

RealTime Transcriptions

TRANSCRIPTION OF THE

COMMISSION OF INQUIRY

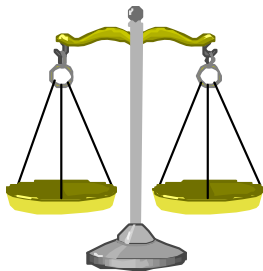
MARIKANA

BEFORE TRIBUNAL

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

HELD ON

DAY 107 14 JUNE 2013 PAGES 11483 TO 11535



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Page 11483

1 [PROCEEDINGS ON 14 JUNE 2013]
 2 [09:55] CHAIRPERSON: The Commission resumes.
 3 Before I remind the Major-General that he's under oath, I
 4 want to welcome, there are some visitors who are with us
 5 this morning who are from the Truth and Reconciliation
 6 Commission of the Republic of the Ivory Coast, who are on a
 7 tour of South Africa to see what they can learn from our
 8 experience in the area of truth and reconciliation and so
 9 forth. I want to extend a welcome particularly to "Metre
 10 Marie Frans Gofre Quamcar," who is the lady in the middle
 11 there – stand up – who is the president of the commission
 12 and who has led the interrogations. I hope all the
 13 members, all those involved in the Commission will be on
 14 their best behaviour today so that our visitors will go
 15 back to the Ivory Coast with a favourable impression on the
 16 way we work. I explained to them that this is a judicial
 17 commission, so we more or less follow the procedures of in
 18 a trial in the High Court. They are very interested, I
 19 understand, in seeing how we work, and as I've said, I hope
 20 that their visit will be fruitful one. They will be
 21 leaving us at one point in the morning to go to Freedom
 22 Park for the reinterment of the remains of some MK members.
 23 They'll then come back and have tea. There is, I
 24 understand, a birthday celebration this morning and they've
 25 been invited to attend that, and at the end of this

Page 11484

1 morning's session they're going to ask us some questions
 2 based upon what they see what they have observed of the
 3 conduct of the rest of you, including me. Major-General,
 4 you're still under oath.
 5 WILLIAM MPEMBE: s.u.o.
 6 CHAIRPERSON: Mr Ngalwana, you're going
 7 to continue with the examination-in-chief.
 8 EXAMINATION BY MR NGALWANA (CONTD.):
 9 General, you'll recall that we're still on the 16th in the
 10 afternoon. What measures did the plan have to avoid
 11 casualties and/or injuries?
 12 MAJOR-GENERAL MPEMBE: I started as an
 13 overall commander to lead the negotiations. We got the
 14 hostage negotiators to negotiate with the protesters. I
 15 also talked to the protesters themselves. Our first
 16 defensive measure was to put the barbed wire to separate
 17 the police and the public. In my presentation yesterday I
 18 did indicate that there were six Nyalas, that they had to
 19 place the barbed wire and those Nyalas could just stand
 20 there when the dispersion has to take place. That could
 21 create a safe area between protesters, police, and the
 22 public. The operational commander has to warn the
 23 protesters and give them a reasonable time, and this
 24 instruction would have been interpreted in the Fanagalo,
 25 hence we had an interpreter.

Page 11485

1 To encourage the dispersal process the
 2 operational commander was also supposed to position the
 3 Public Order Policing in the following manner; firstly, to
 4 put the Nyalas and members of the POP with teargas, stun
 5 grenade. Behind the Nyalas there could have been water
 6 cannons because those are the soft target vehicles for any
 7 other weapon that, and then the armoured vehicles could
 8 have been in front even of the water cannons. The last
 9 line of Public Order Policing would have had the rubber
 10 bullet for force continuum. Before any other matter that
 11 could have served as a show of force.
 12 The operational commander at his own discretion,
 13 when he realises that the dispersion is not taking place
 14 and he will be in the process encouraging the dispersion to
 15 take place, he will now give the protesters a second
 16 warning. In encouraging the protesters, some of the people
 17 would disperse voluntarily.
 18 MR NGALWANA: What would the operational
 19 commander be saying in this warning, General?
 20 MAJOR-GENERAL MPEMBE: The operational
 21 commander will also formulate his own words, but the words
 22 that I envisage as an overall commander was that he will
 23 firstly say to the protesters, "The gathering that you are,
 24 that is taking place, is illegal. You have been informed
 25 several times, Monday, Tuesday, Wednesday, and today, that

Page 11486

1 the gathering is illegal. You have also been informed that
 2 if you want to have such a gathering you are supposed to
 3 serve a notice, and in serving that notice then the police,
 4 the responsible officers and authorised officers will sit
 5 down and plan the gathering and the marching."
 6 MR NGALWANA: Okay, thank you, General.
 7 Is there any other additional measure – remember the
 8 question is what measure did the plan provide for avoiding
 9 casualties and/or injuries.
 10 MAJOR-GENERAL MPEMBE: Yes, Chairperson.
 11 In the process of encouraging the dispersal, I've already
 12 said that he will give a second warning and reasonable time
 13 and he will order the TRT, NIU, STF, to take position 100
 14 metres away from the dispersal process of POP. That would
 15 have added value on a show of force to anybody who is there
 16 to say "Wow, we cannot do any other thing, us is just to
 17 disperse in a voluntary manner."
 18 MR NGALWANA: Thank you, General. What
 19 then transpired? You see you testified yesterday about you
 20 remaining at the JOC until the time you went to Major-
 21 General Annandale and asked for an available chopper so
 22 that you could take to the skies. Could you take the
 23 Commission through, after you've got into the chopper, what
 24 you then did, where you flew?
 25 MAJOR-GENERAL MPEMBE: Chairperson,

<p style="text-align: right;">Page 11487</p> <p>1 myself and Brigadier Tsiloane, we were in a Coin Security 2 chopper. We alighted a Coin Security chopper and we flew. 3 MR NGALWANA: What was the purpose for 4 you getting onto that chopper? 5 MAJOR-GENERAL MPEMBE: Chairperson, that 6 would have made me to be in a better position while I 7 listen to the radio, I could also see the visuals of, from 8 the chopper. 9 MR NGALWANA: What would you seeing the 10 visuals from the chopper enable you to do? 11 MAJOR-GENERAL MPEMBE: Chairperson, it 12 would give me a better view and understand also the 13 communication in the radio. 14 MR NGALWANA: Would the visuals that you, 15 well logically speaking would the visuals that you see from 16 the chopper enable you better to perform your functions as 17 an overall commander? What I'm trying to get at is 18 whatever you see from the chopper down there, what would it 19 enable you to do, if anything, as overall commander, 20 General? 21 MAJOR-GENERAL MPEMBE: Correct, 22 Chairperson, when I was at the chopper I could see the 23 dispersal process of the two Nyalas pouring water and I 24 could hear the instructions of Brigadier Calitz, who was 25 the operational commander, giving the instructions. I need</p>	<p style="text-align: right;">Page 11489</p> <p>1 say you saw, you heard Brigadier Calitz giving 2 instructions, that indicates that what you saw at that 3 stage was what we call scene 1, because that's where 4 Brigadier Calitz was. Is that correct? 5 MAJOR-GENERAL MPEMBE: Chairperson, the 6 indication that I had, it was when Brigadier Calitz was 7 asking why the TRT and the STF are not moving, that's the 8 one that I started hearing him saying, and then when the 9 chopper started saying no, it seems as if there are bodies 10 lying down, it's then that I heard bodies lying down, the 11 first time that I hear bodies lying down. 12 [10:15] CHAIRPERSON: It's scene 1 though, hey. 13 Are you talking about scene 1 or scene 2? 14 MR NGALWANA: May I phrase it thus, 15 Chair, with your leave. General, at the time you were at 16 the chopper, did you know whether there was scene 1 or 17 scene 2? 18 CHAIRPERSON: That's not the question. 19 You now know that there was a scene 1 and a scene 2, don't 20 you? That's correct, isn't it? 21 MAJOR-GENERAL MPEMBE: Correct, 22 Chairperson. 23 CHAIRPERSON: And you may not have known 24 at the time which was scene 1 and which was scene 2, but 25 you now know where scene 1 was.</p>
<p style="text-align: right;">Page 11488</p> <p>1 also to put it to the Commission that I could not see 2 people moving around, only vehicles, Nyalas, and the 3 bigger, and the cannons. 4 COMMISSIONER HEMRAJ: General, you being 5 up in this helicopter, would you have directed the 6 operation if you thought it was not going according to 7 plan? Would you have given any orders from there because 8 you were in a better position to see what was happening? 9 MAJOR-GENERAL MPEMBE: Operationally 10 speaking once the operation has commenced, it's in the 11 hands of the operational commander. If I hear on the radio 12 that there is something going wrong and seeing that there 13 is also something going wrong, without any help sought from 14 me I can intervene. Operationally speaking I expect that 15 the operational commander should also communicate with me. 16 CHAIRPERSON: How high was the helicopter 17 in which you were, above the ground? 18 MAJOR-GENERAL MPEMBE: Chairperson, I am 19 not quite well up in terms of the measurements, but I can 20 give estimation of knowing that it was the highest chopper 21 that was flying in terms of the levels. 22 CHAIRPERSON: Did you have a pair of 23 binoculars with you? 24 MAJOR-GENERAL MPEMBE: No, Chairperson. 25 CHAIRPERSON: I take it the fact that you</p>	<p style="text-align: right;">Page 11490</p> <p>1 MAJOR-GENERAL MPEMBE: Correct, 2 Chairperson. 3 CHAIRPERSON: Now the scene that you were 4 looking down at initially as you've described to us, do you 5 now know whether that was scene 1? 6 MR NGALWANA: Chair, perhaps he should 7 describe what it is that he saw. 8 CHAIRPERSON: Maybe he must answer the 9 question and you can then ask your question. 10 MAJOR-GENERAL MPEMBE: Chairperson, as 11 I'm saying, I saw the water cannons, that could have been 12 scene 2 already, but that's what I saw, but what I heard is 13 correct, that could have been scene 1. 14 CHAIRPERSON: When you heard mention of 15 dead bodies – sorry, not dead, when you heard mention of 16 bodies, bodies down, did you appreciate that someone may 17 have been killed? 18 MAJOR-GENERAL MPEMBE: Chairperson, that 19 could, it has given me the indication that there is 20 something wrong, but because I was high I thought that 21 where I was I tried to communicate with the operational 22 commander, but that time the communication was very high 23 between him and the chopper. Then realising that, I 24 ordered the pilot to take me back to the JOC. 25 COMMISSIONER HEMRAJ: Can I just</p>

Page 11491

1 understand that? You were able to hear Brigadier Calitz
 2 while you were in the chopper?
 3 MAJOR-GENERAL MPEMBE: Brigadier and
 4 others.
 5 COMMISSIONER HEMRAJ: When you heard the
 6 phrase "bodies down," you tried to communicate with
 7 Brigadier Calitz?
 8 MAJOR-GENERAL MPEMBE: Correct,
 9 Chairperson.
 10 COMMISSIONER HEMRAJ: I'm not clear as to
 11 what happened then. Was he unable to hear you or what
 12 exactly happened when you tried to communicate with him?
 13 Were you asking him what had happened?
 14 MAJOR-GENERAL MPEMBE: I testified that
 15 at that time the communication was very high between him
 16 and Lieutenant-Colonel Vermaak. Realising that, then I
 17 gave the pilot the order to take me back to the JOC.
 18 COMMISSIONER HEMRAJ: Sorry, forgive me,
 19 I don't understand that. Were there communications between
 20 Brigadier Calitz and Colonel Vermaak? Is that the reason
 21 you couldn't communicate with Brigadier Calitz?
 22 MAJOR-GENERAL MPEMBE: Correct,
 23 Chairperson.
 24 COMMISSIONER HEMRAJ: I see.
 25 MR NGALWANA: General, when you were on

Page 11492

1 the chopper, could you explain briefly what it is that you
 2 heard in the conversation between Brigadier Calitz and
 3 Lieutenant-Colonel Vermaak?
 4 MAJOR-GENERAL MPEMBE: I heard after the
 5 Brigadier Calitz asked why TRT and the others are not
 6 moving forward, Lieutenant-Colonel Vermaak said there are
 7 bodies down. To me it was not clear where and how these
 8 bodies are down because I didn't hear anything, maybe a
 9 report of, or there is any shooting.
 10 MR NGALWANA: Is there anything else you
 11 heard, or is that all, that you considered significant?
 12 MAJOR-GENERAL MPEMBE: There was also
 13 what I heard when Brigadier Calitz was giving dispersal
 14 instructions, and he was ordering the water cannons to pour
 15 water and giving the instructions to POP members. I also
 16 heard him saying, "Do not engage the target before the
 17 target engages you." That is what, that is significant
 18 that I heard also on the radio while I was still in the
 19 chopper.
 20 MR NGALWANA: What did you then do after
 21 hearing this conversation, General?
 22 MAJOR-GENERAL MPEMBE: I said I ordered
 23 the pilot to take me to the JOC to find out and understand
 24 what it's all about the bodies.
 25 MR NGALWANA: And so you got to the JOC.

Page 11493

1 How long were you on the air for, if you remember?
 2 MAJOR-GENERAL MPEMBE: Chairperson, I'm
 3 not precise on that, but in my estimation it's about 20
 4 minutes.
 5 MR NGALWANA: You then got back to the
 6 JOC. What did you then learn about what it is that had
 7 happened?
 8 MAJOR-GENERAL MPEMBE: On my arrival at
 9 the JOC, to my dismay I learned that there was a shooting
 10 that took place and there are people that are dead. There
 11 were reports that were coming from different scenes. It
 12 was when I learned that we now have scene 1 and scene 2.
 13 COMMISSIONER HEMRAJ: Can I just enquire
 14 what time this was that you received these reports?
 15 MAJOR-GENERAL MPEMBE: Chairperson, I'm
 16 not quite sure, but it was the time when I arrive at the
 17 JOC.
 18 COMMISSIONER HEMRAJ: Possibly what time
 19 would that have been?
 20 MAJOR-GENERAL MPEMBE: It could have been
 21 between 16:30 to, between 16:00 to 16:30.
 22 COMMISSIONER HEMRAJ: 16:00 to 16:30, or
 23 15:30 to 16:00, General?
 24 MAJOR-GENERAL MPEMBE: I'm not quite
 25 sure, but it was in the afternoon of that day.

Page 11494

1 CHAIRPERSON: We know from your evidence
 2 yesterday approximately when you got into the helicopter.
 3 That we were able to ascertain by cross-referencing it to
 4 what you'd heard over the radio. Now the question now is
 5 what time did you get back.
 6 MAJOR-GENERAL MPEMBE: Chairperson, it
 7 could have been at about 16:30.
 8 MR NGALWANA: Okay, you're back at the -
 9 sorry, I've lost my train. You're now back at the JOC,
 10 General. You discover what had happened. As overall
 11 commander, what do you then do? Take us through what you
 12 did for the rest of that afternoon.
 13 MAJOR-GENERAL MPEMBE: Chairperson, I
 14 heard from the radio that the medical emergencies have been
 15 sent to the scene. I also checked as whether are there
 16 people enough to handle those that have been injured. I
 17 also ensured that checking in terms of those that are
 18 injured and critically injured, they also get medical
 19 attention and the hospitals, and the injured people were
 20 sent in different hospitals. After realising that the
 21 injured ones are being - and then also I asked the
 22 management to assist me to identify those that have died
 23 because at that time I was also supposed to compile a
 24 report. I was assisted in terms of getting those that - it
 25 was a process of being helped since from that day and those

Page 11495

1 that have been arrested, I also checked as to whether the
2 processing of the arrest is taking place.

3 MR NGALWANA: Sorry to interrupt you,
4 General. Did you compile the report?

5 MAJOR-GENERAL MPEMBE: The JOC did
6 compile a report to inform the NATJOC.

7 MR NGALWANA: Is this the report that
8 would have formed part of the National Commissioner's media
9 address the following day, which was the 17th? Is that what
10 you're referring to, or you're referring to something else?

11 MAJOR-GENERAL MPEMBE: Chairperson, it's
12 correct, with also, with the necessary changes, because it
13 might not have been maybe taken as it is, but it also
14 formed part of a media statement.

15 CHAIRPERSON: I'm sorry to interrupt you.
16 Just to go back to something you said a few moments ago,
17 when did you learn that there had been two scenes, as it
18 were, a scene 1 and a scene 2? When did you learn that for
19 the first time?

20 MAJOR-GENERAL MPEMBE: Chairperson, it's
21 when I arrived at the JOC.

22 CHAIRPERSON: That you said was about
23 4:30.

24 MAJOR-GENERAL MPEMBE: Correct,
25 Chairperson.

Page 11496

1 CHAIRPERSON: Correct?

2 MAJOR-GENERAL MPEMBE: Yes.

3 CHAIRPERSON: So it was known by round
4 about 4:30 already that there had been two scenes,
5 incidents at two particular scenes, scene 1 and scene 2.
6 That we can accept as a fact.

7 MAJOR-GENERAL MPEMBE: Correct,
8 Chairperson.

9 CHAIRPERSON: And who made the report to
10 you?

11 MAJOR-GENERAL MPEMBE: Chairperson, it's
12 when I arrive at the JOC and when I was asking, the reports
13 were coming from the scenes.

14 CHAIRPERSON: You still haven't answered
15 my question actually. The question is, who told you that
16 there were two scenes? I understand reports that were
17 coming in, but who actually was the person who told you
18 that there were two scenes?

19 MAJOR-GENERAL MPEMBE: Major-General
20 Annandale informed me that Captain Loest did report about
21 scene 1, and he also informed me that General Naidoo
22 informed him also that there is scene 2.

23 MR NGALWANA: Did General Annandale say
24 to you it was reported to him as "scene 1," General?

25 MAJOR-GENERAL MPEMBE: No, Chairperson.

Page 11497

1 MR NGALWANA: How was it described to
2 you? Do you remember?

3 MAJOR-GENERAL MPEMBE: It was, I was only
4 being informed that there are people that have been shot at
5 one koppie, and there are also other ones shot at another
6 koppie.

7 MR NGALWANA: Right, is there anything
8 else of significance that happened on the 16th of August,
9 before we move on to the following day, General?

10 CHAIRPERSON: Before you move on then to
11 that, you talked about arrangements being made for
12 processing those arrested, as you put it. Where did the
13 processing take place?

14 [10:34] MAJOR-GENERAL MPEMBE: At the mine's
15 premises, the reason being that Marikana Police Station was
16 under renovation and there was no electricity at that time.

17 CHAIRPERSON: When did you discover that?
18 When did you find out that you couldn't use the Marikana
19 Police Station for the purposes of processing those
20 arrested because it was under renovation and there was no
21 electricity? So you had to use premises at Marikana, at
22 the mine really, the mine buildings I take it, for that
23 purpose. When did you discover that?

24 MAJOR-GENERAL MPEMBE: Chairperson, in
25 the morning when it was also to say that - when General

Page 11498

1 Annandale said - when we were tasking Brigadier Seboloke
2 and Brigadier Seboloke said that Marikana Police Station is
3 still under renovation, there is no electricity.

4 CHAIRPERSON: What time was that? What
5 time did you receive that report?

6 MAJOR-GENERAL MPEMBE: It was in the
7 JOCCOM of 6 o'clock.

8 CHAIRPERSON: You knew already during the
9 JOCCOM of 6 o'clock that the Marikana Police Station
10 couldn't be used for the purpose of processing people
11 arrested, so that's why you had to request Lonmin, as I
12 understand it, to make space available to you for that
13 purpose. Is that correct?

14 MAJOR-GENERAL MPEMBE: Correct,
15 Chairperson.

16 CHAIRPERSON: So does that mean that you
17 anticipated at the 6 o'clock JOCCOM meeting that space for
18 processing persons arrested would be required or might well
19 be required in the course of the day?

20 MAJOR-GENERAL MPEMBE: Correct,
21 Chairperson.

22 CHAIRPERSON: When did you approach mine
23 management to ask them to provide a processing space?

24 MAJOR-GENERAL MPEMBE: Chairperson, it
25 was done by Brigadier Seboloke.

<p style="text-align: right;">Page 11499</p> <p>1 CHAIRPERSON: When did it happen?</p> <p>2 MAJOR-GENERAL MPEMBE: Precisely I'm not</p> <p>3 going to be able to say because it was done by him.</p> <p>4 CHAIRPERSON: In the morning before the</p> <p>5 media conference held by the Provincial Commissioner,</p> <p>6 during the conference, after the conference, when exactly</p> <p>7 more or less?</p> <p>8 MAJOR-GENERAL MPEMBE: I may not say in</p> <p>9 the morning or what, but I know that the tasking was done</p> <p>10 at 6:00 but the confirmation I did not know or at what time</p> <p>11 he has approached the mine management.</p> <p>12 CHAIRPERSON: Had this been done by the</p> <p>13 time of the special JOCCOM meeting at 1:30?</p> <p>14 MAJOR-GENERAL MPEMBE: Chairperson, at</p> <p>15 13:30 I remember there was a time when he was only</p> <p>16 confirming about the detention, the detention facilities in</p> <p>17 other police stations.</p> <p>18 CHAIRPERSON: You see, I asked you this</p> <p>19 question because what you've been telling us now is not the</p> <p>20 same as what you said in paragraph 53 of your statement</p> <p>21 that you made in November last year, which you've already</p> <p>22 confirmed under oath to be correct. What you say there is</p> <p>23 after describing how you went back to the JOC, found out</p> <p>24 that people had died and been injured and arrested, you</p> <p>25 then say, paragraph 53, "I immediately left for the</p>	<p style="text-align: right;">Page 11501</p> <p>1 place. That is what I'm trying to say there.</p> <p>2 CHAIRPERSON: The statement "I approached</p> <p>3 mine management" isn't correct?</p> <p>4 MAJOR-GENERAL MPEMBE: As I'm saying,</p> <p>5 Chairperson, it is Brigadier Seboloke, so it is not</p> <p>6 correct, but thinking that he was acting under my command</p> <p>7 when I tasked him, that's why I took as if it's done by me.</p> <p>8 CHAIRPERSON: What you said wasn't right,</p> <p>9 though. What you said wasn't correct. Why did you say</p> <p>10 something that wasn't correct? Under oath you reaffirm</p> <p>11 here when you began your evidence.</p> <p>12 MAJOR-GENERAL MPEMBE: Chairperson, what</p> <p>13 I'm saying is that I'm explaining that it is done by</p> <p>14 Brigadier Seboloke -</p> <p>15 CHAIRPERSON: But you said "I approached</p> <p>16 mine management." You didn't approach mine management, he</p> <p>17 did. Why did you say you did?</p> <p>18 MR NGALWANA: With respect, Chair, I</p> <p>19 thought the witness -</p> <p>20 CHAIRPERSON: I'm waiting for your</p> <p>21 answer.</p> <p>22 MAJOR-GENERAL MPEMBE: Chairperson, it's</p> <p>23 the fact that it was reported to me by Brigadier Seboloke -</p> <p>24 CHAIRPERSON: Is that your explanation?</p> <p>25 MAJOR-GENERAL MPEMBE: Yes, Chairperson.</p>
<p style="text-align: right;">Page 11500</p> <p>1 Marikana Police Station with Brigadier Seboloke. I have</p> <p>2 found the conditions not conducive. The police station was</p> <p>3 under renovation; it did not have power and cells to detain</p> <p>4 the deceased. I approached mine management and SAPS was</p> <p>5 provided with a processing space a short distance from the</p> <p>6 JOC to be utilised as a processing centre. Detectives and</p> <p>7 officers from the Marikana Police Station moved to the</p> <p>8 premises offered by the mine for processing of the</p> <p>9 detainees." And then you go on. Now that you say took</p> <p>10 place after you got back to the JOC, which we know was</p> <p>11 after 4:30. You say you went yourself to the police</p> <p>12 station, you found certain things. Now this is exactly</p> <p>13 what you told us earlier. What's true, what you said in</p> <p>14 your statement or you have told us this morning?</p> <p>15 MAJOR-GENERAL MPEMBE: Chairperson,</p> <p>16 Brigadier Seboloke was tasked earlier on to check the</p> <p>17 place. When I got to the JOC and when he reported to me</p> <p>18 that the police station is not - does not have electricity,</p> <p>19 I wanted to check as to whether what is he telling me,</p> <p>20 can't we utilise any other place at a police station.</p> <p>21 Hence I drove with him there and then he already informed</p> <p>22 me on our way to the police station, to say, "General, as a</p> <p>23 result of this electricity shortage I have already</p> <p>24 approached the mine management," and he also took me to a</p> <p>25 place where the mine management has already given us a</p>	<p style="text-align: right;">Page 11502</p> <p>1 CHAIRPERSON: I understand. Please</p> <p>2 proceed, Mr Ngalwana.</p> <p>3 MR NGALWANA: What did you then do the</p> <p>4 evening, General, of the 16th of August, leading on to the</p> <p>5 17th of August?</p> <p>6 MAJOR-GENERAL MPEMBE: Chairperson, after</p> <p>7 we - there was a lot of activities that were taking place</p> <p>8 that we need to brief different people and the National</p> <p>9 Commissioner. We have also to brief other dignitaries of</p> <p>10 what has happened. On the 17th the National Commissioner</p> <p>11 was expected to give a media briefing. The press</p> <p>12 conference was facilitated by Lieutenant-General Petros and</p> <p>13 before the National Commissioner could give the media</p> <p>14 briefing, I briefed the media also by playing the video</p> <p>15 that has been played here.</p> <p>16 MR NGALWANA: And that's the video that</p> <p>17 shows you addressing people next to the railway line and</p> <p>18 telling them to leave their weapons there, is that correct,</p> <p>19 General?</p> <p>20 MAJOR-GENERAL MPEMBE: Correct,</p> <p>21 Chairperson.</p> <p>22 MR NGALWANA: Are you aware of any media</p> <p>23 coverage of your, shall we call it in loose terms,</p> <p>24 presentation to the media before the National Commissioner</p> <p>25 addressed the media?</p>

Page 11503

1 MAJOR-GENERAL MPEMBE: No, Chairperson.
 2 MR NGALWANA: Then you handed over to the
 3 National Commissioner to address. Do you recall what her
 4 address was?
 5 MAJOR-GENERAL MPEMBE: The words
 6 precisely I won't be able to say them, but I know that the
 7 National Commissioner did make the announcement of the
 8 incident.
 9 CHAIRPERSON: Mr Ngalwana, is it
 10 necessary to lead this evidence? We have the text of what
 11 she said.
 12 MR NGALWANA: Yes.
 13 CHAIRPERSON: Exhibit FFF5, and unless
 14 there's something particularly you want to highlight from
 15 this witness it's not necessary to re-prove what she said -
 16 with a hyphen between the re and the prove - what she said
 17 through this witness.
 18 MR NGALWANA: I was about to say
 19 precisely that, thank you, Chairperson. Can we, General,
 20 just perform a sweeping exercise, we are now going to move
 21 to the criticisms of the experts. But before we get there,
 22 I just want to perform a sweeping exercise if you like -
 23 CHAIRPERSON: Mr Ngalwana, are you going
 24 to deal with the material covered? I don't want to tell
 25 you how to run your case because I'm sure you know it

Page 11504

1 better than I, but the impression I got from the statement,
 2 supplementary statement, was at this point of the evidence
 3 he was going to tell us what's contained in paragraphs 31
 4 and 32 of the supplementary statement, before you get onto
 5 his answers to the criticisms. I would have thought that's
 6 the logical way to do it, if I may say so, but if you
 7 disagree of course you are free to proceed as you wish.
 8 MR NGALWANA: Yes, thank you, Chair. The
 9 sweeping exercise starts at paragraphs 31 and 32, moving on
 10 to the next issues. General, may I ask you to turn to GGG3
 11 in the documents bundle? You'll find that it's pagination
 12 272 under flag 14.
 13 MAJOR-GENERAL MPEMBE: Sorry,
 14 Chairperson, I just wanted to get to the -
 15 MR NGALWANA: Go to flag 13, page 272 of
 16 the document bundle, bundle A, I think.
 17 CHAIRPERSON: 14, Mr Ngalwana. You said
 18 13, I think. I think what you want is 14.
 19 MR NGALWANA: Thank you, Chair.
 20 CHAIRPERSON: As you said before it's
 21 page 272.
 22 MR NGALWANA: 272, flag 14. That is a
 23 call-up instruction. Could you just explain to the
 24 Commission, in brief terms, what the purpose of the call-up
 25 was?

Page 11505

1 MAJOR-GENERAL MPEMBE: The purpose was to
 2 get the information, to collate the information so that it
 3 could be presented to the Commission.
 4 MR NGALWANA: You will see, General,
 5 between the tram lines at the top of the that first page it
 6 says "Call-up: Debriefing and preparation for Judicial
 7 Commission of Inquiry," and so on, and it gives the dates,
 8 and if you go to the next call-up instruction in the same
 9 collection of documents, on page 275 you see the same
 10 "Call-up: Debriefing and Preparation." Is it the same
 11 thing we referred - it also talks of debriefing and
 12 preparation. How do you explain the use of the word
 13 "debriefing" in the call-up instruction?
 14 MAJOR-GENERAL MPEMBE: Chairperson, the
 15 word "debriefing" word here is not the one that is intended
 16 in terms of Standing Order 262. It was for the collection
 17 of information for the Judicial Commission of Inquiry
 18 because it was already being announced on the 17th.
 19 MR NGALWANA: As I understand it these
 20 meetings, this series of meetings took place from the 27th
 21 of August to the 31st of August, if you look at that first
 22 page, and then again from the 3rd of September to the 6th of
 23 September 2012. The 6th of September, that's correct isn't
 24 it?
 25 MAJOR-GENERAL MPEMBE: Correct,

Page 11506

1 Chairperson.
 2 MR NGALWANA: Were you in attendance on
 3 all those days, General?
 4 [10:54] MAJOR-GENERAL MPEMBE: Chairperson, I did
 5 attend these meetings but I was not always sitting in those
 6 meetings; there were other things that one would have to
 7 attend.
 8 MR NGALWANA: Do you recall on how many
 9 days you were there? Do you remember how many days you
 10 were present at these meetings, General?
 11 MAJOR-GENERAL MPEMBE: Chairperson, as
 12 I've indicated, I will be attending but if there is any
 13 other matter that may, calls me, because we were also being
 14 called to attend somewhere, I will go out and attend
 15 something that I was supposed to attend. It might also
 16 happen that I did attend all the meetings in terms of
 17 signing the attendance register, but also going somewhere.
 18 MR NGALWANA: So shall I take it you were
 19 not present throughout the proceedings? Is that what
 20 you're telling us?
 21 MAJOR-GENERAL MPEMBE: Correct,
 22 Chairperson.
 23 MR NGALWANA: In those sessions that you
 24 were present, could you explain briefly what it is that you
 25 observed happening at those meetings?

<p style="text-align: right;">Page 11507</p> <p>1 MAJOR-GENERAL MPEMBE: I attended the 2 first one which was opened and addressed by the Provincial 3 Commissioner, and the Provincial Commissioner was saying 4 that all of us that we are there, we need to bring all the 5 information to be collated so that it should be presented 6 to the Commission of Inquiry. The one also I attended is 7 the one where I took part, particularly it's the one where 8 the shooting of the 13th took place. Chairperson, we were 9 divided in groups; those that's of the 13th, you will go 10 there, and also the others they will go there, and then 11 when we come back, we have to give a feedback to Colonel 12 Visser.</p> <p>13 MR NGALWANA: Were there any notes that – 14 let's talk about your group, or involved in the events of 15 the 13th, were there any notes that were taken before you 16 went back to report to Colonel Visser?</p> <p>17 MAJOR-GENERAL MPEMBE: Correct, 18 Chairperson.</p> <p>19 MR NGALWANA: Who took notes?</p> <p>20 MAJOR-GENERAL MPEMBE: The individual 21 members were also making notes, but there was a specific 22 person that will be taking these notes. To us the one that 23 I remember, because I was also one of them that took the 24 notes to the members when they were reporting to me, and I 25 also give the feedback to Colonel Visser.</p>	<p style="text-align: right;">Page 11509</p> <p>1 terms it is that he did on those days that you were 2 present?</p> <p>3 MAJOR-GENERAL MPEMBE: He was 4 facilitating the process.</p> <p>5 MR NGALWANA: Yes, what I'm asking is in 6 facilitating the process, what is it that he was doing?</p> <p>7 MAJOR-GENERAL MPEMBE: Chairperson, 8 firstly he will welcome us and we were dealing with the 9 events on the day-by-day, what happened – first of all is 10 to say what happened on, from the 9th until also for the 11 16th, each and every incident and event that happened on the 12 day-by-day.</p> <p>13 MR NGALWANA: Can I just understand, 14 General, just going back to the notes issue, I'm not sure I 15 understood you correctly. Did you say that you submitted 16 notes to Brigadier – no, to Colonel Visser, or did you say 17 that you went with your notes to Colonel Visser and gave 18 him feedback from your notes? Which is it? Did you give 19 him the notes or did you make a report-back based on your 20 notes?</p> <p>21 MAJOR-GENERAL MPEMBE: I gave him 22 feedback based on my notes.</p> <p>23 MR NGALWANA: What then became of your 24 notes?</p> <p>25 MAJOR-GENERAL MPEMBE: I am still having</p>
<p style="text-align: right;">Page 11508</p> <p>1 MR NGALWANA: Did you submit these notes 2 to Colonel Visser or to anyone?</p> <p>3 MAJOR-GENERAL MPEMBE: When you go to 4 Colonel Visser, we were sitting there and we were telling 5 him what we were discussing, looking at the notes, and also 6 that we could leave the notes with him, he will capture all 7 what we have told him in the computer.</p> <p>8 MR NGALWANA: In addition to what you've 9 testified to earlier, in earlier days about what happened 10 on the 13th, in addition to that, is there anything else 11 that you told Colonel Visser in your report-back?</p> <p>12 MAJOR-GENERAL MPEMBE: Actually what you 13 were relating to Colonel Visser, you had to relate all the 14 activities that took place while, the ones that they are 15 within your knowledge, for example all the meetings that I 16 held with protesters, the union leaders.</p> <p>17 MR NGALWANA: Who was coordinating 18 matters? In other words, who was the convenor of this 19 meeting, dividing people up into groups, and so on, 20 General?</p> <p>21 MAJOR-GENERAL MPEMBE: Brigadier Van 22 Graan of Legal Services Head Office, he was the 23 facilitator.</p> <p>24 MR NGALWANA: I know we talk loosely, we 25 say he was a convenor, but do you know what in practical</p>	<p style="text-align: right;">Page 11510</p> <p>1 the notes.</p> <p>2 MR NGALWANA: The Commission may very 3 well require to have them presented. Of course the 4 Commission will make that decision. You –</p> <p>5 CHAIRPERSON: It will be helpful for us 6 to have the notes. Do you have them here or can you bring 7 them for us on Tuesday?</p> <p>8 MAJOR-GENERAL MPEMBE: They are not here, 9 Chairperson. I can bring them on Tuesday.</p> <p>10 CHAIRPERSON: We look forward to 11 receiving them.</p> <p>12 MR NGALWANA: Right, on each of the days 13 that members were attending, I see there is an attendance 14 register, General, if you look at the back of those call-up 15 instructions. Did everyone to your knowledge sign the 16 attendance register who was there?</p> <p>17 CHAIRPERSON: Mr Ngalwana, when it's 18 convenient, we will take the tea adjournment, but you will 19 indicate to me when it's appropriate.</p> <p>20 MR NGALWANA: Yes, Chair, thank you. Let 21 me ask the question differently. There has been a 22 suggestion that if one looks at the attendance register 23 there appears to be very few, if any, lower-ranking members 24 of the police, like warrant-officers and sergeants. You 25 sent a call-up instruction, you'll find this at page 275.</p>

Page 11511

1 General, are you with me?

2 MAJOR-GENERAL MPEMBE: Correct,

3 Chairperson.

4 MR NGALWANA: Do you know whether or not

5 the people that you called up to attend the meeting of the

6 30th did attend? Page 275, General, still under flag 14.

7 MAJOR-GENERAL MPEMBE: Chairperson, what

8 is normally happening is that when a call-up instruction is

9 being done one expects that all members should attend.

10 CHAIRPERSON: The question isn't what you

11 expect. The question is whether they did. From 1.7

12 downwards to 1.14, in other words eight people, there were

13 constables who were called upon to attend the session, and

14 who's being called upon in a letter which you wrote and

15 signed. Do you know whether they duly went to

16 Potchefstroom?

17 MR NGALWANA: Are you able to say,

18 General, whether those people attended the meeting?

19 MAJOR-GENERAL MPEMBE: Chairperson, when

20 I check the attendance register it's very few of those

21 members that signed the attendance register.

22 CHAIRPERSON: That's the point. Perhaps

23 we can explore the reasons for that, if any, when we've

24 taken the tea adjournment. We now adjourn for tea.

25 [COMMISSION ADJOURNS COMMISSION RESUMES]

Page 11512

1 [12:00] CHAIRPERSON: The Commission will resume.

2 I'm sorry we're resuming late, but there were matters we

3 had to attend to in chambers after the tea party that we

4 had. You're still under oath, Major-General.

5 WILLIAM MPEMBE: s.u.o.

6 CHAIRPERSON: Mr Ngalwana, you were going

7 to deal with some aspects I think following on from the

8 attendance registers and so forth at the Potchefstroom

9 conference. Is that right?

10 EXAMINATION BY MR NGALWANA (CONTD.):

11 Yes, just one aspect, thank you, Chair. General, let's see

12 if we can dispose this quickly. The people you called up,

13 do you know whether or not they attended the meetings?

14 MAJOR-GENERAL MPEMBE: No, Chairperson.

15 MR NGALWANA: Thank you. I move on. Can

16 I take you back, General, to – this shouldn't incur the

17 wrath of the Chairperson, it's something we forgot to deal

18 with some time ago. We're not going to spend too much time

19 on it. Can I take you back to Lieutenant Baloyi's

20 statement, Captain Baloyi's statement. It's under flag 6,

21 just two aspects there, volume B, GGG16 I'm told.

22 CHAIRPERSON: What page do you want us to

23 go?

24 MR NGALWANA: Particularly page 3 of 5,

25 which is the paginated 37.

Page 11513

1 CHAIRPERSON: Thank you, and what

2 paragraph number?

3 MR NGALWANA: Paragraph 7. Have you

4 found it, General, paragraph 7, GGG16?

5 MAJOR-GENERAL MPEMBE: Correct,

6 Chairperson.

7 MR NGALWANA: Go to paragraph 7. You'll

8 see Captain Baloyi, or Colonel Baloyi, Lieutenant –

9 Warrant-Officer – Colonel Baloyi – Lieutenant, he says in

10 paragraph 7, talking about the 13th, "I advised the

11 General," at the end of paragraph 7, "I advised the General

12 that stun grenades should be used to disperse them." Did

13 he?

14 MAJOR-GENERAL MPEMBE: No, Chairperson.

15 MR NGALWANA: What was your answer,

16 General? Did he advise you as he suggests?

17 MAJOR-GENERAL MPEMBE: No, Chairperson.

18 MR NGALWANA: In paragraph 8 he says, "I

19 called other members to come with me to get into the Nyala

20 and only two members responded to my call, and I told the

21 driver that the General," referring to you, "wanted us to

22 delay the strikers until we got them together before

23 disarming them." You see that? Did you convey that wish

24 to the members that you wanted them to delay the strikers

25 until you got to them so that you could disarm them?

Page 11514

1 MAJOR-GENERAL MPEMBE: No, Chairperson.

2 MR NGALWANA: Can I take you to GGG15,

3 which is Joseph Omphile Merafe's statement. It's under

4 flag 7, pagination 40. Have you found it, General?

5 MAJOR-GENERAL MPEMBE: Correct,

6 Chairperson.

7 MR NGALWANA: May I ask you to turn to

8 paragraph 1-7, 17, pagination 45 in your file? Lieutenant-

9 Colonel Merafe says – again he is talking about the 13th,

10 Monday the 13th of August 2012, he says, "When I saw that

11 the miners were not going to listen to Major-General Mpe

12 and lay down their weapons," do you see that?

13 MAJOR-GENERAL MPEMBE: Correct,

14 Chairperson.

15 MR NGALWANA: Can I just read the whole

16 paragraph and then the interpreter can interpret. "When I

17 saw that the miners were not going to listen to Major-

18 General Mpe

19 General Mpe

20 General Mpe

21 General Mpe

22 General Mpe

23 General Mpe

24 General Mpe

25 General Mpe

Page 11515

1 that I do not agree with him." I take it he's still
 2 talking about the incident next to the railway line,
 3 General. Is that factually correct?
 4 MAJOR-GENERAL MPEMBE: Correct,
 5 Chairperson.
 6 MR NGALWANA: Is it correct when he says
 7 you did not agree with him and you said that you did not
 8 want another Tatane incident?
 9 MAJOR-GENERAL MPEMBE: Correct,
 10 Chairperson.
 11 MR NGALWANA: In paragraph 18 he says,
 12 and I'm reading the second paragraph, unnumbered paragraph
 13 under paragraph 18, he says, "Major-General Mpeembe
 14 instructed us to follow the miners on foot and he was also
 15 walking with them." You see that?
 16 MAJOR-GENERAL MPEMBE: Yes, Chairperson.
 17 MR NGALWANA: When he says you were
 18 walking with them, I take it he's referring to the miners.
 19 Would that be factually correct that you were walking with
 20 the miners?
 21 MAJOR-GENERAL MPEMBE: No, Chairperson.
 22 MR NGALWANA: Can I take you to the
 23 statement of Mr Joseph Mathunjwa, which is under flag 13 of
 24 your file? It is exhibit NN, for those who don't have
 25 pagination. Turn to paragraph 37, pagination 162, or page

Page 11516

1 12 of exhibit NN, paragraph 37, General. Have you found
 2 it?
 3 MAJOR-GENERAL MPEMBE: I did find it,
 4 Chairperson.
 5 MR NGALWANA: Second sentence in that
 6 paragraph, "He said," he's talking about you, Mr Mathunjwa,
 7 he says you said "that the koppie was now a security zone."
 8 Did you say that to Mr Mathunjwa?
 9 MAJOR-GENERAL MPEMBE: No, Chairperson.
 10 MR NGALWANA: In paragraph 38, second
 11 sentence, he says, "The General mentioned that four people
 12 had been identified as leaders and that two of these were
 13 NUM members and two of them were AMCU members." It is of
 14 course if one, after you've read the initial part of the
 15 statement, he's talking about the first meeting, what you
 16 said to them at that first meeting on the 15th of August,
 17 the meeting that started at around 2 in the afternoon. Did
 18 you mention to Mr Mathunjwa or to the meeting on the 15th
 19 that afternoon that two, or four of the strikers had been
 20 identified as leaders?
 21 MAJOR-GENERAL MPEMBE: No, Chairperson.
 22 But what I said is that the people that I addressed on the
 23 13th, others belonging to NUM and others are belonging to
 24 AMCU, but not four.
 25 CHAIRPERSON: While you're dealing with

Page 11517

1 that point, you told us that on Monday you showed the
 2 photographs to the Lonmin people and asked if they could
 3 identify the people who were visible on the photographs,
 4 and they said they couldn't because the people who could do
 5 the identification had already gone home, but they would be
 6 back the next morning. Did you get feedback in the course
 7 of the Tuesday or even the Wednesday from Lonmin,
 8 identifying some of the people on the photographs and
 9 giving information presumably from Lonmin's records as to
 10 the union affiliation of those persons?
 11 MAJOR-GENERAL MPEMBE: Correct,
 12 Chairperson.
 13 CHAIRPERSON: Did you ask them if they
 14 could give you the residential addresses of those people as
 15 well?
 16 MAJOR-GENERAL MPEMBE: Yes, Chairperson.
 17 CHAIRPERSON: And did they do so?
 18 MAJOR-GENERAL MPEMBE: No, Chairperson.
 19 MR NGALWANA: Paragraph 38, General –
 20 sorry, paragraph –
 21 CHAIRPERSON: Is that because they didn't
 22 know, or they didn't have it available or did they give any
 23 explanation as to why they couldn't give you the addresses
 24 of these people?
 25 MAJOR-GENERAL MPEMBE: Chairperson, they

Page 11518

1 didn't tell me what is the precise reason, but what they
 2 informed me, and that was a request from their side is that
 3 I must not even mention that they were, they are the ones
 4 that they have assisted me to identify these people.
 5 MR NGALWANA: Paragraph 14, General, the
 6 same page, the same statement, third sentence Mr Mathunjwa
 7 relates what Mr Mokwena said at that meeting. He says, "Mr
 8 Mokwena stated that the workers must renounce violence and
 9 return to work peacefully, and then Lonmin would engage
 10 with their grievances." You see that?
 11 MAJOR-GENERAL MPEMBE: Yes, I can see,
 12 Chairperson.
 13 MR NGALWANA: Did Mr Mokwena at that
 14 meeting say that if the workers renounce violence and
 15 return to work peacefully, Lonmin would engage with their
 16 grievances?
 17 MAJOR-GENERAL MPEMBE: No, Chairperson,
 18 what I know it might also be found on exhibit 004, page 27.
 19 That's only what I know what Mr Mokwena said.
 20 CHAIRPERSON: That appears to be correct.
 21 Your flag 7 is followed by the exhibit to which the witness
 22 has referred, which is a transcript of the meeting at
 23 Lonmin before the two presidents went to the koppie, and
 24 I'm not sure whether what Mr Mathunjwa says is an exact
 25 summary of what was said, but we can easily check it by

<p style="text-align: right;">Page 11519</p> <p>1 looking at – it's OO4. 2 MR NGALWANA: Yes, Chair, I don't think 3 it's in dispute what was said by Mr Mokwena. I just wanted 4 to check with the witness whether what Mr Mathunjwa relayed 5 as to what Mr Mokwena said, that once the workers had come 6 back to work then Lonmin would engage with their 7 grievances. In other words, the way I read it, that they 8 would engage directly with the workers. It's clear what 9 Lonmin's position is at OO4. 10 CHAIRPERSON: OO4 is in fact the 11 transcript of what was recorded at that very meeting. So 12 if what Mr Mathunjwa says doesn't accord with that, then 13 what Mr Mathunjwa says is incorrect, and if it does accord, 14 well he is correct, but we don't have to spend much time on 15 it because we can just look at OO4 for the ipsissima verba 16 of what was said at that meeting. Isn't that so? 17 MR NGALWANA: Absolutely, Chair. I 18 wasn't going to engage with this anymore. We're just 19 referring to page 27, line 9 - line 17, page 28, line 9 of 20 OO4. Can I take you to paragraph 54 of that same 21 statement, General, pagination 166, page 16 of NN. 22 [12:20] In the last sentence of that paragraph he says, 23 "Major-General Mpenbe gave us a salute and said that he was 24 very optimistic and impressed and had no doubt that the 25 strike would be over the next day." Perhaps I should put</p>	<p style="text-align: right;">Page 11521</p> <p>1 these were the other way around, it's page 21 of that 2 transcript. 3 CHAIRPERSON: I see the certificate is 4 actually in the wrong place. Anyway, so you say it's page 5 21, that's page 244 of our copies of the bundles. 6 MR NGALWANA: Correct, Chairperson. 7 You'll find the reference to which the General refers, well 8 firstly this is an off-the-record discussion, so it wasn't 9 part of the meeting, and secondly towards, I think it's 10 line 15, General Mpenbe, he says he was addressing the 11 other Generals in an off-the-record discussion. He says, 12 "So up to so far I'm really impressed." That's what he's 13 referring to. 14 CHAIRPERSON: It's actually not a remark 15 addressed to General Annandale, it's addressed to Mathunjwa 16 because it says, "Your leadership is still under testing, 17 confirmation is the outcome." So he's obviously talking – 18 he may have been talking to General Annandale at the 19 beginning, but clearly that remark is addressed to Mr 20 Mathunjwa. 21 MR NGALWANA: - cover this, but in 22 consultation, so let him testify. General, can you 23 indicate to the Commission what the circumstances were and 24 who was part of the conversation you were having, and 25 thirdly – there are three questions – what were the</p>
<p style="text-align: right;">Page 11520</p> <p>1 this in perspective by reading the whole – well, the 2 previous sentence. This is said in the context where Mr 3 Mathunjwa says what he reported to that meeting was, "We 4 said that the workers had been receptive of the proposal," 5 he's now talking of the second meeting in the evening of 6 the 15th. "We said that the workers had been receptive to 7 the proposal that they return to work and that we would see 8 them again in the morning to discuss the matter further." 9 He then says you saluted him. Is that factually correct? 10 Did you salute him? 11 MAJOR-GENERAL MPEMBE: No, Chairperson, 12 but what I said is that I'm impressed. 13 MR NGALWANA: Did you say you were 14 impressed during the meeting or later? 15 MAJOR-GENERAL MPEMBE: It was after the 16 meeting and I was with Major-General Annandale by that 17 time, talking to him to say I'm impressed and if this could 18 happen what we are being told, at least the problem will be 19 over. 20 MR NGALWANA: Chairperson, you'll find 21 that reference at the documents bundle, pagination 243. 22 It's an off-the-record discussion. 23 CHAIRPERSON: 243 of my copy is a 24 certificate by the transcriber, so there must – 25 MR NGALWANA: It's referred to, because</p>	<p style="text-align: right;">Page 11522</p> <p>1 circumstances, secondly who was part of the conversation, 2 and thirdly, to whom were you addressing these words? 3 MAJOR-GENERAL MPEMBE: In that meeting I 4 did say that the police, it was myself, Major-General 5 Annandale, and Major-General Naidoo. AMCU, I know only Mr 6 Mathunjwa, but he also had some delegations, and the 7 management, it was Mr Kwadi. 8 MR NGALWANA: General, I'm not now 9 talking about the meeting. The meeting is over. I'm 10 talking about the incident – can I refer you to page 21 of 11 GGG4. Do you have it in front of you? GGG4 is the 12 debriefing transcript. It's in the documents bundle. It 13 will either be page 244 for those who have pagination, but 14 page 21 of GGG4 for those who don't have the pagination. 15 It's at the bottom right-hand corner, General, you see 16 page, either 244 or 243, bottom right-hand corner. In the 17 middle of the page at the top it should be page 21. Have 18 you found it? 19 MAJOR-GENERAL MPEMBE: I can see it here. 20 MR NGALWANA: You see it says "Off-the- 21 record discussion about vehicles being in convoy," and so 22 on. Do you see that page? 23 MAJOR-GENERAL MPEMBE: I just want to see 24 the word "off-the-record." 25 MR NGALWANA: It's at the top of the</p>

<p style="text-align: right;">Page 11523</p> <p>1 page, it's written in bold in capital letters and 2 underlined.</p> <p>3 CHAIRPERSON: It's looks as if it's page 4 690 from the police hard drive, it's got 690 on the top 5 right-hand corner, and just below 690 you see there's words 6 in capital underlined to which counsel is referring you, 7 "Off-record discussion about vehicles being in convoy," and 8 that relates back to something that had been discussed on 9 an earlier page where there's a request that they be 10 escorted. Originally the police said no and then the 11 police agreed that they would escort them, and then 12 obviously there was an off-the-record discussion whether 13 the vehicles should be convoy or not, but that's not 14 relevant, so that wasn't transcribed, and then someone is 15 reported as saying – presumably that's you – after 16 Mathunjwa says "Yes?" then there's a statement made by 17 someone who's not identified, but I suspect it may be you. 18 It says, "President," so you're obviously talking to 19 Mathunjwa, "I do not know, maybe I'm (inaudible) and I 20 think it would also be edifying under the circumstances if 21 we can also hear from the Generals what's been their 22 impression since the time you've been with us from morning 23 up to where we've been, so what has been their impression." 24 So I take it that's a reference to the other Generals 25 present, presumably Annandale. Was Naidoo there as well?</p>	<p style="text-align: right;">Page 11525</p> <p>1 CHAIRPERSON: Anyway, you don't have to 2 tell us. You can [inaudible]. You don't have to do it 3 formally before the Commission. You can just revert to 4 your learned friends who appear for the police, and if it's 5 necessary, then arrangements can be made for someone, 6 perhaps the witness or someone else, to listen to the tape 7 and see if the identified speakers can be identified, if 8 the tape is available.</p> <p>9 SPEAKER: Quite so, Chair, thank you.</p> <p>10 MR NGALWANA: Thank you. General, who is 11 it that uttered those words, "President, I do not know, 12 maybe I am?" Are you able to answer that, or do you prefer 13 to wait for the audio, if and when we receive it?</p> <p>14 MAJOR-GENERAL MPEMBE: I was normally 15 referring to him, President, when I was talking to him.</p> <p>16 MR NGALWANA: Shall I take it that's you 17 who's addressing him in that paragraph?</p> <p>18 MAJOR-GENERAL MPEMBE: Correct, 19 Chairperson.</p> <p>20 MR NGALWANA: Now the next paragraph – 21 just paint the picture first, what is the setup here? Are 22 you sitting down? Are you standing, and who is part of 23 this group of people?</p> <p>24 MAJOR-GENERAL MPEMBE: We were in another 25 room at the JOC, but not inside the JOC, and we were</p>
<p style="text-align: right;">Page 11524</p> <p>1 Then General Mpeembe says, "It will be fair because the two 2 Generals were there," and then it continues. So do I read 3 it correctly that the other two Generals present were asked 4 for their impression of the discussion, or am I wrong?</p> <p>5 MAJOR-GENERAL MPEMBE: Correct, 6 Chairperson.</p> <p>7 MR NGALWANA: Let's do it step by step. 8 General, the person who says, "President, I do not know, 9 maybe I am, circumstances," do you see that part? Who is 10 that? Who is saying that?</p> <p>11 CHAIRPERSON: While you're thinking about 12 it, may I raise something? I take it that this is a Lonmin 13 transcript from a recording made without disclosure by 14 Lonmin of the discussion, and perhaps Lonmin's 15 representatives can tell us if they still have the tape, in 16 which case someone can listen to it and then the blank 17 speakers as it were can be identified. It may save time 18 that way. The witness may not perhaps remember, but if 19 it's important then I'm sure that, unless Lonmin have 20 either destroyed the tape or taped over it, we'll be able 21 to ascertain who the speakers were.</p> <p>22 SPEAKER: Chair, we do not know if the 23 tape still exists. We will have to take instruction and 24 come back to you on Tuesday morning. Thank you.</p> <p>25 MR NGALWANA: Yes, we've –</p>	<p style="text-align: right;">Page 11526</p> <p>1 sitting, but there was a time where I was communicating 2 with General Annandale and General Naidoo while Mr 3 Mathunjwa and his entourage was standing somewhere, and 4 also Mr Kwadi was somewhere, but then he did approach us, 5 but when I was uttering the words I was busy talking to the 6 two Generals and he was coming to join us.</p> <p>7 MR NGALWANA: Yes, you say, "My 8 impression is firstly you were on the dot, particularly to 9 mention to say now you accepted responsibility and you will 10 go there as management from the beginning." Who are you 11 referring to as "you" in that excerpt? Do you want me to 12 read it again? Have you got it in front of you, General?</p> <p>13 MAJOR-GENERAL MPEMBE: I was talking to 14 President Mathunjwa of AMCU.</p> <p>15 MR NGALWANA: "Particularly to mention," 16 and I'm reading this paragraph, "Particularly to mention to 17 say now you accepted responsibility and you will go there 18 as management just from the beginning." Are you addressing 19 Mr Mathunjwa?</p> <p>20 MAJOR-GENERAL MPEMBE: Correct, 21 Chairperson.</p> <p>22 MR NGALWANA: Is Mr Mathunjwa management, 23 General?</p> <p>24 CHAIRPERSON: General, it does look as if 25 someone from Lonmin must have been present during this</p>

<p style="text-align: right;">Page 11527</p> <p>1 discussion as well. I get that impression from line 22, 2 "that's why I wanted management should listen," and then 3 the earlier reference to which counsel has referred you, 4 line 14, "you will go there as management." Now Mr 5 Mathunjwa was the president of AMCU, he wasn't involved in 6 management. Management was Lonmin. So the first question 7 is, was there someone from Lonmin present when this 8 discussion took place? 9 MAJOR-GENERAL MPEMBE: Yes, Chairperson. 10 CHAIRPERSON: Now part of the problem is 11 we haven't got page 20. Page 20 is missing, and perhaps 12 that's something which may solve the mystery to some extent 13 because it may appear from 20 who it was who was there from 14 Lonmin, but perhaps the witness can help us. Can you 15 remember who was there from Lonmin? Was it Kwadi or 16 Mokwena, or who? 17 MAJOR-GENERAL MPEMBE: I remember Mr 18 Kwadi. 19 CHAIRPERSON: Would you agree then that 20 it looks as if this remark about "You will go there as 21 management just from the beginning," looks as if it was 22 addressed to Mr Kwadi because he was the representative of 23 management presumably at this meeting. I'm trying to help 24 you, Mr Ngalwana. If I'm doing the opposite, please let me 25 know.</p>	<p style="text-align: right;">Page 11529</p> <p>1 MR NGALWANA: Am I right in saying he's 2 talking about the Provincial Commissioner's press address 3 that morning of the 16th? 4 MAJOR-GENERAL MPEMBE: Correct, 5 Chairperson. 6 MR NGALWANA: To your knowledge was NUM 7 or its representatives invited to that media conference? 8 MAJOR-GENERAL MPEMBE: No, Chairperson. 9 MR NGALWANA: To your knowledge were 10 there any NUM representatives at the press conference? If 11 you didn't see them, you didn't see them. If you saw them, 12 you saw them. Just tell us whether you saw them. 13 MAJOR-GENERAL MPEMBE: I did not see 14 them, but also that the most person that I know of NUM it 15 was Mr Senzeni Zokwana. The others as I indicated I did 16 not know them. 17 MR NGALWANA: Did you see Mr Zokwana at 18 the media conference that morning? 19 MAJOR-GENERAL MPEMBE: No, Chairperson. 20 MR NGALWANA: Paragraph 60, page 18 of 21 NN, pagination 168, he says, "Mr Kwadi after some time came 22 back and called us into one of the offices at LPD. He was 23 accompanied by three people, one of whom I know only as 24 Patrick who is from Human Resources, and two others. Mr 25 Kwadi says that he did not have good news. He said that</p>
<p style="text-align: right;">Page 11528</p> <p>1 MR NGALWANA: No, absolutely. I'm 2 grateful, Chair. 3 MAJOR-GENERAL MPEMBE: Correct, 4 Chairperson. 5 CHAIRPERSON: Mr Ngalwana, you want to 6 take this point further now? 7 MR NGALWANA: Yes. No, thank you, Chair. 8 Then you continue, General, and say, "But to me the 9 leadership is to get the issues resolved." Who are you 10 addressing yourself to there? Maybe this goes together 11 with the next sentence, "So up to so far I am really 12 impressed as I have said to you," and then inaudible, 13 "peaceful, what it is, resolution and your leadership is 14 still under testing at the moment." Who are you addressing 15 yourself to? 16 MAJOR-GENERAL MPEMBE: To Mr Mathunjwa. 17 [12:40] MR NGALWANA: Paragraph 57, I'm moving 18 on. Paragraph 57 of that same statement, page 17, 19 pagination 167, Mr Mathunjwa says, he's talking about the 20 16th of August, "Mr Kwadi informed me that there was a press 21 conference by the SAPS from the LPD offices. I asked why 22 AMCU was not invited as NUM was there." You see that, 23 General? 24 MAJOR-GENERAL MPEMBE: I see it, 25 Chairperson.</p>	<p style="text-align: right;">Page 11530</p> <p>1 management could not commit to engaging with the workers if 2 they returned to work. This was," this is now Mr 3 Mathunjwa's take, "This was a clear departure of the 4 commitment given the previous day," which is on the 15th. 5 You see that, General? Did management during the meeting 6 of the 15th commit to engaging with workers, and I add in 7 brackets, directly, if they returned to work? 8 MAJOR-GENERAL MPEMBE: No, Chairperson. 9 MR NGALWANA: Paragraph 68, page 20 of 10 NN, pagination 170, second sentence Mr Mathunjwa says, 11 "General Mpeembe introduced the AMCU delegation to the 12 Provincial Commissioner Mbombo and said that she was now in 13 charge of the operation. Mbombo confirmed that she was now 14 in charge of the operation and said this thing must end 15 today because it is costing the State a lot of money." Did 16 you say to Mr Mathunjwa and his delegation that Provincial 17 Commissioner Mbombo was now in charge of Operation 18 Platinum? 19 MAJOR-GENERAL MPEMBE: No, Chairperson, 20 this is not true. 21 MR NGALWANA: Well, I suppose the follow- 22 up question falls away in light of the first answer that 23 you gave, but let me ask it anyway. Did Provincial 24 Commissioner Mbombo confirm that she was in charge of the 25 operation?</p>

Page 11531

1 MAJOR-GENERAL MPEMBE: No, Chairperson.
 2 MR NGALWANA: Did Provincial Commissioner
 3 Mbombo says "This thing is costing the State money, a lot
 4 of money?"
 5 MAJOR-GENERAL MPEMBE: No, Chairperson.
 6 MR NGALWANA: Did she say, "This thing
 7 must end today," which is the 16th of August?
 8 MAJOR-GENERAL MPEMBE: No, Chairperson.
 9 MR NGALWANA: Paragraph 69, page 21 of
 10 NN, pagination 171, Mr Mathunjwa says, "I then requested
 11 transport to take me to the koppie in terms of the protocol
 12 that had been explained to me the day before. A female
 13 SAPS officer was appointed to arrange transport. We
 14 waited, but no transport arrived." Is that factually
 15 correct, General?
 16 MAJOR-GENERAL MPEMBE: No, Chairperson.
 17 I just also want to point out to say that Mr Mathunjwa
 18 whenever he was approaching me to arrange transport, I was
 19 always arranging the transport. I don't know why in this
 20 case he will want to say I did not want to arrange the
 21 transport. I just want to mention that on the previous
 22 day, the night, he did request that he should be escorted
 23 to the road; we did arrange that.
 24 MR NGALWANA: Perhaps for the record I
 25 should read the rest of the paragraph. He then says,

Page 11532

1 "After waiting for 15 to 20 minutes I approached General
 2 Mpembe. He said there was no transport. I pointed to
 3 three Vito Mercedes minibuses. He looked into using these
 4 vehicles and came back to me and said that there were no
 5 keys for the minibuses." You've testified earlier about
 6 this aspect, that you went and looked for keys and the keys
 7 were with people who were already deployed. Is there
 8 anything you wish to add in that regard?
 9 MAJOR-GENERAL MPEMBE: It's correct,
 10 Chairperson, that a female captain, it's Captain Seleke,
 11 and the escorting was arranged.
 12 MR NGALWANA: Well, in paragraph 70 he
 13 says, "General Mpembe then advised us we should use our own
 14 vehicles," and he says, "I reminded him of the protocol of
 15 the day before and the clear instruction not to use our own
 16 vehicles. I asked why this had changed and why now, why we
 17 now had to use our own vehicles. I asked whether no
 18 transport was available because the president of NUM was
 19 not there. I received no answer." Did you have that
 20 conversation with Mr Mathunjwa?
 21 MAJOR-GENERAL MPEMBE: No, Chairperson, I
 22 just also want to point out, as I said, when we had a
 23 debriefing a day before, a night before, that was on the
 24 15th, the NUM president was not there and I did arrange a
 25 transport that escorted Mr Mathunjwa to go to the road and

Page 11533

1 we made sure that he was safe. But the following day, I'm
 2 shocked to hear that this is what he's saying.
 3 MR NGALWANA: Did you say to him he must
 4 use his own vehicle to go to the koppie?
 5 MAJOR-GENERAL MPEMBE: No, Chairperson.
 6 MR NGALWANA: Can I take you to paragraph
 7 83, page 25 of exhibit NN, pagination 175. This is I take
 8 it when he was now coming back, looking to report back
 9 about what had happened after his second address. No, this
 10 is just before the second address, I think. He says, "I
 11 then met with the AMCU branch committee and explained to
 12 them that neither the SAPS nor management was willing to
 13 engage with me, but by this time the situation was tense.
 14 The Provincial Commissioner had left," presumably to the
 15 hospital. "The Generals who had welcomed our intervention
 16 the day before were no longer willing to engage with us.
 17 The protocol of the previous day was not being followed."
 18 Is he correct when he says the Generals were no longer
 19 willing to engage with them as AMCU delegation?
 20 MAJOR-GENERAL MPEMBE: No, Chairperson.
 21 MR NGALWANA: Chairperson, we are now
 22 going to move to the last aspect of the examination-in-
 23 chief, in which we intend dwelling for quite some time, and
 24 that is dealing with the criticisms of the plan by the
 25 experts, as well as the Standing Orders and the other

Page 11534

1 prescripts.
 2 CHAIRPERSON: It sounds as if we'll have
 3 to let it stand over until Tuesday morning at 9:30. I want
 4 to state that originally I was informed that these premises
 5 will not be available to us on the first Monday and second
 6 Wednesday of the month, so on that basis we did not sit on
 7 the first Monday or the first Wednesday, but I was
 8 subsequently informed shortly before the second Wednesday
 9 that the premises were available the second Wednesday, but
 10 not the third Wednesday. It was by that time too late to
 11 change the arrangements. So we will not be sitting on
 12 Wednesday of next week. I think it's appropriate that I
 13 should tell those concerned about that now. I hope to
 14 spend some time on that day with the evidence leaders, or
 15 some of them, to work on the programme for what we can call
 16 next term, so the day will not be wasted and I'm sure that
 17 those present here will also find important things to do in
 18 connection with the Commission on the Wednesday. I'm sorry
 19 we'll not be sitting, but in fact it may be a blessing in
 20 disguise because it will enable us perhaps to do work that
 21 we couldn't otherwise easily do, but it's important that I
 22 should tell everyone concerned about that now. So at this
 23 point we will adjourn until Tuesday at 9:30.
 24 I should also perhaps say that as of what we can
 25 call next term, in other words the period after the recess

1 we're taking, the idea is that we should start at 9 every
2 morning. It's no longer necessary for us to arrange our
3 times on the basis that we're sitting in Rustenburg, but
4 strong representation has been made to me about people who
5 have aeroplanes to catch, that we should not sit on Friday
6 afternoon, but if we sit from 9 o'clock every morning, we
7 will in fact gain two and a half hours, which in fact is
8 longer than the Friday afternoon that we would lose, which
9 we're losing at the moment in any event. So I thought I
10 should tell everybody about that now so they can bear it in
11 mind for the future. So we will adjourn then until, as
12 I've said before, 9:30 on Tuesday morning, and wish you all
13 a very happy and successful weekend.

14 [COMMISSION ADJOURNED]

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11514:22 11515:1,7 11527:19</p> <p>agreed 11523:11</p> <p>air 11493:1</p> <p>alighted 11487:2</p> <p>AMCU 11516:13,24 11522:5 11526:14 11527:5 11528:22 11530:11 11533:11 11533:19</p> <p>and/or 11484:11 11486:9</p> <p>Annandale 11486:21 11496:20,23 11498:1 11520:16 11521:15 11521:18 11522:5</p>	<p>11523:25 11526:2</p> <p>announced 11505:18</p> <p>announcement 11503:7</p> <p>answer 11490:8 11501:21 11513:15 11525:12 11530:22 11532:19</p> <p>answered 11496:14</p> <p>answers 11504:5</p> <p>anticipated 11498:17</p> <p>anybody 11486:15</p> <p>anymore 11519:18</p> <p>anyway 11521:4 11525:1 11530:23</p> <p>appear 11525:4 11527:13</p> <p>appears 11510:23 11518:20</p> <p>appointed 11531:13</p> <p>appreciate 11490:16</p> <p>approach 11498:22 11501:16 11526:4</p> <p>approached 11499:11 11500:4,24 11501:2 11501:15 11532:1</p> <p>approaching 11531:18</p> <p>appropriate 11510:19 11534:12</p> <p>approximately 11494:2</p> <p>area 11483:8 11484:21</p> <p>armoured 11485:7</p> <p>arrange 11531:13,18 11531:20,23 11532:24 11535:2</p> <p>arranged 11532:11</p> <p>arrangements 11497:11 11525:5 11534:11</p> <p>arranging 11531:19</p> <p>arrest 11495:2</p> <p>arrested 11495:1 11497:12,20 11498:11,18 11499:24</p> <p>arrival 11493:8</p> <p>arrive 11493:16 11496:12</p> <p>arrived 11495:21 11531:14</p> <p>ascertain 11494:3 11524:21</p> <p>asked 11486:21 11492:5 11494:21 11499:18 11517:2 11524:3 11528:21 11532:16,17</p> <p>asking 11489:7 11491:13 11496:12 11509:5</p> <p>aspect 11512:11 11532:6 11533:22</p> <p>aspects 11512:7,21</p> <p>assist 11494:22</p> <p>assisted 11494:24 11518:4</p> <p>attend 11483:25</p>	<p>11506:5,7,14,14,15 11506:16 11511:5,6,9 11511:13 11512:3</p> <p>attendance 11506:2,17 11510:13,16,22 11511:20,21 11512:8</p> <p>attended 11507:1,6 11511:18 11512:13</p> <p>attending 11506:12 11510:13</p> <p>attention 11494:19</p> <p>audio 11525:13</p> <p>August 11497:8 11502:4,5 11505:21 11505:21 11514:10 11516:16 11528:20 11531:7</p> <p>authorised 11486:4</p> <p>available 11486:21 11498:12 11517:22 11525:8 11532:18 11534:5,9</p> <p>avoid 11484:10</p> <p>avoiding 11486:8</p> <p>aware 11502:22</p> <hr/> <p>B</p> <p>B 11512:21</p> <p>back 11483:15,23 11490:24 11491:17 11493:5 11494:5,8,9 11495:16 11499:23 11500:10 11507:11 11507:16 11509:14 11510:14 11512:16 11512:19 11517:6 11519:6 11523:8 11524:24 11529:22 11532:4 11533:8,8</p> <p>Baloyi 11513:8,8,9</p> <p>Baloyi's 11512:19,20</p> <p>barbed 11484:16,19</p> <p>based 11484:2 11509:19,22</p> <p>basis 11534:6 11535:3</p> <p>bear 11535:10</p> <p>began 11501:11</p> <p>beginning 11521:19 11526:10,18 11527:21</p> <p>behaviour 11483:14</p> <p>belonging 11516:23,23</p> <p>best 11483:14</p> <p>better 11487:6,12,16 11488:8 11504:1</p> <p>bigger 11488:3</p> <p>binoculars 11488:23</p> <p>birthday 11483:24</p> <p>blank 11524:16</p> <p>blessing 11534:19</p> <p>bodies 11489:9,10,11 11490:15,16,16 11491:6 11492:7,8,24</p> <p>bold 11523:1</p> <p>bottom 11522:15,16</p> <p>brackets 11530:7</p>	<p>branch 11533:11</p> <p>brief 11502:8,9 11504:24</p> <p>briefed 11502:14</p> <p>briefing 11502:11,14</p> <p>briefly 11492:1 11506:24</p> <p>Brigadier 11487:1,24 11489:1,4,6 11491:1 11491:3,7,20,21 11492:2,5,13 11498:1 11498:2,25 11500:1 11500:16 11501:5,14 11501:23 11508:21 11509:16</p> <p>bring 11507:4 11510:6 11510:9</p> <p>buildings 11497:22</p> <p>bullet 11485:10</p> <p>bundle 11504:11,16,16 11520:21 11522:12</p> <p>bundles 11521:5</p> <p>busy 11526:5</p> <hr/> <p>C</p> <p>Calitz 11487:24 11489:1,4,6 11491:1 11491:7,20,21 11492:2,5,13</p> <p>call 11489:3 11502:23 11513:20 11534:15 11534:25</p> <p>called 11506:14 11511:5,13,14 11512:12 11513:19 11529:22</p> <p>calls 11506:13</p> <p>call-up 11504:23,24 11505:6,8,10,13 11510:14,25 11511:8</p> <p>cannons 11485:6,8 11488:3 11490:11 11492:14</p> <p>can't 11500:20</p> <p>capital 11523:1,6</p> <p>captain 11496:20 11512:20 11513:8 11532:10,10</p> <p>capture 11508:6</p> <p>case 11503:25 11524:16 11531:20</p> <p>casualties 11484:11 11486:9</p> <p>catch 11535:5</p> <p>celebration 11483:24</p> <p>cells 11500:3</p> <p>centre 11500:6</p> <p>certain 11500:12</p> <p>certificate 11520:24 11521:3</p> <p>Chair 11489:15 11490:6 11501:18 11504:8,19 11510:20 11512:11 11519:2,17 11524:22 11525:9 11528:2,7</p>	<p>chambers 11512:3</p> <p>change 11534:11</p> <p>changed 11532:16</p> <p>changes 11495:12</p> <p>charge 11530:13,14,17 11530:24</p> <p>check 11500:16,19 11511:20 11518:25 11519:4</p> <p>checked 11494:15 11495:1</p> <p>checking 11494:17</p> <p>chief 11533:23</p> <p>chopper 11486:21,23 11487:2,2,4,8,10,16 11487:18,22 11488:20 11489:9,16 11490:23 11491:2 11492:1,19</p> <p>circumstances 11521:23 11522:1 11523:20 11524:9</p> <p>clear 11491:10 11492:7 11519:8 11530:3 11532:15</p> <p>clearly 11521:19</p> <p>Coast 11483:6,15</p> <p>Coin 11487:1,2</p> <p>collate 11505:2</p> <p>collated 11507:5</p> <p>collection 11505:9,16</p> <p>Colonel 11491:20 11507:11,16,25 11508:2,4,11,13 11509:16,17 11513:8 11513:9 11514:9</p> <p>come 11483:23 11507:11 11513:19 11519:5 11524:24</p> <p>coming 11493:11 11496:13,17 11526:6 11533:8</p> <p>command 11501:6</p> <p>commander 11484:13 11484:22 11485:2,12 11485:19,21,22 11487:17,19,25 11488:11,15 11490:22 11494:11</p> <p>commenced 11488:10</p> <p>commission 11483:2,6 11483:11,13,17 11486:23 11488:1 11504:24 11505:3,7 11505:17 11507:6 11510:2,4 11511:25 11511:25 11512:1 11521:23 11525:3 11534:18 11535:14</p> <p>Commissioner 11488:4 11490:25 11491:5,10 11491:18,24 11493:13,18,22 11499:5 11502:9,10 11502:13,24 11503:3 11503:7 11507:3,3</p>
---	---	--	---	---

11530:12,17,24 11531:2 11533:14 Commissioner's 11495:8 11529:2 commit 11530:1,6 commitment 11530:4 committee 11533:11 communicate 11488:15 11490:21 11491:6,12 11491:21 communicating 11526:1 communication 11487:13 11490:22 11491:15 communications 11491:19 compile 11494:23 11495:4,6 computer 11508:7 concerned 11534:13,22 conditions 11500:2 conducive 11500:2 conduct 11484:3 conference 11499:5,6,6 11502:12 11512:9 11528:21 11529:7,10 11529:18 confirm 11530:24 confirmation 11499:10 11521:17 confirmed 11499:22 11530:13 confirming 11499:16 confront 11514:25 connection 11534:18 considered 11492:11 constables 11511:13 consultation 11521:22 contained 11504:3 CONTD 11484:8 11512:10 context 11520:2 continue 11484:7 11528:8 continues 11524:2 continuing 11514:20 continuum 11485:10 convenient 11510:18 convenor 11508:18,25 conversation 11492:2 11492:21 11521:24 11522:1 11532:20 convey 11513:23 convoy 11522:21 11523:7,13 coordinating 11508:17 copies 11521:5 copy 11520:23 corner 11522:15,16 11523:5 correct 11487:21 11489:4,20,21 11490:1,13 11491:8 11491:22 11495:12 11495:24 11496:1,7	11498:13,14,20 11499:22 11501:3,6,9 11501:10 11502:18 11502:20 11505:23 11505:25 11506:21 11507:17 11511:2 11513:5 11514:5,13 11515:3,4,6,9,19 11517:11 11518:20 11519:14 11520:9 11521:6 11524:5 11525:18 11526:20 11528:3 11529:4 11531:15 11532:9 11533:18 correctly 11509:15 11524:3 costing 11530:15 11531:3 couldn't 11491:21 11497:18 11498:10 11517:4,23 11534:21 counsel 11523:6 11527:3 course 11498:19 11504:7 11510:3 11516:14 11517:6 Court 11483:18 cover 11521:21 coverage 11502:23 covered 11503:24 create 11484:21 critically 11494:18 criticisms 11503:21 11504:5 11533:24 cross-referencing 11494:3 <hr/> D dates 11505:7 day 11493:25 11494:25 11495:9 11497:9 11498:19 11519:25 11530:4 11531:12,22 11532:15,23 11533:1 11533:16,17 11534:14,16 days 11506:3,9,9 11508:9 11509:1 11510:12 day-by-day 11509:9,12 dead 11490:15,15 11493:10 deal 11503:24 11512:7 11512:17 dealing 11509:8 11516:25 11533:24 debriefing 11505:6,10 11505:11,13,15 11522:12 11532:23 deceased 11500:4 decision 11510:4 defensive 11484:16 delay 11513:22,24 delegation 11530:11,16 11533:19	delegations 11522:6 departure 11530:3 deployed 11532:7 describe 11490:7 described 11490:4 11497:1 describing 11499:23 destroyed 11524:20 detain 11500:3 detainees 11500:9 Detectives 11500:6 detention 11499:16,16 didn't 11492:8 11501:16 11514:24 11517:21,22 11518:1 11529:11,11 died 11494:22 11499:24 different 11493:11 11494:20 11502:8 differently 11510:21 dignitaries 11502:9 directed 11488:5 direction 11514:21 directly 11519:8 11530:7 disagree 11504:7 disarm 11513:25 11514:19 disarming 11513:23 disclosure 11524:13 discover 11494:10 11497:17,23 discretion 11485:12 discuss 11520:8 discussed 11523:8 discussing 11508:5 discussion 11520:22 11521:8,11 11522:21 11523:7,12 11524:4 11524:14 11527:1,8 disguise 11534:20 dismay 11493:9 dispersal 11485:1 11486:11,14 11487:23 11492:13 disperse 11485:17 11486:17 11513:12 dispersion 11484:20 11485:13,14 dispose 11512:12 dispute 11519:3 distance 11500:5 divided 11507:9 dividing 11508:19 document 11504:16 documents 11504:11 11505:9 11520:21 11522:12 doesn't 11519:12 deceased 11509:6 11527:24 don't 11489:19 11491:19 11503:24 11515:24 11519:2,14 11522:14 11525:1,2	11531:19 dot 11526:8 doubt 11519:24 downwards 11511:12 drive 11523:4 driver 11513:21 drove 11500:21 duly 11511:15 dwelling 11533:23 <hr/> E earlier 11500:13,16 11508:9,9 11523:9 11527:3 11532:5 easily 11518:25 11534:21 edifying 11523:20 eight 11511:12 either 11522:13,16 11524:20 electricity 11497:16,21 11498:3 11500:18,23 emergencies 11494:14 enable 11487:10,16,19 11534:20 encourage 11485:1 encouraging 11485:14 11485:16 11486:11 engage 11492:16 11518:9,15 11519:6,8 11519:18 11533:13 11533:16,19 engages 11492:17 engaging 11530:1,6 enquire 11493:13 ensured 11494:17 entourage 11526:3 envisage 11485:22 escort 11523:11 escorted 11523:10 11531:22 11532:25 escorting 11532:11 estimation 11488:20 11493:3 evening 11502:4 11520:5 event 11509:11 11535:9 events 11507:14 11509:9 everybody 11535:10 evidence 11494:1 11501:11 11503:10 11504:2 11534:14 exact 11518:24 exactly 11491:12 11499:6 11500:12 EXAMINATION 11484:8 11512:10 examination-in 11533:22 examination-in-chief 11484:7 example 11508:15 excerpt 11526:11 exercise 11503:20,22	11504:9 exhibit 11503:13 11515:24 11516:1 11518:18,21 11533:7 exists 11524:23 expect 11488:14 11511:11 expected 11502:11 expects 11511:9 experience 11483:8 experts 11503:21 11533:25 explain 11492:1 11504:23 11505:12 11506:24 explained 11483:16 11531:12 11533:11 explaining 11501:13 explanation 11501:24 11517:23 explore 11511:23 extend 11483:9 extent 11527:12 <hr/> F facilitated 11502:12 facilitating 11509:4,6 facilitator 11508:23 facilities 11499:16 fact 11488:25 11496:6 11501:23 11519:10 11534:19 11535:7,7 factually 11515:3,19 11520:9 11531:14 fair 11524:1 falls 11530:22 Fanagalo 11484:24 far 11521:12 11528:11 favourable 11483:15 feedback 11507:11,25 11509:18,22 11517:6 female 11531:12 11532:10 FFF5 11503:13 file 11514:8 11515:24 find 11492:23 11497:18 11504:11 11510:25 11516:3 11520:20 11521:7 11534:17 first 11484:15 11489:11 11495:19 11505:5,21 11507:2 11509:9 11516:15,16 11525:21 11527:6 11530:22 11534:5,7,7 firstly 11485:3,23 11509:8 11521:8 11526:8 flag 11504:12,15,22 11511:6 11512:20 11514:4 11515:23 11518:21 flew 11486:24 11487:2 flying 11488:21 follow 11483:17 11515:14 11530:21
--	--	--	---	---

<p>followed 11518:21 11533:17</p> <p>following 11485:3 11495:9 11497:9 11512:7 11533:1</p> <p>foot 11515:14</p> <p>force 11485:10,11 11486:15</p> <p>forgive 11491:18</p> <p>forgot 11512:17</p> <p>formally 11525:3</p> <p>formed 11495:8,14</p> <p>formulate 11485:21</p> <p>forth 11483:9 11512:8</p> <p>forward 11492:6 11510:10</p> <p>found 11499:23 11500:2,12 11513:4 11514:4 11516:1 11518:18 11522:18</p> <p>four 11516:11,19,24</p> <p>Frans 11483:10</p> <p>free 11504:7</p> <p>Freedom 11483:21</p> <p>Friday 11535:5,8</p> <p>friends 11525:4</p> <p>front 11485:8 11522:11 11526:12</p> <p>fruitful 11483:20</p> <p>functions 11487:16</p> <p>further 11520:8 11528:6</p> <p>future 11535:11</p> <hr/> <p style="text-align:center">G</p> <p>gain 11535:7</p> <p>gathering 11485:23 11486:1,2,5</p> <p>General 11484:9 11485:19 11486:6,18 11486:21 11487:20 11488:4 11489:15 11491:25 11492:21 11493:23 11494:10 11495:4 11496:21,23 11496:24 11497:9,25 11500:22 11502:4,19 11503:19 11504:10 11505:4 11506:3,10 11508:20 11509:14 11510:14 11511:1,6 11511:18 11512:11 11512:16 11513:4,11 11513:11,16,21 11514:4,18,19 11515:3 11516:1,11 11517:19 11518:5 11519:21 11521:7,10 11521:15,18,22 11522:8,15 11524:1,8 11525:10 11526:2,2 11526:12,23,24 11528:8,23 11530:5 11530:11 11531:15 11532:1,13</p> <p>Generals 11521:11</p>	<p>11523:21,24 11524:2 11524:3 11526:6 11533:15,18</p> <p>getting 11487:4 11494:24</p> <p>GGG15 11514:2</p> <p>GGG16 11512:21 11513:4</p> <p>GGG3 11504:10</p> <p>GGG4 11522:11,11,14</p> <p>give 11484:23 11485:15 11486:12 11487:12 11488:20 11502:11 11502:13 11507:11 11507:25 11509:18 11517:14,22,23</p> <p>given 11488:7 11490:19 11500:25 11530:4</p> <p>gives 11505:7</p> <p>giving 11487:25 11489:1 11492:13,15 11517:9</p> <p>go 11483:14,21 11495:16 11500:9 11504:15 11505:8 11506:14 11507:9,10 11508:3 11512:23 11513:7 11526:10,17 11527:4,20 11532:25 11533:4</p> <p>goes 11528:10</p> <p>Gofre 11483:10</p> <p>gongre 11484:1,6 11488:6,12,13 11499:3 11503:20,23 11504:3 11506:17 11509:14 11512:6,18 11514:11,17 11519:18 11533:22</p> <p>good 11529:25</p> <p>Graan 11508:22</p> <p>grateful 11528:2</p> <p>grenade 11485:5</p> <p>grenades 11513:12</p> <p>grievances 11518:10,16 11519:7</p> <p>ground 11488:17</p> <p>group 11507:14 11525:23</p> <p>groups 11507:9 11508:19</p> <hr/> <p style="text-align:center">H</p> <p>half 11535:7</p> <p>handed 11503:2</p> <p>handle 11494:16</p> <p>hands 11488:11</p> <p>happen 11499:1 11506:16 11520:18</p> <p>happened 11491:11,12 11491:13 11493:7 11494:10 11497:8 11502:10 11508:9 11509:9,10,11 11533:9</p>	<p>happening 11488:8 11506:25 11511:8</p> <p>happy 11535:13</p> <p>hard 11523:4</p> <p>haven't 11496:14 11527:11</p> <p>Head 11508:22</p> <p>heading 11514:21</p> <p>hear 11487:24 11488:11 11489:11 11491:1,11 11492:8 11523:21 11533:2</p> <p>heard 11489:1,10 11490:12,14,15 11491:5 11492:2,4,11 11492:13,16,18 11494:4,14</p> <p>hearing 11489:8 11492:21</p> <p>held 11499:5 11508:16</p> <p>helicopter 11488:5,16 11494:2</p> <p>help 11488:13 11527:14,23</p> <p>helped 11494:25</p> <p>helpful 11510:5</p> <p>HEMRAJ 11488:4 11490:25 11491:5,10 11491:18,24 11493:13,18,22</p> <p>hey 11489:12</p> <p>he's 11483:3 11515:1 11515:18 11516:6,15 11520:5 11521:12,17 11528:19 11529:1 11533:2</p> <p>high 11483:18 11488:16 11490:20 11490:22 11491:15</p> <p>highest 11488:20</p> <p>highlight 11503:14</p> <p>home 11517:5</p> <p>hope 11483:12,19 11534:13</p> <p>hospital 11533:15</p> <p>hospitals 11494:19,20</p> <p>hostage 11484:14</p> <p>hours 11535:7</p> <p>Human 11529:24</p> <p>hyphen 11503:16</p> <hr/> <p style="text-align:center">I</p> <p>idea 11535:1</p> <p>identification 11517:5</p> <p>identified 11516:12,20 11523:17 11524:17 11525:7,7</p> <p>identify 11494:22 11517:3 11518:4</p> <p>identifying 11517:8</p> <p>illegal 11485:24 11486:1</p> <p>immediately 11499:25</p> <p>important 11524:19 11534:17,21</p> <p>impressed 11519:24</p>	<p>11520:12,14,17 11521:12 11528:12</p> <p>impression 11483:15 11504:1 11523:22,23 11524:4 11526:8 11527:1</p> <p>inaudible 11523:19 11525:2 11528:12</p> <p>incident 11503:8 11509:11 11514:24 11515:2,8 11522:10</p> <p>incidents 11496:5</p> <p>including 11484:3</p> <p>incorrect 11519:13</p> <p>incur 11512:16</p> <p>indicate 11484:18 11510:19 11521:23</p> <p>indicated 11506:12 11529:15</p> <p>indicates 11489:2</p> <p>indication 11489:6 11490:19</p> <p>individual 11507:20</p> <p>inform 11495:6</p> <p>informal 11514:21</p> <p>information 11505:2,2 11505:17 11507:5 11517:9</p> <p>informed 11485:24 11486:1 11496:20,21 11496:22 11497:4 11500:21 11514:19 11514:25 11518:2 11528:20 11534:4,8</p> <p>initial 11516:14</p> <p>initially 11490:4</p> <p>injured 11494:16,18,18 11494:19,21 11499:24</p> <p>injuries 11484:11 11486:9</p> <p>Inquiry 11505:7,17 11507:6</p> <p>inside 11525:25</p> <p>instructed 11515:14</p> <p>instruction 11484:24 11504:23 11505:8,13 11510:25 11511:8 11524:23 11532:15</p> <p>instructions 11487:24 11487:25 11489:2 11492:14,15 11510:15</p> <p>intend 11533:23</p> <p>intended 11505:15</p> <p>interested 11483:18</p> <p>interpret 11514:16</p> <p>interpreted 11484:24</p> <p>interpreter 11484:25 11514:16</p> <p>interrogations 11483:12</p> <p>interrupt 11495:3,15</p> <p>intervene 11488:14</p> <p>intervention 11533:15</p> <p>introduced 11530:11</p>	<p>invited 11483:25 11528:22 11529:7</p> <p>involved 11483:13 11507:14 11527:5</p> <p>ipsissima 11519:15</p> <p>isn't 11489:20 11501:3 11505:23 11511:10 11519:16</p> <p>issue 11509:14</p> <p>issues 11504:10 11528:9</p> <p>it's 11488:10 11489:10 11489:12 11492:24 11493:3 11495:11,20 11496:11 11501:7,22 11503:15 11504:11 11504:20 11507:7 11510:17,19 11511:20 11512:17 11512:20 11514:3 11519:1,3,8 11520:22 11520:25 11521:1,4,9 11521:14,15 11522:12,15,25 11523:1,3,3,4 11524:19 11525:4 11532:9,10 11534:12 11534:21 11535:2</p> <p>Ivory 11483:6,15</p> <p>I'm 11487:17 11490:11 11491:10 11493:2,15 11493:24 11495:15 11499:2 11501:1,4,13 11501:13,20 11503:25 11509:5,14 11512:2,21 11515:12 11518:24 11520:12 11520:17 11521:12 11522:8,9 11523:19 11524:19 11526:16 11527:23,24 11528:1 11528:17 11533:1 11534:16,18</p> <p>I've 11483:19 11486:11 11494:9 11506:12 11535:12</p> <hr/> <p style="text-align:center">J</p> <p>JOC 11486:20 11490:24 11491:17 11492:23,25 11493:6 11493:9,17 11494:9 11495:5,21 11496:12 11499:23 11500:6,10 11500:17 11525:25 11525:25</p> <p>JOCCOM 11498:7,9 11498:17 11499:13</p> <p>join 11526:6</p> <p>Joseph 11514:3 11515:23</p> <p>judicial 11483:16 11505:6,17</p> <p>JUNE 11483:1</p> <hr/> <p style="text-align:center">K</p>
--	--	--	--	--

<p>keys 11532:5,6,6 killed 11490:17 knew 11498:8 know 11489:16,19,25 11490:5 11494:1 11499:9,10 11500:10 11503:6,25 11508:24 11508:25 11511:4,15 11512:13 11517:22 11518:18,19 11522:5 11523:19 11524:8,22 11525:11 11527:25 11529:14,16,23 11531:19 knowing 11488:20 knowledge 11508:15 11510:15 11529:6,9 known 11489:23 11496:3 koppie 11497:5,6 11516:7 11518:23 11531:11 11533:4 Kwadi 11522:7 11526:4 11527:15,18 11527:22 11528:20 11529:21,25</p> <hr/> <p style="text-align: center;">L</p> <p>lady 11483:10 late 11512:2 11534:10 lay 11514:12,18 lead 11484:13 11503:10 leaders 11508:16 11516:12,20 11534:14 leadership 11521:16 11528:9,13 leading 11502:4 learn 11483:7 11493:6 11495:17,18 learned 11493:9,12 11525:4 leave 11489:15 11502:18 11508:6 leaving 11483:21 led 11483:12 left 11499:25 11533:14 Legal 11508:22 letter 11511:14 letters 11523:1 let's 11507:14 11512:11 11524:7 levels 11488:21 Lieutenant 11512:19 11513:8,9 11514:8 Lieutenant-Colonel 11491:16 11492:3,6 Lieutenant-General 11502:12 light 11530:22 line 11485:9 11502:17 11515:2 11519:19,19 11519:19 11521:10 11527:1,4 lines 11505:5</p>	<p>listen 11487:7 11514:11,17 11524:16 11525:6 11527:2 Loest 11496:20 logical 11504:6 logically 11487:15 long 11493:1 longer 11533:16,18 11535:2,8 Lonmin 11498:11 11517:2,7 11518:9,15 11518:23 11519:6 11524:12,14,19 11526:25 11527:6,7 11527:14,15 Lonmin's 11517:9 11519:9 11524:14 look 11505:21 11510:10,14 11519:15 11526:24 looked 11532:3,6 looking 11490:4 11508:5 11519:1 11533:8 looks 11510:22 11523:3 11527:20,21 loose 11502:23 loosely 11508:24 lose 11535:8 losing 11535:9 lost 11494:9 lot 11502:7 11530:15 11531:3 lower-ranking 11510:23 LPD 11528:21 11529:22 lying 11489:10,10,11</p> <hr/> <p style="text-align: center;">M</p> <p>Major 11486:20 11514:17 making 11507:21 management 11494:22 11498:23 11499:11 11500:4,24,25 11501:3,16,16 11522:7 11526:10,18 11526:22 11527:2,4,6 11527:6,21,23 11530:1,5 11533:12 manner 11485:3 11486:17 marching 11486:5 Marie 11483:10 Marikana 11497:15,18 11497:21 11498:2,9 11500:1,7 material 11503:24 Mathunjwa 11515:23 11516:6,8,18 11518:6 11518:24 11519:4,12 11519:13 11520:3 11521:15,20 11522:6 11523:16,19 11526:3</p>	<p>11526:14,19,22 11527:5 11528:16,19 11530:10,16 11531:10,17 11532:20,25 Mathunjwa's 11530:3 matter 11485:10 11506:13 11520:8 matters 11508:18 11512:2 Mbombo 11530:12,13 11530:17,24 11531:3 mean 11498:16 means 11514:24 measure 11484:16 11486:7,8 measurements 11488:19 measures 11484:10 media 11495:8,14 11499:5 11502:11,13 11502:14,22,24,25 11529:7,18 medical 11494:14,18 meeting 11498:17 11499:13 11508:19 11511:5,18 11516:15 11516:16,17,18 11518:7,14,22 11519:11,16 11520:3 11520:5,14,16 11521:9 11522:3,9,9 11527:23 11530:5 meetings 11505:20,20 11506:5,6,10,16,25 11508:15 11512:13 members 11483:13,22 11485:4 11492:15 11507:21,24 11510:13,23 11511:9 11511:21 11513:19 11513:20,24 11516:13,13 mention 11490:14,15 11516:18 11518:3 11526:9,15,16 11531:21 mentioned 11516:11 Merafe 11514:9 Merafe's 11514:3 Mercedes 11532:3 met 11533:11 Metre 11483:9 metres 11486:14 middle 11483:10 11522:17 mind 11535:11 mine 11497:22,22 11498:22 11499:11 11500:4,8,24,25 11501:3,16,16 miners 11514:11,17,19 11515:14,18,20 mine's 11497:14 minibuses 11532:3,5 minutes 11493:4</p>	<p>11532:1 missing 11527:11 MK 11483:22 Mokwena 11518:7,8,13 11518:19 11519:3,5 11527:16 moment 11528:14 11535:9 moments 11495:16 Monday 11485:25 11514:10 11517:1 11534:5,7 money 11530:15 11531:3,4 month 11534:6 morning 11483:5,21,24 11497:25 11499:4,9 11500:14 11517:6 11520:8 11523:22 11524:24 11529:3,18 11534:3 11535:2,6,12 morning's 11484:1 move 11497:9,10 11503:20 11512:15 11533:22 moved 11500:7 moving 11488:2 11489:7 11492:6 11504:9 11528:17 mystery 11527:12</p> <hr/> <p style="text-align: center;">N</p> <p>Naidoo 11496:21 11522:5 11523:25 11526:2 National 11495:8 11502:8,10,13,24 11503:3,7 NATJOC 11495:6 necessary 11495:12 11503:10,15 11525:5 11535:2 need 11487:25 11502:8 11507:4 negotiate 11484:14 negotiations 11484:13 negotiators 11484:14 neither 11533:12 news 11529:25 night 11531:22 11532:23 NIU 11486:13 NN 11515:24 11516:1 11519:21 11529:21 11530:10 11531:10 11533:7 normally 11511:8 11525:14 notes 11507:13,15,19 11507:21,22,24 11508:1,5,6 11509:14 11509:16,17,18,19,20 11509:22,24 11510:1 11510:6 notice 11486:3,3 November 11499:21</p>	<p>NUM 11516:13,23 11528:22 11529:6,10 11529:14 11532:18 11532:24 number 11513:2 Nyala 11513:19 Nyalas 11484:18,19 11485:4,5 11487:23 11488:2</p> <hr/> <p style="text-align: center;">O</p> <p>oath 11483:3 11484:4 11499:22 11501:10 11512:4 observed 11484:2 11506:25 obviously 11521:17 11523:12,18 offered 11500:8 Office 11508:22 officer 11531:13 officers 11486:4,4 11500:7 11514:23 offices 11528:21 11529:22 Off-record 11523:7 Off-the 11522:20 off-the-record 11520:22 11521:8,11 11522:24 11523:12 Okay 11486:6 11494:8 Omphile 11514:3 once 11488:10 11519:5 11494:21 11497:5 11508:14 11518:3 OO4 11519:1,9,10,15 11519:20 opened 11507:2 operation 11488:6,10 11530:13,14,17,25 operational 11484:22 11485:2,12,18,20 11487:25 11488:11 11488:15 11490:21 Operationally 11488:9 11488:14 opposite 11527:24 optimistic 11519:24 order 11485:3,9 11486:13 11491:17 11505:16 ordered 11490:24 11492:22 ordering 11492:14 orders 11488:7 11533:25 originally 11523:10 11534:4 outcome 11521:17 overall 11484:13 11485:22 11487:17 11487:19 11494:10 o'clock 11498:7,9,17 11535:6</p> <hr/> <p style="text-align: center;">P</p>
---	--	--	---	--

<p>page 11504:15,21 11505:5,9,22 11510:25 11511:6 11512:22,24 11515:25 11518:6,18 11519:19,19,21 11521:1,4,5 11522:10 11522:13,14,16,17,17 11522:22 11523:1,3,9 11527:11,11 11528:18 11529:20 11530:9 11531:9 11533:7</p> <p>paginated 11512:25</p> <p>pagination 11504:11 11514:4,8 11515:25 11515:25 11519:21 11520:21 11522:13 11522:14 11528:19 11529:21 11530:10 11531:10 11533:7</p> <p>paint 11525:21</p> <p>pair 11488:22</p> <p>paragraph 11499:20 11499:25 11513:2,3,4 11513:7,10,11,18 11514:8,16 11515:11 11515:12,12,13,25 11516:1,6,10 11517:19,20 11518:5 11519:20,22 11525:17,20 11526:16 11528:17 11528:18 11529:20 11530:9 11531:9,25 11532:12 11533:6</p> <p>paragraphs 11504:3,9</p> <p>Park 11483:22</p> <p>part 11495:8,14 11507:7 11516:14 11521:9,24 11522:1 11524:9 11525:22 11527:10</p> <p>particular 11496:5</p> <p>particularly 11483:9 11503:14 11507:7 11512:24 11526:8,15 11526:16</p> <p>party 11512:3</p> <p>Patrick 11529:24</p> <p>peaceful 11528:13</p> <p>peacefully 11518:9,15</p> <p>people 11485:16 11488:2 11493:10 11494:16,19 11497:4 11498:10 11499:24 11502:8,17 11508:19 11511:5,12,18 11512:12 11514:25 11516:11,22 11517:2 11517:3,4,8,14,24 11518:4 11525:23 11529:23 11532:7 11535:4</p> <p>perform 11487:16 11503:20,22</p>	<p>period 11534:25</p> <p>person 11496:17 11507:22 11524:8 11529:14</p> <p>persons 11498:18 11517:10</p> <p>perspective 11520:1</p> <p>Petros 11502:12</p> <p>photographs 11517:2,3 11517:8</p> <p>phrase 11489:14 11491:6</p> <p>picture 11525:21</p> <p>pilot 11490:24 11491:17 11492:23</p> <p>place 11484:19,20 11485:13,15,24 11493:10 11495:2 11497:13 11500:10 11500:17,20,25 11501:1 11502:7 11505:20 11507:8 11508:14 11521:4 11527:8</p> <p>plan 11484:10 11486:5 11486:8 11488:7 11533:24</p> <p>Platinum 11530:18</p> <p>played 11502:15</p> <p>playing 11502:14</p> <p>please 11502:1 11527:24</p> <p>point 11483:21 11504:2 11511:22 11517:1 11528:6 11531:17 11532:22 11534:23</p> <p>pointed 11532:2</p> <p>police 11484:17,21 11486:3 11497:15,19 11498:2,9 11499:17 11500:1,2,7,11,18,20 11500:22 11510:24 11522:4 11523:4,10 11523:11 11525:4</p> <p>Policing 11485:3,9</p> <p>POP 11485:4 11486:14 11492:15</p> <p>position 11485:2 11486:13 11487:6 11488:8 11519:9</p> <p>Possibly 11493:18</p> <p>Potchefstroom 11511:16 11512:8</p> <p>pour 11492:14</p> <p>pouring 11487:23</p> <p>power 11500:3</p> <p>practical 11508:25</p> <p>precise 11493:3 11518:1</p> <p>precisely 11499:2 11503:6,19</p> <p>prefer 11525:12</p> <p>premises 11497:15,21 11500:8 11534:4,9</p> <p>preparation 11505:6 11505:10,12</p>	<p>prescripts 11534:1</p> <p>present 11506:10,19,24 11509:2 11523:25 11524:3 11526:25 11527:7 11534:17</p> <p>presentation 11484:17 11502:24</p> <p>presented 11505:3 11507:5 11510:3</p> <p>president 11483:11 11523:18 11524:8 11525:11,15 11526:14 11527:5 11532:18,24</p> <p>presidents 11518:23</p> <p>press 11502:11 11528:20 11529:2,10</p> <p>presumably 11517:9 11523:15,25 11527:23 11533:14</p> <p>previous 11520:2 11530:4 11531:21 11533:17</p> <p>problem 11520:18 11527:10</p> <p>procedures 11483:17</p> <p>proceed 11502:2 11504:7</p> <p>proceedings 11483:1 11506:19</p> <p>process 11485:1,14 11486:11,14 11487:23 11494:25 11509:4,6</p> <p>processing 11495:2 11497:12,13,19 11498:10,18,23 11500:5,6,8</p> <p>programme 11534:15</p> <p>proposal 11520:4,7</p> <p>protesters 11484:14,15 11484:21,23 11485:15,16,23 11508:16</p> <p>protocol 11531:11 11532:14 11533:17</p> <p>prove 11503:16</p> <p>provide 11486:8 11498:23</p> <p>provided 11500:5</p> <p>Provincial 11499:5 11507:2,3 11529:2 11530:12,16,23 11531:2 11533:14</p> <p>public 11484:17,22 11485:3,9</p> <p>purpose 11487:3 11497:23 11498:10 11498:13 11504:24 11505:1</p> <p>purposes 11497:19</p> <p>put 11484:16 11485:4 11488:1 11497:12 11519:25</p>	<p>Quamcar 11483:10</p> <p>question 11486:8 11489:18 11490:9,9 11494:4 11496:15,15 11499:19 11510:21 11511:10,11 11527:6 11530:22</p> <p>questions 11484:1 11521:25</p> <p>quickly 11512:12</p> <p>quite 11488:19 11493:16,24 11525:9 11533:23</p> <hr/> <p style="text-align: center;">R</p> <hr/> <p>radio 11487:7,13 11488:11 11492:18 11494:4,14</p> <p>railway 11502:17 11515:2</p> <p>raise 11524:12</p> <p>read 11514:15 11516:14 11519:7 11524:2 11526:12 11531:25</p> <p>reading 11515:12 11520:1 11526:16</p> <p>reaffirm 11501:10</p> <p>realises 11485:13</p> <p>realising 11490:23 11491:16 11494:20</p> <p>really 11497:22 11521:12 11528:11</p> <p>reason 11491:20 11497:15 11518:1</p> <p>reasonable 11484:23 11486:12</p> <p>reasons 11511:23</p> <p>recall 11484:9 11503:3 11506:8</p> <p>receive 11498:5 11525:13</p> <p>received 11493:14 11532:19</p> <p>receiving 11510:11</p> <p>receptive 11520:4,6</p> <p>recess 11534:25</p> <p>reconciliation 11483:5 11483:8</p> <p>record 11522:21 11531:24</p> <p>recorded 11519:11</p> <p>recording 11524:13</p> <p>records 11517:9</p> <p>refer 11522:10</p> <p>reference 11520:21 11521:7 11523:24 11527:3</p> <p>referred 11505:11 11518:22 11520:25 11527:3</p> <p>referring 11495:10,10 11513:21 11515:18 11519:19 11521:13 11523:6 11525:15 11526:11</p>	<p>refers 11521:7</p> <p>regard 11532:8</p> <p>register 11506:17 11510:14,16,22 11511:20,21</p> <p>registers 11512:8</p> <p>reinterment 11483:22</p> <p>relate 11508:13</p> <p>relates 11518:7 11523:8</p> <p>relating 11508:13</p> <p>relayed 11519:4</p> <p>relevant 11523:14</p> <p>remaining 11486:20</p> <p>remains 11483:22</p> <p>remark 11521:14,19 11527:20</p> <p>remember 11486:7 11493:1 11497:2 11499:15 11506:9 11507:23 11524:18 11527:15,17</p> <p>remind 11483:3</p> <p>reminded 11532:14</p> <p>renounce 11518:8,14</p> <p>renovation 11497:16 11497:20 11498:3 11500:3</p> <p>report 11492:9 11494:24 11495:4,6,7 11496:9,20 11498:5 11507:16 11533:8</p> <p>reported 11496:24 11500:17 11501:23 11520:3 11523:15</p> <p>reporting 11507:24</p> <p>reports 11493:11,14 11496:12,16</p> <p>report-back 11508:11 11509:19</p> <p>representation 11535:4</p> <p>representative 11527:22</p> <p>representatives 11524:15 11529:7,10</p> <p>Republic 11483:6</p> <p>request 11498:11 11518:2 11523:9 11531:22</p> <p>requested 11531:10</p> <p>require 11510:3</p> <p>required 11498:18,19</p> <p>residential 11517:14</p> <p>resolution 11528:13</p> <p>resolved 11528:9</p> <p>Resources 11529:24</p> <p>respect 11501:18</p> <p>responded 11513:20</p> <p>responsibility 11526:9 11526:17</p> <p>responsible 11486:4</p> <p>rest 11484:3 11494:12 11531:25</p> <p>result 11500:23</p> <p>resume 11512:1</p> <p>resumes 11483:2</p>
		Q		

11511:25 resuming 11512:2 return 11518:9,15 11520:7 returned 11530:2,7 revert 11525:3 re-prove 11503:15 right 11497:7 11501:8 11510:12 11512:9 11529:1 right-hand 11522:15 11522:16 11523:5 road 11531:23 11532:25 room 11525:25 round 11496:3 rubber 11485:9 run 11503:25 Rustenburg 11535:3	11500:1,16 11501:5 11501:14,23 second 11485:15 11486:12 11515:12 11516:5,10 11520:5 11530:10 11533:9,10 11534:5,8,9 secondly 11521:9 11522:1 security 11487:1,2 11516:7 see 11483:7 11484:2 11486:19 11487:7,15 11487:18,22 11488:1 11488:8 11491:24 11499:18 11505:4,9 11510:13 11512:11 11513:8,23 11514:12 11515:15 11518:10 11518:11 11520:7 11521:3 11522:15,19 11522:20,22,23 11523:5 11524:9 11525:7 11528:22,24 11529:11,11,13,17 11530:5 seeing 11483:19 11487:9 11488:12 11514:20 Seleke 11532:10 sent 11494:15,20 11510:25 sentence 11516:5,11 11518:6 11519:22 11520:2 11528:11 11530:10 Senzeni 11529:15 separate 11484:16 September 11505:22 11505:23,23 sergeants 11510:24 series 11505:20 serve 11486:3 served 11485:11 Services 11508:22 servicing 11486:3 session 11484:1 11511:13 sessions 11506:23 settlement 11514:21 setup 11525:21 shocked 11533:2 shooting 11492:9 11493:9 11507:8 short 11500:5 shortage 11500:23 shortly 11534:8 shot 11497:4,5 shouldn't 11512:16 show 11485:11 11486:15 showed 11517:1 shows 11502:17 side 11518:2 sign 11510:15 signed 11511:15,21	significance 11497:8 significant 11492:11,17 signing 11506:17 sit 11486:4 11534:6 11535:5,6 sitting 11506:5 11508:4 11525:22 11526:1 11534:11,19 11535:3 situation 11533:13 six 11484:18 skies 11486:22 soft 11485:6 solve 11527:12 sorry 11490:15 11491:18 11494:9 11495:3,15 11504:13 11512:2 11517:20 11534:18 sought 11488:13 sounds 11534:2 South 11483:7 space 11498:12,17,23 11500:5 SPEAKER 11524:22 11525:9 speakers 11524:17,21 11525:7 speaking 11487:15 11488:10,14 special 11499:13 specific 11507:21 spend 11512:18 11519:14 11534:14 spoke 11514:18 stage 11489:3 stand 11483:11 11484:19 11534:3 standing 11505:16 11525:22 11526:3 11533:25 start 11535:1 started 11484:12 11489:8,9 11516:17 starts 11504:9 state 11530:15 11531:3 11534:4 stated 11518:8 statement 11495:14 11499:20 11500:14 11501:2 11504:1,2,4 11512:20,20 11514:3 11515:23 11516:15 11518:6 11519:21 11523:16 11528:18 station 11497:15,19 11498:2,9 11500:1,2 11500:7,12,18,20,22 stations 11499:17 step 11524:7,7 STF 11486:13 11489:7 stop 11514:20 strike 11519:25 strikers 11513:22,24 11516:19 strong 11535:4 stun 11485:4 11513:12	submit 11508:1 submitted 11509:15 subsequently 11534:8 successful 11535:13 suggestion 11510:22 suggests 11513:16 summary 11518:25 supplementary 11504:2,4 suppose 11530:21 supposed 11485:2 11486:2 11494:23 11506:15 sure 11493:16,25 11503:25 11509:14 11518:24 11524:19 11533:1 11534:16 suspect 11523:17 sweeping 11503:20,22 11504:9 s.u.o 11484:5 11512:5	tell 11503:24 11504:3 11518:1 11524:15 11525:2 11529:12 11534:13,22 11535:10 telling 11499:19 11500:19 11502:18 11506:20 11508:4 tense 11533:13 term 11534:16,25 terms 11488:19,21 11494:17,24 11502:23 11504:24 11505:16 11506:16 11509:1 11531:11 testified 11486:19 11491:14 11508:9 11532:5 testify 11521:22 testing 11521:16 11528:14 text 11503:10 thank 11486:6,18 11503:19 11504:8,19 11510:20 11512:11 11512:15 11513:1 11524:24 11525:9,10 11528:7 that's 11489:3,7,18,20 11490:12 11498:11 11501:7 11502:16 11504:5 11505:23 11507:9 11511:22 11518:19 11521:5,12 11523:13,15,24 11525:16 11527:2,12 there's 11503:14 11523:5,9,16 They'll 11483:23 they're 11484:1 they've 11483:24 thing 11486:16 11505:11 11530:14 11531:3,6 things 11500:12 11506:6 11534:17 think 11504:16,18,18 11512:7 11519:2 11521:9 11523:20 11533:10 11534:12 thinking 11501:6 11524:11 third 11518:6 11534:10 thirdly 11521:25 11522:2 thought 11488:6 11490:20 11501:19 11504:5 11535:9 three 11521:25 11529:23 11532:3 time 11484:23 11486:12,20 11489:11,15,24 11490:22 11491:15 11493:14,16,18 11494:5,23 11495:19
S			T	
safe 11484:21 11533:1 salute 11519:23 11520:10 saluted 11520:9 SAPS 11500:4 11528:21 11531:13 11533:12 save 11524:17 saw 11489:1,2 11490:7 11490:11,12 11514:10,17 11529:11,12,12 saying 11485:19 11489:8,9 11490:11 11492:16 11501:4,13 11507:3 11523:15 11524:10 11529:1 11533:2 says 11505:6 11513:9 11513:18 11514:9,10 11515:6,11,13,17 11516:7,11 11518:7 11518:24 11519:12 11519:13,22 11520:3 11520:9 11521:10,11 11521:16 11522:20 11523:16,18 11524:1 11524:8 11528:19 11529:21,25 11530:10 11531:3,10 11531:25 11532:13 11532:14 11533:10 11533:18 scene 11489:3,12,13,13 11489:16,17,19,19,24 11489:24,25 11490:3 11490:5,12,13 11493:12,12 11494:15 11495:18 11495:18 11496:5,5 11496:21,22,24 scenes 11493:11 11495:17 11496:4,5 11496:13,16,18 Seboloke 11498:1,2,25			take 11484:20 11485:15 11486:13 11486:22,22 11488:25 11490:24 11491:17 11492:23 11494:11 11497:13 11497:22 11506:18 11510:18 11512:16 11512:19 11514:2 11515:1,18,22 11519:20 11523:24 11524:12,23 11525:16 11528:6 11530:3 11531:11 11533:6,7 taken 11495:13 11507:15 11511:24 talk 11507:14 11508:24 talked 11484:15 11497:11 talking 11489:13 11513:10 11514:9 11515:2 11516:6,15 11520:5,17 11521:17 11521:18 11522:9,10 11523:18 11525:15 11526:5,13 11528:19 11529:2 talks 11505:11 tape 11524:15,20,23 11525:6,8 taped 11524:20 target 11485:6 11492:16,17 tasked 11500:16 11501:7 tasking 11498:1 11499:9 Tatane 11514:24 11515:8 tea 11483:23 11510:18 11511:24,24 11512:3 teargas 11485:4	

<p>11497:16 11498:4,5 11499:10,13,15 11512:18,18 11519:14 11520:17 11523:22 11524:17 11526:1 11529:21 11533:13,23 11534:10,14 times 11485:25 11535:3 today 11483:14 11485:25 11530:15 11531:7 told 11496:15,17 11500:13,14 11508:7 11508:11 11512:21 11513:20 11517:1 11520:18 top 11505:5 11522:17 11522:25 11523:4 tour 11483:7 train 11494:9 tram 11505:5 transcribed 11523:14 transcriber 11520:24 transcript 11518:22 11519:11 11521:2 11522:12 11524:13 transpired 11486:19 transport 11531:11,13 11531:14,18,19,21 11532:2,18,25 trial 11483:18 tried 11490:21 11491:6 11491:12 TRT 11486:13 11489:7 11492:5 true 11500:13 11530:20 truth 11483:5,8 trying 11487:17 11501:1 11527:23 Tsiloane 11487:1 Tuesday 11485:25 11510:7,9 11517:7 11524:24 11534:3,23 11535:12 turn 11504:10 11514:7 11515:25 two 11487:23 11495:17 11496:4,5,16,18 11512:21 11513:20 11516:12,13,19 11518:23 11524:1,3 11526:6 11529:24 11535:7</p> <hr/> <p style="text-align: center;">U</p> <hr/> <p>unable 11491:11 underlined 11523:2,6 understand 11483:19 11483:24 11487:12 11491:1,19 11492:23 11496:16 11498:12 11502:1 11505:19 11509:13</p>	<p>understood 11509:15 union 11508:16 11517:10 unnumbered 11515:12 use 11497:18,21 11505:12 11532:13 11532:15,17 11533:4 utilise 11500:20 utilised 11500:6 uttered 11525:11 uttering 11526:5</p> <hr/> <p style="text-align: center;">V</p> <hr/> <p>value 11486:15 Van 11508:21 vehicle 11533:4 vehicles 11485:6,7 11488:2 11522:21 11523:7,13 11532:4 11532:14,16,17 verba 11519:15 Vermaak 11491:16,20 11492:3,6 video 11502:14,16 view 11487:12 violence 11518:8,14 visible 11517:3 visit 11483:20 visitors 11483:4,14 Visser 11507:12,16,25 11508:2,4,11,13 11509:16,17 visuals 11487:7,10,14 11487:15 Vito 11532:3 volume 11512:21 voluntarily 11485:17 voluntary 11486:17</p> <hr/> <p style="text-align: center;">W</p> <hr/> <p>wait 11525:13 waited 11531:14 waiting 11501:20 11532:1 walking 11515:15,18 11515:19 want 11483:4,9 11486:2 11503:14,22 11503:24 11504:18 11512:22 11514:23 11514:24 11515:8 11522:23 11526:11 11528:5 11531:17,20 11531:20,21 11532:22 11534:3 wanted 11500:19 11504:14 11513:21 11513:24 11519:3 11527:2 warn 11484:22 warning 11485:16,19 11486:12 Warrant-Officer 11513:9 warrant-officers 11510:24</p>	<p>wasn't 11501:8,9,10 11519:18 11521:8 11523:14 11527:5 wasted 11534:16 water 11485:5,8 11487:23 11490:11 11492:14,15 way 11483:16 11500:22 11504:6 11519:7 11521:1 11524:18 weapon 11485:7 weapons 11502:18 11514:12,18 Wednesday 11485:25 11517:7 11534:6,7,8 11534:9,10,12,18 week 11534:12 weekend 11535:13 welcome 11483:4,9 11509:8 welcomed 11533:15 went 11486:20 11499:23 11500:11 11507:16 11509:17 11511:15 11518:23 11532:6 we'll 11524:20 11534:2 11534:19 we're 11484:9 11512:2 11512:18 11519:18 11535:1,3,9 we've 11511:23 11523:23 11524:25 what's 11500:13 11504:3 11523:21 who's 11511:14 11523:17 11525:17 WILLIAM 11484:5 11512:5 willing 11533:12,16,19 wire 11484:16,19 wish 11504:7 11513:23 11532:8 11535:12 witness 11501:19 11503:15,17 11518:21 11519:4 11524:18 11525:6 11527:14 won't 11503:6 word 11505:12,15,15 11522:24 words 11485:21,21 11503:5 11508:18 11511:12 11519:7 11522:2 11523:5 11525:11 11526:5 11534:25 work 11483:16,19 11518:9,15 11519:6 11520:7 11530:2,7 11534:15,20 workers 11518:8,14 11519:5,8 11520:4,6 11530:1,6 Wow 11486:16 wrath 11512:17</p>	<p>written 11523:1 wrong 11488:12,13 11490:20 11521:4 11524:4 wrote 11511:14</p> <hr/> <p style="text-align: center;">Y</p> <hr/> <p>year 11499:21 yesterday 11484:17 11486:19 11494:2 you'd 11494:4 you'll 11484:9 11504:11 11510:25 11513:7 11520:20 11521:7 you're 11484:4,6 11494:8,9 11495:10 11495:10 11506:20 11512:4 11516:25 11523:18 11524:11 you've 11486:23 11490:4 11499:19,21 11508:8 11516:14 11523:22 11532:5</p> <hr/> <p style="text-align: center;">Z</p> <hr/> <p>Zokwana 11529:15,17 zone 11516:7</p> <hr/> <p style="text-align: center;">0</p> <hr/> <p>004 11518:18 09:55 11483:2</p> <hr/> <p style="text-align: center;">1</p> <hr/> <p>1 11489:3,12,13,16,19 11489:24,25 11490:5 11490:13 11493:12 11495:18 11496:5,21 11496:24 1-7 11514:8 1.14 11511:12 1.7 11511:11 1:30 11499:13 10:15 11489:12 10:34 11497:14 10:54 11506:4 100 11486:13 12 11516:1 12:00 11512:1 12:20 11519:22 12:40 11528:17 13 11504:15,18 11515:23 13th 11507:8,9,15 11508:10 11513:10 11514:9,10 11516:23 13:30 11499:15 14 11483:1 11504:12,17 11504:18,22 11511:6 11518:5 11527:4 15 11521:10 11532:1 15th 11516:16,18 11520:6 11530:4,6 11532:24 15:30 11493:23 16 11519:21</p>	<p>16th 11484:9 11497:8 11502:4 11509:11 11528:20 11529:3 11531:7 16:00 11493:21,22,23 16:30 11493:21,21,22 11494:7 162 11515:25 166 11519:21 167 11528:19 168 11529:21 17 11514:8 11519:19 11528:18 17th 11495:9 11502:5 11502:10 11505:18 170 11530:10 171 11531:10 175 11533:7 18 11515:11,13 11529:20</p> <hr/> <p style="text-align: center;">2</p> <hr/> <p>2 11489:13,17,19,24 11490:12 11493:12 11495:18 11496:5,22 11516:17 20 11493:3 11527:11,11 11527:13 11530:9 11532:1 2012 11505:23 11514:10 2013 11483:1 21 11521:1,5 11522:10 11522:14,17 11531:9 22 11527:1 243 11520:21,23 11522:16 244 11521:5 11522:13 11522:16 25 11533:7 262 11505:16 27 11518:18 11519:19 27th 11505:20 272 11504:12,15,21,22 275 11505:9 11510:25 11511:6 28 11519:19</p> <hr/> <p style="text-align: center;">3</p> <hr/> <p>3 11512:24 3rd 11505:22 30th 11511:6 31 11504:3,9 31st 11505:21 32 11504:4,9 37 11512:25 11515:25 11516:1 38 11516:10 11517:19</p> <hr/> <p style="text-align: center;">4</p> <hr/> <p>4:30 11495:23 11496:4 11500:11 40 11514:4 45 11514:8</p> <hr/> <p style="text-align: center;">5</p> <hr/>
---	---	---	--	--

5 11512:24
53 11499:20,25
54 11519:20
57 11528:17,18

6

6 11498:7,9,17
11512:20
6th 11505:22,23
6:00 11499:10
60 11529:20
68 11530:9
69 11531:9
690 11523:4,4,5

7

7 11513:3,4,7,10,11
11514:4 11518:21
70 11532:12

8

8 11513:18
83 11533:7

9

9 11519:19,19 11535:1
11535:6
9th 11509:10
9:30 11534:3,23
11535:12