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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 227

12 MAY 2014

PAGES 27926 TO 28085



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<p style="text-align: right;">Page 27926</p> <p>1 [PROCEEDINGS ON 12 MAY 2014] 2 [09:10] CHAIRPERSON: The Commission resumes. 3 Who is the next witness to be called for the SAPS? 4 MS BALOYI: Chairperson, the next witness 5 is Captain Thupe. He is being led by Adv Mathibedi SC who 6 stepped out at some point, if I could just go out and look 7 for him, Chair, I do apologise. 8 CHAIRPERSON: Not a very satisfactory 9 beginning. I think we'd better adjourn, there's no point 10 in sitting here waiting for Mr Mathibedi to come when he 11 chooses to do so. 12 MS BALOYI: Thank you, Chair. 13 CHAIRPERSON: We'll adjourn. 14 [COMMISSION ADJOURNS COMMISSION RESUMES] 15 [09:14] CHAIRPERSON: The Commission resumes. 16 Yes, Mr Mathibedi, where were you when we began? 17 MR MATHIBEDI SC: Sorry, Mr Chairman, I 18 would like to apologise for the holdup, I had gone to the 19 gents. 20 CHAIRPERSON: Sorry, I didn't – 21 MR MATHIBEDI SC: I'd gone to the gents, 22 to the bathroom. I'm sorry about that. 23 CHAIRPERSON: I see, alright. In the 24 circumstances I'll accept your apology. 25 MR MATHIBEDI SC: Thanks, Mr Chair.</p>	<p style="text-align: right;">Page 27928</p> <p>1 CAPTAIN THUPE: I swear, so help me God. 2 SAMUEL KAY THUPE: (d.s.s.) 3 CHAIRPERSON: Thank you. You may be 4 seated. Yes, Mr Mathibedi? We've been given a number of 5 statements, many of which are described as new statements, 6 so shall we mark them first? 7 MR MATHIBEDI SC: I'll appreciate that, 8 Mr Chairperson. 9 CHAIRPERSON: Mark them all first for 10 housekeeping purposes and then you can proceed without 11 interruption. 12 MR MATHIBEDI SC: I'll appreciate that, 13 Mr Chairperson. 14 CHAIRPERSON: Yes. So which statements 15 do you want to have marked? 16 MR MATHIBEDI SC: Item number 1, Mr 17 Chairperson. 18 CHAIRPERSON: Yes? That's the 19 consolidated statement? 20 MR MATHIBEDI SC: No, no, it's not. It's 21 the statement of the 19/08/2012. 22 CHAIRPERSON: Yes. Oh I see, that's not 23 the consolidated one. 24 MR MATHIBEDI SC: The consolidated 25 statement is already an exhibit before the Commission.</p>
<p style="text-align: right;">Page 27927</p> <p>1 CHAIRPERSON: The next witness I gather 2 is Captain Samuel Kay Thupe. 3 MR MATHIBEDI SC: That's correct, Mr 4 Chairman. 5 CHAIRPERSON: I understand he wishes to 6 testify in the vernacular language, Setswana, is it? 7 MR MATHIBEDI SC: That's correct, Mr 8 Chair. 9 CHAIRPERSON: I see he keeps his diary in 10 English and statements are in English so I assume he 11 understands English. I take it he has no objection to 12 receiving questions in English on the understanding, of 13 course, that if he doesn't understand the question it can 14 be interpreted to him. Is that, am I correct in – 15 MR MATHIBEDI SC: That's correct, Mr 16 Chairperson. 17 CHAIRPERSON: I see his statement under 18 oath so I take it – would you rise, please Captain? I take 19 you're prepared to take the oath, the ordinary oath will be 20 binding on your conscience, is that right? 21 CAPTAIN THUPE: It is binding. 22 CHAIRPERSON: Do you swear that the 23 evidence you will give before this Commission will be the 24 truth, the whole truth and nothing but the truth. Please 25 raise your right hand and say I swear, so help me God.</p>	<p style="text-align: right;">Page 27929</p> <p>1 CHAIRPERSON: Yes. So the statement of 2 the 19th of August 2012, that was an original statement, 3 we'll start – I think we'll call that P1, shall we? The 4 statement dated the 19th of August 2012 will be P1 and then 5 any others that you want marked? 6 MR MATHIBEDI SC: Item number 2 – 7 CHAIRPERSON: Yes, can that be P2? 8 MR MATHIBEDI SC: Then we go to item 9 number 5. 10 CHAIRPERSON: Yes, is that the statement 11 of the 12th of February – 12 MR MATHIBEDI SC: That's correct, Mr 13 Chair – 14 CHAIRPERSON: 12th of February 2012, is 15 that right? That will be P3. 16 MR MATHIBEDI SC: Thanks, Chairperson. 17 CHAIRPERSON: No, sorry – yes, P3. And 18 then there's a statement of the 5th of February 2013. 19 MR MATHIBEDI SC: That is correct, 20 Chairperson. 21 CHAIRPERSON: Make that P4. 22 MR WESLEY: Sorry, Chair, to throw a 23 spanner in the works, I'm informed we have a PPP already. 24 We should be actually, Chair, on RRR. 25 CHAIRPERSON: Oh, thank you for drawing</p>

Page 27930

1 my attention to that fairly timeously. So we'll reverse
 2 our steps, we'll take a step back as it's customary to say
 3 in this Commission. The statement dated the 19th of August
 4 will be R1 –

5 MR WESLEY: RRR1, Chair.
 6 CHAIRPERSON: Sorry, RRR1. The typed
 7 warning statement will be RRR2, the statement dated the 12th
 8 of February 2012 will be RRR3. The statement dated the 5th
 9 of February 2013 will be RRR4 and then the diary entries of
 10 the 13th and 16th of August 2012, that's your item 8, do you
 11 want to make it RRR5? And then we've got two shooting
 12 lists.

13 MR MATHIBEDI SC: If item 9 could be
 14 RRR6.
 15 CHAIRPERSON: Yes and item 10 will be
 16 RRR7.
 17 MR MATHIBEDI SC: That's correct, Mr
 18 Chair.
 19 CHAIRPERSON: Then I see this morning we
 20 were given –

21 MR GOTZ: Sorry, Chair, can I just
 22 interrupt? We don't know what these item numbers that are
 23 being referred to are. They haven't been distributed to
 24 the parties so it makes no sense to us to say item number
 25 10 or item number 9.

Page 27931

1 CHAIRPERSON: Well, thank you for drawing
 2 my attention to that. I assumed that you had received
 3 them. There's a statement dated the 19th of August 2012,
 4 that's RRR1. There's a typed warning statement by the
 5 witness, RRR2. There is another statement of the witness
 6 dated 12 February 2012, that's item 5, that's RRR3.
 7 There's a statement of the witness dated 5 February 2013
 8 which is RRR4. There are entries from his diary dated the
 9 13th and the 16th of August 2012, those are RRR5 and then
 10 there's a document described as a shooting list, a shooting
 11 list containing details of the people under his command who
 12 fired shots on the 13th of August 2012, that's RRR6. And
 13 then there's a similar document, a shooting list for the
 14 16th of August and that's RRR7. I was given a copy of the
 15 documents on Friday, I assumed that the parties had also.
 16 Let's find out from Mr Mathibedi. What happened? Did the
 17 parties not get copies of these documents?

18 MR MATHIBEDI SC: Mr Chairperson, we gave
 19 the parties an index but I'm told they were also, all the
 20 documents were also distributed yesterday, soft copy.
 21 CHAIRPERSON: A number of heads are being
 22 shaken but –

23 MR GOTZ: Chair, we're now –
 24 CHAIRPERSON: - let's carry on with the
 25 evidence meanwhile. I imagine he will be giving evidence

Page 27932

1 largely from his consolidated statement and then the copies
 2 can be found or not found or made available during the
 3 first tea adjournment, first comfort break. Mr Mathibedi,
 4 please proceed.

5 MR MATHIBEDI SC: Thank you.
 6 EXAMINATION BY MR MATHIBEDI SC: Captain,
 7 I'm going to refer you to exhibit GGG9, that is your
 8 consolidated statement, item number 7. Sorry, it's QQQ9,
 9 sorry Mr Chairperson. Do you have the statement, Captain?

10 CHAIRPERSON: I take it you've got that,
 11 Mr Gotz? Mr Gotz, I take it you've got that?
 12 MR GOTZ: Chair, we do. We're just
 13 trying to sort out what we have -

14 CHAIRPERSON: That's all you'll need for
 15 the time being, I think.

16 MR MATHIBEDI SC: Captain, according to
 17 page 2 of this statement at the bottom, during 2009 you
 18 attended a training for POP crowd management of section
 19 level institution, division training in-service, TRN
 20 operational response, do you confirm that?

21 CAPTAIN THUPE: I confirm that, Chair.
 22 MR MATHIBEDI SC: Now what did the
 23 training entail?
 24 CAPTAIN THUPE: It entails theory and
 25 practical.

Page 27933

1 MR MATHIBEDI SC: What was dealt with
 2 under theory?
 3 CAPTAIN THUPE: Standing order 262 as
 4 well as Public Gathering Act and tactical options.
 5 MR MATHIBEDI SC: And under training,
 6 practical training, what was dealt with?
 7 CAPTAIN THUPE: It entails tactical
 8 options to approach public gatherings.
 9 MR MATHIBEDI SC: Now, to your deployment
 10 at Marikana, were you involved in any crowd management
 11 incidents?
 12 CAPTAIN THUPE: Yes.
 13 MR MATHIBEDI SC: How many incidents were
 14 you involved in?
 15 CAPTAIN THUPE: Plus-minus 10 incidents.
 16 MR MATHIBEDI SC: Over what period was
 17 that?
 18 CAPTAIN THUPE: From 2009 until 2010.
 19 MR MATHIBEDI SC: Now in as far as
 20 practical experience of the trainers are concerned, are you
 21 in a position to give a view as to whether your view is
 22 that they have practical experience or not?
 23 CHAIRPERSON: Mr Interpreter, you're
 24 interpreting the questions. It's not necessary, the
 25 witness – it was indicated the witness can understand

<p style="text-align: right;">Page 27934</p> <p>1 English, he keeps his diary in English. It's wasting time 2 to interpret the questions into Tswana. If he doesn't 3 understand the question then he can raise his hand and 4 indicate but please, we –</p> <p>5 MR MABUNDA: Ja, he confirms. 6 CHAIRPERSON: There's only an hour been 7 allocated for his evidence-in-chief. I regard it as having 8 started, because of the holdups that we had and problems 9 with the exhibits, at 20 past nine. So he has to finish at 10 20 past ten.</p> <p>11 MR MABUNDA: Chair, he confirms that he 12 understand –</p> <p>13 CHAIRPERSON: We lose time if you 14 interpret the questions as well.</p> <p>15 CAPTAIN THUPE: As far as I'm concerned, 16 the way in which they taught me, I could see that they were 17 experienced.</p> <p>18 MR MATHIBEDI SC: Is it correct that 19 during this year, 2014, you attended a course or training 20 that dealt with crowd management?</p> <p>21 CAPTAIN THUPE: That is so, Chair. 22 MR MATHIBEDI SC: How long was the 23 duration of the course?</p> <p>24 CAPTAIN THUPE: A duration of three 25 weeks.</p>	<p style="text-align: right;">Page 27936</p> <p>1 MR MATHIBEDI SC: What is it that was 2 discussed during the briefing?</p> <p>3 CAPTAIN THUPE: As far as the briefing is 4 concerned, is that the TRT members they will back up the 5 POP members, the day in question and there was, it was said 6 that there were people who were marching from Karee Mine on 7 their way to Wonderkop.</p> <p>8 MR MATHIBEDI SC: Now according to 9 paragraph 5.3 of your statement, there is an indication 10 that the Provincial Commissioner instructed General Mpmembe 11 to deploy members to the scene to monitor the situation and 12 if necessary, disperse and disarm the strikers.</p> <p>13 CAPTAIN THUPE: That is so, yes, Chair. 14 CHAIRPERSON: Before you proceed, you're 15 leading him from exhibit QQQ9. May I suggest you ask him 16 to confirm that the statement is correct so it's all before 17 us and you can then highlight the points that you consider 18 important because you've only got until 20 past ten to lead 19 his evidence-in-chief.</p> <p>20 MR MATHIBEDI SC: Thanks, Mr Chairperson. 21 Captain, you confirm that you are the source of the 22 information set out in annexure QQQ9.</p> <p>23 CHAIRPERSON: Exhibit QQQ9. You confirm 24 the contents of that affidavit, is that correct?</p> <p>25 CAPTAIN THUPE: I do, Chair.</p>
<p style="text-align: right;">Page 27935</p> <p>1 MR MATHIBEDI SC: What did the training 2 entail?</p> <p>3 CAPTAIN THUPE: Theory and practical. 4 MR MATHIBEDI SC: What was dealt with 5 under theory?</p> <p>6 CAPTAIN THUPE: Theory, it was 7 operational plans and commanding. What we have been taught 8 theoretically, now it was then put in practice.</p> <p>9 MR MATHIBEDI SC: Captain, going forward 10 because of the training that you have just received, are 11 you in a better position to can deal with crowd management 12 related issues?</p> <p>13 CAPTAIN THUPE: That is so, Chair. 14 MR MATHIBEDI SC: Can you confirm that on 15 the 13th of August 2012 you and some members of TRT were 16 deployed at Marikana and you were the commander of that 17 unit?</p> <p>18 CAPTAIN THUPE: That is so, Chair. 19 MR MATHIBEDI SC: On the 13th did you 20 receive any briefing from any of the senior officers of the 21 police?</p> <p>22 CAPTAIN THUPE: I did, Chair. 23 MR MATHIBEDI SC: Who was responsible for 24 the briefing?</p> <p>25 CAPTAIN THUPE: General Mpmembe.</p>	<p style="text-align: right;">Page 27937</p> <p>1 MR MATHIBEDI SC: Now you will note that 2 at the last page of this exhibit there is a signature 3 there?</p> <p>4 CHAIRPERSON: - to do that, he's 5 confirmed it. It's not –</p> <p>6 MR MATHIBEDI SC: Thanks, Mr Chair. Now 7 did the Provincial Commissioner dictate to General Mpmembe 8 as to how he should go about in dealing with the situation?</p> <p>9 CAPTAIN THUPE: No, Chair. 10 MR MATHIBEDI SC: Now, were you briefed 11 as to what the role of your unit would be?</p> <p>12 CAPTAIN THUPE: I have been briefed, 13 Chair.</p> <p>14 MR MATHIBEDI SC: Now I am referring you 15 to paragraph 6.1 of the exhibit where it says, "General 16 Mpmembe instructed us to follow the group and monitor them," 17 you confirm that?</p> <p>18 CAPTAIN THUPE: That's correct. I 19 confirm, Chair.</p> <p>20 MR MATHIBEDI SC: Now, did General Mpmembe 21 give an instruction to members to leave behind their rifles 22 and shotguns in the Nyalas?</p> <p>23 CAPTAIN THUPE: That instruction I didn't 24 hear it, your worship.</p> <p>25 MR MATHIBEDI SC: Did General Mpmembe give</p>

Page 27938

1 instructions to members for the utilisation of stun
2 grenades on the ground?
3 CAPTAIN THUPE: That instruction I did
4 not hear it at all.
5 MR MATHIBEDI SC: Now you have observed
6 how the protesters were armed. Taking that into
7 consideration, also the number of the police officers that
8 were deployed and the number of the protesters, were there
9 enough members to effect an arrest and confiscate weapons
10 from the protesters?
11 CAPTAIN THUPE: There were no enough
12 members at all, Chair.
13 MR MATHIBEDI SC: And you further confirm
14 that General Mpembe gave Warrant Officer Kuhn instructions
15 to utilise a teargas?
16 CAPTAIN THUPE: That is so, yes, Chair.
17 MR MATHIBEDI SC: Now at paragraph 7.1 of
18 your statement, I'm going to read the two last lines which
19 read as follows, "I ran towards the police officer to
20 assist him but could not stop the strikers in their
21 actions." Do you confirm that?
22 CAPTAIN THUPE: That's correct. I
23 confirm, Chair.
24 MR MATHIBEDI SC: Now, did you observe or
25 witness any of the members who ran away whilst the police

Page 27939

1 were under attack instead of assisting their colleagues?
2 CAPTAIN THUPE: No, Chair.
3 MR MATHIBEDI SC: Now you have indicated
4 that at one stage you followed the protesters.
5 CAPTAIN THUPE: That is so, Chair.
6 MR MATHIBEDI SC: That is set out at
7 paragraph 7.2. Do you confirm that?
8 CAPTAIN THUPE: I confirm that, Chair.
9 MR MATHIBEDI SC: Mr Chairman, I am just
10 for a moment –
11 COMMISSIONER HEMRAJ: - is that 7.2 or
12 6.2? I'm a bit confused with the paragraph you're
13 referring to.
14 MR MATHIBEDI SC: Sorry, sorry, that
15 would be paragraph 8. It starts from 7.2 where it's
16 indicated that "One of the strikers had grabbed an R5 rifle
17 from the police officer and ran away in the direction of
18 the informal settlement." You confirm that?
19 CAPTAIN THUPE: I confirm that, Chair.
20 MR MATHIBEDI SC: And you furthermore
21 confirm that you and Constable Sekgweleya followed the
22 member – sorry, the group of strikers.
23 CAPTAIN THUPE: I confirm also that, ja,
24 Chair.
25 [09:33] MR MATHIBEDI SC: And that there was a

Page 27940

1 shooting incident that occurred between you and the
2 strikers.
3 CAPTAIN THUPE: That is so, Chair, yes.
4 MR MATHIBEDI SC: Now how many rounds did
5 you fire?
6 CAPTAIN THUPE: I fired eight rounds.
7 MR MATHIBEDI SC: Why was it necessary
8 for you to fire eight rounds?
9 CAPTAIN THUPE: The protesters they were
10 shooting at us and then I returned fire.
11 MR MATHIBEDI SC: I'm going to refer you
12 to item number 3, exhibit BSK1. Can you have a look at
13 that? It's item number 3.
14 CHAIRPERSON: I think that might –
15 MR MATHIBEDI SC: That's the one.
16 CHAIRPERSON: That's item 3, yes and it's
17 an exhibit already before us, is it, on which he's made
18 some marks?
19 MR MATHIBEDI SC: That's correct, it's
20 exhibit B.
21 CHAIRPERSON: But we didn't, in view of
22 the fact that this copy has got his marks on it which
23 aren't on the original, we'd better give it a separate
24 exhibit number. I suggest we make it RRR8.
25 MR MATHIBEDI SC: Thanks, Mr Chairperson.

Page 27941

1 Now if you can look at the exhibit RRR8 you will note that
2 there is an indication of letter A and B and there is also
3 an arrow, can you see that?
4 CAPTAIN THUPE: I see that, Chair.
5 MR MATHIBEDI SC: Now at the time that
6 you fired eight rounds in relation to the blocks that form
7 part of the arrow, at which block were you?
8 CAPTAIN THUPE: The third block.
9 MR MATHIBEDI SC: Now the protester that
10 fired, where was he in relation to the blocks?
11 CAPTAIN THUPE: Between blocks 6 and 7.
12 MR MATHIBEDI SC: Now you state in your
13 statement that at the time that you fired there were some
14 members of the public in that vicinity.
15 CAPTAIN THUPE: That is so, yes.
16 MR MATHIBEDI SC: Now in relation to the
17 blocks, where were the members of the public?
18 CAPTAIN THUPE: The third block from
19 above.
20 MR MATHIBEDI SC: Now you furthermore set
21 out in your statement that one of the strikers was armed
22 with an R rifle and then what happened –
23 CAPTAIN THUPE: Ja, he was armed with an
24 R5 which it was for the police, from the police. He
25 attempted to cock it while pointing it at our direction.

<p style="text-align: right;">Page 27942</p> <p>1 MR MATHIBEDI SC: Now, thereafter what 2 happened, after the exchange of the fire with the 3 protesters? 4 CAPTAIN THUPE: Then the protesters they 5 entered the squatter camp. 6 MR MATHIBEDI SC: According to paragraph 7 8.5 of your statement you say that you will be in a 8 position to can identify the striker if you see him. 9 CAPTAIN THUPE: That's correct, Chair. 10 MR MATHIBEDI SC: Now at paragraph 9 of 11 your statement you give a description of the landing of the 12 chopper. Did the chopper land after or before you and 13 Constable Sekgweleya pursued the strikers? 14 CAPTAIN THUPE: The chopper landed after. 15 MR MATHIBEDI SC: Now you are aware now 16 that at one stage Lieutenant-Colonel Vermaak together with 17 some members of the TRT, including Constable Sekgweleya, 18 followed the protesters. 19 CAPTAIN THUPE: That's correct. Well, 20 that I heard it, that is after when they're returned back, 21 is that I heard about that, Chair. 22 MR MATHIBEDI SC: Now did that happen 23 before you pursued the strikers with Constable Sekgweleya 24 or after the pursuit? 25 CAPTAIN THUPE: It was after, after we</p>	<p style="text-align: right;">Page 27944</p> <p>1 with the situation on the day." 2 CAPTAIN THUPE: I confirm, yes. 3 MR MATHIBEDI SC: You've compiled a 4 shooting list of the members of TRT that would have 5 occurred on the 13th, is that correct? 6 CAPTAIN THUPE: I did, Chair. 7 CHAIRPERSON: Is that the document which 8 has been indicated as exhibit RRR6 which is item 9 of your 9 bundle? 10 MR MATHIBEDI SC: That's correct, Mr 11 Chairman. When did you compile the exhibit? 12 CAPTAIN THUPE: The following day on the 13 14th. 14 MR MATHIBEDI SC: And what happened to 15 the exhibit? 16 CAPTAIN THUPE: I kept it on myself 17 because there was nobody who came to, who wanted it or 18 asked for it or request for it. So I then at a later stage 19 while we were at Roots, I submitted it. 20 MR MATHIBEDI SC: You submitted it to 21 who? 22 CAPTAIN THUPE: Colonel Scott. 23 MR MABUNDA: Colonel Scholtz, Chair. 24 CAPTAIN THUPE: Scott. 25 MR MATHIBEDI SC: Am I correct that on</p>
<p style="text-align: right;">Page 27943</p> <p>1 proceeded, myself and Sekgweleya. 2 MR MATHIBEDI SC: Prior to Lieutenant- 3 Colonel Vermaak pursuing the strikers with the members of 4 TRT, did he discuss that with you? 5 CAPTAIN THUPE: No, he did not discuss it 6 with me. 7 MR MATHIBEDI SC: Who was the commander 8 of the TRT members on the ground that day? 9 CAPTAIN THUPE: I was the one who was – 10 MR MATHIBEDI SC: Was it expected of 11 Lieutenant-Colonel Vermaak to have discussed that with you 12 and obtained your consent before pursuing the strikers with 13 TRT members? 14 CAPTAIN THUPE: Yes, he was supposed to, 15 yes. 16 MR MATHIBEDI SC: Now you are aware at 17 this stage that there are allegations that some members of 18 the TRT would have told Lieutenant-Colonel Vermaak that 19 they were unhappy with the conduct of General Mpembe and 20 they even threatened to kill him. 21 CAPTAIN THUPE: That is not so, Chair. 22 MR MATHIBEDI SC: Do you confirm what is 23 set out in paragraph 12 of your statement, that "At no 24 stage until now has any of the unit members come to me to 25 express their dissatisfaction with how General Mpembe dealt</p>	<p style="text-align: right;">Page 27945</p> <p>1 the 14th and the 15th of August there were no incidents that 2 required the intervention of your unit? 3 CAPTAIN THUPE: That is so, Chair. 4 MR MATHIBEDI SC: Now – 5 CHAIRPERSON: Do I understand this 6 document correctly, it sets out the people who were, the 7 TRT members who were under your command and of course your 8 name is at the top of the list, is that correct? 9 CAPTAIN THUPE: That is so, Chair. 10 CHAIRPERSON: It appears the only, only 11 three of you fired on the 13th. You fired eight rounds with 12 your pistol, as you say. That's indicated in the right- 13 hand column of this document and then – 14 CAPTAIN THUPE: I confirm that, Chair, 15 that is so. 16 CHAIRPERSON: Sekgweleya fired, Constable 17 Sekgweleya fired 19, is that right, 19 rounds with an R5, 18 is that right? 19 CAPTAIN THUPE: That is so, Chair. 20 CHAIRPERSON: And Sergeant Mguye fired 21 ten rounds with an R5. 22 CAPTAIN THUPE: Yes. 23 CHAIRPERSON: Altogether 37 rounds were 24 fired, eight with a pistol by you and the other 29 by 25 Constable Sekgweleya and Sergeant Mguye, is that correct?</p>

<p style="text-align: right;">Page 27946</p> <p>1 CAPTAIN THUPE: That is so, correct, 2 Chair. 3 MR MATHIBEDI SC: Captain, on the 16th in 4 the morning is it correct that you attended a JOCCOM 5 meeting? 6 CAPTAIN THUPE: I did, Chair. 7 MR MATHIBEDI SC: Now a general question 8 about the JOCCOM meetings. The one that you attended, did 9 you give any input? 10 CAPTAIN THUPE: No. 11 MR MATHIBEDI SC: Was it not necessary 12 for you to give an input? 13 CAPTAIN THUPE: It wasn't necessary, 14 Chair. 15 MR MATHIBEDI SC: Other members who gave 16 input, were their inputs considered and deliberated upon? 17 CAPTAIN THUPE: It has been, yes, Chair. 18 MR MATHIBEDI SC: Do you know if 19 Lieutenant-Colonel Vermaak attended any of the JOCCOM 20 meetings that you attended? 21 CAPTAIN THUPE: Ja, there are some of the 22 meetings which he attended but I'm not sure as to whether 23 he attended all the meetings. 24 MR MATHIBEDI SC: Are you in a position 25 to state whether or not he gave some input during the</p>	<p style="text-align: right;">Page 27948</p> <p>1 While the Nyalas were busy deploying the barbed wire I saw 2 that a group of the strikers approached the police line." 3 Do you confirm that? 4 CAPTAIN THUPE: That's correct. I 5 confirm that, Chair. 6 MR MATHIBEDI SC: Now here you say "While 7 the Nyalas were busy deploying the barbed wire." Which 8 Nyalas are you referring to? If you can just have a look 9 at – paragraph 23 of your statement. 10 CAPTAIN THUPE: I don't understand your 11 question, would you kindly repeat it? 12 MR MATHIBEDI SC: Yes. Can you have a 13 look at paragraph, page 11 paragraph 23 of your statement 14 where you say, "While the Nyalas were busy deploying the 15 barbed wire I saw that a group of the strikers approached 16 the police line." Now which Nyalas are you referring to? 17 CAPTAIN THUPE: Nyala 3 and Nyala 4. 18 MR MABUNDA: Referring to Nyala, both 19 Nyala 3 and 4. 20 MR MATHIBEDI SC: Now in terms of metres, 21 distance, how far were you from the line where the 22 deployment of the barbed wire was happening? 23 CAPTAIN THUPE: The distance was 100 24 metres behind the lining up of the public policing. 25 MR MATHIBEDI SC: Now as a result of –</p>
<p style="text-align: right;">Page 27947</p> <p>1 meetings that you would have attended? 2 CAPTAIN THUPE: I don't remember, Chair. 3 MR MATHIBEDI SC: What was the task given 4 to your unit on the 16th? 5 CAPTAIN THUPE: It was just to back up 6 the public order policing, the distance was supposed to be 7 100 metres behind them. That's all. 8 MR MATHIBEDI SC: There is evidence 9 before this Commission that on the 13th there were, during 10 the course of the day two briefings were done. One was 11 done by Colonel Scott and the other one was done by 12 Brigadier Calitz. Did you attend those briefings? 13 CAPTAIN THUPE: That is so but the date 14 was the 16th, Chair. 15 MR MATHIBEDI SC: Thanks. Were you 16 satisfied that a proper briefing was made by both Colonel 17 Scott and Brigadier Calitz? 18 CAPTAIN THUPE: I was satisfied, yes. 19 MR MATHIBEDI SC: Did you also 20 accordingly brief the members under your command? 21 CAPTAIN THUPE: That is so, Chair, I 22 briefed them. 23 MR MATHIBEDI SC: Now I'm going to refer 24 you to paragraph 23 of your statement which reads as 25 follows, "I saw Nyala 1 start to deploy the barbed wire.</p>	<p style="text-align: right;">Page 27949</p> <p>1 COMMISSIONER HEMRAJ: Sorry, just a 2 second. 100 metres behind, at the time the Nyalas were 3 deploying you were 100 metres behind where? 4 CAPTAIN THUPE: The line of public order 5 policing. 6 MR MABUNDA: He is referring to the 7 lining of the public policing, 100 metres away from them, 8 behind them. 9 COMMISSIONER HEMRAJ: And which line-up 10 was that of the public order policing? 11 CAPTAIN THUPE: There were a line of 12 Nyalas in front of us. The ones that were used for 13 negotiations. 14 COMMISSIONER HEMRAJ: So you were 100 15 metres behind the POP Nyalas, the negotiations, five 16 Nyalas. 17 CAPTAIN THUPE: That's correct. 18 COMMISSIONER HEMRAJ: Thank you. 19 MR MATHIBEDI SC: Now as a result of an 20 instruction which was given by Captain Loest, members of 21 TRT moved forward, is that correct? 22 CAPTAIN THUPE: That is so, Chair. 23 MR MATHIBEDI SC: Then what happened 24 thereafter? 25 CAPTAIN THUPE: Then we formed a baseline</p>

Page 27950	Page 27952
1 just on the side of the kraal.	1 MR MATHIBEDI SC: On those two occasions
2 MR MATHIBEDI SC: Why was it necessary	2 when you tested the radio, hand radio, was it functional?
3 for the line of TRT to move forward?	3 CAPTAIN THUPE: In both occasions it was
4 CAPTAIN THUPE: There were some other	4 functional, Chair.
5 members of the POP who were moving backward by then.	5 MR MATHIBEDI SC: According to you,
6 MR MATHIBEDI SC: Why were –	6 Lieutenant-Colonel Claassen is the first member who gave an
7 CAPTAIN THUPE: - retreating, your	7 instruction for cease fire.
8 worship.	8 CAPTAIN THUPE: That is so, Chair.
9 MR MATHIBEDI SC: Why were the members of	9 MR MATHIBEDI SC: Now did you compile a
10 POP retreating?	10 shooting list in relation to the incident of the 16th?
11 CAPTAIN THUPE: They had been attacked by	11 CAPTAIN THUPE: I did so, Chairperson.
12 the group of protesters by then.	12 MR MATHIBEDI SC: I'm going to refer you
13 MR MATHIBEDI SC: They were attacked with	13 to annexure RRR7, is that the shooting list that you
14 what?	14 compiled?
15 CAPTAIN THUPE: They were armed with	15 CHAIRPERSON: That's exhibit RRR7, that's
16 pangas, knobkerries, assegais.	16 item 10 in your bundle.
17 MR MATHIBEDI SC: According to paragraph	17 CAPTAIN THUPE: Item number 10.
18 26 of your statement, the fifth line, you said "I heard two	18 [10:13] CHAIRPERSON: That presumably can be put
19 gunshots fired by the strikers."	19 up on the screen as the previous one was.
20 CAPTAIN THUPE: That is so, yes, Chair.	20 MR MATHIBEDI SC: That is the list, yes.
21 MR MATHIBEDI SC: Did you see the striker	21 CHAIRPERSON: IPID opened a docket in
22 that fired?	22 respect of case 134 of August 2012 and a statement by you,
23 CAPTAIN THUPE: I did not see him at all,	23 unsigned statement by you was put in the IPID docket headed
24 Chair.	24 "Warning statement" but are you saying you hadn't seen that
25 MR MATHIBEDI SC: In which direction was	25 statement and you certainly didn't sign it, is that right?
Page 27951	Page 27953
1 the firing made?	1 CAPTAIN THUPE: So the docket was for the
2 CAPTAIN THUPE: They were approaching the	2 people who were arrested, so it's a witness statement.
3 line of the TRT, that is the protesters. As far as I'm	3 CHAIRPERSON: It's a witness – I see,
4 concerned they were directing their shots towards the TRT	4 it's an SAPS docket, in other words.
5 line.	5 CAPTAIN THUPE: That's correct.
6 MR MATHIBEDI SC: According to paragraph	6 CHAIRPERSON: And your statement is a
7 27 of your statement you saw some police members removing	7 statement effectively as a potential state witness in that
8 firearms from the protesters. Are you in a position to	8 case, is that correct?
9 give names of the members referred to in the statement?	9 CAPTAIN THUPE: That's correct.
10 CAPTAIN THUPE: One whom I've seen is	10 COMMISSIONER HEMRAJ: And it deals only
11 Sergeant Browning. The second one I did not see him, who	11 with the incident on the 16th of August and not the 13th.
12 is that one, clearly.	12 CAPTAIN THUPE: That's correct.
13 MR MATHIBEDI SC: According to paragraph	13 COMMISSIONER HEMRAJ: Yes.
14 28 of your statement you were in possession of a hand	14 MR MOJAPELO: Okay, I'll move on this
15 radio.	15 way. So Captain, you've never made any statement under
16 CAPTAIN THUPE: That is so, Chair.	16 oath to IPID disclosing that you have fired eight shots?
17 MR MATHIBEDI SC: Now when on the 16th did	17 CAPTAIN THUPE: No.
18 you or did you at any stage on the 16th test the hand radio	18 MR MOJAPELO: Okay. I'll move on to the
19 to check whether it was functional or not?	19 next topic which is the instructions to Kuhn to fire a
20 CAPTAIN THUPE: I tested it, it was in a	20 teargas. You are by now aware of the evidence of General
21 working condition, a good working condition.	21 Mpmembe and you're aware that in his evidence he denies that
22 MR MATHIBEDI SC: When did you test the	22 he has issued instructions to Warrant Officer Kuhn to fire
23 radio, hand radio.	23 teargas, am I correct?
24 CAPTAIN THUPE: In the morning and also	24 CAPTAIN THUPE: You are correct.
25 at the time when we were going to the koppie.	25 MR MOJAPELO: And in paragraph 6.3 of

<p style="text-align: right;">Page 27954</p> <p>1 your statement that you've made now recently, you give a 2 full detail of what I term a conversation, an instruction 3 in the form of a conversation between General Mpembe and 4 Warrant Officer Kuhn. If you go to that paragraph 6.3 of 5 QQQ9, on the second sentence there you say, "General Mpembe 6 ran in the direction of some of the members and gave 7 instructions to Warrant Officer Kuhn to shoot a teargas." 8 That was the first part of the conversation. General 9 Mpembe issues an instruction to Warrant Officer Kuhn and 10 Warrant Officer Kuhn replies, according to you, you say "I 11 heard Warrant Officer Kuhn asking the General whether he 12 should shoot the teargas." That is the second part and the 13 third part of this conversation is the General responding 14 to the question. You say the General said, "Yes, shoot." 15 That's how it happened.</p> <p>16 CAPTAIN THUPE: That's correct. 17 MR MOJAPELO: Am I correct that you have 18 just recorded this in detail, this conversation in detail 19 for the first time under oath on the 14th of April 2012? 20 CHAIRPERSON: 2014. 21 MR MOJAPELO: 2014, I beg your pardon. 22 CAPTAIN THUPE: No. I am referring at 23 the time when we were at Roots. 24 MR MOJAPELO: Okay – 25 CHAIRPERSON: No, the question was this</p>	<p style="text-align: right;">Page 27956</p> <p>1 the third paragraph there, the second sentence of the third 2 paragraph. I can read that sentence to you. You say, 3 "While following and monitoring them, the protesters 4 changed direction and went straight towards the informal 5 settlement and then instruction was given for firing of a 6 teargas to redirect them not to pass through an informal 7 settlement and they went through a tear smoke." 8 CAPTAIN THUPE: You are correct. 9 MR MOJAPELO: We agree that you don't 10 mention that General Mpembe issued an instruction. 11 CAPTAIN THUPE: That's correct. 12 MR MOJAPELO: In fact, what is 13 significant is that in this statement when General Mpembe 14 has issued an instruction you've mentioned that 15 instruction. The first sentence of that paragraph you say, 16 "The participants refused to surrender their weapons and 17 while General Mpembe was still negotiating with them, they 18 stood up and started to move towards the koppie and General 19 Mpembe instructed us to follow and monitor them." You see 20 when you talk about an instruction and Mpembe, you 21 mentioned it here. 22 CAPTAIN THUPE: Yes, I can see. 23 MR MOJAPELO: Okay. Two months 24 thereafter you made another statement on the 5th of 25 February.</p>
<p style="text-align: right;">Page 27955</p> <p>1 is the first time you recorded in a statement under oath – 2 were you under oath at Roots? 3 CAPTAIN THUPE: No. 4 CHAIRPERSON: No, so the answer to the 5 question is correct, isn't it, counsel is correct, is it 6 not? Is this the first sworn statement, the first 7 affidavit you made in which you made these allegations? 8 CAPTAIN THUPE: That's correct. 9 CHAIRPERSON: Ja. 10 MR MOJAPELO: You know, what is more 11 significant about this is that it has been made after 12 General Mpembe has made, has already testified in this 13 Commission. You agree with me? 14 CAPTAIN THUPE: Yes. 15 MR MOJAPELO: Okay but you said you 16 mentioned again, you mentioned this again at Roots. I want 17 us to deal with Roots now. The first statement that you've 18 made after Roots is HHH15.1, the statement that you made on 19 the 12th of December 2012, am I correct? 20 CAPTAIN THUPE: Yes. 21 MR MOJAPELO: Am I correct again that in 22 this statement you don't mention this conversation that 23 I've just unpacked to you? In fact you don't mention that 24 General Mpembe issued an instruction to Warrant Officer 25 Kuhn. You can check the statement. What is significant is</p>	<p style="text-align: right;">Page 27957</p> <p>1 CHAIRPERSON: That's RRR4. 2 MR MOJAPELO: RRR4. This is that 3 statement that you deal with eight shots. 4 CAPTAIN THUPE: That is so, yes. 5 MR MOJAPELO: Also in this statement do 6 you agree with me that you – there is no mention again of 7 the alleged instruction by General Mpembe to fire teargas. 8 CAPTAIN THUPE: Yes, that is so, Chair. 9 MR MOJAPELO: Chair, and if we deal with 10 what happened at Roots, you know that General Mpembe has 11 already testified in this Commission and reference to what 12 happened at Roots will be at day 104, page 11168 from line 13 5 to line 17. Do you see that? General Mpembe answers, 14 "Chairperson, he, earlier on I said at Potchefstroom we 15 gathered all those members that took part on the 13th, and 16 during that discussion, that's when then Warrant-Officer 17 Kuhn was asked in the presence of all the members there, 18 and then he said he heard an order but he could not know 19 who gave the order or whose voice was that. It is in that 20 meeting where also Captain Thupe said, 'General, I heard 21 you giving the order.' I said to Captain Thupe, 'I did not 22 give the order. If I could have given the order I could 23 have given the order through the radio and that everybody 24 could have heard me.' That's when then Captain Thupe kept 25 quiet, and that was the end of the matter." This evidence</p>

Page 27958

1 was given before you made this statement, you are aware of
2 that?

3 CHAIRPERSON: You don't have to interpret
4 the question, he understands – unless he asks you to do so.
5 It just wastes times.

6 MR MOJAPELO: The answer is yes?

7 CAPTAIN THUPE: I don't know.

8 MR MOJAPELO: This is what General Mpembe
9 has said in this Commission. It has been recorded, so we
10 can move on.

11 CAPTAIN THUPE: Let's move, I don't know.

12 MR MOJAPELO: Do you understand the
13 question?

14 CAPTAIN THUPE: May you repeat the
15 question, please?

16 MR MOJAPELO: I've read to you what
17 General Mpembe has said in this Commission. This is his
18 version and I've asked you that before you made your
19 statement, this was the evidence already in this Commission
20 by General Mpembe. Do you agree with me?

21 CAPTAIN THUPE: I don't know to which
22 statement are you referring.

23 COMMISSIONER HEMRAJ: Captain?

24 CAPTAIN THUPE: Which statement?

25 COMMISSIONER HEMRAJ: Captain, what has

Page 27959

1 just been put to you as being the evidence of General
2 Mpembe at the Commission, were you aware of that, that that
3 evidence had been given?

4 CAPTAIN THUPE: No.

5 MR MOJAPELO: Okay, so my question
6 previously –

7 CHAIRPERSON: The witness's answer has
8 not been – I thought the witness said no anyway –

9 MR MABUNDA: He said no –

10 CHAIRPERSON: So the interpreter doesn't
11 have to interpret what the witness says in English.

12 MR MOJAPELO: Okay, you might not be
13 aware of this detailed or this part of the transcript but
14 five questions earlier you agreed with me when I said
15 Captain, I mean General Mpembe has already testified in
16 this Commission and denied that he has issued that
17 instruction. You are aware of that denial?

18 CAPTAIN THUPE: That's correct.

19 MR MOJAPELO: Okay, then we can move on.

20 CHAIRPERSON: If you're moving on, I see
21 it's nearly half past 10 so we'll take the first comfort
22 break now. Quarter of an hour, Mr –

23 MR MOJAPELO: Mr Timekeeper.

24 CHAIRPERSON: Mr Timekeeper, quarter of
25 an hour. So we'll be back at quarter to 11 and if

Page 27960

1 everybody isn't here we'll still carry on unless Mr
2 Mathibedi is not here, in which case we'll have to send a
3 posse of policemen to fetch him.

4 [COMMISSION ADJOURNS COMMISSION RESUMES]
5 [10:46] CHAIRPERSON: The Commission resumes.
6 You're still under oath, Captain.

7 SAMUEL KAY THUPE: (s.u.o.)
8 CHAIRPERSON: Mr Mojapelo?
9 MR MATHIBEDI SC: Sorry, Mr Chairman, I
10 just would like to raise an issue which we think is
11 prejudicial to SAPS's case. At this stage we have, save
12 for the evidence leaders, the only documents that we
13 received this morning regarding the cross-examination of
14 this witness is from the Human Rights Commission. We have
15 not received other documents from other parties. My view
16 is that, you know, we should have had an opportunity to
17 consult with the witness on those documents. Now we are
18 being prejudiced, Mr Chairperson.

19 CHAIRPERSON: No, I don't know about, I
20 don't know whether you had time, whether you had an
21 opportunity to consult with the witness but certainly the
22 witness has had a chance to read them and we will take the
23 Human Rights Commission next after Mr Mojapelo, after the
24 evidence leaders, and I don't know whether the parties, the
25 other parties that are going to cross-examine are going to

Page 27961

1 rely on documents. They may be precluded from doing so if
2 they haven't given notice of it in due time but that's
3 something we can perhaps address later on. There will be
4 substantially more time still spent by the evidence
5 leaders, being the time allocated to them and the Human
6 Rights Commission and presumably the other parties can
7 decide whether they're going to rely on documents and, if
8 so, which documents and something can be done by tea time
9 but we'll cross that bridge when we get there. Mr
10 Mojapelo, please proceed? No, sorry, the position is this.
11 If the other parties –

12 MR MATHIBEDI SC: No, but even –

13 CHAIRPERSON: Sorry, can –

14 MR MATHIBEDI SC: - even with the Human
15 Rights, we've just received those documents, they are just
16 being printed so the witness has, did not have an
17 opportunity of reading them.

18 CHAIRPERSON: Alright, when the cross-
19 examination by the evidence leaders is over, we will review
20 the position. Obviously we must give the witness an
21 opportunity to look at any documents that he's being
22 referred to. You haven't got the right to consult with him
23 on them but obviously we will be very careful to ensure
24 that there's no question of unfairness to the witness and
25 before he's confronted with any document, he will have had

<p style="text-align: right;">Page 27962</p> <p>1 to have had ample opportunity to study the document.</p> <p>2 MR MATHIBEDI SC: Sorry, Chairperson,</p> <p>3 what I said, we would have consulted with him had those</p> <p>4 documents been made available prior to the witness</p> <p>5 testifying.</p> <p>6 CHAIRPERSON: Ja, no, that's a good</p> <p>7 point. Alright, okay, in the ordinary rule that you can't</p> <p>8 cross-examine with a witness while he's under cross-</p> <p>9 examination will not – sorry, I made the mistake before –</p> <p>10 you can't consult with the witness while he's under cross-</p> <p>11 examination, that rule will not apply insofar as the</p> <p>12 consultation relating to documents which he hasn't been</p> <p>13 shown before he started evidence-in-chief, which he should</p> <p>14 have been shown before –</p> <p>15 MR MATHIBEDI SC: Thanks, Chairperson.</p> <p>16 CHAIRPERSON: I take it that</p> <p>17 satisfactorily deals with the problem. Mr Mojapele?</p> <p>18 CROSS-EXAMINATION BY MR MOJAPELO (CONTD.):</p> <p>19 Thank you, Mr Chair. Captain –</p> <p>20 CHAIRPERSON: I'm sorry. And if parties</p> <p>21 are disgruntled because that's going to happen and</p> <p>22 consultation will be allowed during cross-examination, it's</p> <p>23 their own fault for not giving notice of the document</p> <p>24 beforehand.</p> <p>25 MR MOJAPELO: Thank you, Chair. Captain,</p>	<p style="text-align: right;">Page 27964</p> <p>1 that is what transpired.</p> <p>2 MR MOJAPELO: So –</p> <p>3 MR MABUNDA: I do not know why he has</p> <p>4 changed but what I said to this Commission, that is the</p> <p>5 truth.</p> <p>6 MR MOJAPELO: So are you telling this</p> <p>7 Commission that General Mzembe did not tell the truth under</p> <p>8 oath about this event?</p> <p>9 CAPTAIN THUPE: I don't know his reasons</p> <p>10 but – (speaking Setswana) –</p> <p>11 MR MABUNDA: I don't know why because</p> <p>12 what I've said to this Commission is the truth. Even</p> <p>13 before the presentation of Mr Visser it was said in that</p> <p>14 way.</p> <p>15 MR MOJAPELO: We will deal with the</p> <p>16 presentation of Mr Visser now.</p> <p>17 CHAIRPERSON: Mr Visser's, Colonel</p> <p>18 Visser's presentation – General Mzembe also said in his</p> <p>19 evidence that you had said that he gave the instruction and</p> <p>20 when he challenged you on it, you said you hadn't heard him</p> <p>21 yourself but someone else had told you that he had given</p> <p>22 the instruction. That was his evidence also, you remember?</p> <p>23 Now have you got any comment on that?</p> <p>24 CAPTAIN THUPE: Well, when he made the</p> <p>25 instruction I've seen him and heard him.</p>
<p style="text-align: right;">Page 27963</p> <p>1 we have just before break, we have just demonstrated to you</p> <p>2 the evidence of General Mzembe in this Commission in as far</p> <p>3 as it relates to the conversation that he had with you and</p> <p>4 other members at Roots and I proceed, in your consolidated</p> <p>5 statement paragraph 31.6 – your consolidated statement is</p> <p>6 QQQ9, you say in relation to General Mzembe and Roots, you</p> <p>7 say, "I recall that General Mzembe said that he could not</p> <p>8 recall that he gave the instruction but admitted that it</p> <p>9 was possible that the instruction was given by him." This</p> <p>10 captures what you said.</p> <p>11 CAPTAIN THUPE: That is so, yes, Chair.</p> <p>12 MR MOJAPELO: You see, what we have now</p> <p>13 is that General Mzembe said he told you, you Captain Thupe,</p> <p>14 that he did not issue an instruction and you say that he</p> <p>15 said to you that it was possible that he did.</p> <p>16 CAPTAIN THUPE: That is so, Chair.</p> <p>17 MR MOJAPELO: These are two conflicting</p> <p>18 versions that have been made under oath by two commanders.</p> <p>19 Are you aware of that?</p> <p>20 CAPTAIN THUPE: I am aware but what I say</p> <p>21 is true.</p> <p>22 MR MOJAPELO: Obviously one of them can't</p> <p>23 be true, one of them must be the truth and one of them not</p> <p>24 the truth.</p> <p>25 CAPTAIN THUPE: But what I said is true,</p>	<p style="text-align: right;">Page 27965</p> <p>1 CHAIRPERSON: So are you saying that</p> <p>2 General Mzembe's evidence that you said at Roots that you</p> <p>3 did not yourself hear him give the instruction but that</p> <p>4 somebody had told you that he had given the instruction,</p> <p>5 are you saying that evidence of General Mzembe is also</p> <p>6 false, also incorrect?</p> <p>7 CAPTAIN THUPE: It is, Chair, incorrect.</p> <p>8 MR MOJAPELO: Thank you, Mr Chair. I</p> <p>9 would like to deal with the documents that come from Roots</p> <p>10 and I want your comment on that because those documents</p> <p>11 that come from Roots, one of them, the first one will be</p> <p>12 exhibit L and if we can light exhibit L47, if it can be</p> <p>13 shown.</p> <p>14 CHAIRPERSON: Exhibit L, slide 47, is</p> <p>15 that what you're saying?</p> <p>16 MR MOJAPELO: Slide 47, yes, L.</p> <p>17 CHAIRPERSON: Do you see that, this is</p> <p>18 the final version of exhibit L. Slide 47 describes what</p> <p>19 allegedly happened on the 13th of August and in the second</p> <p>20 paragraph it talks about the use of teargas and stun</p> <p>21 grenades without mentioning any instruction at all. Do you</p> <p>22 see that?</p> <p>23 CAPTAIN THUPE: That's correct.</p> <p>24 MR MOJAPELO: And the second document,</p> <p>25 that is JJJ140, JJJ140 if we look at its narration in the</p>

<p style="text-align: right;">Page 27966</p> <p>1 record, that is day 123. I will summarise it, it's the 2 notes that were compiled by the breakaway groups and in 3 this event they were dealing with the events of the 13th. 4 CHAIRPERSON: We'll have to scroll down 5 this one a bit because – the second page, yes. 6 MR MOJAPELO: Yes, the second paragraph 7 there. You see it reads, "General Mpembe gave instruction 8 to corner the strikers in order to disarm and arrest them. 9 After the instruction of cornering them was announced, the 10 police ran after the strikers and the strikers increased 11 their walking pace towards the nearby settlement. While 12 there, someone from the members who were run after the mob 13 gave an instruction, gas granite. Captain Thupe heard 14 Warrant Officer Kuhn confirming whether he clearly heard 15 the instruction. After confirming that then he used the 16 teargas CS with an attempt to disperse the mob." Do you 17 see that? 18 CAPTAIN THUPE: Yes, I see that. 19 MR MOJAPELO: You see it doesn't say 20 General Mpembe issued an instruction to Warrant Officer 21 Kuhn. 22 CAPTAIN THUPE: Yes, I can see that it's 23 not mentioned there. 24 MR MOJAPELO: Two documents I've shown 25 you from Roots do not mention that. Do you have any</p>	<p style="text-align: right;">Page 27968</p> <p>1 to General Mpembe when you heard that? 2 CAPTAIN THUPE: I can't remember but the 3 police were plus-minus ten. 4 COMMISSIONER HEMRAJ: Plus-minus ten? 5 CAPTAIN THUPE: That's right. 6 COMMISSIONER HEMRAJ: Was the order 7 addressed to Warrant Officer Kuhn? 8 CAPTAIN THUPE: That's correct, because 9 he was the one who was having the pump action, that's 10 launching that grenade, smoke grenade. 11 COMMISSIONER HEMRAJ: Was the order 12 addressed to Warrant Officer Kuhn? 13 CAPTAIN THUPE: Directed to Warrant 14 Officer Kuhn. 15 CHAIRPERSON: How far was Major-General 16 Mpembe from Warrant Officer Kuhn when he gave the order? 17 CAPTAIN THUPE: Less than three to four 18 metres. 19 CHAIRPERSON: Three to four metres? 20 CAPTAIN THUPE: That's correct. 21 CHAIRPERSON: And clearly from what you 22 tell us, Warrant Officer Kuhn realised that the person who 23 had spoken to him was Major-General Mpembe because you say 24 he asked him whether he should shoot teargas, so he 25 addressed a question to him, is that right?</p>
<p style="text-align: right;">Page 27967</p> <p>1 comment to that? 2 CHAIRPERSON: Before you do that, you'll 3 notice that where General Mpembe gives an instruction it 4 says so. That, the paragraph immediately preceding the one 5 which counsel has put to you begins, "The General warned 6 them" and then the next paragraph begins, "General Mpembe 7 gave an instruction" and then suddenly there's a reference 8 to "someone gave an instruction" and it's from the members 9 who ran after the mob. And then – so the one, when General 10 Mpembe gives an instruction, whoever drafted this document 11 says so but this particular alleged instruction is simply 12 described as having been given by "someone from the 13 members." Can you comment on that? 14 CAPTAIN THUPE: No, the instructions for 15 the CSS was given by General Mpembe. 16 CHAIRPERSON: Did he say gas granite? I 17 take it granite should really be grenade. Did he say gas 18 grenade or what did he say, or didn't you hear the exact 19 words that he used? 20 CAPTAIN THUPE: He said teargas. 21 CHAIRPERSON: He didn't say grenade? 22 CAPTAIN THUPE: No. 23 CHAIRPERSON: I see. 24 COMMISSIONER HEMRAJ: At the time he gave 25 the order how many of the policemen were in close proximity</p>	<p style="text-align: right;">Page 27969</p> <p>1 CAPTAIN THUPE: That's correct. 2 COMMISSIONER HEMRAJ: Does that normally 3 happen when you're given an order by a senior officer to 4 fire gas? Do you turn around and say, must I do this, or 5 do you just go ahead and carry out the order? 6 CAPTAIN THUPE: He asked that carry out 7 the orders. 8 CHAIRPERSON: No, I think what you tell 9 us is, he said should I shoot teargas – in other words, 10 from what you tell us he understood he had to shoot 11 something but he wasn't clear whether it was teargas, so to 12 make sure he asked him "Must I shoot teargas?" Is that 13 what you're telling us? 14 CAPTAIN THUPE: That's correct. 15 COMMISSIONER HEMRAJ: He also asked 16 whether he should shoot it? 17 CAPTAIN THUPE: That's correct. 18 CHAIRPERSON: Did you not contribute to 19 the discussion at all? Did you say anything? 20 CAPTAIN THUPE: I only heard the 21 instruction. 22 CHAIRPERSON: And you didn't repeat the 23 order – 24 CAPTAIN THUPE: I didn't – 25 CHAIRPERSON: - Warrant Officer Kuhn to</p>

<p style="text-align: right;">Page 27970</p> <p>1 know who had issued the order and what the order was? 2 CAPTAIN THUPE: No, I didn't repeat the 3 order. 4 CHAIRPERSON: You remained silent 5 throughout. 6 CAPTAIN THUPE: That's right. 7 CHAIRPERSON: I see, thank you. 8 MR MOJAPELO: You see, Captain, I've 9 already demonstrated to you two documents from Roots that 10 doesn't support your version. Now I want us to deal with 11 the statement of Warrant Officer Kuhn and – 12 CHAIRPERSON: Which exhibit number is 13 that? 14 MR MOJAPELO: The statement, as far as 15 I'm concerned, doesn't have an exhibit number. 16 CHAIRPERSON: No, it is before us as an 17 exhibit, I'm sure. Let it be put up in the meanwhile and 18 we'll find the exhibit number. The police have really 19 kindly provided us with an index to the exhibits, so we 20 should be able to find it there. We've seen it before, 21 maybe it hasn't been given a number, maybe I'm being unduly 22 optimistic in thinking it's been given a number but if it 23 has been given one we'll find it on the index the police 24 gave us to their bundle for cross-examination of Colonel 25 Vermaak where they set out all the exhibits so far. We've</p>	<p style="text-align: right;">Page 27972</p> <p>1 you. Do you still remember that? General Mpembe issued an 2 instruction, Warrant Officer asked whether he heard the 3 instruction, General Mpembe responded again. Do you still 4 remember that? 5 CAPTAIN THUPE: That's correct. 6 MR MOJAPELO: Okay, Warrant Officer Kuhn 7 in paragraph 4, if I can just go to – 8 CHAIRPERSON: Could we see paragraph 4 9 please, on the screen? It's in Afrikaans. "Toe hulle 'n 10 end van ons weg was, het General Mpembe die opdrag gegee 11 dat ons hulle moet weghou van die plakkerskamp. Ons het 12 begin hardloop om by hulle uit te kom. Dis toe dat hulle 13 ook vinniger beweeg. Ek het 'n haelgeweer met een 14 traanrook, ek was besig om agter hulle aan te hardloop toe 15 iemand aan my regterkant opdrag gegee het dat daar 16 traanrook en skokgranate gegooi moet word. Ek het gevra of 17 ek die traanrook moet skiet. Die opdrag het weer gekom dat 18 traanrook en skokgranate gegooi moet word." 19 So I'll translate that into English. When they 20 were a distance away from us, General Mpembe gave the order 21 that we should hold, keep them away from the squatter camp. 22 We began to run in order to catch up with them. That's 23 when they also move – it's the present tense he uses now – 24 they move more quickly. I had a shotgun with one teargas 25 grenade, I think is the correct word, he just says with one</p>
<p style="text-align: right;">Page 27971</p> <p>1 got to move on a bit further, Mr Mojapelo, what paragraph 2 number do you want us to look at? 3 MR MOJAPELO: I want us to look at 4 various paragraphs. Paragraph 2, paragraph 3 and paragraph 5 4 but let me start it this way. There's a bundle of 6 documents that I've prepared for the Commission, the 7 statement must be there. Captain, do you have the 8 statement of Kuhn in front of you? 9 CAPTAIN THUPE: That's correct. 10 MR MOJAPELO: Okay. 11 COMMISSIONER HEMRAJ: Mr Mojapelo, if 12 you've prepared a bundle of documents for us we certainly 13 don't have it. 14 MR MOJAPELO: I apologise for that. I 15 was made to believe that they were given to you on Friday, 16 but in the meantime the statement is on the board there. 17 Yes, Mr Wesley confirms that it doesn't have an exhibit 18 number so we can give it an exhibit number. 19 CHAIRPERSON: Have you got copies of this 20 document for us? It'll be RRR9. What paragraph do you 21 want to refer to? 22 MR MOJAPELO: Before I refer to the 23 specific paragraph I just want to remind the Captain that 24 according to his statement, Warrant Officer Kuhn and 25 General Mpembe had the conversation that I broke down to</p>	<p style="text-align: right;">Page 27973</p> <p>1 teargas. I was busy to run behind them when someone on my 2 right side gave an instruction that teargas and stun 3 grenades must be thrown. I asked if I must fire the 4 teargas. The instruction came again that teargas and stun 5 grenades be thrown. I fired – then he goes on, "Ek het een 6 traanrook afgevuur na die regterkant van die" group. I 7 fired off one teargas to the right side of the group. 8 That's the passage in the – 9 [11:05] MR MOJAPELO: Yes, what I want to 10 highlight there is the word "iemand." Do you see it 11 doesn't say General Mpembe gave instruction. He says 12 "iemand," he says "toe iemand aan my regterkant 'n opdrag 13 gegee het." Do you see that? 14 CAPTAIN THUPE: I see. Yes, I see that. 15 MR MOJAPELO: Do you agree with me that 16 he doesn't say the instruction came from General Mpembe? 17 CAPTAIN THUPE: It's what he wrote on the 18 statement, yes. 19 MR MOJAPELO: Okay. On this statement 20 again I can demonstrate to you that when Warrant Officer 21 Kuhn talks about instruction and General Mpembe, he 22 mentions those two – 23 CHAIRPERSON: We saw that from the first 24 sentence when he said, when they were a distance from us, 25 as I translated previously, General Mpembe gave the</p>

<p style="text-align: right;">Page 27974</p> <p>1 instruction that we should keep them away from the squatter 2 camp. 3 MR MOJAPPELO: Yes, that was in paragraph 4 4, you see that? 5 CAPTAIN THUPE: I see that, yes, Chair. 6 MR MOJAPPELO: It happens again in the 7 previous Warrant Officer paragraphs. In paragraph 3 again 8 – I don't think it's necessary for the Chairperson to 9 interpret – on the second sentence he says, "Generaal 10 Mpembe met hulle gepraat en gevra dat hulle wapens moet 11 neersit voordat hulle koppie toe gaan. Hulle het hom nie 12 verstaan nie want hulle het ander taal gepraat. Die 13 Generaal het hulle weer ingelig dat hulle 10 sekondes gegee 14 om die wapens neer te lê. Hulle het geweier, vorentoe 15 geloop en hulle het laat deurgaan." 16 CHAIRPERSON: I think I'll have to translate that 17 for the benefit of those who are unable to understand 18 Afrikaans. With our arrival at the group of people, they 19 were kneeling with their traditional weapons with them, 20 spears, pangas and knobkerries. General Mpembe spoke with 21 them and asked that they should lay down their arms before 22 they go to the koppie. They didn't understand him because 23 they talked another language. The General then informed 24 them again that he was giving them 10 seconds to lay down 25 their weapons. They refused and walked on. We let them</p>	<p style="text-align: right;">Page 27976</p> <p>1 grenade. 2 CAPTAIN THUPE: Ja, that is so. That's 3 what I heard – 4 MR MOJAPPELO: The reference to that is on 5 paragraph 6.3 of QQQ9. 6 COMMISSIONER HEMRAJ: Did anyone give an 7 order to use stun grenades? 8 CAPTAIN THUPE: I didn't hear that order. 9 COMMISSIONER HEMRAJ: If it had been in 10 the immediate vicinity you would have heard it. 11 CAPTAIN THUPE: That's correct. 12 MR MOJAPPELO: So do you have any comment 13 about that because your alleged conversation between 14 Warrant Officer Kuhn and General Mpembe is not supported by 15 the statement that has been filed by Warrant Officer Kuhn. 16 Do you have any comment on that? 17 MR MATHIBEDI SC: Sorry Mr Chairman, it 18 can't be expected of this witness to comment as to why 19 certain information was included or was excluded from – 20 CHAIRPERSON: No, I think that objection 21 is correct. I mean the most you can say is, have you any 22 explanation? You will later argue, if he can't explain it, 23 that he couldn't explain it but he was given an opportunity 24 to explain but I don't think you can put it any higher than 25 that. So are we correct in assuming that you can't explain</p>
<p style="text-align: right;">Page 27975</p> <p>1 proceed. 2 MR MOJAPPELO: So you see when he talks 3 about General Mpembe, he mentions General Mpembe by name. 4 He doesn't say "iemand." 5 CAPTAIN THUPE: Yes, I see that, Chair. 6 MR MOJAPPELO: The same also applies in 7 the previous paragraph which is paragraph 2. I don't think 8 there's a need to go there. 9 CAPTAIN THUPE: Ja, it is so, Chair. 10 COMMISSIONER HEMRAJ: Can I just ask you, 11 Captain, the order you heard was for teargas to be fired. 12 CAPTAIN THUPE: That's correct. 13 COMMISSIONER HEMRAJ: Did you hear any 14 order from General Mpembe to use stun grenades as well? 15 CAPTAIN THUPE: No, I only heard the one 16 of teargas. 17 COMMISSIONER HEMRAJ: Only teargas? 18 CAPTAIN THUPE: That's correct. 19 MR MOJAPPELO: Yes, taking leave from the 20 question of the Commissioner, that is the other significant 21 difference between your version and the version, and what 22 Warrant Officer Kuhn heard. Warrant Officer Kuhn heard an 23 instruction for both the grenade and teargas but you 24 specifically mention in your consolidated statement that 25 you heard only a teargas and you did not hear a stun</p>	<p style="text-align: right;">Page 27977</p> <p>1 the conflict between what you've told us and Warrant 2 Officer Kuhn? 3 CAPTAIN THUPE: No, I can't say what 4 Warrant Officer Kuhn has read but what I – 5 CHAIRPERSON: My understanding, you've 6 told us, you've given us your version. 7 CAPTAIN THUPE: That's correct. 8 CHAIRPERSON: He's reduced to writing his 9 version and there's a difference and you can't explain the 10 difference, is that correct? Alright. 11 MR MOJAPPELO: Okay, we can move on. 12 Again as I've said and I think I must just repeat it, that 13 the dilemma is that two commanders have given two different 14 versions now about what led to Warrant Officer Kuhn's 15 shooting of the teargas and one of these versions cannot be 16 correct. Do you agree with me? 17 CAPTAIN THUPE: What I said to this court 18 is what I heard the day in question, that's all I gave to 19 the Commission, Chair. 20 MR MOJAPPELO: Yes, I hear that but my 21 question is, your version is different from General 22 Mpembe's version and I'm saying these two commanders have 23 given two conflicting versions, one of those versions 24 cannot be correct, do you agree with me? 25 CAPTAIN THUPE: Well, what I wrote which</p>

<p style="text-align: right;">Page 27978</p> <p>1 is before this Commission , is what I have heard and that 2 is the truth but I wouldn't explain how come the differ, of 3 the statements. 4 MR MOJAPPELO: Yes, I'm not yet at the 5 period where you must explain how come or why did – you say 6 your version is the correct one. 7 CAPTAIN THUPE: That's correct. 8 MR MOJAPPELO: So it goes without saying 9 that General Mpmembe's version is not correct. 10 CHAIRPERSON: [Microphone off, inaudible] 11 – conflict and he says he's right, then it follows the 12 other person is wrong. We don't have to waste time on 13 that. 14 MR MOJAPPELO: Okay. The other two things 15 that I want to deal with briefly is the issue where, 16 Captain, you've chased after the strikers who have robbed 17 the police an R5. 18 CAPTAIN THUPE: That's correct. 19 MR MOJAPPELO: Yes, I've heard your 20 explanation in evidence-in-chief, I'm not going to take it 21 as far as I wanted to take it but before dealing with the 22 chasing of the strikers I want you to explain, I want to 23 understand what you saw in connection with the movement of 24 the strikers as you explain it in paragraph 7.1 of your 25 consolidated statement. The way I understand it and you</p>	<p style="text-align: right;">Page 27980</p> <p>1 CAPTAIN THUPE: They were on, behind as 2 well on the right-hand side of the protesters. 3 MR MOJAPPELO: Yes. Then when the stun 4 grenade was shot the strikers changed direction, according 5 to your statement, and ran back, not in the direction of 6 where they were going but they went back and to the 7 direction of the police. Is that how you saw it? 8 CAPTAIN THUPE: What happened is that the 9 strikers then turned to, on the right-hand side of the 10 police, they turned in that side in the direction where the 11 police were, with the stun grenade. 12 MR MOJAPPELO: In other words when the 13 stun grenade was shot, the strikers, instead of increasing 14 the distance between themselves and the police by running 15 away, you say they turned back and ran towards the police. 16 CAPTAIN THUPE: That is so, Chair. 17 MR MOJAPPELO: Okay. You spoke that there 18 was a lot of teargas that clouded your vision. What 19 exactly did you see when they ran back to the police? 20 CAPTAIN THUPE: Those whom I have seen is 21 those who were busy attacking Warrant Officer Lepaaku, that 22 is the strikers. 23 MR MOJAPPELO: Okay and then what happened 24 thereafter? 25 CAPTAIN THUPE: Thereafter I attempted to</p>
<p style="text-align: right;">Page 27979</p> <p>1 must correct me if I'm wrong, is that the strikers were 2 walking in front of the police, am I correct so far? 3 CAPTAIN THUPE: I would like you to 4 repeat your question. 5 MR MOJAPPELO: Let me just clarify it 6 before I put it. I'm talking about the incident just 7 before the commotion, just before the firing of the teargas 8 and the stun grenades. The strikers were walking in one 9 direction and behind them it was the police. 10 CAPTAIN THUPE: That's correct. 11 MR MOJAPPELO: And the strikers at that 12 time were near an informal settlement. 13 CAPTAIN THUPE: No, that was not near the 14 informal settlement. 15 MR MOJAPPELO: They were not – okay, maybe 16 let me put it this way. They were walking in the direction 17 of the informal settlement. 18 CAPTAIN THUPE: No. They were walking to 19 pass on the left-hand side of the informal settlement. 20 MR MOJAPPELO: They were walking to pass 21 on the left-hand side of the informal settlement. 22 CAPTAIN THUPE: Ja, before everything. 23 MR MOJAPPELO: Okay. For my question that 24 is enough. The police were behind them when the stun 25 grenade and teargas were shot.</p>	<p style="text-align: right;">Page 27981</p> <p>1 go and help Warrant Officer Lepaaku. The strikers, the 2 protesters then they took his R5 and then they ran away 3 with it. Then both myself and Constable Sekgweleya, we 4 started to chase them, to follow the strikers. 5 COMMISSIONER HEMRAJ: Captain, can you 6 assist me with something please? When you say that they 7 turned around and ran towards the police, was it the police 8 on the right-hand side of the crowd of strikers or was it 9 the police that were behind the crowd of strikers? 10 CAPTAIN THUPE: Those on the right-hand 11 side of the protesters. 12 COMMISSIONER HEMRAJ: Those on the right- 13 hand side? 14 CAPTAIN THUPE: That's correct. 15 COMMISSIONER HEMRAJ: And was it the 16 persons that were at the front of the crowd or did they 17 come from somewhere in the middle of the crowd? What did 18 you observe? 19 CAPTAIN THUPE: Can you please repeat 20 your question? 21 COMMISSIONER HEMRAJ: Yes. The persons 22 that went towards the police line on the right-hand side, 23 did they come from the persons that were at the very front 24 of the crowd or did they come from some other part of the 25 crowd of strikers?</p>

Page 27982

1 CAPTAIN THUPE: They were the people who
2 were in the middle of the crowd.
3 MR MOJAPELO: Okay. You say you and
4 Constable Sekgweleya followed the protester who had robbed
5 Warrant Officer Lepaaku of his rifle.
6 CAPTAIN THUPE: That is so, Chair.
7 MR MOJAPELO: That you have captured well
8 in paragraph 4 of HHH15.1 but in paragraph 8.2 of the new
9 statement, the consolidated statement, you don't put it
10 like that. You said "I followed the strikers," that is
11 you, Captain, you followed the strikers "and met Constable
12 Sekgweleya at point A at a certain point." So you didn't
13 leave -
14 CAPTAIN THUPE: That is so, Chair.
15 MR MOJAPELO: Sorry, Mr Interpreter. So
16 you didn't leave immediately with Captain Sekgweleya.
17 CAPTAIN THUPE: Constable Sekgweleya.
18 MR MOJAPELO: Constable Sekgweleya.
19 CAPTAIN THUPE: No.
20 MR MOJAPELO: You met him at a later
21 stage.
22 CAPTAIN THUPE: He was on my right-hand
23 side, just ahead, a few paces ahead of me. It's that as I
24 was following them he then joined me and then we started to
25 follow them together.

Page 27983

1 MR MOJAPELO: Yes. You see, in your
2 first statement you were clear. You say "I and Constable
3 Sekgweleya followed them" but in your new statement, which
4 statement I put it to you was made when Colonel Vermaak was
5 giving evidence, you changed. This time you didn't follow
6 them with Constable Sekgweleya but you met Sekgweleya at a
7 certain point. Can you explain the difference?
8 CAPTAIN THUPE: Well, there's no
9 difference at all because he joined me as we were following
10 those people together, Chair. When saying that he has
11 joined me, it does not illustrate or show that he was far
12 away from me.
13 MR MOJAPELO: Because the thing is,
14 Colonel Vermaak has testified and I'm sure you are aware of
15 his testimony, that he took Sekgweleya – in fact in
16 paragraph 9 of Sekgweleya's statement – I will look for an
17 exhibit number now but he mentioned that "I" – he says
18 "Colonel Vermaak and myself, together with Sergeant Mguye
19 pursued a group of strikers on foot." He doesn't mention
20 you, Captain.
21 CAPTAIN THUPE: Only thereafter, after we
22 have followed those group of people, it's then that he
23 accompanied Vermaak.
24 MR MOJAPELO: So the reason, your reason,
25 the reason for changing this statement has nothing to do

Page 27984

1 with the testimony of Colonel Vermaak?
2 CAPTAIN THUPE: No.
3 MR MOJAPELO: Okay. Yes, I'm about to
4 finish but I just want to go back to one point, the point
5 about the disclosure. Remember this morning we had a
6 debate about the late disclosure of the fact that you had
7 fired eight shots. The reason I want to take up this with
8 you is that, Captain, you are a very senior police officer
9 in the South African Police and you would have been aware
10 that after this incident where five lives have been lost,
11 there will be various investigations including the IPID, am
12 I correct so far?
13 CAPTAIN THUPE: You are correct.
14 MR MOJAPELO: There will be ballistics
15 investigations, am I correct so far?
16 CAPTAIN THUPE: Correct.
17 MR MOJAPELO: The LCRC part of the police
18 will be called to the scene to collect the evidence
19 immediately after the incident.
20 [11:25] CAPTAIN THUPE: Correct.
21 MR MOJAPELO: So don't you think it was
22 essential for you to disclose the number of shots that you
23 have shot immediately after the incident so that it can
24 help with this institution in the investigations?
25 CAPTAIN THUPE: I disclosed a shot that I

Page 27985

1 fired.
2 MR MOJAPELO: Yes, in terms of the
3 statement that was made six months after the event you
4 finally put it under oath that you fired eight shots. I'm
5 asking about the investigations that were done immediately.
6 LCRC collect evidence immediately, don't they?
7 CAPTAIN THUPE: Well, as I've just
8 testified that I have compiled a list of the occurrence on
9 the 13th, so as far as myself is concerned, is to disclose
10 when compiling the list of the 13th.
11 COMMISSIONER HEMRAJ: Captain, when the
12 members of the LCRC attended the scene did you point out
13 any spots to them?
14 CAPTAIN THUPE: That's correct.
15 COMMISSIONER HEMRAJ: Did you indicate to
16 any of them whether you fired shots and how many?
17 CAPTAIN THUPE: That's correct.
18 COMMISSIONER HEMRAJ: And who was the
19 officer attending the scene?
20 CAPTAIN THUPE: It was Colonel Botha.
21 COMMISSIONER HEMRAJ: And would he have
22 completed the report about who shot, which policemen fired
23 shots and how many were fired?
24 CAPTAIN THUPE: I can't remember but I
25 completed the list of people who shot on the –

<p style="text-align: right;">Page 27986</p> <p>1 COMMISSIONER HEMRAJ: Apart from that 2 handwritten list, is there any other SAPS document which 3 contained the number of shots fired by the policemen on the 4 scene? 5 CAPTAIN THUPE: That's correct. 6 COMMISSIONER HEMRAJ: What is that 7 document? 8 CAPTAIN THUPE: The document was handed 9 over to Colonel Scott. 10 COMMISSIONER HEMRAJ: No, no, apart from 11 that handwritten document that you handed to Colonel Scott, 12 is there any other SAPS official form that was filled out 13 that would indicate which policemen fired shots and how 14 many were fired? 15 CAPTAIN THUPE: That's correct. 16 COMMISSIONER HEMRAJ: What would that 17 form be, Captain? 18 CAPTAIN THUPE: That form is supposed to 19 be handed to logistics for reissuing of ammunition. 20 COMMISSIONER HEMRAJ: And what is the 21 number of that SAPS form? 22 CAPTAIN THUPE: No, it's not, it doesn't 23 have a number, it's a pro forma. 24 CHAIRPERSON: Isn't there an SAP15 form? 25 CAPTAIN THUPE: No, SAP15 is the duty</p>	<p style="text-align: right;">Page 27988</p> <p>1 officer who attended this scene? 2 CAPTAIN THUPE: The person I saw, it was 3 Brigadier Calitz, he was on the scene. 4 CHAIRPERSON: So it was his job to fill 5 in the form, you say? Is that right? 6 COMMISSIONER HEMRAJ: The shooting 7 incident – 8 CHAIRPERSON: The shooting incident form. 9 CAPTAIN THUPE: That's correct. 10 CHAIRPERSON: And was it not your duty to 11 inform him of the shots that you'd fired so that he could 12 incorporate that information in the form that he had to 13 fill in? 14 CAPTAIN THUPE: That's correct. 15 CHAIRPERSON: Did you do that? 16 CAPTAIN THUPE: That's correct. 17 CHAIRPERSON: You haven't told us that 18 before. You told us you told Colonel Scott some days 19 later. This is the first we hear that you told Brigadier 20 Calitz on the scene, am I correct? 21 CAPTAIN THUPE: That's correct. 22 CHAIRPERSON: Why didn't you mention it 23 before? 24 CAPTAIN THUPE: No, the question was did 25 I submit the shooting list.</p>
<p style="text-align: right;">Page 27987</p> <p>1 list. 2 CHAIRPERSON: Duty list, I see. But 3 we've had evidence that there's a form, an official printed 4 SAP form that whenever you, a policeman or woman, a member 5 of the service fires his or her firearm, a form has got to 6 be filled in. Is that in order, so that that member of the 7 service can be issued with fresh ammunition to take the 8 place of the ammunition that's been discharged? 9 CAPTAIN THUPE: The form is the pro 10 forma, is called shooting incident. 11 CHAIRPERSON: Yes? 12 CAPTAIN THUPE: And after a shooting 13 incident, that form is completed. 14 CHAIRPERSON: Yes, now who completes it? 15 CAPTAIN THUPE: No, I didn't complete 16 that. 17 CHAIRPERSON: No, I say who normally 18 completes it? 19 CAPTAIN THUPE: The officer who attended 20 the scene. 21 CHAIRPERSON: What Adv Hemraj, the person 22 to whom Adv Hemraj refers as the attending officer. 23 CAPTAIN THUPE: It's the senior officer 24 who attended the scene is supposed – 25 CHAIRPERSON: Now who was the attending</p>	<p style="text-align: right;">Page 27989</p> <p>1 CHAIRPERSON: Alright. Well – 2 CAPTAIN THUPE: I submitted a shooting 3 list for Colonel Scott. 4 CHAIRPERSON: I understand that but that 5 was some days later. I'm interested in what happened on 6 the 13th of August. You say that Brigadier Calitz as the 7 attending officer was the person who was charged with the 8 duty to fill in the shooting incident form, is that 9 correct? 10 CAPTAIN THUPE: That's correct. I 11 reported the incident to Brigadier Calitz, he – 12 CHAIRPERSON: I see, you told him orally? 13 CAPTAIN THUPE: I told him orally, that's 14 correct. 15 CHAIRPERSON: You didn't make a note 16 about it in your diary? 17 CAPTAIN THUPE: No. 18 CHAIRPERSON: Why not? Aren't you 19 supposed to record important matters in your diary? 20 CAPTAIN THUPE: I only recorded – 21 CHAIRPERSON: No, answer my question. 22 Aren't you supposed to report, to record important 23 incidents in your diary? Isn't that – that's what the 24 diary is for, isn't it? 25 CAPTAIN THUPE: That's correct.</p>

<p style="text-align: right;">Page 27990</p> <p>1 CHAIRPERSON: Did you record it in your 2 diary that you fired these shots? 3 CAPTAIN THUPE: No, Chairperson. 4 CHAIRPERSON: Why not? 5 CAPTAIN THUPE: It is – I only mention it 6 in the shooting list. 7 CHAIRPERSON: Ja, I know but you haven't 8 answered my question. Why didn't you record it, an 9 important incident, in your diary? Is there a reason? 10 CAPTAIN THUPE: No, there's no reason. 11 CHAIRPERSON: No reason. Can we perhaps 12 take the tea adjournment at this stage? 13 [COMMISSION ADJOURNS COMMISSION RESUMES] 14 [12:03] CHAIRPERSON: The Commission resumes. 15 SAMUEL KAY THUPE: (s.u.o.) 16 CHAIRPERSON: Have you had an 17 opportunity, Captain, to study the documents which were 18 made available by the Human Rights Commission? 19 CAPTAIN THUPE: That's correct, 20 Chairperson. 21 CHAIRPERSON: You have. And then I 22 understand that Adv Gumbi also sent some documents through, 23 have you had an opportunity to see them? 24 CAPTAIN THUPE: There are lots of 25 documents, I don't know which one comes from who.</p>	<p style="text-align: right;">Page 27992</p> <p>1 Broadly speaking, phase 1 was to deal with the events of 9 2 to 16 August 2012 at Marikana and phase 2 was to deal with 3 underlying socio-economic causes. 4 The President has now removed paragraph 1.5 of 5 the Commission's terms of reference. That paragraph dealt 6 with certain phase 2 issues. Phase 1 of the Commission's 7 inquiry deals with the injuries and deaths during the 8 period 9 to 16 August 2012 and responsibility for those 9 injuries and deaths. It includes the investigation of the 10 role of the South African Police Service and why they acted 11 as they did. This issue is covered by paragraph 1.2 of the 12 terms of reference, which has not been amended or 13 withdrawn. The removal of paragraph 1.5 of the terms of 14 reference does not in any way affect phase 1 of the 15 Commission's inquiry. 16 The Commission has received statements from the 17 Minister of Police and Mr Cyril Ramaphosa with regard to 18 their role in relation to the conduct of the SAPS during 19 the week of 9 to 16 August 2012. As matters currently 20 stand, it is anticipated that they will be called to give 21 oral evidence. The removal of paragraph 1.5 of the terms 22 of reference will have no impact on that. 23 Copies of the statement, as I have said, are 24 available and will be given to the media representatives 25 who are in attendance at the Commission.</p>
<p style="text-align: right;">Page 27991</p> <p>1 CHAIRPERSON: The Human Rights Commission 2 sent you a statement of Lieutenant-Colonel Claassen, two 3 statements of Lieutenant-Colonel Claassen, one typed – both 4 typed and also a zoomed section of exhibit JJJ46. Those 5 are the documents you got from the Human Rights Commission. 6 Have you seen those? Yes, you've seen those? 7 CAPTAIN THUPE: Just received from Mr 8 Gumbi. 9 CHAIRPERSON: Well, never mind those. 10 Those are Mr Gumbi's, you haven't seen Mr Gumbi's but 11 you've see the Human Rights Commission documents, that's 12 the two statements by Lieutenant-Colonel Claassen and this 13 zoomed section of exhibit JJJ46. You've seen those? 14 CAPTAIN THUPE: Yes. 15 CHAIRPERSON: So the Human Rights 16 Commission can cross-examine you in a moment but before 17 they do that I want to make a statement and I understand 18 that Mr Bizos wishes to make a statement as well. Copies 19 of the statement that I'm now going to make will be made 20 available to the press. 21 There has been some speculation in the media 22 about the consequences of the President's amendment of the 23 Commission's terms of reference. I believe that it's 24 desirable that the correct position be stated publicly. 25 The Commission divided its investigation into phases.</p>	<p style="text-align: right;">Page 27993</p> <p>1 I understand, Mr Bizos, that you also have a 2 statement that you wish to make. 3 MR BIZOS SC: Yes, Mr Chairman. In view 4 of certain comments made by Right to Know, we, the LRC 5 legal team at this Commission, have consulted about the 6 statement released on behalf of the Marikana Support 7 Committee regarding the President's extension and amendment 8 of the Commission's powers and the LRC is listed as one of 9 the organisations in whose name the statement is released. 10 The LRC and its team at Marikana have consulted 11 in respect of the President's decision and our response has 12 been communicated to the Commission itself along with that 13 of the other legal teams in the normal course of Commission 14 proceedings. We believe that this is the appropriate way 15 for us to engage and do not wish to convey our views 16 through the statement which we do not consent to have been 17 issued in our name. We are awaiting the response of the 18 Commission and, if need be, the President on the 19 submissions of the legal teams and will continue to address 20 them at Commission hearings and not through the media. 21 CHAIRPERSON: Thank you, Mr Bizos. Mr 22 Mojapelo, I think you indicated to me duri8ng the tea 23 adjournment that you've finished your cross-examination, is 24 that correct? 25 MR MOJAPELO: Yes, we don't have any</p>

<p style="text-align: right;">Page 27994</p> <p>1 further questions.</p> <p>2 CHAIRPERSON: That is why I ascertained</p> <p>3 whether the witness is ready to deal with the cross-</p> <p>4 examination of the Human Rights Commission.</p> <p>5 MR MOJAPELO: Thank you, Mr Chair.</p> <p>6 CHAIRPERSON: Ms Le Roux, are you ready</p> <p>7 to proceed with your cross-examination?</p> <p>8 MS LE ROUX: Yes, thank you, Chair.</p> <p>9 Before I do, if I could echo, on behalf of the Centre for</p> <p>10 Applied Legal Studies, the statement made by the Legal</p> <p>11 Resources Centre. Like the LRC, CALS was unaware that its</p> <p>12 name would be attached to that statement and hadn't agreed</p> <p>13 to its use. Chair, if I can then move on to the</p> <p>14 housekeeping that we always need to do, there are three new</p> <p>15 exhibits that need to be marked. The first of these is the</p> <p>16 statement of the wonderfully named Little Joe Ronnie</p> <p>17 Claassen on the 27th of January 2014. Chair, that is the</p> <p>18 statement that doesn't have a heading above it in the two</p> <p>19 documents you've been provided. So that should be RRR, I</p> <p>20 think we're up to 8, is that correct?</p> <p>21 CHAIRPERSON: No, we're up to 10 now.</p> <p>22 MS LE ROUX: We're up to 10, RRR –</p> <p>23 CHAIRPERSON: RRR9 was the statement of</p> <p>24 Warrant Officer Kuhn.</p> <p>25 MS LE ROUX: Yes.</p>	<p style="text-align: right;">Page 27996</p> <p>1 morning, Captain Thupe. I'm the advocate representing the</p> <p>2 South African Human Rights Commission in the Marikana</p> <p>3 Commission of Inquiry and I have a few questions for you.</p> <p>4 If I could start with a topic covered to a limited extent</p> <p>5 by my learned friend for the evidence leaders, the two</p> <p>6 shooting lists that are now marked RRR6 and 7 relating to</p> <p>7 the 13th and the 16th respectively, I just want to confirm</p> <p>8 and understand your evidence. You said you gave the one</p> <p>9 relating to the 13th, RRR6, to Colonel Scott at Roots,</p> <p>10 correct?</p> <p>11 CAPTAIN THUPE: That's correct.</p> <p>12 MS LE ROUX: And then you gave RRR7, the</p> <p>13 shooting list for the 16th, to Colonel Scott on the 17th of</p> <p>14 August at Marikana?</p> <p>15 CAPTAIN THUPE: That's correct.</p> <p>16 MS LE ROUX: Did you keep a copy of the</p> <p>17 two lists?</p> <p>18 CAPTAIN THUPE: That's correct.</p> <p>19 MS LE ROUX: And were you ever asked by</p> <p>20 the SAPS legal team whether you had any contemporaneous</p> <p>21 notes, which would include the two shooting lists you'd</p> <p>22 drawn up? Were you ever asked whether you had notes of</p> <p>23 what happened at the incident?</p> <p>24 CAPTAIN THUPE: Yes, it's only during the</p> <p>25 consultation preparing for the consolidated statement.</p>
<p style="text-align: right;">Page 27995</p> <p>1 CHAIRPERSON: I must confess I still</p> <p>2 think that the Warrant Officer Kuhn is an exhibit because</p> <p>3 I've certainly read one and the police very kindly gave us</p> <p>4 an updated index of the exhibits which I'm afraid I didn't</p> <p>5 bring with me this morning but if we've erroneously marked</p> <p>6 Warrant Officer Kuhn's document twice I'm sure we can sort</p> <p>7 that out later but at the moment I think we must move on to</p> <p>8 exhibit RRR10.</p> <p>9 MS LE ROUX: RRR10 will be the statement</p> <p>10 of Lieutenant-Colonel Claassen dated 27 January 2014.</p> <p>11 CHAIRPERSON: Yes and then –</p> <p>12 MS LE ROUX: Then RRR11 will be the</p> <p>13 statement of Lieutenant-Colonel Claassen dated 28 January</p> <p>14 2014.</p> <p>15 CHAIRPERSON: Yes.</p> <p>16 MS LE ROUX: And then RRR12 will be the</p> <p>17 zoomed section of exhibit JJJ46.</p> <p>18 CHAIRPERSON: JJJ – very well, I've</p> <p>19 marked my copies then of the three documents. Exhibit</p> <p>20 RRR10 is the statement of Lieutenant-Colonel Claassen dated</p> <p>21 27th January 2014, exhibit RRR11 is the statement of</p> <p>22 Lieutenant-Colonel Claassen dated 28 January 2014 and</p> <p>23 exhibit RRR12 is the zoomed section of exhibit JJJ46.</p> <p>24 MS LE ROUX: Thank you, Chair.</p> <p>25 CROSS-EXAMINATION BY MS LE ROUX: Good</p>	<p style="text-align: right;">Page 27997</p> <p>1 CHAIRPERSON: I don't want to go into</p> <p>2 what happened in consultations –</p> <p>3 MS LE ROUX: No.</p> <p>4 CHAIRPERSON: - between the SAPS legal</p> <p>5 team and the witness. I must confess I thought your</p> <p>6 question related to the SAPS generally, in other words,</p> <p>7 whether those notes that he compiled, whether he'd been</p> <p>8 asked to hand that over at an earlier stage, not only by</p> <p>9 the legal team because –</p> <p>10 MS LE ROUX: Chair, that was my –</p> <p>11 CHAIRPERSON: - the legal team –</p> <p>12 MS LE ROUX: That was my next question.</p> <p>13 CHAIRPERSON: Yes, alright.</p> <p>14 MS LE ROUX: And Captain Thupe, other</p> <p>15 than when the lawyers asked you if you had any notes, did</p> <p>16 anyone else in the SAPS ask you if you had any notes, from</p> <p>17 the 16th of August till today? Did any SAPS member ask you</p> <p>18 if you had any notes?</p> <p>19 CAPTAIN THUPE: No.</p> <p>20 MS LE ROUX: Now, you've got JJJ178, the</p> <p>21 statement of Mr Gary White, correct? You've got that</p> <p>22 statement in front of you? JJJ178, it's the Gary White</p> <p>23 statement.</p> <p>24 MR MATHIBEDI SC: Sorry, Mr Chairman, the</p> <p>25 witness never had an opportunity of reading the statement</p>

<p style="text-align: right;">Page 27998</p> <p>1 because I mean we said for now we'll deal with the three 2 exhibits, you know, submitted. 3 CHAIRPERSON: Oh – 4 MS LE ROUX: Chair, I did – 5 CHAIRPERSON: You didn't give him notice 6 that you were going to ask him about Gary White's, Mr Gary 7 White's statement. 8 MS LE ROUX: Chair, I did and I gave the 9 specific page references and annexure details to the SAPS 10 legal team this morning and they assured that that's what 11 he would be looking at during the break, among other 12 documents. 13 CHAIRPERSON: Alright, it would appear 14 that there was a slip twixt the cup and the lip and what 15 you've told the legal team wasn't conveyed to him. Is it 16 necessary for you to deal with it now or is it something 17 you can deal with after lunch and he can get an opportunity 18 to look at it during the lunch adjournment? 19 MS LE ROUX: Chair, it's actually a very 20 simple point. I'm not even sure we need to – 21 CHAIRPERSON: Well, is it a short passage 22 that he can read now? 23 MS LE ROUX: Yes, two very short 24 passages. 25 CHAIRPERSON: Well, let's give him an</p>	<p style="text-align: right;">Page 28000</p> <p>1 PSNI used higher levels of force in any public order 2 operation" - that's the Northern Ireland police section 3 that he was involved with – "In my experience, where the 4 PSNI used higher levels of force in any public order 5 operation there was an obligation on each and every member 6 present to provide a full and detailed account of events as 7 possible." 4.2.15 – 8 MS LE ROUX: Chair, then – 9 CHAIRPERSON: Sorry? 10 MS LE ROUX: We can skip 4.2.16 – 11 CHAIRPERSON: Alright. 12 MS LE ROUX: And then just to note 13 4.2.16(a). 14 CHAIRPERSON: Alright, okay – 15 MS LE ROUX: Captain Thupe, you're one of 16 the statements that Mr White identifies as a unit commander 17 who provided inadequate detail of significant incidents 18 there witnessed. That's – 19 CHAIRPERSON: You see, I'll read that. 20 4.2.16 "At this point I highlight the following as examples 21 that illustrate the lack of detail in the statements 22 provided." Sub-para (a), "Unit commanders who provide 23 inadequate detail of significant incidents they witnessed, 24 for example" – and your name is the second and there's a 25 footnote which says this, refers to you as "Commander of</p>
<p style="text-align: right;">Page 27999</p> <p>1 opportunity to look at it here and then when he's looked at 2 it he can tell us if he feels he is able to answer 3 questions without considering it further, in which case 4 we'll have to deal with it appropriately. What is the 5 passage that you want to put to him? 6 MS LE ROUX: It's on page 32 of Mr 7 White's statement. 8 CHAIRPERSON: Paragraph? 9 MS LE ROUX: Paragraph 4.2.14 through to 10 4.2.16(a). 11 CHAIRPERSON: Alright, well maybe it 12 would help if we read it aloud – 13 MS LE ROUX: If we could just read it. 14 CHAIRPERSON: - and he can think about 15 it. 16 MS LE ROUX: Yes. 17 CHAIRPERSON: 4.2.14 to 16, is it? 18 4.2.14 says, "When considered as a whole, many of the 19 statements provided to the Commission by members who were 20 present at Marikana on 13 and 18" – sorry – "13 and 16 21 August, including from very senior officers, are so lacking 22 in detail that I question whether the SAPS leadership 23 and/or unit commanders made any serious attempts to 24 encourage their members to provide full details and frank 25 accounts of what happened. In my experience, where the</p>	<p style="text-align: right;">Page 28001</p> <p>1 TRT Brits and within the TRT line, scene 1, but no evidence 2 given of the shooting incident or orders he gave." So 3 that's the passage. 4 MS LE ROUX: Yes, thank you, Chair. 5 CHAIRPERSON: Now are you able, do you 6 feel able to deal with cross-examination on those limited 7 passages? Yes, I think in fairness to the witness he must 8 also be told what the statement is to which Mr White had 9 access. 10 MS LE ROUX: Yes, Chair. Captain Thupe, 11 that's your first statement, the initial statement RRR1, 12 the 19th of August statement, the two page handwritten 13 statement. So Captain Thupe, in light of – so Mr White, 14 who is the Human Rights Commission's policing expert, he 15 identifies this two page statement of yours as one that he 16 says is lacking in adequate detail of significant 17 incidents. So I'd like to ask you how this two page 18 statement came to be written. When did you write it, first 19 of all, on the 19th of August or did you only sign it on the 20 19th? 21 CAPTAIN THUPE: I wrote it on the 19th of 22 August. 23 MS LE ROUX: And why did you write it? 24 Were you asked to write it? 25 CAPTAIN THUPE: Well, I had to write it</p>

Page 28002

1 because it has something to do with the docket case number
 2 134 of 8/2012.
 3 MS LE ROUX: And did anyone ask you to
 4 write it?
 5 CAPTAIN THUPE: It's the investigating
 6 officer.
 7 MS LE ROUX: And do you remember who the
 8 investigating officer was?
 9 CAPTAIN THUPE: I remember him, Captain
 10 Pule.
 11 MS LE ROUX: Right.
 12 COMMISSIONER HEMRAJ: This statement does
 13 not deal with the events of the 13th at all?
 14 CAPTAIN THUPE: That's correct.
 15 COMMISSIONER HEMRAJ: Is there any reason
 16 for that?
 17 CAPTAIN THUPE: Yes, because the thing is
 18 that they want specifically the incident, occurrence of the
 19 16th, 8/2012.
 20 CHAIRPERSON: The statement of the 16th,
 21 that's exhibit RRR1, insofar as it deals with the actual
 22 shooting incident on the 16th is rather sparse, isn't it?
 23 Let's just go through the paragraphs just while they're
 24 pertinent before us, beginning with paragraph 3. "The
 25 POP unit members laid barbed wire to channel them," them

Page 28003

1 being the protesters, what I prefer to call the strikers,
 2 "to channel them towards the squatter camp. While the
 3 police busy erecting the barbed wire the protesters started
 4 to move towards the police and still carried traditional
 5 weapons. The police used water cannon to try and disperse
 6 the crowd but with no success. Teargas were used" – oh
 7 sorry, yes, I missed it. "Teargas were also used after the
 8 water and the protesters still come to the police and
 9 rubber bullets were shot but," I think that must be "also
 10 with no success. The protesters were aggressive and moved
 11 closer and closer towards the police. I suddenly heard two
 12 gunshots," is that "coming from the protesters and the
 13 police returned fire to protestors" –
 14 COMMISSIONER HEMRAJ: To protect
 15 themselves.
 16 CHAIRPERSON: - "to protect themselves."
 17 And that's it. So that was the full statement that you
 18 made in relation to this very important incident which had
 19 taken place three days before. Now I think you will agree
 20 that Mr White is correct in saying that it wasn't a full
 21 statement, that must be right surely? Is he correct when
 22 he says that?
 23 [12:22] CAPTAIN THUPE: It only depends that he
 24 could highlight in connection with my statement, maybe I'll
 25 agree with him, to indicate where there's a fault.

Page 28004

1 COMMISSIONER HEMRAJ: Well, there's a lot
 2 more detail that you could have put into the statement
 3 about what happened, isn't there?
 4 CAPTAIN THUPE: That is so, Chair, but I
 5 wrote this statement for the court purposes.
 6 CHAIRPERSON: No, I understand that but
 7 we're dealing with the question whether Mr White is correct
 8 in saying it wasn't a very full statement and if you
 9 compare the paragraphs I read from the statement you made
 10 more or less contemporaneously three days after the
 11 incident with the statement that you made on the 14th of
 12 April this year, I mean there's an enormous amount of
 13 detail in the later statement which isn't in the first
 14 statement. If one just looks at your statement, this is
 15 exhibit QQQ9, one starts – I suppose one can start reading
 16 round about paragraph 19 on page 10 and the narrative
 17 continues until paragraph 26. The shooting ends in
 18 paragraph 26, 27 deals with what happened afterwards. So
 19 there's substantially more detail there than there was in
 20 the initial statement you made, so Mr White when he says
 21 that your original statement, which is the only one that
 22 was available at the time he made his report, the only one
 23 that was made available to him at the time he made his
 24 report, there was a very sparse and inadequate account of
 25 your version of the incident. That's correct, isn't it?

Page 28005

1 CAPTAIN THUPE: That's correct,
 2 Chairperson.
 3 MS LE ROUX: Captain Thupe, you've just
 4 testified that you were asked to do your initial statement
 5 RRR1, the two page handwritten statement, you were asked to
 6 do that for court purposes. Were you –
 7 CHAIRPERSON: No, I don't think he said,
 8 I think he said it the other way round. I thought he was –
 9 I understood him, I may have got it wrong but I thought he
 10 said that QQQ9 was for court purposes. Did I understand,
 11 did I misunderstand?
 12 MS LE ROUX: Captain Thupe, am I correct
 13 that you did your handwritten –
 14 CHAIRPERSON: No, my two fellow
 15 Commissioners agree with you that I'm in error, so I
 16 retract what was said.
 17 MS LE ROUX: Thank you, Chair. So
 18 Captain Thupe when you said for court – you said for court
 19 purposes, right?
 20 CAPTAIN THUPE: The handwritten one.
 21 MS LE ROUX: The handwritten one, yes.
 22 CAPTAIN THUPE: Correct.
 23 MS LE ROUX: And were you at a JOC, at a
 24 JOCCOM meeting on the morning of the 19th? Were you there?
 25 CAPTAIN THUPE: Which date?

<p style="text-align: right;">Page 28006</p> <p>1 MS LE ROUX: The 19th. 2 CAPTAIN THUPE: No. 3 MS LE ROUX: The day you wrote your 4 statement were you at a JOC meeting? 5 CAPTAIN THUPE: No. 6 MS LE ROUX: Okay. 7 CAPTAIN THUPE: I think the 19th was 8 Sunday, was it Sunday? If it was Sunday, it's no. 9 MS LE ROUX: Not, okay. And you 10 testified earlier that you were asked to do this statement. 11 When you were asked to do the statement were you told that 12 it would be in order to prosecute and convict the strikers 13 that had been arrested? Were you told that that was why 14 you needed to do it? 15 CAPTAIN THUPE: That's correct. 16 MS LE ROUX: Chair, if we can just note 17 for the record, given that Captain Thupe wasn't there I 18 can't ask him further about it but if you look at exhibit 19 JJJ173 which are the handwritten notes of the JOC meeting 20 on the 19th of August and specifically at page 12 of that 21 document, what's recorded there – because the meeting 22 discusses a range of things, what's recorded on page 12 – 23 CHAIRPERSON: The 19th, it's the JOC 24 meeting on the 16th, isn't it? 25 MS LE ROUX: No, it's the 19th, Chair.</p>	<p style="text-align: right;">Page 28008</p> <p>1 what happened on the 16th. So these were, that is to say 2 relating to the so-called arrested persons and there the 3 purpose presumably was to include material which would 4 enable the prosecution to succeed in getting a conviction 5 against the accused persons. Is that – the number that's 6 given there is 259 – was that conveyed to you that that was 7 the purpose of the statement that you were expected to give 8 to the detectives for the docket against the strikers? 9 CAPTAIN THUPE: That is so, Chair. 10 MS LE ROUX: And then, Captain Thupe, 11 your counsel went through them this morning, you've done 12 five subsequent statements but only your consolidated 13 statement, the most recent one QQQ9, that's the one that 14 gives more details with respect to the events of the 16th. 15 Between the 19th of August when you wrote your two page 16 handwritten statement and then April this year when you did 17 that consolidated statement that deals with the detail of 18 the 16th, were you ever asked in that 20 month period to 19 provide a full and detailed account of the 16th by anyone, 20 whether IPID, detectives, lawyers, anyone? 21 CAPTAIN THUPE: Ja, there is another 22 statement which I wrote on the 16th except that one of the 23 docket, for the 16th. 24 MS LE ROUX: Captain Thupe, do you mean 25 your consolidated statement, the April one, the lengthy</p>
<p style="text-align: right;">Page 28007</p> <p>1 CHAIRPERSON: It is the 19th? 2 MS LE ROUX: This is the 19th. 3 CHAIRPERSON: I beg your pardon, okay. 4 MS LE ROUX: So there we see that the JOC 5 discussed having to, quote, "deal with IPID, IPID and 6 detectives start with investigation for statements. 7 Purpose of statements: convict accused persons," 259 8 appears in brackets, "only statements of commanders." So I 9 just draw that to the Commission's attention. 10 CHAIRPERSON: But was that conveyed to 11 you, Captain, that IPID were now busy, that IPID would be 12 interviewing the various people involved and that what is 13 written here, that statements must be, contain information 14 which would enable the accused persons to be convicted. 15 Yes, actually I'm reminded that I've actually abbreviated 16 my question excessively. It says, "Deal with IPID" and 17 then it says "IPID and detectives start with investigation, 18 statements." So I take it IPID, would I be right in saying 19 the IPID investigation was really directed against the 20 police? They were opening dockets against the police. The 21 detectives, on the other hand, that's the CID, they were 22 opening dockets against or had already opened dockets, I 23 take it, against certain of the strikers, those who were 24 accused of having been involved in killing the police, 25 members of the police on the 13th and also in respect of</p>	<p style="text-align: right;">Page 28009</p> <p>1 statement? Is that the one you're referring to? 2 CAPTAIN THUPE: No. No, I'm not 3 referring to the consolidated statement. 4 MS LE ROUX: Which statement are you 5 referring to? 6 CAPTAIN THUPE: I'm referring to the 7 statement dated 12 December 2012. 8 MS LE ROUX: Okay but that deals with the 9 13th. 10 CHAIRPERSON: No, no, there are two 11 statements, aren't there? HHH15.1 is a statement which 12 deals with the events of the 13th, that's 2012 and then 13 there's another one, same typewriter, same day – 14 CAPTAIN THUPE: RRR3. 15 CHAIRPERSON: That's RRR3 and that deals 16 with the 16th. So he made two statements on that day, one 17 dealing with the 13th, one dealing with the 16th and one was 18 handed in as an exhibit earlier and the other one we only 19 saw today. Is that right, Ms Le Roux? 20 MS LE ROUX: Yes, thank you, Chair. 21 Captain Thupe, let me then move on. If I could ask you to 22 look at your consolidated statement which is QQQ9 and if I 23 can ask you to turn to page 10 on that document and we're 24 going to concentrate on paragraphs 20 and 21, this relates 25 to briefing on the 16th. Now you state here in paragraph</p>

Page 28010

1 20, "Between 2 and three o'clock commanders of various
2 units were called to meet at forward holding area 1 where
3 we were briefed about the execution of the tactical plan of
4 the operation which was to disperse, disarm and arrest the
5 strikers. Our task as TRT was to form a baseline 100
6 metres behind the POP members. We were also briefed to
7 sweep koppie 2 after the dispersal action and make arrests
8 if possible. I understood our task as the TRT very well
9 and according to me members were properly briefed. I was
10 under the impression that the commanders of the various
11 units properly understood their task and role properly."
12 In evidence-in-chief this morning you were asked how you
13 understood the role of the TRT and you testified that it
14 was to back up the POP to be 100 metres behind them and
15 then you also testified that you were satisfied about the
16 briefing that you got from Colonel Scott and Brigadier
17 Calitz, does that accurately capture what you testified
18 this morning?
19 CAPTAIN THUPE: That's correct.
20 MS LE ROUX: Okay. Now we'd like to
21 explore the briefing and, you know, your understanding of
22 the briefing and how it relates to what other people have
23 testified and said in their statements. Now at the 2:30
24 briefing, the later briefing before the operation, you
25 understood that the plan had changed from the briefing you

Page 28011

1 got at six o'clock that morning, did you?
2 CAPTAIN THUPE: That's correct.
3 MS LE ROUX: Okay and how did you
4 understand that the plan had changed? What was the plan at
5 six o'clock and how was it different to the plan at 2:30?
6 So let's start with what was the plan for you at six
7 o'clock? And this is only about what TRT would be doing.
8 What were you doing to do at six o'clock?
9 CAPTAIN THUPE: six o'clock there was a
10 meeting. Well, at that meeting we were told that the TRT
11 should remain around there because there's a possibility
12 that the protesters are going to lay down their weapons.
13 MS LE ROUX: At the six o'clock JOC
14 meeting were you told what the TRT's role would be in any
15 tactical operation or were you just told to be available if
16 you were needed? Were you told what you would do or only
17 that you needed to be there?
18 CAPTAIN THUPE: In the case when they are
19 not, they will not surrender their weapons the TRT
20 functions will be to back up the POP.
21 MS LE ROUX: And then at 2:30 did you
22 understand that the plan had changed and did you understand
23 if the TRT role had changed?
24 CAPTAIN THUPE: That's correct.
25 MS LE ROUX: And what was the plan as at

Page 28012

1 2:30 and what was the role of the TRT in that plan?
2 CAPTAIN THUPE: The role was to back up
3 the POP. After they have been dispersed by the POP, that
4 is the protesters, the function of the TRT will be to
5 disarm and arrest the protesters as well as to sweep koppie
6 2.
7 MS LE ROUX: And how was that different
8 to six o'clock that morning?
9 CAPTAIN THUPE: Well, in the morning
10 meeting they didn't speak anything concerning koppie 2.
11 MS LE ROUX: And in the six o'clock
12 meeting did they talk about disperse, disarm and arrest or
13 did they talk about something else like encircling the
14 koppie?
15 CAPTAIN THUPE: In the morning they
16 talked about encircle, encircle the koppie.
17 MS LE ROUX: And at 2:30 did they say no
18 more encircling, now it's disperse, disarm, arrest?
19 CAPTAIN THUPE: That's correct.
20 MS LE ROUX: Did you understand why there
21 had been a change from encircling the koppie at six o'clock
22 in the morning versus disperse, disarm, arrest at 2:30?
23 Did you know why there was a change?
24 CAPTAIN THUPE: No.
25 MS LE ROUX: Can I ask you to look at the

Page 28013

1 new exhibit that we've marked RRR12? It's the photograph,
2 it's the zoomed section of JJJ46 and Chair, just to reflect
3 what's stated in the caption of that document, this is a
4 zoomed in portion of the Colonel Scott JJJ46 exhibit. What
5 we've done is we've taken out the two fire icons that were
6 inserted that represented scenes 1 and 2 because they were
7 put in after 4 o'clock, so as we understand the document
8 now, absent those two icons this is what Colonel Scott used
9 to brief at 2:30. Captain Thupe, Colonel Scott told the
10 Commission that this was the plan that he used when he
11 briefed you all at 2:30. Did you see this diagram at the
12 2:30 briefing by Colonel Scott?
13 CAPTAIN THUPE: No.
14 MS LE ROUX: When Colonel Scott briefed,
15 as we understand Colonel Scott's evidence he said that he
16 briefed using this diagram displayed on his laptop screen
17 and that he sat in the door of a van and the unit
18 commanders, about 20 of you were in front of him and he
19 pointed things out and used his computer screen. Do you
20 remember him briefing you using his computer screen?
21 CAPTAIN THUPE: That's correct.
22 MS LE ROUX: Okay and do you not remember
23 that this is the diagram that he showed you during that
24 briefing?
25 CAPTAIN THUPE: No.

Page 28014

1 MS LE ROUX: What do you remember being
2 on the screen when Colonel Scott briefed you?
3 CAPTAIN THUPE: What was on the screen,
4 it was the line of POP Nyalas.
5 MR MABUNDA: That was the Nyalas and they
6 were moving –
7 MS LE ROUX: Sorry, can you put your
8 microphone on? No, the translator, thank you.
9 MR MABUNDA: The Nyalas, he indicated
10 about the Nyalas as well as their movements, mentioning
11 that Nyala 3 will move to a certain position, Nyala 1 will
12 move up to Nyala 2, Nyala 2 to Nyala 3 and then Nyala 3 to
13 Nyala 4. Those were the explanations he gave to us.
14 MS LE ROUX: And what was he showing you
15 on his computer when he was explaining that? What was on
16 his screen? Could you see his screen?
17 CAPTAIN THUPE: Ja, I could see the
18 screen.
19 MS LE ROUX: And what was on the screen
20 when he was explaining how the Nyalas would move with the
21 barbed wire?
22 CAPTAIN THUPE: It was a map but –
23 CHAIRPERSON: Are you –
24 MR MABUNDA: Well, he showed us a map –
25 CHAIRPERSON: Ms Le Roux, my recollection

Page 28015

1 is that his evidence, Colonel Scott's evidence was that he
2 showed slide 181 of exhibit L without the writing, the
3 white writing in the white blocks. If I'm correct in so
4 thinking, then it might be appropriate to look at the – to
5 let the witness look at slide 181 and then tell him, well,
6 ask him whether that's what he saw and –
7 MS LE ROUX: Thank you, Chair.
8 CHAIRPERSON: It's just a suggestion, I
9 don't want to –
10 MS LE ROUX: No, no, Chair, that would be
11 helpful. If we could look at slide 181 of exhibit then.
12 CHAIRPERSON: The evidence that Colonel
13 Scott gave us was that that's what he showed you, the
14 people at the – in his vehicle, the people who had gathered
15 around the side of his vehicle and saw the screen on his
16 computer but those white blocks and the writing in them,
17 they weren't there. So it was just the, effectively those
18 three blue arrows plus the Nyalas and then there were the
19 other things we can see, I think the soft vehicles and the
20 people standing with, it looks like rifles.
21 [12:42] MS LE ROUX: Captain Thupe, is that the
22 picture that Colonel Scott used when he was briefing you?
23 CAPTAIN THUPE: That's correct.
24 MS LE ROUX: Okay, without any of the
25 white blocks or arrows?

Page 28016

1 CAPTAIN THUPE: Not the first one.
2 MS LE ROUX: Okay. And on this diagram
3 then what did he point out to you? So you've explained the
4 Nyalas, could you identify those for us on this?
5 CAPTAIN THUPE: These are the Nyalas.
6 MS LE ROUX: Okay, so for the record
7 Captain Thupe is identifying the red vehicle icons
8 connected by the orange line. What else did Colonel Scott
9 point out to you on the diagram? Did he explain what any
10 of the other little men or vehicles represented?
11 CAPTAIN THUPE: Can you repeat your
12 question please, madam?
13 MS LE ROUX: When Colonel Scott was using
14 this diagram to brief you, you testified already that he
15 explained how the barbed wire Nyalas would move up and
16 you've shown us that those are the red vehicle icons along
17 the orange line. Did he explain what any of the other
18 icons meant, the little blue cars or the red men or the
19 green cars or the blue men? Did he explain what any of
20 that was?
21 CAPTAIN THUPE: Ja, he explained that
22 this will be – the red one – the TRT line –
23 MR MABUNDA: The red one is the TRT line.
24 MS LE ROUX: So for the record the red
25 men would be the TRT line.

Page 28017

1 CAPTAIN THUPE: And this one in the
2 front, the blue one it will be a POP line.
3 MS LE ROUX: The blue vehicles were the
4 POP line. Did he tell you what the green vehicles were?
5 CAPTAIN THUPE: The green vehicles, it
6 was the task force and NIU.
7 MS LE ROUX: Strategic task force and
8 NIU?
9 CHAIRPERSON: Sorry, green is the STF?
10 CAPTAIN THUPE: STF and the NIUs.
11 CHAIRPERSON: And the NIU. Sorry, just
12 to get it again, you did say but I didn't focus on your
13 answer. The blue men there towards the right, who are
14 they?
15 CAPTAIN THUPE: The blue one, POP.
16 CHAIRPERSON: Blue one POP.
17 CAPTAIN THUPE: POP.
18 CHAIRPERSON: Yes and then the –
19 CAPTAIN THUPE: The red, the green is
20 TRT, NIU and special task force.
21 MR WESLEY: Sorry, Chair, might I just
22 interject? What the witness is indicating, he's showing
23 behind you with a pen. That won't be shown on your screen
24 and I think there might be a misunderstanding between the
25 blue men and the blue vehicles that he's pointing out.

<p style="text-align: right;">Page 28018</p> <p>1 CHAIRPERSON: Oh, I see. Yes, you see if 2 one looks at slide 176 which of course isn't on the screen 3 at the moment, I think we get the colour scheme. According 4 to 176 it looks as if the – the TRT is orange and the red 5 are NIU and as he says, the green is supposed to be STF and 6 I take it the blue would be POP. That's correct, is it? 7 CAPTAIN THUPE: That's correct. 8 CHAIRPERSON: And they were in close 9 proximity to the vehicles, Papa1 and Papa2 and Papa3 and so 10 on, those vehicles were vehicles presumably in which the 11 POP were, from which they disembarked and to which they 12 returned if they had to. Is that correct? 13 CAPTAIN THUPE: I didn't hear you 14 clearly, can you repeat your question, please? 15 CHAIRPERSON: Am I correct in thinking 16 that the blue vehicles, the so-called Papa vehicles, they 17 were armoured vehicles, weren't they? 18 CAPTAIN THUPE: Yes. 19 CHAIRPERSON: The POP members were in 20 those vehicles, they got out of them but if they had to 21 they could get back into them and take refuge from an 22 attack of any kind. Is that correct? 23 CAPTAIN THUPE: That's correct. 24 CHAIRPERSON: The TRT people didn't have 25 vehicles but they had R5s.</p>	<p style="text-align: right;">Page 28020</p> <p>1 MS LE ROUX: Right. So could you just on 2 this show us, the POP dispersion line would be where? You 3 said that the plan at 2:30 was first of all to disperse and 4 that that would be the POP first and you were backup. So 5 where did you understand the POP dispersion line would be? 6 CAPTAIN THUPE: Before – are you 7 referring to briefing – 8 MS LE ROUX: In the briefing were you 9 told? 10 CAPTAIN THUPE: The morning one? 11 MS LE ROUX: No, the 2:30 briefing with 12 Colonel Scott where he showed you this diagram. Did he 13 tell you where the POP dispersion line would be formed up 14 and where they would move from? 15 CAPTAIN THUPE: The POP members would be 16 – then are moving from here to the koppie to disperse those 17 people. 18 MS LE ROUX: Okay, so for the record 19 you're indicating that the POP would move from the line of 20 blue – 21 CAPTAIN THUPE: Blue. 22 MS LE ROUX: - POP vehicles in the 23 direction of the top blue arrow, the short arrow towards 24 the koppie. 25 CAPTAIN THUPE: That's correct, yes.</p>
<p style="text-align: right;">Page 28019</p> <p>1 CAPTAIN THUPE: That's correct. 2 CHAIRPERSON: And the NIU were the same. 3 CAPTAIN THUPE: That's correct. 4 CHAIRPERSON: Ja. 5 MS LE ROUX: If we could then return to 6 slide 181 – 7 CHAIRPERSON: Now we know the colour 8 scheme, that helps us to understand 181. 9 MS LE ROUX: Yes. And Captain Thupe, 10 again to confirm, this is the only picture that Colonel 11 Scott shows you during the briefing, this minus the writing 12 and the blocks. You didn't see any other diagram that he 13 gave you, only this one. 14 CAPTAIN THUPE: That's correct. 15 MS LE ROUX: Right, and the blue men 16 behind the orange line with the red which signifies the 17 barbed wire Nyalas, who were the blue men going to be? 18 CAPTAIN THUPE: Are you referring to this 19 one? 20 MS LE ROUX: Yes. 21 CAPTAIN THUPE: This one is POP vehicles 22 that were standing there for negotiations. 23 MS LE ROUX: Okay, that's the negotiation 24 POP team. 25 CAPTAIN THUPE: That's correct.</p>	<p style="text-align: right;">Page 28021</p> <p>1 MS LE ROUX: Okay. And then the TRT, 2 STF, NIU line of members who are the little red men and the 3 green vehicles behind the POP blue vehicles on this 4 diagram, did you understand how they were going to be 5 deployed? Did you understand when they needed to get into 6 that position? What did Colonel Scott tell you? 7 CAPTAIN THUPE: - behind the POP, once 8 they moved and then we had to go to the koppie in order to 9 go and sweep or clean there, the koppie. 10 MS LE ROUX: Okay, so did Colonel Scott 11 tell you when – 12 CAPTAIN THUPE: And arrest. 13 MS LE ROUX: Did Colonel Scott brief you 14 on when the TRT line needed to be formed in relation to 15 when the POP dispersion would start? Did he tell you when 16 you needed to be where? 17 CAPTAIN THUPE: That's correct. 18 MS LE ROUX: And what did he tell you? 19 CAPTAIN THUPE: He said immediately POP – 20 well, the distance between us and the POP will be 100 21 metres behind them. Once they moved in order to cause the 22 disperse, then we followed in order to go to the koppie to 23 go and sweep and arrest. 24 MS LE ROUX: Okay. Do you remember what 25 Colonel Scott briefed you about when the TRT line needed to</p>

Page 28022

1 be formed up in relation to when the barbed wire would
 2 start getting rolled out? Did he tell you, you must do it
 3 before the barbed wire, after the barbed wire, the same
 4 time as the barbed wire? Do you remember him telling you
 5 when to form your line in relation to when the barbed wire
 6 gets rolled out?

7 CAPTAIN THUPE: After the barbed wire.
 8 MS LE ROUX: He told you after the barbed
 9 wire, and did he tell you how long after the barbed wire
 10 was out?

11 CAPTAIN THUPE: Well, they did not
 12 specify the time factor after the barbed wire.

13 MS LE ROUX: And what did you understand
 14 by after, how long after did you think you needed to be in
 15 position?

16 CAPTAIN THUPE: Immediately after the POP
 17 have rolled out the barbed wire and then shortly thereafter
 18 we had to follow them in order to go and clean the koppie
 19 and arrest the people.

20 MS LE ROUX: Captain Thupe, when you say
 21 immediately after the barbed wire was rolled out, did you
 22 mean all of it, all the way through to Nyala 5 and 6 or did
 23 you mean once number 1 started you needed to be in
 24 position?

25 CAPTAIN THUPE: Well, beginning from

Page 28023

1 Nyala 1 up to the last Nyala.

2 MS LE ROUX: Okay, so you understood your
 3 briefing to be that when Nyala 1 started, you needed to
 4 start getting into position too?

5 CAPTAIN THUPE: The explanation is that
 6 Nyala 1 will roll out the wire to Nyala 2, Nyala 2 will
 7 continue to roll the barbed wire and then up to Nyala 5.
 8 It is then that we will move.

9 MS LE ROUX: Okay, so you would only move
 10 once the Nyala 5 was finished with its wire?

11 CAPTAIN THUPE: That's correct.

12 MS LE ROUX: Okay. And –

13 CHAIRPERSON: Where were you going to
 14 move to?

15 CAPTAIN THUPE: I beg your pardon, Chair?

16 CHAIRPERSON: Where were you going to
 17 move to, where were you going to move?

18 CAPTAIN THUPE: Behind POP. That is the
 19 moment when the POP will move to the koppie, on that time
 20 sector we will be behind the POP. Once they have finished
 21 to disperse and then we move into the koppie and then we
 22 start to effect the arrests.

23 MS LE ROUX: And Captain Thupe, where
 24 were you when Nyala 1 started rolling its barbed wire?
 25 Where were you standing?

Page 28024

1 CAPTAIN THUPE: We were somewhere here.

2 MS LE ROUX: So you're indicating the
 3 area behind to the right on this photograph of the blue
 4 men, the POP negotiating team?

5 CAPTAIN THUPE: That's correct, we were
 6 here.

7 MS LE ROUX: Okay. Now did Colonel –

8 COMMISSIONER HEMRAJ: Sorry, is that the
 9 position you earlier on identified as 100 metres behind the
 10 negotiation Nyalas?

11 CAPTAIN THUPE: That's correct.

12 COMMISSIONER HEMRAJ: Is that what you're
 13 indicating?

14 CAPTAIN THUPE: That's correct.

15 COMMISSIONER HEMRAJ: I see, thank you.

16 MS LE ROUX: Then Captain Thupe, did
 17 Colonel Scott brief you on any warning that would be issued
 18 before the barbed wire was to be deployed? Do you remember
 19 Colonel Scott briefing you anything about that they would
 20 warn the protesters that they were going to start rolling
 21 out barbed wire?

22 CAPTAIN THUPE: No.

23 MS LE ROUX: Don't remember anything
 24 about a warning?

25 CAPTAIN THUPE: That's correct.

Page 28025

1 MS LE ROUX: Did Colonel Scott brief you
 2 that there would be a period of time from when the barbed
 3 wire was deployed that they would let the people disperse
 4 before the POP or TRT would need to move in? Did Colonel
 5 Scott tell you anything about waiting for a period of time
 6 to let people leave?

7 CAPTAIN THUPE: No.

8 MS LE ROUX: Do you remember that?

9 CAPTAIN THUPE: No, I don't remember.

10 MS LE ROUX: Okay. If people dispersed
 11 but they still had their weapons, do you remember Colonel
 12 Scott briefing you anything about what to do if the people
 13 left but they still carried their weapons, they didn't
 14 leave their weapons on the koppie? Do you remember Colonel
 15 Scott briefing anything about what to do if the people were
 16 leaving, dispersing but they kept their weapons?

17 CAPTAIN THUPE: Once the POP disperse
 18 those people in smaller groups, our duties, the TRT, was to
 19 come in, in order to affect the arrest and disarm the
 20 protesters.

21 COMMISSIONER HEMRAJ: The arrests that
 22 were contemplated, they weren't confined to the second
 23 koppie, were they? When you were briefed about arresting,
 24 was it only arresting on the small koppie or arresting
 25 anywhere else?

<p style="text-align: right;">Page 28026</p> <p>1 CAPTAIN THUPE: At the koppie 2. 2 MS LE ROUX: Chair, I have a few short 3 questions – 4 CHAIRPERSON: I see it's – 5 MS LE ROUX: Yes. 6 CHAIRPERSON: You've still got quite a 7 lot of time left but it's one o'clock so if you don't 8 object, I propose taking the lunch adjournment. 9 MS LE ROUX: No, that's fine, Chair. 10 CHAIRPERSON: We'll take the lunch 11 adjournment. We will reassemble at quarter to two. 12 [COMMISSION ADJOURNS COMMISSION RESUMES] 13 [13:52] CHAIRPERSON: The Commission resumes. 14 There are two matters I want to deal with before we 15 continue with the evidence of the Captain. The first is, 16 we understand that the police would like to call Mr X on 17 Monday. Now in terms of the order they can't do that 18 because they can only call Mr X 14 days after they've given 19 notice to the parties of various things. It was an order 20 they themselves agreed to but clearly the parties would be 21 able to waive their rights to have 14 days' notice, so I'd 22 be grateful if the parties would think about the matter and 23 inform the police and the evidence leaders by nine o'clock 24 tomorrow morning whether they insist on the full 14 days 25 and, if not, whether they're prepared to waive their rights</p>	<p style="text-align: right;">Page 28028</p> <p>1 the different units. Can you identify where the TRT is in 2 this photograph? This is before – you can see the first 3 Nyala has just started deploying its barbed wire. Can you 4 identify where the TRT are in this photograph? 5 CAPTAIN THUPE: That is the TRT line 6 where I'm indicating. 7 MS LE ROUX: Okay, so for the record it 8 is the line of vehicles in close proximity to each other. 9 There's the barbed wire Nyalas in the middle of the 10 photograph and then there's the grouping of vehicles 11 towards the bottom of the photograph and it's the line of 12 vehicles in the first, the first row of that collection of 13 vehicles. 14 CHAIRPERSON: More or less in the middle 15 of the page, it would seem, middle of the photograph. Now 16 when that photograph was taken, were the TRT members in the 17 vehicles or are any members visible on the photograph? The 18 reason I ask that, there's a line, I'm not sure if it's a 19 line of people immediately – more or less in the centre of 20 the photograph immediately below that line to which Ms Le 21 roux has referred there is what looks like a black line 22 going across, parallel to the line of vehicles to which 23 reference has been made. As far as you can see is that a 24 line of people standing there or is that something else? 25 MS LE ROUX: Chair, it may be useful if</p>
<p style="text-align: right;">Page 28027</p> <p>1 so that Mr X can give evidence on Monday. That's the first 2 announcement I want to make, I want to give. 3 The second relates to Captain Loest. He is the 4 next witness. I'd be grateful if those parties who wish to 5 cross-examine him would apply in writing by tomorrow 6 morning, again nine o'clock, indicating what topics they 7 wish to cover and how long they would wish to be given for 8 the purposes of the cross-examination. And presumably in 9 order to do that they should consult with the evidence 10 leaders beforehand so that they can avoid repetition and if 11 there are documents they're going to rely on of course 12 notice must be given of that fairly soon too so that 13 Captain Loest can prepare for the cross-examination and if 14 necessary consult with representatives of the SAPS before 15 he gives evidence-in-chief in relation to the documents 16 that he's going to be questioned on. Those are the two 17 announcements I have to make. 18 Captain, you're still under oath. Ms Le Roux? 19 SAMUEL KAY THUPE: (s.u.o.) 20 CROSS-EXAMINATION BY MS LE ROUX (CONTD.): 21 Thank you, Chair. Captain Thupe, I'd like us now to turn 22 to exhibit JJJ10.4540 if we can put that up on the screen 23 please. JJJ10.4540, it's one of Lieutenant-Colonel 24 Vermaak's photographs. Now Captain Thupe, this was taken 25 at 15:43:56 and it shows the pre-deployment positions of</p>	<p style="text-align: right;">Page 28029</p> <p>1 we could zoom in to that portion of the photograph where we 2 see the line of people and the line of – 3 CHAIRPERSON: It looks like a group of 4 people. As a matter of fact there's another line of people 5 that I can see now. One has this line of vehicles to which 6 the witness referred and then on the left-hand side of that 7 line, below it there is what amounts to a second line of 8 vehicles. Below them appear to be a line of people 9 standing, then below that line there are two vehicles with, 10 looks like black roofs or certainly dark roofs. To the 11 right of those two vehicles are two vehicles with white 12 roofs and then to the right of those vehicles is what looks 13 like a line of people. Now are those TRT people or POP 14 people or what are they? 15 CAPTAIN THUPE: Those are the TRT people. 16 CHAIRPERSON: So is that both lines, both 17 the smaller one which is closer to the line of, the first 18 line of vehicles, below those – there are two vehicles 19 which are in the second line and then the second, then the 20 other line further down which stretches further across in 21 line with one another, about six vehicles. Is that – are 22 both lines, lines of TRT people? 23 CAPTAIN THUPE: That is so, Chair. 24 CHAIRPERSON: Thank you. 25 MS LE ROUX: And Captain Thupe can you</p>

<p style="text-align: right;">Page 28030</p> <p>1 point out for us where you were at this point in time? Do 2 you remember where you were? So it's approximately 3 15:43:56 where you've got the two small lines of TRT 4 members, do you recall if you were in either one of those 5 lines of people that we can see? 6 CAPTAIN THUPE: Yes – 7 MS LE ROUX: So you're indicating the 8 bottom longer row – 9 MR MABUNDA: He's indicating where he 10 was, your worship, yes. 11 MS LE ROUX: - of members, approximately 12 one-third in from the right-hand side of that line, that's 13 where you were? 14 CAPTAIN THUPE: That's correct. 15 MS LE ROUX: Okay. And if we could zoom 16 out again, now Captain Thupe, remembering what you 17 testified about before lunch where you were using slide 181 18 and where the people, where the TRT line needed to go to 19 back up the POP dispersion line, can you show us on this 20 photograph your understanding from where you are in the 21 second TRT line to the bottom of the photograph, where did 22 you understand you needed to get to, to be in position 23 behind the POP dispersion line? Where did you need to go? 24 CAPTAIN THUPE: This way. 25 MS LE ROUX: The witness is indicating a</p>	<p style="text-align: right;">Page 28032</p> <p>1 CHAIRPERSON: But I have difficulty 2 understanding, if that's your evidence that's your 3 evidence, I have difficulty understanding it because how 4 could they have got to the koppie if the plan was that the 5 wire barrier was to stretch from the power station on the 6 left all the way through to the kraal there on the right. 7 There was going to be no gap, as I understand it, in the 8 wire barrier. The coils of wire brought by Nyala 1 ended 9 where Nyala 2 was standing and Nyala 2 was going to proceed 10 from that point to where Nyala 3 was and so on. So there 11 was effectively a barrier between the position where the 12 POP people were at the time you're talking about and the 13 koppie. How could they have got through to go to the 14 koppie? I could understand the evidence that Brigadier 15 Calitz gave, that what was intended was that he was going 16 to give a warning to the people from a position somewhere 17 to the right of that kraal, he was going to move slightly 18 forward. He was then going to speak to them over a loud 19 hailer, give them a warning and if they didn't comply then 20 the POP people were going to go in and do what they could – 21 but anyway that's the problem I have. I wonder if you can 22 help me to understand the evidence. 23 CAPTAIN THUPE: Where it will be ended up 24 there will be a sort of a gate, the opening, that wire. 25 There will be a gap in between which will be similar to</p>
<p style="text-align: right;">Page 28031</p> <p>1 straight line from where the TRT is lined up towards the 2 koppie. 3 CHAIRPERSON: I've got a bit of 4 difficulty with that because as – you can see the first 5 Nyala which is busy uncoiling the wire. The wire 6 apparently started at the, the wire barrier started on the 7 left side of the picture at the power station and we saw 8 from the earlier diagram that you showed us, which you got 9 which has been shown by Captain Scott, where the barrier 10 was going to end. It was going to end, I think it's fair 11 to say, somewhere near that kraal we can see on the right- 12 hand side. Now if that was where it was going to be then 13 the POP people wouldn't have had access to the koppie 14 anywhere where the barrier was because they couldn't get 15 through it and in fact the picture which we saw - I think 16 it was 181, slide 181 of exhibit L - seemed to indicate 17 that the intention was to enter the area between the 18 barrier and the koppie at a point as we look at the 19 photograph to the right-hand side of the kraal and that in 20 fact was Brigadier Calitz's evidence. So I don't 21 understand your evidence on this point. Can you perhaps 22 help me? 23 CAPTAIN THUPE: Ja, initially during the 24 briefing TRT will leave that spot where I'm indicating to 25 go through to the koppie, straight to the koppie.</p>	<p style="text-align: right;">Page 28033</p> <p>1 that of a gate, that once they have moved there will be a 2 space where they could move through. 3 CHAIRPERSON: You see what you're telling 4 us is that between, I think it's the fourth Nyala and the 5 fifth Nyala that we can see, those positions as we can see 6 on the photograph, there was going to be an opening or a 7 gate in the wire barrier through which the POP people would 8 gain access to the area between the wire barrier and the 9 koppie. Is that a correct summary of what you've shown us? 10 CAPTAIN THUPE: That's correct. 11 CHAIRPERSON: Thank you. 12 MS LE ROUX: Could we – 13 COMMISSIONER HEMRAJ: Sorry, Captain, 14 proceeding to the koppie to effect the sweeping and the 15 arrest, was the TRT line going to move to that position 16 directly from where you are on the photograph? 17 CAPTAIN THUPE: That's correct. 18 COMMISSIONER HEMRAJ: So where was the 19 POPS dispersion line going to form up then? 20 CAPTAIN THUPE: It was supposed to form 21 from here. 22 COMMISSIONER HEMRAJ: From where? 23 CAPTAIN THUPE: Where, the barbed wire – 24 this Nyala for the barbed wire. 25 COMMISSIONER HEMRAJ: What you're</p>

Page 28034

1 pointing out are the wire Nyalas, barbed wire Nyalas.
 2 CAPTAIN THUPE: That's correct and POP
 3 was supposed to form up somewhere here to go and disperse
 4 from here and there.
 5 COMMISSIONER HEMRAJ: So when the POP
 6 would form up in the direction that you've shown, where
 7 would the TRT line be at that stage when the POP dispersion
 8 line was formed?
 9 CAPTAIN THUPE: TRT was still here.
 10 COMMISSIONER HEMRAJ: The position you're
 11 pointing out is the position that the TRT line is on the
 12 photograph.
 13 CAPTAIN THUPE: That's correct.
 14 COMMISSIONER HEMRAJ: Right. Now where
 15 on the photograph would the POPS line be for dispersing?
 16 Where would that be on the photograph?
 17 CAPTAIN THUPE: The POP, the POP supposed
 18 –
 19 MR MABUNDA: Where he's indicating is
 20 where the –
 21 CHAIRPERSON: What he's shown to us is –
 22 sorry, can I try to explain what you've said? Between the
 23 fourth Nyala as we see it on the photograph and the light
 24 standard, there's a pole which one can see on the
 25 photograph where there was a light of some kind, and in

Page 28035

1 fact there appears to be some kind of path very close to
 2 the position between the fourth Nyala and that pole – that
 3 I understood was where you would form, is that correct?
 4 CAPTAIN THUPE: That's correct.
 5 COMMISSIONER HEMRAJ: How were the POP
 6 going to get to that position from where they were behind
 7 the barbed wire? How were they going to get to the other
 8 side of the barbed wire?
 9 CAPTAIN THUPE: It was supposed to open
 10 the gate somewhere so that they could go through.
 11 COMMISSIONER HEMRAJ: For the Nyalas as
 12 well, for the POP Nyalas as well?
 13 CAPTAIN THUPE: That's correct.
 14 MS LE ROUX: Captain Thupe, the gate that
 15 you're referring to, the gap in the barbed wire, who
 16 briefed you about the gate, the gap? Was that Colonel
 17 Scott?
 18 CAPTAIN THUPE: No, it was Brigadier
 19 Calitz.
 20 MS LE ROUX: Brigadier Calitz. And when
 21 did he brief you? Was that the six o'clock or the 2:30
 22 briefing?
 23 CAPTAIN THUPE: After Colonel Scott –
 24 well, we have been first of all briefed by Scott then
 25 thereafter came Calitz, Brigadier Calitz to brief us too.

Page 28036

1 MS LE ROUX: And that's at the 2:30
 2 briefing?
 3 CAPTAIN THUPE: It was the last briefing.
 4 MS LE ROUX: The last briefing, the one
 5 where Colonel Scott had –
 6 CAPTAIN THUPE: I don't remember the time
 7 but it was the last briefing which –
 8 MS LE ROUX: So the 2:30 afternoon
 9 briefing where Colonel Scott had his computer screen with
 10 the picture we looked at this morning?
 11 CAPTAIN THUPE: Mm-mm.
 12 MS LE ROUX: In that briefing after Scott
 13 finished, Brigadier Calitz told you about the gap, the gate
 14 in the barbed wire and you would go through there to form
 15 your line.
 16 CAPTAIN THUPE: After we have been
 17 briefed by Colonel Scott we left the forward holding area
 18 1, then we returned back to the scene. Then Brigadier
 19 Calitz he called all the commanders together, it's where he
 20 again briefed us and the drivers.
 21 MS LE ROUX: And can you show us on this
 22 photograph where that briefing with Brigadier Calitz took
 23 place? Is that location on this photograph? Where were
 24 you when Calitz briefed you?
 25 CAPTAIN THUPE: Where I'm indicating.

Page 28037

1 MS LE ROUX: Where you were in your line.
 2 CHAIRPERSON: I see. So what happened
 3 was you left your position in that line to go to forward
 4 holding area 1 to get the briefing from Colonel Scott, is
 5 that right? And then you went back to the position where
 6 you'd been previously, the TRT line which we see on the
 7 photograph and then Calitz came and gave you further
 8 information. Is that the position?
 9 CAPTAIN THUPE: That's correct.
 10 MS LE ROUX: Now Captain Thupe, could I
 11 ask you to go back to your initial statement RRR1, the
 12 handwritten two page one that we started with and if we can
 13 look, RRR1, the 19th of August statement by Captain Thupe
 14 and if we go to paragraph 3 on the first page. Captain,
 15 I'm interested in the first sentence there, you say "The
 16 POP unit members laid barbed wire to channel them, the
 17 protesters, towards the squatter camp." So could I also
 18 ask that we then just look at RRR2 which is your typed
 19 warning statement from September 2012, paragraph 4 of that.
 20 You say there the same thing, "The public order police
 21 members laid barbed wire that channelled them towards the
 22 squatter camp" and then you carry on about how the
 23 protesters moved. So I'm correct that your understanding
 24 was that the barbed wire was laid the way it was laid so
 25 that it would channel protesters towards Nkaneng, right?

<p style="text-align: right;">Page 28038</p> <p>1 That's what you understood the barbed wire was doing?</p> <p>2 CAPTAIN THUPE: That's correct.</p> <p>3 MS LE ROUX: Okay. And who told you that</p> <p>4 the barbed wire was there to channel protesters towards</p> <p>5 Nkaneng? Who told you that that was why it was being laid</p> <p>6 the way it was?</p> <p>7 CAPTAIN THUPE: That is my own</p> <p>8 understanding. Nobody told me.</p> <p>9 MS LE ROUX: And what was your</p> <p>10 understanding based on? How did you decide that that was</p> <p>11 what the barbed wire was doing?</p> <p>12 CAPTAIN THUPE: The barbed wire was meant</p> <p>13 to be a barrier between the police and the protesters.</p> <p>14 [14:12] COMMISSIONER HEMRAJ: If you were going</p> <p>15 to channel, if the idea was to channel the strikers towards</p> <p>16 Nkaneng, then in what direction were they going to be</p> <p>17 dispersed?</p> <p>18 CAPTAIN THUPE: To any direction.</p> <p>19 MS LE ROUX: And Captain Thupe, was your</p> <p>20 understanding also that the strikers, if they went towards</p> <p>21 Nkaneng the way the barbed wire was channelling them, they</p> <p>22 would be allowed to go to Nkaneng. If they went in that</p> <p>23 direction, they would be allowed to go there.</p> <p>24 CAPTAIN THUPE: That's correct.</p> <p>25 MS LE ROUX: In any of the briefings, the</p>	<p style="text-align: right;">Page 28040</p> <p>1 his Blackberry, that's what is indicated at the top. It's</p> <p>2 number 1514 and it's taken at 15:42:35 eTV time and if we</p> <p>3 look at the photograph what we see on the left-hand side</p> <p>4 with the blue circle is the TRT in a line outside their</p> <p>5 vehicles, that's the TRT line you pointed out to us on the</p> <p>6 other photograph we just looked at and then on the right-</p> <p>7 hand side of the photograph we see a red circle showing us</p> <p>8 that Nyala 1 has started to deploy its barbed wire. It's</p> <p>9 started moving forward towards Nyala 2 and then on the</p> <p>10 bottom left we see two blue circles which indicate</p> <p>11 protesters dispersing from the koppie using the path</p> <p>12 towards Nkaneng and in the red circle is Nyala 6 and we see</p> <p>13 that the protesters that are dispersing are going on either</p> <p>14 side of Nyala 6 in order to get on that path that takes you</p> <p>15 to Nkaneng. So we've got Nyala 1 starting to lay its</p> <p>16 barbed wire, the strikers beginning to disperse and move</p> <p>17 away from the koppie towards Nkaneng and they walk both</p> <p>18 sides of Nyala 6 down the road to Nkaneng. Do you</p> <p>19 understand and accept all of what's shown in this</p> <p>20 photograph that I've pointed out?</p> <p>21 CAPTAIN THUPE: That's correct.</p> <p>22 MS LE ROUX: Okay, if we then look at the</p> <p>23 next photograph which is at page 24 of GW6A. This again is</p> <p>24 from Lieutenant-Colonel Vermaak, it's image 4540. It's</p> <p>25 taken one minute and 20 seconds later after the last, the</p>
<p style="text-align: right;">Page 28039</p> <p>1 Colonel Scott briefing at the forward holding area or</p> <p>2 Brigadier Calitz when you were back in the line, did any of</p> <p>3 them, either of them brief you about what to do if the</p> <p>4 people were moving towards Nkaneng?</p> <p>5 CAPTAIN THUPE: If they moved towards</p> <p>6 Nkaneng we'd let them go through but if they choose another</p> <p>7 direction, dispersing, we will leave them also the same.</p> <p>8 MS LE ROUX: Okay. Could we now go in</p> <p>9 Gary White's statement, if we go to annexure GW6A, that's</p> <p>10 JJJ178.1, annexure GW6A to the Gary White statement. If we</p> <p>11 could put GW6A up on screen, thanks. So GW6A – no, not the</p> <p>12 statement, that's Gary White – sorry, that's JJJ178. We</p> <p>13 need 178.1, the first annexure which is entitled "Route</p> <p>14 taken by protesters scene 1, CALS analysis." Could we go</p> <p>15 to page 21 of that document? Captain Thupe, I understand</p> <p>16 you haven't had a chance to read all of this document or</p> <p>17 have you been able to read all of 6A? I asked your legal</p> <p>18 team to give you time to do that. Have you looked at the</p> <p>19 whole of 6A, this document?</p> <p>20 CAPTAIN THUPE: Not all.</p> <p>21 MS LE ROUX: Okay, let me see, I think we</p> <p>22 can – because there are only two photographs that I want to</p> <p>23 deal with, with you, so let's see if we can do them</p> <p>24 together now. So if we start on page 21, Captain Thupe,</p> <p>25 this is a photograph taken by Lieutenant-Colonel Vermaak on</p>	<p style="text-align: right;">Page 28041</p> <p>1 photograph we've just looked at, this is one minute and 20</p> <p>2 seconds later or 15:43:56 eTV time. So what we see here if</p> <p>3 we look on the left, we see Nyala 1 deploying its barbed</p> <p>4 wire. It's now much closer to Nyala 2. Below that again</p> <p>5 in the blue circle we see your TRT line outside of the</p> <p>6 vehicles and then on the right-hand side of the photograph</p> <p>7 we see the two circles showing us protesters moving towards</p> <p>8 Nkaneng and we see Nyala 6 with the little red arrow</p> <p>9 indicating - the dot at the start of the red arrow is where</p> <p>10 it was in the photograph we looked at from a minute and 20</p> <p>11 seconds earlier and it's moved off the path, it's moved to</p> <p>12 the south of the path to Nkaneng, seemingly to allow the</p> <p>13 protesters to use the path. So Nyala 6 seems to have moved</p> <p>14 out of the way of the protesters.</p> <p>15 Now at this point in time, this second photograph</p> <p>16 that we've looked at, were you still in the second, longer</p> <p>17 TRT line towards the bottom of the photograph, still</p> <p>18 approximately one-third of the way in from the right-hand</p> <p>19 side of that line? Is that where you were still standing?</p> <p>20 CAPTAIN THUPE: We were still here.</p> <p>21 MS LE ROUX: Okay, so you were still</p> <p>22 standing in the same position you previously testified</p> <p>23 about.</p> <p>24 CAPTAIN THUPE: Yes.</p> <p>25 MS LE ROUX: In that line. And could</p>

<p style="text-align: right;">Page 28042</p> <p>1 you, from where you were standing could you see the shape 2 that the barbed wire line was going to take? Could you see 3 the barbed wire Nyalas from where you were standing? 4 CAPTAIN THUPE: Ja, I could see. 5 MS LE ROUX: And is that, from what you 6 observed you could see the way that the barbed wire Nyalas 7 were lined up, that's why you came to your belief that it 8 was channelling the protesters towards Nkaneng, right? 9 CAPTAIN THUPE: That's correct. 10 MS LE ROUX: Okay. Now if I could ask 11 that we now go to the statement of Gary White, JJJ178 and 12 if we go to page 81 of that document, paragraph 6.5.19 13 because you see, Captain Thupe, Mr White, the expert for 14 the Human Rights Commission, he agrees with you and he sets 15 out here how he understood what the barbed wire would do 16 for the protesters. So if we turn over to page 82, this is 17 the original plan that Colonel Scott put together and what 18 Mr White says about this plan is that if the barbed wire 19 was put the way it's represented here in the orange, it 20 would block access to Nkaneng and it would make going home 21 to Nkaneng very difficult. And if we turn over to page 83 22 we then see the amended stage 3 plan. This was the plan at 23 two o'clock where you can see Nyala 6 has moved back and 24 now the orange line dog-legs towards Nkaneng. And Mr 25 White, as he sets out there on page 83, that this change in</p>	<p style="text-align: right;">Page 28044</p> <p>1 where we have all the human resources behind the barbed 2 wire line. So Captain Thupe, you would agree then with Mr 3 White where he says that this deployment of the barbed wire 4 where there's no-one to the north yet, that this would 5 channel protesters towards Nkaneng, you agree with that? 6 CAPTAIN THUPE: I don't understand your 7 question. 8 MS LE ROUX: Sure. If we go, let's go 9 back to page 82. So the picture on page 82 shows the 10 original plan that Colonel Scott developed. So here we see 11 the orange semi-circle is the barbed wire and then all the 12 other units of the SAPS who were there on the day would 13 have been deployed along that semi-circle and that would 14 block people wanting to go back to Nkaneng because there'd 15 be a barrier between them, between the koppie and Nkaneng. 16 You accept that, you understand that? 17 CAPTAIN THUPE: That's correct. 18 MS LE ROUX: Then if we turn over to page 19 83, this is the stage 3 plan as amended at two o'clock by 20 Colonel Scott and in this plan we see the dog-leg of the 21 barbed wire, so Nyala 6 has moved back out of the semi- 22 circle but STF, NIU and TRT are the resources that are 23 going to be deployed to the north and so between the people 24 being lined up and the barbed wire being deployed, there 25 would still be a semi-circle that stops everybody going to</p>
<p style="text-align: right;">Page 28043</p> <p>1 how the barbed wire would be redeployed would make the 2 strikers think that they could follow the shape of the 3 barbed wire and head home to Nkaneng and I should also let 4 you know that Lieutenant-Colonel Merafe testified, day 221 5 page 27292 to 93, that this change in how the barbed wire 6 would be used would mean that the protesters would think 7 that they could pass along the edge of the shape towards 8 Nkaneng, so – 9 CHAIRPERSON: Can we just see what 10 appears in the next line of the text below the section on 11 the screen? "Nonetheless, the presence of the POP, NIU, 12 TRT and STF members to the north of the koppie and adjacent 13 to the barbed wire do act" – it should be does act, I 14 suppose – "as a deterrent to movement towards Nkaneng." 15 MS LE ROUX: Yes, Chair. This was what 16 we should – this is the amended two o'clock plan which has 17 TRT, STF, NIU deployed at the same time as the barbed wire, 18 so they block the top half of the circle and then if we 19 turn over to page 84 we see the actual positioning of the 20 police resources where we have the Nyala line, the barbed 21 wire line with the Nyalas curving towards Nkaneng and the 22 POP, TRT, NIU and STF not yet deployed to the north of the 23 path to Nkaneng. So there's no-one where in the previous 24 diagram you had the human resources deployed to be the one 25 half of the semi-circle. This is what actually happened</p>	<p style="text-align: right;">Page 28045</p> <p>1 Nkaneng. Do you agree with and understand that? If 2 everyone is there at the same time, the barbed wire is 3 there and everyone is lined up at the same time, people 4 won't go to Nkaneng because there's either barbed wire or 5 TRT, NIU, STF in their way. 6 CAPTAIN THUPE: I disagree. 7 MS LE ROUX: Okay, why do you disagree 8 with that? 9 CAPTAIN THUPE: From here I'm indicating, 10 your lordship, Nkaneng, there's a lot of – you can go this 11 way, this way or this way. There's a lot of ways which 12 lead to Nkaneng, indicating the sides in which direction 13 one could take to Nkaneng. You can go this way or this 14 way. 15 MS LE ROUX: But Captain Thupe, the 16 koppie where the protesters were is the one that's got the 17 blue circle around it. 18 CAPTAIN THUPE: Yes. 19 CHAIRPERSON: You're talking over each 20 other but apart from that we haven't got a record of what 21 he showed. What you showed was that they could have got 22 into Nkaneng by moving towards what we described as koppie 23 3 and going the long way around but then you were saying 24 something else and Adv Le Roux said something over you or 25 vice versa, so perhaps she should repeat her question and</p>

<p style="text-align: right;">Page 28046</p> <p>1 you can repeat your answer.</p> <p>2 CAPTAIN THUPE: I will, sir.</p> <p>3 MS LE ROUX: I apologise, Chair. Captain</p> <p>4 Thupe, the koppie with the blue circle around it is the</p> <p>5 koppie where the protesters were gathered so no-one would</p> <p>6 yet be – the koppie you indicated is the koppie to the left</p> <p>7 of the photograph, of the diagram, but there aren't any</p> <p>8 protesters gathered there. So the people are dispersing</p> <p>9 from the koppie that's got the blue circle around it.</p> <p>10 CHAIRPERSON: The blue circle is around</p> <p>11 two koppies, it's around koppie 1 and 2 –</p> <p>12 MS LE ROUX: Yes, Chair, so it's around</p> <p>13 koppie 1 and 2 –</p> <p>14 CHAIRPERSON: And the one to which you</p> <p>15 are referring is what we call koppie 3.</p> <p>16 MS LE ROUX: Yes. Thank you, Chair. So</p> <p>17 Captain Thupe, given that the protesters are on koppies 1</p> <p>18 and 2 which are in the blue circle, when those people</p> <p>19 disperse, if the barbed wire is where the orange line is</p> <p>20 and STF, NIU and TRT and POP are where the blue vehicles,</p> <p>21 the red men and the green vehicles are, then the protesters</p> <p>22 would have to go all the way north and around them in order</p> <p>23 to get to Nkaneng, do you accept that?</p> <p>24 CAPTAIN THUPE: That's correct.</p> <p>25 MS LE ROUX: Okay. And then if we</p>	<p style="text-align: right;">Page 28048</p> <p>1 those who were the forward holding areas.</p> <p>2 MS LE ROUX: Yes, of course. So with</p> <p>3 respect the people, the TRT members that were with you, you</p> <p>4 all had the same job.</p> <p>5 CAPTAIN THUPE: That's correct.</p> <p>6 MS LE ROUX: Okay. Now, Lieutenant-</p> <p>7 Colonel Scott said that the TRT would actually split into</p> <p>8 two groups and one group would go and form the line with</p> <p>9 POP and one group would protect the gaps between the Nyalas</p> <p>10 and the barbed wire trailers. Do you remember Colonel</p> <p>11 Scott briefing you that some TRT would need to go and be</p> <p>12 down the barbed wire line between the barbed wire trailers</p> <p>13 and the Nyalas? Do you remember him saying anything about</p> <p>14 that?</p> <p>15 CAPTAIN THUPE: No.</p> <p>16 MS LE ROUX: Okay. And Brigadier Calitz</p> <p>17 didn't brief you anything about some of you must go and be</p> <p>18 between the trailers and the Nyalas?</p> <p>19 CAPTAIN THUPE: No.</p> <p>20 MS LE ROUX: Okay. Now if I could turn</p> <p>21 to the briefing that you gave your members when you went</p> <p>22 back after you'd been briefed. Did you discuss the use of</p> <p>23 force with your members? Did you talk to any of your</p> <p>24 members about when they should shoot, whether they should</p> <p>25 shoot, anything about the use of force when you briefed</p>
<p style="text-align: right;">Page 28047</p> <p>1 finally just deal with page 84, this shows us the same</p> <p>2 picture but here we see what actually happened, which is</p> <p>3 the barbed wire is being deployed along the orange line but</p> <p>4 all the police resources, your line, everyone else, are</p> <p>5 still behind the barbed wire Nyalas. They haven't moved up</p> <p>6 yet north. So Mr White's point is that in this scenario</p> <p>7 the people on koppies 1 and 2 have quite an easy route to</p> <p>8 Nkaneng. They can get there quite directly. They can just</p> <p>9 go around where the barbed wire is and they can get to</p> <p>10 Nkaneng, do you accept that?</p> <p>11 CAPTAIN THUPE: That's correct.</p> <p>12 MS LE ROUX: Okay. There's one final</p> <p>13 aspect of your briefing that I wanted to deal with and</p> <p>14 perhaps the easiest way to do this is if we go back to</p> <p>15 slide 181 of exhibit L and again this is with the white</p> <p>16 blocks and writing and arrows removed, this was what</p> <p>17 Colonel Scott used to brief you at 2:30, did you understand</p> <p>18 from Colonel Scott's briefing that there would be a single</p> <p>19 TRT line or would TRT members split into different groups</p> <p>20 and do different things?</p> <p>21 CAPTAIN THUPE: Single TRT line.</p> <p>22 MS LE ROUX: So all the TRT members had</p> <p>23 only one job, it was to be in a line 100 metres behind the</p> <p>24 POP.</p> <p>25 CAPTAIN THUPE: That's correct, except</p>	<p style="text-align: right;">Page 28049</p> <p>1 your members in the afternoon of the 16th after your</p> <p>2 briefing by Colonel Scott and Brigadier Calitz?</p> <p>3 CAPTAIN THUPE: No.</p> <p>4 MS LE ROUX: Could I ask you to look at</p> <p>5 RRR11 which is the supplementary statement by Lieutenant-</p> <p>6 Colonel Claassen? This is the one dated the 28th of January</p> <p>7 2014 and if we can go to page 3, paragraph 6 of that and</p> <p>8 I'd just like to read from the second half of paragraph 6.</p> <p>9 Here we see Lieutenant-Colonel Claassen saying,</p> <p>10 "Furthermore, if not" – meaning if the strikers didn't lay</p> <p>11 down their weapons and by three o'clock they had to move in</p> <p>12 tactically – "Furthermore, if not, we have to respond as</p> <p>13 per planning by encircling the koppies and disarming the</p> <p>14 miners and arresting them. He" – that's Lieutenant-Colonel</p> <p>15 Scott – "said TRT will be followed up by POPS by backing</p> <p>16 them up. Task force to approach the big koppie, disarm the</p> <p>17 miners, NIU to take a smaller koppie, TRT the smaller one."</p> <p>18 And then in paragraph 7, "After receiving my briefing I</p> <p>19 called my members who was then accompanied by PH TRT and</p> <p>20 Soweto TRT to be briefed. I told them what the plan was</p> <p>21 and that if anything should go wrong, the rules of</p> <p>22 engagement to be considered strictly, also adding that in</p> <p>23 our case we don't act, we react should anything go wrong,</p> <p>24 which I doubt it." Now did you brief any of your members</p> <p>25 anything about something like that, that if anything goes</p>

<p style="text-align: right;">Page 28050</p> <p>1 wrong the rules of engagement must be considered strictly 2 and that you mustn't act, you would react if anything goes 3 wrong? Did you brief your members anything about that? 4 CAPTAIN THUPE: No. 5 MS LE ROUX: Could we then look at RRR10 6 which is the statement by Lieutenant-Colonel Claassen that 7 he signs the day before, the 27th of January 2014. Now the 8 two statements are pretty identical in terms of content 9 except for one material difference that we've identified, 10 which is at the end of paragraph 8 of this statement, if we 11 go to page 2 paragraph 8. Here we see the same thing where 12 Lieutenant-Colonel Claassen says, "After receiving my 13 briefing I called my members who was then accompanied by PH 14 TRT, Soweto TRT to be briefed. I told them what the plan 15 was and that if anything should go wrong the rules of 16 engagement to be considered strictly. I also added that in 17 our case we don't act, we react should anything go wrong, 18 which I doubted." And then there's an extra sentence there 19 which says, "I also added that should there be a situation 20 where shooting should occur, that we should go below the 21 knee." Did you brief any of your members that if shooting 22 needed to occur you would go below the knee, you would 23 shoot below the knee? 24 CAPTAIN THUPE: No. 25 [14:32] MS LE ROUX: Do you remember anyone</p>	<p style="text-align: right;">Page 28052</p> <p>1 CAPTAIN THUPE: That's correct. 2 MS LE ROUX: And you remember if he came 3 back and had the briefing with Brigadier Calitz? Was he 4 there for that? 5 CAPTAIN THUPE: That's correct. 6 MS LE ROUX: Okay, but in either of those 7 two briefings you don't remember anything about rules of 8 engagement, if you have to shoot you react and you shoot 9 below the knee? 10 CAPTAIN THUPE: No. 11 MS LE ROUX: Okay. Can I then ask you to 12 go into your, to your consolidated statement, which is 13 QQQ9, and if we could go to page 11 of that document, 14 paragraph 23 in particular? Because I'd now like to 15 understand, Captain Thupe, so you understand what I'm 16 focussing on? I'm now interested to try to work out from 17 where you were in the line that we've seen on the 18 photographs, how you move up behind the POP. That's what 19 we're going to focus on. 20 CHAIRPERSON: Have you moved away from 21 the briefing? 22 MS LE ROUX: Yes, Chair. 23 CHAIRPERSON: Alright, because could I 24 ask a question about that then before you move on? Would 25 you look at your statement, which is exhibit RRR3, that's</p>
<p style="text-align: right;">Page 28051</p> <p>1 briefing TRT members at any point about shooting below the 2 knee if you needed to shoot? 3 CAPTAIN THUPE: TRT North West, I don't 4 remember anything. 5 MS LE ROUX: And have you, you haven't 6 discussed his statement with him? You and Lieutenant- 7 Colonel Claassen haven't discussed his statement at all, 8 have you? 9 CAPTAIN THUPE: No. 10 MS LE ROUX: Okay. And with any TRT 11 member, did anybody tell you they were briefed to shoot 12 below the knee? 13 CAPTAIN THUPE: No. 14 MS LE ROUX: Okay. 15 CAPTAIN THUPE: He was referring to TRT 16 Katilehong because he was a commander of that TRT. 17 MS LE ROUX: Okay. 18 CAPTAIN THUPE: Was he referring to his 19 troop, or group. 20 MS LE ROUX: Okay. Do you know 21 Lieutenant-Colonel Claassen? Would you recognise him? 22 CAPTAIN THUPE: The 16th it was my first 23 time to see him on the scene. 24 MS LE ROUX: Okay, and was he at the 25 briefing with Lieutenant-Colonel Scott, if you remember?</p>	<p style="text-align: right;">Page 28053</p> <p>1 the statement which you made on the 12th of December 2012, 2 which was in fact the second statement you made that day. 3 The first one, which is exhibit HHH15.1 deals with what 4 happened on the 13th of August. This one deals with what 5 happened on the 16th. Now in the second paragraph of that 6 statement – do you have that in front of you? Ja. You say 7 this, "At about 15:00 Brigadier Calitz called all 8 commanders and we proceed to forward holding area 1 where 9 we were briefed about the execution of" – have you got it 10 there, Captain? You're fiddling with the paper. Are you 11 following what I'm reading to you? 12 CAPTAIN THUPE: Ja. 13 CHAIRPERSON: I want you to listen 14 carefully. "At about 15:00 Brigadier Calitz called all 15 commanders and we proceed to forward holding area 1 where 16 we were briefed about the execution of the phase 2 of the 17 operation, which is to disperse, disarm and arrest the 18 perpetrators. Our task was to form a baseline behind the 19 POP members," and then it goes on, "and when the retreat" - 20 that must clearly be "when they retreat," otherwise it 21 doesn't make sense - "when they retreat we move forward and 22 engage with the protesters." Now, so clearly the, that's 23 correct, isn't it? That's what you said? 24 CAPTAIN THUPE: That's correct. 25 CHAIRPERSON: And they, "the" should be</p>

Page 28054

1 "they"? You nod your head.
 2 CAPTAIN THUPE: That's correct.
 3 CHAIRPERSON: Right, so what was
 4 envisaged was the POP people were to advance on the
 5 strikers and try to disperse and disarm them and they would
 6 do that by what is called the force continuum, the less
 7 than lethal force. They would use rubber bullets and
 8 teargas and water cannon and that kind of thing. Is that
 9 right?
 10 CAPTAIN THUPE: That's correct.
 11 CHAIRPERSON: But of course it was always
 12 possible that that mightn't work, that in fact the POP
 13 might have to retreat and take refuge in the armoured
 14 vehicles because they were being attacked by the strikes.
 15 That's correct too, isn't it?
 16 CAPTAIN THUPE: That's correct.
 17 CHAIRPERSON: Alright, and that's what
 18 you deal with now. You say, "When they retreat," in other
 19 words if they retreated, the POP people retreated to take
 20 refuge in the armoured vehicles, your function then was to
 21 move forward and engage with the protesters. That's
 22 correct too, is it?
 23 CAPTAIN THUPE: That's correct.
 24 CHAIRPERSON: Right. Now this means that
 25 you would have a group of protesters who aren't fazed at

Page 28055

1 all. They aren't impressed at all by the less than lethal
 2 force. They are advancing on the POP members, who are in
 3 danger and that's why they have to retreat and take refuge
 4 in their armoured vehicles. Is that right?
 5 CAPTAIN THUPE: That's correct.
 6 CHAIRPERSON: Right, and you then have to
 7 engage them, correct? Armed with your R5 rifles.
 8 CAPTAIN THUPE: That's correct.
 9 CHAIRPERSON: How were you going to
 10 engage them?
 11 CAPTAIN THUPE: Ja.
 12 CHAIRPERSON: What were you going to do?
 13 How were you going to deal with the protesters, or strikers
 14 advancing on you, on the POP people, putting them to flight
 15 so they have to take refuge in their armoured vehicles?
 16 What were the – how were the TRT going to deal with the
 17 situation? Is that where the rules of engagement come into
 18 operation?
 19 CAPTAIN THUPE: That's correct. We –
 20 CHAIRPERSON: And – sorry? You were
 21 going to say something? The rules of engagement come into
 22 operation, which would mean you would have a group of
 23 people approaching you, who presumably would be aggressive,
 24 would be seeking to attack you. Is that correct?
 25 CAPTAIN THUPE: That's correct.

Page 28056

1 CHAIRPERSON: Right. Now how would you
 2 deal with the situation? Presumably you would use your
 3 R5s. You would, I take it, not want to kill them if you
 4 could avoid that, so you'd try to shoot them in their legs
 5 below the knee? Is that right?
 6 CAPTAIN THUPE: That's correct.
 7 CHAIRPERSON: Ja, thank you. Of course
 8 you couldn't always be sure that you would succeed in not
 9 killing them because if you were discharging rifles like
 10 R5s, which are very, very - they're high-velocity rifles,
 11 aren't they?
 12 CAPTAIN THUPE: That's correct.
 13 CHAIRPERSON: Ja, so there's always the
 14 risk that some at least of the people advancing would be
 15 killed, or seriously injured. Is that right?
 16 CAPTAIN THUPE: That's correct.
 17 CHAIRPERSON: Thank you.
 18 MS LE ROUX: Captain Thupe, if we go to
 19 your consolidated statement, QOQ9, page 11 of that,
 20 paragraph 23, you say there that you saw Nyala 1 starting
 21 to deploy the barbed wire –
 22 CHAIRPERSON: Sorry, my colleague Adv
 23 Hemraj was putting a point to me she'd thought I'd
 24 overlooked, but you can carry on.
 25 MS LE ROUX: I'm just pausing. Captain

Page 28057

1 Thupe, you say here at paragraph 23 you saw Nyala 1 start
 2 to deploy the barbed wire. "While the Nyalas were busy
 3 deploying the barbed wire I saw that a group of strikers
 4 approached the police line. Captain Loest specifically
 5 instructed us to run in the direction of the kraal and form
 6 a line." Now I want to understand what it is that you
 7 could see when you report this. So if we go back to
 8 JJJ10.4540, Lieutenant-Colonel Vermaak's photograph, you're
 9 in the bottom TRT line. You're a third of the way in from
 10 the right, and from that position, is that where you saw
 11 Nyala 1 start moving?
 12 CAPTAIN THUPE: That's correct.
 13 MS LE ROUX: Okay, and in your statement
 14 you say, "While the Nyalas were busy deploying the barbed
 15 wire I saw that a group of strikers approached the police
 16 line." Which Nyala was busy deploying its barbed wire when
 17 you saw strikers approach the police line? Which number
 18 Nyala was moving?
 19 CAPTAIN THUPE: Nyala 4.
 20 MS LE ROUX: Nyala 4, okay. And just one
 21 other question on this that I didn't ask you earlier. We
 22 talked, we showed you in GW6A where we saw the groups of
 23 protesters that were moving on the path to Nkaneng on
 24 either side of Nyala 6, and then you remember Nyala 6 moved
 25 off the path and the people used the path. You saw, did

<p style="text-align: right;">Page 28058</p> <p>1 you see Nyala 6 move off the path? From where you were 2 standing in this photograph did you see Nyala 6 move back? 3 CAPTAIN THUPE: I've just noticed that 4 Nyala 6 has stopped at the place where I'm indicating on 5 the map. I don't remember that it has moved or not. 6 MS LE ROUX: And did you see any strikers 7 being challenged or stopped as they were using the path? 8 CAPTAIN THUPE: No. 9 MS LE ROUX: If we could then go to 10 exhibit JJJ11, 15:15, this is one of Lieutenant-Colonel 11 Vermaak's BlackBerry photographs. It's taken at eTV time 12 15:51:47. So this is taken from a different angle, but at 13 around the same time, and we see the core group of 14 protesters heading to the north of the road to Nkaneng, and 15 it's from that position that they move towards the gap 16 between Nyala 4 and the kraal, correct? You saw that? 17 CAPTAIN THUPE: Yes, I saw it. 18 MS LE ROUX: Okay, and this is the same 19 route that we saw the strikers taking on GW6A, the 20 photographs we just looked at, getting to the path that 21 takes you to Nkaneng, right? So this lead group of 22 strikers were going in the same direction as the other 23 strikers who had already got to the path, right? 24 CAPTAIN THUPE: No, they were not moving 25 to Nkaneng. They were just going towards the Nyala which</p>	<p style="text-align: right;">Page 28060</p> <p>1 approximately correct to you? From where you were in your 2 line to where the road is at the kraal, it's about 110 3 metres. Does that sound approximately right to you? 4 CAPTAIN THUPE: Ja, I think you are 5 right. 6 MS LE ROUX: Okay, and we've calculated 7 if we use sort of approximately six and a half kilometres 8 an hour at sort of a light jog, a slow, you know, a pretty 9 brisk walk, that it would take you about a minute to walk 10 that distance. Is that what you recall, that it took you 11 about a minute to get from where you were in your line up 12 to where the road is? 13 CAPTAIN THUPE: No, less than a minute. 14 MS LE ROUX: Less than a minute, okay. 15 If we can actually just play a short clip from JJJ194.16; 16 this is at this same time period, so starting from 15:51. 17 So in JJJ194.16 if we could just play the clip from 23 18 seconds in and if we stop at 36 seconds in. Chair, and 19 Captain Thupe, what you'll see is we'll see the TRT line 20 moving up and you'll see members jogging and you'll see 21 members walking fairly briskly. So from 23 seconds to 36 22 seconds. 23 [VIDEO IS SHOWN] 24 If we can pause there; that's, they've obviously, 25 the front of the TRT line has reached the road at the</p>
<p style="text-align: right;">Page 28059</p> <p>1 was deploying the barbed wire. Those are the group on the 2 right-hand side, that's the group which was moving towards 3 Nkaneng, that I'm indicating. I'm indicating from below. 4 MS LE ROUX: Now Captain Thupe, we've 5 looked at the videos and the photographs and what I'd like 6 to now try to see if you can help me with is we're trying 7 to work out the time at which your TRT line starts moving, 8 and we think we've been able to do that. So this 9 photograph, which is again 15:51:47, you recall seeing the 10 strikers in this position. You've testified about that. 11 You remember seeing the strikers where they are in this 12 photograph, correct? 13 CAPTAIN THUPE: That's correct. 14 MS LE ROUX: And at the time you saw them 15 you were still in your TRT line where we've identified you 16 in the previous photograph. 17 CAPTAIN THUPE: Correct. 18 MS LE ROUX: Okay, am I correct that this 19 is the time that the TRT line starts moving up towards the 20 road to Nkaneng? 21 CAPTAIN THUPE: That is so. 22 MS LE ROUX: Now we've measured the 23 distance from where you were in your TRT starting position, 24 the starting line, and to the road near the kraal and it's, 25 on Google Earth it's about 110 metres. Does that sound</p>	<p style="text-align: right;">Page 28061</p> <p>1 kraal. That is at 15:52:49 eTV time. So from your 2 position in your starting line, which was 15:51:50, until 3 15:52:49, it's taken you about a minute to get from your 4 original line to the kraal. Does that agree with what you 5 remember happening, that it's about a minute, just under a 6 minute? 7 CAPTAIN THUPE: I would ask you to repeat 8 your time so that I could do my calculations. 9 MS LE ROUX: Okay. So the photograph 10 that we had you in your starting position in the line, 11 that's at 15:51:50, and then this moment where the TRT line 12 reaches the road is at 15:52:49. So it's 59 seconds later. 13 So it's just under a minute from the line to the road. 14 CAPTAIN THUPE: That's correct. 15 MS LE ROUX: You'll agree with that, 16 okay. If I could then ask us to put up JJJ11.1515. Again 17 this photograph is at 15:51:47, so it's three seconds 18 before you get to the road, okay. So this is the scene 19 that would have prompted Captain Loest to tell you to form 20 a line and get to the kraal. You'll accept that? 21 CAPTAIN THUPE: Yes, I accept. 22 MS LE ROUX: Okay. Now other parties are 23 going to deal with the events from this point on, so I'll 24 leave it for now and pick up my final topic with you, and 25 that's regarding the use of radios on the day. Now at</p>

<p style="text-align: right;">Page 28062</p> <p>1 paragraph 28 of your consolidated statement you say that 2 your radio wasn't functional. You remember that in your 3 statement? Paragraph 28 you say that you had a radio but 4 when the action started you realised it wasn't functional 5 and you couldn't use it to make contact with the other 6 commanders, and this morning you testified that you'd 7 tested it in the morning and you tested it just before 8 things started and it worked fine, but once the operation 9 got going you didn't have a functional radio. 10 CAPTAIN THUPE: That is so, Chair. 11 MS LE ROUX: Okay. Now RRR5, which is 12 your pocketbook for the 16th, doesn't say anything about 13 your radio not working, or you having problems with your 14 radio. Did you report to anybody that your radio didn't 15 work? Because your diary entry doesn't say anything about 16 radio difficulties, and then the first time we see it is in 17 your statement. Did you report to anybody on the 16th, the 18 17th, the 18th, there and thereabouts, or at Roots, did you 19 tell anybody that your radio didn't work? 20 CAPTAIN THUPE: Immediately after the 21 operation I changed that radio and then got another radio 22 because the other one was not functioning. 23 MS LE ROUX: Captain Thupe, my question 24 was did you tell anyone on the day that your radio didn't 25 work?</p>	<p style="text-align: right;">Page 28064</p> <p>1 What happens, does a radio gets handed to you in the 2 morning and you have to hand it back in the evening, or how 3 do things work with radios? 4 CAPTAIN THUPE: Well, if the radio is not 5 functioning you hand it to the radio tech, to the people 6 who work at radio tech. 7 CHAIRPERSON: So who was the radio tech – 8 there was a radio tech there that day, wasn't there? I 9 remember he, Brigadier Calitz had a problem and he came and 10 he did something to strengthen Brigadier Calitz's radio, so 11 there was a radio technician in attendance. Is that right? 12 CAPTAIN THUPE: That's correct. 13 CHAIRPERSON: Can you remember who he 14 was? 15 CAPTAIN THUPE: I don't remember the 16 person to whom I hand it over. 17 CHAIRPERSON: But did you report to him 18 that the radio was non-functional? 19 CAPTAIN THUPE: That's correct, but – 20 CHAIRPERSON: When did you do that? 21 CAPTAIN THUPE: Immediately after the 22 operation. 23 CHAIRPERSON: I see. 24 MS LE ROUX: Captain Thupe, I understand 25 your radio wasn't working, but could you hear the radio</p>
<p style="text-align: right;">Page 28063</p> <p>1 CAPTAIN THUPE: No. 2 MS LE ROUX: Okay, did you tell anyone 3 the next day or all the days that you were in Marikana, did 4 you tell anyone that your radio didn't work? 5 CAPTAIN THUPE: Well, the person who knew 6 it was Captain Ntlati. I told him at Marikana, yes. 7 MS LE ROUX: And who is Captain Ntlati? 8 [14:51] CAPTAIN THUPE: The commander of TRT, 9 Klerksdorp. 10 MS LE ROUX: Did you tell anyone at Roots 11 that your radio didn't work? 12 CAPTAIN THUPE: That is so. 13 MS LE ROUX: And who did you tell at 14 Roots that your radio didn't work? 15 CAPTAIN THUPE: Are you saying who? 16 MS LE ROUX: Yes. 17 CAPTAIN THUPE: As I just mentioned that 18 I made a report to Captain Ntlati. 19 MS LE ROUX: So you told Captain Ntlati 20 on the day and also at Roots? 21 CAPTAIN THUPE: Only at Roots. 22 MS LE ROUX: Only at Roots, okay. 23 CHAIRPERSON: When a radio doesn't 24 function haven't you got to do something about it? I mean 25 you can't just go around with a non-functioning radio.</p>	<p style="text-align: right;">Page 28065</p> <p>1 communication that was going on at the time from other 2 members' radio? 3 CAPTAIN THUPE: I could hear that there 4 was radio communication, but it wasn't so clear that I 5 could follow what is being said. 6 MS LE ROUX: Okay, and who was the member 7 closest to you when you were in the line and immediately 8 after the shooting? Who was the member closest to you that 9 had a radio? 10 CAPTAIN THUPE: It was Captain Ntlati. 11 MS LE ROUX: Captain Thupe, immediately 12 after the shooting, so there was the 8-second volley of TRT 13 fire and then we know there's shooting for more than a 14 minute after that. By the time all the shooting was 15 finished you knew, because you could see that at least 25 16 people had been shot, some of them probably fatally. You 17 could see that, correct? 18 CAPTAIN THUPE: That's correct. 19 MS LE ROUX: Okay, now if your radio had 20 been working, what would you have done with it at that 21 point in time? 22 CAPTAIN THUPE: If my radio was working? 23 MS LE ROUX: Yes. 24 CAPTAIN THUPE: No, I just wait for 25 another instruction.</p>

<p style="text-align: right;">Page 28066</p> <p>1 MS LE ROUX: Okay, so you were only 2 waiting for another instruction over the radio. Did you 3 not think that you had a duty to inform the JOC that there 4 had been a shooting and that people were very seriously 5 injured, if not dead? 6 MR MATHIBEDI SC: Sorry, Mr Chairman, 7 sorry, the witness indicated that the radio, hand radio was 8 not functional, therefore he could not have, you know, 9 informed JOC. 10 MS LE ROUX: Chair, if my learned friend 11 would let the cross-examination develop, Captain Thupe 12 could have asked another member whether he could use his 13 radio. 14 CHAIRPERSON: Well, you can put the 15 question – 16 MS LE ROUX: He could have instructed a 17 member to communicate with the JOC – 18 CHAIRPERSON: You can put the question 19 like that. I must confess that I thought there was 20 substance in the objection which was raised, but your own 21 radio wasn't working. There were people near you who had 22 radios that were working. Is that right? 23 CAPTAIN THUPE: That's correct. 24 CHAIRPERSON: How far was Lieutenant- 25 Colonel Claassen from you?</p>	<p style="text-align: right;">Page 28068</p> <p>1 own radio wasn't working, but I take it, it must have been 2 obvious to you if you were only three people away from him 3 that Colonel Claassen was listening to his radio and his 4 radio was working. 5 CAPTAIN THUPE: That's correct. 6 CHAIRPERSON: Is that right? So the 7 question is well, why didn't you think of saying to Colonel 8 Claassen look here, don't you think we should tell the JOC 9 what's happened? 10 CAPTAIN THUPE: As I've already said that 11 I was between Lieutenant-Colonel Claassen and Captain 12 Ntlati. I would say that it was their duty that they 13 should report because if they could have seen that my radio 14 was not operating, thus it was their duty to report. 15 CHAIRPERSON: Now to put the proposition 16 slightly differently – 17 MR MABUNDA: Sorry, a point of 18 correction. 19 CHAIRPERSON: Sorry, I beg your pardon. 20 Carry on. 21 CAPTAIN THUPE: What I'm saying is that I 22 was between Lieutenant-Colonel Claassen and Captain Ntlati. 23 If I use my radio to report they could hear that I'm 24 reporting, then they couldn't report. So because I didn't 25 report I suppose that one of them is supposed to report to</p>
<p style="text-align: right;">Page 28067</p> <p>1 CAPTAIN THUPE: I was between Captain 2 Ntlati and Lieutenant-Colonel Claassen. 3 CHAIRPERSON: So was he right next to 4 you? 5 CAPTAIN THUPE: That's correct, but it 6 was – 7 CHAIRPERSON: Well, we see – 8 CAPTAIN THUPE: It was three members 9 between me and Lieutenant-Colonel Claassen – 10 CHAIRPERSON: Sorry, how many people 11 between you and Lieutenant-Colonel Claassen? 12 CAPTAIN THUPE: Three. 13 CHAIRPERSON: Three. But he was quite 14 close to you? 15 CAPTAIN THUPE: He was close. 16 CHAIRPERSON: Now according to his 17 statement he was listening on his radio quite a lot. He 18 says in exhibit RRR10 that he was waiting for instructions, 19 he talks about the barbed wire and so on and "We were told 20 by radio to be on standby," and then he goes on, referring 21 to his radio, after the cease fire had been shouted he 22 says, "I shouted basic line and someone else from the other 23 side also shouted basic line. I was listening to the 24 radio. I could not tell who was talking, but it was people 25 talking to one another." Now the question I think is your</p>	<p style="text-align: right;">Page 28069</p> <p>1 the JOC. 2 CHAIRPERSON: Yes, I was going to ask you 3 this question, but I may as well ask it to you. If your 4 radio had been working, would you have reported to the JOC 5 what had happened? 6 CAPTAIN THUPE: That's correct. 7 CHAIRPERSON: And therefore you would 8 have expected the colleagues near you whose radios were 9 working to do what you would have done if your radio had 10 been working. That's correct, isn't it? 11 CAPTAIN THUPE: That's correct. 12 MS LE ROUX: Captain Thupe, did you hear 13 on the radios that you could hear where you were standing, 14 did you hear anyone report to the JOC that there had been a 15 shooting? 16 CAPTAIN THUPE: Well, I heard that 17 Colonel Claassen was busy on his radio, but I could not 18 understand what he was saying, but he was busy talking in 19 his radio. 20 MS LE ROUX: So you could see Colonel 21 Claassen using his radio, you couldn't hear what he was 22 specifically saying? 23 CAPTAIN THUPE: That's correct. 24 MS LE ROUX: Okay, did you ask him 25 whether he had reported to the JOC that there had been a</p>

Page 28070

1 shooting?

2 CAPTAIN THUPE: No.

3 MS LE ROUX: Why not?

4 CAPTAIN THUPE: It's obvious where he

5 was, he was supposed to have reported to the JOC. If there

6 was not a report there was supposed to be a query and there

7 was never any query which came to us why it was not

8 reported to the JOC.

9 MS LE ROUX: Captain Thupe, this morning

10 and in the adjournment I've asked your legal team to show

11 you KKK43, which is the CALS analysis about the use of

12 radio and telephone by SAPS members at scene 1, because

13 we're hoping you can help us identify the four members that

14 we see there using the radios. Have you had a chance to

15 look at that document?

16 CHAIRPERSON: I wonder whether we

17 shouldn't – it's 3 o'clock now – whether we shouldn't take

18 tea now. I see Mr Ntsebeza is nodding his head vigorously,

19 so obviously thirsty. So let's take the tea adjournment

20 now. He can look at the exhibit that you've referred to

21 and give you a focussed condensed answer when we return.

22 Quarter of an hour? Take the tea adjournment.

23 [COMMISSION ADJOURNS COMMISSION RESUMES]

24 [15:32] CHAIRPERSON: The Commission resumes.

25 Captain, you're still under oath.

Page 28071

1 SAMUEL KAY THUPE: (s.u.o.)

2 CHAIRPERSON: Ms Le Roux.

3 CROSS-EXAMINATION BY MS LE ROUX (CONTD.):

4 Thank you, Chair. Captain Thupe, just four short topics

5 relating to the use of radios. In the adjournment we went

6 through KKK43, the CALS analysis of the use of radios and

7 cell phones at scene 1, and could you just confirm that you

8 were able to identify member 1 in that presentation as

9 Lieutenant-Colonel Claassen, but you couldn't identify the

10 other three members? So member 1 is Lieutenant-Colonel

11 Claassen, but you didn't recognise the other three?

12 CAPTAIN THUPE: That's correct.

13 MS LE ROUX: Okay. Then secondly if we

14 can move on to – hopefully we don't need to go there, but

15 Lieutenant-Colonel Seloane, do you know Lieutenant-Colonel

16 Seloane?

17 CAPTAIN THUPE: I only know him after the

18 incident of the 16th, but it does appear that he was there

19 on the 13th. By then he was unknown to me.

20 MS LE ROUX: Right, in HHH45, which is

21 Lieutenant-Colonel Seloane's statement – for the record we

22 don't need to go there, but it's page 2, paragraph 8,

23 Lieutenant-Colonel Seloane says he counted the number of

24 dead and wounded people at scene 1 and he reported it on

25 the radio to chopper 2. Did you see Lieutenant-Colonel

Page 28072

1 Seloane counting the number of dead and the number of

2 wounded and then using his radio to report it to chopper 2?

3 CAPTAIN THUPE: No, I didn't see him.

4 MS LE ROUX: Did you hear Lieutenant-

5 Colonel Seloane on the radio reporting numbers of dead or

6 wounded to chopper 2?

7 CAPTAIN THUPE: No.

8 MS LE ROUX: Did you hear anyone

9 reporting the number of dead or wounded people on a radio?

10 CAPTAIN THUPE: I say that I did not have

11 radio on me, so I didn't hear anybody, nor heard anybody

12 making a report.

13 MS LE ROUX: Okay. Captain Thupe, I'd

14 understood your testimony this afternoon differently. I'd

15 understood that although your radio didn't work, you could

16 hear the radio communication that was going on from the

17 people near you.

18 CAPTAIN THUPE: Well, I said that I could

19 hear, or heard it, but it wasn't clear to me what is has

20 been said there.

21 MS LE ROUX: Okay. Then thirdly,

22 immediately after the shooting at scene 1 did you see or

23 hear Captain Loest on the radio? Immediately after the

24 shooting did you hear Captain Loest on the radio at all?

25 CAPTAIN THUPE: Well, he was far left

Page 28073

1 from where I was. That is very far away from me. Well, I

2 didn't see him using the radio and that's all yes, because

3 he was far away from me.

4 MS LE ROUX: So he was on the far left-

5 hand side of that TRT line?

6 CAPTAIN THUPE: That's correct.

7 MS LE ROUX: Okay, and then lastly if we

8 could just –

9 CHAIRPERSON: [Microphone off, inaudible]

10 was he on the far left, because I understood you or the

11 interpreter to stick out his right hand, so as you were

12 facing the oncoming strikers, perhaps we can get positions;

13 were you on the left or the right or in the middle? Where

14 were you?

15 CAPTAIN THUPE: I was on the right of

16 Captain Loest.

17 CHAIRPERSON: On the right, facing the

18 oncoming strikers? And where was –

19 CAPTAIN THUPE: That's correct.

20 CHAIRPERSON: Were you near the end or

21 were you in the middle or where were you?

22 CAPTAIN THUPE: I was in the middle.

23 CHAIRPERSON: In the middle, and Captain

24 Loest was to your left, was he?

25 CAPTAIN THUPE: Ja, he was on my left.

Page 28074

1 CHAIRPERSON: And was he right near the
2 end or was he also more or less in the middle?
3 CAPTAIN THUPE: He was right to the end.
4 CHAIRPERSON: Right at the end, I see.
5 Thank you.
6 MS LE ROUX: Then Captain Thupe, lastly
7 I'm going to play you – if we could play exhibit EEE16,
8 EEE16, that's the eNews footage "Marikana exposed" and if
9 we could play from 9:30 into that – Chair, before we play
10 it, a warning might be appropriate. I think that
11 particular clip is alright, but it may be necessary.
12 CHAIRPERSON: I'm told that the clip that
13 we're now going to see may well contain pictures of people
14 who are relatives or loved ones of some of those present in
15 the chamber today and seeing these pictures may cause those
16 who are here and related to them, or among their loved
17 ones, may cause them acute emotional distress. So I ask
18 that that clip not be shown until a minute has elapsed
19 after what I am saying. Half a minute has expired and no-
20 one shows any signs of moving, so I think it's safe for us
21 to proceed.
22 MS LE ROUX: So Captain Thupe, we're
23 going to 9:30 into this clip and what I want you to listen
24 carefully for is we hear Brigadier Calitz on the radio
25 saying "TRT, can you hear me?" and then we hear a TRT

Page 28075

1 member saying, "TRT, listen to the radio." So just listen
2 out for those bits of the clip.
3 [VIDEO IS SHOWN]
4 And we don't need it up on screen anymore.
5 Captain Thupe, did you hear that radio transmission? Did
6 you hear Brigadier Calitz saying, "TRT, can you hear me?"
7 Did you hear that?
8 CAPTAIN THUPE: Ja, I heard it from the
9 video.
10 MS LE ROUX: No, no, on the day did you
11 hear Brigadier Calitz say "TRT, can you hear me?"
12 CAPTAIN THUPE: No.
13 MS LE ROUX: Do you remember hearing any
14 TRT member saying "TRT, listen to the radio"?
15 CAPTAIN THUPE: No.
16 MS LE ROUX: Okay. Chair, I have no
17 further questions.
18 CHAIRPERSON: Thank you. Who is next to
19 cross-examine? Mr Gumbi.
20 MR GUMBI: Yes, Chairperson.
21 CHAIRPERSON: Let's find out if the
22 witness has had the opportunity to read the documents that
23 you provided. Have you had a chance to read the documents
24 which Mr Gumbi provided this morning? You remember there
25 was a little bundle of documents I showed you?

Page 28076

1 CAPTAIN THUPE: No, I didn't get a chance
2 to read it, Chairperson, but I think it –
3 CHAIRPERSON: The bundle I'm showing you,
4 you've got it? Well, let's – the first statement that we
5 have is a – yes, it's quite a short point which Mr Gumbi is
6 going to put. I think I'll let him proceed and if you have
7 a problem at all – I don't want you to be ambushed or
8 caught by surprise by a document you haven't had a chance
9 to consider, but if there's any question then I'll have to
10 make a decision as to whether it is indeed a case of an
11 ambush. But let's let Mr Gumbi start and we'll see how far
12 we can get.
13 CROSS-EXAMINATION BY MR GUMBI: Thanks
14 very much, Chairperson. I think I can use the remaining
15 time effectively. Good afternoon, Captain Thupe.
16 CAPTAIN THUPE: Afternoon, Mr Gumbi.
17 MR GUMBI: Ja, let me introduce myself
18 briefly. I represent Lieutenant Baloyi who was injured on
19 the 13th of August 2012, and the family of the late Warrant
20 Officer Lepaaku. My cross-examination is divided into two
21 legs. The first leg I'll briefly deal with the version of
22 Lieutenant Baloyi about the incident of the 13th, and my
23 second leg of cross-examination I will briefly deal with
24 the series of report that was produced after Roots meeting
25 that took place from the 27th of August until the 6th of

Page 28077

1 September 2012. Then I will test your knowledge on those
2 series of document that led to the production of exhibit L
3 that was presented before this Commission. You understand
4 me?
5 CAPTAIN THUPE: I do.
6 MR GUMBI: Let's deal with the version of
7 Lieutenant Baloyi, who was mobilised from Pretoria POP. On
8 the 13th of August 2012 the version of Lieutenant Baloyi was
9 to the effect that before they were deployed near the
10 railway line they were never briefed and he was not
11 equipped to confront those strikers they confronted near
12 the railway line. Do you have knowledge of those
13 allegation?
14 CAPTAIN THUPE: No, I don't have any
15 knowledge of the people of POP.
16 MR GUMBI: Near the railway line, the
17 version of Lieutenant Baloyi is that when General Mzembe
18 took a decision to escort those strikers on their way to
19 the koppie General Mzembe did not inform different units
20 that they were there that now he has taken a decision to
21 escort the strikers on their way to the koppie. Do you
22 have knowledge of that?
23 CAPTAIN THUPE: I would have you to
24 repeat your question so that I can understand.
25 MR GUMBI: I'm saying Lieutenant Baloyi,

Page 28078

1 his version is that when General Mpembe took a decision to
 2 escort strikers from the railway line to the koppie,
 3 General Mpembe did not instruct different units that they
 4 were involved there that now he has taken a decision to
 5 escort strikers on their way to the koppie. That
 6 instruction was not announced loudly to all the units who
 7 were there. Do you agree with him on that one?
 8 CAPTAIN THUPE: That's correct.
 9 MR GUMBI: Okay, furthermore according to
 10 the version of Lieutenant Baloyi he drove and blocked the
 11 strikers who were marching towards koppie, then he alighted
 12 from the Nyala. He was attacked, then he fired a stun
 13 grenade. So did you see one of the Nyalas moving in front
 14 of the strikers, blocking them, and did you see Lieutenant
 15 Baloyi alighting from the Nyala?
 16 CAPTAIN THUPE: I only looked at the
 17 Nyalas just travelling on the gravel road, but I didn't
 18 know the inhabitants of those Nyalas, who were in the
 19 Nyalas.
 20 MR GUMBI: Will I be correct again,
 21 Captain, that there were other members, after the stun
 22 grenade, after the teargas was fired there were other
 23 members who fired stun grenade after that?
 24 CAPTAIN THUPE: Well, there was some
 25 smoke of the teargas after it had been fired, but I heard

Page 28079

1 the sound of the stun grenade, but I could not see who were
 2 firing them.
 3 MR GUMBI: Thanks very much. Let's move
 4 again to another, my second leg of cross-examination. Can
 5 I refer you to exhibit JJJ156? Ja, before you could even
 6 deal with exhibit JJJ156 can I refer you – you can put that
 7 exhibit aside, Captain. Can I refer you to OOO19.2 – I
 8 mean OOO19.1, I mean. I'm sorry. OOO19.1, then you go to
 9 page 17. That's a document that was produced by the SAPS
 10 from the hard drive of Lieutenant-Colonel Scott. When you
 11 go to paragraph 3 of that page, page 17, do you see that?
 12 If I can read it for you quickly. It reads as follows, "On
 13 their way to the koppie they changed direction towards the
 14 village. To prevent them from entering the village a
 15 command was given of gas grenade. Warrant Officer Kuhn
 16 confirm the command to Captain Thupe and teargas was used
 17 to disperse the group and prevent them from entering the
 18 village." Do you see that?
 19 CAPTAIN THUPE: I can see that.
 20 MR GUMBI: Your name is included there.
 21 You see?
 22 CAPTAIN THUPE: That's correct.
 23 MR GUMBI: Can we move again, the same
 24 document, when you go to page 16 – to page 18, I mean, page
 25 18 of the same exhibit OOO19.1, and when you read paragraph

Page 28080

1 2 again, you see again your name there, "Captain Thupe, TRT
 2 commander, heard Major-General Mpembe issue a command for
 3 stun grenade and teargas, after which Warrant Officer Kuhn
 4 fired a shotgun CS rifle grenade." You see that?
 5 CAPTAIN THUPE: Yes, I see that.
 6 MR GUMBI: That was the 5th of September
 7 2012. The first, it's a draft report produced by SAPS on
 8 the 5th of September 2012. You see that?
 9 CAPTAIN THUPE: I see that.
 10 MR GUMBI: Then again when you move on
 11 again on the same document again, page 20, paragraph 6, on
 12 the 11th of September 2012 your name also again is there,
 13 Captain Thupe as a person who heard Major-General Mpembe
 14 issue a command. You see that?
 15 CAPTAIN THUPE: I see that, Chair.
 16 MR GUMBI: Same applies again when you go
 17 to the next page again, page 29 of the same document is
 18 dated 12 September 2012. When you go to paragraph 3, again
 19 your name, Captain Thupe, is included there as a person who
 20 heard Major-General Mpembe issue a command. You see that?
 21 CAPTAIN THUPE: Yes, I see that, Chair.
 22 MR GUMBI: When you go on the 18th of
 23 September, same document, page 29, same exhibit I mean,
 24 page 29, 18 September 2012, when you go to paragraph 2 your
 25 name there is not included. Do you see that? The name of

Page 28081

1 Captain Thupe, paragraph 2, is not there, as the person who
 2 heard Major-General Mpembe issue an instruction. Do you
 3 see that?
 4 CAPTAIN THUPE: I see that, Chair.
 5 MR GUMBI: When you move again, the same
 6 document, when you go to page 36 of the same document,
 7 exhibit OOO19.1, paragraph 3 is 30 October 2012, your name,
 8 Captain Thupe, as the person who heard Major-General Mpembe
 9 issue an instruction on that day, it's also not there. You
 10 see that?
 11 CAPTAIN THUPE: I see that, Chair.
 12 MR GUMBI: That was the hard drive for
 13 Lieutenant-Colonel Scott. When we go to another hard drive
 14 again of Lieutenant-Colonel Visser, that is OOO19.2, you
 15 can put it up, OOO19.2, page 32, this document is dated 8th
 16 of October 2012. When you go to paragraph 2 of that
 17 document, that's the hard drive received from Lieutenant-
 18 Colonel Visser, your name, Captain Thupe, is not included
 19 there. You see that?
 20 [15:52] CAPTAIN THUPE: I see that, Chair.
 21 MR GUMBI: Furthermore when you go to the
 22 next page again of the same exhibit, page 31, paragraph 3,
 23 paragraph 3 again your name, Captain Thupe, is not included
 24 there. You see that?
 25 CAPTAIN THUPE: I see that, Chair.

Page 28082

1 MR GUMBI: When you go to the next page,
 2 page 36 of the same exhibit, that page is dated 15th of
 3 October 2012 and your name again, Captain Thupe, as the
 4 person who heard instructions, is not included there. You
 5 see that?
 6 CAPTAIN THUPE: I see that, Chair.
 7 MR GUMBI: The last page again on that
 8 exhibit, that is page 36, paragraph 3, and it's on record
 9 this document is dated the 17th October 2012, you see that?
 10 CAPTAIN THUPE: I see that, Chair.
 11 MR GUMBI: And your name is not included
 12 there. You confirm that?
 13 CAPTAIN THUPE: That is so, Chair.
 14 MR GUMBI: Will I be correct, Captain,
 15 that you didn't instruct Lieutenant-Colonel Scott or
 16 Lieutenant-Colonel Visser to delete this document building
 17 towards the production of exhibit L?
 18 CAPTAIN THUPE: No.
 19 MR GUMBI: So did you see this document,
 20 or were you given an opportunity to make your own
 21 contribution leading towards the production of exhibit L
 22 around the incident of the 13th near the railway line?
 23 CAPTAIN THUPE: I see these documents
 24 before me today in this Commission for the first time.
 25 COMMISSIONER HEMRAJ: Captain –

Page 28083

1 MR GUMBI: Is it including exhibit L?
 2 COMMISSIONER HEMRAJ: Captain, the only
 3 stage that your name disappears from this narrative is the
 4 8th of September 2012.
 5 CAPTAIN THUPE: Okay.
 6 COMMISSIONER HEMRAJ: Prior to that at
 7 any one of the Roots meetings had you seen this narrative
 8 put up where your name was mentioned?
 9 CAPTAIN THUPE: No.
 10 COMMISSIONER HEMRAJ: Thank you.
 11 MR GUMBI: Thank you very much,
 12 Commissioner. Exhibit L, did you see exhibit L before it
 13 was presented before this Commission, around the incident
 14 of the 13th, if I can refer you to slide number 47?
 15 CAPTAIN THUPE: Page?
 16 MR GUMBI: Page 48, slide number 47 of
 17 exhibit L. This narrative was ever, ever presented to you
 18 before this document, exhibit L, was presented before this
 19 Commission? Page 48, slide number 47 of exhibit L.
 20 CAPTAIN THUPE: No, it was not presented
 21 to me.
 22 MR GUMBI: Thanks very much, Chairperson,
 23 I don't have further questions.
 24 CHAIRPERSON: Thank you. Well, it's
 25 worked out rather nicely. It's now 2 minutes to 4. Who is

Page 28084

1 going to cross-examine next? Not now, but tomorrow
 2 morning. Who wishes to? Mr Ntsebeza is nodding his head
 3 and smiling. Does that mean we're going to have the
 4 privilege of hearing you opening the bowling tomorrow
 5 morning?
 6 MR NTSEBEZA SC: Yes, Mr Chairman,
 7 tomorrow morning.
 8 CHAIRPERSON: Have we got documents from
 9 you?
 10 MR NTSEBEZA SC: Yes, there are.
 11 CHAIRPERSON: Alright, and then AMCU.
 12 Well, of course being a gentleman you may want to stand
 13 back for Ms Barnes. Do you want to cross-examine next, Ms
 14 Barnes, or do you leave it to Mr Ntsebeza? Have you come
 15 to an agreement with him?
 16 MS BARNES: Yes, Chair, it will be Adv
 17 Gotz on behalf of AMCU, but Mr Ntsebeza will go first
 18 tomorrow. Our documents have also been distributed, Chair.
 19 CHAIRPERSON: We've got some documents
 20 here that we found on our table, "One second before the TRT
 21 volley" is one of the documents. Who's responsible for
 22 that?
 23 MS BARNES: Yes, those are part of the
 24 AMCU bundle of documents that will be used tomorrow. They
 25 have been distributed, Chair.

Page 28085

1 CHAIRPERSON: Mr Ntsebeza, what are your
 2 documents? Perhaps you could – we won't debate it here in
 3 the chambers. Perhaps you and Ms Lewis can come and see us
 4 afterwards and you can tell us what your documents are, so
 5 we'll be prepared – because I don't think we've got them.
 6 But anyway, we can be prepared to deal with your cross-
 7 examination in the sense of listening with comprehension
 8 and understanding to it tomorrow. We'll adjourn now until
 9 tomorrow morning 9 o'clock. I think we must try from now
 10 on – it's not always easy because planes are late and other
 11 things happen, but if we could start at 9 tomorrow if
 12 possible, I personally would appreciate it. We'll adjourn.
 13 [COMMISSION ADJOURNED]
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aan 27972:14,15 27973:12	affidavit 27936:24 27955:7	ander 27974:12	28054:25 28055:1	attended 27932:18
abbreviated 28007:15	afgevuur 27973:6	and/or 27999:23	28056:11	27934:19 27946:4,8
able 27970:20 27999:2	afraid 27995:4	angle 28058:12	argue 27976:22	27946:19,20,22,23
28001:5,6 28026:21	African 27984:9	annexure 27936:22	armed 27938:6	27947:1 27985:12
28039:17 28059:8	27992:10 27996:2	27952:13 27998:9	27941:21,23	27987:19,24 27988:1
28071:8	Afrikaans 27972:9	28039:9,10,13	27950:15 28055:7	attending 27985:19
absent 28013:8	27974:18	announced 27966:9	armoured 28018:17	27987:22,25 27989:7
accept 27926:24	afternoon 28036:8	28078:6	28054:13,20 28055:4	attention 27930:1
28040:19 28044:16	28049:1 28072:14	announcement 28027:2	28055:15	27931:2 28007:9
28046:23 28047:10	28076:15,16	announcements	arms 27974:21	August 27929:2,4
28061:20,21	aggressive 28003:10	28027:17	arrest 27938:9 27966:8	27930:3,10 27931:3,9
access 28001:9	28055:23	answer 27955:4	28010:4 28012:5,12	27931:12,14
28031:13 28033:8	agree 27955:13	27958:6 27959:7	28012:18,22	27935:15 27945:1
28042:20	27956:9 27957:6	27989:21 27999:2	28021:12,23	27952:22 27953:11
accompanied 27983:23	27958:20 27973:15	28017:13 28046:1	28022:19 28025:19	27965:19 27989:6
28049:19 28050:13	27977:16,24	28070:21	28033:15 28053:17	27992:2,8,19
account 28000:6	28003:19,25	answered 27990:8	arrested 27953:2	27996:14 27997:17
28004:24 28008:19	28005:15 28044:2,5	answers 27957:13	28006:13 28008:2	27999:21 28001:12
accounts 27999:25	28045:1 28061:4,15	anticipated 27992:20	arresting 28025:23,24	28001:19,22
accurately 28010:17	28078:7	anybody 28051:11	28025:24 28049:14	28006:20 28008:15
accused 28007:7,14,24	agreed 27959:14	28062:14,17,19	arrests 28010:7	28037:13 28053:4
28008:5	27994:12 28026:20	28072:11,11	28023:22 28025:21	28076:19,25 28077:8
act 27933:4 28043:13	agreement 28084:15	anymore 28075:4	arrival 27974:18	available 27932:2
28043:13 28049:23	agrees 28042:14	anyway 27959:8	arrow 27941:3,7	27962:4 27990:18
28050:2,17	agter 27972:14	28032:21 28085:6	28020:23,23 28041:8	27991:20 27992:24
acted 27992:10	ahead 27969:5	apart 27986:1,10	28041:9	28004:22,23
action 27968:9 28010:7	27982:23,23	28045:20	arrows 28015:18,25	28011:15
28062:4	alighted 28078:11	apologise 27926:7,18	28047:16	avoid 28027:10
actions 27938:21	alighting 28078:15	27971:14 28046:3	ascertained 27994:2	28056:4
actual 28002:21	allegation 28077:13	apology 27926:24	aside 28079:7	awaiting 27993:17
28043:19	allegations 27943:17	apparently 28031:6	asked 27944:18	aware 27942:15
acute 28074:17	27955:7	appear 27998:13	27957:17 27958:18	27943:16 27953:20
added 28050:16,19	alleged 27957:7	28029:8 28071:18	27968:24 27969:6,12	27953:21 27958:1
adding 28049:22	27967:11 27976:13	appears 27945:10	27969:15 27972:2	27959:2,13,17
address 27961:3	allegedly 27965:19	28007:8 28035:1	27973:3 27974:21	27963:19,20
27993:19	allocated 27934:7	28043:10	27996:19,22 27997:8	27983:14 27984:9
addressed 27968:7,12	27961:5	Applied 27994:10	27997:15 28001:24	
27968:25	allow 28041:12	applies 27975:6	28005:4,5 28006:10	B
adequate 28001:16	allowed 27962:22	28080:16	28006:11 28008:18	B 27940:20 27941:2
adjacent 28043:12	28038:22,23	apply 27962:11	28010:12 28039:17	back 27930:2 27936:4
adjourn 27926:9,13	aloud 27999:12	28027:5	28066:12 28070:10	27942:20 27947:5
28085:8,12	alright 27926:23	appreciate 27928:7,12	asking 27954:11	27959:25 27980:5,6
ADJOURNED	27961:18 27962:7	28085:12	27985:5	27980:15,19 27984:4
28085:13	27977:10 27989:1	approach 27933:8	asks 27958:4	28010:14 28011:20
adjournment 27932:3	27997:13 27998:13	28049:16 28057:17	aspect 28047:13	28012:2 28018:21
27990:12 27993:23	27999:11 28000:11	approached 27948:2	assegais 27950:16	28030:19 28036:18
27998:18 28026:8,11	28000:14 28052:23	27948:15 28057:4,15	assist 27938:20	28037:5,11 28039:2
28070:10,19,22	28054:17 28074:11	approaching 27951:2	27981:6	28042:23 28044:9,14
28071:5	28084:11	28055:23	assisting 27939:1	28044:21 28047:14
ADJOURNS 27926:14	Altogether 27945:23	appropriate 27993:14	assume 27927:10	28048:22 28052:3
27960:4 27990:13	ambush 28076:11	28015:4 28074:10	assumed 27931:2,15	28057:7 28058:2
28026:12 28070:23	ambushed 28076:7	appropriately 27999:4	assuming 27976:25	28064:2 28084:13
admitted 27963:8	AMCU 28084:11,17,24	approximately 28030:2	assured 27998:10	backing 28049:15
Adv 27926:5 27987:21	amended 27992:12	28030:11 28041:18	attached 27994:12	backup 28020:4
27987:22 27990:22	28042:22 28043:16	28060:1,3,7	attack 27939:1	backward 27950:5
28045:24 28056:22	28044:19	April 27954:19	28018:22 28055:24	ballistics 27984:14
28084:16	amendment 27991:22	28004:12 28008:16	attacked 27950:11,13	Baloyi 27926:4,12
advance 28054:4	27993:7	28008:25	28054:14 28078:12	28076:18,22 28077:7
advancing 28055:2,14	ammunition 27986:19	area 28010:2 28024:3	attacking 27980:21	28077:8,17,25
28056:14	27987:7,8	28031:17 28033:8	attempt 27966:16	28078:10,15
advocate 27996:1	amount 28004:12	28036:17 28037:4	attempted 27941:25	Barnes 28084:13,14,16
affect 27992:14	28009:7	28039:1 28053:8,15	27980:25	28084:23
28025:19	amounts 28029:7	areas 28048:1	attempts 27999:23	barrier 28031:6,9,14
	ample 27962:1	aren't 27940:23	attend 27947:12	28031:18 28032:5,8
	analysis 28039:14	27989:18,22	attendance 27992:25	28032:11 28033:7,8
	28070:11 28071:6	28009:11 28046:7	28064:11	28038:13 28044:15

<p>based 28038:10 baseline 27949:25 28010:5 28053:18 basic 28067:22,23 bathroom 27926:22 beg 27954:21 28007:3 28023:15 28068:19 began 27926:16 27972:22 beginning 27926:9 28002:24 28022:25 28040:16 begins 27967:5,6 behalf 27993:6 27994:9 28084:17 belief 28042:7 believe 27971:15 27991:23 27993:14 benefit 27974:17 besig 27972:14 better 27926:9 27935:11 27940:23 beweeg 27972:13 big 28049:16 binding 27927:20,21 bit 27939:12 27966:5 27971:1 28031:3 bits 28075:2 Bizos 27991:18 27993:1,3,21 black 28028:21 28029:10 Blackberry 28040:1 28058:11 block 27941:7,8,18 28042:20 28043:18 28044:14 blocked 28078:10 blocking 28078:14 blocks 27941:6,10,11 27941:17 28015:3,16 28015:25 28019:12 28047:16 blue 28015:18 28016:18,19 28017:2 28017:3,13,15,16,25 28017:25 28018:6,16 28019:15,17 28020:20,21,23 28021:3 28024:3 28040:4,10 28041:5 28045:17 28046:4,9 28046:10,18,20 board 27971:16 Botha 27985:20 bottom 27932:17 28028:11 28030:8,21 28040:10 28041:17 28057:9 bowling 28084:4 brackets 28007:8 break 27932:3 27959:22 27963:1 27998:11 breakaway 27966:2 bridge 27961:9</p>	<p>brief 27947:20 28013:9 28016:14 28021:13 28024:17 28025:1 28035:21,25 28039:3 28047:17 28048:17 28049:24 28050:3,21 briefed 27937:10,12 27947:22 28010:3,6,9 28013:11,14,16 28014:2 28021:25 28025:23 28035:16 28035:24 28036:17 28036:20,24 28048:22,25 28049:20 28050:14 28051:11 28053:9,16 28077:10 briefing 27935:20,24 27936:2,3 27947:16 28009:25 28010:16 28010:21,22,24,24,25 28013:12,20,24 28015:22 28019:11 28020:7,8,11 28023:3 28024:19 28025:12 28025:15 28031:24 28035:22 28036:2,3,4 28036:7,9,12,22 28037:4 28039:1 28047:13,18 28048:11,21 28049:2 28049:18 28050:13 28051:1,25 28052:3 28052:21 briefings 27947:10,12 28038:25 28052:7 briefly 27978:15 28076:18,21,23 Brigadier 27947:12,17 27988:3,19 27989:6 27989:11 28010:16 28031:20 28032:14 28035:18,20,25 28036:13,18,22 28039:2 28048:16 28049:2 28052:3 28053:7,14 28064:9 28064:10 28074:24 28075:6,11 bring 27995:5 brisk 28060:9 briskly 28060:21 Brits 28001:1 Broadly 27992:1 broke 27971:25 brought 28032:8 Browning 27951:11 BSK1 27940:12 building 28082:16 bullets 28003:9 28054:7 bundle 27944:9 27952:16 27970:24 27971:5,12 28075:25 28076:3 28084:24 busy 27948:1,7,14</p>	<p>27973:1 27980:21 28003:3 28007:11 28031:5 28057:2,14 28057:16 28069:17 28069:18 <hr/> <p style="text-align: center;">C</p> <hr/> <p>calculated 28060:6 calculations 28061:8 Calitz 27947:12,17 27988:3,20 27989:6 27989:11 28010:17 28032:15 28035:19 28035:20,25,25 28036:13,19,22,24 28037:7 28039:2 28048:16 28049:2 28052:3 28053:7,14 28064:9 28074:24 28075:6,11 Calitz's 28031:20 28064:10 call 27929:3 28003:1 28026:16,18 28046:15 called 27926:3 27984:18 27987:10 27992:20 28010:2 28036:19 28049:19 28050:13 28053:7,14 28054:6 CALS 27994:11 28039:14 28070:11 28071:6 camp 27942:5 27972:21 27974:2 28003:2 28037:17,22 cannon 28003:5 28054:8 can't 28063:25 caption 28013:3 capture 28010:17 captured 27982:7 captures 27963:10 careful 27961:23 carefully 28053:14 28074:24 carried 28003:4 28025:13 carry 27931:24 27960:1 27969:5,6 28037:22 28056:24 28068:20 cars 28016:18,19 case 27952:22 27953:8 27960:2,11 27999:3 28002:1 28011:18 28049:23 28050:17 28076:10 catch 27972:22 caught 28076:8 cause 28021:21 28074:15,17 causes 27992:3 cease 27952:7 28067:21 cell 28071:7</p> </p>	<p>centre 27994:9,11 28028:19 certain 27976:19 27982:12 27983:7 27992:6 27993:4 28007:23 28014:11 certainly 27952:25 27960:21 27971:12 27995:3 28029:10 Chairman 27926:17 27927:4 27939:9 27944:11 27960:9 27976:17 27993:3 27997:24 28066:6 28084:6 challenged 27964:20 28058:7 chamber 28074:15 chambers 28085:3 chance 27960:22 28039:16 28070:14 28075:23 28076:1,8 change 28012:21,23 28042:25 28043:5 changed 27956:4 27964:4 27980:4 27983:5 28010:25 28011:4,22,23 28062:21 28079:13 changing 27983:25 channel 28002:25 28003:2 28037:16,25 28038:4,15,15 28044:5 channelled 28037:21 channelling 28038:21 28042:8 charged 27989:7 chase 27981:4 chased 27978:16 chasing 27978:22 check 27951:19 27955:25 choose 28039:6 chooses 27926:11 chopper 27942:12,12 27942:14 28071:25 28072:2,6 CID 28007:21 circle 28040:4,7,12 28041:5 28043:18 28044:22 28045:17 28046:4,9,10,18 circles 28040:10 28041:7 circumstances 27926:24 Claassen 27952:6 27991:2,3,12 27994:17 27995:10 27995:13,20,22 28049:6,9 28050:6,12 28051:7,21 28066:25 28067:2,9,11 28068:3 28068:8,11,22 28069:17,21 28071:9</p>	<p>28071:11 clarify 27979:5 clean 28021:9 28022:18 clear 27969:11 27983:2 28065:4 28072:19 clearly 27951:12 27966:14 27968:21 28018:14 28026:20 28053:20,22 clip 28060:15,17 28074:11,12,18,23 28075:2 close 27967:25 28018:8 28028:8 28035:1 28067:14,15 closer 28003:11,11 28029:17 28041:4 closest 28065:7,8 clouded 27980:18 cock 27941:25 coils 28032:8 colleague 28056:22 colleagues 27939:1 28069:8 collect 27984:18 27985:6 collection 28028:12 Colonel 27943:3 27944:22,23 27947:11,16 27964:17 27970:24 27983:4,14,18 27984:1 27985:20 27986:9,11 27988:18 27989:3 27996:9,13 28010:16 28013:4,8,9 28013:12,14,15 28014:2 28015:1,12 28015:22 28016:8,13 28019:10 28020:12 28021:6,10,13,25 28024:7,17,19 28025:1,4,11,14 28035:16,23 28036:5 28036:9,17 28037:4 28039:1 28042:17 28044:10,20 28047:17,18 28048:7 28048:10 28049:2,6 28051:7 28066:25 28068:3,7 28069:17 28069:20 28072:5 28081:18 colour 28018:3 28019:7 column 27945:13 come 27926:10 27943:24 27965:9,11 27978:2,5 27981:17 27981:23,24 28003:8 28025:19 28055:17 28055:21 28084:14 28085:3 comes 27990:25 comfort 27932:3 27959:21 coming 28003:12</p>
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<p>command 27931:11 27945:7 27947:20 28079:15,16 28080:2 28080:14,20</p> <p>commander 27935:16 27943:7 28000:16,25 28051:16 28063:8 28080:2</p> <p>commanders 27963:18 27977:13,22 27999:23 28000:22 28007:8 28010:1,10 28013:18 28036:19 28053:8,15 28062:6</p> <p>commanding 27935:7</p> <p>comment 27964:23 27965:10 27967:1,13 27976:12,16,18</p> <p>comments 27993:4</p> <p>Commission 27926:2 27926:14,14,15 27927:23 27928:25 27930:3 27947:9 27955:13 27957:11 27958:9,17,19 27959:2,16 27960:4,4 27960:5,14,23 27961:6 27963:2 27964:4,7,12 27971:6 27977:19 27978:1 27990:13,13,14,18 27991:1,5,11,16,25 27992:16,25 27993:5 27993:12,13,18,20 27994:4 27996:2,3 27999:19 28013:10 28026:12,12,13 28042:14 28070:23 28070:23,24 28077:3 28082:24 28083:13 28083:19 28085:13</p> <p>Commissioner 27936:10 27937:7 27939:11 27949:1,9 27949:14,18 27953:10,13 27958:23,25 27967:24 27968:4,6 27968:11 27969:2,15 27971:11 27975:10 27975:13,17,20 27976:6,9 27981:5,12 27981:15,21 27985:11,15,18,21 27986:1,6,10,16,20 27988:6 28002:12,15 28003:14 28004:1 28024:8,12,15 28025:21 28033:13 28033:18,22,25 28034:5,10,14 28035:5,11 28038:14 28082:25 28083:2,6 28083:10,12</p> <p>Commissioners 28005:15</p>	<p>Commission's 27991:23 27992:5,6 27992:15 27993:8 28001:14 28007:9</p> <p>Committee 27993:7</p> <p>commotion 27979:7</p> <p>communicate 28066:17</p> <p>communicated 27993:12</p> <p>communication 28065:1,4 28072:16</p> <p>compare 28004:9</p> <p>compile 27944:11 27952:9</p> <p>compiled 27944:3 27952:14 27966:2 27985:8 27997:7</p> <p>compiling 27985:10</p> <p>complete 27987:15</p> <p>completed 27985:22,25 27987:13</p> <p>completes 27987:14,18</p> <p>comply 28032:19</p> <p>comprehension 28085:7</p> <p>computer 28013:19,20 28014:15 28015:16 28036:9</p> <p>concentrate 28009:24</p> <p>concerned 27933:20 27934:15 27936:4 27951:4 27970:15 27985:9</p> <p>concerning 28012:10</p> <p>condensed 28070:21</p> <p>condition 27951:21,21</p> <p>conduct 27943:19 27992:18</p> <p>confess 27995:1 27997:5 28066:19</p> <p>confined 28025:22</p> <p>confirm 27932:20,21 27935:14 27936:16 27936:21,23 27937:17,19 27938:13,21,23 27939:7,8,18,19,21 27939:23 27943:22 27944:2 27945:14 27948:3,5 27996:7 28019:10 28071:7 28079:16 28082:12</p> <p>confirmed 27937:5</p> <p>confirming 27966:14 27966:15</p> <p>confirms 27934:5,11 27971:17</p> <p>confiscate 27938:9</p> <p>conflict 27977:1 27978:11</p> <p>conflicting 27963:17 27977:23</p> <p>confront 28077:11</p> <p>confronted 27961:25 28077:11</p> <p>confused 27939:12</p>	<p>connected 28016:8</p> <p>connection 27978:23 28003:24</p> <p>conscience 27927:20</p> <p>consent 27943:12 27993:16</p> <p>consequences 27991:22</p> <p>consider 27936:17 28076:9</p> <p>consideration 27938:7</p> <p>considered 27946:16 27999:18 28049:22 28050:1,16</p> <p>considering 27999:3</p> <p>consolidated 27928:19 27928:23,24 27932:1 27932:8 27963:4,5 27975:24 27978:25 27982:9 27996:25 28008:12,17,25 28009:3,22 28052:12 28056:19 28062:1</p> <p>Constable 27939:21 27942:13,17,23 27945:16,25 27981:3 27982:4,11,17,18 27983:2,6</p> <p>consult 27960:17,21 27961:22 27962:10 28027:9,14</p> <p>consultation 27962:12 27962:22 27996:25</p> <p>consultations 27997:2</p> <p>consulted 27962:3 27993:5,10</p> <p>contact 28062:5</p> <p>contain 28007:13 28074:13</p> <p>contained 27986:3</p> <p>containing 27931:11</p> <p>CONTD 27962:18 28027:20 28071:3</p> <p>contemplated 28025:22</p> <p>contemporaneous 27996:20</p> <p>contemporaneously 28004:10</p> <p>content 28050:8</p> <p>contents 27936:24</p> <p>continue 27993:19 28023:7 28026:15</p> <p>continues 28004:17</p> <p>continuum 28054:6</p> <p>contribute 27969:18</p> <p>contribution 28082:21</p> <p>conversation 27954:2,3 27954:8,13,18 27955:22 27963:3 27971:25 27976:13</p> <p>convey 27993:15</p> <p>conveyed 27998:15 28007:10 28008:6</p> <p>convict 28006:12 28007:7</p> <p>convicted 28007:14</p> <p>conviction 28008:4</p>	<p>copies 27931:17 27932:1 27971:19 27991:18 27992:23 27995:19</p> <p>copy 27931:14,20 27940:22 27996:16</p> <p>core 28058:13</p> <p>corner 27966:8</p> <p>cornering 27966:9</p> <p>correction 28068:18</p> <p>correctly 27945:6</p> <p>couldn't 27976:23 28031:14 28056:8 28062:5 28068:24 28069:21 28071:9</p> <p>counsel 27955:5 27967:5 28008:11</p> <p>counted 28071:23</p> <p>counting 28072:1</p> <p>course 27927:13 27934:19,23 27945:7 27947:10 27993:13 28018:2 28027:11 28048:2 28054:11 28056:7 28084:12</p> <p>court 27977:17 28004:5 28005:6,10 28005:18,18</p> <p>cover 28027:7</p> <p>covered 27992:11 27996:4</p> <p>cross 27961:9,18 27962:8,10 27994:3 28085:6</p> <p>cross-examination 27960:13 27962:18 27962:22 27970:24 27993:23 27994:7 27995:25 28001:6 28027:8,13,20 28066:11 28071:3 28076:13,20,23 28079:4</p> <p>cross-examine 27960:25 27962:8 27991:16 28027:5 28075:19 28084:1,13</p> <p>crowd 27932:18 27933:10 27934:20 27935:11 27981:8,9 27981:16,17,24,25 27982:2 28003:6</p> <p>CS 27966:16 28080:4</p> <p>CSS 27967:15</p> <p>cup 27998:14</p> <p>currently 27992:19</p> <p>curving 28043:21</p> <p>customary 27930:2</p> <p>Cyril 27992:17</p>	<p>date 27947:13 28005:25</p> <p>dated 27929:4 27930:3 27930:7,8 27931:3,6 27931:7,8 27995:10 27995:13,20,22 28009:7 28049:6 28080:18 28081:15 28082:2,9</p> <p>day 27936:5 27943:8 27944:1,12 27947:10 27957:12 27966:1 27977:18 28006:3 28009:13,16 28043:4 28044:12 28050:7 28053:2 28061:25 28062:24 28063:3,20 28064:8 28075:10 28081:9</p> <p>days 27988:18 27989:5 28003:19 28004:10 28026:18,21,24 28063:3</p> <p>dead 28066:5 28071:24 28072:1,5,9</p> <p>deal 27935:11 27955:17 27957:3,9 27964:15 27965:9 27970:10 27978:15 27992:1,2 27994:3 27998:1,16,17 27999:4 28001:6 28002:13 28007:5,16 28026:14 28039:23 28047:1,13 28054:18 28055:13,16 28056:2 28061:23 28076:21 28076:23 28077:6 28079:6 28085:6</p> <p>dealing 27937:8 27966:3 27978:21 28004:7 28009:17,17</p> <p>deals 27953:10 27962:17 27992:7 28002:21 28004:18 28008:17 28009:8,12 28009:15 28053:3,4</p> <p>dealt 27933:1,6 27934:20 27935:4 27943:25 27992:5</p> <p>deaths 27992:7,9</p> <p>debate 27984:6 28085:2</p> <p>December 27955:19 28009:7 28053:1</p> <p>decide 27961:7 28038:10</p> <p>decision 27993:11 28076:10 28077:18 28077:20 28078:1,4</p> <p>delete 28082:16</p> <p>deliberated 27946:16</p> <p>demonstrate 27973:20</p> <p>demonstrated 27963:1 27970:9</p> <p>denial 27959:17</p>
D				
			<p>daar 27972:15</p> <p>danger 28055:3</p> <p>dark 28029:10</p> <p>dat 27972:11,12,15,17 27974:10,13</p>	

<p>denied 27959:16 denies 27953:21 depends 28003:23 deploy 27936:11 27947:25 28040:8 28056:21 28057:2 deployed 27935:16 27938:8 28021:5 28024:18 28025:3 28043:17,22,24 28044:13,23,24 28047:3 28077:9 deploying 27948:1,7,14 27949:3 28028:3 28041:3 28057:3,14 28057:16 28059:1 deployment 27933:9 27948:22 28044:3 described 27928:5 27931:10 27967:12 28045:22 describes 27965:18 description 27942:11 desirable 27991:24 detail 27954:2,18,18 27999:22 28000:17 28000:21,23 28001:16 28004:2,13 28004:19 28008:17 detailed 27959:13 28000:6 28008:19 details 27931:11 27998:9 27999:24 28008:14 detectives 28007:6,17 28007:21 28008:8,20 deterrent 28043:14 deurgaan 27974:15 develop 28066:11 developed 28044:10 diagram 28013:11,16 28013:23 28016:2,9 28016:14 28019:12 28020:12 28021:4 28031:8 28043:24 28046:7 diary 27927:9 27930:9 27931:8 27934:1 27989:16,19,23,24 27990:2,9 28062:15 dictate 27937:7 didn't 27926:20 27937:23 27940:21 27952:25 27967:18 27967:21 27969:22 27969:24 27970:2 27974:22 27976:8 27982:12,16 27983:5 27987:15 27988:22 27989:15 27990:8 27995:4 27998:5 28012:10 28017:12 28018:13,24 28019:12 28025:13 28032:19 28048:17 28049:10 28057:21</p>	<p>28062:9,14,19,24 28063:4,11,14 28068:7,24 28071:11 28072:3,11,15 28073:2 28076:1 28078:17 28082:15 die 27972:10,11,17,17 27973:6,6 27974:12 27974:14 differ 27978:2 difference 27975:21 27977:9,10 27983:7,9 28050:9 different 27977:13,21 28011:5 28012:7 28028:1 28047:19,20 28058:12 28077:19 28078:3 differently 28068:16 28072:14 difficult 28042:21 difficulties 28062:16 difficulty 28031:4 28032:1,3 dilemma 27977:13 directed 27968:13 28007:19 directing 27951:4 direction 27939:17 27941:25 27950:25 27954:6 27956:4 27979:9,16 27980:4,5 27980:7,10 28020:23 28034:6 28038:16,18 28038:23 28039:7 28045:12 28057:5 28058:22 28079:13 directly 28033:16 28047:8 Dis 27972:12 disagree 28045:6,7 disappears 28083:3 disarm 27936:12 27966:8 28010:4 28012:5,12,18,22 28025:19 28049:16 28053:17 28054:5 disarming 28049:13 discharged 27987:8 discharging 28056:9 disclose 27984:22 27985:9 disclosed 27984:25 disclosing 27953:16 disclosure 27984:5,6 discuss 27943:4,5 28048:22 discussed 27936:2 27943:11 28007:5 28051:6,7 discusses 28006:22 discussion 27957:16 27969:19 disembarked 28018:11 disgruntled 27962:21 dispersal 28010:7</p>	<p>disperse 27936:12 27966:16 28003:5 28010:4 28012:12,18 28012:22 28020:3,16 28021:22 28023:21 28025:3,17 28034:3 28040:16 28046:19 28053:17 28054:5 28079:17 dispersed 28012:3 28025:10 28038:17 dispersing 28025:16 28034:15 28039:7 28040:11,13 28046:8 dispersion 28020:2,5 28020:13 28021:15 28030:19,23 28033:19 28034:7 displayed 28013:16 dissatisfaction 27943:25 distance 27947:6 27948:21,23 27972:20 27973:24 27980:14 28021:20 28059:23 28060:10 distress 28074:17 distributed 27930:23 27931:20 28084:18 28084:25 divided 27991:25 28076:20 division 27932:19 docket 27952:21,23 27953:1,4 28002:1 28008:8,23 dockets 28007:20,22,22 document 27931:10,13 27944:7 27945:6,13 27961:25 27962:1,23 27965:24 27967:10 27971:20 27986:2,7,8 27986:11 27995:6 28006:21 28009:23 28013:3,7 28039:15 28039:16,19 28042:12 28052:13 28070:15 28076:8 28077:2 28079:9,24 28080:11,17,23 28081:6,6,15,17 28082:9,16,19 28083:18 documents 27931:15 27931:17,20 27960:12,15,17 27961:1,7,8,15,21 27962:4,12 27965:9 27965:10 27966:24 27970:9 27971:6,12 27990:17,22,25 27991:5,11 27994:19 27995:19 27998:12 28027:11,15 28075:22,23,25 28082:23 28084:8,18</p>	<p>28084:19,21,24 28085:2,4 doesn't 27927:13 27934:2 27959:10 27966:19 27970:10 27970:15 27971:17 27973:11,16 27975:4 27983:19 27986:22 27994:18 28053:21 28062:12,15 28063:23 dog-leg 28044:20 dog-legs 28042:24 doing 27961:1 28011:7 28011:8 28038:1,11 don't 27930:22 27947:2 27948:10 27955:22,23 27956:9 27958:3,7,11,21 27960:19,20,24 27964:9,11 27971:13 27974:8 27975:7 27976:24 27978:12 27982:9 27984:21 27985:6 27990:25 27993:25 27997:1 28005:7 28015:9 28024:23 28025:9 28026:7 28031:20 28036:6 28044:6 28049:23 28050:17 28051:3 28052:7 28058:5 28064:15 28068:8 28071:14,22 28075:4 28076:7 28077:14 28083:23 28085:5 door 28013:17 dot 28041:9 doubt 28049:24 doubted 28050:18 draft 28080:7 drafted 27967:10 draw 28007:9 drawing 27929:25 27931:1 drawn 27996:22 drive 28079:10 28081:12,13,17 drivers 28036:20 drove 28078:10 due 27961:2 duration 27934:23,24 duri8ng 27993:22 duties 28025:18 duty 27986:25 27987:2 27988:10 27989:8 28066:3 28068:12,14 d.s.s 27928:2</p>	<p>Earth 28059:25 easiest 28047:14 easy 28047:7 28085:10 echo 27994:9 edge 28043:7 EEE16 28074:7,8 een 27972:13 27973:5 effect 27938:9 28023:22 28033:14 28077:9 effectively 27953:7 28015:17 28032:11 28076:15 eight 27940:6,8 27941:6 27945:11,24 27953:16 27957:3 27984:7 27985:4 either 28030:4 28039:3 28040:13 28045:4 28052:6 28057:24 ek 27972:13,14,16,17 27973:5 elapsed 28074:18 emotional 28074:17 en 27972:16,18 27974:10,15 enable 28007:14 28008:4 encircle 28012:16,16 encircling 28012:13,18 28012:21 28049:13 encourage 27999:24 ended 28032:8,23 ends 28004:17 eNews 28074:8 engage 27993:15 28053:22 28054:21 28055:7,10 engagement 28049:22 28050:1,16 28052:8 28055:17,21 English 27927:10,10,11 27927:12 27934:1,1 27959:11 27972:19 enormous 28004:12 ensure 27961:23 entail 27932:23 27935:2 entails 27932:24 27933:7 enter 28031:17 entered 27942:5 entering 28079:14,17 entitled 28039:13 entries 27930:9 27931:8 entry 28062:15 envisaged 28054:4 equipped 28077:11 erecting 28003:3 erroneously 27995:5 error 28005:15 escort 28077:18,21 28078:2,5 essential 27984:22 eTV 28040:2 28041:2</p>
E				
<p>earlier 27957:14 27959:14 27997:8 28006:10 28009:18 28024:9 28031:8 28041:11 28057:21</p>				

<p>28058:11 28061:1 evening 28064:2 event 27964:8 27966:3 27985:3 events 27966:3 27992:1 28000:6 28002:13 28008:14 28009:12 28061:23 everybody 27957:23 27960:1 28044:25 evidence 27927:23 27931:25,25 27947:8 27953:20,21 27957:25 27958:19 27959:1,3 27960:12 27960:24 27961:4,19 27963:2 27964:19,22 27965:2,5 27983:5 27984:18 27985:6 27987:3 27992:21 27996:5,8 28001:1 28013:15 28015:1,1 28015:12 28026:15 28026:23 28027:1,9 28031:20,21 28032:2 28032:3,14,22 evidence-in-chief 27934:7 27936:19 27962:13 27978:20 28010:12 28027:15 exact 27967:18 exactly 27980:19 examination 27932:6 27961:19 27962:9,11 27994:4 28085:7 example 28000:24 examples 28000:20 excessively 28007:16 exchange 27942:2 excluded 27976:19 execution 28010:3 28053:9,16 exhibit 27928:25 27932:7 27936:15,23 27937:2,15 27940:12 27940:17,20,24 27941:1 27944:8,11 27944:15 27952:15 27965:12,12,14,18 27970:12,15,17,18 27971:17,18 27983:17 27991:4,13 27995:2,8,17,19,21 27995:23,23 28002:21 28004:15 28006:18 28009:18 28013:1,4 28015:2,11 28027:22 28031:16 28047:15 28052:25 28053:3 28058:10 28067:18 28070:20 28074:7 28077:2 28079:5,6,7,25 28080:23 28081:7,22 28082:2,8,17,21 28083:1,12,12,17,18</p>	<p>28083:19 exhibits 27934:9 27970:19,25 27994:15 27995:4 27998:2 expected 27943:10 27976:18 28008:7 28069:8 experience 27933:20 27933:22 27999:25 28000:3 experienced 27934:17 expert 28001:14 28042:13 expired 28074:19 explain 27976:22,23,24 27976:25 27977:9 27978:2,5,22,24 27983:7 28016:9,17 28016:19 28034:22 explained 28016:3,15 28016:21 explaining 28014:15,20 explanation 27976:22 27978:20 28023:5 explanations 28014:13 explore 28010:21 exposed 28074:8 express 27943:25 extension 27993:7 extent 27996:4 extra 28050:18</p> <hr/> <p style="text-align: center;">F</p> <p>facing 28073:12,17 fact 27940:22 27955:23 27956:12 27983:15 27984:6 28029:4 28031:15,20 28035:1 28053:2 28054:12 factor 28022:12 fair 28031:10 fairly 27930:1 28027:12 28060:21 fairness 28001:7 false 27965:6 family 28076:19 far 27933:19 27934:15 27936:3 27948:21 27951:3 27963:2 27968:15 27970:14 27970:25 27978:21 27979:2 27983:11 27984:12,15 27985:9 28028:23 28066:24 28072:25 28073:1,3,4 28073:10 28076:11 fatally 28065:16 fault 27962:23 28003:25 fazed 28054:25 February 27929:11,14 27929:18 27930:8,9 27931:6,7 27956:25 feel 28001:6 feels 27999:2</p>	<p>fellow 28005:14 fetch 27960:3 fiddling 28053:10 fifth 27950:18 28033:5 filed 27976:15 fill 27988:4,13 27989:8 filled 27986:12 27987:6 final 27965:18 28047:12 28061:24 finally 27985:4 28047:1 find 27931:16 27970:18 27970:20,23 28075:21 fine 28026:9 28062:8 finish 27934:9 27984:4 finished 27993:23 28023:10,20 28036:13 28065:15 fire 27940:5,8,10 27942:2 27952:7 27953:19,22 27957:7 27969:4 27973:3 28003:13 28013:5 28065:13 28067:21 firearm 27987:5 firearms 27951:8 fired 27931:12 27940:6 27941:6,10,13 27945:11,11,16,17,20 27945:24 27950:19 27950:22 27953:16 27973:5,7 27975:11 27984:7 27985:1,4,16 27985:22,23 27986:3 27986:13,14 27988:11 27990:2 28078:12,22,23,25 28080:4 fires 27987:5 firing 27951:1 27956:5 27979:7 28079:2 first 27928:6,9 27932:3 27932:3 27952:6 27954:8,19 27955:1,6 27955:6,17 27956:15 27959:21 27965:11 27973:23 27983:2 27988:19 27994:15 28001:11,18 28004:13 28016:1 28020:3,4 28026:15 28027:1 28028:2,12 28028:12 28029:17 28031:4 28035:24 28037:14,15 28039:13 28051:22 28053:3 28062:16 28076:4,21 28080:7 28082:24 28084:17 five 27949:15 27959:14 27984:10 28008:12 flight 28055:14 focus 28017:12 28052:19 focussed 28070:21 focussing 28052:16</p>	<p>follow 27937:16 27956:19 27981:4 27982:25 27983:5 28022:18 28043:2 28065:5 followed 27939:4,21 27942:18 27982:4,10 27982:11 27983:3,22 28021:22 28049:15 following 27944:12 27956:3 27982:24 27983:9 28000:20 28053:11 follows 27938:19 27947:25 27978:11 28079:12 foot 27983:19 footage 28074:8 footnote 28000:25 force 28000:1,4 28017:6,7,20 28048:23,25 28049:16 28054:6,7 28055:2 form 27941:6 27954:3 27986:12,17,18,21,24 27987:3,4,5,9,13 27988:5,8,12 27989:8 28010:5 28022:5 28033:19,20 28034:3 28034:6 28035:3 28036:14 28048:8 28053:18 28057:5 28061:19 forma 27986:23 27987:10 formed 27949:25 28020:13 28021:14 28022:1 28034:8 forward 27935:9 27949:21 27950:3 28010:2 28032:18 28036:17 28037:3 28039:1 28040:9 28048:1 28053:8,15 28053:21 28054:21 found 27932:2,2 28084:20 four 27968:17,19 28070:13 28071:4 fourth 28033:4 28034:23 28035:2 frank 27999:24 fresh 27987:7 Friday 27931:15 27971:15 friend 27996:5 28066:10 front 27949:12 27971:8 27979:2 27981:16,23 27997:22 28013:18 28017:2 28053:6 28060:25 28078:13 full 27954:2 27999:24 28000:6 28003:17,20 28004:8 28008:19</p>	<p>28026:24 function 28012:4 28054:20 28063:24 functional 27951:19 27952:2,4 28062:2,4 28062:9 28066:8 functioning 28062:22 28064:5 functions 28011:20 further 27938:13 27971:1 27994:1 27999:3 28006:18 28029:20,20 28037:7 28075:17 28083:23 furthermore 27939:20 27941:20 28049:10 28049:12 28078:9 28081:21</p> <hr/> <p style="text-align: center;">G</p> <p>gaan 27974:11 gain 28033:8 gap 28032:7,25 28035:15,16 28036:13 28058:15 gaps 28048:9 Gary 27997:21,22 27998:6,6 28039:9,10 28039:12 28042:11 gas 27966:13 27967:16 27967:17 27969:4 28079:15 gate 28032:24 28033:1 28033:7 28035:10,14 28035:16 28036:13 gather 27927:1 gathered 27957:15 28015:14 28046:5,8 Gathering 27933:4 gatherings 27933:8 gegeee 27972:10,15 27973:13 27974:13 gegooi 27972:16,18 gekomp 27972:17 geloop 27974:15 Generaal 27974:9,13 general 27935:25 27936:10 27937:7,15 27937:20,25 27938:14 27943:19 27943:25 27946:7 27953:20 27954:3,5,8 27954:11,13,14 27955:12,24 27956:10,13,17,18 27957:7,10,13,20 27958:8,17,20 27959:1,15 27963:2,6 27963:7,13 27964:7 27964:7,20 27965:2,5 27966:7,20 27967:3,5 27967:6,9,15 27968:1 27971:25 27972:1,3 27972:10,20 27973:11,16,21,25 27974:20,23 27975:3</p>
--	--	---	---	--

27975:3,14 27976:14 27977:21 27978:9 28077:17,19 28078:1 28078:3 generally 27997:6 gentleman 28084:12 gents 27926:19,21 gepraat 27974:10,12 getting 28008:4 28022:2 28023:4 28058:20 gevra 27972:16 27974:10 geweier 27974:14 GGG9 27932:7 give 27927:23 27933:21 27937:21,25 27940:23 27942:11 27946:9,12 27951:9 27954:1 27957:22 27961:20 27965:3 27971:18 27976:6 27992:20 27998:5,25 28008:7 28027:1,2 28032:16,19 28039:18 28070:21 given 27928:4 27930:20 27931:14 27947:3 27949:20 27956:5 27957:22,23 27958:1 27959:3 27961:2 27963:9 27964:21 27965:4 27967:12,15 27969:3 27970:21,22,23 27971:15 27976:23 27977:6,13,23 27992:24 28001:2 28006:17 28008:6 28026:18 28027:7,12 28046:17 28079:15 28082:20 gives 27967:3,10 28008:14 28027:15 giving 27931:25 27957:21 27962:23 27974:24 27983:5 God 27927:25 27928:1 goes 27973:5 27978:8 28049:25 28050:2 28053:19 28067:20 going 27932:7 27935:9 27938:18 27940:11 27947:23 27951:25 27952:12 27960:25 27960:25 27961:7 27962:21 27978:20 27980:6 27991:19 27998:6 28009:24 28011:12 28019:17 28021:4 28023:13,16 28023:17 28024:20 28027:11,16 28028:22 28031:10 28031:10,12 28032:7 28032:9,15,17,18,20	28033:6,15,19 28035:6,7 28038:14 28038:16 28040:13 28042:2,20 28044:23 28044:25 28045:23 28052:19 28055:9,12 28055:13,16,21 28058:22,25 28061:23 28062:9 28065:1 28069:2 28072:16 28074:7,13 28074:23 28076:6 28084:1,3 good 27951:21 27962:6 27995:25 28076:15 Google 28059:25 Gotz 27930:21 27931:23 27932:11 27932:11,12 28084:17 grabbed 27939:16 granite 27966:13 27967:16,17 grateful 28026:22 28027:4 gravel 28078:17 green 28016:19 28017:4,5,9,19 28018:5 28021:3 28046:21 grenade 27967:17,18 27967:21 27968:10 27968:10 27972:25 27975:23 27976:1 27979:25 27980:4,11 27980:13 28078:13 28078:22,23 28079:1 28079:15 28080:3,4 grenades 27938:2 27965:21 27973:3,5 27975:14 27976:7 27979:8 ground 27938:2 27943:8 group 27937:16 27939:22 27948:2,15 27950:12 27973:6,7 27974:18 27983:19 27983:22 28029:3 28048:8,9 28051:19 28054:25 28055:22 28057:3,15 28058:13 28058:21 28059:1,2 28079:17 grouping 28028:10 groups 27966:2 28025:18 28047:19 28048:8 28057:22 Gumbi 27990:22 27991:8 28075:19,20 28075:24 28076:5,11 28076:13,16,17 28077:6,16,25 28078:9,20 28079:3 28079:20,23 28080:6 28080:10,16,22	28081:5,12,21 28082:1,7,11,14,19 28083:1,11,16,22 Gumbi's 27991:10,10 gunshots 27950:19 28003:12 GW6A 28039:9,10,11 28039:11 28040:23 28057:22 28058:19 <hr/> H <hr/> hadn't 27952:24 27964:20 27994:12 haelgeweer 27972:13 hailer 28032:19 half 27959:21 28043:18 28043:25 28049:8 28060:7 28074:19 hand 27927:25 27934:3 27945:13 27951:14 27951:18,23 27952:2 27981:13 27997:8 28007:21 28031:12 28040:7 28064:2,5,16 28066:7 28073:5,11 handed 27986:8,11,19 28009:18 28064:1 handwritten 27986:2 27986:11 28001:12 28005:5,13,20,21 28006:19 28008:16 28037:12 happen 27942:22 27962:21 27969:3 28085:11 happened 27931:16 27941:22 27942:2 27944:14 27949:23 27954:15 27957:10 27957:12 27965:19 27980:8,23 27989:5 27996:23 27997:2 27999:25 28004:3,18 28008:1 28037:2 28043:25 28047:2 28053:4,5 28068:9 28069:5 happening 27948:22 28061:5 happens 27974:6 28064:1 hard 28079:10 28081:12,13,17 hardloop 27972:12,14 hasn't 27962:12 27970:21 haven't 28051:5,7 28063:24 28076:8 head 28043:3 28054:1 28070:18 28084:2 headed 27952:23 heading 27994:18 28058:14 heads 27931:21 hear 27937:24 27938:4 27965:3 27967:18	27975:13,25 27976:8 27977:20 27988:19 28018:13 28064:25 28065:3 28068:23 28069:12,13,14,21 28072:4,8,11,16,19 28072:23,24 28074:24,25,25 28075:5,6,6,7,11,11 heard 27942:20,21 27950:18 27954:11 27957:18,20,24 27964:20,25 27966:13,14 27968:1 27969:20 27972:2 27975:11,15,22,22,25 27976:3,10 27977:18 27978:1,19 28003:11 28069:16 28072:11 28072:19 28075:8 28078:25 28080:2,13 28080:20 28081:2,8 28082:4 hearing 28075:13 28084:4 hearings 27993:20 help 27927:25 27928:1 27981:1 27984:24 27999:12 28031:22 28032:22 28059:6 28070:13 helpful 28015:11 helps 28019:8 Hemraj 27939:11 27949:1,9,14,18 27953:10,13 27958:23,25 27967:24 27968:4,6 27968:11 27969:2,15 27971:11 27975:10 27975:13,17 27976:6 27976:9 27981:5,12 27981:15,21 27985:11,15,18,21 27986:1,6,10,16,20 27987:21,22 27988:6 28002:12,15 28003:14 28004:1 28024:8,12,15 28025:21 28033:13 28033:18,22,25 28034:5,10,14 28035:5,11 28038:14 28056:23 28082:25 28083:2,6,10 het 27972:10,11,13,15 27972:16,17 27973:5 27973:13 27974:11 27974:12,13,14,15 he'd 27997:7 he's 27937:4 27940:17 27961:21,25 27962:8 27962:10 27977:8 27978:11 27999:1 28017:22,25 28027:16 28030:9	28034:19,21 HHH15.1 27955:18 27982:8 28009:11 28053:3 HHH45 28071:20 higher 27976:24 28000:1,4 highlight 27936:17 27973:10 28000:20 28003:24 high-velocity 28056:10 hold 27972:21 holding 28010:2 28036:17 28037:4 28039:1 28048:1 28053:8,15 holdup 27926:18 holdups 27934:8 hom 27974:11 home 28042:20 28043:3 hopefully 28071:14 hoping 28070:13 hour 27934:6 27959:22 27959:25 28060:8 28070:22 housekeeping 27928:10 27994:14 hulle 27972:9,11,12,12 27972:14 27974:10 27974:10,11,11,12,13 27974:13,14,15 human 27960:14,23 27961:5,14 27990:18 27991:1,5,11,15 27994:4 27996:2 28001:14 28042:14 28043:24 28044:1 <hr/> I <hr/> icons 28013:5,8 28016:7,16,18 idea 28038:15 identical 28050:8 identified 28024:9 28050:9 28059:15 identifies 28000:16 28001:15 identify 27942:8 28016:4 28028:1,4 28070:13 28071:8,9 identifying 28016:7 iemand 27972:15 27973:10,12,12 27975:4 illustrate 27983:11 28000:21 image 28040:24 imagine 27931:25 immediate 27976:10 immediately 27967:4 27982:16 27984:19 27984:23 27985:5,6 28021:19 28022:16 28022:21 28028:19 28028:20 28062:20
---	---	---	---	---

28064:21 28065:7,11 28072:22,23 impact 27992:22 important 27936:18 27989:19,22 27990:9 28003:18 impressed 28055:1 impression 28010:10 inadequate 28000:17 28000:23 28004:24 inaudible 27978:10 28073:9 incident 27940:1 27952:10 27953:11 27979:6 27984:10,19 27984:23 27987:10 27987:13 27988:7,8 27989:8,11 27990:9 27996:23 28001:2 28002:18,22 28003:18 28004:11 28004:25 28071:18 28076:22 28082:22 28083:13 incidents 27933:11,13 27933:15 27945:1 27989:23 28000:17 28000:23 28001:17 include 27996:21 28008:3 included 27976:19 28079:20 28080:19 28080:25 28081:18 28081:23 28082:4,11 includes 27992:9 including 27942:17 27984:11 27999:21 28083:1 incorporate 27988:12 incorrect 27965:6,7 increased 27966:10 increasing 27980:13 index 27931:19 27970:19,23 27995:4 indicate 27934:4 27985:15 27986:13 28003:25 28031:16 28040:10 indicated 27933:25 27939:3,16 27944:8 27945:12 27993:22 28014:9 28040:1 28046:6 28066:7 indicating 28017:22 28020:19 28024:2,13 28027:6 28028:6 28030:7,9,25 28031:24 28034:19 28036:25 28041:9 28045:9,12 28058:4 28059:3,3 indication 27936:9 27941:2 inform 27988:11 28026:23 28066:3 28077:19	informal 27939:18 27956:4,6 27979:12 27979:14,17,19,21 information 27936:22 27976:19 27988:12 28007:13 28037:8 informed 27929:23 27974:23 28066:9 ingelig 27974:13 inhabitants 28078:18 initial 28001:11 28004:20 28005:4 28037:11 initially 28031:23 injured 28056:15 28066:5 28076:18 injuries 27992:7,9 input 27946:9,12,16,25 inputs 27946:16 inquiry 27992:7,15 27996:3 inserted 28013:6 insist 28026:24 insofar 27962:11 28002:21 institution 27932:19 27984:24 instruct 28078:3 28082:15 instructed 27936:10 27937:16 27956:19 28057:5 28066:16 instruction 27937:21 27937:23 27938:3 27949:20 27952:7 27954:2,9 27955:24 27956:5,10,14,15,20 27957:7 27959:17 27963:8,9,14 27964:19,22,25 27965:3,4,21 27966:7 27966:9,13,15,20 27967:3,7,8,10,11 27969:21 27972:2,3 27973:2,4,11,16,21 27974:1 27975:23 28065:25 28066:2 28078:6 28081:2,9 instructions 27938:1 27938:14 27953:19 27953:22 27954:7 27967:14 28067:18 28082:4 intended 28032:15 intention 28031:17 interested 27989:5 28037:15 28052:16 interject 28017:22 interpret 27934:2,14 27958:3 27959:11 27974:9 interpreted 27927:14 interpreter 27933:23 27959:10 27982:15 28073:11 interpreting 27933:24	interrupt 27930:22 interruption 27928:11 intervention 27945:2 interviewing 28007:12 introduce 28076:17 investigating 28002:5,8 investigation 27991:25 27992:9 28007:6,17 28007:19 investigations 27984:11,15,24 27985:5 involved 27933:10,14 28000:3 28007:12,24 28078:4 in-service 27932:19 IPID 27952:21,23 27953:16 27984:11 28007:5,5,11,11,16 28007:17,18,19 28008:20 Ireland 28000:2 isn't 27960:1 28053:23 28054:15 28069:10 issue 27960:10 27963:14 27978:15 27992:11 28080:2,14 28080:20 28081:2,9 issued 27953:22 27955:24 27956:10 27956:14 27959:16 27966:20 27970:1 27972:1 27987:7 27993:17 28024:17 issues 27935:12 27954:9 27992:6 item 27928:16 27929:6 27929:8 27930:10,13 27930:15,22,24,25 27931:6 27932:8 27940:12,13,16 27944:8 27952:16,17 It'll 27971:20 I'd 28052:14 28056:23 28059:5 28072:13,14 I'll 28061:23 28076:6,9 28076:21 I'm 28052:15,16 28053:11 28056:25 28058:4 28059:3,3 28068:21,23 28074:7 28074:12 28076:3 28077:25 28079:8 I've 28058:3 28068:10 28070:10	28056:7,13 28060:4 28073:25 28075:8 28076:17 28079:5 January 27994:17 27995:10,13,21,22 28049:6 28050:7 JJJ 27995:18 JJJ10.4540 28027:22 28027:23 28057:8 JJJ11 28058:10 JJJ11.1515 28061:16 JJJ140 27965:25,25 JJJ156 28079:5,6 JJJ173 28006:19 JJJ178 27997:20,22 28039:12 28042:11 JJJ178.1 28039:10 JJJ194.16 28060:15,17 JJJ46 27991:4,13 27995:17,23 28013:2 28013:4 job 27988:4 28047:23 28048:4 JOC 28005:23 28006:4 28006:19,23 28007:4 28011:13 28066:3,9 28066:17 28068:8 28069:1,4,14,25 28070:5,8 JOCOM 27946:4,8 27946:19 28005:24 Joe 27994:16 jog 28060:8 jogging 28060:20 joined 27982:24 27983:9,11	28065:15 knobkerries 27950:16 27974:20 know 27930:22 27946:18 27955:10 27957:10,18 27958:7 27958:11,21 27960:16,19,20,24 27964:3,9,11 27970:1 27990:7,25 27993:4 27998:2 28010:21 28012:23 28019:7 28043:4 28051:20 28060:8 28065:13 28066:8 28071:15,17 28078:18 knowledge 28077:1,12 28077:15,22 kom 27972:12 koppie 27951:25 27956:18 27974:11 27974:22 28010:7 28012:5,10,14,16,21 28020:16,24 28021:8 28021:9,22 28022:18 28023:19,21 28025:14,23,24 28026:1 28031:2,13 28031:18,25,25 28032:4,13,14 28033:9,14 28040:11 28040:17 28043:12 28044:15 28045:16 28045:22 28046:4,5,6 28046:6,9,11,13,15 28049:16,17 28077:19,21 28078:2 28078:5,11 28079:13 koppies 28046:11,17 28047:7 28049:13 kraal 27950:1 28031:11,19 28032:6 28032:17 28057:5 28058:16 28059:24 28060:2 28061:1,4,20 Kuhn 27938:14 27953:19,22 27954:4 27954:7,9,10,11 27955:25 27957:17 27966:14,21 27968:7 27968:12,14,16,22 27969:25 27970:11 27971:8,24 27972:6 27973:21 27975:22 27975:22 27976:14 27976:15 27977:2,4 27994:24 27995:2 28079:15 28080:3 Kuhn's 27977:14 27995:6
			K	
			Karee 27936:6 Katlehong 28051:16 Kay 27927:2 27928:2 27960:7 27990:15 28027:19 28071:1 keep 27972:21 27974:1 27996:16 keeps 27927:9 27934:1 kept 27944:16 27957:24 28025:16 kill 27943:20 28056:3 killed 28056:15 killing 28007:24 28056:9 kilometres 28060:7 kind 28018:22 28034:25 28035:1 28054:8 kindly 27948:11 27970:19 27995:3 KKK43 28070:11 28071:6 Klerksdorp 28063:9 knee 28050:21,22,23 28051:2,12 28052:9 28056:5 kneeling 27974:19 knew 28063:5	
			L	
			L 27965:12,14,16,18 28015:2 28031:16 28047:15 28077:2 28082:17,21 28083:1	

28083:12,12,17,18,19 laat 27974:15 lack 28000:21 lacking 27999:21 28001:16 laid 28002:25 28037:16 28037:21,24,24 28038:5 land 27942:12 landed 27942:14 landing 27942:11 language 27927:6 27974:23 laptop 28013:16 largely 27932:1 lastly 28073:7 28074:6 late 27984:6 28076:19 28085:10 launching 27968:10 lawyers 27997:15 28008:20 lay 27974:21,24 28011:12 28040:15 28049:10 LCRC 27984:17 27985:6,12 lead 27936:18 28045:12 28058:21 leaders 27960:12,24 27961:5,19 27996:5 28026:23 28027:10 leadership 27999:22 leading 27936:15 28082:21 learned 27996:5 28066:10 leave 27937:21 27975:19 27982:13 27982:16 28025:6,14 28031:24 28039:7 28061:24 28084:14 leaving 28025:16 led 27926:5 27977:14 28077:2 left 28025:13 28026:7 28031:7 28032:6 28036:17 28037:3 28040:10 28041:3 28046:6 28072:25 28073:4,10,13,24,25 left-hand 27979:19,21 28029:6 28040:3 leg 28076:21,23 28079:4 legal 27993:5,13,19 27994:10,10 27996:20 27997:4,9 27997:11 27998:10 27998:15 28039:17 28070:10 legs 28056:4 28076:21 lengthy 28008:25 Lepaaku 27980:21 27981:1 27982:5 28076:20 lethal 28054:7 28055:1	letter 27941:2 let's 27931:16,24 27958:11 27998:25 28002:23 28011:6 28039:23 28044:8 28070:19 28075:21 28076:4,11 28077:6 28079:3 level 27932:19 levels 28000:1,4 Lewis 28085:3 Lieutenant 27943:2 28048:6 28049:5 28051:6 28066:24 28072:4 28076:18,22 28077:7,8,17,25 28078:10,14 28081:17 Lieutenant-Colonel 27942:16 27943:11 27943:18 27946:19 27952:6 27991:2,3,12 27995:10,13,20,22 28027:23 28039:25 28040:24 28043:4 28049:9,14 28050:6 28050:12 28051:21 28051:25 28057:8 28058:10 28067:2,9 28067:11 28068:11 28068:22 28071:9,10 28071:15,15,21,23,25 28079:10 28081:13 28081:14 28082:15 28082:16 light 27965:12 28001:13 28034:23 28034:25 28060:8 limited 27996:4 28001:6 lined 28031:1 28042:7 28044:24 28045:3 lines 27938:18 28029:16,22,22 28030:3,5 line-up 27949:9 lining 27948:24 27949:7 lip 27998:14 list 27931:10,11,13 27944:4 27945:8 27952:10,13,20 27985:8,10,25 27986:2 27987:1,2 27988:25 27989:3 27990:6 27996:13 listed 27993:8 listen 28053:13 28074:23 28075:1,1 28075:14 listening 28067:17,23 28068:3 28085:7 lists 27930:12 27996:6 27996:17,21 little 27994:16 28016:10,18 28021:2	28041:8 28075:25 lives 27984:10 location 28036:23 Loest 27949:20 28027:3,13 28057:4 28061:19 28072:23 28072:24 28073:16 28073:24 logistics 27986:19 long 27934:22 28022:9 28022:14 28027:7 28045:23 longer 28030:8 28041:16 look 27926:6 27940:12 27941:1 27948:8,13 27961:21 27965:25 27971:2,3 27983:16 27998:18 27999:1 28006:18 28009:22 28012:25 28015:4,5 28015:11 28031:18 28037:13,18 28040:3 28040:22 28041:3 28049:4 28050:5 28052:25 28068:8 28070:15,20 looked 27999:1 28036:10 28039:18 28040:6 28041:1,10 28041:16 28058:20 28059:5 28078:16 looking 27998:11 looks 28004:14 28015:20 28018:2,4 28028:21 28029:3,10 28029:12 lordship 28045:10 lose 27934:13 lost 27984:10 lot 27980:18 28004:1 28026:7 28045:10,11 28067:17 lots 27990:24 loud 28032:18 loudly 28078:6 loved 28074:14,16 LRC 27993:4,8,10 27994:11 lunch 27998:17,18 28026:8,10 28030:17 lê 27974:14 L47 27965:12	28081:8 making 28072:12 management 27932:18 27933:10 27934:20 27935:11 map 28014:22,24 28058:5 marching 27936:6 28078:11 Marikana 27933:10 27935:16 27992:2 27993:6,10 27996:2 27996:14 27999:20 28063:3,6 28074:8 mark 27928:6,9 marked 27928:15 27929:5 27994:15 27995:5,19 27996:6 28013:1 marks 27940:18,22 material 28008:3 28050:9 matter 27957:25 28026:22 28029:4 matters 27989:19 27992:19 28026:14 mean 27959:15 27976:21 27998:1 28004:12 28008:24 28022:22,23 28043:6 28055:22 28063:24 28079:8,8,24 28080:23 28084:3 meaning 28049:10 means 28054:24 meant 28016:18 28038:12 measured 28059:22 media 27991:21 27992:24 27993:20 meet 28010:2 meeting 27946:5 27957:20 28005:24 28006:4,19,21,24 28011:10,10,14 28012:10,12 28076:24 meetings 27946:8,20,22 27946:23 27947:1 28083:7 member 27939:22 27952:6 27987:4,6 27997:17 28000:5 28051:11 28065:6,8 28066:12,17 28071:8 28071:10 28075:1,14 members 27935:15 27936:4,5,11 27937:21 27938:1,9 27938:12,25 27941:14,17 27942:17 27943:3,8 27943:13,17,24 27944:4 27945:7 27946:15 27947:20 27949:20 27950:5,9	27951:7,9 27954:6 27957:15,17 27963:4 27966:12 27967:8,13 27985:12 27999:19 27999:24 28002:25 28007:25 28010:6,9 28018:19 28020:15 28021:2 28028:16,17 28030:4,11 28037:16 28037:21 28043:12 28047:19,22 28048:3 28048:21,23,24 28049:1,19,24 28050:3,13,21 28051:1 28053:19 28055:2 28060:20,21 28065:2 28067:8 28070:12,13 28071:10 28078:21 28078:23 men 28016:10,18,19,25 28017:13,25 28019:15,17 28021:2 28024:4 28046:21 mention 27955:22,23 27956:10 27957:6 27966:25 27975:24 27983:19 27988:22 27990:5 mentioned 27955:16,16 27956:14,21 27966:23 27983:17 28063:17 28083:8 mentioning 27965:21 28014:10 mentions 27973:22 27975:3 Merafe 28043:4 met 27972:13 27974:10 27982:11,20 27983:6 metres 27947:7 27948:20,24 27949:2 27949:3,7,15 27968:18,19 28010:6 28010:14 28021:21 28024:9 28047:23 28059:25 28060:3 Mguye 27945:20,25 27983:18 microphone 27978:10 28014:8 28073:9 middle 27981:17 27982:2 28028:9,14 28028:15 28073:13 28073:21,22,23 28074:2 mightn't 28054:12 mind 27991:9 Mine 27936:6 miners 28049:14,17 Minister 27992:17 minus 28019:11 minute 28040:25 28041:1,10 28060:9 28060:11,13,14 28061:3,5,6,13
M				
MABUNDA 27934:5 27934:11 27944:23 27948:18 27949:6 27959:9 27964:3,11 28014:5,9,24 28016:23 28030:9 28034:19 28068:17 madam 28016:12 Major-General 27968:15,23 28080:2 28080:13,20 28081:2				

28065:14 28074:18 28074:19 minutes 28083:25 missed 28003:7 mistake 27962:9 misunderstand 28005:11 misunderstanding 28017:24 Mm-mm 28036:11 mob 27966:12,16 27967:9 mobilised 28077:7 moet 27972:11,16,17 27972:18 27974:10 moment 27939:10 27991:16 27995:7 28018:3 28023:19 28061:11 Monday 28026:17 28027:1 monitor 27936:11 27937:16 27956:19 monitoring 27956:3 month 28008:18 months 27956:23 27985:3 morning 27930:19 27946:4 27951:24 27960:13 27984:5 27995:5 27996:1 27998:10 28005:24 28008:11 28010:12 28010:18 28011:1 28012:8,9,15,22 28020:10 28026:24 28027:6 28036:10 28062:6,7 28064:2 28070:9 28075:24 28084:2,5,7 28085:9 move 27950:3 27953:14,18 27956:18 27958:10 27958:11 27959:19 27971:1 27972:23,24 27977:11 27979:13 27995:7 28003:4 28009:21 28014:11 28014:12,20 28016:15 28020:14 28020:19 28023:8,9 28023:14,17,17,19,21 28025:4 28032:17 28033:2,15 28040:16 28049:11 28052:18 28052:24 28053:21 28054:21 28058:1,2 28058:15 28071:14 28079:3,23 28080:10 28081:5 moved 27949:21 28003:10 28021:8,21 28033:1 28037:23 28039:5 28041:11,11 28041:13 28042:23 28044:21 28047:5	28052:20 28057:24 28058:5 movement 27978:23 28043:14 movements 28014:10 moving 27950:5 27959:20 28014:6 28020:16 28039:4 28040:9 28041:7 28045:22 28057:11 28057:18,23 28058:24 28059:2,7 28059:19 28060:20 28074:20 28078:13 Mpembe 27935:25 27936:10 27937:7,16 27937:20,25 27938:14 27943:19 27943:25 27953:21 27954:3,5,9 27955:12 27955:24 27956:10 27956:13,17,19,20 27957:7,10,13 27958:8,17,20 27959:2,15 27963:2,6 27963:7,13 27964:7 27964:18 27965:5 27966:7,20 27967:3,6 27967:10,15 27968:1 27968:16,23 27971:25 27972:1,3 27972:10,20 27973:11,16,21,25 27974:10,20 27975:3 27975:3,14 27976:14 28077:17,19 28078:1 28078:3 28080:2,13 28080:20 28081:2,8 Mpembe's 27965:2 27977:22 27978:9 mustn't 28050:2 <hr/> N n 27972:9,13 27973:12 name 27945:8 27975:3 27993:9,17 27994:12 28000:24 28079:20 28080:1,12,19,25,25 28081:7,18,23 28082:3,11 28083:3,8 named 27994:16 names 27951:9 narration 27965:25 narrative 28004:16 28083:3,7,17 near 27979:12,13 28031:11 28059:24 28066:21 28069:8 28072:17 28073:20 28074:1 28077:9,11 28077:16 28082:22 nearby 27966:11 nearly 27959:21 necessary 27933:24 27936:12 27940:7 27946:11,13 27950:2	27974:8 27998:16 28027:14 28074:11 need 27932:14 27975:8 27993:18 27994:14 27994:15 27998:20 28025:4 28030:23 28039:13 28048:11 28071:14,22 28075:4 needed 28006:14 28011:16,17 28021:5 28021:14,16,25 28022:14,23 28023:3 28030:18,22 28050:22 28051:2 neer 27974:14 neersit 27974:11 negotiating 27956:17 28024:4 negotiation 28019:23 28024:10 negotiations 27949:13 27949:15 28019:22 never 27953:15 27991:9 27997:25 28070:7 28077:10 new 27928:5 27982:8 27983:3 27994:14 28013:1 nicely 28083:25 nie 27974:11,12 nine 27934:9 28026:23 28027:6 NIU 28017:6,8,11,20 28018:5 28019:2 28021:2 28043:11,17 28043:22 28044:22 28045:5 28046:20 28049:17 NIUs 28017:10 Nkaneng 28037:25 28038:5,16,21,22 28039:4,6 28040:12 28040:15,17,18 28041:8,12 28042:8 28042:20,21,24 28043:3,8,14,21,23 28044:5,14,15 28045:1,4,10,12,13 28045:22 28046:23 28047:8,10 28057:23 28058:14,21,25 28059:3,20 nod 28054:1 nodding 28070:18 28084:2 non-functional 28064:18 non-functioning 28063:25 normal 27993:13 normally 27969:2 27987:17 north 28043:12,22 28044:4,23 28046:22 28047:6 28051:3 28058:14	Northern 28000:2 note 27937:1 27941:1 27989:15 28000:12 28006:16 notes 27966:2 27996:21 27996:22 27997:7,15 27997:16,18 28006:19 notice 27961:2 27962:23 27967:3 27998:5 28026:19,21 28027:12 noticed 28058:3 no-one 28043:23 28044:4 28046:5 Ntlati 28063:6,7,18,19 28065:10 28067:2 28068:12,22 Ntsebeza 28070:18 28084:2,6,10,14,17 28085:1 number 27928:4,16 27929:6,9 27930:24 27930:25 27931:21 27932:8 27938:7,8 27940:12,13,24 27952:17 27970:12 27970:15,18,21,22 27971:2,18,18 27983:17 27984:22 27986:3,21,23 28002:1 28008:5 28022:23 28040:2 28057:17 28071:23 28072:1,1,9 28083:14 28083:16,19 numbers 27930:22 28072:5 Nyala 27947:25 27948:17,17,18,19 28014:11,11,12,12,12 28014:12,13 28022:22 28023:1,1,3 28023:6,6,6,7,10,24 28028:3 28031:5 28032:8,9,9,10 28033:4,5,24 28034:23 28035:2 28040:8,9,12,14,15 28040:18 28041:3,4,8 28041:13 28042:23 28043:20 28044:21 28056:20 28057:1,11 28057:16,18,19,20,24 28057:24 28058:1,2,4 28058:16,25 28078:12,15 Nyalas 27937:22 27948:1,7,8,14,16 27949:2,12,15,16 28014:4,5,9,10,20 28015:18 28016:4,5 28016:15 28019:17 28024:10 28028:9 28034:1,1 28035:11 28035:12 28042:3,6	28043:21 28047:5 28048:9,13,18 28057:2,14 28078:13 28078:17,18,19 <hr/> O o 27960:21 oath 27927:18,19,19 27953:16 27954:19 27955:1,2 27960:6 27963:18 27964:8 27985:4 28027:18 28070:25 object 28026:8 objection 27927:11 27976:20 28066:20 obligation 28000:5 observe 27938:24 27981:18 observed 27938:5 28042:6 obtained 27943:12 obvious 28068:2 28070:4 obviously 27961:20,23 27963:22 28060:24 28070:19 occasions 27952:1,3 occur 28050:20,22 occurred 27940:1 27944:5 occurrence 27985:8 28002:18 October 28081:7,16 28082:3,9 officer 27938:14,19 27939:17 27953:22 27954:4,7,9,10,11 27955:24 27966:14 27966:20 27968:7,12 27968:14,16,22 27969:3,25 27970:11 27971:24 27972:2,6 27973:20 27974:7 27975:22,22 27976:14,15 27977:2 27977:4,14 27980:21 27981:1 27982:5 27984:8 27985:19 27987:19,22,23 27988:1 27989:7 27994:24 27995:2,6 28002:6,8 28076:20 28079:15 28080:3 officers 27935:20 27938:7 27999:21 official 27986:12 27987:3 oh 27928:22 27929:25 27998:3 28003:6 28018:1 om 27972:12,14 27974:14 once 28021:7,21 28022:23 28023:10 28023:20 28025:17
---	---	---	---	--

<p>28033:1 28062:8 oncoming 28073:12,18 ones 27949:12 28074:14,17 one-third 28030:12 28041:18 ons 27972:10,11,11 ook 27972:13 OOO19.1 28079:8,8,25 28081:7 OOO19.2 28079:7 28081:14,15 opdrag 27972:10,15,17 27973:12 open 28035:9 opened 27952:21 28007:22 opening 28007:20,22 28032:24 28033:6 28084:4 operating 28068:14 operation 28000:2,5 28010:4,24 28011:15 28053:17 28055:18 28055:22 28062:8,21 28064:22 operational 27932:20 27935:7 opportunity 27960:16 27960:21 27961:17 27961:21 27962:1 27976:23 27990:17 27990:23 27997:25 27998:17 27999:1 28075:22 28082:20 optimistic 27970:22 options 27933:4,8 oral 27992:21 orally 27989:12,13 orange 28016:8,17 28018:4 28019:16 28042:19,24 28044:11 28046:19 28047:3 order 27933:3 27947:6 27949:4,10 27957:18 27957:19,21,22,22,23 27966:8 27967:25 27968:6,11,16 27969:3,5,23 27970:1 27970:1,3 27972:20 27972:22 27975:11 27975:14 27976:7,8 27987:6 28000:1,4 28006:12 28021:8,21 28021:22 28022:18 28025:19 28026:17 28026:19 28027:9 28037:20 28040:14 28046:22 orders 27969:7 28001:2 ordinary 27927:19 27962:7 organisations 27993:9 original 27929:2</p>	<p>27940:23 28004:21 28042:17 28044:10 28061:4 outside 28040:4 28041:5 overlooked 28056:24 o'clock 28010:1 28011:1,5,7,8,9,13 28012:8,11,21 28070:17 28085:9 o'clock 28013:7 28026:7,23 28027:6 28035:21 28042:23 28043:16 28044:19 28049:11</p> <hr/> <p style="text-align: center;">P</p> <hr/> <p>pace 27966:11 paces 27982:23 page 27932:17 27937:2 27948:13 27957:12 27966:5 27998:9 27999:6 28001:12,15 28001:17 28004:16 28005:5 28006:20,22 28008:15 28009:23 28028:15 28037:12 28037:14 28039:15 28039:24 28040:23 28042:12,16,21,25 28043:5,19 28044:9,9 28044:18 28047:1 28049:7 28050:11 28052:13 28056:19 28071:22 28079:9,11 28079:11,24,24,24 28080:11,17,17,23,24 28081:6,15,22,22 28082:1,2,2,7,8 28083:15,16,19 pangas 27950:16 27974:20 Papa 28018:16 Papa1 28018:9 Papa2 28018:9 Papa3 28018:9 paper 28053:10 paragraphs 27971:4 27974:7 28002:23 28004:9 28009:24 parallel 28028:22 pardon 27954:21 28007:3 28023:15 28068:19 part 27941:7 27954:8 27954:12,13 27957:15 27959:13 27981:24 27984:17 28084:23 participants 27956:16 particular 27967:11 28052:14 28074:11 parties 27930:24 27931:15,17,19 27960:15,24,25 27961:6,11 27962:20</p>	<p>28026:19,20,22 28027:4 28061:22 pass 27956:6 27979:19 27979:20 28043:7 passage 27973:8 27998:21 27999:5 28001:3 passages 27998:24 28001:7 past10so 27959:21 path 28035:1 28040:11 28040:14 28041:11 28041:12,13 28043:23 28057:23 28057:25,25 28058:1 28058:7,20,23 pause 28060:24 pausing 28056:25 pen 28017:23 people 27931:11 27936:6 27945:6 27953:2 27974:18 27982:1 27983:10,22 27985:25 28007:12 28010:22 28015:14 28015:14,20 28018:24 28020:17 28022:19 28025:3,6 28025:10,12,15,18 28028:19,24 28029:2 28029:4,4,8,13,13,14 28029:15,22 28030:5 28030:18 28031:13 28032:12,16,20 28033:7 28039:4 28044:14,23 28045:3 28046:8,18 28047:7 28048:3 28054:4,19 28055:14,23 28056:14 28057:25 28064:5 28065:16 28066:4,21 28067:10 28067:24 28068:2 28071:24 28072:9,17 28074:13 28077:15 period 27933:16 27978:5 27992:8 28008:18 28025:2,5 28060:16 perpetrators 28053:18 person 27968:22 27978:12 27987:21 27988:2 27989:7 28063:5 28064:16 28080:13,19 28081:1 28081:8 28082:4 personally 28085:12 persons 27981:16,21 27981:23 28007:7,14 28008:2,5 pertinently 28002:24 PH 28049:19 28050:13 phase 27992:1,2,6,6,14 28053:16 phases 27991:25 phones 28071:7</p>	<p>photograph 28013:1 28024:3 28028:2,4,10 28028:11,15,16,17,20 28029:1 28030:20,21 28031:19 28033:6,16 28034:12,15,16,23,25 28036:22,23 28037:7 28039:25 28040:3,6,7 28040:20,23 28041:1 28041:6,10,15,17 28046:7 28057:8 28058:2 28059:9,12 28059:16 28061:9,17 photographs 28027:24 28039:22 28052:18 28058:11,20 28059:5 pick 28061:24 picture 28015:22 28019:10 28031:7,15 28036:10 28044:9 28047:2 pictures 28074:13,15 pistol 27945:12,24 place 27987:8 28003:19 28036:23 28058:4 28076:25 plakkerskamp 27972:11 plan 28010:3,25 28011:4,4,5,6,22,25 28012:1 28013:10 28020:3 28032:4 28042:17,18,22,22 28043:16 28044:10 28044:19,20 28049:20 28050:14 planes 28085:10 planning 28049:13 plans 27935:7 play 28060:15,17 28074:7,7,9,9 please 27927:18,24 27932:4 27934:4 27958:15 27961:10 27972:9 27981:6,19 28016:12 28018:14 28027:23 plus 28015:18 plus-minus 27933:15 27968:3,4 pocketbook 28062:12 point 27926:6,9 27962:7 27982:12,12 27983:7 27984:4,4 27985:12 27998:20 28000:20 28016:3,9 28030:1,1 28031:18 28031:21 28032:10 28041:15 28047:6 28051:1 28056:23 28061:23 28065:21 28068:17 28076:5 pointed 28013:19 28040:5,20 pointing 27941:25 28017:25 28034:1,11</p>	<p>points 27936:17 pole 28034:24 28035:2 police 27935:21 27938:7,19,25 27939:17 27941:24 27941:24 27948:2,16 27951:7 27966:10 27968:3 27970:18,23 27978:17 27979:2,9 27979:24 27980:7,10 27980:11,14,15,19 27981:7,7,9,22 27984:8,9,17 27992:10,17 27995:3 28000:2 28003:3,4,5 28003:8,11,13 28007:20,20,24,25 28026:16,23 28037:20 28038:13 28043:20 28047:4 28057:4,15,17 policeman 27987:4 policemen 27960:3 27967:25 27985:22 27986:3,13 policing 27947:6 27948:24 27949:5,7 27949:10 28001:14 POP 27932:18 27936:5 27949:15 27950:5,10 28002:25 28010:6,14 28011:20 28012:3,3 28014:4 28017:2,4,15 28017:16,17 28018:6 28018:11,19 28019:21,24 28020:2 28020:4,5,13,15,19 28020:22 28021:3,7 28021:15,19,20 28022:16 28023:18 28023:19,20 28024:4 28025:4,17 28029:13 28030:19,23 28031:13 28032:12 28032:20 28033:7 28034:2,5,7,17,17 28035:5,12 28037:16 28043:11,22 28046:20 28047:24 28048:9 28052:18 28053:19 28054:4,12 28054:19 28055:2,14 28077:7,15 POPS 28033:19 28034:15 28049:15 portion 28013:4 28029:1 position 27933:21 27935:11 27942:8 27946:24 27951:8 27961:10,20 27991:24 28014:11 28021:6 28022:15,24 28023:4 28024:9 28030:22 28032:11 28032:16 28033:15</p>
---	--	---	--	--

28034:10,11 28035:2 28035:6 28037:3,5,8 28041:22 28057:10 28058:15 28059:10 28059:23 28061:2,10 positioning 28043:19 positions 28027:25 28033:5 28073:12 posse 27960:3 possession 27951:14 possibility 28011:11 possible 27963:9,15 28000:7 28010:8 28054:12 28085:12 Potchefstroom 27957:14 potential 27953:7 power 28031:7 28032:5 powers 27993:8 PPP 27929:23 practical 27932:25 27933:6,20,22 27935:3 practice 27935:8 preceding 27967:4 precluded 27961:1 prefer 28003:1 prejudiced 27960:18 prejudicial 27960:11 prepare 28027:13 prepared 27927:19 27971:6,12 28026:25 28085:5,6 preparing 27996:25 presence 27957:17 28043:11 present 27972:23 27999:20 28000:6 28074:14 presentation 27964:13 27964:16,18 28071:8 presented 28077:3 28083:13,17,18,20 President 27992:4 27993:18 President's 27991:22 27993:7,11 press 27991:20 presumably 27952:18 27961:6 28008:3 28018:10 28027:8 28055:23 28056:2 Pretoria 28077:7 pretty 28050:8 28060:8 prevent 28079:14,17 previous 27952:19 27974:7 27975:7 28043:23 28059:16 previously 27959:6 27973:25 28037:6 28041:22 pre-deployment 28027:25 printed 27961:16 27987:3 prior 27943:2 27962:4	28083:6 privilege 28084:4 pro 27986:23 27987:9 probably 28065:16 problem 27962:17 28032:21 28064:9 28076:7 problems 27934:8 28062:13 proceed 27928:10 27932:4 27936:14 27961:10 27963:4 27975:1 27994:7 28032:9 28053:8,15 28074:21 28076:6 proceeded 27943:1 proceeding 28033:14 proceedings 27926:1 27993:14 produced 28076:24 28079:9 28080:7 production 28077:2 28082:17,21 prompted 28061:19 proper 27947:16 properly 28010:9,11,11 propose 28026:8 proposition 28068:15 prosecute 28006:12 prosecution 28008:4 protect 28003:14,16 28048:9 protester 27941:9 27982:4 protesters 27938:6,8 27938:10 27939:4 27940:9 27942:3,4,18 27950:12 27951:3,8 27956:3 27980:2 27981:2,11 28003:1,3 28003:8,10,12 28011:12 28012:4,5 28024:20 28025:20 28037:17,23,25 28038:4,13 28039:14 28040:11,13 28041:7 28041:13,14 28042:8 28042:16 28043:6 28044:5 28045:16 28046:5,8,17,21 28053:22 28054:21 28054:25 28055:13 28057:23 28058:14 protestors 28003:13 provide 27999:24 28000:6,22 28008:19 provided 27970:19 27994:19 27999:19 28000:17,22 28075:23,24 Provincial 27936:10 27937:7 proximity 27967:25 28018:9 28028:8 PSNI 28000:1,4 public 27933:4,8	27941:14,17 27947:6 27948:24 27949:4,7 27949:10 28000:1,4 28037:20 publicly 27991:24 Pule 28002:10 pump 27968:9 purpose 28007:7 28008:3,7 purposes 27928:10 28004:5 28005:6,10 28005:19 28027:8 pursued 27942:13,23 27983:19 pursuing 27943:3,12 pursuit 27942:24 put 27935:8 27952:18 27952:23 27959:1 27967:5 27970:17 27976:24 27979:6,16 27982:9 27983:4 27985:4 27999:5 28004:2 28013:7 28014:7 28027:22 28039:11 28042:17 28042:19 28061:16 28066:14,18 28068:15 28076:6 28079:6 28081:15 28083:8 putting 28055:14 28056:23 P1 27929:3,4 P2 27929:7 P3 27929:15,17 P4 27929:21	28069:3 28076:9 28077:24 questioned 28027:16 questions 27927:12 27933:24 27934:2,14 27959:14 27994:1 27996:3 27999:3 28026:3 28075:17 28083:23 quickly 27972:24 28079:12 quiet 27957:25 quite 28026:6 28047:7 28047:8 28067:13,17 28076:5 quote 28007:5	reading 27961:17 27997:25 28004:15 28053:11 reads 27947:24 27966:7 28079:12 ready 27994:3,6 realised 27968:22 28062:4 really 27967:17 27970:18 28007:19 reason 27983:24,24,25 27984:7 27990:9,10 27990:11 28002:15 28028:18 reasons 27964:9 reassemble 28026:11 recall 27963:7,8 28030:4 28059:9 28060:10 receive 27935:20 received 27931:2 27935:10 27960:13 27960:15 27961:15 27991:7 27992:16 28081:17 receiving 27927:12 28049:18 28050:12 recognise 28051:21 28071:11 recollection 28014:25 record 27966:1 27989:19,22 27990:1 27990:8 28006:17 28016:6,24 28020:18 28028:7 28045:20 28071:21 28082:8 recorded 27954:18 27955:1 27958:9 27989:20 28006:21 28006:22 red 28016:7,16,18,22 28016:23,24 28017:19 28018:4 28019:16 28021:2 28040:7,12 28041:8,9 28046:21 redeployed 28043:1 redirect 27956:6 reduced 27977:8 refer 27932:7 27940:11 27947:23 27952:12 27971:21,22 28079:5 28079:6,7 28083:14 reference 27957:11 27967:7 27976:4 27991:23 27992:5,12 27992:14,22 28028:23 references 27998:9 referred 27930:23 27951:9 27961:22 28028:21 28029:6 28070:20 referring 27937:14 27939:13 27948:8,16 27948:18 27949:6
			R	
			R 27941:22	
			radio 27951:15,18,23 27951:23 27952:2,2 27957:23 28062:2,3,9 28062:13,14,14,16,19 28062:21,21,24 28063:4,11,14,23,25 28064:1,4,5,6,7,8,10 28064:11,18,25,25 28065:2,4,9,19,22 28066:2,7,7,13,21 28067:17,20,21,24 28068:1,3,4,13,23 28069:4,9,17,19,21 28070:12 28071:25 28072:2,5,9,11,15,16 28072:23,24 28073:2 28074:24 28075:1,5 28075:14	
			radios 28061:25 28064:3 28066:22 28069:8,13 28070:14 28071:5,6	
			railway 28077:10,12,16 28078:2 28082:22	
			raise 27927:25 27934:3 27960:10	
			raised 28066:20	
			Ramaphosa 27992:17	
			ran 27938:19,25 27939:17 27954:6 27966:10 27967:9 27980:5,15,19 27981:2,7	
			range 28006:22	
			reached 28060:25	
			reaches 28061:12	
			react 28049:23 28050:2 28050:17 28052:8	
			read 27938:18,19 27956:2 27958:16 27960:22 27977:4 27995:3 27998:22 27999:12,13 28000:19 28004:9 28039:16,17 28049:8 28075:22,23 28076:2 28079:12,25	
			QQQ9 27932:8 27936:15,22,23 27954:5 27963:6 27976:5 28004:15 28005:10 28008:13 28009:22 28052:13 28056:19	
			quarter 27959:22,24,25 28026:11 28070:22	
			query 28070:6,7	
			question 27927:13 27934:3 27936:5 27946:7 27948:11 27954:14,25 27955:5 27958:4,13,15 27959:5 27961:24 27968:25 27975:20 27977:18,21 27979:4 27979:23 27981:20 27988:24 27989:21 27990:8 27997:6,12 27999:22 28004:7 28007:16 28016:12 28018:14 28044:7 28045:25 28052:24 28057:21 28062:23 28066:15,18 28067:25 28068:7	

<p>27954:22 27958:22 28009:1,3,5,6 28019:18 28020:7 28035:15 28046:15 28051:15,18 28067:20 refers 27987:22 28000:25 reflect 28013:2 refuge 28018:21 28054:13,20 28055:3 28055:15 refused 27956:16 27974:25 regard 27934:7 27992:17 regarding 27960:13 27993:7 28061:25 regterkant 27972:15 27973:6,12 reissuing 27986:19 related 27935:12 27997:6 28074:16 relates 27963:3 28009:24 28010:22 28027:3 relating 27962:12 27996:6,9 28008:2 28071:5 relation 27941:6,10,16 27952:10 27963:6 27992:18 28003:18 28021:14 28022:1,5 28027:15 relatives 28074:14 released 27993:6,9 rely 27961:1,7 28027:11 remain 28011:11 remained 27970:4 remaining 28076:14 remember 27947:2 27964:22 27968:2 27972:1,4 27984:5 27985:24 28002:7,9 28013:20,22 28014:1 28021:24 28022:4 28024:18,23 28025:8 28025:9,11,14 28030:2 28036:6 28048:10,13 28050:25 28051:4,25 28052:2,7 28057:24 28058:5 28059:11 28061:5 28062:2 28064:9,13,15 28075:13,24 remembering 28030:16 remind 27971:23 reminded 28007:15 removal 27992:13,21 removed 27992:4 28047:16 removing 27951:7 repeat 27948:11 27958:14 27969:22</p>	<p>27970:2 27977:12 27979:4 27981:19 28016:11 28018:14 28045:25 28046:1 28061:7 28077:24 repetition 28027:10 replies 27954:10 report 27985:22 27989:22 28004:22 28004:24 28057:7 28062:14,17 28063:18 28064:17 28068:13,14,23,24,25 28068:25 28069:14 28070:6 28072:2,12 28076:24 28080:7 reported 27989:11 28069:4,25 28070:5,8 28071:24 reporting 28068:24 28072:5,9 represent 28076:18 representatives 27992:24 28027:14 represented 28013:6 28016:10 28042:19 representing 27996:1 request 27944:18 required 27945:2 resources 27994:11 28043:20,24 28044:1 28044:22 28047:4 respect 27952:22 27993:11 28007:25 28008:14 28048:3 respectively 27996:7 respond 28049:12 responded 27972:3 responding 27954:13 response 27932:20 27993:11,17 responsibility 27992:8 responsible 27935:23 28084:21 result 27948:25 27949:19 resumes 27926:2,14,15 27960:4,5 27990:13 27990:14 28026:12 28026:13 28070:23 28070:24 retract 28005:16 retreat 28053:19,20,21 28054:13,18 28055:3 retreated 28054:19,19 retreating 27950:7,10 return 28019:5 28070:21 returned 27940:10 27942:20 28003:13 28018:12 28036:18 reverse 27930:1 review 27961:19 rifle 27939:16 27941:22 27982:5 28080:4</p>	<p>rifles 27937:21 28015:20 28055:7 28056:9,10 right 27927:20,25 27929:15 27945:12 27945:17,18 27952:25 27961:22 27968:5,25 27970:6 27973:2,7 27978:11 27981:12 27988:5 27993:4 28002:11 28003:21 28005:19 28007:18 28009:19 28017:13 28019:15 28020:1 28024:3 28029:11,12 28031:11 28032:6,17 28034:14 28037:5,25 28040:6 28042:8 28054:3,9,24 28055:4 28055:6 28056:1,5,15 28057:10 28058:21 28058:23 28060:3,5 28064:11 28066:22 28067:3 28068:6 28071:20 28073:11 28073:13,15,17 28074:1,3,4 rights 27960:14,23 27961:6,15 27990:18 27991:1,5,11,15 27994:4 27996:2 28001:14 28026:21 28026:25 28042:14 right-hand 27980:2,9 27981:8,10,22 27982:22 28030:12 28031:19 28041:6,18 28059:2 rise 27927:18 risk 28056:14 road 28040:18 28058:14 28059:20 28059:24 28060:2,12 28060:25 28061:12 28061:13,18 28078:17 robbed 27978:16 27982:4 role 27937:11 27992:10 27992:18 28010:11 28010:13 28011:14 28011:23 28012:1,2 roll 28023:6,7 rolled 28022:2,6,17,21 rolling 28023:24 28024:20 Ronnie 27994:16 roofs 28029:10,10,12 Roots 27944:19 27954:23 27955:2,16 27955:17,18 27957:10,12 27963:4 27963:6 27965:2,9,11 27966:25 27970:9 27996:9 28062:18</p>	<p>28063:10,14,20,21,22 28076:24 28083:7 round 28004:16 28005:8 rounds 27940:4,6,8 27941:6 27945:11,17 27945:21,23 route 28039:13 28047:7 28058:19 row 28028:12 28030:8 RRR 27929:24 27994:19,22 RRR1 27930:5,6 27931:4 28001:11 28002:21 28005:5 28037:11,13 RRR10 27995:8,9,20 28050:5 28067:18 RRR11 27995:12,21 28049:5 RRR12 27995:16,23 28013:1 RRR2 27930:7 27931:5 28037:18 RRR3 27930:8 27931:6 28009:14,15 28052:25 RRR4 27930:9 27931:8 27957:1,2 RRR5 27930:11 27931:9 28062:11 RRR6 27930:14 27931:12 27944:8 27996:6,9 RRR7 27930:16 27931:14 27952:13 27952:15 27996:12 RRR8 27940:24 27941:1 RRR9 27971:20 27994:23 rubber 28003:9 28054:7 rule 27962:7,11 rules 28049:21 28050:1 28050:15 28052:7 28055:17,21 run 27966:12 27972:22 27973:1 28057:5 running 27980:14 R1 27930:4 R5 27939:16 27941:24 27945:17,21 27978:17 27981:2 28055:7 R5s 28018:25 28056:3 28056:10</p>	<p>27986:2,12,21 27992:18 27996:20 27997:4,6,16,17 27998:9 27999:22 28027:14 28044:12 28070:12 28079:9 28080:7 SAPS's 27960:11 SAP15 27986:24,25 sat 28013:17 satisfactorily 27962:17 satisfactory 27926:8 satisfied 27947:16,18 28010:15 save 27960:11 saw 27947:25 27948:1 27948:15 27951:7 27973:23 27978:23 27980:7 27988:2 28009:19 28015:6,15 28031:7,15 28056:20 28057:1,3,10,15,17 28057:22,25 28058:16,17,19 28059:14 saying 27952:24 27965:1,5,15 27977:22 27978:8 27983:10 28003:20 28004:8 28007:18 28045:23 28048:13 28049:9 28063:15 28068:7,21 28069:18 28069:22 28074:19 28074:25 28075:1,6 28075:14 28077:25 says 27937:15 27959:11 27967:4,11 27972:25 27973:11 27973:12 27974:9 27978:11 27983:17 27999:18 28000:25 28001:16 28003:22 28004:20 28007:16 28007:17 28018:5 28042:18 28044:3 28050:12,19 28067:18,22 28071:23 scenario 28047:6 scene 27936:11 27984:18 27985:12 27985:19 27986:4 27987:20,24 27988:1 27988:3,20 28001:1 28036:18 28039:14 28051:23 28061:18 28070:12 28071:7,24 28072:22 scenes 28013:6 scheme 28018:3 28019:8 Scholtz 27944:23 Scott 27944:22,24 27947:11,17 27986:9 27986:11 27988:18</p>
S				
<p>safe 28074:20 Samuel 27927:2 27928:2 27960:7 27990:15 28027:19 28071:1 SAP 27987:4 SAPS 27926:3 27953:4</p>				

<p>27989:3 27996:9,13 28010:16 28013:4,8,9 28013:12,14 28014:2 28015:13,22 28016:8 28016:13 28019:11 28020:12 28021:6,10 28021:13,25 28024:17,19 28025:1 28025:5,12,15 28031:9 28035:17,23 28035:24 28036:5,9 28036:12,17 28037:4 28039:1 28042:17 28044:10,20 28047:17 28048:7,11 28049:2,15 28051:25 28079:10 28081:13 28082:15 Scott's 28013:15 28015:1 28047:18 screen 27952:19 27972:9 28013:16,19 28013:20 28014:2,3 28014:16,16,18,19 28015:15 28017:23 28018:2 28027:22 28036:9 28039:11 28043:11 28075:4 scroll 27966:4 seated 27928:4 second 27949:2 27951:11 27954:5,12 27956:1 27965:19,24 27966:5,6 27974:9 28000:24 28025:22 28027:3 28029:7,19 28029:19 28030:21 28041:15,16 28049:8 28053:2,5 28076:23 28079:4 28084:20 secondly 28071:13 seconds 27974:24 28040:25 28041:2,11 28060:18,18,21,22 28061:12,17 section 27932:18 27991:4,13 27995:17 27995:23 28000:2 28013:2 28043:10 sector 28023:20 seeing 28059:9,11 28074:15 seeking 28055:24 seemingly 28041:12 seen 27951:10 27952:24 27964:25 27970:20 27980:20 27991:6,6,10,13 28052:17 28068:13 28083:7 Sekgweleya 27939:21 27942:13,17,23 27943:1 27945:16,17 27945:25 27981:3 27982:4,12,16,17,18 27983:3,6,6,15</p>	<p>Sekgweleya's 27983:16 sekondes 27974:13 Seloane 28071:15,16,23 28072:1,5 Seloane's 28071:21 semi 28044:21 semi-circle 28043:25 28044:11,13,25 send 27960:2 senior 27935:20 27969:3 27984:8 27987:23 27999:21 sense 27930:24 28053:21 28085:7 sent 27990:22 27991:2 sentence 27954:5 27956:1,2,15 27973:24 27974:9 28037:15 28050:18 separate 27940:23 September 28037:19 28077:1 28080:6,8,12 28080:18,23,24 28083:4 Sergeant 27945:20,25 27951:11 27983:18 series 28076:24 28077:2 serious 27999:23 seriously 28056:15 28066:4 service 27987:5,7 27992:10 set 27936:22 27939:6 27941:20 27943:23 27970:25 sets 27945:6 28042:14 28042:25 Setswana 27927:6 27964:10 settlement 27939:18 27956:5,7 27966:11 27979:12,14,17,19,21 shaken 27931:22 shape 28042:1 28043:2 28043:7 she'd 28056:23 shoot 27954:7,12,14 27968:24 27969:9,10 27969:12,16 28048:24,25 28050:23 28051:2,11 28052:8,8 28056:4 shooting 27930:11 27931:10,10,13 27940:1,10 27944:4 27952:10,13 27977:15 27987:10 27987:12 27988:6,8 27988:25 27989:2,8 27990:6 27996:6,13 27996:21 28001:2 28002:22 28004:17 28050:20,21 28051:1 28065:8,12,13,14 28066:4 28069:15</p>	<p>28070:1 28072:22,24 short 27998:21,23 28020:23 28026:2 28060:15 28071:4 28076:5 shortly 28022:17 shot 27979:25 27980:4 27980:13 27984:23 27984:25 27985:22 27985:25 28003:9 28065:16 shotgun 27972:24 28080:4 shotguns 27937:22 shots 27931:12 27951:4 27953:16 27957:3 27984:7,22 27985:4 27985:16,23 27986:3 27986:13 27988:11 27990:2 shouldn't 28070:17,17 shouted 28067:21,22 28067:23 show 27983:11 28020:2 28030:19 28036:21 28070:10 showed 28013:23 28014:24 28015:2,13 28020:12 28031:8 28045:21,21 28057:22 28075:25 showing 28014:14 28017:22 28040:7 28041:7 28076:3 shown 27962:13,14 27965:13 27966:24 28016:16 28017:23 28031:9 28033:9 28034:6,21 28040:19 28060:23 28074:18 28075:3 shows 28019:11 28027:25 28044:9 28047:1 28074:20 side 27950:1 27973:2,7 27979:19,21 27980:2 27980:9,10 27981:8 27981:11,13,22 27982:23 28015:15 28029:6 28030:12 28031:7,12,19 28035:8 28040:3,7,14 28041:6,19 28057:24 28059:2 28067:23 28073:5 sides 28040:18 28045:12 sign 27952:25 28001:19 signature 27937:2 significant 27955:11,25 27956:13 27975:20 28000:17,23 28001:16 signifies 28019:16 signs 28050:7 28074:20 silent 27970:4</p>	<p>similar 27931:13 28032:25 simple 27998:20 simply 27967:11 single 28047:18,21 sir 28046:2 sitting 27926:10 situation 27936:11 27937:8 27944:1 28050:19 28055:17 28056:2 six 27985:3 28011:1,5,6 28011:8,9,13 28012:8 28012:11,21 28029:21 28035:21 28060:7 skiet 27972:17 skip 28000:10 skokgranate 27972:16 27972:18 slide 27965:14,16,18 28015:2,5,11 28018:2 28019:6 28030:17 28031:16 28047:15 28083:14,16,19 slightly 28032:17 28068:16 slip 27998:14 slow 28060:8 small 28025:24 28030:3 smaller 28025:18 28029:17 28049:17 28049:17 smiling 28084:3 smoke 27956:7 27968:10 28078:25 socio-economic 27992:3 soft 27931:20 28015:19 somebody 27965:4 soon 28027:12 sorry 27926:17,20,22 27929:17,22 27930:6 27930:21 27932:8,9 27939:14,14,22 27949:1 27960:9 27961:10,13 27962:2 27962:9,20 27976:17 27982:15 27997:24 27999:20 28000:9 28003:7 28014:7 28017:9,11,21 28024:8 28033:13 28034:22 28039:12 28055:20 28056:22 28066:6,7 28067:10 28068:17,19 28079:8 sort 27932:13 27995:6 28032:24 28060:7,8 sound 28059:25 28060:3 28079:1 source 27936:21 south 27984:9 27992:10 27996:2 28041:12</p>	<p>Soweto 28049:20 28050:14 so-called 28008:2 28018:16 space 28033:2 spanner 27929:23 sparse 28002:22 28004:24 speak 28012:10 28032:18 speaking 27964:10 27992:1 spears 27974:20 special 28017:20 specific 27971:23 27998:9 specifically 27975:24 28002:18 28006:20 28057:4 28069:22 specify 28022:12 speculation 27991:21 spent 27961:4 split 28047:19 28048:7 spoke 27974:20 27980:17 spoken 27968:23 spot 28031:24 spots 27985:13 squatter 27942:5 27972:21 27974:1 28003:2 28037:17,22 stage 27939:4 27942:16 27943:17,24 27944:18 27951:18 27960:11 27982:21 27990:12 27997:8 28034:7 28042:22 28044:19 28083:3 stand 27992:20 28084:12 standard 28034:24 standby 28067:20 standing 27933:3 28015:20 28019:22 28023:25 28028:24 28029:9 28032:9 28041:19,22 28042:1 28042:3 28058:2 28069:13 start 27929:3 27947:25 27971:5 27996:4 28004:15 28007:6,17 28011:6 28021:15 28022:2 28023:4,22 28024:20 28039:24 28041:9 28057:1,11 28076:11 28085:11 started 27934:8 27956:18 27962:13 27981:4 27982:24 28003:3 28022:23 28023:3,24 28028:3 28031:6,6 28037:12 28040:8,9 28062:4,8 starting 28040:15 28056:20 28059:23</p>
---	--	---	---	---

<p>28059:24 28060:16 28061:2,10 starts 27939:15 28004:15 28059:7,19 state 27941:12 27946:25 27953:7 28009:25 stated 27991:24 28013:3 statements 27927:10 27928:5,5,14 27978:3 27991:3,12 27992:16 27999:19 28000:16 28000:21 28007:6,7,8 28007:13,18 28008:12 28009:11 28009:16 28010:23 28050:8 station 28031:7 28032:5 step 27930:2 stepped 27926:6 steps 27930:2 STF 28017:9,10 28018:5 28021:2 28043:12,17,22 28044:22 28045:5 28046:20 stick 28073:11 stood 27956:18 stop 27938:20 28060:18 stopped 28058:4,7 stops 28044:25 straight 27956:4 28031:1,25 Strategic 28017:7 strengthen 28064:10 stretch 28032:5 stretches 28029:20 strictly 28049:22 28050:1,16 striker 27942:8 27950:21 strikers 27936:12 27938:20 27939:16 27939:22 27940:2 27941:21 27942:13 27942:23 27943:3,12 27948:2,15 27950:19 27966:8,10,10 27978:16,22,24 27979:1,8,11 27980:4 27980:9,13,22 27981:1,4,8,9,25 27982:10,11 27983:19 28003:1 28006:12 28007:23 28008:8 28010:5 28038:15,20 28040:16 28043:2 28049:10 28054:5 28055:13 28057:3,15 28057:17 28058:6,19 28058:22,23 28059:10,11</p>	<p>28073:12,18 28077:11,18,21 28078:2,5,11,14 strikes 28054:14 Studies 27994:10 study 27962:1 27990:17 stun 27938:1 27965:20 27973:2,4 27975:14 27975:25 27976:7 27979:8,24 27980:3 27980:11,13 28078:12,21,23 28079:1 28080:3 submissions 27993:19 submit 27988:25 submitted 27944:19,20 27989:2 27998:2 subsequent 28008:12 substance 28066:20 substantially 27961:4 28004:19 Sub-para 28000:22 succeed 28008:4 28056:8 success 28003:6,10 suddenly 27967:7 28003:11 suggest 27936:15 27940:24 suggestion 28015:8 summarise 27966:1 summary 28033:9 Sunday 28006:8,8,8 supplementary 28049:5 support 27970:10 27993:6 supported 27976:14 suppose 28004:15 28043:14 28068:25 supposed 27943:14 27947:6 27986:18 27987:24 27989:19 27989:22 28018:5 28033:20 28034:3,17 28035:9 28068:25 28070:5,6 sure 27946:22 27969:12 27970:17 27983:14 27995:6 27998:20 28028:18 28044:8 28056:8 surely 28003:21 surprise 28076:8 surrender 27956:16 28011:19 swear 27927:22,25 27928:1 sweep 28010:7 28012:5 28021:9,23 sweeping 28033:14 sworn 27955:6 s.u.o 27960:7 27990:15 28027:19 28071:1</p>	<p style="text-align: center;">T</p> <p>taal 27974:12 table 28084:20 tactical 27933:4,7 28010:3 28011:15 tactically 28049:12 take 27927:11,18,18,19 27930:2 27932:10,11 27959:21 27960:22 27962:16 27967:17 27978:20,21 27984:7 27987:7 27990:12 28007:18,23 28018:6 28018:21 28026:10 28042:2 28045:13 28049:17 28054:13 28054:19 28055:3,15 28056:3 28060:9 28068:1 28070:17,19 28070:22 taken 28003:19 28013:5 28027:24 28028:16 28039:14 28039:25 28040:2,25 28058:11,12 28061:3 28077:20 28078:4 takes 28040:14 28058:21 talk 27956:20 28012:12 28012:13 28048:23 talked 27974:23 28012:16 28057:22 talking 27979:6 28032:12 28045:19 28067:24,25 28069:18 talks 27965:20 27973:21 27975:2 28067:19 task 27947:3 28010:5,8 28010:11 28017:6,7 28017:20 28049:16 28053:18 taught 27934:16 27935:7 te 27972:12,14 27974:14 tea 27932:3 27961:8 27990:12 27993:22 28070:18,19,22 team 27993:5,10 27996:20 27997:5,9 27997:11 27998:10 27998:15 28019:24 28024:4 28039:18 28070:10 teams 27993:13,19 tear 27956:7 teargas 27938:15 27953:20,23 27954:7 27954:12 27956:6 27957:7 27965:20 27966:16 27967:20 27968:24 27969:9,11 27969:12 27972:24</p>	<p>27973:1,2,4,4,7 27975:11,16,17,23,25 27977:15 27979:7,25 27980:18 28003:6,7 28054:8 28078:22,25 28079:16 28080:3 tech 28064:5,6,7,8 technician 28064:11 telephone 28070:12 tell 27964:7 27968:22 27969:8,10 27999:2 28015:5 28017:4 28020:13 28021:6,11 28021:15,18 28022:2 28022:9 28025:5 28051:11 28061:19 28062:19,24 28063:2 28063:4,10,13 28067:24 28068:8 28085:4 telling 27964:6 27969:13 28022:4 28033:3 ten 27934:10 27936:18 27945:21 27968:3,4 tense 27972:23 term 27954:2 terms 27948:20 27985:2 27991:23 27992:5,12,13,21 28026:17 28050:8 test 27951:18,22 28077:1 tested 27951:20 27952:2 28062:7,7 testified 27955:12 27957:11 27959:15 27983:14 27985:8 28005:4 28006:10 28010:13,15,17,23 28016:14 28030:17 28041:22 28043:4 28059:10 28062:6 testify 27927:6 testifying 27962:5 testimony 27983:15 27984:1 28072:14 text 28043:10 thank 27926:12 27928:3 27929:25 27931:1 27932:5 27949:18 27962:19 27962:25 27965:8 27970:7 27993:21 27994:5,8 27995:24 28001:4 28005:17 28009:20 28014:8 28015:7 28024:15 28027:21 28029:24 28033:11 28046:16 28056:7,17 28071:4 28074:5 28075:18 28083:10,11,24 thanks 27926:25 27929:16 27936:20 27937:6 27940:25</p>	<p>27947:15 27962:15 28039:11 28076:13 28079:3 28083:22 theoretically 27935:8 theory 27932:24 27933:2 27935:3,5,6 thereabouts 28062:18 there'd 28044:14 there's 27926:9 27929:18 27931:3,4,7 27931:10,13 27934:6 27961:24 27967:7 27971:5 27975:8 27977:9 27983:8 27987:3 27990:10 28000:24 28003:25 28004:1,12,19 28009:13 28011:11 28028:9,10,18 28029:4 28034:24 28043:23 28044:4 28045:4,10,11 28047:12 28050:18 28056:13 28065:13 28076:9 they're 27942:20 27961:7 28002:23 28026:25 28027:11 28056:10 they've 28026:18 28060:24 thing 27983:13 28002:17 28037:20 28050:11 28054:8 things 27978:14 28006:22 28013:19 28015:19 28026:19 28047:20 28062:8 28064:3 28085:11 think 27926:9 27929:3 27932:15 27940:14 27960:10 27969:8 27972:25 27974:8,16 27975:7 27976:20,24 27977:12 27984:21 27993:22 27994:20 27995:2,7 27999:14 28001:7 28003:9,19 28005:7,8 28006:7 28015:19 28017:24 28018:3 28022:14 28026:22 28031:10 28031:15 28033:4 28039:21 28043:2,6 28059:8 28060:4 28066:3 28067:25 28068:7,8 28074:10 28074:20 28076:2,6 28076:14 28085:5,9 thinking 27970:22 28015:4 28018:15 third 27941:8,18 27954:13 27956:1,1 28057:9 thirdly 28072:21 thirsty 28070:19</p>
---	--	---	--	--

<p>thought 27959:8 27997:5 28005:8,9 28056:23 28066:19 threatened 27943:20 three 27934:24 27945:11 27968:17 27968:19 27994:14 27995:19 27998:1 28003:19 28004:10 28010:1 28015:18 28049:11 28061:17 28067:8,12,13 28068:2 28071:10,11 throw 27929:22 thrown 27973:3,5 till 27997:17 time 27932:15 27934:1 27934:13 27941:5,13 27949:2 27951:25 27954:19,23 27955:1 27960:20 27961:2,4,5 27961:8 27967:24 27978:12 27979:12 27983:5 28004:22,23 28022:4,12 28023:19 28025:2,5 28026:7 28030:1 28032:12 28036:6 28039:18 28040:2 28041:2,15 28043:17 28045:2,3 28051:23 28058:11 28058:13 28059:7,14 28059:19 28060:16 28061:1,8 28062:16 28065:1,14,21 28076:15 28082:24 Timekeeper 27959:23 27959:24 timeously 27930:1 times 27958:5 today 27997:17 28009:19 28074:15 28082:24 toe 27972:9,12,14 27973:12 27974:11 told 27931:19 27943:18 27963:13 27964:21 27965:4 27977:1,6 27988:17,18,18,19 27989:12,13 27998:15 28001:8 28006:11,13 28011:10,14,15,16 28013:9 28020:9 28022:8 28036:13 28038:3,5,8 28049:20 28050:14 28063:6,19 28067:19 28074:12 tomorrow 28026:24 28027:5 28084:1,4,7 28084:18,24 28085:8 28085:9,11 top 27945:8 28020:23 28040:1 28043:18 topic 27953:19 27996:4 28061:24</p>	<p>topics 28027:6 28071:4 traanrook 27972:14,16 27972:17,18 27973:6 traditional 27974:19 28003:4 trailers 28048:10,12,18 trainers 27933:20 training 27932:18,19 27932:23 27933:5,6 27934:19 27935:1,10 transcript 27959:13 translate 27972:19 27974:16 translated 27973:25 translator 28014:8 transmission 28075:5 transpired 27964:1 travelling 28078:17 TRN 27932:19 troop 28051:19 TRT's 28011:14 true 27963:21,23,25 truth 27927:24,24,24 27963:23,24 27964:5 27964:7,12 27978:2 try 28003:5 28034:22 28052:16 28054:5 28056:4 28059:6 28085:9 trying 27932:13 28059:6 Tswana 27934:2 turn 27969:4 28009:23 28027:21 28042:16 28042:21 28043:19 28044:18 28048:20 turned 27980:9,10,15 27981:7 twice 27995:6 twixt 27998:14 two 27930:11 27938:18 27947:10 27950:18 27952:1 27956:23 27963:17,18 27966:24 27970:9 27973:22 27977:13 27977:13,22,23 27978:14 27991:2,12 27994:18 27996:5,17 27996:21 27998:23 28001:12,15,17 28003:11 28005:5,14 28008:15 28009:10 28009:16 28013:5,8 28026:11,14 28027:16 28029:9,11 28029:11,18 28030:3 28037:12 28039:22 28040:10 28041:7 28042:23 28043:16 28044:19 28046:11 28048:8 28050:8 28052:7 28076:20 typed 27930:6 27931:4 27991:3,4 28037:18 typewriter 28009:13</p>	<p style="text-align: center;">U</p> <p>uit 27972:12 unable 27974:17 unaware 27994:11 uncoiling 28031:5 underlying 27992:3 understand 27927:5,13 27933:25 27934:3,12 27945:5 27948:10 27958:12 27974:17 27974:22 27978:23 27978:25 27989:4 27990:22 27991:17 27993:1 27996:8 28004:6 28005:10 28011:4,22,22 28012:20 28013:7,15 28019:8 28020:5 28021:4,5 28022:13 28026:16 28030:22 28031:21 28032:7,14 28032:22 28039:15 28040:19 28044:6,16 28045:1 28047:17 28052:15,15 28057:6 28064:24 28069:18 28077:3,24 understanding 27927:12 27977:5 28010:21 28030:20 28032:2,3 28037:23 28038:8,10,20 28085:8 understands 27927:11 27958:4 understood 27969:10 28005:9 28010:8,11 28010:13,25 28023:2 28035:3 28038:1 28042:15 28072:14 28072:15 28073:10 unduly 27970:21 unfairness 27961:24 unhappy 27943:19 unit 27935:17 27937:11 27943:24 27945:2 27947:4 27999:23 28000:16,22 28002:25 28013:17 28037:16 units 28010:2,11 28028:1 28044:12 28077:19 28078:3,6 unknown 28071:19 unpacked 27955:23 unsigned 27952:23 updated 27995:4 use 27965:20 27975:14 27976:7 27994:13 28041:13 28048:22 28048:25 28054:7 28056:2 28060:7 28061:25 28062:5 28066:12 28068:23 28070:11 28071:5,6</p>	<p>28076:14 useful 28028:25 uses 27972:23 utilisation 27938:1 utilise 27938:15</p> <p style="text-align: center;">V</p> <p>van 27972:10,11 27973:6 28013:17 various 27971:4 27984:11 28007:12 28010:1,10 28026:19 vehicle 28015:14,15 28016:7,16 vehicles 28015:19 28016:10 28017:3,4,5 28017:25 28018:9,10 28018:10,16,16,17,20 28018:25 28019:21 28020:22 28021:3,3 28028:8,10,12,13,17 28028:22 28029:5,8,9 28029:11,11,12,18,18 28029:21 28040:5 28041:6 28046:20,21 28054:14,20 28055:4 28055:15 Vermaak 27942:16 27943:3,11,18 27946:19 27970:25 27983:4,14,18,23 27984:1 28039:25 28040:24 Vermaak's 28027:24 28057:8 28058:11 vernacular 27927:6 versa 28045:25 version 27958:18 27965:18 27970:10 27975:21,21 27977:6 27977:9,21,22 27978:6,9 28004:25 28076:21 28077:6,8 28077:17 28078:1,10 versions 27963:18 27977:14,15,23,23 verstaan 27974:12 versus 28012:22 vice 28045:25 vicinity 27941:14 27976:10 video 28060:23 28075:3,9 videos 28059:5 view 27933:21,21 27940:21 27960:15 27993:3 views 27993:15 vigorously 28070:18 village 28079:14,14,18 vinniger 27972:13 visible 28028:17 vision 27980:18 Visser 27964:13,16 28081:14,18 28082:16</p>	<p>Visser's 27964:17,18 voice 27957:19 volley 28065:12 28084:21 voordat 27974:11 vorentoe 27974:14</p> <p style="text-align: center;">W</p> <p>wait 28065:24 waiting 27926:10 28025:5 28066:2 28067:18 waive 28026:21,25 walk 28040:17 28060:9 28060:9 walked 27974:25 walking 27966:11 27979:2,8,16,18,20 28060:21 want 27928:15 27929:5 27930:11 27955:16 27965:10 27970:10 27971:2,3,21,23 27973:9 27974:12 27978:15,22,22 27984:4,7 27991:17 27996:7 27997:1 27999:5 28002:18 28015:9 28026:14 28027:2,2 28039:22 28053:13 28056:3 28057:6 28074:23 28076:7 28084:12,13 wanted 27944:17 27978:21 28047:13 wanting 28044:14 wapens 27974:10,14 warn 28024:20 warned 27967:5 warning 27930:7 27931:4 27952:24 28024:17,24 28032:16,19 28037:19 28074:10 Warrant 27938:14 27953:22 27954:4,7,9 27954:10,11 27955:24 27966:14 27966:20 27968:7,12 27968:13,16,22 27969:25 27970:11 27971:24 27972:2,6 27973:20 27974:7 27975:22,22 27976:14,15 27977:1 27977:4,14 27980:21 27981:1 27982:5 27994:24 27995:2,6 28076:19 28079:15 28080:3 Warrant-Officer 27957:16 wasn't 27946:13 27969:11 27998:15 28003:20 28004:8 28006:17 28062:2,4</p>
---	---	---	--	--

28064:8,25 28065:4 28066:21 28068:1 28072:19 waste 27978:12 wastes 27958:5 wasting 27934:1 water 28003:5,8 28054:8 way 27934:16 27936:7 27953:15 27964:14 27971:5 27978:25 27979:16 27992:14 27993:14 28005:8 28022:22 28030:24 28032:6 28037:24 28038:6,21 28041:14 28041:18 28042:6,19 28045:5,11,11,11,13 28045:14,23 28046:22 28047:14 28057:9 28077:18,21 28078:5 28079:13 ways 28045:11 weapons 27938:9 27956:16 27974:19 27974:25 28003:5 28011:12,19 28025:11,13,14,16 28049:11 week 27992:19 weeks 27934:25 weer 27972:17 27974:13 weg 27972:10 weghou 27972:11 went 27956:4,7 27980:6 27981:22 28008:11 28037:5 28038:20,22 28048:21 28071:5 weren't 28015:17 28018:17 28025:22 Wesley 27929:22 27930:5 27971:17 28017:21 West 28051:3 we'd 27926:9 27940:23 28010:20 28039:6 we'll 27926:13 27929:3 27929:3 27930:1,2 27959:21,25 27960:1 27960:2 27961:9 27966:4 27970:18,23 27998:1 27999:4 28026:10 28060:19 28076:11 28085:5,8 28085:12 we're 27931:23 27932:12 27994:20 27994:21,22 28004:7 28009:23 28052:19 28059:6 28070:13 28074:13,22 28084:3 we've 27928:4 27930:11 27961:15 27970:20,25 27987:3	27995:5 28013:1,5,5 28040:15 28041:1,16 28050:9 28052:17 28059:4,8,15,22 28060:6 28084:19 28085:5 what's 28006:21,22 28013:3 28040:19 28068:9 whilst 27938:25 white 27997:21,22 28000:16 28001:8,13 28003:20 28004:7,20 28015:3,3,16,25 28029:11 28039:10 28039:12 28042:11 28042:13,18,25 28044:3 28047:15 White's 27998:6,7 27999:7 28039:9 28047:6 Who's 28084:21 wish 27993:2,15 28027:4,7,7 wishes 27927:5 27991:18 28084:2 withdrawn 27992:13 witness 27926:3,4 27927:1 27931:5,5,7 27933:25,25 27938:25 27953:2,3,7 27959:8,11 27960:14 27960:17,21,22 27961:16,20,24 27962:4,8,10 27976:18 27994:3 27997:5,25 28001:7 28015:5 28017:22 28027:4 28029:6 28030:25 28066:7 28075:22 witnessed 28000:18,23 witness's 27959:7 woman 27987:4 wonder 28032:21 28070:16 wonderfully 27994:16 Wonderkop 27936:7 won't 28085:2 word 27972:16,18,25 27973:10 words 27953:4 27967:19 27969:9 27980:12 27997:6 28054:19 work 28052:16 28054:12 28059:7 28062:15,19,25 28063:4,11,14 28064:3,6 28072:15 worked 28062:8 28083:25 working 27951:21,21 28062:13 28064:25 28065:20,22 28066:21,22 28068:1	28068:4 28069:4,9,10 works 27929:23 worship 27937:24 27950:8 28030:10 wouldn't 27978:2 28031:13 wounded 28071:24 28072:2,6,9 would 27994:12 write 28001:18,23,24 28001:25 28002:4 writing 27977:8 28015:2,3,16 28019:11 28027:5 28047:16 written 28001:18 28007:13 wrong 27978:12 27979:1 28005:9 28049:21,23 28050:1 28050:3,15,17 wrote 27973:17 27977:25 28001:21 28004:5 28006:3 28008:15,22	Z	27953:11 27957:15 27965:19 27966:3 27985:9,10 27989:6 27996:7,9 28002:13 28007:25 28009:9,12 28009:17 28053:4 28071:19 28076:19 28076:22 28077:8 28082:22 28083:14 13:52 28026:13 134 27952:22 28002:2 14 28026:18,21,24 14th 27944:13 27945:1 27954:19 28004:11 14:12 28038:14 14:32 28050:25 14:51 28063:8 15th 27945:1 28082:2 15:00 28053:7,14 15:15 28058:10 15:32 28070:24 15:42:35 28040:2 15:43:56 28027:25 28030:3 28041:2 15:51 28060:16 15:51:47 28058:12 28059:9 28061:17 15:51:50 28061:2,11 15:52 28081:20 15:52:49 28061:1,3,12 1514 28040:2 16 27992:2,8,19 27999:17,20 28079:24 16th 27930:10 27931:9 27931:14 27946:3 27947:4,14 27951:17 27951:18 27952:10 27953:11 27996:7,13 27997:17 28002:19 28002:20,22 28006:24 28008:1,14 28008:18,19,22,23 28009:16,17,25 28049:1 28051:22 28053:5 28062:12,17 28071:18 17 27957:13 28079:9,11 17th 27996:13 28062:18 28082:9 176 28018:2,4 178.1 28039:13 18 27999:20 28079:24 28079:25 28080:24 18th 28062:18 28080:22 181 28015:2,5,11 28019:6,8 28030:17 28031:16,16 28047:15 19 27945:17,17 28004:16 19th 27929:2,4 27930:3 27931:3 28001:12,19 28001:20,21 28005:24 28006:1,7	0	09:10 27926:2 09:14 27926:15 09:33 27939:25	1	1 27928:16 27947:25 27992:1,6,14 28001:1 28010:2 28013:6 28014:11 28022:23 28023:1,3,6,24 28032:8 28036:18 28037:4 28039:14 28040:8,15 28041:3 28046:11,13,17 28047:7 28053:8,15 28056:20 28057:1,11 28070:12 28071:7,8 28071:10,24 28072:22 1.2 27992:11 1.5 27992:4,13,21 10 27930:15,25 27933:15 27952:16 27952:17 27974:13 27974:24 27994:21 27994:22 28004:16 28009:23 10:13 27952:18 10:46 27960:5 100 27947:7 27948:23 27949:2,3,7,14 28010:5,14 28021:20 28024:9 28047:23 104 27957:12 11 27948:13 27959:25 28052:13 28056:19 11th 28080:12 11:05 27973:9 11:25 27984:20 110 28059:25 28060:2 11168 27957:12 12 27926:1 27931:6 27943:23 28006:20 28006:22 28009:7 28080:18 12th 27929:11,14 27930:7 27955:19 28053:1 12:03 27990:14 12:22 28003:23 12:42 28015:21 123 27966:1 13 27999:20,20 13th 27930:10 27931:9 27931:12 27935:15 27935:19 27944:5 27945:11 27947:9
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<p>28006:20,23,25 28007:1,2 28008:15 28037:13 19/08/2012 27928:21</p> <hr/> <p style="text-align: center;">2</p> <p>2 27929:6 27932:17 27971:4 27975:7 27992:2,6 28010:1,7 28012:6,10 28013:6 28014:12,12 28023:6 28023:6 28026:1 28032:9,9 28040:9 28041:4 28046:11,13 28046:18 28047:7 28050:11 28053:16 28071:22,25 28072:2 28072:6 28080:1,24 28081:1,16 28083:25 2:30 28010:23 28011:5 28011:21 28012:1,17 28012:22 28013:9,11 28013:12 28020:3,11 28035:21 28036:1,8 28047:17 20 27934:9,10 27936:18 28008:18 28009:24 28010:1 28013:18 28040:25 28041:1,10 28080:11 2009 27932:17 27933:18 2010 27933:18 2012 27929:2,4,14 27930:8,10 27931:3,6 27931:9,12 27935:15 27952:22 27954:19 27955:19 27992:2,8 27992:19 28009:7,12 28037:19 28053:1 28076:19 28077:1,8 28080:7,8,12,18,24 28081:7,16 28082:3,9 28083:4 2013 27929:18 27930:9 27931:7 2014 27926:1 27934:19 27954:20,21 27994:17 27995:10 27995:14,21,22 28049:7 28050:7 21 28009:24 28039:15 28039:24 221 28043:4 23 27947:24 27948:9,13 28052:14 28056:20 28057:1 28060:17,21 24 28040:23 25 28065:15 259 28007:7 28008:6 26 27950:18 28004:17 28004:18 262 27933:3 27 27951:7 27995:10 28004:18 27th 27994:17</p>	<p>27995:21 28050:7 28076:25 27292 28043:5 28 27951:14 27995:13 27995:22 28062:1,3 28th 28049:6 29 27945:24 28080:17 28080:23,24</p> <hr/> <p style="text-align: center;">3</p> <p>3 27940:12,13,16 27948:17,19 27971:4 27974:7 28002:24 28014:11,12,12 28032:10 28037:14 28042:22 28044:19 28045:23 28046:15 28049:7 28070:17 28079:11 28080:18 28081:7,22,23 28082:8 30 28081:7 31 28081:22 31.6 27963:5 32 27999:6 28081:15 36 28060:18,21 28081:6 28082:2,8 37 27945:23</p> <hr/> <p style="text-align: center;">4</p> <p>4 27948:17,19 27971:5 27972:7,8 27974:4 27982:8 28013:7 28014:13 28037:19 28057:19,20 28058:16 28083:25 4.2.14 27999:9,17,18 4.2.15 28000:7 4.2.16 28000:10,20 4.2.16(a) 27999:10 28000:13 4540 28040:24 47 27965:14,16,18 28083:14,16,19 48 28083:16,19</p> <hr/> <p style="text-align: center;">5</p> <p>5 27929:9 27931:6,7 27957:13 28022:22 28023:7,10 5th 27929:18 27930:8 27956:24 28080:6,8 5.3 27936:9 59 28061:12</p> <hr/> <p style="text-align: center;">6</p> <p>6 27941:11 28022:22 28040:12,14,18 28041:8,13 28042:23 28044:21 28049:7,8 28057:24,24 28058:1 28058:2,4 28080:11 6A 28039:17,19 6th 28076:25 6.1 27937:15 6.2 27939:12</p>	<p>6.3 27953:25 27954:4 27976:5 6.5.19 28042:12</p> <hr/> <p style="text-align: center;">7</p> <p>7 27932:8 27941:11 27996:6 28049:18 7.1 27938:17 27978:24 7.2 27939:7,11,15</p> <hr/> <p style="text-align: center;">8</p> <p>8 27930:10 27939:15 27994:20 28050:10 28050:11 28071:22 8th 28081:15 28083:4 8-second 28065:12 8.2 27982:8 8.5 27942:7 8/2012 28002:2,19 81 28042:12 82 28042:16 28044:9,9 83 28042:21,25 28044:19 84 28043:19 28047:1</p> <hr/> <p style="text-align: center;">9</p> <p>9 27930:13,25 27942:10 27944:8 27983:16 27992:1,8,19 28085:9 28085:11 9:30 28074:9,23 93 28043:5</p>		
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