

RealTime Transcriptions

TRANSCRIPTION OF THE

COMMISSION OF INQUIRY

MARIKANA

BEFORE TRIBUNAL

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

HELD ON

DAY 101 04 JUNE 2013 PAGES 10730 TO 10874



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64 10th Avenue, Highlands North, Johannesburg
P O Box 721, Highlands North, 2037
Tel: 011-440-3647 Fax: 011-440-9119 Cell: 083 273-5335
E-mail: realtime@pixie.co.za
Web Address: <http://mysite.mweb.co.za/residents/pak06278>



Page 10730

1 [PROCEEDINGS ON 4 JUNE 2013]
 2 [10:06] CHAIRPERSON: The Commission resumes in
 3 our new venue, beginning our second century of hearings. I
 4 hope we won't get to 199 but it's a very auspicious place
 5 to start the new century in Centurion. Mr Tip, I
 6 understand you wanted to say something?
 7 MR TIP SC: Yes, thank you, Chair. It's
 8 an unfortunate thing to have to say on the first day that
 9 we are at our new venue but there was an incident that
 10 everyone I think will have become aware of yesterday, at
 11 Marikana, which fills one with profound dismay and that was
 12 a shooting incident at the Western Platinum office of NUM
 13 whilst, I understand, there was a meeting in progress of
 14 the local branch structures. Chair, one person lost his
 15 life and a second one is in hospital apparently with
 16 critical injuries and I thought it appropriate that that
 17 should be placed before the Commission. I may add that, to
 18 the best of my knowledge at present, there is nothing to
 19 suggest that the incident was in any way committed,
 20 connected with the work of the Commission and that is all
 21 that I would want to say about that at this stage.
 22 CHAIRPERSON: Thank you, Mr Tip. I hope
 23 the last comment you made is correct, that there is no
 24 connection. I would like, on behalf of the Commission, to
 25 extend our condolences to the family and loved ones of the

Page 10731

1 deceased and I would be grateful, Mr Tip, if you'd see to
 2 it that that message is conveyed to them and also to wish
 3 the other gentleman who was injured a speedy recovery from
 4 the injuries that he sustained. Thank you.
 5 MR TIP SC: Chair, I shall certainly see
 6 to it that those remarks are conveyed.
 7 CHAIRPERSON: Thank you. National
 8 Commissioner, you are still under oath.
 9 GENERAL PHIYEGA: Yes, Chair.
 10 CHAIRPERSON: Mr Mpofo, I understand you
 11 still have questions to ask in cross-examination.
 12 MANGWASHI VICTORIA PHIYEGA: s.u.o.
 13 CROSS-EXAMINATION BY MR MPOFU (CONTD.):
 14 Yes, thank you very much Chairperson. Good morning,
 15 General.
 16 GENERAL PHIYEGA: Good morning, Advocate.
 17 MR MPOFU: When we broke on Wednesday, I
 18 think –
 19 CHAIRPERSON: Tuesday, actually.
 20 MR MPOFU: Tuesday, yes. Thank you,
 21 Chairperson. There was just one issue that I wanted to
 22 round up that we were busy with. I don't want to spend
 23 much time on it so I'll just explain to you where I'm
 24 coming from with it. You remember one of the 10 points
 25 that we had agreed could be gleaned from the prescripts was

Page 10732

1 the fact, the need for accurate and up-to-date information
 2 in an operation of the kind that we are debating. Do you
 3 remember that?
 4 GENERAL PHIYEGA: Are these the 10 points
 5 that you led as your key 10 points?
 6 MR MPOFU: Ja, these are the 10 points
 7 that you and I agreed could be extracted from the
 8 prescripts viewed as a whole. You remember we extracted 10
 9 points which you and I had agreed on in April, when we
 10 started?
 11 GENERAL PHIYEGA: This is why I'm asking
 12 whether it's the 10 points –
 13 MR MPOFU: Yes, it's the –
 14 GENERAL PHIYEGA: - that you mentioned.
 15 MR MPOFU: Yes.
 16 GENERAL PHIYEGA: I noted them.
 17 MR MPOFU: Alright, well, when you do
 18 that then I have to refer you – the reason why I had wanted
 19 us to agree on those 10 points is so that I don't every
 20 time have to read the prescripts to say these are the
 21 points that come from the prescripts but we'll do it the
 22 long way. If you go to FFF1 –
 23 CHAIRPERSON: Mr Mpofo, wouldn't it be
 24 quicker if you referred the witness to the passage in the
 25 record –

Page 10733

1 MR MPOFU: Oh yes.
 2 CHAIRPERSON: Where you previously went
 3 through the prescripts and where, as far as I can recall,
 4 she agreed with what you put to her.
 5 MR MPOFU: She did, yes.
 6 CHAIRPERSON: That would save a bit of
 7 time, I think.
 8 MR MPOFU: Yes, yes. Alright,
 9 Chairperson, I don't have it at hand now but I think that's
 10 the best way. General, I'm trying to short circuit things.
 11 When I cross-examined you in April and when I started now
 12 last week, I revisited the issue of the 10 points that you
 13 had agreed. You remember, in one of them I even remember
 14 you went "hm-mm" and I said no, if you say "hm-mmm" it
 15 won't record, you have to agree or not agree. Remember
 16 those 10 points? I will in due course find the exact
 17 passage. I'm hoping to rely on your memory more than
 18 having to read it out to you because I just don't have it
 19 in front of me.
 20 CHAIRPERSON: Mr Mpofo, if there is a
 21 specific prescript, as you call it, which you want to put
 22 to her now, won't you read that one out?
 23 MR MPOFU: Ja.
 24 CHAIRPERSON: And if she disagrees she'll
 25 tell you and if she agrees she'll say "um-mm" or "yes" and

Page 10734

1 then we can carry on.
 2 MR MPOFU: Thank you. Alright, I'll read
 3 them out in turn and then I will put to you what is the
 4 clear implication of those prescripts. The first one is
 5 FFF1, 3.1 or rather 3.3.1 and it says, "Situational
 6 appropriateness is the assessment by the operational
 7 commander of a public order situation and the taking of the
 8 most appropriate action at that time," with the emphasis on
 9 the last three words. Remember we are discussing the
 10 accuracy and to the minute accuracy of information. And
 11 then the next one, 3.3.2 is a bit long so I'll just read
 12 it. It says, "The situation in which these interventions
 13 will take place must be also considered. Thus the
 14 operational commander must consider the situation at that
 15 specific moment and in that specific area in terms of the
 16 legal provisions. It is the operational commander's
 17 responsibility to take into account the situational
 18 appropriateness. To do this correctly, the operational
 19 commander needs continuous and accurate information on the
 20 situation at all times." Thank you, and then the last one
 21 is SS2 which is standing order 262. It says at 9.4
 22 thereof, the first one says "The C-JOC" – or rather, "The
 23 appointed C-JOC is responsible for a well-planned and co-
 24 ordinated action for the duration of an operation." And
 25 then the important part which I'm going to read out is 2,

Page 10735

1 "For the purposes of pre-planning the C-JOC must follow the
 2 following procedure" and I'll jump 1 to 3. Number 4 says,
 3 "Implement an effective information gathering system for
 4 the operation to proactively gather up-to-the-minute,
 5 relevant and accurate information, enlisting the assistance
 6 of –" and so on. Yes, and the simple question is, from
 7 what I've read it's obvious, isn't it, that the prescripts
 8 require not only accurate but up-to-the-minute information
 9 in the course of an operation, correct?
 10 GENERAL PHIYEGA: Yes.
 11 MR MPOFU: And therefore if - you and I
 12 have already gone through the one situation where the
 13 information relied on even to trigger stage 3, let's say
 14 may not have been accurate, namely the so-called breaking
 15 of the promise by Mathunjwa. Agreed?
 16 GENERAL PHIYEGA: I do not agree because
 17 it is exactly the point of difference between the police
 18 and your position.
 19 MR MPOFU: Chair, if you'll bear with me.
 20 Getting used to this place is a bit of a challenge. Yes,
 21 in paragraph 17 of your statement which is FFF2 – sorry,
 22 Chair – well, that version of your statement –
 23 CHAIRPERSON: Well, I think 17 is
 24 probably the same in all of hers.
 25 MR MPOFU: It is, yes. The first

Page 10736

1 reference I want to refer you to is that you say, "The mine
 2 management informed the SAPS delegation that there were
 3 ongoing clashes between members of two labour unions, AMCU
 4 and the NUM." Did you –
 5 CHAIRPERSON: Let's put this in context.
 6 This is the discussion which took place on the evening of
 7 Monday the 13th –
 8 MR MPOFU: 13th, correct.
 9 CHAIRPERSON: - when the National
 10 Commissioner rushed off to Lonmin in consequence of what
 11 had happened earlier that day.
 12 MR MPOFU: Thank you, Chairperson.
 13 CHAIRPERSON: And she had a meeting,
 14 firstly a meeting I think with her senior officers and
 15 thereafter a meeting with Lonmin and this passage relates
 16 to that meeting with Lonmin.
 17 MR MPOFU: Thank you. I'm sorry,
 18 Chairperson. That's correct, yes. Ja, you were told that
 19 there were ongoing clashes between members of two labour
 20 unions, AMCU and the NUM.
 21 GENERAL PHIYEGA: Yes.
 22 MR MPOFU: Yes. Well, would you – what
 23 would your reaction be if I say that statement is not
 24 correct, that there were no clashes between AMCU and NUM?
 25 MR SEMENYA SC: Well, Mr Mpofu -

Page 10737

1 CHAIRPERSON: I don't understand how the
 2 witness can answer. You're putting to her that what she
 3 was told by Lonmin was not correct.
 4 MR MPOFU: Yes.
 5 CHAIRPERSON: And you're asking her to
 6 comment. Well, what sort of comment can she make really?
 7 Perhaps you should put the question –
 8 MR MPOFU: Well, she can –
 9 CHAIRPERSON: - more specifically
 10 directing her to a particular area of concern that you're
 11 busy with at the moment.
 12 MR MPOFU: Okay. Well, the area of
 13 concern is that the police – I thought I had laid that out
 14 – the area of concern is that the police were acting on the
 15 basis of information which was not accurate. That's what
 16 we are discussing right now.
 17 MR SEMENYA SC: Chair, it's still not
 18 clear to us which information was incorrect.
 19 MR MPOFU: Okay. Well okay, in that –
 20 CHAIRPERSON: I don't think you should
 21 say that, Mr Mpofu –
 22 MR MPOFU: Yes, that's true. That's
 23 true, correct. Well, I've already said the one about
 24 Mathunjwa but I'm saying now the second piece of
 25 information that was not correct was the fact that at that

Page 10738

1 time there were ongoing clashes between AMCU and the NUM.
 2 I'm putting that to you.
 3 MR BURGER SC: Chair, I object to that
 4 question.
 5 CHAIRPERSON: Yes.
 6 MR BURGER SC: That's not the evidence
 7 before the Commission and in any event the comment of this
 8 witness on that version put, is irrelevant.
 9 CHAIRPERSON: Mr Semenya also turned on
 10 his light.
 11 MR SEMENYA SC: Well, I still don't know
 12 why it is contended that the information isn't correct.
 13 CHAIRPERSON: Mr Mpofo, I think the
 14 question is rather vague, the way you've phrased it, to say
 15 the information is incorrect without indicating in what
 16 respect the information is incorrect. Otherwise you elicit
 17 the objection from Mr Burger but there's a further point,
 18 of course, and that is what is the purpose of getting this
 19 witness to comment? It may be that there is a relevance
 20 that you haven't yet made apparent but may I suggest,
 21 reformulate the question in a more focused way and then
 22 perhaps we can proceed.
 23 MR MPOFU: Okay, Chairperson. Firstly,
 24 let me deal with the issue of relevance. I'm reading from
 25 the witness's own statement. If it was irrelevant, why was

Page 10739

1 it put in her statement? That's the whole point. How can
 2 I do better than cross-examine her on her own statement,
 3 really? All I'm saying is that the information contained
 4 in her statement, insofar as it suggests that – and I do
 5 acknowledge that it was second-hand information given by
 6 other people but I'm saying that information, insofar as it
 7 was given to her and it was important enough for her to
 8 include in her statement, reflected factually incorrect
 9 content in the sense that, to answer Mr Semenya's question,
 10 in the sense that there is no evidence that there were
 11 clashes between AMCU and the NUM. And I don't want to go
 12 through all – we've gone through this with Mr Zokwana and
 13 various, and Mr Mathunjwa and it is clear that the unions
 14 per se, at least AMCU has said that it played no role
 15 whatsoever in –
 16 CHAIRPERSON: I would've thought the
 17 better way to do it is to ask this witness what importance,
 18 if any, she attached to this information –
 19 MR MPOFU: Well –
 20 CHAIRPERSON: - whether it caused her to
 21 do or not do certain things and then there would be a
 22 direct connection between the information and the kind of
 23 evidence she can give. There's a good deal of hearsay in
 24 her statement, statements will presumably be repeated by
 25 other witnesses, having in some cases already been made by

Page 10740

1 other witnesses but if you're going to cross-examine this
 2 witness on every piece of hearsay in her statement, even if
 3 it has no bearing on anything she did or didn't do, then I
 4 don't think the time of the Commission will be gainfully
 5 employed. Let's ask the witness the question as I
 6 formulated it. This piece of information, National
 7 Commissioner, you were given, that according to Lonmin
 8 there had been ongoing clashes between members of two
 9 unions, AMCU and NUM, it's suggested that that piece of
 10 information is incorrect because according to the case that
 11 Mr Mpofo is putting up, members of AMCU as such who weren't
 12 involved in any clashes – but the point of the question I'm
 13 asking you is, did that information that you were given,
 14 erroneous or not, have any influence on anything that you
 15 did or didn't do in the period after you received it on the
 16 evening of the 13th of August?
 17 GENERAL PHIYEGA: No, Judge.
 18 [10:26] MR MPOFU: Okay, I'm going to put the
 19 other statement similarly and ask you the same as the Judge
 20 and then I'll ask you the real question which I want to ask
 21 you at the end. Your statement goes on to say, "The
 22 management further stated that the clashes had already
 23 claimed the lives of nine people, as we were briefed by the
 24 police." In other words, the clashes between AMCU and NUM
 25 had already claimed nine lives. Well, first of all I'm

Page 10741

1 putting to you that that was incorrect and to follow the
 2 Judge's example, did that play any role in anything that
 3 the police did? And maybe to – sorry, before you answer –
 4 to pre-empt Mr Semenya's question, in what respect was it
 5 inaccurate? I'll put to you that at least five of those
 6 nine people, I won't even go to the others, were killed on
 7 the 13th and the NUM and AMCU had no role to play in those
 8 or the clashes between the two of them.
 9 GENERAL PHIYEGA: I think it is
 10 important, Adv Mpofo, to say to you that when nine lives
 11 are lost, whether it's on the 10th or the 9th or the 13th or
 12 the 16th or whatever, it's a very important issue for the
 13 police so we would have to concern ourselves with those
 14 nine lives that were lost, do our investigations and see
 15 what's happening. This is how far it would affect me and
 16 we would want to know what is the cause of that.
 17 MR MPOFU: Yes. No, I agree with you
 18 100%. That's exactly my worry, that you were told that the
 19 cause of that were the clashes between AMCU and NUM and
 20 that was not the cause of those clashes, that's exactly the
 21 point I'm making.
 22 CHAIRPERSON: The point I put to you, Mr
 23 Mpofo, is surely it's only relevant to know what that
 24 information, if it was erroneous or even if it wasn't, what
 25 role that played in anything that the witness did or didn't

Page 10742

1 do because she can't, from her own knowledge, comment on
 2 the accuracy of the information.
 3 MR MPOFU: No.
 4 CHAIRPERSON: All she says is that's the
 5 information she got. It's important to know whether that
 6 information influenced her in her subsequent conduct.
 7 That's the only aspect, surely, on which she can
 8 meaningfully help us.
 9 MR MPOFU: Yes, Chair –
 10 CHAIRPERSON: Shouldn't you concentrate
 11 your questions on that aspect?
 12 MR MPOFU: Yes. Chairperson, exactly.
 13 I'm going to, following your example and putting that
 14 question but I'm going to put the inaccuracies first if –
 15 and then I have a theory as to the importance or non-
 16 importance.
 17 CHAIRPERSON: Why not list the
 18 inaccuracies as you contend they are –
 19 MR MPOFU: Yes.
 20 CHAIRPERSON: List the inaccuracies for
 21 her benefit –
 22 MR MPOFU: That's what I'm doing.
 23 CHAIRPERSON: And then put the question
 24 that I've suggested.
 25 MR MPOFU: Thank you, Chairperson.

Page 10743

1 Alright, I'm going to list them, all five of them, Chair.
 2 As I said, the first one we dealt with last week which was
 3 the fact that Mathunjwa had made a promise which he did not
 4 make. The second one is the fact that there were ongoing
 5 clashes between AMCU and NUM. The third one is the one I
 6 was dealing with now that those clashes had already
 7 claimed, in other words cost, the lives of nine people.
 8 The fourth one is, fourth inaccuracy is the fact, "The mine
 9 management further stated that the protesters were not
 10 their employees." We already know that you, the police
 11 contested that successfully. That's the –
 12 CHAIRPERSON: That misinformation, if it
 13 was misinformation, it appears to have been, played no role
 14 in anything which she did or didn't do because her senior
 15 officers were able to demonstrate to Lonmin by reference to
 16 the photographs and so on, that their members were indeed
 17 involved.
 18 MR MPOFU: Yes.
 19 CHAIRPERSON: So that one has got no, is
 20 not causally connected with anything she did or didn't do,
 21 is that right?
 22 MR MPOFU: Yes. The faceless people,
 23 yes. Yes, and the last one is also an inaccuracy but it's
 24 a more complicated one and it probably falls under the
 25 category that the Chairperson has just spoken about. It's

Page 10744

1 in paragraph 24 of your statement which says that – and
 2 this is not from the mine, it's from Mbombo – "She relayed"
 3 –
 4 CHAIRPERSON: 24?
 5 MR MPOFU: 24, yes Chairperson. It's –
 6 CHAIRPERSON: Just to put it again in
 7 context –
 8 MR MPOFU: It's General Mbombo.
 9 CHAIRPERSON: It's something that she was
 10 told by Lieutenant-General Mbombo, that's the Provincial
 11 Commissioner of North-West, on the afternoon or possibly
 12 even early evening of the 16th August after the shootings on
 13 the 16th had taken place.
 14 MR MPOFU: That's correct, Chairperson.
 15 And supposing this one merely as an inaccuracy, so I'm
 16 conceding the point that the Chairperson has made that it
 17 was said after the first, so obviously it didn't influence
 18 what actions you took but she said that, she relayed that
 19 the police had also been fired at and that the police had
 20 shot and killed a number of protesters, which later turned
 21 out as 34, in private defence. The reason why I'm saying
 22 that's inaccurate is that the police's own version accepts
 23 that about 10, if I'm not mistaken, of the people shot at
 24 scene 2 may not have been shot in self-defence.
 25 CHAIRPERSON: It is the police's version,

Page 10745

1 as I understand it from the opening statement and Mr
 2 Semenya will confirm this if I'm correct, that they claim
 3 that all 34 people who were shot on the 16th by members of
 4 the police service were shot in circumstances where the
 5 policemen – they were all men – policemen concerned were
 6 acting in private defence. That's their case, as I
 7 understand it.
 8 MR MPOFU: Well –
 9 CHAIRPERSON: Is that correct, Mr
 10 Semenya?
 11 MR SEMENYA SC: That is correct, Chair.
 12 CHAIRPERSON: That's one of the issues
 13 that we are called upon to decide. The present witness
 14 will not be able to assist us, I don't think, in any way in
 15 deciding that question because she wasn't there but she
 16 made statements thereafter, based on the information she
 17 had received but I don't see how, even – I understand from
 18 your point of view, your argument is that this information
 19 was either totally or partially incorrect, that's your case
 20 and that's something that you'll argue fully at the end of
 21 the evidence but what's the point of taking the point up
 22 with the present witness who merely says what she was told
 23 by the Provincial Commissioner who, in any event, will be
 24 coming to give evidence at some stage in the near future?
 25 MR BURGER SC: Chair, I have another

Page 10746

1 problem with this whole debate. My learned friend, if he
 2 puts factual inaccuracies, can only put it on the basis
 3 that that's his version. I don't for a moment accept these
 4 as factual inaccuracies. In fact, my people haven't given
 5 evidence yet. General Mpenbe hasn't given evidence yet.
 6 Whether this is the result of a turf war between NUM and
 7 AMCU –
 8 CHAIRPERSON: General Mbombo.
 9 MR BURGER SC: Mbombo. Whether this is
 10 the result of a turf war between two unions is very much a
 11 live debate, from my perspective. So my learned friend can
 12 put these, quote, "inaccuracies" as his version and no
 13 more.
 14 MR MPOFU: Okay. Well, Chairperson,
 15 CHAIRPERSON: I think impliedly, to be
 16 fair, that's what he was doing. He perhaps didn't say it
 17 expressly but I understood that and if there was anyone
 18 here who didn't so understand it, they will now so
 19 understand it.
 20 MR MPOFU: Yes.
 21 CHAIRPERSON: Please proceed in a focused
 22 way on this point.
 23 MR MPOFU: Yes. Mr Chairperson, yes,
 24 Chairperson not only do I put it on the basis that it's my
 25 version, I go further. I put it on the basis that it is

Page 10747

1 nobody's version in these proceedings that the five people
 2 killed on the 13th were as a result of clashes between AMCU
 3 and NUM.
 4 CHAIRPERSON: Well, apparently it's
 5 Lonmin's version –
 6 MR MPOFU: Well –
 7 CHAIRPERSON: - and Lonmin haven't had an
 8 opportunity to lead evidence yet so Mr Burger says –
 9 MR MPOFU: Okay.
 10 CHAIRPERSON: - we can't make a finding
 11 at this stage in anticipando, as it were, before he's even
 12 been given a chance to lead any evidence and that must be
 13 right, so –
 14 MR MPOFU: Yes, well –
 15 CHAIRPERSON: It's not a matter of moment
 16 for the moment –
 17 MR MPOFU: No, no.
 18 CHAIRPERSON: It's clear your version is
 19 different from his. Let's just carry on, on that basis.
 20 MR MPOFU: Thank you, Chairperson. The
 21 further point, General, that I want to put to you is that
 22 part of the to-the-minute information included the fact
 23 that, for example, Bishop Seoka had had a discussion with
 24 the protesters and your members of SAPS and informed them
 25 or rather informed your people – I'm sorry, I mean General

Page 10748

1 Mbombo and others – about what the protesters wanted as at
 2 about 13:45, which was to the minute information of what
 3 was happening and that the police ignored the Bishop, to
 4 put it mildly. You are aware of that?
 5 CHAIRPERSON: Before you answer, National
 6 Commissioner, Mr Semenya wishes to say something.
 7 MR SEMENYA SC: The question again,
 8 Chair, it's unclear whether this is reference to the Bishop
 9 saying the people want water and food. Which part is
 10 wrong?
 11 MR MPOFU: Okay. Let me preface this by
 12 taking you back to what I said earlier. Your prescripts
 13 say that you need to know accurate and to the minute
 14 information. I'm saying to you, part of the most important
 15 to the minute information which might have even averted the
 16 massacre, was the fact that the Bishop had interacted with
 17 the strikers and they had basically sent him to management
 18 with a message which he wanted to relay, not only to
 19 management but also to the police but the police ignored
 20 him. That is a crucial part of the to the minute reality
 21 of what was happening, do you understand?
 22 CHAIRPERSON: How can this witness help
 23 us on that issue?
 24 MR MPOFU: Well –
 25 CHAIRPERSON: We've had the evidence of

Page 10749

1 the Bishop, we're going to have the evidence of the
 2 Provincial Commissioner about her dealings with the Bishop
 3 but how can the National Commissioner help us on that
 4 point?
 5 MR MPOFU: Chairperson, with the greatest
 6 respect, this is the witness who has said to this
 7 Commission that one of the key things for their acting is
 8 the accuracy of information. I'm busy showing her that
 9 they acted or might have acted on information which was
 10 inaccurate. How can the witness, who is the National
 11 Commissioner of Police, not be able to comment as to
 12 whether that is, as she says, in conformity with the
 13 prescripts for which she thanked the people or it is not?
 14 MR BURGER SC: Chair, then I formally
 15 object to the question on the basis you've put to my
 16 learned friend and I request a ruling. This is quite
 17 irrelevant, what this witness's version on a contentious
 18 issue in this case is. She wasn't there, she didn't know
 19 what happened. The Bishop was here, he was cross-examined,
 20 we'll hear the police when they come. This is wasting time
 21 and I seek a ruling.
 22 MR MPOFU: Well, Mr – I've already
 23 answered the objection but I don't know how, Mr Burger is
 24 not a witness here, I don't know how he knows where the
 25 witness was or was not because -

Page 10750

1 CHAIRPERSON: Come on, Mr Mpofo, that
 2 answer isn't worthy of you. The witness has already said
 3 that she wasn't there. It's never been suggested that she
 4 was, so I think we can take it as a given that she wasn't
 5 there.
 6 MR MPOFU: Well, then she may have been
 7 told. She wasn't there for everything, then Chairperson,
 8 why is she here? She wasn't there the whole day, then why
 9 does she have to say anything about the 16th?
 10 CHAIRPERSON: At the end of the day this
 11 commission will have to decide certain factual issues and I
 12 regret to say that the views of the National Commissioner
 13 on those factual issues which relate to points that arose
 14 when she wasn't present, in respect of which she has no
 15 special knowledge, will cut no ice with the Commission at
 16 all and will be ignored. So let us not indeed even elicit
 17 information or evidence from her which will merely be
 18 ignored.
 19 MR MPOFU: Okay, let me –
 20 CHAIRPERSON: So the ruling I give is in
 21 favour of Mr Burger.
 22 MR MPOFU: Yes, thank you. I'll go back,
 23 step back. Do you know that Bishop Seoka tried to
 24 intervene and to prevent the massacre? Do you know,
 25 General?

Page 10751

1 CHAIRPERSON: There's some static on the
 2 line. I don't know what's happening. It's someone's cell
 3 phone, so everyone who has a cell phone please turn it off
 4 otherwise, unless it's someone whose presence is essential
 5 for the ongoing work of the Commission, I'll ask for that
 6 person to be removed from the room. So whether the witness
 7 knows about whether Bishop Seoka's intervention clearly
 8 will depend on hearsay, it will depend on something that
 9 she was told or something which she read in the newspaper.
 10 Again I don't understand any relevance of her comments upon
 11 whether he was present or whether he wasn't or what exactly
 12 he did or tried to do.
 13 MR MPOFU: Fine, Chair.
 14 CHAIRPERSON: Perhaps you can explain
 15 that to me before I rule on it?
 16 MR MPOFU: No, obviously I don't think I
 17 can even go that far to explain. If the witness knows now
 18 that there was something which could have prevented the
 19 massacre and that is irrelevant, well, then I'll just move
 20 to something else. I don't know how that could ever be
 21 irrelevant.
 22 CHAIRPERSON: Mr Mpofo, the witness's
 23 knowledge of these matters is a matter for her herself. If
 24 it could have prevented the massacre, it's a matter you
 25 will argue in due course. If you are correct we will

Page 10752

1 uphold you –
 2 MR MPOFU: Yes.
 3 CHAIRPERSON: - and make a finding
 4 accordingly. If you are wrong, we'll make a finding the
 5 other way but nothing this witness can say will help us in
 6 making that finding because her knowledge in the matter is
 7 based on hearsay and she has no particular expertise or
 8 anything of that kind which can assist us in resolving the
 9 factual dispute that would arise in consequence of the
 10 argument that you're going to put up before us.
 11 MR MPOFU: Ja.
 12 CHAIRPERSON: So it's on that basis that
 13 I rule that the evidence is irrelevant.
 14 MR MPOFU: Okay.
 15 CHAIRPERSON: And I suggest you move on
 16 to a point that has more relevance than the ones you're
 17 busy with at the moment.
 18 MR MPOFU: Okay. Well, General,
 19 unfortunately the only thing I can ask you is simply that
 20 whether, or rather say to you what I'm going to argue and
 21 ask for your comment, which is that if the police acted on
 22 inaccurate and not to the minute information, that would
 23 have caused disastrous consequences if the factual basis
 24 was incorrect. Or maybe to put it in the reverse, the
 25 reason why these prescripts that I read to you put so much

Page 10753

1 emphasis on the accuracy of up to the minute information is
 2 exactly to avert a situation where the police act on an
 3 incorrect factual basis and cause a disaster.
 4 [10:46] CHAIRPERSON: I have received a note
 5 informing me that a group of injured people who are
 6 represented by Mr Mpofo want to sit in the chamber, despite
 7 limited space. There are 31 in number and – are there 31
 8 seats available?
 9 MR SETATI: [Inaudible]
 10 CHAIRPERSON: There have been,
 11 arrangements have been made for them to sit in a room
 12 across the courtyard where there'll be a television
 13 screening of what's happening.
 14 MR SETATI: [Inaudible] they are saying
 15 they cannot watch the screen while they are [inaudible].
 16 CHAIRPERSON: Well, that's a matter which
 17 we'll deal with when we get there. There is accommodation
 18 for the people who want to come in and I suggest if they
 19 want to come in, they should come in and if they don't want
 20 to come in they can stay out.
 21 MR MPOFU: Thank you, Chair.
 22 MR SETATI: Excuse me, Chairperson.
 23 Chairperson, it's me.
 24 CHAIRPERSON: I was looking for a light
 25 but I fear your computer's top may have blocked the light

Page 10754

1 so I couldn't – I was looking for a microphone light. Is
 2 your microphone on? Well, your computer is blocking it, I
 3 can't see. Alright yes, please proceed.

4 MR SETATI: Chairperson, you know, I
 5 think the best thing to do – we have suggested that they
 6 wait for the adjournment, the tea adjournment, then what we
 7 will do, we'll add an extra row of chairs, you know, the
 8 free chairs that side and I think that will accommodate
 9 them.

10 CHAIRPERSON: I'm told there are 31
 11 outside and there are 31 chairs available now. I don't
 12 know why they're not inside here.

13 MR SETATI: I am sure we do have that
 14 number of chairs and I'm not – what I'm not sure of is that
 15 whether they will fit inside but we will try to fit a last
 16 row –

17 CHAIRPERSON: As far as I can see, making
 18 a quick estimate, I would guess there are 31 chairs. If
 19 they didn't come on time before we started, I'm not sure
 20 that they can demand that we stop proceedings to
 21 accommodate them because they happen to be late but if they
 22 want to come in they can come in, as long as they do so
 23 quietly. Let's carry on.

24 MS MOTLOENYA: I'm sorry, Chair, while Mr
 25 Setati is making arrangements for the injured, can they

Page 10755

1 also keep in mind that the family members will be attending
 2 the Commission tomorrow and I think –

3 CHAIRPERSON: The Commission won't be
 4 sitting tomorrow but –

5 MS MOTLOENYA: I mean on Thursday.

6 CHAIRPERSON: The question of the
 7 arrangements for the family will be discussed during the
 8 adjournment.

9 MS MOTLOENYA: Yes, Chair.

10 CHAIRPERSON: I don't think it's anything
 11 we need discuss here in the auditorium.

12 MS MOTLOENYA: Yes, Chair.

13 MR SEMENYA SC: Chair, I was seeking
 14 clarity. Is Mr Mpofo's case that the disaster, as he uses
 15 the word, was caused by the failure to take up to the
 16 minute, accurate information? Is that his case?

17 CHAIRPERSON: I think that is his case.

18 MR MPOFU: No -

19 MR SEMENYA SC: And there will be
 20 evidence –

21 MR MPOFU: Amongst other things, yes,
 22 Chair.

23 MR SEMENYA SC: And there'll be evidence
 24 to that effect, Chair?

25 CHAIRPERSON: Either evidence or

Page 10756

1 argument, I would think, but – there will be an argument
 2 but I take it he'll have a factual basis. It may be based
 3 on circumstantial, arguments based on circumstantial
 4 evidence, not necessarily direct evidence but certainly
 5 circumstantial evidence to establish that. Whether the
 6 argument is good or bad is something we can't decide now.
 7 So that's your point, is it, Mr Mpofo?

8 MR MPOFU: That's all, Chairperson, and
 9 I'm moving on to something else.

10 CHAIRPERSON: I regret to say in all the
 11 excitement about the adequacy of the seating for people who
 12 want to come in, I think I missed the answer if there was
 13 one. So would ask the National Commissioner to please
 14 repeat it, if she gave it, or to give it for the first time
 15 if she didn't.

16 GENERAL PHIYEGA: I think listening to
 17 the argument that is going around, the issue of accurate,
 18 to the minute information, that matter is going to be
 19 argued. There'll be a standpoint of the police, there is
 20 your standpoint and those that were there, I think General
 21 Annandale has started talking about some of it, General
 22 Mbombo is coming, General Mpenbe is coming, so there would
 23 be an argument on that matter and there would be
 24 disagreement.

25 MR MPOFU: Thank you very much, General,

Page 10757

1 we will have that argument, I can assure you.

2 Incidentally, have you found whether or not there was a
 3 recording of Mr Lepaaku's funeral where you allegedly made
 4 the statement that SAPS should not be sorry? I've asked,
 5 my learned friend could not find it but he said he was
 6 going to ask you. Have you found it?

7 GENERAL PHIYEGA: I have indicated in
 8 this Commission that we didn't have that recording.

9 MR MPOFU: No, that's – well, that's the
 10 first time you are making that indication. And are you
 11 also equally saying that there's no recording in existence
 12 of your press conference on the 17th and that of General
 13 Mbombo - a SAPS recording, I am asking?

14 GENERAL PHIYEGA: I've also said yes, we
 15 don't have.

16 MR MPOFU: There is – Chairperson, if I
 17 may ask a document which will be an exhibit, I had given it
 18 to Mr Semanya last week so that he, insofar as it relates
 19 to the record, rather to the recording, so that he could
 20 satisfy himself.

21 CHAIRPERSON: Have you given us copies or
 22 not?

23 MR MPOFU: No, Chairperson.

24 CHAIRPERSON: So you're giving us now?

25 MR MPOFU: I am, yes.

Page 10758

1 CHAIRPERSON: And your learned friends
 2 for the –
 3 MR MPOFU: Just one line, Chairperson.
 4 CHAIRPERSON: Okay, but your learned
 5 friends, have they also got copies or been given copies?
 6 MR MPOFU: They will –
 7 CHAIRPERSON: I see. That's being
 8 attended to, good.
 9 MR MPOFU: Yes. If there are some –
 10 CHAIRPERSON: Ms Pillay, am I correct in
 11 thinking that FFF20 – sorry, FFF30 is the next exhibit?
 12 MS PILLAY: That's correct, Chair.
 13 CHAIRPERSON: Is it the transcript of the
 14 Rylands video, Mr Mpofo, is that how I describe it? Mr
 15 Mpofo? Mr Mpofo?
 16 MR MPOFU: Yes?
 17 CHAIRPERSON: Do I describe this as
 18 transcript of Rylands video?
 19 MR MPOFU: Yes, correct, Chairperson.
 20 Transcript Rylands video 26 maybe to be exact, in case
 21 there's another one later. Is it 25? Oh, there's also a
 22 25. 26, Chairperson.
 23 CHAIRPERSON: Oh, alright. It will be
 24 marked exhibit FFF30.
 25 MR MPOFU: Thank you, Chairperson.

Page 10759

1 MS PILLAY: Chair, just to be clear,
 2 there is another exhibit of a transcript of Captain
 3 Ryland's video.
 4 MR MPOFU: That's why this one is 20 –
 5 MS PILLAY: That's GGG36. I'm just
 6 wondering if we shouldn't make this GGG36.1.
 7 MR MPOFU: Oh yes.
 8 MS PILLAY: To keep it with the other
 9 transcript.
 10 MR MPOFU: I would agree with that,
 11 Chairperson. It's actually the same conversation. The
 12 only difference is that here we've translated the Sesotho
 13 part.
 14 MS PILLAY: GGG36.1.
 15 CHAIRPERSON: I actually wasn't on the
 16 microphone – I'm sorry, I've changed the exhibit
 17 description now to exhibit GGG36.1.
 18 MR MPOFU: Yes. Right, I'm just going to
 19 refer you – just for background, sorry General, this
 20 transcript as Ms Pillay has correctly pointed out, was
 21 given but obviously whoever was doing the transcription
 22 could not, either could not understand the Sesotho part and
 23 we've just inserted those. It's in the same genre as what
 24 you and I discussed at the beginning about –
 25 CHAIRPERSON: It would be helpful if we

Page 10760

1 had the Sesotho portions – is it Sesotho, is it?
 2 MR MPOFU: Ja.
 3 CHAIRPERSON: The vernacular portions, if
 4 we had them translated as well.
 5 MR MPOFU: I'm hoping that – yes, we
 6 will. Thank you, Chairperson, that's a valid point but I'm
 7 hoping to test the interpretations with the witness.
 8 CHAIRPERSON: I can't remember what the
 9 first language of the National Commissioner is. I seem to
 10 remember it was Sepedi, but let's ask her. What is your
 11 home language or your mother tongue, National Commissioner?
 12 GENERAL PHIYEGA: Sepedi.
 13 CHAIRPERSON: Sepedi. Now Sepedi of
 14 course is northern Sotho and presumably someone who speaks
 15 Northern Sotho can understand 95% of something in Southern
 16 Sotho, is that –
 17 MR MPOFU: Correct, Chairperson. Most of
 18 the experts we get in the courts only know about 80% of
 19 what they're talking about, but for background let's start
 20 with the – before we even go to the Sotho can you look at
 21 entry 00:42 to 00:46? I'm sorry, do you have the same
 22 document? GGG36.1, the new one that's just arrived now.
 23 Yes, that one. If you can read for us against the entry
 24 00:42 to 00:46.
 25 GENERAL PHIYEGA: Before I read that,

Page 10761

1 Judge, can I just – what is this that you're asking me to
 2 read?
 3 CHAIRPERSON: This is a transcript of the
 4 soundtrack of a video taken by Captain Rylands who is one
 5 of the members of the police service who was present at
 6 scene 2. We've seen the video already, we listened to the
 7 soundtrack but the point being made is that there were
 8 portions of the soundtrack in the vernacular which were not
 9 translated, so they've had it transcribed again with the
 10 portions of the vernacular. I can't remember whether the
 11 portions in the Afrikaans vernacular were translated but
 12 certainly the portions in the Sesotho vernacular weren't.
 13 The passage he wants you to look at, at the same time I'll
 14 read, it reads, "Ryland" which I take it indicates the
 15 Captain's voice, "Pyp hom live, daai enetjie, pop hom
 16 live." Is that correct, is that the passage you want?
 17 MR MPOFU: That's the one, Chairperson.
 18 Can you see that part, General?
 19 GENERAL PHIYEGA: Before I see that, I
 20 want to be clear. Is it the translation you gave me as
 21 homework and you asked me to go and listen to?
 22 MR MPOFU: Yes, it's part – the Rylands
 23 videos, yes, were part of the homework about a week or so
 24 ago, ja.
 25 GENERAL PHIYEGA: Thank you. And I did

Page 10762

1 listen, I didn't hear. I think it's important for me to do
 2 that, to tell you that when I listened, I did my homework
 3 and I didn't understand. So you are saying somebody has a
 4 better ear, this is the person with the better ear.
 5 MR MPOFU: Yes. Okay General, let me
 6 explain how we are proposing to do this. First I gave you
 7 the homework.
 8 GENERAL PHIYEGA: Yes.
 9 MR MPOFU: And then, as I say, I gave the
 10 transcript to your legal team last week so that they
 11 themselves could go to the people upstairs and listen and
 12 satisfy themselves. So it's either they have done that or
 13 they have not done it. If they have done it then they
 14 would, they are satisfied that this is what reads, it says
 15 on the tape. If they have not done so then obviously they
 16 are taking the risk that maybe later they'll find there is
 17 someone, as you put it, with a better ear in which case
 18 we'll deal with it but for now just deal with it on the
 19 basis that this is the transcript. If that is wrong, for
 20 some reason, we will apologise to the Commission and all
 21 sorts of things will happen but that's why we took those
 22 precautions. Thank you. So –
 23 GENERAL PHIYEGA: But Judge, I just want
 24 to say it is important for me as a witness to actually say
 25 I did my homework, I took what you gave me, I listened and

Page 10763

1 indeed the inaudible places remained inaudible to me.
 2 MR MPOFU: Yes. No, in fairness to you,
 3 I did say to Mr Semenya when I gave him the document that
 4 even for us, when we played it on a sort of normal TV we
 5 couldn't pick up those parts, we had to use earphones. So
 6 I can believe what you're saying but for now I think let's
 7 just move on. All those will be done - we can't do them
 8 right now – will be done in time. So okay, I'll just read
 9 out the part and then I'll ask you the question. The first
 10 one is the one that the Judge has already read, "Pyp hom
 11 live daai enetjie, pop hom live."
 12 CHAIRPERSON: It says "pyp" as the first
 13 word and "pop" as the second.
 14 MR MPOFU: Ja, "pop hom."
 15 CHAIRPERSON: I'm not sure if that was a
 16 misprint or whether "pyp" was said the first time and "pop"
 17 was said the second time.
 18 MR MPOFU: Yes, yes.
 19 CHAIRPERSON: I'm not quite sure.
 20 Perhaps Mr Burger, who's a better Afrikaans linguist than I
 21 am, can tell us what either of those words mean in the
 22 context.
 23 MR BURGER SC: We're dealing with POP,
 24 it's probably pop.
 25 MR MPOFU: That will be a matter of

Page 10764

1 argument. And this one fortunately we don't need Mr
 2 Burger's assistance. The next one is 02:15 which - up to
 3 02:30. I'll read it out just out of respect for you.
 4 "That motherfucker, I shot him at least 10 times. He keeps
 5 coming and coming. These things of 17 magazines keeps" –
 6 and then there someone else speaks. That's the second one
 7 that I'm referring you to.
 8 MR SEMENYA SC: Chair –
 9 CHAIRPERSON: Is Captain Ryland going to
 10 come?
 11 MR SEMENYA SC: We'll get the witness, if
 12 so directed Chair, but the basis of my objection now is, I
 13 really don't know where Mr Mpofu is going but if this
 14 witness is not able to understand and what prompted these
 15 comments, her evidence would be again totally irrelevant.
 16 CHAIRPERSON: I think that we're going to
 17 get the question about the highest standards of
 18 professionalism at the end but -
 19 MR MPOFU: Yes –
 20 CHAIRPERSON: Am I right? You're reading
 21 a bit of – you're reading some passages which you think,
 22 you're going to submit reflect badly on the policemen
 23 concerned –
 24 MR MPOFU: Yes.
 25 CHAIRPERSON: And then you're going to –

Page 10765

1 the punch line or the final culminating question is going
 2 to be, is that in accordance with the highest standards of
 3 professional –
 4 MR MPOFU: Something like that.
 5 CHAIRPERSON: - professionalism, you
 6 know, is that right? Well, let's –
 7 MR MPOFU: Best of responsible policing.
 8 CHAIRPERSON: Let's get that over with as
 9 quickly as we can.
 10 [11:05] MR SEMENYA SC: Well, Chair, shouldn't
 11 the witness first tell us whether, when she made that
 12 statement, all these utterances were known to her?
 13 CHAIRPERSON: No, no –
 14 MR MPOFU: No.
 15 CHAIRPERSON: No – no, Mr Semenya, that's
 16 not Mr Mpofu's point. Mr Mpofu, as I understand it,
 17 doesn't suggest that the witness knew all the things that
 18 he put to her. What he's asking her is whether she still
 19 says-
 20 MR MPOFU: Ja.
 21 CHAIRPERSON: - they're in accordance
 22 with the highest standards of professionalism. I think
 23 that's his point. It's marginally relevant but I'm
 24 inclined to think, in the interests of moving on, it's
 25 better to allow him to ask the question than not. So

<p style="text-align: right;">Page 10766</p> <p>1 anyway, let him – is that right, am I right, Mr Mpofo?</p> <p>2 MR MPOFU: You have –</p> <p>3 CHAIRPERSON: You don't suggest for a</p> <p>4 moment that this witness knew about the Rylands video and</p> <p>5 what was on it when she made the statement she made?</p> <p>6 MR MPOFU: No, Chairperson, that's why I</p> <p>7 had to play 16 for her to show the dragging, to show the</p> <p>8 boots, to show all those things. If I thought she knew all</p> <p>9 those things already I wouldn't have played it for her.</p> <p>10 Alright, the next one. The next one was just the one below</p> <p>11 that - [Reading Sesotho]. Now we'll take it – this is the</p> <p>12 part where they say –</p> <p>13 CHAIRPERSON: He translated it into, from</p> <p>14 Sesotho into Xhosa.</p> <p>15 MR MPOFU: He has already.</p> <p>16 CHAIRPERSON: Are you still busy with it,</p> <p>17 translating it into isiXhosa?</p> <p>18 MR MAHLANGU: We are still busy with the</p> <p>19 last sentence.</p> <p>20 CHAIRPERSON: When you've done that would</p> <p>21 you be kind enough to help those of us who are</p> <p>22 linguistically challenged in another direction, by</p> <p>23 translating it into the English please?</p> <p>24 MR MPOFU: Thank you, Mr Mahlangu.</p> <p>25 CHAIRPERSON: [Inaudible]</p>	<p style="text-align: right;">Page 10768</p> <p>1 it says – [speaking Sesotho]. This is very vulgar, it</p> <p>2 refers to your private parts. And then he says to that</p> <p>3 person – “[speaking Sesotho], go down.” He was insulting a</p> <p>4 person who was seated there, your, referring to his private</p> <p>5 parts and then saying to this person, “Go down, [speaking</p> <p>6 Sesotho].”</p> <p>7 CHAIRPERSON: Could you then please</p> <p>8 translate that into Xhosa for the benefit of those who want</p> <p>9 the Xhosa interpretation?</p> <p>10 MR MPOFU: But the last line is –</p> <p>11 [speaking Sesotho] – and I'll also read it in full for</p> <p>12 trans – rather, for context. “Blom, blom, ready the</p> <p>13 position, boss. Hierdie, het jy gesien hoe die ding ons</p> <p>14 aanval, die ding vang ons sommer so. Wie Sebatchesane, hy</p> <p>15 slaat hom tien, hy is die mag”, the “mag” or the “mag” –</p> <p>16 the “mag” yes, “hy het die mag leeggemaak maar hy kom nog</p> <p>17 steeds.” “Mag” I assume is magazine.</p> <p>18 CHAIRPERSON: Translate the Afrikaans</p> <p>19 into English and then also into Xhosa and I suspect that</p> <p>20 “mag” there is probably an abbreviation for the English</p> <p>21 word “magazine” but you'll know better than I.</p> <p>22 MR MAHLANGU: If I may say, Mr</p> <p>23 Chairperson, this sounds like the Afrikaans spoken by the</p> <p>24 coloured population of the Western Cape. The word “blom”</p> <p>25 usually means sit but I cannot say in this context this was</p>
<p style="text-align: right;">Page 10767</p> <p>1 MR MAHLANGU: Into Xhosa first, yes, yes.</p> <p>2 CHAIRPERSON: [Inaudible]</p> <p>3 MR MAHLANGU: Yes. In English this would</p> <p>4 be, “Yō, yō, Pat, I have blasted him, I have blasted him,</p> <p>5 jong. I have blasted him, yes, yes. “I don't see how it</p> <p>6 could be if I could hit him with a knob stick” – and then</p> <p>7 the sentence is not complete.</p> <p>8 MR MPOFU: Thank you, Chairperson, I'm</p> <p>9 happy with that translation, save to remind the tribunal</p> <p>10 that earlier on the witness had agreed to a closer</p> <p>11 interpretation which was, “I have blown him apart” but “I</p> <p>12 have blasted him,” I'm happy with that. Right, then the</p> <p>13 next one –</p> <p>14 GENERAL PHUYEGA: It's very confusing.</p> <p>15 MR MPOFU: - is at 2:00 to 3:00 and just</p> <p>16 for context I'll read the whole thing and Mr Mahlangu will</p> <p>17 help us with the other part. “There's muti there, there's</p> <p>18 muti there. Ja, all over the body. Leave it, leave it,</p> <p>19 leave it.” And then “Unknown,” another person, “Ja, that</p> <p>20 muti shit does not work here, baba” – [Speaking Sesotho].</p> <p>21 MR MAHLANGU: The translation in English</p> <p>22 would be, “There's muti there, there's muti there. Ja, all</p> <p>23 over the body. Leave it, leave it, leave it. Ja, that</p> <p>24 muti shit does not work here, baba.” Baba means father but</p> <p>25 it's a reference to any male person. “Ja, baba.” And then</p>	<p style="text-align: right;">Page 10769</p> <p>1 sitting here. “Blom, blom, ready the position, boss.”</p> <p>2 That's how it reads and then he says, “Hierdie, Here,</p> <p>3 hierdie, het jy gesien hoe die ding ons aan, die ding vang</p> <p>4 ons sommer so.” Did you see how this thing attacked us?</p> <p>5 This thing just comes. “Die ding vang ons sommer so.”</p> <p>6 This thing just catches up – yes, like this, or unaware.</p> <p>7 “Wie Sebatchesane, hy slaat hom tien,” that one is not really</p> <p>8 - “Wie Sebatchesane, hy slaat hom tien.” Sebatchesane hit him</p> <p>9 10 times. “Hy het die mag leeggemaak,” he emptied his</p> <p>10 stomach but he –</p> <p>11 CHAIRPERSON: I suspect it may be the</p> <p>12 magazine of the firearm.</p> <p>13 MR MAHLANGU: Die mag, not die maag. Die</p> <p>14 mag, ja. He emptied his magazine –</p> <p>15 CHAIRPERSON: Maybe Captain Rylands when</p> <p>16 he comes, can tell us how he understood it but I suspect</p> <p>17 that he emptied his magazine –</p> <p>18 MR MAHLANGU: Yes, “mag” here is another</p> <p>19 one of those terms used there, “en hy het die mag</p> <p>20 leeggemaak.” He emptied his magazine, “maar hy kom</p> <p>21 steeds,” but he is still coming.</p> <p>22 MR MPOFU: Thank you. General, I just</p> <p>23 want to try and save time. I'll round off, I'll ask you a</p> <p>24 kind of rounded question that covers all the statements and</p> <p>25 without belabouring the point I'd like you to confirm to</p>

<p style="text-align: right;">Page 10770</p> <p>1 the Commission that those statements, including those made 2 in Sesotho, are vulgarities, as Mr Mahlangu has suggested, 3 which have no place in a humane police service that you and 4 the SAPS legal team have made us to believe you were 5 running. 6 GENERAL PHIYEGA: Judge, let me just put 7 it this way before I answer that question. I have a 8 problem with all these versions of information as presented 9 to me to respond to. First there was the translation which 10 I was given too, which had a lot of gaps. I was asked to 11 go and listen, which I did and again I came out unclear. 12 Today there's a version her that sounds more like Fanagolo 13 that is being presented to us and perhaps at some point 14 really if one is to start commenting and putting opinions 15 on the matter, we may need people with better equipment, 16 ability to read this type of thing and then maybe we can 17 respond to those. At this point in time I find it very 18 difficult to accept the statement that has been read to me. 19 MR MPOFU: Yes. Thank you, General. No, 20 that's understandable but you see how these things work is 21 that you are a very busy person, we don't want to bring you 22 back here in two months' time just for the sake of 23 listening to this. So for now please just believe that the 24 question is simply as follows. If these translations are 25 correct and that "if" depends on if Mr Semenya for some</p>	<p style="text-align: right;">Page 10772</p> <p>1 tea adjournment now. 2 MR MPOFU: Thank you, Chairperson. 3 [COMMISSION ADJOURNS COMMISSION RESUMES] 4 [11:48] CHAIRPERSON: The Commission resumes. 5 National Commissioner, you're still under oath. Mr Mpofu. 6 MR MPOFU: Thank you, thank you, 7 Chairperson. Commissioner, before we move on I just want 8 to once again clarify the question I'm putting to you. In 9 paragraph 39 of the opening statement of the police among 10 other things it says, "The South African Police Service is 11 committed to humane policing, in a humane," I suppose, it's 12 spelt human but I'm sure they meant humane. "Humane 13 policing in a humane society." You yourself have thanked 14 the police for what they did and you have described their 15 work as the best of responsible policing. And all I'm 16 putting to you is that in the same way as the images that I 17 showed you of policemen placing a boot on somebody's body, 18 dragging people, laughing around them and all the things 19 that we dealt with when we resumed our cross-examination, 20 that the statement - those were actions, physical actions. 21 Now I'm showing you verbal actions, if you like, which fall 22 into the same genre, as I said, and what I'm putting to you 23 is that if these statements are indeed as they appear in 24 the document in front of you then they do not, A, represent 25 a commitment to humane policing in a humane society or the</p>
<p style="text-align: right;">Page 10771</p> <p>1 reason – I can be 1000% sure about this – if he speaks one 2 word that is incorrect, him and I will sit down and as 3 colleagues we'll agree and we'll inform the Commissioners 4 and so on and so on. So take that for granted that that 5 will happen. In fact he doesn't even have to listen. If I 6 listen to and find something wrong, I will – I am duty 7 bound to come and say no, that word was not correct and so 8 on, so accept all that. Now if, after all those processes, 9 these translations are found to be correct, would you agree 10 that they display vulgarities which have no place in the 11 humane and compassionate police and all the other things 12 that you said the police are doing? 13 GENERAL PHIYEGA: Advocate, I think the 14 "if" factor will remain a very serious bother for me in 15 answering questions in this Commission because the "if" 16 factor, you know, you are actually saying being the 17 National Commissioner I must make very serious comments 18 about things that I would have considered very rationally 19 and objectively. I'm saying to you, this version, this 20 translation, I am very concerned to put my comment on these 21 type of issues. I wouldn't even mind coming back if we 22 have had people who have listened to this, all these 23 versions and have given us a translation, then I can 24 comment. 25 CHAIRPERSON: Mr Mpofu, we'll take the</p>	<p style="text-align: right;">Page 10773</p> <p>1 best of responsible policing and it's nothing for you to 2 direct your gratitude towards. What do you say to that? 3 GENERAL PHIYEGA: I shall say to you, 4 Advocate, that there is a lot that I have to express my 5 gratitude to in terms of the operation that took place. 6 And I shall also say in a large operation such as that one 7 there may be one or two errors and those we will look into. 8 As this Commission finishes we will look at those errors 9 but ordinarily the operation was indeed delivered in a 10 humane manner. 11 MR MPOFU: So going back to where we 12 started, you and I accept I think as Mr Semenya has pointed 13 out and the Chairperson has confirmed, I accept that all 14 the things that I've shown you, starting with the material 15 from the videos to this, were not things that you 16 necessarily knew when you made your statement of gratitude 17 and best of responsible policing, what have you. The 18 question I'm asking you is now, as you are sitting there, 19 now that I've pointed all these things to you is your 20 answer that you're not prepared to withdraw, qualify your 21 statements about gratitude for whatever happened and thank 22 you for what you did? You're not prepared to do that? 23 GENERAL PHIYEGA: No, I am not because 24 I've already indicated in my previous answer to you that 25 there is a lot that I have gratitude for.</p>

Page 10774

1 MR MPOFU: Thank you.

2 CHAIRPERSON: Mr Mpofu, I get the

3 impression you've taken the point as far as you can. I can

4 understand that there are points you may wish to advance in

5 argument but whether they are good points or bad points –

6 MR MPOFU: Is another matter.

7 CHAIRPERSON: It's not appropriate to

8 decide now but I imagine you've got the material upon which

9 you'll base the argument.

10 MR MPOFU: Yes.

11 CHAIRPERSON: So may I suggest you move

12 on to another point?

13 MR MPOFU: Yes Chair, that question was

14 meant exactly for that purpose. And I put it to you that

15 this kind of behaviour and language portrays not a so-

16 called compassionate and humane police force but one that

17 was motivated by anger, malice and even a sense of revenge.

18 What do you say to that?

19 GENERAL PHIYEGA: I have disagreed and I

20 shall continue to disagree because I do not believe that we

21 as police had what you are putting forward.

22 MR MPOFU: And do you remember before we

23 moved to what I call the next game changer, do you remember

24 where we started with this was that the events of the 13th,

25 in particular the killing of the policemen, are what

Page 10775

1 produced this sort of brutality, for lack of - well I don't

2 think it's anything short of that - and strong language and

3 unlawful actions and what I want to put to you is that the

4 police themselves knew that some of the policemen would be

5 so affected by the killing of their fellow policemen that

6 they would lose their professionalism or that they would no

7 longer be able to function as expected. What do you say to

8 that?

9 COMMISSIONER HEMRAJ: Mr Mpofu, when you

10 say the police knew, exactly who are you referring to?

11 MR MPOFU: Okay let me say SAPS or the

12 leadership of SAPS on the ground knew that because of the

13 killing of the policemen in particular, some of their

14 members would be so affected as not to be able to carry on

15 their duties as expected and that these were just

16 demonstrations thereof. What do you say to that?

17 CHAIRPERSON: Mr Semenya, you have your

18 light on.

19 MR SEMENYA SC: I was going to say that,

20 Chair, the word leadership does not answer Commissioner

21 Hemraj's enquiry. We want to be able to bring those

22 witnesses so that they can refute the allegations that is

23 being put to them. To just say the leadership knew, to me

24 suggests even premeditated murder.

25 MR MPOFU: Sorry, Commissioner.

Page 10776

1 COMMISSIONER HEMRAJ: My next question to

2 you, Mr Mpofu, was going to be are you suggesting that the

3 commanders that have been named are the persons who knew

4 about this?

5 MR MPOFU: Maybe my next question will

6 clarify, Commissioner Hemraj. The proposition that I'm

7 putting to you really is this, that to your knowledge, to

8 your knowledge members of the police who were present

9 during the operation knew some of the policemen would be so

10 affected by the killing of other policemen that they would

11 not be able to function normally to the extent that is

12 expected of them.

13 MR SEMENYA SC: Chair –

14 CHAIRPERSON: Yes, Mr Semenya?

15 MR SEMENYA SC: We still require

16 specificity. We had General Annandale there, it was not

17 put to him that he knew that those people would, because of

18 the events of Monday, kill the others.

19 CHAIRPERSON: I seem to remember that

20 when he was asked a question along those lines and he said

21 he couldn't say, the Provincial Commissioner might be able

22 to but if he couldn't and it's a matter for the Provincial

23 Commissioner, I don't see the point in asking this witness

24 the question. But Mr Mpofu aren't you asking this question

25 of the wrong witness?

Page 10777

1 MR MPOFU: Okay, once again I have to

2 show my hand. I have to say where I'm going with this.

3 You have testified that you approved the opening statement

4 of the police, correct?

5 GENERAL PHIYEGA: Yes.

6 MR MPOFU: In that statement, paragraph

7 35 says the following: "When police officers are targeted

8 the police service steps in, suppressing the human response

9 of the moment in order to render a professional service."

10 Suppressing the human response of the moment in order to

11 render a professional service. "Some members who may have

12 been affected by the death of their colleagues in the

13 events of 13th August, of Monday 13th August 2012, were

14 removed from Marikana and posted elsewhere." That's the

15 statement which you approved. The statement doesn't say

16 who or all these things that Mr Semenya is asking but what

17 it does say is that some of the members were removed from

18 Marikana because of the knowledge that the death of their

19 colleagues would have so affected them that it might

20 suppress the human response of the moment in order to

21 render a professional service.

22 MR SEMENYA SC: Chair, that opening

23 statement contends to the contrary and I don't understand

24 where Mr Mpofu is going.

25 MR MPOFU: Okay, I'll assist my learned

Page 10778

1 colleague. The only proposition I'm putting is that if the
 2 police realised even before the 16th that some of their own
 3 would have been so affected by the death of their
 4 colleagues, as it says here, to such an extent that they
 5 had to be removed because they may not be able to render a
 6 professional service, then it was then to the knowledge of
 7 this witness when she approved the statement at least, if
 8 no other time, the proposition that - the grand or the big
 9 proposition which I put in terms of what I call game
 10 changer 2, namely that the deaths of police on the 13th were
 11 such a game changer to the extent that they denuded or
 12 removed the sense of professionalism from the police to the
 13 extent that they had to do and say all the vulgarities and
 14 the brutality that I've shown to the witness.
 15 CHAIRPERSON: Mr Mpofo, I don't see the
 16 nexus between what was described in the passage you read
 17 from the opening statement and what we see here in GGG36.1
 18 because the picture that one saw on the video was a
 19 situation where it is contended by the police that the
 20 members of the police who were there were being attacked.
 21 And it will be contended that in self-defence or private
 22 defence they responded. Now if people, even if they
 23 weren't there on the 13th, are at scene 2 on the 16th and
 24 they're being attacked - assuming for the moment that
 25 that's correct, something we may have to find as to the

Page 10779

1 circumstances in which they were there and so on - then
 2 they will react in a particular way. And they mightn't
 3 always speak the English that Doctor Bowdler would approve
 4 of or that you would find used in polite drawing rooms but
 5 how can you show or base a contention that this behaviour,
 6 this vulgar speech was caused by the fact that these
 7 people, or some of them were on the scene on the 13th? The
 8 nexus seems to be missing unless I'm not understanding the
 9 question properly.
 10 MR MPOFU: No, no I'm afraid you're not,
 11 Chairperson. That is not what I'm putting. It's got
 12 nothing to do with the present at all, at all. All I'm
 13 putting is this, assume that they were attacked, assume
 14 that they were acting under self-defence, assume all those
 15 things. I'm saying that their behaviour that I have
 16 displayed of dragging people, of insulting them, of all the
 17 things that I have shown to the General, assuming all those
 18 things to be so, do not display the requisite
 19 professionalism from a police force that is attacked or not
 20 attacked. So the issue of whether they're attacked doesn't
 21 come into it, number one. Number two, I'm not suggesting
 22 that necessarily they were present on the 13th. I will show
 23 actually, Chair, that one of the Captains when he was
 24 briefing the TRT members said to the police just in case
 25 they were not there on the 13th, remember these people have

Page 10780

1 killed people, innocent people and so on and so on, so
 2 whether they were present or not once again does not come
 3 into it. That's not the proposition I'm putting. I'm
 4 simply saying that - and I'm not even saying it's the sole
 5 cause.
 6 CHAIRPERSON: I'd like to know what
 7 proposition you are putting, not the proposition you're not
 8 putting but the proposition you are putting.
 9 MR MPOFU: Yes. Well, I first have to
 10 de-ascribe the one that's ascribed to me first and then
 11 I'll say what I'm putting. Also what I'm not saying is
 12 that it's the sole cause for them behaving
 13 unprofessionally. All I'm saying, Chair, is this, that the
 14 killing of the police, to the knowledge of themselves and
 15 of this witness so affected some of them that they even had
 16 to be removed and what I'm going to argue obviously at the
 17 end is that they didn't remove enough. That some of those
 18 who displayed the vulgar behaviour that I have displayed
 19 were motivated inter alia, I'm prepared to concede that, by
 20 the same inability to render a professional service that
 21 has been displayed, yes. Thank you, Chair.
 22 [12:08] CHAIRPERSON: I'm afraid you've lost me.
 23 I still don't understand the proposition you're putting -
 24 MR MPOFU: Okay.
 25 CHAIRPERSON: And if I don't understand

Page 10781

1 then I don't think, it may be my fault but if I don't
 2 understand then I can't expect the witness to understand it
 3 either. So if you could put it with greater clarity, I
 4 would appreciate it.
 5 MR MPOFU: Okay, thank you, Chair. Okay
 6 General, I'm going to put a simple proposition to you and
 7 you can agree or disagree. If members of the police were
 8 of the view that some of their numbers were so affected by
 9 the death of their colleagues that they had to be removed
 10 and posted elsewhere, then I will argue that that
 11 demonstrates that they knew that those members who had to
 12 be removed were being removed, among other things, because
 13 of what is said in paragraph 35, namely the potential
 14 inability to render a professional service.
 15 MR SEMENYA SC: Chair -
 16 CHAIRPERSON: Mr Semenya, you've turned
 17 your light on.
 18 MR SEMENYA SC: That contention requires
 19 no answer from this witness. It is the police case, it's
 20 not even an "if," that the people were removed who were
 21 believed may have been affected by the events of the 13th.
 22 So they were not part of the 16th operation, some of them.
 23 CHAIRPERSON: Yes. Mr Semenya, you'll
 24 remember that Major-General Annandale was asked about this
 25 and I seem to remember Adv Jele asked him a number of

Page 10782

1 questions about the debriefing and it turned out there are
 2 two types of debriefing. The one kind is what one can call
 3 sort of emotional debriefing where they interviewed people
 4 who had been involved in the incident to see whether they
 5 were emotionally affected, whether they traumatised and
 6 those were given therapy in some cases and in other cases
 7 actually removed from the operation for the many reasons
 8 that are set out in paragraph 35. Now it may be that you
 9 will want to argue that the choice of those to be removed
 10 wasn't done adequately, there were some others who should
 11 have been removed, but I'm not sure that this witness can
 12 answer that question. Maybe you must – remember he also
 13 said that this was a matter that fell under the Provincial
 14 Commissioner, do you remember, when he was asked about that
 15 and these are questions you may well wish to ask the
 16 Provincial Commissioner and when you ask them I'll allow
 17 them, but I don't know that this witness can help us very
 18 much.

19 MR MPOFU: Thank you, Chairperson, I'll
 20 leave it but for the record let it be shown that I'm only
 21 asking this witness insofar as she has confirmed to this
 22 Commission that she approved the statement and therefore to
 23 her knowledge these things happened, but I won't pursue it
 24 any further. That's all I'm doing.

25 CHAIRPERSON: We know that she approved

Page 10783

1 the statement, you've established that and that may well
 2 form a basis of argument at a later stage ex post facto,
 3 but anyway you've now –

4 MR MPOFU: I'll move on.

5 CHAIRPERSON: - move on to the next
 6 point.

7 MR MPOFU: I'll move on. Thank you,
 8 Chairperson. No, before I move on, just would you also
 9 accept – I'm going to also argue that there is a direct
 10 link between the killing of the policemen specifically and
 11 the death threats that were made to General Mpenbe. In
 12 other words, what I'm saying is that people like Merafi who
 13 threatened to kill Mpenbe would not have threatened to kill
 14 him had it not been for the fact that their colleagues,
 15 policemen had been killed - in other words, if it was
 16 civilians who had been killed.

17 MR SEMENYA SC: Chair –

18 CHAIRPERSON: Mr Semenya wants to say
 19 something –

20 MR MPOFU: Yes.

21 CHAIRPERSON: - but my recollection is
 22 that Merafi was not there on the 16th.

23 MR SEMENYA SC: Exactly.

24 CHAIRPERSON: According to his statement
 25 he was somewhere else.

Page 10784

1 MR MPOFU: No, I'm not talking about-
 2 CHAIRPERSON: We may well discover that
 3 he was somewhere else because the Provincial Commissioner
 4 sent him there for the very reason - so he's a bad example
 5 actually –

6 MR MPOFU: No -
 7 CHAIRPERSON: - to illustrate your point.

8 MR MPOFU: No, that's a misunderstanding,
 9 Chair, on your part, with respect. I'm not talking about
 10 the 16th. I'm not talking about the 16th –

11 CHAIRPERSON: There's another point that
 12 I'm reminded – Merafi's statement doesn't say he made death
 13 threats. My recollection of his statement was that he
 14 heard the death threats and therefore he considered it
 15 appropriate for steps to be taken that those death threats
 16 weren't implemented.

17 MR MPOFU: No.
 18 CHAIRPERSON: So –

19 MR MPOFU: No, that's also incorrect.
 20 That's Vermaak, you're mistaking it with Vermaak. That's
 21 not correct, Chair. What happened –

22 CHAIRPERSON: Does Merafi say in his
 23 statement that he threatened to kill –

24 MR MPOFU: No.
 25 CHAIRPERSON: - Mpenbe. He doesn't say

Page 10785

1 that.

2 MR MPOFU: He doesn't. Vermaak says
 3 Merafi –

4 CHAIRPERSON: I know – I know, but Merafi
 5 hasn't come here. You can't put it as a statement of fact.
 6 You could say possibly that Vermaak says it but you can't
 7 put it higher than that, can you?

8 MR MPOFU: Okay. Vermaak says that
 9 Merafi wanted to kill Mpenbe. You remember we've gone
 10 through that.

11 CHAIRPERSON: You've got your light on,
 12 what do you want to say?

13 MR SEMENYA SC: That is misquoting the
 14 evidence of, the statement of Colonel Vermaak.

15 MR MPOFU: Okay.

16 MR SEMENYA SC: But most importantly,
 17 Chair, Mr Mpenbe cannot keep disguising irrelevant questions
 18 by stating that that is his argument. Is he going to be
 19 giving us evidence, direct evidence of these propositions
 20 he's making?

21 CHAIRPERSON: No, well, I've told you he
 22 doesn't of course have to give direct evidence, provided
 23 there's evidential material which gives rise to a
 24 circumstantial evidence argument. So direct evidence isn't
 25 all he requires but I'm inclined to agree with your view,

Page 10786

1 it's a ruling I've made several times, it's no good asking
 2 this witness for her views on certain things because if
 3 these are matters that we have to decide, her views, with
 4 great respect, are irrelevant. That's why, on a number of
 5 occasions, I've upheld objections that the cross-
 6 examination is not appropriate because it's irrelevant.
 7 Obviously it doesn't mean the witness, that Mr Mpofu can't
 8 argue these points later if there's circumstantial evidence
 9 that supports the proposition he's putting up but that's a
 10 different matter.

11 MR SEMENYA SC: No, we concede, Chair.
 12 If that is circumstantial evidence then we'll be pointed to
 13 it, that based on A and B and C, that the argument will
 14 rest on A, B and C to contend why –

15 MR MPOFU: Okay –

16 MR SEMENYA SC: Then the witness would be
 17 able to respond to it.

18 CHAIRPERSON: Mr Mpofu, I don't want to
 19 hamper your cross-examination because I know you've got a
 20 difficult duty to discharge and you must be given every
 21 opportunity but the fact is, when evidential material is
 22 before the Commission such as statements, paragraphs in the
 23 opening statement, evidence of other witnesses and so on,
 24 you don't have to repeat it to this witness to get her
 25 views, for the reasons I've explained in the past. It can

Page 10787

1 still be open to you to argue the point and if a witness
 2 comes who is directly affected with the proposition you're
 3 putting, you can ask the witness, so –

4 MR MPOFU: That I appreciate,
 5 Chairperson, and honestly I don't want to belabour this
 6 point. All I'm doing is what has been done since this
 7 Commission started, of putting a proposition that comes
 8 from the police statements themselves and which actually we
 9 have done, we've dealt with this issue with this witness.
 10 All I'm saying is that if you go to Vermaak, Chairperson,
 11 paragraph 5, you'll see that he says, "Van die lede het
 12 saam met my teruggeloop en was baie ontsteld gewees en aan
 13 my gemeld dat hulle Generaal-Majoor Mpembe kwalik neem vir
 14 die lede wat dood is en dat hy verkeerde opdragte gegee
 15 het. Hulle het aan my gesê dat" –

16 CHAIRPERSON: Sorry, Mr Mpofu, this
 17 passage is being read in Afrikaans. I think it's been read
 18 in English already. Among the members who walked back with
 19 me were some who were very upset or disturbed and who
 20 mentioned to me that they were very angry with Major-
 21 General Mpembe for the members who were dead and that he'd
 22 given wrong instructions. They said to me that Major-
 23 General Mpembe today would go and lie together with these
 24 members on the ground because they were going to shoot him.

25 MR MPOFU: Yes.

Page 10788

1 CHAIRPERSON: I immediately realised that
 2 it was a very explosive situation and I telephoned the
 3 Provincial Commissioner and informed her of the threat and
 4 informed her further that I was going to remove him from
 5 the scene. I went directly to him, informed him that I was
 6 going to remove him from the scene because of the threat to
 7 his life. I arranged for a Nyala vehicle with two members
 8 to take him away to the ops. That's the passage that we've
 9 had before –

10 MR MPOFU: Thank you –

11 CHAIRPERSON: Now I've translated it for
 12 you and for the witness.

13 MR MPOFU: Thank you –

14 CHAIRPERSON: Okay, now that doesn't say
 15 of course that Merafi was one of the threateners.

16 MR MPOFU: Well, General Annandale
 17 confirmed that – but that's not important. "Die lede," he
 18 said "die lede," I don't care who it is, "die lede" –

19 CHAIRPERSON: No – no, "lede" are the
 20 members.

21 MR MPOFU: Ja.

22 CHAIRPERSON: You put directly to the
 23 witness that the evidence was, and you said Lieutenant-
 24 Colonel Vermaak said it, that one of those who threatened
 25 to kill General Mpembe was Merafi –

Page 10789

1 MR MPOFU: Yes.

2 CHAIRPERSON: I've just read that passage
 3 to you to indicate that that proposition was inaccurate and
 4 certainly Major-General Annandale who wasn't there, he was
 5 in the JOC the whole time, wasn't able to add anything
 6 further – in fact he wasn't there at the time, that was on
 7 the 13th –

8 MR MPOFU: Ja.

9 CHAIRPERSON: He wasn't even there at the
 10 time. Major-General Annandale wasn't able to take that any
 11 further. So that's the high-water mark of that allegation
 12 and the proposition you put to the witness was incorrect
 13 because it went beyond that.

14 MR MPOFU: That's fine. Chairperson, I
 15 know what Annandale said, I don't want to go there. Let's
 16 leave it at "die lede." Do you know that some of the
 17 members, nameless, wanted to kill Mpembe?

18 GENERAL PHIYEGA: I'm going to answer you
 19 in two ways. One, I would know that as reports as I read
 20 the statement that is done by Vermaak and that you are also
 21 saying that, is "die lede" nameless, and you say they are
 22 nameless. And thirdly, that General Mbombo is here or is
 23 going to come here, she is the one who was phoned by
 24 Vermaak and I'm sure she can talk about the nameless people
 25 and the allegation by Vermaak.

Page 10790

1 MR MPOFU: General, let's make this very
 2 easy. The only proposition I am putting to you is that the
 3 threats that were made to Mpembe, it was said that he
 4 should, "saam met daardie lede op die grond gaan lê," that
 5 he, Mpembe, should be lying down together with those
 6 members who are dead. And the only simple proposition I'm
 7 putting to you is that those death threats were made
 8 because members, other members of the police had been
 9 killed, not because civilians were killed. It was, the
 10 threats were directly linked met "saam met die lede op die
 11 grond." Do you understand?
 12 GENERAL PHIYEGA: I think I've given you
 13 my understanding of this.
 14 MR MPOFU: Okay, thank you. We'll leave
 15 that for argument if that's your final answer. Now, going
 16 back to the 10 principles and once again, if you somehow
 17 don't remember that we agreed on this, I will take you to
 18 the prescripts but is it correct that you and I have agreed
 19 that one of the most important principles coming out of the
 20 prescripts is that the police should act impartially.
 21 Agreed?
 22 GENERAL PHIYEGA: Yes, I do.
 23 MR MPOFU: And the very first words of
 24 section 218 of the Constitution, which has been retained,
 25 say that – where it talks about the responsibilities of the

Page 10791

1 National Commissioner, "Subject to section 214 and the
 2 directions of the Minister referred to in 216" – which you
 3 can ignore – "the National Commissioner shall be
 4 responsible for, (a) the maintenance of an impartial,
 5 accountable, transparent and efficient police service."
 6 The very first one of about 12 or 13 sections, the first
 7 word that is imposed upon you is the duty for impartiality.
 8 Do you accept that?
 9 GENERAL PHIYEGA: Yes, I do.
 10 MR MPOFU: And section 195(1)(d) of the
 11 Constitution, which Mr Semenya read to you in chief, also
 12 requires for the public service to be impartial, correct?
 13 GENERAL PHIYEGA: [African language].
 14 MR MAHLANGU: That is true.
 15 MR MPOFU: And section 25 of the Act
 16 which, going down the ladder of the prescripts, also
 17 prescribes for impartiality, so does – just to save time –
 18 paragraph 2.2.5 of FFF1 and so does para, sorry, paragraph
 19 34.4 of the police opening statement which says, "When
 20 death, injury or damage results from internecine conflict
 21 among any constituencies, the police service steps up and
 22 conducts itself impartially."
 23 MR MAHLANGU: That is the truth.
 24 MR MPOFU: You'll also agree that – so
 25 okay, so the prescripts definitely require this. Do you

Page 10792

1 agree that a large percentage of the work that the police
 2 do, involves disputes of some sort between alleged victims
 3 and alleged perpetrators and those kinds of parties,
 4 correct?
 5 GENERAL PHIYEGA: There are also those
 6 issues, among others.
 7 MR MPOFU: And it would be in those
 8 typical situations of conflict or dispute that the police
 9 need to display their impartiality the most, correct?
 10 GENERAL PHIYEGA: I think overall they
 11 must show impartiality.
 12 MR MPOFU: And you would know, as a
 13 social scientist, that in a society there is what some
 14 might call an inherent conflict between capital and labour,
 15 so to speak, between business people and workers, if you
 16 don't want to use the grand terms.
 17 GENERAL PHIYEGA: Maybe I don't
 18 understand the context of what you are asking.
 19 [12:28] MR MPOFU: Do you know or don't you know,
 20 as a person who has studied social sciences, that there is,
 21 in situations such as the one that we are discussing here,
 22 a situation of conflict between what some call capital and
 23 labour or, to put it in simple English, between the working
 24 people and those that own the means of production. I don't
 25 know if that's simple English.

Page 10793

1 GENERAL PHIYEGA: Yes, I do understand.
 2 MR MPOFU: And in this, taking it now
 3 away from the esoteric level, in this particular situation
 4 you were aware that there was a dispute as between Lonmin
 5 and the protesters, correct?
 6 GENERAL PHIYEGA: I think it's a very
 7 shaded question that you are asking me. Are you asking me
 8 whether there was conflict between Lonmin as the employer
 9 and the protesters as employees and perhaps maybe if you
 10 could take it a little bit further so that I can answer you
 11 properly, what would have been the nature of the conflict?
 12 MR MPOFU: Okay. Yes, were you aware
 13 that there was a wage dispute as between those two parties?
 14 MR BURGER SC: I object to that question.
 15 There's no evidence that there was a wage dispute. There
 16 was an unprotected strike and the strikers wouldn't talk
 17 within the agreed structures in place between the workers
 18 and the employer. That's the evidence thus far before the
 19 Commission.
 20 MR MPOFU: Do you know, General, that
 21 another work for a strike is an industrial dispute?
 22 CHAIRPERSON: I don't know that that is
 23 entirely accurate. There are various kinds of industrial
 24 disputes. Strikes are one of them, I think.
 25 MR MPOFU: Yes, what the Chairperson –

Page 10794

1 [inaudible].

2 GENERAL PHUYEGA: My response to you is

3 that we were there as the police to deal with an

4 unprotected strike.

5 MR MPOFU: Yes and if someone was more

6 verbose they could express exactly what you are saying to

7 say you were there for an unprotected industrial dispute,

8 correct?

9 GENERAL PHUYEGA: I don't have the

10 capacity to extend my mind to that but I know that we were

11 there to deal with an unprotected strike.

12 MR MPOFU: Alright, look, I'm not going

13 to argue semantics with you. I put it to you that you were

14 informed, according to your own statement and the

15 statements of many other witnesses, during the briefing of

16 two things and I'm still dealing with the first one. It

17 was said to you that there's a conflict between the NUM and

18 AMCU - we've dealt with that in another context - and it

19 was also said to you that there's a dispute about wages

20 with the employees. And further on it was said to you,

21 what Mr Burger is saying is correct, that the employees

22 wanted to negotiation with the employer and the employer

23 said it could not negotiate with faceless people. It was

24 in that context that the whole issue of faceless people was

25 raised. So you knew that there was this wage dispute.

Page 10795

1 MR BURGER SC: What my learned friend put

2 is not correct. The evidence is that Lonmin could not

3 negotiate principally because the unprotected strikers

4 wanted to negotiate outside established wage negotiation

5 structures. They couldn't do that because contractually

6 they were bound to the existing structures. The faceless

7 comment is taken out of context. That came about on the

8 evidence thus far, that the strikers wouldn't disclose who

9 they speak for, whether it's a trade union or not, and

10 there was a suspicion that there were non-Lonmin employees

11 in the crowd. It's in that context that there was a

12 reference to faceless people but my learned friend should

13 put it on that basis and not on the narrow basis he's done.

14 MR MPOFU: Okay. Okay, for the sake of

15 progress I'll put it on the wide or narrow basis that Mr

16 Burger is suggesting, that you and the rest of the world,

17 for that matter, knew that there was a dispute or a number

18 of disputes about wages - another one is the one that Mr

19 Burger has kindly told us, about whether or not these

20 strikers could negotiate outside the collective bargaining

21 systems without the union, given that although there was a

22 two-year agreement, warra-warra, all those things, that

23 there were disputes about wages, principally, and about how

24 the issue should be taken forward. That you knew, you were

25 told about that.

Page 10796

1 GENERAL PHUYEGA: Advocate, it is

2 important to contextualise the involvement of the police

3 and I will again repeat that our involvement as police was

4 because there was an unprotected strike. The drivers

5 thereof are another thing. The causes, the underlying

6 causes thereof are another thing but what brings us there

7 as police, what puts us in that scene is because there is

8 an unprotected illegal strike.

9 MR MPOFU: Yes. No, I don't want to be

10 sidetracked into labour law definitions but I'm sure you

11 know also as a person who has been in management and in HR,

12 that the unprotectedness of a strike is not a matter for

13 policing, it's a matter for collective bargaining at best

14 or at worst for the labour law, the Labour Court to either

15 dismiss the unprotected strikers or not.

16 GENERAL PHUYEGA: I think it's important

17 also again for me to mention that in public order, part of

18 ensuring that there's public order is that economic

19 activity must take place, social life must continue,

20 property of people must be taken care of, all those.

21 People should have the freedom to do what they are supposed

22 to be doing. In whatever area they find themselves, we are

23 coming there to ensure that that happens, that public order

24 is restored and the normal life of that community can

25 continue as it goes. So the issues, Chair, bargaining and

Page 10797

1 whatever, really are not the issues that we concern

2 ourselves with as the police. We are there to restore

3 stability, public order and to ensure that the rights of

4 people in their various shapes, social, economic and

5 religious, continue to go the way it's supposed to go.

6 MR MPOFU: Okay, maybe it's better if I

7 put it to you that in the context of the dispute or the

8 disputes that existed as between Lonmin and the employer,

9 rather the employees, the protesters, even confining it to

10 the basis that Mr Burger has articulated, the duty of the

11 police was to act impartially vis-à-vis or as between those

12 two parties, those protagonists in that dispute or

13 disputes. Do you agree with that?

14 GENERAL PHUYEGA: I've heard, I wait for

15 the question.

16 MR MPOFU: That's the question -

17 CHAIRPERSON: He's asked a question. The

18 question is, do you agree that it was the duty of the

19 police to act impartially between the two sides of what he

20 describe as a wage dispute? Insofar as it was a wage

21 dispute would you agree, says he, that it was the police's

22 duty to act impartially as between the two contesting

23 parties. I think that's your question, Mr Mpofo.

24 MR MPOFU: Essentially, Chair.

25 GENERAL PHUYEGA: Actually Chair, I've

1 already indicated that the impartiality principle is fully
2 embraced and yes, it continues to be embraced by the
3 police.

4 MR MPOFU: Okay, I'm now going to put to
5 you a proposition at the end of which I will suggest
6 whether or not, or what I will argue as to whether or not
7 this very and sacrosanct principle of impartiality was
8 observed but before I do that I want, once again taking
9 advantage of your experience in industry, you are aware
10 that collective bargaining is a process that involves the
11 negotiation of that tension that I referred to between
12 employers and employees and that - we were given a very
13 rudimentary lesson by Mr Magidiwana on this - that on the
14 one hand the employers withdraw their labour to hurt the
15 employer, the employees, to hurt the employer's profit-
16 making or chimneys, as Mr Magidiwana put it - and the
17 employer on the other side has got the capacity to act
18 against the employees by locking them out of their
19 premises, that that is, those are the powerhouses that are
20 at play in the process known as collective bargaining. You
21 know that, correct?

22 GENERAL PHIYEGA: Yes, I do.

23 MR MPOFU: Yes. And you would agree, I
24 am sure, that the spirit of our law and in particular
25 section 23(5), I think, of the Constitution which enshrines

1 the right for everyone to bargain collectively, that spirit
2 is that that power play that you and I agree upon is best
3 left to the relative power of the parties. In other words,
4 if the union is weak, well, then they have themselves to
5 blame if they are overpowered, so to speak, and if the
6 employer somehow is weak then it has itself to blame and
7 that our entire ethos, constitutional ethos, is that that
8 is a power play that is best left to the parties.

9 GENERAL PHIYEGA: Ja, I take it those are
10 philosophical points of departure for bargaining and all
11 those things but we as police don't get involved in it.

12 MR MPOFU: Thank you. Now knowing that,
13 all that, is it correct that when you arrived at the site
14 of this industrial dispute you only visited one of the
15 parties to the conflict -

16 CHAIRPERSON: What date was that?

17 MR MPOFU: On the 13th, thank you,
18 Chairperson. You only visited one of the parties to that
19 conflict or the protagonists, as I would have called them,
20 namely Lonmin and you were briefed by only one of them.

21 MR BURGER SC: Perhaps my learned friend
22 can tell us what the industrial dispute is he referred to.
23 We've had that skirmish. I thought he accepted my
24 definition which takes an industrial dispute out of the
25 equation. This was the police arriving, on the evidence

1 thus far, to address an unprotected illegal strike.

2 CHAIRPERSON: An unprotected illegal
3 strike, if it goes no further and it's peaceful, would
4 presumably be qualified as an industrial dispute. If, of
5 course, it goes beyond that and there's a breakdown in law
6 and order because there's violence, intimidation, murder,
7 damage to property and so on, then that would be a
8 different matter and then it would be appropriate for the
9 police to come, I would have thought.

10 MR BURGER SC: Chair, no, we don't have
11 to be in a philosophical debate on that. We know the
12 evidence before the Commission, nine people are dead at
13 that stage or people have been killed, by the 16th nine are
14 dead. This is not an innocent unprotected strike, this is
15 violence in the community, this is a mine at a standstill
16 and that's the evidence. I'm not putting any words before
17 anybody and in that context, to put it that there was an
18 industrial strike is not correct and my learned friend
19 should -

20 CHAIRPERSON: Industrial dispute. Well,
21 there may well have been an industrial dispute but
22 superadded would have been other factors such as the ones I
23 mentioned, which constituted a breakdown in law and order
24 and the real question is whether it would have been
25 appropriate for the police to come in circumstances where

1 there was a breakdown in law and order, where people had
2 been murdered - killed, anyway - property had been damaged,
3 threats of violence had been uttered, other people had been
4 injured. That's the real question, is it not?

5 MR BURGER SC: Indeed -

6 CHAIRPERSON: I'm not suggesting that's
7 Mr Mpofo's question but that's -

8 [12:47] MR BURGER SC: No - no, but what is being
9 explored is, as I understand it, is the unfairness of
10 talking to only one side to a dispute whereas I say the
11 true facts are, the question is do you have to negotiate
12 with unprotected strikers in the view of nine corpses or
13 are you entitled to talk only to the employer, that's the
14 question.

15 CHAIRPERSON: You've heard the debate, I
16 think the question could be reformulated in a manner which
17 avoids those difficulties which are there.

18 MR MPOFU: Chairperson, I'm afraid - let
19 me maybe make an attempt to address you and the
20 Commissioners. What I'm saying, Chair, and I think the
21 Chairperson has put it correctly, the evidence is that
22 there was a dispute, a wage dispute. There's no doubt
23 about that. What Mr Burger is correctly saying is that
24 there was that dispute and more, which I'm comfortable with
25 but to argue that there was no wage dispute is really

<p style="text-align: right;">Page 10802</p> <p>1 pushing it too far, one. Two, I said to this witness, the 2 very first question or first two questions I asked her, I 3 said please understand that we are coming from the point of 4 view that the presence of the police there we're not taking 5 any issue because of the things that the Chairperson has 6 correctly pointed out. So I'm not there, I'm not saying 7 they should not have come, I'm talking about the behaviour, 8 impartially or otherwise once they had come. Not whether 9 they should have come or should have left it at all, that's 10 not what I'm questioning. Thank you, Chairperson. 11 CHAIRPERSON: Reformulate your question 12 that takes on board the factors that you've mentioned and 13 we'll get the answer of the witness. 14 MR MPOFU: Thank you, Chair. 15 MR SEMENYA SC: Chair, Chair, just so 16 that we follow, is a proposition being made that when the 17 National Commissioner got to Marikana between half past six 18 and seven she ought not to have spoken to Lonmin alone, to 19 maintain the prescript of impartiality? 20 CHAIRPERSON: I don't know about alone, I 21 think Mr Mpofu's point is - whether it's a good or a bad 22 point is another matter but his point seems to be that 23 regard being had to the fact that there were at least two 24 antagonists, it was a departure from the principles of 25 impartiality only to speak to the Lonmin side and not to</p>	<p style="text-align: right;">Page 10804</p> <p>1 it is busy with another point and that's on the 13th before 2 McIntosh came and said all that to the people on the 3 koppie, whether it was impartial on the part of the police 4 only to speak to Lonmin and not try to hear the other side. 5 I think that's his question, is that right? 6 MR MPOFU: That's right, specifically to 7 the witness. 8 CHAIRPERSON: Okay, well let's hear what 9 the witness has to say. 10 GENERAL PHIYEGA: Let me start off by 11 saying I don't see impartiality there and I'll explain why 12 I'm saying that. 13 MR MPOFU: Yes, in fairness to you I'm 14 sure you - 15 GENERAL PHIYEGA: Can I answer? 16 CHAIRPERSON: No, let her explain. She's 17 busy with her answer, let's give her the chance to finish 18 her answer - 19 MR MPOFU: - I won't help. 20 GENERAL PHIYEGA: Thank you for allowing 21 me to answer. 22 CHAIRPERSON: Mr Mpofu's point was you 23 said impartiality when you meant partiality. I think you 24 meant to say I don't see evidence of partiality in what 25 happened and let me explain.</p>
<p style="text-align: right;">Page 10803</p> <p>1 speak to the other side. Whether that's a bad point or a 2 bad point is for the witness to answer but I would have 3 thought that that's the question. He's not suggesting that 4 they had to have a meeting of the two together, what he's 5 suggesting is that having heard the Lonmin side, attempts 6 should have been made to hear the other side. That's his 7 question. Whether it would have been appropriate in the 8 circumstances is a matter the witness will be able to tell 9 us. Isn't that so? 10 MR SEMENYA SC: But, Chair, the evidence, 11 as we already know, even people like McIntosh were brought 12 specifically to talk to the other side. 13 CHAIRPERSON: But McIntosh only came the 14 following day. 15 MR SEMENYA SC: Yes, that's why I'm 16 asking whether on the evening - 17 CHAIRPERSON: That's the way I understand 18 the question. Mr Mpofu can correct me if I'm wrong. On 19 the 13th, it was confined to the 13th as I understand it. 20 We all know that McIntosh came the following day. McIntosh 21 repeatedly said and we've seen it in transcripts, that 22 we're not concerned about your disputes with your employer, 23 we're concerned about the weapons you've got, we're 24 concerned about law and order. That was McIntosh's 25 approach, clearly expressed, but Mr Mpofu as I understand</p>	<p style="text-align: right;">Page 10805</p> <p>1 GENERAL PHIYEGA: Okay. 2 CHAIRPERSON: Please explain. 3 GENERAL PHIYEGA: I'll put it in my own 4 language. I do not believe that I stood with the one party 5 there and I will explain why I say so. 6 CHAIRPERSON: The witness is answering, 7 it's her fullest right to do so in Sepedi, then I think you 8 must interpret it for the benefit of the Xhosa speakers in 9 the auditorium so they can hear or understand also what 10 she's saying. I don't they all are bilingual, I don't 11 think all the Xhosa speakers here can also speak Sepedi. 12 GENERAL PHIYEGA: I come to Marikana on 13 the 13th when this event, when this process had first 14 started from the 10th and a lot is happening in the pipeline 15 and being part of large operation I do not operate alone, I 16 link up and leverage what my other team members have been 17 doing. If we want to park on the 13th itself, there had 18 been a lot of engagement with the strikers by the police 19 and many other people during the day. There had been 20 engagement by the commanders on the ground with the 21 strikers. My intervention is not an isolated intervention, 22 it's part of the police intervention and throughout our 23 involvement we've worked with all the stakeholders. And 24 it's for that reason any debate and view that says there's 25 this partiality doesn't resonate with my thinking.</p>

<p style="text-align: right;">Page 10806</p> <p>1 MR MPOFU: Yes you see, General, once 2 again I'll give you the benefit of the doubt as it were 3 because you had not been there before but I'm telling you 4 now, I'm putting it to you, sorry, that as at the 13th when 5 you got there, there had been or rather there's no evidence 6 of any contact between the police and the strikers. So 7 take that as a - 8 CHAIRPERSON: That's not correct, Mr 9 Mpofo. 10 GENERAL PHIYEGA: That's not true. 11 CHAIRPERSON: The evidence indicates that 12 at least those people who were at the railway line and who 13 were addressed by and in fact engaged in a debate with 14 General Mzembe, had been fully addressed by him. 15 MR MPOFU: Ja, that's fine. 16 CHAIRPERSON: I'm not sure whether there 17 was at that stage any contact that we know about between 18 the commanders of the police and those, and the others on 19 the koppie but certainly the group who were involved in the 20 engagement, if one calls it that, on the afternoon of the 21 13th had been addressed by General Mzembe by the railway 22 line and had exchanged views with him and so on. 23 MR MPOFU: Fair enough. 24 CHAIRPERSON: So the question isn't 25 correct.</p>	<p style="text-align: right;">Page 10808</p> <p>1 CHAIRPERSON: There were other people, 2 well they were on the way back to the koppie. 3 MR MPOFU: Still eight kilometres. 4 CHAIRPERSON: They'd been to the koppie 5 and they were on the way back to the koppie. They were 6 among – they were strikers, part of the striking group. 7 Your point is that there was no attempt as far as we know 8 on the evidence to communicate with the remainder on the 9 koppie. And the real question is and those facts are 10 before us, the real question is what are her comments on 11 your suggestion that police displayed lack of required 12 impartiality by acting in that way. Is that not your 13 question? 14 MR MPOFU: That is it. 15 CHAIRPERSON: Alright, now you heard my 16 attempt to reformulate Mr Mpofo's question, are you able to 17 answer it? 18 GENERAL PHIYEGA: I do not see any act of 19 partiality on our side. As I've said this is a broader 20 context, I look at the day, I look at the evening and even 21 the people I met, was it the executive or the board or 22 whatever of Lonmin. I met a few people because I wanted to 23 understand what was happening and I had the context of what 24 was happening during the day. So I don't see the argument 25 that you're putting forward to me.</p>
<p style="text-align: right;">Page 10807</p> <p>1 MR MPOFU: Ja, fair enough, thank you. 2 There is no evidence that as at the 13th, with the exception 3 of the 120 or so people who were addressed by General 4 Mzembe some eight kilometres away, there is no evidence 5 that there had been any contact between the police and the 6 protestors at the koppie. 7 GENERAL PHIYEGA: And this is why, when I 8 answered you now I said freeze the day on the 13th and I was 9 going to tell you that earlier that day the police 10 commanders that were there were talking to the strikers. 11 MR MPOFU: Yes, I've asked you now the 12 question accommodating that fact. 13 MR SEMENYA SC: Chair, I really don't 14 understand. We're going to be spending a whole lot of 15 time, Chair, really achieving with respect very little. 16 There's no point in putting a proposition that excludes 17 this evidence, the consequences be the other – 18 MR MPOFU: No. 19 MR SEMENYA SC: It's just axiomatic. 20 CHAIRPERSON: Mr Mpofo, may we not 21 perhaps approach it differently? The point you're trying 22 to make is you say the police didn't act with the necessary 23 impartiality and you concede that the police did speak to 24 the people by the railway line. 25 MR MPOFU: Yes.</p>	<p style="text-align: right;">Page 10809</p> <p>1 MR MPOFU: Yes, I think let's confine it 2 to you - 3 CHAIRPERSON: I'm sorry to interrupt you 4 but the point that concerns me is that is it fair to draw 5 the curtain, put the curtain down as it were on the 6 question of partiality or impartiality on the Monday 7 evening because it is correct that the police spoke to 8 Lonmin people on the Monday night, but isn't it appropriate 9 to have regard to what they did on the Tuesday to decide 10 whether they acted impartially? I don't how practical it 11 would have been for them to have tried to establish contact 12 after they'd spoken to the Lonmin people, to establish 13 contact with the strikers at that point. We know what they 14 did the next day, so in the context, the broad context of 15 looking at what happened on the 13th and the 14th together, 16 was there partiality? Now you may contend there was still 17 a lack of the requisite impartiality at that stage but I 18 would have thought a fair question would incorporate both 19 what the police did on the 13th and the 14th. So the 20 question so framed, let's get the witness's comment. What 21 do you say about that, National Commissioner? 22 GENERAL PHIYEGA: Judge, I really am - 23 you know from the bottom of my heart I do not see the 24 partial intervention of the police. I really think we 25 reached out to various stakeholders at various points and</p>

Page 10810

1 we could not talk peace, encourage people to strive for
 2 peace if we were not talking to all the stakeholders
 3 because it would be anomalous to -
 4 MR MPOFU: Okay, General -
 5 CHAIRPERSON: We'll take the lunch
 6 adjournment now. If you still contend that the police
 7 showed a lack of the requisite impartiality by only
 8 speaking to Lonmin on the Monday night and not attempting
 9 to speak to the strikers that same night instead of the
 10 following day, then you can proceed with the point after
 11 lunch.
 12 MR MPOFU: Chairperson, just for the - to
 13 make it clear, I've never said anything about the police, I
 14 was talking about the 13th and this witness whether she was
 15 briefed and attended to Lonmin only, but we'll deal with it
 16 after lunch now.
 17 [COMMISSION ADJOURNS COMMISSION RESUMES]
 18 [14:02] CHAIRPERSON: The Commission will now
 19 resume. We understand that the National Commissioner
 20 sometimes has urgent matters to attend to by telephone and
 21 she's in another building, so we quite understand. In
 22 future we will make a practice of only coming in to resume
 23 when we are informed that the witness is at the witness
 24 table, but don't feel upset about it, we quite understand.
 25 GENERAL PHIYEGA: Thank you.

Page 10811

1 CHAIRPERSON: But I have to remind you
 2 that you're still under oath.
 3 GENERAL PHIYEGA: I am.
 4 CHAIRPERSON: And Mr Mpofo, you're still
 5 cross-examining.
 6 MANGWASHI VICTORIA PHIYEGA: s.u.o.
 7 CROSS-EXAMINATION BY MR MPOFU (CONTD.):
 8 Yes, thank you, Chairperson. I just want to say,
 9 Chairperson, the witness I'm sure hopes there's no "in
 10 future" to talk about but -
 11 CHAIRPERSON: To some extent it's in your
 12 hands, Mr Mpofo.
 13 MR MPOFU: Thank you, Chairperson.
 14 General, I'm going to shorten this portion of my cross-
 15 examination for two reasons. Firstly, let me explain to
 16 you where it comes from. You remember I had asked you to
 17 read our opening statement and one of the points raised
 18 there is the allegation about the toxic collusion, toxic
 19 relationship between Lonmin and the police, remember that
 20 in the statement? 9.3 or so.
 21 GENERAL PHIYEGA: 9.3.
 22 MR MPOFU: Yes 9.3, yes. That's the
 23 subject I'm busy with now and the reason I'm going to run
 24 through these points quickly is because I've already put
 25 about 13 points to General Annandale in relation to that

Page 10812

1 issue and to you I'm going to put fewer, maybe eight or so,
 2 some of which are new and others are overlapping. So it
 3 was in that context that I was asking you the first
 4 question and the question really relates to the section
 5 218. Section 218 of the Constitution that I read to you
 6 referred to you as the National Commissioner specifically.
 7 The other section on impartiality I concede relates to the
 8 police in general but that one relates to you. So having
 9 given that background, which hopefully will shorten things,
 10 I just want to ask you whether it is so or not so that on
 11 the 13th you, as National Commissioner, only were present at
 12 the Lonmin premises and you were briefed by Lonmin
 13 representatives and nobody else from the other side, as it
 14 were.
 15 CHAIRPERSON: Mr Burger?
 16 MR BURGER SC: Chair, may I object in
 17 principle to this line of questioning. As I understand my
 18 learned friend he wants to debate eight factual situations
 19 with the witness as being indicative of a relationship.
 20 Now with great respect, what this witness's view is on what
 21 has to be made of that relationship would be irrelevant.
 22 That's for the Commission to decide. To the extent that
 23 these are factual statements, the witness can't add to it.
 24 What the spirit of the Constitution is or what her
 25 statutory duties under the Constitution might be is a

Page 10813

1 matter for legal interpretation. Who she spoke to is a
 2 factual inquiry, she can clearly be asked on that but what
 3 my learned friend, as I understand it and I mean him no
 4 disservice, wishes to do is to argue his closing speech and
 5 ask the comments of the witness on his closing speech. Now
 6 I can't wait for the opportunity to deal with that closing
 7 speech in my closing speech but that's the forum for it and
 8 that's where we'll debate the merits or the demerits of
 9 conclusions to be drawn from facts. This is not the place
 10 nor the witness for that, so on that general basis I raise
 11 an objection to this line of questioning.
 12 CHAIRPERSON: Of course he can ask
 13 questions about factual propositions upon which he's going
 14 to base his argument, clearly he can do that, I think you
 15 concede that.
 16 MR BURGER SC: But that's not my
 17 objection.
 18 CHAIRPERSON: No, I know it's your
 19 objection.
 20 MR BURGER SC: Yes.
 21 CHAIRPERSON: I understand your objection
 22 is based on the fact that he introduces his first
 23 proposition by reference to statutory provisions,
 24 particularly in the Constitution and those are statutory
 25 provisions, they are law, they are legal propositions which

Page 10814

1 can be the subject of argument and interpretation. That's
 2 your main objection.
 3 MR BURGER SC: Well, I'm really objecting
 4 to the second question in the line. The second question
 5 is, on the 13th is it so you only spoke to Lonmin? Now
 6 she's given the evidence. Whether she agrees with it or
 7 not, we're not interested in, it's on the record. To ask
 8 her that is unnecessary, it's time wasting. What the
 9 argument is, that do you agree that that's indicative of a
 10 certain relationship, that's my problem.
 11 MR MPOFU: Okay.
 12 CHAIRPERSON: Perhaps he can reformulate
 13 the question with the benefit of having received guidance
 14 from you on the point.
 15 MR MPOFU: Chair, I prefer the guidance
 16 that I got from you, Chairperson, which is that –
 17 CHAIRPERSON: Don't spurn Mr Burger's
 18 guidance, I'm sure he can be a useful guide in some
 19 respects.
 20 MR MPOFU: Ja, I'm sure he can, Chair,
 21 but I'd rather stick to asking the factual basis of what I
 22 will argue one day, as he correctly puts it. And
 23 Chairperson it would be unfair to argue those things having
 24 not put them to the witness. The witness might well say,
 25 you know what, Mr Mpofu, on my way back from Lonmin I

Page 10815

1 popped in and spoke to so-and-so. I mean I think we know
 2 that it didn't happen but it's only fair to put it to the
 3 witness.
 4 CHAIRPERSON: Be as focused as you can.
 5 MR MPOFU: Yes, I will, Chair.
 6 CHAIRPERSON: Remember everyone is here.
 7 MR MPOFU: Yes. Yes, thank you,
 8 Chairperson. So really the only issue was that you
 9 yourself did not speak, or rather you only spoke to
 10 representatives of Lonmin and got a briefing from them on
 11 the 13th. Fact, correct?
 12 GENERAL PHIYEGA: It is correct and I've
 13 answered you earlier on to say it's within the milieu of a
 14 broader operation and the police did talk to other
 15 stakeholders.
 16 CHAIRPERSON: Mr Mpofu, I think part of
 17 Mr Burger's complaint is, when you put a proposition it's
 18 based upon something she's said already, you then say is
 19 that correct and then she says yes and we know it's correct
 20 because she's said it already. So I think if you put a
 21 series of facts or propositions, none of which she can
 22 disagree with because they're based on she's said already,
 23 you don't have to ask her every time is that right.
 24 Perhaps you can preface it by saying I'm putting a number
 25 of propositions to you which I understand to be based on

Page 10816

1 your evidence, if there's anything you disagree with or
 2 anything you feel requires, in the context, explanation or
 3 elaboration, do so. I think if you do it that way -
 4 MR MPOFU: Ja.
 5 CHAIRPERSON: - you're going to have less
 6 displeasure from Mr Burger than would otherwise be the
 7 case.
 8 MR MPOFU: Thank you, Chairperson, I was
 9 more worried about the displeasure from you, Chairperson,
 10 because one day you told me it has to be a question not a
 11 statement but it's fine, I'll do it like that. You,
 12 General, also acquiesced or agreed with the fact that the
 13 police had decided to set up the JOC at the Lonmin
 14 premises, correct? I'll avoid the "correct," that's one of
 15 the propositions on which I'm going to rely and – well, I
 16 think we need to punctuate it with whether you agree or –
 17 CHAIRPERSON: Having put the basis, if
 18 she disagrees –
 19 MR MPOFU: Okay, thank you.
 20 CHAIRPERSON: I think we can rely on the
 21 National Commissioner to be sufficiently -
 22 MR MPOFU: Silence means consent, okay.
 23 Number 3, the next basis on which I'm going to rely is that
 24 the police conducted meetings in which their plans were
 25 discussed in the company of private individuals who worked

Page 10817

1 for Lonmin who were, in a way, party to the dispute that
 2 you and I have spoken about earlier.
 3 CHAIRPERSON: - actually correct. As far
 4 as I can see from the statements of the Lonmin witnesses,
 5 they say that on several occasions the police asked them
 6 please to leave because they were going to discuss the
 7 plans.
 8 MR MPOFU: Ja.
 9 CHAIRPERSON: And they then left. So I
 10 don't know that that proposition can be put in an
 11 unqualified a fashion as you have done.
 12 MR MPOFU: Yes. Obviously I'm referring
 13 to the other occasions when they did not do that but the
 14 Chairperson is correct. And specifically I'll refer you to
 15 paragraph 49 of Botes' statement which says – I'll just
 16 read it out to you – "On 16 August 2012 I had arrived at
 17 the SAPS JOC fairly early in the morning. From discussions
 18 I overheard I gathered that the SAPS had formulated a plan
 19 to proceed with disarming the group at the koppie."
 20 MR BURGER SC: Chair, but this is my very
 21 objection. We are now going to have eight pieces of
 22 evidence which is before the Commission –
 23 MR MPOFU: No.
 24 MR BURGER SC: - read to the witness.
 25 CHAIRPERSON: The Botes one hasn't been

Page 10818

1 put before the Commission yet.

2 MR MPOFU: It hasn't.

3 CHAIRPERSON: He hasn't given evidence

4 yet. The statement was put before us but that particular

5 passage wasn't highlighted or referred to, so –

6 MR BURGER SC: That passage was read out

7 in this Commission and – before, I'm quite confident on

8 that, it was read out but that's not my objection. What if

9 it was read out and what if Botes is going to say that?

10 How can this witness contribute? If it isn't done in the

11 context that, General, I'm going to use that as one of the

12 arguments in order to substantiate a relationship. Well,

13 that's irrelevant what the witness says on that, so we can

14 reformulate this question till the cows come home, the

15 debate is irrelevant and that's my objection.

16 CHAIRPERSON: Well, he's already put of

17 his propositions.

18 MR MPOFU: Yes.

19 CHAIRPERSON: Let's see whether the other

20 four are subject to the same criticism.

21 MR SEMENYA SC: Chair –

22 CHAIRPERSON: Mr Semenya wants to say

23 something.

24 MR SEMENYA SC: The statement doesn't say

25 that the police plans were discussed in the presence of

Page 10819

1 what-do-you-call –

2 MR MPOFU: Botes.

3 MR SEMENYA SC: - people. The statement,

4 as I gathered, how he gathered is not necessarily a

5 function of him being present when the plans were discussed

6 and that it had been discussed.

7 MR MPOFU: Chairperson, two things.

8 General Annandale has testified that Mr Botes was present

9 at the 6 o'clock meeting. Secondly, we know that from, I

10 think it's GGG40, the whiteboard where the attendees at the

11 Provincial JOC were, that one of their names there was

12 Botes.

13 CHAIRPERSON: Yes. Mr Semenya, what do

14 you say about what Mr Mpofo says?

15 MR SEMENYA SC: But it doesn't –

16 CHAIRPERSON: I gathered, it's ambiguous

17 but I must confess my impression of reading it was that he

18 was there and he overheard it and certainly the evidence is

19 he was there a good deal of the time when he wasn't asked –

20 I think let him put his eight –

21 MR SEMENYA SC: I reserve my –

22 CHAIRPERSON: You've reserved your

23 position. Let him put his eight propositions, let your

24 witness comment and then we can move on.

25 MR MPOFU: Thank you. And the next one

Page 10820

1 I'm going to put and then I'm going to put a proposition to

2 you, is that the police shared their radios and other means

3 of communication with private individuals working for

4 Lonmin and for that proposition I rely on the statement

5 submitted by Lonmin of Amanda van der Merwe. I'll read one

6 paragraph for you. She says that, "On the 14th August 2012

7 at 14:22 SAPS reported" – this is after she says she had

8 access to radios and so on – "SAPS reported and I recorded

9 that there were approximately 2 000 persons at the top

10 koppie and that they needed instructions 'on whether or not

11 they should shoot at them all.'" If I can finish, Mr

12 Mahlangu? "This report came via SAPS radio and I recorded

13 it on the log sheet as I was instructed to do. I

14 understood this to mean that the SAPS had requested

15 authorisation from the Commissioner" – I don't know which

16 Commissioner – "to use water cannons, rubber bullets and

17 the like to disperse the crowd."

18 [14:22] And in respect of those, the last two things that

19 I spoke to you, Botes and Van der Merwe, if I do the other

20 three I just want to put to you what I'm going to argue,

21 which is a much more serious proposition. Given that we

22 have agreed, you and I, that the bargaining what-do-you-

23 call-it, collective bargaining is a matter of power

24 relations between the two parties, I'm going to argue that

25 if Lonmin knew as long as 6 o'clock in the morning that –

Page 10821

1 or rather as long as since the 14th that the police were,

2 quote/unquote, "planning to go into them all" and, two, as

3 long as 6 o'clock on the 16th that the plan was there to

4 move into phase 3 as it were, then what incentive would

5 they have to negotiate with the protesters and that's a

6 rhetorical question but I'm going to argue that police's

7 action in allowing these people to be privy to what they

8 were planning to do, disturbed the collective bargaining

9 positions against the protesters and was not a display of

10 impartiality.

11 CHAIRPERSON: It's just a proposition, Mr

12 Burger. He admits it's a rhetorical question so she

13 doesn't have to answer it, so let's move on.

14 MR BURGER SC: As long as she needn't

15 answer I don't have an objection, sir.

16 MR MPOFU: We're also going to put that

17 the police used equipment, including aircraft, which

18 belonged to one of the parties in the dispute in which one

19 of them was a party.

20 CHAIRPERSON: There's an objection to

21 that. That's not entirely correctly formulated. The

22 videographers apparently used – I'm not sure if this

23 evidence is out yet but it's in a statement that has been

24 before, may or not be before us yet, they used cameras

25 provided by Lonmin and the police used a helicopter, a

Page 10822

1 Protea – which was under contract from Protea Coin, it
 2 actually belonged to Protea Coin but it was the subject of
 3 a contract between Protea Coin and Lonmin.
 4 MR MPOFU: Yes, no –
 5 CHAIRPERSON: That's the correct
 6 formulation.
 7 MR MPOFU: That's correct, Chairperson,
 8 that's correct. The word "belonging" is a bit much in the
 9 circumstances insofar as the aircraft is concerned.
 10 Remember I said including aircraft, but the point is that
 11 other equipment such as the – what do you call it, the CCTV
 12 screens and other materials at Lonmin belonged to Lonmin
 13 but as far as the aircraft is concerned the Chairperson is
 14 right, it was only procured by them, subcontracted from
 15 Coin.
 16 CHAIRPERSON: I don't know if I've been
 17 counting correctly, is that your sixth of the eight
 18 propositions or seventh?
 19 MR MPOFU: Well, on our list it's the
 20 fifth, Chairperson. Maybe I have split some of them or
 21 combined some of them.
 22 CHAIRPERSON: Okay, carry on –
 23 MR MPOFU: There are few left –
 24 CHAIRPERSON: Carry on.
 25 MR MPOFU: The next one is that the 270

Page 10823

1 or so people who were arrested were taken to number 1 shaft
 2 at Lonmin and processed there before they were taken to the
 3 police station. In addition, your well-known press
 4 conference on the 17th of August, the day after the
 5 massacre, was held at the Lonmin game farm. And before I
 6 come to the last one or the last two, the key point in my
 7 argument is that in the eyes of the protesters at least,
 8 but also of the reasonable citizen of South Africa, these
 9 specific actions would not be viewed as not taking sides or
 10 to use one word, exhibits of impartiality. The penultimate
 11 one is that the police, although they have given some
 12 severe criticisms to Lonmin now after the fact, turned a
 13 blind eye to what they saw as offensive behaviour on the
 14 part of one of the parties in, for example, dubbing the
 15 people as faceless but were prepared to punish perceived
 16 offensive behaviour on the part of the other party with
 17 death.
 18 CHAIRPERSON: No – no, Mr Mpofu, I think
 19 that question, that proposition can't stand.
 20 MR MPOFU: Well, then I'll break it down
 21 –
 22 CHAIRPERSON: A number of points, the
 23 first one is I'm not sure that they turned a blind eye on
 24 the allegation of facelessness. On the contrary, they went
 25 out of their way to rebut it. And the second question is

Page 10824

1 that – of course it's a controversial matter upon which we
 2 will have to decide – whether the police decided or planned
 3 to kill the people or whether the killing that took place
 4 was a consequence of, as the police allege, a threatened
 5 attack against which they had to defend themselves and
 6 their colleagues.
 7 MR MPOFU: Yes, no –
 8 CHAIRPERSON: You've got trouble with
 9 that proposition, if I were you I would withdraw it.
 10 MR MPOFU: Yes, the second proposition
 11 you can ignore but what I'm going to put to you is that it
 12 is the view of the police, at least according to their
 13 opening statement, that Lonmin's inconsistent approach must
 14 have sent mixed messages to the protesters and that's a
 15 reference to the fact that they had negotiated with the
 16 RDOs allegedly in July and that they were refusing now.
 17 That's the view of the police. It is also their view that
 18 Lonmin created the beast that it later found impossible to
 19 tame, the beast being the violent strikes that contributed
 20 to this tragedy, that was also the view of the police.
 21 MR BURGER SC: Is my learned friend now
 22 putting indications of a toxic relationship between Lonmin
 23 and the police?
 24 CHAIRPERSON: I thought so. I couldn't
 25 quite understand the last one myself –

Page 10825

1 MR BURGER SC: I'm lost.
 2 CHAIRPERSON: I think we're together in
 3 that but let him put his propositions, he's near the end,
 4 let's get the comments of the witness and then we can move
 5 on. Otherwise we have debates about it, it just takes more
 6 time. Let him – but I take your point, the last two don't
 7 sound like evidence of toxic collusion. If anything, they
 8 –
 9 MR MPOFU: No.
 10 CHAIRPERSON: - something else but
 11 anyway, that's a matter for argument. Mr Mpofu, you've got
 12 one more proposition to put, have you?
 13 MR MPOFU: Yes. Chairperson, I have to
 14 say this now, all I'm saying – obviously I've said, I've
 15 even played open cards before. I'm saying despite these
 16 criticisms, they did not do a certain thing. So you can't
 17 reduce it to an infantile –
 18 CHAIRPERSON: No – no.
 19 MR MPOFU: - you know, level. Okay.
 20 CHAIRPERSON: [Inaudible]
 21 MR MPOFU: Thank you, Chairperson. All
 22 I'm saying –
 23 CHAIRPERSON: [Inaudible]
 24 MR MPOFU: Yes. Thank you, Chair. Thank
 25 you, Chairperson.

Page 10826

1 CHAIRPERSON: Let's have the last
 2 proposition.
 3 MR MPOFU: Thank you, Chairperson.
 4 CHAIRPERSON: None of what I've said was
 5 on record but just as well.
 6 MR MPOFU: Yes. Thank you, Chairperson.
 7 You – it was also, despite the view of the police that the
 8 blame of the two unions is not mitigated by Lonmin's
 9 conduct in fanning the flames of inter-union rivalry, when
 10 on 23 July it negotiated the wage deal directly with the
 11 workers –
 12 MR BURGER SC: I object to this question,
 13 it's completely out of order and I'd like a ruling on this.
 14 This witness cannot help you on it, sir, and to simply
 15 allow Mr Mpofu to go on and on and on is unfair to my
 16 client.
 17 CHAIRPERSON: Mr Mpofu, what do you say
 18 about the objection to this last point?
 19 MR MPOFU: Well –
 20 CHAIRPERSON: That may be the view of the
 21 police as stated here –
 22 MR MPOFU: Ja.
 23 CHAIRPERSON: But does it really advance
 24 the debate on the point that you're busy arguing?
 25 MR MPOFU: Well –

Page 10827

1 CHAIRPERSON: And if it does, you could
 2 argue it at the end surely?
 3 MR MPOFU: Yes.
 4 CHAIRPERSON: I don't think you should
 5 put it to the witness.
 6 MR MPOFU: Okay.
 7 CHAIRPERSON: You've put a number of
 8 propositions to her –
 9 MR MPOFU: Chair, I won't put it to the
 10 witness. All I'm going to do is just to tell you where I'm
 11 going with it and as you say, one day it may or not be –
 12 all I'm saying is this, the police had valid or invalid
 13 criticisms of the behaviour on each side and that on the
 14 one side where they were residing, being served with tea
 15 and using equipment and so on they turned a blind eye to
 16 those infractions. And on the other half a side they
 17 turned semi-automatic rifles, that's all.
 18 CHAIRPERSON: I don't know that turning
 19 semi-automatic rifles is evidence of toxic collusion but
 20 let me try to reformulate your question. What I understand
 21 Mr Mpofu to be saying is that we know from the passage he
 22 read from the opening statement that the police were
 23 critical of Lonmin's conduct at various stages during the
 24 period covered by our investigation but what he says is
 25 they didn't communicate those objections to Lonmin at the

Page 10828

1 time, they went along with Lonmin and acted in a way as if
 2 they had no objection to what Lonmin were doing or not
 3 doing. And he is suggesting that that reticence by the
 4 police, that failure to communicate this disagreement with
 5 Lonmin on certain points is evidence that there was a kind
 6 of a collusion between the two. I think that's your point,
 7 is it?
 8 MR MPOFU: That's correct, Chair.
 9 CHAIRPERSON: Have we now got all your
 10 propositions?
 11 MR MPOFU: No, Chair, we've got another
 12 one. The last one is something which is a bridge to the
 13 next topic that I'm going to deal with and it is that,
 14 significantly, you – I'll connect it to you at the end –
 15 the Police Minister at least allowed himself to be
 16 influenced and directed towards certain actions and
 17 positions by individuals who happened to be directly in,
 18 part of Lonmin, who also happened to be politically
 19 powerful - which concerns, quote/unquote, were communicated
 20 to you, according to the Minister.
 21 MR BURGER SC: Chair, there's no factual
 22 basis for that statement, none whatsoever. This witness is
 23 on record to say that when the Minister spoke to her he
 24 didn't mention any names. There was no suggestion that the
 25 Minister put any pressure on her. There was no suggestion

Page 10829

1 that she put any pressure down the line. General Annandale
 2 gave evidence too long, there was no suggestion to him that
 3 he had pressure put upon him by anybody from higher up, so
 4 there's no factual basis for this statement and it's, with
 5 respect, out of order to put it to this witness. I've
 6 objected before, I repeat my objection.
 7 MR MPOFU: Chairperson –
 8 MR SEMENYA SC: More pertinently –
 9 MR MPOFU: Sorry, sorry –
 10 CHAIRPERSON: Mr Mpofu, Mr Semenya wants
 11 to say something too.
 12 MR SEMENYA SC: Mr Mpofu is not a mind
 13 reader, Chair, with respect, that the Minister allowed
 14 himself to be influenced. Where is he going to get the
 15 evidence to support that?
 16 MR MPOFU: Okay. Firstly Chairperson,
 17 the factual basis of what I'm putting I'm going to read out
 18 from the Minister's statement. Secondly, Mr Semenya is
 19 correct, it's actually not even the witness, it's me who
 20 said I'm going to assume in her favour that he did not
 21 mention names. That's not the point I'm canvassing. I
 22 can't go against my own say-so. The only thing I'm putting
 23 to the witness and the only thing that connects her with
 24 this is paragraph 18, which I'm going to read now, of the
 25 statement. So it's not mind reading –

Page 10830

1 CHAIRPERSON: 18 of the Minister's –
 2 MR MPOFU: Sorry, of the Minister's
 3 statement, yes and before I read it, Chairperson, I just
 4 want to make it clear that when I'm reading it now as I was
 5 reading it earlier, you'll remember that I – when I'm
 6 reading it now as I was reading it earlier, I'm assuming in
 7 the witness's favour that all that was communicated to her
 8 were the concerns without necessarily them being labelled
 9 as belonging to X or Y, but that the so-called concerns
 10 were related to her comes from what I'm going to read which
 11 I've read before. Paragraph 15, "I am advised that Mr
 12 Senzeni Zokwana, the president of the National Union of
 13 Mineworkers, testified before this honourable Commission
 14 that on 12 August" –
 15 CHAIRPERSON: Has the witness got the
 16 statement in front of her?
 17 MR MPOFU: I'm sorry, yes.
 18 CHAIRPERSON: FFF29.
 19 MR MPOFU: It's FFF29, sorry, sorry
 20 General. I think she's got it in front of her, ja. "I am
 21 advised that Mr Senzeni Zokwana, the president of the NUM,
 22 testified before this honourable Commission that, 1. on 12
 23 August 2012 he had a telephonic conversation with me (the
 24 Minister) concerning the Marikana incident." 15.2, "During
 25 that said conversation he requested that adequate SAPS

Page 10831

1 members be deployed at Marikana to avoid a further loss of
 2 life." 16, "I (the Minister) also had a telephonic
 3 conversation with Mr Cyril Ramaphosa regarding his concerns
 4 about Marikana." And it's the next two paragraphs that
 5 connect the witness. "I informed both Mr Zokwana and Mr
 6 Ramaphosa in response that I would convey their requests
 7 and concerns to the National Commissioner and ensure that
 8 SAPS was dealing with the matter. I also informed them
 9 that I would ensure that SAPS attended to this matter."
 10 18, "Having been alerted to the situation in Marikana as
 11 indicated above, I discussed the issue with the National
 12 Commissioner and received assurances that SAPS was able to
 13 handle the matter." So -
 14 [14:41] MR BURGER SC: Chair, Chair, then what
 15 was put to the witness was quite improperly put. If that's
 16 the basis for what was put as improper pressure on a
 17 Minister then perpetuated from the Minister down to the
 18 National Commissioner, it is improperly put. I object to
 19 it and I invite my learned friend to withdraw that
 20 statement.
 21 CHAIRPERSON: Well, there's a further
 22 problem and that is that it appeared from some of the
 23 evidence we had that Mr Ramaphosa must have communicated
 24 with the Minister on I think the 15th and I can't remember
 25 if the witness actually confirmed that but that certainly

Page 10832

1 was the 15th. So if the conversation referred to in para 18
 2 was on the 15th or possibly even the morning of the 16th,
 3 then I'm not sure if there's any causal connection between
 4 the discussions because by that time the NIU people, the
 5 STF people, the TRT people, all the other people who were
 6 brought to Marikana had already arrived. They'd started
 7 coming a day or two before that. I'm not sure if there's a
 8 causal connection but anyway. They'd been deployed much
 9 earlier, it would appear, before any conversation took
 10 place between the Minister and the National Commissioner
 11 who is reported in the next, well, in para 20, as having
 12 said that the SAPS was already dealing with the matter and
 13 she gave an assurance that the SAPS was capable of handling
 14 the matter. So it would appear that there's, if all that's
 15 correct, there's no causal connection between any telephone
 16 conversation between the Minister and the National
 17 Commissioner in relation to the build up of police
 18 personnel on the scene and the deployment and so on. So
 19 there are two problems –
 20 MR MPOFU: yes.
 21 CHAIRPERSON: I'll give you a chance to
 22 deal with them.
 23 MR MPOFU: Yes, thank you Chairperson.
 24 Well, thank you Chairperson, I'm glad that at least I'm
 25 privy to the Chairperson's prima facie view on the causal

Page 10833

1 connection. I will explain the causal connection.
 2 CHAIRPERSON: [Inaudible] - the causal
 3 connection, what Mr Burger complains about is that you
 4 suggested, that what you had put constituted improper
 5 pressure brought on the National Commissioner by the
 6 Minister and then somehow transmitted down and his
 7 complaint, as I understand it, related to that phrase
 8 "improper pressure."
 9 MR MPOFU: Well –
 10 CHAIRPERSON: He invited you to withdraw
 11 that and reformulate the question in a less objectionable
 12 fashion.
 13 MR MPOFU: Yes. Well Chairperson,
 14 remember the topic we are dealing with. I'm saying the
 15 pressure is improper, (a) insofar as it comes from the one
 16 side of the dispute which is the Lonmin side, that's the
 17 first thing. The second thing which I said is that it's
 18 improper insofar as it came from politically powerful
 19 individuals who had access to the Minister. So those are
 20 matters that we can argue. If someone thinks that those
 21 are rightful things, well, we'll argue that one day but I'm
 22 entitled certainly to put to the witness those two
 23 propositions, that one, it was from the one side and he
 24 acted on it with – together or rather transmitted it as you
 25 correctly put it, Chair, to this witness. And two, what I

Page 10834

1 call the political – remember there’s a third game changer
 2 in my earlier formulation, is exactly the fact that there
 3 was political pressure put to bear. Whether at the end I
 4 will succeed in that is another matter but I can’t be
 5 disentitled now from putting it to the witness, one. Two,
 6 coming to your point, Chair, of the causal connection, I
 7 have –
 8 CHAIRPERSON: Sorry Mr Mpofo, before you
 9 get to the second point –
 10 MR MPOFU: Yes.
 11 CHAIRPERSON: You’ve got the first point,
 12 it suggests an improper pressure. What’s improper about
 13 one party to a dispute who complains there’s been a
 14 breakdown of law and order, that his side or its side is
 15 being subjected to violence, intimidation, damage to
 16 property, murder and so on, in complaining about that to
 17 the police and if he gets the impression that the police
 18 are not dealing with it properly, going higher up in the
 19 police and saying look here, something must be done about
 20 this. Is that improper? Would that not be a perfectly
 21 proper approach by the party concerned to endeavour to
 22 protect his rights?
 23 MR MPOFU: Well Chairperson, with the
 24 greatest respect, if it would have been equally accessible,
 25 let’s put it that way, to the other side to fly about to

Page 10835

1 Cape Town and demand a meeting with Ministers and for
 2 messages to be passed to the President and the Minister of
 3 Police and all that, then of course it would be proper but
 4 the point I’m making –
 5 CHAIRPERSON: Sorry, can I put a problem
 6 to you about it? What exactly should the Minister have
 7 received, what kind of representation should the Minister
 8 receive from the other side, the side allegedly involved in
 9 a breakdown of law and order? Could AMCU have been heard
 10 or the non-unionised strikers perhaps because I think it’s
 11 controversial whether AMCU were involved. Could the non-
 12 unionised strikers have phoned the Minister and said look
 13 here, there’s been a breakdown of law and order here, there
 14 have been murders, NUM people have – well, employees of
 15 Lonmin have been killed, Lonmin property has been damaged
 16 but please listen to our side and don’t ask the police to
 17 send in more people. I mean surely that would be a totally
 18 unrealistic proposition to expect anyone to even consider.
 19 MR MPOFU: No Chairperson, I’m sorry.
 20 The point is simply this, I’m putting to this witness that
 21 the Minister – remember the Minister might say later that I
 22 actually told the witness about these phone calls but I’m
 23 assuming in her favour for now that he didn’t mention
 24 names. All I’m putting to her is that she was the
 25 recipient, to put it mildly, of communication which sought

Page 10836

1 to influence operational matters from one side of the
 2 equation. Remember Chairperson, that it’s not a fairly
 3 simple matter of just the deployment and so on. There’s
 4 the big question of what I call the characterisation of the
 5 problem at Lonmin. That was also the subject of these
 6 communications. Actually it was the major subject that the
 7 government people, the Minister must be told to stop
 8 characterising this as a labour dispute but to characterise
 9 it as, only purely as a criminal matter. That
 10 characterisation, Chairperson, is much more cynical than
 11 meets the eye because remember that the Minister –
 12 CHAIRPERSON: Surely it would be cynical
 13 to say that this was only a labour dispute. It’s true
 14 there were some dead bodies on the ground and there were
 15 some cars that had been burnt –
 16 MR MPOFU: Exactly.
 17 CHAIRPERSON: - and there was other
 18 damage that had been done but that doesn’t matter, this is
 19 purely a labour matter. That would be a cynical –
 20 MR MPOFU: It is.
 21 CHAIRPERSON: - observation, would it
 22 not?
 23 MR MPOFU: Oh certainly, Chair, and in
 24 fact this is exactly how it is put in the e-mail in
 25 question. “I’ve had two discussions with the DG, in each

Page 10837

1 case I’ve characterised this as not, and it’s put in bold
 2 letters, “as not an industrial relations issue but a civil
 3 unrest, destabilisation, criminal issue that could not be
 4 resolved with political intervention and needs the
 5 situation to be stabilised by the police or army.” So
 6 let’s not trivialise this, Chairperson.
 7 CHAIRPERSON: I don’t think it’s being
 8 trivialised. The other point that you have to deal with is
 9 what the Minister says in paragraph 21 of his statement.
 10 MR MPOFU: I’m going to –
 11 CHAIRPERSON: He now makes the point that
 12 he regularly receives complaints and requests from members
 13 of society regarding policing matters. “In such
 14 situations,” he says, “I take these up with the National
 15 Commissioner in order to ensure that these matters are
 16 attended to.” And then he says this, “My approach is based
 17 on the constitutional segregation of the roles of the
 18 Minister of Police from that of the National Commissioner
 19 referred to above.” Now is there any basis upon which it
 20 can be suggested on material before us now, I’m not saying
 21 that you may not have other grounds later when the Minister
 22 gives evidence, but is there any basis on what’s before us
 23 at the moment which justifies you in suggesting that the
 24 Minister acted in a manner not consistent with the
 25 constitutional segregation of the roles of the Minister of

Page 10838

1 Police on the one hand and the National Commissioner on the
 2 other?
 3 MR MPOFU: Yes –
 4 CHAIRPERSON: If there isn't any basis
 5 for suggesting that then I don't see how you can put it to
 6 the witness.
 7 MR MPOFU: No, there is, Chairperson,
 8 two. There are two bases. One of those bases is a matter
 9 that I'm going to come to, which is that when this witness
 10 says that her statement in paragraph 23, that she's
 11 discussed with the Minister the action to be taken – that's
 12 her cross-examination that came from Mr Burger – paragraph
 13 23 of her statement, I'm going to argue that that evidence
 14 must be disbelieved and if I have to, obviously I'm not
 15 going to go through that whole thing about page 7 and what
 16 have you, I'll assume that the Commission has heard enough
 17 of that. So that's the first basis, that if it's going to
 18 be disbelieved then she did discuss this matter at an
 19 operational level with the Minister, that's –
 20 CHAIRPERSON: That's another matter.
 21 MR MPOFU: Thank you –
 22 CHAIRPERSON: But you can scarcely put a
 23 question to her, a hypothetical question, on the basis that
 24 the Commission doesn't believe you and on the basis that
 25 the Commission makes a finding adverse to your evidence on

Page 10839

1 this particular point, what do you say about that? I don't
 2 think –
 3 MR MPOFU: I'm going there, Chairperson.
 4 CHAIRPERSON: No, I don't see how such a
 5 question can be put to a witness.
 6 MR MPOFU: Yes but –
 7 CHAIRPERSON: What do you say, cross-
 8 examining counsel says to the witness, what do you say if
 9 the court doesn't believe you when it says you weren't
 10 there but – and then a question is asked based on the
 11 hypothesis. A witness would be entitled to refuse, to say
 12 I don't accept the hypothesis, I say my evidence should be
 13 believed.
 14 MR MPOFU: I'm not –
 15 CHAIRPERSON: Whether the evidence will
 16 be believed is a matter that time alone will tell.
 17 MR MPOFU: Chairperson, I'm not
 18 addressing the witness right now, I'm addressing you.
 19 You've asked me whether there's a basis, on the evidence
 20 before us, on which I will attach the argument and I was
 21 answering you. The second basis is that – and this
 22 attaches to the crucial question of characterisation – why
 23 is it that this political individual wanted the
 24 characterisation to be changed cynically, as we have said?
 25 Here is the answer and it's before this Commission. The

Page 10840

1 Minister has said, said somewhere in Mpumalanga, "There
 2 must be a good appreciation of the distinction between the
 3 need to use maximum force against violent criminals and
 4 minimum force in dealing with fellow citizens. We should
 5 not have any blurring lines when it comes to command and
 6 control." We have this witness who has said in FFF5 that
 7 maximum force was used and I know there's a debate about
 8 that and, yes, that is the second basis, that if anyone who
 9 knows that there is this distinction, which is wrong by the
 10 way, should be hell bent in trying to show the Minister and
 11 the witness that this is a situation that requires maximum
 12 force according to their wrong formulation and not the one
 13 where you are dealing with fellow citizens. So these are,
 14 that flying around in aeroplanes to change the
 15 characterisation was not a matter of semantics, it was a
 16 matter to prepare the ground and that's the causal
 17 connection point, to prepare the ground for the murder of
 18 these people using maximum force as this witness has –
 19 CHAIRPERSON: The points you've raised
 20 are all matters for argument. I don't know that it's
 21 appropriate for you to put the arguments to the witness
 22 because I don't know that her answers, with respect, will
 23 take the matter any further and I say with respect to her.
 24 MR MPOFU: Yes.
 25 CHAIRPERSON: But so I'm not disposed to

Page 10841

1 allow you to ask those questions, but the general
 2 proposition, the series of propositions you put to her, you
 3 asked her what does she say about your contention that
 4 there's a toxic collusion – I take it you've now reached
 5 the stage where that question can be put, so let me put it
 6 on your behalf. You've heard a series of propositions –
 7 MR MPOFU: No, Chairperson, I'm sorry.
 8 If you'd just allow me to put one –
 9 CHAIRPERSON: Alright –
 10 MR MPOFU: No, not a new proposition –
 11 CHAIRPERSON: Well, let's –
 12 MR MPOFU: Just to preface your
 13 assistance to me, ja.
 14 COMMISSIONER HEMRAJ: Mr Mpofo, before
 15 you do that, the question about undue influence, are you
 16 relying only on the contents of the statement of the
 17 Minister or are there other facts that shore up that
 18 allegation? I just need to understand that carefully
 19 before the question is put, please.
 20 MR MPOFU: Ja. Chairperson and
 21 Commissioners, obviously one of the handicaps that I have
 22 in this line of questioning is the fact that at least two
 23 of the dramatis personae that I'm relating to, namely the
 24 Minister and Mr Ramaphosa, have not yet testified. So
 25 obviously the handicap that I have or rather the best I can

Page 10842

1 do in curing that inherent handicap is to use, (a) the
 2 statement of the Minister and the –
 3 CHAIRPERSON: The e-mail that Mr
 4 Ramaphosa wrote –
 5 MR MPOFU: Which the Minister has now
 6 confirmed, at least partially. You must remember when I
 7 said this at the opening address it was still open to
 8 someone to say, oh, Mpfu has manufactured these e-mails or
 9 whatever, or there was no such communication. Now we are
 10 in a different terrain where the Minister has under oath
 11 confirmed that such communication occurred and bearing in
 12 mind that what I call those inherent handicaps, at the very
 13 least, I can't be expected to then recall this witness once
 14 –
 15 CHAIRPERSON: Mr Ramaphosa –
 16 MR MPOFU: - has testified.
 17 CHAIRPERSON: Sorry, Mr Mpfu, I'm sorry.
 18 I don't understand why you can't. If more information
 19 becomes available which you didn't have at your disposal
 20 when this witness was being cross-examined you would be
 21 perfectly entitled to get up and say, in the light of this
 22 fresh evidence which takes the matter significantly further
 23 than it was when the National Commissioner was in the
 24 witness box, questions which I couldn't ask her at the time
 25 because I didn't have this material, then I ask for her to

Page 10843

1 come back. If there is such material which justifies her
 2 being recalled, you can bring the application and depending
 3 on the strength of the material, the application will
 4 succeed.
 5 MR MPOFU: Fair enough. Thank you,
 6 Chairperson.
 7 MR BURGER SC: Chair, may I say
 8 something?
 9 MR MAHLANGU: May I just very briefly, I
 10 see the people at the back are all looking at me and are
 11 surprised why I am so quiet about all the discussion that
 12 is taking place. Very briefly.
 13 MR BURGER SC: Chair, may I say
 14 something? Have you finished? It is now nearly 3 o'clock.
 15 The witness has played no role for the past hour in what is
 16 an inquiry into what happened from the 6th to the 19th.
 17 This is not a monologue. This is not a forum for one
 18 party. This is a forum where we have to ascertain the
 19 facts and we don't get to the facts but what I want to say
 20 is this, this whole debate about improper pressure being
 21 put on the Minister you will remember arose when we
 22 produced documents, we're one of the few parties, Lonmin,
 23 who produced documents right up front and we produced the
 24 Ramaphosa e-mail as we were duty bound to do. That was
 25 then used by Mr Mpfu in his opening as the evidence of a

Page 10844

1 toxic relationship between the police and Lonmin. In fact
 2 I read about it the next day in The Star when the e-mail
 3 was highlighted and I read about this relationship between
 4 my client and Lonmin in The Star on the front page. We, to
 5 this day, know how The Star got that e-mail. So that was
 6 the first leg he relied upon. Then we had evidence and we
 7 had this theme being developed from time to time. We had
 8 evidence from this witness indicating that there was no
 9 substance in it and I don't want to repeat her evidence,
 10 she's given her evidence. We've received an affidavit from
 11 the Minister indicating that there's no substance
 12 whatsoever in this pressure point. The Commissioner asked
 13 today a very valid question, what do you rely upon for your
 14 submission that there was a toxic relationship? What do
 15 you rely upon for what submission? We hear it is the e-
 16 mail, which is neutral, and we hear it is the Minister's
 17 affidavit, which is neutral. We don't hear anything about
 18 NUM having phoned the Minister with a very similar request
 19 as every responsible citizen will do, but the fact of the
 20 matter is that we again today have a whole spiel to this
 21 witness suggesting that there was an imbalance in the
 22 relationship, that somehow my client had an improper
 23 relationship with the police. Based on what? On nonsense.
 24 The submission is opportunistic, I say it's irresponsibly
 25 made and it's no good for my learned friend to ride over

Page 10845

1 objections, make long speeches and then go on with the next
 2 question. It's harmful to my client and I invite you to
 3 protect my client from this type of cross-examination which
 4 has got no factual basis up to now. My learned friend may
 5 come one day, grab a rabbit from a hat and produce evidence
 6 to substantiate that. I'll be the first to concede that
 7 it'll then be a responsible submission but if these are the
 8 two grounds for the submission it's not responsible.
 9 [15:01] MR MPOFU: Well, Chairperson, I think
 10 that begs the second point which I was making to you about
 11 the causal connection issue which you raised, validly
 12 Chairperson, and I'm going to try and put it very
 13 simplistically. The argument is simply this, Chairperson,
 14 that the efforts by politically powerful individuals, which
 15 were successful, to change the characterisation by the
 16 government of the event to a criminal event - strictly
 17 criminal, no labour matter – were intended and did result,
 18 were intended and did result in two things. One, it was to
 19 convince the Minister, as it is said in one of the e-mails
 20 289E where it says, "I've just had a discussion with Susan
 21 Shabangu in Cape Town. 1 –" this is from Mr Ramaphosa –
 22 "She agrees that what we are going through is not a labour
 23 dispute," which is what it was out for at 9 o'clock, "but a
 24 criminal act." So now we've got the stage for murder set.
 25 "She will correct her characterisation of what we are

<p style="text-align: right;">Page 10846</p> <p>1 experiencing. 2. She is going into Cabinet and will brief 2 the President as well and get the Minister of Police, Nathi 3 Mthethwa, to act in a more – more – “pointed way.” 4 Now if, with the greatest respect, Chairperson, 5 that, those actions and the communications have obviously 6 achieved their intended result as at 3 o'clock on the 15th, 7 had nothing whatsoever to do with the fact that all of a 8 sudden on the 16th in the morning it's D-day, warra-warra, 9 all those things and people get killed in a more pointed 10 way and are dealt with as criminals with maximum force, 11 according to this witness, then nothing ever will be 12 connected under the Sun. 13 CHAIRPERSON: Mr Mpofo – 14 MR TIP SC: Chair yes, I unfortunately 15 need to enter the debate and certainly not with a view to 16 prolonging it because it has already been a very extensive 17 and less than productive one but I'm drawn into it because 18 of the treatment that my learned friend Mr Mpofo has given 19 to what he calls politically powerful interventions or 20 rather interventions by politically powerful individuals. 21 He has focused his submissions on Mr Ramaphosa and hence, 22 via Mr Ramaphosa, they're directed towards Lonmin, that 23 he's drawn our attention to the paragraphs from the 24 statement of the Minister where the very first person who 25 enters the arena of communications to the police and</p>	<p style="text-align: right;">Page 10848</p> <p>1 is intimidation, there is violence and there is now killing 2 and he made it absolutely clear that it was not because 3 there were people striking who had gathered on the koppie. 4 It was not a matter for him that this was a collective 5 bargaining issue or that it was an issue that Mr Mpofo 6 inaccurately, incidentally, describes as a wage dispute. 7 He called for law and order forces because of the killings. 8 Now if that is part of the undue influence that 9 people were seeking to exert on the security and police 10 establishment of this country then I need to know that and 11 I am not deriving that from what Mr Mpofo is saying about 12 Mr Ramaphosa and Lonmin. If Mr Zokwana was on a similar 13 mission, if Mr Zokwana was concerned was to secure murder, 14 then that needs to be made clear today and we will 15 establish in due course why it was not put to Mr Zokwana. 16 CHAIRPERSON: I'll take the tea 17 adjournment now. Mr Mpofo, you can consider your position. 18 It may well be in the light of submissions that have been 19 made that you'd wish to reformulate your question. 20 Basically you want to put to the witness that there was 21 improper or undue influence. The complaint relates to what 22 the allegation of impropriety or undueness rests on. 23 Perhaps if you can put that succinctly to the witness – 24 MR MPOFU: Yes. 25 CHAIRPERSON: You may find a way through</p>
<p style="text-align: right;">Page 10847</p> <p>1 invitations to the police to secure a proper presence and 2 the effective restoration of law and order, is Mr Zokwana, 3 the president of my client and he does that, not on the 4 15th, he does that on the 12th and perhaps I can just 5 recapitulate very briefly the essence of it because it is 6 important in the context of the thesis that Mr Mpofo is now 7 placing before the Commission, ultimately with a view to an 8 answer to some set of propositions, that on the 12th Mr 9 Zokwana arrives because he has heard reports about the 10 incident on the morning of the 12th in which two security 11 men were killed and he comes to Lonmin because he is very, 12 very concerned. The first thing that he does is to arrange 13 a meeting with Lonmin and it's a logical and perfectly 14 proper recourse because Lonmin have the security apparatus 15 that is in place and he needs to establish whether or not 16 there is sufficient security. He is not entirely satisfied 17 – I know that I'm repeating things I've said previously, 18 but he then calls the Provincial Commissioner's office. He 19 is not yet satisfied that there has been a sufficient 20 response on the part of the police and he then telephones, 21 on the 12th of August, the Minister. 22 Now Mr Zokwana has given evidence and his 23 evidence on this topic has been very, very clear and it is 24 entirely unchallenged. He seeks police intervention 25 because there has been a breakdown of law and order. There</p>	<p style="text-align: right;">Page 10849</p> <p>1 the problem, because I imagine you want to move on to other 2 points. 3 MR MPOFU: I do. 4 CHAIRPERSON: Well, let's take the tea 5 adjournment, give you a chance to think about it, 6 reformulate your question and we'll resume in quarter of an 7 hour's time. 8 [COMMISSION ADJOURNS COMMISSION RESUMES] 9 [15:32] CHAIRPERSON: The Commission resumes. 10 Major-General, sorry, National Commissioner – the last 11 witness was a Major-General. National Commissioner, you're 12 still under oath. Mr Mpofo, have you found a way out of 13 the thicket in which we were all involved before we took 14 the adjournment? 15 MR MPOFU: Yes, yes Chairperson, I have. 16 It's very simple, Chairperson. 17 CHAIRPERSON: Before you do that, forgive 18 me, when we came back here we found documents on our desk, 19 on the table, statement of the National Commissioner base 20 document, advancement base document, a not signed and not 21 commissioned statement, amendments on paras 3 and 24, 22 signed and commissioned statement, scanned document. Now 23 to whom must we say thank you for these documents? 24 MR MPOFU: To SAPS. 25 MR SEMENYA SC: Chair, it's us. You'd</p>

Page 10850

1 recall we had requested documents of the statement as and
 2 when they were generated. Those are the documents.
 3 CHAIRPERSON: Thank you, and presumably
 4 you will deal with them in re-examination. Alright, okay
 5 thank you. Mr Mpofo, sorry, I interrupted you.
 6 MR MPOFU: Thank you, Chairperson. I
 7 just want to say that those documents, insofar as they may
 8 be dealt with in re-examination, we also just received them
 9 now so obviously we will reserve our rights. But
 10 Chairperson, yes, to respond to you or rather to Mr Tip
 11 through you, Chairperson and Commissioners, unfortunately I
 12 was interrupted when I was still – Mr Tip is correct – when
 13 I was confining my line of questioning to Mr Ramaphosa.
 14 However, contrary to what Mr Burger said, I had in reading
 15 the Minister's statement, I deliberately started at 15.1 so
 16 as to cover the point that Mr Tip is correctly raising and
 17 the answer is this. The only appellation, as it were, to
 18 which I will argue Mr Zokwana conforms is the one I've made
 19 of politically powerful individuals for the obvious reasons
 20 that were led in the evidence but I absolve him completely
 21 from the rest of the things that I had observed to you,
 22 Chairperson, namely the "campaign" to re-characterise the
 23 events, one. Two, the desire to bring out the army
 24 although that one is a bit marginal, I'll explain just now.
 25 And the desire expressed in the e-mails for maintaining the

Page 10851

1 police presence at about 800, that's in one of the e-mails.
 2 And fourthly, the desire for getting the Minister "to act
 3 in a pointed way." So the only common ground, which is Mr
 4 Tip's question, is simply the issue of the appellation.
 5 However, where I do join issue with NUM in
 6 response to these issues is where, insofar as there is
 7 coincidence between the call for the army and the police in
 8 the e-mails by Lonmin and a similar call being made in BBB7
 9 where it says that, quote, in the NUM statement, "We call
 10 for the deployment of a special task force or the SANDF to
 11 deal decisively with the criminal elements in Rustenburg
 12 and its surrounding mines" and so on, says the NUM general
 13 secretary. And if I'm going to argue any second
 14 coincidence it will simply be that there was, whether it
 15 was fortuitous or not, but that both Lonmin and the NUM to
 16 that extent called for the involvement of the army and in
 17 this case it says special task force. The other one
 18 didn't, it just said the police but that's a minor, that's
 19 a minor issue. So I hope that deals sufficiently with Mr
 20 Tip' concerns, in other words insofar as some bring him in
 21 and some of the issues bring him out.
 22 CHAIRPERSON: Ask your question and let's
 23 see whether we, it's – Mr Tip, I beg your pardon.
 24 MR TIP SC: Yes, just a matter of
 25 courtesy really to say to my learned friend Mr Mpofo that

Page 10852

1 that clarifies the position, that is what I sought and I
 2 appreciate that.
 3 CHAIRPERSON: You've put a long series of
 4 propositions, some of which have had to be left out for the
 5 moment at least -
 6 MR MPOFU: Yes.
 7 CHAIRPERSON: - to the witness. The main
 8 concern was the suggestion, putting that there was undue
 9 influence or improper pressure. That was the thrust, as I
 10 understood it, of Mr Burger's complaint, one of the main
 11 ones. Now are you minded to reformulate your question?
 12 MR MPOFU: Yes I am, Chairperson, and I'm
 13 not going to put any new propositions, that I promise.
 14 What I wanted to do is, before the Chairperson was going to
 15 crystallise the crux I just wanted to put one, one little
 16 proposition as a preface, if the Chair doesn't mind. It is
 17 this –
 18 CHAIRPERSON: Just a little proposition.
 19 MR MPOFU: Yes. General, the only
 20 connection that you have to this – and I'm sorry because as
 21 I've conceded already, I'm putting to you things that other
 22 witnesses are going to come and say and what have you,
 23 which is partly unfair because you were obviously not privy
 24 to their communications – the only reason I'm putting this
 25 to you is insofar as you are drawn into those discussions

Page 10853

1 and the following, that I'm going to argue that the only
 2 reason why these so-called concerns were communicated to
 3 you by the Minister was to transform those political
 4 concerns, as I say, into operational action as desired by
 5 those politicians. You may once again – all I'm saying is
 6 that you were told so that you can operationalise the
 7 thing. What motivated the Minister or whoever, I don't
 8 expect you to be answerable for.
 9 CHAIRPERSON: The question is, you've
 10 heard it suggested that it's going to be argued on the
 11 basis of what we call circumstantial evidence that there
 12 was indirect, sorry, there was undue influence or indirect
 13 - or sorry, undue influence or improper pressure brought to
 14 bear on you and through you and the whole SAPS as a result
 15 of the factors that were relied on. Now what do you say to
 16 the proposition that there was improper pressure or undue
 17 influence? Would you agree with that?
 18 GENERAL PHIYEGA: No, I do not agree.
 19 CHAIRPERSON: Anything you want to add,
 20 or are you content to rest with that answer? Anything you
 21 want to add, or are you content to abide by that answer
 22 you've just given?
 23 GENERAL PHIYEGA: No, I don't agree.
 24 I've already given a lot of testimony around this issue.
 25 CHAIRPERSON: I see, alright.

Page 10854

1 MR MPOFU: Thank you, Chairperson.
 2 General, we'll leave it at that for argument and that's in
 3 relation to what I call the last point, the political
 4 pressure point but in relation to the other six or seven
 5 points I'm going to argue that viewed from the point of
 6 view of the protesters and even a neutral citizen, all the
 7 other things, the use of the radios, the joint use of this
 8 and that, that I mentioned earlier, I'm going to argue that
 9 those were not instances which displayed the requisite
 10 amount of impartiality and that they would be viewed, they
 11 can be viewed as having taken sides and that's all –
 12 CHAIRPERSON: Now there are two points
 13 about that, Mr Mpofo.
 14 MR MPOFU: Yes.
 15 CHAIRPERSON: The first one is whether
 16 this witness's opinion about that is receivable for the
 17 reasons we discussed before.
 18 MR MPOFU: Sure.
 19 CHAIRPERSON: The second point is that
 20 there may be a legal question. Where the law says, where
 21 the Act and the Constitution say that the police must be
 22 impartial, does that mean must also appear to be impartial
 23 or is it enough that they are actually impartial, never
 24 mind what impression may be created to the contrary? But
 25 that's also a matter which you will debate at the end of

Page 10855

1 the hearing.
 2 MR MPOFU: Yes.
 3 CHAIRPERSON: It's not something that the
 4 witness can appropriately help us on.
 5 MR MPOFU: I concede that, Chairperson.
 6 My question to her is limited only to the factual
 7 propositions but as far how they can be interpreted, I
 8 concede what you're saying Chairperson, namely that I can't
 9 ask her that one derives from this – I'm only saying what
 10 I'm going to argue. She can –
 11 CHAIRPERSON: Well, she's heard what
 12 you're going to argue.
 13 MR MPOFU: Yes.
 14 CHAIRPERSON: And her counsel has also
 15 heard what you're going to argue.
 16 MR MPOFU: Yes.
 17 CHAIRPERSON: And if he wants to get some
 18 answers from her in re-examination –
 19 MR MPOFU: He will.
 20 CHAIRPERSON: - which refutes or attempts
 21 to refute the point you're going to argue, I'm sure we can
 22 depend upon him to do so.
 23 MR MPOFU: Thank you, Chairperson.
 24 CHAIRPERSON: So would you like to move
 25 on to your next point?

Page 10856

1 MR MPOFU: Yes, thank you, Chairperson.
 2 The next point is somewhat linked but separate and it is
 3 this, I take it that you and I agree that from everything
 4 that we've heard from you, from the Minister, from the
 5 Constitution, from the Act, it would be fair to say that
 6 you are the conduit or the bridge between the political
 7 sphere and the operational sphere and by that I mean when
 8 things have to be transposed from the one sphere to the
 9 other, you stand at the intersection between those two
 10 spheres. Would that be a fair statement?
 11 MR SEMENYA SC: I don't understand the
 12 question, Chair. All we know are the duties of the
 13 National Commissioner of Police and we know what the
 14 ministerial responsibilities are under the law.
 15 MR MPOFU: Chairperson, I'm sure the
 16 witness understands the question but I'll try and rephrase
 17 it. The simple proposition that I'm putting to you, madam,
 18 is that in terms of how the relationship is structured as
 19 between what we may call the political sphere which is
 20 referred to in the Constitution and which you yourself have
 21 testified about as being the purview of the Minister, and
 22 the operational sphere which is the policing side of
 23 things, to put it colloquially, the National Commissioner –
 24 maybe I shouldn't say you – the National Commissioner,
 25 whoever it is, is constitutionally speaking the bridge

Page 10857

1 between those two spheres, between the so-called political
 2 advice leadership, all the terms that you used, and the
 3 operational sphere. The National Commissioner is, by
 4 prescription of the Constitution, the conduit through which
 5 those two spheres are connected, correct?
 6 GENERAL PHIYEGA: I think in the
 7 statement that was led by Adv Semanya and yourself too, you
 8 clearly articulated the roles, those powers and within that
 9 context I understand my role to be, you know, as
 10 articulated in that manner.
 11 CHAIRPERSON: I think what Mr Mpofo
 12 suggests is that if the Minister has got anything to say to
 13 the police he says it to you. He doesn't ring up Sergeant
 14 Van der Merwe in the Tshwane police station or he doesn't
 15 even speak to a Provincial Commissioner, he speaks to you
 16 on the basis that you will then take it further insofar as
 17 you consider it appropriate with the rest of the service.
 18 I think that's basically his point, is that right Mr Mpofo?
 19 MR MPOFU: That's correct, Chair.
 20 GENERAL PHIYEGA: I think –
 21 MR SEMENYA SC: The evidence has already
 22 been given on this point, that the Minister can speak to
 23 the National Commissioner, the Minister can speak to the
 24 Provincial Commissioner, as he did.
 25 CHAIRPERSON: I think he's asking the

Page 10858

1 question –

2 MR MPOFU: General –

3 CHAIRPERSON: - summing up that answer as

4 a springboard to something else, so let's move on.

5 MR MPOFU: Yes, thank you.

6 CHAIRPERSON: I'm just going to say – you

7 say the Minister can speak to a Provincial Commissioner?

8 Alright, okay, that's the evidence but primarily I suppose

9 the Minister would speak to you. If the Minister has

10 something general to say –

11 MR MPOFU: Constitutionally.

12 CHAIRPERSON: - to the police, the

13 appropriate person, not necessarily the only person but the

14 most appropriate person would be you and I take it from

15 your evidence it seems that that what happens from time to

16 time in a perfectly proper way, is that correct?

17 GENERAL PHIYEGA: Judge, I think this is

18 why I gave the answer the way I did because it was

19 important for me to say the powers and the roles and the

20 responsibilities are clearly articulated on how we relate.

21 The way it is asked it carries a lot of overtures and

22 that's why I wanted to constrict myself to what my roles,

23 my responsibility, the flow of – and it's very clear. He

24 has asked me about that, I've been led on that and I think

25 I'd like to keep my answer as that.

Page 10859

1 MR MPOFU: Maybe I can assist you by

2 using an example. When on the 17th it was required to

3 transmit information as to what has happened at the

4 operational level, namely the tragedy or whatever you call

5 it, and what I call the political sphere – in this case you

6 had to transmit information to the President – you, in

7 conformity with your duties as I have defined them, caused

8 FFF4 I think to be compiled so that that information from

9 the operational sphere, through you, could be transmitted

10 to your political principals. That's the kind of role I'm

11 explaining, that you are ordinarily speaking the conduit

12 and I accept readily what Mr Semenya is saying, that in

13 real life the police, the Minister might pick up the phone

14 and speak to so-and-so. I'm talking constitutionally as

15 things are set out, that you are generally speaking the

16 main conduit through which the two spheres are conducted as

17 happened on the 17th or on the evening of the 16th.

18 CHAIRPERSON: Sorry to interrupt you. I

19 don't know that it necessarily affects your point but as a

20 matter of fact exhibit FFF4 was sent to the Minister of

21 International Relations for the eyes of the President, as

22 it happens, not directly to the Minister of Police.

23 MR MPOFU: Fair enough.

24 CHAIRPERSON: I don't know whether that

25 affects your point –

Page 10860

1 MR MPOFU: No, it doesn't, Chair.

2 CHAIRPERSON: As a matter of accuracy

3 that's what happened.

4 MR MPOFU: No, no, thank you very much,

5 Chairperson, it's still the political sphere so-called. Do

6 you understand it now and if you do, do you agree with it?

7 [15:32] GENERAL PHIYEGA: I've already answered

8 you on that one to say, it's very consistent with what you

9 asked about my roles and responsibilities then, today, and

10 my answer is still the same on this point in terms of

11 understanding my responsibilities.

12 MR MPOFU: Okay, I'll move on but I will

13 argue that you're really evading a simple question which is

14 only a stepping stone to what I'm going to put to you. I

15 think the laws, the Act and the Constitution are very clear

16 as to the role of the National Commissioner, that's why I

17 didn't, I'm removing it to you as such but I'll move on.

18 COMMISSIONER HEMRAJ: But she has

19 repeatedly said that she's answered that question.

20 GENERAL PHIYEGA: Mm.

21 MR MPOFU: Well, she –

22 COMMISSIONER HEMRAJ: And she said –

23 MR MPOFU: A "yes" would –

24 COMMISSIONER HEMRAJ: Mr Mpofo, and she

25 has said that she stands by her evidence as it was led and

Page 10861

1 as she was cross-examined. Now how is that evasive?

2 MR MPOFU: Well, a question just simply

3 requires a yes in such a simple question. Even if she had

4 answered it before, I am entitled under cross-examination

5 to ask it again and she can just say yes. We would have

6 long been gone –

7 CHAIRPERSON: You said you were going to

8 argue she's evasive. I take it Mr Semenya is going to

9 argue she isn't.

10 MR MPOFU: I'm sure.

11 CHAIRPERSON: Let's move on.

12 MR MPOFU: Yes. Okay, I'll address this

13 rather – I think one day I've got the right to ask

14 questions which have been asked before but that's another

15 question. The reason I'm asking you that question is

16 whether it would be fair to say that any information,

17 generally speaking, any information that is found in the

18 political sphere – you know what I mean by that, I've

19 defined it – ordinarily would have come via yourself, such

20 as FFF4, insofar as it comes from the ground, from the

21 operational sphere. You are the person who would have

22 transmitted that information upwards or downwards, so to

23 speak.

24 CHAIRPERSON: Mr Mpofo, isn't that the

25 question you've asked already? So shouldn't you – I

Page 10862

1 thought you were going to move on. You've moved on by just
 2 jumping up and down on the same spot. I suggest you put a
 3 foot forward and move forward in the real sense.
 4 MR MPOFU: Fine, Chairperson, as long as
 5 it's recorded that I still don't have an answer. Your
 6 evidence, I asked you when I restarted my cross-examination
 7 if, having considered or rather having heard what you've
 8 heard up to then and up to now, you were prepared to admit
 9 to any mistake or mistakes that the police might have
 10 committed in the operation and your answer was no. I'm
 11 just reminding you. Is that still your answer?
 12 GENERAL PHIYEGA: Yes.
 13 MR MPOFU: Now assuming that, well, from
 14 what Commissioner Hemraj, you did answer the question so I
 15 want to assume in your favour that you've answered it in
 16 the affirmative. If indeed you are that conduit then the -
 17 can I take you to, oh, it doesn't have an exhibit number
 18 yet, Chairperson, but it's a statement that I gave to you a
 19 week ago.
 20 CHAIRPERSON: It will be exhibit FFF30.
 21 Is that right, Ms Pillay?
 22 MR MPOFU: 3-0?
 23 MS PILLAY: That's correct, Chair.
 24 MR MPOFU: That is a copy of the article
 25 from the Mail & Guardian website – rather The Guardian,

Page 10863

1 sorry, in the UK, website – which says, "Jacob Zuma says
 2 response to Lonmin massacre shows democracy is working."
 3 We did –
 4 CHAIRPERSON: It looks like an article –
 5 I'm sorry to interrupt you – it looks like an article, it's
 6 taken from the Internet. It looks like an article
 7 appearing on the website of The Guardian, that's the UK
 8 newspaper on – it looks like the 13th December 2012. Look
 9 at the top right-hand corner, is that correct?
 10 MR MPOFU: That's correct, Chairperson.
 11 CHAIRPERSON: Alright. It's an article
 12 headed, "Jacob Zuma says response to Lonmin massacre shows
 13 democracy is working" and it appears to be a report of an
 14 interview between President Zuma and Mr David Smith, who I
 15 take it is the Guardian correspondent in South Africa.
 16 MR MPOFU: That's correct, Chairperson.
 17 Commissioner or General, I will take you to page 2. You'll
 18 see that the page numbering is cut out so just go to the
 19 second page at the top of which it says "Zuma, meanwhile"
 20 and so on and so on.
 21 MR BURGER SC: Can I just ask, Chair,
 22 what is the question going to be to this witness or is Mr
 23 Mpofo going to read the whole statement?
 24 CHAIRPERSON: No, he's referred the
 25 witness to page 2 and it's quite clear from the previous

Page 10864

1 questions he asked that – it's the sixth paragraph I think,
 2 the paragraph beginning "How many other people," that's
 3 going to form the focus of his question I would think,
 4 based upon the previous question he's just asked. Is that
 5 right, Mr Mpofo?
 6 MR MPOFU: That's right, Chairperson.
 7 Yes, yes, I'm afraid Chairperson that is where I'm going
 8 but for context can I start at "Nobody expected Marikana?"
 9 CHAIRPERSON: I suppose in fairness to
 10 the witness and to those who are listening here who haven't
 11 got the benefit of the document in front of them, it's
 12 probably just as well if you read that, ja.
 13 MR MPOFU: I promise you Chair, I won't
 14 ask many questions or any questions about the other part.
 15 CHAIRPERSON: You can ask any relevant
 16 questions you like.
 17 MR MPOFU: Thank you, Chair. Quote,
 18 "Nobody expected Marikana," he said – he being the
 19 President - "but I think you can't fail to appreciate that
 20 Marikana happened in a democratic country. If it was
 21 during apartheid, there were many Marikanas almost on a
 22 daily basis, and there was nothing that anyone could do
 23 about it whatever. Once this one happened, you saw the
 24 reaction of the country. The churches were there, the
 25 traditional leaders were there, government was there. We

Page 10865

1 established the ministerial committee immediately to deal
 2 with the issue, established a judicial commission of
 3 inquiry to make it a point that it does not happen again,
 4 but also to say what caused it. Zuma rejected calls for
 5 the Police Minister, Nathi Mthethwa, to quit, saying the
 6 unrest was caused by a dispute over wages. Now you can't
 7 say the Minister of Police is responsible for that, to
 8 start the thing. When the workers were striking, they had
 9 every other kind of weapon in their hands. In fact long
 10 before the shooting, 10 people had died including two
 11 policemen, two security policemen" which meant two security
 12 guards. "Now all of that is not taken into account." And
 13 as the Chairperson indicated, the important paragraph is
 14 the one that I'm going to read now. He said, "How many
 15 other people would have died if, for example, police did
 16 not move to disarm these people? Nobody can tell. At a
 17 spur of the moment, a mistake happened. Now if such a
 18 mistake happened, you throw the Minister away, I don't know
 19 on what basis because there are facts that need to be
 20 weighed." Now, the issues that I want to confine - there
 21 are various other issues which we, if we have time, will or
 22 will not deal with but the issue that I want to confine my
 23 question to now is that, firstly, assuming that as I have
 24 said the information that is available at the political
 25 sphere would have come from, among other people, yourself,

Page 10866

1 whether you are aware of the mistake that happened at the
 2 spur of the moment in respect of the Marikana tragedy that
 3 the President was referring to.
 4 GENERAL PHIYEGA: I don't.
 5 MR MPOFU: And I read the statement in
 6 much fuller context, in fairness to you as the Chairperson
 7 said, but also to put what the President said in its proper
 8 context and, well, I'm going to put to you that what I'm
 9 going to argue insofar as it affects you, is that indeed of
 10 course we agree with the President that the whole thing was
 11 caused by a mistake but more importantly I'm going to argue
 12 that if you are the "conduit", quote/unquote, that I
 13 described earlier, that that information – we know that the
 14 President was not there – must have come from either
 15 yourself or people who had the ear of the people who were
 16 there who are your soldiers –
 17 CHAIRPERSON: I'm not sure that follows.
 18 I think we can assume that the President reads the
 19 newspapers, that he watches the television news programmes
 20 and he has a wide variety of sources of information and
 21 this is his opinion. I'm not sure we can confine it
 22 necessarily to information he received from the police
 23 service. Maybe we should ask that question directly.
 24 MR MPOFU: Yes, that's why I'm asking the
 25 question.

Page 10867

1 CHAIRPERSON: Alright, this view which
 2 the President expressed that a mistake happened at a spur
 3 of the moment, as he put it, in accordance with your
 4 understanding based on all the information you received,
 5 would you agree with that?
 6 GENERAL PHIYEGA: No, I don't.
 7 CHAIRPERSON: You don't. So does it
 8 follow from your answer and what from you said to Mr Mpofo
 9 that the President did not receive that information from
 10 you or from the SAPS as far as you are aware?
 11 GENERAL PHIYEGA: I think, Judge, what's
 12 a little bit confusing here is, the question I was asked by
 13 Adv Mpofo is whether I know what mistake. I said I don't
 14 know what this mistake is. Maybe he knows, he can share
 15 what the mistake is because I don't know. He continues
 16 talking about a mistake. If he's got a standpoint about
 17 what the mistake is, maybe he can explain. I don't have
 18 that explanation of what is the so-called mistake.
 19 MR MPOFU: Chairperson, for that, I think
 20 in fairness I will deviate from tradition and answer your
 21 question. You see when the Chairperson put that question
 22 which was going to be my next question, there would have
 23 been two possible answers, either that it came from you or
 24 it didn't come from you, which you've now answered. If it
 25 didn't come from you then obviously I wouldn't expect you

Page 10868

1 to go the extra step of unpacking what the so-called
 2 mistake is but if it had emanated from you or in your
 3 presence even, then I would have been entitled to ask you
 4 the further question as to the nature of the mistake which
 5 you or someone else transmitted to the President. So
 6 that's all dependent on the question that the Chairperson
 7 put to you.
 8 CHAIRPERSON: She said she doesn't know
 9 what the mistake was.
 10 MR MPOFU: Yes, that's exactly but I
 11 didn't know she was going to say that.
 12 CHAIRPERSON: No, no, I understand.
 13 Perhaps you can take the point up further, if you consider
 14 it worthwhile, tomorrow morning – I beg your pardon, not
 15 tomorrow morning, Thursday morning at 9:30.
 16 MR MPOFU: Thank you, Chairperson, I just
 17 want to indicate that I'm really, the next section is just
 18 going to be what I'm going to put. There's one or two
 19 things that –
 20 CHAIRPERSON: What you're saying is that
 21 General Mpenzwe must be ready in the pavilion with his pads
 22 on, ready to bat quite soon after half past 9.
 23 MR MAHLANGU: Chairperson, the
 24 Commissioner wants to state something.
 25 CHAIRPERSON: Oh, sorry.

Page 10869

1 GENERAL PHIYEGA: Chairperson, I have
 2 requested a long time ago when I started that I'm not
 3 available on the 6th and 7th.
 4 MR MPOFU: On the?
 5 GENERAL PHIYEGA: On the 6th and 7th I'm
 6 not available.
 7 CHAIRPERSON: I'm afraid we weren't told
 8 that beforehand but Mr Semanya, I take it you wouldn't
 9 object – at least I hope you wouldn't object to interposing
 10 General Mpenzwe in chief at least on Thursday and the half
 11 of Friday we'll be sitting. I know it's not desirable
 12 normally to interpose witnesses but in this case I think
 13 it's important that we don't waste time. If it's only done
 14 on the basis of the evidence-in-chief then you shouldn't be
 15 prejudiced unduly. We're not establishing a precedent, I
 16 don't want to put pressure on you either of course.
 17 MR SEMENYA SC: Chair, if it were
 18 agreeable to everyone and Mr Mpofo's remaining point is a
 19 30-minuter, I think we'd be better served just to sit until
 20 5.
 21 [16:11] CHAIRPERSON: I think Mr Gumbi is going
 22 to ask some questions –
 23 MR SEMENYA SC: I only have one –
 24 CHAIRPERSON: And I have a few questions
 25 that I'm proposing to ask as well, so I'm not sure we can

Page 10870

1 guarantee the curtain will coming down at 5 o'clock.
 2 MR SEMENYA SC: Chair, we will oblige but
 3 I must state that in our estimation this witness has been
 4 in the witness box precisely for this, because there was an
 5 interposition of a witness and the cross-examination that
 6 went with it. We started the cross-examination from the
 7 start and she's still in the witness box even now.
 8 CHAIRPERSON: I'm aware of that. I take
 9 it, as long as Mr Mpfu promises not to come up with any
 10 more questions based upon what the interposed witness has
 11 to say and so confines himself to the questions that he's
 12 already prepared then it shouldn't be a problem. There
 13 shouldn't be a problem, Mr Semenya. Only in chief, Mr
 14 Semenya.
 15 COMMISSIONER TOKOTA: Mr Mpfu, how long
 16 do you think it will take you to complete this cross-
 17 examination?
 18 MR MPOFU: Well, that's a difficult one
 19 if you put it in time terms because it depends on the
 20 answers. There's one issue which has something to do with
 21 the deployment of the SANDF and then there's a very small
 22 issue emanating from the President's thing about the inter-
 23 ministerial committee, those are definitely going to be
 24 short. And then it's a question of putting a series of
 25 propositions, so it shouldn't be long ordinarily but it

Page 10871

1 depends on the answers.
 2 CHAIRPERSON: The problem, Mr Gumbi has
 3 indicated he's going to be half an hour –
 4 MR SEMENYA SC: Chair –
 5 CHAIRPERSON: And he's given us documents
 6 and things to read.
 7 MR SEMENYA SC: If Mr Mpfu finishes, I'm
 8 sure my prejudice is halved.
 9 CHAIRPERSON: It's now about 12 minutes
 10 past 4, do you think you can finish by, say quarter to 5?
 11 I understand there's a thing we colloquially call injury
 12 time over which you have no control, I understand that.
 13 MR MPOFU: Yes.
 14 CHAIRPERSON: But subject to that, do you
 15 think you can?
 16 MR MPOFU: Chairperson, if I can just
 17 confer with my attorney. Chairperson sorry, I'm reminded
 18 that some of the injured persons who are here and the
 19 persons that we're acting on behalf of, as of today
 20 obviously have to travel a longer distance and there's a
 21 bit of unrest in Marikana, as Mr Tip had indicated in the
 22 morning and so it might be unfair to continue in their
 23 absence, at least the primary ones because the bus has been
 24 prearranged but speaking for myself, I would meet that
 25 injury time.

Page 10872

1 CHAIRPERSON: You could always tell them,
 2 they can always be told what happened in their absence once
 3 they've gone, couldn't they? I see people are leaving now
 4 anyway, not knowing what we're going to do.
 5 MR MPOFU: No, Chairperson, my
 6 instructions are that we should continue in the normal
 7 course whenever it is suitable to do so.
 8 CHAIRPERSON: Alright, we'll carry on
 9 until quarter to 5. Oh, you don't want to carry on until
 10 quarter to 5? Are you prepared to do so?
 11 MR MPOFU: Until?
 12 CHAIRPERSON: Your clients have gone
 13 already, they didn't even know what we were going to do.
 14 So they've gone, they can be told what – they can later be
 15 shown the transcripts, if necessary, and it can be
 16 interpreted to them specially. As soon as we have the
 17 transcript, which we'll have I take it by Thursday morning,
 18 they can have it translated to them.
 19 MR MPOFU: No Chairperson, yes, I don't
 20 think we can read anything from the fact that they have
 21 left. Once again it's what I call Hobson's choice.
 22 Obviously they would like to be here but they also don't
 23 want to be killed when they get home, so –
 24 CHAIRPERSON: So what do you suggest we
 25 do?

Page 10873

1 MR MPOFU: Chair, let me try again,
 2 Chairperson. Thank you, Chairperson. Chairperson, yes –
 3 oh, sorry.
 4 MR MAHLANGU: The Commissioner is just
 5 consulting with [inaudible].
 6 CHAIRPERSON: Commissioner, it looks as
 7 if you want to say something. Would you like to turn your
 8 microphone on and say what you want to say, if there is
 9 something that you wish to say?
 10 GENERAL PHIYEGA: I've actually asked
 11 somebody to call the office to see if I cannot shift the
 12 Thursday issue to the session on Friday and Saturday and
 13 finish the thing, Judge, because I do want to finish.
 14 CHAIRPERSON: Does that mean we must wait
 15 a couple of minutes before you get the message back from
 16 your office? Shall we adjourn for five minutes in the hope
 17 that within those five minutes we get the information which
 18 you seek?
 19 GENERAL PHIYEGA: Sure.
 20 CHAIRPERSON: Alright, we'll take the
 21 adjournment for five minutes.
 22 [COMMISSION ADJOURNS COMMISSION RESUMES]
 23 [16:27] CHAIRPERSON: The Commission resumes. In
 24 the light of what Mr Semenya told me, I allowed Adv Hemraj
 25 to leave so that she could catch a plane. Would you like

1 to tell me in the auditorium what you told me outside, Mr
2 Semenya?

3 MR SEMENYA SC: Yes, Chair. The National
4 Commissioner will make herself available on Thursday.

5 CHAIRPERSON: Thank you very much,
6 National Commissioner, we appreciate the gesture you've
7 made. This is about a valid postponement. The Commission
8 adjourns until Thursday morning at 9:30.

9 [COMMISSION ADJOURNED]

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<p>A</p> <p>aan 10769:3 10787:12 10787:15</p> <p>aanval 10768:14</p> <p>abbreviation 10768:20</p> <p>abide 10853:21</p> <p>ability 10770:16</p> <p>able 10743:15 10745:14 10749:11 10764:14 10775:7,14 10775:21 10776:11 10776:21 10778:5 10786:17 10789:5,10 10803:8 10808:16 10831:12</p> <p>absence 10871:23 10872:2</p> <p>absolutely 10848:2</p> <p>absolve 10850:20</p> <p>accept 10746:3 10770:18 10771:8 10773:12,13 10783:9 10791:8 10839:12 10859:12</p> <p>accepted 10799:23</p> <p>accepts 10744:22</p> <p>access 10820:8 10833:19</p> <p>accessible 10834:24</p> <p>accommodate 10754:8 10754:21</p> <p>accommodating 10807:12</p> <p>accommodation 10753:17</p> <p>account 10734:17 10865:12</p> <p>accountable 10791:5</p> <p>accuracy 10734:10,10 10742:2 10749:8 10753:1 10860:2</p> <p>accurate 10732:1 10734:19 10735:5,8 10735:14 10737:15 10748:13 10755:16 10756:17 10793:23</p> <p>achieved 10846:6</p> <p>achieving 10807:15</p> <p>acknowledged 10739:5</p> <p>acquiesced 10816:12</p> <p>act 10753:2 10790:20 10791:15 10797:11 10797:19,22 10798:17 10807:22 10808:18 10845:24 10846:3 10851:2 10854:21 10856:5 10860:15</p> <p>acted 10749:9,9 10752:21 10809:10 10828:1 10833:24 10837:24</p> <p>acting 10737:14 10745:6 10749:7 10779:14 10808:12</p>	<p>10871:19</p> <p>action 10734:8,24 10821:7 10838:11 10853:4</p> <p>actions 10744:18 10772:20,20,21 10775:3 10823:9 10828:16 10846:5</p> <p>activity 10796:19</p> <p>add 10730:17 10754:7 10789:5 10812:23 10853:19,21</p> <p>addition 10823:3</p> <p>address 10800:1 10801:19 10842:7 10861:12</p> <p>addressed 10806:13,14 10806:21 10807:3</p> <p>addressing 10839:18 10839:18</p> <p>adequacy 10756:11</p> <p>adequate 10830:25</p> <p>adequately 10782:10</p> <p>adjourn 10873:16</p> <p>ADJOURNED 10874:9</p> <p>adjournment 10754:6 10754:6 10755:8 10772:1 10810:6 10848:17 10849:5,14 10873:21</p> <p>adjourns 10772:3 10810:17 10849:8 10873:22 10874:8</p> <p>admit 10862:8</p> <p>admits 10821:12</p> <p>Adv 10741:10 10781:25 10857:7 10867:13 10873:24</p> <p>advance 10774:4 10826:23</p> <p>advancement 10849:20</p> <p>advantage 10798:9</p> <p>adverse 10838:25</p> <p>advice 10857:2</p> <p>advised 10830:11,21</p> <p>Advocate 10731:16 10771:13 10773:4 10796:1</p> <p>aeroplanes 10840:14</p> <p>affect 10741:15</p> <p>affidavit 10844:10,17</p> <p>affirmative 10862:16</p> <p>afraid 10779:10 10780:22 10801:18 10864:7 10869:7</p> <p>Africa 10823:8 10863:15</p> <p>African 10772:10 10791:13</p> <p>Afrikaans 10761:11 10763:20 10768:18 10768:23 10787:17</p> <p>afternoon 10744:11 10806:20</p> <p>ago 10761:24 10862:19 10869:2</p>	<p>agree 10732:19 10733:15,15 10735:16 10741:17 10759:10 10771:3,9 10781:7 10785:25 10791:24 10792:1 10797:13,18,21 10798:23 10799:2 10814:9 10816:16 10853:17,18,23 10856:3 10860:6 10866:10 10867:5</p> <p>agreeable 10869:18</p> <p>agreed 10731:25 10732:7,9 10733:4,13 10735:15 10767:10 10790:17,18,21 10793:17 10816:12 10820:22</p> <p>agreement 10795:22</p> <p>agrees 10733:25 10814:6 10845:22</p> <p>aircraft 10821:17 10822:9,10,13</p> <p>alerted 10831:10</p> <p>alia 10780:19</p> <p>allegation 10789:11,25 10811:18 10823:24 10841:18 10848:22</p> <p>allegations 10775:22</p> <p>allege 10824:4</p> <p>alleged 10792:2,3</p> <p>allegedly 10757:3 10824:16 10835:8</p> <p>allow 10765:25 10782:16 10826:15 10841:1,8</p> <p>allowed 10828:15 10829:13 10873:24</p> <p>allowing 10804:20 10821:7</p> <p>alright 10732:17 10733:8 10734:2 10743:1 10754:3 10758:23 10766:10 10794:12 10808:15 10841:9 10850:4 10853:25 10858:8 10863:11 10867:1 10872:8 10873:20</p> <p>Amanda 10820:5</p> <p>ambiguous 10819:16</p> <p>AMCU 10736:3,20,24 10738:1 10739:11,14 10740:9,11,24 10741:7,19 10743:5 10746:7 10747:2 10794:18 10835:9,11</p> <p>amendments 10849:21</p> <p>amount 10854:10</p> <p>anger 10774:17</p> <p>angry 10787:20</p> <p>Annandale 10756:21 10776:16 10781:24 10788:16 10789:4,10 10789:15 10811:25</p>	<p>10819:8 10829:1</p> <p>anomalous 10810:3</p> <p>answer 10737:2 10739:9 10741:3 10748:5 10750:2 10756:12 10770:7 10773:20,24 10775:20 10781:19 10782:12 10789:18 10790:15 10793:10 10802:13 10803:2 10804:15,17,18,21 10808:17 10821:13 10821:15 10839:25 10847:8 10850:17 10853:20,21 10858:3 10858:18,25 10860:10 10862:5,10 10862:11,14 10867:8 10867:20</p> <p>answerable 10853:8</p> <p>answered 10749:23 10807:8 10815:13 10860:7,19 10861:4 10862:15 10867:24</p> <p>answering 10771:15 10805:6 10839:21</p> <p>answers 10840:22 10855:18 10867:23 10870:20 10871:1</p> <p>antagonists 10802:24</p> <p>anticipando 10747:11</p> <p>anybody 10800:17 10829:3</p> <p>anyway 10766:1 10783:3 10801:2 10825:11 10832:8 10872:4</p> <p>apart 10767:11</p> <p>apartheid 10864:21</p> <p>apologise 10762:20</p> <p>apparatus 10847:14</p> <p>apparent 10738:20</p> <p>apparently 10730:15 10747:4 10821:22</p> <p>appear 10772:23 10832:9,14 10854:22</p> <p>appeared 10831:22</p> <p>appearing 10863:7</p> <p>appears 10743:13 10863:13</p> <p>appellation 10850:17 10851:4</p> <p>application 10843:2,3</p> <p>appointed 10734:23</p> <p>appreciate 10781:4 10787:4 10852:2 10864:19 10874:6</p> <p>appreciation 10840:2</p> <p>approach 10803:25 10807:21 10824:13 10834:21 10837:16</p> <p>appropriate 10730:16 10734:8 10774:7 10784:15 10786:6 10800:8,25 10803:7</p>	<p>10809:8 10840:21 10857:17 10858:13 10858:14</p> <p>appropriately 10855:4</p> <p>appropriateness 10734:6,18</p> <p>approve 10779:3</p> <p>approved 10777:3,15 10778:7 10782:22,25</p> <p>approximately 10820:9</p> <p>April 10732:9 10733:11</p> <p>area 10734:15 10737:10,12,14 10796:22</p> <p>arena 10846:25</p> <p>argue 10745:20 10751:25 10752:20 10780:16 10781:10 10782:9 10783:9 10786:8 10787:1 10794:13 10798:6 10801:25 10813:4 10814:22,23 10820:20,24 10821:6 10827:2 10833:20,21 10838:13 10850:18 10851:13 10853:1 10854:5,8 10855:10 10855:12,15,21 10860:13 10861:8,9 10866:9,11</p> <p>argued 10756:19 10853:10</p> <p>arguing 10826:24</p> <p>argument 10745:18 10752:10 10756:1,1,6 10756:17,23 10757:1 10764:1 10774:5,9 10783:2 10785:18,24 10786:13 10790:15 10808:24 10813:14 10814:1,9 10823:7 10825:11 10839:20 10840:20 10845:13 10854:2</p> <p>arguments 10756:3 10818:12 10840:21</p> <p>army 10837:5 10850:23 10851:7,16</p> <p>arose 10750:13 10843:21</p> <p>arrange 10847:12</p> <p>arranged 10788:7</p> <p>arrangements 10753:11 10754:25 10755:7</p> <p>arrested 10823:1</p> <p>arrived 10760:22 10799:13 10817:16 10832:6</p> <p>arrives 10847:9</p> <p>arriving 10799:25</p> <p>article 10862:24 10863:4,5,6,11</p> <p>articulated 10797:10</p>
------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------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10857:8,10 10858:20 ascertain 10843:18 ascribed 10780:10 asked 10757:4 10761:21 10770:10 10776:20 10781:24 10781:25 10782:14 10797:17 10802:2 10807:11 10811:16 10813:2 10817:5 10819:19 10839:10 10839:19 10841:3 10844:12 10858:21 10858:24 10860:9 10861:14,25 10862:6 10864:1,4 10867:12 10873:10 asking 10732:11 10737:5 10740:13 10757:13 10761:1 10765:18 10773:18 10776:23,24 10777:16 10782:21 10786:1 10792:18 10793:7,7 10803:16 10812:3 10814:21 10857:25 10861:15 10866:24 aspect 10742:7,11 assessment 10734:6 assist 10745:14 10752:8 10777:25 10859:1 assistance 10735:5 10764:2 10841:13 assume 10768:17 10779:13,13,14 10829:20 10838:16 10862:15 10866:18 assuming 10778:24 10779:17 10830:6 10835:23 10862:13 10865:23 assurance 10832:13 assurances 10831:12 assure 10757:1 attach 10839:20 attached 10739:18 attaches 10839:22 attack 10824:5 attacked 10769:4 10778:20,24 10779:13,19,20,20 attempt 10801:19 10808:7,16 attempting 10810:8 attempts 10803:5 10855:20 attend 10810:20 attended 10758:8 10810:15 10831:9 10837:16 attendees 10819:10 attending 10755:1 attention 10846:23 attorney 10871:17	auditorium 10755:11 10805:9 10874:1 August 10740:16 10744:12 10777:13 10777:13 10817:16 10820:6 10823:4 10830:14,23 10847:21 auspicious 10730:4 authorisation 10820:15 available 10753:8 10754:11 10842:19 10865:24 10869:3,6 10874:4 avert 10753:2 averted 10748:15 avoid 10816:14 10831:1 avoids 10801:17 aware 10730:10 10748:4 10793:4,12 10798:9 10866:1 10867:10 10870:8 axiomatic 10807:19	10752:12,23 10753:3 10756:2 10762:19 10764:12 10783:2 10795:13,13,15 10797:10 10813:10 10814:21 10816:17 10816:23 10828:22 10829:4,17 10831:16 10837:19,22 10838:4 10838:17,23,24 10839:19,21 10840:8 10845:4 10853:11 10857:16 10864:22 10865:19 10869:14 bat 10868:22 BBB7 10851:8 bear 10735:19 10834:3 10853:14 bearing 10740:3 10842:11 beast 10824:18,19 beg 10851:23 10868:14 beginning 10730:3 10759:24 10864:2 begs 10845:10 behalf 10730:24 10841:6 10871:19 behaving 10780:12 behaviour 10774:15 10779:5,15 10780:18 10802:7 10823:13,16 10827:13 belabour 10787:5 belabouring 10769:25 believe 10763:6 10770:4,23 10774:20 10805:4 10838:24 10839:9 believed 10781:21 10839:13,16 belonged 10821:18 10822:2,12 belonging 10822:8 10830:9 benefit 10742:21 10768:8 10805:8 10806:2 10814:13 10864:11 bent 10840:10 best 10730:18 10733:10 10754:5 10765:7 10772:15 10773:1,17 10796:13 10799:2,8 10841:25 better 10739:2,17 10762:4,4,17 10763:20 10765:25 10768:21 10770:15 10797:6 10869:19 beyond 10789:13 10800:5 big 10778:8 10836:4 bilingual 10805:10 Bishop 10747:23 10748:3,8,16 10749:1 10749:2,19 10750:23	10751:7 bit 10733:6 10734:11 10735:20 10764:21 10793:10 10822:8 10850:24 10867:12 10871:21 blame 10799:5,6 10826:8 blasted 10767:4,4,5,12 blind 10823:13,23 10827:15 blocked 10753:25 blocking 10754:2 blom 10768:12,12,24 10769:1,1 blown 10767:11 blurring 10840:5 board 10802:12 10808:21 bodies 10836:14 body 10767:18,23 10772:17 bold 10837:1 boot 10772:17 boots 10766:8 boss 10768:13 10769:1 Botes 10817:15,25 10818:9 10819:2,8,12 10820:19 bother 10771:14 bottom 10809:23 bound 10771:7 10795:6 10843:24 Bowler 10779:3 box 10842:24 10870:4 10870:7 branch 10730:14 break 10823:20 breakdown 10800:5,23 10801:1 10834:14 10835:9,13 10847:25 breaking 10735:14 bridge 10828:12 10856:6,25 brief 10846:1 briefed 10740:23 10799:20 10810:15 10812:12 briefing 10779:24 10794:15 10815:10 briefly 10843:9,12 10847:5 bring 10770:21 10775:21 10843:2 10850:23 10851:20 10851:21 brings 10796:6 broad 10809:14 broader 10808:19 10815:14 broke 10731:17 brought 10803:11 10832:6 10833:5 10853:13 brutality 10775:1 10778:14	build 10832:17 building 10810:21 bullets 10820:16 Burger 10738:3,6,17 10745:25 10746:9 10747:8 10749:14,23 10750:21 10763:20 10763:23 10793:14 10794:21 10795:1,16 10795:19 10797:10 10799:21 10800:10 10801:5,8,23 10812:15,16 10813:16,20 10814:3 10816:6 10817:20,24 10818:6 10821:12,14 10824:21 10825:1 10826:12 10828:21 10831:14 10833:3 10838:12 10843:7,13 10850:14 10863:21 Burger's 10764:2 10814:17 10815:17 10852:10 burnt 10836:15 bus 10871:23 business 10792:15 busy 10731:22 10737:11 10749:8 10752:17 10766:16 10766:18 10770:21 10804:1,17 10811:23 10826:24
	<hr/> B <hr/> B 10786:13,14 baba 10767:20,24,24 10767:25 back 10748:12 10750:22,23 10770:22 10771:21 10773:11 10787:18 10790:16 10808:2,5 10814:25 10843:1,10 10849:18 10873:15 background 10759:19 10760:19 10812:9 bad 10756:6 10774:5 10784:4 10802:21 10803:1,2 badly 10764:22 baie 10787:12 bargain 10799:1 bargaining 10795:20 10796:13,25 10798:10,20 10799:10 10820:22 10820:23 10821:8 10848:5 base 10774:9 10779:5 10813:14 10849:19 10849:20 based 10745:16 10752:7 10756:2,3 10786:13 10813:22 10815:18,22,25 10837:16 10839:10 10844:23 10864:4 10867:4 10870:10 bases 10838:8,8 basically 10748:17 10848:20 10857:18 basis 10737:15 10746:2 10746:24,25 10747:19 10749:15		<hr/> C <hr/> C 10786:13,14 Cabinet 10846:1 call 10733:21 10774:23 10778:9 10782:2 10792:14,22 10822:11 10834:1 10836:4 10842:12 10851:7,8,9 10853:11 10854:3 10856:19 10859:4,5 10871:11 10872:21 10873:11 called 10745:13 10774:16 10799:19 10848:7 10851:16 calls 10806:20 10835:22 10846:19 10847:18 10865:4 call-it 10820:23 cameras 10821:24 campaign 10850:22 cannons 10820:16 canvassing 10829:21 can't 10747:10 10754:3 10756:6 10760:8 10761:10 10763:7 10781:2 10785:5,6 10786:7 10812:23 10813:6 10823:19 10825:16 10831:24 10834:4 10842:13 10855:8	

<p>capable 10832:13 capacity 10794:10 10798:17 Cape 10768:24 10835:1 10845:21 capital 10792:14,22 Captain 10759:2 10761:4 10764:9 10769:15 Captains 10779:23 Captain's 10761:15 cards 10825:15 care 10788:18 10796:20 carefully 10841:18 carries 10858:21 carry 10734:1 10747:19 10754:23 10775:14 10822:22 10822:24 10872:8,9 cars 10836:15 case 10740:10 10745:6 10745:19 10749:18 10755:14,16,17 10758:20 10762:17 10779:24 10781:19 10816:7 10837:1 10851:17 10859:5 10869:12 cases 10739:25 10782:6 10782:6 catch 10873:25 catches 10769:6 category 10743:25 causal 10832:3,8,15,25 10833:1,2 10834:6 10840:16 10845:11 causally 10743:20 cause 10741:16,19,20 10753:3 10780:5,12 caused 10739:20 10752:23 10755:15 10779:6 10859:7 10865:4,6 10866:11 causes 10796:5,6 CCTV 10822:11 cell 10751:2,3 Centurion 10730:5 century 10730:3,5 certain 10739:21 10750:11 10786:2 10814:10 10825:16 10828:5,16 certainly 10731:5 10756:4 10761:12 10789:4 10806:19 10819:18 10831:25 10833:22 10836:23 10846:15 Chairperson's 10832:25 chairs 10754:7,8,11,14 10754:18 challenge 10735:20 challenged 10766:22 chamber 10753:6</p>	<p>chance 10747:12 10804:17 10832:21 10849:5 change 10840:14 10845:15 changed 10759:16 10839:24 changer 10774:23 10778:10,11 10834:1 characterisation 10836:4,10 10839:22 10839:24 10840:15 10845:15,25 characterise 10836:8 characterised 10837:1 characterising 10836:8 chief 10791:11 10869:10 10870:13 chimneys 10798:16 choice 10782:9 10872:21 churches 10864:24 circuit 10733:10 circumstances 10745:4 10779:1 10800:25 10803:8 10822:9 circumstantial 10756:3 10756:3,5 10785:24 10786:8,12 10853:11 citizen 10823:8 10844:19 10854:6 citizens 10840:4,13 civil 10837:2 civilians 10783:16 10790:9 claim 10745:2 claimed 10740:23,25 10743:7 clarifies 10852:1 clarify 10772:8 10776:6 clarity 10755:14 10781:3 clashes 10736:3,19,24 10738:1 10739:11 10740:8,12,22,24 10741:8,19,20 10743:5,6 10747:2 clear 10734:4 10737:18 10739:13 10747:18 10759:1 10761:20 10810:13 10830:4 10847:23 10848:2,14 10858:23 10860:15 10863:25 clearly 10751:7 10803:25 10813:2,14 10857:8 10858:20 client 10826:16 10844:4,22 10845:2,3 10847:3 clients 10872:12 closer 10767:10 closing 10813:4,5,6,7 Coin 10822:1,2,3,15 coincidence 10851:7,14</p>	<p>colleague 10778:1 colleagues 10771:3 10777:12,19 10778:4 10781:9 10783:14 10824:6 collective 10795:20 10796:13 10798:10 10798:20 10820:23 10821:8 10848:4 collectively 10799:1 colloquially 10856:23 10871:11 collusion 10811:18 10825:7 10827:19 10828:6 10841:4 Colonel 10785:14 10788:24 coloured 10768:24 combined 10822:21 come 10732:21 10749:20 10750:1 10753:18,19,19,20 10754:19,22,22 10756:12 10764:10 10771:7 10779:21 10780:2 10785:5 10789:23 10800:9,25 10802:7,8,9 10805:12 10818:14 10823:6 10838:9 10843:1 10845:5 10852:22 10861:19 10865:25 10866:14 10867:24 10867:25 10870:9 comes 10769:5,16 10787:2,7 10811:16 10830:10 10833:15 10840:5 10847:11 10861:20 comfortable 10801:24 coming 10731:24 10745:24 10756:22 10756:22 10764:5,5 10769:21 10771:21 10790:19 10796:23 10802:3 10810:22 10832:7 10834:6 10870:1 command 10840:5 commander 10734:7 10734:14,19 commanders 10776:3 10805:20 10806:18 10807:10 commander's 10734:16 comment 10730:23 10737:6,6 10738:7,19 10742:1 10749:11 10752:21 10771:20 10771:24 10795:7 10809:20 10819:24 commenting 10770:14 comments 10751:10 10764:15 10771:17 10808:10 10813:5</p>	<p>10825:4 commission 10730:2,17 10730:20,24 10738:7 10740:4 10749:7 10750:11,15 10751:5 10755:2,3 10757:8 10762:20 10770:1 10771:15 10772:3,3,4 10773:8 10782:22 10786:22 10787:7 10793:19 10800:12 10810:17,17,18 10812:22 10817:22 10818:1,7 10830:13 10830:22 10838:16 10838:24,25 10839:25 10847:7 10849:8,8,9 10865:2 10873:22,22,23 10874:7,9 commissioned 10849:21,22 Commissioner 10731:8 10736:10 10740:7 10744:11 10745:23 10748:6 10749:2,3,11 10750:12 10756:13 10760:9,11 10771:17 10772:5,7 10775:9,20 10775:25 10776:1,6 10776:21,23 10782:14,16 10784:3 10788:3 10791:1,3 10802:17 10809:21 10810:19 10812:6,11 10816:21 10820:15 10820:16 10831:7,12 10831:18 10832:10 10832:17 10833:5 10837:15,18 10838:1 10841:14 10842:23 10844:12 10849:10 10849:11,19 10856:13,23,24 10857:3,15,23,24 10858:7 10860:16,18 10860:22,24 10862:14 10863:17 10868:24 10870:15 10873:4,6 10874:4,6 Commissioners 10771:3 10801:20 10841:21 10850:11 Commissioner's 10847:18 commitment 10772:25 committed 10730:19 10772:11 10862:10 committee 10865:1 10870:23 common 10851:3 communicate 10808:8 10827:25 10828:4 communicated 10828:19 10830:7 10831:23 10853:2</p>	<p>communication 10820:3 10835:25 10842:9,11 communications 10836:6 10846:5,25 10852:24 community 10796:24 10800:15 company 10816:25 compassionate 10771:11 10774:16 compiled 10859:8 complaining 10834:16 complains 10833:3 10834:13 complaint 10815:17 10833:7 10848:21 10852:10 complaints 10837:12 complete 10767:7 10870:16 completely 10826:13 10850:20 complicated 10743:24 computer 10754:2 computer's 10753:25 concede 10780:19 10786:11 10807:23 10812:7 10813:15 10845:6 10855:5,8 conceded 10852:21 conceding 10744:16 concentrate 10742:10 concern 10737:10,13 10737:14 10741:13 10797:1 10852:8 concerned 10745:5 10764:23 10771:20 10803:22,23,24 10822:9,13 10834:21 10847:12 10848:13 concerning 10830:24 concerns 10809:4 10828:19 10830:8,9 10831:3,7 10851:20 10853:2,4 conclusions 10813:9 condolences 10730:25 conduct 10742:6 10826:9 10827:23 conducted 10816:24 10859:16 conducts 10791:22 conduit 10856:6 10857:4 10859:11,16 10862:16 10866:12 confer 10871:17 conference 10757:12 10823:4 confess 10819:17 confident 10818:7 confine 10809:1 10865:20,22 10866:21 confined 10803:19 confines 10870:11</p>
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<p>confining 10797:9 10850:13 confirm 10745:2 10769:25 confirmed 10773:13 10782:21 10788:17 10831:25 10842:6,11 conflict 10791:20 10792:8,14,22 10793:8,11 10794:17 10799:15,19 conformity 10749:12 10859:7 conforms 10850:18 confusing 10767:14 10867:12 connect 10828:14 10831:5 connected 10730:20 10743:20 10846:12 10857:5 connection 10730:24 10739:22 10832:3,8 10832:15 10833:1,1,3 10834:6 10840:17 10845:11 10852:20 connects 10829:23 consent 10816:22 consequence 10736:10 10752:9 10824:4 consequences 10752:23 10807:17 consider 10734:14 10835:18 10848:17 10857:17 10868:13 considered 10734:13 10771:18 10784:14 10862:7 consistent 10837:24 10860:8 constituencies 10791:21 constituted 10800:23 10833:4 Constitution 10790:24 10791:11 10798:25 10812:5,24,25 10813:24 10854:21 10856:5,20 10857:4 10860:15 constitutional 10799:7 10837:17,25 constitutionally 10856:25 10858:11 10859:14 constrict 10858:22 consulting 10873:5 contact 10806:6,17 10807:5 10809:11,13 contained 10739:3 CONTD 10731:13 10811:7 contend 10742:18 10786:14 10809:16 10810:6 contended 10738:12</p>	<p>10778:19,21 contends 10777:23 content 10739:9 10853:20,21 contention 10779:5 10781:18 10841:3 contentious 10749:17 contents 10841:16 contested 10743:11 contesting 10797:22 context 10736:5 10744:7 10763:22 10767:16 10768:12 10768:25 10792:18 10794:18,24 10795:7 10795:11 10797:7 10800:17 10808:20 10808:23 10809:14 10809:14 10812:3 10816:2 10818:11 10847:6 10857:9 10864:8 10866:6,8 contextualise 10796:2 continue 10774:20 10796:19,25 10797:5 10871:22 10872:6 continues 10798:2 10867:15 continuous 10734:19 contract 10822:1,3 contractually 10795:5 contrary 10777:23 10823:24 10850:14 10854:24 contribute 10818:10 contributed 10824:19 control 10840:6 10871:12 controversial 10824:1 10835:11 conversation 10759:11 10830:23,25 10831:3 10832:1,9,16 convey 10831:6 conveyed 10731:2,6 convince 10845:19 copies 10757:21 10758:5,5 copy 10862:24 corner 10863:9 corpses 10801:12 correct 10730:23 10735:9 10736:8,18 10736:24 10737:3,23 10737:25 10738:12 10744:14 10745:2,9 10745:11 10751:25 10758:10,12,19 10760:17 10761:16 10770:25 10771:7,9 10777:4 10778:25 10784:21 10790:18 10791:12 10792:4,9 10793:5 10794:8,21 10795:2 10798:21 10799:13 10800:18</p>	<p>10803:18 10806:8,25 10809:7 10815:11,12 10815:19,19 10816:14,14 10817:3 10817:14 10822:5,7,8 10828:8 10829:19 10832:15 10845:25 10850:12 10857:5,19 10858:16 10862:23 10863:9,10,16 correctly 10734:18 10759:20 10801:21 10801:23 10802:6 10814:22 10821:21 10822:17 10833:25 10850:16 correspondent 10863:15 cost 10743:7 couldn't 10754:1 10763:5 10795:5 10824:24 10842:24 10872:3 counsel 10839:8 10855:14 counting 10822:17 country 10848:10 10864:20,24 couple 10873:15 course 10733:16 10735:9 10738:18 10751:25 10760:14 10785:22 10788:15 10800:5 10813:12 10824:1 10835:3 10848:15 10866:10 10869:16 10872:7 court 10796:14 10839:9 courtesy 10851:25 courts 10760:18 courtyard 10753:12 cover 10850:16 covered 10827:24 covers 10769:24 cows 10818:14 created 10824:18 10854:24 criminal 10836:9 10837:3 10845:16,17 10845:24 10851:11 criminals 10840:3 10846:10 critical 10730:16 10827:23 criticism 10818:20 criticisms 10823:12 10825:16 10827:13 cross 10786:5 10811:14 10839:7 10870:16 cross-examination 10731:11,13 10772:19 10786:19 10811:7 10838:12 10845:3 10861:4 10862:6 10870:5,6</p>	<p>cross-examine 10739:2 10740:1 cross-examined 10733:11 10749:19 10842:20 10861:1 cross-examining 10811:5 crowd 10795:11 10820:17 crucial 10748:20 10839:22 crux 10852:15 crystallise 10852:15 culminating 10765:1 curing 10842:1 curtain 10809:5,5 10870:1 cut 10750:15 10863:18 cynical 10836:10,12,19 cynically 10839:24 Cyril 10831:3 C-JOC 10734:22,23 10735:1</p> <hr/> <p style="text-align: center;">D</p> <hr/> <p>daai 10761:15 10763:11 daardie 10790:4 daily 10864:22 damage 10791:20 10800:7 10834:15 10836:18 damaged 10801:2 10835:15 dat 10787:13,14,15 date 10799:16 David 10863:14 day 10730:8 10736:11 10750:8,10 10803:14 10803:20 10805:19 10807:8,9 10808:20 10808:24 10809:14 10810:10 10814:22 10816:10 10823:4 10827:11 10832:7 10833:21 10844:2,5 10845:5 10861:13 dead 10787:21 10790:6 10800:12,14 10836:14 deal 10738:24 10739:23 10753:17 10762:18,18 10794:3 10794:11 10810:15 10813:6 10819:19 10826:10 10828:13 10832:22 10837:8 10850:4 10851:11 10865:1,22 dealing 10743:6 10763:23 10794:16 10831:8 10832:12 10833:14 10834:18 10840:4,13 dealings 10749:2 deals 10851:19</p>	<p>dealt 10743:2 10772:19 10787:9 10794:18 10846:10 10850:8 death 10777:12,18 10778:3 10781:9 10783:11 10784:12 10784:14,15 10790:7 10791:20 10823:17 deaths 10778:10 debate 10746:1,11 10800:11 10801:15 10805:24 10806:13 10812:18 10813:8 10818:15 10826:24 10840:7 10843:20 10846:15 10854:25 debates 10825:5 debating 10732:2 debriefing 10782:1,2,3 deceased 10731:1 December 10863:8 decide 10745:13 10750:11 10756:6 10774:8 10786:3 10809:9 10812:22 10824:2 decided 10816:13 10824:2 deciding 10745:15 decisively 10851:11 defence 10744:21 10745:6 10778:22 defend 10824:5 defined 10859:7 10861:19 definitely 10791:25 10870:23 definition 10799:24 definitions 10796:10 delegation 10736:2 deliberately 10850:15 delivered 10773:9 demand 10754:20 10835:1 demerits 10813:8 democracy 10863:2,13 democratic 10864:20 demonstrate 10743:15 demonstrates 10781:11 demonstrations 10775:16 denuded 10778:11 departure 10799:10 10802:24 depend 10751:8,8 10855:22 dependent 10868:6 depending 10843:2 depends 10770:25 10870:19 10871:1 deployed 10831:1 10832:8 deployment 10832:18 10836:3 10851:10 10870:21 der 10820:5,19</p>
--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

10857:14 derives 10855:9 deriving 10848:11 describe 10758:14,17 10797:20 described 10772:14 10778:16 10866:13 describes 10848:6 description 10759:17 desirable 10869:11 desire 10850:23,25 10851:2 desired 10853:4 desk 10849:18 despite 10753:6 10825:15 10826:7 destabilisation 10837:3 developed 10844:7 deviate 10867:20 de-ascibe 10780:10 DG 10836:25 didn't 10740:3,15 10741:25 10743:14 10743:20 10744:17 10746:16,18 10749:18 10754:19 10756:15 10757:8 10762:1,3 10815:2 10827:25 10828:24 10835:23 10842:19 10842:25 10851:18 10860:17 10867:24 10867:25 10868:11 10872:13 die 10768:13,14,15,16 10769:3,3,5,9,13,13 10769:13,19 10787:11,14 10788:17,18,18 10789:16,21 10790:4 10790:10,10 died 10865:10,15 difference 10735:17 10759:12 different 10747:19 10786:10 10800:8 10842:10 differently 10807:21 difficult 10770:18 10786:20 10870:18 difficulties 10801:17 ding 10768:13,14 10769:3,3,5 direct 10739:22 10756:4 10773:2 10783:9 10785:19,22 10785:24 directed 10764:12 10828:16 10846:22 directing 10737:10 direction 10766:22 directions 10791:2 directly 10787:2 10788:5,22 10790:10 10826:10 10828:17 10859:22 10866:23	disagree 10774:20 10781:7 10815:22 10816:1 disagreed 10774:19 disagreement 10756:24 10828:4 disagrees 10733:24 10816:18 disarm 10865:16 disarming 10817:19 disaster 10753:3 10755:14 disastrous 10752:23 disbelieved 10838:14 10838:18 discharge 10786:20 disclose 10795:8 discover 10784:2 discuss 10755:11 10817:6 10838:18 discussed 10755:7 10759:24 10816:25 10818:25 10819:5,6 10831:11 10838:11 10854:17 discussing 10734:9 10737:16 10792:21 discussion 10736:6 10747:23 10843:11 10845:20 discussions 10817:17 10832:4 10836:25 10852:25 disentitled 10834:5 disguising 10785:17 dismay 10730:11 dismiss 10796:15 disperse 10820:17 display 10771:10 10779:18 10792:9 10821:9 displayed 10779:16 10780:18,18,21 10808:11 10854:9 displeasure 10816:6,9 disposal 10842:19 disposed 10840:25 dispute 10752:9 10792:8 10793:4,13 10793:15,21 10794:7 10794:19,25 10795:17 10797:7,12 10797:20,21 10799:14,22,24 10800:4,20,21 10801:10,22,22,24,25 10817:1 10821:18 10833:16 10834:13 10836:8,13 10845:23 10848:6 10865:6 disputes 10792:2 10793:24 10795:18 10795:23 10797:8,13 10803:22 disservice 10813:4 distance 10871:20	distinction 10840:2,9 disturbed 10787:19 10821:8 Doctor 10779:3 document 10757:17 10760:22 10763:3 10772:24 10849:20 10849:20,22 10864:11 documents 10843:22 10843:23 10849:18 10849:23 10850:1,2,7 10871:5 doesn't 10765:17 10771:5 10784:12,25 10785:2,22 10786:7 10788:14 10818:24 10819:15 10821:13 10836:18 10838:24 10839:9 10852:16 10857:13,14 10860:1 10862:17 10868:8 doing 10742:22 10746:16 10759:21 10771:12 10782:24 10787:6 10796:22 10805:17 10828:2,3 dood 10787:14 doubt 10801:22 10806:2 downwards 10861:22 dragging 10766:7 10772:18 10779:16 dramatis 10841:23 draw 10809:4 drawing 10779:4 drawn 10813:9 10846:17,23 10852:25 drivers 10796:4 dubbing 10823:14 due 10733:16 10751:25 10848:15 duration 10734:24 duties 10775:15 10812:25 10856:12 10859:7 duty 10771:6 10786:20 10791:7 10797:10,18 10797:22 10843:24 D-day 10846:8	economic 10796:18 10797:4 effect 10755:24 effective 10735:3 10847:2 efficient 10791:5 efforts 10845:14 eight 10807:4 10808:3 10812:1,18 10817:21 10819:20,23 10822:17 either 10745:19 10755:25 10759:22 10762:12 10763:21 10781:3 10796:14 10866:14 10867:23 10869:16 elaboration 10816:3 elements 10851:11 elicit 10738:16 10750:16 emanated 10868:2 emanating 10870:22 embraced 10798:2,2 emotional 10782:3 emotionally 10782:5 emphasis 10734:8 10753:1 employed 10740:5 employees 10743:10 10793:9 10794:20,21 10795:10 10797:9 10798:12,15,18 10835:14 employer 10793:8,18 10794:22,22 10797:8 10798:15,17 10799:6 10801:13 10803:22 employers 10798:12,14 employer's 10798:15 emptied 10769:9,14,17 10769:20 en 10769:19 10787:12 10787:12,14 encourage 10810:1 endeavour 10834:21 enetjie 10761:15 10763:11 engaged 10806:13 engagement 10805:18 10805:20 10806:20 English 10766:23 10767:3,21 10768:19 10768:20 10779:3 10787:18 10792:23 10792:25 enlisting 10735:5 enquiry 10775:21 enshrines 10798:25 ensure 10796:23 10797:3 10831:7,9 10837:15 ensuring 10796:18 enter 10846:15 enters 10846:25 entire 10799:7	entirely 10793:23 10821:21 10847:16 10847:24 entitled 10801:13 10833:22 10839:11 10842:21 10861:4 10868:3 entry 10760:21,23 equally 10757:11 10834:24 equation 10799:25 10836:2 equipment 10770:15 10821:17 10822:11 10827:15 erroneous 10740:14 10741:24 errors 10773:7,8 esoteric 10793:3 essence 10847:5 essential 10751:4 Essentially 10797:24 establish 10756:5 10809:11,12 10847:15 10848:15 established 10783:1 10795:4 10865:1,2 establishing 10869:15 establishment 10848:10 estimate 10754:18 estimation 10870:3 ethos 10799:7,7 evading 10860:13 evasive 10861:1,8 evening 10736:6 10740:16 10744:12 10803:16 10808:20 10809:7 10859:17 event 10738:7 10745:23 10805:13 10845:16,16 events 10774:24 10776:18 10777:13 10781:21 10850:23 evidence-in-chief 10869:14 evidential 10785:23 10786:21 ex 10783:2 exact 10733:16 10758:20 exactly 10735:17 10741:18,20 10742:12 10751:11 10753:2 10774:14 10775:10 10783:23 10794:6 10834:2 10835:6 10836:16,24 10868:10 examination 10786:6 10811:15 10870:17 examining 10839:8 example 10741:2 10742:13 10747:23 10784:4 10823:14
-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

<p>10859:2 10865:15 exception 10807:2 exchanged 10806:22 excitement 10756:11 excludes 10807:16 Excuse 10753:22 executive 10808:21 exert 10848:9 exhibit 10757:17 10758:11,24 10759:2 10759:16,17 10859:20 10862:17 10862:20 exhibits 10823:10 existed 10797:8 existence 10757:11 existing 10795:6 expect 10781:2 10835:18 10853:8 10867:25 expected 10775:7,15 10776:12 10842:13 10864:8,18 experience 10798:9 experiencing 10846:1 expertise 10752:7 experts 10760:18 explain 10731:23 10751:14,17 10762:6 10804:11,16,25 10805:2,5 10811:15 10833:1 10850:24 10867:17 explained 10786:25 explaining 10859:11 explanation 10816:2 10867:18 explored 10801:9 explosive 10788:2 express 10773:4 10794:6 expressed 10803:25 10850:25 10867:2 expressly 10746:17 extend 10730:25 10794:10 extensive 10846:16 extent 10776:11 10778:4,11,13 10811:11 10812:22 10851:16 extra 10754:7 10868:1 extracted 10732:7,8 eye 10823:13,23 10827:15 10836:11 eyes 10823:7 10859:21 e-mail 10836:24 10842:3 10843:24 10844:2,5 e-mails 10842:8 10845:19 10850:25 10851:1,8</p>	<p>10795:12 10823:15 facelessness 10823:24 facie 10832:25 fact 10732:1 10737:25 10743:3,4,8 10746:4 10747:22 10748:16 10771:5 10779:6 10783:14 10785:5 10786:21 10789:6 10802:23 10806:13 10807:12 10813:22 10815:11 10816:12 10823:12 10824:15 10834:2 10836:24 10841:22 10844:1,19 10846:7 10859:20 10865:9 10872:20 facto 10783:2 factor 10771:14,16 factors 10800:22 10802:12 10853:15 facts 10801:11 10808:9 10813:9 10815:21 10841:17 10843:19 10843:19 10865:19 factual 10746:2,4 10750:11,13 10752:9 10752:23 10753:3 10756:2 10812:18,23 10813:2,13 10814:21 10828:21 10829:4,17 10845:4 10855:6 factually 10739:8 fail 10864:19 failure 10755:15 10828:4 fair 10746:16 10806:23 10807:1 10809:4,18 10815:2 10843:5 10856:5,10 10859:23 10861:16 fairly 10817:17 10836:2 fairness 10763:2 10804:13 10864:9 10866:6 10867:20 fall 10772:21 falls 10743:24 family 10730:25 10755:1,7 Fanagolo 10770:12 fanning 10826:9 far 10733:3 10741:15 10751:17 10754:17 10774:3 10793:18 10795:8 10800:1 10802:1 10808:7 10817:3 10822:13 10855:7 10867:10 farm 10823:5 fashion 10817:11 10833:12 father 10767:24 fault 10781:1 favour 10750:21 10829:20 10830:7</p>	<p>10835:23 10862:15 fear 10753:25 feel 10810:24 10816:2 fell 10782:13 fellow 10775:5 10840:4 10840:13 fewer 10812:1 FFF1 10732:22 10734:5 10791:18 FFF2 10735:21 FFF20 10758:11 FFF29 10830:18,19 FFF30 10758:11,24 10862:20 FFF4 10859:8,20 10861:20 FFF5 10840:6 fifth 10822:20 fills 10730:11 final 10765:1 10790:15 find 10733:16 10757:5 10762:16 10770:17 10771:6 10778:25 10779:4 10796:22 10848:25 finding 10747:10 10752:3,4,6 10838:25 fine 10751:13 10789:14 10806:15 10816:11 10862:4 finish 10804:17 10820:11 10871:10 10873:13,13 finished 10843:14 finishes 10773:8 10871:7 firearm 10769:12 fired 10744:19 first 10730:8 10734:4 10734:22 10735:25 10740:25 10742:14 10743:2 10744:17 10756:14 10757:10 10760:9 10762:6 10763:9,12,16 10765:11 10767:1 10770:9 10780:9,10 10790:23 10791:6,6 10794:16 10802:2,2 10805:13 10812:3 10813:22 10823:23 10833:17 10834:11 10838:17 10844:6 10845:6 10846:24 10847:12 10854:15 firstly 10736:14 10738:23 10811:15 10829:16 10865:23 fit 10754:15,15 five 10741:5 10743:1 10747:1 10873:16,17 10873:21 flames 10826:9 flow 10858:23 fly 10834:25 flying 10840:14</p>	<p>focus 10864:3 focused 10738:21 10746:21 10815:4 10846:21 follow 10735:1 10741:1 10802:16 10867:8 following 10735:2 10742:13 10777:7 10803:14,20 10810:10 10853:1 follows 10770:24 10866:17 food 10748:9 foot 10862:3 force 10774:16 10779:19 10840:3,4,7 10840:12,18 10846:10 10851:10 10851:17 forces 10848:7 forgive 10849:17 form 10783:2 10864:3 formally 10749:14 formulated 10740:6 10817:18 10821:21 formulation 10822:6 10834:2 10840:12 fortuitous 10851:15 fortunately 10764:1 forum 10813:7 10843:17,18 forward 10774:21 10795:24 10808:25 10862:3,3 found 10757:2,6 10771:9 10824:18 10849:12,18 10861:17 four 10818:20 fourth 10743:8,8 fourthly 10851:2 framed 10809:20 free 10754:8 freedom 10796:21 freeze 10807:8 fresh 10842:22 Friday 10869:11 10873:12 friend 10746:1,11 10749:16 10757:5 10795:1,12 10799:21 10800:18 10812:18 10813:3 10824:21 10831:19 10844:25 10845:4 10846:18 10851:25 friends 10758:1,5 front 10733:19 10772:24 10830:16 10830:20 10843:23 10844:4 10864:11 full 10768:11 fuller 10866:6 fullest 10805:7 fully 10745:20 10798:1 10806:14</p>	<p>function 10775:7 10776:11 10819:5 funeral 10757:3 further 10738:17 10740:22 10743:9 10746:25 10747:21 10782:24 10788:4 10789:6,11 10793:10 10794:20 10800:3 10831:1,21 10840:23 10842:22 10857:16 10868:4,13 future 10745:24 10810:22 10811:10</p> <hr/> <p style="text-align: center;">G</p> <hr/> <p>gaan 10790:4 gainfully 10740:4 game 10774:23 10778:9,11 10823:5 10834:1 gaps 10770:10 gather 10735:4 gathered 10817:18 10819:4,4,16 10848:3 gathering 10735:3 gegeee 10787:14 gemeld 10787:13 Generaal-Majoor 10787:13 generally 10859:15 10861:17 generated 10850:2 genre 10759:23 10772:22 gentleman 10731:3 gesien 10768:13 10769:3 gesture 10874:6 gesê 10787:15 getting 10735:20 10738:18 10851:2 gewees 10787:12 GGG36 10759:5 GGG36.1 10759:6,14 10759:17 10760:22 10778:17 GGG40 10819:10 give 10739:23 10745:24 10750:20 10756:14 10785:22 10804:17 10806:2 10832:21 10849:5 given 10739:5,7 10740:7,13 10746:4,5 10747:12 10750:4 10757:17,21 10758:5 10759:21 10770:10 10771:23 10782:6 10786:20 10787:22 10790:12 10795:21 10798:12 10812:9 10814:6 10818:3 10820:21 10823:11 10844:10 10846:18 10847:22 10853:22</p>
----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

10853:24 10857:22 10871:5 gives 10785:23 10837:22 giving 10757:24 10785:19 glad 10832:24 gleaned 10731:25 go 10732:22 10739:11 10741:6 10746:25 10750:22 10751:17 10760:20 10761:21 10762:11 10768:3,5 10770:11 10787:10 10787:23 10789:15 10797:5,5 10821:2 10826:15 10829:22 10838:15 10845:1 10863:18 10868:1 goes 10740:21 10796:25 10800:3,5 good 10731:14,16 10739:23 10756:6 10758:8 10774:5 10786:1 10802:21 10819:19 10840:2 10844:25 government 10836:7 10845:16 10864:25 grab 10845:5 grand 10778:8 10792:16 granted 10771:4 grateful 10731:1 gratitude 10773:2,5,16 10773:21,25 great 10786:4 10812:20 greater 10781:3 greatest 10749:5 10834:24 10846:4 grond 10790:4,11 ground 10775:12 10787:24 10805:20 10836:14 10840:16 10840:17 10851:3 10861:20 grounds 10837:21 10845:8 group 10753:5 10806:19 10808:6 10817:19 guarantee 10870:1 Guardian 10862:25,25 10863:7,15 guards 10865:12 guess 10754:18 guidance 10814:13,15 10814:18 guide 10814:18 Gumbi 10869:21 10871:2	halved 10871:8 hamper 10786:19 hand 10733:9 10777:2 10798:14 10838:1 handicap 10841:25 10842:1 handicaps 10841:21 10842:12 handle 10831:13 handling 10832:13 hands 10811:12 10865:9 happen 10754:21 10762:21 10771:5 10815:2 10865:3 happened 10736:11 10749:19 10773:21 10782:23 10784:21 10804:25 10809:15 10828:17,18 10843:16 10859:3,17 10860:3 10864:20,23 10865:17,18 10866:1 10867:2 10872:2 happening 10741:15 10748:3,21 10751:2 10753:13 10805:14 10808:23,24 happens 10796:23 10858:15 10859:22 happy 10767:9,12 harmful 10845:2 hasn't 10746:5 10785:5 10817:25 10818:2,3 hat 10845:5 haven't 10746:4 10747:7 10864:10 headed 10863:12 hear 10749:20 10762:1 10803:6 10804:4,8 10805:9 10844:15,16 10844:17 heard 10784:14 10797:14 10801:15 10803:5 10808:15 10835:9 10838:16 10841:6 10847:9 10853:10 10855:11 10855:15 10856:4 10862:7,8 hearing 10855:1 hearings 10730:3 hearsay 10739:23 10740:2 10751:8 10752:7 heart 10809:23 held 10823:5 helicopter 10821:25 hell 10840:10 help 10742:8 10748:22 10749:3 10752:5 10766:21 10767:17 10782:17 10804:19 10826:14 10855:4 helpful 10759:25 Hemraj 10775:9	10776:1,6 10841:14 10860:18,22,24 10862:14 10873:24 Hemraj's 10775:21 het 10768:13,16 10769:3,9,19 10787:11,15,15 he'd 10787:21 he'll 10756:2 he's 10747:11 10765:18 10784:4 10785:20 10786:9 10795:13 10797:17 10813:13 10818:16 10825:3 10846:23 10857:25 10863:24 10864:4 10867:16 10870:11 10871:3,5 hierdie 10768:13 10769:2,3 higher 10785:7 10829:3 10834:18 highest 10764:17 10765:2,22 highlighted 10818:5 10844:3 high-water 10789:11 hit 10767:6 10769:8 hm-mm 10733:14 hm-mmm 10733:14 Hobson's 10872:21 hoe 10768:13 10769:3 hom 10761:15,15 10763:10,11,14 10768:15 10769:7,8 home 10760:11 10818:14 10872:23 homework 10761:21 10761:23 10762:2,7 10762:25 honestly 10787:5 honourable 10830:13 10830:22 hope 10730:4,22 10851:19 10869:9 10873:16 hopefully 10812:9 hopes 10811:9 hoping 10733:17 10760:5,7 hospital 10730:15 hour 10843:15 10871:3 hour's 10849:7 HR 10796:11 hulle 10787:13,15 human 10772:12 10777:8,10,20 humane 10770:3 10771:11 10772:11 10772:11,12,12,13,25 10772:25 10773:10 10774:16 hurt 10798:14,15 hy 10768:14,15,16,16 10769:7,8,9,19,20 10787:14	hypothesis 10839:11,12 hypothetical 10838:23	I	ice 10750:15 ignore 10791:3 10824:11 ignored 10748:3,19 10750:16,18 illegal 10796:8 10800:1 10800:2 illustrate 10784:7 images 10772:16 imagine 10774:8 10849:1 imbalance 10844:21 immediately 10788:1 10865:1 impartial 10791:4,12 10804:3 10854:22,22 10854:23 impartiality 10791:7 10791:17 10792:9,11 10798:1,7 10802:19 10802:25 10804:11 10804:23 10807:23 10808:12 10809:6,17 10810:7 10812:7 10821:10 10823:10 10854:10 impartially 10790:20 10791:22 10797:11 10797:19,22 10802:8 10809:10 Implement 10735:3 implemented 10784:16 implication 10734:4 impliedly 10746:15 importance 10739:17 10742:15,16 important 10734:25 10739:7 10741:10,12 10742:5 10748:14 10762:1,24 10788:17 10790:19 10796:2,16 10847:6 10858:19 10865:13 10869:13 importantly 10785:16 10866:11 imposed 10791:7 impossible 10824:18 impression 10774:3 10819:17 10834:17 10854:24 improper 10831:16 10833:4,8,15,18 10834:12,12,20 10843:20 10844:22 10848:21 10852:9 10853:13,16 improperly 10831:15 10831:18 impropriety 10848:22 inability 10780:20 10781:14 inaccuracies 10742:14	10742:18,20 10746:2 10746:4,12 inaccuracy 10743:8,23 10744:15 inaccurate 10741:5 10744:22 10749:10 10752:22 10789:3 inaccurately 10848:6 inaudible 10753:9,14 10753:15 10763:1,1 10766:25 10767:2 10794:1 10825:20,23 10833:2 10873:5 incentive 10821:4 incident 10730:9,12,19 10782:4 10830:24 10847:10 incidentally 10757:2 10848:6 inclined 10765:24 10785:25 include 10739:8 included 10747:22 including 10770:1 10821:17 10822:10 10865:10 inconsistent 10824:13 incorporate 10809:18 incorrect 10737:18 10738:15,16 10739:8 10740:10 10741:1 10745:19 10752:24 10753:3 10771:2 10784:19 10789:12 indicate 10789:3 10868:17 indicated 10757:7 10773:24 10798:1 10831:11 10865:13 10871:3,21 indicates 10761:14 10806:11 indicating 10738:15 10844:8,11 indication 10757:10 indications 10824:22 indicative 10812:19 10814:9 indirect 10853:12,12 individual 10839:23 individuals 10816:25 10820:3 10828:17 10833:19 10845:14 10846:20 10850:19 industrial 10793:21,23 10794:7 10799:14,22 10799:24 10800:4,18 10800:20,21 10837:2 industry 10798:9 infantile 10825:17 influence 10740:14 10744:17 10836:1 10841:15 10848:8,21 10852:9 10853:12,13 10853:17 influenced 10742:6
----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------	----------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

10828:16 10829:14 inform 10771:3 information 10732:1 10734:10,19 10735:3 10735:5,8,13 10737:15,18,25 10738:12,15,16 10739:3,5,6,18,22 10740:6,10,13 10741:24 10742:2,5,6 10745:16,18 10747:22 10748:2,14 10748:15 10749:8,9 10750:17 10752:22 10753:1 10755:16 10756:18 10770:8 10842:18 10859:3,6,8 10861:16,17,22 10865:24 10866:13 10866:20,22 10867:4 10867:9 10873:17 informed 10736:2 10747:24,25 10788:3 10788:4,5 10794:14 10810:23 10831:5,8 informing 10753:5 infractions 10827:16 inherent 10792:14 10842:1,12 injured 10731:3 10753:5 10754:25 10801:4 10871:18 injuries 10730:16 10731:4 injury 10791:20 10871:11,25 innocent 10780:1 10800:14 inquiry 10813:2 10843:16 10865:3 inserted 10759:23 inside 10754:12,15 insofar 10739:4,6 10757:18 10782:21 10797:20 10822:9 10833:15,18 10850:7 10851:6,20 10852:25 10857:16 10861:20 10866:9 instances 10854:9 instructed 10820:13 instructions 10787:22 10820:10 10872:6 insulting 10768:3 10779:16 intended 10845:17,18 10846:6 inter 10780:19 10870:22 interacted 10748:16 interested 10814:7 interests 10765:24 International 10859:21 internecine 10791:20 Internet 10863:6 interpose 10869:12	interposed 10870:10 interposing 10869:9 interposition 10870:5 interpret 10805:8 interpretation 10767:11 10768:9 10813:1 10814:1 interpretations 10760:7 interpreted 10855:7 10872:16 interrupt 10809:3 10859:18 10863:5 interrupted 10850:5,12 intersection 10856:9 intervene 10750:24 intervention 10751:7 10805:21,21,22 10809:24 10837:4 10847:24 interventions 10734:12 10846:19,20 interview 10863:14 interviewed 10782:3 inter-union 10826:9 intimidation 10800:6 10834:15 10848:1 introduces 10813:22 invalid 10827:12 investigation 10827:24 investigations 10741:14 invitations 10847:1 invite 10831:19 10845:2 invited 10833:10 involved 10740:12 10743:17 10782:4 10799:11 10806:19 10835:8,11 10849:13 involvement 10796:2,3 10805:23 10851:16 involves 10792:2 10798:10 irrelevant 10738:8,25 10749:17 10751:19 10751:21 10752:13 10764:15 10785:17 10786:4,6 10812:21 10818:13,15 irresponsibly 10844:24 isiXhosa 10766:17 isn't 10735:7 10738:12 10750:2 10785:24 10818:10 10838:4 10861:9,24 isolated 10805:21 issue 10731:21 10733:12 10738:24 10741:12 10748:23 10749:18 10756:17 10779:20 10787:9 10794:24 10795:24 10802:5 10812:1 10815:8 10831:11 10837:2,3 10845:11	10848:5,5 10851:4,5 10851:19 10853:24 10865:2,22 10870:20 10870:22 10873:12 issues 10745:12 10750:11,13 10771:21 10792:6 10796:25 10797:1 10851:6,21 10865:20 10865:21 it'll 10845:7 I'd 10769:25 10814:21 10826:13 10858:25 I'm 10866:21	10846:9 10847:11 10872:23 killings 10774:25 10775:5,13 10776:10 10780:14 10783:10 10824:3 10848:1 killings 10848:7 kilometres 10807:4 10808:3 kind 10732:2 10739:22 10752:8 10766:21 10769:24 10774:15 10782:2 10828:5 10835:7 10859:10 10865:9 kindly 10795:19 kinds 10792:3 10793:23 knew 10765:17 10766:4,8 10773:16 10775:4,10,12,23 10776:3,9,17 10781:11 10794:25 10795:17,24 10820:25 knob 10767:6 knowing 10799:12 10872:4 knowledge 10730:18 10742:1 10750:15 10751:23 10752:6 10776:7,8 10777:18 10778:6 10780:14 10782:23 known 10765:12 10798:20 knows 10749:24 10751:7,17 10840:9 10867:14 kom 10768:16 10769:20 koppie 10804:3 10806:19 10807:6 10808:2,4,5,9 10817:19 10820:10 10848:3 kwalik 10787:13	laughing 10772:18 law 10796:10,14 10798:24 10800:5,23 10801:1 10803:24 10813:25 10834:14 10835:9,13 10847:2 10847:25 10848:7 10854:20 10856:14 laws 10860:15 lead 10747:8,12 leaders 10864:25 leadership 10775:12,20 10775:23 10857:2 learned 10746:1,11 10749:16 10757:5 10758:1,4 10777:25 10795:1,12 10799:21 10800:18 10812:18 10813:3 10824:21 10831:19 10844:25 10845:4 10846:18 10851:25 leave 10767:18,18,19 10767:23,23,23 10782:20 10789:16 10790:14 10817:6 10854:2 10873:25 leaving 10872:3 led 10732:5 10850:20 10857:7 10858:24 10860:25 lede 10787:11,14 10788:17,18,18,19 10789:16,21 10790:4 10790:10 leeggemaak 10768:16 10769:9,20 left 10799:3,8 10802:9 10817:9 10822:23 10852:4 10872:21 leg 10844:6 legal 10734:16 10762:10 10770:4 10813:1,25 10854:20 Lepaaku's 10757:3 lesson 10798:13 letters 10837:2 let's 10735:13 10736:5 10740:5 10747:19 10754:23 10760:10 10760:19 10763:6 10765:6,8 10789:15 10790:1 10809:1 10818:19 10821:13 10825:4 10826:1 10834:25 10837:6 10841:11 10849:4 10851:22 10858:4 10861:11 let's 10804:8,17 10809:20 level 10793:3 10825:19 10838:19 10859:4 leverage 10805:16 lie 10787:23 Lieutenant 10788:23
		J		
		ja 10732:6 10733:23 10736:18 10752:11 10760:2 10761:24 10763:14 10765:20 10767:18,19,22,23,25 10769:14 10788:21 10789:8 10799:9 10806:15 10807:1 10814:20 10816:4 10817:8 10826:22 10830:20 10841:13 10841:20 10864:12 Jacob 10863:1,12 Jele 10781:25 JOC 10789:5 10816:13 10817:17 10819:11 join 10851:5 joint 10854:7 jong 10767:5 Judge 10740:17,19 10761:1 10762:23 10763:10 10770:6 10809:22 10858:17 10867:11 10873:13 Judge's 10741:2 judicial 10865:2 July 10824:16 10826:10 jump 10735:2 jumping 10862:2 JUNE 10730:1 justifies 10837:23 10843:1 jy 10768:13 10769:3		
		K		
		keep 10755:1 10759:8 10785:17 10858:25 keeps 10764:4,5 key 10732:5 10749:7 10823:6 kill 10776:18 10783:13 10783:13 10784:23 10785:9 10788:25 10789:17 10824:3 killed 10741:6 10744:20 10747:2 10780:1 10783:15,16 10790:9,9 10800:13 10801:2 10835:15		
		L		
		labelled 10830:8 labour 10736:3,19 10792:14,23 10796:10,14,14 10798:14 10836:8,13 10836:19 10845:17 10845:22 lack 10775:1 10808:11 10809:17 10810:7 ladder 10791:16 laid 10737:13 language 10760:9,11 10774:15 10775:2 10791:13 10805:4 large 10773:6 10792:1 10805:15 late 10754:21		

Lieutenant-General 10744:10	10812:12,12 10814:5 10814:25 10815:10 10816:13 10817:1,4 10820:4,5,25 10821:25 10822:3,12 10822:12 10823:2,5 10823:12 10824:18 10824:22 10827:25 10828:1,2,5,18 10833:16 10835:15 10835:15 10836:5 10843:22 10844:1,4 10846:22 10847:11 10847:13,14 10848:12 10851:8,15 10863:2,12	10852:10 10859:16 maintain 10802:19 maintaining 10850:25 maintenance 10791:4 major 10787:20,22 10836:6 Major-General 10781:24 10789:4,10 10849:10,11 making 10741:21 10752:6 10754:17,25 10757:10 10785:20 10798:16 10835:4 10845:10 male 10767:25 malice 10774:17 management 10736:2 10740:22 10743:9 10748:17,19 10796:11	10840:16,23 10842:22 10844:20 10845:17 10848:4 10851:24 10854:25 10859:20 10860:2 matters 10751:23 10786:3 10810:20 10833:20 10836:1 10837:13,15 10840:20 maximum 10840:3,7 10840:11,18 10846:10 Mbombo 10744:2,8,10 10746:8,9 10748:1 10756:22 10757:13 10789:22 McIntosh 10803:11,13 10803:20,20 10804:2 McIntosh's 10803:24 mean 10747:25 10755:5 10763:21 10786:7 10813:3 10815:1 10820:14 10835:17 10854:22 10856:7 10861:18 10873:14 meaningfully 10742:8 means 10767:24 10768:25 10792:24 10816:22 10820:2 meant 10772:12 10774:14 10804:23 10804:24 10865:11 meet 10871:24 meeting 10730:13 10736:13,14,15,16 10803:4 10819:9 10835:1 10847:13 meetings 10816:24 meets 10836:11 members 10736:3,19 10740:8,11 10743:16 10745:3 10747:24 10755:1 10761:5 10775:14 10776:8 10777:11,17 10778:20 10779:24 10781:7,11 10787:18 10787:21,24 10788:7 10788:20 10789:17 10790:6,8,8 10805:16 10831:1 10837:12 memory 10733:17 men 10745:5 10847:11 mention 10796:17 10828:24 10829:21 10835:23 mentioned 10732:14 10787:20 10800:23 10802:12 10854:8 Merafi 10783:12,22 10784:22 10785:3,4,9 10788:15,25 Merafi's 10784:12 merely 10744:15	10745:22 10750:17 merits 10813:8 Merwe 10820:5,19 10857:14 message 10731:2 10748:18 10873:15 messages 10824:14 10835:2 met 10787:12 10790:4 10790:10,10 10808:21,22 microphone 10754:1,2 10759:16 10873:8 mightn't 10779:2 mildly 10748:4 10835:25 milieu 10815:13 mind 10755:1 10771:21 10794:10 10829:12 10829:25 10842:12 10852:16 10854:24 minded 10852:11 mine 10736:1 10743:8 10744:2 10800:15 mines 10851:12 Mineworkers 10830:13 minimum 10840:4 Minister 10791:2 10828:15,20,23,25 10829:13 10830:24 10831:2,17,17,24 10832:10,16 10833:6 10833:19 10835:2,6,7 10835:12,21,21 10836:7,11 10837:9 10837:18,21,24,25 10838:11,19 10840:1 10840:10 10841:17 10841:24 10842:2,5 10842:10 10843:21 10844:11,18 10845:19 10846:2,24 10847:21 10851:2 10853:3,7 10856:4,21 10857:12,22,23 10858:7,9,9 10859:13 10859:20,22 10865:5 10865:7,18 ministerial 10856:14 10865:1 10870:23 Ministers 10835:1 Minister's 10829:18 10830:1,2 10844:16 10850:15 minor 10851:18,19 minute 10734:10 10748:2,13,15,20 10752:22 10753:1 10755:16 10756:18 minutes 10871:9 10873:15,16,17,21 misinformation 10743:12,13 misprint 10763:16 misquoting 10785:13 missed 10756:12
limited 10753:7 10855:6 line 10751:2 10758:3 10765:1 10768:10 10806:12,22 10807:24 10812:17 10813:11 10814:4 10829:1 10841:22 10850:13 lines 10776:20 10840:5 linguist 10763:20 linguistically 10766:22 link 10783:10 10805:16 linked 10790:10 10856:2 list 10742:17,20 10743:1 10822:19 listen 10761:21 10762:1,11 10770:11 10771:5,6 10835:16 listened 10761:6 10762:2,25 10771:22 listening 10756:16 10770:23 10864:10 little 10793:10 10807:15 10852:15 10852:18 10867:12 live 10746:11 10761:15 10761:16 10763:11 10763:11 lives 10740:23,25 10741:10,14 10743:7 local 10730:14 locking 10798:18 log 10820:13 logical 10847:13 long 10732:22 10734:11 10754:22 10820:25 10821:1,3 10821:14 10829:2 10845:1 10852:3 10861:6 10862:4 10865:9 10869:2 10870:9,15,25 longer 10775:7 10871:20 Lonmin 10736:10,15 10736:16 10737:3 10740:7 10743:15 10747:7 10793:4,8 10795:2 10797:8 10799:20 10802:18 10802:25 10803:5 10804:4 10808:22 10809:8,12 10810:8 10810:15 10811:19	Lonmin's 10747:5 10824:13 10826:8 10827:23 look 10760:20 10761:13 10773:7,8 10794:12 10808:20 10808:20 10834:19 10835:12 10863:8 looking 10753:24 10754:1 10809:15 10843:10 looks 10863:4,5,6,8 10873:6 lose 10775:6 loss 10831:1 lost 10730:14 10741:11 10741:14 10780:22 10825:1 lot 10770:10 10773:4 10773:25 10805:14 10805:18 10807:14 10853:24 10858:21 loved 10730:25 lunch 10810:5,11,16 lying 10790:5 lê 10790:4	M maag 10769:13 maar 10768:16 10769:20 madam 10856:17 mag 10768:15,15,15,16 10768:16,17,20 10769:9,13,14,18,19 magazine 10768:17,21 10769:12,14,17,20 magazines 10764:5 Magidiwana 10798:13 10798:16 Mahlangu 10766:18,24 10767:1,3,16,21 10768:22 10769:13 10769:18 10770:2 10791:14,23 10820:12 10843:9 10868:23 10873:4 mail 10844:16 10862:25 main 10814:2 10852:7	10852:10 10859:16 maintain 10802:19 maintaining 10850:25 maintenance 10791:4 major 10787:20,22 10836:6 Major-General 10781:24 10789:4,10 10849:10,11 making 10741:21 10752:6 10754:17,25 10757:10 10785:20 10798:16 10835:4 10845:10 male 10767:25 malice 10774:17 management 10736:2 10740:22 10743:9 10748:17,19 10796:11 MANGWASHI 10731:12 10811:6 manner 10773:10 10801:16 10837:24 10857:10 manufactured 10842:8 marginal 10850:24 marginally 10765:23 Marikana 10730:11 10777:14,18 10802:17 10805:12 10830:24 10831:1,4 10831:10 10832:6 10864:8,18,20 10866:2 10871:21 Marikanas 10864:21 mark 10789:11 marked 10758:24 massacre 10748:16 10750:24 10751:19 10751:24 10823:5 10863:2,12 material 10773:14 10774:8 10785:23 10786:21 10837:20 10842:25 10843:1,3 materials 10822:12 Mathunjwa 10735:15 10737:24 10739:13 10743:3 matter 10747:15 10751:23,24 10752:6 10753:16 10756:18 10756:23 10763:25 10770:15 10774:6 10776:22 10782:13 10786:10 10795:17 10796:12,13 10800:8 10802:22 10803:8 10813:1 10820:23 10824:1 10825:11 10831:8,9,13 10832:12,14 10834:4 10836:3,9,18,19 10838:8,18,20 10839:16 10840:15	

<p>missing 10779:8 mission 10848:13 mistake 10862:9 10865:17,18 10866:1 10866:11 10867:2,13 10867:14,15,16,17,18 10868:2,4,9 mistaken 10744:23 mistakes 10862:9 mistaking 10784:20 misunderstanding 10784:8 mitigated 10826:8 mixed 10824:14 Mm 10860:20 moment 10734:15 10737:11 10746:3 10747:15,16 10752:17 10766:4 10777:9,10,20 10778:24 10837:23 10852:5 10865:17 10866:2 10867:3 Monday 10736:7 10776:18 10777:13 10809:6,8 10810:8 monologue 10843:17 months 10770:22 morning 10731:14,16 10817:17 10820:25 10832:2 10846:8 10847:10 10868:14 10868:15,15 10871:22 10872:17 10874:8 mother 10760:11 motherfucker 10764:4 motivated 10774:17 10780:19 10853:7 MOTLOENYA 10754:24 10755:5,9 10755:12 move 10751:19 10752:15 10763:7 10772:7 10774:11 10783:4,5,7,8 10819:24 10821:4,13 10825:4 10849:1 10855:24 10858:4 10860:12,17 10861:11 10862:1,3 10865:16 moved 10774:23 10862:1 moving 10756:9 10765:24 Mpembe 10746:5 10756:22 10783:11 10783:13 10784:25 10785:9 10787:13,21 10787:23 10788:25 10789:17 10790:3,5 10806:14,21 10807:4 10868:21 10869:10 Mpofu's 10755:14 10765:16 10801:7</p>	<p>10869:18 Mpofu's 10802:21 10804:22 10808:16 Mpumalanga 10840:1 Mthethwa 10846:3 10865:5 murder 10775:24 10800:6 10834:16 10840:17 10845:24 10848:13 murdered 10801:2 murders 10835:14 muti 10767:17,18,20,22 10767:22,24</p> <hr/> <p style="text-align: center;">N</p> <hr/> <p>named 10776:3 nameless 10789:17,21 10789:22,24 names 10819:11 10828:24 10829:21 10835:24 narrow 10795:13,15 Nathi 10846:2 10865:5 National 10731:7 10736:9 10740:6 10748:5 10749:3,10 10750:12 10756:13 10760:9,11 10771:17 10772:5 10791:1,3 10802:17 10809:21 10810:19 10812:6,11 10816:21 10830:12 10831:7,11,18 10832:10,16 10833:5 10837:14,18 10838:1 10842:23 10849:10 10849:11,19 10856:13,23,24 10857:3,23 10860:16 10874:3,6 nature 10793:11 10868:4 near 10745:24 10825:3 nearly 10843:14 necessarily 10756:4 10773:16 10779:22 10819:4 10830:8 10858:13 10859:19 10866:22 necessary 10807:22 10872:15 need 10732:1 10748:13 10755:11 10764:1 10770:15 10792:9 10816:16 10840:3 10841:18 10846:15 10848:10 10865:19 needed 10820:10 needn't 10821:14 needs 10734:19 10837:4 10847:15 10848:14 neem 10787:13 negotiate 10794:23 10795:3,4,20</p>	<p>10801:11 10821:5 negotiated 10824:15 10826:10 negotiation 10794:22 10795:4 10798:11 neutral 10844:16,17 10854:6 never 10750:3 10810:13 10854:23 new 10730:3,5,9 10760:22 10812:2 10841:10 10852:13 news 10866:19 newspaper 10751:9 10863:8 newspapers 10866:19 nexus 10778:16 10779:8 night 10809:8 10810:8 10810:9 nine 10740:23,25 10741:6,10,14 10743:7 10800:12,13 10801:12 NIU 10832:4 nobody's 10747:1 nog 10768:16 non 10742:15 10835:11 nonsense 10844:23 non-Lonmin 10795:10 non-unionised 10835:10 normal 10763:4 10796:24 10872:6 normally 10776:11 10869:12 northern 10760:14,15 North-West 10744:11 note 10753:4 noted 10732:16 NUM 10730:12 10736:4,20,24 10738:1 10739:11 10740:9,24 10741:7 10741:19 10743:5 10746:6 10747:3 10794:17 10830:21 10835:14 10844:18 10851:5,9,12,15 number 10735:2 10744:20 10753:7 10754:14 10779:21 10779:21 10781:25 10786:4 10795:17 10815:24 10816:23 10823:1,22 10827:7 10862:17 numbering 10863:18 numbers 10781:8 Nyala 10788:7</p> <hr/> <p style="text-align: center;">O</p> <hr/> <p>oath 10731:8 10772:5 10811:2 10842:10 10849:12 object 10738:3</p>	<p>10749:15 10793:14 10812:16 10826:12 10831:18 10869:9,9 objected 10829:6 objecting 10814:3 objection 10738:17 10749:23 10764:12 10813:11,17,19,21 10814:2 10817:21 10818:8,15 10821:15 10821:20 10826:18 10828:2 10829:6 objectionable 10833:11 objections 10786:5 10827:25 10845:1 objectively 10771:19 oblige 10870:2 observation 10836:21 observed 10798:8 10850:21 obvious 10735:7 10850:19 obviously 10744:17 10751:16 10759:21 10762:15 10780:16 10786:7 10817:12 10825:14 10838:14 10841:21,25 10846:5 10850:9 10852:23 10867:25 10871:20 10872:22 occasions 10786:5 10817:5,13 occurred 10842:11 offensive 10823:13,16 office 10730:12 10847:18 10873:11 10873:16 officers 10736:14 10743:15 10777:7 oh 10733:1 10758:21 10758:23 10759:7 10836:23 10842:8 10862:17 10868:25 10872:9 10873:3 okay 10737:12,19,19 10738:23 10740:18 10746:14 10747:9 10748:11 10750:19 10752:14,18 10758:4 10762:5 10763:8 10775:11 10777:1,25 10780:24 10781:5,5 10785:8,15 10786:15 10788:14 10790:14 10791:25 10793:12 10795:14,14 10797:6 10798:4 10804:8 10805:1 10810:4 10814:11 10816:19 10816:22 10822:22 10825:19 10827:6 10829:16 10850:4 10858:8 10860:12 10861:12 once 10772:8 10777:1</p>	<p>10780:2 10790:16 10798:8 10802:8 10806:1 10842:13 10853:5 10864:23 10872:2,21 ones 10730:25 10752:16 10800:22 10852:11 10871:23 ongoing 10736:3,19 10738:1 10740:8 10743:4 10751:5 ons 10768:13,14 10769:3,4,5 ontsteld 10787:12 op 10790:4,10 opdragte 10787:14 open 10787:1 10825:15 10842:7 opening 10745:1 10772:9 10777:3,22 10778:17 10786:23 10791:19 10811:17 10824:13 10827:22 10842:7 10843:25 operate 10805:15 operation 10732:2 10734:24 10735:4,9 10773:5,6,9 10776:9 10781:22 10782:7 10805:15 10815:14 10862:10 operational 10734:6,14 10734:16,18 10836:1 10838:19 10853:4 10856:7,22 10857:3 10859:4,9 10861:21 operationalise 10853:6 opinion 10854:16 10866:21 opinions 10770:14 opportunistic 10844:24 opportunity 10747:8 10786:21 10813:6 ops 10788:8 order 10734:7,21 10777:9,10,20 10796:17,18,23 10797:3 10800:6,23 10801:1 10803:24 10818:12 10826:13 10829:5 10834:14 10835:9,13 10837:15 10847:2,25 10848:7 ordinarily 10773:9 10859:11 10861:19 10870:25 ordained 10734:24 ought 10802:18 outside 10754:11 10795:4,20 10874:1 overall 10792:10 overheard 10817:18 10819:18 overlapping 10812:2 overpowered 10799:5 overtures 10858:21</p>
---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

<p>o'clock 10819:9 10820:25 10821:3 10843:14 10845:23 10846:6 10870:1</p> <hr/> <p style="text-align: center;">P</p> <p>pads 10868:21 page 10838:15 10844:4 10863:17,18,19,25 para 10791:18 10832:1 10832:11 paragraph 10735:21 10744:1 10772:9 10777:6 10781:13 10782:8 10787:11 10791:18,18 10817:15 10820:6 10829:24 10830:11 10837:9 10838:10,12 10864:1,2 10865:13 paragraphs 10786:22 10831:4 10846:23 paras 10849:21 pardon 10851:23 10868:14 park 10805:17 part 10734:25 10747:22 10748:9,14 10748:20 10759:13 10759:22 10761:18 10761:22,23 10763:9 10766:12 10767:17 10781:22 10784:9 10796:17 10804:3 10805:15,22 10808:6 10815:16 10823:14 10823:16 10828:18 10847:20 10848:8 10864:14 partial 10809:24 partiality 10804:23,24 10805:25 10808:19 10809:6,16 partially 10745:19 10842:6 particular 10737:10 10752:7 10774:25 10775:13 10779:2 10793:3 10798:24 10818:4 10839:1 particularly 10813:24 parties 10792:3 10793:13 10797:12 10797:23 10799:3,8 10799:15,18 10820:24 10821:18 10823:14 10843:22 partly 10852:23 parts 10763:5 10768:2 10768:5 party 10805:4 10817:1 10821:19 10823:16 10834:13,21 10843:18 passage 10732:24 10733:17 10736:15</p>	<p>10761:13,16 10778:16 10787:17 10788:8 10789:2 10818:5,6 10827:21 passages 10764:21 passed 10835:2 Pat 10767:4 pavilion 10868:21 peace 10810:1,2 peaceful 10800:3 penultimate 10823:10 perceived 10823:15 percentage 10792:1 perfectly 10834:20 10842:21 10847:13 10858:16 period 10740:15 10827:24 perpetrators 10792:3 perpetuated 10831:17 person 10730:14 10751:6 10762:4 10767:19,25 10768:3 10768:4,5 10770:21 10792:20 10796:11 10846:24 10858:13 10858:13,14 10861:21 personae 10841:23 personnel 10832:18 persons 10776:3 10820:9 10871:18,19 perspective 10746:11 pertinently 10829:8 phase 10821:4 philosophical 10799:10 10800:11 phone 10751:3,3 10835:22 10859:13 phoned 10789:23 10835:12 10844:18 photographs 10743:16 phrase 10833:7 phrased 10738:14 physical 10772:20 pick 10763:5 10859:13 picture 10778:18 piece 10737:24 10740:2 10740:6,9 pieces 10817:21 Pillay 10758:10,12 10759:1,5,8,14,20 10862:21,23 pipeline 10805:14 place 10730:4 10734:13 10735:20 10736:6 10744:13 10770:3 10771:10 10773:5 10793:17 10796:19 10813:9 10824:3 10832:10 10843:12 10847:15 placed 10730:17 places 10763:1 placing 10772:17 10847:7</p>	<p>plan 10817:18 10821:3 plane 10873:25 planned 10824:2 planning 10821:2,8 plans 10816:24 10817:7 10818:25 10819:5 Platinum 10730:12 play 10741:2,7 10766:7 10798:20 10799:2,8 played 10739:14 10741:25 10743:13 10763:4 10766:9 10825:15 10843:15 please 10746:21 10751:3 10754:3 10756:13 10766:23 10768:7 10770:23 10802:3 10805:2 10817:6 10835:16 10841:19 pointed 10759:20 10773:12,19 10786:12 10802:6 10846:3,9 10851:3 points 10731:24 10732:4,5,6,9,12,19 10732:21 10733:12 10733:16 10750:13 10774:4,5,5 10786:8 10799:10 10809:25 10811:17,24,25 10823:22 10828:5 10840:19 10849:2 10854:5,12 policemen 10745:5,5 10764:22 10772:17 10774:25 10775:4,5 10775:13 10776:9,10 10783:10,15 10865:11,11 police's 10744:22,25 10797:21 10821:6 policing 10765:7 10772:11,13,15,25 10773:1,17 10796:13 10837:13 10856:22 polite 10779:4 political 10834:1,3 10837:4 10839:23 10853:3 10854:3 10856:6,19 10857:1 10859:5,10 10860:5 10861:18 10865:24 politically 10828:18 10833:18 10845:14 10846:19,20 10850:19 politicians 10853:5 pop 10761:15 10763:11 10763:13,14,16,23,24 popped 10815:1 population 10768:24 portion 10811:14 portions 10760:1,3 10761:8,10,11,12</p>	<p>portrays 10774:15 position 10735:18 10768:13 10769:1 10819:23 10848:17 10852:1 positions 10821:9 10828:17 possible 10867:23 possibly 10744:11 10785:6 10832:2 post 10783:2 posted 10777:14 10781:10 postponement 10874:7 potential 10781:13 power 10799:2,3,8 10820:23 powerful 10828:19 10833:18 10845:14 10846:19,20 10850:19 powerhouses 10798:19 powers 10857:8 10858:19 practical 10809:10 practice 10810:22 prearranged 10871:24 precautions 10762:22 precedent 10869:15 precisely 10870:4 preface 10748:11 10815:24 10841:12 10852:16 prefer 10814:15 prejudice 10871:8 prejudiced 10869:15 premeditated 10775:24 premises 10798:19 10812:12 10816:14 prepare 10840:16,17 prepared 10773:20,22 10780:19 10823:15 10862:8 10870:12 10872:10 prescribes 10791:17 prescript 10733:21 10802:19 prescription 10857:4 prescripts 10731:25 10732:8,20,21 10733:3 10734:4 10735:7 10748:12 10749:13 10752:25 10790:18,20 10791:16,25 presence 10751:4 10802:4 10818:25 10847:1 10851:1 10868:3 present 10730:18 10745:13,22 10750:14 10751:11 10761:5 10776:8 10779:12,22 10780:2 10812:11 10819:5,8 presented 10770:8,13</p>	<p>president 10830:12,21 10835:2 10846:2 10847:3 10859:6,21 10863:14 10864:19 10866:3,7,10,14,18 10867:2,9 10868:5 President's 10870:22 press 10757:12 10823:3 pressure 10828:25 10829:1,3 10831:16 10833:5,8,15 10834:3 10834:12 10843:20 10844:12 10852:9 10853:13,16 10854:4 10869:16 presumably 10739:24 10760:14 10800:4 10850:3 prevent 10750:24 prevented 10751:18,24 previous 10773:24 10863:25 10864:4 previously 10733:2 10847:17 pre-empt 10741:4 pre-planning 10735:1 prima 10832:25 primarily 10858:8 primary 10871:23 principally 10795:3,23 principals 10859:10 principle 10798:1,7 10812:17 principles 10790:16,19 10802:24 private 10744:21 10745:6 10768:2,4 10778:21 10816:25 10820:3 privy 10821:7 10832:25 10852:23 proactively 10735:4 probably 10735:24 10743:24 10763:24 10768:20 10864:12 problem 10746:1 10770:8 10814:10 10831:22 10835:5 10836:5 10849:1 10870:12,13 10871:2 problems 10832:19 procedure 10735:2 proceed 10738:22 10746:21 10754:3 10810:10 10817:19 proceedings 10730:1 10747:1 10754:20 process 10798:10,20 10805:13 processed 10823:2 processes 10771:8 procured 10822:14 produce 10845:5 produced 10775:1 10843:22,23,23 production 10792:24</p>
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<p>productive 10846:17 professional 10765:3 10777:9,11,21 10778:6 10780:20 10781:14 professionalism 10764:18 10765:5,22 10775:6 10778:12 10779:19 profit 10798:15 profound 10730:11 programmes 10866:19 progress 10730:13 10795:15 prolonging 10846:16 promise 10735:15 10743:3 10852:13 10864:13 promises 10870:9 prompted 10764:14 proper 10834:21 10835:3 10847:1,14 10858:16 10866:7 properly 10779:9 10793:11 10834:18 property 10796:20 10800:7 10801:2 10834:16 10835:15 proposing 10762:6 10869:25 proposition 10776:6 10778:1,8,9 10780:3 10780:7,7,8,23 10781:6 10786:9 10787:2,7 10789:3,12 10790:2,6 10798:5 10802:16 10807:16 10813:23 10815:17 10817:10 10820:1,4 10820:21 10821:11 10823:19 10824:9,10 10825:12 10826:2 10835:18 10841:2,10 10852:16,18 10853:16 10856:17 propositions 10785:19 10813:13,25 10815:21,25 10816:15 10818:17 10819:23 10822:18 10825:3 10827:8 10828:10 10833:23 10841:2,6 10847:8 10852:4,13 10855:7 10870:25 protagonists 10797:12 10799:19 Protea 10822:1,1,2,3 protect 10834:22 10845:3 protesters 10743:9 10744:20 10747:24 10748:1 10793:5,9 10797:9 10821:5,9 10823:7 10824:14 10854:6</p>	<p>protestors 10807:6 provided 10785:22 10821:25 Provincial 10744:10 10745:23 10749:2 10776:21,22 10782:13,16 10784:3 10788:3 10819:11 10847:18 10857:15 10857:24 10858:7 provisions 10734:16 10813:23,25 public 10734:7 10791:12 10796:17 10796:18,23 10797:3 punch 10765:1 punctuate 10816:16 punish 10823:15 purely 10836:9,19 purpose 10738:18 10774:14 purposes 10735:1 pursue 10782:23 purview 10856:21 pushing 10802:1 puts 10746:2 10796:7 10814:22 putting 10737:2 10738:2 10740:11 10741:1 10742:13 10770:14 10772:8,16 10772:22 10774:21 10776:7 10778:1 10779:11,13 10780:3 10780:7,8,8,11,23 10786:9 10787:3,7 10790:2,7 10800:16 10806:4 10807:16 10808:25 10815:24 10824:22 10829:17 10829:22 10834:5 10835:20,24 10852:8 10852:21,24 10856:17 10870:24 pyp 10761:15 10763:10 10763:12,16</p> <hr/> <p style="text-align: center;">Q</p> <p>qualified 10800:4 qualify 10773:20 quarter 10849:6 10871:10 10872:9,10 questioning 10802:10 10812:17 10813:11 10841:22 10850:13 questions 10731:11 10742:11 10771:15 10782:1,15 10785:17 10802:2 10813:13 10841:1 10842:24 10861:14 10864:1,14 10864:14,16 10869:22,24 10870:10,11 quick 10754:18 quicker 10732:24</p>	<p>quickly 10765:9 10811:24 quiet 10843:11 quietly 10754:23 quit 10865:5 quite 10749:16 10763:19 10810:21 10810:24 10818:7 10824:25 10831:15 10863:25 10868:22 quote 10746:12 10851:9 10864:17 quote/unquote 10821:2 10828:19 10866:12</p> <hr/> <p style="text-align: center;">R</p> <p>rabbit 10845:5 radio 10820:12 radios 10820:2,8 10854:7 railway 10806:12,21 10807:24 raise 10813:10 raised 10794:25 10811:17 10840:19 10845:11 raising 10850:16 Ramaphosa 10831:3,6 10831:23 10841:24 10842:4,15 10843:24 10845:21 10846:21 10846:22 10848:12 10850:13 rationally 10771:18 RDOs 10824:16 reached 10809:25 10841:4 react 10779:2 reaction 10736:23 10864:24 read 10732:20 10733:18,22 10734:2 10734:11,25 10735:7 10751:9 10752:25 10760:23,25 10761:2 10761:14 10763:8,10 10764:3 10767:16 10768:11 10770:16 10770:18 10778:16 10787:17,17 10789:2 10789:19 10791:11 10811:17 10812:5 10817:16,24 10818:6 10818:8,9 10820:5 10827:22 10829:17 10829:24 10830:3,10 10830:11 10844:2,3 10863:23 10864:12 10865:14 10866:5 10871:6 10872:20 reader 10829:13 readily 10859:12 reading 10738:24 10764:20,21 10766:11 10819:17 10829:25 10830:4,5,6</p>	<p>10830:6 10850:14 reads 10761:14 10762:14 10769:2 10866:18 ready 10768:12 10769:1 10868:21,22 real 10740:20 10800:24 10801:4 10808:9,10 10859:13 10862:3 realised 10778:2 10788:1 reality 10748:20 really 10737:6 10739:3 10764:13 10769:7 10770:14 10776:7 10797:1 10801:25 10807:13,15 10809:22,24 10812:4 10814:3 10815:8 10826:23 10851:25 10860:13 10868:17 reason 10732:18 10744:21 10752:25 10762:20 10771:1 10784:4 10805:24 10811:23 10852:24 10853:2 10861:15 reasonable 10823:8 reasons 10782:7 10786:25 10811:15 10850:19 10854:17 rebut 10823:25 recall 10733:3 10842:13 10850:1 recalled 10843:2 recapitulate 10847:5 receivable 10854:16 receive 10835:8 10867:9 received 10740:15 10745:17 10753:4 10814:13 10831:12 10835:7 10844:10 10850:8 10866:22 10867:4 receives 10837:12 recipient 10835:25 recollection 10783:21 10784:13 record 10732:25 10733:15 10757:19 10782:20 10814:7 10826:5 10828:23 recorded 10820:8,12 10862:5 recording 10757:3,8,11 10757:13,19 recourse 10847:14 recovery 10731:3 reduce 10825:17 refer 10732:18 10736:1 10759:19 10817:14 reference 10736:1 10743:15 10748:8 10767:25 10795:12 10813:23 10824:15</p>	<p>referred 10732:24 10791:2 10798:11 10799:22 10812:6 10818:5 10832:1 10837:19 10856:20 10863:24 referring 10764:7 10768:4 10775:10 10817:12 10866:3 refers 10768:2 reflect 10764:22 reflected 10739:8 reformulate 10738:21 10802:11 10808:16 10814:12 10818:14 10827:20 10833:11 10848:19 10849:6 10852:11 reformulated 10801:16 refuse 10839:11 refusing 10824:16 refute 10775:22 10855:21 refutes 10855:20 regard 10802:23 10809:9 regarding 10831:3 10837:13 regret 10750:12 10756:10 regularly 10837:12 rejected 10865:4 relate 10750:13 10858:20 related 10830:10 10833:7 relates 10736:15 10757:18 10812:4,7,8 10848:21 relating 10841:23 relation 10811:25 10832:17 10854:3,4 relations 10820:24 10837:2 10859:21 relationship 10811:19 10812:19,21 10814:10 10818:12 10824:22 10844:1,3 10844:14,22,23 10856:18 relative 10799:3 relay 10748:18 relayed 10744:2,18 relevance 10738:19,24 10751:10 10752:16 relevant 10735:5 10741:23 10765:23 10864:15 relied 10735:13 10844:6 10853:15 religious 10797:5 rely 10733:17 10816:15 10816:20,23 10820:4 10844:13,15 relying 10841:16 remain 10771:14</p>
---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

<p>remainder 10808:8 remained 10763:1 remaining 10869:18 remarks 10731:6 remember 10731:24 10732:3,8 10733:13 10733:13,15 10734:9 10760:8,10 10761:10 10774:22,23 10776:19 10779:25 10781:24,25 10782:12,14 10785:9 10790:17 10811:16 10811:19 10815:6 10822:10 10830:5 10831:24 10833:14 10834:1 10835:21 10836:2,11 10842:6 10843:21 remind 10767:9 10811:1 reminded 10784:12 10871:17 reminding 10862:11 remove 10780:17 10788:4,6 removed 10751:6 10777:14,17 10778:5 10778:12 10780:16 10781:9,12,12,20 10782:7,9,11 removing 10860:17 render 10777:9,11,21 10778:5 10780:20 10781:14 repeat 10756:14 10786:24 10796:3 10829:6 10844:9 repeated 10739:24 repeatedly 10803:21 10860:19 repeating 10847:17 rephrase 10856:16 report 10820:12 10863:13 reported 10820:7,8 10832:11 reports 10789:19 10847:9 represent 10772:24 representation 10835:7 representatives 10812:13 10815:10 represented 10753:6 request 10749:16 10844:18 requested 10820:14 10830:25 10850:1 10869:2 requests 10831:6 10837:12 require 10735:8 10776:15 10791:25 required 10808:11 10859:2 requires 10781:18</p>	<p>10785:25 10791:12 10816:2 10840:11 10861:3 requisite 10779:18 10809:17 10810:7 10854:9 reserve 10819:21 10850:9 reserved 10819:22 residing 10827:14 resolved 10837:4 resolving 10752:8 resonate 10805:25 respect 10738:16 10741:4 10749:6 10750:14 10764:3 10784:9 10786:4 10807:15 10812:20 10820:18 10829:5,13 10834:24 10840:22 10840:23 10846:4 10866:2 respects 10814:19 respond 10770:9,17 10786:17 10850:10 responded 10778:22 response 10777:8,10,20 10794:2 10831:6 10847:20 10851:6 10863:2,12 responsibilities 10790:25 10856:14 10858:20 10860:9,11 responsibility 10734:17 10858:23 responsible 10734:23 10765:7 10772:15 10773:1,17 10791:4 10844:19 10845:7,8 10865:7 rest 10786:14 10795:16 10850:21 10853:20 10857:17 restarted 10862:6 restoration 10847:2 restore 10797:2 restored 10796:24 rests 10848:22 result 10746:6,10 10747:2 10845:17,18 10846:6 10853:14 results 10791:20 resume 10810:19,22 10849:6 resumed 10772:19 resumes 10730:2 10772:3,4 10810:17 10849:8,9 10873:22 10873:23 retained 10790:24 reticence 10828:3 revenge 10774:17 reverse 10752:24 revisited 10733:12 re-characterise 10850:22</p>	<p>re-examination 10850:4,8 10855:18 rhetorical 10821:6,12 ride 10844:25 rifles 10827:17,19 right 10737:16 10743:21 10747:13 10759:18 10763:8 10764:20 10765:6 10766:1,1 10767:12 10799:1 10804:5,6 10805:7 10815:23 10822:14 10839:18 10843:23 10857:18 10861:13 10862:21 10864:5,6 rightful 10833:21 rights 10797:3 10834:22 10850:9 right-hand 10863:9 ring 10857:13 rise 10785:23 risk 10762:16 rivalry 10826:9 role 10739:14 10741:2 10741:7,25 10743:13 10843:15 10857:9 10859:10 10860:16 roles 10837:17,25 10857:8 10858:19,22 10860:9 room 10751:6 10753:11 rooms 10779:4 round 10731:22 10769:23 rounded 10769:24 row 10754:7,16 rubber 10820:16 rudimentary 10798:13 rule 10751:15 10752:13 ruling 10749:16,21 10750:20 10786:1 10826:13 run 10811:23 running 10770:5 rushed 10736:10 Rustenburg 10851:11 Ryland 10761:14 10764:9 Rylands 10758:14,18 10758:20 10761:4,22 10766:4 10769:15 Ryland's 10759:3</p>	<p>10817:17,18 10820:7 10820:8,12,14 10830:25 10831:8,9 10831:12 10832:12 10832:13 10849:24 10853:14 10867:10 satisfied 10762:14 10847:16,19 satisfy 10757:20 10762:12 Saturday 10873:12 save 10733:6 10767:9 10769:23 10791:17 saw 10778:18 10823:13 10864:23 saying 10737:24 10739:3,6 10744:21 10748:9,14 10753:14 10757:11 10762:3 10763:6 10768:5 10771:16,19 10779:15 10780:4,4 10780:11,13 10783:12 10787:10 10789:21 10794:6,21 10801:20,23 10802:6 10804:11,12 10805:10 10815:24 10825:14,15,22 10827:12,21 10833:14 10834:19 10837:20 10848:11 10853:5 10855:8,9 10859:12 10865:5 10868:20 says 10734:5,12,21,22 10735:2 10742:4 10744:1 10745:22 10747:8 10749:12 10762:14 10763:12 10765:19 10768:1,2 10769:2 10772:10 10777:7 10778:4 10785:2,6,8 10787:11 10791:19 10797:21 10805:24 10815:19 10817:15 10818:13 10819:14 10820:6,7 10827:24 10837:9,14 10837:16 10838:10 10839:8,9 10845:20 10851:9,12,17 10854:20 10857:13 10863:1,1,12,19 say-so 10829:22 scanned 10849:22 scarcely 10838:22 scene 10744:24 10761:6 10778:23 10779:7 10788:5,6 10796:7 10832:18 sciences 10792:20 scientist 10792:13 screen 10753:15 screening 10753:13 screens 10822:12</p>	<p>se 10739:14 seated 10768:4 seating 10756:11 seats 10753:8 Sebatchane 10768:14 10769:7,8,8 second 10730:3,15 10737:24 10743:4 10763:13,17 10764:6 10814:4,4 10823:25 10824:10 10833:17 10834:9 10839:21 10840:8 10845:10 10851:13 10854:19 10863:19 Secondly 10819:9 10829:18 second-hand 10739:5 secretary 10851:13 section 10790:24 10791:1,10,15 10798:25 10812:4,5,7 10868:17 sections 10791:6 secure 10847:1 10848:13 security 10847:10,14 10847:16 10848:9 10865:11,11 see 10731:1,5 10741:14 10745:17 10754:3,17 10758:7 10761:18,19 10767:5 10769:4 10770:20 10776:23 10778:15,17 10782:4 10787:11 10804:11 10804:24 10806:1 10808:18,24 10809:23 10817:4 10818:19 10838:5 10839:4 10843:10 10851:23 10853:25 10863:18 10867:21 10872:3 10873:11 seek 10749:21 10873:18 seeking 10755:13 10848:9 seeks 10847:24 seen 10761:6 10803:21 segregation 10837:17 10837:25 self-defence 10744:24 10778:21 10779:14 semantics 10794:13 10840:15 Semenya 10736:25 10737:17 10738:9,11 10745:2,10,11 10748:6,7 10755:13 10755:19,23 10757:18 10763:3 10764:8,11 10765:10 10765:15 10770:25 10773:12 10775:17 10775:19 10776:13</p>
--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

10776:14,15 10777:16,22 10781:15,16,18,23 10783:17,18,23 10785:13,16 10786:11,16 10791:11 10802:15 10803:10,15 10807:13,19 10818:21,22,24 10819:3,13,15,21 10829:8,10,12,18 10849:25 10856:11 10857:7,21 10859:12 10861:8 10869:8,17 10869:23 10870:2,13 10870:14 10871:4,7 10873:24 10874:2,3 Semenya's 10739:9 10741:4 semi-automatic 10827:17,19 send 10835:17 senior 10736:14 10743:14 sense 10739:9,10 10774:17 10778:12 10862:3 sent 10748:17 10784:4 10824:14 10859:20 sentence 10766:19 10767:7 Senzeni 10830:12,21 Seoka 10747:23 10750:23 Seoka's 10751:7 separate 10856:2 Sepedi 10760:10,12,13 10760:13 10805:7,11 Sergeant 10857:13 series 10815:21 10841:2,6 10852:3 10870:24 serious 10771:14,17 10820:21 served 10827:14 10869:19 service 10745:4 10761:5 10770:3 10772:10 10777:8,9 10777:11,21 10778:6 10780:20 10781:14 10791:5,12,21 10857:17 10866:23 Sesotho 10759:12,22 10760:1,1 10761:12 10766:11,14 10767:20 10768:1,3,6 10768:11 10770:2 session 10873:12 set 10782:8 10816:13 10845:24 10847:8 10859:15 Setati 10753:9,14,22 10754:4,13,25 seven 10802:18	10854:4 seventh 10822:18 severe 10823:12 Shabangu 10845:21 shaded 10793:7 shaft 10823:1 shapes 10797:4 share 10867:14 shared 10820:2 sheet 10820:13 she'll 10733:24,25 she's 10805:10 10810:21 10814:6 10815:18,20,22 10830:20 10838:10 10844:10 10855:11 10860:19 10861:8 10870:7 shift 10873:11 shit 10767:20,24 shoot 10787:24 10820:11 shooting 10730:12 10865:10 shootings 10744:12 shore 10841:17 short 10733:10 10775:2 10870:24 shorten 10811:14 10812:9 shot 10744:20,23,24 10745:3,4 10764:4 shouldn't 10742:10 10759:6 10765:10 10856:24 10861:25 10869:14 10870:12 10870:13,25 show 10766:7,7,8 10777:2 10779:5,22 10792:11 10840:10 showed 10772:17 10810:7 showing 10749:8 10772:21 shown 10773:14 10778:14 10779:17 10782:20 10872:15 shows 10863:2,12 side 10754:8 10798:17 10801:10 10802:25 10803:1,5,6,12 10804:4 10808:19 10812:13 10827:13 10827:14,16 10833:16,16,23 10834:14,14,25 10835:8,8,16 10836:1 10856:22 sides 10797:19 10823:9 10854:11 sidetracked 10796:10 signed 10849:20,22 significantly 10828:14 10842:22 Silence 10816:22 similar 10844:18	10848:12 10851:8 similarly 10740:19 simple 10735:6 10781:6 10790:6 10792:23,25 10836:3 10849:16 10856:17 10860:13 10861:3 simplistically 10845:13 simply 10752:19 10770:24 10780:4 10826:14 10835:20 10845:13 10851:4,14 10861:2 sir 10821:15 10826:14 sit 10753:6,11 10768:25 10771:2 10869:19 site 10799:13 sitting 10755:4 10769:1 10773:18 10869:11 situation 10734:7,12,14 10734:20 10735:12 10753:2 10778:19 10788:2 10792:22 10793:3 10831:10 10837:5 10840:11 situational 10734:5,17 situations 10792:8,21 10812:18 10837:14 six 10802:17 10854:4 sixth 10822:17 10864:1 skirmish 10799:23 slaat 10768:15 10769:7 10769:8 small 10870:21 Smith 10863:14 social 10792:13,20 10796:19 10797:4 society 10772:13,25 10792:13 10837:13 soldiers 10866:16 sole 10780:4,12 somebody 10762:3 10873:11 somebody's 10772:17 someone's 10751:2 somewhat 10856:2 summer 10768:14 10769:4,5 soon 10868:22 10872:16 sorry 10735:21 10736:17 10741:3 10747:25 10754:24 10757:4 10758:11 10759:16,19 10760:21 10775:25 10787:16 10791:18 10806:4 10809:3 10829:9,9 10830:2,17 10830:19,19 10834:8 10835:5,19 10841:7 10842:17,17 10849:10 10850:5 10852:20 10853:12 10853:13 10859:18 10863:1,5 10868:25	10871:17 10873:3 sort 10737:6 10763:4 10775:1 10782:3 10792:2 sorts 10762:21 Sotho 10760:14,15,16 10760:20 sought 10835:25 10852:1 sound 10825:7 sounds 10768:23 10770:12 soundtrack 10761:4,7 10761:8 sources 10866:20 South 10772:10 10823:8 10863:15 Southern 10760:15 so-and-so 10815:1 10859:14 so-called 10735:14 10830:9 10853:2 10857:1 10860:5 10867:18 10868:1 space 10753:7 speak 10779:3 10792:15 10795:9 10799:5 10802:25 10803:1 10804:4 10805:11 10807:23 10810:9 10815:9 10857:15,22,23 10858:7,9 10859:14 10861:23 speakers 10805:8,11 speaking 10767:20 10768:1,3,5,11 10810:8 10856:25 10859:11,15 10861:17 10871:24 speaks 10760:14 10764:6 10771:1 10857:15 special 10750:15 10851:10,17 specifically 10872:16 specific 10733:21 10734:15,15 10823:9 specifically 10737:9 10783:10 10803:12 10804:6 10812:6 10817:14 specificity 10776:16 speech 10779:6 10813:4,5,7,7 speeches 10845:1 speedy 10731:3 spelt 10772:12 spend 10731:22 spending 10807:14 sphere 10856:7,7,8,19 10856:22 10857:3 10859:5,9 10860:5 10861:18,21 10865:25 spheres 10856:10	10857:1,5 10859:16 spiel 10844:20 spirit 10798:24 10799:1 10812:24 split 10822:20 spoke 10809:7 10813:1 10814:5 10815:1,9 10820:19 10828:23 spoken 10743:25 10768:23 10802:18 10809:12 10817:2 spot 10862:2 springboard 10858:4 spur 10865:17 10866:2 10867:2 spurn 10814:17 SS2 10734:21 stabilised 10837:5 stability 10797:3 stage 10730:21 10735:13 10745:24 10747:11 10783:2 10800:13 10806:17 10809:17 10841:5 10845:24 stages 10827:23 stakeholders 10805:23 10809:25 10810:2 10815:15 stand 10823:19 10856:9 standards 10764:17 10765:2,22 standing 10734:21 standpoint 10756:19 10756:20 10867:16 stands 10860:25 standstill 10800:15 Star 10844:2,4,5 start 10730:5 10760:19 10770:14 10804:10 10864:8 10865:8 10870:7 started 10732:10 10733:11 10754:19 10756:21 10773:12 10774:24 10787:7 10805:14 10832:6 10850:15 10869:2 10870:6 starting 10773:14 state 10868:24 10870:3 stated 10740:22 10743:9 10826:21 statement 10735:21,22 10736:23 10738:25 10739:1,2,4,8,24 10740:2,19,21 10744:1 10745:1 10757:4 10765:12 10766:5 10770:18 10772:9,20 10773:16 10777:3,6,15,15,23 10778:7,17 10782:22 10783:1,24 10784:12 10784:13,23 10785:5
----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

<p>10785:14 10786:23 10789:20 10791:19 10794:14 10811:17 10811:20 10816:11 10817:15 10818:4,24 10819:3 10820:4 10821:23 10824:13 10827:22 10828:22 10829:4,18,25 10830:3,16 10831:20 10837:9 10838:10,13 10841:16 10842:2 10846:24 10849:19 10849:21,22 10850:1 10850:15 10851:9 10856:10 10857:7 10862:18 10863:23 10866:5 statements 10739:24 10745:16 10769:24 10770:1 10772:23 10773:21 10786:22 10787:8 10794:15 10812:23 10817:4 static 10751:1 stating 10785:18 station 10823:3 10857:14 statutory 10812:25 10813:23,24 stay 10753:20 steeds 10768:17 10769:21 step 10750:23 10868:1 stepping 10860:14 steps 10777:8 10784:15 10791:21 STF 10832:5 stick 10767:6 10814:21 stomach 10769:10 stone 10860:14 stood 10805:4 stop 10754:20 10836:7 strength 10843:3 strictly 10845:16 strike 10793:16,21 10794:4,11 10796:4,8 10796:12 10800:1,3 10800:14,18 strikers 10748:17 10793:16 10795:3,8 10795:20 10796:15 10801:12 10805:18 10805:21 10806:6 10807:10 10808:6 10809:13 10810:9 10835:10,12 strikes 10793:24 10824:19 striking 10808:6 10848:3 10865:8 strive 10810:1 strong 10775:2 structured 10856:18 structures 10730:14 10793:17 10795:5,6</p>	<p>studied 10792:20 subcontracted 10822:14 subject 10791:1 10811:23 10814:1 10818:20 10822:2 10836:5,6 10871:14 subjected 10834:15 submission 10844:14 10844:15,24 10845:7 10845:8 submissions 10846:21 10848:18 submit 10764:22 submitted 10820:5 subsequent 10742:6 substance 10844:9,11 substantiate 10818:12 10845:6 succeed 10834:4 10843:4 successful 10845:15 successfully 10743:11 succinctly 10848:23 sudden 10846:8 sufficient 10847:16,19 sufficiently 10816:21 10851:19 suggest 10730:19 10738:20 10752:15 10753:18 10765:17 10766:3 10774:11 10798:5 10862:2 10872:24 suggested 10740:9 10742:24 10750:3 10754:5 10770:2 10833:4 10837:20 10853:10 suggesting 10776:2 10779:21 10795:16 10801:6 10803:3,5 10828:3 10837:23 10838:5 10844:21 suggestion 10808:11 10828:24,25 10829:2 10852:8 suggests 10739:4 10775:24 10834:12 10857:12 suitable 10872:7 summing 10858:3 Sun 10846:12 superadded 10800:22 support 10829:15 supports 10786:9 suppose 10772:11 10858:8 10864:9 supposed 10796:21 10797:5 supposing 10744:15 suppress 10777:20 suppressing 10777:8 10777:10 sure 10754:13,14,19 10763:15,19 10771:1</p>	<p>10772:12 10782:11 10789:24 10796:10 10798:24 10804:14 10806:16 10811:9 10814:18,20 10821:22 10823:23 10832:3,7 10854:18 10855:21 10856:15 10861:10 10866:17 10866:21 10869:25 10871:8 10873:19 surely 10741:23 10742:7 10827:2 10835:17 10836:12 surprised 10843:11 surrounding 10851:12 Susan 10845:20 suspect 10768:19 10769:11,16 suspicion 10795:10 sustained 10731:4 system 10735:3 systems 10795:21 s.u.o 10731:12 10811:6</p> <hr/> <p style="text-align: center;">T</p> <p>table 10810:24 10849:19 take 10734:13,17 10750:4 10755:15 10756:2 10761:14 10766:11 10771:4,25 10788:8 10789:10 10790:17 10793:10 10796:19 10799:9 10806:7 10810:5 10825:6 10837:14 10840:23 10841:4 10848:16 10849:4 10856:3 10857:16 10858:14 10861:8 10862:17 10863:15 10863:17 10868:13 10869:8 10870:8,16 10872:17 10873:20 taken 10744:13 10761:4 10774:3 10784:15 10795:7,24 10796:20 10823:1,2 10838:11 10854:11 10863:6 10865:12 takes 10799:24 10802:12 10825:5 10842:22 talk 10789:24 10793:16 10801:13 10803:12 10810:1 10811:10 10815:14 talking 10756:21 10760:19 10784:1,9 10784:10 10801:10 10802:7 10807:10 10810:2,14 10859:14 10867:16 talks 10790:25 tame 10824:19</p>	<p>tape 10762:15 targeted 10777:7 task 10851:10,17 tea 10754:6 10772:1 10827:14 10848:16 10849:4 team 10762:10 10770:4 10805:16 telephone 10810:20 10832:15 telephoned 10788:2 telephones 10847:20 telephonic 10830:23 10831:2 television 10753:12 10866:19 tell 10733:25 10762:2 10763:21 10765:11 10769:16 10799:22 10803:8 10807:9 10827:10 10839:16 10865:16 10872:1 10874:1 telling 10806:3 tension 10798:11 terms 10734:15 10769:19 10773:5 10778:9 10792:16 10856:18 10857:2 10860:10 10870:19 terrain 10842:10 teruggelooop 10787:12 test 10760:7 testified 10777:3 10819:8 10830:13,22 10841:24 10842:16 10856:21 testimony 10853:24 thank 10730:7,22 10731:4,7,14,20 10734:2,20 10736:12 10736:17 10742:25 10747:20 10750:22 10753:21 10756:25 10758:25 10760:6 10761:25 10762:22 10766:24 10767:8 10769:22 10770:19 10772:2,6,6 10773:21 10774:1 10780:21 10781:5 10782:19 10783:7 10788:10,13 10790:14 10799:12 10799:17 10802:10 10802:14 10804:20 10807:1 10810:25 10811:8,13 10815:7 10816:8,19 10819:25 10825:21,24,24 10826:3,6 10832:23 10832:24 10838:21 10843:5 10849:23 10850:3,5,6 10854:1 10855:23 10856:1 10858:5 10860:4 10864:17 10868:16</p>	<p>10873:2 10874:5 thanked 10749:13 10772:13 theme 10844:7 theory 10742:15 therapy 10782:6 thereof 10734:22 10775:16 10796:5,6 there'll 10753:12 10755:23 10756:19 there's 10738:17 10739:23 10751:1 10757:11 10758:21 10758:21 10767:17 10767:17,22,22 10770:12 10784:11 10785:23 10786:8 10793:15 10794:17 10794:19 10796:18 10800:5,6 10811:9 10816:1 10821:20 10828:21 10829:4 10831:21 10832:3,7 10832:14,15 10834:1 10834:13 10835:13 10836:3 10839:19 10840:7 10841:4 10844:11 10868:18 10870:20,21 10871:11,20 thesis 10847:6 They'd 10832:6,8 they'll 10762:16 they're 10754:12 10760:19 10765:21 10779:20 10815:22 10846:22 they've 10761:9 10872:3,14 they'd 10808:4 10809:12 thicket 10849:13 thing 10730:8 10752:19 10754:5 10767:16 10769:4,5,6 10770:16 10796:5,6 10825:16 10829:22,23 10833:17,17 10838:15 10847:12 10853:7 10865:8 10866:10 10870:22 10871:11 10873:13 things 10733:10 10739:21 10749:7 10755:21 10762:21 10764:5 10765:17 10766:8,9 10770:20 10771:11,18 10772:10,18 10773:14,15,19 10777:16 10779:15 10779:17,18 10781:12 10782:23 10786:2 10794:16 10795:22 10799:11 10802:5 10812:9</p>
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<p>10814:23 10819:7 10820:18 10833:21 10845:18 10846:9 10847:17 10850:21 10852:21 10854:7 10856:8,23 10859:15 10868:19 10871:6 thinking 10758:11 10805:25 thinks 10833:20 third 10743:5 10834:1 thirdly 10789:22 thought 10730:16 10737:13 10739:16 10766:8 10799:23 10800:9 10803:3 10809:18 10824:24 10862:1 threat 10788:3,6 threatened 10783:13 10783:13 10784:23 10788:24 10824:4 threateners 10788:15 threats 10783:11 10784:13,14,15 10790:3,7,10 10801:3 three 10734:9 10820:20 throw 10865:18 thrust 10852:9 Thursday 10755:5 10868:15 10869:10 10872:17 10873:12 10874:4,8 tien 10768:15 10769:7 10769:8 till 10818:14 time 10731:23 10732:20 10733:7 10734:8 10738:1 10740:4 10749:20 10754:19 10756:14 10757:10 10761:13 10763:8,16,17 10769:23 10770:17 10770:22 10778:8 10789:5,6,10 10791:17 10807:15 10814:8 10815:23 10819:19 10825:6 10828:1 10832:4 10839:16 10842:24 10844:7,7 10849:7 10858:15,16 10865:21 10869:2,13 10870:19 10871:12 10871:25 times 10734:20 10764:4 10769:9 10786:1 Tip 10730:5,7,22 10731:1,5 10846:14 10850:10,12,16 10851:20,23,24 10871:21 Tip's 10851:4 today 10770:12</p>	<p>10787:23 10844:13 10844:20 10848:14 10860:9 10871:19 TOKOTA 10870:15 told 10736:18 10737:3 10741:18 10744:10 10745:22 10750:7 10751:9 10754:10 10785:21 10795:19 10795:25 10816:10 10835:22 10836:7 10853:6 10869:7 10872:2,14 10873:24 10874:1 tomorrow 10755:2,4 10868:14,15 tongue 10760:11 top 10753:25 10820:9 10863:9,19 topic 10828:13 10833:14 10847:23 totally 10745:19 10764:15 10835:17 Town 10835:1 10845:21 toxic 10811:18,18 10824:22 10825:7 10827:19 10841:4 10844:1,14 to-the-minute 10747:22 trade 10795:9 tradition 10867:20 traditional 10864:25 tragedy 10824:20 10859:4 10866:2 trans 10768:12 transcribed 10761:9 transcript 10758:13,18 10758:20 10759:2,9 10759:20 10761:3 10762:10,19 10872:17 transcription 10759:21 transcripts 10803:21 10872:15 transform 10853:3 translate 10768:8,18 translated 10759:12 10760:4 10761:9,11 10766:13 10788:11 10872:18 translating 10766:17 10766:23 translation 10761:20 10767:9,21 10770:9 10771:20,23 translations 10770:24 10771:9 transmit 10859:3,6 transmitted 10833:6,24 10859:9 10861:22 10868:5 transparent 10791:5 transposed 10856:8 traumatised 10782:5</p>	<p>travel 10871:20 treatment 10846:18 tribunal 10767:9 tried 10750:23 10751:12 10809:11 trigger 10735:13 trivialise 10837:6 trivialised 10837:8 trouble 10824:8 TRT 10779:24 10832:5 true 10737:22,23 10791:14 10801:11 10806:10 10836:13 truth 10791:23 try 10754:15 10769:23 10804:4 10827:20 10845:12 10856:16 10873:1 trying 10733:10 10807:21 10840:10 Tshwane 10857:14 Tuesday 10731:19,20 10809:9 turf 10746:6,10 turn 10734:3 10751:3 10873:7 turned 10738:9 10744:20 10781:16 10782:1 10823:12,23 10827:15,17 turning 10827:18 TV 10763:4 two 10736:3,19 10740:8 10741:8 10746:10 10770:22 10773:7 10779:21 10782:2 10788:7 10789:19 10793:13 10794:16 10797:12 10797:19,22 10802:1 10802:2,23 10803:4 10811:15 10819:7 10820:18,24 10821:2 10823:6 10825:6 10826:8 10828:6 10831:4 10832:7,19 10833:22,25 10834:5 10836:25 10838:8,8 10841:22 10845:8,18 10847:10 10850:23 10854:12 10856:9 10857:1,5 10859:16 10865:10,11,11 10867:23 10868:18 two-year 10795:22 type 10770:16 10771:21 10845:3 types 10782:2 typical 10792:8</p>	<p>unclear 10748:8 10770:11 underlying 10796:5 understand 10730:6,13 10731:10 10737:1 10745:1,7,17 10746:18,19 10748:21 10751:10 10759:22 10760:15 10762:3 10764:14 10765:16 10774:4 10777:23 10780:23 10780:25 10781:2,2 10790:11 10792:18 10793:1 10801:9 10802:3 10803:17,19 10803:25 10805:9 10807:14 10808:23 10810:19,21,24 10812:17 10813:3,21 10815:25 10824:25 10827:20 10833:7 10841:18 10842:18 10856:11 10857:9 10860:6 10868:12 10871:11,12 understandable 10770:20 understanding 10779:8 10790:13 10860:11 10867:4 understands 10856:16 understood 10746:17 10769:16 10820:14 10852:10 undue 10841:15 10848:8,21 10852:8 10853:12,13,16 undueness 10848:22 unduly 10869:15 unfair 10814:23 10826:15 10852:23 10871:22 unfairness 10801:9 unfortunate 10730:8 unfortunately 10752:19 10846:14 10850:11 union 10795:9,21 10799:4 10830:12 unionised 10835:12 unions 10736:3,20 10739:13 10740:9 10746:10 10826:8 Unknown 10767:19 unlawful 10775:3 unnecessary 10814:8 unpacking 10868:1 unprofessionally 10780:13 unprotected 10793:16 10794:4,7,11 10795:3 10796:4,8,15 10800:1 10800:2,14 10801:12 unprotectedness 10796:12</p>	<p>unqualified 10817:11 unrealistic 10835:18 unrest 10837:3 10865:6 10871:21 upheld 10786:5 uphold 10752:1 upset 10787:19 10810:24 upstairs 10762:11 upwards 10861:22 up-to-date 10732:1 up-to-the-minute 10735:4,8 urgent 10810:20 use 10763:5 10792:16 10818:11 10820:16 10823:10 10840:3 10842:1 10854:7,7 useful 10814:18 uses 10755:14 usually 10768:25 utterances 10765:12 uttered 10801:3</p> <hr/> <p style="text-align: center;">V</p> <hr/> <p>vague 10738:14 valid 10760:6 10827:12 10844:13 10874:7 validly 10845:11 van 10787:11 10820:5 10820:19 10857:14 vang 10768:14 10769:3 10769:5 variety 10866:20 various 10739:13 10793:23 10797:4 10809:25,25 10827:23 10865:21 vehicle 10788:7 venue 10730:3,9 verbal 10772:21 verbose 10794:6 verkeerde 10787:14 Vermaak 10784:20,20 10785:2,6,8,14 10787:10 10788:24 10789:20,24,25 vernacular 10760:3 10761:8,10,11,12 version 10735:22 10738:8 10744:22,25 10746:3,12,25 10747:1,5,18 10749:17 10770:12 10771:19 versions 10770:8 10771:23 victims 10792:2 VICTORIA 10731:12 10811:6 video 10758:14,18,20 10759:3 10761:4,6 10766:4 10778:18 videographers 10821:22 videos 10761:23</p>
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<p>10773:15 view 10745:18 10781:8 10785:25 10801:12 10802:4 10805:24 10812:20 10824:12 10824:17,17,20 10826:7,20 10832:25 10846:15 10847:7 10854:6 10867:1 viewed 10732:8 10823:9 10854:5,10 10854:11 views 10750:12 10786:2,3,25 10806:22 violence 10800:6,15 10801:3 10834:15 10848:1 violent 10824:19 10840:3 vir 10787:13 visited 10799:14,18 vis-à-vis 10797:11 voice 10761:15 vulgar 10768:1 10779:6 10780:18 vulgarities 10770:2 10771:10 10778:13</p> <hr/> <p style="text-align: center;">W</p> <hr/> <p>wage 10793:13,15 10794:25 10795:4 10797:20,20 10801:22,25 10826:10 10848:6 wages 10794:19 10795:18,23 10865:6 wait 10754:6 10797:14 10813:6 10873:14 walked 10787:18 want 10730:21 10731:22 10733:21 10736:1 10739:11 10740:20 10741:16 10747:21 10748:9 10753:6,18,19,19 10754:22 10756:12 10761:16,20 10762:23 10768:8 10769:23 10770:21 10772:7 10775:3,21 10782:9 10785:12 10786:18 10787:5 10789:15 10792:16 10796:9 10798:8 10805:17 10811:8 10812:10 10820:20 10830:4 10843:19 10844:9 10848:20 10849:1 10850:7 10853:19,21 10862:15 10865:20 10865:22 10868:17 10869:16 10872:9,23 10873:7,8,13 wanted 10730:6</p>	<p>10731:21 10732:18 10748:1,18 10785:9 10789:17 10794:22 10795:4 10808:22 10839:23 10852:14 10852:15 10858:22 wants 10761:13 10783:18 10812:18 10818:22 10829:10 10855:17 10868:24 war 10746:6,10 warra-warra 10795:22 10846:8 wasn't 10741:24 10745:15 10749:18 10750:3,4,7,8,14 10751:11 10759:15 10782:10 10789:4,5,6 10789:9,10 10818:5 10819:19 waste 10869:13 wasting 10749:20 10814:8 wat 10787:14 watch 10753:15 watches 10866:19 water 10748:9 10820:16 way 10730:19 10732:22 10733:10 10738:14 10738:21 10739:17 10745:14 10746:22 10752:5 10770:7 10772:16 10779:2 10797:5 10803:17 10808:2,5,12 10814:25 10816:3 10817:1 10823:25 10828:1 10834:25 10840:10 10846:3,10 10848:25 10849:12 10851:3 10858:16,18 10858:21 ways 10789:19 weak 10799:4,6 weapon 10865:9 weapons 10803:23 website 10862:25 10863:1,7 Wednesday 10731:17 week 10733:12 10743:2 10757:18 10761:23 10762:10 10862:19 weighed 10865:20 well-known 10823:3 well-planned 10734:23 went 10733:2,14 10788:5 10789:13 10823:24 10828:1 10870:6 weren't 10740:11 10761:12 10784:16 10839:9 10869:7 weren't 10778:23 Western 10730:12 10768:24</p>	<p>we'd 10869:19 we'll 10732:21 10749:20 10752:4 10753:17 10754:7 10762:18 10764:11 10766:11 10771:3,3 10771:25 10786:12 10790:14 10813:8 10833:21 10849:6 10854:2 10869:11 10872:8,17 10873:20 we're 10749:1 10763:23 10764:16 10803:22 10814:7 10821:16 10825:2 10843:22 10869:15 10871:19 10872:4 we've 10739:12 10748:25 10759:12 10759:23 10761:6 10785:9 10787:9 10788:8 10794:18 10799:23 10828:11 10844:10 10845:24 10856:4 we'll 10802:13 10810:5 10810:15 we're 10802:4 10803:23,23 10807:14 we've 10803:21 10805:23 whatsoever 10739:15 10828:22 10844:12 10846:7 what's 10741:15 10745:21 10751:2 10753:13 10834:12 10837:22 10867:11 what-do-you 10820:22 what-do-you-call 10819:1 whilst 10730:13 whiteboard 10819:10 who's 10763:20 wide 10795:15 10866:20 Wie 10768:14 10769:7 10769:8 wish 10731:2 10774:4 10782:15 10848:19 10873:9 wishes 10748:6 10813:4 withdraw 10773:20 10798:14 10824:9 10831:19 10833:10 witnesses 10739:25 10740:1 10775:22 10786:23 10794:15 10817:4 10852:22 10869:12 witness's 10738:25 10749:17 10751:22 10812:20 10830:7 10854:16</p>	<p>witness's 10809:20 wondering 10759:6 won't 10730:4 10733:15,22 10741:6 10755:3 10782:23 word 10755:15 10763:13 10768:21 10768:24 10771:2,7 10775:20 10791:7 10822:8 10823:10 words 10734:9 10740:24 10743:7 10763:21 10783:12 10783:15 10790:23 10799:3 10800:16 10851:20 work 10730:20 10751:5 10767:20,24 10770:20 10772:15 10792:1 10793:21 worked 10805:23 10816:25 workers 10792:15 10793:17 10826:11 10865:8 working 10792:23 10820:3 10863:2,13 world 10795:16 worried 10816:9 worry 10741:18 worst 10796:14 worthwhile 10868:14 worthy 10750:2 wouldn't 10732:23 10766:9 10771:21 10793:16 10795:8 10867:25 10869:8,9 would've 10739:16 wrong 10748:10 10752:4 10762:19 10771:6 10776:25 10787:22 10803:18 10840:9,12 wrote 10842:4</p> <hr/> <p style="text-align: center;">X</p> <hr/> <p>X 10830:9 Xhosa 10766:14 10767:1 10768:8,9,19 10805:8,11</p> <hr/> <p style="text-align: center;">Y</p> <hr/> <p>Y 10830:9 yesterday 10730:10 you'd 10731:1 10841:8 10848:19 10849:25 you'll 10735:19 10768:21 10781:23 10791:24 10830:5 10863:17 you're 10737:2,5,10 10740:1 10752:10,16 10757:24 10761:1 10763:6 10764:20,21 10764:22,25 10780:23 10784:20</p>	<p>10787:2 10811:2,4 10816:5 10826:24 10849:11 10855:8,12 10855:15,21 10860:13 10868:20 you've 10738:14 10749:15 10766:20 10780:22 10781:16 10783:1,3 10785:11 10786:19 10819:22 10824:8 10825:11 10827:7 10834:11 10839:19 10840:19 10841:4,6 10852:3 10853:9,22 10861:25 10862:1,7,15 10867:24 10874:6 yô 10767:4,4</p> <hr/> <p style="text-align: center;">Z</p> <hr/> <p>Zokwana 10739:12 10830:12,21 10831:5 10847:2,9,22 10848:12,13,15 10850:18 Zuma 10863:1,12,14 10863:19 10865:4</p> <hr/> <p style="text-align: center;">0</p> <hr/> <p>00:42 10760:21,24 00:46 10760:21,24 000 10820:9 02:15 10764:2 02:30 10764:3</p> <hr/> <p style="text-align: center;">1</p> <hr/> <p>1 10735:2 10823:1 10830:22 10845:21 10 10731:24 10732:4,5 10732:6,8,12,19 10733:12,16 10744:23 10764:4 10769:9 10790:16 10865:10 10th 10741:11 10805:14 10:06 10730:2 10:26 10740:18 10:46 10753:4 100% 10741:18 1000% 10771:1 11:05 10765:10 11:48 10772:4 12 10791:6 10830:14,22 10871:9 12th 10847:4,8,10,21 12:08 10780:22 12:28 10792:19 12:47 10801:8 120 10807:3 13 10791:6 10811:25 13th 10736:7,8 10740:16 10741:7,11 10747:2 10774:24 10777:13,13 10778:10,23 10779:7</p>
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<p>10779:22,25 10781:21 10789:7 10799:17 10803:19 10803:19 10804:1 10805:13,17 10806:4 10806:21 10807:2,8 10809:15,19 10810:14 10812:11 10814:5 10815:11 10863:8 13:45 10748:2 14th 10809:15,19 10820:6 10821:1 14:02 10810:18 14:22 10820:7,18 14:41 10831:14 15 10830:11 15th 10831:24 10832:1 10832:2 10846:6 10847:4 15.1 10850:15 15.2 10830:24 15:01 10845:9 15:32 10849:9 10860:7 16 10766:7 10817:16 10831:2 16th 10741:12 10744:12,13 10745:3 10750:9 10778:2,23 10781:22 10783:22 10784:10,10 10800:13 10821:3 10832:2 10846:8 10859:17 16:11 10869:21 16:27 10873:23 17 10735:21,23 10764:5 17th 10757:12 10823:4 10859:2,17 18 10829:24 10830:1 10831:10 10832:1 19th 10843:16 195(1)(d) 10791:10 199 10730:4</p> <hr/> <p style="text-align: center;">2</p> <p>2 10734:25 10744:24 10761:6 10778:10,23 10820:9 10846:1 10863:17,25 2.2.5 10791:18 2:00 10767:15 20 10759:4 10832:11 2012 10777:13 10817:16 10820:6 10830:23 10863:8 2013 10730:1 21 10837:9 214 10791:1 216 10791:2 218 10790:24 10812:5,5 23 10826:10 10838:10 10838:13 23(5) 10798:25 24 10744:1,4,5 10849:21</p>	<p>25 10758:21,22 10791:15 26 10758:20,22 262 10734:21 270 10822:25 289E 10845:20</p> <hr/> <p style="text-align: center;">3</p> <p>3 10735:2,13 10816:23 10821:4 10843:14 10846:6 10849:21 3-0 10862:22 3.1 10734:5 3.3.1 10734:5 3.3.2 10734:11 3:00 10767:15 30-minuter 10869:19 31 10753:7,7 10754:10 10754:11,18 34 10744:21 10745:3 34.4 10791:19 35 10777:7 10781:13 10782:8 39 10772:9</p> <hr/> <p style="text-align: center;">4</p> <p>4 10730:1 10735:2 10871:10 49 10817:15</p> <hr/> <p style="text-align: center;">5</p> <p>5 10787:11 10869:20 10870:1 10871:10 10872:9,10</p> <hr/> <p style="text-align: center;">6</p> <p>6 10819:9 10820:25 10821:3 6th 10843:16 10869:3,5</p> <hr/> <p style="text-align: center;">7</p> <p>7 10838:15 7th 10869:3,5</p> <hr/> <p style="text-align: center;">8</p> <p>80% 10760:18 800 10851:1</p> <hr/> <p style="text-align: center;">9</p> <p>9 10845:23 10868:22 9th 10741:11 9.3 10811:20,21,22 9.4 10734:21 9:30 10868:15 10874:8 95% 10760:15</p>			
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