

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 169

15 JANUARY 2014

PAGES 19711 TO 19929



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Page 19711

1 [PROCEEDINGS ON 15 JANUARY 2014]
 2 [09:18] CHAIRPERSON: The Commission resumes, I
 3 hope everybody who has a cell phone has turned it off.
 4 Brigadier, you're still under oath.
 5 BRIGADIER CALITZ: Dankie, mnr die
 6 Voorsitter.
 7 CHAIRPERSON: Mr Bizos?
 8 MR BIZOS SC: Thank you, Mr Chairman.
 9 Brigadier I was busy asking you questions yesterday on the
 10 contents of exhibit GGG2, the affidavit of Mr Hendrickx, we
 11 reached page 10, do you recall that?
 12 BRIGADIER CALITZ: I've got it.
 13 MR BIZOS SC: The effect of your answers
 14 to my questions in relation to the concepts that Mr
 15 Hendrickx described in the first 10 pages and would you
 16 accept that in the main your answers were that you disagree
 17 with the precepts of Mr Hendricks because of your
 18 experience?
 19 BRIGADIER CALITZ: Dit is korrek, dit was
 20 een van die redes gewees.
 21 MR BIZOS SC: Now experience can be good
 22 experience and bad experience depending on the purpose.
 23 BRIGADIER CALITZ: Dit is seker so.
 24 MR BIZOS SC: Your experience during the
 25 apartheid regime and thereafter, after the demilitarisation

Page 19712

1 of the police force was and unhappily is almost
 2 dictatorial, would you agree with that?
 3 BRIGADIER CALITZ: Net die laaste woord
 4 as jy kan net vir my kan verduidelik wat u bedoel?
 5 MR BIZOS SC: Yes, dictatorial, more
 6 befitting a dictatorship rather than a democratic state.
 7 BRIGADIER CALITZ: Nee, mnr die
 8 Voorsitter, nee ek volg nie mooi nie. As jy dalk net weer
 9 vir my kan die vraag herhaal.
 10 MR BIZOS SC: No, let me try and explain.
 11 That during the apartheid regime and after the
 12 demilitarisation of the police came to an end during Mr
 13 Tshwete's ministership the behaviour of the police was
 14 dictatorial. You know what that means don't you?
 15 BRIGADIER CALITZ: As jy praat na my eie
 16 ondervinding, gister se voorbeelde waar jy genoem het ek
 17 gesê ek was nooit betrokke by enige van daardie, ek het
 18 verduidelik waar ek was in daardie tyd waar u verwys het in
 19 die apartheidsjare. So dit is wat my ondervinding aan
 20 betref.
 21 MR BIZOS SC: Well you know I'm sorry
 22 that I have to remind you about the statements made by the
 23 minister of police by the –
 24 CHAIRPERSON: Mr Bizos, I think you're
 25 going to refer, the then deputy minister.

Page 19713

1 MR BIZOS SC: Sorry the then deputy
 2 minister.
 3 CHAIRPERSON: No, no the minister and
 4 the then deputy minister.
 5 MR BIZOS SC: Deputy.
 6 CHAIRPERSON: Who is Ms Shabangu. Those
 7 are the statements you're going to refer to?
 8 MR BIZOS SC: No, that we have, you're
 9 following the proceedings here, kill the bastards, you've
 10 got a gun and a bullet use it. This is the sort of thing
 11 that were –
 12 CHAIRPERSON: You puzzled me here. What
 13 counsel is referring to is statements which were quoted
 14 earlier in the proceedings, he thinks you may have been
 15 aware of them, having been quoted earlier in the
 16 proceedings, alternatively you may have been aware of them
 17 any way. The statements made by the minister and the then
 18 deputy minister, Ms Shabangu which he's quoted which are
 19 rather forthright and have been subjected to substantial
 20 criticism. Were you aware of the statements of that kind
 21 and the fact that there had been a controversy about the
 22 minister and the deputy minister having used language of
 23 that kind that Mr Bizos has quoted?
 24 BRIGADIER CALITZ: Dit is korrek, mnr die
 25 Voorsitter. Ek het wel daarvan gehoor.

Page 19714

1 MR BIZOS SC: Yes.
 2 CHAIRPERSON: That's what he's referring
 3 to, the question he's going to ask you now as a run up to
 4 questions he's going to ask you now, I just put that to you
 5 so that -
 6 BRIGADIER CALITZ: Dankie vir daardie –
 7 CHAIRPERSON: That you can follow.
 8 BRIGADIER CALITZ: Dankie, mnr die
 9 Voorsitter.
 10 MR BIZOS SC: And also that you must use
 11 maximum force.
 12 BRIGADIER CALITZ: Ja, ek kan nie sê
 13 presies laat ek kan aanhaal wat gesê is nie, maar ek weet
 14 in daardie lyn daar was opmerkings gemaak. Ek nie presies
 15 nou onthou op hierdie stadium wat gesê was nie.
 16 MR BIZOS SC: Also in the last 10, 12
 17 years repeatedly the police force of which you are a senior
 18 member has expressed views that they can't really fight
 19 crime properly by, because of the provisions of the
 20 constitution that have more regard for criminals than the
 21 rights of the people. Am I quoting them correctly?
 22 CHAIRPERSON: I think it would be more
 23 appropriate to ask him were you aware of statements along
 24 those lines.
 25 BRIGADIER CALITZ: Nee, mnr die

<p style="text-align: right;">Page 19715</p> <p>1 Voorsitter, dis as ek net sê –</p> <p>2 CHAIRPERSON: Then you can't say whether</p> <p>3 the quotation is a correct one.</p> <p>4 BRIGADIER CALITZ: Nee.</p> <p>5 MR BIZOS SC: That's what I mean by a</p> <p>6 dictatorial attitude. That has been primarily your</p> <p>7 experience, Brigadier?</p> <p>8 BRIGADIER CALITZ: Nee, mnr die</p> <p>9 Voorsitter. Dit was nie my ondervinding nie.</p> <p>10 MR BIZOS SC: Well we'll argue about it</p> <p>11 in the, at the end of the case but what I want to put to</p> <p>12 you is this. That having regard to all these statements,</p> <p>13 having regard to what has been happening in various places</p> <p>14 where people were shot dead, where force was, maximum force</p> <p>15 was used I'm going to suggest to you that your experience</p> <p>16 is not something that we should follow in South Africa in</p> <p>17 terms of our constitution and our legislation. So that</p> <p>18 your experience is detrimental rather than beneficial as to</p> <p>19 what the commission should find and express a view as to</p> <p>20 how the situation can be improved in the future.</p> <p>21 MR SEMENYA SC: I don't understand that</p> <p>22 question, Chair.</p> <p>23 CHAIRPERSON: Perhaps you can explain it</p> <p>24 for the benefit of the witness, Mr Semenya and me.</p> <p>25 MR BIZOS SC: What –</p>	<p style="text-align: right;">Page 19717</p> <p>1 huidige demokrasie onder die huidige regering. So my</p> <p>2 ondervinding van die openbare orde polisiëring was onder</p> <p>3 die huidige regering. My bevordering tot waar ek nou is</p> <p>4 was gegee deur die huidige regering en my range wat ek</p> <p>5 geklim het en dan oor die uitlatings wat gemaak is dit is</p> <p>6 nie te sê as ons gehoor het daarvan dit is enigsins my</p> <p>7 opinie gewees of ons opdragte aan lede nie. Ons praat van</p> <p>8 'n minimum geweld in gevalle. Ek het nog nooit opdragte</p> <p>9 gegee van use maximum force en daardie terme nie. So nee,</p> <p>10 glad nie, mnr die Voorsitter.</p> <p>11 MR BIZOS SC: You're aware that your</p> <p>12 address to the assembled police force the day after the 16th</p> <p>13 –</p> <p>14 CHAIRPERSON: Two days after that, Mr</p> <p>15 Bizos.</p> <p>16 MR BIZOS SC: Was two days.</p> <p>17 CHAIRPERSON: The 18th.</p> <p>18 MR BIZOS SC: Was it the 18th, thank you,</p> <p>19 Mr Chairman. But your speech in JJJ82 and the film which</p> <p>20 we saw you addressing the police force would you accept</p> <p>21 that your utterances were of an show that you are an</p> <p>22 authoritarian police officer.</p> <p>23 CHAIRPERSON: What particular passage in</p> <p>24 the address do you rely on for the statement that it shows</p> <p>25 him to authoritarian because I think in order to answer</p>
<p style="text-align: right;">Page 19716</p> <p>1 CHAIRPERSON: In your experience, that</p> <p>2 in itself is a wide expression to cover, I don't know what</p> <p>3 exactly it means. You then say your experience is</p> <p>4 detrimental to the proper functioning of the criminal</p> <p>5 justice system and the, I take it the –</p> <p>6 MR BIZOS SC: What I mean is this –</p> <p>7 CHAIRPERSON: Explain that in more</p> <p>8 detail I'm afraid so that the witness can follow, Mr</p> <p>9 Semenya can follow and I can follow.</p> <p>10 MR BIZOS SC: Yes, let me simplify it.</p> <p>11 Your experience is dependent on what you learnt during the</p> <p>12 apartheid regime and what has been prevalent from</p> <p>13 ministers, police officers, people who are unhappy with the</p> <p>14 provisions of the constitution and that is not the</p> <p>15 experience that really entitles you to pass judgment on the</p> <p>16 correctness or otherwise of the views of Mr Hendrickx.</p> <p>17 CHAIRPERSON: What do you say about</p> <p>18 that, do you agree with that or don't you?</p> <p>19 BRIGADIER CALITZ: Nee, mnr die</p> <p>20 Voorsitter, as ek net kan wys, my experience die eerste een</p> <p>21 wat u genoem het, het ek opgetel deur, gedurende die</p> <p>22 apartheidsjare, dit is glad nie so nie. Ek het gesê my</p> <p>23 eerste ses jaar van my loopbaan was, wat u na verwys het as</p> <p>24 die apartheidsjare ek het 27 jaar diens, so 21 jaar daarvan</p> <p>25 en vandat ek by die openbare orde polisiëring is was in die</p>	<p style="text-align: right;">Page 19718</p> <p>1 you, you've got to draw his attention to the specific</p> <p>2 passage that you rely on. So we can get a meaningful</p> <p>3 answer from him.</p> <p>4 MR BIZOS SC: Mr Chairman, I wanted to</p> <p>5 save time by not actually showing the film.</p> <p>6 CHAIRPERSON: No, you don't have to show</p> <p>7 the film but I take it, no because it was a longish speech,</p> <p>8 several pages of transcripts.</p> <p>9 MR BIZOS SC: Yes.</p> <p>10 CHAIRPERSON: Unless you suggest that</p> <p>11 every single sentence –</p> <p>12 MR BIZOS SC: No –</p> <p>13 CHAIRPERSON: Breathed an authoritarian</p> <p>14 kind of air then there are particular passages in it I take</p> <p>15 it, I know it will take a bit longer and you know how keen</p> <p>16 I am that we should waste the time at all but I think in</p> <p>17 this occasion to be fair to him you must put the specific</p> <p>18 passages to him so that he can answer you properly.</p> <p>19 MR BIZOS SC: Mr Chairman, I am relying</p> <p>20 on my impression, not only of the content but the manner of</p> <p>21 its delivery of, I am entitled to describe it as</p> <p>22 authoritarian. I don't know that I can isolate individual</p> <p>23 sentences but taking the speech as a whole and the manner</p> <p>24 in which it was delivered and you will recall, Mr Chairman,</p> <p>25 that it dealt with a very large extent as to how to deal</p>

Page 19719

1 with the possible appearance of a certain gentleman during
2 the day. It is in my submission an authoritarian view. If
3 the Commission doesn't share that view of my assessment I
4 will abandon the question.

5 CHAIRPERSON: No, I don't think it
6 appropriate for us to form a view on the matter at this
7 stage because that's something we will decide upon if we
8 have to at the end of the evidence. But I was just merely
9 concerned that the witness should be able to answer with, I
10 take it that what you said probably is enough. You heard
11 what Mr Bizos, says. He says having seen you on the video,
12 having had regard to what you said, what came across was an
13 authoritarian attitude. Both the way you spoke and what
14 you said. Now are you able to deal with that, do you agree
15 with that? Did you see yourself because I take it you've
16 seen the video since, did you see yourself as adopting an
17 authoritarian attitude towards the policemen under your
18 command to whom your speech was addressed?

19 BRIGADIER CALITZ: Authoritarian, is dit
20 met outoriteit, is dit die regte –

21 CHAIRPERSON: There's a difference
22 between authoritative where you speak with authority.

23 BRIGADIER CALITZ: As ek dalk net
24 duidelikheid kan kry.

25 CHAIRPERSON: Authoritarian is where it's

Page 19720

1 overbearing, the authorities were imposed excessively on
2 the people to whom the remarks were addressed or the
3 conduct is addressed to. Would you agree with that, Mr
4 Bizos?

5 MR BIZOS SC: Thank you, yes. It's
6 precisely what I had in mind and I submit that it is a view
7 which is not an exaggerated view, I may be wrong but I
8 don't think terribly wrong, having read and having seen the
9 manner in which it was delivered and what was said. I'm
10 entitled to use it but I'm not going to make a big issue
11 out to it.

12 CHAIRPERSON: Ja, you put it to the
13 witness. We must give him a chance to reply.

14 BRIGADIER CALITZ: Mnr die Voorsitter,
15 baie dankie. Nou dat ek u vraag verstaan. Die eerste
16 gedeelte van my toespraak wat u verwys na 'n sekere persoon
17 wat daarna toe kom, nee dit is 'n gewone operasionele
18 voorligting. Van my as operasionele bevelvoerder wat die
19 JOCCOM vergadering in die oggend bygewoon het en dit is wat
20 oorgedra is aan die lede, die spesifieke take. Ek dink as
21 ons kyk na die video en die rekord spreek vanself het ek
22 presies in detail vir hulle verduidelik wat gebeur die dag,
23 hoe moet ons die draad gaan optel en wat die inligting is
24 tot ons beskikking op daardie dag. So daar het ek niks
25 afgeforseer op die lede nie en die tweede gedeelte van my

Page 19721

1 voorligting aan die lede was vir daardie lede wat vir die
2 eerste keer daar was om hulle almal net in te lig en kalm
3 te hou rondom die gebeure wat twee dae voor dit gebeur het.
4 So ek het niks op hulle afgedwing nie. As mens gaan kyk na
5 die lede se optrede daardie dag en wat gebeur het is daar
6 niks afgedwing op hulle om op 'n manier op te tree wat nie
7 van 'n redelike polisieman verwag word nie. Daardie dag
8 was 'n sukses en as ons gaan kyk na die video's wat wel
9 beskikbaar is van daardie dag, die 18de en wat verloop het
10 die res van die dag was dit 'n baie rustige geordende
11 operasie gewees. So ek het niks op lede afgedwing nie,
12 nee.

13 MR BIZOS SC: You had an opportunity of
14 reading the rest of Mr Hendrickx's affidavit overnight.

15 BRIGADIER CALITZ: Ek het wel na die
16 punte gekyk, dit wat ek geantwoord het en hoe ek dit
17 geantwoord het.

18 MR BIZOS SC: I'm anxious to limit the
19 cross-examination in view of your answers yesterday. Could
20 I ask you to please point out any particular precept which
21 Mr Hendrickx expresses with which you agree so that we can
22 cut short the –

23 CHAIRPERSON: It may cut it shorter,
24 even shorter if we ask him to point to things he doesn't
25 agree with, that he may well agree with a good deal of what

Page 19722

1 Mr Hendrickx says.

2 MR BIZOS SC: Yes.

3 CHAIRPERSON: Well let's put it this
4 way. Do you agree with most of Mr Hendrickx said or you
5 disagree with most of what he says?

6 BRIGADIER CALITZ: Mnr die Voorsitter,
7 met die meeste van die, as ek verwys verder in paragraaf,
8 in bladsy 11 staan daar orde 262 disagree ek, ek verskil
9 van hom daar. Ek dink nie as ek na elke paragraaf toe
10 verwys gaan ons lank wees.

11 CHAIRPERSON: All I want to know is
12 before you even get to the paragraphs do you agree with
13 most of what he says and disagree with some parts?

14 BRIGADIER CALITZ: Nee.

15 CHAIRPERSON: Or do you disagree with
16 most of he says and only agree with a little bit of what he
17 says, which of the two is it?

18 BRIGADIER CALITZ: Die presentasie, die
19 gedeeltes wat na my verwys is en wat spesifiek op ons van
20 toepassing is verskil ek met die meeste van sy stellings
21 wat hy gemaak het.

22 CHAIRPERSON: The way his statement is
23 drafted he makes certain general propositions based on his
24 knowledge and expertise and academic writers written on
25 police, public order policing. Now I take it you agree

Page 19723

1 with most of that?

2 BRIGADIER CALITZ: Dit is korrek.

3 CHAIRPERSON: Alright. Then he descends

4 from the general particular and he deals with what happened

5 at the Marikana and he makes certain critical comments.

6 You say you disagree with most of that?

7 BRIGADIER CALITZ: Dit is korrek, mnr die

8 Voorsitter.

9 CHAIRPERSON: Alright. Now the one that

10 I was interested in, but perhaps I mustn't anticipate Mr

11 Bizos's cross-examination. But the one that I was

12 interested in is 28.2 but Mr Bizos, are you going to deal

13 with 28.2?

14 MR BIZOS SC: 20?

15 CHAIRPERSON: Page 18.

16 MR BIZOS SC: Yes, Mr Chairman, I'm sure

17 –

18 CHAIRPERSON: That's as far as I can

19 see, I may have been wrong but that, the impression I got

20 was that was the main paragraph, actually probably the only

21 paragraph that I could find that refers specifically to

22 you. Am I right in that, Mr Bizos?

23 [09:38] MR BIZOS SC: Yes, I have got it

24 underlined, Mr Chairman, and for the purposes of record the

25 operational commander that's you does not appear to have

Page 19724

1 been in charge of the operation. The rationale for the

2 decision to proceed to phase 3 and the timing of this

3 intervention is not apparent from the evidence. And 28.3,

4 there is no documented evidence of adequate briefing of –

5 CHAIRPERSON: Mr Bizos, I'm sorry –

6 MR BIZOS SC: One at a time –

7 CHAIRPERSON: 28.2 is a discrete, D-I-S-

8 C-R-E-T-E, point of criticism and which relates

9 specifically to the witness, so I think to be fair he

10 should be given an opportunity to deal with that

11 separately. You may want to put other passages to him as

12 well, but that one to me is the most important one as far

13 as he is concerned, and I would very much appreciate

14 hearing his response to it, and obviously in answer to such

15 follow-up questions relating to this point which you

16 consider appropriate to ask.

17 MR BIZOS SC: Yes. We'll await the

18 witness's answer, Mr Chairman.

19 BRIGADIER CALITZ: Dankie, mnr die

20 Voorsitter. Nee, ek verskil van wat mnr Hendrickx hier

21 gesê het, dat hy gesê het dat dit wil voorkom dat ek nie in

22 beheer van die operasie nie. Ek dink as ons gaan luister

23 nie net na die video "transcript" maar ook die lees van die

24 verklaring sal u sien dat ek die heeltyd opdragte gegee het

25 vir dan die voertuie en die hele operasie sodoende beheer

Page 19725

1 het. Daar was wel gevalle, en dit is wat u aan my uitgewys

2 het, waar persone wat inbeweeg het na sekere gedeeltes toe

3 nie met my kontak gemaak het nie en ek het wel gesê in

4 daardie geval dra ek nie kennis wat die redes is nie.

5 CHAIRPERSON: Yes, as far as the second

6 sentence of 28.2 is concerned it seems to me prima facie,

7 obviously subject to what may be said from the other said,

8 that the criticism is unfounded because the decision to

9 proceed to phase 3 was not your decision. That was

10 imposed, according to the other evidence we've had imposed

11 on the JOCCOM at its meeting at 1:30 –

12 BRIGADIER CALITZ: Dit is waarnatoe –

13 CHAIRPERSON: - by the Provincial

14 Commissioner.

15 BRIGADIER CALITZ: Dit is waarnatoe ek

16 nou net wil –

17 CHAIRPERSON: Sorry, so I'm interrupting

18 you.

19 BRIGADIER CALITZ: Ekskuus, mnr die

20 Voorsitter –

21 CHAIRPERSON: Please proceed.

22 BRIGADIER CALITZ: Ek probeer hom net so

23 in die sinne antwoord. Ja, maar u is heeltemal reg,

24 daardie fase 3 en dan miskien ook sien ek die verklaring is

25 opgestel op die 1ste dag van Februarie 2013 en ek dink dalk

Page 19726

1 as hy my gekonsolideerde verklaring gehad het, wat toe

2 later, ek dink hy uitsprake gegee op die een wat ek gemaak

3 het vir die dossier, as u onthou.

4 CHAIRPERSON: But on any basis you were

5 out in the field. You didn't attend the JOCCOM meeting at

6 1:30.

7 BRIGADIER CALITZ: Dit is korrek, mnr die

8 Voorsitter.

9 CHAIRPERSON: Where the decision was

10 either made or communicated – I think it is more accurate

11 to say communicated – and you first heard of it at 2:30.

12 There's nothing to indicate that you were involved in any

13 way in making the decision to proceed to phase 3 on the

14 Thursday afternoon. Is that right?

15 BRIGADIER CALITZ: Korrek, mnr die

16 Voorsitter.

17 CHAIRPERSON: The timing of the

18 intervention, that was imposed by – is it 3:30? Or

19 actually just after 3:30 by, was it General Annandale's

20 decision? It wasn't your decision. You weren't –

21 BRIGADIER CALITZ: 15:30.

22 CHAIRPERSON: You weren't – yes, you

23 speak police language, I speak ordinary language, and the

24 time was fixed was General Annandale sitting in the JOC,

25 without consultation with you, as far as I understand. Is

<p style="text-align: right;">Page 19727</p> <p>1 that right?</p> <p>2 BRIGADIER CALITZ: Dit is heeltemal</p> <p>3 korrek so, mnr die Voorsitter.</p> <p>4 CHAIRPERSON: So that may or may not be</p> <p>5 valid criticism, but it's not criticism that should be</p> <p>6 addressed to you.</p> <p>7 BRIGADIER CALITZ: Dit is korrek, mnr die</p> <p>8 Voorsitter.</p> <p>9 CHAIRPERSON: But as far as your being in</p> <p>10 charge of the operation is concerned, I want to put this to</p> <p>11 you because it's again a prima facie view of mine and not</p> <p>12 necessarily leading to a finding of culpability on your</p> <p>13 side, but just as the facts. You weren't quite in charge</p> <p>14 of the operation on your own evidence, I think, at koppie 3</p> <p>15 because you didn't know that some extra forces had arrived</p> <p>16 there and were actually taking part, dealing with the</p> <p>17 situation, firing shots and that kind of thing. Is that</p> <p>18 right? You didn't know General Naidoo was there. You</p> <p>19 didn't know that Captain Kidd was there, did you?</p> <p>20 BRIGADIER CALITZ: [Microphone off,</p> <p>21 inaudible].</p> <p>22 CHAIRPERSON: Sorry?</p> <p>23 BRIGADIER CALITZ: Actually nor the NIU.</p> <p>24 CHAIRPERSON: Nor the NIU?</p> <p>25 BRIGADIER CALITZ: Ja.</p>	<p style="text-align: right;">Page 19729</p> <p>1 Voorsitter.</p> <p>2 CHAIRPERSON: Alright. Mr Bizos, I'm</p> <p>3 sorry if I intervened, but –</p> <p>4 MR BIZOS SC: Thank you, Mr Chairman –</p> <p>5 CHAIRPERSON: I take it you may wish to</p> <p>6 ask further questions in relation to that paragraph.</p> <p>7 MR BIZOS SC: No, I do not wish, Mr</p> <p>8 Chairman, but what I want to say in order to –</p> <p>9 CHAIRPERSON: Sorry, before you say</p> <p>10 whatever you want to say, Mr Semenya would like to say</p> <p>11 something.</p> <p>12 MR SEMENYA SC: Chair, for the record, we</p> <p>13 are going to contend that an operational commander is not</p> <p>14 in charge of everything. He is a coordinator of</p> <p>15 operations.</p> <p>16 MR BIZOS SC: My learned friend can argue</p> <p>17 that, Mr Chairman.</p> <p>18 CHAIRPERSON: It is helpful that he makes</p> <p>19 the point, so we know what the attitude of the SAPS on this</p> <p>20 point is. Thank you, Mr Semenya.</p> <p>21 MR BIZOS SC: Now is there any point in</p> <p>22 my taking you through the rest of this document if in fact</p> <p>23 you believe that most of what Mr Hendrickx said ought to</p> <p>24 have done and ought not to have been done is correct,</p> <p>25 without my going through each one of the statements or</p>
<p style="text-align: right;">Page 19728</p> <p>1 CHAIRPERSON: So you conceded that there</p> <p>2 was a lack of coordination at koppie 3, but the explanation</p> <p>3 you gave was you couldn't set out to coordinate people if</p> <p>4 you didn't know they were there. Am I summarising the</p> <p>5 evidence correctly?</p> <p>6 BRIGADIER CALITZ: Dit is korrek, mnr die</p> <p>7 Voorsitter.</p> <p>8 CHAIRPERSON: But I mean to be fair, it</p> <p>9 would be fair to say that you weren't exactly in charge of</p> <p>10 the operation at koppie 3 for whatever reason. I mean you</p> <p>11 were in charge of part of it, but not the whole of it.</p> <p>12 BRIGADIER CALITZ: Dit is korrek –</p> <p>13 CHAIRPERSON: I mean you concede that,</p> <p>14 don't you?</p> <p>15 BRIGADIER CALITZ: Ek wou net bygevoeg</p> <p>16 het dat, "the operational commander does not appear to be</p> <p>17 in charge of the operation" – "in charge of the operation"</p> <p>18 sal wees die oorhoofse bevelvoerder en dan my rol sal wees</p> <p>19 dan om die koördinerings en die voorligting te gee. So dit</p> <p>20 is miskien net wat ek net wil byvoeg.</p> <p>21 CHAIRPERSON: Alright, it may be a</p> <p>22 semantic debate, but the fact of the matter was at koppie 3</p> <p>23 you weren't acting in control of everything that was</p> <p>24 happening, but you've given your reason for that.</p> <p>25 BRIGADIER CALITZ: Dit is korrek, mnr die</p>	<p style="text-align: right;">Page 19730</p> <p>1 paragraphs that he made –</p> <p>2 CHAIRPERSON: It's the other way round.</p> <p>3 He says many of the general statements Mr Hendrickx makes</p> <p>4 he agrees with, but when he deals with particular matters</p> <p>5 in relation to what happened at Marikana on the 16th in</p> <p>6 particular, which involved him, he doesn't agree, he says,</p> <p>7 and now there are two aspects to that, I would think. The</p> <p>8 one is points relating to other people and the operation</p> <p>9 generally and the radio equipment and all that sort of</p> <p>10 stuff, which has been covered with other witnesses, and I</p> <p>11 don't know that this witness has anything in particular to</p> <p>12 add to that. If he has something in particular to add,</p> <p>13 obviously he must be given the opportunity, but I wouldn't</p> <p>14 have thought he's got anything in particular to add to many</p> <p>15 of those points of criticism. They have been traversed</p> <p>16 with other witnesses. But of course the parts dealing with</p> <p>17 him directly he must deal with. I thought 28.2 was one</p> <p>18 that dealt with him directly, that's why I put it to him.</p> <p>19 There may be other passages – I'm not aware of them, but</p> <p>20 perhaps he can tell us if he saw something in the report</p> <p>21 which he regarded as being a criticism of him or relating</p> <p>22 to something about which he has a special input that he</p> <p>23 thinks we should have. Perhaps that's the way forward. I</p> <p>24 understand your commendable desire to cut things short, but</p> <p>25 perhaps the way I've suggested may be – I may say so with</p>

Page 19731

1 my customary modesty – a sensible way to do it.
 2 MR BIZOS SC: Yes. Did you understand
 3 the criticisms of Mr Hendrickx of the conduct of not only
 4 you, but all those who were responsible for formulating the
 5 plan, those who had to oversee it, and what the unfortunate
 6 results were? Do you agree with his statements or
 7 conclusions in relation to any of those matters, or do you
 8 disagree generally by his conclusions?
 9 BRIGADIER CALITZ: Mnr die Voorsitter, ek
 10 glo my antwoord gaan dieselfde wees, as ek die vraag reg
 11 verstaan. Meeste van die opmerkings wat mnr Hendrickx
 12 gemaak het wat pertinent tot die operasie en nie net myself
 13 nie maar ook die ander lede - twee paragrawe af praat hy
 14 van "There were no real negotiations with the crowd" -
 15 sulke tipe van opmerkings wat hy gemaak het, so ek
 16 "disagree" met die meeste van, of dit wat hy gesê het
 17 rondom die operasie self. Dit is maar net een vinnige
 18 voorbeeld wat ek nou net hier sien.
 19 CHAIRPERSON: Yes, as far as the planning
 20 is concerned of the actual operation I'm not sure that you
 21 had anything to do with that. As far as we've heard, the
 22 first time the detailed plan for the tactical operation was
 23 explained at the JOCCOM was by Colonel Scott at the 1:30
 24 meeting when you weren't there, and you first heard about
 25 it at 2:30 when it was communicated to you as a done deal,

Page 19732

1 as it were, as an operation that had to be carried out. Is
 2 that correct?
 3 BRIGADIER CALITZ: Korrek, mnr die
 4 Voorsitter.
 5 CHAIRPERSON: You had no opportunity to
 6 make any inputs about it at all. Is that right?
 7 BRIGADIER CALITZ: Nee, nie voor die tyd
 8 op daardie stadium nie.
 9 CHAIRPERSON: Alright, then in relation
 10 to negotiation of course I'm inclined to think – again
 11 prima facie – that he's making a valid point, but I'm not
 12 sure it's a criticism of the police. The truth was the
 13 police had very little to offer. The crowd wanted, the
 14 strikers wanted to get a response from Lonmin. The police
 15 very appropriately took that request to Lonmin and put it
 16 to them. Lonmin weren't interested, as I understand it.
 17 They didn't agree. So the police had to go back to the
 18 strikers and say look, we put it to Lonmin but that's it,
 19 they're not prepared to accede to your request. Whether it
 20 is a valid request, whether Lonmin were unreasonable in
 21 turning the request down is not relevant. The fact is the
 22 police did have nothing to offer the strikers and the
 23 strikers weren't interested in fighting with the police –
 24 not initially anyway. Their opponent was Lonmin. The
 25 police were merely acting almost as mediators or

Page 19733

1 intermediaries between the strikers and Lonmin. Is that
 2 not right?
 3 BRIGADIER CALITZ: Dit is so –
 4 CHAIRPERSON: And when Lonmin dug its
 5 heels in there was, as Mr Hendrickx says, nothing really
 6 that the police could go back to the strikers with. That's
 7 correct, isn't it?
 8 BRIGADIER CALITZ: Wat betref Lonmin, dit
 9 is korrek, mnr die Voorsitter.
 10 CHAIRPERSON: So that's why he says there
 11 was no real negotiation. Negotiation involves give and
 12 take on both sides, concessions on both sides, and that
 13 kind of thing. The police couldn't engage in that kind of
 14 exercise for the reasons he stated. Isn't that right?
 15 BRIGADIER CALITZ: Dit is wat betref
 16 Lonmin, daardie gedeelte, dit is korrek, mnr die
 17 Voorsitter.
 18 CHAIRPERSON: Yes, yes, it's not
 19 necessarily a point for criticising the police. It's just
 20 a fact. Isn't that right? In fact if anything, I would
 21 have thought it made the police's task more difficult.
 22 Would you agree with that?
 23 BRIGADIER CALITZ: Dit is so, mnr die
 24 Voorsitter.
 25 CHAIRPERSON: Ja, okay.

Page 19734

1 MR BIZOS SC: Let me take an example.
 2 Take paragraph 21.6.1 in answer to your contention that
 3 there were armed protesters. "Armed protesters could have
 4 been prevented from gathering rather than waiting for them
 5 to gather before attempting to disperse them." That is his
 6 view. Do you agree or disagree with him?
 7 BRIGADIER CALITZ: Nee, mnr die
 8 Voorsitter.
 9 MR BIZOS SC: You disagree?
 10 BRIGADIER CALITZ: Dit is korrek, mnr die
 11 Voorsitter.
 12 MR BIZOS SC: Yes. "A display of force"
 13 - in 21.6.2 – "as envisaged in stage 2 of the plan can be
 14 provocative and increase antagonism towards the police."
 15 Do you agree with that, or do you disagree?
 16 BRIGADIER CALITZ: Ek dink dit is wat ons
 17 gister ook hanteer het. Ek het verskil daar, mnr die
 18 Voorsitter.
 19 CHAIRPERSON: This was dealt with fully
 20 yesterday, Mr Bizos, wasn't it?
 21 MR BIZOS SC: Yes.
 22 CHAIRPERSON: 21.6.2. 21.6.1 wasn't
 23 dealt with yesterday.
 24 MR BIZOS SC: 21.6.3, "The deployment of
 25 barbed wire has probable effects on the crowd; most will

Page 19735

1 want to run away, some will want to fight, which were not
2 considered in the planning scenarios." Do you agree with
3 that?

4 BRIGADIER CALITZ: Nee, mnr die
5 Voorsitter.

6 CHAIRPERSON: Well firstly, let's analyse
7 this. The planning scenario I take it means that the
8 planning that went into this decision, the idea that there
9 should be a barrier, this barrier between the police and
10 the media on the one hand and the strikers on the other.

11 BRIGADIER CALITZ: Korrek, mnr die
12 Voorsitter.

13 CHAIRPERSON: Now were you involved in
14 that planning? Or is that something that was suggested and
15 was just -

16 BRIGADIER CALITZ: Nee, dit was -

17 CHAIRPERSON: - by Colonel Scott perhaps
18 and just accepted?

19 BRIGADIER CALITZ: Dit was wel aan ons
20 voorgelê deur Kolonel Scott en bespreek in die JOCCOM en
21 dit is dan so aanvaar, dit is die fase 2.

22 CHAIRPERSON: Now when it was discussed,
23 did anybody say but how are they likely to react, the
24 strikers, how are they likely to react to this uncoiling of
25 the barbed wire, and then various possible ways in which

Page 19736

1 they could have reacted, might have reacted? Was that
2 discussed?

3 BRIGADIER CALITZ: Mnr die Voorsitter,
4 wat ek onthou van wat bespreek is, is net dat ons gesê het
5 dat die draad sal dien as 'n beskermingsmaatreël sou ons
6 dan uitbeweeg. Waar ons wel 'n konfrontasie, wat ek op
7 getuig het, voorsien het, is dat sou ons die waarskuwing
8 gee en begin met die "dispersion action" dan sou daar
9 konfrontasie wees, maar nie -

10 CHAIRPERSON: Yes, yes, I -

11 BRIGADIER CALITZ: - maar nie ten tye van
12 die -

13 CHAIRPERSON: No, no, I understand that.
14 It sounds to me as if you're really agreeing with what he
15 said, unwittingly. But let's develop it a little bit
16 further. What I asked you was when this idea of uncoiling
17 the wire to create this protective barrier was discussed at
18 the JOCCOM, was there any discussion as to how the strikers
19 might probably react to that? I know you've explained what
20 the idea was, and I understand that, but that's not Mr
21 Hendrickx's point. Mr Hendrickx says as far as he can see
22 the possible, the probable ways in which the strikers might
23 react to that doesn't appear to have been considered.
24 That's his point, as I understand it. Was it considered in
25 the discussion there in the JOCCOM? Did somebody say, hang

Page 19737

1 on a second, let's consider how the strikers are going to
2 react to this; some of them may do this, some of them may
3 do that? Was there any discussion along those lines?

4 BRIGADIER CALITZ: Mnr die Voorsitter,
5 die spesifieke woorde, as ek nou moet sê wie wat gesê het
6 kan ek nie vir u met sekerheid sê nie. Ek weet dit was wel
7 bespreek gewees en dat ons tot die slotsom gekom het dat
8 die draad sal dan, soos u sê in hierdie geval nie dat hulle
9 sal wil baklei rondom die draad nie. Ek dink dit is uit
10 die ondervinding uit en die meeste van die kere waar ons
11 wel draad gebruik het, dat persone sien daar word 'n
12 "barrier" gemaak en dan die meeste het wegbeweeg. Waar
13 daar wel voorsiening was, was aan die tweede deel. So
14 waarmee ek verskil is miskien "which were not considered in
15 the planning scenarios." Ek dink die konsiderasie was daar
16 gewees.

17 CHAIRPERSON: I understand that. So
18 you've now elaborated on what you said earlier, which gave
19 me the opposite impression when you say it was considered,
20 what he says in 21.6.3 isn't correct.

21 BRIGADIER CALITZ: Dit is korrek. Ek
22 verskil met die sinnetjie daar.

23 MR BIZOS SC: The plan as a whole was
24 considered by all the senior officers and they all agreed
25 that it should be put into operation. Am I right?

Page 19738

1 BRIGADIER CALITZ: Op watter fase, as ek
2 miskien net kan vra? Tot die oggend van die 16de was ek
3 betrokke daar en kan ek op dit getuig. Dit is korrek, tot
4 by fase 2.

5 CHAIRPERSON: Mr Bizos, the problem with
6 the question is he wasn't there at the 1:30 JOCCOM meeting.
7 That's the occasion when for the first time Colonel Scott
8 said what he, the form that the tactical option should
9 take, and he didn't even have it fully recorded on his
10 computer. There were no hardcopies available to give to
11 the commanders. The commanders who were going to execute
12 it weren't there, and as you know, he then went out at 2:30
13 to forward holding area and showed them on his laptop. The
14 witness, that was the first time the witness heard about
15 it. He wasn't involved in it at all up to that point. So
16 I'm not sure that your question -

17 MR BIZOS SC: I'm not talking about that
18 stage. I am asking whether when the plan was formulated by
19 Colonel Scott, was it approved by you and other senior
20 members of the police?

21 CHAIRPERSON: What aspect of the plan are
22 you talking about?

23 MR BIZOS SC: The whole of it. As a
24 whole, the plan.

25 CHAIRPERSON: Well, you see -

Page 19739

1 MR BIZOS SC: Was it agreed to, Mr
2 Chairman.

3 CHAIRPERSON: The trouble is, you see,
4 that according to Colonel Scott the actual practical
5 implementation of stage 3 was something which he
6 volunteered, he mentioned for the first time at the JOCCOM
7 meeting at 1:30 after nobody else had raised his hand to
8 make any suggestions as to how it should be done, and this
9 witness wasn't there at the time. So when you talk about
10 the plan, the plan as whole –

11 MR BIZOS SC: The plan as a whole –

12 CHAIRPERSON: - didn't include any
13 detail, according to Scott, any detail relating to the
14 practical implementation of the tactical option until he,
15 Scott, gave those detail at the 1:30 JOCCOM meeting in the
16 absence of the witness. So to ask him about the plan in
17 general –

18 MR BIZOS SC: With respect, my question
19 is whether the plan, the plan –

20 CHAIRPERSON: Well, what do you mean by
21 the plan?

22 MR BIZOS SC: The plan as put down on
23 paper by Colonel Scott, which was going to be followed on
24 the 16th, whether he and the other senior officers agreed to
25 it. If there was any modification, I'm not concerned with

Page 19740

1 it in relation to this question as to whether the plan as
2 written down by Scott and what was going to happen on the
3 16th was agreed by all the senior officers.

4 CHAIRPERSON: Were you aware of any plan,
5 when you were in the JOCCOM either on the 15th or the
6 morning of the 16th, any plan which had been put on paper by
7 Colonel Scott?

8 [09:58] BRIGADIER CALITZ: Mnr die Voorsitter,
9 die plan waarvan ek bewus was, was vandat Kolonel Scott dit
10 aan ons voorgedhou het en dit was fase 1 en 2, die
11 onderhandelingsfase en dan ook die "show of force" fase.
12 Op geen stadium voor dit was ek bewus van die besluite en
13 die detail van die ander –

14 CHAIRPERSON: Van fase 3, yes, but I take
15 it you can answer this part of Mr Bizos' question then. In
16 relation to what was suggested and proposed for phases 1
17 and 2, were you in agreement with that?

18 BRIGADIER CALITZ: Dit is reg, dit is
19 bespreek in die JOCCOM en al die seniors was teenwoordig en
20 dit is so aanvaar en goedgekeur.

21 MR BIZOS SC: Was it foreseen by you and
22 the other senior officers that maximum force may have to be
23 used in implementing that plan?

24 BRIGADIER CALITZ: Mnr die Voorsitter,
25 maximum force is nooit ter sprake by onderhandelinge nie,

Page 19741

1 ook nie by "show of force", fase 2 nie. Daar bestaan nie
2 so 'n konsep in daardie twee fases wat ons goedgekeur het
3 op daardie stadium nie.

4 MR BIZOS SC: Did you not foresee, did
5 you not foresee that there was going to be maximum force
6 used as a possibility or a probability during the course of
7 that day, the whole lot of you, foreseen?

8 BRIGADIER CALITZ: Mnr die Voorsitter, ek
9 kan net weereens getuig op waar ek was en dit is die oggend
10 van die 16de, as u na die dag verwys en dit is waar ons
11 gesê het daar gaan oor na 'n "show of force" toe en die
12 onderhandelinge sal voortgaan, so nee, glad nie, mnr die
13 Voorsitter, nie op daardie stadium nie.

14 MR BIZOS SC: How did you understand the
15 force to be used or what force to be used would be?

16 BRIGADIER CALITZ: Nee, fase 2, "show of
17 force", dit beteken ons sou die prepositioning van die
18 draad karre uiteengesit het en dan ook die deployment van
19 die Papa Nyalas agter hulle, dieselfde as wat ons die
20 vorige dag gedoen het, net met 'n addisionele uit plaas van
21 die draad.

22 CHAIRPERSON: You also had a big gun, I
23 can't remember the description of it but according to Mr
24 Mpfu you could blow a building down, but which actually
25 couldn't work which is on the back of a truck of some kind.

Page 19742

1 That was also part of the show of force, it was a scorpion.
2 The evidence was that there was a scorpion that couldn't
3 actually work but looked a fearsome gun and was designed
4 apparently, according to the evidence, as part of the show
5 of force to make the striker terrified. It doesn't appear
6 it succeeded but that was part of the show of force also,
7 wasn't it?

8 BRIGADIER CALITZ: Dit was deel van
9 daardie dag, ook daar gewees, mnr die Voorsitter.

10 MR BIZOS SC: Did any of you know that
11 there were 4,000 bullets readily available and for what
12 purpose they were readily available?

13 MR SEMENYA SC: Objection, there was
14 never any 4,000 bullets available, they were indeed brought
15 there and returned immediately.

16 MR BIZOS SC: I didn't hear the last bit,
17 Mr Chairperson?

18 CHAIRPERSON: It was brought there and
19 returned immediately, they weren't kept available, they
20 were sent back presumably to the place from which they
21 came, that's what Mr Semanya said, and that was the
22 evidence.

23 MR BIZOS SC: I don't understand the
24 objection, Mr Chairman.

25 CHAIRPERSON: No, he says you said that

Page 19743

1 there were 4,000 bullets to shoot people with, he says that
 2 isn't right, they had already been sent back, so they
 3 didn't have them, they weren't available.
 4 MR BIZOS SC: They were available on the
 5 16th, Mr Chairman.
 6 CHAIRPERSON: No, but I take it by
 7 available means some people in the field had 4,000 bullets
 8 at their disposal to shoot at the strikers if they wanted
 9 to or had considered it necessary. Well, Mr Semenya says
 10 that's factually incorrect, that the amount of, - I don't
 11 know what the number is but presumably we will be told, but
 12 he says the number of bullets available to the forces, if I
 13 can call them that in the field, that were taking part in
 14 the tactical option, it was nowhere near 4,000, is that
 15 right, Mr Semenya?
 16 MR SEMENYA SC: That they were not
 17 available to be used because they were sent back.
 18 CHAIRPERSON: Yes, yes, yes, no, I
 19 understand that but I mean obviously some people in the
 20 field had bullets, I mean bullets were fired, so we do know
 21 that there were bullets, a set number of bullets were
 22 available to the TRT and the NIU and these people in the
 23 field.
 24 MR SEMENYA SC: Oh, certainly but we know
 25 what 4,000 is referring to.

Page 19744

1 CHAIRPERSON: No, no, no, I am saying it
 2 wasn't anywhere near 4,000, I am saying we don't know the
 3 exact number, it is clearly not correct to say they had no
 4 bullets at all because they obviously had, but 4,000 is a
 5 gross exaggeration because the 4,000 number relates to
 6 bullets which were sent back, am I understanding it
 7 correctly?
 8 MR SEMENYA SC: That's correct, Mr
 9 Chairman.
 10 CHAIRPERSON: Yes, Advocate Hemraj
 11 reminds me that the evidence is as follows, over and above
 12 the bullets which the troops, if one can call them that,
 13 had in the field, somebody, we don't know who it is,
 14 requested an additional 4,000. They came and a decision
 15 was taken to send them back, they're not needed, that's the
 16 suggestion, but your question requires a bit of
 17 modification.
 18 MR CHASKALSON SC: Chairperson, can I
 19 just respond to a point that you raised because you said
 20 they were nowhere near 4,000. I would imagine there were
 21 more than 4,000 because there were over 600 that were
 22 actually shot and the proportion of what was shot relative
 23 to what wasn't shot is probably in terms of the total
 24 bullets available, I would hope a low proportion.
 25 CHAIRPERSON: Okay, no, I take your

Page 19745

1 point, I overstated the case as well. The position is that
 2 in addition to a number which the people in the field had
 3 and we don't know what that number is at the moment, an
 4 additional 4,000 had been asked for and that additional
 5 4,000 were sent back and weren't available. I mean that's
 6 the correct position, is it not, Mr Semenya?
 7 MR SEMENYA SC: Yes.
 8 CHAIRPERSON: That's the correct
 9 position, in addition to the bullets which the forces in
 10 the field had which is an unknown number at the moment to
 11 us, you people can give it to us in due course, in addition
 12 to that number, whatever it was, an additional 4,000 had
 13 been asked for and that additional 4,000 were sent back.
 14 MR SEMENYA SC: That's correct.
 15 CHAIRPERSON: Is that the correct
 16 position?
 17 MR SEMENYA SC: That's correct, Chair.
 18 CHAIRPERSON: Alright, so I think we now
 19 struggles through to the approximation of the correct facts
 20 of the point, so you can reformulate your question and put
 21 it to the witness.
 22 MR BIZOS SC: Was it foreseen, was it
 23 foreseen, irrespective of the number of bullets, by any of
 24 the senior officers that the maximum force that may have to
 25 be used included bullets to kill people, was that discussed

Page 19746

1 at any of the meetings of the senior persons before it
 2 happened on the 16th?
 3 BRIGADIER CALITZ: Mnr die Voorsitter,
 4 nee, die vergaderings wat ek bygewoon het tot die oggend
 5 sesuur van die 16de, was daardie fases nie bespreek nie en
 6 daar was ook nie gepraat van maximum force nie.
 7 MR BIZOS SC: So the killing of people
 8 came as a complete surprise to you?
 9 BRIGADIER CALITZ: Ek het wel gesê dat
 10 toe ek ingelig is daarvan, dit was 'n skok gewees en dit
 11 was 'n aanval op die polisiebeamptes en hulle het in
 12 selfverdediging opgetree.
 13 MR BIZOS SC: Let's deal with paragraph
 14 22, "The objectives of the tactical intervention stage,
 15 dispersal, disarmament and unrest are problematic," and
 16 then there are four reasons set out for that. Do you agree
 17 or disagree with that?
 18 BRIGADIER CALITZ: Nee, ek verskil, mnr
 19 die Voorsitter.
 20 MR BIZOS SC: You disagree?
 21 BRIGADIER CALITZ: Korrek, mnr die
 22 Voorsitter.
 23 MR BIZOS SC: 23, "There should not have
 24 been so many different police units in the operation." Do
 25 you agree or disagree?

<p style="text-align: right;">Page 19747</p> <p>1 BRIGADIER CALITZ: Ek verskil weereens, 2 mnr die Voorsitter.</p> <p>3 MR BIZOS SC: And you obviously disagree 4 with the sub points, 23.1, 2 and 3, do you disagree?</p> <p>5 BRIGADIER CALITZ: Laat ek net jou deur 6 dit gaan, laat ek net sien? U sien, mnr die Voorsitter, ek 7 verskil, dit is in die konteks wat dit geplaas is, daar mag 8 waarheid in wees dat, "POP specialised training and crowd 9 management which other units apparently do not have." Daar 10 kan waarheid in die stelling wees maar in die konteks wat 11 dit gebruik is wil dit voorkom of ons hulle gebruik het vir 12 uiteendrywing van crowds and dit is waar ek verskil. So, 13 dit is miskien net, mnr Hendrickx het dalk gedink dat 14 hierdie magte, hulle was nie gebruik vir uiteendrywing of 15 die dispersion action nie. Hulle het ander spesifieke take 16 gehad, so in daardie opsig, ek verskil dan weereens.</p> <p>17 MR BIZOS SC: It is a substantial 18 disagreement in the whole of paragraph 23.</p> <p>19 BRIGADIER CALITZ: 23?</p> <p>20 MR BIZOS SC: 23, yes, you're in general 21 disagreement with –</p> <p>22 BRIGADIER CALITZ: Dit is –</p> <p>23 MR BIZOS SC: - the view of Mr Hendrickx?</p> <p>24 BRIGADIER CALITZ: Dit is korrek, met die 25 redes wat ek gegee het.</p>	<p style="text-align: right;">Page 19749</p> <p>1 punte, insidente wat daar gebeur het asook dreigemente en 2 intimidasie wat in daardie gedeeltes was op die dag, so 3 daarom was –</p> <p>4 CHAIRPERSON: It is a different point, 5 the question is whether they were likely to go there, 6 likely to want to go there. It may be undesirable for them 7 to go there but that's a different issue. At the time the 8 wire was being uncoiled, it wasn't been done simultaneously 9 from each Nyala, so there was about nine minutes. During 10 that time, the question I think that Mr Bizos is busy with 11 was, was there the likelihood on the part of the strikers 12 to want to move towards Nkaneng? You weren't driving them 13 away at that stage, I understand you're driving people 14 away, driving them in a particular direction, they are 15 going to just go in the direction which you're driving 16 them, but when you were uncoiling the fire you weren't 17 driving them yet, you weren't even dispersing them. You 18 were putting up a protective barrier and what he is busy 19 with is a different question where he says, he contends, I 20 am not sure he is right but this is what he says, that it 21 was most likely that they wouldn't want to be fenced in as 22 it were and they would want to move towards Nkaneng. Now 23 there may be a number of answers to it but that's the point 24 that he is making. Do you agree with that or not?</p> <p>25 BRIGADIER CALITZ: Mnr die Voorsitter,</p>
<p style="text-align: right;">Page 19748</p> <p>1 MR BIZOS SC: Yes.</p> <p>2 BRIGADIER CALITZ: Ook, ek sien nou 23.2 3 en 23.3 praat van dieselfde, so dit is waarna ek verwys 4 het.</p> <p>5 MR BIZOS SC: Do you disagree with 6 paragraph 24?</p> <p>7 BRIGADIER CALITZ: Ek verskil ook daar, 8 daar word verskeie stellings gemaak maar ek verskil ook 9 daar.</p> <p>10 MR BIZOS SC: Do you disagree with 11 paragraph 25?</p> <p>12 CHAIRPERSON: This was debated –</p> <p>13 BRIGADIER CALITZ: Ja –</p> <p>14 CHAIRPERSON: This was debated fully 15 earlier with you.</p> <p>16 BRIGADIER CALITZ: Ek verskil ook daar, 17 mnr die Voorsitter.</p> <p>18 CHAIRPERSON: Are you an expert on 19 negative and positive attraction points?</p> <p>20 BRIGADIER CALITZ: Mnr die Voorsitter, 21 uit my ondervinding uit in die jare, nee, 20 jaar, weereens 22 Openbare Orde Polisiëring, as ons persone uiteendryf dan is 23 daar altyd 'n positiewe bewegingspunt waarna toe ons hulle 24 beweeg en weg van 'n negatiewe retraction point af. Die 25 negatiewe retraction point verwys dan na sekere sleutel</p>	<p style="text-align: right;">Page 19750</p> <p>1 miskien kan ek net so daarna verwys, dit is die foto's wat 2 ek op 'n vorige geleentheid, ek weet nie of daar 'n 3 bewysstuknummer aan dit gegee is nie, waar ek na groot lug 4 foto's verwys het en gesê het, nee, na my sin het hulle 5 direk na die polisie toe beweeg. Daar was 'n groter 6 gedeelte aan die regterkant wat we loop was vir Nkaneng, so 7 die moontlikheid is daar dat hulle wel beweeg het maar soos 8 ons toegemaak het en dan ook die gesprekke wat daar was met 9 hulle deur die dag, ek dink ek het gister verwys na die 10 aantal 20/25 waar ons hulle vir hulle verduidelik het die 11 neersit van die wapens, die weg beweeg, ek dink die 12 boodskap was duidelik gewees.</p> <p>13 CHAIRPERSON: To get back to the point, 14 it has been debated over and over again here and that is, 15 were they advancing, the group who were involved at scene 16 1, were they advancing towards the police to attack the 17 police or were they advancing in that direction simply to 18 go to Nkaneng and that's a debate we've had and presumably 19 will continue to have. Your view is that they were 20 advancing to attack the police, not to go to Nkaneng but to 21 attack the police. Is that what you're saying?</p> <p>22 BRIGADIER CALITZ: Mnr die Voorsitter, 23 dit is die feite wat ek het en dit is wat mnr Noki aan my 24 meegedeel het –</p> <p>25 CHAIRPERSON: No, no, no, you don't give</p>

Page 19751

1 the reason –

2 BRIGADIER CALITZ: Laat ek net sê, ja,

3 mnr die Voorsitter.

4 CHAIRPERSON: So it wasn't really a

5 question of Nkaneng being an attraction point, the real

6 attraction point I suppose on your analysis would be the

7 police, that would be the attraction point because they

8 would be the group whom the strikers would which to advance

9 to so that they could attack them. On your analysis is

10 that right?

11 BRIGADIER CALITZ: Dit is op die

12 dreigemente wat ons ontvang het, korrek, mnr die

13 Voorsitter.

14 MR SEMENYA SC: Chair, may we state for

15 the record as far as, at least as the SAPS case is

16 concerned that a positive or a negative attraction point,

17 concepts, don't define where the crowd to be dispersed

18 wants to go, they all define where the police desires the

19 crowd to move to, that's a completely different concept

20 than the one the chair is making.

21 CHAIRPERSON: I am grateful to you for

22 pointing that out. Mr Bizos, shall we take a comfort break

23 now and then we will resume and we'll take the tea at 11

24 o'clock? Well, let's take a short comfort break now,

25 because we've been now at it for some and there may well be

Page 19752

1 people here who would benefit from the comfort break.

2 [COMMISSION ADJOURNS COMMISSION RESUMES]

3 [10:18] CHAIRPERSON: I'm sorry, Brigadier, I

4 came back before making sure you were here. You don't have

5 to apologise, the apology is due from me and I extend it to

6 you. You're still under oath. Mr Bizos, when you're ready

7 you can continue with your cross-examination.

8 MR BIZOS SC: Page 18 of the exhibit,

9 paragraph 28.1 there was no evidence of good command and

10 control important where there are several units operating

11 at once, since no record keeping at a level of the joint

12 operational centre and operating units in the field has

13 been presented so far. Do you agree with that or disagree?

14 BRIGADIER CALITZ: Nee, mnr die

15 Voorsitter, ek disagree. Ek dink die VB en die operational

16 diaries skiet met tye van sy verklaring was hy die bewus

17 daarvan nie.

18 MR BIZOS SC: We have already dealt with

19 28.2 and I don't want to repeat it. There is no documented

20 evidence of adequate briefing of and guidance to the

21 members of the SAPS. It is critical that police officers

22 know who is able to give them a command to fire, that is

23 not only can they not shoot unless commanded but there must

24 be a command only from a specific agreed upon person that

25 should have been made clear at the briefing. Do you agree

Page 19753

1 or disagree with that?

2 BRIGADIER CALITZ: Weereens maak hy twee

3 stellings. Ek stem nie saam dat daar nie adequate briefing

4 was nie. Die briefing was heeltemal volledig wat aan ons

5 gegee is. Daarna het ek die briefing vir die commanders

6 gegee en hulle vir die lede. So, en almal is opgelei in

7 uiteendrywing so die commanders weet presies wat van hulle

8 verwag word en watse opdragte hulle gegee word tot op die

9 vlak van 'n seksiebevelvoerder.

10 MR BIZOS SC: Do you agree or do you

11 disagree that the standing orders directly provide that

12 there must be a warning, do you disagree with that as well?

13 CHAIRPERSON: For what, before what,

14 based on 28.5 then of course the answer is, to my question

15 to you would be that the warning prior to deployment of the

16 razor wire but I'm not sure that that's the question you're

17 asking. You say there should be a warning but the question

18 –

19 MR BIZOS SC: That we're going to shoot.

20 CHAIRPERSON: The question is

21 incomplete. You mean there must be a warning before shots

22 are fired, is that the question?

23 MR BIZOS SC: No. Command to fire.

24 CHAIRPERSON: There must be a warning

25 before a command is given to fire, there was a warning to

Page 19754

1 the strikers that the demand is going to be given to the

2 members to fire, is that the question?

3 MR BIZOS SC: Yes, this is what 28.3

4 says.

5 CHAIRPERSON: So what do you say about

6 that, Brigadier?

7 BRIGADIER CALITZ: Mnr die Voorsitter,

8 dit wat ek getuig het en dit waarvan ek bewus is, die

9 openbare orde polisiëring bevelvoerders het ook opdrag

10 gegee en ek spesifiek het opdrag gegee vir die

11 uiteendrywing. So volgens my was daar wel 'n bevel. Wat

12 op die TRT lyn daarby kan ek nie getuig nie.

13 MR BIZOS SC: Do you agree or disagree

14 with the statement of Mr Hendrickx that there should have

15 been?

16 MR SEMENYA SC: Chair, the witness has

17 answered the question to say he did give instructions in

18 relation to the shots for fire of tear gas, etcetera.

19 MR BIZOS SC: I don't think that the

20 statement by Mr Hendrickx then a command to fire actually

21 relates to gas or other matters, Mr Chairman, but we will

22 not, but I will not argue with my learned friend on that.

23 I think we should just proceed. If I may. My learned

24 friend nods that I may proceed, Mr Chairman. The 28.7

25 apparently the radio communications were problematic, do

Page 19755

1 you agree with that?

2 BRIGADIER CALITZ: Daar was wel 'n

3 probleem met die radios, ek stem saam.

4 CHAIRPERSON: I remember when General

5 Annandale was giving evidence it was put to him that there

6 was this common international practice which Mr Hendrickx

7 refers to in 28.7, he didn't, my impression was he didn't,

8 he wasn't aware but he didn't dispute it, but he explained

9 that there had, there was a problem in relations to the

10 radio equipment that attempts were being made to deal with

11 the problem but it was going to cost an enormous amount of

12 money and I'm not sure if he said they had budgeted for it

13 yet but they were going to do so, but it was going to take

14 a large sum of money and in particular as it had to apply

15 to POP units throughout the country and all the provinces.

16 So his answer was yes the radio communications were

17 problematic, we're aware of that but we're busy trying to

18 address it, but it's going to cost a large amount of money.

19 That was his evidence. I take it you agree with that?

20 BRIGADIER CALITZ: Ek stem 'n 100% saam

21 met die, mnr die Voorsitter.

22 MR BIZOS SC: Can we look at 28.8, the

23 operation was not filmed or photographed completely. "It

24 appears that some crucial recorded evidence of the flash

25 point at the kraal is lacking between 15:45 and 16:05. The

Page 19756

1 necessary equipment was either not working or not

2 available. The whole operation should have been filmed

3 especially if the intention was to charge people later."

4 Do you agree with that?

5 BRIGADIER CALITZ: Ekskuus, mnr die

6 Voorsitter, daar was wel die video persone wat gedreig was

7 en dit is die enigste twee wat ek bewus was wat dan later

8 tot my kennis gekom het, dat hulle gedeelte nie volledig

9 gefilm was nie. Maar wat betref die ander persone wat

10 daarmee getaak met was, was daar wel recordings gewees op

11 die dag.

12 MR BIZOS SC: Do you agree that we do not

13 have any recordings from the police between 15:45 –

14 CHAIRPERSON: Mr Bizos, sorry to

15 interrupt, I'm not sure it's necessary to put this point to

16 the witness. I think it's common cause that there's a lack

17 of video recording, many of them which we would like to

18 have aren't there, there's various reasons for it. The

19 witness himself said he didn't know that the people had

20 been threatened or allegedly threatened, had left

21 completely and had gone back to the JOC, he thought they

22 had moved to an area, a safe area from which they could go

23 on filming, which they didn't. But it's common cause I

24 think the, what video material is available, what video

25 material isn't available, what should be available, the

Page 19757

1 problems about that. But I'm not sure this witness can add

2 any value and I'm not being disrespectful, I'm not sure

3 that he can add any value to the evidence on that point.

4 MR BIZOS SC: I'm tempted to ask whether

5 this is another coincidence but I won't, Mr Chairman.

6 CHAIRPERSON: If you want to, I won't

7 stop you.

8 MR BIZOS SC: Thank you.

9 CHAIRPERSON: The question is whether

10 the answer will be helpful.

11 MR BIZOS SC: Well, thank you. This is

12 yet another unfortunate coincidence, isn't it that what

13 happened at a vital period was not recorded, was just one

14 of those coincidences that have occurred.

15 BRIGADIER CALITZ: Mnr die Voorsitter, ek

16 dink gister het ons die woord coincidence en toe het u vir

17 my gesê dis nie coincidence was dit deliberate. So ek wil

18 antwoord dit was nie deliberate nie. Volgens wat ek geweet

19 het, volgens my het hulle terug beweeg tot by die lyn. So

20 daar was redes voor gegee. Na die tyd het ek nou wel bewus

21 geword laat hulle wel terug beweeg het na die JOC toe. So

22 daar is redes wat daardie persone daarvoor aangegee het.

23 MR BIZOS SC: - that what you say,

24 Brigadier, but I might as well put to you what we will

25 argue. That too many coincidence which exculpate the

Page 19758

1 police from any liability create a probability that they

2 are not telling the truth.

3 CHAIRPERSON: I take it's noted that

4 you're going to advance that argument.

5 MR BIZOS SC: Yes.

6 CHAIRPERSON: Of course the lack of

7 video material doesn't necessarily exculpate the police, it

8 will create difficulties with the police as well. It means

9 that if things were done correctly by the police, if they

10 were, there's no video record to indicate that that's so.

11 So there's room for disputes, issues of fact and so forth.

12 So that the fact that the video material isn't available or

13 enough video material isn't available, the kind that the

14 standing order envisages should be available, that fact

15 actually can cut both ways. It can prejudice the police as

16 much as others. So I'm not sure that it will fall in the

17 same category as the other so-called coincidences to which

18 you've referred.

19 MR BIZOS SC: Well I will merely give it

20 notice, Mr Chairman, that too many coincidences lead to

21 inferences to be drawn that if they favour the police

22 version, their absence favours the police version we will

23 argue and I hope successfully that the police version

24 cannot be accepted and this is why I am asking the witness

25 whether he has anything to say about that line of argument,

Page 19759

1 whether he agrees or disagrees.
 2 CHAIRPERSON: I don't know that it's for
 3 him to comment on an argument you're going to advance. I'm
 4 sure he can leave that to Mr Semenya to deal with at the
 5 appropriate time and again without any, tendering any
 6 disrespect I'm not really interested in his answer to the
 7 question because I don't, simply because I don't think it
 8 will take it any further. One way or the other.
 9 MR BIZOS SC: Do you agree that the
 10 standing orders expect you to have a debriefing before any
 11 event of the nature that we are dealing with?
 12 CHAIRPERSON: The thing is, Mr Bizos,
 13 this is a point that's been covered very fully with other
 14 witnesses. We know what the evidence is, we know what the
 15 standing orders say. The decision not to have a, as I
 16 understand it, not to have a debriefing as envisaged in the
 17 standing order was not made by the witness. They have the
 18 reason which they've given which may or may not be
 19 adequate, you may criticise it, others will defend it. But
 20 again I don't know this witness can add any value to that
 21 discussion.
 22 MR BIZOS SC: Yes, well I –
 23 CHAIRPERSON: It wasn't his decision you
 24 see.
 25 MR BIZOS SC: I was going to ask him

Page 19760

1 whether he agrees or disagrees with Mr Hendrickx's
 2 conclusion at 28.10 but I suppose it's a, it's surplusage,
 3 Mr Chairman. I will leave it. Let's come to the
 4 recommendations. Based on my experience I would have
 5 expected the SAPS involved at Marikana to at least have
 6 been the below listed additional steps. Explore other less
 7 confrontational risky options, do you agree or disagree?
 8 BRIGADIER CALITZ: Weereens, mnr die
 9 Voorsitter, die stelling is baie wyd. Soos hy hier staan
 10 disagree ek, verskil ek want ons het begin van dag een af
 11 met onderhandelinge, ek dink die polisie was drie dae
 12 betrokke met onderhandelinge voor na die volgende fases toe
 13 oorgegaan het. So die een het gelei na 'n ander. So ek
 14 verskil van die stelling hier.
 15 MR BIZOS SC: Do you agree that you could
 16 have adopted less confrontational and risky options?
 17 BRIGADIER CALITZ: Op die dag van die
 18 gebeure en soos dit uitgespeel het sal ek sê op hierdie
 19 stadium verskil ek, mnr die Voorsitter.
 20 MR BIZOS SC: Disagree?
 21 BRIGADIER CALITZ: Dit is korrek.
 22 CHAIRPERSON: The answer is limited to
 23 the day in question as things developed. You'll remember
 24 the evidence they had an order from a provincial
 25 commissioner or possibly even higher that's a matter to be

Page 19761

1 looked into later, that they had to act on the Thursday,
 2 they couldn't act until fairly late in the day, they
 3 couldn't act at 9 o'clock. They were only really able to
 4 act appropriately after 12 as I see it and that was the
 5 situation in which he found himself. Subject to an
 6 instruction from above which was then conveyed to him via
 7 the JOCCOM at half past 2, I take it his point is in those
 8 circumstances the answer is no but it involves a wider
 9 question, but I don't know whether they're worth exploring
 10 with him.
 11 MR BIZOS SC: Be it or other additional
 12 step identify all probable responses from the crowd and
 13 plan for all these possibilities, do you agree with that?
 14 BRIGADIER CALITZ: Mnr die Voorsitter,
 15 dit is presies wat ons gedoen het. Die responses van die
 16 crowd het ons in ag geneem en dit is dan ook in die plan in
 17 gewerk.
 18 MR BIZOS SC: Do you agree with what he
 19 says or disagree?
 20 BRIGADIER CALITZ: Dit hang af of hy dit
 21 in 'n negatiewe sin bedoel het. As hy sê identify all
 22 probable responsibilities of crowd and to plan for all
 23 these possibilities, as hy bedoel het ons het dit gedoen
 24 dan stem ek saam. As hy bedoel ons het dit nie –
 25 CHAIRPERSON: He says he would have

Page 19762

1 expected you to have done the following which I take is
 2 implicitly means he accepts you didn't do that.
 3 BRIGADIER CALITZ: Oh in daardie geval –
 4 CHAIRPERSON: That's why it's in a
 5 paragraph headed recommendations. So he's recommendation
 6 is you should have done that and he says you didn't do it.
 7 BRIGADIER CALITZ: In daai -
 8 CHAIRPERSON: That's the point you have
 9 got to deal with.
 10 BRIGADIER CALITZ: In daardie geval
 11 verskil ek, mnr die Voorsitter, dankie.
 12 MR BIZOS SC: - to avoid any confusion as
 13 a result of the guidance of the Chairman, that you didn't
 14 ensure that units involved in operations provide their
 15 written record keeping, do you agree with him or do you
 16 disagree with him?
 17 BRIGADIER CALITZ: Nee, mnr die
 18 Voorsitter, dis 'n absolute leuen. Dit is gedoen.
 19 CHAIRPERSON: No, don't use a word like
 20 that. You remember this statement is made in February
 21 2013.
 22 BRIGADIER CALITZ: Ek het voorheen daarna
 23 verwys, dit is korrek.
 24 CHAIRPERSON: And various documentation I
 25 think was produced afterwards, he wasn't aware of it. So I

Page 19763

1 don't think you can accuse him of telling a lie. The
 2 statement may well be inaccurate whether it is or not the
 3 matter we needn't debate at the moment. But it may well be
 4 inaccurate but the inaccuracy would appear, if it is
 5 inaccurate would have been based upon the limited
 6 information available to him in February when he made the
 7 statement. We're going to get another statement which I
 8 understand is going to be considerably longer than this
 9 one. But we can't deal with it because we haven't seen it,
 10 it that right, Mr Bizos?

11 MR BIZOS SC: That is so, Mr Chairman.

12 CHAIRPERSON: So it is correct that at
 13 the time, it would be your case I take it, the time the
 14 statement was made Mr Hendrickx wasn't aware of various
 15 record keeping document which some of which at least has
 16 been produced.

17 MR BIZOS SC: Yes, some were discovered
 18 and produced later on by the evidence keepers, Mr Chairman.

19 CHAIRPERSON: How adequate or complete
 20 it was is a matter we can't go into at the moment. But the
 21 fact is here is a statement made by Mr Hendrickx in
 22 February last year –

23 MR BIZOS SC: Information -

24 CHAIRPERSON: It's been overtaken by
 25 quite a lot of information.

Page 19764

1 MR BIZOS SC: Correct.

2 CHAIRPERSON: Alright.

3 MR BIZOS SC: There will be, as I
 4 indicated a supplementary statement, Mr Chairman, with
 5 which regard is had to all the matters. He says
 6 operational debriefings should have been held at all levels
 7 of commanders and units involved in the operation. In it
 8 there is a suggestion that there were not operational
 9 debriefings that should have been held. Do you agree or
 10 disagree?

11 BRIGADIER CALITZ: Mnr die Voorsitter,
 12 weereens ek verskil. Ses maande later weet ek nie of mnr
 13 Hendrickx wel ingelig was daarvan nie, maar operational
 14 debriefings was gedoen op daardie selfde aand nog. So ek
 15 verskil van wat hy hier sê.

16 MR BIZOS SC: And lessons learnt were
 17 examined, documented and proposed WITH the SAPS leadership,
 18 was that done?

19 [10:38] BRIGADIER CALITZ: Mnr die Voorsitter,
 20 nee daar kan ek, tot my wete saamstem dat dit wat ons
 21 gedoen het was by Roots in Potchefstroom en dit is om die
 22 feite bymekaar te kry. Ek het nog nie bewys gewees van
 23 enige dokument wat uiteengesit is van "lessons learnt" wat
 24 dan aan die topstruktuur van die polisie voorgelê is nie.

25 CHAIRPERSON: Well, perhaps I can tell

Page 19765

1 you that during the course of the Commission Mr Semenya
 2 undertook, in response to a request from the Commission, to
 3 provide a document setting out the lessons which the police
 4 accept they've learnt. He undertook that as soon as that
 5 document is ready he would make it available to us. It
 6 hasn't been done yet, but I'm confident that we'll receive
 7 it in due course. So that would seem to dispose of that
 8 point.

9 MR CHASKALSON SC: Chairperson, just to
 10 go back to 29.4, we haven't seen any written or audio
 11 records of any operational debriefing, so I wonder if SAPS
 12 could confirm that none exist, or if they do exist,
 13 indicate that they'll be made available to us?

14 CHAIRPERSON: I take it Mr Semenya will
 15 take instructions on that and revert to us.

16 MR SEMENYA SC: I will, Chair.

17 MR BIZOS SC: Well, perhaps one would
 18 have expected, if regard was had to the Standing Orders,
 19 that some of it would have been done at Potchefstroom.

20 BRIGADIER CALITZ: Mnr die Voorsitter,
 21 waarna ek verwys het hier, die "operational debriefings,"
 22 dit is waarna ons verwys het en ek dink ons het dit
 23 deurtrap met die vorige getuienis, is dat ons het 'n "hot
 24 debriefing" gehad waar die lede hulle inligting vir die
 25 "commanders" gegee het. Dan het ons 'n "second level

Page 19766

1 debriefing" gehad waar die "commanders" daardie inligting
 2 gebring het na die JOC toe. Ek het nie gesê daar was 'n
 3 formele JOCCOM "meeting," 'n vergadering nie. Ek dink een
 4 van die vorige advokate het vir my gevra wie sou die notas
 5 geneem het en ek sê ek het gedink dit is die bevelvoerders
 6 saam met Kolonel Scott. So ek dink nie dit was in 'n
 7 formele "minute" vorm nie. As dit bestaan dan praat ek
 8 onder korreksie, maar dit is die enigste manier hoe ons die
 9 inligting wel kon kry, waarop dan die "media briefing" en
 10 al die ander dokumente saamgestel is.

11 MR BIZOS SC: Well, would you agree that
 12 exhibit L does not show what one would have expected in
 13 terms of the Standing Orders? It was really the putting
 14 together of an exculpatory statement absolving the police
 15 from any responsibility.

16 BRIGADIER CALITZ: Nee, mnr die
 17 Voorsitter, ek stem nie saam met u nie.

18 CHAIRPERSON: There are a number of
 19 points, Mr Bizos. The first is I think it's been the
 20 attitude of the SAPS that L wasn't intended to be a
 21 debriefing in that sense. It was a presentation to the
 22 Commission of the facts that they gathered. Whether it's
 23 exculpatory, whether it's inaccurate, these are matters
 24 that obviously will be debated, have formed the subject of
 25 extensive evidence and may well continue to do so, but I

Page 19767

1 don't think we can take it any further than that at this
2 stage. Is that right?
3 BRIGADIER CALITZ: Korrek, mnr die
4 Voorsitter.
5 MR BIZOS SC: We're still waiting for a
6 reason why there were no operational debriefings once you
7 spend nine days in putting together exhibit L at
8 Potchefstroom.
9 CHAIRPERSON: Mr Bizos, I'm not sure this
10 witness can answer that, and he wasn't in charge of the
11 Potchefstroom exercise. There were people who were senior
12 to him involved in organising the Roots operation. The
13 Provincial Commissioner was there some of the time, the
14 National Commissioner at other times. The decision to hold
15 the Roots exercise wasn't his. So I'm not sure that he's
16 the appropriate person to ask this. I'm not saying they're
17 not valid questions, but I don't know that he's the
18 appropriate person to ask them.
19 MR BIZOS SC: Was it discussed at all
20 there that we are obliged to have a debriefing? Was that
21 discussed in your presence, or did you as a senior officer
22 say that the Standing Orders require a debriefing, let us
23 have a debriefing of what maybe have been wrong and do
24 that, instead of putting exhibit L together, which doesn't
25 deal with that? Did you or anyone else make that proposal

Page 19768

1 at Potchefstroom?
2 BRIGADIER CALITZ: Mnr die Voorsitter,
3 waarna ek hier verwys het, "operational debriefing," is wat
4 ek vir die "commanders" gegee het die dag van die 16de, die
5 aand. Daar is drie verskillende "debriefings" wat uitgesit
6 word. Dit is die "hot debriefing" van die lede, miskien
7 net tot – as ek u kan, u miskien help in daardie rigting,
8 en dan is daar "commanders" wat dit moet terugbring na die
9 bevelvoerders toe, en dan die een waarna u verwys is die
10 formele "debriefing" waar ons dan praat van ons doen 'n
11 "SWOT analysis," your strengths, weaknesses, opportunities,
12 threats. Daardie "SWOT analysis" het ons saamgestel uit
13 "exhibit" L en daardie, daar is bespreking dat die
14 Kommissie sy werk gaan voltooi en dan sal ons sien uit wat
15 voortvloei, en dan glo ek ook uit die polisie se, die
16 taking wat gegee is, dat soos dit aangaan sal ons sien
17 "lessons learnt," en dan daardie sal gebruik word vir
18 toekomstige, indien nodig regstellings waar foute gemaak is
19 en hulp ook aan die operasionele lede.
20 MR CHASKALSON SC: Sorry, Chair, I wonder
21 if I could also add to that previous request any records of
22 the SWOT analysis? Because again we haven't seen anything
23 like that.
24 CHAIRPERSON: I thought the witness said
25 the SWOT analysis hasn't happened yet. Has the SWOT

Page 19769

1 analysis happened yet?
2 BRIGADIER CALITZ: Nee, mnr die
3 Voorsitter –
4 CHAIRPERSON: It's going to happen after
5 you get our Commission report?
6 BRIGADIER CALITZ: Dit is wat ek nou net
7 oor getuig het –
8 CHAIRPERSON: Is that right? That's what
9 you said, as far as I understood.
10 BRIGADIER CALITZ: Dit het nie gebeur.
11 Dit was my getuienis, ja.
12 CHAIRPERSON: What I can say is I hope
13 that no unfortunate incident takes place between now and
14 the time the report comes out which could have been solved
15 by a SWOT analysis, prevented by a SWOT analysis, but
16 anyway, that's just a comment I make; I don't expect you to
17 respond to it.
18 MR SEMENYA SC: And also for the record,
19 sorry Chair, there are no audio or written operational
20 debriefings that we have.
21 MR BIZOS SC: [Microphone off, inaudible]
22 hear that, Mr Chairman?
23 CHAIRPERSON: Mr Semanya was responding
24 to the request made by Mr Chaskalson that if there are
25 written or video or audio recordings of operational

Page 19770

1 debriefings which he says took place, could they please be
2 made available. Mr Semanya said he'd take instructions.
3 He's done so. He now says there are no such records or
4 recordings, so the request cannot be complied with. That's
5 what I understood to be what he said.
6 MR BIZOS SC: We'll draw some inference
7 from that, Mr Chairman, in due course. Now Mr Hendrickx
8 was asked, because he had seen the terms of reference which
9 we showed him and he thought fit to say, "On a general
10 level I would recommend," and then there are four
11 recommendations made. Do you agree that those
12 recommendations should be made by the Commission?
13 BRIGADIER CALITZ: Can I go one by one,
14 or –
15 MR BIZOS SC: If you think that you can,
16 having regard to what happened –
17 BRIGADIER CALITZ: Mnr die Voorsitter –
18 MR BIZOS SC: - whether you as a senior
19 officer would want to make some recommendation so that we
20 do not have another Marikana tragedy in the near or distant
21 future.
22 BRIGADIER CALITZ: As ons nie een-een
23 deurgaans nie, gee my net 'n geleentheid dat ek net gou al
24 vier of vyf lees, dan sal ek u antwoord.
25 CHAIRPERSON: [Microphone off, inaudible]

<p style="text-align: right;">Page 19771</p> <p>1 sure there are five. I think he's on the level of general 2 recommendations. Is that right, Mr Bizos? 3 MR BIZOS SC: I beg your pardon? 4 CHAIRPERSON: Are you busy with paragraph 5 30? 6 MR BIZOS SC: Paragraph 30, yes. 7 CHAIRPERSON: Yes, you see, paragraph 30 8 is general recommendations and what he suggests is that 9 working groups be established to research and review 10 certain matters. The one, the first is the foundations of 11 problem-solving levels of crowd management. The second is 12 existing police practices within the framework of the crowd 13 management model, and the third is levels of constant 14 interaction between lessons learnt and future police 15 actions. So do you agree with those? 16 BRIGADIER CALITZ: Ek stem – 17 CHAIRPERSON: Any harm in having working 18 groups established to do those things? 19 BRIGADIER CALITZ: Geen argument nie. Ek 20 stem saam daarmee, mnr die Voorsitter. 21 CHAIRPERSON: And there should be 22 positive results flowing from such an exercise, surely. 23 BRIGADIER CALITZ: Dit is waarvoor ons 24 hoop, mnr die Voorsitter. 25 CHAIRPERSON: Ja.</p>	<p style="text-align: right;">Page 19773</p> <p>1 MR BIZOS SC: The question following it, 2 Mr Chairman – 3 CHAIRPERSON: Alright, well ask the 4 question following rather than the first question. 5 MR BIZOS SC: Yes. Have you been made 6 aware that on behalf of the South African Police Mr De 7 Rover has made a statement? 8 BRIGADIER CALITZ: Dit is korrek, mnr die 9 Voorsitter. 10 MR BIZOS SC: With certain exceptions 11 towards the end of his report, do you agree that he is in 12 substantial agreement with the views of Mr Hendrickx? 13 CHAIRPERSON: Mr Bizos, I'm sorry, I 14 don't think I can allow that question. Whether he's in 15 agreement or not is a matter for us to decide when we've 16 read the reports. We have read the reports. We don't have 17 to rely on the Brigadier to tell us he's read the reports 18 and this is what he thinks they amount to. I think, with 19 respect, that is not a helpful – 20 MR BIZOS SC: They are an introduction to 21 the final question that I have to put to him. 22 CHAIRPERSON: Well, ask the final 23 question and if amplification is required, you can give it 24 then. 25 MR BIZOS SC: Yes. What makes you think</p>
<p style="text-align: right;">Page 19772</p> <p>1 MR BIZOS SC: In conclusion, Brigadier, 2 you find yourself in substantial disagreement with Mr 3 Hendrickx and his interpretation of the events as presented 4 in documents shown to him. Is that correct? Substantial 5 disagreement. 6 BRIGADIER CALITZ: In soverre dit die 7 gebeure aangaan soos wat ons dit bespreek het, dit is 8 korrek, mnr die Voorsitter. 9 MR BIZOS SC: Are you aware that another 10 expert, Mr White, has made a report? 11 BRIGADIER CALITZ: Ek is bewus van mnr 12 White se rapport, ja. 13 MR BIZOS SC: Have you read it? 14 BRIGADIER CALITZ: Ek het deur dit 15 gegaan, dit is korrek. 16 MR BIZOS SC: Do you agree that Mr White, 17 another international expert, is in substantial agreement 18 with – 19 CHAIRPERSON: Mr Bizos, do we have to 20 have this witness's opinion as to whether Mr White agrees 21 with Mr Hendrickx? I mean it's a matter, if they're in 22 agreement, they're in agreement. We will form an opinion 23 on it. If he says they are in agreement, then that will be 24 interesting. If he says they aren't in agreement, well, 25 and if we don't agree with him –</p>	<p style="text-align: right;">Page 19774</p> <p>1 that you are qualified to contradict these experts? 2 BRIGADIER CALITZ: Mnr die Voorsitter, 3 dit is presies waarop ek getuig het. My 21-jaar 4 ondervinding in die huidige demokrasie onder die huidige 5 regering, my kursusse wat ek deurloop het, die bevorderings 6 wat ek gekry het, die panele waarvoor ek, waar ek verskyn 7 het, en die rang wat ek tans beklee, dit het nie verniet 8 gekom nie. Dit het gekom deur harde werk, 'n skoon rekord, 9 en soos ek verwys het, meer as ek dink 3 900 gevalle van 10 "crowd management" wat ek hanteer het, en ek kan amper sê 11 met honderd persent sukses "rate." 12 So in hierdie geval, dit was 'n unieke geval, die 13 eerste wat ons van weet in Suid-Afrika. Ons weet nie van 14 nog so 'n geval nie, en daarom as daar dan iets is wat 15 fouteer is, "lessons learnt" is, sal ek die eerste een wees 16 om daarby in te stem en te sê reg, kom ons maak hier en 17 daar goeters reg. Maar wat betref my ondervinding dink ek 18 die vyf jaar of 10 jaar wat mnr Hendrickx wel hier 19 gespandeer het, het hy dalk nie met almal in kontak gewees 20 en met sekere mense, en sy afleidings is daarvolgens 21 gemaak. Ek dink wat Suid-Afrika betref in die situasie, in 22 die "crowd management" in Suid-Afrika het ek meer 23 ondervinding as die persoon. Dit sal my afleiding wees. 24 MR BIZOS SC: Is the sanctity of human 25 life not a universal principle?</p>

Page 19775

1 BRIGADIER CALITZ: As ek u vraag reg
 2 verstaan - mnr die Voorsitter, as ek die vraag verstaan,
 3 die reg op lewe, dit word altyd vooropgestel en ek stem
 4 saam, dit is 'n grondwetlike beginsel en dit is beslis so.
 5 CHAIRPERSON: I think Mr Bizos's point is
 6 that principle applies in Belgium, it applies in Northern
 7 Ireland, and it applies in South Africa, and so experts to
 8 Northern Ireland and from Belgium can also express expert
 9 opinions on, particularly Public Order Policing experts, on
 10 what the police should do to uphold the sanctity of human
 11 life. I think that's really your point, Mr Bizos. Is that
 12 right?
 13 MR BIZOS SC: I'm indebted to you, Mr
 14 Chairman.
 15 CHAIRPERSON: So when you say to –
 16 MR BIZOS SC: That is what I intended and
 17 it's the last question that I had for the –
 18 CHAIRPERSON: So what answer do you want
 19 to give to Mr Bizos's last question?
 20 BRIGADIER CALITZ: Mnr die Voorsitter,
 21 nee, ek stem saam, die reg op lewe word vooropgestel nie
 22 net in die dag vir die "protesters" nie, maar ook vir die
 23 polisie. Ons almal is onder dieselfde grondwet en die reg
 24 op lewe is definitief die belangrikste vir almal op daardie
 25 dag. Ek dank u, Advokaat.

Page 19776

1 CHAIRPERSON: Thank you, Mr Bizos. I
 2 think Mr Mpfu, you're next. We have been given -
 3 MR MPOFU: Yes, I am, Chairperson.
 4 CHAIRPERSON: We have been given a list
 5 of the exhibits, documents to which you're going to refer.
 6 MR MPOFU: Yes, Chairperson.
 7 CHAIRPERSON: And you've got five minutes
 8 before we take the tea adjournment.
 9 MR MPOFU: Yes, I would appreciate –
 10 CHAIRPERSON: I'm not sure you'll be
 11 finished by then, but do try.
 12 MR MPOFU: Somehow I don't think I will
 13 be, Chairperson, but I'd appreciate to use the few minutes
 14 because there are some preliminary –
 15 CHAIRPERSON: Mr Mpfu, before you ask
 16 your questions, Adv Hemraj wants to ask something.
 17 MR MPOFU: Yes.
 18 CHAIRPERSON: And then you can –
 19 MR MPOFU: Thank you, Chairperson.
 20 CHAIRPERSON: - commence your cross-
 21 examination.
 22 COMMISSIONER HEMRAJ: Brigadier, can you
 23 just clarify, please, the talk you gave on the 18th, the
 24 members present, were they only POPS members or were there
 25 members from other units present as well?

Page 19777

1 BRIGADIER CALITZ: Dit was al die lede.
 2 Dit was Openbare Orde Polisiëring, TRT, NIU, K9, selfs nuwe
 3 lede wat vir die eerste keer daar was. So dit was 'n hele
 4 groepering van lede, asook die onderhandelaars.
 5 COMMISSIONER HEMRAJ: Thank you.
 6 MR MPOFU: Thank you, Chairperson. Good
 7 morning, Brigadier.
 8 BRIGADIER CALITZ: Mnr die Voorsitter, as
 9 ek net 'n versoek kan rig dat ek net die lêers bêre en u
 10 lêer uithaal?
 11 CHAIRPERSON: Is that going to take a bit
 12 of time? Shall we –
 13 BRIGADIER CALITZ: Nee, nee, ek het –
 14 CHAIRPERSON: Shall we take the tea
 15 adjournment now to enable you to set yourself up?
 16 BRIGADIER CALITZ: Ek het die lêer by my,
 17 so ek sien dis 11 uur amper, so dit is – ek wil nie
 18 voorskryf nie, mnr die Voorsitter –
 19 CHAIRPERSON: Mr Mpfu, let's take the
 20 tea adjournment now, then you'll have a witness who's got
 21 all the documents in front of him, ready to –
 22 MR MPOFU: Attentive.
 23 CHAIRPERSON: - answer all your questions
 24 fully.
 25 MR MPOFU: Thank you, Chairperson.

Page 19778

1 BRIGADIER CALITZ: Mnr die Voorsitter,
 2 kan ek miskien tydens die tee-breek, die – ek wil nie amper
 3 sê die belofte wat gister gemaak is nie. U het gepraat van
 4 daar is foto's of iets wat u ontdek het wat u sou gegee het
 5 vir ons regspraak. Ek het niks gekry nie. Ek het wel die
 6 versoek gekry van, dit is omtrent 80 video's wat ek moes
 7 deurgaan. So dit is wat in die dokument is, maar nie die
 8 foto's nie. So as ek dit miskien kan kry oor teetyd gaan
 9 dit my dalk help, dankie.
 10 CHAIRPERSON: That's a housekeeping
 11 matter that can be dealt with during the, while the rest of
 12 us are drinking tea.
 13 MR MPOFU: It can. I can dispose of it
 14 very quickly, Chairperson. Ja, I just spoke to Mr Semenya
 15 about it. We haven't been able to give the photos yet.
 16 They are few, but we'll make sure that we don't use them
 17 until such time that you are comfortable.
 18 BRIGADIER CALITZ: Baie dankie.
 19 CHAIRPERSON: That sounds encouraging.
 20 Let's take the tea adjournment.
 21 [COMMISSION ADJOURNS COMMISSION RESUMES]
 22 [11:22] CHAIRPERSON: The Commission resumes,
 23 Brigadier, you're still under oath. Mr Mpfu?
 24 BRIGADIER CALITZ: Dankie, mnr die
 25 Voorsitter.

Page 19779

1 CROSS-EXAMINATION BY MR MPOFU: Thank you
 2 very much, Chairperson. Brigadier Calitz, I am just going
 3 to start with preliminary material, just to situate where I
 4 am going with the cross-examination, it won't take long.
 5 You –
 6 CHAIRPERSON: Before we get to that can I
 7 ask a question?
 8 MR MPOFU: Yes.
 9 CHAIRPERSON: I see item 26 on your list
 10 that you gave us is Mr Mathunjwa's second address and you
 11 describe it as a new video. Do you know whether there is a
 12 transcript of the address and the translation of what he
 13 said in the second address?
 14 MR MPOFU: No, there isn't, Chairperson.
 15 Actually I was not intending to use this anymore but I –
 16 CHAIRPERSON: Well, I would like
 17 nevertheless –
 18 MR MPOFU: Yes –
 19 CHAIRPERSON: - to have it at some stage,
 20 because it is quite important what he said.
 21 MR MPOFU: Yes, I would like, - I'll find
 22 an opportunity to submit it because I was aware that the
 23 Commission didn't have it. It has been referred to many
 24 times but –
 25 CHAIRPERSON: I understood that there was

Page 19780

1 unfortunately no record of it, but I am pleased to see
 2 that, I think we may have heard later that a record had
 3 been found.
 4 MR MPOFU: Ja.
 5 CHAIRPERSON: But I haven't seen it, but
 6 that maybe reflects, you say you're not going to deal with
 7 it in cross-examination, so I don't have to discuss it with
 8 you now.
 9 MR MPOFU: Yes.
 10 CHAIRPERSON: I'm sorry for interrupting
 11 you.
 12 MR MPOFU: Thank you very much,
 13 Chairperson. Brigadier, I just want to talk to you a little
 14 bit about the purposes of this Commission in very broad
 15 terms. Mr Bizos took you to the terms of reference, so I
 16 won't do that since it was done with you yesterday, but
 17 just so that we understand the issues together or in the
 18 same way. You do realise that one of the purposes of this
 19 Commission is to get the truth for various reasons,
 20 including the people that I represent who were the
 21 survivors of the massacre to know what happened and of
 22 course the families of those who passed away, to know what
 23 happened but even more broadly for the country to know what
 24 happened and lastly, and maybe most importantly to prevent
 25 such a thing ever happening again. Would you take that as

Page 19781

1 a first summary of what we are about in this exercise?
 2 BRIGADIER CALITZ: Mnr die Voorsitter,
 3 ja, net een plekkie waar ek verskil, ek weet nie of dit 'n
 4 vraag is en of dit net 'n stelling is nie, maar ek stem
 5 saam dat ons agter die waarheid moet kom. Die woord wat net
 6 gebruik is, massacre volgens my is 'n massacre 'n brutale
 7 slagting, blindelings, onoordeelkundig. Ek wil net sê
 8 hierdie was 'n veelvoudige polisie reaksie op 'n aanval van
 9 individuele lede, so miskien net omsigtigheid rondom die
 10 woordjie –
 11 MR MPOFU: Ja –
 12 BRIGADIER CALITZ: - massacre want ons
 13 weet dit is nie wat dit was nie.
 14 MR MPOFU: No, that's fine. Well, for
 15 the record we are going to argue at the end that it is a
 16 massacre but I'll use, for your cross-examination I'll use
 17 whatever word you are comfortable with, because I don't
 18 want to quibble on semantics with you.
 19 BRIGADIER CALITZ: Dankie, Meneer.
 20 MR MPOFU: Okay, now underneath or
 21 underlying all these purposes that you and I have agreed on
 22 is obviously the need, the truth to be told, particularly
 23 by witnesses, those who were fortunate enough to be able to
 24 enlighten the Commission because they were there or because
 25 they collected the evidence, correct?

Page 19782

1 BRIGADIER CALITZ: Dit is korrek, mnr die
 2 Voorsitter.
 3 MR MPOFU: And you also understand that
 4 when you speak under oath, I'm not going to deal with Mr
 5 Chairperson's long thing about the importance of the oath,
 6 but you do understand that when you speak under oath you
 7 speak mainly about things that are within your personal
 8 knowledge, obviously there are exceptions if you are
 9 referring to something that you were told by someone else,
 10 you'll indicate so, but mainly things within your
 11 knowledge, correct?
 12 BRIGADIER CALITZ: Mnr die Voorsitter, as
 13 ek onder eed getuig is dit wat ek wel waargeneem het, asook
 14 dele wat aan my meegedeel is en dan na die beste van my
 15 vermoë soos ek dit onthou 18 maande later, dit is korrek.
 16 MR MPOFU: Yes, and when you are
 17 testifying about things that someone else told you, you
 18 know, as an officer you know that you should so indicate,
 19 those two must not be mistaken against each other, in other
 20 things that are within your personal knowledge and things
 21 that you were told by others, correct?
 22 BRIGADIER CALITZ: Ek dink ons het
 23 daardie onderwerp al aangeraak, ja, mnr die Voorsitter ook
 24 op 'n stadium met die ander ondervraging.
 25 MR MPOFU: Ja, and at the risk of stating

Page 19783

1 the obvious the work of this Commission, all the money that
 2 is spent on it and the time that is spent on it would go to
 3 waste if this Commission is going to be fed with lies,
 4 because firstly we won't be able to know what happened, but
 5 secondly we won't be able to prevent it from happening
 6 again, correct?
 7 BRIGADIER CALITZ: Ek sal saam met u
 8 stem, ja.
 9 MR MPOFU: Alright, I am saying this
 10 because and I don't want to be unfair to you, I think,
 11 depending on some of your answers but already on what I've
 12 heard already, that I am going to be probably suggesting at
 13 the end that you are not completely truthful with the
 14 Commission and it is unfair for me to put that statement
 15 blindly without illustrations, but I am just giving you the
 16 broad parameters of my cross-examination at this stage. Do
 17 you understand that, so you don't have to quibble, rather,
 18 well, you can say you've only spoken the truth and so on
 19 and so on, but let's not get into the details yet.
 20 CHAIRPERSON: You shouldn't prejudge, Mr
 21 Mpfu, let him give his evidence and you may find to your
 22 surprise that you accept his evidence as truthful,
 23 alternatively if you don't you can make submissions but I
 24 think it is a bit offside to say in advance before he even
 25 has testified that he is not going to tell the truth, but

Page 19784

1 anyway, you can carry on.
 2 MR MPOFU: Well, Chairperson, that's
 3 exactly why I used the word advisably on what I have
 4 already heard because I didn't, if I haven't heard anything
 5 then I would be prejudging but be that as it may. Insofar
 6 as this cross-examination is concerned the chairperson is
 7 correct, I'm yet to support what I am saying. I'll just
 8 give you one little example, or before we do that, you also
 9 are aware that the outcomes of this Commission are very
 10 important for the image of the police and their ability to
 11 maintain law and order, if it still called that, agree?
 12 BRIGADIER CALITZ: Dit is korrek, mnr die
 13 Voorsitter.
 14 MR MPOFU: And that there is a view out
 15 there that the police are just a killing machine which
 16 either needs to be confirmed or corrected, do you agree?
 17 BRIGADIER CALITZ: Mnr die Voorsitter,
 18 nee, ek kan nie sê agree nie, as u sê "view" glo ek daar is
 19 wel van die media berigte –
 20 MR MPOFU: Ja –
 21 BRIGADIER CALITZ: - maar van die
 22 algemene publiek dink ek dit is 50/50. Ek kan nie
 23 heeltemal saam met u stem daar nie.
 24 MR MPOFU: Alright, fair enough. Well,
 25 just to illustrate what I am saying to you, I am not going

Page 19785

1 to put it as an exhibit but in this morning's paper there
 2 is an article on page 15 of the –
 3 CHAIRPERSON: Which newspaper?
 4 MR MPOFU: I'm sorry, it is the Sowetan,
 5 Chairperson.
 6 CHAIRPERSON: The Sowetan?
 7 MR MPOFU: Yes, page 15 of today's
 8 Sowetan. The heading is, "South Africa becoming a killing
 9 State" and it is written by respected analyst Pmumelela
 10 Makubela and I'll just read you one or two paragraphs of
 11 what he says. Effectively what he does, he has a picture
 12 of the Marikana massacre, there is a picture of –
 13 CHAIRPERSON: I thought we were going to
 14 avoid that word massacre for this –
 15 MR MPOFU: Oh, I'm sorry, well, in fact
 16 if I use it again you'll forgive me, it is a strategy or
 17 whatever. I think Mr Semenya calls it an incident, ja, so
 18 we will –
 19 CHAIRPERSON: Tragedy is probably an
 20 accurate description that everyone would agree with.
 21 MR MPOFU: Ja.
 22 CHAIRPERSON: It is tragic for all –
 23 MR MPOFU: It is halfway, ja –
 24 CHAIRPERSON: All sorts of points of
 25 view, it is a tragedy.

Page 19786

1 MR MPOFU: Yes, no, I think that's a good
 2 compromise between my massacre and Mr Semenya's incident,
 3 we'll take tragedy.
 4 MR SEMENYA SC: It is off record, Mr
 5 Mpfu.
 6 MR MPOFU: Okay, off the record, okay,
 7 we'll settle for it. I think it is on the record but I
 8 might be wrong. It has a picture of the Marikana strategy,
 9 a picture of Tatane, a dying Mr Tatane and a picture of
 10 someone who died two days ago in the tragedy that happened
 11 in Brits, a couple of days ago, and what I'm getting at is
 12 that this kind of view is something that should be worrying
 13 to SAPS and which should be corrected if it is not correct.
 14 This is what Mr Makubela says about it.
 15 BRIGADIER CALITZ: Mnr die Voorsitter,
 16 ja, soos ek vir u miskien voorheen gesê het, dit is soos
 17 die media berig het.
 18 MR MPOFU: Ja.
 19 BRIGADIER CALITZ: Ek weet nie of ek moet
 20 uitbrei nie, ek het menigde gevalle vir u genoem waar ek
 21 heeltemal verkeerd aangehaal was in die media. Ek weet nie
 22 watter koerant is daardie nie, die Sowetan?
 23 MR MPOFU: Ja.
 24 BRIGADIER CALITZ: Dit is die presiese
 25 koerant wat my verkeerd aangehaal het en woorde uitgehaal

Page 19787

1 het en my totaal verkeerd ge-quote het, so ek wil net sê
 2 die Marikana is belangrik, die Kommissie is aan die gang en
 3 ek dink die media en die publiek kan dit respekteer, dat
 4 hier wel die waarheid sal uitkom. Die Tatane insident weet
 5 ek daar was 'n hofsitting gewees op die hoogste vlak en ek
 6 verstaan daardie uitslag is ook bekend, so ek weet nie of
 7 daar twyfel is oor die Justisie in die geval nie en so ver
 8 ek weet, Brits word ondersoek deur die OBOD, wat ons
 9 bekend, in Engels die IPID.

10 MR MPOFU: Ja.

11 BRIGADIER CALITZ: So ek dink miskien om
 12 te verwys na u verslag toe, nee.

13 MR MPOFU: Okay, no, I have not asked you
 14 a question yet here.

15 BRIGADIER CALITZ: O, ekskuus, ek tog het
 16 u gevra wat is my view.

17 MR MPOFU: No, this is what I wanted to
 18 read to you. After analysing all the incidents which
 19 you've touched on he says, "Is this strategy of shooting
 20 fling protestors part of the new measures to manage
 21 protestors? In 2012 the police shot and killed 34 miners
 22 in Marikana, in apparent retaliation for the killing of two
 23 police officers. Circumstantial evidence suggests the
 24 police confronted the striking mineworkers with one aim, to
 25 kill. Fast forward 2013, two people have been killed and

Page 19788

1 there is a possibility of a third victim after the police
 2 opened fire at them during a service delivery protest at
 3 Mutholong near Brits." That's the –

4 CHAIRPERSON: Mr Mpofu, forgive me
 5 interrupting you, we haven't asked a single question yet,
 6 you've read it very provocative and it is a very critical
 7 comment by a journalist, which obviously deals with a
 8 number of the matters which we have to decide in the
 9 Commission and I'm not saying that we won't necessarily
 10 make findings which support what he says, but it is also
 11 possible, we make findings that don't, but I don't know how
 12 our process is helped by reading that unless you have a
 13 particular purpose in putting that to the witness by way of
 14 a preliminary to a question.

15 MR MPOFU: Yes.

16 CHAIRPERSON: Because I can't have you
 17 just standing there reading lots in newspaper columns,
 18 views on matters that are before us without any question
 19 linking to it at some stage.

20 MR MPOFU: No, Chairperson, with respect
 21 that's completely unnecessary. I've just said to the
 22 witness I haven't asked you a question yet, so that means
 23 there is a question coming.

24 CHAIRPERSON: We look forward to the
 25 question.

Page 19789

1 MR MPOFU: Ja, fine. Okay, now as I said
 2 to you, Brigadier, there are views out there and I did that
 3 exactly, I did it also to prevent the comment made by the
 4 chairperson, that these are views out there which may be
 5 right or might be wrong, but all I am saying to you, which
 6 I've already said, I'll repeat it, it is in the interest of
 7 SAPS that these views that are flying around should be
 8 corrected if they are incorrect or confirmed if they are
 9 correct and that it is also in the interest of the citizens
 10 of this country. Would you agree with that?

11 BRIGADIER CALITZ: Dit is korrek, ja, die
 12 regte boodskap moet uitgedra word na die publiek toe daar
 13 buite.

14 MR MPOFU: Thank you very much,
 15 Brigadier, and if it is necessary, let me emphasise that
 16 I'm saying these are views held by the person whose name I
 17 quoted. I didn't say they are my views or your views or
 18 even worse, the views of the Commission. Okay, now I just
 19 want to just deal with one issue as an illustration of the
 20 importance of telling the truth to this Commission. You'll
 21 remember yesterday the chairperson asked you and if I'm not
 22 wrong, he asked you repeatedly about exactly when you
 23 became aware that there was a decision to go to stage 3 and
 24 your answer was that it was at about half past two on the
 25 16th. Do you remember that?

Page 19790

1 BRIGADIER CALITZ: Dit was tydens die
 2 voorligting gewees, korrek.

3 MR MPOFU: Alright, and as we know now
 4 that decision was taken among other places at the National
 5 Management Forum on the 15th, correct?

6 MR SEMENYA SC: That's not a fact, Chair,
 7 and that proposition cannot be put.

8 MR MPOFU: Okay, well, alright.

9 CHAIRPERSON: He said, taken at.

10 MR SEMENYA SC: But not even taken at the
 11 Management Forum meeting.

12 MR MPOFU: Alright, let's call it
 13 whatever.

14 CHAIRPERSON: Alright, no, I understand
 15 the distinction that –

16 MR MPOFU: Yes –

17 CHAIRPERSON: - Mr Semanya is going to
 18 try to draw. You should ask the question to avoid the
 19 objection to avoid waste time.

20 MR MPOFU: Yes, I think, ja, in fairness
 21 there is some controversy, not that I understand it, about
 22 whether this was a decision and so on, so I'll call it an
 23 endorsement. So there was an endorsement of a view to move
 24 the tactical phase which endorsement had occurred at the
 25 National Management Forum. You are aware of that now?

Page 19791

1 MR SEMENYA SC: Even the record I think
 2 properly stated it, Mr Mpofo must say it is minuted as an
 3 endorsement –
 4 MR MPOFU: Ja –
 5 MR SEMENYA SC: - but it also the
 6 evidence of the PC on the point.
 7 MR MPOFU: Okay, whatever, ja, it is
 8 minuted as an endorsement as Mr Semenya puts it, but you
 9 are aware of that minuted endorsement, correct?
 10 BRIGADIER CALITZ: Ek het u tydens my
 11 getuienis, in hindsight het ek wel bewus geword, ek dink
 12 dit is mnr Semenya of iemand wat gemeld het die datum
 13 waarop hierdie fase bespreek was, ja.
 14 MR MPOFU: And when the chairperson was
 15 asking you this which was flowing from a question asked by
 16 Mr Bizos, you do understand it is important for us to know
 17 exactly when the operational commander was made aware that
 18 the dangerous part of the operation was, it is an important
 19 thing, would you agree?
 20 BRIGADIER CALITZ: Ek stem saam.
 21 MR MPOFU: Ja, and if the Commission is
 22 left with an impression that that important thing happened
 23 at one time, I mean while it happened at another time, then
 24 we would all go through a whole, a lot of consequences
 25 flowing from that incorrect fact which might change the

Page 19792

1 report, correct?
 2 BRIGADIER CALITZ: Mnr die Voorsitter, ek
 3 wil miskien net die onderskeid tref, waarop ek geantwoord
 4 het is waarop ek ingelig was en waarop ek bewus geword het
 5 van die volgende fase wat fase 3 was. So dit is 'n feit
 6 dat ek eers op 14:30 op die 16de bewus geword het daarvan.
 7 So ek dink nie daar is, ek neem aan, ek weet nie, as ek die
 8 vraag reg verstaan, iets vals voor die Kommissie, maar vir
 9 ander getuienis na my wat dit kan weerlê, van ander persone
 10 wat van ander geweet het, het ek nie 'n probleem nie maar
 11 ek getuig maar net op wat vir my gesê is en wanneer ek
 12 bewus geword het daarvan.
 13 MR MPOFU: Okay, so effectively what you
 14 are saying is that it was only at 2:30 that afternoon that
 15 you became aware of a decision/minuted endorsement from the
 16 National Management Forum –
 17 CHAIRPERSON: Mr Mpofo, I think you are
 18 now going further than the evidence indicates. There is no
 19 suggestion, I believe you could ask him directly, but there
 20 is no suggestion that the witness knew that the Management
 21 Forum had, - well, put differently, there is no suggestion
 22 that the witness knew that during or after the Management
 23 Forum meeting on the previous evening that the matter had
 24 been discussed by the Provincial Commissioner, the National
 25 Commissioner and the persons remaining at the venue of the

Page 19793

1 meeting when, according to the minutes a proposal was
 2 endorsed. It is not suggested unless we can ask it
 3 directly, but I didn't understand that he knew that.
 4 [11:42] What he knew I think we'll find, well let's ask
 5 him, did you know that, Brigadier, or, I know, you see
 6 there's two points. The one is you say you first heard at
 7 2:30 in the afternoon that the decision had been taken to
 8 proceed to phase 3. That was communicated to you by
 9 Colonel Scott. Lieutenant Colonel Scott as he then was, at
 10 forward holding area 1, correct?
 11 BRIGADIER CALITZ: Dit is korrek, mnr die
 12 Voorsitter.
 13 CHAIRPERSON: Which comes from the
 14 meeting of the JOC, at the JOCCOM which you hadn't attended
 15 at 1:30.
 16 BRIGADIER CALITZ: Dit is korrek, mnr die
 17 Voorsitter.
 18 CHAIRPERSON: Mr Mpofo, is busy with
 19 another question at the moment, whether you were told that
 20 that decision had been taken the previous evening or
 21 certainly that decision had been discussed the previous
 22 evening by people who were present at the venue at which
 23 the National Management Forum Meeting had been held and had
 24 been minuted involving an endorsement by those present of
 25 the Provincial Commissioner's proposal. That's a separate

Page 19794

1 issue, did you know about that? How much did you know
 2 about this decision to proceed to phase, the tactical
 3 option otherwise known as phase 3?
 4 BRIGADIER CALITZ: Nee, glad nie, mnr die
 5 Voorsitter. Ek dink daardie, wat u verwys die nasionale
 6 management forum vergadering vind plaas in Pretoria by 'n
 7 venue wat die Nasionale Kommissaris vasstel en ek is nie
 8 deel van daardie vergadering en dit word deur die
 9 provinsiale kommissaris bygewoon sover dit my kennis trek.
 10 So ek het glad nie kennis gedra van enige besluit of iets
 11 wat daar bespreek is of 'n decision wat daarna geneem is.
 12 MR MPOFU: Yes, thank you. I think it's
 13 clear now. So by that, enige, you mean you knew absolutely
 14 nothing about this matter of the minuted endorsement or
 15 even the discussions for that matter that might have taken
 16 place?
 17 BRIGADIER CALITZ: Nee, nie op daardie
 18 stadium enigsins nee glad nie.
 19 MR MPOFU: Well at what stadium, at what
 20 stage did you know about this for the first time? Anything
 21 to do with -
 22 BRIGADIER CALITZ: Ek het vir u getuig
 23 daarvoor dat toe ek het hier begin getuig het, ek dink Adv
 24 Semenya het daarna verwys op 'n stadium dat die polisie wel
 25 op die 15de toe dit eerste op my kennis gekom. So kan ek

Page 19795

1 sê 18 maande later.

2 MR MPOFU: Okay, ja, that's exactly the

3 point. So according to you the first time you knew

4 anything about this matter was 18 months later here in

5 Centurion, correct?

6 BRIGADIER CALITZ: Dit is my getuienis,

7 mnr die Voorsitter.

8 MR MPOFU: Yes. Okay well can you then

9 explain your evidence in, on page 17204 from line 6 -

10 BRIGADIER CALITZ: Ekskuus ek net nou nie

11 my transkripsie by my nie.

12 CHAIRPERSON: I think we will ask those

13 responsible for putting up things on the screen for us to

14 see, to put the transcript up for us.

15 BRIGADIER CALITZ: Was dit in my evidence

16 in chief of wat was dit?

17 MR MPOFU: Ja, it was your evidence-in-

18 chief, it's the 22nd of November which is probably day 153.

19 BRIGADIER CALITZ: Ek het een lêer, laat

20 ek kyk.

21 CHAIRPERSON: Is there something been

22 done to put that, oh it looks as if it is, alright. What

23 is the page again, Mr Mpofo?

24 MR MPOFU: 17204, Chairperson.

25 CHAIRPERSON: We now have that page

Page 19796

1 before us, what line?

2 MR MPOFU: Ja, from line 6.

3 CHAIRPERSON: Thank you.

4 MR MPOFU: Okay, I'll read it out to you.

5 Mr Semenya says to you, "we know now from the evidence of

6 the National Commissioner that the Wednesday evening

7 subsequent to the national forum meeting it communicated to

8 that forum that in the event this disarmament does not

9 happen they would have to go tactical to disarm the people,

10 were you privy to this information. Brigadier Calitz, nie

11 die vorige aand nie maar ons is daardie eers later die

12 oggend daarvan in kennis gestel."

13 CHAIRPERSON: Maybe I must translate

14 that.

15 MR MPOFU: Yes.

16 CHAIRPERSON: After Mr Semenya said what

17 Mr Mpofo Brigadier Calitz's answer amounted to this, not

18 the previous evening but we were informed I take it of

19 this, of that first later in the morning.

20 MR MPOFU: Yes. Okay. So that to me

21 unless if you give an explanation indicates that you were

22 informed of that endorsement, whatever it's called, these

23 days, in the morning.

24 BRIGADIER CALITZ: Mnr die Voorsitter,

25 nee, ek dink as ons dan net verder lees, miskien is daar

Page 19797

1 net 'n misverstand. Adv Semenya het my toe net daarna

2 gevra are you saying because of that that after the address

3 of General Annandale in the morning there was a decision to

4 have a contingency plan as you call it in paragraph 76, ek

5 het uit my verklaring uit getuig en ek het dan wel gesê dit

6 is korrek, mnr die Voorsitter. So in my verklaring het ek

7 bedoel that the decision was taken that we must have a

8 contingency plan in place should the strikers fail to

9 disarm and it was indicated by the AMCU President that

10 police would be in a position to disperse the crowd into

11 smaller groups, encircle them and disarm them in order to

12 arrest. Dit is die eerste keer wat dit bespreek is en dit

13 is daardie, die draad wat ons dan sou uitgesit het as 'n

14 tweede fase.

15 MR MPOFU: No, Brigadier, I'm afraid it's

16 not that easy. You didn't know what that what Mr Semenya

17 was going to ask a separate question about the contingency

18 plan when you answered that first question. I'm saying to

19 you that you were asked a question about when you became

20 aware or rather which, whose answer seems to indicate when

21 you became aware of the goings on in the national forum

22 meeting and the going tactical is basically phase 3 as we

23 know now and you said you became aware of that in the

24 morning. Unlike the answer you gave to me earlier now and

25 the answer you gave to the Chairperson yesterday. That

Page 19798

1 you, that knowledge came to you only in the afternoon.

2 MR SEMENYA SC: Chair, If we go back to

3 my question. There are two elements about it. The first

4 part is I say we know now from what the evidence of the

5 National Commissioner is saying and it's about the

6 implementation of stage 3. What the witness must, the two

7 must be separated as to which element of that aspect I'm

8 putting is he reacting to. Clearly he did know about

9 implementation of stage 3 the following day. That has been

10 his consistent evidence. I do not read that transcript to

11 mean he is confirming knowledge about what the National

12 Commissioner, the forum meeting did the day before.

13 CHAIRPERSON: Mr Mpofo, it does look as

14 if the question was a double question that Mr Semenya asked

15 him and so I'm not sure that the answer is necessarily in

16 agreement with both legs of the double question.

17 MR MPOFU: It's not necessary,

18 Chairperson. You can take any leg you like. Let's take

19 the leg about going tactical and forget the national

20 management forum. The thrust of the question is still the

21 same. I asked this question carefully for that reason

22 because I anticipated that objection. Whether, forget

23 about national management forum for the purposes of what

24 I'm going to ask you now. Is it still your evidence that

25 the decision to go tactical which is stage 3 was only known

Page 19799

1 to you in the afternoon or not?

2 BRIGADIER CALITZ: Dit is beslis so, mnr

3 die Voorsitter. Om 14:30 toe ek voorgelig was deur Kolonel

4 Scott. As dit in die oggend beskikbaar was sou dit dan in

5 die oggend daardie fases bespreek gewees in die beplanning

6 gedoen gewees het. Dan was daar nie 'n nodigheid vir

7 Kolonel Scott om uit te kom, al die bevelvoerders in te

8 roep en dit dan oor te dra aan hulle nie. So dit is my

9 antwoord, ja.

10 MR MPOFU: Well then the, my question

11 then stands. As I say forget about the National Management

12 Forum. How do you explain from the fact that from this

13 answer it would seem that you knew in the oggend, in the

14 morning that the decision to go tactical which is phase 3

15 or rather you were put, you said you were daarvan in kennis

16 gestel, that you were –

17 CHAIRPERSON: Informed about it.

18 MR MPOFU: Informed about it, thank you,

19 Chairperson.

20 BRIGADIER CALITZ: Mnr die Voorsitter,

21 nie tactical nie, die contingency plan en dit is die fase 2

22 waar ons dan oorgaan na die show of force toe. Dit is wat

23 ek oor getuig het.

24 CHAIRPERSON: Could we see the question

25 please, I think it starts about line 10. Could we see the

Page 19800

1 questions which you were answering. They would have go to

2 –

3 MR MPOFU: Starts at 6.

4 CHAIRPERSON: It starts at 6. We now

5 know from the evidence of the National Commissioner, I'm

6 quoting the question that the Wednesday evening subsequent

7 to the National Forum Meeting it communicated, I take it,

8 it was communicated to that forum that in the event that

9 disarmament doesn't happen they would have to go tactical

10 to disarm the people, were you privy to this information.

11 The answer given it's not the previous evening but we were

12 informed thereof I suppose first later in the morning.

13 MR MPOFU: Answer the question,

14 Brigadier.

15 CHAIRPERSON: Perhaps you should repeat

16 the question.

17 MR MPOFU: Oh yes.

18 CHAIRPERSON: Just in fairness to the

19 witness.

20 MR MPOFU: Can you for the benefit of the

21 Commission try to reconcile that answer if it is a truthful

22 answer with the information that you gave me this morning

23 after I asked you again and the information that you gave

24 the Chairperson when he asked you repeatedly yesterday as

25 to what point you first became aware of this.

Page 19801

1 BRIGADIER CALITZ: Mnr die Voorsitter, ja

2 ek het u verwys na die volgende vraag van mnr Semenya, maar

3 om terug te kom op daardie spesifieke antwoord, tactical to

4 disarm, dit is waar ons 'n contingency plan moes in plek

5 gesit het. So dit is waar ek u verwys na fase 2, paragraaf

6 76 van my verklaring asook as ons afgaan en ons lees dan

7 die daarop volgende kommunikasie, as ek net, ek weet nie of

8 mnr die Voorsitter dit kan translate of moet ek maar net,

9 and then you say because of that after the address by

10 General Annandale in the morning there was a decision to a

11 contingency plan as you call it in paragraph 6 you say. So

12 dit is die takties gedeelte waar ons dan fase 2 in plek sou

13 sit en daarna sou die res volg en ek het gesê dit is korrek

14 mnr die Voorsitter en hy het vir my dan gevra wat behels

15 hierdie contingency plan en het ek dan verder uiteengesit

16 daar van die groep wat in alle waarskynlikheid 9 uur sou

17 toe gee, hulle wapens sou neergelê word en, maar sou dit

18 nie gebeur nie dan moet daar 'n polisie posisie wees om die

19 groep uiteen te dryf wat ons noem isoleer, ontwapen, arres,

20 sou dit die voorsiening wees. So daardie is fase 2 wat ons

21 dan in plek gesit het. So die antwoord bly dat wat betref

22 fase 3 was dit eers die middag 14:30.

23 MR MPOFU: Alright, look for the sake of

24 progress I'm not going to belabour the point but in

25 fairness I must tell you that I'm going to argue at the end

Page 19802

1 that your evidence in this regard is irreconcilable and

2 untruthful and that you could not, if Mr Semenya's

3 examination in chief had ended there after your answer you

4 can't rely on a subsequent question to try and justify your

5 answer which was clearly about two things, fair enough as

6 the Chairperson said, it was the National Management Forum,

7 so I'm prepared to scratch that out, but it was certainly

8 about going tactical as well. That's what I'm going to

9 argue, that you are being untruthful to the Commission in

10 that regard on an important point. A point that you and I

11 have agreed is very important.

12 BRIGADIER CALITZ: Mnr die Voorsitter, al

13 wat ek daarop kan antwoord is dat ek dink daar's genoeg

14 getuienis in hierdie geval. Almal wat teenwoordig was by

15 die JOC, die persone, die kommunikasie daar's verskeie

16 opsies in hierdie geval. So as daar enige evidence is wat

17 dit kan weerlê miskien in daardie geval maar ek weet dat

18 daar genoegsame getuienis rondom hierdie is waar ek was,

19 wanneer ek was, en wanneer die besluit geneem was om oor te

20 gaan na daardie fase toe.

21 MR MPOFU: Yes, and I think in fairness

22 to you I must say now that when I advance that argument I

23 will support it with the fact that you were indeed present

24 in the 6 o'clock meeting when it was declared by someone

25 that this was D day and of that reason as well your answer

Page 19803

1 about only becoming aware of that tactical phase in the
 2 afternoon is also untruthful. So I'll use that when the
 3 time comes as an additional reason to say your answer in
 4 this regard is untruthful because you were present in the D
 5 day meeting or in the 6 o'clock meeting.

6 BRIGADIER CALITZ: Mnr die Voorsitter, ja
 7 ek was wel teenwoordig op die 6 uur meeting en die vraag
 8 rondom D day was al aan my gevra deur, ek's nie seker
 9 watter advokaat nie, asook mnr die Voorsitter, waarop ek te
 10 kenne gegee het dat ek nie daarvan kennis gedra het nie.

11 MR MPOFU: Right. I'd like you to just
 12 explain, I'm sure you've done this before or rather to
 13 confirm my understanding of the hierarchy. We know what
 14 the overall commander does and so on. We've dealt with
 15 that with General Mpmembe. But would it be fair to say that
 16 generally speaking the structure of an operation such as
 17 this would pick someone like either the operational
 18 commander as the second in charge as it were, there's an
 19 overall commander and then the operational commander, those
 20 are the big guns if you excuse the pun, correct?

21 BRIGADIER CALITZ: Miskien as ek net vir
 22 u kan differensieer. Die CJOC is dan die overall
 23 commander, ek lees maar net uit die staande orde uit who is
 24 in overall command of a specific operation for which he/she
 25 is designated and is responsible for all actions taken.

Page 19804

1 Dit is die overall commander. Die operational commander is
 2 om te koordineer en dit het ek vir u gesê om die briefings
 3 te gee, seker te maak dat die lede wel gebrief word tot op
 4 die seksie vlak. As daar genoegsame tyd is dat die
 5 beplannings kan terug kom en dan seker te maak dat die
 6 mense dit verstaan het en die vrae soos te vra. So daardie
 7 vier, vyf funksies is wat die operasionele bevelvoerder
 8 aanbetref. So om u vraag te antwoord, ja die aanstelling
 9 dink ek nie daar was mee 'n probleem.

10 MR MPOFU: Ja, that's fine, don't worry
 11 we'll get to that order. But I'm just saying if I was just
 12 talking to somebody in the street would I be correct in
 13 saying that the person in charge of the operation on the
 14 ground, the big chief there is the operational commander,
 15 correct?

16 BRIGADIER CALITZ: Nee, dit sal die
 17 oorhoofse bevelvoerder wees.

18 MR MPOFU: No. The oorhoofse
 19 bevelvoerder or the overall commander according to the
 20 standing order has to stay at the JOC correct, all the
 21 time?

22 BRIGADIER CALITZ: Nee, mnr die
 23 Voorsitter. Daar is niks wat dit vir hom sê dat hy moet in
 24 die CJOC bly al die tyd nie. Dit is onmoontlik, ons het
 25 baie gevalle waar, gevalle in die straat plaasvind weg van

Page 19805

1 waar nie tyd is om 'n JOC te stig nie. Die oorhoofse
 2 bevelvoerder kan ook op die grond wees. So daar's niks
 3 meer fout daarmee nie.

4 MR MPOFU: Okay. Let's, okay I'll,
 5 before I find that passage let's assume you are correct.
 6 If in fact the CJOC is in the JOC would it be correct that
 7 on the ground at the operation itself the highest ranking
 8 person as far as the operation is concerned, okay sorry
 9 highest ranking is confusing because there are also the
 10 formal ranks. Let me put it this way, the most senior and
 11 most responsible person on the ground would be the
 12 operational commander?

13 BRIGADIER CALITZ: As u verwys spesifiek
 14 na die dag van die 16de toe sal ek saam met u stem. In
 15 algemene terme nee. Die senior of die persoon, big chief
 16 soos u dit genoem het sal nog steeds die oorhoofse
 17 bevelvoerder wees.

18 [12:02] MR MPOFU: Yes but, Brigadier, I did say
 19 putting aside the CJOC. That's why I prefaced my question
 20 by saying I understand that the CJOC is above you, saying
 21 putting that person aside and on the ground, and assuming
 22 that the CJOC is not physically responsible, for that
 23 operation the big chief is the operational commander,
 24 correct?

25 BRIGADIER CALITZ: Mnr die Voorsitter, ek

Page 19806

1 het dit geantwoord. As u verwys na die 16de toe was ek die
 2 operasionele bevelvoerder op die grond, die senior, ja.
 3 Maar die "big chief," soos u dit stel, verantwoordelik vir
 4 al die aksies op die grond, bly die oorhoofse bevelvoerder.
 5 Of daar 'n JOC gestig is of nie 'n JOC gestig is nie, die
 6 oorhoofse bevelvoerder is die persoon wat die operasie, kan
 7 ek maar sê beheer.

8 CHAIRPERSON: No, as a fact did you – can
 9 I ask you, did you receive any instructions at all during
 10 the course of the operation from General Mpmembe?

11 BRIGADIER CALITZ: Nee, mnr die
 12 Voorsitter.

13 CHAIRPERSON: And you had authority, I
 14 take it, as the operational commander to give instructions
 15 to the various units or sections that were in the field
 16 performing various functions.

17 BRIGADIER CALITZ: Dit is beslis so, mnr
 18 die Voorsitter.

19 CHAIRPERSON: And you had the power to
 20 issue commands, the authority to issue commands. He
 21 obviously had the authority to issue commands to you, but
 22 he didn't avail himself, or didn't exercise that authority
 23 because he sent – whether it's a point of criticism or not
 24 is another matter, but as a fact he didn't give you any
 25 instructions at all during the whole of the operation. Is

<p style="text-align: right;">Page 19807</p> <p>1 that correct?</p> <p>2 BRIGADIER CALITZ: Nie op daardie dag,</p> <p>3 nee glad nie, mnr die Voorsitter.</p> <p>4 CHAIRPERSON: We're talking about that</p> <p>5 day.</p> <p>6 BRIGADIER CALITZ: Ja.</p> <p>7 CHAIRPERSON: Did General Annandale give</p> <p>8 you any instruction -</p> <p>9 BRIGADIER CALITZ: Nee -</p> <p>10 CHAIRPERSON: - during that day while you</p> <p>11 were in the field and he was in the JOC?</p> <p>12 BRIGADIER CALITZ: Nee, glad nie, mnr die</p> <p>13 Voorsitter.</p> <p>14 CHAIRPERSON: So you were left very much</p> <p>15 on your own basically, without any guidance or instructions</p> <p>16 from above. Can I put it correctly, is that right?</p> <p>17 BRIGADIER CALITZ: Die enigste opdragte</p> <p>18 wat ons gekry het was na die 13:30 en dit is aan ons</p> <p>19 oorgedra deur Kolonel Scott, wat direkte opdragte was van</p> <p>20 die JOC af en waar daar sekere stellings, of opdragte aan</p> <p>21 ons gegee is hoe ons van daar af voort moet gaan na die</p> <p>22 15:30 tydperk. So daardie was opdragte wat van die JOC af</p> <p>23 kom.</p> <p>24 CHAIRPERSON: No, that was in fact the</p> <p>25 tactical option as it had been -</p>	<p style="text-align: right;">Page 19809</p> <p>1 MR MPOFU: Ja.</p> <p>2 BRIGADIER CALITZ: Ek sal nie sê die</p> <p>3 "highest power available to the troops" nie, nee. Hulle</p> <p>4 kon nog steeds dit gerapporteer het aan die JOC waar die</p> <p>5 bevelvoerder dan was. So -</p> <p>6 MR MPOFU: Ja.</p> <p>7 BRIGADIER CALITZ: - u vraag, net dit te</p> <p>8 antwoord -</p> <p>9 MR MPOFU: No, no, thank you, yes. No, I</p> <p>10 was now asking this question not from a theoretical point</p> <p>11 of view, but from the reality that they could have reported</p> <p>12 to an empty JOC if they wanted. I'm just saying that the</p> <p>13 reality is that since Major General Mpembe was</p> <p>14 incapacitated either by the fact that he was in a</p> <p>15 helicopter or his radio was not working, or whatever, you</p> <p>16 de facto became the highest authority, correct?</p> <p>17 BRIGADIER CALITZ: Ek was die senior op</p> <p>18 die toneel gewees. As dit u vraag is, dat ek daarmee</p> <p>19 saamstem.</p> <p>20 MR MPOFU: Ja.</p> <p>21 BRIGADIER CALITZ: Ek het net verwys na u</p> <p>22 vorige stelling waar u gesê het die senior ten opsigte van</p> <p>23 die lede, dit is nie so nie, nee. Hulle het nog steeds -</p> <p>24 MNR MPOFU: Wat beskikbaar was.</p> <p>25 BRIGADIER CALITZ: Nee -</p>
<p style="text-align: right;">Page 19808</p> <p>1 BRIGADIER CALITZ: Dit is -</p> <p>2 CHAIRPERSON: - agreed to by the JOCCOM,</p> <p>3 right?</p> <p>4 BRIGADIER CALITZ: Dit is korrek.</p> <p>5 CHAIRPERSON: That was conveyed to you in</p> <p>6 the manner that's been described, without any hardcopies,</p> <p>7 just being shown on a laptop with certain words that were</p> <p>8 later added to what is in exhibit L, weren't even there at</p> <p>9 the time. So it was basically, the instructions you got</p> <p>10 were what was on the laptop and oral amplification by</p> <p>11 Colonel Scott. Is that correct?</p> <p>12 BRIGADIER CALITZ: Dit is wat -</p> <p>13 CHAIRPERSON: And from that time on no</p> <p>14 further instructions, no further guidance, you were on your</p> <p>15 own effectively. Is that right?</p> <p>16 BRIGADIER CALITZ: Dit is korrek, mnr die</p> <p>17 Voorsitter.</p> <p>18 MR MPOFU: Thank you. Yes, so for all</p> <p>19 intents and purposes and for the reason that Major General</p> <p>20 Mpembe was not available, for all the reasons that we know,</p> <p>21 you during the time of the killings were the head, the</p> <p>22 power-that-be, as it were, the highest power available to</p> <p>23 the troops. Correct?</p> <p>24 BRIGADIER CALITZ: Ek was die</p> <p>25 operasionele bevelvoerder gewees op daardie stadium.</p>	<p style="text-align: right;">Page 19810</p> <p>1 MR MPOFU: Who were available.</p> <p>2 BRIGADIER CALITZ: Nee, mnr die</p> <p>3 Voorsitter, ek verskil. Ons weet wel daar sal getuienis</p> <p>4 kom dat die lede wel gerapporteer het aan die JOC en daar</p> <p>5 was wel "reports" gemaak aan die JOC rondom van die TRT</p> <p>6 personeel, ensovoorts. So dit is nie waar nie.</p> <p>7 MR MPOFU: Okay, but would you agree then</p> <p>8 with this proposition, that on the ground at the operation</p> <p>9 there the buck stopped with you?</p> <p>10 BRIGADIER CALITZ: As u verduidelik vir</p> <p>11 my wat bedoel u by die "buck stop" met my?</p> <p>12 MR MPOFU: Well, okay, we don't have the</p> <p>13 - if you don't know that expression, then we'll just move</p> <p>14 on then.</p> <p>15 BRIGADIER CALITZ: In daardie geval sal</p> <p>16 ek net vir u sê ek verskil van u.</p> <p>17 CHAIRPERSON: Basically you were the last</p> <p>18 port of call from a practical point of view. In theory you</p> <p>19 could, I suppose if you weren't certain about something and</p> <p>20 wanted guidance, have communicated with the JOC and say</p> <p>21 look, we've got this problem, what must we do, and when</p> <p>22 General Mpembe went into the helicopter General Annandale</p> <p>23 remained behind. He was not only the chairman of the</p> <p>24 JOCCOM, but he was I think described as the chief of staff.</p> <p>25 BRIGADIER CALITZ: Korrek.</p>

Page 19811

1 CHAIRPERSON: So he was effectively
 2 General Mpembe's deputy as overall commander, I would
 3 assume. So if General Mpembe didn't hear you because he
 4 was in the helicopter, but you got through to the JOC, the
 5 people in the JOC heard you over the radio, General
 6 Annandale could then have given you instructions, and for a
 7 lot of the time according to the evidence the Provincial
 8 Commissioner herself was in the JOC. She was there from
 9 3:20, I think she says in her statement. So she could also
 10 have given you instruction, but they didn't give you
 11 instructions. You were left to deal with the matter as you
 12 thought best, using your discretion as operational
 13 commander. Would that be a correct description?
 14 BRIGADIER CALITZ: Ja, mnr die
 15 Voorsitter, laat ek saam met u stem. Ja, dis 'n nadere
 16 beskrywing.
 17 MR MPOFU: Ja, thank you. Okay, that's
 18 good enough. Now let's get to the issue that the
 19 Chairperson has just touched on, which is the issue of the
 20 discretion. That's really where this questioning is going
 21 to, and before I ask you the question I want to say that
 22 one of the issues that we're going to be contending is that
 23 whatever failings might have been on the side of the units
 24 and what have you, but that there was also a failure of
 25 leadership in this operation. So that's why I'm placing

Page 19812

1 you where you are in the pecking order as far as the
 2 leadership is concerned. Now that we've done that, would I
 3 be correct to say that the discretion that you had as the
 4 main person on the ground – and I know that there were
 5 other people higher than you who were not there, but the
 6 main person on the ground, as you've agreed with the
 7 Chairperson, that discretion was very wide indeed? Would
 8 that be fair?
 9 BRIGADIER CALITZ: Die diskresie sou
 10 afgehang het wat voor my afspeel en die gebeure op die dag
 11 wat daar gebeur. Ek dink u het 'n vorige stelling gemaak
 12 wat u nie my opinie gevra het nie, maar dat ek net sê ek
 13 verskil van u daar.
 14 MR MPOFU: Yes, but that discretion was
 15 so wide that you could have called the operation off if the
 16 circumstances allowed you to do so, correct?
 17 BRIGADIER CALITZ: As die "policies," of
 18 die opdragte of die Staande Orders waarvolgens ons werk dit
 19 wel so vervat het en dit wel in my ondervinding was en die
 20 inligting tot my beskikking was, dat ek so gevoel het dat
 21 'n operasie gestop moet word, dan kon ek dit op daardie
 22 stadium, dit wel daardie opdrag gegee het, ja.
 23 MR MPOFU: Yes, and I think your evidence
 24 was for example that – or no, forget your evidence. Let me
 25 just put a proposition to you. If Mr Mathunjwa had come to

Page 19813

1 you and said okay, I've now told them to lay down their
 2 arms, I've told them to go back to work, or whatever the
 3 demands of Lonmin were, and they say ja, Mr Mathunjwa, now
 4 that you mention it, we're going to lay down the arms and
 5 go back to work, you would have had the discretionary power
 6 to then stop the movement to the dangerous tactical phase,
 7 correct?
 8 BRIGADIER CALITZ: Mnr die Voorsitter,
 9 dit is waaroor ek in die begin ook getuig het. Ek dink as
 10 ons gaan kyk na die "transcript" het ek gesê mnr Mathunjwa
 11 het om 15:40 wegbeweeg en hy het nie na my toe gekom soos
 12 met die vorige kere nie –
 13 CHAIRPERSON: No, but I –
 14 BRIGADIER CALITZ: So om die vraag –
 15 CHAIRPERSON: I'm sorry, Brigadier. You
 16 and Mr Mpofo are talking past each other. This is a
 17 hypothetical question. I think Mr Mpofo knows very well
 18 that Mr Mathunjwa didn't come back to you and say what he
 19 said. It's hypothetical. He's saying if he had done that,
 20 if he'd come back to you and said look here, I've spoken to
 21 them, I've finally persuaded them, they're laying down
 22 their arms and they're going to go back to work, you would
 23 then have had the authority on your, acting on your own,
 24 without referring back to the JOC to say right, to the
 25 members, we're stopping the operation at this stage in the

Page 19814

1 light of what I'd been told by Mr Mathunjwa. That's his
 2 question. I've elaborated a bit, but I think that's the
 3 thrust of it. Do you agree with that?
 4 BRIGADIER CALITZ: Mnr die Voorsitter,
 5 met respek, ek sou daar gekom het, as ek net gou miskien
 6 daardie sin klaarmaak. Ek het net verwys na die vorige
 7 keer toe Mr Mathunjwa na my toe gekom het en ons het 'n
 8 gesprek gehad rondom die vorige dag. Nou ek het gesê as
 9 hy, om 15:40 weet ons dat hy wegbeweeg het en nie na my toe
 10 gekom het nie. Indien hy wel na my toe gekom het – en dit
 11 is waaroor ek, die volgende stap wat ek wil getuig, mnr die
 12 Voorsitter – indien hy wel na my toe gekom het en vir my
 13 gesê het sy onderhandelinge met die persone was suksesvol,
 14 hulle het ooreengekom om in plaas van 9 uur die oggend maar
 15 nou hulle wapens neer te lê en uiteen te gaan en dan
 16 vreedsaam verder die betoging ongewapend mee voort te gaan,
 17 dan sou ek beslis die JOC gekontak het, mnr die Voorsitter,
 18 en dis nie dat ek die besluit op my eie nie. Onthou dan
 19 kon ek die besluit wat deur die JOC gemaak is, iets
 20 positief vir hulle teruggegee het en gesê het luister, wag
 21 'n bietjie, op hierdie stadium is die volgende inligting
 22 tot die beskikking, so heroorweeg en miskien – want ek weet
 23 daar was 'n gesprek, selfoongesprekke tussen die generale
 24 en – so dan kon ons dit verder gemonitor het en gesien het
 25 die groep doen dit wel, en op daardie stadium sou dit

<p style="text-align: right;">Page 19815</p> <p>1 totaal en al uitgedraai het. Ons sou geen optrede verder 2 as "stage" 2 hoef te gedoen het nie. Ons sou nie die 3 persone hoef uiteen te gedryf het op die koppie nie want 4 daar was dan verder geen onwettige byeenkoms wat wapens 5 betref nie. Hulle sou hulle wapens neerlê, hulle sou 6 vreedzaam weggaan, wat ons van die oggend af met hulle 7 versoek het. Daardie wapens sou bymekaar gemaak gewees 8 het en daar sou verdere vreedsame onderhandeling 9 plaasgevind het. So niemand sou op die dag gesterf het nie 10 sou dit gebeur het, maar ons weet dit het nie gebeur nie, 11 maar ja, ek kon die JOC gekontak het en ek het, sou wel 'n 12 invloed gehad het op die uitvoer –</p> <p>13 CHAIRPERSON: Before you actually 14 contacted the JOC, I take it you would have had the 15 authority to do the following. Assuming the wire was 16 already in the process of being uncoiled, the first Nyala 17 was moving with the wire from the power station, and if at 18 that point you got a message from Mathunjwa along the lines 19 that have been discussed, obviously you would have 20 contacted the JOC. But I take it you would in the meantime 21 have said to the Nyala, stop the action while we wait for 22 the decision I'm going to get from the JOC because I'm 23 going to consult with them and contact them immediately. 24 That will be fair, is it?</p> <p>25 BRIGADIER CALITZ: Dit sou heeltemal</p>	<p style="text-align: right;">Page 19817</p> <p>1 diskresie, as daardie inligting tot my beskikking was - ek 2 wil net sê op die dag, dit was nie drie of vier keer die 3 woorde van mnr Noki nie; hy het beslis vir my gesê ons gaan 4 daardie dag doodgaan, ons gaan ons voertuie daar los, hulle 5 gaan die voertuie brand. Die dreigemente van dood is wel 6 deur mnr Noki gedoen. So net miskien om vir u aan te dui, 7 maar sou hy dit anderste om doen, nie dreigemente aan ons 8 toegevoeg het nie maar wel met 'n wit vlag, wit bord, iets 9 geloop het, dan ja, kon ons dit raakgesien het en ons sal 10 van ons kant af met hom weer 'n keer begin kommunikeer het, 11 soos met die onderhandeling.</p> <p>12 MR MPOFU: Yes, so I'll take that, that's 13 a yes. The limits of your discretion would have allowed 14 you to stop or at least suspend the operation at that stage 15 of the white flag, correct?</p> <p>16 BRIGADIER CALITZ: Dit sal, hang af wat 17 gebeur het voor my op daardie stadium.</p> <p>18 MR MPOFU: Ja, but I've just told you 19 what would be happening in front of you.</p> <p>20 BRIGADIER CALITZ: Dit is –</p> <p>21 MR MPOFU: Mr Noki would be holding a 22 board that says, 'Okay, we give up,' or 'We're going to 23 work,' or waving a white flag. That's what would be 24 happening in front of your eyes. Would you at that point 25 have the discretion to stop the operation or to even</p>
<p style="text-align: right;">Page 19816</p> <p>1 regverdig wees, mnr die Voorsitter, sou hulle dan hulle 2 wapens en goed neerlê en sou hulle vreedzaam deurbeweeg 3 het, sou hulle toegelaat geword het. Ons het van die begin 4 af vir hulle gesê oor die "public address system" dat 5 indien hulle hulle wapens neerlê, die wat vrylik huis toe 6 wil gaan sou toegelaat word, en ons weet ook uit die 7 arrestasies uit later die wat wel hulle wapens neergesit 8 het, het ons laat deurgaan. Dit was nooit die bedoeling om 9 3 000 te arresteer nie, nee, glad nie. So beslis so, mnr 10 die Voorsitter.</p> <p>11 MR MPOFU: Right, we'll get into the 12 merits of the issues. Right now I'm busy just trying to 13 see the outer limits of your discretionary powers, and 14 forgive me for making these hypothetical examples, but it's 15 just to make the point. So let's say now then that the – I 16 accept your answer as far as Mathunjwa is concerned. Let's 17 say now that at the stage where Nyala 4 was closing the 18 gap, Mr Noki now - because Mr Mathunjwa was gone - 19 approaching that gap there was holding a big board that 20 says 'Okay, we will go back to work,' at that point you 21 would also have had the discretion to stop the operation, 22 correct?</p> <p>23 BRIGADIER CALITZ: As ek wel geweet het 24 mnr Noki hou die bord en hy wys dit vir ons, of enigiemand 25 het probeer kommunikeer in daardie geval, dan kon die</p>	<p style="text-align: right;">Page 19818</p> <p>1 momentarily change the course of the operation? Yes?</p> <p>2 BRIGADIER CALITZ: Dit is hoekom ek vir u 3 gesê het, Advokaat, dat as die persone op my Nyala, en dit 4 was in my sig en ek kon dit wel sien, sou ek daarop 5 gereageer het. Dit is korrek.</p> <p>6 MR MPOFU: Ja, thank you. And in fact it 7 was in the exercise of that discretion that despite the 8 fact that you had been given an instruction to start the 9 operation at half past 3, you only started it at 20 to 4 10 because of, as you put it, what was happening in front of 11 your eyes, namely that Mr Mathunjwa was still addressing 12 the people.</p> <p>13 BRIGADIER CALITZ: En ander faktore 14 waaroor ek getuig het, soos byvoorbeeld die media wat saam 15 met hom daar voor was en dat hulle in gevaar sou gewees 16 het.</p> <p>17 MR MPOFU: Ja, no that's exactly what I'm 18 saying. You didn't think dogmatically, look, I've been 19 told half past 3, at half past 3 I'm shooting. You were 20 able to see that –</p> <p>21 MR SEMENYA SC: Chair, can we use proper 22 language for these questions?</p> <p>23 CHAIRPERSON: The use of the word "shoot" 24 is a bit unfortunate in the context. I think you meant it 25 metaphorically.</p>

Page 19819

1 MR MPOFU: I didn't mean it that way,
2 but –
3 CHAIRPERSON: You meant it
4 metaphorically. There was no intention, according to the
5 evidence, to shoot anybody at half past 3. They were going
6 to proceed with phase 3, and we know what phase 3 was
7 supposed to contain, but shooting wasn't part of it. So
8 reformulate your question and don't use a word which is
9 ambiguous, which could lead to misunderstanding in certain
10 quarters.
11 MR MPOFU: Ja, I think both the witness –
12 CHAIRPERSON: You see, if the witness
13 says yes to the answer because he understands the
14 metaphorical sense in which you're using the word, that
15 could be reported in the press as if he meant literally
16 that shooting was going to start at 3:30, which is not what
17 you intended, not what he would intend. So anyway, just
18 keep an eye on that, please.
19 MR MPOFU: Ja, so –
20 CHAIRPERSON: We're all I'm afraid
21 inclined to use loose language of a sort of military
22 metaphorical nature, which could lead to misunderstandings,
23 particularly on this part of the factual complex we're busy
24 with.
25 MR MPOFU: That's fine, Chairperson. I

Page 19820

1 think both the witness and Mr Semenya know exactly what I
2 meant, and I would appreciate it if my cross-examination is
3 not unnecessarily interrupted.
4 CHAIRPERSON: No, but I was concerned
5 about the way it might be reported, you see, so that's why
6 – so it was a necessary interruption, I'm afraid, Mr Mpofo,
7 but would you now proceed?
8 MR MPOFU: Okay, thank you, Chairperson.
9 Brigadier, I was busy saying you did not simply because you
10 had been given an instruction that the operation must start
11 at half past 3 by your seniors, in spite of the fact that
12 you could see objectively in front of your eyes that Mr
13 Mathunjwa was still addressing the strikers, say well, it's
14 half past 3 now, all systems go. You, in the exercise of
15 the discretion that we are busy discussing, decided to wait
16 for him to finish. He could have taken another 20 minutes,
17 he could have taken 15 minutes, and only thereafter did you
18 give your instruction. Is that correct?
19 BRIGADIER CALITZ: Dit is korrek.
20 MR MPOFU: Another important function of
21 yours as operational commander is that of coordinating all
22 the units that have been deployed for that particular
23 operation, correct?
24 BRIGADIER CALITZ: Ja, die funksies - as
25 die definisie, as 'n ou kyk tussen die definisie en die

Page 19821

1 funksies is daar miskien net 'n verskil. Maar ek was
2 verantwoordelik vir die koördinerings van die operasie, ja.
3 MR MPOFU: Ja.
4 [12:22] BRIGADIER CALITZ: Maar die funksie is
5 was ek vir u nou-nou uitgelees het.
6 MR MPOFU: Ja, okay, if you have to do,
7 you are free to use it. Now-
8 CHAIRPERSON: You're also free to amplify
9 if you consider it necessary.
10 MR MPOFU: Well, let's not encourage him,
11 Chairperson.
12 BRIGADIER CALITZ: Ek moet net die
13 waarheid voor die Kommissie getuig en dit is net wat ek op
14 feite het voor my, asseblief.
15 MR MPOFU: Ja, alright, and just for my
16 own understanding, part of the coordination of all the
17 units would involve coordinating their movement in the
18 terrain, as you call it, correct?
19 BRIGADIER CALITZ: Die koördinerings
20 waarna hier nou verwys word is presies wat ek gesê het my
21 funksies is, miskien kan ek dit net herhaal dat daar nie 'n
22 misverstand is nie. Die koördinerings is, "To personally
23 brief all members on the command structure." Dit is die
24 bevelvoerders. Die volgende een is, "To ensure that all
25 members in the command structure communicate the objectives

Page 19822

1 of the operation clearly to all the members deployed under
2 their command at the event." Die volgende funksie sal
3 wees, "To instruct all the commanders, all section leaders
4 to furnish detailed written plans where possible to the
5 specific task and then during the briefing the task of the
6 role-players involved in the operation must be defined in
7 detail," so dit was my funksie.
8 "The communication channel must also be
9 thoroughly explained to the members," and then lastly,
10 regarding the briefing that was given, "The section leaders
11 must be identified, briefed in accordance and then asked
12 questions if they understand that." So ek het dit nou in
13 die Engels gelees dat daar nie 'n misverstand is nie, dit
14 is die funksies van die, hoe om te koördineer. Met ander
15 woorde om die vraag direk te antwoord, ek sou dan vir die
16 bevelvoerders voorligting gegee het. Sou daar enige iets
17 wees wat die bevelvoerders sien of wat voor hulle gebeur of
18 enige voorval, as ek dit so kan noem, dan moet dit aan my
19 gerapporteer word of dan aan die JOC gerapporteer word
20 sodat daar dan aksie daarop kan of 'n opdrag daarop kan
21 volg.
22 MR MPOFU: Now, Brigadier, I am begging
23 you, if you are going to carry on like this it is going to
24 take us a long time to do this cross-examination. You
25 don't have to read all these things or, I've got that

Page 19823

1 exhibit, everyone has got it. I've just asked you a simple
 2 question and if I'm wrong, actually I'm putting it as a
 3 leading question so that you can say I'm wrong or I'm
 4 right. I'm saying part of the coordination which you and I
 5 have agreed was your function, would involve ensuring that
 6 the units among each other as it were, let me put it this
 7 way, maybe to give an example, the Dog Unit might be
 8 expected to do something at a particular time and the
 9 Mounted Unit might be expected to do something at a
 10 particular time, but the two units themselves don't know
 11 what the other one has to do. It is your job as the
 12 coordinator to make sure that they do whatever it is in the
 13 correct sequence. In other words if the plan was, the Dog
 14 Unit must come first and then the Mounted Unit, it should
 15 not be the Mounted Unit come first and then the Dog Unit.
 16 That, your job is to, - that's what coordination is, do you
 17 understand?
 18 BRIGADIER CALITZ: Mnr die Voorsitter,
 19 weereens ek hoor wat u sê maar ek het dit so pas vir u
 20 uitgelees en die stelling wat u nou aan my maak is presies
 21 die teenoorgestelde as wat ek vir u gesê het. Kan ek
 22 klaarmaak? Die voorbeeld wat u nou gebruik het, die honde,
 23 die K9 en die horses, dit sou nie vir my gewees het, as my
 24 opdrag aan hulle, nou moet julle beweeg nie, nee. Die
 25 eerste een en dit is hoekom ek dit pertinent vir u gelees

Page 19824

1 het om te verstaan en u het gesê u het dit, u verstaan dit,
 2 maar dit is duidelik dat volgens my, u dit miskien nie
 3 verstaan nie, "It is to personally brief all the members
 4 and command," en dan die commanders van daardie eenhede sal
 5 dan verantwoordelik wees vir al hulle eenhede. Mnr die
 6 Voorsitter, ek weet nie of ek dit net makliker miskien met
 7 iets anders kan verduidelik, as u my net die vergunning
 8 gee?
 9 MR MPOFU: Ja.
 10 BRIGADIER CALITZ: Kom ons sê die
 11 operasionele bevelvoerder, met die Wêreld Beker, met 'n
 12 sokker byeenkoms, as ek net vinnig vir u kan sê, wat ook
 13 dan daar rond beweeg, hy kan nie weet wat by die hek
 14 aangaan, wat by die search points aangaan, wat by die
 15 ticket booth aangaan, wat binne in die veld self aangaan
 16 nie en dit is onmoontlik vir hom om na elke een toe te roep
 17 en sê, hoor hier, is daar nog iets, is daar nog iets, is
 18 daar nog? Daardie commanders word voor, hoe kan ek sê, 'n
 19 voorbeeld gegee dat hulle sal weet indien daar enige iets
 20 plaasvind op enige van die plekke sou hulle dit dan
 21 rapporteer en dit is die koördinerings. Met ander woorde al
 22 die inligting wat na my toe kom kan ek dan koördineer en
 23 dit met die JOC bespreek en sê, dit is hoe.
 24 CHAIRPERSON: I take it, it can't be
 25 quite as limited as that. What was required was

Page 19825

1 coordination. Now if something unexpected happened and you
 2 have the plan, die voorligting, so that's been
 3 communicated, people must do what they're told to do in
 4 terms of the plan, but something happens which is not dealt
 5 with in the plan, which is unexpected. Now I suppose
 6 ideally some of the commanders would then report to you and
 7 say, what do we do now, but if they don't or you think
 8 urgent action is required by a particular section, surely
 9 you had the authority to say, okay, go and do that, it must
 10 be otherwise, you know - coordination, you could say to one
 11 group, you go and do this and the other group, you go and
 12 do that, something unforeseen has turned up requiring
 13 immediate action. You could do that without consulting
 14 them and waiting for them to come back to you and say, what
 15 do we do now. That must be right, surely.
 16 BRIGADIER CALITZ: Nee, mnr die
 17 Voorsitter, ek stem saam met u, daardie was net 'n
 18 voorbeeld om dit uit te lig, operasioneel hoe dit werk, ek
 19 stem saam met u. Dit wat voor ons gebeur en die persone
 20 saam met, daar het ek wel opdragte wel gegee, in die geval.
 21 COMMISSIONER HEMRAJ: But, Brigadier,
 22 what about the discretion that rests with each of those
 23 section commanders should something untoward happen or
 24 something unexpected happen?
 25 BRIGADIER CALITZ: Kommissaris, die

Page 19826

1 discretion sal ook vir hulle wees, hulle hoef nie te wag
 2 vir 'n opdrag voordat hulle, as hulle sien iets speel af
 3 voor hulle dan kan hulle ook daardie opdrag gee. Dit is in
 4 ons nasionale instruksie vervat tot op die vlak van 'n
 5 seksie bevelvoerder wat dan 'n adjudant-offisier is, kan
 6 dan ook 'n opdrag gee hoe om op te tree.
 7 MR MPOFU: Ja, no, that's understood. I
 8 mean none of them are not automatons or robots, but the
 9 point -
 10 BRIGADIER CALITZ: Ek het nie nou u
 11 verstaan nie, u sê?
 12 MR MPOFU: I'm saying none of them are
 13 robots who can't -
 14 BRIGADIER CALITZ: O -
 15 MR MPOFU: - exercise -
 16 CHAIRPERSON: It is not robots, it is not
 17 robots in the sense of traffic lights, but you know what a
 18 robot means.
 19 BRIGADIER CALITZ: Ja.
 20 CHAIRPERSON: It is on the traffic light,
 21 that's right.
 22 BRIGADIER CALITZ: Ek het net nie gehoor
 23 wat hy gesê het nie, dankie, mnr die Voorsitter.
 24 MR MPOFU: Ja, but the point apropos that
 25 if you like, the width of the discretion cascades down with

<p style="text-align: right;">Page 19827</p> <p>1 the level of responsibility. In other words the leaders 2 have a wider discretion as we have already established, 3 which could even amount to stopping or delaying the 4 operation. The people down there couldn't very well say, 5 oh well, I'm just going to the loo now, can you start the 6 operation ten minutes later. So as it goes down the ladder 7 the discretion gets smaller and smaller, I mean in any 8 hieratical organisation, is that correct? 9 BRIGADIER CALITZ: Mnr die Voorsitter, ek 10 verhoed om 'n lang antwoord te gee, kom ek sê net, nee, dit 11 is nie korrek nie. 12 MR MPOFU: So for the constable and for 13 the brigadier the extent of the discretion, for example as 14 to when the operation should start is the thing. 15 BRIGADIER CALITZ: U verwys nou 16 operation, u het nou-nou verwys in die algemeen en kan ek 17 my punt maak wat ek miskien nie sien nie, ons gaan op 'n 18 lang gesprek. 'n Konstabel wat in normale omstandighede op 19 'n patrollie voertuig is en patrollie ry en hier gebeur 'n 20 incident voor hom, daardie konstabel het die reg om sy 21 vuurwapen te gebruik, sy vuurwapen te gebruik en iemand te 22 dood as dit sy diskresie is, of as hy voel dit is nodig in 23 daardie geval. Daardie konstabel gaan nie nou eers wag en 24 terug rapporteer na sy stasie bevelvoerder of iemand in 25 enige geval nie, so ook die seksie bevelvoerders wat op die</p>	<p style="text-align: right;">Page 19829</p> <p>1 looking at that as an example, that doesn't mean that each 2 Nyala commander had the discretion to say, well, I am going 3 to do my one now, number 4, I'm going to do my one now, I'm 4 not going to wait until 3 arrives here, but you as the 5 operation commander would actually have been the only 6 person who would have done that in the interest of 7 coordination, because it would have been chaos if the one 8 Nyala said, alright, I'm going to start now, I mean, sorry, 9 number 4, I'm going to start now together with number 1 and 10 number 2 says, no, no, no, I'm going to wait until 1 comes 11 to me and do the same, there would have been chaos. So 12 that example illustrates that there were certain matters 13 where the discretion was only yours. People below you 14 couldn't exercise their discretion because it would have 15 undermined the very principle of coordination. That must 16 be right? 17 BRIGADIER CALITZ: U voorbeeld is 100% 18 reg, mnr die Voorsitter, dit is egter nie hoe ek dit bedoel 19 het deur dit te sê nie, die lede werk nog steeds onder 20 opdrag en elke groep het nog sy eie groep bevelvoerder. Ek 21 het maar net bedoel wat voor hom afspeel, maar u voorbeeld 22 is 100% reg ook. 23 MR MPOFU: Ja, for example I'm just going 24 to read, I don't have to refer you even to the exhibit, it 25 is just to illustrate this point, well, I have to I</p>
<p style="text-align: right;">Page 19828</p> <p>1 voertuie is, as hulle iets sien wat voor hulle is kan hulle 2 die opdrag selfs gee om te disperse, om 'n opdrag te gee om 3 rubber te gebruik wat fisies is, non lethal wapens. 4 So die diskresie vlak sou ek sê speel af oor 5 watsse omstandighede is en wat die omstandighede is voor jou 6 wat afspeel, nie so seer dat 'n brigadier meer diskresie 7 het as 'n konstabel nie. Ons is nie altyd teenwoordig waar 8 die junior lede beweeg nie en hulle is die meeste van die 9 tyd daar. 10 CHAIRPERSON: Ja, of course it is not 11 quite as simple, let's take a practical example that arose 12 here. Colonel Scott said that his plan involved the 13 simultaneous uncoiling of the wire by all the Nyalas, I 14 think you said you weren't aware of that, but that's what 15 he said. He pointed out that's not what happened, it was 16 done consecutively and his answer to that was, yes, but you 17 have the discretion as operational commander to do that if 18 you consider it necessary and you in fact demonstrated to 19 us that from a practical point of view they tried to uncoil 20 all the wire simultaneously from all the Nyalas, a 21 difficult task and it had to be done consecutively. That's 22 – 23 BRIGADIER CALITZ: Korrek, mnr die 24 Voorsitter. 25 CHAIRPERSON: Now clearly applying that,</p>	<p style="text-align: right;">Page 19830</p> <p>1 suppose, HHH20, but you don't have to go there, you can 2 just listen to me because it is not for the content, it is 3 just to make the point I'm making. At 13.8 of – 4 CHAIRPERSON: I think 20 is one of the 5 documents that you were referred to. 6 MR MPOFU: Yes, this is – 7 CHAIRPERSON: It is the 13th document in 8 the bundle. 9 MR MPOFU: Okay. 10 CHAIRPERSON: What paragraph? 11 MR MPOFU: Colonel Scott, - oh, statement 12 13.8, Chairperson. 13 CHAIRPERSON: You'll find it on page 83, 14 I think? 15 MR MPOFU: Okay, so I'm just using that 16 as an illustration of the point that I felt was obvious. 17 He says there, "The further dispersion action, the strikers 18 were to be warned of the dispersion. This is some time 19 after the razor wire had been deployed. As I can recall I 20 did not elaborate on when but left the decision to the 21 operational commander." In other words he left the finer 22 details to your discretion, he couldn't have left it to 23 some low ranking constable, that decision, that's the point 24 I was really making, correct? 25 BRIGADIER CALITZ: Mnr die Voorsitter, ek</p>

Page 19831

1 is nou versigtig om uit te brei en dit so kort as moontlik
 2 te hou. U voorbeeld hier is, ja.
 3 MR MPOFU: Ja.
 4 BRIGADIER CALITZ: Hy kon nie vir my sê
 5 waar nie, onthou dit is 'n opdrag van die JOC af dat ons
 6 sou eers moet uitbeweeg met ons voertuie, ons sal in 'n lyn
 7 moet kom en dat dit wel na die uitrol van die draad is, so
 8 hy kon nie vir my sê op watter stadium nie. Ek sou dan
 9 eers seker gemaak het dat my voertuie in plek is en dan die
 10 opdrag gegee het, so ek weet nie of dit heeltemal van pas
 11 is nie, hy kon nie vir my daardie tyd, dit is onmoontlik om
 12 so 'n tyd te gee.
 13 MR MPOFU: No, -
 14 BRIGADIER CALITZ: Ek kan dit nie verder
 15 vat as dit nie, ja.
 16 CHAIRPERSON: But the corollary is that
 17 the people who were doing it to you couldn't decide to
 18 start dispersing before you as the operational commander
 19 and the person, effectively the only power or authority -
 20 BRIGADIER CALITZ: Dit is korrek -
 21 CHAIRPERSON: - ordered the dispersion
 22 action, they had to wait for you, they couldn't take it
 23 upon themselves to start dispersing earlier. That wasn't
 24 allowed either.
 25 BRIGADIER CALITZ: Dit is miskien wat ek

Page 19832

1 probeer verduidelik het hier.
 2 CHAIRPERSON: So that's the other side of
 3 the same coin.
 4 MR MPOFU: Thank you.
 5 BRIGADIER CALITZ: Ek dink miskien dat
 6 ons het dieselfde punt, dankie, mnr die Voorsitter.
 7 MR MPOFU: Thank you very much and that's
 8 the side I'm interested in, of the coin that the
 9 chairperson, it is not so much that he could not dictate to
 10 you what time and so on, that I understand. I'm saying he
 11 could not, given his limitations of not being able to
 12 dictate he couldn't then delegate that function to a
 13 constable, but to an operational commander.
 14 BRIGADIER CALITZ: Ja, nee, dit is
 15 logies, ja.
 16 MR MPOFU: Ja.
 17 BRIGADIER CALITZ: Ek is die operasionele
 18 bevelvoerder.
 19 MR MPOFU: Alright, now there was a
 20 general instruction which was issued that people should
 21 only act on command in this operation, correct?
 22 BRIGADIER CALITZ: As u miskien net vir
 23 my verwys waarna u verwys dan kan ek u antwoord?
 24 MR MPOFU: No, I'm asking you, you're the
 25 operational commander, to your memory was there or not,

Page 19833

1 such a general instruction?
 2 BRIGADIER CALITZ: Ek dink nie dit is 'n
 3 general instruction, ek dink dit is tydens die voorligting
 4 waar elke bevelvoerder dan voorgelig is wat die plan is en
 5 dan sou die opdrag gegee word wanneer om die draad uit te
 6 gooi en dan sou die opdrag gewees het wanneer om te
 7 disperse. So die dispersion action moet in opdrag wees en
 8 dit is ook in ons Staande Ordes vervat, lede kan nie net
 9 self net optree nie, nee.
 10 MR MPOFU: Alright, now before I move on
 11 to the next topic I just want to round off something and
 12 just to understand. Did I understand you correctly that
 13 even under the first part of your experience, what Mr Bizos
 14 calls the apartheid regime, that even then only once do you
 15 recall a situation where a mortuary van was called before
 16 an operation was executed?
 17 BRIGADIER CALITZ: Nee, during die
 18 apartheid regime, daardie ses jaar wat mnr Bizos na verwys
 19 het, het ek gesê was ek 'n sersant adjudant offisier by die
 20 Spesiale Wageenheid. Ons was getaak om sekere sleutel
 21 punte op te pas, ons het glad nie met crowds enige iets
 22 gedeel nie, so ek was glad nie bewus daarvan in daardie tyd
 23 nie, nee, glad nie.
 24 MR MPOFU: Okay, so the previous incident
 25 where a mortuary van arrived before the operation was

Page 19834

1 rolled out, happened in the new regime, correct?
 2 BRIGADIER CALITZ: Ek het wel getuig en
 3 ek het nou nie die jaartal voor my nie, ek het gepraat van
 4 daardie vyf, ses jaar toe ek in Pretoria was. Ek het wel
 5 getuig dat ons by 'n myn voorval waar ek en Luitenant-
 6 Kolonel Vermaak, dink ek het ek gesê, saamgewerk het, was
 7 daar wel, oor 'n dag of twee het dit gebeur dat daar
 8 persone gedood is die eerste dag en daar gesukkel is om
 9 genoegsame lykswaens te kry en daarom is die hospitale en
 10 die lykswaens op bystand geplaas vir die volgende dag, want
 11 dit het oorgeloop deur die nag na die volgende dag toe, die
 12 myn onluste in Klerksdorp. Onder korreksie praat ek van,
 13 ek dink daar was ook so 18 plus mense oorlede op daardie
 14 stadium, as dit nie meer is nie.
 15 MR MPOFU: Brigadier, it would help you
 16 if you listen to the question. You've already testified
 17 about that incident, all I'm asking you is whether it
 18 happened before 1994 or after 1994?
 19 BRIGADIER CALITZ: Ja, ek kan nie vir u
 20 presies sê wanneer daardie myn insident plaasgevind het
 21 nie, dit was my getuieis.
 22 MR MPOFU: So you don't know whether it
 23 happened under the apartheid regime or after?
 24 BRIGADIER CALITZ: Ek dink kom ons
 25 aanvaar dit so, ek sal moet gaan naslaan en miskien die

Page 19835

1 rekords gaan trek en kyk daarna.
 2 MR MPOFU: Did you work with Vermaak
 3 before, both under the apartheid regime and after?
 4 BRIGADIER CALITZ: Ek het in 1992 in
 5 Potchefstroom, is ek soontoe verplaas na die Onluste
 6 Eenheid toe waar ek begin het, so effektief van 1993 af het
 7 ons operasioneel saamgewerk. Ek was ook peloton
 8 bevelvoerder in Potchefstroom en Kolonel Vermaak was die
 9 Eenheidsbevelvoerder op Klerksdorp en ons het saamgewerk
 10 tot en met, ek dink 1999 waar ek dan weg verplaas is.
 11 MR MPOFU: Okay, but in any event on your
 12 part as the operational commander you did not see a need to
 13 order mortuary vans because you did not anticipate any
 14 deaths, correct, in this operation? I'm not talking about
 15 the old one now, I'm talking about Marikana.
 16 BRIGADIER CALITZ: Nee, ek het glad nie
 17 daarvoor gepraat nie en ek het dit ook nie ge-order nie,
 18 nee.
 19 MR MPOFU: Now the question is, one of
 20 the reasons you did not order it or you could not have
 21 ordered the mortuary van was because you did not anticipate
 22 any deaths, so the mortuary vans would be redundant?
 23 BRIGADIER CALITZ: Laat ek sê korrek.
 24 MR MPOFU: Yes.
 25 CHAIRPERSON: It is more complicated than

Page 19836

1 that, according to your evidence you didn't know that you
 2 were going to move over to a tactical option, phase 3,
 3 until half past two in the afternoon.
 4 [12:41] I take it there wasn't much risk of anyone being
 5 hurt in phase 1 or phase 2. It does look though as if
 6 somebody, whoever ordered those, tried to get, they didn't
 7 get the, tried to get four mortuary vans, must have had
 8 information to the effect that the tactical option was
 9 going to be pursued, that there was going to be a move over
 10 to phase 3 already at the time when the mortuary vans were
 11 ordered or an attempt was made to order them. Because
 12 clearly the person who ordered them foresaw the possibility
 13 that someone might be killed, not necessarily even
 14 strikers, it could be policemen who were killed or possibly
 15 both, strikers and policemen but the point is the person
 16 who ordered the mortuary vans, it was quite early in the
 17 morning as far as I recall, had more, knew more about
 18 where, about the tactical option and what's going to happen
 19 later the day than you did. That must be so.
 20 BRIGADIER CALITZ: Die persoon wat dit
 21 gedoen het in hindsight weet ek daar's name genoem en nou
 22 in hindsight weet ek daar's redes gegee daarvoor maar die
 23 persoon sal, ek weet nie of hy kom getuig maar daar sal
 24 redes gegee word hoekom hulle dan die voertuie op bystand
 25 op geroep het. Maar seer sekerlik moet daar meer rede wees

Page 19837

1 as wat ek gehad het op daardie stadium, u is reg, mnr die
 2 Voorsitter.
 3 MR MPOFU: And as the coordinator of
 4 proceedings you would be expected to know if someone
 5 ordered mortuary vans, if someone took such a drastic step
 6 and to make it clear I'm not suggesting that you knew,
 7 you've already answered that. I'm just saying under normal
 8 circumstances if such a drastic decision was being taken
 9 one would expect that the operational commander should be
 10 informed, is that fair?
 11 BRIGADIER CALITZ: Miskien voor die tyd,
 12 as dit die oggend gedoen is kon dit dan die vergadering al
 13 bespreek gewees het. Dit is korrek.
 14 MR MPOFU: And have you taken any steps
 15 to find out what, who ordered mortuary vans before the
 16 operation commenced and why, sorry.
 17 CHAIRPERSON: We've got the evidence,
 18 names have been mentioned as to who ordered them. So he
 19 doesn't have to find out –
 20 MR MPOFU: Why.
 21 CHAIRPERSON: The why is a different
 22 matter.
 23 MR MPOFU: Yes.
 24 CHAIRPERSON: A further question of
 25 course presumably as operational commander who should be

Page 19838

1 kept in, kept up with everything that's happening –
 2 MR MPOFU: Yes.
 3 CHAIRPERSON: I would imagine it would
 4 have been appropriate to have told by the way you don't
 5 have to worry about mortuary vans we've –
 6 MR MPOFU: We've covered that.
 7 CHAIRPERSON: It's unnecessary but any
 8 way it's your cross-examination, I mustn't interject.
 9 MR MPOFU: Thank you, Chairperson, no I
 10 appreciate. The Chairperson is correct, Brigadier, you've
 11 already answered the question as to the identity of the
 12 people. But did you make any inquires as to why anyone
 13 ordered mortuary vans?
 14 BRIGADIER CALITZ: Nou in hindsight, het
 15 ons gevra toe dit bekend geword aan my. Op daardie stadium
 16 was dit glad nie bekend aan my laat dit op bystand geplaas
 17 is nie.
 18 MR MPOFU: Oh. Now I want to move into
 19 something that's also in the, I'll start with some preface,
 20 you'll accept that one of the key constitutional
 21 imperatives for a police force or a police service,
 22 whatever you call it, to operate in circumstances like this
 23 is the issue of impartiality and not taking sides and on
 24 the positive side I can tell you I was a beneficiary of an
 25 impartial police service recently. So I think it's very

Page 19839

1 important. But you accept that if a police get into some
2 kind of dispute and take sides that on its own might have
3 disastrous consequences?
4 BRIGADIER CALITZ: Dit is korrek.
5 MR MPOFU: And therefore in a situation
6 such as this, or let me put it this way. You are aware or
7 you were aware that the underlining or the root conflict or
8 dispute in this matter was between the protestors and
9 Lonmin, correct?
10 BRIGADIER CALITZ: Dit is underlying, ja.
11 MR MPOFU: Yes.
12 BRIGADIER CALITZ: As ek dit so kan stel,
13 nie net Lonmin nie, maar ja.
14 MR MPOFU: No, I accept that, I mean
15 there was also talk of inter-union rivalry and so on.
16 BRIGADIER CALITZ: Dit is korrek.
17 MR MPOFU: Yes. Okay.
18 CHAIRPERSON: The strike action was
19 directed against Lonmin.
20 MR MPOFU: Ja.
21 CHAIRPERSON: Not against one or other
22 union.
23 MR MPOFU: Yes, yes he has conceded that,
24 thank you Chairperson and that's what is described
25 somewhere in exhibit L, I don't know where but as the root

Page 19840

1 conflict but you and I agree on that. Now as far as that
2 root conflict is concerned and in relation to the topic I'm
3 dealing with which is impartiality, the absence of which
4 you and I have agreed can have disastrous consequences. It
5 would be important that neither of the two sides quote
6 unquote to that conflict perceives the police as having
7 taken sides, correct?
8 BRIGADIER CALITZ: Dit is korrek, as ek u
9 reg verstaan.
10 MR MPOFU: Ja. Now the next section of
11 my cross-examination will seek to demonstrate –
12 CHAIRPERSON: I want to ask the question
13 about that. That means in practical terms here that your
14 function I take it was not to break the strike, if the
15 strike continued peacefully the police would not have
16 considered it necessary to take any action, is that
17 correct?
18 BRIGADIER CALITZ: Mnr die Voorsitter,
19 nee dit byeenkoms of die gathering was nog steeds onwettig
20 gewees.
21 CHAIRPERSON: No, I'm saying if the
22 strike continued peacefully, I'm not talking about the
23 gathering, I'll talk about the gathering in a minute. But
24 if the strike continued peacefully the police wouldn't have
25 considered it necessary to take any action, is that right?

Page 19841

1 BRIGADIER CALITZ: Korrek, mnr die
2 Voorsitter.
3 CHAIRPERSON: And I understand the
4 problems in relation to regulation of gatherings act and
5 notices and that kind of thing, but the main objection to
6 this particular gathering was there were people were armed?
7 BRIGADIER CALITZ: Dit is korrek.
8 CHAIRPERSON: You have a constitutional
9 right to gather, assemble but you don't have a
10 constitutional right to gather with arms.
11 BRIGADIER CALITZ: Dit is korrek, mnr die
12 Voorsitter.
13 CHAIRPERSON: So if the arms were no
14 longer a problem and the strikers said well okay we've
15 given you our arms, you've asked us for them and here they
16 are, but we want to carry on with our strike because we
17 still want R12 500 a month, the police would have folded
18 with their arms and taken no further action, at most just
19 stay there to make sure there weren't, there wasn't an
20 outbreak of further violence and that kind of thing. But
21 they wouldn't have done anything to stop the strike?
22 BRIGADIER CALITZ: Mnr die Voorsitter,
23 nee in teendeel ons sou hulle gehelp het wat in menige
24 gevalle gebeur waar persone 'n strike dan gaan ons
25 information managers en ons assist hulle met die nodige

Page 19842

1 section 4 vorms om die gatherings act dan, ons sal nie net
2 noodwendig teen hulle optree nie. Ons sal hulle gehelp het
3 om die byeenkoms wettig te maak en dan dit net gemonitor
4 het.
5 MR MPOFU: Ja, but this, that's a very
6 important issue. This issue of the carrying or not
7 carrying of arms was mightily irrelevant as in relation to
8 the, what you and I have said was the underlying conflict,
9 the labour conflict between Lonmin and the strikers,
10 correct? For example For example if I'm fighting with
11 somebody the police don't have to take sides against that
12 somebody simply because he also happens to be an illegal
13 immigrant. That's irrelevant to the conflict that you
14 would be mediating at that particular point, correct?
15 BRIGADIER CALITZ: Meneer, as ek u vraag
16 nou reg verstaan. Die onderhandelaars se mandaat was
17 duidelik wees. Ons kon nie onderhandel oor enige loon
18 geskille nie. Met ander woorde die 12 en 'n half duisend
19 rand teen Lonmin. Ons was merely daar om die boodskap oor
20 te dra. Maar wat die doel was is om vir die persone te sê
21 om hulle wapens neer te lê en laat ons kan voortgaan met 'n
22 peaceful gathering. Dit was die doel van die
23 onderhandeling. So ja ek stem saam met u die impartiality
24 waarna u verwys het maar die kruks van die saak is die
25 onderhandelinge het begin waar ons hulle ook meegedeel het

Page 19843

1 dit is onwettig en die wapens, as hulle die wapens neersit
 2 kan ons dan verder gaan en ons weet later dat dis een van
 3 die vereistes ook gewees van die myn, dat indien hulle,
 4 hulle wapens neersit en terug keer dan sou hulle met hulle
 5 onderhandel.

6 MR MPOFU: Yes.

7 CHAIRPERSON: Assuming they had said
 8 we'll put our arms down but we're not going to return to
 9 work, we're carrying on with our strike that would have
 10 been, would that have been a matter for the police to have
 11 been involved in?

12 BRIGADIER CALITZ: Mnr die Voorsitter,
 13 dan is my antwoord dieselfde die vorige keer. As daar geen
 14 wapens betrokke was nie, sou ons hulle gehelp het, hierdie
 15 ding sou volgens die gatherings act op die regter manier
 16 gedoen het, section 4 met, daar sal net conditions opgestel
 17 word. Met ander woorde dat hulle op een plek gather,
 18 gedra, marshals het en, en, en. So dit sou dieselfde
 19 uitwerking gehad het op my vorige antwoord.

20 MR MPOFU: Ja but surely, Brigadier, the
 21 issue is not so much the arms okay. The issue must be
 22 police would have been there insofar as there was a threat
 23 of violence or anything, if they said we will kill the
 24 people with our bare hands, you wouldn't have packed your
 25 Nyalas and left, correct?

Page 19844

1 BRIGADIER CALITZ: Ek dink die polisie se
 2 teenwoordigheid juis daar was oor dat daar 'n aantal
 3 persone gedood is en oor die geweld wat in die gebied
 4 aangegaan het en dit is hoekom die polisie ingeroep was en
 5 vandaar af besluit om met die strikers dan te kommunikeer
 6 is die beste moontlike manier om te begin met
 7 onderhandeling. So die geweld aspek is wat die polisie
 8 genoodsaak het om soontoe te gaan. Want ons hoof doel is
 9 lewe en eiendom te beskerm, maak nie saak aan watter kant
 10 nie.

11 CHAIRPERSON: It does look as if the
 12 deaths to which you refer which had occurred earlier might
 13 well have taken place in a background of attempts to
 14 enforce an unprotected strike by violence and intimidation
 15 leading in certain circumstances to death. That does seem
 16 from the evidence we've had to have been the case. So the
 17 weapons weren't entirely irrelevant to the strike. But in
 18 the sense that they may well have been used to enforce an
 19 unprotected strike illegally so by violence and
 20 intimidation. But the main point was you weren't concerned
 21 to stop the strike as such, you were concerned to stop the
 22 violence, intimidation and illegal gatherings with
 23 dangerous weapons, is that correct?

24 BRIGADIER CALITZ: Dit is heeltemal
 25 korrek, mnr die Voorsitter.

Page 19845

1 MR MPOFU: Yes, well my point is that in
 2 the conflict which - as between Lonmin and the strikers the
 3 police were under a constitutional imperative of
 4 impartiality not to be seen to have taken sides, to be
 5 favouring one of the sides, correct?

6 BRIGADIER CALITZ: Dit is korrek, en dit
 7 is ook so oorgedra aan die, mnr Noki.

8 MR MPOFU: And if the police did take
 9 sides that would almost surely have disastrous
 10 consequences, correct?

11 BRIGADIER CALITZ: Ja, nee die polisie
 12 kan nie kant kies nie. Ek stem saam met u.

13 MR MPOFU: Alright. Well I was about to
 14 just to say that I'm now going to demonstrate, either now
 15 or after lunch that the police failed dismally in that
 16 regard and by taking side -

17 CHAIRPERSON: Forgive me, just give me
 18 the early part of that question.

19 MR MPOFU: The question?

20 CHAIRPERSON: You said in that regard
 21 the police failed dismally, I didn't catch the regard
 22 because I was worrying about the time. But please repeat
 23 that so that I can hear you.

24 MR MPOFU: Okay, Chairperson.

25 CHAIRPERSON: I see we've got ample time

Page 19846

1 on the screen which misled me. We are going to by ETV time
 2 which I think is five minutes earlier.

3 MR MPOFU: Yes.

4 CHAIRPERSON: But, so that's why, I was
 5 listening, so please repeat the early part of the question.

6 MR MPOFU: Yes, unfortunately Chairperson
 7 it was just one of the parameter setting issues. I was
 8 simply saying -

9 CHAIRPERSON: It's important to know the
 10 parameters we're busy with.

11 MR MPOFU: Yes, I was saying that now
 12 that we've agreed, the Brigadier and I that the lack of
 13 impartiality in this context would lead to disastrous
 14 consequences and a breach of the constitutional imperative
 15 for impartiality. I was now going to proceed to show him
 16 why the, why SAPS failed the test of impartiality dismally.
 17 Understand, you don't -

18 BRIGADIER CALITZ: Nee ek -

19 MR MPOFU: If you say yes, it doesn't
 20 mean you agree with me. Just that you understand.

21 BRIGADIER CALITZ: Dis hoekom ek
 22 versigtig is. Ek wou gevra het is dit 'n vraag of nie.

23 MR MPOFU: Ja. Okay.

24 CHAIRPERSON: I'm waiting for the
 25 demonstration.

Page 19847

1 MR MPOFU: Yes.

2 CHAIRPERSON: As to why it is contended

3 that the police failed the test dismally and yes, you say

4 yes I'm waiting for that.

5 BRIGADIER CALITZ: Op rekord, ja, dis

6 daarvoor ek wag, mnr die Voorsitter.

7 CHAIRPERSON: How long is it going to

8 take you to get the demonstration, Mr Mpfu?

9 MR MPOFU: A little bit long but I don't

10 mind giving it the first jab, Chairperson.

11 CHAIRPERSON: Alright, let's start with

12 the first building block in this building that you're going

13 to erect.

14 MR MPOFU: Yes. Thank you. Now let's

15 start on the 13th. Would you agree that that operation was

16 instigated and I'm using that word advisedly, by

17 information given to you by Lonmin?

18 MR SEMENYA SC: What does that mean?

19 MR MPOFU: I think the witness knows

20 this, Mr Semanya doesn't know.

21 MR SEMENYA SC: No, I have to follow the

22 answer.

23 MR MPOFU: Which words don't you

24 understand, instigated, it means assisting in –

25 CHAIRPERSON: Commotion initiated.

Page 19848

1 General Mpebe went with the POP members that he took with

2 him to the railway line on the basis of information that he

3 had been given, that he had received from Lonmin and

4 through the close circuit TV cameras which Lonmin had which

5 they showed to the police as to what was happening. That's

6 correct isn't it?

7 MR MPOFU: That's exactly that I was

8 asking.

9 CHAIRPERSON: Is that not, you've got

10 that building brick in place. Can we have lunch?

11 MR MPOFU: Well if the nodding can just

12 be confirmed by, ja.

13 BRIGADIER CALITZ: The nodding doesn't

14 mean a ja. You say the information that has been supplied

15 to by Lonmin, that refer to the CCTV cameras that were in

16 the JOC that were observed, that will be my testimony.

17 That those were observed on the CCTV cameras and it was

18 brought to the attention and from there the tasking –

19 MR MPOFU: Can you just –

20 CHAIRPERSON: Brought to the police

21 attention by whom? By Lonmin I take it?

22 BRIGADIER CALITZ: Ek dink hulle -

23 CHAIRPERSON: - looks what's happening on

24 our CCTV cameras, somebody must have said.

25 BRIGADIER CALITZ: Ja, we all returned

Page 19849

1 back, ek dink dis net na die vergadering gewees met die

2 Lonmin management, mnr die Voorsitter, ek dink ons het

3 ingestap, my getuienis was onder korreksie as ek my

4 getuienis, ek dink my getuienis was dat ons het ingestap en

5 mnr Sinclair, ek weet ook meneer, wie is sy, Botes en daar

6 was nog 'n persoon Hein of Horn, daar was persone gewees

7 wat saam met hom daar was. Maar ek dink dit is ultimately

8 mnr Sinclair wat vir ons verduidelik waar die plekke is en

9 dit is hoekom ons besluit het, u weet die geskiedenis is

10 reeds bespreek.

11 MR MPOFU: No, sorry just one question.

12 You're quite right your evidence was that it was Mr

13 Sinclair but I'm not talking about Mr Sinclair assisting

14 you later which he did. I'm talking about the first person

15 who sparked, who pointed the whole thing out to you, it was

16 Mr Sinclair or another Lonmin official, correct?

17 BRIGADIER CALITZ: Dit sal een van die

18 persone wees wat die monitor, die CCTV gemonitor het. Dit

19 is korrek.

20 MR MPOFU: Thank you. Thanks,

21 Chairperson.

22 CHAIRPERSON: We'll take the tea

23 adjournment at this stage, I mean the lunch adjournment at

24 this stage and we will try very hard to recommence at

25 quarter to 2.

Page 19850

1 [COMMISSION ADJOURNS COMMISSION RESUMES]

2 [13:57] CHAIRPERSON: The Commission resumes.

3 Brigadier, you're still under oath.

4 ADRIAAN MARTHINUS CALITZ: Dankie, mnr

5 die Voorsitter.

6 CHAIRPERSON: Mr Mpfu.

7 CROSS-EXAMINATION BY MR MPOFU (CONTD.):

8 Thank you very much, Chairperson. Brigadier, I was saying

9 really that when there's a conflict situation, obviously

10 the police have to communicate with both sides, but in so

11 doing, would you agree with me it would be important for

12 them to keep an open mind, as it were, and not allow

13 themselves to be influenced by the one side or the other to

14 that conflict, which can be done, correct?

15 BRIGADIER CALITZ: Ja, ek het gesê die

16 polisie moet onpartydig wees, korrek.

17 MR MPOFU: Yes, and if the one side or

18 the other says something about the other side, you must

19 take it with a pinch of salt because they might have other

20 motives to do with their own conflict and trying to

21 influence the police one way or the other. That would be

22 expected, correct?

23 BRIGADIER CALITZ: As dit wel voorkom en

24 dan behoort die polisie seker dit in ag te neem met hulle

25 besluite, ja.

Page 19851

1 MR MPOFU: Ja.

2 BRIGADIER CALITZ: As dit tot hulle – as
3 dit bekend word, stel dit so.

4 MR MPOFU: Ja, and it's something to be
5 expected. I mean you know, if it's a domestic fight you're
6 going to, if you only talk to the husband he's going to
7 blame the wife, and you speak to the wife, she's going to
8 blame the husband. That goes without saying, but the
9 police must be careful in interacting with both, correct?

10 BRIGADIER CALITZ: Yes, but if the case
11 is registered by the wife then the husband will be arrested
12 on that case. So we won't ask him his view; he will be
13 arrested on that probability. So dis –

14 MR MPOFU: Even if whatever she's saying
15 is clearly improbable?

16 BRIGADIER CALITZ: Dit is die –

17 MR MPOFU: Well, I hope that is not our
18 police force –

19 BRIGADIER CALITZ: That is not for the
20 police to decide improbable – as daar 'n saakdossier is dan
21 sal dit –

22 MR MPOFU: You “sommer” arrest them, ja,
23 okay.

24 BRIGADIER CALITZ: Nee, dis nie wat ek
25 gesê het nie. Dit sal verder ondersoek word na die

Page 19852

1 arrestasie.

2 Nee, dis nie wat ek gesê het nie. Dit sal verder
3 ondersoek word na die arrestasie.

4 MR MPOFU: Okay. I hope people who hold
5 that view in our police force are in the minority. But we
6 agree that there is this need to detach yourself, correct?

7 BRIGADIER CALITZ: Dit is korrek, mnr die
8 Voorsitter.

9 MR MPOFU: Okay, now let's come back to
10 this situation. In line with that duty it was incumbent
11 upon you as the police not to swallow everything that
12 Lonmin says to you line, hook, and sinker. Or is it line,
13 hooker and Sinclair? Correct?

14 BRIGADIER CALITZ: Ek sal “refrain” om
15 daardie een te antwoord in daardie geval, maar ek verstaan
16 wat u –

17 CHAIRPERSON: A very wise and appropriate
18 response.

19 BRIGADIER CALITZ: Dankie, mnr die
20 Voorsitter.

21 MR MPOFU: You accept? You know what I
22 mean?

23 BRIGADIER CALITZ: For the record, die
24 polisie sal reageer op die inligting tot hulle beskikking.

25 MR MPOFU: Ja.

Page 19853

1 MR CHASKALSON SC: Chairperson, sorry to
2 interrupt. We've just been told that the projector has
3 broken down. If we're going to need to project images of
4 exhibits or videos, we'll need an adjournment to attend to
5 it. Should we wait until the point, the moment arises?

6 CHAIRPERSON: Mr Mpofu, you heard the
7 problem.

8 MR MPOFU: Yes, Chairperson.

9 CHAIRPERSON: If you can proceed for the
10 moment simply by referring to documents which are in your
11 bundle –

12 MR MPOFU: Yes.

13 CHAIRPERSON: - then we'll do that, and
14 possibly during the tea adjournment or something we can
15 have the projector attended to.

16 MR MPOFU: Yes.

17 CHAIRPERSON: But if we reach the stage
18 before the tea adjournment where you need to show
19 something, we'll have to take the tea adjournment early.

20 MR MPOFU: Thank you, Chairperson. No, I
21 have sufficient material to avoid any videos until it's
22 sorted out. Thank you, Chairperson. Anyway, before lunch
23 we were at the stage where the very operation, the very
24 genesis of the operation on the 13th was as a result of Mr
25 Sinclair pointing out to the police, using the Lonmin CCTV,

Page 19854

1 a group of strikers, correct?

2 BRIGADIER CALITZ: Hulle het vir ons 'n
3 groep uitgewys wat gewapen was en wat op 'n sekere plek
4 vergader het, ja.

5 MR MPOFU: Yes, they didn't stop, the
6 Lonmin management didn't stop there, but they assisted you
7 in locating that group, correct?

8 BRIGADIER CALITZ: As u verwys na die
9 helikopter, is dit waarna u verwys? Ek wil net die – of
10 herhaal miskien die vraag dan kan ek –

11 CHAIRPERSON: Strictly speaking,
12 Brigadier, you can't ask questions, but I think the
13 evidence was that General Mpembe was guided to the place
14 where the people were by you and somebody else in a
15 helicopter which was provided by Lonmin, I think. Am I
16 correct?

17 BRIGADIER CALITZ: Daar was twee gevalle,
18 mnr die Voorsitter, dis hoekom ek miskien net die vraag wil
19 reg hê, maar ek wil nou nie dit stel en dan was dit nie die
20 vraag nie.

21 CHAIRPERSON: Well, answer my question.
22 How did General Mpembe find his way to the place where
23 these people were? They were coming back from Karee,
24 weren't they?

25 BRIGADIER CALITZ: Yes.

Page 19855

1 CHAIRPERSON: About 200-odd, carrying
2 dangerous weapons.
3 BRIGADIER CALITZ: Ja, eerstens –
4 CHAIRPERSON: How did General Mpembe find
5 his way there with his – I think he had about 70 POP people
6 with him, didn't he?
7 BRIGADIER CALITZ: Die twee gevalle
8 waarna ek verwys, mnr die Voorsitter, wat ek nou wou seker
9 gemaak het, dis op die CCTV kameras was daar twee duidelik
10 uiteen groepe gewees; die een op die groter koppie wat ons
11 nou van bewus is, en dan was daar ook wat ek verwys het
12 agter 'n pyplyn, ek dink dit was Karee nommer 4, ek praat
13 onder korreksie, en dit is waar dit vir ons uitgewys is.
14 So dit is my vraag aan u –
15 MR MPOFU: Ja.
16 BRIGADIER CALITZ: - op watter stadium,
17 en daarna is dit myself gewees wat saam met mnr Sinclair in
18 die helikopter was om Generaal Mpembe in te beduie omdat
19 ons nie bewus was, of die gebied so goed geken het nie.
20 MR MPOFU: Ja. Okay, okay, Brigadier.
21 Okay, when I talk about the 13th, the group I'm talking
22 about is the smaller group that was next to the pipeline.
23 So just so that we don't have to go through it again, for
24 me to explain which group I'm talking about. That group
25 was identified and located for you – and when I say you, I

Page 19856

1 mean for SAPS – by Lonmin management, correct?
2 BRIGADIER CALITZ: Ek het voorheen getuig
3 die sekuriteitspersoneel van Lonmin.
4 MR MPOFU: Ja.
5 BRIGADIER CALITZ: Ek weet nie of hulle
6 kan geklassifiseer word onder "management" nie. Ek dra nie
7 kennis of hulle deel is van die bestuur nie.
8 MR MPOFU: Okay, Lonmin personnel.
9 BRIGADIER CALITZ: Dit is korrek.
10 MR MPOFU: Ja, okay. And not only did
11 they locate the group, but Mr Sinclair – or firstly, they
12 issued you with a Coin or whatever helicopter.
13 CHAIRPERSON: That's completely the wrong
14 word. Made available –
15 MR MPOFU: Ja.
16 CHAIRPERSON: - or provided the services
17 of the Coin –
18 MR MPOFU: That's a better –
19 CHAIRPERSON: - helicopter, which is I
20 think under contract to Lonmin.
21 MR MPOFU: Ja, they provided you with the
22 helicopter, correct?
23 BRIGADIER CALITZ: Dit is as gevolg van
24 die redes wat ons reeds verduidelik het, ja.
25 MR MPOFU: Ja, whatever the "redes" were.

Page 19857

1 Okay, and in that helicopter –
2 BRIGADIER CALITZ: Sorry for laughing.
3 MR MPOFU: Okay, sorry. I'm just trying
4 to limit you here, but sorry, Brigadier. In that
5 helicopter you and Mr Sinclair, Mr Sinclair didn't just
6 provide you with the – or Lonmin didn't just provide you
7 with the helicopter but Mr Sinclair actually came with you
8 into that helicopter to go and locate the people, correct?
9 BRIGADIER CALITZ: Mnr Sinclair was die
10 persoon wat geweet het op die CCTV waar die persone was.
11 Ek weet nie of die helikopter vlieënier bewus was, of hy
12 was nie saam met ons nie, so ek – ja, mnr Sinclair was saam
13 met my.
14 MR MPOFU: Ja, and one of the reasons
15 that were offered for you – in the broad sense – or for
16 SAPS to have to intervene was that these people might pose
17 a danger to the Karee Hospital. That was mentioned,
18 correct?
19 CHAIRPERSON: Is it Karee Hospital or
20 Hostel?
21 MR MPOFU: Hostel, I'm sorry, yes.
22 Correct?
23 BRIGADIER CALITZ: Ek dink op daardie
24 stadium toe die voorligting gegee was, was dit die
25 Provinsiale Kommissaris, as ek kan reg onthou, wat gesê het

Page 19858

1 die persone moet dan "ge-intercept" en ontwapen word. Wat
2 die spesifieke strekking van die woorde was hoekom hulle
3 daar "assemble," ek dink dit kon te doen gehad het met die
4 intimidasie of iets, maar nie 'n aanval op 'n – ek is nie
5 seker. Ek gaan nie, ek kan nie met sekerheid vir u sê wat
6 daar gesê is nie.
7 MR MPOFU: Well, I thought your evidence
8 – and unfortunately I don't have the reference, I'll find
9 it for you later, but my recollection is that your evidence
10 was that one, at least one of the reasons that was offered
11 was that they might pose some danger to the Karee Hostel.
12 Am I correct –
13 BRIGADIER CALITZ: Ja, ek –
14 MR MPOFU: Or rather, am I incorrect in
15 my –
16 BRIGADIER CALITZ: Ek sou sê 'n
17 dreigement, ja. Ek wou net die woord "aanval," ek was nie
18 seker of ek dit wel gebruik het nie –
19 MR MPOFU: A threat.
20 BRIGADIER CALITZ: En dit is net daardie
21 deeltjie, maar ja, 'n dreigement.
22 MR MPOFU: Thanks. And as I say, you
23 never – you as the operational commander, or no-one else
24 questioned Lonmin's motives as to why they wanted you to
25 intercept these people, apart from the stated reason of for

Page 19859

1 example a threat to Karee Hostel?
 2 BRIGADIER CALITZ: Ja, ek dink nie dit
 3 was Lonmin wat wou gehad het ons moes dit "intercept" nie.
 4 Hulle het vir ons net die verskeie groepe uitgewys. Soos
 5 ek vir u gesê het, daardie opdrag is deur die Provinsiale
 6 Kommissaris gegee.
 7 MR MPOFU: Right. Did the Lonmin people
 8 tell you that actually the Lonmin Security had the
 9 situation under control?
 10 BRIGADIER CALITZ: Nee, ek dink op
 11 daardie stadium is gesê dat hulle het persone in die
 12 omgewing wat die groep monitor. Ek praat weereens onder
 13 korreksie, maar ek dink dit is wat gesê is.
 14 MR MPOFU: Yes. Well, if necessary I can
 15 tell you the evidence will be that the Lonmin Security had
 16 actually intercepted the group next to the pipeline that
 17 you were referring to. You can't dispute that.
 18 BRIGADIER CALITZ: Ja-nee, ek was nie
 19 bewus dan daarvan nie, nee.
 20 MR MPOFU: The evidence will also be that
 21 after a stalemate, which was the stage at which you were
 22 shown the people next to the pipeline and the Lonmin
 23 Security effectively blocking them from proceeding, the
 24 group turned back, or the Lonmin Security asked them to go
 25 back to the koppie and they obliged. You can't dispute

Page 19860

1 that.
 2 BRIGADIER CALITZ: Mnr die Voorsitter,
 3 nee, ek stem nie saam met u nie. Soos ek vir u gesê het,
 4 dit was ons op die CCTV kameras gesien het was daar geen
 5 sekuriteit wat naby hulle was, of soos u sê, "can't
 6 dispute" dat hulle geblok is. As u getuienis tot daardie
 7 effek het, dit mag so wees. Ek sal nie dit betwis nie,
 8 maar dit is glad nie wat aan my bekend was -
 9 MR MPOFU: Yes.
 10 BRIGADIER CALITZ: - as ek sê "my" bedoel
 11 ek die polisie - bekend was op daardie stadium. Die CCTV
 12 het nie so gewys nie en seer sekerlik ook nie die inligting
 13 wat vir ons gegee is dat hulle, hulle probeer blok het nie.
 14 MR MPOFU: Ja.
 15 BRIGADIER CALITZ: Ek was nie -
 16 MR SEMENYA SC: We'll make the
 17 observation, Chair, that we haven't come across a statement
 18 bearing that evidence.
 19 MR MPOFU: Well, that means Mr Semenya
 20 has not read the statements of Mr Booie and Mr Nzuzza, but
 21 that's not my problem. The evidence, and I don't think
 22 there will be a dispute on this, to be honest. Even on the
 23 Lonmin side, if there was no statement to that effect, it's
 24 a gap that we can close, but I can assure you that the
 25 evidence will be that, the objective evidence on the video

Page 19861

1 will be that the Lonmin Security for a number of minutes,
 2 having intercepted the group, were monitoring them, as you
 3 put it, and they were radioing reports which are audible on
 4 that footage, and ultimately the group agreed to turn back
 5 to Wonderkop and abandon their mission. That's the - and
 6 you said you can't dispute it because you don't know. I'm
 7 just telling you that that's the objective evidence.
 8 BRIGADIER CALITZ: Nee, mnr die
 9 Voorsitter, ek het nie gesê "I can't dispute," want ek weet
 10 nie. Ek het gesê ek stem nie saam met u nie omdat ek dit
 11 nie gesien het nie. So dis nie dat ek dit nie "dispute"
 12 nie. Dit is net dat -
 13 MR MPOFU: Okay.
 14 BRIGADIER CALITZ: - dit wat vir my gewys
 15 is - as ek sê "my," die polisie - die CCTV "footage," was
 16 daar geen sekuriteit naby nie. Ons het gesê wel dat hulle
 17 gesê het hulle monitor dit. Toe ek met die helikopter
 18 gevlieg het kon u sien dat daar waar die pyplyn is naby die
 19 K, kom ons noem dit maar K4 - ek praat onder korreksie; ek
 20 weet nie hoe verwys die myn daarna nie - is daar 'n -
 21 CHAIRPERSON: [Microphone off, inaudible]
 22 4-skag.
 23 BRIGADIER CALITZ: Skag 4, as ek reg is.
 24 Ek sien -
 25 VOORSITTER: Ek dink daar is twee Karee

Page 19862

1 skagte in daardie omgewing, K3, Karee 3, en K4. Dis een
 2 van die twee.
 3 BRIGADIER CALITZ: Kom ons praat van 4,
 4 onder korreksie, maar die een waar die pyplyn is, daar naby
 5 is 'n voertuig brug oorgang, so met ons helikopter vlug het
 6 ek bo-op die brug sekuriteits voertuie waargeneem. Mnr
 7 Sinclair het dan met hulle in kontak gewees.
 8 MR MPOFU: Ja, okay, Brigadier, you'll
 9 forgive me - maybe it's my Afrikaans - when you said "Ek
 10 kan nie dit betwis nie," I thought you meant you can't
 11 dispute it. But be that as it may, the objective evidence
 12 that I'm talking about agrees with part of what you are
 13 saying. This standoff, if you like, between Lonmin
 14 Security and those 100 or so marchers happened next to
 15 those pipelines and there was a bridge. Actually my
 16 instructions are that the Lonmin Security were on top of
 17 the bridge. So it might well be that you couldn't see them
 18 on the CCTV. That I won't dispute with you.
 19 CHAIRPERSON: I understood the witness to
 20 say he did see them on the bridge.
 21 MR MPOFU: I thought he said he -
 22 CHAIRPERSON: Did I hear you correctly?
 23 You saw the -
 24 MR MPOFU: He said he "verskil" with me.
 25 CHAIRPERSON: You saw Lonmin Security,

Page 19863

1 unless I misheard, on the bridge.
 2 BRIGADIER CALITZ: Heel bo –
 3 CHAIRPERSON: On the footbridge of the
 4 pipeline.
 5 BRIGADIER CALITZ: Dit is 'n voertuig,
 6 dit is 'n pad, mnr die Voorsitter, wat voertuie gebruik om
 7 te ry.
 8 CHAIRPERSON: It's a bridge with a road
 9 over it?
 10 BRIGADIER CALITZ: Dit is 'n pad. Dit is
 11 'n pad, 'n teerpad wat daar loop.
 12 CHAIRPERSON: And there were Lonmin
 13 Security people on the bridge?
 14 BRIGADIER CALITZ: Daar was, toe ons met
 15 die helikopter daar gekom het, was daar 'n voertuig, ek
 16 dink een of twee wat bo-op die brug, wat mee gekommunikeer
 17 is. Maar ek het geen "standoff" tussen sekuriteit en
 18 Lonmin – daarvan weet ek nie. Soos u sê –
 19 MR MPOFU: Ja, fair enough. The simple
 20 point really is that the journey – or the only point
 21 really, Brigadier, I'm not suggesting that you are aware of
 22 all the finer details; I'm saying to you that the journey,
 23 or the intended journey of this group towards Karee was
 24 blocked, successfully blocked by Lonmin Security to such an
 25 extent that by the time General Mpembe came to them they

Page 19864

1 had already travelled some distance on their way back to
 2 Wonderkop. You can't dispute that?
 3 BRIGADIER CALITZ: Mnr die Voorsitter,
 4 nee, dit is beslis nie so nie. Ek was ten tye van daardie
 5 voorval in die lug en my getuienis is duidelik uit die
 6 helikopter uit, die persone was gehurkend gewees agter
 7 daardie pyplyn en toe ek bo hulle gesirkel het – nie ek
 8 nie, die helikopter – toe het hulle oor die treinspoor
 9 beweeg na die grondpad toe, en toe het hulle terug begin
 10 beweeg. Ten tye van die voorval wat ek by hulle was, was
 11 hulle nog staties, gehurkend agter die pyplyn. Dit was my
 12 getuienis gewees. So as u sê hulle was reeds op pad terug
 13 toe ek – ek stem nie daarmee saam nie.
 14 MR MPOFU: Okay, you accept that General
 15 Mpembe did not find them near the pipeline where you had
 16 initially seen them, correct?
 17 BRIGADIER CALITZ: Ja, dit is 'n ander
 18 stelling.
 19 MR MPOFU: Good.
 20 BRIGADIER CALITZ: Ja.
 21 MR MPOFU: So they must have moved
 22 somehow, whether on foot or by aeroplane, from the place
 23 with the pipelines to where General Mpembe met with them.
 24 That follows, correct?
 25 CHAIRPERSON: Mr Mpofo, I don't know if

Page 19865

1 we have to get entangled in detail here. What obviously
 2 happened was they were advancing - or proceeding –
 3 proceeding towards one of the two Karee shafts. In the
 4 vicinity of the bridge for some reason or other they turn
 5 around and started walking back. What the reason was isn't
 6 relevant for the present purposes, I wouldn't have
 7 thought -
 8 MR MPOFU: Well, it's very relevant.
 9 That's what this questioning is all about. It is that we –
 10 CHAIRPERSON: The witness doesn't know,
 11 if the witness can't tell you why they turn around, then
 12 it's pointless asking him. You may have to get the
 13 information from other witnesses.
 14 MR MPOFU: No, Chairperson, I've accepted
 15 that he doesn't know. That's why I said he must for now
 16 accept that they were intercepted by Lonmin Security. All
 17 I'm canvassing with him now is simply that by the time
 18 General Mpembe intercepted them they were on their way back
 19 to Wonderkop, for whatever reason. Whether they were
 20 stopped by Lonmin Security or the SPCA –
 21 CHAIRPERSON: That's what I'm putting to
 22 you. The detail, that detail as to why they turned around,
 23 whether they turn around because of some communication with
 24 Lonmin isn't, I take it isn't directly relevant at the
 25 moment. What is relevant is they turned around and they

Page 19866

1 started walking back more or less in line with the railway
 2 line, and that's the point at which General Mpembe –
 3 MR MPOFU: Correct.
 4 CHAIRPERSON: That seems to be common
 5 cause, isn't it?
 6 [14:16] MR MPOFU: Ja, anyway the point I am
 7 driving at, is that by the time, whether you know it or
 8 not, by the time General Mpembe intercepted them they were
 9 on their way back to Wonderkop without having reached their
 10 destination because of the interception by the Lonmin
 11 Security and I am not suggesting that you know that, I am
 12 telling you that's what the evidence will be. It will be
 13 because they were turned back by the Lonmin Security and
 14 they were on their way back to Wonderkop and the police
 15 intercepted them. So all you have to know is that they
 16 were on their way back to Wonderkop and no longer on their
 17 way to Karee.
 18 BRIGADIER CALITZ: U het nou 'n lank
 19 stelling gemaak met 'n paar feite, watse vraag wil u hê
 20 moet ek antwoord?
 21 MR MPOFU: When I say all that, you must
 22 know that's what I want you to answer. All that I want you
 23 to accept is that they were on their way back to Wonderkop.
 24 BRIGADIER CALITZ: Mnr die Voorsitter,
 25 nee, ek kan nie dit sê nie, op daardie stadium, Wonderkop

Page 19867

1 was, al sou die lyn reguit trek op 'n ander rigting, hulle
 2 was in die grondpad wel op pad, toe ek bo hulle sirkel en
 3 ek het General Mpembe ingepaat van, ek kan nie, sê nou
 4 maar 'n suidelike, westelike rigting af, van vooraf sodat
 5 General Mpembe-hulle oor die treinspoor gery het en ek het
 6 vir hom dadelik gesê draai links en hy het die groep van
 7 voor af bereik waar hulle besig was op die grondpad terug
 8 te beweeg, dit is korrek.

9 MR MPOFU: Okay, and if I'm correct that,
 10 or if they are correct when they come here, that they were
 11 on their way to Wonderkop already, having turned back,
 12 nobody from Lonmin informed you that they have now turned
 13 to Wonderkop and there is no longer any threat to Karee
 14 Hostel because they've turned their backs towards it?

15 BRIGADIER CALITZ: Niemand van Lonmin of
 16 laat ek so sê, mnr Sinclair het geen so 'n boodskap aan my
 17 oorgedra nie, so as daar so iets was, was dit nie bekend
 18 gemaak aan ons, as ek sê ons, die polisie nie, nee.

19 MR MPOFU: And if the reason for your
 20 intervention or one of the reasons of concern was that they
 21 might pose a threat to Karee Mine, that threat was no
 22 longer there because they were now walking away from that
 23 spot, correct, but the point of my question is that nobody
 24 informed you of this major elimination of that threat.

25 BRIGADIER CALITZ: Mnr die Voorsitter, ek

Page 19868

1 het reeds vir u gesê niemand het vir ons daardie deel gegee
 2 nie en ons het gereageer op 'n opdrag wat gesê het die
 3 persone moet, as ek die woorde kan in Engels gebruik, to be
 4 intercepted and disarmed, want dit is 'n groep gewapende
 5 mense wat met 'n onwettige optog, as ek dit so kan noem,
 6 besig was. So die polisie sou hulle in elk geval, in
 7 daardie geval hanteer het.

8 MR MPOFU: And would it be fair to say
 9 that had somebody pointed out that threat to Karee Hostel
 10 was now eliminated due to the direction of the movement of
 11 the people, and that the police might have acted
 12 differently?

13 BRIGADIER CALITZ: Mnr die Voorsitter,
 14 nee, ek kan nie vir u sê dit sou gebeur het nie, ek weet
 15 General Mpembe het dadelik in onderhandelinge ingegaan met
 16 die leier wat daar teenwoordig was en ek glo as enige sulke
 17 feite op die tafel was sou hulle vir hulle gesê het dit is
 18 wat gebeur het en dan dieselfde. Hulle kan nie voortgaan
 19 om in 'n gewapende groep te beweeg nie, dit kan nie
 20 toegelaat word nie en dat hulle hulle wapens sou neerlê.
 21 So indien hulle dit sou wel doen was hulle vrylik, kon
 22 hulle enige plek heen beweeg.

23 MR MPOFU: And, ja, whatever the
 24 differences that might have been between the strikers and
 25 the police, would have been best resolved by negotiation

Page 19869

1 and reaching some kind of agreement, correct?

2 BRIGADIER CALITZ: Mnr die Voorsitter,
 3 die video, een van die 80 wat u my gegee het om deur te
 4 kyk, ek dink ek het gisteraand, ek dink die video is so 28
 5 minute lank, as ek onder korreksie kan praat, waar General
 6 Mpembe met hulle onderhandel het, so min of meer die tyd
 7 onder korreksie. So dit is presies wat u nou sê wat wel
 8 gebeur het, ek weet daar was 'n lang onderhandeling tussen
 9 die general en die leier van hierdie groep.

10 MR MPOFU: Okay, I'll take that as a yes.

11 BRIGADIER CALITZ: Dit is nie wat ek gesê
 12 het nie, mnr die Voorsitter.

13 MR MPOFU: Now, and yet according to
 14 General Mpembe and I don't know if you are aware of this,
 15 if you are not you are not, when he wanted to embark on
 16 those negotiations to resolve the impasse, Lonmin refused
 17 to give an interpreter for that purpose. Were you aware of
 18 that?

19 BRIGADIER CALITZ: Nee, mnr die
 20 Voorsitter, -

21 MR VAN AS: Sorry, we've traversed this
 22 ground, Mr Chairman, in detail.

23 CHAIRPERSON: Asking why this point was
 24 being pursued but I think Mr Mpofu just wanted to get it on
 25 record as part of the picture he is building up, that

Page 19870

1 Lonmin declined to provide an interpreter, a Fanagalo
 2 interpreter, so I think the request was directed to Mr
 3 Blaauw and Blaauw declined it. It was gone into fully,
 4 I'll be surprised if Mr Mpofu wants to re-plough that
 5 ground.

6 MR MPOFU: No.

7 CHAIRPERSON: If he tries I'll stop him,
 8 but he has got the facts on record, I think he wanted, so I
 9 don't know how much of that was recorded but -

10 MR VAN AS: Thank you, Mr Chairman.

11 MR MPOFU: Were you aware of that,
 12 Brigadier?

13 BRIGADIER CALITZ: Nee, mnr die
 14 Voorsitter, ek was nie bewus van dit nie.

15 MR MPOFU: Apart from their possession of
 16 dangerous weapons the strikers having turned back and no
 17 longer being a threat to Karee, were posing no danger to
 18 anyone, would you agree with that?

19 BRIGADIER CALITZ: Nee, ek sal nie
 20 daarmee saamstem nie.

21 MR MPOFU: To whom where they posing
 22 danger?

23 BRIGADIER CALITZ: Enige groep wat
 24 gewapen loop, pose, soos u sê 'n threat vir enige persoon
 25 wat hulle teëkom op die pad, 'n gewapende groep wat met

Page 19871

1 pangas, ensovoorts, beweeg is onwettig en dit kan nie
2 toegelaat word nie.

3 MR MPOFU: But once again if you accept
4 that long debate we had about them turning back, you would
5 accept that the ground that they were now traversing was
6 exactly the same ground that they had covered coming from
7 the koppie to the pipeline and they were now going back to
8 the koppie, correct?

9 BRIGADIER CALITZ: Mnr die Voorsitter, al
10 hoekom ek sê nee is dat gegewe die feit die Maandag was
11 daar alreeds persone gedood en daar was verskille tussen
12 unies gewees en dreigemente, so om 'n groep so te los dat
13 hulle kan loop sou die ander groep wat teen hulle pose van
14 vooraf kom op enige stadium of een of twee persone, kan ek
15 glad nie sê dit sou nie gevaarlik gewees het nie, dit sou
16 beslis gevaarlik gewees het en daarom glo ek het General
17 Mpembe probeer om die wapens te laat neerlê en dat hulle
18 daar sonder dan vrylik na die koppie toe kon beweeg het.

19 MR MPOFU: Alright, anyway the thrust of
20 what I'm putting to you is that without the interventions
21 of Lonmin, either in the first instance pointing out the
22 group, providing you with a helicopter, accompanying you,
23 pointing them out, locating them out, alleging that they
24 were a threat to Karee, without all those interventions,
25 that operation would not even have taken place.

Page 19872

1 BRIGADIER CALITZ: Mnr die Voorsitter,
2 nee, ek verskil. Dit sou in elk geval op die CCTV skerms
3 opgetel word. Onthou die JOC is op die Sondag gestig en
4 hierdie was die Maandag gewees waar hulle dit opgetel het,
5 so indien die sekuriteit personeel dan versuim het om dit
6 vir ons te rapporteer sou een van ons beamptes in die JOC
7 dit wel gesien het en miskien vir ons uitgewys het. So ek
8 kan nie saam met u stem dat dit, as dit nie deur die
9 sekuriteit aan ons gerapporteer is dat die polisie niks
10 daaraan sou doen nie, as die inligting wel tot ons
11 beskikking gekom het op watter ander mate sou dit self so
12 hanteer gewees het.

13 Die tweede deel van die vraag is, die helikopter
14 wat vir ons beskikbaar gestel is, u het voorheen gesê wat
15 ook al die rede, ek wil net miskien op record plaas dat op
16 daardie stadium toevallig altwee ons helikopters was besig
17 om te re-fuel, sou Lonmin glad nie die helikopter vir ons
18 beskikbaar gestel het nie, vir watter rede ook al, sou ons
19 daardie paar minute langer gewag het en dan ons eie
20 helikopter gebruik het om dan die persoon in te verduidelik
21 op 'n stadium uit die lug uit.

22 MR MPOFU: Now –

23 BRIGADIER CALITZ: So ek kan nie met die
24 hele stelling saamstem nie.

25 MR MPOFU: Okay, Brigadier, I think we

Page 19873

1 are talking past each other. I am not suggesting by any
2 stretch of the imagination that the police being aware of
3 an armed group would just kind of carry on as if nothing
4 has happened. That's not what I'm saying. I'm saying to
5 you without these interventions from Lonmin, pointing out
6 the people on their CCTV screens, giving you the
7 helicopter, flying with you to locate them, without those
8 interventions that operation would not have taken place at
9 all.

10 BRIGADIER CALITZ: Nee, ek stem nie saam
11 met u nie, Meneer.

12 MR MPOFU: And in that answer I'm not
13 including what you say, miskien this, miskien that, I'm
14 saying factually on that day at that spot, on that time it
15 happened because of those series of interventions.

16 BRIGADIER CALITZ: Daar kan ek saam met u
17 stem, factually dit het gebeur as gevolg van die inligting
18 daar.

19 MR MPOFU: Ja, thank you.

20 BRIGADIER CALITZ: Maar u vorige vraag
21 was, sou dit nie gebeur het nie dat die polisie geen
22 intervensie gehad het nie en dit is waarop ek u geantwoord
23 het, nee, ek kan nie saam nie –

24 MR MPOFU: Now we understand each other.

25 BRIGADIER CALITZ: Net op die feit dat

Page 19874

1 dit wel gebeur het op die dag.

2 MR MPOFU: No, not op die dag, as gevolg
3 van, you've just said, you agree with me that it happened
4 as a result of those –

5 BRIGADIER CALITZ: Dit is die feitlike –

6 MR MPOFU: Correct?

7 BRIGADIER CALITZ: Dit is feitlik korrek.

8 MR MPOFU: Thank you, and if as you agree
9 that it should not have happened as a result of those
10 interventions from Lonmin then Warrant-Officer Monene,
11 Warrant-Officer Lepaaku and those three persons would be
12 alive today, correct, if that operation did not happen?

13 BRIGADIER CALITZ: Mnr die Voorsitter, -

14 MR VAN AS: Mr Chairman, sorry Mr
15 Chairman, that's pure speculation and there is no legal
16 basis for coming to that conclusion.

17 CHAIRPERSON: No, the fact –

18 MR VAN AS: Or a factual basis for that
19 matter.

20 CHAIRPERSON: Let the question be put to
21 the witness, if the answer is, it is a bad question and
22 produces an answer that doesn't agree with the question, I
23 don't see how I can disallow the question. It seems to me
24 to be a false premise, but let me ask a few questions
25 myself. Am I correct in thinking there was already a JOC

Page 19875

1 functioning on the Lonmin premises?
 2 BRIGADIER CALITZ: Dit is korrek, mnr die
 3 Voorsitter.
 4 MR MPOFU: And there was a CCTV camera
 5 there, is that correct, or not camera, a screen, a screen
 6 receiving material from the CCTV cameras, is that correct?
 7 BRIGADIER CALITZ: Korrek, mnr die
 8 Voorsitter.
 9 MR MPOFU: So it is correct that the
 10 Lonmin officials drew your attention to what could be seen
 11 on the TV screen, that there was this group of people with
 12 dangerous weapons, with illegal possessions as you call it.
 13 Now if Lonmin hadn't referred you to that there are two
 14 possibilities, I take it. The one is, you wouldn't have
 15 seen it and General Mpmembe wouldn't have gone to deal with
 16 the situation. The other possibility is, yes, one of the
 17 police members at the JOC would have seen it, is that
 18 correct?
 19 BRIGADIER CALITZ: Dit is korrek, mnr die
 20 Voorsitter.
 21 CHAIRPERSON: And what would have
 22 happened in that event?
 23 BRIGADIER CALITZ: Mnr die Voorsitter,
 24 dan sou ons dieselfde uitgewys het en ek vertrou die
 25 Provinsiale Kommissaris sal dan dieselfde opdrag gegee het

Page 19876

1 dat dit is 'n gevaarlike groep wat intercept en ge-disarm
 2 moet word.
 3 CHAIRPERSON: So in other words if you
 4 remove the intervention, if one can call it that, of Lonmin
 5 in drawing your attention to what was on the screen, if we
 6 draw that and nothing else comes in, then Mr Mpofo is
 7 right, the whole problem on the field, the engagement
 8 between the police and the strikers wouldn't have occurred,
 9 but if a policeman who was at the JOC, it seems, then of
 10 course those consequences that follow would have followed
 11 as well.
 12 BRIGADIER CALITZ: Dit is korrek, mnr die
 13 Voorsitter.
 14 MR MPOFU: Ja, well, surely that is
 15 totally incorrect. If you had seen the persons
 16 nevertheless you would not have known where they are
 17 geographically, correct?
 18 BRIGADIER CALITZ: Nee, ek het gesê daar
 19 is 'n JOC gestig en 'n JOC staan vir 'n Joint Operational
 20 Centre, so as die polisiebeampte dit dan sou waarneem sou
 21 daar seer sekerlik kommunikasie binne in daardie JOC
 22 plaasgevind het.
 23 MR MPOFU: Yes, but the reason why you
 24 needed a Sinclair to go and locate the people for you, it
 25 is because you did not know their allocation, correct?

Page 19877

1 BRIGADIER CALITZ: Dit is waaroor ons
 2 getuig het, die spesifieke plek waar dit is was ons nie van
 3 seker om op die grond soontoe te ry nie en uit die lug uit
 4 was dit makliker om die voertuie in te beduie in daardie
 5 rigting.
 6 MR MPOFU: Yes, that is what I am saying,
 7 he was not just going for the joy ride, he was going
 8 because he was to locate the offending group for you and
 9 that's exactly what he did, that's how you found them,
 10 otherwise you would have been wondering around the whole
 11 area of Marikana, correct?
 12 BRIGADIER CALITZ: Mnr die Voorsitter,
 13 nee, ek verskil van u. Ons eie helikopter vlieëniers was
 14 al daar van vroeg af, so die persone in daardie helikopters
 15 uit die lug uit het ook die area en daar kon gekommunikeer
 16 gewees het, so dit is nie dat ons sal, soos u dit stel
 17 wandering around nie, ek glo die helikopters uit die lug
 18 uit kon dit maklik vasgestel het.
 19 MR MPOFU: Ja, but what –
 20 CHAIRPERSON: Sorry, Mr Mpofo –
 21 MR MPOFU: Sorry, Chairperson?
 22 CHAIRPERSON: Can I just ask this, the
 23 first point is, you only used the helicopter that was on
 24 hire to Lonmin at the time because your own helicopters
 25 were refuelling?

Page 19878

1 BRIGADIER CALITZ: Dit is korrek, mnr die
 2 Voorsitter.
 3 CHAIRPERSON: If the Lonmin hired
 4 helicopter had not been made available you could have gone
 5 up in the air with your own helicopter once the refuelling
 6 was finished?
 7 BRIGADIER CALITZ: Dit is korrek, Meneer.
 8 CHAIRPERSON: And how long would that
 9 have taken?
 10 BRIGADIER CALITZ: Mnr die Voorsitter, ek
 11 weet nie op watter stadium het hulle begin refuel nie maar
 12 'n re-fuelling kan in minute afgehandel word.
 13 CHAIRPERSON: Alright, so you would then
 14 have got up in a Lonmin helicopter. Now how big is the
 15 area, if a helicopter goes up reasonably high and circles
 16 around, would it be easy or difficult to have seen from the
 17 helicopter this group of people on the ground?
 18 BRIGADIER CALITZ: Dit is hoekom ek sê,
 19 mnr die Voorsitter, daar is 'n Joint Operational Centre en
 20 daar sal seer sekerlik kommunikasie wees tussen die JOC en
 21 die helikopter dan wat dan vir hulle 'n aanduiding sal gee
 22 dat hierdie na die ooste se kant toe is, so as 'n
 23 helikopter op 500 voet is, die area wat u kan sien is nogal
 24 wyd. Ek dink ek het getuig in my verklaring dit is 7
 25 kilometer of 8 kilometer, die afstande, ek weet nie of ek

<p style="text-align: right;">Page 19879</p> <p>1 korrek is presies oor dit nie, maar dit is waarneembaar 2 veral die teerpad en die K4, as hulle byvoorbeeld 'n baken 3 gegee het soos K4, sou die helikopter geweet het want hulle 4 het vroeër al die gebied gevlieg. 5 MR MPOFU: Yes, look, even if you knew 6 that they were 8 kilometres away which by the way you were 7 also informed by Lonmin, but let's put that aside? 8 BRIGADIER CALITZ: Nee, dit is nie korrek 9 nie, mnr die Voorsitter, dit was my skatting gewees, so – 10 MR MPOFU: No, according to your 11 statement or General Mpembe's statement, at the time when 12 they were spotted whoever, Sinclair I suppose said they are 13 on their way to Karee, they are about 8 kilometres away and 14 so on, but that's not important. The point of the matter 15 is at that point they could have been anywhere within a 350 16 degree radius and that's why Sinclair had to come with you 17 to identify them and if you had to look for them they might 18 have been intercepted at a different place and the people 19 would be alive. That's the point I'm making. The point 20 I'm making is that for the operation to happen as it 21 happened, the interventions that you and I had agreed which 22 was the spotting, the CCTV itself, the helicopter, the 23 flying with Sinclair and locating the people, those 24 interventions were essential for the operation as we know 25 it today to have happened, where it happened at the time</p>	<p style="text-align: right;">Page 19881</p> <p>1 [14:36] MR SEMENYA SC: But Chair I'm making is a 2 different one. Despite the police being told where the 3 group is, despite a helicopter being given to them, if 4 Warrant Officer Lepaaku was not chopped with the panga he 5 wouldn't have died. 6 CHAIRPERSON: No, that's correct, but if 7 the police hadn't met up with the group in the first place 8 there wouldn't have been an engagement and he wouldn't be 9 chopped with a panga. 10 MR MPOFU: Ja. 11 CHAIRPERSON: That's the point. I'll 12 allow you to continue but – 13 MR MPOFU: Yes, Chairperson, I won't – 14 CHAIRPERSON: You squeezed virtually 15 every drop of juice out of this lemon but there's a little 16 bit more you can carry on, but not to for too long. 17 MR MPOFU: Thank you, Chairperson, no I'm 18 not intending to carry on except to say this, I don't want 19 to get involved in this unnecessary intervention. Quite 20 frankly – 21 CHAIRPERSON: Wait, wait, wait. 22 Sometimes you intervene and if you intervene I won't allow 23 anyone to say it's an unnecessary intervention. Mr 24 Semenya's entitled to raise objections, if they're good 25 I'll uphold them, if they're bad I'll dismiss them. But</p>
<p style="text-align: right;">Page 19880</p> <p>1 that it happened. 2 MR SEMENYA SC: Chair, Mr Mpofu is 3 persisting with this. We do know that Warrant-Officer 4 Lepaaku was killed by a panga, regardless of the 5 interventions of Lonmin of whatever nature and I think the 6 – 7 CHAIRPERSON: No, no, no, I don't think 8 that's right, Mr Mpofu's point is, I'm not sure whether it 9 is in accordance with the probabilities but that's a 10 different matter. What Mr Mpofu says is, Lonmin hadn't 11 said, look here, look on the screen, look what's happening, 12 we will take you in the helicopter that is on hire to us to 13 that place, but that hadn't happened. Then you've got to 14 speculate a little bit to see what would have happened 15 absent that intervention by Lonmin. What the witness has 16 said is on the probabilities, the police would have picked 17 it up anyway on the screen and they would have gone in 18 their own helicopter and they would have circled around and 19 seen where it happened, but Mr Mpofu is contending that, he 20 will argue in due course that that's not as probable as the 21 witness says and if you take out the Lonmin intervention 22 then this group of people might well succeeded in walking 23 peacefully back to the koppie and without meeting up with 24 the police, without the engagement that took place which 25 led to the deaths of the policemen, that's his point.</p>	<p style="text-align: right;">Page 19882</p> <p>1 it's not necessary for you to say they're unnecessary it 2 just raises the temperature which is not a good idea. So I 3 suggest you carry on with a lower – 4 MR MPOFU: Well, Chairperson, let's not 5 blame the victim. He raised the temperature, I'm 6 responding. I'm saying the point of the matter here is 7 that the, it's no use for Mr Semenya to say – 8 CHAIRPERSON: Mr Mpofu, I've made – 9 MR MPOFU: But I want to – 10 CHAIRPERSON: I've made the ruling in 11 your favour. Remember when you were here last time, before 12 I used to say to you it's unnecessary to give us concurring 13 judgments when I've already given a ruling in your favour 14 and that's what you're doing - 15 MR MPOFU: Chairperson – 16 CHAIRPERSON: Just carry on without the 17 concurring judgments. 18 MR MPOFU: Okay. Anyway, Brigadier, 19 would you agree that although Warrant Officer Lepaaku was 20 hacked by a panga the point is that if these interventions 21 had not happened he would not have been there in the first 22 place, near that panga? 23 BRIGADIER CALITZ: Mnr die Voorsitter, 24 ons is om hierdie punt. Laat ek sê nee ek stem nie saam 25 nie.</p>

Page 19883

1 MR MPOFU: Fine.

2 CHAIRPERSON: There's enough on record

3 to argue the point you want to argue.

4 MR MPOFU: Thank you.

5 CHAIRPERSON: Whether it's a good point

6 or not we'll find out later.

7 MR MPOFU: Well I'm sure we'll find that

8 in due course.

9 BRIGADIER CALITZ: As ek net kan sê ek

10 dink ons verwys na Lepaaku, miskien moet ons nie vergeet

11 Adjudant Offisier Monene ook op daardie toneel nie. So net

12 laat ons hulle altwee hulle name noem.

13 CHAIRPERSON: There were two strikers who

14 died as well and there's a third striker who we're not

15 quite sure how he died but he was also killed.

16 BRIGADIER CALITZ: Dit is korrek.

17 CHAIRPERSON: In that vicinity, we

18 mustn't forget them either. But any way I think we've

19 looked at this point thoroughly from all angles.

20 MR MPOFU: Ja.

21 CHAIRPERSON: I trust Mr Mpofo is going

22 to move on to another point.

23 MR MPOFU: I will, Chairperson, but

24 apropos your remark that's why I said those five persons

25 would be alive today. I was including the three strikers.

Page 19884

1 BRIGADIER CALITZ: Dankie, mnr die

2 Voorsitter.

3 MR MPOFU: Thank you, and I don't want to

4 canvas this particular point with you because I canvassed

5 it with other witnesses but in relation to what you and I

6 are discussing if, I'll also argue that if SAPS had

7 complied with its duty of impartiality by not setting up

8 the JOC at the Lonmin premises again all these other things

9 that I've said would follow. Then there would have been no

10 CCTV, no Sinclair, no helicopter.

11 CHAIRPERSON: Mr Mpofo, I don't

12 understand, you say you've dealt with this already. I

13 don't understand, I know you've raised a contention but I

14 just want to know why Lonmin permitting or giving

15 permission to the police to set up their JOC on their

16 premises necessarily involved abandonment by the police or

17 a breach by the police of their duty of impartiality?

18 MR MPOFU: Okay, I'll let –

19 CHAIRPERSON: That's something that I'll

20 imagine you'll argue later.

21 MR MPOFU: No, but I can make –

22 CHAIRPERSON: I may not understand at

23 the moment but you may succeed in persuading me and helping

24 me to understand it.

25 MR MPOFU: Yes, thank you, Chairperson.

Page 19885

1 Well just in case I forget. The reason, I'm not blaming

2 Lonmin for it, Chairperson. I'm saying it's a duty of the

3 police to act in such a way that the both sides so to speak

4 don't perceive them as impartial and setting up a JOC with

5 one of the two sides is definitely and obviously not one of

6 the ways to instil the air of impartiality on the other

7 side. I thought that would have been obvious.

8 CHAIRPERSON: That's a contention you'll

9 raise and we will deal with it in due course.

10 MR MPOFU: Yes. I thought you said you

11 don't understand. Okay, that's the contention that we'll

12 deal with it later. Now okay –

13 BRIGADIER CALITZ: You raise it, is it a

14 question to me or?

15 MR MPOFU: No, you can say whatever you

16 want to say. I'm saying, I'm not going to canvas with you

17 the advisability or otherwise of the police setting up the

18 JOC at Lonmin because I've canvassed that with the National

19 Commissioner and I think with one other person, probably

20 General Mpembe.

21 BRIGADIER CALITZ: Mnr die Voorsitter, ek

22 dink dan in daardie geval as ek kan aandring ek weet jy sê

23 dis partykeer nie wys nie maar as 'n operasionele oogpunt

24 uit, met wie ook al u hierdie punt opgevat het, ek is

25 miskien die eerste operasionele witness, 'n joint

Page 19886

1 operational centre word soos na as moontlik aan waar die

2 gebeure plaasvind opgesit. Kom ons vat die Nedbank Million

3 Dollar Golf toernooi, ons gaan nie die JOC opsit in die

4 middel van Rustenburg nie, ons sit dit op by Sun City. As

5 daar 'n strike is van die personeel van Sun City dan sit

6 ons die JOC op by Sun City se sekuriteits kantore. Hulle

7 het die fasiliteite, hulle het die radio kommunikasie, die

8 televisies, gewoonlik die CCTV, ons het nie daardie

9 fasiliteit of die luukshede in die polisie om 'n voertuig

10 te trek, dit sou baie nice gewees het, of jy weet as ons

11 dit kan, kon gehad het met hierdie satelliet links en ons

12 kon ons eie goed opsit, fantasties, maar ongelukkig werk

13 dit nie so nie. Daar waar daar 'n probleem is, die naaste

14 moontlike plek sit ons dan die JOC op, impartial.

15 MR MPOFU: Okay, so you favoured the side

16 that has the best technology, if the strikers at the koppie

17 had CCTV you would have set the JOC there at the koppie,

18 please Brigadier.

19 BRIGADIER CALITZ: Nee, ek gee net die,

20 vir die feite deur hoe die polisie werk en wat die

21 ondervinding is op die grond. So dit is 'n feit. Dis nie

22 'n vergissing nie.

23 MR MPOFU: Anyway to put it bluntly for

24 all intents and purposes this operation Platinum as it was

25 called was for all intents and purposes a joint operation

Page 19887

1 between SAPS and Lonmin, correct or they were your partners
2 in it.

3 BRIGADIER CALITZ: As jy na partners
4 verwys miskien moet ons net sê watter rol, ek dink in die
5 beplanning van Kolonel Scott is elke een se role and
6 responsibility uiteen geskryf en ek dink die rol van
7 Lonmin, die CCTV footage en die persone wat dit vir ons
8 gemonitor het was dan binne die JOC gewees. So as dit is
9 waarna u verwys partners, daardie geval.

10 MR MPOFU: Daardie geval wat? Ja.

11 BRIGADIER CALITZ: Ek sal nie met die
12 woord partners nie, dit is hoekom ek vir u gesê dit is die
13 enigste persone wat dan in die JOC teenwoordig was saam met
14 'n sekuriteits verteenwoordiger wat vir ons die inligting
15 dan deurgegee het.

16 MR MPOFU: Yes. But what I want to know
17 is what your reaction is to my contention, I'm putting to
18 you that for all intents and purposes this operation was
19 being carried out in partnership with Lonmin or as a joint
20 operation between the two entities?

21 BRIGADIER CALITZ: In cooperation. Dit
22 sal my woorde wees, in samewerking met die partye.

23 MR MPOFU: Samewerking is fine.

24 BRIGADIER CALITZ: Dankie, mnr die
25 Voorsitter.

Page 19888

1 MR MPOFU: Samewerking is, ja, alright.
2 We'll leave that for argument, ja and from your perspective
3 and I'm now talking about you as operational commander but
4 also as SAPS, Lonmin was effectively one of the units which
5 were an integral part of the JOC or the JOCCOM or both,
6 correct?

7 BRIGADIER CALITZ: Miskien verstaan ek
8 nie u vraag korrek nie. Integral part, as u net vir my sê
9 wat u bedoel daarby?

10 MR MPOFU: Integral part means an
11 inseparable part of a thing. So I'm saying that from the
12 perspective of someone who was, who's looking on Lonmin was
13 part, was an integral part of the JOC and the JOCCOM,
14 correct?

15 BRIGADIER CALITZ: Mnr die Voorsitter,
16 weereens nee. Lonmin se sekuriteitspersoneel het die CCTV
17 gemonitor. Onthou dit is hulle eie sisteme. So hulle kyk,
18 ek dink hulle noem dit die smelters waar die hostels is,
19 persone soos diefstal van hulle koper, daai tipe van
20 goeters, hulle moes nog steeds dit monitor. Dit was in
21 dieselfde vertrek gewees en dan tydens die JOCCOM
22 vergaderings het ek gesê daai persoon van die sekuriteit,
23 mnr Sinclair of mnr Botes gewoonlik ingesit en dan van
24 hulle kant af input, ek dink dit sal in die minutes miskien
25 wees gesê watse sekuriteits probleme ondervind hulle, as

Page 19889

1 hulle iets ondervind. Sou daar enige besluite geneem
2 geword het soos op die dag van die 16de is die persone van
3 Lonmin gevra om te verlaat en die polisie se, kan ek maar
4 sê taktiese beplanning is dan in hulle afwesigheid gedoen.

5 MR MPOFU: I'm going to assume, I'm not
6 sure whether you're disagreeing with my contention. But
7 I'll assume that you are and then –

8 CHAIRPERSON: He has conceded that there
9 was cooperation between Lonmin and the police and he's now
10 describing for you the nature of the cooperation that
11 existed. That's his evidence.

12 MR MPOFU: Yes.

13 CHAIRPERSON: But he said when it came
14 to decisions, tactical decisions the cooperation didn't
15 extend that far and in fact the Lonmin people were asked to
16 leave the room at that point. I think that's the summary
17 of what he said. If I misunderstood you, Brigadier, you'll
18 correct me.

19 BRIGADIER CALITZ: Dit was korrek, mnr
20 die Voorsitter.

21 MR MPOFU: Can you go to HHH20 again.

22 CHAIRPERSON: That's document 13 in the
23 bundle to which -

24 MR MPOFU: Oh sorry paragraph 8.4.1.
25 Page 56. That's a statement of Colonel Scott and it says

Page 19890

1 what the JOCCOM was at that time and the representatives
2 being informed of the meeting represented the following
3 disciplines and then he lists the disciplines that were
4 involved there from Mpembe, Crime Intelligence, Detectives
5 and so on up to the next page 8.4.17 Lonmin Mine Security
6 representative. Before that South African Air Force
7 representative. That's what I'm saying, I'm saying it was
8 viewed by yourselves as an integral part of the units that
9 were there, do you understand now?

10 BRIGADIER CALITZ: Mnr die Voorsitter,
11 met alle respek, nee ek moet vir u verstaan, gevra het of u
12 die vraag, my antwoord verstaan soos ek vir u gegee het
13 voorheen. Die Voorsitter het ook vir u, dit is presies wat
14 ek vir u gesê het. So dit was eintlik onnodig om u hierna
15 toe verwys, want dit is presies wat ek vir u gesê het.

16 MR SEMENYA SC: But also Chair, it's
17 about a particular meeting, as the sentence opens.

18 CHAIRPERSON: The meeting on the
19 Wednesday 8 o'clock in the morning.

20 MR MPOFU: Okay well in that, if that is
21 the issue then can you, can we have JJJ129 on the screen
22 please. It's not on the list General, I mean Brigadier.

23 CHAIRPERSON: It's on JJJ129. The
24 screen is now, the projectors are now working again. Can
25 you just tell us what you want to say.

Page 19891

1 MR MPOFU: Except for the main screen,
 2 yes. All the other screens I think are working. JJJ129.
 3 Can you use the small –
 4 BRIGADIER CALITZ: Where is in my file,
 5 in your –
 6 MR MPOFU: It is not, I've just said it's
 7 not in your file. Look at the screen. You see that
 8 document says JOC structure Marikana.
 9 BRIGADIER CALITZ: Mnr die Voorsitter, ja
 10 dit is nou nuwe evidence wat nie in sy bundel was nie. So,
 11 versoek ek om dan tyd te hê om net deur hierdie dokumente
 12 te werk. Sodat ek my kan vergewis wat die hele dokument
 13 is.
 14 CHAIRPERSON: Maybe there's a specific
 15 line or sentence that you can look at. Is there a
 16 particular line or sentence that's relevant?
 17 MR MPOFU: Yes, Chairperson.
 18 CHAIRPERSON: Lets scroll down a bit and
 19 see what we see.
 20 MR MPOFU: Just start from where it says
 21 the following role players were part of the JOC structure
 22 and were available for decision taking and then let's look
 23 whatever follows after that.
 24 CHAIRPERSON: Just scroll down a bit
 25 more please.

Page 19892

1 MR MPOFU: Operational commander, warrah,
 2 warrah, warrah and then representative –
 3 CHAIRPERSON: The second last one, the
 4 penultimate one is representative of mine security.
 5 MR MPOFU: And before that
 6 representatives of mine management.
 7 CHAIRPERSON: Representative of mine
 8 management and then emergency services probably is Lonmin
 9 as well. So it does look as if, according to this document
 10 there were at times three people from Lonmin there, is that
 11 right?
 12 BRIGADIER CALITZ: Mnr die Voorsitter,
 13 dis hoekom ek sê ek weet nie eers watse dokument dit uit
 14 kom nie. So as ek dalk net die dokument uit geprint of as
 15 dit my kan gee dan kan ek sien waaruit dit kom. My net
 16 vergewis watter dag dit was of waarna dit hier verwys.
 17 Maar ek ontken nie dat -
 18 MR MPOFU: I can give you my -
 19 BRIGADIER CALITZ: Dankie. Maar -
 20 MR MPOFU: 1 July.
 21 MR CHASKALSON SC: Chairperson, I may be
 22 able to help Brigadier Calitz. This is a document that was
 23 prepared at Roots apparently to describe what the JOC
 24 structure was.
 25 MR MPOFU: Thank you. Thank you, Mr

Page 19893

1 Chaskalson. Even better.
 2 MR CHASKALSON SC: The date of the
 3 document is 28 August.
 4 BRIGADIER CALITZ: Dankie, mnr die
 5 Voorsitter. Ek sien egter nou nie wie dit opgestel of
 6 geteken hier so ek kan nie vir u sê wie die dokument
 7 beskikbaar gestel nie. Maar net –
 8 CHAIRPERSON: We were told it was a
 9 Roots' document. The document compiled at Roots towards
 10 the end of August.
 11 BRIGADIER CALITZ: Ja, ek hoor so, mnr
 12 die Voorsitter, maar ek sê maar net, ek kan nie sien wie
 13 het hom opgestel of dit iemand was wat betrokke was by die
 14 JOC en of dit na die tyd deur 'n -
 15 CHAIRPERSON: While you're there, can I
 16 ask you a question. You were at most of the JOCCOM
 17 meetings weren't you? You weren't at the last one but, at
 18 1 o'clock.
 19 BRIGADIER CALITZ: Dit is korrek.
 20 CHAIRPERSON: On the 16th but you were
 21 there at earlier ones. Now there were, is it correct that
 22 there either was one or were more Lonmin people in
 23 attendance, is that right?
 24 BRIGADIER CALITZ: Dit is waaroor ek
 25 getuig het, dit is korrek, mnr die Voorsitter.

Page 19894

1 CHAIRPERSON: And presumably they were
 2 there to provide assistance when asked to do so, asked for
 3 information, asked for assistance and they would do their
 4 best to provide it, is that correct?
 5 BRIGADIER CALITZ: Mnr die Voorsitter, ja
 6 ek wil vra as ons na die tweede bladsy toe gaan, dis maar
 7 net wou gaan kyk het, is dit, of daar beskryf is wat die
 8 doel is en een van dit is maps of the whole area of the
 9 mining area as well the greater Rustenburg available at the
 10 JOC. So hulle het vir ons dan daardie gegee asook die CCTV
 11 gedeelte wat daar beskryf is, ek wou net seker gemaak het
 12 dit was die feite.
 13 CHAIRPERSON: Now I want to ask you this.
 14 When there was a discussion of any kind in the JOC, in the
 15 JOCCOM did the Lonmin people sometimes participate? Did
 16 they also take part in the discussion?
 17 BRIGADIER CALITZ: Mnr die Voorsitter, ek
 18 vertrou so ja, ek dink die JOC, die sekuriteitpersoneel of
 19 die verteenwoordiger was meerderheid van die kere gewees
 20 daar. Ek het net gesê as ons verwys het na 'n taktiese
 21 operasie of ons het verwys na iets wat hulle sal doen soos
 22 'n deursoeking of die speurders miskien verdagtes gaan, in
 23 daardie gevalle is die persone dan verskoon. Maar die
 24 meerderheid van die kere was daar wel en dit is wat ek
 25 voorheen getuig het.

<p style="text-align: right;">Page 19895</p> <p>1 CHAIRPERSON: I see. When tactical 2 decisions were taken you say were they asked to leave? 3 [14:56] BRIGADIER CALITZ: Dit was op daardie dag 4 van die 16de. Dit is hoe dit aan my meegedeel was. 5 CHAIRPERSON: Yes, Mr Tokota has drawn my 6 attention to a paragraph TT4, which is the minutes of the 7 meeting at 6 o'clock on the 17th of August. Now those 8 minutes are minutes which were prepared, it went through a 9 long period of gestation and drafting at roots. They were 10 not contemporaneous notes at all. We have the original 11 manuscript notes, so I'll treat these notes always with 12 great caution, but never mind that, if one looks at the 13 last page, paragraph 3.3.11 – have you got that? 14 BRIGADIER CALITZ: Dit is nou nie in my 15 bundel nie, so ek het dit nie voor my nie, maar ek – 16 CHAIRPERSON: No, it should be, TT4. 17 It's one of the documents that Mr Mpofo referred to. 18 MR MPOFU: I think it's the first one, 19 Chair. 20 CHAIRPERSON: It's in fact the second 21 one. The first thing he referred to is exhibit L, then the 22 next thing – 23 BRIGADIER CALITZ: Oh double T, I was 24 looking for TTT. Ekskuus, Mnr die Voorsitter. 25 CHAIRPERSON: TT4.</p>	<p style="text-align: right;">Page 19897</p> <p>1 the exhibit number, there was a board in the JOC where the 2 cell numbers of various important role-players was put up 3 and once again Lonmin, Mr Botes' details were listed there, 4 together with General Mzembe and other people like that. 5 If you are aware of it, then we move on, if you're not, 6 we'll find the exhibit. 7 BRIGADIER CALITZ: Nee, ek glo nie dit is 8 nodig vir 'n exhibit nie. Dit sal in enige operasionele 9 sentrum sal al die rolspeleers daar, wat betrokke is, kontak 10 nommers daar wees, indien hulle benodig word. So ek vat u 11 woord daarvoor. 12 MR MPOFU: Yes, but the point I'm making 13 is – you know what I'm trying to say, Brigadier – the point 14 I'm making is that that board of police contacts would 15 normally contain no civilians as such, but members of the 16 police, but in this case Mr Botes or the Lonmin security 17 were regarded as – I'm still on the point of being an 18 integral part of both the structure and the meetings. 19 BRIGADIER CALITZ: Mnr die Voorsitter, 20 weereens moet ek miskien net u verwys hoe dit operasioneel 21 werk. Die name van sekuriteit personeel, ensovoorts, is 22 altyd op 'n – wat ons na verwys, 'n gevegsbord in 'n 23 operasionele sentrum. Al die partye wat daar is, die 24 nommers is daar. 25 MR MPOFU: Okay, yes, the board I'm</p>
<p style="text-align: right;">Page 19896</p> <p>1 BRIGADIER CALITZ: Ja, nee, ek het na 2 triple T – 3 CHAIRPERSON: Right, now these are the 4 minutes of the 6 o'clock meeting on the Thursday which went 5 through a long period of gestation and substantial drafting 6 and redrafting, so I treat with great caution. And we have 7 the manuscript notes made at the time of the meeting, but 8 allowing for caution to which I have referred, if you look 9 at paragraph 3.3.11 on the last page, which is headed, 10 "Mine Security," there it says, "Mr Dirk Botes indicated 11 that no serious challenges are being experienced." So he 12 certainly took part in the meeting and was indeed asked, 13 presumably by the chairman, to inform the meeting as to 14 anything that there was to be reported regarding mine 15 security. 16 BRIGADIER CALITZ: Dit was wat hy getuig 17 het, ja, mnr die Voorsitter, dit is korrek. Ek dink ek het 18 ook sy naam genoem as een van die persone wat wel daar was. 19 MR MPOFU: And that was the meeting at 20 which Mr Botes stated where D-day was referred to, correct? 21 BRIGADIER CALITZ: Dit was u stelling 22 gewees. Ek het getuig my getuienis reeds daarvoor 'n vorige 23 keer. 24 MR MPOFU: Yes, and also, and here I'm 25 just going to rely on your memory, because I can't remember</p>	<p style="text-align: right;">Page 19898</p> <p>1 referring to is GGG40 just for the sake of completion. 2 BRIGADIER CALITZ: Ja, nee, ek het gesê 3 dis nie nodig nie, ek stem saam met u, ek vat die woord 4 daarvoor so, maar as u die bord wil wys, u is welkom. 5 MR MPOFU: Well, since it's there in 6 front of you, you might as well look at it. You see that 7 Mr – it starts with General Annandale, General Naidoo and 8 so on and so on. Scroll down please, and the negotiator 9 whatever, and then Dirk Botes with his cell number there. 10 That is the board at the JOC and the heading is, "JOC 11 Control," agreed? 12 BRIGADIER CALITZ: Ek sien sy naam daar, 13 dis korrek. 14 MR MPOFU: Ja. 15 CHAIRPERSON: Perhaps, sorry, after tea 16 we can possibly look at one of the documents that Mr Mpofo 17 referred us to, unless he wants to deal with it at a later 18 stage in the cross-examination, in which case obviously he 19 must run the cross-examination he wants to, but there's an 20 affidavit which is exhibit GGG19, which is in the bundle 21 that Mr Mpofo referred us to. It's the witness statement 22 of Mr Botes, and he deals at various points in the 23 statement with the role he played in the JOC and in 24 discussions and decisions and so forth, but presumably Mr 25 Mpofo will get there at his own good time.</p>

<p style="text-align: right;">Page 19899</p> <p>1 MR MPOFU: You read my mind, Chairperson, 2 it was - actually I was going to make reference to it, but 3 - 4 CHAIRPERSON: Alright, let's have tea 5 first and then you can - 6 MR MPOFU: After tea, yes. 7 CHAIRPERSON: - and then you can take us 8 to the relevant part of the document. 9 MR MPOFU: Thank you, Chairperson. 10 [COMMISSION ADJOURNS COMMISSION RESUMES] 11 [15:24] CHAIRPERSON: The Commission resumes. 12 Brigadier, you're still under oath. 13 ADRIAAN MARTHINUS CALITZ: Dankie, mnr 14 die Voorsitter. 15 CHAIRPERSON: Mr Mpofo, do you have 16 anymore questions for the witness? 17 CROSS-EXAMINATION BY MR MPOFU (CONTD.): 18 Yes, thank you, Chairperson. Brigadier, you've already 19 been referred to GGG19, which is Mr Botes' statement. 20 Firstly before we deal with the topic that I'm busy with 21 now, just for the sake of completion I'll refer to some 22 statements which refer to the debate that you and I had 23 about the intervention with - I'm not going to question you 24 on it; I'll just point you to certain passages. 25 If you start at paragraph 29 of Botes, you'll see</p>	<p style="text-align: right;">Page 19901</p> <p>1 before where you start now. 2 MR MPOFU: Pardon? 3 BRIGADIER CALITZ: Just read the sentence 4 before. I think you start there, "As most of the police 5 officers." 6 MR MPOFU: Yes. That's the part I want 7 to read. 8 BRIGADIER CALITZ: Yes, I'm just 9 referring to the sentence before that. "Colonel Vermaak 10 told us that we should use the police helicopter in order 11 to try and locate the group," and then, "As most of the 12 police officers" - you missed that part, but it's fine. 13 I'm with you. 14 MR MPOFU: Ja, no, I don't want to read 15 it. All that this shows is that there was Sinclair in your 16 helicopter and Botes was in Vermaak's helicopter. That's 17 all. Is that correct? 18 BRIGADIER CALITZ: Nie ten tye van 19 dieselfde voorval nie, nee. Ek dink as hier 'n tyd by 20 gekoppel was dan moes hierdie seker vroeër gewees het. 21 Miskien het u die tyd vir my. 22 MR MPOFU: No, okay, put it this way - 23 CHAIRPERSON: [Microphone off, inaudible] 24 was said in para 33 indicates that Mr Mpofo is right, that 25 Mr Botes, who is the, it's his affidavit we're looking at,</p>
<p style="text-align: right;">Page 19900</p> <p>1 that he says he is the person who noticed the surveillance 2 equipment, through the surveillance equipment rather, a 3 group of what he estimated to be 200 people breaking away 4 from the koppie, and so on, and then this group were 5 heading in a westerly direction towards Karee, and having 6 regard to the events of the 12th he was concerned that this 7 group may proceed and attack another shaft, and then he 8 sent out security, Lonmin Security obviously, with a task 9 of finding them. You see that part? 10 BRIGADIER CALITZ: Ek sien hom sover. 11 MR MPOFU: Yes, and then he says in 12 paragraph 31 in the middle of it, "The SAPS were not aware 13 of the layout of the area of the mine and consequently if 14 there was a situation developing we would direct them to 15 where it was occurring." You see that part? 16 BRIGADIER CALITZ: Korrek, ja. 17 MR MPOFU: Okay, and then paragraph 32 - 18 no, paragraph 32 is not relevant for this. Paragraph 33 in 19 the middle of that, "As most of the police officers had not 20 been to the Lonmin area previously they did not know their 21 way around. Consequently I joined the pilot of the 22 helicopter, together with Colonel Vermaak and the pilot's 23 assistant in the helicopter, in order to locate the group." 24 You see that part? 25 BRIGADIER CALITZ: Just read the sentence</p>	<p style="text-align: right;">Page 19902</p> <p>1 he says, "I joined the pilots of the helicopter, together 2 with Colonel Vermaak and the pilot's assistant in the 3 helicopter, in order to locate the group." So Botes was in 4 Vermaak's helicopter and I think Sinclair was in the same 5 helicopter as you were. Is that right? 6 BRIGADIER CALITZ: Mnr die Voorsitter, ek 7 betwis glad nie daardie feit nie. Ek het net gesê dit is 8 nie op dieselfde tydperk gewees nie. Wat ek gesê het, 9 hierdie moes heel vroeër in die dag gewees het, glad nie, 10 dit het niks te doen met die insident op die grondpad nie. 11 MR MPOFU: Ja, no, I accept that. Nobody 12 is saying it happened at the same time. We are busy with 13 the - 14 BRIGADIER CALITZ: No, that is just what 15 I - 16 MR MPOFU: - with the collusion, whether 17 that it happened more than once. All I am saying is that 18 at some stage you were with Sinclair in one helicopter, the 19 Coin helicopter, and at another stage around the same event 20 Vermaak was with Botes in the police helicopter, which is a 21 different helicopter. 22 BRIGADIER CALITZ: Dis wat sy verklaring 23 sê, ja. 24 MR MPOFU: Ja, okay. And then it says, 25 "The police helicopter flew over a number of areas, but</p>

<p style="text-align: right;">Page 19903</p> <p>1 could not spot the breakaway group." Sorry, I'm reading 34 2 now. You see that part? 3 BRIGADIER CALITZ: Korrek. 4 MR MPOFU: "Eventually PW Botes contacted 5 me and said that the group was headed towards, or in the 6 direction of railway line," and so on. You see that part 7 in 34? 8 BRIGADIER CALITZ: I see the 9 communication, ja, then from security to the chopper, the 10 direction, and then they were found. 11 MR MPOFU: Ja. Then 35, which is 12 important, "The presence of Lonmin Security personnel 13 stopped the breakaway group," which is what I had put to 14 you, you were not aware of, and I accept you were not aware 15 of, but I'm just saying that's what Mr Botes says. 16 BRIGADIER CALITZ: Ja, ek sien sy 17 verklaring. Ek weet egter nie wat hy bedoel by "stopped 18 the breakaway group" nie. 19 MR MPOFU: Ja. And then there's another, 20 a third partnership. Then in 35 at the bottom, "I 21 understand that a significant police contingent then moved 22 out in order to intercept the breakaway group. I was 23 advised that Hendrik Blaauw, who is also a Lonmin person, 24 had accompanied the police." You see that? 25 BRIGADIER CALITZ: Ek sien dit, mnr die</p>	<p style="text-align: right;">Page 19905</p> <p>1 uit die lug uit gesien en ek weet waar die groep was toe 2 ons daar kom, en ek het dan so getuig dat ek hulle sien 3 begin beweeg het en op daardie stadium was die sekuriteit 4 bo-op die brug. Dit kon wees dat die sekuriteit miskien 5 hulle gestop het om verder te beweeg met daardie pad, of in 6 daardie geval – dis hoekom ek gesê het ek weet nie wat hy 7 bedoel by "security personnel managed to stop the breakaway 8 group." Dit sal interessant wees om net verklarings van 9 die sekuriteit te sien wat het hulle bedoel. Ja, niks het 10 tot my kennis gekom op hierdie stadium nie, so ek kan net 11 getuig as 'n fisiese ooggetuie wat ek gesien het uit die 12 lug uit en waar die groep dan begin beweeg het. Ek het 13 aangeneem oor die gesirkel van ons helikopter. 14 MR MPOFU: Okay, no fair enough. 15 Whatever they mean by they successfully stopped them, but 16 that feat was achieved, the thrust of my question is that 17 that stopping - whatever it means, and I don't expect you 18 to know – was achieved by a group of four, of security 19 personnel in four vehicles. I don't know how many they 20 were. We will find that out in due course, but I'm saying 21 would you agree with me that those four vehicles were a 22 much lesser contingent, or force, than what we know, which 23 is the 70 policemen, the teargas, the R5s, the Nyalas, and 24 what have you, that the police sent there? That's the only 25 point I'm making. Correct?</p>
<p style="text-align: right;">Page 19904</p> <p>1 Voorsitter. 2 MR MPOFU: Yes, and then, "At the Lonmin 3 JOC we monitored the breakaway group as they returned to 4 the eastern side of the railway line." And the last 5 sentence, "I was involved only in advising the SAPS of 6 risks to Lonmin and the positioning of the breakaway group, 7 as and when I was able to do so." Okay, I'm just pointing 8 those in relation to our earlier discussion, but I'm not 9 going to go back to that. You understand the context in 10 which I'm showing you those particular passages? 11 BRIGADIER CALITZ: Ek het dit gelees soos 12 ek dit verstaan het, ja. 13 MR MPOFU: Ja, thank you. Or maybe the 14 only remark that I can make is that from this account, 15 including our discussion, I'm going to argue that it was 16 possible for – I don't know the – oh, it's vehicles, I 17 thought it was four people – for four Lonmin vehicles 18 successfully to divert the group without using any 19 violence whatsoever, and presumably – this is an assumption 20 on my part, admittedly – presumably there were fewer of 21 them than the contingent of 70 policemen and Nyalas and 22 what have you, R5s, that were with the police group. Would 23 you argue with that? 24 BRIGADIER CALITZ: Ek sal nie sê "argue" 25 nie, maar ek gaan nie saam met u stem nie want ek het dit</p>	<p style="text-align: right;">Page 19906</p> <p>1 BRIGADIER CALITZ: Mnr die Voorsitter, ek 2 kan nie met alles saam met u stem nie. Ek weet nie hoeveel 3 voertuie hulle was of wat daar was nie. 4 MR MPOFU: Okay, fair enough. 5 BRIGADIER CALITZ: Ek weet ook nie 6 waarmee hulle uitgereik was nie. So, maar ek glo die 7 polisie se kontingent wat ons soontoe gestuur het is groter 8 gewees as wat die sekuriteit gehad het. 9 CHAIRPERSON: According to this 10 affidavit, paragraph 34, they had four soft-skin vehicles. 11 The police had, we can see that from the video, more Nyalas 12 than that, and of course they had arms and there were 70 13 people. Now I don't know how many people you can squeeze 14 into a soft-skin vehicle, but let's assume it's five 15 maximum, you've then got 20 people, probably fewer, but 20 16 people, whereas General Mpembe had a contingent of about 70 17 people I think on the evidence. That's the point Mr Mpofu 18 is making. Of course the point was of course that I take 19 it the security people were simply wishing to turn the 20 strikers back, away from Karee. They weren't trying to 21 disarm them and get their weapons from them, which may make 22 the difference, but anyway, that's speculation too, I 23 imagine. 24 BRIGADIER CALITZ: Ek het op daardie punt 25 saam met hom gestem na sy vraag, mnr die Voorsitter.</p>

<p style="text-align: right;">Page 19907</p> <p>1 MR MPOFU: Yes, and whatever it is that 2 the security might have asked from them, the point of the 3 matter is that they complied therewith and returned to 4 Wonderkop. But once again you have no personal knowledge 5 of that. I'm just saying that's what the evidence will be. 6 BRIGADIER CALITZ: Ek lees dit so in 7 hierdie verklaring. 8 MR MPOFU: Ja, and in any event, by the 9 time the trouble started, General Mpembe himself had 10 accepted that they should go back to the koppie. You're 11 aware of that? 12 BRIGADIER CALITZ: Nee, ek kan u nie 13 daarmee help nie. 14 MR MPOFU: No, you can help me because 15 you've read the statements, and I'm not saying you were at 16 the scene. I'm saying are you aware that in any event by 17 the time the trouble started where the killings happened, 18 even General Mpembe had accepted, or agreed that they 19 should be escorted back to Wonderkop - to the koppie, while 20 they were still carrying their arms? 21 BRIGADIER CALITZ: Mnr die Voorsitter, 22 onder eed kan ek nou nie sê dat ek presies weet – 23 MR MPOFU: Okay. 24 BRIGADIER CALITZ: - wat Generaal Mpembe 25 se getuënis was nie. Ek weet hy het onderhandel en ek</p>	<p style="text-align: right;">Page 19909</p> <p>1 I take your point, Chairperson. I'm simply saying I was 2 not doing it to establish that fact obviously, because he 3 wasn't there. 4 CHAIRPERSON: [Microphone off, 5 inaudible]. 6 MR MPOFU: Yes, thank you, Chairperson. 7 Well, by the way, your friend Colonel Merafe, or whom you 8 have worked with for along time, as you described it, must 9 have told you almost blow by blow - he was the one who was 10 emotional and going on about this incident - must have told 11 you blow by blow what happened and what went wrong in the 12 course of his outpourings. 13 BRIGADIER CALITZ: Nee, mnr die 14 Voorsitter, ek verskil van u. Kolonel Merafe, ja, hy is 'n 15 vriend van my, 'n kollega. Hy is een van my 16 eenheidsbevelvoerders op Rustenburg. Hy het my wel 17 meegedeel dat hy oppad is met een van die lede wat gekap 18 is. 19 MR MPOFU: Ja. 20 BRIGADIER CALITZ: Hy was baie emosioneel 21 en het gesê daar was 'n aanval en hy jaag met hierdie 22 persoon. Sy asem het gejaag. Hy het half gepraat/skreeu 23 oor die selfoon, en toe was dit af, en ek het toe in my 24 verklaring getuig dit is waar ek toe weer na die helikopter 25 toe is saam met die speurhoof –</p>
<p style="text-align: right;">Page 19908</p> <p>1 weet hulle is van daar af koppie toe en daar het 'n 2 konfrontasie plaasgevind. Maar wat presies sy woorde was 3 onder getuënis kan ek nie nou vir u onder eed sê nie. 4 MR MPOFU: Yes, but surely your friend Mr 5 Merafe – 6 CHAIRPERSON: I'm sorry, Mr Mpofo, any 7 evidence he's going to give on this point would be hearsay 8 in any event. We've heard direct evidence from General 9 Mpembe. We're going to hear evidence, I take it, from some 10 of the others who were with him. You're going to call your 11 two witnesses who you've filed statements to deal with it. 12 We will be able to make – I would hope – to make findings 13 about that. We don't need some hearsay from this witness. 14 MR MPOFU: No, Chairperson, it – 15 CHAIRPERSON: So there's no point in 16 following it up. 17 MR MPOFU: Yes, that's true, Chairperson, 18 but of course I was only asking whether he was aware, not – 19 CHAIRPERSON: Yes, yes, I know, but his 20 awareness isn't going to take us much further, because if 21 he became aware it would only have been much later. He 22 wouldn't have been aware of it, I take it, at the time it 23 was happening. 24 MR MPOFU: I don't know that, 25 Chairperson. It might be relevant to my next enquiry, but</p>	<p style="text-align: right;">Page 19910</p> <p>1 MR MPOFU: Ja, but – 2 BRIGADIER CALITZ: - om na die toneel toe 3 te gaan. 4 MR MPOFU: Sorry, sorry, sorry, 5 Brigadier. Ja. No, that's why I'm suggesting that you are 6 being untruthful when you say you did not know that General 7 Mpembe escorted them, because that was the exact point of 8 difference between Colonel Merafe and Mpembe as to whether 9 they should be escorted back to the koppie with their arms, 10 or disarmed right there, and that's why some of the people 11 wanted to kill Mpembe, because they thought he'd made the 12 wrong call on that exact point. 13 BRIGADIER CALITZ: Ja, ek en Merafe het 14 nie die verskille bespreek op daardie stadium toe hy my 15 gebel het nie. Sy belange het toe gelê by die lid wat hy 16 gedra het na die voertuig toe en wat ernstig beseer is en 17 wat later beswyk het. 18 MR MPOFU: So Kolonel Merafe didn't say 19 to you at any stage during this emotional period that, "All 20 this would have been prevented if Mpembe had listened to 21 me," or something like that? 22 BRIGADIER CALITZ: Nee – 23 MR MPOFU: Because that seems to be the 24 contention between the two of them. 25 BRIGADIER CALITZ: Soos ek vir u sê, nie</p>

Page 19911

1 op daardie stadium het Kolonel Merafe glad nie oor, gepraat
 2 wat daar gebeur het nie. Ek het die inligting nie by hom
 3 gekry nie. Ek dink op 'n stadium ek het met Kolonel
 4 Vermaak geskakel. As ek onder korreksie praat, die persoon
 5 op die toneel, mnr Blaauw of iemand dink ek ook op 'n
 6 stadium, so daar was telefoniese gesprekke gewees en dit is
 7 waar ons dit gehoor het op 'n latere stadium.
 8 MR MPOFU: And you also didn't take any
 9 interest, given your position and what Mr Bizos described
 10 as mutinous behaviour, to find what the root of the
 11 disagreement was between the one mutineering group and the
 12 General?
 13 BRIGADIER CALITZ: My getuienis was dat
 14 ek onmiddellik toe ek die inligting gekry het, het ek die
 15 speurhoof gekontak en ons is met die eerste helikopter, wat
 16 toevallig weer 'n Coin helikopter was, is ons na die toneel
 17 toe en van daar af het ons wel vasgestel en soveel as
 18 moontlik probeer uitvind wat het aangegaan en wat het
 19 gebeur.
 20 MR MPOFU: Good, and in the course of
 21 that investigation surely, surely Brigadier, you were then
 22 told that the bone of contention was the fact that General
 23 Mpembe proposed and did allow the people to proceed to the
 24 koppie while their arms were in their hands, surely?
 25 BRIGADIER CALITZ: Ek het met Kolonel

Page 19912

1 Vermaak gepraat wat in die helikopter was en geland het, so
 2 ek dink nie hy kon rêrig gehoor het wat Kolonel, ag
 3 Generaal Mpembe bespreek het met die mense nie. Kolonel
 4 Merafe was nie op die toneel nie en daar was baie geskokte
 5 lede daar rond. So die senior persoon op die toneel was
 6 Kolonel Vermaak toe ek daar aankom en hy het ons dan deur
 7 die toneel gevat, waar ek dan die oorledenes gesien het en
 8 van daar af het ek die lede uitgeplaas om die toneel te
 9 beveilig.
 10 MR MPOFU: Okay, I'm going to argue that
 11 your evidence in this regard is highly improbable and
 12 actually farfetched.
 13 BRIGADIER CALITZ: Ek verstaan nie wat –
 14 u stelling "farfetched," wat bedoel u daarby?
 15 MR MPOFU: Okay, let's stick with
 16 improbable.
 17 CHAIRPERSON: I think "vergesog."
 18 Vergesog.
 19 BRIGADIER CALITZ: Ek sê maar net wat op
 20 daardie dag Kolonel Vermaak, die inligting wat hy my gegee
 21 het is nie wat hy self waargeneem het nie. Dit is wel wat
 22 hy gehoor het en die redes wat hy my gegee het daarvoor dat
 23 hy Kolonel, ag Generaal Mpembe van die toneel af verwyder
 24 het, maar u vraag was dat hulle kon hoor wat die
 25 onderhandeling, en in daardie geval, ek sê Kolonel Vermaak

Page 19913

1 kon dit nie hoor nie; hy was in die helikopter, maar hy het
 2 wel vir my die detail, toe ek land op die grond vir ons dit
 3 deurgegee wat sy besluit was, hy het die Generaal laat
 4 verwyder en dat die lede onder aanval was. Hy het vir my
 5 beskryf uit die lug uit presies wat hy gesien het toe hy
 6 die "stun" granate gegooi het, die lede wat doodgekap was
 7 onder hom, daardie beskrywing het hy vir my – het ons
 8 gesprek oor gehad, ja.
 9 MR MPOFU: Yes, well you really want the
 10 Commission to believe that here's this situation which
 11 unfortunately for two reasons – (1), it has had very tragic
 12 consequences both for the police and the community; but
 13 secondly, it has generated the mutinous behaviour of the
 14 people that you are working with, and with all that
 15 background you didn't bother to say ja but why did they
 16 want to kill him in the first place, and then get into the
 17 reason, which was really only the difference between what
 18 should be done. Is that really what you want the –
 19 BRIGADIER CALITZ: Nee, ek het glad nie
 20 gesê – dit was nie die gesprek tussen, of ons, dat ons nie
 21 daarvoor gepraat het nie. Ek het net gesê Kolonel Vermaak
 22 het vir my gesê hy het nie self gehoor wat die gesprekke
 23 was nie. Dit is net die lede wat vir hom gesê het dat
 24 hulle is ongelukkig met die besluite wat geneem was en dat
 25 daar dreigemente was en hy het besluit om die Generaal weg

Page 19914

1 te vat. Hy kon nie vir my sê op watter stadium, wie die
 2 lede was, hulle uitwys nie. Ek dink tot tans is daardie
 3 name nie aan hom bekend nie, volgens my kennis. Miskien as
 4 hy kom getuig kan hy sê dat hy wel die persone kon onthou
 5 het. So ek sê glad nie dat ons dit nie bespreek het nie.
 6 Dit is wel bespreek op daardie stadium.
 7 [15:44] MR MPOFU: Okay, fine, I'll argue what I
 8 argue. We'll come back to this statement in a different
 9 context.
 10 BRIGADIER CALITZ: Mnr die Voorsitter, as
 11 ons weg beweeg van hierdie verklaring af kan ek miskien net
 12 ietsie wys, net uit dieselfde verklaring uit waaroor ek
 13 getuig het? Dit is paragraaf 50, maar net vir die record,
 14 bladsy 15.
 15 CHAIRPERSON: It presumably has to be
 16 read also with 48.4, it covers the similar point.
 17 BRIGADIER CALITZ: So dit is maar net
 18 waarna ek verwys het dat as daar 'n taktiese besluit geneem
 19 is op die dag dat hulle gevra is, die Security sowel as the
 20 Surveillance personnel, om die JOC te verlaat wat mnr Botes
 21 dan duidelik ook hier in sy eie verklaring sê die gebeure
 22 was. So dit is, ek wil dit maar net op rekord sit, dit is
 23 uit sy eie verklaring uit.
 24 MR MPOFU: Okay, well, now that you've
 25 raised it let me correct you. That is exactly what Mr

Page 19915

1 Semenya was correctly asking me to refrain from doing.
 2 That paragraph you are reading is in respect of a
 3 particular meeting, do you understand, which lasted
 4 approximately 45 minutes. So you can't stretch it to what
 5 you've just said.
 6 CHAIRPERSON: Yes, that's why it is
 7 helpful to look at 48.4.
 8 MR MPOFU: Absolutely and in any event in
 9 context you have to read it with 48.4.
 10 BRIGADIER CALITZ: Ek het –
 11 CHAIRPERSON: 48.4 specifically deals
 12 with Wednesday.
 13 MR MPOFU: Yes.
 14 CHAIRPERSON: But it says that there were
 15 times when I was asked for information about a particular
 16 situation on the ground. In this regard I provided factual
 17 information to SAPS, and he gives what it was, layouts of
 18 hospitals, number of residents, ventilations, access roads,
 19 etcetera, and then he goes on how to deal with that
 20 situation, it was a decision within the purview of SAPS.
 21 MR MPOFU: Yes.
 22 CHAIRPERSON: But I don't think it is a
 23 matter that can be dealt with further with him.
 24 MR MPOFU: Correct, ja, in other words,
 25 ja, my contention to you earlier is covered by 48.4 or has

Page 19916

1 been indicated by 48.4, because I was saying that, - I was
 2 not saying that Lonmin took over the whole operation, I was
 3 saying that they participated and made certain significant
 4 or decisive contributions. Obviously how the situation got
 5 dealt with as it happened on the 13th was left to SAPS, that
 6 I agree. So the situation described at 48.4 is more in
 7 line with what usually happened, correct?
 8 BRIGADIER CALITZ: Mnr die Voorsitter,
 9 ja, ek en u was nog, die advokaat het saamgestem die
 10 heelyd. Ek het gesê daar was 'n samewerking ooreenkoms en
 11 ek het net 'n punt gemaak dat wanneer 'n taktiese besluit
 12 geneem was, dat hulle, - so dit is net die paragraaf wat ek
 13 dan na wou verwys het, maar ek het ook saam met die
 14 voorsitter gestem oor paragraaf 48.4, korrek.
 15 MR MPOFU: Okay, I am not going to go
 16 back to that, to TT4 and all that, but you get my point,
 17 ja. Okay, are you happy now that you've pointed your part
 18 on the statement, we can move on to something else?
 19 BRIGADIER CALITZ: You've got permission.
 20 MR MPOFU: Thank you, I don't know what I
 21 would do without you, Brigadier. Okay, we've dealt with
 22 the issue of whether Merafe told you about the removal.
 23 Just another issue very quickly, do I understand you
 24 correctly that General Annandale arrived at the scene on
 25 the 13th and that's where you first saw him as it were?

Page 19917

1 BRIGADIER CALITZ: Dit is korrek,
 2 Generaal Annandale en Brigadier Chilwane.
 3 MR MPOFU: On the 13th, yes.
 4 BRIGADIER CALITZ: Op Maandag, die 13de.
 5 MR MPOFU: That is correct.
 6 BRIGADIER CALITZ: Korrek.
 7 MR MPOFU: Because, - anyway, that's not
 8 for you, ja. I seem to remember his own evidence being
 9 different but don't quote me on that. The removal of
 10 General Mpembe, you see I want to, I'm just going to, - I'm
 11 not going to belabour this point, I'll ask you maybe one or
 12 two questions, so for that reason I would play open cards
 13 and tell you where I am going with it. I'm going to argue
 14 at the end that the removal of General Mpembe from the
 15 scene as described by Vermaak, that that removal was not as
 16 temporary as it seemed, that actually from that point on he
 17 was removed effectively from his position and that General
 18 Annandale took over the overall command of the operation.
 19 What would be your comment on that?
 20 BRIGADIER CALITZ: Nee, glad nie, nie van
 21 my observasie punt af nie. Ek dink daardie selfde aand het
 22 General Mpembe nog terugvoer gegee, ek dink aan die
 23 Nasionale Kommissaris en die goed verduidelik en die
 24 vergaderings nog steeds bygewoon en Generaal Annandale, wat
 25 ons gepraat het, ek dink mnr die Voorsitter het die term

Page 19918

1 gebruik, chief of staff, wat uit die Wêreld Beker uitgekome
 2 het. So dit is meer om die JOCCOM vergaderings te
 3 fasiliteer.
 4 MR MPOFU: Ja, well, that's property the
 5 point. You know Annandale, nobody really knows what he was
 6 doing, one day he is chief of staff or he is the deputy or
 7 he is the chairman or whatever. The point of the matter
 8 is, from that point on, whether one looks at your statement
 9 or Scott's statement or the others I will argue and I'm not
 10 going to refer you to those passages. The thrust of all
 11 those statements from that point on is that every major
 12 decision, you refer to General Annandale, right up to the
 13 point at which he instructs Colonel Scott to come and brief
 14 you and determine that the operation must start at half
 15 past three.
 16 BRIGADIER CALITZ: I don't think every
 17 major instruction or what you refer to, definitely the one
 18 of the 13:30 was General Annandale chairing that meeting,
 19 maar ek weet nie of die generaal, soos u dit sê, nie deel
 20 was daarvan nie en so ver ek weet was Generaal Mpembe, hy
 21 het 'n integrale deel gehad met die onderhandeling, met die
 22 Lonmin Mynbestuur as ek reg is, hy het opdrag gegee daardie
 23 Maandagaand dat die mense moet bystaan, ek dink vir Kolonel
 24 Scott om die beplanning, om voorligting te gee, om die
 25 beplanning en goed te begin doen. So hy het sekere

Page 19919

1 definitiewe opdragte gegee nog steeds as 'n oorhoofse
2 bevelvoerder, so ek het dit nie so ondervind nie, miskien
3 weet u van iets wat u kan –
4 CHAIRPERSON: But surely the decision
5 that the operation's tactical option, stage 3 operation
6 should have been implemented or put into operation at 3:30,
7 - sorry, 15:30 on the Thursday afternoon. That was quite
8 an important decision and he made that. In fact the
9 evidence I think is that the Provincial Commissioner
10 instructed General Annandale to proceed with the operation
11 and he then fixed the time. Now General Mpembe was
12 present, I must say, this is obviously a prima facie view I
13 am putting to you so that you can deal with it, I would
14 have expected General Mpembe to have given, fixed the time
15 or at the very least have been referred to. The impression
16 we get in the evidence is this is not what happened.
17 General Annandale just said, right, implement it at 15:30
18 and General Mpembe sat there in the corner and did nothing.
19 That's the impression I must tell you I get, it may be
20 wrong, the prima facie view which may require revision, but
21 I would like to hear your comment on it.
22 BRIGADIER CALITZ: Mnr die Voorsitter,
23 soos ek General Mpembe ken, ek werk 19 jaar plus saam met
24 hom, is hy nie 'n persoon wat stil sit in die hoek en geen
25 kommentaar lewer nie. Hy is nogal 'n op die grond,

Page 19920

1 definitiewe betrokke offisier. Ek weet nie wat sy
2 getuienis was in die verband nie, so ek was nie by daardie
3 vergadering nie, ek kan maar net sê soos ek General Mpembe
4 ken. Hy sal miskien 'n rede gehad het, as hy dan erken dat
5 hy dit nie bespreek het nie, wat ook al die geval was en of
6 dit 'n opdrag was van die PK af, dat hy dit dalk so aanvaar
7 het, ek weet nie, mnr die Voorsitter. Ek ken nie General
8 Mpembe se karakter as iemand wat net in die hoekie gaan sit
9 en niks sê nie.
10 MR MPOFU: Ja, well, -
11 CHAIRPERSON: You see the evidence you're
12 giving actually, I'm sorry to say, strengthens the prima
13 facie view that I have. If he is an op and wakker kind of
14 a person, you know active, forceful, he takes the lead and
15 that kind of thing, which I think to be fair based on my
16 impression of him in the witness seat is correct. You
17 would have expected him with that character to have said,
18 right, we're going to do it at 15:30, not to sat quietly
19 when, and let Annandale fix the time, but obviously it is
20 peripheral point as far as you were concerned because you
21 weren't there.
22 BRIGADIER CALITZ: Ek was glad nie daar
23 nie, mnr die Voorsitter.
24 CHAIRPERSON: It is something that is an
25 indication perhaps that the point being made is correct,

Page 19921

1 but on the other hand there may be other explanations and
2 there may be other areas in which he did truly function as
3 overall commander. It is too early to make a definitive
4 finding on that obviously.
5 BRIGADIER CALITZ: Ek stem saam met u,
6 mnr die Voorsitter, ek dink die generaal sal die beste weet
7 wat die omstandighede was in daardie dag, ek was nie daar
8 nie.
9 MR MPOFU: Ja, and once again, I mean not
10 to belabour the point, as the chairperson correctly pointed
11 out, you were not at that meeting and I did put this to
12 General Mpembe but I would like to hear your remark, I mean
13 your own observation given what you've described that he is
14 an outgoing character. Remarkably in, I think it is EEE,
15 are the minutes of that meeting. It is all Annandale,
16 Annandale, Annandale, up to the point that we've just
17 discussed and Mpembe says nothing, at the most decisive
18 meeting before the biggest operation probably in South
19 Africa, arguably, the overall commander who is an outgoing
20 and a person who gets involved, is mute.
21 BRIGADIER CALITZ: Mnr die Voorsitter, ek
22 sal net kan getuig dat die generaal self sal kan antwoord
23 op daardie een, ek was glad nie daar nie. Ek het net
24 kommentaar gelewer op die vorige opmerking van dat hy hande
25 gevou in die hoekie sit.

Page 19922

1 MR MPOFU: Yes, okay, thank you, and just
2 to complete that point, General Mpembe really, the only
3 place that he featured in the period that I've described is
4 in the evening of the 15th where he was engaging the union
5 bosses and as we know even that effort was, it came to
6 naught because Lonmin refused to see Mr Mathunjwa in the
7 morning.
8 CHAIRPERSON: I'm sure that that act, we
9 know that. The evidence of the Lonmin people which of
10 course we're going to hear in due course and the tape
11 recording which has been, the transcripts which have been
12 put before us, indicates that there were discussions
13 between Mr Mathunjwa and some of the Lonmin people and the
14 problem was of a different nature but what you have put
15 accurately to the witness is Mr Mathunjwa's version.
16 MR MPOFU: Yes, correct.
17 CHAIRPERSON: Whether we know that Mr
18 Mathunjwa's version is correct is a different matter.
19 MR MPOFU: Fair enough.
20 CHAIRPERSON: And it may well be,
21 certainly Lonmin is going to argue that Mr Mathunjwa's
22 version is not correct, so we can't prematurely make a
23 finding on that but what you have done correctly is to put,
24 but you didn't put it like that, is to put Mr Mathunjwa's
25 version to the witness.

Page 19923

1 MR MPOFU: Yes, no, thank you,
 2 Chairperson. What we know and that includes you now is
 3 that when Mr Mathunjwa came back at 12 o'clock to talk to
 4 the strikers he reported to you that he was once again
 5 going to engage management and he came back again at 15:35
 6 and management had still not engaged with him.
 7 BRIGADIER CALITZ: Ja, ek kan u help net
 8 met die eerste gedeelte van die vraag, dit kan ek bevestig
 9 dat hy wel 12 uur by my was. Daar was 'n redelike gesprek
 10 tussen ons en dat hy het gesê hy gaan na Lonmin management
 11 toe en dat hy sal terugkeer. Die tweede deel weet ek nie
 12 van nie, ek was nie teenwoordig toe hy die tweede keer
 13 teruggekom het nie, dit is toe ons by forward holding area
 14 2 was, - ag, forward holding area 1, ekskuus tog.
 15 CHAIRPERSON: Mr Mpofo, when you're
 16 finished with this point we'll take the adjournment until
 17 tomorrow morning, so it is for you to tell me when we can
 18 adjourn.
 19 MR MPOFU: Yes, Chairperson, I'm just
 20 going to round off this point. I'm just checking, I
 21 thought it was you, Brigadier, who said that Mr Mathunjwa
 22 addressed the strikers for the first time on the 16th at
 23 about 12, but some time before the main action.
 24 BRIGADIER CALITZ: Mnr Mpofo, dit is wat
 25 ek saam met u gestem het, ek het vir u gesê ek kan daardie

Page 19924

1 deel saam met u stem. Hy het teruggekom en wel gesê dat hy
 2 na die mynbestuur toe gaan en weer sal terugkeer. Ek het
 3 net gesê die tweede deel van die stelling kan ek u nie mee
 4 help nie en dit is dat u gesê het hy het om, ek dink u tyd
 5 was 14:30, wat het u gesê, teruggedaan na die koppie toe.
 6 Dit is waar ons besig was met die voorligting by forward
 7 holding area 1, so ek het nie weer met mnr Mathunjwa
 8 gepraat die tweede deel nie. Ek weet VBN was Papa1 gewees
 9 maar dit was my voertuig, Kolonel McIntosh wat toe daar
 10 was.
 11 MR MPOFU: Okay, but in any event it was
 12 known to you as operational commander and through your
 13 interactions with the negotiators and even the five Madoda,
 14 that the management had consistently refused to engage the
 15 strikers and had put, they had basically said that they
 16 would only do so if they capitulate, in other words if they
 17 come back to work.
 18 BRIGADIER CALITZ: Wat ek vir u kan
 19 getuig wat ons wel weet en uit die negotiations, na van
 20 hulle weg getuig het of gesê het was dat Lonmin Management
 21 sê daar is 'n twee jaar loon ooreenkoms aan die gang en dat
 22 hulle nie bereid is om met gewapende strikers in gesprek te
 23 tree nie en dat indien die persone hulle wapens sal neerlê,
 24 vreedsaam en terugkeer werk toe, dan sal hulle met hulle
 25 onderhandel. Dit is die terugvoer wat ons vir hulle gegee

Page 19925

1 het. Ek dink dit is uit die gesprek uit van Kolonel
 2 McIntosh, General Mpembe en die ander persone so vroeg soos
 3 vyf uur dink ek op die vorige oggend, as ek my feite korrek
 4 het nou. So dit is wat ons dan vir hulle die terugvoer
 5 gegee het, maar op daardie dag wat u verwys, dit was die
 6 16de na mnr Mathunjwa by ons was, so ek was bewus dat hy
 7 Management toe is en miskien as ek dan kan sê, dit is
 8 hoekom ek van hom verwag het op die stadium toe hy hulle
 9 wel toegesprek het die tweede keer, om na my toe terug te
 10 kom, want dit was ons verstandhouding gewees dat daar 'n
 11 gesprek sal plaasvind.
 12 MR MPOFU: Yes, no, fair enough and would
 13 you confirm as other police witnesses did, that that
 14 refusal to engage the strikers on the part of Lonmin for
 15 all the reasons that they put, was frustrating to SAPS?
 16 MR VAN AS: Mr Chairman, one witness,
 17 General Mpembe indicated that he felt that Lonmin should
 18 have engaged with the strikers but he also qualified that
 19 answer by saying he understood why they didn't engage with
 20 the strikers.
 21 CHAIRPERSON: Yes, the question is
 22 whether it was frustrating to SAPS and as far as I can
 23 remember, even from the opening statement of SAPS before
 24 this Commission, SAPS adopted, I think it was there, at
 25 some point SAPS adopted a critical attitude towards Lonmin

Page 19926

1 and felt that if Lonmin had been more flexible things might
 2 have been different, so I think –
 3 MR MPOFU: Yes –
 4 CHAIRPERSON: - the question is a
 5 permissible question, the witness can be asked to answer
 6 it.
 7 MR MPOFU: Thank you, Chairperson.
 8 BRIGADIER CALITZ: Mnr die Voorsitter,
 9 ongelukkig was ek nie deel van daardie gespreksvoeringe
 10 tussen die generale of die Lonmin Management nie, so ek kan
 11 nie presies sê of dit vir hulle frustrerend was of wat daar
 12 gesê is nie, ek kan net sê die boodskap wat ons aan die
 13 groep oorgeda het en dat die strikers op daardie stadium
 14 nie gelukkig was daarmee nie en nie verder met ons wil
 15 onderhandel het nie, so ek kan net die reaksie van die
 16 strikers daarop gee en nie die van die polisie nie. Seer
 17 sekerlik van ons kant af, van my kant af, ons het
 18 onderhandelinge probeer vreedsaam voortgaan, dit het nie
 19 ons onderhandelinge beïnvloed op daardie stadium nie.
 20 MR MPOFU: My last question and it is
 21 meant to just prepare you for where we are going to move to
 22 tomorrow which is the 16th, is whether you would agree that
 23 them, I'll avoid the word eulogy that Mr Bizos used, the
 24 congratulatory message that you gave about the 110% and all
 25 that, whether you agree that now, knowing what you know

<p style="text-align: right;">Page 19927</p> <p>1 now, you agree that it was incorrect and inappropriate, 2 insensitive?</p> <p>3 CHAIRPERSON: I thought that was covered 4 because Mr Bizos cross-examined quite extensively. I have 5 a feeling you are trying to re-plough part of the field –</p> <p>6 MR MPOFU: No, I'm not –</p> <p>7 CHAIRPERSON: - that has been ploughed 8 already.</p> <p>9 MR MPOFU: I am not, Chairperson.</p> <p>10 [16:04] CHAIRPERSON: Alright, let's get his 11 answer. The proposition is being put to you that with the 12 benefit of hindsight, having based on extra information you 13 received and so on, having seen the video of, who depicts 14 whose speaking, having read the transcript of what you 15 said, whether you don't think that it was inappropriate to 16 say what you said, or some of the things you said, what you 17 said is totally in order and Mr Mpofu wouldn't, even Mr 18 Mpofu wouldn't criticise it but the passages that have been 19 singled out the suggestion is you should agree that it with 20 hindsight these remarks were inappropriate?</p> <p>21 BRIGADIER CALITZ: Mnr die Voorsitter, 22 nou met die benefit van hindsight, as ons praat van die 23 110%, die gedeelte wat ons gesê ons het die mense geluk 24 gewens, ek het vir u verduidelik presies in watter konteks 25 dit bedoel was en dit is net met die opvolg lyn, so as –</p>	<p style="text-align: right;">Page 19929</p> <p>1 separate from what Mr Bizos dealt with which I won't 2 traverse but from the point of view that that statement 3 amongst other things was irregular in that it was intended 4 to influence the members to support the false theory of 5 self defence.</p> <p>6 BRIGADIER CALITZ: Mnr die Voorsitter, ek 7 dink dit is reeds bespreek, daardie selfde vrae is aan my 8 gevra. So, maar ons sal dit vir u -</p> <p>9 CHAIRPERSON: We'll face it with such 10 fortitude as we can muster on the morrow. We will now 11 adjourn until tomorrow.</p> <p>12 BRIGADIER CALITZ: Dankie. 13 [COMMISSION ADJOURNED] 14 . 15 . 16 . 17 . 18 . 19 . 20 . 21 . 22 . 23 . 24 . 25 .</p>
<p style="text-align: right;">Page 19928</p> <p>1 CHAIRPERSON: You don't -</p> <p>2 BRIGADIER CALITZ: Nee, nee, nee.</p> <p>3 CHAIRPERSON: You don't have to repeat is 4 all over again.</p> <p>5 BRIGADIER CALITZ: Ja.</p> <p>6 CHAIRPERSON: It's just a general 7 proposition put to you by Mr Mpofu and I indicated to him 8 that I thought he was re-ploughing ground that had been 9 ploughed already but I allowed him to put the general 10 question to you and I'd appreciate a general answer from 11 you without all the details which we had before when Mr 12 Bizos questioned you.</p> <p>13 BRIGADIER CALITZ: Miskien daardie 14 gedeelte, mnr die Voorsitter, as ek net kan sê net op wat 15 die bedoel was met die lyn en die opvolg van die lyn, dit 16 is wat ek die bevelvoerders geluk gewens het met die 110%. 17 Nou met die benefit van hindsight laat ek weet daar is 18 video materiaal en van alle kante af en gesien het die 19 hoeveelheid doppies en die hoeveelheid skietery sou ons 20 dalk die skiet voorval ook bespreek het en dan vir die lede 21 met omsigtigheid daarna verwys het en gesê het kom ons kyk 22 wat het hier gebeur. So dit sal seerskerlik deel gewees 23 het van my voorligting aan daardie groep op die 18de.</p> <p>24 MR MPOFU: Yes, and my questioning to you 25 tomorrow will deal with that. From the point of view that</p>	

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<p>aan 19712:19 19717:7 19720:20 19721:1 19725:1 19735:19 19737:13 19740:10 19750:3,6,23 19753:4 19764:24 19768:19 19782:14 19787:2 19792:7 19799:8 19803:8 19807:18,20 19809:4 19810:4,5 19817:6,7 19822:18 19822:19 19823:20 19823:24 19838:15 19838:16 19844:9 19845:7 19855:14 19860:8 19867:16,18 19872:9 19886:1 19895:4 19914:3 19917:22 19924:21 19926:12 19928:23 19929:7</p> <p>aanbetrof 19804:8</p> <p>aand 19764:14 19768:5 19796:11 19917:21</p> <p>aandring 19885:22</p> <p>aanduiding 19878:21</p> <p>aangaan 19768:16 19772:7 19824:14,14 19824:15,15</p> <p>aangegaan 19844:4 19911:18</p> <p>aangegee 19757:22</p> <p>aangehaal 19786:21,25</p> <p>aangeneem 19905:13</p> <p>aangeraak 19782:23</p> <p>aanhaal 19714:13</p> <p>aankom 19912:6</p> <p>aanstelling 19804:8</p> <p>aantal 19750:10 19844:2</p> <p>aanvaar 19735:21 19740:20 19834:25 19920:6</p> <p>aanval 19746:11 19781:8 19858:4,17 19909:21 19913:4</p> <p>abandon 19719:4 19861:5</p> <p>abandonment 19884:16</p> <p>ability 19784:10</p> <p>able 19719:9,14 19752:22 19761:3 19778:15 19781:23 19783:4,5 19818:20 19832:11 19892:22 19904:7 19908:12</p> <p>absence 19739:16 19758:22 19840:3</p> <p>absent 19880:15</p> <p>absolute 19762:18</p> <p>absolutely 19794:13 19915:8</p> <p>absolving 19766:14</p>	<p>academic 19722:24</p> <p>accede 19732:19</p> <p>accept 19711:16 19717:20 19765:4 19783:22 19816:16 19838:20 19839:1,14 19852:21 19864:14 19865:16 19866:23 19871:3,5 19902:11 19903:14</p> <p>accepted 19735:18 19758:24 19865:14 19907:10,18</p> <p>accepts 19762:2</p> <p>access 19915:18</p> <p>accompanied 19903:24</p> <p>accompanying 19871:22</p> <p>account 19904:14</p> <p>accurate 19726:10 19785:20</p> <p>accurately 19922:15</p> <p>accuse 19763:1</p> <p>achieved 19905:16,18</p> <p>act 19761:1,2,3,4 19832:21 19841:4 19842:1 19843:15 19885:3 19922:8</p> <p>acted 19868:11</p> <p>acting 19728:23 19732:25 19813:23</p> <p>action 19736:8 19747:15 19815:21 19825:8,13 19830:17 19831:22 19833:7 19839:18 19840:16 19840:25 19841:18 19923:23</p> <p>actions 19771:15 19803:25</p> <p>active 19920:14</p> <p>actual 19731:20 19739:4</p> <p>add 19730:12,12,14 19757:1,3 19759:20 19768:21</p> <p>added 19808:8</p> <p>addisionele 19741:20</p> <p>addition 19745:2,9,11</p> <p>additional 19744:14 19745:4,4,12,13 19760:6 19761:11 19803:3</p> <p>address 19717:12,24 19755:18 19779:10 19779:12,13 19797:2 19801:9 19816:4</p> <p>addressed 19719:18 19720:2,3 19727:6 19923:22</p> <p>addressing 19717:20 19818:11 19820:13</p> <p>adequate 19724:4 19752:20 19753:3 19759:19 19763:19</p> <p>adjourn 19923:18</p>	<p>19929:11</p> <p>ADJOURNED</p> <p>19929:13</p> <p>adjournment 19776:8 19777:15,20 19778:20 19849:23 19849:23 19853:4,14 19853:18,19 19923:16</p> <p>ADJOURNS 19752:2 19778:21 19850:1 19899:10</p> <p>adjutant 19833:19 19883:11</p> <p>adjutant-offisier 19826:5</p> <p>admittedly 19904:20</p> <p>adopted 19760:16 19925:24,25</p> <p>adopting 19719:16</p> <p>ADRIAAN 19850:4 19899:13</p> <p>Adv 19776:16 19794:23 19797:1</p> <p>advance 19751:8 19758:4 19759:3 19783:24 19802:22</p> <p>advancing 19750:15,16 19750:17,20 19865:2</p> <p>advisability 19885:17</p> <p>advisably 19784:3</p> <p>advised 19903:23</p> <p>advisedly 19847:16</p> <p>advising 19904:5</p> <p>Advocate 19744:10</p> <p>advokaat 19775:25 19803:9 19818:3 19916:9</p> <p>advokate 19766:4</p> <p>aeroplane 19864:22</p> <p>af 19731:13 19748:24 19760:10 19761:20 19807:20,21,22 19815:6 19816:4 19817:10,16 19826:2 19828:4 19831:5 19835:6 19844:5 19867:4,7 19877:14 19888:24 19908:1 19909:23 19911:17 19912:8,23 19914:11 19917:21 19920:6 19926:17,17 19928:18</p> <p>affidavit 19711:10 19721:14 19898:20 19901:25 19906:10</p> <p>afgaan 19801:6</p> <p>afgedwing 19721:4,6 19721:11</p> <p>afgeforseer 19720:25</p> <p>afgehandel 19878:12</p> <p>afgehang 19812:10</p> <p>afleiding 19774:23</p> <p>afleidings 19774:20</p> <p>afraid 19716:8</p>	<p>19797:15 19819:20 19820:6</p> <p>Africa 19715:16 19775:7 19785:8 19921:19</p> <p>African 19773:6 19890:6</p> <p>Afrikaans 19862:9</p> <p>afspeel 19812:10 19828:6 19829:21</p> <p>afstande 19878:25</p> <p>afternoon 19726:14 19792:14 19793:7 19798:1 19799:1 19803:2 19836:3 19919:7</p> <p>afwesigheid 19889:4</p> <p>ag 19761:16 19850:24 19912:2,23 19923:14</p> <p>ago 19786:10,11</p> <p>agree 19712:2 19716:18 19719:14 19720:3 19721:21,25 19721:25 19722:4,12 19722:16,25 19730:6 19731:6 19732:17 19733:22 19734:6,15 19735:2 19746:16,25 19749:24 19752:13 19752:25 19753:10 19754:13 19755:1,19 19756:4,12 19759:9 19760:7,15 19761:13 19761:18 19762:15 19764:9 19766:11 19770:11 19771:15 19772:16,25 19773:11 19784:11 19784:16,18 19785:20 19789:10 19791:19 19810:7 19814:3 19840:1 19846:20 19847:15 19850:11 19852:6 19870:18 19874:3,8 19874:22 19882:19 19905:21 19916:6 19926:22,25 19927:1 19927:19</p> <p>agreed 19737:24 19739:1,24 19740:3 19752:24 19781:21 19802:11 19808:2 19812:6 19823:5 19840:4 19846:12 19861:4 19879:21 19898:11 19907:18</p> <p>agreeing 19736:14</p> <p>agreement 19740:17 19772:17,22,22,23,24 19773:12,15 19798:16 19869:1</p> <p>agrees 19730:4 19759:1 19760:1 19772:20 19862:12</p> <p>agter 19741:19 19781:5</p>	<p>19855:12 19864:6,11</p> <p>aim 19787:24</p> <p>air 19718:14 19878:5 19885:6 19890:6</p> <p>aksie 19822:20</p> <p>aksies 19806:4</p> <p>al 19740:19 19766:10 19770:23 19777:1 19782:23 19799:7 19802:12 19803:8 19804:24 19806:4 19815:1 19824:5,21 19837:12 19867:1 19871:9 19872:15,18 19877:14 19879:4 19885:24 19897:9,23 19920:5</p> <p>algemeen 19827:16</p> <p>algemene 19784:22 19805:15</p> <p>alive 19874:12 19879:19 19883:25</p> <p>alle 19801:16 19890:11 19928:18</p> <p>allegedly 19756:20</p> <p>alleging 19871:23</p> <p>alles 19906:2</p> <p>allocation 19876:25</p> <p>allow 19773:14 19850:12 19881:12 19881:22 19911:23</p> <p>allowed 19812:16 19817:13 19831:24 19928:9</p> <p>allowing 19896:8</p> <p>almal 19721:2 19753:6 19774:19 19775:23 19775:24 19802:14</p> <p>alreeds 19871:11</p> <p>alright 19723:3,9 19728:21 19729:2 19732:9 19745:18 19764:2 19773:3 19783:9 19784:24 19790:3,8,12,14 19795:22 19801:23 19821:15 19829:8 19832:19 19833:10 19845:13 19847:11 19871:19 19878:13 19888:1 19899:4 19927:10</p> <p>alternatively 19713:16 19783:23</p> <p>altwee 19872:16 19883:12</p> <p>altyd 19748:23 19775:3 19828:7 19897:22</p> <p>ambiguous 19819:9</p> <p>AMCU 19797:9</p> <p>amount 19743:10 19755:11,18 19773:18 19827:3</p> <p>amounted 19796:17</p> <p>amper 19774:10 19777:17 19778:2</p>

ample 19845:25	19731:10 19757:18	19900:13,20	aspect 19738:21	19756:2,24,25,25
amplification 19773:23	19770:24 19799:9	19923:13,14 19924:7	19798:7	19758:12,13,14
19808:10	19801:3,21 19802:13	areas 19902:25	aspects 19730:7	19763:6 19765:5,13
amplify 19821:8	19804:8 19809:8	19921:2	aspek 19844:7	19770:2 19808:20,22
analyse 19735:6	19822:15 19827:10	aren't 19756:18	asseblief 19821:14	19809:3 19810:1
analysing 19787:18	19832:23 19843:13	19772:24	assemble 19841:9	19856:14 19878:4
analysis 19751:6,9	19843:19 19852:15	arguably 19921:19	19858:3	19891:22 19894:9
19768:11,12,22,25	19866:20 19890:12	argue 19715:10	assembled 19717:12	avoid 19762:12
19769:1,15,15	19921:22	19729:16 19754:22	assessment 19719:3	19785:14 19790:18
analyst 19785:9	anxious 19721:18	19757:25 19758:23	assist 19841:25	19790:19 19853:21
ander 19731:13	anybody 19735:23	19781:15 19801:25	assistance 19894:2,3	19926:23
19740:13 19747:15	19819:5	19802:9 19880:20	assistant 19900:23	await 19724:17
19756:9 19760:13	anymore 19779:15	19883:3,3 19884:6,20	19902:2	aware 19713:15,16,20
19766:10 19782:24	19899:16	19904:15,23,24	assisted 19854:6	19714:23 19717:11
19792:9,9,10	anyway 19732:24	19912:10 19914:7,8	assisting 19847:24	19730:19 19740:4
19818:13 19822:14	19769:16 19784:1	19917:13 19918:9	19849:13	19755:8,17 19762:25
19824:21 19842:18	19819:17 19853:22	19922:21	assume 19805:5	19763:14 19772:9
19843:17 19864:17	19866:6 19871:19	argument 19758:4,25	19811:3 19889:5,7	19773:6 19779:22
19867:1 19871:13	19880:17 19882:18	19759:3 19771:19	19906:14	19784:9 19789:23
19872:11 19925:2	19886:23 19906:22	19802:22 19888:2	assuming 19805:21	19790:25 19791:9,17
anders 19824:7	19917:7	arises 19853:5	19815:15 19843:7	19792:15 19797:20
anderste 19817:7	apart 19858:25	armed 19734:3,3	assumption 19904:19	19797:21,23
angles 19883:19	19870:15	19841:6 19873:3	assure 19860:24	19800:25 19803:1
Annandale 19726:24	apartheid 19711:25	arms 19813:2,4,22	attack 19750:16,20,21	19828:14 19839:6,7
19755:5 19797:3	19712:11 19716:12	19841:10,13,15,18	19751:9 19900:7	19863:21 19869:14
19801:10 19807:7	19833:14,18	19842:7 19843:8,21	attempt 19836:11	19869:17 19870:11
19810:22 19811:6	19834:23 19835:3	19906:12 19907:20	attempting 19734:5	19873:2 19897:5
19898:7 19916:24	apartheidsjare	19910:9 19911:24	attempts 19755:10	19900:12 19903:14
19917:2,18,24	19712:19 19716:22	arose 19828:11	19844:13	19903:14 19907:11
19918:5,12,18	19716:24	arres 19801:19	attend 19726:5 19853:4	19907:16 19908:18
19919:10,17	apologise 19752:5	arrest 19797:12	attendance 19893:23	19908:21,22
19920:19 19921:15	apology 19752:5	19851:22	attended 19793:14	awareness 19908:20
19921:16,16	apparent 19724:3	arrestasie 19852:1,3	19853:15	
Annandale's 19726:19	19787:22	arrestasies 19816:7	attention 19718:1	B
answer 19717:25	apparently 19742:4	arrested 19851:11,13	19848:18,21	back 19732:17 19733:6
19718:3,18 19719:9	19747:9 19754:25	arresteer 19816:9	19875:10 19876:5	19741:25 19742:20
19724:14,18 19734:2	19892:23	arrived 19727:15	19895:6	19743:2,17 19744:6
19740:15 19753:14	appear 19723:25	19833:25 19916:24	Attentive 19777:22	19744:15 19745:5,13
19755:16 19757:10	19728:16 19736:23	arrives 19829:4	attitude 19715:6	19750:13 19752:4
19759:6 19760:22	19742:5 19763:4	article 19785:2	19719:13,17	19756:21 19765:10
19761:8 19767:10	appearance 19719:1	asem 19909:22	19729:19 19766:20	19798:2 19813:2,5,18
19775:18 19777:23	appears 19755:24	aside 19805:19,21	19925:25	19813:20,22,24
19789:24 19796:17	applies 19775:6,6,7	19879:7	attraction 19748:19	19816:20 19825:14
19797:20,24,25	apply 19755:14	asked 19736:16	19751:5,6,7,16	19849:1 19852:9
19798:15 19799:13	applying 19828:25	19745:4,13 19770:8	audible 19861:3	19854:23 19859:24
19800:11,13,21,22	appreciate 19724:13	19787:13 19788:5,22	audio 19765:10	19859:25 19861:4
19802:3,5,25 19803:3	19776:9,13 19820:2	19789:21,22	19769:19,25	19864:1 19865:5,18
19816:16 19819:13	19838:10 19928:10	19791:15 19797:19	August 19893:3,10	19866:1,9,13,14,16
19828:16 19847:22	approaching 19816:19	19798:14,21	19895:7	19866:23 19867:11
19854:21 19866:22	appropriate 19714:23	19800:23,24	authoritarian 19717:22	19870:16 19871:4,7
19873:12 19874:21	19719:6 19724:16	19822:11 19823:1	19717:25 19718:13	19880:23 19904:9
19874:22 19925:19	19759:5 19767:16,18	19841:15 19859:24	19718:22 19719:2,13	19906:20 19907:10
19926:5 19927:11	19838:4 19852:17	19889:15 19894:2,2,3	19719:17,19,25	19907:19 19910:9
19928:10	appropriately	19895:2 19896:12	authoritative 19719:22	19914:8 19916:16
answered 19754:17	19732:15 19761:4	19907:2 19915:15	authorities 19720:1	19923:3,5 19924:17
19797:18 19837:7	approved 19738:19	19926:5	authority 19719:22	background 19844:13
19838:11	approximately 19915:4	asking 19711:9	19806:13,20,21,22	19913:15
answering 19800:1	approximation	19738:18 19753:17	19809:16 19813:23	backs 19867:14
answers 19711:13,16	19745:19	19758:24 19791:15	19815:15 19825:9	bad 19711:22 19874:21
19721:19 19749:23	apropos 19826:24	19809:10 19832:24	19831:19	19881:25
19783:11	19883:24	19834:17 19848:8	automatons 19826:8	baie 19720:15
antagonism 19734:14	area 19738:13	19865:12 19869:23	avail 19806:22	19721:10 19760:9
anticipate 19723:10	19756:22,22	19908:18 19915:1	available 19738:10	19778:18 19804:25
19835:13,21	19793:10 19877:11	asook 19749:1 19777:4	19742:11,12,14,19	19886:10 19909:20
anticipated 19798:22	19877:15 19878:15	19782:13 19801:6	19743:3,4,7,12,17,22	19912:4
antwoord 19725:23	19878:23 19894:8,9	19803:9 19894:10	19744:24 19745:5	baken 19879:2

baklei 19737:9	beplanning 19799:5	better 19856:18	19894:6 19914:14	broadly 19780:23
barbed 19734:25	19887:5 19889:4	19893:1	blame 19851:7,8	broken 19853:3
19735:25	19918:24,25	betwis 19860:7	19882:5	brought 19742:14,18
bare 19843:24	beplannings 19804:5	19862:10 19902:7	blaming 19885:1	19848:18,20
barrier 19735:9,9	beplanning 19924:22	beveilig 19912:9	blindelings 19781:7	brug 19862:5,6
19736:17 19737:12	bereik 19867:7	bevel 19754:11	blindly 19783:15	19863:16 19905:4
19749:18	berig 19786:17	bevelvoerder 19720:18	block 19847:12	brutale 19781:6
based 19722:23	berigte 19784:19	19728:18 19804:7,17	blocked 19863:24,24	buck 19810:9,11
19753:14 19760:4	beseer 19910:16	19804:19 19805:2,17	blocking 19859:23	budgeted 19755:12
19763:5 19920:15	besig 19867:7 19868:6	19806:2,4,6 19808:25	blok 19860:13	building 19741:24
19927:12	19872:16 19924:6	19809:5 19824:11	blow 19741:24 19909:9	19847:12,12
basically 19797:22	beskerm 19844:9	19826:5 19827:24	19909:9,11,11	19848:10 19869:25
19807:15 19808:9	beskermingsmaatreël	19829:20 19832:18	bluntly 19886:23	buite 19789:13
19810:17 19924:15	19736:5	19833:4 19835:8	bly 19801:21 19804:24	bullet 19713:10
basis 19726:4 19848:2	beskikbaar 19721:9	19919:2	19806:4	bullets 19742:11,14
19874:16,18	19799:4 19809:24	bevelvoerders 19754:9	bo 19863:2 19864:7	19743:1,7,12,20,20
bastards 19713:9	19872:14,18 19893:7	19766:5 19768:9	19867:2	19743:21,21 19744:4
beamptes 19872:6	beskikking 19720:24	19799:7 19821:24	board 19816:19	19744:6,12,24
bearing 19860:18	19812:20 19814:22	19822:16,17	19817:22 19897:1,14	19745:9,23,25
becoming 19785:8	19817:1 19852:24	19827:25 19928:16	19897:25 19898:10	bundel 19891:10
19803:1	19872:11	bevestig 19923:8	bone 19911:22	19895:15
bedoel 19712:4	beskryf 19894:7,11	bevordering 19717:3	boodskap 19750:12	bundle 19830:8
19761:21,23,24	19913:5	bevorderings 19774:5	19789:12 19842:19	19853:11 19889:23
19797:7 19810:11	beskrywing 19811:16	beweeg 19748:24	19867:16 19926:12	19898:20
19829:18,21	19913:7	19750:5,7,11	Booi 19860:20	busy 19711:9 19749:10
19860:10 19888:9	beslis 19775:4 19799:2	19757:19,21	booth 19824:15	19749:18 19755:17
19903:17 19905:7,9	19806:17 19814:17	19823:24 19824:13	bord 19816:24 19817:8	19771:4 19793:18
19912:14 19927:25	19816:9 19817:3	19828:8 19864:9,10	19898:4	19816:12 19819:23
19928:15	19864:4 19871:16	19867:8 19868:19,22	bosses 19922:5	19820:9,15 19846:10
bedoeling 19816:8	besluit 19794:10	19871:1,18 19905:3,5	Botes 19849:5	19899:20 19902:12
beduie 19855:18	19802:19 19814:18	19905:12 19914:11	19888:23 19896:10	byeenkoms 19815:4
19877:4	19814:19 19844:5	bewegingspunt	19896:20 19897:3,16	19824:12 19840:19
befitting 19712:6	19849:9 19913:3,25	19748:23	19898:9,22 19899:19	19842:3
beg 19771:3	19914:18 19916:11	bewus 19740:9,12	19899:25 19901:16	bygevoeg 19728:15
begging 19822:22	besluite 19740:12	19752:16 19754:8	19901:25 19902:3,20	bygewoon 19720:19
beginsel 19775:4	19850:25 19889:1	19756:7 19757:20	19903:4,15 19914:20	19746:4 19794:9
behalf 19773:6	19913:24	19764:22 19772:11	bother 19913:15	19917:24
behaviour 19712:13	bespreek 19735:20	19791:11 19792:4,6	bottom 19903:20	bymekaar 19764:22
19911:10 19913:13	19736:4 19737:7	19792:12 19833:22	bo-op 19862:6	19815:7
beheer 19724:22,25	19740:19 19746:5	19855:11,19	19863:16 19905:4	bystaan 19918:23
19806:7	19772:7 19791:13	19857:11 19859:19	brand 19817:5	bystand 19834:10
behels 19801:14	19794:11 19797:12	19870:14 19925:6	breach 19846:14	19836:24 19838:16
behoort 19850:24	19799:5 19824:23	bewysstuknommer	19884:17	byvoeg 19728:20
bekend 19787:6,9	19837:13 19849:10	19750:3	break 19751:22,24	byvoorbeeld 19818:14
19838:15,16 19851:3	19910:14 19912:3	beïnvloed 19926:19	19752:1 19840:14	19879:2
19860:8,11 19867:17	19914:5,6 19920:5	bietjie 19814:21	breakaway 19903:1,13	bêre 19777:9
19914:3	19928:20 19929:7	big 19720:10 19741:22	19903:18,22 19904:3	
Beker 19824:11	bespreking 19768:13	19803:20 19804:14	19904:6 19905:7	C
19918:1	best 19811:12 19868:25	19805:15,23 19806:3	breaking 19900:3	Calitz's 19796:17
beklee 19774:7	19886:16 19894:4	19816:19 19878:14	Breathed 19718:13	call 19743:13 19744:12
belabour 19801:24	bestaan 19741:1	biggest 19921:18	brei 19831:1	19790:12,22 19797:4
19917:11 19921:10	19766:7	binne 19824:15	brick 19848:10	19801:11 19810:18
belange 19910:15	beste 19782:14 19844:6	19876:21 19887:8	bridge 19862:15,17,20	19821:18 19838:22
belangrik 19787:2	19921:6	bit 19718:15 19722:16	19863:1,8,13 19865:4	19875:12 19876:4
belangrikste 19775:24	bestuur 19856:7	19736:15 19742:16	brief 19821:23 19824:3	19908:10 19910:12
Belgium 19775:6,8	beswyk 19910:17	19744:16 19777:11	19918:13	called 19784:11
believe 19729:23	beteken 19741:17	19780:14 19783:24	briefed 19822:11	19796:22 19812:15
19792:19 19913:10	betoging 19814:16	19814:2 19818:24	briefing 19724:4	19833:15 19886:25
belofte 19778:3	betref 19712:20	19847:9 19880:14	19752:20,25 19753:3	calls 19785:17
beneficial 19715:18	19733:8,15 19756:9	19881:16 19891:18	19753:4,5 19766:9	19833:14
beneficiary 19838:24	19774:17,21	19891:24	19822:5,10	camera 19875:4,5
benefit 19715:24	19801:21 19815:5	Bizos's 19723:11	briefings 19804:2	cameras 19848:4,15,17
19752:1 19800:20	betrokke 19712:17	19775:5,19	Brits 19786:11 19787:8	19848:24 19875:6
19927:12,22	19738:3 19760:12	Blaauw 19870:3,3	19788:3	canvas 19884:4
19928:17	19843:14 19893:13	19903:23 19911:5	broad 19780:14	19885:16
benodig 19897:10	19897:9 19920:1	bladsy 19722:8	19783:16 19857:15	canvassed 19884:4

<p>19885:18 canvassing 19865:17 can't 19714:18 19741:23 19763:9 19788:16 19802:4 19824:24 19826:13 19854:12 19859:17 19859:25 19860:5 19861:6,9 19862:10 19864:2 19865:11 19896:25 19915:4 19922:22 capitulate 19924:16 Captain 19727:19 cards 19917:12 careful 19851:9 carefully 1998:21 carried 19732:1 19887:19 carry 19784:1 19822:23 19841:16 19873:3 19881:16,18 19882:3,16 carrying 19842:6,7 19843:9 19855:1 19907:20 cascades 19826:25 case 19715:11 19745:1 19751:15 19763:13 19844:16 19851:10 19851:12 19885:1 19897:16 19898:18 catch 19845:21 category 19758:17 cause 19756:16,23 19866:5 caution 19895:12 19896:6,8 CCTV 19848:15,17,24 19849:18 19853:25 19855:9 19857:10 19860:4,11 19861:15 19862:18 19872:2 19873:6 19875:4,6 19879:22 19884:10 19886:8,17 19887:7 19888:16 19894:10 cell 19711:3 19897:2 19898:9 centre 19752:12 19876:20 19878:19 19886:1 Centurion 19795:5 certain 19719:1 19722:23 19723:5 19771:10 19773:10 19808:7 19810:19 19819:9 19829:12 19844:15 19899:24 19916:3 certainly 19743:24 19793:21 19802:7 19896:12 19922:21 chair 19715:22 19729:12 19745:17 19751:14,20</p>	<p>19754:16 19765:16 19768:20 19769:19 19790:6 19798:2 19818:21 19860:17 19880:2 19881:1 19890:16 19895:19 chairing 19918:18 chairman 19711:8 19717:19 19718:4,19 19718:24 19723:16 19723:24 19724:18 19729:4,8,17 19739:2 19742:24 19743:5 19744:9 19754:21,24 19757:5 19758:20 19760:3 19762:13 19763:11,18 19764:4 19769:22 19770:7 19773:2 19775:14 19810:23 19869:22 19870:10 19874:14 19874:15 19896:13 19918:7 19925:16 Chairperson's 19782:5 challenges 19896:11 chance 19720:13 change 19791:25 19818:1 channel 19822:8 chaos 19829:7,11 character 19920:17 19921:14 charge 19724:1 19727:10,13 19728:9 19728:11,17,17 19729:14 19756:3 19767:10 19803:18 19804:13 Chaskalson 19744:18 19765:9 19768:20 19769:24 19853:1 19892:21 19893:1,2 checking 19923:20 chief 19795:16,18 19802:3 19804:14 19805:15,23 19806:3 19810:24 19918:1,6 Chilwane 19917:2 chopped 19881:4,9 chopper 19903:9 circled 19880:18 circles 19878:15 circuit 19848:4 circumstances 19761:8 19812:16 19837:8 19838:22 19844:15 Circumstantial 19787:23 citizens 19789:9 City 19886:4,5,6 civilians 19897:15 CJOC 19803:22 19804:24 19805:6,19 19805:20,22 clarify 19776:23 clear 19752:25</p>	<p>19794:13 19837:6 clearly 19744:3 19798:8 19802:5 19822:1 19828:25 19836:12 19851:15 close 19848:4 19860:24 closing 19816:17 coin 19832:3,8 19856:12,17 19902:19 19911:16 coincidence 19757:5,12 19757:16,17,25 coincidences 19757:14 19758:17,20 collected 19781:25 collusion 19902:16 Colonel 19731:23 19735:17 19738:7,19 19739:4,23 19740:7 19793:9,9 19808:11 19828:12 19830:11 19889:25 19900:22 19901:9 19902:2 19909:7 19910:8 19918:13 columns 19788:17 come 19760:3 19812:25 19813:18,20 19823:14,15 19825:14 19852:9 19860:17 19867:10 19879:16 19914:8 19918:13 19924:17 comes 19769:14 19793:13 19803:3 19829:10 19876:6 comfort 19751:22,24 19752:1 comfortable 19778:17 19781:17 coming 19788:23 19854:23 19871:6 19874:16 command 19719:18 19752:9,22,24 19753:23,25 19754:20 19803:24 19821:23,25 19822:2 19824:4 19832:21 19917:18 commanded 19752:23 commander 19723:25 19728:16 19729:13 19791:17 19803:14 19803:18,19,19,23 19804:1,1,14,19 19805:12,23 19806:14 19811:2,13 19820:21 19828:17 19829:2,5 19830:21 19831:18 19832:13 19832:25 19835:12 19837:9,25 19858:23 19888:3 19892:1 19921:3,19 19924:12 commanders 19738:11</p>	<p>19738:11 19753:5,7 19764:7 19765:25 19766:1 19768:4,8 19822:3 19824:4,18 19825:6,23 commands 19806:20 19806:20,21 commence 19776:20 commenced 19837:16 commendable 19730:24 comment 19759:3 19769:16 19788:7 19789:3 19917:19 19919:21 comments 19723:5 commission 19711:2 19715:19 19719:3 19752:2,2 19765:1,2 19766:22 19769:5 19770:12 19778:21 19778:21,22 19779:23 19780:14 19780:19 19781:24 19783:1,3,14 19784:9 19788:9 19789:18,20 19791:21 19800:21 19802:9 19850:1,1,2 19899:10,10,11 19913:10 19925:24 19929:13 commissioner 19725:14 19760:25 19767:13,14 19776:22 19777:5 19792:24,25 19796:6 19798:5,12 19800:5 19811:8 19825:21 19885:19 19919:9 Commissioner's 19793:25 common 19755:6 19756:16,23 19866:4 Commotion 19847:25 communicate 19821:25 19850:10 communicated 19726:10,11 19731:25 19793:8 19796:7 19800:7,8 19810:20 19825:3 communication 19822:8 19865:23 19903:9 communications 19754:25 19755:16 community 19913:12 compiled 19893:9 complete 19746:8 19763:19 19922:2 completely 19751:19 19755:23 19756:21 19783:13 19788:21 19856:13 completion 19898:1 19899:21</p>	<p>complex 19819:23 complicated 19835:25 complied 19770:4 19884:7 19907:3 compromise 19786:2 computer 19738:10 concede 19728:13 conceded 19728:1 19839:23 19889:8 concept 19751:19 concepts 19711:14 19751:17 concern 19867:20 concerned 19719:9 19724:13 19725:6 19727:10 19731:20 19739:25 19751:16 19784:6 19805:8 19812:2 19816:16 19820:4 19840:2 19844:20,21 19900:6 19920:20 concessions 19733:12 conclusion 19760:2 19772:1 19874:16 conclusions 19731:7,8 concurring 19882:12 19882:17 conditions 19843:16 conduct 19720:3 19731:3 confident 19765:6 confirm 19765:12 19803:13 19925:13 confirmed 19784:16 19789:8 19848:12 confirming 19798:11 conflict 19839:7 19840:1,2,6 19842:8 19842:9,13 19845:2 19850:9,14,20 confrontational 19760:7,16 confronted 19787:24 confusing 19805:9 confusion 19762:12 congratulatory 19926:24 consecutively 19828:16 19828:21 consequences 19791:24 19839:3 19840:4 19845:10 19846:14 19876:10 19913:12 consequently 19900:13 19900:21 consider 19724:16 19737:1 19821:9 19828:18 considerably 19763:8 considered 19735:2 19736:23,24 19737:14,19,24 19743:9 19840:16,25 consistent 19798:10 consistently 19924:14</p>
--	---	---	--	---

<p>constable 19827:12 19830:23 19832:13 constant 19771:13 constitution 19714:20 19715:17 19716:14 constitutional 19838:20 19841:8,10 19845:3 19846:14 consult 19815:23 consultation 19726:25 consulting 19825:13 contact 19815:23 contacted 19815:14,20 19903:4 contacts 19897:14 contain 19819:7 19897:15 CONTD 19850:7 19899:17 contemporaneous 19895:10 contend 19729:13 contended 19847:2 contending 19811:22 19880:19 contends 19749:19 content 19718:20 19830:2 contention 19734:2 19884:13 19885:8,11 19887:17 19889:6 19910:24 19911:22 19915:25 contents 19711:10 context 19818:24 19846:13 19904:9 19914:9 19915:9 contingency 19797:4,8 19797:17 19799:21 19801:4,11,15 contingent 19903:21 19904:21 19905:22 19906:16 continue 19750:19 19752:7 19766:25 19881:12 continued 19840:15,22 19840:24 contract 19856:20 contradict 19774:1 contributions 19916:4 control 19728:23 19752:10 19859:9 19898:11 controversy 19713:21 19790:21 conveyed 19761:6 19808:5 cooperation 19887:21 19889:9,10,14 coordinate 19728:3 coordinating 19820:21 19821:17 coordination 19728:2 19821:16 19823:4,16 19825:1,10 19829:7</p>	<p>19829:15 coordinator 19729:14 19823:12 19837:3 corner 19919:18 corollary 19831:16 corrected 19784:16 19786:13 19789:8 correctly 19714:21 19728:5 19744:7 19758:9 19807:16 19833:12 19862:22 19915:1 19916:24 19921:10 19922:23 correctness 19716:16 cost 19755:11,18 couldn't 19728:3 19733:13 19741:25 19742:2 19761:2,3 19827:4 19829:14 19830:22 19831:17 19831:22 19832:12 19862:17 counsel 19713:13 country 19755:15 19780:23 19789:10 couple 19786:11 course 19730:16 19732:10 19741:6 19745:11 19753:14 19758:6 19765:1,7 19770:7 19780:22 19806:10 19818:1 19828:10 19837:25 19876:10 19880:20 19883:8 19885:9 19905:20 19906:12 19906:18,18 19908:18 19909:12 19911:20 19922:10 19922:10 cover 19716:2 covered 19730:10 19759:13 19838:6 19871:6 19915:25 19927:3 covers 19914:16 create 19736:17 19758:1,8 crime 19714:19 19890:4 criminal 19716:4 criminals 19714:20 critical 19723:5 19752:21 19788:6 19925:25 criticise 19759:19 19927:18 criticising 19733:19 criticism 19713:20 19724:8 19725:8 19727:5,5 19730:15 19730:21 19732:12 19806:23 criticisms 19731:3 cross 19776:20 cross-examination</p>	<p>19721:19 19723:11 19752:7 19779:1,4 19780:7 19781:16 19783:16 19784:6 19820:2 19822:24 19838:8 19840:11 19850:7 19898:18,19 19899:17 cross-examined 19927:4 crowd 19731:14 19732:13 19734:25 19747:8 19751:17,19 19761:12,16,22 19771:11,12 19774:10,22 19797:10 crowds 19747:12 19833:21 crucial 19755:24 culpability 19727:12 customary 19731:1 cut 19721:22,23 19730:24 19758:15 C-R-E-T-E 19724:8</p> <hr/> <p style="text-align: center;">D</p> <p>D 19802:25 19803:4,8 daai 19762:7 19888:19 19888:22 daaraan 19872:10 daarby 19754:12 19774:16 19888:9 19912:14 daarmee 19756:10 19771:20 19805:3 19809:18 19864:13 19870:20 19907:13 19926:14 daarna 19720:17 19750:1 19753:5 19762:22 19794:11 19794:24 19797:1 19801:13 19835:1 19855:17 19861:20 19928:21 daarom 19749:3 19774:14 19834:9 19871:16 daaroor 19794:23 19835:17 19896:22 19912:22 19913:21 daarop 19801:7 19802:13 19818:4 19822:20,20 19926:16 daarvan 19713:25 19716:24 19717:6 19746:10 19752:17 19764:13 19792:6,12 19796:12 19799:15 19803:10 19833:22 19859:19 19863:18 19918:20 daarvolgens 19774:20 daarvoor 19757:22</p>	<p>19836:22 19847:6 19897:11 19898:4 daar's 19802:13,15 19805:2 19836:21,22 dadelik 19867:6 19868:15 dae 19721:3 19760:11 dag 19720:22,24 19721:5,7,9,10 19725:25 19741:10 19741:20 19742:9 19749:2 19750:9 19756:11 19760:10 19760:17 19768:4 19775:22,25 19805:14 19807:2 19812:10 19814:8 19815:9 19817:2,4 19834:7,8,10,11 19874:1,2 19889:2 19892:16 19895:3 19902:9 19912:20 19914:19 19921:7 19925:5 dalk 19712:8 19719:23 19725:25 19747:13 19774:19 19778:9 19892:14 19920:6 19928:20 danger 19857:17 19858:11 19870:17 19870:22 dangerous 19791:18 19813:6 19844:23 19855:2 19870:16 19875:12 dank 19775:25 dankie 19711:5 19714:6,8 19720:15 19724:19 19762:11 19778:9,18,24 19781:19 19826:23 19832:6 19850:4 19852:19 19884:1 19887:24 19892:19 19893:4 19899:13 19929:12 date 19893:2 datum 19791:12 day 19717:12 19719:2 19741:7 19760:23 19761:2 19795:18 19798:9,12 19802:25 19803:5,8 19807:5,10 19836:19 19873:14 19918:6 days 19717:14,16 19767:7 19786:10,11 19796:23 de 19773:6 19809:16 dead 19715:14 deal 19718:25 19719:14 19721:25 19723:12 19724:10 19730:17 19731:25 19746:13 19755:10</p>	<p>19759:4 19762:9 19763:9 19767:25 19780:6 19782:4 19789:19 19811:11 19875:15 19885:9,12 19898:17 19899:20 19908:11 19915:19 19919:13 19928:25 dealing 19727:16 19730:16 19759:11 19840:3 deals 19723:4 19730:4 19788:7 19898:22 19915:11 dealt 19718:25 19730:18 19734:19 19734:23 19752:18 19778:11 19803:14 19825:4 19884:12 19915:23 19916:5,21 19929:1 death 19844:15 deaths 19835:14,22 19844:12 19880:25 debate 19728:22 19750:18 19763:3 19871:4 19899:22 debated 19748:12,14 19750:14 19766:24 debriefing 19759:10,16 19765:11,24 19766:1 19766:21 19767:20 19767:22,23 19768:3 19768:6,10 debriefings 19764:6,9 19764:14 19765:21 19767:6 19768:5 19769:20 19770:1 decide 19719:7 19773:15 19788:8 19831:17 19851:20 decided 19820:15 decision 19724:2 19725:8,9 19726:9,13 19726:20,20 19735:8 19744:14 19759:15 19759:23 19767:14 19789:23 19790:4,22 19793:7,20,21 19794:2,11 19797:3,7 19798:25 19799:14 19801:10 19815:22 19830:20,23 19837:8 19891:22 19915:20 19918:12 19919:4,8 decisions 19889:14,14 19895:2 19898:24 decision/minuted 19792:15 decisive 19916:4 19921:17 declared 19802:24 declined 19870:1,3 deel 19737:13 19742:8 19794:8 19856:7 19868:1 19872:13</p>
---	---	---	--	---

<p>19918:19,21 19923:11 19924:1,3,8 19926:9 19928:22</p> <p>deeltjie 19858:21</p> <p>defence 19929:5</p> <p>defend 19759:19</p> <p>define 19751:17,18</p> <p>defined 19822:6</p> <p>definisie 19820:25,25</p> <p>definitely 19885:5 19918:17</p> <p>definitief 19775:24</p> <p>definitiewe 19919:1 19920:1</p> <p>definitive 19921:3</p> <p>degree 19879:16</p> <p>delaying 19827:3</p> <p>dele 19782:14</p> <p>delegate 19832:12</p> <p>deliberate 19757:17,18</p> <p>delivered 19718:24 19720:9</p> <p>delivery 19718:21 19788:2</p> <p>demand 19754:1</p> <p>demands 19813:3</p> <p>demilitarisation 19711:25 19712:12</p> <p>democratic 19712:6</p> <p>demokrasie 19717:1 19774:4</p> <p>demonstrate 19840:11 19845:14</p> <p>demonstrated 19828:18</p> <p>demonstration 19846:25 19847:8</p> <p>dependent 19716:11</p> <p>depending 19711:22 19783:11</p> <p>depicts 19927:13</p> <p>deployed 19820:22 19822:1 19830:19</p> <p>deployment 19734:24 19741:18 19753:15</p> <p>deputy 19712:25 19713:1,4,5,18,22 19811:2 19918:6</p> <p>descends 19723:3</p> <p>describe 19718:21 19779:11 19892:23</p> <p>described 19711:15 19808:6 19810:24 19839:24 19909:8 19911:9 19916:6 19917:15 19921:13 19922:3</p> <p>describing 19889:10</p> <p>description 19741:23 19785:20 19811:13</p> <p>designated 19803:25</p> <p>designed 19742:3</p> <p>desire 19730:24</p> <p>desires 19751:18</p> <p>despite 19818:7 19881:2,3</p>	<p>destination 19866:10</p> <p>detach 19852:6</p> <p>detail 19716:8 19720:22 19739:13 19739:13,15 19740:13 19822:7 19865:1,22,22 19869:22 19913:2</p> <p>detailed 19731:22 19822:4</p> <p>details 19783:19 19830:22 19863:22 19897:3 19928:11</p> <p>Detectives 19890:4</p> <p>determine 19918:14</p> <p>detrimental 19715:18 19716:4</p> <p>deur 19716:21 19717:4 19735:20 19747:5 19750:9 19772:14 19774:8 19787:8 19794:8 19799:3 19803:8 19807:19 19814:19 19817:6 19829:19 19834:11 19859:5 19869:3 19872:8 19886:20 19891:11 19893:14 19912:6</p> <p>deurbeweg 19816:2</p> <p>deurgaam 19770:23 19778:7 19816:8</p> <p>deurgee 19887:15 19913:3</p> <p>deurloop 19774:5</p> <p>deursoeking 19894:22</p> <p>deurtrap 19765:23</p> <p>develop 19736:15</p> <p>developed 19760:23</p> <p>developing 19900:14</p> <p>diaries 19752:16</p> <p>dictate 19832:9,12</p> <p>dictatorial 19712:2,5 19712:14 19715:6</p> <p>dictatorship 19712:6</p> <p>didn't 19726:5 19727:15,18,19 19728:4 19732:17 19738:9 19739:12 19742:16 19743:3 19755:7,7,8 19756:19 19756:23 19762:2,6 19762:13 19779:23 19784:4 19789:17 19793:3 19797:16 19806:22,22,24 19811:3,10 19813:18 19818:18 19819:1 19836:1,6 19845:21 19854:5,6 19855:6 19857:5,6 19889:14 19910:18 19911:8 19913:15 19922:24 19925:19</p> <p>died 19786:10 19881:5 19883:14,15</p>	<p>diefstal 19888:19</p> <p>dien 19736:5</p> <p>diens 19716:24</p> <p>dieselfde 19731:10 19741:19 19748:3 19775:23 19832:6 19843:13,18 19868:18 19875:24 19875:25 19888:21 19901:19 19902:8 19914:12</p> <p>difference 19719:21 19906:22 19910:8 19913:17</p> <p>differences 19868:24</p> <p>differensieer 19803:22</p> <p>different 19746:24 19749:4,7,19 19751:19 19837:21 19879:18 19880:10 19881:2 19902:21 19914:8 19917:9 19922:14,18 19926:2</p> <p>differently 19792:21 19868:12</p> <p>difficult 19733:21 19828:21 19878:16</p> <p>difficulties 19758:8</p> <p>ding 19843:15</p> <p>direct 19900:14 19908:8</p> <p>directed 19839:19 19870:2</p> <p>direction 19749:14,15 19750:17 19868:10 19900:5 19903:6,10</p> <p>directly 19730:17,18 19753:11 19792:19 19793:3 19865:24</p> <p>direk 19750:5 19822:15</p> <p>direkte 19807:19</p> <p>Dirk 19896:10 19898:9</p> <p>dis 19715:1 19757:17 19762:18 19777:17 19811:15 19814:18 19843:2 19846:21 19847:5 19849:1 19851:13,24 19852:2 19854:18 19855:9 19861:11 19862:1 19885:23 19886:21 19892:13 19894:6 19898:3,13 19902:22 19905:6</p> <p>disagree 19711:16 19722:5,8,13,15 19723:6 19731:8,16 19734:6,9,15 19746:17,20,25 19747:3,4 19748:5,10 19752:13,15 19753:1 19753:11,12 19754:13 19760:7,10 19760:20 19761:19 19762:16 19764:10</p>	<p>disagreeing 19889:6</p> <p>disagreement 19747:18 19747:21 19772:2,5 19911:11</p> <p>disagrees 19759:1 19760:1</p> <p>disallow 19874:23</p> <p>disarm 19796:9 19797:9,11 19800:10 19801:4 19906:21</p> <p>disarmament 19746:15 19796:8 19800:9</p> <p>disarmed 19868:4 19910:10</p> <p>disastrous 19839:3 19840:4 19845:9 19846:13</p> <p>disciplines 19890:3,3</p> <p>discovered 19763:17</p> <p>discrete 19724:7</p> <p>discretion 19811:12,20 19812:3,7,14 19816:21 19817:13 19817:25 19818:7 19820:15 19825:22 19826:1,25 19827:2,7 19827:13 19828:17 19829:2,13,14 19830:22</p> <p>discretionary 19813:5 19816:13</p> <p>discuss 19780:7</p> <p>discussed 19735:22 19736:2,17 19745:25 19767:19,21 19792:24 19793:21 19815:19 19921:17</p> <p>discussing 19820:15 19884:6</p> <p>discussion 19736:18,25 19737:3 19759:21 19894:14,16 19904:8 19904:15</p> <p>discussions 19794:15 19898:24 19922:12</p> <p>diskresie 19812:9 19817:1 19827:22 19828:4,6</p> <p>dismally 19845:15,21 19846:16 19847:3</p> <p>dismiss 19881:25</p> <p>dispersal 19746:15</p> <p>disperse 19734:5 19797:10 19828:2 19833:7</p> <p>dispersed 19751:17</p> <p>dispersing 19749:17 19831:18,23</p> <p>dispersion 19736:8 19747:15 19830:17 19830:18 19831:21 19833:7</p> <p>display 19734:12</p> <p>disposal 19743:8</p> <p>dispose 19765:7 19778:13</p>	<p>dispute 19755:8 19839:2,8 19859:17 19859:25 19860:6,22 19861:6,9,11 19862:11,18 19864:2</p> <p>disputes 19758:11</p> <p>disrespect 19759:6</p> <p>disrespectful 19757:2</p> <p>distance 19864:1</p> <p>distant 19770:20</p> <p>distinction 19790:15</p> <p>document 19729:22 19763:15 19765:3,5 19830:7 19889:22 19891:8 19892:9,22 19893:3,9,9 19899:8</p> <p>documentation 19762:24</p> <p>documented 19724:4 19752:19 19764:17</p> <p>documents 19772:4 19776:5 19777:21 19830:5 19853:10 19895:17 19898:16</p> <p>doel 19842:20,22 19844:8 19894:8</p> <p>doen 19768:10 19814:25 19817:7 19858:3 19868:21 19872:10 19894:21 19902:10 19918:25</p> <p>doesn't 19730:6 19736:23 19742:5 19767:24 19829:1 19865:10,15 19874:22</p> <p>Dog 19823:7,13,15</p> <p>dogmatically 19818:18</p> <p>doing 19831:17 19850:11 19882:14 19909:2 19915:1 19918:6</p> <p>dokument 19764:23 19778:7 19891:12 19892:13,14 19893:6</p> <p>dokumente 19766:10 19891:11</p> <p>Dollar 19886:3</p> <p>domestic 19851:5</p> <p>dood 19817:5 19827:22</p> <p>doodgaan 19817:4</p> <p>doodgekap 19913:6</p> <p>doppies 19928:19</p> <p>dossier 19726:3</p> <p>double 19798:14,16 19895:23</p> <p>dra 19725:4 19799:8 19842:20 19856:6</p> <p>draad 19720:23 19736:5 19737:8,9,11 19741:18,21 19797:13 19831:7 19833:5</p> <p>draai 19867:6</p> <p>drafted 19722:23</p> <p>drafting 19895:9</p>
--	--	---	--	--

19896:5 drastic 19837:5,8 draw 19718:1 19770:6 19790:18 19876:6 drawing 19876:5 drawn 19758:21 19895:5 dreigement 19858:17 19858:21 dreigemente 19749:1 19751:12 19817:5,7 19871:12 19913:25 drew 19875:10 drie 19760:11 19768:5 19817:2 drinking 19778:12 driving 19749:12,13,14 19749:15,17 19866:7 drop 19881:15 dryf 19801:19 due 19745:11 19752:5 19765:7 19770:7 19868:10 19880:20 19883:8 19885:9 19905:20 19922:10 dug 19733:4 dui 19817:6 duidelik 19750:12 19824:2 19842:17 19855:9 19864:5 19914:21 duidelikheid 19719:24 19842:18 duty 19852:10 19884:7 19884:17 19885:2 dying 19786:9 D-day 19896:20 D-I-S 19724:7	19887:5 19894:8 19896:18 19909:15 19909:17 19921:23 eenhede 19824:4,5 Eenheid 19835:6 Eenheidsbevelvoerder 19835:9 eenheidsbevelvoerders 19909:16 een-een 19770:22 eers 19792:6 19796:11 19801:22 19827:23 19831:6,9 19892:13 eerste 19716:20,23 19720:15 19721:2 19774:13,15 19777:3 19794:25 19797:12 19823:25 19834:8 19885:25 19911:15 19923:8 eerstens 19855:3 effect 19711:13 19836:8 19860:23 effectively 19785:11 19792:13 19808:15 19811:1 19831:19 19859:23 19888:4 19917:17 effects 19734:25 effek 19860:7 effektief 19835:6 effort 19922:5 egter 19829:18 19893:5 19903:17 eie 19712:15 19814:18 19829:20 19872:19 19877:13 19886:12 19888:17 19914:21 19914:23 eiendom 19844:9 eintlik 19890:14 either 19726:10 19740:5 19756:1 19784:16 19803:17 19809:14 19831:24 19845:14 19871:21 19883:18 19893:22 ekskuus 19725:19 19756:5 19787:15 19795:10 19895:24 19923:14 ek's 19803:8 elaborate 19830:20 elaborated 19737:18 19814:2 element 19798:7 elements 19798:3 eliminated 19868:10 elimination 19867:24 elk 19868:6 19872:2 elke 19722:9 19824:16 19829:20 19833:4 19887:5 embark 19869:15 emergency 19892:8 emosioneel 19909:20	emotional 19909:10 19910:19 emphasise 19789:15 empty 19809:12 enable 19777:15 encircle 19797:11 encourage 19821:10 encouraging 19778:19 ended 19802:3 endorsed 19793:2 endorsement 19790:23 19790:23,24 19791:3 19791:8,9 19792:15 19793:24 19794:14 19796:22 enforce 19844:14,18 engage 19733:13 19923:5 19924:14 19925:14,19 engaged 19923:6 19925:18 engagement 19876:7 19880:24 19881:8 engaging 19922:4 Engels 19787:9 19822:13 19868:3 enige 19712:17 19764:23 19794:10 19794:13 19802:16 19822:16,18 19824:19,20 19827:25 19833:21 19842:17 19868:16 19868:22 19870:23 19870:24 19871:14 19889:1 19897:8 enigiemand 19816:24 enigsins 19717:6 19794:18 enigste 19756:7 19766:8 19807:17 19887:13 enlighten 19781:24 enormous 19755:11 enquiry 19908:25 ensovoorts 19810:6 19871:1 19897:21 ensure 19762:14 19821:24 ensuring 19823:5 entangled 19865:1 entirely 19844:17 entities 19887:20 entitled 19718:21 19720:10 19881:24 entitles 19716:15 envisaged 19734:13 19759:16 envisages 19758:14 equipment 19730:9 19755:10 19756:1 19900:2,2 erect 19847:13 erken 19920:4 ernstig 19910:16 escorted 19907:19	19910:7,9 especially 19756:3 essential 19879:24 establish 19909:2 established 19771:9,18 19827:2 estimated 19900:3 etcetera 19754:18 19915:19 ETV 19846:1 eulogy 19926:23 evening 19792:23 19793:20,22 19796:6 19796:18 19800:6,11 19922:4 event 19759:11 19796:8 19800:8 19822:2 19835:11 19875:22 19902:19 19907:8,16 19908:8 19915:8 19924:11 events 19772:3 19900:6 Eventually 19903:4 everybody 19711:3 evidence 19719:8 19724:3,4 19725:10 19727:14 19728:5 19742:2,4,22 19744:11 19752:9,20 19755:5,19,24 19757:3 19759:14 19760:24 19763:18 19766:25 19781:25 19783:21,22 19787:23 19791:6 19792:18 19795:9,15 19796:5 19798:4,10 19798:24 19800:5 19802:1,16 19811:7 19812:23,24 19819:5 19836:1 19837:17 19844:16 19849:12 19854:13 19858:7,9 19859:15,20 19860:18,21,25,25 19861:7 19862:11 19866:12 19889:11 19891:10 19906:17 19907:5 19908:7,8,9 19912:11 19917:8 19919:9,16 19920:11 19922:9 evidence-in 19795:17 exact 19744:3 19910:7 19910:12 exactly 19716:3 19728:9 19784:3 19789:3,22 19791:17 19795:2 19818:17 19820:1 19848:7 19871:6 19877:9 19914:25 exaggerated 19720:7 exaggeration 19744:5 examination 19776:21 19802:3	examined 19764:17 example 19734:1 19784:8 19812:24 19823:7 19827:13 19828:11 19829:1,12 19829:23 19842:10 19842:10 19859:1 examples 19816:14 exceptions 19773:10 19782:8 excessively 19720:1 exculpate 19757:25 19758:7 exculpatory 19766:14 19766:23 excuse 19803:20 execute 19738:11 executed 19833:16 exercise 19733:14 19767:11,15 19771:22 19781:1 19806:22 19818:7 19820:14 19826:15 19829:14 exhibit 19711:10 19752:8 19766:12 19767:7,24 19768:13 19785:1 19808:8 19823:1 19829:24 19839:25 19895:21 19897:1,6,8 19898:20 exhibits 19776:5 19853:4 exist 19765:12,12 existed 19889:11 existing 19771:12 expect 19759:10 19769:16 19837:9 19905:17 expected 19760:5 19762:1 19765:18 19766:12 19823:8,9 19837:4 19850:22 19851:5 19919:14 19920:17 experience 19711:18 19711:21,22,22,24 19715:7,15,18 19716:1,3,11,15,20 19760:4 19833:13 experienced 19896:11 expert 19748:18 19772:10,17 19775:8 expertise 19722:24 experts 19774:1 19775:7,9 explain 19712:10 19715:23 19716:7 19795:9 19799:12 19803:12 19855:24 explained 19731:23 19736:19 19755:8 19822:9 explanation 19728:2 19796:21 explanations 19921:1
---	---	--	--	--

E

<p>Explore 19760:6 exploring 19761:9 express 19715:19 19775:8 expressed 19714:18 expresses 19721:21 expression 19716:2 19810:13 extend 19752:5 19889:15 extensive 19766:25 extensively 19927:4 extent 19718:25 19827:13 19863:25 extra 19727:15 19927:12 eye 19819:18 eyes 19817:24 19818:11 19820:12</p> <hr/> <p style="text-align: center;">F</p> <p>face 19929:9 facie 19725:6 19727:11 19732:11 19919:12 19919:20 19920:13 fact 19713:21 19728:22 19729:22 19732:21 19733:20,20 19758:11,12,14 19763:21 19785:15 19790:6 19791:25 19799:12 19802:23 19805:6 19806:8,24 19807:24 19809:14 19818:6,8 19820:11 19828:18 19874:17 19889:15 19895:20 19909:2 19911:22 19919:8 facto 19809:16 facts 19727:13 19745:19 19766:22 19870:8 factual 19819:23 19874:18 19915:16 factually 19743:10 19873:14,17 fail 19797:8 failed 19845:15,21 19846:16 19847:3 failings 19811:23 failure 19811:24 fair 19718:17 19724:9 19728:8,9 19784:24 19802:5 19803:15 19812:8 19815:24 19837:10 19863:19 19868:8 19905:14 19906:4 19920:15 19922:19 19925:12 fairly 19761:2 fairness 19790:20 19800:18 19801:25 19802:21 faktore 19818:13 fall 19758:16</p>	<p>false 19874:24 19929:4 families 19780:22 Fanagalo 19870:1 fantasies 19886:12 far 19723:18 19724:12 19725:5 19726:25 19727:9 19731:19,21 19736:21 19751:15 19752:13 19769:9 19805:8 19812:1 19816:16 19836:17 19840:1 19889:15 19920:20 19925:22 farfetched 19912:12,14 fase 19725:24 19735:21 19738:1,4 19740:10 19740:11,14 19741:1 19741:16 19791:13 19792:5,5 19797:14 19799:21 19801:5,12 19801:20,22 19802:20 fases 19741:2 19746:5 19760:12 19799:5 fasiliteer 19918:3 fasiliteit 19886:9 fasiliteite 19886:7 Fast 19787:25 favour 19758:21 19882:11,13 favoured 19886:15 favouring 19845:5 favours 19758:22 fearsome 19742:3 feat 19905:16 featured 19922:3 Februarie 19725:25 February 19762:20 19763:6,22 fed 19783:3 feeling 19927:5 feit 19792:5 19871:10 19873:25 19886:21 19902:7 feite 19750:23 19764:22 19821:14 19866:19 19868:17 19886:20 19894:12 19925:3 feitlik 19874:7 feitlike 19874:5 felt 19830:16 19925:17 19926:1 fenced 19749:21 fewer 19904:20 19906:15 field 19726:5 19743:7 19743:13,20,23 19744:13 19745:2,10 19752:12 19806:15 19807:11 19876:7 19927:5 fight 19714:18 19735:1 19851:5 fighting 19732:23 19842:10</p>	<p>file 19891:4,7 filed 19908:11 film 19717:19 19718:5 19718:7 filmed 19755:23 19756:2 filming 19756:23 final 19773:21,22 finally 19813:21 find 19715:19 19723:21 19772:2 19779:21 19783:21 19793:4 19805:5 19830:13 19837:15,19 19854:22 19855:4 19858:8 19864:15 19883:6,7 19897:6 19905:20 19911:10 finding 19727:12 19900:9 19921:4 19922:23 findings 19788:10,11 19908:12 fine 19781:14 19789:1 19804:10 19819:25 19883:1 19887:23 19901:12 19914:7 finer 19830:21 19863:22 finish 19820:16 finished 19776:11 19878:6 19923:16 fire 19749:16 19752:22 19753:23,25 19754:2 19754:18,20 19788:2 fired 19743:20 19753:22 firing 19727:17 first 19711:15 19726:11 19731:22 19731:24 19738:7,14 19739:6 19766:19 19771:10 19773:4 19781:1 19793:6 19794:20 19795:3 19796:19 19797:18 19798:3 19800:12,25 19815:16 19823:14 19823:15 19833:13 19847:10,12 19849:14 19871:21 19877:23 19881:7 19882:21 19895:18 19895:21 19899:5 19913:16 19916:25 19923:22 firstly 19735:6 19783:4 19856:11 19899:20 fisies 19828:3 fisiese 19905:11 fit 19770:9 five 19771:1 19776:7 19846:2 19883:24 19906:14 19924:13 fix 19920:19 fixed 19726:24</p>	<p>19919:11,14 flag 19817:15,23 flash 19755:24 flew 19902:25 flexible 19926:1 fling 19787:20 flowing 19771:22 19791:15,25 flying 19789:7 19873:7 19879:23 folded 19841:17 follow 19714:7 19715:16 19716:8,9,9 19847:21 19876:10 19884:9 followed 19739:23 19876:10 following 19713:9 19762:1 19773:1,4 19798:9 19815:15 19890:2 19891:21 19908:16 follows 19744:11 19864:24 19891:23 follow-up 19724:15 foot 19864:22 footage 19861:4,15 19887:7 footbridge 19863:3 force 19712:1 19714:11 19714:17 19715:14 19715:14 19717:9,12 19717:20 19734:12 19740:11,22,25 19741:1,5,11,15,15 19741:17 19742:1,5,6 19745:24 19746:6 19799:22 19838:21 19851:18 19852:5 19890:6 19905:22 forceful 19920:14 forces 19727:15 19743:12 19745:9 foresaw 19836:12 foresee 19741:4,5 foreseen 19740:21 19741:7 19745:22,23 forget 19798:19,22 19799:11 19812:24 19883:18 19885:1 forgive 19785:16 19788:4 19816:14 19845:17 19862:9 form 19719:6 19738:8 19772:22 formal 19805:10 formed 19766:24 formele 19766:3,7 19768:10 formulated 19738:18 formulating 19731:4 forth 19758:11 19898:24 forthright 19713:19 fortitude 19929:10 fortunate 19781:23</p>	<p>forum 19790:5,11,25 19792:16,21,23 19793:23 19794:6 19796:7,8 19797:21 19798:12,20,23 19799:12 19800:7,8 19802:6 forward 19730:23 19738:13 19787:25 19788:24 19793:10 19923:13,14 19924:6 foto's 19750:1,4 19778:4,8 found 19761:5 19780:3 19877:9 19903:10 foundations 19771:10 four 19746:16 19770:10 19836:7 19904:17,17 19905:18,19,21 19906:10 fout 19805:3 foute 19768:18 fouteer 19774:15 framework 19771:12 frankly 19881:20 free 19821:7,8 friend 19729:16 19754:22,24 19908:4 19909:7 front 19777:21 19817:19,24 19818:10 19820:12 19898:6 frustrating 19925:15 19925:22 frustrerend 19926:11 fully 19734:19 19738:9 19748:14 19759:13 19777:24 19870:3 function 19820:20 19823:5 19832:12 19840:14 19921:2 functioning 19716:4 19875:1 functions 19806:16 funksie 19821:4 19822:2,7 funksies 19804:7 19820:24 19821:1,21 19822:14 furnish 19822:4 further 19729:6 19736:16 19759:8 19767:1 19792:18 19808:14,14 19830:17 19837:24 19841:18,20 19908:20 19915:23 future 19715:20 19770:21 19771:14</p> <hr/> <p style="text-align: center;">G</p> <p>gaan 19720:23 19721:4 19721:8 19722:10 19724:22 19731:10</p>
---	--	---	---	---

<p>19741:11 19747:6 19768:14 19778:8 19802:20 19807:21 19813:10 19814:15 19814:16 19816:6 19817:3,4,5 19827:17 19827:23 19834:25 19835:1 19841:24 19843:2 19844:8 19858:5 19886:3 19894:6,7,22 19904:25 19910:3 19920:8 19923:10 19924:2 gang 19787:2 19924:21 gap 19816:18,19 19860:24 gas 19754:18,21 gather 19734:5 19841:9,10 19843:17 gathered 19766:22 gathering 19734:4 19840:19,23,23 19841:6 19842:22 gatherings 19841:4 19842:1 19843:15 19844:22 geantwoord 19721:16 19721:17 19792:3 19806:1 19873:22 gebel 19910:15 gebeur 19720:22 19721:3,5 19749:1 19769:10 19801:18 19812:11 19815:10 19815:10 19817:17 19822:17 19825:19 19827:19 19834:7 19841:24 19868:14 19868:18 19869:8 19873:17,21 19874:1 19911:2,19 19928:22 gebeure 19721:3 19760:18 19772:7 19812:10 19886:2 19914:21 gebied 19844:3 19855:19 19879:4 geblok 19860:6 gebrief 19804:3 gebring 19766:2 gebruik 19737:11 19747:11,11,14 19768:17 19781:6 19823:22 19827:21 19827:21 19828:3 19858:18 19863:6 19868:3 19872:20 19918:1 gedeel 19833:22 gedeelte 19720:16,25 19733:16 19750:6 19756:8 19801:12 19894:11 19923:8 19927:23 19928:14 gedeeltes 19722:19</p>	<p>19725:2 19749:2 gedink 19747:13 19766:5 gedoen 19741:20 19761:15,23 19762:18 19764:14 19764:21 19799:6 19815:2 19817:6 19836:21 19837:12 19843:16 19889:4 gedood 19834:8 19844:3 19871:11 gedra 19794:10 19803:10 19843:18 19910:16 gedreig 19756:6 gedryf 19815:3 gedurende 19716:21 gee 19728:19 19736:8 19770:23 19801:17 19804:3 19824:8 19826:3,6 19827:10 19828:2,2 19831:12 19878:21 19886:19 19892:15 19918:24 19926:16 geen 19740:12 19771:19 19815:1,4 19843:13 19860:4 19861:16 19863:17 19867:16 19873:21 19919:24 gefilm 19756:9 gegaan 19772:15 gegee 19717:4,9 19724:24 19726:2 19747:25 19750:3 19753:5,6,8 19754:10 19754:10 19757:20 19765:25 19768:4,16 19778:4 19803:10 19807:21 19812:22 19822:16 19824:19 19825:20 19831:10 19833:5 19836:22,24 19857:24 19859:6 19860:13 19868:1 19869:3 19875:25 19879:3 19890:12 19894:10 19912:20 19912:22 19917:22 19918:22 19919:1 19924:25 19925:5 gegewe 19871:10 gegooi 19913:6 gehad 19726:1 19747:16 19765:24 19766:1 19814:8 19815:12 19837:1 19843:19 19858:3 19859:3 19873:22 19886:11 19906:8 19913:8 19918:21 19920:4 gehelp 19841:23 19842:2 19843:14</p>	<p>gehoor 19713:25 19717:6 19826:22 19911:7 19912:2,22 19913:22 gehurkend 19864:6,11 gejaag 19909:22 gekap 19909:17 geken 19855:19 geklassifiseer 19856:6 geklim 19717:5 gekom 19737:7 19756:8 19774:8,8 19794:25 19813:11 19814:5,7,10,10,12 19863:15 19872:11 19905:10 gekommunikeer 19863:16 19877:15 gekonsolideerde 19726:1 gekontak 19814:17 19815:11 19911:15 gekoppel 19901:20 gekry 19774:6 19778:5 19778:6 19807:18 19911:3,14 gekyk 19721:16 geland 19912:1 geleentheid 19750:2 19770:23 gelees 19822:13 19823:25 19904:11 gelei 19760:13 gelewer 19921:24 geloop 19817:9 geluk 19927:23 19928:16 gelukkig 19926:14 gelê 19910:15 gemaak 19714:14 19717:5 19722:21 19725:3 19726:2 19731:12,15 19737:12 19748:8 19768:18 19774:21 19778:3 19810:5 19812:11 19814:19 19815:7 19831:9 19855:9 19866:19 19867:18 19894:11 19916:11 gemeld 19791:12 gemonitor 19814:24 19842:3 19849:18 19887:8 19888:17 geneem 19761:16 19766:5 19794:11 19802:19 19889:1 19913:24 19914:18 19916:12 generaal 19855:18 19907:24 19912:3,23 19913:3,25 19917:2 19917:24 19918:19 19918:20 19921:6,22 generale 19814:23</p>	<p>19926:10 generally 19730:9 19731:8 19803:16 generated 19913:13 genesis 19853:24 genoeg 19802:13 genoegsame 19802:18 19804:4 19834:9 genoem 19712:16 19716:21 19786:20 19805:16 19836:21 19896:18 genoodsaak 19844:8 gentleman 19719:1 geographically 19876:17 geordende 19721:10 geplaas 19747:7 19834:10 19838:16 gepraat 19746:6 19778:3 19834:3 19835:17 19911:1 19912:1 19913:21 19917:25 19924:8 gepraat/skreeu 19909:22 geprint 19892:14 gerapporteur 19809:4 19810:4 19822:19,19 19872:9 gereageer 19818:5 19868:2 geroep 19836:25 gery 19867:5 gesien 19814:24 19860:4 19861:11 19872:7 19905:1,11 19912:7 19913:5 19928:18 gesirkel 19864:7 19905:13 gesit 19801:5,21 geskakel 19911:4 geskiedenis 19849:9 geskille 19842:18 geskokte 19912:4 geskryf 19887:6 gespandeer 19774:19 gesprek 19814:8,23 19827:18 19913:8,20 19923:9 19924:22 19925:1,11 gesprekke 19750:8 19911:6 19913:22 gesprekvoeringe 19926:9 gestation 19895:9 19896:5 gestel 19796:12 19799:16 19872:14 19872:18 19893:7 gestem 19906:25 19916:14 19923:25 gesterf 19815:9 gestig 19806:5,5 19872:3 19876:19</p>	<p>gestop 19812:21 19905:5 gestuur 19906:7 gesukkel 19834:8 getaak 19756:10 19833:20 geteken 19893:6 getting 19786:11 getuienis 19765:23 19769:11 19791:11 19792:9 19795:6 19802:14,18 19810:3 19834:21 19849:3,4,4 19860:6 19864:5,12 19896:22 19907:25 19908:3 19911:13 19920:2 getuig 19736:7 19738:3 19741:9 19754:8,12 19769:7 19774:3 19782:13 19792:11 19794:22,23 19797:5 19799:23 19813:9 19814:11 19818:14 19821:13 19834:2,5 19836:23 19856:2 19877:2 19878:24 19893:25 19894:25 19896:16,22 19905:2 19905:11 19909:24 19914:4,13 19921:22 19924:19,20 gevaar 19818:15 gevaarlik 19871:15,16 gevaarlike 19876:1 geval 19725:4 19737:8 19762:3,10 19774:12 19774:12,14 19787:7 19802:14,16,17 19810:15 19816:25 19825:20 19827:23 19827:25 19852:15 19868:6,7 19872:2 19885:22 19887:9,10 19905:6 19912:25 19920:5 gevalle 19717:8 19725:1 19774:9 19786:20 19804:25 19804:25 19841:24 19854:17 19855:7 19894:23 gevat 19912:7 gevegsbord 19897:22 gevlieg 19861:18 19879:4 gevoel 19812:20 gevolg 19856:23 19873:17 19874:2 gevou 19921:25 gevra 19766:4 19787:16 19797:2 19801:14 19803:8 19812:12 19838:15 19846:22 19889:3 19890:11 19914:19</p>
--	---	--	---	--

<p>19929:8 gewag 19872:19 gewapen 19854:3 19870:24 gewapende 19868:4,19 19870:25 19924:22 gewees 19711:20 19717:7 19721:11 19737:7,16 19742:9 19746:10 19750:12 19756:10 19764:22 19774:19 19787:5 19790:2 19799:5,6 19808:25 19809:18 19815:7 19818:15 19823:23 19833:6 19837:13 19840:20 19843:3 19849:1,6 19855:10,17 19862:7 19864:6,12 19871:12 19871:15,16 19872:4 19872:12 19877:16 19879:9 19886:10 19887:8 19888:21 19894:19 19896:22 19901:20 19902:8,9 19906:8 19911:6 19924:8 19925:10 19928:22 geweet 19757:18 19792:10 19816:23 19857:10 19879:3 geweld 19717:8 19844:3,7 gewens 19927:24 19928:16 gewerk 19761:17 gewone 19720:17 gewoonlik 19886:8 19888:23 geword 19757:21 19791:11 19792:4,6 19792:12 19816:3 19838:15 19889:2 gewys 19860:12 19861:14 ge-disarm 19876:1 ge-intercept 19858:1 ge-order 19835:17 ge-quote 19787:1 GGG19 19898:20 19899:19 GGG2 19711:10 GGG40 19898:1 gister 19712:16 19734:17 19750:9 19757:16 19778:3 gisteraand 19869:4 give 19720:13 19733:11 19738:10 19745:11 19750:25 19752:22 19754:17 19758:19 19773:23 19775:19 19778:15 19783:21 19784:8 19796:21 19806:14,24 19807:7</p>	<p>19811:10 19817:22 19820:18 19823:7 19845:17 19869:17 19882:12 19892:18 19908:7 given 19724:10 19728:24 19730:13 19753:25 19754:1 19759:18 19776:2,4 19800:11 19811:6,10 19818:8 19820:10 19822:10 19832:11 19841:15 19847:17 19848:3 19881:3 19882:13 19911:9 19919:14 19921:13 gives 19915:17 giving 19755:5 19783:15 19847:10 19873:6 19884:14 19920:12 glad 19716:22 19717:10 19741:12 19794:4,10,18 19807:3,12 19816:9 19833:21,22,23 19835:16 19838:16 19860:8 19871:15 19872:17 19902:7,9 19911:1 19913:19 19914:5 19917:20 19920:22 19921:23 glo 19731:10 19768:15 19784:18 19868:16 19871:16 19877:17 19897:7 19906:6 go 19732:17 19733:6 19749:5,6,7,15 19750:18,20 19751:18 19756:22 19763:20 19765:10 19770:13 19783:2 19789:23 19791:24 19796:9 19798:2,25 19799:14 19800:1,9 19813:2,5,22 19816:20 19820:14 19825:9,11,11 19830:1 19855:23 19857:8 19859:24 19876:24 19889:21 19904:9 19907:10 19916:15 goed 19816:2 19855:19 19886:12 19917:23 19918:25 goedgekeur 19740:20 19741:2 goes 19827:6 19851:8 19878:15 19915:19 goeters 19774:17 19888:20 goings 19797:21 Golf 19886:3 good 19711:21 19721:25 19752:9</p>	<p>19777:6 19786:1 19811:18 19864:19 19881:24 19882:2 19883:5 19898:25 19911:20 gooi 19833:6 gou 19747:5 19770:23 19814:5 granate 19913:6 grateful 19751:21 great 19895:12 19896:6 greater 19894:9 groep 19801:16,19 19814:25 19829:20 19829:20 19854:3 19859:12 19867:6 19868:4,19 19869:9 19870:23,25 19871:12,13 19876:1 19905:1,12 19926:13 19928:23 groepe 19855:10 19859:4 groepering 19777:4 grond 19805:2 19806:2 19806:4 19877:3 19886:21 19913:2 19919:25 grondpad 19864:9 19867:2,7 19902:10 grondwet 19775:23 grondwetlike 19775:4 groot 19750:3 groot 19744:5 groter 19750:5 19855:10 19906:7 ground 19804:14 19805:7,11,21 19810:8 19812:4,6 19869:22 19870:5 19871:5,6 19878:17 19915:16 19928:8 group 19750:15 19751:8 19825:11,11 19854:1,7 19855:21 19855:22,24,24 19856:11 19859:16 19859:24 19861:2,4 19863:23 19871:22 19873:3 19875:11 19877:8 19878:17 19880:22 19881:3,7 19900:3,4,7,23 19901:11 19902:3 19903:1,5,13,18,22 19904:3,6,18,22 19905:8,18 19911:11 groups 19771:9,18 19797:11 guidance 19752:20 19762:13 19807:15 19808:14 19810:20 guided 19854:13 gun 19713:10 19741:22 19742:3 guns 19803:20</p>	<p style="text-align: center;">H</p> <hr/> <p>hacked 19882:20 hadn't 19793:14 19875:13 19880:10 19880:13 19881:7 half 19761:7 19789:24 19818:9,19,19 19819:5 19820:11,14 19836:3 19842:18 19909:22 19918:14 halfway 19785:23 hand 19735:10 19739:7 19921:1 hande 19921:24 hands 19843:24 19911:24 hang 19736:25 19761:20 19817:16 hanteer 19734:17 19774:10 19868:7 19872:12 happen 19740:2 19769:4 19796:9 19800:9 19825:23,24 19836:18 19874:12 19879:20 happened 19723:4 19730:5 19746:2 19757:13 19768:25 19769:1 19770:16 19780:21,23,24 19783:4 19786:10 19791:22,23 19825:1 19828:15 19834:1,18 19834:23 19862:14 19865:2 19873:4,15 19874:3,9 19875:22 19879:21,25,25 19880:1,13,14,19 19882:21 19902:12 19902:17 19907:17 19909:11 19916:5,7 19919:16 happening 19715:13 19728:24 19780:25 19783:5 19817:19,24 19818:10 19838:1 19848:5,23 19880:11 19908:23 happens 19825:4 19842:12 happy 19916:17 hard 19849:24 hardcopies 19738:10 19808:6 harde 19774:8 harm 19771:17 hasn't 19765:6 19768:25 haven't 19763:9 19765:10 19768:22 19778:15 19780:5 19784:4 19788:22 19860:17 head 19808:21</p>	<p>headed 19762:5 19896:9 19903:5 heading 19785:8 19898:10 19900:5 hear 19742:16 19769:22 19811:3 19845:23 19862:22 19908:9 19919:21 19921:12 19922:10 heard 19719:10 19726:11 19731:21 19731:24 19738:14 19780:2 19783:12 19784:4,4 19793:6 19811:5 19853:6 19908:8 hearing 19724:14 hearsay 19908:7,13 heel 19863:2 19902:9 heels 19733:5 heeltemal 19725:23 19727:2 19753:4 19784:23 19786:21 19815:25 19831:10 19844:24 heeltyd 19724:24 19916:10 heen 19868:22 Hein 19849:6 hek 19824:13 held 19764:6,9 19789:16 19793:23 hele 19724:25 19777:3 19872:24 19891:12 helicopter 19809:15 19810:22 19811:4 19854:15 19856:12 19856:19,22 19857:1 19857:5,7,8 19871:22 19873:7 19877:23 19878:4,5,14,15,17 19879:22 19880:12 19880:18 19881:3 19884:10 19900:22 19900:23 19901:10 19901:16,16 19902:1 19902:3,4,5,18,19,20 19902:21,25 helicopters 19877:24 helikopter 19854:9 19855:18 19857:11 19861:17 19862:5 19863:15 19864:6,8 19872:13,17,20 19877:13 19878:21 19878:23 19879:3 19905:13 19909:24 19911:15,16 19912:1 19913:1 helikopters 19872:16 19877:14,17 help 19768:7 19778:9 19834:15 19892:22 19907:13,14 19923:7 19924:4 helped 19788:12</p>
--	---	--	---	--

<p>helpful 19729:18 19757:10 19773:19 19915:7</p> <p>helping 19884:23</p> <p>Hemraj 19744:10 19776:16,22 19777:5 19825:21</p> <p>Hendricks 19711:17</p> <p>Hendrickx 19711:10 19711:15 19716:16 19721:21 19722:1,4 19724:20 19729:23 19730:3 19731:3,11 19733:5 19736:21 19747:13,23 19754:14,20 19755:6 19763:14,21 19764:13 19770:7 19772:3,21 19773:12 19774:18</p> <p>Hendrickx's 19721:14 19736:21 19760:1</p> <p>Hendrik 19903:23</p> <p>here's 19913:10</p> <p>herhaal 19712:9 19821:21 19854:10</p> <p>heroorweeg 19814:22</p> <p>he'd 19770:2 19813:20 19910:11</p> <p>he's 19713:18 19714:2 19714:3,4 19730:14 19732:11 19762:5 19767:15,17 19770:3 19771:1 19773:14,17 19813:19 19851:6 19889:9 19908:7</p> <p>he/she 19803:24</p> <p>HHH20 19830:1 19889:21</p> <p>hier 19724:20 19731:18 19760:9,14 19764:15 19765:21 19768:3 19774:16,18 19787:4 19794:23 19821:20 19824:17 19827:19 19831:2 19832:1 19892:16 19893:6 19901:19 19914:21 19928:22</p> <p>hierarchy 19803:13</p> <p>hieratical 19827:8</p> <p>hierdie 19714:15 19737:8 19747:14 19760:18 19774:12 19781:8 19791:13 19801:15 19802:14 19802:16,18 19814:21 19843:14 19869:9 19872:4 19878:22 19882:24 19885:24 19886:11 19891:11 19901:20 19902:9 19905:10 19907:7 19909:21 19914:11</p> <p>hierna 19890:14</p>	<p>high 19878:15</p> <p>higher 19760:25 19812:5</p> <p>highest 19805:7,9 19808:22 19809:3,16</p> <p>highly 19912:11</p> <p>hindsight 19791:11 19836:21,22 19838:14 19927:12 19927:20,22 19928:17</p> <p>hire 19877:24 19880:12</p> <p>hired 19878:3</p> <p>hoe 19720:23 19721:16 19766:8 19807:21 19822:14 19824:18 19824:23 19825:18 19826:6 19829:18 19861:20 19886:20 19895:4 19897:20</p> <p>hoef 19815:2,3 19826:1</p> <p>hoek 19919:24</p> <p>hoekie 19920:8 19921:25</p> <p>hoekom 19818:2 19823:25 19836:24 19844:4 19846:21 19849:9 19854:18 19858:2 19871:10 19878:18 19887:12 19892:13 19905:6 19925:8</p> <p>hoeveel 19906:2</p> <p>hoeveelheid 19928:19 19928:19</p> <p>hofsitting 19787:5</p> <p>hold 19767:14 19852:4</p> <p>holding 19738:13 19793:10 19816:19 19817:21 19923:13 19923:14 19924:7</p> <p>hom 19722:9 19725:22 19804:23 19817:10 19818:15 19824:16 19827:20 19829:21 19849:7 19867:6 19893:13 19900:10 19906:25 19911:2 19913:7,23 19914:3 19919:24 19925:8</p> <p>honde 19823:22</p> <p>honderd 19774:11</p> <p>honest 19860:22</p> <p>hoof 19844:8</p> <p>hoogste 19787:5</p> <p>hook 19852:12</p> <p>hooker 19852:13</p> <p>hoop 19771:24</p> <p>hoor 19823:19 19824:17 19893:11 19912:24 19913:1</p> <p>hope 19711:3 19744:24 19758:23 19769:12 19851:17 19852:4 19908:12</p> <p>Horn 19849:6</p>	<p>horses 19823:23</p> <p>Hospital 19857:17,19</p> <p>hospitale 19834:9</p> <p>hospitals 19915:18</p> <p>Hostel 19857:20,21 19858:11 19859:1 19867:14 19868:9</p> <p>hostels 19888:18</p> <p>hot 19765:23 19768:6</p> <p>hou 19721:3 19816:24 19831:2</p> <p>housekeeping 19778:10</p> <p>huidige 19717:1,1,3,4 19774:4,4</p> <p>huis 19816:5</p> <p>hulp 19768:19</p> <p>human 19774:24 19775:10</p> <p>hurt 19836:5</p> <p>husband 19851:6,8,11</p> <p>hypothetical 19813:17 19813:19 19816:14</p> <p>hê 19854:19 19866:19 19891:11</p> <hr/> <p style="text-align: center;">I</p> <p>idea 19735:8 19736:16 19736:20 19882:2</p> <p>ideally 19825:6</p> <p>identified 19822:11 19855:25</p> <p>identify 19761:12,21 19879:17</p> <p>identity 19838:11</p> <p>iemand 19791:12 19827:21,24 19893:13 19911:5 19920:8</p> <p>iets 19774:14 19778:4 19792:8 19794:10 19814:19 19817:8 19822:16 19824:7,17 19824:17,19 19826:2 19828:1 19833:21 19858:4 19867:17 19889:1 19894:21 19919:3</p> <p>ietsie 19914:12</p> <p>illegal 19842:12 19844:22 19875:12</p> <p>illegally 19844:19</p> <p>illustrate 19784:25 19829:25</p> <p>illustrates 19829:12</p> <p>illustration 19789:19 19830:16</p> <p>illustrations 19783:15</p> <p>image 19784:10</p> <p>images 19853:3</p> <p>imagination 19873:2</p> <p>imagine 19744:20 19838:3 19884:20 19906:23</p> <p>immediate 19825:13</p> <p>immediately 19742:15 19742:19 19815:23</p>	<p>immigrant 19842:13</p> <p>impartial 19838:25 19885:4 19886:14</p> <p>impartiality 19838:23 19840:3 19842:23 19845:4 19846:13,15 19846:16 19884:7,17 19885:6</p> <p>impasse 19869:16</p> <p>imperative 19845:3 19846:14</p> <p>imperatives 19838:21</p> <p>implement 19919:17</p> <p>implementation 19739:5,14 19798:6,9</p> <p>implemented 19919:6</p> <p>implementing 19740:23</p> <p>implicitly 19762:2</p> <p>importance 19782:5 19789:20</p> <p>important 19724:12 19752:10 19779:20 19784:10 19791:16 19791:18,22 19802:10,11 19820:20 19839:1 19840:5 19842:6 19846:9 19850:11 19879:14 19897:2 19903:12 19919:8</p> <p>importantly 19780:24</p> <p>imposed 19720:1 19725:10,10 19726:18</p> <p>impression 19718:20 19723:19 19737:19 19755:7 19791:22 19919:15,19 19920:16</p> <p>improbable 19851:15 19851:20 19912:11 19912:16</p> <p>improved 19715:20</p> <p>inaccuracy 19763:4</p> <p>inaccurate 19763:2,4,5 19766:23</p> <p>inappropriate 19927:1 19927:15,20</p> <p>inaudible 19727:21 19769:21 19770:25 19861:21 19901:23 19909:5</p> <p>inbeweeg 19725:2</p> <p>incapacitated 19809:14</p> <p>incident 19769:13 19785:17 19786:2 19827:20 19833:24 19834:17 19909:10</p> <p>incidents 19787:18</p> <p>inclined 19732:10 19819:21</p> <p>include 19739:12</p> <p>included 19745:25</p> <p>includes 19923:2</p> <p>including 19780:20 19873:13 19883:25 19904:15</p>	<p>incomplete 19753:21</p> <p>incorrect 19743:10 19789:8 19791:25 19858:14 19876:15 19927:1</p> <p>increase 19734:14</p> <p>incumbent 19852:10</p> <p>indebted 19775:13</p> <p>indicate 19726:12 19758:10 19765:13 19782:10,18 19797:20</p> <p>indicated 19764:4 19797:9 19896:10 19916:1 19925:17 19928:7</p> <p>indicates 19792:18 19796:21 19901:24 19922:12</p> <p>indication 19920:25</p> <p>indien 19768:18 19814:10,12 19816:5 19824:19 19843:3 19868:21 19872:5 19897:10 19924:23</p> <p>individual 19718:22</p> <p>individuele 19781:9</p> <p>inference 19770:6</p> <p>inferences 19758:21</p> <p>influence 19850:21 19929:4</p> <p>influenced 19850:13</p> <p>inform 19896:13</p> <p>information 19763:6 19763:23,25 19796:10 19800:10 19800:22,23 19836:8 19841:25 19847:17 19848:2,14 19865:13 19894:3 19915:15,17 19927:12</p> <p>informed 19796:18,22 19799:17,18 19800:12 19837:10 19867:12,24 19879:7 19890:2</p> <p>ingegaan 19868:15</p> <p>ingelig 19746:10 19764:13 19792:4</p> <p>ingepraat 19867:3</p> <p>ingeroep 19844:4</p> <p>ingesit 19888:23</p> <p>ingestap 19849:3,4</p> <p>initially 19732:24 19864:16</p> <p>initiated 19847:25</p> <p>inligting 19720:23 19765:24 19766:1,9 19812:20 19814:21 19817:1 19824:22 19852:24 19860:12 19872:10 19873:17 19887:14 19911:2,14 19912:20</p>
---	---	---	--	--

<p>input 19730:22 19888:24</p> <p>inputs 19732:6</p> <p>inquires 19838:12</p> <p>insensitive 19927:2</p> <p>inseparable 19888:11</p> <p>insident 19787:4 19834:20 19902:10</p> <p>insidente 19749:1</p> <p>insofar 19784:5 19843:22</p> <p>instance 19871:21</p> <p>instigated 19847:16,24</p> <p>instil 19885:6</p> <p>instruct 19822:3</p> <p>instructed 19919:10</p> <p>instruction 19761:6 19807:8 19811:10 19818:8 19820:10,18 19832:20 19833:1,3 19918:17</p> <p>instructions 19754:17 19765:15 19770:2 19806:9,14,25 19807:15 19808:9,14 19811:6,11 19862:16</p> <p>instructs 19918:13</p> <p>instruksie 19826:4</p> <p>integral 19888:5,8,10 19888:13 19890:8 19897:18</p> <p>integrale 19918:21</p> <p>Intelligence 19890:4</p> <p>intend 19819:17</p> <p>intended 19766:20 19775:16 19819:17 19863:23 19929:3</p> <p>intending 19779:15 19881:18</p> <p>intention 19756:3 19819:4</p> <p>intents 19808:19 19886:24,25 19887:18</p> <p>interacting 19851:9</p> <p>interaction 19771:14</p> <p>interactions 19924:13</p> <p>intercept 19858:25 19859:3 19876:1 19903:22</p> <p>intercepted 19859:16 19861:2 19865:16,18 19866:8,15 19868:4 19879:18</p> <p>interception 19866:10</p> <p>interessant 19905:8</p> <p>interest 19789:6,9 19829:6 19911:9</p> <p>interested 19723:10,12 19732:16,23 19759:6 19832:8</p> <p>interesting 19772:24</p> <p>interject 19838:8</p> <p>intermediaries 19733:1</p> <p>international 19755:6 19772:17</p>	<p>interpretation 19772:3</p> <p>interpreter 19869:17 19870:1,2</p> <p>interrupt 19756:15 19853:2</p> <p>interrupted 19820:3</p> <p>interrupting 19725:17 19780:10 19788:5</p> <p>interruption 19820:6</p> <p>intervene 19857:16 19881:22,22</p> <p>intervened 19729:3</p> <p>intervensie 19873:22</p> <p>intervention 19724:3 19726:18 19746:14 19867:20 19876:4 19880:15,21 19881:19,23 19899:23</p> <p>interventions 19871:20 19871:24 19873:5,8 19873:15 19874:10 19879:21,24 19880:5 19882:20</p> <p>inter-union 19839:15</p> <p>intimidasie 19749:2 19858:4</p> <p>intimidation 19844:14 19844:20,22</p> <p>introduction 19773:20</p> <p>investigation 19911:21</p> <p>invloed 19815:12</p> <p>involve 19821:17 19823:5</p> <p>involved 19726:12 19730:6 19735:13 19738:15 19750:15 19760:5 19762:14 19764:7 19767:12 19822:6 19828:12 19843:11 19881:19 19884:16 19890:4 19904:5 19921:20</p> <p>involves 19733:11 19761:8</p> <p>involving 19793:24</p> <p>IPID 19787:9</p> <p>Ireland 19775:7,8</p> <p>irreconcilable 19802:1</p> <p>irregular 19929:3</p> <p>irrelevant 19842:7,13 19844:17</p> <p>irrespective 19745:23</p> <p>isn't 19733:7,14,20 19737:20 19743:2 19756:25 19757:12 19758:12,13 19779:14 19848:6 19865:5,24,24 19866:5 19908:20</p> <p>isolate 19718:22</p> <p>isoleer 19801:19</p> <p>issue 19720:10 19749:7 19789:19 19794:1 19806:20,20,21 19811:18,19</p>	<p>19838:23 19842:6,6 19843:21,21 19890:21 19916:22 19916:23</p> <p>issued 19832:20 19856:12</p> <p>issues 19758:11 19780:17 19811:22 19816:12 19846:7</p> <p>item 19779:9</p> <p>it's 19727:5,11 19730:2 19732:12 19733:18 19733:19 19766:19 19766:22,23 19769:4 19772:21 19775:17 19806:23 19813:19 19816:14 19820:13 19851:4,5 19853:21 19860:23 19862:9 19863:8 19865:8,12 19895:17,18,20 19898:5,21 19901:12 19901:25 19904:16 19906:14</p> <p>I'd 19776:13 19803:11 19814:1 19928:10</p> <p>I'll 19779:21 19781:16 19781:16 19784:7 19785:10 19789:6 19790:22 19796:4 19803:2 19805:4 19817:12 19838:19 19840:23 19858:8 19869:10 19870:4,7 19881:11,25,25 19884:6,18,19 19889:7 19895:11 19899:21,24 19914:7 19917:11 19926:23</p> <p>I've 19711:12 19730:25 19783:11 19788:21 19789:6 19813:1,2,20 19813:21 19814:2 19817:18 19818:18 19822:25 19823:1 19865:14 19882:8,10 19882:13 19884:9 19885:18 19891:6 19922:3</p> <hr/> <p style="text-align: center;">J</p> <p>jaag 19909:21</p> <p>jaar 19716:23,24,24 19748:21 19774:18 19774:18 19833:18 19834:4 19919:23 19924:21</p> <p>jaartal 19834:3</p> <p>jab 19847:10</p> <p>JANUARY 19711:1</p> <p>janre 19748:21</p> <p>Ja-nee 19859:18</p> <p>JJJ129 19890:21,23 19891:2</p> <p>JJJ82 19717:19</p> <p>job 19823:11,16</p>	<p>JOC 19726:24 19756:21 19757:21 19766:2 19793:14 19802:15 19804:20 19805:1,6 19806:5,5 19807:11,20,22 19809:4,12 19810:4,5 19810:20 19811:4,5,8 19813:24 19814:17 19814:19 19815:11 19815:14,20,22 19822:19 19824:23 19831:5 19848:16 19872:3,6 19874:25 19875:17 19876:9,19 19876:19,21 19878:20 19884:8,15 19885:4,18 19886:3,6 19886:14,17 19887:8 19887:13 19888:5,13 19891:8,21 19892:23 19893:14 19894:10 19894:14,18 19897:1 19898:10,10,23 19904:3 19914:20</p> <p>JOCCOM 19720:19 19725:11 19726:5 19731:23 19735:20 19736:18,25 19738:6 19739:6,15 19740:5 19740:19 19761:7 19766:3 19793:14 19808:2 19810:24 19888:5,13,21 19890:1 19893:16 19894:15 19918:2</p> <p>joined 19900:21 19902:1</p> <p>joint 19752:11 19876:19 19878:19 19885:25 19886:25 19887:19</p> <p>jou 19828:5</p> <p>journalist 19788:7</p> <p>journey 19863:20,22 19863:23</p> <p>joy 19877:7</p> <p>judgment 19716:15</p> <p>judgments 19882:13,17</p> <p>juice 19881:15</p> <p>juis 19844:2</p> <p>julle 19823:24</p> <p>July 19892:20</p> <p>junior 19828:8</p> <p>justice 19716:5</p> <p>justify 19802:4</p> <p>Justisie 19787:7</p> <p>ju 19712:4,8,15,16 19885:22 19886:10 19887:3</p> <hr/> <p style="text-align: center;">K</p> <p>K 19861:19</p> <p>kalm 19721:2</p> <p>kameras 19855:9 19860:4</p>	<p>kant 19817:10 19844:9 19845:12 19878:22 19888:24 19926:17 19926:17</p> <p>kante 19928:18</p> <p>kantore 19886:6</p> <p>karakter 19920:8</p> <p>Karee 19854:23 19855:12 19857:17 19857:19 19858:11 19859:1 19861:25 19862:1 19863:23 19865:3 19866:17 19867:13,21 19868:9 19870:17 19871:24 19879:13 19900:5 19906:20</p> <p>karre 19741:18</p> <p>keen 19718:15</p> <p>keep 19819:18 19850:12</p> <p>keepers 19763:18</p> <p>keeping 19752:11 19762:15 19763:15</p> <p>keer 19721:2 19777:3 19797:12 19814:7 19817:2,10 19843:4 19843:13 19896:23 19923:12 19925:9</p> <p>ken 19919:23 19920:4 19920:7</p> <p>kenne 19803:10</p> <p>kennis 19725:4 19756:8 19794:9,10 19794:25 19796:12 19799:15 19803:10 19856:7 19905:10 19914:3</p> <p>kept 19742:19 19838:1 19838:1</p> <p>kere 19737:10 19813:12 19894:19 19894:24</p> <p>key 19838:20</p> <p>Kidd 19727:19</p> <p>kies 19845:12</p> <p>kill 19713:9 19745:25 19787:25 19843:23 19910:11 19913:16</p> <p>killed 19787:21,25 19836:13,14 19880:4 19883:15</p> <p>killing 19746:7 19784:15 19785:8 19787:22</p> <p>killings 19808:21 19907:17</p> <p>kilometer 19878:25,25</p> <p>kilometres 19879:6,13 19917:13,20,23 19718:14 19727:17 19733:13,13 19741:25 19758:13 19786:12 19839:2 19841:5,20 19869:1 19873:3 19894:14</p>
--	---	---	---	--

19920:13,15 klaarmaak 19814:6 19823:22 Klerksdorp 19834:12 19835:9 knew 19792:20,22 19793:3,4 19794:13 19795:3 19799:13 19836:17 19837:6 19879:5 knowing 19926:25 knowledge 19722:24 19782:8,11,20 19798:1,11 19907:4 known 19794:3 19798:25 19876:16 19924:12 knows 19813:17 19847:19 19918:5 koerant 19786:22,25 kollega 19909:15 Kolonel 19735:20 19740:9 19766:6 19799:3,7 19807:19 19834:6 19835:8 19887:5 19909:14 19910:18 19911:1,3 19911:25 19912:2,3,6 19912:20,23,25 19913:21 19918:23 19924:9 19925:1 kom 19720:17 19774:16 19781:5 19799:7 19801:3 19804:5 19807:23 19810:4 19824:10,22 19827:10 19831:7 19834:24 19836:23 19861:19 19862:3 19871:14 19886:2 19892:14,15 19905:2 19914:4 19925:10 19928:21 kommentaar 19919:25 19921:24 kommissaris 19794:7,9 19825:25 19857:25 19859:6 19875:25 19917:23 Kommissie 19768:14 19787:2 19792:8 19821:13 kommunikasie 19801:7 19802:15 19876:21 19878:20 19886:7 kommunikeer 19816:25 19817:10 19844:5 kon 19766:9 19809:4 19812:21 19814:19 19814:24 19815:11 19816:25 19817:9 19818:4 19831:4,8,11 19837:12 19842:17 19858:3 19861:18 19868:21 19871:18	19877:15,18 19886:11,12 19905:4 19912:2,24 19913:1 19914:1,4 konfrontasie 19736:6,9 19908:2 konsep 19741:2 konsiderasie 19737:15 konstabel 19827:18,20 19827:23 19828:7 kontak 19725:3 19774:19 19862:7 19897:9 konteks 19747:7,10 19927:24 kontingent 19906:7 koördineer 19804:2 19822:14 19824:22 koper 19888:19 koppie 19727:14 19728:2,10,22 19815:3 19855:10 19859:25 19871:7,8 19871:18 19880:23 19886:16,17 19900:4 19907:10,19 19908:1 19910:9 19911:24 19924:5 korreksie 19766:8 19834:12 19849:3 19855:13 19859:13 19861:19 19862:4 19869:5,7 19911:4 kort 19831:1 koördinerings 19728:19 19821:2,19,22 19824:21 kraal 19755:25 kruks 19842:24 kry 19719:24 19764:22 19766:9 19778:8 19834:9 kursusse 19774:5 kyk 19720:21 19721:4 19721:8 19795:20 19813:10 19820:25 19835:1 19869:4 19888:17 19894:7 19928:21 K3 19862:1 K4 19861:19 19862:1 19879:2,3 K9 19777:2 19823:23	19871:17 19882:24 19883:12 19913:3 19928:17 labour 19842:9 lack 19728:2 19756:16 19758:6 19846:12 lacking 19755:25 ladder 19827:6 land 19913:2 lang 19827:10,18 19869:8 langer 19872:19 language 19713:22 19726:23,23 19818:22 19819:21 lank 19722:10 19866:18 19869:5 laptop 19738:13 19808:7,10 large 19718:25 19755:14,18 lasted 19915:3 lastly 19780:24 19822:9 late 19761:2 latere 19911:7 laughing 19857:2 law 19784:11 lay 19813:1,4 laying 19813:21 layout 19900:13 layouts 19915:17 lead 19758:20 19819:9 19819:22 19846:13 19920:14 leaders 19822:3,10 19827:1 leadership 19764:17 19811:25 19812:2 leading 19727:12 19823:3 19844:15 learned 19729:16 19754:22,23 learnt 19716:11 19764:16,23 19765:4 19768:17 19771:14 19774:15 leave 19759:4 19760:3 19888:2 19889:16 19895:2 led 19880:25 lede 19717:7 19720:20 19720:25 19721:1,1,5 19721:11 19731:13 19753:6 19765:24 19768:6,19 19777:1,3 19777:4 19781:9 19804:3 19809:23 19810:4 19828:8 19829:19 19833:8 19909:17 19912:5,8 19913:4,6,23 19914:2 19928:20 lees 19724:23 19770:24 19796:25 19801:6 19803:23 19907:6	left 19756:20 19791:22 19807:14 19811:11 19830:20,21,22 19843:25 19916:5 leg 19798:18,19 legal 19874:15 legislation 19715:17 legs 19798:16 leier 19868:16 19869:9 lemon 19881:15 Lepaaku 19874:11 19880:4 19881:4 19882:19 19883:10 lesser 19905:22 lessons 19764:16,23 19765:3 19768:17 19771:14 19774:15 lethal 19828:3 let's 19722:3 19735:6 19736:15 19737:1 19746:13 19751:24 19760:3 19777:19 19778:20 19783:19 19790:12 19793:4 19798:18 19805:4,5 19811:18 19816:15 19816:16 19821:10 19828:11 19847:11 19847:14 19852:9 19879:7 19882:4 19891:22 19899:4 19906:14 19912:15 19927:10 leuen 19762:18 level 19752:11 19765:25 19770:10 19771:1 19827:1 levels 19764:6 19771:11,13 lewe 19775:3,21,24 19844:9 lewer 19919:25 liability 19758:1 lid 19910:15 lie 19763:1 lies 19783:3 Lieutenant 19793:9 life 19774:25 19775:11 lig 19721:2 19825:18 light 19814:1 19826:20 lights 19826:17 likelihood 19749:11 limit 19721:18 19857:4 limitations 19832:11 limited 19760:22 19763:5 19824:25 limits 19816:13 19817:13 line 19758:25 19795:9 19796:1,2 19799:25 19848:2 19852:10,12 19852:12 19866:1,2 19891:15,16 19903:6 19904:4 19916:7 lines 19714:24 19737:3 19815:18	linking 19788:19 links 19867:6 19886:11 list 19776:4 19779:9 19890:22 listed 19760:6 19897:3 listen 19830:2 19834:16 listened 19910:20 listening 19846:5 lists 19890:3 literally 19819:15 little 19722:16 19732:13 19736:15 19780:13 19784:8 19847:9 19880:14 19881:15 locate 19856:11 19857:8 19873:7 19876:24 19877:8 19900:23 19901:11 19902:3 located 19855:25 locating 19854:7 19871:23 19879:23 logies 19832:15 long 19779:4 19782:5 19822:24 19847:7,9 19871:4 19878:8 19881:16 19895:9 19896:5 longer 19718:15 19763:8 19841:14 19866:16 19867:13 19867:22 19870:17 longish 19718:7 Lonmin's 19858:24 loo 19827:5 look 19732:18 19755:22 19788:24 19798:13 19801:23 19810:21 19813:20 19818:18 19836:5 19844:11 19879:5,17 19880:11,11,11 19891:7,15,22 19892:9 19896:8 19898:6,16 19915:7 looked 19742:3 19761:1 19883:19 looking 19829:1 19888:12 19895:24 19901:25 looks 19795:22 19848:23 19895:12 19918:8 loon 19842:17 19924:21 loop 19750:6 19863:11 19870:24 19871:13 loopbaan 19716:23 loose 19819:21 los 19817:4 19871:12 lot 19741:7 19763:25 19791:24 19811:7 lots 19788:17 low 19744:24 19830:23
---	---	--	--	---

<p>lower 19882:3 lug 19750:3 19864:5 19872:21 19877:3,15 19877:17 19905:1,12 19913:5 luister 19724:22 19814:20 Luitenant 19834:5 lunch 19845:15 19848:10 19849:23 19853:22 luukshede 19886:9 lykswaens 19834:9,10 lyn 19714:14 19754:12 19757:19 19831:6 19867:1 19927:25 19928:15,15 lê 19814:15 19842:21 lêer 19777:10,16 19795:19 lêers 19777:9</p> <hr/> <p style="text-align: center;">M</p> <p>maak 19753:2 19774:16 19804:3,5 19823:20 19827:17 19842:3 19844:9 Maandag 19871:10 19872:4 19917:4 Maandagaand 19918:23 maande 19764:12 19782:15 19795:1 machine 19784:15 Madoda 19924:13 mag 19747:7 19860:7 magte 19747:14 main 19711:16 19723:20 19812:4,6 19841:5 19844:20 19891:1 19923:23 maintain 19784:11 major 19808:19 19809:13 19867:24 19918:11,17 making 19726:13 19732:11 19749:24 19751:20 19752:4 19816:14 19830:3,24 19879:19,20 19881:1 19897:12,14 19905:25 19906:18 maklik 19877:18 makliker 19824:6 19877:4 Makubela 19785:10 19786:14 manage 19787:20 managed 19905:7 management 19747:9 19771:11,13 19774:10,22 19790:5 19790:11,25 19792:16,20,22 19793:23 19794:6 19798:20,23</p>	<p>19799:11 19802:6 19849:2 19854:6 19856:1,6 19892:6,8 19923:5,6,10 19924:14,20 19925:7 19926:10 managers 19841:25 mandaat 19842:16 manier 19721:6 19766:8 19843:15 19844:6 manner 19718:20,23 19720:9 19808:6 manuscript 19895:11 19896:7 maps 19894:8 marchers 19862:14 Marikana 19723:5 19730:5 19760:5 19770:20 19785:12 19786:8 19787:2,22 19835:15 19877:11 19891:8 marshals 19843:18 MARTHINUS 19850:4 19899:13 massacre 19780:21 19781:6,6,12,16 19785:12,14 19786:2 mate 19872:11 materiaal 19928:18 material 19756:24,25 19758:7,12,13 19779:3 19853:21 19875:6 Mathunjwa 19812:25 19813:3,10,18 19814:1,7 19815:18 19816:16,18 19818:11 19820:13 19922:6,13 19923:3 19923:21 19924:7 19925:6 Mathunjwa's 19779:10 19922:15,18,21,24 matter 19719:6 19728:22 19760:25 19763:3,20 19772:21 19773:15 19778:11 19792:23 19794:14 19794:15 19795:4 19806:24 19811:11 19837:22 19839:8 19843:10 19874:19 19879:14 19880:10 19882:6 19907:3 19915:23 19918:7 19922:18 matters 19730:4 19731:7 19754:21 19764:5 19766:23 19771:10 19788:8,18 19829:12 maximum 19714:11 19715:14 19717:9 19740:22,25 19741:5</p>	<p>19745:24 19746:6 19906:15 McIntosh 19924:9 19925:2 mean 19715:5 19716:6 19728:8,10,13 19739:20 19743:19 19743:20 19745:5 19753:21 19772:21 19791:23 19794:13 19798:11 19819:1 19826:8 19827:7 19829:1,8 19839:14 19846:20 19847:18 19848:14 19849:23 19851:5 19852:22 19856:1 19890:22 19905:15 19921:9,12 meaningful 19718:2 means 19712:14 19716:3 19735:7 19743:7 19758:8 19762:2 19788:22 19826:18 19840:13 19847:24 19860:19 19888:10 19905:17 meant 19818:24 19819:3,15 19820:2 19862:10 19926:21 measures 19787:20 media 19735:10 19766:9 19784:19 19786:17,21 19787:3 19818:14 mediating 19842:14 mediators 19732:25 mee 19804:9 19814:16 19863:16 19924:3 meegedeel 19750:24 19782:14 19842:25 19895:4 19909:17 meer 19774:9,22 19805:3 19828:6 19834:14 19836:25 19869:6 19918:2 meerderheid 19894:19 19894:24 meeste 19722:7,20 19731:11,16 19737:10,12 19828:8 meeting 19725:11 19726:5 19731:24 19738:6 19739:7,15 19766:3 19790:11 19792:23 19793:1,14 19793:23 19796:7 19797:22 19798:12 19800:7 19802:24 19803:5,5,7 19880:23 19890:2,17,18 19895:7 19896:4,7,12 19896:13,19 19915:3 19918:18 19921:11 19921:15,18 meetings 19746:1 19893:17 19897:18</p>	<p>member 19714:18 members 19738:20 19752:21 19754:2 19776:24,24,25 19813:25 19821:23 19821:25 19822:1,9 19824:3 19848:1 19875:17 19897:15 19929:4 memory 19832:25 19896:25 meneer 19781:19 19842:15 19849:5 19873:11 19878:7 menigde 19786:20 menige 19841:23 mens 19721:4 mense 19774:20 19804:6 19834:13 19868:5 19912:3 19918:23 19927:23 mention 19813:4 mentioned 19739:6 19837:18 19857:17 Merafe 19908:5 19909:7,14 19910:8 19910:13,18 19911:1 19912:4 19916:22 merely 19719:8 19732:25 19758:19 19842:19 merits 19816:12 message 19815:18 19926:24 metaphorical 19819:14 19819:22 metaphorically 19818:25 19819:4 Microphone 19727:20 19769:21 19770:25 19861:21 19901:23 19909:4 middag 19801:22 middel 19886:4 middle 19900:12,19 mightily 19842:7 military 19819:21 Million 19886:2 min 19869:6 mind 19720:6 19847:10 19850:12 19895:12 19899:1 mine 19727:11 19867:21 19890:5 19892:4,6,7 19896:10 19896:14 19900:13 miners 19787:21 mineworkers 19787:24 minimum 19717:8 mining 19894:9 minister 19712:23,25 19713:2,3,4,17,18,22 19713:22 ministers 19716:13 ministership 19712:13 minority 19852:5</p>	<p>minute 19766:7 19840:23 19869:5 19872:19 19878:12 minuted 19791:2,8,9 19793:24 19794:14 minutes 19749:9 19776:7,13 19793:1 19820:16,17 19827:6 19846:2 19861:1 19888:24 19895:6,8,8 19896:4 19915:4 19921:15 misheard 19863:1 miskien 19725:24 19728:20 19737:14 19738:2 19747:13 19750:1 19768:6,7 19778:2,8 19781:9 19786:16 19787:11 19792:3 19796:25 19802:17 19803:21 19814:5,22 19817:6 19821:1,21 19824:2,6 19827:17 19831:25 19832:5,22 19834:25 19837:11 19854:10 19854:18 19872:7,15 19873:13,13 19883:10 19885:25 19887:4 19888:7,24 19894:22 19897:20 19901:21 19905:4 19914:3,11 19919:2 19920:4 19925:7 19928:13 misled 19846:1 missed 19901:12 mission 19861:5 mistaken 19782:19 misunderstanding 19819:9 misunderstandings 19819:22 misunderstood 19889:17 misverstand 19797:1 19821:22 19822:13 model 19771:13 modesty 19731:1 modification 19739:25 19744:17 moes 19778:6 19801:4 19859:3 19888:20 19901:20 19902:9 moet 19720:23 19737:5 19768:8 19781:5 19786:19 19789:12 19801:8,18 19804:23 19807:21 19812:21 19821:12 19822:18 19823:24 19831:6,7 19833:7 19834:25 19836:25 19850:16 19858:1 19866:20 19868:3 19876:2 19883:10 19887:4</p>
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19890:11 19897:20 19918:23 moment 19745:3,10 19763:3,20 19793:19 19853:5,10 19865:25 19884:23 momentarily 19818:1 Monene 19874:10 19883:11 money 19755:12,14,18 19783:1 monitor 19849:18 19859:12 19861:17 19888:20 monitored 19904:3 monitoring 19861:2 month 19841:17 months 19795:4 mooi 19712:8 moontlik 19831:1 19886:1 19911:18 moontlike 19844:6 19886:14 moontlikheid 19750:7 morning 19740:6 19777:7 19796:19,23 19797:3,24 19799:14 19800:12,22 19801:10 19836:17 19890:19 19922:7 19923:17 morning's 19785:1 morrow 19929:10 mortuary 19833:15,25 19835:13,21,22 19836:7,10,16 19837:5,15 19838:5 19838:13 motives 19850:20 19858:24 Mounted 19823:9,14 19823:15 move 19749:12,22 19751:19 19790:23 19810:13 19833:10 19836:2,9 19838:18 19883:22 19897:5 19916:18 19926:21 moved 19756:22 19864:21 19903:21 movement 19813:6 19821:17 19868:10 moving 19815:17 Mpembe 19803:15 19806:10 19808:20 19809:13 19810:22 19811:3 19848:1 19854:13,22 19855:4 19855:18 19863:25 19864:15,23 19865:18 19866:2,8 19867:3 19868:15 19869:6,14 19871:17 19875:15 19885:20 19890:4 19897:4 19906:16 19907:9,18	19907:24 19908:9 19910:7,8,11,20 19911:23 19912:3,23 19917:10,14,22 19918:20 19919:11 19919:14,18,23 19920:3,8 19921:12 19921:17 19922:2 19925:2,17 Mpembe's 19811:2 19879:11 Mpembe-hulle 19867:5 Mpofu's 19880:8 muster 19929:10 mustn't 19723:10 19838:8 19883:18 mute 19921:20 Mutholong 19788:3 mutineering 19911:11 mutinous 19911:10 19913:13 myn 19834:5,12,20 19843:3 19861:20 mynbestuur 19918:22 19924:2 <hr/> N <hr/> naam 19896:18 19898:12 naaste 19886:13 naby 19860:5 19861:16 19861:18 19862:4 nadere 19811:15 nag 19834:11 Naidoo 19727:18 19898:7 name 19789:16 19836:21 19883:12 19897:21 19914:3 names 19837:18 nasionale 19794:5,7 19826:4 19917:23 naslaan 19834:25 national 19767:14 19790:4,25 19792:16 19792:24 19793:23 19796:6,7 19797:21 19798:5,11,19,23 19799:11 19800:5,7 19802:6 19885:18 nature 19759:11 19819:22 19880:5 19889:10 19922:14 naught 19922:6 near 19743:14 19744:2 19744:20 19770:20 19788:3 19864:15 19882:22 necessarily 19727:12 19733:19 19758:7 19788:9 19798:15 19836:13 19884:16 necessary 19743:9 19756:1,15 19789:15 19798:17 19820:6 19821:9 19828:18	19840:16,25 19859:14 19882:1 Nedbank 19886:2 need 19781:22 19835:12 19852:6 19853:3,4,18 19908:13 needed 19744:15 19876:24 needn't 19763:3 needs 19784:16 neem 19792:7 19850:24 neer 19814:15 19842:21 neergelê 19801:17 neergesit 19816:7 neerlê 19815:5 19816:2 19816:5 19868:20 19871:17 19924:23 neersit 19750:11 19843:1,4 negatiewe 19761:21 negative 19748:19,24 19748:25 19751:16 negotiation 19732:10 19733:11,11 19868:25 negotiations 19731:14 19869:16 19924:19 negotiator 19898:8 negotiators 19924:13 neither 19840:5 never 19742:14 19858:23 19895:12 nevertheless 19779:17 19876:16 new 19779:11 19787:20 19834:1 newspaper 19785:3 19788:17 nice 19886:10 niemand 19815:9 19867:15 19868:1 niks 19720:24 19721:4 19721:6,11 19778:5 19804:23 19805:2 19872:9 19902:10 19905:9 19920:9 nine 19749:9 19767:7 NIU 19727:23,24 19743:22 19777:2 Nkaneng 19749:12,22 19750:6,18,20 19751:5 nodding 19848:11,13 nodig 19768:18 19827:22 19897:8 19898:3 nodige 19841:25 nodigheid 19799:6 nods 19754:24 noem 19801:19 19822:18 19861:19 19868:5 19883:12 19888:18	nog 19717:8 19764:14 19764:22 19774:14 19805:16 19809:4,23 19824:17,17,18 19829:19,20 19840:19 19849:6 19864:11 19888:20 19916:9 19917:22,24 19919:1 nogal 19878:23 19919:25 Noki 19750:23 19816:18,24 19817:3 19817:6,21 19845:7 nommer 19855:12 nommers 19897:10,24 non 19828:3 noodwendig 19842:2 nooit 19712:17 19717:8 19740:25 19816:8 normal 19837:7 normale 19827:18 normally 19897:15 Northern 19775:6,8 notas 19766:4 noted 19758:3 notes 19895:10,11,11 19896:7 notice 19758:20 noticed 19900:1 notices 19841:5 nou 19714:15 19717:3 19720:15 19725:16 19731:18 19737:5 19748:2 19757:20 19769:6 19795:10 19814:8,15 19821:20 19822:12 19823:20 19823:22,24 19826:10 19827:15 19827:23 19831:1 19834:3 19836:21 19838:14 19842:16 19854:19 19855:8,11 19866:18 19867:3 19869:7 19891:10 19893:5 19895:14 19907:22 19908:3 19925:4 19927:22 19928:17 nou-nou 19821:5 19827:16 November 19795:18 no-one 19858:23 number 19743:11,12 19743:21 19744:3,5 19745:2,3,10,12,23 19749:23 19766:18 19788:8 19829:3,9,9 19829:10 19861:1 19897:1 19898:9 19902:25 19915:18 numbers 19897:2 nuwe 19777:2 19891:10 Nyala 19749:9	19815:16,21 19816:17 19818:3 19829:2,8 Nyalas 19741:19 19828:13,20 19843:25 19904:21 19905:23 19906:11 Nzuza 19860:20 <hr/> O <hr/> O 19787:15 19826:14 oath 19711:4 19752:6 19778:23 19782:4,5,6 19850:3 19899:12 objection 19742:13,24 19790:19 19798:22 19841:5 objections 19881:24 objective 19860:25 19861:7 19862:11 objectively 19820:12 objectives 19746:14 19821:25 obliged 19767:20 19859:25 OBOD 19787:8 observasie 19917:21 observation 19860:17 19921:13 observed 19848:16,17 obvious 19783:1 19830:16 19885:7 obviously 19724:14 19725:7 19730:13 19743:19 19744:4 19747:3 19766:24 19781:22 19782:8 19788:7 19806:21 19815:19 19850:9 19865:1 19885:5 19898:18 19900:8 19909:2 19916:4 19919:12 19920:19 19921:4 occasion 19718:17 19738:7 occurred 19757:14 19790:24 19844:12 19876:8 occurring 19900:15 offending 19877:8 offer 19732:13,22 offered 19857:15 19858:10 officer 19717:22 19767:21 19770:19 19782:18 19881:4 19882:19 officers 19716:13 19737:24 19739:24 19740:3,22 19745:24 19752:21 19787:23 19900:19 19901:5,12 official 19849:16 officials 19875:10 offisier 19833:19
---	--	---	--	---

<p>19883:11 19920:1 offside 19783:24 oggend 19720:19 19738:2 19741:9 19746:4 19796:12 19799:4,5,13 19814:14 19815:6 19837:12 19925:3 oh 19743:24 19762:3 19785:15 19795:22 19800:17 19827:5 19830:11 19838:18 19889:24 19895:23 19904:16 okay 19733:25 19744:25 19781:20 19786:6,6 19787:13 19789:1,18 19790:8 19791:7 19792:13 19795:2,8 19796:4,20 19805:4,4,8 19810:7 19810:12 19811:17 19813:1 19816:20 19817:22 19820:8 19821:6 19825:9 19830:9,15 19833:24 19835:11 19839:17 19841:14 19843:21 19845:24 19846:23 19851:23 19852:4,9 19855:20,20,21 19856:8,10 19857:1,3 19861:13 19862:8 19864:14 19867:9 19869:10 19872:25 19882:18 19884:18 19885:11,12 19886:15 19890:20 19897:25 19900:17 19901:22 19902:24 19904:7 19905:14 19906:4 19907:23 19912:10,15 19914:7 19914:24 19916:15 19916:17,21 19922:1 19924:11 old 19835:15 omdat 19855:18 19861:10 omgewing 19859:12 19862:1 omsigtigheid 19781:9 19928:21 omstandighede 19827:18 19828:5,5 19921:7 omtrent 19778:6 once 19752:11 19767:6 19833:14 19871:3 19878:5 19897:3 19902:17 19907:4 19921:9 19923:4 onder 19717:1,2 19766:8 19774:4 19775:23 19782:13 19829:19 19834:12</p>	<p>19849:3 19855:13 19856:6 19859:12 19861:19 19862:4 19869:5,7 19907:22 19908:3,3 19911:4 19913:4,7 onderhandel 19842:17 19843:5 19869:6 19907:25 19924:25 19926:15 onderhandelaars 19777:4 19842:16 onderhandeling 19815:8 19817:11 19842:23 19844:7 19869:8 19912:25 19918:21 onderhandelinge 19740:25 19741:12 19760:11,12 19814:13 19842:25 19868:15 19926:18 19926:19 onderhandelingsfase 19740:11 onderskeid 19792:3 ondersoek 19787:8 19851:25 19852:3 ondervind 19888:25 19889:1 19919:2 ondervinding 19712:16 19712:19 19715:9 19717:2 19737:10 19748:21 19774:4,17 19774:23 19812:19 19886:21 ondervraging 19782:24 onderwerp 19782:23 ones 19893:21 ongelukkig 19886:12 19913:24 19926:9 ongewapend 19814:16 onluste 19834:12 19835:5 onmiddellik 19911:14 onmoontlik 19804:24 19824:16 19831:11 onnodig 19890:14 onoordeelkundig 19781:7 onpartydig 19850:16 ontdek 19778:4 onthou 19714:15 19726:3 19736:4 19782:15 19814:18 19831:5 19857:25 19872:3 19888:17 19914:4 ontken 19892:17 ontvang 19751:12 ontwapen 19801:19 19858:1 onwettig 19840:19 19843:1 19871:1 onwettige 19815:4 19868:5</p>	<p>ooggetuie 19905:11 oogpunt 19885:23 ook 19724:23 19725:24 19731:13 19734:17 19740:11 19741:1,18 19742:9 19746:6 19748:2,7,8,16 19750:8 19754:9 19761:16 19768:15 19768:19 19775:22 19782:23 19787:6 19805:2 19813:9 19816:6 19824:12 19826:1,3,6 19827:25 19829:22 19833:8 19834:13 19835:7,17 19842:25 19843:3 19845:7 19849:5 19855:11 19860:12 19872:15,18 19877:15 19883:11 19885:24 19890:13 19896:18 19906:5 19911:5 19914:21 19916:13 19920:5 19928:20 oor 19717:5 19741:11 19769:7 19778:8 19787:7 19799:8,23 19802:19 19816:4 19828:4 19834:7 19842:17,19 19844:2 19844:3 19864:8 19867:5 19879:1 19905:13 19909:23 19911:1 19913:8 19916:14 ooreengekom 19814:14 ooreenkoms 19916:10 19924:21 oorgaan 19799:22 oorgang 19862:5 oorgedra 19720:20 19807:19 19845:7 19867:17 19926:13 oorgegaan 19760:13 oorgeloop 19834:11 oorhoofse 19728:18 19804:17,18 19805:1 19805:16 19806:4,6 19919:1 oorlede 19834:13 oorledenes 19912:7 ooste 19878:22 opdrag 19754:9,10 19812:22 19822:20 19823:24 19826:2,3,6 19828:2,2 19829:20 19831:5,10 19833:5,6 19833:7 19859:5 19868:2 19875:25 19918:22 19920:6 opdragte 19717:7,8 19724:24 19753:8 19807:17,19,20,22 19812:18 19825:20</p>	<p>19919:1 open 19850:12 19917:12 openbare 19716:25 19717:2 19748:22 19754:9 19777:2 opened 19788:2 opening 19925:23 opens 19890:17 operasie 19721:11 19724:22,25 19731:12,17 19806:6 19812:21 19821:2 19894:21 operasioneel 19825:18 19835:7 19897:20 operasionele 19720:17 19720:18 19768:19 19804:7 19806:2 19808:25 19824:11 19832:17 19885:23 19885:25 19897:8,23 operate 19838:22 operating 19752:10,12 operation 19724:1 19727:10,14 19728:10,17,17 19730:8 19731:20,22 19732:1 19737:25 19746:24 19755:23 19756:2 19764:7 19767:12 19791:18 19803:16,24 19804:13 19805:7,8 19805:23 19806:10 19806:25 19810:8 19811:25 19812:15 19813:25 19816:21 19817:14,25 19818:1 19818:9 19820:10,23 19822:1,6 19827:4,6 19827:14,16 19829:5 19832:21 19833:16 19833:25 19835:14 19837:16 19847:15 19853:23,24 19871:25 19873:8 19874:12 19879:20 19879:24 19886:24 19886:25 19887:18 19887:20 19916:2 19917:18 19918:14 19919:5,6,10 19921:18 operational 19723:25 19728:16 19729:13 19752:12,15 19764:6 19764:8,13 19765:11 19765:21 19767:6 19768:3 19769:19,25 19791:17 19803:17 19803:19 19804:1,14 19805:12,23 19806:14 19811:12 19820:21 19828:17 19830:21 19831:18</p>	<p>19832:13,25 19835:12 19837:9,25 19858:23 19876:19 19878:19 19886:1 19888:3 19892:1 19924:12 operations 19729:15 19762:14 operation's 19919:5 opgelei 19753:6 opgesit 19886:2 opgestel 19725:25 19843:16 19893:5,13 opgetel 19716:21 19872:3,4 opgetree 19746:12 opgevat 19885:24 opinie 19717:7 19812:12 opinion 19772:20,22 opinions 19775:9 opmerking 19921:24 opmerkings 19714:14 19731:11,15 oppad 19909:17 opponent 19732:24 opportunities 19768:11 opportunity 19721:13 19724:10 19730:13 19732:5 19779:22 opposite 19737:19 opsies 19802:16 opsig 19747:16 opsigte 19809:22 opsit 19886:3,12 optel 19720:23 option 19738:8 19739:14 19743:14 19794:3 19807:25 19836:2,8,18 19919:5 options 19760:7,16 optog 19868:5 optrede 19721:5 19815:1 optree 19833:9 19842:2 opvolg 19927:25 19928:15 oral 19808:10 orde 19716:25 19717:2 19722:8 19748:22 19754:9 19777:2 19803:23 order 19717:25 19722:25 19729:8 19758:14 19759:17 19760:24 19775:9 19784:11 19797:11 19804:11,20 19812:1 19835:13,20 19836:11 19900:23 19901:10 19902:3 19903:22 19927:17 ordered 19831:21 19835:21 19836:6,11 19836:12,16 19837:5 19837:15,18</p>
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19838:13 orders 19753:11 19759:10,15 19765:18 19766:13 19767:22 19812:18 Ordes 19833:8 ordinary 19726:23 organisation 19827:8 organising 19767:12 original 19895:10 ou 19820:25 ought 19729:23,24 outbreak 19841:20 outcomes 19784:9 outer 19816:13 outgoing 19921:14,19 outoriteit 19719:20 outpourings 19909:12 overall 19803:14,19,22 19803:24 19804:1,19 19811:2 19917:18 19921:3,19 overbearing 19720:1 overnight 19721:14 oversee 19731:5 overstated 19745:1 overtaken 19763:24 o'clock 19751:24 19895:7 19896:4 19923:3 o'clock 19761:3 19802:24 19803:5 19890:19 19893:18	19771:4,6,7 19797:4 19801:11 19830:10 19889:24 19895:6,13 19896:9 19899:25 19900:12,17,18,18 19906:10 19915:2 paragraphs 19722:12 19730:1 19785:10 paragrafe 19731:13 parameter 19846:7 parameters 19783:16 19846:10 pardon 19771:3 19901:2 part 19727:16 19728:11 19740:15 19742:1,4,6 19743:13 19749:11 19787:20 19791:18 19798:4 19819:7,23 19821:16 19823:4 19833:13 19835:12 19845:18 19846:5 19862:12 19869:25 19888:5,8 19888:10,11,13,13 19890:8 19891:21 19894:16 19896:12 19897:18 19899:8 19900:9,15,24 19901:6,12 19903:2,6 19904:20 19916:17 19925:14 19927:5 participate 19894:15 participated 19916:3 particular 19717:23 19718:14 19721:20 19723:4 19730:4,6,11 19730:12,14 19749:14 19755:14 19788:13 19820:22 19823:8,10 19825:8 19841:6 19842:14 19884:4 19890:17 19891:16 19904:10 19915:3,15 particularly 19775:9 19781:22 19819:23 partners 19887:1,3,9 19887:12 partnership 19887:19 19903:20 parts 19722:13 19730:16 partye 19887:22 19897:23 partykeer 19885:23 pas 19823:19 19831:10 19833:21 pass 19716:15 passage 19717:23 19718:2 19805:5 passages 19718:14,18 19724:11 19730:19 19899:24 19904:10 19918:10 19927:18 passed 19780:22	patrollie 19827:19,19 PC 19791:6 peaceful 19842:22 peacefully 19840:15,22 19840:24 19880:23 pecking 19812:1 peloton 19835:7 penultimate 19892:4 people 19714:21 19715:14 19716:13 19720:2 19728:3 19730:8 19743:1,7,19 19743:22 19745:2,11 19745:25 19746:7 19749:13 19752:1 19756:3,19 19767:11 19780:20 19787:25 19793:22 19796:9 19800:10 19811:5 19812:5 19818:12 19825:3 19827:4 19829:13 19831:17 19832:20 19838:12 19841:6 19843:24 19852:4 19854:14,23 19855:5 19857:8,16 19858:25 19859:7,22 19863:13 19868:11 19873:6 19875:11 19876:24 19878:17 19879:18,23 19880:22 19889:15 19892:10 19893:22 19894:15 19897:4 19900:3 19904:17 19906:13,13,15,16,17 19906:19 19910:10 19911:23 19913:14 19922:9,13 perceive 19885:4 perceives 19840:6 performing 19806:16 period 19757:13 19895:9 19896:5 19910:19 19922:3 peripheral 19920:20 permissible 19926:5 permission 19884:15 19916:19 permitting 19884:14 persent 19774:11 persisting 19880:3 person 19752:24 19767:16,18 19789:16 19804:13 19805:8,11,21 19812:4,6 19829:6 19831:19 19836:12 19836:15 19849:14 19885:19 19900:1 19903:23 19920:14 19921:20 personal 19782:7,20 19907:4 personally 19821:22 19824:3	persone 19725:2 19737:11 19748:22 19756:6,9 19757:22 19792:9 19802:15 19814:13 19815:3 19818:3 19825:19 19834:8 19841:24 19842:20 19844:3 19849:6,18 19857:10 19858:1 19859:11 19864:6 19868:3 19871:11,14 19877:14 19887:7,13 19888:19 19889:2 19894:23 19896:18 19914:4 19924:23 19925:2 personeel 19810:6 19872:5 19886:5 19897:21 personnel 19856:8 19903:12 19905:7,19 19914:20 persons 19746:1 19792:25 19874:11 19876:15 19883:24 persoon 19720:16 19774:23 19805:15 19806:6 19836:20,23 19849:6 19857:10 19870:24 19872:20 19888:22 19909:22 19911:4 19912:5 19919:24 perspective 19888:2,12 persuaded 19813:21 persuading 19884:23 pertinent 19731:12 19823:25 phase 19724:2 19725:9 19726:13 19790:24 19793:8 19794:2,3 19797:22 19799:14 19803:1 19813:6 19819:6,6 19836:2,5 19836:5,10 phases 19740:16 phone 19711:3 photographed 19755:23 photos 19778:15 physically 19805:22 pick 19803:17 picked 19880:16 picture 19785:11,12 19786:8,9,9 19869:25 pilot 19900:21 pilots 19902:1 pilot's 19900:22 19902:2 pinch 19850:19 pipeline 19855:22 19859:16,22 19863:4 19864:15 19871:7 pipelines 19862:15 19864:23	PK 19920:6 plaas 19741:20 19794:6 19814:14 19872:15 plaasgevind 19815:9 19834:20 19876:22 19908:2 plaasvind 19804:25 19824:20 19886:2 19925:11 place 19742:20 19769:13 19770:1 19794:16 19797:8 19844:13 19848:10 19854:13,22 19864:22 19871:25 19873:8 19879:18 19880:13,24 19881:7 19882:22 19913:16 19922:3 places 19715:13 19790:4 placing 19811:25 plan 19731:5,22 19734:13 19737:23 19738:18,21,24 19739:10,10,11,16,19 19739:19,21,22 19740:1,4,6,9,23 19761:13,16,22 19797:4,8,18 19799:21 19801:4,11 19801:15 19823:13 19825:2,4,5 19828:12 19833:4 planning 19731:19 19735:2,7,8,14 19737:15 plans 19822:4 Platinum 19886:24 play 19917:12 played 19898:23 players 19891:21 please 19721:20 19725:21 19770:1 19776:23 19799:25 19819:18 19845:22 19846:5 19886:18 19890:22 19891:25 19898:8 pleased 19780:1 plek 19801:4,12,21 19831:9 19843:17 19854:3 19868:22 19877:2 19886:14 plekke 19824:20 19849:8 plekkie 19781:3 ploughed 19927:7 19928:9 plus 19834:13 19919:23 Pnumelela 19785:9 pointed 19828:15 19849:15 19868:9 19916:17 19921:10 pointing 19751:22
---	--	---	---	--

P

paar 19866:19
19872:19
packed 19843:24
pad 19863:6,10,11
19864:12 19867:2
19870:25 19905:5
page 19711:11
19723:15 19752:8
19785:2,7 19795:9,23
19795:25 19830:13
19889:25 19890:5
19895:13 19896:9
pages 19711:15
19718:8
panele 19774:6
panga 19880:4 19881:4
19881:9 19882:20,22
pangas 19871:1
Papa 19741:19
Papal 19924:8
paper 19739:23
19740:6 19785:1
para 19901:24
paragraaf 19722:7,9
19801:5 19914:13
19916:12,14
paragraph 19723:20
19723:21 19729:6
19734:2 19746:13
19747:18 19748:6,11
19752:9 19762:5

19853:25 19871:21 19871:23 19873:5 19904:7 pointless 19865:12 points 19730:8,15 19747:4 19748:19 19766:19 19785:24 19793:6 19824:14 19898:22 policeman 19876:9 policemen 19719:17 19836:14,15 19880:25 19904:21 19905:23 police's 19733:21 policies 19812:17 policing 19722:25 19775:9 polisie 19750:5 19760:11 19764:24 19768:15 19775:23 19781:8 19794:24 19801:18 19844:1,4,7 19845:11 19850:16 19850:24 19852:24 19860:11 19861:15 19867:18 19868:6 19872:9 19873:21 19886:9,20 19889:3 19906:7 19926:16 polisiebeampte 19876:20 polisiebeamptes 19746:11 polisiesman 19721:7 polisiering 19716:25 19717:2 19748:22 19754:9 19777:2 POP 19747:8 19755:15 19848:1 19855:5 POPS 19776:24 port 19810:18 pose 19857:16 19858:11 19867:21 19870:24 19871:13 posing 19870:17,21 posisie 19801:18 positief 19814:20 positiewe 19748:23 position 19745:1,6,9,16 19797:10 19911:9 19917:17 positioning 19904:6 positive 19748:19 19751:16 19771:22 19838:24 possession 19870:15 possessions 19875:12 possibilities 19761:13 19761:23 19875:14 possibility 19741:6 19788:1 19836:12 19875:16 possible 19719:1 19735:25 19736:22 19788:11 19822:4	19904:16 possibly 19760:25 19836:14 19853:14 19898:16 Potchefstroom 19764:21 19765:19 19767:8,11 19768:1 19835:5,8 power 19806:19 19808:22 19809:3 19813:5 19815:17 19831:19 powers 19816:13 power-that-be 19808:22 praat 19712:15 19717:7 19731:13 19748:3 19766:7 19768:10 19834:12 19855:12 19859:12 19861:19 19862:3 19869:5 19911:4 19927:22 practical 19739:4,14 19810:18 19828:11 19828:19 19840:13 practice 19755:6 practices 19771:12 precept 19721:20 precepts 19711:17 precisely 19720:6 preface 19838:19 prefaced 19805:19 prejudge 19783:20 prejudging 19784:5 prejudice 19758:15 preliminary 19776:14 19779:3 19788:14 prematurely 19922:22 premise 19874:24 premises 19875:1 19884:8,16 prepare 19926:21 prepared 19732:19 19802:7 19892:23 19895:8 prepositioning 19741:17 presence 19767:21 19903:12 present 19776:24,25 19793:22,24 19802:23 19803:4 19865:6 19919:12 presentasie 19722:18 presentation 19766:21 presented 19752:13 19772:3 President 19797:9 presies 19714:13,14 19720:22 19753:7 19761:15 19774:3 19821:20 19823:20 19834:20 19869:7 19879:1 19890:13,15 19907:22 19908:2	19913:5 19926:11 19927:24 presiese 19786:24 press 19819:15 presumably 19742:20 19743:11 19750:18 19837:25 19894:1 19896:13 19898:24 19904:19,20 19914:15 Pretoria 19794:6 19834:4 prevalent 19716:12 prevent 19780:24 19783:5 19789:3 prevented 19734:4 19769:15 19910:20 previous 19768:21 19792:23 19793:20 19793:21 19796:18 19800:11 19833:24 previously 19900:20 prima 19725:6 19727:11 19732:11 19919:12,20 19920:12 primarily 19715:6 principle 19774:25 19775:6 19829:15 prior 19753:15 privy 19796:10 19800:10 probabilities 19880:9 19880:16 probability 19741:6 19758:1 19851:13 probable 19734:25 19736:22 19761:12 19761:22 19880:20 probably 19719:10 19723:20 19736:19 19744:23 19783:12 19785:19 19795:18 19885:19 19892:8 19906:15 19921:18 probeer 19725:22 19816:25 19832:1 19860:13 19871:17 19911:18 19926:18 problem 19755:3 19792:10 19804:9 19886:13 problem 19738:5 19755:9,11 19810:21 19841:14 19853:7 19860:21 19876:7 19922:14 problematic 19746:15 19754:25 19755:17 probleme 19888:25 problems 19757:1 19841:4 problem-solving 19771:11 proceed 19724:2 19725:9,21 19726:13	19754:23,24 19793:8 19794:2 19819:6 19820:7 19846:15 19853:9 19900:7 19911:23 19919:10 proceeding 19859:23 19865:2,3 proceedings 19711:1 19713:9,14,16 19837:4 process 19788:12 19815:16 produced 19762:25 19763:16,18 produces 19874:22 progress 19801:24 project 19853:3 projector 19853:2,15 projectors 19890:24 proper 19716:4 19818:21 properly 19714:19 19718:18 19791:2 property 19918:4 proportion 19744:22 19744:24 proposal 19767:25 19793:1,25 proposed 19740:16 19764:17 19911:23 proposition 19790:7 19810:8 19812:25 19927:11 19928:7 propositions 19722:23 protective 19736:17 19749:18 protest 19788:2 protesters 19734:3,3 19775:22 protestors 19787:20,21 19839:8 provide 19753:11 19762:14 19765:3 19857:6,6 19870:1 19894:2,4 provided 19854:15 19856:16,21 19915:16 providing 19871:22 provinces 19755:15 provincial 19725:13 19760:24 19767:13 19792:24 19793:25 19811:7 19919:9 provinsiale 19794:9 19857:25 19859:5 19875:25 provisions 19714:19 19716:14 provocative 19734:14 19788:6 public 19722:25 19775:9 19816:4 publiek 19784:22 19787:3 19789:12 pun 19803:20	punt 19827:17 19832:6 19882:24 19885:24 19906:24 19916:11 19917:21 punte 19721:16 19749:1 19833:21 pure 19874:15 purpose 19711:22 19742:12 19788:13 19869:17 purposes 19723:24 19780:14,18 19781:21 19798:23 19808:19 19865:6 19886:24,25 19887:18 pursued 19836:9 19869:24 purview 19915:20 put 19714:4 19715:11 19718:17 19720:12 19722:3 19724:11 19727:10 19730:18 19732:15,18 19737:25 19739:22 19740:6 19745:20 19755:5 19756:15 19757:24 19773:21 19783:14 19785:1 19790:7 19792:21 19795:14,22 19799:15 19805:10 19807:16 19812:25 19818:10 19823:6 19839:6 19843:8 19861:3 19874:20 19879:7 19886:23 19897:2 19901:22 19903:13 19919:6 19921:11 19922:12 19922:14,23,24,24 19924:15 19925:15 19927:11 19928:7,9 puts 19791:8 putting 19749:18 19766:13 19767:7,24 19788:13 19795:13 19798:8 19805:19,21 19823:2 19865:21 19871:20 19887:17 19919:13 puzzled 19713:12 PW 19903:4 pyplyn 19855:12 19861:18 19862:4 19864:7,11
Q				
qualified 19774:1 19925:18 quarter 19849:25 quarters 19819:10 questioned 19858:24 19928:12 questioning 19811:20 19865:9 19928:24				

<p>questions 19711:9,14 19714:4 19724:15 19729:6 19767:17 19776:16 19777:23 19800:1 19818:22 19822:12 19854:12 19874:24 19899:16 19917:12</p> <p>quibble 19781:18 19783:17</p> <p>quickly 19778:14 19916:23</p> <p>quietly 19920:18</p> <p>quite 19727:13 19763:25 19779:20 19824:25 19828:11 19836:16 19849:12 19881:19 19883:15 19919:7 19927:4</p> <p>quotation 19715:3</p> <p>quote 19840:5 19917:9</p> <p>quoted 19713:13,15,18 19713:23 19789:17</p> <p>quoting 19714:21 19800:6</p> <hr/> <p style="text-align: center;">R</p> <p>raakgesien 19817:9</p> <p>radio 19730:9 19754:25 19755:10 19755:16 19809:15 19811:5 19886:7</p> <p>radioing 19861:3</p> <p>radios 19755:3</p> <p>radius 19879:16</p> <p>railway 19848:2 19866:1 19903:6 19904:4</p> <p>raise 19881:24 19885:9 19885:13</p> <p>raised 19739:7 19744:19 19882:5 19884:13 19914:25</p> <p>raises 19882:2</p> <p>rand 19842:19</p> <p>rang 19774:7</p> <p>range 19717:4</p> <p>ranking 19805:7,9 19830:23</p> <p>ranks 19805:10</p> <p>rapport 19772:12</p> <p>rapporteer 19824:21 19827:24 19872:6</p> <p>rate 19774:11</p> <p>rationale 19724:1</p> <p>razor 19753:16 19830:19</p> <p>reach 19853:17</p> <p>reached 19711:11 19866:9</p> <p>reaching 19869:1</p> <p>react 19735:23,24 19736:19,23 19737:2</p> <p>reacted 19736:1,1</p> <p>reacting 19798:8</p> <p>reaction 19887:17</p>	<p>read 19720:8 19772:13 19773:16,16,17 19785:10 19787:18 19788:6 19796:4 19798:10 19822:25 19829:24 19860:20 19899:1 19900:25 19901:3,7,14 19907:15 19914:16 19915:9 19927:14</p> <p>readily 19742:11,12</p> <p>reading 19721:14 19788:12,17 19903:1 19915:2</p> <p>ready 19752:6 19765:5 19777:21</p> <p>reageer 19852:24</p> <p>reaksie 19781:8 19926:15</p> <p>real 19731:14 19733:11 19751:5</p> <p>realise 19780:18</p> <p>reality 19809:11,13</p> <p>really 19714:18 19716:15 19733:5 19736:14 19751:4 19759:6 19761:3 19766:13 19775:11 19811:20 19830:24 19850:9 19863:20,21 19913:9,17,18 19918:5 19922:2</p> <p>reason 19728:10,24 19751:1 19759:18 19767:6 19798:21 19802:25 19803:3 19808:19 19858:25 19865:4,5,19 19867:19 19876:23 19885:1 19913:17 19917:12</p> <p>reasonably 19878:15</p> <p>reasons 19733:14 19746:16 19756:18 19780:19 19808:20 19835:20 19857:14 19858:10 19867:20 19913:11 19925:15</p> <p>recall 19711:11 19718:24 19830:19 19833:15 19836:17</p> <p>receive 19765:6 19806:9</p> <p>received 19848:3 19927:13</p> <p>receiving 19875:6</p> <p>recollection 19858:9</p> <p>recommence 19849:24</p> <p>recommend 19770:10</p> <p>recommendation 19762:5 19770:19</p> <p>recommendations 19760:4 19762:5 19770:11,12 19771:2 19771:8</p> <p>reconcile 19800:21</p>	<p>record 19723:24 19729:12 19751:15 19752:11 19758:10 19762:15 19763:15 19769:18 19780:1,2 19781:15 19786:4,6,7 19791:1 19852:23 19869:25 19870:8 19872:15 19883:2 19914:13</p> <p>recorded 19738:9 19755:24 19757:13 19870:9</p> <p>recording 19756:17 19922:11</p> <p>recordings 19756:10 19756:13 19769:25 19770:4</p> <p>records 19765:11 19768:21 19770:3</p> <p>rede 19836:25 19872:15,18 19920:4</p> <p>redelike 19721:7 19923:9</p> <p>redes 19711:20 19725:4 19747:25 19757:20,22 19836:22,24 19856:24,25 19912:22</p> <p>redivert 19904:18</p> <p>redrafting 19896:6</p> <p>redundant 19835:22</p> <p>reeds 19849:10 19856:24 19864:12 19868:1 19896:22 19929:7</p> <p>refer 19712:25 19713:7 19776:5 19829:24 19844:12 19848:15 19899:21,22 19918:10,12,17</p> <p>reference 19770:8 19780:15 19858:8 19899:2</p> <p>referred 19758:18 19779:23 19830:5 19875:13 19895:17 19895:21 19896:8,20 19898:17,21 19899:19 19919:15</p> <p>referring 19713:13 19714:2 19743:25 19782:9 19813:24 19853:10 19859:17 19898:1 19901:9</p> <p>refers 19723:21 19755:7</p> <p>reflects 19780:6</p> <p>reformulate 19745:20 19819:8</p> <p>refrain 19852:14 19915:1</p> <p>refuel 19878:11</p> <p>refuelling 19877:25 19878:5</p>	<p>refusal 19925:14</p> <p>refused 19869:16 19922:6 19924:14</p> <p>reg 19725:23 19731:10 19740:18 19774:16 19774:17 19775:1,3 19775:21,23 19792:8 19827:20 19829:18 19829:22 19837:1 19840:9 19842:16 19854:19 19857:25 19861:23 19918:22</p> <p>regard 19714:20 19715:12,13 19719:12 19764:5 19765:18 19770:16 19802:1,10 19803:4 19845:16,20,21 19900:6 19912:11 19915:16</p> <p>regarded 19730:21 19897:17</p> <p>regarding 19822:10 19896:14</p> <p>regardless 19880:4</p> <p>regering 19717:1,3,4 19774:5</p> <p>regime 19711:25 19712:11 19716:12 19833:14,18 19834:1 19834:23 19835:3</p> <p>registered 19851:11</p> <p>regspan 19778:5</p> <p>regstellings 19768:18</p> <p>regte 19719:20 19789:12</p> <p>regter 19843:15</p> <p>regterkant 19750:6</p> <p>reguit 19867:1</p> <p>regulation 19841:4</p> <p>regverdig 19816:1</p> <p>rekord 19720:21 19774:8 19847:5 19914:22</p> <p>rekords 19835:1</p> <p>relates 19724:8 19744:5 19754:21</p> <p>relating 19724:15 19730:8,21 19739:13</p> <p>relation 19711:14 19729:6 19730:5 19731:7 19732:9 19740:1,16 19754:18 19840:2 19841:4 19842:7 19884:5 19904:8</p> <p>relations 19755:9</p> <p>relative 19744:22</p> <p>relevant 19732:21 19865:6,8,24,25 19891:16 19899:8 19900:18 19908:25</p> <p>rely 19717:24 19718:2 19773:17 19802:4 19896:25</p> <p>relying 19718:19</p>	<p>remained 19810:23</p> <p>remaining 19792:25</p> <p>remark 19883:24 19904:14 19921:12</p> <p>Remarkably 19921:14</p> <p>remarks 19720:2 19927:20</p> <p>remember 19741:23 19755:4 19760:23 19762:20 19789:21 19789:25 19882:11 19896:25 19917:8 19925:23</p> <p>remind 19712:22</p> <p>reminds 19744:11</p> <p>removal 19916:22 19917:9,14,15</p> <p>remove 19876:4</p> <p>removed 19917:17</p> <p>repeat 19752:19 19789:6 19800:15 19845:22 19846:5 19928:3</p> <p>repeatedly 19714:17 19789:22 19800:24</p> <p>reply 19720:13</p> <p>report 19730:20 19769:5,14 19772:10 19773:11 19792:1 19825:6</p> <p>reported 19809:11 19819:15 19820:5 19896:14 19923:4</p> <p>reports 19773:16,16,17 19810:5 19861:3</p> <p>represent 19780:20</p> <p>representative 19890:6 19890:7 19892:2,4,7</p> <p>representatives 19890:1 19892:6</p> <p>represented 19890:2</p> <p>request 19732:15,19,20 19732:21 19765:2 19768:21 19769:24 19770:4 19870:2</p> <p>requested 19744:14</p> <p>require 19767:22 19919:20</p> <p>required 19773:23 19824:25 19825:8</p> <p>requires 19744:16</p> <p>requiring 19825:12</p> <p>res 19721:10 19801:13</p> <p>research 19771:9</p> <p>residents 19915:18</p> <p>resolve 19869:16</p> <p>resolved 19868:25</p> <p>respect 19739:18 19773:19 19788:20 19915:2</p> <p>respected 19785:9</p> <p>respek 19814:5 19890:11</p> <p>respekter 19787:3</p> <p>respond 19744:19 19769:17</p>
--	--	---	---	--

<p>responding 19769:23 19882:6</p> <p>response 19724:14 19732:14 19765:2 19852:18</p> <p>responses 19761:12,15</p> <p>responsibilities 19761:22</p> <p>responsibility 19766:15 19827:1 19887:6</p> <p>responsible 19731:4 19795:13 19803:25 19805:11,22</p> <p>rest 19721:14 19729:22 19778:11</p> <p>rests 19825:22</p> <p>result 19762:13 19853:24 19874:4,9</p> <p>results 19731:6 19771:22</p> <p>resume 19751:23</p> <p>resumes 19711:2 19752:2 19778:21,22 19850:1,2 19899:10 19899:11</p> <p>retaliation 19787:22</p> <p>retraction 19748:24,25</p> <p>return 19843:8</p> <p>returned 19742:15,19 19848:25 19904:3 19907:3</p> <p>revert 19765:15</p> <p>review 19771:9</p> <p>revision 19919:20</p> <p>re-fuel 19872:17</p> <p>re-fuelling 19878:12</p> <p>re-plough 19870:4 19927:5</p> <p>re-ploughing 19928:8</p> <p>ride 19877:7</p> <p>rig 19777:9</p> <p>right 19723:22 19726:14 19727:1,18 19732:6 19733:2,14 19733:20 19737:25 19743:2,15 19749:20 19751:10 19763:10 19767:2 19769:8 19771:2 19775:12 19789:5 19803:11 19807:16 19808:3,15 19813:24 19816:11 19816:12 19823:4 19825:15 19826:21 19829:16 19840:25 19841:9,10 19849:12 19859:7 19876:7 19880:8 19892:11 19893:23 19896:3 19901:24 19902:5 19910:10 19918:12 19919:17 19920:18</p> <p>rights 19714:21</p> <p>rigting 19768:7 19867:1,4 19877:5</p> <p>risk 19782:25 19836:4</p>	<p>risks 19904:6</p> <p>risky 19760:7,16</p> <p>rivalry 19839:15</p> <p>road 19863:8</p> <p>roads 19915:18</p> <p>robot 19826:18</p> <p>robots 19826:8,13,16 19826:17</p> <p>roep 19799:8 19824:16</p> <p>rol 19728:18 19887:4,6</p> <p>role 19887:5 19891:21 19898:23</p> <p>role-players 19822:6 19897:2</p> <p>rolled 19834:1</p> <p>rolspelers 19897:9</p> <p>rond 19824:13 19912:5</p> <p>rondom 19721:3 19731:17 19737:9 19781:9 19802:18 19803:8 19810:5 19814:8</p> <p>room 19758:11 19889:16</p> <p>root 19839:7,25 19840:2 19911:10</p> <p>roots 19764:21 19767:12,15 19892:23 19893:9,9 19895:9</p> <p>round 19730:2 19833:11 19923:20</p> <p>Rover 19773:7</p> <p>rubber 19828:3</p> <p>ruling 19882:10,13</p> <p>run 19714:3 19735:1 19898:19</p> <p>Rustenburg 19886:4 19894:9 19909:16</p> <p>rustige 19721:10</p> <p>ry 19827:19 19863:7 19877:3</p> <p>rêrig 19912:2</p> <p>R12 19841:17</p> <p>R5s 19904:22 19905:23</p> <p style="text-align: center;">S</p> <p>saak 19842:24 19844:9</p> <p>saakdossier 19851:20</p> <p>saam 19753:3 19755:3 19755:20 19761:24 19766:6,17 19771:20 19775:4,21 19781:5 19783:7 19784:23 19791:20 19805:14 19811:15 19818:14 19825:17,19,20 19842:23 19845:12 19849:7 19855:17 19857:12,12 19860:3 19861:10 19864:13 19872:8 19873:10,16 19873:23 19882:24 19887:13 19898:3 19904:25 19906:2,25 19909:25 19916:13</p>	<p>19919:23 19921:5 19923:25 19924:1</p> <p>saamgestel 19766:10 19768:12</p> <p>saamgestem 19916:9</p> <p>saamgewerk 19834:6 19835:7,9</p> <p>saamstem 19764:20 19809:19 19870:20 19872:24</p> <p>safe 19756:22</p> <p>sake 19801:23 19898:1 19899:21</p> <p>sal 19724:24 19728:18 19728:18 19736:5 19737:8,9 19741:12 19760:18 19768:14 19768:16,17 19770:24 19774:15 19774:23 19783:7 19787:4 19804:16 19805:14,16 19809:2 19810:3,15 19817:9 19817:16 19822:2 19824:4,19 19826:1 19831:6 19834:25 19836:23,23 19842:1 19842:2 19843:16 19849:17 19851:21 19851:25 19852:2,14 19852:24 19860:7 19870:19 19875:25 19877:16 19878:20 19878:21 19887:11 19887:22 19888:24 19894:21 19897:8,9 19904:24 19905:8 19920:4 19921:6,22 19921:22 19923:11 19924:2,23,24 19925:11 19928:22 19929:8</p> <p>salt 19850:19</p> <p>samewerking 19887:22 19887:23 19888:1 19916:10</p> <p>sanctity 19774:24 19775:10</p> <p>SAPS 19729:19 19751:15 19752:21 19760:5 19764:17 19765:11 19766:20 19786:13 19789:7 19846:16 19856:1 19857:16 19884:6 19887:1 19888:4 19900:12 19904:5 19915:17,20 19916:5 19925:15,22,23,24,25</p> <p>sat 19919:18 19920:18</p> <p>satelliet 19886:11</p> <p>save 19718:5</p> <p>saw 19717:20 19730:20 19862:23,25 19916:25</p> <p>saying 19744:1,2</p>	<p>19750:21 19767:16 19783:9 19784:7,25 19788:9 19789:5,16 19792:14 19797:2,18 19798:5 19804:11,13 19805:20,20 19809:12 19813:19 19818:18 19820:9 19823:4 19826:12 19832:10 19837:7 19840:21 19846:8,11 19850:8 19851:8,14 19862:13 19863:22 19873:4,4,14 19877:6 19882:6 19885:2,16 19888:11 19890:7,7 19902:12,17 19903:15 19905:20 19907:5,15,16 19909:1 19916:1,2,3 19925:19</p> <p>says 19719:11,11 19722:1,5,13,16,17 19730:3,6 19733:5,10 19736:21 19737:20 19742:25 19743:1,9 19743:12 19749:19 19749:20 19754:4 19761:19,25 19762:6 19764:5 19770:1,3 19772:23,24 19785:11 19786:14 19787:19 19788:10 19796:5 19811:9 19816:20 19817:22 19819:13 19829:10 19830:17 19850:18 19852:12 19880:10 19880:21 19889:25 19891:8,20 19896:10 19900:1,11 19902:1 19902:24 19903:15 19915:14 19921:17</p> <p>scenario 19735:7</p> <p>scenarios 19735:2 19737:15</p> <p>scene 19750:15 19907:16 19916:24 19917:15</p> <p>scorpion 19742:1,2</p> <p>Scott 19731:23 19735:17,20 19738:7 19738:19 19739:4,13 19739:15,23 19740:2 19740:7,9 19766:6 19793:9,9 19799:4,7 19807:19 19808:11 19828:12 19830:11 19887:5 19889:25 19918:13,24</p> <p>Scott's 19918:9</p> <p>scratch 19802:7</p> <p>screen 19795:13 19846:1 19875:5,5,11 19876:5 19880:11,17 19890:21,24 19891:1</p>	<p>19891:7</p> <p>screens 19873:6 19891:2</p> <p>scroll 19891:18,24 19898:8</p> <p>se 19712:16 19721:5 19768:15 19772:12 19842:16 19844:1 19878:22 19886:6 19887:5 19888:16 19889:3 19906:7 19907:25 19920:8</p> <p>search 19824:14</p> <p>seat 19920:16</p> <p>second 19725:5 19737:1 19765:25 19771:11 19779:10 19779:13 19803:18 19892:3 19895:20</p> <p>secondly 19783:5 19913:13</p> <p>section 19822:3,10 19825:8,23 19840:10 19842:1 19843:16</p> <p>sections 19806:15</p> <p>security 19859:8,15,23 19859:24 19861:1 19862:14,16,25 19863:13,24 19865:16,20 19866:11,13 19890:5 19892:4 19896:10,15 19897:16 19900:8,8 19903:9,12 19905:7 19905:18 19906:19 19907:2 19914:19</p> <p>see 19719:15,16 19723:19 19736:21 19738:25 19739:3 19759:24 19761:4 19771:7 19779:9 19780:1 19793:5 19795:14 19799:24 19799:25 19816:13 19818:20 19819:12 19820:5,12 19835:12 19845:25 19862:17 19862:20 19874:23 19880:14 19891:7,19 19891:19 19895:1 19898:6 19899:25 19900:9,15,24 19903:2,6,8,24 19906:11 19917:10 19920:11 19922:6</p> <p>seek 19840:11</p> <p>seen 19719:11,16 19720:8 19763:9 19765:10 19768:22 19770:8 19780:5 19845:4 19864:16 19875:10,15,17 19876:15 19878:16 19880:19 19927:13</p> <p>seer 19828:6 19836:25 19860:12 19876:21</p>
--	--	--	--	---

<p>19878:20 19926:16 seerseekerlik 19928:22 seker 19711:23 19803:8 19804:3,5 19831:9 19850:24 19855:8 19858:5,18 19877:3 19894:11 19901:20 sekere 19720:16 19725:2 19748:25 19774:20 19807:20 19833:20 19854:3 19918:25 sekerheid 19737:6 19858:5 sekerlik 19836:25 19860:12 19876:21 19878:20 19926:17 seksie 19804:4 19826:5 19827:25 seksiebevoerder 19753:9 sekuriteit 19860:5 19861:16 19863:17 19872:5,9 19888:22 19897:21 19905:3,4,9 19906:8 sekuriteitpersoneel 19894:18 sekuriteits 19862:6 19886:6 19887:14 19888:25 sekuriteitspersoneel 19856:3 19888:16 self 19731:17 19824:15 19833:9 19872:11 19912:21 19913:22 19921:22 19929:5 selfde 19764:14 19917:21 19929:7 selfoon 19909:23 selfoongesprekke 19814:23 selfs 19777:2 19828:2 selfverdediging 19746:12 semantic 19728:22 semantics 19781:18 Semenya 19715:21,24 19716:9 19729:10,12 19729:20 19742:13 19742:21 19743:9,15 19743:16,24 19744:8 19745:6,7,14,17 19751:14 19754:16 19759:4 19765:1,14 19765:16 19769:18 19769:23 19770:2 19778:14 19785:17 19786:4 19790:6,10 19790:17 19791:1,5,8 19791:12 19794:24 19796:5,16 19797:1 19797:16 19798:2,14 19801:2 19818:21 19820:1 19847:18,20</p>	<p>19847:21 19860:16 19860:19 19880:2 19881:1 19882:7 19890:16 19915:1 Semenya's 19786:2 19802:2 19881:24 send 19744:15 senior 19714:17 19737:24 19738:19 19739:24 19740:3,22 19745:24 19746:1 19767:11,21 19770:18 19805:10 19805:15 19806:2 19809:17,22 19912:5 seniors 19740:19 19820:11 sense 19766:21 19819:14 19826:17 19844:18 19857:15 sensible 19731:1 sent 19742:20 19743:2 19743:17 19744:6 19745:5,13 19806:23 19900:8 19905:24 sentence 19718:11 19725:6 19890:17 19891:15,16 19900:25 19901:3,9 19904:5 sentences 19718:23 sentrum 19897:9,23 separate 19793:25 19797:17 19929:1 separated 19798:7 separately 19724:11 sequence 19823:13 series 19873:15 serious 19896:11 sersant 19833:19 service 19788:2 19838:21,25 services 19856:16 19892:8 ses 19716:23 19764:12 19833:18 19834:4 sesuur 19746:5 set 19728:3 19743:21 19746:16 19777:15 19884:15 19886:17 setting 19765:3 19846:7 19884:7 19885:4,17 settle 19786:7 Shabangu 19713:6,18 shaft 19900:7 shafts 19865:3 share 19719:3 she's 19851:7,14 shoot 19743:1,8 19752:23 19753:19 19818:23 19819:5 shooting 19787:19 19818:19 19819:7,16 short 19721:22 19730:24 19751:24</p>	<p>shorter 19721:23,24 shot 19715:14 19744:22,22,23 19787:21 shots 19727:17 19753:21 19754:18 shouldn't 19783:20 show 19717:21 19718:6 19740:11 19741:1,11 19741:16 19742:1,4,6 19766:12 19799:22 19846:15 19853:18 showed 19738:13 19770:9 19848:5 showing 19718:5 19904:10 shown 19772:4 19808:7 19859:22 shows 19717:24 19901:15 side 19727:13 19811:23 19832:2,8 19838:24 19845:16 19850:13 19850:17,18 19860:23 19885:7 19886:15 19904:4 sides 19733:12,12 19838:23 19839:2 19840:5,7 19842:11 19845:4,5,9 19850:10 19885:3,5 sien 19724:24 19725:24 19731:18 19737:11 19747:6,6 19748:2 19768:14,16 19777:17 19818:4 19822:17 19826:2 19827:17 19828:1 19861:18,24 19878:23 19892:15 19893:5,12 19898:12 19900:10 19903:16 19903:25 19905:2,9 sig 19818:4 significant 19903:21 19916:3 similar 19914:16 simple 19823:1 19828:11 19863:19 simplify 19716:10 simply 19750:17 19759:7 19820:9 19842:12 19846:8 19853:10 19865:17 19906:19 19909:1 simultaneous 19828:13 simultaneously 19749:8 19828:20 sin 19750:4 19761:21 19814:6 Sinclair 19849:5,8,13 19849:13,16 19852:13 19853:25 19855:17 19856:11 19857:5,5,7,9,12 19862:7 19867:16</p>	<p>19876:24 19879:12 19879:16,23 19884:10 19888:23 19901:15 19902:4,18 single 19718:11 19788:5 singled 19927:19 sinker 19852:12 sinne 19725:23 sinnetjie 19737:22 sirkel 19867:2 sisteme 19888:17 sit 19801:13 19886:4,5 19886:14 19914:22 19919:24 19920:8 19921:25 sitting 19726:24 situasie 19774:21 situate 19779:3 situation 19715:20 19727:17 19761:5 19833:15 19839:5 19850:9 19852:10 19859:9 19875:16 19900:14 19913:10 19915:16,20 19916:4 19916:6 Skag 19861:23 skagte 19862:1 skatting 19879:9 skerms 19872:2 skiet 19752:16 19928:20 skietery 19928:19 skok 19746:10 skoon 19774:8 slagting 19781:7 slutel 19748:25 19833:20 slotsom 19737:7 small 19891:3 smaller 19797:11 19827:7,7 19855:22 smelters 19888:18 sodat 19822:20 19867:4 19891:12 sodoende 19724:25 soft-skin 19906:10,14 sokker 19824:12 solved 19769:14 somebody 19736:25 19744:13 19804:12 19836:6 19842:11,12 19848:24 19854:14 19868:9 sommer 19851:22 Sondag 19872:3 sonder 19871:18 soon 19765:4 soontoe 19835:5 19844:8 19877:3 19906:7 soos 19737:8 19750:7 19760:9,18 19768:16 19772:7 19774:9 19782:15 19786:16</p>	<p>19786:16 19804:6 19805:16 19806:3 19813:11 19817:11 19818:14 19859:4 19860:3,5 19863:18 19870:24 19877:16 19879:3 19886:1 19888:19 19889:2 19890:12 19894:21 19904:11 19910:25 19918:19 19919:23 19920:3 19925:2 sorry 19712:21 19713:1 19724:5 19725:17 19727:22 19729:3,9 19752:3 19756:14 19768:20 19769:19 19773:13 19780:10 19785:4,15 19805:8 19813:15 19829:8 19837:16 19849:11 19853:1 19857:2,3,4,21 19869:21 19874:14 19877:20,21 19889:24 19898:15 19903:1 19908:6 19910:4,4,4 19919:7 19920:12 sort 19713:10 19730:9 19819:21 sorted 19853:22 sorts 19785:24 sou 19736:5,7,8 19741:17 19766:4 19778:4 19797:13 19799:4 19801:12,13 19801:16,17,17,20 19812:9 19814:5,17 19814:25 19815:1,2,5 19815:5,7,8,9,10,11 19815:25 19816:1,2,3 19816:6 19817:7 19818:4,15 19822:15 19822:16 19823:23 19824:20 19828:4 19831:6,8 19833:5,6 19841:23 19843:4,14 19843:15,18 19858:16 19867:1 19868:6,14,17,20,21 19871:13,15,15 19872:2,6,10,11,17 19872:18 19873:21 19875:24 19876:20 19876:20 19879:3 19886:10 19889:1 19928:19 sounds 19736:14 19778:19 South 19715:16 19773:6 19775:7 19785:8 19890:6 19921:18 soveel 19911:17 sover 19794:9</p>
---	--	--	---	--

<p>19900:10 sovereign 19772:6 sowel 19914:19 Sowetan 19785:4,6,8 19786:22 so-called 19758:17 sparked 19849:15 SPCA 19865:20 speak 19719:22 19726:23,23 19782:4 19782:6,7 19851:7 19885:3 speaking 19803:16 19854:11 19927:14 special 19730:22 specialised 19747:8 specific 19718:1,17 19752:24 19803:24 19822:5 19891:14 specifically 19723:21 19724:9 19915:11 speculate 19880:14 speculation 19874:15 19906:22 speech 19717:19 19718:7,23 19719:18 speel 19826:2 19828:4 spend 19767:7 spent 19783:2,2 Spesiale 19833:20 spesifiek 19722:19 19754:10 19805:13 spesifieke 19720:20 19737:5 19747:15 19801:3 19858:2 19877:2 speurders 19894:22 speurhoof 19909:25 19911:15 spite 19820:11 spoke 19719:13 19778:14 spoken 19783:18 19813:20 spot 19867:23 19873:14 19903:1 spotted 19879:12 spotting 19879:22 sprake 19740:25 spreek 19720:21 squeeze 19906:13 squeezed 19881:14 staan 19722:8 19760:9 19876:19 staande 19803:23 19812:18 19833:8 stadium 19714:15 19732:8 19740:12 19741:3,13 19760:19 19782:24 19794:18 19794:19,24 19808:25 19812:22 19814:21,25 19817:17 19831:8 19834:14 19837:1 19838:15 19855:16</p>	<p>19857:24 19859:11 19860:11 19866:25 19871:14 19872:16 19872:21 19878:11 19905:3,10 19910:14 19911:1,3,6,7 19914:1,6 19925:8 19926:13,19 staff 19810:24 19918:1 19918:6 stage 19719:7 19734:13 19738:18 19739:5 19746:14 19749:13 19767:2 19779:19 19783:16 19788:19 19789:23 19794:20 19798:6,9,25 19813:25 19815:2 19816:17 19817:14 19849:23,24 19853:17,23 19859:21 19898:18 19902:18,19 19910:19 19919:5 stalemate 19859:21 standing 19753:11 19758:14 19759:10 19759:15,17 19765:18 19766:13 19767:22 19788:17 19804:20 standoff 19862:13 19863:17 stands 19799:11 stap 19814:11 start 19779:3 19818:8 19819:16 19820:10 19827:5,14 19829:8,9 19831:18,23 19838:19 19847:11 19847:15 19891:20 19899:25 19901:1,4 19918:14 started 19818:9 19865:5 19866:1 19907:9,17 starts 19799:25 19800:3,4 19898:7 stasie 19827:24 state 19712:6 19751:14 19785:9 stated 19733:14 19791:2 19858:25 19896:20 statement 19717:24 19722:22 19754:14 19754:20 19762:20 19763:2,7,7,14,21 19764:4 19766:14 19773:7 19783:14 19811:9 19830:11 19860:17,23 19879:11,11 19889:25 19898:21 19898:23 19899:19 19914:8 19916:18</p>	<p>19918:8,9 19925:23 19929:2 statements 19712:22 19713:7,13,17,20 19714:23 19715:12 19729:25 19730:3 19731:6 19860:20 19899:22 19907:15 19908:11 19918:11 staties 19864:11 stating 19782:25 station 19815:17 stay 19804:20 19841:19 steeds 19805:16 19809:4,23 19829:19 19840:19 19888:20 19917:24 19919:1 stel 19806:3 19839:12 19851:3 19854:19 19877:16 stelling 19747:10 19760:9,14 19781:4 19809:22 19812:11 19823:20 19864:18 19866:19 19872:24 19896:21 19912:14 19924:3 stellings 19722:20 19748:8 19753:3 19807:20 stem 19753:3 19755:3 19755:20 19761:24 19766:17 19771:16 19771:20 19774:16 19775:3,21 19781:4 19783:8 19784:23 19791:20 19805:14 19811:15 19825:17 19825:19 19842:23 19845:12 19860:3 19861:10 19864:13 19872:8 19873:10,17 19882:24 19898:3 19904:25 19906:2 19921:5 19924:1 step 19761:12 19837:5 steps 19760:6 19837:14 stick 19912:15 stig 19805:1 stil 19919:24 stop 19757:7 19810:11 19813:6 19815:21 19816:21 19817:14 19817:25 19841:21 19844:21,21 19854:5 19854:6 19870:7 19905:7 stopped 19810:9 19865:20 19903:13 19903:17 19905:15 stopping 19813:25 19827:3 19905:17 straat 19804:25 strategy 19785:16 19786:8 19787:19 street 19804:12</p>	<p>strekking 19858:2 strengthens 19920:12 strengths 19768:11 stretch 19873:2 19915:4 Strictly 19854:11 strike 19839:18 19840:14,15,22,24 19841:16,21,24 19843:9 19844:14,17 19844:19,21 19886:5 striker 19742:5 19883:14 strikers 19732:14,18,22 19732:23 19733:1,6 19735:10,24 19736:18,22 19737:1 19743:8 19749:11 19751:8 19754:1 19797:8 19820:13 19830:17 19836:14 19836:15 19841:14 19842:9 19844:5 19845:2 19854:1 19868:24 19870:16 19876:8 19883:13,25 19886:16 19906:20 19923:4,22 19924:15 19924:22 19925:14 19925:18,20 19926:13,16 striking 19787:24 structure 19803:16 19821:23,25 19891:8 19891:21 19892:24 19897:18 struggles 19745:19 stuff 19730:10 stun 19913:6 sub 19747:4 subject 19725:7 19761:5 19766:24 subjected 19713:19 submission 19719:2 submissions 19783:23 submit 19720:6 19779:22 subsequent 19796:7 19800:6 19802:4 substantial 19713:19 19747:17 19772:2,4 19772:17 19773:12 19896:5 succeed 19884:23 succeeded 19742:6 19880:22 successfully 19758:23 19863:24 19904:18 19905:15 sufficient 19853:21 suggest 19715:15 19718:10 19882:3 suggested 19730:25 19735:14 19740:16 19793:2 suggesting 19783:12</p>	<p>19837:6 19863:21 19866:11 19873:1 19910:5 suggestion 19744:16 19764:8 19792:19,20 19792:21 19927:19 suggestions 19739:8 suggests 19771:8 19787:23 suidelike 19867:4 Suid-Afrika 19774:13 19774:21,22 sukses 19721:8 19774:11 suksesvol 19814:13 sulke 19731:15 19868:16 sum 19755:14 summarising 19728:4 summary 19781:1 19889:16 Sun 19886:4,5,6 supplementary 19764:4 supplied 19848:14 support 19784:7 19788:10 19802:23 19929:4 suppose 19751:6 19760:2 19800:12 19810:19 19825:5 19830:1 19879:12 supposed 19819:7 sure 19723:16 19731:20 19732:12 19738:16 19749:20 19752:4 19753:16 19755:12 19756:15 19757:1,2 19758:16 19759:4 19767:9,15 19771:1 19776:10 19778:16 19798:15 19803:12 19823:12 19841:19 19880:8 19883:7,15 19889:6 19922:8 surely 19771:22 19825:8,15 19843:20 19845:9 19876:14 19908:4 19911:21,21 19911:24 19919:4 surplusage 19760:2 surprise 19746:8 19783:22 surprised 19870:4 surveillance 19900:1,2 19914:20 survivors 19780:21 suspend 19817:14 swallow 19852:11 SWOT 19768:11,12,22 19768:25,25 19769:15,15 sy 19722:20 19752:16 19768:14 19774:20 19814:13 19827:20</p>
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19827:21,22,24 19829:20 19849:5 19891:10 19896:18 19898:12 19902:22 19903:16 19906:25 19908:2 19909:22 19910:15 19913:3 19914:21,23 19920:1 system 19716:5 19816:4 systems 19820:14	19849:22 19853:14 19853:18,19 19898:15 19899:4,6 tear 19754:18 teargas 19905:23 technology 19886:16 teen 19842:2,19 19871:13 teendeel 19841:23 teenoorgestelde 19823:21 teenwoordig 19740:19 19802:14 19803:7 19828:7 19868:16 19887:13 19923:12 teenwoordigheid 19844:2 teerpad 19863:11 19879:2 teetyd 19778:8 tee-breek 19778:2 telefoniese 19911:6 televiesies 19886:8 tell 19730:20 19764:25 19773:17 19783:25 19801:25 19838:24 19859:8,15 19865:11 19890:25 19917:13 19919:19 19923:17 telling 19758:2 19763:1 19789:20 19861:7 19866:12 temperature 19882:2,5 temporary 19917:16 tempted 19757:4 ten 19736:11 19809:22 19827:6 19864:4,10 19901:18 tendering 19759:5 ter 19740:25 term 19917:25 terme 19717:9 19805:15 terms 19715:17 19744:23 19766:13 19770:8 19780:15,15 19825:4 19840:13 terrain 19821:18 terribly 19720:8 terrified 19742:5 terug 19757:19,21 19801:3 19804:5 19827:24 19843:4 19864:9,12 19867:7 19925:9 terugbring 19768:8 teruggegaan 19924:5 teruggegee 19814:20 teruggekom 19923:13 19924:1 terugkeer 19923:11 19924:2,24 terugvoer 19917:22 19924:25 19925:4 test 19846:16 19847:3 testified 19783:25	19834:16 testifying 19782:17 testimony 19848:16 teëkom 19870:25 thank 19711:8 19717:18 19720:5 19729:4,20 19757:8 19757:11 19776:1,19 19777:5,6,25 19779:1 19780:12 19789:14 19794:12 19796:3 19799:18 19808:18 19809:9 19811:17 19818:6 19820:8 19832:4,7 19838:9 19839:24 19847:14 19849:20 19850:8 19853:20,22 19870:10 19873:19 19874:8 19881:17 19883:4 19884:3,25 19892:25,25 19899:9 19899:18 19904:13 19909:6 19916:20 19922:1 19923:1 19926:7 Thanks 19849:20 19858:22 theoretical 19809:10 theory 19810:18 19929:4 thereof 19800:12 therewith 19907:3 there's 19719:21 19726:12 19756:16 19756:18 19758:10 19758:11 19793:6 19803:18 19850:9 19881:15 19883:2,14 19891:14 19898:19 19903:19 19908:15 they'll 19765:13 they're 19732:19 19744:15 19761:9 19767:16 19772:21 19772:22 19813:21 19813:22 19825:3 19881:24,25 19882:1 they've 19759:18 19765:4 19867:14 thing 19713:10 19727:17 19733:13 19759:12 19780:25 19782:5 19791:19,22 19827:14 19841:5,20 19849:15 19888:11 19895:21,22 19920:15 things 19721:24 19730:24 19758:9 19760:23 19771:18 19782:7,10,17,20,20 19795:13 19802:5 19822:25 19884:8 19926:1 19927:16 19929:3	thinking 19874:25 thinks 19713:14 19730:23 19773:18 third 19771:13 19788:1 19883:14 19903:20 thoroughly 19822:9 19883:19 thought 19730:14,17 19733:21 19756:21 19768:24 19770:9 19785:13 19811:12 19858:7 19862:10,21 19865:7 19885:7,10 19904:17 19910:11 19923:21 19927:3 19928:8 threat 19843:22 19858:19 19859:1 19867:13,21,21,24 19868:9 19870:17,24 19871:24 threatened 19756:20 19756:20 threats 19768:12 three 19874:11 19883:25 19892:10 19918:15 thrust 19798:20 19814:3 19871:19 19905:16 19918:10 Thursday 19726:14 19761:1 19896:4 19919:7 ticket 19824:15 time 19718:5,16 19724:6 19726:24 19731:22 19738:7,14 19739:6,9 19749:7,10 19759:5 19763:13,13 19767:13 19769:14 19777:12 19778:17 19783:2 19790:19 19791:23,23 19794:20 19795:3 19803:3 19804:21 19808:9,13,21 19811:7 19822:24 19823:8,10 19830:18 19832:10 19836:10 19845:22,25 19846:1 19863:25 19865:17 19866:7,8 19873:14 19877:24 19879:11 19879:25 19882:11 19890:1 19896:7 19898:25 19902:12 19907:9,17 19908:22 19909:8 19919:11,14 19920:19 19923:22 19923:23 times 19767:14 19779:24 19892:10 19915:15 timing 19724:2 19726:17 tipe 19731:15 19888:19	today 19874:12 19879:25 19883:25 today's 19785:7 toe 19720:17 19722:9 19725:2 19726:1 19741:11 19746:10 19748:23 19750:5 19757:16,21 19760:12 19766:2 19768:9 19787:12 19789:12 19794:23 19794:25 19797:1 19799:3,22 19801:17 19802:20 19805:14 19806:1 19813:11 19814:7,7,9,10,12 19816:5 19824:16,22 19834:4,11 19835:6 19838:15 19857:24 19861:17 19863:14 19864:7,8,9,9,13 19867:2 19871:18 19878:22 19890:15 19894:6 19905:1 19908:1 19909:23,23 19909:24,25 19910:2 19910:14,15,16 19911:14,17 19912:6 19913:2,5 19923:11 19923:12,13 19924:2 19924:5,9,24 19925:7 19925:8,9 toegelaat 19816:3,6 19868:20 19871:2 toegemaak 19750:8 toegesprek 19925:9 toegevoeg 19817:8 toekomstige 19768:18 toepassing 19722:20 toernooi 19886:3 toespraak 19720:16 toevallig 19872:16 19911:16 tog 19787:15 19923:14 Tokota 19895:5 told 19743:11 19781:22 19782:9,17,21 19793:19 19813:1,2 19814:1 19817:18 19818:19 19825:3 19838:4 19853:2 19881:2 19893:8 19901:10 19909:9,10 19911:22 19916:22 tomorrow 19923:17 19926:22 19928:25 19929:11 toneel 19809:18 19883:11 19910:2 19911:5,16 19912:4,5 19912:7,8,23 top 19862:16 topic 19833:11 19840:2 19899:20 topstruktuur 19764:24 tot 19717:3 19720:24
---	---	--	--	--

19731:12 19737:7 19738:2,3 19746:4 19753:8 19756:8 19757:19 19764:20 19768:7 19804:3 19812:20 19814:22 19817:1 19826:4 19835:10 19851:2 19852:24 19860:6 19872:10 19905:10 19914:2 totaal 19787:1 19815:1 total 19744:23 totally 19876:15 19927:17 touched 19787:19 19811:19 traffic 19826:17,20 tragedy 19770:20 19785:19,25 19786:3 19786:10 tragic 19785:22 19913:11 training 19747:8 transcript 19724:23 19779:12 19795:14 19798:10 19813:10 19927:14 transcripts 19718:8 19922:11 transkripsie 19795:11 translate 19796:13 19801:8 translation 19779:12 travelled 19864:1 traverse 19929:2 traversed 19730:15 19869:21 traversing 19871:5 treat 19895:11 19896:6 tree 19721:6 19826:6 19924:23 tref 19792:3 treinspoor 19864:8 19867:5 trek 19794:9 19835:1 19867:1 19886:10 tried 19828:19 19836:6 19836:7 tries 19870:7 triple 19896:2 troops 19744:12 19808:23 19809:3 trouble 19739:3 19907:9,17 TRT 19743:22 19754:12 19777:2 19810:5 truck 19741:25 true 19908:17 truly 19921:2 trust 19883:21 truth 19732:12 19758:2 19780:19 19781:22 19783:18,25 19789:20	truthful 19783:13,22 19800:21 try 19712:10 19776:11 19790:18 19800:21 19802:4 19849:24 19901:11 trying 19755:17 19816:12 19850:20 19857:3 19897:13 19906:20 19927:5 Tshwete's 19712:13 TTT 19895:24 TT4 19895:6,16,25 19916:16 turn 19861:4 19865:4 19865:11,23 19906:19 turned 19711:3 19825:12 19859:24 19865:22,25 19866:13 19867:11 19867:12,14 19870:16 turning 19732:21 19871:4 tussen 19814:23 19820:25 19863:17 19869:8 19871:11 19878:20 19913:20 19923:10 19926:10 TV 19848:4 19875:11 twee 19721:3 19731:13 19741:2 19753:2 19756:7 19834:7 19854:17 19855:7,9 19861:25 19862:2 19863:16 19871:14 19924:21 tweede 19720:25 19737:13 19797:14 19872:13 19894:6 19923:11,12 19924:3 19924:8 19925:9 two 19717:14,16 19722:17 19730:7 19782:19 19785:10 19786:10 19787:22 19787:25 19789:24 19793:6 19798:3,6 19802:5 19823:10 19836:3 19840:5 19865:3 19875:13 19883:13 19885:5 19887:20 19908:11 19910:24 19913:11 19917:12 twyfel 19787:7 tyd 19712:18 19732:7 19757:20 19804:4,24 19805:1 19828:9 19831:11,12 19833:22 19837:11 19869:6 19891:11 19893:14 19901:19 19901:21 19924:4 tydens 19778:2	19790:1 19791:10 19833:3 19888:21 tydperk 19807:22 19902:8 tye 19736:11 19752:16 19864:4,10 19901:18 <hr/> U <hr/> uit 19737:9,10 19741:20 19748:21 19748:21 19768:12 19768:14,15 19797:5 19797:5 19799:7 19803:23,23 19816:6 19816:7 19825:18 19831:1 19833:5 19864:5,6 19872:21 19872:21 19877:3,3 19877:15,15,17,18 19885:24 19892:13 19892:14 19905:1,1 19905:11,12 19913:5 19913:5 19914:12,12 19914:23,23 19918:1 19924:19 19925:1,1 uitbeweeg 19736:6 19831:6 uitbrei 19786:20 uiteen 19801:19 19814:15 19815:3 19855:10 19887:6 uiteendryf 19748:22 uiteendrywing 19747:12,14 19753:7 19754:11 uiteengesit 19741:18 19764:23 19801:15 uitgedra 19789:12 uitgedraai 19815:1 uitgehaal 19786:25 uitgekom 19918:1 uitgelees 19821:5 19823:20 uitgeplaas 19912:8 uitgereik 19906:6 uitgesit 19768:5 19797:13 uitgespeel 19760:18 uitgewys 19725:1 19854:3 19855:13 19859:4 19872:7 19875:24 uithaal 19777:10 uitkom 19787:4 uitlatings 19717:5 uitrol 19831:7 uitslag 19787:6 uitsprake 19726:2 uitvind 19911:18 uitvoer 19815:12 uitwerking 19843:19 uitwys 19914:2 ultimately 19849:7 19861:4 uncoil 19828:19 uncoiled 19749:8	19815:16 uncoiling 19735:24 19736:16 19749:16 19828:13 underlined 19723:24 underlining 19839:7 underlying 19781:21 19839:10 19842:8 undermined 19829:15 underneath 19781:20 understand 19715:21 19726:25 19730:24 19731:2 19732:16 19736:13,20,24 19737:17 19741:14 19742:23 19743:19 19749:13 19759:16 19763:8 19780:17 19782:3,6 19783:17 19790:14,21 19791:16 19793:3 19805:20 19822:12 19823:17 19832:10 19833:12,12 19841:3 19846:17,20 19847:24 19873:24 19884:12,13,22,24 19885:11 19890:9 19903:21 19904:9 19915:3 19916:23 understanding 19744:6 19803:13 19821:16 understands 19819:13 understood 19769:9 19770:5 19779:25 19826:7 19862:19 19925:19 undertook 19765:2,4 undesirable 19749:6 unexpected 19825:1,5 19825:24 unfair 19783:10,14 unforeseen 19825:12 unfortunate 19731:5 19757:12 19769:13 19818:24 unfortunately 19780:1 19846:6 19858:8 19913:11 unfounded 19725:8 unhappily 19712:1 unhappy 19716:13 unieke 19774:12 unies 19871:12 union 19839:22 19922:4 Unit 19823:7,9,14,14 19823:15,15 units 19746:24 19747:9 19752:10,12 19755:15 19762:14 19764:7 19776:25 19806:15 19811:23 19820:22 19821:17 19823:6,10 19888:4 19890:8	universal 19774:25 unknown 19745:10 unnecessarily 19820:3 unnecessary 19788:21 19838:7 19881:19,23 19882:1,12 unprotected 19844:14 19844:19 unquote 19840:6 unreasonable 19732:20 unrest 19746:15 untoward 19825:23 untruthful 19802:2,9 19803:2,4 19910:6 unwittingly 19736:15 uphold 19775:10 19881:25 urgent 19825:8 use 19713:10 19714:10 19717:9 19720:10 19762:19 19776:13 19778:16 19779:15 19781:16,16 19785:16 19803:2 19818:21,23 19819:8 19819:21 19821:7 19882:7 19891:3 19901:10 usually 19916:7 utterances 19717:21 uur 19777:17 19801:16 19803:7 19814:14 19923:9 <hr/> V <hr/> valid 19727:5 19732:11 19732:20 19767:17 vals 19792:8 value 19757:2,3 19759:20 vandaar 19844:5 vandat 19716:25 19740:9 vans 19835:13,22 19836:7,10,16 19837:5,15 19838:5 19838:13 vanself 19720:21 various 19715:13 19735:25 19756:18 19762:24 19763:14 19780:19 19806:15 19806:16 19897:2 19898:22 vasgestel 19877:18 19911:17 vasstel 19794:7 vat 19831:15 19886:2 19897:10 19898:3 19914:1 VB 19752:15 VBN 19924:8 veelvoudige 19781:8 vehicle 19906:14 vehicles 19904:16,17 19905:19,21
---	--	--	--	---

19906:10 veld 19824:15 ventilations 19915:18 venue 19792:25 19793:22 19794:7 ver 19787:7 19918:20 veral 19879:2 verantwoordelik 19806:3 19821:2 19824:5 verband 19920:2 verdagtes 19894:22 verder 19722:7 19796:25 19801:15 19814:16,24 19815:1 19815:4 19831:14 19843:2 19851:25 19852:2 19905:5 19926:14 verdere 19815:8 verduidelik 19712:4,18 19720:22 19750:10 19810:10 19824:7 19832:1 19849:8 19856:24 19872:20 19917:23 19927:24 vereistes 19843:3 vergader 19854:4 vergadering 19720:19 19766:3 19794:6,8 19837:12 19849:1 19920:3 vergaderings 19746:4 19888:22 19917:24 19918:2 vergeet 19883:10 vergesog 19912:17,18 vergewis 19891:12 19892:16 vergissing 19886:22 vergunning 19824:7 verhoed 19827:10 verkeerd 19786:21,25 19787:1 verklaring 19724:24 19725:24 19726:1 19752:16 19797:5,6 19801:6 19878:24 19902:22 19903:17 19907:7 19909:24 19914:11,12,21,23 verklarings 19905:8 verlaat 19889:3 19914:20 verloop 19721:9 Vermaak 19834:6 19835:2,8 19900:22 19901:9 19902:2,20 19911:4 19912:1,6,20 19912:25 19913:21 19917:15 Vermaak's 19901:16 19902:4 vermoë 19782:15 verniet 19774:7 verplaas 19835:5,10	versigtig 19831:1 19846:22 version 19758:22,22,23 19922:15,18,22,25 verskeie 19748:8 19802:15 19859:4 verskil 19722:8,20 19724:20 19734:17 19737:14,22 19746:18 19747:1,7 19747:12,16 19748:7 19748:8,16 19760:10 19760:14,19 19762:11 19764:12 19764:15 19781:3 19810:3,16 19812:13 19821:1 19862:24 19872:2 19877:13 19909:14 verskille 19871:11 19910:14 verskillende 19768:5 verskoon 19894:23 verskyn 19774:6 verslag 19787:12 versoek 19777:9 19778:6 19815:7 19891:11 verstaan 19720:15 19731:11 19775:2,2 19787:6 19792:8 19804:6 19824:1,1,3 19826:11 19840:9 19842:16 19852:15 19888:7 19890:11,12 19904:12 19912:13 verstandhouding 19925:10 versuim 19872:5 verteenwoordiger 19887:14 19894:19 vertrek 19888:21 vertrou 19875:24 19894:18 vervat 19812:19 19826:4 19833:8 verwag 19721:7 19753:8 19925:8 verwyder 19912:23 19913:4 verwys 19712:18 19716:23 19720:16 19722:7,10,19 19741:10 19748:3,25 19750:1,4,9 19762:23 19765:21,22 19768:3 19768:9 19774:9 19787:12 19794:5,24 19801:2,5 19805:13 19806:1 19809:21 19814:6 19821:20 19827:15,16 19832:23,23 19833:18 19842:24 19854:8,9 19855:8,11 19861:20 19883:10	19887:4,9 19890:15 19892:16 19894:20 19894:21 19897:20 19897:22 19914:18 19916:13 19925:5 19928:21 vicinity 19865:4 19883:17 victim 19788:1 19882:5 video 19719:11,16 19720:21 19724:23 19756:6,17,24,24 19758:7,10,12,13 19769:25 19779:11 19860:25 19869:3,4 19906:11 19927:13 19928:18 videos 19853:4,21 video's 19721:8 19778:6 vier 19770:24 19804:7 19817:2 view 19715:19 19719:2 19719:3,6 19720:6,7 19721:19 19727:11 19734:6 19747:23 19750:19 19784:14 19784:18 19785:25 19786:12 19787:16 19790:23 19809:11 19810:18 19828:19 19851:12 19852:5 19919:12,20 19920:13 19928:25 19929:2 viewed 19890:8 views 19714:18 19716:16 19773:12 19788:18 19789:2,4,7 19789:16,17,17,18 vind 19794:6 vinnig 19824:12 vinnige 19731:17 violence 19841:20 19843:23 19844:14 19844:19,22 19904:19 virtually 19881:14 vital 19757:13 vlag 19817:8 vlak 19753:9 19787:5 19804:4 19826:4 19828:4 vlieënier 19857:11 vlieëniers 19877:13 vlug 19862:5 voel 19827:22 voertuie 19724:25 19817:4,5 19828:1 19831:6,9 19836:24 19862:6 19863:6 19877:4 19906:3 voertuig 19827:19 19862:5 19863:5,15 19886:9 19910:16 19924:9	voet 19878:23 volg 19712:8 19801:13 19822:21 volgende 19760:12 19792:5 19801:2,7 19814:11,21 19821:24 19822:2 19834:10,11 volgens 19754:11 19757:18,19 19781:6 19824:2 19843:15 19914:3 volledig 19753:4 19756:8 voltooi 19768:14 volunteered 19739:6 voor 19721:3 19732:7 19740:12 19757:20 19760:12 19792:8 19812:10 19817:17 19818:15 19821:13 19821:14 19822:17 19824:18 19825:19 19826:3 19827:20 19828:1,5 19829:21 19834:3 19837:11 19867:7 19895:15 vooraf 19867:4 19871:14 voorbeeld 19731:18 19823:22 19824:19 19825:18 19829:17 19829:21 19831:2 voorbeelde 19712:16 voordat 19826:2 voorgehou 19740:10 voorgelig 19799:3 19833:4 voorgelê 19735:20 19764:24 voorheen 19762:22 19786:16 19856:2 19872:14 19890:13 19894:25 voorkom 19724:21 19747:11 19850:23 voorligting 19720:18 19721:1 19728:19 19790:2 19822:16 19825:2 19833:3 19857:24 19918:24 19924:6 19928:23 vooropgestel 19775:3 19775:21 voorsien 19736:7 voorsiening 19737:13 19801:20 voorskryf 19777:18 voort 19807:21 19814:16 voortgaan 19741:12 19842:21 19868:18 19926:18 voortvloei 19768:15 voorval 19822:18 19834:5 19864:5,10	19901:19 19928:20 vorige 19741:20 19750:2 19765:23 19766:4 19796:11 19809:22 19812:11 19813:12 19814:6,8 19843:13,19 19873:20 19896:22 19921:24 19925:3 vorm 19766:7 vorms 19842:1 vra 19738:2 19804:6 19894:6 vraag 19712:9 19720:15 19731:10 19775:1,2 19781:4 19792:8 19801:2 19803:7 19804:8 19809:7,18 19813:14 19822:15 19842:15 19846:22 19854:10 19854:18,20 19855:14 19866:19 19872:13 19873:20 19888:8 19890:12 19906:25 19912:24 19923:8 vrae 19804:6 19929:7 vreedsaam 19814:16 19815:6 19816:2 19924:24 19926:18 vreedsame 19815:8 vriend 19909:15 vroeg 19877:14 19925:2 vroeër 19879:4 19901:20 19902:9 vrylik 19816:5 19868:21 19871:18 vuurwapen 19827:21 19827:21 vyf 19770:24 19774:18 19804:7 19834:4 vyfuur 19925:3
W				
waar 19712:16,18,18 19717:3 19725:2 19736:6 19737:10,12 19741:9,10 19747:12 19750:3,10 19765:24 19766:1 19768:10,18 19774:6 19781:3 19786:20 19799:22 19801:4,5,12 19802:18 19804:25 19805:1 19807:20 19809:4,22 19810:6 19828:7 19831:5 19833:4 19834:5 19835:6,10 19841:24 19842:25 19849:8 19855:13 19857:10 19861:18 19862:4 19867:7 19869:5 19872:4 19877:2				

<p>19886:1,13 19888:18 19905:1,12 19909:24 19911:7 19912:7 19924:6 waargeneem 19782:13 19862:6 19912:21 waarheid 19747:8,10 19781:5 19787:4 19821:13 waarmee 19737:14 19906:6 waarna 19748:3,23 19765:21,22 19768:3 19768:9 19821:20 19832:23 19842:24 19854:9 19855:8 19887:9 19892:16 19914:18 waarnatoe 19725:12,15 waarneem 19876:20 waarneembaar 19879:1 waaroor 19813:9 19814:11 19818:14 19877:1 19893:24 19914:12 waarop 19766:9 19774:3 19791:13 19792:3,4,4 19803:9 19873:22 waarskuwing 19736:7 waarskynlikheid 19801:16 waaruut 19892:15 waarvan 19740:9 19754:8 waarvolgens 19812:18 waarvoor 19771:23 19774:6 wag 19814:20 19826:1 19827:23 19847:6 Wageenheid 19833:20 wait 19815:21 19820:15 19829:4,10 19831:22 19853:5 19881:21,21,21 waiting 19734:4 19767:5 19825:14 19846:24 19847:4 wakker 19920:13 walking 19865:5 19866:1 19867:22 19880:22 wandering 19877:17 wanneer 19792:11 19802:19,19 19833:5 19833:6 19834:20 19916:11 want 19715:11 19722:11 19724:11 19727:10 19729:8,10 19735:1,1 19749:6,12 19749:21,22 19752:19 19757:6 19760:10 19770:19 19775:18 19780:13</p>	<p>19781:12,18 19783:10 19789:19 19811:21 19814:22 19815:3 19833:11 19834:10 19838:18 19840:12 19841:16 19841:17 19844:8 19861:9 19866:22,22 19868:4 19879:3 19881:18 19882:9 19883:3 19884:3,14 19885:16 19887:16 19890:15,25 19894:13 19901:6,14 19904:25 19913:9,16 19913:18 19917:10 19925:10 wanted 19718:4 19732:13,14 19743:8 19787:17 19809:12 19810:20 19858:24 19869:15,24 19870:8 19910:11 wants 19751:18 19776:16 19870:4 19898:17,19 wapens 19750:11 19801:17 19814:15 19815:4,5,7 19816:2 19816:5,7 19828:3 19842:21 19843:1,1,4 19843:14 19868:20 19871:17 19924:23 warned 19830:18 warning 19753:12,15 19753:17,21,24,25 warrak 19892:1,2,2 Warrant 19881:4 19882:19 Warrant-Officer 19874:10,11 19880:3 wasn't 19726:20 19734:20,22 19738:6 19738:15 19739:9 19742:7 19744:2,23 19749:8 19751:4 19755:8 19759:23 19762:25 19763:14 19766:20 19767:10 19767:15 19819:7 19831:23 19836:4 19841:19 19909:3 waste 19718:16 19783:3 19790:19 watse 19753:8 19828:5 19866:19 19888:25 19892:13 watter 19738:1 19786:22 19803:9 19831:8 19844:9 19855:16 19872:11 19872:18 19878:11 19887:4 19892:16 19914:1 19927:24 waving 19817:23 way 19713:17 19719:13</p>	<p>19722:4,22 19726:13 19730:2,23,25 19731:1 19759:8 19780:18 19788:13 19805:10 19819:1 19820:5 19823:7 19838:4,8 19839:6 19850:21 19854:22 19855:5 19864:1 19865:18 19866:9,14 19866:16,17,23 19867:11 19879:6,13 19883:18 19885:3 19900:21 19901:22 19909:7 ways 19735:25 19736:22 19758:15 19885:6 weaknesses 19768:11 weapons 19844:17,23 19855:2 19870:16 19875:12 19906:21 Wednesday 19796:6 19800:6 19890:19 19915:12 weer 19712:8 19817:10 19909:24 19911:16 19924:2,7 weereens 19741:9 19747:1,16 19748:21 19753:2 19760:8 19764:12 19823:19 19859:12 19888:16 19897:20 weerlê 19792:9 19802:17 wees 19722:10 19728:18,18 19731:10 19736:9 19747:8,10 19774:15 19774:23 19801:18 19801:20 19804:17 19805:2,17 19816:1 19822:3,17 19824:5 19826:1 19833:7 19836:25 19842:17 19849:18 19850:16 19860:7 19878:20 19887:22 19888:25 19897:10 19905:4,8 weet 19714:13 19737:6 19750:2 19753:7 19764:12 19774:13 19774:13 19781:3,13 19786:19,21 19787:4 19787:6,8 19792:7 19801:7 19802:17 19810:3 19814:9,22 19815:10 19816:6 19824:6,13,19 19831:10 19836:21 19836:22,23 19843:2 19849:5,9 19856:5 19857:11 19861:9,20 19863:18 19868:14 19869:8 19878:11,25</p>	<p>19885:22 19886:10 19892:13 19903:17 19905:1,6 19906:2,5 19907:22,25 19908:1 19918:19,20 19919:3 19920:1,7 19921:6 19923:11 19924:8,19 19928:17 weg 19748:24 19750:11 19804:25 19835:10 19913:25 19914:11 19924:20 wegbeweeg 19737:12 19813:11 19814:9 weggaan 19815:6 wel 19713:25 19721:8 19721:15 19725:1,3 19735:19 19736:6 19737:6,11,13 19746:9 19750:7 19754:11 19755:2 19756:6,10 19757:20 19757:21 19764:13 19766:9 19774:18 19778:5 19782:13 19784:19 19787:4 19791:11 19794:24 19797:5 19803:7 19804:3 19810:3,4,5 19812:19,19,22 19814:10,12,25 19815:11 19816:7,23 19817:5,8 19818:4 19825:20,20 19831:7 19834:2,4,7 19850:23 19858:18 19861:16 19867:2 19868:21 19869:7 19872:7,10 19874:1 19894:24 19896:18 19909:16 19911:17 19912:21 19913:2 19914:4,6 19923:9 19924:1,19 19925:9 welkom 19898:4 went 19735:8 19738:12 19810:22 19848:1 19895:8 19896:4 19909:11 weren't 19726:20,22 19727:13 19728:9,23 19731:24 19732:16 19732:23 19738:12 19742:19 19743:3 19745:5 19749:12,16 19749:17 19808:8 19810:19 19828:14 19841:19 19844:17 19844:20 19854:24 19893:17,17 19906:20 19920:21 werk 19768:14 19774:8 19812:18 19825:18 19829:19 19886:12 19886:20 19891:12 19897:21 19919:23</p>	<p>19924:24 westelike 19867:4 westerly 19900:5 wete 19764:20 wettig 19842:3 we'll 19715:10 19724:17 19751:23 19765:6 19770:6 19778:16 19786:3,7 19793:4 19804:11 19810:13 19816:11 19843:8 19849:22 19853:4,13,19 19860:16 19883:6,7 19885:11 19888:2 19897:6 19914:8 19923:16 19929:9 we're 19753:19 19755:17,17 19763:7 19767:5 19807:4 19811:22 19813:4,25 19817:22 19819:20 19819:23 19843:8,9 19846:10 19853:3 19883:14 19901:25 19908:9 19920:18 19922:10 we've 19725:10 19731:21 19750:18 19751:25 19773:15 19803:14 19810:21 19812:2 19837:17 19838:5,6 19841:14 19844:16 19845:25 19846:12 19853:2 19869:21 19883:18 19908:8 19916:21 19921:16 whatsoever 19904:19 what's 19836:18 19848:23 19880:11 white 19772:10,12,16 19772:20 19817:15 19817:23 who's 19777:20 19888:12 wide 19716:2 19812:7 19812:15 wider 19761:8 19827:2 width 19826:25 wie 19737:5 19766:4 19849:5 19885:24 19893:5,6,12 19914:1 wife 19851:7,7,11 wil 19724:21 19725:16 19728:20 19737:9 19747:11 19757:17 19777:17 19778:2 19781:7 19787:1 19792:3 19814:11 19816:6 19817:2 19854:9,18,19 19866:19 19872:15 19894:6 19898:4 19914:22 19926:14 wire 19734:25</p>
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<p>19735:25 19736:17 19749:8 19753:16 19815:15,17 19828:13,20 19830:19 wise 19852:17 wish 19729:5,7 wishing 19906:19 wit 19817:8,8 witness 19715:24 19716:8 19719:9 19720:13 19724:9 19730:11 19738:14 19738:14 19739:9,16 19745:21 19754:16 19756:16,19 19757:1 19758:24 19759:17 19759:20 19767:10 19768:24 19777:20 19788:13,22 19792:20,22 19798:6 19800:19 19819:11 19819:12 19820:1 19847:19 19862:19 19865:10,11 19874:21 19880:15 19880:21 19885:25 19898:21 19899:16 19908:13 19920:16 19922:15,25 19925:16 19926:5 witnesses 19730:10,16 19759:14 19781:23 19865:13 19884:5 19908:11 19925:13 witness's 19724:18 19772:20 wonder 19765:11 19768:20 wondering 19877:10 Wonderkop 19861:5 19864:2 19865:19 19866:9,14,16,23,25 19867:11,13 19907:4 19907:19 won't 19779:4 19780:16 19783:4,5 19788:9 19851:12 19862:18 woord 19712:3 19757:16 19858:17 19887:12 19897:11 19898:3 woorde 19737:5 19786:25 19817:3 19822:15 19824:21 19842:18 19843:17 19858:2 19868:3 19887:22 19908:2 woordjie 19781:10 word 19721:7 19737:11 19748:8 19753:8,8 19762:19 19768:6,17 19775:3,21 19781:5 19781:17 19784:3 19785:14 19787:8</p>	<p>19789:12 19794:8 19801:17 19804:3 19812:21 19816:6 19818:23 19819:8,14 19821:20 19822:19 19822:19 19824:18 19833:5 19836:24 19843:17 19847:16 19851:3,25 19852:3 19856:6,14 19858:1 19868:20 19871:2 19872:3 19876:2 19878:12 19886:1 19897:10 19926:23 words 19808:7 19823:13 19827:1 19830:21 19847:23 19876:3 19915:24 19924:16 work 19741:25 19742:3 19783:1 19813:2,5,22 19816:20 19817:23 19835:2 19843:9 19924:17 worked 19909:8 working 19756:1 19771:9,17 19809:15 19890:24 19891:2 19913:14 worry 19804:10 19838:5 worrying 19786:12 19845:22 worse 19789:18 worth 19761:9 wou 19728:15 19846:22 19855:8 19858:17 19859:3 19894:7,11 19916:13 wouldn't 19730:13 19749:21 19840:24 19841:21 19843:24 19865:6 19875:14,15 19876:8 19881:5,8,8 19908:22 19927:17 19927:18 writers 19722:24 written 19722:24 19740:2 19762:15 19765:10 19769:19 19769:25 19785:9 19822:4 wrong 19720:7,8 19723:19 19767:23 19786:8 19789:5,22 19823:2,3 19856:13 19909:11 19910:12 19919:20 wyd 19760:9 19878:24 wys 19716:20 19816:24 19885:23 19898:4 19914:12 Wêreld 19824:11 19918:1</p>	<p>year 19763:22 years 19714:17 yesterday 19711:9 19721:19 19734:20 19734:23 19780:16 19789:21 19797:25 19800:24 you'll 19760:23 19776:10 19777:20 19782:10 19785:16 19789:20 19830:13 19838:20 19862:8 19884:20 19885:8 19889:17 19899:25 you're 19711:4 19712:24 19713:7,8 19736:14 19747:20 19749:13,15 19750:21 19752:6,6 19753:16 19758:4 19759:3 19776:2,5 19778:23 19780:6 19819:14 19821:8 19832:24 19847:12 19849:12 19850:3 19851:5 19882:14 19893:15 19897:5 19899:12 19907:10 19908:10 19920:11 19923:15 you've 19713:9 19718:1 19719:15 19728:24 19736:19 19737:18 19758:18 19776:7 19783:18 19787:19 19788:6 19803:12 19812:6 19834:16 19837:7 19838:10 19841:15 19848:9 19874:3 19880:13 19884:12 19884:13 19899:18 19906:15 19907:15 19908:11 19914:24 19915:5 19916:17,19 19921:13</p> <hr/> <p style="text-align: center;">0</p> <p>000 19816:9 09:18 19711:2 09:38 19723:23 09:58 19740:8</p> <hr/> <p style="text-align: center;">1</p> <p>1 19740:10,16 19750:16 19793:10 19829:9,10 19836:5 19892:20 19893:18 19913:11 19923:14 19924:7 1ste 19725:25 1:30 19725:11 19726:6 19731:23 19738:6 19739:7,15 19793:15 10 19711:11,15 19714:16 19774:18 19799:25</p>	<p>10:18 19752:3 10:38 19764:19 100 19862:14 100% 19755:20 19829:17,22 11 19722:8 19751:23 19777:17 11:22 19778:22 11:42 19793:4 110% 19926:24 19927:23 19928:16 12 19714:16 19761:4 19842:18 19923:3,9 19923:23 12th 19900:6 12:02 19805:18 12:22 19821:4 12:41 19836:4 13 19889:22 13de 19917:4 13th 19830:7 19847:15 19853:24 19855:21 19916:5,25 19917:3 13.8 19830:3,12 13:30 19807:18 19918:18 13:57 19850:2 14:16 19866:6 14:30 19792:6 19799:3 19801:22 19924:5 14:36 19881:1 14:56 19895:3 15 19711:1 19785:2,7 19820:17 19914:14 15de 19794:25 15th 19740:5 19790:5 19922:4 15:24 19899:11 15:30 19726:21 19807:22 19919:7,17 19920:18 15:35 19923:5 15:40 19813:11 19814:9 15:44 19914:7 15:45 19755:25 19756:13 153 19795:18 16de 19738:2 19741:10 19746:5 19768:4 19792:6 19805:14 19806:1 19889:2 19895:4 19925:6 16th 19717:12 19730:5 19739:24 19740:3,6 19743:5 19746:2 19789:25 19893:20 19923:22 19926:22 16:04 19927:10 16:05 19755:25 17th 19895:7 17204 19795:9,24 18 19723:15 19752:8 19782:15 19795:1,4 19834:13 18de 19721:9 19928:23</p>	<p>18th 19717:17,18 19776:23 19 19919:23 1992 19835:4 1993 19835:6 1994 19834:18,18 1999 19835:10</p> <hr/> <p style="text-align: center;">2</p> <p>2 19734:13 19735:21 19738:4 19740:10,17 19741:1,16 19747:4 19761:7 19799:21 19801:5,12,20 19815:2 19829:10 19836:5 19849:25 19923:14 2:30 19726:11 19731:25 19738:12 19792:14 19793:7 20 19723:14 19748:21 19818:9 19820:16 19830:4 19906:15,15 20/25 19750:10 200 19900:3 200-odd 19855:1 2012 19787:21 2013 19725:25 19762:21 19787:25 2014 19711:1 21 19716:24 21-jaar 19774:3 21.6.1 19734:2,22 21.6.2 19734:13,22 21.6.3 19734:24 19737:20 22 19746:14 22nd 19795:18 23 19746:23 19747:18 19747:19,20 23.1 19747:4 23.2 19748:2 23.3 19748:3 24 19748:6 25 19748:11 26 19779:9 262 19722:8 27 19716:24 28 19869:4 19893:3 28.1 19752:9 28.10 19760:2 28.2 19723:12,13 19724:7 19725:6 19730:17 19752:19 28.3 19724:3 19754:3 28.5 19753:14 28.7 19754:24 19755:7 28.8 19755:22 29 19899:25 29.4 19765:10</p> <hr/> <p style="text-align: center;">3</p> <p>3 19724:2 19725:9,24 19726:13 19727:14 19728:2,10,22 19739:5 19740:14</p>
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<p>19747:4 19774:9 19789:23 19792:5 19793:8 19794:3 19797:22 19798:6,9 19798:25 19799:14 19801:22 19816:9 19818:9,19,19 19819:5,6,6 19820:11 19820:14 19829:4 19836:2,10 19862:1 19919:5 3.3.11 19895:13 19896:9 3:20 19811:9 3:30 19726:18,19 19819:16 19919:6 30 19771:5,6,7 31 19900:12 32 19900:17,18 33 19900:18 19901:24 34 19787:21 19903:1,7 19906:10 35 19903:11,20 350 19879:15</p> <hr/> <p style="text-align: center;">4</p> <p>4 19816:17 19818:9 19829:3,9 19842:1 19843:16 19855:12 19861:23 19862:3 4,000 19742:11,14 19743:1,7,14,25 19744:2,4,5,14,20,21 19745:4,5,12,13 4-skag 19861:22 45 19915:4 48.4 19914:16 19915:7 19915:9,11,25 19916:1,6,14</p> <hr/> <p style="text-align: center;">5</p> <p>50 19914:13 50/50 19784:22 500 19841:17 19878:23 56 19889:25</p> <hr/> <p style="text-align: center;">6</p> <p>6 19795:9 19796:2 19800:3,4 19801:11 19802:24 19803:5,7 19895:7 19896:4 600 19744:21</p> <hr/> <p style="text-align: center;">7</p> <p>7 19878:24 70 19855:5 19904:21 19905:23 19906:12 19906:16 76 19797:4 19801:6</p> <hr/> <p style="text-align: center;">8</p> <p>8 19878:25 19879:6,13 19890:19 8.4.1 19889:24 8.4.17 19890:5 80 19778:6 19869:3</p>	<p>83 19830:13</p> <hr/> <p style="text-align: center;">9</p> <hr/> <p>9 19761:3 19801:16 19814:14 900 19774:9</p>			
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