

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 176

28 JANUARY 2014

PAGES 20958 TO 21126



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



<p style="text-align: right;">Page 20958</p> <p>1 [PROCEEDINGS ON 28 JANUARY 2014] 2 [09:14] CHAIRPERSON: The Commission resumes. I 3 understand that the families of the deceased are on their 4 way and they will be arriving in the course of the day. We 5 will obviously welcome them when they return. I understand 6 they've been delayed and they're at the moment still in 7 Johannesburg, so we have to start, I'm afraid, without 8 them. So they will be deprived of the opportunity of 9 hearing what I hope will be the end of Mr Gotz's cross- 10 examination, but I'm sure that if they are particularly 11 interested Mr Nichol or somebody will be prepared to read 12 the relevant bits to them from the transcript. 13 MR GOTZ: In his best Afrikaans. 14 MR GOTZ: Mr Gotz, are you ready to 15 proceed with your cross-examination? 16 MR GOTZ: Thank you, Chair, and good 17 morning, Commissioners. Good morning, Brigadier Calitz. 18 BRIGADIER CALITZ: Good morning, 19 Commissioners, and good morning Advocate. 20 CROSS-EXAMINATION BY MR GOTZ (CONTD.): 21 Brigadier, you'll recall we ended yesterday with us 22 debating a point that I'd made that it was not that easy 23 for the strikers to retreat, as it were. You'll recall 24 that? 25 BRIGADIER CALITZ: Ek onthou wat u gesê</p>	<p style="text-align: right;">Page 20960</p> <p>1 KKK57. Is that right? 2 MR GOTZ: Yes. 3 CHAIRPERSON: So we have two – it's two 4 photographs, isn't it? 5 MR GOTZ: Two photographs, Chair. We can 6 make them KKK57.1 – 7 CHAIRPERSON: Alright, so how do I 8 describe them in the exhibits, in my book? KKK57.1 is 9 what? 10 MR GOTZ: An aerial – 11 CHAIRPERSON: I didn't check them. Are 12 they – no, they're not the same photograph. 13 MR GOTZ: They're not the same 14 photograph. 15 CHAIRPERSON: So the easiest way to do it 16 will be to say marked copy of exhibit so-and-so. Now of 17 course, and if you knew what exhibit – 18 MR GOTZ: Yes, indeed, although I will 19 need to get that underlying exhibit number for you, and I 20 don't have that at my fingertips, Chair. 21 CHAIRPERSON: Alright, well never mind; 22 we will provisionally just mark them 57.1 and 2, and then 23 when you have got the information at your fingertips, as 24 you put it, you will then announce it. 25 MR GOTZ: Alright, thank you, Chair.</p>
<p style="text-align: right;">Page 20959</p> <p>1 het. 2 MR GOTZ: And it was suggested to me that 3 I should produce some evidence underlying my proposition. 4 I'd like to take a slight step back so that we can 5 orientate ourselves, because I fear that we may be at 6 slight cross purposes. I provided you with a series of two 7 photographs – Chair, they should also be in the 8 Commissioners' bundles. The photographs have lines drawn 9 on them. They're aerial shots. 10 CHAIRPERSON: You explained to us in 11 chambers that these were exhibits that were already before 12 the Commission, but what you've done is you've added to the 13 exhibits certain lines which – I'm not quite sure where I 14 put them – certain lines which indicated something which 15 you're going to deal with in cross-examination. 16 MR GOTZ: Yes. 17 CHAIRPERSON: Am I – 18 MR GOTZ: Chair, for the purposes of – 19 CHAIRPERSON: - recollecting correctly? 20 MR GOTZ: Yes, indeed. Chair, for the 21 purposes of the people operating the screen, it's a 22 document on my disc called "Barbed wire and fences." 23 CHAIRPERSON: If you're going to put them 24 in we have to give them exhibit numbers because the lines 25 will be in effect an exhibit. The next exhibit I think is</p>	<p style="text-align: right;">Page 20961</p> <p>1 Brigadier, have you got copies of the two photographs 2 KKK57.1 and 57.2? 3 BRIGADIER CALITZ: I found them yesterday 4 lying on my table here. So ek het nie geweet nie, maar ek 5 het aangeneem dit is u span wat dit vir my hier neergesit 6 het. 7 CHAIRPERSON: Have you marked them? Het 8 u hulle gemerk KKK57.1 en KKK57.2? 9 BRIGADIER CALITZ: Ek het hom so gemerk, 10 dankie, mnr die Voorsitter. 11 MR GOTZ: Brigadier, the first photograph 12 you will confirm is, or demonstrates really what the effect 13 of the planned rollout of the barbed wire coupled with the 14 fences to the southern side of the squatter camp would do. 15 You'll see that there is a, from the line of Nyala 1 16 through to Nyala 5 and then on to the kraal, and then on 17 the other side there are barbed wire fences which 18 effectively, as it were, block access to a large group of 19 people. I'm not suggesting that individuals couldn't climb 20 under a fence or over a fence, but I'm sure you would agree 21 if a large group of people tried to go through that fence 22 they would have difficulty? 23 CHAIRPERSON: This isn't it at the 24 moment, is it? My one has got red lines on it. 25 MR GOTZ: Ja.</p>

Page 20962

1 CHAIRPERSON: What we see on the screen
 2 hasn't got it.
 3 MR GOTZ: Chair, I'm not sure whether my
 4 learned friend has copies of this document.
 5 MR SEMENYA SC: No, we don't.
 6 CHAIRPERSON: Well, I see his red light
 7 is on which probably means he hasn't got a red line
 8 photograph. Is that right?
 9 MR SEMENYA SC: I don't have photographs
 10 at all, Chair.
 11 CHAIRPERSON: Well, I think it's –
 12 MR GOTZ: Do you have –
 13 CHAIRPERSON: Before we carry on, Mr
 14 Semenya should get them because he must be able to follow
 15 the cross-examination.
 16 MR GOTZ: I do have copies available,
 17 Chair.
 18 CHAIRPERSON: Alright, what we had on the
 19 screen didn't have the red markings.
 20 MR GOTZ: I'm not sure what happened to
 21 them on the screen, Chair, but certainly when we gave –
 22 CHAIRPERSON: Perhaps a further attempt
 23 can be made to find the relevant slide for screening for
 24 us.
 25 MR GOTZ: Chair, if you'll just bear with

Page 20963

1 me for two minutes.
 2 CHAIRPERSON: Is this going to take some
 3 time, Mr Gotz, or are we waiting for the families to arrive
 4 before it's screened, or what –
 5 MR GOTZ: No, no, not at all, Chair.
 6 We've given a copy to the person.
 7 SPEAKER: [Microphone off, inaudible].
 8 CHAIRPERSON: [Microphone off, inaudible]
 9 rivalry between the computer firms of course is the trouble
 10 we had previously in relation to time, if you will
 11 remember.
 12 MR GOTZ: Indeed. Ah, there we go.
 13 CHAIRPERSON: There we've got it. You
 14 see the red line there, Brigadier?
 15 BRIGADIER CALITZ: Ek sien dit, mnr die
 16 Voorsitter.
 17 CHAIRPERSON: The red line at the bottom
 18 of the page, the foot of the page is also, is obviously not
 19 part of the barrier, I take it. It's presumably the fence
 20 around the power station. Is that right, Mr Gotz?
 21 MR GOTZ: Yes, indeed, Chair.
 22 CHAIRPERSON: So we've got a red line at
 23 the foot of the page which is effectively the fence of the
 24 power station.
 25 MR GOTZ: Yes.

Page 20964

1 CHAIRPERSON: We've then got at an angle
 2 of about 45 degrees –
 3 MR GOTZ: I think that's more –
 4 CHAIRPERSON: - moving towards - or
 5 slightly more – moving towards the middle of the page we've
 6 got the wire barrier. Then we've got almost a right
 7 angle –
 8 MR GOTZ: Yes.
 9 CHAIRPERSON: - moving to the right to
 10 the vicinity of the kraal. We've then got a red line going
 11 around the kraal, which I presume that is really the fence
 12 of the kraal.
 13 MR GOTZ: Yes.
 14 CHAIRPERSON: The kraal fence.
 15 MR GOTZ: Yes, indeed.
 16 CHAIRPERSON: The thorn trees, whatever
 17 they were, that made up the fence of the kraal.
 18 MR GOTZ: Yes.
 19 CHAIRPERSON: And then beyond that we've
 20 got a line running from a position, I suppose about a
 21 quarter of the way down and about a third of the way in
 22 from the left-hand side of the picture, which – is that
 23 supposed, what's that supposed to be?
 24 MR GOTZ: Chair, so on our understanding,
 25 having visited the scene as well as having looked at these

Page 20965

1 photographs, those are barbed wire fences. So if one sees
 2 the kraal to the, on the top left-hand side and the kraal
 3 to the top right-hand side, the small kraal being at the
 4 bottom, surrounding those two kraals at the top would be a
 5 series of barbed wire fences in the position as marked on
 6 the red line.
 7 CHAIRPERSON: Well, Mr Gotz, we've got
 8 other photographs. I can't remember that, but I'm not
 9 quarrelling with you. You may well be right, but after a
 10 few more witnesses have testified I'm proposing that we're
 11 going to have another inspection and we will then be able
 12 to verify whether you are correct in saying that there is
 13 indeed a series of barbed wire fences which are along the
 14 route covered by what one can call the upper red line on
 15 your photograph. But you assure me that you've inspected
 16 it and you've seen it yourself and without putting you
 17 under oath in the witness box I'll accept what you say
 18 provisionally, and obviously you realise you proceed at the
 19 risk that if this is wrong then your whole cross-
 20 examination on this point will be nullified, but if you're
 21 prepared to take that risk, I am. I will provisionally
 22 allow you to ask the questions on that basis.
 23 MR GOTZ: Safe to say that I think things
 24 may have changed on the scene quite dramatically, but Mr
 25 Chaskalson wants to –

Page 20966

1 MR CHASKALSON SC: That was the point I
 2 was about to make. For instance the kraal has been
 3 completely demolished.
 4 SPEAKER: [Microphone off, inaudible].
 5 MR CHASKALSON SC: I take that back.
 6 But –
 7 CHAIRPERSON: We did [inaudible] these
 8 conflicts of testimony don't have to be resolved by oral
 9 evidence, but alright, which kraal has been demolished?
 10 You say the so-called small kraal –
 11 MR CHASKALSON SC: No, no, I withdraw
 12 that comment. My informant has repudiated his information.
 13 So I think there has to be a caution in relation to
 14 inspection. It is 18 months down the line, or it will be
 15 18 months down the line. Things may have changed, but the
 16 dramatic changes that I was informed about apparently have
 17 not taken place.
 18 CHAIRPERSON: Yes, well Adv Hemraj wants
 19 to say something. Could I just ask this, though? The red
 20 line we're talking about, the upper red line –
 21 MR GOTZ: Yes.
 22 CHAIRPERSON: - that's intended to be, I
 23 suppose, the outer boundary on presumably more or less the
 24 southern side of Nkaneng. Do we have contemporaneous
 25 photographs which indicate those barbed fences, or that

Page 20967

1 barbed wire fence? Because if we have then the point we're
 2 debating will fall away and Mr Gotz will be able to proceed
 3 triumphantly on the basis of his marked exhibit.
 4 MR GOTZ: Yes, indeed, and one can see
 5 the barbed wire fences in many of the videos as well. So
 6 I'm not sure, Brigadier, I mean just by way of
 7 illustration, you were parked, as it were, at the point of
 8 the - you'll see where the top line creates a point, that's
 9 where your Papa1 was located. You'll confirm that there
 10 are barbed wire fences going in that V-shape, as I've
 11 indicated.
 12 COMMISSIONER HEMRAJ: Just before that,
 13 Mr Gotz – Mr Chaskalson, there are close-up photographs of
 14 these fences. I recall, I think it was during Mr
 15 Magidiwana's evidence that showed the fence with horizontal
 16 strands. Can you perhaps help us identify those
 17 photographs? It might help if this cross-examination is
 18 going in the direction one envisages it might.
 19 MR CHASKALSON SC: There's a wide range
 20 of them, but I'll identify a few and then we can –
 21 CHAIRPERSON: But in the meanwhile to
 22 save time, I think we can let Mr Gotz proceed -
 23 MR CHASKALSON SC: Yes.
 24 CHAIRPERSON: - on the basis that if it's
 25 not so then the cross-examination will be rendered

Page 20968

1 worthless, but you're prepared to take that risk, Mr Gotz.
 2 MR GOTZ: Chair, I'm comfortable –
 3 CHAIRPERSON: On your assurance I'm
 4 prepared to as well.
 5 MR GOTZ: I'm comfortable that the
 6 representation is accurate, perhaps with one qualification
 7 is that I'm not seeking to represent every kink and twist
 8 in the barbed wire is accurately – I mean this is a general
 9 depiction of where the barbed wires run. In other words
 10 the barbed wire fences as opposed to the barbed wire
 11 Nyalas. Brigadier, just so that we can orientate
 12 ourselves, on the top right-hand corner of the photograph
 13 you'll see a built-up area. That is Wonderkop, correct?
 14 BRIGADIER CALITZ: As u na die
 15 nedersetting verwys, dit, volgens my is dit Nkaneng.
 16 MR GOTZ: Yes, I mean just so that we're
 17 clear, this sort of less built-up section above the top red
 18 line is what SAPS refers to as the greater squatter camp.
 19 The more built-up section to the right is Nkaneng and then
 20 as part of that you'll find Wonderkop, and indeed just to
 21 the right of this built-up section of Wonderkop the
 22 hostels, correct?
 23 BRIGADIER CALITZ: Mnr die Voorsitter,
 24 nee, ek kan nie vir u met sekerheid sê nie. Ek glo Lonmin
 25 sal ons seker beter kan help met waar die skeidslyn is.

Page 20969

1 Volgens my is daardie nedersetting aaneen gewees, so ek
 2 weet nie rêrig waar die waterlyn, die skeidslyn is tussen
 3 Wonderkop en Nkaneng nie.
 4 MR GOTZ: Brigadier, what we've also
 5 sought to represent on this diagram is the movement of the
 6 protesters, or strikers off the koppie towards the small
 7 kraal.
 8 MR SEMENYA SC: That, Chair, we do not
 9 accept as accurate.
 10 MR GOTZ: Perhaps I can assist, Chair.
 11 I'm not suggesting, I'm not debating at the moment whether
 12 or not incident 1 occurred or incident 2 occurred.
 13 CHAIRPERSON: May I interrupt you? There
 14 were of course two – or so the evidence seems to indicate,
 15 there appear, or this may be denied but I mean there appear
 16 prima facie anyway to have been two groups of - or perhaps
 17 the strikers could be classified in, broadly speaking into
 18 two groups. There were those who were actually on the
 19 koppie itself, and there were those who tended to
 20 congregate on the plain, as it were, the flat area in front
 21 of the koppie, and that's obviously not a watertight
 22 distinction between the two, but it's a broad proposition
 23 that appears to be correct.
 24 Now I take it your arrow indicates presumably the
 25 direction taken by some at least of the people on the

Page 20970

1 koppie. I suspect Mr Semenya is concerned about the, what
 2 he would say was an inaccuracy in respect of the group who
 3 tended to congregate on the flat area in front because you
 4 know, we have all the arguments about the incident 1 and 2
 5 and all that sort of thing, but the arrow is accurate
 6 insofar as I take it, it relates to some of the people on
 7 the koppie. It's not accurate in respect of the, some of
 8 the people who had congregated on the flat area in front of
 9 the koppie. That's correct, isn't it?

10 MR GOTZ: That is so, and perhaps I can
 11 rephrase the question as follows –

12 CHAIRPERSON: So anyway, but do you need
 13 your white arrow? You can express what you want to express
 14 in words, I would imagine, without referring to a
 15 misleading arrow.

16 MR GOTZ: Yes. Brigadier, you'll see
 17 that the diagram on the screen represented by the two red
 18 lines, you'll see that there's almost a funnel that's
 19 created between the barbed wire Nyalas, the line
 20 represented by the barbed wire Nyalas and the line of the
 21 barbed wire fences. Do you see that? As it were, it's
 22 almost a funnel, a triangle. I prefer to call it a funnel.

23 BRIGADIER CALITZ: Miskien as ek u kan
 24 vra om met 'n pointer vir my, dan gaan dit dalk makliker
 25 werk, die hier en die daar, en dan miskien net terug te

Page 20971

1 kom, u het my nou-nou 'n vraag gevra, ek weet nie, mnr die
 2 Voorsitter, daar was 'n vraag aan my gestel dat ek getuig
 3 het dat ek op die hoek, die boonste hoek van die kraal, dit
 4 my posisie was, soos u dit gestel het, asook dat dit die
 5 "barbed wire" was. Ek wil maar net dit antwoord dat nee,
 6 ek het nie daarvoor getuig nie. My voertuig was nie op die
 7 punt soos u dit aandui nie en daar was ook beslis nie
 8 "barbed wire" nie.

9 [09:34] MR GOTZ: Brigadier, sorry, I don't
 10 understand your evidence. Our understanding is that your
 11 Papa Nyala during the line up as it were of the Nyalas as
 12 the protestors came around the kraal was located at that
 13 point which I'm now marking, which is the point and that
 14 point as it were is created by two barbed wire fences which
 15 come together at a point.

16 BRIGADIER CALITZ: Ek kan miskien,
 17 miskien is u, die manier wat –

18 MR SEMENYA SC: Mr Chair, -

19 CHAIRPERSON: Mr Semenya wants to say
 20 something, just give him a chance.

21 MR SEMENYA SC: Chair, those solid lines
 22 we know are not representative of the true evidence because
 23 the witness told us he drove over that wire with his Nyala.

24 MR GOTZ: No, but Chair, that simply
 25 confirms my point. His Nyala could drive over a barbed

Page 20972

1 wire fence.

2 CHAIRPERSON: Yes, there was a fence, if
 3 you were in a Nyala you could drive over it, if you were a
 4 pedestrian and you were a striker you wouldn't be able to
 5 drive over it, you might or might not have been able to
 6 climb through it or under it but, so I'm not sure how much
 7 you need these red lines, except by way of a general
 8 indication.

9 MR GOTZ: Ja.

10 CHAIRPERSON: But –

11 MR GOTZ: It is a general indication,
 12 Chair.

13 CHAIRPERSON: Well, may I suggest you
 14 carry on with your cross-examination, using the red lines
 15 as little as possible and let's see how we do.

16 MR GOTZ: Alright, Brigadier, what I want
 17 to put to you is that what we do know, I want to leave
 18 aside questions of whether there was incident 1 and
 19 incident 2, but at a particular point –

20 BRIGADIER CALITZ: Kan ek u miskien net
 21 onderbreek, as ek mag, net om terug te kom vir duidelikheid
 22 op die vorige antwoord, mnr die Voorsitter, waar u gesê het
 23 my voertuig was op die punt, u verwys na die punt, in other
 24 words where they meet, en dit is nie die posisie van my
 25 Nyala nie. U rooi kolletjie het nou aangedui en dit was in

Page 20973

1 die middel van daardie, so it is not at the point, it is in
 2 the middle of that fence, dit is net waar ek met u verskil
 3 het.

4 MR GOTZ: Thanks for that clarification,
 5 Brigadier.

6 CHAIRPERSON: Mr Gotz, sorry, can I just
 7 ask you this question? This evidence has all been gone
 8 over very fully in the past, but you'll remember, I'm not
 9 sure if you were at the time but Mr Chaskalson spent a long
 10 time with the witness and we had a representation, an
 11 enlarged, a blown up photograph of the area and it was all
 12 recorded on video, these movements of where all the
 13 vehicles were and what he did and so on. Now, there is no
 14 point in repeating that. If you got another point that
 15 you're coming to soon I'll allow you to carry on, but if
 16 this is just going to be reploughing that field then I'm
 17 not going to allow it.

18 MR GOTZ: Chair, I have no intention of
 19 reploughing that field and unfortunately it is taking far
 20 longer than I expected, I simply wanted to present this
 21 photograph by way of orientating ourselves. Perhaps we can
 22 –

23 CHAIRPERSON: You can assume we are
 24 orientated.

25 MR GOTZ: Okay.

Page 20974

1 CHAIRPERSON: So can we now proceed?

2 MR GOTZ: Brigadier, can I then in

3 further evidence of my point refer you to a photograph from

4 Vermaak's Blackberry series? That will be Exhibit JJJ, I

5 beg your pardon, it is Exhibit JJJ –

6 CHAIRPERSON: KKK57.2?

7 MR GOTZ: No, no, no, Chair, let's move

8 on from this because I think we're going to have the same

9 problem in relation to 57.2, so I wanted to move on without

10 reference to barbed –

11 CHAIRPERSON: Well, move on, move on. If

12 you've got a good point you want to make I don't want to

13 stop you but on the other hand if this is going to be

14 repetition and it is going to be one that is difficult to

15 establish without all sorts of collateral things, then

16 you'll have to reconsider it.

17 MR GOTZ: Can we look at Exhibit JJJ10

18 and the photograph is 1515?

19 CHAIRPERSON: Was the witness given

20 notice of your intention to rely on this photograph?

21 MR GOTZ: He was indeed, Chair, - sorry,

22 it is Exhibit JJJ11, not 10 and it is 1515 and I sent these

23 references through by way of an email last night.

24 BRIGADIER CALITZ: Mnr die Voorsitter, om

25 net aan te dui, ek dink ons moet net, ek is onder eed, so

Page 20975

1 ek moet die waarheid praat, is dat ek het reference gekry

2 na JJJ10 toe en na 'n foto verwysing, asook die email in

3 paragraaf, Exhibit JJJ10 en 'n foto verwysing. Daardie

4 foto's kom glad nie voor in JJJ10 nie, soos u nou net sê

5 dit is JJJ11, so die inligting, ek weet nie of dit aspris

6 vir my verkeerd deurgegee is nie, maar ek sal nog steeds

7 kyk die foto's en dan daarop antwoord.

8 MR GOTZ: I do apologise for that,

9 Brigadier, but –

10 CHAIRPERSON: Thank you, Brigadier, I –

11 MR GOTZ: - these are photographs that

12 you've seen before, I don't think that –

13 CHAIRPERSON: I appreciate that, let's do

14 the best we can with JJJ11 and if you have difficulty and

15 you need a bit of time, then we'll accommodate that.

16 BRIGADIER CALITZ: Dankie, mnr die

17 Voorsitter.

18 MR GOTZ: So if we can have Exhibit

19 JJJ11, 1515 up on the screen? It seems to be bedevilled by

20 technological failures.

21 CHAIRPERSON: While we're waiting, Mr

22 Gotz, it has been pointed out to me that we omitted

23 yesterday, it was my fault but I hope to remedy my

24 omission. We sort of marked the report that you handed in

25 to us by way of explaining certain things. We should have

Page 20976

1 given it an exhibit number.

2 MR GOTZ: Chair, it was originally made

3 an exhibit number, so –

4 CHAIRPERSON: The report that you handed

5 in, the explanatory report that you handed in, that wasn't

6 give an exhibit number.

7 MR GOTZ: Chair, you'll recall that at

8 the commencement of my cross-examination we marked the

9 actual document movements of SAPS –

10 CHAIRPERSON: Yes –

11 MR GOTZ: - vehicle as Exhibit 52.

12 CHAIRPERSON: Yes.

13 MR GOTZ: And then there was another

14 exhibit, a shot fired by the striker which is Exhibit 53

15 and then we provisionally marked the report which I –

16 CHAIRPERSON: Okay, -

17 MR GOTZ: - produced as Exhibit 54.

18 CHAIRPERSON: Okay, I was, my apology is

19 withdrawn, I was also misinformed it hadn't been given a

20 number.

21 MR GOTZ: Okay.

22 CHAIRPERSON: I appreciate it has and so

23 all the housekeeping is in order.

24 MR GOTZ: Absolutely.

25 CHAIRPERSON: And have we now got the

Page 20977

1 photograph on the screen that you were referring to?

2 MR GOTZ: Yes, Brigadier, -

3 CHAIRPERSON: Okay, you may now carry on.

4 MR GOTZ: You have seen this photograph

5 before of course.

6 BRIGADIER CALITZ: Dit is korrek, waar

7 ons na insident 2 verwys.

8 MR GOTZ: You'll agree with me that what

9 this photograph shows is the lead group of protestors

10 almost in the centre of the photograph, but perhaps just

11 off to the left, correct?

12 BRIGADIER CALITZ: As u na die punt van

13 die groep verwys, dit sal die voorste, die lead group wees,

14 ja.

15 MR GOTZ: Now we do know that, and I

16 really don't want to debate the issues of incident 2,

17 etcetera, what we do know is that the direction that the

18 strikers moved was downwards on the photograph, so if one

19 draws a line between the kraal on the left hand side and

20 the kraal on the right hand side, they moved down that

21 line, correct?

22 BRIGADIER CALITZ: Die voorste groep dink

23 ek het na die kraal toe beweeg en dit is waar Nyala 4 die

24 punt toe gemaak het, so ek dink dit was die eerste attempt,

25 of waarna ons verwys as insident 2, om daar deur te gaan en

Page 20978

1 toe Nyala 4 toe maak, toe is daar om beweeg, om die kraal.

2 MR GOTZ: And you'll agree with me also

3 and, Chair, I will be indicating it with the red dot on the

4 screen, that the lines that you see here are effectively,

5 so it is a bit indistinct, but this is a barbed wire fence

6 that runs –

7 CHAIRPERSON: You're going have to

8 describe that for the record.

9 MR GOTZ: Yes.

10 CHAIRPERSON: Those who read the record

11 in future time won't know what this and that mean.

12 MR GOTZ: Indeed, so there is –

13 CHAIRPERSON: At least try to describe, I

14 mean otherwise I'll have to do it but you are marking it,

15 you know exactly which you want to mark, so please do it

16 for me, if you don't mind?

17 MR GOTZ: There is a barbed wire fence

18 which runs at a 45 degree angle from the left hand corner

19 of the photograph up towards the small kraal.

20 CHAIRPERSON: The left hand bottom

21 corner?

22 MR GOTZ: Yes, the left hand bottom

23 corner. It runs upwards towards the small kraal. You will

24 then see a darkish patch in the middle of the earth section

25 below the small kraal and at a probably 65 degree angle the

Page 20979

1 barbed wire fence then runs towards the top section of the

2 large kraal on the right hand side. Would you agree with

3 that description, Brigadier?

4 BRIGADIER CALITZ: Ek weet daar het 'n

5 draad geloop, u verwys na barbed wire, die barbed wire is

6 wat ons gebruik in ons terme wat ons uitgooi as barbed

7 wire, so in daardie opsig verskil ek as ons na dieselfde

8 verwys en dan die draad loop, u het gewys op die foto, ek

9 probeer nou net kyk en vergelyk met die rooi lyn, u sê dit

10 loop tot by die punt van daardie kraal, daardie een is die

11 groot een aan die onderkant wat net suid lê van die paar

12 sinkhuisies. Op die foto het u dit wel baie verder

13 aangedui, dat daardie draad reguit aanbeweeg in 'n, sê

14 westelike rigting.

15 MR GOTZ: Brigadier, I'm not sure what

16 our points of differences are but I think you've given

17 sufficient clarification for my purposes.

18 BRIGADIER CALITZ: Miskien as u die

19 pointer gebruik en net weer vir my sê, u het gesê, "and the

20 barbed wire started there up to the corner" en dan het u

21 gesê "it runs up to", nee, "up to", u gaan nou terug, "it

22 runs up to", met ander woorde waarnatoe gaan die draad?

23 MR GOTZ: So the barbed wire runs from a

24 position –

25 BRIGADIER CALITZ: Ek het die begin

Page 20980

1 posisie, ek wil net weer die eind posisie –

2 MR GOTZ: Ja, it runs up to a position

3 where you see a dark patch.

4 BRIGADIER CALITZ: Dit is ek met u.

5 MR GOTZ: Just below the small kraal.

6 BRIGADIER CALITZ: And from there?

7 MR GOTZ: And then at a 65 degree angle,

8 probably, - sorry, more than that, so it -

9 CHAIRPERSON: No, it looks like a 110

10 actually, it is slightly more than –

11 MR GOTZ: Yes, at a 110 degree angle –

12 CHAIRPERSON: Have you, I won't go there,

13 so you start at the bottom left hand corner, you go up to

14 the corner that you've referred to, the dark patch looks

15 like a tree, I think. That's below what will be the bottom

16 left hand corner of the kraal. At that point it turns

17 right, probably about a 100 degrees, just more than a right

18 angle and it proceeds then across the veld, more or less

19 parallel with the bottom of, the foot of the photograph and

20 it goes in the direction of a point just above the larger

21 kraal, and I think what the witness is interested in is

22 where do you say it ended?

23 MR GOTZ: Well, it is immaterial for my

24 purposes, Chair, but I'm suggesting that the barbed wire

25 runs past the large kraal and then divert it probably at a

Page 20981

1 175 degree angle down to the bottom, to the right of the –

2 CHAIRPERSON: Anyway, it sounds as if,

3 for Mr Gotz' purposes we only have to concentrate on the

4 area between the left hand corner, as it were which is

5 opposite the bottom end of the small kraal, to the point

6 where it is close to the large kraal and what happens

7 thereafter to the right of that on the photograph is a

8 matter that we need not concern ourselves with, because it

9 is not relevant for the purposes for this cross-

10 examination, is that right, Mr Gotz?

11 MR GOTZ: Indeed.

12 CHAIRPERSON: Okay, so we're now at a

13 stage where you can put your point to the witness.

14 MR GOTZ: Now, Brigadier, this photograph

15 was taken with Vermaak's Blackberry at 15:50:47, so it is

16 some three minutes before the TRT opens fire and you will

17 agree with me that the position to the left of the kraal,

18 of the small kraal is where the Nyalas ultimately ended up,

19 is at this point in time completely open, correct?

20 BRIGADIER CALITZ: Daardie gedeelte is

21 oop, so ook die hele westelike gedeelte waarna die

22 voorsitter verwys het, ek dink 160 grade.

23 MR GOTZ: Now if the protestors or

24 strikers thought that they wanted to go onto the road to

25 Nkaneng the most natural way to accomplish that would be to

Page 20982

1 head towards the gap between –
 2 MR SEMENYA SC: That's also contested,
 3 there was no natural way of going anywhere.
 4 CHAIRPERSON: Well, there are two points
 5 about that. The one is, it is contested and the second one
 6 has been raised before. I mean there is nothing about this
 7 point really. We've got over and over again the suggestion
 8 that if they wanted to go to Nkaneng they could have gone
 9 straight there and this is where they could have gone and
 10 there were big arguments about whether it is the most
 11 natural way, were there other ways, but this is a part of
 12 the field that's been ploughed more than once already.
 13 MR GOTZ: Chair, thank you very much.
 14 Can we look at the next photograph which, in the series
 15 which is 1516?
 16 CHAIRPERSON: The fact that you hadn't
 17 seen that photograph before didn't really put you at a
 18 disadvantage.
 19 BRIGADIER CALITZ: Nee.
 20 CHAIRPERSON: But let's hope the same
 21 will happen with the next one.
 22 BRIGADIER CALITZ: Mnr die Voorsitter, ek
 23 is gemaklik met die foto's, baie dankie.
 24 MR GOTZ: Now, Brigadier, here we get to
 25 the point where it seems to us that the lead group of

Page 20983

1 strikers has committed to trying to get through the gap
 2 between the Casspir that you see on the top left hand side,
 3 - oh, sorry, well, let me put it this way. At the top of
 4 the photograph you will see the small kraal, you will see
 5 the top left hand corner of the kraal and just simply to
 6 the left of that you'll see what is the point or the head
 7 of the lead group of strikers, correct?
 8 BRIGADIER CALITZ: Ek sien die voorste
 9 punt van die groep, ja.
 10 MR GOTZ: And just to the left of the
 11 lead group of strikers you will see the STF Casspir,
 12 correct?
 13 [09:53] BRIGADIER CALITZ: Ek sien eers vir
 14 Pappa11 en dan die STF Casspir, dit is korrek.
 15 MR GOTZ: Now this photograph is taken at
 16 eTV time 15:53:21, so it's 29 seconds before the TRT opens
 17 fire. Brigadier, you'll agree with me that for a person
 18 who is at the front of that group of strikers it is
 19 incredibly difficult now reverse –
 20 MR SEMENYA SC: No, we're back again at
 21 the same point, Chair. I would like a witness who'll come
 22 and say these things.
 23 CHAIRPERSON: Sorry, what's the point you
 24 say witnesses must come and say?
 25 MR SEMENYA SC: That at the point of that

Page 20984

1 group it is very difficult for them to turn back.
 2 MR GOTZ: I used the word "reverse" and –
 3 MR SEMENYA SC: Or reverse.
 4 CHAIRPERSON: It's the same thing, means
 5 the same.
 6 MR GOTZ: Chair, I'm putting a
 7 proposition on the basis of a photograph which shows a
 8 crowd of people. The Commissioners are of course entitled
 9 to accept or reject the proposition in due course, but I'm
 10 not, I don't see why I need to call a witness to testify to
 11 this fact. I'm looking at objective evidence –
 12 CHAIRPERSON: Well, let me suggest
 13 [inaudible] media, if there's a column of people proceeding
 14 in one direction and what you're talking about, I imagine,
 15 is changing direction radically, in other words completely
 16 reversing the direction in the space of a few seconds, I
 17 would imagine one can infer using common sense and
 18 knowledge of human behaviour that it might not be easy for
 19 the person in front to bark out what sound like a military
 20 command, "About turn, advance, proceed in opposite
 21 direction." If he'd done that I'm not sure everyone would
 22 have heard him and even if they had heard him, you've got
 23 to allow for reaction time and all that kind of thing. So
 24 I would have thought that you put the proposition too
 25 highly, but if you put the proposition on a reduced scale

Page 20985

1 that I have suggested, the difficulty in all the
 2 circumstances for the person or persons who were leading
 3 this group of people to change direction by 180 degrees in
 4 a relatively short time, I would allow the question on that
 5 basis and I would think we could move forward even if the
 6 people couldn't move backwards. So –
 7 MR SEMENYA SC: Chair, with respect, we
 8 know that even according to Mr Mpofu Mr Noki is in control
 9 of this group. He says we've done nothing wrong, we're
 10 going to walk very slowly and if he'd said to them we'd
 11 done nothing wrong, we're going to turn slowly, there's no
 12 reason why that wouldn't happen.
 13 CHAIRPERSON: Sorry, let me respond to
 14 that. I'm not sure that we're necessarily going to accept
 15 what Mr Magidiwana said about what Mr Noki said. It's
 16 obviously part of the evidence. At the end of the day
 17 we'll have to decide whether that was said, whether that
 18 was the reason for these people advancing, but I'm not
 19 prepared at this stage to accept that that statement is
 20 necessarily correct.
 21 MR SEMENYA SC: No, but Chair, with
 22 respect, the question is whether Mr Gotz is able to produce
 23 factual evidence that even reflects negatively on that
 24 weight of evidence which we have been given is the say-so
 25 by Mr Noki. There's nothing to gainsay that, whatever

1 weight we place on it.

2 CHAIRPERSON: The mere fact that evidence
3 cannot be gainsaid directly doesn't mean it has to be
4 accepted. There's a case of Segune versus Banks in the
5 Appellate Division, you'll remember, which decided that
6 point very clearly. I'm prepared to allow the question in
7 the modified form I've suggested it, but before I do that I
8 understand Adv Hemraj wants to say something too which I'd
9 better listen to first before I make a final ruling.

10 COMMISSIONER HEMRAJ: Mr Gotz, is the
11 question that you're perhaps not wanting to put is that as
12 it appears on the photograph that there appears to be no
13 opportunity for them to turn around, is that perhaps what
14 you want to say?

15 MR GOTZ: Commissioner, I wouldn't put it
16 as highly as no opportunity. I think I've made it
17 absolutely clear and it will be on record that I've never
18 suggested that it's impossible. What I'm suggesting is
19 that it is not as easy as the Brigadier has sought to
20 suggest for the crowd, for the people in the front of that
21 crowd to do, as has been helpfully suggested by the Chair
22 of the Commission, a dramatic turnaround given the
23 circumstances, including for instance the fact that you've
24 got a whole group of people behind you. Knowing the
25 psychology of crowds and the direction that they were

1 moving, it's not that easy to simply turn around and that's
2 the proposition that I want to put to the Brigadier.

3 CHAIRPERSON: Mr Semenya, anything else
4 you want to add on the point? It seems to me prima facie,
5 subject to what you may say, that the way it's now put
6 avoids many of the difficulties which you raised before.

7 MR SEMENYA SC: Well, Chair, I'll abide
8 the ruling. I don't agree.

9 CHAIRPERSON: Yes well, good counsel
10 never says whether he or she agrees with what the –

11 MR SEMENYA SC: [Microphone off,
12 inaudible].

13 CHAIRPERSON: No, I'm saying something
14 else. Good counsel doesn't say to the court I agree with
15 you or I disagree. I had a number of passages with Mr
16 Mpofo on that. Please, counsel make submissions; they
17 don't give courts or commissions the benefit of their own
18 views. So please bear that in mind. I will allow the
19 question on the modified basis which you've now put it,
20 therefore from a practical common sense point of view if
21 you're at the front of a column of a large number of people
22 and you want to change direction, you can't do it in a -
23 the question is you can't do it in a short period of time
24 unless you can be certain that everybody behind you will
25 make the same about-turn at the same time you were doing

1 it. Even if you bark out a command in your best
2 militaristic, or para-militaristic voice, it isn't
3 necessarily going to help. Anyway, you've heard the point,
4 Brigadier. Mr Gotz doesn't have to repeat it. I'll allow
5 that question. What do you say about that?

6 BRIGADIER CALITZ: Mnr die Voorsitter, as
7 u my net sal toelaat, ek dink my antwoord gaan net 'n paar
8 goedjies insluit wat dit dalk sal duidelik maak. Tussen
9 die eerste foto en hierdie foto moet ons nie uit die oog
10 uit verloor nie dat reeds by Nyala 4 was daar optrede
11 geloods deur die polisie met 'n uiteendryf aksie. So reeds
12 by, in, waarna ons verwys insident 2, het hulle 'n
13 doelbewuste keuse uitgeoefen om dan om te beweeg, wat
14 hierdie, ons na verwys insident 3.

15 Op hierdie stadium weet ons dat Pappa11, die
16 Casspirs, die POP-lede, reeds ook 'n aksie besig is om uit
17 te voer. Ons weet daar is 'n paar honderd – ek het nie nou
18 die spesifieke getal nie – haelgeweer rubber rondtes op
19 hulle gevuur.

20 Mnr die Voorsitter, my punt wat ek wil maak is
21 kom ons gaan net vir 'n oomblik terug na ondervinding toe,
22 dat ek miskien vir u sê in die polisie operasioneel hoe dit
23 werk. As daar 'n groep op u afkom en die polisie dryf
24 daardie groep uiteen, die, 99.999% het die groepe wegbeweeg
25 van die polisielyn af. In hierdie geval het daar 'n

1 "deliberate" ombeweeg – en selfs as u nou kan sien
2 waarnatoe hulle gaan, en dit is wat ek voorheen getuig het,
3 wat u na verwys het, ek het gepraat van die 45 "angle."
4 Mnr die Voorsitter het my gevra as ek aan die voerpunt van
5 daardie groep was, wat sou ek voor my sien, en ek het
6 getuig dat ek sou omtrent vier, vyf, ses pantser voertuie
7 sien wat my uiteendryf. Dit is nou met traanrook, "stun"
8 granate, rubber. So dit is – ek weet nie wat is die woord
9 om te gebruik nie – miskien die "muti," miskien die geloof
10 wat hulle gehad het, miskien die – ek kan nie dink dat die
11 voetpad so belangrik is dat jy jou eie lewe in gevaar stel
12 en om te probeer 'n polisielyn aanval terwyl jy
13 uiteengedryf word nie. Dit werk nie so nie en dit het nog
14 nooit so gewerk in die geskiedenis waarby ek betrokke was
15 in Suid-Afrika nie.

16 Om terug te kom na u vraag toe, mnr die
17 Voorsitter, is dat ek glo nie dit is net gebaseer op wat
18 die persoon voor sê van ons gaan nou – ek dink woorde is
19 gebruik, "about turn," en dat almal hom gaan hoor nie. Die
20 leier elemente was aan die voorkant. Ons weet self dat
21 hierdie persone geloop het in 'n formasie naby aan mekaar,
22 en selfs al het hulle gaan stilstaan op daardie stadium en
23 mnr Noki het sy hand in die lug gehou, soos wat menigte
24 kere van die 14de, 15de, 16de, toe ons met hulle
25 onderhandel het en die persone heen en weer beweeg het.

<p style="text-align: right;">Page 20990</p> <p>1 Daar was 'n konstant leier element waaraan hierdie groep 2 gehoor gegee het. So die heelyd het hulle soort van 3 gedoen wat die leier sê. As die leier sê sit, dan sit 4 hulle. As die leier sê stap, of ons gaan in die rigting, 5 dan doen hulle spesifiek so iets.</p> <p>6 So die punt wat ek vir u wil maak is daar was 'n 7 doelbewuste ombeweeg en dit was enige tyd moontlik gewees 8 vir mnr Noki op daardie stadium om te sê, sy hand in die 9 lug te sit of net selfs vir die leier element te sê kom ons 10 stop, hier word uiteengedryf en ons draai om. My opdrag 11 sou dieselfde gewees het. U sal onthou dat ek op 'n latere 12 stadium vir die voertuie gesê het "Do not shoot unless they 13 engage," toe ons aanbeweeg het, en ons het hulle 14 uiteengedryf. Presies dieselfde opdragte sou hier gevolg 15 het. As hierdie persone op daardie stadium gestop het, 16 omgedraai het en net wegbeweeg het dan sou die vuurlyn 17 opdrag dadelik gewees het stop die "dispersion," dit is nie 18 meer nodig nie. Hierdie persone het nou gehoor gegee. Wat 19 moet gebeur in Suid-Afrika, enige groep wat uiteengedryf 20 word wat onwettig in besit en teen regulasies gewapen 21 bymekaar kom, moet uiteengedryf word en ons kan nie dit 22 toelaat nie. Dit is net absoluut dat – ek weet nie, mnr 23 die Voorsitter, of ek my uitdruk dat hy kan verstaan nie, 24 maar ek hoop dit antwoord u vraag.</p> <p>25 CHAIRPERSON: No, no, well I understand</p>	<p style="text-align: right;">Page 20992</p> <p>1 achieve quickly. But you don't dispute that it would have 2 been difficult, as I understand you, it would have been 3 difficult but you say it never actually arose. That's your 4 answer really. Is that a fair summary?</p> <p>5 BRIGADIER CALITZ: Dit is a "summary," 6 mnr die Voorsitter. Ek wil net sê in 29 sekondes kan 'n 7 leier element 'n groep laat omdraai. Ek was in my 8 operasionele ondervinding baie, baie groepe wat ons 9 uiteengedryf het wat gestorm het en sodra die uiteendrywing 10 begin het die voorste leier omgedraai en gehardloop. Ja, 11 party mense gaan oor mekaar val en dan, maar dit gaan 12 definitief nie fatale gevolge hê soos wat ons in hierdie 13 geval gehad het nie.</p> <p>14 MR GOTZ: Can we look at some of the 15 videos which show the movement around the kraal, and I 16 think it will be somewhat enlightening. Chair, if we can 17 look at exhibit JJJ194.16. This is one of the videos from 18 the so-called Al Jazeera series.</p> <p>19 CHAIRPERSON: While they're getting this 20 slide for us, can I ask you this; I take it one can accept 21 that the time that photograph – I take it not because I 22 really take it, I'm asking the question, can one accept 23 that when this photograph was taken those in the very front 24 could have seen the TRT line in front of them? Is that 25 reasonable to accept?</p>
<p style="text-align: right;">Page 20991</p> <p>1 your answer, which is not quite an answer to the question. 2 Let me tell you how I sum it up. As I understand you don't 3 really deny that if an order had been given "about turn and 4 proceed in the opposite direction," it wouldn't have been 5 easy to have achieved that in a few seconds because of the 6 circumstances that were sketched.</p> <p>7 But your argument, your answer is that that's 8 really an unrealistic question because you say, for the 9 reasons you've given, that that was clearly never something 10 in the mind of the leaders of the group, so that even – you 11 don't dispute, I take it, that if they tried to do it, it 12 couldn't have been achieved in a couple of, in a few 13 seconds, but what you say is, your argument is they 14 wouldn't have tried to do it. You contend that all the 15 evidence indicates that they were "vasberade," they were 16 determined to proceed forward, never mind the fact that 17 there were rubber balls being fired at them. I think there 18 were some water cannon at that stage, was there? And were 19 there stun grenades as well?</p> <p>20 BRIGADIER CALITZ: Dit is korrek, mnr die 21 Voorsitter.</p> <p>22 CHAIRPERSON: And despite all that they 23 were determined to advance forward and therefore no 24 question actually arose on your contention of them seeking 25 to do what Mr Gotz puts to you would have been difficult to</p>	<p style="text-align: right;">Page 20993</p> <p>1 BRIGADIER CALITZ: Die vraag was al 2 gevra, mnr die Voorsitter, definitief. Hulle is nog 3 heeltelmal op die noordwestelike hoek van die kraal. So 4 hulle kon nog nie daardie TRT-lyn sien op vorm daar nie.</p> <p>5 CHAIRPERSON: So they couldn't have seen 6 it?</p> <p>7 BRIGADIER CALITZ: Nie die –</p> <p>8 CHAIRPERSON: I mean if this is a few 9 seconds before the shots were fired the TRT line had 10 formed, isn't it?</p> <p>11 BRIGADIER CALITZ: Ja, hulle –</p> <p>12 CHAIRPERSON: And just above the picture 13 I take it, and the front members who are more or less in 14 line with the north-western corner of the kraal, could they 15 have seen the TRT line at that stage?</p> <p>16 BRIGADIER CALITZ: Mnr die Voorsitter, as 17 ek dan kan vra net omdat ek onder eed is dat ek, ons kan 18 miskien in zoom gou na die boonste en kyk of daar 'n 19 persoon is wat al verby die hoek is, maar soos dit vir my 20 lyk op hierdie ver afstand lyk dit of hulle nog nie om 21 daardie hoek van die kraal gekom het nie. So op hierdie 22 stadium sou dit die Openbare Orde Polisiëring gewees het 23 wat net teen hulle opgetree het. Mnr die Voorsitter, ek 24 weet nie of dit u vraag antwoord nie. Die groep kon –</p> <p>25 CHAIRPERSON: If it's correct, I'm asking</p>

Page 20994

1 this on the assumption which it may be wrong, but if it's
 2 correct that this photograph was taken at a second or two
 3 or three before the firing started –
 4 MR GOTZ: Chairperson, it's 29 seconds
 5 before –
 6 BRIGADIER CALITZ: 29 seconds.
 7 CHAIRPERSON: Sorry, 29 seconds, I see.
 8 So in those – so you say that in those 29 – you see, you
 9 remember the evidence we have is there was a line of Nyalas
 10 and there were members of the POP who were standing between
 11 the Nyalas and were shooting their rubber balls from there.
 12 Now I don't see that here on this picture. I don't know,
 13 so I'm not sure that it's correct, but if it is, if the
 14 evidence indicates that that's so obviously I must accept
 15 it. I'm not sure that was quite as much as 29 seconds
 16 before the fatal volley, but is it correct – was it 29
 17 seconds?
 18 MR CHASKALSON SC: It was 29 seconds.
 19 CHAIRPERSON: I see, alright.
 20 BRIGADIER CALITZ: Mnr die Voorsitter,
 21 daardie wat ons op die video sal sien is die Nyalas wat uit
 22 beeld uit is. Daar is 'n klein Nyala'tjie wat uitsteek aan
 23 die noord oostekant, of die oostekant van die kraal. Ek
 24 dink daardie Nyala is waar u verwys waar die persone tussen
 25 staan, hulle staan tussen die wit Casspir, die Nyala wat

Page 20995

1 dan volg, daardie wat ons op die video sien. So dis net
 2 uit beeld uit van hierdie foto, maar ons weet dat Nyala 4
 3 se persone wat die "barbed wire" insluit, asook Pappa11,
 4 daardie persone het reeds al ook aksie geloods op die
 5 groep. So sover as drie minute voordat hulle hier gekom
 6 het.
 7 CHAIRPERSON: Ja, what I'm trying to get
 8 clear in my mind is what was the time interval between the
 9 stage when the leaders of the group for the first time
 10 could see the TRT group in front of them, and the moment
 11 when the fatal volley began? Are you able to help me on
 12 that? I know it's an estimate, but you can't do better
 13 than that.
 14 BRIGADIER CALITZ: Nee, ek hoor wat u sê,
 15 mnr die Voorsitter, daarom vra ek, ek dink dis moontlik as
 16 ons gou kan in zoom en ons weet die spoed wat die persone
 17 loop, so dit sal 'n sekonde of twee miskien na hierdie foto
 18 wees. Is dit moontlik om in te zoom net op die boonste
 19 gedeelte, dat ons net kan sien waar is die voerpunt
 20 presies? Maybe if I can repeat my request, if we can just
 21 zoom in on the top of the photograph at the kraal to the
 22 front portion of the – well, I call them the militant
 23 group, or the strikers.
 24 CHAIRPERSON: I think attempts are being
 25 made to zoom in to the part that you want us to zoom in to.

Page 20996

1 MR GOTZ: Brigadier, to assist you,
 2 although this obviously won't be put up on the screen, is
 3 if you look at exhibit KKK51 and have a look at slide 6 of
 4 exhibit KKK51, you'll see the zoom I think that you're
 5 wanting.
 6 [10:13] BRIGADIER CALITZ: Slide 6, dit is bladsy
 7 5, as ek hom so reg het.
 8 MR GOTZ: It's a slide headed "Close-up
 9 of image 1515," so it will either be slide 5 or 6.
 10 BRIGADIER CALITZ: Ja, dis bladsy 5. Hy
 11 is baie uit fokus uit, so as ons miskien met hierdie een
 12 kan net – ek sien aan die linkerkant van daardie groep sien
 13 ek 'n pertinente wit hemp of baadjie of 'n figuur, so ek
 14 wil net kyk of daardie persoon, hoe ver hy van die hoek van
 15 die kraal af is.
 16 CHAIRPERSON: We're now looking at a
 17 photograph –
 18 MR GOTZ: Brigadier, if you look at the
 19 next –
 20 CHAIRPERSON: Please put on record what
 21 this is, Mr Gotz.
 22 MR GOTZ: Yes, this is part of the
 23 presentation that we've prepared for the purposes of
 24 identifying where the Nyalas were located at the time of
 25 the TRT volley. This is in fact a copy of the photograph

Page 20997

1 that we saw from JJJ11, 1505 – I beg your pardon, 1515. On
 2 the following slide we have zoomed up the section which is
 3 relevant, which is the head of the group as well as the
 4 formation of the barbed wire Nyalas – I beg your pardon,
 5 the Nyalas around the small kraal. So if we can go to the
 6 next slide of this exhibit –
 7 CHAIRPERSON: Where exactly is this
 8 taking us? Are you going to take us to the point that I'm
 9 interested in? How many seconds elapsed between the time
 10 when the front group, the front people among the strikers
 11 could have seen for the first time the TRT group in front
 12 of them? From what the witness has told us, and I think
 13 you accepted it, at 29 seconds before they couldn't see,
 14 but are we able with any degree of accuracy to ascertain
 15 what the time difference would have been between them, the
 16 front people seeing this TRT line in front of them with
 17 their rifles and so on, and the beginning of the volley?
 18 MR GOTZ: Chairperson, this is actually,
 19 Brigadier Calitz had requested that we show the close-up.
 20 So it's not what I'm –
 21 CHAIRPERSON: No, no, I understand that.
 22 I'm just asking you where you're going. Are you going
 23 there, or are you going somewhere else?
 24 MR GOTZ: It's not where I'm taking him,
 25 but I can answer, I can venture an answer to the question.

Page 20998

1 I would submit that they only see the TRT line three
 2 seconds before the TRT shooting begins.
 3 CHAIRPERSON: Alright, okay. Is this the
 4 enlargement, the zooming in picture that you asked to see,
 5 Brigadier?
 6 BRIGADIER CALITZ: Dis korrek, mnr die
 7 Voorsitter. Ek wou net gesien het hoe ver is hulle van die
 8 hoek af, en dan as mens om daardie hoek sal beweeg sal mens
 9 tussen die voertuie deur wel die TRT-lyn kan sien op vorm.
 10 Daardie Nyala wat ek dink Pappa10 wat mnr Gotz miskien na
 11 verwys wat wegbeweeg het, ek dink nie hy het die hele TRT-
 12 lyn geblok nie. Ons weet die TRT-lyn het uit 80-plus mense
 13 bestaan, so hulle sou definitief aan weerskante van daardie
 14 Nyala uitgesteek het. So dit kon nie drie sekondes gewees
 15 het nie, mnr die Voorsitter.
 16 CHAIRPERSON: What would you say it would
 17 have been?
 18 BRIGADIER CALITZ: Ek sal sê dit sal – as
 19 ons kyk na die spoed wat die persone beweeg en hulle om
 20 hierdie hoek gekom het, so miskien kom ons gee hulle nog
 21 vyf of ses sekondes om, om hierdie hoek te kom en dan kon
 22 hulle definitief tussen die Nyalas deur gesien het daar is
 23 nog polisielede wat op vorm.
 24 CHAIRPERSON: As far as I remember there
 25 is a video slide where one can see an Nyala moving just

Page 20999

1 before the volley begins, and while it's technically
 2 possible I suppose to see between some of the Nyalas before
 3 that, what really clears the line of sight, as it were, is
 4 the removal of that Nyala. Is that your recollection as
 5 well?
 6 BRIGADIER CALITZ: Dit is Pappa10 waarna
 7 ek verwys het, ja. Ek dink dit is die drie sekondes waarna
 8 mnr Gotz verwys, maar ek sê daardie een Nyala kon nie die
 9 hele TRT-lyn versper het nie. Dit is onmoontlik, want ons
 10 weet 80 persone as ons hulle in 'n lyn gaan sit, u sal
 11 definitief verby dit kan sien.
 12 CHAIRPERSON: So it sounds as if, while
 13 we're looking for this slide that's being looked for, we
 14 got some clarity. You concede, if that's the right word,
 15 that there was a clear view for the front strikers three
 16 seconds before the volley began because Nyala 10 had gotten
 17 out of the way, but you say that despite the fact that
 18 Nyala 10 was in the way before that, it didn't completely
 19 block – I mustn't use the word "block" – it didn't
 20 completely obstruct the line of sight of the advancing
 21 group and they could have seen between the Nyalas that
 22 behind them there was this group of TRT people in line. Is
 23 that so?
 24 BRIGADIER CALITZ: Mnr die Voorsitter,
 25 dit is korrek. Miskien net –

Page 21000

1 CHAIRPERSON: Yes, it seems – sorry, it
 2 seems as if this is a suitable stage for us to take the
 3 comfort break and – alright, let's take a comfort break now
 4 and then we can presumably carry on until 11 o'clock or
 5 thereabouts to take the tea adjournment, but let's take the
 6 comfort break now and whatever has to be found to be shown
 7 to you at Mr Gotz's request can be looked at, can be found
 8 and got ready while we have the comfort break.
 9 [COMMISSION ADJOURNS COMMISSION RESUMES]
 10 [10:29] CHAIRPERSON: The Commission resumes. Mr
 11 Gotz, have you got all your ducks in a row now?
 12 MR GOTZ: Chair, it was never my ducks
 13 out of row, but Chair –
 14 CHAIRPERSON: Sorry?
 15 MR GOTZ: It wasn't my ducks out of the
 16 row, but I –
 17 CHAIRPERSON: No, I wasn't being –
 18 MR GOTZ: Yes, I know.
 19 CHAIRPERSON: The things that you're
 20 going to use by way of advancing your cross-examination,
 21 slides and photographs and so on, are they now all in, all
 22 ready in order, we can proceed without further
 23 interruption?
 24 MR GOTZ: Yes, indeed.
 25 CHAIRPERSON: Fine, that's all I meant.

Page 21001

1 I didn't –
 2 MR GOTZ: Chair, we do –
 3 CHAIRPERSON: I haven't reminded him he's
 4 under oath yet. Brigadier, you're still under oath.
 5 ADRIAAN MARTHINUS CALITZ: Dankie, mnr
 6 die Voorsitter.
 7 CHAIRPERSON: Yes, Mr Gotz.
 8 CROSS-EXAMINATION BY MR GOTZ (CONTD.):
 9 Chair, we do recognise that these are important questions
 10 for the Commission and because of that we have sought to
 11 assist the Commission by preparing a document which has
 12 been made exhibit KKK52, which is the movement of SAPS
 13 vehicles relative to the strikers from 15:53:13 to
 14 15:53:50, and at the request of the Commission we've
 15 prepared a report which explains how we arrive at these
 16 representations, which –
 17 CHAIRPERSON: You want to hand that in?
 18 MR GOTZ: It's already been made KKK54,
 19 Chair.
 20 CHAIRPERSON: Oh, I see. That's right,
 21 yes.
 22 MR GOTZ: Yes, KKK54. Brigadier, have
 23 you had a chance to look at KKK52?
 24 BRIGADIER CALITZ: Ja, dit is korrek.
 25 MR GOTZ: And the report which underlies

<p style="text-align: right;">Page 21002</p> <p>1 the conclusions set out in the various slides, have you had 2 a chance to look at that?</p> <p>3 BRIGADIER CALITZ: Praat u van die 4 onderskrifte wat saam met dit gaan?</p> <p>5 MR GOTZ: No, all I'm saying is the 6 representations made on the various pages, we've prepared a 7 report which explains how we get there. Have you had an 8 opportunity to look at that?</p> <p>9 BRIGADIER CALITZ: Wat myne betref, 10 dieselfde dokument het net foto's in en onderaan elke foto 11 is daar 'n byskrif wat sê, die eerste een, "Papa19, 10, are 12 the same." So dit is die dokument wat ek het.</p> <p>13 MR GOTZ: Yes, Brigadier, so there's a 14 report which explains each page, which is exhibit KKK54. 15 Have you had an opportunity to look at that?</p> <p>16 BRIGADIER CALITZ: 54?</p> <p>17 MR SEMENYA SC: Chair, it appears we 18 don't have the report.</p> <p>19 BRIGADIER CALITZ: Mnr die Voorsitter, ek 20 dink dit is die een waarna u verwys het, die laaste blou 21 bladsy wat KKK54 –</p> <p>22 CHAIRPERSON: No, I understand that, it 23 was given to us in chambers but I'm not sure Mr Semenya has 24 got one.</p> <p>25 BRIGADIER CALITZ: Nee, dit is nog nooit</p>	<p style="text-align: right;">Page 21004</p> <p>1 you of the Law of Evidence – offer is rejected, it falls 2 away. That's the Law of – sorry, the Law of Contract. But 3 if you still want my copy and I reinstate my offer I will 4 do so with pleasure.</p> <p>5 MR SEMENYA SC: More an opportunity to 6 peruse the document so that I can protect the interests of 7 my client.</p> <p>8 MR GOTZ: But Chair, with respect to my 9 learned friend, this document was emailed to my learned 10 friend's junior and my learned friend's attorney over the 11 weekend.</p> <p>12 CHAIRPERSON: Mr Gotz, there's a problem 13 here. Have you got a copy of this document?</p> <p>14 BRIGADIER CALITZ: Mnr die Voorsitter, 15 daardie dokument is nie – ek het die "email" gekry wat aan 16 Advokaat, my advokate gestuur is, en daardie een was beslis 17 nie daar by nie. Die Vrydag, dit is waarna ek u verwys 18 het, het u gesê die bladsy is nog "blank" en mnr Gotz het 19 dan gesê hy sal daardie gedeelte inhandig. Hierdie 20 dokument is nog nooit "ge-email," tensy hy vir hulle kan 21 wys waar dit, die bewyse van daardie "email," maar ek het 22 hom nog nooit gesien nie en ek het hom ook nog nie gekry 23 nie. Dis die eerste keer wat ek hom nou ontvang.</p> <p>24 CHAIRPERSON: No, Mr Gotz, are there 25 other matters that you can deal with in cross-examination</p>
<p style="text-align: right;">Page 21003</p> <p>1 vir ons gegee nie.</p> <p>2 CHAIRPERSON: He says he hasn't got it, 3 so have you got a spare one for him?</p> <p>4 MR GOTZ: Chair, I can make mine 5 available to –</p> <p>6 CHAIRPERSON: Well, he can have my one in 7 the meanwhile. You probably need yours to cross-examine –</p> <p>8 MR GOTZ: No, no, no, I don't need the 9 report.</p> <p>10 CHAIRPERSON: He can have my own.</p> <p>11 COMMISSIONER HEMRAJ: That's the 46-page 12 document that you handed to us, Mr Gotz?</p> <p>13 MR GOTZ: Indeed. Chair, just for the 14 record, this was in a –</p> <p>15 MR SEMENYA SC: I can't look at a 46-page 16 document now, Chair.</p> <p>17 CHAIRPERSON: I beg your pardon?</p> <p>18 MR SEMENYA SC: It will be difficult to 19 look at a 46-page document now.</p> <p>20 CHAIRPERSON: Well, in other words you're 21 rejecting my offer of lending you mine. Okay, I accept 22 that. When an offer is rejected it falls away.</p> <p>23 MR SEMENYA SC: No Chair, I'm not 24 rejecting your offer –</p> <p>25 CHAIRPERSON: No, no, I'm just reminding</p>	<p style="text-align: right;">Page 21005</p> <p>1 for the moment?</p> <p>2 MR GOTZ: Yes, Chair, perhaps what we can 3 do is deal with some other small matters which –</p> <p>4 CHAIRPERSON: Is this matter the last big 5 matter –</p> <p>6 MR GOTZ: Yes.</p> <p>7 CHAIRPERSON: - in your cross- 8 examination?</p> <p>9 MR GOTZ: Yes.</p> <p>10 CHAIRPERSON: So okay, and would you be 11 prejudiced – now from what you've told me it sounds you 12 won't be – if you deal with your other matters now –</p> <p>13 MR GOTZ: No, Chair, not at all.</p> <p>14 CHAIRPERSON: - we'll then adjourn and I 15 don't know how long the witness needs to study the 16 document, but we will then adjourn and give him an 17 opportunity to read it and his counsel to do so, and then 18 when they tell us they're ready we'll carry on. I must 19 announce now, because I was going to announce it later but 20 it may be relevant to those who have to make plans, that we 21 will adjourning at 1 until 2; we have a meeting we have to 22 attend to between 1 and 2, and we have to adjourn at 3:30. 23 So we will then run straight through from 2 to 3:30 without 24 any comfort break or tea break or anything of that sort. 25 But I had assumed, and I hope the assumption still stands</p>

Page 21006

1 that that time will be used for the evidence of the next
 2 witness, but if it can't be done, it can't be done, but
 3 anyway, let's proceed as I've suggested. Come with your
 4 minor points now and when you're finished we'll give the
 5 Brigadier and his counsel a chance to study the report;
 6 they've now got copies, and you can then revert to your
 7 final "big point" in your cross-examination.
 8 MR GOTZ: Chair, if you'll just bear
 9 with –
 10 CHAIRPERSON: Unless of course another
 11 way to do it might be – no, it doesn't help because they've
 12 got to study it, because I thought Mr Gumbi could also ask
 13 his questions, but it's probably best to stick to what I've
 14 suggested.
 15 MR GOTZ: Chair, if you'll just bear with
 16 me for a few seconds to reorder my papers.
 17 CHAIRPERSON: Adv Tokota points out to me
 18 that I think Mr Gumbi is covering totally different
 19 matters, so we might get an adjournment which approximates
 20 to the lunch adjournment so we don't waste time. So if
 21 when you've finished your minor points Mr Gumbi will be
 22 ready to present his cross-examination, I'll allow him to
 23 interpose. We'll then by the end of that be closer to the
 24 lunch adjournment, so the lunch adjournment and this
 25 adjournment to enable the witness and his counsel to read

Page 21007

1 the report will more closely coincide. So we'll carry on
 2 in that way.
 3 MR GOTZ: Brigadier, a few minor
 4 questions that I've got on other topics, and then to come
 5 back to some issues in relation to your examination over
 6 the last couple of days. Over the weekend there were a
 7 number of press reports that we read concerning the use of
 8 shotgun pellets in crowd management operations in the
 9 Rustenburg area during the course of last week,
 10 Brits/Rustenburg area. Are you aware of what happened in
 11 Rustenburg and are you aware of the reports which said that
 12 POPS members had used shotgun pellets?
 13 CHAIRPERSON: Can I reformulate the
 14 question, Mr Gotz? I hope you won't mind. I think we
 15 don't want to get involved in investigating what happened
 16 over the last week, but what I presume would be common
 17 cause is that certain members of the POPS group, section,
 18 in the North West have been suspended for various reasons,
 19 on various charges, which are disciplinary matters I think
 20 from the reports that I have – one at least is alleged to
 21 have used pellets in his shotgun and the point was made
 22 that pellets were, the issue of pellets to members of the
 23 police force ceased in 2006, I think or 2007, that was your
 24 evidence also, and so this member allegedly was using
 25 pellets which he shouldn't have had because the issue of

Page 21008

1 them stopped a long time ago. Now if this allegation is
 2 correct it would mean that it may have a bearing on our
 3 inquiry, that pellets were in the possession of a member of
 4 POPS, the North West POPS "nogal," which he fired in his
 5 shotgun in a crowd management situation. Now are you aware
 6 of that allegation and are you aware of the fact that a,
 7 one at least member, at least one member has been suspended
 8 on the basis of such an allegation? Are you aware of that?
 9 BRIGADIER CALITZ: Mnr die Voorsitter, ek
 10 is bewus van die voorval. Ek het dit gevolg in die media.
 11 Volgens my kennis weet ek nie dat daardie lid, of daardie
 12 lede tans onder skorsing is nie. Volgens my kennis die
 13 lede wat wel gedien is, is daardie lede wat met die Nyala
 14 vervoer is waar die persoon dan uit die Nyala voertuig uit,
 15 ek dink daardie lede. Die ander is "still" volgens my
 16 kennis onder behandeling en ek weet nie of daar 'n
 17 bediening op hulle gedoen is nie. Dit is my kennis wat ek
 18 op hierdie stadium het.
 19 CHAIRPERSON: Did you hear of an
 20 allegation that pellets were used by, allegedly by a member
 21 of the police service in his police shotgun?
 22 BRIGADIER CALITZ: Ek het dit gehoor in
 23 die media en ek het dit so gevolg, ja. Ek het dit
 24 persoonlik nie opgevolg omdat ek tans getuig en onder eed,
 25 so ek wou nie dit bespreek met iemand nie.

Page 21009

1 CHAIRPERSON: A number of questions arise
 2 from that, which I take it Mr Gotz now wants to ask you.
 3 MR GOTZ: Well, there are questions; I'm
 4 sure the Chairperson has questions as well, Brigadier.
 5 Brigadier, but just to take a step back, we read in the
 6 press reports that the Minister had come out and condemned
 7 the use of shotgun pellets, indicating that they had been
 8 discontinued – was the word use in the press report – since
 9 2006. First of all, are you aware that the Minister had
 10 made such a statement?
 11 BRIGADIER CALITZ: Ek het dit wel op die
 12 nuusberig gesien op die TV, dit is korrek.
 13 MR GOTZ: And can you confirm that my
 14 date of 2006 is correct, in other words that they had
 15 discontinued –
 16 CHAIRPERSON: That evidence has been
 17 given already. I don't think you were here, but at the
 18 time the question of the fact that pellets had been used
 19 and in fact some of the deceased had apparently died as a
 20 result of being shot by pellets, that question was raised.
 21 There was something of a debate as to who was responsible
 22 for that and one suggestion was it was some of the strikers
 23 who were in possession of shotguns, they might have been
 24 responsible, killed some of their colleagues. The other
 25 suggestion was it may have been members of the police. The

Page 21010

1 witness said no, no, no, it couldn't be because they
 2 haven't been in possession of them since 2006, and then
 3 there was a suggestion that Lonmin security people might
 4 have been responsible, and that allegation, the last one,
 5 is currently being investigated by the investigators for
 6 the evidence leaders. But that's all been covered, you
 7 see, so to some extent you're going over ground we've
 8 covered already.

9 MR GOTZ: Yes.

10 CHAIRPERSON: But proceed if you can find
 11 some new ground to cover.

12 MR GOTZ: I simply wanted some clarity on
 13 this notion of pellets being discontinued and not being in
 14 possession of SAPS, because we understand from my learned
 15 friend Mr Semenya that SAPS' case is not that SAPS is not
 16 in possession of these shotgun pellet cartridges, simply
 17 that they're not issued to the members.

18 BRIGADIER CALITZ: Ja, dit is tydens 2006
 19 – ek dink dit was toe die Staande Order 262 uitgekom het,
 20 was die opdrag gewees daardie rondtes is totaal van
 21 operasioneel gebruik onttrek en mag glad nie meer in besit
 22 wees van enige polisiebeampte operasioneel nie. Met ander
 23 woorde ons gebruik dit glad nie meer buitekant in die
 24 aanwending van ons dienste nie.

25 MR GOTZ: So would it be correct to say

Page 21011

1 that SAPS is in possession and still is in possession of
 2 these shotgun cartridges, but an individual police officer
 3 cannot be found in possession of them, it would be unlawful
 4 to do so, to have them in his or her possession?

5 BRIGADIER CALITZ: Ja, dit is korrek, en
 6 sou die polisiebeampte dan wel in besit daarvan wees is dit
 7 teenstrydig met die opdragte, en dit is definitief so.

8 So –

9 CHAIRPERSON: Does that mean there's an
 10 arsenal somewhere, a rubber pellet arsenal where all the
 11 rubber pellets that the police –

12 MR GOTZ: Shotgun pellets.

13 CHAIRPERSON: Sorry, shotgun rubber, they
 14 are rubber pellets, aren't they?

15 MR GOTZ: No, they're steel.

16 CHAIRPERSON: Oh, sorry.

17 BRIGADIER CALITZ: Shotgun pellets.

18 CHAIRPERSON: Shotgun. Anyway, just as
 19 well I've been corrected so I've got it right. So
 20 somewhere there is an arsenal or perhaps a number of
 21 arsenals where all the shotgun pellets which the police
 22 were in possession of in 2006 are still being kept, but
 23 they are one presumes kept under lock and key and they're
 24 not to be issued to members of the service. Is that what
 25 you say?

Page 21012

1 BRIGADIER CALITZ: Dit is onttrek na die
 2 wapenkluis toe wat dan groot instapkluis is en daardie
 3 persone wat in beheer is van daardie kluis het dan, kan ek
 4 sê toegang tot daardie kluis en al die uitreikings wat aan
 5 die lede gedoen is word dan gedoen in terme van 'n
 6 uitreikingregister, kan ek maar so sê, die wapens wat
 7 uitgereik word en die ammunisie. Daar is behoorlike
 8 kontrole rondom dit, maar dit SSGAAA, die "pellets" waarna
 9 u verwys word glad nie meer vir operasioneel nie, nee.

10 CHAIRPERSON: You say they're not used
 11 for operational purposes. Are they issued to members of
 12 the service for perhaps target practice or things of that
 13 sort?

14 BRIGADIER CALITZ: Mnr die Voorsitter,
 15 ja, dit is gebruik in verskeie geleenthede op opleiding,
 16 "training," net om dit dan uit te skiet.

17 MR GOTZ: Well, let's be clear on that,
 18 Brigadier. Are you saying that POPS members are trained in
 19 the use of shotgun pellets?

20 BRIGADIER CALITZ: Nee, dit is nie wat ek
 21 getuig nie.

22 MR GOTZ: But are you then saying that
 23 they are used during the course of training of POPS
 24 members?

25 BRIGADIER CALITZ: Dit is korrek gewees.

Page 21013

1 Ek sê sover my kennis strek het die "training division"
 2 daardie rondtes gebruik en dit is dan onder beheer aan die
 3 persone uitgereik. U moet onthou om 'n haelgeweer, dit is
 4 die metode van 'n haelgeweer laai en 'n haelgeweer
 5 uitskiet. Dit gaan nie oor hoe om "pellets" te gebruik of
 6 hoe om rubber te gebruik nie. Dit gaan oor die
 7 operasionele laai van 'n haelgeweer, die metode van onder
 8 af, so daardie rondtes word dan, kan vir so 'n doel dan
 9 aangewend word.

10 MR GOTZ: In the light of the facts which
 11 have emerged in the last week, or rather the allegations
 12 that have emerged in the last week that at least one and
 13 perhaps more of the POPS members who were deployed in the
 14 Rustenburg/Brits area to deal with a protest action there
 15 were in fact in possession of shotgun pellets and shotgun
 16 pellet cartridges and had in fact used them, so on the
 17 basis that that is ultimately proved - I think I need to
 18 make that clear, Brigadier - on the basis that that is
 19 ultimately proved as correct, would you be prepared to
 20 accept that the same might have happened at Marikana on the
 21 16th of August –

22 MR SEMENYA SC: Objection -

23 CHAIRPERSON: No, no, no, I'm not
 24 prepared to allow that question. I think it's based on a
 25 hypothesis which may never come about. Clearly if it is

Page 21014

1 so, and I think you need evidence on it; if it's so that
 2 someone, if the charges are established and it's shown that
 3 particular members of the POP in the North West province
 4 were in possession of shotgun pellets - however they got
 5 them is not clear, but presumably it's possible then that
 6 members of the POP here at Marikana could also have been in
 7 possession of shotgun pellets. But that would follow, I
 8 would imagine, but I don't think we need to ask the witness
 9 a hypothetical question. But of course there is another
 10 possibility, isn't there, that shotgun pellets can freely
 11 be purchased by members of the public.

12 BRIGADIER CALITZ: Mnr die Voorsitter,
 13 ja, ek het net gewag, ek het gedog die vraag sal kom.
 14 Enige persoon met 'n lisensie vir 'n haelgeweer kan dit
 15 bekom en dan as jy nie 'n lisensie het nie kan jy dit nog
 16 steeds onwettig bekom as jy 'n vriend het wat sulke
 17 ammunisie het, en ons weet, ek dink die Lonmin se
 18 sekuriteit het ook gesê hulle gebruik van die "pellets."
 19 So dit is beskikbaar as 'n lid rêrig so oneerlik wil wees,
 20 of op 'n manier dit so wil bekom, as ek dit so kan stel.
 21 Maar dit bly onwettig. Dit kan nie in daardie lid se besit
 22 wees nie.

23 [10:49] CHAIRPERSON: It is also clear, is it
 24 not, that there's been expressed actually in, I'm not sure
 25 publicly but it's certainly been expressed in the police

Page 21015

1 service that there are members who are dissatisfied with
 2 the decision to withdraw pellets from issue for operational
 3 purposes. There's a group in the police who feel that that
 4 was a wrong decision. Whether that's, it's not for us to
 5 decide whether that decision was a right or wrong one, but
 6 it's correct, is it not, that there is a dissention group
 7 who think that it could and should be used still in
 8 operation activities. Is that right?

9 BRIGADIER CALITZ: Mnr die Voorsitter, ek
 10 moet dalk net versigtig wees as ek antwoord. Ek is nie
 11 bewus van 'n groep nie. Ek is bewus van –

12 CHAIRPERSON: [Microphone off, inaudible]

13 BRIGADIER CALITZ: Ja, ek is bewus van
 14 individue wat dit gestel het en dan ook met voorstelle
 15 gekom het dat na die verandering van die polisiemag na 'n
 16 polisie diens is ons rondtes onttrek. Ons moet net onthou
 17 daar is verskillende "pellets." Dit is die SSG wat dan –
 18 ek praat heeltemal onder korreksie, die 18 balletjies in
 19 het, metaal balletjies, dan die AAA wat so iets soos 75, en
 20 dan het ons die donshael en ek dink die groep wat vra dat
 21 daar moet iets wees tussen rubber en R5 praat meer van die
 22 donshael. Dit is so iets soos 270 klein fyn, kan ek sê
 23 balletjies, maar dit is nie ten doel om te dood nie; dit is
 24 ten doel om meer effektief te stop as wat die rubber doen
 25 op hierdie stadium. Dit sou byvoorbeeld die kombes en die

Page 21016

1 "double layer of clothing" glo ek nie sou die donshael kon
 2 keer nie. So van daardie voorstel is ek bewus, en dat
 3 hulle wil graag hê daar moet iets teruggebring word, of
 4 iets meer tegnologie tussen rubber en R5, op hierdie
 5 stadium is dit die leemte.

6 MR GOTZ: Brigadier, I had understood
 7 your evidence to be – rather you had indicated in relation
 8 to earlier questions, questions posed by other cross-
 9 examiners, that you didn't believe that the shotgun pellets
 10 could have been fired by the police on the 16th of August
 11 2012, and the basis of that statement was that shotgun
 12 pellets are not issued to the members of POPS. Do you
 13 remember that evidence?

14 BRIGADIER CALITZ: Dit is korrek, ja.

15 MR GOTZ: But in the light of what we now
 16 know that these shotgun pellets can be purchased readily
 17 and freely by anybody with a gun licence, are you prepared
 18 to change your view?

19 BRIGADIER CALITZ: Mnr die Voorsitter,
 20 nee, glad nie. Ek dink nie die inligting dat ons dit kan
 21 bekom met 'n lisensie het nou te voorskyn gekom nie. Ek
 22 glo vandat u opgegroeï het as 'n jongman en ek,
 23 haelgeweerrondtes was nog altyd beskikbaar gewees om te
 24 koop as jy 'n lisensie het. So dit is nie nuwe "evidence"
 25 nie. Al wat ek gesê het is dat dit word nie operasioneel

Page 21017

1 uitgereik nie en daarom glo ek, en ek glo steeds dat die
 2 polisie nie kan in besit wees wettig en dit gebruik het
 3 nie.

4 CHAIRPERSON: No, no, I understand that,
 5 but the point being made, I take it, is look, we have a
 6 serious problem in this case because some of the deceased
 7 died because of shotgun pellets, alright, and you concede
 8 that no policeman should have – or policewoman for that
 9 matter, should have been in possession of shotgun pellets.
 10 So anyone who was, if one was and used them to kill some of
 11 the deceased here, that would have been unauthorised
 12 conduct by the police person concerned. You said you
 13 didn't think that that's the way these people were killed,
 14 by the shotgun pellets. You didn't think it was as a
 15 result of action by any member of the police service
 16 because they're not issued to members of the police. But
 17 now we know that police can be in possession of them, then
 18 one can't entirely exclude these deaths as having been
 19 caused by members of the police service. It is a
 20 possibility, but I presume you would say it's improbable
 21 because the police person concerned, if there was someone
 22 who did it, would have illegally been in possession of the
 23 pellets. Is that basically your case?

24 BRIGADIER CALITZ: Mnr die Voorsitter,
 25 ja, ek stem saam met u. Ek dink u het my 'n vroeëre vraag

Page 21018

1 ook gevra sou iemand dit gehoor het, dit het 'n totale
 2 ander klank, so dit sou gerapporteer gewees het, die
 3 bevelvoerders, die persone saam met daardie persoon. Ek
 4 glo sulke doppies sou gevind gewees het op die toneel.
 5 So –
 6 CHAIRPERSON: So all those factors you
 7 rely on –
 8 BRIGADIER CALITZ: Ja.
 9 CHAIRPERSON: - support your contention
 10 that it's overwhelmingly improbable that these deaths could
 11 have been caused by members of the police service. I take
 12 it technically it's possible, but you think it highly, and
 13 you contend it is highly improbable for the reasons you've
 14 given. Would that be a fair summary of your evidence?
 15 BRIGADIER CALITZ: Heeltemal, mnr die
 16 Voorsitter, ja.
 17 MR GOTZ: But just picking up on one of
 18 those points, Brigadier, assume that the shots were fired
 19 by somebody who was inside one of the Papa Nyalas, just
 20 take by way of example Papa, what we've indicated Papa19 or
 21 Papa10 at the back of the row of Nyalas, you wouldn't find
 22 "doppies," as you put it, or the used cartridges on the
 23 scene because they would have been discharged inside of the
 24 Nyala and when the SAPS officer or POPS officer reloaded
 25 the used cartridge would simply be kicked out into the

Page 21019

1 Nyala and it wouldn't then be found on the scene, correct?
 2 BRIGADIER CALITZ: U is korrek daarmee,
 3 ja.
 4 MR GOTZ: Conversely if one of the
 5 strikers had been firing the shotgun cartridges, you would
 6 likely have found them on the scene, correct?
 7 BRIGADIER CALITZ: Ons is al oor die
 8 getuienis. Ons het gesê sou daar net een skoot wees, ons
 9 weet daar is drie haelgewere vermis gewees op die dag, twee
 10 van die sekuriteit en een van die polisiebeampte, sou ons
 11 een rondte en een rondte hê, en ek het ook getuig dat daar
 12 is ander maniere om 'n haelgeweerrondte af te vuur as net
 13 met 'n haelgeweer. So sou daardie een rondte gevuur word
 14 dan sou daardie doppie ook nie uitgespan gewees het nie, so
 15 u sal dit ook nie kan kry op die toneel nie.
 16 MR GOTZ: Brigadier, again you know, I
 17 don't want to cover ground that has been covered. I think
 18 Mr Ntsebeza, Adv Ntsebeza covered this with you. So I
 19 think let's move on to a different topic. Brigadier,
 20 another presentation that we prepared for you was one which
 21 was entitled "The shot fired by the striker." We prepared
 22 it on the assumption that you would be able to assist us
 23 with this issue. It has been made an exhibit and it is
 24 exhibit KKK53.
 25 CHAIRPERSON: Have you seen that

Page 21020

1 presentation, Brigadier?
 2 BRIGADIER CALITZ: Dit is korrek, mnr die
 3 Voorsitter.
 4 CHAIRPERSON: So he can ask you about
 5 that now.
 6 MR GOTZ: Well Brigadier, I presume
 7 you've had an opportunity to go through the presentation.
 8 It simply is a series of frames or screenshots from a
 9 second in one of the videos, and leading up to a conclusion
 10 or observations which you find then on the last page of the
 11 presentation. Have you had an opportunity to go through
 12 the presentation and consider the observations?
 13 BRIGADIER CALITZ: Ek het daarna gekyk,
 14 ja.
 15 MR GOTZ: So let me just take you briefly
 16 through these observations. It has been suggested on
 17 various occasions in these proceedings that the striker
 18 fires two shots. Our analysis is that the striker only
 19 fires once and the basis of that observation is the
 20 breakdown into the various screenshots and the fact that
 21 one only sees one shot being discharged when one does a
 22 frame by frame analysis. Would you agree with our
 23 observation that the striker only fires once?
 24 BRIGADIER CALITZ: Mnr die Voorsitter,
 25 nee, in die video dink ek wat ons in "hindsight" gekyk het

Page 21021

1 dink ek daar was twee, iemand het getuig – dit was nie my
 2 getuienis nie, so ek, want ek het dit nie gesien nie, maar
 3 ek het dit ook as twee. So, maar ek glo die "frame by
 4 frame," ons eksperts kan daarna kyk en kyk of hulle dan
 5 saam met u stem met die geval.
 6 MR GOTZ: Is this something that we
 7 should engage the SAPS experts with, Brigadier? I mean if
 8 you're not able to assist us I'm happy for us to move on.
 9 The following observations are of a similar nature, but
 10 this is material that can be agreed between SAPS and us.
 11 MR SEMENYA SC: I would propose that
 12 avenue, Chair.
 13 MR GOTZ: Brigadier, just to be clear,
 14 you didn't actually see the –
 15 CHAIRPERSON: No, you know, he's not an
 16 expert in this kind of thing. He wasn't there at the scene
 17 at the time. So he's really drawing inferences as a
 18 layman, I would imagine, from these various frames that
 19 you've reproduced, without any expertise of his own. The
 20 suggestion of Mr Semanya is this is a really a matter for
 21 an expert and they've got an expert who's going to give
 22 evidence and he can be asked these questions. Isn't that a
 23 sensible way to proceed?
 24 MR GOTZ: Yes, Chair, that in fact is
 25 what I was proposing. Brigadier, after having asked the

1 first question I realised that that is the appropriate way
 2 forward rather than to torment you with the following
 3 questions.
 4 CHAIRPERSON: An interesting point arises
 5 from this, that you yourself say on page 32 of this part of
 6 your presentation, "Despite the fact that two shots can be
 7 heard on the clip's audio, the striker only fired once."
 8 Now if there were two shots and this striker only fires one
 9 of them, then somebody else has fired the other. Now that
 10 can't be seen on the video clip. There are two
 11 possibilities. We might say that the one that was fired by
 12 a member of the police service, the other is it was fired
 13 by another striker who isn't on the video clip. If the
 14 police evidence is that none of them fired at that stage,
 15 and if that evidence is accepted – and these are all ifs, I
 16 know – then it means that there were two strikers in
 17 possession of firearms, if your presentation is right, two
 18 strikers who fired beforehand, and that intensifies the
 19 threat which the police presumably will say that they
 20 anticipated was facing them. But anyway, these are all
 21 matters that can be debated when the expert comes.
 22 MR GOTZ: Yes, Chair, but I do think to
 23 respond to that, first of all, the Human Rights Commission,
 24 my learned friend Adv Le Roux in fact put statements to the
 25 Brigadier from SAPS which prima facie do indicate that a

1 number of them who were actually there did fire, and when I
 2 say "there" I mean close to the striker, fired before the
 3 TRT volley. I think there are three statements which were
 4 put to the Brigadier which make that point.
 5 CHAIRPERSON: Yes, alright, obviously
 6 it's not the appropriate place to debate now.
 7 MR GOTZ: I simply don't want to –
 8 CHAIRPERSON: There's something to be
 9 said, I think, for the proposition and I say that on a
 10 very, very prima facie basis, on the basis that something
 11 can be said for the proposition that those people may have
 12 been talking about the so-called incident 2, or incident 1.
 13 You know, so, and there's a debating about those incidents,
 14 so we won't go there either. But anyway, the point you
 15 make is that – I put that to you initially there's a
 16 possibility that the second shot we hear was fired by a
 17 member of the police service, but there's also a
 18 possibility that it was fired by a striker, and if it was a
 19 striker, not the one we see on the video clip, then certain
 20 things follow. But we don't have to go into that now.
 21 MR MPOFU: Sorry, Chairperson, from a
 22 different angle. I'm just following this debate. I thought
 23 it was quite clear on the video, and not even on
 24 statements, that the shooting striker, so to speak, was at
 25 the very least responding to the person wearing a blue

1 helmet that we see shooting.
 2 CHAIRPERSON: Mr Mpofu, I'm going to rule
 3 you out of order. What Mr Gotz and Mr Semenya and I agree
 4 is this whole topic won't be dealt with now, but will be
 5 dealt with later when an expert gives evidence.
 6 MR MPOFU: Ja, well Chairperson, once
 7 you've just postulated a situation, now one of my clients,
 8 the so-called "other striker" shot, I'm explaining that the
 9 shot that we saw on the video was from a policeman. So I
 10 think that must be put into the record as well. Thank you.
 11 CHAIRPERSON: We'll get there later. I
 12 didn't say one of your clients necessarily fired the second
 13 shot; I said it was a possibility. But anyway, that's the
 14 possibility we will investigate at the appropriate time.
 15 MR GOTZ: And Mr Mpofu has in fact –
 16 CHAIRPERSON: [Microphone off,
 17 inaudible] –
 18 MR GOTZ: - anticipated something that I
 19 wanted to place on record, Chair. I think there is a need
 20 to look at the videos carefully, and as you pointed out to
 21 us yesterday, we don't need to deal with it with this
 22 witness because the videos properly looked at are obvious.
 23 But it is quite apparent to us, Chair, that what is
 24 happening in that video is that he is responding to being
 25 shot not once, but in fact twice with rubber bullets, at

1 the every least, but which are not skip fired, but fired
 2 directly at him and his head, and we do want to place on
 3 record that that is our observation as well –
 4 CHAIRPERSON: Well, Mr Gotz, I don't
 5 think you can carry on with that. This is a matter that
 6 can be dealt with at the appropriate time. Whether he's
 7 being fired at with rubber bullets or rubber balls and so
 8 on are also matters that we can debate later, but let's
 9 deal with that at the appropriate time and not make all
 10 these statements on the record which can more appropriately
 11 be dealt with later, but certainly we will deal with it
 12 later. The points have been flagged, as it were, and they
 13 require attention and it's an important part of the inquiry
 14 with which we are busy. You want to move on – but you want
 15 to say something, Brigadier, before we carry on?
 16 BRIGADIER CALITZ: Mnr die Voorsitter,
 17 nee, ek wou miskien na iets verwys het, maar ek dink ek sal
 18 dit vir die regspraak gee en dit mag dalk net die eksperts
 19 "assist" want ek dink iewers is bewyse daarvan, maar ek sal
 20 dit los dat die eksperts daarna kyk en dan kan ons miskien
 21 terugkom op 'n latere stadium daarvan.
 22 CHAIRPERSON: Alright, let's carry on
 23 with what Mr Gotz wants to deal with. Mr Gotz, next point?
 24 MR GOTZ: Brigadier, earlier on in my
 25 cross-examination I asked you certain questions about your

Page 21026

1 knowledge of whether or not people had in fact been killed
2 or seriously injured by NUM members on the Saturday, the
3 11th. I'd understood your evidence to be that you didn't in
4 fact know the true position. I did want to put a document
5 which we found subsequent to that evidence. It's exhibit
6 SS3 which I would like to take you to in the light of your
7 evidence. So if you could have a look at exhibit SS3.

8 CHAIRPERSON: Can we have SS3 on the
9 screen, please?

10 MR GOTZ: I beg your pardon, Chair,
11 they're waving at us in the background. I'm not sure what
12 the concern is.

13 CHAIRPERSON: Your assistant is
14 proceeding to deal with the situation and she has in the
15 past dealt with similar situations very efficiently; I'm
16 sure she'll repeat her success on this occasion.

17 [11:09] Thank you very much, I'm happy that my prediction
18 of success came true.

19 MR GOTZ: Brigadier, this is the South
20 African Police Service Rustenburg POP Contingency Plan. If
21 you page down through the document you'll ultimately come
22 to a signature page. Can you find that? Unfortunately
23 these pages aren't numbered in a particularly coherent
24 way –

25 CHAIRPERSON: We've got the signatures

Page 21027

1 now.

2 MR GOTZ: And then Brigadier, then you'll
3 see that that first document is dated the 10th of August
4 2012. What I'd like to do is to look at the next document,
5 which is the contingency plan that was actually formulated
6 by you, we suspect, on the 13th. It's the next page of this
7 lengthy document. So it is headed "South African Police
8 Service Rustenburg POP Amended Contingency Plan" and,
9 Brigadier, this is a document which seems to have been put
10 together by yourself. Would that be correct?

11 BRIGADIER CALITZ: Ja, by the planners.
12 We don't do it actually self. The planners is doing the
13 document, give it to us, and then myself as operational
14 commander will endorse it with a signature. It will be
15 recommended by one of the seniors and ultimately approved
16 by the overall commander, General Mpembe.

17 MR GOTZ: So you'll see at the end of
18 this section of the document, you'll see that your
19 signature does appear seven or eight pages later.

20 BRIGADIER CALITZ: Dit is wat ek nou net
21 vir u getuig het, ja.

22 MR GOTZ: Can we look at paragraph 1.1 of
23 the document, and look at the second paragraph? It says,
24 "At around 8 o'clock on Saturday 11th of August 2012, a
25 group of plus-minus 3 000" –

Page 21028

1 CHAIRPERSON: I'm sorry to interrupt you,
2 Mr Gotz. It's actually 6 o'clock.

3 MR GOTZ: 6 o'clock.

4 CHAIRPERSON: Sometimes a 6 does look
5 like an 8. This one, my screen is closer to me than the
6 one you're looking at and it is 6. "At around 6:00 on
7 Saturday 2012-08-11, a group of approximately 3 000
8 employees," it carries on like that, and then near the end
9 of that paragraph it said, "On their way through the hostel
10 it appears they met a group of NUM members, resulting in a
11 confrontation. Shots were fired. Two employees of Lonmin
12 were injured. Both were shot in the back near the spinal
13 area. The victims were taken to the Andrew Saffy Hospital
14 for medical attention." The point is that they were
15 described as having been injured. That's the point you're
16 making.

17 MR GOTZ: Yes, indeed, and Brigadier, it
18 does seem to me that you know their condition in fact
19 because you say in the very next paragraph, "At about 11:30
20 whilst the victims were visited at Andrew Saffy Hospital" –
21 I take it that means visited by somebody from POPS or SAPS?

22 BRIGADIER CALITZ: If you can just read
23 further on you will see who visited them.

24 MR GOTZ: "The duty officer was informed"
25 – does that mean that the duty officer visited them?

Page 21029

1 BRIGADIER CALITZ: That's presumably how
2 it works normally. Na 'n skietvoorval sal die offisier
3 aangewese dan die toneel besoek, asook van die lede om uit
4 te vind wat het gebeur.

5 MR GOTZ: And will you also confirm that
6 this plan was the one prepared either late on the 13th or
7 early in the morning of the 14th of August 2012?

8 BRIGADIER CALITZ: Ja, dit is korrek
9 gewees, ongeveer daardie tyd.

10 MR GOTZ: So contrary to what I'd
11 understood you to have testified on Friday last week, by
12 the time you encounter the strikers in the negotiations on
13 the afternoon of the 14th of August, you in fact know what
14 the position is in relation to these workers, the strikers.
15 These two strikers had been injured, not killed, on the
16 basis of the information that is available to you.

17 BRIGADIER CALITZ: Mnr die Voorsitter, as
18 ek miskien net mag mnr Gotz miskien help dat ons vinniger
19 net hier deur kan gaan, dit was alreeds oor getuig. As u
20 hierdie presiese, wat die opskrif sê "Nature of operation,"
21 1.1 gaan vergelyk met my verklaring JJJ107, paragraaf 27,
22 dit is die "italic bold," as ek dit so kan noem, gedeelte
23 wat ek in my verklaring ingesit het. Ek weet nie of dit u
24 was of die vorige advokaat nie wat my daarvoor ook ondervra
25 het. Ek dink dit was u gewees wat gesê het dit is my

Page 21030

1 woorde. Ek het vir u verduidelik nee, dit is Kaptein
 2 Govender wat dit aan ons gerapporteer het. So dit is die
 3 presiese, presiese woorde. U kan dit woord vir woord gaan
 4 vergelyk. Dit is die "Nature of operation," dit is die
 5 inligting tot ons beskikking gewees tot op daardie stadium
 6 en ek het vir u getuig dat ek dit uit my verklaring uit dan
 7 so, dis presies wat op daardie dag dan in die beplanning
 8 vervat is en dit is die inligting tot ons beskikking
 9 gewees.

10 U het verder gegaan en vir my gevra of ek bewus
 11 was van die persone wat gedood is. Ek het vir u gesê nee,
 12 daardie bewering is wel gemaak en ons kon dit nie bevestig
 13 nie. So ek kan nie dit uitsluit dat ek kon vir hulle gesê
 14 het julle mense is beslis nie dood nie want daardie
 15 bewering is gemaak, die eerste persone wat ons geweet het
 16 was dood was die twee sekuriteitspersone, asook die Sondag
 17 die twee myn "employees," saam met daardie nege voertuie
 18 wat gebrand is. Dit is waarvan ons die eerste keer bewus
 19 geword het. Maar die vorige, die Vrydag was twee persone
 20 gewond, die Saterdag vyf persone gewond –

21 VOORSITTER: Vrydagaand en Saterdag –
 22 BRIGADIER CALITZ: Saterdag, ja, was daar
 23 vyf persone gewond en dan later weer drie persone gedurende
 24 die optog. So ons praat van – as my wiskunde nou reg is,
 25 vyf, ses, sewe, agt, nege, 10 persone gewond tot op daardie

Page 21031

1 stadium, en ek dink ons het al hieroor gepraat, so dis niks
 2 nuuts nie, en dit miskien het ons al oor getuig, mnr die
 3 Voorsitter.

4 MR GOTZ: But Brigadier, what's quite
 5 clear from this – and perhaps it is a repetition of
 6 something that you had repeated, or had received from Mr
 7 Govender, but my point is this; the information at your
 8 disposal by the time you meet with the strikers is that
 9 nobody has been killed by NUM.

10 BRIGADIER CALITZ: Mnr die Voorsitter,
 11 ja, ons het al daarvoor getuig. Soos ek vir u sê, die
 12 beweringe wat gemaak is, ons kan nie vir daardie persone sê
 13 met sekerheid nee, julle is verkeerd, julle persone is nie
 14 gedood nie. Ons het op daardie stadium, die ondersoek het
 15 aangegaan.

16 MR GOTZ: The strikers had repeatedly
 17 said to you that they thought that two people had been
 18 killed by NUM, correct?

19 BRIGADIER CALITZ: Nee, ek kan nie onthou
 20 dat hulle "repeatedly" dit vir ons gesê het nie, nee.

21 CHAIRPERSON: But they definitely said it
 22 at least once, didn't they?

23 BRIGADIER CALITZ: Dit is korrek –

24 CHAIRPERSON: But did they say 'Two of
 25 our people were killed by NUM on Saturday morning?' If

Page 21032

1 they had said that you would have been able to say, 'No,
 2 no, no, our information is that people were indeed injured
 3 on Saturday morning by NUM, but they weren't killed,
 4 they're still alive, they're in hospital.' But if they had
 5 simply made the general allegation that 'Two of our members
 6 were killed by NUM,' and you weren't able to tie it up with
 7 what happened on the Saturday morning, then of course it
 8 would be different. So did they say to you when they said
 9 that two of their members had been killed by NUM, did they
 10 say that that happened on the Saturday morning, or did they
 11 just make the general allegation without further
 12 particulars as to time and place?

13 BRIGADIER CALITZ: Nee, mnr die
 14 Voorsitter, ek dink dit was net 'n algemene stelling gewees
 15 en nie pertinent soos u daarna verwys nie.

16 MR GOTZ: But even if it was a general
 17 statement and they didn't specify the Saturday morning, did
 18 you not have an obligations or a duty to find out from them
 19 what they were referring to, Brigadier? This is the reason
 20 that they were carrying the weapons that they were.

21 BRIGADIER CALITZ: Al was dit die rede
 22 vir die dra van die wapens, was dit nog steeds geen
 23 verskoning gewees om onwettig in beheer van wapens te wees
 24 terwyl mens "gather" nie. Dis teenstrydig met die
 25 Grondwet, dis teenstrydig met die "Gatherings Act," so, en

Page 21033

1 dit is wat ons vir hulle gesê het, dit is "illegal," sit
 2 neer die wapens, ons sal hierdie ding "peaceful" verder
 3 hanteer. So hulle kon nie wettig in besit gewees het van
 4 daardie wapens, maak nie saak wat die rede wat hulle
 5 aangevoer het.

6 MR GOTZ: Brigadier, doesn't the
 7 Dangerous Weapons Act which was applicable at the time
 8 allow a person to be in possession of a dangerous weapon if
 9 they can demonstrate that they are doing, or have
 10 possession for a lawful purpose?

11 BRIGADIER CALITZ: Mnr die Voorsitter, ek
 12 is nie heeltemal 'n regskenner nie, maar sover ek weet, die
 13 vorige wapens "act" was daar ook 'n afkondiging gewees deur
 14 die Minister en hy het sekere verbod geplaas op sekere
 15 items, waarvan definitief pangas, knopkieries en daardie
 16 deel sou gewees het daarvan. So volgens my was daar 'n
 17 verbod gewees. Ek kan die dokument trek, maar ek is amper
 18 seker ek is reg.

19 CHAIRPERSON: It is not necessary to
 20 cross-examine the witness about what the state of the law
 21 was at the time. We can ascertain that ourselves, but
 22 unless it's relevant for something – are you moving on to
 23 another point now? Is it appropriate to take the tea
 24 adjournment at this point?

25 MR GOTZ: Okay, we can take the tea

Page 21034

1 adjournment now.

2 CHAIRPERSON: I see some of the families

3 have arrived. I don't know whether they've all arrived. I

4 think after tea when presumably all of them will have

5 arrived, if they haven't all arrived yet, I will be able to

6 address some words of welcome to them. But we'll take the

7 tea adjournment now.

8 [COMMISSION ADJOURNS COMMISSION RESUMES]

9 [11:49] CHAIRPERSON: The Commission resumes.

10 Brigadier, you're still under oath.

11 ADRIAAN MARTHINUS CALITZ: Dankie, mnr

12 die Voorsitter.

13 CHAIRPERSON: Mr Gotz.

14 CROSS-EXAMINATION BY MR GOTZ (CONTD.):

15 Brigadier, just a few follow-up questions from the debate

16 that we were having before the tea adjournment. Brigadier,

17 your knowledge of the law and whether or not the strikers

18 were acting unlawfully surely must have been relevant

19 during the course of the negotiations?

20 BRIGADIER CALITZ: Ja, dit is, kan ek met

21 u saamstem.

22 MR GOTZ: You also have a duty to

23 establish whether or not the strikers may have had a

24 defence under the relevant law to the accusation that they

25 were acting unlawfully, correct?

Page 21035

1 BRIGADIER CALITZ: Ja, ek dink nie die

2 "negotiations" se doel was enigsins om betrokke te raak met

3 loongeskille of die argumente nie, bloot om, wat ons vir

4 hulle gesê het is dat ons sal hulle boodskap oordra aan

5 die, ek dink dis die "mine employees," en dan het ons begin

6 deur vir hulle dadelik te sê – ek verwys daarna in my

7 paragraaf 57 – dat – ag, 47 – dat ons is daar om die

8 situasie "peaceful" te "resolve" en hulle daardeur te help.

9 MR GOTZ: You see the simple fact is that

10 they were carrying the weapons for their own protection, on

11 their version. We've seen that in the videos. That is not

12 necessarily a contravention of the Dangerous Weapons Act as

13 it existed at the time.

14 BRIGADIER CALITZ: Nee, ek verskil van u.

15 Die bietjie wat ek weet van die Dangerous Weapons Act, soos

16 ek vir u gesê het daar was 'n afkondiging gewees deur die

17 Minister en ons kan daarna gaan kyk; ek dink dis, ek het

18 nie die wet nommer nie, van 1971, en hy is gewysig hierdie

19 jaar, wat geïmplementeer is in Februarie. Daardie

20 afkondigings is gemaak dat daar sekere gevaarlike wapens

21 nie tentoongestel moet word tydens enige optog, byeenkoms,

22 en waaronder dan knopkieries, pangas, spiese, yster – ek

23 kan amper sê ek is 100% seker dat dit so is, maar ek kan

24 dit vir u kry.

25 MR SEMENYA SC: Chair, for what it is

Page 21036

1 worth, that would have been inconsistent with the

2 constitutional right to assemble peacefully in the first

3 place. I can't see how the subsequent legislation would

4 then authorise that which the Constitution doesn't

5 authorise. I'm not familiar with what section Mr Gotz is

6 referring to.

7 CHAIRPERSON: We won't debate the law

8 now, but I can understand an argument that you have a

9 constitutionally entrenched right to gather without

10 weapons. That's your constitutionally entrenched right.

11 If you gather with weapons you're obviously not exercising

12 a constitutionally entrenched right. If your possession of

13 the weapon is in fact lawful because you have it for

14 purposes of self-defence, for example, and if there is no

15 absolute prohibition in respect of the possession of that

16 weapon, then the fact that you're not covered by the

17 constitutionally entrenched right in the Bill of Rights

18 doesn't mean that what you were doing is necessarily

19 illegal, but anyway, we can debate all that at the

20 appropriate time.

21 The debate at the moment is a bit artificial

22 because the witness says as far as he's aware there is

23 legislation on the point which he relied on and he can get

24 it if necessary. But I don't know it's necessary, or

25 indeed appropriate for Mr Gotz to debate the law with the

Page 21037

1 witness. That's a matter he can debate with us later on.

2 Of course what he's suggesting is it was a duty of the

3 witness to ascertain what the law was and if he can in fact

4 show that the law authorised them to do what they were

5 doing and they were urging them to refrain from doing what

6 was lawful, then of course that will be another point. But

7 I'm not sure that you are armed with the actual legal

8 provisions either that the witness is promising to bring

9 us. Am I right, Mr Gotz?

10 MR GOTZ: Well Chair, I'm certainly not

11 armed with all the legislation. I'm actually testing this

12 witness's knowledge of the law and we may have to argue

13 this in –

14 CHAIRPERSON: You know, this is not an

15 examination for promotion from brigadier to major general

16 where they may have to pass some law exam, I don't know,

17 but I'm not interested in his knowledge of the law. I

18 understand you can argue, if you're right in what you think

19 may be the law you can argue that the police acted

20 inappropriately because they should have acted in

21 accordance with what you say the law is, but is that really

22 a matter that you – he doesn't know what the law is. He's

23 got an idea. He's going to produce something, if

24 necessary, but he'll give it to his counsel and he'll give

25 to us in due course. But I'm not sure that this is a line

Page 21038

1 of enquiry which is going to help us very much to answer
 2 the questions in the terms of reference. So it might be
 3 advisable to step off it. I'm not going to stop you
 4 arguing it later on, you understand that, but I don't know
 5 whether we're going to profit much by a sort of oral
 6 examination of the witness, conducted by you, as we
 7 acknowledge the law in relation to dangerous weapons.
 8 I see a number of people have arrived and your
 9 colleague Adv Lewis undertook to find out for me whether
 10 the whole party have come back from the Eastern Cape, but
 11 perhaps I can ask her to address me now.
 12 MS LEWIS: Mr Chair, I believe that all
 13 of the families have not returned as yet. There are a
 14 number who are still en route, as it were, and I – Chair,
 15 apparently the Lesotho families have not arrived back yet.
 16 CHAIRPERSON: Are they expected soon?
 17 Are they going to come today? Because if all the Eastern
 18 Cape people are here then it may be appropriate for us to
 19 welcome them. What is the position?
 20 MS LEWIS: Mr Chair, my understanding is
 21 that I think they will return during the course of the
 22 week. I'm not sure that they will be back with us today.
 23 CHAIRPERSON: I think I'll ask Mr Tokota
 24 in his best Xhosa to translate what I'm going to say. I
 25 see the families who were away for the Christmas break in

Page 21039

1 the Eastern Cape have now returned. I understand why they
 2 were not able to return as soon as we recommenced our
 3 activities; there were questions of children going to
 4 school and so forth, but we are pleased to see them back.
 5 We are pleased that they appear to have had a safe journey
 6 and are back with us and I hope that they will continue to
 7 see that we are endeavouring to the best of our ability to
 8 ascertain the true facts in relation to the matters covered
 9 by our terms of reference, in particular in relation to the
 10 deaths at Lonmin over the period from the 12th of August
 11 onwards, and also we're concerned about some of the events
 12 that preceded that.
 13 But I hope they will have seen when they were
 14 here previously that we are endeavouring to leave no stone
 15 unturned to get to the truth and I hope they will see that
 16 we will continue to do that, and I'm sure that if there's
 17 anything that they wish to convey to us which is relevant
 18 to our work, they will do so through the counsel who are
 19 representing them. Welcome back and we hope that you have
 20 a comfortable stay while you're here.
 21 We understand that the matters being traversed
 22 here are issues which cause you pain and distress for
 23 reasons that are obvious, and that I'm afraid is a
 24 necessary part of what's happening, but we have sympathy
 25 and empathy for you and as we say we hope that in the end

Page 21040

1 you will succeed in obtaining closure and also it will be
 2 clear to you and to everybody else what the true facts
 3 were.
 4 I understand Mr Mahlangu interpreted it and they
 5 all appear to have headphones on so they all heard what was
 6 being said. So Mr Gotz, I think you may now proceed.
 7 MR GOTZ: Thank you, Chair. Brigadier, I
 8 had a question or two about one final document that we
 9 provided to you. It's exhibit 50 and it's entitled "Crowd
 10 management for platoon members, CMPM, prepare for crowd
 11 management incidents." Chairperson, in attempting to get
 12 my ducks in a row I sought to make sure that the exhibit
 13 could be projected on screen. It seems that it's not
 14 possible because the version of the software that is loaded
 15 on the computer cannot read the version on the disc, so
 16 unfortunately it's not going to be –
 17 CHAIRPERSON: We'll just have to do the
 18 best we can without the actual projection of what's
 19 contained in this exhibit.
 20 MR GOTZ: Brigadier, this is a SAPS
 21 training document dealing with crowd management and how to
 22 understand crowds. Would you confirm that?
 23 BRIGADIER CALITZ: Ek sien die dokument,
 24 ja.
 25 MR GOTZ: Well, Brigadier, have you

Page 21041

1 received this training?
 2 BRIGADIER CALITZ: Ek dink hierdie
 3 opleiding dokument is opgestel – ek kan nie onthou wanneer
 4 nie, ek dink dit is nadat ek my "crowd management" kursus
 5 gedoen het, maar ek is bewus daar is "refresher" kursusse
 6 wat aangebied word waar hierdie materiaal gebruik word.
 7 MR GOTZ: As we read this document it
 8 makes a particularly important point, and I'm going to make
 9 the point to you and get your response. The point that it
 10 makes is that the way you view a crowd determines
 11 ultimately how you deal with the crowd. So if you view a
 12 crowd as threatening, almost always that will result in you
 13 dealing with a crowd in a repressive way. The way that you
 14 view a crowd determines the outcome of the intervention.
 15 BRIGADIER CALITZ: Ja, dit is een van die
 16 faktore is hoe u dit sien. Daar is verskeie ander faktore,
 17 hoe die "crowd" reageer en wat daarop volg.
 18 MR GOTZ: And I do want to put to you
 19 that it seems to us on the basis of simply the way in which
 20 you dealt with the situation on the ground both on the 14th
 21 and the 15th, and indeed on the 16th, failed to take account
 22 of some of the fundamental principles which are articulated
 23 in this document. So for example you went into the
 24 situation viewing the crowd as threatening and dangerous.
 25 BRIGADIER CALITZ: Nee, ek stem nie saam

Page 21042

1 met u nie.

2 MR GOTZ: And you interpreted much of

3 what the crowd did as a threat against the police.

4 BRIGADIER CALITZ: Ek het na enkele

5 gevalle gewys waar daar wel dreigemente gemaak was op ons,

6 maar dit is nie die geheelbeeld van die skare wat ons gehad

7 het vandat ons daar aangekom het op die 12de nie, nee.

8 MR GOTZ: And in essence the way that you

9 approached dealing with crowd management on the 14th and the

10 15th ultimately prevented you from moving down what they say

11 in these documents is the five Cs to a position where you

12 had comprehension, cooperation, and building an

13 understanding with the crowd which would ultimately avoid

14 conflict.

15 BRIGADIER CALITZ: Ja, miskien kan ek u

16 net help daar. Die "five Cs" begin by "cooperation," so

17 daardeur het ons met die persone wat daar by Lonmin was

18 vanaf die 12de, het ons aangekom en ons het 'n samewerking

19 bewerkstellig wat dan die "cooperation" gedeelte is. Die

20 tweede stap is jou "communication." In daardie geval het

21 ons dan wel kommunikasie begin tussen die verskillende

22 partye en ons het dit dan verder gevat. "Comprehension" is

23 die "understanding," met ander woorde daar het ons die

24 inligting gekry van al die partye af en ook "ge-review" tot

25 wat op daardie dag gebeur het.

Page 21043

1 So as u vat die polisie se teenwoordigheid daar

2 en die feit dat ons nie net ingegaan het en van dag 1 af

3 vir hulle gesê het, 'Luister, hierdie is 'n onwettige

4 byeenkoms, ons gee julle 10 minute, 15 minute, om uit

5 mekaar uit te gaan en dan 'disperse' ons julle,' dit was

6 ook 'n opsie gewees. Die polisie het nie daardie opsie

7 gekies nie. Die polisie het die opsie gekies om te

8 onderhandel. Ek verneem die generale, waarby ek nie self

9 bewus was – teenwoordig was nie, het met die bestuur

10 onderhandel. Ek verneem daar is met die AMCU leierskap,

11 met die NUM leierskap onderhandel. So daardie

12 kommunikasies is breedvoerig gedoen om die "understanding,"

13 soos u dit sê die "comprehension" te kry van wat aan die

14 gang was daar.

15 Daarna is daar besluit oor die gebeure tot op

16 daardie dag, dat die persone nie meer so gewapen kan

17 rondbeweeg onbeheersd nie as gevolg van die nie-samewerking

18 en die dood tot op daardie stadium, en dit het oorgegaan na

19 'n konflik situasie toe waar ons dan oorgegaan het na fase

20 3 toe, en na die konflik kry mens dan konfrontasie. Dit

21 hang af hoe jou groepe reageer, of hulle wegbeweeg of nie.

22 So dit is basies vir u vinnig miskien opsom die vyf Cs

23 waarna u verwys, en dit is presies die stappe wat ons

24 gevolg het tot op daardie stadium.

25 MR GOTZ: Well, Brigadier, we do differ

Page 21044

1 with that opinion and it's based on partly the way in which

2 you've given evidence in these proceedings. For instance

3 the repeated reference to things that were done as

4 threatening, or threats against the police, is just by way

5 of one example. If I can give you another example, you

6 negotiated with the STF Scorpion vehicle behind you. The

7 STF Scorpion vehicle was paraded around Marikana and was

8 present on the afternoon of the 14th, correct?

9 BRIGADIER CALITZ: Ek kan nie onthou, toe

10 ons gaan opdaag het met die onderhandelinge was dit my

11 Nyalas gewees wat begin het met die onderhandeling. Ek kan

12 glad nie dink dat die Scorpion op daardie dag op daardie

13 toneel was nie. Ek kan heeltemal verkeerd wees, so as daar

14 foto's is, maar sover ek weet is hulle ingebring met 'n

15 spesifieke doel van waar hulle "ge-deploy" was.

16 MR GOTZ: No, Brigadier, you testified

17 that the STF went with you to investigate the body behind

18 the kraal. That was shortly after the negotiations and on

19 the scene. The STF must have been present.

20 BRIGADIER CALITZ: Ja, nee, nee, dit is

21 nie deel van die "negotiations" wat u nou net gesê het nie.

22 U sien u verwar miskien die twee gevalle. My getuienis was

23 dat die Spesiale Taakmag het vir ons rondom-verdediging

24 gegee waar die liggaam van daardie ouer persoon wel op die

25 grond gelê het. Ek is jammer, ek het nie sy naam nou nie,

Page 21045

1 mnr die Voorsitter.

2 CHAIRPERSON: I think you're referring to

3 Mr Twala.

4 BRIGADIER CALITZ: Mr Twala. Ek, net in

5 respek aan sy familie, waar hulle dan vir ons rondom-

6 verdediging gegee het op daardie stadium en dit is duidelik

7 sigbaar. Maar hulle was nie deel gewees van die

8 "deploying" en van die onderhandelinge op daardie stadium

9 nie, nee.

10 MR GOTZ: No, but my point is a different

11 one. The STF was present on the scene. That was your

12 evidence, that the STF was there.

13 BRIGADIER CALITZ: Mnr Gotz, as u die

14 toneel bekyk, ek dink nie ons moet teruggaan soontoe nie –

15 CHAIRPERSON: Stop, stop, stop. Look,

16 those people who have cell phones must please turn them

17 off. Turn your cell phone off immediately, or leave the

18 room. And please, all cell phones must be turned off. Let

19 me just make sure my own is turned off. Yes, it is. All

20 cell phones must be turned off. It disturbs the

21 proceedings; we can't allow it, and of there's anyone here

22 whose cell phone – please leave the room. Please leave the

23 room. Leave the room. You can come back after lunch.

24 Leave the room immediately. Whose cell phone went off?

25 The person whose cell phone went off must please leave the

Page 21046

1 room. I asked you to turn them off. Would the person
2 whose cell phone went off please stand up? Would you
3 please leave the room now? I asked you to turn cell phones
4 off; you didn't, it went off. So would you please go out?
5 MR GOTZ: Chair, I do think that the –
6 MR MPOFU: Chairperson, I think it was in
7 the bag and he was trying to fiddle –
8 CHAIRPERSON: It doesn't matter where it
9 was. I asked them to turn them off. I didn't say only
10 turn those off that aren't in bags, I said please turn cell
11 phones off. We can't have cell phones going off all the
12 time; it disturbs the proceedings. So please leave. You
13 can come back after lunch. Please proceed, Mr Gotz.
14 MR GOTZ: I'd understood your evidence to
15 be that the STF Scorpion was present on the afternoon of
16 the 14th of August.
17 BRIGADIER CALITZ: Ja, dit is korrek. U
18 moet net kwalifiseer die toneel waarna u verwys. U sê
19 "present on the scene," en u het duidelik gemeld dat hulle
20 in die agtergrond was tydens die onderhandelinge. Ek sê
21 vir u dit is twee verskillende tonele. Die een is waar ons
22 na die koppie toe kyk, met ander woorde van 'n oostelike
23 rigting wes na die koppie toe, en waar die dood van mnr
24 Twala was aan die suidekant van die koppie gewees. So dit
25 is om die hoek, en dan die STF het met daardie grondpad –

Page 21047

1 ek weet nie hoe om dit beter te verduidelik nie – wat agter
2 die substasie verby gaan, dit is seker waar hulle dan
3 "access" gekry het en dan rondom-verdediging gegee het
4 daar.
5 [12:09] Selfs die speurders was op die toneel; die
6 helikopter het daar geland om die speurders af te laai.
7 Die PKRS mense was op die toneel gewees. So dit was 'n
8 misdaadtoneel wat moes beveilig geword het.
9 MR GOTZ: The other thing that you did
10 was you always "negotiated" behind the protection of the
11 Nyala, or in other words from within the protection of the
12 Nyala. You never got out and spoke to them face to face,
13 correct?
14 BRIGADIER CALITZ: Ja, dit is korrek.
15 Ons het uit die Nyala uit met hulle onderhandel.
16 MR GOTZ: You never sought true
17 comprehension or understanding of what their grievances
18 were, correct?
19 BRIGADIER CALITZ: Ek verstaan nie u
20 stelling nie. Die twee wat aan ons gegee is dat hulle nie
21 met die polisie wil onderhandel nie en met die mynbestuur,
22 en dat hulle is ongelukkig oor die dood van hulle twee
23 persone, dit is wat hulle vir ons gegee het en daardie
24 boodskappe is beide oorgedra aan die bestuur van Lonmin
25 self. So, en die ondersoek het verder gegaan, soos ek vir

Page 21048

1 u gesê het. So ek dink ons het daarin geslaag om die
2 boodskappe oor te dra. Selfs die feit van die 15de, die
3 oggend het ons teruggekom en ons het dan die terugvoer vir
4 hulle gegee wat die mynbestuur dan gesê het, die kondisies
5 waaronder – so ons het, as ons dit kan miskien so noem, 'n
6 "mediation" rol gespeel en dit is hoekom ek van u verskil.
7 Daar was wel 'n verstandhouding, of 'n "understanding,"
8 soos u dit stel.
9 MR GOTZ: Major General Mpembe was rather
10 candid and clear that he believed that if Lonmin had come
11 to the party, as it were, and agreed to go and speak to the
12 workers, the strikers, this incident on the 16th would not
13 have happened at all. Would you agree with that?
14 MR VAN AS: Sorry, Mr Chairman, before
15 the witness answers the question, I understood General
16 Mpembe to say the incident may not have happened, not would
17 not have happened.
18 CHAIRPERSON: My recollection is the same
19 as Mr Van As'. Mr Gotz, maybe you should reformulate it,
20 unless you've got a passage in the record that shows that
21 my recollection and Mr Van As' recollection is wrong,
22 unless you've got that you must reformulate it along the
23 lines that coincides with what Mr Van As and I –
24 MR GOTZ: I'm happy to reformulate it in
25 that way, Chair, that it may well not have happened.

Page 21049

1 BRIGADIER CALITZ: Mnr die Voorsitter, ek
2 kan net met, miskien die, waarna Adv Mpofu verwys het, my
3 "favourite" woorde is "benefit of hindsight," sê dat die
4 gesprekke – en ons sien dit nou, daar is tans nog steeds
5 die AMCU "protected strike" wat aan die gang is, die
6 loongeskil van R12 500 dink ek is voorop. Ek sal nie sê ek
7 stem nie saam nie. Dit kon 'n bydraende faktor gewees het,
8 maar of hulle tot 'n ooreenkoms sou gekom het en wel hulle
9 wapens neergelê het en wel gehoor gegee het en teruggegaan
10 het werk toe, as ek sien wat tans gebeur, en dit is
11 algemene kennis in die nuus media dat mnr Mathunjwa vir die
12 mense gevra het asseblief, wees rustig, wees vreedsaam,
13 protes sonder gevaarlike wapens, en ons sien dit gebeur
14 nie. Tot huidige gebeur dit nie. Daar is insidente elke
15 dag amper. So ek kan nie vir u sê dat, met sekerheid dat
16 dit sou nie gebeur het nie. Dit gaan nog aan soos ons op
17 hierdie stadium praat. Dit kon 'n bydraende faktor gewees
18 het om die gemoedere te verlaag. Dit is maar my
19 persoonlike opinie.
20 CHAIRPERSON: Can I ask you a question
21 flowing from that? What General Mpembe said was reported
22 to you, not entirely accurate originally, but it was
23 reported to you by Mr Gotz. Did you sense, or did you
24 yourself experience a measure of frustration in that you,
25 in negotiating with the strikers you had because of the

<p style="text-align: right;">Page 21050</p> <p>1 attitude that Lonmin had adopted, very little to offer them 2 by way of a response to their specific point that they 3 wanted to deal with, wanted to negotiate with Lonmin, and 4 Lonmin weren't making any concession in that regard as far 5 as you could see. Now did you or any of your colleagues in 6 the police who were involved in the negotiations feel any 7 sense of frustration about that?</p> <p>8 BRIGADIER CALITZ: Mnr die Voorsitter, 9 frustrasie is miskien 'n sterk woord, omdat ons nie 10 betrokke geraak het met "labour negotiations" nie. Maar 11 dit kon wel 'n bydrae gegee het en die onderhandelinge 12 makliker gemaak het in die sin van dat ons hulle miskien 13 ietsie meer kon bied in die sin van dat – wat ons weet het 14 later gebeur, na Marikana het ons voortgegaan met dieselfde 15 onderhandelinge en ons weet dat toe het ons gereël dat die 16 persone by, ek dink dis een of ander hospitaal, ek is nie 17 seker waar op die perseel het die leiersgroepe, vyf, ses, 18 wel met sekere van die mense begin praat en onderhandel en, 19 so miskien kon dit 'n bydraende faktor gewees het. 20 Frustrasie is miskien 'n sterk woord, mnr die Voorsitter, 21 maar –</p> <p>22 CHAIRPERSON: I think it is correct that 23 at some point the strikers' spokesperson said we want to 24 talk to our employer; we want to speak to the employer 25 about our wage demand, and they were faced, as far as one</p>	<p style="text-align: right;">Page 21052</p> <p>1 say well we're not interested in that, we're only prepared 2 to negotiate through the union, which is the majority 3 union, which has adopted this particular stance. Obviously 4 that wasn't said in terms, but that's what it was all 5 about.</p> <p>6 Now that, I would have thought that stance – and 7 this is a prima facie view which I'm sure the Lonmin people 8 will deal with very comprehensively, but I would have 9 thought that in the light of the facts I've stated, or the 10 facts which are going to be possibly established later, it 11 was very difficult for the police to get any concessions 12 out of the strikers because there was no movement at all. 13 Is that correct?</p> <p>14 BRIGADIER CALITZ: Mnr die Voorsitter, 15 baie van die feite wat u nou genoem het is ek nie rêrig van 16 bewus nie. Dit, maar ek verstaan dit kom uit getuienis 17 uit. Wat ons van bewus is, is dat dit wat vir ons 18 teruggegee is daardie oggend gedeeltelik is dat die 19 mynbestuur – en ek het in paragraaf 56 van my verklaring 20 daarna verwys – bereid sal wees om met hulle te praat as 21 hulle dan "disarm" en "return to work." Dit was een wat 22 ons vir hulle gegee het, maar dan is u ook korrek daar is 23 'n twee-jaar loonooreenkoms en die "strike" was 24 "unprotected." So oor daardie twee redes is u korrek, dit 25 is so. Maar lyk vir my hulle wou gehad het dat die persone</p>
<p style="text-align: right;">Page 21051</p> <p>1 can make out, with what amounted to a brick wall. All that 2 Lonmin said was we're prepared to negotiate through the 3 usual channels, and the usual channels meant through NUM, 4 and according to some evidence we've heard the NUM stance 5 at that stage was – incorrectly as it turned out, and Mr 6 Zokwana concedes that – that nothing could be done; the 7 two-year agreement was in place. And furthermore there's 8 some evidence – it's not yet clear yet what the exact 9 position is, but there's some suggestion that NUM was in 10 any event not in favour of specific increases for 11 particular groups of employees. If there was an increase 12 it should be across the board. So if that's correct - 13 that's still a matter that's being investigated, but if 14 that's correct NUM wouldn't have been prepared to argue for 15 special increases for RDOs, and in any event their attitude 16 was nothing could be done for two years because the two- 17 year agreement stands, which turns out to have been 18 incorrect. So it was a bit of a hollow offer to say to the 19 strikers no, you can negotiate with us through the usual 20 channels, through NUM, who have adopted this particular 21 stance and are not, who don't agree with your demand, and 22 to tell them that, we're not prepared to speak to - the 23 rock drill operators had said they weren't proceeding 24 through the unions, they were proceeding as individual rock 25 drill operators, they didn't want the unions involved, to</p>	<p style="text-align: right;">Page 21053</p> <p>1 moet terugkeer werk toe, die wapens neerlê en dan deur die 2 normale kanale –</p> <p>3 CHAIRPERSON: Yes, well that's the point, 4 you see. It's the "normale kanale" and the "normale 5 kanale" were the ordinary usual negotiation channels which 6 were, as I understand it – and if I'm wrong I'm sure I'll 7 be corrected – through, the only party who was entitled to 8 negotiate wages was the union, the majority union at that 9 stage, which was NUM, which had not only not supported the 10 unprotected strike, which may well have been an insensible 11 stance on their part because people who took part in the 12 unprotected strike could have been dismissed without 13 recourse, but had also taken the view that the two-year 14 agreement was binding and nothing could be done, even 15 negotiations couldn't be engaged in with a view to 16 obtaining an increase in wages until the two-year period 17 was up. But anyway, if you weren't aware of that, it's 18 pointless discussing it with you further.</p> <p>19 MR GOTZ: The Chairperson has asked all 20 of the questions that constituted my last point, but I'm 21 not sure that you've answered the question. In effect you 22 had nothing to offer the strikers.</p> <p>23 BRIGADIER CALITZ: Gedurende die 24 onderhandelinge wat ons wel die "strikers" kon bied is om 25 hulle boodskap oor te dra, en dan baie beslis het ons op</p>

Page 21054

1 die tafel gesit dat indien hulle, hulle wapens sou neerlê
 2 en vreedsaam uiteengaan, daar nie teen hulle opgetree word
 3 nie. So ek stem glad nie saam met u stelling nie. Ons het
 4 wel onderhandel en sou dit gebeur het was die polisie
 5 bereid om geen aksie te loods op daardie stadium, maar dat
 6 hulle, hulle wapens neersit en dan vrylik wegbeweeg en dan
 7 aansoek te doen volgens die wetgewing en dat ons hierdie
 8 ding op 'n ordentlike manier volgens die wet wat beskikbaar
 9 is gehanteer het.

10 MR GOTZ: The simple point I think that's
 11 being made is that Lonmin's stance put you at a
 12 disadvantage in the negotiations because you couldn't meet
 13 anything that the workers required, or wanted.

14 BRIGADIER CALITZ: Daar was pertinent
 15 gesê die "negotiations," ons raak nie betrokke by die
 16 loongeskille nie. Die polisie kan nie onderhandel met, oor
 17 arbeidsgeskille nie, glad nie. Ons is net daar vir die
 18 veiligheid van, beskerming van lewe en eiendom en daarom
 19 het ons die wapen-gedeelte aangespreek en ons
 20 teenwoordigheid in die gebied het ons hulle ook verseker,
 21 vanaf die 10de het ons begin met ekstra "deployments" in
 22 die gebied en die getalle is beskikbaar; ons was 24 uur om
 23 die beurt teenwoordig in die gebied gewees.

24 COMMISSIONER TOKOTA: Brigadier, if I
 25 understand you and also understood the evidence of General

Page 21055

1 Mpembe, these people were engaged in an illegal gathering
 2 in that they had in their possession the dangerous weapons.
 3 So you could have arrested them, but you offered them that
 4 you are not going to arrest them, 'Give us your dangerous
 5 weapons, then you can deal with the rest. We're not
 6 interested in the labour issues. All we are interested in
 7 is the dangerous weapons.' Is that what you were –

8 BRIGADIER CALITZ: Dit is heeltemal wat
 9 ek getuig, Kommissaris, u is korrek.

10 MR GOTZ: Chair, I mean safe for this
 11 part, this portion –

12 CHAIRPERSON: The part where he's got to
 13 have a chance to study the report –

14 MR GOTZ: Yes.

15 CHAIRPERSON: - you're finished with
 16 cross-examination. Alright. Mr Gumbi, are you in a
 17 position now to proceed with your cross-examination on the
 18 point that you, or point or points that you want to cover?

19 MR GUMBI: Yes, Chair.

20 CHAIRPERSON: And then we'll go back to
 21 Mr Gotz when you're finished, after the witness and his
 22 counsel have had an opportunity to study the report that
 23 he's made available.

24 CROSS-EXAMINATION BY MR GUMBI: Yes,
 25 Chairperson. Yes, I'm ready. Good afternoon, Brigadier

Page 21056

1 Calitz.

2 BRIGADIER CALITZ: Goeiemiddag, Advokaat.
 3 Gee my net so 'n sekonde dat ek net my lêers toemaak en die
 4 ander een kry, asseblief. Dankie, Advokaat.

5 MR GUMBI: Thank you very much, Brigadier
 6 Calitz.

7 CHAIRPERSON: Am I correct in thinking
 8 that we were given an extract from the pocketbook of
 9 Constable Msiza, and we were also given the diary of
 10 Captain –

11 MR GUMBI: Makukule.

12 CHAIRPERSON: Ja, that's it, Makukule.
 13 Are those the documents that you are relying on?

14 MR GUMBI: And the pocketbook of
 15 Brigadier Calitz himself. I mean the diary of Brigadier
 16 Calitz himself.

17 CHAIRPERSON: Officers have diaries and
 18 non-commissioned people have pocketbooks.

19 MR GUMBI: Yes.

20 CHAIRPERSON: An important distinction.

21 MR GUMBI: Yes, Chairperson. Brigadier
 22 Calitz, as you know that I represent the family of the late
 23 Warrant Officer Lepaaku who was hacked to death on the 13th
 24 of August 2012 –

25 CHAIRPERSON: Mr Gumbi, forgive my

Page 21057

1 interrupting you. Should we not as a matter of good
 2 housekeeping –

3 MR GUMBI: Yes.

4 CHAIRPERSON: - mark your exhibits while
 5 we're, before you proceed.

6 MR GUMBI: Yes, Chairperson.

7 CHAIRPERSON: I think the next exhibit
 8 will be KKK58, so should we make Constable Msiza's
 9 pocketbook exhibit KKK58.

10 MR GUMBI: Yes.

11 CHAIRPERSON: And the diary of Captain
 12 Maluleke, is it?

13 MR GUMBI: Yes, Makukule.

14 CHAIRPERSON: Makukule rather, that will
 15 be KKK59.

16 MR GUMBI: Yes, Chair.

17 CHAIRPERSON: And am I correct in
 18 thinking that Brigadier Calitz's diary is already before us
 19 as an exhibit?

20 MR GUMBI: Yes.

21 CHAIRPERSON: Alright. So let me just
 22 write those in my book and then you can start.

23 MR GUMBI: Thank you very much,
 24 Chairperson.

25 COMMISSIONER HEMRAJ: Ms Pillay, is

<p style="text-align: right;">Page 21058</p> <p>1 Brigadier Calitz's diary already an exhibit? I don't 2 recall this. 3 MR GUMBI: It's not yet an exhibit, 4 Commissioner. 5 COMMISSIONER HEMRAJ: Oh, it's not? 6 MR GUMBI: Yes, we distributed it. 7 CHAIRPERSON: Well, we haven't been given 8 copies, not in this file we've got. 9 MR GUMBI: Yes, it's only one page. I 10 can – 11 CHAIRPERSON: Oh, it's one page. It's 12 one page in here, in this file you gave us? 13 MR GUMBI: Yes. It should be there, 14 Chairperson. 15 CHAIRPERSON: Alright. So anyway that 16 then will be KKK60, is it? 17 MR GUMBI: Yes, KKK60. 18 CHAIRPERSON: Alright, now sorry, let me 19 just – is this, the last page we've got – I'm not sure that 20 I follow how this file of yours works. Let's go through it 21 so we can mark the things correctly. 22 MR GUMBI: Yes, Chair. 23 CHAIRPERSON: We start off with the diary 24 of – I'm sorry, the pocketbook of Constable Msiza. 25 MR GUMBI: Yes.</p>	<p style="text-align: right;">Page 21060</p> <p>1 the diary of – 2 MR GUMBI: Captain Makukule. 3 CHAIRPERSON: How do you spell the 4 Captain's surname? It's written there, but I can't read 5 his handwriting. 6 MR GUMBI: It's M-A-K-U-K-U-L-E. 7 CHAIRPERSON: Makukule? 8 MR GUMBI: Yes. 9 CHAIRPERSON: Alright, thank you very 10 much. 11 MR GUMBI: Those are the documents I'll 12 rely on in my cross-examination. Brigadier, hence I was 13 telling you that I represented the family of the late 14 Warrant Officer Lepaaku, who was hacked to death on the 15 13th, and Lieutenant Baloyi, who was injured on the 13th. I 16 have a few questions for you, Brigadier, and all these 17 documents I will make use of it just as a point of 18 reference so that you'll understand the basis of my 19 proposition, where I'm coming from. 20 I understand that on the 13th of August you 21 directed General Mpembe to those protesters that they were 22 marching, and you didn't go with General Mpembe. So I 23 wanted to check with you, Brigadier, as to why you didn't 24 accompany General Mpembe to those protesters, if I can 25 check with you.</p>
<p style="text-align: right;">Page 21059</p> <p>1 CHAIRPERSON: That's clear from the front 2 page, it actually refers, it's got his name on it. 3 MR GUMBI: Yes. 4 CHAIRPERSON: And then there are a number 5 of pages that have been stapled together. These I take it 6 are the extracts over the period beginning on, it looks 7 like Tuesday the 14th, is it, of August, through to a little 8 bit of Friday the 17th of August. That's all the pocketbook 9 of Constable Msiza. 10 MR GUMBI: Yes. 11 CHAIRPERSON: And that's all exhibit 12 KKK58. 13 MR GUMBI: KKK58. 14 CHAIRPERSON: Alright, we then have a 15 page which is actually a double page from a diary which 16 deals with the 12th and 13th of August. 17 MR GUMBI: Yes. 18 CHAIRPERSON: What is that? 19 MR GUMBI: That's the diary of Brigadier 20 Calitz, that one. 21 CHAIRPERSON: I see, that's Brigadier 22 Calitz's – so we'd better make that KKK59, KKK59. 23 MR GUMBI: Yes, Chairperson. 24 CHAIRPERSON: I see, and then we have 25 another document which is, that will be KKK60 and that's</p>	<p style="text-align: right;">Page 21061</p> <p>1 [12:29] BRIGADIER CALITZ: Mnr die Voorsitter, op 2 daardie dag het ons die inligting gekry op die CCTV kameras 3 wat in die JOC was en die Provinsiale Kommissaris het dan 4 gesê dat die persone moet, ek dink die woorde was 5 "intercept and disarm" word, waarop Generaal Mpembe dan vir 6 my gesê het hy sal saam met die lede gaan, die taal wat 7 hulle praat op daardie stadium het hulle gepraat van die 8 Fanagalo en dan het Kolonel Merafe, Luitenant Kolonel 9 Merafe die rol vertolk van die operasionele bevelvoerder. 10 Ek het tussen my en Generaal Mpembe ooreengekom, 11 omdat hy nie geweet het waar die gebied is nie, sou ons dan 12 opgaan in die lug met die helikopter. Ons helikopters het 13 "refuel" op daardie stadium en ons het van Lonmin se – of 14 nie Lonmin nie, ek dink dis 'n Coin helikopter maar wat 15 deur mnr Sinclair gereël was, het ons opgegaan en ek het 16 hom in daardie rigting, kan u sê dan beduie waar hulle moet 17 links en regs draai, tot hulle by die protesgroep gekom 18 het. 19 MR GUMBI: Thanks very much. So before 20 General Mpembe confronted those protesters, did you brief 21 any members before that confrontation? 22 BRIGADIER CALITZ: Nee, mnr die 23 Voorsitter, ek, die voorligting was gegee deur Generaal 24 Mpembe aan daardie persone. 25 MR GUMBI: When you arrived at the scene,</p>

<p style="text-align: right;">Page 21062</p> <p>1 Brigadier, immediately after the killing of two police 2 officers and other civilians there, at the scene when you 3 arrived did you talk to any police officers or sectional 4 commanders who were there, in trying to understand what 5 transpired before the killing of these two police officers 6 and the other civilians? 7 BRIGADIER CALITZ: Dit is korrek, mnr die 8 Voorsitter. Die eerste persoon wat ek mee gekontak het toe 9 ek daar aankom kon ek die persoon, wat Adjudant Offisier 10 Lepaaku op die grond, of Adjudant Offisier Monene, wat op 11 die grond was naby 'n Nyala voertuig, en ek is genader deur 12 Luitenant Kolonel Vermaak – ek probeer nou net die 13 “sequence” onthou – wat my dan meegedeel het wat op daardie 14 stadium plaasgevind het, dat die persone was, volgens wat 15 ek verstaan het, ge-escort in 'n sekere rigting. Hulle wou 16 wegbreek, en toe daar teen hulle opgetree is was daar 'n 17 aanval direk op die polisie gewees. 18 Ek is meegedeel dat twee van die polisieman, 19 beamptes, een was op die toneel oorlede en later is ek 20 meegedeel dat die ander polisiebeampte in die hospitaal 21 oorlede is en beswyk het. Daar was ook 'n derde, die 22 luitenant wat beseer was, en ek is meegedeel deur Kolonel 23 Vermaak dat hulle die helikopter gebruik het om die persoon 24 uit te vlieg. Een persoon is met die, ek dink Adjudant 25 Offisier Lepaaku is met die voertuig gery kliniek toe, en</p>	<p style="text-align: right;">Page 21064</p> <p>1 al daardie inligting het hulle met my gedeel op daardie 2 stadium. 3 Ek het van my kant af die toneel probeer 4 beveilig. Ek moet dit vir u sê dat dit was moeilik gewees 5 onder die omstandighede want die polisiebeamptes – ek wil 6 nie die woord “bang” gebruik nie, maar dit was versigtig. 7 U kan sien dat dit was 'n groot traumatiese gebeurtenis vir 8 hulle gewees want toe ek hulle plaas spesifiek binne-in die 9 woongebied om beveiliging te gee rondom daardie sinkhuisie 10 waar die persoon gelê het, daar is 'n huiwering gewees wat 11 ek toegeskryf het maar net aan die erge trauma en die skok 12 wat daar gebeur het. 13 MR GUMBI: Thank you very much, 14 Brigadier. General Mpembe testified in evidence before 15 this Commission that after the incident on the 13th of 16 August 2012 there was a debriefing between the members, the 17 platoon commanders, and operational commanders, and you 18 will see that when you look at his evidence-in-chief, that 19 is day 108, 18 June 2013. It's just a point of reference. 20 And furthermore you'll see when you check the diary of 21 Captain N Makukule, that's exhibit KKK60, when you check at 22 page 1, that is the 13th of August 2012. 23 MS PILLAY: Chair, I'm sorry to 24 interrupt. If I can just indicate that the diary of 25 Captain Makukule is already an exhibit. It's exhibit</p>
<p style="text-align: right;">Page 21063</p> <p>1 dan Luitenant Baloyi is uitgevlieg met die helikopter ek 2 dink na, as ek korrek is, Ferncrest en miskien later 3 oorgeplaas. 4 Toe het ek verder gegaan en toe ek deur die 5 toneel stap het ek met die bevelvoerders gekommunikeer 6 daar. Ek wil amper sê die TRT bevelvoerder, onder 7 korreksie sê ek nou, was Kaptein Thupe gewees wat daar was, 8 en die luitenant, daar was iemand van Openbare Orde 9 Polisiëring, ek kan nie presies onthou wie dit was nie. 10 Kolonel Merafe was nie meer op die toneel nie. Daardie 11 luitenant het dan ook na my toe gekom en gesê dat hulle is 12 aangeval en hulle het hulself probeer verdedig; die persone 13 het gevlug, en toe het hulle vir ons dan gaan uitwys. Ek 14 het self deur die toneel gestap en die drie siviele persone 15 – of “actually” net die twee gesien, die een by die, wat in 16 die veld lê en dan een wat by 'n sinkhuisie oorkant, 17 oorkant 'n grondpad was daar 'n persoon wat erg gebloei het 18 wat ook daar oorlede is, en dan was daar 'n verdere persoon 19 verder af by die rivier waar Kolonel Vermaak en een van die 20 persone, ek dink Adv Moolman na toe gestap het. Ek het 21 hulle egter teruggeroep en gesê, want die persone, die – ek 22 sal nie sê die “protesters” nie, maar die gemeenskap het 23 begin hergroepeer in die agtergrond en ons was bewus op 24 daardie stadium dat die wapens wat gevat is, die 25 haelgeweer, die R5, die twee 9mms, asook die hand radio, so</p>	<p style="text-align: right;">Page 21065</p> <p>1 HHH27. 2 CHAIRPERSON: Thank you, Ms Pillay. We 3 will then, we'll cancel the reference to it as KKK60 and 4 I'll mark it – what is it? You say HHH? 5 MS PILLAY: HHH27. 6 CHAIRPERSON: 27, thank you very much. 7 MR GUMBI: I do apologise, Chairperson. 8 I didn't notice that it's already in evidence. I do 9 apologise. 10 MS PILLAY: And it was marked as KKK59, 11 not KKK60, today. KKK60 is the diary – 12 CHAIRPERSON: It was marked 59 and then I 13 changed it to 60. 14 MR GUMBI: Yes. 15 MS PILLAY: No, KKK60 is the diary of 16 Brigadier Calitz. 17 CHAIRPERSON: No, no, we changed it. 18 Originally I made Makukule's one 59 and then I changed it 19 to 60 because Brigadier Calitz's diary apparently comes 20 before in the bundle and I didn't know that. So we've now 21 changed Brigadier Calitz to 59. This one was 60, but it's 22 now jumping out of its letter category of KKK and it's 23 among the HHHs as 27. 24 MR GUMBI: Thanks, Chairperson. When we 25 check HHH27, that's the diary of Captain Makukule, on the</p>

<p style="text-align: right;">Page 21066</p> <p>1 13th, when you go down there around 14, you'll see that 2 debriefing by Brigadier Calitz at Lonmin offices. Do you 3 see that, Brigadier? 4 BRIGADIER CALITZ: Dit is korrek. 5 MR GUMBI: And again when you compare 6 that with the diary of Constable Msiza, MJ, that should be 7 KKK58, when you go to page 3, entry number 43 around half 8 past 7 in the afternoon, do you see that? 43, entry number 9 43. 10 BRIGADIER CALITZ: Is it the pocketbook, 11 page 43? 12 MR GUMBI: Yes. 13 BRIGADIER CALITZ: The time? 14 MR GUMBI: 19:30. 15 CHAIRPERSON: Mr Gumbi, I must tell you 16 that something has gone wrong here because we haven't been 17 given, in the files we were given we haven't been given 18 pages 43 and 44. The document we've got starts with the 19 cover with his name and then the next page is 45 and 46 20 which contains entries for Tuesday, the 14th, and Wednesday, 21 the 15th. So there's something missing from what we've got, 22 but that I'm sure can be rectified. 23 MR GUMBI: Yes. Yes, I do apologise 24 about that mistake, Chairperson. But when you compare 25 these, Brigadier, it's written there "Departure from scene</p>	<p style="text-align: right;">Page 21068</p> <p>1 het hom as Makukule. So hier op bladsy 12 as ons die 2 spelling kan sien, dis – 3 CHAIRPERSON: Well, it's either wrongly 4 recorded originally as Malelenle and should be Makukule, or 5 vice versa. But do you know the captain? Do you know what 6 his name is? 7 BRIGADIER CALITZ: Nie persoonlik nie, 8 nee. 9 CHAIRPERSON: Well, we can find out. 10 Let's not delay about that. 11 BRIGADIER CALITZ: Dit is korrek. 12 CHAIRPERSON: It's detail that can be 13 sorted out later. 14 MR GUMBI: Thanks, Chairperson. 15 CHAIRPERSON: But can I interrupt? You 16 were asked about the entry about the debriefing. 17 MR GUMBI: Yes. 18 CHAIRPERSON: And it says, "All the 19 members were called for initial," is that word "debriefing 20 by Reverend Lieutenant Colonel," I can't read his name. 21 BRIGADIER CALITZ: Dit sal wees Setsedi, 22 mnr die Voorsitter. 23 CHAIRPERSON: Now what sort of debriefing 24 would the lieutenant colonel have given them? I see he's a 25 chaplain, I take it. Now it was explained to us that there</p>
<p style="text-align: right;">Page 21067</p> <p>1 to JOC as per SAPS118B for briefing." Do you see that, 2 Brigadier? 3 BRIGADIER CALITZ: Ja-nee, ek sien 4 daardie inskrywing om 19:30. 5 MR GUMBI: So Brigadier, do you confirm 6 that on the 13th there was a debriefing on that afternoon 7 between platoon sectional commanders and their members and 8 you participated in those debriefing as alleged by Captain 9 Makukule in his pocketbook? 10 BRIGADIER CALITZ: Ekskuus, mnr die 11 Voorsitter, ek het net – 12 CHAIRPERSON: We've got a problem about 13 the name of the captain. When it was introduced before as 14 exhibit HHH27 it was recorded as the diary of Captain 15 Malelenle, and we think that if you look at the name on the 16 document before us it is Malelenle and not Maluluke, but we 17 want to get the captain's name right, Mr Gumbi. That's 18 what Mr Tokota and I were discussing. The document that 19 you've given us in the file is indeed a copy of HHH27. 20 MR GUMBI: Yes. 21 CHAIRPERSON: But the question is what is 22 the name of the captain? Well anyway, the Brigadier should 23 know. Brigadier, what's the name of the captain which 24 we're talking about? Is it Malelenle or Maluluke? 25 BRIGADIER CALITZ: Mnr die Voorsitter, ek</p>	<p style="text-align: right;">Page 21069</p> <p>1 are two kinds of debriefing; there's what amounts to a kind 2 of therapeutic debriefing where people are given 3 counselling almost for a traumatic experience that they've 4 gone through, and there's another kind of debriefing where 5 people are asked, almost factual debriefing, asked to 6 report what happened. Now this debriefing by the 7 lieutenant colonel, the chaplain, what sort of debriefing 8 was that? 9 BRIGADIER CALITZ: Mnr die Voorsitter, 10 dit is my vraag miskien op die advokaat se vraag gewees. 11 Dit is waarby ek myself betrokke was waar ons die lede 12 bymekaar gekry het en waar ons gereël het vir ons "employee 13 health and wellness," dit is die sosiale werkers en 14 sielkundiges wat dan deur, die Reverend Setsedi was die 15 hoof van hulle gewees, so dit is waar die persone trauma 16 "counselling" kry en met hulle kommunikeer en – 17 CHAIRPERSON: That's what I call 18 therapeutic debriefing as opposed to factual debriefing. 19 BRIGADIER CALITZ: Dit is korrek, mnr die 20 Voorsitter. So dit is waarby ek betrokke was. Die lede 21 het dan seker gemaak, en dan die EHW personeel wat wel daar 22 was daardie aand seker gemaak dat die lede wel by hulle 23 uitkom. As daar operasionele "debriefing," dit was miskien 24 dan vir, deur Generaal Mpembe aan die lede self gegee wat 25 dan daardie feite vir hom teruggegee het.</p>

<p style="text-align: right;">Page 21070</p> <p>1 CHAIRPERSON: That seems to be borne out 2 by the following sentence, "Members from Springs were all 3 okay; they cope with the situation," so the ability to cope 4 with the situation obviously is a result that you want to 5 achieve by what I call therapeutic debriefing. Is that 6 correct?</p> <p>7 BRIGADIER CALITZ: Dit is korrek, mnr die 8 Voorsitter. As hulle aangedui het dat - nie almal is 9 gedwing nie. Dit is 'n vrywillige proses. So ons kan nie 10 iemand verplig nie, maar die persone is daargestel om hulle 11 wel by te staan.</p> <p>12 MR GUMBI: Thank you very much, 13 Brigadier. In those debriefings you participated in - let 14 us focus on you, Brigadier Calitz – was it ever, ever 15 alleged that certain members acted without instruction at 16 the scene on the 13th?</p> <p>17 BRIGADIER CALITZ: Nie wat ek kan onthou 18 nie, nee.</p> <p>19 MR GUMBI: Okay, again when you check the 20 occurrence book of the 13th, that is FFF25, it doesn't 21 indicate that on that day there was ever, ever any 22 debriefing. Do you have a knowledge as an operational 23 commander why that information is not reflected there?</p> <p>24 BRIGADIER CALITZ: Ekskuus, mnr die 25 Advokaat, u het gesê FFF25, dis die VB, dat wat daarin</p>	<p style="text-align: right;">Page 21072</p> <p>1 the end of the question. Neither the Brigadier nor I heard 2 the end of your question. So repeat your question again, 3 please.</p> <p>4 MR GUMBI: Yes, Chairperson. I'm saying 5 in your presence when General Mpembe briefed the National 6 Commissioner, did he make any allegation, or did he inform 7 the National Commissioner that on the 13th certain members 8 fired without his instruction as an operational commander?</p> <p>9 BRIGADIER CALITZ: Nee, mnr die 10 Voorsitter, nie waarvan ek bewus is nie.</p> <p>11 MR GUMBI: Then in your presence, 12 Brigadier, when General Mpembe briefed the National 13 Commissioner, can you tell this Commission what did he 14 inform the National Commissioner about the incident of the 15 13th?</p> <p>16 BRIGADIER CALITZ: Mnr die Voorsitter, 17 dit was laat daardie aand, as dit nie vroeg die oggend is 18 nie. Ek weet die Provinsiale Kommissaris, Nasionale 19 Kommissaris en die persone wat daar teenwoordig was, ek was 20 in en uit gewees, deel van hierdie goed, so die dele wat ek 21 wel kon miskien getuig oor is dat hy vir die Nasionale 22 Kommissaris miskien die detail gegee het van wat 23 geobserveer is op die dag, dat hy met die groep onderhandel 24 het en dat hulle in "agreement" was om die persone te 25 eskort, ek dink na die groter koppie toe, en dat daar dan</p>
<p style="text-align: right;">Page 21071</p> <p>1 vervat is nie? Die dreigement? Ekskuus, ek het nie u 2 vraag gehoor nie. Ek is jammer.</p> <p>3 MR GUMBI: The occurrence book of the 13th 4 is not reflected that later on that afternoon there was 5 sort of a debriefing. Do you know as an operational 6 commander why that information is not reflected?</p> <p>7 BRIGADIER CALITZ: Ek sal u nie kan help 8 daarmee nie, nee. Ek het nie spesifiek daarna gekyk nie, 9 maar as u sê, ek sal u woord vat daarvoor dat daar nie so 10 'n inskrywing is nie.</p> <p>11 MR GUMBI: Okay, thanks very much. Let's 12 move on to another topic again. According to General 13 Mpembe, again it was his testimony before this Commission, 14 he testified that he briefed the National Commissioner with 15 you, that is Brigadier Calitz, on the 13th, immediately 16 after the – I mean later on after the incident, and you 17 will see that when you go to his evidence-in-chief, for 18 your record that is day number 104, that is his evidence on 19 the 18th of June 2013. So in your presence did General 20 Mpembe when he briefed the National Commissioner, in your 21 presence inform the National Commissioner that on the 13th 22 certain members fired without instruction?</p> <p>23 BRIGADIER CALITZ: Dat sekere lede wat 24 gedoen het? Ekskuus tog, as u net u vraag kan herhaal – 25 CHAIRPERSON: You dropped your voice at</p>	<p style="text-align: right;">Page 21073</p> <p>1 afgewyk was van die roete af en 'n konfrontasie ontstaan 2 het waar daar dan "fatal injuries" was, as ek dit so kan 3 stel.</p> <p>4 MR GUMBI: At Potchefstroom meeting when 5 you were preparing for this Commission, in your presence, 6 in any of the sessions in your presence, Brigadier, this 7 topic of members firing without instruction was ever, ever 8 discussed there, on the 13th?</p> <p>9 BRIGADIER CALITZ: Mnr die Voorsitter, 10 toe ons by Roots was, was daar wel die groepe het 11 opgebreek, elkeen in sy eie groepering, en daardie groep 12 van Generaal Mpembe was dan saam gewees by hulle en ek weet 13 dit is daar bespreek rondom die opdrag gegee. Ek het 14 verneem dit is bespreek gewees in hulle groep.</p> <p>15 MR GUMBI: Not in your group, will I be 16 clear?</p> <p>17 BRIGADIER CALITZ: Nee, nee, my groep was 18 die, meer die onderhandeling saam met Kolonel McIntosh en 19 die onderhandelinge, en dit is hoe ons die "exhibit" L 20 probeer saamstel het. Elke groep het apart gegaan in hulle 21 aparte dele en dan teruggekome en die terugvoer is dan gegee 22 in die groter groep self.</p> <p>23 MR GUMBI: Thank you very much, 24 Brigadier. Let me move now on my last topic. When we were 25 cross-examining General Mpembe on behalf of the family of</p>

<p style="text-align: right;">Page 21074</p> <p>1 the late Warrant Officer Lepaaku and Lieutenant Baloyi, we 2 presented evidence in the form of a pocketbook and 3 statement of those police officers who were there, and 4 their statement and their pocketbook just describe what 5 happened before Warrant Officer Lepaaku was hacked to death 6 and before Lieutenant Baloyi was injured by those strikers. 7 [12:49] So we analysed the pocketbook and the statement. 8 Your pocketbook of the 13th before this Commission that has 9 been marked as KKK59, are you in possession of that 10 pocketbook, your pocketbook, Brigadier, or diary? Diary, I 11 mean. 12 BRIGADIER CALITZ: Dit is my dagboek, dit 13 is korrek. Die inskrywing van die 13de en dan – 14 MR GUMBI: Yes, it's written there duty 15 on and duty off. Do you see that? 16 BRIGADIER CALITZ: Dit is korrek, ek het 17 6 uur die oggend aan diens en 3 uur daardie volgende oggend 18 van diens af gegaan. 19 MR GUMBI: Yes, when one analyses your 20 diary and when you compare it with other police officers 21 that were involved during the operation of the 13th there, 22 you will see that what transpired on that day, your diary 23 is blank. It doesn't reflect what transpired on that day. 24 So can you give us an explanation, Brigadier, as to why you 25 didn't record your activities on the 13th of August 2012?</p>	<p style="text-align: right;">Page 21076</p> <p>1 dit was nie vir my moontlik gewees om elke uur daardie 2 inskrywings te maak nie. 3 MR GUMBI: But is it possible to complete 4 your diary even after the incident? Is it practically 5 possible to do that in terms of SAPS policy? 6 BRIGADIER CALITZ: Dit is prakties 7 moontlik. Ek weet net nie of dit korrek sal wees want dit 8 sal wees met "benefit" van weereens "hindsight," goed wat 9 na die tyd gebeur het. Dit was maklik gewees vir my om 10 "exhibit" L te vat en die verklaring en die VB en my 11 dagboek te gaan opskryf na die tyd, maar ek dink nie dit 12 sou 'n ware – nie kan sê nie ware gebeure nie, maar soos ek 13 dit op daardie stadium ontvang het nie. Dit sou uit ander 14 materiaal uit dan gekom het as ek dit na die tyd opgeskryf 15 het, of soos ek dit na die tyd dan in my gedagte het. So 16 nee, dit is hoekom ek dit nie gedoen het nie. 17 MR GUMBI: Thank you very much, 18 Brigadier. As an operational commander are you aware 19 whether is there any internal inquiry within the SAPS 20 probing the circumstances surrounding the death of the 21 police officers who were involved there on the 13th near the 22 railway line? 23 BRIGADIER CALITZ: Ek kan u ongelukkig 24 nie daarmee help en sê – ek glo miskien die Kommissaris sal 25 vir u kan sê of daar 'n ondersoek is intern in daardie</p>
<p style="text-align: right;">Page 21075</p> <p>1 BRIGADIER CALITZ: Mnr die Voorsitter, 2 hoe dit werk gewoonlik, jy het jou dagboek by jou of jou 3 sakboek en dan soos die dinge gebeur deur die dag, so 4 notuleer mens. "Either" uurliks of soos die opdragte kom, 5 so skryf jy die dagboek op. Ek moet vir u sê as u gaan kyk 6 na my dagboek van jare toet af tot nou toe, ek skryf my 7 dagboek baie, baie volledig op, omtrent elke uur vir uur, 8 maar vanaf die 11de tot en met die 24ste het ek net 'n 9 diens aan, diens van, so my dagboek is heeltemal "blank" in 10 daardie week. Die – 11 CHAIRPERSON: When you speak about the 12 11th onwards you're referring to the 11th of August 2012? 13 BRIGADIER CALITZ: Dit is korrek, ja. Ek 14 praat van die tydperk van die Marikana wat ek "deploy" was. 15 Dit is die enigste tydperk in my dagboek wat heeltemal 16 skoon is. Enigste rede wat ek daarvoor het is dat ek het 17 omtrent een en 'n half uur na twee ure slaap gehad per dag, 18 per nag, so ons is vroeg die oggend uit, ons is besig 19 gewees met takings, dan is ek in die veld. As ons terugkom 20 was ons met die lede betrokke tot omtrent elke, u kan my 21 dagboek deurgaans, 3 uur, half 4 die oggende. So vir 22 daardie week het ons minimum slaap gehad. So miskien was 23 dit nalatig gewees aan daardie kant, maar ek vind dat ek 24 het op daardie stadium net nie dagboek bygehou van elke 25 dingetjie wat gebeur het nie, nee. Laat ek dit so sê net,</p>	<p style="text-align: right;">Page 21077</p> <p>1 geval. Ek is nie bewus van dit op hierdie stadium nie. 2 CHAIRPERSON: Is it normally the practice 3 when a member of the police service dies on duty, is killed 4 on duty – never mind dies, is killed on duty, in the course 5 of performing his or her duties as a member of the service, 6 is it the practice to have an internal inquiry? 7 BRIGADIER CALITZ: Mnr die Voorsitter, 8 daar is 'n kriminele saak wat oopgemaak word, maar sou daar 9 enige beweringe wees in enige geval dat iemand 10 verantwoordelik daarvoor is of so, dan sal dit wel lei tot 11 'n interdepartementele ondersoek. 12 CHAIRPERSON: So if there was an internal 13 departmental investigation into the death of the member of 14 the service for whose family Mr Gumbi is appearing, that's 15 something that the Provincial Commissioner would know 16 about, although you don't? 17 BRIGADIER CALITZ: Ek glo sy sal wees, 18 mnr die Voorsitter, ja. Ek dra nie kennis nie. 19 MR GUMBI: Lastly, Brigadier, exhibit L 20 was presented before this Commission explaining what 21 transpired before the death of the late Warrant Officer 22 Lepaaku and injury of Lieutenant Baloyi. So the final 23 product of this document, exhibit L, did you participate 24 when it was finalised, or during the compilation of it? 25 BRIGADIER CALITZ: Ek was teenwoordig</p>

Page 21078

1 gewees, by Roots gewees terwyl dit opgestel was, die
 2 "drafts" tot met die finale produk, dit is korrek.
 3 MR GUMBI: Do you know, are you aware
 4 that the allegation, this allegation that certain members
 5 fired without instruction, do you know whether, why it was
 6 not included in this document?
 7 BRIGADIER CALITZ: Nee, ek kan nie vir u
 8 sê waarom dit nie ingesluit is in die dokument nie. Ek sê
 9 dit was wel by Roots bespreek en ek het verstaan in die
 10 Generaal se getuienis het hy ook daarvoor getuig, sy
 11 weergawe, of sy getuienis daarvoor gegee, maar ek kan nie
 12 vir u sê waarom dit nie ingesluit is as daar 'n dispuut was
 13 nie.
 14 MR GUMBI: General Mpembe, do you know
 15 whether he participated during the compilation of this
 16 document, final product?
 17 BRIGADIER CALITZ: Generaal Mpembe was
 18 wel teenwoordig gewees ook by Roots. Ek sal nie sê al die
 19 dae nie. Die generale is ook getaak met ander belangrike
 20 sake, maar hy was wel teenwoordig gewees met die
 21 groepbespreking rondom die opdrag wat gegee is of nie gegee
 22 is nie.
 23 MR GUMBI: Thank you very much,
 24 Chairperson, and the Commissioners. No further cross-
 25 examination.

Page 21079

1 CHAIRPERSON: Thank you, Mr Gumbi. Mr
 2 Gotz is not here, but the position is that we're going to
 3 take the lunch adjournment now until 2 o'clock. That gives
 4 you an opportunity, Brigadier, and your counsel, to study
 5 the report which was made available to you during the
 6 course of the sitting this morning, and if at 2 o'clock
 7 you're still not ready to deal with the matter you'll let
 8 me know, but if you don't we will start again at 2 o'clock.
 9 Mr Semenya, I don't think you heard that. Let me repeat
 10 it.
 11 MR SEMENYA SC: I did hear that.
 12 CHAIRPERSON: Sorry? We're adjourning
 13 now till 2 o'clock. That gives you and the Brigadier
 14 chance to study these reports that you were given and he
 15 was given. If you're not ready to proceed at 2 o'clock,
 16 please let me know, otherwise we'll start again at 2
 17 o'clock or as soon thereafter as we can.
 18 MR SEMENYA SC: We'll do so, Chair.
 19 CHAIRPERSON: We will now adjourn for
 20 lunch.
 21 [COMMISSION ADJOURNS COMMISSION RESUMES]
 22 [14:23] CHAIRPERSON: The Commission resumes. I
 23 understand, Mr Semenya and Brigadier, that you've now had
 24 an opportunity to study the report, and you won't be
 25 disadvantaged – you won't be at a disadvantage if you're

Page 21080

1 questioned about it by Mr Gotz. Mr Gotz.
 2 BRIGADIER CALITZ: Dankie, mnr die
 3 Voorsitter –
 4 CHAIRPERSON: You're still under oath,
 5 Brigadier.
 6 BRIGADIER CALITZ: Dankie, Mnr die
 7 Voorsitter.
 8 MR GOTZ: Thank you, Commissioners, and,
 9 Brigadier, can we set the backdrop, as it were, to my final
 10 piece of cross-examination by playing a small portion of
 11 one of the video clips? It's JJJ194.16, and if we can
 12 commence that at 25 seconds?
 13 CHAIRPERSON: Are there any warnings
 14 required?
 15 MR GOTZ: Not in this piece, Chair.
 16 CHAIRPERSON: Sorry?
 17 MR GOTZ: Not in this piece, Chair.
 18 CHAIRPERSON: Not in this piece.
 19 [VIDEO SHOWN]
 20 MR GOTZ: Can we stop there?
 21 CHAIRPERSON: Stopping at 39.
 22 MR GOTZ: 39. Brigadier, what you've
 23 seen up until that point is the formation of a basic line
 24 by the TRT. You've been cross-examined by Mr Mpfu on
 25 those issues. So the TRT basic line has essentially formed

Page 21081

1 at this moment and it's behind the road. Can I ask you to
 2 look at the centre of the screen, you'll see Nyala 6, and
 3 what you'll see also is a group of POPS members to the
 4 right of that – to the right of Nyala 6. They essentially,
 5 Brigadier, they're essentially hiding behind Nyala 6 and
 6 moving with Nyala 6 as Nyala 6 moves up. Brigadier –
 7 CHAIRPERSON: Do you agree with that?
 8 BRIGADIER CALITZ: Ek sal die video volg,
 9 mnr die Voorsitter, ek sien op hierdie stadium –
 10 CHAIRPERSON: What counsel put to you
 11 that on the screen, in the middle of the screen, we see
 12 Nyala 6, it's still got its trailer of wire at the back,
 13 the wire not having been uncoiled, and to the right of this
 14 Nyala there's a group of POP members, and he suggests that
 15 they are walking along in such a way that they are hidden
 16 by the Nyalas. In other words, people, I take it, on the
 17 other side of the Nyala. You won't be able to see them,
 18 because the Nyala is in their line of sight. Is that the
 19 point you're making, Mr Gotz?
 20 MR GOTZ: Yes, exactly. We can take it
 21 back a bit and show beyond that point as well, Brigadier,
 22 if it's helpful. So let's play it from here. Keep your
 23 eye on the Nyala with the barbed wire.
 24 [VIDEO SHOWN]
 25 MR GOTZ: And we can stop there. Can we

<p style="text-align: right;">Page 21082</p> <p>1 go back to 39 seconds or even 38 would be – do you agree 2 with me that essentially the POP members to the right of 3 the Nyala are hiding, as it were, behind the barbed wire 4 Nyala? 5 BRIGADIER CALITZ: Ek sal - nie wegkruip 6 daar nie, nee, ek sal sê hulle beweeg onder beskerming van 7 daardie voertuig voorentoe, vir daardie breukdeel van 'n 8 sekonde, en dan wat ons dan sien net hierna is dat Nyala 6 9 vorentoe ry. Ek kan nie daarna sien waar daardie lede dan 10 is nie. 11 MR GOTZ: Well, Brigadier, if it was 12 simply, as you put it, under the protection of, wouldn't 13 you expect to see some of those members on the left-hand 14 side of the Nyala? The point is that they are all on the 15 right-hand side of the Nyala and therefore obscured from 16 sight by the strikers, correct? 17 BRIGADIER CALITZ: Mnr die Voorsitter, 18 dit is wat ek vir u sê in hierdie breukdeel van 'n sekonde 19 of 'n sekonde of twee, maar definitief nie vir die hele tyd 20 nie. Nyala 6 het vorentoe beweeg. Ons kan kyk na die 21 verdere beeldmateriaal om te sien of hulle die heel tyd 22 agter daai kar is, maar op hierdie stadium, vir daardie 23 sekonde of twee, was hulle agter daardie voertuig. Dit is 24 korrek. 25 CHAIRPERSON: Mr Gotz, I've got a problem</p>	<p style="text-align: right;">Page 21084</p> <p>1 themselves, they could as easily have protected themselves 2 on the left, doesn't make sense, if the persons against 3 whom they are potentially seeking to protect themselves, 4 are further to the left. So that's my problem with the 5 question you asked. 6 MR GOTZ: Perhaps I can ask the 7 Brigadier, when you say they're moving under the protection 8 of the Nyala, I had understood that simply to mean in close 9 proximity to the Nyala, so that if they needed to get into 10 the Nyala in a hurry, they could do so. It didn't mean 11 that the Nyala was effectively shielding them from an 12 onslaught, as it were, or am I incorrect? 13 BRIGADIER CALITZ: Nee, jy is glad nie 14 reg nie, Mnr Gotz. Operasioneel sal ons daardie taktiese 15 beweging onder beskerming van 'n Nyala voertuig, of dan 'n 16 pantser voertuig, presies soos wat mnr die Voorsitter dit 17 nou net vir u verduidelik het. Dit is operasioneel. 18 Onthou ten tye van hierdie video, weet ons dat daar was 19 klaar opgetree, wat ons verwys na, waar Nyala 4 toegemaak 20 het, insident 2. So op hierdie stadium, is die lede baie 21 bewus van daar is reeds 'n non-lethal force gebruik gewees, 22 daar is reeds aksie en hulle kan definitief sien daar's 23 persone wat dan in daardie rigting om kom en om beweeg, so 24 in daardie geval is, dan sal die lede onder taktiese 25 beskerming van 'n voertuig of van 'n pantser voertuig, soos</p>
<p style="text-align: right;">Page 21083</p> <p>1 with the question you've asked. You suggest that they were 2 hiding. Well, let's not decide what the – go into the 3 question what their intention was, the effect of their 4 being were they are on this clip, which we see at 39 5 seconds, is they certainly would have been not capable of 6 being seen by people to the left of Nyala, because the 7 Nyala would have blocked the line of sight of those people. 8 Whether the POP people were deliberately taking advantage 9 of that and hiding, or whether they were there for another 10 reason, we don't have to go into at the moment. The 11 problem I've got with your question is, you suggest, if 12 they were in hiding, they would also be on the left side, 13 but of course if they're on the left-hand side, and the 14 people that we are concerned about are people who would 15 have not been able to see them on the right-hand side, 16 because the Nyala would be in the way, then they certainly 17 wouldn't be protected against the potential people to see 18 them, if they had been on the left-hand side, because if 19 the - the people we're talking about are strikers - if they 20 are on left-hand side of the Nyala, and the POP people want 21 to be protected from in case they've got firearms or 22 something, so the Nyala would protect them against fire. 23 Then it's not going to help them to be on the left-hand 24 side, because then the Nyala will no longer protect them. 25 So your question was, even if they were protecting</p>	<p style="text-align: right;">Page 21085</p> <p>1 in hierdie geval, nader beweeg. Dit is net goeie opleiding 2 en goeie uitvoering. 3 MR GOTZ: Then I must be correct on that, 4 but in any event, you would agree with the chairperson that 5 in effect they are hidden from sight from the strikers in 6 their position? 7 BRIGADIER CALITZ: Mnr die Voorsitter, as 8 jy vir my tyd kan gee wat hierdie – ek dink op hierdie 9 stadium toe hierdie sekonde waar ons nou stop, as ons gaan 10 na die foto verwysing, is die persone nog nie om die kraal 11 nie. So ek dink nie hidden from sight gaan die regte 12 stelling wees nie, nee, want die persone, ek dink is 13 getuig, dat hulle was nog nie om die kraal op hierdie 14 stadium gewees nie. Tensy jy vir my sê hulle is om die 15 kraal, wat ek nie kan sien op hierdie insetstel nie. 16 MR GOTZ: Brigadier, they're indeed not – 17 they haven't rounded the corner of the kraal at that point, 18 but as the Nyala moves, as you'll see now in the video, as 19 the Nyala 6 moves up, they come into sight of the strikers. 20 In other words, the strikers can see Nyala 6. 21 BRIGADIER CALITZ: Dit is hoekom ek vir u 22 sê, ons kan kyk as die video aangaan, as die strikers om 23 kom en hulle is nog steeds aan daardie kant van Nyala 6, 24 dan sal ek saam met u kan stem dat hulle die Nyala gebruik 25 het as beskerming en dat die strikers hulle nie kon sien</p>

Page 21086

1 nie, as dit u stelling is, maar op hierdie stadium, nee,
 2 glad nie. Op hierdie stadium sal die strikers in die kraal
 3 vas gekyk het, so –
 4 MR GOTZ: The lone officer that you see
 5 to the left of Nyala 6 is Warrant Officer Kuhn, correct?
 6 BRIGADIER CALITZ: Dit is Adjutant
 7 Offisier Kuhn.
 8 MR GOTZ: Spelt K-U-H-N?
 9 BRIGADIER CALITZ: K-H-U-N.
 10 MR GOTZ: K-U-H-N.
 11 CHAIRPERSON: It's fine, it's K-U-H-N,
 12 actually.
 13 BRIGADIER CALITZ: He just pronounced
 14 Kuhn not Koen, not K-O-E-N, for the record.
 15 CHAIRPERSON: Ja, but it's spelt K-U-H-N.
 16 You said K-H-U-N, it's –
 17 BRIGADIER CALITZ: Okay, no, no, sorry,
 18 sorry.
 19 CHAIRPERSON: No, I understand. Mr Gotz
 20 did pronounce it differently, but you've corrected him.
 21 MR GOTZ: Brigadier, I'd like your
 22 comment on this. Warrant Officer Kuhn, as you pronounce
 23 it, and I may be mispronouncing it now, is approximately 10
 24 metres in front of the TRT basic line. He does not move
 25 from that position until 3 seconds before the TRT opens

Page 21087

1 fire, at which point he backs up slightly and opens fire.
 2 Why –
 3 CHAIRPERSON: Is that correct? I must
 4 confess I thought, but we'll see if I'm right or wrong, my
 5 impression is he fired first and they fired afterwards, but
 6 anyway let's look at the video and see whether you were
 7 right or I'm right.
 8 MR GOTZ: Ja, I don't necessarily want to
 9 focus on the second part of my proposition, what I'm
 10 focussing on is the fact that Warrant Officer Kuhn is
 11 standing in that position. He doesn't in fact move from
 12 that position for what is effectively a full minute after
 13 this shot.
 14 CHAIRPERSON: - see the video, then we'll
 15 see the video to see if that is correct. I've got a
 16 feeling your proposition is correct, but anyway let's see
 17 what the video show.
 18 MR GOTZ: Chairperson, I'm hesitant to
 19 break it at this point, so can we – I'm willing to show the
 20 video. It will need to be shown, subject obviously to a
 21 warning -
 22 CHAIRPERSON: It's your cross-
 23 examination, as long as the cross-examination is fair for
 24 the witness so he can follow it, you do it the way you want
 25 to do it. I can't dictate to you how to cross-examine.

Page 21088

1 MR GOTZ: Can you also see, Brigadier,
 2 that to the left of the officer's head, you'll see Papa11
 3 driving around the tree, and the STF Casspir, as it were,
 4 moving into position. Would you agree with that?
 5 BRIGADIER CALITZ: Ja, op hierdie slide
 6 kan ons nie sien of dit Papa11 is nie, maar ek vertrou so.
 7 As ons na die fotos toe gaan en die bewysstukke, ek sal u
 8 woord aanvaar daar voor.
 9 MR GOTZ: It is at this moment in front
 10 of the STF Casspir, slightly ahead of it. You'd agree with
 11 me that is by that reason alone likely to be Papa11?
 12 BRIGADIER CALITZ: Dit is my vorige
 13 antwoord vir u gewees, dit is korrek.
 14 MR GOTZ: Now, just so that we get our
 15 timing correct, this moment in the clip is eTV time
 16 15:52:52, which means that it's almost a full minute, in
 17 fact to be exact, 58 seconds before the TRT opens fire.
 18 Brigadier, you'll agree with me that at this moment in
 19 time, 58 seconds, there is no semblance of any order in the
 20 positioning of the Nyalas?
 21 BRIGADIER CALITZ: As u net die vraag kan
 22 vir my duidelik stel, wat –
 23 MR GOTZ: There's no order or form in the
 24 positioning of the Nyalas. They're spread about, it looks
 25 rather chaotic, correct?

Page 21089

1 BRIGADIER CALITZ: Nee, ek sal glad nie
 2 saam met u stem met die woorde chaoties nie. Die voertuie
 3 is nog in op beweging, met ander woorde, na insident 2 en
 4 dat hulle gesien het die aksie wat hulle daar uitgevoer het
 5 was onsuksesvol, die groter groep het om beweeg om die
 6 kraal aan die agterkant en hierdie voertuie is dan op pad
 7 soontoe om te kyk of hulle, hulle daar kan verder
 8 uiteendryf en dan so te stop.
 9 MR GOTZ: They're not in any formation at
 10 this point in time, correct?
 11 BRIGADIER CALITZ: Mnr die Voorsitter,
 12 nee, dit is ook nie die opdrag gewees dat hulle in enige
 13 formasie moet wees nie. Soos ek vir u sê, dit is voertuie
 14 wat nog in die op beweeg is om, om die kraal te beweeg.
 15 Dit is die enigste uitgang is aan die linkerkant van die
 16 kraal, aan die regterkant waar jy daai klip sien uitsteek,
 17 waar die sinkhuisie was. So dis die enigste uitgang en dis
 18 waar die voertuie nou op beweeg het.
 19 MR GOTZ: But, Brigadier, is that
 20 agreement with my proposition? They're not in any
 21 formation at this point. As a matter of fact, they're not
 22 in formation.
 23 BRIGADIER CALITZ: Ek kan met u stry. Ek
 24 kan vir sê die formasie is, hulle ry agter mekaar. Hulle
 25 is besig met 'n opvolg van 'n dispersion action. So ek

Page 21090

1 weet nie van watse formasie praat u nie.

2 MR GOTZ: Well, perhaps we can compare

3 this to the formation that they ultimately end up in, one

4 minute later, which you have described as a perfect block.

5 I would describe that as a formation.

6 BRIGADIER CALITZ: Dit is presies wat ek

7 vir u sê, hulle is nou in op beweging in opvolg van 'n

8 uiteendryfaksie. Met ander woorde, die voertuie is nog op

9 pad soontoe. U kan sekerlik nie verwag hulle moet op die

10 oomblik by insident 2 wees en dan met die klap van 'n

11 vinger alreeds op 'n ander plek wees nie. Hulle moet tog

12 soontoe beweeg.

13 MR GOTZ: But the point is that within

14 one minute, they move from this position, where there

15 doesn't appear to me to be any formation, into the perfect

16 block – those are your words, “the perfect block” at the

17 time of the TRT shooting.

18 BRIGADIER CALITZ: Mnr Gotz, ons is weer

19 terug waar ons gister was, met die woorde van perfect

20 block. Ek het vir mnr die Voorsitter verduidelik, en ek

21 dink dis Advokaat Chaskalson, ons is oor en oor, oor

22 dieselfde punt. Waarna ek verwys het, die perfect block,

23 was toe die groepering aangekom het, en dink dis op die

24 Kolonel Vermaak foto op die 45 angle, wat hulle voor hulle

25 sou gesien het en ek dink dit is die deel in die

Page 21091

1 transkripsie waarna ons verwys het wat hulle sou gesien

2 het, en dit het ek gesê daar was 'n groepering wat hulle

3 sou gestop het van openbare orde polisiëring. Ons kan

4 daarnatoe gaan. Ons was al oor en oor op dieselfde punt

5 gewees.

6 MR GOTZ: I don't want to have to go and

7 debate something that Mr Chaskalson has established, but

8 just to give you the reference, it's day 160 at 18270,

9 lines 6 to 7. Brigadier, just to remind you, you and Mr

10 Chaskalson were debating – discussing whether or not a

11 block formation could be established where you presently

12 see Papa11, and you'll remember that there was a debate

13 about whether you drew the line, or whether you had drawn

14 the red line there, etcetera, etcetera. I don't want to

15 traverse that. And in the context of that discussion, you

16 describe the formation of the Nyalas at the time of the TRT

17 shooting as the perfect block, and you do so at line 6 to 7

18 of 18270. Brigadier, let's continue to play this video.

19 There's another point that I want to make just at

20 approximately a minute –

21 CHAIRPERSON: Can I ask you a question?

22 You may have said already, and I've forgotten. We see the

23 front portion of another Nyala on the right-hand side, what

24 Nyala was that.

25 MR GOTZ: That says Nyala Papa1.

Page 21092

1 CHAIRPERSON: That's Nyala 1?

2 MR GOTZ: It's Papa1, and Brigadier

3 Calitz' Nyala. Would you confirm that, Brigadier?

4 BRIGADIER CALITZ: Dit is korrek, ja, ek

5 dink dit is my voertuig wat daar beweeg. Ons sal sien as

6 die video aan gaan, as hy regs om Nyala 6 gaan is dit my

7 voertuig.

8 MR GOTZ: So let's continue to play and

9 stop around 1 minute, 20 seconds.

10 [VIDEO SHOWN]

11 MR GOTZ: Stop there. Well, I was hoping

12 that you would be able to get the license plate, but that

13 is –

14 CHAIRPERSON: Are we going to get to

15 point where it's necessary for me to give a warning, in

16 which case –

17 MR GOTZ: No, not in this clip, Chair.

18 That is your Nyala, correct?

19 BRIGADIER CALITZ: Mnr die Voorsitter,

20 ja, ek dink daar is al seker vier keer hieroor getuig, oor

21 die nommerplaat, so laat ons maar weer daaroor gaan. Dit

22 is korrek, Mnr die Voorsitter, maar die getuienis is op

23 rekord, al hoeveel keer.

24 MR GOTZ: Yes, it was the chairperson who

25 asked the question.

Page 21093

1 CHAIRPERSON: It's my fault. Don't shunt

2 him, it was my fault. I wasn't sure whether it was your

3 Nyala, and I just wanted confirmation.

4 BRIGADIER CALITZ: Dan is ek jammer, Mnr

5 die Voorsitter, ekskuus, ek het in my transcript lêers

6 geblaai, so ek het nie gevolg nie. Ek is jammer dan.

7 [14:43] MR GOTZ: Well lets continue to play.

8 [VIDEO SHOWN]

9 MR GOTZ: Now, Brigadier, lets stop the

10 video here. This is one minute, one second, Brigadier,

11 that Etv time 15:53:18 you can see at that point that the

12 strikers are still, the strikers are visible on the left

13 hand side of the screen, just to the left of the Casspir.

14 Will you confirm that?

15 BRIGADIER CALITZ: Ekskuus, ek wil net in

16 die dokument, op die fotos wat u vir my gesê het om deur te

17 gaan, so 15:53:13 sien ek u het aangedui op die fotos dat

18 daardie persoon op die linkerkant wel strikers is.

19 MR GOTZ: Now, Brigadier, let's just play

20 for a couple of seconds on.

21 BRIGADIER CALITZ: Sê u hulle is reeds om

22 die hoek van die kraal hier of -

23 MR GOTZ: No, I didn't say that

24 Brigadier, I just wanted you to note the position.

25 BRIGADIER CALITZ: Nee, ek vra.

Page 21094

1 MR GOTZ: I just wanted you to note the
2 position and then lets continue to play for two or three
3 seconds.
4 [VIDEO SHOWN]
5 MR GOTZ: Okay, you can stop there. You
6 can see that the strike -
7 CHAIRPERSON CALITZ: One minute and four
8 seconds?
9 MR GOTZ: One minute and four seconds.
10 Brigadier, you will confirm that the strikers have at that
11 point not yet reached the corner of the kraal?
12 BRIGADIER CALITZ: Dit was uit die hoek
13 van waaruit hy geskiet is wat ek vir u vir u gevra of u
14 weet die presiese tyd, as hulle nie die hoek van die kraal
15 bereik het op hierdie stadium nie, volgens u en dit is u
16 video, kom dit terug na die vorige vraag toe waarom mnr
17 die Voorsitter gevra het, die Vermaak foto 29 sekondes voor
18 hulle om die kraal gekom het, en op daardie stadium as u
19 kan reg onthou was dit gesê dit was baie moeilik vir hom
20 om, om te draai. Ek dink u het die woorde gebruik daar is
21 'n groot groep agter hulle ensovoorts. As ek, mnr die
22 Voorsitter, miskien net kan terugvat en dan verwys nou
23 hier, dit is u eie beeld materiaal. U kan sien dit sal
24 glad nie moeilik wees vir hierdie groepie, as daardie
25 voorste groep besluit het om, om te draai en selfs die

Page 21095

1 leier elemente, u sou nie eers oor mekaar geval het nie en
2 hulle sou kompleet net gaan sit het waar hulle is of
3 omgedraai het en weggehoop het, maar dankie vir die clip
4 dit help met die vorige antwoord.
5 MR GOTZ: Well, Brigadier, I disagree
6 with you fundamentally, they can't turn right, because if
7 they were to turn right they would be heading towards Nyala
8 4, and Nyala 4 we know has at this point being firing
9 rubber bullets at them. They can't turn left because there
10 is a fence there, it's not particularly clear from this
11 video but there is a fence there. So I don't agree with
12 your proposition that the lead group can simply turn
13 around.
14 CHAIRPERSON: I'm sorry, I'm sorry, Mr
15 Gotz. Is that correct, if we look at the photographs that
16 you have of ETV time 15:53:13, where would they have been,
17 because the difficulty if this, the actual photograph is
18 taken, on which you have superimposed the positions of the
19 vehicles is taken after the shooting, though we see the
20 bodies lying there. But where would the strikers have been
21 on this photograph 15:53:13?
22 MR GOTZ: Chair, are you now referring to
23 Exhibit KKK52? Perhaps we can have it up on screen so that
24 everybody, ja. So can we go to slide 2?
25 CHAIRPERSON: Now where would they have

Page 21096

1 been? They are the cloud, are they?
2 MR GOTZ: Yes, indeed. So what, at
3 15:53:13 which is measured by the ETV time, what we have
4 estimated on the basis of the video material is that the
5 strikers would have been in the position of the blue cloud,
6 at that point.
7 CHAIRPERSON: So you say they couldn't
8 have gone right because they would then have come close to
9 Nyala 4, which were firing rubber balls at them, do I
10 understand you to say that?
11 MR GOTZ: Well the one proposition is
12 that turning right would bring them into contact again with
13 the people in Nyala 4, and they can't turn left because of
14 the fence at that point in time. Would you agree with
15 that?
16 BRIGADIER CALITZ: Mnr die Voorsitter, as
17 dit, ekskuus laat mnr die Voorsitter net klaarmaak. Net in
18 antwoord op u vraag, as dit die enigste twee rigtings is
19 wat vir u duidelik is regs en links, dan kan u dalk net
20 verwys daar is iets soos stop en daar is iets soos omdraai
21 en agter toe.
22 MR GOTZ: Yes, but we have debated that,
23 Brigadier.
24 BRIGADIER CALITZ: So as, nee asseblief
25 ek is nog besig. So as ons nou na die video gekyk het sou

Page 21097

1 u gesien het dat die persone baie stadig beweeg uit u eie
2 footage wat u nou vir my gewys het. So dit is baie, baie
3 moontlik, hierdie, dit is waarnatoe ek wou gekom het,
4 15:53:13 die Vermaak foto wat ons na verwys het was 21, so
5 dit gee 'n verdere 8 of 9 sekondes voor hulle by daardie
6 stadium gekom het waar, mnr die Voorsitter, die vraag gevra
7 het. Selfs op hierdie vroeër stadium waarna u nou verwys,
8 het u reeds gewys in watse formasie die mense stap en hoe
9 versprei hulle was en dat daar glad nie 'n druk op die
10 voorste groep was soos u beweer het dat hulle nie kon
11 omdraai nie. So des te meer sê ek vir u hulle kon links
12 gedraai het, daardie draad ek was self daardie dag teen
13 daardie draad, dit bestaan uit 'n drie lyn draad uit, nie
14 'n lemmetjiesdraad barbed wire, soos wat die polisie
15 gebruik, wat ondeurdringbaar is nie. As jy gaan kyk na lug
16 fotos is daar baie van die persone wat wel deur daardie
17 drade na Nkaneng toe is, so my vraag is hoe het daardie
18 persone dan daardeur gekom. Dit is net die voorste punt
19 van hierdie groep, die militante groep wat besluit het ons
20 gaan aanval en ons gaan aanval en ons gaan nie gehoor gee
21 aan die uiteendrywing van die polisie nie. As hulle regs
22 gedraai het en hulle het wegbeweeg van Papa4 af sou daar
23 geen konfrontasie verder gewees het nie want Papa4 sal net
24 op hulle gereageer het sou hulle na die polisie lyn toe
25 kom. Sodra hulle omdraai en wegbeweeg het sou daar net 'n

<p style="text-align: right;">Page 21098</p> <p>1 opvolg aksie gewees het sonder enige non-lethal force. 2 MR GOTZ: Brigadier, the one point in 3 response to that is that this is some seven or eight 4 seconds before the photograph that we were looking at, 5 which was Vermaak Blackberry photograph, and they are at 6 that point quite close, a lot closer to the corner of the 7 kraal. The second point of course is that at this point in 8 time, the lead group of strikers is simply seeing the 9 Casspir moving into position. That's the central focus. 10 They can't in fact see the TRT line. I think you have 11 conceded that, and I would suggest to you that they are 12 certainly not seeing, they may be able to see Papa2 but 13 they certainly can't see Papa4, Papa5, Papa19 or Nyala 5, 14 and a lot of those other vehicles your Papa as well as the 15 two to the left or above the SGF Casspir are probably quite 16 out of sight as well. 17 BRIGADIER CALITZ: Mnr die Voorsitter, al 18 wat sê ek hoor u het voorheen ook gesê hulle het drie 19 sekondes voor hulle die TRT gesien het. Dit is, ons sal 20 later daar bykom. Wat ek vir u sê op hierdie foto waar jy 21 hulle hier kan sien, Papa11, Papa7, Papa18, die Casspir, 22 die ander Casspir, Nyala 6 daar is verskeie polisievoertuie 23 wat sigbaar is, en wat u bly uit die oog uit verloor is dat 24 ek vir u sê reeds by Nyala 4 is daar opgetree teen hulle. 25 Hier op hierdie stadium was daar stun granate gegooi, die</p>	<p style="text-align: right;">Page 21100</p> <p>1 CHAIRPERSON: They had only formed up 2 relatively recently hadn't it? 3 BRIGADIER CALITZ: Heeltemal korrek, mnr 4 die Voorsitter. 5 CHAIRPERSON: So they wouldn't have, they 6 had no reason to know that as they were coming in the 7 position we see them on this slide, to know that the TRT 8 line was where it was. They didn't, they had no reason to 9 know that there was a line formed there, is that right? 10 BRIGADIER CALITZ: Nee, nee dit is nie 11 waarteen ek sry nie, mnr die Voorsitter. Ek sê nee dit 12 gaan oor die TRT lyn nie, ek sê dit gaan oor die 13 polisielyn. 14 CHAIRPERSON: No, no I'm eliminating the 15 TRT line first because they didn't know it was there. 16 BRIGADIER CALITZ: Ek stem saam met u 17 daar. 18 CHAIRPERSON: Now as far as I can recall 19 the evidence is that the POP people, with the exception of 20 Kuhn, were on the side there between the Nyala is that 21 right? 22 BRIGADIER CALITZ: Dit is korrek, mnr die 23 Voorsitter. 24 CHAIRPERSON: Now did the, as the 25 strikers came past, did they attack the POP people as they</p>
<p style="text-align: right;">Page 21099</p> <p>1 rubber rondtes wat op hulle gevuur is en dit is wat ek vir 2 u sê is dat die lede, indien u uiteengedryf word, dan val u 3 nie 'n polisielyn aan nie. Jy gee gehoor uit die 4 uiteendrywing, u draai om en beweeg in 'n teenoorgestelde 5 rigting. Daar is nie iets soos jy verdedig jouself teen 'n 6 regmatige uiteendrywing nie. Daar bestaan nie so iets nie, 7 of jy besluit om daardeur te gaan nie. As die pad geblok 8 is end ie verkeer pak daar normaalweg cones en hulle sê u 9 kan nie daardeur ry nie, dan gaan jy nie met jou voertuig 10 daardeur omdat jy wil jou huis is daai kant nie, u volg die 11 ompad. Dieselfde hier, die persone is uiteengedryf en dit 12 is waaraan hulle gehoor moes gegee het. So die blote feit 13 dat u sê hulle kan nie die TRT lyn sien nie, beteken die 14 openbare orde polisiëring en die ander polisievoertuie, is 15 dit nie dieselfde polisie diens nie. Dit is polisie lede wat 16 besig is om op te tree teen hulle. So ek kan nie die 17 verskoning sien hoekom hulle die TRT lyn moes sien nie 18 voordat hulle retreat het nie. 19 CHAIRPERSON: Whom do you say were the 20 strikers going to attack? 21 BRIGADIER CALITZ: Op hierdie stadium die 22 polisielyn, mnr die Voorsitter. 23 CHAIRPERSON: Well they couldn't see the 24 TRT line there. 25 BRIGADIER CALITZ: Korrek.</p>	<p style="text-align: right;">Page 21101</p> <p>1 were standing between the Nyalas? 2 BRIGADIER CALITZ: Mnr die Voorsitter, ek 3 dink hulle was ge, kan ek sê onder dekking gewees agter 4 die, u sal sien as die video gespeel word, ek glo ons gaan 5 na daardie video toe, dat daar waar die lede op hulle 6 gevuur het, het hulle net aan daardie kant verbybeweeg. 7 Hulle het nie tussen die Nyalas deurgekom nie, maar daar 8 was wel 'n aksie gewees op Papa11 waar hulle begin het 9 aanvanklik waar daardie lede nie buitekant die voertuig was 10 nie maar binne in die voertuig. So dieselfde sou gebeur 11 het, as ons 'n linie met openbare polisiëring en die lede 12 het nie tactically retreat soos ons daarna verwys nie, sou 13 daar definitief 'n aanval gewees het, as hulle die linie 14 van openbare orde gehou het. 15 CHAIRPERSON: Well you know when you're 16 in the area of what would have happened, it's not quite as 17 objectively clear as some of the other things that did 18 happen. Now if there were POP people standing on the 19 ground between the STF Casspir and the other Casspir, and 20 the Casspir, what I call the other Casspir, and Papa2 and 21 others between Papa2 and Papa4, they would have been 22 attacked by the strikers if they were minded to attack a 23 police line because that would have been the only police 24 line that they would have been aware of, is that right? 25 BRIGADIER CALITZ: Al wat ek vir u kan sê</p>

<p style="text-align: right;">Page 21102</p> <p>1 is dat die, al waaroor openbare polisiëring wel aangeval 2 was, was waar Nyala 4 toegemaak het waar Papa 5 getuig het 3 daar was op hulle gevuur. Asook wat ons kan sien op die 4 video omtrent tussen Casspir 2 en Papa2 op die openbare 5 orde polisiëringlid wat buite op die grond gestaan het 6 waar die striker dan wel op hom geskiet het met die 7 vuurwapen. 8 CHAIRPERSON: Okay, so your answer is 9 that there was an attack on the police line, as you have 10 described the police line between these vehicles we have 11 discussed. 12 BRIGADIER CALITZ: Dit is die skietery 13 waarna ek verwys definitief, mnr die Voorsitter. 14 CHAIRPERSON: There is the skietery, one 15 shot I think, one or two. Well we have seen a photograph 16 which appears to give us the line of travel as it were of 17 one of the shots and there was another shot, we don't know 18 where it was shot. All we know is we hear it on the video, 19 is that right? 20 BRIGADIER CALITZ: Ek dink dit is die 21 dispuut wat ooreengekom is dat die experts vir ons gaan kyk 22 na die beskikbare bewysstukke, mnr die Voorsitter. 23 CHAIRPERSON: Apart from that shot, which 24 is into the ground, as far as I can recall, the one we can 25 see, was there anything else, now this is quite an</p>	<p style="text-align: right;">Page 21104</p> <p>1 van die ander kant af, van agter af en van agter die TRT 2 lyn geneem. So ek dink nie daar was enige beeldmateriaal 3 op hierdie stadium van die kraal se kant af toe hulle daar 4 verby gekom het nie, nie waarvan ek bewus is nie. 5 MR GOTZ: Brigadier, can we go to slide 3 6 and you will be thankful that I'm not going to go through 7 all of them in great detail. But slide 3 of this 8 presentation is ETV time 15:53:21. Now, Brigadier, this is 9 the configuration of the Nyalas or the SAPS vehicles at the 10 time that the Vermaak Blackberry photograph that we were 11 looking at earlier in the day was taken. You can see that 12 the strikers have moved on our representation closer to the 13 edge of the kraal but certainly have not got to the corner 14 of the kraal and that the Papa2, Papa4, Papa5 have, Papa2 15 and Papa4 have started to move into formation. The Casspir 16 as well has moved from its position on the previous page 17 seven seconds later into position behind the STF Casspir. 18 BRIGADIER CALITZ: Ja, wat is die vraag? 19 MR GOTZ: Would you agree with my 20 description of what was occurring or what had occurred by 21 15:53:21? 22 BRIGADIER CALITZ: Ja, ek dink ons kan 23 dit duidelik sien op die foto van Kolonel Vermaak ook. 24 MR GOTZ: And, Brigadier, we have 25 included 15:53:30 although there is not much difference</p>
<p style="text-align: right;">Page 21103</p> <p>1 important one, I'm asking not because I know the answer but 2 because I want to know the answer. Is there any other 3 evidence which indicates that any of the strikers attacked 4 the people, the POP members that were standing in the 5 positions that you have mentioned? 6 BRIGADIER CALITZ: Nie van wat ek weet op 7 hierdie stadium wat buitekant die voertuie was nie, maar 8 daar was verklarings gewees van lede wat in die voertuie 9 was wat sê die persone het probeer die Nyala se deure en 10 daar was met aksie teen die voertuie gewees. So definitief 11 'n aanval. 12 MR GOTZ: Well, Brigadier, we honestly 13 don't see any of that in the videos. There are two angles, 14 we have got the Al Jazeera angle which is effectively taken 15 from where you see your Papa1 and where your Papa1 is 16 located on this diagram, which is effectively where the Al 17 Jazeera camera was, and where you see the white bakkie, 18 second from the right, is effectively where the Reuters and 19 ETV cameras were. We just don't see these attacks on the 20 Nyalas that your members talk about. 21 BRIGADIER CALITZ: Ek het nog geen video 22 footage van myself gesien toe die groep verby Papa11 is wat 23 daar gebeur het nie, as u daardie video footage het sal ons 24 bly wees as ons dit kan sien, want u sê daar was nie. 25 Asook die angle wat die Reuters of na wie u verwys het is</p>	<p style="text-align: right;">Page 21105</p> <p>1 between the two, which is significant for a different 2 reason, which I will come to in a moment, but essentially 3 all that happens in that time, is that the strikers move 4 closer to the corner of the kraal and papa2 and papa4 come 5 to the positions where they stop. They halt there and they 6 remain in that position until the TRT line opens fire. 7 BRIGADIER CALITZ: Ja, ek dink dit is 8 waar Papa2 en Papa4 waar ons dan die lede buitekant die 9 voertuie sou sien as ons die video speel. Ek dink u het 10 verwys op dieselfde tyd 53:21 of 53:30, dit is so 'n paar 11 sekondes na die Vermaak video. 12 MR GOTZ: Yes, it's nine seconds, you 13 mean the Vermaak Blackberry photograph, it's in fact nine 14 seconds after the Vermaak Blackberry photograph. 15 BRIGADIER CALITZ: Ja, kan ons miskien 16 net, toe maar nee dit is reg, ek wou net verwys het, ek 17 dink u is op 'n dokument wat die ander dokumente as wat ek 18 nou deur gewerk het, so ons bladsye kom nie so lekker 19 ooreen nie. Maar dit is korrek, ek weet nie of u daardie 20 dokument ook op transcript het nie. 21 MR GOTZ: Are you talking about the 22 report that - 23 BRIGADIER CALITZ: Die rapport, ja. 24 MR GOTZ: Brigadier, if there is a 25 question that, what is it that you want to refer to?</p>

Page 21106

1 BRIGADIER CALITZ: Nee, nee die vorige
 2 een van 53:21 Vermaak se foto, ek dink die kommissaris se
 3 vraag was, hoe ver was hulle op daardie stadium of hoe die
 4 voorste punt gelyk. Onthou ek het gevra hulle moet in zoom
 5 en u het 'n ander foto gehad, so as dit moontlik is kan ons
 6 van bladsy 18 van daardie foto dat ons miskien al twee die
 7 dokumente het, die rapport wat u nou vir my gegee het om
 8 deur te werk, want ek glo dit is die 46 bladsye wat ek nou
 9 deur gewerk het.
 10 [15:03] MR GOTZ: Well, Brigadier, I hadn't
 11 intended to, but if KKK54 can be put up on the screen,
 12 slide 18 if you wanted to make a point of that.
 13 BRIGADIER CALITZ: Nee, ek is net gevra
 14 om die document deur te werk en die vrae sou gegaan het oor
 15 die dokument. So dit was -
 16 MR GOTZ: Brigadier, sorry do you want
 17 make a point about Exhibit KKK54 in slide 18?
 18 BRIGADIER CALITZ: Bladsy 18, ek wil net,
 19 soos ons aangaan met die tyd sal ons na al twee verwys as
 20 dit vir u reg is.
 21 CHAIRPERSON: Is KKK54 already available
 22 to the operator?
 23 MR GOTZ: It should be.
 24 CHAIRPERSON: I didn't see it on the, he
 25 says no.

Page 21107

1 MR GOTZ: Mr Chair, we had given
 2 everything but -
 3 BRIGADIER CALITZ: Ekskuus, mnr die
 4 Voorsitter, vir die vermorsing van tyd. Ek het gedog dit
 5 was die taak gewees, ek moes deur die dokument gaan en dan
 6 sou dit beskikbaar wees vir vrae.
 7 CHAIRPERSON: No, no I assumed it was and
 8 when there was a hesitation and they tried to find it for
 9 us, they didn't, so I thought they mightn't have it, but
 10 they haven't got it. But anyhow -
 11 MR GOTZ: Brigadier, I don't want to
 12 waste time so while the video people are being given that
 13 can we turn to 15:53:35 which is slide 5 of this
 14 presentation. Brigadier, it's at this moment we say that
 15 the lead group of strikers headed by Mr Noki reaches the
 16 north west corner of the kraal, in other words the corner
 17 of the kraal between, well the kraal and the Casspirs, and
 18 that's 15 seconds before the TRT opens fire. Would you
 19 agree with that?
 20 BRIGADIER CALITZ: Ja, as ons na die
 21 fotos kan gaan, ek dink dit is belangrik om miskien nou na
 22 daardie dokument te verwys so, dan kan ons net gou-gou
 23 soontoe gaan. Die eerste bladsy waarna ek verwys het was
 24 18, net om vir mnr die Voorsitter die punt te maak en dan
 25 hierdie sal begin op bladsy 23 as ek u miskien kan help.

Page 21108

1 MR GOTZ: Brigadier, are you disputing
 2 our analysis that as at this moment that the strikers
 3 reached the edge of the kraal?
 4 BRIGADIER CALITZ: Ekskuus, mnr die
 5 Voorsitter, nee advokaat dit is glad nie dat ons betwis dat
 6 die strikers die hoek van die kraal genader het nie, maar
 7 daar is net 'n ander punt wat ek wil maak wat ek dink baie
 8 belangrik is. Daarom is die belangrik om 54 vir my op te
 9 sit. Ek dink u het die dokument vir my gegee om deur te
 10 gaan so dit moet beskikbaar wees seer sekerlik anders was
 11 daar geen doel vir my -
 12 CHAIRPERSON: That's true -
 13 MR GOTZ: But understand that we are
 14 wasting time.
 15 BRIGADIER CALITZ: Ons mors glad nie tyd,
 16 mnr die Voorsitter.
 17 CHAIRPERSON: Now come, Mr Gotz, he is
 18 entitled to say you gave him a report to go through, which
 19 he did. He is entitled to say at page 54 of that report
 20 contains material that he would like to demonstrate to the
 21 commission which illustrates the point he wants to make, he
 22 is entitled to do that and that is not time wasting. It
 23 may turn out in the end the point he wants to show us isn't
 24 a good point, but it may turn out that it is a good point.
 25 But we don't know the answer to that until we know what it

Page 21109

1 is and it certainly can't be described as time wasting.
 2 BRIGADIER CALITZ: Mnr die Voorsitter,
 3 terwyl ons wag kan ek miskien sê wat op daardie bladsy is,
 4 miskien om die tyd te verminder en dan -
 5 VOORSITTER: Ja, u kan meneer, gaan voort
 6 gerus.
 7 BRIGADIER CALITZ: Dit sal nou nie 'n
 8 verrassing wees of iets nie. Op bladsy 18 is net die foto
 9 wat uit die Vermaak se kamera hoek geneem is en dit is 'n
 10 foto wat baie nader beskryf oor hoe die voerpunt gelyk het
 11 op daardie stadium. So as ons op bladsy 18 kom sal u kan
 12 sien die formasie -
 13 CHAIRPERSON: I haven't got one, I think
 14 you have got mine, but never mind, I will take your word
 15 for it.
 16 BRIGADIER CALITZ: Sorry, en dit is op
 17 bladsy 18 wat ek dan vir u wil wys hoe maklik dit was vir
 18 hulle om, om te draai en dat daar glad nie so, hoe kan ek
 19 sê, tight formasie was soos wat die advokaat beweer nie.
 20 Maar u sal dit duidelik sien, ek gaan nie tyd mors op
 21 daardie foto nie. Ek wil net die punt gemaak het, bladsy
 22 18. U sien daardie is die ETV tyd 15:53:21 wat ooreenstem
 23 met die Kolonel Vermaak se lug foto, en toe het u gevra hoe
 24 lyk die voerpunt, ek het gevra laat ons in zoom en u het
 25 vir ons 'n baie slegte foto gegee. Nie 'n slegte foto nie

<p style="text-align: right;">Page 21110</p> <p>1 wat 'n bietjie uit fokus was, van 'n ander angle af. Ek 2 dink hierdie was dalk 'n beter foto om te gee en op hierdie 3 punt het ek al gesê dat as die leier elemente wel kon 4 omdraai en te beweeg, ek dink die mnr die Voorsitter het 5 gesê about turn, daar is ten minste meters spasie tussen 6 die persone wat voor beweeg en verder 'n paar meter tussen 7 hulle en dan die groepe wat volg so dit was vir hulle baie, 8 baie moontlik om te stop, in hierdie geval of om, om te 9 draai. Dit is al wat ek wil bewys op daardie foto, en dan 10 is ons nou op bladsy 23 net aan. U vraag oor die 30 11 sekondes, u sê vyf sekondes later het hulle by die hoek van 12 die kraal gekom. Dit betwis ek nie. As ons dalk net die 13 volgende foto sien, sal u sien dit is die hoek van die 14 kraal waar die POP lid buitekant staan, nog steeds 15 dieselfde tyd 15:53:35 en dan net die volgende een dit is 16 die vyf sekondes waarna u verwys wat ek sê ek betwis glad 17 nie, dat hulle om die hoek van die kraal is nie. Maar wat 18 ek pertinent hier wil uitwys vir mnr die Voorsitter, en dit 19 is op rekord dat u gesê het daar is net drie sekondes 20 gewees voordat hierdie mense die TRT lyn kon sien, ek het 21 gesê 29 minus omtrent ses of tien sekondes, so ek het hulle 22 'n langer tyd gegee. Mnr die Voorsitter, as u kan sien 23 waar die strikers is en dit is so duidelik dat hierdie TRT 24 lyn sigbaar is, en volgens u eie getuienis, nee u is nie in 25 die getuiebank nie, volgens u stelling het hulle net drie</p>	<p style="text-align: right;">Page 21112</p> <p>1 gebukkend is met die groen, dit is op hierdie posisie waar 2 hy dan ook op die polisie gevuur het. As ons na die video 3 kyk sal dit baie duidelik wees. So daar was 'n besliste 4 aanval gewees op hierdie lede dan op hierdie foto. 5 CHAIRPERSON: I understand that, and if 6 that is so, and it may well be so, that's a very important 7 point. 8 BRIGADIER CALITZ: Dankie, mnr die 9 Voorsitter, en dan net die volgende foto wat in die 10 sequence is - 11 MR GOTZ: Sorry before you go there, the 12 point is that - 13 BRIGADIER CALITZ: Ekskuus tog, ek wil 14 net my punt klaarmaak as ek mag? 15 CHAIRPERSON: Let him make his point, and 16 then you can make your point. 17 BRIGADIER CALITZ: Ek is nog steeds op 18 dieselfde punt. Ek bereik en beweeg nie, die 15:53:15 dit 19 is toe hulle om die kraal gekom het. So u volgende foto, 20 dit is dieselfde tyd, die vyf sekondes screenshot at five 21 seconds, met ander woorde waar hulle om die kraal gekom 22 het. My enigste punt wat ek hier wil maak, wat ek glo is 23 'n belangrike punt, die strikers kan gesien word. Openbare 24 orde polisiëringslede kan gesien word aan die regterkant, 25 hier is een man in die voorgrond wat tactically retreat</p>
<p style="text-align: right;">Page 21111</p> <p>1 sekondes gehad. 2 CHAIRPERSON: No, that's an interesting 3 point but, because the previous slide we saw showed the 4 strikers moving forward and not, that's the one ja, they 5 are moving forward moving from right to left on the slide, 6 they don't appear to be focusing any attention on the one 7 POP person whom we can see between the two Nyalas and - 8 BRIGADIER CALITZ: Die persoon - 9 CHAIRPERSON: They don't seem to be 10 focusing any attention in fact on anything between the 11 Nyalas, they are looking straight ahead and marching 12 straight forward of course towards the TRT line but - 13 BRIGADIER CALITZ: Behalwe die persoon - 14 CHAIRPERSON: But I was concerned with 15 the question whether there was any evidence to indicate 16 apart from entries and so on, any evidence to indicate that 17 they were actually attacking the people who were on their 18 left between the Nyalas. Of course this photograph doesn't 19 show them doing that but of course you may well be right, 20 there may well be other, there may well have been other 21 attacks happening further down the line. But this one 22 doesn't show that, that seems to be the - 23 BRIGADIER CALITZ: Mnr die Voorsitter, ek 24 dink hulle sal dit ook in hulle, as dit kom by die striker 25 wat geskiet het, onder korreksie die persoon wat so</p>	<p style="text-align: right;">Page 21113</p> <p>1 terug. Adjudant-offisier Kuhn kan gesien word asook die 2 hele TRT lyn. So as dit die enigste beskikbare foto is op 3 hierdie stadium, dan was die tyd 14 sekondes wat hulle die 4 TRT lyn in hulle visie gehad het en nie drie sekondes soos 5 beweer nie. 6 CHAIRPERSON: That's seems to, prima 7 facie to establish the point you wished to make. But can I 8 ask you this is that Kuhn with his sort of left foot, sort 9 of up in the air with his toe - 10 BRIGADIER CALITZ: Nee, mnr die 11 Voorsitter. 12 CHAIRPERSON: Which is Kuhn? 13 BRIGADIER CALITZ: Kuhn is die een net, 14 waarna die rooi pyltjie wys. Sê maar die strikers, die 15 rooi pyltjie wys direk in sy rigting. 16 CHAIRPERSON: That's Kuhn? 17 BRIGADIER CALITZ: Dit is die man. 18 CHAIRPERSON: And there is two other 19 members of the police service near him is that correct? 20 BRIGADIER CALITZ: Ja. 21 CHAIRPERSON: One of them is leaning 22 forward and he has his left toe on the ground but his heel 23 in the air, is that right? And then there is another 24 policeman ahead of him to his left, is that correct? 25 BRIGADIER CALITZ: Dit is openbare orde</p>

Page 21114

1 polisiëringslede wat ge-retreat het na die Nyala toe.
 2 CHAIRPERSON: So effectively there was
 3 three, at this moment, there were three POP people directly
 4 in front of the advancing strikers, Kuhn and a person to
 5 his left, more or less in line with him, and the other one,
 6 the one with his left toe on the ground. I mean the toe
 7 portion, the front part of his left foot on the ground, he
 8 is slightly behind.
 9 BRIGADIER CALITZ: Dit is korrek.
 10 CHAIRPERSON: A metre or two probably,
 11 two metres probably -
 12 BRIGADIER CALITZ: Dit is korrek.
 13 MR GOTZ: Behind, is that right?
 14 BRIGADIER CALITZ: Dit is korrek, mnr die
 15 Voorsitter.
 16 MR GOTZ: Brigadier, just a couple of
 17 other points the person who has his toe on the ground as it
 18 were, is looking at the Papa19, Papa10 Nyala. If you watch
 19 the videos, he from this moment walks over to the Nyala and
 20 climbs into it. The other man just above him as it were,
 21 standing closer to the strikers at this point turns and
 22 runs away, leaving Warrant-officer Kuhn standing there on
 23 his own. Warrant-officer Kuhn has not moved from the
 24 position that we saw him in some 45 seconds earlier.
 25 BRIGADIER CALITZ: U is heeltemal korrek,

Page 21115

1 as ons aan die linkerkant kyk vir Papa10 wat nie 9, maar 10
 2 was, het hy dan in daardie voertuig se rigting beweeg en in
 3 geklim. Die ander een wat u sê het weggehardloop daar
 4 bestaan nie so iets in die polisie nie. Ons noem dit
 5 tactically retreat en ek het dit by hoeveel geleenthede
 6 gesê, dit is hoe 'n openbare orde lid wat uitgereik is met
 7 non-lethal force, sy rubber gaan geen verskil maak op die
 8 aanvallers nie en hy het geen ander keuse, tensy hy sy lewe
 9 wil verloor om daar te bly staan nie. Adjudant-offisier
 10 Kuhn was in besit gewees van 'n R5. Een seksie lid per
 11 openbare orde is uitgereik daarmee en hy kon wel die R5
 12 gebruik dan vir waarskuwingskote of selfverdediging in
 13 daardie geval. Die openbare orde polisiëringslede is wat
 14 onttrek het of tactically retreat het kan nie daar gebly
 15 staan het nie.
 16 MR GOTZ: Are you say Kuhn, Warrant-
 17 officer Kuhn was not particularly concerned and stood his
 18 ground there because he was carrying an R5 rifle?
 19 BRIGADIER CALITZ: Ek sê net waarmee hy
 20 uitgereik is en ek sê waarom die ander persone teruggegaan
 21 het na die voertuie toe. Die R5 geweer is 'n meer lethal
 22 wapen wat jy kan gebruik vir self verdediging waar die
 23 haelgewere en die non-lethal, as dit nie werk nie en die
 24 persone kom al nader is daar geen ander maniere as om terug
 25 te val en dan die TRT wat hulle moet beskerm of dan die

Page 21116

1 seksie 1 per seksie dan daardie volgende wapen is al wat
 2 hulle het.
 3 CHAIRPERSON: Your point simply is this,
 4 that Warrant-officer Kuhn was able to defend himself
 5 because he had an R5, the other two if they were only
 6 equipped with less than lethal weapons couldn't defend
 7 themselves so they had to beat a tactical retreat. I know
 8 you don't like the word retreat but that's what it means, a
 9 tactical retreat.
 10 BRIGADIER CALITZ: Korrek, mnr die
 11 Voorsitter.
 12 CHAIRPERSON: Right, now can I just ask
 13 you this, I think I, I think what I'm putting to you is
 14 right, I just want to make sure, if one looks at the slide
 15 we have been looking at, the 15:53:31 as an example, the P5
 16 is presumably in the correct position. It looks to me as
 17 if the man with the front part of his left foot is standing
 18 in the road, would that be correct, in the roadway there
 19 and it looks to me, it's difficult to estimate I suppose it
 20 looks as if Warrant-officer Kuhn and the man on his left
 21 are probably about two metres or so ahead of the man with
 22 the front part of his left foot on the ground. Would that
 23 be correct?
 24 BRIGADIER CALITZ: Dit is -
 25 MR GOTZ: So we can more or less place

Page 21117

1 Kuhn and the other two on this photograph, which I'm using
 2 number 4 but they are all the same, but we can see where P5
 3 is and we can see P5 in the photograph, and we work out to
 4 a fair degree of accuracy I would hope where Kuhn and these
 5 other two POP people were at the time this photograph was
 6 taken, is that right?
 7 BRIGADIER CALITZ: Dit is korrek, mnr die
 8 Voorsitter.
 9 MR GOTZ: Chairperson, just to highlight
 10 that the Nyala 5, I mean Papa5 at 15:53:35 is in fact
 11 moving into position, so it shouldn't be regarded as being
 12 stationary at that point in time, and if you wanted to
 13 place Warrant-officer Kuhn it would probably be best to do
 14 it from 15:53:40, in other words slide 6 and following.
 15 Because then at least you have got the -
 16 CHAIRPERSON: This picture is taken at
 17 what time?
 18 MR GOTZ: So if we are looking at 15:53 -
 19 CHAIRPERSON: The one on the screen at
 20 the moment, what time is this one taken?
 21 MR GOTZ: This is 15:53:35.
 22 CHAIRPERSON: Yes, so that's why it is
 23 better to look at the other one which is number 5 in your
 24 series. If the position of Papa5 is right on this slide,
 25 then we can see it on the slide that is being shown on the

<p style="text-align: right;">Page 21118</p> <p>1 screen and we can see these three POP people and we can 2 place them because that's the relevant time to do it, isn't 3 it? 4 BRIGADIER CALITZ: Mnr die Voorsitter, as 5 ek dalk kan help, as ons twee aangaan, 15:53:40 waarna die 6 advokaat verwys, bladsy 27 as ons dit net kan ophaal, dit 7 is vyf sekondes later, nee nie op hierdie, op die ander, 8 bladsy 27 daar waar ons was en dan net die volgende een, om 9 die tyd vir u te gee dit is 15:53:40 en dan bladsy 28 is 10 waarna die advokaat verwys, u sal Kuhn se kop net sien 11 uitsteek bo die polisieman tweede van regs af. Sy skaduwee 12 kan u sien in daardie posisie so hy is nog steeds voor die 13 voetpad en u sal sien dat die openbare orde polisiëringlid 14 ge-tactically retreat het en hy is besig om in die Nyala te 15 klim aan die linkerkant. En selfs hier is die drie 16 sekondes wat ek nou-nou vir u gewys het na 14, hier het dit 17 verminder na 10 sekondes, so dit is vier sekondes later en 18 die TRT lyn is nog steeds sigbaar. Net om 'n punt daarvan 19 te maak ook. 20 MR GOTZ: Brigadier, the one point that 21 does need to be made of course is that Warrant-officer Kuhn 22 doesn't follow the other POP member and climb into the 23 Nyala. 24 BRIGADIER CALITZ: Nee, maar dit is 25 duidelik. Ons het mos reeds gesê hoekom hy daar staan.</p>	<p style="text-align: right;">Page 21120</p> <p>1 hulle is, ek dink na die CALS en die tydlyn is daar ooreen 2 gekom dat die experts sal gaan kyk na die spesifieke tye en 3 plasinge. So dit is maar net waarna ek verwys. 4 MR GOTZ: It's also at this moment that 5 the first teargas canister of the day gets shot and it's 6 fired roughly between, in amongst the strikers but between 7 where you see Papa11 and the STF Casspir? 8 [15:23] BRIGADIER CALITZ: Ek sal nie vir u kan 9 sê of dit die eerste is nie, ek weet die videos wat ek 10 gesien het en soos die mense om die kraal kom het ons 11 gesien daar is wit rook aan die agterkant, so ek glo nie 12 dit is heeltemal korrek wat u, die stelling wat u maak nie. 13 MR GOTZ: Well, I said roughly, I didn't 14 meant right at this moment, as I understand it, the first 15 teargas canister gets fired around this time. It doesn't 16 get fired in front of the crowd of strikers as they move 17 around the corner of the kraal, but gets fired behind them 18 roughly where, between Papa11 and the STF Casspir is. 19 BRIGADIER CALITZ: Ek sal nie vir u met 20 sekerheid dit kan sê nie, ek sal u nie daar kan help nie. 21 Ek het dit dat hulle reeds by insident 2, aan die 22 linkerkant van die kraal was daar reeds die stun grenades 23 sowel as die rook. Ek dink op 'n ver afstand het ons die 24 video gesien en u kan sien dat dit is aan die linkerkant 25 van die kraal en nie aan die regterkant soos wat u nou</p>
<p style="text-align: right;">Page 21119</p> <p>1 MR GOTZ: Armed with a R5 rifle is the 2 only thing that a TRT line seems to have done is brace 3 themselves. So if you compare the earlier photograph, what 4 they have done is they braced themselves for something, if 5 you compare the two photographs. They haven't moved at all 6 either, correct? 7 BRIGADIER CALITZ: Ja, dit is korrek. 8 Adjutant-offisier Kuhn beweeg nie en dan die TRT lyn ook 9 nie op daardie stadium nie. 10 MR GOTZ: Now, Brigadier, I did want to 11 go back to make a few points about 15:53:35 on the Exhibit 12 KKK52. You will agree with me that at this point in time 13 Papa5 is in fact moving, so it starts out from the 14 position, a fraction of a second later it has moved past 15 the bush as it were and it is moving into position behind 16 Papa4. 17 BRIGADIER CALITZ: Ek dink die experts is 18 besig met die tydlyn en presiese plasing van die voertuie 19 maar as ons na die video kan kyk kan u sien dat hy beweeg 20 wel maar of dit die presiese posisie is kan ek nou nie vir 21 u sê op hierdie tyd 15:43:35 dat hy daar was nie. 22 MR GOTZ: Well we may have to show that 23 video if you request it. 24 BRIGADIER CALITZ: Nee, ek versoek dit 25 nie ek het net gesê die experts, ons het ooreen gekom dat</p>	<p style="text-align: right;">Page 21121</p> <p>1 beweer nie. 2 CHAIRPERSON: That's the left hand side 3 as one is advancing in the way of, the strikers were 4 moving. As the strikers were moving the kraal was 5 initially, it was on their right hand side throughout, but 6 you know we say the left, the right, we didn't know – 7 BRIGADIER CALITZ: Ekskuus, mnr die 8 Voorsitter, ja, - 9 CHAIRPERSON: - which direction you're 10 facing. 11 BRIGADIER CALITZ: Nee, ek praat – 12 CHAIRPERSON: So for purposes of accuracy 13 one has got to make it clear. So if you talk about the 14 strikers left then we have no problem. 15 BRIGADIER CALITZ: Ja, nee, ek verwys van 16 die polisie se kant af, so ekskuus daarvoor, mnr die 17 Voorsitter. As ek sê linkerkant van die kraal bedoel ek 18 waar Nyala4 teen die kraal staan, waar ons verwys het na 19 insident 2. 20 MR GOTZ: So what I want to put to you is 21 that if I'm correct that that is the position of the 22 teargas canister and the rough timing, that is a factor 23 which contributes to the inability of the front group of 24 strikers from turning around, as it were, and making their 25 way back outside of the –</p>

Page 21122

1 MR SEMENYA SC: Chair, we are at that
2 point where again a fact is stated which does not have any
3 witness to it.
4 MR GOTZ: No, Chair, I'm putting –
5 CHAIRPERSON: Repeat the question –
6 MR GOTZ: I'm putting a simple
7 proposition.
8 CHAIRPERSON: Repeat the question?
9 MR GOTZ: If I'm correct that the teargas
10 canister is fired at this point of time or just slightly
11 before it and if I'm correct that the position of the
12 teargas canister is below Papa11 and not in front of the
13 crowd, in front of the lead crowd, that is a factor which
14 would contribute to the inability of the front group of
15 strikers from moving around, of moving backwards, correct?
16 People move away from teargas, they don't move towards it –
17 CHAIRPERSON: That sounds right, it is a
18 hypothetical question but I think the hypothesis is one
19 that we can allow him to put, and on the probabilities if
20 there was teargas behind the group of strikers, it would be
21 a factor which would have encouraged them not to turn
22 around and go back because they were marching into a cloud
23 of teargas. Okay, you can put that, and that must be right
24 surely.
25 BRIGADIER CALITZ: Mnr die Voorsitter, ek

Page 21123

1 wil amper sê dan kan ons enige scenario afspeel hier, maar
2 dit kan 'n bydraende factor wees, maar dit is nie gebeur
3 het nie.
4 CHAIRPERSON: No, no, no, perhaps I put
5 it wrongly, I mean Mr Gotz has put it wrongly too.
6 Generally speaking someone doesn't voluntarily walk into a
7 cloud of teargas unless he has got a gas mask, right? So
8 if he has got a choice to go in forward and there is no
9 teargas and going backwards where there is teargas he is
10 likely to go forward, unless of course there is greater
11 discomfort of some kind awaiting in front of him, that must
12 be right?
13 MR SEMENYA SC: Chair, I don't –
14 BRIGADIER CALITZ: Mnr die Voorsitter, as
15 ek mag –
16 MR SEMENYA SC: For the record we know
17 there is a version that teargas makes people attack the
18 police, so these probabilities and hypothesis with respect
19 do not –
20 CHAIRPERSON: I'm not talking about
21 attacking the police at all, I'm talking about an ordinary
22 person wouldn't go on the road, he has got teargas in front
23 of him and no teargas behind him, he is likely to go behind
24 him and not in front of him and vice versa. If there is
25 teargas in front of him he is not likely to go forward, not

Page 21124

1 because he wants to attack anybody, but because teargas is
2 designed to induce an unpleasant sensation, that's why
3 teargas is used. So –
4 MR SEMENYA SC: Chair, but the case
5 before the Commission is, we are not dealing with that
6 situation. We are told once you throw a teargas instead of
7 people going in that particular direction they attack the
8 police, that's what happened on the 13th, that's the
9 evidence so far.
10 CHAIRPERSON: Yes, no, no. Well, the
11 question of course is, you've got a choice, you're going to
12 be caught between two fires as it were, but the real
13 question is, what is put is, there is teargas behind
14 people, not that it necessarily affected them, but that if
15 they move in such a way that they come within range of it
16 then they will be affected by it. We are not dealing with
17 a situation which is actually affecting them and possibly
18 makes them cross and makes them advance more aggressively
19 forward. So I think that's the answer, but anyway, it is
20 merely half past three, let's just round this point off and
21 then adjourn. Hierdie is net 'n bydraende factor, it is
22 fact.
23 BRIGADIER CALITZ: Mnr die Voorsitter, as
24 ek dit kan –
25 CHAIRPERSON: It is not a conclusive

Page 21125

1 factor, but you give Mr Gotz about 2 out of 10 for the
2 point he has put, it is 'n bydraende factor, is that
3 correct?
4 BRIGADIER CALITZ: Mnr die Voorsitter,
5 nee, ek sal hom 0 uit 10 gee. As ek mag, u laat my toe in
6 drie sekondes, 'n normale man in die straat af loop en daar
7 is traangas wat sal hy doen, - hy sal weg beweeg. As 'n
8 normale man in die straat afloop en daar word op hom
9 geskiet met rubber wat gaan hy doen, hy gaan weg beweeg.
10 Dit is dieselfde, so ek –
11 CHAIRPERSON: Yes, that's the two fires
12 that these people were caught in.
13 BRIGADIER CALITZ: Die mense moes weg
14 beweeg het na insident 2 toe, mnr die Voorsitter.
15 CHAIRPERSON: Alright, it is now half
16 past three, I did indicate we would have to adjourn at half
17 past three, so I'd hoped you could finish this, this
18 afternoon, but I'm not criticising you, Mr Gotz, you
19 couldn't, so we'll carry on at nine tomorrow morning. How
20 long, I know I've asked this before and I haven't always
21 got accurate information but not to any fault of yours, how
22 long do you think you're likely to be tomorrow?
23 MR GOTZ: Chair, -
24 CHAIRPERSON: Allowing for a bit of
25 injury time?

1 MR GOTZ: I really was going to finish in
2 five, ten minutes, but I understand that you need to
3 adjourn.

4 CHAIRPERSON: No, we have to adjourn at
5 3:30. Anyway, so it sounds as if there is a fair prospect
6 that five or ten minutes after nine you will be finished.

7 MR GOTZ: I will certainly finish within
8 that time, Chair.

9 CHAIRPERSON: Alright, we will adjourn
10 now until nine o'clock tomorrow morning.

11 [COMMISSION ADJOURNED]

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<p>AAA 21015:19 aan 20971:2 20974:25 20979:11 20989:4,20 20989:21 20994:22 20996:12 20998:13 21004:15 21012:4 21013:2 21030:2 21035:4 21043:13 21045:5 21046:24 21047:20,24 21049:5 21049:16 21061:24 21064:11 21069:24 21074:17 21075:9,23 21085:23 21089:6,15 21089:16 21092:6 21097:21 21099:3 21101:6 21110:10 21112:24 21115:1 21118:15 21120:11 21120:21,24,25 aanbeweeg 20979:13 20990:13 aand 21069:22 21072:17 aandui 20971:7 aaneen 20969:1 aangaan 21085:22 21106:19 21118:5 aangebied 21041:6 aangedui 20972:25 20979:13 21070:8 21093:17 aangegaan 21031:15 aangekom 21042:7,18 21090:23 aangeneem 20961:5 aangespreek 21054:19 aangeval 21063:12 21102:1 aangevoer 21033:5 aangewend 21013:9 aangewese 21029:3 aankom 21062:9 aansoek 21054:7 aanvaar 21088:8 aanval 20989:12 21062:17 21097:20 21097:20 21101:13 21103:11 21112:4 aanvallers 21115:8 aanvanklik 21101:9 aanwending 21010:24 abide 20987:7 ability 21039:7 21070:3 able 20962:14 20965:11 20967:2 20972:4,5 20985:22 20995:11 20997:14 21019:22 21021:8 21032:1,6 21034:5 21039:2 21081:17 21083:15 21092:12 21098:12 21116:4 about-turn 20987:25</p>	<p>absolute 21036:15 absolutely 20976:24 20986:17 absoluut 20990:22 accept 20965:17 20969:9 20984:9 20985:14,19 20992:20,22,25 20994:14 21003:21 21013:20 accepted 20986:4 20997:13 21022:15 access 20961:18 21047:3 accommodate 20975:15 accompany 21060:24 accomplish 20981:25 account 21041:21 accuracy 20997:14 21117:4 21121:12 accurate 20968:6 20969:9 20970:5,7 21049:22 21125:21 accurately 20968:8 accusation 21034:24 achieve 20992:1 21070:5 achieved 20991:5,12 acknowledge 21038:7 act 21032:25 21033:7 21033:13 21035:12 21035:15 acted 21037:19,20 21070:15 acting 21034:18,25 action 21013:14 21017:15 21089:25 activities 21015:8 21039:3 21074:25 actual 20976:9 21037:7 21040:18 21095:17 add 20987:4 added 20959:12 address 21034:6 21038:11 adjourn 21005:14,16 21005:22 21079:19 21124:21 21125:16 21126:3,4,9 ADJOURNED 21126:11 adjourning 21005:21 21079:12 adjournment 21000:5 21006:19,20,24,24,25 21033:24 21034:1,7 21034:16 21079:3 ADJOURNS 21000:9 21034:8 21079:21 Adjutant 21062:9,10 21062:24 21086:6 Adjutant-offisier 21113:1 21115:9 21119:8 adopted 21050:1</p>	<p>21051:20 21052:3 ADRIAAN 21001:5 21034:11 Adv 20966:18 20986:8 21006:17 21019:18 21022:24 21038:9 21049:2 21063:20 advance 20984:20 20991:23 21124:18 advancing 20985:18 20999:20 21000:20 21114:4 21121:3 advantage 21083:8 advisable 21038:3 Advocate 20958:19 advokaat 21004:16 21029:24 21056:2,4 21069:10 21070:25 21090:21 21108:5 21109:19 21118:6,10 advokate 21004:16 aerial 20959:9 20960:10 af 20988:25 20996:15 20998:8 21013:8 21019:12 21042:24 21043:2,21 21047:6 21063:19 21064:3 21073:1 21074:18 21075:6 21097:22 21104:1,1,3 21110:1 21118:11 21121:16 21125:6 afgewyk 21073:1 afkom 20988:23 afkondiging 21033:13 21035:16 afkondigings 21035:20 afloop 21125:8 afraid 20958:7 21039:23 African 21026:20 21027:7 Afrikaans 20958:13 afspeel 21123:1 afstand 20993:20 21120:23 afternoon 21029:13 21044:8 21046:15 21055:25 21066:8 21067:6 21071:4 21125:18 ag 21035:7 aggressively 21124:18 ago 21008:1 agree 20961:20 20977:8 20978:2 20979:2 20981:17 20983:17 20987:8,14 21020:22 21024:3 21048:13 21051:21 21081:7 21082:1 21085:4 21088:4,10 21088:18 21095:11 21096:14 21104:19 21107:19 21119:12</p>	<p>agreed 21021:10 21048:11 agreement 21051:7,17 21053:14 21072:24 21089:20 agrees 20987:10 agt 21030:25 agter 21047:1 21082:22 21082:23 21089:24 21094:21 21096:21 21101:3 21104:1,1 agtergrond 21046:20 21063:23 agterkant 21089:6 21120:11 Ah 20963:12 ahead 21088:10 21111:11 21113:24 21116:21 air 21113:9,23 aksie 20988:11,16 20995:4 21054:5 21084:22 21089:4 21098:1 21101:8 21103:10 al 20989:22 20992:18 20993:1,19 20995:4 21012:4 21016:25 21019:7 21031:1,2,11 21032:21 21042:24 21064:1 21078:18 21091:4 21092:20,23 21098:17 21101:25 21102:1 21103:14,16 21106:6,19 21110:3,9 21115:24 21116:1 algemene 21032:14 21049:11 alive 21032:4 allegation 21008:1,6,8 21008:20 21010:4 21032:5,11 21072:6 21078:4,4 allegations 21013:11 alleged 21007:20 21067:8 21070:15 allegedly 21007:24 21008:20 allow 20965:22 20973:15,17 20984:23 20985:4 20986:6 20987:18 20988:4 21006:22 21013:24 21033:8 21045:21 21122:19 Allowing 21125:24 almal 20989:19 21070:8 alreds 21029:19 21090:11 alright 20960:7,21,25 20962:18 20966:9 20972:16 20994:19 20998:3 21000:3 21017:7 21023:5 21025:22 21055:16</p>	<p>21057:21 21058:15 21058:18 21059:14 21060:9 21125:15 21126:9 altdy 21016:23 AMCU 21043:10 21049:5 Amended 21027:8 ammunisie 21012:7 21014:17 amounted 21051:1 amounts 21069:1 amper 21033:17 21035:23 21049:15 21063:6 21123:1 analysed 21074:7 analyses 21074:19 analysis 21020:18,22 21108:2 ander 20979:22 21008:15 21010:22 21018:2 21019:12 21041:16 21042:23 21046:22 21050:16 21056:4 21062:20 21076:13 21078:19 21089:3 21090:8,11 21098:22 21099:14 21104:1 21105:17 21106:5 21108:7 21110:1 21112:21 21115:3,8,20,24 21118:7 anders 21108:10 Andrew 21028:13,20 angle 20964:1,7 20978:18,25 20980:7 20980:11,18 20981:1 20989:3 21023:22 21090:24 21103:14 21103:25 21110:1 angles 21103:13 announce 20960:24 21005:19,19 answer 20991:1,1,7 20992:4 20997:25,25 21038:1 21102:8 21103:1,2 21108:25 21124:19 answered 21053:21 answers 21048:15 anticipated 21022:20 21024:18 antwoord 20971:5 20972:22 20975:7 20988:7 20990:24 20993:24 21015:10 21088:13 21095:4 21096:18 anybody 21016:17 21124:1 anyway 20969:16 20970:12 20981:2 20988:3 21006:3 21011:18 21022:20 21023:14 21024:13</p>

21036:19 21053:17 21058:15 21067:22 21087:6,16 21124:19 21126:5 apart 21073:20 21102:23 21111:16 aparte 21073:21 apologise 20975:8 21065:7,9 21066:23 apology 20976:18 apparent 21024:23 apparently 20966:16 21009:19 21038:15 21065:19 appear 20969:15,15 21027:19 21039:5 21040:5 21090:15 21111:6 appearing 21077:14 appears 20969:23 20986:12,12 21002:17 21028:10 21102:16 Appellate 20986:5 applicable 21033:7 appreciate 20975:13 20976:22 approached 21042:9 appropriate 21022:1 21023:6 21024:14 21025:6,9 21033:23 21036:20,25 21038:18 appropriately 21025:10 approved 21027:15 approximately 21028:7 21086:23 21091:20 approximates 21006:19 arbeidsgeskill 21054:17 area 20968:13 20969:20 20970:3,8 20973:11 20981:4 21007:9,10 21013:14 21028:13 21101:16 aren't 21011:14 21026:23 21046:10 argue 21037:12,18,19 21051:14 arguing 21038:4 argument 20991:7,13 21036:8 argumente 21035:3 arguments 20970:4 20982:10 arises 21022:4 armed 21037:7,11 21119:1 arose 20991:24 20992:3 arrest 21055:4 arrested 21055:3 arrive 20963:3 21001:15	arrived 21034:3,3,5,5 21038:8,15 21061:25 21062:3 arriving 20958:4 arrow 20969:24 20970:5,13,15 arsenal 21011:10,10,20 arsenals 21011:21 articulated 21041:22 artificial 21036:21 ascertain 20997:14 21033:21 21037:3 21039:8 aside 20972:18 asked 20998:4 21021:22,25 21025:25 21046:1,3,9 21053:19 21068:16 21069:5,5 21083:1 21084:5 21092:25 21125:20 asking 20992:22 20993:25 20997:22 21103:1 asook 20971:4 20975:2 20995:3 21029:3 21030:16 21063:25 21102:3 21103:25 21113:1 aspris 20975:5 asseblief 21049:12 21056:4 21096:24 assemble 21036:2 assist 20969:10 20996:1 21001:11 21019:22 21021:8 21025:19 assistant 21026:13 assume 20973:23 21018:18 assumed 21005:25 21107:7 assumption 20994:1 21005:25 21019:22 assurance 20968:3 assure 20965:15 attack 21099:20 21100:25 21101:22 21102:9 21123:17 21124:1,7 attacked 21101:22 21103:3 attacking 21111:17 21123:21 attacks 21103:19 21111:21 attempt 20962:22 20977:24 attempting 21040:11 attempts 20995:24 attend 21005:22 attention 21025:13 21028:14 21111:6,10 attitude 21050:1 21051:15 attorney 21004:10	audio 21022:7 August 21013:21 21016:10 21027:3,24 21029:7,13 21039:10 21046:16 21056:24 21059:7,8,16 21060:20 21064:16 21064:22 21074:25 21075:12 authorise 21036:4,5 authorised 21037:4 available 20962:16 21003:5 21029:16 21055:23 21079:5 21106:21 avenue 21021:12 avoid 21042:13 avoids 20987:6 awaiting 21123:11 aware 21007:10,11 21008:5,6,8 21009:9 21036:22 21053:17 21076:18 21078:3 21101:24	20965:5,13 20966:25 20967:1,5,10 20968:8 20968:9,10,10 20970:19,20,21 20971:5,8,14,25 20974:10 20978:5,17 20979:1,5,5,6,20,23 20980:24 20995:3 20997:4 21081:23 21082:3 21097:14 bark 20984:19 20988:1 barrier 20963:19 20964:6 based 21013:24 21044:1 basic 21080:23,25 21086:24 basically 21017:23 basies 21043:22 basis 20965:22 20967:3 20967:24 20984:7 20985:5 20987:19 21008:8 21013:17,18 21016:11 21020:19 21023:10,10 21029:16 21041:19 21060:18 21096:4 beamptes 21062:19 bear 20962:25 20987:18 21006:8,15 bearing 21008:2 beat 21116:7 bedevilled 20975:19 bediening 21008:17 bedoel 21121:17 beduie 21061:16 beeld 20994:22 20995:2 21094:23 beeldmateriaal 21082:21 21104:2 beg 20974:5 20997:1,4 21003:17 21026:10 began 20995:11 20999:16 beginning 20997:17 21059:6 begins 20998:2 20999:1 behalf 21073:25 Behalwe 21111:13 behandeling 21008:16 behaviour 20984:18 beheer 21012:3 21013:2 21032:23 behoorlike 21012:7 beide 21047:24 bekom 21014:15,16,20 21016:21 bekyk 21045:14 belangrik 20989:11 21107:21 21108:8,8 belangrike 21078:19 21112:23 believe 21016:9 21038:12 believed 21048:10 benefit 20987:17	21049:3 21076:8 beplanning 21030:7 bereid 21052:20 21054:5 bereik 21094:15 21112:18 beseer 21062:22 besig 20988:16 21075:18 21089:25 21096:25 21099:16 21118:14 21119:18 besit 20990:20 21010:21 21011:6 21014:21 21017:2 21033:3 21115:10 beskerm 21115:25 beskerming 21054:18 21082:6 21084:15,25 21085:25 beskikbaar 21014:19 21016:23 21054:8,22 21107:6 21108:10 beskikbare 21102:22 21113:2 beskikking 21030:5,8 beskryf 21109:10 beslis 20971:7 21004:16 21030:14 21053:25 besliste 21112:3 besluit 21043:15 21094:25 21097:19 21099:7 besoek 21029:3 bespreek 21008:25 21073:13,14 21078:9 best 20958:13 20975:14 20988:1 21006:13 21038:24 21039:7 21040:18 21117:13 bestaan 20998:13 21097:13 21099:6 21115:4 bestuur 21043:9 21047:24 beswyk 21062:21 beteken 21099:13 beter 20968:25 21047:1 21110:2 betref 21002:9 betrokke 20989:14 21035:2 21050:10 21054:15 21069:11 21069:20 21075:20 better 20986:9 20995:12 21059:22 21117:23 betwis 21108:5 21110:12,16 beurt 21054:23 beveilig 21047:8 21064:4 beveiliging 21064:9 bevelvoerder 21061:9 21063:6 bevelvoerders 21018:3
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21063:5 bevestig 21030:12 beweeg 20977:23 20978:1 20988:13 20989:25 20998:8,19 21082:6,20 21084:23 21085:1 21089:5,14 21089:14,18 21090:12 21092:5 21097:1 21099:4 21110:4,6 21112:18 21115:2 21119:8,19 21125:7,9,14 beweer 21097:10 21109:19 21113:5 21121:1 beweging 21084:15 21089:3 21090:7 bewering 21030:12,15 beweringe 21031:12 21077:9 bewerkstellig 21042:19 bewus 21008:10 21015:11,11,13 21016:2 21030:10,18 21041:5 21043:9 21052:16,17 21063:23 21072:10 21077:1 21084:21 21104:4 bewys 21110:9 bewyse 21004:21 21025:19 bewysstukke 21088:7 21102:22 beyond 20964:19 21081:21 bied 21050:13 21053:24 bietjie 21035:15 21110:1 big 20982:10 21005:4 21006:7 Bill 21036:17 binding 21053:14 binne 21101:10 binne-in 21064:8 bit 20975:15 20978:5 21036:21 21051:18 21059:8 21081:21 21125:24 bits 20958:12 Blackberry 20974:4 20981:15 21098:5 21104:10 21105:13 21105:14 bladsy 20996:6,10 21002:21 21004:18 21068:1 21106:6,18 21107:23,25 21109:3 21109:8,11,17,21 21110:10 21118:6,8,9 bladsye 21105:18 21106:8 blank 21004:18 21074:23 21075:9	block 20961:18 20999:19,19 21090:4 21090:16,16,20,22 21091:11,17 blocked 21083:7 bloot 21035:3 blote 21099:12 blou 21002:20 blown 20973:11 blue 21023:25 21096:5 bly 21014:21 21098:23 21103:24 21115:9 bo 21118:11 board 21051:12 bodies 21095:20 body 21044:17 bold 21029:22 boodskap 21035:4 21053:25 boodskappe 21047:24 21048:2 book 20960:8 21057:22 21070:20 21071:3 boonste 20971:3 20993:18 20995:18 borne 21070:1 bottom 20963:17 20965:4 20978:20,22 20980:13,15,19 20981:1,5 boundary 20966:23 box 20965:17 brace 21119:2 braced 21119:4 break 21000:3,3,6,8 21005:24,24 21038:25 21087:19 breakdown 21020:20 breedvoerig 21043:12 breukdeel 21082:7,18 brick 21051:1 brief 21061:20 briefed 21071:14,20 21072:5,12 briefing 21067:1 briefly 21020:15 bring 21037:8 21096:12 Brits/Rustenburg 21007:10 broad 20969:22 broadly 20969:17 building 21042:12 built-up 20968:13,17 20968:19,21 buite 21102:5 buitekant 21010:23 21101:9 21103:7 21105:8 21110:14 bullets 21024:25 21025:7 21095:9 bundle 21065:20 bundles 20959:8 bush 21119:15 busy 21025:14 bydrae 21050:11	bydraende 21049:7,17 21050:19 21123:2 21124:21 21125:2 byeenkoms 21035:21 21043:4 bygehou 21075:24 bykom 21098:20 bymekaar 20990:21 21069:12 byskrif 21002:11 byvoorbeeld 21015:25 <hr/> C <hr/> Calitz's 21057:18 21058:1 21059:22 21065:19 call 20965:14 20970:22 20984:10 20995:22 21069:17 21070:5 21101:20 called 20959:22 21068:19 CALS 21120:1 camera 21103:17 cameras 21103:19 camp 20961:14 20968:18 cancel 21065:3 candid 21048:10 canister 21120:5,15 21121:22 21122:10 21122:12 cannon 20991:18 can't 20965:8 20987:22 20987:23 20995:12 21003:15 21006:2,2 21017:18 21022:10 21036:3 21045:21 21046:11 21060:4 21068:20 21087:25 capable 21083:5 Cape 21038:10,18 21039:1 captain 21056:10 21057:11 21060:2 21064:21,25 21065:25 21067:8,13 21067:14,22,23 21068:5 captain's 21060:4 21067:17 carefully 21024:20 carries 21028:8 carry 20962:13 20972:14 20973:15 20977:3 21000:4 21005:18 21007:1 21025:5,15,22 21125:19 carrying 21032:20 21035:10 21115:18 cartridge 21018:25 cartridges 21010:16 21011:2 21013:16 21018:22 21019:5 case 20986:4 21010:15	21017:6,23 21083:21 21092:16 21124:4 Casspir 20983:2,11,14 20994:25 21088:3,10 21093:13 21098:9,15 21098:21,22 21101:19,19,20,20 21102:4 21104:15,17 21120:7,18 Casspirs 20988:16 21107:17 category 21065:22 caught 21124:12 21125:12 cause 21007:17 21039:22 caused 21017:19 21018:11 caution 20966:13 CCTV 21061:2 ceased 21007:23 cell 21045:16,17,18,20 21045:22,24,25 21046:2,3,10,11 central 21098:9 centre 20977:10 21081:2 certain 20959:13,14 20975:25 20987:24 21007:17 21023:19 21025:25 21070:15 21071:22 21072:7 21078:4 certainly 20962:21 21014:25 21025:11 21037:10 21083:5,16 21098:12,13 21104:13 21109:1 21126:7 Chairman 21048:14 chambers 20959:11 21002:23 chance 20971:20 21001:23 21002:2 21006:5 21055:13 21079:14 change 20985:3 20987:22 21016:18 changed 20965:24 20966:15 21065:13 21065:17,18,21 changes 20966:16 changing 20984:15 channels 21051:3,3,20 21053:5 chaotic 21088:25 chaoties 21089:2 chaplain 21068:25 21069:7 charges 21007:19 21014:2 Chaskalson 20965:25 20966:1,5,11 20967:13,19,23 20973:9 20994:18 21090:21 21091:7,10	check 20960:11 21060:23,25 21064:20,21 21065:25 21070:19 children 21039:3 choice 21123:8 21124:11 Christmas 21038:25 circumstances 20985:2 20986:23 20991:6 21076:20 civilians 21062:2,6 clarification 20973:4 20979:17 clarity 20999:14 21010:12 classified 20969:17 clear 20968:17 20986:17 20995:8 20999:15 21012:17 21013:18 21014:5,23 21021:13 21023:23 21031:5 21040:2 21048:10 21051:8 21059:1 21073:16 21095:10 21101:17 21121:13 clearly 20986:6 20991:9 21013:25 clears 20999:3 client 21004:7 clients 21024:7,12 climb 20961:19 20972:6 21118:22 climbs 21114:20 clip 21022:10,13 21023:19 21083:4 21088:15 21092:17 21095:3 clips 21080:11 clip's 21022:7 close 20981:6 21023:2 21084:8 21096:8 21098:6 closely 21007:1 closer 21006:23 21028:5 21098:6 21104:12 21105:4 21114:21 close-up 20967:13 20996:8 20997:19 closure 21040:1 clothing 21016:1 cloud 21096:1,5 21122:22 21123:7 CMPM 21040:10 coherent 21026:23 Coin 21061:14 coincide 21007:1 coincides 21048:23 collateral 20974:15 colleague 21038:9 colleagues 21009:24 21050:5 colonel 21068:20,24 21069:7
---	---	---	---	---

<p>column 20984:13 20987:21</p> <p>come 20971:15 20983:21,24 21006:3 21007:4 21009:6 21013:25 21026:21 21038:10,17 21045:23 21046:13 21048:10 21085:19 21096:8 21105:2,4 21108:17 21124:15</p> <p>comes 21022:21 21065:19</p> <p>comfort 21000:3,3,6,8 21005:24</p> <p>comfortable 20968:2,5 21039:20</p> <p>coming 20973:15 21060:19 21100:6</p> <p>command 20984:20 20988:1</p> <p>commander 21027:14 21027:16 21070:23 21071:6 21072:8 21076:18</p> <p>commanders 21062:4 21064:17,17 21067:7</p> <p>commence 21080:12</p> <p>commencement 20976:8</p> <p>comment 20966:12 21086:22</p> <p>commission 20958:2 20959:12 20986:22 21000:9,9,10 21001:10,11,14 21022:23 21034:8,8,9 21064:15 21071:13 21072:13 21073:5 21074:8 21077:20 21079:21,21,22 21108:21 21124:5 21126:11</p> <p>Commissioner 20967:12 20986:10 20986:15 21003:11 21054:24 21057:25 21058:4,5 21071:14 21071:20,21 21072:6 21072:7,13,14 21077:15</p> <p>Commissioners 20958:17,19 20959:8 20984:8 21078:24 21080:8</p> <p>commissions 20987:17</p> <p>committed 20983:1</p> <p>common 20984:17 20987:20 21007:16</p> <p>communication 21042:20</p> <p>compare 21066:5,24 21074:20 21090:2 21119:3,5</p> <p>compilation 21077:24 21078:15</p>	<p>complete 21076:3</p> <p>completely 20966:3 20981:19 20984:15 20999:18,20</p> <p>comprehension 21042:12,22 21043:13 21047:17</p> <p>comprehensively 21052:8</p> <p>computer 20963:9 21040:15</p> <p>concede 20999:14 21017:7</p> <p>conceded 21098:11</p> <p>concedes 21051:6</p> <p>concentrate 20981:3</p> <p>concern 20981:8 21026:12</p> <p>concerned 20970:1 21017:12,21 21039:11 21083:14 21111:14 21115:17</p> <p>concerning 21007:7</p> <p>concession 21050:4</p> <p>concessions 21052:11</p> <p>conclusion 21020:9</p> <p>conclusions 21002:1</p> <p>conclusive 21124:25</p> <p>condemned 21009:6</p> <p>condition 21028:18</p> <p>conduct 21017:12</p> <p>conducted 21038:6 21099:8</p> <p>cones 21099:8</p> <p>confess 21087:4</p> <p>configuration 21104:9</p> <p>confirm 20961:12 20967:9 21009:13 21029:5 21040:22 21067:5 21092:3 21093:14 21094:10</p> <p>confirmation 21093:3</p> <p>confirms 20971:25</p> <p>conflict 21042:14</p> <p>conflicts 20966:8</p> <p>confrontation 21028:11 21061:21</p> <p>confronted 21061:20</p> <p>congregate 20969:20 20970:3</p> <p>congregated 20970:8</p> <p>consider 21020:12</p> <p>Constable 21056:9 21057:8 21058:24 21059:9 21066:6</p> <p>constituted 21053:20</p> <p>Constitution 21036:4</p> <p>constitutional 21036:2</p> <p>constitutionally 21036:9,10,12,17</p> <p>contact 21096:12</p> <p>contained 21040:19</p> <p>contains 21066:20 21108:20</p> <p>CONTD 20958:20 21001:8 21034:14</p> <p>contemporaneous</p>	<p>20966:24</p> <p>contend 20991:14 21018:13</p> <p>contention 20991:24 21018:9</p> <p>contested 20982:2,5</p> <p>context 21091:15</p> <p>contingency 21026:20 21027:5,8</p> <p>continue 21039:6,16 21091:18 21092:8 21093:7 21094:2</p> <p>Contract 21004:2</p> <p>contrary 21029:10</p> <p>contravention 21035:12</p> <p>contribute 21122:14</p> <p>contributes 21121:23</p> <p>control 20985:8</p> <p>Conversely 21019:4</p> <p>convey 21039:17</p> <p>cooperation 21042:12 21042:16,19</p> <p>cope 21070:3,3</p> <p>copies 20961:1 20962:4 20962:16 21006:6 21058:8</p> <p>copy 20960:16 20963:6 20996:25 21004:3,13 21067:19</p> <p>corner 20968:12 20978:18,21,23 20979:20 20980:13 20980:14,16 20981:4 20983:5 20993:14 21085:17 21094:11 21098:6 21104:13 21105:4 21107:16,16 21120:17</p> <p>correct 20965:12 20968:13,22 20969:23 20970:9 20977:11,21 20981:19 20983:7,12 20985:20 20993:25 20994:2,13,16 21008:2 21009:14 21010:25 21013:19 21015:6 21019:1,6 21027:10 21031:18 21034:25 21044:8 21047:13,18 21050:22 21051:12 21051:14 21052:13 21056:7 21057:17 21070:6 21082:16 21085:3 21086:5 21087:3,15,16 21088:15,25 21089:10 21092:18 21095:15 21113:19 21113:24 21116:16 21116:18,23 21119:6 21121:21 21122:9,11 21122:15 21125:3</p> <p>corrected 21011:19</p>	<p>21053:7 21086:20</p> <p>correctly 20959:19 21058:21</p> <p>couldn't 20961:19</p> <p>couldn't 20985:6 20991:12 20993:5 20997:13 21010:1 21053:15 21054:12 21096:7 21099:23 21116:6 21125:19</p> <p>counsel 20987:9,14,16 21005:17 21006:5,25 21037:24 21039:18 21055:22 21079:4 21081:10</p> <p>counselling 21069:3,16</p> <p>couple 20991:12 21007:6 21093:20 21114:16</p> <p>coupled 20961:13</p> <p>course 20958:4 20960:17 20963:9 20969:14 20977:5 20984:8,9 21006:10 21007:9 21012:23 21014:9 21032:7 21034:19 21037:2,6 21037:25 21038:21 21077:4 21079:6 21083:13 21098:7 21111:12,18,19 21118:21 21123:10 21124:11</p> <p>court 20987:14</p> <p>courts 20987:17</p> <p>cover 21010:11 21019:17 21055:18 21066:19</p> <p>covered 20965:14 21010:6,8 21019:17 21019:18 21036:16 21039:8</p> <p>covering 21006:18</p> <p>created 20970:19 20971:14</p> <p>creates 20967:8</p> <p>criticising 21125:18</p> <p>cross 20958:9 20959:6 20965:19 20981:9 21005:7 21016:8 21078:24 21087:22 21124:18</p> <p>cross-examination 20958:15,20 20959:15 20962:15 20967:17,25 20972:14 20976:8 21000:20 21001:8 21004:25 21006:7,22 21025:25 21034:14 21055:16,17,24 21060:12 21080:10 21087:23</p> <p>cross-examine 21003:7 21033:20 21087:25</p> <p>cross-examined</p>	<p>21080:24</p> <p>cross-examining 21073:25</p> <p>crowd 20984:8 20986:20,21 21007:8 21008:5 21040:9,10 21040:21 21041:4,10 21041:11,12,13,14,17 21041:24 21042:3,9 21042:13 21120:16 21122:13,13</p> <p>crowds 20986:25 21040:22</p> <p>Cs 21042:11,16 21043:22</p> <p>currently 21010:5</p> <hr/> <p style="text-align: center;">D</p> <hr/> <p>daai 21082:22 21089:16 21099:10</p> <p>daardeur 21035:8 21042:17 21097:18 21099:7,9,10</p> <p>daargestel 21070:10</p> <p>daarin 21048:1 21070:25</p> <p>daarmee 21019:2 21071:8 21076:24 21115:11</p> <p>daarna 21020:13 21021:4 21025:20 21032:15 21035:6,17 21043:15 21052:20 21071:8 21082:9 21101:12</p> <p>daarnatoe 21091:4</p> <p>daarom 20995:15 21017:1 21054:18 21108:8</p> <p>daaroor 20971:6 21029:24 21031:11 21078:10,11 21092:21</p> <p>daarop 20975:7 21041:17</p> <p>daarvan 21011:6 21025:19,21 21033:16 21118:18</p> <p>daarvoor 21071:9 21075:16 21077:10 21121:16</p> <p>daar's 21084:22</p> <p>dadelik 20990:17 21035:6</p> <p>dae 21078:19</p> <p>dag 21019:9 21030:7 21042:25 21043:2,16 21044:12 21049:15 21061:2 21072:23 21075:3,17 21097:12</p> <p>dagboek 21074:12 21075:2,5,6,7,9,15,21 21075:24 21076:11</p> <p>dalk 20970:24 20988:8 21015:10 21025:18 21096:19 21110:2,12</p>
---	---	---	--	--

<p>21118:5 dangerous 21033:7,8 21035:12,15 21038:7 21041:24 21055:2,4,7 dankie 20961:10 20975:16 20982:23 21001:5 21034:11 21056:4 21080:2,6 21095:3 21112:8 dark 20980:3,14 darkish 20978:24 date 21009:14 dated 21027:3 day 20958:4 20985:16 21064:19 21070:21 21071:18 21074:22 21074:23 21091:8 21104:11 21120:5 days 21007:6 deal 20959:15 21004:25 21005:3,12 21013:14 21024:21 21025:9,11,23 21026:14 21041:11 21050:3 21052:8 21055:5 21079:7 dealing 21040:21 21041:13 21042:9 21124:5,16 deals 21059:16 dealt 21024:4,5 21025:6,11 21026:15 21041:20 death 21056:23 21060:14 21074:5 21076:20 21077:13 21077:21 deaths 21017:18 21018:10 21039:10 debate 20977:16 21009:21 21023:6,22 21025:8 21034:15 21036:7,19,21,25 21037:1 21091:7,12 debated 21022:21 21096:22 debating 20958:22 20967:2 20969:11 21023:13 21091:10 debriefing 21064:16 21066:2 21067:6,8 21068:16,19,23 21069:1,2,4,5,6,7,18 21069:18,23 21070:5 21070:22 21071:5 debriefings 21070:13 deceased 20958:3 21009:19 21017:6,11 decide 20985:17 21015:5 21083:2 decided 20986:5 decision 21015:2,4,5 deel 21033:16 21044:21 21045:7 21072:20 21090:25 defence 21034:24</p>	<p>defend 21116:4,6 definitely 21031:21 definitief 20992:12 20993:2 20998:13,22 20999:11 21011:7 21033:15 21082:19 21084:22 21101:13 21102:13 21103:10 degree 20978:18,25 20980:7,11 20981:1 20997:14 21117:4 degrees 20964:2 20980:17 20985:3 dekking 21101:3 delay 21068:10 delayed 20958:6 dele 21072:20 21073:21 deliberate 20989:1 deliberately 21083:8 demand 21050:25 21051:21 demolished 20966:3,9 demonstrate 21033:9 21108:20 demonstrates 20961:12 denied 20969:15 deny 20991:3 departmental 21077:13 Departure 21066:25 depiction 20968:9 deploy 21075:14 deployed 21013:13 deploying 21045:8 deployments 21054:21 deprived 20958:8 derde 21062:21 des 21097:11 describe 20960:8 20978:8,13 21074:4 21090:5 21091:16 described 21028:15 21090:4 21102:10 21109:1 description 20979:3 21104:20 designed 21124:2 despite 20991:22 20999:17 21022:6 detail 21068:12 21072:22 21104:7 determined 20991:16 20991:23 determines 21041:10 21041:14 deur 20977:25 20988:11 20998:9,22 21029:19 21033:13 21035:6,16 21053:1 21061:15,23 21062:11,22 21063:4 21063:14 21069:14 21069:24 21075:3 21093:16 21097:16 21105:18 21106:8,9 21106:14 21107:5 21108:9</p>	<p>deure 21103:9 deurgaans 21075:21 deurgegee 20975:6 deurgekom 21101:7 diagram 20969:5 20970:17 21103:16 diaries 21056:17 diary 21056:9,15 21057:11,18 21058:1 21058:23 21059:15 21059:19 21060:1 21064:20,24 21065:11,15,19,25 21066:6 21067:14 21074:10,10,20,22 21076:4 dictate 21087:25 didn't 20960:11 20962:19 20982:17 20999:18,19 21001:1 21016:9 21017:13,14 21021:14 21024:12 21026:3 21031:22 21032:17 21046:4,9 21051:25 21060:22 21060:23 21065:8,20 21074:25 21084:10 21093:23 21100:8,15 21106:24 21107:9 21120:13 21121:6 died 21009:19 21017:7 diens 21074:17,18 21075:9,9 dienste 21010:24 dies 21077:3,4 dieselfde 20979:7 20990:11,14 21002:10 21050:14 21090:22 21091:4 21099:11,15 21101:10 21105:10 21110:15 21112:18 21112:20 21125:10 differ 21043:25 difference 20997:15 21104:25 differences 20979:16 different 21006:18 21019:19 21023:22 21032:8 21045:10 21105:1 differently 21086:20 difficult 20974:14 20983:19 20984:1 20991:25 20992:2,3 21003:18 21052:11 21116:19 difficulties 20987:6 difficulty 20961:22 20975:14 20985:1 21095:17 ding 21033:2 21054:8 dinge 21075:3 dingetje 21075:25 dink 20974:25 20977:22,24</p>	<p>20981:22 20988:7 20989:10,18 20994:24 20995:15 20998:10,11 20999:7 21002:20 21008:15 21010:19 21014:17 21015:20 21016:20 21017:25 21020:25 21021:1 21025:17,19 21029:25 21031:1 21032:14 21035:1,5 21035:17 21041:2,4 21044:12 21045:14 21048:1 21049:6 21050:16 21061:4,14 21062:24 21063:2,20 21072:25 21076:11 21085:8,11,12 21090:21,23,25 21092:5,20 21094:20 21101:3 21102:20 21104:2,22 21105:7,9 21105:17 21106:2 21107:21 21108:7,9 21110:2,4 21111:24 21119:17 21120:1,23 directed 21060:21 direction 20967:18 20969:25 20977:17 20980:20 20984:14 20984:15,16,21 20985:3 20986:25 20987:22 20991:4 21121:9 21124:7 directly 20986:3 21025:2 21114:3 direk 21062:17 21113:15 dis 20995:1,15 20996:10 20998:6 21004:23 21030:7 21031:1 21032:24,25 21035:5,17 21050:16 21061:14 21068:2 21070:25 21089:17 21089:17 21090:21 21090:23 disadvantage 20982:18 21054:12 21079:25 disadvantaged 21079:25 disagree 20987:15 21095:5 disarm 21052:21 21061:5 disc 20959:22 21040:15 discharged 21018:23 21020:21 disciplinary 21007:19 discomfort 21123:11 discontinued 21009:8 21009:15 21010:13 discussed 21073:8 21102:11 discussing 21053:18 21067:18 21091:10</p>	<p>discussion 21091:15 dismissed 21053:12 disperse 21043:5 dispersion 20990:17 21089:25 disposal 21031:8 dispute 20991:11 20992:1 disputing 21108:1 dispuut 21078:12 21102:21 dissatisfied 21015:1 dissent 21015:6 distinction 20969:22 21056:20 distress 21039:22 distributed 21058:6 disturbs 21045:20 21046:12 divert 20980:25 division 20986:5 21013:1 document 20959:22 20962:4 20976:9 21001:11 21003:12 21003:16,19 21004:6 21004:9,13 21005:16 21026:4,21 21027:3,4 21027:7,9,13,18,23 21040:8,21 21041:7 21041:23 21059:25 21066:18 21067:16 21067:18 21077:23 21078:6,16 21106:14 documents 21042:11 21056:13 21060:11 21060:17 doel 21013:8 21015:23 21015:24 21035:2 21044:15 21108:11 doelbewuste 20988:13 20990:7 doen 20990:5 21015:24 21054:7 21125:7,9 doesn't 20986:3 20987:14 20988:4 21006:11 21033:6 21036:4,18 21037:22 21046:8 21070:20 21074:23 21084:2 21087:11 21090:15 21120:15 21123:6 doing 20987:25 21027:12 21033:9 21036:18 21037:5,5 21111:19 dokument 21002:10,12 21004:15,20 21033:17 21040:23 21041:3 21078:8 21093:16 21105:17 21105:20 21106:15 21107:5,22 21108:9 dokumente 21105:17 21106:7 donshael 21015:20,22</p>
---	--	---	--	---

21016:1 don't 20960:20 20962:5,9 20966:8 20971:9 20974:12 20975:12 20977:16 20978:16 20984:10 20987:8,17 20991:2 20991:11 20992:1 20994:12,12 21002:18 21003:8 21005:15 21006:20 21007:15 21009:17 21014:8 21019:17 21023:7,20 21024:21 21025:4 21027:12 21034:3 21036:24 21037:16 21038:4 21051:21 21058:1 21077:16 21079:8,9 21083:10 21087:8 21091:6,14 21093:1 21122:16 21123:13 dood 21015:23 21030:14,16 21043:18 21046:23 21047:22 doppie 21019:14 doppies 21018:4,22 dot 20978:3 double 21016:1 21059:15 downwards 20977:18 dra 21032:22 21048:2 21053:25 21077:18 draad 20979:5,8,13,22 21097:12,13,13 draai 20990:10 21061:17 21094:20 21094:25 21099:4 21109:18 21110:9 drade 21097:17 drafts 21078:2 dramatic 20966:16 20986:22 dramatically 20965:24 drawing 21021:17 drawn 20959:8 21091:13 draws 20977:19 dreigement 21071:1 dreigemente 21042:5 drew 21091:13 drie 20995:5 20998:14 20999:7 21019:9 21030:23 21063:14 21097:13 21098:18 21110:19,25 21113:4 21118:15 21125:6 drill 21051:23,25 drive 20971:25 20972:3 20972:5 driving 21088:3 dropped 21071:25 drove 20971:23 druk 21097:9 dryf 20988:23	ducks 21000:11,12,15 21040:12 due 20984:9 21037:25 dui 20974:25 duidelik 20988:8 21045:6 21046:19 21088:22 21096:19 21104:23 21109:20 21110:23 21112:3 21118:25 duidelikheid 20972:21 duties 21077:5 duty 21028:24,25 21032:18 21034:22 21037:2 21074:14,15 21077:3,4,4 <hr/> E earlier 21016:8 21025:24 21104:11 21114:24 21119:3 early 21029:7 earth 20978:24 easiest 20960:15 easily 21084:1 Eastern 21038:10,17 21039:1 easy 20958:22 20984:18 20986:19 20987:1 20991:5 edge 21104:13 21108:3 eed 20974:25 20993:17 21008:24 een 20979:10,11 20996:11 20999:8 21002:11,20 21004:16 21019:8,10 21019:11,11,13 21041:15 21046:21 21050:16 21052:21 21056:4 21062:19,24 21063:15,16,19 21075:17 21106:2 21110:15 21112:25 21113:13 21115:3,10 21118:8 eers 20983:13 21095:1 eerste 20977:24 20988:9 21002:11 21004:23 21030:15 21030:18 21062:8 21107:23 21120:9 effect 20959:25 20961:12 21053:21 21083:3 21085:5 effectively 20961:18 20963:23 20978:4 21084:11 21087:12 21103:14,16,18 21114:2 effektief 21015:24 efficiently 21026:15 egter 21063:21 EHW 21069:21 eie 20989:11 21073:11 21094:23 21097:1	21110:24 eiendom 21054:18 eight 21027:19 21098:3 eind 20980:1 either 20996:9 21023:14 21029:6 21037:8 21068:3 21075:4 21119:6 ekskuus 21067:10 21070:24 21071:1,24 21093:5,15 21096:17 21107:3 21108:4 21112:13 21121:7,16 eksperts 21021:4 21025:18,20 ekstra 21054:21 elapsed 20997:9 element 20990:1,9 20992:7 elemente 20989:20 21095:1 21110:3 eliminating 21100:14 elke 21002:10 21049:14 21073:20 21075:7,20 21075:24 21076:1 elkeen 21073:11 email 20974:23 20975:2 21004:15,21 emailed 21004:9 emerged 21013:11,12 empathy 21039:25 employee 21069:12 employees 21028:8,11 21030:17 21035:5 21051:11 employer 21050:24,24 enable 21006:25 encounter 21029:12 encouraged 21122:21 endeavouring 21039:7 21039:14 ended 20958:21 20980:22 20981:18 endorse 21027:14 engage 20990:13 21021:7 engaged 21053:15 21055:1 enige 20990:7,19 21010:22 21014:14 21035:21 21077:9,9 21089:12 21098:1 21104:2 21123:1 enigins 21035:2 enigste 21075:15,16 21089:15,17 21096:18 21112:22 21113:2 enkele 21042:4 enlarged 20973:11 enlargement 20998:4 enlightening 20992:16 enquiry 21038:1 ensovoorts 21094:21 entirely 21017:18 21049:22	entitled 20984:8 21019:21 21040:9 21053:7 21108:18,19 21108:22 entrenched 21036:9,10 21036:12,17 entries 21066:20 21111:16 entry 21066:7,8 21068:16 envisages 20967:18 equipped 21116:6 erg 21063:17 erge 21064:11 eskort 21072:25 essence 21042:8 essentially 21080:25 21081:4,5 21082:2 21105:2 establish 20974:15 21034:23 21113:7 established 21014:2 21052:10 21091:7,11 estimate 20995:12 21116:19 estimated 21096:4 etcetera 20977:17 21091:14,14 eTV 20983:16 21088:15 21093:11 21095:16 21096:3 21103:19 21104:8 21109:22 event 21051:10,15 21085:4 events 21039:11 everybody 20987:24 21040:2 21095:24 evidence 20959:3 20966:9 20967:15 20969:14 20971:10 20971:22 20973:7 20974:3 20984:11 20985:16,23,24 20986:2 20991:15 20994:9,14 21004:1 21006:1 21007:24 21009:16 21010:6 21014:1 21016:7,13 21016:24 21018:14 21021:22 21022:14 21022:15 21024:5 21026:3,5,7 21044:2 21045:12 21046:14 21051:4,8 21054:25 21064:14 21065:8 21071:18 21074:2 21100:19 21103:3 21111:15,16 21124:9 evidence-in-chief 21064:18 21071:17 exact 21051:8 21088:17 exactly 20978:15 20997:7 21081:20 exam 21037:16 examination 20958:10	20965:20 20981:10 21005:8 21007:5 21037:15 21038:6 21078:25 21087:23 examiners 21016:9 example 21018:20 21036:14 21041:23 21044:5,5 21116:15 exception 21100:19 exclude 21017:18 exercising 21036:11 exhibit 20959:24,25,25 20960:16,17,19 20967:3 20974:4,5,17 20974:22 20975:3,18 20976:1,3,6,11,14,14 20976:17 20992:17 20996:3,4 20997:6 21001:12 21002:14 21019:23,24 21026:5 21026:7 21040:9,12 21040:19 21057:7,9 21057:19 21058:1,3 21059:11 21064:21 21064:25,25 21067:14 21073:19 21076:10 21077:19 21077:23 21095:23 21106:17 21119:11 exhibits 20959:11,13 20960:8 21057:4 existed 21035:13 expect 21082:13 expected 20973:20 21038:16 experience 21049:24 21069:3 expert 21021:16,21,21 21022:21 21024:5 expertise 21021:19 experts 21021:7 21102:21 21119:17 21119:25 21120:2 explained 20959:10 21068:25 explaining 20975:25 21024:8 21077:20 explains 21001:15 21002:7,14 explanation 21074:24 explanatory 20976:5 express 20970:13,13 expressed 21014:24,25 extent 21010:7 extract 21056:8 extracts 21059:6 eye 21081:23 <hr/> F face 21047:12,12 faced 21050:25 facie 20969:16 20987:4 21022:25 21023:10 21052:7 21113:7 facing 21022:20 21121:10
---	--	--	--	---

fact 20982:16 20984:11 20986:2,23 20991:16 20996:25 20999:17 21008:6 21009:18,19 21013:15,16 21020:20 21021:24 21022:6,24 21024:15 21024:25 21026:1,4 21028:18 21029:13 21035:9 21036:13,16 21037:3 21087:10,11 21088:17 21089:21 21098:10 21105:13 21111:10 21117:10 21119:13 21122:2 21124:22	20967:1,15 20972:1,2 20973:2 20978:5,17 20979:1 21095:10,11 21096:14 fences 20959:22 20961:14,17 20965:1 20965:5,13 20966:25 20967:5,10,14 20968:10 20970:21 20971:14 Ferncrest 21063:2 FFF25 21070:20,25 fiddle 21046:7 field 20973:16,19 20982:12 figuur 20996:13 file 21058:8,12,20 21067:19 files 21066:17 final 20986:9 21006:7 21040:8 21077:22 21078:16 21080:9 finale 21078:2 finalised 21077:24 find 20962:23 20968:20 21010:10 21018:21 21020:10 21026:22 21032:18 21038:9 21068:9 21107:8 fine 21000:25 21086:11 fingertips 20960:20,23 finish 21125:17 21126:1,7 finished 21006:4,21 21055:15,21 21126:6 fire 20981:16 20983:17 21023:1 21083:22 21087:1,1 21088:17 21105:6 21107:18 firearms 21022:17 21083:21 fired 20976:14 20991:17 20993:9 21008:4 21016:10 21018:18 21019:21 21022:7,9,11,12,14 21022:18 21023:2,16 21023:18 21024:12 21025:1,1,7 21028:11 21071:22 21072:8 21078:5 21087:5,5 21120:6,15,16,17 21122:10 fires 21020:18,19,23 21022:8 21124:12 21125:11 firing 20994:3 21019:5 21073:7 21095:8 21096:9 firms 20963:9 first 20961:11 20986:9 20995:9 20997:11 21009:9 21022:1,23 21027:3 21036:2 21087:5 21100:15 21120:5,14	five 21042:11,16 21112:20 21126:2,6 flagged 21025:12 flat 20969:20 20970:3,8 flowing 21049:21 focus 21070:14 21087:9 21098:9 focusing 21111:6,10 focussing 21087:10 fokus 20996:11 21110:1 follow 20962:14 21014:7 21023:20 21058:20 21087:24 21118:22 following 20997:2 21021:9 21022:2 21023:22 21070:2 21117:14 follows 20970:11 follow-up 21034:15 foot 20963:18,23 20980:19 21113:8 21114:7 21116:17,22 footage 21097:2 21103:22,23 force 21007:23 21084:21 21098:1 21115:7 forgive 21056:25 forgotten 21091:22 form 20986:7 21074:2 21088:23 formasie 20989:21 21089:13,24 21090:1 21097:8 21109:12,19 formation 20997:4 21080:23 21089:9,21 21089:22 21090:3,5 21090:15 21091:11 21091:16 21104:15 formed 20993:10 21080:25 21100:1,9 formulated 21027:5 forth 21039:4 forward 20985:5 20991:16,23 21022:2 21111:4,5,12 21113:22 21123:8,10 21123:25 21124:19 foto 20975:2,3 20979:8 20979:12 20988:9,9 20995:2,17 21002:10 21085:10 21090:24 21094:17 21097:4 21098:20 21104:23 21106:2,5,6 21109:8 21109:10,21,23,25,25 21110:2,9,13 21112:4 21112:9,19 21113:2 fotos 21088:7 21093:16 21093:17 21097:16 21107:21 foto's 20975:4,7 20982:23 21002:10 21044:14	found 20961:3 21000:6 21000:7 21011:3 21019:1,6 21026:5 four 21094:7,9 fraction 21119:14 frame 21020:22,22 21021:3,4 frames 21020:8 21021:18 freely 21014:10 21016:17 Friday 21029:11 21059:8 friend 20962:4 21004:9 21010:15 21022:24 friend's 21004:10,10 front 20969:20 20970:3 20970:8 20983:18 20984:19 20986:20 20987:21 20992:23 20992:24 20993:13 20995:10,22 20997:10,10,11,16,16 20999:15 21059:1 21086:24 21088:9 21091:23 21114:4,7 21116:17,22 21120:16 21121:23 21122:12,13,14 21123:11,22,24,25 frustrasie 21050:9,20 frustration 21049:24 21050:7 full 21087:12 21088:16 fully 20973:8 fundamental 21041:22 fundamentally 21095:6 funnel 20970:18,22,22 further 20962:22 20974:3 21000:22 21028:23 21032:11 21053:18 21078:24 21084:4 21111:21 furthermore 21051:7 21064:20 future 20978:11 fyn 21015:22	21099:7,9 21100:12 21100:12 21101:4 21102:21 21107:5,21 21107:23 21108:10 21109:5,20 21115:7 21120:2 21125:9,9 gainsaid 20986:3 gainsay 20985:25 gang 21043:14 21049:5 gap 20982:1 20983:1 gas 21123:7 gather 21032:24 21036:9,11 gathering 21055:1 Gatherings 21032:25 ge 21101:3 gebaseer 20989:17 gebeur 20990:19 21029:4 21042:25 21049:10,13,14,16 21050:14 21054:4 21064:12 21075:3,25 21076:9 21101:10 21103:23 21123:2 gebeure 21043:15 21076:12 geburtenis 21064:7 gebied 21054:20,22,23 21061:11 geblaai 21093:6 gebloe 21063:17 geblok 20998:12 21099:7 gebyl 21115:14 gebrand 21030:18 gebruik 20979:6,19 20989:9,19 21010:21 21010:23 21012:15 21013:2,5,6 21014:18 21017:2 21041:6 21062:23 21064:6 21084:21 21085:24 21094:20 21097:15 21115:12,22 gebukkend 21112:1 gedagte 21076:15 gedeelte 21064:1 gedeelte 20981:20,21 20995:19 21004:19 21029:22 21042:19 gedeeltelik 21052:18 gedien 21008:13 gedoen 20990:3 21008:17 21012:5,5 21041:5 21043:12 21071:24 21076:16 gedog 21014:13 21107:4 gedood 21030:11 21031:14 gedraai 21097:12,22 gedurende 21030:23 21053:23 gedwing 21070:9 gee 20998:20 21025:18 21043:4 21056:3
G				
gaan 20970:24 20977:25 20979:21 20979:22 20988:7,21 20989:2,18,19,22 20990:4 20992:11,11 20999:10 21002:4 21013:5,6 21029:19 21029:21 21030:3 21035:17 21043:5 21044:10 21047:2 21049:16 21061:6 21063:13 21075:5 21076:11 21085:9,11 21088:7 21091:4 21092:6,6,21 21093:17 21095:2 21097:15,20,20,20				

<p>21064:9 21085:8 21097:5,20 21099:3 21110:2 21118:9 21125:5 geen 21032:22 21054:5 21097:23 21103:21 21108:11 21115:7,8 21115:24 gegaan 21030:10 21047:25 21063:4 21073:20 21074:18 21106:14 gegee 20990:2,18 21003:1 21044:24 21045:6 21047:3,20 21047:23 21048:4 21049:9 21050:11 21052:22 21061:23 21069:24 21072:22 21073:13,21 21078:11,21,21 21099:12 21106:7 21108:9 21109:25 21110:22 gegooi 21098:25 gehad 20989:10 20992:13 21042:6 21052:25 21075:17 21075:22 21106:5 21111:1 21113:4 gehanteer 21054:9 gehardloop 20992:10 geheelbeeld 21042:6 gehoor 20990:2,18 21008:22 21018:1 21049:9 21071:2 21097:20 21099:3,12 gehou 20989:23 21101:14 gekies 21043:7,7 geklim 21115:3 gekom 20993:21 20995:5 20998:20 21015:15 21016:21 21049:8 21061:17 21063:11 21076:14 21094:18 21097:3,6 21097:18 21104:4 21110:12 21112:19 21112:21 21119:25 21120:2 gekommunikeer 21063:5 gekontak 21062:8 gekry 20975:1 21004:15,22 21042:24 21047:3 21061:2 21069:12 gekyk 21020:13,25 21071:8 21086:3 21096:25 geland 21047:6 geleenthede 21012:15 21115:5 geloods 20988:11 20995:4</p>	<p>geloof 20989:9 geloop 20979:5 20989:21 gelyk 21106:4 21109:10 gelê 21044:25 21064:10 gemaak 20977:24 21030:12,15 21031:12 21035:20 21042:5 21050:12 21069:21,22 21109:21 gemaklik 20982:23 gemeenskap 21063:22 gemeld 21046:19 gemerk 20961:8,9 gemoedere 21049:18 genader 21062:11 21108:6 geneem 21104:2 21109:9 Generaal 21061:5,10 21061:23 21069:24 21073:12 21078:10 21078:17 general 20968:8 20972:7,11 21027:16 21032:5,11,16 21037:15 21048:9,15 21049:21 21054:25 21060:21,22,24 21061:20 21064:14 21071:12,19 21072:5 21072:12 21073:25 21078:14 generale 21043:8 21078:19 Generally 21123:6 genoem 21052:15 geobserveer 21072:23 geplaas 21033:14 gepraat 20989:3 21031:1 21061:7 geraak 21050:10 gerapporteer 21018:2 21030:2 gereageer 21097:24 gereël 21050:15 21061:15 21069:12 gerus 21109:6 gery 21062:25 gesien 20998:7,22 21004:22 21009:12 21021:2 21063:15 21089:4 21090:25 21091:1 21097:1 21098:19 21103:22 21112:23,24 21113:1 21120:10,11,24 gesit 21054:1 geskiedenis 20989:14 geskiet 21094:13 21102:6 21111:25 21125:9 geslaag 21048:1 gespeel 21048:6</p>	<p>21101:4 gesprekke 21049:4 gestaan 21102:5 gestap 21063:14,20 gestel 20971:2,4 21015:14 gestop 20990:15 21091:3 gestorm 20992:9 gestuur 21004:16 gesê 20958:25 20972:22 20979:19 20979:21 20990:12 21004:18,19 21014:18 21016:25 21019:8 21029:25 21030:11,13 21031:20 21033:1 21035:4,16 21043:3 21044:21 21048:1,4 21054:15 21061:4,6 21063:11,21 21070:25 21091:2 21093:16 21094:19 21098:18 21110:3,5 21110:19,21 21115:6 21118:25 21119:25 getaak 21078:19 getal 20988:18 getalle 21054:22 getting 20992:19 getuiebanc 21110:25 getuienis 21019:8 21021:2 21044:22 21052:16 21078:10 21078:11 21092:22 21110:24 getuig 20971:2,6 20989:2,6 21008:24 21012:21 21019:11 21021:1 21027:21 21029:19 21030:6 21031:2,11 21055:9 21072:21 21078:10 21085:13 21092:20 21102:2 gevaar 20989:11 gevaarlike 21035:20 21049:13 geval 20988:25 20992:13 21021:5 21042:20 21077:1,9 21084:24 21085:1 21095:1 21110:8 21115:13 gevalle 21042:5 21044:22 gevat 21042:22 21063:24 gevind 21018:4 gevlug 21063:13 gevolg 20990:14 21008:10,23 21043:17,24 21093:6 gevolge 20992:12 gevra 20971:1 20989:4</p>	<p>20993:2 21018:1 21030:10 21049:12 21094:13,17 21097:6 21106:4,13 21109:23 21109:24 gevuur 20988:19 21019:13 21099:1 21101:6 21102:3 21112:2 gewag 21014:13 gewapen 20990:20 21043:16 geweer 21115:21 gewees 20969:1 20990:7,11,17 20993:22 20998:14 21010:20 21012:25 21016:23 21018:2,4 21019:9,14 21029:9 21029:25 21030:5,9 21032:14,23 21033:3 21033:13,16,17 21035:16 21043:6 21044:11 21045:7 21046:24 21047:7 21049:7,17 21050:19 21054:23 21062:17 21063:7 21064:4,8,10 21069:10,15 21072:20 21073:12 21073:14 21075:19 21075:23 21076:1,9 21078:1,1,18,20 21084:21 21085:14 21088:13 21089:12 21091:5 21097:23 21098:1 21101:3,8,13 21103:8,10 21107:5 21110:20 21112:4 21115:10 geweet 20961:4 21030:15 21061:11 gewerk 20989:14 21105:18 21106:9 gewond 21030:20,20,23 21030:25 gewoonlik 21075:2 geword 21030:19 21047:8 gewys 20979:8 21042:5 21097:2,8 21118:16 gewysig 21035:18 geïmplementeer 21035:19 ge-deploy 21044:15 ge-email 21004:20 ge-escort 21062:15 ge-retreat 21114:1 ge-review 21042:24 ge-tactically 21118:14 gister 21090:19 give 20959:24 20971:20 20976:6 20987:17 21005:16 21006:4 21021:21 21027:13 21037:24,24 21044:5</p>	<p>21055:4 21074:24 21091:8 21092:15 21102:16 21125:1 given 20963:6 20974:19 20976:1,19 20979:16 20985:24 20986:22 20991:3,9 21002:23 21009:17 21018:14 21044:2 21056:8,9 21058:7 21066:17,17,17 21067:19 21068:24 21069:2 21079:14,15 21107:1,12 gives 21024:5 21079:3 21079:13 glad 20975:4 21010:21 21010:23 21012:9 21016:20 21044:12 21054:3,17 21084:13 21086:2 21089:1 21094:24 21097:9 21108:5,15 21109:18 21110:16 glo 20968:24 20989:17 21016:1,22 21017:1,1 21018:4 21021:3 21076:24 21077:17 21101:4 21106:8 21112:22 21120:11 go 20961:21 20963:12 20980:12,13 20981:24 20982:8 20997:5 21020:7,11 21023:14,20 21046:4 21048:11 21055:20 21058:20 21060:22 21066:1,7 21071:17 21082:1 21083:2,10 21091:6 21095:24 21104:5,6 21108:18 21112:11 21119:11 21122:22 21123:8,10 21123:22,23,25 goed 21072:20 21076:8 goedjies 20988:8 Goeiemiddag 21056:2 goes 20980:20 going 20959:15,23 20963:2 20964:10 20965:11 20967:10 20967:18 20973:16 20973:17 20974:8,13 20974:14 20978:7 20982:3 20985:10,11 20985:14 20988:3 20997:8,22,22,23 21000:20 21005:19 21010:7 21021:21 21024:2 21037:23 21038:1,3,5,17,24 21039:3 21040:16 21041:8 21046:11 21052:10 21055:4 21079:2 21083:23</p>
--	--	---	--	---

21092:14 21099:20 21104:6 21123:9 21124:7,11 21126:1 good 20958:16,17,18 20958:19 20974:12 20987:9,14 21055:25 21057:1 21108:24,24 gotten 20999:16 Gotz's 20958:9 21000:7 gou 20993:18 20995:16 gou-gou 21107:22 Govender 21030:2 21031:7 graag 21016:3 grade 20981:22 granate 20989:8 21098:25 great 21104:7 greater 20968:18 21123:10 grenades 20991:19 21120:22 grievances 21047:17 groen 21112:1 groep 20977:13,22 20983:9 20988:23,24 20989:5 20990:1,19 20992:7 20993:24 20995:5 20996:12 21015:11,20 21072:23 21073:11 21073:14,17,20,22 21089:5 21094:21,25 21097:10,19,19 21103:22 groepbespreking 21078:21 groepe 20988:24 20992:8 21043:21 21073:10 21110:7 groepering 21073:11 21090:23 21091:2 groepie 21094:24 grond 21044:25 21062:10,11 21102:5 grondpad 21046:25 21063:17 Grondwet 21032:25 groot 20979:11 21012:2 21064:7 21094:21 groter 21072:25 21073:22 21089:5 ground 21010:7,11 21019:17 21041:20 21101:19 21102:24 21113:22 21114:6,7 21114:17 21115:18 21116:22 group 20961:18,21 20970:2 20977:9,13 20982:25 20983:7,11 20983:18 20984:1 20985:3,9 20986:24 20991:10 20995:9,10	20995:23 20997:3,10 20997:11 20999:21 20999:22 21007:17 21015:3,6 21027:25 21028:7,10 21073:15 21081:3,14 21095:12 21098:8 21107:15 21121:23 21122:14 21122:20 groups 20969:16,18 21051:11 Gumbi 21006:12,18,21 21055:16,19,24 21056:5,11,14,19,21 21056:25 21057:3,6 21057:10,13,16,20,23 21058:3,6,9,13,17,22 21058:25 21059:3,10 21059:13,17,19,23 21060:2,6,8,11 21061:19,25 21064:13 21065:7,14 21065:24 21066:5,12 21066:14,15,23 21067:5,17,20 21068:14,17 21070:12,19 21071:3 21071:11 21072:4,11 21073:4,15,23 21074:14,19 21076:3 21076:17 21077:14 21077:19 21078:3,14 21078:23 21079:1 gun 21016:17 H hacked 21056:23 21060:14 21074:5 hadn't 20976:19 20982:16 21100:2 21106:10 haelgeweer 20988:18 21013:3,4,4,7 21014:14 21019:13 21063:25 haelgeweerrondte 21019:12 haelgeweerrondtes 21016:23 haelgewere 21019:9 21115:23 half 21066:7 21075:17 21075:21 21124:20 21125:15,16 halt 21105:5 hand 20974:13 20977:19,20 20978:18,20,22 20979:2 20980:13,16 20981:4 20983:2,5 20989:23 20990:8 21001:17 21063:25 21093:13 21121:2,5 handed 20975:24 20976:4,5 21003:12 handwriting 21060:5	hang 21043:21 hanteer 21033:3 happen 20982:21 20985:12 21101:18 happened 20962:20 21007:10,15 21013:20 21032:7,10 21048:13,16,17,25 21069:6 21074:5 21101:16 21124:8 happening 21024:24 21039:24 21111:21 happens 20981:6 21105:3 happy 21021:8 21026:17 21048:24 hasn't 20962:2,7 21003:2 haven't 21001:3 21010:2 21034:5 21058:7 21066:16,17 21085:17 21107:10 21109:13 21119:5 head 20982:1 20983:6 20997:3 21025:2 21088:2 headed 20996:8 21027:7 21107:15 heading 21095:7 headphones 21040:5 health 21069:13 hear 21008:19 21023:16 21079:11 21102:18 heard 20984:22,22 20988:3 21022:7 21040:5 21051:4 21072:1 21079:9 hearing 20958:9 heel 21082:21 21113:22 heeltemal 20993:3 21015:18 21018:15 21033:12 21044:13 21055:8 21075:9,15 21100:3 21114:25 21120:12 heeltyd 20990:2 heen 20989:25 hele 20981:21 20998:11 20999:9 21082:19 21113:2 helikopter 21047:6 21061:12,14 21062:23 21063:1 helikopters 21061:12 helmet 21024:1 help 20967:16,17 20968:25 20988:3 20995:11 21006:11 21029:18 21035:8 21038:1 21042:16 21071:7 21076:24 21083:23 21095:4 21107:25 21118:5 21120:20 helpful 21081:22	helpfully 20986:21 hemp 20996:13 Hemraj 20966:18 20967:12 20986:8,10 21003:11 21057:25 21058:5 hergroepeer 21063:23 herhaal 21071:24 hesitant 21087:18 hesitation 21107:8 he'd 20984:21 20985:10 he'll 21037:24,24 he's 21001:3 21021:15 21021:17 21025:6 21036:22 21037:2,22 21037:23 21055:12 21055:23 21068:24 HHH 21065:4 HHHs 21065:23 HHH27 21065:1,5,25 21067:14,19 hidden 21081:15 21085:5,11 hiding 21081:5 21082:3 21083:2,9,12 hier 20961:5 20970:25 20990:10,14 20995:5 21029:19 21068:1 21093:22 21094:23 21098:21,25 21099:11 21110:18 21112:22,25 21118:15,16 21123:1 hierdie 20988:9,14,15 20988:25 20989:21 20990:1,15,18 20992:12 20993:20 20993:21 20995:2,17 20996:11 20998:20 20998:21 21004:19 21008:18 21015:25 21016:4 21029:20 21033:2 21035:18 21041:2,6 21043:3 21049:17 21054:7 21072:20 21077:1 21081:9 21082:18,22 21084:18,20 21085:1 21085:8,8,9,13,15 21086:1,2 21088:5 21089:6 21094:15,24 21097:3,7,19 21098:20,25 21099:21 21103:7 21104:3 21107:25 21110:2,2,8,20,23 21112:1,4,4 21113:3 21118:7 21119:21 21124:21 hierna 21082:8 hieroor 21031:1 21092:20 highlight 21117:9 highly 20984:25 20986:16 21018:12	21018:13 hindsight 21020:25 21049:3 21076:8 hoe 20988:22 20996:14 20998:7 21013:5,6 21041:16,17 21043:21 21047:1 21073:19 21075:2 21097:8,17 21106:3,3 21109:10,17,18,23 21115:6 hoek 20971:3,3 20993:3,19,21 20996:14 20998:8,8 20998:20,21 21046:25 21093:22 21094:12,14 21108:6 21109:9 21110:11,13 21110:17 hoekom 21048:6 21076:16 21085:21 21099:17 21118:25 hoeveel 21092:23 21115:5 hollow 21051:18 hom 20961:9 20989:19 20996:7 21004:22,22 21004:23 21061:16 21068:1 21069:25 21094:19 21102:6 21125:5,8 honderd 20988:17 honestly 21103:12 hoof 21069:15 hoop 20990:24 hoor 20989:19 20995:14 21098:18 hope 20958:9 20975:23 20982:20 21005:25 21007:14 21039:6,13 21039:15,19,25 21117:4 hoped 21125:17 hoping 21092:11 horizontal 20967:15 hospitaal 21050:16 21062:20 hospital 21028:13,20 21032:4 hostel 21028:9 hostels 20968:22 housekeeping 20976:23 21057:2 huidiglik 21049:14 huis 21099:10 huiwering 21064:10 hulself 21063:12 human 20984:18 21022:23 hurry 21084:10 hy 20990:23 20996:10 20996:14 20998:11 21004:19,20 21033:14 21035:18 21061:6,11 21072:21 21072:23 21078:10
---	--	---	---	--

21078:20 21092:6 21094:13 21112:2 21115:2,8,8,11,19 21118:12,14,25 21119:19,21 21125:7 21125:7,9,9 hypothesis 21013:25 21122:18 21123:18 hypothetical 21014:9 21122:18 hê 20992:12 21016:3 21019:11	21076:4 incidents 21023:13 21040:11 included 21078:6 21104:25 including 20986:23 inconsistent 21036:1 incorrect 21051:18 21084:12 incorrectly 21051:5 increase 21051:11 21053:16 increases 21051:10,15 incredibly 20983:19 indicate 20966:25 20969:14 21022:25 21064:24 21070:21 21111:15,16 21125:16 indicated 20959:14 20967:11 21016:7 21018:20 indicates 20969:24 20991:15 20994:14 21103:3 indicating 20978:3 21009:7 indication 20972:8,11 indien 21054:1 21099:2 indistinct 20978:5 individual 21011:2 21051:24 individuals 20961:19 indiwidue 21015:14 induce 21124:2 infer 20984:17 inferences 21021:17 inform 21071:21 21072:6,14 informant 20966:12 information 20960:23 20966:12 21029:16 21031:7 21032:2 21070:23 21071:6 21125:21 informed 20966:16 21028:24 ingebring 21044:14 ingegaan 21043:2 ingesit 21029:23 ingesluit 21078:8,12 inhandig 21004:19 initial 21068:19 initially 21023:15 21121:5 injured 21026:2 21028:12,15 21029:15 21032:2 21060:15 21074:6 injuries 21073:2 injury 21077:22 21125:25 inligting 20975:5 21016:20 21030:5,8 21042:24 21061:2 21064:1	inquiry 21008:3 21025:13 21076:19 21077:6 insensible 21053:10 insetsel 21085:15 inside 21018:19,23 insident 20977:7,25 20988:12,14 21084:20 21089:3 21090:10 21120:21 21121:19 21125:14 insidente 21049:14 inskrywing 21067:4 21071:10 21074:13 inskrywings 21076:2 insluit 20988:8 20995:3 insofar 20970:6 inspected 20965:15 inspection 20965:11 20966:14 instance 20966:2 20986:23 21044:2 instapkluis 21012:2 instruction 21070:15 21071:22 21072:8 21073:7 21078:5 intended 20966:22 21106:11 intensifies 21022:18 intention 20973:18 20974:20 21083:3 intercept 21061:5 interdepartementele 21077:11 interested 20958:11 20980:21 20997:9 21037:17 21052:1 21055:6,6 interesting 21022:4 21111:2 interests 21004:6 intern 21076:25 internal 21076:19 21077:6,12 interpose 21006:23 interpreted 21040:4 21042:2 interrupt 20969:13 21028:1 21064:24 21068:15 interrupting 21057:1 interruption 21000:23 interval 20995:8 intervention 21041:14 introduced 21067:13 investigate 21024:14 21044:17 investigated 21010:5 21051:13 investigating 21007:15 investigation 21077:13 investigators 21010:5 involved 21007:15 21050:6 21051:25 21074:21 21076:21 isn't 20960:4 20961:23	20970:9 20988:2 20993:10 21014:10 21021:22 21022:13 21108:23 21118:2 issue 21007:22,25 21015:2 21019:23 issued 21010:17 21011:24 21012:11 21016:12 21017:16 issues 20977:16 21007:5 21039:22 21055:6 21080:25 italic 21029:22 items 21033:15 I'd 20958:22 20959:4 20986:8 21026:3 21027:4 21029:10 21046:14 21086:21 21125:17 I'll 20965:17 20967:20 20973:15 20978:14 20987:7 20988:4 21006:22 21038:23 21053:6 21060:11 21065:4 I've 20967:10 20986:7 20986:16,17 21006:3 21006:13 21007:4 21011:19,19 21052:9 21082:25 21083:11 21087:15 21091:22 21125:20	Jazeera 20992:18 21103:14,17 Ja-nee 21067:3 JJJ 20974:4,5 JJJ10 20974:17 20975:2,3,4 JJJ107 21029:21 JJJ11 20974:22 20975:5,14,19 20997:1 JJJ194.16 20992:17 21080:11 JOC 21061:3 21067:1 Johannesburg 20958:7 jongman 21016:22 jou 20989:11 21042:20 21043:21 21075:2,2,2 21099:9,10 journey 21039:5 jouself 21099:5 julle 21030:14 21031:13,13 21043:4 21043:5 jumping 21065:22 June 21064:19 21071:19 junior 21004:10 ju 20989:11,12 21014:15,15,16 21016:24 21075:2,5 21084:13 21085:8,14 21089:16 21097:15 21098:20 21099:3,5,7 21099:9,10 21115:22
I				J
idea 21037:23 identify 20967:16,20 identifying 20996:24 iemand 21008:25 21018:1 21021:1 21063:8 21070:10 21077:9 iets 20990:5 21015:19 21015:21,22 21016:3 21016:4 21025:17 21096:20,20 21099:5 21099:6 21109:8 21115:4 ietsie 21050:13 iewers 21025:19 ifs 21022:15 illegal 21033:1 21036:19 21055:1 illegally 21017:22 illustrates 21108:21 illustration 20967:7 image 20996:9 imagine 20970:14 20984:14,17 21014:8 21021:18 immaterial 20980:23 immediately 21045:17 21045:24 21062:1 21071:15 important 21001:9 21025:13 21041:8 21056:20 21103:1 21112:6 impossible 20986:18 impression 21087:5 improbable 21017:20 21018:10,13 inability 21121:23 21122:14 inaccuracy 20970:2 inappropriately 21037:20 inaudible 20963:7,8 20966:4,7 20984:13 20987:12 21015:12 21024:17 incident 20969:12,12 20970:4 20972:18,19 20977:16 21023:12 21023:12 21048:12 21048:16 21064:15 21071:16 21072:14			ja 20961:25 20972:9 20977:14 20980:2 20983:9 20992:10 20993:11 20995:7 20996:10 20999:7 21001:24 21008:23 21010:18 21011:5 21012:15 21014:13 21015:13 21016:14 21017:25 21018:8,16 21019:3 21020:14 21024:6 21027:11,21 21029:8 21030:22 21031:11 21034:20 21035:1 21040:24 21041:15 21042:15 21044:20 21046:17 21047:14 21056:12 21075:13 21077:18 21086:15 21087:8 21088:5 21092:4,20 21095:24 21104:18 21104:22 21105:7,15 21105:23 21107:20 21109:5 21111:4 21113:20 21119:7 21121:8,15 jaar 21035:19 jammer 21044:25 21071:2 21093:4,6 JANUARY 20958:1 jare 21075:6	K kamera 21109:9 kameras 21061:2 kanale 21053:2,4,5 kant 21064:3 21075:23 21085:23 21099:10 21101:6 21104:1,3 21121:16 Kaptein 21030:1 21063:7 kar 21082:22 Keep 21081:22 keer 21004:23 21016:2 21030:18 21092:20 21092:23 kennis 21008:11,12,16 21008:17 21013:1 21049:11 21077:18 kept 21011:22,23 kere 20989:24 keuse 20988:13 21115:8 key 21011:23 kicked 21018:25 kill 21017:10 killed 21009:24 21017:13 21026:1 21029:15 21031:9,18 21031:25 21032:3,6,9 21077:3,4 killing 21062:1,5

<p>kind 20984:23 21021:16 21069:1,4 21123:11</p> <p>kinds 21069:1</p> <p>kink 20968:7</p> <p>KKK 21065:22</p> <p>KKK51 20996:3,4</p> <p>KKK52 21001:12,23 21095:23 21119:12</p> <p>KKK53 21019:24</p> <p>KKK54 21001:18,22 21002:14,21 21106:11,17,21</p> <p>KKK57 20960:1</p> <p>KKK57.1 20960:6,8 20961:2,8</p> <p>KKK57.2 20961:8 20974:6</p> <p>KKK58 21057:8,9 21059:12,13 21066:7</p> <p>KKK59 21057:15 21059:22,22 21065:10 21074:9</p> <p>KKK60 21058:16,17 21059:25 21064:21 21065:3,11,11,15</p> <p>klaar 21084:19</p> <p>klaarmaak 21096:17 21112:14</p> <p>klank 21018:2</p> <p>klap 21090:10</p> <p>klein 20994:22 21015:22</p> <p>klim 21118:15</p> <p>kliniek 21062:25</p> <p>klip 21089:16</p> <p>kluis 21012:4</p> <p>kluisse 21012:3</p> <p>knew 20960:17</p> <p>knopkieries 21033:15 21035:22</p> <p>know 20970:4 20971:22 20972:17 20977:15,17 20978:11,15 20985:8 20994:12 20995:12 21000:18 21005:15 21016:16 21017:17 21019:16 21021:15 21022:16 21023:13 21026:4 21028:18 21029:13 21034:3 21036:24 21037:14 21037:16,22 21038:4 21056:22 21065:20 21067:23 21068:5,5 21071:5 21077:15 21078:3,5,14 21079:8 21079:16 21095:8 21100:6,7,9,15 21101:15 21102:17 21102:18 21103:1,2 21108:25,25 21116:7 21121:6,6 21123:16 21125:20</p> <p>Knowing 20986:24</p>	<p>knowledge 20984:18 21026:1 21034:17 21037:12,17 21070:22</p> <p>Koen 21086:14</p> <p>kolletjie 20972:25</p> <p>Kolonel 21061:8,8 21062:12,22 21063:10,19 21073:18 21090:24 21104:23 21109:23</p> <p>kom 20971:1 20972:21 20975:4 20988:21 20989:16 20990:9,21 20998:20,21 21014:13 21052:16 21075:4 21084:23 21085:23 21094:16 21097:25 21105:18 21109:11 21111:24 21115:24 21120:10</p> <p>kombers 21015:25</p> <p>kommissaris 21055:9 21061:3 21072:18,19 21072:22 21076:24 21106:2</p> <p>kommunikasie 21042:21</p> <p>kommunikasies 21043:12</p> <p>kommunikeer 21069:16</p> <p>kompleet 21095:2</p> <p>kon 20993:4,24 20998:14,21 20999:8 21016:1 21030:12,13 21033:3 21049:7,17 21050:11,13,19 21053:24 21062:9 21072:21 21085:25 21097:10,11 21110:3 21110:20 21115:11</p> <p>kondisies 21048:4</p> <p>konflik 21043:19,20</p> <p>konfrontasie 21043:20 21073:1 21097:23</p> <p>konstant 20990:1</p> <p>kontrole 21012:8</p> <p>koop 21016:24</p> <p>kop 21118:10</p> <p>koppie 20969:6,19,21 20970:1,7,9 21046:22 21046:23,24 21072:25</p> <p>korrek 20977:6 20983:14 20991:20 20998:6 20999:25 21001:24 21009:12 21011:5 21012:25 21016:14 21019:2 21020:2 21029:8 21031:23 21046:17 21047:14 21052:22 21052:24 21055:9 21062:7 21063:2 21066:4 21068:11</p>	<p>21069:19 21070:7 21074:13,16 21075:13 21076:7 21078:2 21082:24 21088:13 21092:4,22 21099:25 21100:3,22 21105:19 21114:9,12 21114:14,25 21116:10 21117:7 21119:7 21120:12</p> <p>korreksie 21015:18 21063:7 21111:25</p> <p>kraals 20965:4</p> <p>kriminele 21077:8</p> <p>kry 21019:15 21035:24 21043:13,20 21056:4 21069:16</p> <p>Kuhn 21086:5,7,14,22 21087:10 21100:20 21113:1,8,12,13,16 21114:4,22,23 21115:10,16,17 21116:4,20 21117:1,4 21117:13 21118:10 21118:21 21119:8</p> <p>kursus 21041:4</p> <p>kursusse 21041:5</p> <p>kwalfiseer 21046:18</p> <p>kyk 20975:7 20979:9 20993:18 20996:14 20998:19 21021:4,4 21025:20 21035:17 21046:22 21075:5 21082:20 21085:22 21089:7 21097:15 21102:21 21112:3 21115:1 21119:19 21120:2</p> <p>K-H-U-N 21086:9,16</p> <p>K-O-E-N 21086:14</p> <p>K-U-H-N 21086:8,10 21086:11,15</p> <hr/> <p>L</p> <p>L 21073:19 21076:10 21077:19,23</p> <p>laai 21013:4,7 21047:6</p> <p>laaste 21002:20</p> <p>laat 20992:7 21072:17 21075:25 21092:21 21096:17 21109:24 21125:5</p> <p>labour 21050:10 21055:6</p> <p>langer 21110:22</p> <p>large 20961:18,21 20979:2 20980:25 20981:6 20987:21</p> <p>larger 20980:20</p> <p>Lastly 21077:19</p> <p>late 21029:6 21056:22 21060:13 21074:1 21077:21</p> <p>latere 20990:11 21025:21</p> <p>law 21004:1,2,2</p>	<p>21033:20 21034:17 21034:24 21036:7,25 21037:3,4,12,16,17 21037:19,21,22 21038:7</p> <p>lawful 21033:10 21036:13 21037:6</p> <p>layer 21016:1</p> <p>layman 21021:18</p> <p>Le 21022:24</p> <p>lead 20977:9,13 20982:25 20983:7,11 21095:12 21098:8 21107:15 21122:13</p> <p>leaders 20991:10 20995:9 21010:6</p> <p>leading 20985:2 21020:9</p> <p>leaning 21113:21</p> <p>learned 20962:4 21004:9,9,10 21010:14 21022:24</p> <p>leave 20972:17 21039:14 21045:17 21045:22,22,23,24,25 21046:3,12</p> <p>leaving 21114:22</p> <p>lede 21008:12,13,13,15 21012:5 21029:3 21061:6 21069:11,20 21069:22,24 21071:23 21075:20 21082:9 21084:20,24 21099:2 21101:5,9,11 21103:8 21105:8 21112:4</p> <p>leemte 21016:5</p> <p>left 20977:11,19 20978:18,20,22 20980:13,16 20981:4 20981:17 20983:2,5,6 20983:10 21083:6,12 21084:2,4 21086:5 21088:2 21093:12,13 21095:9 21096:13 21098:15 21111:5,18 21113:8,22,24 21114:5,6,7 21116:17 21116:20,22 21121:2 21121:6,14</p> <p>left-hand 20964:22 20965:2 21082:13 21083:13,18,20,23</p> <p>legal 21037:7</p> <p>legislation 21036:3,23 21037:11</p> <p>lei 21077:10</p> <p>leier 20989:20 20990:1 20990:3,3,4,9 20992:7,10 21095:1 21110:3</p> <p>leiersgroepe 21050:17</p> <p>leierskap 21043:10,11</p> <p>lekker 21105:18</p> <p>lemmetjiesdraad 21097:14</p>	<p>lending 21003:21</p> <p>lengthy 21027:7</p> <p>Lepaaku 21056:23 21060:14 21062:10 21062:25 21074:1,5 21077:22</p> <p>Lesotho 21038:15</p> <p>lethal 21115:21 21116:6</p> <p>letter 21065:22</p> <p>let's 20972:15 20974:7 20975:13 20982:20 21000:3,5 21006:3 21012:17 21019:19 21025:8,22 21058:20 21068:10 21071:11 21081:22 21083:2 21087:6,16 21091:18 21092:8 21093:19 21124:20</p> <p>lewe 20989:11 21054:18 21115:8</p> <p>Lewis 21038:9,12,20</p> <p>licence 21016:17</p> <p>license 21092:12</p> <p>lid 21008:11 21014:19 21014:21 21110:14 21115:6,10</p> <p>lieutenant 21060:15 21068:20,24 21069:7 21074:1,6 21077:22</p> <p>liggaam 21044:24</p> <p>light 20962:6 21013:10 21016:15 21026:6 21052:9</p> <p>line 20961:15 20962:7 20963:14,17,22 20964:10,20 20965:6 20965:14 20966:14 20966:15,20,20 20967:8 20968:18 20970:19,20 20971:11 20977:19 20977:21 20992:24 20993:9,14,15 20994:9 20997:16 20998:1 20999:3,20 20999:22 21037:25 21076:22 21080:23 21080:25 21081:18 21083:7 21086:24 21091:13,14,17 21098:10 21099:24 21100:8,9,15 21101:23,24 21102:9 21102:10,16 21105:6 21111:12,21 21114:5 21119:2</p> <p>lines 20959:8,13,14,24 20961:24 20970:18 20971:21 20972:7,14 20978:4 21048:23 21091:9</p> <p>linie 21101:11,13</p> <p>linkerkant 20996:12 21089:15 21093:18</p>
--	---	--	--	--

21115:1 21118:15 21120:22,24 21121:17 links 21061:17 21096:19 21097:11 lisensie 21014:14,15 21016:21,24 listen 20986:9 little 20972:15 21050:1 21059:7 loaded 21040:14 located 20967:9 20971:12 20996:24 21103:16 lock 21011:23 lone 21086:4 long 20973:9 21005:15 21008:1 21087:23 21125:20,22 longer 20973:20 21083:24 Lonmin 20968:24 21010:3 21014:17 21028:11 21039:10 21042:17 21047:24 21048:10 21050:1,3,4 21051:2 21052:7 21061:13,14 21066:2 Lonmin's 21054:11 loods 21054:5 look 20974:17 20982:14 20992:14 20992:17 20996:3,3 20996:18 21001:23 21002:2,8,15 21003:15,19 21017:5 21024:20 21026:7 21027:4,22,23 21028:4 21045:15 21064:18 21067:15 21081:2 21087:6 21095:15 21117:23 looked 20964:25 20999:13 21000:7 21024:22 looking 20984:11 20996:16 20999:13 21028:6 21098:4 21104:11 21111:11 21114:18 21116:15 21117:18 looks 20980:9,14 21059:6 21088:24 21116:14,16,19,20 loongeskil 21049:6 loongeskillie 21035:3 21054:16 loonooreenkoms 21052:23 loop 20979:8,10 20995:17 21125:6 los 21025:20 lot 21098:6,14 lug 20989:23 20990:9 21061:12 21097:15 21109:23	Luister 21043:3 luitenant 21061:8 21062:12,22 21063:1 21063:8,11 lunch 21006:20,24,24 21045:23 21046:13 21079:3,20 lying 20961:4 21095:20 lyk 20993:20,20 21052:25 21109:24 lyn 20979:9 20998:12 20999:10 21097:13 21097:24 21099:13 21099:17 21100:12 21104:2 21110:20,24 21113:2,4 21118:18 21119:8 lê 20979:11 21063:16 lêers 21056:3 21093:5 <hr/> M <hr/> maak 20978:1 20988:8 20988:20 20990:6 21033:4 21076:2 21107:24 21108:7 21112:22 21115:7 21118:19 21120:12 maar 20961:4 20971:5 20975:6 20990:24 20992:11 20993:19 20995:2 20999:8 21004:21 21012:6,8 21014:21 21015:23 21021:2,3 21025:17 21025:19 21030:19 21033:12,17 21035:23 21041:5 21042:6 21044:14 21045:7 21049:8,18 21050:10,21 21052:16,22,25 21054:5 21061:14 21063:22 21064:6,11 21070:10 21071:9 21075:8,23 21076:11 21076:12 21077:8 21078:11,20 21082:19,22 21086:1 21088:6 21092:21,22 21095:3 21101:7,10 21103:7 21105:16,19 21108:6 21109:20 21110:17 21113:14 21115:1 21118:24 21119:19,20 21120:3 21123:1,2 mag 20972:21 21010:21 21025:18 21029:18 21112:14 21123:15 21125:5 Magidiwana 20985:15 Magidiwana's 20967:15 Mahlangu 21040:4 major 21037:15 21048:9	majority 21052:2 21053:8 making 21028:16 21050:4 21081:19 21121:24 maklik 21076:9 21109:17 makliker 20970:24 21050:12 Makukule 21056:11,12 21057:13,14 21060:2 21060:7 21064:21,25 21065:25 21067:9 21068:1,4 Makukule's 21065:18 Malelenle 21067:15,16 21067:24 21068:4 Maluleke 21057:12 Maluluke 21067:16,24 man 21112:25 21113:17 21114:20 21116:17,20,21 21125:6,8 management 21007:8 21008:5 21040:10,11 21040:21 21041:4 21042:9 manier 20971:17 21014:20 21054:8 maniere 21019:12 21115:24 marching 21060:22 21111:11 21122:22 Marikana 21013:20 21014:6 21044:7 21050:14 21075:14 mark 20960:22 20978:15 21057:4 21058:21 21065:4 marked 20960:16 20961:7 20965:5 20967:3 20975:24 20976:8,15 21065:10 21065:12 21074:9 marking 20971:13 20978:14 markings 20962:19 MARTHINUS 21001:5 21034:11 mask 21123:7 materiaal 21041:6 21076:14 21094:23 material 21021:10 21096:4 21108:20 Mathunjwa 21049:11 matter 20981:8 21005:4,5 21017:9 21021:20 21025:5 21037:1,22 21046:8 21051:13 21057:1 21079:7 21089:21 matters 21004:25 21005:3,12 21006:19 21007:19 21022:21 21025:8 21039:8,21 McIntosh 21073:18	mean 20967:6 20968:8 20968:16 20969:15 20978:11,14 20982:6 20986:3 20993:8 21008:2 21011:9 21021:7 21023:2 21028:25 21036:18 21055:10 21056:15 21071:16 21074:11 21084:8,10 21105:13 21114:6 21117:10 21123:5 means 20962:7 20984:4 21022:16 21028:21 21088:16 21116:8 meant 21000:25 21051:3 21120:14 measure 21049:24 measured 21096:3 media 20984:13 21008:10,23 21049:11 mediation 21048:6 medical 21028:14 mee 21062:8 meegedeel 21062:13,18 21062:20,22 meer 20990:18 21010:21,23 21012:9 21015:21,24 21016:4 21043:16 21050:13 21063:10 21073:18 21097:11 21115:21 meet 20972:24 21031:8 21054:12 meeting 21005:21 21073:4 mekaar 20989:21 20992:11 21043:5 21089:24 21095:1 member 21007:24 21008:3,7,7,20 21017:15 21022:12 21023:17 21077:3,5 21077:13 21118:22 members 20993:13 20994:10 21007:12 21007:17,22 21009:25 21010:17 21011:24 21012:11 21012:18,24 21013:13 21014:3,6 21014:11 21015:1 21016:12 21017:16 21017:19 21018:11 21026:2 21028:10 21032:5,9 21040:10 21061:21 21064:16 21067:7 21068:19 21070:2,15 21071:22 21072:7 21073:7 21078:4 21081:3,14 21082:2,13 21103:4 21103:20 21113:19 meneer 21109:5 menigte 20989:23	mens 20998:8,8 21032:24 21043:20 21075:4 mense 20992:11 20998:12 21030:14 21047:7 21049:12 21050:18 21097:8 21110:20 21120:10 21125:13 mentioned 21103:5 Merafe 21061:8,9 21063:10 mere 20986:2 merely 21124:20 metaal 21015:19 meter 21110:6 meters 21110:5 metode 21013:4,7 metre 21114:10 metres 21086:24 21114:11 21116:21 Microphone 20963:7,8 20966:4 20987:11 21015:12 21024:16 middel 20973:1 middle 20964:5 20973:2 20978:24 21081:11 mightn't 21107:9 militant 20995:22 militante 21097:19 militaristic 20988:2 military 20984:19 mind 20960:21 20978:16 20987:18 20991:10,16 20995:8 21007:14 21077:4 21109:14 minded 21101:22 mine 21003:4,21 21035:5 21109:14 minimum 21075:22 Minister 21009:6,9 21033:14 21035:17 minor 21006:4,21 21007:3 minste 21110:5 minus 21110:21 minute 20995:5 21043:4,4 21087:12 21088:16 21090:4,14 21091:20 21092:9 21093:10 21094:7,9 minutes 20963:1 20981:16 21126:2,6 misdaadtoneel 21047:8 misinformed 20976:19 miskien 20970:23,25 20971:16,17 20972:20 20979:18 20988:22 20989:9,9 20989:10 20993:18 20995:17 20996:11 20998:10,20 20999:25 21025:17 21025:20 21029:18
--	---	---	--	--

21029:18 21031:2 21042:15 21043:22 21044:22 21048:5 21049:2 21050:9,12 21050:19,20 21063:2 21069:10,23 21072:21,22 21075:22 21076:24 21094:22 21105:15 21106:6 21107:21,25 21109:3,4 misleading 20970:15 mispronouncing 21086:23 missing 21066:21 mistake 21066:24 MJ 21066:6 modified 20986:7 20987:19 moelik 21064:4 21094:19,24 moes 21047:8 21099:12 21099:17 21107:5 21125:13 moet 20974:25 20975:1 20988:9 20990:19,21 21013:3 21015:10,16 21015:21 21016:3 21035:21 21045:14 21046:18 21053:1 21061:4,16 21064:4 21075:5 21089:13 21090:9,11 21106:4 21108:10 21115:25 moment 20958:6 20961:24 20969:11 20995:10 21005:1 21036:21 21081:1 21083:10 21088:9,15 21088:18 21105:2 21107:14 21108:2 21114:3,19 21117:20 21120:4,14 Monene 21062:10 months 20966:14,15 Moolman 21063:20 moontlik 20990:7 20995:15,18 21076:1 21076:7 21097:3 21106:5 21110:8 morning 20958:17,17 20958:18,19 21029:7 21031:25 21032:3,7 21032:10,17 21079:6 21125:19 21126:10 mors 21108:15 21109:20 mos 21118:25 move 20974:7,9,11,11 20985:5,6 21019:19 21021:8 21025:14 21071:12 21073:24 21086:24 21087:11 21090:14 21104:15 21105:3 21120:16 21122:16,16	21124:15 moved 20977:18,20 21104:12,16 21114:23 21119:5,14 movement 20969:5 20992:15 21001:12 21052:12 movements 20973:12 20976:9 moves 21081:6 21085:18,19 moving 20964:4,5,9 20987:1 20998:25 21033:22 21042:10 21081:6 21084:7 21088:4 21098:9 21111:4,5,5 21117:11 21119:13,15 21121:4 21121:4 21122:15,15 Mpembe 21027:16 21048:9,16 21049:21 21055:1 21060:21,22 21060:24 21061:5,10 21061:20,24 21064:14 21069:24 21071:13,20 21072:5 21072:12 21073:12 21073:25 21078:14 21078:17 Mpofu 20985:8 20987:16 21023:21 21024:2,6,15 21046:6 21049:2 21080:24 Msiza 21056:9 21058:24 21059:9 21066:6 Msiza's 21057:8 mustn't 20999:19 muti 20989:9 myn 21030:17 mynbestuur 21047:21 21048:4 21052:19 myne 21002:9 M-A-K-U-K-U-L-E 21060:6 <hr/> N naam 21044:25 naby 20989:21 21062:11 nadat 21041:4 nader 21085:1 21109:10 21115:24 nag 21075:18 nalatig 21075:23 name 21059:2 21066:19 21067:13 21067:15,17,22,23 21068:6,20 Nasionale 21072:18,21 National 21071:14,20 21071:21 21072:5,7 21072:12,14 natural 20981:25 20982:3,11 nature 21021:9	21029:20 21030:4 near 21028:8,12 21076:21 21113:19 necessarily 20985:14 20985:20 20988:3 21024:12 21035:12 21036:18 21087:8 21124:14 necessary 21033:19 21036:24,24 21037:24 21039:24 21092:15 nedersetting 20968:15 20969:1 nee 20968:24 20971:5 20979:21 20982:19 20995:14 21002:25 21012:9,20 21016:20 21020:25 21025:17 21030:1,11 21031:13 21031:19,20 21032:13 21035:14 21041:25 21042:7 21044:20,20 21045:9 21061:22 21068:8 21070:18 21071:8 21072:9 21073:17,17 21075:25 21076:16 21078:7 21082:6 21084:13 21085:12 21086:1 21089:1,12 21093:25 21096:24 21100:10,10,11 21105:16 21106:1,1 21106:13 21108:5 21110:24 21113:10 21118:7,24 21119:24 21121:11,15 21125:5 need 20960:19 20970:12 20972:7 20975:15 20981:8 20984:10 21003:7,8 21013:17 21014:1,8 21024:19,21 21087:20 21118:21 21126:2 needed 21084:9 needs 21005:15 neer 21033:2 neergelê 21049:9 neergesit 20961:5 neerlê 21053:1 21054:1 neersit 21054:6 negatively 20985:23 nege 21030:17,25 negotiate 21050:3 21051:2,19 21052:2 21053:8 negotiated 21044:6 21047:10 negotiating 21049:25 negotiation 21053:5 negotiations 21029:12 21034:19 21035:2 21044:18,21 21050:6 21050:10 21053:15	21054:12,15 Neither 21072:1 never 20960:21 20986:17 20987:10 20991:9,16 20992:3 21000:12 21013:25 21047:12,16 21077:4 21109:14 new 21010:11 Nichol 20958:11 nie-samewerking 21043:17 night 20974:23 niks 21031:1 nine 21105:12,13 21125:19 21126:6,10 Nkaneng 20966:24 20968:15,19 20969:3 20981:25 20982:8 21097:17 nodig 20990:18 noem 21029:22 21048:5 21115:4 nog 20975:6 20989:13 20993:2,4,20 20998:20,23 21002:25 21004:18 21004:20,22,22 21014:15 21016:23 21032:22 21049:4,16 21085:10,13,23 21089:3,14 21090:8 21096:25 21103:21 21110:14 21112:17 21118:12,18 nogal 21008:4 Noki 20985:8,15,25 20989:23 20990:8 21107:15 nommer 21035:18 nommerplaat 21092:21 non-commissioned 21056:18 non-lethal 21084:21 21098:1 21115:7,23 nooit 20989:14 21002:25 21004:20 21004:22 noord 20994:23 noordwestelike 20993:3 normaalweg 21099:8 normale 21053:2,4,4 21125:6,8 normally 21029:2 21077:2 north 21007:18 21008:4 21014:3 21107:16 north-western 20993:14 note 21093:24 21094:1 notice 20974:20 21065:8 notion 21010:13 notuleer 21075:4	nou 20972:25 20975:4 20979:9,21 20988:17 20989:1,7,18 20990:18 21004:23 21016:21 21027:20 21030:24 21044:21 21044:25 21049:4 21052:15 21062:12 21063:7 21075:6 21084:17 21085:9 21089:18 21090:7 21094:22 21096:25 21097:2,7 21105:18 21106:7,8 21107:21 21109:7 21110:10 21119:20 21120:25 nou-nou 20971:1 21118:16 Ntsebeza 21019:18,18 nullified 20965:20 NUM 21026:2 21028:10 21031:9,18 21031:25 21032:3,6,9 21043:11 21051:3,4,9 21051:14,20 21053:9 number 20960:19 20976:1,3,6,20 20987:15,21 21007:7 21009:1 21011:20 21023:1 21038:8,14 21059:4 21066:7,8 21071:18 21117:2,23 numbered 21026:23 numbers 20959:24 nuus 21049:11 nuusberig 21009:12 nuuts 21031:2 nuwe 21016:24 Nyalas 20968:11 20970:19,20 20971:11 20981:18 20994:9,11,21 20996:24 20997:4,5 20998:22 20999:2,21 21018:19,21 21044:11 21081:16 21088:20,24 21091:16 21101:1,7 21103:20 21104:9 21111:7,11,18 Nyala'tjie 20994:22 Nyala4 21121:18 <hr/> O oath 20965:17 21001:4 21001:4 21034:10 21080:4 Objection 21013:22 objective 20984:11 objectively 21101:17 obligations 21032:18 obscured 21082:15 observation 21020:19 21020:23 21025:3 observations 21020:10 21020:12,16 21021:9
--	--	--	--	---

<p>obstruct 20999:20 obtaining 21040:1 21053:16 obvious 21024:22 21039:23 obviously 20958:5 20963:18 20965:18 20969:21 20985:16 20994:14 20996:2 21023:5 21036:11 21052:3 21070:4 21087:20 occasion 21026:16 occasions 21020:17 occurred 20969:12,12 21104:20 occurrence 21070:20 21071:3 occurring 21104:20 offer 21003:21,22,24 21004:1,3 21050:1 21051:18 21053:22 offered 21055:3 officer 21011:2 21018:24,24 21028:24,25 21056:23 21060:14 21074:1,5 21077:21 21086:4,5,22 21087:10 21115:17 officers 21056:17 21062:2,3,5 21074:3 21074:20 21076:21 officer's 21088:2 offices 21066:2 offisier 21029:2 21062:9,10,25 21086:7 oggend 21048:3 21052:18 21072:17 21074:17,17 21075:18 oggende 21075:21 oh 20983:3 21001:20 21011:16 21058:5,11 okay 20973:25 20976:16,18,21 20977:3 20981:12 20998:3 21003:21 21005:10 21033:25 21070:3,19 21071:11 21086:17 21094:5 21102:8 21122:23 ombeweeg 20989:1 20990:7 omdat 20993:17 21008:24 21050:9 21061:11 21099:10 omdraai 20992:7 21096:20 21097:11 21097:25 21110:4 omgedraai 20990:16 20992:10 21095:3 omission 20975:24 omitted 20975:22 ompad 21099:11</p>	<p>omstandighede 21064:5 omtrek 20989:6 21075:7,17,20 21102:4 21110:21 onbeheersd 21043:17 once 20982:12 21020:19,23 21022:7 21024:6,25 21031:22 21124:6 onder 20974:25 20993:17 21008:12 21008:16,24 21013:2 21013:7 21015:18 21063:6 21064:5 21082:6 21084:15,24 21101:3 21111:25 onderaan 21002:10 onderbreek 20972:21 onderhandel 20989:25 21043:8,10,11 21047:15,21 21050:18 21054:4,16 21072:23 onderhandeling 21044:11 21073:18 onderhandelinge 21044:10 21045:8 21046:20 21050:11 21050:15 21053:24 21073:19 onderkant 20979:11 onderskrifte 21002:4 ondersoek 21076:25 21077:11 ondersoeke 21031:14 21047:25 ondervinding 20988:21 20992:8 ondervra 21029:24 ondeurdringbaar 21097:15 oneerlik 21014:19 ongelukkig 21047:22 21076:23 ongeveer 21029:9 onmoontlik 20999:9 onslaught 21084:12 onsuksesvol 21089:5 onthou 20958:25 20990:11 21013:3 21015:16 21031:19 21041:3 21044:9 21062:13 21063:9 21070:17 21084:18 21094:19 21106:4 ontstaan 21073:1 onttrek 21010:21 21012:1 21015:16 21115:14 ontvang 21004:23 21076:13 onwards 21039:11 21075:12 onwettig 20990:20 21014:16,21</p>	<p>21032:23 onwettige 21043:3 oog 20988:9 21098:23 oog 20971:7 20981:21 20988:16 20995:4 21004:22 21014:18 21015:14 21018:1 21019:11,14,15 21021:3 21029:24 21033:13 21042:24 21043:6 21052:22 21054:20 21062:21 21063:11,18 21078:10,18,19 21089:12 21098:18 21104:23 21105:20 21111:24 21112:2 21118:19 21119:8 oomblik 20988:21 21090:10 oop 20981:21 ooggemaak 21077:8 oor 20992:11 21013:5,6 21019:7 21029:19 21031:2 21043:15 21047:22 21048:2 21052:24 21053:25 21054:16 21072:21 21090:21,21,21 21091:4,4 21092:20 21095:1 21100:12,12 21106:14 21109:10 21110:10 oordra 21035:4 ooreen 21105:19 21119:25 21120:1 ooreengekom 21061:10 21102:21 ooreenkoms 21049:8 ooreenstem 21109:22 oorgedra 21047:24 oorgegaan 21043:18,19 oorgeplaas 21063:3 oorkant 21063:16,17 oorlede 21062:19,21 21063:18 oostekant 20994:23,23 oostelike 21046:22 opdaag 21044:10 opdrag 20990:10,17 21010:20 21073:13 21078:21 21089:12 opdragte 20990:14 21011:7 21075:4 open 20981:19 openbare 20993:22 21063:8 21091:3 21099:14 21101:11 21101:14 21102:1,4 21112:23 21113:25 21115:6,11,13 21118:13 opens 20981:16 20983:16 21086:25 21087:1 21088:17 21105:6 21107:18</p>	<p>operasioneel 20988:22 21010:21,22 21012:9 21016:25 21084:14 21084:17 operasionele 20992:8 21013:7 21061:9 21069:23 operating 20959:21 operation 21015:8 21029:20 21030:4 21074:21 operational 21012:11 21015:2 21027:13 21064:17 21070:22 21071:5 21072:8 21076:18 operations 21007:8 operator 21106:22 operators 21051:23,25 opgaan 21061:12 opgebreek 21073:11 opgegaan 21061:15 opgegroe 21016:22 opgeskryf 21076:14 opgestel 21041:3 21078:1 opgetree 20993:23 21054:2 21062:16 21084:19 21098:24 opgevolg 21008:24 ophaal 21118:6 opinie 21049:19 opinion 21044:1 opleiding 21012:15 21041:3 21085:1 opportunity 20958:8 20986:13,16 21002:8 21002:15 21004:5 21005:17 21020:7,11 21055:22 21079:4,24 opposed 20968:10 21069:18 opposite 20981:5 20984:20 20991:4 opsie 21043:6,6,7 opsig 20979:7 opskrif 21029:20 opskryf 21076:11 opsom 21043:22 optog 21030:24 21035:21 optrede 20988:10 opvolg 21089:25 21090:7 21098:1 oral 20966:8 21038:5 orde 20993:22 21063:8 21091:3 21099:14 21101:14 21102:5 21112:24 21113:25 21115:6,11,13 21118:13 ordentlike 21054:8 order 20976:23 20991:3 21000:22 21010:19 21024:3 21088:19,23</p>	<p>ordinary 21053:5 21123:21 orientate 20959:5 20968:11 orientated 20973:24 orientating 20973:21 originally 20976:2 21049:22 21065:18 21068:4 ouer 21044:24 outcome 21041:14 outer 20966:23 outside 21121:25 overall 21027:16 overwhelmingly 21018:10 o'clock 21000:4 21027:24 21028:2,3 21079:3,6,8,13,15,17 21126:10</p> <hr/> <p style="text-align: center;">P</p> <p>paar 20979:11 20988:7 20988:17 21105:10 21110:6 pad 21089:6 21090:9 21099:7 page 20963:18,18,23 20964:5 21002:14 21020:10 21022:5 21026:21,22 21027:6 21058:9,11,12,19 21059:2,15,15 21064:22 21066:7,11 21066:19 21104:16 21108:19 pages 21002:6 21026:23 21027:19 21059:5 21066:18 pain 21039:22 pak 21099:8 pangas 21033:15 21035:22 pantser 20989:6 21084:16,25 Papa 20971:11 21018:19,20 21098:14 21102:2 Papa1 20967:9 21091:25 21092:2 21103:15,15 Papa10 21018:21 21114:18 21115:1 Papa11 21088:2,6,11 21091:12 21098:21 21101:8 21103:22 21120:7,18 21122:12 Papa18 21098:21 Papa19 21002:11 21018:20 21098:13 21114:18 papa2 21098:12 21101:20,21 21102:4 21104:14,14 21105:4 21105:8 papa4 21097:22,23</p>
--	---	---	---	---

<p>21098:13 21101:21 21104:14,15 21105:4 21105:8 21119:16 Papa5 21098:13 21104:14 21117:10 21117:24 21119:13 Papa7 21098:21 papers 21006:16 Pappa10 20998:10 20999:6 Pappa11 20983:14 20988:15 20995:3 paraded 21044:7 paragraaf 20975:3 21029:21 21035:7 21052:19 paragraph 21027:22 21027:23 21028:9,19 parallel 20980:19 para-militaristic 20988:2 pardon 20974:5 20997:1,4 21003:17 21026:10 parked 20967:7 part 20963:19 20968:20 20982:11 20985:16 20995:25 20996:22 21022:5 21025:13 21039:24 21053:11,11 21055:11,12 21087:9 21114:7 21116:17,22 participate 21077:23 participated 21067:8 21070:13 21078:15 particular 20972:19 21014:3 21039:9 21051:11,20 21052:3 21124:7 particularly 20958:10 21026:23 21041:8 21095:10 21115:17 particulars 21032:12 partly 21044:1 party 20992:11 21038:10 21048:11 21053:7 partye 21042:22,24 pass 21037:16 passage 21048:20 passages 20987:15 patch 20978:24 20980:3,14 peaceful 21033:2 21035:8 peacefully 21036:2 pedestrian 20972:4 pellet 21010:16 21011:10 21013:16 pellets 21007:8,12,21 21007:22,22,25 21008:3,20 21009:7 21009:18,20 21010:13 21011:11 21011:12,14,17,21</p>	<p>21012:8,19 21013:5 21013:15 21014:4,7 21014:10,18 21015:2 21015:17 21016:9,12 21016:16 21017:7,9 21017:14,23 people 20959:21 20961:19,21 20969:25 20970:6,8 20984:8,13 20985:3,6 20985:18 20986:20 20986:24 20987:21 20997:10,16 20999:22 21010:3 21017:13 21023:11 21026:1 21031:17,25 21032:2 21038:8,18 21045:16 21052:7 21053:11 21055:1 21056:18 21069:2,5 21081:16 21083:6,7,8 21083:14,14,17,19,20 21096:13 21100:19 21100:25 21101:18 21103:4 21107:12 21111:17 21114:3 21117:5 21118:1 21122:16 21123:17 21124:7,14 21125:12 perfect 21090:4,15,16 21090:19,22 21091:17 performing 21077:5 period 20987:23 21039:10 21053:16 21059:6 perseel 21050:17 person 20963:6 20983:17 20984:19 20985:2 21017:12,21 21023:25 21033:8 21045:25 21046:1 21111:7 21114:4,17 21123:22 persone 20989:21,25 20990:15,18 20994:24 20995:3,4 20995:16 20998:19 20999:10 21012:3 21013:3 21018:3 21030:11,15,19,20,23 21030:23,25 21031:12,13 21042:17 21043:16 21047:23 21050:16 21052:25 21061:4,24 21062:14 21063:12 21063:14,20,21 21069:15 21070:10 21072:19,24 21084:23 21085:10 21085:12 21097:1,16 21097:18 21099:11 21103:9 21110:6 21115:20,24 personeel 21069:21</p>	<p>persons 20985:2 21084:2 persoon 20989:18 20993:19 20996:14 21008:14 21014:14 21018:3 21044:24 21062:8,9,23,24 21063:17,18 21064:10 21093:18 21111:8,13,25 persoonlik 21008:24 21068:7 persoonlike 21049:19 pertinent 21032:15 21054:14 21110:18 pertinente 20996:13 peruse 21004:6 phone 21045:17,22,24 21045:25 21046:2 phones 21045:16,18,20 21046:3,11,11 photograph 20960:12 20960:14 20961:11 20962:8 20965:15 20968:12 20973:11 20973:21 20974:3,18 20974:20 20977:1,4,9 20977:10,18 20978:19 20980:19 20981:7,14 20982:14 20982:17 20983:4,15 20984:7 20986:12 20992:21,23 20994:2 20995:21 20996:17 20996:25 21095:17 21095:21 21098:4,5 21102:15 21104:10 21105:13,14 21111:18 21117:1,3,5 21119:3 photographs 20959:7,8 20960:4,5 20961:1 20962:9 20965:1,8 20966:25 20967:13 20967:17 20975:11 21000:21 21095:15 21119:5 picking 21018:17 picture 20964:22 20993:12 20994:12 20998:4 21117:16 piece 21080:10,15,17 21080:18 Pillay 21057:25 21064:23 21065:2,5 21065:10,15 PKRS 21047:7 plaas 21064:8 plaasgevind 21062:14 place 20966:17 20986:1 21023:6 21024:19 21025:2 21032:12 21036:3 21051:7 21116:25 21117:13 21118:2 plain 20969:20</p>	<p>plan 21026:20 21027:5 21027:8 21029:6 planned 20961:13 planners 21027:11,12 plans 21005:20 plasing 21119:18 plasings 21120:3 plate 21092:12 platoon 21040:10 21064:17 21067:7 play 21081:22 21091:18 21092:8 21093:7,19 21094:2 playing 21080:10 please 20978:15 20987:16,18 20996:20 21026:9 21045:16,18,22,22,25 21046:2,3,4,10,12,13 21072:3 21079:16 pleased 21039:4,5 pleasure 21004:4 plek 21090:11 ploughed 20982:12 plus-minus 21027:25 pocketbook 21056:8,14 21057:9 21058:24 21059:8 21066:10 21067:9 21074:2,4,7 21074:8,10,10 pocketbooks 21056:18 pointed 20975:22 21024:20 pointer 20970:24 20979:19 pointless 21053:18 points 20979:16 20982:4 21006:4,17 21006:21 21018:18 21025:12 21055:18 21114:17 21119:11 police 21007:23 21008:21,21 21009:25 21011:2,11 21011:21 21014:25 21015:3 21016:10 21017:12,15,16,17,19 21017:21 21018:11 21022:12,14,19 21023:17 21026:20 21027:7 21037:19 21042:3 21044:4 21050:6 21052:11 21062:1,3,5 21074:3 21074:20 21076:21 21077:3 21101:23,23 21102:9,10 21113:19 21123:18,21 21124:8 policeman 21017:8 21024:9 21113:24 policewoman 21017:8 policy 21076:5 polisie 20988:11,22,23 21017:2 21043:1,6,7 21047:21 21054:4,16 21062:17 21097:14</p>	<p>21097:21,24 21112:2 21115:4 21121:16 polisiebeampte 21010:22 21011:6 21019:10 21062:20 polisiebeamptes 21064:5 polisiediens 21015:16 21099:15 polisielede 20998:23 21099:15 polisielyn 20988:25 20989:12 21099:3,22 21100:13 polisiemag 21015:15 polisiesman 21062:18 21118:11 polisievoertuie 21098:22 21099:14 polisiering 20993:22 21063:9 21091:3 21099:14 21101:11 21102:1 polisieringslede 21112:24 21114:1 21115:13 polisieringslid 21102:5 21118:13 POP 20994:10 21014:3 21014:6 21026:20 21027:8 21081:14 21082:2 21083:8,20 21100:19,25 21101:18 21103:4 21110:14 21111:7 21114:3 21117:5 21118:1,22 POPS 21007:12,17 21008:4,4 21012:18 21012:23 21013:13 21016:12 21018:24 21028:21 21081:3 POP-lede 20988:16 portion 20995:22 21055:11 21080:10 21091:23 21114:7 posed 21016:8 posisie 20971:4 20972:24 20980:1,1 21112:1 21118:12 21119:20 position 20964:20 20965:5 20979:24 20980:2 20981:17 21026:4 21029:14 21038:19 21042:11 21051:9 21055:17 21079:2 21085:6 21086:25 21087:11 21087:12 21088:4 21090:14 21093:24 21094:2 21096:5 21098:9 21100:7 21104:16,17 21105:6 21114:24 21116:16 21117:11,24</p>
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21119:14,15 21121:21 21122:11 positioning 21088:20 21088:24 positions 21095:18 21103:5 21105:5 possession 21008:3 21009:23 21010:2,14 21010:16 21011:1,1,3 21011:4,22 21013:15 21014:4,7 21017:9,17 21017:22 21022:17 21033:8,10 21036:12 21036:15 21055:2 21074:9 possibilities 21022:11 possibility 21014:10 21017:20 21023:16 21023:18 21024:13 21024:14 possible 20972:15 20999:2 21014:5 21018:12 21040:14 21076:3,5 possibly 21052:10 21124:17 postulated 21024:7 Potchefstroom 21073:4 potential 21083:17 potentially 21084:3 power 20963:20,24 praat 20975:1 21002:3 21015:18,21 21030:24 21049:17 21050:18 21052:20 21061:7 21075:14 21090:1 21121:11 practical 20987:20 practically 21076:4 practice 21012:12 21077:2,6 prakties 21076:6 preceded 21039:12 prediction 21026:17 prefer 20970:22 prejudiced 21005:11 prepare 21040:10 prepared 20958:11 20965:21 20968:1,4 20985:19 20986:6 20996:23 21001:15 21002:6 21013:19,24 21016:17 21019:20 21019:21 21029:6 21051:2,14,22 21052:1 preparing 21001:11 21073:5 presence 21071:19,21 21072:5,11 21073:5,6 present 20973:20 21006:22 21044:8,19 21045:11 21046:15 21046:19 presentation 20996:23 21019:20 21020:1,7	21020:11,12 21022:6 21022:17 21104:8 21107:14 presented 21074:2 21077:20 presently 21091:11 presies 20990:14 20995:20 21030:7 21043:23 21063:9 21084:16 21090:6 presiese 21029:20 21030:3,3 21094:14 21119:18,20 press 21007:7 21009:6 21009:8 presumably 20963:19 20966:23 20969:24 21000:4 21014:5 21022:19 21029:1 21034:4 21116:16 presume 20964:11 21007:16 21017:20 21020:6 presumes 21011:23 prevented 21042:10 previous 21104:16 21111:3 previously 20963:10 21039:14 prima 20969:16 20987:4 21022:25 21023:10 21052:7 21113:6 principles 21041:22 probabilities 21122:19 21123:18 probably 20962:7 20978:25 20980:8,17 20980:25 21003:7 21006:13 21098:15 21114:10,11 21116:21 21117:13 probeer 20979:9 20989:12 21062:12 21063:12 21064:3 21073:20 21103:9 probing 21076:20 problem 20974:9 21004:12 21017:6 21067:12 21082:25 21083:11 21084:4 21121:14 proceed 20958:15 20965:18 20967:2,22 20974:1 20984:20 20991:4,16 21000:22 21006:3 21010:10 21021:23 21040:6 21046:13 21055:17 21057:5 21079:15 proceeding 20984:13 21026:14 21051:23 21051:24 proceedings 20958:1 21020:17 21044:2 21045:21 21046:12	proceeds 20980:18 produce 20959:3 20985:22 21037:23 produced 20976:17 product 21077:23 21078:16 produk 21078:2 profit 21038:5 prohibition 21036:15 projected 21040:13 projection 21040:18 promising 21037:8 promotion 21037:15 pronounce 21086:20 21086:22 pronounced 21086:13 properly 21024:22 propose 21021:11 proposing 20965:10 21021:25 proposition 20959:3 20969:22 20984:7,9 20984:24,25 20987:2 21023:9,11 21060:19 21087:9,16 21089:20 21095:12 21096:11 21122:7 proses 21070:9 prospect 21126:5 protect 21004:6 21083:22,24 21084:3 protected 21049:5 21083:17,21 21084:1 protecting 21083:25 protection 21035:10 21047:10,11 21082:12 21084:7 protes 21049:13 protesgroep 21061:17 protest 21013:14 protesters 20969:6 21060:21,24 21061:20 21063:22 protestors 20971:12 20977:9 20981:23 proved 21013:17,19 provided 20959:6 21040:9 province 21014:3 Provincial 21077:15 Provinsiale 21061:3 21072:18 provisionally 20960:22 20965:18,21 20976:15 provisions 21037:8 proximity 21084:9 psychology 20986:25 public 21014:11 publicly 21014:25 punt 20971:7 20972:23 20972:23 20977:12 20977:24 20979:10 20983:9 20988:20 20990:6 21090:22 21091:4 21097:18	21106:4 21107:24 21108:7 21109:21 21110:3 21112:14,18 21112:22,23 21118:18 purchased 21014:11 21016:16 purpose 21033:10 purposes 20959:6,18 20959:21 20979:17 20980:24 20981:3,9 20996:23 21012:11 21015:3 21036:14 21121:12 put 20959:14,23 20960:24 20972:17 20981:13 20982:17 20983:3 20984:24,25 20986:11,15 20987:2 20987:5,19 20996:2 20996:20 21018:22 21022:24 21023:4,15 21024:10 21026:4 21027:9 21041:18 21054:11 21081:10 21082:12 21106:11 21121:20 21122:19 21122:23 21123:4,5 21124:13 21125:2 puts 20991:25 putting 20965:16 20984:6 21116:13 21122:4,6 pyltjie 21113:14,15 P5 21116:15 21117:2,3	21039:3 21053:20 21060:16 quickly 20992:1 quite 20959:13 20965:24 20991:1 20994:15 21023:23 21024:23 21031:4 21098:6,15 21101:16 21102:25
R				
raak 21035:2 21054:15 radically 20984:15 radio 21063:25 railway 21076:22 raised 20982:6 20987:6 21009:20 range 20967:19 21124:15 rapport 21105:23 21106:7 RDOs 21051:15 reached 21094:11 21108:3 reaches 21107:15 reaction 20984:23 read 20958:11 20978:10 21005:17 21006:25 21007:7 21009:5 21028:22 21040:15 21041:7 21060:4 21068:20 readily 21016:16 ready 20958:14 21000:8,22 21005:18 21006:22 21055:25 21079:7,15 reageer 21041:17 21043:21 real 21124:12 realise 20965:18 realised 21022:1 really 20961:12 20964:11 20977:16 20982:7,17 20991:3,8 20992:4,22 20999:3 21021:17,20 21037:21 21126:1 reason 20985:12,18 21032:19 21083:10 21088:11 21100:6,8 21105:2 reasonable 20992:25 reasons 20991:9 21007:18 21018:13 21039:23 recall 20958:21,23 20967:14 20976:7 21058:2 21100:18 21102:24 received 21031:6 21041:1 recognise 21001:9 recollecting 20959:19 recollection 20999:4 21048:18,21,21				
Q				
qualification 20968:6 quarrelling 20965:9 quarter 20964:21 question 20970:11 20973:7 20985:4,22 20986:6,11 20987:19 20987:23 20988:5 20991:1,8,24 20992:22 20997:25 21007:14 21009:18 21009:20 21013:24 21014:9 21022:1 21040:8 21048:15 21049:20 21053:21 21067:21 21072:1,2,2 21083:1,3,11,25 21084:5 21091:21 21092:25 21105:25 21111:15 21122:5,8 21122:18 21124:11 21124:13 questioned 21080:1 questions 20965:22 20972:18 21001:9 21006:13 21007:4 21009:1,3,4 21016:8 21016:8 21021:22 21022:3 21025:25 21034:15 21038:2				

<p>recommended 21039:2 recommended 21027:15 reconsider 20974:16 record 20978:8,10 20986:17 20996:20 21003:14 21024:10 21024:19 21025:3,10 21048:20 21071:18 21074:25 21086:14 21123:16 recorded 20973:12 21067:14 21068:4 recourse 21053:13 rectified 21066:22 red 20961:24 20962:6,7 20962:19 20963:14 20963:17,22 20964:10 20965:6,14 20966:19,20 20968:17 20970:17 20972:7,14 20978:3 21091:14 rede 21032:21 21033:4 21075:16 redes 21052:24 reduced 20984:25 reeds 20988:10,11,16 20995:4 21084:21,22 21093:21 21097:8 21098:24 21118:25 21120:21,22 refer 20974:3 21105:25 reference 20974:10 20975:1 21038:2 21039:9 21044:3 21060:18 21064:19 21065:3 21091:8 references 20974:23 referred 20980:14 referring 20970:14 20977:1 21032:19 21036:6 21045:2 21075:12 21095:22 refers 20968:18 21059:2 reflect 21074:23 reflected 21070:23 21071:4,6 reflects 20985:23 reformulate 21007:13 21048:19,22,24 refrain 21037:5 refresher 21041:5 refuel 21061:13 reg 20996:7 21030:24 21033:18 21084:14 21094:19 21105:16 21106:20 regard 21050:4 regarded 21117:11 regmatige 21099:6 regs 21061:17 21092:6 21096:19 21097:21 21118:11 regskenner 21033:12</p>	<p>regspan 21025:18 regte 21085:11 regterkant 21089:16 21112:24 21120:25 reguit 20979:13 regulasies 20990:20 reinstate 21004:3 reject 20984:9 rejected 21003:22 21004:1 rejecting 21003:21,24 rekord 21092:23 21110:19 relates 20970:6 relation 20963:10 20966:13 20974:9 21007:5 21016:7 21029:14 21038:7 21039:8,9 relative 21001:13 relatively 20985:4 21100:2 relevant 20958:12 20962:23 20981:9 20997:3 21005:20 21033:22 21034:18 21034:24 21039:17 21118:2 relied 21036:23 reloaded 21018:24 rely 20974:20 21018:7 21060:12 relying 21056:13 remain 21105:6 remedy 20975:23 remember 20963:11 20965:8 20973:8 20986:5 20994:9 20998:24 21016:13 21091:12 remind 21091:9 reminded 21001:3 reminding 21003:25 removal 20999:4 rendered 20967:25 reorder 21006:16 repeat 20988:4 20995:20 21026:16 21072:2 21079:9 21122:5,8 repeated 21031:6 21044:3 repeatedly 21031:16,20 repeating 20973:14 repetition 20974:14 21031:5 rephrase 20970:11 reploughing 20973:16 20973:19 report 20975:24 20976:4,5,15 21001:15,25 21002:7 21002:14,18 21003:9 21006:5 21007:1 21009:8 21055:13,22 21069:6 21079:5,24</p>	<p>21105:22 21108:18 21108:19 reported 21049:21,23 reports 21007:7,11,20 21009:6 21079:14 represent 20968:7 20969:5 21056:22 representation 20968:6 20973:10 21104:12 representations 21001:16 21002:6 representative 20971:22 represented 20970:17 20970:20 21060:13 representing 21039:19 repressive 21041:13 reproduced 21021:19 repudiated 20966:12 request 20995:20 21000:7 21001:14 21119:23 requested 20997:19 require 21025:13 required 21054:13 21080:14 resolve 21035:8 resolved 20966:8 respect 20970:2,7 20985:7,22 21004:8 21036:15 21123:18 respek 21045:5 relying 20985:13 21022:23 responding 21023:25 21024:24 response 21041:9 21050:2 21098:3 responsible 21009:21 21009:24 21010:4 rest 21055:5 result 21009:20 21017:15 21041:12 21070:4 resulting 21028:10 resumes 20958:2 21000:9,10 21034:8,9 21079:21,22 retreat 20958:23 21099:18 21101:12 21112:25 21115:5,14 21116:7,8,9 21118:14 return 20958:5 21038:21 21039:2 21052:21 returned 21038:13 21039:1 Reuters 21103:18,25 Reverend 21068:20 21069:14 reverse 20983:19 20984:2,3 reversing 20984:16 revert 21006:6 rifle 21115:18 21119:1 rifles 20997:17</p>	<p>right 20960:1 20962:8 20963:20 20964:6,9 20965:9 20968:19,21 20977:20 20979:2 20980:17,17 20981:1 20981:7,10 20999:14 21001:20 21011:19 21015:5,8 21022:17 21036:2,9,10,12,17 21037:9,18 21067:17 21081:4,4,13 21082:2 21087:4,7,7 21095:6 21095:7 21096:8,12 21100:9,21 21101:24 21102:19 21103:18 21111:5,19 21113:23 21114:13 21116:12 21116:14 21117:6,24 21120:14 21121:5,6 21122:17,23 21123:7 21123:12 Rights 21022:23 21036:17 right-hand 20965:3 20968:12 21082:15 21083:15 21091:23 rigting 20979:14 20990:4 21046:23 21061:16 21062:15 21084:23 21099:5 21113:15 21115:2 rigtings 21096:18 risk 20965:19,21 20968:1 rivalry 20963:9 rivier 21063:19 road 20981:24 21081:1 21116:18 21123:22 roadway 21116:18 rock 21051:23,24 roete 21073:1 rol 21048:6 21061:9 rollout 20961:13 rondbeweeg 21043:17 rondom 21012:8 21045:5 21064:9 21073:13 21078:21 rondom-verdediging 21044:23 21047:3 rondte 21019:11,11,13 rondtes 20988:18 21010:20 21013:2,8 21015:16 21099:1 rooi 20972:25 20979:9 21113:14,15 rook 21120:11,23 room 21045:18,22,23 21045:23,24 21046:1 21046:3 Roots 21073:10 21078:1,9,18 rough 21121:22 roughly 21120:6,13,18 round 21124:20 rounded 21085:17 route 20965:14</p>	<p>21038:14 Roux 21022:24 row 21000:11,13,16 21018:21 21040:12 rubber 20988:18 20989:8 20991:17 20994:11 21011:10 21011:11,13,14 21013:6 21015:21,24 21016:4 21024:25 21025:7,7 21095:9 21096:9 21099:1 21115:7 21125:9 rule 21024:2 ruling 20986:9 20987:8 run 20968:9 21005:23 running 20964:20 runs 20978:6,18,23 20979:1,21,22,23 20980:2,25 21114:22 Rustenburg 21007:9 21007:11 21026:20 21027:8 Rustenburg/Brits 21013:14 rustig 21049:12 ry 21082:9 21089:24 21099:9 rêrig 20969:2 21014:19 21052:15 R12 21049:6 R5 21015:21 21016:4 21063:25 21115:10 21115:11,18,21 21116:5 21119:1</p> <hr/> <p style="text-align: center;">S</p> <p>saak 21033:4 21077:8 saam 21002:4 21017:25 21018:3 21021:5 21030:17 21041:25 21049:7 21054:3 21061:6 21073:12,18 21085:24 21089:2 21100:16 saamstel 21073:20 saamstem 21034:21 safe 20965:23 21039:5 21055:10 Saffy 21028:13,20 sakboek 21075:3 sake 21078:20 sal 20968:25 20975:6 20977:13 20988:7,8 20990:11 20994:21 20995:17 20998:8,8 20998:18,18 20999:10 21004:19 21014:13 21019:15 21025:17,19 21029:2 21033:2 21035:4 21049:6 21052:20 21061:6 21063:22 21068:21 21071:7,9 21076:7,8,24 21077:10,17</p>
--	--	---	--	---

<p>21078:18 21081:8 21082:5,6 21084:14 21084:24 21085:24 21086:2 21088:7 21089:1 21092:5 21094:23 21097:23 21098:19 21101:4 21103:23 21106:19 21107:25 21109:7,11 21109:20 21110:13 21111:24 21112:3 21118:10,13 21120:2 21120:8,19,20 21125:5,7,7 samerwerking 21042:18 SAPS 20968:18 20976:9 21001:12 21010:14,15,15 21011:1 21018:24 21021:7,10 21022:25 21028:21 21040:20 21076:5,19 21104:9 SAPS118B 21067:1 Saterdag 21030:20,21 21030:22 Saturday 21026:2 21027:24 21028:7 21031:25 21032:3,7 21032:10,17 save 20967:22 saw 20997:1 21024:9 21111:3 21114:24 saying 20965:12 20987:13 21002:5 21012:18,22 21072:4 says 20985:9 20987:10 21003:2 21027:23 21036:22 21068:18 21091:25 21106:25 say-so 20985:24 SC 20962:5,9 20966:1 20966:5,11 20967:19 20967:23 20969:8 20971:18,21 20982:2 20983:20,25 20984:3 20985:7,21 20987:7 20987:11 20994:18 21002:17 21003:15 21003:18,23 21004:5 21013:22 21021:11 21035:25 21079:11 21079:18 21122:1 21123:13,16 21124:4 scale 20984:25 scenario 21123:1 scene 20964:25 20965:24 21018:23 21019:1,6 21021:16 21044:19 21045:11 21046:19 21061:25 21062:2 21066:25 21070:16 school 21039:4 Scorpion 21044:6,7,12 21046:15 screen 20959:21</p>	<p>20962:1,19,21 20970:17 20975:19 20977:1 20978:4 20996:2 21026:9 21028:5 21040:13 21081:2,11,11 21093:13 21095:23 21106:11 21117:19 21118:1 screened 20963:4 screening 20962:23 screenshot 21112:20 screenshots 21020:8,20 se 20995:3 21014:17,21 21035:2 21043:1 21061:13 21069:10 21078:10 21103:9 21104:3 21106:2,2 21109:9,23 21115:2 21118:10 21121:16 second 20982:5 20994:2 21020:9 21023:16 21024:12 21027:23 21087:9 21093:10 21098:7 21103:18 21119:14 seconds 20983:16 20984:16 20991:5,13 20993:9 20994:4,6,7 20994:15,17,18 20997:9,13 20998:2 20999:16 21006:16 21080:12 21082:1 21083:5 21086:25 21088:17,19 21092:9 21093:20 21094:3,8,9 21098:4 21104:17 21105:12,14 21107:18 21112:21 21114:24 section 20968:17,19,21 20978:24 20979:1 20997:2 21007:17 21027:18 21036:5 sectional 21062:3 21067:7 security 21010:3 seeing 20997:16 21098:8,12 seeking 20968:7 20991:24 21084:3 seen 20965:16 20975:12 20977:4 20982:17 20992:24 20993:5,15 20997:11 20999:21 21019:25 21022:10 21035:11 21039:13 21080:23 21083:6 21102:15 seer 21108:10 sees 20965:1 21020:21 Segune 20986:4 seker 20968:25 21033:18 21035:23 21047:2 21050:17 21069:21,22</p>	<p>21092:20 sekere 21033:14,14 21035:20 21050:18 21062:15 21071:23 sekerheid 20968:24 21031:13 21049:15 21120:20 sekerlik 21090:9 21108:10 sekonde 20995:17 21056:3 21082:8,18 21082:19,23 21085:9 sekondes 20992:6 20998:14,21 20999:7 21094:17 21097:5 21098:19 21105:11 21110:11,11,16,19,21 21111:1 21112:20 21113:3,4 21118:7,16 21118:17,17 21125:6 seksie 21115:10 21116:1,1 sekuriteit 21014:18 21019:10 sekuriteitspersone 21030:16 self 20989:20 21027:12 21043:8 21047:25 21063:14 21069:24 21073:22 21097:12 21115:22 selfs 20989:1,22 20990:9 21047:5 21048:2 21094:25 21097:7 21118:15 selfverdediging 21115:12 self-defence 21036:14 semblance 21088:19 Semenya 20962:5,9,14 20969:8 20970:1 20971:18,19,21 20982:2 20983:20,25 20984:3 20985:7,21 20987:3,7,11 21002:17,23 21003:15,18,23 21004:5 21010:15 21013:22 21021:11 21021:20 21024:3 21035:25 21079:9,11 21079:18,23 21122:1 21123:13,16 21124:4 seniors 21027:15 sensation 21124:2 sense 20984:17 20987:20 21049:23 21050:7 21084:2 sensible 21021:23 sent 20974:22 sentence 21070:2 sequence 21062:13 21112:10 series 20959:6 20965:5 20965:13 20974:4 20982:14 20992:18</p>	<p>21020:8 21117:24 serious 21017:6 seriously 21026:2 service 21008:21 21011:24 21012:12 21015:1 21017:15,19 21018:11 21022:12 21023:17 21026:20 21027:8 21077:3,5,14 21113:19 ses 20989:6 20998:21 21030:25 21050:17 21110:21 sessions 21073:6 set 21002:1 21080:9 Setsemi 21068:21 21069:14 seven 21027:19 21098:3 21104:17 sewe 21030:25 SGF 21098:15 she'll 21026:16 shielding 21084:11 shoot 20990:12 shooting 20994:11 20998:2 21023:24 21024:1 21090:17 21091:17 21095:19 short 20985:4 20987:23 shortly 21044:18 shot 20976:14 21009:20 21019:21 21020:21 21023:16 21024:8,9,13,25 21028:12 21087:13 21102:15,17,18,23 21120:5 shotgun 21007:8,12,21 21008:5,21 21009:7 21010:16 21011:2,12 21011:13,17,18,21 21012:19 21013:15 21013:15 21014:4,7 21014:10 21016:9,11 21016:16 21017:7,9 21017:14 21019:5 shotguns 21009:23 shots 20959:9 20993:9 21018:18 21020:18 21022:6,8 21028:11 21102:17 shouldn't 21007:25 21117:11 show 20992:15 20997:19 21037:4 21081:21 21087:17 21087:19 21108:23 21111:19,22 21119:22 showed 20967:15 21111:3 shown 21000:6 21014:2 21080:19 21081:24 21087:20 21092:10 21093:8 21094:4 21117:25</p>	<p>shows 20977:9 20984:7 21048:20 shunt 21093:1 side 20961:14,17 20964:22 20965:2,3 20966:24 20977:19 20977:20 20979:2 20983:2 21081:17 21082:14,15 21083:12,13,15,18,20 21083:24 21091:23 21093:13 21100:20 21121:2,5 sielkundiges 21069:14 sien 20963:15 20983:8 20983:13 20989:1,5,7 20993:4 20994:21 20995:1,19 20996:12 20996:12 20998:9 20999:11 21040:23 21041:16 21044:22 21049:4,10,13 21064:7 21067:3 21068:2 21081:9 21082:8,9,21 21084:22 21085:15 21085:25 21088:6 21089:16 21092:5 21093:17 21094:23 21098:21 21099:13 21099:17,17 21101:4 21102:3 21103:24 21104:23 21105:9 21109:12,20,22 21110:13,13,20,22 21118:10,12,13 21119:19 21120:24 sigbaar 21045:7 21098:23 21110:24 21118:18 sight 20999:3,20 21081:18 21082:16 21083:7 21085:5,11 21085:19 21098:16 signature 21026:22 21027:14,19 signatures 21026:25 significant 21105:1 similar 21021:9 21026:15 simple 21035:9 21054:10 21122:6 simply 20971:24 20973:20 20983:5 20987:1 21010:12,16 21018:25 21020:8 21023:7 21032:5 21041:19 21082:12 21084:8 21095:12 21098:8 21116:3 sin 21050:12,13 Sinclair 21061:15 sinkhuisie 21063:16 21064:9 21089:17 sinkhuisies 20979:12 sit 20990:3,3,9</p>
--	---	---	---	--

<p>20999:10 21033:1 21095:2 21108:9 sitting 21079:6 situasie 21035:8 21043:19 situation 21008:5 21024:7 21026:14 21041:20,24 21070:3 21070:4 21124:6,17 situations 21026:15 siviele 21063:14 skaduwee 21118:11 skare 21042:6 skeidslyn 20968:25 20969:2 sketched 20991:6 skiet 21012:16 skietery 21102:12,14 skietvooral 21029:2 skip 21025:1 skok 21064:11 skoon 21075:16 skoot 21019:8 skorsing 21008:12 skryf 21075:5,6 slaap 21075:17,22 slegte 21109:25,25 slide 20962:23 20992:20 20996:3,6,8 20996:9 20997:2,6 20998:25 20999:13 21088:5 21095:4 21100:7 21104:5,7 21106:12,17 21107:13 21111:3,5 21116:14 21117:14 21117:24,25 slides 21000:21 21002:1 slight 20959:4,6 slightly 20964:5 20980:10 21087:1 21088:10 21114:8 21122:10 slowly 20985:10,11 small 20965:3 20966:10 20969:6 20978:19,23,25 20980:5 20981:5,18 20983:4 20997:5 21005:3 21080:10 sodra 20992:9 21097:25 software 21040:14 solid 20971:21 somebody 20958:11 21018:19 21022:9 21028:21 somewhat 20992:16 Sondag 21030:16 sonder 21049:13 21098:1 soon 20973:15 21038:16 21039:2 21079:17 soontoe 21045:14</p>	<p>21089:7 21090:9,12 21107:23 soort 20990:2 soos 20971:4,7 20975:4 20989:23 20992:12 20993:19 21015:19 21015:22 21031:11 21032:15 21035:15 21043:13 21047:25 21048:8 21049:16 21075:3,4 21076:12 21076:15 21084:16 21084:25 21089:13 21096:20,20 21097:10,14 21099:5 21101:12 21106:19 21109:19 21113:4 21120:10,25 sorry 20971:9 20973:6 20974:21 20980:8 20983:3,23 20985:13 20994:7 21000:1,14 21004:2 21011:13,16 21023:21 21028:1 21048:14 21058:18 21058:24 21064:23 21079:12 21080:16 21086:17,18 21095:14,14 21106:16 21109:16 21112:11 sort 20968:17 20970:5 20975:24 21005:24 21012:13 21038:5 21068:23 21069:7 21071:5 21113:8,8 sorted 21068:13 sorts 20974:15 sosiale 21069:13 sou 20989:5,6 20990:11 20990:14,16 20993:22 20998:13 21011:6 21015:25 21016:1 21018:1,2,4 21019:8,10,13,14 21033:16 21049:8,16 21054:1,4 21061:11 21076:12,13 21077:8 21090:25 21091:1,3 21095:1,2 21096:25 21097:22,24,25 21101:10,12 21105:9 21106:14 21107:6 sought 20969:5 20986:19 21001:10 21040:12 21047:16 sound 20984:19 sounds 20981:2 20999:12 21005:11 21122:17 21126:5 South 21026:19 21027:7 southern 20961:14 20966:24 sover 20995:5 21013:1 21033:12 21044:14</p>	<p>sowel 21120:23 so-and-so 20960:16 so-called 20966:10 20992:18 21023:12 21024:8 space 20984:16 span 20961:5 spare 21003:3 spasie 21110:5 speak 21023:24 21048:11 21050:24 21051:22 21075:11 SPEAKER 20963:7 20966:4 speaking 20969:17 21123:6 special 21051:15 specific 21050:2 21051:10 specify 21032:17 speel 21105:9 spell 21060:3 spelling 21068:2 spelt 21086:8,15 spent 20973:9 Spesiale 21044:23 spesifiek 20990:5 21064:8 21071:8 spesifieke 20988:18 21044:15 21120:2 speurders 21047:5,6 spiese 21035:22 spinal 21028:12 spoed 20995:16 20998:19 spoke 21047:12 spokesperson 21050:23 spread 21088:24 Springs 21070:2 squatter 20961:14 20968:18 SSG 21015:17 SSGAA 21012:8 SS3 21026:6,7,8 staan 20994:25,25 21070:11 21110:14 21115:9,15 21118:25 21121:18 Staande 21010:19 stadig 21097:1 stadium 20988:15 20989:22 20990:8,12 20990:15 20993:22 21008:18 21015:25 21016:5 21025:21 21030:5 21031:1,14 21043:18,24 21045:6 21045:8 21049:17 21054:5 21061:7,13 21062:14 21063:24 21064:2 21075:24 21076:13 21077:1 21081:9 21082:22 21084:20 21085:9,14 21086:1,2 21094:15 21094:18 21097:6,7</p>	<p>21098:25 21099:21 21103:7 21104:3 21106:3 21109:11 21113:3 21119:9 stage 20981:13 20985:19 20991:18 20993:15 20995:9 21000:2 21022:14 21051:5 21053:9 stance 21051:4,21 21052:3,6 21053:11 21054:11 stand 21046:2 standing 20994:10 21087:11 21101:1,18 21103:4 21114:21,22 21116:17 stands 21005:25 21051:17 stap 20990:4 21042:20 21063:5 21097:8 stapled 21059:5 stappe 21043:23 start 20958:7 20980:13 21057:22 21058:23 21079:8,16 started 20979:20 20994:3 21104:15 starts 21066:18 21119:13 state 21033:20 stated 21052:9 21122:2 statement 20985:19 21009:10 21016:11 21032:17 21074:3,4,7 statements 21022:24 21023:3,24 21025:10 station 20963:20,24 stationary 21117:12 stay 21039:20 steeds 20975:6 21014:16 21017:1 21032:22 21049:4 21085:23 21110:14 21112:17 21118:12 21118:18 steel 21011:15 stel 20989:11 21014:20 21048:8 21073:3 21088:22 stelling 21032:14 21047:20 21054:3 21085:12 21086:1 21110:25 21120:12 stem 21017:25 21021:5 21041:25 21049:7 21054:3 21085:24 21089:2 21100:16 step 20959:4 21009:5 21038:3 sterk 21050:9,20 STF 20983:11,14 21044:6,7,17,19 21045:11,12 21046:15,25 21088:3 21088:10 21101:19</p>	<p>21104:17 21120:7,18 stick 21006:13 stilstaan 20989:22 stone 21039:14 stood 21115:17 stop 20974:13 20990:10,17 21015:24 21038:3 21045:15,15,15 21080:20 21081:25 21085:9 21089:8 21092:9,11 21093:9 21094:5 21096:20 21105:5 21110:8 stopped 21008:1 Stopping 21080:21 straat 21125:6,8 straight 20982:9 21005:23 21111:11 21111:12 strands 20967:16 strek 21013:1 strike 21049:5 21052:23 21053:10 21053:12 21094:6 striker 20972:4 20976:14 21019:21 21020:17,18,23 21022:7,8,13 21023:2 21023:18,19,24 21024:8 21102:6 21111:24 strikers 20958:23 20969:6,17 20977:18 20981:24 20983:1,7 20983:11,18 20995:23 20997:10 20999:15 21001:13 21009:22 21019:5 21022:16,18 21029:12,14,15 21031:8,16 21034:17 21034:23 21048:12 21049:25 21050:23 21051:19 21052:12 21053:22,24 21074:6 21082:16 21083:19 21085:5,19,20,22,25 21086:2 21093:12,12 21093:18 21094:10 21095:20 21096:5 21098:8 21099:20 21100:25 21101:22 21103:3 21104:12 21105:3 21107:15 21108:2,6 21110:23 21111:4 21112:23 21113:14 21114:4,21 21120:6,16 21121:3,4 21121:14,24 21122:15,20 stry 21089:23 21100:11 study 21005:15 21006:5,12 21055:13 21055:22 21079:4,14 21079:24</p>
--	--	---	---	---

<p>stun 20989:7 20991:19 21098:25 21120:22</p> <p>subject 20987:5 21087:20</p> <p>submissions 20987:16</p> <p>submit 20998:1</p> <p>subsequent 21026:5 21036:3</p> <p>substasie 21047:2</p> <p>succeed 21040:1</p> <p>success 21026:16,18</p> <p>sufficient 20979:17</p> <p>suggest 20972:13 20984:12 20986:20 21083:1,11 21098:11</p> <p>suggested 20959:2 20985:1 20986:7,18 20986:21 21006:3,14 21020:16</p> <p>suggesting 20961:19 20969:11 20980:24 20986:18 21037:2</p> <p>suggestion 20982:7 21009:22,25 21010:3 21021:20 21051:9</p> <p>suggests 21081:14</p> <p>suid 20979:11</p> <p>suidekant 21046:24</p> <p>Suid-Afrika 20989:15 20990:19</p> <p>suitable 21000:2</p> <p>sulke 21014:16 21018:4</p> <p>sum 20991:2</p> <p>summary 20992:4,5 21018:14</p> <p>superimposed 21095:18</p> <p>support 21018:9</p> <p>supported 21053:9</p> <p>suppose 20964:20 20966:23 20999:2 21116:19</p> <p>supposed 20964:23,23</p> <p>sure 20958:10 20959:13 20961:20 20962:3,20 20967:6 20972:6 20973:9 20979:15 20984:21 20985:14 20994:13 20994:15 21002:23 21009:4 21014:24 21026:11,16 21037:7 21037:25 21038:22 21039:16 21040:12 21045:19 21052:7 21053:6,21 21058:19 21066:22 21093:2 21116:14</p> <p>surely 21034:18 21122:24</p> <p>surname 21060:4</p> <p>surrounding 20965:4 21076:20</p> <p>suspect 20970:1 21027:6</p> <p>suspended 21007:18</p>	<p>21008:7</p> <p>sy 20989:23 20990:8 21044:25 21045:5 21073:11 21077:17 21078:10,11 21113:15 21115:7,8 21118:11</p> <p>sympathy 21039:24</p> <hr/> <p style="text-align: center;">T</p> <hr/> <p>taak 21107:5</p> <p>Taakmag 21044:23</p> <p>taal 21061:6</p> <p>table 20961:4</p> <p>tactical 21116:7,9</p> <p>tactically 21101:12 21112:25 21115:5,14</p> <p>tafel 21054:1</p> <p>take 20959:4 20963:2 20963:19 20965:21 20966:5 20968:1 20969:24 20970:6 20991:11 20992:20 20992:21,22 20993:13 20997:8 21000:2,3,5,5 21009:2,5 21017:5 21018:11,20 21020:15 21026:6 21028:21 21033:23 21033:25 21034:6 21041:21 21059:5 21068:25 21079:3 21081:16,20 21109:14</p> <p>taken 20966:17 20969:25 20981:15 20983:15 20992:23 20994:2 21028:13 21053:13 21095:18 21095:19 21103:14 21104:11 21117:6,16 21117:20</p> <p>takings 21075:19</p> <p>taktiese 21084:14,24</p> <p>talk 21050:24 21062:3 21103:20 21121:13</p> <p>talking 20966:20 20984:14 21023:12 21067:24 21083:19 21105:21 21123:20 21123:21</p> <p>tans 21008:12,24 21049:4,10</p> <p>target 21012:12</p> <p>te 20970:25 20972:21 20974:25 20977:25 20988:13,17 20989:9 20989:12,16 20990:8 20990:9,9 20995:18 20998:21 21012:16 21013:5,6 21015:23 21015:24 21016:21 21016:23 21019:12 21029:4 21032:23 21035:2,6,8,8</p>	<p>21043:5,7,13 21047:1 21047:6 21048:2 21049:18 21052:20 21053:25 21054:5,7 21062:24 21064:9 21070:11 21072:24 21076:2,10,11 21082:21 21089:7,8 21089:14 21093:16 21094:20,25 21097:11 21099:7,16 21106:8,14 21107:22 21107:24 21108:8,9 21109:4,18 21110:2,4 21110:8,8 21115:9,25 21118:9,14,19</p> <p>tea 21000:5 21005:24 21033:23,25 21034:4 21034:7,16</p> <p>teargas 21120:5,15 21121:22 21122:9,12 21122:16,20,23 21123:7,9,9,17,22,23 21123:25 21124:1,3,6 21124:13</p> <p>technically 20999:1 21018:12</p> <p>technological 20975:20</p> <p>teen 20990:20 20993:23 21054:2 21062:16 21097:12 21098:24 21099:5,16 21103:10 21121:18</p> <p>teenoorgestelde 21099:4</p> <p>teenstrydig 21011:7 21032:24</p> <p>teenstryding 21032:25</p> <p>teenwoordig 21043:9 21054:23 21072:19 21077:25 21078:18 21078:20</p> <p>teenwoordigheid 21043:1 21054:20</p> <p>tegnologies 21016:4</p> <p>tell 20991:2 21005:18 21051:22 21066:15 21072:13</p> <p>telling 21060:13</p> <p>ten 21015:23,24 21084:18 21110:5 21126:2,6</p> <p>tended 20969:19 20970:3</p> <p>tensy 21004:20 21085:14 21115:8</p> <p>tentoongestel 21035:21</p> <p>terme 20979:6 21012:5</p> <p>terms 21038:2 21039:9 21052:4 21076:5</p> <p>terug 20970:25 20972:21 20979:21 20988:21 20989:16 21090:19 21094:16 21113:1 21115:24</p> <p>teruggaan 21045:14</p>	<p>teruggebring 21016:3</p> <p>teruggegaan 21049:9 21115:20</p> <p>teruggegee 21052:18 21069:25</p> <p>teruggekrom 21048:3 21073:21</p> <p>teruggeroep 21063:21</p> <p>terugkeer 21053:1</p> <p>terugkom 21025:21 21075:19</p> <p>terugvat 21094:22</p> <p>terugvoer 21048:3 21073:21</p> <p>terwyl 20989:12 21032:24 21078:1 21109:3</p> <p>testified 20965:10 21029:11 21044:16 21064:14 21071:14</p> <p>testify 20984:10</p> <p>testimony 20966:8 21071:13</p> <p>testing 21037:11</p> <p>thank 20958:16 20960:25 20975:10 20982:13 21024:10 21026:17 21040:7 21056:5 21057:23 21060:9 21064:13 21065:2,6 21070:12 21073:23 21076:17 21078:23 21079:1 21080:8</p> <p>thankful 21104:6</p> <p>thanks 20973:4 21061:19 21065:24 21068:14 21071:11</p> <p>that's 20964:3 20966:22 20967:8 20969:21 20970:9,18 20980:15 20982:2,12 20987:1 20991:7 20992:3 20994:14 20999:13,14 21000:25 21001:20 21003:11 21004:2 21010:6 21015:4 21017:13 21024:13 21028:15 21029:1 21036:10 21037:1 21051:12,13,13,14 21052:4 21053:3 21054:10 21056:12 21059:1,8,11,19,21 21059:25 21064:21 21065:25 21067:17 21069:17 21077:14 21084:4 21092:1 21121:2 21124:2,8,8 21124:19 21125:11</p> <p>therapeutic 21069:2,18 21070:5</p> <p>thereabouts 21000:5</p> <p>there's 20967:19 20970:18 20984:13</p>	<p>20985:11,25 20986:4 21002:13 21004:12 21011:9 21014:24 21015:3 21023:8,13 21023:15,17 21039:16 21045:21 21051:7,9 21066:21 21069:1,4 21081:14 21088:23 21091:19</p> <p>they're 20958:6 20959:9 20960:12,13 20992:19 21005:18 21010:17 21011:15 21011:23 21012:10 21017:16 21026:11 21032:4,4 21081:5 21083:13 21084:7 21085:16 21088:24 21089:9,20,21</p> <p>they've 20958:6 21006:6,11 21021:21 21034:3 21069:3 21083:21</p> <p>thing 20970:5 20984:4 20984:23 21021:16 21047:9 21119:2</p> <p>things 20965:23 20966:15 20974:15 20975:25 20983:22 21000:19 21012:12 21023:20 21044:3 21058:21 21101:17</p> <p>think 20959:25 20962:11 20964:3 20965:23 20966:13 20967:14,22 20974:8 20975:12 20979:16 20980:15,21 20985:5 20986:16 20991:17 20992:16 20995:24 20996:4 20997:12 21006:18 21007:14 21007:19,23 21009:17 21013:17 21013:24 21014:1,8 21015:7 21017:13,14 21018:12 21019:17 21019:19 21022:22 21023:3,9 21024:10 21024:19 21025:5 21034:4 21037:18 21038:21,23 21040:6 21045:2 21046:5,6 21050:22 21054:10 21057:7 21067:15 21079:9 21098:10 21102:15 21109:13 21116:13,13 21122:18 21124:19 21125:22</p> <p>thinking 21056:7 21057:18</p> <p>third 20964:21</p> <p>thorn 20964:16</p> <p>thought 20981:24 20984:24 21006:12</p>
---	--	---	--	--

21023:22 21031:17 21052:6,9 21087:4 21107:9 threat 21022:19 21042:3 threatening 21041:12 21041:24 21044:4 threats 21044:4 three 20981:16 20994:3 20998:1 20999:15 21023:3 21094:2 21114:3,3 21118:1 21124:20 21125:16 21125:17 throw 21124:6 Thupe 21063:7 tie 21032:6 tien 21110:21 tight 21109:19 till 21079:13 time 20963:3,10 20967:22 20973:9,10 20975:15 20978:11 20981:19 20983:16 20984:23 20985:4 20987:23,25 20992:21 20995:8,9 20996:24 20997:9,11 20997:15 21006:1,20 21008:1 21009:18 21021:17 21024:14 21025:6,9 21029:12 21031:8 21032:12 21033:7,21 21035:13 21036:20 21046:12 21066:13 21088:15 21088:19 21089:10 21090:17 21091:16 21093:11 21095:16 21096:3,14 21098:8 21104:8,10 21105:3 21107:12 21108:14 21108:22 21109:1 21117:5,12,17,20 21118:2 21119:12 21120:15 21122:10 21125:25 21126:8 timing 21088:15 21121:22 today 21038:17,22 21065:11 toe 20975:2 20977:23 20977:24 20978:1,1,1 20988:21 20989:16 20989:24 20990:13 21010:19 21012:2 21043:19,20 21044:9 21046:22,23 21049:10 21050:15 21053:1 21062:8,16 21062:25 21063:4,4 21063:11,13,20 21064:8 21072:25 21073:10 21075:6 21085:9 21088:7 21090:23 21094:16	21096:21 21097:17 21097:24 21101:5 21103:22 21104:3 21105:16 21109:23 21112:19 21113:9,22 21114:1,6,6,17 21115:21 21125:5,14 toegang 21012:4 toegemaak 21084:19 21102:2 toegeskryf 21064:11 toelaat 20988:7 20990:22 toemaak 21056:3 toet 21075:6 tog 21071:24 21090:11 21112:13 Tokota 21006:17 21038:23 21054:24 21067:18 told 20971:23 20997:12 21005:11 21124:6 tomorrow 21125:19,22 21126:10 toneel 21018:4 21019:15 21029:3 21044:13 21045:14 21046:18 21047:5,7 21062:19 21063:5,10 21063:14 21064:3 tonele 21046:21 top 20965:2,3,4 20967:8 20968:12,17 20979:1 20983:2,3,5 20995:21 topic 21019:19 21024:4 21071:12 21073:7,24 topics 21007:4 torment 21022:2 tot 20979:10 21012:4 21030:5,5,8,25 21042:24 21043:15 21043:18,24 21049:8 21049:14 21061:17 21075:6,8,20 21077:10 21078:2 totaal 21010:20 totale 21018:1 totally 21006:18 traangas 21125:7 traanrook 20989:7 trailer 21081:12 trained 21012:18 training 21012:16,23 21013:1 21040:21 21041:1 transcript 20958:12 21093:5 21105:20 transkripsie 21091:1 translate 21038:24 transpired 21062:5 21074:22,23 21077:21 trauma 21064:11 21069:15 traumatic 21069:3	traumatiese 21064:7 travel 21102:16 traverse 21091:15 traversed 21039:21 tree 20980:15 21088:3 21099:16 trees 20964:16 trek 21033:17 triangle 20970:22 tried 20961:21 20991:11,14 21107:8 triumphantly 20967:3 trouble 20963:9 TRT 20981:16 20983:16 20992:24 20993:9,15 20995:10 20996:25 20997:11 20997:16 20998:1,2 20998:11 20999:22 21023:3 21063:6 21080:24,25 21086:24,25 21088:17 21090:17 21091:16 21098:10 21098:19 21099:13 21099:17,24 21100:7 21100:12,15 21104:1 21105:6 21107:18 21110:20,23 21111:12 21113:2,4 21115:25 21118:18 21119:2,8 TRT-lyn 20993:4 20998:9,12 20999:9 true 20971:22 21026:4 21026:18 21039:8 21040:2 21047:16 21108:12 truth 21039:15 try 20978:13 trying 20983:1 20995:7 21046:7 21062:4 Tuesday 21059:7 21066:20 turn 20984:1,20 20985:11 20986:13 20987:1 20989:19 20991:3 21045:16,17 21046:1,3,9,10,10 21095:6,7,9,12 21096:13 21107:13 21108:23,24 21110:5 21122:21 turnaround 20986:22 turned 21045:18,19,20 21051:5 turning 21096:12 21121:24 turns 20980:16 21051:17 21114:21 tussen 20969:2 20988:8 20994:24,25 20998:9 20998:22 21015:21 21016:4 21042:21 21061:10 21101:7 21102:4 21110:5,6	TV 21009:12 Twala 21045:3,4 21046:24 twee 20995:17 21019:9 21021:1,3 21030:16 21030:17,19 21044:22 21046:21 21047:20,22 21052:24 21062:18 21063:15,25 21075:17 21082:19 21082:23 21096:18 21106:6,19 21118:5 tweede 21042:20 21118:11 twee-jaar 21052:23 twice 21024:25 twist 20968:7 two 20959:6 20960:3,3 20960:5 20961:1 20963:1 20965:4 20969:14,16,18,22 20970:17 20971:14 20982:4 20994:2 21020:18 21022:6,8 21022:10,16,17 21028:11 21029:15 21031:17,24 21032:5 21032:9 21040:8 21051:16,16 21062:1 21062:5 21069:1 21094:2 21098:15 21102:15 21103:13 21105:1 21111:7 21113:18 21114:10 21114:11 21116:5,21 21117:1,5 21119:5 21124:12 21125:11 two-year 21051:7 21053:13,16 tyd 20990:7 21029:9 21076:9,11,14,15 21082:19,21 21085:8 21094:14 21105:10 21106:19 21107:4 21108:15 21109:4,20 21109:22 21110:15 21110:22 21112:20 21113:3 21118:9 21119:21 tydens 21010:18 21035:21 21046:20 tydlyne 21119:18 21120:1 tydperk 21075:14,15 tye 21084:18 21120:2	21052:17 21062:24 21072:20 21075:18 21076:13,14 21094:12 21097:1,13 21097:13 21098:23 21098:23 21099:3 21109:9 21110:1 21125:5 uitdruk 20990:23 uiteen 20988:24 uiteendryf 20988:11 20989:7 21089:8 uiteendryfaksie 21090:8 uiteendrywing 20992:9 21097:21 21099:4,6 uiteengaan 21054:2 uiteengedryf 20989:13 20990:10,14,19,21 20992:9 21099:2,11 uitgang 21089:15,17 uitgekom 21010:19 uitgeoefen 20988:13 uitgereik 21012:7 21013:3 21017:1 21115:6,11,20 uitgespan 21019:14 uitgesteek 20998:14 uitgevlieg 21063:1 uitgevoer 21089:4 uitgooi 20979:6 uitkom 21069:23 uitreikingeregister 21012:6 uitreikings 21012:4 uitskiet 21013:5 uitsluit 21030:13 uitsteek 20994:22 21089:16 21118:11 uitvoering 21085:2 uitwys 21063:13 21110:18 ultimately 20981:18 21013:17,19 21026:21 21027:15 21041:11 21042:10 21042:13 21090:3 unauthorised 21017:11 uncoiled 21081:13 underlies 21001:25 underlying 20959:3 20960:19 understand 20958:3,5 20971:10 20986:8 20990:25 20991:2 20992:2 20997:21 21002:22 21010:14 21017:4 21036:8 21037:18 21038:4 21039:1,21 21040:4 21040:22 21053:6 21054:25 21060:18 21060:20 21062:4 21079:23 21086:19 21096:10 21108:13 21112:5 21120:14
---	---	--	---	---

U

uit 20988:9,10,16
20994:21,22 20995:2
20995:2 20996:11,11
20998:12 21008:14
21008:14 21012:16
21029:3 21030:6,6
21043:4,5 21047:15
21047:15 21052:16

21126:2 understanding 20964:24 20971:10 21038:20 21042:13 21042:23 21043:12 21047:17 21048:7 understood 21016:6 21026:3 21029:11 21046:14 21048:15 21054:25 21084:8 undertook 21038:9 unfortunately 20973:19 21026:22 21040:16 union 21052:2,3 21053:8,8 unions 21051:24,25 unlawful 21011:3 unlawfully 21034:18 21034:25 unpleasant 21124:2 unprotected 21052:24 21053:10,12 unrealistic 20991:8 unturned 21039:15 upper 20965:14 20966:20 upwards 20978:23 ure 21075:17 urging 21037:5 use 20999:19 21000:20 21007:7 21009:7,8 21012:19 21060:17 usual 21051:3,3,19 21053:5 uur 21054:22 21074:17 21074:17 21075:7,7 21075:17,21 21076:1 uurliks 21075:4	ver 20993:20 20996:14 20998:7 21106:3 21120:23 verandering 21015:15 verantwoordelik 21077:10 verbod 21033:14,17 verby 20993:19 20999:11 21047:2 21103:22 21104:4 verbybeweeg 21101:6 verdedig 21063:12 21099:5 verdediging 21045:6 21115:22 verder 20979:12 21030:10 21033:2 21042:22 21047:25 21063:4,19 21089:7 21097:23 21110:6 verdere 21063:18 21082:21 21097:5 verduidelik 21030:1 21047:1 21084:17 21090:20 vergelyk 20979:9 21029:21 21030:4 verify 20965:12 verkeer 21099:8 verkeerd 20975:6 21031:13 21044:13 verklaring 21029:21,23 21030:6 21052:19 21076:10 verklarings 21103:8 verlaag 21049:18 verloor 20988:10 21098:23 21115:9 Vermaak 21062:12,23 21063:19 21090:24 21094:17 21097:4 21098:5 21104:10,23 21105:11,13,14 21106:2 21109:9,23 Vermaak's 20974:4 20981:15 verminder 21109:4 21118:17 vermis 21019:9 vermorsing 21107:4 verneem 21043:8,10 21073:14 verplig 21070:10 verrassing 21109:8 versa 21068:5 21123:24 verseker 21054:20 versigtig 21015:10 21064:6 version 21035:11 21040:14,15 21123:17 verskeie 21012:15 21041:16 21098:22 verskil 20973:2 20979:7 21035:14	21048:6 21115:7 verskillende 21015:17 21042:21 21046:21 verskoning 21032:23 21099:17 versoek 21119:24 versper 20999:9 versprei 21097:9 verstaan 20990:23 21047:19 21052:16 21062:15 21078:9 verstandhouding 21048:7 versus 20986:4 vertolk 21061:9 vertrou 21088:6 vervat 21030:8 21071:1 vervoer 21008:14 verwag 21090:9 verwar 21044:22 verwys 20968:15 20972:23 20977:7,13 20977:25 20979:5,8 20981:22 20988:12 20988:14 20989:3 20994:24 20998:11 20999:7,8 21002:20 21004:17 21012:9 21025:17 21032:15 21035:6 21043:23 21046:18 21049:2 21052:20 21084:19 21090:22 21091:1 21094:22 21096:20 21097:4,7 21101:12 21102:13 21103:25 21105:10,16 21106:19 21107:22 21107:23 21110:16 21118:6,10 21120:3 21121:15,18 verwysing 20975:2,3 21085:10 vice 21068:5 21123:24 vicinity 20964:10 victims 21028:13,20 video 20973:12 20994:21 20995:1 20998:25 21020:25 21022:10,13 21023:19,23 21024:9 21024:24 21080:11 21080:19 21081:8,24 21084:18 21085:18 21085:22 21087:6,14 21087:15,17,20 21091:18 21092:6,10 21093:8,10 21094:4 21094:16 21095:11 21096:4,25 21101:4,5 21102:4,18 21103:21 21103:23 21105:9,11 21107:12 21112:2 21119:19,23 21120:24 videos 20967:5	20992:15,17 21020:9 21024:20,22 21035:11 21103:13 21114:19 21120:9 vier 20989:6 21092:20 21118:17 view 20987:20 20999:15 21016:18 21041:10,11,14 21052:7 21053:13,15 viewing 21041:24 views 20987:18 vind 21029:4 21075:23 vinger 21090:11 vinnig 21043:22 vinniger 21029:18 visible 21093:12 visie 21113:4 visited 20964:25 21028:20,21,23,25 vlieg 21062:24 voer 20988:17 voertuie 20989:6 20990:12 20998:9 21030:17 21089:2,6 21089:13,18 21090:8 21103:7,8,10 21105:9 21115:21 21119:18 voertuig 20971:6 20972:23 21008:14 21062:11,25 21082:7 21082:23 21084:15 21084:16,25,25 21092:5,7 21099:9 21101:9,10 21115:2 voetpad 20989:11 21118:13 voice 20988:2 21071:25 volg 20995:1 21041:17 21081:8 21099:10 21110:7 volgende 21074:17 21110:13,15 21112:9 21112:19 21116:1 21118:8 volgens 20968:15 20969:1 21008:11,12 21008:15 21033:16 21054:7,8 21062:14 21094:15 21110:24 21110:25 volledig 21075:7 volley 20994:16 20995:11 20996:25 20997:17 20999:1,16 21023:3 voluntarily 21123:6 voor 20975:4 20989:5 20989:18 21088:8 21090:24 21094:17 21097:5 21098:19 21110:6 21118:12 voordat 20995:5 21099:18 21110:20 voorentoe 21082:7 voorgond 21112:25	voorheen 20989:2 21098:18 voorkant 20989:20 voorligting 21061:23 voorpunt 21049:6 voorpunt 20989:4 20995:19 21109:10 21109:24 voorskyn 21016:21 voorst 20977:13,22 20983:8 20992:10 21094:25 21097:10 21097:18 21106:4 voorstel 21016:2 voorstelle 21015:14 voort 21109:5 voortgegaan 21050:14 voorval 21008:10 vorentoe 21082:9,20 vorige 20972:22 21029:24 21030:19 21033:13 21088:12 21094:16 21095:4 21106:1 vorm 20993:4 20998:9 20998:23 vra 20970:24 20993:17 20995:15 21015:20 21093:25 vraag 20971:1,2 20989:16 20990:24 20993:1,24 21014:13 21017:25 21069:10 21069:10 21071:2,24 21088:21 21094:16 21096:18 21097:6,17 21104:18 21106:3 21110:10 vrae 21106:14 21107:6 vreesaam 21049:12 21054:2 vriend 21014:16 vroeg 21072:17 21075:18 vroeër 21097:7 vroeë 21017:25 Vrydag 21004:17 21030:19 Vrydagaand 21030:21 vrylik 21054:6 vrywillige 21070:9 vuur 21019:12 vuurlyn 20990:16 vuurwapen 21102:7 vyf 20989:6 20998:21 21030:20,23,25 21043:22 21050:17 21110:11,16 21112:20 21118:7 V-shape 20967:10
V				
val 20992:11 21099:2 21115:25 vanaf 21042:18 21054:21 21075:8 vandat 21016:22 21042:7 various 21002:1,6 21007:18,19 21020:17,20 21021:18 vas 21086:3 vasberade 20991:15 vat 21043:1 21071:9 21076:10 VB 21070:25 21076:10 vehicle 20976:11 21044:6,7 vehicles 20973:13 21001:13 21095:19 21098:14 21102:10 21104:9 veiligheid 21054:18 veld 20980:18 21063:16 21075:19 venture 20997:25	version 21035:11 21040:14,15 21123:17 verskeie 21012:15 21041:16 21098:22 verskil 20973:2 20979:7 21035:14	verwysing 20975:2,3 21085:10 vice 21068:5 21123:24 vicinity 20964:10 victims 21028:13,20 video 20973:12 20994:21 20995:1 20998:25 21020:25 21022:10,13 21023:19,23 21024:9 21024:24 21080:11 21080:19 21081:8,24 21084:18 21085:18 21085:22 21087:6,14 21087:15,17,20 21091:18 21092:6,10 21093:8,10 21094:4 21094:16 21095:11 21096:4,25 21101:4,5 21102:4,18 21103:21 21103:23 21105:9,11 21107:12 21112:2 21119:19,23 21120:24 videos 20967:5	voordat 20995:5 21099:18 21110:20 voorentoe 21082:7 voorgond 21112:25	
W				
waar 20968:25 20969:2 20972:22 20973:2 20977:6,23 20994:24 20994:24 20995:19				

<p>21004:21 21008:14 21041:6 21042:5 21043:19 21044:15 21044:24 21045:5 21046:21,23 21047:2 21050:17 21061:11 21061:16 21063:19 21064:10 21069:11 21069:12,15 21073:2 21082:9 21084:19 21085:9 21089:16,17 21089:18 21090:19 21095:2 21097:6 21098:20 21101:5,8,9 21102:2,2,6 21105:8 21105:8 21110:14,23 21112:1,21 21115:22 21118:8 21121:18,18</p> <p>waaraan 20990:1 21099:12</p> <p>waarby 20989:14 21043:8 21069:11,20</p> <p>waarheid 20975:1</p> <p>waarmee 21115:19</p> <p>waarna 20977:25 20981:21 20988:12 20999:6,7 21002:20 21004:17 21012:8 21043:23 21046:18 21049:2 21090:22 21091:1 21097:7 21102:13 21107:23 21110:16 21113:14 21118:5,10 21120:3</p> <p>waarnatoe 20979:22 20989:2 21097:3</p> <p>waarom 21078:8,12 21115:20</p> <p>waaronder 21035:22 21048:5</p> <p>waaroor 21094:16 21102:1</p> <p>waarop 21061:5</p> <p>waarskuwingskote 21115:12</p> <p>waarteen 21100:11</p> <p>waaruit 21094:13</p> <p>waarvan 21030:18 21033:15 21072:10 21104:4</p> <p>wag 21109:3</p> <p>wage 21050:25</p> <p>wages 21053:8,16</p> <p>waiting 20963:3 20975:21</p> <p>walk 20985:10 21123:6</p> <p>walking 21081:15</p> <p>walks 21114:19</p> <p>wall 21051:1</p> <p>wanneer 21041:3</p> <p>want 20970:13 20972:16,17 20974:12,12 20977:16 20978:15 20986:14 20987:2,4 20987:22 20995:25</p>	<p>20999:9 21001:17 21004:3 21007:15 21019:17 21021:2 21023:7 21025:2,14 21025:14,19 21026:4 21030:14 21041:18 21050:23,24 21051:25 21055:18 21063:21 21064:5,8 21067:17 21070:4 21076:7 21083:20 21085:12 21087:8,24 21091:6,14,19 21097:23 21103:2,24 21105:25 21106:8,16 21107:11 21116:14 21119:10 21121:20</p> <p>wanted 20973:20 20974:9 20981:24 20982:8 21010:12 21024:19 21050:3,3 21054:13 21060:23 21093:3,24 21094:1 21106:12 21117:12</p> <p>wanting 20986:11 20996:5</p> <p>wants 20965:25 20966:18 20971:19 20986:8 21009:2 21025:23 21108:21 21108:23 21124:1</p> <p>wapen 21115:22 21116:1</p> <p>wapenkluis 21012:2</p> <p>wapens 21012:6 21032:22,23 21033:2 21033:4,13 21035:20 21049:9,13 21053:1 21054:1,6 21063:24</p> <p>wapen-gedeelte 21054:19</p> <p>ware 21076:12,12</p> <p>warning 21087:21 21092:15</p> <p>warnings 21080:13</p> <p>Warrant 21056:23 21060:14 21074:1,5 21077:21 21086:5,22 21087:10 21115:16</p> <p>Warrant-officer 21114:22,23 21116:4 21116:20 21117:13 21118:21</p> <p>wasn't 20976:5 21000:15,17 21021:16 21052:4 21093:2</p> <p>waste 21006:20 21107:12</p> <p>wasting 21108:14,22 21109:1</p> <p>watch 21114:18</p> <p>water 20991:18</p> <p>waterlyn 20969:2</p> <p>watertight 20969:21</p> <p>watse 21090:1 21097:8</p>	<p>waving 21026:11</p> <p>way 20958:4 20960:15 20964:21,21 20967:6 20972:7 20973:21 20974:23 20975:25 20981:25 20982:3,11 20983:3 20987:5 20999:17,18 21000:20 21006:11 21007:2 21017:13 21018:20 21021:23 21022:1 21026:24 21028:9 21041:10,13 21041:13,19 21042:8 21044:1,4 21048:25 21050:2 21081:15 21083:16 21087:24 21121:3,25 21124:15</p> <p>ways 20982:11</p> <p>weapon 21033:8 21036:13,16</p> <p>weapons 21032:20 21033:7 21035:10,12 21035:15 21036:10 21036:11 21038:7 21055:2,5,7 21116:6</p> <p>wearing 21023:25</p> <p>Wednesday 21066:20</p> <p>week 21007:9,16 21013:11,12 21029:11 21038:22 21075:10,22</p> <p>weekend 21004:11 21007:6</p> <p>weer 20979:19 20980:1 20989:25 21030:23 21090:18 21092:21</p> <p>weereens 21076:8</p> <p>weergawe 21078:11</p> <p>weerskante 20998:13</p> <p>wees 20977:13 20995:18 21010:22 21011:6 21014:19,22 21015:10,21 21017:2 21019:8 21032:23 21044:13 21049:12 21049:12 21052:20 21068:21 21076:7,8 21077:9,17 21085:12 21089:13 21090:10 21090:11 21094:24 21103:24 21107:6 21108:10 21109:8 21112:3 21123:2</p> <p>weet 20969:2 20971:1 20975:5 20979:4 20988:15,17 20989:8 20989:20 20990:22 20993:24 20995:2,16 20998:12 20999:10 21008:11,16 21014:17 21019:9 21029:23 21033:12 21035:15 21044:14 21047:1 21050:13,15 21072:18 21073:12</p>	<p>21076:7 21084:18 21090:1 21094:14 21103:6 21105:19 21120:9</p> <p>weg 21125:7,9,13</p> <p>wegbeweeg 20988:24 20990:16 20998:11 21043:21 21054:6 21097:22,25</p> <p>wegbreek 21062:16</p> <p>weggehardloop 21115:3</p> <p>weggeloop 21095:3</p> <p>wegkruip 21082:5</p> <p>weight 20985:24 20986:1</p> <p>wel 20979:12 20998:9 21008:13 21009:11 21011:6 21030:12 21042:5,21 21044:24 21048:7 21049:8,9 21050:11,18 21053:24 21054:4 21069:21,22 21070:11 21072:21 21073:10 21077:10 21078:9,18,20 21093:18 21097:16 21101:8 21102:1,6 21110:3 21115:11 21119:20</p> <p>welcome 20958:5 21034:6 21038:19 21039:19</p> <p>wellness 21069:13</p> <p>went 21041:23 21044:17 21045:24 21045:25 21046:2,4</p> <p>weren't 21032:3,6 21050:4 21051:23 21053:17</p> <p>werk 20970:25 20988:23 20989:13 21049:10 21053:1 21075:2 21106:8,14 21115:23</p> <p>werkers 21069:13</p> <p>wes 21046:23</p> <p>west 21007:18 21008:4 21014:3 21107:16</p> <p>westelike 20979:14 20981:21</p> <p>wet 21035:18 21054:8</p> <p>wetgewing 21054:7</p> <p>wettig 21017:2 21033:3</p> <p>we'd 20985:10 21059:22</p> <p>we'll 20975:15 20985:17 21005:14 21005:18 21006:4,23 21007:1 21024:11 21034:6 21040:17 21055:20 21065:3 21079:16,18 21087:4 21087:14 21125:19</p> <p>we're 20965:10</p>	<p>20966:20 20967:1 20968:16 20974:8 20975:21 20981:12 20983:20 20985:9,11 20985:14 20996:16 20999:13 21038:5 21039:11 21051:2,22 21052:1,1 21055:5 21057:5 21067:24 21079:2,12 21083:19</p> <p>we've 20963:6,13,22 20964:1,5,6,10,19 20965:7 20969:4 20982:7 20985:9 20996:23 21001:14 21002:6 21010:7 21018:20 21026:25 21035:11 21051:4 21058:8,19 21065:20 21066:18,21 21067:12</p> <p>what's 20964:23 20983:23 21031:4 21039:24 21040:18 21067:23</p> <p>whilst 21028:20</p> <p>white 20970:13 21103:17</p> <p>who'll 20983:21</p> <p>who's 21021:21</p> <p>wide 20967:19</p> <p>wie 20963:9 21103:25</p> <p>wil 20971:5 20980:1 20988:20 20990:6 20992:6 20996:14 21014:19,20 21016:3 21047:21 21063:6 21064:5 21093:15 21099:10 21106:18 21108:7 21109:17,21 21110:9,18 21112:13 21112:22 21115:9 21123:1</p> <p>willing 21087:19</p> <p>wire 20959:22 20961:13,17 20964:6 20965:1,5,13 20967:1 20967:5,10 20968:8 20968:10,10 20970:19,20,21 20971:5,8,14,23 20972:1 20978:5,17 20979:1,5,5,7,20,23 20980:24 20995:3 20997:4 21081:12,13 21081:23 21082:3 21097:14</p> <p>wires 20968:9</p> <p>wish 21039:17</p> <p>wished 21113:7</p> <p>wiskunde 21030:24</p> <p>wit 20994:25 20996:13 21120:11</p> <p>withdraw 20966:11 21015:2</p> <p>withdrawn 20976:19</p>
---	--	--	---	--

<p>witness 20965:17 20971:23 20973:10 20974:19 20980:21 20981:13 20983:21 20984:10 20997:12 21005:15 21006:2,25 21010:1 21014:8 21024:22 21033:20 21036:22 21037:1,3,8 21038:6 21048:15 21055:21 21087:24 21122:3 witnesses 20965:10 20983:24 witness's 21037:12 Wonderkop 20968:13 20968:20,21 20969:3 won't 20978:11 20980:12 20996:2 21005:12 21007:14 21023:14 21024:4 21036:7 21079:24,25 21081:17 woongebied 21064:9 woord 20989:8 21030:3 21030:3 21050:9,20 21064:6 21071:9 21088:8 woorde 20979:22 20989:18 21010:23 21030:1,3 21042:23 21046:22 21049:3 21061:4 21089:2,3 21090:8,19 21094:20 21112:21 word 20984:2 20989:13 20990:10,20,21 20999:14,19 21009:8 21012:5,7,9 21013:8 21013:9 21016:3,25 21019:13 21035:21 21041:6,6 21054:2 21061:5 21068:19 21077:8 21099:2 21101:4 21109:14 21112:23,24 21113:1 21116:8 21125:8 words 20968:9 20970:14 20972:24 20984:15 21003:20 21009:14 21034:6 21047:11 21081:16 21085:20 21090:16 21107:16 21117:14 work 21039:18 21052:21 21117:3 workers 21029:14 21048:12 21054:13 works 21029:2 21058:20 worth 21036:1 worthless 20968:1 wou 20998:7 21008:25 21025:17 21052:25 21062:15 21097:3 21105:16</p>	<p>wouldn't 20972:4 20985:12 20986:15 20991:4,14 21018:21 21019:1 21051:14 21082:12 21083:17 21100:5 21123:22 write 21057:22 written 21060:4 21066:25 21074:14 wrong 20965:19 20985:9,11 20994:1 21015:4,5 21048:21 21053:6 21066:16 21087:4 wrongly 21068:3 21123:5,5 wys 21004:21 21109:17 21113:14,15 <hr/>X<hr/>Xhosa 21038:24 <hr/>Y<hr/>year 21051:17 years 21051:16 yesterday 20958:21 20961:3 20975:23 21024:21 You'd 21088:10 you'll 20958:21,23 20961:15 20962:25 20967:8,9 20968:13 20968:20 20970:16 20970:18 20973:8 20974:16 20976:7 20977:8 20978:2 20983:6,17 20986:5 20996:4 21006:8,15 21026:21 21027:2,17 21027:18 21060:18 21064:20 21066:1 21079:7 21081:2,3 21085:18 21088:2,18 21091:12 you're 20959:15,23 20965:20 20968:1 20973:15 20978:7 20984:14 20986:11 20987:21 20996:4 20997:22 21000:19 21001:4 21003:20 21006:4 21010:7 21021:8 21028:6,15 21034:10 21036:11 21036:16 21037:18 21039:20 21045:2 21055:15,21 21075:12 21079:7,15 21079:25 21080:4 21081:19 21101:15 21121:9 21124:11 21125:22 you've 20959:12,12 20965:15,16 20974:12 20975:12 20979:16 20980:14</p>	<p>20984:22 20986:23 20987:19 20988:3 20991:9 21005:11 21006:21 21018:13 21020:7 21021:19 21024:7 21044:2 21048:20,22 21053:21 21067:19 21079:23 21080:22 21080:24 21083:1 21086:20 21124:11 yster 21035:22 <hr/>Z<hr/>Zokwana 21051:6 zoom 20993:18 20995:16,18,21,25,25 20996:4 21106:4 21109:24 zoomed 20997:2 zooming 20998:4 <hr/>0<hr/>0 21125:5 000 21027:25 21028:7 09:14 20958:2 09:34 20971:9 09:53 20983:13 <hr/>1<hr/>1 20961:15 20969:12 20970:4 20972:18 21005:21,22 21023:12 21043:2 21064:22 21092:1,9 21116:1 1.1 21027:22 21029:21 10 20974:22 20999:16 20999:18 21002:11 21030:25 21043:4 21086:23 21115:1 21118:17 21125:1,5 10de 21054:21 10th 21027:3 10:13 20996:6 10:29 21000:10 10:49 21014:23 100 20980:17 100% 21035:23 104 21071:18 108 21064:19 11 21000:4 11de 21075:8 11th 21026:3 21027:24 21075:12,12 11:09 21026:17 11:30 21028:19 11:49 21034:9 110 20980:9,11 12 21068:1 12de 21042:7,18 12th 21039:10 21059:16 12:09 21047:5 12:29 21061:1 12:49 21074:7</p>	<p>13de 21074:13 13th 21027:6 21029:6 21056:23 21059:16 21060:15,15,20 21064:15,22 21066:1 21067:6 21070:16,20 21071:3,15,21 21072:7,15 21073:8 21074:8,21,25 21076:21 21124:8 14 21066:1 21113:3 21118:16 14de 20989:24 14th 21029:7,13 21041:20 21042:9 21044:8 21046:16 21059:7 21066:20 14:23 21079:22 14:43 21093:7 15 21043:4 21107:18 15de 20989:24 21048:2 15th 21041:21 21042:10 21066:21 15:03 21106:10 15:23 21120:8 15:43:35 21119:21 15:50:47 20981:15 15:52:52 21088:16 15:53 21117:18 15:53:13 21001:13 21093:17 21095:16 21095:21 21096:3 21097:4 15:53:15 21112:18 15:53:18 21093:11 15:53:21 20983:16 21104:8,21 21109:22 15:53:30 21104:25 15:53:31 21116:15 15:53:35 21107:13 21110:15 21117:10 21117:21 21119:11 15:53:40 21117:14 21118:5,9 15:53:50 21001:14 1505 20997:1 1515 20974:18,22 20975:19 20996:9 20997:1 1516 20982:15 16de 20989:24 16th 21013:21 21016:10 21041:21 21048:12 160 20981:22 21091:8 17th 21059:8 175 20981:1 18 20966:14,15 21015:18 21064:19 21106:6,12,17,18 21107:24 21109:8,11 21109:17,22 18th 21071:19 180 20985:3 18270 21091:8,18 19:30 21066:14</p>	<p>21067:4 1971 21035:18 <hr/>2<hr/>2 20960:22 20969:12 20970:4 20972:19 20977:7,16,25 20988:12 21005:21 21005:22,23 21023:12 21079:3,6,8 21079:13,15,16 21084:20 21089:3 21090:10 21095:24 21102:4 21120:21 21121:19 21125:1,14 20 21092:9 2006 21007:23 21009:9 21009:14 21010:2,18 21011:22 2007 21007:23 2012 21016:11 21027:4 21027:24 21029:7 21056:24 21064:16 21064:22 21074:25 21075:12 2012-08-11 21028:7 2013 21064:19 21071:19 2014 20958:1 21 21097:4 23 21107:25 21110:10 24 21054:22 24ste 21075:8 25 21080:12 262 21010:19 27 21029:21 21065:6,23 21118:6,8 270 21015:22 28 20958:1 21118:9 29 20983:16 20992:6 20994:4,6,7,8,15,16 20994:18 20997:13 21094:17 21110:21 <hr/>3<hr/>3 20988:14 21027:25 21028:7 21043:20 21066:7 21074:17 21075:21 21086:25 21104:5,7 3:30 21005:22,23 21126:5 30 21110:10 32 21022:5 38 21082:1 39 21080:21,22 21082:1 21083:4 <hr/>4<hr/>4 20977:23 20978:1 20988:10 20995:2 21075:21 21084:19 21095:8,8 21096:9,13 21098:24 21102:2 21117:2 43 21066:7,8,9,11,18</p>
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44 21066:18
 45 20964:2 20978:18
 20989:3 21066:19
 21090:24 21114:24
 46 21066:19 21106:8
 46-page 21003:11,15
 21003:19
 47 21035:7

5

5 20961:16 20996:7,9
 20996:10 21098:13
 21102:2 21107:13
 21117:10,23
 50 21040:9
 500 21049:6
 52 20976:11
 53 20976:14
 53:21 21105:10
 21106:2
 53:30 21105:10
 54 20976:17 21002:16
 21108:8,19
 56 21052:19
 57 21035:7
 57.1 20960:22
 57.2 20961:2 20974:9
 58 21088:17,19
 59 21065:12,18,21

6

6 20996:3,6,9 21028:2
 21028:3,4,6 21074:17
 21081:2,4,5,6,6,12
 21082:8,20 21085:19
 21085:20,23 21086:5
 21091:9,17 21092:6
 21098:22 21117:14
 6:00 21028:6
 60 21065:13,19,21
 65 20978:25 20980:7

7

7 21066:8 21091:9,17
 75 21015:19

8

8 21027:24 21028:5
 21097:5
 80 20999:10
 80-plus 20998:12

9

9 21097:5 21115:1
 9mms 21063:25
 99.999 20988:24

