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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 28 13 DECEMBER 2012 PAGES 2912 TO 3043

HELD AT

CIVIC CENTRE, RUSTENBURG, NORTH WEST PROVINCE



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Page 2912

1 [PROCEEDINGS ON 13 DECEMBER 2012]
 2 [09:33] CHAIRPERSON: Good morning. The
 3 commission resumes. Brigadier -
 4 MR TIP SC: Chair -
 5 CHAIRPERSON: Yes.
 6 MR TIP SC: - excuse me. Before the
 7 witness continues, I need to mention that there was
 8 unfortunately a bit of an incident here at the conclusion
 9 of the proceedings yesterday afternoon where persons
 10 wearing AMCU T-shirts gathered and saying they kill the NUM
 11 song, but also formed themselves into a fairly tightly knit
 12 group which moved around the parking lot and at one stage,
 13 more or less confronted the NUM members who were in the
 14 vicinity in a fairly confrontational mode. It was -
 15 nothing of consequence followed fortunately, but it was
 16 something that required the SAPS to intervene. Some police
 17 officers ran towards the scene, happily it had dissipated
 18 before any action was required. We have spoken to the
 19 Colonel in charge here who was aware of the incident and
 20 also had spoken to the persons in the t-shirts and he joins
 21 us in the view that it would be helpful with respect if the
 22 commission would be good enough to say something about
 23 incidents of that kind. I have spoken to Mr Bruinders, he
 24 doesn't - he's not aware of the incident. He hasn't taken
 25 instructions, but I think we'll accept in good faith that

Page 2913

1 there was an incident and on that basis would have no
 2 complaint about something being said.
 3 CHAIRPERSON: Mr Tip, it's obviously a
 4 very serious matter. There's no one in a green t-shirt in
 5 the auditorium at the moment. It may be that because we're
 6 starting earlier this morning than yesterday, some people
 7 are still on the way. I think it would be sensible for us
 8 to deal with it after the short adjournment when there's a
 9 greater chance that possibly some of the people involved
 10 will be present in the auditorium, to hear what's been
 11 said. It's no good just saying something if there's no one
 12 to whom it's directed who's here to hear it. So I think it
 13 appropriate to let the matter stand over until after the
 14 short adjournment when you can raise it again.
 15 MR TIP SC: I'm in full agreement with
 16 that, Mr Chair.
 17 CHAIRPERSON: And then I - Mr Bruinders
 18 an opportunity to deal with it also and the evidence
 19 leaders. Brigadier, you're still under oath to tell the
 20 truth.
 21 BRIG MKHWANAZI: Alright, Sir, thank you.
 22 CHAIRPERSON: Mr Ngalwana, I take it you
 23 have further questions for your witness?
 24 MR NGALWANA: Yes, thank you,
 25 Chairperson. Chairperson and members of the commission

Page 2914

1 will recall that towards the end of yesterday's evidence we
 2 were about to hand out standing order general 262, may I
 3 proceed to do that now?
 4 CHAIRPERSON: Yes, thank you. I see they
 5 are on the bench here. I did make a note but I can't find
 6 it at the moment as to what - was that SS2? That's what Ms
 7 Pillay told us we were going to call it. So we will mark
 8 it SS2 and you're going to lead evidence about that and
 9 lead evidence on other aspects as well.
 10 MR NGALWANA: Yes.
 11 CHAIRPERSON: Has the witness had an
 12 opportunity to look at Exhibit L overnight?
 13 MR NGALWANA: Yes, Chairperson.
 14 CHAIRPERSON: Good.
 15 MR NGALWANA: May I also hand up a plan
 16 for the operation with which the witness will deal later
 17 on. It's a plan together with an annexure to which is -
 18 yes, that's the one.
 19 CHAIRPERSON: I've seen on the bench in
 20 front of us a number of documents all stapled together
 21 headed annexures Thursday 2012-08-16. I take it you want
 22 this to be SS3 with - so with Ms Pillay's permission and
 23 once we've got it, we will duly mark it. Are you happy
 24 with that Ms Pillay?
 25 MS PILLAY: I am, thank you, Judge.

Page 2915

1 CHAIRPERSON: Thank you for that. So
 2 that is SS3, now how do we describe it? Plan and other
 3 documents?
 4 MR NGALWANA: It's a plan and annexures,
 5 Chairperson.
 6 CHAIRPERSON: Okay, plan - plan of
 7 operation -
 8 MR NGALWANA: Operational plan.
 9 CHAIRPERSON: Or, okay. Alright,
 10 operational plan and other documents.
 11 MR NGALWANA: And annexures, yes.
 12 CHAIRPERSON: Alright, thank you.
 13 MS PILLAY: Chair, if we could just
 14 include the date as well because there is already a
 15 contingency plan that's one of the exhibits. So if we
 16 could name this the operation - the plan dated 16 August
 17 2012 -
 18 CHAIRPERSON: Yes, of course.
 19 MS PILLAY: - with annexure.
 20 CHAIRPERSON: So operational plan dated
 21 16-08-2012 and other documents. And the heading, rather
 22 the cover sheet says "Annexures, Thursday 2012-08-16. So
 23 there's no difficulty about identifying this exhibit in
 24 future.
 25 MR NGALWANA: Thank you, Chairperson.

<p style="text-align: right;">Page 2916</p> <p>1 Brigadier, do you have in front of you the document 2 entitled Standing order general 262? 3 BRIG MKHWANAZI: That's correct. 4 MR NGALWANA: Yes. I take it you're 5 familiar with its contents? 6 BRIG MKHWANAZI: Yes, I am familiar with 7 it. 8 CHAIRPERSON: Sorry, may I ask a 9 question? Has this – forgive me for interrupting – has 10 this standing order been amended from time to time after it 11 was first issued? I see on the front page at the foot, it 12 says issued by consolidation notice 13/2004. So do you 13 know whether this standing order has been amended from time 14 to time since it was first issued? 15 BRIG MKHWANAZI: That's correct, 16 Chairperson. Even though I was not part of the group that 17 was working on it, we're actually having the one that 18 talked to division visible policing. As you can see 19 there's written operational response services. 20 CHAIRPERSON: Yes. 21 BRIG MKHWANAZI: So while we were with 22 the division visible policing, we have it. Then when we 23 split it and formed operational response services, then 24 they updated the standing order 262. 25 CHAIRPERSON: Now is the document that we</p>	<p style="text-align: right;">Page 2918</p> <p>1 if you can't tell us that at the moment we will wait till 2 Mr Semenya gets it or Mr Ngalwana get instructions on the 3 matter and tell us - 4 MR NGALWANA: Chairperson, we've noted 5 that and we'll deal with it in due course. Thank you, 6 chairperson. Brigadier, may I take you to the definition 7 section of that document and ask you what an area crime 8 combat unit, what is it otherwise known as? 9 BRIG MKHWANAZI: What is happening with 10 ACCU is that during restructuring in the South African 11 Police Service, the public order policing was restructured, 12 members were taken to the stations and the area was 13 actually the one that was coordinating everything. So 14 everything at that stage fell or fall under area then it 15 became an area crime combating unit and our task before 16 that, our main key task was crown management, but crime 17 combating became the main task at that moment. In other 18 words we are still public order policing but things were 19 changed into ACCU of which it changed again, we became 20 public order policing again. 21 MR NGALWANA: So is it fair to say that 22 ACCU is in fact POP? 23 BRIG MKHWANAZI: That's correct. 24 MR NGALWANA: Just very briefly, 25 Brigadier, could you enlighten us with regards what the</p>
<p style="text-align: right;">Page 2917</p> <p>1 have at the moment the wording of the standing order as it 2 was on the 16th of August 2012? You see, it might have 3 been amended earlier and the amendments may not be 4 incorporated. The reason I say that is because it says, 5 consolidation notice 13/2004 that I referred to earlier. 6 Now if it was amended after that, after 2004 before the 7 16th of August 2012, then we need those – need to know that 8 those amendments have been incorporated. 9 BRIG MKHWANAZI: Well I will have a 10 problem maybe, Chairperson, to have a clear indication 11 whether it was before or what, but what I know very well it 12 was – there was the time when we split it and when we split 13 it there was some sort of amendment made because all – it's 14 because what happened is we were – are having ACCU and 15 which was actually falling under area. As we move up, 16 becoming POP and it goes back to the province again, 17 provincial and as well as with the split as well there were 18 some sort of amendment that were made. But I'm not sure 19 before the 16th what was the position. 20 CHAIRPERSON: Yes, well I take it counsel 21 will be able to get the information on that and put it 22 before us. I just thought it might complicate matters if 23 we haven't got that information at the beginning of your 24 evidence. If we refer to a standing order which may not 25 have been the one that was enforced at the time, but anyway</p>	<p style="text-align: right;">Page 2919</p> <p>1 purpose of the standing order general 262 is? 2 BRIG MKHWANAZI: The standing order 262 3 actually it entails to how we must manage our events, 4 activities. The crowd management issues, how we must 5 manage them. It entails – it tells us. Remember we have 6 national instructions, we have policies but the standing 7 order tells us how we must manage, how we must deal with 8 the issues of crowd management. 9 MR NGALWANA: And it regulates POP 10 conduct? 11 BRIG MKHWANAZI: That's correct. It 12 regulates and it form part of our management tool. 13 MR NGALWANA: Can you turn to numbered 14 page 6 of 11 of that document? Well in fact it starts at 15 numbered page 5 of 11 and dealing with threat assessment. 16 Are you with me? 17 BRIG MKHWANAZI: Thank you. 18 MR NGALWANA: If you flip over the page, 19 in sub-paragraph 3, it seems to divide threat levels into 3 20 levels. It talks of level 1, a level 2 and level 3. Can 21 you see that? Would you give the commission just a 22 practical example of what situation could fall into level 1 23 or could be described as a level 1 situation? 24 BRIG MKHWANAZI: That's correct. What 25 normally actually happen is that before we embark in any</p>

Page 2920

1 operation we need to do threat assessment of the situation.
 2 If we have a situation whereby people are going to march,
 3 we'll have to do an assessment to say what is the threat
 4 regarding that type of a situation. In level 1, if I may
 5 make an example, it can be a situation whereby we're going
 6 to have a march. Maybe if I can say an old age occupant
 7 talking about all those people staying in that old aged
 8 home who want to march, complaining maybe about their
 9 living condition – if you look to that type of a threat,
 10 there will be too little that those people can do what can
 11 be wrong on – during the day. What you need is only to
 12 involve traffic officials, visible policing members that
 13 work with crime combating in that specific area to monitor
 14 that type of a march. Because really the threat at that
 15 position will be totally zero. Then it will be actually
 16 level 1.
 17 MR NGALWANA: And typically, Brigadier,
 18 which units would be in charge of such a threat level in
 19 level 1?
 20 BRIG MKHWANAZI: In level 1 we will have
 21 visible policing that is the crime prevention members how
 22 will actually deal with the situation including traffic
 23 officials with the purpose of making sure that the road is
 24 actually – the traffic is regulated and the public order
 25 policing will be on standby. In other words they won't be

Page 2921

1 in the vicinity, they will be called if something happen,
 2 maybe changing, can't come in and assist.
 3 MR NGALWANA: And an example of a level 2
 4 situation?
 5 BRIG MKHWANAZI: In level 2, we are
 6 actually looking to – after we have done our threat
 7 assessment, it can be a march maybe planned by the school
 8 children. In school children the threat that can come up
 9 maybe it will be around maybe damage to property or
 10 throwing stone or something. In that type of a march, of
 11 school kids, the only thing we can look at is to say public
 12 order policing must be in reserve. In reserve meaning they
 13 will be in the same vicinity but not involved in the march
 14 of the young school children. This poll will take care of
 15 it as well as traffic as well which is municipality, they
 16 will actually deal with the situation. But if anything
 17 goes wrong, that is public order policing hence they will
 18 be on reserve in the vicinity, they will actually come in
 19 and assist.
 20 MR NGALWANA: I take it a level 2
 21 situation is of a slightly higher threat level than 1, is
 22 that a fair statement?
 23 BRIG MKHWANAZI: That's correct. The
 24 possibility can be there that the young kids or the school
 25 children can do something, then we can actually be in

Page 2922

1 reserve in that position.
 2 MR NGALWANA: And an example of what
 3 would be termed level 3, Brigadier?
 4 BRIG MKHWANAZI: In level 3 is where,
 5 after we have done our threat assessment, it's where we
 6 look at issues regarding service delivery. In service
 7 delivery if there is a march that's going to take place,
 8 it's clear there that there will be a possibility that
 9 there can be some disruption on traffic, there can be
 10 disruption on – I mean maybe throw of stones or issues of
 11 burning, whatever can happen. Damage to property, it can
 12 happen in that position. That means the threat become
 13 bigger on level 3. It's when our public order policing
 14 will be definitely taking command or control of the
 15 situation, ensure that plan is in plan, ensure that the
 16 operational commander take control from the side of public
 17 order policing. They will lead the operation in this
 18 regard.
 19 MR NGALWANA: Typically, who makes the
 20 assessment as regards which level a situation belongs?
 21 [09:53] BRIG MKHWANAZI: Normally what we have,
 22 we have crime Intelligence. We have our info officers and
 23 we have the operational commander, the overall commander.
 24 During the meetings as well, as we are sitting in the
 25 meetings during the plenary is whereby with all role

Page 2923

1 players we can be able to pick it up what possible can
 2 happen during that particular march. Out of that you can
 3 be able to say can it be level 3 or can it be level 2,
 4 because what is important with level 3 is that historically
 5 as well, the history, the background of the people who are
 6 going to march will always tell to say on a previous march
 7 what happened, how they behaved themselves, if it's not for
 8 the first time. Then it will give us a situation to say we
 9 can say this can be level 3 or what can we do, because
 10 Intelligence will have to come as well. It, we won't only
 11 rely on the side of the meeting only. Intelligence will
 12 give us as well to say what actually can happen, what can
 13 be possible, then we can be in a position to say, as an
 14 operational command to say these can be level 3. Maybe to
 15 add as well, we have authorised member, we have the
 16 responsible officer as well. During the meeting as well
 17 they will be in a position to give more facts, or more
 18 information to say what had happened on the previous and
 19 how these people used to march; if they march, what they
 20 do, and out of that they will be able to actually to come
 21 with a proper analysis of the situation. Then we can be
 22 able to say should we have these type of members or
 23 resources to deal with that situation.
 24 MR NGALWANA: Brigadier, just for the
 25 benefit of some of us who may not be conversant with these

<p style="text-align: right;">Page 2924</p> <p>1 terms, could you explain briefly what an authorised member 2 is and what his duties are, or her duties are? 3 BRIG MKHWANAZI: Yes, an authorised 4 member, especially if we look to the Gatherings Act 205, 5 it's a member that is appointed by the provincial 6 commissioner in that particular province to ensure that all 7 issues regarding marches, they are reported to him, he 8 knows about them, and during the meeting this is the person 9 who's going to look to the issues of logistically to say 10 are we having sufficient members, are we having other 11 marches taking place on the same date, if the person says 12 they would like actually to have a march on a particular 13 day. That person will be able to say no, yes, we've got 14 this march but we can try to assist, or let's postpone it 15 because logistically we won't be able to deal with that. 16 Actually an authorised person, or authorised member, will 17 represent the South African Police Service during that 18 particular march. 19 CHAIRPERSON: "Authorised member" is a 20 term defined in the act, rather, defined in the order, 21 paragraph 2(b), and it means a member of the service 22 designated in terms of section 2(2)(a) of the act - that's 23 the Regulation of Gatherings Act - to help with the 24 arrangements relating to gatherings or demonstrations. So 25 that's what the expression means, I take it.</p>	<p style="text-align: right;">Page 2926</p> <p>1 coordination, normally we have an office within the office 2 of the operational commander, and that person is the person 3 who coordinates all the issues in regard to the operation 4 that are going to take place, but the operational commander 5 is the main person who will actually be in charge of the 6 operation on that day. But the operational coordinator 7 coordinates all the issues of the operation. He's the one 8 who can come up and say this is the type of operation that 9 is coming on the day, then we need to actually plan around 10 that. 11 MR NGALWANA: So too does Standing Order 12 262 define a responsible officer. It simply says "A person 13 defined in section 1 of the act." From your experience, 14 what does a responsible officer do? 15 BRIG MKHWANAZI: A responsible officer is 16 a person appointed from municipality office. It's a person 17 who actually sits in the meeting together with an 18 authorised member, as well as with the convenor, which is 19 the organiser of the particular march, and during that 20 meeting a responsible person, a responsible officer is the 21 person who'll assist together with an authorised member to 22 look to the logistical issues and to see if that march can 23 take place or not, but the main thing is to say all issues, 24 the giving of the notice, it must go through the 25 responsible officer and the responsible officer ensure that</p>
<p style="text-align: right;">Page 2925</p> <p>1 BRIG MKHWANAZI: Yes, that's correct. 2 CHAIRPERSON: Who makes the designation? 3 I haven't got the act in front of me. Who makes the 4 designation in terms of section 2(2)(a) of the act? Is it 5 the provincial commissioner who does that? 6 BRIG MKHWANAZI: Just come again, 7 Commissioner. 8 CHAIRPERSON: Is the designation referred 9 to in section 2(2)(a) of the act made by the provincial 10 commissioner? 11 BRIG MKHWANAZI: Yes, under Regulation of 12 Gatherings Act it is one of the tasks the provincial 13 commissioner – 14 CHAIRPERSON: I see. 15 BRIG MKHWANAZI: - has to do to make, 16 ensure that an authorised member is appointed. 17 CHAIRPERSON: Ja, I see. Thank you. 18 MR NGALWANA: The operational commander 19 is also defined in the Standing Order 262 to mean an 20 officer who's responsible for the operational coordination 21 of an operation. Is that your understanding? 22 BRIG MKHWANAZI: That's correct. 23 MR NGALWANA: What would operational 24 coordination entail? 25 BRIG MKHWANAZI: Yes, an operational</p>	<p style="text-align: right;">Page 2927</p> <p>1 he starts talking with the authorised member to say there 2 is a group, or there is a union or people who want to march 3 on a particular date. Then they have to convene a meeting 4 and have the meeting and make sure that people actually can 5 be able to participate in that particular march. 6 MR NGALWANA: There is also, Brigadier, a 7 definition of a CJOC. What's a CJOC and what does he or 8 she do? 9 BRIG MKHWANAZI: Yes, a CJOC means joint 10 operational centre, or actually it's a mechanism we are 11 using actually to say in a JOC, actually it's a joint 12 operational centre but there must be a joint operational 13 commander in a JOC itself, that actually that particular 14 person will be the person to make sure that he coordinates 15 the issues regarding the issue. He makes sure that in the 16 JOC itself everything that actually in relation with the 17 operation that is taking place during the day is there, he 18 controls, he makes sure that he knows what is happening 19 with an operation, and actually controlling everything 20 regarding the operation as a person who sits inside that 21 joint operational centre. That is CJOC, joint, that is a 22 JOC commander that actually sits inside there. 23 MR NGALWANA: Yes, for the benefit of the 24 audience, Brigadier, there is also a long, lengthy 25 definition of a JOCOM. In your experience, what is a JOCOM</p>

<p style="text-align: right;">Page 2928</p> <p>1 and what happens there?</p> <p>2 BRIG MKHWANAZI: In short, Chairperson, a</p> <p>3 JOCOM, it is a meeting that must be held on continuous</p> <p>4 basis during the operation. You will have a JOC, which is</p> <p>5 the joint operational centre, and you will have a JOCOM</p> <p>6 meeting, a JOCOM meeting or a committee. This committee</p> <p>7 must sit every time during the course of the operation,</p> <p>8 whereby they will be discussing issues of the operation,</p> <p>9 what are the shortcomings, and the person who must chair</p> <p>10 that meeting will be the provincial commissioner, depending</p> <p>11 to the size of the operation. If it's not a big operation</p> <p>12 or maybe the provincial commissioner is unable to attend,</p> <p>13 the overall commander will chair that particular meeting on</p> <p>14 her or his behalf to make sure the planning is being done.</p> <p>15 That means in that meeting all role players involved in</p> <p>16 that particular operation, which is the march, must be part</p> <p>17 of that meeting. That means the Metro Police must be</p> <p>18 there, the role players from the union, if it is the</p> <p>19 unions, must be part of that, if possible, to bring them to</p> <p>20 discuss the issues, if it is necessary, to make sure all</p> <p>21 role players, they understand what is happening in that</p> <p>22 particular operation. But if maybe we talk about a</p> <p>23 sporting event, in a sporting event you will have stadia</p> <p>24 management and those stadia, those people representing</p> <p>25 stadia management must be part of that meeting as well on</p>	<p style="text-align: right;">Page 2930</p> <p>1 BRIG MKHWANAZI: That's correct.</p> <p>2 MR SEMENYA SC: Can I start with you and</p> <p>3 to deal with what appears in your statements as module 5,</p> <p>4 you'll see that at the last page of your statement under</p> <p>5 paragraph 5, in fact the one but last page, paragraph 5.</p> <p>6 You recall your evidence, you told us about what you called</p> <p>7 the OPCs, which are operational plans for platoon.</p> <p>8 BRIG MKHWANAZI: That's correct.</p> <p>9 MR SEMENYA SC: And you told us about the</p> <p>10 operational commander training for senior officers as well.</p> <p>11 BRIG MKHWANAZI: That's correct.</p> <p>12 MR SEMENYA SC: Brigadier, let us try and</p> <p>13 break this down a little bit. What would you expect, from</p> <p>14 your experience, in an operational plan? What would you</p> <p>15 expect it to have?</p> <p>16 BRIG MKHWANAZI: The operational plan</p> <p>17 must have at least the five paragraphs. Number 1 will be</p> <p>18 the situation.</p> <p>19 MR SEMENYA SC: Okay. What do you mean</p> <p>20 by a situation?</p> <p>21 BRIG MKHWANAZI: With a situation I mean</p> <p>22 it's what is going to happen, or what prompted the</p> <p>23 operational plan to be compiled.</p> <p>24 MR SEMENYA SC: And what issues are</p> <p>25 identified under that heading?</p>
<p style="text-align: right;">Page 2929</p> <p>1 continuous basis. If anything goes wrong, that meeting has</p> <p>2 to be, actually be activated and they must come together</p> <p>3 and discuss to say what can be the next step to deal with</p> <p>4 the situation.</p> <p>5 MR NGALWANA: Thank you, Brigadier.</p> <p>6 Chairperson and members of the Commission, we are now going</p> <p>7 to move to a different phase of the evidence and that will</p> <p>8 be to try and marry the events of 16 August 2012 and the</p> <p>9 events leading up to those events with the theoretical</p> <p>10 underpinnings to which the brigadier has testified. The</p> <p>11 Commission will recall that towards the conclusion of his</p> <p>12 evidence yesterday, there was a question that was posed and</p> <p>13 is still lingering in as much as it hasn't been answered.</p> <p>14 That question will, should form part of the next phase of</p> <p>15 the evidence. The person who will deal with that will be</p> <p>16 my leader, Mr Semanya, with your leave.</p> <p>17 CHAIRPERSON: Yes, Mr Semanya?</p> <p>18 MR SEMENYA SC: We are indebted to the</p> <p>19 Commissioners. Brigadier, your statement when it was</p> <p>20 formulated was expected to deal with these matters in a</p> <p>21 very narrow fashion. Do you recall that?</p> <p>22 BRIG MKHWANAZI: That's correct.</p> <p>23 MR SEMENYA SC: We have now been called</p> <p>24 at least to amplify and deal with greater penetration with</p> <p>25 all these matters now. Correct?</p>	<p style="text-align: right;">Page 2931</p> <p>1 BRIG MKHWANAZI: Normally it's what is</p> <p>2 going to happen; if it is a march, who is going to march;</p> <p>3 at what time are they going to march; what is the date of</p> <p>4 the march. It will come under the situation, and we will</p> <p>5 include as well the background under situation to say</p> <p>6 previously their historical background is if they march</p> <p>7 they do the following and the following. If they are</p> <p>8 normally peaceful, we'll indicate that if they march</p> <p>9 normally they are peaceful. If they march, they are</p> <p>10 violent, and if they marched before, this is what they've</p> <p>11 done, and we have just to make sure all those issues are</p> <p>12 indicated.</p> <p>13 MR SEMENYA SC: And there would be some</p> <p>14 measure of specificity, depending on what information you</p> <p>15 have or what happens?</p> <p>16 BRIG MKHWANAZI: Yes, it will depend as</p> <p>17 well, especially with the orientation part. It must come</p> <p>18 in as well to say where this is going to take place. We</p> <p>19 need to give a clear orientation of the situation, and</p> <p>20 still under situation as well we'll come up with saying</p> <p>21 what will be the intention of the Police on the day, what</p> <p>22 we are going to do to ensure, to make sure the march goes</p> <p>23 peacefully at the end of the day.</p> <p>24 MR SEMENYA SC: And where do you get the</p> <p>25 information that you use in defining your situation?</p>

Page 2932

1 BRIG MKHWANAZI: Information is normally
 2 obtained during the meeting that we sit on it. Within that
 3 meeting it's where actually we get all this information
 4 because we ask questions from the people, especially the
 5 convenor, the organiser is the person who's going to give
 6 all this information to us, and with our record as well,
 7 with the historical part, it will assist us as well to say
 8 before this what had happened with this type of a march,
 9 which will help us as well to say how do we plan to deal
 10 with the situation.
 11 MR SEMENYA SC: And what is the relevance
 12 of Intelligence?
 13 BRIG MKHWANAZI: The Intelligence will
 14 play a big role because the sooner we receive this type of
 15 information sitting in the meeting, our Intelligence must
 16 start gathering information for us to say what can be
 17 possible, you know, because we need to do the risk analysis
 18 as soon as possible so that we can be able to deal with the
 19 situation properly.
 20 MR SEMENYA SC: And the role for
 21 information officers?
 22 [10:13] BRIG MKHWANAZI: Yes, the information
 23 officers, these are the members we have under public order
 24 policing, they are not working in the office of
 25 Intelligence, the info officers, they assist as well with

Page 2933

1 their information but the only difference between the two
 2 their information is the raw material, it is not purified
 3 but with the information from Intelligence it is a real
 4 purified information. When it comes from their side we
 5 know it is purified but sometime, even with the information
 6 from their side it can assist us to deal with the
 7 situation.
 8 MR SEMENYA SC: You had just in broad
 9 terms defined for us the first part of a plan, what other
 10 part should a plan have?
 11 BRIG MKHWANAZI: The number 2 will be the
 12 mission of the operation.
 13 MR SEMENYA SC: What is supposed to be
 14 captured in a mission to a plan?
 15 BRIG MKHWANAZI: A mission will actually
 16 entail, it depends who is giving that mission. In a bigger
 17 operation, in a bigger situation the mission may sometimes
 18 be given by the provincial commissioner to say the
 19 following must be done, or sometime it can be by the
 20 national commissioner, depending to the situation as well,
 21 but sometimes if it is a march, we feel that this one can
 22 be actually managed, we can actually come up with a mission
 23 that says, what we're supposed to do to achieve that
 24 operation and at the same time it must include who is going
 25 to do that particular task, that is the mission, but the

Page 2934

1 mission may not be changed, it will remain until everything
 2 is done. You can't change it, chop and change on it
 3 because it must be one thing that says we're going to do
 4 the following until we finish up that type of an operation.
 5 MR SEMENYA SC: Any example that comes to
 6 mind?
 7 BRIG MKHWANAZI: Especially if people are
 8 going to march the mission will actually base to say how
 9 the police official must handle that particular march. It
 10 states clearly, it must say, the police will do the
 11 following on that particular march.
 12 MR SEMENYA SC: You spoke about five
 13 elements to a plan, what would be the third?
 14 BRIG MKHWANAZI: The third one will be
 15 the operational concept.
 16 MR SEMENYA SC: What does that entail?
 17 BRIG MKHWANAZI: The operational concept
 18 first will have a paragraph under operational concept, the
 19 possibilities or the threats. We will have to come up with
 20 the threats to say, in this march these are the
 21 possibilities we think of, they may take place.
 22 MR SEMENYA SC: Is that what is called
 23 your threat analysis?
 24 BRIG MKHWANAZI: The threat analysis,
 25 yes.

Page 2935

1 MR SEMENYA SC: What goes into that type
 2 of analysis?
 3 BRIG MKHWANAZI: Normally if we talk
 4 about the march, especially the union march obviously they
 5 will be marching in the street, we need to look and say, is
 6 there any possibility that during that day or during that
 7 particular time will the traffic be disrupted, will there
 8 be any violence during that march. We'll have to look to
 9 say, will there be any situation whereby there will be a
 10 burning of structures during that march, we need to look at
 11 that and we need to come back and say, how do we deal with
 12 that and we'll look as well to the background as well to
 13 say, when they were marching before what they have done.
 14 Maybe to look further to say, during their march before was
 15 there any killing of anybody, was there any injuring of
 16 somebody during their march because it will help us to say
 17 how we must plan in that position.
 18 MR SEMENYA SC: Does the how to deal with
 19 what resources are available to deal with the analysed
 20 threats?
 21 BRIG MKHWANAZI: That's correct,
 22 Chairperson, these will assist us to say which resources,
 23 who can do that job, who must come on board on the day of
 24 the operation, it helps us to deal with that.
 25 MR SEMENYA SC: What type of resources is

<p style="text-align: right;">Page 2936</p> <p>1 affected in this type of operation?</p> <p>2 BRIG MKHWANAZI: Normally public order</p> <p>3 policing will be the main key role player and traffic</p> <p>4 officials, they play a big role because we need to make</p> <p>5 sure that the road is not, actually the road users are not</p> <p>6 impudent during the time of the march, we need just to make</p> <p>7 sure they play a big role, but it will depend as well what</p> <p>8 are the other issues we have picked up as a threat. If</p> <p>9 there are other issues then we'll look to other discipline</p> <p>10 in the South African Police Service to be present, to</p> <p>11 address that particular part that we feel that it can</p> <p>12 actually happen during the course of the march.</p> <p>13 MR SEMENYA SC: So depending on what type</p> <p>14 of threat is identified, it is considerable to have multi</p> <p>15 disciplinary units to address that particular threat</p> <p>16 environment?</p> <p>17 BRIG MKHWANAZI: That's correct.</p> <p>18 MR SEMENYA SC: Now having put out the</p> <p>19 how to deal with the threat, what else should a plan of</p> <p>20 that nature have, the fourth element?</p> <p>21 BRIG MKHWANAZI: Yes, before the fourth</p> <p>22 element, I was talking with the threat, that is the</p> <p>23 possibilities under operational concept. Still under</p> <p>24 operational concept now we will say, who address those</p> <p>25 threats, do we need to put patrol on the day? If we need</p>	<p style="text-align: right;">Page 2938</p> <p>1 every time the job commander will know who is at what place</p> <p>2 if anything goes wrong.</p> <p>3 MR SEMENYA SC: Yes?</p> <p>4 BRIG MKHWANAZI: The next one after the</p> <p>5 execution, the execution will only talk to, who are the</p> <p>6 disciplines, who will be a commander, all that, it would be</p> <p>7 under execution, but now if we move to the next one it will</p> <p>8 be administration and control. Under that one we'll look</p> <p>9 to the issues of coordination of instructions, that is the</p> <p>10 part, we call it EEI, which means essential elements of</p> <p>11 information, meaning as an operational commander what do</p> <p>12 you expect from your own members when they are there you</p> <p>13 know, giving that information, communication on a</p> <p>14 continuous times, you need to be able to tell them what do</p> <p>15 you need from them during the time of the operation. The</p> <p>16 other part that comes in under coordination of instructions</p> <p>17 will be, - sorry, under admin and control will be the use</p> <p>18 or force, how do you expect your members to administer</p> <p>19 force if anything happens during the operation. You need</p> <p>20 to state clear how the use of force will be handled, put</p> <p>21 everything nicely, they will understand to say, if anything</p> <p>22 happened the use of force will be administered in this</p> <p>23 fashion.</p> <p>24 Still under admin and control we'll look to the</p> <p>25 equipment, what type of equipment members need on the day</p>
<p style="text-align: right;">Page 2937</p> <p>1 to put patrol obviously visible policing members will be</p> <p>2 the ones that deal with that. Do we need traffic officials</p> <p>3 because of road disruption with the people during the day</p> <p>4 of march, then traffic will be called in, now we will have</p> <p>5 a paragraph that says, how do we address that, who're going</p> <p>6 to address that part, it comes into it.</p> <p>7 MR SEMENYA SC: Any other elements under</p> <p>8 this heading?</p> <p>9 BRIG MKHWANAZI: Yes.</p> <p>10 MR SEMENYA SC: Under operational concept</p> <p>11 there will be those elements that will come in, if we can</p> <p>12 check the fourth one of course.</p> <p>13 BRIG MKHWANAZI: The fourth one, it will</p> <p>14 be execution. Execution now, it will talk to say who is</p> <p>15 the commander, what will be his call consign or depend or</p> <p>16 maybe a cell phone number or whatever, how to contact that</p> <p>17 person, how many personnel that person would be having to</p> <p>18 deal with that situation. For instance if we talk about</p> <p>19 traffic officials, normally in a sporting event they will</p> <p>20 have their own plan which will be incorporated into a</p> <p>21 master plan, but in a situation of a march the traffic</p> <p>22 official will be included under SAPS as to say, there will</p> <p>23 be this commander with so many vehicle and they will be at</p> <p>24 this position where they will actually deal with traffic</p> <p>25 disruption, if there is any traffic disruption, so that</p>	<p style="text-align: right;">Page 2939</p> <p>1 to do that particular job, what they must have in their</p> <p>2 position, must they have bullet proofs, we need to put</p> <p>3 clearly in the plan what they must have. If they must have</p> <p>4 a side firearm, who must have side firearms, if they must</p> <p>5 be in uniform, who must be, - all those types of issues</p> <p>6 must come in there, especially what needs to be there, and</p> <p>7 special equipment will come in as well, do we need a water</p> <p>8 canon on the day, it forms part of the special equipment.</p> <p>9 Should the water canon be there you need to put it down, as</p> <p>10 well as Nyalas, that is the armoured vehicles, if they must</p> <p>11 be there we need to put it down as well, those are special</p> <p>12 equipment.</p> <p>13 MR SEMENYA SC: And barbed wire?</p> <p>14 BRIG MKHWANAZI: Barbed wire as well, it</p> <p>15 must be there, thank you, Counsel.</p> <p>16 MR SEMENYA SC: How do the different</p> <p>17 units know what their roles will be in terms of that plan?</p> <p>18 BRIG MKHWANAZI: Different units</p> <p>19 mobilised for the operation, for example in northwest, if</p> <p>20 you actually mobilise somebody from Gauteng your letter</p> <p>21 sometime will set clear what will be the task on arrival,</p> <p>22 or maybe on arrival the plan will be communicated before</p> <p>23 they take their position because they are from outside,</p> <p>24 they don't know where is the position or where they're</p> <p>25 supposed to work. The operational commander will brief</p>

<p style="text-align: right;">Page 2940</p> <p>1 them clearly where and what they must do and that includes 2 what type of equipment they must have in their position to 3 do that particular job. 4 MR SEMENYA SC: And units that come out 5 of the particular area of deployment, how are they 6 familiarised with the terrain? 7 BRIG MKHWANAZI: There will be an 8 orientation regarding the terrain, they will be briefed 9 thoroughly to say, this is where they're going to be 10 operating and they will sometime, if it happened that they 11 come like outside of the area northwest, obviously sometime 12 a senior officer or a senior member will be placed with 13 them to make sure that they know exactly where to operate 14 so that they are not actually wasting time if they are 15 called in to do something. 16 MR SEMENYA SC: Identification of 17 sensitive areas where the operation is going to be carried 18 out? 19 BRIG MKHWANAZI: Yes, it is very, very 20 important as well to say the key point areas that must be 21 identified as well, and those key point areas, there will 22 be specific members posted to those key areas but in the 23 march most of the time you cannot choose any place to be a 24 key point area. It must link to the reason why the people 25 are marching. If people are marching on service delivery,</p>	<p style="text-align: right;">Page 2942</p> <p>1 us that they will march. The only difference into that is 2 to say during that meeting do we agree, look into our 3 logistical issues, if we can't handle it, it will indicate 4 that we can't handle it. So in other words there is a big 5 change compared then and now, that application will be 6 done, or now it's a notice that is being given. 7 [10:33] MR SEMENYA SC: Yes, just stay with me a 8 little bit, Brigadier. Pre-'94 for instance policing 9 obtained in an environment where there was no equality of 10 citizens, correct? 11 BRIG MKHWANAZI: That's correct. 12 MR SEMENYA SC: And law enforcement was 13 used depending on what racial groups are affected by a 14 particular situation, correct? 15 BRIG MKHWANAZI: Correct. 16 MR SEMENYA SC: Part of the way you 17 repressed dissent, you used a whole complicated state 18 machinery to achieve. Am I right? 19 BRIG MKHWANAZI: Maybe if you can try to 20 – 21 MR SEMENYA SC: I'm saying repressing 22 dissent in a community, how people get to be pulled down 23 pre-'94 used to be quite brutal. Is that correct? 24 BRIG MKHWANAZI: That's correct. 25 MR SEMENYA SC: The legal environment</p>
<p style="text-align: right;">Page 2941</p> <p>1 obviously if there is a government structure that is linked 2 to that position you will need definitely to make sure that 3 you protect those structures. 4 MR SEMENYA SC: Now, Brigadier, we will 5 revert to that subject again but can I have you deal with 6 policing at least pre 1994 and post the constitution and 7 let's see the contrast there? 8 BRIG MKHWANAZI: Yes. 9 MR SEMENYA SC: I'll define them for you. 10 BRIG MKHWANAZI: Yes, as I have been 11 involved before 94 and all that in the police, there was a 12 big difference between the two in a sense that if people 13 are going to march it differs today because for the people 14 to march it is a embodied or it's in the constitution. 15 MR SEMENYA SC: Brigadier, I just want to 16 recite for you matters of sufficient notoriety about our 17 pre constitution dispensation and how it impacted the 18 police and I will invite your comments in relation to how 19 that has since been adjusted, okay? 20 BRIG MKHWANAZI: That's correct, as I was 21 trying to indicate was that if people are going to march 22 previously, people were actually doing an application, were 23 supposed to give an application to say on such a date they 24 applied to march, but if you look nowadays what we have, 25 people give a notice to march. In other words they notify</p>	<p style="text-align: right;">Page 2943</p> <p>1 included death sentences for instance, correct? 2 BRIG MKHWANAZI: Correct. 3 MR SEMENYA SC: Law enforcement included 4 detentions without trial, right? 5 BRIG MKHWANAZI: Correct. 6 MR SEMENYA SC: There were extrajudicial 7 killings of people who were in a particular protest 8 environment, correct? 9 BRIG MKHWANAZI: Yes, we have incidents 10 of that, yes. 11 MR SEMENYA SC: You had the police force 12 in the Vlakplaas environment, correct? 13 BRIG MKHWANAZI: Correct. 14 MR SEMENYA SC: Death and detention of 15 people, that was the police environment and the legal 16 environment at the time, correct? 17 BRIG MKHWANAZI: Correct. 18 MR SEMENYA SC: That had to change with 19 the coming into operation of the Constitution, Brigadier, 20 am I right? 21 BRIG MKHWANAZI: That's correct. 22 MR SEMENYA SC: Can you please help us 23 understand how the Police managed that transition? 24 BRIG MKHWANAZI: Yes, I will talk on, 25 particularly on Public Order Policing, that after 1994</p>

<p style="text-align: right;">Page 2944</p> <p>1 there were lots of programmes that came into place, 2 especially on skill development, programmes on human rights 3 – 4 MR SEMENYA SC: Okay, stop. 5 BRIG MKHWANAZI: Yes. 6 MR SEMENYA SC: Now everybody had the 7 right, the freedom of expression, correct? 8 BRIG MKHWANAZI: Correct, yes. 9 MR SEMENYA SC: People had the right of 10 assembly now, don't they? 11 BRIG MKHWANAZI: They do, under section 12 17, correct. 13 MR SEMENYA SC: The use of force was 14 tempered for the Police. Am I right? 15 BRIG MKHWANAZI: Correct. 16 MR SEMENYA SC: There now had to be an 17 environment of treating people with their human dignity. 18 Isn't that right? 19 BRIG MKHWANAZI: That's correct. 20 MR SEMENYA SC: Protection of their 21 privacy, part of their entrenched rights? 22 BRIG MKHWANAZI: Yes, correct. 23 MR SEMENYA SC: Life became sacrosanct, 24 isn't that right, now under our Constitution, Brigadier? 25 BRIG MKHWANAZI: That's correct.</p>	<p style="text-align: right;">Page 2946</p> <p>1 BRIG MKHWANAZI: That's correct, we 2 became a service. 3 MR SEMENYA SC: If we look at the 4 Standing Order to which you testified earlier, now there 5 was even things like paragraph 3, if you can have it in 6 front of you – that would be exhibit SS2. Do you see that, 7 the very first page? 8 BRIG MKHWANAZI: Yes, that's correct. 9 MR SEMENYA SC: Now you have an 10 environment where there is working in partnership with the 11 community and other agencies. 12 BRIG MKHWANAZI: That's correct. 13 MR SEMENYA SC: And the service must 14 devise effective methods to promote public safety. 15 BRIG MKHWANAZI: Yes, correct. 16 MR SEMENYA SC: As well as reassuring the 17 various communities that they are protected. 18 BRIG MKHWANAZI: Correct, Sir. 19 MR SEMENYA SC: Now you needed to be a 20 humane service. Am I right, Brigadier? 21 BRIG MKHWANAZI: Correct. 22 MR SEMENYA SC: Now can we with the 23 benefit of that background deal with annexure SS3 – 24 BRIG MKHWANAZI: Got it. 25 MR SEMENYA SC: And together with that I</p>
<p style="text-align: right;">Page 2945</p> <p>1 MR SEMENYA SC: What training, if any, 2 was given to the Police to deal with this new environment? 3 BRIG MKHWANAZI: Yes, under Public Order 4 Policing, immediately after '94 we actually from head 5 office side engaged with Belgium Police whereby they 6 actually came to South Africa, look into our development, 7 how actually we should work we crowd management, which 8 actually at that stage they actually trained us, do the 9 training with us, and we came up with actually, with a 10 programme which actually was dealing only with crowd 11 management situation, look into the situation in South 12 Africa, looking, or benchmarking from their side. Then we 13 have to train members intensively to make sure that they 14 understand how to handle issues regarding crowd management. 15 That includes as well the coming in of the Gatherings Act, 16 which was actually through the recommendation of Commission 17 Goldstone. 18 MR SEMENYA SC: And the structures of the 19 Police changed also from your Internal Stability Units to 20 different units now. Am I right? 21 BRIG MKHWANAZI: That's correct, it 22 became Public Order Policing immediately. 23 MR SEMENYA SC: And as the chairman 24 observed that you changed from being a force into a 25 service?</p>	<p style="text-align: right;">Page 2947</p> <p>1 want to give you the benefit of the evidence as it will 2 unfold before this Commission. On the 9th of August there 3 was intelligence that there was a developing unrest in 4 Marikana and I now want to test and get your comment on the 5 appropriateness or otherwise of the various interventions 6 made by the Police. When the initial message was received 7 about this, there was a deployment of the visible police in 8 the area. Would that have been appropriate to do, 9 Brigadier? 10 BRIG MKHWANAZI: It will be appropriate, 11 Sir, because if the information was given and they felt 12 that they need at the first stage to deploy visible 13 policing to check the area, to make sure everything is in 14 order before maybe they go higher, it is correct, Sir. 15 MR SEMENYA SC: The intelligence divulged 16 that there was a labour strike occurring. 17 BRIG MKHWANAZI: That's correct, Sir. If 18 it is that position, first one has to first to establish 19 the strike itself, what is the aim of the strike, what is 20 the behaviour of the people. Then from there you'll be in 21 a position to call more other unit to come in. 22 MR SEMENYA SC: Intelligence was that it 23 was an unprotected strike. 24 BRIG MKHWANAZI: Yes, that's correct, 25 because if we look to the Standing Order 262 we talk about</p>

Page 2948

1 the first responder to the scene. A first responder to the
 2 scene will have to come and check if the strike in place,
 3 is it in terms of the law. If it was not, he has to find
 4 out from different role players. Then from there one has
 5 to start planning from there.

6 MR SEMENYA SC: The profile of the
 7 strikers was largely peaceful with people singing and
 8 marching with knobkieries, not hostile to anybody.

9 BRIG MKHWANAZI: Yes, again in that
 10 position as well one has to look as well to say are the
 11 procedures, were the procedures followed. If they were not
 12 followed, has to see to it that the organiser is brought
 13 onboard and to see if we can assist to make sure that
 14 whatever is done is in the right position. Hence they are
 15 not actually violent, they are peaceful. It's just to say
 16 get the convenor, or the organiser, get everything in place
 17 properly, let's see how we can assist to get things
 18 alright, but if it's violent, it's a different case.

19 MR SEMENYA SC: At that point what threat
 20 level would you say that type of environment should have?

21 BRIG MKHWANAZI: At that moment it will
 22 be level 1. I would send visible policing at that stage to
 23 get that information.

24 MR SEMENYA SC: And the evidence will be
 25 the following day the group got larger and there was

Page 2949

1 invitation for more Police reinforcement.

2 BRIG MKHWANAZI: Correct, especially if
 3 it grow bigger and bigger, I think in that way we need to
 4 look as well to say is it within legal framework, or what
 5 is the position. Then we need to check as well to say all
 6 the role players, we spoke about authorised member, we
 7 spoke about responsible officer, we need to check all these
 8 people, do they know about this.

9 MR SEMENYA SC: The evidence shows that
 10 the group was contained and no adverse incidents happened
 11 the 9th and the 10th.

12 BRIG MKHWANAZI: Yes, that's correct, but
 13 actually I'm hearing, Counsellor, that, but the only thing
 14 that changes a little bit is that the group is growing
 15 bigger. As it grows bigger we need now to say who can
 16 handle that group. Now we cannot just keep on having
 17 visible policing at that situation. We can start bringing
 18 in Public Order Policing to take care of the situation in
 19 that position because it's growing bigger and it can change
 20 to another situation as well.

21 MR SEMENYA SC: The evidence will also be
 22 that come Sunday the 12th, there are now fatalities that
 23 are reported.

24 BRIG MKHWANAZI: Yes, in that situation
 25 it shows that it grow up and it become differently, as

Page 2950

1 somebody is losing his life, because if you go through the
 2 Gatherings Act itself, nobody must be injured or killed in
 3 any situation. That means really there we need to start to
 4 bring our situation, to bring more members, to look to the
 5 situation and see how can we deal with that. That means
 6 mobilisation to start, but I'm talking within the province
 7 itself and see if we've got sufficient members, there must
 8 be more to start dealing with the situation in that case,
 9 and deal with the strike as well, checking whether
 10 everything what is happening, but now we talk about the
 11 death that is taking place. I'm not sure whether it's
 12 taking place through the march or through the strike.

13 MR SEMENYA SC: The evidence is then
 14 there is a creation of a JOC.

15 BRIG MKHWANAZI: That's correct.

16 MR SEMENYA SC: Would it be proper
 17 conduct by the Police?

18 BRIG MKHWANAZI: Yes, that's correct. As
 19 soon as possible one come across that type of a situation,
 20 a JOC must be activated so that they must start
 21 coordinating all incidents that are taking place. That
 22 includes the 10th where the march is starting to grow, it
 23 must be as soon as possible. Maybe on the first, on the
 24 9th, peacefully, a mobile JOC can be in place to monitor
 25 the situation, but when it moved to that position we have

Page 2951

1 to have a joint operational centre where we start
 2 monitoring the situation and see what is happening. That's
 3 what has to be done.

4 MR SEMENYA SC: And the evidence is that
 5 the force strength is now increased with people being
 6 deployed as far afield as the Eastern Cape, and other
 7 provinces. Would that be appropriate response on the part
 8 of the Police to do so?

9 BRIG MKHWANAZI: It is correct. The
 10 mobilisation of members from different provinces, it will
 11 be done, but at the same time it will actually be
 12 determined to say within the province, what is the
 13 strength, are we having sufficient members to do the job.
 14 If we have sufficient, maybe we can or maybe we cannot, but
 15 if there is a lack, definitely we have to look to other
 16 provinces to assist, hence somebody has lost his life in
 17 that position.

18 MR SEMENYA SC: Monday the 13th the
 19 Police are now informed there is a group of protesters
 20 which is moving along the railway line, and General Mpembe
 21 is then despatched to go and attend to that matter, would
 22 that be a proper response to such an event?

23 [10:53] BRIG MKHWANAZI: It is the correct
 24 response.

25 MR SEMENYA SC: He is there confronted by

Page 2952

1 a group of heavily armed people who he asks to disarm and
 2 actually says to the group, if you do disarm, we will not
 3 effect any arrest, what is your comment in relation to the
 4 appropriateness of the conduct of General Mpembe, there?
 5 BRIG MKHWANAZI: I would say the conduct
 6 is correct, Chairperson, because as public order members,
 7 the Gatherings Act, everything, states clear we must
 8 practise tolerance in any situation, for his intervention
 9 to discuss with the people to ensure that they lay down
 10 their arms, without being getting arrested, and proceed.
 11 His intervention is correct, because he has to actually as
 12 well, to ensure that there is dialogue with the people,
 13 talk to the people as well, as they are having those
 14 weapons, the sniping that has happened up to so far. The
 15 only thing is to say, what has happened on a previous day,
 16 lay down, proceed, nobody will be arrested. There's
 17 nothing wrong with that, it's dialogue, it's tolerance, and
 18 that can be done, Counsellor.
 19 MR SEMENYA SC: The group of protestors
 20 did not heed his warning, nor his instruction. They then
 21 move amidst to the police that were there, and General
 22 Mpembe makes the judgment call, not to confront them with
 23 any force, would you want to comment about the
 24 appropriateness or otherwise of his conduct there?
 25 BRIG MKHWANAZI: Yes, Chairperson, with

Page 2953

1 the position of the people disregarding his request or his
 2 instruction, moving forward I would say really it depends
 3 to the side of the General what he saw or why he decided to
 4 do that because at the same time, you need to look to the
 5 proportionality as well, that the members he got in his
 6 position, was it going to be possible if he actually do
 7 something else, to makes sure that he deal with the
 8 situation.
 9 MR SEMENYA SC: The General's evidence
 10 will be that he felt that he had inadequate number of
 11 police officers to engage the group at that point. Would
 12 you fault that type of judgment?
 13 BRIG MKHWANAZI: As we've said from the
 14 beginning, Counsellor, is that we need to be appropriate,
 15 or proportionate to the situation. If the point is that
 16 there were few members to deal with the situation at that
 17 stage, I would say it was correct to act in that position,
 18 depending how many members were there, and depending how
 19 many protestors or people who were walking in that area
 20 along the railway line and how they were armed as well, and
 21 how dangerous was going to be if maybe he intervened, was
 22 he going to maybe put the members' lives into danger or
 23 what is the position.
 24 MR SEMENYA SC: He then makes an election
 25 that the police must escort these protestors to the koppie

Page 2954

1 where they had promised they would go and disarm.
 2 BRIG MKHWANAZI: That is correct.
 3 MR SEMENYA SC: And then be criticised in
 4 your own opinion, Brigadier.
 5 BRIG MKHWANAZI: General – I mean,
 6 Chairperson, as you have indicated that they will actually
 7 hand over their weapon if they arrive in the koppie, all in
 8 all is a matter of trust. If it was going to happen, it's
 9 what maybe he can try to maybe to employ at that moment,
 10 but if it was not, then it's going to be problem, because
 11 maybe it will actually cause some problem in the future or
 12 in a later stage, when they come in that koppie. But I
 13 think if that was a promise and it was a matter of trust
 14 that they will definitely hand over these dangerous weapons
 15 on arrival at the koppie, he can escort them and get those
 16 weapons out of them if they arrive from the koppie.
 17 MR SEMENYA SC: Will this an appropriate
 18 stage for the tea?
 19 CHAIRPERSON: Yes, Mr Semenya. The
 20 Commission will take a short adjournment, after which we
 21 will revert to the point raised by Mr Tip. Mr Bruinders,
 22 do you want to say something before we take the
 23 adjournment?
 24 MR BRUINDERS SC: Before we do, we
 25 haven't objected. The fact that we haven't to some of the

Page 2955

1 propositions put to this particular witness, doesn't mean
 2 that we accept that that is the evidence. In fact, the
 3 last proposition put to this witness is in fact at odds
 4 with the General's own statement, but we will deal with
 5 that obviously at the appropriate time.
 6 CHAIRPERSON: I understood Mr Semenya to
 7 be saying that this will be the evidence that will be led,
 8 whether it is at odds with other material is just a matter
 9 that will become relevant later, but he is entitled to put
 10 what his case will be, or the evidence that he proposes to
 11 lead, and ask the witness to comment on the basis that if
 12 that evidence is led, and is accepted, then his opinion is
 13 as follows. So there can't be objection, but what is the
 14 point you want to make?
 15 MR BRUINDERS SC: Well, the point is that
 16 what my learned friend is putting to this witness is in
 17 fact on his own version, inaccurate.
 18 CHAIRPERSON: Isn't that a matter to be
 19 debated as and when the evidence is led. It will of course
 20 affect the weight to be given to the opinions given by the
 21 present witness, if a point put to him turn out as to what
 22 the evidence will be, turn out to be incorrect, but I don't
 23 see how you can object at this stage, unless it is
 24 absolutely clear that what he is putting is wrong, but I am
 25 not sure you can say that because he says this will be the

Page 2956

1 evidence too be given by his witness. We haven't heard his
2 witness yet. You can, the alternative proposition is in
3 cross-examination.

4 MR BRUINDERS SC: Of course, I accept
5 that. All I am –

6 CHAIRPERSON: By sitting silent, you are
7 not to be taken to having assented to the correctness of
8 what's been put, but I don't think anyone for a moment
9 believes that that's the case, but if you want to make it
10 clear on record, you have now done so. We will now take
11 the short adjournment.

12 [COMMISSION ADJOURNS COMMISSION RESUMES]

13 [11:29] CHAIRPERSON: The commission resumes.
14 Before we proceed with the evidence of the Brigadier, whom
15 I wish to remind that he's still under oath, Mr Tip, there
16 was a matter that you wanted to raise. I see that the
17 people who were here just before we adjourned are probably
18 still having their tea. So perhaps the most appropriate
19 time to deal with this might be just before we take the
20 lunch adjournment. If there's any sign of people going for
21 an early lunch, you can alert me to it. So but we've
22 obviously got – I mean, to be sensible, we've got to deal
23 with the people here and I intended dealing with it now,
24 but you'll agree with me it's not appropriate for us to
25 deal with it now.

Page 2957

1 MR TIP SC: There would be no purpose in
2 it now and I'll keep my eye on developments to the left.

3 CHAIRPERSON: Yes, well, yes. You keep
4 one eye on the auditorium and the other eye on the witness
5 of course. Alright. I've already reminded him that he's
6 still under oath. Mr Semenya, you were moving on to
7 another part of his evidence.

8 MR SEMENYA SC: Indeed, Chair. Chair,
9 just for the record, we did see clips where the AM
10 protestors are saying to the general allow us to go to the
11 koppie. That is where we will disarm. So it is not even
12 the evidence of General Mpmembe, it is actually what we have
13 heard in the presentation and in the clips.

14 CHAIRPERSON: Yes, I thought when you
15 gave the summary of your case that it was accurate and in
16 accordance with what we had seen. There may be some aspect
17 that I overlooked and Mr Bruinders will deal with his
18 cross-examination and undo some of the work you're doing at
19 the moment by putting an alternative version of your case
20 to the witness, but that's something that we will know more
21 about maybe as his evidence proceeds.

22 MR BRUINDERS SC: Can I – I'm not going
23 to take issue with my learned friend about his last
24 comment, but can I raise a difficulty that I've been
25 instructed to place on record and it is this. This witness

Page 2958

1 started out as a witness who was going to tell us about
2 training at the POP. Yesterday afternoon, he turned into
3 an expert who was going to give an opinion on the
4 reasonableness and the appropriateness of the response of
5 the SAPS particular, as I understood it, on the 16th but
6 also on the 13th. The difficulty is that of course his
7 statement or his affidavit doesn't – is not that of an
8 expert and we didn't anticipate that he was going to be
9 called as an expert and even after yesterday afternoon when
10 it became clear to us that today he was going to give an
11 opinion about the reasonableness of the conduct of the
12 SAPS, we were still left with this difficulty. The experts
13 that we would like to call, of course, haven't seen what he
14 was going to say about the response of the SAPS and they
15 are not here to assist in cross-examination. We obviously
16 will try and do the best we can, but we are hamstrung in
17 that respect –

18 CHAIRPERSON: I understand that, but of
19 course he didn't become an expert yesterday. He's
20 obviously been an expert for a long time. He was invited
21 to express views as an expert which led to the evidence
22 we're now having. You will of course cross-examine after
23 the evidence leaders have cross-examined and after some of
24 the other counsel have cross-examined. If you wish to, as
25 you have done in the past I think, to stand back for Mr

Page 2959

1 Bizos, at least, if he is going to cross-examine, I don't
2 know if he is, that's one way of dealing with it. You will
3 of course get the transcript as soon as it's available.

4 There will be a long weekend. If the witness' evidence is
5 otherwise finished before the end – before we adjourn on
6 Friday afternoon, I will allow you to reserve your cross-
7 examination if you wish to do so, until Tuesday. So you
8 can then send the transcript, which I hope will be
9 available by then, if today's evidence at least, to your
10 experts to advise you. But anyway, that's – I understand
11 the problem that you've mentioned, but I hope we can find a
12 satisfactory way of dealing with it.

13 MR BIZOS SC: Mr Chairman, we are ready
14 to examine the witness.

15 CHAIRPERSON: Mr Semenya's examining him
16 but you will get an opportunity to cross-examine him when
17 the time arises.

18 MR BIZOS SC: I want to avoid – I don't
19 want to frighten him. We will examine him.

20 MR FISCHER: Chair, if I may? Toby
21 Fischer, on behalf of the Human Rights Commission. Chair,
22 if I may support Mr Bruinders' submissions, The Human
23 Rights Commission -

24 CHAIRPERSON: But I've dealt with his
25 submission. I indicated that the way forward which seems

Page 2960

1 to be satisfactory, but I'm advised from my right here that
 2 I must give you a hearing first before I respond further.
 3 Yes. But we've heard what Mr Bruinders has to say, you
 4 associate yourself with what he says. Is there any further
 5 point you want to make by way elaboration or strengthening
 6 of the point he raised?
 7 MR FISCHER: There is a slightly
 8 different point, Chair, and it relates to parties who don't
 9 have resources to instruct counsel every day of this
 10 process and some parties are in that position. For those
 11 parties, it is helpful if they can know in advance if a
 12 witness like this witness giving evidence now, is going to
 13 be giving substantial evidence on matters which go straight
 14 to points that those parties wish to cross-examine on. The
 15 Human Rights Commission, Chair, as you know, intends to
 16 bring an expert witness on public order policing and we
 17 would ordinarily have liked to take instruction from that
 18 expert witness and then cross-examine this witness on the
 19 basis of that instruction. Given the way that the evidence
 20 has emerged, that is not going to be possible and it's
 21 regrettable but it also raises issues of procedural
 22 fairness.
 23 CHAIRPERSON: We'll take the – we'll deal
 24 with the matter of procedural fairness as and when it
 25 becomes necessary to do so, but as I indicated to Mr

Page 2961

1 Bruinders, if he feels it necessary to do so, he can
 2 reserve his cross-examination, he can ask if he has
 3 material that he later wishes to put to the witness which
 4 hasn't been put by other counsel. He can apply for him to
 5 come back and obviously I won't discriminate between AMCU
 6 and the Human Rights Commission. You will be given the
 7 same facility.
 8 MR HANABE: The recorders were just
 9 asking for the name of the counsel for Human Rights
 10 Commission to place his name on record.
 11 MR FISCHER: Toby Fischer.
 12 MR HANABE: Thank you very much.
 13 CHAIRPERSON: Mr Semenya, I suppose I was
 14 discourteous to you. I should've allowed you to deal with
 15 these points that have been raised yourself instead of
 16 jumping in beforehand. Do you wish to comment on what's
 17 been said?
 18 MR SEMENYA SC: Chair, nothing beyond
 19 stating that the witness was called for a very limited
 20 purpose after agreement between the evidence leaders and Mr
 21 Ngalwana, but it became apparent yesterday that his
 22 evidence cannot be contained within those parameters and it
 23 is for that reason that we consulted throughout of last
 24 night to try and enable the witness to be familiar with the
 25 matters we anticipate he will be cross-examined on.

Page 2962

1 CHAIRPERSON: Mr Semenya, there are
 2 various ways of dealing with the matter. One is for you to
 3 prepare a statement to give the parties. As they say that
 4 some of them can't afford to have counsel every day and it
 5 will make things easier for them if they had a statement.
 6 The other thing of course is simply for them to get the
 7 transcript which presumably would be even fuller than the
 8 statement that you would put forward and then the – by when
 9 the transcript would be available, but they're normally
 10 produced on a daily basis. So I would've thought that Mr
 11 Fischer would have the transcript by tomorrow and the
 12 witness presumably won't be finished by tomorrow, but even
 13 if he is, he can always be called back if the Human Rights
 14 Commission wants to put further material before – to him by
 15 way of cross-examination. Speaking for myself, I can't see
 16 any procedural unfairness or prejudices could be suffered,
 17 but maybe if it is alleged later or stated later that there
 18 has been prejudice, we can ascertain what the prejudice is
 19 and do what we can to remove it. Mr Fischer, you've heard
 20 the debate between me and Mr Semenya, the suggestion is
 21 you'll get the transcript tomorrow what the witness is
 22 saying today which will be a fuller version of the expert
 23 summary that you would get under the High Court Rules if
 24 this were a trial and the expert were giving evidence. You
 25 will have the right, if you wish to avail yourself on it,

Page 2963

1 to reserve cross-examination until you're ready to do so
 2 and because of the way this point arose, through no fault
 3 of the Police Service, it should be possible to ensure that
 4 your client suffered no prejudice.
 5 MR FISCHER: Chair, I'm grateful. That
 6 suggestion that we can reserve the right to cross-examine
 7 at a later date will resolve any problems we have.
 8 CHAIRPERSON: I'm pleased about that. Mr
 9 Semenya, I think, unless there are any other points that
 10 can be raised, I see a number of red shirts in the
 11 auditorium, but not many green at the moment. So we'll
 12 carry on for the moment with the evidence.
 13 MR SEMENYA SC: Thank you, Chair.
 14 Brigadier, before the tea adjournment, we had just dealt
 15 with General Mpembe allowing the protestors to continue to
 16 what they said was their intended destination i.e. the big
 17 koppie. You remember that?
 18 BRIG MKHWANAZI: Correct.
 19 MR SEMENYA SC: Now, the evidence will
 20 also be that when the group changed direction towards the
 21 settlement, the police thought it prudent to administer
 22 tear gas there and stun grenade. But before we touch on
 23 that, are you familiar with the concept positive attraction
 24 and negative attraction?
 25 BRIG MKHWANAZI: It's correct.

<p style="text-align: right;">Page 2964</p> <p>1 MR SEMENYA SC: What do they mean?</p> <p>2 BRIG MKHWANAZI: With the positive</p> <p>3 attraction point, it's where we look at the position if the</p> <p>4 participants in a certain march, if they are going maybe to</p> <p>5 be pushed back or maybe be disbursed. One has to look what</p> <p>6 can be the appropriate direction where they can be taken</p> <p>7 to, where they will be able to get to their vehicles, be</p> <p>8 able to go home or take taxis, go home. We need to look to</p> <p>9 those direction whether is it going to be appropriate if we</p> <p>10 take to that direction. But a negative attraction point is</p> <p>11 where we look to a position which actually can actually</p> <p>12 contribute to the problem to the police side. If those</p> <p>13 people can move to a certain direction, maybe they can</p> <p>14 attack a certain structure, burn a certain structure and</p> <p>15 maybe kill somebody around that area, but depend most of</p> <p>16 the time to the information you've got in your position.</p> <p>17 If that information is there to say if they go to that</p> <p>18 direction they will cause the problem, then it become a</p> <p>19 negative attraction point.</p> <p>20 MR SEMENYA SC: Sorry, is there anything</p> <p>21 to be criticised about the diverting a group of people away</p> <p>22 from a negative attraction point?</p> <p>23 BRIG MKHWANAZI: If there is a clear</p> <p>24 information that if they go to that position really they</p> <p>25 will cause a problem, somebody can injure – be injured or</p>	<p style="text-align: right;">Page 2966</p> <p>1 BRIG MKHWANAZI: That's correct. There</p> <p>2 was a JOC commander. There were other as well, role</p> <p>3 players in that JOC as well.</p> <p>4 MR SEMENYA SC: Such as Lonmin personnel</p> <p>5 there.</p> <p>6 BRIG MKHWANAZI: That's the information</p> <p>7 I've got, Sir, thank you.</p> <p>8 MR SEMENYA SC: There was the use of</p> <p>9 facilities like cameras and things like radios for</p> <p>10 communication, would that be consistent with how a JOC</p> <p>11 should be structured?</p> <p>12 BRIG MKHWANAZI: That's correct, yes.</p> <p>13 MR SEMENYA SC: Now can I invite you to</p> <p>14 what was then done that is by Colonel Scott, in devising</p> <p>15 the plan and invite your comment regarding those slides.</p> <p>16 If they can put Exhibit L, for Lima, in front of you. If</p> <p>17 you go to slide 71 you will find there the operational</p> <p>18 overview. Do you see that?</p> <p>19 [11:49] BRIG MKHWANAZI: I've got it.</p> <p>20 MR SEMENYA SC: It has at the first stage</p> <p>21 there is described as a dialogue and monitor protestors,</p> <p>22 would that be a proper stage to have an operation of that</p> <p>23 nature?</p> <p>24 BRIG MKHWANAZI: Yes, as per Gathering</p> <p>25 Act 205, yes, we have to engage with the dialogue with the</p>
<p style="text-align: right;">Page 2965</p> <p>1 be killed, there will be no criticism, but if there isn't</p> <p>2 any threat to that position, definitely there will be no</p> <p>3 need to stop them going that position.</p> <p>4 MR SEMENYA SC: Regrettably the evidence</p> <p>5 will show that immediately after that happened, two police</p> <p>6 officers lives are lost, one police officer was injured,</p> <p>7 two civilian lives are lost there when the group responded</p> <p>8 to that police action or reacted to it. Brigadier, can I</p> <p>9 invite you now to look at how the planning was done for the</p> <p>10 16th of August? And the evidence is that the smaller JOC</p> <p>11 was earlier moved to a bigger JOC.</p> <p>12 BRIG MKHWANAZI: Correct.</p> <p>13 MR SEMENYA SC: And this is subsequent to</p> <p>14 these developments that I have handled with you.</p> <p>15 BRIG MKHWANAZI: Correct.</p> <p>16 MR SEMENYA SC: In that JOC was an</p> <p>17 operational commander is that consistent – was that overall</p> <p>18 commander is that consistent with how it should be.</p> <p>19 BRIG MKHWANAZI: Yes, that's correct.</p> <p>20 From what actually the information I've got, Chairperson,</p> <p>21 was that there was an overall commander and there was an</p> <p>22 operational commander as well.</p> <p>23 MR SEMENYA SC: There were other</p> <p>24 stakeholders in that JOC as well. Is that consistent with</p> <p>25 how you would expect it to happen?</p>	<p style="text-align: right;">Page 2967</p> <p>1 leaders of the march, or of any gathering that is taking</p> <p>2 place of protestors, correct.</p> <p>3 MR SEMENYA SC: The evidence will be that</p> <p>4 personnel like – I think it's Lieutenant Colonel. I was</p> <p>5 trying to establish the rank of McIntosh.</p> <p>6 BRIG MKHWANAZI: He is a colonel.</p> <p>7 MR SEMENYA SC: A colonel?</p> <p>8 BRIG MKHWANAZI: Yes.</p> <p>9 MR SEMENYA SC: Who is a police</p> <p>10 negotiator, was tasked with the negotiating and having that</p> <p>11 dialogue we contemplated in stage 1.</p> <p>12 BRIG MKHWANAZI: Correct.</p> <p>13 MR SEMENYA SC: Would that be a proper –</p> <p>14 BRIG MKHWANAZI: Yes, correct.</p> <p>15 MR SEMENYA SC: There will be evidence of</p> <p>16 Fanagalo interpreters used, giving the audience that was</p> <p>17 going to be addressed.</p> <p>18 BRIG MKHWANAZI: It is correct, as long</p> <p>19 as if there was somebody really from SAPS who can interact</p> <p>20 with that, if he never had a problem with that, I think it</p> <p>21 was correct as well, because dialogue must be in the</p> <p>22 language people can understand.</p> <p>23 MR SEMENYA SC: Now the stage 2,</p> <p>24 according to plan, would have been a show of force with</p> <p>25 negotiations. Would that be a proper stage to have a plan</p>

Page 2968

1 of this nature?

2 BRIG MKHWANAZI: Yes, it is correct.

3 Normally it is done especially when it looked clearly that

4 the dialogue or the discussions or negotiation with the

5 people, it doesn't actually bear fruit as quick as

6 possible. Then to start to come up with a show of force,

7 show of force without weapon in their possession, just

8 members only coming to the forefront and actually

9 displaying, or showing force to the people, that's all,

10 that's correct stage 2.

11 MR SEMENYA SC: What is a show of force

12 and how is that manifested?

13 BRIG MKHWANAZI: If we talk about a show

14 of force, is where we would look to police gradual

15 response. In other words, we don't just come at the same

16 time we use force, but you will come with your members

17 maybe in uniform, come out in vehicles, stand in front,

18 just show force that they are there, or maybe at the same

19 time they can have less lethal equipment that they can

20 utilise, use of shield, use of domfa, that's totally not

21 actually going to cause anything or aggravate anything

22 within the crowd. You need to be very less show of force

23 before the crowd, in other words you must not aggravate any

24 situation amongst the crowd, if you are there with members

25 from the SAPS.

Page 2969

1 MR SEMENYA SC: And the purpose being

2 what, in relation to the crowd?

3 BRIG MKHWANAZI: Normally, you expect as

4 a police officially that your presence should some time

5 change the situation, within the crowd. The crowd must be

6 in a position to see police are here, let's respond, maybe

7 let's do something different to make sure that we don't

8 cause chaos and all that. That is the whole purpose, it's

9 not to say you come there, because you want to have some

10 sort of conflict with the crowd at all, but it's just to

11 display yourself as police official, to say you are there,

12 and they can be able to say, okay, from what the organiser

13 is saying to them because remember you will be negotiating

14 for certain reasons, and if the organiser is talking to

15 them they must be in a position to say they can actually be

16 able to disperse and go back. That's what you need to do

17 without any confrontation.

18 MR SEMENYA SC: Again in the context of

19 the 16th, what stage 1 contemplated was that the armoured

20 vehicles would make a presence between the koppie and the

21 informal settlement and create a neutral area there. Is

22 that a sound plan to put in place for that environment?

23 BRIG MKHWANAZI: Normally, what is the

24 position, is that with the police you need to create a

25 neutral zone, most of the time. A neutral zone must be

Page 2970

1 created. A neutral zone is where you can be able as an

2 operational commander to have your freedom of expression.

3 Freedom of expression is where you can be able to give your

4 commands as an operational commander. Then the neural zone

5 need to be created. Obviously with that, there wasn't

6 anything wrong.

7 MR SEMENYA SC: And in terms of the plan,

8 they were going to have behind the armoured vehicles, the

9 first line of police officials, being your POP members,

10 would that be - is anything objectionable about that type

11 of deployment?

12 BRIG MKHWANAZI: Counsellor, I miss it a

13 little bit, who is in front Public Order Policing members?

14 MR SEMENYA SC: Public Order Policing

15 members, yes.

16 BRIG MKHWANAZI: That's correct, because

17 at that stage the situation was still crowd management and

18 Public Order Policing should be the one that is in front,

19 you cannot bring other members whose primarily weapon can

20 be rifle, that is totally not acceptable. Public Order

21 Policing, was to take the front portion.

22 MR SEMENYA SC: The plan was also that

23 100 metres behind the POP members would be your tactical

24 response team positioned there. What is your comment in

25 relation to that, as a plan?

Page 2971

1 BRIG MKHWANAZI: Chairperson, at that

2 position it will dependent to the operational commander

3 where to place a tactical member. We talk about TRT, with

4 the type of training they've received, and if you place

5 them at that position, it will depend to the operational

6 commander whether you need them to be at that position, but

7 with my opinion as well, will be that if there is a real

8 threat that you foresee that there will be problem, of

9 course you need somebody to back up Public Order Policing,

10 as you know very well that they are in possession of a

11 shotgun with rubber rounds, which if maybe the participants

12 are in possession of a weapon or something, they will need

13 somebody to actually to support them. I think if they are

14 placed in that position, as it says 100 metres away from

15 Public Order Policing, it will be appropriate.

16 MR SEMENYA SC: Behind the TRT line, was

17 position the FTF as well as the NIU, would there be

18 anything obviously wrong with that type of plan?

19 BRIG MKHWANAZI: My answer will be

20 similar, Chairperson, to the first answer to say it will

21 depend to the operational commander, who will make a

22 decision looking to the available threat analysis to say,

23 this is what can happen if definitely he feel that there

24 will be problem, he can place those members, to be able to

25 react as quick as possible to a situation.

<p style="text-align: right;">Page 2972</p> <p>1 MR SEMENYA SC: Now, the evidence will 2 be, and deal with the various units that were there, and 3 let me invite your comments about their appropriateness or 4 otherwise of having them there. There would have been your 5 Public Order Police, you say that that is not 6 objectionable. 7 BRIG MKHWANAZI: Correct. 8 MR SEMENYA SC: Tactical response team, 9 nothing objectionable about having them in your plan? 10 BRIG MKHWANAZI: Nothing objectionable, 11 Chairperson, as I've indicated, it depends to the threat 12 analysis on the day, what is the threat, what is the 13 situation? If the threat demands that, to say you need 14 support now, you will definitely come with those members to 15 support the members on Public Order line, so that if 16 anything happened, they can be able to assist. 17 MR SEMENYA SC: And that will see, 18 Brigadier, later that the mission is to disperse, disarm 19 and effect arrests in relation to the armed protesters that 20 are there. 21 BRIG MKHWANAZI: I saw it. 22 MR SEMENYA SC: The appropriateness or 23 otherwise of having medical personnel on a plan like this, 24 would that be objectionable? 25 BRIG MKHWANAZI: You are talking about</p>	<p style="text-align: right;">Page 2974</p> <p>1 they can assist, but on the day calling of mounted unit, it 2 will depend as well to the operational commander if he has 3 identified those issues that he would like to address with 4 their presence in the operation. 5 MR SEMENYA SC: K9 units? 6 BRIG MKHWANAZI: Yes, with K9, it depend 7 as well to the threat in position, it's a lot of things 8 that we can utilise K9 unit, as you know you've got dogs 9 that can be utilised to assist maybe as sniffing dogs, if 10 there is a situation that need them to be utilised as that 11 position, and in this situation as well, as I've said, it 12 will depend to the Ops commander as well as the overall 13 commander, if they pick up anything that needs those 14 members to actually to deal with that type of situation, 15 their presence, it won't be a problem as well. 16 MR SEMENYA SC: Now, when we look back at 17 the situation on the koppie on the 16th, we see a group of 18 about, as witnesses will say, 3 – 4 000, some of whom are 19 heavily armed with lives having been lost the days before 20 that, in your own personal opinion, what level of risk are 21 we talking now? 22 BRIG MKHWANAZI: Yes, on my 23 understanding, as soon as we have people's lives lost, the 24 level changes completely because we need to start to up or 25 to bring up our plan and make sure that we have all</p>
<p style="text-align: right;">Page 2973</p> <p>1 medical? 2 MR SEMENYA SC: Personnel. 3 BRIG MKHWANAZI: Personnel? 4 MR SEMENYA SC: Yes, as part of the 5 various units that were deployed there. 6 BRIG MKHWANAZI: If I understand alright, 7 Counsellor, that the presence of medical units to be part 8 of the operation, it is normal during the operation as 9 well. If anything happens, somebody must be in a position 10 to give help as quick as possible, you plan that as well, 11 that include as well the identification maybe of hospitals 12 nearby that can be utilised if anything happened, because 13 nobody knows what will happen, if it happened how people 14 can be helped on that position as quick as possible, if 15 anything goes wrong. 16 MR SEMENYA SC: The presence in the plan 17 of mounted police? 18 BRIG MKHWANAZI: The mounted police 19 normally when it comes to the situation of operations, you 20 will need to be able to identify how are you going to 21 utilise them, especially, it's easy to use mounted units, 22 because with horses, you can reach places whereby with a 23 vehicle, you will have a problem to reach, but with horses, 24 you can be able to reach all places as quick as possible, 25 especially where it is not driveable, there are no roads,</p>	<p style="text-align: right;">Page 2975</p> <p>1 relevant units to assist in that type of operation. That 2 means in that position, really we are now already at level 3 3, and it can be above that, depending to the situation we 4 are having at that moment. As you say, they are heavily 5 armed, people have been killed on different occasions. 6 MR SEMENYA SC: And if you factor the 7 fact that an R5 rifle was stolen from the killed police 8 member, a pistol was also stolen from them, what level of 9 risk are we talking now? 10 BRIG MKHWANAZI: We talk about level 3, 11 and it can be above on that, if I say it can be above, it 12 is where we are going to look to other issues we can do. 13 Obviously now we have a rifle being taken from the police, 14 we have a 9 millimetre taken from the police, that means 15 there is a risk, that there can be more people dying in 16 that type of a situation. That means we need definitely to 17 put other option or tactical option to say, how can we deal 18 with that type of a situation to make sure we retain those 19 firearms taken, and all those things. It can be above, or 20 level 3 exactly. 21 [12:09] MR SEMENYA SC: In the spectrum of 22 various units of the Police, which unit would be 23 appropriately specialised to deal with these type of 24 threats? 25 BRIG MKHWANAZI: Maybe if I may ask,</p>

<p style="text-align: right;">Page 2976</p> <p>1 because we need to look whether have we passed Public Order 2 Policing as a crowd management situation, or now we put it 3 into another situation, but if we're still under Public 4 Order Policing, we will keep it under Public Order Policing 5 until come to the situation to say at this position now 6 Public Order Policing can't do anything at all because of 7 all means of intervention have failed, then we can bring 8 other suitable unit to take over and deal with the 9 situation.</p> <p>10 MR SEMENYA SC: Are you able to comment 11 on the areas for deployment of TRT for instance?</p> <p>12 BRIG MKHWANAZI: Normally obviously TRT 13 will be in support of Public Order Policing when the 14 situation becomes difficult, especially on issues where we 15 talk about rifles are being involved, people are armed, all 16 those type of situation. Then they will be able to come in 17 and assist in those position as well. Because they are 18 actually using R5s as their primary weapon, they can be 19 able to come in and assist, but it will be within the 20 operational commander to say when and what time they must 21 intervene, looking to the Public Order Policing if they 22 have actually exhausted all the means they've got at their 23 possession.</p> <p>24 MR SEMENYA SC: The NIU, National 25 Intervention Unit?</p>	<p style="text-align: right;">Page 2978</p> <p>1 MR SEMENYA SC: That addresses stage 2 of 2 the plan.</p> <p>3 BRIG MKHWANAZI: Sure. It's correct, 4 Sir.</p> <p>5 MR SEMENYA SC: I would like to invite 6 your comment about that plan. The slide says, it starts 7 with "SAPS deploying stage 1 deployment as one of POPs 8 monitoring contingent, with a negotiation contingent to 9 engage in dialogue, seek a peaceful disarming and 10 dispersion resolution." You have already commented about 11 that stage, haven't you, Brigadier?</p> <p>12 BRIG MKHWANAZI: I have done so, Sir.</p> <p>13 MR SEMENYA SC: And it also says that 14 there would be a reserve force which would be brought 15 forward to the neutral area as a show of force with the 16 intent to dissuade confrontation with the Police. Do you 17 see that?</p> <p>18 BRIG MKHWANAZI: I see it, Sir.</p> <p>19 MR SEMENYA SC: Now speaking about that, 20 if you look to slide 77, it is a Google map indicating how 21 the deployment according to plan was to happen. Do you see 22 that?</p> <p>23 BRIG MKHWANAZI: Yes.</p> <p>24 MR SEMENYA SC: Chair, I had actually not 25 made the request, but I would request that we have that</p>
<p style="text-align: right;">Page 2977</p> <p>1 BRIG MKHWANAZI: Yes, with NIU as well it 2 will be the same situation as well. It will depend to the 3 operational commander as well how to utilise them as well.</p> <p>4 MR SEMENYA SC: The STF?</p> <p>5 BRIG MKHWANAZI: Normally the STF, it is 6 an elite, it will depend really what situation do we have 7 that means NIU, which means actually an NIU, TRT, Public 8 Order Policing, everything has failed, then they will 9 intervene and assist with the situation.</p> <p>10 MR SEMENYA SC: We were also told about 11 the concept called "situation of appropriateness." Are you 12 familiar with the concept, Brigadier?</p> <p>13 BRIG MKHWANAZI: That's correct, Sir.</p> <p>14 MR SEMENYA SC: What does that mean?</p> <p>15 BRIG MKHWANAZI: Yes, if we talk about 16 situation of appropriateness, it's where we look to the 17 situation and we have to come up with the means to say how 18 are we going to solve the problem, but if we solve the 19 problem we must not create the bigger problem. We must 20 make sure that we put measures that will actually solve the 21 problem that is before us. In actual fact, let's try by 22 all means to be situational to the situation.</p> <p>23 MR SEMENYA SC: And can I invite you to 24 look at slide 75 on exhibit Lima?</p> <p>25 BRIG MKHWANAZI: Got it.</p>	<p style="text-align: right;">Page 2979</p> <p>1 slide on screen so that the witness can comment on it and 2 how it is positioned.</p> <p>3 CHAIRPERSON: Is it possible to comply 4 with the request that's been made by Mr Semenya? Is it 5 necessary for us to have a short adjournment for this slide 6 to be put into position to be shown?</p> <p>7 MR HANABE(?): It's necessary, but my 8 understanding is that Mr Dos Reis has been struggling with 9 the slides today, but can we take an adjournment, Mr Chair?</p> <p>10 CHAIRPERSON: Either that, or 11 alternatively while attempts are being made, perhaps we can 12 deal with Mr Tip's problem, which may well be appropriate 13 dealt with at this stage. Mr Tip?</p> <p>14 MR TIP SC: Thank you, Mr Chair. There 15 are not a great many green T-shirts in the audience, but 16 that is not really a difficulty. Mr Chair, what happened 17 at the conclusion of the proceedings yesterday afternoon 18 was that a group of about 40 persons who had attended here 19 went out and some disturbance followed. There was some 20 singing of songs, including the song that this Commission 21 has heard a few times, and that is, "Kill the NUM," and 22 there was also the formation of a group which moved around 23 and there was some intimidatory conduct. It did prompt the 24 South African Police Service members to move to the scene 25 to be ready to intervene and the head of the unit, Colonel,</p>

Page 2980

1 spoke to some of the members wearing green shirts and
 2 instructed them to desist and to go, and that happened.
 3 There was luckily no serious consequence at all, but there
 4 was some intimidatory impact on the members of the NUM who
 5 were in the immediate vicinity and who were faced down, as
 6 it were.
 7 Now I want to say this, Mr Chair. My
 8 instructions are that it seems that a large number of that
 9 40 came in fact from Impala Platinum Mine and not from
 10 Lonmin, and the position in respect of the employees from
 11 Lonmin and NUM, rather the Lonmin employees respectively
 12 from AMCU and NUM have in fact maintained a very
 13 satisfactory peaceful co-existence here throughout the
 14 duration of the Commission, and it is apparently persons
 15 who have not appreciated the need for such conduct that we
 16 had the situation yesterday.
 17 I'm going to request the Commission to repeat
 18 what it has previously said about the need on the part of
 19 all parties and all persons who present themselves here, to
 20 conduct themselves in a manner that is absolutely free of
 21 any intimidatory impact or interference with others. I
 22 should add that the Police themselves on duty here would be
 23 very pleased for that message to be broadcast again, and
 24 I'm confident that my learned friend Mr Bruinders would see
 25 to it that his team conveys that message in a satisfactory

Page 2981

1 way to those at Impala, if that is indeed the position.
 2 CHAIRPERSON: Mr Bruinders, do you have
 3 any comments to make?
 4 MR BRUINDERS SC: Commission, our
 5 attorney attempted to take an instruction earlier by
 6 contacting Mr Mathunjwa, who said that he knew nothing of
 7 this. Our attorney obviously knew nothing of this until
 8 this morning when he was told about this, but he had
 9 undertaken to investigate and to come back to us after he's
 10 investigated the allegations and hopefully with appropriate
 11 instructions. Obviously if this happened it is disturbing
 12 and we've, through our attorney we have made it clear that
 13 certainly AMCU's members should behave as they have
 14 throughout the conduct of this inquiry up to now. We in
 15 fact were unaware that there were any difficulties between
 16 NUM and AMCU members at the inquiry until yesterday. They
 17 co-mingle freely outside and inside and we didn't know and
 18 in fact are quite disturbed by the allegation. I can't
 19 tell you, I mean AMCU doesn't know whether this indeed
 20 happened. We accept the good faith of our learned friend.
 21 Obviously it would be appropriate for the Commission to
 22 caution all of us to behave with dignity and appropriately.
 23 CHAIRPERSON: The evidence leaders,
 24 either Mr Madlanga or Mr Budlender wish to comment on this
 25 aspect or represent –

Page 2982

1 MR BUDLENDER: Chair, we endorse what our
 2 colleagues have said. It has been a matter for
 3 satisfaction that thus far in this hearing there have been
 4 members of both unions present, co-existing peacefully,
 5 going about their business, and enabling the Commission to
 6 go about its business. It is very disturbing if there has
 7 been such an incident, which I understand it to be the
 8 case, and particularly given that one of the people
 9 confronted was a person who is to give evidence before this
 10 Commission, and so we would welcome it if the Commission
 11 were to make a clear statement as to how it expects people
 12 who attend these sittings to conduct themselves.
 13 CHAIRPERSON: Thank you, Mr Budlender. I
 14 want to address some remarks to those people sitting in the
 15 auditorium. I see from the colours of their shirts that
 16 some belong to NUM and some belong to AMCU. Up to now, as
 17 counsel have said - you have heard what counsel have said -
 18 there's been a harmonious atmosphere between
 19 representatives, or members of the two unions, and that is
 20 as it should be, because as you would have heard when Mr
 21 Mathunjwa gave his evidence, near the end of his evidence
 22 he said he was concerned that the Commission should find
 23 the truth, and I indicated to him that that was our
 24 objective. Now the best way for us to find the truth is by
 25 means of a thorough inquiry to all the aspects of the

Page 2983

1 matter, but an inquiry which is conducted in a spirit of
 2 harmony and cooperation by everybody concerned, which
 3 includes those people who are sitting in the auditorium.
 4 If anything is done which puts any of the persons connected
 5 with the Commission, whether they be officials of the
 6 Commission or counsel or attorneys or others appearing
 7 before the Commission, or people who are going to give
 8 evidence, who put those people under pressure, it will
 9 hamper the work of the Commission in arriving at the truth.
 10 Now it's in the interest of everybody, the interests of all
 11 those involved in the operation of the mine, involved in
 12 the tragic events that took place over the period that
 13 we're dealing with at the moment, but it's more important
 14 than that, it's in the interest of the whole country that
 15 the Commission be allowed to do its work properly and
 16 thoroughly and be enabled as best as it can to find the
 17 truth.
 18 So I trust that what I have said has been heard
 19 by those present. If any of you present know others who
 20 were here yesterday and not here today, to whom that
 21 message should be conveyed, I would be grateful if you'd do
 22 so. But I trust that all concerned will behave as well as
 23 they have done in the past, except for this incident which
 24 allegedly took place yesterday, and I hope we will never
 25 again hear any complaints of the kind that we've heard

Page 2984

1 today. Thank you.

2 It appears that the slide that Mr Semenya wanted

3 to be shown is now on the screen, so if we can proceed with

4 his examination-in-chief of the witness.

5 MR SEMENYA SC: Thank you, Chair.

6 Brigadier, what is on the screen is slide 77, at least on

7 my document, exhibit L. You see that?

8 CHAIRPERSON: Though it says 74, it

9 appears to be actually 77, according to exhibit L.

10 MR SEMENYA SC: It has mutated, Chair.

11 CHAIRPERSON: Slightly changed.

12 MR SEMENYA SC: That was the PowerPoint

13 presentation given for the plan on that day, and might I

14 invite you to make some comments there? I don't know

15 whether it would require magnification, but what you see

16 would be the green vehicle there. Are you able to see that

17 far?

18 BRIG MKHWANAZI: Yes, Sir.

19 MR SEMENYA SC: Those would represent the

20 barbed wire.

21 BRIG MKHWANAZI: Okay.

22 MR SEMENYA SC: Do you see that?

23 BRIG MKHWANAZI: I see that.

24 MR SEMENYA SC: Perhaps for orientation,

25 alphabet K, number 1 on that plan would be the koppie 1.

Page 2985

1 Do you see that? Perhaps if you look at the hard copy in

2 front of you –

3 [12:29] BRIG MKHWANAZI: Ja, I see that, thank

4 you.

5 MR SEMENYA SC: You would also have K2

6 there –

7 BRIG MKHWANAZI: Yes –

8 MR SEMENYA SC: - which would be copied

9 to?

10 BRIG MKHWANAZI: I see that.

11 MR SEMENYA SC: You have to orientate all

12 of us, you have K3 which is copy 3 there as well?

13 BRIG MKHWANAZI: Correct.

14 MR SEMENYA SC: Do you see that?

15 BRIG MKHWANAZI: I see that.

16 MR SEMENYA SC: You would see towards

17 the, just behind the barbed wire in green you have blue

18 vehicles there, do you see those?

19 BRIG MKHWANAZI: Correct.

20 MR SEMENYA SC: With the letter and

21 numbers like P1 which we are going to be told stands for

22 Pappa 1, etcetera, being the Nyalas?

23 BRIG MKHWANAZI: Correct.

24 MR SEMENYA SC: That would be the public

25 order police there deployed, would that be correct?

Page 2986

1 BRIG MKHWANAZI: Correct.

2 MR SEMENYA SC: The figurines there with

3 red or orange would have been your TRT.

4 BRIG MKHWANAZI: Correct.

5 MR SEMENYA SC: The red circled

6 environment there called informal settlement, do you see

7 that as well, on the top of the picture?

8 BRIG MKHWANAZI: Yes, I see it now.

9 MR SEMENYA SC: There is a road towards,

10 slightly below the middle of the picture that is cutting

11 across horizontally, do you see that? That is the road,

12 the evidence will show.

13 BRIG MKHWANAZI: If - can assist me?

14 MR SEMENYA SC: The road –

15 BRIG MKHWANAZI: Okay, I see that.

16 MR SEMENYA SC: Now we see on the right

17 side of the picture on that road we have letters FHA1

18 standing for forward holding area 1, which would be the

19 reserve deployed for this operation, do you see that?

20 BRIG MKHWANAZI: Zoom it a bit, oh, that

21 position, yes, I can see that.

22 MR SEMENYA SC: And in the middle of that

23 road, they would have been positioned your STF and the NIU,

24 do you see those according to plan?

25 BRIG MKHWANAZI: Are you referring to the

Page 2987

1 further left of the road?

2 MR SEMENYA SC: No, just in the middle of

3 the picture there, the writing is quite pretty faint.

4 BRIG MKHWANAZI: Can you assist me there?

5 MR SEMENYA SC: That, that –

6 BRIG MKHWANAZI: Yes, I see that.

7 MR SEMENYA SC: Okay, and that the

8 evidence will say is the intermediate response area.

9 BRIG MKHWANAZI: Correct.

10 MR SEMENYA SC: Do you see that?

11 BRIG MKHWANAZI: I see that, yes.

12 MR SEMENYA SC: And to the extreme left

13 of the picture along that road would be forward holding

14 area 2, do you see that?

15 BRIG MKHWANAZI: Yes, I see that.

16 MR SEMENYA SC: Do you see that, that

17 will be where the other reserves are held.

18 BRIG MKHWANAZI: That's correct.

19 MR SEMENYA SC: But most importantly,

20 Brigadier, we will hear that the vital areas to be

21 protected were the installations where forward holding area

22 2 is, do you see that?

23 BRIG MKHWANAZI: I see.

24 MR SEMENYA SC: And there will be power

25 station at forward holding area 1 as a sensitive point,

<p style="text-align: right;">Page 2988</p> <p>1 that's why we're having that reverse force stationed there, 2 okay?</p> <p>3 BRIG MKHWANAZI: Okay, I see that.</p> <p>4 MR SEMENYA SC: And the top portion of 5 the plan would have had the TRT and the NIU almost and 6 close to the informal settlement which should have been a 7 negative attraction point as well.</p> <p>8 BRIG MKHWANAZI: There is the top one, 9 yes.</p> <p>10 MR SEMENYA SC: And the picture is a 11 little undecipherable but the right top corner of that 12 picture would be on the north point, alright?</p> <p>13 BRIG MKHWANAZI: Yes, I see that.</p> <p>14 MR SEMENYA SC: And we have the vast area 15 of open land to the left of that picture which is the 16 western side of that landscape, do you see that?</p> <p>17 BRIG MKHWANAZI: I see that.</p> <p>18 MR SEMENYA SC: The evidence will be that 19 is the positive attraction point where, if the dispersal 20 was to happen the crowd would be directed in that way.</p> <p>21 BRIG MKHWANAZI: Yes.</p> <p>22 MR SEMENYA SC: Now is there anything 23 obviously wrong with this as a plan for a mission whose 24 purpose is to disperse, disarm, arrest where arrests are 25 possible?</p>	<p style="text-align: right;">Page 2990</p> <p>1 of Exhibit -</p> <p>2 BRIG MKHWANAZI: I've got it ready.</p> <p>3 MR SEMENYA SC: Stage 3, the plan headed 4 that the protestors will be addressed, they will be 5 dispersed into smaller groups, they will be encircled and 6 disarmed, do you see that?</p> <p>7 BRIG MKHWANAZI: I see that.</p> <p>8 MR SEMENYA SC: There serves the plan, 9 this will be negotiations are deemed unsuccessful or no 10 longer feasible by high authorities and a technical option 11 needs to be employed, do you see that?</p> <p>12 BRIG MKHWANAZI: I see it.</p> <p>13 MR SEMENYA SC: Is this the negotiations 14 that you are referring to a little earlier now?</p> <p>15 BRIG MKHWANAZI: That's correct, I spoke 16 about negotiations that need to be on a continuous basis as 17 the main initiative to be taken by SAPS to ensure that the 18 negotiations there, dialogue with the people, that's what I 19 am actually referring to.</p> <p>20 MR SEMENYA SC: So the plan in relation 21 to stage 3, that an option was considered and was deemed 22 preferable was that the crowd would be dispersed into 23 smaller groups and circled and disarmed, do you see that as 24 a technical option which was deemed preferable? 25 BRIG MKHWANAZI: I see it.</p>
<p style="text-align: right;">Page 2989</p> <p>1 BRIG MKHWANAZI: Maybe to have my comment 2 accurate I would be happy if I understand where the 3 participants were from if they come to the koppie, which is 4 koppie 1 and when they disperse, which direction they were 5 taking and the purpose of the plan itself as it has been 6 indicated. If it was to disperse, arrest, then I would be 7 happy to understand, I think the main thing is to say from 8 what direction if they were coming in, what direction when 9 they were leaving, then I would be able maybe to have an 10 accurate position to say what actually, was it correct, but 11 if it was actually assisting to say if they are disturbed, 12 they will be able to reach their place of residence or be 13 able to reach whatever transport means but looking into the 14 situation, it is just in an open area, there is no 15 transport, there is nothing that comes there, but will they 16 be able to reach the place where they stay, for me the plan 17 will be appropriate to address that.</p> <p>18 And as well if I may go further to say maybe 19 before the disperse maybe is employed, the issue of giving 20 warnings, giving them a chance to move on their own, you 21 know if all that is done I won't have a problem with the 22 plan in place.</p> <p>23 MR SEMENYA SC: Now that is an 24 appropriate stage for us to look at the plan but in 25 particular stage 3. Can I invite you to look at slide 78</p>	<p style="text-align: right;">Page 2991</p> <p>1 MR SEMENYA SC: The thinking behind the 2 plan, we are told, is that the dispersion strategy would 3 enable the police to deal with more manageable disorganised 4 groups, it is easier to handle than a group of about 3 000 5 persons, it would also allow for the water canons to be 6 used to break up the more militant groups, formation and 7 structuring, do you see that?</p> <p>8 BRIG MKHWANAZI: I see it.</p> <p>9 MR SEMENYA SC: According to you, 10 Brigadier, is there anything obviously objectionable about 11 this as a plan?</p> <p>12 BRIG MKHWANAZI: Chairperson, if you look 13 to the technical option or the action modes disperse, the 14 main purpose is to split people into a smaller manageable 15 group. If negotiation has totally failed, depending 16 whether negotiations were about voluntarily disperse, or it 17 was about, maybe another situation, but if it was about 18 voluntarily disperse from the koppie, go back home and all 19 that and everything has failed, that includes laying down 20 of the arms and all that and to administer those types of 21 options to say make use of the water canon, let's split 22 them into smaller groups, let's try and manage to arrest 23 them, it definitely worked well, rather than going for a 24 bigger group because a bigger group you can injure your 25 members, you put them in danger as well it can end up in</p>

Page 2992

1 confrontation, but if you split them into smaller groups
 2 you can easily manage and arrest them or disarm them, take
 3 those arms that actually can cause some sort of trouble at
 4 that stage. I think it is correct in that way, for that
 5 purpose.
 6 MR SEMENYA SC: Slide 79 then tells us
 7 how the operation in our plan was to be implemented, do you
 8 see that?
 9 BRIG MKHWANAZI: I see it.
 10 MR SEMENYA SC: A plan was that there
 11 would be a force continuum and we have heard evidence of
 12 what that entails, are you familiar with the concept?
 13 BRIG MKHWANAZI: That's correct.
 14 MR SEMENYA SC: That then of course would
 15 include the giving of a verbal command to tell the crowd to
 16 disperse in languages that they understand.
 17 BRIG MKHWANAZI: That's correct, in
 18 provision with the Gathering Act 205, paragraph 9.
 19 MR SEMENYA SC: Next would be to advance
 20 the water canons to engage the protestors, getting them to
 21 disperse, flanked by Nyalas with the members of the POP
 22 deployed outside the armoured vehicles, using them as a
 23 safe heaven to climb back into them should they be attacked
 24 by the protestors, do you see that?
 25 BRIG MKHWANAZI: That's correct.

Page 2993

1 MR SEMENYA SC: Should that not be
 2 effective, there would then be the administration of
 3 teargas to encourage the group to break up, do you see
 4 that?
 5 BRIG MKHWANAZI: I see it.
 6 MR SEMENYA SC: And that can be followed
 7 up by the stun grenades to force the dispersion.
 8 BRIG MKHWANAZI: Correct.
 9 MR SEMENYA SC: If need be there would be
 10 the use of rubber rounds to encourage the dispersion of the
 11 crowds, do you see that?
 12 BRIG MKHWANAZI: I see it.
 13 MR SEMENYA SC: Would that be consistent
 14 with the proper use of force continuum?
 15 BRIG MKHWANAZI: What is important,
 16 Chairperson, is that with the use of water canons and other
 17 means we got in public order policing it should actually
 18 be, it is actually in line with a less lethal weapon that
 19 we are using. The using of a water canon, it definitely
 20 can allow people to disperse or to split into smaller
 21 groups without anybody getting injured and if you go
 22 further down using of a teargas, as well if nothing is
 23 happening people can be able to move out and at the same
 24 time using stun grenade which cannot actually injure
 25 anybody at all, the only thing is it has got those two

Page 2994

1 bangs and the people can split aside, but the use of a
 2 rubber, it can be actually be the last resort to see if
 3 maybe we can get people to actually disperse at the same
 4 time. Of course the use of all of this means less lethal
 5 and they are appropriate.
 6 [12:49] MR SEMENYA SC: And just to interrupt
 7 ourselves, the evidence will also be that at this time the
 8 Commissioner of Police, the National Commissioner had
 9 introduced a circular the year before withdrawing the
 10 rubber bullets and now introducing the rubber rounds, are
 11 you familiar with that circular?
 12 BRIG MKHWANAZI: I am familiar, yes.
 13 MR SEMENYA SC: Now Brigadier, as the
 14 plan was conceived, it was anticipated that should the
 15 protestors attack the members of POP in the dispersion
 16 line, who would be outside the Nyalas, a second line, the
 17 TRT backed by NU [inaudible] following behind the POP line
 18 would respond proportionate to the threats, do you see
 19 that?
 20 BRIG MKHWANAZI: I see it.
 21 MR SEMENYA SC: Immediately bothering -
 22 BRIG MKHWANAZI: [inaudible] responding
 23 or as a plan, I would like to indicate that [inaudible]
 24 because during the situation that will take place you will
 25 have to see as an operational commander to say what is the

Page 2995

1 threat, what is the situation as the people advances, or
 2 what is happening if it doesn't happen the way you have
 3 planned. The situation can change every time as I've
 4 indicated that the operation got a lot of influence, a lot
 5 of things do happen that you need to adjust yourself as
 6 quick as possible to see how you solve the problem. So it
 7 will depend really to say if you administer now special
 8 task force or you administer now TRT what prompted that
 9 situation. Then you'll give your command in that position.
 10 MR SEMENYA SC: The plan about the
 11 deployment of those units, Brigadier, we are told that the
 12 TLT, the NIU and the STF would also be responsible for
 13 close quarter confrontation to approaching groups which are
 14 armed with sharp-edged weapons who refuse to disperse and
 15 move to higher grounds where armoured vehicles and water
 16 cannons cannot access them. Do you see that?
 17 BRIG MKHWANAZI: I see it, Sir.
 18 MR SEMENYA SC: Well the events of that
 19 day did not quite pan out the way the plan was conceived
 20 because there was no stage 4 which dealt with, I mean stage
 21 5 and stage 6, stage 5 was dealing with an intelligence
 22 driven follow-up operations to arrest at places of
 23 residence and stage 6 to cordon and search of hostels, do
 24 you see that?
 25 BRIG MKHWANAZI: I see, yes, I've got it.

Page 2996

1 MR SEMENYA SC: But that as a plan of an
 2 operation whose mission is to disperse, disarm and arrest,
 3 is there anything objectionable about having any of those
 4 stages as were conceived in the plan?
 5 BRIG MKHWANAZI: No, I have no problem on
 6 it, I have no problem, Sir.
 7 MR SEMENYA SC: Chair, I next propose to
 8 deal with the actual operation and may we take this lunch
 9 adjournment at this time?
 10 CHAIRPERSON: Well the Commission will
 11 take the lunch adjournment.
 12 [COMMISSION ADJOURNS COMMISSION RESUMES]
 13 [14:05] CHAIRPERSON: The Commission resumes. Mr
 14 Semenya, you were going to move on to another point, and
 15 Brigadier, it's my duty to remind you that you're still
 16 under oath.
 17 MR SEMENYA SC: Thank you, Chair, members
 18 of the Commission. Brigadier, let us now try and deal with
 19 the actual events, solicit your comment, where you can,
 20 given your experience. In your evidence you told us about
 21 the equipment which is given to POP members. You remember?
 22 BRIG MKHWANAZI: That's correct.
 23 MR SEMENYA SC: Amongst the equipment
 24 we'd have the shield.
 25 BRIG MKHWANAZI: Yes, we have shields.

Page 2997

1 MR SEMENYA SC: What type of environments
 2 and situations would be used for a shield?
 3 BRIG MKHWANAZI: Sir, Counsellor, mostly
 4 the main purpose of utilisation of a shield is at a
 5 situation whereby people will be throwing stones to the
 6 members of the SAPS, and in that way they have to utilise
 7 shields to be able to protect themselves. However, in a
 8 situation where people, they are armed with different types
 9 of weapons such as maybe spears or maybe assegai, that,
 10 pangas, and it brings a problem because a member with a
 11 shield, facing that type of a person, it's difficult to
 12 make use of it, but the main purpose of a shield is to
 13 protect a member to be able to block the stone thrown
 14 towards him, then he can – him or her – can be able to
 15 protect himself or herself.
 16 MR SEMENYA SC: And the use of a tonfa?
 17 BRIG MKHWANAZI: Normally when we use a
 18 tonfa, it's actually, can be into two ways. It's either
 19 you have a tonfa and a shield, or maybe you can have a
 20 tonfa only, but basically a tonfa is there to, actually to
 21 be used by members with a shield and a tonfa at the same
 22 time, and it's more a show of force because if you a tonfa
 23 and a shield, it's whereby you will hit with the shield
 24 just to build some sort of momentum and the participant in
 25 front they can maybe move away without any physical

Page 2998

1 contact. If it happened that maybe the tonfa is being
 2 used, there are some sort of places we make sure that
 3 members must not utilise them. The strikes, that are very,
 4 very important, because a tonfa itself, there is a course
 5 members must undergo and we make sure that they understand
 6 which part of the body of a person must not be struck,
 7 because if you strike a person on this position a person
 8 can easily maybe lose his life. On the knee, private
 9 parts, all those places, we make sure they don't use on
 10 those positions with a tonfa.
 11 MR SEMENYA SC: And how effective would
 12 those be against a spear, panga, machete, as we see
 13 displayed in the crowd on the 16th?
 14 BRIG MKHWANAZI: On the incident we have
 15 on the 16th the shield, the tonfa, it was not going to be a
 16 conducive type of equipment to utilise because if you pick
 17 up the tonfa you must definitely take the shield and be
 18 with a shield and a tonfa, and in that position it was not
 19 going to help because a shield itself, it's not
 20 bulletproof. Really, if a person comes with a panga it can
 21 smash the tonfa, I mean the shield into pieces and get you
 22 and kill that member at the same time. It won't work at
 23 all.
 24 MR SEMENYA SC: And the body armour?
 25 BRIG MKHWANAZI: With the bulletproof

Page 2999

1 it's if you definitely have, what's named the spear, the
 2 assegai, and it can go through, especially it's in a close
 3 range, unless if maybe a person throws it from a distance,
 4 maybe you can maybe survive on that, but if a person is too
 5 close, in a close range, really it can go through. Depends
 6 how sharp, the sharpness of the spear as well.
 7 MR SEMENYA SC: And the fact is we know
 8 one of the members, police member who was killed, had a
 9 body armour on.
 10 BRIG MKHWANAZI: Correct.
 11 MR SEMENYA SC: Now with that knowledge,
 12 is there any criticism that shields are not used on the
 13 16th, in your opinion?
 14 BRIG MKHWANAZI: If my opinion will
 15 definitely be that really looking to the situation and the
 16 information I've got, hence it is limited in that position.
 17 Looking to the type of arms those people, or the gatherers
 18 were there having at their possession, to have a shield, I
 19 mean a tonfa and a shield at that type of a situation was
 20 going to be definitely dangerous for the members. If you
 21 are an operational commander or an overall commander to
 22 actually indicate that they must put it on, it was going to
 23 put them into trouble, really, because they were not going
 24 to be able to, even to defend themselves in that type of
 25 situation.

Page 3000

1 MR SEMENYA SC: With a mission to
2 disperse, encircle, disarm and arrest, what is your
3 opinion, would members have done that with body armour,
4 tonfas and shields? What encumbrance, if any, would those
5 have been for POP members?
6 BRIG MKHWANAZI: Ja, it was going to be
7 very difficult for the members to run with a shield and a
8 tonfa, chasing a person whom they must disarm, and as they
9 are in possession of dangerous weapon or any weapon in
10 their possession, obvious they must disarm somebody and if
11 you run with the shield, chasing that person, it's going to
12 be totally difficult for the member to be able to do
13 whatever he's supposed to do properly.
14 MR SEMENYA SC: Now we know, and that
15 will be the evidence later, that at 1:30 a decision is made
16 to go to stage 3, once the promise for the protesters to
17 disarm was not fulfilled in the morning, at 9 o'clock as
18 was promised.
19 BRIG MKHWANAZI: That's correct. I heard
20 that story.
21 MR SEMENYA SC: Your opinion, Brigadier,
22 come 15:30 Mr Mathunjwa is on the koppie, still trying to
23 persuade the protesters to disarm, and the implementation
24 of stage 3 is deferred. Can you criticise that as a
25 position taken by the members?

Page 3001

1 BRIG MKHWANAZI: Chairperson, there isn't
2 any problem with a chance given to the leaders of the union
3 to engage more with their constituencies, especially in the
4 issue of crowd management. A position of being tolerant is
5 the one that we need to practice. Giving a chance, you
6 know, to get some of the issues settled is not a big
7 problem. I think in that position I won't be, you know, be
8 fair enough to say it was wrong to give a chance to Mr
9 Mathunjwa to talk to the people more to get whatever has
10 been agreed upon. If it was that position, it was just
11 practicing tolerance to give a chance to the situation.
12 MR SEMENYA SC: Towards the hour 4, the
13 police members realised the protesters are not going to
14 disperse; they are not going to disarm, and the decision is
15 then to implement the stage 3.
16 BRIG MKHWANAZI: That's correct.
17 MR SEMENYA SC: Is there anything obvious
18 to criticise about that from the facts I've given you?
19 BRIG MKHWANAZI: From the position where
20 I, I'm not in a position to criticise because I'm not sure
21 as Mr Mathunjwa came out from the group what was the
22 message he gave to the Police as to say people are not
23 going to do it or what is the position, but the decision is
24 made between the overall commander and the operational
25 commander, it will be for them to say how they move from

Page 3002

1 there, depending to the answer they are receiving.
2 MR SEMENYA SC: And the evidence will be
3 that there is anxiety that it is getting late, the
4 operation is massive, and if left longer it may go into the
5 night.
6 BRIG MKHWANAZI: That's correct. Mostly
7 in this type of a situation where you deal with crowds it
8 becomes very, very challenging, especially if you're going
9 to leave to do whatever you're supposed to do until it's in
10 the dark. If it's in the dark it's where you can lose lot
11 of people's lives. You need to act in the time where you
12 can be able to see everybody properly. I think there
13 wasn't anything wrong around that.
14 MR SEMENYA SC: The Commission has also
15 seen from the visuals that the people on the koppie have
16 somewhat two distinct groups. The one is the large
17 dispersed group of people, and the other a tight, neat
18 group with armaments. You saw those visuals?
19 BRIG MKHWANAZI: That's correct.
20 MR SEMENYA SC: When the decision was
21 taken and a command was given to release the barbed wire,
22 it was done in the following fashion, and I want to share
23 with you, that will be the evidence. The plan was to
24 trigger one of them, because that is barbed wire, you would
25 have to allow it to expand to its full length. At times

Page 3003

1 they do not, so you'd have to know before you deploy the
2 second wire, how far the first one has gone, otherwise
3 you'd have breaches if it is not done. Are you familiar
4 with that as a problem relating to barbed wire trailers?
5 BRIG MKHWANAZI: That's correct.
6 Normally with the barbed wire it's not that if you deploy a
7 barbed wire, automatically it gets easily dropped on the
8 ground. You will need members with the hooks to be able to
9 get the back side of the barbed wire on the ground and at
10 the same time assisting with the hooks to get the barbed
11 wire on the ground. Then you'll have it properly deployed,
12 and can be some other issues that can cause as well that
13 the barbed wire can't get, you know, deployed as quick as
14 possible. Maybe can be the terrain as well, that can be a
15 challenge as well, that needs to be looked at as well how
16 are you going to deploy it if you want to deploy it,
17 looking to the purpose of why you deploy it as well. But
18 always there's a challenge that the hooks must be used by
19 the members to deploy, to get it on the ground.
20 MR SEMENYA SC: So to deploy these barbed
21 wires in sequence is not a decision that can be criticised,
22 you say?
23 BRIG MKHWANAZI: From my position, no
24 Sir. I don't have any criticism on that, but it will
25 depend definitely how the terrain looks like as well and

<p style="text-align: right;">Page 3004</p> <p>1 the purpose.</p> <p>2 MR SEMENYA SC: Now the evidence will be,</p> <p>3 and the visuals will also confirm, that immediately the</p> <p>4 first barbed wire was deployed, the group of armed</p> <p>5 protesters approached the police line where the barbed wire</p> <p>6 was being deployed.</p> <p>7 BRIG MKHWANAZI: [Inaudible]</p> <p>8 MR SEMENYA SC: And the evidence will be</p> <p>9 the second barbed wire was also deployed and so was the</p> <p>10 third.</p> <p>11 BRIG MKHWANAZI: Correct, Sir, I got that</p> <p>12 information.</p> <p>13 MR SEMENYA SC: And this tight group of</p> <p>14 protesters were attempting to breach that barbed wire.</p> <p>15 BRIG MKHWANAZI: Correct, I heard that.</p> <p>16 MR SEMENYA SC: Which the evidence will</p> <p>17 describe as the first breach.</p> <p>18 BRIG MKHWANAZI: Correct.</p> <p>19 MR SEMENYA SC: When that was foiled, the</p> <p>20 group went towards the kraal – will be the evidence – to</p> <p>21 try and go through between the Nyala and the kraal before</p> <p>22 Nyala 4, or the fourth barbed wire could be deployed.</p> <p>23 BRIG MKHWANAZI: That's correct, Sir, I</p> <p>24 got that information.</p> <p>25 [14:25] MR SEMENYA SC: What the evidence will be</p>	<p style="text-align: right;">Page 3006</p> <p>1 was foiled.</p> <p>2 BRIG MKHWANAZI: Correct, I see it.</p> <p>3 MR SEMENYA SC: Brigadier, the evidence</p> <p>4 is going to be that when the second breach was occurring</p> <p>5 there was use of teargas.</p> <p>6 BRIG MKHWANAZI: Correct.</p> <p>7 MR SEMENYA SC: There was use of stun</p> <p>8 grenade.</p> <p>9 BRIG MKHWANAZI: Yes.</p> <p>10 MR SEMENYA SC: The teargas did not stop</p> <p>11 the crowd from approaching that police line.</p> <p>12 BRIG MKHWANAZI: I've got that</p> <p>13 information.</p> <p>14 MR SEMENYA SC: If we look at slide 194,</p> <p>15 you'd see behind those arrows that was the positive</p> <p>16 attraction point westwards for anybody to go to, do you see</p> <p>17 that?</p> <p>18 BRIG MKHWANAZI: Sir, if I am correct, is</p> <p>19 the last bold arrow, do you mean that one?</p> <p>20 MR SEMENYA SC: The right side of the</p> <p>21 picture would be the western –</p> <p>22 BRIG MKHWANAZI: That's the north.</p> <p>23 MR SEMENYA SC: I have problems with - as</p> <p>24 well.</p> <p>25 BRIG MKHWANAZI: Okay, thank you, I see</p>
<p style="text-align: right;">Page 3005</p> <p>1 and the visuals will confirm, is that the Nyala then moved</p> <p>2 to close the gap between the other Nyalas and the wall of</p> <p>3 the kraal, when the second bridge was frustrated. What</p> <p>4 follows is, that the group then reorganises, and goes</p> <p>5 around the kraal.</p> <p>6 BRIG MKHWANAZI: Correct, got</p> <p>7 information.</p> <p>8 MR SEMENYA SC: If you go back to slide</p> <p>9 77, but perhaps we will find a much larger slide, let's go</p> <p>10 to Limo, slide 194.</p> <p>11 BRIG MKHWANAZI: 194?</p> <p>12 MR SEMENYA SC: Yes. That is a</p> <p>13 diagrammatic reconstruction of the events which we are now</p> <p>14 discussing, do you see the slide?</p> <p>15 BRIG MKHWANAZI: Yes, correct.</p> <p>16 MR SEMENYA SC: The bold yellow arrow is</p> <p>17 the one indicating as the evidence will say, the first</p> <p>18 breach.</p> <p>19 BRIG MKHWANAZI: Right, I see it.</p> <p>20 MR SEMENYA SC: The yellow arrow that is</p> <p>21 a little pale and yellow, I mean a little pale, indicates</p> <p>22 the gap of the second breach, do you see that?</p> <p>23 BRIG MKHWANAZI: I see it, thanks.</p> <p>24 MR SEMENYA SC: And the red arrow is</p> <p>25 showing the movement of the crowd once the second breach</p>	<p style="text-align: right;">Page 3007</p> <p>1 it now. Ja, I see it, yes.</p> <p>2 MR SEMENYA SC: The evidence will be that</p> <p>3 there was ample opportunity for anybody who wanted to get</p> <p>4 away to do so in that western side of the picture.</p> <p>5 BRIG MKHWANAZI: That's correct, I see</p> <p>6 it. If it was that's the position, if they can be able to</p> <p>7 move.</p> <p>8 MR SEMENYA SC: The evidence will also be</p> <p>9 that the stun grenade did not dissuade this group into</p> <p>10 dispersing westwards.</p> <p>11 BRIG MKHWANAZI: Correct.</p> <p>12 MR SEMENYA SC: And there'll be evidence</p> <p>13 of a use of rubber balls at an attempt to have this group</p> <p>14 of people disperse and move way.</p> <p>15 BRIG MKHWANAZI: Correct.</p> <p>16 MR SEMENYA SC: Now, Brigadier, again the</p> <p>17 evidence will be and the film will confirm that amongst the</p> <p>18 group was somebody with a pistol firing at the police.</p> <p>19 BRIG MKHWANAZI: I am not sure, but with</p> <p>20 the visual I saw one visual that indicate that.</p> <p>21 CHAIRPERSON: I think you may be</p> <p>22 referring to slide 206.</p> <p>23 BRIG MKHWANAZI: 206, just a minute.</p> <p>24 Yes, that's correct, Sir.</p> <p>25 MR SEMENYA SC: Of exhibit L, and we also</p>

<p style="text-align: right;">Page 3008</p> <p>1 see on that same slide members of the POP firing rubber 2 bullets there. 3 BRIG MKHWANAZI: That's correct, Sir. 4 MR SEMENYA SC: Up to so far, Brigadier, 5 is the conduct of the police appropriate, in your opinion? 6 BRIG MKHWANAZI: Up to this position 7 where we are, it is appropriate even though the member 8 standing there is with a shotgun with rubber, with somebody 9 with a live ammunition. I would say the member in Public 10 Order Policing's life is in danger. 11 MR SEMENYA SC: Now, maybe let me take 12 you back, before the tear gas was discharged, the evidence 13 will be that water was used, water canons. 14 BRIG MKHWANAZI: Yes, I got that 15 information, water canon was utilised. 16 MR SEMENYA SC: And that did not dissuade 17 these armed protesters. 18 BRIG MKHWANAZI: That is correct. 19 MR SEMENYA SC: Now, I had invited your 20 opinion that up to this point, is there anything done by 21 the police which is outside the training and whether or not 22 your opinion was their conduct appropriate to that 23 situation? 24 BRIG MKHWANAZI: Up to this position, I 25 pick up that Public Order Policing is still leading the</p>	<p style="text-align: right;">Page 3010</p> <p>1 saw that. 2 MR SEMENYA SC: Later the evidence will 3 be that some of these members had blankets and had multiple 4 trousers and clothing to negative the effects of the 5 rubber. 6 CHAIRPERSON: Mr Semenya, you said "some 7 of the members," I don't think you meant members, I think 8 you meant the strikers or the workers or protesters. 9 MR SEMENYA SC: I am indebted, Chair. 10 Did you follow? 11 BRIG MKHWANAZI: I do follow you, Sir. 12 MR SEMENYA SC: Visuals will also show us 13 the members of the POP retreating as this crowd is coming 14 forward. 15 BRIG MKHWANAZI: Correct, Sir. 16 MR SEMENYA SC: A development follows 17 with the TFT members coming forward. 18 BRIG MKHWANAZI: Correct, Sir. 19 MR SEMENYA SC: They too, when they begin 20 to fire at the crowd, do it even whilst retreating, the 21 visuals will show us that and so will be the evidence. 22 BRIG MKHWANAZI: I saw that, sir. 23 MR SEMENYA SC: And after the unfortunate 24 shooting which occurs for approximately eight seconds, 25 there will be evidence, and video – audio video visuals</p>
<p style="text-align: right;">Page 3009</p> <p>1 whole action, and they are still in the forefront, they are 2 still actually take care of the situation. I think 3 everything's still okay at this moment. 4 MR SEMENYA SC: And if you go to slide 5 201 on exhibit L, the evidence will be that those marks are 6 consistent with marks made by a bullet or bullets. 7 BRIG MKHWANAZI: I see that, Sir. 8 MR SEMENYA SC: And this Nyala around 9 scene 1 next to the kraal there. 10 BRIG MKHWANAZI: Correct, Sir. 11 MR SEMENYA SC: Now, Brigadier, the group 12 then, in that motion we watch in the visuals, moves in 13 between the fence on the left, as well as the perimeter of 14 the kraal to their right, facing the police line. 15 BRIG MKHWANAZI: That is correct, I see 16 that, Sir. 17 MR SEMENYA SC: The evidence will be and 18 the visuals do confirm that there comes a point where the 19 front of the armed protesters charging is facing the police 20 line as I say. 21 BRIG MKHWANAZI: It is correct, Sir. 22 MR SEMENYA SC: So to the members of the 23 POP, discharged, some of them rubber balls at this oncoming 24 threat. 25 BRIG MKHWANAZI: It is correct, Sir, I</p>	<p style="text-align: right;">Page 3011</p> <p>1 that show us and tell us an instruction to cease fire. 2 BRIG MKHWANAZI: That is correct, sir. 3 MR BIZOS SC: Don't mean to interrupt 4 unnecessarily, but the witness said "Correct, sir." Is he 5 saying that the evidence is correct, or that he is hearing 6 my learned friend, Mr Semenya. 7 CHAIRPERSON: Well, my impression was, it 8 was put to him that the videos, that you could see that and 9 hear that on the videos, and it sounded as if he has 10 already been show the videos, so I understood him to be 11 saying, that's what you can see on the videos. But perhaps 12 the point can be clarified. You heard the point raised by 13 Mr Bizos. When you say "correct, Sir," the Sir refers to 14 me, obviously, but the correct, does that mean that it's 15 correct that what counsel is putting to you, or it's 16 correct what you saw, that's what you saw on the video, or 17 what does it mean? 18 BRIG MKHWANAZI: That is correct, Sir, 19 what I am saying is that, I say it again, it's like a song, 20 ja, if I say that's correct, I am referring that I've seen, 21 I agree with what he is saying. 22 MR MMUSI: Mr Chair, I have the same 23 confusion, I don't that answer, the correct Sir, the 24 explanation that is given applies to all the previous 25 questions, for example, there was –</p>

<p style="text-align: right;">Page 3012</p> <p>1 CHAIRPERSON: Can't you elucidate that 2 point in cross-examination? The point is at the moment, is 3 Mr Semenya put to him, that the evidence will be and the 4 videos will show that, and he then says something, and the 5 witness says, "Correct, Sir." He has explained to us now, 6 that he meant that that's what he had seen on the video 7 which he was shown. That is his answer in-chief. If you 8 don't like it, or you think it requires clarification, or 9 amplification or correction, you can deal with it when you 10 have a chance to cross-examine.</p> <p>11 MR MMUSI: Fair enough, Mr Chair.</p> <p>12 MR SEMENYA SC: And later, police 13 responsible for crime scene management, come to the scene 14 and testify before the Commission that the nearest 15 cartridge to body of deceased persons there is 2.6 metres. 16 I think I have the distance correctly, Chair.</p> <p>17 CHAIRPERSON: The question is –</p> <p>18 MR SEMENYA SC: I say that is the 19 evidence that –</p> <p>20 CHAIRPERSON: Yes, I know. What's the 21 question, I don't think there's any objection from anybody, 22 so what question do you base it on those statements?</p> <p>23 MR SEMENYA SC: Now, with, Brigadier, 24 with the totality of this evidence and the visuals I am 25 presenting to you, is there anything that you, in your</p>	<p style="text-align: right;">Page 3014</p> <p>1 depiction of the scenario immediately after scene 1. Do 2 you see that?</p> <p>3 BRIG MKHWANAZI: I see it, Sir.</p> <p>4 MR SEMENYA SC: To the top left corner of 5 that slide we find the kraal.</p> <p>6 BRIG MKHWANAZI: I see it.</p> <p>7 MR SEMENYA SC: We see some of the 8 members of the Police around where scene 1 occurred, close 9 to the kraal there.</p> <p>10 BRIG MKHWANAZI: Do you mean members with 11 vehicles or out of the vehicles?</p> <p>12 MR SEMENYA SC: There are vehicles and 13 there are other members also out of those vehicles. Do you 14 see that?</p> <p>15 BRIG MKHWANAZI: Yes, I could pick it up.</p> <p>16 MR SEMENYA SC: The evidence will be that 17 those are some of the TRT members whose primary purpose on 18 the plan was to see after the planned action of the POP 19 members.</p> <p>20 BRIG MKHWANAZI: I hear that, Sir.</p> <p>21 MR SEMENYA SC: On slide 201, do you see 22 the group of people between koppie 2, which would be on the 23 centre of that slide –</p> <p>24 BRIG MKHWANAZI: 201?</p> <p>25 MR SEMENYA SC: 215.</p>
<p style="text-align: right;">Page 3013</p> <p>1 opinion, would be critical about the conduct of the police 2 there?</p> <p>3 BRIG MKHWANAZI: I see, up to this 4 position with the action by Public Order Policing, I do not 5 have any criticism I can actually come up with at this 6 stage.</p> <p>7 MR SEMENYA SC: I know ultimately the 8 Commission will have to make a finding, the legal finding 9 whether the conduct of the Police was lawful in the 10 circumstances but I have to ask you this, given your 11 experience and training, how would your response be to the 12 evidence that the police would say they have acted in self 13 and private defence, from what you have seen?</p> <p>14 BRIG MKHWANAZI: With what I have seen, 15 with the members that has already intervened, the members 16 of Public Order Policing until the position where there is 17 visual 206, where the firearm is as well identified, I 18 would say definitely members could have acted in a proper 19 way proportionate to the situation.</p> <p>20 [14:45] MR SEMENYA SC: Most regrettable, 16 21 lives are lost in that action. Now the evidence will also 22 be and the visuals will confirm that some of the members of 23 this group, regroup. There is a discernable group of them 24 moving now to koppie 2. Can I invite you to look at 25 exhibit L, slide 215? That will show you the area</p>	<p style="text-align: right;">Page 3015</p> <p>1 CHAIRPERSON: 201 would be damage from 2 sharp-point ammunition.</p> <p>3 MR SEMENYA SC: 215.</p> <p>4 CHAIRPERSON: 215.</p> <p>5 BRIG MKHWANAZI: Yes, I've got it.</p> <p>6 MR SEMENYA SC: You see a mass of people 7 moving in a file around the centre of the slide?</p> <p>8 BRIG MKHWANAZI: I see that.</p> <p>9 MR SEMENYA SC: Now slide 221, if I may 10 invite your attention to that –</p> <p>11 BRIG MKHWANAZI: Got it.</p> <p>12 MR SEMENYA SC: That is also the type of 13 tight group that we are describing, going from one copy to 14 the other. Do you see that?</p> <p>15 BRIG MKHWANAZI: I see it.</p> <p>16 MR SEMENYA SC: Is there anything 17 apparent to you, Brigadier, why these people don't disperse 18 and go sideways and all other places open to them?</p> <p>19 BRIG MKHWANAZI: Chairperson, it would be 20 very difficult for me to establish with the information I'm 21 having before me to say exactly why they are not 22 dispersing, why they are still moving from another koppie 23 to another. I'm not sure why, Sir.</p> <p>24 MR SEMENYA SC: Slide 237 of exhibit L is 25 also an aerial picture of what happened around koppie 3.</p>

Page 3016

1 BRIG MKHWANAZI: Got it, Sir.
 2 MR SEMENYA SC: We see the use of water
 3 there. Do you see that?
 4 BRIG MKHWANAZI: Yes, it's water canon.
 5 MR SEMENYA SC: Would that action be
 6 consistent with the mission?
 7 BRIG MKHWANAZI: As we have checked from
 8 the beginning that when everything started water canon was
 9 utilised, and I can see it now again it's utilised over
 10 that koppie, or over that position. However, for me to say
 11 was it supposed to be utilised there or not, I'm not sure,
 12 but what I can say, maybe it will depend to the overall
 13 commander and the section, I mean the operational commander
 14 to say why they took that decision to have it being
 15 utilised at that position when they were there, because I'm
 16 not having full information to say what happened and why
 17 it, what prompted that the water canon be utilised over
 18 that position as well.
 19 MR SEMENYA SC: Now can I take us back,
 20 Brigadier, because –
 21 MS HEMRAJ SC: Mr Semenya, sorry to
 22 interrupt you. Shouldn't you inform the witness of the
 23 position of the strikers vis-à-vis koppie 3 for him to be
 24 able to comment on that last question?
 25 MR SEMENYA SC: Thank you, Commissioner.

Page 3017

1 The direction in which the water canon is spraying water is
 2 where the group of protesters were hiding. Do you see
 3 that?
 4 BRIG MKHWANAZI: I see that.
 5 MR SEMENYA SC: That will be the
 6 evidence. For amplification, Brigadier, you can look at
 7 slide 235 as well.
 8 BRIG MKHWANAZI: Got it.
 9 MR SEMENYA SC: That would show us where
 10 koppie 3 is. It will show us the western section where
 11 there was the positive attraction. It would show us
 12 vehicles on the northern side. It would show us that
 13 helicopter there. Do you see that?
 14 BRIG MKHWANAZI: I see it, Sir.
 15 MR SEMENYA SC: There is also
 16 clarification from slide 240 and 242. Do you see those?
 17 BRIG MKHWANAZI: I've got it.
 18 MR SEMENYA SC: Now there is one part,
 19 Brigadier, I did not deal with in relation to scene 1. We
 20 know that immediately after the first barbed wire was
 21 deployed, the group approached the police line. There was
 22 no announcement to the crowd to disperse, as the Standing
 23 Order contemplates. The evidence will be that that
 24 movement by the crowd was not anticipated and it frustrated
 25 the opportunity for that to be done.

Page 3018

1 BRIG MKHWANAZI: I hear that, Sir.
 2 MR SEMENYA SC: And in relation to scene
 3 1 it was not anticipated that the crowd would behave as
 4 they did around the kraal, confronting the police line.
 5 BRIG MKHWANAZI: I hear that.
 6 MR SEMENYA SC: Returning to koppie 3,
 7 Brigadier – I'm told maybe to go back to scene 1 again and
 8 ask you this, that with that additional information, would
 9 it alter your opinion about the appropriateness or
 10 otherwise of the Police conduct?
 11 BRIG MKHWANAZI: Just a moment.
 12 MR HANABE: What page is it?
 13 MR SEMENYA SC: No, the additional
 14 information that there was no warning -
 15 BRIG MKHWANAZI: Regarding the warning
 16 itself, Chairperson, it is supposed to be with a provision
 17 of Regulation of Gatherings Act, subparagraph 9 -
 18 subsection 9, sorry. It is important that the warning must
 19 be given with a loudhailer, indicating that the
 20 participants must disperse on a specific time, and it has
 21 to be done twice to allow the bystanders as well to have a
 22 chance to vacate the place before maybe any action as far
 23 as use of force can be actually employed. It can be
 24 actually done by a person with the rank of warrant upward,
 25 to issue that time of instruction or that command, and as

Page 3019

1 you indicated to me now that it was not anticipated, while
 2 they were still deploying the barbed wire the participants
 3 started to breach the barbed wire at the same time, which
 4 actually frustrated the whole procedures that need to be
 5 followed, and my comment into that is to say if definitely
 6 that is the position, I won't be in a position to be able
 7 to criticise either anybody on it, because what is
 8 important is that hence the barbed wire was deployed, then
 9 the warning must be given and people at the same time must
 10 start moving, if they have to move, and a second warning
 11 must be given as well, and can be any action that is taken,
 12 but it will, has to be followed properly. But with the
 13 position whereby I'm seeing from the visual, I'm sure now
 14 that the moment it was deployed is the moment they breach
 15 it as well, then everything was short and they couldn't do
 16 anything in that position.
 17 MR SEMENYA SC: Chair, would this be an
 18 appropriate time?
 19 CHAIRPERSON: We'll take a 10-minute
 20 adjournment now.
 21 [COMMISSION ADJOURNS COMMISSION RESUMES]
 22 [15:12] CHAIRPERSON: The Commission resumes.
 23 Brigadier, you are still under oath. Mr Semenya, you are
 24 still examining your witness in-chief.
 25 MR SEMENYA SC: Thank you, Chair, members

<p style="text-align: right;">Page 3020</p> <p>1 of the Commission. Brigadier, we are going to scene 2 at 2 koppie 3. We have had, or we do have ballistics reports. 3 BRIG MKHWANAZI: I heard about it. 4 MR SEMENYA SC: Unfortunately the reports 5 do not tell us which bullet from which firearm is 6 responsible for the death of any of the 14 people at scene 7 2. What the reports do, is to tell us which cartridge was 8 fired from which firearm, and to which member that firearm 9 would belong and unfortunately we do not have visuals of 10 how those fatalities were occasioned except the say-so of 11 members who would have fired. Would you to be in a 12 position to make a judgment in respect of any of those 13 without the body of information that I am referring to? 14 BRIG MKHWANAZI: Chairperson, it will be 15 very difficult for me as that area is not an area of my 16 expertise. It will be totally not fair of me to comment on 17 that position. 18 MR SEMENYA SC: For those members, who 19 would claim to have fired in self-defence you would have to 20 know the totality of the facts and circumstances before you 21 can comment about the appropriateness or otherwise of their 22 conduct in those circumstances. Is that right, Brigadier? 23 BRIG MKHWANAZI: That is correct, it is 24 the normal situation in an operation, we need to know 25 exactly who have fired, and how many shots that persons has</p>	<p style="text-align: right;">Page 3022</p> <p>1 personally in an operation that involves different units in 2 an operation? 3 BRIG MKHWANAZI: Correct. 4 MR SEMENYA SC: Was it the same one, by 5 way of example, the Kumba Mine one? 6 BRIG MKHWANAZI: No, not exactly, maybe I 7 can take, most of the operations I have been involved is 8 especially with sporting events, where all different types 9 of disciplines normally they get involved, and I was part 10 of those operations as well. 11 MR SEMENYA SC: I remember you were 12 involved in the Ellis Park disaster, and came to testify 13 before us in that Commission, you were a captain at the 14 time, correct? 15 BRIG MKHWANAZI: That is correct, 16 Chairperson. 17 MR SEMENYA SC: That was occasioned by 18 the stampede that claimed many lives in a soccer match, 19 right? 20 BRIG MKHWANAZI: Correct, Chairperson. 21 MR SEMENYA SC: Were any lessons learned 22 by the police in relation to crowd management from that 23 Commission? 24 BRIG MKHWANAZI: That is correct, 25 Chairperson. There were lessons learnt and as a result, we</p>
<p style="text-align: right;">Page 3021</p> <p>1 fired and that's the only part we can be able to handle, 2 but when it goes further to ballistic tests and everything, 3 is a different situation. 4 MR SEMENYA SC: Now Brigadier, your 5 experience, have you been personally in drafting of an 6 operational plan and saw to the implementation of that 7 plan? 8 BRIG MKHWANAZI: That is correct, I have. 9 MR SEMENYA SC: By way of example, which 10 operations would you readily refer us to? 11 BRIG MKHWANAZI: I will refer to the 12 recent operational plan I have in my province recently, we 13 have a situation in Khumani Mine, where we have a strike 14 where the whole situation was put into hold, as far as the 15 production and everything, and I compiled that operational 16 plan to make sure that we act and take the necessary steps 17 into that position. Can I just rectify please? Not 18 Khumani Mine, it's Kumba Mine. 19 MR SEMENYA SC: Where is this mine? 20 BRIG MKHWANAZI: It's at a place called 21 Katu, in Northern Cape. 22 MR SEMENYA SC: When was this? 23 BRIG MKHWANAZI: It was on the 16 of 24 September, if I am correct. 25 MR SEMENYA SC: Were you ever involved</p>	<p style="text-align: right;">Page 3023</p> <p>1 actually take a lot of consideration of the recommendations 2 that were made out of the Commission as well. 3 MR SEMENYA SC: Mr Bizos reminds me that 4 him and I and others were involved in the Goldstone 5 Commission regarding the tragedy that happened there in 6 Vanderbijl Park. 7 MR BIZOS SC: On the same side. 8 MR SEMENYA SC: Well, Mr Bizos says we 9 were on the same side, and I still think we are even in 10 this one. 11 CHAIRPERSON: It's not so funny, I 12 thought we were all here to try and find the truth. 13 MR SEMENYA SC: That's exactly why I 14 said, we are on the same side with Mr Bizos, Chair. Now, 15 Brigadier, I'll later show you documents which constitute 16 the operational plan of days, 10 August, 13 August and 16 17 August of this year, the Marikana operation. Chair, I will 18 deal with this a little later, but you have had an 19 opportunity to look at those Brigadier, correct? 20 BRIG MKHWANAZI: It is correct, Sir. 21 MR SEMENYA SC: In relation to that part 22 of the plan, where it does a risk assessment, we do not see 23 any notation of the crowd attacking the police formations, 24 correct? 25 BRIG MKHWANAZI: It is correct. Chair,</p>

<p style="text-align: right;">Page 3024</p> <p>1 especially, when you go to the possibilities and threats, 2 it's not indicated, Sir. 3 MR SEMENYA SC: Neither is the threat 4 contemplated for the first breach, the second breach nor 5 the third breach. Did you see that? 6 BRIG MKHWANAZI: I noticed that. 7 MR SEMENYA SC: What criticism would you 8 offer as given your training, for those omissions? 9 BRIG MKHWANAZI: I have tried to check on 10 the plan itself Chairperson, just to see why the risk 11 analysis or the threats or possibilities doesn't indicate 12 specifically those incidents that comes out during the day 13 of the operation. I have actually listened to different 14 people, talking about this before, that there was a promise 15 made, especially on the 15th, that there will be a lay down 16 of arms and hence it came to that position. I have that 17 believe that it actually changed the whole thing to say, 18 there will be lay down of arms and as a result won't be 19 anything that will come, if people lay down their arms, 20 that means there won't be any action taking place, but 21 everything changes. As I've said from the beginning, that 22 – 23 CHAIRPERSON: Which plan are you talking 24 about? 25 BRIG MKHWANAZI: I am looking to the one</p>	<p style="text-align: right;">Page 3026</p> <p>1 BRIG MKHWANAZI: 13. 2 CHAIRPERSON: Oh, there's a – I beg your 3 pardon, my attention is drawn to 1698, there is a risk 4 analysis, para 1.3. 5 BRIG MKHWANAZI: I am struggling a little 6 bit because I am having the plan which is converted to plan 7 of 2012 of 8, 10. 8 CHAIRPERSON: This document that we've 9 been given which is exhibit SS3. 10 BRIG MKHWANAZI: Yes, are you on the one 11 that is for the 10th? 12 CHAIRPERSON: There are pages which are – 13 page numbers in the top right-hand corner and 1698 has got 14 a risk analysis 1.3. 15 BRIG MKHWANAZI: Okay. Got it. 16 CHAIRPERSON: Just a list of various 17 things. That's – so there is a risk analysis there as far 18 as it goes. 19 BRIG MKHWANAZI: Okay. 20 CHAIRPERSON: But the document you are 21 referring to, where you say there wasn't a risk analysis, 22 is that a document that we haven't been given yet? 23 BRIG MKHWANAZI: Okay, Chairperson, when 24 I was responding, I was responding to the specific 25 situation that took place on that day, the breaching of the</p>
<p style="text-align: right;">Page 3025</p> <p>1 of the 16th, I don't know if - 2 CHAIRPERSON: What page is, there are 3 page numbers? 4 MR SEMENYA SC: Sir, I am trying not to 5 confuse the Commission. I propose to put before you the 6 actual documents that would put that evidence in context. 7 I am now told that the documents will be ready in a short 8 while. 9 CHAIRPERSON: I see, alright. So we 10 don't have to worry about the page numbers. I am 11 interested to know the plan that you are referring to, 12 which doesn't contain the risk analysis, what's the date of 13 that plan? Because originally, from the documents we've 14 been given, it appears that there was a plan, described as 15 an amended contingency plan, which looks as if it was the 16 13th I think it is of August, it's pages 1697 and 17 following. Now we are going to get some documents later, 18 so I don't want to spend too much time on it. Then there's 19 another one which we've been given, which is page 1723, 20 that's dated the 10th of August. 21 BRIG MKHWANAZI: Yes, I have got that. 22 CHAIRPERSON: That is before things 23 changed as dramatically as they did, but the one dated the 24 13th of August, it's 1697 and following, there is no risk 25 analysis there, is there?</p>	<p style="text-align: right;">Page 3027</p> <p>1 barbed wire, which was not indicated in a risk analysis. 2 However, other points under risk analysis are there in the 3 plan, but only this plan was not indicated. That's the one 4 the counsellor would like me to comment on. 5 CHAIRPERSON: Yes, I see, right. 6 MR SEMENYA SC: As I indicate, Chair, 7 Commissioners, I will make the documents available. 8 Brigadier, after all that happened you went on certain days 9 to Potchefstroom. Is that correct? 10 BRIG MKHWANAZI: It is correct, 11 Chairperson. 12 MR SEMENYA SC: Who was there? 13 BRIG MKHWANAZI: In Potchefstroom we have 14 all senior manager from the side of North West were present 15 at Potchefstroom at Roets. The office of the Minister, 16 Minister Mthethwa, was represented, and as well as, there 17 was one member from the office of the Divisional 18 Operational Response Services, presents there as well, a 19 Colonel, and all tactical commanders were present, we were 20 actually working on the day of the 16th. 21 MR SEMENYA SC: What was your 22 participation in the Potchefstroom meetings? 23 BRIG MKHWANAZI: My participation in that 24 meeting was to look on issues of policies, issues of 25 national instructions as well as the standing orders as to</p>

Page 3028

1 see all presentations that need to be put in place,
2 especially for the Commission, is everything in line with
3 those necessary precision of the South African Police
4 Service. So what was happening, was that after they've
5 prepared everything, they will present, and at that meeting
6 we will be able to make comments if there's something that
7 is not looking alright.

8 MR SEMENYA SC: What did you understand
9 to be the purpose of those meetings?

10 BRIG MKHWANAZI: My understanding there,
11 it was not like to interview some people who were involved
12 in an operation, but it was there to say what information
13 needed to ensure that when the Commission sits, at least we
14 have everything well prepared in a proper way, have the
15 presentation now.

16 [15:32] MR SEMENYA SC: Did you yourself make any
17 comment about the conduct of the Police in relation to the
18 policy Standing Orders and the legal framework?

19 BRIG MKHWANAZI: It wasn't a lot we could
20 manage to pick it up as far as the policies and the
21 national instructions, but it was only on the issues of
22 maybe the terminologies and all that. That's what we
23 actually to make a lot of changes on that, especially with
24 the presentation that need to come at the Commission.

25 MR SEMENYA SC: Chair, those are the

Page 3029

1 questions we have of the witness in chief, but I have made
2 an undertaking to give the documents relating to the 10th,
3 the 13th, as well as the slides of the 16th, that were in
4 the presentation. They are busy with them now, Chair. If
5 you indulge us, I don't know whether cross-examination can
6 start and we can deal with those in re-examination –

7 CHAIRPERSON: Well, let's find out, the
8 evidence leader is going to start cross-examining, so let's
9 ask, let's find out what their attitude is. Mr Budlender,
10 are you going to cross-examine on this? You've heard the
11 suggestion by Mr Semenya that the documents concerned will
12 be available in re-examination, if you're prepared to start
13 cross-examining now. It may well be, I don't know whether
14 – will you still hand the documents in, Mr Semenya, or do
15 you propose asking the witness some questions about them?

16 MR SEMENYA SC: In substance, Chair, they
17 are a regurgitation of what the evidence has been and the –

18 CHAIRPERSON: So if the documents were to
19 be forthcoming, say early tomorrow morning, they could be
20 just handed in. Presumably the witness could just
21 identify, or he doesn't even know that they are what they
22 are, but they could be handed in, later identified. Are
23 you happy to start now, Mr Budlender, on the basis that
24 those documents will be forthcoming early tomorrow morning?

25 MR BUDLENDER: Yes, Chair, I'm happy to

Page 3030

1 start, on the basis of course that if my learned friend
2 asks questions arising out of those documents in re-
3 examination, I may have some questions on those, but
4 subject to that, very happy to proceed.

5 CHAIRPERSON: It doesn't sound as if he's
6 got many questions. He says they're a regurgitation
7 largely of what he's covered already. But anyway, so start
8 now and we'll deal with that extra problems as arise, when
9 and if they do arise.

10 MR BUDLENDER: Thank you, Chair.
11 Brigadier, I think you will agree with me that the
12 operation of the 16th of August 2012 was an operation which
13 went horribly and tragically wrong?

14 BRIG MKHWANAZI: Or if one be asked if
15 definitely it was in that position, maybe I will be a bit
16 unfair to myself because why, I was not part of the
17 operation, unless maybe the counsellor can be in a position
18 to indicate for me what happened then and there, then I
19 would be able to comment at that position, but directly to
20 say yes, it went wrong because of what I managed to pick it
21 up as a person and a person working under SAPS, it's going
22 to be totally unfair for me to say this is what went wrong
23 at that stage.

24 MR BUDLENDER: Brigadier, I think I
25 haven't made myself clear. I'm not asking you at the

Page 3031

1 moment what was done that was wrong. What I'm saying, what
2 I'm putting is a different proposition, that the Police
3 operation went horribly and tragically wrong, as a result
4 of which 34 people were killed and more than 70 people were
5 injured.

6 BRIG MKHWANAZI: Chairperson, looking to
7 the plan as we have gone through it, and looking to the lot
8 of techniques that were put in place of which they never
9 materialised because of the changes that came as the day
10 goes on, we have a situation where there were agreements
11 that there will be a lay-down of firearm, of arms, of which
12 it never happened, which actually after that everything
13 changes and everything goes to a wrong direction. Yes, in
14 that position I will say yes, all what was planned never
15 actually succeeded on that day.

16 MR BUDLENDER: Brigadier, I think I'm
17 still not making myself clear. I'm putting it to you that
18 the outcome of the operation was a tragedy. Do you agree
19 with that?

20 BRIG MKHWANAZI: I will agree,
21 Counsellor, if, as I said from the beginning, if I was part
22 of the operation, I will, I was doing the plan and
23 everything from the beginning to the end, I will be in a
24 position to agree and say yes, it was a tragedy. We know
25 for a fact we lost a lot of life of people, but for me to

<p style="text-align: right;">Page 3032</p> <p>1 sit at this position and say this is how it went wrong on 2 that day, it's going to be totally unfair for me, please. 3 MR BUDLENDER: Brigadier, I don't 4 understand why you're finding it so difficult to answer my 5 question. We know that as a result of this Police 6 operation 34 people were killed and more than 70 people 7 were injured, and I'm putting it to you that the outcome of 8 the operation was a tragedy. That's a simple question 9 which you can say yes or no. 10 MR SEMENYA SC: Chair, can I make the 11 objection that perhaps to call it – 12 CHAIRPERSON: I don't understand the 13 objection. If you and I went to the play "Hamlet" and at 14 the end of the play there are a lot of dead bodies on the 15 stage and only Fortinbras was left standing, we would agree 16 it was a tragedy, would we not? Here there were lots of 17 people lying dead on the scene, lot of people injured. 18 That in ordinary language is a tragedy. I don't understand 19 the witness's problem, but I'll just give you a chance to 20 motivate your objection. 21 MR SEMENYA SC: May I articulate the 22 objection, Chair? I can understand the loss of life being 23 a tragedy if that is put, but to say it is, the Police 24 operation resulted in that seems to allocate the tragedy to 25 the conduct of the Police in a blameworthy sense.</p>	<p style="text-align: right;">Page 3034</p> <p>1 MR BUDLENDER: Would you like to answer 2 the question now, Brigadier? 3 BRIG MKHWANAZI: That's correct, 4 Counsellor, as long as definitely it goes to that position 5 as the chairperson has actually explained, I would say yes, 6 it was a tragedy. 7 MR BUDLENDER: Brigadier, a core purpose 8 of the operation was to preserve life. Is that correct? 9 BRIG MKHWANAZI: That's correct. 10 MR BUDLENDER: The operation failed; 34 11 people died. 12 BRIG MKHWANAZI: In my position, once 13 more it will be difficult to say it failed. Yes, I 14 understand people lost their lives, but to say it failed, I 15 cannot be in a position because I was not part of the 16 operational plan and everything. 17 MR BUDLENDER: Brigadier, did the 18 operation preserve life? 19 BRIG MKHWANAZI: I agree with you. 20 MR BUDLENDER: You agree with me that it 21 failed to preserve life? 22 BRIG MKHWANAZI: Once more again I'm 23 saying if I talk about failing, there are a lot of 24 influences that will bring the operation into that 25 position. For me at my position with the information I'm</p>
<p style="text-align: right;">Page 3033</p> <p>1 CHAIRPERSON: I thought Mr Budlender 2 tried to indicate that it wasn't what he's saying, but 3 let's give him a chance to reformulate his question in a 4 way that does away with your objection. Mr Budlender, do 5 you think you can deal with the matter in a way which won't 6 evoke another objection from Mr Semenya? 7 MR BUDLENDER: Chair, I truly don't 8 understand the objection, but let me try again. I'm not 9 talking – let me be clear. For the moment, Brigadier, I'm 10 not talking about blame. Alright? We will deal with blame 11 in due course. I'm putting to you that a Police operation, 12 the outcome of which is that 34 people are killed and 70 13 people are injured, is an operation which has resulted in a 14 tragedy. Can you not accept that? 15 MR SEMENYA SC: But it doesn't remove my 16 objection, Chair. 17 CHAIRPERSON: I disallow the objection, 18 and I'll give you my reasons. The question was that the 19 outcome of the operation was these deaths and injuries. 20 The operation involved the firing of hundreds of bullets in 21 eight seconds, and a number of bullets thereafter. That 22 was part of the operation. The result of that was, people 23 died. So that, without any question of blame being 24 attached to anybody, so in my opinion the question was a 25 proper one and I disallow the objection.</p>	<p style="text-align: right;">Page 3035</p> <p>1 getting, it's not easy to say it failed. Yes, I have the 2 outcome, I see the outcome. 3 CHAIRPERSON: Let me approach the matter 4 slightly differently. If the operation had been a success 5 all the people on the hill would have been disarmed and 6 dispersed and no-one would have died or been injured. That 7 would have been a successful operation. Is that correct? 8 BRIG MKHWANAZI: It's correct, Sir. 9 CHAIRPERSON: Seen in that light, the 10 operation cannot be described as a complete success, can 11 it? 12 BRIG MKHWANAZI: I will agree to say yes, 13 it couldn't achieve the goal, Sir. However, I'm in a 14 position to say for me to criticise and say it failed from 15 the position whereby I was not involved, it's difficult to 16 say that. 17 CHAIRPERSON: But to some extent it's a 18 semantic point. If an operation isn't a success, it fails 19 to achieve its purpose. The word "fail" doesn't 20 necessarily involve blame. It's just an objective falling 21 short of success. Viewed in that light, would you agree 22 with what's being put? 23 BRIG MKHWANAZI: Okay, Sir. 24 MR BUDLENDER: Brigadier, we're going to 25 be here a very long time if every time I ask you a question</p>

Page 3036

1 you're going to try to defend or try to avoid criticising
 2 the Police. I will come to questions of blame, I promise
 3 you, and I will be interested, I'm sure the Commission will
 4 be interested to hear your answers to that, but at this
 5 stage we are talking about objective outcomes. You
 6 understand my point?
 7 BRIG MKHWANAZI: I'm with you.
 8 MR BUDLENDER: You are very familiar,
 9 Brigadier, with Standing Order 262?
 10 BRIG MKHWANAZI: That's correct, Sir.
 11 MR BUDLENDER: Would you like to get
 12 paragraph 11(3)(a) in front of you?
 13 BRIG MKHWANAZI: Sorry, paragraph again?
 14 MR BUDLENDER: Paragraph 11(3)(a).
 15 BRIG MKHWANAZI: (3)(a).
 16 SPEAKER: Turn to page 8.
 17 BRIG MKHWANAZI: Oh, page 8.
 18 MR BUDLENDER: Do you have that?
 19 BRIG MKHWANAZI: I've got it, the one –
 20 okay, yes, I've got it, under "Execution."
 21 MR BUDLENDER: Yes, and under 11(3)(a)
 22 the last – I'm not going to read the whole of it – the last
 23 phrase, "The success of the actions will be measured by the
 24 results of the operation in terms of cost, damage to
 25 property, injuries to people, and loss of life," and I'm

Page 3037

1 just putting it to you that measured by those standards,
 2 the operation was not a success. You have difficulty with
 3 that proposition? Do you agree, Sir? I didn't hear you.
 4 You say you agree with that?
 5 BRIG MKHWANAZI: I do.
 6 MR BUDLENDER: Thank you. Now you've
 7 been asked a lot of questions by Adv Semanya about whether
 8 you consider that the Police acted reasonably under the
 9 circumstances, whether they can be criticised for the
 10 manner in which they acted. You agree with that?
 11 BRIG MKHWANAZI: Yes, I've been asked.
 12 MR BUDLENDER: And you've expressed an
 13 opinion on that?
 14 BRIG MKHWANAZI: Yes, I did.
 15 MR BUDLENDER: You weren't there on the
 16 day, but you have familiarised yourself with the facts
 17 sufficiently that you feel confident to express an opinion
 18 under oath as to the conduct of the Police?
 19 BRIG MKHWANAZI: Yes, I did agree.
 20 MR BUDLENDER: Now we know that the
 21 operation was not a success. We've now agreed on that.
 22 BRIG MKHWANAZI: I do.
 23 MR BUDLENDER: You're a very experienced
 24 policeman. On the basis of your experience and your
 25 knowledge of the circumstances of that day, on which you've

Page 3038

1 given evidence, what would you have done differently to
 2 avoid that unsuccessful result?
 3 BRIG MKHWANAZI: I think that question
 4 came slightly maybe yesterday, even though it was not the
 5 same as you're putting it, Counsellor. To say now for me
 6 after all what has been done to say I could have done
 7 differently, looking to the situation. I think it will be
 8 totally uncalled for. I would like to say really I won't
 9 be in a position, as I'm sitting here with the limited
 10 information I have, to say I could have done in a different
 11 way to make sure that things go differently. Looking to
 12 the whole information I've received and I've gone through
 13 now while I'm sitting here, to me it indicates that all
 14 procedures were followed by SAPS, especially starting with
 15 negotiations, until at the end where the situation goes
 16 wrong where one can say yes, the plan failed, but all the
 17 procedures were followed. So for me now to say I could
 18 have done differently, it's not going to be actually a
 19 correct approach.
 20 MR BUDLENDER: So if I understand your
 21 evidence correctly, your evidence is the following. You
 22 know enough to say under oath that you find nothing to
 23 criticise in the conduct of the Police, but you do not know
 24 enough to say what could have been done to avoid this
 25 tragedy. Is that correct?

Page 3039

1 [15:52] BRIG MKHWANAZI: It is not correct,
 2 Counsellor, that I cannot criticise. Where I definitely
 3 can be able to criticise, I will criticise. My only
 4 position is that if we talk about an operational plan,
 5 there must be information given. Then I will be in a
 6 position to say I could have done differently. The people
 7 who were involved, they plan according to the information
 8 they got on the day, and for me now to say I could have
 9 done differently and criticise where I'm supposed to
 10 criticise, I'm saying where I can criticise I will be able
 11 to criticise, but where I feel it's not conducive for me to
 12 criticise, I would think it's my right really to say here I
 13 cannot criticise.
 14 MR BUDLENDER: Brigadier, you have not
 15 thus far made any criticism of the Police conduct on that
 16 day or in the planning of that day. Is that correct?
 17 BRIG MKHWANAZI: If I may ask a question,
 18 are you saying will I help, or –
 19 MR BUDLENDER: You've given evidence
 20 under oath.
 21 BRIG MKHWANAZI: Yes.
 22 MR BUDLENDER: In that evidence you have
 23 not made any criticism thus far either of the conduct of
 24 the Police on that day, or on the planning for that day.
 25 BRIG MKHWANAZI: That's correct, up to so

Page 3040

1 far with the question that has been asked from me I
 2 couldn't pick up a position where I can actually criticise,
 3 but I'm saying if I'm asked and there is a position where I
 4 must criticise, I will criticise.

5 MR BUDLENDER: We know that the operation
 6 failed to achieve its objective of preserving human life.

7 BRIG MKHWANAZI: Yes, you have asked this
 8 question. I think, Counsellor, I've answered.

9 MR BUDLENDER: And just to make clear
 10 that we all understand what you're saying, you're saying
 11 that you know enough to give the Police a clean bill of
 12 health, but not enough to say whether there was anything
 13 wrong in what they did?

14 BRIG MKHWANAZI: I'm not clear with the
 15 question, Sir. Can you repeat?

16 MR BUDLENDER: You were asked repeatedly
 17 by my learned friend Mr Semanya, is there anything wrong
 18 with what the Police did here, was there anything wrong
 19 with what the Police did there, was there anything wrong
 20 what the Police did there, and each time you said, no. Is
 21 that correct?

22 BRIG MKHWANAZI: I have indicated,
 23 Counsellor, that where I can be able to criticise I will
 24 criticise. Where I couldn't criticise it means at this
 25 stage I haven't found a position where I can say here I

Page 3041

1 must criticise, and as a result as you are cross-
 2 questioning me now, if definitely I find a position where I
 3 would say Police here never done enough or never done
 4 properly, I will indicate that.

5 MR BUDLENDER: But you don't know enough,
 6 you say, to be able to tell the Commission what could have
 7 been done to avoid this tragic failure?

8 BRIG MKHWANAZI: Counsellor, if I
 9 remember properly your question was, what could have maybe
 10 I have done differently, if maybe I can remember properly.
 11 My answer to that is to say the problem has happened and
 12 for me now to sit here and come up and say I could have
 13 done this way, it's going to be a problem. As I have said,
 14 to compile an operational plan you must have information,
 15 you must be able to say with this information this is what
 16 I want to achieve. Now for me at this stage to come now
 17 and talk about this, what I was supposed to do, or this
 18 what I could have done, for me it will be totally unfair to
 19 do that.

20 MR BUDLENDER: Chair, I'm going on to a
 21 new topic now and I don't know at what time the Commission
 22 proposes to adjourn.

23 CHAIRPERSON: Can I just ask one more
 24 question along that line. You were involved in lecturing
 25 people, training people in Public Order Policing. Is that

Page 3042

1 right?

2 BRIG MKHWANAZI: Correct, Sir.

3 CHAIRPERSON: And I take it whenever
 4 there is a Public Order Policing exercise which doesn't
 5 turn out exactly as it should, you examine that to see what
 6 went wrong so that you can incorporate the lessons to be
 7 learned in your teaching. Is that correct?

8 BRIG MKHWANAZI: That's correct, Chair.

9 CHAIRPERSON: Right, now I would hope
 10 that at some stage in your future training the people you
 11 train will be told about the facts of Marikana and such
 12 lessons as can be learned from Marikana to make sure it
 13 doesn't happen again. Is that a fair justifiable hope in
 14 the circumstances?

15 BRIG MKHWANAZI: It is totally correct,
 16 Sir, and maybe if I can go further to say as this
 17 Commission is sitting as well it can as well assist with
 18 the finding as well to say how can we make it better so
 19 that in future such situation doesn't happen again.

20 CHAIRPERSON: We will certainly try to do
 21 that, but we would require assistance from people such as
 22 you who are experts in the field of Public Order Policing.
 23 We're going to adjourn now, but I'd be glad if you'd think
 24 about it overnight and come and tell us tomorrow morning if
 25 you have any ideas on what can be done - you're laughing,

Page 3043

1 it's not a funny matter; it's not amusing – what, such
 2 ideas as you have which would be relevant in this context.
 3 Mr Budlender, do you want to say something?

4 MR BUDLENDER: Chair, I'm sorry to
 5 interrupt you. There are a couple of further questions
 6 arising, but perhaps I'll deal with them either now or
 7 tomorrow morning, as the Commission prefers.

8 CHAIRPERSON: I think it would be better
 9 if you ask them tomorrow, and you have the advantage of the
 10 answer that he gives to the question I asked him to think
 11 about overnight. The Commission will adjourn until 9:30
 12 tomorrow morning.

13 [INQUIRY ADJOURNED]
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<p>A</p> <p>able 2917:21 2923:1,3 2923:20,22 2924:13 2924:15 2927:5 2932:18 2938:14 2964:7,8 2969:12,16 2970:1,3 2971:24 2972:16 2973:20,24 2976:10,16,19 2984:16 2989:9,12,13 2989:16 2993:23 2997:7,13,14 2999:24 3000:12 3002:12 3003:8 3007:6 3016:24 3019:6 3021:1 3028:6 3030:19 3039:3,10 3040:23 3041:6,15</p> <p>absolutely 2955:24 2980:20</p> <p>accept 2912:25 2955:2 2956:4 2981:20 3033:14</p> <p>acceptable 2970:20</p> <p>accepted 2955:12</p> <p>access 2995:16</p> <p>ACCU 2917:14 2918:10,19,22</p> <p>accurate 2957:15 2989:2,10</p> <p>achieve 2933:23 2942:18 3035:13,19 3040:6 3041:16</p> <p>act 2924:4,20,22,23 2925:3,4,9,12 2926:13 2945:15 2950:2 2952:7 2953:17 2966:25 2992:18 3002:11 3018:17 3021:16</p> <p>acted 3013:12,18 3037:8,10</p> <p>action 2912:18 2965:8 2991:13 3009:1 3013:4,21 3014:18 3016:5 3018:22 3019:11 3024:20</p> <p>actions 3036:23</p> <p>activated 2929:2 2950:20</p> <p>activities 2919:4</p> <p>actual 2977:21 2996:8 2996:19 3025:6</p> <p>add 2923:15 2980:22</p> <p>additional 3018:8,13</p> <p>address 2936:11,15,24 2937:5,6 2974:3 2982:14 2989:17</p> <p>addressed 2967:17 2990:4</p> <p>addresses 2978:1</p> <p>adjourn 2959:5 3041:22 3042:23 3043:11</p> <p>adjourned 2956:17</p>	<p>3043:13</p> <p>adjournment 2913:8 2913:14 2954:20,23 2956:11,20 2963:14 2979:5,9 2996:9,11 3019:20</p> <p>ADJOURNS 2956:12 2996:12 3019:21</p> <p>adjust 2995:5</p> <p>adjusted 2941:19</p> <p>admin 2938:17,24</p> <p>administer 2938:18 2963:21 2991:20 2995:7,8</p> <p>administered 2938:22</p> <p>administration 2938:8 2993:2</p> <p>Adv 3037:7</p> <p>advance 2960:11 2992:19</p> <p>advances 2995:1</p> <p>advantage 3043:9</p> <p>adverse 2949:10</p> <p>advise 2959:10</p> <p>advised 2960:1</p> <p>aerial 3015:25</p> <p>affect 2955:20</p> <p>affidavit 2958:7</p> <p>afford 2962:4</p> <p>afield 2951:6</p> <p>Africa 2945:6,12</p> <p>African 2918:10 2924:17 2936:10 2979:24 3028:3</p> <p>afternoon 2912:9 2958:2,9 2959:6 2979:17</p> <p>age 2920:6</p> <p>aged 2920:7</p> <p>agencies 2946:11</p> <p>aggravate 2968:21,23</p> <p>agree 2942:2 2956:24 3011:21 3030:11 3031:18,20,24 3032:15 3034:19,20 3035:12,21 3037:3,4 3037:10,19</p> <p>agreed 3001:10 3037:21</p> <p>agreement 2913:15 2961:20</p> <p>agreements 3031:10</p> <p>aim 2947:19</p> <p>alert 2956:21</p> <p>allegation 2981:18</p> <p>allegations 2981:10</p> <p>alleged 2962:17</p> <p>allegedly 2983:24</p> <p>allocate 3032:24</p> <p>allow 2957:10 2959:6 2991:5 2993:20 3002:25 3018:21</p> <p>allowed 2961:14 2983:15</p> <p>allowing 2963:15</p> <p>alphabet 2984:25</p>	<p>alright 2913:21 2915:9 2915:12 2948:18 2957:5 2973:6 2988:12 3025:9 3028:7 3033:10</p> <p>alter 3018:9</p> <p>alternative 2956:2 2957:19</p> <p>alternatively 2979:11</p> <p>AMCU 2912:10 2961:5 2980:12 2981:16,19 2982:16</p> <p>AMCU's 2981:13</p> <p>amended 2916:10,13 2917:3,6 3025:15</p> <p>amendment 2917:13 2917:18</p> <p>amendments 2917:3,8</p> <p>amidst 2952:21</p> <p>ammunition 3008:9 3015:2</p> <p>ample 3007:3</p> <p>amplification 3012:9 3017:6</p> <p>amplify 2929:24</p> <p>amusing 3043:1</p> <p>analysed 2935:19</p> <p>analysis 2923:21 2932:17 2934:23,24 2935:2 2971:22 2972:12 3024:11 3025:12,25 3026:4,14 3026:17,21 3027:1,2</p> <p>annexure 2914:17 2915:19 2946:23</p> <p>annexures 2914:21 2915:4,11,22</p> <p>announcement 3017:22</p> <p>answer 2971:19,20 3002:1 3011:23 3012:7 3032:4 3034:1 3041:11 3043:10</p> <p>answered 2929:13 3040:8</p> <p>answers 3036:4</p> <p>anticipate 2958:8 2961:25</p> <p>anticipated 2994:14 3017:24 3018:3 3019:1</p> <p>anxiety 3002:3</p> <p>anybody 2935:15 2948:8 2993:21,25 3006:16 3007:3 3012:21 3019:7 3033:24</p> <p>anyway 2917:25 2959:10 3030:7</p> <p>apparent 2961:21 3015:17</p> <p>apparently 2980:14</p> <p>appearing 2983:6</p> <p>appears 2930:3 2984:2 2984:9 3025:14</p> <p>application 2941:22,23 2942:5</p>	<p>applied 2941:24</p> <p>applies 3011:24</p> <p>apply 2961:4</p> <p>appointed 2924:5 2925:16 2926:16</p> <p>appreciated 2980:15</p> <p>approach 3035:3 3038:19</p> <p>approached 3004:5 3017:21</p> <p>approaching 2995:13 3006:11</p> <p>appropriate 2913:13 2947:8,10 2951:7 2953:14 2954:17 2955:5 2956:18,24 2964:6,9 2971:15 2979:12 2981:10,21 2989:17,24 2994:5 3008:5,7,22 3019:18</p> <p>appropriately 2975:23 2981:22</p> <p>appropriateness 2947:5 2952:4,24 2958:4 2972:3,22 2977:11,16 3018:9 3020:21</p> <p>approximately 3010:24</p> <p>area 2917:15 2918:7,12 2918:14,15 2920:13 2940:5,11,24 2947:8 2947:13 2953:19 2964:15 2969:21 2978:15 2986:18 2987:8,14,21,25 2988:14 2989:14 3013:25 3020:15,15</p> <p>areas 2940:17,20,21,22 2976:11 2987:20</p> <p>arises 2959:17</p> <p>arising 3030:2 3043:6</p> <p>armaments 3002:18</p> <p>armed 2952:1 2953:20 2972:19 2974:19 2975:5 2976:15 2995:14 2997:8 3004:4 3008:17 3009:19</p> <p>armour 2998:24 2999:9 3000:3</p> <p>armoured 2939:10 2969:19 2970:8 2992:22 2995:15</p> <p>arms 2952:10 2991:20 2992:3 2999:17 3024:16,18,19 3031:11</p> <p>arose 2963:2</p> <p>arrangements 2924:24 2952:3 2988:24</p> <p>arrest 2952:3 2988:24 2989:6 2991:22 2992:2 2995:22 2996:2 3000:2</p> <p>arrested 2952:10,16</p> <p>arrests 2972:19 2988:24</p>	<p>arrival 2939:21,22 2954:15</p> <p>arrive 2954:7,16</p> <p>arriving 2983:9</p> <p>arrow 3005:16,20,24 3006:19</p> <p>arrows 3006:15</p> <p>articulate 3032:21</p> <p>ascertain 2962:18</p> <p>aside 2994:1</p> <p>asked 3030:14 3037:7 3037:11 3040:1,3,7 3040:16 3043:10</p> <p>asking 2961:9 3029:15 3030:25</p> <p>asks 2952:1 3030:2</p> <p>aspect 2957:16 2981:25</p> <p>aspects 2914:9 2982:25</p> <p>assegai 2997:9 2999:2</p> <p>assembly 2944:10</p> <p>assented 2956:7</p> <p>assessment 2919:15 2920:1,3 2921:7 2922:5,20 3023:22</p> <p>assist 2921:2,19 2924:14 2926:21 2932:7,25 2933:6 2935:22 2948:13,17 2951:16 2958:15 2972:16 2974:1,9 2975:1 2976:17,19 2977:9 2986:13 2987:4 3042:17</p> <p>assistance 3042:21</p> <p>assisting 2989:11 3003:10</p> <p>associate 2960:4</p> <p>atmosphere 2982:18</p> <p>attached 2992:23 3033:24</p> <p>attack 2964:14 2994:15</p> <p>attacking 3023:23</p> <p>attempt 3007:13</p> <p>attempted 2981:5</p> <p>attempting 3004:14</p> <p>attempts 2979:11</p> <p>attend 2928:12 2951:21 2982:12</p> <p>attended 2979:18</p> <p>attention 3015:10 3026:3</p> <p>attitude 3029:9</p> <p>attorney 2981:5,7,12</p> <p>attorneys 2983:6</p> <p>attraction 2963:23,24 2964:3,10,19,22 2988:7,19 3006:16 3017:11</p> <p>audience 2927:24 2967:16 2979:15</p> <p>audio 3010:25</p> <p>auditorium 2913:5,10 2957:4 2963:11 2982:15 2983:3</p> <p>August 2915:16 2917:2 2917:7 2929:8 2947:2</p>
--	---	--	---	---

2965:10 3023:16,16 3023:17 3025:16,20 3025:24 3030:12 authorised 2923:15 2924:1,3,16,16,19 2925:16 2926:18,21 2927:1 2949:6 authorities 2990:10 automatically 3003:7 avail 2962:25 available 2935:19 2959:3,9 2962:9 2971:22 3027:7 3029:12 avoid 2959:18 3036:1 3038:2,24 3041:7 aware 2912:19,24	belongs 2922:20 bench 2914:5,19 benchmarking 2945:12 benefit 2923:25 2927:23 2946:23 2947:1 best 2958:16 2982:24 2983:16 better 3042:18 3043:8 beyond 2961:18 big 2928:11 2932:14 2936:4,7 2941:12 2942:4 2963:16 3001:6 bigger 2922:13 2933:16 2933:17 2949:3,3,15 2949:15,19 2965:11 2977:19 2991:24,24 bill 3040:11 bit 2912:8 2930:13 2942:8 2949:14 2970:13 2986:20 3026:6 3030:15 Bizos 2959:1,13,18 3011:3,13 3023:3,7,8 3023:14 blame 3033:10,10,23 3035:20 3036:2 blameworthy 3032:25 blankets 3010:3 block 2997:13 blue 2985:17 board 2935:23 bodies 3032:14 body 2998:6,24 2999:9 3000:3 3012:15 3020:13 bold 3005:16 3006:19 bothering 2994:21 breach 3004:14,17 3005:18,22,25 3006:4 3019:3,14 3024:4,4,5 breaches 3003:3 breaching 3026:25 break 2930:13 2991:6 2993:3 bridge 3005:3 brief 2939:25 briefed 2940:8 briefly 2918:24 2924:1 brigadier 2912:3 2913:19 2916:1 2918:6,25 2920:17 2922:3 2923:24 2927:6,24 2929:5,10 2929:19 2930:12 2941:4,15 2942:8 2943:19 2944:24 2946:20 2947:9 2954:4 2956:14 2963:14 2965:8 2972:18 2977:12 2978:11 2984:6 2987:20 2991:10 2994:13 2995:11 2996:15,18 3000:21	3006:3 3007:16 3008:4 3009:11 3012:23 3015:17 3016:20 3017:6,19 3018:7 3019:23 3020:1,22 3021:4 3023:15,19 3027:8 3030:11,24 3031:16 3032:3 3033:9 3034:2 3034:7,17 3035:24 3036:9 3039:14 bring 2928:19 2950:4,4 2960:16 2970:19 2974:25 2976:7 3034:24 bringing 2949:17 brings 2997:10 broad 2933:8 broadcast 2980:23 brought 2948:12 2978:14 Bruinders 2912:23 2913:17 2954:21,24 2955:15 2956:4 2957:17,22 2959:22 2960:3 2961:1 2980:24 2981:2,4 brutal 2942:23 Budlender 2981:24 2982:1,13 3029:9,23 3029:25 3030:10,24 3031:16 3032:3 3033:1,4,7 3034:1,7 3034:10,17,20 3035:24 3036:8,11,14 3036:18,21 3037:6,12 3037:15,20,23 3038:20 3039:14,19 3039:22 3040:5,9,16 3041:5,20 3043:3,4 build 2997:24 bullet 2939:2 3009:6 3020:5 bulletproof 2998:20,25 bullets 2994:10 3008:2 3009:6 3033:20,21 burn 2964:14 burning 2922:11 2935:10 business 2982:5,6 busy 3029:4 bystanders 3018:21	cannons 2995:16 canon 2939:8,9 2991:21 2993:19 3008:15 3016:4,8,17 3017:1 canons 2991:5 2992:20 2993:16 3008:13 can't 2934:2 2942:3,4 2955:13 2976:6 2981:18 3003:13 3012:1 Cape 2951:6 3021:21 captain 3022:13 captured 2933:14 care 2921:14 2949:18 3009:2 carried 2940:17 carry 2963:12 cartridge 3012:15 3020:7 case 2948:18 2950:8 2955:10 2956:9 2957:15,19 2982:8 cause 2954:11 2964:18 2964:25 2968:21 2969:8 2992:3 3003:12 caution 2981:22 cease 3011:1 cell 2937:16 centre 2927:10,12,21 2928:5 2951:1 3014:23 3015:7 certain 2964:4,13,14,14 2969:14 3027:8 certainly 2981:13 3042:20 chair 2912:4 2913:16 2915:13 2928:9,13 2957:8,8 2959:20,21 2960:8,15 2961:18 2963:5,13 2978:24 2979:9,14,16 2980:7 2982:1 2984:5,10 2996:7,17 3010:9 3011:22 3012:11,16 3019:17,25 3023:14 3023:17,25 3027:6 3028:25 3029:4,16,25 3030:10 3032:10,22 3033:7,16 3041:20 3042:8 3043:4 chairman 2945:23 2959:13 challenge 3003:15,18 challenging 3002:8 chance 2913:9 2989:20 3001:2,5,8,11 3012:10 3018:22 3032:19 3033:3 change 2934:2,2 2942:5 2943:18 2949:19 2969:5 2995:3 changed 2918:19,19 2934:1 2945:19,24 2963:20 2984:11	3024:17 3025:23 changes 2949:14 2974:24 3024:21 3028:23 3031:9,13 changing 2921:2 chaos 2969:8 charge 2912:19 2920:18 2926:5 charging 3009:19 chasing 3000:8,11 check 2937:12 2947:13 2948:2 2949:5,7 3024:9 checked 3016:7 checking 2950:9 chief 3029:1 children 2921:8,8,14 2921:25 choose 2940:23 chop 2934:2 circled 2986:5 2990:23 circular 2994:9,11 circumstances 3013:10 3020:20,22 3037:9,25 3042:14 citizens 2942:10 civilian 2965:7 CJOC 2927:7,7,9,21 claim 3020:19 claimed 3022:18 clarification 3012:8 3017:16 clarified 3011:12 clean 3040:11 clear 2917:10 2922:8 2931:19 2938:20 2939:21 2952:7 2955:24 2956:10 2958:10 2964:23 2981:12 2982:11 3030:25 3031:17 3033:9 3040:9,14 clearly 2934:10 2939:3 2940:1 2968:3 client 2963:4 climb 2992:23 clips 2957:9,13 close 2988:6 2995:13 2999:2,5,5 3005:2 3014:8 clothing 3010:4 colleagues 2982:2 colonel 2912:19 2966:14 2967:4,6,7 2979:25 3027:19 colours 2982:15 combat 2918:8 combating 2918:15,17 2920:13 come 2921:2,8,18 2923:10,20 2925:6 2926:8 2929:2 2931:4 2931:17,20 2933:22 2934:19 2935:11,23 2937:11 2939:6,7 2940:4,11 2947:21
<hr/> B <hr/>				
back 2917:16 2935:11 2958:25 2961:5 2962:13 2964:5 2969:16 2971:9 2974:16 2981:9 2991:18 2992:23 3003:9 3005:8 3008:12 3016:19 3018:7 backed 2994:17 background 2923:5 2931:5,6 2935:12 2946:23 ballistic 3021:2 ballistics 3020:2 balls 3007:13 3009:23 bangs 2994:1 barbed 2939:13,14 2984:20 2985:17 3002:21,24 3003:4,6 3003:7,9,10,13,20 3004:4,5,9,14,22 3017:20 3019:2,3,8 3027:1 base 2934:8 3012:22 basically 2997:20 basis 2913:1 2928:4 2929:1 2955:11 2960:19 2962:10 2990:16 3029:23 3030:1 3037:24 bear 2968:5 becoming 2917:16 beg 3026:2 beginning 2917:23 2953:14 3016:8 3024:21 3031:21,23 behalf 2928:14 2959:21 behave 2981:13,22 2983:22 3018:3 behaved 2923:7 behaviour 2947:20 Belgium 2945:5 believe 3024:17 believes 2956:9 belong 2982:16,16 3020:9				
			<hr/> C <hr/>	
		call 2914:7 2937:15 2938:10 2947:21 2952:22 2958:13 3032:11 called 2921:1 2929:23 2930:6 2934:22 2937:4 2940:15 2958:9 2961:19 2962:13 2977:11 2986:6 3021:20 calling 2974:1 cameras 2966:9		

<p>2948:2 2949:22 2950:19 2954:12 2961:5 2968:6,15,16 2968:17 2969:9 2972:14 2976:5,16,19 2977:17 2981:9 2989:3 3000:22 3012:13 3013:5 3024:19 3028:24 3036:2 3041:12,16 3042:24 comes 2933:4 2934:5 2937:6 2938:16 2973:19 2989:15 2998:20 3009:18 3024:12 coming 2926:9 2943:19 2945:15 2968:8 2989:8 3010:13,17 command 2922:14 2923:14 2992:15 2995:9 3002:21 3018:25 commander 2922:16 2922:23,23 2925:18 2926:2,4 2927:13,22 2928:13 2930:10 2937:15,23 2938:1,6 2938:11 2939:25 2965:17,18,21,22 2966:2 2970:2,4 2971:2,6,21 2974:2 2974:12,13 2976:20 2977:3 2994:25 2999:21,21 3001:24 3001:25 3016:13,13 commanders 3027:19 commands 2970:4 comment 2947:4 2952:3,23 2955:11 2957:24 2961:16 2966:15 2970:24 2976:10 2978:6 2979:1 2981:24 2989:1 2996:19 3016:24 3019:5 3020:16,21 3027:4 3028:17 3030:19 commented 2978:10 comments 2941:18 2972:3 2981:3 2984:14 3028:6 commission 2912:3,22 2913:25 2919:21 2929:6,11 2945:16 2947:2 2954:20 2956:12,12,13 2959:21,23 2960:15 2961:6,10 2962:14 2979:20 2980:14,17 2981:4,21 2982:5,10 2982:10,22 2983:5,6 2983:7,9,15 2996:10 2996:12,12,13,18 3002:14 3012:14 3013:8 3019:21,21,22</p>	<p>3020:1 3022:13,23 3023:2,5 3025:5 3028:2,13,24 3036:3 3041:6,21 3042:17 3043:7,11 commissioner 2924:6 2925:5,7,10,13 2928:10,12 2933:18 2933:20 2994:8,8 3016:25 Commissioners 2929:19 3027:7 committee 2928:6,6 communicated 2939:22 communication 2938:13 2966:10 communities 2946:17 community 2942:22 2946:11 compared 2942:5 compile 3041:14 compiled 2930:23 3021:15 complaining 2920:8 complaint 2913:2 complaints 2983:25 complete 3035:10 completely 2974:24 complicate 2917:22 complicated 2942:17 comply 2979:3 conceived 2994:14 2995:19 2996:4 concept 2934:15,17,18 2936:23,24 2937:10 2963:23 2977:11,12 2992:12 concerned 2982:22 2983:2,22 3029:11 conclusion 2912:8 2929:11 2979:17 condition 2920:9 conducive 2998:16 3039:11 conduct 2919:10 2950:17 2952:4,5,24 2958:11 2979:23 2980:15,20 2981:14 2982:12 3008:5,22 3013:1,9 3018:10 3020:22 3028:17 3032:25 3037:18 3038:23 3039:15,23 conducted 2983:1 confident 2980:24 3037:17 confirm 3004:3 3005:1 3007:17 3009:18 3013:22 conflict 2969:10 confront 2952:22 confrontation 2969:17 2978:16 2992:1 2995:13 confrontational 2912:14</p>	<p>confronted 2912:13 2951:25 2982:9 confronting 3018:4 confuse 3025:5 confusion 3011:23 connected 2983:4 consequence 2912:15 2980:3 consider 3037:8 considerable 2936:14 consideration 3023:1 considered 2990:21 consign 2937:15 consistent 2965:17,18 2965:24 2966:10 2993:13 3009:6 3016:6 consolidation 2916:12 2917:5 constituencies 3001:3 constitute 3023:15 constitution 2941:6,14 2941:17 2943:19 2944:24 consulted 2961:23 contact 2937:16 2998:1 contacting 2981:6 contain 3025:12 contained 2949:10 2961:22 contemplated 2967:11 2969:19 3024:4 contemplates 3017:23 contents 2916:5 context 2969:18 3025:6 3043:2 contingency 2915:15 3025:15 contingent 2978:8,8 continue 2963:15 continues 2912:7 continuous 2928:3 2929:1 2938:14 2990:16 continuum 2992:11 2993:14 contrast 2941:7 contribute 2964:12 control 2922:14,16 2938:8,17,24 controlling 2927:19 controls 2927:18 convene 2927:3 convenor 2926:18 2932:5 2948:16 conversant 2923:25 converted 3026:6 conveyed 2983:21 conveys 2980:25 cooperation 2983:2 coordinates 2926:3,7 2927:14 coordinating 2918:13 2950:21 coordination 2925:20 2925:24 2926:1</p>	<p>2938:9,16 coordinator 2926:6 copied 2985:8 copy 2985:1,12 3015:13 cordon 2995:23 core 3034:7 corner 2988:11 3014:4 3026:13 correction 3012:9 correctly 3012:16 3038:21 correctness 2956:7 cost 3036:24 couldn't 3019:15 3035:13 3040:2,24 counsel 2917:20 2939:15 2958:24 2960:9 2961:4,9 2962:4 2982:17,17 2983:6 3011:15 counsellor 2949:13 2952:18 2953:14 2970:12 2973:7 2997:3 3027:4 3030:17 3031:21 3034:4 3038:5 3039:2 3040:8,23 3041:8 country 2983:14 couple 3043:5 course 2915:18 2918:5 2928:7 2936:12 2937:12 2955:19 2956:4 2957:5 2958:6 2958:13,19,22 2959:3 2962:6 2971:9 2992:14 2994:4 2998:4 3030:1 3033:11 Court 2962:23 cover 2915:22 covered 3030:7 co-existence 2980:13 co-existing 2982:4 co-mingle 2981:17 create 2969:21,24 2977:19 created 2970:1,5 creation 2950:14 crime 2918:7,15,16 2920:13,21 2922:22 3012:13 critical 3013:1 criticise 3000:24 3001:18,20 3019:7 3035:14 3038:23 3039:2,3,3,9,10,10,11 3039:12,13 3040:2,4 3040:4,23,24,24 3041:1 criticised 2954:3 2964:21 3003:21 3037:9 criticising 3036:1 criticism 2965:1 2999:12 3003:24 3013:5 3024:7</p>	<p>3039:15,23 cross 2959:6 3041:1 cross-examination 2956:3 2957:18 2958:15 2961:2 2962:15 2963:1 3012:2 3029:5 cross-examine 2958:22 2959:1,16 2960:14,18 2963:6 3012:10 3029:10 cross-examined 2958:23,24 2961:25 cross-examining 3029:8,13 crowd 2919:4,8 2945:7 2945:10,14 2968:22 2968:23,24 2969:2,5 2969:5,10 2970:17 2976:2 2988:20 2990:22 2992:15 2998:13 3001:4 3005:25 3006:11 3010:13,20 3017:22 3017:24 3018:3 3022:22 3023:23 crowds 2993:11 3002:7 crown 2918:16 cutting 2986:10</p> <hr/> <p style="text-align: center;">D</p> <hr/> <p>daily 2962:10 damage 2921:9 2922:11 3015:1 3036:24 danger 2953:22 2991:25 3008:10 dangerous 2953:21 2954:14 2999:20 3000:9 dark 3002:10,10 date 2915:14 2924:11 2927:3 2931:3 2941:23 2963:7 3025:12 dated 2915:16,20 3025:20,23 day 2920:11 2924:13 2926:6,9 2927:17 2931:21,23 2935:6,23 2936:25 2937:3 2938:25 2939:8 2948:25 2952:15 2960:9 2962:4 2972:12 2974:1 2984:13 2995:19 3024:12 3026:25 3027:20 3031:9,15 3032:2 3037:16,25 3039:8,16,16,24,24 days 2974:19 3023:16 3027:8 dead 3032:14,17 deal 2913:8,18 2914:16 2918:5 2919:7 2920:22 2921:16</p>
--	--	--	---	--

2923:23 2924:15 2929:3,15,20,24 2930:3 2932:9,18 2933:6 2935:11,18,19 2935:24 2936:19 2937:2,18,24 2941:5 2945:2 2946:23 2950:5,9 2953:7,16 2955:4 2956:19,22,25 2957:17 2960:23 2961:14 2972:2 2974:14 2975:17,23 2976:8 2979:12 2991:3 2996:8,18 3002:7 3012:9 3017:19 3023:18 3029:6 3030:8 3033:5 3033:10 3043:6	2974:12 2977:2,6 2995:7 3003:25 3016:12 dependent 2971:2 depending 2928:10 2931:14 2933:20 2936:13 2942:13 2953:18,18 2975:3 2991:15 3002:1 depends 2933:16 2953:2 2972:11 2999:5 depiction 3014:1 deploy 2947:12 3003:1 3003:6,16,16,17,19 3003:20 deployed 2951:6 2973:5 2985:25 2986:19 2992:22 3003:11,13 3004:4,6 3004:9,22 3017:21 3019:8,14 deploying 2978:7 3019:2 deployment 2940:5 2947:7 2970:11 2976:11 2978:7,21 2995:11 describe 2915:2 3004:17 described 2919:23 2966:21 3025:14 3035:10 describing 3015:13 designated 2924:22 designation 2925:2,4,8 desist 2980:2 despatched 2951:21 destination 2963:16 detention 2943:14 detentions 2943:4 determined 2951:12 developing 2947:3 development 2944:2 2945:6 3010:16 developments 2957:2 2965:14 devise 2946:14 devising 2966:14 diagrammatic 3005:13 dialogue 2952:12,17 2966:21,25 2967:11 2967:21 2968:4 2978:9 2990:18 didn't 2981:17 3037:3 died 3033:23 3034:11 3035:6 difference 2933:1 2941:12 2942:1 different 2929:7 2939:16,18 2945:20 2948:4,18 2951:10 2960:8 2969:7 2975:5 2997:8 3021:3 3022:1 3022:8 3024:13 3031:2 3038:10	differently 2949:25 3035:4 3038:1,7,11 3038:18 3039:6,9 3041:10 differs 2941:13 difficult 2976:14 2997:11 3000:7,12 3015:20 3020:15 3032:4 3034:13 3035:15 difficulties 2981:15 difficulty 2915:23 2957:24 2958:6,12 2979:16 3037:2 dignity 2944:17 2981:22 directed 2913:12 2988:20 direction 2963:20 2964:6,9,10,13,18 2989:4,8,8 3017:1 3031:13 directly 3030:19 disallow 3033:17,25 disarm 2952:1,2 2954:1 2957:11 2972:18 2988:24 2992:2 2996:2 3000:2,8,10 3000:17,23 3001:14 disarmed 2990:6,23 3035:5 disarming 2978:9 disaster 3022:12 disbursed 2964:5 discernable 3013:23 discharged 3008:12 3009:23 disciplinary 2936:15 discipline 2936:9 disciplines 2938:6 3022:9 discourteous 2961:14 discriminate 2961:5 discuss 2928:20 2929:3 2952:9 discussing 2928:8 3005:14 discussions 2968:4 disorganised 2991:3 dispensation 2941:17 dispersal 2988:19 disperse 2969:16 2972:18 2988:24 2989:4,6,19 2991:13 2991:16,18 2992:16 2992:21 2993:20 2994:3 2995:14 2996:2 3000:2 3001:14 3007:14 3015:17 3017:22 3018:20 dispersed 2990:5,22 3002:17 3035:6 dispersing 3007:10 3015:22 dispersion 2978:10	2991:2 2993:7,10 2994:15 display 2969:11 displayed 2998:13 displaying 2968:9 disregarding 2953:1 disrupted 2935:7 disruption 2922:9,10 2937:3,25,25 dissent 2942:17,22 dissipated 2912:17 dissuade 2978:16 3007:9 3008:16 distance 2999:3 3012:16 distinct 3002:16 disturbance 2979:19 disturbed 2981:18 2989:11 disturbing 2981:11 2982:6 diverting 2964:21 divide 2919:19 division 2916:18,22 Divisional 3027:17 divulged 2947:15 document 2916:1,25 2918:7 2919:14 2984:7 3026:8,20,22 documents 2914:20 2915:3,10,21 3023:15 3025:6,7,13,17 3027:7 3029:2,11,14 3029:18,24 3030:2 doesn't 2912:24 2955:1 2958:7 2968:5 2981:19 2995:2 3024:11 3025:12 3029:21 3030:5 3033:15 3035:19 3042:4,13,19 dogs 2974:8,9 doing 2941:22 2957:18 3031:22 domfa 2968:20 don't 2939:24 2944:10 2955:22 2956:8 2959:1,18 2960:8 2968:15 2969:7 2984:14 2998:9 3003:24 3010:7 3011:3,23 3012:8,21 3015:17 3025:1,10,18 3029:5,13 3032:3,12 3032:18 3033:7 3041:5,21 Dos 2979:8 drafting 3021:5 dramatically 3025:23 drawn 3026:3 driveable 2973:25 driven 2995:22 dropped 3003:7 due 2918:5 3033:11 duly 2914:23 duration 2980:14	duties 2924:2,2 duty 2980:22 2996:15 dying 2975:15 <hr/> E earlier 2913:6 2917:3,5 2946:4 2965:11 2981:5 2990:14 early 2956:21 3029:19 3029:24 easier 2962:5 2991:4 easily 2992:2 2998:8 3003:7 Eastern 2951:6 easy 2973:21 3035:1 EEI 2938:10 effect 2952:3 2972:19 effective 2946:14 2993:2 2998:11 effects 3010:4 eight 3010:24 3033:21 either 2979:10 2981:24 2997:18 3019:7 3039:23 3043:6 elaboration 2960:5 election 2953:24 element 2936:20,22 elements 2934:13 2937:7,11 2938:10 elite 2977:6 Ellis 3022:12 elucidate 3012:1 embark 2919:25 embodied 2941:14 emerged 2960:20 employ 2954:9 employed 2989:19 2990:11 3018:23 employees 2980:10,11 enable 2961:24 2991:3 enabled 2983:16 enabling 2982:5 encircle 3000:2 encircled 2990:5 encourage 2993:3,10 encumbrance 3000:4 endorse 2982:1 enforced 2917:25 enforcement 2942:12 2943:3 engage 2953:11 2966:25 2978:9 2992:20 3001:3 engaged 2945:5 enlighten 2918:25 ensure 2922:15,15 2924:6 2925:16 2926:25 2931:22 2952:9,12 2963:3 2990:17 3028:13 entail 2925:24 2933:16 2934:16 entails 2919:3,5 2992:12 entitled 2916:2 2955:9 entrenched 2944:21
---	--	--	---	---

<p>environment 2936:16 2942:9,25 2943:8,12 2943:15,16 2944:17 2945:2 2946:10 2948:20 2969:22 2986:6</p> <p>environments 2997:1</p> <p>equality 2942:9</p> <p>equipment 2938:25,25 2939:7,8,12 2940:2 2968:19 2996:21,23 2998:16</p> <p>escort 2953:25 2954:15</p> <p>especially 2924:4 2931:17 2932:4 2934:7 2935:4 2939:6 2944:2 2949:2 2968:3 2973:21,25 2976:14 2999:2 3001:3 3002:8 3022:8 3024:1,15 3028:2,23 3038:14</p> <p>essential 2938:10</p> <p>establish 2947:18 2967:5 3015:20</p> <p>etcetera 2985:22</p> <p>event 2928:23,23 2937:19 2951:22</p> <p>events 2919:3 2929:8,9 2929:9 2983:12 2995:18 2996:19 3005:13 3022:8</p> <p>everybody 2944:6 2983:2,10 3002:12</p> <p>everything's 3009:3</p> <p>evoked 3033:6</p> <p>exactly 2940:13 2975:20 3015:21 3020:25 3022:6 3023:13 3042:5</p> <p>examination 2959:7 3030:3</p> <p>examination-in-chief 2984:4</p> <p>examine 2959:14,19 3042:5</p> <p>examining 2959:15 3019:24</p> <p>example 2919:22 2920:5 2921:3 2922:2 2934:5 2939:19 3011:25 3021:9 3022:5</p> <p>excuse 2912:6</p> <p>execution 2937:14,14 2938:5,5,7 3036:20</p> <p>exercise 3042:4</p> <p>exhausted 2976:22</p> <p>exhibit 2914:12 2915:23 2946:6 2966:16 2977:24 2984:7,9 2990:1 3007:25 3009:5 3013:25 3015:24 3026:9</p> <p>exhibits 2915:15</p> <p>expand 3002:25</p>	<p>expect 2930:13,15 2938:12,18 2965:25 2969:3</p> <p>expected 2929:20</p> <p>expects 2982:11</p> <p>experience 2926:13 2927:25 2930:14 2996:20 3013:11 3021:5 3037:24</p> <p>experienced 3037:23</p> <p>expert 2958:3,8,9,19,20 2958:21 2960:16,18 2962:22,24</p> <p>expertise 3020:16</p> <p>experts 2958:12 2959:10 3042:22</p> <p>explain 2924:1</p> <p>explained 3012:5 3034:5</p> <p>explanation 3011:24</p> <p>express 2958:21 3037:17</p> <p>expressed 3037:12</p> <p>expression 2924:25 2944:7 2970:2,3</p> <p>extent 3035:17</p> <p>extra 3030:8</p> <p>extrajudicial 2943:6</p> <p>extreme 2987:12</p> <p>eye 2957:2,4,4</p> <hr/> <p style="text-align: center;">F</p> <hr/> <p>faced 2980:5</p> <p>facilities 2966:9</p> <p>facility 2961:7</p> <p>facing 2997:11 3009:14 3009:19</p> <p>fact 2918:22 2919:14 2930:5 2954:25 2955:2,3,17 2975:7 2977:21 2980:9,12 2981:15,18 2999:7 3031:25</p> <p>factor 2975:6</p> <p>facts 2923:17 3001:18 3020:20 3037:16 3042:11</p> <p>fail 3035:19</p> <p>failed 2976:7 2977:8 2991:15,19 3034:10 3034:13,14,21 3035:1 3035:14 3038:16 3040:6</p> <p>failing 3034:23</p> <p>fails 3035:18</p> <p>failure 3041:7</p> <p>faint 2987:3</p> <p>fair 2918:21 2921:22 3001:8 3012:11 3020:16 3042:13</p> <p>fairly 2912:11,14</p> <p>fairness 2960:22,24</p> <p>faith 2912:25 2981:20</p> <p>fall 2918:14 2919:22</p> <p>falling 2917:15 3035:20</p> <p>familiar 2916:5,6</p>	<p>2961:24 2963:23 2977:12 2992:12 2994:11,12 3003:3 3036:8</p> <p>familiarised 2940:6 3037:16</p> <p>Fanagalo 2967:16</p> <p>far 2951:6 2952:14 2982:3 2984:17 3003:2 3008:4 3018:22 3021:14 3026:17 3028:20 3039:15,23 3040:1</p> <p>fashion 2929:21 2938:23 3002:22</p> <p>fatalities 2949:22 3020:10</p> <p>fault 2953:12 2963:2</p> <p>feasible 2990:10</p> <p>feel 2933:21 2936:11 2971:23 3037:17 3039:11</p> <p>feels 2961:1</p> <p>fell 2918:14</p> <p>felt 2947:11 2953:10</p> <p>fence 3009:13</p> <p>FHA1 2986:17</p> <p>field 3042:22</p> <p>figurines 2986:2</p> <p>file 3015:7</p> <p>film 3007:17</p> <p>find 2914:5 2948:3 2959:11 2966:17 2982:22,24 2983:16 3005:9 3014:5 3023:12 3029:7,9 3038:22 3041:2</p> <p>finding 3013:8,8 3032:4 3042:18</p> <p>finish 2934:4</p> <p>finished 2959:5 2962:12</p> <p>fire 3010:20 3011:1</p> <p>firearm 2939:4 3013:17 3020:5,8,8 3031:11</p> <p>firearms 2939:4 2975:19</p> <p>fired 3020:8,11,19,25 3021:1</p> <p>firing 3007:18 3008:1 3033:20</p> <p>first 2916:11,14 2923:8 2933:9 2934:18 2946:7 2947:12,18,18 2948:1,1 2950:23 2960:2 2966:20 2970:9 2971:20 3003:2 3004:4,17 3005:17 3017:20 3024:4</p> <p>Fischer 2959:20,21 2960:7 2961:11,11 2962:11,19 2963:5</p> <p>five 2930:17 2934:12</p> <p>flanked 2992:21</p>	<p>flip 2919:18</p> <p>foiled 3004:19 3006:1</p> <p>follow 3010:10,11</p> <p>followed 2912:15 2948:11,12 2979:19 2993:6 3019:5,12 3038:14,17</p> <p>following 2931:7,7 2933:19 2934:4,11 2948:25 2994:17 3002:22 3025:17,24 3038:21</p> <p>follows 2955:13 3005:4 3010:16</p> <p>follow-up 2995:22</p> <p>foot 2916:11</p> <p>force 2938:18,19,20,22 2943:11 2944:13 2945:24 2951:5 2952:23 2967:24 2968:6,7,9,11,14,16 2968:18,22 2978:14 2978:15 2988:1 2992:11 2993:7,14 2995:8 2997:22 3018:23</p> <p>forefront 2968:8 3009:1</p> <p>foresee 2971:8</p> <p>forgive 2916:9</p> <p>form 2919:12 2929:14</p> <p>formation 2979:22 2991:6</p> <p>formations 3023:23</p> <p>formed 2912:11 2916:23</p> <p>forms 2939:8</p> <p>formulated 2929:20</p> <p>forthcoming 3029:19 3029:24</p> <p>Fortinbras 3032:15</p> <p>fortunately 2912:15</p> <p>forward 2953:2 2959:25 2962:8 2978:15 2986:18 2987:13,21,25 3010:14,17</p> <p>found 3040:25</p> <p>fourth 2936:20,21 2937:12,13 3004:22</p> <p>framework 2949:4 3028:18</p> <p>free 2980:20</p> <p>freedom 2944:7 2970:2 2970:3</p> <p>freely 2981:17</p> <p>Friday 2959:6</p> <p>friend 2955:16 2957:23 2980:24 2981:20 3011:6 3030:1 3040:17</p> <p>frighten 2959:19</p> <p>front 2914:20 2916:1 2916:11 2925:3 2946:6 2966:16 2968:17 2970:13,18</p>	<p>2970:21 2985:2 2997:25 3009:19 3036:12</p> <p>fruit 2968:5</p> <p>frustrated 3005:3 3017:24 3019:4</p> <p>FTF 2971:17</p> <p>fulfilled 3000:17</p> <p>full 2913:15 3002:25 3016:16</p> <p>fuller 2962:7,22</p> <p>funny 3023:11 3043:1</p> <p>further 2913:23 2935:14 2960:2,4 2962:14 2987:1 2989:18 2993:22 3021:2 3042:16 3043:5</p> <p>future 2915:24 2954:11 3042:10,19</p> <hr/> <p style="text-align: center;">G</p> <hr/> <p>gap 3005:2,22</p> <p>gas 2963:22 3008:12</p> <p>gathered 2912:10</p> <p>gatherers 2999:17</p> <p>gathering 2932:16 2966:24 2967:1 2992:18</p> <p>gatherings 2924:4,23 2924:24 2925:12 2945:15 2950:2 2952:7 3018:17</p> <p>Gauteng 2939:20</p> <p>general 2914:2 2916:2 2919:1 2951:20 2952:4,21 2953:3 2954:5 2957:10,12 2963:15</p> <p>General's 2953:9 2955:4</p> <p>getting 2952:10 2992:20 2993:21 3002:3 3035:1</p> <p>give 2919:21 2923:8,12 2923:17 2931:19 2932:5 2941:23,25 2947:1 2958:3,10 2960:2 2962:3 2970:3 2973:10 2982:9 2983:7 2995:9 3001:8 3001:11 3029:2 3032:19 3033:3,18 3040:11</p> <p>given 2933:18 2942:6 2945:2 2947:11 2955:20,20 2956:1 2960:19 2961:6 2982:8 2984:13 2996:20,21 3001:2,18 3002:21 3011:24 3013:10 3018:19 3019:9,11 3024:8 3025:14,19 3026:9,22 3038:1 3039:5,19</p> <p>gives 3043:10</p>
--	---	--	--	---

<p>giving 2926:24 2933:16 2938:13 2960:12,13 2962:24 2967:16 2989:19,20 2992:15 3001:5 glad 3042:23 go 2926:24 2947:14 2950:1 2951:21 2954:1 2957:10 2960:13 2964:8,8,17 2964:24 2966:17 2969:16 2980:2 2982:6 2989:18 2991:18 2993:21 2999:2,5 3000:16 3002:4 3004:21 3005:8,9 3006:16 3009:4 3015:18 3018:7 3024:1 3038:11 3042:16 goal 3035:13 goes 2917:16 2921:17 2929:1 2931:22 2935:1 2938:2 2973:15 3005:4 3021:2 3026:18 3031:10,13 3034:4 3038:15 Goldstone 2945:17 3023:4 gong 2960:12 good 2912:2,22,25 2913:11 2914:14 2981:20 Google 2978:20 government 2941:1 gradual 2968:14 grateful 2963:5 2983:21 great 2979:15 greater 2913:9 2929:24 green 2913:4 2963:11 2979:15 2980:1 2984:16 2985:17 grenade 2963:22 2993:24 3006:8 3007:9 grenades 2993:7 ground 3003:8,9,11,19 grounds 2995:15 group 2912:12 2916:16 2927:2 2948:25 2949:10,14,16 2951:19 2952:1,2,19 2953:11 2963:20 2964:21 2965:7 2974:17 2979:18,22 2991:4,15,24,24 2993:3 3001:21 3002:17,18 3004:4,13 3004:20 3005:4 3007:9,13,18 3009:11 3013:23,23 3014:22 3015:13 3017:2,21 groups 2942:13 2990:5 2990:23 2991:4,6,22</p>	<p>2992:1 2993:21 2995:13 3002:16 grow 2949:3,25 2950:22 growing 2949:14,19 grows 2949:15 <hr/>H<hr/>Hamlet 3032:13 hamper 2983:9 hamstrung 2958:16 HANABE 2961:8,12 2979:7 3018:12 hand 2914:2,15 2954:7 2954:14 3029:14 handed 3029:20,22 handle 2934:9 2942:3,4 2945:14 2949:16 2991:4 3021:1 handled 2938:20 2965:14 happen 2919:25 2921:1 2922:11,12 2923:2,12 2930:22 2931:2 2936:12 2954:8 2965:25 2971:23 2973:13 2978:21 2988:20 2995:2,5 3042:13,19 happened 2917:14 2923:7,18 2932:8 2938:22 2940:10 2949:10 2952:14,15 2965:5 2972:16 2973:12,13 2979:16 2980:2 2981:11,20 2998:1 3015:25 3016:16 3023:5 3027:8 3030:18 3031:12 3041:11 happening 2918:9 2927:18 2928:21 2950:10 2951:2 2993:23 2995:2 3028:4 happens 2928:1 2931:15 2938:19 2973:9 happily 2912:17 happy 2914:23 2989:2 2989:7 3029:23,25 3030:4 hard 2985:1 harmonious 2982:18 harmony 2983:2 hasn't 2912:24 2929:13 2961:4 haven't 2917:23 2925:3 2954:25,25 2956:1 2958:13 2978:11 3026:22 3030:25 3040:25 head 2945:4 2979:25 headed 2914:21 2990:3 heading 2915:21 2930:25 2937:8</p>	<p>health 3040:12 hear 2913:10,12 2983:25 2987:20 3011:9 3014:20 3018:1,5 3036:4 3037:3 heard 2956:1 2957:13 2960:3 2962:19 2979:21 2982:17,20 2983:18,25 2992:11 3000:19 3004:15 3011:12 3020:3 3029:10 hearing 2949:13 2960:2 2982:3 3011:5 heaven 2992:23 heavily 2952:1 2974:19 2975:4 heed 2952:20 held 2928:3 2987:17 helicopter 3017:13 help 2924:23 2932:9 2935:16 2943:22 2973:10 2998:19 3039:18 helped 2973:14 helpful 2912:21 2960:11 helps 2935:24 HEMRAJ 3016:21 he's 2926:7 2981:9 3000:13 3030:5,7 3033:2 hiding 3017:2 high 2962:23 2990:10 higher 2921:21 2947:14 2995:15 hill 3035:5 historical 2931:6 2932:7 historically 2923:4 history 2923:5 hit 2997:23 hold 3021:14 holding 2986:18 2987:13,21,25 home 2920:8 2964:8,8 2991:18 hooks 3003:8,10,18 hope 2959:8,11 2983:24 3042:9,13 hopefully 2981:10 horizontally 2986:11 horribly 3030:13 3031:3 horses 2973:22,23 hospitals 2973:11 hostels 2995:23 hostile 2948:8 hour 3001:12 human 2944:2,17 2959:21,22 2960:15 2961:6,9 2962:13 3040:6 humane 2946:20 hundreds 3033:20</p>	<p><hr/>I<hr/>ideas 3042:25 3043:2 identification 2940:16 2973:11 identified 2930:25 2936:14 2940:21 2974:3 3013:17 3029:22 identify 2973:20 3029:21 identifying 2915:23 immediate 2980:5 immediately 2945:4,22 2965:5 2994:21 3004:3 3014:1 3017:20 impact 2980:4,21 impacted 2941:17 Impala 2980:9 2981:1 implement 3001:15 implementation 3000:23 3021:6 implemented 2992:7 important 2923:4 2940:20 2983:13 2993:15 2998:4 3018:18 3019:8 importantly 2987:19 impression 3011:7 impudent 2936:6 inaccurate 2955:17 inadequate 2953:10 inaudible 2994:17,22 2994:23 3004:7 incident 2912:8,19,24 2913:1 2982:7 2983:23 2998:14 incidents 2912:23 2943:9 2949:10 2950:21 3024:12 include 2915:14 2931:5 2933:24 2973:11 2992:15 included 2937:22 2943:1,3 includes 2940:1 2945:15 2950:22 2983:3 2991:19 including 2920:22 2979:20 incorporate 3042:6 incorporated 2917:4,8 2937:20 incorrect 2955:22 increased 2951:5 indebted 2929:18 3010:9 indicate 2931:8 2941:21 2942:3 2994:23 2999:22 3007:20 3024:11 3027:6 3030:18 3033:2 3041:4 indicated 2931:12 2954:6 2959:25</p>	<p>2960:25 2972:11 2982:23 2989:6 2995:4 3019:1 3024:2 3027:1,3 3040:22 indicates 3005:21 3038:13 indicating 2978:20 3005:17 3018:19 indication 2917:10 indulge 3029:5 influence 2995:4 influences 3034:24 info 2922:22 2932:25 inform 3016:22 informal 2969:21 2986:6 2988:6 information 2917:21 2917:23 2923:18 2931:14,25 2932:1,3 2932:6,15,16,21,22 2933:1,2,3,4,5 2938:11,13 2947:11 2948:23 2964:16,17 2964:24 2965:20 2966:6 2999:16 3004:12,24 3005:7 3006:13 3008:15 3015:20 3016:16 3018:8,14 3020:13 3028:12 3034:25 3038:10,12 3039:5,7 3041:14,15 informed 2951:19 initial 2947:6 initiative 2990:17 injure 2964:25 2991:24 2993:24 injured 2950:2 2964:25 2965:6 2993:21 3031:5 3032:7,17 3033:13 3035:6 injuries 3033:19 3036:25 injuring 2935:15 inquiry 2981:14,16 2982:25 2983:1 3043:13 inside 2927:20,22 2981:17 installations 2987:21 instance 2937:18 2942:8 2943:1 2976:11 instruct 2960:9 instructed 2957:25 2980:2 instruction 2952:20 2953:2 2960:17,19 2981:5 3011:1 3018:25 instructions 2912:25 2918:2 2919:6 2938:9 2938:16 2980:8 2981:11 3027:25 3028:21 intelligence 2922:22</p>
--	---	--	---	--

2921:11 2922:6 2924:4,9 2926:22 2935:5,8,10,12,14 2936:9 2938:8,24 2941:24 2942:2 2945:6,11 2946:3 2947:25 2948:10 2949:4 2950:4 2951:15 2953:4 2964:3,5,8,11 2965:9 2968:14 2974:16 2975:12 2976:1 2977:16,24 2978:20 2985:1 2989:24,25 2991:12 3006:14 3013:24 3017:6 3023:19 3027:24 looked 2968:3 3003:15 looking 2921:6 2945:12 2971:22 2976:21 2989:13 2999:15,17 3003:17 3024:25 3028:7 3031:6,7 3038:7,11 looks 3003:25 3025:15 lose 2998:8 3002:10 losing 2950:1 loss 3032:22 3036:25 lost 2951:16 2965:6,7 2974:19,23 3013:21 3031:25 3034:14 lot 2912:12 2974:7 2995:4,4 3002:10 3023:1 3028:19,23 3031:7,25 3032:14,17 3034:23 3037:7 lots 2944:1 3032:16 loudhailer 3018:19 luckily 2980:3 lunch 2956:20,21 2996:8,11 lying 3032:17	3022:22 manager 3027:14 manifested 2968:12 manner 2980:20 3037:10 map 2978:20 march 2920:2,6,8,14 2921:7,10,13 2922:7 2923:2,6,6,19,19 2924:12,14,18 2926:19,22 2927:2,5 2928:16 2931:2,2,3,4 2931:6,8,9,22 2932:8 2933:21 2934:8,9,11 2934:20 2935:4,4,8 2935:10,14,16 2936:6 2936:12 2937:4,21 2940:23 2941:13,14 2941:21,24,25 2942:1 2950:12,22 2964:4 2967:1 marched 2931:10 marches 2924:7,11 marching 2935:5,13 2940:25,25 2948:8 Marikana 2947:4 3023:17 3042:11,12 mark 2914:7,23 marks 3009:5,6 marry 2929:8 mass 3015:6 massive 3002:4 master 2937:21 match 3022:18 material 2933:2 2955:8 2961:3 2962:14 materialised 3031:9 Mathunjwa 2981:6 2982:21 3000:22 3001:9,21 matter 2913:4,13 2918:3 2951:21 2954:8,13 2955:8,18 2956:16 2960:24 2962:2 2982:2 2983:1 3033:5 3035:3 3043:1 matters 2917:22 2929:20,25 2941:16 2960:13 2961:25 McIntosh 2967:5 mean 2922:10 2925:19 2930:19,21 2954:5 2955:1 2956:22 2964:1 2977:14 2981:19 2995:20 2998:21 2999:19 3005:21 3006:19 3011:3,14,17 3014:10 3016:13 meaning 2921:12 2938:11 means 2922:12 2924:21 2924:25 2927:9 2928:15,17 2938:10 2950:3,5 2975:2,14 2975:16 2976:7,22	2977:7,7,17,22 2982:25 2989:13 2993:17 2994:4 3024:20 3040:24 meant 3010:7,8 3012:6 measure 2931:14 measured 3036:23 3037:1 measures 2977:20 mechanism 2927:10 medical 2972:23 2973:1,7 meeting 2923:11,16 2924:8 2926:17,20 2927:3,4 2928:3,6,6 2928:10,13,15,17,25 2929:1 2932:2,3,15 2942:2 3027:24 3028:5 meetings 2922:24,25 3027:22 3028:9 member 2923:15 2924:1,4,5,16,19,21 2925:16 2926:18,21 2927:1 2940:12 2949:6 2971:3 2975:8 2997:10,13 2998:22 2999:8 3000:12 3008:7,9 3020:8 3027:17 mention 2912:7 mentioned 2959:11 message 2947:6 2980:23,25 2983:21 3001:22 methods 2946:14 metres 2970:23 2971:14 3012:15 Metro 2928:17 middle 2986:10,22 2987:2 militant 2991:6 millimetre 2975:14 mind 2934:6 mine 2980:9 2983:11 3021:13,18,18,19 3022:5 Minister 3027:15,16 minute 3007:23 mission 2933:12,14,15 2933:16,17,22,25 2934:1,8 2972:18 2988:23 2996:2 3000:1 3016:6 MMUSI 3011:22 3012:11 mobile 2950:24 mobilisation 2950:6 2951:10 mobilise 2939:20 mobilised 2939:19 mode 2912:14 modes 2991:13 module 2930:3 moment 2913:5 2914:6 2917:1 2918:1,17	2948:21 2954:9 2956:8 2957:19 2963:11,12 2975:4 2983:13 3009:3 3012:2 3018:11 3019:14,14 3031:1 3033:9 momentum 2997:24 Monday 2951:18 monitor 2920:13 2950:24 2966:21 monitoring 2951:2 2978:8 morning 2912:2 2913:6 2981:8 3000:17 3029:19,24 3042:24 3043:7,12 motion 3009:12 motivate 3032:20 mounted 2973:17,18,21 2974:1 move 2917:15 2929:7 2938:7 2952:21 2964:13 2979:24 2989:20 2993:23 2995:15 2996:14 2997:25 3001:25 3007:7,14 3019:10 moved 2912:12 2950:25 2965:11 2979:22 3005:1 movement 3005:25 3017:24 moves 3009:12 moving 2951:20 2953:2 2957:6 3013:24 3015:7,22 3019:10 Mpembe 2951:20 2952:4,22 2957:12 2963:15 Mthethwa 3027:16 multi 2936:14 multiple 3010:3 municipality 2921:15 2926:16 mutated 2984:10	3028:3 need 2912:7 2917:7,7 2920:1,11 2926:9 2931:19 2932:17 2935:5,10,11 2936:4 2936:6,25,25 2937:2 2938:14,15,19,25 2939:2,7,9,11 2941:2 2947:12 2949:3,5,7 2949:15 2950:3 2953:4,14 2964:8 2965:3 2968:22 2969:16,24 2970:5 2971:6,9,12 2972:13 2973:20 2974:10,24 2975:16 2976:1 2980:15,18 2990:16 2993:9 2995:5 3001:5 3002:11 3003:8 3019:4 3020:24 3028:1,24 needed 2946:19 3028:13 needs 2939:6 2974:13 2990:11 3003:15 negative 2963:24 2964:10,19,22 2988:7 3010:4 negotiating 2967:10 2969:13 negotiation 2968:4 2978:8 2991:15 negotiations 2967:25 2990:9,13,16,18 2991:16 3038:15 negotiator 2967:10 Neither 3024:3 neural 2970:4 neutral 2969:21,25,25 2970:1 2978:15 never 2967:20 2983:24 3031:8,12,14 3041:3 3041:3 new 2945:2 3041:21 Ngalwana 2913:22,24 2914:10,13,15 2915:4 2915:8,11,25 2916:4 2918:2,4,21,24 2919:9,13,18 2920:17 2921:3,20 2922:2,19 2923:24 2925:18,23 2926:11 2927:6,23 2929:5 2961:21 nicely 2938:21 night 2961:24 3002:5 NIU 2971:17 2976:24 2977:1,7,7 2986:23 2988:5 2995:12 normal 2973:8 3020:24 normally 2919:25 2922:21 2926:1 2931:1,8,9 2932:1 2935:3 2936:2 2937:19 2962:9 2968:3 2969:3,23 2973:19 2976:12	
M					
machete 2998:12 machinery 2942:18 Madlanga 2981:24 magnification 2984:15 main 2918:16,17 2926:5,23 2936:3 2989:7 2990:17 2991:14 2997:4,12 maintained 2980:12 making 2920:23 3031:17 manage 2919:3,5,7 2991:22 2992:2 3028:20 manageable 2991:3,14 managed 2933:22 2943:23 3030:20 management 2918:16 2919:4,8,12 2928:24 2928:25 2945:7,11,14 2970:17 2976:2 3001:4 3012:13					
			N		
			name 2915:16 2961:9 2961:10 named 2999:1 narrow 2929:21 national 2919:6 2933:20 2976:24 2994:8 3027:25 3028:21 nature 2936:20 2966:23 2968:1 near 2982:21 nearby 2973:12 nearest 3012:14 neat 3002:17 necessarily 3035:20 necessary 2928:20 2960:25 2961:1 2979:5,7 3021:16		

2977:5 2997:17 3003:6 3022:9 north 2988:12 3006:22 3027:14 northern 3017:12 3021:21 northwest 2939:19 2940:11 notation 3023:23 note 2914:5 noted 2918:4 notice 2916:12 2917:5 2926:24 2941:25 2942:6 noticed 3024:6 notify 2941:25 notoriety 2941:16 nowadays 2941:24 no-one 3035:6 NU 2994:17 NUM 2912:10,13 2979:21 2980:4,11,12 2981:16 2982:16 number 2914:20 2930:17 2933:11 2937:16 2953:10 2963:10 2980:8 2984:25 3033:21 numbered 2919:13,15 numbers 2985:21 3025:3,10 3026:13 Nyala 3004:21,22 3005:1 3009:8 Nyalas 2939:10 2985:22 2992:21 2994:16 3005:2	2991:10 3011:14 occasioned 3020:10 3022:17 occasions 2975:5 occupant 2920:6 occurred 3014:8 occurring 2947:16 3006:4 occurs 3010:24 odds 2955:3,8 offer 3024:8 office 2926:1,1,16 2932:24 2945:5 3027:15,17 officer 2923:16 2925:20 2926:12,14 2926:15,20,25,25 2940:12 2949:7 2965:6 officers 2912:17 2922:22 2930:10 2932:21,23,25 2953:11 2965:6 official 2934:9 2937:22 2969:11 officially 2969:4 officials 2920:12,23 2936:4 2937:2,19 2970:9 2983:5 oh 2986:20 3026:2 3036:17 okay 2915:6,9 2930:19 2941:19 2944:4 2969:12 2984:21 2986:15 2987:7 2988:2,3 3006:25 3009:3 3026:15,19,23 3035:23 3036:20 old 2920:6,7 omissions 3024:8 onboard 2948:13 once 2914:23 3000:16 3005:25 3034:12,22 oncoming 3009:23 ones 2937:2 OPCs 2930:7 open 2988:15 2989:14 3015:18 operate 2940:13 operating 2940:10 operation 2914:16 2915:7,16 2920:1 2922:17 2925:21 2926:3,6,7,8 2927:17 2927:19,20 2928:4,7 2928:8,11,11,16,22 2933:12,17,24 2934:4 2935:24 2936:1 2938:15,19 2939:19 2940:17 2943:19 2966:22 2973:8,8 2974:4 2975:1 2983:11 2986:19 2992:7 2995:4 2996:2 2996:8 3002:4 3020:24 3022:1,2	3023:17 3024:13 3028:12 3030:12,12 3030:17 3031:3,18,22 3032:6,8,24 3033:11 3033:13,19,20,22 3034:8,10,18,24 3035:4,7,10,18 3036:24 3037:2,21 3040:5 operational 2915:8,10 2915:20 2916:19,23 2922:16,23 2923:14 2925:18,20,23,25 2926:2,4,6 2927:10 2927:12,12,21 2928:5 2930:7,10,14,16,23 2934:15,17,18 2936:23,24 2937:10 2938:11 2939:25 2951:1 2965:17,22 2966:17 2970:2,4 2971:2,5,21 2974:2 2976:20 2977:3 2994:25 2999:21 3001:24 3016:13 3021:6,12,15 3023:16 3027:18 3034:16 3039:4 3041:14 operations 2973:19 2995:22 3021:10 3022:7,10 opinion 2954:4 2955:12 2958:3,11 2971:7 2974:20 2999:13,14 3000:3,21 3008:5,20 3008:22 3013:1 3018:9 3033:24 3037:13,17 opinions 2955:20 opportunity 2913:18 2914:12 2959:16 3007:3 3017:25 3023:19 Ops 2974:12 option 2975:17,17 2990:10,21,24 2991:13 options 2991:21 orange 2986:3 order 2914:2 2916:2,10 2916:13,24 2917:1,24 2918:11,18,20 2919:1 2919:2,7 2920:24 2921:12,17 2922:13 2922:17 2924:20 2925:19 2926:11 2932:23 2936:2 2943:25 2945:3,22 2946:4 2947:14,25 2949:18 2952:6 2960:16 2970:13,14 2970:18,20 2971:9,15 2972:5,15 2976:1,4,4 2976:6,13,21 2977:8 2985:25 2993:17 3008:10,25 3013:4,16	3017:23 3036:9 3041:25 3042:4,22 orders 3027:25 3028:18 ordinarily 2960:17 ordinary 3032:18 organiser 2926:19 2932:5 2948:12,16 2969:12,14 orientate 2985:11 orientation 2931:17,19 2940:8 2984:24 originally 3025:13 outcome 3031:18 3032:7 3033:12,19 3035:2,2 outcomes 3036:5 outside 2939:23 2940:11 2981:17 2992:22 2994:16 3008:21 overall 2922:23 2928:13 2965:17,21 2974:12 2999:21 3001:24 3016:12 overlooked 2957:17 overnight 2914:12 3042:24 3043:11 overview 2966:18 o'clock 3000:17	3031:21 3033:22 3034:15 participant 2997:24 participants 2964:4 2971:11 2989:3 3018:20 3019:2 participate 2927:5 participation 3027:22 3027:23 particular 2923:2 2924:6,12,18 2926:19 2927:3,5,13 2928:13 2928:16,22 2933:25 2934:9,11 2935:7 2936:11,15 2939:1 2940:3,5 2942:14 2943:7 2955:1 2958:5 2989:25 particularly 2943:25 2982:8 parties 2960:8,10,11,14 2962:3 2980:19 partnership 2946:10 parts 2998:9 passed 2976:1 patrol 2936:25 2937:1 peaceful 2931:8,9 2948:7,15 2978:9 2980:13 peacefully 2931:23 2950:24 2982:4 penetration 2929:24 people's 2974:23 3002:11 perimeter 3009:13 period 2983:12 permission 2914:22 person 2924:8,11,13,16 2926:2,2,5,12,16,16 2926:20,21 2927:14 2927:14,20 2928:9 2929:15 2932:5 2937:17,17 2982:9 2997:11 2998:6,7,7 2998:20 2999:3,4 3000:8,11 3018:24 3030:21,21 personal 2974:20 personally 3021:5 3022:1 personnel 2937:17 2966:4 2967:4 2972:23 2973:2,3 persons 2912:9,20 2979:18 2980:14,19 2983:4 2991:5 3012:15 3020:25 persuade 3000:23 phase 2929:7,14 phone 2937:16 phrase 3036:23 physical 2997:25 pick 2923:1 2974:13 2998:16 3008:25 3014:15 3028:20 3030:20 3040:2
O			P	
oath 2913:19 2956:15 2957:6 2996:16 3019:23 3037:18 3038:22 3039:20 object 2955:23 objected 2954:25 objection 2955:13 3012:21 3032:11,13 3032:20,22 3033:4,6 3033:8,16,17,25 objectionable 2970:10 2972:6,9,10,24 2991:10 2996:3 objective 2982:24 3035:20 3036:5 3040:6 observed 2945:24 obtained 2932:2 2942:9 obvious 3000:10 3001:17 obviously 2913:3 2935:4 2937:1 2940:11 2941:1 2955:5 2956:22 2958:15,20 2961:5 2970:5 2971:18 2975:13 2976:12 2981:7,11,21 2988:23			page 2916:11 2919:14 2919:15,18 2930:4,5 2946:7 3018:12 3025:2,3,10,19 3026:13 3036:16,17 pages 3025:16 3026:12 pale 3005:21,21 pan 2995:19 panga 2998:12,20 pangas 2997:10 Pappa 2985:22 para 3026:4 paragraph 2924:21 2930:5,5 2934:18 2937:5 2946:5 2992:18 3036:12,13 3036:14 paragraphs 2930:17 parameters 2961:22 pardon 3026:3 Park 3022:12 3023:6 parking 2912:12 part 2916:16 2919:12 2928:16,19,25 2929:14 2931:17 2932:7 2933:9,10 2936:11 2937:6 2938:10,16 2939:8 2942:16 2944:21 2951:7 2957:7 2973:4 2973:7 2980:18 2998:6 3017:18 3021:1 3022:9 3023:21 3030:16	

<p>picked 2936:8</p> <p>picture 2986:7,10,17 2987:3,13 2988:10,12 2988:15 3006:21 3007:4 3015:25</p> <p>pieces 2998:21</p> <p>Pillay 2914:7,24,25 2915:13,19</p> <p>Pillay's 2914:22</p> <p>pistol 2975:8 3007:18</p> <p>place 2922:7 2924:11 2926:4,23 2927:17 2931:18 2934:21 2938:1 2940:23 2944:1 2948:2,16 2950:11,12,21,24 2957:25 2961:10 2967:2 2969:22 2971:3,4,24 2983:12 2983:24 2989:12,16 2989:22 2994:24 3018:22 3021:20 3024:20 3026:25 3028:1 3031:8</p> <p>placed 2940:12 2971:14</p> <p>places 2973:22,24 2995:22 2998:2,9 3015:18</p> <p>planned 2921:7 2995:3 3014:18 3031:14</p> <p>planning 2928:14 2948:5 2965:9 3039:16,24</p> <p>plans 2930:7</p> <p>Platinum 2980:9</p> <p>platoon 2930:7</p> <p>play 2932:14 2936:4,7 3032:13,14</p> <p>player 2936:3</p> <p>players 2923:1 2928:15 2928:18,21 2948:4 2949:6 2966:3</p> <p>please 2943:22 3021:17 3032:2</p> <p>pleased 2963:8 2980:23</p> <p>plenary 2922:25</p> <p>point 2940:20,21,24 2948:19 2953:11,15 2954:21 2955:14,15 2955:21 2960:5,6,8 2963:2 2964:3,10,19 2964:22 2987:25 2988:7,12,19 2996:14 3006:16 3008:20 3009:18 3011:12,12 3012:2,2 3035:18 3036:6</p> <p>points 2960:14 2961:15 2963:9 3027:2</p> <p>policeman 3037:24</p> <p>policies 2919:6 3027:24 3028:20</p> <p>policing 2916:18,22 2918:11,18,20 2920:12,21,25</p>	<p>2921:12,17 2922:13 2922:17 2932:24 2936:3 2937:1 2941:6 2942:8 2943:25 2945:4,22 2947:13 2948:22 2949:17,18 2960:16 2970:13,14 2970:18,21 2971:9,15 2976:2,4,4,6,13,21 2977:8 2993:17 3008:25 3013:4,16 3041:25 3042:4,22</p> <p>Policing's 3008:10</p> <p>policy 3028:18</p> <p>poll 2921:14</p> <p>POP 2917:16 2918:22 2919:9 2958:2 2970:9 2970:23 2992:21 2994:15,17 2996:21 3000:5 3008:1 3009:23 3010:13 3014:18</p> <p>POPs 2978:7</p> <p>portion 2970:21 2988:4</p> <p>posed 2929:12</p> <p>positioned 2970:24 2979:2 2986:23</p> <p>positions 2998:10</p> <p>positive 2963:23 2964:2 2988:19 3006:15 3017:11</p> <p>possession 2968:7 2971:10,12 2976:23 2999:18 3000:9,10</p> <p>possibilities 2934:19,21 2936:23 3024:1,11</p> <p>possibility 2921:24 2922:8 2935:6</p> <p>possible 2923:1,13 2928:19 2932:17,18 2950:19,23 2953:6 2960:20 2963:3 2968:6 2971:25 2973:10,14,24 2979:3 2988:25 2995:6 3003:14</p> <p>possibly 2913:9</p> <p>post 2941:6</p> <p>posted 2940:22</p> <p>postpone 2924:14</p> <p>Potchefstroom 3027:9 3027:13,15,22</p> <p>power 2987:24</p> <p>PowerPoint 2984:12</p> <p>practical 2919:22</p> <p>practice 3001:5</p> <p>practicing 3001:11</p> <p>practise 2952:8</p> <p>pre 2941:6,17 2942:8 2942:23</p> <p>precision 3028:3</p> <p>preferable 2990:22,24</p> <p>prefers 3043:7</p> <p>prejudice 2962:18,18 2963:4</p> <p>prejudices 2962:16</p>	<p>prepare 2962:3</p> <p>prepared 3028:5,14 3029:12</p> <p>presence 2969:4,20 2973:7,16 2974:4,15</p> <p>present 2913:10 2936:10 2955:21 2980:19 2982:4 2983:19,19 3027:14 3027:19 3028:5</p> <p>presentation 2957:13 2984:13 3028:15,24 3029:4</p> <p>presentations 3028:1</p> <p>presenting 3012:25</p> <p>presents 3027:18</p> <p>preserve 3034:8,18,21</p> <p>preserving 3040:6</p> <p>pressure 2983:8</p> <p>presumably 2962:7,12 3029:20</p> <p>pretty 2987:3</p> <p>prevention 2920:21</p> <p>previous 2923:6,18 2952:15 3011:24</p> <p>previously 2931:6 2941:22 2980:18</p> <p>primarily 2970:19</p> <p>primary 2976:18 3014:17</p> <p>privacy 2944:21</p> <p>private 2998:8 3013:13</p> <p>probably 2956:17</p> <p>problem 2917:10 2954:10,11 2959:11 2964:12,18,25 2967:20 2971:8,24 2973:23 2974:15 2977:18,19,19,21 2979:12 2989:21 2995:6 2996:5,6 2997:10 3001:2,7 3003:4 3032:19 3041:11,13</p> <p>problems 2963:7 3006:23 3030:8</p> <p>procedural 2960:21,24 2962:16</p> <p>procedures 2948:11,11 3019:4 3038:14,17</p> <p>proceed 2914:3 2952:10,16 2956:14 2984:3 3030:4</p> <p>proceedings 2912:1,9 2979:17</p> <p>proceeds 2957:21</p> <p>process 2960:10</p> <p>produced 2962:10</p> <p>production 3021:15</p> <p>profile 2948:6</p> <p>programme 2945:10</p> <p>programmes 2944:1,2</p> <p>promise 2954:13 3000:16 3024:14 3036:2</p> <p>promised 2954:1</p>	<p>3000:18</p> <p>promote 2946:14</p> <p>prompt 2979:23</p> <p>prompted 2930:22 2995:8 3016:17</p> <p>proofs 2939:2</p> <p>proper 2923:21 2950:16 2951:22 2966:22 2967:13,25 2993:14 3013:18 3028:14 3033:25</p> <p>properly 2932:19 2948:17 2983:15 3000:13 3002:12 3003:11 3019:12 3041:4,9,10</p> <p>property 2921:9 2922:11 3036:25</p> <p>proportionality 2953:5</p> <p>proportionate 2953:15 2994:18 3013:19</p> <p>propose 2996:7 3025:5 3029:15</p> <p>proposes 2955:10 3041:22</p> <p>proposition 2955:3 2956:2 3031:2 3037:3</p> <p>propositions 2955:1</p> <p>protect 2941:3 2997:7 2997:13,15</p> <p>protected 2946:17 2987:21</p> <p>Protection 2944:20</p> <p>protest 2943:7</p> <p>protesters 2951:19 2972:19 3000:16,23 3001:13 3004:5,14 3008:17 3009:19 3010:8 3017:2</p> <p>protestors 2952:19 2953:19,25 2957:10 2963:15 2966:21 2967:2 2990:4 2992:20,24 2994:15</p> <p>province 2917:16 2924:6 2950:6 2951:12 3021:12</p> <p>provinces 2951:7,10,16</p> <p>provincial 2917:17 2924:5 2925:5,9,12 2928:10,12 2933:18</p> <p>provision 2992:18 3018:16</p> <p>prudent 2963:21</p> <p>public 2918:11,18,20 2920:24 2921:11,17 2922:13,16 2932:23 2936:2 2943:25 2945:3,22 2946:14 2949:18 2952:6 2960:16 2970:13,14 2970:18,20 2971:9,15 2972:5,15 2976:1,3,4 2976:6,13,21 2977:7 2985:24 2993:17 3008:9,25 3013:4,16</p>	<p>3041:25 3042:4,22</p> <p>pulled 2942:22</p> <p>purified 2933:2,4,5</p> <p>purpose 2919:1 2920:23 2957:1 2961:20 2969:1,8 2988:24 2989:5 2991:14 2992:5 2997:4,12 3003:17 3004:1 3014:17 3028:9 3034:7 3035:19</p> <p>pushed 2964:5</p> <p>put 2917:21 2936:18,25 2937:1 2938:20 2939:2,9,11 2953:22 2955:1,3,9,21 2956:8 2961:3,4 2962:8,14 2966:16 2969:22 2975:17 2976:2 2977:20 2979:6 2983:8 2991:25 2999:22,23 3011:8 3012:3 3021:14 3025:5,6 3028:1 3031:8 3032:23 3035:22</p> <p>puts 2983:4</p> <p>putting 2955:16,24 2957:19 3011:15 3031:2,17 3032:7 3033:11 3037:1 3038:5</p> <p>P1 2985:21</p> <hr/> <p style="text-align: center;">Q</p> <hr/> <p>quarter 2995:13</p> <p>question 2916:9 2929:12,14 3012:17 3012:21,22 3016:24 3032:5,8 3033:3,18 3033:23,24 3034:2 3035:25 3038:3 3039:17 3040:1,8,15 3041:9,24 3043:10</p> <p>questioning 3041:2</p> <p>questions 2913:23 2932:4 3011:25 3029:1,15 3030:2,3,6 3036:2 3037:7 3043:5</p> <p>quick 2968:5 2971:25 2973:10,14,24 2995:6 3003:13</p> <p>quite 2942:23 2981:18 2987:3 2995:19</p> <hr/> <p style="text-align: center;">R</p> <hr/> <p>racial 2942:13</p> <p>radios 2966:9</p> <p>railway 2951:20 2953:20</p> <p>raise 2913:14 2956:16 2957:24</p> <p>raised 2954:21 2960:6 2961:15 2963:10 3011:12</p>
--	---	--	---	---

<p>raises 2960:21 ran 2912:17 range 2999:3,5 rank 2967:5 3018:24 raw 2933:2 reach 2973:22,23,24 2989:12,13,16 react 2971:25 reacted 2965:8 read 3036:22 readily 3021:10 ready 2959:13 2963:1 2979:25 2990:2 3025:7 real 2933:3 2971:7 realised 3001:13 really 2920:14 2950:3 2953:2 2964:24 2967:19 2975:2 2977:6 2979:16 2995:7 2998:20 2999:5,15,23 3038:8 3039:12 reason 2917:4 2940:24 2961:23 reasonableness 2958:4 2958:11 reasonably 3037:8 reasons 2969:14 3033:18 reassuring 2946:16 recall 2914:1 2929:11 2929:21 2930:6 receive 2932:14 received 2947:6 2971:4 3038:12 receiving 3002:1 recite 2941:16 recommendation 2945:16 recommendations 3023:1 reconstruction 3005:13 record 2932:6 2956:10 2957:9,25 2961:10 recorders 2961:8 rectify 3021:17 red 2963:10 2986:3,5 3005:24 refer 2917:24 3021:10 3021:11 referred 2917:5 2925:8 referring 2986:25 2990:14,19 3007:22 3011:20 3020:13 3025:11 3026:21 refers 3011:13 reformulate 3033:3 refuse 2995:14 regard 2922:18 2926:3 regarding 2920:4 2922:6 2924:7 2927:15,20 2940:8 2945:14 2966:15 3018:15 3023:5 regards 2918:25</p>	<p>2922:20 regrettable 2960:21 3013:20 Regrettably 2965:4 regroup 3013:23 regulated 2920:24 regulates 2919:9,12 Regulation 2924:23 2925:11 3018:17 regurgitation 3029:17 3030:6 reinforcement 2949:1 Reis 2979:8 relates 2960:8 relating 2924:24 3003:4 3029:2 relation 2927:16 2941:18 2952:3 2969:2 2970:25 2972:19 2990:20 3017:19 3018:2 3022:22 3023:21 3028:17 release 3002:21 relevance 2932:11 relevant 2955:9 2975:1 3043:2 rely 2923:11 remain 2934:1 remarks 2982:14 remember 2919:5 2963:17 2969:13 2996:21 3022:11 3041:9,10 remind 2956:15 2996:15 reminded 2957:5 reminds 3023:3 remove 2962:19 3033:15 reorganises 3005:4 repeat 2980:17 3040:15 repeatedly 3040:16 reported 2924:7 2949:23 reports 3020:2,4,7 represent 2924:17 2981:25 2984:19 representatives 2982:19 represented 3027:16 representing 2928:24 repressed 2942:17 repressing 2942:21 request 2953:1 2978:25 2978:25 2979:4 2980:17 require 2984:15 3042:21 required 2912:16,18 requires 3012:8 reserve 2921:12,12,18 2922:1 2959:6 2961:2 2963:1,6 2978:14 2986:19 reserves 2987:17</p>	<p>residence 2989:12 2995:23 resolution 2978:10 resolve 2963:7 resort 2994:2 resources 2923:23 2935:19,22,25 2960:9 respect 2912:21 2958:17 2980:10 3020:12 respectively 2980:11 respond 2960:2 2969:6 2994:18 responded 2965:7 responder 2948:1,1 responding 2994:22 3026:24,24 response 2916:19,23 2951:7,22,24 2958:4 2958:14 2968:15 2970:24 2972:8 2987:8 3013:11 3027:18 responsible 2923:16 2925:20 2926:12,14 2926:15,20,20,25,25 2949:7 2995:12 3012:13 3020:6 restructured 2918:11 restructuring 2918:10 result 3022:25 3024:18 3031:3 3032:5 3033:22 3038:2 3041:1 resulted 3032:24 3033:13 results 3036:24 resumes 2912:3 2956:12,13 2996:12 2996:13 3019:21,22 retain 2975:18 retreating 3010:13,20 Returning 3018:6 reverse 2988:1 revert 2941:5 2954:21 re-examination 3029:6 3029:12 rifle 2970:20 2975:7,13 rifles 2976:15 right 2942:18 2943:4 2943:20 2944:7,9,14 2944:18,24 2945:20 2946:20 2948:14 2960:1 2962:25 2963:6 2986:16 2988:11 3005:19 3006:20 3009:14 3020:22 3022:19 3027:5 3039:12 3042:1,9 rights 2944:2,21 2959:21,23 2960:15 2961:6,9 2962:13 right-hand 3026:13 risk 2932:17 2974:20 2975:9,15 3023:22</p>	<p>3024:10 3025:12,24 3026:3,14,17,21 3027:1,2 road 2920:23 2936:5,5 2937:3 2986:9,11,14 2986:17,23 2987:1,13 roads 2973:25 Roets 3027:15 role 2922:25 2928:15 2928:18,21 2932:14 2932:20 2936:3,4,7 2948:4 2949:6 2966:2 roles 2939:17 rounds 2971:11 2993:10 2994:10 rubber 2971:11 2993:10 2994:2,10,10 3007:13 3008:1,8 3009:23 3010:5 Rules 2962:23 run 3000:7,11 R5 2975:7 R5s 2976:18</p> <hr/> <p style="text-align: center;">S</p> <hr/> <p>sacrosanct 2944:23 safe 2992:23 safety 2946:14 SAPS 2912:16 2937:22 2958:5,12,14 2967:19 2968:25 2978:7 2990:17 2997:6 3030:21 3038:14 satisfaction 2982:3 satisfactory 2959:12 2960:1 2980:13,25 saw 2953:3 2972:21 3002:18 3007:20 3010:1,22 3011:16,16 3021:6 saying 2912:10 2913:11 2931:20 2942:21 2955:7 2957:10 2962:22 2969:13 3011:5,11,19,21 3031:1 3033:2 3034:23 3039:10,18 3040:3,10,10 says 2915:22 2916:12 2917:4 2924:11 2926:12 2933:23 2934:3 2937:5 2952:2 2955:25 2960:4 2971:14 2978:6,13 2984:8 3012:4,5 3023:8 3030:6 say-so 3020:10 scenario 3014:1 scene 2912:17 2948:1,2 2979:24 3009:9 3012:13,13 3014:1,8 3017:19 3018:2,7 3020:1,6 3032:17 school 2921:7,8,11,14 2921:24 Scott 2966:14</p>	<p>screen 2979:1 2984:3,6 search 2995:23 second 2994:16 3003:2 3004:9 3005:3,22,25 3006:4 3019:10 3024:4 seconds 3010:24 3033:21 section 2918:7 2924:22 2925:4,9 2926:13 2944:11 3016:13 3017:10 seeing 3019:13 seek 2978:9 seen 2914:19 2957:16 2958:13 3002:15 3011:20 3012:6 3013:13,14 3035:9 self 3013:12 self-defence 3020:19 semantic 3035:18 Semenya's 2959:15 send 2948:22 2959:8 senior 2930:10 2940:12 2940:12 3027:14 sense 2941:12 3032:25 sensible 2913:7 2956:22 sensitive 2940:17 2987:25 sentences 2943:1 September 3021:24 sequence 3003:21 serious 2913:4 2980:3 serves 2990:8 service 2918:11 2922:6 2922:6 2924:17,21 2936:10 2940:25 2945:25 2946:2,13,20 2963:3 2979:24 3028:4 services 2916:19,23 3027:18 set 2939:21 settled 3001:6 settlement 2963:21 2969:21 2986:6 2988:6 share 3002:22 sharp 2999:6 sharpness 2999:6 sharp-edged 2995:14 sharp-point 3015:2 sheet 2915:22 shield 2968:20 2996:24 2997:2,4,11,12,19,21 2997:23,23 2998:15 2998:17,18,19,21 2999:18,19 3000:7,11 shields 2996:25 2997:7 2999:12 3000:4 shirts 2963:10 2980:1 2982:15 shooting 3010:24 short 2913:8,14 2928:2 2954:20 2956:11</p>
--	--	--	--	--

2979:5 3019:15 3025:7 3035:21 shortcomings 2928:9 shotgun 2971:11 3008:8 shots 3020:25 Shouldn't 3016:22 should've 2961:14 show 2965:5 2967:24 2968:6,7,11,13,18,22 2978:15 2986:12 2997:22 3010:12,21 3011:1,10 3012:4 3013:25 3017:9,10,11 3017:12 3023:15 showing 2968:9 3005:25 shown 2979:6 2984:3 3012:7 shows 2949:9,25 side 2922:16 2923:11 2933:4,6 2939:4,4 2945:5,12 2953:3 2964:12 2986:17 2988:16 3003:9 3006:20 3007:4 3017:12 3023:7,9,14 3027:14 sideways 3015:18 sign 2956:20 silent 2956:6 similar 2971:20 simple 3032:8 simply 2926:12 2962:6 singing 2948:7 2979:20 sir 2913:21 2946:18 2947:11,14,17 2966:7 2977:13 2978:4,12,18 2984:18 2995:17 2996:6 2997:3 3003:24 3004:11,23 3006:18 3007:24 3008:3 3009:7,10,16 3009:21,25 3010:11 3010:15,18,22 3011:2 3011:4,13,13,18,23 3012:5 3014:3,20 3015:23 3016:1 3017:14 3018:1 3023:20 3024:2 3025:4 3035:8,13,23 3036:10 3037:3 3040:15 3042:2,16 sit 2928:7 2932:2 3032:1 3041:12 sits 2926:17 2927:20,22 3028:13 sitting 2922:24 2932:15 2956:6 2982:14 2983:3 3038:9,13 3042:17 sittings 2982:12 situational 2977:22 situations 2997:2 size 2928:11 skill 2944:2	slide 2966:17 2977:24 2978:6,20 2979:1,5 2984:2,6 2989:25 2992:6 3005:8,9,10 3005:14 3006:14 3007:22 3008:1 3009:4 3013:25 3014:5,21,23 3015:7 3015:9,24 3017:7,16 slides 2966:15 2979:9 3029:3 slightly 2921:21 2960:7 2984:11 2986:10 3035:4 3038:4 smaller 2965:10 2990:5 2990:23 2991:14,22 2992:1 2993:20 smash 2998:21 sniffing 2974:9 sniping 2952:14 soccer 3022:18 solicit 2996:19 solve 2977:18,18,20 2995:6 somebody 2935:16 2939:20 2950:1 2951:16 2964:15,25 2967:19 2971:9,13 2973:9 3000:10 3007:18 3008:8 somewhat 3002:16 song 2912:11 2979:20 3011:19 songs 2979:20 soon 2932:18 2950:19 2950:23 2959:3 2974:23 sooner 2932:14 sorry 2916:8 2938:17 2964:20 3016:21 3018:18 3036:13 3043:4 sort 2917:13,18 2969:10 2992:3 2997:24 2998:2 sound 2969:22 3030:5 sounded 3011:9 South 2918:10 2924:17 2936:10 2945:6,11 2979:24 3028:3 SPEAKER 3036:16 speaking 2962:15 2978:19 spear 2998:12 2999:1,6 spears 2997:9 special 2939:7,8,11 2995:7 specialised 2975:23 specific 2920:13 2940:22 3018:20 3026:24 specifically 3024:12 specificity 2931:14 spectrum 2975:21 spectrum 2975:21 spend 3025:18 spirit 2983:1	split 2916:23 2917:12 2917:12,17 2991:14 2991:21 2992:1 2993:20 2994:1 spoke 2934:12 2949:6,7 2980:1 2990:15 spoken 2912:18,20,23 sporting 2928:23,23 2937:19 3022:8 spraying 3017:1 SS2 2914:6,8 2946:6 SS3 2914:22 2915:2 2946:23 3026:9 Stability 2945:19 stadia 2928:23,24,25 stage 2912:12 2918:14 2945:8 2947:12 2948:22 2953:17 2954:12,18 2955:23 2966:20,22 2967:11 2967:23,25 2968:10 2969:19 2970:17 2978:1,7,11 2979:13 2989:24,25 2990:3,21 2992:4 2995:20,20,21 2995:21,23 3000:16 3000:24 3001:15 3013:6 3030:23 3032:15 3036:5 3040:25 3041:16 3042:10 stages 2996:4 stakeholders 2965:24 stampede 3022:18 stand 2913:13 2958:25 2968:17 standards 3037:1 standby 2920:25 standing 2914:2 2916:2 2916:10,13,24 2917:1 2917:24 2919:1,2,6 2925:19 2926:11 2946:4 2947:25 2986:18 3008:8 3017:22 3027:25 3028:18 3032:15 3036:9 stands 2985:21 stapled 2914:20 start 2930:2 2932:16 2948:5 2949:17 2950:3,6,8,20 2951:1 2968:6 2974:24 3019:10 3029:6,8,12 3029:23 3030:1,7 started 2958:1 3016:8 3019:3 starting 2913:6 2950:22 3038:14 starts 2919:14 2927:1 2978:6 state 2938:20 2942:17 stated 2962:17 statement 2921:22 2929:19 2930:4 2955:4 2958:7 2962:3	2962:5,8 2982:11 statements 2930:3 3012:22 states 2934:10 2952:7 stating 2961:19 station 2987:25 stationed 2988:1 stations 2918:12 stay 2942:7 2989:16 staying 2920:7 step 2929:3 steps 3021:16 STF 2977:4,5 2986:23 2995:12 stolen 2975:7,8 stone 2921:10 2997:13 stones 2922:10 2997:5 stop 2944:4 2965:3 3006:10 story 3000:20 straight 2960:13 strategy 2991:2 street 2935:5 strength 2951:5,13 strengthening 2960:5 strike 2947:16,19,19,23 2948:2 2950:9,12 2998:7 3021:13 strikers 2948:7 3010:8 3016:23 strikes 2998:3 struck 2998:6 structure 2941:1 2964:14,14 structured 2966:11 structures 2935:10 2941:3 2945:18 structuring 2991:7 struggling 2979:8 3026:5 stun 2963:22 2993:7,24 3006:7 3007:9 subject 2941:5 3030:4 submission 2959:25 submissions 2959:22 subparagraph 3018:17 subsection 3018:18 subsequent 2965:13 substance 3029:16 substantial 2960:13 sub-paragraph 2919:19 succeeded 3031:15 success 3035:4,10,18 3035:21 3036:23 3037:2,21 successful 3035:7 suffered 2962:16 2963:4 sufficient 2924:10 2941:16 2950:7 2951:13,14 sufficiently 3037:17 suggestion 2962:20 2963:6 3029:11 suitable 2976:8	summary 2957:15 2962:23 Sunday 2949:22 support 2959:22 2971:13 2972:14,15 2976:13 suppose 2961:13 supposed 2933:13,23 2939:25 2941:23 3000:13 3002:9 3016:11 3018:16 3039:9 3041:17 sure 2917:18 2920:23 2927:4,14,15,18 2928:14,20 2931:11 2931:22 2936:5,7 2940:13 2941:2 2945:13 2947:13 2948:13 2950:11 2953:7 2955:25 2969:7 2974:25 2975:18 2977:20 2978:3 2998:2,5,9 3001:20 3007:19 3015:23 3016:11 3019:13 3021:16 3036:3 3038:11 3042:12 survive 2999:4 <hr/> T tactical 2970:23 2971:3 2972:8 2975:17 3027:19 take 2913:22 2914:21 2916:4 2917:20 2918:6 2921:14,20 2922:7,16 2924:25 2926:4,23 2931:18 2934:21 2939:23 2949:18 2954:20,22 2956:10,19 2957:23 2960:17,23 2964:8,10 2970:21 2976:8 2979:9 2981:5 2992:2 2994:24 2996:8,11 2998:17 3008:11 3009:2 3016:19 3019:19 3021:16 3022:7 3023:1 3042:3 taken 2912:24 2918:12 2956:7 2964:6 2975:13,14,19 2990:17 3000:25 3002:21 3019:11 talk 2928:22 2935:3 2937:14,18 2938:5 2943:24 2947:25 2950:10 2952:13 2968:13 2971:3 2975:10 2976:15 2977:15 3001:9 3034:23 3039:4 3041:17 talked 2916:18 talking 2920:7 2927:1
---	--	---	--	---

2936:22 2950:6 2969:14 2972:25 2974:21 2975:9 3024:14,23 3033:9,10 3036:5 talks 2919:20 task 2918:15,16,17 2933:25 2939:21 2995:8 tasked 2967:10 tasks 2925:12 taxis 2964:8 tea 2954:18 2956:18 2963:14 teaching 3042:7 team 2970:24 2972:8 2980:25 tear 2963:22 3008:12 teargas 2993:3,22 3006:5,10 technical 2990:10,24 2991:13 techniques 3031:8 tell 2913:19 2918:1,3 2923:6 2938:14 2958:1 2981:19 2992:15 3011:1 3020:5,7 3041:6 3042:24 tells 2919:5,7 2992:6 tempered 2944:14 term 2924:20 termed 2922:3 terminologies 3028:22 terms 2924:1,22 2925:4 2933:9 2939:17 2948:3 2970:7 3036:24 terrain 2940:6,8 3003:14,25 test 2947:4 testified 2929:10 2946:4 testify 3012:14 3022:12 tests 3021:2 TFT 3010:17 thank 2913:21,24 2914:4,25 2915:1,12 2915:25 2918:5 2919:17 2925:17 2929:5 2939:15 2961:12 2963:13 2966:7 2979:14 2982:13 2984:1,5 2985:3 2996:17 3006:25 3016:25 3019:25 3030:10 3037:6 thanks 3005:23 that's 2924:22,25 2925:1,22 2929:22 2930:1,8,11 2935:21 2936:17 2941:20 2942:11,24 2943:21 2944:19,25 2945:21 2946:1,8,12 2947:17	2947:24 2949:12 2950:15,18 2951:2 2956:9 2968:9,10,20 2969:16 2970:16 2977:13 2979:4 2987:18 2988:1 2990:15,18 2992:13 2992:17,25 2996:22 3000:19 3001:16 3002:6,19 3003:5 3004:23 3006:22 3007:5,6,24 3008:3 3011:11,16,20 3012:6 3021:1 3023:13 3025:20 3026:17 3027:3 3028:22 3032:8 3034:3,9 3036:10 3039:25 3042:8 theoretical 2929:9 there's 2952:16 2982:18 3003:18 3012:21 3025:18 3026:2 3028:6 they're 2939:24 2940:9 3030:6 they've 2931:10 2971:4 2976:22 3028:4 thing 2921:11 2926:23 2934:3 2949:13 2952:15 2962:6 2989:7 2993:25 3024:17 things 2918:18 2946:5 2948:17 2962:5 2966:9 2974:7 2975:19 2995:5 3025:22 3026:17 3038:11 think 2912:25 2913:7 2913:12 2934:21 2949:3 2954:13 2956:8 2958:25 2963:9 2967:4,20 2971:13 2989:7 2992:4 3001:7 3002:12 3007:21 3009:2 3010:7,7 3012:8,16,21 3023:9 3025:16 3030:11,24 3031:16 3033:5 3038:3,7 3039:12 3040:8 3042:23 3043:8,10 thinking 2991:1 third 2934:13,14 3004:10 3024:5 thorough 2982:25 thoroughly 2940:9 2983:16 thought 2917:22 2957:14 2962:10 2963:21 3023:12 3033:1 threat 2919:15,19 2920:1,3,9,14,18	2921:6,8,21 2922:5 2922:12 2934:23,24 2936:8,14,15,19,22 2948:19 2965:2 2971:8,22 2972:11,12 2972:13 2974:7 2995:1 3009:24 3024:3 threats 2934:19,20 2935:20 2936:25 2975:24 2994:18 3024:1,11 throw 2922:10 throwing 2921:10 2997:5 thrown 2997:13 throws 2999:3 Thursday 2914:21 2915:22 tight 3002:17 3004:13 3015:13 tightly 2912:11 till 2918:1 time 2916:10,10,13,14 2917:12,25 2923:8 2928:7 2931:3 2933:24 2935:7 2936:6 2938:1,15 2940:14,23 2943:16 2951:11 2953:4 2955:5 2956:19 2958:20 2959:17 2964:16 2968:16,19 2969:4,25 2976:20 2993:24 2994:4,7 2995:3 2996:9 2997:22 2998:22 3002:11 3003:10 3018:20,25 3019:3,9 3019:18 3022:14 3025:18 3035:25,25 3040:20 3041:21 times 2938:14 2979:21 3002:25 Tip 2912:4,6 2913:3,15 2954:21 2956:15 2957:1 2979:13,14 Tip's 2979:12 TLT 2995:12 Toby 2959:20 2961:11 today 2941:13 2958:10 2962:22 2979:9 2983:20 2984:1 today's 2959:9 told 2914:7 2930:6,9 2977:10 2981:8 2985:21 2991:2 2995:11 2996:20 3018:7 3025:7 3042:11 tolerance 2952:8,17 3001:11 tolerant 3001:4 tomorrow 2962:11,12 2962:21 3029:19,24 3042:24 3043:7,9,12	tonfa 2997:16,18,19,20 2997:20,21,22 2998:1 2998:4,10,15,17,18 2998:21 2999:19 3000:8 tonfas 3000:4 tool 2919:12 top 2986:7 2988:4,8,11 3014:4 3026:13 topic 3041:21 totality 3012:24 3020:20 totally 2920:15 2968:20 2970:20 2991:15 3000:12 3020:16 3030:22 3032:2 3038:8 3041:18 3042:15 touch 2963:22 traffic 2920:12,22,24 2921:15 2922:9 2935:7 2936:3 2937:2 2937:4,19,21,24,25 tragedy 3023:5 3031:18,24 3032:8,16 3032:18,23,24 3033:14 3034:6 3038:25 tragic 2983:12 3041:7 tragically 3030:13 3031:3 trailers 3003:4 train 2945:13 3042:11 trained 2945:8 training 2930:10 2945:1,9 2958:2 2971:4 3008:21 3013:11 3024:8 3041:25 3042:10 transcript 2959:3,8 2962:7,9,11,21 transition 2943:23 transport 2989:13,15 treating 2944:17 trial 2943:4 2962:24 tried 3024:9 3033:2 trigger 3002:24 trouble 2992:3 2999:23 trousers 3010:4 TRT 2971:3,16 2976:11,12 2977:7 2986:3 2988:5 2994:17 2995:8 3014:17 truly 3033:7 trust 2954:8,13 2983:18,22 truth 2913:20 2982:23 2982:24 2983:9,17 3023:12 try 2924:14 2929:8 2930:12 2942:19 2954:9 2958:16 2961:24 2977:21 2991:22 2996:18 3004:21 3023:12	3033:8 3036:1,1 3042:20 trying 2941:21 2967:5 3000:22 3025:4 Tuesday 2959:7 turn 2919:13 2955:21 2955:22 3036:16 3042:5 turned 2958:2 twice 3018:21 two 2933:1 2941:12 2965:5,7 2982:19 2993:25 2997:18 3002:16 type 2920:4,9,14 2921:10 2923:22 2926:8 2932:8,14 2934:4 2935:1,25 2936:1,13 2938:25 2940:2 2948:20 2950:19 2953:12 2970:10 2971:4,18 2974:14 2975:1,16,18 2975:23 2976:16 2997:1,11 2998:16 2999:17,19,24 3002:7 3015:12 types 2939:5 2991:20 2997:8 3022:8 typically 2920:17 2922:19 t-shirt 2913:4 t-shirts 2912:10,20 2979:15
U				
ultimately 3013:7 unable 2928:12 unaware 2981:15 uncalled 3038:8 undecipherable 2988:11 undergo 2998:5 underpinnings 2929:10 understand 2928:21 2938:21 2943:23 2945:14 2958:18 2959:10 2967:22 2973:6 2982:7 2989:2 2989:7 2992:16 2998:5 3028:8 3032:4 3032:12,18,22 3033:8 3034:14 3036:6 3038:20 3040:10 understanding 2925:21 2974:23 2979:8 3028:10 understood 2955:6 2958:5 3011:10 undertaken 2981:9 undertaking 3029:2 undo 2957:18 unfair 3030:16,22 3032:2 3041:18 unfairness 2962:16 unfold 2947:2				

<p>unfortunate 3010:23 unfortunately 2912:8 3020:4,9 uniform 2939:5 2968:17 union 2927:2 2928:18 2935:4 3001:2 unions 2928:19 2982:4 2982:19 unit 2918:8,15 2947:21 2974:1,8 2975:22 2976:8,25 2979:25 units 2920:18 2936:15 2939:17,18 2940:4 2945:19,20 2972:2 2973:5,7,21 2974:5 2975:1,22 2995:11 3022:1 unnecessarily 3011:4 unprotected 2947:23 unrest 2947:3 unsuccessful 2990:9 3038:2 updated 2916:24 upward 3018:24 use 2931:25 2938:17,20 2938:22 2944:13 2966:8 2968:16,20,20 2973:21 2991:21 2993:10,14,16 2994:1 2994:4 2997:12,16,17 2998:9 3006:5,7 3007:13 3016:2 3018:23 users 2936:5 utilisation 2997:4 utilise 2968:20 2973:21 2974:8 2977:3 2997:6 2998:3,16 utilised 2973:12 2974:9 2974:10 3008:15 3016:9,9,11,15,17</p> <hr/> <p style="text-align: center;">V</p> <p>vacate 3018:22 Vanderbijl 3023:6 various 2946:17 2947:5 2962:2 2972:2 2973:5 2975:22 3026:16 vast 2988:14 vehicle 2937:23 2973:23 2984:16 vehicles 2939:10 2964:7 2968:17 2969:20 2970:8 2985:18 2992:22 2995:15 3014:11,11 3014:12,13 3017:12 verbal 2992:15 version 2955:17 2957:19 2962:22 vicinity 2912:14 2921:1 2921:13,18 2980:5 video 3010:25,25 3011:16 3012:6 videos 3011:8,9,10,11</p>	<p>3012:4 view 2912:21 Viewed 3035:21 views 2958:21 violence 2935:8 violent 2931:10 2948:15,18 visible 2916:18,22 2920:12,21 2937:1 2947:7,12 2948:22 2949:17 visual 3007:20,20 3013:17 3019:13 visuals 3002:15,18 3004:3 3005:1 3009:12,18 3010:12 3010:21,25 3012:24 3013:22 3020:9 vis-à-vis 3016:23 vital 2987:20 Vlakplaas 2943:12 voluntarily 2991:16,18</p> <hr/> <p style="text-align: center;">W</p> <p>wait 2918:1 walking 2953:19 wall 3005:2 want 2914:21 2920:8 2927:2 2941:15 2947:1,4 2952:23 2954:22 2955:14 2956:9 2959:18,19 2960:5 2969:9 2980:7 2982:14 3002:22 3003:16 3025:18 3041:16 3043:3 wanted 2956:16 2984:2 3007:3 wants 2962:14 warning 2952:20 3018:14,15,18 3019:9 3019:10 warnings 2989:20 warrant 3018:24 wasn't 2970:5 3002:13 3026:21 3028:19 3033:2 wasting 2940:14 watch 3009:12 water 2939:7,9 2991:5 2991:21 2992:20 2993:16,19 2995:15 3008:13,13,15 3016:2 3016:4,8,17 3017:1,1 way 2913:7 2942:16 2949:3 2959:2,12,25 2960:5,19 2962:15 2963:2 2981:1 2982:24 2988:20 2992:4 2995:2,19 2997:6 3007:14 3013:19 3021:9 3022:5 3028:14 3033:4,5 3038:11 3041:13 ways 2962:2 2997:18</p>	<p>weapon 2954:7 2968:7 2970:19 2971:12 2976:18 2993:18 3000:9,9 weapons 2952:14 2954:14,16 2995:14 2997:9 wearing 2912:10 2980:1 weekend 2959:4 weight 2955:20 welcome 2982:10 went 2979:19 3004:20 3027:8 3030:13,20,22 3031:3 3032:1,13 3042:6 weren't 3037:15 West 3027:14 western 2988:16 3006:21 3007:4 3017:10 westwards 3006:16 3007:10 we'd 2996:24 we'll 2931:8,20 2935:8 2935:12 2936:9 2938:8,24 3019:19 3030:8 we're 2933:23 2934:3 2976:3 2983:13 2988:1 3035:24 3042:23 we've 2924:13 2950:7 2953:13 2956:22 2981:12 2983:25 3025:13,19 3026:8 3037:21 we'll 2912:25 2918:5 2920:3 2960:23,23 2963:11 we're 2913:5 2916:17 2920:5 2958:22 we've 2914:23 2918:4 2956:21 2960:3 what's 2927:7 2956:8 2999:1 3012:20 3025:12 3035:22</p> <hr/> <p style="text-align: center;">Y</p> <p>whilst 3010:20 who'll 2926:21 who're 2937:5 who's 2924:9 2925:20 2932:5 wire 2939:13,14 2984:20 2985:17 3002:21,24 3003:2,4 3003:6,7,9,11,13 3004:4,5,9,14,22 3017:20 3019:2,3,8 3027:1 wires 3003:21 wish 2956:15 2958:24 2959:7 2960:14 2961:16 2962:25 2981:24 wishes 2961:3 withdrawing 2994:9</p>	<p>witness 2912:7 2913:23 2914:11,16 2955:1,3 2955:11,16,21 2956:1 2956:2 2957:4,20,25 2958:1 2959:4,14 2960:12,12,16,18,18 2961:3,19,24 2962:12 2962:21 2979:1 2984:4 3011:4 3012:5 3016:22 3019:24 3029:1,15,20 witnesses 2974:18 witness's 3032:19 won't 2923:10 2924:15 2974:15 2989:21 2998:22 3001:7 3019:6 3024:18,20 3033:5 3038:8 word 3035:19 wording 2917:1 words 2918:18 2920:25 2941:25 2942:4 2968:15,23 work 2920:13 2939:25 2945:7 2957:18 2983:9,15 2998:22 worked 2991:23 workers 3010:8 working 2916:17 2932:24 2946:10 3027:20 3030:21 worry 3025:10 would've 2962:10 writing 2987:3 written 2916:19 wrong 2920:11 2921:17 2929:1 2938:2 2952:17 2955:24 2970:6 2971:18 2973:15 2988:23 3001:8 3002:13 3030:13,20,22 3031:1 3031:3,13 3032:1 3038:16 3040:13,17 3040:18,19 3042:6</p> <hr/> <p style="text-align: center;">Z</p> <p>you've 2962:19 2964:16 2974:8 3029:10 3037:6,12,25 3039:19</p> <hr/> <p style="text-align: center;">0</p> <p>000 2974:18 2991:4 09:33 2912:2 09:53 2922:21</p> <hr/> <p style="text-align: center;">1</p> <p>1 2919:20,22,23 2920:4 2920:16,19,20 2921:21 2926:13 2930:17 2948:22 2967:11 2969:19 2978:7 2984:25,25 2985:22 2986:18 2987:25 2989:4 3009:9 3014:1,8 3017:19 3018:3,7 1.3 3026:4,14 1:30 3000:15 10 3023:16 3026:7 10th 2949:11 2950:22 3025:20 3026:11 3029:2 10-minute 3019:19 10:13 2932:22 10:33 2942:7 10:53 2951:23 100 2970:23 2971:14 11 2919:14,15 11(3)(a) 3036:12,14,21 11:29 2956:13 11:49 2966:19 12th 2949:22 12:09 2975:21 12:29 2985:3 12:49 2994:6 13 2912:1 3023:16 3026:1 13th 2951:18 2958:6 3025:16,24 3029:3 13/2004 2916:12 2917:5 14 3020:6 14:05 2996:13 14:25 3004:25 14:45 3013:20 15th 3024:15 15:12 3019:22 15:30 3000:22 15:32 3028:16 15:52 3039:1 16 2915:16 2929:8 3013:20 3021:23 3023:16 16th 2917:2,7,19 2958:5 2965:10</p>
---	---	--	---

<p>2969:19 2974:17 2998:13,15 2999:13 3025:1 3027:20 3029:3 3030:12 16-08-2012 2915:21 1697 3025:16,24 1698 3026:3,13 17 2944:12 1723 3025:19 194 3005:10,11 3006:14 1994 2941:6 2943:25</p> <hr/> <p style="text-align: center;">2</p> <p>2 2919:20 2921:3,5,20 2923:3 2933:11 2967:23 2968:10 2978:1 2987:14,22 3013:24 3014:22 3020:1,7 2(b) 2924:21 2(2)(a) 2924:22 2925:4 2925:9 2.6 3012:15 2004 2917:6 201 3009:5 3014:21,24 3015:1 2012 2912:1 2915:17 2917:2,7 2929:8 3026:7 3030:12 2012-08-16 2914:21 2915:22 205 2924:4 2966:25 2992:18 206 3007:22,23 3013:17 215 3013:25 3014:25 3015:3,4 221 3015:9 235 3017:7 237 3015:24 240 3017:16 242 3017:16 262 2914:2 2916:2,24 2919:1,2 2925:19 2926:12 2947:25 3036:9</p> <hr/> <p style="text-align: center;">3</p> <p>3 2919:19,19,20 2922:3 2922:4,13 2923:3,4,9 2923:14 2946:5 2974:18 2975:3,10,20 2985:12 2989:25 2990:3,21 2991:4 3000:16,24 3001:15 3015:25 3016:23 3017:10 3018:6 3020:2 3036:15 34 3031:4 3032:6 3033:12 3034:10</p> <hr/> <p style="text-align: center;">4</p> <p>4 2974:18 2995:20 3001:12 3004:22 40 2979:18 2980:9</p> <hr/> <p style="text-align: center;">5</p>	<p>5 2919:15 2930:3,5,5 2995:21,21</p> <hr/> <p style="text-align: center;">6</p> <p>6 2919:14 2995:21,23</p> <hr/> <p style="text-align: center;">7</p> <p>70 3031:4 3032:6 3033:12 71 2966:17 74 2984:8 75 2977:24 77 2978:20 2984:6,9 3005:9 78 2989:25 79 2992:6</p> <hr/> <p style="text-align: center;">8</p> <p>8 3026:7 3036:16,17</p> <hr/> <p style="text-align: center;">9</p> <p>9 2975:14 2992:18 3000:17 3018:17,18 9th 2947:2 2949:11 2950:24 9:30 3043:11 94 2941:11 2942:8,23 2945:4</p>			
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