

# RealTime Transcriptions

TRANSCRIPTION OF THE

## COMMISSION OF INQUIRY

### MARIKANA

#### BEFORE TRIBUNAL

THE HONOURABLE MR JUSTICE FARLAM (RETIRED) - CHAIRPERSON  
MR TOKOTA SC  
MS HEMRAJ SC

#### HELD ON

DAY 284

3 SEPTEMBER 2014

PAGES 36663 TO 36868



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

Page 36667

1 allow people to leave the koppie but had to differentiate  
 2 between those people who were armed and those people who  
 3 weren't, you know one of the things you would have expected  
 4 to see is some sort of filtering mechanism for people  
 5 leaving the koppie, and that wasn't present.  
 6 MR SEMENYA SC: Mr White, I have time  
 7 constraints. If there is a way in which you can answer my  
 8 questions without embellishment I would appreciate it, but  
 9 if you have to then that's what it is.  
 10 If you were in the JOCCOM meeting of 16 August  
 11 2012 at 13:30 and the Provincial Commissioner said I want  
 12 you to go and disarm those people on the koppie, do I  
 13 understand you to say you would have said no, it can't be  
 14 done?  
 15 MR WHITE: I'm absolutely satisfied that  
 16 given my experience with dealing with these issues I would  
 17 have raised an objection. You know I've spent 30 years in  
 18 a disciplined organisation and I understand the concept of  
 19 orders, but I would have raised an objection, and from my  
 20 very first statement, my provisional statement, I  
 21 highlighted the fact that I was surprised that no one did  
 22 so.  
 23 MR SEMENYA SC: Ja, but what would be the  
 24 objection if the conversation in the JOCCOM is we are going  
 25 to put up a barbed wire - and let's disabuse our minds of

Page 36668

1 what we know now - we're going to put a barrier, i.e. a  
 2 measure that was not present on the 13th, to make sure that  
 3 we delineate the group of strikers from the police; we  
 4 expect after we announce that we wanted them to disperse  
 5 that the majority of those who were on the koppie will do  
 6 so, as it happened as a matter of fact, and we'd expect  
 7 that those who are belligerent and refuse to disarm would  
 8 be a minority in the 3 or 400. We will use standard  
 9 operation procedures of POP to use water cannon to split  
 10 them into smaller groups. We'll use the armoured vehicles  
 11 to split them into smaller groups. We'll encircle smaller  
 12 groups and arrest those. Where we fail to do so there  
 13 would be other tactically trained individuals to do it.  
 14 How would you meet that argument in the JOCCOM?  
 15 MR WHITE: I'll meet the argument by  
 16 basically saying first of all this is your - what is it  
 17 we're trying to achieve, and we have a responsibility to  
 18 try and achieve that, i.e. the disarming of people with  
 19 the minimum use of force. That's our responsibility, and  
 20 my first point then would have been all through the  
 21 planning process Lieutenant-Colonel Scott had talked about  
 22 an encirclement option early in the morning when there  
 23 weren't people, many people around, so why don't we do  
 24 that.  
 25 The second thing I would have been suggesting

Page 36669

1 would have been as people approach the koppie later on in  
 2 the morning after we had done the encirclement, to have  
 3 some sort of filtering mechanism that if people wanted to  
 4 come and protest peacefully then that's entirely their  
 5 right to do so, but there would have been a mechanism to  
 6 ensure that people who were armed were deterred from  
 7 coming, or alternatively that the arms were able to be  
 8 taken from them. So that's the first thing.  
 9 MR SEMENYA SC: Let's test the first  
 10 thing as you point out. On your analysis there was  
 11 insufficient intelligence to tell us where these people  
 12 are, where they are sleeping, and we knew from Lonmin  
 13 records that only 10% of the workforce was staying in  
 14 hostels. Correct?  
 15 MR WHITE: I think I can agree with that.  
 16 MR SEMENYA SC: And what we also know is  
 17 that according to the reconnaissance that was done by  
 18 Brigadier Calitz there were only a few people in the  
 19 evening at koppie 1.  
 20 MR WHITE: That's correct.  
 21 MR SEMENYA SC: So we would have planned  
 22 to encircle koppie 1.  
 23 MR WHITE: That was Mr Scott's plan.  
 24 MR SEMENYA SC: Yes, and to our horror Mr  
 25 X tells us they were at koppie 3 all the time, hiding

Page 36670

1 there. How would that have achieved the goals that we  
 2 sought to achieve?  
 3 MR WHITE: Well, what we would -  
 4 MS LE ROUX: Chair, sorry, Chair,  
 5 obviously that's a disputed fact. I'm assuming Mr Semenya  
 6 would like Mr White to assume that people were hiding in  
 7 koppie 3.  
 8 MR MPOFU: Ja, it's not even a disputed  
 9 fact. It doesn't, it's a non-existent fact. Mr X never  
 10 said such a thing.  
 11 CHAIRPERSON: Well, let's not get  
 12 involved in that. I think the simple point is Mr Semenya  
 13 asks Mr - or I take it implicitly - Mr White to accept it  
 14 as a fact for the moment and proceed to deal with it.  
 15 MR MPOFU: As an assumption?  
 16 CHAIRPERSON: Yes, I say assume it's  
 17 correct. Whether it is a fact, whether there's any  
 18 evidence to deal with it, whether if Mr X said it he can be  
 19 believed on that, all these other matters we don't have to  
 20 debate at the moment.  
 21 MR MPOFU: Okay.  
 22 MR WHITE: Chair, then if it's helpful  
 23 and if the planning that we are engaging with was in  
 24 relation to the issue at koppie 1, the police certainly,  
 25 well that's a disputed fact. What wouldn't be disputed is

Page 36671

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

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

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

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

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

Page 36673

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

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

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

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

Page 36672

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

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

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

20 MR SEMENYA SC: You don't understand?

21 MR WHITE: - your argument.

22 MR SEMENYA SC: You don't understand?

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

Page 36674

1 MR WHITE: That's correct.

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

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

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

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

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

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



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

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

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

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

Page 36707

1 the things that I say in relation to my final statement  
 2 might not be, might be something that I need to revise  
 3 simply because I was engaging with a set of facts which  
 4 perhaps were not strictly accurate.

5 MR SEMENYA SC: I gave Mr –  
 6 MS LE ROUX: And Chairperson, in Mr  
 7 White's supplementary statement that's section 2.2  
 8 commencing at page 3 where he deals with the decision to  
 9 move to the DDA operation.

10 MR SEMENYA SC: And I haven't even asked  
 11 the question. That's what you have written in the  
 12 paragraph 70, Mr White.

13 MR WHITE: Yes, that's what I've written  
 14 in the paragraph –

15 MR SEMENYA SC: Right.  
 16 MR WHITE: - at the time.

17 MR SEMENYA SC: Now let me explore that  
 18 with you. You can't tell us what would have been the  
 19 consequence had the police done nothing on the 17th, the  
 20 18th, the 19th and the 20th or going forward, can you?

21 MR WHITE: I can, but I've never  
 22 suggested that they would do nothing.

23 MR SEMENYA SC: Well, there is some  
 24 opinion that suggests maybe you do nothing because there is  
 25 no escalation, there's no point in doing anything. You can

Page 36708

1 observe it throughout. You don't share that opinion, do  
 2 you?

3 MR WHITE: I certainly wouldn't share the  
 4 opinion that the police do nothing.

5 MR SEMENYA SC: By way of disarming the  
 6 group?

7 MR WHITE: Again I wouldn't share the  
 8 opinion that the police do nothing.

9 MR SEMENYA SC: Okay. And by the time  
 10 the operation was launched on the 16th of August the  
 11 position, obtuse or otherwise, that was taken by Lonmin  
 12 that they were not going to go to the koppie was not going  
 13 to change. You can accept that premise, correct?

14 MR WHITE: I've seen evidence of that  
 15 fact. I don't know what would have happened in the future,  
 16 but yeah.

17 MR SEMENYA SC: So the primary demand on  
 18 the koppie was not going to be met insofar as they wanted  
 19 Lonmin to go to the koppie.

20 MR WHITE: Well, I don't know what  
 21 Lonmin's intention would be and whether it would have  
 22 changed, but if you want me to assume –

23 MR SEMENYA SC: On the evidence that you  
 24 have read –

25 MR WHITE: - that Lonmin wouldn't go to

Page 36709

1 the koppie –

2 MR SEMENYA SC: On the evidence that you  
 3 have looked at and the evidence that you have analysed  
 4 there's nothing to indicate that position was going to  
 5 change on the part of Lonmin. Is that fair to say?

6 MR WHITE: Okay, I'll accept that.

7 MR SEMENYA SC: And on the evidence that  
 8 you have seen Mr Mathunjwa had made his plea and drove off  
 9 in exasperation that they're not listening to him.

10 MR WHITE: Well ja, I'm aware that he  
 11 drove off, yes.

12 MR SEMENYA SC: And if some of the  
 13 evidence is to be accepted, the group was intent on going  
 14 to attack the police.

15 MR WHITE: I think there's evidence to  
 16 that fact and there's also evidence to the contrary that  
 17 I've seen.

18 MR SEMENYA SC: So the police evidence is  
 19 then that there was nothing anymore to wait for but to  
 20 disarm the group. You say that still leaves you standing  
 21 to question how that was to happen.

22 MR WHITE: Yes, it does leave me to  
 23 question how it's going to happen.

24 MR SEMENYA SC: But of course you know  
 25 even beyond koppie 3 there were many vehicles of Lonmin

Page 36710

1 that were torched by some of these individuals? You're  
 2 aware of that evidence?

3 MR WHITE: Yes.

4 MR SEMENYA SC: So that risk was still  
 5 present to assets of Lonmin, even despite the intervention?

6 MR WHITE: Could I just ask for clarity,  
 7 Mr Semenya? The vehicles that you're referring to that had  
 8 been torched by Lonmin's – when specifically, just so that  
 9 I have it in my had, when are we talking about that  
 10 happened?

11 MR SEMENYA SC: Well, as I understand the  
 12 evidence it was the 12th and the 16th.

13 MR WHITE: But specifically on the 16th  
 14 would I be right in saying that that happened subsequent –

15 MR SEMENYA SC: Correct.

16 MR WHITE: - to the police operation?

17 MR SEMENYA SC: Correct, on the same day.

18 MR WHITE: But subsequent to the police –

19 MR SEMENYA SC: Yes.

20 MR CHASKALSON SC: Approximately an hour  
 21 after 36 people were killed.

22 CHAIRPERSON: 34.

23 MR CHASKALSON SC: 34.

24 MR CHASKALSON SC: Say approximately an  
 25 hour after 17 of the 34 had been killed.

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

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

Page 36719

1 MR MPOFU: Chairperson, with respect –

2 CHAIRPERSON: If you want to show me

3 respect abide by my ruling. Mr Semenya, please continue.

4 MR MPOFU: No, Chairperson, I have to

5 make this point. I hear what you are saying. I'm just

6 saying you're making a mistake. Mr Semenya said the

7 evidence is, those are the words. I can't leave it like

8 that just because you didn't hear those words. He says the

9 evidence is and I'm putting to you that the evidence is

10 something completely different. That's the proposition.

11 CHAIRPERSON: You've made your point.

12 May I suggest, it's now 10:30, we take the first comfort

13 break? Mr Semenya will take on board what you've said and

14 we will proceed.

15 MR MPOFU: Thank you.

16 [COMMISSION ADJOURNS COMMISSION RESUMES]

17 [10:49] CHAIRPERSON: The Commission resumes. Mr

18 White, you're still under oath.

19 GARY WHITE: [s.u.o.]

20 CHAIRPERSON: Mr Semenya.

21 CROSS-EXAMINATION BY MR SEMENYA SC (CONTD.):

22 I was saying, Mr White, that on the one hand the desire to

23 have those who are armed arrested existed, but you can

24 accept as a legitimate concern of the police that it was

25 also necessary to disarm them sooner to curb the potential

Page 36720

1 of further killings.

2 MR WHITE: That's always going to be a

3 consideration. However, I think it's worthy of note the

4 comment that Mr Scott makes with regards to the fact that

5 since the plan that went into the operation, that you –

6 MR SEMENYA SC: Mr White, if it is enough

7 to say yes, please, I have time constraints. I haven't

8 asked you about Mr Scott, but you're taking me there.

9 MR WHITE: But you're asking me for my

10 opinion in relation to whether or not it would be better to

11 arrest people sooner rather than later. If I'm going to

12 give you my opinion, Mr Semenya, then please, I need to

13 give you my whole opinion. It's not sufficient for me to

14 say yes or no without explanation. None of these things

15 are absolute. All of these things happened in a context

16 and the issue is around proportionality around actions. So

17 I think it is only fair to say of course if the police

18 could have got those weapons off people earlier rather than

19 later, then the potential for those weapons to be used for

20 further acts of violence stops of course. However, it's

21 about the consequence of actually moving in to take those

22 weapons. What that leads to is the issue and that needs to

23 be factored in, in advance.

24 My point is that Colonel Scott himself had

25 actually made the comment that the plan appeared to be

Page 36721

1 working in terms of the negotiation and therefore there was

2 an absence of violence for a period of 48 hours from the

3 Tuesday afternoon up until the period when the operation

4 went tactical.

5 The violence that you refer to in terms of the

6 burning of the vehicles then happened subsequent to that.

7 I think it's only fair that I can give that full answer.

8 MR SEMENYA SC: Page 75, at the top of

9 the page you talk about one of the options being to

10 maintain stage 2.

11 MR WHITE: Indeed.

12 MR SEMENYA SC: For how long?

13 MR WHITE: Well again that's an open

14 question. It depends upon what else is happening. So for

15 example the issues that you referred to earlier on about is

16 it possible to get Lonmin to step up to their

17 responsibilities of potentially coming to the koppie or

18 whatever other negotiation can take place, but the point is

19 that stage 1 and stage 2 had effectively brought a

20 temporary, potentially a halt to the violence. I think

21 that's a success.

22 MR SEMENYA SC: So you can't tell us how

23 long stage 2 reasonably ought to have been maintained

24 beyond the duration that it was maintained?

25 MR WHITE: No. But I did give a

Page 36722

1 suggestion again based on Colonel Scott's own

2 interpretation of the facts that potentially you could have

3 then taken an alternative course of action, say for example

4 on the morning of the 17th.

5 MR SEMENYA SC: And you say that there

6 was also an opportunity perhaps to re-engage negotiations.

7 Do you have any evidence indicating a possibility that

8 Lonmin was going to change its position?

9 MR WHITE: No, I don't, nor do I have any

10 evidence to suggest they wouldn't.

11 MR SEMENYA SC: Sorry?

12 MR WHITE: Nor do I have any evidence to

13 suggest that they wouldn't. You know in negotiations

14 things change. Sometimes people maintain a position for a

15 long period of time, sometimes they change. I mean that's

16 the nature of negotiation.

17 MR SEMENYA SC: No, but we know the

18 evidence, Mr White. We know there have been attempts at

19 getting Lonmin from day 1 to go to the koppie and they

20 steadfastly said they're not going there. Can't you accept

21 that to have, to would have maintained?

22 MR WHITE: Well, I will accept that they

23 haven't gone there and if it helps you I'm prepared to

24 accept that they won't go there, but I don't know how I

25 would know that.



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

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

Page 36731

1 have merely suggested to people they could go that way and  
 2 of course that's the way people, a lot of people went.  
 3 Forget about the, even the more militant group that we're  
 4 referring to, but lots of people left the koppie beforehand  
 5 and walked that exact route.

6 MR SEMENYA SC: But clearly if they had  
 7 done what the Chairman suggests was possible, there would  
 8 be no dispersal action because the police would be this  
 9 side of that enclosure, entirely closed by the barbed wire.

10 MR WHITE: Well of course this was one of  
 11 the issues I sort of was confused about in relation to the  
 12 plan because as you say, Chair, Nyala 5 could have been  
 13 used to extend on beyond Nyala 4. Well, the original plan  
 14 was that that is what was to happen and then Nyala 6 beyond  
 15 that. So in some respects when they created that wire in  
 16 order to create this sort of neutral zone, this area where  
 17 police officers and media or whatever would be safe, it was  
 18 somewhat confusing to me well, how actually would the  
 19 dispersal resources get out, because they're now behind the  
 20 wire because the sequencing of the plan was the wire goes  
 21 out, then at the time of Mr Calitz as the operational  
 22 commander choosing he gives this warning to the crowd, he  
 23 then allows people to leave and then the dispersal action  
 24 takes place, and it was always a matter of confusion to me,  
 25 well, surely the dispersal resources are now stuck behind

Page 36732

1 the wire.

2 CHAIRPERSON: The original plan didn't  
 3 envisage a gap. It envisaged an uninterrupted barrier.  
 4 Presumably what, I don't think we asked Colonel Scott at  
 5 the time, but I take it what must, the answer would have  
 6 been once they were ready to go into the area where the  
 7 strikers were they could they effected some kind of  
 8 temporary gap in the barrier they'd created to go through.  
 9 I mean –

10 MR WHITE: That may well have been the  
 11 case.

12 [11:09] CHAIRPERSON: Advocate Hemraj says that  
 13 I'm wrong, but in fact they were going to go round the end  
 14 of the barrier, but anyway, I don't think anything turns on  
 15 the point. So let me not waste, Mr Semenya's time further.

16 MR SEMENYA SC: Somewhere in your report  
 17 you deal with the use of the words bloodshed by General  
 18 Mpembe in one of the meetings. The evidence by General  
 19 Mpembe is that he used that expression in attempts to  
 20 pressure Lonmin to appreciate the need to resolve the  
 21 industrial dispute. That's the context.

22 MR WHITE: I accept that.

23 MR SEMENYA SC: If your report is read to  
 24 read that it was because of some foreseeable loss of life  
 25 in stage 3, we should de-contextualise that, correct?

Page 36733

1 MR WHITE: In order to give you a brief  
 2 answer, Mr Semenya, could you read first the question,  
 3 because I don't quite follow.

4 MR SEMENYA SC: You are not connoting in  
 5 reference to that utterance that he was foreseeing stage 3  
 6 culminating in bloodshed?

7 MR WHITE: If you're asking me, did I  
 8 think that he felt that he was planning for bloodshed, no,  
 9 however, I took that comment to be that he was trying to  
 10 negotiate, as we referred to earlier on, he was trying to  
 11 make Lonmin and the unions realise that, look, this is the  
 12 potential seriousness of this and therefore, but part of  
 13 his negotiation strategy, however the point that he makes  
 14 is he uses the word bloodshed, and basically it seems to me  
 15 that he's saying, given the number of people on that hill  
 16 and they're heavily armed, if I then have to send in lots  
 17 of heavily armed police, there's likely to be bloodshed.

18 MR SEMENYA SC: Now, you're building  
 19 those words into his mouth. I'm telling you what he said  
 20 in his evidence.

21 MR WHITE: Well, with respect, then, Mr  
 22 Semenya, if I'm incorrectly quoting him, if you want to put  
 23 the exact words up and I'll engage with those, but my only  
 24 point in relation to this is Mr Mpembe appeared to be alive  
 25 to the fact that this potentially could be a very

Page 36734

1 difficult, dangerous situation involving firearms the  
 2 following day, where you have to put heavily armed police  
 3 officers into confrontation with the heavily armed group.  
 4 And he was trying to use that in order to influence people  
 5 to see if we can negotiate our way out of this, I get that,  
 6 but the point is I used that reference there to make the  
 7 point that Mr Mpembe is alive to high risk nature of this  
 8 operation and yet the following day they went ahead with  
 9 and did exactly that. That's my point, but if I misquoted  
 10 him, I'm more than happy to see it on the screen and to  
 11 engage with the specifics of what he said.

12 MR SEMENYA SC: Page 89, where you make  
 13 reference in paragraph 6.5.31a, you are not suggesting if  
 14 you accepted that the crowd that moved to the TRT line, if  
 15 the evidence is that they were acting in concept, that is a  
 16 situation that could have been resolved by appointment of  
 17 snipers. That's not what you're suggesting there?

18 MR WHITE: I make the reference to  
 19 snipers because snipers were placed, and as I understand,  
 20 snipers were placed on the basis of there is intelligence  
 21 to say that there may be firearms threat against the  
 22 police, and that the firearms had been stolen throughout  
 23 the course of the week and we know that it would have been  
 24 used. So I make that point that snipers are already  
 25 deployed in this. I then make the further point that when

Page 36735

1 you're engaging with a firearms threat, in relation to  
 2 crowd, there are ways to do that respectfully, and ways to  
 3 do it in a way that doesn't involve lining up 60 people  
 4 armed with rifles, who are all going to potentially  
 5 perceive and engage the same threat. That's the point that  
 6 I'm making.

7 MR SEMENYA SC: The question was a simple  
 8 one, you are not suggesting, and if you are, tell me you  
 9 are. You're not suggesting that that problem could have  
 10 been resolved by the use of snipers?

11 MR WHITE: No, I'm not, but I would refer  
 12 to the last couple of lines of that. In my experience, it  
 13 is generally not sufficient when firearms can be  
 14 anticipated in a crowd situation to leave the response to  
 15 officer's discretion, acting in self or private defence.  
 16 It's also unfair to the officers to be placed in that  
 17 situation. That's the point that I'm making around this  
 18 issue of the line of TRT officers.

19 CHAIRPERSON: It's a simple question  
 20 really. I can understand you don't like 60 members of the  
 21 police service, each of whom has got an R5, each of whom is  
 22 given the authority, if he considers it necessary to defend  
 23 himself or his colleagues to fire. So then you have  
 24 potentially 60 shotists all firing at once on the advancing  
 25 group. That obviously you don't like, and that you suggest

Page 36736

1 is undesirable, inappropriate. What would be an  
 2 appropriate way of dealing with the matter? What Mr  
 3 Semenya is suggesting to you, is just having two or three  
 4 snipers wouldn't be enough, and I take it you agree with  
 5 that? So what was the alternative?

6 MR WHITE: Well, Chair, I actually have  
 7 given evidence in my statement, somebody to help me with  
 8 specific reference where I have talked about dealing with  
 9 that type of eventuality in a crowd situation. I've  
 10 experienced all of that. I think and I gave evidence in my  
 11 evidence-in-chief around it, where we would have used  
 12 specialist armed firearms, armed response officers,  
 13 specially trained firearms officers, if you like, and  
 14 imbedded within the public order units.

15 CHAIRPERSON: I'm sorry to interrupt you.  
 16 I think you're referring to in your report 7.5.11 on page  
 17 115.

18 COMMISSIONER HEMRAJ: Are you, Mr White,  
 19 suggesting dedicated officers who would be responsible for  
 20 dealing with that issue, rather than a line of 60?

21 MR WHITE: Yes, Commissioner, that is my  
 22 point.

23 COMMISSIONER HEMRAJ: I understand.

24 CHAIRPERSON: That's effectively what you  
 25 say in 7.5.11.

Page 36737

1 MR WHITE: I am grateful, that is indeed  
 2 the reference.

3 CHAIRPERSON: Just check. It just says  
 4 arises, the point you make in 7.5.11, maximum lethal force  
 5 be used only when necessary, avoid the of force at all  
 6 costs. Linked to that would be the necessity where force  
 7 has to be used, use as little force as possible. And  
 8 giving 60 people R5s and saying, all of you can shoot as  
 9 and when you consider it necessary to defend yourselves and  
 10 your colleagues, it might well be argued, I'm saying, what  
 11 the answer is, but it might well be argued that that would  
 12 not be using as little force as possible, question, would  
 13 you agree with that?

14 MR WHITE: That's exactly my point,  
 15 Chair.

16 CHAIRPERSON: Then the next question  
 17 arises, which I think, just let me quickly ask, is what  
 18 would be as little force as possible? And I take it your  
 19 answer is contained in this paragraph, am I understanding  
 20 you correctly?

21 MR WHITE: Exactly, that the issue to the  
 22 use of force is that it's in proportion. So it's about  
 23 understanding what the threat actually is that you're  
 24 facing and then trying to work out a tactical option to  
 25 deal with that. And I have been consistent in all three of

Page 36738

1 my statements, my main issues here is that the tactical  
 2 configuration of the operation was set up, was likely to  
 3 lead to higher uses of force, and that's not with the  
 4 benefit of hindsight. I couldn't understand why, during  
 5 the planning process, during the meeting that we were  
 6 talking about before the tea break, the 30 minute meeting,  
 7 that senior police officers were not objecting to this plan  
 8 on that basis.

9 COMMISSIONER HEMRAJ: May I just  
 10 understand, given the circumstances as they were on the 16th  
 11 and the numbers involved, and if you were suggesting the  
 12 dedicated, you call them firearms officers, do you? How  
 13 many would you say would be given that order to deal with  
 14 this threat?

15 MR WHITE: Well, again, this comes back  
 16 to careful planning. So it's about understanding what that  
 17 threat is. By way of an example, it may well be that you  
 18 have potentially three or four public order teams who are  
 19 going to engage a crowd, and it may well be that this end  
 20 of the crowd, for whatever reason based on intelligence, we  
 21 don't anticipate a firearms threat or a threat where  
 22 potentially there is a threat to life, not necessarily by  
 23 firearms, whereas over here there is. None of this stuff  
 24 is perfect science, it's about trying to interpret the  
 25 risks and responding to that. So it may well be that, as I

<p style="text-align: right;">Page 36739</p> <p>1 say, we would have imbedded on either end of a public order 2 line police officers who are specifically trained and carry 3 out that function. And ordinarily it would be one person 4 with a gun with their backup team, as in spotters, people 5 to help them identify the threat.</p> <p>6 Also what you would figure into that would be 7 about the protection that be afforded from various 8 vehicles. If there is a specific firearms threat that 9 police officers are facing, and that's based on very good, 10 reliable intelligence. It may even be that in dealing with 11 a crowd, a public order crowd, we confine police officers 12 to their vehicles. We actually use vehicle tactics, 13 because it's too dangerous for them to get out, so rather 14 than to be exposed and to therefore have to shoot back, we 15 might keep them in vehicles.</p> <p>16 So my answer to you, Ma'am Commissioner, is 17 basically that it depends on the threat. You plan around 18 the threat, but in a way that is likely to minimise the use 19 of force.</p> <p>20 COMMISSIONER HEMRAJ: Yes, but given the 21 circumstances, as you're fully aware of on the 16th, what 22 would you suggest? How many dedicated firearms officers 23 would you have to deal with the threat? That's really what 24 I'm trying to understand, because you don't like the 60 25 people, so what are you suggesting?</p>	<p style="text-align: right;">Page 36741</p> <p>1 understood you to say initially you have effectively 2 snipers at each side, one on each side of the line, 3 assisted by spotters and so on. You also then spoke about 4 the necessity for them possibly to be protected by being in 5 a armoured vehicle which made me think that you were 6 suggesting that perhaps they should be in an Nyala. I 7 think we should get clarity on what you say that the police 8 should have done, because you are saying there's defect in 9 their plan. I know your first point is that they shouldn't 10 have endeavoured to exercise the tactical option on the 11 Thursday, they should have done it early morning on the 12 Friday, but in the alternative, as it were, what was wrong 13 with the actual plan that was implemented on the Thursday? 14 You say that 60 people with firearms with discretion to 15 fire is inappropriate. What is the alternative? If you 16 can spell that out with precision, because I think that's 17 important for us and I suspect for Mr Semenya too.</p> <p>18 MR WHITE: Chair, three points on what 19 you said. First, reference to snipers, when I talk about 20 use of firearms teams in a public order operation, I'm not 21 necessarily talking about snipers – certainly the way that 22 Mr Frits had described, I think, those were people who were 23 nearly, I think, they're STF personnel and they were placed 24 sort of almost independent of the dispersal to provide for 25 protection against the specific firearms threat. So they</p>
<p style="text-align: right;">Page 36740</p> <p>1 MR WHITE: Well, I'd suggest a number 2 considerably lower than that. I mean, we could perhaps be 3 here all day as to whether or not it's five, it's ten, or 4 it's three or four, but the point that I think I made 5 yesterday actually is that given the nature of the threat 6 and understand there was firearms threat and then there was 7 an actual firearms incident within this, that's what the 8 evidence is, but I did talk about yesterday that I think 9 that for the most part this crowd who were armed largely 10 with what are referred to as traditional dangerous weapons 11 could have been dealt with fairly adequately with the use 12 of less lethal options, had they been properly used.</p> <p>13 CHAIRPERSON: Well, let's just go back to 14 the firearm, what I call the shotists that you have – I'm 15 not sure that shotists is the right word, but I don't know 16 a more appropriate one. Am I understanding you to say what 17 should perhaps have happened was there should have been 18 perhaps an Nyala at either end, parked as it were, on 19 either end of the line, and in which there were officers 20 armed with R5s or with rifles anyway, and with spotters 21 assisting them. They could then have fired through from 22 the Nyala at the advancing group, who'd be relatively safe 23 themselves, because they'd be in the Nyalas. Is that what 24 you're saying? I don't quite understand what you're 25 saying. You did say, - debate with my colleague, I</p>	<p style="text-align: right;">Page 36742</p> <p>1 are deployed, and set them aside.</p> <p>2 Then looking at the circumstances of Marikana, we 3 are talking about a dispersal operation, whereby public 4 order police are going forward to disperse a crowd who are 5 armed with dangerous traditional weapons, but also, our 6 intelligence suggests, that there might be firearms threat 7 within that, okay. So, don't forget, this is the planning, 8 this is what we anticipated was going to happen, so 9 therefore to engage that threat and there are potentially 10 small numbers of firearms within that crowd, then how do 11 you do that? And what I've given you is I've face that 12 type of a situation before, and what we've done is as the 13 public order, as the POPS line have gone forward, that they 14 may be accompanied on either end, either extremity of that 15 line, by armed response officers, specifically firearms 16 trained officers, trained to do that particular job, who 17 would practice with the public order teams in terms of 18 training and whatever. So maybe one at either end of the 19 public order team.</p> <p>20 CHAIRPERSON: They would be on foot, in 21 other words, they wouldn't be in armoured vehicles?</p> <p>22 MR WHITE: Potentially on foot. And the 23 third point that I was going to make was, then your 24 reference clears up any confusion, I talked about people in 25 the armoured vehicles. On occasion, I've faced</p>

Page 36743

1 circumstances whereby the level of threat, the level of  
 2 intelligence, if you like, is such that we have to be in a  
 3 particular area, because quite often the difficulties that  
 4 we deal with is around two opposing communities. So it's  
 5 not an available option for the police not to be there, or  
 6 potentially like to be lost. So the police might have to  
 7 be between these two opposing communities, but if the  
 8 threat level is such there is intelligence suggesting that  
 9 actually there could be lots of firearms, there could be  
 10 AK47s, etcetera, then rather than putting the police  
 11 officers out on a sheet line to simply walk forward towards  
 12 that crowd, it may well be that we actually utilise  
 13 armoured vehicles. In other words, we manage the crowd by  
 14 vehicle tactics, by not getting the police officers out of  
 15 the vehicles, because it's too dangerous to do so.

16 CHAIRPERSON: Thank you, I understand.

17 MR SEMENYA SC: Mr White, I thought we  
 18 had agreed that the possibility of the crowd moving around  
 19 the corner, as they did, was not present at the 14:30  
 20 JOCCOM discussion.

21 MR WHITE: And I thought I was careful in  
 22 my answer to the chairman when I actually said how this was  
 23 planned and the example I gave of how this was planned was  
 24 that the POP dispersal line would be moving forward. So I  
 25 was giving an illustrative example based on what the plan

Page 36744

1 was, not that people came round the kraal.

2 MR SEMENYA SC: And that the TRT only  
 3 moved there once they saw the crowd moving around the  
 4 corner. That's what happened, and they realised they'll be  
 5 going into the - encroach the safe area, where there were  
 6 media and other people.

7 MR WHITE: That might be so, but my  
 8 criticism is around the TRT in this line, and the plan was,  
 9 the plan from the outset was that the POP officers would go  
 10 forward and disperse and they would be supported by this  
 11 TRT line of 60 people. That was the plan, which you say  
 12 the TRT came forward when people came around the kraal.  
 13 Now, in terms of my criticism of the planning, the planning  
 14 was that the TRT, 60 people would be lined up to follow the  
 15 POP.

16 MR SEMENYA SC: I think your line of  
 17 argument, Mr White, with respect, implicitly rejects that  
 18 the shooting was a function of self-defence as opposed to a  
 19 police operational plan to do something.

20 MR WHITE: I'm not sure that's correct.  
 21 I've always been careful, Chair, to say, obviously I'm very  
 22 aware of my position here is – it is your position to  
 23 decide factually what happened. I'm just trying to give an  
 24 interpretation of the facts, based on my opinion, as to  
 25 potentially what might have happened or could have

Page 36745

1 happened. So if I am overstepping my mark in that regard  
 2 with regards to what Mr Semenya said, I apologise to you.  
 3 I'm sure you'll comment on that.

4 MR SEMENYA SC: What I also find  
 5 difficult and please help me, where standing order 262 says  
 6 in clause 11 that things like putting a barbed wire as  
 7 offensive action requires no prior announcement, you're  
 8 saying it does.

9 MR WHITE: I'm saying that it is I think  
 10 fairly well accepted good public order policing dealing  
 11 with crowds principles that when the police are carrying  
 12 out actions, they provide warnings to the crowds. Now if  
 13 there is a specific direction in relation to 262, or  
 14 elsewhere, that says that you shouldn't do that, for  
 15 whatever reason, well that's fine. I am saying to you,  
 16 Chair, as someone who has considerable experience with  
 17 dealing with public order that and I'm looking at some of  
 18 the learning, if you like, coming out of public order  
 19 situations that actually it is generally accepted as good  
 20 practice in managing crowds that we use this concept of no  
 21 surprises, where we keep the crowd informed of what's going  
 22 to happen, so there can't be a misinterpretation of the  
 23 actions of police.

24 [11:29] MR SEMENYA SC: But let's explore that,  
 25 if the tactic is for instance we are going to channel this

Page 36746

1 group. Using vehicles blocking that and blocking that, do  
 2 you announce that in advance?

3 MR WHITE: Sorry.

4 MR SEMENYA SC: If you're going to do a  
 5 channelling exercise, channelling crowds, you are going to  
 6 be using vehicles to block this entrance to open that  
 7 entrance and to block the other do you announce that to the  
 8 crowd in advance, that we are going to be channelling you  
 9 now?

10 MR WHITE: As you said, Mr Semenya, there  
 11 was a responsibility for the police to engage with the  
 12 stakeholders, we talked about that at length and the  
 13 planning of these operations would often involve lots of  
 14 engagement with stakeholders including representatives of  
 15 communities where we make it very clear –

16 MR SEMENYA SC: No I'm talking about  
 17 spontaneous events, obviously if it is planned everybody  
 18 agrees. I'm talking about spontaneous ones.

19 MR WHITE: When the police -

20 MR SEMENYA SC: Sorry.

21 MR WHITE: And then in relation to  
 22 spontaneous events where the police are taking actions yes  
 23 it would be as a matter of course the police would explain.  
 24 We'd give warnings in relation any use of force whatsoever  
 25 because the idea behind a warning is that hopefully people

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

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



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

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

Page 36763

1 I based – and the Dutch police agreed to that – I based the  
 2 approach on the model that I'm sure we're going to debate  
 3 over the next few hours, and that the Dutch police agreed  
 4 to base all approaches on that model. So far my  
 5 operational experience in Belgium.

6 As far as South Africa is concerned, I was, or  
 7 the Belgium government was asked by the police –

8 CHAIRPERSON: I'm sorry to interrupt you.  
 9 MR HENDRICKX: Sorry.  
 10 CHAIRPERSON: May I say to you that  
 11 paragraphs 10 to 17.10 of your statement you've dealt  
 12 extensively –

13 MR HENDRICKX: Okay.  
 14 CHAIRPERSON: - with your South African  
 15 experience. We studied that, so you can assume we've read  
 16 that, but perhaps you just want to highlight some of the  
 17 points that you consider particularly important.

18 MR HENDRICKX: Yes, certainly that the  
 19 model was used together with the Dutch police to police the  
 20 events at the European Soccer Championships in 2000.  
 21 Coming now to South Africa, the interim  
 22 governmental structures to the Peace Accord, during the  
 23 Peace Accord in 1993 asked the Belgium government for some  
 24 support at organising the new democratic elections and the  
 25 Belgium government sent me in the end, by the end of 1993

Page 36764

1 to this country to see what would be possible and to what  
 2 extent we could contribute to the running of these  
 3 elections.

4 At those occasions they sent me and at those  
 5 occasions I was asked to work together with the [inaudible]  
 6 Peace Secretariat with whom, or with the people from the  
 7 [inaudible] Peace Secretariat I went and stood at numerous  
 8 demonstrations between demonstrators and the police, only  
 9 having a bib to protect ourselves. During that time I was  
 10 taken hostage in Zulu Hostel in Orlando and I want to  
 11 explain to everybody, if explanation is needed, I know what  
 12 a panga is, I know what it feels and I know what it feels  
 13 to be under threat by a panga.

14 Coming then to my work for the IEC; I was asked  
 15 to help the head of the Monitoring Department, Mr Peter  
 16 Harris, to develop the monitoring, the national monitoring  
 17 and the international monitoring of the events so that that  
 18 department could help Mr Kriegler by the end of the  
 19 election process to define whether the elections were run  
 20 free and fair.

21 For that matter I developed and I implemented in  
 22 all of the provinces of this country IEC operational rooms  
 23 where the IEC could follow the events, the canvassing of  
 24 the elections. I trained, or not I but I mean with a team  
 25 we were responsible of recruiting from the end of 1993 up

Page 36765

1 until the period of the election in April 1994, recruit  
 2 volunteers, to train them in monitoring all those, the  
 3 canvassing of the elections and during the elections  
 4 monitor the behaviour of the people at the moment of the  
 5 elections.

6 On those occasions I've been in numerous  
 7 situations in stadiums in demonstrations, and I don't have  
 8 to remember you that at some point the IFP was not  
 9 participating at the elections and there was quite a lot of  
 10 tense situations. At that moment I stood with the  
 11 monitors, the IEC monitors, very close to demonstrators,  
 12 only protected by another bib.

13 At the end through all the monitoring we could  
 14 luckily, or Judge Kriegler could declare the elections free  
 15 and fair, but during those very intense period in my life I  
 16 was present at the Shell House disaster. I've seen people  
 17 die in the streets. I was present when a lot of  
 18 demonstrations went on people carrying traditional weapons.  
 19 So even at that moment I was familiar with the levels of  
 20 possible violence and possibly being used by demonstrators  
 21 or by people demonstrating in the streets.

22 I'm telling you this because after the elections  
 23 when the results were known and approved, the then new  
 24 government, and based on the experience I guess and based  
 25 on the impression that they had over our work at IEC level,

Page 36766

1 they asked the Belgian government for support to the reform  
 2 of the SAP into SAPS. I was sent there in the first  
 3 instance by the Belgian government and agreed for by the  
 4 new South Africa government to be responsible for one part  
 5 of the cooperation agreement and it a reform of public  
 6 order – of the, ja, from the Public Order Policing units in  
 7 South Africa at that moment.

8 So afterwards when that first project was  
 9 finished, around 2000, 2001, the government, South African  
 10 government asked for a new cooperation agreement that was –  
 11 [12:25] In the meantime I had left the police and I then  
 12 had it the new the new the new cooperation agreement, which  
 13 was focussing on what has been called the Vispol project.  
 14 And that, since somebody showing me a five minute warning,  
 15 is what I would have liked to explain to you on my  
 16 experience with the South African police.

17 MR BIZOS SC: Yes. When you consider  
 18 your situation, what are the criticisms which you have  
 19 outlined in your statement? Very briefly, just the  
 20 headings, what are the main criticisms?

21 MR HENDRICKX: The main criticism is that  
 22 and I am really summarising very, very hard, is that it's  
 23 my, after I have seen all the evidence, after I have  
 24 perused everything that has been shown to me and also not  
 25 being here, the opportunity that I had through the

Page 36767

1 television on You Tube and things like that, the hearings  
 2 that I have been able to follow, is that the operation, as  
 3 it was implemented, was firstly, not enough based on the  
 4 principles of 262. Two, put together by responsible  
 5 officers who were not enough trained based on 262, was  
 6 implemented in a way that I got my doubts on the command  
 7 and control that happened before and during the operation.  
 8 I know there are lot of explanations for that, I'm more  
 9 than happy to discuss all those, but that basically is what  
 10 you could call my criticism of what happened during those  
 11 regretful days.

12 And if I'm allowed to make a bit of sidestep, my  
 13 motivation, Chair, to come here is to pay my respect to the  
 14 victims of that tragedy, and I consider, I not only  
 15 consider the people who were shot as victims, but I  
 16 consider as well the policemen, or a lot of the policemen  
 17 who were present at those tragic events as victims, and it  
 18 is my intention and my willing to make sure to help you to  
 19 make recommendations that events like this will not be seen  
 20 again in this country.

21 MR BIZOS SC: Thank you, Mr Hendrickx.  
 22 You have your statements, written statements, have you also  
 23 been fed by my colleagues sitting here with the record and  
 24 certain documents that have been produced to the  
 25 Commission?

Page 36768

1 MR HENDRICKX: Yes, Chair, I have.  
 2 MR BIZOS SC: What is your attitude after  
 3 all the additional evidence that has been presented to you  
 4 in relation to the conclusions that you have expressed in  
 5 the two exhibits that were made previously?  
 6 MR HENDRICKX: After studying all that, I  
 7 keep my position and I don't – I am in a position that I  
 8 don't want to change anything that I've written down.  
 9 MR BIZOS SC: Yes. Thank you, I have no  
 10 further questions for the witness.  
 11 CHAIRPERSON: Before Mr Semanya starts  
 12 questioning you, just one thing I want to ask you about,  
 13 and that is you handed in as exhibit quadruple T2, an  
 14 extract from a book, which is already before us, but we  
 15 have used quadruple T2. It's the publication of Goldstone  
 16 Commission which accompanied the bill which they drafted  
 17 which ultimately became the Regulation of Gathering Act.  
 18 And in that passage that's been put before us, it's said  
 19 that the policing – I'm quoting the second line – the  
 20 policing of PO operations is characterised by thorough  
 21 planning and preparation, senior officers must consider and  
 22 make contingency plans for various scenarios, probable to  
 23 impossible, with these means the police should avoid being  
 24 surprised by unexpected events, thus retaining maximum  
 25 control over their own officers, and events themselves. I

Page 36769

1 take you put it before us, because it's something with  
 2 which you agree, am I correct?  
 3 MR HENDRICKX: For that reason I wanted  
 4 to, if possible, bring everybody back to the cornerstone of  
 5 262 to, and everything, the Gatherings Act and everything  
 6 that happened also at a legal – at a level of legislation  
 7 and police practice since that report of Mr Goldstone was  
 8 reported. I do that for two reasons, to draw the attention  
 9 of the Commission to matters concerning command and  
 10 control, one. And two, to matters of the use of firearms  
 11 by police.  
 12 CHAIRPERSON: Yes. Thank you. Mr  
 13 Semanya?  
 14 MR SEMENYA SC: Thank you, Chair. Good  
 15 afternoon, Mr Hendrickx.  
 16 MR HENDRICKX: Good afternoon, Mr  
 17 Semanya.  
 18 MR SEMENYA SC: Can I take it from the  
 19 end of your commentary that we should hope to obtain from  
 20 the recommendations of this Commission those measures which  
 21 would make another Marikana not happen?  
 22 MR HENDRICKX: Chair, I totally agree  
 23 with that, and I said that was my motivation to do what I'm  
 24 doing here today.  
 25 MR SEMENYA SC: And based on your

Page 36770

1 experience, one of the elements of public order policing  
 2 that's important is, as you call it, prevention, correct?  
 3 MR HENDRICKX: That is correct, Chair.  
 4 MR SEMENYA SC: Can we unbundle that a  
 5 little bit, because I think it's central to some of the  
 6 arguments we intend to make before this Commission? By  
 7 prevention you mean that there ought to participation by  
 8 all relevant stakeholders in ensuring that anticipate and  
 9 perhaps not anticipated public disorder events can be  
 10 managed?  
 11 MR HENDRICKX: I do agree with that, Sir,  
 12 and I even would complement that by saying it is prevention  
 13 is trying to attack the root causes of conflict, and I add  
 14 to that that it is apparent that is not only the police who  
 15 was responsible for that.  
 16 MR SEMENYA SC: Correct. So that South  
 17 Africa must move away from that scenario when there is  
 18 service protests around water, the first people, you send  
 19 your police there. When there is a labour unrest, the  
 20 first thing you send is police there. We should rather go  
 21 the other direction, if I understand the prevention, we  
 22 should go to the other direction and make those public  
 23 protests that are – that can be resolved politically to be  
 24 so resolved, before police intervention, for example?  
 25 MR HENDRICKX: Yes, I agree with that.

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

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

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

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



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

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

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

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

Page 36803

1 in reserve, was the TRT people behind. He anticipated it  
 2 was possible that the POP people would take refuge in the  
 3 armoured vehicles and the TRT people would then have to  
 4 take over. So, the main part of the plan was the arrest  
 5 they thought would be done by the POP people but if they  
 6 couldn't be, if the POP people had jumped into the Nyalas  
 7 and slammed down, and closed the doors then the TRT people  
 8 would have to do it. That's a correct summary, I believe,  
 9 of the plan.

10 MR HENDRICKX: I agree with that, Chair.  
 11 And that's the point that I was trying to make in this,  
 12 because we are talking here about hypothesis, right? In  
 13 that case, in the case that the protesters would have been  
 14 stopped by the then deployed barbed wire, Nyala5, in the  
 15 case that all those POPs vehicles and POPs members were  
 16 there, with armoured cars, in the event, in the hypothesis,  
 17 that they were there, they could have stopped, they could  
 18 have, how do you call it? Encircled if you see what I  
 19 mean, with those armoured cars and then if the radios would  
 20 have worked, and that is another problem, that could be  
 21 another problem that we could debate, they could have  
 22 called in TRT, to arrest these people, that's the point  
 23 that I wanted to make. And another thing, Mr Semenya, that  
 24 was put to me before lunch, said that there were no other  
 25 alternatives for POP. I have just given you two.

Page 36804

1 CHAIRPERSON: The difficulty with that  
 2 suggestion, prima facie, I am sorry if I am taking over  
 3 somebody's time, but I am debating an issue that you seem  
 4 to think quite important, the difficulty with that one was  
 5 that if you had the barbed wire stretching across what I  
 6 called a gap, and the TRT people were on the other side,  
 7 they would have difficulty getting there to effect the  
 8 arrests. I put to that to you, obviously to get your  
 9 response.

10 MR HENDRICKX: No, no, yes. That you  
 11 have already debated with, this morning, right, in the  
 12 sense that how are, how were the people, the policemen  
 13 standing behind the barbed wire, going to the other side to  
 14 do the original operation? Okay.

15 MR SEMENYA SC: No, Mr Hendrickx, let's  
 16 take it step by step –

17 MR HENDRICKX: But I am answering –

18 MR SEMENYA SC: If we –

19 CHAIRPERSON: - answer my question.

20 MR SEMENYA SC: Yes.

21 CHAIRPERSON: And what he is saying, is  
 22 you are alluding to a passage in the cross-examination of  
 23 Mr White.

24 MR HENDRICKX: Yes.

25 CHAIRPERSON: Where it was suggested that

Page 36805

1 the original Scott plan which remember involved a barrier  
 2 all the way, but also involved the police getting onto the  
 3 other side of the barrier to do -

4 MR SEMENYA SC: They would have used the  
 5 opening, Chair, that's –

6 CHAIRPERSON: And the suggestion was that  
 7 they might have opened, created a gap as it were in the  
 8 barrier, I think that's what he's alluding to. Am I right?  
 9 The difficulty with that, I am told, is that the – I am not  
 10 sure that it's correct, but this is what he's put to me  
 11 during the lunch hour, that the, I misunderstood that the  
 12 TRT people, or rather, not the TRT people, Brigadier  
 13 Calitz's people would have gone into the area where the  
 14 strikers were, by going, moving further to the left on this  
 15 photograph and going around that section where we see that  
 16 corrugated iron house. So if I am correct in that, then it  
 17 wouldn't have been possible for the TRT people to have gone  
 18 through the wire barrier to make the arrests, but anyway,  
 19 perhaps you want to respond to that, and then Mr Semenya  
 20 can take over in the light of your –

21 MR HENDRICKX: Can I respond? Okay. I  
 22 think that the TRT could go, if that hypothesis was  
 23 implemented or whatever you call it, the TRT then could go  
 24 up and could go around the shack, right, because the  
 25 deployed uncoiled barbed wire would not have reached that,

Page 36806

1 they could go around and when they would have arrested,  
 2 they would have had to arrest the people, I mean, the  
 3 protesters, there could have been made some openings in the  
 4 – or made some distance between the Nyalas so that the TRT  
 5 people could go through.

6 MR SEMENYA SC: Ja, you see, that's my  
 7 difficulty, Mr Hendrickx, you keep adjusting, what if,  
 8 after the barbed wire closes there, then the strikers go  
 9 behind the, you know, no, no. I am saying what if those  
 10 strikers in the light of being closed there, they go behind  
 11 the shack, they will meet TRT with -

12 MR HENDRICKX: It's not what I am saying.

13 MR SEMENYA SC: No, no, that's what I am  
 14 saying.

15 MR HENDRICKX: Okay.

16 CHAIRPERSON: You have to hear what he  
 17 says first, before you ask him the next question.

18 MR SEMENYA SC: I understand your  
 19 response to be, let me break it slowly, on the exhibit as  
 20 you see it in front of us, correct? If Nyala5 closes at  
 21 that gap between the kraal and the shack, with a barbed  
 22 wire, the TRT would be on the upper side of that portrait,  
 23 am I right?

24 MR HENDRICKX: That is correct.

25 MR SEMENYA SC: there would have been on

Page 36807

1 the side, the other side of the strikers, correct?

2 MR HENDRICKX: Yes, but they would be

3 enclosed by the barbed wire on one side and the armoured

4 vehicles from POP and they, you know, they were encircled.

5 MR SEMENYA SC: No, they could go through

6 the vehicles, no?

7 MR HENDRICKX: The protesters? I don't

8 think so, Sir.

9 MR SEMENYA SC: Why not? Why couldn't

10 they go through those gaps as you see them there?

11 MR HENDRICKX: Part of this hypothesis,

12 would have been then that the POPs members and they are

13 trained in that, to block with vehicles, I mean encircle

14 them and link vehicles, I mean, drive vehicles next to each

15 other if you see what I mean, preventing the protesters

16 from going anywhere.

17 MR SEMENYA SC: Mr Chaskalson is not

18 here, but as I understand the movement of things there, all

19 of this happens in seconds, I mean under 15 seconds, and

20 you are saying this is how it should have been organised

21 within those 15 seconds, by the group of policemen that

22 were there.

23 MR HENDRICKX: What I am saying, I am

24 responding to your question from before lunch, you said you

25 put to me that there were no other options. What I have

Page 36808

1 tried to do is explain that there were at least to my mind,

2 and based on my professional experience, two options that

3 could have been taken, that's the only thing that I am

4 saying. I am not disputing the fact that it would have

5 been a difficult thing to do, it needs to be co-ordinated

6 and hence and so on and so forth, I am not disputing that

7 side. I am just giving you two possibilities, to other

8 options before lethal force must or should, could have been

9 used in those circumstances.

10 COMMISSIONER HEMRAJ: Mr Hendrickx, do

11 you not see any danger to the POP policemen if in fact that

12 barbed wire was deployed by Nyala5 as you say? Do you not

13 foresee any danger to the POPs persons if a huge crowd,

14 armed crowd came around that kraal and found themselves -

15 as going through?

16 MR HENDRICKX: Yes, I mean there is

17 danger to that, what I am saying is that is a second

18 possibility. The first possibility would have been to

19 close off without those vehicles being there, I don't, am I

20 getting, I am under the impression that I am not, that I

21 don't explain as well. There were two -

22 CHAIRPERSON: Two possibilities. The

23 first is, vehicles could have gone off presumably in the

24 direction that Brigadier Callitz went. Alternatively, in

25 which case if the wire had been uncoiled, where you suggest

Page 36809

1 it should have been, the strikers would have been trapped

2 behind the wire, as it were.

3 MR HENDRICKX: Yes.

4 CHAIRPERSON: And the vehicles wouldn't

5 be there?

6 MR HENDRICKX: Yes.

7 CHAIRPERSON: So then, that's the one

8 possibility you are suggesting. The other possibility is

9 vehicles didn't go, didn't leave, they stayed, as the

10 strikers came along, were unable to pass through the wire

11 barrier, the vehicles were then as it were, formed a circle

12 around and they could then be arrested. Are those the two

13 possibilities you are putting up?

14 MR HENDRICKX: Ja.

15 MR SEMENYA SC: Let's explore the second

16 one, they would be arrested by the people who have fled

17 into the Nyalas?

18 MR HENDRICKX: No, Sir, I said -

19 MR SEMENYA SC: Okay, I just want to tidy

20 it up. They would not be arrested in that second scenario,

21 by the POP members who have fled into the Nyalas.

22 MR HENDRICKX: Ja.

23 MR SEMENYA SC: They would have had to be

24 arrested in that scenario b the TRT that was on the other

25 side.

Page 36810

1 MR HENDRICKX: Yes.

2 MR SEMENYA SC: And you suggest that that

3 TRT would have had to go around the shack as you see the

4 exhibit?

5 MR HENDRICKX: Yes.

6 MR SEMENYA SC: And they can do it, and

7 get to the strikers?

8 MR HENDRICKX: Yes.

9 MR SEMENYA SC: But the strikers can't go

10 to the TRT?

11 MR HENDRICKX: No. If they are being

12 blocked by the armoured vehicles they cannot move from

13 there.

14 MR SEMENYA SC: But if they're blocked -

15 CHAIRPERSON: Sorry, forgive me.

16 MR SEMENYA SC: I am saying if they are

17 blocked in a manner that they cannot get to the TRT, the

18 TRT can't get to them either.

19 MR HENDRICKX: Yes, but then you start,

20 when the protesters are, how shall I put it? Located and

21 in a certain spot, then the police is at an advantage

22 situation to start discussing with the protesters to say,

23 you are going to lay down your arms now, and we are going

24 to arrest you, and then those people would have been

25 confined to that space.

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

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



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

Page 36823

1 17236.

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

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

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

5 MR HENDRICKX: Which part?

6 CHAIRPERSON: Which line on page 17236 do

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

8 MR SEMENYA SC: Now we do know, Mr

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

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

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

12 MR HENDRICKX: That's not my reading of

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

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

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

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

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

18 MR SEMENYA SC: Okay, can I ask Exhibit

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

20 there. Please help us understand it.

21 MR HENDRICKX: Yes.

22 MR SEMENYA SC: It says under clause 11.2

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

24 following procedure must be followed. Step 1, put

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

Page 36824

1 that?

2 MR HENDRICKX: Yes.

3 MR SEMENYA SC: And then it says "after

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

5 MR HENDRICKX: Yes. In reading that you

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

7 interpretation, certain interpretation and the effect

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

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

10 unannounced will provoke a certain reaction of protestors.

11 MR SEMENYA SC: And that standing order

12 says defensive measure includes setting up barricades.

13 MR HENDRICKX: Yes.

14 MR SEMENYA SC: Which would included a

15 barbed wire.

16 MR HENDRICKX: Sorry?

17 MR SEMENYA SC: So –

18 MR HENDRICKX: Yes.

19 MR SEMENYA SC: Which would include a

20 barbed wire.

21 MR HENDRICKX: I agree.

22 MR SEMENYA SC: But this doesn't matter

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

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

25 MR HENDRICKX: After the deployment, or

Page 36825

1 the decoiling began, yes.

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

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

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

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

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

7 You're not?

8 CHAIRPERSON: Mr Hendrickx, the question

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

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

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

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

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

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

15 MR HENDRICKX: The fact remains that the

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

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

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

19 a certainty.

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

21 that –

22 COMMISSIONER TOKOTA: If it wasn't for

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

24 place instead of the barbed wire then?

25 MR HENDRICKX: I'm sorry, Sir, I –

Page 36826

1 COMMISSIONER TOKOTA: In those

2 circumstances then what sort of other defensive measures do

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

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

5 MR HENDRICKX: That is starting from the

6 assumption that you would have needed a defensive action or

7 a defensive measure there. We can discuss about that

8 whether it was necessary to do that.

9 COMMISSIONER TOKOTA: You think it was

10 not necessary in this case?

11 MR HENDRICKX: We can discuss about that.

12 I think –

13 COMMISSIONER TOKOTA: No, you answer now.

14 MR HENDRICKX: I think there are –

15 COMMISSIONER TOKOTA: Let's discuss it

16 now.

17 MR HENDRICKX: - other – there are other

18 possibilities on the condition and that is one of the

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

20 more policemen.

21 COMMISSIONER TOKOTA: In that aspect even

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

23 right.

24 MR HENDRICKX: That is correct.

25 COMMISSIONER HEMRAJ: Do I understand

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

Page 36831

1 group with the 3 000 other protesters.

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

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

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

5 concert?

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

7 MR SEMENYA SC: Okay.

8 MR HENDRICKX: But from my evidence, from

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

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

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

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

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

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

15 Security says despite, even in Lonmin unrest situations it

16 was the first time that security themselves get attacked by

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

18 accept that evidence to be correct?

19 MR HENDRICKX: If it was the evidence,

20 yes.

21 MR SEMENYA SC: Ja, and they say they

22 have never seen a crowd of unprotected strikers behave as

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

24 August 2012. You accept that as well?

25 MR HENDRICKX: I've got my doubts about

Page 36832

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

2 least in January –

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

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

5 evidence of the security personnel in Marikana –

6 MR HENDRICKX: I agree –

7 MR SEMENYA SC: - to the Commission.

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

9 fine.

10 MR SEMENYA SC: Alright.

11 MR HENDRICKX: But there have been

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

13 Marikana.

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

15 specifically in Lonmin.

16 MR HENDRICKX: Okay, I accept that.

17 MR SEMENYA SC: The police evidence

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

19 unfurling of a barbed wire caused the strikers to attack

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

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

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

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

24 MR SEMENYA SC: In the past on the basis

25 purely of unfurling barbed wire –

Page 36833

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

2 I've got no evidence.

3 MR SEMENYA SC: Okay, and really as we

4 agreed with Mr White, doctrine in police operations is

5 dictated by past experience.

6 MR HENDRICKX: That could be, yes. It

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

8 MR SEMENYA SC: Correct, and if no

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

10 barbed wire could trigger this response, they would have

11 operated under that belief, though it proves mistaken?

12 MR HENDRICKX: Yes Sir, but what you are

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

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

15 any evidence that that group attacked the police when the

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

17 photographic evidence and the video evidence is I cannot

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

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

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

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

22 time.

23 MR HENDRICKX: I can only confirm what I

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

25 the videos and I haven't seen any –

Page 36834

1 MR SEMENYA SC: No, Mr Hendrickx, you

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

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

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

5 convenient stage –

6 CHAIRPERSON: It might be a convenient

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

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

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

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

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

12 up their arms and they would fight to protect their

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

14 evidence that threats were given. One of the controversial

15 questions we have to decide in this Commission, which

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

17 the strikers in advancing as they were towards the police

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

19 they could stay in undisturbed possession of the koppie and

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

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

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

23 find the opposite.

24 There is a further alternative which we have to

25 consider and that is that even if the strikers were

Page 36835

1 intending to go to Nkaneng and not to attack the police,  
 2 whether the police did not reasonably believe in the light  
 3 of the circumstances which I've outlined that they were  
 4 going to be attacked either to drive them away from the  
 5 scene or possibly if the strikers were not perhaps  
 6 intending to hack their way through past the police to  
 7 Nkaneng. So these are questions that we have to decide,  
 8 you see.

9 MR HENDRICKX: Indeed.

10 CHAIRPERSON: We have the evidence of Mr  
 11 X who says they were intending to attack the police. Mr  
 12 X's evidence has been criticised. One of the things we'd  
 13 have to decide at the end of the day is whether we can  
 14 believe him, but it's not for – if I may say so, it's not  
 15 for an expert witness to say which of the versions he  
 16 believes. An expert witness has got to say fact finding is  
 17 for the Commission.

18 MR HENDRICKX: Okay.

19 CHAIRPERSON: I will comment on the  
 20 various scenarios that are put to me. I'm prepared to make  
 21 assumption A, B, or C, and in the event of assumption A  
 22 this is my opinion. My opinion may be different in the  
 23 case of some of the other assumptions. So that's basically  
 24 the point. So Mr Semenya is putting to you at the moment,  
 25 he asks you to assume, because that will be his contention

Page 36836

1 at the end, that the strikers were advancing on the police.  
 2 Whether they were running or walking is neither here nor  
 3 there. They were advancing on the police intending to  
 4 attack them. That's his case. Now he asks you questions  
 5 based upon that. Is that right, Mr Semenya?

6 MR SEMENYA SC: Indeed, Chair. Indeed.

7 CHAIRPERSON: So put the point that you  
 8 want to put on the basis of that assumption and then at a  
 9 convenient stage you'll tell me and we'll take the tea  
 10 adjournment.

11 MR SEMENYA SC: Chair, we may take the  
 12 tea adjournment now and I'll collate my thoughts and  
 13 sequence of questions.

14 CHAIRPERSON: Adv Hemraj wants to ask a  
 15 question before we have tea.

16 COMMISSIONER HEMRAJ: Mr Hendrickx, have  
 17 you had an opportunity to familiarise yourself with the  
 18 evidence of the most recent witnesses from Lonmin and Mr  
 19 Nzuzza and Mr X? I get the impression you haven't.

20 MR HENDRICKX: No.

21 COMMISSIONER HEMRAJ: Am I right?

22 MR HENDRICKX: That's right.

23 COMMISSIONER HEMRAJ: Yes.

24 CHAIRPERSON: Alright, well on that basis  
 25 we'll take tea, quarter of an hour. Please, quarter of an

Page 36837

1 hour, because Mr Semenya's time is very –  
 2 [COMMISSION ADJOURNS COMMISSION RESUMES]  
 3 CHAIRPERSON: The Commission resumes.  
 4 Before I remind the witness that he's still bound by his  
 5 affirmation, I've been asked by the attorney for the  
 6 families to explain something to some of the clients who  
 7 are present in the chamber. Questions are being put on the  
 8 basis that the strikers were attacking the police. I  
 9 thought I made it clear, but I obviously didn't make it  
 10 clear enough so I want to have another attempt to ensure  
 11 there's clarity on the point, that this question is being  
 12 put because that's the police case. I made it clear to the  
 13 witness and to everybody that one of the questions we have  
 14 to decide at the end of the evidence, one of the matters on  
 15 which we'd have to make findings is whether that allegation  
 16 is correct. We are well aware of the fact that it's the  
 17 case of the injured and arrested persons, and I believe the  
 18 case of the families also, that that was not so, that the  
 19 police are incorrect in that respect.

20 I emphasise that there are actually three issues.  
 21 The first issue on this part of the case, the first is  
 22 whether the strikers were seeking to attack the police.  
 23 The second issue is whether the strikers weren't intending  
 24 to attack the police but the police reasonably believed  
 25 they were. The third issue is simply whether the strikers

Page 36838

1 weren't attacking the police at all, but simply walking to  
 2 Nkaneng.

3 These are very much issues that we have to  
 4 decide. We haven't made up our minds on the matter. We  
 5 will have full argument on the matter at the end. We'll  
 6 weigh up the evidence very carefully and then make a  
 7 finding as to which of those points we accept as being  
 8 correct, but no one must get the impression that we've  
 9 already made up our minds on that issue. No one must think  
 10 that the fact that I'm allowing these questions to be asked  
 11 indicate that we accept this is so. This is the way courts  
 12 work, the way commissions work. Conflicting accounts are  
 13 weighed up and put by the representatives of the various  
 14 parties. That's the way we work. Do not fear that there's  
 15 any question of prejudging any issues or making findings in  
 16 advance on these issues. I'm aware of the case, as I've  
 17 said already, advanced by the injured and arrested persons  
 18 and advanced by the families and that case will be very  
 19 carefully considered, together with the case put up by the  
 20 police. At the end of the day we hope to be able to make a  
 21 finding and whatever the finding is will be contained in  
 22 our report.

23 Mr De Rover, you – Mr Hendrickx, sorry. These  
 24 people from the Netherlands, from the Lowlands, I get  
 25 confused. Mr Hendrickx, you're still bound by your

Page 36839

1 affirmation.

2 EDDIE MARTINUS ROSALIA HENDRICKX:

3 [affirms further]

4 CHAIRPERSON: Mr Bizos.

5 MR BIZOS SC: Mr Chairman, I thank you

6 very much for the assurance. One of the difficulties, Mr

7 Chairman, is that some cross-examiners put to witnesses

8 what is an allegation, like my witness, like Mr X, as if it

9 were a fact, and they expect the witness to answer on the

10 basis that it is a fact. That creates the wrong

11 impression.

12 CHAIRPERSON: Yes. No, I understand. I

13 also, perhaps I should say, also remind those present that

14 I also said on several occasions this is Mr X's evidence;

15 whether we believe Mr X is a matter that's by no means

16 clear. We'll have to decide at the end of the matter,

17 having considered his evidence carefully and the points of

18 criticism that are raised against it, whether we can

19 believe him at all, or whether we can believe some parts of

20 his evidence and not other parts, or whether we must accept

21 his evidence in totality, but again we haven't made up our

22 minds. We will consider that matter also at the

23 appropriate time.

24 MR BIZOS SC: Provided, Mr Chairman, the

25 cross-examiner makes clear that this is an allegation made

Page 36840

1 by a witness and not to ask witnesses to say what do you

2 say to this –

3 CHAIRPERSON: Yes, yes.

4 MR BIZOS SC: - on the assumption that

5 the allegation has been proved.

6 CHAIRPERSON: Yes. No, no, I understand

7 that. I take it the cross-examiners in the house will bear

8 that in mind. Mr Semenya.

9 MR SEMENYA SC: No, but Chair, for the

10 record - and I know Mr Bizos is not referring to me – I

11 have always said this is the evidence should the Commission

12 find that evidence to be correct. I've never done it the

13 other way around.

14 CHAIRPERSON: Mr Semenya, what I

15 understand from the attorney for the families is that his

16 clients, he actually said to me it may be that some of the

17 points were lost in translation but, and that is why he

18 asked me to stress what I've stressed. He accepted I'd

19 said it already and he didn't suggest at all that you had

20 done anything incorrect. The point made was something may

21 well have been lost in translation and the clients were

22 agitated because of that, and that was why I said what I

23 did. But I think we can now move on.

24 CROSS-EXAMINATION BY MR SEMENYA SC (CONTD.):

25 Thank you, Chair. Let me go at it again. If the evidence

Page 36841

1 that Brigadier Calitz did tell Noki in the early morning

2 what the purpose of the barbed wire was, then your

3 observation that it would have caught them by surprise

4 would be incorrect. Is that right, Mr Hendrickx?

5 MR HENDRICKX: In the sense that you

6 would assume that Mr Noki would be able to communicate with

7 the 3 000 other people on the koppie that this was going to

8 be the case, then it could not have been that much of a

9 surprise to the protesters.

10 MR SEMENYA SC: Well, the evidence is,

11 whether it's accepted later or not is a different issue,

12 but the evidence is that it was done through a Fanagalo-

13 speaking individual and through the loudhailer. So the

14 probabilities of anybody being surprised there is miniscule

15 really, right?

16 MR HENDRICKX: The fact, the factor for

17 me, as I see the reality in my interpretation of looking at

18 all the evidence is that the protesters started to move the

19 moment the barbed wire was uncoiled. That's what I'm,

20 that's the point. On the fact of uncoiling the wire,

21 that's the point that I want to make and that the police

22 organisation doing that should be aware of the possible

23 effects of starting to uncoil the wire. That's the point

24 that I want to make.

25 MR SEMENYA SC: Yes, I'm bringing the

Page 36842

1 additional fact that you may not be aware of, I was just

2 bringing more additional facts you may not have been aware

3 of, Mr Hendrickx.

4 MR HENDRICKX: Thank you, Sir.

5 MR SEMENYA SC: And of course you would

6 have heard that Mr White says he does not criticise per se

7 the use of different disciplines in this operation. It's

8 an opinion you don't share with him, clearly.

9 MR HENDRICKX: I partially am agreeing

10 with that and I would like to specify that – I mean and I

11 would like to clarify that from my side. I've said in my

12 statement that it is my opinion, based on my experience,

13 that the number of specialised units like TRT, NIU and so

14 on and so forth, who were, there were more policemen of

15 that training, those units, of that type of units than

16 Public Order Policing. What I tried to say is that you

17 need, for an operation like this you need a lot more

18 trained Public Order Policing members. That's what I said,

19 and equipment.

20 MR SEMENYA SC: Ja, that's a different

21 point. The point I'm trying to chase with you is Mr White

22 does not find wrong the use of various disciplines in this

23 operation, but you do. Am I right?

24 MR HENDRICKX: To be, for them to be used

25 in the first line as they were being used, certainly when

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

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



Page 36851

1 we see shows us there are two distinct groups on the  
 2 koppie, do you accept that?  
 3 MR HENDRICKX: I can see a lot of  
 4 protesters sitting on the big hill, and I can see a semi-  
 5 detached group sitting where it's on the flat part of a -  
 6 MR SEMENYA SC: The bigger one will be  
 7 those 3, 4 000 estimate and the smaller one was a 3, 400  
 8 one.  
 9 MR HENDRICKX: I agree on that.  
 10 MR SEMENYA SC: It's objective evidence.  
 11 MR HENDRICKX: Yes.  
 12 MR BIZOS SC: Was it objective to at  
 13 least two very senior officers who made affidavits to a  
 14 different effect, Mr Chair.  
 15 CHAIRPERSON: Yes, I think they changed  
 16 their tale a little bit in cross-examination which may be  
 17 the subject of adverse criticism in your argument, but I  
 18 think we can let Mr Semenya proceed on the basis that one  
 19 version of his case is put to the witness.  
 20 MR BIZOS SC: One version, I will accept  
 21 that.  
 22 MR SEMENYA SC: One of the points you  
 23 make is that the decision to disarm, disperse and arrest  
 24 conveys conflicting operations.  
 25 MR HENDRICKX: That is correct, Sir.

Page 36852

1 MR SEMENYA SC: Can I explain how the  
 2 SAPS explained the dispersal, disarming and the arrests,  
 3 the DDA? And invite you to explain what elements of it are  
 4 conflictual. The contemplation was after the barbed wire  
 5 is there, we would have an announcement and there will be a  
 6 time lapse and people would be given an opportunity to  
 7 disperse. Would that stand in conflict with anything?  
 8 MR HENDRICKX: Not as far as I can see,  
 9 Sir.  
 10 MR SEMENYA SC: Okay, and the plan is  
 11 that for those who for one or other reason are armed but  
 12 refused to disperse, they would be broken up into smaller  
 13 units through, I mean, by POP. Is that conflictual with  
 14 anything?  
 15 MR HENDRICKX: It's conflictual in that  
 16 sense that you just said that you are dealing with a group  
 17 of 300 armed protesters, and that you are expecting POP to  
 18 disperse them, whereas you just tell as well that there  
 19 were a cohesive group and they would stick together. So  
 20 you know, it's difficult.  
 21 MR SEMENYA SC: No, I can understand the  
 22 difficulty. I am looking at the contradictory message that  
 23 you are conveying. And if I understood you well, you used  
 24 that water cannon properly, you would split any group.  
 25 MR HENDRICKX: That was written in the,

Page 36853

1 at the time when there was still the, it was still assumed  
 2 that there were 3 000 people and that the operation was  
 3 going to have to split, to disperse the 3 000 people.  
 4 MR SEMENYA SC: No, work on the evidence  
 5 as I said also exists. The plan was that this operation  
 6 that is the breaking up of smaller groups, would be in  
 7 relation to that section of the group that was armed and  
 8 would not voluntarily disperse. Now we know that group  
 9 would be the 3,400. I am talking about those. And I am  
 10 suggesting to you they could have been split into smaller  
 11 groups through the use of a cannon as you describe it, or  
 12 no?  
 13 MR HENDRICKX: They could have been  
 14 dispersed, how? What did you say?  
 15 MR SEMENYA SC: They could have been  
 16 split into smaller groups through the method that you say  
 17 the water cannon used.  
 18 MR HENDRICKX: That would be, that would  
 19 have been a possibility, yes.  
 20 MR SEMENYA SC: And the other possibility  
 21 they could have been split, into smaller groups through the  
 22 use of tear gas amount of it.  
 23 MR HENDRICKX: That's one of the  
 24 possibilities, that's one of the means that is available to  
 25 the police to try and do that, yes.

Page 36854

1 MR SEMENYA SC: And that is not  
 2 contradictory to anything?  
 3 MR HENDRICKX: No.  
 4 MR SEMENYA SC: Neither would those who  
 5 are proving very stubborn that you use a stun grenade to  
 6 disorientate them and put them into smaller circles of  
 7 groups.  
 8 MR HENDRICKX: I am fine with that.  
 9 MR SEMENYA SC: So I fail to follow in  
 10 what respect would the tactic, disperse, disarm, arrest  
 11 have been conflictual?  
 12 MR HENDRICKX: On the principle of it,  
 13 and now you are putting it in another context, but on the  
 14 principle of it, when you disperse a large group of  
 15 protesters, you need a lot of policeman, and you need a lot  
 16 of units to be able to first of all to split them, and  
 17 secondly when they are split into different groups, and  
 18 simultaneously arrest them, and to my opinion, there were  
 19 not enough policemen to do that.  
 20 MR SEMENYA SC: I am not mistaken that in  
 21 your statement Mr Hendrickx, you are the one that says a  
 22 water cannon is not suitable for a rural outfit like  
 23 Marikana.  
 24 MR HENDRICKX: It depends what you define  
 25 by rural operations. You asked me the question, could a

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

Page 36859

1 I'll adjourn now but I am in your hands.  
 2 MR SEMENYA SC: Maybe let me attend to  
 3 the time, Chair. Did I read your statement correctly, to  
 4 say the one way in addressing the problem is these armed  
 5 strikers was to wait it out.  
 6 MR HENDRICKX: That could have been a  
 7 possibility, yes.  
 8 MR SEMENYA SC: I know is a possibility,  
 9 I am just trying to test its merits.  
 10 MR HENDRICKX: Yes, I would have in any  
 11 case, on that day, preferred to do that than to start an  
 12 operation at 15:40 in the afternoon. I would have,  
 13 personally I would have preferred to do that and wait it  
 14 out and if the decision was made then to continue with an  
 15 operation to do it the day after, or two days after,  
 16 allowing me more time to better prepare, to better brief,  
 17 and maybe the units that are already there, and maybe call  
 18 in more reinforcements because I keep repeating that to me,  
 19 there were not enough policemen present that day to do that  
 20 operation successfully.  
 21 MR SEMENYA SC: Wait it out three, four  
 22 days?  
 23 MR HENDRICKX: That could be a  
 24 possibility, yes.  
 25 MR SEMENYA SC: You see my difficulty is

Page 36860

1 this, that must assume that for the period of waiting the  
 2 strikers having the demands they do, the strikers not  
 3 being, the request not being acceded to by Lonmin, AMCU's  
 4 president having left and said, I can't do anything.  
 5 Bishop Seoka's effort not succeeding, how was this waiting  
 6 out going to pan out?  
 7 MR HENDRICKX: You have to see that in a  
 8 combination with the possible operation and I did not see  
 9 any thinking or evidence about that of arresting these  
 10 people either when they were asleep, or staying the  
 11 night at either of the koppies or try and arrest them in  
 12 the hostels or in the community where they stayed.  
 13 MR SEMENYA SC: You see Mr Hendrickx,  
 14 that's exactly the point, even on your own assessment there  
 15 was not adequate intelligence to be doing all what you are  
 16 saying.  
 17 MR HENDRICKX: And that's one of the  
 18 reasons, why I would not, that's one of the reasons the  
 19 more not to start that operation at 15:40 because there was  
 20 intelligence from General Engelbrecht who said that in his  
 21 opinion, the people were not, the protesters were not going  
 22 to lay down their arms, and at a certain point in the  
 23 briefing I think it was on the Wednesday, General Annandale  
 24 at the JOCCOM did agree with that and I still cannot  
 25 understand why an operation was launched based on your own

Page 36861

1 intelligence that people would not lay down their arms  
 2 whereas you put a lot of faith in the saying by Mr  
 3 Mathunjwa that they were going to lay down their arms, so I  
 4 would have spent, and invested a lot more in intelligence  
 5 gathering, for instance, now it appears that the people  
 6 were staying on the koppie, right, it must be very easy for  
 7 a professional police to observe during the night, what's  
 8 going on at the koppies. And to continue, to get informed  
 9 on the behaviour of the protesters and if you are really  
 10 sure of what the behaviour was, make a plan to deal with  
 11 that in another way than the way that it has been dealt  
 12 with.  
 13 MR SEMENYA SC: I am interrogating  
 14 something different. You do accept on your analysis that  
 15 the intelligence was inadequate, as you used the word?  
 16 Correct?  
 17 MR HENDRICKX: That is correct.  
 18 MR SEMENYA SC: And on that I think we  
 19 have traversed that path, that there were limiting factors  
 20 for intelligence gathering given the nature of the group,  
 21 and what they were doing.  
 22 MR HENDRICKX: Yes.  
 23 MR SEMENYA SC: Including the fact that  
 24 somebody like the late Mr Thola gets killed allegedly  
 25 because he's a spy the evidence carries. So given the

Page 36862

1 limitation, I am testing with you, you suggest what ought  
 2 to have happened was to go and disarm them in the hostels.  
 3 MR HENDRICKX: That's not what I am  
 4 saying, what I am saying that would have been one of the  
 5 possibilities. The first thing to do, or one of the things  
 6 to do, was to get more intelligence, to try and identify  
 7 these people, try to identify where they stayed and so on  
 8 and so forth. For then, if you get, if you've got all that  
 9 information to, with your special units to arrest then when  
 10 they were not expecting it, that's what I am trying to say.  
 11 MR SEMENYA SC: The police also say that  
 12 a stage, the later stages, be it 5 or 6, also contemplated  
 13 that after the arrest they would collate better  
 14 intelligence, they would know what the people are, they  
 15 will do a cordon and search and go do the arrests there.  
 16 You don't criticise that element of the planning.  
 17 MR HENDRICKX: No, but I haven't seen any  
 18 concrete planning for that. It was intentions but on the  
 19 principle of taking into account that I agree with that  
 20 operation, yes, afterwards those stages to go to the  
 21 hostels and arrest the remaining people, yes, I agree with  
 22 that.  
 23 MR SEMENYA SC: It wasn't intentions, Mr  
 24 Hendrickx, they even obtained a warrant for that.  
 25 MR HENDRICKX: Mr Calitz, yes, did it in

Page 36863

1 the morning.

2 [16:04] MR SEMENYA SC: Now there is also the

3 view that the group of these strikers presented less of a

4 risk while on the koppie because there was no property to

5 damage or no injury to inflict on anybody. You agree with

6 that as a strategy?

7 MR HENDRICKX: Yes, Sir.

8 MR SEMENYA SC: And conversely you would

9 have not been, you would have been averse to a strategy

10 that closed the koppie so that they don't get there at all?

11 MR HENDRICKX: That depends of when that

12 possible operation was envisaged. If through intelligence

13 you learn that a majority of those people stayed for

14 instance the night at the koppie, then an operation like

15 that would be possible, would be advisable early in the

16 morning.

17 MR SEMENYA SC: You do accept though with

18 the departure of Mr Mathunjwa on the 16th the complaint of

19 the strikers had not been resolved?

20 MR HENDRICKX: Complaint in the sense

21 that they would not be –

22 MR SEMENYA SC: Their reason for being on

23 the koppie had not been resolved.

24 MR HENDRICKX: Yes, yes I agree with it.

25 MR SEMENYA SC: I seem to read your

Page 36864

1 statement to say the police have had previous experience of

2 these violent clashes and you refer to the events of the

3 22nd of May which Colonel Merafe refers to.

4 MR HENDRICKX: Ja, it's just an example

5 of an operation where there were 15 000 protesters and that

6 SAPS had to deal with. So in that sense it cannot be seen

7 as an unprecedented event.

8 MR SEMENYA SC: Can I suggest to you

9 that's chalk and cheese to what was happening in Marikana?

10 MR HENDRICKX: Sorry?

11 MR SEMENYA SC: Can I suggest to you that

12 that operation is really chalk and cheese to what happened

13 in Marikana?

14 MR HENDRICKX: That's possible, Sir.

15 MR SEMENYA SC: And I accept that you

16 would have no qualms with the evidence of Mr De Rover who

17 will say to the Commission that an event such as has

18 happened on the 13th of August 2012 in Marikana with the

19 result of multiple deaths, including the death of police

20 officers, would have provoked public outrage generally?

21 You would agree that would have been expected arising out

22 of a tragedy of that kind?

23 MR HENDRICKX: I agree with you

24 partially, Sir, because as from, sorry, from January '12 to

25 June and July '12 in many places, in many places in the

Page 36865

1 Platinum Belt, right, there were incidents, people,

2 citizens getting killed, citizens getting attacked, the

3 number of which, and the history of that is in the latest

4 version of L. What changed is the fact that on the 13th of

5 August two policemen got killed and that was unprecedented

6 in that, in the building up to Marikana. I haven't seen a

7 National Commissioner coming to visit the units on the

8 ground from January to July. I have seen a National

9 Commissioner coming to visit the units as soon after two

10 policemen got killed. So, and that visit and the killing

11 of those two, the death of those two policemen, that

12 changed a lot of the dynamics and the way the police and

13 the authorities went about in trying to solve this problem.

14 MR SEMENYA SC: Well, consistent with

15 your theory of policing by consent, one of the people you

16 would have expected come the five people who were killed is

17 South African Human Rights Commission going there to

18 investigate what is happening, no?

19 MR HENDRICKX: Yes, and what, and can I

20 ask you then what is the point that you want to make?

21 MR SEMENYA SC: And also that there could

22 be a combined effort at resolving what proves and shows now

23 to be a public disorder getting awry.

24 MR HENDRICKX: I agree with that, Sir.

25 MR SEMENYA SC: Yes. Including the Legal

Page 36866

1 Resources Centre as an interested body, as many other NGOs,

2 to go there and see what is happening, right?

3 MR HENDRICKX: That is not – if that is a

4 question that is addressed to me?

5 MR SEMENYA SC: Yes, that it would have

6 been prudent for all those NGOs interested in human rights

7 culture to see if they can help contain, just like Bishop

8 Seoka did.

9 MR HENDRICKX: On the principle I agree

10 with that, Sir.

11 MR SEMENYA SC: Thank you. Now I also

12 want to have the benefit of your expertise in making the

13 argument that ideally social ills that trigger public

14 interest should not necessarily be throwing police at, they

15 just find other alternative resolutions before it gets to

16 that point.

17 MR HENDRICKX: I fully agree with that,

18 Sir. And if you'll allow me to add, the police should not

19 be seen by whoever responsible person or people or

20 institutions that have responsibility, the police should

21 not be seen as the only instrument to solve a problem.

22 There are other role-players who have a responsibility in

23 solving the problem, but that doesn't mean that the actions

24 of the police, and certainly in this case, are always, were

25 always, you know, the right thing to do. That's –

Page 36867

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

7 MR HENDRICKX: I agree with that, Sir.

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

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

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

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

Page 36868

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

5 MR SEMENYA SC: Indeed, Chair.

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

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

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

15 MR HENDRICKX: Okay.

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

18 MR HENDRICKX: Yes.

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

21 [COMMISSION ADJOURNED]

22  
23  
24  
25

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

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

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



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

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

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

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

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

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

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



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



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

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

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

---

**P**

---

**page** 36686:6 36688:11  
36690:22 36691:3  
36692:22 36698:13  
36698:19,21,25  
36699:11,24 36701:6  
36704:3 36705:23  
36706:3 36707:8  
36712:12 36713:7,8  
36717:3,4,14 36721:8  
36721:9 36723:12  
36724:5 36725:7,10  
36726:23 36728:19  
36729:25 36734:12

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

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

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

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

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



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

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

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

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

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