

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 113 18 JULY 2013 PAGES 12076 TO 12157



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Page 12076

1 [PROCEEDINGS ON 18 JULY 2013]
 2 [09:41] CHAIRPERSON: I'm sorry we're starting
 3 late; we had a number of matters to attend to and
 4 interviews in chambers. Mr Mathibedi – he's not here; we
 5 have Mr Ngalwana with us. In your absence, Mr Ngalwana, Mr
 6 Mathibedi undertook to give us a statement relating to the
 7 minutes that either were taken or weren't taken at the JOC
 8 meeting on the 14th. Do you have that statement?
 9 MR NGALWANA: I'm told it's not yet
 10 ready, Chairperson.
 11 CHAIRPERSON: When will it be ready?
 12 MR NGALWANA: May I take instructions on
 13 that over –
 14 CHAIRPERSON: Revert when you have them,
 15 yes.
 16 MR NGALWANA: I did read about that in
 17 the transcript.
 18 CHAIRPERSON: Yes, thank you. I
 19 understand that the representatives of the Human Rights
 20 Commission wish to say something. Is that correct?
 21 MS HARDY: Yes, that's correct, Chair.
 22 Thank you. The Human Rights Commission just wishes to
 23 place on record that we confirm, we are in fact in
 24 attendance today because we are of the view that our
 25 presence and participation in the Commission's process is

Page 12077

1 important, and in line with our constitutional mandate, and
 2 of course our role before this Commission. We also
 3 recognise the importance of the participation of those
 4 parties who have provisionally withdrawn. We respect their
 5 position and we are deeply concerned at the fact that they
 6 are not at present participating in the process. We are
 7 aware that the continued participation of those parties may
 8 be dependent on a judgment that is due to be delivered at
 9 2PM this afternoon, and in light of that judgment and once
 10 we have an indication from those parties on what their
 11 position would be and their continued participation, once
 12 we have that indication we may then need to review our
 13 position.
 14 CHAIRPERSON: Thank you. Is there
 15 anything else that you wish to say?
 16 MS HARDY: That's all, thank you, Chair.
 17 CHAIRPERSON: Mr Kgaka, do you wish to
 18 say something as well?
 19 MR KGAKA: Yes, thank you, Mr
 20 Chairperson. Yes, Mr Chairperson, our instructions are at
 21 the moment, is to place on the record that Bapo Ba Mogale
 22 also want to provisionally withdraw from the participation,
 23 pending the outcome of the urgent application that is
 24 outstanding at the North West Gauteng Court.
 25 CHAIRPERSON: Yes, thank you. I don't

Page 12078

1 think you're actually on record as representing them.
 2 You're appearing for the administrator, are you, of the
 3 Traditional Authority?
 4 MR KGAKA: Yes, correct, Mr Chairperson.
 5 CHAIRPERSON: Put yourself on record,
 6 please.
 7 MR KGAKA: My name is Mr Kgaka, Elson
 8 Kgaka, E-L-S-O-N, K-G-A-K-A.
 9 CHAIRPERSON: And who is your client you
 10 represent?
 11 MR KGAKA: Mr Chairperson, I'm
 12 representing the administrator for Bapo Ba Mogale. You'll
 13 recall, Mr Chairperson, that Bapo Ba Mogale, they're under
 14 administration.
 15 CHAIRPERSON: - was appointed by the
 16 Premier of the North West Province. Is that correct? In
 17 terms of the relevant act.
 18 MR KGAKA: Yes, correct, yes, then he
 19 appointed administrators.
 20 CHAIRPERSON: Yes. Thank you very much.
 21 Sorry, before I remind the Major-General he's still under
 22 oath, is there anyone else who wishes to make a statement
 23 of any kind before we proceed? There's one thing I want to
 24 say before we proceed, and that is that from next week we
 25 will be proceeding initially on, as a trial basis, with the

Page 12079

1 system of simultaneous translation and which the, and if it
 2 proves feasible, as we believe it should, it will
 3 considerably shorten the amount of time taken because we
 4 will not have consecutive translations we have at the
 5 moment, but simultaneous translation, so that it should
 6 almost double the time available for evidence. Major-
 7 General, you're still under oath.
 8 WILLIAM MPEMBE: s.u.o.
 9 CHAIRPERSON: Before Mr Madlanga proceeds
 10 with his cross-examination, we asked you, I think, to see
 11 if you could get some information for us. One of the
 12 questions, you may remember, related to that information
 13 which was obtained on or after the 13th, which could have
 14 been used in relation to cordon and search operation. Do
 15 you have that information?
 16 MAJOR-GENERAL MPEMBE: Correct,
 17 Chairperson.
 18 CHAIRPERSON: What have you got?
 19 MAJOR-GENERAL MPEMBE: Chairperson, the
 20 dockets that were registered on the 13th where subsequent
 21 arrests were made, it's Marikana CAS118/8/2012, Murder; six
 22 people were arrested, and they were arrested on 23rd to 24th
 23 October, and there's also Marikana CAS119 of August, 8/12,
 24 the CAS is murder, happened on the 13th; nine people were
 25 arrested, and they were arrested on the 13th to the 14th.

<p style="text-align: right;">Page 12080</p> <p>1 CHAIRPERSON: Of which month?</p> <p>2 MAJOR-GENERAL MPEMBE: Of August,</p> <p>3 Chairperson. Chairperson, then there are also other</p> <p>4 dockets that were registered, but not on the 13th. Those</p> <p>5 two were the 13th ones. Marikana CAS136 is the one that was</p> <p>6 registered on the 16th of August, where one person was</p> <p>7 arrested for possession of firearm and ammunition.</p> <p>8 Marikana CAS135 of August 2012, possession of firearms and</p> <p>9 ammunition and attempted murder; one person was arrested.</p> <p>10 That was on the 16th of August, Chairperson. Marikana</p> <p>11 CAS139 of August, it's possession of firearms; one person</p> <p>12 was arrested. It's also on the 16th of August.</p> <p>13 Chairperson, this one is Marikana CAS134. That is where</p> <p>14 more people were arrested.</p> <p>15 CHAIRPERSON: On what date?</p> <p>16 MAJOR-GENERAL MPEMBE: It's on the 16th of</p> <p>17 August that relates to that one. Then it's Marikana</p> <p>18 CAS121. It's also murder, and four people were arrested.</p> <p>19 They were arrested on the 23rd/24th October. Marikana</p> <p>20 CAS107, the charge is murder, and six people were arrested</p> <p>21 on the 23rd/24th October. Chairperson, these are the</p> <p>22 dockets that I was also referring to that the information,</p> <p>23 even though I'm not going to be precise on the information</p> <p>24 because the investigation is continuing, and also they're</p> <p>25 revealing the names of the people, which I did not put for</p>	<p style="text-align: right;">Page 12082</p> <p>1 Provincial Commissioner.</p> <p>2 CHAIRPERSON: Is there anything else you</p> <p>3 want to say in that regard?</p> <p>4 MAJOR-GENERAL MPEMBE: Chairperson, I</p> <p>5 understand the confusion that my words which I tried to</p> <p>6 explain, it was on page, it's on the 15th, which it was</p> <p>7 referred to by Adv Madlanga. It's page 11946 and it's</p> <p>8 lines 22 to line 25 on that page, again on page 11947 from</p> <p>9 page 1 to page 10.</p> <p>10 CHAIRPERSON: [Inaudible]</p> <p>11 MAJOR-GENERAL MPEMBE: Correct,</p> <p>12 Chairperson, page, line 1 to page, line 1 to line 10, where</p> <p>13 I said – if we could go to where I said I made a decision.</p> <p>14 I said I made a decision to go to the Provincial</p> <p>15 Commissioner, and that decision is the one that briefed</p> <p>16 her, and I think the Judge Hemraj also asked me, that</p> <p>17 sentence caused a confusion, which I did request that I</p> <p>18 should request my – but I want to put it on record that my</p> <p>19 evidence as it is on the 13th, remains, Chairperson.</p> <p>20 CHAIRPERSON: Is there anything further</p> <p>21 you wish to say at this point?</p> <p>22 MAJOR-GENERAL MPEMBE: No, Chairperson.</p> <p>23 CHAIRPERSON: Are you confident that what</p> <p>24 you've now said removes the confusion that may have existed</p> <p>25 previously?</p>
<p style="text-align: right;">Page 12081</p> <p>1 –</p> <p>2 CHAIRPERSON: Yes, I understand. Thank</p> <p>3 you. Is that the information to which you were referring?</p> <p>4 MAJOR-GENERAL MPEMBE: Correct,</p> <p>5 Chairperson.</p> <p>6 CHAIRPERSON: Was there anything else</p> <p>7 that you wish to bring to our attention arising from the</p> <p>8 cross-examination on Monday and Tuesday, anything else that</p> <p>9 you want to mention now before Mr Madlanga proceeds with</p> <p>10 his cross-examination?</p> <p>11 MAJOR-GENERAL MPEMBE: Correct,</p> <p>12 Chairperson. Chairperson will recall that I did request</p> <p>13 the esteemed Chairperson and the Commissioners when I was</p> <p>14 asked a question of who made a decision to go to stage 3,</p> <p>15 Chairperson, I was provided with all the transcripts of the</p> <p>16 15th and the 16th, and also I did get the, I did have the</p> <p>17 transcripts of the 13th where Adv Ngalwana asked me the</p> <p>18 question. Chairperson, page 11442, lines 23, 24, of that</p> <p>19 transcript, and page 11443, line 1 to 25, page 11444, line</p> <p>20 1 to 21. Chairperson, after those lines it was clear that</p> <p>21 it's me who took a decision, which I subsequently confirmed</p> <p>22 with Adv Madlanga.</p> <p>23 CHAIRPERSON: What was that decision?</p> <p>24 MAJOR-GENERAL MPEMBE: It's that I did</p> <p>25 take a decision that we go to stage 3, and I briefed the</p>	<p style="text-align: right;">Page 12083</p> <p>1 MAJOR-GENERAL MPEMBE: Pardon –</p> <p>2 CHAIRPERSON: You said last time you gave</p> <p>3 evidence that there was some confusion on the point. I say</p> <p>4 are you confident that what you've now told us removes that</p> <p>5 confusion?</p> <p>6 MAJOR-GENERAL MPEMBE: Correct,</p> <p>7 Chairperson.</p> <p>8 CHAIRPERSON: Thank you. There's one</p> <p>9 point I want to ask you before Mr Madlanga proceeds with</p> <p>10 this cross-examination, and that is it's a question he</p> <p>11 asked you and which I didn't quite understand the answer,</p> <p>12 so I want to give you an opportunity to explain it to me.</p> <p>13 The point he put to you is this; he said you decided to</p> <p>14 leave the JOC and get into the helicopter to find out what</p> <p>15 was happening on the ground. You then said that when you</p> <p>16 were in the helicopter you didn't really know what was</p> <p>17 happening on the ground, so you decided to return to the</p> <p>18 JOC to find out what was happening on the ground, but you</p> <p>19 also said that that was 20 minutes after you left. So what</p> <p>20 Mr Madlanga asked you was when it was apparent to you that</p> <p>21 you couldn't see what was happening on the ground from the</p> <p>22 helicopter and you'd have to return to the JOC, why did you</p> <p>23 allow 20 minutes to elapse before you returned to the JOC.</p> <p>24 That was the question asked. I'm not sure that I</p> <p>25 understood your answer. Could you repeat it please, for my</p>

Page 12084

1 benefit?

2 MR NGALWANA: Chair, my recollection of

3 the evidence as regards why the General –

4 CHAIRPERSON: The evidence, this is

5 something that happened yesterday when you weren't – not

6 yesterday, on Tuesday when you weren't here. I put the

7 question which Mr Madlanga asked, which he asked without

8 objection. The witness gave an answer. I don't understand

9 the answer. I just want him to repeat it so I can

10 understand it. So would you answer my question, please?

11 MR NGALWANA: Chair, it's simply the

12 premise of the Chairperson asking the question that I wish

13 to correct.

14 CHAIRPERSON: The passage on which the

15 question was based by Mr Madlanga was taken directly from

16 the statement the witness made. I had the passage in front

17 of me when he put the question. It was correctly put to

18 the witness, so there's no substance in your objection.

19 Would you please proceed, Major-General?

20 MAJOR-GENERAL MPEMBE: Chairperson,

21 firstly I did say that my reason to go the chopper, I said

22 I wanted to see and also to link up with what is happening;

23 that will give me a proper perspective, and what I

24 indicated is that I could see the dispersal process by the

25 Nyalas, and I could hear from the radio the instructions

Page 12085

1 that were given, particularly by Brigadier Calitz, who's an

2 operational commander.

3 [10:01] The only matter that I could not see are the

4 people that were on the ground, but because I was in the

5 chopper I could hear everything that was taking place,

6 linked up with what I could see. I couldn't detect any

7 other problem, except when I heard Lieutenant-Colonel

8 Vermaak was talking about, I did testify, said bodies lying

9 down, and that's when then I wanted to go back to the JOC

10 with the reasons already I have indicated of me trying to

11 talk with Brigadier Calitz on the radio, but I did say that

12 I did not contact him on the cell phone, with the reasons

13 that I have also given.

14 CHAIRPERSON: Thank you. Commissioner

15 Hemraj would like to ask you a question also.

16 COMMISSIONER HEMRAJ: Your evidence,

17 General, earlier on about the possibility of a cordon and

18 search operation earlier on as a result of arrests can only

19 refer to those arrests on the 13th and the 14th of the nine

20 people in that second Marikana CAS number you've given us.

21 MAJOR-GENERAL MPEMBE: Chairperson, may

22 the question be repeated?

23 COMMISSIONER HEMRAJ: Yes. Your earlier

24 evidence about the possibility of an earlier cordon and

25 search operation, you had said it was as a result of

Page 12086

1 information that would be obtained from persons that had

2 been arrested. Now that can only pertain to the persons

3 arrested on the 13th and 14th in the CAS number 119 of

4 August. Isn't that so?

5 MAJOR-GENERAL MPEMBE: Correct,

6 Chairperson, including CAS118, I said we had two CAS

7 numbers.

8 COMMISSIONER HEMRAJ: Yes, but I

9 understood your evidence to be that those persons were

10 arrested on the 23rd and 24th of October.

11 MAJOR-GENERAL MPEMBE: I said the dockets

12 were those of the 13th and the information obtained from -

13 that's the information which I said I didn't indicate - I

14 could not indicate here how was it obtained, but that

15 information led to the arrest which took place in October,

16 but without us attending that scene and processing the

17 scene, because we were talking about stages 4 and 5 by

18 then, and then I said that information also assisted us to

19 do a follow-up operation, and also that information could

20 be used for the cordon and search.

21 COMMISSIONER HEMRAJ: Yes, thank you.

22 CHAIRPERSON: Mr Madlanga, I'm sorry we

23 took so long before giving you a chance, but would you care

24 to proceed with your cross-examination?

25 CROSS-EXAMINATION BY MR MADLANGA SC (CONTD.):

Page 12087

1 Thank you, thank you, Mr Chairman. General, I'm just going

2 to refer to evidence that you gave on Tuesday, and I'm

3 going to premise my question on that. You agreed with me

4 that it is necessary for an overall commander to keep

5 himself or herself informed as an operation is unfolding,

6 that the operational commander - the overall commander

7 rather, may do this by radio or cell phone, as at least two

8 possibilities, and that there were problems with the radio

9 system, and lastly that because of the problems with the

10 radio system you assumed or believed that cell phone

11 contact would also present problems. Now my question is

12 this; did you even consider contacting Brigadier Calitz by

13 cell phone, General?

14 MAJOR-GENERAL MPEMBE: Chairperson, I did

15 testify that I did not contact him.

16 MR MADLANGA SC: No, I'm asking did you

17 even consider contacting him; I'm not asking whether you

18 did contact him, specifically by cell phone.

19 MAJOR-GENERAL MPEMBE: Correct,

20 Chairperson, and that's why my reason was that knowing that

21 Brigadier Calitz had a problem with a radio while he was

22 still under the electricity lines and also he was, I know

23 that they were between the mountains. That's why I thought

24 that the sign would not be better off, knowing that I'm

25 also in the air.

Page 12088

1 CHAIRPERSON: I think you mean the
2 signal. When you say the sign, I think you mean the
3 signal. Your evidence, as I understand it is because there
4 was a problem with the radio signals you assumed that there
5 would be the same problem with the mobile phone signals as
6 well. Is that -
7 MAJOR-GENERAL MPEMBE: Correct,
8 Chairperson.
9 MR MADLANGA SC: Please tell me when you
10 have in front of you paragraph 51 of your statement GGG12
11 and paragraph 28 of your statement HHH3, just have both
12 paragraphs ready.
13 CHAIRPERSON: Give us the two paragraph
14 numbers again, please.
15 MR MADLANGA SC: 51 of GGG12, Mr
16 Chairman, and 28 of HHH3.
17 MAJOR-GENERAL MPEMBE: Chairperson, I can
18 confirm that they are in front of me, I do have them.
19 MR MADLANGA SC: 51 reads, "At all times
20 while I was in the helicopter, which was a period of about
21 20 minutes or less, I was accessible by radio both to the
22 operational commander, Brigadier Calitz, and to the JOC.
23 As overall commander I could only give direction when
24 direction was sought either from the JOC or from the
25 operational commander. Neither sought direction," and then

Page 12089

1 going to paragraph 28 of the other statement, "I should add
2 to what I say in paragraph 51 of my original statement that
3 as overall commander I am the soundboard to the operational
4 commander and the JOC when problems arise and they inform
5 me through the radio or cell phone of those problems and
6 seek my guidance. This did not happen." I take it to mean
7 that they did not seek your guidance. "It is not the
8 function of the overall commander to usurp the functions of
9 the operational commander, particularly when the
10 operational commander is better positioned as being on the
11 ground and experiencing action firsthand." General, the
12 distinct impression I get from this is that you were simply
13 waiting to be contacted, and because you were not contacted
14 then you just decided to remain and let things unfold. Or
15 it does not seem, as you suggest, that you ever even
16 considered making contact yourself. Do you agree with the
17 impression I have?
18 MAJOR-GENERAL MPEMBE: No, Chairperson.
19 Chairperson, my conduct of the 13th is very clear. I'm a
20 general that leads in the front -
21 MR MADLANGA SC: The 16th, General, the
22 16th please.
23 MAJOR-GENERAL MPEMBE: I'm giving an
24 example of the 13th -
25 MR MADLANGA SC: Oh, oh.

Page 12090

1 MAJOR-GENERAL MPEMBE: - to answer the
2 question of the 16th.
3 CHAIRPERSON: Let him proceed.
4 MAJOR-GENERAL MPEMBE: I did testify in
5 this Commission that I'm a general that leads in the front,
6 and also the Commission said that I assume a position of
7 the operational commander on the 13th. Hence I say it could
8 not be true that I could just be sitting and waiting for
9 the report that comes from the ground.
10 MR MADLANGA SC: No further questions,
11 Commissioners, thank you.
12 CHAIRPERSON: Before - I think the next
13 cross-examiner is going to be Mr Burger on behalf of
14 Lonmin. Before he starts his cross-examination, Mr
15 Ngalwana, you said you'd take instructions in regard to the
16 affidavit in respect of the minutes of the meeting of the
17 14th. In your absence on Tuesday there was also a mention
18 made of certain things which Captain Moolman did or didn't
19 do, and the witness suggested that information should be
20 got from her and I said it would be more appropriate if
21 counsel, or the attorneys representing the police did that.
22 Do you know whether that's been done? If not, perhaps you
23 could instruction in respect of that matter also.
24 MR NGALWANA: I understand it is being
25 done, Chairperson, and -

Page 12091

1 CHAIRPERSON: Thank you. Mr Burger.
2 MR BURGER SC: Chair, my learned friend
3 Mr Shoji will pose questions to the General.
4 CHAIRPERSON: Mr Shoji.
5 MR SHOZI: Chair, members of the
6 Commission, thank you. Chair, we learnt for the first time
7 yesterday that we would have cross-examine General Mpeembe
8 today and the effect of that was that we didn't have the
9 opportunity to indicate both to the Chair and the
10 Commissioners and our colleagues what documents we'd be
11 relying upon for our cross-examination. We do apologise
12 for that. We will try as far as possible and confine
13 ourselves to the documents which are squarely before you.
14 There is, however, one document, Chair, it's part of the
15 exhibits but it's been a while since it was last referred
16 to it in these proceedings and so we didn't think it would
17 be readily available to you and so we took the liberty to
18 make copies of the document and in due course, when we get
19 to it, we will beg your leave to hand it up.
20 CHAIRPERSON: Have you given a copy to
21 the witness before we started this morning, or has he not
22 seen it yet?
23 MR SHOZI: No, Chair, we haven't, but I'm
24 confident that it won't prejudice the witness in any way.
25 It's a short passage that we'll be referring to from the

<p style="text-align: right;">Page 12092</p> <p>1 document.</p> <p>2 CHAIRPERSON: I see. Well, if of course</p> <p>3 you don't get to it before the tea adjournment then you can</p> <p>4 give it to the witness to look at during the tea</p> <p>5 adjournment and draw his attention to the passage in</p> <p>6 particular upon which you wish to rely.</p> <p>7 MR SHOZI: We'll happily do that,</p> <p>8 Chairperson, thank you.</p> <p>9 MS PILLAY: Chair, if I may just indicate</p> <p>10 that Mr Ngalwana was informed of the document that Mr Shozi</p> <p>11 is referring to, this morning.</p> <p>12 CHAIRPERSON: He may have been informed,</p> <p>13 but the question is whether the witness knows, because Mr</p> <p>14 Ngalwana, as he knows very well, isn't allowed to answer</p> <p>15 questions on behalf of the witness. The witness must</p> <p>16 answer on his own behalf.</p> <p>17 CROSS-EXAMINATION BY MR SHOZI: General,</p> <p>18 good morning.</p> <p>19 MAJOR-GENERAL MPEMBE: Good morning,</p> <p>20 Advocate.</p> <p>21 MR SHOZI: At the commencement of the</p> <p>22 proceedings this morning you took the Commission through a</p> <p>23 number of passages which emanates from your testimony of</p> <p>24 the 13th of June. Do you recall that?</p> <p>25 MAJOR-GENERAL MPEMBE: Correct,</p>	<p style="text-align: right;">Page 12094</p> <p>1 correct?</p> <p>2 MAJOR-GENERAL MPEMBE: That's correct,</p> <p>3 Chairperson.</p> <p>4 CHAIRPERSON: And is the exercise you</p> <p>5 performed yesterday; once you'd been given the transcript,</p> <p>6 did you go through it and identify those passages? Is that</p> <p>7 what you're saying?</p> <p>8 MAJOR-GENERAL MPEMBE: That's correct,</p> <p>9 Chairperson.</p> <p>10 MR SHOZI: I see. Now -</p> <p>11 MR MADLANGA SC: If I may, I drew his</p> <p>12 attention specifically to the earlier evidence, and as to</p> <p>13 the later evidence, at that stage I did not yet have the</p> <p>14 transcript and I said but from recollection from what you</p> <p>15 had said yesterday, General, referring to his evidence that</p> <p>16 was given on Monday. So yes, just to add to what, my</p> <p>17 recollection of it, Chair.</p> <p>18 MR SHOZI: Now, General, I want to</p> <p>19 explore four themes with you this morning, if I may, the</p> <p>20 first of which is this, and it pertains to the interaction</p> <p>21 which you had with Mr Blaauw of Lonmin on Monday 13 August</p> <p>22 2012. Do you remember the interaction that you testified</p> <p>23 about, i.e. your request to him to secure for you a</p> <p>24 Fanagalo interpreter? You recall that?</p> <p>25 MAJOR-GENERAL MPEMBE: Correct,</p>
<p style="text-align: right;">Page 12093</p> <p>1 Chairperson.</p> <p>2 MR SHOZI: Would you care to tell the</p> <p>3 Commission who drew your attention to these passages?</p> <p>4 MAJOR-GENERAL MPEMBE: I do not</p> <p>5 understand the question, except by saying that this is my</p> <p>6 past evidence-in-chief.</p> <p>7 MR SHOZI: I'm aware of that. I'm simply</p> <p>8 asking you who was it that drew your attention to these</p> <p>9 passages that you referred the Commission to this morning.</p> <p>10 MAJOR-GENERAL MPEMBE: Chairperson, it's</p> <p>11 myself. I did a research on myself after having received -</p> <p>12 CHAIRPERSON: I thought that -</p> <p>13 MAJOR-GENERAL MPEMBE: Maybe I don't</p> <p>14 understand the question.</p> <p>15 CHAIRPERSON: Yes, I'm sorry to interrupt</p> <p>16 you. I thought that on Tuesday your attention was drawn to</p> <p>17 certain passages by Mr Madlanga and you asked - or he</p> <p>18 suggested to you that you'd said certain things at certain</p> <p>19 stages in your evidence and you asked for the references,</p> <p>20 and am I correct in thinking that the passages you referred</p> <p>21 to this morning are the ones to which your attention was</p> <p>22 drawn by Mr Madlanga on Tuesday? Oh, I see, sorry, I</p> <p>23 misunderstood. I understand you - sorry, I mentioned it</p> <p>24 now. You asked to be provided with a transcript of your</p> <p>25 previous evidence so you could look through it. Is that</p>	<p style="text-align: right;">Page 12095</p> <p>1 Chairperson.</p> <p>2 MR SHOZI: The second theme that I want</p> <p>3 to explore with you is the suggestion, or perhaps more</p> <p>4 precisely the criticism against Lonmin that what Lonmin</p> <p>5 should have done between the period 14 August to 16 August</p> <p>6 was to have gone to the mountain to negotiate with the</p> <p>7 strikers in relation to their wage demands. The third</p> <p>8 theme that I want to explore with you pertains to the</p> <p>9 events of the 16th of August and the role that you played,</p> <p>10 or perhaps the role that you ought to have played in your</p> <p>11 capacity both as the commander of the JOC and the overall</p> <p>12 commander of the operation. And then lastly I'm going to</p> <p>13 deal very briefly with the events at Potchefstroom, or the</p> <p>14 Potchefstroom meeting.</p> <p>15 [10:21] There is just one small matter, General Mpeembe,</p> <p>16 that I want to get out of the way, or perhaps clear with</p> <p>17 you, and that pertains to your evidence of the 14th of June.</p> <p>18 You testified in relation, or in answer to a question by</p> <p>19 the Chairperson, you will recall that on the 16th of August</p> <p>20 you asked to be flown over the area for you to get a clear</p> <p>21 view of what was happening. You recall that?</p> <p>22 MAJOR-GENERAL MPEMBE: Correct,</p> <p>23 Chairperson.</p> <p>24 MR SHOZI: And you testified that whilst</p> <p>25 you were still airborne, you heard over the radio Colonel</p>

Page 12096

1 Vermaak saying that there were bodies down. You recall
2 that? The Chairperson asked you whether at that point you
3 gained the impression that people may have been killed.
4 You recall that?
5 MAJOR-GENERAL MPEMBE: Correct,
6 Chairperson.
7 MR SHOZI: And your answer was
8 essentially to the effect that you were high; because you
9 were high, you struggled to communicate with your ground
10 forces. Now what I want to ask you is this; when you said
11 you were high, did you mean that you were high as being in
12 the air, or you meant some other form of being high?
13 COMMISSIONER HEMRAJ: Mr Shozi, exactly
14 what are you suggesting to the witness? I don't think it's
15 a matter for amusement. Exactly what are you suggesting to
16 the witness?
17 MR SHOZI: Commissioner Hemraj, I'm
18 simply asking the witness what he meant by being high,
19 whether he was high as being high in the air or he meant
20 some other form of being high.
21 COMMISSIONER HEMRAJ: Well, what are you
22 suggesting might be the other forms of being high then?
23 MR SHOZI: That's what I'm asking the
24 witness, Commissioner Hemraj.
25 COMMISSIONER HEMRAJ: Perhaps you might

Page 12097

1 favour us with the page and reference number of the
2 transcript that you're referring to.
3 MR NGALWANA: Chairperson, this is
4 clearly an objectionable question. It shouldn't be allowed
5 because the suggestion is – I can't even utter the words.
6 CHAIRPERSON: No, no, I'm not sure that
7 you're right, Mr Ngalwana, because my recollection actually
8 is that he heard the reference to the people being down
9 when he was on the way to the helicopter, before he
10 actually got into the helicopter. So if I'm right on that
11 – and I'm not saying I am, but that's my impression – if
12 I'm right on that, but there's a passage elsewhere in the
13 evidence where he says he was high, then he couldn't have
14 been high in the sky if he was still on the ground on the
15 way to the helicopter. Then it's a permissible question.
16 So, but what he's being asked for is the reference – Mr
17 Shozi is being asked for the reference to where he says he
18 was high, and then perhaps possibly that could be
19 juxtaposed, if there is such a reference, with the other
20 passage in his evidence where he talks about when he heard
21 on his radio as he walked to the helicopter. But perhaps
22 we can first get from him the reference to which he is
23 referring.
24 MR SHOZI: Chair, the page is 11490, line
25 13 to 24.

Page 12098

1 CHAIRPERSON: - think that's being put is
2 that the way the question was asked, which aroused a sort
3 of a snigger from some of the people here, was suggesting
4 something improper and there was an insinuation of that,
5 and that's something which I'm not going to allow and I
6 would suggest that you withdraw any insinuation that would
7 be objectionable. Let's just ask the question. You can
8 ask the question along the lines that I debated with Mr
9 Ngalwana, but I think the innuendo which gave rise to the
10 unfortunate merriment should be withdrawn, and you should –
11 MR SHOZI: Chair, it wasn't –
12 CHAIRPERSON: And you should apologise
13 for it.
14 MR SHOZI: It wasn't meant, Chair, to
15 offend the witness, and if that's the impression that's
16 been gained I'm very happy to move away from the question,
17 Chairperson.
18 CHAIRPERSON: It might be helpful to
19 apologise first and withdraw the innuendo, insofar as there
20 was one, and then you can proceed.
21 MR SHOZI: Chair, to the extent that
22 there was an innuendo, I withdraw it.
23 CHAIRPERSON: And you apologise?
24 MR SHOZI: I do indeed, Chairperson.
25 CHAIRPERSON: Thank you. But perhaps I

Page 12099

1 can ask this other question. I must confess, I thought you
2 said that you heard reference to people being shot and
3 being down when you were still on the ground, walking to
4 the helicopter. Now I may be wrong, but let me ask you
5 therefore, for purposes of clarity; you did hear something,
6 did you not, on your radio as you were walking to the
7 helicopter? Is that correct?
8 MAJOR-GENERAL MPEMBE: Chairperson, if I
9 recall, what I said is that I heard saying that the
10 protesters are moving to the TRT line by that time, but
11 there was not any other shooting at that time.
12 MR SHOZI: Now General, am I correct in
13 my understanding that when the events at Marikana began to
14 unfold on the 9th of August, you were on leave at the time,
15 correct?
16 MAJOR-GENERAL MPEMBE: Correct,
17 Chairperson.
18 MR SHOZI: Am I also correct in my
19 understanding that your real involvement, your first real
20 involvement with the events at Marikana began in earnest on
21 Monday, 13th August 2012, correct?
22 MAJOR-GENERAL MPEMBE: Correct,
23 Chairperson.
24 MR SHOZI: In point of fact what happened
25 on Monday is that you were appointed by the Provincial

<p style="text-align: right;">Page 12100</p> <p>1 Commissioner - and those of our colleagues who act for the 2 police refer to her affectionately as the PC – you were 3 appointed by the PC on the morning of the 13th of August 4 both as the commander of the JOC, as well as the overall 5 commander of the operation, correct? 6 MAJOR-GENERAL MPEMBE: As the CJOC, 7 correct, Chairperson. 8 MR SHOZI: No, General, both as a CJOC 9 and the overall commander. That's your evidence. 10 MAJOR-GENERAL MPEMBE: Chairperson, CJOC 11 and overall commander is one word. 12 MR SHOZI: No, it's not. I'm sorry. 13 General, can I take you to your statement, please, GGG12? 14 Is your evidence that the commander of the JOC performs the 15 same function as the overall commander of the operation? 16 Is that your evidence? 17 MAJOR-GENERAL MPEMBE: Correct, 18 Chairperson, hence I said it is referring to the one word. 19 MR SHOZI: Is it also correct that 20 pursuant to your appointment as both the commander of the 21 CJOC and the overall commander, you were then instructed by 22 the PC, or as you prefer, requested by the PC to attend to 23 a group of a strikers who were marching from the Karee 24 Mine, presumably back to the koppie at the time? 25 COMMISSIONER HEMRAJ: Mr Shozi, you</p>	<p style="text-align: right;">Page 12102</p> <p>1 MR SHOZI: Point taken, Chair. Now we 2 know from your evidence, General Mpeembe, that when you went 3 to attend to this group of strikers next to the railway 4 line, you asked Captain Moolman to come along with you, the 5 SAPS legal advisor. Correct? 6 MAJOR-GENERAL MPEMBE: Correct, 7 Chairperson. 8 MR SHOZI: We also know that you also 9 asked Mr Hendrik Blaauw of Lonmin to also come along with 10 you, correct? 11 MAJOR-GENERAL MPEMBE: Correct, 12 Chairperson. 13 MR SHOZI: Now you testified that when 14 you began to interact with the protesters, it became clear 15 to you, soon became clear to you that they were 16 communicating to you in Fanagalo, at which point you then 17 asked Mr Blaauw to secure a Fanagalo speaker for you. 18 Correct? 19 MAJOR-GENERAL MPEMBE: Correct, 20 Chairperson. 21 MR SHOZI: Now Mr Hendrik Blaauw's 22 recollection of events is different from yours. Mr Hendrik 23 Blaauw's recollection of events is that when you asked him 24 for an – you never in fact asked him to get you, or secure 25 for you a Fanagalo interpreter. Would you like to comment</p>
<p style="text-align: right;">Page 12101</p> <p>1 referred us to GGG12. Are you drawing our attention to 2 anything in GGG12, or are you moving on? 3 MR SHOZI: I beg your pardon, 4 Commissioner Hemraj, I'm moving on. 5 CHAIRPERSON: You see paragraph 3 of that 6 paragraph, it directly contradicts the point you put to the 7 witness because it says "On Monday, 13 August at about 8 8:30, I attended at the interim joint operational centre 9 established at the Lonmin Mine. I arrived with the 10 Provincial Commissioner, Lieutenant-General Mbombo, and 11 Major-General Naidoo. Lieutenant-General Mbombo then 12 appointed me as the commander of joint operational centre, 13 CJOC. In that capacity I was also the overall commander of 14 the operation to restore public order at the Marikana area. 15 Brigadier Calitz had already been appointed the operational 16 commander." So what this passage indicates is that what 17 you put to the witness was wrong, and what the witness said 18 in reply was correct. Isn't that so? 19 MR SHOZI: I follow, Chairperson. 20 CHAIRPERSON: Yes. 21 MR SHOZI: Thank you. 22 CHAIRPERSON: I expect counsel who put 23 things that are incorrect, who later discover they're 24 incorrect, to correct themselves and not expect me to do 25 so.</p>	<p style="text-align: right;">Page 12103</p> <p>1 on that? 2 MAJOR-GENERAL MPEMBE: Chairperson, I did 3 ask Mr Blaauw to arrange for me a Fanagalo interpreter, and 4 actually I also stick to my, what I've said in my statement 5 and in my evidence. 6 CHAIRPERSON: Yes, I want to ask you a 7 question about that, but perhaps Mr Mahlangu can interpret 8 what you said first before I ask my question. You deal 9 with this matter in paragraph 12 of your statement, exhibit 10 GGG12, but I think there may be a misprint there. I want 11 to ask you about that. But I'm reminded that you corrected 12 it when you gave evidence. I wasn't, I'd forgotten that, 13 but let me just get it absolutely clear. What you said was 14 you asked Mr Blaauw for an interpreter, said you need an 15 interpreter. You didn't require management to negotiate 16 with the people, you needed an interpreter. What your 17 statement then says is, "Mr Blaauw then told me Lonmin 18 would send an interpreter because Lonmin was not prepared 19 to negotiate with the marchers." Now my colleague, 20 Commissioner Hemraj remembers it, but I assume that in any 21 event there was a misprint there, a word left out. I take 22 it that what, or you tell us what did Mr Blaauw say when 23 you asked him for an interpreter? 24 MAJOR-GENERAL MPEMBE: Mr Blaauw said to 25 me, Chairperson, that the management is not prepared to</p>

Page 12104

1 negotiate with the protesters. Then I said no, I'm not
 2 asking for negotiation, but I'm asking for an interpreter.
 3 CHAIRPERSON: What did Mr Blaauw say?
 4 When you asked for an interpreter, what did Mr Blaauw say?
 5 MAJOR-GENERAL MPEMBE: Chairperson, Mr
 6 Blaauw said that the, he will organise that interpreter,
 7 but ultimately he did not; the interpreter did not come.
 8 CHAIRPERSON: But if you look at the last
 9 page then, on page 5 of exhibit GGG12, it's the last
 10 paragraph, paragraph 12, there seems to be something wrong
 11 with that statement. Am I correct? What should it read?
 12 You've now told us that Mr Blaauw said that Lonmin would
 13 send an interpreter, so that part, "Mr Blaauw then told me
 14 Lonmin would send an interpreter," that's correctly
 15 recorded. It then goes on, because Lonmin was not prepared
 16 to negotiate with the marchers and that, that doesn't quite
 17 fit in. So how should that read?
 18 MAJOR-GENERAL MPEMBE: Chairperson, what
 19 I was trying to explain there is that actually, maybe Mr
 20 Blaauw will be able to interpret what he was talking, to
 21 whom was he talking, but what he reported to me, it was
 22 that the mine is not prepared to negotiate with the
 23 marchers. Then I said I'm not asking for that they must
 24 come and negotiate; then I'm asking for an interpreter.
 25 Then he said the interpreter will be sent, but they are not

Page 12105

1 prepared to negotiate. So negotiate it was for, maybe, in
 2 my understanding it was for something else.
 3 CHAIRPERSON: Yes, alright. Yes, thank
 4 you. I think it's now clear what's wrong with the last
 5 line on page 6. Instead of "because," it should be "but."
 6 So the sentence should then read – if I'm wrong, please
 7 tell me, I don't want to put words in your mouth
 8 incorrectly – "Mr Blaauw then told me that Lonmin would
 9 send an interpreter, but Lonmin was not prepared to
 10 negotiate with the marchers." Is that what you meant to
 11 say?
 12 MAJOR-GENERAL MPEMBE: Yes, it's correct,
 13 Chairperson.
 14 CHAIRPERSON: So the misprint was
 15 "because" should be "but."
 16 MAJOR-GENERAL MPEMBE: Okay.
 17 CHAIRPERSON: Is that right? Is that
 18 right?
 19 MAJOR-GENERAL MPEMBE: Yes, that's
 20 correct, Chairperson.
 21 MR SHOZI: General Mpeembe, I understood
 22 your testimony previously to be that Mr Blaauw had said to
 23 you that Lonmin would not provide you with a Fanagalo
 24 interpreter. Is your evidence now that Lonmin did in fact
 25 agree to provide with an interpreter, a Fanagalo

Page 12106

1 interpreter?
 2 MAJOR-GENERAL MPEMBE: Chairperson, I
 3 said it in my statement in paragraph 12. "Mr Blaauw then
 4 told me that Lonmin would send an interpreter, because
 5 Lonmin was not prepared to negotiate with the members, with
 6 the marchers."
 7 MR SHOZI: In point of fact, General
 8 Mpeembe, Lonmin would have had no reason to refusing to
 9 provide you with a Fanagalo interpreter because the very
 10 next morning they did in fact provide the police with a
 11 Fanagalo interpreter.
 12 MAJOR-GENERAL MPEMBE: Correct,
 13 Chairperson, we were provided with an interpreter on the
 14 following day. I want to state it as a fact that on the
 15 13th I did not get a Fanagalo interpreter.
 16 MR SHOZI: In fact your inability on the
 17 13th to have secured a Fanagalo interpreter didn't in any
 18 way affect your communication with the strikers, correct?
 19 MAJOR-GENERAL MPEMBE: Correct,
 20 Chairperson, but notwithstanding the fact that it could
 21 have enhanced more understanding between ourselves and the
 22 protesters.
 23 [10:41] MR SHOZI: I see. Can I move on to
 24 something else then, General Mpeembe, and that is the
 25 suggestion that between the period 14 to the 15th of August,

Page 12107

1 Lonmin should in fact have gone to the koppie to negotiate
 2 with the protestors on their wage demand.
 3 MR NGALWANA: Chair, it's – I don't
 4 recall that there is such evidence that the SAPS position
 5 was that Lonmin should go to the mountain and negotiate
 6 with protestors.
 7 CHAIRPERSON: Mr Shozi can give us a
 8 reference in the records to which he is referring.
 9 MR SHOZI: Chair, I didn't suggest that
 10 that was, this criticism came from SAPS. It's been
 11 suggested in these proceedings that Lonmin should in fact
 12 during that period have gone to the koppie to negotiate
 13 with the protestors. Now I'm simply engaging the General
 14 as one who negotiated with the unions and Lonmin.
 15 CHAIRPERSON: Who made the suggestion?
 16 MR SHOZI: I think it's Mr Mpofu on
 17 behalf of arrested persons.
 18 CHAIRPERSON: I understand that, but
 19 what's the point of asking this witness about it? I mean
 20 you could ask him if he agrees with the suggestion, and if
 21 he does you can follow that up, but the way you put the
 22 question initially, I must confess I got the impression
 23 that you were saying that that was effectively his
 24 evidence, or had been his evidence. If I misunderstood you
 25 I apologise. But anyway, we now know what you intended to

<p style="text-align: right;">Page 12108</p> <p>1 convey, so we don't have to spend further time on it.</p> <p>2 MR SHOZI: No, Chair, with respect, it</p> <p>3 wasn't the evidence of the witness, nor was the case made</p> <p>4 by the police. It was made by another party –</p> <p>5 CHAIRPERSON: Alright, well then –</p> <p>6 MR SHOZI: - in these proceedings, but</p> <p>7 I'm simply exploring the point with the witness to solicit</p> <p>8 his views on the matter.</p> <p>9 CHAIRPERSON: Well then I suggest you –</p> <p>10 the question should be formulated differently than the way</p> <p>11 you formulated it. Perhaps I can ask a question to clear</p> <p>12 the way. Major-General, Mr Shoji has now explained that he</p> <p>13 doesn't say that you said that Lonmin should go to the</p> <p>14 koppie and negotiate with the strikers, and he goes</p> <p>15 further; he says he doesn't say that's what the SAPS said.</p> <p>16 He says Mr Mpofo said it. But he wants to explore this</p> <p>17 suggestion with you. So by way of clearing the road for</p> <p>18 him, I'd like to ask you this question. Have you any views</p> <p>19 that you can give us as to whether the Lonmin was – it</p> <p>20 would've been advisable for Lonmin to go to the koppie to</p> <p>21 negotiate with the strikers? Have you got any views on</p> <p>22 that? Based obviously upon your experience and what you</p> <p>23 saw on the ground on the relevant days, have you got any</p> <p>24 views on that point?</p> <p>25 MAJOR-GENERAL MPEMBE: Chairperson, the</p>	<p style="text-align: right;">Page 12110</p> <p>1 the opportunity to do so, so it's being placed before him.</p> <p>2 Thank you.</p> <p>3 CHAIRPERSON: You gave us a reference</p> <p>4 which I didn't write down, in OO4, what was the reference?</p> <p>5 MR SHOZI: It is page 27, Chair.</p> <p>6 CHAIRPERSON: Thank you.</p> <p>7 MR SHOZI: Thanks, Ms Pillay.</p> <p>8 MR NGALWANA: Perhaps our learned friend</p> <p>9 could refer us to the lines in 4787 where –</p> <p>10 MR SHOZI: I will take the witness</p> <p>11 through the line, thank you. It's line 22. We can pick up</p> <p>12 from line 22, General Mpeembe, if you have it in front of</p> <p>13 you.</p> <p>14 MAJOR-GENERAL MPEMBE: Yes, Chairperson,</p> <p>15 I could see it.</p> <p>16 MR SHOZI: And Mr Mpofo put the question</p> <p>17 in the following terms. He says, Ja. No, I agree with Mr</p> <p>18 Burger. Would you agree that as of the 15th when there was</p> <p>19 some relative peace that there was an opportunity for</p> <p>20 Lonmin to engage with the strikers as they requested and as</p> <p>21 Mr Gwala also suggested," and here comes the important</p> <p>22 part, "to go and engage with them where they were, namely</p> <p>23 at the koppie." So that's the point that is being made,</p> <p>24 that Lonmin should've gone to the koppie to negotiate with</p> <p>25 the protestors where they were.</p>
<p style="text-align: right;">Page 12109</p> <p>1 Lonmin position was made very clear by Mr Mokwena in the</p> <p>2 meeting that we held between the unions and, on Wednesday,</p> <p>3 and is recorded in OO4 – OO4. Maybe we can get that</p> <p>4 relevant quotation of Mr Mokwena.</p> <p>5 CHAIRPERSON: - that quotation has been</p> <p>6 looked at, have you got the reference for us, Mr Shoji,</p> <p>7 where Mr Mpofo put that point – the reference in the</p> <p>8 record, where Mr Mpofo put that point?</p> <p>9 MR SHOZI: Yes, I do, Chair. And if I</p> <p>10 could assist General Mpeembe, the passage he is looking for</p> <p>11 from exhibit OO4, it is page 27 of OO4, line 17 to 25.</p> <p>12 And, Chair, the passage you asked for, it is the transcript</p> <p>13 of the 7th of Feb this year, page 4787. General, I wonder</p> <p>14 if it could be placed before you, perhaps, the transcript</p> <p>15 that I'm just – that I've just referred to of the 7th of</p> <p>16 Feb, page 4787. Have you got that in front of you?</p> <p>17 MAJOR-GENERAL MPEMBE: No, Chairperson.</p> <p>18 MR SHOZI: It is day 44.</p> <p>19 COMMISSIONER HEMRAJ: Mr Shoji, the</p> <p>20 witness doesn't have a copy of the transcript before him.</p> <p>21 Generally the transcripts are not placed before the witness</p> <p>22 unless counsel cross-examining puts copies of the pages</p> <p>23 before him.</p> <p>24 MR SHOZI: The point I was making,</p> <p>25 Commissioner Hemraj, is that we couldn't – we didn't have</p>	<p style="text-align: right;">Page 12111</p> <p>1 MAJOR-GENERAL MPEMBE: Chairperson, I</p> <p>2 said that in answer to that, in my presence Mr Mokwena made</p> <p>3 the Lonmin position with regard to this.</p> <p>4 MR SHOZI: Now do you agree with Mr</p> <p>5 Mokwena's position there? OO4, page 27, that's where Mr</p> <p>6 Mokwena articulates Lonmin's position. Have you read the</p> <p>7 passage?</p> <p>8 CHAIRPERSON: I'll read the passage out</p> <p>9 for the benefit of those who haven't got it before them, so</p> <p>10 we can follow the point you're making.</p> <p>11 MR SHOZI: Thank you, Chair.</p> <p>12 CHAIRPERSON: Mr Mokwena says this – I'm</p> <p>13 starting a bit earlier than the lines you referred to,</p> <p>14 starting at line 17. "Our position, General, is as Lonmin</p> <p>15 management, our position is as follows. We're willing to</p> <p>16 engage our employees within the structures that are known,</p> <p>17 in a very safe environment where there are no weapons, not</p> <p>18 on the mountain. So we are willing to meet our employees</p> <p>19 through their structures, through their leaders, to discuss</p> <p>20 any issue, not when they are armed, not when they are</p> <p>21 actually outside the Lonmin property. So when the workers</p> <p>22 are back, disarmed, tomorrow, tonight, through their</p> <p>23 leaders we will meet them. That is our position. So we</p> <p>24 are not against meeting, discussing issues with their" – I</p> <p>25 take it, it should be our - "employees, through their right</p>

<p style="text-align: right;">Page 12112</p> <p>1 structures. We are prepared to do that." That's the 2 passage to which the witness – to which you gave us the 3 reference. 4 MR SHOZI: Now you've seen the passage, 5 General Mpmembe. Would you agree with me that it would have 6 been unrealistic, perhaps even unfair, to have expected 7 Lonmin to go to negotiate with the strikers on the koppie 8 where they were armed? 9 MAJOR-GENERAL MPEMBE: Chairperson, the 10 purpose of - also one of the purpose of that meeting, I 11 understand the safety of the Lonmin; in my opinion because 12 even though it's not good to give an opinion, in my 13 understanding is that not only Lonmin, if the Lonmin and 14 the unions did what they do after the tragedy, I believe 15 that the tragedy could have been averted. 16 CHAIRPERSON: I think that it would help 17 us if you – I think I know what you meant, but I think it 18 would help us if you spelt out what exactly you mean in 19 that regard. What was it about what was done after the 20 tragedy which, if it had been done prior to the tragedy, it 21 would've averted the tragedy? As I say I think I know what 22 you mean, but I'm not sure. Perhaps you could spell it out 23 for us. 24 MAJOR-GENERAL MPEMBE: Chairperson, in my 25 understanding it was that Lonmin and the unions, they did</p>	<p style="text-align: right;">Page 12114</p> <p>1 efforts that were made after, as the Chairperson is 2 alluding, if they were made before, and those are the ones 3 that I'm referring to. 4 MR SHOZI: But, General, I'm putting – 5 with respect, I'm putting a different proposition to you 6 and it is the following. It would've been imprudent of 7 Lonmin to have gone to negotiate with the strikers on the 8 koppie where they were armed between the period 14th to the 9 16th of August. Do you agree with that? 10 MAJOR-GENERAL MPEMBE: May you please 11 repeat your question? 12 MR SHOZI: It would've been unwise of 13 Lonmin to have gone to the koppie between the period 14th to 14 the 16th of August to negotiate with the strikers at the 15 koppie where they armed. Do you agree with that? 16 MAJOR-GENERAL MPEMBE: Chairperson, in 17 answer to the question, I'll refer to the process that we 18 did when we were there, practically including myself, is 19 that myself, Mr Kwadi, and the delegates of the unions, 20 they were also escorted with vehicles to communicate with 21 the strikers, to give the strikers an assurance that they 22 will sit and negotiate their grievances. There were also – 23 it is mentioned also in many of the exhibits before the 24 Commission that we did not even want Mr Mathunjwa, Mr 25 Zokwana, when speaking to the protestors, not to go out of</p>
<p style="text-align: right;">Page 12113</p> <p>1 negotiate the conditions of the workers. 2 CHAIRPERSON: You say the unions because 3 you – sorry, Mr Mahlangu, please carry on. Sorry. 4 MR MAHLANGU: Thank you. I just 5 completed the sentence. 6 CHAIRPERSON: I see. By the unions, 7 you're referring to the fact that AMCU also took part in 8 those discussions, is that correct? 9 MAJOR-GENERAL MPEMBE: Chairperson, I'm 10 referring to both AMCU and NUM. 11 CHAIRPERSON: And NUM. 12 MAJOR-GENERAL MPEMBE: Because on the 13 ground they were both, in my mind, they were relevant 14 stakeholders. They were relevant stakeholders to have 15 assisted to avert the tragedy. 16 CHAIRPERSON: And am I correct in saying 17 that after the tragedy, these discussions to which you 18 refer included Lonmin - the participants in the discussion 19 included Lonmin, NUM, AMCU, and I think there were also 20 people who were described in the ultimate agreement as 21 delegates, people who were not part of either union, but 22 who were delegated by, and represented some of the strikers 23 on the koppie. Is that correct as well? 24 MAJOR-GENERAL MPEMBE: Chairperson, with 25 that I'm not quite sure, but what I'm saying is that the</p>	<p style="text-align: right;">Page 12115</p> <p>1 the Nyala, precisely so for their safety. 2 Chairperson, sitting where I am as a reasonable 3 person, we believed that – I believe that if the mine could 4 have done the same thing, just to tell them to say, as they 5 have said, we cannot negotiate with the protestors, which I 6 understand is correct, I'm not sure I'm much well 7 knowledgeable about labour relation, but to give the 8 protestors themselves an assurance that they will now go 9 and negotiate with the NUM and the AMCU, because those 10 unions were there; Chairperson, I need to say, maybe it 11 could have helped. 12 MR SHOZI: General, I'm still unclear as 13 to what your answer is to my question. Can I ask you, do 14 you still have exhibit OO4 in front of you? 15 MAJOR-GENERAL MPEMBE: Chairperson, I 16 will get the exhibit. 17 CHAIRPERSON: While you're doing that, 18 perhaps I can ask a question which may also help clear some 19 of the ground. Are you saying that if Lonmin had done what 20 the trade union presidents had done and gone under police 21 escort to the place where the trade union presidents went 22 and had a person in the Nyala, speaking through a 23 loudhailer to the people on the koppie, inviting their 24 leaders to come forward and then telling them what they say 25 - in the passage I read out from exhibit OO4, page 27 and</p>

<p style="text-align: right;">Page 12116</p> <p>1 28, if that had happened, you think that might have helped 2 to alleviate the situation and avoid the tragedy? Is that 3 what you're saying? 4 MAJOR-GENERAL MPEMBE: Correct, 5 Chairperson. 6 CHAIRPERSON: Mr Shozi, I see it's now 11 7 o'clock; perhaps we can take the tea adjournment at this 8 stage and then you can continue the debate with the witness 9 thereafter. 10 MR SHOZI: I'm in your hands, 11 Chairperson. 12 CHAIRPERSON: We had a bit of 13 simultaneous operation there in anticipation of next week. 14 We'll now adjourn for tea. 15 [COMMISSION ADJOURNS COMMISSION RESUMES] 16 [11:34] CHAIRPERSON: The Commission will 17 proceed. Major-General, you're still under oath. 18 WILLIAM MPEMBE: s.u.o. 19 CHAIRPERSON: Mr Shozi, I take it you've 20 got further questions to ask the witness. There was an 21 aspect that we were busy with just before we adjourned, 22 which I take it you want to take further? 23 MR SHOZI: I do indeed, Chair, thank you. 24 Chair, there was a request during the tea break from Mr 25 Ngalwana for us to provide a statement by Mr Hendrik</p>	<p style="text-align: right;">Page 12118</p> <p>1 CROSS-EXAMINATION BY MR SHOZI (CONTD.): 2 I'm indebted to Commissioner Hemraj. Now General, just 3 before the adjournment I was exploring with you the 4 suggestion that Lonmin should have gone to the koppie to 5 negotiate with the protesters, and we're looking at exhibit 6 OO4. Can I ask you if you could please just, ask again to 7 have a look at exhibit OO4, and tell me when you have it in 8 front of you. 9 MAJOR-GENERAL MPEMBE: Correct, 10 Chairperson, I have in front of me. 11 MR SHOZI: Can I ask you then again to go 12 back to page 27, and this is where Mr Mokwena articulates 13 Lonmin's position towards negotiations. 14 MAJOR-GENERAL MPEMBE: Correct, 15 Chairperson, I'm already on page 27. 16 MR SHOZI: So can I ask you then with 17 your one eye, so keep your one eye on page 27 and if you 18 can please, with your other eye go to page 11 of the same 19 document. Are you there? 20 COMMISSIONER HEMRAJ: Which lines on page 21 11, Mr Shozi? 22 MR SHOZI: From line 3, Commissioner 23 Hemraj, and perhaps for context if you go back one page, 24 it's page 10, you will see that person who's talking is the 25 NUM president, starting at page 10. So over the page at</p>
<p style="text-align: right;">Page 12117</p> <p>1 Blaauw, and we have undertaken to do so, so we'll be doing 2 so in due course. Thank you. 3 CHAIRPERSON: Which reminds me, you 4 didn't really follow up – you started putting something to 5 the witness and then it became clear that the statement he 6 had made required an amendment, which we then dealt with. 7 What he said, you'll remember, was that he asked for the 8 assistance of a Fanagalo interpreter near, at the spot near 9 the railway line. Mr Blaauw said that he would comply with 10 the request, but he didn't do so that day, but there was 11 one made available the next day, I think it was put. Now, 12 but he also said that Mr Blaauw said that Lonmin weren't 13 prepared to negotiate with the marchers. Now as far as I 14 can recall, that point was then left in the air and you 15 didn't put to the witness if his evidence on that point was 16 in accordance with the Lonmin evidence, so – Adv Hemraj 17 says that you did put that Mr Blaauw denied that there was 18 a request for an interpreter. 19 MR SHOZI: I did, Chair. 20 CHAIRPERSON: So in other words I'm wrong 21 therefore in thinking that the matter was left in the air. 22 Is that right? 23 MR SHOZI: I did indeed, Chair. 24 CHAIRPERSON: Okay, alright. So I 25 withdraw what I said. Please proceed.</p>	<p style="text-align: right;">Page 12119</p> <p>1 page 11 it says this from line 3 – tell me when you are 2 there. Page 11, line 3, Mr Zokwana says the following, 3 "The minute you climb there to address," by "there" he 4 means at the koppie, "The minute you climb there to address 5 those members, I can assure you, and we had this experience 6 from Impala, so we think people should be told nicely that 7 they should leave that mountain, go to where they're 8 employed, and that any other debate pertaining to 9 grievances will be entertained by different unions. It's 10 how things are done." And here comes the important part. 11 "You can't negotiate with people who are armed. Those guys 12 are armed." Now what I want to put again to you, General 13 Mpeembe, is the following. It would have been imprudent, it 14 would have been unwise of Lonmin to have gone to negotiate 15 with the strikers on the koppie where the strikers were 16 armed. Would you agree with that? 17 MR NGALWANA: Chair, it's not an 18 objection; it's just a request for guidance from the Chair 19 and the Commissioners. Our learned friend has admitted, or 20 rather conceded that this line was not advanced by General 21 Mpeembe that the Lonmin management must go to the koppie and 22 negotiate with armed people. He said it's counsel who's 23 put, who said that. I'm not sure whether counsel was 24 giving evidence or was just making a remark from the bar. 25 So it escapes me why this line of questioning should then</p>

Page 12120

1 be explored with this witness, inasmuch as it's not his
 2 view. I'm not sure if –
 3 CHAIRPERSON: Of course it doesn't –
 4 MR NGALWANA: I'm not sure if the
 5 Chairperson and the Commissioners are interested in the
 6 opinion of the witness. As far as I know, I mean the
 7 probative value of such opinion, even if admissible –
 8 CHAIRPERSON: Well, the difficulty is the
 9 – look, he is an expert, presumably, in maintaining law and
 10 order. He was asked a question by Mr Shozi how should
 11 Lonmin have acted. He said if they'd acted before the
 12 event the way they acted after the event, then it may be
 13 that the tragedy might not have occurred. That's the
 14 evidence he's given. Now I take it Mr Shozi - that
 15 evidence is there. I take it Mr Shozi is entitled to deal
 16 with that evidence. If he doesn't deal with it then he can
 17 be taken as having accepted it. So it's a line that Mr
 18 Shozi started, but once he started it and he got the
 19 answers, I don't think it would be fair for me to stop him.
 20 I take it he will bear in mind the need for brevity and
 21 conciseness in this, but it is evidence your witness gave
 22 in answer to a question asked by this witness. So I think
 23 one can't just expect him to accept the answer and move on.
 24 MR SHOZI: Thank you, Chair, I'm
 25 indebted.

Page 12121

1 MAJOR-GENERAL MPEMBE: In my response,
 2 Chairperson, to the same question, I said the unions were
 3 there on that day, the union leaders, for negotiation with
 4 Lonmin. The only aspect which I said is that when the
 5 unions went there on that day under the police escort,
 6 under the protection of the police, if the mine could have
 7 done the same, and which in a practical way where all of
 8 the people were there, and I said with the benefit of the
 9 hindsight, and I used the word "maybe" something could have
 10 happened. Particularly so, and my emphasis on that is the
 11 protesters themselves, they were saying "sifuna gobona
 12 umlungu." So "umlungu," when going there, talking to them
 13 and say "Here are your leaders; I am going to negotiate
 14 with them about your grievances," and this is what I'm
 15 saying, with the benefit of the hindsight.
 16 MR SHOZI: But General Mpeembe, in your
 17 estimation could sensible wage negotiations have taken
 18 place at the koppie where the strikers were armed –
 19 CHAIRPERSON: No, Mr Shozi, that's not
 20 what he's saying. He's not suggesting, as I understand
 21 him, that the wage negotiations were taking place at the
 22 koppie. What he's saying is something different. If
 23 Lonmin had come, gone, as the trade union presidents had
 24 done, been in the Nyala, spoken to the workers and said,
 25 "Look here, we're happy to negotiate with your leaders who

Page 12122

1 are over here, but not here, not with arms; we'll meet them
 2 at the office tomorrow," that might have made a difference.
 3 That's what he said. It's a might have and a maybe. It's
 4 probably a matter that can be dealt with more in argument
 5 at the end of the matter rather than debating it with the
 6 witness, but if you debate it with the witness, you mustn't
 7 put something to him that he's not actually saying. He's
 8 not suggesting for a moment – am I right, Major-General?
 9 MAJOR-GENERAL MPEMBE: Correct,
 10 Chairperson.
 11 CHAIRPERSON: He's not suggesting for a
 12 moment that your clients acted unwisely because they
 13 weren't prepared to engage in wage negotiations, sub hostis
 14 as it were, on the koppie. That's not what he says. So,
 15 but what he does say, I would have thought it's his
 16 opinion, it's prefaced by "maybe," is perhaps a matter
 17 which can more fruitfully, profitably be dealt with in
 18 argument at the end of the case and you can just put to him
 19 that you don't agree when you deal with it in argument,
 20 that will cover your position, I would think, but it's not
 21 for me to tell you how to run your case.
 22 MR SHOZI: What you do say now, of
 23 course, General Mpeembe, you do say, as you quite correctly
 24 pointed out earlier, that you say it with the benefit of
 25 hindsight, correct?

Page 12123

1 MAJOR-GENERAL MPEMBE: Correct,
 2 Chairperson.
 3 MR SHOZI: You didn't at the time when Mr
 4 Mokwena was articulating Lonmin's position to you on the
 5 13th of August, you didn't at the time invite him to come
 6 along with you and say, or convey to the strikers what you
 7 now say you should have done.
 8 MAJOR-GENERAL MPEMBE: Chairperson, I
 9 said in my statement immediately after I addressed the
 10 marchers at the railway line, I did go to the mine
 11 management and I said that they should help me with the
 12 identification of the protesters, and at that time I said,
 13 immediately when they give us feedback to say some of the
 14 members are AMCU, then I said "You have to confront the
 15 unions and together, all of you, we need to resolve the
 16 matter." So going to the meeting on Wednesday, my position
 17 was already being put both to the union and to the Lonmin
 18 management, hence Mr Mokwena's response in terms of that,
 19 in terms of page 27, which I understood, but what I'm
 20 saying now is that I don't say, as the Chairperson has
 21 already explained it, I don't say that he should have
 22 negotiated with the protesters at the koppie, but for the
 23 Lonmin could have gone there and say "You all say you want
 24 to see 'umlungu.' Here is 'umlungu' and here are your
 25 leaders which I did call," because those leaders, I'm

<p style="text-align: right;">Page 12124</p> <p>1 saying AMCU and NUM, they were called by Lonmin through my 2 request with Lonmin. So that, as I'm saying, with the 3 benefit of hindsight, might have helped. 4 MR SHOZI: Yes, I hear you, and this is 5 my last question to you on this theme. You didn't of 6 course at the time, you yourself in precise terms, invite 7 Lonmin to come to the koppie to convey what you say they 8 ought to have conveyed even from inside the Nyala. You 9 didn't at the time do that. Do you agree? 10 MAJOR-GENERAL MPEMBE: Mr Chairperson, I 11 said the purpose of the meeting was clearly articulated to 12 Mr Kwadi, and knowing the – not to Mr Mokwena himself, 13 because I was normally interacting with Mr Kwadi on behalf 14 of Mr Mokwena. But Mr Kwadi, and I need to state, Mr 15 Kwadi, on the same day he was with the union leaders at the 16 mountain, but he did not speak, and he went there as an 17 observer. 18 MR SHOZI: But of course the idea was 19 never for Mr Kwadi to say anything. He was never meant to 20 speak anyway. Do you agree? 21 MAJOR-GENERAL MPEMBE: Correct, 22 Chairperson. But what I'm saying is if the Lonmin could 23 have spoken on that day, and that's why I'm saying it could 24 have made a difference, particularly when the protesters 25 who have asked twice to say "We want to see 'umlungu; we</p>	<p style="text-align: right;">Page 12126</p> <p>1 MAJOR-GENERAL MPEMBE: I have it, 2 Chairperson. I'm just asking maybe the page and – 3 MR SHOZI: Would you care, please, to 4 look at the definitions clause, and that is clause 2 of 5 exhibit SS2. 6 CHAIRPERSON: Yes, it's also, we've also 7 been given a file by the evidence leaders, the document 8 they're referring to is behind tab 11 in that. What 9 definition are you referring to in clause 2 of the Standing 10 Order? 11 MR SHOZI: Would you care to look at 12 clause 2(e), please, General Mpeembe, of the definition – 13 CHAIRPERSON: The definition of CJOC? 14 MR SHOZI: Of CJOC. Are you there, 15 General Mpeembe? 16 MAJOR-GENERAL MPEMBE: Correct, 17 Chairperson. 18 MR SHOZI: You see the CJOC is defined as 19 "Meaning the commander of the joint operational centre, a 20 designated provincial commissioner, a divisional provincial 21 or area commissioner, to take command of the JOC." You see 22 that? 23 MAJOR-GENERAL MPEMBE: Correct, 24 Chairperson. 25 MR SHOZI: And would you turn to clause</p>
<p style="text-align: right;">Page 12125</p> <p>1 want to communicate with 'umlungu'." 2 MR SHOZI: We will argue differently, 3 General Mpeembe. I want to move on to something else with 4 you now, and that is the events of the 16th of August, and 5 as I said to you earlier, I want to deal with the role that 6 you played, or more precisely the role that you ought to 7 have played in your capacity as the commander, overall 8 commander of the operation and the commander of the JOC, 9 and just to recap, on Monday 13 August you were appointed 10 the commander of the JOC, correct? 11 MAJOR-GENERAL MPEMBE: Correct, 12 Chairperson. 13 MR SHOZI: And you say in your statement 14 GGG12 that in that capacity you were also the overall 15 commander of the operation, correct? 16 MAJOR-GENERAL MPEMBE: Correct, 17 Chairperson. 18 COMMISSIONER HEMRAJ: - handled with not 19 even half an hour ago. 20 MR SHOZI: I beg your pardon? 21 COMMISSIONER HEMRAJ: You canvassed the 22 same issue not even half an hour ago. 23 MR SHOZI: Can I ask you please, General 24 Mpeembe, to have a look at exhibit SS2, the Standing Order 25 262?</p>	<p style="text-align: right;">Page 12127</p> <p>1 8, please, of the same document? Clause 8 deals with the 2 appointment of the CJOC. Tell me when you're there, 3 please. 4 [11:54] MAJOR-GENERAL MPEMBE: I'm there, 5 Chairperson. 6 MR SHOZI: 8.1 is in these terms, "The 7 divisional provincial or area commissioner must ensure that 8 the CJOC is designated and that he or she is conversant 9 with this order and relevant legislation, and is well 10 trained to take responsibility for the operation." Do you 11 see that? 12 MAJOR-GENERAL MPEMBE: Correct, 13 Chairperson, I see it. 14 MR SHOZI: Do you regard yourself as 15 being well trained to take responsibility for the 16 operation? 17 MAJOR-GENERAL MPEMBE: Chairperson, as I 18 indicated before, is that my training and the combination 19 of my training and my experience, yes, I see myself as 20 competent to do the work. 21 MR SHOZI: Now clause 8.2 is in these 22 terms. It says, "The CJOC is in overall command of the 23 specific operation for which he or she is designated, and" 24 – here comes the important part – "is responsible for all 25 actions taken." Do you see that?</p>

<p style="text-align: right;">Page 12128</p> <p>1 MAJOR-GENERAL MPEMBE: Correct, 2 Chairperson, I see it. 3 MR SHOZI: Let me ask you this; did you 4 regard yourself, or do you regard yourself as you sit here 5 today, as having been responsible for all actions taken in 6 relation to the Marikana operation? 7 MAJOR-GENERAL MPEMBE: No, Chairperson, 8 my reason being that in any organisation, including SAPS, 9 there is what we call a span of control whereby you are 10 also having other officers that assisted you to do the 11 management, and also, but the – yes, the accountability 12 part in terms of to account, and as I'm doing now in front 13 of the Commission. 14 MR SHOZI: But of course you assumed 15 ultimate responsibility for all actions taken in relation 16 to the operation, correct? 17 MAJOR-GENERAL MPEMBE: Chairperson, as 18 I've alluded, there were other role, there are other role 19 players in terms of the structure and who were reporting to 20 me. Chairperson, they also had to have a role to play. I 21 can only answer where I was physically there and as I did 22 on the 13th, but, and according to my supplementary 23 statement I made it clear that I can only answer on the 24 issues where they happened when I was present. 25 MR SHOZI: This order of course doesn't</p>	<p style="text-align: right;">Page 12130</p> <p>1 but to put our learned friend on notice that he should 2 tread carefully. Remember the Chairperson made – I think 3 it was a ruling some time ago that you won't allow 4 questions that have been dealt with in cross-examinations 5 previously to be traversed again later. I remember, it may 6 have been yesterday or two days ago, that Mr Madlanga dealt 7 with – 8 CHAIRPERSON: It wasn't yesterday. 9 Yesterday I had an alibi. 10 MR NGALWANA: Yes, two days ago or three 11 days ago, Monday or Tuesday, Mr Madlanga for the evidence 12 leaders traversed this point ad nauseam, and so – 13 CHAIRPERSON: I don't know who had 14 suffered from nausea, but he did traverse the point in some 15 detail. The point Mr Ngalwana makes is of course not 16 without substance, because if – I don't know where you're 17 going with this point, but if you're going the same 18 direction Mr Madlanga did, then I'll stop you. But if it's 19 something new you want to contribute on this point, 20 obviously you can proceed. 21 MR SHOZI: With respect, Chair, I'm not 22 going the same direction as Mr Madlanga. Thank you. Just 23 so that we are clear, General Mpeembe, you say that you 24 shared this responsibility with other role players, to pick 25 up your language. Who in your mind, who do you have in</p>
<p style="text-align: right;">Page 12129</p> <p>1 define the overall commander, and can I ask you what is it 2 that – 3 CHAIRPERSON: I don't think that's right. 4 You put that before, but it's not correct. 8.2, which you 5 read, says, "The CJOC is in overall command of the specific 6 operation." So that surely makes him the overall 7 commander. He said, you may recall, and we dealt with that 8 before in paragraph 3 of this statement, that as CJOC he 9 was the overall commander, and what he said in that regard 10 is in fact supported by clause 8.2. So he admits he was 11 the overall commander. It goes on to say he is responsible 12 for all actions taken, which is the point you're making at 13 the moment, but I mean it doesn't help to deal with the 14 overall command point. It's clear beyond the peradventure 15 of a doubt that he is the, he was the overall commander. 16 He says so, supported by what the Standing Order says in 17 that regard, which goes on to say he's responsible for all 18 actions, and this is the point that you can proceed with. 19 But it doesn't help to worry about the overall commander 20 point. That's beyond dispute, isn't it? 21 MR SHOZI: I take the point, Chair. 22 MR NGALWANA: Chairperson, on that point 23 which you've instructed our learned friend to proceed, 24 regarding specifically the responsibility for all actions 25 taken, this is not an objection, perhaps not even guidance,</p>	<p style="text-align: right;">Page 12131</p> <p>1 mind when you say there were other role players who assumed 2 responsibility for actions taken? 3 MAJOR-GENERAL MPEMBE: Chairperson, as 4 I've indicated in terms of the structure, I was the overall 5 commander. There was also the deputy, I'd say Major- 6 General Annandale who worked as my deputy, or also you can 7 call him as a JOC commander, to exercise my – to be there 8 and represent the overall commander when I'm not there, 9 because I had also to do many work. There was an 10 operational commander; there were many officers responsible 11 for specific units, including individual members. So there 12 was a command structure. 13 MR SHOZI: I see. 14 CHAIRPERSON: I think Mr Shozi wants you 15 to identify the people who were responsible for what 16 happened. You had overall responsibility for all actions 17 taken, but you correctly said you couldn't be everywhere 18 all the time and you had to leave certain of the operations 19 to the people below you, who were the operational commander 20 and others, and what Mr Shozi wants you to do, I think – if 21 I'm wrong he'll stop me – is to identify those to whom you 22 say responsibility must be attributed, and who effectively 23 share the responsibility with you. You have mentioned 24 Major-General Annandale who was in the JOC. He was your 25 deputy, effectively, and everything that happened in the</p>

Page 12132

1 JOC while you weren't there obviously – or happened or
 2 didn't happen in the JOC, but should have happened, is
 3 something that can be laid at his door. But I take it
 4 there are other people as well to whom you say, who you say
 5 are responsible for some of the things that happened and
 6 didn't happen. Is that right?

7 MAJOR-GENERAL MPEMBE: Correct,
 8 Chairperson.

9 CHAIRPERSON: Now Mr Shozi, do you want
 10 him to identify those people?

11 MR SHOZI: I'm very keen to know who they
 12 are, Chairperson.

13 CHAIRPERSON: Okay, well I've made the
 14 question clear for him.

15 MAJOR-GENERAL MPEMBE: Chairperson –

16 MR NGALWANA: Chair, perhaps our learned
 17 friend should read carefully the transcript because this
 18 was extensively traversed in evidence-in-chief at the
 19 beginning about who played what role. So to repeat –

20 CHAIRPERSON: No, now he's talking about
 21 responsibility, isn't he? I don't remember it being put in
 22 evidence-in-chief on the basis of responsibility, so
 23 perhaps the question can proceed.

24 MR SHOZI: Chair, with respect, it
 25 wasn't. That's the first point, but the second point is Mr

Page 12133

1 Ngalwana can't incubate the witness –

2 CHAIRPERSON: You're doing what other
 3 people have done before, giving a concurring judgment when
 4 I've given a ruling in your favour. Don't waste time.
 5 Let's carry on.

6 MAJOR-GENERAL MPEMBE: Brigadier Calitz
 7 as operational commander of the operation, well trained POP
 8 member, Provincial Head; Major-General Naidoo, forward
 9 holding area number 1, commander. We also have Brigadier
 10 Fritz. He was in charge of the STF. Also have Brigadier
 11 Tsiloane who was in charge of the National Intervention
 12 Unit. We also have different commanders under the
 13 brigadiers. Forward holding area number 2, it was
 14 Lieutenant-Colonel Pitsi. Brigadier Calitz, he was also
 15 having Colonel Makhubela. Chairperson, there were also
 16 other various officers who were working as section
 17 commanders.

18 MR SHOZI: Thank you. With that in mind,
 19 can I invite you please then to have a look at page,
 20 paragraph 48 of your statement, the main one, GGG12. Are
 21 you there, General Mpeembe?

22 CHAIRPERSON: 48 of exhibit GGG12?

23 MR SHOZI: Correct, Chairperson, and
 24 perhaps we can pick up the story from there. What is
 25 happening now is we're in the middle of the implementation

Page 12134

1 of stage 3 of the operational plan, and you say the
 2 following. You say in paragraph 48, "I remained at the
 3 JOC. Later I informed General Annandale that I wanted to
 4 fly over the area to get a view of what was happening."
 5 Let me pause there for a moment. When you say that you
 6 remained at the JOC, why did you remain at the JOC, General
 7 Mpeembe? Why weren't you at the koppie where stage 3 was
 8 being implemented?

9 MAJOR-GENERAL MPEMBE: The operational
 10 commander was at the koppie.

11 MR SHOZI: But Annandale was also at the
 12 JOC. Why did you have to be at the JOC where Annandale
 13 was?

14 MAJOR-GENERAL MPEMBE: Major-General
 15 Annandale was a deputy CJOC, or a JOC commander.

16 MR SHOZI: And as you remained at the
 17 JOC, what contribution did you make towards the
 18 implementation of the plan whilst you were at the JOC?

19 MAJOR-GENERAL MPEMBE: Chairperson, I do
 20 not understand the question because the planning process,
 21 explanation and all any other matters, that's how I
 22 contributed, but according to an operation, when an
 23 operational commander has been appointed he has to take
 24 control of the operation and when the operation is ongoing
 25 there will be no any other command that will be given,

Page 12135

1 except when it comes from the operational commander.
 2 Chairperson, I did testify to say as an overall commander -
 3 on the 13th, I will use an example of the 13th to illustrate
 4 the one of the 16th, as an overall commander on the 16th and
 5 when I realised it was necessary, and the reasons I did
 6 explain in my statement, I did take the role of an
 7 operational command. Chairperson, with what has already
 8 been testified to the Commission, we placed completely
 9 competent, well trained commanders of POP to take the
 10 operation on the 16th, which was not the same magnitude of
 11 the one that I did on the 13th.

12 MR SHOZI: I heard you –

13 MAJOR-GENERAL MPEMBE: To give –

14 MR SHOZI: Sorry.

15 MAJOR-GENERAL MPEMBE: To give further
 16 explanation, Brigadier Calitz was on the JOC on the 13th
 17 also to receive and to guide the operation. So for me to
 18 be at the JOC, it is also to receive and to guide those
 19 that they need guidance. Chairperson, realising that
 20 Major-General Annandale was also there, hence I wanted also
 21 to fly to have a better view over the radio, together with
 22 where I will be, and I said in my testimony it could have
 23 got certain advantages.

24 MR SHOZI: You say in the following
 25 sentence that, "Later I informed General Annandale that I

<p style="text-align: right;">Page 12136</p> <p>1 wanted to fly over the area to get a view of what was 2 happening." Now you don't there say that you wanted to fly 3 over the area in order that you could direct operations 4 from the air. You say simply that you wanted to fly over 5 the area simply to get a view of what was happening. You 6 see that?</p> <p>7 MAJOR-GENERAL MPEMBE: Chairperson, my 8 role as an overall commander is very clear in terms of the 9 Standing Order, that as an overall commander I need to 10 direct the – I need to give guidance in terms of the 11 operations, getting the view, link it up with what is 12 happening, and when I have to give direction I will give 13 direction, and I still used an example of the 13th of 14 practically what I did on the same day, and on any other 15 days when there are so many spontaneous actions that I was 16 request to intervene –</p> <p>17 MR SHOZI: But that's my point precisely. 18 You were in the air for 20 minutes and you gave no guidance 19 whatsoever. Correct?</p> <p>20 MAJOR-GENERAL MPEMBE: Correct, 21 Chairperson, because there was no guidance that I, it was 22 sought from me. I had a radio and I was listening to what 23 was happening during the operation, and immediately when I 24 heard that there are bodies then I went to the JOC, and I 25 did testify to that.</p>	<p style="text-align: right;">Page 12138</p> <p>1 that there is a problem, but none, but on that day none of 2 the two happened.</p> <p>3 MR SHOZI: Would you care please to have 4 a look at paragraph 49 of your statement? You say there in 5 the third sentence, "I could see the group of people 6 dispersing from the koppie and moving in a north and north- 7 westerly direction." Do you see that?</p> <p>8 MAJOR-GENERAL MPEMBE: Correct, 9 Chairperson.</p> <p>10 MR SHOZI: Did you make any effort to 11 communicate what you were observing from the air to your 12 members on the ground or to the JOC?</p> <p>13 MAJOR-GENERAL MPEMBE: No, Chairperson, 14 because I couldn't see this as - or I couldn't view it as a 15 problem.</p> <p>16 MR SHOZI: Sorry, I didn't follow that.</p> <p>17 CHAIRPERSON: He says he didn't see it as 18 a problem. I take it you weren't in the air to give a 19 running commentary to people in the JOC as to what you 20 could see. You were there to give orders if you considered 21 it necessary, or to respond to requests for orders if those 22 - your operational commanders wished to have your 23 instructions on a particular issue. That's what you've 24 explained already.</p> <p>25 MAJOR-GENERAL MPEMBE: Correct,</p>
<p style="text-align: right;">Page 12137</p> <p>1 MR SHOZI: But why didn't you – 2 [12:14] CHAIRPERSON: Sorry, sorry, before you 3 carry on, I just want to take him a couple of steps back. 4 You said that you as the overall commander wants to know, 5 find out what's going on so you could give instructions, 6 directions. I take it that you also had to be in a 7 position to give instructions to the operational commanders 8 if they asked you for instructions. In other words you had 9 to be in a position either on your initiative to give 10 instructions if you considered it was necessary, but also 11 it was possible, I take it, that they would contact you and 12 ask for instructions, should we do this or that. So you 13 were effectively in the air, would I be correct, for two 14 reasons, to acquaint yourself with what was happening, to 15 be able either to give instructions if you considered it 16 necessary, or to be able to answer questions and respond to 17 requests for instructions from the operational commanders. 18 Would that be a fair summary of the position?</p> <p>19 MAJOR-GENERAL MPEMBE: Correct, 20 Chairperson, this is what I'm trying to say.</p> <p>21 MR SHOZI: But nothing precluded you, 22 General Mpeembe, from giving the directions whilst you were 23 in the air. Nothing precluded you from doing so, correct?</p> <p>24 MAJOR-GENERAL MPEMBE: Correct, 25 Chairperson. When direction was sought or when I heard</p>	<p style="text-align: right;">Page 12139</p> <p>1 Chairperson. Chairperson, I need -</p> <p>2 CHAIRPERSON: In the paragraph you say 3 you saw people dispersing from the koppie, moving in these 4 two directions, north and north-westerly. You also saw 5 water canons arriving at koppie 3. Did you consider it 6 necessary to give any instructions at that point?</p> <p>7 MAJOR-GENERAL MPEMBE: No, Chairperson.</p> <p>8 CHAIRPERSON: Were you asked for any 9 instructions by any of the operational commanders?</p> <p>10 MAJOR-GENERAL MPEMBE: No, Chairperson. 11 Chairperson, I need also to add, to fast-track the 12 questioning, is to say there were two helicopters; the one 13 of Colonel Vermaak specifically, it was a command post that 14 assisted the operational commander from the air to see on 15 all the sites. There was also the other one that was under 16 the direction of Brigadier Fritz, which could move a little 17 bit away and to check any other problems that the 18 operational commander could not see. So as a result of 19 that I knew that there is an assistance from the air, on 20 the ground for the operational commander. I was listening 21 to either of those if there is any other problem for my 22 intervention or those that might seek also, or sought 23 directive from me.</p> <p>24 MR SHOZI: Your evidence is that when you 25 heard Colonel Vermaak over the radio saying that there were</p>

Page 12140

1 bodies down, you then at that stage asked to be flown back
2 to the JOC, correct?
3 MAJOR-GENERAL MPEMBE: Correct,
4 Chairperson.
5 MR SHOZI: And at paragraph 53 of your
6 statement you then say the following - I beg your pardon,
7 paragraph 52. "I learnt that people had been shot and died
8 at the scene when I arrived at the JOC." Do you see that?
9 MAJOR-GENERAL MPEMBE: Correct,
10 Chairperson.
11 MR SHOZI: Why didn't you, at that stage,
12 proceed to the koppie where people had been shot and killed
13 to establish for yourself, after all you're the overall
14 commander of the operation - why didn't you proceed to the
15 koppie to establish for yourself how people had died, how
16 many had died, what the circumstances were? Why didn't you
17 do that?
18 MAJOR-GENERAL MPEMBE: Chairperson, I
19 said I had competent officers whom I have trust that they
20 will handle the situation the same as I could have handled.
21 And Chairperson, to use an example, the same thing that I
22 did on the 13th, so the same officers could have done what
23 I've done on the 13th, to handle the scene and make sure
24 that the processing of the scene is done.
25 MR SHOZI: So was it more important for

Page 12141

1 you to proceed to inspect the Marikana Police Station
2 rather than proceed to the koppie where people have just
3 died?
4 MAJOR-GENERAL MPEMBE: No, Chairperson.
5 MR SHOZI: So why didn't you go to the
6 koppie then?
7 MR NGALWANA: Chair, this line of
8 questioning assumes something, and I don't want to testify
9 from the bar but if we were in court I would have asked -
10 if we were in a trial situation I would have asked for the
11 General to be excused. But his evidence doesn't relate to
12 what our learned friend assumes. Our learned friend - well
13 I can't go further.
14 CHAIRPERSON: No well, I don't understand
15 the objection. But let him carry on, but I've got another
16 problem. Aren't you asking a question now which he
17 answered a minute or two ago? You asked him why he didn't
18 go to the koppie instead of going back to the JOC and he
19 gave an answer, didn't he? One of the things he had to do
20 was to check - if people were going to be arrested he had
21 to check whether the processing of those arrested could
22 take place, which he apparently did according to what he
23 says in paragraph 53. So he's given the answer. You can
24 ask other questions, but you mustn't repeat the same
25 questions.

Page 12142

1 MR SHOZI: General Mpeembe, why was it
2 important for you - let me ask you this. Why wouldn't you
3 send a junior constable to go and inspect the Marikana
4 Police Station? Why was it important for you personally to
5 go to the police station rather than proceed to the koppie
6 where people had just died? I don't understand that.
7 MAJOR-GENERAL MPEMBE: Chairperson, I
8 did, in my testimony to say that in the meeting of the
9 morning Brigadier Seboloke and Van Zyl were tasked and I
10 was going to confirm my taskings with them, but I still
11 repeat the answers that I have said to say I had competent
12 officers. There was a major-general there who is having
13 the same rank as myself, that is Major-General Naidoo. I
14 had Brigadier Calitz, and I've got also other brigadiers
15 that were there, same competent. I did the same scene on
16 Monday. If there was any other problem and that I was
17 available on the radio, that could have been sorted, but
18 what was more important is also the processing of those
19 that were arrested.
20 CHAIRPERSON: As I understand what you
21 say in paragraph 50, it was a question of priorities and
22 you regarded two matters as being of prior importance. One
23 was ensuring that there were medical personnel on hand to
24 attend to those who were injured, and that there was space
25 in the police cells to deal with those who hadn't been

Page 12143

1 injured but who had been or were going to be arrested.
2 Those are the two matters you regarded of the most
3 importance, you prioritised them. That's what you said in
4 paragraph 50. That's correct, isn't it?
5 MAJOR-GENERAL MPEMBE: Correct,
6 Chairperson.
7 CHAIRPERSON: Was there anything you
8 could have done in respect of those who were dead? There
9 were people on the ground dealing with the situation, but
10 could you yourself have done anything in relation to those
11 who were dead?
12 MAJOR-GENERAL MPEMBE: No, Chairperson.
13 CHAIRPERSON: As far as the injured ones
14 were concerned, the most important thing you could do was
15 to ensure that medical personnel were available to deal
16 with them, to treat them. Is that right?
17 MAJOR-GENERAL MPEMBE: Correct,
18 Chairperson.
19 MR SHOZI: When was the first time that
20 you went to the scene of the 16th of August?
21 MAJOR-GENERAL MPEMBE: Chairperson, on
22 the 16th I did not go to the scene because as, with the
23 reasons that I've been giving there was a major-general
24 there, there was brigadiers that were there and I was
25 receiving a report, the same thing that I did on the 13th.

<p style="text-align: right;">Page 12144</p> <p>1 But, Chairperson, what I can say is that I played a major 2 role, as an overall commander, as it has been put in front 3 of the Commission, that the tragedy could have been 4 averted.</p> <p>5 CHAIRPERSON: What you're being 6 questioned about now is what you did and failed to do after 7 the tragedy had happened, and what you regarded as 8 important, to make sure that the injured people were 9 treated, there were medical personnel to deal with them, 10 that those people who were arrested could be lodged and 11 processed properly and lodged in cells that were available, 12 and you also, according to your statement, took it upon 13 yourself to confirm that hospital beds were available for 14 those who needed hospitalisation. Is that right?</p> <p>15 MAJOR-GENERAL MPEMBE: Correct, 16 Chairperson.</p> <p>17 CHAIRPERSON: And you regarded it as 18 utmost importance for you as overall commander to see to it 19 that those things were in place and were being done 20 correctly.</p> <p>21 MAJOR-GENERAL MPEMBE: Correct, 22 Chairperson.</p> <p>23 MR SHOZI: General, we will argue that 24 you got your priorities wrong; that the first thing you 25 should have done, or ought to have done when you got back</p>	<p style="text-align: right;">Page 12146</p> <p>1 urgency. It's also important that those who've been 2 arrested can be processed and dealt with appropriately. As 3 a matter of police operations, isn't that the kind of 4 conduct you'd expect from an overall commander to engage 5 in, in a situation such as that in which he found himself? 6 Why must he go to the scene if he's assured that it's being 7 attended to? Admittedly he must ask if it was being 8 attended to, which he did. Once he's told it's being 9 attended to, and he relies on the people who give him the 10 confirmation, why must he go himself to check whether what 11 he's been told is correct? Surely there's no substance in 12 this. Aren't we wasting a bit of time with a non-point?</p> <p>13 MR SHOZI: Thank you, Chair. General, 14 can I then move onto my last theme, and that is the 15 Potchefstroom meeting, if I may please? To your knowledge, 16 was an agenda prepared for the Potchefstroom meeting?</p> <p>17 MAJOR-GENERAL MPEMBE: Chairperson, I 18 would take that the call-up could have served the purpose 19 of an agenda, and secondly is that there were 20 administrators that were dealing with the matters of the 21 agendas and also the minutes that were taken, which were 22 not falling under me.</p> <p>23 MR SHOZI: We know that exhibit L was the 24 end product of the Potchefstroom meeting, but were minutes 25 prepared at the end of each day during the course of the</p>
<p style="text-align: right;">Page 12145</p> <p>1 to the JOC, was to proceed to the koppie where 34 people 2 have just died, rather than proceed to the police station 3 to inspect whether or not people could be processed there. 4 Would you like to comment on that?</p> <p>5 MAJOR-GENERAL MPEMBE: Chairperson, I 6 would not agree that my priorities were wrong, but -</p> <p>7 CHAIRPERSON: Is that - sorry to 8 interrupt you, is that a valid criticism? Because what he 9 says in para 52 is this; when he got back to JOC he learnt 10 people had been shot and died at the scene. So he then 11 enquired whether the scene is being attended to and 12 Brigadier Van Zyl confirmed that it was. Brigadier 13 Pretorius confirmed that IPID had been informed, and Major- 14 General Naidoo confirmed he was taking the emergency 15 medical services based at forward holding area 1 to the 16 koppie. Now weren't those matters of utmost priority which 17 he dealt with appropriately as soon as he got to the JOC? 18 Is the criticism therefore of any substance? The important 19 point is Brigadier Van Zyl confirmed that the scene was 20 being attended to. So what was important was IPID must 21 know, because things follow from that; emergency medical 22 services must go, because if there are people who haven't 23 died they must receive treatment as soon as possible. It's 24 also important to know those who need hospitalisation, 25 there will be hospitals they can be taken to as a matter of</p>	<p style="text-align: right;">Page 12147</p> <p>1 meeting?</p> <p>2 MAJOR-GENERAL MPEMBE: Chairperson, as I 3 have indicated, I was not responsible for ensuring that the 4 minutes are taken and so on, but what I know is that 5 General Visser was responsible for all what the question is 6 being asked. Maybe he might be in a better position to 7 shed the light on that matter.</p> <p>8 MR SHOZI: And as far as you were 9 concerned, did you give a presentation regarding the events 10 of 13 August 2012 for the Potchefstroom meeting?</p> <p>11 [12:34] MAJOR-GENERAL MPEMBE: Chairperson, not 12 necessarily a presentation, but I was a participant in that 13 meeting and I did speak about the matters of the 13th, which 14 they were already being given here to the Commission.</p> <p>15 MR SHOZI: What did you say went wrong 16 with the operation of 13 August 2012?</p> <p>17 MAJOR-GENERAL MPEMBE: Chairperson, I did 18 submit my diary notes to the Commission at what precisely I 19 said there at Potchefstroom.</p> <p>20 MR SHOZI: Would you care to tell me, 21 please, what did you say went wrong with the operation of 22 13 August 2012, at the Potchefstroom meeting? I'm asking 23 you now as you sit here today, what did you tell the 24 meeting went wrong with the operation?</p> <p>25 MAJOR-GENERAL MPEMBE: Chairperson, with</p>

<p style="text-align: right;">Page 12148</p> <p>1 what went wrong, I do not understand, but what I'm saying 2 is that what I said in Potchefstroom is contained in the 3 diary notes that I have submitted – 4 CHAIRPERSON: I think counsel wants to 5 check whether what you, what exactly you said, and because 6 it has importance for various reasons. Now are you able to 7 tell us in very few short sentences what went wrong and 8 what you said at Potchefstroom went wrong? Or, I mean why 9 do you want to look into the diary? Can't you remember 10 what you said at Potchefstroom? I mean normally when you 11 ask a witness a question the witness doesn't say please 12 remind me what I said yesterday on the point so I make sure 13 I say the same story again. If you can't remember then 14 obviously you must say so, but I don't think you're saying 15 that. What counsel wants to know from you is can you tell 16 us what you told the meeting at Potchefstroom about what 17 went wrong? Just in a few short sentences. He doesn't 18 want the full story, as I understand it. Is that right? 19 MR SHOZI: Correct, Chairperson. 20 MAJOR-GENERAL MPEMBE: Chairperson, what 21 I said in Potchefstroom is contained in my statement, and 22 also in the diary that I submitted to the Commission. 23 CHAIRPERSON: Ms Pillay, can you help us 24 by telling us what the exhibit number is of the diary 25 extract?</p>	<p style="text-align: right;">Page 12150</p> <p>1 Warrant-Officer Kuhn, a teargas or any other thing, were 2 instructed to give statements, and they did give 3 statements. 4 MR SHOZI: I'm going to try for the last 5 time – 6 MAJOR-GENERAL MPEMBE: And, Chairperson – 7 COMMISSIONER HEMRAJ: By whom were they 8 requested to make the statements, General Mpeembe? 9 MAJOR-GENERAL MPEMBE: Chairperson, it's 10 – I would say through the JOCCOM that I chaired, by their 11 commanders. We instructed that every member, and it's a 12 procedure that every member that has used a teargas or who 13 has shot a firearm is expected to give a statement, and the 14 statement were discovered by the Commission. 15 COMMISSIONER HEMRAJ: Did you personally 16 ask any person at all to make statements, or was this done 17 by their immediate commanders? 18 MAJOR-GENERAL MPEMBE: Chairperson, as 19 I'm saying that normally in the JOCCOM, different 20 commanders they represent members. So I instructed the 21 commanders to make sure that any member who has used his 22 firearm, he is supposed to submit a statement. Those that 23 have used the teargas is supposed to submit a statement to 24 explain that, and those that, any other member that has 25 used that is supposed to submit statements, and the</p>
<p style="text-align: right;">Page 12149</p> <p>1 COMMISSIONER TOKOTA: In other words, 2 General, what you are saying is that you didn't give an 3 opinion or a judgment of what went wrong; all you did was 4 to relate the facts of what happened during that period? 5 MAJOR-GENERAL MPEMBE: Correct, 6 Chairperson. 7 MR SHOZI: Was Warrant-Officer Kuhn 8 present at Potchefstroom? 9 MAJOR-GENERAL MPEMBE: Correct, 10 Chairperson. 11 MR SHOZI: Did you ask him, whether 12 before or after Potchefstroom meeting, to prepare a 13 statement explaining why he fired the CS gas on 13 August 14 2012? 15 MAJOR-GENERAL MPEMBE: Chairperson, 16 according to my recollection members were requested to give 17 statements, and Warrant-Officer Kuhn is one of the members 18 that was also expected to give a statement. 19 MR SHOZI: I'm asking you, General 20 Mpeembe, as one who was in charge of the operation, did you 21 personally ask Warrant-Officer Kuhn to prepare a statement 22 explaining why he fired the CS gas on Monday, 13th of 23 August? Did you, or didn't you? 24 MAJOR-GENERAL MPEMBE: Chairperson, I 25 stated that all members that used the teargas, not only</p>	<p style="text-align: right;">Page 12151</p> <p>1 commanders, they did confirm with me that members were 2 informed and that the statements were made, and that the 3 statements were also being discovered by the Commission. 4 MS PILLAY: Chair, the diary notes are 5 HHH9, the General's diary notes. 6 CHAIRPERSON: Thank you. The copies of 7 the exhibits we have here at our table stop at HHH8. Is 8 there a copy that we can be given, please? 9 MR NGALWANA: In anticipation of the 10 Chairman's wrath, we shall endeavour to prepare a typed 11 version of this. 12 CHAIRPERSON: Yes, of course that will be 13 helpful. I did have an attempt at deciphering it myself 14 earlier, but it will make it much easier, yes. 15 MR MAHLANGU: Mr Chairperson, General 16 wants to make a request just for a few minutes. 17 CHAIRPERSON: Sorry, I was concentrating 18 on something else. Please forgive me. What do you want to 19 ask me? 20 MAJOR-GENERAL MPEMBE: Chairperson, I 21 will just ask a few minutes comfort break. 22 CHAIRPERSON: - 10 minutes. We'll 23 adjourn for 10 minutes. Sorry, I notice it's now – sorry, 24 I'm a little bit absentminded this morning. I see it's 25 quarter to 1 already. Let's take the adjournment until</p>

Page 12152

1 half past 1, the lunch adjournment, and that will give you
2 time to do what has to be done and give us chance to have
3 lunch.

4 [COMMISSION ADJOURNS COMMISSION RESUMES]
5 [13:40] CHAIRPERSON: The Commission resumes.
6 Major-General, you're still under oath.
7 WILLIAM MPEMBE: s.u.o.
8 CHAIRPERSON: Mr Shozi, you have further
9 questions in cross-examination.
10 CROSS-EXAMINATION BY MR SHOZI (CONTD.):
11 Thank you, Chair. Chair, I was practically finished when
12 we adjourned. General Mpeembe, as far as the events of the
13 16th of August, sitting here today with the benefit of
14 hindsight and having had inputs at Potchefstroom, what
15 would you say went wrong with the operation on the 16th of
16 August?
17 MAJOR-GENERAL MPEMBE: Chairperson, the
18 problems that we experienced mostly which they are already
19 mentioned in the Commission, it's the communication of the
20 radios, so if we had communication that could, many of the
21 people could have communicated, that could have assisted a
22 lot. Chairperson, the dedication of the other role players
23 could have assisted us in the sense that if by the time we
24 wanted to know who actually are the destabilisers, or the
25 people that were driving the violence, if we go their names

Page 12153

1 and where they stay we could have acted better.
2 Chairperson, the less seriousness of, from the other role
3 players to appreciate the problem that we were in, in the
4 sense that they couldn't act, or they couldn't understand
5 the problem, also the urgency of the matter, that also
6 contributed.
7 MR SHOZI: Chair, those are our
8 questions, thank you.
9 CHAIRPERSON: Thank you. Adv Masebe, are
10 you in a position to cross-examine on behalf of your
11 clients today?
12 MS MASEBE: Unfortunately not,
13 Chairperson. We are not ready to proceed. Chairperson,
14 I've obtained instructions that we need to verify certain
15 aspects, and unfortunately it only came late and that is
16 where I find myself, Chairperson, that we can't proceed at
17 this stage.
18 CHAIRPERSON: I see. Thank you. Is
19 there anybody else here who wishes to cross-examine? Mr
20 Tip?
21 MR TIP SC: Thank you, Chair. We
22 presently have no questions for the General.
23 CHAIRPERSON: What do you mean by
24 "presently"?
25 MR TIP SC: I mean that we hope that

Page 12154

1 there will be cross-examination by other parties and if
2 something arises we'll approach the Chair for leave then to
3 deal with anything that is of consequence, but all things
4 remaining equal, we will not have questions for the
5 General.
6 CHAIRPERSON: Okay, thank you. Yes, we
7 have a situation that certain parties have withdrawn
8 provisionally, dependent upon the judgment which is to be
9 delivered later this afternoon in the High Court in
10 Pretoria, and if it is in favour of the application they
11 may return, in which case they may wish to ask questions of
12 the witness. I understand that the parties concerned, if
13 the judgment is given granting the application and they
14 return, they will in any event not be able to cross-examine
15 tomorrow, and so in the circumstances it's unfortunate, but
16 we will not be able to sit tomorrow because the other
17 alternative will be for the next witness to be called, and
18 the next witness to be deposed. The next witness is
19 Lieutenant – sorry, he's now Colonel, I think, he's been
20 promoted, Colonel Scott. He is to be led by Adv Semanya,
21 who is not available tomorrow because he's taking the chair
22 at a meeting of the General Council of the Bar, of which
23 he's the chairman.
24 So in the circumstances we're in the unfortunate
25 position that we can't proceed tomorrow. We'll accordingly

Page 12155

1 have to adjourn till 9 o'clock on Monday, by which time we
2 will be in a position to proceed one way or the other,
3 depending upon what – I'm reminded that because it's
4 Monday, we'll be starting at 9:30 and not at 9. So in the
5 circumstances, I regret the fact that we lose a day because
6 a day is very precious to us, and on the other hand we have
7 received a lengthy statement from Colonel Scott and we can
8 profitably spend the day, I would imagine, tomorrow
9 studying it carefully, so that in fact no time will in
10 reality be lost because we'll be able to proceed more
11 expeditiously with Colonel Scott's evidence. So we will
12 adjourn now until 9:30 on Monday morning.
13 MR NGALWANA: Chair –
14 CHAIRPERSON: Mr Ngalwana, do you wish to
15 say something?
16 MR NGALWANA: Just two things. I
17 understood the HRC, while they have hopped off the bus,
18 they've hopped back on again. So I'm not sure if they were
19 not intending – I understood the HRC were back –
20 CHAIRPERSON: Yes, sorry. Yes, thank you
21 for reminding me. I was informed this morning that the HRC
22 are continuing with their participation; in fact, they told
23 us here in the Commission, but that will be irrespective of
24 which way the judgment goes in the High Court this
25 afternoon, but unfortunately their counsel was due to

1 cross-examine at the end after other parties had cross-
 2 examined, and it wasn't foreseeable that she'll be called
 3 upon to cross-examine tomorrow and she will only be
 4 available on Monday. So that's another factor that I
 5 should have mentioned. Seeing you've reminded me that I
 6 must give you chance to say something, have you got
 7 anything further to tell us about the two matters that were
 8 referred to earlier?

9 MR NGALWANA: Yes, I did say there were
 10 two aspects I wanted to address the Chair on. The first
 11 I've already done. The other one is a two-pronged one,
 12 which I'm about to address now. Chair, with regards to the
 13 Moolman affidavit, we do have it; it has been prepared but
 14 it hasn't been signed yet. So we can circulate and hand
 15 out the signed version, we were hoping to do that tomorrow;
 16 inasmuch as we're not sitting we can do it on Monday, or it
 17 can be done before then. So it can be distributed any time
 18 between now and Monday. That's the first point.

19 The second point in relation to the existence or
 20 otherwise of the minutes of the 14th, well the person who
 21 was tasked with that task – excuse my tautology, if it is
 22 one – was not apparently given that task timeously and has
 23 now been declared to be unfit to do certain things because
 24 he's indisposed, and so that task has now been conveyed to
 25 him, or given to him to prepare an affidavit, which will be

1 submitted in the course of Monday, because he's ill. So he
 2 has been – I think that has been conveyed to him and he
 3 will prepare the affidavit, which will be circulated on
 4 Monday.

5 CHAIRPERSON: Well, perhaps we can wish
 6 him a speedy recovery and look forward to his affidavit on
 7 Monday. Anyone else wish to say anything before we
 8 adjourn? Well, we'll adjourn then until Monday morning at
 9 9:30.

10 [COMMISSION ADJOURNED]

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			B	
			Ba 12077:21 12078:12 12078:13 back 12085:9 12100:24 12111:22 12118:12 12118:23 12137:3 12140:1 12141:18 12144:25 12145:9 12155:18,19 Bapo 12077:21 12078:12,13 bar 12119:24 12141:9 12154:22 based 12084:15 12108:22 12145:15 basis 12078:25 12132:22 bear 12120:20 beds 12144:13 beg 12091:19 12101:3 12125:20 12140:6 began 12099:13,20 12102:14 beginning 12132:19 behalf 12090:13 12092:15,16 12107:17 12124:13 12153:10 believe 12079:2 12112:14 12115:3 believed 12087:10 12115:3 benefit 12084:1 12111:9 12121:8,15 12122:24 12124:3 12152:13 better 12087:24 12089:10 12135:21 12147:6 12153:1 beyond 12129:14,20 bit 12111:13 12116:12 12139:17 12146:12 12151:24 Blaauw 12094:21 12102:9,17 12103:3 12103:14,17,22,24 12104:3,4,6,12,13,20 12105:8,22 12106:3 12117:1,9,12,17 Blaauw's 12102:21,23 bodies 12085:8 12096:1 12136:24 12140:1 break 12116:24 12151:21 brevity 12120:20 briefed 12081:25 12082:15 briefly 12095:13 Brigadier 12085:1,11 12087:12,21	

12088:22 12101:15 12133:6,9,10,14 12135:16 12139:16 12142:9,14 12145:12 12145:12,19 brigadiers 12133:13 12142:14 12143:24 bring 12081:7 Burger 12090:13 12091:1,2 12110:18 bus 12155:17 busy 12116:21	12153:14 12154:7 12156:23 chair 12076:21 12077:16 12084:2,11 12091:2,5,6,9,14,23 12092:9 12094:17 12097:24 12098:11 12098:14,21 12102:1 12107:3,9 12108:2 12109:9,12 12110:5 12111:11 12116:23 12116:24 12117:19 12117:23 12119:17 12119:18 12120:24 12129:21 12130:21 12132:16,24 12141:7 12146:13 12151:4 12152:11,11 12153:7 12153:21 12154:2,21 12155:13 12156:10 12156:12 chaired 12150:10 chairman 12087:1 12088:16 12154:23 Chairman's 12151:10 chambers 12076:4 chance 12086:23 12152:2 12156:6 charge 12080:20 12133:10,11 12149:20 check 12139:17 12141:20,21 12146:10 12148:5 chopper 12084:21 12085:5 circulate 12156:14 circulated 12157:3 circumstances 12140:16 12154:15 12154:24 12155:5 CJOC 12100:6,8,10,21 12101:13 12126:13 12126:14,18 12127:2 12127:8,22 12129:5,8 12134:15 clarity 12099:5 clause 12126:4,4,9,12 12126:25 12127:1,21 12129:10 clear 12081:20 12089:19 12095:16 12095:20 12102:14 12102:15 12103:13 12105:4 12108:11 12109:1 12115:18 12117:5 12128:23 12129:14 12130:23 12132:14 12136:8 clearing 12108:17 clearly 12097:4 12124:11 client 12078:9 clients 12122:12 12153:11 climb 12119:3,4	colleague 12103:19 colleagues 12091:10 12100:1 Colonel 12095:25 12133:15 12139:13 12139:25 12154:19 12154:20 12155:7,11 combination 12127:18 come 12102:4,9 12104:7,24 12115:24 12121:23 12123:5 12124:7 comes 12090:9 12110:21 12119:10 12127:24 12135:1 comfort 12151:21 command 12126:21 12127:22 12129:5,14 12131:12 12134:25 12135:7 12139:13 commander 12085:2 12087:4,6,6 12088:22 12088:23,25 12089:3 12089:4,8,9,10 12090:7 12095:11,12 12100:4,5,9,11,14,15 12100:20,21 12101:12,13,16 12125:7,8,8,10,15 12126:19 12129:1,7,9 12129:11,15,19 12131:5,7,8,10,19 12133:7,9 12134:10 12134:15,23 12135:1 12135:2,4 12136:8,9 12137:4 12139:14,18 12139:20 12140:14 12144:2,18 12146:4 commanders 12133:12 12133:17 12135:9 12137:7,17 12138:22 12139:9 12150:11,17 12150:20,21 12151:1 commencement 12092:21 comment 12102:25 12145:4 commentary 12138:19 Commission 12076:20 12076:22 12077:2 12090:5,6 12091:6 12092:22 12093:3,9 12114:24 12116:15 12116:15,16 12128:13 12135:8 12144:3 12147:14,18 12148:22 12150:14 12151:3 12152:4,4,5 12152:19 12155:23 12157:10 commissioner 12082:1 12082:15 12085:14 12085:16,23 12086:8 12086:21 12096:13 12096:17,21,24,25 12100:1,25 12101:4	12101:10 12103:20 12109:19,25 12118:2 12118:20,22 12125:18,21 12126:20,21 12127:7 12149:1 12150:7,15 Commissioners 12081:13 12090:11 12091:10 12119:19 12120:5 Commission's 12076:25 communicate 12096:9 12114:20 12125:1 12138:11 communicated 12152:21 communicating 12102:16 communication 12106:18 12152:19 12152:20 competent 12127:20 12135:9 12140:19 12142:11,15 completed 12113:5 completely 12135:8 comply 12117:9 conceded 12119:20 concentrating 12151:17 concerned 12077:5 12143:14 12147:9 12154:12 conciseness 12120:21 concurring 12133:3 conditions 12113:1 conduct 12089:19 12146:4 confess 12099:1 12107:22 confident 12082:23 12083:4 12091:24 confine 12091:12 confirm 12076:23 12088:18 12142:10 12144:13 12151:1 confirmation 12146:10 confirmed 12081:21 12145:12,13,14,19 confront 12123:14 confusion 12082:5,17 12082:24 12083:3,5 consecutive 12079:4 consequence 12154:3 consider 12087:12,17 12139:5 considerably 12079:3 considered 12089:16 12137:10,15 12138:20 constable 12142:3 constitutional 12077:1 contact 12085:12 12087:11,15,18 12089:16 12137:11	contacted 12089:13,13 contacting 12087:12,17 contained 12148:2,21 CONTD 12086:25 12118:1 12152:10 context 12118:23 continue 12116:8 continued 12077:7,11 continuing 12080:24 12155:22 contradicts 12101:6 contribute 12130:19 contributed 12134:22 12153:6 contribution 12134:17 control 12128:9 12134:24 conversant 12127:8 convey 12108:1 12123:6 12124:7 conveyed 12124:8 12156:24 12157:2 copies 12091:18 12109:22 12151:6 copy 12091:20 12109:20 12151:8 cordon 12079:14 12085:17,24 12086:20 corrected 12103:11 correctly 12084:17 12104:14 12122:23 12131:17 12144:20 couldn't 12083:21 12085:6 12097:13 12109:25 12131:17 12138:14,14 12153:4 12153:4 Council 12154:22 counsel 12090:21 12101:22 12109:22 12119:22,23 12148:4 12148:15 12155:25 couple 12137:3 course 12077:2 12091:18 12092:2 12117:2 12120:3 12122:23 12124:6,18 12128:14,25 12130:15 12146:25 12151:12 12157:1 court 12077:24 12141:9 12154:9 12155:24 cover 12122:20 criticism 12095:4 12107:10 12145:8,18 cross 12156:1 cross-examination 12079:10 12081:8,10 12083:10 12086:24 12086:25 12090:14 12091:11 12092:17 12118:1 12152:9,10 12154:1 cross-examinations
C				
Calitz 12085:1,11 12087:12,21 12088:22 12101:15 12133:6,14 12135:16 12142:14 call 12123:25 12128:9 12131:7 called 12124:1 12154:17 12156:2 call-up 12146:18 canons 12139:5 canvassed 12125:21 can't 12097:5 12119:11 12120:23 12133:1 12141:13 12148:9,13 12153:16 12154:25 capacity 12095:11 12101:13 12125:7,14 Captain 12090:18 12102:4 care 12086:23 12093:2 12126:3,11 12138:3 12147:20 carefully 12130:2 12132:17 12155:9 carry 12113:3 12133:5 12137:3 12141:15 CAS 12079:24 12085:20 12086:3,6 case 12108:3 12122:18 12122:21 12154:11 CAS107 12080:20 CAS118 12086:6 CAS118/8/2012 12079:21 CAS119 12079:23 CAS121 12080:18 CAS134 12080:13 CAS135 12080:8 CAS136 12080:5 CAS139 12080:11 caused 12082:17 cell 12085:12 12087:7 12087:10,13,18 12089:5 12142:25 cells 12144:11 centre 12101:8,12 12126:19 certain 12090:18 12093:17,18,18 12131:18 12135:23				

12130:4 cross-examine 12091:7 12153:10,19 12154:14 12156:1,3 cross-examiner 12090:13 cross-examining 12109:22 CS 12149:13,22	described 12113:20 designated 12126:20 12127:8,23 destabilisers 12152:24 detail 12130:15 detect 12085:6 diary 12147:18 12148:3,9,22,24 12151:4,5 didn't 12083:11,16 12086:13 12090:18 12091:8,16 12103:15 12106:17 12107:9 12109:25 12110:4 12117:4,10,15 12123:3,5 12124:5,9 12132:2,6 12137:1 12138:16,17 12140:11,14,16 12141:5,17,19 12149:2,23 died 12140:7,15,16 12141:3 12142:6 12145:2,10,23 difference 12122:2 12124:24 different 12102:22 12114:5 12119:9 12121:22 12133:12 12150:19 differently 12108:10 12125:2 difficulty 12120:8 direct 12136:3,10 direction 12088:23,24 12088:25 12130:18 12130:22 12136:12 12136:13 12137:25 12138:7 12139:16 directions 12137:6,22 12139:4 directive 12139:23 directly 12084:15 12101:6 disarmed 12111:22 discover 12101:23 discovered 12150:14 12151:3 discuss 12111:19 discussing 12111:24 discussion 12113:18 discussions 12113:8,17 dispersal 12084:24 dispersing 12138:6 12139:3 dispute 12129:20 distinct 12089:12 distributed 12156:17 divisional 12126:20 12127:7 dockets 12079:20 12080:4,22 12086:11 document 12091:14,18 12092:1,10 12118:19 12126:7 12127:1 documents 12091:10	12091:13 doesn't 12104:16 12108:13,15 12109:20 12120:3,16 12128:25 12129:13 12129:19 12141:11 12148:11,17 doing 12115:17 12117:1 12128:12 12133:2 12137:23 don't 12077:25 12084:8 12092:3 12093:13 12096:14 12105:7 12107:3 12108:1 12120:19 12122:19 12123:20 12123:21 12129:3 12130:13,16 12132:21 12133:4 12136:2 12141:8,14 12142:6 12148:14 door 12132:3 double 12079:6 doubt 12129:15 draw 12092:5 drawing 12101:1 drawn 12093:16,22 drew 12093:3,8 12094:11 driving 12152:25 due 12077:8 12091:18 12117:2 12155:25	enquired 12145:11 ensure 12127:7 12143:15 ensuring 12142:23 12147:3 entertained 12119:9 entitled 12120:15 environment 12111:17 equal 12154:4 escapes 12119:25 escort 12115:21 12121:5 escorted 12114:20 essentially 12096:8 establish 12140:13,15 established 12101:9 esteemed 12081:13 estimation 12121:17 event 12103:21 12120:12,12 12154:14 events 12095:9,13 12099:13,20 12102:22,23 12125:4 12147:9 12152:12 evidence 12079:6 12082:19 12083:3 12084:3,4 12085:16 12085:24 12086:9 12087:2 12088:3 12093:19,25 12094:12,13,15 12095:17 12097:13 12097:20 12100:9,14 12100:16 12102:2 12103:5,12 12105:24 12107:4,24,24 12108:3 12117:15,16 12119:24 12120:14 12120:15,16,21 12126:7 12130:11 12139:24 12141:11 12155:11 evidence-in-chief 12093:6 12132:18,22 exactly 12096:13,15 12112:18 12148:5 examined 12156:2 example 12089:24 12135:3 12136:13 12140:21 excuse 12156:21 excused 12141:11 exercise 12094:4 12131:7 exhibit 12103:9 12104:9 12109:11 12115:14,16,25 12118:5,7 12125:24 12126:5 12133:22 12146:23 12148:24 exhibits 12091:15 12114:23 12151:7 existed 12082:24 existence 12156:19 expect 12101:22,24	12120:23 12146:4 expected 12112:6 12149:18 12150:13 expeditiously 12155:11 experience 12108:22 12119:5 12127:19 experienced 12152:18 experiencing 12089:11 expert 12120:9 explain 12082:6 12083:12 12104:19 12135:6 12150:24 explained 12108:12 12123:21 12138:24 explaining 12149:13,22 explanation 12134:21 12135:16 explore 12094:19 12095:3,8 12108:16 explored 12120:1 exploring 12108:7 12118:3 extensively 12132:18 extent 12098:21 extract 12148:25 eye 12118:17,17,18 E-L-S-O-N 12078:8
				F
				fact 12076:23 12077:5 12099:24 12102:24 12105:24 12106:7,10 12106:14,16,20 12107:1,11 12113:7 12129:10 12155:5,9 12155:22 factor 12156:4 facts 12149:4 failed 12144:6 fair 12120:19 12137:18 falling 12146:22 Fanagalo 12094:24 12102:16,17,25 12103:3 12105:23,25 12106:9,11,15,17 12117:8 far 12091:12 12117:13 12120:6 12143:13 12147:8 12152:12 fast-track 12139:11 favour 12097:1 12133:4 12154:10 feasible 12079:2 Feb 12109:13,16 feedback 12123:13 file 12126:7 find 12083:14,18 12137:5 12153:16 finished 12152:11 firearm 12080:7 12150:13,22 firearms 12080:8,11 fired 12149:13,22 first 12091:6 12094:20 12097:22 12098:19 12099:19 12103:8
				E
		earlier 12085:17,18,23 12085:24 12094:12 12111:13 12122:24 12125:5 12151:14 12156:8 earnest 12099:20 easier 12151:14 effect 12091:8 12096:8 effectively 12107:23 12131:22,25 12137:13 effort 12138:10 efforts 12114:1 either 12076:7 12088:24 12113:21 12137:9,15 12139:21 elapse 12083:23 electricity 12087:22 Elson 12078:7 emanates 12092:23 emergency 12145:14 12145:21 emphasis 12121:10 employed 12119:8 employees 12111:16,18 12111:25 endeavour 12151:10 engage 12110:20,22 12111:16 12122:13 12146:4 engaging 12107:13 enhanced 12106:21		
				D
date 12080:15 day 12106:14 12109:18 12117:10,11 12121:3 12121:5 12124:15,23 12136:14 12138:1 12146:25 12155:5,6,8 days 12108:23 12130:6 12130:10,11 12136:15 dead 12143:8,11 deal 12095:13 12103:8 12120:15,16 12122:19 12125:5 12129:13 12142:25 12143:15 12144:9 12154:3 dealing 12143:9 12146:20 deals 12127:1 dealt 12117:6 12122:4 12122:17 12129:7 12130:4,6 12145:17 12146:2 debate 12116:8 12119:8 12122:6 debated 12098:8 debating 12122:5 decided 12083:13,17 12089:14 deciphering 12151:13 decision 12081:14,21 12081:23,25 12082:13,14,15 declared 12156:23 dedication 12152:22 deeply 12077:5 define 12129:1 defined 12126:18 definition 12126:9,12 12126:13 definitions 12126:4 delegated 12113:22 delegates 12113:21 12114:19 delivered 12077:8 12154:9 demand 12107:2 demands 12095:7 denied 12117:17 dependent 12077:8 12154:8 depending 12155:3 deposed 12154:18 deputy 12131:5,6,25 12134:15				

<p>12144:24 12156:10 12156:18 firsthand 12089:11 firstly 12084:21 fit 12104:17 flown 12095:20 12140:1 fly 12134:4 12135:21 12136:1,2,4 follow 12101:19 12107:21 12111:10 12117:4 12138:16 12145:21 following 12106:14 12110:17 12114:6 12119:2,13 12134:2 12135:24 12140:6 follows 12111:15 follow-up 12086:19 forces 12096:10 foreseeable 12156:2 forgive 12151:18 forgotten 12103:12 form 12096:12,20 forms 12096:22 formulated 12108:10 12108:11 forward 12115:24 12133:8,13 12145:15 12157:6 found 12146:5 four 12080:18 12094:19 friend 12091:2 12110:8 12119:19 12129:23 12130:1 12132:17 12141:12,12 Fritz 12133:10 12139:16 front 12084:16 12088:10,18 12089:20 12090:5 12109:16 12110:12 12115:14 12118:8,10 12128:12 12144:2 fruitfully 12122:17 full 12148:18 function 12089:8 12100:15 functions 12089:8 further 12082:20 12090:10 12108:1,15 12116:20,22 12135:15 12141:13 12152:8 12156:7</p> <hr/> <p style="text-align: center;">G</p> <hr/> <p>gained 12096:3 12098:16 gas 12149:13,22 Gauteng 12077:24 general 12079:7 12084:3 12085:17 12087:1,13 12089:11 12089:20,21 12090:5 12091:3,7 12092:17</p>	<p>12094:15,18 12095:15 12099:12 12100:8,13 12102:2 12105:21 12106:7,24 12107:13 12109:10 12109:13 12110:12 12111:14 12112:5 12114:4 12115:12 12118:2 12119:12,20 12121:16 12122:23 12125:3,23 12126:12 12126:15 12130:23 12131:6 12133:21 12134:3,6 12135:25 12137:22 12141:11 12142:1 12144:23 12145:14 12146:13 12147:5 12149:2,19 12150:8 12151:15 12152:12 12153:22 12154:5,22 Generally 12109:21 General's 12151:5 getting 12136:11 GGG12 12088:10,15 12100:13 12101:1,2 12103:10 12104:9 12125:14 12133:20 12133:22 give 12076:6 12083:12 12084:23 12088:13 12088:23 12092:4 12107:7 12108:19 12112:12 12114:21 12115:7 12123:13 12135:13,15 12136:10,12,12 12137:5,7,9,15 12138:18,20 12139:6 12146:9 12147:9 12149:2,16,18 12150:2,2,13 12152:1 12152:2 12156:6 given 12085:1,13,20 12091:20 12094:5,16 12120:14 12126:7 12133:4 12134:25 12141:23 12147:14 12151:8 12154:13 12156:22,25 giving 12086:23 12089:23 12119:24 12133:3 12137:22 12143:23 go 12081:14,25 12082:13,14 12084:21 12085:9 12094:6 12107:5 12108:13,20 12109:16 12110:22 12112:7 12114:25 12115:8 12118:11,18 12118:23 12119:7,21 12123:10 12141:5,13 12141:18 12142:3,5 12143:22 12145:22</p>	<p>12146:6,10 12152:25 gobona 12121:11 goes 12104:15 12108:14 12129:11 12129:17 12155:24 going 12080:23 12087:1,3 12089:1 12090:13 12095:12 12098:5 12121:12,13 12123:16 12130:17 12130:17,22 12137:5 12141:18,20 12142:10 12143:1 12150:4 good 12092:18,19 12112:12 granting 12154:13 grievances 12114:22 12119:9 12121:14 ground 12083:15,17,18 12083:21 12085:4 12089:11 12090:9 12096:9 12097:14 12099:3 12108:23 12113:13 12115:19 12138:12 12139:20 12143:9 group 12100:23 12102:3 12138:5 guidance 12089:6,7 12119:18 12129:25 12135:19 12136:10 12136:18,21 guide 12135:17,18 guys 12119:11 Gwala 12110:21</p> <hr/> <p style="text-align: center;">H</p> <hr/> <p>hadn't 12142:25 half 12125:19,22 12152:1 hand 12091:19 12142:23 12155:6 12156:14 handle 12140:20,23 handled 12125:18 12140:20 hands 12116:10 happen 12089:6 12132:2,6 happened 12079:24 12084:5 12099:24 12116:1 12121:10 12128:24 12131:16 12131:25 12132:1,2,5 12138:2 12144:7 12149:4 happening 12083:15,17 12083:18,21 12084:22 12095:21 12133:25 12134:4 12136:2,5,12,23 12137:14 happily 12092:7 happy 12098:16 12121:25</p>	<p>HARDY 12076:21 12077:16 hasn't 12156:14 haven't 12091:23 12111:9 12145:22 Head 12133:8 hear 12084:25 12085:5 12099:5 12124:4 heard 12085:7 12095:25 12097:8,20 12099:2,9 12135:12 12136:24 12137:25 12139:25 held 12109:2 helicopter 12083:14,16 12083:22 12088:20 12097:9,10,15,21 12099:4,7 helicopters 12139:12 help 12112:16,18 12115:18 12123:11 12129:13,19 12148:23 helped 12115:11 12116:1 12124:3 helpful 12098:18 12151:13 Hemraj 12082:16 12085:15,16,23 12086:8,21 12096:13 12096:17,21,24,25 12100:25 12101:4 12103:20 12109:19 12109:25 12117:16 12118:2,20,23 12125:18,21 12150:7 12150:15 Hendrik 12102:9,21,22 12116:25 he'll 12131:21 he's 12076:4 12078:21 12097:16 12120:14 12121:20,20,22 12122:7,7,11 12129:17 12132:20 12141:23 12146:6,8 12146:11 12154:19 12154:19,21,23 12156:24 12157:1 HHH3 12088:11,16 HHH8 12151:7 HHH9 12151:5 high 12096:8,9,11,11 12096:12,18,19,19,20 12096:22 12097:13 12097:14,18 12154:9 12155:24 hindsight 12121:9,15 12122:25 12124:3 12152:14 holding 12133:9,13 12145:15 hope 12153:25 hoping 12156:15 hopped 12155:17,18 hospital 12144:13</p>	<p>hospitalisation 12144:14 12145:24 hospitals 12145:25 hostis 12122:13 hour 12125:19,22 HRC 12155:17,19,21 Human 12076:19,22</p> <hr/> <p style="text-align: center;">I</p> <hr/> <p>idea 12124:18 identification 12123:12 identify 12094:6 12131:15,21 12132:10 ill 12157:1 illustrate 12135:3 imagine 12155:8 immediate 12150:17 immediately 12123:9 12123:13 12136:23 Impala 12119:6 implementation 12133:25 12134:18 implemented 12134:8 importance 12077:3 12142:22 12143:3 12144:18 12148:6 important 12077:1 12110:21 12119:10 12127:24 12140:25 12142:2,4,18 12143:14 12144:8 12145:18,20,24 12146:1 impression 12089:12 12089:17 12096:3 12097:11 12098:15 12107:22 improper 12098:4 imprudent 12114:6 12119:13 inability 12106:16 inasmuch 12120:1 12156:16 Inaudible 12082:10 included 12113:18,19 including 12086:6 12114:18 12128:8 12131:11 incorrect 12101:23,24 incorrectly 12105:8 incubate 12133:1 indebted 12118:2 12120:25 indicate 12086:13,14 12091:9 12092:9 indicated 12084:24 12085:10 12127:18 12131:4 12147:3 indicates 12101:16 indication 12077:10,12 indisposed 12156:24 individual 12131:11 inform 12089:4 information 12079:11 12079:12,15</p>
--	---	---	---	---

12080:22,23 12081:3 12086:1,12,13,15,18 12086:19 12090:19 informed 12087:5 12092:10,12 12134:3 12135:25 12145:13 12151:2 12155:21 initially 12078:25 12107:22 initiative 12137:9 injured 12142:24 12143:1,13 12144:8 innuendo 12098:9,19 12098:22 inputs 12152:14 inside 12124:8 insinuation 12098:4,6 insofar 12098:19 inspect 12141:1 12142:3 12145:3 instructed 12100:21 12129:23 12150:2,11 12150:20 instruction 12090:23 instructions 12076:12 12077:20 12084:25 12090:15 12137:5,7,8 12137:10,12,15,17 12138:23 12139:6,9 12153:14 intended 12107:25 intending 12155:19 interact 12102:14 interacting 12124:13 interaction 12094:20 12094:22 interested 12120:5 interim 12101:8 interpret 12103:7 12104:20 interpreter 12094:24 12102:25 12103:3,14 12103:15,16,18,23 12104:2,4,6,7,13,14 12104:24,25 12105:9 12105:24,25 12106:1 12106:4,9,11,13,15 12106:17 12117:8,18 interrupt 12093:15 12145:8 intervene 12136:16 intervention 12133:11 12139:22 interviews 12076:4 investigation 12080:24 invite 12123:5 12124:6 12133:19 inviting 12115:23 involvement 12099:19 12099:20 IPID 12145:13,20 irrespective 12155:23 isn't 12086:4 12092:14 12101:18 12129:20 12132:21 12143:4 12146:3	issue 12111:20 12125:22 12138:23 issues 12111:24 12128:24 it's 12076:9 12079:21 12080:11,12,16,17,18 12081:21,24 12082:6 12082:7,7 12083:10 12084:11 12091:14 12091:15,25 12093:10 12096:14 12097:15 12100:12 12104:9 12105:4,12 12107:3,10,16 12110:1,11 12112:12 12116:6 12118:24 12119:9,17,18,22 12120:1,17 12122:3,3 12122:15,16,20 12126:6 12129:4,14 12130:18 12145:23 12146:1,6,8 12150:9 12150:11 12151:23 12151:24 12152:19 12154:15 12155:3 I'd 12103:12 12108:18 12131:5 I'll 12111:8 12114:17 12130:18 I've 12103:4 12109:15 12128:18 12131:4 12132:13 12133:4 12140:23 12141:15 12142:14 12143:23 12153:14 12156:11 i.e 12094:23	K	Karee 12100:23 keen 12132:11 keep 12087:4 12118:17 Kgaka 12077:17,19 12078:4,7,7,8,11,18 killed 12096:3 12140:12 kind 12078:23 12146:3 knew 12139:19 know 12083:16 12087:22 12090:22 12102:2,8 12107:25 12112:17,21 12120:6 12130:13,16 12132:11 12137:4 12145:21,24 12146:23 12147:4 12148:15 12152:24 knowing 12087:20,24 12124:12 knowledge 12146:15 knowledgeable 12115:7 known 12111:16 knows 12092:13,14 koppie 12100:24 12107:1,12 12108:14 12108:20 12110:23 12110:24 12112:7 12113:23 12114:8,13 12114:15 12115:23 12118:4 12119:4,15 12119:21 12121:18 12121:22 12122:14 12123:22 12124:7 12134:7,10 12138:6 12139:3,5 12140:12 12140:15 12141:2,6 12141:18 12142:5 12145:1,16 Kuhn 12149:7,17,21 12150:1 Kwadi 12114:19 12124:12,13,14,15,19 K-G-A-K-A 12078:8	12132:16 12141:12 12141:12 learnt 12091:6 12140:7 12145:9 leave 12083:14 12091:19 12099:14 12119:7 12131:18 12154:2 led 12086:15 12154:20 left 12083:19 12103:21 12117:14,21 legal 12102:5 legislation 12127:9 lengthy 12155:7 Let's 12098:7 12133:5 12151:25 liberty 12091:17 Lieutenant 12154:19 Lieutenant-Colonel 12085:7 12133:14 Lieutenant-General 12101:10,11 light 12077:9 12147:7 line 12077:1 12081:19 12081:19 12082:8,12 12082:12,12 12097:24 12099:10 12102:4 12105:5 12109:11 12110:11 12110:11,12 12111:14 12117:9 12118:22 12119:1,2 12119:20,25 12120:17 12123:10 12141:7 lines 12081:18,20 12082:8 12087:22 12098:8 12110:9 12111:13 12118:20 link 12084:22 12136:11 linked 12085:6 listening 12136:22 12139:20 little 12139:16 12151:24 lodged 12144:10,11 long 12086:23 Lonmin 12090:14 12094:21 12095:4,4 12101:9 12102:9 12103:17,18 12104:12,14,15 12105:8,9,23,24 12106:4,5,8 12107:1 12107:5,11,14 12108:13,19,20 12109:1 12110:20,24 12111:3,14,21 12112:7,11,13,13,25 12113:18,19 12114:7 12114:13 12115:19 12117:12,16 12118:4 12119:14,21 12120:11 12121:4,23 12123:17,23 12124:1 12124:2,7,22	Lonmin's 12111:6 12118:13 12123:4 look 12092:4 12093:25 12104:8 12118:7 12120:9 12121:25 12125:24 12126:4,11 12133:19 12138:4 12148:9 12157:6 looked 12109:6 looking 12109:10 12118:5 lose 12155:5 lost 12155:10 lot 12152:22 loudhailer 12115:23 lunch 12152:1,3 lying 12085:8
		L			
	J		M		
	Ja 12110:17 JOC 12076:7 12083:14 12083:18,22,23 12085:9 12088:22,24 12089:4 12095:11 12100:4,14 12125:8 12125:10 12126:21 12131:7,24 12132:1,2 12134:3,6,6,12,12,15 12134:17,18 12135:16,18 12136:24 12138:12 12138:19 12140:2,8 12141:18 12145:1,9 12145:17 JOCCOM 12150:10,19 joint 12101:8,12 12126:19 Judge 12082:16 judgment 12077:8,9 12133:3 12149:3 12154:8,13 12155:24 JULY 12076:1 June 12092:24 12095:17 junior 12142:3 juxtaposed 12097:19	Madlangu 12079:9 12081:9,22 12082:7 12083:9,20 12084:7 12084:15 12086:22 12086:25 12087:16 12088:9,15,19 12089:21,25 12090:10 12093:17 12093:22 12094:11 12130:6,11,18,22 magnitude 12135:10 Mahlangu 12103:7 12113:3,4 12151:15 main 12133:20 maintaining 12120:9 major 12079:6 12131:5 12144:1 12145:13 Makhubela 12133:15 making 12089:16 12109:24 12111:10 12119:24 12129:12 management 12103:15 12103:25 12111:15 12119:21 12123:11 12123:18 12128:11 mandate 12077:1 marchers 12103:19 12104:16,23 12105:10 12106:6 12117:13 12123:10 marching 12100:23 Marikana 12079:21,23 12080:5,8,10,13,17 12080:19 12085:20 12099:13,20 12101:14 12128:6 12141:1 12142:3 Masebe 12153:9,12 Mathibedi 12076:4,6 Mathunjwa 12114:24 matter 12085:3 12090:23 12095:15 12096:15 12103:9 12108:8 12117:21 12122:4,5,16 12123:16 12145:25 12146:3 12147:7			

<p>12153:5 matters 12076:3 12134:21 12142:22 12143:2 12145:16 12146:20 12147:13 12156:7 Mbombo 12101:10,11 mean 12088:1,2 12089:6 12096:11 12107:19 12112:18 12112:22 12120:6 12129:13 12148:8,10 12153:23,25 Meaning 12126:19 means 12119:4 meant 12096:12,18,19 12098:14 12105:10 12112:17 12124:19 medical 12142:23 12143:15 12144:9 12145:15,21 meet 12111:18,23 12122:1 meeting 12076:8 12090:16 12095:14 12109:2 12111:24 12112:10 12123:16 12124:11 12142:8 12146:15,16,24 12147:1,10,13,22,24 12148:16 12149:12 12154:22 member 12133:8 12150:11,12,21,24 members 12091:5 12106:5 12119:5 12123:14 12131:11 12138:12 12149:16 12149:17,25 12150:20 12151:1 mention 12081:9 12090:17 mentioned 12093:23 12114:23 12131:23 12152:19 12156:5 merriment 12098:10 middle 12133:25 mind 12113:13 12120:20 12130:25 12131:1 12133:18 mine 12100:24 12101:9 12104:22 12115:3 12121:6 12123:10 minute 12119:3,4 12141:17 minutes 12076:7 12083:19,23 12088:21 12090:16 12136:18 12146:21 12146:24 12147:4 12151:16,21,22,23 12156:20 misprint 12103:10,21 12105:14 misunderstood 12093:23 12107:24</p>	<p>mobile 12088:5 Mogale 12077:21 12078:12,13 Mokwena 12109:1,4 12111:2,6,12 12118:12 12123:4 12124:12,14 Mokwena's 12111:5 12123:18 moment 12077:21 12079:5 12122:8,12 12129:13 12134:5 Monday 12081:8 12094:16,21 12099:21,25 12101:7 12125:9 12130:11 12142:16 12149:22 12155:1,4,12 12156:4 12156:16,18 12157:1 12157:4,7,8 month 12080:1 Moolman 12090:18 12102:4 12156:13 morning 12091:21 12092:11,18,19,22 12093:9,21 12094:19 12100:3 12106:10 12142:9 12151:24 12155:12,21 12157:8 mountain 12095:6 12107:5 12111:18 12119:7 12124:16 mountains 12087:23 mouth 12105:7 move 12098:16 12106:23 12120:23 12125:3 12139:16 12146:14 moving 12099:10 12101:2,4 12138:6 12139:3 Mpofu 12107:16 12108:16 12109:7,8 12110:16 murder 12079:21,24 12080:9,18,20 mustn't 12122:6 12141:24</p> <hr/> <p style="text-align: center;">N</p> <hr/> <p>Naidoo 12101:11 12133:8 12142:13 12145:14 name 12078:7 names 12080:25 12152:25 National 12133:11 nausea 12130:14 nauseam 12130:12 near 12117:8,8 necessarily 12147:12 necessary 12087:4 12135:5 12137:10,16 12138:21 12139:6 need 12077:12 12103:14 12115:10</p>	<p>12120:20 12123:15 12124:14 12135:19 12136:9,10 12139:1 12139:11 12145:24 12153:14 needed 12103:16 12144:14 negotiate 12095:6 12103:15,19 12104:1 12104:16,22,24 12105:1,1,10 12106:5 12107:1,5,12 12108:14,21 12110:24 12112:7 12113:1 12114:7,14 12114:22 12115:5,9 12117:13 12118:5 12119:11,14,22 12121:13,25 negotiated 12107:14 12123:22 negotiation 12104:2 12121:3 negotiations 12118:13 12121:17,21 12122:13 Neither 12088:25 never 12102:24 12124:19,19 new 12130:19 Ngalwana 12076:5,5,9 12076:12,16 12081:17 12084:2,11 12090:15,24 12092:10,14 12097:3 12097:7 12098:9 12107:3 12110:8 12116:25 12119:17 12120:4 12129:22 12130:10,15 12132:16 12133:1 12141:7 12151:9 12155:13,14,16 12156:9 nicely 12119:6 nine 12079:24 12085:19 non-point 12146:12 normally 12124:13 12148:10 12150:19 north 12077:24 12078:16 12138:6,6 12139:4 north-westerly 12139:4 notes 12147:18 12148:3 12151:4,5 notice 12130:1 12151:23 notwithstanding 12106:20 NUM 12113:10,11,19 12115:9 12118:25 12124:1 number 12076:3 12085:20 12086:3 12092:23 12097:1</p>	<p>12133:9,13 12148:24 numbers 12086:7 12088:14 Nyala 12115:1,22 12121:24 12124:8 Nyalas 12084:25</p> <hr/> <p style="text-align: center;">O</p> <hr/> <p>oath 12078:22 12079:7 12116:17 12152:6 objection 12084:8,18 12119:18 12129:25 12141:15 objectionable 12097:4 12098:7 observer 12124:17 observing 12138:11 obtained 12079:13 12086:1,12,14 12153:14 obviously 12108:22 12130:20 12132:1 12148:14 occurred 12120:13 October 12079:23 12080:19,21 12086:10,15 offend 12098:15 office 12122:2 officers 12128:10 12131:10 12133:16 12140:19,22 12142:12 oh 12089:25,25 12093:22 Okay 12105:16 12117:24 12132:13 12154:6 once 12077:9,11 12094:5 12120:18 12146:8 ones 12080:5 12093:21 12114:2 12143:13 ongoing 12134:24 OOO4 12109:3 OO4 12109:3,11,11 12110:4 12111:5 12115:14,25 12118:6 12118:7 operation 12079:14 12085:18,25 12086:19 12087:5 12095:12 12100:5,15 12101:14 12116:13 12125:8,15 12127:10 12127:16,23 12128:6 12128:16 12129:6 12133:7 12134:22,24 12134:24 12135:10 12135:17 12136:23 12140:14 12147:16 12147:21,24 12149:20 12152:15 operational 12085:2 12087:6 12088:22,25 12089:3,9,10 12090:7</p>	<p>12101:8,12,15 12126:19 12131:10 12131:19 12133:7 12134:1,9,23 12135:1 12135:7 12137:7,17 12138:22 12139:9,14 12139:18,20 operations 12131:18 12136:3,11 12146:3 opinion 12112:11,12 12120:6,7 12122:16 12149:3 opportunity 12083:12 12091:9 12110:1,19 order 12101:14 12120:10 12125:24 12126:10 12127:9 12128:25 12129:16 12136:3,9 orders 12138:20,21 organisation 12128:8 organise 12104:6 original 12089:2 ought 12095:10 12124:8 12125:6 12144:25 outcome 12077:23 outside 12111:21 outstanding 12077:24 overall 12087:4,6 12088:23 12089:3,8 12095:11 12100:4,9 12100:11,15,21 12101:13 12125:7,14 12127:22 12129:1,5,6 12129:9,11,14,15,19 12131:4,8,16 12135:2 12135:4 12136:8,9 12137:4 12140:13 12144:2,18 12146:4 o'clock 12116:7 12155:1</p> <hr/> <p style="text-align: center;">P</p> <hr/> <p>page 12081:18,19,19 12082:6,7,8,8,9,9,12 12082:12 12097:1,24 12104:9,9 12105:5 12109:11,13,16 12110:5 12111:5 12115:25 12118:12 12118:15,17,18,20,23 12118:24,25,25 12119:1,2 12123:19 12126:2 12133:19 pages 12109:22 para 12145:9 paragraph 12088:10 12088:11,13 12089:1 12089:2 12101:5,6 12103:9 12104:10,10 12106:3 12129:8 12133:20 12134:2 12138:4 12139:2 12140:5,7 12141:23 12142:21 12143:4</p>
---	--	--	---	--

<p>paragraphs 12088:12 pardon 12083:1 12101:3 12125:20 12140:6 part 12091:14 12104:13 12110:22 12113:7,21 12119:10 12127:24 12128:12 participant 12147:12 participants 12113:18 participating 12077:6 participation 12076:25 12077:3,7,11,22 12155:22 particular 12092:6 12138:23 particularly 12085:1 12089:9 12121:10 12124:24 parties 12077:4,7,10 12154:1,7,12 12156:1 party 12108:4 passage 12084:14,16 12091:25 12092:5 12097:12,20 12101:16 12109:10 12109:12 12111:7,8 12112:2,4 12115:25 passages 12092:23 12093:3,9,17,20 12094:6 pause 12134:5 PC 12100:2,3,22,22 peace 12110:19 pending 12077:23 people 12079:22,24 12080:14,18,20,25 12085:4,20 12096:3 12097:8 12098:3 12099:2 12103:16 12113:20,21 12115:23 12119:6,11 12119:22 12121:8 12131:15,19 12132:4 12132:10 12133:3 12138:5,19 12139:3 12140:7,12,15 12141:2,20 12142:6 12143:9 12144:8,10 12145:1,3,10,22 12146:9 12152:21,25 peradventure 12129:14 performed 12094:5 performs 12100:14 period 12088:20 12095:5 12106:25 12107:12 12114:8,13 12149:4 permissible 12097:15 person 12080:6,9,11 12115:3,22 12118:24 12150:16 12156:20 personally 12142:4 12149:21 12150:15 personnel 12142:23 12143:15 12144:9</p>	<p>persons 12086:1,2,9 12107:17 perspective 12084:23 pertain 12086:2 pertaining 12119:8 pertains 12094:20 12095:8,17 phone 12085:12 12087:7,10,13,18 12088:5 12089:5 physically 12128:21 pick 12110:11 12130:24 12133:24 Pillay 12092:9 12110:7 12148:23 12151:4 Pitsi 12133:14 place 12076:23 12077:21 12085:5 12086:15 12115:21 12121:18,21 12141:22 12144:19 placed 12109:14,21 12110:1 12135:8 plan 12134:1,18 planning 12134:20 play 12128:20 played 12095:9,10 12125:6,7 12132:19 12144:1 players 12128:19 12130:24 12131:1 12152:22 12153:3 please 12078:6 12083:25 12084:10 12084:19 12088:9,14 12089:22 12100:13 12105:6 12113:3 12114:10 12117:25 12118:6,18 12125:23 12126:3,12 12127:1,3 12133:19 12138:3 12146:15 12147:21 12148:11 12151:8,18 point 12082:21 12083:3 12083:9,13 12096:2 12099:24 12101:6 12102:1,16 12106:7 12107:19 12108:7,24 12109:7,8,24 12110:23 12111:10 12117:14,15 12129:12,14,18,20,21 12129:22 12130:12 12130:14,15,17,19 12132:25,25 12136:17 12139:6 12145:19 12148:12 12156:18,19 pointed 12122:24 police 12090:21 12100:2 12106:10 12108:4 12115:20 12121:5,6 12141:1 12142:4,5,25 12145:2 12146:3 POP 12133:7 12135:9</p>	<p>pose 12091:3 position 12077:5,11,13 12090:6 12107:4 12109:1 12111:3,5,6 12111:14,15,23 12118:13 12122:20 12123:4,16 12137:7,9 12137:18 12147:6 12153:10 12154:25 12155:2 positioned 12089:10 possession 12080:7,8 12080:11 possibilities 12087:8 possibility 12085:17,24 possible 12091:12 12137:11 12145:23 possibly 12097:18 post 12139:13 Potchefstroom 12095:13,14 12146:15,16,24 12147:10,19,22 12148:2,8,10,16,21 12149:8,12 12152:14 practical 12121:7 practically 12114:18 12136:14 12152:11 precious 12155:6 precise 12080:23 12124:6 precisely 12095:4 12115:1 12125:6 12136:17 12147:18 precluded 12137:21,23 prefaced 12122:16 prefer 12100:22 prejudice 12091:24 Premier 12078:16 premise 12084:12 12087:3 prepare 12149:12,21 12151:10 12156:25 12157:3 prepared 12103:18,25 12104:15,22 12105:1 12105:9 12106:5 12112:1 12117:13 12122:13 12146:16 12146:25 12156:13 presence 12076:25 12111:2 present 12077:6 12087:11 12128:24 12149:8 presentation 12147:9 12147:12 presently 12153:22,24 president 12118:25 presidents 12115:20,21 12121:23 presumably 12100:24 12120:9 Pretoria 12154:10 Pretorius 12145:13 previous 12093:25</p>	<p>previously 12082:25 12105:22 12130:5 prior 12112:20 12142:22 priorities 12142:21 12144:24 12145:6 prioritised 12143:3 priority 12145:16 probably 12122:4 probative 12120:7 problem 12085:7 12087:21 12088:4,5 12138:1,15,18 12139:21 12141:16 12142:16 12153:3,5 problems 12087:8,9,11 12089:4,5 12139:17 12152:18 procedure 12150:12 proceed 12078:23,24 12084:19 12086:24 12090:3 12098:20 12116:17 12117:25 12129:18,23 12130:20 12132:23 12140:12,14 12141:1 12141:2 12142:5 12145:1,2 12153:13 12153:16 12154:25 12155:2,10 proceeding 12078:25 proceedings 12076:1 12091:16 12092:22 12107:11 12108:6 proceeds 12079:9 12081:9 12083:9 process 12076:25 12077:6 12084:24 12114:17 12134:20 processed 12144:11 12145:3 12146:2 processing 12086:16 12140:24 12141:21 12142:18 product 12146:24 profitably 12122:17 12155:8 promoted 12154:20 proper 12084:23 properly 12144:11 property 12111:21 proposition 12114:5 protection 12121:6 protesters 12099:10 12102:14 12104:1 12106:22 12118:5 12121:11 12123:12 12123:22 12124:24 protestors 12107:2,6 12107:13 12110:25 12114:25 12115:5,8 proves 12079:2 provide 12105:23,25 12106:9,10 12116:25 provided 12081:15 12093:24 12106:13</p>	<p>Province 12078:16 provincial 12082:1,14 12099:25 12101:10 12126:20,20 12127:7 12133:8 provisionally 12077:4 12077:22 12154:8 public 12101:14 purpose 12112:10,10 12124:11 12146:18 purposes 12099:5 pursuant 12100:20 put 12078:5 12080:25 12082:18 12083:13 12084:6,17,17 12098:1 12101:6,17 12101:22 12105:7 12107:21 12109:7,8 12110:16 12117:11 12117:15,17 12119:12,23 12122:7 12122:18 12123:17 12129:4 12130:1 12132:21 12144:2 puts 12109:22 putting 12114:4,5 12117:4</p> <hr/> <p style="text-align: center;">Q</p> <hr/> <p>quarter 12151:25 question 12081:14,18 12083:10,24 12084:7 12084:10,12,15,17 12085:15,22 12087:3 12087:11 12090:2 12092:13 12093:5,14 12095:18 12097:4,15 12098:2,7,8,16 12099:1 12103:7,8 12107:22 12108:10 12108:11,18 12110:16 12114:11 12114:17 12115:13 12115:18 12120:10 12120:22 12121:2 12124:5 12132:14,23 12134:20 12141:16 12142:21 12147:5 12148:11 questioned 12144:6 questioning 12119:25 12139:12 12141:8 questions 12079:12 12090:10 12091:3 12092:15 12116:20 12130:4 12137:16 12141:24,25 12152:9 12153:8,22 12154:4 12154:11 quite 12083:11 12104:16 12113:25 12122:23 quotation 12109:4,5</p> <hr/> <p style="text-align: center;">R</p> <hr/> <p>radio 12084:25</p>
--	---	--	---	--

<p>12085:11 12087:7,8 12087:10,21 12088:4 12088:21 12089:5 12095:25 12097:21 12099:6 12135:21 12136:22 12139:25 12142:17 radios 12152:20 railway 12102:3 12117:9 12123:10 rank 12142:13 read 12076:16 12104:11,17 12105:6 12111:6,8 12115:25 12129:5 12132:17 readily 12091:17 reads 12088:19 ready 12076:10,11 12088:12 12153:13 real 12099:19,19 realised 12135:5 realising 12135:19 reality 12155:10 really 12083:16 12117:4 reason 12084:21 12087:20 12106:8 12128:8 reasonable 12115:2 reasons 12085:10,12 12135:5 12137:14 12143:23 12148:6 recall 12078:13 12081:12 12092:24 12094:24 12095:19 12095:21 12096:1,4 12099:9 12107:4 12117:14 12129:7 recap 12125:9 receive 12135:17,18 12145:23 received 12093:11 12155:7 receiving 12143:25 recognise 12077:3 recollection 12084:2 12094:14,17 12097:7 12102:22,23 12149:16 record 12076:23 12077:21 12078:1,5 12082:18 12109:8 recorded 12104:15 12109:3 records 12107:8 recovery 12157:6 refer 12085:19 12087:2 12100:2 12110:9 12113:18 12114:17 reference 12097:1,8,16 12097:17,19,22 12099:2 12107:8 12109:6,7 12110:3,4 12112:3 references 12093:19 referred 12082:7</p>	<p>12091:15 12093:9,20 12101:1 12109:15 12111:13 12156:8 referring 12080:22 12081:3 12091:25 12092:11 12094:15 12097:2,23 12100:18 12107:8 12113:7,10 12114:3 12126:8,9 refusing 12106:8 regard 12082:3 12090:15 12111:3 12112:19 12127:14 12128:4,4 12129:9,17 regarded 12142:22 12143:2 12144:7,17 regarding 12129:24 12147:9 regards 12084:3 12156:12 registered 12079:20 12080:4,6 regret 12155:5 relate 12141:11 12149:4 related 12079:12 relates 12080:17 relating 12076:6 relation 12079:14 12095:7,18 12115:7 12128:6,15 12143:10 12156:19 relative 12110:19 relevant 12078:17 12108:23 12109:4 12113:13,14 12127:9 relies 12146:9 rely 12092:6 relying 12091:11 remain 12089:14 12134:6 remained 12134:2,6,16 remaining 12154:4 remains 12082:19 remark 12119:24 remember 12079:12 12094:22 12117:7 12130:2,5 12132:21 12148:9,13 remembers 12103:20 remind 12078:21 12148:12 reminded 12103:11 12155:3 12156:5 reminding 12155:21 reminds 12117:3 removes 12082:24 12083:4 repeat 12083:25 12084:9 12114:11 12132:19 12141:24 12142:11 repeated 12085:22 reply 12101:18 report 12090:9 12143:25</p>	<p>reported 12104:21 reporting 12128:19 represent 12078:10 12131:8 12150:20 representatives 12076:19 represented 12113:22 representing 12078:1 12078:12 12090:21 request 12081:12 12082:17,18 12094:23 12116:24 12117:10,18 12119:18 12124:2 12136:16 12151:16 requested 12100:22 12110:20 12149:16 12150:8 requests 12137:17 12138:21 require 12103:15 required 12117:6 research 12093:11 resolve 12123:15 respect 12077:4 12090:16,23 12108:2 12114:5 12130:21 12132:24 12143:8 respond 12137:16 12138:21 response 12121:1 12123:18 responsibility 12127:10 12127:15 12128:15 12129:24 12130:24 12131:2,16,22,23 12132:21,22 responsible 12127:24 12128:5 12129:11,17 12131:10,15 12132:5 12147:3,5 restore 12101:14 result 12085:18,25 12139:18 resumes 12116:15 12152:4,5 return 12083:17,22 12154:11,14 returned 12083:23 revealing 12080:25 Revert 12076:14 review 12077:12 right 12097:7,10,12 12105:17,18 12111:25 12117:22 12122:8 12129:3 12132:6 12143:16 12144:14 12148:18 Rights 12076:19,22 rise 12098:9 road 12108:17 role 12077:2 12095:9 12095:10 12125:5,6 12128:18,18,20 12130:24 12131:1 12132:19 12135:6</p>	<p>12136:8 12144:2 12152:22 12153:2 ruling 12130:3 12133:4 run 12122:21 running 12138:19</p> <hr/> <p style="text-align: center;">S</p> <hr/> <p>safe 12111:17 safety 12112:11 12115:1 SAPS 12102:5 12107:4 12107:10 12108:15 12128:8 saw 12108:23 12139:3 12139:4 saying 12093:5 12094:7 12096:1 12097:11 12099:9 12107:23 12113:16,25 12115:19 12116:3 12121:11,15,20,22 12122:7 12123:20 12124:1,2,22,23 12139:25 12148:1,14 12149:2 12150:19 says 12097:13,17 12101:7 12103:17 12108:15,16 12110:17 12111:12 12117:17 12119:1,2 12122:14 12127:22 12129:5,16,16 12138:17 12141:23 12145:9 SC 12086:25 12087:16 12088:9,15,19 12089:21,25 12090:10 12091:2 12094:11 12153:21 12153:25 scene 12086:16,17 12140:8,23,24 12142:15 12143:20 12143:22 12145:10 12145:11,19 12146:6 Scott 12154:20 12155:7 Scott's 12155:11 search 12079:14 12085:18,25 12086:20 Seboloke 12142:9 second 12085:20 12095:2 12132:25 12156:19 secondly 12146:19 section 12133:16 secure 12094:23 12102:17,24 secured 12106:17 see 12079:10 12083:21 12084:22,24 12085:3 12085:6 12092:2 12093:22 12094:10 12101:5 12106:23 12110:15 12113:6 12116:6 12118:24</p>	<p>12123:24 12124:25 12126:18,21 12127:11,13,19,25 12128:2 12131:13 12136:6 12138:5,7,14 12138:17,20 12139:14,18 12140:8 12144:18 12151:24 12153:18 Seeing 12156:5 seek 12089:6,7 12139:22 seen 12091:22 12112:4 Semenya 12154:20 send 12103:18 12104:13,14 12105:9 12106:4 12142:3 sense 12152:23 12153:4 sensible 12121:17 sent 12104:25 sentence 12082:17 12105:6 12113:5 12135:25 12138:5 sentences 12148:7,17 seriousness 12153:2 served 12146:18 services 12145:15,22 share 12131:23 shared 12130:24 shed 12147:7 she'll 12156:2 shooting 12099:11 short 12091:25 12148:7 12148:17 shorten 12079:3 shot 12099:2 12140:7 12140:12 12145:10 12150:13 shouldn't 12097:4 should've 12110:24 sifuna 12121:11 sign 12087:24 12088:2 signal 12088:2,3 signals 12088:4,5 signed 12156:14,15 simply 12084:11 12089:12 12093:7 12096:18 12107:13 12108:7 12136:4,5 simultaneous 12079:1 12079:5 12116:13 sit 12114:22 12128:4 12147:23 12154:16 sites 12139:15 sitting 12090:8 12115:2 12152:13 12156:16 situation 12116:2 12140:20 12141:10 12143:9 12146:5 12154:7 six 12079:21 12080:20 sky 12097:14 small 12095:15 snigger 12098:3 solicit 12108:7 soon 12102:15</p>
--	---	--	---	--

12145:17,23 sorry 12076:2 12078:21 12086:22 12093:15,22,23 12100:12 12113:3,3 12135:14 12137:2,2 12138:16 12145:7 12151:17,23,23 12154:19 12155:20 sort 12098:2 sorted 12142:17 sought 12088:24,25 12136:22 12137:25 12139:22 soundboard 12089:3 space 12142:24 span 12128:9 speak 12124:16,20 12147:13 speaker 12102:17 speaking 12114:25 12115:22 specific 12127:23 12129:5 12131:11 specifically 12087:18 12094:12 12129:24 12139:13 speedy 12157:6 spell 12112:22 spelt 12112:18 spend 12108:1 12155:8 spoken 12121:24 12124:23 spontaneous 12136:15 spot 12117:8 squarely 12091:13 SS2 12125:24 12126:5 stage 12081:14,25 12094:13 12116:8 12134:1,7 12140:1,11 12153:17 stages 12086:17 12093:19 stakeholders 12113:14 12113:14 Standing 12125:24 12126:9 12129:16 12136:9 started 12091:21 12117:4 12120:18,18 starting 12076:2 12111:13,14 12118:25 12155:4 starts 12090:14 state 12106:14 12124:14 stated 12149:25 statement 12076:6,8 12078:22 12084:16 12088:10,11 12089:1 12089:2 12100:13 12103:4,9,17 12104:11 12106:3 12116:25 12117:5 12123:9 12125:13 12128:23 12129:8	12133:20 12135:6 12138:4 12140:6 12144:12 12148:21 12149:13,18,21 12150:13,14,22,23 12155:7 statements 12149:17 12150:2,3,8,16,25 12151:2,3 station 12141:1 12142:4,5 12145:2 stay 12153:1 steps 12137:3 STF 12133:10 stick 12103:4 stop 12120:19 12130:18 12131:21 12151:7 story 12133:24 12148:13,18 strikers 12095:7 12100:23 12102:3 12106:18 12108:14 12108:21 12110:20 12112:7 12113:22 12114:7,14,21,21 12119:15,15 12121:18 12123:6 structure 12128:19 12131:4,12 structures 12111:16,19 12112:1 struggled 12096:9 studying 12155:9 sub 12122:13 submit 12147:18 12150:22,23,25 submitted 12148:3,22 12157:1 subsequent 12079:20 subsequently 12081:21 substance 12084:18 12130:16 12145:18 12146:11 suffered 12130:14 suggest 12089:15 12098:6 12107:9 12108:9 suggested 12090:19 12093:18 12107:11 12110:21 suggesting 12096:14,15 12096:22 12098:3 12121:20 12122:8,11 suggestion 12095:3 12097:5 12106:25 12107:15,20 12108:17 12118:4 summary 12137:18 supplementary 12128:22 supported 12129:10,16 supposed 12150:22,23 12150:25 sure 12083:24 12097:6 12112:22 12113:25	12115:6 12119:23 12120:2,4 12140:23 12144:8 12148:12 12150:21 12155:18 surely 12129:6 12146:11 system 12079:1 12087:9,10 s.u.o 12079:8 12116:18 12152:7 <hr/> T <hr/> tab 12126:8 table 12151:7 take 12076:12 12081:25 12089:6 12090:15 12100:13 12103:21 12110:10 12111:25 12116:7,19 12116:22,22 12120:14,15,20 12126:21 12127:10 12127:15 12129:21 12132:3 12134:23 12135:6,9 12137:3,6 12137:11 12138:18 12141:22 12146:18 12151:25 taken 12076:7,7 12079:3 12084:15 12102:1 12120:17 12121:17 12127:25 12128:5,15 12129:12 12129:25 12131:2,17 12145:25 12146:21 12147:4 talk 12085:11 talking 12085:8 12086:17 12104:20 12104:21 12118:24 12121:12 12132:20 talks 12097:20 task 12156:21,22,24 tasked 12142:9 12156:21 taskings 12142:10 tautology 12156:21 tea 12092:3,4 12116:7 12116:14,24 teargas 12149:25 12150:1,12,23 tell 12088:9 12093:2 12103:22 12105:7 12115:4 12118:7 12119:1 12122:21 12127:2 12147:20,23 12148:7,15 12156:7 telling 12115:24 12148:24 terms 12078:17 12110:17 12123:18 12123:19 12124:6 12127:6,22 12128:12 12128:19 12131:4 12136:8,10 testified 12094:22	12095:18,24 12102:13 12135:8 testify 12085:8 12087:15 12090:4 12135:2 12136:25 12141:8 testimony 12092:23 12105:22 12135:22 12142:8 thank 12076:18,22 12077:14,16,19,25 12078:20 12081:2 12083:8 12085:14 12086:21 12087:1,1 12090:11 12091:1,6 12092:8 12098:25 12101:21 12105:3 12110:2,6,11 12111:11 12113:4 12116:23 12117:2 12120:24 12130:22 12133:18 12146:13 12151:6 12152:11 12153:8,9,18,21 12154:6 12155:20 Thanks 12110:7 that's 12076:21 12077:16 12085:9 12086:13 12087:20 12087:23 12090:22 12094:2,8 12096:23 12097:11 12098:1,5 12098:15,15 12100:9 12104:14 12105:19 12108:15 12110:23 12111:5 12112:1 12120:13 12121:19 12122:3,14 12124:23 12129:3,20 12132:25 12134:21 12136:17 12138:23 12143:3,4 12156:4,18 theme 12095:2,8 12124:5 12146:14 themes 12094:19 there's 12078:23 12079:23 12083:8 12084:18 12097:12 12146:11 they'd 12120:11 they're 12078:13 12080:24 12101:23 12119:7 12126:8 they've 12155:18 thing 12078:23 12115:4 12140:21 12143:14 12143:25 12144:24 12150:1 things 12089:14 12090:18 12093:18 12101:23 12119:10 12132:5 12141:19 12144:19 12145:21 12154:3 12155:16 12156:23 think 12078:1	12079:10 12082:16 12088:1,2 12090:12 12091:16 12096:14 12098:1,9 12103:10 12105:4 12107:16 12112:16,17,17,21 12113:19 12116:1 12117:11 12119:6 12120:19,22 12122:20 12129:3 12130:2 12131:14,20 12148:4,14 12154:19 12157:2 thinking 12093:20 12117:21 third 12095:7 12138:5 thought 12087:23 12093:12,16 12099:1 12122:15 three 12130:10 till 12155:1 time 12079:3,6 12083:2 12091:6 12099:10,11 12099:14 12100:24 12108:1 12123:3,5,12 12124:6,9 12130:3 12131:18 12133:4 12143:19 12146:12 12150:5 12152:2,23 12155:1,9 12156:17 timeously 12156:22 times 12088:19 Tip 12153:20,21,25 today 12076:24 12091:8 12128:5 12147:23 12152:13 12153:11 TOKOTA 12149:1 told 12076:9 12083:4 12103:17 12104:12 12104:13 12105:8 12106:4 12119:6 12146:8,11 12148:16 12155:22 tomorrow 12111:22 12122:2 12154:15,16 12154:21,25 12155:8 12156:3,15 tonight 12111:22 trade 12115:20,21 12121:23 Traditional 12078:3 tragedy 12112:14,15,20 12112:20,21 12113:15,17 12116:2 12120:13 12144:3,7 trained 12127:10,15 12133:7 12135:9 training 12127:18,19 transcript 12076:17 12081:19 12093:24 12094:5,14 12097:2 12109:12,14,20 12132:17 transcripts 12081:15 12081:17 12109:21
---	--	---	---	--

<p>translation 12079:1,5 translations 12079:4 traverse 12130:14 traversed 12130:5,12 12132:18 tread 12130:2 treat 12143:16 treated 12144:9 treatment 12145:23 trial 12078:25 12141:10 tried 12082:5 TRT 12099:10 true 12090:8 trust 12140:19 try 12091:12 12150:4 trying 12085:10 12104:19 12137:20 Tsiloane 12133:11 Tuesday 12081:8 12084:6 12087:2 12090:17 12093:16 12093:22 12130:11 turn 12126:25 twice 12124:25 two 12080:5 12086:6 12087:7 12088:13 12130:6,10 12137:13 12138:2 12139:4,12 12141:17 12142:22 12143:2 12155:16 12156:7,10 two-pronged 12156:11 typed 12151:10</p> <hr/> <p style="text-align: center;">U</p> <p>ultimate 12113:20 12128:15 ultimately 12104:7 umlungu 12121:12,12 12123:24,24 12124:25 12125:1 unclear 12115:12 understand 12076:19 12081:2 12082:5 12083:11 12084:8,10 12088:3 12090:24 12093:5,14,23 12107:18 12112:11 12115:6 12121:20 12134:20 12141:14 12142:6,20 12148:1 12148:18 12153:4 12154:12 understanding 12099:13,19 12105:2 12106:21 12112:13 12112:25 understood 12083:25 12086:9 12105:21 12123:19 12155:17 12155:19 undertaken 12117:1 undertook 12076:6 unfair 12112:6 unfit 12156:23</p>	<p>unfold 12089:14 12099:14 unfolding 12087:5 unfortunate 12098:10 12154:15,24 unfortunately 12153:12,15 12155:25 union 12113:21 12115:20,21 12121:3 12121:23 12123:17 12124:15 unions 12107:14 12109:2 12112:14,25 12113:2,6 12114:19 12115:10 12119:9 12121:2,5 12123:15 Unit 12133:12 units 12131:11 unrealistic 12112:6 unwise 12114:12 12119:14 unwisely 12122:12 urgency 12146:1 12153:5 urgent 12077:23 use 12135:3 12140:21 usurp 12089:8 utmost 12144:18 12145:16 utter 12097:5</p> <hr/> <p style="text-align: center;">V</p> <p>valid 12145:8 value 12120:7 Van 12142:9 12145:12 12145:19 various 12133:16 12148:6 vehicles 12114:20 verify 12153:14 Vermaak 12085:8 12096:1 12139:13,25 version 12151:11 12156:15 view 12076:24 12095:21 12120:2 12134:4 12135:21 12136:1,5,11 12138:14 views 12108:8,18,21,24 violence 12152:25 Visser 12147:5</p> <hr/> <p style="text-align: center;">W</p> <p>wage 12095:7 12107:2 12121:17,21 12122:13 waiting 12089:13 12090:8 walked 12097:21 walking 12099:3,6 want 12077:22 12078:23 12081:9 12082:3,18 12083:9 12083:12 12084:9</p>	<p>12094:18 12095:2,8 12095:16 12096:10 12103:6,10 12105:7 12106:14 12114:24 12116:22 12119:12 12123:23 12124:25 12125:1,3,5 12130:19 12132:9 12137:3 12141:8 12148:9,18 12151:18 wanted 12084:22 12085:9 12134:3 12135:20 12136:1,2,4 12152:24 12156:10 wants 12108:16 12131:14,20 12137:4 12148:4,15 12151:16 Warrant-Officer 12149:7,17,21 12150:1 wasn't 12098:11,14 12103:12 12108:3 12130:8 12132:25 12156:2 waste 12133:4 wasting 12146:12 water 12139:5 way 12091:24 12095:16 12097:9,15 12098:2 12106:18 12107:21 12108:10,12,17 12120:12 12121:7 12155:2,24 weapons 12111:17 Wednesday 12109:2 12123:16 week 12078:24 12116:13 went 12102:2 12115:21 12121:5 12124:16 12136:24 12143:20 12147:15,21,24 12148:1,7,8,17 12149:3 12152:15 weren't 12076:7 12084:5,6 12117:12 12122:13 12132:1 12134:7 12138:18 12145:16 West 12077:24 12078:16 westerly 12138:7 we'd 12091:10 we'll 12091:25 12092:7 12116:14 12117:1 12122:1 12151:22 12154:2,25 12155:4 12155:10 12157:8 we're 12076:2 12111:15 12118:5 12121:25 12133:25 12154:24 12156:16 we've 12126:6 whatsoever 12136:19 what's 12105:4 12107:19 12137:5</p>	<p>whilst 12095:24 12134:18 12137:22 who's 12085:1 12118:24 12119:22 who've 12146:1 WILLIAM 12079:8 12116:18 12152:7 willing 12111:15,18 wish 12076:20 12077:15,17 12081:7 12082:21 12084:12 12092:6 12154:11 12155:14 12157:5,7 wished 12138:22 wishes 12076:22 12078:22 12153:19 withdraw 12077:22 12098:6,19,22 12117:25 withdrawn 12077:4 12098:10 12154:7 witness 12084:8,16,18 12090:19 12091:21 12091:24 12092:4,13 12092:15,15 12096:14,16,18,24 12098:15 12101:7,17 12101:17 12107:19 12108:3,7 12109:20 12109:21 12110:10 12112:2 12116:8,20 12117:5,15 12120:1,6 12120:21,22 12122:6 12122:6 12133:1 12148:11,11 12154:12,17,18,18 wonder 12109:13 won't 12091:24 12130:3 word 12100:11,18 12103:21 12121:9 words 12082:5 12097:5 12105:7 12117:20 12137:8 12149:1 work 12127:20 12131:9 worked 12131:6 workers 12111:21 12113:1 12121:24 working 12133:16 worry 12129:19 wouldn't 12142:2 would've 12108:20 12112:21 12114:6,12 wrath 12151:10 write 12110:4 wrong 12099:4 12101:17 12104:10 12105:4,6 12117:20 12131:21 12144:24 12145:6 12147:15,21 12147:24 12148:1,7,8 12148:17 12149:3 12152:15</p> <hr/> <p style="text-align: center;">Y</p> <p>year 12109:13</p>	<p>yesterday 12084:5,6 12091:7 12094:5,15 12130:6,8,9 12148:12 you'd 12083:22 12090:15 12093:18 12094:5 12146:4 you'll 12078:12 12117:7 you're 12078:1,2 12079:7 12094:7 12097:2,7 12111:10 12113:7 12115:17 12116:3,17 12127:2 12129:12 12130:16 12130:17 12133:2 12140:13 12144:5 12148:14 12152:6 you've 12082:24 12083:4 12085:20 12104:12 12112:4 12116:19 12129:23 12138:23 12156:5</p> <hr/> <p style="text-align: center;">Z</p> <p>Zokwana 12114:25 12119:2 Zyl 12142:9 12145:12 12145:19</p> <hr/> <p style="text-align: center;">0</p> <p>09:41 12076:2</p> <hr/> <p style="text-align: center;">1</p> <p>1 12081:19,20 12082:9 12082:12,12 12133:9 12145:15 12151:25 12152:1 10 12082:9,12 12118:24 12118:25 12151:22 12151:23 10:01 12085:3 10:21 12095:15 10:41 12106:23 11 12116:6 12118:18,21 12119:1,2 12126:8 11:34 12116:16 11:54 12127:4 11442 12081:18 11443 12081:19 11444 12081:19 11490 12097:24 119 12086:3 11946 12082:7 11947 12082:8 12 12103:9 12104:10 12106:3 12:14 12137:2 12:34 12147:11 13 12094:21 12097:25 12101:7 12125:9 12147:10,16,22 12149:13 13th 12079:13,20,24,25 12080:4,5 12081:17 12082:19 12085:19 12086:3,12 12089:19</p>
---	--	--	---	---

<p>12089:24 12090:7 12092:24 12099:21 12100:3 12106:15,17 12123:5 12128:22 12135:3,3,11,16 12136:13 12140:22 12140:23 12143:25 12147:13 12149:22 13:40 12152:5 14 12095:5 12106:25 14th 12076:8 12079:25 12085:19 12086:3 12090:17 12095:17 12114:8,13 12156:20 15th 12081:16 12082:6 12106:25 12110:18 16 12095:5 16th 12080:6,10,12,16 12081:16 12089:21 12089:22 12090:2 12095:9,19 12114:9 12114:14 12125:4 12135:4,4,10 12143:20,22 12152:13,15 17 12109:11 12111:14 18 12076:1</p> <hr/> <p style="text-align: center;">2</p> <hr/> <p>2 12126:4,9 12133:13 2PM 12077:9 2(e) 12126:12 20 12083:19,23 12088:21 12136:18 2012 12080:8 12094:22 12099:21 12147:10 12147:16,22 12149:14 2013 12076:1 21 12081:20 22 12082:8 12110:11,12 23 12081:18 23rd 12079:22 12086:10 23rd/24th 12080:19,21 24 12081:18 12097:25 24th 12079:22 12086:10 25 12081:19 12082:8 12109:11 262 12125:25 27 12109:11 12110:5 12111:5 12115:25 12118:12,15,17 12123:19 28 12088:11,16 12089:1 12116:1</p> <hr/> <p style="text-align: center;">3</p> <hr/> <p>3 12081:14,25 12101:5 12118:22 12119:1,2 12129:8 12134:1,7 12139:5 34 12145:1</p> <hr/> <p style="text-align: center;">4</p>	<p>4 12086:17 44 12109:18 4787 12109:13,16 12110:9 48 12133:20,22 12134:2 49 12138:4</p> <hr/> <p style="text-align: center;">5</p> <hr/> <p>5 12086:17 12104:9 50 12142:21 12143:4 51 12088:10,15,19 12089:2 52 12140:7 12145:9 53 12140:5 12141:23</p> <hr/> <p style="text-align: center;">6</p> <hr/> <p>6 12105:5</p> <hr/> <p style="text-align: center;">7</p> <hr/> <p>7th 12109:13,15</p> <hr/> <p style="text-align: center;">8</p> <hr/> <p>8 12127:1,1 8.1 12127:6 8.2 12127:21 12129:4 12129:10 8/12 12079:23 8:30 12101:8</p> <hr/> <p style="text-align: center;">9</p> <hr/> <p>9 12155:1,4 9th 12099:14 9:30 12155:4,12 12157:9</p>			
--	---	--	--	--