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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 32 20 DECEMBER 2012 PAGES 3400 TO 3511

HELD AT

CIVIC CENTRE, RUSTENBURG, NORTH WEST PROVINCE



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<p style="text-align: right;">Page 3400</p> <p>1 [PROCEEDINGS ON 20 DECEMBER 2012] 2 [09:31] CHAIRPERSON: The Commission resumes. 3 Brigadier, you're still under oath. Mr Bizos, you're still 4 cross-examining. 5 MR BIZOS SC: Yes. Brigadier, I want to 6 read to you the first paragraph of the background of the 7 standing orders. "The purpose of this order is to regulate 8 crowd management during gatherings and demonstrations in 9 accordance with the democratic principles of the 10 Constitution, and acceptable international standards." 11 BRIG MKHWANAZI: That's correct, Sir. 12 MR BIZOS SC: You accept the validity of 13 that duty that you had to perform in accordance with the 14 principles envisaged in that standing order? 15 BRIG MKHWANAZI: I do agree. 16 MR BIZOS SC: And this is what you taught 17 your pupils who were trained how to manage crowds? 18 BRIG MKHWANAZI: Correct. 19 MR BIZOS SC: Did any of your pupils or 20 learners raise any objection to this principle during your 21 training sessions? 22 BRIG MKHWANAZI: Not in my presence. 23 MR BIZOS SC: And you made it clear to 24 all and sundry during your training sessions that they must 25 be following all their orders in relation to crowd</p>	<p style="text-align: right;">Page 3402</p> <p>1 notice that when Minister Steve Tshwete was appointed 2 Minister of Safety & Security in 1999, he made a statement, 3 which I am going to read to you. "We are going to deal 4 with criminals as bulldogs deal with a bull." Did that 5 come to your notice? 6 BRIG MKHWANAZI: I remember that. 7 MR BIZOS SC: Did you think that that 8 statement was consistent with the provisions of the order 9 that, well, 262? Is it consistent or inconsistent with the 10 provisions of that order? 11 BRIG MKHWANAZI: It's difficult for me to 12 question my senior's comment. This was the comment from 13 his side. It was not like an instruction, but it was a 14 comment, and for me to question that is not a, is not my 15 call as a junior person. 16 MR BIZOS SC: Do I understand you to say 17 that you feel obliged to take account of whatever any 18 person in authority, be it political or in the police, is 19 binding on you? 20 BRIG MKHWANAZI: I never actually thought 21 in that way that such a comment I must actually look at it 22 in this fashion. However, my point is this is my senior 23 person, he's actually talking about this position that he 24 would like to see us dealing with crime in that position, 25 and for me to question that is not possible.</p>
<p style="text-align: right;">Page 3401</p> <p>1 management control? 2 BRIG MKHWANAZI: Maybe, Senior 3 Counsellor, I must explain that not all classes are 4 presented by me. Not all classes are presented by me. 5 Some classes can be presented by somebody else, or maybe I 6 can be around, or I can present myself, but in my presence 7 I did exactly explain to people as you are saying. 8 MR BIZOS SC: No, the question was 9 whether in your classes any objection was offered to the 10 principles that are in the standing orders. 11 BRIG MKHWANAZI: No. 12 MR BIZOS SC: We have already established 13 earlier on, but merely as a reminder that these orders were 14 inspired by the transformation of the functions of the 15 police from the apartheid years. 16 BRIG MKHWANAZI: Yes. 17 MR BIZOS SC: Now you read newspapers. 18 The people that you trained read newspapers, listen to the 19 radio, and they are informed citizens of the land, as one 20 would expect of police officers. 21 BRIG MKHWANAZI: I think so, they do read 22 newspapers – 23 MR BIZOS SC: And you do yourself. 24 BRIG MKHWANAZI: Everyday I do. 25 MR BIZOS SC: Now did it come to your</p>	<p style="text-align: right;">Page 3403</p> <p>1 MR BIZOS SC: Do you agree that this 2 statement by the then Minister of Safety & Security was 3 inconsistent with the standing orders that you had to teach 4 and observe? 5 BRIG MKHWANAZI: As I said, Senior 6 Counsel, it's not my platform to question my senior 7 person's comment. He's my senior person by far; he's 8 making a comment. For me to go back and start checking 9 whether is he correct or not, it's not my call. 10 MR BIZOS SC: The people that you taught 11 are intelligent people, concerned about the nature of their 12 duty. Did any of them ask you, "What does the minister 13 mean? You tell us these are the orders but this is what 14 the minister says. How can we reconcile the two?" 15 BRIG MKHWANAZI: I never have any 16 question, unless if there was something wrong with the 17 comment by the minister. The minister's comment is how 18 we're going to deal with crime, and the standing order is 19 totally talking about crowd management. It's the two 20 different things. So can I move the comment in regard to 21 crime prevention into crowd management and say is it 22 inconsistent or consistent to the standing order? 23 MR BIZOS SC: Part of crowd management 24 requires to manage crowds where offences are committed, or 25 may be committed.</p>

<p style="text-align: right;">Page 3404</p> <p>1 BRIG MKHWANAZI: If I remember very well, 2 during our cross-examination I believe from senior counsel 3 from leading evidence side, if I'm not correct, maybe I 4 would be wrong, there was a question to say people gather, 5 but not to say they have committed any crime, or they are 6 criminals or what. We agreed to that to say people coming 7 together in a crowd doesn't mean that they are criminals. 8 Yes, during the course of the event anything can happen 9 within the crowd. Of course we'll have to take steps, but 10 crowd management in gathering situation, definitely we are 11 not going there to face criminals, but we are there because 12 we have to make sure that the gathering or the crowd 13 management, the march is taking place peacefully. If it 14 turns otherwise, it turns otherwise, of course it can 15 happen in that way. But to say you're going there now, the 16 whole notion will be crime prevention. That's why we are 17 saying crowd, I mean Public Order Policing's task is, as a 18 primary is crowd management. If there are, there's no 19 crowd management to manage on the day, obviously they will 20 go to the secondary function, which is crime prevention. 21 But we don't say both of them is one thing, as it actually 22 define here in paragraph 1, is crowd management situation, 23 and we are talking about the comment of the minister that 24 is definitely talking to the crime prevention situation. I 25 cannot now to say if I'm there now it, was this asked or</p>	<p style="text-align: right;">Page 3406</p> <p>1 MR BIZOS SC: In its plain meaning is if 2 someone points a firearm at a policeman, points a firearm 3 at a policeman, the policeman is entitled to kill him. 4 BRIG MKHWANAZI: Counsellor, it will 5 depend to the situation. I cannot sit here and say yes. I 6 can definitely have a problem to say if a person points a 7 firearm to a police official, what is the reason, why it is 8 like that. To – 9 MR BIZOS SC: Would you agree – 10 BRIG MKHWANAZI: If it is, the main 11 purpose is to shoot to a police official, of course the 12 police official will have to do something. Then I will 13 agree in that position, but it's a little bit a problem to 14 me that a person can just point a firearm to a person, then 15 a police must shoot to that person. But I don't get it, 16 but I'm saying if the, really the intention is there to say 17 that something was going to happen, obviously a police 18 official will have to defend himself from that type of a 19 situation. I will agree on that. 20 MR BIZOS SC: Assume the statement to 21 have been made in the way that I have read to you. Do you 22 agree that as it stands it's not within the spirit of the 23 standing orders to the police, whether it's in relation to 24 crowd control or whether it is merely a question of safety? 25 Is the mere pointing of a firearm a crime which entitles</p>
<p style="text-align: right;">Page 3405</p> <p>1 whatever, but if it was asked I was going to have my 2 comment. But in this position I never thought I should 3 question the minister's comment. He's senior person. He 4 has indicated what he would like to see. We will have to 5 abide ourselves to that. 6 MR BIZOS SC: After the death of Minister 7 Tshwete, Mr Charles Nqakula who took over from him in 2002, 8 is recorded as having said, "Anyone who points a firearm at 9 police will be killed by police officers." 10 BRIG MKHWANAZI: Maybe if I may ask – 11 MR BIZOS SC: Did that come to your 12 notice? 13 BRIG MKHWANAZI: Counsellor, if I may ask 14 where it came from? Media or where was the comment – 15 MR BIZOS SC: I'm asking you to assume 16 that it was published as having been said by the minister. 17 Can you please make that assumption? I know that you are 18 reluctant to make assumptions, but let's get on by you 19 accepting the assumptions as an assumption when I put it to 20 you so that we can expedite the proceedings, please. 21 CHAIRPERSON: Brigadier, the question is, 22 did you hear, or did you come to learn that that statement 23 was made by the minister, if it was made? 24 BRIG MKHWANAZI: It may happen, 25 Chairperson, but I can't remember now. I can't recall it.</p>	<p style="text-align: right;">Page 3407</p> <p>1 the policeman to impose a death sentence on the person 2 pointing the firearm? 3 BRIG MKHWANAZI: Counsellor, yesterday 4 you read me the definition for self-defence. When we were 5 reading there, there wasn't a passage that indicates that 6 if it is a crowd management a police official would do the 7 following, or whoever will do the following; if it's crime 8 prevention, so and so will do the following. The 9 definition was clear to all of us what is the meaning of 10 that, and really, it's clear. It's a situation, no matter 11 it's crowd management or no crowd management, it's for the 12 person who's pointed with a firearm, depending to the 13 situation, I've said what is the situation, will actually 14 be the person who looks to necessity, self or private 15 defence. That is the position. For me here to say it will 16 be in line with the standing order general 262, it will be 17 totally not appropriate because even the definition there 18 doesn't talk about all this. It's a definition, 19 straightforward, talking about a situation where one has to 20 actually deal with whatever situation is before him or her. 21 MR BIZOS SC: With the statement as it 22 stands, is it consistent or inconsistent with police 23 behaviour, be it for crowd control or any self-defence 24 situation? Why don't you just answer the question, whether 25 it is consistent or not? You as a teacher of how a</p>

<p style="text-align: right;">Page 3408</p> <p>1 policeman should behave, please tell us whether you 2 consider it consistent or inconsistent. 3 BRIG MKHWANAZI: Counsellor, I have said 4 clearly when we talk about issues of this nature it depends 5 to the situation before a person. It's for a person to 6 decide to the situation because it's the person's life 7 versus another person, and a decision would be taken in 8 that split of second to say what has to be done. For me 9 now to say is it in line or not in line with the standing 10 order is difficult because we talk about self or private 11 defence in this position. 12 [09:51] MR BIZOS SC: But you're teaching them. 13 You are a teacher on police conduct. If you were asked, 14 Brigadier, we've read the standing order, we've read the 15 minister's statement, whom are we to follow? 16 BRIG MKHWANAZI: Senior Counsel, we read 17 paragraph 1. Paragraph 1 is talking to lot of different 18 things that actually regulate, that says how we must manage 19 the situation, and the example you are giving me, it goes 20 straight to individual, to say the individual is confronted 21 by a person who just points a firearm. My point is it will 22 depend what is the situation and the person will have to 23 take action in the way that is suitable at that moment, but 24 to say is it consistent to the standing order that talks 25 about lot of different things, is totally difficult for me</p>	<p style="text-align: right;">Page 3410</p> <p>1 not there are clear policies as to how the police should 2 behave vis-à-vis the citizen, whether he's a striker or a 3 demonstrator or a common-law criminal – 4 CHAIRPERSON: Mr Bizos, you can argue 5 that at the appropriate time – 6 MR BIZOS SC: Yes. 7 CHAIRPERSON: And presumably Mr Semanya 8 will address us also on the same point. It may not be 9 entirely the argument, but we'll wait to see when the 10 argument stage is reached. 11 MR BIZOS SC: Brigadier, it gets worse. 12 Deputy Minister, now Minister of Mineral Resources, 13 Minister Nqakula's deputy, Susan Shabangu is reported to 14 have said, "You must kill the bastards (criminals) if they 15 threaten you or the community. You must not worry about 16 the regulations. I want no warning shots. You have one 17 shot and it must be a kill shot. I want to assure the 18 police commissioners and policemen and women from these 19 areas that they have permission to kill these criminals. I 20 will not tolerate any pathetic excuses for you not being 21 able to deal with crime. You have been given guns. Now 22 use them. If criminals dare to threaten the police or the 23 livelihood or lives of innocent men and women, children, 24 then they must be killed." Did that statement come to your 25 attention?</p>
<p style="text-align: right;">Page 3409</p> <p>1 to say in that position. 2 CHAIRPERSON: Mr Bizos, in the light of 3 paragraph 11(7) of the standing orders, I wonder whether 4 there's any point in you taking this point – I think you've 5 made the point that you're setting out to make. 6 MR BIZOS SC: Yes. 7 CHAIRPERSON: It may well be more 8 profitable to move on to something else. The elaboration 9 that you're going through now is, I can understand possibly 10 why you want to do it, but I don't know if it's going to 11 help us much further. So you've made your point. I 12 suggest you move on – 13 MR BIZOS SC: Thank you, Mr Chairman – 14 CHAIRPERSON: At this point it's 15 consistent with paragraph 11(7). I understand the point, 16 the minister's statement, if it was as simply as you quoted 17 it, clearly couldn't stand without substantial 18 qualification, but it's not really for him to – 19 MR BIZOS SC: Yes. 20 CHAIRPERSON: - in this forum to deal 21 with that in more detail. 22 MR BIZOS SC: I will leave it at that and 23 we will leave it for argument that there is an unfortunate, 24 I'm merely informing the Commission that we will submit 25 that these sort of statements are relevant as to whether or</p>	<p style="text-align: right;">Page 3411</p> <p>1 BRIG MKHWANAZI: First time to hear about 2 it. 3 MR BIZOS SC: First time you hear it? 4 BRIG MKHWANAZI: Yes. 5 MR BIZOS SC: Now you told us yesterday 6 that the word "kill" is hardly ever used by you, and you 7 refused to answer any questions in which the word "kill" 8 was used, and the word "shoot," it's not in your 9 vocabulary. You remember that? 10 BRIG MKHWANAZI: I remember very well, 11 Counsellor, when I spoke about the word "shoot," which the 12 counsellor was very much referring to it that police must 13 shoot, and my problem was I cannot teach a police official 14 to shoot, shoot to people. You know to carry the firearm 15 is not about killing people or shooting people. Then I 16 said I have a problem with the term "shoot at all the 17 time." We teach people, or we advise our members how they 18 must work, but not to teach them to shoot people. It's not 19 about that. That's why I said the term "shoot," to me it's 20 very deep if you're going to say "shoot." I remember very 21 well I said it's too deep and it's difficult for me to 22 handle that part to say shoot, shoot, because Counsellor, 23 you were very much on a point to say police must shoot, 24 police must shoot, police will shoot. For me to say, 25 that's totally not correct. Police are not there outside</p>

<p style="text-align: right;">Page 3412</p> <p>1 to shoot people. Police are there to protect communities. 2 MR BIZOS SC: Are you saying that the 3 spirit that you spoke about yesterday and repeated today is 4 reflected in the statement of the minister and deputy 5 minister? She doesn't seem to be shy to use the word 6 "shoot" over and over again. 7 BRIG MKHWANAZI: Senior Counsel, I have 8 indicated from the first question where you spoke about the 9 first minister in the police, and my point was I'm not in 10 the position to question my senior's comment, and moreover, 11 that is a comment. If maybe it can be an instruction to 12 the police by the Minister of Minerals, that's what I heard 13 you were saying, you know it's a total different thing for 14 me, but this is in media, is a comment, and I'm not in a 15 position really to comment on that to say was the person 16 correct, is it in line with what I have said. I'm talking 17 about my opinion here to say the word "shoot, shoot," for 18 me it's deep. If I can go outside here and talk in that 19 fashion and teach people in that fashion, really I will 20 have a difficulty to say how the job will be done, you 21 know. So I have a problem on that, but I cannot question 22 my senior's comment and sit here and say the minister was 23 wrong, the minister was right. I cannot question that. 24 I'm not in that position, unless if I have received that 25 prior, I can make consultation with whoever and have a</p>	<p style="text-align: right;">Page 3414</p> <p>1 problem with that. I'm saying I cannot comment. This is 2 my senior person. A rank is not a big deal of course, but 3 I cannot answer to that part and say it was wrong or right. 4 This is the minister's comment. 5 CHAIRPERSON: Mr Bizos, I'm inclined to 6 think that you've taken this point as far as you need take 7 it. You've got a basis for an argument to present – 8 MR BIZOS SC: Thank you. 9 CHAIRPERSON: You can go on all morning 10 asking the questions and getting the answer – 11 MR BIZOS SC: It will be the same one. 12 CHAIRPERSON: But I'm not sure that we're 13 going to be any further forward than we are now. So I'm 14 not saying it's a good point; I'm not saying it's a bad 15 point, but I think whatever the point is, you've made it. 16 Shall we move on to the next point? 17 MR BIZOS SC: Just one further question. 18 Would you agree that that sort of statement would confuse 19 the members of the police force in the execution of their 20 duties, especially, "You must not worry about the 21 regulations?" Who is the minister to say to the police – 22 CHAIRPERSON: That passage is the deputy 23 minister, as far as I know. The passage you're reading 24 now, he was talking about the minister. 25 MR BIZOS SC: Yes.</p>
<p style="text-align: right;">Page 3413</p> <p>1 clear indication what was the meaning, because maybe if you 2 can ask the person who said those words, he's got a 3 different meaning of that thing. I cannot myself just 4 interpret that and say this is the meaning, it means it's 5 not in line with my belief or with what our books are 6 saying, and everything. I cannot comment on that. That is 7 the minister talking. I'm just a brigadier. I don't 8 question that. 9 MR BIZOS SC: Brigadier, I would appeal 10 to you to please have regard to the situation that we are 11 in. You are a witness before an important commission. 12 What is right and what is wrong cannot depend on a matter 13 of rank. 14 BRIG MKHWANAZI: Counsel, I do understand 15 very well before I came here, that I must give my input and 16 I have made it clear, I will give my input where it is 17 definitely due to. At this position I'm saying the 18 minister had spoken, I don't know what was the meaning 19 behind that, and if I had a chance to question that some 20 other way round, I could have come back with an answer and 21 say this is how I feel, because the meaning of this, it 22 means exactly what you mean. You know, we take this thing, 23 we read it and we think the minister means this, and you 24 ask the minister, it's a total different meaning, and I 25 come here and say the minister was right or wrong, I have a</p>	<p style="text-align: right;">Page 3415</p> <p>1 CHAIRPERSON: A very short, cryptic 2 little statement which probably even had qualifications 3 when the minister said it which weren't reported, I would 4 like to think, but you're now putting something different. 5 A longer statement by the deputy minister, as she then was, 6 now the Minister of Mineral Resources – 7 MR BIZOS SC: Yes. 8 CHAIRPERSON: That statement goes much 9 further than what the minister said, that said never mind 10 the regulations, you just shoot. Now that's a different 11 statement by a different person, and I don't think the 12 witness understands that you're talking about that. So 13 anyway, we discussed this point before. I understand the 14 question you want to ask the witness, let me ask it. That 15 statement the deputy minister made, that you never heard of 16 before, you said? 17 BRIG MKHWANAZI: Correct, Sir. 18 CHAIRPERSON: Saying, "Kill the bastards." 19 Don't worry about the regulations," short summary, it went 20 further than that. What counsel wants to know from you is 21 do you think, regard being had to your knowledge and 22 experience, that that statement if it had come to the 23 notice of members of the police force, particularly 24 possibly junior members of the police force, constables on 25 the beat and so on, that might have confused them and</p>

<p style="text-align: right;">Page 3416</p> <p>1 persuaded them to do things that were not really in line 2 with the standing order? Would that be – I think that's 3 what counsel wants to know. Am I right? 4 MR BIZOS SC: Thank you, Mr Chairman, 5 yes. 6 BRIG MKHWANAZI: Chairperson, as you say 7 do I think it can bring confusion, to me again it goes back 8 to the same answer, but I'll put it in a different way to 9 say if really it comes to the person's attention, it can 10 cause some confusion somehow, but I haven't heard any 11 question around it. 12 CHAIRPERSON: You said it hadn't come to 13 your attention, so you can't deal with it at all in that 14 way, but you've given the answer I think Mr Bizos wanted, 15 so perhaps he'll move on to the next point, if we let him. 16 BRIG MKHWANAZI: It can cause a 17 confusion, of course. But further explaining as well to 18 say it's important to understand exactly the logic, or the 19 meaning, the meaning behind of the message given. You 20 know, you are saying something, how many times I ask you to 21 ask me again because I don't want to take the first meaning 22 of what I think you are saying. So it's important to 23 understand exactly what was the meaning behind it, but I 24 agree, if it landed to somebody it can definitely cause 25 some confusion. I agree on that, Chair.</p>	<p style="text-align: right;">Page 3418</p> <p>1 let's focus on the mission, the purpose of the mission. 2 You indicated that the operation plan must have a mission 3 and that the mission cannot be chopped and changed. You 4 recall that? 5 BRIG MKHWANAZI: That's correct. 6 MR MMUSI: Would that be the case even in 7 instances where the circumstances of the operation changes? 8 BRIG MKHWANAZI: The operational plan 9 will have a mission for a certain operation. Where people 10 are going to gather or going to march, it is an operational 11 plan that we're going to do the following. The mission 12 will be maybe to escort the participants or to monitor the 13 participants at a certain place, and whatever happens 14 there, it will need maybe to be identified under the 15 operational concept, and whatever comes there, it is a 16 threat that we need to deal with it, but it is not a 17 mission. It is a threat. 18 [10:11] Our mission, stay bolder, why we are there, we 19 are there to do the following, but whatever comes out there 20 we need to deal with it when we come to that situation. 21 For an example, if we escort these people and it happens 22 people are throwing dustbin around the street, you don't 23 have to go back now and say to the mission, change the 24 mission because they are throwing dustbin now. The mission 25 as a whole is to escort the people. However, there are</p>
<p style="text-align: right;">Page 3417</p> <p>1 MR BIZOS SC: Although we have similar 2 quotes to put to the witness, I don't think that any useful 3 purpose will be served. We will accept at this stage, but 4 we'll argue that this witness's failure to respond to 5 legitimate questions about police training and his role in 6 it is something that we'll question in argument and we'll 7 argue, and we hope that there will be other witnesses who 8 may have better answers to the questions that we have. 9 With that closing remark I will conclude my cross- 10 examination and give an hour to the Commission to carry on. 11 CHAIRPERSON: Thank you, Mr Bizos, that 12 last gift is appreciated. I take it, it doesn't have to be 13 disclosed in any register. I think the next counsel to 14 cross-examine is, if there is any cross-examination, is 15 from Lonmin. Is that correct? Do you have any questions? 16 MR MOTAU SC: Chair, members of the 17 Commission, I'd indicated earlier that we spoke about the 18 sequence and Mr Mmusi on behalf of the injured and arrested 19 was going to be next in line. 20 CHAIRPERSON: - I'm sorry, Mr Mmusi, if I 21 was told that I'd forgotten and I apologise. If I wasn't, 22 I withdraw my apology. Anyway, Mr Mmusi, you've got some 23 questions in cross-examination, have you, for the witness, 24 so please proceed. 25 MR MMUSI: I do, Mr Chair. Brigadier,</p>	<p style="text-align: right;">Page 3419</p> <p>1 some things that are happening during that process, let's 2 deal with that and make sure that the march proceeds 3 properly. 4 MR MMUSI: So you can never have an 5 operational plan without a mission? 6 BRIG MKHWANAZI: A well-planned operation 7 always will have a mission, unless if it is a spontaneous 8 event, especially in issues of gathering and a march. If 9 it is a spontaneous, obviously you will get to that as 10 quick as possible and deal with that situation, but you 11 will follow some other processes to make sure that you 12 gather everything properly, you do some other issues to 13 make sure you deal with the situation. However, a well- 14 planned operation, well organised, people putting their 15 notice, there will be an operational plan with a mission, 16 then it will be, actually be handled. 17 MR MMUSI: Let's have a look at the new 18 SS3, document SS3. You've got it? 19 BRIG MKHWANAZI: SS3, that is annexure 20 for Thursday, this one? 21 MR MMUSI: The new SS3 – 22 CHAIRPERSON: Hold on. This is what the 23 new SS3 looks like. 24 BRIG MKHWANAZI: So I haven't received 25 the new one –</p>

<p style="text-align: right;">Page 3420</p> <p>1 CHAIRPERSON: The old one was replaced by 2 this one. It's a much thicker bundle of documents and the 3 heading is, "South African Police Service, Rustenburg POP 4 contingency plan," and it goes on and it's dated the 10th of 5 August 2012. Have you got it now? 6 BRIG MKHWANAZI: I've got it now, thank 7 you. 8 CHAIRPERSON: It's numbered with letters 9 that Mr Bizos will recognise at the foot of the page, it's 10 the Greek letters for page, and they start with, but it's 11 got other unnumbered pages thereafter. I don't know which 12 page counsel wants to refer you to, but he'll have to tell 13 us. 14 MR MMUSI: Now the first page, the 15 document tells you that this is the plan for the 10th of 16 August 2012. You see that? 17 BRIG MKHWANAZI: I see that, yes. 18 MR MMUSI: Now the document proceeds 19 right through to page 7. If you can take your time and 20 tell me where you would see the mission of this plan in the 21 document. 22 MS HEMRAJ SC: Mr Mmusi, exactly which 23 document are you referring to in SS3? Can you just – 24 MR MMUSI: The first document. If you 25 look at SS3 –</p>	<p style="text-align: right;">Page 3422</p> <p>1 next aspect – 2 MS HEMRAJ SC: Let me just help you, Mr 3 Mmusi. If you look at the old SS3, if you look at page 4 1723 – 5 MR MMUSI: I look at page? 6 MS HEMRAJ SC: 1723. 7 MR MMUSI: The 10th. 8 MS HEMRAJ SC: That's also dealing with 9 the plan of the 10th of August. 10 CHAIRPERSON: You see, SS3, the new one, 11 contains the old documents, but some extra ones. So, but 12 in the original SS3 there was a copy of the document with 13 which the new SS3 starts, namely the plan for the 10th of 14 August, but unfortunately page 2 is missing, but it's not a 15 problem because if you look at the original one you will 16 find it's near the back of the bundle, you'll find it 17 there. That's what we're telling you. So you don't have 18 to move on to the next point; you can deal with this point. 19 MS HEMRAJ SC: And page 2 of that old 20 document has got "Mission" right at the top of it. 21 MR MMUSI: I'll move to the next point 22 because I intend completing this point with the further 23 points I'm moving to. 24 CHAIRPERSON: We won't tell you how to 25 cross-examine. You cross-examine the way you want to do.</p>
<p style="text-align: right;">Page 3421</p> <p>1 MS HEMRAJ SC: On page 1665? 2 MR MMUSI: Yes, and then you, it's seven 3 pages. They talk to the plan of the 10th. 4 MS HEMRAJ SC: Yes, can I just point out 5 to you that page 2 is missing from there, and if you look 6 at the old SS3 you might find page 2 in that document. 7 CHAIRPERSON: You're quoting page 7, is 8 that right? 9 MS HEMRAJ SC: No, he's quoting from page 10 1 to 7. 11 CHAIRPERSON: Yes, but which page are you 12 referring to specifically at the moment? 13 MR MMUSI: I see what the commissioner is 14 referring to. 15 CHAIRPERSON: What she's telling you is 16 in the new SS3 page 2 is missing. It's not a train smash 17 because it's still there in the original SS3, if you didn't 18 throw it away, but if you're referring us now to page 2 you 19 have to find it in the original SS3, but if you're 20 referring us to any of the other pages you can use this 21 document. That's what you're been told. 22 MR MMUSI: Mr Chair, what I will do now, 23 I will move to the next aspect because the original SS3 24 speaks of the operational plan of the 16th. This one is the 25 operational plan of the 10th. So I would then move to the</p>	<p style="text-align: right;">Page 3423</p> <p>1 MR MMUSI: Now let's focus on the plan as 2 it was on the 16th. According to information you have, how 3 many POP members were deployed on the day? 4 BRIG MKHWANAZI: On the 16th I'm not sure 5 how many members, but I heard there were around – I'm not 6 sure, it should be 80 something, I'm not sure about that, 7 really. I'm subject to correction. I'm not sure how many 8 members were – I'm not sure - Public Order Policing. 9 MR MMUSI: We agree that the operation 10 had not yet gone past the crowd management stage. Is that 11 correct? 12 BRIG MKHWANAZI: With the – 13 MR MMUSI: Let me just – 14 BRIG MKHWANAZI: Which date are we 15 referring to? 16 MR MMUSI: On the 16th. 17 BRIG MKHWANAZI: Yes. 18 MR MMUSI: Immediately prior to the 19 implementation of stage 3 the operation as at that stage 20 had not gone past crowd management. 21 BRIG MKHWANAZI: Still crowd management. 22 MR MMUSI: Still crowd management. Would 23 I therefore be correct to say the number of POP members 24 deployed to deal with crowd management as at that stage 25 should have been taken into account by the operational</p>

Page 3424

1 commander and the overall commander?
 2 BRIG MKHWANAZI: It will be incorrect,
 3 because as I've indicated, I'm not sure how many members
 4 were. Maybe if you can indicate to me how many members of
 5 Public Order Policing were there, then I can be able to say
 6 whether was it proportionate or not proportionate on the
 7 day. At this stage I have said clearly I'm not sure how
 8 many they were there. I just estimated and I'm saying I'm
 9 subject to correction. If you can indicate to me then I
 10 can be in a position, look into the situation you are
 11 giving me, I can be able to say were those members
 12 sufficient to deal with the situation. If not, extra
 13 members should have been called in. I can be able maybe to
 14 answer on that.
 15 MR MMUSI: Let's do that. Look at
 16 exhibit L and look at slide 135.
 17 BRIG MKHWANAZI: I've got it.
 18 MR MMUSI: Yes, now at slide 135 and the
 19 following slides we are told of the deployment on the 16th,
 20 correct? Just a moment, please.
 21 BRIG MKHWANAZI: Slide 135?
 22 MR MMUSI: 135. Exhibit L.
 23 CHAIRPERSON: 135 is headed "Operational
 24 deployment briefing," and then if you look at the various
 25 slides from 136 and following, setting out the various

Page 3425

1 teams and then if you perform the exercise, which I hope Mr
 2 Mmusi has done already for us, you look at the column
 3 "personnel" in each of these designation slides, you'll
 4 find how many people were there, but I hope he's not going
 5 to ask you to do it for us because I trust he's done it
 6 already.
 7 MR MMUSI: I've done that already, Chair.
 8 CHAIRPERSON: Alright, well tell us the
 9 answer so we don't waste time.
 10 MR MMUSI: Now look at slide 137.
 11 BRIG MKHWANAZI: Okay. I've got it.
 12 MR MMUSI: It tells you that 45 POP
 13 members had been deployed, and if you look at on the top of
 14 page, it says "Designation, monitoring group."
 15 BRIG MKHWANAZI: I've got it.
 16 MR MMUSI: And then the following slide
 17 you have TRT members, there's no POP, and then you find POP
 18 on slide 139, it's 53 POP members.
 19 BRIG MKHWANAZI: Yes, I see that.
 20 MR MMUSI: Now that would be POP that
 21 would have been deployed as according to the plan that
 22 would be deployed to the neutral area. Is that correct?
 23 BRIG MKHWANAZI: Ja, I'm not sure because
 24 there's no place that shows exactly their action zone, if
 25 maybe you can identify me the action zone, please.

Page 3426

1 MR MMUSI: The action zone you'll see – I
 2 don't know what you mean by the action zone, but look at
 3 the top part of the –
 4 BRIG MKHWANAZI: Action area, neutral
 5 area, central point, okay, I see that. I see that, yes.
 6 MR MMUSI: Yes.
 7 CHAIRPERSON: - answer quickly by looking
 8 at task. Look two paragraphs up under "Task, deployment of
 9 the Nyalas with the barbed wire trailers" –
 10 BRIG MKHWANAZI: Ja, ja.
 11 CHAIRPERSON: So that's where they were.
 12 BRIG MKHWANAZI: Yes. Ja, I see now
 13 these are the members who are deployed with the barbed
 14 wire, who are 53 in total, and on the other side it's for
 15 monitoring, they are 45.
 16 MR MMUSI: Yes.
 17 BRIG MKHWANAZI: Ja, for monitoring only,
 18 and this side it's 53 for barbed wire deployment in a front
 19 before the participants, creating a neutral zone at the
 20 back. That is my understanding there.
 21 MR MMUSI: Yes.
 22 BRIG MKHWANAZI: Because it says in the
 23 slide 137, "Monitor the atmosphere around the gathering
 24 crowd and provide feedback to the JOC." That is 45, and on
 25 that other side, "Deploy the Nyala with the barbed wire,"

Page 3427

1 those are in front, 53 of them.
 2 MR MMUSI: Now you had a total of,
 3 according to the plan, 98 POP members at least in the, or
 4 around the neutral area.
 5 BRIG MKHWANAZI: In total, if we talk
 6 about POP there, it would be 98. 98, yes.
 7 MR MMUSI: Now if we go back to slide
 8 136, if I can just take you through the slides quickly,
 9 because I need to be fair to you because of the questions
 10 that I need to ask thereafter. Slide 136 tells you that
 11 this is Pappa 1, it will be controlled by Colonel McIntosh,
 12 and the task. You see that?
 13 BRIG MKHWANAZI: Yes Sir, that, "Engage
 14 in dialogue with the representative."
 15 MR MMUSI: It will be at the neutral
 16 area. Look, let's look to the action area, it says neutral
 17 area, yes.
 18 BRIG MKHWANAZI: Yes.
 19 MR MMUSI: And then the following slide
 20 is the one that we referred to earlier on of 45 POP
 21 members, it's Pappa 10. You see that? It will also be at
 22 the neutral area. You see that? Slide -
 23 BRIG MKHWANAZI: Ja, 45 members would be
 24 at the neutral area, yes.
 25 MR MMUSI: Yes. Now the following slide

<p style="text-align: right;">Page 3428</p> <p>1 –</p> <p>2 BRIG MKHWANAZI: 53.</p> <p>3 MR MMUSI: Slide 138 –</p> <p>4 BRIG MKHWANAZI: 138, okay.</p> <p>5 MR MMUSI: 138, you have TRT members also</p> <p>6 at the neutral area. You see that?</p> <p>7 BRIG MKHWANAZI: I see that.</p> <p>8 MR MMUSI: Now slide 139, if you page</p> <p>9 through, slide 139 –</p> <p>10 BRIG MKHWANAZI: Yes.</p> <p>11 MR MMUSI: That's the one we referred to</p> <p>12 earlier, 53 POP members and designation neutral area. You</p> <p>13 see that?</p> <p>14 BRIG MKHWANAZI: I see that.</p> <p>15 MR MMUSI: Slide 140 you have STF and NIU</p> <p>16 members, they are at the holding area. You see that?</p> <p>17 BRIG MKHWANAZI: I see that.</p> <p>18 MR MMUSI: The following slide you've got</p> <p>19 NIU, which is also at the holding area in Charlie 6.</p> <p>20 BRIG MKHWANAZI: Yes.</p> <p>21 MR MMUSI: Now slide 142 you have Charlie</p> <p>22 2 at holding area with eight POP members.</p> <p>23 BRIG MKHWANAZI: I see that.</p> <p>24 MR MMUSI: These are the reserves,</p> <p>25 correct?</p>	<p style="text-align: right;">Page 3430</p> <p>1 his opinion as an expert in Public Order Policing as to the</p> <p>2 adequacy or otherwise in the plan. So it's not fair to say</p> <p>3 to him "you had." He didn't have any at all; he wasn't</p> <p>4 there. Just bear that in mind, please.</p> <p>5 MR MMUSI: Point taken, Chair. I did not</p> <p>6 intend – ja. Now you are an expert. How would 98 POP</p> <p>7 members handle a crowd of 3 000 or so, or more, of strikers</p> <p>8 on that particular day? Is it possible, according to the</p> <p>9 training is it possible that 98 members would be in a</p> <p>10 position to handle this crowd of this magnitude?</p> <p>11 BRIG MKHWANAZI: It is possible.</p> <p>12 MR MMUSI: How so?</p> <p>13 BRIG MKHWANAZI: I will explain. We look</p> <p>14 to our mission on the 16th is to disperse, encircle, disarm,</p> <p>15 and arrest. That is the mission. We explained from the</p> <p>16 questions that came from the evidence team as well as to</p> <p>17 last counsellor who was asking me, that before anything was</p> <p>18 going to be done there, people were going to be given a</p> <p>19 warning and some of them were going to evacuate on their</p> <p>20 own and people were going to be dispersed into smaller</p> <p>21 groups, or manageable groups, and be, at that stage be</p> <p>22 disarmed and be arrested, and go further, we got 78 members</p> <p>23 that are placed in reserve, 70 on the other side, eight on</p> <p>24 the other side, in total it's 78. Those members, I said</p> <p>25 right from the beginning that their main task is three</p>
<p style="text-align: right;">Page 3429</p> <p>1 BRIG MKHWANAZI: Correct.</p> <p>2 MR MMUSI: If you jump to slide 144 you</p> <p>3 have Charlie 3 and you have 70 POP members and Canine and</p> <p>4 TRT in the holding area. You see that?</p> <p>5 BRIG MKHWANAZI: What slide is it?</p> <p>6 MR MMUSI: 144.</p> <p>7 BRIG MKHWANAZI: 144?</p> <p>8 MR MMUSI: Yes, Sir.</p> <p>9 BRIG MKHWANAZI: I see personnel 57 TRT -</p> <p>10 oh, 70 POP, yes, holding area, ja.</p> <p>11 MR MMUSI: So they are the reserves.</p> <p>12 BRIG MKHWANAZI: Correct, that's what I'm</p> <p>13 here.</p> <p>14 MR MMUSI: In holding area 2?</p> <p>15 BRIG MKHWANAZI: That's right.</p> <p>16 [10:31] MR MMUSI: If we can just jump the, the</p> <p>17 following slide is LCRC and something – I don't want to</p> <p>18 focus on that. Now we agree as at this stage that the plan</p> <p>19 on the 16th, according to what we have seen you had 98 POP</p> <p>20 members who had been stationed in the neutral area with the</p> <p>21 responsibility of crowd management, handling 3 000 or so</p> <p>22 strikers. You see that?</p> <p>23 BRIG MKHWANAZI: I see that.</p> <p>24 CHAIRPERSON: Correction. You say "you</p> <p>25 had." He didn't have. He sits here as an expert, giving</p>	<p style="text-align: right;">Page 3431</p> <p>1 things, is to relieve members, is to reinforce, and is to</p> <p>2 arrest. These 78, if you call in as an operational</p> <p>3 commander, you see now the situation demands that you bring</p> <p>4 some other members, you'll bring other members as well, and</p> <p>5 I went further, I said if you give a warning to the crowd</p> <p>6 gathered in that particular koppie and then some of them</p> <p>7 leave, it gives another opportunity. I even further said</p> <p>8 when they deployed the barbed wire, on my understanding is</p> <p>9 that some of the people as well were moving. So they were</p> <p>10 not even stopped from being moving away from the koppie as</p> <p>11 well. So this was going to be achievable with the members</p> <p>12 we got. You know, to talk about proportionality, it</p> <p>13 doesn't mean if participants are 50 and you must have 50</p> <p>14 members as well to deal with the situation. You know, we</p> <p>15 are dealing with people here whom we talk with them. If</p> <p>16 you talk with them, some of them disperse on their own.</p> <p>17 That was the technique that was going to be, or an option</p> <p>18 that was going to be utilised. In that way it was</p> <p>19 achievable.</p> <p>20 MR MMUSI: That would be achievable if</p> <p>21 the police follow procedure, by first warning the people,</p> <p>22 correct?</p> <p>23 BRIG MKHWANAZI: I have said the</p> <p>24 information given to me was that when they deployed the</p> <p>25 first barbed wire their intention was that once they</p>

Page 3432

1 complete the deployment of the barbed wire they will then
 2 give the warning, because the purpose of deploying the
 3 barbed wire was not to encircle the people in the koppie,
 4 but was to protect the media, other people, and SAPS. So
 5 as they were deploying the barbed wire, in that meantime
 6 then people breached the barbed wire, then they couldn't go
 7 further with warning the people so that they can move on
 8 their own. But what I'm told is that at the same time when
 9 the barbed wire was deployed, they were able to have, there
 10 were people who were able to move on their own without
 11 being interfered to.

12 MR MMUSI: Now the deployment of the
 13 barbed wire, would I be correct to say in a strike
 14 situation when the police deployed a barbed wire, that
 15 triggers a movement in one way or the other with the
 16 protesters?

17 BRIG MKHWANAZI: I spoke, I think
 18 yesterday, if not yesterday, that the purpose of the barbed
 19 wire is to protect the structures, that people may not get
 20 in, damage the property, whatever, if the march is going to
 21 pass that particular structure. I said normally we
 22 deployed the barbed wire prior to that. However, on the
 23 day, on the 16th it was totally different because the barbed
 24 wire was deployed for another purpose, of which it was done
 25 in the presence of the people and all that. I answered

Page 3433

1 that question, I think yesterday.

2 MR MMUSI: You see, I understand that to
 3 mean yes to my question.

4 BRIG MKHWANAZI: Repeat your question.

5 MR MMUSI: In a strike situation, when
 6 the police start to deploy a barbed wire, assume in the
 7 circumstances similar to this, that would trigger the
 8 movement of the protesters in one way or the other?

9 BRIG MKHWANAZI: My answer to that is
 10 that the purpose of the barbed wire is deployed prior to
 11 that. Now it was deployed at this moment for another
 12 purpose. Therefore for me to say it will trigger or not
 13 trigger, I don't have an experience of that, because a
 14 barbed wire is not an animal. It's like, you know you
 15 don't bring a lion, then people will jump. This is not
 16 about that. It's just an equipment.

17 MR MMUSI: Let's look at the purpose of
 18 the barbed wire, take it step by step. It does happen that
 19 the police deploy a barbed wire to arrest the target,
 20 correct?

21 CHAIRPERSON: The evidence is, it appears
 22 from the documents that the purpose of the barbed wire was
 23 to protect the police who were there in the neutral area
 24 and the media who were slightly behind. That was the
 25 purpose, and he explained yesterday - I mean you're

Page 3434

1 repeating material that was covered yesterday. I don't
 2 want to stop you entirely because I take it you're actually
 3 using this to move to another point, but what he said was
 4 the purpose was to protect the neutral area and those in
 5 it. As far as he sees it, based on his experience, because
 6 he wasn't there, that sort of situation isn't like sending
 7 a lion or a pack of dogs or whatever at protesters to
 8 disperse them, and the idea was, or he would have done it,
 9 as I understand his evidence, give a warning about what was
 10 going to happen thereafter, after the barbed wire was in
 11 place. What went wrong was that while the barbed wire was
 12 being deployed, the people breached it, they tried to
 13 breach it twice, unsuccessfully. They breached it the
 14 third time and that's when the firing started. We know
 15 that something happened before, that the final incident
 16 happened before it was planned to because we heard that
 17 long ago when we heard the evidence of the helicopter went
 18 into the air at a time when it was effectively too late.
 19 But that's the evidence that he's giving. So it doesn't
 20 help, with respect, to put it slightly differently. I'm
 21 not suggesting for a moment you're doing it deliberately,
 22 but I'm trying to help you so that you can get to the point
 23 that you want to make.

24 MR MMUSI: But Mr Chair, I appreciate
 25 that, but that is exactly the piece of evidence I'm taking

Page 3435

1 issue with. Now I'm proceeding beyond that point. I'm
 2 exploring, under normal circumstances -

3 CHAIRPERSON: I thought you
 4 misunderstood. You understand very well, but you're trying
 5 to change -

6 MR MMUSI: Perhaps let me do it
 7 differently. For what purpose to the police use a barbed
 8 wire, in general?

9 BRIG MKHWANAZI: As I -

10 MR MAHLANGU: Mr Chairperson, if I may
 11 say, the recorders here are fighting me for interfering
 12 with the records, but it's the counsel who doesn't give me
 13 a chance and -

14 CHAIRPERSON: May I say to the recorders,
 15 if you want to fight with anybody, please fight with
 16 counsel and not the interpreter.

17 BRIG MKHWANAZI: Counsellor, maybe you
 18 said in general, I'm correct, what is the purpose of the
 19 barbed wire?

20 MR MMUSI: Yes.

21 BRIG MKHWANAZI: Okay. Ja what normally,
 22 as I've said, the purpose of the barbed wire, we utilise it
 23 for the purpose of protecting the structures. As I've
 24 said, if people are going to be channelled to a certain
 25 direction, you will deploy the barbed wire to protect a

<p style="text-align: right;">Page 3436</p> <p>1 certain structure. I made an example, I think yesterday, 2 about Shell House, if normally used to be IFP marching in 3 Johannesburg, if they're going to pass next to Shell House 4 in those previous years where we were still anticipating 5 some threat around that area, we will deploy the barbed 6 wire around the structure. We will have police official as 7 well to ensure that if there's a space where they can maybe 8 breach, we place them to protect, to make sure nobody goes 9 through. The purpose is to protect structures. You deploy 10 into that. You deploy it for the purpose of channelling 11 spectators to a certain direction.</p> <p>12 MR MMUSI: And then in protest actions, 13 what is the purpose of the barbed wire?</p> <p>14 BRIG MKHWANAZI: It's, if we talk about a 15 march it can be a protest, it can be a march, it's protest, 16 it's going to be a protest march. It is a protest march 17 and maybe your question will be if it is a gathering where 18 people are sitting in one place, maybe what can be the 19 purpose around that position, it will definitely depend, as 20 I have said, it will depend to the operational commander on 21 the day to say how they can utilise it. Then it will come 22 to their decision, operational commander, overall 23 commander, to look to the situation and say how they can 24 utilise it. You need to do your assessment. We spoke 25 about threat assessment to say what can be the threat in</p>	<p style="text-align: right;">Page 3438</p> <p>1 MR MMUSI: Now according to information 2 you've been given, what triggered the move of the 3 protesters at scene 1 when the barbed wire was being 4 deployed?</p> <p>5 MR SEMENYA SC: I don't understand the 6 question, Chair.</p> <p>7 CHAIRPERSON: Well, perhaps the witness 8 understands the question; let's ask him. Do you understand 9 the question, Brigadier? He asks you -</p> <p>10 BRIG MKHWANAZI: I can try to answer, 11 Sir.</p> <p>12 CHAIRPERSON: Sorry?</p> <p>13 BRIG MKHWANAZI: I can try to answer.</p> <p>14 CHAIRPERSON: Alright, try to answer, 15 let's see from your answer whether you understood the 16 question.</p> <p>17 BRIG MKHWANAZI: Counsellor, my answer 18 would be one -</p> <p>19 MR SEMENYA SC: Chair, that can't help me 20 unless I understand what the question is so that I can 21 follow the answer as well.</p> <p>22 CHAIRPERSON: Well, I've never ever heard 23 you have to explain the question to every person, every 24 counsel present so that they can understand what's going 25 on, but anyway, but I don't mean to be unkind, I understand</p>
<p style="text-align: right;">Page 3437</p> <p>1 this situation, do we have a problem with this and that. 2 As I've said, the deployment of the barbed wire there was 3 only just to protect media, other people who come in, which 4 are VIP or whatever, as well as the police. That was that. 5 There wasn't only to encircle people or anything; it was 6 only for that purpose.</p> <p>7 MR MMUSI: Has it ever happened in your 8 experience that the police used the barbed wire as an aid 9 to effect arrest?</p> <p>10 BRIG MKHWANAZI: No, I don't recall any 11 incident using a barbed wire to arrest people, because 12 people, maybe if you, they are sitting already, you take 13 the barbed wire, you put it around, definitely you're going 14 to have a stampede into that, because always people will 15 seek for the position to run out if it's that position. So 16 on that day it was not that purpose to encircle the koppie. 17 It was only to protect those people on the other side, 18 that's all.</p> <p>19 MR MMUSI: I'm not asking on that 20 particular day. I'm asking in your experience as a police 21 officer, have you never experienced a situation where a 22 barbed wire is used as an aid by police officers to effect 23 arrest?</p> <p>24 BRIG MKHWANAZI: No, not at all. I don't 25 recall that in my presence.</p>	<p style="text-align: right;">Page 3439</p> <p>1 where you're coming from. Mr Mmusi, the question isn't 2 quite as clear as it should be. Mr Semanya is having 3 problems understanding it and I'm not entirely sure I 4 understand it correctly either. So have another go at 5 putting it clearly. Bear in mind the audience that you're 6 addressing the question to, and make it clear so we can 7 understand it, okay?</p> <p>8 MR MMUSI: Perhaps I should start by 9 explaining the question to Mr Semanya. It is evidence that 10 the barbed wire was deployed and then soon after the barbed 11 wire was deployed, the protesters started to move from 12 scene 1 - koppie 1, from koppie 1. Now this is an expert 13 who has been given particular information which I'm not 14 privy to. I'm asking him according to information that he 15 has been given, when the barbed wire was deployed, what 16 triggered the move of the protestors from Koppie 1, that's 17 the question.</p> <p>18 [10:51] CHAIRPERSON: He can't know the answer to 19 that. The most he can tell you is what based on his 20 expertise and experience, what he thinks the probable cause 21 was of the movement forward, he can't tell you from his own 22 knowledge, when you call your own clients they can perhaps 23 tell us why they did what they did, but he can't answer 24 directly. The most he can do is give his opinion as to why 25 it happened. So, anyway, I've reformulated your question</p>

<p style="text-align: right;">Page 3440</p> <p>1 for you. Can you answer now, Brigadier?</p> <p>2 BRIG MKHWANAZI: I don't have an answer.</p> <p>3 CHAIRPERSON: Cross-examination, Mr</p> <p>4 Mmusi.</p> <p>5 MR MMUSI: Sir, I put it to you that what</p> <p>6 caused the protestors to move from koppie 1 was the</p> <p>7 deployment of the barbed wire.</p> <p>8 CHAIRPERSON: May I ask you, you're</p> <p>9 appearing for some of the people who are there who moved</p> <p>10 forward, I take it, are you going lead evidence from them</p> <p>11 as to what caused them to move forward?</p> <p>12 MR MMUSI: Yes, yes.</p> <p>13 CHAIRPERSON: Because why don't you put</p> <p>14 then, that my case will be and my witnesses will say this</p> <p>15 and this and he can comment. It's not appropriate just to</p> <p>16 phrase the question the way you're doing in these</p> <p>17 circumstances.</p> <p>18 MR MMUSI: Counsellor, if it is a fact I</p> <p>19 have no problem but it never came to my attention. Seeing</p> <p>20 that the witness has answered, I need to make a follow-up</p> <p>21 question. Would the fact that the protestors moved from</p> <p>22 koppie 1 immediately after the deployment of the</p> <p>23 protestors, immediately after the deployment of the barbed</p> <p>24 wire, would that not be consistent with ordinary reaction</p> <p>25 of protestors when the barbed wire is deployed?</p>	<p style="text-align: right;">Page 3442</p> <p>1 CHAIRPERSON: You've put your, what</p> <p>2 amounts to your case at this point, and you haven't now,</p> <p>3 now the witness obviously can't comment on that because he</p> <p>4 wasn't there. The most he can say, I suppose, is</p> <p>5 consistent with what he's seen on the video and the</p> <p>6 information that's been given to him. Is that correct,</p> <p>7 Brigadier?</p> <p>8 BRIG MKHWANAZI: That's correct, Sir.</p> <p>9 CHAIRPERSON: Ja. Now having established</p> <p>10 that, you're now going to put your main questions to</p> <p>11 establish the points you've been busy with since you</p> <p>12 started.</p> <p>13 MR MMUSI: Yes Chair. You stated that</p> <p>14 when POP members dispersed the crowd, they should make</p> <p>15 allowance.</p> <p>16 BRIG MKHWANAZI: I'm just putting my</p> <p>17 understanding.</p> <p>18 MR MMUSI: For people to go to places of</p> <p>19 residence, go to places where they can catch transport to</p> <p>20 go home, do I understand you correctly to be saying that?</p> <p>21 BRIG MKHWANAZI: On my answer I think I</p> <p>22 gave, I think not yesterday, days before that, that if you</p> <p>23 give a warning, Counsellor, you will give it twice to give</p> <p>24 a chance to the bystanders as well to be able to move away</p> <p>25 from where the situation is and giving a chance as well to</p>
<p style="text-align: right;">Page 3441</p> <p>1 CHAIRPERSON: I'm not sure that issue is</p> <p>2 clear. I'm not sure what the ordinary behaviour of</p> <p>3 protestors is in these circumstances. Shouldn't you first</p> <p>4 establish that before you proceed to ask this question? I</p> <p>5 think I know where you're going but I don't think, with</p> <p>6 respect, you put it quite as clearly as would be fair in</p> <p>7 the circumstances to enable the witness to answer.</p> <p>8 MR MMUSI: Evidence will be led that when</p> <p>9 the police started to deploy the barbed wire the protestors</p> <p>10 assumed that they were now being surrounded and they</p> <p>11 started to leave koppie 1. And they left in various</p> <p>12 directions. Others left in the direction of Nkaneng.</p> <p>13 Others left towards Marikana. Others left towards K4. All</p> <p>14 those being places where they reside. Do you have a</p> <p>15 comment at this stage?</p> <p>16 BRIG MKHWANAZI: - hear from you.</p> <p>17 MR MMUSI: And that a group that left in</p> <p>18 the direction of Nkaneng realised that Nyala with a barbed</p> <p>19 wire was about to close the gap between itself and the</p> <p>20 kraal. And some ran quickly before the Nyala could close</p> <p>21 the gap going around the kraal.</p> <p>22 BRIG MKHWANAZI: I hear the information</p> <p>23 from you, Sir.</p> <p>24 MR MMUSI: Now, let's move to the purpose</p> <p>25 of -</p>	<p style="text-align: right;">Page 3443</p> <p>1 those people who have been given a warning to be able to</p> <p>2 move where they want to go, depending where their transport</p> <p>3 is, they will move to those places and go home if that is</p> <p>4 possible.</p> <p>5 MR MMUSI: Now, I want us to focus on the</p> <p>6 location of the neutral area. Look at slide 77 of exhibit</p> <p>7 L. Now do you see where the neutral area is?</p> <p>8 BRIG MKHWANAZI: Will you please</p> <p>9 orientate me, please?</p> <p>10 MR MMUSI: If you look at the blue and</p> <p>11 green icons, you see them, on the middle of the page next</p> <p>12 to the informal settlement.</p> <p>13 BRIG MKHWANAZI: I see that.</p> <p>14 MR MMUSI: Now if you look on top of the</p> <p>15 page you see that there would be NIU and other officers</p> <p>16 deployed there.</p> <p>17 BRIG MKHWANAZI: I see that.</p> <p>18 MR MMUSI: If you look further down</p> <p>19 towards the right you see forward holding area 1.</p> <p>20 BRIG MKHWANAZI: I see that.</p> <p>21 MR MMUSI: Towards the left is STF and</p> <p>22 NIU.</p> <p>23 BRIG MKHWANAZI: I see that.</p> <p>24 MR MMUSI: And then further left there is</p> <p>25 forward holding area 2.</p>

<p style="text-align: right;">Page 3444</p> <p>1 BRIG MKHWANAZI: I see that.</p> <p>2 MR MMUSI: And we have evidence that</p> <p>3 there were also mounted police and those would be towards</p> <p>4 the direction of the top left of this particular slide,</p> <p>5 according to -</p> <p>6 BRIG MKHWANAZI: Correct.</p> <p>7 MR MMUSI: And down in the same</p> <p>8 direction, towards the bottom, you would have K9.</p> <p>9 BRIG MKHWANAZI: I'm not sure you spoke</p> <p>10 about K9 on the reserve on top and you said is it holding</p> <p>11 area 2, you are talking about that, that's K9 as well</p> <p>12 there?</p> <p>13 MR MMUSI: No, K9 would be slightly</p> <p>14 above. Holding area number 1. Yes, holding area 2,</p> <p>15 forward holding area 2 towards the left.</p> <p>16 BRIG MKHWANAZI: I hear that, Counsellor,</p> <p>17 but I'm not sure as you are explaining I will follow that.</p> <p>18 MR MMUSI: What I'm trying to show you is</p> <p>19 that at the time when the barbed wire was being deployed,</p> <p>20 the protestors had been surrounded by the police.</p> <p>21 BRIG MKHWANAZI: Chairperson, we went</p> <p>22 past this point a little earlier. Slide 77 is not how the</p> <p>23 formation was when the barbed wire was deployed.</p> <p>24 CHAIRPERSON: It's now 11 o'clock, it's</p> <p>25 time for tea. I suggest we take the, Mr Bizos promised to</p>	<p style="text-align: right;">Page 3446</p> <p>1 further. The police, when they stationed the neutral area</p> <p>2 at the entrance, I want to believe, of Nkaneng, in your</p> <p>3 understanding of the purpose of crowd management would the</p> <p>4 position of the neutral area be consistent with the crowd</p> <p>5 management principles?</p> <p>6 MR SEMENYA SC: Chair, no policemen were</p> <p>7 positioned at the entrance of Nkaneng.</p> <p>8 CHAIRPERSON: I think Mr Semenya is</p> <p>9 correct.</p> <p>10 MR MMUSI: Mr Chair, that's not how I</p> <p>11 understand it. What I understand is that by the kraal,</p> <p>12 that's the entrance towards the informal settlement.</p> <p>13 That's where the neutral area was, and in the neutral area</p> <p>14 you had the police stationed there. Now I'm exploring this</p> <p>15 aspect that the crowd management principles are that when</p> <p>16 you disperse the crowd you should create environment for</p> <p>17 them to leave to places of residence. Now if you look at</p> <p>18 the location of the neutral area, in my view it goes</p> <p>19 against this, that's what I -</p> <p>20 CHAIRPERSON: No, you don't give us your</p> <p>21 view; you give us your submissions.</p> <p>22 MR MMUSI: Yes.</p> <p>23 CHAIRPERSON: The point you're making is</p> <p>24 that by rendering the neutral area inaccessible to the</p> <p>25 strikers, they were also prevented from going into the</p>
<p style="text-align: right;">Page 3445</p> <p>1 end at about tea time, he actually ended before that. I</p> <p>2 suggest we take the tea adjournment now. During that time</p> <p>3 you can look and see whether there is another slide which</p> <p>4 perhaps illustrates more clearly the point you want to</p> <p>5 make. I think Mr Semenya is right, you're choosing too</p> <p>6 early a slide for the purpose of the point you're trying to</p> <p>7 make. So while we have tea, you look for the slide and</p> <p>8 we'll resume in about 15 minutes time.</p> <p>9 [COMMISSION ADJOURNS COMMISSION RESUMES]</p> <p>10 [11:23] CHAIRPERSON: The Commission will resume.</p> <p>11 Brigadier, I have to remind you, you're still under oath.</p> <p>12 Mr Mmusi, have you found the slide which will illustrate</p> <p>13 the point you want to make and we won't listen to an</p> <p>14 objection from Mr Semenya? If so, I suggest you proceed</p> <p>15 with your cross-examination.</p> <p>16 MR MMUSI: Mr Chair, I will defer that to</p> <p>17 a later stage when I found the correct slide. At the</p> <p>18 moment I'll proceed. Brigadier, the senior counsel for the</p> <p>19 police, Mr Semenya, when he did an opening statement at the</p> <p>20 commencement of this Commission, this is what he said.</p> <p>21 "The implementation of this measure was preceded by the</p> <p>22 deployment of barbed wire to send a message that the armed</p> <p>23 protesters may not cross the police line."</p> <p>24 BRIG MKHWANAZI: I hear that.</p> <p>25 MR MMUSI: Now let's explore this aspect</p>	<p style="text-align: right;">Page 3447</p> <p>1 informal settlement because the entrance to the informal</p> <p>2 settlement was being blocked. I think that's your point,</p> <p>3 is it?</p> <p>4 MR MMUSI: Exactly.</p> <p>5 CHAIRPERSON: I think that's right, Mr</p> <p>6 Semenya. I don't think he's suggesting it was done on</p> <p>7 purpose, but he's suggesting that that was the effect of</p> <p>8 what was done.</p> <p>9 MR SEMENYA SC: That's not the objective</p> <p>10 evidence, Chair. The entrance to that informal settlement</p> <p>11 is quite wide, and that's in the veld there where the event</p> <p>12 happened. Perhaps we can look at slide 116.</p> <p>13 CHAIRPERSON: What Commissioner Hemraj</p> <p>14 suggests to me is that I should refer you, Mr Mmusi, to</p> <p>15 slide 215. Mr Mmusi, is it possible if we move on to</p> <p>16 something else for the moment? I think I understand the</p> <p>17 point you're wanting to make. The difficulties we have</p> <p>18 are, (1), I don't think that the brigadier was there, and</p> <p>19 secondly, I don't know that we've got a clear photograph</p> <p>20 here which illustrates what you want. It may be that, if</p> <p>21 you look during the lunch adjournment at the videos, you</p> <p>22 may find a video clip which clearly demonstrates what you</p> <p>23 want, the point you want to make, alternatively shows if</p> <p>24 the point that you want to make is a good one. But perhaps</p> <p>25 if there's something else that you could proceed with at</p>

<p style="text-align: right;">Page 3448</p> <p>1 the moment, it will be helpful. It may be, I don't know, 2 it may be your cross-examination is so planned that you've 3 got to make this point first, but I'm not a party to, or 4 privy to the planning of your cross-examination, so I can't 5 help you with it.</p> <p>6 MR MMUSI: Mr Chair, perhaps something 7 that could be of assistance to us, the record of 8 proceedings, page 1463, I found a passage where Mr 9 Bruinders got a concession from Warrant Officer Thamae that 10 that particular dirt road leads into the informal 11 settlement. So it was on that particular basis that I put 12 this as –</p> <p>13 CHAIRPERSON: I think the way forward 14 will be to read the passage to which you're referring to 15 the witness, and then based upon the concession that was 16 obtained from the warrant officer – what was Mr Thamae's 17 rank again? I forgot.</p> <p>18 MR MMUSI: Warrant Officer.</p> <p>19 CHAIRPERSON: Based upon that concession 20 then you can put a question to the witness, and it may be 21 that Mr Semenya will then withdraw his objection. Let's 22 see whether you can do it that way.</p> <p>23 MR MMUSI: Yes, it is the transcript of 24 the 15th of November. Mr Bruinders says to Warrant Officer 25 Thamae, "No, please Warrant Officer," it's at page 1463 –</p>	<p style="text-align: right;">Page 3450</p> <p>1 MR MMUSI: I'll rephrase, Mr Chair. The 2 neutral area was stationed in the direction leading to the 3 entrance of the informal settlement. Do you see that? 4 MR SEMENYA SC: Objection. That's also 5 not correct, Chair, and slide 215 makes the point that the 6 journalists would have been to the left of that dirt road 7 going to Nkaneng. That would have been the neutral zone. 8 That's not to the entrance of the settlement.</p> <p>9 MR MMUSI: I'll proceed. Would I be 10 correct to say that the police when handling crowd 11 management have to station the neutral area in a manner 12 that does not defeat the purpose of the operation? 13 BRIG MKHWANAZI: Counsellor, I hear your 14 question very well. However, I explained before when we 15 were talking about a neutral zone, or a neutral area, I 16 think the question came from the counsellor who was busy 17 with me before, I explained clearly that a neutral area or 18 a neutral zone, only it's purpose will be the position 19 where the operational commander will be able to exercise 20 his freedom of action, and the position where it should be 21 and everything, it will be determined by him because he's 22 the person who's actually in charge of the operation there. 23 For me it's difficult hence I was not even in that position 24 to say on the day where it was, was it in right position or 25 not in the right position, definitely I cannot have a good</p>
<p style="text-align: right;">Page 3449</p> <p>1 CHAIRPERSON: And of course the brigadier 2 hasn't got the page in front of him, so you have to read 3 the passage to him.</p> <p>4 MR MMUSI: Yes, Mr Chair, I thought it 5 was for the purpose of other legal representatives. He 6 says, "No, please Warrant Officer, we don't want to go to 7 the left of that photograph. I want to keep you to the 8 right of the kraal. Do you understand?" Warrant Officer 9 then answers, "If you go straight you go to the position of 10 that body." Then Mr Bruinders says, "We've been through 11 this before. If you want to go, I want you to go, take the 12 path towards the dirt road. Yes, you've got that. Now 13 that dirt road, I'll make it easier for you, that dirt road 14 leads into the informal settlement, not so?" Warrant 15 Officer says, "If you go that direction, yes."</p> <p>16 CHAIRPERSON: Now you've read the 17 passage, now put the question.</p> <p>18 MR MMUSI: Brigadier, the point where the 19 neutral area was stationed was at the entrance of the 20 informal settlement.</p> <p>21 MR SEMENYA SC: Objection. That's not 22 the entrance of the informal settlement, Chair. That 23 evidence which was given through Mr Bruinders is that that 24 dirt road leads to the informal settlement, not its 25 entrance. The entrance is not there.</p>	<p style="text-align: right;">Page 3451</p> <p>1 comment on that. That one definitely it's an issue with an 2 operational commander to see where he place it, because the 3 purpose is to be able to exercise his freedom of action to 4 say who must do what job at that time. That's all.</p> <p>5 MR MMUSI: Let's move on. When the 6 police dispersed the protesters, under normal circumstances 7 the protesters would usually run towards the residential 8 area. Is that not correct? 9 BRIG MKHWANAZI: As you have said, in a 10 normal situation, normally we do have different types of 11 marches. It's either others are in town, in the city, in 12 the CBD, others can be in residential. It will depend 13 where you are, and if you talk about residential it can 14 happen people are marching right inside their area of 15 residence. So it's always like that. If you have to 16 disperse them it will be exactly the position to say which 17 direction do you disperse them so that you can actually 18 deal with the situation. That's all, but in a normal 19 situation we don't only deal with marches whereby we look 20 to say they're at their residence or what. You can do it 21 inside the CBD, whatever place the situation is.</p> <p>22 MR MMUSI: Now let's look at the 16th. It 23 would have been normal and expected for the protesters when 24 they get dispersed to run into the residential area.</p> <p>25 BRIG MKHWANAZI: It is true, Counsellor.</p>

<p style="text-align: right;">Page 3452</p> <p>1 People will have to disperse, obviously a person will go 2 where he or she stays. There's no ways that a person will 3 run somewhere where a totally different person will run to 4 where he stays or maybe run to the place where there's taxi 5 rank, what, it depend where you are. But on the 16th, as 6 you say, obviously they will definitely look to the place 7 where they will reach their residence as quick as possible. 8 MR MMUSI: Now seeing that the operation 9 had not gone beyond crowd management stage, the police 10 should have foreseen that these protesters, when dispersed 11 will run into the residential area. 12 BRIG MKHWANAZI: As you've said, that's 13 correct. The operational commander will look at that. 14 Those are the basics. It will have to be like that. 15 MR MMUSI: I know you were not the 16 operational commander on the day, but the operational 17 commander should have had this in mind, you say? 18 BRIG MKHWANAZI: It's normal, it must be 19 like that. 20 MR MMUSI: So it's a yes? 21 BRIG MKHWANAZI: As you wish really, yes. 22 CHAIRPERSON: Having got that concession, 23 the wise cross-examiner doesn't ask the question again 24 because sometimes he loses the concession he got already. 25 [11:43] MR MMUSI: I didn't foresee him saying</p>	<p style="text-align: right;">Page 3454</p> <p>1 the one that counsel has put to you. They also allege that 2 Nyalas were actually driven there and driven over the 3 bodies of the people who were still alive, as I understand 4 it. Now my understanding also is the police deny that, but 5 the question that's being put to you is if the evidence 6 that is led by Mr Mmusi establishes the facts that he's put 7 to you, what is your comment, and I will be surprised to 8 hear you say that that was proportionate force and minimum 9 force and so on. I imagine you would concede very readily 10 that if that's what happened, it can't be defended and is 11 clearly inappropriate. Would that be fair? The real 12 question is whether those facts are correct, but if they're 13 correct, I take it you would concede that that wasn't 14 minimum force? Shooting a man who is injured, lying on the 15 ground, driving a Nyala over him, that can't be minimum 16 force, can it? 17 BRIG MKHWANAZI: No, it cannot. 18 CHAIRPERSON: Very well. Is that the 19 point you wanted to make, Mr Mmusi, or have I anticipated 20 the point you wanted to make? 21 BRIG MKHWANAZI: No, it cannot be that 22 position, really, but as I'm hearing from you now, I 23 couldn't have that type of information before definitely 24 coming here that such situation took place on that day, 25 that people were actually shot while they were lying down</p>
<p style="text-align: right;">Page 3453</p> <p>1 anything other than yes, Mr Chair. Now minimum force, 2 evidence will be led that after the eight-second shooting 3 at scene 1, police approached the protesters that had been 4 shot and lying on the ground, searching them, checking them 5 one by one, and checking if they are dead, and those that 6 were not dead they were shot again. 7 CHAIRPERSON: Evidence you're going to 8 lead or – 9 MR MMUSI: Yes, yes, Mr Chair. 10 CHAIRPERSON: I understood the way you 11 put the question was that that was the evidence already, 12 but what you're saying is your case is, and you will lead 13 evidence to prove that that's what happened? 14 MR MMUSI: Yes, Mr Chair. 15 CHAIRPERSON: Okay, now that's clear. 16 MR MMUSI: Now assuming that this is 17 going to be the evidence, I now want to invite your opinion 18 as an expert. 19 BRIG MKHWANAZI: On that situation, 20 Counsellor, I have no comment. 21 CHAIRPERSON: Brigadier, I'm just trying 22 to cut this short. From the statements that we've been 23 given, taken by IPID, it appears that some of the surviving 24 strikers, if one can call them that, may make that 25 allegation. They allege that, the allegation they make is</p>	<p style="text-align: right;">Page 3455</p> <p>1 helpless, and I haven't heard a situation that the Nyalas 2 were driving on top of them, and definitely I hear right 3 here, but if you say is it still minimum force, then really 4 it cannot be minimum force, but I cannot have a clear 5 opinion to say what can I say in that situation, but my 6 point is just to say it cannot be that way. That's how it 7 should be. 8 MR MMUSI: Now evidence would be led also 9 that at scene 2 the protesters who had run from scene 1 - 10 from koppie 1, I'm sorry, hiding in scene 2, whilst they 11 were hiding the police shot at them and they, the 12 protesters, made an agreement to come out of their hiding 13 place, raising their arms as a sign of surrender. The 14 police shot at those protesters, nevertheless. This 15 evidence would be led. 16 MR SEMENYA SC: Chair, these are not 17 questions calling for an expert opinion. These are 18 questions which ought properly to be put to witnesses who 19 can countenance them or confirm them. They're not for 20 expert opinion. 21 CHAIRPERSON: Mr Mmusi, I don't see how 22 an expert can be expected to give expert testimony in 23 regard to the allegations you've made. You said what your 24 evidence will be. When people who were involved at scene 2 25 give evidence you can put it to them and get their</p>

<p style="text-align: right;">Page 3456</p> <p>1 response, but I think that subject to what you're going to 2 say, Mr Semenya is right. This is not really a matter to 3 put to an expert because he can't really give expert 4 evidence about it, that I can see, but isn't that so? 5 MR MMUSI: Mr Chair, I have a differing 6 view. 7 CHAIRPERSON: I am not interested in your 8 views, but I'm happy to hear your submissions. 9 MR MMUSI: Yes, the way I understand the 10 evidence is that this was crowd management. Now a level 11 higher would be crime prevention. I have not yet evidence 12 that now the police were dealing with crime prevention. 13 Now this is an expert who knows about crowd management, as 14 at that stage the police were still dealing with crowd 15 management. So the questions and the evidence and the 16 versions that I'm putting are informed by this particular 17 background. 18 CHAIRPERSON: You've put the evidence 19 that will be led. Now I suggest you reformulate your 20 question in a way which avoids Mr Semenya's objection, and 21 that you then proceed. 22 MR MMUSI: Mr Chair, I respect your 23 guidance, but I do not understand the objection, really, 24 because unless Mr Semenya just substantiates his objection, 25 then I would understand, but I don't understand it.</p>	<p style="text-align: right;">Page 3458</p> <p>1 have already stated, be consistent with the teachings of 2 the police with regard to crowd management? 3 BRIG MKHWANAZI: I will have a problem to 4 answer your question directly, because I think here we need 5 to be clear what situation we're having now, and if we 6 still go on talking about crowd management and having 7 another situation, we need to be sure exactly who was where 8 at that stage, because my last understanding was that we 9 were at the position where the barbed wire was deployed, 10 where we spoke about 98 members of Public Order Policing 11 that were at that position. Now people, Chairperson, have 12 moved to another place. Now who's there now? You know, it 13 cannot be crowd management and crowd management, and I 14 don't get it in that way. I want to understand alright 15 that position. 16 CHAIRPERSON: Okay, we've moved on now. 17 We've moved on from koppie 1. We're now at koppie 2, which 18 is scene 2. 19 BRIG MKHWANAZI: I understand, Sir. 20 CHAIRPERSON: The eight-second shooting 21 has happened. There are a lot of bodies lying all over the 22 place, people who ran back to koppie 2, and police who 23 followed them, and what is put to you is that the people 24 who ran to koppie 2 hid among the bushes – koppie 3, sorry, 25 koppie 3 – hid among the bushes. They ran to koppie 2</p>
<p style="text-align: right;">Page 3457</p> <p>1 CHAIRPERSON: Mr Semenya, would you care 2 to help your learned friend? Look, he's obviously trying 3 to make a point that he considers important. I don't want 4 to stifle him, prevent him from doing it. Obviously he 5 must do it correctly, but explain the point you want to 6 make so to enable him to reformulate his question and make 7 the point he wants to make without offending against the 8 basic rules that you're seeking to defend. 9 MR SEMENYA SC: I don't know if I'll 10 manage to be more lucid, Chair. The objection is, this is 11 an expert witness, not an eyewitness. For that reason he 12 cannot be invited to elicit an expert opinion on a factual 13 premise of that kind. 14 CHAIRPERSON: It sounds as if he's going 15 to be asked whether in the light of the fact, if the facts 16 that have been put to him are correct, whether that would 17 be a legitimate form of what, crowd control or crowd 18 management or whatever. The answer may be self-evident, 19 but anyway, let him ask the question. It can't do any 20 harm. Carry on, Mr Mmusi. 21 MR MMUSI: Now Brigadier, against that 22 background I gave you, which is going to be the evidence of 23 my clients, I now want to proceed to ask you the following 24 questions. Would the conduct of the police shooting at the 25 protesters who are raising their hands at scene 2, as I</p>	<p style="text-align: right;">Page 3459</p> <p>1 first and then went to koppie 3, hid among the bushes, and 2 they then decided that the game is up, they surrender, and 3 they stood up and held their hands up in surrender, and 4 what is suggested is that they were then killed. 5 BRIG MKHWANAZI: I understand, Sir. 6 CHAIRPERSON: They were then shot at, 7 some of them killed and some injured, and what he wants to 8 know from you is whether if that's true, the police who did 9 that, allegedly, acted in accordance with the principles of 10 crowd management that they're taught in their courses. I 11 would have thought the answer is self-evident, but perhaps 12 you can give it to us. 13 BRIG MKHWANAZI: I'm with you exactly, 14 because what was, my question is who of the members were 15 there? Are we still, are we having crowd management? 16 Remember we've got different discipline. That's a thing I 17 want to know exactly. We have different – 18 CHAIRPERSON: Brigadier, I'm sorry to 19 interrupt you. I don't think counsel is interested in 20 which policemen there were, if it was National Intervention 21 Unit people, POP people, Canine people – 22 BRIG MKHWANAZI: Whoever – 23 CHAIRPERSON: Whatever. 24 BRIG MKHWANAZI: Ja. 25 CHAIRPERSON: He says if the policemen</p>

<p style="text-align: right;">Page 3460</p> <p>1 were there and that's what they did, would that be in 2 accordance with what they learned at the Police College or 3 at any training course that you were coordinator 4 responsible for. I would have thought your answer is 5 obvious, but please give us the answer, obvious or not 6 obvious.</p> <p>7 BRIG MKHWANAZI: No, I do understand, 8 Chairperson, if you speak in that way. Where I have a 9 confusion was he's talking about crowd management, because 10 if you talk about crowd management, it's totally a 11 different thing, Counsellor, not to say I'm disrespecting –</p> <p>12 CHAIRPERSON: No, no, I understand you. 13 That's not crowd management according to any of the books 14 on crowd management, is it?</p> <p>15 BRIG MKHWANAZI: No. 16 CHAIRPERSON: It's just behaviour of a 17 totally other kind, and he wants to know whether that's – 18 well, let him rephrase his question. I've done my best for 19 him, but let him carry on himself.</p> <p>20 BRIG MKHWANAZI: No, I can answer in that 21 - If it is that way I can answer. Ja, I don't know if the 22 counsellor, it's fine.</p> <p>23 CHAIRPERSON: Well, give the answer first 24 and then if he doesn't like the answer he'll follow up. 25 BRIG MKHWANAZI: Thank you. Counsellor,</p>	<p style="text-align: right;">Page 3462</p> <p>1 CHAIRPERSON: Quite right, at 237 – 2 MR MMUSI: Where we are, I want to know – 3 CHAIRPERSON: Hang on, hang on. At 237 4 there is a picture, a water canon firing into the bushes. 5 There's also a picture at 235 which shows two water canon, 6 one on the right with blue water and one on the left with 7 what looks like ordinary water, or perhaps white water. I 8 suppose it's a fair question, which of the two is counsel 9 referring to –</p> <p>10 MR MMUSI: The one I'm referring to is 11 the one with a water canon on the right flashing water, 12 blue-coloured water, and then there's another one on the 13 left where I think the direction is southern part.</p> <p>14 CHAIRPERSON: That's 235 that you're 15 referring to.</p> <p>16 MR MMUSI: Now earlier on we traversed 17 the part where we were talking about the location of 18 various units. Now when you look at the picture it says, 19 "The photo show the police members from forward holding 20 area 2 converging on koppie 3 from two direction, north- 21 west and south-west." Now we've already identified that in 22 forward holding area 2 there were POP members.</p> <p>23 BRIG MKHWANAZI: Correct. 24 MR MMUSI: Now what you see on this 25 particular picture, the spraying of water at koppie 3,</p>
<p style="text-align: right;">Page 3461</p> <p>1 if you talk about police official coming to a situation and 2 people raising hands, surrendering themselves, and shooting 3 at them, and your question is, is it still in line with the 4 training that is given to the members, my answer will be 5 no, it's not like that.</p> <p>6 MR MMUSI: Now let's look at exhibit L, 7 slide 236, to check who was there. Are you there, 8 Brigadier?</p> <p>9 BRIG MKHWANAZI: Ja, correct. 10 MR MMUSI: 236. 11 BRIG MKHWANAZI: 236, yes. 12 MR MMUSI: You see the water canons 13 flashing the water, spraying the water, I think – 14 CHAIRPERSON: - in 235, Mr Mmusi – 15 MR MMUSI: 235. 16 CHAIRPERSON: You can see the water canon 17 on 235, the one on the left firing what looks like white 18 water, and the one on the right shooting what looks like 19 blue water.</p> <p>20 MR MMUSI: Yes, I don't know why mine 21 says 236. 22 CHAIRPERSON: We now know what the number 23 is, so carry on with your question. 24 BRIG MKHWANAZI: So we are at 237? No, 25 I'm asking because I see at 237.</p>	<p style="text-align: right;">Page 3463</p> <p>1 which we now know as scene 2, would that be consistent with 2 crowd management?</p> <p>3 BRIG MKHWANAZI: My understanding, 4 Counsellor, is that usage of water canon is the minimum 5 force. Having the people at that position, maybe I, that's 6 my opinion to say maybe they wanted to get people out using 7 the water, easily getting them out themselves because if 8 you spray water, obvious a person will come out. I don't 9 see anything wrong with that.</p> <p>10 MR MMUSI: So it is consistent with crowd 11 management?</p> <p>12 BRIG MKHWANAZI: It's part of minimum 13 force, of course. 14 MR MMUSI: Should I understand that to be 15 a yes? 16 BRIG MKHWANAZI: It's part of the minimum 17 force, Counsellor. 18 MR MMUSI: Now threat analysis, how 19 important is threat analysis? 20 [12:03] BRIG MKHWANAZI: It's important, 21 Counsellor because it assists the planner or the planners 22 to be able to put or to compile an operational plan in a 23 proper way. 24 MR MMUSI: Now let's jump to something 25 else. According to information you were given, because</p>

<p style="text-align: right;">Page 3464</p> <p>1 there was certain information that was given to you, were 2 the police aware or at least been told that the protestors 3 might attack them? 4 BRIG MKHWANAZI: I'm not sure, Counsellor 5 because unless if we go back and check from the operational 6 plan if under threat analysis, attack is it forming part of 7 it or not. But on my understanding is that there must be 8 threat analysis in that position. But for me as a person 9 who was not there, I cannot go back to a person and say, 10 tell me, did you identify attackers, did you identify this, 11 and come back and say, Counsellor, yes, they did identify 12 that. The only thing we can go here, I can answer as I 13 answered from the previous counsellors to say they never 14 identify the breaching of the barbed wire, hence as well 15 it's not indicated here after we have gone through it. 16 That's how I can actually have an opinion. But in this 17 manner it's very difficult for me. 18 MR MMUSI: So the police were not aware 19 that the protestors may attack them on the 16th, according 20 to information you've been given? 21 BRIG MKHWANAZI: Counsellor, I said clear 22 right now, I said if maybe we can check the operational 23 plan, whether it was identified or not. I only made an 24 example of the answer I've given before whereby I was asked 25 if the breaching was part of the identified threat analysis</p>	<p style="text-align: right;">Page 3466</p> <p>1 document of course which we have which is TT5 which was the 2 relevant criminal information and inputs given by Brigadier 3 Engelbrecht and then later by Colonel Isaacs. The last 4 page being the information that was given at noon on the 5 16th by Colonel Isaacs. Perhaps those are two documents 6 which can be put before the witness and you can then with a 7 minimum of time wastage, put the points to him that you 8 want to put to him, and elicit the opinions from him that 9 you are seeking. 10 MR MMUSI: Mr Chair, I'll proceed to the 11 next aspect. I think I got what I wanted out of that 12 particular exercise. Brigadier, what is your understanding 13 when an area is declared a security zone, what does that 14 mean? 15 BRIG MKHWANAZI: My understanding, I will 16 talk really on what I understand if it is a security zone, 17 I believe is where really whenever somebody come in that 18 position or in that area will maybe need to be escorted in 19 because something has been identified that maybe a person, 20 his life can be in danger or whatever if you walk through 21 on his or her own, or maybe we can put some search point 22 and all those type of things, those are my understanding 23 around that position. 24 MR MMUSI: Now the information you were 25 given and the information that we have, I would want to</p>
<p style="text-align: right;">Page 3465</p> <p>1 on that day, and I have given an answer as well into that. 2 So I'm saying to this one as well, if we can check, I can 3 be in a position to answer your question properly. I 4 cannot just say it was identified or it was not identified, 5 unless we look to the plan of which both of us we haven't 6 danced with now. 7 CHAIRPERSON: Mr Mmusi, I don't want to 8 interrupt you and I don't know at what stage of the 9 operation you are busy with at the moment. But if you look 10 at SS3, the new one, the fuller one, you'll see five pages 11 from the end is a section headed "Operation Platinum. 12 Lonmin Mine, Marikana 16 August 2012, Stage 3" and there's 13 then what looks like a slide or a possible slide headed 14 "Current Information" and then over the page is "Risk 15 Assessment" and then Stage 3, Mission. I don't know 16 whether that's the passage that you're referring to, 17 because that certainly contains the information which, this 18 will be relevant for us. Whether it was given to the 19 Brigadier at the time, I don't know, but what he was told 20 isn't relevant, presumably. If this is in fact an accurate 21 statement of the current information at the time that we're 22 concerned with, then it might be helpful to proceed with 23 your cross-examination based on that document. 24 MR BIZOS SC: Are you – 25 CHAIRPERSON: Then there's another</p>	<p style="text-align: right;">Page 3467</p> <p>1 believe the same, there were about eight barbed wire on the 2 16th at the disposal of the police. Do you know that? 3 MR SEMENYA SC: Chair, the evidence will 4 be that there were six. 5 CHAIRPERSON: The question accordingly, 6 Mr Mmusi, and carry on. There were six vehicles to be used 7 for barbed wire deployment. 8 BRIG MKHWANAZI: The information I got, 9 Chairperson, there were six barbed wire in that particular 10 place. 11 MR MMUSI: Now have you been to Marikana 12 at scene 1 where the incidents took place, at the koppie, 13 specifically at the koppie? 14 BRIG MKHWANAZI: Ja, after a late stage, 15 yes, I have a chance just to visit to the place, yes. 16 MR MMUSI: Now the six barbed wires that 17 were at the disposal of the police, in your own 18 understanding, would they have been sufficient for the 19 cordoning off of the koppie, koppie 1? Let me make it 20 clear, cordoning off in a sense of surrounding the koppie 21 with the barbed wire, would these six barbed wire have been 22 sufficient for the police to encircle koppie 1? 23 BRIG MKHWANAZI: Counsellor, I know your 24 answer you want, yes, but I want to try and get clarity to 25 you. Are you actually indicating that you want to cordon</p>

<p style="text-align: right;">Page 3468</p> <p>1 the koppie itself?</p> <p>2 MR MMUSI: Yes, yes.</p> <p>3 BRIG MKHWANAZI: And you want to know</p> <p>4 from me if the six barbed wire was going to be sufficient</p> <p>5 and all that?</p> <p>6 MR MMUSI: Yes.</p> <p>7 BRIG MKHWANAZI: Truly speaking, I'm not</p> <p>8 sure.</p> <p>9 CHAIRPERSON: Mr Mmusi, if you look at</p> <p>10 197, slide 197, you can see that was four, the barbed wire</p> <p>11 had been deployed by four of the Nyalas and one can see</p> <p>12 from that, more or less what the length of each barbed wire</p> <p>13 section was. I wouldn't report myself looking at the</p> <p>14 picture that you could coral, as it were, the whole koppie</p> <p>15 with that but perhaps I misread the picture, but let's see</p> <p>16 what the Brigadier says.</p> <p>17 BRIG MKHWANAZI: I see it, ja, I've got</p> <p>18 it. I'm not sure. It cannot, from there to there, from</p> <p>19 there to here, that's why I'm saying I'm not sure because</p> <p>20 I'm not sure how big the place is.</p> <p>21 MR MMUSI: Should we proceed, Mr Chair?</p> <p>22 Now looking at the scene of koppie 1, what I'm trying to</p> <p>23 probe from you through your understanding of deployment of</p> <p>24 barbed wire as a means of crowd management, is that would</p> <p>25 the deployment of those six barbed wires have been</p>	<p style="text-align: right;">Page 3470</p> <p>1 were given, correct?</p> <p>2 BRIG MKHWANAZI: I think the information</p> <p>3 came from the side of the evidence team that people were</p> <p>4 leaving at night and my point was I got that information as</p> <p>5 well, not that I gave it.</p> <p>6 MR MMUSI: You would not dispute if I say</p> <p>7 cordoning off koppie 1 and koppie 2 which was a meeting</p> <p>8 place for the strikers, was a plausible thing to do prior</p> <p>9 to the 16th August 2012.</p> <p>10 BRIG MKHWANAZI: You mean the 15th?</p> <p>11 MR MMUSI: Say the 13th, the 14th, the</p> <p>12 15th.</p> <p>13 BRIG MKHWANAZI: I'm looking at one</p> <p>14 position that, because on the 15th already before the close</p> <p>15 of the afternoon there was already an agreement that</p> <p>16 tomorrow arms will be laid down at 9:30 then I think maybe</p> <p>17 it was going to depend to the situation to say was it going</p> <p>18 to be a conducive exercise that the police should embark</p> <p>19 on. Remember from the beginning I indicated strongly that</p> <p>20 when we talk about negotiations at least there must be</p> <p>21 trust to the two parties, how the police can agree on the</p> <p>22 other side and at the same time they close the koppie.</p> <p>23 MR MMUSI: The POP members in crowd</p> <p>24 management in situations similar to the situation of</p> <p>25 Marikana should be impartial, correct?</p>
<p style="text-align: right;">Page 3469</p> <p>1 sufficient to cordon off koppie 1 or the police would have</p> <p>2 needed more or just give us an estimate?</p> <p>3 BRIG MKHWANAZI: Counsellor, looking to</p> <p>4 the position of the barbed wire, we see now, I would say</p> <p>5 this was not going to be sufficient and at the same time</p> <p>6 I'm having a problem to say the circumference of the koppie</p> <p>7 itself, how big it is I'm not sure, maybe if you can help</p> <p>8 me with that, how big it is, looking to this, then I can be</p> <p>9 in a position to say maybe we can maybe be in need of so</p> <p>10 many Nyalas to be able to do that job, whether six was not</p> <p>11 going to be possible, but looking to what we see now in</p> <p>12 front, at 197, I don't know whether it can be able to fit</p> <p>13 the space, unless you've got a clear picture how big the</p> <p>14 koppie it is, the circumference of the koppie itself</p> <p>15 because we talk about going around, how big it is, then how</p> <p>16 many Nyalas we can need on that. Can six Nyalas definitely</p> <p>17 be able to deal with that if you're going to utilise them</p> <p>18 in -</p> <p>19 MR MMUSI: Let's do it differently. The</p> <p>20 police considered the gathering of the strikers at koppie 1</p> <p>21 and koppie 2 illegal, correct?</p> <p>22 BRIG MKHWANAZI: That's my understanding,</p> <p>23 hence procedures were not followed.</p> <p>24 MR MMUSI: At night the protestors would</p> <p>25 leave to go to their homes according to information you</p>	<p style="text-align: right;">Page 3471</p> <p>1 BRIG MKHWANAZI: Correct.</p> <p>2 MR MMUSI: Now the police had problem</p> <p>3 with ammunition the protestors had in their possession,</p> <p>4 correct?</p> <p>5 BRIG MKHWANAZI: It's always the case, it</p> <p>6 will be like that. Yes, there will be a concern if</p> <p>7 protestors are armed, it will be a problem really. Let's</p> <p>8 put it in the context of the activities of 13 August 2012,</p> <p>9 General Mpmembe was seen on the video speaking to the</p> <p>10 protestors telling the protestors, your gathering is</p> <p>11 illegal, I have a problem with the things, the weapons</p> <p>12 you're carrying because they're illegal. You saw that</p> <p>13 video?</p> <p>14 BRIG MKHWANAZI: That's correct.</p> <p>15 MR MMUSI: The protestors on the other</p> <p>16 hand were saying to General Mpmembe, escort us to the</p> <p>17 mountain where we will hand over the ammunition to</p> <p>18 yourselves but please bring our employer, on the video.</p> <p>19 CHAIRPERSON: Mr Mmusi, I'm sorry, that's</p> <p>20 not quite correct. My understanding was that they talked</p> <p>21 about the spears and the pangas, assegais, not ammunition.</p> <p>22 And there was no suggestion, as far as I can recall that</p> <p>23 they were in possession at that stage of firearms.</p> <p>24 Firearms were in fact obtained after the engagement with</p> <p>25 the police later than day, but there was no question of</p>

<p style="text-align: right;">Page 3472</p> <p>1 having ammunition, it was handing over the weapons, the 2 spears, assegais and pangas, I think. 3 MR MMUSI: My apologies, Mr Chair, I 4 exactly meant that. I apologise, thank you. You said the 5 role of the negotiator, when you were asked by the evidence 6 leader, you give and take. You remember that piece of 7 evidence where you say when you mediate, you obviously give 8 and take, that kind of evidence. 9 [12:23] BRIG MKHWANAZI: Counsellor, if I 10 remember well, it was a comment from the side of the 11 evidence team, that negotiation is part of give and take, 12 and I agreed on that. I never said in that way. I agreed 13 on that. 14 MR MMUSI: According to information you 15 were given, were there any steps taken by the police to 16 attempt to bring the employer to address the protesters, 17 because that was the only request from their part. 18 BRIG MKHWANAZI: Counsellor, even – I am 19 not sure at what stage we are talking about, but on my 20 understanding, I couldn't get, I haven't got information to 21 say from the employer who was brought in but I know there 22 were a lot of interaction with the employer and employees 23 as well, but I haven't got information to say were they 24 brought together to talk with the participants at the 25 koppie or what position, I haven't actually received that</p>	<p style="text-align: right;">Page 3474</p> <p>1 Breytenbach, are you not? 2 BRIG MKHWANAZI: Correct, Sir. 3 MR TIP SC: You in fact worked together 4 for some time at the National Training facility for all 5 units, including POP. 6 BRIG MKHWANAZI: That is correct, Sir, 7 even though he was in human resource development, I was in 8 another office, operational response services. 9 MR TIP SC: I understand that fully, 10 Brigadier. He, Brig Breytenbach has given evidence in 11 these proceedings. I think you are aware of that. 12 BRIG MKHWANAZI: Correct, Sir. 13 MR TIP SC: I just want to read to you, 14 two questions and answers that were given in the course of 15 his evidence, and then I'll ask you whether that accords 16 with your understanding. For cross reference purposes, Mr 17 Chair, that's at page 1619 to 1620 of the transcript. They 18 are fairly brief. Brigadier, I'll read them out, if you 19 need me to repeat, just say so, but I think they'll be 20 familiar to you. The cross-examiner firstly put this 21 question to him, "Would it be correct to think that there 22 is an important interface between training and the 23 operations divisions of the police service?" 24 MR HANABE: Can you repeat the question, 25 but a bit slowly?</p>
<p style="text-align: right;">Page 3473</p> <p>1 information. 2 MR MMUSI: Mr Chair, I am wrapping up, I 3 am just checking with my attorney if there's anything else. 4 CHAIRPERSON: I saw what was happening, 5 and I didn't object. 6 MR MMUSI: That will be my cross- 7 examination, Mr Chair. 8 CHAIRPERSON: Thank you, Mr Mmusi. Ms 9 Lewis, are you going to cross-examine on behalf of the 10 families, or is your colleague going to do so? 11 MS LEWIS: Mr Chair, we don't have any 12 questions at present, but we are still in the process of 13 consulting with our expert, so we would also like to 14 reserve our right to recall this witness when we convene in 15 January if necessary. I am not sure that it will be 16 necessary. 17 CHAIRPERSON: There's an arrangement 18 between the parties as to the order of cross-examination. 19 It wasn't disclosed to me, but that's not a problem. The 20 only problem is I don't know whom to call on next. Are you 21 next, Mr Tip? 22 CROSS-EXAMINATION BY MR TIP SC: I'd be 23 very pleased to go next. Brigadier, I am going to take up 24 two aspects with you, which I hope we will be able to deal 25 with quite shortly. You are familiar with Brig Petrus</p>	<p style="text-align: right;">Page 3475</p> <p>1 MR TIP SC: I will do that. "Would I be 2 correct to think that there is an important interface 3 between training and the operations divisions of the police 4 service?" 5 MR HANABE: The training and? 6 MR TIP SC: The operations divisions. In 7 other words, Brigadier, you are on top of the question, 8 there's an important interface, there are two divisions, 9 training and operations – 10 BRIG MKHWANAZI: Yes. 11 MR TIP SC: - and there has to be 12 connection. 13 BRIG MKHWANAZI: Correct. 14 MR TIP SC: And Brig Breytenbach 15 responded as follows, "The process that is followed when a 16 need is identified for training is that such a need by the 17 operational units would be raised with our curriculum 18 development and research fraternity." I'll pause there, so 19 that you can interpret. "And they would do the research 20 and compile the training modules which is then presented to 21 the forth and back process between operational people and 22 the curriculum developers." Again, Brigadier, let me 23 pause, you followed the reply given by Brig Breytenbach? 24 BRIG MKHWANAZI: That is correct. 25 MR TIP SC: The cross-examiner then put</p>

<p style="text-align: right;">Page 3476</p> <p>1 the following question to Brig Breytenbach, "Would it 2 therefore be so that the overview that you presented to us 3 in exhibit Q," I will just interpose, exhibit Q was an 4 exhibit that set out in summary form some of the training 5 material. There is not need for us to go into any detail 6 on that, "but that the overview presented in that exhibit, 7 reflects the current state of the approach to training, the 8 use of equipment in conjunction with operations." And Brig 9 Breytenbach's answer to that was "that is correct." So 10 that the effect of those two questions and answers was that 11 there is an important connection in the functioning of the 12 police service that there should be a proper interface 13 between operational needs and the training that is given to 14 the police members, who must perform the operations. You 15 would agree with that, I think.</p> <p>16 BRIG MKHWANAZI: Yes.</p> <p>17 MR TIP SC: And it follows does it not 18 that officers who are involved with the planning and 19 implementation of operations should be fully aware of the 20 nature of the training that is given to the various units 21 they intend to deploy.</p> <p>22 BRIG MKHWANAZI: It is correct.</p> <p>23 MR TIP SC: Now, I want to take you back 24 to a portion of your own evidence, which you gave last 25 Wednesday, Brigadier, some time back, but I've made – just</p>	<p style="text-align: right;">Page 3478</p> <p>1 August. Correct? Now you gave a fairly lengthy account in 2 which you dealt with the possibility of weapons being among 3 a crowd and what POPS members should do, and whether they 4 should have equivalent weapons and so on, I am not going to 5 go into the detail, but subject to your guidance, Mr Chair, 6 it may be fair if you have a moment just to read through 7 that portion, just to refresh your memory on what you gave, 8 on the evidence which you gave at the time. And then I 9 will come –</p> <p>10 CHAIRPERSON: I think indicate to him the 11 exact page and line references for the passage that you 12 want him to read so that he can read it quickly.</p> <p>13 MR TIP SC: Yes, thank you, I'll do that.</p> <p>14 It's the passage that begins on page 2884 at line 20, and 15 it continues through to page 2885 at line 20. I am not 16 going to deal with that passage, I am going to deal with 17 the two questions that follow, but as I said, just to put 18 you entirely in context with what you testified to at the 19 time, have a look at that answer of yours. I think it 20 looks as though you've got to the end of that answer.</p> <p>21 BRIG MKHWANAZI: I got it.</p> <p>22 MR TIP SC: Then I am going to draw your 23 attention particularly to page 2885 line 21, where Mr 24 Ngolwana then poses another question to you, and he does it 25 in the following way, "I am going to put the question</p>
<p style="text-align: right;">Page 3477</p> <p>1 to assist you, and the Commission, we've made copies of the 2 relevant page which just for the record is to be found at 3 the transcript pages 2884, 2885 and 2886.</p> <p>4 BRIG MKHWANAZI: I see that, Sir.</p> <p>5 MR TIP SC: I am not, I don't propose to 6 read all of this again onto the record, Brigadier, but if 7 you would have a look at page 2884, that's the top right- 8 hand quarter of the page.</p> <p>9 BRIG MKHWANAZI: I see it.</p> <p>10 MR TIP SC: And you will recall that at 11 that stage your evidence was being led by my learned 12 friend, Mr Ngolwana on behalf of the SAPS, do you recall 13 that?</p> <p>14 BRIG MKHWANAZI: I remember.</p> <p>15 MR TIP SC: And he posed the following 16 question to you, "Given your extensive experience in POPS 17 and the training of POPS if you were given a set of facts, 18 that says you have a group of between a thousand and I 19 think it is three-and-a-half or 4 000 people planted on a 20 hill, many of whom armed with pangas, assegais, spears an 21 R5 rifle, possibly a pistol, is such a crowd, a crowd of 22 the sort with which POPS is trained to deal?" Now although 23 that questions was posed in a fairly hypothetical manner, 24 it of course reflects the essential facts that we know 25 were, formed part of the picture at Marikana on the 16th of</p>	<p style="text-align: right;">Page 3479</p> <p>1 slightly differently, or in a brief fashion, does POPS 2 training prepared POPS to deal with the situation I just 3 gave you," and your answer follows, you said, "No, not at 4 all." And over the page at 2886, lines 1 to 4, Mr Ngolwana 5 repeated in effect this question, he said, "Is their 6 training adequate to deal with people who are armed with 7 pangas, assegais, R5, pistol and spears," and your answer 8 was "no, no." Now Brigadier, that appears to us to be 9 quite significant evidence that you gave, because what it 10 conveys is that POPS per se and the training given to POPS 11 members and implicitly the equipment with which they are 12 ordinarily – which they ordinarily carry into crowd 13 management situations, does not suffice to deal with a 14 crowd of the kind there described. Does that fairly 15 reflect the thrust of your evidence there?</p> <p>16 BRIG MKHWANAZI: Counsellor, I remember 17 very well the question, my point was clear as it indicate 18 at paragraph 11, in 2885 whereby I indicate that public 19 order policing, yes, they got R5, they are trained in R5, 20 shotgun nine millimetre which is a side firearm. However, 21 with our task or their task they are doing you will find 22 that maybe one or two members are issued with R5, and most 23 of the time, they carry shotgun. And if they are actually 24 faced by a situation where a person or somebody amongst the 25 crowd is in possession of that type of a firearm as the –</p>

<p style="text-align: right;">Page 3480</p> <p>1 what's the name, the scenario was given to me, it will 2 become a challenge for the, because they've got rubber in 3 their position most of the time, and as a result they will 4 have to change to a nine millimetre, and if they do that, 5 sometimes you have to shot with one hand or maybe eliminate 6 or do whatever you do with one hand, which will at the same 7 time will be challenge, because you will have what's a 8 name, a shotgun in your possession, you can be inaccurate 9 and you will shoot a wrong person in that position. 10 Therefore always it become a challenge. Yes, they are 11 trained into R5, but with the type of a job we deal with 12 the crowd, we want to use the what's a name, the minimum 13 force, we want to use less lethal weapon or less lethal 14 option and if you are going to actually now use rubber, at 15 the same time you need to change, it always become a 16 challenge in that position. That's what I tried to 17 actually to put down when I was answering my question. 18 MR TIP SC: Thank you, Brigadier, you've 19 reflected the evidence that you gave on last Wednesday, 20 quite accurately and I appreciate that. I don't propose to 21 enter into any debate with you on the nuances that 22 different situations may present, you'll be happy to hear. 23 [12:43] BRIG MKHWANAZI: We can proceed. No 24 problem. 25 MR TIP SC: It's really not necessary for</p>	<p style="text-align: right;">Page 3482</p> <p>1 the type of intervention we must administer then it will 2 actually compel us to go step by step to make sure that we 3 look to the life of the people and all that, then public 4 order will be limited to a certain position before 5 administering R5s and all that, you need to think first of 6 easy method to deal with the problem. 7 MR TIP SC: Brigadier, thank you for that 8 answer which I'm confident I followed and perhaps I can 9 just re-state it very briefly. A POP unit will be trained 10 and capable to deal with a variety of situations but there 11 will come a point where the situation overruns its capacity 12 to deal with it. Or put even differently again, then you 13 can answer, it can deal with a situation up to a certain 14 point but after that point POP can no longer deal with the 15 situation. 16 BRIG MKHWANAZI: I will agree, 17 Counsellor, into that that really it will come to a 18 situation whereby you need to get other unit to assist to 19 deal with the situation if it goes above that position. 20 MR TIP SC: And it is at this moment that 21 the important interface between training capacity and 22 operational needs comes back into the picture, doesn't it? 23 BRIG MKHWANAZI: I would say the 24 expertise, Sir. 25 MR TIP SC: And in particular what is</p>
<p style="text-align: right;">Page 3481</p> <p>1 the point that I want to make. The point that I want to 2 make is just this that on the strength of the evidence that 3 you've given and confirmed today, at the very least one can 4 confidently deduce that there are serious limitations in 5 respect of the capacity of the POP unit of whatever size to 6 deal with a difficult crowd situation, a situation such as 7 the one that was described to you by my learned friend, Mr 8 Ngalwana. 9 BRIG MKHWANAZI: Counsellor, I understand 10 the question as you indicate the training they got, it may 11 sometime not be equally or proportionate to the situation 12 we have on the 16th. However, my answer will be to say 13 normally how we look at is to say we should start from a 14 certain position to arrive to a certain position. What I 15 mean before you administer force and all those things you 16 must be able at least to say you have actually done 17 everything that is in place, talking about negotiations, 18 all the steps must be in place. To say the public order 19 policing is not trained to deal with a particular 20 situation, I would say the only thing what we have is that 21 there is a part public order policing must play in a 22 certain situation and when the situation becomes difficult, 23 obviously we need to look to other means to say how to 24 intervene to deal with the situation as well. However, 25 they are trained in particular type of firearms but with</p>	<p style="text-align: right;">Page 3483</p> <p>1 essential in the planning phase in respect of an operation 2 of the kind that is contemplated in your evidence and 3 before this commission is that the officers who are dealing 4 with the preparation of plans, the approval of plans and 5 the implementation of plans must have a very acute 6 understanding of the limitations of various units that are 7 to be used and in this instance, in particular, the 8 limitations that are associated with POP. 9 BRIG MKHWANAZI: I will agree with you. 10 MR TIP SC: Now I want to couple some 11 questions to that answer and this really deals with the 12 second aspect that I wanted to take up with you briefly 13 today. You will recall that last Thursday at the 14 conclusion of the proceedings there was some discussion 15 about your position as an expert, your familiarity with the 16 events at Marikana, and the Chairman requested you to 17 overnight, to think about what lessons could be drawn from 18 the experience at Marikana. 19 BRIG MKHWANAZI: I do remember. 20 MR TIP SC: And you were good enough to 21 do that and you came back on Friday morning and you 22 identified four topics that you felt could constitute areas 23 of learning in respect of the event and areas where further 24 remedial or tactical possibilities could be explored. 25 BRIG MKHWANAZI: That's correct, Sir.</p>

<p style="text-align: right;">Page 3484</p> <p>1 MR TIP SC: One of those four is 2 particularly relevant to the topics I'm dealing with and 3 that was your suggestion that there should be further 4 research, both nationally and internationally in the 5 availability of further non-lethal weaponry options that 6 could be potentially deployed in the management of crowd 7 situations in this country. 8 BRIG MKHWANAZI: That's correct. 9 MR TIP SC: And as I understood the 10 formulation that you gave to that topic, that proposal for 11 research was that you were addressing a perceived gap 12 between what POP was equipped to manage and what it should 13 be equipped to manage, and that gap is the gap between 14 using the existing non-lethal weaponry and the recourse, 15 the resort to live ammunition. 16 BRIG MKHWANAZI: That's correct. 17 MR TIP SC: It's an important subject, 18 Brigadier, and I just want to ask you firstly whether that 19 was the first occasion that, the evening of the 13th, 20 Thursday evening, was that the first occasion that you 21 identified that need as something that should be addressed? 22 BRIG MKHWANAZI: Truly speaking, 23 Counsellor, it was not the first time, it's something we 24 have been looking at it, thinking of it because I'm 25 involved with crowd management as a provincial head and we</p>	<p style="text-align: right;">Page 3486</p> <p>1 utilise, not only to rely on teargas only if actually means 2 are finished you can't do another thing, that's how it come 3 up. 4 MR TIP SC: If I follow you correctly, 5 these are discussions that you are having with your officer 6 colleagues in the Northern Cape subsequent to you taking up 7 the position of operational head in that province? 8 BRIG MKHWANAZI: That's correct, Sir. 9 MR TIP SC: In a context of debriefing 10 events in that province? 11 BRIG MKHWANAZI: That's correct. 12 MR TIP SC: Now Brigadier, the, if I may 13 say that that's positive, but what is not necessarily 14 positive is that it is confined to your province. 15 BRIG MKHWANAZI: Yes. But I'm prepared 16 to take it forward in future. 17 MR TIP SC: Well I'm glad to hear that, 18 if I may take the liberty to say so, but what is, there are 19 two things of importance, Brigadier, that we need to be 20 clear about. The Marikana shootings of 16 August have not 21 themselves triggered any kind of debate of that sort 22 amongst the senior officers of the South African Police 23 Service, is that correct? 24 BRIG MKHWANAZI: Counsellor, I will not 25 be sure and I cannot answer yes or no because we've got two</p>
<p style="text-align: right;">Page 3485</p> <p>1 are dealing with crowds every day. It's something that we 2 talk about at my own level at Northern Cape where am I and 3 when definitely come the situation as well, I felt strongly 4 that these need to be addressed. 5 MR TIP SC: Brigadier, can you enlighten 6 the commission a bit about the pedigree, if I may use that 7 word, of those discussions, in other words for how long 8 have discussions of that kind been taking place amongst 9 senior officers of the police, and in what circumstances? 10 BRIG MKHWANAZI: As I've said I'm a 11 provincial head for operational response services, I'm 12 dealing with crowd management. I have public order 13 policing reporting under me and when we meet these type of 14 situations always we'll have some sort of debriefing to 15 issues whereby we look and say what went wrong, what went 16 right and all that to say we need to explore and look to 17 these type of things. But for me at that provincial level, 18 I can't take a final decision, it's only that if I take it 19 up to the head office and sit with the people in head 20 office in our meetings, then that's where I can actually 21 put my point in place. But as you say, how long and when, 22 it's a thing we have been talking with it most of the time 23 really because we have issues on service delivery that 24 challenges us. We talk about it and we look and we say we 25 need more issues that can actually as an option, we can</p>	<p style="text-align: right;">Page 3487</p> <p>1 levels, the provincial as well as head office. I'm not 2 sure whether they did have any meeting at this stage or 3 discussing all issues and all that, but as far as I know, I 4 haven't seen a meeting of this nature, except the work 5 session I attended in Potchefstroom, that's all. 6 MR TIP SC: What I gather from that is 7 that if there have indeed been any discussions at the 8 national level, it certainly hasn't percolated down to your 9 important office at a provincial level. 10 BRIG MKHWANAZI: Counsellor, I won't say 11 yes because why, normally such type of meetings, only what 12 we'll hear will be the outcome of the meeting if there is 13 an instruction that need to be given to us, to say this 14 actually emanates from this type of a meeting, then it will 15 be something on writing or whatever, then what instruction 16 we need to follow, then we'll follow. And discussion of 17 this nature, maybe if there isn't anything that need to 18 come to us, they can be the discussions, maybe there will 19 be nothing at this stage that need to come to us as what 20 we're supposed to implement. 21 MR TIP SC: Again what I gather from that 22 is that there has not been any communication from the 23 national office to your office to say, we have encountered, 24 we have identified a serious problem in respect of the 25 operation of POP units as became clear on the 16th August</p>

<p style="text-align: right;">Page 3488</p> <p>1 2012 at Marikana, there's been nothing of that kind? 2 BRIG MKHWANAZI: Counsellor, I will go 3 back to my answer, same answer to say if definitely there 4 is an instruction, it will be given to us if there are 5 discussions that need our intervention. However, if you 6 talk about maybe talking about the situation at Marikana, 7 obviously all of us we are actually keeping informed and as 8 a result as the situation was going on, some of us we have 9 assisted after everything with members to deploy to deal 10 with the situation to make sure that the situation turned 11 peacefully in Marikana as a whole. We have been informed, 12 we have been part of everything, but what I'm referring at 13 is the instruction that says this is what we need to look 14 at, this is what we need to start implementing. We haven't 15 received that because the only time I can be informed, if 16 there is something that need to be taken care of. 17 CHAIRPERSON: Mr Tip, it's now 1 o'clock. 18 Is it convenient to take the adjournment at this time? 19 MR TIP SC: It would be, Mr Chair. 20 CHAIRPERSON: May I ask the other counsel 21 representatives here whether there's anyone who wishes to 22 cross-examine after Mr Tip's cross-examined? Yes, are you 23 the only one or are there others as well? I know certain 24 parties have reserved their rights and explained why but I 25 just wanted to know for the purposes of planning ahead.</p>	<p style="text-align: right;">Page 3490</p> <p>1 MR TIP SC: And in the course of that the 2 chairperson made this observation, we would require 3 assistance from people such as you who are experts in the 4 field of the public order policing and then we adjourned. 5 Now you remember that? 6 BRIG MKHWANAZI: I remember. 7 MR TIP SC: The particular point that 8 flows from that I'd like to raise with you is that there 9 are two ways in which expert assistance from the side of 10 the police can be placed before the commission. The one is 11 that experts such as yourself come and give evidence and 12 they are cross-examined and various concessions and points 13 are established in that way. That as we know is a fairly 14 time consuming way and it is subject to the particular 15 qualifications and approach of the experts and the 16 particular qualifications and skills of the cross-examining 17 counsel. You with me thus far? 18 BRIG MKHWANAZI: Correct, Sir. 19 MR TIP SC: Now the other way is that the 20 police themselves should have undertaken a major debriefing 21 exercise in respect of the shootings of the 16th of August 22 and should themselves have generated views in respect of 23 aspects that had been well done and aspects that had not 24 been well done. 25 BRIG MKHWANAZI: A -</p>
<p style="text-align: right;">Page 3489</p> <p>1 Thank you. Would it be in order if we adjourn until half 2 past 1 or would that inconvenience too many people? The 3 commission will adjourn until half past 1. 4 [COMMISSION ADJOURNS COMMISSION RESUMES] 5 [13:38] MR TIP SC: Mr Chair. Brigadier, just 6 before the lunch adjournment you had indicated that aside 7 from the question of formal letters or other written 8 communications, there had been discussions amongst the 9 police regarding this question of for instance the gap in 10 the armaments or weaponry of POP. Do you remember that we 11 were at that point? 12 BRIG MKHWANAZI: What I indicated, 13 Counsellor, was that in my own province where am I, we 14 always discuss these issues and I'm looking forward as well 15 to take it forward to head office if I've got a chance. 16 MR TIP SC: Well let us turn immediately 17 to that question because we also consider it a very 18 important one. Brigadier you remember that in the course 19 of the discussions late on Thursday last week, immediately 20 before we adjourned. The chairperson had made it clear to 21 you that he hoped that in due course the commission's 22 findings would be an important source document for training 23 in respect of how difficulties of this nature could be 24 addressed. 25 BRIG MKHWANAZI: It's correct, Sir.</p>	<p style="text-align: right;">Page 3491</p> <p>1 MR TIP SC: Let me just add and then you 2 can respond if you would. And that in the course and as 3 part of a presentation such as the one that this commission 4 has received in the form of Exhibit L, that Exhibit L 5 would've contained precisely that kind of content. You 6 with me still? 7 BRIG MKHWANAZI: I'm with you, 8 Counsellor, only one thing is that I'm not sure with the 9 debriefing as I have said or indicated that was it held on 10 a provincial level or it was held on head office side. I'm 11 not sure about it. However as you say, your feeling or 12 maybe your indication is that the Exhibit L should contain 13 maybe the issues regarding debriefing and all that. Again, 14 I don't dispute it because I'm not sure whether should it 15 be that direction or not about that. 16 MR TIP SC: And why I suggest that 17 something like that ought to have been and perhaps ought 18 still to be done is that it contains potentially at least 19 twofold advantage. The first, as I've indicated already is 20 that that commission is favoured with the benefit of 21 concerted expert analysis conducted by the police 22 themselves. And the second is that the police themselves 23 will already have begun to learn lessons from what went 24 wrong on the 16th of August. Any further comment on that? 25 BRIG MKHWANAZI: I hear that, Counsellor.</p>

<p style="text-align: right;">Page 3492</p> <p>1 As I've said, I can't dispute that. As you say it can 2 maybe formulate a document that will assist you are saying. 3 However I'm not sure why they took this direction they took 4 to come up with this type of a submission. I'm not sure 5 about that.</p> <p>6 MR TIP SC: That's entirely 7 understandable, Brigadier, and I'm not requiring you to 8 respond in any depth. It's a topic that it's appropriate 9 to put – to ventilate through your evidence. Can I just 10 add none of what I have said in any way of course implies 11 that ultimately it will be the commission's findings that 12 are those that are to be given action and heeded in further 13 training and operational steps. I want lastly to give some 14 real content to the penultimate statement that I made which 15 is that the police really should already have been learning 16 lessons from that happened and that is through regard to a 17 press report from yesterday's Star which I'd hand up as an 18 exhibit if I may, Mr Chair. Ms Pillay will tell us in a 19 moment what the number is.</p> <p>20 MS PILLAY: Chair, it's Exhibit DB1.</p> <p>21 MR TIP SC: Thank you. Brigadier, I'm 22 going to – it's a copy of a report that appeared in the 23 Star, as I indicated, yesterday morning under the headline 24 Lonmin faces threat of another wage strike and I'm going to 25 just read the first four paragraphs to you. The remainder</p>	<p style="text-align: right;">Page 3494</p> <p>1 mountain. And I want to ask you merely this and here I do 2 put the question to you on the basis of your expertise and 3 experience of, as a trainer and also of course of your 4 responsibilities now as an operations head and that is that 5 as a proposition, the prospect of a reproduction of that 6 situation underlines the urgency of the South African 7 Police Service attending to shortcomings and what happened 8 on the 16th of August so that those shortcomings are not 9 going to reoccur.</p> <p>10 BRIG MKHWANAZI: Counsellor, seeing to 11 the situation you are showing me, it is true that something 12 need to be done to make sure that it doesn't actually 13 repeat itself and at the same time to look to the issues as 14 the chairperson last time requested me to come up to say 15 how are we going to actually deal with other issues as one 16 of our lesson learned and maybe what I can actually 17 indicate is that I'm not sure at this stage, as far as head 18 office is concerned, with the plan to say what need to be 19 done looking to the situation that took place as well. As 20 I have indicated at this stage, I haven't seen anything on 21 writing or maybe heard about, but I'm very sure that there 22 must be – there will be something that will actually come 23 forward to address the issue even though maybe I may not 24 know what is happening at this stage. But as I spoke about 25 the issues of less lethal options and all that, something</p>
<p style="text-align: right;">Page 3493</p> <p>1 of the report details the grievances and the ongoing 2 complaints that workers have. But the first four 3 paragraphs are, in our respectful view, of real consequence 4 and I may just put on record that we've taken an 5 instruction and that the content that we see here is borne 6 out by my instructions as a real topic and a real concern. 7 I'm going to read it, the first paragraph. "Miners at the 8 Lonmin Mine in Marikana, North West, have threatened to 9 down tools and "return to the mountain" after mine bosses 10 alleged reneged on their promise of a 22% pay increase. 11 The miners also accused the employers of breaching their 12 promise of a 22% once off bonus payment after they ended 13 their protracted strike in August. They alleged that 14 Lonmin had "unfairly and fraudulently" deducted the money 15 paid as a bonus. "If they don't pay us, we will strike 16 again in January and go back to that mountain. They are 17 taking us for granted" said Tolokele Dlunga, a rock drill 18 operator who has worked at Lonmin for 8 years. Now, 19 Brigadier, I'm not in any way concerned with the content of 20 the complaints that the rock drill operators have or 21 whether any of them are justified in respect of Lonmin's 22 conduct, my only concern is that one has here a clear 23 indication of at least some potential of the Marikana 24 situation being reproduced in January of next year with 25 dissatisfied rock drill operators returning to the</p>	<p style="text-align: right;">Page 3495</p> <p>1 must come as quick as possible. I do agree on that.</p> <p>2 MR TIP SC: Thank you, Brigadier. Thank 3 you, Mr Chair.</p> <p>4 CHAIRPERSON: Mr Motau, I think you're 5 going to cross-examine on behalf of Lonmin, is that 6 correct?</p> <p>7 CROSS-EXAMINATION MR MOTAU SC: Thank 8 you, Chair and members of the commission. Brigadier, good 9 afternoon.</p> <p>10 BRIG MKHWANAZI: Good afternoon.</p> <p>11 MR MOTAU SC: How are you?</p> <p>12 BRIG MKHWANAZI: Trying to do well, 13 thanks.</p> <p>14 MR MOTAU SC: Let's see how far you can 15 try. Brigadier, just the last exhibit that you were 16 referred to by my learned friend, Mr Tip.</p> <p>17 BRIG MKHWANAZI: I've got it.</p> <p>18 MR MOTAU SC: The article in the Star 19 newspaper, he read the first four paragraphs of that 20 article and put a number of questions to you, correct?</p> <p>21 BRIG MKHWANAZI: That's correct, yes.</p> <p>22 MR MOTAU SC: You will see that that 23 paragraph has a response by Lonmin. If you go to the last 24 three paragraphs on the extreme right column.</p> <p>25 BRIG MKHWANAZI: I see that.</p>

<p style="text-align: right;">Page 3496</p> <p>1 MR MOTAU SC: And it says, just to read 2 it for the benefit of the record, Lonmin spokeswoman, Sue 3 Vey, denied that the company had reneged on its promise. 4 She said the current wage structure was part of an amended 5 deal signed by the workers union in September. Do you see 6 that? And it proceeds to say the main features of the 7 agreement included a signing of bonus of R2 000 and average 8 raise in the overall package of between 11 and 22% for all 9 employees falling between categories 3 to 8, she said. 10 BRIG MKHWANAZI: I see that. 11 MR MOTAU SC: She blamed the media for 12 reporting on the 22% increase and she concludes by saying 13 "in the absence of any context, this figure is misleading 14 and has contributed to widespread confusion." Yes, now 15 these questions that were posed to you by Mr Tip, they were 16 in the context of lessons which should be learned in the 17 light of the possible impending situation that may 18 eventuate in January. 19 BRIG MKHWANAZI: That's correct, Sir. 20 MR MOTAU SC: And you recall it was also 21 in the context that the commission is supposed to be of 22 some assistance in terms of it's recommendations arising 23 out of these proceedings. 24 BRIG MKHWANAZI: I agree. 25 MR MOTAU SC: Would you be opposed to the</p>	<p style="text-align: right;">Page 3498</p> <p>1 BRIG MKHWANAZI: I hear that, Sir. 2 MR MOTAU SC: Right, Brigadier, let me 3 return to the aspects that I intend to deal with you. I'd 4 like to firstly start with discussing certain aspects 5 emanating from standing order 262 which is Annexure SS, 6 sorry – ja. Annexure SS2. 7 BRIG MKHWANAZI: I've got it, Sir. 8 MR MOTAU SC: I gathered from your 9 evidence and correct me if I'm wrong, that the operation 10 such as the one in Marikana is the kind of an operation to 11 which the standing order was applicable. Am I correct? 12 BRIG MKHWANAZI: Correct. 13 MR MOTAU SC: May I ask you to turn to 14 page 6 of 11, paragraph 8.1. You will see the heading is 15 the appointment of the CJOC. 16 BRIG MKHWANAZI: I see that, Sir. 17 MR MOTAU SC: You will see that in terms 18 of paragraph 8(1) the standing order provides that the 19 divisional, provisional or area commissioner must ensure 20 that the CJOC is designated and that he or she, the CJOC, 21 is conversant with this order and relevant legislation and 22 well trained to take responsibility for the operation. 23 BRIG MKHWANAZI: That's correct. 24 MR MOTAU SC: And we do know that the 25 CJOC is the commander of the joint operational centre.</p>
<p style="text-align: right;">Page 3497</p> <p>1 idea of the commission talking or expressing its views in 2 respect of the responsibilities on the part of the unions, 3 particularly in circumstances where a wage deal has been 4 signed by the unions? 5 BRIG MKHWANAZI: Counsellor, if I 6 understand you well, your point is will it be acceptable to 7 our side as SAPS to see your input as well. Am I correct? 8 MR MOTAU SC: Well the union's input as 9 well given that – remember there was a situation, we had 10 this ordeal. There was a peace accord which was signed, 11 there was a wage deal agreement which was signed by the 12 unions. 13 BRIG MKHWANAZI: Ja, right. 14 MR MOTAU SC: That's the context within 15 which I'm asking you the question. 16 BRIG MKHWANAZI: Okay. Ja. It will be 17 difficult, Counsellor, as I have said that yesterday maybe 18 I said there's always two side of the story and I will be 19 happy to say maybe if this comes in both side and we see 20 why it is this position, then I can be in a position to 21 make proper deduction to say will I be in a position to 22 accept whatever comes up in this position. 23 [13:58] MR MOTAU SC: Except I must just indicate 24 to you, I have not planned to discuss this aspect as part 25 of my cross-examination now and I have to deal with it.</p>	<p style="text-align: right;">Page 3499</p> <p>1 BRIG MKHWANAZI: Correct. 2 MR MOTAU SC: And we will see that the 3 thrust of 8.1 is that such a person will take the 4 responsibility for the operation. 5 BRIG MKHWANAZI: It's correct. 6 MR MOTAU SC: Then you will see in terms 7 of 8.2 that once designated the CJOC gets to be in overall 8 command of the specific operation for which he or she has 9 been designated. With emphasis being in the words in 10 overall command of the specific operation. 11 BRIG MKHWANAZI: That's correct. He's an 12 overall commander. 13 MR MOTAU SC: And you will also see from 14 that that the CJOC once designated becomes responsible for 15 all actions which are taken. Correct? 16 BRIG MKHWANAZI: That's correct. 17 MR MOTAU SC: And in respect of the 18 preplanning of the operations paragraph 9.1 tells us that 19 the appointed CJOC is responsible for the well planned and 20 coordinated actions for the duration of an operation. 21 BRIG MKHWANAZI: That's correct, Sir. 22 MR MOTAU SC: And if you look at 9.2 it 23 stipulates that for purposes of preplanning there are 24 certain procedures which are outlined there under which the 25 CJOC must follow. You see that?</p>

<p style="text-align: right;">Page 3500</p> <p>1 BRIG MKHWANAZI: I see that, yes. 2 MR MOTAU SC: I'm only going to focus on 3 sub 3 which prescribes that the CJOC must activate a JOC. 4 You see that? 5 BRIG MKHWANAZI: I see that, yes. 6 MR MOTAU SC: And you'll agree with me 7 that's a peremptory provision – 8 BRIG MKHWANAZI: It's correct. 9 MR MOTAU SC: - that the CJOC enjoys no 10 discretion in that regard. 11 BRIG MKHWANAZI: It's correct. 12 MR MOTAU SC: In fact I'm just going to 13 put to you part of what appears in the statement of General 14 Mbombo. I don't have to give it to you. I don't think it 15 will be an issue. And in fact if I'm misrepresenting what 16 is contained there, representatives of SAPS will be quick 17 to jump in. In paragraph 7 and 8 of General Mbombo's 18 statement, she states that on the 12th of August 2012 she 19 gave instructions to Brigadier Calitz to set up or activate 20 a JOC. Do you know about that? 21 BRIG MKHWANAZI: It's my first time I 22 hear. 23 MR MOTAU SC: But I take it that you have 24 no reason to dispute the correctness of what I'm putting to 25 you?</p>	<p style="text-align: right;">Page 3502</p> <p>1 that exhibit, if I can just ask you to turn to page 001702. 2 MR BUDLENDER SC: Chair, may I just 3 interject for a moment please. The old one is not an 4 Exhibit. So if it's going to be used it will need to be 5 put in separately. It's been replaced by the new one. So 6 if the witness has the new one, it may – 7 CHAIRPERSON: No, the only change between 8 the old one and the new is that the old one has got a 9 complete set of the operational – of the contingency plan 10 of the 10th of August and whereas the one before us lacks at 11 least one page. But that's the only difference as far as 12 I'm aware. Is that correct, Mr Semenya? 13 MR MOTAU SC: Well – 14 CHAIRPERSON: If you are going to quote a 15 missing page then all we have to do is tear that missing 16 page out of the original one and insert it. 17 MR MOTAU SC: Chair and members of the 18 commission, I had also indicated that for purposes of the 19 record, I am going to give the page reference in terms of 20 the new SS3 so that there should be no confusion and I was 21 going to proceed to do that. 22 CHAIRPERSON: Ja, you're going to have 23 difficulty with some of the later documents, but never 24 mind. Do your best. 25 MR MOTAU SC: Brigadier -</p>
<p style="text-align: right;">Page 3501</p> <p>1 BRIG MKHWANAZI: I don't see the reason 2 of course but I was going to be happy if I was seeing the 3 statement. 4 MR MOTAU SC: Well, Brigadier, I'm 5 putting it to you in this fashion so that we can save time. 6 So then I'm asking you to accept that what I'm putting to 7 you is indeed correct. Well I'm indebted to Ms Pillay. 8 BRIG MKHWANAZI: I see that. Yes, I see 9 it, Sir. 10 MR MOTAU SC: Having regard to that, may 11 I then ask you to turn to Exhibit SS3. For the purposes of 12 what I want to ask you, you can use either of them. I will 13 give you references in both documents even if you use the 14 old one, even if you use the new one. 15 BRIG MKHWANAZI: The new one or the old 16 one? Are you referring to the new one, Counsellor - 17 MR MOTAU SC: Any of them. 18 BRIG MKHWANAZI: Okay. 19 MR MOTAU SC: You just tell me which one 20 you have. 21 BRIG MKHWANAZI: I've got both. 22 MR MOTAU SC: Well let's take the old one 23 and then I'll give reference for purposes of the record - 24 BRIG MKHWANAZI: Okay. 25 MR MOTAU SC: - as well. In terms of</p>	<p style="text-align: right;">Page 3503</p> <p>1 MS PILLAY: Chair, if I may just indicate 2 just to clear matters up, Exhibit U is the contingency plan 3 of 10th of August. It's the first part of the old SS3. So 4 if you want to refer to that document, it is already an 5 exhibit and then we can refer to the new SS3 in it's 6 current form for anything else related to that document. 7 CHAIRPERSON: Yes, thank you, Ms Pillay, 8 that will solve the problem. 9 MR MOTAU SC: Brigadier, I think let's 10 just simplify matters. Can we just – can I just ask you to 11 look at the new SS3. 12 BRIG MKHWANAZI: Yes, I've got it. 13 MR MOTAU SC: May I ask you to turn to 14 page 001679 and please give me an indication once you - 15 BRIG MKHWANAZI: 166 or 167? 16 MR MOTAU SC: 1679 as I could make out. 17 You will see it starts at the top with the words Joint 18 Operational Centre (JOC). 19 BRIG MKHWANAZI: Just a moment. 20 CHAIRPERSON: - I suppose we must say 21 this is the amended contingency plan dated the 13th of 22 August, is that right? 23 MR MOTAU SC: Chair, I'm not looking at 24 the new one at the moment, but I don't have it physically. 25 BRIG MKHWANAZI: Got it. I've got it,</p>

Page 3504

1 Sir.

2 MR MOTAU SC: Yes, Chair. The

3 chairperson's description is correct. So you will see

4 under the heading physical location, it states that the JOC

5 will be positioned at Middlekraal Rescue Centre, is that

6 correct?

7 BRIG MKHWANAZI: Correct, yes.

8 MR MOTAU SC: And if you turn to page

9 001676, paragraph 3.2.1, you will note from there that the

10 Middlekraal Rescue Centre is situated at the Lonmin Mine.

11 See that?

12 BRIG MKHWANAZI: I see that.

13 MR MOTAU SC: Now may I then ask you to

14 go back to Exhibit SS2?

15 BRIG MKHWANAZI: I've got it.

16 MR MOTAU SC: You will see on page 1,

17 paragraph 2, you have a definition section. Do you see

18 that?

19 BRIG MKHWANAZI: Yes.

20 MR MOTAU SC: And against the letter J,

21 over the page, on page 2 of that document –

22 BRIG MKHWANAZI: Page 2, okay.

23 MR MOTAU SC: - you will find the

24 definition of a JOC –

25 BRIG MKHWANAZI: - which is defined to

Page 3505

1 mean the joint operational centre that is activated and for

2 the purposes of my questions, the important words are the

3 ones that are to follow. That is activated at the scene of

4 an incident or event. You see that?

5 BRIG MKHWANAZI: You are talking about

6 paragraph E.

7 MR MOTAU SC: No, paragraph J.

8 BRIG MKHWANAZI: J, okay.

9 MR MOTAU SC: Right. So if one looks at

10 the standing order, remember we said it gives no discretion

11 to the CJOC but it prescribes that the CJOC must activate a

12 JOC. And we see that not only does the standing order

13 prescribe that a JOC must be activated or established, it

14 also tells us where such a JOC should be established.

15 BRIG MKHWANAZI: I do agree.

16 MR MOTAU SC: And it's common cause, the

17 scene of an incident or event for purposes of this

18 commission, we're talking about Marikana and Lonmin.

19 Lonmin Mine. Is that correct?

20 BRIG MKHWANAZI: That's my understanding,

21 yes.

22 MR MOTAU SC: Now having regard to the

23 provisions of the standing order, will you agree with me

24 that there is nothing untoward if the police comply with

25 the standing order by doing two things. One, by activating

Page 3506

1 the JOC and two, activating it at the scene of an incident

2 or event. Because that in fact – in doing that they'll be

3 complying with the standing order.

4 BRIG MKHWANAZI: It's correct.

5 MR MOTAU SC: And if the scene of an

6 incident or event as defined by the standing order happens

7 to be fitted with cameras, you'll also agree that there's

8 nothing untoward if the police use those cameras in running

9 the JOC.

10 BRIG MKHWANAZI: That's correct. We have

11 been working like that, especially in sporting events, it

12 has been like that because there are cameras as well.

13 MR MOTAU SC: And in fact if the party

14 that is responsible for the scene of an incident or event

15 were to refuse either to allow the police to set up a JOC

16 there or to use that equipment, one could validly view that

17 as an obstruction to the work that the police need to do.

18 BRIG MKHWANAZI: Counsellor, I won't go

19 to a yes answer, but in my experience we never have a

20 situation whereby really we'll be denied an access unless

21 otherwise maybe a situation demands otherwise, but normally

22 we used to have definitely a support to be able to utilise

23 whatever equipment or structure to be able to deal with the

24 situation at hand.

25 MR MOTAU SC: Brigadier, let me go to a

Page 3507

1 separate but related aspect. You'll agree with me that

2 when the police approach an incident such as the one in

3 Marikana, for the purposes of implementing their

4 operational plan which we've already defined as disarming,

5 dispersing and arresting, they would require information,

6 correct?

7 BRIG MKHWANAZI: It's correct, yes.

8 MR MOTAU SC: Part of the information

9 which they would require would be for example the nature of

10 the dispute. In other words what is the source of

11 conflict, correct?

12 BRIG MKHWANAZI: Yes, correct.

13 MR MOTAU SC: And they would also require

14 the identity of the parties which are in dispute, correct?

15 BRIG MKHWANAZI: Correct.

16 MR MOTAU SC: And in the context of the

17 issue that we're dealing with, they would require to be

18 shown the layout of the area, for example where the koppie

19 is situated, correct?

20 BRIG MKHWANAZI: It's correct.

21 MR MOTAU SC: And you would expect

22 parties such as the unions and management to provide

23 assistance in among other things the information that I've

24 identified, correct?

25 [14:18] BRIG MKHWANAZI: I won't be specific with

Page 3508

1 the name but it will depend who can be able to avail the
 2 information. Because I'm saying that coming to this type
 3 of a situation obviously would be meeting held of which
 4 different role players must definitely play a role on that,
 5 irrespective they are in dispute or not in dispute but they
 6 must be part of that type of a meeting. Then it's where
 7 all issues of this nature can be disclosed as well.
 8 MR MOTAU SC: Brigadier, let me just make
 9 myself very clear. I was not confining the role players,
 10 only to the unions and management. I was saying in the
 11 context of what we're dealing with and given the examples
 12 of the type of information which I had indicated that would
 13 be required, one would not exclude the possibility that the
 14 unions and management would be such role players would
 15 provide this information which the police would require.
 16 BRIG MKHWANAZI: It's correct.
 17 MR MOTAU SC: And the reason thereof,
 18 Brigadier, is quite obvious because the police would
 19 require such information for purposes of being able to plan
 20 properly and in deciding what appropriate intervention
 21 measures should be implemented. Correct?
 22 BRIG MKHWANAZI: It's correct.
 23 MR MOTAU SC: And having regard to that,
 24 you'll agree with me then that there is or there would be
 25 nothing untoward on the part of management cooperating in

Page 3509

1 that particular process of sharing information with the
 2 relevant role players in order to seek or find a solution.
 3 BRIG MKHWANAZI: I do agree.
 4 MR MOTAU SC: Chairperson and members of
 5 the commission, those are our questions.
 6 CHAIRPERSON: Thank you. I think we've
 7 indicated that all other persons who are going to – or
 8 parties going to ask questions have reserved their rights
 9 until next year when they've studied the transcripts and
 10 consulted the experts and so on. Is that correct? Mr
 11 Semanya, since you won't be able to re-examine yet because
 12 you can only do that at the end of the cross-examination.
 13 MR SEMENYA SC: Indeed, Chair.
 14 MR MMUSI SC: Mr Chair, just one aspect.
 15 Earlier on when I cross-examined and I put to the witness
 16 that there were 8 razor wire available, I was corrected to
 17 say there were 6. That I had taken in Exhibit TT3, that's
 18 the only aspect that I wanted to put on record.
 19 CHAIRPERSON: Do you want to ask further
 20 questions based on it?
 21 MR MMUSI SC: No.
 22 CHAIRPERSON: You just want to explain
 23 where your erroneous information came from?
 24 MR MMUSI SC: Yes.
 25 CHAIRPERSON: So it's not your fault,

Page 3510

1 it's the fault of the person who drafted the document.
 2 MR MMUSI SC: I didn't get that, Mr
 3 Chair.
 4 CHAIRPERSON: It wasn't your fault –
 5 MR MMUSI SC: Yes.
 6 CHAIRPERSON: - it was the fault of the
 7 person who drafted that document.
 8 MR MMUSI SC: Precisely.
 9 CHAIRPERSON: Alright. Well that's now
 10 on record. Mr Tip, the arrangement were that you were
 11 going to lead a witness in chief when this evidence was
 12 over, well there are two problems about that. The first is
 13 the witness isn't finished and secondly, we did indicate
 14 that we would carry on until 12 tomorrow. Is there any
 15 likelihood that you would've finished leading the witness's
 16 evidence in chief by then?
 17 MR TIP SC: No, Mr Chair, there's no
 18 likelihood at all and we would respectfully ask for the
 19 indulgence that he be called in the new session.
 20 CHAIRPERSON: Well in the circumstances
 21 we won't be able to proceed this year and the proceedings
 22 of the commission will have to stand adjourned until the
 23 21st of January next year. I would say that the commission
 24 expects those parties who have reserved cross-examination
 25 to be ready to proceed with their cross-examination at

Page 3511

1 09:30 on the morning of the 21st of January. There appears
 2 to be an application we should start at 10 o'clock. I am
 3 prepared to accede to that application on the basis we then
 4 resume after lunch at 13:30 on the 31st of January. The
 5 commission will therefore stand adjourned until 10 am on
 6 the 21st of January here at Pacific Centre in Rustenburg
 7 unless otherwise advised. It remains to me on behalf of my
 8 fellow commissioners and myself to extend our best wishes
 9 to all concerned. Those who are in auditorium and have
 10 been listening the proceedings and those who participated
 11 as parties or as counsel of attorneys, all the best for the
 12 festive season. Travel safely, come back safely and we
 13 will proceed then next year. Thank you very much.
 14 [COMMISSION ADJOURNED]
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A	ADJOURNS			B
abide 3405:5	ADJOURNS 3445:9	3438:21 3439:18,23	3449:19 3450:2,11,15	assuming 3453:16
able 3410:21 3424:5,11	3489:4	3440:1,2 3441:7	3450:17 3451:8,14,24	assumption 3405:17,19
3424:13 3432:9,10	administer 3481:15	3442:21 3457:18	3452:11 3462:20,22	assumptions 3405:18
3442:24 3443:1	3482:1	3458:4 3459:11	3466:13,18 3498:19	3405:19
3450:19 3451:3	administering 3482:5	3460:4,5,20,21,23,24	3507:18	assure 3410:17
3463:22 3469:10,12	advantage 3491:19	3461:4 3464:12,24	areas 3410:19 3483:22	atmosphere 3426:23
3469:17 3473:24	advise 3411:17	3465:1,3 3467:24	3483:23	attack 3464:3,6,19
3481:16 3506:22,23	advised 3511:7	3476:9 3478:19,20	argue 3410:4 3417:4,7	attackers 3464:10
3508:1,19 3509:11	African 3420:3	3479:3,7 3481:12	argument 3409:23	attempt 3472:16
3510:21	3486:22 3494:6	3482:8,13 3483:11	3410:9,10 3414:7	attended 3487:5
absence 3496:13	afternoon 3470:15	3486:25 3488:3,3	3417:6	attending 3494:7
accede 3511:3	3495:9,10	3506:19	arising 3496:22	attention 3410:25
accept 3400:12 3417:3	ago 3434:17	answered 3432:25	armaments 3489:10	3416:9,13 3440:19
3497:22 3501:6	agree 3400:15 3403:1	3440:20 3464:13	armed 3445:22 3471:7	3478:23
acceptable 3400:10	3406:9,13,19,22	answering 3480:17	3477:20 3479:6	attorney 3473:3
3497:6	3414:18 3416:24,25	answers 3417:8 3449:9	arms 3455:13 3470:16	attorneys 3511:11
accepting 3405:19	3423:9 3429:18	3474:14 3476:10	arrangement 3473:17	audience 3439:5
access 3506:20	3470:21 3476:15	anticipated 3454:19	3510:10	auditorium 3511:9
accord 3497:10	3482:16 3483:9	anticipating 3436:4	arrest 3430:15 3431:2	August 3420:5,16
accords 3474:15	3495:1 3496:24	anybody 3435:15	3433:19 3437:9,11,23	3422:9,14 3465:12
account 3402:17	3500:6 3505:15,23	anyway 3415:13	arrested 3417:18	3470:9 3471:8 3478:1
3423:25 3478:1	3506:7 3507:1	3417:22 3438:25	3430:22	3486:20 3487:25
accurate 3465:20	3508:24 3509:3	3439:25 3457:19	arresting 3507:5	3490:21 3491:24
accurately 3480:20	agreed 3404:6 3472:12	apartheid 3401:15	arrive 3481:14	3493:13 3494:8
accused 3493:11	3472:12	apologies 3472:3	article 3495:18,20	3500:18 3502:10
achievable 3431:11,19	agreement 3455:12	apologise 3417:21	aside 3489:6	3503:3,22
3431:20	3470:15 3496:7	3472:4	asked 3404:25 3405:1	authority 3402:18
acted 3459:9	3497:11	apology 3417:22	3408:13 3457:15	avail 3508:1
action 3408:23 3425:24	ahead 3488:25	appeal 3413:9	3464:24 3472:5	availability 3484:5
3425:25 3426:1,2,4	aid 3437:8,22	appeared 3492:22	asking 3405:15	available 3509:16
3427:16 3450:20	air 3434:18	appearing 3440:9	3414:10 3430:17	average 3496:7
3451:3 3492:12	alive 3454:3	appears 3433:21	3437:19,20 3439:14	avoids 3456:20
actions 3436:12	allegation 3453:25,25	3453:23 3479:8	3461:25 3497:15	aware 3464:2,18
3499:15,20	allegations 3455:23	3500:13 3511:1	3501:6	3474:11 3476:19
activate 3500:3,19	allege 3453:25 3454:1	applicable 3498:11	asks 3438:9	3502:12
3505:11	alleged 3493:10,13	application 3511:2,3	aspect 3421:23 3422:1	
activated 3505:1,3,13	allegedly 3459:9	appointed 3402:1	3445:25 3446:15	
activating 3505:25	allow 3506:15	3499:19	3466:11 3483:12	
3506:1	allowance 3442:15	appointment 3498:15	3497:24 3507:1	
activities 3471:8	alright 3425:8 3438:14	appreciate 3434:24	3509:14,18	
acute 3483:5	3458:14 3510:9	3480:20	aspects 3473:24	
add 3491:1 3492:10	alternatively 3447:23	appreciated 3417:12	3490:23,23 3498:3,4	
address 3410:8	amended 3496:4	approach 3476:7	assegais 3471:21	
3472:16 3494:23	3503:21	3490:15 3507:2	3472:2 3477:20	
addressed 3484:21	ammunition 3471:3,17	approached 3453:3	3479:7	
3485:4 3489:24	3471:21 3472:1	appropriate 3407:17	assessment 3436:24,25	
addressing 3439:6	3484:15	3410:5 3440:15	3465:15	
3484:11	amounts 3442:2	3492:8 3508:20	assist 3477:1 3482:18	
adequacy 3430:2	analysis 3463:18,19	approval 3483:4	3492:2	
adequate 3479:6	3464:6,8,25 3491:21	area 3425:22 3426:4,5	assistance 3448:7	
adjourn 3489:1,3	animal 3433:14	3427:4,16,16,17,22	3490:3,9 3496:22	
adjourned 3489:20	annexure 3419:19	3427:24 3428:6,12,16	3507:23	
3490:4 3510:22	3498:5,6	3428:19,22 3429:4,10	assisted 3488:9	
3511:5,14	answer 3407:24 3411:7	3429:14,20 3433:23	assists 3463:21	
adjournment 3445:2	3413:20 3414:3,10	3434:4 3436:5 3443:6	associated 3483:8	
3447:21 3488:18	3416:8,14 3424:14	3443:7,19,25 3444:11	assume 3405:15	
3489:6	3425:9 3426:7 3433:9	3444:14,14,15 3446:1	3406:20 3433:6	
	3438:10,13,14,15,17	3446:4,13,13,18,24	assumed 3441:10	

3440:7,23,25 3441:9 3441:18 3444:19,23 3445:22 3458:9 3464:14 3467:1,7,9 3467:16,21,21 3468:4 3468:10,12,24,25 3469:4 based 3434:5 3439:19 3448:15,19 3465:23 3509:20 basic 3457:8 basics 3452:14 basis 3414:7 3448:11 3494:2 3511:3 bastards 3410:14 3415:18 bear 3430:4 3439:5 beat 3415:25 beginning 3430:25 3470:19 begins 3478:14 begun 3491:23 behalf 3417:18 3473:9 3477:12 3495:5 3511:7 behave 3408:1 3410:2 behaviour 3407:23 3441:2 3460:16 belief 3413:5 believe 3404:2 3446:2 3466:17 3467:1 benefit 3491:20 3496:2 best 3460:18 3502:24 3511:8,11 better 3417:8 beyond 3435:1 3452:9 big 3414:2 3468:20 3469:7,8,13,15 binding 3402:19 bit 3406:13 3474:25 3485:6 Bizos 3400:3,5,12,16 3400:19,23 3401:8,12 3401:17,23,25 3402:7 3402:16 3403:1,10,23 3405:6,11,15 3406:1 3406:9,20 3407:21 3408:12 3409:2,6,13 3409:19,22 3410:4,6 3410:11 3411:3,5 3412:2 3413:9 3414:5 3414:8,11,17,25 3415:7 3416:4,14 3417:1,11 3420:9 3444:25 3465:24 blamed 3496:11 blocked 3447:2 blue 3443:10 3461:19	3462:6 blue-coloured 3462:12 bodies 3454:3 3458:21 body 3449:10 bolder 3418:18 bonus 3493:12,15 3496:7 books 3413:5 3460:13 borne 3493:5 bosses 3493:9 bottom 3444:8 breach 3434:13 3436:8 breached 3432:6 3434:12,13 breaching 3464:14,25 3493:11 Breytenbach 3474:1,10 3475:14,23 3476:1 Breytenbach's 3476:9 brief 3474:18 3479:1 briefing 3424:24 briefly 3482:9 3483:12 Brig 3400:11,15,18,22 3401:2,11,16,21,24 3402:6,11,20 3403:5 3403:15 3404:1 3405:10,13,24 3406:4 3406:10 3407:3 3408:3,16 3411:1,4 3411:10 3412:7 3413:14 3415:17 3416:6,16 3418:5,8 3419:6,19,24 3420:6 3420:17 3423:4,12,14 3423:17,21 3424:2,17 3424:21 3425:11,15 3425:19,23 3426:4,10 3426:12,17,22 3427:5 3427:13,18,23 3428:2 3428:4,7,10,14,17,20 3428:23 3429:1,5,7,9 3429:12,15,23 3430:11,13 3431:23 3432:17 3433:4,9 3435:9,17,21 3436:14 3437:10,24 3438:10 3438:13,17 3440:2 3441:16,22 3442:8,16 3442:21 3443:8,13,17 3443:20,23 3444:1,6 3444:9,16,21 3445:24 3450:13 3451:9,25 3452:12,18,21 3453:19 3454:17,21 3458:3,19 3459:5,13 3459:22,24 3460:7,15 3460:20,25 3461:9,11 3461:24 3462:23	3463:3,12,16,20 3464:4,21 3466:15 3467:8,14,23 3468:3 3468:7,17 3469:3,22 3470:2,10,13 3471:1 3471:5,14 3472:9,18 3473:25 3474:2,6,10 3474:12 3475:10,13 3475:14,23,24 3476:1 3476:8,16,22 3477:4 3477:9,14 3478:21 3479:16 3480:23 3481:9 3482:16,23 3483:9,19,25 3484:8 3484:16,22 3485:10 3486:8,11,15,24 3487:10 3488:2 3489:12,25 3490:6,18 3490:25 3491:7,25 3494:10 3495:10,12 3495:17,21,25 3496:10,19,24 3497:5 3497:13,16 3498:1,7 3498:12,16,23 3499:1 3499:5,11,16,21 3500:1,5,8,11,21 3501:1,8,15,18,21,24 3503:12,15,19,25 3504:7,12,15,19,22 3504:25 3505:5,8,15 3505:20 3506:4,10,18 3507:7,12,15,20,25 3508:16,22 3509:3 brigadier 3400:3,5 3405:21 3408:14 3410:11 3413:7,9 3417:25 3438:9 3440:1 3442:7 3445:11,18 3447:18 3449:1,18 3453:21 3457:21 3459:18 3461:8 3465:19 3466:2,12 3468:16 3473:23 3474:10,18 3475:7,22 3476:25 3477:6 3479:8 3480:18 3482:7 3484:18 3485:5 3486:12,19 3489:5,18 3492:7,21 3493:19 3495:2,8,15 3498:2 3500:19 3501:4 3502:25 3503:9 3506:25 3508:8,18 bring 3416:7 3431:3,4 3433:15 3471:18 3472:16 brought 3472:21,24	Bruinders 3448:9,24 3449:10,23 BUDLENDER 3502:2 bull 3402:4 bulldogs 3402:4 bundle 3420:2 3422:16 3459:1 3462:4 busy 3442:11 3450:16 3465:9 bystanders 3442:24 <hr/> C <hr/> Calitz 3500:19 call 3402:15 3403:9 3431:2 3439:22 3453:24 3473:20 called 3424:13 3510:19 calling 3455:17 cameras 3506:7,8,12 Canine 3429:3 3459:21 canon 3461:16 3462:4 3462:5,11 3463:4 canons 3461:12 can't 3405:25,25 3416:13 3438:19 3439:18,21,23 3442:3 3448:4 3454:10,15 3456:3 3457:19 3485:18 3486:2 capable 3482:10 capacity 3481:5 3482:11,21 Cape 3485:2 3486:6 care 3457:1 3488:16 carry 3411:14 3417:10 3457:20 3460:19 3461:23 3467:6 3479:12,23 3510:14 carrying 3471:12 case 3418:6 3440:14 3442:2 3453:12 3471:5 catch 3442:19 categories 3496:9 cause 3416:10,16,24 3439:20 3505:16 caused 3440:6,11 CBD 3451:12,21 central 3426:5 centre 3498:25 3503:18 3504:5,10 3505:1 3511:6 certain 3418:9,13 3435:24 3436:1,11 3464:1 3481:14,14,22 3482:4,13 3488:23 3498:4 3499:24	certainly 3465:17 3487:8 Chair 3416:25 3417:16 3417:25 3421:22 3425:7 3430:5 3434:24 3438:6,19 3442:13 3445:16 3446:6,10 3447:10 3448:6 3449:4,22 3450:1,5 3453:1,9,14 3455:16 3456:5,22 3457:10 3466:10 3467:3 3468:21 3472:3 3473:2,7,11 3474:17 3478:5 3488:19 3489:5 3492:18,20 3495:3,8 3502:2,17 3503:1,23 3504:2 3509:13,14 3510:3,17 Chairman 3409:13 3416:4 3483:16 chairperson 3400:2 3405:21,25 3409:2,7 3409:14,20 3410:4,7 3414:5,9,12,22 3415:1,8,18 3416:6 3416:12 3417:11,20 3419:22 3420:1,8 3421:7,11,15 3422:10 3422:24 3424:23 3425:8 3426:7,11 3429:24 3433:21 3435:3,10,14 3438:7 3438:12,14,22 3439:18 3440:3,8,13 3441:1 3442:1,9 3444:21,24 3445:10 3446:8,20,23 3447:5 3447:13 3448:13,19 3449:1,16 3452:22 3453:7,10,15,21 3454:18 3455:21 3456:7,18 3457:1,14 3458:11,16,20 3459:6 3459:18,23,25 3460:8 3460:12,16,23 3461:14,16,22 3462:1 3462:3,14 3465:7,25 3467:5,9 3468:9 3471:19 3473:4,8,17 3478:10 3488:17,20 3489:20 3490:2 3494:14 3495:4 3502:7,14,22 3503:7 3503:20 3509:4,6,19 3509:22,25 3510:4,6 3510:9,20
---	--	--	---	--

<p>chairperson's 3504:3 challenge 3480:2,7,10 3480:16 challenges 3485:24 chance 3413:19 3435:13 3442:24,25 3467:15 3489:15 change 3418:23 3435:5 3480:4,15 3502:7 changed 3418:3 changes 3418:7 channelled 3435:24 channelling 3436:10 charge 3450:22 Charles 3405:7 Charlie 3428:19,21 3429:3 check 3461:7 3464:5,22 3465:2 checking 3403:8 3453:4,5 3473:3 chief 3510:11,16 children 3410:23 choosing 3445:5 chopped 3418:3 circumference 3469:6 3469:14 circumstances 3418:7 3433:7 3435:2 3440:17 3441:3,7 3451:6 3485:9 3497:3 3510:20 citizen 3410:2 citizens 3401:19 city 3451:11 CJOC 3498:15,20,20 3498:25 3499:7,14,19 3499:25 3500:3,9 3505:11,11 clarity 3467:24 classes 3401:3,4,5,9 clear 3400:23 3407:9 3407:10 3410:1 3413:1,16 3439:2,6 3441:2 3447:19 3453:15 3455:4 3458:5 3464:21 3467:20 3469:13 3479:17 3486:20 3487:25 3489:20 3493:22 3503:2 3508:9 clearly 3408:4 3409:17 3424:7 3439:5 3441:6 3445:4 3447:22 3450:17 3454:11 clients 3439:22 3457:23 clip 3447:22</p>	<p>close 3441:19,20 3470:14,22 closing 3417:9 colleague 3473:10 colleagues 3486:6 College 3460:2 Colonel 3427:11 3466:3,5 column 3425:2 3495:24 come 3401:25 3402:5 3405:11,22 3410:24 3413:20,25 3415:22 3416:12 3418:20 3436:21 3437:3 3455:12 3463:8 3464:11 3466:17 3478:9 3482:11,17 3485:3 3486:2 3487:18,19 3490:11 3492:4 3494:14,22 3495:1 3511:12 comes 3416:9 3418:15 3418:19 3482:22 3497:19,22 coming 3404:6 3439:1 3454:24 3461:1 3508:2 command 3499:8,10 commander 3424:1,1 3431:3 3436:20,22,23 3450:19 3451:2 3452:13,16,17 3498:25 3499:12 commencement 3445:20 comment 3402:12,12 3402:14,21 3403:7,8 3403:17,17,20 3404:23 3405:2,3,14 3412:10,11,14,15,22 3413:6 3414:1,4 3440:15 3441:15 3442:3 3451:1 3453:20 3454:7 3472:10 3491:24 commission 3400:2 3409:24 3413:11 3417:10,17 3445:9,9 3445:10,20 3477:1 3483:3 3485:6 3489:3 3489:4,4 3490:10 3491:3,20 3495:8 3496:21 3497:1 3502:18 3505:18 3509:5 3510:22,23 3511:5,14 commissioner 3421:13 3447:13 3498:19</p>	<p>commissioners 3410:18 3511:8 commission's 3489:21 3492:11 committed 3403:24,25 3404:5 common 3505:16 common-law 3410:3 communication 3487:22 communications 3489:8 communities 3412:1 community 3410:15 company 3496:3 compel 3482:2 compile 3463:22 3475:20 complaints 3493:2,20 complete 3432:1 3502:9 completing 3422:22 comply 3505:24 complying 3506:3 concede 3454:9,13 concept 3418:15 concern 3471:6 3493:6 3493:22 concerned 3403:11 3465:22 3493:19 3494:18 3511:9 concerted 3491:21 concession 3448:9,15 3448:19 3452:22,24 concessions 3490:12 conclude 3417:9 concludes 3496:12 conclusion 3483:14 condoning 3467:20 conductive 3470:18 conduct 3408:13 3457:24 3493:22 conducted 3491:21 confident 3482:8 confidently 3481:4 confined 3486:14 confining 3508:9 confirm 3455:19 confirmed 3481:3 conflict 3507:11 confronted 3408:20 confuse 3414:18 confused 3415:25 confusion 3416:7,10,17 3416:25 3460:9 3496:14 3502:20 conjunction 3476:8 connection 3475:12</p>	<p>3476:11 consequence 3493:3 consider 3408:2 3489:17 considered 3469:20 considers 3457:3 consistent 3402:8,9 3403:22 3407:22,25 3408:2,24 3409:15 3440:24 3442:5 3446:4 3458:1 3463:1 3463:10 constables 3415:24 constitute 3483:22 Constitution 3400:10 consultation 3412:25 consulted 3509:10 consulting 3473:13 consuming 3490:14 contain 3491:12 contained 3491:5 3500:16 contains 3422:11 3465:17 3491:18 contemplated 3483:2 content 3491:5 3492:14 3493:5,19 context 3471:8 3478:18 3486:9 3496:13,16,21 3497:14 3507:16 3508:11 contingency 3420:4 3502:9 3503:2,21 continues 3478:15 contributed 3496:14 control 3401:1 3406:24 3407:23 3457:17 controlled 3427:11 convene 3473:14 convenient 3488:18 converting 3462:20 conversant 3498:21 conveys 3479:10 cooperating 3508:25 coordinated 3499:20 coordinator 3460:3 copies 3477:1 copy 3422:12 3492:22 coral 3468:14 cordons 3467:25 3469:1 cordoning 3467:19 3470:7 correct 3400:11,18 3403:9 3404:3 3411:25 3412:16 3415:17 3417:15 3418:5 3423:11,23 3424:20 3425:22</p>	<p>3428:25 3429:1,12 3431:22 3432:13 3433:20 3435:18 3442:6,8 3444:6 3445:17 3446:9 3450:5,10 3451:8 3452:13 3454:12,13 3457:16 3461:9 3462:23 3469:21 3470:1,25 3471:1,4 3471:14,20 3474:2,6 3474:12,21 3475:2,13 3475:24 3476:9,22 3478:1 3483:25 3484:8,16 3486:8,11 3486:23 3489:25 3490:18 3495:6,20,21 3496:19 3497:7 3498:9,11,12,23 3499:1,5,11,15,16,21 3500:8,11 3501:7 3502:12 3504:3,6,7 3505:19 3506:4,10 3507:6,7,11,12,14,15 3507:19,20,24 3508:16,21,22 3509:10 corrected 3509:16 correction 3423:7 3424:9 3429:24 correctly 3439:4 3442:20 3457:5 3486:4 correctness 3500:24 couldn't 3409:17 3432:6 3454:23 3472:20 counsel 3403:6 3404:2 3408:16 3412:7 3413:14 3415:20 3416:3 3417:13 3420:12 3435:12,16 3438:24 3445:18 3454:1 3459:19 3462:8 3488:20 3490:17 3511:11 counsellor 3401:3 3405:13 3406:4 3407:3 3408:3 3411:11,12,22 3430:17 3435:17 3438:17 3440:18 3442:23 3444:16 3450:13,16 3451:25 3453:20 3460:11,22 3460:25 3463:4,17,21 3464:4,11,21 3467:23 3469:3 3472:9,18</p>
--	--	--	--	--

<p>3479:16 3481:9 3482:17 3484:23 3486:24 3487:10 3488:2 3489:13 3491:8,25 3494:10 3497:5,17 3501:16 3506:18 counsellors 3464:13 countenance 3455:19 country 3484:7 couple 3483:10 course 3404:8,9,14 3406:11 3414:2 3416:17 3449:1 3460:3 3463:13 3466:1 3474:14 3477:24 3489:18,21 3490:1 3491:2 3492:10 3494:3 3501:2 courses 3459:10 covered 3434:1 create 3446:16 creating 3426:19 crime 3402:24 3403:18 3403:21 3404:5,16,20 3404:24 3406:25 3407:7 3410:21 3456:11,12 criminal 3410:3 3466:2 criminals 3402:4 3404:6,7,11 3410:14 3410:19,22 cross 3417:9 3445:23 3473:6 3474:16 cross-examination 3404:2 3417:14,23 3440:3 3445:15 3448:2,4 3465:23 3473:18,22 3495:7 3497:25 3509:12 3510:24,25 cross-examine 3417:14 3422:25,25 3473:9 3488:22 3495:5 cross-examined 3488:22 3490:12 3509:15 cross-examiner 3452:23 3474:20 3475:25 cross-examining 3400:4 3490:16 crowd 3400:8,25 3403:19,21,23 3404:7 3404:9,10,12,17,18 3404:19,22 3406:24 3407:6,11,11,23</p>	<p>3423:10,20,21,22,24 3426:24 3429:21 3430:7,10 3431:5 3442:14 3446:3,4,15 3446:16 3450:10 3452:9 3456:10,13,14 3457:17,17 3458:2,6 3458:13,13 3459:10 3459:15 3460:9,10,13 3460:14 3463:2,10 3468:24 3470:23 3477:21 3478:3 3479:12,14,25 3480:12 3481:6 3484:6,25 3485:12 crowds 3400:17 3403:24 3485:1 cryptic 3415:1 current 3465:14,21 3476:7 3496:4 3503:6 curriculum 3475:17,22 cut 3453:22</p> <hr/> <p style="text-align: center;">D</p> <p>damage 3432:20 danced 3465:6 danger 3466:20 dare 3410:22 date 3423:14 dated 3420:4 3503:21 day 3404:19 3423:3 3424:7 3430:8 3432:23 3436:21 3437:16,20 3450:24 3452:16 3454:24 3465:1 3471:25 3485:1 days 3442:22 DB1 3492:20 dead 3453:5,6 deal 3402:3,4 3403:18 3407:20 3409:20 3410:21 3414:2 3416:13 3418:16,20 3419:2,10,13 3422:18 3423:24 3424:12 3431:14 3451:18,19 3469:17 3473:24 3477:22 3478:16,16 3479:2,6,13 3480:11 3481:6,19,24 3482:6 3482:10,12,13,14,19 3488:9 3494:15 3496:5 3497:3,11,25 3498:3 3506:23 dealing 3402:24 3422:8 3431:15 3456:12,14 3483:3 3484:2 3485:1</p>	<p>3485:12 3507:17 3508:11 deals 3483:11 dealt 3478:2 death 3405:6 3407:1 debate 3480:21 3486:21 debriefing 3485:14 3486:9 3490:20 3491:9,13 DECEMBER 3400:1 decide 3408:6 decided 3459:2 deciding 3508:20 decision 3408:7 3436:22 3485:18 declared 3466:13 deduce 3481:4 deducted 3493:14 deduction 3497:21 deep 3411:20,21 3412:18 defeat 3450:12 defence 3407:15 3408:11 defend 3406:18 3457:8 defended 3454:10 defer 3445:16 define 3404:22 defined 3504:25 3506:6 3507:4 definitely 3404:10,24 3406:6 3413:17 3416:24 3436:19 3437:13 3450:25 3451:1 3452:6 3454:23 3455:2 3469:16 3485:3 3488:3 3506:22 3508:4 definition 3407:4,9,17 3407:18 3504:17,24 deliberately 3434:21 delivery 3485:23 demands 3431:3 3506:21 democratic 3400:9 demonstrates 3447:22 demonstrations 3400:8 demonstrator 3410:3 denied 3496:3 3506:20 deny 3454:4 depend 3406:5 3408:22 3413:12 3436:19,20 3451:12 3452:5 3470:17 3508:1 depending 3407:12 3443:2</p>	<p>depends 3408:4 deploy 3426:25 3433:6 3433:19 3435:25 3436:5,9,10 3441:9 3476:21 3488:9 deployed 3423:3,24 3425:13,21,22 3426:13 3431:8,24 3432:9,14,22,24 3433:10,11 3434:12 3438:4 3439:10,11,15 3440:25 3443:16 3444:19,23 3458:9 3468:11 3484:6 deploying 3432:2,5 deployment 3424:19,24 3426:8,18 3432:1,12 3437:2 3440:7,22,23 3445:22 3467:7 3468:23,25 depth 3492:8 deputy 3410:12,13 3412:4 3414:22 3415:5,15 described 3479:14 3481:7 description 3504:3 designated 3498:20 3499:7,9,14 designation 3425:3,14 3428:12 detail 3409:21 3476:5 3478:5 details 3493:1 determined 3450:21 developers 3475:22 development 3474:7 3475:18 dialogue 3427:14 didn't 3421:17 3429:25 3430:3 3452:25 3473:5 difference 3502:11 different 3403:20 3408:17,25 3412:13 3413:3,24 3415:4,10 3415:11 3416:8 3432:23 3451:10 3452:3 3459:16,17 3460:11 3480:22 3508:4 differently 3434:20 3435:7 3469:19 3479:1 3482:12 differing 3456:5 difficult 3402:11 3408:10,25 3411:21 3450:23 3464:17</p>	<p>3481:6,22 3497:17 difficulties 3447:17 3489:23 difficulty 3412:20 3502:23 direction 3435:25 3436:11 3441:12,18 3444:4,8 3449:15 3450:2 3451:17 3462:13,20 3491:15 3492:3 directions 3441:12 directly 3439:24 3458:4 dirt 3448:10 3449:12 3449:13,13,24 3450:6 disarm 3430:14 disarmed 3430:22 disarming 3507:4 discipline 3459:16 disclosed 3417:13 3473:19 3508:7 discretion 3500:10 3505:10 discuss 3489:14 3497:24 discussed 3415:13 discussing 3487:3 3498:4 discussion 3483:14 3487:16 discussions 3485:7,8 3486:5 3487:7,18 3488:5 3489:8,19 disperse 3430:14 3431:16 3434:8 3446:16 3451:16,17 3452:1 dispersed 3430:20 3442:14 3451:6,24 3452:10 dispersing 3507:5 disposal 3467:2,17 dispute 3470:6 3491:14 3492:1 3500:24 3507:10,14 3508:5,5 disrespecting 3460:11 dissatisfied 3493:25 divisional 3498:19 divisions 3474:23 3475:3,6,8 Dlunga 3493:17 document 3419:18 3420:15,18,21,23,24 3421:6,21 3422:12,20 3465:23 3466:1 3489:22 3492:2 3503:4,6 3504:21</p>
--	---	---	---	---

<p>3510:1,7 documents 3420:2 3422:11 3433:22 3466:5 3501:13 3502:23 doesn't 3404:7 3407:18 3412:5 3417:12 3431:13 3434:19 3435:12 3452:23 3460:24 3482:22 3494:12 dogs 3434:7 doing 3434:21 3440:16 3457:4 3479:21 3505:25 3506:2 don't 3404:21 3406:15 3407:24 3409:10 3413:7,18 3415:11,19 3416:21 3417:2 3418:22 3420:11 3422:17 3425:9 3426:2 3429:17 3433:13,15 3434:1 3437:10,24 3438:5,25 3440:2,13 3441:5 3446:20 3447:6,18,19 3448:1 3449:6 3451:19 3455:21 3456:25 3457:3,9 3458:14 3459:19 3460:21 3461:20 3463:8 3465:7,8,15 3465:19 3469:12 3473:11,20 3477:5 3480:20 3491:14 3493:15 3500:14,14 3501:1 3503:24 drafted 3510:1,7 draw 3478:22 drawn 3483:17 drill 3493:17,20,25 driven 3454:2,2 driving 3454:15 3455:2 due 3413:17 3489:21 duration 3499:20 dustbin 3418:22,24 duties 3414:20 duty 3400:13 3403:12</p>	<p>easy 3482:6 effect 3437:9,22 3447:7 3476:10 3479:5 effectively 3434:18 eight 3428:22 3430:23 3467:1 eight-second 3453:2 3458:20 either 3439:4 3451:11 3501:12 3506:15 elaboration 3409:8 elicit 3457:12 3466:8 eliminate 3480:5 emanates 3487:14 emanating 3498:5 embark 3470:18 emphasis 3499:9 employees 3472:22 3496:9 employer 3471:18 3472:16,21,22 employers 3493:11 enable 3441:7 3457:6 encircle 3430:14 3432:3 3437:5,16 3467:22 encountered 3487:23 ended 3445:1 3493:12 Engage 3427:13 engagement 3471:24 Engelbrecht 3466:3 enjoys 3500:9 enlighten 3485:5 ensure 3436:7 3498:19 enter 3480:21 entirely 3410:9 3434:2 3439:3 3478:18 3492:6 entitled 3406:3 entitles 3406:25 entrance 3446:2,7,12 3447:1,10 3449:19,22 3449:25,25 3450:3,8 environment 3446:16 envisaged 3400:14 equally 3481:11 equipment 3433:16 3476:8 3479:11 3506:16,23 equipped 3484:12,13 equivalent 3478:4 erroneous 3509:23 escort 3418:12,21,25 3471:16 escorted 3466:18 especially 3414:20 3419:8 3506:11 essential 3477:24</p>	<p>3483:1 establish 3441:4 3442:11 established 3401:12 3442:9 3490:13 3505:13,14 establishes 3454:6 estimate 3469:2 estimated 3424:8 evacuate 3430:19 evening 3484:19,20 event 3404:8 3419:8 3447:11 3483:23 3505:4,17 3506:2,6 3506:14 events 3483:16 3486:10 3506:11 eventuate 3496:18 Everyday 3401:24 evidence 3404:3 3430:16 3433:21 3434:9,17,19,25 3439:9 3440:10 3441:8 3444:2 3447:10 3449:23 3453:2,7,11,13,17 3454:5 3455:8,15,24 3455:25 3456:4,10,11 3456:15,18 3457:22 3467:3 3470:3 3472:5 3472:7,8,11 3474:10 3474:15 3476:24 3477:11 3478:8 3479:9,15 3480:19 3481:2 3483:2 3490:11 3492:9 3498:9 3510:11,16 exact 3478:11 exactly 3401:7 3413:22 3416:18,23 3420:22 3425:24 3434:25 3447:4 3451:16 3458:7 3459:13,17 3472:4 examination 3417:10 3473:7 example 3408:19 3418:21 3436:1 3464:24 3507:9,18 examples 3508:11 exclude 3508:13 excuses 3410:20 execution 3414:19 exercise 3425:1 3450:19 3451:3 3466:12 3470:18 3490:21 exhibit 3424:16,22</p>	<p>3443:6 3461:6 3476:3 3476:3,4,6 3491:4,4 3491:12 3492:18,20 3495:15 3501:11 3502:1,4 3503:2,5 3504:14 3509:17 existing 3484:14 expect 3401:20 3507:21 expected 3451:23 3455:22 expects 3510:24 expedite 3405:20 experience 3415:22 3433:13 3434:5 3437:8,20 3439:20 3477:16 3483:18 3494:3 3506:19 experienced 3437:21 expert 3429:25 3430:1 3430:6 3439:12 3453:18 3455:17,20 3455:22,22 3456:3,3 3456:13 3457:11,12 3473:13 3483:15 3490:9 3491:21 expertise 3439:20 3482:24 3494:2 experts 3490:3,11,15 3509:10 explain 3401:3,7 3430:13 3438:23 3457:5 3509:22 explained 3430:15 3433:25 3450:14,17 3488:24 explaining 3416:17 3439:9 3444:17 explore 3445:25 3485:16 explored 3483:24 exploring 3435:2 3446:14 expressing 3497:1 extend 3511:8 extensive 3477:16 extra 3422:11 3424:12 extreme 3495:24 eyewitness 3457:11</p>	<p>facts 3454:6,12 3457:15 3477:17,24 factual 3457:12 failure 3417:4 fair 3427:9 3430:2 3441:6 3454:11 3462:8 3478:6 fairly 3474:18 3477:23 3478:1 3479:14 3490:13 falling 3496:9 familiar 3473:25 3474:20 familiarity 3483:15 families 3473:10 far 3403:7 3414:6,23 3434:5 3471:22 3487:3 3490:17 3494:17 3495:14 3502:11 fashion 3402:22 3412:19,19 3479:1 3501:5 fault 3509:25 3510:1,4 3510:6 favoured 3491:20 features 3496:6 feedback 3426:24 feel 3402:17 3413:21 feeling 3491:11 fellow 3511:8 felt 3483:22 3485:3 festive 3511:12 field 3490:4 fight 3435:15,15 fighting 3435:11 figure 3496:13 final 3434:15 3485:18 find 3421:6,19 3422:16 3422:16 3425:4,17 3447:22 3479:21 3504:23 3509:2 findings 3489:22 3492:11 fine 3460:22 finished 3486:2 3510:13,15 firearm 3405:8 3406:2 3406:2,7,14,25 3407:2,12 3408:21 3411:14 3479:20,25 firearms 3471:23,24 3481:25 firing 3434:14 3461:17 3462:4 first 3400:6 3411:1,3 3412:8,9 3416:21 3420:14,24 3431:21</p>
<p style="text-align: center;">E</p> <p>E 3505:6 earlier 3401:13 3417:17 3427:20 3428:12 3444:22 3462:16 3509:15 early 3445:6 easier 3449:13 easily 3463:7</p>			<p style="text-align: center;">F</p> <p>face 3404:11 faced 3479:24 faces 3492:24 facility 3474:4 fact 3440:18,21 3457:15 3465:20 3471:24 3474:3 3500:12,15 3506:2,13</p>	

3431:25 3441:3 3448:3 3459:1 3460:23 3482:5 3484:19,20,23 3491:19 3492:25 3493:2,7 3495:19 3500:21 3503:3 3510:12 firstly 3474:20 3484:18 3498:4 fit 3469:12 fitted 3506:7 five 3465:10 flashing 3461:13 3462:11 flows 3490:8 focus 3418:1 3423:1 3429:18 3443:5 3500:2 follow 3408:15 3419:11 3431:21 3438:21 3444:17 3460:24 3478:17 3486:4 3487:16,16 3499:25 3505:3 followed 3458:23 3469:23 3475:15,23 3482:8 following 3400:25 3407:7,7,8 3418:11 3418:19 3424:19,25 3425:16 3427:19,25 3428:18 3429:17 3457:23 3476:1 3477:15 3478:25 follows 3475:15 3476:17 3479:3 follow-up 3440:20 foot 3420:9 force 3414:19 3415:23 3415:24 3453:1 3454:8,9,14,16 3455:3,4 3463:5,13 3463:17 3480:13 3481:15 foresee 3452:25 foreseen 3452:10 forgot 3448:17 forgotten 3417:21 form 3457:17 3476:4 3491:4 3503:6 formal 3489:7 formation 3444:23 formed 3477:25 forming 3464:6 formulate 3492:2 formulation 3484:10 forth 3475:21	forum 3409:20 forward 3414:13 3439:21 3440:10,11 3443:19,25 3444:15 3448:13 3462:19,22 3486:16 3489:14,15 3494:23 found 3445:12,17 3448:8 3477:2 four 3468:10,11 3483:22 3484:1 3492:25 3493:2 3495:19 fraternity 3475:18 fraudulently 3493:14 freedom 3450:20 3451:3 Friday 3483:21 friend 3457:2 3477:12 3481:7 3495:16 front 3426:18 3427:1 3449:2 3469:12 fuller 3465:10 fully 3474:9 3476:19 function 3404:20 functioning 3476:11 functions 3401:14 further 3409:11 3414:13,17 3415:9,20 3416:17 3422:22 3430:22 3431:5,7 3432:7 3443:18,24 3446:1 3483:23 3484:3,5 3491:24 3492:12 3509:19 future 3486:16	3432:2 3434:9 3435:12 3439:24 3442:23,23,23 3446:20,21 3455:22 3455:25 3456:3 3459:12 3460:5,23 3469:2 3472:6,7,11 3490:11 3492:13 3500:14 3501:13,23 3502:19 3503:14 given 3410:21 3416:14 3416:19 3430:18 3431:24 3438:2 3439:13,15 3442:6 3443:1 3449:23 3453:23 3461:4 3463:25 3464:1,20,24 3465:1,18 3466:2,4 3466:25 3470:1 3472:15 3474:10,14 3475:23 3476:13,20 3477:16,17 3479:10 3480:1 3481:3 3487:13 3488:4 3492:12 3497:9 3508:11 gives 3431:7 3505:10 giving 3408:19 3424:11 3429:25 3434:19 3442:25 glad 3486:17 go 3403:8 3404:20 3412:18 3414:9 3418:23 3427:7 3430:22 3432:6 3439:4 3442:18,19,20 3443:2,3 3449:6,9,9 3449:11,11,15 3452:1 3458:6 3464:5,9,12 3469:25 3473:23 3476:5 3478:5 3482:2 3488:2 3493:16 3495:23 3504:14 3506:18,25 goes 3408:19 3415:8 3416:7 3420:4 3436:8 3446:18 3482:19 going 3402:3,3 3403:18 3404:11,15 3405:1 3406:17 3409:9,10 3411:20 3414:13 3417:19 3418:10,10 3418:11 3425:4 3430:18,18,19,20 3431:11,17,18 3432:20 3434:10 3435:24 3436:3,16 3437:13 3438:24	3440:10 3441:5,21 3442:10 3446:25 3450:7 3453:7,17 3456:1 3457:14,22 3468:4 3469:5,11,15 3469:17 3470:17,17 3473:9,10,23 3478:4 3478:16,16,22,25 3480:14 3488:8 3492:22,24 3493:7 3494:9,15 3495:5 3500:2,12 3501:2 3502:4,14,19,21,22 3509:7,8 3510:11 good 3414:14 3447:24 3450:25 3483:20 3495:8,10 granted 3493:17 Greek 3420:10 green 3443:11 grievances 3493:1 ground 3453:4 3454:15 group 3425:14 3441:17 3477:18 groups 3430:21,21 guidance 3456:23 3478:5 guns 3410:21	3506:6 happy 3456:8 3480:22 3497:19 3501:2 harm 3457:20 hasn't 3449:2 3487:8 haven't 3416:10 3419:24 3442:2 3455:1 3465:5 3472:20,23,25 3487:4 3488:14 3494:20 head 3484:25 3485:11 3485:19,19 3486:7 3487:1 3489:15 3491:10 3494:4,17 headed 3424:23 3465:11,13 heading 3420:3 3498:14 3504:4 headline 3492:23 hear 3405:22 3411:1,3 3441:16,22 3444:16 3445:24 3450:13 3454:8 3455:2 3456:8 3480:22 3486:17 3487:12 3491:25 3498:1 3500:22 heard 3412:12 3415:15 3416:10 3423:5 3434:16,17 3438:22 3455:1 3494:21 hearing 3454:22 heeded 3492:12 held 3459:3 3491:9,10 3508:3 helicopter 3434:17 help 3409:11 3422:2 3434:20,22 3438:19 3448:5 3457:2 3469:7 helpful 3448:1 3465:22 helpless 3455:1 Hemraj 3420:22 3421:1,4,9 3422:2,6,8 3422:19 3447:13 he'll 3416:15 3420:12 3460:24 he's 3402:23 3403:7,7 3405:3 3410:2 3413:2 3421:9 3425:4,5 3434:19 3442:5 3447:6,7 3450:21 3454:6 3457:2,14 3460:9 hid 3458:24,25 3459:1 hiding 3455:10,11,12 higher 3456:11 hill 3477:20 Hold 3419:22 holding 3428:16,19,22
	G		H	
	game 3459:2 gap 3441:19,21 3484:11,13,13 3489:9 gather 3404:4 3418:10 3419:12 3487:6,21 gathered 3431:6 3498:8 gathering 3404:10,12 3419:8 3426:23 3436:17 3469:20 3471:10 gatherings 3400:8 general 3407:16 3435:8 3435:18 3471:9,16 3500:13,17 generated 3490:22 getting 3414:10 3463:7 3417:12 gift 3417:12 give 3413:15,16 3417:10 3431:5		hadn't 3416:12 half 3489:1,3 HANABE 3474:24 3475:5 hand 3471:16,17 3477:8 3480:5,6 3492:17 3506:24 handing 3472:1 handle 3411:22 3430:7 3430:10 handled 3419:16 handling 3429:21 3450:10 hands 3457:25 3459:3 3461:2 hang 3462:3,3 happen 3404:8,15 3405:24 3406:17 3433:18 3434:10 3451:14 happened 3434:15,16 3437:7 3439:25 3447:12 3453:13 3454:10 3458:21 3492:16 3494:7 happening 3419:1 3473:4 3494:24 happens 3418:13,21	

3429:4,10,14 3443:19 3443:25 3444:10,14 3444:14,15 3462:19 3462:22 home 3442:20 3443:3 homes 3469:25 hope 3417:7 3425:1,4 3473:24 hoped 3489:21 hour 3417:10 House 3436:2,3 human 3474:7 hypothetical 3477:23	inappropriate 3454:11 incident 3434:15 3437:11 3505:4,17 3506:1,6,14 3507:2 incidents 3467:12 inclined 3414:5 included 3496:7 including 3474:5 inconsistent 3402:9 3403:3,22 3407:22 3408:2 inconvenience 3489:2 incorrect 3424:2 increase 3493:10 3496:12 indebted 3501:7 indicate 3424:4,9 3478:10 3479:17,18 3481:10 3494:17 3497:23 3503:1 3510:13 indicated 3405:4 3412:8 3417:17 3418:2 3424:3 3464:15 3470:19 3489:6,12 3491:9,19 3492:23 3494:20 3502:18 3508:12 3509:7 indicates 3407:5 indicating 3467:25 indication 3413:1 3491:12 3493:23 3503:14 individual 3408:20,20 indulgence 3510:19 informal 3443:12 3446:12 3447:1,1,10 3448:10 3449:14,20 3449:22,24 3450:3 information 3423:2 3431:24 3438:1 3439:13,14 3441:22 3442:6 3454:23 3463:25 3464:1,20 3465:14,17,21 3466:2 3466:4,24,25 3467:8 3469:25 3470:2,4 3472:14,20,23 3473:1 3507:5,8,23 3508:2 3508:12,15,19 3509:1 3509:23 informed 3401:19 3456:16 3488:7,11,15 informing 3409:24 injured 3417:18 3454:14 3459:7 innocent 3410:23	input 3413:15,16 3497:7,8 inputs 3466:2 insert 3502:16 inside 3451:14,21 inspired 3401:14 instance 3483:7 3489:9 instances 3418:7 instruction 3402:13 3412:11 3487:13,15 3488:4,13 3493:5 instructions 3493:6 3500:19 intelligent 3403:11 intend 3422:22 3430:6 3476:21 3498:3 intention 3406:16 3431:25 interaction 3472:22 interested 3456:7 3459:19 interface 3474:22 3475:2,8 3476:12 3482:21 interfered 3432:11 interfering 3435:11 interject 3502:3 international 3400:10 internationally 3484:4 interpose 3476:3 interpret 3413:4 3475:19 interpreter 3435:16 interrupt 3459:19 3465:8 intervene 3481:24 intervention 3459:20 3482:1 3488:5 3508:20 invite 3453:17 invited 3457:12 involved 3455:24 3476:18 3484:25 IPID 3453:23 irrespective 3508:5 Isaacs 3466:3,5 isn't 3434:6 3439:1 3456:4 3465:20 3487:17 3510:13 issue 3435:1 3441:1 3451:1 3494:23 3500:15 3507:17 issued 3479:22 issues 3408:4 3419:8,12 3485:15,23,25 3487:3 3489:14 3491:13 3494:13,15,25 3508:7 it's 3402:11 3403:6,9	3403:19 3406:13,22 3406:23 3407:7,10,10 3407:11,11,18 3408:5 3408:6 3409:10,14,18 3411:8,18,19,21,21 3412:13,18 3413:4,24 3414:14,14 3416:18 3416:22 3420:2,4,8,9 3420:10 3421:2,16,17 3422:14,16 3425:18 3426:14,18 3427:21 3430:2,24 3433:14,16 3435:12 3436:14,15 3436:16 3437:15 3440:15 3444:24,24 3448:25 3450:18,23 3451:1,11,15 3452:18 3452:20 3460:10,16 3460:22 3461:5 3462:8 3463:12,16,20 3464:15,17 3471:5 3478:14 3480:25 3484:17,23 3485:1,18 3485:22 3488:17 I'd 3417:17,21 3473:22 3498:3 I'll 3416:8 3422:21 3445:18 3449:13 3450:1,9 3457:9 3466:10 3474:15,18 3475:18 3478:13 I'm 3404:3,25 3405:15 3406:16 3409:24 3412:9,14,16,24 3413:7,17 3414:1,5 3414:12,13,14 3417:20 3422:23 3423:4,5,6,7,8 3424:3,7,8,8 3425:23 3429:12 3432:8 3434:20,22,25 3435:1 3435:1,18 3437:19,20 3439:3,13,14 3441:1 3441:2 3442:16 3444:9,17,18 3446:14 3448:3 3453:21 3454:22 3455:10 3456:8,16 3459:13,18 3460:11 3461:25 3462:10 3464:4 3465:2 3468:7,18,19 3468:19,20,22 3469:6 3469:7 3470:13 3471:19 3482:8 3484:2,24 3485:10,11 3486:15,17 3487:1 3488:12 I've 3407:13 3420:6	3424:3,17 3425:7,11 3425:15 3435:22,23 3437:2 3438:22 3439:25 3460:18 3464:24 3468:17 3476:25 3485:10 <hr/> J J 3504:20 3505:7,8 ja 3425:23 3426:10,10 3426:12,17 3427:23 3429:10 3430:6 3435:21 3442:9 3459:24 3460:21 3461:9 3467:14 3468:17 3497:13,16 3498:6 3502:22 January 3473:15 3493:16,24 3496:18 3510:23 3511:1,4,6 job 3412:20 3451:4 3469:10 3480:11 JOC 3426:24 3500:3 3500:20 3503:18 3504:4,24 3505:12,13 3505:14 3506:1,9,15 Johannesburg 3436:3 joint 3498:25 3503:17 3505:1 journalists 3450:6 jump 3429:2,16 3433:15 3463:24 3500:17 junior 3402:15 3415:24 justified 3493:21 <hr/> K keep 3449:7 keeping 3488:7 kill 3406:3 3410:14,17 3410:19 3411:6,7 3415:18 killed 3405:9 3410:24 3459:4,7 killing 3411:15 kind 3457:13 3460:17 3472:8 3479:14 3483:2 3485:8 3486:21 3488:1 3491:5 3498:10 know 3405:17 3409:10 3411:14 3412:13,21 3413:18,22 3414:23 3415:20 3416:3,20 3420:11 3426:2 3431:12,14 3433:14 3434:14 3439:18 3441:5 3447:19
---	--	--	--	--

3448:1 3452:15 3457:9 3458:12 3459:8,17 3460:17,21 3461:20,22 3462:2 3463:1 3465:8,15,19 3467:2,23 3468:3 3469:12 3472:21 3473:20 3477:24 3487:3 3488:23,25 3490:13 3494:24 3498:24 3500:20 knowledge 3415:21 3439:22 knows 3456:13 koppie 3431:6,10 3432:3 3437:16 3439:12,12,16 3440:6 3440:22 3441:11 3455:10 3458:17,17 3458:22,24,24,25,25 3459:1 3462:20,25 3467:12,13,19,19,20 3467:22 3468:1,14,22 3469:1,6,14,14,20,21 3470:7,7,22 3472:25 3507:18 kraal 3441:20,21 3446:11 3449:8 K4 3441:13 K9 3444:8,10,11,13	leave 3409:22,23 3431:7 3441:11 3446:17 3469:25 leaving 3470:4 led 3441:8 3453:2 3454:6 3455:8,15 3456:19 3477:11 left 3441:11,12,13,13 3441:17 3443:21,24 3444:4,15 3449:7 3450:6 3461:17 3462:6,13 legal 3449:5 legislation 3498:21 legitimate 3417:5 3457:17 length 3468:12 lengthy 3478:1 lesson 3494:16 lessons 3483:17 3491:23 3492:16 3496:16 lethal 3480:13,13 3494:25 letter 3504:20 letters 3420:8,10 3489:7 let's 3405:18 3418:1 3419:1,17 3423:1 3424:15 3427:16 3433:17 3438:8,15 3441:24 3445:25 3448:21 3451:5,22 3461:6 3463:24 3468:15 3469:19 3471:7 let's 3495:14 3501:22 3503:9 level 3456:10 3485:2,17 3487:8,9 3491:10 levels 3487:1 Lewis 3473:9,11 liberty 3486:18 life 3408:6 3466:20 3482:3 light 3409:2 3457:15 3496:17 likelihood 3510:15,18 limitations 3481:4 3483:6,8 limited 3482:4 line 3407:16 3408:9,9 3412:16 3413:5 3416:1 3417:19 3445:23 3461:3 3478:11,14,15,23 lines 3479:4 lion 3433:15 3434:7	listen 3401:18 3445:13 listening 3511:10 little 3406:13 3415:2 3444:22 live 3484:15 livelihood 3410:23 lives 3410:23 location 3443:6 3446:18 3462:17 3504:4 logic 3416:18 long 3434:17 3485:7,21 longer 3415:5 3482:14 Lonmin 3417:15 3465:12 3492:24 3493:8,14,18 3495:5 3495:23 3496:2 3504:10 3505:18,19 Lonmin's 3493:21 look 3402:21 3419:17 3420:25 3421:5 3422:3,3,5,15 3424:10,15,16,24 3425:2,10,13 3426:2 3426:8 3427:16,16 3430:13 3433:17 3436:23 3443:6,10,14 3443:18 3445:3,7 3446:17 3447:12,21 3451:19,22 3452:6,13 3457:2 3461:6 3462:18 3465:5,9 3468:9 3477:7 3478:19 3481:13,23 3482:3 3485:15,16,24 3488:13 3494:13 3499:22 3503:11 looking 3426:7 3468:13 3468:22 3469:3,8,11 3470:13 3484:24 3489:14 3494:19 3503:23 looks 3407:14 3419:23 3461:17,18 3462:7 3465:13 3478:20 3505:9 loses 3452:24 lot 3408:17,25 3458:21 3472:22 lucid 3457:10 lunch 3447:21 3489:6 3511:4 lying 3453:4 3454:14 3454:25 3458:21	main 3406:10 3430:25 3442:10 3496:6 major 3490:20 making 3403:8 3446:23 man 3454:14 manage 3400:17 3403:24 3404:19 3408:18 3457:10 3484:12,13 manageable 3430:21 management 3400:8 3401:1 3403:19,21,23 3404:10,13,18,19,22 3407:6,11,11 3423:10 3423:20,21,22,24 3429:21 3446:3,5,15 3450:11 3452:9 3456:10,13,15 3457:18 3458:2,6,13 3458:13 3459:10,15 3460:9,10,13,14 3463:2,11 3468:24 3470:24 3479:13 3484:6,25 3485:12 3507:22 3508:10,14 3508:25 manner 3450:11 3464:17 3477:23 march 3404:13 3418:10 3419:2,8 3432:20 3436:15,15 3436:16,16 marches 3451:11,19 marching 3436:2 3451:14 Marikana 3441:13 3465:12 3467:11 3470:25 3477:25 3483:16,18 3486:20 3488:1,6,11 3493:8 3493:23 3498:10 3505:18 3507:3 material 3434:1 3476:5 matter 3407:10 3413:12 3456:2 matters 3503:2,10 Mbombo 3500:14 Mbombo's 3500:17 McIntosh 3427:11 mean 3403:13 3404:7 3404:17 3413:22 3426:2 3431:13 3433:3,25 3438:25 3466:14 3470:10 3481:15 3505:1 meaning 3406:1 3407:9 3413:1,3,4,18,21,24 3416:19,19,21,23	means 3413:4,22,23 3468:24 3481:23 3486:1 meant 3472:4 measure 3445:21 measures 3508:21 media 3405:14 3412:14 3432:4 3433:24 3437:3 3496:11 mediate 3472:7 meet 3485:13 meeting 3470:7 3487:2 3487:4,12,14 3508:3 3508:6 meetings 3485:20 3487:11 members 3411:17 3414:19 3415:23,24 3417:16 3423:3,5,8 3423:23 3424:3,4,11 3424:13 3425:13,17 3425:18 3426:13 3427:3,21,23 3428:5 3428:12,16,22 3429:3 3429:20 3430:7,9,22 3430:24 3431:1,4,4 3431:11,14 3442:14 3458:10 3459:14 3461:4 3462:19,22 3470:23 3476:14 3478:3 3479:11,22 3488:9 3495:8 3502:17 3509:4 memory 3478:7 men 3410:23 mere 3406:25 merely 3401:13 3406:24 3409:24 3494:1 message 3416:19 3445:22 method 3482:6 middle 3443:11 Middlekraal 3504:5,10 millimetre 3479:20 3480:4 mind 3415:9 3430:4 3439:5 3452:17 3502:24 mine 3461:20 3465:12 3493:8,9 3504:10 3505:19 Mineral 3410:12 3415:6 Minerals 3412:12 miners 3493:7,11 minimum 3453:1 3454:8,14,15 3455:3
<hr/> L <hr/> L 3424:16,22 3443:7 3461:6 3491:4,4,12 lacks 3502:10 laid 3470:16 land 3401:19 landed 3416:24 lastly 3492:13 late 3434:18 3467:14 3489:19 layout 3507:18 LCRC 3429:17 lead 3440:10 3453:8,12 3510:11 leader 3472:6 leading 3404:3 3450:2 3510:15 leads 3448:10 3449:14 3449:24 learn 3405:22 3491:23 learned 3457:2 3460:2 3477:11 3481:7 3494:16 3495:16 3496:16 learners 3400:20 learning 3483:23 3492:15	<hr/> M <hr/> magnitude 3430:10 MAHLANGU 3435:10			

<p>3455:4 3463:4,12,16 3466:7 3480:12 minister 3402:1,2 3403:2,12,14,17 3404:23 3405:6,16,23 3410:12,12,13 3412:4 3412:5,9,12,22,23 3413:7,18,23,24,25 3414:21,23,24 3415:3 3415:5,6,9,15 minister's 3403:17 3405:3 3408:15 3409:16 3414:4 minutes 3445:8 misleading 3496:13 misread 3468:15 misrepresenting 3500:15 missing 3421:5,16 3422:14 3502:15,15 mission 3418:1,1,2,3,9 3418:11,17,18,23,24 3418:24 3419:5,7,15 3420:20 3422:20 3430:14,15 3465:15 misunderstood 3435:4 MKHWANAZI 3400:11,15,18,22 3401:2,11,16,21,24 3402:6,11,20 3403:5 3403:15 3404:1 3405:10,13,24 3406:4 3406:10 3407:3 3408:3,16 3411:1,4 3411:10 3412:7 3413:14 3415:17 3416:6,16 3418:5,8 3419:6,19,24 3420:6 3420:17 3423:4,12,14 3423:17,21 3424:2,17 3424:21 3425:11,15 3425:19,23 3426:4,10 3426:12,17,22 3427:5 3427:13,18,23 3428:2 3428:4,7,10,14,17,20 3428:23 3429:1,5,7,9 3429:12,15,23 3430:11,13 3431:23 3432:17 3433:4,9 3435:9,17,21 3436:14 3437:10,24 3438:10 3438:13,17 3440:2 3441:16,22 3442:8,16 3442:21 3443:8,13,17 3443:20,23 3444:1,6 3444:9,16,21 3445:24 3450:13 3451:9,25 3452:12,18,21</p>	<p>3453:19 3454:17,21 3458:3,19 3459:5,13 3459:22,24 3460:7,15 3460:20,25 3461:9,11 3461:24 3462:23 3463:3,12,16,20 3464:4,21 3466:15 3467:8,14,23 3468:3 3468:7,17 3469:3,22 3470:2,10,13 3471:1 3471:5,14 3472:9,18 3474:2,6,12 3475:10 3475:13,24 3476:16 3476:22 3477:4,9,14 3478:21 3479:16 3480:23 3481:9 3482:16,23 3483:9,19 3483:25 3484:8,16,22 3485:10 3486:8,11,15 3486:24 3487:10 3488:2 3489:12,25 3490:6,18,25 3491:7 3491:25 3494:10 3495:10,12,17,21,25 3496:10,19,24 3497:5 3497:13,16 3498:1,7 3498:12,16,23 3499:1 3499:5,11,16,21 3500:1,5,8,11,21 3501:1,8,15,18,21,24 3503:12,15,19,25 3504:7,12,15,19,22 3504:25 3505:5,8,15 3505:20 3506:4,10,18 3507:7,12,15,20,25 3508:16,22 3509:3 Mmusi 3417:18,20,22 3417:25 3418:6 3419:4,17,21 3420:14 3420:18,22,24 3421:2 3421:13,22 3422:3,5 3422:7,21 3423:1,9 3423:13,16,18,22 3424:15,18,22 3425:2 3425:7,10,12,16,20 3426:1,6,16,21 3427:2,7,15,19,25 3428:3,5,8,11,15,18 3428:21,24 3429:2,6 3429:8,11,14,16 3430:5,12 3431:20 3432:12 3433:2,5,17 3434:24 3435:6,20 3436:12 3437:7,19 3438:1 3439:1,8 3440:4,5,12,18 3441:8,17,24 3442:13 3442:18 3443:5,10,14</p>	<p>3443:18,21,24 3444:2 3444:7,13,18 3445:12 3445:16,25 3446:10 3446:22 3447:4,14,15 3448:6,18,23 3449:4 3449:18 3450:1,9 3451:5,22 3452:8,15 3452:20,25 3453:9,14 3453:16 3454:6,19 3455:8,21 3456:5,9 3456:22 3457:20,21 3461:6,10,12,14,15 3461:20 3462:2,10,16 3462:24 3463:10,14 3463:18,24 3464:18 3465:7 3466:10,24 3467:6,11,16 3468:2 3468:6,9,21 3469:19 3469:24 3470:6,11,23 3471:2,15,19 3472:3 3472:14 3473:2,6,8 3509:14,21,24 3510:2 3510:5,8 modules 3475:20 moment 3408:23 3421:12 3424:20 3433:11 3434:21 3445:18 3447:16 3448:1 3465:9 3478:6 3482:20 3492:19 3502:3 3503:19,24 money 3493:14 monitor 3418:12 3426:23 monitoring 3425:14 3426:15,17 morning 3414:9 3483:21 3492:23 3511:1 Motau 3417:16 3495:4 3495:7,11,14,18,22 3496:1,11,20,25 3497:8,14,23 3498:2 3498:8,13,17,24 3499:2,6,13,17,22 3500:2,6,9,12,23 3501:4,10,17,19,22 3501:25 3502:13,17 3502:25 3503:9,13,16 3503:23 3504:2,8,13 3504:16,20,23 3505:7 3505:9,16,22 3506:5 3506:13,25 3507:8,13 3507:16,21 3508:8,17 3508:23 3509:4 mountain 3471:17 3493:9,16 3494:1 mounted 3444:3</p>	<p>move 3403:20 3409:8 3409:12 3414:16 3416:15 3421:23,25 3422:18,21 3432:7,10 3434:3 3438:2 3439:11,16 3440:6,11 3441:24 3442:24 3443:2,3 3447:15 3451:5 moved 3440:9,21 3458:12,16,17 movement 3432:15 3433:8 3439:21 moving 3422:23 3431:9 3431:10 Mpembe 3471:9,16 <hr/>N<hr/>name 3480:1,8,12 3508:1 national 3459:20 3474:4 3487:8,23 nationally 3484:4 nature 3403:11 3408:4 3476:20 3487:4,17 3489:23 3507:9 3508:7 near 3422:16 necessarily 3486:13 necessary 3473:15,16 3480:25 necessity 3407:14 need 3414:6 3418:14 3418:16,20 3427:9,10 3436:24 3440:20 3458:4,7 3466:18 3469:9,16 3474:19 3475:16,16 3476:5 3480:15 3481:23 3482:5,18 3484:21 3485:4,16,25 3486:19 3487:13,16,17,19 3488:5,13,14,16 3494:12,18 3502:4 3506:17 needed 3469:2 needs 3476:13 3482:22 negotiation 3472:11 negotiations 3470:20 3481:17 negotiator 3472:5 neutral 3425:22 3426:4 3426:19 3427:4,15,16 3427:22,24 3428:6,12 3429:20 3433:23 3434:4 3443:6,7 3446:1,4,13,13,18,24 3449:19 3450:2,7,11</p>	<p>3450:15,15,17,18 never 3402:20 3403:15 3405:2 3415:9,15 3419:4 3437:21 3438:22 3440:19 3464:13 3472:12 3502:23 3506:19 nevertheless 3455:14 new 3419:17,21,23,25 3421:16 3422:10,13 3465:10 3501:14,15 3501:16 3502:5,6,8 3502:20 3503:5,11,24 3510:19 newspaper 3495:19 newspapers 3401:17,18 3401:22 Ngalwana 3481:8 Ngolwana 3477:12 3478:24 3479:4 night 3469:24 3470:4 nine 3479:20 3480:4 NIU 3428:15,19 3443:15,22 Nkaneng 3441:12,18 3446:2,7 3450:7 non-lethal 3484:5,14 noon 3466:4 normal 3435:2 3451:6 3451:10,18,23 3452:18 normally 3432:21 3435:21 3436:2 3451:10 3481:13 3487:11 3506:21 north 3462:20 3493:8 Northern 3485:2 3486:6 note 3504:9 notice 3402:1,5 3405:12 3415:23 3419:15 notion 3404:16 November 3448:24 Nqakula 3405:7 Nqakula's 3410:13 nuances 3480:21 number 3423:23 3444:14 3461:22 3492:19 3495:20 numbered 3420:8 Nyala 3426:25 3441:18 3441:20 3454:15 Nyalas 3426:9 3454:2 3455:1 3468:11 3469:10,16,16 <hr/>O<hr/></p>
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<p>oath 3400:3 3445:11 object 3473:5 objection 3400:20 3401:9 3445:14 3448:21 3449:21 3450:4 3456:20,23,24 3457:10 objective 3447:9 obliged 3402:17 observation 3490:2 observe 3403:4 obstruction 3506:17 obtained 3448:16 3471:24 obvious 3460:5,5,6 3463:8 3508:18 obviously 3404:19 3406:17 3419:9 3442:3 3452:1,6 3457:2,4 3472:7 3481:23 3488:7 3508:3 occasion 3484:19,20 offences 3403:24 offending 3457:7 offered 3401:9 office 3474:8 3485:19 3485:20 3487:1,9,23 3487:23 3489:15 3491:10 3494:18 officer 3437:21 3448:9 3448:16,18,24,25 3449:6,8,15 3486:5 officers 3401:20 3405:9 3437:22 3443:15 3476:18 3483:3 3485:9 3486:22 official 3406:7,11,12,18 3407:6 3411:13 3436:6 3461:1 oh 3429:10 okay 3425:11 3426:5 3428:4 3435:21 3439:7 3453:15 3458:16 3497:16 3501:18,24 3504:22 3505:8 old 3420:1 3421:6 3422:3,11,19 3501:14 3501:15,22 3502:3,8 3502:8 3503:3 once 3431:25 3493:12 3499:7,14 3503:14 ones 3422:11 3505:3 ongoing 3493:1 opening 3445:19 operation 3418:2,7,9 3419:6,14 3423:9,19</p>	<p>3450:12,22 3452:8 3465:9,11 3483:1 3487:25 3498:9,10,22 3499:4,8,10,20 operational 3418:8,10 3418:15 3419:5,15 3421:24,25 3423:25 3424:23 3431:2 3436:20,22 3450:19 3451:2 3452:13,16,16 3463:22 3464:5,22 3474:8 3475:17,21 3476:13 3482:22 3485:11 3486:7 3492:13 3498:25 3502:9 3503:18 3505:1 3507:4 operations 3474:23 3475:3,6,9 3476:8,14 3476:19 3494:4 3499:18 operator 3493:18 operators 3493:20,25 opinion 3412:17 3430:1 3439:24 3453:17 3455:5,17,20 3457:12 3463:6 3464:16 opinions 3466:8 opportunity 3431:7 opposed 3496:25 option 3431:17 3480:14 3485:25 options 3484:5 3494:25 ordeal 3497:10 order 3400:7,14 3402:8 3402:10 3403:18,22 3404:17 3407:16 3408:10,14,24 3416:2 3423:8 3424:5 3430:1 3458:10 3473:18 3479:19 3481:18,21 3482:4 3485:12 3489:1 3490:4 3498:5 3498:11,18,21 3505:10,12,23,25 3506:3,6 3509:2 orders 3400:7,25 3401:10,13 3403:3,13 3406:23 3409:3 ordinarily 3479:12,12 ordinary 3440:24 3441:2 3462:7 organised 3419:14 orientate 3443:9 original 3421:17,19,23 3422:12,15 3502:16 ought 3455:18 3491:17 3491:17</p>	<p>outcome 3487:12 outlined 3499:24 outside 3411:25 3412:18 overall 3424:1 3436:22 3496:8 3499:7,10,12 overnight 3483:17 overruns 3482:11 overview 3476:2,6 o'clock 3444:24 3488:17 o'clock 3511:2</p> <hr/> <p style="text-align: center;">P</p> <p>Pacific 3511:6 pack 3434:7 package 3496:8 page 3420:9,10,12,14 3420:19 3421:1,5,6,7 3421:9,11,16,18 3422:3,5,14,19 3425:14 3428:8 3443:11,15 3448:8,25 3449:2 3465:14 3466:4 3474:17 3477:2,7,8 3478:11 3478:14,15,23 3479:4 3498:14 3502:1,11,15 3502:16,19 3503:14 3504:8,16,21,21,22 pages 3420:11 3421:3 3421:20 3465:10 3477:3 paid 3493:15 pangas 3471:21 3472:2 3477:20 3479:7 Pappa 3427:11,21 paragraph 3400:6 3404:22 3408:17,17 3409:3,15 3479:18 3493:7 3495:23 3498:14,18 3499:18 3500:17 3504:9,17 3505:6,7 paragraphs 3426:8 3492:25 3493:3 3495:19,24 part 3403:23 3411:22 3414:3 3426:3 3462:13,17 3463:12 3463:16 3464:6,25 3472:11,17 3477:25 3481:21 3488:12 3491:3 3496:4 3497:2 3497:24 3500:13 3503:3 3507:8 3508:6 3508:25 participants 3418:12</p>	<p>3418:13 3426:19 3431:13 3472:24 participated 3511:10 particular 3430:8 3431:6 3432:21 3437:20 3439:13 3444:4 3448:10,11 3456:16 3462:25 3466:12 3467:9 3481:19,25 3482:25 3483:7 3490:7,14,16 3509:1 particularly 3415:23 3478:23 3484:2 3497:3 parties 3470:21 3473:18 3488:24 3507:14,22 3509:8 3510:24 3511:11 party 3448:3 3506:13 pass 3432:21 3436:3 passage 3407:5 3414:22,23 3448:8,14 3449:3,17 3465:16 3478:11,14,16 path 3449:12 pathetic 3410:20 pause 3475:18,23 pay 3493:10,15 payment 3493:12 peace 3497:10 peacefully 3404:13 3488:11 pedigree 3485:6 penultimate 3492:14 people 3401:7,18 3403:10,11 3404:4,6 3411:14,15,15,17,18 3412:1,19 3418:9,21 3418:22,25 3419:14 3425:4 3430:18,20 3431:9,15,21 3432:3 3432:4,6,7,10,19,25 3433:15 3434:12 3435:24 3436:18 3437:3,5,11,12,14,17 3440:9 3442:18 3443:1 3451:14 3452:1 3454:3,25 3455:24 3458:11,22 3458:23 3459:21,21 3459:21 3461:2 3463:5,6 3470:3 3475:21 3477:19 3479:6 3482:3 3485:19 3489:2 3490:3 perceived 3484:11</p>	<p>percolated 3487:8 peremptory 3500:7 perform 3400:13 3425:1 3476:14 permission 3410:19 person 3402:15,18,23 3403:7 3405:3 3406:6 3406:14,14,15 3407:1 3407:12,14 3408:5,5 3408:7,21,22 3412:15 3413:2 3414:2 3415:11 3438:23 3450:22 3452:1,2,3 3463:8 3464:8,9 3466:19 3479:24 3480:9 3499:3 3510:1 3510:7 personnel 3425:3 3429:9 persons 3509:7 person's 3403:7 3408:6 3416:9 persuaded 3416:1 Petrus 3473:25 phase 3483:1 photo 3462:19 photograph 3447:19 3449:7 phrase 3440:16 physical 3504:4 physically 3503:24 picture 3462:4,5,18,25 3468:14,15 3469:13 3477:25 3482:22 piece 3434:25 3472:6 Pillay 3492:18,20 3501:7 3503:1,7 pistol 3477:21 3479:7 place 3404:13 3418:13 3425:24 3434:11 3436:8,18 3451:2,21 3452:4,6 3454:24 3455:13 3458:12,22 3467:10,12,15 3468:20 3470:8 3481:17,18 3485:8,21 3494:19 placed 3430:23 3490:10 places 3441:14 3442:18 3442:19 3443:3 3446:17 plain 3406:1 plan 3418:2,8,11 3419:5,15 3420:4,15 3420:20 3421:3,24,25 3422:9,13 3423:1 3425:21 3427:3</p>
--	--	--	--	--

<p>3429:18 3430:2 3463:22 3464:6,23 3465:5 3494:18 3502:9 3503:2,21 3507:4 3508:19 planned 3419:14 3434:16 3448:2 3497:24 3499:19 planner 3463:21 planners 3463:21 planning 3448:4 3476:18 3483:1 3488:25 plans 3483:4,4,5 planted 3477:19 platform 3403:6 Platinum 3465:11 plausible 3470:8 play 3481:21 3508:4 players 3508:4,9,14 3509:2 please 3405:17,20 3408:1 3413:10 3417:24 3424:20 3425:25 3430:4 3435:15 3443:8,9 3448:25 3449:6 3460:5 3471:18 3502:3 3503:14 pleased 3473:23 point 3402:22 3406:14 3408:21 3409:4,4,5 3409:11,14,15 3410:8 3411:23 3412:9 3414:6,14,15,15,16 3415:13 3416:15 3421:4 3422:18,18,21 3422:22 3426:5 3430:5 3434:3,22 3435:1 3442:2 3444:22 3445:4,6,13 3446:23 3447:2,17,23 3447:24 3448:3 3449:18 3450:5 3454:19,20 3455:6 3457:3,5,7 3466:21 3470:4 3479:17 3481:1,1 3482:11,14 3482:14 3485:21 3489:11 3490:7 3497:6 pointed 3407:12 pointing 3406:25 3407:2 points 3405:8 3406:2,2 3406:6 3408:21 3422:23 3442:11 3466:7 3490:12</p>	<p>police 3401:15,20 3402:18 3405:9,9 3406:7,11,12,15,17 3406:23 3407:6,22 3408:13 3410:1,18,22 3411:12,13,23,24,24 3411:25 3412:1,9,12 3414:19,21 3415:23 3415:24 3417:5 3420:3 3431:21 3432:14 3433:6,19,23 3435:7 3436:6 3437:4 3437:8,20,22 3441:9 3444:3,20 3445:19,23 3446:1,14 3450:10 3451:6 3452:9 3453:3 3454:4 3455:11,14 3456:12,14 3457:24 3458:2,22 3459:8 3460:2 3461:1 3462:19 3464:2,18 3467:2,17,22 3469:1 3469:20 3470:18,21 3471:2,25 3472:15 3474:23 3475:3 3476:12,14 3485:9 3486:22 3489:9 3490:10,20 3491:21 3491:22 3492:15 3494:7 3505:24 3506:8,15,17 3507:2 3508:15,18 policeman 3406:2,3,3 3407:1 3408:1 policemen 3410:18 3446:6 3459:20,25 policies 3410:1 policing 3423:8 3424:5 3430:1 3458:10 3479:19 3481:19,21 3485:13 3490:4 Policing's 3404:17 political 3402:18 POP 3420:3 3423:3,23 3425:12,17,17,18,20 3427:3,6,20 3428:12 3428:22 3429:3,10,19 3430:6 3442:14 3459:21 3462:22 3470:23 3474:5 3481:5 3482:9,14 3483:8 3484:12 3487:25 3489:10 POPS 3477:16,17,22 3478:3 3479:1,2,10 3479:10 portion 3476:24 3478:7 posed 3477:15,23</p>	<p>3496:15 poses 3478:24 position 3402:23,24 3405:2 3406:13 3407:15 3408:11 3409:1 3412:10,15,24 3413:17 3424:10 3430:10 3436:19 3437:15,15 3446:4 3449:9 3450:18,20,23 3450:24,25 3451:16 3454:22 3458:9,11,15 3463:5 3464:8 3465:3 3466:18,23 3469:4,9 3470:14 3472:25 3480:3,9,16 3481:14 3481:14 3482:4,19 3483:15 3486:7 3497:20,20,21,22 positioned 3446:7 3504:5 positive 3486:13,14 possession 3471:3,23 3479:25 3480:8 possibilities 3483:24 possibility 3478:2 3508:13 possible 3402:25 3419:10 3430:8,9,11 3443:4 3447:15 3452:7 3465:13 3469:11 3495:1 3496:17 possibly 3409:9 3415:24 3477:21 Potchefstroom 3487:5 potential 3493:23 potentially 3484:6 3491:18 preceded 3445:21 precisely 3491:5 3510:8 premise 3457:13 preparation 3483:4 prepared 3479:2 3486:15 3511:3 preplanning 3499:18 3499:23 prescribe 3505:13 prescribes 3500:3 3505:11 presence 3400:22 3401:6 3432:25 3437:25 present 3401:6 3414:7 3438:24 3473:12 3480:22 presentation 3491:3</p>	<p>presented 3401:4,4,5 3475:20 3476:2,6 press 3492:17 presumably 3410:7 3465:20 prevent 3457:4 prevented 3446:25 prevention 3403:21 3404:16,20,24 3407:8 3456:11,12 previous 3436:4 3464:13 primary 3404:18 principle 3400:20 principles 3400:9,14 3401:10 3446:5,15 3459:9 prior 3412:25 3423:18 3432:22 3433:10 3470:8 private 3407:14 3408:10 privy 3439:14 3448:4 probable 3439:20 probably 3415:2 probe 3468:23 problem 3406:6,13 3411:13,16 3412:21 3414:1 3422:15 3437:1 3440:19 3458:3 3469:6 3471:2 3471:7,11 3473:19,20 3480:24 3482:6 3487:24 3503:8 problems 3439:3 3510:12 procedure 3431:21 procedures 3469:23 3499:24 proceed 3417:24 3441:4 3445:14,18 3447:25 3450:9 3456:21 3457:23 3465:22 3466:10 3468:21 3480:23 3502:21 3510:21,25 3511:13 proceeding 3435:1 proceedings 3400:1 3405:20 3448:8 3474:11 3483:14 3496:23 3510:21 3511:10 proceeds 3419:2 3420:18 3496:6 process 3419:1 3473:12 3475:15,21 3509:1 processes 3419:11</p>	<p>profitable 3409:8 promise 3493:10,12 3496:3 promised 3444:25 proper 3463:23 3476:12 3497:21 properly 3419:3,12 3455:18 3465:3 3508:20 property 3432:20 proportionality 3431:12 proportionate 3424:6,6 3454:8 3481:11 proposal 3484:10 propose 3477:5 3480:20 proposition 3494:5 prospect 3494:5 protect 3412:1 3432:4 3432:19 3433:23 3434:4 3435:25 3436:8,9 3437:3,17 protecting 3435:23 protest 3436:12,15,15 3436:16,16 protesters 3432:16 3433:8 3434:7 3438:3 3439:11 3445:23 3451:6,7,23 3452:10 3453:3 3455:9,12,14 3457:25 3472:16 protestors 3439:16 3440:6,21,23,25 3441:3,9 3444:20 3464:2,19 3469:24 3471:3,7,10,10,15 protracted 3493:13 prove 3453:13 provide 3426:24 3507:22 3508:15 provides 3498:18 province 3486:7,10,14 3489:13 provincial 3484:25 3485:11,17 3487:1,9 3491:10 provision 3500:7 provisional 3498:19 provisions 3402:8,10 3505:23 public 3404:17 3423:8 3424:5 3430:1 3458:10 3479:18 3481:18,21 3482:3 3485:12 3490:4 published 3405:16 pupils 3400:17,19</p>
---	---	--	---	---

<p>purpose 3400:7 3406:11 3417:3 3418:1 3432:2,18,24 3433:10,12,17,22,25 3434:4 3435:7,18,22 3435:23 3436:9,10,13 3436:19 3437:6,16 3441:24 3445:6 3446:3 3447:7 3449:5 3450:12,18 3451:3</p> <p>purposes 3474:16 3488:25 3499:23 3501:11,23 3502:18 3505:2,17 3507:3 3508:19</p> <p>put 3405:19 3416:8 3417:2 3434:20 3437:13 3440:5,13 3441:6 3442:1,10 3448:11,20 3449:17 3453:11 3454:1,5,6 3455:18,25 3456:3,18 3457:16 3458:23 3463:22 3466:6,7,8 3466:21 3471:8 3474:20 3475:25 3478:17,25 3480:17 3482:12 3485:21 3492:9 3493:4 3494:2 3495:20 3500:13 3502:5 3509:15,18</p> <p>putting 3415:4 3419:14 3439:5 3442:16 3456:16 3500:24 3501:5,6</p> <hr/> <p style="text-align: center;">Q</p> <hr/> <p>qualification 3409:18 qualifications 3415:2 3490:15,16</p> <p>quarter 3477:8 question 3401:8 3402:12,14,25 3403:6 3403:16 3404:4 3405:3,21 3406:24 3407:24 3412:8,10,21 3412:23 3413:8,19 3414:17 3415:14 3416:11 3417:6 3433:1,3,4 3436:17 3438:6,8,9,16,20,23 3439:1,6,9,17,25 3440:16,21 3441:4 3448:20 3449:17 3450:14,16 3452:23 3453:11 3454:5,12 3456:20 3457:6,19 3458:4 3459:14</p>	<p>3460:18 3461:3,23 3462:8 3465:3 3467:5 3471:25 3474:21,24 3475:7 3476:1 3477:16 3478:24,25 3479:5,17 3480:17 3481:10 3489:7,9,17 3494:2 3497:15</p> <p>questions 3411:7 3414:10 3417:5,8,15 3417:23 3427:9 3430:16 3442:10 3455:17,18 3456:15 3457:24 3473:12 3474:14 3476:10 3477:23 3478:17 3483:11 3495:20 3496:15 3505:2 3509:5,8,20</p> <p>quick 3419:10 3452:7 3495:1 3500:16</p> <p>quickly 3426:7 3427:8 3441:20 3478:12</p> <p>quite 3439:2 3441:6 3447:11 3462:1 3471:20 3473:25 3479:9 3480:20 3508:18</p> <p>quote 3502:14 quoted 3409:16 quotes 3417:2 quoting 3421:7,9</p> <hr/> <p style="text-align: center;">R</p> <hr/> <p>radio 3401:19 raise 3400:20 3490:8 3496:8</p> <p>raised 3475:17 raising 3455:13 3457:25 3461:2</p> <p>ran 3441:20 3458:22 3458:24,25</p> <p>rank 3413:13 3414:2 3448:17 3452:5</p> <p>razor 3509:16 reach 3452:7 reached 3410:10 reaction 3440:24 read 3400:6 3401:17,18 3401:21 3402:3 3406:21 3407:4 3408:14,14,16 3413:23 3448:14 3449:2,16 3474:13,18 3477:6 3478:6,12,12 3492:25 3493:7 3495:19 3496:1</p> <p>readily 3454:9</p>	<p>reading 3407:5 3414:23 ready 3510:25 real 3454:11 3492:14 3493:3,6,6 realised 3441:18 really 3406:16 3407:10 3409:18 3412:15,19 3416:1,9 3423:7 3452:21 3454:22 3455:3 3456:2,3,23 3466:16,17 3471:7 3480:25 3482:17 3483:11 3485:23 3492:15 3506:20</p> <p>reason 3406:7 3457:11 3500:24 3501:1 3508:17</p> <p>recall 3405:25 3418:4 3437:10,25 3471:22 3473:14 3477:10,12 3483:13 3496:20</p> <p>received 3412:24 3419:24 3472:25 3488:15 3491:4</p> <p>recognise 3420:9 recommendations 3496:22</p> <p>reconcile 3403:14 record 3448:7 3477:2,6 3493:4 3496:2 3501:23 3502:19 3509:18 3510:10</p> <p>recorded 3405:8 recorders 3435:11,14 records 3435:12 recourse 3484:14 refer 3420:12 3447:14 3503:4,5</p> <p>reference 3474:16 3501:23 3502:19 references 3478:11 3501:13</p> <p>referred 3427:20 3428:11 3495:16 referring 3411:12 3420:23 3421:12,14 3421:18,20 3423:15 3448:14 3462:9,10,15 3465:16 3488:12 3501:16</p> <p>reflect 3479:15 reflected 3412:4 3480:19 reflects 3476:7 3477:24 reformulate 3456:19 3457:6 reformulated 3439:25</p>	<p>refresh 3478:7 refuse 3506:15 refused 3411:7 regard 3403:20 3413:10 3415:21 3455:23 3458:2 3492:16 3500:10 3501:10 3505:22 3508:23</p> <p>regarding 3489:9 3491:13</p> <p>register 3417:13 regulate 3400:7 3408:18</p> <p>regulations 3410:16 3414:21 3415:10,19</p> <p>reinforce 3431:1 related 3503:6 3507:1 relation 3400:25 3406:23</p> <p>relevant 3409:25 3465:18,20 3466:2 3477:2 3484:2 3498:21 3509:2</p> <p>relieve 3431:1 reluctant 3405:18 rely 3486:1 remainder 3492:25 remains 3511:7 remark 3417:9 remedial 3483:24 remember 3402:6 3404:1 3405:25 3411:9,10,20 3459:16 3470:19 3472:6,10 3477:14 3479:16 3483:19 3489:10,18 3490:5,6 3497:9 3505:10</p> <p>remind 3445:11 reminder 3401:13 rendering 3446:24 reneged 3493:10 3496:3</p> <p>reoccur 3494:9 repeat 3433:4 3474:19 3474:24 3494:13 repeated 3412:3 3479:5 repeating 3434:1 rephrase 3450:1 3460:18</p> <p>replaced 3420:1 3502:5 reply 3475:23 report 3468:13 3492:17 3492:22 3493:1 reported 3410:13 3415:3 reporting 3485:13</p>	<p>3496:12 representative 3427:14 representatives 3449:5 3488:21 3500:16 reproduced 3493:24 reproduction 3494:5 request 3472:17 requested 3483:16 3494:14 require 3490:2 3507:5 3507:9,13,17 3508:15 3508:19</p> <p>required 3508:13 requires 3403:24 requiring 3492:7 Rescue 3504:5,10 research 3475:18,19 3484:4,11 reserve 3430:23 3444:10 3473:14 reserved 3488:24 3509:8 3510:24 reserves 3428:24 3429:11 reside 3441:14 residence 3442:19 3446:17 3451:15,20 3452:7</p> <p>residential 3451:7,12 3451:13,24 3452:11 resort 3484:15 resource 3474:7 Resources 3410:12 3415:6 respect 3434:20 3441:6 3456:22 3481:5 3483:1,23 3487:24 3489:23 3490:21,22 3493:21 3497:2 3499:17</p> <p>respectful 3493:3 respectfully 3510:18 respond 3417:4 3491:2 3492:8 responded 3475:15 response 3456:1 3474:8 3485:11 3495:23 responsibilities 3494:4 3497:2 responsibility 3429:21 3498:22 3499:4 responsible 3460:4 3499:14,19 3506:14 result 3480:3 3488:8 resume 3445:8,10 3511:4 resumes 3400:2 3445:9 3489:4</p>
--	--	--	--	---

<p>return 3493:9 3498:3 returning 3493:25 re-examine 3509:11 re-state 3482:9 rifle 3477:21 right 3412:23 3413:12 3413:25 3414:3 3416:3 3420:19 3421:8 3422:20 3429:15 3430:25 3443:19 3445:5 3447:5 3449:8 3450:24,25 3451:14 3455:2 3456:2 3461:18 3462:1,6,11 3464:22 3473:14 3477:7 3485:16 3495:24 3497:13 3498:2 3503:22 3505:9 rights 3488:24 3509:8 Risk 3465:14 road 3448:10 3449:12 3449:13,13,24 3450:6 rock 3493:17,20,25 role 3417:5 3472:5 3508:4,4,9,14 3509:2 round 3413:20 rubber 3480:2,14 rules 3457:8 run 3437:15 3451:7,24 3452:3,3,4,11 3455:9 running 3506:8 Rustenburg 3420:3 3511:6 R2 3496:7 R5 3477:21 3479:7,19 3479:19,22 3480:11 R5s 3482:5</p> <hr/> <p style="text-align: center;">S</p> <p>safely 3511:12,12 safety 3402:2 3403:2 3406:24 SAPS 3432:4 3477:12 3497:7 3500:16 save 3501:5 saw 3471:12 3473:4 saying 3401:7 3404:17 3406:16 3412:2,13 3413:6,17 3414:1,14 3414:14 3415:18 3416:20,22 3424:8 3442:20 3452:25 3453:12 3465:2 3468:19 3471:16 3492:2 3496:12 3508:2,10</p>	<p>says 3403:14 3408:18 3425:14 3426:22 3427:16 3448:24 3449:6,10,15 3459:25 3461:21 3462:18 3468:16 3477:18 3488:13 3496:1 SC 3400:5,12,16,19,23 3401:8,12,17,23,25 3402:7,16 3403:1,10 3403:23 3405:6,11,15 3406:1,9,20 3407:21 3408:12 3409:6,13,19 3409:22 3410:6,11 3411:3,5 3412:2 3413:9 3414:8,11,17 3414:25 3415:7 3416:4 3417:1,16 3420:22 3421:1,4,9 3422:2,6,8,19 3438:5 3438:19 3446:6 3447:9 3449:21 3450:4 3455:16 3457:9 3465:24 3467:3 3473:22 3474:3,9,13 3475:1,6 3475:11,14,25 3476:17,23 3477:5,10 3477:15 3478:13,22 3480:18,25 3482:7,20 3482:25 3483:10,20 3484:1,9,17 3485:5 3486:4,9,12,17 3487:6,21 3488:19 3489:5,16 3490:1,7 3490:19 3491:1,16 3492:6,21 3495:2,7 3495:11,14,18,22 3496:1,11,20,25 3497:8,14,23 3498:2 3498:8,13,17,24 3499:2,6,13,17,22 3500:2,6,9,12,23 3501:4,10,17,19,22 3501:25 3502:2,13,17 3502:25 3503:9,13,16 3503:23 3504:2,8,13 3504:16,20,23 3505:7 3505:9,16,22 3506:5 3506:13,25 3507:8,13 3507:16,21 3508:8,17 3508:23 3509:4,13,14 3509:21,24 3510:2,5 3510:8,17 scenario 3480:1 scene 3438:3 3439:12 3453:3 3455:9,9,10 3455:24 3457:25</p>	<p>3458:18 3463:1 3467:12 3468:22 3505:3,17 3506:1,5 3506:14 se 3479:10 search 3466:21 searching 3453:4 season 3511:12 second 3408:8 3483:12 3491:22 secondary 3404:20 secondly 3447:19 3510:13 section 3465:11 3468:13 3504:17 security 3402:2 3403:2 3466:13,16 see 3402:24 3405:4 3410:9 3420:16,17,20 3421:13 3422:10 3425:19 3426:1,5,5 3426:12 3427:12,21 3427:22 3428:6,7,13 3428:14,16,17,23 3429:4,9,22,23 3431:3 3433:2 3438:15 3443:7,11,13 3443:15,17,19,20,23 3444:1 3445:3 3448:22 3450:3 3451:2 3455:21 3456:4 3461:12,16,25 3462:24 3463:9 3465:10 3468:10,11 3468:15,17 3469:4,11 3477:4,9 3493:5 3495:14,22,25 3496:5 3496:10 3497:7,19 3498:14,16,17 3499:2 3499:6,13,25 3500:1 3500:4,5 3501:1,8,8 3503:17 3504:3,11,12 3504:16,17 3505:4,12 seeing 3440:19 3452:8 3494:10 3501:2 seek 3437:15 3509:2 seeking 3457:8 3466:9 seen 3429:19 3442:5 3471:9 3487:4 3494:20 sees 3434:5 self 3407:14 3408:10 self-defence 3407:4,23 self-evident 3457:18 3459:11 Semenya 3410:7 3438:5,19 3439:2,9 3445:5,14,19 3446:6</p>	<p>3446:8 3447:6,9 3448:21 3449:21 3450:4 3455:16 3456:2,24 3457:1,9 3467:3 3502:12 3509:11,13 Semenya's 3456:20 send 3445:22 sending 3434:6 senior 3401:2 3402:22 3403:5,6,7 3404:2 3405:3 3408:16 3412:7 3414:2 3445:18 3485:9 3486:22 senior's 3402:12 3412:10,22 sense 3467:20 sentence 3407:1 separate 3507:1 separately 3502:5 September 3496:5 sequence 3417:18 serious 3481:4 3487:24 served 3417:3 service 3420:3 3474:23 3475:4 3476:12 3485:23 3486:23 3494:7 services 3474:8 3485:11 session 3487:5 3510:19 sessions 3400:21,24 set 3476:4 3477:17 3500:19 3502:9 3506:15 setting 3409:5 3424:25 settlement 3443:12 3446:12 3447:1,2,10 3448:11 3449:14,20 3449:22,24 3450:3,8 seven 3421:2 Shabangu 3410:13 sharing 3509:1 Shell 3436:2,3 she's 3421:15 shoot 3406:11,15 3411:8,11,13,14,14 3411:16,18,19,20,22 3411:22,23,24,24 3412:1,6,17,17 3415:10 3480:9 shooting 3411:15 3453:2 3454:14 3457:24 3458:20 3461:2,18 shootings 3486:20 3490:21</p>	<p>short 3415:1,19 3453:22 shortcomings 3494:7,8 shortly 3473:25 shot 3410:17,17 3453:4 3453:6 3454:25 3455:11,14 3459:6 3480:5 shotgun 3479:20,23 3480:8 shots 3410:16 Shouldn't 3441:3 show 3444:18 3462:19 showing 3494:11 shown 3507:18 shows 3425:24 3447:23 3462:5 shy 3412:5 side 3402:13 3404:3 3426:14,18,25 3430:23,24 3437:17 3470:3,22 3472:10 3479:20 3490:9 3491:10 3497:7,18,19 sign 3455:13 signed 3496:5 3497:4 3497:10,11 significant 3479:9 signing 3496:7 similar 3417:1 3433:7 3470:24 simplify 3503:10 simply 3409:16 Sir 3400:11 3415:17 3427:13 3429:8 3438:11 3440:5 3441:23 3442:8 3458:19 3459:5 3474:2,6,12 3477:4 3482:24 3483:25 3486:8 3489:25 3490:18 3496:19 3498:1,7,16 3499:21 3501:9 3504:1 sit 3406:5 3412:22 3485:19 sits 3429:25 sitting 3436:18 3437:12 situated 3504:10 3507:19 situation 3404:10,22,24 3406:5,19 3407:10,13 3407:13,19,20,24 3408:5,6,19,22 3413:10 3418:20 3419:10,13 3424:10 3424:12 3431:3,14 3432:14 3433:5</p>
--	--	--	--	--

3434:6 3436:23 3437:1,21 3442:25 3451:10,18,19,21 3453:19 3454:24 3455:1,5 3458:5,7 3461:1 3470:17,24 3479:2,24 3481:6,6 3481:11,20,22,22,24 3482:11,13,15,18,19 3485:3 3488:6,8,10 3488:10 3493:24 3494:6,11,19 3496:17 3497:9 3506:20,21,24 3508:3 situations 3470:24 3479:13 3480:22 3482:10 3484:7 3485:14 six 3467:4,6,9,16,21 3468:4,25 3469:10,16 size 3481:5 skills 3490:16 slide 3424:16,18,21 3425:10,16,18 3426:23 3427:7,10,19 3427:22,25 3428:3,8 3428:9,15,18,21 3429:2,5,17 3443:6 3444:4,22 3445:3,6,7 3445:12,17 3447:12 3447:15 3450:5 3461:7 3465:13,13 3468:10 slides 3424:19,25 3425:3 3427:8 slightly 3433:24 3434:20 3444:13 3479:1 slowly 3474:25 smaller 3430:20 smash 3421:16 solution 3509:2 solve 3503:8 somebody 3401:5 3416:24 3466:17 3479:24 soon 3439:10 sorry 3417:20 3438:12 3455:10 3458:24 3459:18 3471:19 3498:6 sort 3409:25 3414:18 3434:6 3477:22 3485:14 3486:21 sounds 3457:14 source 3489:22 3507:10 South 3420:3 3486:22	3494:6 southern 3462:13 south-west 3462:21 space 3436:7 3469:13 speak 3460:8 speaking 3468:7 3471:9 3484:22 speaks 3421:24 spears 3471:21 3472:2 3477:20 3479:7 specific 3499:8,10 3507:25 specifically 3421:12 3467:13 spectators 3436:11 spirit 3406:22 3412:3 split 3408:8 spoke 3411:11 3412:3,8 3417:17 3432:17 3436:24 3444:9 3458:10 3494:24 spoken 3413:18 spokeswoman 3496:2 spontaneous 3419:7,9 sporting 3506:11 spray 3463:8 spraying 3461:13 3462:25 SS 3498:5 SS2 3498:6 3504:14 SS3 3419:18,18,19,21 3419:23 3420:23,25 3421:6,16,17,19,23 3422:3,10,12,13 3465:10 3501:11 3502:20 3503:3,5,11 stage 3410:10 3417:3 3423:10,19,19,24 3424:7 3429:18 3430:21 3441:15 3445:17 3452:9 3456:14 3458:8 3465:8,12,15 3467:14 3471:23 3472:19 3477:11 3487:2,19 3494:17,20,24 stampede 3437:14 stand 3409:17 3510:22 3511:5 standards 3400:10 standing 3400:7,14 3401:10 3403:3,18,22 3406:23 3407:16 3408:9,14,24 3409:3 3416:2 3498:5,11,18 3505:10,12,23,25 3506:3,6 stands 3406:22 3407:22	Star 3492:17,23 3495:18 start 3403:8 3420:10 3433:6 3439:8 3481:13 3488:14 3498:4 3511:2 started 3434:14 3439:11 3441:9,11 3442:12 starts 3422:13 3503:17 state 3476:7 stated 3442:13 3458:1 statement 3402:2,8 3403:2 3405:22 3406:20 3407:21 3408:15 3409:16 3410:24 3412:4 3414:18 3415:2,5,8 3415:11,15,22 3445:19 3465:21 3492:14 3500:13,18 3501:3 statements 3409:25 3453:22 states 3500:18 3504:4 station 3450:11 stationed 3429:20 3446:1,14 3449:19 3450:2 stay 3418:18 stays 3452:2,4 step 3433:18,18 3482:2 3482:2 steps 3404:9 3472:15 3481:18 3492:13 Steve 3402:1 STF 3428:15 3443:21 stifle 3457:4 stipulates 3499:23 stood 3459:3 stop 3434:2 stopped 3431:10 story 3497:18 straight 3408:20 3449:9 straightforward 3407:19 street 3418:22 strength 3481:2 strike 3432:13 3433:5 3492:24 3493:13,15 striker 3410:2 strikers 3429:22 3430:7 3446:25 3453:24 3469:20 3470:8 strongly 3470:19 3485:3	structure 3432:21 3436:1,6 3496:4 3506:23 structures 3432:19 3435:23 3436:9 studied 3509:9 sub 3500:3 subject 3423:7 3424:9 3456:1 3478:5 3484:17 3490:14 submission 3492:4 submissions 3446:21 3456:8 submit 3409:24 subsequent 3486:6 substantial 3409:17 substantiates 3456:24 Sue 3496:2 suffice 3479:13 sufficient 3424:12 3467:18,22 3468:4 3469:1,5 suggest 3409:12 3444:25 3445:2,14 3456:19 3491:16 suggested 3459:4 suggesting 3434:21 3447:6,7 suggestion 3471:22 3484:3 suggests 3447:14 suitable 3408:23 summary 3415:19 3476:4 sundry 3400:24 support 3506:22 suppose 3442:4 3462:8 3503:20 supposed 3487:20 3496:21 sure 3404:12 3414:12 3419:2,11,13 3423:4 3423:6,6,7,8 3424:3,7 3425:23 3436:8 3439:3 3441:1,2 3444:9,17 3458:7 3464:4 3468:8,18,19 3468:20 3469:7 3472:19 3473:15 3482:2 3486:25 3487:2 3488:10 3491:8,11,14 3492:3 3492:4 3494:12,17,21 surprised 3454:7 surrender 3455:13 3459:2,3 surrendering 3461:2 surrounded 3441:10	3444:20 surrounding 3467:20 surviving 3453:23 Susan 3410:13 <hr/> T <hr/> tactical 3483:24 take 3402:17 3404:9 3408:23 3413:22 3414:6 3416:21 3417:12 3420:19 3427:8 3433:18 3434:2 3437:12 3440:10 3444:25 3445:2 3449:11 3454:13 3472:6,8,11 3473:23 3476:23 3483:12 3485:18,18 3486:16,18 3488:18 3489:15 3498:22 3499:3 3500:23 3501:22 taken 3408:7 3414:6 3423:25 3430:5 3453:23 3472:15 3488:16 3493:4 3499:15 3509:17 talk 3407:18 3408:4,10 3412:18 3421:3 3427:5 3431:12,15,16 3436:14 3451:13 3460:10 3461:1 3466:16 3469:15 3470:20 3472:24 3485:2,24 3488:6 talked 3471:20 talking 3402:23 3403:19 3404:23,24 3407:19 3408:17 3412:16 3413:7 3414:24 3415:12 3444:11 3450:15 3458:6 3460:9 3462:17 3472:19 3481:17 3485:22 3488:6 3497:1 3505:5 3505:18 talks 3408:24 target 3433:19 task 3404:17 3426:8,8 3427:12 3430:25 3479:21,21 taught 3400:16 3403:10 3459:10 taxi 3452:4 tea 3444:25 3445:1,2,7 teach 3403:3 3411:13 3411:17,18 3412:19
---	---	--	---	--

<p>teacher 3407:25 3408:13 teaching 3408:12 teachings 3458:1 team 3430:16 3470:3 3472:11 teams 3425:1 tear 3502:15 teargas 3486:1 technique 3431:17 tell 3403:13 3408:1 3420:12,20 3422:24 3425:8 3439:19,21,23 3464:10 3492:18 3501:19 telling 3421:15 3422:17 3471:10 tells 3420:15 3425:12 3427:10 3499:18 3505:14 term 3411:16,19 terms 3496:22 3498:17 3499:6 3501:25 3502:19 testified 3478:18 testimony 3455:22 Thamae 3448:9,25 Thamae's 3448:16 thank 3409:13 3414:8 3416:4 3417:11 3420:6 3460:25 3472:4 3473:8 3478:13 3480:18 3482:7 3489:1 3492:21 3495:2,2,7 3503:7 3509:6 3511:13 thanks 3495:13 that's 3400:11 3404:16 3411:19,25 3412:12 3415:10 3416:2 3418:5 3421:21 3422:8,17 3426:11 3428:11 3429:12,15 3434:14,19 3437:18 3439:16 3442:6,8 3444:11 3446:10,12 3446:13,19 3447:2,5 3447:9,11 3449:21 3450:4,8 3451:4,18 3452:12 3453:13,15 3454:5,10 3455:6 3459:8,16 3460:1,13 3460:17 3462:14 3463:5 3464:16 3465:16 3468:19 3469:22 3471:14,19 3473:19 3474:17</p>	<p>3477:7 3480:16 3483:25 3484:8,16 3485:20 3486:2,8,11 3486:13 3487:5 thereof 3508:17 there's 3404:18 3409:4 3425:17,24 3436:7 3447:25 3452:2,4 3462:5,12 3465:12,25 3473:3,17 3475:8 3488:1,21 they'll 3474:19 they're 3436:3 3451:20 3454:12 3455:19 3459:10 3471:12 they've 3480:2 3509:9 thicker 3420:2 thing 3404:21 3412:13 3413:3,22 3459:16 3460:11 3464:12 3470:8 3481:20 3485:22 3486:2 3491:8 things 3403:20 3408:18 3408:25 3416:1 3419:1 3431:1 3466:22 3471:11 3481:15 3485:17 3486:19 3505:25 3507:23 think 3401:21 3402:7 3409:4 3413:23 3414:6,15 3415:4,11 3415:21 3416:2,7,14 3416:22 3417:2,13 3432:17 3433:1 3436:1 3441:5,5 3442:21,22 3445:5 3446:8 3447:2,5,6,16 3447:18 3448:13 3450:16 3456:1 3458:4 3459:19 3461:13 3462:13 3466:11 3470:2,16 3472:2 3474:11,19,21 3475:2 3476:15 3477:19 3478:10,19 3482:5 3483:17 3495:4 3500:14 3503:9 3509:6 thinking 3484:24 thinks 3439:20 third 3434:14 thought 3402:20 3405:2 3435:3 3449:4 3459:11 3460:4 thousand 3477:18 threat 3418:16,17</p>	<p>3436:5,25,25 3463:18 3463:19 3464:6,8,25 3492:24 threaten 3410:15,22 threatened 3493:8 three 3430:25 3495:24 three-and-a-half 3477:19 throw 3421:18 throwing 3418:22,24 thrust 3479:15 3499:3 Thursday 3419:20 3483:13 3484:20 3489:19 time 3410:5 3411:1,3 3411:17 3420:19 3425:9 3432:8 3434:14,18 3444:19 3444:25 3445:1,2,8 3451:4 3465:19,21 3466:7 3469:5 3470:22 3474:4 3476:25 3478:8,19 3479:23 3480:3,7,15 3484:23 3485:22 3488:15,18 3490:14 3494:13,14 3500:21 3501:5 times 3416:20 Tip 3473:21,22 3474:3 3474:9,13 3475:1,6 3475:11,14,25 3476:17,23 3477:5,10 3477:15 3478:13,22 3480:18,25 3482:7,20 3482:25 3483:10,20 3484:1,9,17 3485:5 3486:4,9,12,17 3487:6,21 3488:17,19 3489:5,16 3490:1,7 3490:19 3491:1,16 3492:6,21 3495:2,16 3496:15 3510:10,17 Tip's 3488:22 today 3412:3 3481:3 3483:13 told 3411:5 3417:21 3421:21 3424:19 3432:8 3464:2 3465:19 tolerate 3410:20 Tolokele 3493:17 tomorrow 3470:16 3510:14 tools 3493:9 top 3422:20 3425:13 3426:3 3443:14 3444:4,10 3455:2</p>	<p>3475:7 3477:7 3503:17 topic 3484:10 3492:8 3493:6 topics 3483:22 3484:2 total 3412:13 3413:24 3426:14 3427:2,5 3430:24 totally 3403:19 3407:17 3408:25 3411:25 3432:23 3452:3 3460:10,17 town 3451:11 trailers 3426:9 train 3421:16 trained 3400:17 3401:18 3477:22 3479:19 3480:11 3481:19,25 3482:9 3498:22 trainer 3494:3 training 3400:21,24 3417:5 3430:9 3460:3 3461:4 3474:4,22 3475:3,5,9,16,20 3476:4,7,13,20 3477:17 3479:2,6,10 3481:10 3482:21 3489:22 3492:13 transcript 3448:23 3474:17 3477:3 transcripts 3509:9 transformation 3401:14 transport 3442:19 3443:2 Travel 3511:12 traversed 3462:16 tried 3434:12 3480:16 trigger 3433:7,12,13 triggered 3438:2 3439:16 3486:21 triggers 3432:15 TRT 3425:17 3428:5 3429:4,9 true 3451:25 3459:8 3494:11 Truly 3468:7 3484:22 trust 3425:5 3470:21 try 3438:10,13,14 3467:24 3495:15 trying 3434:22 3435:4 3444:18 3445:6 3453:21 3457:2 3468:22 3495:12 Tshwete 3402:1 3405:7 TT3 3509:17 TT5 3466:1</p>	<p>turn 3489:16 3498:13 3501:11 3502:1 3503:13 3504:8 turned 3488:10 turns 3404:14,14 twice 3434:13 3442:23 two 3403:14,19 3426:8 3462:5,8,20 3466:5 3470:21 3473:24 3474:14 3475:8 3476:10 3478:17 3479:22 3486:19,25 3490:9 3497:18 3505:25 3506:1 3510:12 twofold 3491:19 type 3406:18 3454:23 3466:22 3479:25 3480:11 3481:25 3482:1 3485:13,17 3487:11,14 3492:4 3508:2,6,12 types 3451:10</p> <hr/> <p style="text-align: center;">U</p> <p>U 3503:2 ultimately 3492:11 underlines 3494:6 understand 3402:16 3409:9,15 3413:14 3415:13 3416:18,23 3433:2 3434:9 3435:4 3438:5,8,20,24,25 3439:4,7 3442:20 3446:11,11 3447:16 3449:8 3454:3 3456:9 3456:23,25,25 3458:14,19 3459:5 3460:7,12 3463:14 3466:16 3474:9 3481:9 3497:6 understandable 3492:7 understanding 3426:20 3431:8 3439:3 3442:17 3446:3 3454:4 3458:8 3463:3 3464:7 3466:12,15,22 3467:18 3468:23 3469:22 3471:20 3472:20 3474:16 3483:6 3505:20 understands 3415:12 3438:8 understood 3438:15 3453:10 3484:9 undertaken 3490:20 unfairly 3493:14 unfortunate 3409:23</p>
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<p>unfortunately 3422:14 union 3496:5 unions 3497:2,4,12 3507:22 3508:10,14 union's 3497:8 unit 3459:21 3481:5 3482:9,18 units 3462:18 3474:5 3475:17 3476:20 3483:6 3487:25 unkind 3438:25 unnumbered 3420:11 unsuccessfully 3434:13 untoward 3505:24 3506:8 3508:25 urgency 3494:6 usage 3463:4 use 3410:22 3412:5 3421:20 3435:7 3476:8 3480:12,13,14 3485:6 3501:12,13,14 3506:8,16 useful 3417:2 usually 3451:7 utilise 3435:22 3436:21 3436:24 3469:17 3486:1 3506:22 utilised 3431:18</p> <hr/> <p style="text-align: center;">V</p> <p>validity 3400:12 validly 3506:16 variety 3482:10 various 3424:24,25 3441:11 3462:18 3476:20 3483:6 3490:12 vehicles 3467:6 veld 3447:11 ventilate 3492:9 versions 3456:16 versus 3408:7 Vey 3496:3 video 3442:5 3447:22 3471:9,13,18 videos 3447:21 view 3446:18,21 3456:6 3493:3 3506:16 views 3456:8 3490:22 3497:1 VIP 3437:4 visit 3467:15 vis-à-vis 3410:2 vocabulary 3411:9</p> <hr/> <p style="text-align: center;">W</p> <p>wage 3492:24 3496:4 3497:3,11</p>	<p>wait 3410:9 walk 3466:20 want 3400:5 3409:10 3410:16,17 3415:14 3416:21 3422:25 3429:17 3434:2,23 3435:15 3443:2,5 3445:4,13 3446:2 3447:20,23,23,24 3449:6,7,11,11 3453:17 3457:3,5,23 3458:14 3459:17 3462:2 3465:7 3466:8 3466:25 3467:24,24 3467:25 3468:3 3474:13 3476:23 3478:12 3480:12,13 3481:1,1 3483:10 3484:18 3492:13 3494:1 3501:12 3503:4 3509:19,22 wanted 3416:14 3454:19,20 3463:6 3466:11 3483:12 3488:25 3509:18 wanting 3447:17 wants 3415:20 3416:3 3420:12 3457:7 3459:7 3460:17 warning 3410:16 3430:19 3431:5,21 3432:2,7 3434:9 3442:23 3443:1 warrant 3448:9,16,18 3448:24,25 3449:6,8 3449:14 wasn't 3407:5 3417:21 3430:3 3434:6 3437:5 3442:4 3454:13 3473:19 3510:4 wastage 3466:7 waste 3425:9 water 3461:12,13,13,16 3461:18,19 3462:4,5 3462:6,7,7,11,11,12 3462:25 3463:4,7,8 way 3402:21 3404:15 3406:21 3408:23 3413:20 3416:8,14 3422:25 3431:18 3432:15 3433:8 3440:16 3448:13,22 3453:10 3455:6 3456:9,20 3458:14 3460:8,21 3463:23 3472:12 3478:25 3490:13,14,19 3492:10 3493:19</p>	<p>ways 3452:2 3490:9 weapon 3480:13 weaponry 3484:5,14 3489:10 weapons 3471:11 3472:1 3478:2,4 Wednesday 3476:25 3480:19 week 3489:19 well-planned 3419:6 went 3415:19 3431:5 3434:11,17 3444:21 3459:1 3485:15,15 3491:23 weren't 3415:3 west 3462:21 3493:8 we'll 3404:9 3410:9 3417:4,6,6 3445:8 3485:14 3487:12,16 we're 3403:18 3414:12 3418:11 3422:17 3458:5,17 3465:21 3487:20 we've 3408:14,14 3447:19 3449:10 3453:22 3458:16,17 3459:16 3462:21 3477:1 3486:25 we'll 3506:20 we're 3505:18 3507:17 3508:11 we've 3493:4 3507:4 3509:6 what's 3438:24 3480:1 3480:7,12 whilst 3455:10 white 3461:17 3462:7 who's 3407:12 3450:22 3458:12 wide 3447:11 widespread 3496:14 wire 3426:9,14,18,25 3431:8,25 3432:1,3,5 3432:6,9,13,14,19,22 3432:24 3433:6,10,14 3433:18,19,22 3434:10,11 3435:8,19 3435:22,25 3436:6,13 3437:2,8,11,13,22 3438:3 3439:10,11,15 3440:7,24,25 3441:9 3441:19 3444:19,23 3445:22 3458:9 3464:14 3467:1,7,9 3467:12,21 3468:4,10 3468:12,24 3469:4 3509:16 wires 3467:16 3468:25</p>	<p>wise 3452:23 wish 3452:21 wishes 3488:21 3511:8 withdraw 3417:22 3448:21 witness 3413:11 3415:12,14 3417:2,23 3438:7 3440:20 3441:7 3442:3 3448:15,20 3457:11 3466:6 3473:14 3502:6 3509:15 3510:11,13 witnesses 3417:7 3440:14 3455:18 witness's 3417:4 witness's 3510:15 women 3410:18,23 wonder 3409:3 won't 3422:24 3445:13 3487:10 word 3411:6,7,8,11 3412:5,17 3485:7 words 3413:2 3475:7 3485:7 3499:9 3503:17 3505:2 3507:10 work 3411:18 3487:4 3506:17 worked 3474:3 3493:18 workers 3493:2 3496:5 working 3506:11 worry 3410:15 3414:20 3415:19 worse 3410:11 wouldn't 3468:13 would've 3491:5 3510:15 wrapping 3473:2 writing 3487:15 3494:21 written 3489:7 wrong 3403:16 3404:4 3412:23 3413:12,25 3414:3 3434:11 3463:9 3480:9 3485:15 3491:24 3498:9</p> <hr/> <p style="text-align: center;">Y</p> <p>year 3493:24 3509:9 3510:21,23 3511:13 years 3401:15 3436:4 3493:18 yesterday 3407:3 3411:5 3412:3 3432:18,18 3433:1,25 3434:1 3436:1</p>	<p>3442:22 3492:23 3497:17 yesterday's 3492:17 you'll 3422:16 3425:3 3426:1 3431:4 3465:10 3480:22 you're 3400:3,3 3404:15 3408:12 3409:5,9 3411:20 3414:23 3415:4,12 3421:7,18,19,21 3433:25 3434:2,21 3435:4 3437:13 3439:1,5 3440:8,16 3441:5 3442:10 3445:5,6,11 3446:23 3447:17 3448:14 3453:7,12 3456:1 3457:8 3462:14 3465:16 3469:17 3471:12 you've 3409:4,11 3414:6,7,15 3416:14 3417:22 3419:18 3428:18 3438:2 3442:1,11 3448:2 3449:12,16 3452:12 3455:23 3456:18 3464:20 3469:13 3478:20 3480:18 3481:3</p> <hr/> <p style="text-align: center;">Z</p> <p>zone 3425:24,25 3426:1 3426:2,19 3450:7,15 3450:18 3466:13,16</p> <hr/> <p style="text-align: center;">0</p> <p>000 3429:21 3430:7 3477:19 3496:7 001676 3504:9 001679 3503:14 001702 3502:1 09:30 3511:1 09:31 3400:2 09:51 3408:12</p> <hr/> <p style="text-align: center;">1</p> <p>1 3404:22 3408:17,17 3421:10 3427:11 3438:3 3439:12,12,12 3439:16 3440:6,22 3441:11 3443:19 3444:14 3447:18 3453:3 3455:9,10 3458:17 3467:12,19 3467:22 3468:22 3469:1,20 3470:7</p>
---	--	---	--	---

<p>3479:4 3488:17 3489:2,3 3504:16 10 3427:21 3511:2,5 10th 3420:4,15 3421:3 3421:25 3422:7,9,13 3502:10 3503:3 10:11 3418:18 10:31 3429:16 10:51 3439:18 11 3444:24 3479:18 3496:8 3498:14 11(7) 3409:3,15 11:23 3445:10 11:43 3452:25 116 3447:12 12 3510:14 12th 3500:18 12:03 3463:20 12:23 3472:9 12:43 3480:23 13 3471:8 13th 3470:11 3484:19 3503:21 13:30 3511:4 13:38 3489:5 13:58 3497:23 135 3424:16,18,21,22 3424:23 136 3424:25 3427:8,10 137 3425:10 3426:23 138 3428:3,4,5 139 3425:18 3428:8,9 14th 3470:11 14:18 3507:25 140 3428:15 142 3428:21 144 3429:2,6,7 1463 3448:8,25 15 3445:8 15th 3448:24 3470:10 3470:12,14 16 3465:12 3486:20 16th 3421:24 3423:2,4 3423:16 3424:19 3429:19 3430:14 3432:23 3451:22 3452:5 3464:19 3466:5 3467:2 3470:9 3477:25 3481:12 3487:25 3490:21 3491:24 3494:8 1619 3474:17 1620 3474:17 166 3503:15 1665 3421:1 167 3503:15 1679 3503:16 1723 3422:4,6</p>	<p>197 3468:10,10 3469:12 1999 3402:2</p> <hr/> <p>2</p> <hr/> <p>2 3421:5,6,16,18 3422:14,19 3428:22 3429:14 3443:25 3444:11,14,15 3455:9 3455:10,24 3457:25 3458:17,18,22,24,25 3462:20,22 3463:1 3469:21 3470:7 3504:17,21,22 20 3400:1 3478:14,15 2002 3405:7 2012 3400:1 3420:5,16 3465:12 3470:9 3471:8 3488:1 3500:18 21 3478:23 21st 3510:23 3511:1,6 215 3447:15 3450:5 22% 3493:10,12 3496:8,12 235 3461:14,15,17 3462:5,14 236 3461:7,10,11,21 237 3461:24,25 3462:1 3462:3 262 3402:9 3407:16 3498:5 2884 3477:3,7 3478:14 2885 3477:3 3478:15 3478:23 3479:18 2886 3477:3 3479:4</p> <hr/> <p>3</p> <hr/> <p>3 3423:19 3429:3,21 3430:7 3458:24,25 3459:1 3462:20,25 3465:12,15 3496:9 3500:3 3.2.1 3504:9 31st 3511:4</p> <hr/> <p>4</p> <hr/> <p>4 3477:19 3479:4 45 3425:12 3426:15,24 3427:20,23</p> <hr/> <p>5</p> <hr/> <p>50 3431:13,13 53 3425:18 3426:14,18 3427:1 3428:2,12 57 3429:9</p> <hr/> <p>6</p>	<p>6 3428:19 3498:14 3509:17</p> <hr/> <p>7</p> <hr/> <p>7 3420:19 3421:7,10 3500:17 70 3429:3,10 3430:23 77 3443:6 3444:22 78 3430:22,24 3431:2</p> <hr/> <p>8</p> <hr/> <p>8 3493:18 3496:9 3500:17 3509:16 8(1) 3498:18 8.1 3498:14 3499:3 8.2 3499:7 80 3423:6</p> <hr/> <p>9</p> <hr/> <p>9.1 3499:18 9.2 3499:22 9:30 3470:16 98 3427:3,6,6 3429:19 3430:6,9 3458:10</p>		
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