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 187 18 FEBRUARY 2014

PAGES 22580 TO 22740



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Marikana Commission of Inquiry

1	Page 22580	1	Page 22582
1	[PROCEEDINGS ON 18 FEBRUARY 2014]	1	CHAIRPERSON: So you'll be ready for Ms
2	[09:09] CHAIRPERSON: The Commission resumes.	2	Le Roux's cross-examination.
3	Provincial Commissioner, you're under oath still.	3	GENERAL MBOMBO: That is correct.
4	MIRRIAM NOSAZISO ZUKISWA MBOMBO: s.u.o.	4	MR BUDLENDER SC: Chair, we don't have an
5	CHAIRPERSON: Mr Budlender, I understood	5	electronic copy available, so we'll need to proceed on the
6	that you wanted to ask, you told me privately outside the	6	hardcopy –
7	chamber that you wanted to ask the witness some questions	7	CHAIRPERSON: Well, can you please read
8	flowing from the Mkhwanazi report which is now an exhibit.	8	it out slowly and clearly?
9	Please do so.	9	MR BUDLENDER SC: This is the fourth
10	FURTHER CROSS-EXAMINATION BY MR BUDLENDER SC:	10	paragraph of the paragraph numbered 3.4 of exhibit LLL11,
11	Thank you, Chair. Lieutenant General, good morning again.	11	and I'll read it slowly. Quote, "The management decision
12	GENERAL MBOMBO: Good morning, Counsel.	12	to downsize Crime Combating Units (CCU) negatively impacted
13	MR BUDLENDER SC: I just want to ask you	13	to SAPS' ability to maintain public order. The re-
14	some couple of matters arising from the, what we call the	14	establishment of POP based on the current demand in the
15	Mkhwanazi report, or the Task Team report. It's LLL11,	15	country indicates that the capacity and the strength must
16	which you were asked about earlier. Do you have it?	16	be reviewed." You see that, General?
17	GENERAL MBOMBO: Yes, I do.	17	GENERAL MBOMBO: I see it.
18	MR BUDLENDER SC: It's called "Final	18	MR BUDLENDER SC: I just want to identify
19	interim report Marikana 16 August 2012." What I'd like you	19	what was this decision to downsize and I think the easiest
20	to do is to look, is to go to page 3, or perhaps before	20	way to do it may be to go to exhibit R. Could we go to
21	that, page 2 has the heading, paragraph 3 "Weaknesses," and	21	exhibit R, which is the Minister's policy statement of 29
22	it identifies various weaknesses and then one of those is	22	August 2011, and go to page 14 of that, and at page 14 we
23	paragraph 3.4 on the next page called "Means," and could	23	see the subheading, "Establishment of a dedicated Public
24	you go to the fourth paragraph there and we can read it	24	Order Policing POPS unit," and the policy statement refers
25	together, it says the following, "The management decision	25	to the obligation on the National Commissioner under the
	Page 22581		Page 22583
1	Page 22581 to downsize" –	1	Page 22583 SAPS Act to establish a national Public Order Policing unit
1 2		1 2	5
	to downsize" –	-	SAPS Act to establish a national Public Order Policing unit
2	to downsize" – CHAIRPERSON: I'm sorry, Mr Budlender, is	2	SAPS Act to establish a national Public Order Policing unit and maintain the same, and then it says, second sentence,
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	Page 22584		Page 22586
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2	under the division Operational Response Services. The	2	station levels.
3	ACCUS was drastically rationalised and more than half of	3	MR BUDLENDER SC: Can you recall who was
4	its members seen deployed to police station level to	4	the National Commissioner of Police at the various stages,
5	strengthen the local crime combating initiatives. The	5	2002, 2004, and 2006?
6	remaining half of members found themselves in a situation	6	GENERAL MBOMBO: If I remember correctly
7	where they had to cover bigger areas with lesser	7	the one of 2004 when this decision was taken it was
8	resources."	8	Commissioner Selebe. It was still him in 2006 as well.
9	It then goes on in the next paragraph, "It is	9	MR BUDLENDER SC: And I understand what
10	indeed the 2006 restructuring of the ACCUS which provoked	10	you say about needing to balance crime prevention and crowd
11	serious criticism since it was indicative that specifically	11	management, depending on the needs, but we see in the
12	from this period a remarkable increase incurred in the	12	passage that we read a bit earlier at the foot of page 15
13	number of service delivery protests. However, the reasons	13	of the - in fact it's right up on the screen there, right
14	advanced for the transformation of the initial POP unit and	14	there, page 15 of exhibit R, if you look at the fifth line
15	the subsequent rationalisation of the ACCUS was firstly	15	of that last paragraph it says, "Due to changes, demands,
16	that the functions of the unit could not be justified since	16	and an increase in public protests and demonstrations,
17	they did not have much duties to perform and thus not value	17	especially incidences with a violent nature, since 2006,
18	for money in line with the PFMA; secondly that the skills	18	the need for a specialised Public Order Policing unit
19	and experience of the POPS unit were deemed necessary in	19	becomes more and more justified. This notion is
20	creating capacity to boost police station crime combating	20	strengthened by the constant negative public scrutiny of
21	initiatives.	21	current policing methods." So we see from that that in
22	The conclusion is that the current Operational	22	fact since 2006 there was increased need for Public Order
23	Response Services operates as a division which includes the	23	Policing. Is that correct?
24	CCUS as a unit. Although the CCUS are still used for crowd	24	GENERAL MBOMBO: Mr Chair, I'm not sure
25	management, it's primary function remains crime combating."	25	about the figure showing the decrease or increase, but I'm
	Page 22585		Page 22587
1	Now I take it that this is the decision which is	1	sure those details can be obtained.
2	referred to in the Mkhwanazi report about the downsizing of	2	MR BUDLENDER SC: Yes, we don't have the
3	the CCUS. It was these decisions in 2002 and 2006. Am I	3	figures, but this is the policy statement issued by the
4	correct in understanding that?	4	Minister in 2011 and we can rely on that as reliable. I
			-
5	GENERAL MBOMBO: That is so, Mr Chair,	5	mean if he says that since 2006 there's been an increase in
5 6	GENERAL MBOMBO: That is so, Mr Chair, but a decision to make them more on the side of combating		-
		5	mean if he says that since 2006 there's been an increase in
6	but a decision to make them more on the side of combating	5 6	mean if he says that since 2006 there's been an increase in public protests and demonstrations, especially with a
6 7	but a decision to make them more on the side of combating crime on the station level was started, if I remember	5 6 7	mean if he says that since 2006 there's been an increase in public protests and demonstrations, especially with a violent nature, we can accept that that is the case.
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	Page 22588		Page 22590
1	the trainings that were necessary and the resources, all	1	question.
2	those things continued. The only thing that changed is the	2	MR BUDLENDER SC: If you look at the
3	name and the way they worked, namely that they will help	3	heading it says, "Final Interim Report Marikana 16 August
4	mostly in the crime prevention. Now to answer your	4	2012." Now if this is the final interim report then it
5	question, it is so that the police had the Public Order,	5	means there must have been some previous interim reports.
6	although it was not called Public Order. Then in 2000 –	6	Where will we find the previous interim reports?
7	I'm not sure whether it was 2008 or 9 – it was agreed that	7	GENERAL MBOMBO: Mr Chair, I have no
8	their name should be changed and they should again go back	8	knowledge of the interim report, but I think we can look
9	to the name POP. So since 2011 the police ensured that the	9	for it.
10	Public Order Policing is enhanced in order to comply with	10	[09:29] MR BUDLENDER SC: Well, should it have
11	this policy, although they have not reached the desired	11	been submitted to your office, given that this happened in
12	level.	12	your province?
13	MR BUDLENDER SC: Yes, I think that's	13	GENERAL MBOMBO: It could have been
14	really the point, the last point I wanted to raise. There	14	submitted to the National Commissioner and I also was
15	is still, as I understand the evidence, a shortage of	15	expected to get it but I do not remember receiving it.
16	Public Order police officers. Is that correct?	16	MR BUDLENDER SC: I understand. Could I
17	GENERAL MBOMBO: Yes, there is really a	17	ask you to ask someone in your office to make a search to
18	shortage.	18	see whether you have the previous interim reports submitted
19	MR BUDLENDER SC: And if we can just go	19	by the Task Team and perhaps the SAPS team could do the
20	to the first paragraph, next page, page 16, there it says,	20	same in respect of the National Commissioner's office.
21	"The National Commissioner must ensure that sufficient	21	GENERAL MBOMBO: I will do that.
22	appropriate capacity is created, whether by transferring	22	MR BUDLENDER SC: Thank you, Chair, I
23	back previous experienced and skilled members or building	23	have no further questions.
24	capacity through effective and focussed training to other	24	CHAIRPERSON: Thank you, Mr Budlender.
25	members deemed fit, and must ensure that the unit is	25	Thank you, Provincial Commissioner, for that information
1	Page 22589 appropriately resourced. These deliberations must be based	1	Page 22591 which will help us in our work.
2	within the context of current international trends,	2	COMMISSIONER HEMRAJ: Mr Budlender, as a
3	developments, norms, and standards." As I understand it	3	matter of interest, the model for the community policing
4	what you're saying is that that has not yet been completed?	4	and the CC units at station level emanated, if you look at
5	GENERAL MBOMBO: As we speak now, Mr	5	the documents on the SAPS hard drive, from the
6	Chair, there was a big meeting where these things were	6	collaboration between the Belgium and the South African
7	addressed where it was expected that Public Order should	7	Police. It's very clearly minuted in those documents.
8	have presentations, and it must be brought to light what	8	MR BUDLENDER SC: I think that must be
9	are the things that we need.	9	so, Commissioner, but I think the only question is the
10	MR BUDLENDER SC: Yes, I understand that.	10	quantum of resources allocated at the task. The fact that
11	Well, the only point I'm seeking to clarify is that it	11	it was a decentralised operation, with respect seems to
12	seems from your evidence and what we've heard previously	12	make a great deal of sense.
13	that we are currently still experiencing the consequences	13	COMMISSIONER HEMRAJ: It's all the
14	of those decisions which were made in 2002, 2004, and 2006.	14	recommendations and they seem to have been implemented to
15	GENERAL MBOMBO: I can agree, Mr Chair,	15	the -
16	and say that is so.	16	MR BUDLENDER SC: Well, perhaps Mr
17	MR BUDLENDER SC: And this is the final,	17	Hendrickx when he comes can tell us more about that.
18	finally, Provincial Commissioner; this document LLL11, the	18	COMMISSIONER HEMRAJ: Yes, correct.
19	Mkhwanazi document, if I can call it that for shorthand,	19	CHAIRPERSON: Alright, Ms Le Roux, are
20	that's called "Final Interim" – if you look at the front	20	you now ready to commence your cross-examination?
21	page the heading is "Final Interim Report." Now that	21	MS LE ROUX: Yes, thank you, Chair. Good
22 23	implies that there were previous interim reports and this is now the final interim report. Where will we find the	22	morning, Provincial Commissioner.
1/5		23	GENERAL MBOMBO: Good morning, Counsel.
		24	CHAIRPERSON: Now before you get
24 25	previous interim reports? GENERAL MBOMBO: I do not get the	24 25	CHAIRPERSON: Now before you get underway, if I can put it that way, it might be sensible

Marikana Commission of Inquiry

	Page 22592		Page 22594
	for us to engage in some housekeeping and mark the	1	hopefully we'll get the last page with the attestation
	documents that you want to hand in as exhibits. Let me see	2	certificate at a later date. Then we have the diary, or
	from my book where we are. We are, I presume that would be	3	actually pocketbook -
4	part of the L-series and according to my notebook we've got	4	MS LE ROUX: Pocketbook.
5	as far as LLL11, so I suggest that we mark the documents	5	CHAIRPERSON: - because he's a Warrant
6	you want to hand in as part of the LLL-series and then once	6	Officer. The pocketbook of Warrant Officer Swartz for the
7	we've done that it will make your cross-examination flow	7	dates dealing essentially with 15th and 16th of August 2012.
8	more smoothly. Now the statement of Eddie Hendrickx, this	8	That LLL15. Yes, Provincial Commissioner, do you want to
9	is the final one, is it? Do we know whether that's an	9	say something?
10	exhibit yet?	10	GENERAL MBOMBO: Just that I do not have
11	MR BUDLENDER SC: I don't think it is,	11	all these documents, Mr Chair.
12	Chair.	12	CHAIRPERSON: Oh dear. Well, we will –
13	CHAIRPERSON: Yes, so we'll make this one	13	what's that black file you've got on your left there?
14	LLL12, shall we? The statement of Eddie Hendrickx.	14	GENERAL MBOMBO: No –
15	MR BUDLENDER SC: Chair, could we just	15	CHAIRPERSON: No, no, no, under that.
16	put a date to it, because we have a couple of versions of	16	What's that one?
17	Mr Hendrickx's statement. Is it dated?	17	GENERAL MBOMBO: No, this one it has got
18	CHAIRPERSON: Yes, quite right. Quite	18	the statement of Mr – oh, there's that pocketbook.
19	right. This one is January 2014. I remember he took his	19	CHAIRPERSON: Mr Tokota solved the
	oath in the embassy in Brussels.	20	mystery with one fell swoop.
21	MR BUDLENDER SC: That's the very recent	21	GENERAL MBOMBO: Oh, I see Swartz – oh,
	one then.	22	sorry, Chairperson.
23	CHAIRPERSON: Yes, that's the one we're	23	CHAIRPERSON: Have you got it?
	busy with. Yes, it appears on page 67 that on the 27th of	24	GENERAL MBOMBO: Ja.
	January this year he swore to this affidavit in the South	25	CHAIRPERSON: No, that's fine. Does that
20		25	
	Page 22593		Page 22595
	African embassy in Brussels. So this will then be LLL12.	1	mean that you haven't read it or you did read it but you -
2	Then we have a barely legible manuscript statement by	2	GENERAL MBOMBO: No, I have looked at it,
3	Warrant Officer Jan Jacobus Swartz. I don't think that's	3	but I –
4	in either, is it?	4	CHAIRPERSON: I see, well okay. Okay, so
5	MS LE ROUX: No, Chair.	5	these things happen in the best regulated families, I'm
6	CHAIRPERSON: So that will be LLL13. We	6	sure. It does cause a problem. It's been solved. So just
7	then have a typed document, also a statement from Warrant	7	as well we found it now so we don't have difficulties
8	Officer Swartz. I'll give the date in a moment. That will	8	later. Anyway, so LLL15 is the pocketbook of Warrant
9	be LLL14 – sorry, the first one, the manuscript one is – it	9	Officer Swartz. Then we've got the Protected Disclosures
10	hasn't got a date on it, but so I haven't got an	10	Act which is LLL16, Protected Disclosures Act No. 26 of
11	attestation either and it may not even be an affidavit,	11	2000. That's then followed by a batch of - then we've got
12	this may just be a statement. But anyway, we know what it	12	the regulations for the South African Police Service,
13	is. It's an undated manuscript statement of Warrant	13	regulation 20 thereof. That's LLL17. I take it it's just
	Officer Jan Jacobus Swartz and we've marked it LLL13.	14	regulation 20. I don't know whether it's the whole of
	LLL14 is a typed supplementary statement, also apparently	15	regulation 20, but it's certainly a page and a half
	not sworn, and this one also hasn't got a date, but anyway	16	containing –
		17	MS LE ROUX: Yes, Chair –
	– is there a page missing? Is this an affidavit without an		·
	 is there a page missing? Is this an affidavit without an attestation certificate, or what is it? You see, and it's 	18	CHAIRPERSON: - regulation 20 –
18	attestation certificate, or what is it? You see, and it's	18	CHAIRPERSON: - regulation 20 – MS LE ROUX: Correct.
18 19	attestation certificate, or what is it? You see, and it's headed "Supplementary statement," so it doesn't purport to	18 19	MS LE ROUX: Correct.
18 19 20	attestation certificate, or what is it? You see, and it's headed "Supplementary statement," so it doesn't purport to be under oath, but is there –	18 19 20	MS LE ROUX: Correct. CHAIRPERSON: - of the regulations of the
18 19 20 21	attestation certificate, or what is it? You see, and it's headed "Supplementary statement," so it doesn't purport to be under oath, but is there – COMMISSIONER HEMRAJ: All the others I've	18 19 20 21	MS LE ROUX: Correct. CHAIRPERSON: - of the regulations of the South African Police Service.
18 19 20 21 22	attestation certificate, or what is it? You see, and it's headed "Supplementary statement," so it doesn't purport to be under oath, but is there – COMMISSIONER HEMRAJ: All the others I've seen do seem to have a last page with an attestation	18 19 20 21 22	MS LE ROUX: Correct. CHAIRPERSON: - of the regulations of the South African Police Service. MS LE ROUX: Correct.
18 19 20 21 22 23	attestation certificate, or what is it? You see, and it's headed "Supplementary statement," so it doesn't purport to be under oath, but is there – COMMISSIONER HEMRAJ: All the others I've seen do seem to have a last page with an attestation certificate, so is this just missing perhaps or –	18 19 20 21 22 23	MS LE ROUX: Correct. CHAIRPERSON: - of the regulations of the South African Police Service. MS LE ROUX: Correct. CHAIRPERSON: Without any indication as
 18 19 20 21 22 23 24 	attestation certificate, or what is it? You see, and it's headed "Supplementary statement," so it doesn't purport to be under oath, but is there – COMMISSIONER HEMRAJ: All the others I've seen do seem to have a last page with an attestation	18 19 20 21 22	MS LE ROUX: Correct. CHAIRPERSON: - of the regulations of the South African Police Service. MS LE ROUX: Correct.

	Page 22596		Page 22598
1	later. Then we start with LLL18. Now I'm not going to	1	MS LE ROUX: Ja.
2	waste time and mark them all, but can you tell me how many	2	CHAIRPERSON: Shooters who had failed
3	there are? There are a number of documents which deal with	3	most recent shooting practice firearm training, LLL21 –
4	courses passed or in some cases, most cases failed, by some	4	MS LE ROUX: No, that should be 22
5	of the members of the service, and they appear to be	5	because then we've got two 21s.
6	summarised in a document at the end, or a series of	6	CHAIRPERSON: Oh sorry, I beg your
7	documents at the end called, the first one is called "POP	7	pardon. I see. I'm sorry, I apologise for that senior
8	shooters training records," which I suspect is a summary of	8	moment. That's LLL22, and then, so shooters who had failed
9	the documents we just referred to. That's followed by TRT	9	most recent POP course, that's actually only one of them
10	shooters training analysis, NIU shooters training analysis,	10	really, but that's LLL23. Right, we've then got a number
11	and then shooters who had most recent shooting firearm	11	of documents – oh sorry, I beg your pardon, then I've
12	training. Now what I suggest we do is we actually – sorry,	12	missed the shooter not deemed fit to carry a firearm, it
13	what I suggest we do is we don't call the individual	13	says shooters but there's only one of them, deemed not fit
14	document in respect of the individual members of the	14	to carry a firearm, that will be LLL24. We've then got a
15	service LLL18 and following; let's just move over to the	15	batch, 22 I believe, of documents in respect of individual
16	summary which starts with POP shooters training records, if	16	members. What I'd suggest we do is we call those LLL25.1
17	I'm correct. Let's call that LLL18, and then the next	17	down to point 22 and we won't mark them all now. I don't
18	document TRT shooters training analysis will be LLL19, and	18	know whether we'll do that in the tea adjournment, I think,
19	NIU shooters training analysis will be LLL20. Then the K9	19	or someone will, I won't. And I don't know whether it will
20	shooters will be LLL21. Shooters who had failed most	20	be necessary for you actually in the course of your cross-
21	recent shooting practice firearm training, LLL21, and	21	examination to refer to these documents one by one because
22	shooters who had failed most recent POP course, LLL22, and	22	you have got the summary and if –
23	then shooters who were deemed not fit to carry – the	23	MS LE ROUX: Ja, no Chair, that was the
24	heading is wrong, it's actually to be singular, shooters	24	plan. I hope not to have to refer to individuals, but they
25	who were deemed unfit to carry a firearm should be LLL23.	25	are there.
_	,		
	Page 22597		Page 22599
1	Page 22597 MS LE ROUX: Sorry, Chair, we seem to	1	Page 22599 CHAIRPERSON: If the witness doesn't
1 2	•	1 2	
	MS LE ROUX: Sorry, Chair, we seem to		CHAIRPERSON: If the witness doesn't
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ARCHIVE FOR JUSTICE

Marikana Commission of Inquiry

		I	
1 COMM	Page IISSIONER HEMRAJ: Mr Pretorius, is	e 22600 s 1	Page 22602 Annandale.
	lete set of these regulations available?	2	
	RETORIUS: I don't have them here.		MS LE ROUX: But you understood that Colonel Scott would be involved with – he would be
	IISSIONER HEMRAJ: Yes, thank you		primarily responsible for putting together the plan? GENERAL MBOMBO: That is not how I
	RPERSON: Yes, that's something that		
	ded to in due course. Anyway, now that v		understood it, it's as it was explained to me.
	sekeeping, can you now start your cross-		MS LE ROUX: What was your understanding
8 examination?		8 Thonk 0	of what Colonel Scott's role was with respect to the plan?
		Thank 9	GENERAL MBOMBO: Mostly I was told that
•	Provincial Commissioner, I'd like to start	10	it's the person who had sufficient knowledge in computers.
	ct of Mr White's statement. You don't nee		He is part of this team so that he can download this
•	, but just for the record, this is JJJ178, the		operation into the computers for the presentation.
	nt of Gary White, commencing at page 63		MS LE ROUX: So you understood that
	the question of input into the final plan,	14	Colonel Scott was involved because of his knowledge of
	lan, and the challenge process. That's the		computers and his ability to draw down Google Earth maps,
16 topic we'll be	•	16	assume you mean?
	I ask you to turn in your amplified	17 19	GENERAL MBOMBO: That is so, Mr Chair,
	ibit LLL1, to page 5, please? And paragra		and also the person who is operational.
19 16 in particula		19	MS LE ROUX: Were you aware with respect
	RAL MBOMBO: I found it.	20	to Colonel Scott's operational expertise that he was from
	ROUX: Thank you. Now in that	21	STF, not POP?
	u state that you "assumed that the opera-		GENERAL MBOMBO: Initially I did not know
	e drawn up by experienced Public Order P	-	it but I became aware of that after I'd asked him.
-	ether with such assistance as would be ob		MS LE ROUX: When did you ask him and
25 nom other pr	rovinces and the national structures." You	1 366 20	what did you ask him?
	Pagu	e 22601	Page 2260
1 that in that p	aragraph, correct?	1	GENERAL MBOMBO: I did not ask him
2 GENER	RAL MBOMBO: I see it.	2	personally. I enquired about him and I was told that he
3 MS LE	ROUX: And in your experience in	3	was from the STF.
4 other operation	ons have the operational plans been drav	wn up 4	MS LE ROUX: And who did you ask about
5 by POP, by ex	xperienced Public Order Policing members	s? Has 5	Colonel Scott?
6 that been you	ur experience?	6	GENERAL MBOMBO: I can't remember now
7 GENER	RAL MBOMBO: That is so, Mr Chair	[.] 7	whether it was one of the people from STF or was it Genera
8 MS LE	ROUX: You then say that you	8	Mpembe. I'm not sure.
9 therefore did	not attempt to examine the adequacy or	9	MS LE ROUX: And when did you establish
10 otherwise of	the plan, but the question we have is did	you 10	that Colonel Scott was from STF?
11 make enquirie	es about who was giving input into the pl	lan? 11	GENERAL MBOMBO: I think it was in the
	RAL MBOMBO: I did that, yes.	12	afternoon, the Tuesday on the 14th.
	ROUX: And you were aware that	13	MS LE ROUX: So you knew that he was STF,
	was taking primary responsibility for	14	not POP, before the 16th?
15 developing th		15	GENERAL MBOMBO: Yes, I knew.
	RAL MBOMBO: I don't remember it	16	MS LE ROUX: Were you aware that Colonel
	ied to me like that.	17	Scott was not familiar because he had not been trained in
	ROUX: When you enquired as to v	who 18	and was not aware of the contents of Standing Order 262?
19 was giving in	put, what were you told?	19	Did you know that?
	RAL MBOMBO: I was told that there		GENERAL MBOMBO: I did not have knowledge
	was together with Colonel Scott and that	they 21	of that, Mr Chair.
00 1 2.9	and the second second	22	[09:49] MS LE ROUX: Were you aware that the 1:30
22 were busy wi	ROUX: Who did you make that	23	JOCCOM on the 16th of August was the first time that any
22 were busy wi 23 MS LE			
22 were busy wi		24	stage 3 plan was put to the JOCCOM.
18MS LE19was giving in20GENER	ROUX: When you enquired as to v put, what were you told? RAL MBOMBO: L was told that there was together with Colonel Scott and that ith the plan.	who 18 19 e is 20 they 21 22	and was not aware of the contents of Did you know that? GENERAL MBOMBO: I of of that, Mr Chair. [09:49] MS LE ROUX: Were y

1	Page 22604 that.	1	Page 22606 version that was produced after much editing at Roots, you
2	MS LE ROUX: And did you notice that at	2	don't what the answer to that is do you?
3	that 1:30 JOCCOM there were no POP members present?	3	GENERAL MBOMBO: I do not have definite
4	GENERAL MBOMBO: I did not notice that	4	knowledge, Mr Chair.
5	whilst I was there, but I see it now on the minutes as to	5	MS LE ROUX: Provincial Commissioner, we
6	the people who attended.	6	may be talking past each other. It is true that before the
7	MS LE ROUX: So the Human Rights	7	1:30 JOCCOM it was known that there would be a stage 3 and
8	Commission will submit in due course, that this led to the	8	that stage 3 entailed dispersal and disarmament. My point
9	failure of the operation because the plan to deal with a	9	is though, that until the 1:30 JOCCOM there was no
10	large and potentially dangerous crowd was first of all	10	operational plan for how to accept dispersal and
11	drawn up by somebody with no detailed knowledge of the	11	disarmament. You don't know of any evidence that that plan
12	requirements for public order policing, being Colonel	12	was developed before the 1:30 JOCCOM do you?
13	Scott. And secondly was then presented to a JOCCOM that	13	GENERAL MBOMBO: No, I do not have
14	had no POP expertise present. Do you have a comment on	14	knowledge of that.
15	that?	15	MS LE ROUX: Now as I understand the SAPS
16	GENERAL MBOMBO: I do not want to agree	16	position it's that the members of the JOCCOM are
17	with you about that because, as I say, according to me they	17	collectively responsible for any plan that is approved by
18	had come together concerning this plan. And on the second	18	the JOCCOM, correct?
19	point, again I do not agree with you completely because	19	GENERAL MBOMBO: That is so, Mr Chair.
20	even if the Public Order Police were not in that meeting	20	MS LE ROUX: But of course the JOCCOM is
21	General Mpembe and Annandale were present and they have	21	not there merely to rubber stamp whatever is put before it,
22 23	knowledge about working with the crowd management. MS LE ROUX: But, Provincial	22 23	is it? GENERAL MBOMBO: Yes, that is correct.
23 24	Commissioner, my question goes to there was no member	23 24	GENERAL MBOMBO: Yes, that is correct. MS LE ROUX: And what we know from
24	present at that 1:30 JOCCOM where the plan for stage 3 was	24	standing order 262, we don't need to go there, it's exhibit
20	present at that 1.50 50000m where the plan for stage 5 was	25	
	Page 22605		Page 22607
1	Page 22605 discussed for the first time that has an explicit POP	1	Page 22607 SS2, page 8, paragraph 11 for record purposes, that because
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Marikana Commission of Inquiry

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1	Page 22608 GENERAL MBOMBO: I remember seeing that,	1	Page 22610 that document? How long was it, what did it contain? Do
2	yes.	2	you remember anything about the detail of that document?
3	MS LE ROUX: Okay and you'd agree that	3	GENERAL MBOMBO: I do not remember
4	this type of challenge process is necessary?	4	clearly, but it would explain how much resources are there,
5	GENERAL MBOMBO: I agree with you there.	5	who is the operational commander, who is going to play what
6	MS LE ROUX: And this is all the more so,	6	role, things like that.
7	where, as you've accepted, there's a risk of injury and	7	MS LE ROUX: And would it detail the
8	even death as part of an operation. It would be even more	8	steps of the operation? So for example, if we use Marikana
9	important to make sure that you had a good plan where you	9	as an example, phase 3, would it detail for example how
10	foresaw a potential level of violence.	10	barbed wire will be deployed, where the different units
11	GENERAL MBOMBO: That is correct, yes.	11	will be stationed? What everybody's responsibility is and
12	MS LE ROUX: Now, Colonel Scott has told	12	when they should participate in the operation? Did it have
13	the Commission that there was no meaningful interrogation	13	that detail in it?
14	of the plan. It wasn't challenged, it was essentially	14	GENERAL MBOMBO: I think it did have such
15	accepted with very little discussion. In the other	15	details, yes.
16	operations that you've been involved in, have you seen that	16	CHAIRPERSON: Does standing order 262
17	be the process, that the plan is generally just accepted	17	require a written operational plan?
18	when it's presented? Or have you ever been in an operation	18	GENERAL MBOMBO: That is correct.
19	where the police members who are present have interrogated	19	CHAIRPERSON: Do you know why there
20	and challenged and pulled apart and really had a good look	20	wasn't one here?
21	at what the plan is? What's your experience other than	21	GENERAL MBOMBO: I do not know, Mr Chair.
22	Marikana?	22	CHAIRPERSON: Did you not enquire, after
23	MR SEMENYA SC: Well for the record it is	23	the event when things had turned rather badly did you not
24	also the evidence of Colonel Scott that there was an	24	enquire? Did you not say look here 262 says there should
25	opportunity for those POP members who would have had	25	be a written operational plan, where is it? None could be
	Page 22609		Page 22611
1	Page 22609 questions on it to do so. The witness must be given –	1	Page 22611 produced, why wasn't there one? Did you not ask those
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	Page 22612		Page 22614
1	CHAIRPERSON: Have you got exhibit L	1	CHAIRPERSON: Sorry, what were you saying
2	there?	2	Provincial Commissioner?
3	GENERAL MBOMBO: I have it.	3	GENERAL MBOMBO: I had already finished,
4	CHAIRPERSON: If you look at slide 181,	4	Mr Chair.
5	you'll see – have you got that? It's on the screen now,	5	MS LE ROUX: Provincial Commissioner, for
6	but I suggest you have a look at it in front of you, your	6	the sake of the record and so that we don't miss each other
7	own copy of L. According to Colonel Scott that's what he	7	if I could ask for slide 149 to be displayed from exhibit
8	showed the people, certainly out in the field at 2:30 and I	8	L? Because that is the image that Colonel Scott presented
9	assume he did so at the JOCCOM meeting, I'm not sure about	9	at the 1:30 JOCCOM, not slide 181 which is presently on the
10	that. All he showed the commanders in the field was that	10	screen.
11	slide minus the white blocks. Do you see the white blocks	11	CHAIRPERSON: My understanding is 181 is
12	with writing? Minus that. And he had to explain to them	12	what he says he showed the commanders in the field at 2:30.
13	orally what is contained in those white blocks. There was	13	It wasn't clear in my mind what he said at 1:30 but that
14	no written plan, operational plan. All he had to show the	14	was the only thing he showed, according to his evidence,
15	people out in the field, about an hour before the operation	15	the only thing he showed the commanders in the field at
16	was to take place, was that slide which was on his computer	16	2:30 on his laptop.
17	screen minus the white blocks. Where you aware of that,	17	MS LE ROUX: Correct, Chair, and slide
18	was that disclosed to you when you enquired afterwards?	18	149 is what he presented to the 1:30 JOCCOM. If we can go
19	GENERAL MBOMBO: Mr Chair, I don't	19	to 149, thank you. Which of course, the stage 2 briefing,
20	remember clearly but when I inquired I was told that the	20	it doesn't reflect the ultimate stage 3 briefing that he
21	plan was on the computer.	21	gave late that afternoon. Provincial Commissioner, do you
22	CHAIRPERSON: No, but I'm asking you now.	22	recall that image being presented to you at the 1:30
23	Is this the first time you hear that what was on the	23	JOCCOM, did you see that at the 1:30 JOCCOM?
24	computer and shown to the commanders in the field was that	24	GENERAL MBOMBO: Chair, when Colonel
25	slide minus the writing in the white blocks?	25	Scott was giving a presentation at that meeting I'd already
1	Page 22613	1	Page 22615
1	GENERAL MBOMBO: Mr Chair, when we were	1	left.
2	GENERAL MBOMBO: Mr Chair, when we were at Roots there was a plan that Colonel Scott presented to	2	left. MS LE ROUX: So during the time that you
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	Page 22616		Page 22618
1	plan on the Thursday in time for the 1:30 meeting?	1	on, Mr Semenya, can someone in your team assist me with
2	GENERAL MBOMBO: Mr Chair, really I am	2	that part of the record that deals with Colonel Scott's
3	surprised because I really believe that even if it is in	3	evidence about what was presented as regards the plan? I
4	the computer, but it is available, it's there.	4	don't have my transcript with my, but I do have it marked,
5	MS LE ROUX: Provincial Commissioner, can	5	but can somebody in your team assist me with that just to
6	I ask you to turn to exhibit EE, which is the 1:30 JOCCOM	6	get some clarity, please?
7	minutes, please? And then if you can follow through the	7	MR SEMENYA SC: You mean at the 1:30
8	three pages with me because it indicates your attendance,	8	meeting?
9	then you address the meeting regarding the purpose of the	9	COMMISSIONER HEMRAJ: Yes, at the 1:30
10	meeting, then there's a discussion of the execution of	10	meeting, exactly what was presented, because I seem to
11	stage 3 with Major General Annandale beginning that, then	11	recall that more than just a slide was presented. But it
12	Lieutenant Colonel Scott giving a slide presentation, and	12	need not be done now. It can be done at a later stage.
13	that then on the top of the next page is set out in some	13	MR SEMENYA SC: We will, Commissioner.
14	detail. Then Major General Annandale goes through a	14	COMMISSIONER HEMRAJ: Thank you.
15	checklist and then we have closing remarks and the second	15	MS LE ROUX: Provincial Commissioner, I'd
16	paragraph there has the Provincial Commissioner indicated	16	like your comment on a submission that the Human Rights
17	as giving that you'd already communicated with the National	17	Commission will make in due course, which is this; that
18	Commissioner, informing her of the current situation, a	18	it's clear that there was no comprehensive written
19	deadlock was reached, stage 3 of the operational plan is	19	operational plan as required by Standing Order 262
20	being executed, and that the National Commissioner had	20	presented to the JOCCOM, and at best it received an oral
21	indicated she would inform the Minister of Police about the	21	briefing with some visual aid. So we will submit that the
22	current situation. Major General Annandale then gives a	22	Marikana operation on 16 August, phase 3, had no
23	final instruction and the meeting adjourns. So the minutes	23	operational plan. Do you have a comment on that?
24 25	seem to indicate that you were present during Lieutenant	24 25	CHAIRPERSON: Sorry, you dropped your
25	Colonel Scott's slide presentation because you then make	25	voice. You will submit that the?
	Page 22617		Page 22619
1	Page 22617 closing remarks that follow that in the minutes. Do you	1	Page 22619 MS LE ROUX: That the phase 3 of the
1 2		1 2	
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Marikana Commission of Inquiry

	Page 22620		Page 22622
1	operational plan as required by Standing Order 262, that	1	outline of phase 3 as phase 2 was in essence also a pre-
2	you should not have merely said I assume the other members	2	positioning in case phase 3 was to be implemented." So
3	of the JOCCOM know what they're doing. Do you have a	3	what we have there – and then if we can go to the
4	comment?	4	transcript –
5	GENERAL MBOMBO: I will not agree with	5	CHAIRPERSON: Is there anything further
6	you there.	6	in 9.4, in any of the subparagraphs thereof which enlarges
7	CHAIRPERSON: Forgive me, Ms Le Roux, are	7	on that introductory statement at the beginning?
8	you now moving on to a new point? Because what we've been	8	MS LE ROUX: No, Chair, it doesn't
9	doing lately for reasons that I don't have to explain,	9	identify the two icons, but perhaps let's just stay in the
10	we've been taking comfort breaks every hour for the benefit	10	document and go to paragraph 12.4, which is where Colonel
11	of those who have difficulty sitting for long periods and	11	Scott is detailing the 1:30 JOCCOM and Major General
12	at a suitable stage in your cross-examination will you let	12	Annandale had asked how they were going to execute phase 3
13	me know when it will be appropriate for a comfort break to	13	and then 12.4 Colonel Scott says, "I asked if I may suggest
14	be taken?	14	a course of action, to which I was given the floor to brief
15	MS LE ROUX: Chair, I think let's take it	15	the JOCCOM. I explained on the Google Earth satellite
16	now because to wrap this up will take a little bit longer.	16	photo which I had printed out for the commanders that
17	CHAIRPERSON: We'll now take a comfort	17	morning for the phase 2 deployment where I felt the
18	break for 10 minutes.	18	dispersion should take place with the different units in
19	[COMMISSION ADJOURNS COMMISSION RESUMES]	19	their different roles and areas of responsibility." So
20	[10:34] CHAIRPERSON: The Commission resumes.	20	what 9.4 and 12.4 show us is Colonel Scott saying he
21	Provincial Commissioner, you're still under oath.	21	printed out Google Earth images that related to phase 2 for
22	MIRRIAM NOSAZISO ZUKISWA MBOMBO: s.u.o.	22	the 6AM JOC and then at the 1:30 JOCCOM he used those phase
23	CHAIRPERSON: Ms Le Roux.	23	2 Google Earth images to speak to phase 3.
24	CROSS-EXAMINATION BY MS LE ROUX (CONTD.):	24	Then if we can turn now to the transcript, day
25	Thank you, Chair, Provincial Commissioner. Chair, I tried	25	134, and if we start at the bottom of page 14235, line 20,
	Page 22621		Page 22623
1	to use the tea adjournment to address Commissioner Hemraj's	1	right, so if we go down to line 20, Mr Chaskalson then
2	to use the tea adjournment to address Commissioner Hemraj's question relating to establishing the documents that were	2	right, so if we go down to line 20, Mr Chaskalson then starts, so he says, well line 22, "In terms of the
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2 3 4	to use the tea adjournment to address Commissioner Hemraj's question relating to establishing the documents that were presented at the JOCCOM early in the day and then at 1:30, so if I can just go through what we've managed to	2 3 4	right, so if we go down to line 20, Mr Chaskalson then starts, so he says, well line 22, "In terms of the contemporaneous documents," he takes him to paragraph 9.4, "where you mentioned the Google Earth satellite images."
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Marikana Commission of Inquiry

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	Page 22624		Page 22626
1	Lieutenant Colonel Scott confirms, "That's correct. They	1	because there Adv Bizos asked you whether you agree with
2	were given out to show the stage, or the phase 2 deployment	2	the experts who have criticised the lack of a written
3	to the commanders. That was given to commanders just after	3	operational plan for phase 3 and you said you didn't agree
4	the JOCCOM of the 16th in the morning 6 o'clock," and then	4	with that expert criticism. In light of the fact that
5	they left to brief meetings.	5	we've established this morning that now you have become
6	So if we then go to JJJ107, you'll recall those	6	aware that there never was a written operational plan and
7	are the pictures taken in the JOC and on the wall are two	7	you said that you were shocked that there was never a
8	gridded aerial photographs which Colonel Scott has	8	proper written operational plan, do you still disagree with
9	confirmed at page 14237 as being the two images that he	9	the experts when they criticise the lack of an operational
10	handed out –	10	plan?
11	CHAIRPERSON: No, it can't be JJJ107	11	MR SEMENYA SC: No, the lack of a written
12	because that's –	12	operational plan, not –
13	MS LE ROUX: JJJ –	13	CHAIRPERSON: Yes, yes, I think the
14	CHAIRPERSON: That's Brigadier Calitz's	14	word –
15	statement.	15	MS LE ROUX: Of a written operational
16	MS LE ROUX: No, sorry, it's JJJ07, so 7,	16	plan.
17	apologies.	17	CHAIRPERSON: I think the word "written"
18	CHAIRPERSON: JJJ7? Yes, those are the	18	was intended by Ms Le Roux, but Mr Semenya is right, the
19	Van Heerden photographs, yes.	19	question is the lack of a written operational plan.
20	MS LE ROUX: Yes, those, Chair. So these	20	MS LE ROUX: Correct, Chair.
21	show the gridded – and then the next one is 1020197. So	21	GENERAL MBOMBO: Mr Chair, I would agree
22	what we've established, Chair and Commissioners, these two	22	with this criticism if really there was no plan, written
23	Van Heerden photographs show you the two images that were	23	plan on the computer.
24	printed out for the morning JOCCOM on the 16th that speak to	24	CHAIRPERSON: We saw what he showed the
25	phase 2 deployment, and that is what was used at the 1:30	25	people at 2:30 was that slide that I showed you which is in
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	Dogo 22425		Dago 22627
1	Page 22625 JOCCOM when Colonel Scott speaks to phase 3. Thank you,	1	Page 22627 exhibit L, and the writing on it in the white blocks wasn't
1	JOCCOM when Colonel Scott speaks to phase 3. Thank you,	1	exhibit L, and the writing on it in the white blocks wasn't
			exhibit L, and the writing on it in the white blocks wasn't there. So there wasn't even a written plan in the
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2 3	JOCCOM when Colonel Scott speaks to phase 3. Thank you, Chair. So in the absence of any further questions on that – CHAIRPERSON: Sorry, it was Adv Hemraj's	2 3	exhibit L, and the writing on it in the white blocks wasn't there. So there wasn't even a written plan in the computer, as I understand it. MS LE ROUX: Provincial Commissioner, do
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		1	
	Page 22628		Page 22630
1	Mr White criticises the SAPS because he says that he is not	1	justification for ordering the commencement of stage 3, nor
2	satisfied on the evidence available that there was an	2	is it consistent with the requirements of the SAPS policy
3	urgent need to launch stage 3 on the afternoon of 16	3	to avoid the use of force at all cost. So he says it's
4	August. For the record, this is at page 74 of Mr White's	4	insufficient to say negotiations have failed, therefore
5	statement, and he raised a number of points there that	5	stage 3, and one of the reasons he says that is because
6	relate to how the SAPS members who were present on the day	6	stage 2 was working. There hadn't been further violence.
7	accepted, or failed to challenge the move to actually go to	7	The show of force was having some effect at keeping the
8	stage 3. So I need to just put these points to you for	8	peace, and therefore he says there's no – that the failure
9	comment.	9	of negotiations is an insufficient reason to move to stage
10	Now first of all we know that Lieutenant Colonel	10	3, but that's the reason you give for why you wanted to
11	Scott set his criteria for the move to stage 3 as saying	11	move to stage 3. So I'm asking you whether you have any
12	that that should only happen if all other options to	12	comment on his view that the failure of negotiations is not
13	resolve the situation without force were exhausted. Now is	13	a basis to move to stage 3, nor is it consistent with the
14	it your view that all other options to resolve the	14	SAPS policy to avoid the use of force at all cost.
15	situation without force had been exhausted?	15	GENERAL MBOMBO: Then I think, Mr Chair,
16	GENERAL MBOMBO: I think, Mr Chair, as	16	that is his view.
17	counsel is also saying, it was Mr Scott's view. My view	17	MS LE ROUX: And you disagree with it?
18	was that if negotiations fail we would then go to stage 3.	18	GENERAL MBOMBO: Definitely, Mr Chair.
19	MS LE ROUX: If I can ask you to open up	19	COMMISSIONER HEMRAJ: Are you putting
20	Mr White's final statement, and if you go to page 74,	20	6.5.4 to her as well, Ms Le Roux, if you're going to follow
21	paragraph 6.5.4, and then it follows through to 6.5.7, and	21	this line any further?
22	the conclusion is set out at 6.5.7, page 77. So if we can	22	MS LE ROUX: No, Commissioner, because
23	go there.	23	that relates to Colonel Scott's criteria. So I'm just
24	GENERAL MBOMBO: Page?	24	trying to tackle her own articulated reason to move, which
25	MS LE ROUX: 77.	25	is the failure of negotiation. Provincial Commissioner,
1	Page 22629	1	Page 22631
1	GENERAL MBOMBO: Okay.	1	the other criticism made by Mr White against your conduct
2	GENERAL MBOMBO: Okay. MS LE ROUX: There Mr White directly	2	the other criticism made by Mr White against your conduct on the day, on the 16th, is set out at page 71, paragraph
2 3	GENERAL MBOMBO: Okay. MS LE ROUX: There Mr White directly challenges your rationale for launching stage 3 as not	2 3	the other criticism made by Mr White against your conduct on the day, on the 16th, is set out at page 71, paragraph 6.4.10A. There Mr White begins detailing why the absence
2 3 4	GENERAL MBOMBO: Okay. MS LE ROUX: There Mr White directly challenges your rationale for launching stage 3 as not sufficient justification for ordering the commencement of	2 3 4	the other criticism made by Mr White against your conduct on the day, on the 16th, is set out at page 71, paragraph 6.4.10A. There Mr White begins detailing why the absence of the written operational plan at the 1:30 JOCCOM and
2 3 4 5	GENERAL MBOMBO: Okay. MS LE ROUX: There Mr White directly challenges your rationale for launching stage 3 as not sufficient justification for ordering the commencement of stage 3, and that it's inconsistent with the requirement of	2 3 4 5	the other criticism made by Mr White against your conduct on the day, on the 16th, is set out at page 71, paragraph 6.4.10A. There Mr White begins detailing why the absence of the written operational plan at the 1:30 JOCCOM and before the implementation of stage 3 is problematic, and A
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1	Page 22632 [10:54] GENERAL MBOMBO: Because I had an overall	1	Page 22634 happen because they got hold of Mr Mathunjwa and Mr
2	commander present there who was supposed to make those	2	Zokwana.
3	decisions.	3	CHAIRPERSON: I see. Now let me put
4	MS LE ROUX: Provincial Commissioner, I'd	4	something else to you. The criticism which Mr White makes
5	now like to move on to another –	5	in this paragraph which we have on the screen at the
6	CHAIRPERSON: Sorry, before you move away	6	moment, subparagraph (a) which was read says – let me just,
7	from this point, there's a question I'd like to ask about	7	it was read before but let me read it again so that those
8	this. You referred to Tuesday afternoon. Are you saying	8	who read the record in due course will understand what I'm
9	that you effectively approved the decision to move	9	asking you about. "What stage 3 plan did the Provincial
10	eventually to stage 3 on the Tuesday afternoon in the	10	Commissioner and/or Major General Mpembe, overall
11	absence of successful negotiations?	11	commander, approve? It appears that the decision to
12	GENERAL MBOMBO: That is so, Mr Chair.	12	proceed to stage 3 was made prior to the 13:30 JOCCOM. It
13	CHAIRPERSON: Now if Colonel Scott is	13	was only during that JOCCOM that Lieutenant Colonel Scott
14	correct, the only plan on the table at the JOCCOM on the	14	outlined orally how stage 3 might work. Therefore whoever
15	Thursday morning was the encirclement plan. So if that's	15	actually made the decision to proceed to stage 3 did so
16	correct, the only plan that you could have approved would	16	without a full appreciation of what stage 3 entailed. If
17	have been - on the Tuesday would have been the encirclement	17	correct, that is a very serious issue." That's the end of
18	plan, not the plan that was ultimately implemented. Now	18	the quotation.
19	what comment do you have to make about that?	19	Now if you are correct in saying that the minutes
20	GENERAL MBOMBO: Mr Chair, I did not know	20	are wrong in reflecting that you were there at the end of
21	anything about stage 3. I was briefed at the JOC when I	21	the meeting at the time the closing remarks were given, you
22	arrived on Tuesday in the afternoon. As I have already	22	say, your evidence is that that was incorrect, that what
23	said, Mr Chair, they spoke about the encirclement plan and	23	you said, which is reflected in that paragraph, was said at
24	they indicated to me that it was again criticised. There	24	the time you left, which was before Lieutenant Colonel
25	were some criticisms about it and as I was leaving on	25	Scott outlined how stage 3 might work, then of course
		20	
	Page 22633		
	Page 22033		Page 22635
1	Tuesday going to a meeting, after I've heard about a body	1	Page 22635 you'll have to deal with the criticism which presumably Mr
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2	Tuesday going to a meeting, after I've heard about a body that was found on the koppie I then said that I phoned	2	you'll have to deal with the criticism which presumably Mr White would make that it's even worse if you approved stage
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2 3 4	Tuesday going to a meeting, after I've heard about a body that was found on the koppie I then said that I phoned General Mpembe and Annandale and told them that, "That stage 3 of yours, which is the disarmament and dispersion,	2 3 4	you'll have to deal with the criticism which presumably Mr White would make that it's even worse if you approved stage 3 not because you did not have a full appreciation of what stage 3 entailed, but because you couldn't have had any
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Marikana Commission of Inquiry

	Page 22636		Page 22638
1	would, and I then thought about what had happened and when	1	was given significant thought."
2	I was on the way and said because of what had happened,	2	Provincial Commissioner, do you have a comment to
3	let's continue with this plan tomorrow.	3	that criticism by Mr White that is set out in the three
4	COMMISSIONER HEMRAJ: So on the 14th you	4	paragraphs I've read into the record?
5	also did not know the mechanics of the plan?	5	GENERAL MBOMBO: About the absence of
6	GENERAL MBOMBO: That is so, yes.	6	video material, I agree with him that was our problem.
7	COMMISSIONER HEMRAJ: And similarly on	7	About the statements of the officers I believe that the
8	the 16th?	8	police officers who made the arrests would explain that in
9	GENERAL MBOMBO: That is correct.	9	their statements, but I agree with him that video material
10	COMMISSIONER HEMRAJ: Thank you.	10	would have had to show the evidence.
11	MS LE ROUX: Provincial Commissioner, I'd	11	MS LE ROUX: And just to take this in
12	like to move on to my next topic. I'd ask you to turn to	12	stages; you agree with the criticism - Provincial
13	page 45 of Mr White's statement. This is section 4.4,	13	Commissioner, to break it down, you agree with the
14	which is titled, "Evidence for the criminal justice	14	criticism about the lack of video evidence. Do you also
15	process," and it covers, if we can just run through briefly	15	agree with the criticism about the lack of photographic
16	the three paragraphs that follow. So 4.4.1 Mr White says	16	evidence that could assist in the criminal justice process?
17	that, "Related to the previous point is the apparent	17	GENERAL MBOMBO: That is so, yes.
18	absence of material before the Commission to support the	18	MS LE ROUX: Then if we can focus with
19	prosecution of offenders in the criminal justice process.	19	respect to the statements -
20	One of the objectives of stage 3 of the operational plan	20	CHAIRPERSON: I'm sorry, I'm not sure
21	for 16 August was to make arrests for those who refused to	21	that that concession is necessarily rightly made. There's
22	disarm. I infer that those arrests were attended to lead	22	apparently quite a lot of photographic material of people
23	to prosecutions and convictions. However, I'm struck by	23	on the koppie with weapons and so forth, and the evidence
24	the absence of evidence before the Commission that would	24	is that during the run-up to the events on the Thursday
25	support the prosecution of many of those arrested. When	25	afternoon a number of Criminal Intelligence people were
1	Page 22637	1	Page 22639
1	planning for a large-scale Public Order operation where it is anticipated that arrests will be made, one would expect	1	brought in from Gauteng and they spent many hours working
2		2	with Lonmin people trying to identify the people whose
3	to see video operators and photographers present to	3	faces could be seen on the photographs taken, which would
4	document the operation to ensure that the police have	4	presumably have led to various things, inter alia cordon
5	evidence of the commission of any criminal offences.	5	and search of their homes to see if there were arms there,
6	Moreover one would expect to see statements from all of the	6	but also could have been used as evidence in the criminal
7	officers who made arrests, with a detailed description of	7	prosecution of these people. So I'm not sure that the – I
8	those arrested, the circumstances of arrest, the suspected	8	understand the concession you make relating to the video
9	offence for which the arrests were made." That approach is	9	material, which is very, very unfortunate that there is a
10	supported by paragraph 5.2.7 of the POP policy document on	10	lack of that kind of material, particularly in the light of
11	crowd management, but from the evidence Mr White has seen	11	clear policy prescripts that applied, but as far as still
12	it does not appear to have been implemented in the Marikana	12	photographs were concerned, taken over the period from I
13	operation.	13	suppose the 10th of August, I'm not sure the concession you
14	Then he concludes, "There do not appear to be any	14	made was correct.
15	police videos or police photographs of the alleged violent	15	MR SEMENYA SC: Chair, may we also add –
16	attacks at scene 1 or 2. Additionally there do not appear	16	GENERAL MBOMBO: Thank you, you helped
17	to be statements from all of the members who made arrests,	17	me, Mr Chair.
18	detailing the identity of the person arrested and the	18	MR SEMENYA SC: This witness is really
19	circumstances of arrest. I make this point to illustrate	19	confronted about operational matters where she wasn't, but
20	that careful videoing and photographing of operations and	20	there is also evidence of the, what I'd call the Calitz
21	the provision of detailed statements after the event is	21	arrests, which is videotaped. There is also the arrests at
22	important not simply to account to the Commission of	22	koppie 3 which are videotaped.
23	Inquiry, but also in order to ensure there is sufficient	23	CHAIRPERSON: Yes, but the point that I
24	evidence for the criminal justice process. It does not	24	think Ms Le Roux is making, based upon what Mr White said,
176	appear that the criminal justice element of the operation	25	in this very document on crowd management it's said part of
25	RCHIVE FOR JUSTICE		

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	Page 22640		Page 22642
1	the process must be collecting evidence which can be used	1	on that page seems to be the point at which you begin with
2	against people arrested. You can't just have an operation	2	the point.
3	to arrest people because if you arrest people you're arresting them not just to stop them from doing what	3	MS LE ROUX: So the question is, "There
4		4	was no coherent plan to capture, deal with and retain the
5	they're doing, but to bring them before the courts to be	5	best evidence that will be available to assist the
6	charged with something. So you've got to have evidence	6	prosecution?" Sorry, Chair, I've made an error. It was
7	upon which a prosecution can be based and the complaint is	7 8	obviously Colonel Scott, not Major General Mpembe. So if
8 9	that that doesn't appear to be attended to. Certainly the	0 9	we proceed, I'm asking the same question of Colonel Scott
10	point would be true in the case of police videos to some extent at least – to what extent is a matter for debate	9 10	and he then says from line 19, "What you're saying is a coherent plan comes down to the Standing Orders and I
11	later, and certainly in relation to police photographs of	11	wouldn't need to explain to detective what he needs to do
12	the alleged violent attacks at scenes 1 and 2, as you say	12	to process the person, wouldn't have to explain to a police
13	there is some material. But I was concerned more with	13	official what they need to provide when arresting a person
14	photographs being taken from the 10th of August onwards	14	because they know they would need to provide an arresting
15	dealing with people with weapons who are seen on the koppie	15	statement, similarly with the evidence chain, physical
16	or in front of the koppie. But anyway, the point has been	16	evidence, the crime scene experts, so for me to dictate
17	made. You obviously wish to say something further.	17	their action is out of place." Then I say, "Thank you,
18	MR SEMENYA SC: I was going to say,	18	Chair, we'll follow up through the evidence leaders, but if
19	Chair, that the criticism that there is no video material	19	the SAPS could confirm whether there are any such arresting
20	at all would be incorrect.	20	statements or video evidence," and then if we keep going,
21	COMMISSIONER HEMRAJ: There's a further	21	Chair, you ask Mr Semenya and the rest of the team one
22	aspect, the criticism about the provision of detailed	22	question regarding whether there, "Are you aware of the
23	statements, we're not privy to the contents of those	23	fact as to any instructions."
24	dockets so we don't know if there are indeed detailed	24	Now we have followed up in this respect with the
25	statements as part of the investigations.	25	SAPS team relating to the provision of arresting statements
	Page 22641		Page 22643
1	CHAIRPERSON: At any rate, Ms Le Roux put	1	and we haven't been provided with any. Provincial
2	CHAIRPERSON: At any rate, Ms Le Roux put her point to you and you made your comment on it, which is	2	and we haven't been provided with any. Provincial Commissioner, do you know whether there are any statements
2 3	CHAIRPERSON: At any rate, Ms Le Roux put her point to you and you made your comment on it, which is on record and we can proceed.	2 3	and we haven't been provided with any. Provincial Commissioner, do you know whether there are any statements by members who made arrests that could be used in the
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Marikana Commission of Inquiry

	Page 22644		Page 22646
1	COMMISSIONER HEMRAJ: But that would have	1	intervene at this stage and ask a question? My
2	been a while ago.	2	understanding of the relevant provision of the Criminal
3	MR BUDLENDER SC: Probably. We'll have	3	Procedure Act - I can't remember the number, but I'm sure
4	to check that, Chair.	4	the people here will know – is basically a peace officer, I
5	CHAIRPERSON: In every docket of someone	5	think is the phrase used in the Criminal Procedure Act – is
6	who's arrested for public violence or possession of	6	entitled generally to make an arrest for two purposes. The
7	dangerous weapons, every docket should contain an arresting	7	first is so that someone can eventually be brought before a
8	statement. I mean that's elementary. So there must be	8	court and prosecuted, so that the arrested person can be
9	arresting statements, and generally speaking it's difficult	9	brought before the court and be prosecuted. Arrest is a
10	to see how an arresting statement could be sensitive	10	means of obtaining the attendance of an accused person
11	because the arrestor will say I arrested such-and-such a	11	before the court, the criminal court. That's the main
12	person and will say what he observed or she observed which	12	purpose for which arrests are effected, but there's also a
13	led him or her to make the arrest.	13	section in the Criminal Procedure Act which provides, as
14	Anyway, perhaps this is a matter which can be	14	far as I remember, that a peace officer can arrest someone
15	explored later. We don't have to explore it further in the	15	who appears to be about to commit an offence, and that kind
16	chamber, and clearly to be fair to the Provincial	16	of arrest is a preventative arrest. The person obviously
17	Commissioner, I don't think she has facts at her fingertips	17	isn't charged. The person normally would be released
18	to be able to deal with the questions put. These are	18	shortly thereafter without having been brought before a
19	matters that I would hope could be dealt with by agreement	19	court. There is a period which a person can be detained
20	between the police, the Provincial Director of Public	20	without being brought before court. But generally speaking
21	Prosecution's office, and the Human Rights Commission, the	21	probably 99%, if not higher percentage, of people arrested
22	evidence leaders, and the result of such agreement or	22	are arrested with a view that they're being brought before
23	negotiation can be put before us in due course without	23	a court to face a charge, being guilty of some or other
24	troubling the Provincial Commissioner who, to be fair, I	24	criminal conduct.
25	think can't be expected to answer the questions with any	25	Now what is your understanding, what was your
1	Page 22645 degree of detail.	1	Page 22647 intention as far as what was happening at Marikana was
2	-		intention as fai as what was happening at maritana was
	MSTEROUX: Indeed Chair and we will	2	concerned what was your understanding, were the people who
	MS LE ROUX: Indeed, Chair, and we will follow up with the SAPS, the relevant prosecution	2	concerned, what was your understanding; were the people who were arrested, arrested to prevent them from committing
3	follow up with the SAPS, the relevant prosecution	3	were arrested, arrested to prevent them from committing
3 4	follow up with the SAPS, the relevant prosecution authorities, and the evidence leaders to see if we can	3 4	were arrested, arrested to prevent them from committing crimes, in other words in terms of that exceptional
3 4 5	follow up with the SAPS, the relevant prosecution authorities, and the evidence leaders to see if we can establish anything about the arresting statements.	3 4 5	were arrested, arrested to prevent them from committing crimes, in other words in terms of that exceptional provision of the Criminal Procedure Act to which I
3 4 5 6	follow up with the SAPS, the relevant prosecution authorities, and the evidence leaders to see if we can establish anything about the arresting statements. Provincial Commissioner, I must just ask you two further	3 4 5 6	were arrested, arrested to prevent them from committing crimes, in other words in terms of that exceptional provision of the Criminal Procedure Act to which I referred, or were they arrested for the main reason for
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Marikana Commission of Inquiry

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	Page 22648		Page 22650
1	CHAIRPERSON: Sorry, yes. Yes, forgive	1	facts that the Human Rights Commission team has been able
2	me, Provincial Commissioner, you want to make a comment?	2	to establish and then ask for your comment on this. So
3	Would you like a – you want to suggest that we take the tea	3	we've analysed the statements before the Commission and
4	adjournment at this stage? I don't think there will be any	4	we've managed to establish the following, that of the
5	opposition to that and we will take the tea adjournment -	5	approximately 200 POP members present at Marikana on 16
6	GENERAL MBOMBO: That is my request.	6	August we have only 65 statements, that 32.5% of all POP
7	[COMMISSION ADJOURNS COMMISSION RESUMES]	7	members have given statements that are before the
8	[11:48] CHAIRPERSON: The Commission resumes.	8	Commission. Oh, apologies, the percentage is the
9	Provincial Commissioner, you're still under oath.	9	percentage missing, not the percentage obtained. So 32.5%
10	MIRRIAM NOSAZISO ZUKISWA MBOMBO: s.u.o.	10	have not given us statements.
11	CHAIRPERSON: Ms Le Roux.	11	CHAIRPERSON: You'll have to revise your
12	MS LE ROUX: Thank you, Chair.	12	earlier figure then; of the 200 POP members how many have
13	Provincial Commissioner, I just want to round out this –	13	provided statements, or in respect of how many have
14	CHAIRPERSON: I'm sorry, before you	14	statements been provided? If it's 33% it looks as if we're
15	[microphone off, inaudible] we've been given a document	15	looking at about –
16	which some kind person has caused to be placed before us.	16	MS LE ROUX: So 135 have provided –
17	It's headed "Key to training analysis documents."	17	CHAIRPERSON: Yes –
18	MS LE ROUX: Yes, Chair, this is a	18	MS LE ROUX: Approximately 65 have not
19	document that we should probably just mark as LLL18.1.	19	provided.
20	It's the key to the spreadsheets that summarise the	20	CHAIRPERSON: I see, alright.
21	training records that I'll get to in due course.	21	MS LE ROUX: With respect to the
22	CHAIRPERSON: Alright, well let me write	22	approximately 165 TRT members we don't have statements from
23 24	it in my book. 18.1, key to? MS LE ROUX: Key to –	23 24	more than 70 of those, so 42% of TRT members' statements
24 25	CHAIRPERSON: Analysis document –	24 25	are outstanding. Of the 110 NIU members there are still more than 30 outstanding, meaning 27% have still not
23	CHAIN ENSON. Analysis document –	25	more than 50 outstanding, meaning 2776 have still not
	Page 22649		Page 22651
1	Page 22649 MS LE ROUX: CALS analysis, training and	1	Page 22651 provided a statement. With respect to the 22 STF members,
1 2	6	1 2	6
	MS LE ROUX: CALS analysis, training and		provided a statement. With respect to the 22 STF members,
2	MS LE ROUX: CALS analysis, training and disciplinary record.	2	provided a statement. With respect to the 22 STF members, 11 have not yet provided, so 50% have provided, 50% we
2 3	MS LE ROUX: CALS analysis, training and disciplinary record. CHAIRPERSON: CALS analysis documents,	2 3	provided a statement. With respect to the 22 STF members, 11 have not yet provided, so 50% have provided, 50% we still await, and of the 38 K9 members we still don't have
2 3 4	MS LE ROUX: CALS analysis, training and disciplinary record. CHAIRPERSON: CALS analysis documents, we'll just call them analysis documents because it's all –	2 3 4	provided a statement. With respect to the 22 STF members, 11 have not yet provided, so 50% have provided, 50% we still await, and of the 38 K9 members we still don't have statements from four, which is 10.5%. So do you consider
2 3 4 5	MS LE ROUX: CALS analysis, training and disciplinary record. CHAIRPERSON: CALS analysis documents, we'll just call them analysis documents because it's all – MS LE ROUX: Yes, Chair –	2 3 4 5	provided a statement. With respect to the 22 STF members, 11 have not yet provided, so 50% have provided, 50% we still await, and of the 38 K9 members we still don't have statements from four, which is 10.5%. So do you consider that to be problematic? Do you consider it a problem that
2 3 4 5 6	MS LE ROUX: CALS analysis, training and disciplinary record. CHAIRPERSON: CALS analysis documents, we'll just call them analysis documents because it's all – MS LE ROUX: Yes, Chair – CHAIRPERSON: Alright, hang on. Let's	2 3 4 5 6	provided a statement. With respect to the 22 STF members, 11 have not yet provided, so 50% have provided, 50% we still await, and of the 38 K9 members we still don't have statements from four, which is 10.5%. So do you consider that to be problematic? Do you consider it a problem that 32% of POP, 42% of TRT, 27% of NIU, 50% of STF, and 10% of
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	Page 22652		Page 22654
1	will get an opportunity to comment either directly from the	1	we can go to page 10, the two paragraphs that appear on
2	bar, as it were, or in re-examination of the witness on the	2	that page state, "Current international research supports
3	points that you've put. He may agree with your statistics,	3	continuous police training in crowd control and management.
4	he may disagree. He may make further statements in respect	4	Education and training in crowd control depend on a
5	of those statements that have not yet been provided, but I	5	knowledge management systems available within the police
6	won't ask him to do it now because he obviously needs time	6	which capture operational reports on successes and
7	to take instructions. Is that right, Mr Semenya?	7	failures. The knowledge management system is an
8	MR SEMENYA SC: That's correct, Chair.	8	organisation's ability to capture lessons learnt and best
9	MS LE ROUX: And Chair, to assist my	9	and worst practices in the context of crowd control
10	learned friend, the correspondence is dated 19 November	10	operations," and it continues to describe "how there's a
11	2013 which sets out this analysis. Provincial	11	need for clear and comprehensive police leadership to
12	Commissioner, I'd like to turn to my penultimate topic,	12	ensure that such training actually occurs within all
13	which relates to training and disciplinary records, well	13	appropriate police structures. In principle every law
14	the training and discipline of SAPS members. Now as I	14	enforcement agency is required to conduct and document
15	understand it from your statement – we don't need to go	15	semi-annual training for all officers on the lawful and
16	there unless there's controversy with this; for the record,	16	appropriate or professional use of force and deadly force.
17	it's page 4 of exhibit LLL1, paragraph 11.6 – I understand	17	This training should be designed to reflect current
18	that you are responsible for the implementation of HR	18	standards established by statutory and law" – I think they
19	programmes and procedures. Am I correct that that would	19	mean statute and law – "as well as State-wide, country and
20	include oversight with respect to training and discipline?	20	individual agency policy. It should include, but not be
21	GENERAL MBOMBO: It is correct.	21	limited to," and then it lists a series of substantive
22	MS LE ROUX: Now I'd like us to look at	22	topics that should be covered, and of interest here of
23	the training and discipline of the members that were on	23	course is the use of force in general, the use of physical
24	duty at Marikana specifically on the 16th, but including the	24	and mechanical force, the use of deadly force, limitations
25	commanders that were in charge during the course of the	25	that govern the use of force, and deadly force. "The
1	Page 22653 week, and I'd like to start at a policy level. So exhibit	1	Page 22655 international perspective on the broader aspects of police
2	R, if we can call that up, is SAPS policy and guidelines,	2	training in crowd control and management highlight that
3	policing of public protests, gatherings and major events,	3	training should include review and reinforcement of the
4	and this is a document that we understand to be dated	4	applicable laws, State statutes, department policies, a
5	August 2012, but am I correct this document remains in		
		5	
6	-	5 6	review of civil rights issues inherent in mass demonstration events, a uniform understanding of rules of
6	force? You don't know of any other policy document that	6	demonstration events, a uniform understanding of rules of
7	force? You don't know of any other policy document that governs policing of public protests, gatherings, and major	6 7	demonstration events, a uniform understanding of rules of engagement, use of force, policies, and mass arrest
7 8	force? You don't know of any other policy document that governs policing of public protests, gatherings, and major events, a policy document rather than the Standing Order?	6 7 8	demonstration events, a uniform understanding of rules of engagement, use of force, policies, and mass arrest procedures, clear instructions on the need for self-
7 8 9	force? You don't know of any other policy document that governs policing of public protests, gatherings, and major events, a policy document rather than the Standing Order? GENERAL MBOMBO: It is this one,	6 7 8 9	demonstration events, a uniform understanding of rules of engagement, use of force, policies, and mass arrest procedures, clear instructions on the need for self- control, teamwork, adherence to commands, stated
7 8 9 10	force? You don't know of any other policy document that governs policing of public protests, gatherings, and major events, a policy document rather than the Standing Order? GENERAL MBOMBO: It is this one, Chairperson.	6 7 8	demonstration events, a uniform understanding of rules of engagement, use of force, policies, and mass arrest procedures, clear instructions on the need for self- control, teamwork, adherence to commands, stated expectations for highly disciplined behaviour, self-control
7 8 9 10 11	force? You don't know of any other policy document that governs policing of public protests, gatherings, and major events, a policy document rather than the Standing Order? GENERAL MBOMBO: It is this one, Chairperson. MS LE ROUX: And if we could go to page 4	6 7 8 9 10	demonstration events, a uniform understanding of rules of engagement, use of force, policies, and mass arrest procedures, clear instructions on the need for self- control, teamwork, adherence to commands, stated expectations for highly disciplined behaviour, self-control and restraint, and a strong statement that any officer's
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7 8 9 10 11 12	force? You don't know of any other policy document that governs policing of public protests, gatherings, and major events, a policy document rather than the Standing Order? GENERAL MBOMBO: It is this one, Chairperson. MS LE ROUX: And if we could go to page 4 of this document, and specifically section 2, Objectives, and if we scroll through to page 4, a final bullet point is	6 7 9 10 11 12	demonstration events, a uniform understanding of rules of engagement, use of force, policies, and mass arrest procedures, clear instructions on the need for self- control, teamwork, adherence to commands, stated expectations for highly disciplined behaviour, self-control and restraint, and a strong statement that any officer's
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7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	force? You don't know of any other policy document that governs policing of public protests, gatherings, and major events, a policy document rather than the Standing Order? GENERAL MBOMBO: It is this one, Chairperson. MS LE ROUX: And if we could go to page 4 of this document, and specifically section 2, Objectives, and if we scroll through to page 4, a final bullet point is that, "One of the objectives of this policy is to facilitate the introduction of appropriate training initiatives which must, amongst others, address the principle of first responder, guide SAPS operational planning and response, resource deployment and physical execution." So one of the objectives of the police document for POP policing is to facilitate the introduction of appropriate training initiatives, correct? GENERAL MBOMBO: That's correct, yes.	6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	demonstration events, a uniform understanding of rules of engagement, use of force, policies, and mass arrest procedures, clear instructions on the need for self- control, teamwork, adherence to commands, stated expectations for highly disciplined behaviour, self-control and restraint, and a strong statement that any officer's failure to comply could result not only in failed police tactics, but also employee discipline." So what we take from all of this is that current international research relied upon by the SAPS supports continuous police training in crowd control and management. You agree with that? GENERAL MBOMBO: It is correct, yes. MS LE ROUX: And Chair, we don't need to go there unless it's necessary, but the final statement of Hendrickx, which we have now marked as LLL12, at page 66, paragraph 160 where Mr Hendrickx is setting out his final
7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	force? You don't know of any other policy document that governs policing of public protests, gatherings, and major events, a policy document rather than the Standing Order? GENERAL MBOMBO: It is this one, Chairperson. MS LE ROUX: And if we could go to page 4 of this document, and specifically section 2, Objectives, and if we scroll through to page 4, a final bullet point is that, "One of the objectives of this policy is to facilitate the introduction of appropriate training initiatives which must, amongst others, address the principle of first responder, guide SAPS operational planning and response, resource deployment and physical execution." So one of the objectives of the police document for POP policing is to facilitate the introduction of appropriate training initiatives, correct? GENERAL MBOMBO: That's correct, yes. MS LE ROUX: And then if we scroll	6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	demonstration events, a uniform understanding of rules of engagement, use of force, policies, and mass arrest procedures, clear instructions on the need for self- control, teamwork, adherence to commands, stated expectations for highly disciplined behaviour, self-control and restraint, and a strong statement that any officer's failure to comply could result not only in failed police tactics, but also employee discipline." So what we take from all of this is that current international research relied upon by the SAPS supports continuous police training in crowd control and management. You agree with that? GENERAL MBOMBO: It is correct, yes. MS LE ROUX: And Chair, we don't need to go there unless it's necessary, but the final statement of Hendrickx, which we have now marked as LLL12, at page 66, paragraph 160 where Mr Hendrickx is setting out his final recommendations to the Commission, page 66, para 160, one

Page 2258 The Page 2258 1 involved in POP. So Mr Hendrick: as one of the seprets in this process confirms that this is something that he thinks The Page 2258 2 this process confirms that this is something that he thinks Commanders should be experienced, but they also should be operation. 3 motods to be implemented. Tailed. You accept that? 4 What was of rom the policy document, and if we can then policy document, the training of once is appropriately used, civil rights, questions of adf-cantrol of and judgment, as well as teamon, cammand and cantrol of and polyment, as well as teamon, cammand and cantrol of a practices. So in the poly document, if we then move to the appropriately used, because were analysed them, unless to addrocs? A is Righter Fitz. New Years Ween when SAPS responses to the following transmittals are produced strates gate in the six strates. 10 brows type of operations. This poly document, if we then move to the avel analysed them, unless to addrocs? A is Righter Fitz. New Years ween ween analysed them, unless to addrocs? A is Righter Fitz. New Years ween ween analysed them, unless to addrocs? A is Righter Fitz. New Years ween ween years and the there some disput there some disput these because were analysed them, unless to addrocs? A is Righter Fitz. New Years ween years and the there some disput themes the sole. 11 indication poly and the source asset in the poly of the poly and the there some disput themes because were analysed them, unless to addrocs and the there some disput themes because mere analysed theme. 12			1	
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	Page 22660		Page 22662
1	MS LE ROUX: Provincial Commissioner,	1	did not have that occupational competence; they were not
2	could you then turn to page 106 of Mr White's statement?	2	properly trained. Do you accept that?
3	That's JJJ178. JJJ178, final statement of Gary White, and	3	GENERAL MBOMBO: According to what he
4	page 106, paragraph 7.3.19, there Mr White recites his	4	says, yes, but all these people normally work in POP
5	understandings that the senior leadership have no up-to-	5	operations. General Annandale, he is at head office,
6	date POP training, albeit that they are experienced, and Mr	6	working in the Public Order division of head office.
7	White then says he disagrees that experience is sufficient.	7	According to records he might not be trained, but in
8	He says, "Experience is undoubtedly useful and necessary in order to command a major POP aparation. However, it is not	8 9	practice he is always involved with such matters.
9 10	order to command a major POP operation. However, it is not sufficient. Unless you're properly trained in what is	9 10	General Mpembe might not have had recent training, as you say, but according to his job he is always
10	considered as best practice, you can never be sure if your	10	involved in such operations.
12	experience is still relevant. Over time	12	Brigadier Calitz, since I've known him from my
13	[12:07] laws change, tactics change and equipment	13	arrival in this province he is in charge of the Public
14	changes. Professional police officers, even highly	14	Order Police, working together with Public Order people in
15	experienced officers, need to refresh their training to	15	his job.
16	ensure they remain fit for purpose and contemporary in	16	I am not disputing that training should be
17	their knowledge. In the UK context commanders of Public	17	continuous, but I think if a person is continuously
18	Order operations must be both occupationally and	18	involved in this job you get the necessary experience in
19	operationally competent. Occupational competence requires	19	order to be competent in the job.
20	the completion of a set of specific training modules,	20	MS LE ROUX: But Provincial Commissioner,
21	continuing professional training and development, and	21	this is precisely the Human Rights Commission's point, that
22	yearly reaccreditation. Operational competence requires	22	your senior commanders of the Marikana operation, while
23	not only experience in the role, but confirmation by other	23	they may be very experienced, have not been properly
24	commanders that the officer's performance in the role was	24	trained and it's the SAPS' own document, own policy
25	and is in accordance with the national standards."	25	document which says they should be continuously trained and
	Page 22661		Page 22663
1	Now Provincial Commissioner, do you agree that	1	as the Provincial Commissioner it would be your
2	Now Provincial Commissioner, do you agree that there is a distinction between occupational competence of a	2	as the Provincial Commissioner it would be your responsibility for your province to make sure that they
	Now Provincial Commissioner, do you agree that there is a distinction between occupational competence of a police officer, which is based on the training that they		as the Provincial Commissioner it would be your responsibility for your province to make sure that they were getting properly trained, and that hasn't happened.
2 3 4	Now Provincial Commissioner, do you agree that there is a distinction between occupational competence of a police officer, which is based on the training that they have received, and their operational competence, which is	2 3 4	as the Provincial Commissioner it would be your responsibility for your province to make sure that they were getting properly trained, and that hasn't happened. GENERAL MBOMBO: Remembering,
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	Page 22664		Page 22666
1	questioning, which was in your statement where you say	1	training they have not received which they still need to
2	you're responsible for the implementation of HR programmes	2	have. We do have that system, but I must say again even if
3	and procedures and you confirm that that includes an	3	I have that and I see that my members of my police need
4	oversight role for training and discipline of members in	4	training, it does not depend on me as to when they receive
5	your province. So what have you done in your province, or	5	their training, except those that I have explained the
6	what systems have you put in place in your province to	6	courses.
7	ensure that your members are getting trained the way the	7	CHAIRPERSON: Sorry, I don't quite
8	SAPS policy document require them to be trained?	8	understand. Is there a computer program that you have
9	GENERAL MBOMBO: The powers that I have,	9	somewhere that keeps track of the various POP members and
10	Mr Chairperson, in connection with the Public Order is that	10	the training that they have received, or is it just
11	members of the POP once in a week should, to go for	11	recorded on paper somewhere in records that are kept in
12	refresher courses. To correct that, it's not a once-a-week	12	your office? How does it work?
13	refresher course, Chairperson. It is in-service training.	13	GENERAL MBOMBO: Chairperson, each and
14	I'm not quite certain here, but in a month they have to go	14	every member of the police appears on computer, indicating
15	for a refresher course. That is the only thing in the	15	training and what that person has been trained.
16	province that I have the right to do. When it comes to	16	CHAIRPERSON: Now let's take by way of
17	formal training interventions, Chairperson, that is the	17	example, let's look at this schedule that's been prepared
18	responsibility of the Public Order at national level.	18	for us, LLL18, that gives POP shooters training records.
19	MS LE ROUX: But Provincial Commissioner,	19	Now let's take the first name there, Sergeant Baloyi, top
20	I go back to my question. What system do you have to	20	of the list, Sergeant Baloyi. He apparently hasn't done a
21	establish that your POP members in your province are going	21	course in human rights at all, but he doesn't appear to
22	for the training they should be going for? I understand	22	have done basic training either as a matter of fact. Well,
23	your answer to be it's the head office responsibility to	23	I don't know how he got in there if he hasn't got basic
24	organise. My question is in your role as having oversight	24	training, unless this schedule is wrong. But anyway, let's
25	over training of members in your province, what have you	25	not concentrate on the details; let's take him as an
	D		
1	Page 22665	1	Page 22667 example Now do your records tell you, are you able to say
1	done to establish that they are being trained regularly as	1	example. Now do your records tell you, are you able to say
2	done to establish that they are being trained regularly as they are supposed to be trained?	2	example. Now do your records tell you, are you able to say at any given time that what training Sergeant Baloyi has
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Marikana Commission of Inquiry

1	Page 22668 GENERAL MBOMBO: Mostly the formal	1	Page 22670 [12:27] GENERAL MBOMBO: I wouldn't say certainly
	interventions in the Public Order.		
2		2	so, Chairperson, particularly now, Chairperson, that the
3	CHAIRPERSON: Now do you have a number of	3	training of Public Order is being prioritised.
4	places – I take it they have courses from time to time. Do	4	CHAIRPERSON: If you say now, is this
5	they allocate a number of places to your province in	5	post August 2012 or was that the case even before August
6	respect of the courses that they are organising?	6	2012?
7	GENERAL MBOMBO: It is correct,	7	GENERAL MBOMBO: From the beginning of
8	Chairperson. They make it a national course, but each and	8	last year, Chairperson.
9	every province receives a number of seats there.	9	CHAIRPERSON: Would it be fair to say
10	CHAIRPERSON: And how many of these	10	that since the events at Marikana, since the beginning of
11	courses are there every year?	11	last year the number of places available to your province
12	GENERAL MBOMBO: I'm not certain. No,	12	at these various training courses has risen substantially?
13	I'm not sure, Chairperson.	13	GENERAL MBOMBO: I'd agree with you, Sir.
14	CHAIRPERSON: One a month or one a year	14	I'd agree with you there, Chairperson.
15	or how frequently are they – roughly, I understand you	15	CHAIRPERSON: I didn't hear the answer.
16	can't, you haven't got the exact facts at your fingertips.	16	GENERAL MBOMBO: I agree with you there,
17	I don't expect that.	17	Chairperson.
18	GENERAL MBOMBO: Though I'm not quite	18	CHAIRPERSON: You agree with that, thank
19	certain of the number, Chairperson, but I remember that	19	you. Ms Le Roux, I've tried to open up some of the – cut
20	last year we sent our people to two different courses.	20	some of the bush away for you so you can proceed with your
21	CHAIRPERSON: Alright, so let's take two	21	cross-examination. I don't know how successful I was, but
22	as a provisional number. How many persons did you send to	22	I tried.
23	each course? How many positions on the courses were made	23	MS LE ROUX: Thank you, Chair.
24	available to your province?	24	Provincial Commissioner, following up on the Chair's line
25	GENERAL MBOMBO: I don't remember, but I	25	of questioning, I understand that the system you've
20		20	or questioning, i understand that the system you've
	Page 22669		Page 22671
1	Page 22669 can get these figures for the Chair.	1	Page 22671 described records when training is done. When you're
1	can get these figures for the Chair.	1	described records when training is done. When you're
	can get these figures for the Chair. CHAIRPERSON: What I'm trying to	2	described records when training is done. When you're selecting which members to send to the national training
2	can get these figures for the Chair. CHAIRPERSON: What I'm trying to ascertain is were enough places being made available during	2 3	described records when training is done. When you're selecting which members to send to the national training interventions for POP does your system tell you who's most
2 3 4	can get these figures for the Chair. CHAIRPERSON: What I'm trying to ascertain is were enough places being made available during the course of each year to your province so that you could	2 3 4	described records when training is done. When you're selecting which members to send to the national training interventions for POP does your system tell you who's most in need of training either because they've never been
2 3 4 5	can get these figures for the Chair. CHAIRPERSON: What I'm trying to ascertain is were enough places being made available during the course of each year to your province so that you could ensure that your POP members were properly trained and	2 3 4 5	described records when training is done. When you're selecting which members to send to the national training interventions for POP does your system tell you who's most in need of training either because they've never been trained, or because their training is out of date?
2 3 4 5 6	can get these figures for the Chair. CHAIRPERSON: What I'm trying to ascertain is were enough places being made available during the course of each year to your province so that you could ensure that your POP members were properly trained and their training was being kept up to date?	2 3 4 5 6	described records when training is done. When you're selecting which members to send to the national training interventions for POP does your system tell you who's most in need of training either because they've never been trained, or because their training is out of date? GENERAL MBOMBO: Can you please repeat
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	Dama 20/72		Da wa 20/74
1	Page 22672 the members that are there, trying to identify gaps that	1	Page 22674 Now what's the reason for that?
2	are there in each unit concerning the training. Those gaps	2	GENERAL MBOMBO: Chairperson, I wouldn't
3	will then be put into what we call workplace skills plan.	3	be sure of the reasons.
4	That is what we then submit to the national office so that	4	CHAIRPERSON: It does look, does it not,
5	the interventions done by the national office will be seen	5	as if human rights was not given a very high priority when
6	and identified where we lack. We also assist them	6	it came to deciding what courses to be made available to
7	according to the budgeting in terms of those interventions.	7	the POP people. Is that correct?
8	We then use that workplace skills plan to budget as a	8	GENERAL MBOMBO: It looks as though that
9	province in order to make provision for the people that we	9	was the position, Chairperson, but I wouldn't be sure of
10	can train as a province and budget for them.	10	what the problems were, Chairperson. Those would then be
11	MS LE ROUX: Provincial Commissioner, I	11	known by the people at training.
12	understand your evidence to be that since Marikana	12	CHAIRPERSON: Isn't some oversight
13	happened, so for 2013 at least there was more POP training	13	exercised by your office, or wasn't it exercised - we're
14	provided in your province. That's your evidence, correct?	14	talking about the period ending in on August 25th, wasn't
15	GENERAL MBOMBO: That is so, Mr Chair.	15	some oversight being exercised by your office in seeing to
16	MS LE ROUX: So do you accept that before	16	it that the various POP members received adequate training
17	2013 there was insufficient POP training in your province?	17	in all important aspects of Public Order Policing,
18	GENERAL MBOMBO: I would not say I don't	18	including human rights?
19	agree with you, though I would not be in - I don't totally	19	GENERAL MBOMBO: I agree there,
20	agree, fully agree with you.	20	Chairperson, with you. It could possible by so that we
21	CHAIRPERSON: Let's just concentrate on	21	also did not look at it thoroughly, but I'm not quite
22	human rights. Human rights is quite an important course	22	certain as to what the problems encountered are.
23	for people involved in Public Order Policing. Is that	23	CHAIRPERSON: But if you were keeping
24 25	correct? GENERAL MBOMBO: Correct, Chairperson.	24 25	oversight of this matter yourself you would have picked it up over the period, wouldn't you? When did you arrive in
20	GENERAL MBOMBO: Correct, Chairperson.	20	up over the period, wouldn't you? When ald you arrive in
	Page 22673		Page 22675
1	Page 22673 CHAIRPERSON: Now according to exhibit	1	Page 22675 the North West province, take over as Provincial
1 2	5	1 2	
	CHAIRPERSON: Now according to exhibit		the North West province, take over as Provincial
2	CHAIRPERSON: Now according to exhibit LLL18 there are 55 people mentioned here, that's to say, I take it these are the members of the POP who fired shots. I'm not sure whether they're all in your province, but	2	the North West province, take over as Provincial Commissioner? GENERAL MBOMBO: August of 2010, Chairperson.
2 3	CHAIRPERSON: Now according to exhibit LLL18 there are 55 people mentioned here, that's to say, I take it these are the members of the POP who fired shots. I'm not sure whether they're all in your province, but let's not worry about that for the moment. There are 55 on	2 3	the North West province, take over as Provincial Commissioner? GENERAL MBOMBO: August of 2010, Chairperson. CHAIRPERSON: So for two years from
2 3 4 5 6	CHAIRPERSON: Now according to exhibit LLL18 there are 55 people mentioned here, that's to say, I take it these are the members of the POP who fired shots. I'm not sure whether they're all in your province, but let's not worry about that for the moment. There are 55 on the list. Now on this basis –	2 3 4 5 6	the North West province, take over as Provincial Commissioner? GENERAL MBOMBO: August of 2010, Chairperson. CHAIRPERSON: So for two years from August 2010 to August 2012 you were in charge and you
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1	Page 22676 what happened on this issue.	1	Page 22678 the witness says. What do you say about that, Provincial
2	MS LE ROUX: Provincial Commissioner, if	2	Commissioner? Is that a good point or a bad point?
3	you could then stay with the POP shooters spreadsheet. It	3	MS LE ROUX: Chair, I must just first
4	also indicates that POP members are trained far more often	4	clarify; we would accept that obviously we want police
5	in shooting practice and firearms training than they are in	5	officers trained in firearms handling and have regular
6	crowd management or human rights. So if we look at the	6	shooting practice, of course, and it may well be true that
7	column headed "Shooting practice or firearms training," we	7	human rights training needs to happen less frequently, but
8	see that there these members are trained in those 183 and	8	we would not accept that proposition with respect to crowd
9	83 times respectively in the last five years. So what that	9	management training, and indeed the policy documents that
10	means is POP members are getting trained in shooting	10	we started with contemplate refresher courses, regular
11	practice and firearms training about four times as often as	11	crowd management courses. Those, you know, we don't know
12	they are in human rights and crowd management. Now of	12	exactly what that frequency should be. Mr White does
13	course we accept that it's important that members are	13	indicate that in his experience there's at least an annual
14	properly trained in firearms handling and that they're	14	revisiting around crowd management techniques, so I think
15	regularly tested in their competence at doing that, but why	15	we would say with respect to crowd management it certainly
16	is it prioritised to this degree over POP and human rights	16	can't be a once-off.
17	training?	17	CHAIRPERSON: I understand that, but
18	GENERAL MBOMBO: I wouldn't be very	18	let's accept a year is desirable, an annual course is
19	certain to know what exactly the reason is for that, but I	19	desirable for crowd management. You'll probably find that
20	can see as you're indicating it now.	20	as far as shooting practice is concerned you should do it
21	MS LE ROUX: And when you engage with	21	far more frequently than that, and if you do it once a
22	your system that monitors training in your province or you	22	quarter versus once a year then you've got times more
23	set out your workplace skills plan, do those prioritise	23	courses, which is probably the way things should be done.
24	shooting and firearms handling over Public Order Policing	24	Anyway, I don't know whether the witness can help us.
25	and human rights?	25	Maybe it's a matter that Mr White will be able to help us
	Dago 22677		Page 22670
1	Page 22677 GENERAL MBOMBO: If you'd just repeat	1	Page 22679 on when he comes, but anyway, we must make sure the points
1 2	Page 22677 GENERAL MBOMBO: If you'd just repeat that question?	1 2	Page 22679 on when he comes, but anyway, we must make sure the points that are being made are realistic points.
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Page 22680	
	Page 22682
	er we had the evidence of Brigadier Calitz who said,
-	nen I was giving instructions, I was giving
	ns in relation to koppie 3 to POP members, never
	wd dispersal instructions to the other units."
5 Provincial Commissioner, in the analysis LLL19 that sets 5 That's the	e correct evidence as I know it.
6 out the TRT shooters' training records, there we see we 6 MS	S LE ROUX: Chair, we'll make
7 have 56 TRT members. Of those we have two completed 7 submission	ons in due course. Obviously Provincial
8 courses in human rights in the past five years, zero in the 8 Commissi	ioner, the only point I want you to deal with is
9 period preceding that, and then 189 and 42 respectively 9 given the	TRT are often deployed in the same operation as
10with respect to shooting practice and firearms training,10POP, and	we see from the training records that most of them
11and 161 courses in what we've called the specialist TRT11don't even	n have one course in crowd management, in
12 category completed. Now my question with respect to TRT 12 understar	nding what the POP members would be doing, the
13training is that it's not exceptional that TRT members will13point is w	vhy wouldn't they be given even just one course in
14be called in to support POP, is it? It often happens?14POP so the	nat when they are deployed together with POP
	they understand the crowd management principles
	being used? Wouldn't it help the TRT members when
17 given crowd management or POP-related training?17 they are d	deployed together to know what the crowd
18 GENERAL MBOMBO: Just repeat the question 18 management	nent principles are that the POP are busy using?
19 again. 19 GE	ENERAL MBOMBO: I think what you should
20 MS LE ROUX: Sure. We see from the 20 first under	erstand, Chairperson, is if these people are
21 training records the TRT members have done barely any crowd 21 deployed,	, what are they really deployed to do. We do not
	e TRT for crowd management in the frontline. As
	person has said that in the one incident it did
	but that was not the purpose of their deployment.
25 regular POP training, or in fact any POP training with 25 MS	S LE ROUX: Provincial Commissioner, for
Page 22681	Page 22683
• •	d, we don't have to go there now but in Mr White's
2 important that your TRT members understand crowd management 2 statemen	t, page 122, section 8, he deals with the first aid
3 principles and POP principles? 3 that was	provided or not provided to the wounded on the 16th
4 MR SEMENYA SC: Chair, my recollection of 4 and we're	e obviously dealing with respect to scene 1, and
5 the evidence is that the TRT do not do crowd management 5 these are	obviously the TRT members that he's criticising
6 operations themselves. Even on the 16th the contemplation 6 at that po	pint. Could I ask you to look at the TRT shooters
7 was POP would do that element of the operation and the 7 training a	analysis, because there we've added in a column
8 others would come for different reasons completely 9 that look	s at when they received first aid training and
8 others would come for different reasons completely. 8 that looks	
	see is from the 56 members of the TRT only three
9 CHAIRPERSON: Yes, yes, I think there is 9 what we	see is from the 56 members of the TRT only three elived any first aid training. One of those was in
9CHAIRPERSON:Yes, yes, I think there is9what we start10evidence that on occasions, I think there was an incident10have received	2
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	Page 22684		Page 22686
1	to do in the execution of their task? Is that what you're	1	apparently providing immediate first aid to what I'm told
2	saying?	2	is body C near scene 2. However," he says, "there's no
3	GENERAL MBOMBO: No, no, that's not what	3	evidence of such immediate first aid being provided at
4	I'm saying, Commissioner. That is why I'm saying if there	4	scene 1."
5	is a chance to do so.	5	Now the reason I'm asking you the question is I'm
6	MS LE ROUX: Provincial Commissioner, let	6	looking ahead; one of the things we have to do in this
7	me take to you to Mr White's statement. That will be the	7	Commission is make recommendations for the future and
8	fairest and easiest way to do this. So Mr White's final	8	clearly we're going to be asked by the Human Rights
9	statement JJJ178, page 122 and paragraph 8.1.3, there Mr	9	Commission who presented us with Mr White's report, clearly
10	White explains why it's important that the equivalent of	10	they're going to ask us to recommend that officers who are
11	TRT members in the Marikana operation receive firearms	11	provided with firearms, particularly people like the TRT,
12	training. He says, "Specialist firearms officers," which	12	should be given first aid training so that they can do the
13	is the TRT here, "receive additional training in	13	kind of things that are described in this paragraph and
14	administering first aid for those with bullet wounds. This	14	what Lieutenant Colonel McIntosh very properly did at, near
15	is done on the principle that if you provide an officer	15	scene 2.
16	with a firearm, you increase the likelihood that gunshot	16	So when you answer my question, don't necessarily
17	injuries might arise, therefore to mitigate this the police	17	look backwards at what didn't happen because a question may
18	should provide those officers with the basic first aid	18	arise about that, but you know, hindsight they say is
19	skills to assist any person that they have been forced to	19	20/20. We're busy now looking ahead. So looking ahead
20	shoot with that firearm." He goes on to then say that,	20	into the future, would you support a recommendation that
21	"Footage from the recent high-profile murder of a soldier	21	TRT members, generally speaking officers equipped with
22	in Woolwich, London, is instructive. Firearms officers are	22	firearms, particularly firearms of the nature we're dealing
23	seen shooting both suspects, but within a matter of seconds	23	with here, should receive basic first aid training so they
24	the same officers provide urgent first aid attention to	24	can act in the manner in which Colonel McIntosh acted at
25	those suspects and by doing so may have saved both of their	25	scene 2?
	Page 22685		Page 22687
1	lives." So the point of Mr White's criticism here is that	1	GENERAL MBOMBO: I think, Chairperson, if
2	lives." So the point of Mr White's criticism here is that the TRT members present at Marikana, precisely because they	2	GENERAL MBOMBO: I think, Chairperson, if something like that has got to be designed, there would be
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	Page 22688		Page 22690
1	Roux.	1	training, this is shooting practise that members continue
2	MS LE ROUX: Thank you, Chair.	2	to go through.
3	Provincial Commissioner, I'd now like to explore the	3	COMMISSIONER HEMRAJ: Well let's ask the
4	consequences of failing particular courses and I want to	4	General. Shooting practise, when you speak of shooting
5	start with shooting practise. Now am I correct that	5	practise is that what you envisage takes place at the
6	shooting practise faces two different skills. The first is	6	police station level?
7	the ability to accurately hit a target and the second is	7	GENERAL MBOMBO: That is so, Mr Chair.
8	the ability to distinguish between threats, so to	8	COMMISSIONER HEMRAJ: And at that stage
9	distinguish when to shoot. Whether there's a lethal threat	9	what are they practising, the actual shooting of the
10	or non-lethal threat it's an element of judgment. Am I	10	targets and accuracy?
11	correct that those are the two skills that shooting	11	GENERAL MBOMBO: That is why I'm saying
12	practise tests, accuracy of hitting a target and judgment	12	I'm not sure whether accuracy is part of this exercise, but
13	as to when to shoot?	13	aiming at the target is one.
14	GENERAL MBOMBO: Mr Chair, I'm not sure	14	COMMISSIONER HEMRAJ: And this is
15	about that. Yes I know that one of them – I know one	15	conducted on the shooting range, this practise, this
16	objective is to aim at the target, but I'm not sure about	16	shooting practise?
17	all the objectives that you put.	17	GENERALM MBOMBO: That is correct.
18	MS LE ROUX: Other than shooting practise	18	MS LE ROUX: Thank you, Provincial
19	are you aware of any other way in which the SAPS tests or	19	Commissioner, so let's just focus on the accuracy. So
20	trains members on that second element, the judgment element	20	shooting practise is being able to hit the target. If a
21	as to when to shoot or not to shoot?	21	member fails shooting practise what are the consequences?
22	GENERAL MBOMBO: Can you repeat the	22	Does it mean they can't carry a firearm when they're on
23	question please?	23	duty?
24	MS LE ROUX: Sure. As I understand your	24	GENERAL MBOMBO: There's a difference, Mr
25	answer you accept that the SAPS shooting practise, that you	25	Chair, I don't know whether this shooting practise is
	Page 22689		Page 22691
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2	know of, tests accuracy, tests the ability to hit the target. You don't know if shooting practise tests the	2	connected to the maintenance, shooting practise, the shooting practise that is done at station or unit level. I
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Marikana Commission of Inquiry

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5
2 question Chair
4 CHAIRPERSON: It appears that there's 4 CHAIRPERSON: The course of 1st of
5 another course simply called shooting practise. There are 5 February 2011 it appears, according to the list, as being
6 some courses called maintenance shooting practise and there 6 maintenance shooting practise risk group high. You don't
7 are courses simply called shooting practise. Now you've 7 know what that means. And the other one, the one in August
8 told us you don't know what exactly maintenance shooting 8 2011 that's maintenance shooting practise medium risk
9 practise involves. So we can't ask you any further 9 group, that's the way it's described. You don't know what
10 questions about that, but in the case of a course called 11 cheating provide what does that involve? 11 constraints and c
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1	Page 22696 of shooting practise in February 2011 and August 2011 and	1	Page 22698 [14:20] Maintenance shooting is done by someone who is
2	failed in service firearms training in September 2011, yet	2	already proficient in carrying and using of a firearm. As
3	he is sent off to scene 2. He is a member of TRT and he's	3	counsel explained, it is done by means of three firearms,
4	sent off to scene 2, armed with an R5 rifle and he fires it	4	an R5, shotgun, and a 9mm. Initially when you were tested
5	six times. Now unless we know the significance of his	5	in those three different firearms and you fail one, you
6	consistent failures of these various courses it does tend	6	were regarded as having failed the course, the shooting
7	to cause alarm bells to ring. Now can you help us on that?	7	course. That was then changed to say if you pass one or
8	MR SEMENYA SC: That's the type of	8	two of those tests or different firearms, then you are
9	evidence I propose to make available to the Commission.	9	regarded as having passed that particular calibre. You are
10	For instance maintenance shooting entails the proficiency	10	then given a chance, a remedial chance for the firearms
11	of the use of three types of firearms. You fail one	11	that you have not passed. So I can say that there is no
12	because you have failed the course but all this evidence	12	way that we will deploy an officer with a firearm that he
13	I'll put on affidavit for the benefit of the –	13	is not able to use as he's supposed to be, or a firearm
14	CHAIRPERSON: Ms Le Roux, it does sound	14	that he is not permitted to use.
15		15	MS LE ROUX: Provincial Commissioner, I
16	from what we've heard as if the present witness isn't going to be able to help us, but it may be that in the light of	16	
			understand you saying that you are tested as being
17 18	the extra information which Mr Semenya proposes to put before us that we'll be able to deal constructively with	17 18	proficient and then this maintenance shooting practice tests you on the three weapons. Does there ever come a
	-	10	point though where repeatedly failing maintenance shooting
19 20	this point. Would you agree with that? MS LE ROUX: Yes, Chair, and we'll	20	
20	certainly engage with the police legal team about getting	20	practice means you're no longer proficient, or once you've been declared proficient once to carry a firearm, is that
22	that explanation of what is entailed in the different	22	good forever? Is there any consequence to repeatedly
22	courses. The next question, I just have one more question	22	failing shooting practice?
23	on this which is do you have any system or process whereby	23	GENERAL MBOMBO: At the moment we don't
25	you receive the results of these shooting practise	25	have anything in place as to what should be done with such
20	Jou receive the results of these shooting processe	20	have anything in place us to what should be done with such
	Page 22697		Page 22699
1	Page 22697 exercises? So do you get told when a member has failed a	1	Page 22699 a person, except when there are signs that he is not able
1 2		1 2	5
	exercises? So do you get told when a member has failed a		a person, except when there are signs that he is not able
2	exercises? So do you get told when a member has failed a shooting practise and do you – that's the first question.	2	a person, except when there are signs that he is not able to use that particular firearm. The police officials are
2 3	exercises? So do you get told when a member has failed a shooting practise and do you – that's the first question. Do you get told that a member has failed the shooting	2 3	a person, except when there are signs that he is not able to use that particular firearm. The police officials are looked at every quarter to ensure that they are still fit
2 3 4	exercises? So do you get told when a member has failed a shooting practise and do you – that's the first question. Do you get told that a member has failed the shooting practise?	2 3 4	a person, except when there are signs that he is not able to use that particular firearm. The police officials are looked at every quarter to ensure that they are still fit to carry that firearm, even if that officer had failed the
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Marikana Commission of Inquiry

1	Page 22700	1	Page 22702
1	degree of deficiency in a person's ability is. So the	1	that failure at section level relates to POP management or
2	point Mr Semenya makes, as you've heard, he's not	2	to the section leader of a particular POP unit? Because
3	suggesting that the point should be dismissed out of hand,	3	the conclusions we are likely to draw from this evidence
4	but we should only revert to it once we have information as	4	may be unhelpful unless we understand what it entails –
5	to what exactly these things mean.	5	MS LE ROUX: Chair, all I –
6	MS LE ROUX: I understand the point,	6	CHAIRPERSON: The witness has said that
7	Chair, but the difficulty is my learned friend objected	7	she wants to find out what it involves and she will then be
8	before the question came. So all I'd said is that we have	8	able to express an opinion on that. Isn't that right?
9	20 members who failed their most recent shooting practice	9	Prima facie it doesn't look good, but it may be that the
10	with firearms at Marikana, 18 of them shoot live	10	important words are "on section level" and it may be the
11	ammunition. The question to the Provincial Commissioner is	11	inability to pass, or the failure to pass the test at
12	whether she has any comment on whether the fact that they	12	section level may not disable someone, or disqualify
13	had failed has any relevance to what they did at Marikana,	13	someone from acting as an ordinary foot soldier, as it
14	in your opinion. Is there anything relevant to how they	14	were, carrying a shotgun and firing rubber balls, but that
15	conducted themselves on the 16th that we should draw from	15	person might not be able to exercise any kind of command
16	the fact that they had failed shooting practice?	16	over a section, but we don't know. It's something we're
17	COMMISSIONER HEMRAJ: But Ms Le Roux,	17	going to find out.
18	aren't we going back to the same question if we don't quite	18	MS LE ROUX: Yes, Chair, and obviously we
19	know what it is that they were tested for and in what	19	only have the evidence that SAPS has disclosed to us, but
20	aspect they failed? Isn't that a basic problem with this	20	we'll follow up to establish what that means. But
21	approach?	21	Provincial Commissioner, one more question then on this; do
22	CHAIRPERSON: Well, she was just asking	22	you know of any consequences for failing a POP course?
23	the Provincial Commissioner – if the Provincial	23	Does it affect your – can that member still be deployed in
24	Commissioner says she doesn't know, well then that's where	24	a POP operation if they failed a POP course? Do you know?
25	it ends, but the Provincial Commissioner may say something	25	GENERAL MBOMBO: What I know is that when
	Page 22701		Page 22703
1	else. Provincial Commissioner, what do you say about -	1	police officers have failed a course that is core in their
2	you've heard the question; are you able to comment on the	2	duties, an important course, they are given what is called
3	point or is it a matter which you have to leave unanswered	3	a remedial opportunity and if they fail all those
4	because you don't know what these things mean?	4	opportunities they will then be stationed in functions that
5	GENERAL MBOMBO: Mr Chair, I think I	5	are alternative places that are not the core functions of
6	tried to explain what I know and I also said I do not have	6	their training.
7	the knowledge about how the training is done, the details	7	MS LE ROUX: Thank you, Provincial
8	of the training.	8	Commissioner If we can then mays on to 111.24 which
9			Commissioner. If we can then move on to LLL24, which
	MS LE ROUX: Provincial Commissioner, let	9	relates to –
10	MS LE ROUX: Provincial Commissioner, let me move on then. If you could turn to LLL23, this is a	9 10	
10 11			relates to –
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11	me move on then. If you could turn to LLL23, this is a summary with respect to Warrant Officer Motlabane. Now in	10 11	relates to – COMMISSIONER HEMRAJ: Ms Le Roux, before you do that, this warrant officer failed the course on 22
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	Page 22704		Page 22706
1	practice and the use of firearm and so on. It's the crowd	1	did something on the 26th of April 2012 which endangered the
2	– POP course described as "Crowd management on section	2	lives of others, by disregarding safety rules and it looks
3	level," and then on the next page it goes on, "Institution	3	to me as if he was then before a disciplinary tribunal
4	divisional training, in-service training PSS," whatever	4	which found him guilty and declared him unfit to handle a
5	that stands for. There it says, "Completed, failed." Then	5	firearm for five years from the 8th of October 2017 – sorry,
6	he's passed, he's completed other tests, shooting practice	6	the 8th of October 2012 to the 8th of October 2017. So the
7	for example he's completed and so forth, so it may be that	7	point appears to be that he was the subject of a
8	it isn't a problem in giving him a shotgun and letting him	8	disciplinary inquiry which had this result, but in respect
9	shoot rubber balls, but he shot, passed the shooting	9	of something that had happened on the 26th of April 2012,
10	practice. It would depend therefore what exactly the	10	and the question would be was it appropriate to send
11	course that he failed involved, but again that's something	11	someone who was facing a charge of that kind to take part
12	we'd have to find out in due course, isn't it?	12	in the activities at, police operations at Marikana where
13	MS LE ROUX: Yes, and of course, Chair,	13	he was called upon to fire an R5 and did so five times at
14	all we were highlighting is his failure of the most recent	14	scene 1.
15	crowd management course that he took when he was on POP,	15	MS LE ROUX: Yes, Chair –
16	deployed –	16	CHAIRPERSON: Sorry to interrupt you, but
17	CHAIRPERSON: Yes, yes, I understand	17	I think that's right. He's a TRT member. I don't know
18	that, but I mean you know, if he was a mere foot soldier,	18	where – do you know where he came from?
19	as it were, in a crowd management operation under the	19	GENERAL MBOMBO: Soweto.
20	command of someone who'd passed and all he had to do really	20	MS LE ROUX: Soweto.
21	was fire rubber balls from a shotgun, then maybe there	21	CHAIRPERSON: Yes, I'm sorry, I'm wrong.
22	isn't a problem, but if he had to exercise some kind of	22	I'm shown the document which relates to him and the offence
23	judgment, as it were, in the management of a crowd then the	23	is recorded – I don't quite understand this – oh, the
24	point you make may have some substance. But we don't know	24	offence is recorded as having happened on the 23rd of April
25	the answer to that yet, do we?	25	2012. He was fined on the 26th, so he'd already been
	Dage 22705		Page 22707
1	Page 22705 MS LE ROUX: Correct, Chair. We'll need	1	Page 22707 convicted in April 2012 and then what stood over was the
1 2	MS LE ROUX: Correct, Chair. We'll need	1 2	Page 22707 convicted in April 2012 and then what stood over was the inquiry as to his fitness to handle a firearm and that
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1		1	
	Page 22708		Page 22710
1	accurate information relating to this rather than solicit	1	convicted in connection with that firearm or an act
2	an answer from the Provincial Commissioner.	2	concerning that firearm, it would normally take us a month
3	MS LE ROUX: Chair, I'd welcome accurate	3	or maybe at the longest two months to finalise the fitness
4	information about this particular member, but to the extent	4	process. Maybe they might have their own reasons which are
5	that this is the way SAPS records disciplinary incidents in	5	unknown to me.
6	a member's employment history, if the Provincial	6	MS LE ROUX: And in that period where
7	Commissioner could assist us to explain how to read this	7	you're evaluating their fitness to carry a firearm, are
8	record, I would be grateful to her.	8	they nevertheless permitted to carry a firearm?
9	[14:40] CHAIRPERSON: Yes, I'm sorry, Ms Le Roux,	9	GENERAL MBOMBO: According to the law
10	please proceed. My colleague is drawing something to my	10	we're supposed to suspend that person in using a firearm if
11	attention.	11	they have been convicted.
12	MS LE ROUX: Thanks, Chair. Provincial	12	MS LE ROUX: So if Constable Pakati's
13	Commissioner, can you assist the Commission in	13	disciplinary record reflects that in April 2012 he was
14	understanding Constable Pakati's disciplinary record? Are	14	found guilty of the offence of endangering the lives of
15	we reading it correctly that the offence is committed on 23	15	others by disregarding safety rules or regulations, and he
16	April, there's a verdict imposed three days later and then	16	was then in a period where his fitness to carry a firearm
17	later in October is when his fitness to carry a firearm is,	17	was being assessed, he should have been suspended?
18	that he's declared unfit to carry a firearm? Is that how	18	GENERAL MBOMBO: Not being suspended from
19	we should read that statement? Can you help us?	19	duty, but the use of firearm is suspended. He cannot use a
20	GENERAL MBOMBO: Mr Chair, I think	20	firearm.
21	Counsel Semenya was correct, was telling the truth that we	21	MS LE ROUX: And so your understanding of
22	would, the person who could be able to give us a correct	22	how that suspension would work, he certainly wouldn't be
23	answer is someone from Gauteng.	23	deployed with an R5 rifle?
24	MS LE ROUX: Provincial Commissioner,	24	GENERAL MBOMBO: I think so, Mr Chair.
25	sorry to interrupt you, but I understand that may be true	25	MS LE ROUX: Thank you, Provincial
1	Page 22709 with respect to this particular member, but is this a	1	Page 22711
1 2	format of a disciplinary record that you are familiar with?	1 2	Commissioner. Provincial Commissioner, one more question on Constable Pakati; assuming he was in the phase of having
2	Have you seen a SAPS disciplinary record that looks like	2	his fitness evaluated and that he should have been
	this and can you help us in understanding the different	4	suspended from using a firearm, yet we know that he was in
4 5	dates that are entered?	5	Marikana with an R5 rifle and he fired five rounds, who
6	GENERAL MBOMBO: According to me I've	6	would be responsible for him being deployed with a firearm
7	never seen such a situation. A person commits an offence	7	on the 16th of August? Who would have been able to make
8	on the 23rd, sentenced on the 26th, it looks like the time	8	that deployment decision?
9	is too short, taking into account the investigations that	9	GENERAL MBOMBO: When we get members we
10	should be done.	10	get them when they come with their commanders, if they come
11	COMMISSIONER HEMRAJ: Madam, do you know	11	and assist in an operation. It would then be that
		1	2.2.2.2.2.5 of an epotention of the the thet
		12	commander that is commanding them who will be able to know
12	whether the inquiry as to being able to carry a firearm is	12 13	commander that is commanding them who will be able to know all those details about all the members that are with him.
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		T	
1	Page 22712	1	Page 22714
1	just provide the figures, or numbers of members who we need trained in the refresher course.	1	strikers who were arrested at scene 2? Did you know that at that time?
2	I further said, Mr Chair, last year we had better	2	
	figures of members who were sent for the training. I said	3 4	GENERAL MBOMBO: No, I did not know at that time, Mr Chair.
4 5	I was not sure about the exact number, but I said around	4 5	
6	hundred. I then verified that information and it is 130	6	MS LE ROUX: And were you aware that some of the strikers who were arrested had alleged that SAPS
		7	members had shot some of the strikers dead while they were
7 8	people who were trained, but again they were trained in refresher course, because I'm told that the formal crowd	8	surrendering? Were you aware of that?
9	management course, as far as that is concerned they are	0 9	GENERAL MBOMBO: At that time no, I did
		9 10	
10 11	still finalising the enhancement of the curriculum. There are plans to train a significant number of police officers	10	not. MS LE ROUX: Now, Provincial
	as soon as that curriculum is finalised. I wish to		
12		12	Commissioner, you know that those allegations were widely
13	apologise to the Commission for misleading it first, the	13	reported in the media at the time. Did you not become
14	first time.	14	aware of them through the media at least?
15	MS LE ROUX: Provincial Commissioner, let	15	GENERAL MBOMBO: I'm not sure if I met,
16	me record that we obviously appreciate that you've	16	or became aware of that even in the media.
17	clarified the position and been able to place the	17	MS LE ROUX: But are you aware as you sit
18	additional information before the Commission, but I must	18	here today that allegations have been made that SAPS
19	ask you who you consulted with. Where did you get this	19	members shot strikers while they'd surrendered and they
20	information during the course of your cross-examination	20	were being arrested? Are you aware of those allegations as
21	today that you're able to now provide it to the Commission?	21	you sit here today?
22	GENERAL MBOMBO: I got that information	22	GENERAL MBOMBO: I hear about those now.
23	from the documents that I have, but what I really wanted	23	MS LE ROUX: But only in the Commission
24	from Brigadier Pretorius was the numbers, the figures that I was asked about.	24 25	process, correct?
25	T was asked about.	20	GENERAL MBOMBO: That is correct, yes.
	Page 22713		Page 22715
1	Page 22713 MS LE ROUX: So you discussed these	1	Page 22715 MS LE ROUX: Now we understand from your
1 2	-	1 2	5
	MS LE ROUX: So you discussed these		MS LE ROUX: Now we understand from your
2	MS LE ROUX: So you discussed these questions with Brigadier Pretorius. Did you do that over	2	MS LE ROUX: Now we understand from your statement and from your earlier evidence that with respect
2 3	MS LE ROUX: So you discussed these questions with Brigadier Pretorius. Did you do that over the lunch adjournment?	2 3	MS LE ROUX: Now we understand from your statement and from your earlier evidence that with respect to Warrant Officer Myburgh you referred the matter to IPID
2 3 4	MS LE ROUX: So you discussed these questions with Brigadier Pretorius. Did you do that over the lunch adjournment? GENERAL MBOMBO: I asked them for the numbers of the people who were trained in the Public Order only.	2 3 4	MS LE ROUX: Now we understand from your statement and from your earlier evidence that with respect to Warrant Officer Myburgh you referred the matter to IPID and you hoped that they would take a statement from him,
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1	Page 22716 what he was saying.	1	Page 22718 GENERAL MBOMBO: Mr Chair, when a police
2	MS LE ROUX: But Provincial Commissioner,	2	officer has done something or reporting an act that
3	why didn't you make further enquiries? Because I	3	involved the police, especially if one carefully looks at
4	understand you would expect IPID to do its investigation,	4	Myburgh's statement, we do not go into that matter again.
5	but by then we knew there was going to be a commission of	5	We hand it over to IPID.
6	inquiry and we'd covered this morning, more than 250	6	MS LE ROUX: And Provincial Commissioner,
7	members of the police that were at Marikana still haven't	7	where you knew there would be a commission of inquiry and
8	given any sort of statement. So –	8	what Warrant Officer Myburgh had told you would clearly be
9	MR SEMENYA SC: Chair –	9	important to the Commission's work, did you make any
10	MS LE ROUX: Why didn't you pursue	10	efforts internally to see if anyone could corroborate what
11	whether anyone could corroborate what Warrant Officer	11	Warrant Officer Myburgh had told you for the Commission?
12	Myburgh had told you?	12	[15:00] GENERAL MBOMBO: I did not do that
13	MR SEMENYA SC: Chair, we dealt with this	13	because I knew the Commission had discovered Myburgh's
14	subject at length and you even told Mr Mpofu that IPID is	14	statement.
15	an independent institution, the police are not supposed to	15	MS LE ROUX: Let me move on. Provincial
16	interfere in that type of investigation. We're going back	16	Commissioner, at the end of paragraph 51 in your statement
17	to the same subject.	17	Myburgh told you that in September he'd referred the matter
18	MS LE ROUX: Chair, I'm not enquiring as	18	to "a white man working at the Air Wing." Do you know who
19	to whether the Provincial Commissioner interfered with IPID	19	that white man working at the Air Wing was?
20	or pursued anything through the IPID process. I'm asking	20	GENERAL MBOMBO: At the moment I think he
21	whether she made any other enquiries, knowing there would	21	had told Colonel Vermaak about it because we asked him if
22	be a commission of inquiry, to corroborate what Warrant	22	he can point out this white man.
23	Officer Myburgh had told her.	23	MS LE ROUX: You asked him when you met
24	CHAIRPERSON: I think, Mr Semenya, it	24	with him on the 1st of October if he could point out the
25	sounds as if the question can be asked, provided it's	25	white man?
	Page 22717	1	Page 22719
1	limited in the way that Adv Le Roux has now indicated and	1	GENERAL MBOMBO: That is so, yes.
2	limited in the way that Adv Le Roux has now indicated and it doesn't involve any suggestion of interference with	2	GENERAL MBOMBO: That is so, yes. MS LE ROUX: And did he then point out
2 3	limited in the way that Adv Le Roux has now indicated and it doesn't involve any suggestion of interference with IPID, which is the point you made.	2 3	GENERAL MBOMBO: That is so, yes. MS LE ROUX: And did he then point out Colonel Vermaak?
2 3 4	limited in the way that Adv Le Roux has now indicated and it doesn't involve any suggestion of interference with IPID, which is the point you made. MR SEMENYA SC: Well, I understand the	2 3 4	GENERAL MBOMBO: That is so, yes. MS LE ROUX: And did he then point out Colonel Vermaak? GENERAL MBOMBO: He described him, did
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Marikana Commission of Inquiry

1	Page 22720	1	Page 22722
1	CHAIRPERSON: Well, I don't think the	1	employee who has reason to believe that the information
2	question is in any way wrong. The witness is being asked	2	concerned shows or tends to show one or more of the
3	for her opinion as to Myburgh's conduct in doing what he	3	following," and one of those is that "Criminal offences
4	did. There are a number of inferences which can actually	4	being committed, has been committed, is being committed, or
5	be drawn, but I'll allow the question, but you heard the	5	is likely to be committed; (b), that the person has failed,
6	question? Would you agree with counsel it was a brave	6	is failing, or is likely to fail to comply with any legal
7	thing for Warrant Officer Myburgh to come forward with the	7	obligation to which that person is subject; that a
8	allegation that he made? Do you agree with that, or don't	8	miscarriage of justice has occurred, is occurring, or is
9	you agree?	9	likely to occur; that the health or safety of an individual
10	GENERAL MBOMBO: Mr Chair, it is not easy	10	has been, is being, or is likely to be endangered, or any
11	for me to say whether it is brave or not because I take it,	11	other matter that has been, is being, or is likely to be
12	it was the duty of the police officers to tell us	12	deliberately concealed."
13	everything that happened there and we've been trying for	13	So taking Warrant Officer Myburgh's account of
14	some time to get information as to what had happened there.	14	him seeing another SAPS member on his version as set out in
15	MS LE ROUX: Provincial Commissioner, as	15	your statement, that he sees an injured - he passes an
16	we understand what Warrant Officer Myburgh did, he was	16	injured striker leaning against a rock. One he passed him
17	acting in the role of what we know as a whistleblower. Are	17	he heard a gunshot behind him. When he turned to look he
18	you familiar with the term whistleblower?	18	saw an NIU member put his firearm in the holster, asked the
19	GENERAL MBOMBO: That is correct, Mr	19	member what he was doing and the member answered to the
20	Chair.	20	effect that "These people deserve to die."
21	MS LE ROUX: And I'm correct that SAPS	21	The Human Rights Commission submits that that
22	has no whistleblower policy, am I not?	22	would qualify as the type of disclosure covered by the
23	GENERAL MBOMBO: We use a public service	23	Protected Disclosures Act and therefore that it is a
24	policy.	24	whistle-blowing incident –
25	MR SEMENYA SC: Chair, I must confess my	25	CHAIRPERSON: Yes, but if you –
	Page 22721		Page 22723
1	confusion. A police officer who witnesses a crime can't be	1	MS LE ROUX: But of course I don't need
2	a whistleblower. Maybe I'll have a look at the statute.	2	to convince the Provincial Commissioner of that fact or
3	COMMISSIONER HEMRAJ: Isn't he under a	3	version –
4	legal duty, Mr Semenya, to report any such act?	4	CHAIRPERSON: Is it suggested that the
5	CHAIRPERSON: Anyway, I could understand	5	warrant officer suffered any occupational detriment in
6	if a junior police officer sees a general doing something	6	consequence of this disclosure? You see, the whistle-
7	wrong and reports that, you argue he's got duties and so	7	blowing act says if you blow the whistle, in other words
8	on, but nevertheless he might be subject to all kind of de	8	
~		Ŭ	you make a disclosure and it's a protected disclosure, and
9	facto sanctions for blowing the whistle, as it were, on the	9	you make a disclosure and it's a protected disclosure, and your employer then subjects you to an occupational
9 10	facto sanctions for blowing the whistle, as it were, on the general, but where he's making a report about another	_	
	-	9	your employer then subjects you to an occupational detriment, then there's, consequences follow. There are
10	general, but where he's making a report about another	9 10	your employer then subjects you to an occupational detriment, then there's, consequences follow. There are
10 11	general, but where he's making a report about another member who may even be his junior I think, I don't	9 10 11	your employer then subjects you to an occupational detriment, then there's, consequences follow. There are remedies available to the employee who's being subjected to
10 11 12	general, but where he's making a report about another member who may even be his junior I think, I don't understand the scope for it being suggested that he's a	9 10 11 12	your employer then subjects you to an occupational detriment, then there's, consequences follow. There are remedies available to the employee who's being subjected to the occupational detriment, which are set out in section 4
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1	Page 22724 though at some stage. If in fact it's not suggested that	1	Page 22726 whistleblower whether or not you're prejudiced. You're a
2	there's occupational detriment suffered by Myburgh, then I	2	whistleblower by making a protected disclosure.
3		3	CHAIRPERSON: There are a number of
	don't see that there's a problem under the act. You'll		
4	notice the statement of Warrant Officer Swartz, according	4	questions. The first one, was he a whistleblower.
5	to paragraph 13 thereof was provided to the evidence	5	MR BUDLENDER SC: Yes.
6	leaders at their request. But anyway, carry on with the	6	CHAIRPERSON: In other words did the act
7	questioning in the meanwhile. I don't want to stifle the	7	apply to the disclosure that he made. Right, the second
8	point because I'm not quite sure what it is, but I have	8	question is was he – clearly if he was, if he is a
9	indicated to you that I have certain problems which I'd be	9	whistleblower covered by the act, he's entitled to the
10	grateful if they were explained to me in due course. But	10	protection which the act affords and it applies clearly to
11	carry on for the time being.	11	the police service as well, even though they may - we're
12	COMMISSIONER HEMRAJ: Before we go there,	12	told they haven't got a policy, but it applies to employees
13	can we have some assistance with that part of the Police	13	in the private and the public sector. So the presumption
14	Act which refers to the obligation of a policeman to report	14	that the act doesn't apply to the State is rebutted by
15	any criminal act, Mr Semenya? I think that makes it clear	15	that.
16	beyond any doubt what he's obliged to do legally.	16	The next question is, once you accept he's a
17	MR SEMENYA SC: We'll get to it.	17	whistleblower he's entitled to protection. The next
18	COMMISSIONER HEMRAJ: You're shaking your	18	question is, does he need the protection in the sense that
19	head, Mr Budlender. Do you have something –	19	has he been exposed to any occupational detriment? That's
20	MR BUDLENDER SC: Well, Chair, a person	20	the question we're going to get to in due course, but Ms Le
	· · · · ·		
21	who is under an obligation to make a disclosure may	21	Roux is going to carry on for the time being and eventually
22	nevertheless be a whistleblower, whether or not persecuted	22	all these matters will be clear to us.
23	for it, and if persecuted is entitled to protection, but	23	MS LE ROUX: Thanks, Chair, and I'm
24	the fact that somebody is under an obligation to make a	24	indebted to my learned friend for his intervention.
25	disclosure doesn't mean that that person may not also be a	25	Provincial Commissioner, have you provided any particular
	Dago 22725		Dogo 20202
1	Page 22725 person who falls under the Protected Disclosures Act. So	1	Page 22727 support to Warrant Officer Myburgh to prevent him being
1	person who falls under the Protected Disclosures Act. So	1	support to Warrant Officer Myburgh to prevent him being
2	person who falls under the Protected Disclosures Act. So the Protected Disclosures Act deals with people who	2	support to Warrant Officer Myburgh to prevent him being intimidated or harassed in any way? Have you, are you
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Marikana Commission of Inquiry

	Page 22728		Page 22730
1	they relate to what Warrant Officer Myburgh has reported to	1	Mr De Rover, at scene 2 and I was present when Warrant
2	you. So if we can start in LLL14, which is the new	2	Officer Breedt of K9 showed Mr De Rover where he saw
3	statement by Warrant Officer Swartz, and in particular if	3	Sergeant Myburgh turned into the rocks at scene 2."
4	we look at paragraphs 30 to 36, commencing on page 6, and	4	So Provincial Commissioner, what this new by
5	then 39 to 43, do you have that, Provincial Commissioner?	5	Warrant Officer Swartz says is that Myburgh admitted to him
6	GENERAL MBOMBO: Not yet. LLL?	6	that Myburgh had shot the person at scene 2, and laughed
7	MS LE ROUX: LLL14, which is the new	7	about it. Now of course that's a very serious allegation.
8	statement submitted by Warrant Officer Swartz –	8	Can I ask you to turn though to LLL13, which is
9	GENERAL MBOMBO: I have it.	9	the initial statement that we received in the Commission
10	MS LE ROUX: - and commencing on page 6	10	from Warrant Officer Swartz. This is the manuscript
11	of that document, paragraph 30, if we just read through	11	statement. Now Chair, it runs to four pages, but
12	briefly, 30, "The police member with the K9 badge told me	12	Provincial Commissioner, nowhere in the initially statement
13	there is another striker in the bushy area at koppie 3 and	13	does Warrant Officer Swartz say anything at all about the
14	that he shot him. He further on told me he thought that	14	allegations he makes against Warrant Officer Myburgh.
15	the striker was dead. I asked him where the man that he	15	There's simply no reference to anything even like that.
16	shot is and he showed me in the direction of the big rocks	16	I then need you to turn to exhibit LLL15, which
17	and the bushy area of koppie 3. When the paramedics and	17	is the pocketbook completed by Warrant Officer Swartz, and
18	other personnel come to me I told them they must go and	18	if we turn to the page marked 68 –
19	look for the other striker that was shot by the unknown K9	19	CHAIRPERSON: There's a passage there
20	member. The paramedic that came to me was from the mine	20	that's been highlighted so completely that we can't read
21	medics. After a short while they brought a wounded man	21	it. Do you know what the highlighted words are?
22	that was shot in his pelvic. They applied first aid. They	22	[15:20] MS LE ROUX: In the pocketbook, Chair,
23	searched the man, could not find any other weapons. After	23	no, we don't know. That's how we received it.
24 25	a short time had lapsed Captain Kidd came to me from the left-hand side and I told him what had happened and I	24 25	CHAIRPERSON: The trouble is if you photostat a document that's been highlighted sometimes the
25	nen-hand side and i told him what had happened and i	23	photostat a document that's been nightighted sometimes the
	Page 22729		Page 22731
1	specifically told him what the sergeant of K9 had told me.	1	highlighted portions don't come out. I wonder whether that
2	He made some notes thereof and walked away."	2	can be looked into - it is time to take the tea adjournment
3	And then he leaves the scene, then goes to the	3	and I know there are people who have problems with sitting
4	JOC on the 18th and 19th of August and then from paragraph	4	for a long time and suffer discomfort if we go on sitting
5	39 he states, "While we were waiting for the lawyers to	5	for too long. So we'll take the tea adjournment now and I
6	take our warning statements some of us were smoking and	6	hope that attempts can be made to obtain the original of
7	chatting with other police members. I saw the sergeant of	7	the diary because I – I mean the pocketbook, because
8	K9 and immediately recognised him as the man who told me	8	presumably the highlighted words will then be visible, or
9	he'd shot the striker. I made a joke and told him that he	9	readable on the original. But we'll take the tea
10	said he killed one of the strikers, but it seemed to me	10	adjournment now.
11	that he can't shoot very well. The sergeant of K9, who was	11	[COMMISSION ADJOURNS COMMISSION RESUMES]
12	unknown to me, only grinned and walked away.	12	[15:40] CHAIRPERSON: The Commission resumes.
10	lator the year we were called up to Siste Impela	13	Provincial Commissioner, you're still under oath.
13	Later the year we were called up to Siesta Impala		
14	Mine to consult with the legal team of SAPS in Rustenburg.	14	MIRRIAM NOSAZISO ZUKISWA MBOMBO: s.u.o.
14 15	Mine to consult with the legal team of SAPS in Rustenburg. I was asked by Captain Aucamp if I knew who Sergeant	14 15	MR BUDLENDER SC: Chair, may I just
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Page 227321 "I've just shot somebody." What we then did was, he1 rocks and noting that the sergeant said there2 reported that to us and we reported that to the SAPS legal2 man in the rocks." So just to recap where w3 team and we asked them to arrange for a statement to be4 taken from Warrant Officer Swartz, and the statement, the4 taken from Warrant Officer Swartz, and the statement, the5 fuller detail, and he says that it's Warrant Officer Swartz has the5 typed statement of Warrant Officer Swartz which you have is6 Myburgh who he identifies as doing, alleged6 the consequence of that enquiry which we initiated. Thank7 the shooting. Initial statement of Warrant O8 CHAIRPERSON:Now the question, the other9 question I want to know is, do we know what the words are9 this pocketbook where there seems to be sort10 that were highlighted which we can't read on the photostat?10 aspects missing from the account, would be11MR BUDLENDER SC:Mr Pretorius informs me	e are, because en, is the latest full detail, or ficer to have done fficer Swartz,
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	-
11 MR BUDLENDER SC: Mr Pretorius informs me 11 describe it. So he doesn't mention anything	•
12 that they have requested Brigadier Pretorius to make the 12 sergeant reporting that he had shot the man	or thought that
13original available and we're waiting for that.13the man was dead.	
14CHAIRPERSON:It doesn't appear to be14Now of course there are two possibility	
15 blocked out. My understanding is over many years battling 15 and the Human Rights Commission can't esta	ablish which of
16with these things, that people highlight documents,16these is true, but you'll agree with me that the	
17highlight things on documents and then photostat the17least two possibilities here. So the one possibilities	-
18document, the highlighted section can't be read. But it18that Warrant Officer Swartz's account in his	
19doesn't mean that you can't read it if you have the19statement is true and he failed to give a full	and truthful
20 original because it will be highlighted on the original. 20 account in his first statement, because he on	
21 So that problem is in the process of being solved. Where 21 completely, and then a deficient account in h	-
22 is Brigadier Pretorius? Is she –22 So you'll accept that that's one possibility as	to what
23 MR SEMENYA SC: She's at our JOC. There 23 could have happened here, that Warrant Off	
24 are whole hundreds of pocketbooks that are in a box, so we 24 merely failed to put it into his first statement	
25 will attempt to get the box to – if we cannot find it 25 it with all its material details in his pocketboo	k? You
Page 22733 1 legible, then we'll probably go to Swartz for him to help 1 accept that's one possibility?	Page 22735
	ı, Chairperson,
3 CHAIRPERSON: Alright. Well, I don't 3 as you are putting it.	, enan percent,
	mmissioner
4 know whether Ms Le Roux needs the highlighted illegible 4 MS LE ROUX: And Provincial Co	
4know whether Ms Le Roux needs the highlighted illegible4MS LE ROUX:And Provincial Co5section for purposes of her cross-examination.5would you agree with me that if that were tr	ue, if it's
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Marikana Commission of Inquiry

	Page 22736		Page 22738
1	asking you whether you would accept that there's a	1	Officer Swartz's second statement which names Warrant
2	possibility that what Warrant Officer Swartz says in his	2	Officer Myburgh as the very member who shoots and kills one
3	second statement is not true.	3	of the strikers, do you accept the possibility that Warrant
4	GENERAL MBOMBO: It could happen. It	4	Officer Swartz may be saying that about Warrant Officer
5	could be so.	5	Myburgh because Warrant Officer Myburgh is the only SAPS
6	MS LE ROUX: So given that the	6	member who's alleged anything unlawful? Do you accept that
7	allegations made in the second statement come more than 16	7	possibility exists?
8	months after what he saw, and given that it is inconsistent	8	GENERAL MBOMBO: I'm not sure,
9	in material respects with the statements and the	9	Chairperson, whether Warrant Officer Swartz was aware of
10	pocketbooks that are more contemporaneous, and given that	10	Warrant Officer Myburgh's disclosure, and that for me makes
11	what he says in the second statement are allegations that	11	it difficult to believe what you are putting to me.
12	are made against the only individual who is a member of the	12	MS LE ROUX: Provincial Commissioner,
13	SAPS who has given evidence about unlawful acts by SAPS at	13	you've met Warrant Officer Myburgh, but have you met
14	Marikana, do you accept the possibility that this second	14	Warrant Officer Swartz?
15	statement by Warrant Officer Swartz could amount to	15	GENERAL MBOMBO: No, I don't even know
16	precisely the type of harassment, intimidation or other	16	him.
17	adverse treatment that the Protected Disclosures Act –	17	MS LE ROUX: When you met Warrant Officer
18	MR SEMENYA SC: No, no, no, no –	18	Myburgh and you had the interaction where he reported to
19	CHAIRPERSON: No, I'm sorry, Ms Le Roux –	19	you what he saw, did you believe him to be telling you the
20	MS LE ROUX: - is designed to protect	20	truth?
21	whistleblowers –	21	GENERAL MBOMBO: What was important for
22	CHAIRPERSON: I don't understand the	22	me, Chairperson, was that I should accept what he was
23	basis on which this question can be asked. What you're	23	telling me at the time as being the truth.
24	asking really is the witness's opinion as to whether	24	CHAIRPERSON: I wasn't going to allow you
25	certain hypothetical facts constitute occupational	25	actually to ask the question whether she believed it, but
	Page 22737		Page 22739
1	detriment under the act. Now I've ruled over and over	1	she gave the answer which would have been an answer to the
2	again in this Commission that whoever asks the question, I	2	question if you'd phrased it correctly, that she took it
3	don't allow it. If you ask a question of a witness to draw	3	sufficiently seriously to attach importance to it.
4	an inference which this Commission is in a position to draw	4	Alright, you can carry on.
5	equally as the witness is, I don't allow the question. If	5	MS LE ROUX: Chair, I could carry on, but
6	you ask the witness for the witness's opinion as to the	6	I have no further questions for the Provincial
7	law, I disallow the question. Now that's what's happening	7	Commissioner. Thank you very much, Provincial
8	here.	8	Commissioner.
9	MS LE ROUX: Chair, let me –	9	GENERAL MBOMBO: Thank you, Counsel.
10	CHAIRPERSON: I understand you can –	10	CHAIRPERSON: Alright, Mr Semenya, it's
11	MS LE ROUX: Let me then ask the	11	now 7 minutes to 4. I take it you would like to – I mean
12	question –	12	you can start your re-examination now if you wish, but if
13	CHAIRPERSON: I understand you can argue	13	you want me to postpone until 9 o'clock on Thursday so
14	points later, if necessary, but I don't think I should	14	maybe you can collect your thoughts, I will do so, but I'm
15	allow you to ask the witness for her views, because we	15	in your hands.
16	won't be bound by her views anyway. They may be right,	16	MR SEMENYA SC: My untrained background
17	they may be wrong, but we are obliged, I think, to form our	17	tells me that the Provincial Commissioner must be fatigued
18	own opinion on this matter. So anyway –	18	now. She did intimate at one point that she's really
19	MS LE ROUX: Chair, let me rephrase the	19	tired.
20	question then –	20	CHAIRPERSON: No, I understand. I can
	A 1 50 50 50 50 50 50 50 50 50 50 50 50 50	21	understand her being tired and I sympathise with her
21	CHAIRPERSON: Ja, maybe -	- ·	
21 22	CHAIRPERSON: Ja, maybe – MS LE ROUX: - not asking the Provincial	22	entirely, but I would have thought that your questions are
21	CHAIRPERSON: Ja, maybe – MS LE ROUX: - not asking the Provincial Commissioner as to whether she believes this falls foul of	22 23	entirely, but I would have thought that your questions are likely to cause her less distress than perhaps questions
21 22 23 24	CHAIRPERSON: Ja, maybe – MS LE ROUX: - not asking the Provincial Commissioner as to whether she believes this falls foul of the Protected Disclosures Act or not. But Provincial	22 23 24	entirely, but I would have thought that your questions are likely to cause her less distress than perhaps questions asked in cross-examination. But you will be in a better
21 22 23 24 25	CHAIRPERSON: Ja, maybe – MS LE ROUX: - not asking the Provincial Commissioner as to whether she believes this falls foul of	22 23	entirely, but I would have thought that your questions are likely to cause her less distress than perhaps questions

	Page 22740	
1 2	until Thursday at 9 o'clock. MR SEMENYA SC: I'll be indebted, Chair.	
3	[COMMISSION ADJOURNED]	
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abilities 22699:20	22718:2 22721:4,14	afternoon 22603:12	22733:3 22739:4,10	22666:20 22686:1
ability 22582:13	22722:23 22723:7,13	22614:21 22628:3	alterations 22611:9	22733:12
22602:15 22654:8	22724:3,14,15	22631:20 22632:8,10	alternative 22703:5	appear 22596:5
22688:7,8 22689:1	22725:1,2,4,7,10,22	22632:22 22633:10	ammunition 22699:11	22637:12,14,16,25
22693:1 22700:1	22726:6,9,10,14	22638:25	22700:11	22640:8 22654:1
	22736:17 22737:1,24	agency 22654:14,20	amount 22736:15	22666:21 22675:16
able 22615:25	acted 22686:24	ago 22644:2	amounts 22723:21	22703:18 22732:14
22617:18 22643:4	acting 22702:13	agree 22587:8	amplified 22600:17	appeared 22647:11
22644:18 22645:12	22720:17	22589:15 22599:2	22619:9	appears 22587:12
22650:1 22665:25	action 22622:14	22604:16,19 22605:4	analysed 22599:21	22592:24 22617:8
22667:1 22669:13,16	22642:17	· ·	22650:3 22658:12	22631:8 22634:11
22671:10 22678:25	activities 22706:12	22608:3,5 22609:15 22620:5 22626:1,3,21		22645:8 22646:15
22683:25 22685:11			analyses 22679:24	
22690:20 22692:20	activity 22645:12,14	22627:22 22635:9	analysis 22596:10,10	22659:9 22666:14
22696:16,18	acts 22647:11 22736:13	22638:6,9,12,13,15	22596:18,19	22667:11 22675:12
22698:13 22699:1,14	actual 22613:10	22652:3 22655:17	22597:18,22,25	22693:4 22694:8
22701:2 22702:8,15	22623:12 22690:9	22661:1 22670:13,14	22648:17,25 22649:1	22695:5 22706:7
22708:22 22709:12	22694:5 22705:6	22670:16,18	22649:3,4,10	22707:3 22723:19
22711:7,12 22712:17	22709:14	22672:19,20,20	22651:15 22652:11	22733:24
22712:21 22733:11	add 22639:15	22674:19 22696:19	22661:9 22680:5	applicable 22655:4
absence 22625:2	added 22647:13	22719:17,21 22720:6	22683:7 22703:12,14	applied 22639:11
22631:3 22632:11	22683:7	22720:8,9 22734:16	and/or 22627:24	22656:15 22728:22
22636:18,24 22638:5	additional 22684:13	22735:5,16	22631:7 22634:10	applies 22726:10,12
	22712:18	agreed 22588:7	22647:19	apply 22726:7,14
accept 22587:7	Additionally 22637:16	agreeing 22663:7	Annandale 22602:1	appointed 22619:17
22606:10 22619:22	address 22616:9	agreement 22644:19,22	22604:21 22616:11	appreciate 22712:16
22627:5 22657:25	22621:1 22653:16	ahead 22686:6,19,19	22616:14,22	appreciation 22631:1
22658:3 22661:5,6,7				
22661:8 22662:2	addressed 22589:7	aid 22618:21 22683:2,8	22621:19 22622:12	22631:24 22634:16
22672:16 22676:13	22723:21	22683:10,11,13,14,19	22633:3 22658:9	22635:3,5
22678:4,8,18	addressing 22625:14	22683:24 22684:14	22659:2,3 22661:16	approach 22637:9
22683:13,18	adequacy 22601:9	22684:18,24 22685:4	22661:21,22 22662:5	22700:21
22685:12 22688:25	22619:12 22625:15	22685:12,13,22	annual 22678:13,18	approaches 22656:15
22689:19 22726:16	adequate 22669:24	22686:1,3,12,23	answer 22588:4	appropriate 22588:22
22734:22 22735:1,11	22674:16	22728:22	22606:2 22644:25	22620:13 22653:15
22735:21 22736:1,14	adherence 22655:9	aim 22645:22 22647:10	22664:23 22665:14	22653:21 22654:13
22737:25 22738:3,6	adjourn 22739:25	22688:16	22665:15,18	22654:16 22706:10
22738:22	ADJOURNED 22740:3	aiming 22690:13	22669:13 22670:15	appropriately 22589:
	adjournment 22598:18	22693:14	22683:17 22686:16	22656:8
accepted 22608:7,15,17	22621:1 22625:13	Air 22718:18,19	22688:25 22701:13	approve 22631:8
22627:24 22628:7	22648:4,5 22687:9,15	alarm 22696:7	22704:25 22708:2,23	22634:11 22635:15
access 22643:11	22713:3 22731:2,5,10	albeit 22660:6	22704.23 22700.2,23	22635:16,23,25
22671:11 22679:20		alia 22639:4	-	, ,
account 22607:22	22731:16 22734:3		22723:25 22727:14	approved 22606:17
22637:22 22709:9	adjourns 22616:23	align 22656:18	22739:1,1	22632:9,16 22633:1
22713:24 22722:13	22620:19 22648:7	aligned 22583:15	answered 22722:19	22635:2
22734:10,18,20,21	22687:16 22731:11	allegation 22720:8	answering 22613:5	approving 22607:4
22735:8,9	administering	22730:7	answers 22611:5	approximate 22669:1
accuracy 22688:12	22684:14	allegations 22713:14	22699:15	approximately 22650
22689:1,12,15	admit 22663:7	22713:25 22714:12	anticipated 22637:2	22650:18,22
22690:10,12,19	admitted 22730:5	22714:18,20	anyone's 22735:15	22671:12
accurate 22708:1,3	Adv 22625:4,24	22730:14 22736:7,11	anyway 22593:12,16,25	April 22705:8,15,21
accurately 22617:15	22626:1 22717:1	alleged 22637:15	22595:8 22600:6	22706:1,9,24 22707
22688:7 22689:17	22733:7	22640:12 22714:6	22605:21 22640:16	22707:19,20
22692:11	advanced 22584:14	22734:6 22738:6	22644:14 22649:20	22708:16 22710:13
ACCUS 22583:23	adverse 22723:22	allocate 22668:5	22666:24 22677:25	area 22583:15,16
22584:3,10,15	22736:17	allocated 22591:10	22678:24 22679:1	22663:16 22677:17
accused 22646:10	aerial 22624:8	allow 22720:5 22737:3	22699:23 22717:10	22728:13,17
achieves 22607:5	affect 22697:15,19	22737:5,15 22738:24	22721:5 22724:6	22729:24
	22702:23	allowed 22699:22	22733:12 22737:16	areas 22583:20
acknowledged	affidavit 22592:25	allows 22665:24	22737:18	22584:7 22622:19
22656:13	22593:11,17	alphabetically	apart 22608:20	22656:19
acquired 22677:15	22600:18 22695:20	22694:16	apologies 22624:17	aren't 22643:24
act 22583:1 22587:15				
22587:19,22	22695:21 22696:13	alright 22591:19	22650:8	22673:13 22680:24
22595:10,10	22699:18	22593:25 22599:7,13	apologise 22598:7	22687:13 22700:18
22393.10,10	00 1 00000 000			orono ()()7()1.7
22645:21 22646:3,5	affords 22726:10	22621:13 22648:22	22712:13	argue 22721:7
	afraid 22599:8	22649:6,20 22650:20	apparent 22636:17	22737:13
22645:21 22646:3,5	afraid 22599:8 African 22591:6			0

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RealTime Transcriptions

Arbitration

				Page
arising 22580:14	assessed 22710:17	22613:23 22616:4	22616:11 22622:7	22658:11,15,16
armed 22645:22	assist 22618:1,5	22628:2 22642:5	22670:7,10	22661:17,17
22696:4	22635:12 22638:16	22651:11 22654:5	begins 22631:3	22662:12 22682:1
arms 22639:5	22641:17 22642:5	22668:24 22669:3,23	behalf 22711:25	22712:24 22713:2,8
	22645:13 22652:9	22670:11 22674:6	behaviour 22655:10	22732:12,22
arrange 22687:13				-
22694:16 22732:3	22672:6 22684:19	22696:9 22723:11	Belgium 22591:6	bring 22640:5 22647:7
arranged 22621:25	22685:22 22701:18	22732:13	belief 22617:11	22647:10 22735:15
arrangement 22643:11	22708:7,13 22711:11	avoid 22607:2 22629:6	believe 22598:15	broader 22655:1
arranging 22581:12	22727:11,12	22629:15 22630:3,14	22616:3 22638:7	broadly 22713:24
arrest 22637:8,19	assistance 22600:24	await 22651:3	22722:1 22738:11,19	brought 22589:8
22640:3,3 22644:13	22724:13	aware 22601:13	believed 22738:25	22639:1 22646:7,9,18
22645:23,23 22646:6	assisting 22675:11	22602:19,23	believes 22737:23	22646:20,22
22646:9,14,16,16	assume 22602:16	22603:16,18,22	bells 22696:7	22715:17 22719:10
22647:10 22655:7	22612:9 22620:2	22605:11 22612:17	benefit 22620:10	22728:21
arrested 22636:25	22675:9 22689:13	22625:20 22626:6	22696:13	Brussels 22592:20
22637:8,18 22640:2	22707:5	22642:22 22659:3	best 22595:5 22618:20	22593:1
22643:7 22644:6,11	assumed 22600:22	22688:19 22713:23	22642:5 22654:8	budget 22672:8,10
22646:8,21,22	assuming 22711:2	22714:5,8,14,16,17	22657:4 22659:23	budgeting 22672:7
22647:3,3,6,15	22719:18	22714:20 22727:3,14	22660:11	Budlender 22580:5,10
22714:1,6,20	assumption 22689:22	22735:14 22738:9	better 22699:14,17	22580:13,18 22581:2
	-	22133.14 22130.7		
arresting 22640:4	attach 22739:3	D	22712:3 22739:24	22581:5,11,16,20
22642:13,14,19,25	attached 22656:22	B	beyond 22724:16	22582:4,9,18
22644:7,9,10 22645:5	22695:22	b 22722:5	big 22589:6 22675:17	22583:12 22585:9,18
arrestor 22644:11	attaching 22699:19	back 22588:8,23	22728:16	22586:3,9 22587:2,11
arrests 22636:21,22	attacks 22637:16	22663:25 22664:20	bigger 22584:7	22588:13,19
22637:2,7,9,17	22640:12	22687:12 22700:18	bind 22721:14	22589:10,17 22590:2
22638:8 22639:21,21	attempt 22601:9	22716:16	bit 22586:12 22620:16	22590:10,16,22,24
	-			
22641:6 22643:3,19	22619:11 22625:15	background 22605:2	22623:8 22641:23	22591:2,8,16
22646:12 22647:7,14	22732:25	22739:16	Bizos 22625:24	22592:11,15,21
22647:15	attempts 22731:6	backup 22681:15	22626:1	22643:16,17 22644:3
arrival 22662:13	attend 22692:19	backwards 22686:17	black 22594:13	22724:19,20
arrive 22674:25	22697:9	bad 22678:2 22692:6	blame 22667:21	22725:15,20,25
arrived 22632:22	attendance 22616:8	badge 22728:12	blocked 22732:15	22726:5 22731:15,23
22675:9	22646:10	badly 22610:23	blocks 22612:11,11,13	22732:11
articulated 22630:24	attended 22600:6	balance 22586:10	22612:17,25	building 22588:23
ascertain 22669:3	22604:6 22636:22	balls 22702:14 22704:9	22613:14,16 22627:1	bullet 22653:13
asked 22580:16	22640:8 22673:20,22	22704:21	22613.14,10 22027.1	22684:14
22602:23 22613:10	22673:25 22677:13	Baloyi 22666:19,20	blow 22723:7	bullets 22693:24
22621:21 22622:12	22677:14 22697:8	22667:2,10,20	blowing 22721:9	bundle 22597:10,15,18
22622:13 22626:1	attending 22677:24	bar 22652:2	22723:7	burdened 22599:20
22641:11 22686:8	22692:21 22703:13	barbed 22610:10	body 22633:1 22686:2	bush 22670:20
22687:18,20,22	attention 22587:20	barely 22593:2	bold 22649:16	bushy 22728:13,17
22693:20 22711:20	22684:24 22694:1	22680:21	book 22592:3 22648:23	22729:24
22712:25 22713:4	22708:11 22735:15	based 22582:14	boost 22584:20	busy 22581:12
22716:25 22717:11	attestation 22593:11,18	22589:1 22639:24	Boshoff 22727:8	22592:24 22601:22
22718:21,23 22719:9	22593:22 22594:1	22640:7 22661:3,5	bottom 22622:25	22677:12 22682:18
22720:2 22722:18	Aucamp 22729:15	22663:20 22671:22	bound 22737:16	22686:19
22728:15 22729:15	August 22580:19	22694:7	box 22732:24,25	
22729:20 22732:3	22582:22 22590:3	bases 22647:15	brave 22719:19,21	C
22736:23 22739:24	22594:7 22603:23	basic 22657:1,8	22720:6,11	C 22686:2
		22666:22,23	break 22620:13,18	calibre 22691:22
asking 22612:22	22003:10 2201A:22			
	22605:10 22618:22 22619:2 22628:4		22638.13	//698.9
22613:18 22630:11	22619:2 22628:4	22675:20,21	22638:13 brooks 22620:10	22698:9
22613:18 22630:11 22634:9 22642:8	22619:2 22628:4 22636:21 22639:13	22675:20,21 22681:13 22684:18	breaks 22620:10	Calitz 22639:20
22613:18 22630:11 22634:9 22642:8 22686:5 22689:3	22619:2 22628:4 22636:21 22639:13 22640:14 22641:7	22675:20,21 22681:13 22684:18 22685:21 22686:23	breaks 22620:10 breath 22731:18	Calitz 22639:20 22658:10,15,21
22613:18 22630:11 22634:9 22642:8 22686:5 22689:3 22700:22 22716:20	22619:2 22628:4 22636:21 22639:13 22640:14 22641:7 22650:6 22653:5	22675:20,21 22681:13 22684:18 22685:21 22686:23 22689:24,25	breaks 22620:10 breath 22731:18 Breedt 22730:2	Calitz 22639:20 22658:10,15,21 22661:17 22662:12
22613:18 22630:11 22634:9 22642:8 22686:5 22689:3 22700:22 22716:20 22736:1,24 22737:22	22619:2 22628:4 22636:21 22639:13 22640:14 22641:7 22650:6 22653:5 22661:19 22670:5,5	22675:20,21 22681:13 22684:18 22685:21 22686:23 22689:24,25 22700:20	breaks 22620:10 breath 22731:18 Breedt 22730:2 brief 22622:14 22624:5	Calitz 22639:20 22658:10,15,21 22661:17 22662:12 22682:1
22613:18 22630:11 22634:9 22642:8 22686:5 22689:3 22700:22 22716:20 22736:1,24 22737:22	22619:2 22628:4 22636:21 22639:13 22640:14 22641:7 22650:6 22653:5	22675:20,21 22681:13 22684:18 22685:21 22686:23 22689:24,25	breaks 22620:10 breath 22731:18 Breedt 22730:2	Calitz 22639:20 22658:10,15,21 22661:17 22662:12
22613:18 22630:11 22634:9 22642:8 22686:5 22689:3 22700:22 22716:20 22736:1,24 22737:22 asks 22737:2	22619:2 22628:4 22636:21 22639:13 22640:14 22641:7 22650:6 22653:5 22661:19 22670:5,5	22675:20,21 22681:13 22684:18 22685:21 22686:23 22689:24,25 22700:20	breaks 22620:10 breath 22731:18 Breedt 22730:2 brief 22622:14 22624:5	Calitz 22639:20 22658:10,15,21 22661:17 22662:12 22682:1
22613:18 22630:11 22634:9 22642:8 22686:5 22689:3 22700:22 22716:20 22736:1,24 22737:22 asks 22737:2 aspect 22600:11	22619:2 22628:4 22636:21 22639:13 22640:14 22641:7 22650:6 22653:5 22661:19 22670:5,5 22673:10,19 22674:14 22675:3,6,6	22675:20,21 22681:13 22684:18 22685:21 22686:23 22689:24,25 22700:20 basically 22646:4 basis 22627:19	breaks 22620:10 breath 22731:18 Breedt 22730:2 brief 22622:14 22624:5 briefed 22621:22 22632:21	Calitz 22639:20 22658:10,15,21 22661:17 22662:12 22682:1 Calitz's 22624:14 call 22580:14 22589:19
22613:18 22630:11 22634:9 22642:8 22686:5 22689:3 22700:22 22716:20 22736:1,24 22737:22 asks 22737:2 aspect 22600:11 22607:18 22625:14	22619:2 22628:4 22636:21 22639:13 22640:14 22641:7 22650:6 22653:5 22661:19 22670:5,5 22673:10,19 22674:14 22675:3,6,6 22679:25 22694:3,20	22675:20,21 22681:13 22684:18 22685:21 22686:23 22689:24,25 22700:20 basically 22646:4 basis 22627:19 22630:13 22633:13	breaks 22620:10 breath 22731:18 Breedt 22730:2 brief 22622:14 22624:5 briefed 22621:22 22632:21 briefing 22611:15,17	Calitz 22639:20 22658:10,15,21 22661:17 22662:12 22682:1 Calitz's 22624:14 call 22580:14 22589:19 22596:13,17
22613:18 22630:11 22634:9 22642:8 22686:5 22689:3 22700:22 22716:20 22736:1,24 22737:22 asks 22737:2 aspect 22600:11 22607:18 22625:14 22625:16 22640:22	22619:2 22628:4 22636:21 22639:13 22640:14 22641:7 22650:6 22653:5 22661:19 22670:5,5 22673:10,19 22674:14 22675:3,6,6 22679:25 22694:3,20 22695:7 22696:1	22675:20,21 22681:13 22684:18 22685:21 22686:23 22689:24,25 22700:20 basically 22646:4 basis 22627:19 22630:13 22633:13 22647:14 22673:6	breaks 22620:10 breath 22731:18 Breedt 22730:2 brief 22622:14 22624:5 briefed 22621:22 22632:21 briefing 22611:15,17 22613:13 22614:19	Calitz 22639:20 22658:10,15,21 22661:17 22662:12 22682:1 Calitz's 22624:14 call 22580:14 22589:19 22596:13,17 22598:16 22639:20
22613:18 22630:11 22634:9 22642:8 22686:5 22689:3 22700:22 22716:20 22736:1,24 22737:22 asks 22737:2 aspect 22600:11 22607:18 22625:14 22625:16 22640:22 22645:9 22689:9	22619:2 22628:4 22636:21 22639:13 22640:14 22641:7 22650:6 22653:5 22661:19 22670:5,5 22673:10,19 22674:14 22675:3,6,6 22679:25 22694:3,20 22695:7 22696:1 22701:15 22707:8	22675:20,21 22681:13 22684:18 22685:21 22686:23 22689:24,25 22700:20 basically 22646:4 basis 22627:19 22630:13 22633:13 22647:14 22673:6 22689:22 22736:23	breaks 22620:10 breath 22731:18 Breedt 22730:2 brief 22622:14 22624:5 briefed 22621:22 22632:21 briefing 22611:15,17 22613:13 22614:19 22614:20 22618:21	Calitz 22639:20 22658:10,15,21 22661:17 22662:12 22682:1 Calitz's 22624:14 call 22580:14 22589:19 22596:13,17 22598:16 22639:20 22649:4 22653:2
22634:9 22642:8 22686:5 22689:3 22700:22 22716:20 22736:1,24 22737:22 asks 22737:2 aspect 22600:11 22607:18 22625:14 22625:16 22640:22 22645:9 22689:9 22700:20	22619:2 22628:4 22636:21 22639:13 22640:14 22641:7 22650:6 22653:5 22661:19 22670:5,5 22673:10,19 22674:14 22675:3,6,6 22679:25 22694:3,20 22695:7 22696:1 22701:15 22707:8 22711:7 22729:4,17	22675:20,21 22681:13 22684:18 22685:21 22686:23 22689:24,25 22700:20 basically 22646:4 basis 22627:19 22630:13 22633:13 22647:14 22673:6 22689:22 22736:23 batch 22595:11	breaks 22620:10 breath 22731:18 Breedt 22730:2 brief 22622:14 22624:5 briefed 22621:22 22632:21 briefing 22611:15,17 22613:13 22614:19 22614:20 22618:21 22619:3	Calitz 22639:20 22658:10,15,21 22661:17 22662:12 22682:1 Calitz's 22624:14 call 22580:14 22589:19 22596:13,17 22598:16 22639:20 22649:4 22653:2 22672:3
22613:18 22630:11 22634:9 22642:8 22686:5 22689:3 22700:22 22716:20 22736:1,24 22737:22 asks 22737:2 aspect 22600:11 22607:18 22625:14 22625:16 22640:22 22645:9 22689:9 22700:20 aspects 22607:9,21	22619:2 22628:4 22636:21 22639:13 22640:14 22641:7 22650:6 22653:5 22661:19 22670:5,5 22673:10,19 22674:14 22675:3,6,6 22679:25 22694:3,20 22695:7 22696:1 22701:15 22707:8 22711:7 22729:4,17 authorities 22645:4	22675:20,21 22681:13 22684:18 22685:21 22686:23 22689:24,25 22700:20 basically 22646:4 basis 22627:19 22630:13 22633:13 22647:14 22673:6 22689:22 22736:23 batch 22595:11 22597:4 22598:15	breaks 22620:10 breath 22731:18 Breedt 22730:2 brief 22622:14 22624:5 briefed 22621:22 22632:21 briefing 22611:15,17 22613:13 22614:19 22614:20 22618:21 22619:3 briefly 22621:20	Calitz 22639:20 22658:10,15,21 22661:17 22662:12 22682:1 Calitz's 22624:14 call 22580:14 22589:19 22596:13,17 22598:16 22639:20 22649:4 22653:2 22672:3 called 22580:18,23
22613:18 22630:11 22634:9 22642:8 22686:5 22689:3 22700:22 22716:20 22736:1,24 22737:22 asks 22737:2 aspect 22600:11 22607:18 22625:14 22625:16 22640:22 22645:9 22689:9 22700:20 aspects 22607:9,21 22655:1 22674:17	22619:2 22628:4 22636:21 22639:13 22640:14 22641:7 22650:6 22653:5 22661:19 22670:5,5 22673:10,19 22674:14 22675:3,6,6 22679:25 22694:3,20 22695:7 22696:1 22701:15 22707:8 22711:7 22729:4,17 authorities 22645:4 22687:18	22675:20,21 22681:13 22684:18 22685:21 22686:23 22689:24,25 22700:20 basically 22646:4 basis 22627:19 22630:13 22633:13 22647:14 22673:6 22689:22 22736:23 batch 22595:11 22597:4 22598:15 battling 22732:15	breaks 22620:10 breath 22731:18 Breedt 22730:2 brief 22622:14 22624:5 briefed 22621:22 22632:21 briefing 22611:15,17 22613:13 22614:19 22614:20 22618:21 22619:3 briefly 22621:20 22636:15 22728:12	Calitz 22639:20 22658:10,15,21 22661:17 22662:12 22682:1 Calitz's 22624:14 call 22580:14 22589:19 22596:13,17 22598:16 22639:20 22649:4 22653:2 22672:3 called 22580:18,23 22588:6 22589:20
22613:18 22630:11 22634:9 22642:8 22686:5 22689:3 22700:22 22716:20 22736:1,24 22737:22 asks 22737:2 aspect 22600:11 22607:18 22625:14 22625:16 22640:22 22645:9 22689:9 22700:20 aspects 22607:9,21 22655:1 22674:17 22734:10	22619:2 22628:4 22636:21 22639:13 22640:14 22641:7 22650:6 22653:5 22661:19 22670:5,5 22673:10,19 22674:14 22675:3,6,6 22679:25 22694:3,20 22695:7 22696:1 22701:15 22707:8 22711:7 22729:4,17 authorities 22645:4 22687:18 available 22581:6,23	22675:20,21 22681:13 22684:18 22685:21 22686:23 22689:24,25 22700:20 basically 22646:4 basis 22627:19 22630:13 22633:13 22647:14 22673:6 22689:22 22736:23 batch 22595:11 22597:4 22598:15	breaks 22620:10 breath 22731:18 Breedt 22730:2 brief 22622:14 22624:5 briefed 22621:22 22632:21 briefing 22611:15,17 22613:13 22614:19 22614:20 22618:21 22619:3 briefly 22621:20 22636:15 22728:12 Brigadier 22624:14	Calitz 22639:20 22658:10,15,21 22661:17 22662:12 22682:1 Calitz's 22624:14 call 22580:14 22589:19 22596:13,17 22598:16 22639:20 22649:4 22653:2 22672:3 called 22580:18,23
22613:18 22630:11 22634:9 22642:8 22686:5 22689:3 22700:22 22716:20 22736:1,24 22737:22 asks 22737:2 aspect 22600:11 22607:18 22625:14 22625:16 22640:22 22645:9 22689:9 22700:20 aspects 22607:9,21 22655:1 22674:17	22619:2 22628:4 22636:21 22639:13 22640:14 22641:7 22650:6 22653:5 22661:19 22670:5,5 22673:10,19 22674:14 22675:3,6,6 22679:25 22694:3,20 22695:7 22696:1 22701:15 22707:8 22711:7 22729:4,17 authorities 22645:4 22687:18	22675:20,21 22681:13 22684:18 22685:21 22686:23 22689:24,25 22700:20 basically 22646:4 basis 22627:19 22630:13 22633:13 22647:14 22673:6 22689:22 22736:23 batch 22595:11 22597:4 22598:15 battling 22732:15	breaks 22620:10 breath 22731:18 Breedt 22730:2 brief 22622:14 22624:5 briefed 22621:22 22632:21 briefing 22611:15,17 22613:13 22614:19 22614:20 22618:21 22619:3 briefly 22621:20 22636:15 22728:12	Calitz 22639:20 22658:10,15,21 22661:17 22662:12 22682:1 Calitz's 22624:14 call 22580:14 22589:19 22596:13,17 22598:16 22639:20 22649:4 22653:2 22672:3 called 22580:18,23 22588:6 22589:20

Tel: 011 021 6457 Fax: 011 440 9119

RealTime Transcriptions

Marikana Commission of Inquiry

Arbitration

				Page
22681:13 22692:25	22736:25	22591:7 22610:4	22612:24 22613:12	Comparative 22656:23
22693:5,6,7,10	certainly 22595:15	22612:20 22613:6	22613:17 22614:12	compare 22671:25
22694:8,22 22703:2	22612:8 22625:17	22644:16 22686:8,9	22614:15 22621:22	compared 22677:24
22706:13 22729:13	22640:8,11 22667:21	22718:8 22726:8,10	22622:16 22623:25	comparison 22653:25
CALS 22649:1,3,10	22670:1 22678:15	close 22617:5 22733:23	22624:3,3 22652:25	compelling 22619:17
22705:6	22681:17 22696:21	closed 22585:23	22657:21,24 22658:2	competence 22660:19
can't 22603:6 22621:10	22710:22	closing 22616:15	22658:7 22660:17,24	22660:22 22661:2,4
22624:11 22633:19	certificate 22593:18,23	22617:1,18 22634:21	22661:18,23,25	22662:1 22676:15
22640:2 22644:25	22594:2	coherent 22642:4,10	22662:22 22711:10	competent 22615:24
22646:3 22667:21	chain 22642:15	collaboration 22591:6	commanding 22711:12	22660:19 22661:11
22668:16 22678:16	Chair's 22627:5	colleague 22708:10	commands 22655:9	22661:24 22662:19
22699:24 22721:1	22670:24	collect 22739:14	commence 22591:20	complaint 22640:7
22725:7 22729:11	challenge 22599:24	collecting 22640:1	22599:14	complete 22600:2
22730:20 22732:10	22600:15 22607:12	collectively 22606:17	commencement	22641:20
22732:18,19	22607:17,21 22608:4	Colonel 22601:14,21	22629:4,13 22630:1	completed 22589:4
22734:15	22628:7	22602:3,8,14,20	commencing 22600:13	22680:7,12 22683:11
capacitated 22587:18	challenged 22608:14	22603:5,10,16	22653:24 22713:18	22683:12 22695:24
capacity 22582:15	22608:20 22609:8	22604:12 22605:8,12	22728:4,10	22704:5,6,7 22709:19
22583:22 22584:20	challenges 22629:3	22608:12,24	comment 22604:14	22730:17
22585:24 22588:22	chamber 22580:7	22611:11,14,22	22617:2 22618:16,23	completely 22604:19
22588:24	22644:16 22687:20	22612:7 22613:2,7	22620:4 22628:9	22681:8 22730:20
Captain 22623:13	chance 22683:21,21	22614:8,24 22615:4	22629:7,15 22630:12	22734:21
22685:25 22727:8	22684:5 22685:7	22615:25 22616:12	22631:22 22632:19	completion 22660:20
22728:24 22729:15	22692:2 22698:10,10	22616:25 22618:2	22633:19 22638:2	complied 22587:15
capture 22642:4	22701:24	22619:6 22621:6,8,18	22641:2 22648:2	comply 22587:21
22654:6,8	chances 22691:23	22621:21 22622:10	22650:2 22652:1	22588:10 22655:12
captures 22671:10	change 22660:13,13	22622:13,20 22623:5	22685:4 22700:12	22663:21 22722:6
care 22617:2	changed 22583:17,23	22624:1,8 22625:1	22701:2,17	comprehensive
careful 22637:20	22588:2,8 22698:7	22628:10 22630:23	comments 22617:17	22618:18 22654:11
carefully 22718:3	changes 22586:15	22631:10 22632:13	commission 22580:2	computer 22611:8
carried 22633:5	22660:14	22633:13 22634:13	22581:24 22604:8	22612:16,21,24
carry 22596:23,25	charge 22619:18	22634:24 22635:6	22608:13 22618:17	22613:12,22 22616:4
22598:12,14	22646:23 22647:8,12	22642:7,8 22681:11	22620:19,19,20	22626:23 22627:3,10
22633:24 22690:22	22652:25 22662:13	22681:19,20	22636:18,24 22637:5	22627:11 22666:8,14
22691:16,20,21	22675:6 22706:11	22685:25 22686:14	22637:22 22644:21	computers 22602:10,12
22692:20 22698:21	charged 22640:6	22686:24 22718:21	22648:7,7,8 22650:1	22602:15
22699:4 22708:17,18	22646:17	22719:3,6,9,14	22650:3,8 22651:7	concealed 22722:12
22709:12,24 22710:7	Chaskalson 22621:6	22727:10	22655:23 22659:8	concede 22587:13
22710:8,16 22717:14	22623:1,11,19	column 22676:7	22686:7,9 22687:16	conceded 22613:11
22723:24 22724:6,11	chatting 22729:7	22683:7	22687:16,17 22689:7	concentrate 22666:25
22726:21 22739:4,5	check 22643:18	combating 22582:12	22696:9 22701:18	22672:21
carrying 22692:1,17	22644:4	22583:16,18,24	22708:13 22712:13	concentrating 22680:3
22693:18 22697:22	checked 22731:16	22584:5,20,25	22712:18,21	concepts 22621:20
22698:2 22702:14	checklist 22616:15	22585:6	22714:23 22716:5,22	concern 22733:13
case 22587:7 22622:2	chief 22617:20	come 22604:18	22717:23 22718:7,11	concerned 22613:10
22627:21 22640:9	circumstances	22651:19 22675:18	22718:13 22722:21	22639:12 22640:13
22658:17 22670:5	22619:24 22637:8,19	22681:8 22698:18	22723:19 22730:9	22647:2 22678:20
22689:7 22692:13	22647:13,21	22711:10,10	22731:11,11,12	22712:9 22722:2
22693:10 22701:23	civil 22655:5 22656:8	22719:19 22720:7	22734:15 22737:2,4	22735:13
cases 22596:4,4	claims 22735:9	22728:18 22731:1,25	22740:3	concerning 22604:18
22613:9	clarification 22627:5	22733:23 22736:7	Commissioners	22672:2 22710:2
categories 22649:18	22715:12	comes 22591:17	22624:22	22735:16
category 22680:12	clarified 22712:17	22642:10 22663:5	Commissioner's	concerns 22607:10
cause 22595:6 22696:7	clarify 22589:11	22664:16 22679:1	22590:20	22695:22
22739:23	22607:10 22673:8	comfort 22620:10,13	Commission's	concession 22638:21
caused 22648:16	22678:4 22731:16	22620:17	22662:21 22718:9	22639:8,13
22651:10	clarity 22618:6	command 22656:9	commit 22646:15	concludes 22637:14
CC 22591:4	22705:2	22657:19,24	commits 22707:19	conclusion 22584:22
CCU 22582:12	classified 22649:17	22659:10,12 22660:9	22709:7	22628:22
CCUS 22584:1,24,24	cleaning 22681:16	22675:13 22702:15	committed 22647:11	conclusions 22702:3
22585:3	clear 22611:20	22704:20	22708:15 22722:4,4,4	conduct 22631:1
	22614:13 22618:18	commander 22610:5	22722:5	22646:24 22654:14
certain 22643:14	22014.13 22010.10			
777 3 / 19,570 4 44	22639:11 22654:11	22631:8 22632:2	committing 22647:3	22667:18 22679:9
certain 22643:14	2	22631:8 22632:2 22634:11 22711:12	committing 22647:3 communicated	22667:18 22679:9 22720:3 22721:24
certain 22 643:14 22664:14 22668:12	22639:11 22654:11			
certain 22643:14 22664:14 22668:12 22668:19 22669:21	22639:11 22654:11 22655:8 22675:20	22634:11 22711:12	communicated	22720:3 22721:24

Tel: 011 021 6457 Fax: 011 440 9119

RealTime Transcriptions

Marikana Commission of Inquiry

Arbitration

				Page
confers 22587:19	continuing 22660:21	courts 22640:5	22676:6,12 22677:7	decentralised 22591:11
confess 22720:25	continuous 22654:3	22709:13	22678:8,11,14,15,19	decided 22585:22
confirm 22642:19	22655:16,25	cover 22584:7 22656:6	22679:15,21	deciding 22674:6
22664:3	22659:21 22662:17	22721:18	22680:17,21 22681:2	decision 22580:25
confirmation 22660:23	continuously 22661:24	covered 22619:13	22681:5,12,14,25	22582:11,19 22585:1
confirmed 22624:9	22662:17,25	22625:16,24	22682:4,11,15,17,22	
		-		22585:6,13,15,16,17
confirms 22624:1	contractor 22721:17	22654:22 22716:6	22701:21 22703:13	22585:19,19,25
22656:2	control 22654:3,4,9	22722:22 22726:9	22704:1,2,15,19,23	22586:7 22631:8,12
confronted 22639:19	22655:2,9,16 22656:9	covers 22636:15	22712:8	22632:9 22634:11,15
confusion 22721:1	22656:25 22659:21	created 22588:22	crucial 22656:19	22663:22 22711:8
connected 22691:1	controversy 22647:14	22613:7	current 22582:14	decisions 22585:3,10
connection 22585:17	22652:16	creating 22584:20	22584:22 22586:21	22585:11 22589:14
22664:10 22710:1	convicted 22707:1,4,10	crime 22582:12	22589:2 22616:18,22	22632:3
consequence 22698:22	22710:1,11	22583:16,17,23	22654:2,17 22655:14	declaration 22705:22
22699:25 22723:6	convictions 22636:23	22584:5,20,25	22656:24	declared 22698:21
22732:6	convince 22723:2	22585:7 22586:1,10	currently 22589:13	22706:4 22707:9
consequences 22589:13	сору 22581:12 22582:5	22588:4 22642:16	curriculum 22712:10	22708:18
22688:4 22690:21	22612:7 22615:9	22647:17,19 22721:1	22712:12	decrease 22586:25
22697:22 22702:22	cordon 22639:4	crimes 22647:4	cut 22670:19	dedicated 22582:23
22723:10	core 22703:1,5	criminal 22636:14,19		22583:9 22587:16
consider 22651:4,5	correctly 22585:8,16	22637:5,24,25	D	deemed 22584:19
22721:22	22585:24 22586:6	22638:16,25 22639:6	danger 22692:16	22588:25 22596:23
considered 22660:11	22611:10 22657:11	22643:4 22645:9,21	dangerous 22604:10	22596:25 22596:25
			0	
consistent 22629:14	22667:7 22708:15	22646:2,5,11,13,24	22644:7 22647:20	22598:13
22630:2,13 22696:6	22739:2	22647:5,8,11	date 22592:16 22593:8	deficiency 22699:20
22713:25	correspondence	22709:13 22722:3	22593:10,16 22594:2	22700:1
constable 22693:23	22652:10	22724:15	22660:6 22669:6	deficient 22734:21
22694:3,17 22695:23	corroborate 22715:6	criteria 22628:11	22671:5,18 22673:19	22735:8
22705:4,15 22707:24	22715:14,23	22630:23	dated 22592:17	definite 22606:3
22708:14 22710:12	22716:11,22	criticise 22626:9	22652:10 22653:4	Definitely 22630:18
22711:2 22729:19,19	22717:21 22718:10	criticised 22626:2	22705:21	definition 22627:19
constables 22673:16	corroborating	22632:24	dates 22594:7 22707:18	22721:19,22
constant 22586:20	22717:24	criticises 22628:1	22709:5	degree 22645:1
constitute 22736:25	corroboration 22717:7	criticising 22683:5	day 22615:18 22621:3	22676:16 22700:1
constitutional 22657:3	cost 22629:6,15	criticism 22584:11	22621:5 22622:24	deliberately 22722:12
22657:10	22630:3,14	22626:4,22 22627:22	22625:25 22628:6	deliberations 22589:1
constructively	costs 22607:3	22629:7,16,20	22631:2 22641:8,10	delivery 22584:13
22696:18	couldn't 22635:4	22631:1,23 22634:4	22641:14,16,19	demand 22582:14
consult 22729:14	counsel 22580:12	22635:1,8,10 22638:3		22619:25 22625:14
			22729:19	
consultation 22657:21	22591:23 22628:17	22638:12,14,15	days 22708:16	demands 22586:15
consulted 22712:19	22698:3 22708:21	22640:19,22	de 22721:8 22730:1,2	demonstrates 22658:14
contain 22610:1	22711:18 22720:6	22661:23 22685:1,5	dead 22714:7 22728:15	demonstration 22655:6
22644:7	22739:9	criticisms 22632:25	22733:22 22734:13	demonstrations
contained 22612:13	counted 22691:3	cross 22598:20 22600:7	deadlock 22616:19	22586:16 22587:6
containing 22595:16	country 22582:15	22717:8	deadly 22654:16,24,25	deny 22675:14
CONTD 22620:24	22654:19	cross-examination	deal 22591:12 22596:3	department 22655:4
22649:23 22733:16	couple 22580:14	22580:10 22582:2	22604:9 22635:1,7	depend 22654:4
				-
contemplate 22678:10	22592:16	22591:20 22592:7	22642:4 22644:18	22666:4 22704:10
contemplation 22681:6	courses 22596:4	22599:14 22600:9	22682:8 22696:18	depending 22586:11
contemporaneous	22597:5 22649:15,17	22617:21 22620:12	dealing 22594:7	22717:12
22623:3 22736:10	22657:2,8,9 22664:12	22620:24 22649:21	22600:16 22640:15	depict 22623:14
contemporary	22665:8,10 22666:6	22649:23 22670:21	22683:4 22686:22	deploy 22682:22
22660:16	22667:3,24 22668:4,6	22711:16 22712:20	22733:23	22698:12
content 22657:1	22668:11,20,23	22713:8 22717:13	deals 22618:2 22683:2	deployed 22584:4
contents 22603:18		22723:15 22733:5,16	22713:12 22725:2	22610:10 22682:9,14
	22669:9,16,24			
22617:15 22640:23	22670:12 22674:6	22739:24	dealt 22609:15	22682:17,21,21
context 22589:2	22675:8,8 22678:10	cross-examining	22615:20 22617:19	22697:16,18,23
22641:24 22654:9	22678:11,23	22621:6 22641:10	22644:19 22707:3	22702:23 22704:16
22660:17	22679:16,21 22680:8	crowd 22583:18	22716:13 22725:6	22710:23 22711:6
contextualised	22680:11 22683:12	22584:24 22585:25	dear 22594:12	deployment 22621:20
22656:17	22688:4 22693:6,7	22586:10 22587:25	death 22608:8	22621:22 22622:17
continue 22636:3	22695:16 22696:6,23	22604:10,22		22624:2,25 22653:18
La La la partera		-	22619:23	-
	22697:6 22703:13,25	22637:11 22639:25	deaths 22619:21	22682:24 22711:8
22690:1 22693:18			00607.05 00642.01	depth 22617:23
22723:15	court 22646:8,9,11,11	22654:3,4,9 22655:2	22627:25 22643:21	-
22723:15 continued 22588:2	22646:19,20,23	22654:3,4,9 22655:2 22655:16 22656:24	debate 22640:10	describe 22654:10
22723:15				-

Tel: 011 021 6457 Fax: 011 440 9119

RealTime Transcriptions

				Page
described 22649:10,15	directly 22621:24	distinguish 22688:8,9	download 22602:11	efforts 22629:22,24
22657:11 22671:1	22629:2 22652:1	22689:18	downsize 22581:1	22718:10
22677:4,5 22686:13	Director 22644:20	distress 22739:23	22582:12,19	either 22593:4,11
22695:9 22704:2	disable 22702:12	distributed 22609:17	downsized 22585:23	22633:11 22652:1
22719:4,5 22725:3	disagree 22626:8	division 22584:2,23	22587:24	22666:22 22671:4
2		·		
22727:16	22630:17 22652:4	22662:6 22663:11	downsizing 22585:2	22689:16
description 22637:7	disagrees 22660:7	22665:5	drastically 22584:3	electronic 22582:5
deserve 22722:20	disallow 22737:7	divisional 22704:4	draw 22602:15	22627:11
designed 22654:17	disarm 22636:22	docket 22643:7,7	22700:15 22702:3	electronically 22581:7
22687:2 22736:20	22645:23	22644:5,7	22737:3,4	element 22637:25
desirable 22678:18,19	disarmament 22606:8	dockets 22640:24	drawing 22708:10	22681:7 22688:10,20
22685:17	22606:11 22631:18	22643:10	drawn 22600:23	22688:20 22689:3,5
desired 22588:11		document 22581:7		
	22633:4,8,18,25		22601:4 22604:11	elementary 22644:8
despite 22699:11	disbanded 22583:21	22585:17 22589:18	22694:2 22719:24	elements 22681:25
detail 22610:2,7,9,13	discharge 22657:5	22589:19 22593:7	22720:5	emanated 22591:4
22616:14 22645:1	disciplinary 22649:2	22596:6,14,18	drive 22591:5 22651:16	embassy 22592:20
22734:4,5	22652:13 22705:6	22609:17,23 22610:1	22733:9,10,12	22593:1
detailed 22604:11	22706:3,8 22707:16	22610:2 22611:13,17	dropped 22618:24	emerge 22733:25
22615:8 22637:7,21	22708:5,14 22709:2,3	22611:21 22613:11	due 22586:15 22600:6	emphasise 22657:23
22640:22,24 22641:5	22709:15 22710:13	22613:15 22615:8	22604:8 22609:3	employee 22655:13
detailing 22622:11	discipline 22652:14,20	22622:10 22637:4,10	22618:17 22619:20	22705:12 22721:16
22631:3 22637:18	22652:23 22655:13	22639:25 22648:15	22634:8 22644:23	22721:25 22722:1
details 22587:1	22664:4	22648:19,25 22649:9	22647:7 22648:21	22723:11
22610:15 22631:20	disciplined 22655:10	22651:20 22653:4,5,6	22649:22 22682:7	employees 22721:15
22666:25 22693:21	disclose 22725:3,8	22653:8,12,20	22704:12 22724:10	22726:12
22695:13 22701:7	22735:16	22654:14 22656:4,5	22704.12 22724.10	employer 22721:19,25
		-		
22711:13 22719:9	disclosed 22612:18	22656:11 22657:7,11	duties 22584:17	22721:25 22723:9
22734:25	22702:19	22657:16,17,18	22703:2 22721:7	employers 22721:15
detained 22646:19	disclosure 22721:22,24	22662:24,25	22727:12	employment 22708:6
detective 22642:11	22722:22 22723:6,8,8	22663:15 22664:8	duty 22652:24	enable 22671:16
determine 22691:19	22724:21,25	22694:5,6,21 22695:3	22690:23 22697:23	enables 22693:18
detriment 22723:5,10	22725:17,18 22726:2	22695:12,13	22701:15 22710:19	encirclement 22632:15
22723:12 22724:2	22726:7 22738:10	22703:22 22706:22	22715:25 22720:12	22632:17,23
22725:12 22726:19	Disclosures 22595:9,10	22728:11 22730:25	22721:4 22725:8	22633:11,15
			22721.4 22723.8	
22737:1	22721:14 22722:23	22732:18 22733:2	E	encountered 22674:22
developed 22606:12	22725:1,2,7,10,21	documents 22581:23		endangered 22706:1
developing 22601:15	22736:17 22737:24	22591:5,7 22592:2,5	e 22705:13	22722:10
development 22660:21	discomfort 22731:4	22594:11 22596:3,7,9	earlier 22580:16	endangering 22705:17
developments 22589:3	discovered 22711:24	22597:4,6,7 22598:11	22586:12 22617:14	22710:14
diary 22594:2 22731:7	22718:13 22719:10	22598:15,21 22599:3	22645:21 22650:12	endangers 22705:13
dictate 22642:16	discuss 22713:7,9	22613:8,10 22621:2	22715:2	endeavours 22663:20
ultial 22072.10		22013.0,10 22021.2	22713.2	
didm?+ 22610.11.15			20ml + 22621.2	
didn't 22619:11,15	discussed 22605:1,5,13	22623:3 22648:17	early 22621:3	ends 22700:25
22625:15 22626:3	discussed 22605:1,5,13 22611:9 22633:11	22623:3 22648:17 22649:3,4,10,20	Earth 22602:15	ends 22700:25 enforcement 22654:14
22625:15 22626:3 22631:16,17	discussed 22605:1,5,13 22611:9 22633:11 22713:1 22719:13	22623:3 22648:17 22649:3,4,10,20 22658:8 22659:22	Earth 22602:15 22611:14,22	ends 22700:25 enforcement 22654:14 22657:2
22625:15 22626:3	discussed 22605:1,5,13 22611:9 22633:11	22623:3 22648:17 22649:3,4,10,20	Earth 22602:15	ends 22700:25 enforcement 22654:14
22625:15 22626:3 22631:16,17	discussed 22605:1,5,13 22611:9 22633:11 22713:1 22719:13	22623:3 22648:17 22649:3,4,10,20 22658:8 22659:22	Earth 22602:15 22611:14,22	ends 22700:25 enforcement 22654:14 22657:2
22625:15 22626:3 22631:16,17 22667:20 22670:15 22675:7 22686:17	discussed 22605:1,5,13 22611:9 22633:11 22713:1 22719:13 discussion 22608:15 22609:13 22615:18	22623:3 22648:17 22649:3,4,10,20 22658:8 22659:22 22678:9 22694:15,16 22705:4 22712:23	Earth 22602:15 22611:14,22 22621:24 22622:15	ends 22700:25 enforcement 22654:14 22657:2 engage 22592:1 22676:21 22696:21
22625:15 22626:3 22631:16,17 22667:20 22670:15 22675:7 22686:17 22716:3,10 22735:15	discussed 22605:1,5,13 22611:9 22633:11 22713:1 22719:13 discussion 22608:15 22609:13 22615:18 22616:10 22633:16	22623:3 22648:17 22649:3,4,10,20 22658:8 22659:22 22678:9 22694:15,16 22705:4 22712:23 22732:16,17	Earth 22602:15 22611:14,22 22621:24 22622:15 22622:21,23 22623:4 22627:7	ends 22700:25 enforcement 22654:14 22657:2 engage 22592:1 22676:21 22696:21 engaged 22651:21
22625:15 22626:3 22631:16,17 22667:20 22670:15 22675:7 22686:17 22716:3,10 22735:15 22735:15	discussed 22605:1,5,13 22611:9 22633:11 22713:1 22719:13 discussion 22608:15 22609:13 22615:18 22616:10 22633:16 22643:16	22623:3 22648:17 22649:3,4,10,20 22658:8 22659:22 22678:9 22694:15,16 22705:4 22712:23 22732:16,17 doesn't 22593:19	Earth 22602:15 22611:14,22 22621:24 22622:15 22622:21,23 22623:4 22627:7 easier 22649:19	ends 22700:25 enforcement 22654:14 22657:2 engage 22592:1 22676:21 22696:21 engaged 22651:21 22717:24
22625:15 22626:3 22631:16,17 22667:20 22670:15 22675:7 22686:17 22716:3,10 22735:15 22735:15 die 22722:20	discussed 22605:1,5,13 22611:9 22633:11 22713:1 22719:13 discussion 22608:15 22609:13 22615:18 22616:10 22633:16 22643:16 dismissed 22700:3	22623:3 22648:17 22649:3,4,10,20 22658:8 22659:22 22678:9 22694:15,16 22705:4 22712:23 22732:16,17 doesn't 22593:19 22599:1 22617:15	Earth 22602:15 22611:14,22 22621:24 22622:15 22622:21,23 22623:4 22627:7 easier 22649:19 22679:20	ends 22700:25 enforcement 22654:14 22657:2 engage 22592:1 22676:21 22696:21 engaged 22651:21 22717:24 engagement 22655:7
22625:15 22626:3 22631:16,17 22667:20 22670:15 22675:7 22686:17 22716:3,10 22735:15 22735:15 die 22722:20 difference 22690:24	discussed 22605:1,5,13 22611:9 22633:11 22713:1 22719:13 discussion 22608:15 22609:13 22615:18 22616:10 22633:16 22643:16 dismissed 22700:3 dispersal 22606:8,10	22623:3 22648:17 22649:3,4,10,20 22658:8 22659:22 22678:9 22694:15,16 22705:4 22712:23 22732:16,17 doesn't 22593:19 22599:1 22617:15 22622:8 22640:8	Earth 22602:15 22611:14,22 22621:24 22622:15 22622:21,23 22623:4 22627:7 easier 22649:19 22679:20 easiest 22582:19	ends 22700:25 enforcement 22654:14 22657:2 engage 22592:1 22676:21 22696:21 engaged 22651:21 22717:24 engagement 22655:7 Engelbrecht 22633:9
22625:15 22626:3 22631:16,17 22667:20 22670:15 22675:7 22686:17 22716:3,10 22735:15 22735:15 die 22722:20 difference 22690:24 different 22607:21	discussed 22605:1,5,13 22611:9 22633:11 22713:1 22719:13 discussion 22608:15 22609:13 22615:18 22616:10 22633:16 22643:16 dismissed 22700:3 dispersal 22606:8,10 22631:17 22633:7,18	22623:3 22648:17 22649:3,4,10,20 22658:8 22659:22 22678:9 22694:15,16 22705:4 22712:23 22732:16,17 doesn't 22593:19 22599:1 22617:15 22622:8 22640:8 22666:21 22675:10	Earth 22602:15 22611:14,22 22621:24 22622:15 22622:21,23 22623:4 22627:7 easier 22649:19 22679:20 easiest 22582:19 22684:8 22705:5	ends 22700:25 enforcement 22654:14 22657:2 engage 22592:1 22676:21 22696:21 engaged 22651:21 22717:24 engagement 22655:7 Engelbrecht 22633:9 22633:16
22625:15 22626:3 22631:16,17 22667:20 22670:15 22675:7 22686:17 22716:3,10 22735:15 22735:15 die 22722:20 difference 22690:24	discussed 22605:1,5,13 22611:9 22633:11 22713:1 22719:13 discussion 22608:15 22609:13 22615:18 22616:10 22633:16 22643:16 dismissed 22700:3 dispersal 22606:8,10	22623:3 22648:17 22649:3,4,10,20 22658:8 22659:22 22678:9 22694:15,16 22705:4 22712:23 22732:16,17 doesn't 22593:19 22599:1 22617:15 22622:8 22640:8	Earth 22602:15 22611:14,22 22621:24 22622:15 22622:21,23 22623:4 22627:7 easier 22649:19 22679:20 easiest 22582:19	ends 22700:25 enforcement 22654:14 22657:2 engage 22592:1 22676:21 22696:21 engaged 22651:21 22717:24 engagement 22655:7 Engelbrecht 22633:9
22625:15 22626:3 22631:16,17 22667:20 22670:15 22675:7 22686:17 22716:3,10 22735:15 22735:15 die 22722:20 difference 22690:24 different 22607:21	discussed 22605:1,5,13 22611:9 22633:11 22713:1 22719:13 discussion 22608:15 22609:13 22615:18 22616:10 22633:16 22643:16 dismissed 22700:3 dispersal 22606:8,10 22631:17 22633:7,18 22635:14 22682:4	22623:3 22648:17 22649:3,4,10,20 22658:8 22659:22 22678:9 22694:15,16 22705:4 22712:23 22732:16,17 doesn't 22593:19 22599:1 22617:15 22622:8 22640:8 22666:21 22675:10	Earth 22602:15 22611:14,22 22621:24 22622:15 22622:21,23 22623:4 22627:7 easier 22649:19 22679:20 easiest 22582:19 22684:8 22705:5	ends 22700:25 enforcement 22654:14 22657:2 engage 22592:1 22676:21 22696:21 engaged 22651:21 22717:24 engagement 22655:7 Engelbrecht 22633:9 22633:16
22625:15 22626:3 22631:16,17 22667:20 22670:15 22675:7 22686:17 22716:3,10 22735:15 22735:15 die 22722:20 difference 22690:24 different 22607:21 22610:10 22622:18 22622:19 22657:16	discussed 22605:1,5,13 22611:9 22633:11 22713:1 22719:13 discussion 22608:15 22609:13 22615:18 22616:10 22633:16 22643:16 dismissed 22700:3 dispersal 22606:8,10 22631:17 22633:7,18 22635:14 22682:4 dispersion 22622:18	22623:3 22648:17 22649:3,4,10,20 22658:8 22659:22 22678:9 22694:15,16 22705:4 22712:23 22732:16,17 doesn't 22593:19 22599:1 22617:15 22622:8 22640:8 22666:21 22675:10 22677:16 22700:24 22702:9 22717:2	Earth 22602:15 22611:14,22 22621:24 22622:15 22622:21,23 22623:4 22627:7 easier 22649:19 22679:20 easiest 22582:19 22684:8 22705:5 easy 22687:13 22720:10	ends 22700:25 enforcement 22654:14 22657:2 engage 22592:1 22676:21 22696:21 engaged 22651:21 22717:24 engagement 22655:7 Engelbrecht 22633:9 22633:16 enhanced 22588:10 enhancement 22712:10
22625:15 22626:3 22631:16,17 22667:20 22670:15 22675:7 22686:17 22716:3,10 22735:15 22735:15 die 22722:20 difference 22690:24 different 22607:21 22610:10 22622:18 22622:19 22657:16 22658:1,22 22668:20	discussed 22605:1,5,13 22611:9 22633:11 22713:1 22719:13 discussion 22608:15 22609:13 22615:18 22616:10 22633:16 22643:16 dismissed 22700:3 dispersal 22606:8,10 22631:17 22633:7,18 22635:14 22682:4 dispersion 22622:18 22633:4	22623:3 22648:17 22649:3,4,10,20 22658:8 22659:22 22678:9 22694:15,16 22705:4 22712:23 22732:16,17 doesn't 22593:19 22599:1 22617:15 22622:8 22640:8 22666:21 22675:10 22677:16 22700:24 22702:9 22717:2 22721:19 22724:25	Earth 22602:15 22611:14,22 22621:24 22622:15 22622:21,23 22623:4 22627:7 easier 22649:19 22679:20 easiest 22582:19 22684:8 22705:5 easy 22687:13 22720:10 Eddie 22592:8,14	ends 22700:25 enforcement 22654:14 22657:2 engage 22592:1 22676:21 22696:21 engaged 22651:21 22717:24 engagement 22655:7 Engelbrecht 22633:9 22633:16 enhanced 22588:10 enhancement 22712:10 enlarges 22622:6
22625:15 22626:3 22631:16,17 22667:20 22670:15 22675:7 22686:17 22716:3,10 22735:15 22735:15 die 22722:20 difference 22690:24 different 22607:21 22610:10 22622:18 22622:19 22657:16 22658:1,22 22668:20 22669:9,20 22681:8	discussed 22605:1,5,13 22611:9 22633:11 22713:1 22719:13 discussion 22608:15 22609:13 22615:18 22616:10 22633:16 22643:16 dismissed 22700:3 dispersal 22606:8,10 22631:17 22633:7,18 22635:14 22682:4 dispersion 22622:18 22633:4 display 22658:12	22623:3 22648:17 22649:3,4,10,20 22658:8 22659:22 22678:9 22694:15,16 22705:4 22712:23 22732:16,17 doesn't 22593:19 22599:1 22617:15 22622:8 22640:8 22666:21 22675:10 22677:16 22700:24 22702:9 22717:2 22721:19 22724:25 22726:14 22732:14	Earth 22602:15 22611:14,22 22621:24 22622:15 22622:21,23 22623:4 22627:7 easier 22649:19 22679:20 easiest 22582:19 22684:8 22705:5 easy 22687:13 22720:10 Eddie 22592:8,14 22659:23	ends 22700:25 enforcement 22654:14 22657:2 engage 22592:1 22676:21 22696:21 engaged 22651:21 22717:24 engagement 22655:7 Engelbrecht 22633:9 22633:16 enhanced 22588:10 enhancement 22712:10 enlarges 22622:6 enquire 22610:22,24
22625:15 22626:3 22631:16,17 22667:20 22670:15 22675:7 22686:17 22716:3,10 22735:15 22735:15 die 22722:20 difference 22690:24 different 22607:21 22610:10 22622:18 22622:19 22657:16 22658:1,22 22668:20 22669:9,20 22681:8 22688:6 22689:18	discussed 22605:1,5,13 22611:9 22633:11 22713:1 22719:13 discussion 22608:15 22609:13 22615:18 22616:10 22633:16 22643:16 dismissed 22700:3 dispersal 22606:8,10 22631:17 22633:7,18 22635:14 22682:4 dispersion 22622:18 22633:4 display 22658:12 displayed 22614:7	22623:3 22648:17 22649:3,4,10,20 22658:8 22659:22 22678:9 22694:15,16 22705:4 22712:23 22732:16,17 doesn't 22593:19 22599:1 22617:15 22622:8 22640:8 22666:21 22675:10 22677:16 22700:24 22702:9 22717:2 22721:19 22724:25 22726:14 22732:14 22732:19 22733:13	Earth 22602:15 22611:14,22 22621:24 22622:15 22622:21,23 22623:4 22627:7 easier 22649:19 22679:20 easiest 22582:19 22684:8 22705:5 easy 22687:13 22720:10 Eddie 22592:8,14 22659:23 editing 22606:1	ends 22700:25 enforcement 22654:14 22657:2 engage 22592:1 22676:21 22696:21 engaged 22651:21 22717:24 engagement 22655:7 Engelbrecht 22633:9 22633:16 enhanced 22588:10 enhancement 22712:10 enlarges 22622:6 enquire 22610:22,24 22715:22
22625:15 22626:3 22631:16,17 22667:20 22670:15 22675:7 22686:17 22716:3,10 22735:15 22735:15 die 22722:20 difference 22690:24 different 22607:21 22610:10 22622:18 22622:19 22657:16 22658:1,22 22668:20 22669:9,20 22681:8 22688:6 22689:18 22696:22 22697:21	discussed 22605:1,5,13 22611:9 22633:11 22713:1 22719:13 discussion 22608:15 22609:13 22615:18 22616:10 22633:16 22643:16 dismissed 22700:3 dispersal 22606:8,10 22631:17 22633:7,18 22635:14 22682:4 dispersion 22622:18 22633:4 display 22658:12 displayed 22614:7 dispute 22617:14	22623:3 22648:17 22649:3,4,10,20 22658:8 22659:22 22678:9 22694:15,16 22705:4 22712:23 22732:16,17 doesn't 22593:19 22599:1 22617:15 22622:8 22640:8 22666:21 22675:10 22677:16 22700:24 22702:9 22717:2 22721:19 22724:25 22726:14 22732:14 22732:19 22733:13 22734:11	Earth 22602:15 22611:14,22 22621:24 22622:15 22622:21,23 22623:4 22627:7 easier 22649:19 22679:20 easiest 22582:19 22684:8 22705:5 easy 22687:13 22720:10 Eddie 22592:8,14 22659:23 editing 22606:1 Education 22654:4	ends 22700:25 enforcement 22654:14 22657:2 engage 22592:1 22676:21 22696:21 engaged 22651:21 22717:24 engagement 22655:7 Engelbrecht 22633:9 22633:16 enhanced 22588:10 enhancement 22712:10 enlarges 22622:6 enquire 22610:22,24 22715:22 enquired 22601:18
22625:15 22626:3 22631:16,17 22667:20 22670:15 22675:7 22686:17 22716:3,10 22735:15 22735:15 die 22722:20 difference 22690:24 different 22607:21 22610:10 22622:18 22622:19 22657:16 22658:1,22 22668:20 22669:9,20 22681:8 22688:6 22689:18 22696:22 22697:21 22698:5,8 22707:18	discussed 22605:1,5,13 22611:9 22633:11 22713:1 22719:13 discussion 22608:15 22609:13 22615:18 22616:10 22633:16 22643:16 dismissed 22700:3 dispersal 22606:8,10 22631:17 22633:7,18 22635:14 22682:4 dispersion 22622:18 22633:4 display 22658:12 displayed 22614:7 dispute 22617:14 22658:13	22623:3 22648:17 22649:3,4,10,20 22658:8 22659:22 22678:9 22694:15,16 22705:4 22712:23 22732:16,17 doesn't 22593:19 22599:1 22617:15 22622:8 22640:8 22666:21 22675:10 22677:16 22700:24 22702:9 22717:2 22721:19 22724:25 22726:14 22732:14 22732:19 22733:13 22734:11 doing 22617:11	Earth 22602:15 22611:14,22 22621:24 22622:15 22622:21,23 22623:4 22627:7 easier 22649:19 22679:20 easiest 22582:19 22684:8 22705:5 easy 22687:13 22720:10 Eddie 22592:8,14 22659:23 editing 22606:1 Education 22654:4 EE 22605:15,19	ends 22700:25 enforcement 22654:14 22657:2 engage 22592:1 22676:21 22696:21 engaged 22651:21 22717:24 engagement 22655:7 Engelbrecht 22633:9 22633:16 enhanced 22588:10 enhancement 22712:10 enlarges 22622:6 enquire 22610:22,24 22715:22 enquired 22601:18 22603:2 22612:18
22625:15 22626:3 22631:16,17 22667:20 22670:15 22675:7 22686:17 22716:3,10 22735:15 22735:15 die 22722:20 difference 22690:24 different 22607:21 22610:10 22622:18 22622:19 22657:16 22658:1,22 22668:20 22669:9,20 22681:8 22688:6 22689:18 22696:22 22697:21	discussed 22605:1,5,13 22611:9 22633:11 22713:1 22719:13 discussion 22608:15 22609:13 22615:18 22616:10 22633:16 22643:16 dismissed 22700:3 dispersal 22606:8,10 22631:17 22633:7,18 22635:14 22682:4 dispersion 22622:18 22633:4 display 22658:12 displayed 22614:7 dispute 22617:14	22623:3 22648:17 22649:3,4,10,20 22658:8 22659:22 22678:9 22694:15,16 22705:4 22712:23 22732:16,17 doesn't 22593:19 22599:1 22617:15 22622:8 22640:8 22666:21 22675:10 22677:16 22700:24 22702:9 22717:2 22721:19 22724:25 22726:14 22732:14 22732:19 22733:13 22734:11	Earth 22602:15 22611:14,22 22621:24 22622:15 22622:21,23 22623:4 22627:7 easier 22649:19 22679:20 easiest 22582:19 22684:8 22705:5 easy 22687:13 22720:10 Eddie 22592:8,14 22659:23 editing 22606:1 Education 22654:4	ends 22700:25 enforcement 22654:14 22657:2 engage 22592:1 22676:21 22696:21 engaged 22651:21 22717:24 engagement 22655:7 Engelbrecht 22633:9 22633:16 enhanced 22588:10 enhancement 22712:10 enlarges 22622:6 enquire 22610:22,24 22715:22 enquired 22601:18
22625:15 22626:3 22631:16,17 22667:20 22670:15 22675:7 22686:17 22716:3,10 22735:15 22735:15 die 22722:20 difference 22690:24 different 22607:21 22610:10 22622:18 22622:19 22657:16 22658:1,22 22668:20 22669:9,20 22681:8 22688:6 22689:18 22696:22 22697:21 22698:5,8 22707:18	discussed 22605:1,5,13 22611:9 22633:11 22713:1 22719:13 discussion 22608:15 22609:13 22615:18 22616:10 22633:16 22643:16 dismissed 22700:3 dispersal 22606:8,10 22631:17 22633:7,18 22635:14 22682:4 dispersion 22622:18 22633:4 display 22658:12 displayed 22614:7 dispute 22617:14 22658:13	22623:3 22648:17 22649:3,4,10,20 22658:8 22659:22 22678:9 22694:15,16 22705:4 22712:23 22732:16,17 doesn't 22593:19 22599:1 22617:15 22622:8 22640:8 22666:21 22675:10 22677:16 22700:24 22702:9 22717:2 22721:19 22724:25 22726:14 22732:14 22732:19 22733:13 22734:11 doing 22617:11	Earth 22602:15 22611:14,22 22621:24 22622:15 22622:21,23 22623:4 22627:7 easier 22649:19 22679:20 easiest 22582:19 22684:8 22705:5 easy 22687:13 22720:10 Eddie 22592:8,14 22659:23 editing 22606:1 Education 22654:4 EE 22605:15,19	ends 22700:25 enforcement 22654:14 22657:2 engage 22592:1 22676:21 22696:21 engaged 22651:21 22717:24 engagement 22655:7 Engelbrecht 22633:9 22633:16 enhanced 22588:10 enhancement 22712:10 enlarges 22622:6 enquire 22610:22,24 22715:22 enquired 22601:18 22603:2 22612:18
22625:15 22626:3 22631:16,17 22667:20 22670:15 22675:7 22686:17 22716:3,10 22735:15 22735:15 die 22722:20 difference 22690:24 different 22607:21 22610:10 22622:18 22622:19 22657:16 22658:1,22 22668:20 22669:9,20 22681:8 22688:6 22689:18 22696:22 22697:21 22698:5,8 22707:18 22709:4 difficult 22644:9	discussed 22605:1,5,13 22611:9 22633:11 22713:1 22719:13 discussion 22608:15 22609:13 22615:18 22616:10 22633:16 22643:16 dismissed 22700:3 dispersal 22606:8,10 22631:17 22633:7,18 22635:14 22682:4 dispersion 22622:18 22633:4 display 22658:12 displayed 22614:7 dispute 22617:14 22658:13 disputes 22605:11 disputing 22662:16	22623:3 22648:17 22649:3,4,10,20 22658:8 22659:22 22678:9 22694:15,16 22705:4 22712:23 22732:16,17 doesn't 22593:19 22599:1 22617:15 22622:8 22640:8 22666:21 22675:10 22677:16 22700:24 22702:9 22717:2 22721:19 22724:25 22726:14 22732:14 22732:19 22733:13 22734:11 doing 22617:11 22620:3,9 22640:4,5 22676:15 22682:12	Earth 22602:15 22611:14,22 22621:24 22622:15 22622:21,23 22623:4 22627:7 easier 22649:19 22679:20 easiest 22582:19 22684:8 22705:5 easy 22687:13 22720:10 Eddie 22592:8,14 22659:23 editing 22606:1 Education 22654:4 EE 22605:15,19 22616:6	ends 22700:25 enforcement 22654:14 22657:2 engage 22592:1 22676:21 22696:21 engaged 22651:21 22717:24 engagement 22655:7 Engelbrecht 22633:9 22633:16 enhanced 22588:10 enhancement 22712:10 enlarges 22622:6 enquire 22610:22,24 22715:22 enquired 22601:18 22603:2 22612:18 enquiries 22601:11 22715:13 22716:3,21
22625:15 22626:3 22631:16,17 22667:20 22670:15 22675:7 22686:17 22716:3,10 22735:15 22735:15 die 22722:20 difference 22690:24 different 22607:21 22610:10 22622:18 22622:19 22657:16 22658:1,22 22668:20 22669:9,20 22681:8 22669:9,20 22681:8 22696:22 22697:21 22698:5,8 22707:18 22709:4 difficult 22644:9 22738:11	discussed 22605:1,5,13 22611:9 22633:11 22713:1 22719:13 discussion 22608:15 22609:13 22615:18 22616:10 22633:16 22643:16 dismissed 22700:3 dispersal 22606:8,10 22631:17 22633:7,18 22635:14 22682:4 dispersion 22622:18 22633:4 display 22658:12 display 22658:12 displayed 22614:7 dispute 22617:14 22658:13 disputes 22605:11 disputing 22662:16 disqualify 22702:12	$\begin{array}{c} 22623:3\ 22648:17\\ 22649:3,4,10,20\\ 22658:8\ 22659:22\\ 22678:9\ 22694:15,16\\ 22705:4\ 22712:23\\ 22732:16,17\\ \textbf{doesn't}\ 22593:19\\ 22599:1\ 22617:15\\ 22622:8\ 22640:8\\ 22666:21\ 22675:10\\ 22677:16\ 22700:24\\ 22702:9\ 22717:2\\ 22721:19\ 22724:25\\ 22726:14\ 22732:14\\ 22732:19\ 22733:13\\ 22734:11\\ \textbf{doing}\ 22617:11\\ 22620:3,9\ 22640:4,5\\ 22676:15\ 22682:12\\ 22684:25\ 22685:7\\ \end{array}$	Earth 22602:15 22611:14,22 22621:24 22622:15 22622:21,23 22623:4 22627:7 easier 22649:19 22679:20 easiest 22582:19 22684:8 22705:5 easy 22687:13 22720:10 Eddie 22592:8,14 22659:23 editing 22606:1 Education 22654:4 EE 22605:15,19 22616:6 effect 22584:1 22630:7 22722:20	ends 22700:25 enforcement 22654:14 22657:2 engage 22592:1 22676:21 22696:21 engaged 22651:21 22717:24 engagement 22655:7 Engelbrecht 22633:9 22633:16 enhanced 22588:10 enhancement 22712:10 enlarges 22622:6 enquire 22610:22,24 22715:22 enquired 22601:18 22603:2 22612:18 enquiries 22601:11 22715:13 22716:3,21 enquiring 22716:18
22625:15 22626:3 22631:16,17 22667:20 22670:15 22675:7 22686:17 22716:3,10 22735:15 22735:15 die 22722:20 difference 22690:24 different 22607:21 22610:10 22622:18 22622:19 22657:16 22658:1,22 22668:20 22669:9,20 22681:8 22669:9,20 22681:8 22696:22 22697:21 22698:5,8 22707:18 22709:4 difficult 22644:9 22738:11 difficulties 22595:7	discussed 22605:1,5,13 22611:9 22633:11 22713:1 22719:13 discussion 22608:15 22609:13 22615:18 22616:10 22633:16 22643:16 dismissed 22700:3 dispersal 22606:8,10 22631:17 22633:7,18 22635:14 22682:4 dispersion 22622:18 22633:4 display 22658:12 display 22658:12 display 22658:12 display 22614:7 dispute 22617:14 22658:13 disputes 22605:11 disputing 2262:16 disqualify 22702:12 disregarding 22705:14	$\begin{array}{c} 22623:3\ 22648:17\\ 22649:3,4,10,20\\ 22658:8\ 22659:22\\ 22678:9\ 22694:15,16\\ 22705:4\ 22712:23\\ 22732:16,17\\ \textbf{doesn't}\ 22593:19\\ 22599:1\ 22617:15\\ 22622:8\ 22640:8\\ 22666:21\ 22675:10\\ 22677:16\ 22700:24\\ 22702:9\ 22717:2\\ 22721:19\ 22724:25\\ 22726:14\ 22732:14\\ 22732:19\ 22733:13\\ 22734:11\\ \textbf{doing}\ 22617:11\\ 22620:3,9\ 22640:4,5\\ 22676:15\ 22682:12\\ 22684:25\ 22685:7\\ 22717:5\ 22720:3\\ \end{array}$	Earth 22602:15 22611:14,22 22621:24 22622:15 22622:21,23 22623:4 22627:7 easier 22649:19 22679:20 easiest 22582:19 22684:8 22705:5 easy 22687:13 22720:10 Eddie 22592:8,14 22659:23 editing 22606:1 Education 22654:4 EE 22605:15,19 22616:6 effect 22584:1 22630:7 22722:20 effected 22646:12	ends 22700:25 enforcement 22654:14 22657:2 engage 22592:1 22676:21 22696:21 engaged 22651:21 22717:24 engagement 22655:7 Engelbrecht 22633:9 22633:16 enhanced 22588:10 enhancement 22712:10 enlarges 22622:6 enquire 22610:22,24 22715:22 enquired 22601:18 22603:2 22612:18 enquiries 22601:11 22715:13 22716:3,21 enquiring 22716:18 enquiry 22601:24
22625:15 22626:3 22631:16,17 22667:20 22670:15 22675:7 22686:17 22716:3,10 22735:15 22735:15 die 22722:20 difference 22690:24 different 22607:21 22610:10 22622:18 22622:19 22657:16 22658:1,22 22668:20 22669:9,20 22681:8 22688:6 22689:18 22696:22 22697:21 22698:5,8 22707:18 22709:4 difficult 22644:9 22738:11 difficulties 22595:7 difficulty 22620:11	discussed 22605:1,5,13 22611:9 22633:11 22713:1 22719:13 discussion 22608:15 22609:13 22615:18 22616:10 22633:16 22643:16 dismissed 22700:3 dispersal 22606:8,10 22631:17 22633:7,18 22635:14 22682:4 dispersion 22622:18 22633:4 display 22658:12 displayed 22614:7 dispute 22617:14 22658:13 disputes 22605:11 disputing 22662:16 disqualify 22702:12 disregarding 22705:14 22705:17 22706:2	$\begin{array}{c} 22623:3\ 22648:17\\ 22649:3,4,10,20\\ 22658:8\ 22659:22\\ 22678:9\ 22694:15,16\\ 22705:4\ 22712:23\\ 22732:16,17\\ \textbf{doesn't}\ 22593:19\\ 22599:1\ 22617:15\\ 22622:8\ 22640:8\\ 22666:21\ 22675:10\\ 22677:16\ 22700:24\\ 22702:9\ 22717:2\\ 22721:19\ 22724:25\\ 22726:14\ 22732:14\\ 22732:19\ 22733:13\\ 22734:11\\ \textbf{doing}\ 22617:11\\ 22620:3,9\ 22640:4,5\\ 22676:15\ 22682:12\\ 22684:25\ 22685:7\\ 22717:5\ 22720:3\\ 22721:6\ 22722:19\\ \end{array}$	Earth 22602:15 22611:14,22 22621:24 22622:15 22622:21,23 22623:4 22627:7 easier 22649:19 22679:20 easiest 22582:19 22684:8 22705:5 easy 22687:13 22720:10 Eddie 22592:8,14 22659:23 editing 22606:1 Education 22654:4 EE 22605:15,19 22616:6 effect 22584:1 22630:7 22722:20 effected 22646:12 effective 22588:24	ends 22700:25 enforcement 22654:14 22657:2 engage 22592:1 22676:21 22696:21 engaged 22651:21 22717:24 engagement 22655:7 Engelbrecht 22633:9 22633:16 enhanced 22588:10 enhancement 22712:10 enlarges 22622:6 enquire 22610:22,24 22715:22 enquired 22601:18 22603:2 22612:18 enquiries 22601:11 22715:13 22716:3,21 enquiring 22716:18 enquiry 22601:24 22732:6
22625:15 22626:3 22631:16,17 22667:20 22670:15 22675:7 22686:17 22716:3,10 22735:15 22735:15 die 22722:20 difference 22690:24 different 22607:21 22610:10 22622:18 22622:19 22657:16 22658:1,22 22668:20 22669:9,20 22681:8 22696:22 22697:21 22698:5,8 22707:18 22709:4 difficult 22644:9 22738:11 difficulties 22595:7 difficulty 22620:11 22700:7	discussed 22605:1,5,13 22611:9 22633:11 22713:1 22719:13 discussion 22608:15 22609:13 22615:18 22616:10 22633:16 22643:16 dismissed 22700:3 dispersal 22606:8,10 22631:17 22633:7,18 22635:14 22682:4 dispersion 22622:18 22633:4 display 22658:12 displayed 22614:7 dispute 22617:14 22658:13 disputes 22605:11 disputing 22662:16 disqualify 22702:12 disregarding 22705:14 22705:17 22706:2 22710:15	$\begin{array}{c} 22623:3\ 22648:17\\ 22649:3,4,10,20\\ 22658:8\ 22659:22\\ 22678:9\ 22694:15,16\\ 22705:4\ 22712:23\\ 22732:16,17\\ \textbf{doesn't}\ 22593:19\\ 22599:1\ 22617:15\\ 22622:8\ 22640:8\\ 22666:21\ 22675:10\\ 22677:16\ 22700:24\\ 22702:9\ 22717:2\\ 22721:19\ 22724:25\\ 22726:14\ 22732:14\\ 22732:19\ 22733:13\\ 22734:11\\ \textbf{doing}\ 22617:11\\ 22620:3,9\ 22640:4,5\\ 22676:15\ 22682:12\\ 22684:25\ 22685:7\\ 22717:5\ 22720:3\\ 22721:6\ 22722:19\\ 22727:12\ 22734:6\\ \end{array}$	Earth 22602:15 22611:14,22 22621:24 22622:15 22622:21,23 22623:4 22627:7 easier 22649:19 22679:20 easiest 22582:19 22684:8 22705:5 easy 22687:13 22720:10 Eddie 22592:8,14 22659:23 editing 22606:1 Education 22654:4 EE 22605:15,19 22616:6 effect 22584:1 22630:7 22722:20 effected 22646:12 effective 22588:24 effectively 22597:7	ends 22700:25 enforcement 22654:14 22657:2 engage 22592:1 22676:21 22696:21 engaged 22651:21 22717:24 engagement 22655:7 Engelbrecht 22633:9 22633:16 enhanced 22588:10 enhancement 22712:10 enlarges 22622:6 enquire 22610:22,24 22715:22 enquired 22601:18 22603:2 22612:18 enquiries 22601:11 22715:13 22716:3,21 enquiring 22716:18 enquiry 22601:24 22732:6 ensure 22588:21,25
22625:15 22626:3 22631:16,17 22667:20 22670:15 22675:7 22686:17 22716:3,10 22735:15 22735:15 die 22722:20 difference 22690:24 different 22607:21 22610:10 22622:18 22622:19 22657:16 22658:1,22 22668:20 22669:9,20 22681:8 22688:6 22689:18 22696:22 22697:21 22698:5,8 22707:18 22709:4 difficult 22644:9 22738:11 difficulties 22595:7 difficulty 22620:11	discussed 22605:1,5,13 22611:9 22633:11 22713:1 22719:13 discussion 22608:15 22609:13 22615:18 22616:10 22633:16 22643:16 dismissed 22700:3 dispersal 22606:8,10 22631:17 22633:7,18 22635:14 22682:4 dispersion 22622:18 22633:4 display 22658:12 displayed 22614:7 dispute 22617:14 22658:13 disputes 22605:11 disputing 22662:16 disqualify 22702:12 disregarding 22705:14 22705:17 22706:2	$\begin{array}{c} 22623:3\ 22648:17\\ 22649:3,4,10,20\\ 22658:8\ 22659:22\\ 22678:9\ 22694:15,16\\ 22705:4\ 22712:23\\ 22732:16,17\\ \textbf{doesn't}\ 22593:19\\ 22599:1\ 22617:15\\ 22622:8\ 22640:8\\ 22666:21\ 22675:10\\ 22677:16\ 22700:24\\ 22702:9\ 22717:2\\ 22721:19\ 22724:25\\ 22726:14\ 22732:14\\ 22732:19\ 22733:13\\ 22734:11\\ \textbf{doing}\ 22617:11\\ 22620:3,9\ 22640:4,5\\ 22676:15\ 22682:12\\ 22684:25\ 22685:7\\ 22717:5\ 22720:3\\ 22721:6\ 22722:19\\ \end{array}$	Earth 22602:15 22611:14,22 22621:24 22622:15 22622:21,23 22623:4 22627:7 easier 22649:19 22679:20 easiest 22582:19 22684:8 22705:5 easy 22687:13 22720:10 Eddie 22592:8,14 22659:23 editing 22606:1 Education 22654:4 EE 22605:15,19 22616:6 effect 22584:1 22630:7 22722:20 effected 22646:12 effective 22588:24	ends 22700:25 enforcement 22654:14 22657:2 engage 22592:1 22676:21 22696:21 engaged 22651:21 22717:24 engagement 22655:7 Engelbrecht 22633:9 22633:16 enhanced 22588:10 enhancement 22712:10 enlarges 22622:6 enquire 22610:22,24 22715:22 enquired 22601:18 22603:2 22612:18 enquiries 22601:11 22715:13 22716:3,21 enquiring 22716:18 enquiry 22601:24 22732:6

Tel: 011 021 6457 Fax: 011 440 9119

RealTime Transcriptions

				Page
22665:19,21 22669:5	22614:14 22617:14	existing 22656:14	F	favour 22675:10
22699:3	22618:3 22627:5,6,16	exists 22738:7	face 22646:23 22647:8	feared 22687:21
ensured 22588:9	22627:17,17 22628:2	expect 22637:2,6	faces 22639:3 22688:6	February 22580:1
entail 22631:17	22633:7,12,17	22668:17 22680:22	facie 22702:9 22721:18	22694:2,20 22695:5
entailed 22606:8	22634:22 22636:14	22716:4	facilitate 22653:15,20	22696:1
22631:13,25	22636:24 22637:5,11	expectations 22655:10	facing 22706:11	feel 22727:22
22634:16 22635:4	22637:24 22638:10	expected 22589:7	fact 22586:13,22	feels 22727:22
22696:22	22638:14,16,23	22590:15 22644:25	22591:10 22626:4	fell 22594:20
entails 22689:24	22639:6,20 22640:1,6	expecting 22633:24	22642:23 22666:22	felt 22622:17
22696:10 22702:4	22642:5,15,16,18,20	experience 22584:19	22680:25 22700:12	FFF1 22657:17
entered 22709:5	22643:11 22644:22	22599:13 22601:3,6	22700:16 22707:4	field 22609:3 22612:8
entirely 22739:22	22645:4,13 22659:15	22608:21 22615:8	22723:2 22724:1,24	22612:10,15,24
entitled 22646:6	22671:9,13 22672:12	22660:7,8,12,23	22725:8 22731:19	22613:12,17
22647:21 22653:25	22672:14 22681:5,10	22661:5 22662:18	facto 22721:9	22614:12,15
22724:23 22725:21	22682:1,5 22686:3	22678:13	factors 22607:22	22699:22 22707:8
22725:23 22726:9,17	22696:9,12 22702:3	experienced 22588:23	facts 22644:17 22650:1	fifth 22586:14
entrance 22675:22	22702:19 22715:2	22600:23 22601:5	22668:16 22689:11	figure 22586:25
entries 22694:18	22724:5 22736:13	22657:22,25 22658:2	22736:25	22650:12 22669:17
entrusted 22657:20	exact 22668:16 22712:5	22659:20 22660:6,15	fail 22628:18 22629:22	figures 22587:3,10
22659:11 22707:6	exactly 22618:10	22662:23	22691:10 22692:10	22669:1,19 22712:1,4
entry 22694:6	22676:19 22678:12	experiences 22609:17	22696:11 22698:5	22712:24
environment 22657:6	22679:10 22692:13	22609:19	22703:3 22722:6	file 22594:13 22727:10
envisage 22690:5	22693:8 22700:5	experiencing 22589:13	failed 22596:4,20,22	final 22580:18
equally 22737:5	22704:10	expert 22626:4	22598:2,8 22628:7	22589:17,20,21,23
equipment 22660:13	examination 22598:21	22659:23 22729:25	22629:25 22630:4	22590:3,4 22592:9
equipped 22686:21	22600:8	expertise 22602:20	22655:12 22691:15	22600:13,14
equivalent 22684:10	examine 22601:9	22604:14	22693:21 22694:3,8	22605:25 22616:23
error 22642:6	22619:12 22625:15	experts 22626:2,9	22694:19 22695:25	22628:20 22653:13
especially 22586:17	example 22610:8,9,9	22642:16 22656:1	22696:2,12 22697:1,3	22655:20,22 22660:3
22587:6 22617:9	22666:17 22667:1	explain 22610:4	22697:14 22698:6	22684:8 22711:15
22711:20 22718:3	22671:17 22697:25	22611:24 22612:12	22699:4,8,11 22700:9	22713:12
essence 22622:1	22704:7	22620:9 22638:8	22700:13,16,20	finalise 22710:3
essentially 22594:7	exception 22661:20	22642:11,12	22702:24 22703:1,11	finalised 22712:12
22607:19 22608:14	exceptional 22647:4	22649:13,25 22665:4	22704:5,11 22722:5	finalising 22712:10
establish 22583:1	22680:13	22683:15 22685:11	22734:19,24 22735:6	finally 22589:18
22603:9 22621:5	exclude 22721:19	22697:24 22701:6	failing 22688:4 22692:6	find 22589:23 22590:6
22645:5 22650:2,4	excludes 22725:9	22708:7	22698:19,23	22678:19 22702:7,17
22664:21 22665:1,16	excluding 22721:16	explained 22601:17	22699:25 22702:22	22704:12 22705:25
22689:11,19	excuse 22731:18	22602:6 22609:9	22722:6	22728:23 22732:25
22702:20 22707:14	execute 22587:18	22613:14 22617:8,9	fails 22689:16	finds 22595:24
22709:23 22715:5	22622:12	22617:20 22622:15	22690:21 22691:5	fine 22594:25
22734:15	executed 22616:20	22635:17,19 22665:6	22697:21 22701:14	fined 22706:25 22707:5
established 22583:3,13	execution 22616:10	22666:5 22698:3	failure 22604:9	22707:11,12
22587:18 22624:22	22653:19 22684:1	22699:24 22724:10	22630:8,12,25	fingertips 22644:17
22626:5 22627:6	exercise 22690:12	explaining 22617:4,5	22655:12 22695:19	22668:16
22654:18	22691:7,24 22692:19	22621:18,19,25	22702:1,11 22704:14	finished 22614:3
establishing 22621:2	22702:15 22703:23	explains 22621:17	failures 22654:7	fire 22692:21 22704:21
establishment	22704:22 22709:18	22684:10 22685:18	22696:6	22706:13
22582:14,23 22583:9	exercised 22674:13,13	explanation 22611:10	fair 22644:16,24	firearm 22596:11,21,25
evaluated 22711:3	22674:15	22696:22	22670:9	22598:3,12,14
evaluating 22710:7	exercises 22692:14	explicit 22605:1	fairest 22684:8	22677:6,21 22684:16
evening 22623:21	22697:1 avaluated 22628:12.15	explore 22644:15	fall 22677:20 22717:12	22684:20 22685:19
event 22610:23	exhausted 22628:13,15	22688:3	falls 22703:20 22725:1	22685:23 22690:22
22613:8 22637:21	exhibit 22580:8	explored 22644:15	22737:23	22691:17,20,22
22721:13	22582:10,20,21	exploring 22689:23	familiar 22603:17	22692:1,17,20
events 22638:24	22586:14 22592:10	exposed 22656:13	22605:7 22607:17,25	22693:18 22697:23
22653:3,8 22655:6	22600:18 22605:15	22726:19	22709:2 22720:18	22698:2,12,13,21
22670:10	22606:25 22612:1	express 22702:8	families 22595:5	22699:2,4,22 22704:1
	22614:7 22616:6	extent 22640:10,10	far 22592:5 22613:9	22705:23 22706:5
eventually 22632:10	22623:17 22627:1,15	22697:13 22708:4	22639:11 22646:14	22707:2,7,20
22646:7 22691:23			22647.1 22651.11	22708:17,18
22646:7 22691:23 22726:21	22652:17 22653:1	22727:25	22647:1 22651:11	
22646:7 22691:23 22726:21 everybody's 22610:11	22652:17 22653:1 22656:5 22657:17	extra 22696:17	22676:4 22678:20,21	22709:12,24 22710:1
22646:7 22691:23 22726:21 everybody's 22610:11 evidence 22588:15	22652:17 22653:1 22656:5 22657:17 22673:1 22689:23	extra 22696:17 extraordinary	22676:4 22678:20,21 22707:17 22712:9	22709:12,24 22710:1 22710:2,7,8,10,16,19
22646:7 22691:23 22726:21 everybody's 22610:11 evidence 22588:15 22589:12 22605:7,8	22652:17 22653:1 22656:5 22657:17 22673:1 22689:23 22730:16	extra 22696:17 extraordinary 22673:23	22676:4 22678:20,21 22707:17 22712:9 fatigued 22739:17	22709:12,24 22710:1 22710:2,7,8,10,16,19 22710:20 22711:4,6
22646:7 22691:23 22726:21 everybody's 22610:11 evidence 22588:15	22652:17 22653:1 22656:5 22657:17 22673:1 22689:23	extra 22696:17 extraordinary	22676:4 22678:20,21 22707:17 22712:9	22709:12,24 22710:1 22710:2,7,8,10,16,19

Tel: 011 021 6457 Fax: 011 440 9119

Marikana Commission of Inquiry

Arbitration

5				Page
22676.14 24	22656.10 22658.14	22734:4,19 22735:9	22699:18 22704:8	
22676:14,24	22656:19 22658:14	,		22647:17,18,18
22677:18 22678:5	22670:24 22685:24	fuller 22734:5	go 22580:20,24	22705:12,16 22706:4
22680:10 22684:11	22722:3 22731:18	fully 22672:20	22582:20,20,22	22710:14
22684:12,22 22685:3	follows 22628:21	function 22583:15,19	22588:8,19 22600:12	gunshot 22684:16
22686:11,22,22	follow-up 22625:5	22583:19 22584:25	22606:25 22607:16	22685:19 22722:17
22692:3 22693:22	22645:7	22587:17,21	22614:18 22621:4,17	
22696:2,11 22698:3,5	foot 22583:8 22586:12	functions 22583:17	22622:3,10 22623:1	H
22698:8,10 22699:10	22702:13 22704:18	22584:16 22587:19	22623:17 22624:6	hadn't 22630:6
22699:12 22700:10	Footage 22684:21	22657:5 22703:4,5	22625:25 22628:7,18	22707:9
fired 22673:3,9	22685:24	further 22580:10	22628:20,23 22641:9	half 22584:3,6
22693:24 22699:10	footnote 22685:24	22590:23 22622:5	22641:24,24	22595:15 22609:2
22699:10 22711:5	force 22607:3 22628:13	22625:2 22630:6,21	22652:15 22653:11	hand 22592:2,6
fires 22696:4	22628:15 22629:6,15	22640:17,21	22654:1 22655:20	22700:3 22718:5
firing 22702:14	22630:3,7,14 22653:6	22641:24 22644:15	22664:11,14,20	handed 22615:8
first 22585:10	22654:16,16,23,24,24	22645:6 22652:4	22675:21 22677:19	22623:24 22624:10
22587:13,23	22654:25,25 22655:7	22687:19 22693:9	22683:1 22687:20,22	handle 22649:20
22588:20 22593:9	22656:6,7 22675:21	22711:23 22712:3	22687:23 22690:2	22705:23 22706:4
22596:7 22597:9	forced 22684:19	22716:3 22727:17	22691:25 22705:9	22705.25 22700.4
22603:23 22604:10	22685:23	22728:14 22739:6	22718:4 22724:12	handling 22676:14,24
22605:1,4,9,13	foresaw 22608:10	future 22686:7,20	22728:18 22731:4	22678:5
22612:23 22613:19	foreseeable 22619:22		22733:1	hands 22657:24
22621:14 22625:16	22627:25	<u> </u>	goal 22607:5	22739:15
22628:10 22646:7	forever 22698:22	gaps 22656:13,16	goes 22584:9 22604:24	hang 22649:6
22653:17 22666:19	forgive 22620:7	22672:1,2	22616:14 22623:11	happen 22595:5
22678:3 22682:20	22648:1	Gary 22600:13 22660:3	22684:20 22685:20	22599:8 22628:12
22683:2,8,10,11,13	forgotten 22679:8	gathering 22643:20	22687:19 22704:3	22634:1 22678:7
22683:14,19,24	form 22651:19	gatherings 22653:3,7	22729:3	22681:22 22682:24
22684:14,18,24	22699:21 22737:17	Gauteng 22639:1	going 22596:1	22686:17 22687:24
22685:4,12,13,22	formal 22664:17	22708:23	22609:14 22610:5	22736:4
22686:1,3,12,23	22668:1 22712:8	Gazettes 22595:24	22622:12 22630:20	happened 22590:11
22688:6 22689:22	formally 22665:12	generally 22608:17	22633:1 22635:25	22605:24 22615:23
22697:2 22703:15	format 22709:2	22644:9 22646:6,20	22640:18 22642:20	22603.24 22613.23
22712:13,14	forth 22638:23 22704:7	22686:21	22651:24 22659:20	22636:1,2 22663:3
-				
22725:17 22726:4	Fortunately 22733:6	GENERALM	22663:9 22664:21,22	22672:13 22676:1
22728:22 22734:20	forum 22585:13	22690:17	22686:8,10 22695:17	22701:23 22706:9,24
22734:24 22735:7	forward 22720:7	Generals 22601:25	22696:15 22700:18	22720:13,14
firstly 22584:15	foul 22737:23	getting 22635:19	22702:17 22716:5,16	22728:25 22731:18
22694:14	found 22584:6 22595:7	22663:3 22664:7	22723:15 22726:20	22734:23 22735:10
fish 22733:13	22599:13 22600:20	22676:10 22696:21	22726:21 22738:24	happening 22647:1
fit 22588:25 22596:23	22633:2 22705:16	22697:6	good 22580:11,12	22723:19 22737:7
22598:12,13	22706:4 22710:14	GGG27 22658:8	22581:10 22591:21	happens 22680:14
22660:16 22691:20	22727:6	GGG27.1 22658:8	22591:23 22608:9,20	happy 22599:5
22699:3 22709:23	foundation 22599:2	give 22593:8 22630:10	22677:13 22678:2	22727:22
fitness 22707:2,6,13	founding 22694:5,21	22669:13,16	22698:22 22702:9	harassed 22727:2,22
22708:17 22709:18	four 22651:4 22673:20	22695:18 22699:14	Google 22602:15	harassment 22723:22
22710:3,7,16 22711:3	22673:24 22675:8	22707:23,25	22611:14,21	22725:4 22736:16
fits 22703:24	22676:11 22730:11	22708:22 22734:19	22621:24 22622:15	hard 22591:5 22651:15
five 22649:25 22676:9	fourth 22580:24	given 22587:20	22622:21,23 22623:4	22733:9,10,11
22680:8 22705:23	22582:9	22590:11 22609:1	22627:7	hardcopy 22582:6
22706:5,13 22711:5	frequency 22677:23	22615:6,7 22622:14	govern 22654:25	hasn't 22593:10,16
floor 22622:14	22678:12	22624:2,3 22634:21	governs 22653:7	22623:8 22625:19
flow 22592:7	frequent 22711:20	22638:1 22647:13	GOIRANA 22647:24	22663:3 22666:20,23
	frequently 22668:15		-	
flowing 22580:8		22648:15 22650:7,10	grateful 22708:8	22667:10
focus 22638:18 22641:4	22678:7,21 22681:22	22667:2 22674:5	22724:10	haven't 22593:10
22645:9,14 22690:19	22707:17	22680:17,24 22682:9	great 22591:12 22725:7	22595:1 22599:20
focussed 22588:24	friend 22652:10	22682:13 22686:12	22725:16	22643:1,4,17,18,18
follow 22581:4 22616:7	22700:7 22726:24	22691:6,23 22692:2	gridded 22623:23	22643:21,24
22617:1 22630:20	Fritz 22658:11,16,21	22698:10 22703:2	22624:8,21	22651:22 22658:18
22636:16 22642:18	22661:17	22716:8 22725:9	grinned 22729:12	22668:16 22683:15
DOCLE D DOCCE 14	front 22589:20	22736:6,8,10,13	group 22694:9,23	22703:22 22716:7
22645:3 22665:14	22502.25 22612.6	gives 22605:16	22695:1,6,9	22726:12
22645:3 22665:14 22689:11 22702:20	22593:25 22612:6			1 1 22662.5.6
/ 31 1 1 22	22640:16	22616:22 22666:18	guide 22653:17	head 22662:5,6
22689:11 22702:20		22616:22 22666:18		nead 22662:5,6 22663:7,19 22664:23
22689:11 22702:20 22723:10 followed 22595:11	22640:16 frontline 22682:22	22616:22 22666:18 giving 22601:11,19	guidelines 22621:23	22663:7,19 22664:23
22689:11 22702:20 22723:10 followed 22595:11 22596:9 22642:24	22640:16 frontline 22682:22 fry 22733:13	22616:22 22666:18 giving 22601:11,19 22614:25 22616:12	guidelines 22621:23 22653:2	22663:7,19 22664:23 22667:16,21,25
22689:11 22702:20 22723:10 followed 22595:11	22640:16 frontline 22682:22	22616:22 22666:18 giving 22601:11,19	guidelines 22621:23	22663:7,19 22664:23

Tel: 011 021 6457 Fax: 011 440 9119

RealTime Transcriptions

				Page
22593:19 22648:17	HH20 22621:8	identity 22637:18	22640:20 22694:1	inquired 22612:20
22676:7	high 22674:5 22695:6	illegal 22645:12,14	increase 22584:12	inquiry 22637:23
heading 22580:21	higher 22646:21	illegally 22645:22	22585:23 22586:16	22706:8 22707:2,6,12
22589:21 22590:3	highlight 22655:2	illegible 22733:4	22586:25 22587:5	22709:12,13,14
22596:24 22649:14	22732:16,17	illustrate 22637:19	22684:16	22716:6,22 22718:7
				-
headings 22649:16	highlighted 22730:20	illustrates 22681:17	increased 22586:1,22	inside 22729:24
health 22722:9	22730:21,25 22731:1	image 22611:14,22	incurred 22584:12	instance 22671:23
hear 22612:23	22731:8 22732:10,18	22614:8,22	indebted 22726:24	22696:10
22613:18 22615:13	22732:20 22733:4	images 22622:21,23	22740:2	instances 22681:19,21
22658:4 22670:15	highlighting 22704:14	22623:4 22624:9,23	independence	institution 22667:16
22677:25 22714:22	22733:10	22627:7,11	22717:18	22704:3 22716:15
22735:2	highlights 22656:23	imagine 22677:17,22	independent 22716:15	instructed 22581:20
heard 22589:12	highly 22655:10	immediate 22686:1,3	22721:16	instruction 22616:23
	22660:14			22617:7
22605:14 22615:13		immediately 22729:8	indicate 22613:8	
22633:1 22696:15	high-profile 22684:21	22729:22	22616:24 22675:11	instructions 22642:23
22700:2 22701:2	hindsight 22686:18	impacted 22582:12	22678:13	22651:25 22652:7
22720:5 22722:17	history 22658:8,14	Impala 22729:13	indicated 22616:16,21	22655:8 22682:2,3,4
Heerden 22623:13	22708:6 22731:17	imperative 22656:18	22619:6 22632:24	instructive 22684:22
22624:19,23	hit 22688:7 22689:1,17	implementation	22659:6 22717:1	insufficient 22630:4,9
Heerden's 22623:18	22690:20 22693:1	22631:5 22652:18	22724:9	22672:17
held 22619:21	hitting 22688:12	22655:24 22656:21	indicates 22582:15	Intelligence 22638:25
22663:10	hold 22634:1	22664:2	22616:8 22676:4	intended 22626:18
help 22588:3 22591:1	holster 22722:18	implemented 22591:14	indicating 22666:14	intention 22647:1
22659:8 22678:24,25	homes 22639:5	22609:4 22622:2	22676:20	inter 22639:4
22681:13 22682:16	hope 22598:24	22627:25 22632:18	indication 22595:23	interaction 22738:18
22696:7,16 22708:19	22644:19 22687:24	22637:12 22656:3	indicative 22584:11	interest 22591:3
22709:4 22733:1	22699:18 22731:6	implies 22589:22	individual 22596:13,14	22654:22
			-	
helped 22639:16	hoped 22715:4	import 22692:5,10	22597:5 22598:15	interested 22715:5
Hemraj 22591:2,13,18	hopefully 22594:1	importance 22739:3	22654:20 22722:9	interesting 22657:15
22593:21 22600:1,4	hour 22612:15	important 22608:9	22736:12	22685:24
22617:25 22618:9,14	22620:10	22619:25 22637:22	individuals 22598:24	interfere 22716:16
22625:7 22630:19	hours 22639:1	22672:22 22674:17	individual's 22701:23	interfered 22716:19
22635:12,22 22636:4	housekeeping 22592:1	22676:13 22677:23	infer 22636:22	interference 22717:2
22636:7,10 22640:21	22599:15 22600:7	22681:2 22683:19	inference 22719:23	interim 22580:19
22643:13 22644:1	22649:7	22684:10 22702:10	22737:4	22589:20,21,22,23,24
22651:14 22675:19	HR 22652:18 22664:2	22703:2 22718:9	inferences 22720:4	22590:3,4,5,6,8,18
22679:3,10,15,19	human 22581:23	22734:9 22738:21	inform 22616:21	internally 22718:10
22683:23 22690:3,8	22604:7 22618:16	imposed 22705:22	information 22590:25	international 22589:2
22690:14 22692:5,9	22644:21 22650:1	22707:19,20	22696:17 22697:12	22653:25 22654:2
22692:15 22695:14	22657:3,10 22662:21	22708:16	22697:13,15,17	22655:1,15 22659:23
22700:17 22703:10	22666:21 22667:10	impossible 22649:14	22699:18 22700:4	interrogate 22607:9,12
22703:17 22703:10				8
	22667:14,17,20	impression 22605:17	22701:19 22707:24	22607:21
22721:3 22724:12,18	22672:22,22	inability 22702:11	22708:1,4 22712:6,18	interrogated 22608:19
22733:8	22673:20,22,25	inappropriate	22712:20,22	interrogation 22608:13
Hemraj's 22621:1	22674:5,18 22676:6	22631:23	22717:19 22720:14	interrupt 22583:4
22625:4	22676:12,16,25	inaudible 22648:15	22721:24 22722:1	22705:20 22706:16
Hendrickx 22591:17	22677:7,13,14,24	22695:21	22725:3	22708:25
22592:8,14 22655:21	22678:7 22680:8	incidences 22586:17	informed 22643:14	intervene 22646:1
,		incident 22611:4		intervention 22656:19
22655:22 22656:1	22686:8 22722:21		informing 22616:18	
22659:23	22723:18 22734:15	22681:10 22682:23	informs 22732:11	22663:9 22726:24
Hendrickx's 22592:17	hundred 22669:21	22709:14 22722:24	inherent 22655:5	interventions 22663:6
he'd 22706:25	22671:12 22712:6	incidents 22585:25	initial 22584:14	22664:17 22668:2
22707:10 22715:20	hundreds 22732:24	22708:5	22730:9 22734:7	22669:20 22671:3,21
22718:17 22729:9	hypothetical 22736:25	include 22583:17	initially 22602:22	22672:5,7 22697:10
he'll 22651:24	• F · · · · · · · · · · · · · · · · · ·	22652:20 22654:20	22698:4 22730:12	22727:16
he's 22594:5 22621:18	T	22655:3 22657:2,9	initiated 22732:6	interview 22731:24
22629:17 22683:5	icons 22621:24 22622:9	22692:16	initiatives 22584:5,21	interviewed 22731:20
1160812 117/10017	22627:8	includes 22584:23	22653:16,21	22731:21
22698:13 22700:2	idea 22659:6 22681:14	22664:3 22673:9	injured 22722:15,16	intimate 22739:18
22701:15 22703:24		including 22652:24	injuries 22627:24	intimidated 22727:2
	identified 22657:9	meruumg 22032.24		
22701:15 22703:24 22703:25 22704:6,6,7			22684:17 22685:19	intimidation 22723:22
22701:15 22703:24 22703:25 22704:6,6,7 22705:4 22706:17	22672:6 22733:19	22673:10 22674:18	22684:17 22685:19 injury 22608:7	intimidation 22723:22 22736:16
22701:15 22703:24 22703:25 22704:6,6,7 22705:4 22706:17 22708:18 22721:7,10	22672:6 22733:19 identifies 22580:22	22673:10 22674:18 22717:22	injury 22608:7	22736:16
22701:15 22703:24 22703:25 22704:6,6,7 22705:4 22706:17 22708:18 22721:7,10 22721:12 22724:16	22672:6 22733:19 identifies 22580:22 22623:17,19 22734:6	22673:10 22674:18 22717:22 inconsistent 22629:5	injury 22608:7 22619:23	22736:16 introduction 22653:15
22701:15 22703:24 22703:25 22704:6,6,7 22705:4 22706:17 22708:18 22721:7,10 22721:12 22724:16 22726:9,16,17	22672:6 22733:19 identifies 22580:22 22623:17,19 22734:6 identify 22582:18	22673:10 22674:18 22717:22 inconsistent 22629:5 22736:8	injury 22608:7 22619:23 input 22600:14	22736:16 introduction 22653:15 22653:20
22701:15 22703:24 22703:25 22704:6,6,7 22705:4 22706:17 22708:18 22721:7,10 22721:12 22724:16 22726:9,16,17 HHH 22621:7	22672:6 22733:19 identifies 22580:22 22623:17,19 22734:6 identify 22582:18 22622:9 22639:2	22673:10 22674:18 22717:22 inconsistent 22629:5 22736:8 incorporated 22584:1	injury 22608:7 22619:23 input 22600:14 22601:11,19	22736:16 introduction 22653:15 22653:20 introductory 22622:7
22701:15 22703:24 22703:25 22704:6,6,7 22705:4 22706:17 22708:18 22721:7,10 22721:12 22724:16 22726:9,16,17	22672:6 22733:19 identifies 22580:22 22623:17,19 22734:6 identify 22582:18	22673:10 22674:18 22717:22 inconsistent 22629:5 22736:8	injury 22608:7 22619:23 input 22600:14	22736:16 introduction 22653:15 22653:20

Tel: 011 021 6457 Fax: 011 440 9119

RealTime Transcriptions

Marikana Commission of Inquiry

Arbitration

22709-23 22716-16 22724-1 22734-16 22746-16 22746-16 2204-18 2206-10,14 2202-10,14 2202-10,14 1202-11,14 2202-10,14 1202-11,14 2202-10,14 1202-11,13 1202-11,14 1202-11,14 1202-11,14 1202-11,14 1202-11,14 1202-11,14 1202-11,14 1202-11,14 1202-11,14 1202-11,14 1202-11,14 1202-11,13 1202-11,13 1202-11,14 1202-11,14 1202-11,14 1202-11,14 1202-11,12 1202-11,12 1202-11,14 1202-11,14 1202-11,14 1202-11,12 1202-11,12 1202-11,12 1202-11,12 1202-11,12 1202-11,12 1202-11,12 1202-11,12 1202-11,12 1202-11,12 1202-11,12 1202-11,12 1202-11,12 1202-11,12	, ,				
investigation 22716-4 22735:58 22230:1 JUT 22024:18 22000:102280:0 JUT 22024:18 22000:122280:0 JUT 22024:18 22000:122280:0 JUT 22024:18 22000:122280:0 JUT 22024:18 22000:122280:0 JUT 22024:18 JUT 22024:17					Page
investigations 227164 227355.8 22739:10 JJJT 2202418 22000.225 22002.25 22002.25 22002.25 22002.25 22002.25 22002.2717.2 22002.25 22002.272.22 22002.25 22002.272.22 22002.25 22002.272.22 22002.25 22002.272.22 22005.272.22005.22 22005.272.22005.22 22005.272.22 22005.272.22 22005.272.22 22005.272.22 22005.272.22 22005.272.22 22005.272.22 22005.272.22 22005.272.22 22005.272.22 22005.272.22 22005.272.22 22005.272.22 22005.272.22 22005.272.22 22005.272.22 22005.272.272.22 22005.272.22 22005.272.22 22005.272.272.16 122005.272.272.272.16 122005.272.272.272.16 122016.21 22005.272.272.17.17 122016.21 22005.272.272.17.17 122016.21 22005.272.272.272.16 122016.21 22005.272.272.17.17 122016.21 22005.272.272.16 122016.21 22005.272.272.17.17 122016.21 22005.272.272.17.17 122016.21 22005.272.272.17.17 122016.21 22005.17.272.272.17.17 122016.21 22005.17.272.272.17.17 122016.21 22005.17.272.272.17.17.17 122016.21 22005.17.	22709.23 22715.25	22724.1 22734.5	22660.3 3 22684.9	knowledge 22590.8	22644.13
2271/16.16 2271/76.19 22658.19 22668.12 2277.22.6 2277.21.6 2277.22.6 2277.21.6 2277.22.6 2277.21.6 2277.22.6 2277.21.6 2277.22.6 2277.21.6 2277.22.6 2277.21.6 2277.22.6 2277.21.6 2277.22.6 2277.21.6 2277.22.7 2277.21.6 2277.27.21.6 2277.22.6 2277.21.6 2277.21.6 2277.21.6 2277.21.6 2277.21.6 2277.21.6 1 2277.21.6 1 2277.21.6 2277.21.6 2277.21.6 1 22668.12 2277.8.2 2277.8.1 1 1 1 1 1 1 1 1 1 1 1 1 22668.12 <td></td> <td></td> <td>-</td> <td></td> <td></td>			-		
investigations 22600:12 2200:23 j.00 C 22007; 72 22022 22604:12 22006:1 j.22604:12 22006:1 j.22664:12 22069:1 j.22664:12 22069:1 j.22664:12 22069:1 j.22664:12 22069:1 j.22732:23 j.22664:12 22679:23 j.22734:12 22066:13 22774:16 j.22666:12 22679:23 j.22734:12 22066:13 22774:16 j.22664:12 22679:23 j.2274:16 j.22664:12 22679:23 j.2274:11 22764:12 22674:12 22674:11 22674:12 22674:12 22674:11 22674:12 22674:12 22674:11 22674:12 22674:11 22674:12 22674:12 22674:12 22674:11 22674:12 22774:14 j.22664:12,12664:12 2267					
2260/02/5 2260/8/15 2260/8/14 2260/8/14 2260/8/14 2260/8/14 2260/8/14 2260/8/12 2272/22 2273/23 2266/27 2273/23 2266/27 1 1 2272/22 2273/23 2266/27 1 <			•		
22709-9 2263247,22636-11 226047,22632-21 226457,22658-12 222062-12206-12 100000 22697-25 226561-122659-02 22653-1222679-02 22653-122679-02 22732-23 226661-122670-12 22732-23 22693-11.14 22679-23 2270-08 22665-12269-02 22653-12267-02 22733-23 22665-122670-02 22733-23 22665-122670-02 22733-23 22665-122670-02 22733-23 22665-122670-02 2273-23 22665-122670-02 2273-23 22665-122670-02 2273-23 22665-122670-02 2273-33 22665-122670-02 2273-32 22665-122670-02 2273-32 22665-122670-02 2273-32 22665-122670-02 2273-32 22665-122670-02 2273-32 22674-1122670-02 2273-32 22674-1122670-02 2273-32 22674-1122670-02 22674-1122670-02 22674-1122670-02 22674-1122670-02 22674-1122670-02 22674-1122670-02 22674-1122670-02 22674-1122670-02 22674-1122670-02 22674-1122670-02 22674-1122670-02 22674-1122670-02 22674-1122670-02 22674-1122670-02 22674-1122670-02 22674-1122670-02 22674-1122670-02 22674-1122670-02 22674-1122670-02					
investigators 2273:1:9 22636:1222639:20 22633:9.2279:4 22658:25.2269:8 2272:2:0.2279:4 22695:10.2271/7:2 22670:13.14 2260:17.220:077:15 2272:0:2 2260:17.220:077:15 2273:2:2 22695:10.2271/7:2 22670:13.14 2260:17.220:077:15 2273:2:2 2260:17.220:077:15 2273:2:2 2260:17.220:0271/7:2 22678:12.2299:8:8 2260:17.120:077:15 1eguly 2273:1:1 1eguly 2273:1:1 2260:17.220:0270:7:10 2270:12.229:18:3 2260:17.120:077:15 1eguly 2273:1:1 1eguly 2273:1:1 2260:17.220:027:17:18 2260:19.220:17:18 2260:17.120:077:15 1eguly 2273:1:1 1eguly 2273:1:1 2260:17.120:025:12 2270:02:1270:17:12 2260:17:120:077:15 1eguly 2273:1:1 1eguly 2273:1:1 2260:17:12:025:02:07:12 2260:17:15 2273:1:1 1eguly 2273:1:1 2273:1:1 2270:17:18 Tm 2258:17:12:02:07:12 2260:11:1 1eguly 2274:1:1 1eguly 2270:1:1 2270:17:18 Tm 2258:12:02:07:12 2260:11:1 2260:11:1 2260:11:1 1eguly 2270:1:1 2260:11:1 2200:17:12:2258:17:02:07:12:2270:12:2270:12:2270:12:2270:12:2270	22640:25 22643:15	22618:15 22625:23	22623:7,14,21		left-hand 22728:25
involve 2269/25 22632:11,22 22732:23 22632:11,24 22679:13 22732:23 22685:12 22701:11,4 22774:16 12732:24 22695:10 22717:2 22679:23 22665:12 22679:23 22685:12 22606:17 22679:12 22733:1 1egula 22733:1 22665:12 122665:12 122665:12 22665:12 22665:12 22774:16 22773:1 22774:16 22773:1 22774:16 22773:1 22774:16 22774:16 22774:12 <td< td=""><td>22709:9</td><td>22632:4,7 22636:11</td><td>22624:7 22632:21</td><td>22654:5,7 22658:21</td><td>legal 22696:21 22721:4</td></td<>	22709:9	22632:4,7 22636:11	22624:7 22632:21	22654:5,7 22658:21	legal 22696:21 22721:4
involve 2269/25 22632:11,22 22732:23 22632:11,24 22679:13 22732:23 22685:12 22701:11,4 22774:16 160111 22695:10 22717:2 22679:23 22665:12 22679:23 22665:12 227373:1 16011 227373:1 16011 227373:1 22665:12 227373:1 12765:1 127373:1 12765:1 127373:1 12765:1 127373:1 12765:1 127373:1 12765:1 127373:1 12765:1 127373:1 12765:1 127275:1 12775:1 127	investigators 22731:19	22636:12 22639:20	22633:9 22729:4	22658:25 22659:8	22722:6 22729:14
22693:11,14 22670:13,14 20CCOM 1260:32,324 22685:0 22689:8 22695:10 22710:17 1egily 22724:16 22695:10 22717:2 22675:8 22679:3 22706:9 22065:10,12,16 1egily 2273:16 1egily 2273:16 22668:10 22657:2 22658:9 22689:8 22065:10,12,16 1egily 2273:16 1egily 2273:16 22667:11 18 22706:12 2270:17,17 22665:14 22717:8 22665:14 22717:8 2276:14 22667:12 22691:2 22667:12 2075:22 22716:12 22614:312.12 261:23 22668:32 2263:2 1escore 2268:3 22718:3 1molves 2663:9 22595:12 22061:17 22604:32 22621:31.19 22778:13.17 22668:12 2269:12 22668:12 2278:12 1ettre 2258:16 22716:3 22595:222061:17 22604:32 22621:31.19 22778:13.17 22605:13.7 2278:12 22003:12 2278:12 22003:12 2278:12 22003:12 2278:12 22003:12 2278:12 22003:12 2278:12 22003:12 2278:12 22003:12 2278:12 22003:12 2278:12 22003:12 2278:12 22003:12 2278:12 22003:12 2278:12 22003:12 2278:12 22003:12 2278:12 22003:12 2278:12 22003:12 2278:12 22003:12 2278:12 22003:12 2278:12 22003:12 2278:12	•				
22609:10 22717:2 22679:23 22604:3.13.25 22009:13 22701:717 22733:31 22666:1 22586:1 22065:14 22710:53 22714:2 22714:12 22733:1 22672:2 22665:1 2270:5 22714:1 2270:5 22714:1 2270:5 22714:1 2270:5 22714:2 2261:13.21 2263:12 2263:12 2263:12 2263:12 2263:12 2263:12 2263:12 2263:12 2263:13 22714:1 2270:11 2263:12					
involved 22602:3,14 22708:3 22724:9 22605:10,12,16 known 22605:17 2273:1 2273:1 22666:10 22671:2 22635:8,0 22648:21 22666:7,0 12,0 1:18 22667:9,0 12,0 1:18 22667:9,0 12,0 1:18 22667:11,0 2260:12 2271:61:4 22667:13,0 2260:12 22667:13,0 2260:12 22667:13,0 2260:12 22667:13,0 2260:12 22667:13,0 2260:12 22667:14,0 2276:02 2273:13,0 2263:23,0 2263:23 22668:23,0 22669:24 Lesson 2263:49 2271:43 Lesson 2264:49 22668:10,0 2260:12 2273:83,1 2263:40,2 2569:12 22668:10,2 2667:12 22668:10,2 2667:12 22668:12,0 2260:12 2277:83,1 2270:42 22669:12,0 2267:12 22669:15,17 22669:12,0 2267:12,4 2263:16 2277:81,3 1:12 2270:14,12 2260:15,17 22669:15,17 22669:12,0 2270:12 22020:15,2 261:15,17 2271:15,2 2271:6,1,12 22569:13,2 22669:10,2 2277:14,12 22669:12,0 2277:14,12 2277:14,12 22669:12,0 2261:15,17 22666:12,0 2261:15,17 22666:12,0 2261:15,17 22666:12,0 2261:15,17 22666:12,0 2261:15,17 22666:12,0 2261:15,17 22666:12,0 2277:14 22669:12,0 2277:14 22669:12,0 2277:14 22669:12,0 2277:14 22669:12,0 2277:14 22669:12,0 2277:14 22666:12,0 277:14 2266					3 .
22608:16 (22657)2 22608:1 (22657)2 22608:1 (22607)2 22608:1 (22607)2 22716:14 22676:12 (2267)2 22678:2 (2268)2:1 22607:1 (2267)2 22614:4 (2271)2 22614:4 (2267)2 22716:14 lesser (2284:7) 22670:23 (22704:1) 22700:5 (277)2 2261:8 (2260:6) 22638:2 (22633:2) lesser (2284:7) lesser (2284:7) 22665:1 (270):7 22583:4 (2258:6) 2260:1 (2260):1 2261:1, 15, 22 2261:1, 15, 22 letter (2266):12 letter (2266):12 <td></td> <td></td> <td></td> <td></td> <td>8</td>					8
22666:1 2267:3 2267:41 <td< td=""><td>· · · · · · · · · · · · · · · · · · ·</td><td></td><td></td><td></td><td></td></td<>	· · · · · · · · · · · · · · · · · · ·				
22662:8,11.18 22665:14 22717:8 22611:13.21 22612:9 koops 22735:9 lesser 22584:7 22672:32 22693:9 22740:2 22614:9.18.33 lesser 22584:7 lesser 2258:15 22709:2271:2 22614:9.18.20 22619:21 22638:23 22639:22 letter 22585:16 22605:1 22702:7 22588:7 22599:7.8 22601:3 22601:3.19 22779:24 letter 22585:16 22704:4 22595:5 2250:11 22620:3 22611:3.19 22779:12 letter 22596:15.17 22716:4 22603:8 22619:4 22631:10.16 22779:12 letter 22596:15.17 22716:4 22630:3 22638:20 joke 22779:12 2264:12.13 22708:12 2260:15 2262:12 22711:8:18 22636:13.204 joke 22779:9 joke 2279:9:19 letter 2258:12 2266:16.17,19.20 22711:8:18 22636:12.2021:12 2263:12.2023:12 2263:12.2023:12 2266:12.2023:12 2266:12.2023:12 2266:12.2023:12 2266:12.2024:12 2266:12.2024:12 2266:12.2024:12 2266:12.2024:12 2266:12.2024:12 2266:12.2024:12 2266:12.2024:12 2266:12.2026:12 2266:12.2026:12 2266:12.2026:12 2266:12.2026:12					
22672:23 22064:10 2270b:22 2271b:2 22614:9:18:32.32 koppie 22633:2 lessons 22654:8 227140:2 22618:53 22616:6 22688:20 22619:21 22688:20 22649:21 22688:20 22649:13,16 22688:11 22688:11 22688:12 22719:22 22718:3 22729:22 Letter 22588:16 22715:25 22716:14 22698:12 2270:12 22698:12 22728:14 Letter 22588:16 Letter 22588:16 22717:81:25 2216:41,42 22609:17 22600:11 22632:11 8:26314:14 Letter 22587:16 22666:12 22672:12 22666:12 22672:12 22666:12 22672:12 22666:12 22672:12 22666:12 22672:12 22673:12 22675:2 22678:12 22675:2 22678:12 22675:2 22678:12 22675:2 22678:12 22675:2 22688:12 2259:12 22688:10 12:20 Letter 22588:16 22799:14 22669:12 22679:12 22689:12 22669:12 22689:12 22669:12 22689:12 22669:12 22689:12 22669:12 22689:12 22669:12 22689:12 22669:12 22689:12 22669:12 <			22606:20 22607:3	22674:11 22691:21	22716:14
22704:11 2270:8:3 Tm 22581:2.20 22615:3 22615:3 22638:3 22639:22 12618:20 22718:13 22738:13 22628:12 22628:12 22628:12 22628:12 22628:12 22628:12 22628:12 22628:12 22668:12	22662:8,11,18	22665:14 22717:8,8	22611:13,21 22612:9	knows 22735:9	lesser 22584:7
22704:11 2270:8:3 P 2258:3:22 2261:5:3 2261:5:3 2263:3:3 <td< td=""><td>22672:23 22694:10</td><td>22720:5 22721:2</td><td>22614:9.18.23.23</td><td>koppie 22633:2</td><td>lessons 22654:8</td></td<>	22672:23 22694:10	22720:5 22721:2	22614:9.18.23.23	koppie 22633:2	lessons 22654:8
22718:3 I'm 22581:2:00 22618:20 22619:21 22640:15.16 22682:3 Letter 22585:16 22695:1 22702:7 22583:4 22586:24.25 22602:1 2262:11.15.22 22712:13.17 22781:11 22781:11 22781:11 22781:11 22781:11 22781:11 22781:11 22781:11 22781:12 2270:12 22663:12 </td <td></td> <td></td> <td></td> <td></td> <td></td>					
involves 22693:9 22583:4 22586:24,25 22620:1 22621:1,10 22728:13,17 22681:11 22695:1 22595:5 22596:1,17 22588:7 22589:11 22622:4,24 22625:1 2262:4,24 22625:1 2262:4,24 22625:1 2262:4,24 22625:1 2262:4,24 22625:1 2262:4,24 22625:1 2262:4,24 22625:1 2262:4,24 22625:1 2262:4,24 22625:1 2262:4,24 2263:1 2262:4,24 2263:1 2262:4,24 2263:1 2262:4 2262:9 2262:2 2262:2 2262:2 2262:2 2262:2 2262:2 2262:2 2262:2 2262:2 2262:2 2262:2 2262:2 2262:2 2262:2 2266:1 1262:1 2266:1 1262:1 2266:1 22					
22695:1 22702:7 22588:7 22595:5 22596:1 22625:1 22625:1 2263:1 2266:1					
in-service 22664:13 22595: 22590:1,17 22624:4,24 22625:1 K9 22596:1 22597:24 let's 22596:15,17 1PID 22715:3,8,12,21 22603:8 22619:4 2263:18,2614,9 2263:18,2714 2263:18,22614 2263:18,22614 2263:12,2273:10,2273:20,21 22666:3,2279:9,18 22666:3,2279:9,12 22666:3,2264:8 2263:12,264:11 2263:12,264:11 2263:12,264:14 2263:12,264:14 2263:12,264:14 2263:12,264:14 2263:12,264:17 22666:3,2267:9:1 22666:3,2267:9:1 22666:3,2267:9:1 22666:3,2267:9:1 22666:3,2267:9:1 22667:1,2267:3:4 22677:25,2267:9:1 22667:1,2267:9:1 22668:10,12,0 1ack 2266:2,9,11,19 2271:1:1 2271:1:1 2271:1:1 2271:1:1 2271:1:1 2271:1:1 2271:1:1 2271:1:1 2271:1:1 22661:1:2:267:4:1 22669:1:2:1:1:1 22669:1:2:1:2:1 22669:1:2:1:2:1 22669:1:2:1:2:1 22669:1:2:1:2:1 22669:1:2:1:2:1 22669:1:2:1:2:1 22669:1:2:1:2:1 22669:1:2:1:2:2571:4 22699:1:2:2771:1:1 22669:1:2:2571:4 22699:1:2:2771:1:1 22669:1:2:2571:4 22699:1:2:2771:1:1 22669:1:2:2571:4 22699:1:2:2571:4 22699:1:2:2571:4 22699:1:2:2571:1:1 2269:1:1:2:2591:4 <t< td=""><td></td><td></td><td></td><td>· · · · · · · · · · · · · · · · · · ·</td><td></td></t<>				· · · · · · · · · · · · · · · · · · ·	
22704:4 22599:7.2599:7.8 22623:18 22631:4.9 22651:3.7 2278:12 22620:15 2261:15 22715:3.8,12,21 22603:12 2263:12 2263:12,13 2273:22.12 22666:16,17,19,22 22717:3.8,18 2263:3:12,23 2263:12,13 2263:12,2273:2.2 22666:16,17,19,22 22717:8,18 2263:3:14,2263:12,13 2263:12,2263:12 2263:12,2263:12 22666:12,17,12 22717:8,18 2263:3:12,2263:12,13 2268:12,12 22668:12,12 22668:12,12 22668:12,12 22668:12,12 22668:12,12 22688:10,12,20 1ack 22662:2,01,15 22671:1,15 2271:1,15 2271:1,12 2271:1,2 22668:12,13 22699:2,12,15 22699:3,1,12 22638:14,15 1et's 22690:3,19 22712:3 22668:1,2,1,18 1ume 2707:12 1apsed 22738:24 22588:16,22 2258:14 22639:12 2268:14,15 1et's 22690:3,19 22669:2,12 2664:14 22669:2,12 2664:14 22690:2,12 2665:7 1ack 2265:2 2258:14,22 258:14 2258:14,22 258:14 2258:14,22 258:14 2258:14,22 258:14 22639:12 2666:1 22669:12 2266:14 22669:12 2266:14 1apte 22637:11 22609:12 2669:12					
IPID 22715:38,11,2.11 22603:8 22619.41 22631:10,16 22778:19 2278:18 22622:9 22631:15 22716:19,20 22717:3 22630:23 22634:8 22630:12 22630:11 22630:12 2279:1,8 22666:11 22073:20,2.11 22717:8:18,18 22636:23 22638:20 jöke 22729:9 jöke 22729:9 22666:12 22673:2 22646:17 22648:8:0 22639:13 22739:25 L 22612:1,7 22614:8 22677:25 22675:9 22704:12 22675:22 22646:3 22647:16 22699:21 22704:23 22638:14,15 lev2 2288:10 22704:22205:22 22646:14 22631:23 22699:21 22704:23 22638:14,15 lev2 2288:16,22 22711:3 22666:11 22673:4 judgment 22656:7 lack 22656:25 22584:4 2288:16,22 2269:20 22617:1 2268:12,13,18 justifice 22636:14,19 large 22604:10 22669:21 22673:4 2269:20 22676:1 2268:15,5 22699:7 2268:12,222715:9 2264:59 22721:21 22638:16 2264:34 1ssued 22587:3 22706:11,222706:21 22638:16 2264:34 large 22604:10 22669:12 2260:11 22580:15,18 22711:41,15 22712:8 lavel 22637:1 22669:12 2260:12 22669:12 22706:21 </td <td></td> <td></td> <td></td> <td></td> <td></td>					
22716:125 22716:1,22 22630:12 22630:14 22633:14 22633:16 22773:20:2 22666:1,6,17,19,24 22717:8,18,18 22635:18,24 joke 2279:9 22668:12,2675:2 22668:12,2675:9 22668:12,2675:9 22668:12,2675:9 22668:12,2675:9 22668:12,2675:9 22668:12,22675:9 22668:12,22675:9 22668:12,22675:9 22675:12 22668:12,22675:9 22675:12 22668:12,22675:9 22675:12 22668:12,13 22689:3,5,12,15 22675:12 22668:12,13 22689:3,5,12,15 22638:16,22 2273:3:2 22689:12,2267:2 22684:14,22656:7 1acks 22656:25 22584:42 2258:12 2258:12 2258:12 2258:12 2258:12 2258:12 2258:12 2258:12 2258:12 2258:12 2258:12 2266:12		22598:7 22599:7,8	22625:18 22631:4,9	22651:3,7 22728:12	22620:15 22621:12
22716:125 22716:1,22 22630:12 22630:14 22633:14 22633:16 22773:20:2 22666:1,6,17,19,24 22717:8,18,18 22635:18,24 joke 2279:9 22668:12,2675:2 22668:12,2675:9 22668:12,2675:9 22668:12,2675:9 22668:12,2675:9 22668:12,2675:9 22668:12,22675:9 22668:12,22675:9 22668:12,22675:9 22675:12 22668:12,22675:9 22675:12 22668:12,22675:9 22675:12 22668:12,13 22689:3,5,12,15 22675:12 22668:12,13 22689:3,5,12,15 22638:16,22 2273:3:2 22689:12,2267:2 22684:14,22656:7 1acks 22656:25 22584:42 2258:12 2258:12 2258:12 2258:12 2258:12 2258:12 2258:12 2258:12 2258:12 2258:12 2258:12 2266:12	IPID 22715:3,8,12,21	22603:8 22619:4	22631:10,16	22728:19 22729:1,8	22622:9 22631:15
22717:8,18,18 22635:18,24 joke 22729:9 22635:18,24 joke 22729:9 22635:18,24 22635:18,24 joke 22729:9 22635:18,24 22635:18,24 22635:18,24 22635:18,24 22635:18,24 22635:18,24 22635:18,24 22635:12,22673:12 22635:12,22673:12 22673:12 22673:12 22673:12 22673:12 22673:12 22673:12 22673:12 22773:22 22648:14 22651:23 22639:10 22639:10 22673:14 22773:22 22639:10 22673:15 22639:10 22639:10 22673:12 22639:10 22673:12 22639:10 22673:12 22639:12 22639:12 22639:12 22639:12 22639:12 22639:12 22639:12 22639:12 22639:12 22639:12 22663:12 22664			-		
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22700:20 22702:8 22648:14 22651:23 22689:3,5,12,15 22639:10 22672:6 level 22583:16,22 22721:3 22668:12,13,18 judgments 22656:1 lacks 22656:25 22584:122581:1 22588:12 22581:1 22631:14 22634:17 22667:21 22677:9,12 junior 22721:6,11 lapto 22124:16 22669:12 22661:1 22655:5 22705:19 22706:21 22637:24,25 large-22604:10 22669:12 22661:1 22586:15,15 22705:19 22706:21 22638:16 22643:4 large-2260:12 22699:12 22586:19 22733:24 22701:14,15 22712:8 justife 22680:1 large-2260:9 22699:12 22586:19 22733:14 22701:12 22702:1 22663:1 2260:1 latet 22173:3 22609:12 22586:13 22591:7,13 22714:15 22715:9 22649:12 launch 22628:3 launch 22628:3 22602:61 22606:7 22736:19 22733:17 22666:7 22667:2 launch 2268:3 launch 2268:3 22596:7 22661:4 22736:19 22738:4 keepig 22660:1 lawy 2265:4:12 22663:1 2269:12 22665:5 22737:14 22736:19 22738:4 keepig 22660:1 lawy 22654:15 22666:12				-	
$\begin{array}{c c c c c c c c c c c c c c c c c c c $	22674:12 22675:22	22646:3 22647:16	22688:10,12,20	lack 22626:2,9,11,19	22717:13
$\begin{array}{c c c c c c c c c c c c c c c c c c c $	22700:20 22702:8	22648:14 22651:23	22689:3,5,12,15	22638:14,15	let's 22690:3,19
$\begin{array}{c c c c c c c c c c c c c c c c c c c $	22704:8,12,22	22661:15 22664:14	22699:21 22704:23	22639:10 22672:6	level 22583:16,22
issue 22599:20 22617:4 22669:2,21 22673:4 June 22703:12 lapsed 22728:24 22588:12 22591:4 22649:25 22676:1 22668:1,22 22677:9,12 2268:16 22636:14,19 large 22604:10 22656:24 22664:1 issued 22587:3 22686:1,5,5 22699:7 22637:24,25 large-scale 22637:1 22690:6 22691:5 22671:1 issued 22587:3 22686:1,2,2 22706:21 22638:16 22643:4 late 22614:21 22690:6 22691:5 22671:1 issued 22588:7,8 22584:15 22711:14,15 22712:8 justification 22629:4 late 22614:21 22690:6 22691:2 22586:13 22591:7,13 22716:18,20 22717:8 justification 22629:4 laughed 22730:6 22705:2 22595:13,14,15 22714:15 22717:8 justified 22584:16 launch ing 22629:3 launching 2269:3 launching 2269:3 22595:13,14,15 22731:18 22735:25 K 22661:1 22630:7 22663:12 22630:7 laws 2055:4 2260:13 laws 2055:4 2260:13 22638:14 2263:12 22663:2 2263:2 2263:2 22642:6 22649:9 keep 22642:20 kery 2270:2:1 22673:13 22638:14 22663:13 22673:1 22668:14 22663:2 2263:2 22739:14 22666:19 22666:12 22660:1					-
$\begin{array}{c c c c c c c c c c c c c c c c c c c $			• 0		
$\begin{array}{ c c c c c c c c c c c c c c c c c c c$					
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issues 22655:5 22705:19 22706:21 22638:16 22643:4 late 22614:21 22690:6 22691:2 22656:19 22733:24 22706:21,22 22708:9 22645:9 22722:8 lately 2260:9 22693:13 22702:1 22580:15,18 22711:15 22715:9 justification 22629:4 latest 22736:6 22705:2 22586:13 22591:7,13 22716:18,20 22717:8 justified 22584:16 launch 22628:3 levels 22586:2 22595:13,14,15 22720:21 2273:17 22586:19 22629:21 launch 22628:3 levels 22580:11 22602:6,10 22616:4 22736:19 22738:8 keep 22642:20 22656:7 22657:2 22628:10 22631:1 22602:6,10 22616:4 22739:14 keep 22642:20 22710:9 22737:7 22638:13 22638:1 22602:5 22630:3 22633:1 22638:4 keeps 22666:9 lawful 2265:4 2260:13 22686:14 22699:22 22642:6 22649:9 kept 22666:11 22669:6 lawfur 2265:4 2260:13 22661:8 2267:12 22641:8,11 22644:9 22667:12 22665:20 22737:1 kild 22728:24 leaders 22642:18 22666:18 22687:12 22656:7,12 22665:24 22737:1 kild 22728:24 leaders 22642:18 22666:18 22687:1		,			
22656:19 22733:24 22706:21,22 22708:9 22645:9 22722:8 lately 22620:9 22693:13 22702:12 22580:15,18 22711:14,15 22717:8 22629:12 22630:1 lately 22702:2 22702:2 22586:13 22595:13,14,15 22716:18,20 22716:2 22586:19 22629:21 launch 22628:3 levels 22586:12 22595:13,14,15 22720:21 22735:25 K 22656:7 22656:7 22665:12 22630:1 law 22654:13,18,19 22616:12,24 22616:12,24 2260:12 22630:1 law 22654:13,18,19 22616:12,24 2266:7 2266:7 2266:7 2266:7 2266:7 2266:7 2266:7 2266:7 2266:7 2266:1 <td></td> <td></td> <td>· ·</td> <td>0</td> <td></td>			· ·	0	
it's 22580:15,18 22711:14,15 22712:8 justification 22629:4 latest 22734:3 22702:12 22704:3 22588:7,8 22584:25 22714:15 22717:8 22716:18,20 22717:8 justification 22629:4 laughed 22730:6 22705:2 22595:13,14,15 22702:12 2273:17 justification 22629:21 launch 22628:3 laughed 22730:6 22705:2 22596:24 22599:3 22731:18 22735:25 K 22663:1 22630:7 lausful 22654:15 22710:9 22737:7 22634:13,24 2263 22602:6,10 22616:4 22739:14 keeping 22630:7 lawful 22654:15 22673:18 2263:1 22686:12 22686:12 22629:5 22630:3 2263:1 22638:4 keeping 22660:9 laws 22655:4 22660:13 22686:14 22649:14 22630:4 22670:19 22709:6 22648:17,20,224 laws 22654:22 light 22589:8 22655 22641:8,11 22644:9 22662:12 22666:5 keep 22648:17,20,224 laws 2265:4 2260:13 2268:14 22652:17 22652:14 22670:19 22709:6 22649:10 kild 22729:10,23 leader 2264:22 light 22584:18 22661:8 22687:12 22652:17 22652:14 22593:3,14 22649:16 22729:10,23 leadership 22661:5 light 22684:16 limitatons 22654:22 <	issues 22655:5	22705:19 22706:21	22638:16 22643:4		22690:6 22691:2
$\begin{array}{c c c c c c c c c c c c c c c c c c c $	22656:19 22733:24	22706:21,22 22708:9	22645:9 22722:8	lately 22620:9	22693:13 22702:1,10
22583:7,8 22584:25 22714:15 22715:9 22629:12 22630:1 Jaughed 22730:6 22705:2 22586:13 22591:7,13 22710:21 22723:17 22586:19 22629:21 Jaunchi 22628:3 Jevels 22586:2 22593:13,18 22595:6 22720:21 22723:17 22586:19 22629:21 Jaunchi 22629:3 Jevels 22586:2 22595:24 22599:3 22731:18 22735:25 K 22665:7 22657:2 22663:12,24 2262 22602:6,10 22616:4 22739:14 keep 12630:7 Jawful 22654:15 22673:18 22685:2 22623:8 22624:16 I've 22593:21 22598:11 22674:23 22669:2 Jaws 22655:4 2260:13 22686:14 2263:2 22642:62 22642:6 2266:9 keep 22646:11 22669:6 Jawyers 22729:5 Jeutenants 22673:17 22642:12 22665:1,9 22670:19 22709:6 22649:10 Leaders 22642:18 22666:18 22689:10 22645:12 22662:24 J 22737:1 Kild 22728:24 22645:4 22724:6 Jight 22689:22 22644:12,23 Ja 22594:24 22598:1,23 22737:21 Z2648:16 22665:25 Jacobus 22593:3,14 22648:16 22665:25 Jacobus 22593:3,14 22648:12 22070:15 22661:9 Jimited 22654:21	it's 22580:15,18	22711:14,15 22712:8	justification 22629:4		22702:12 22704:3
22586:13 22591:7,13 22716:18,20 22717:8 justified 22584:16 launch 22628:3 levels 22586:2 22593:13,18 22595:6 22720:1 22723:17 22586:19 22629:21 launching 22629:3 lieutenant 22580:11 22595:24 22599:3 22731:18 22735:25 K 22656:7 22657:2 22638:10 22631:11 22602:6,10 22616:4 22739:14 keep 22642:20 22656:7 22657:2 22638:13,24 2263: 22618:18 22621:5 22739:14 keep 22642:20 lawyers 22729:5 lieutenant 22580:13 22635:2,21 22639:25 22642:6 22649:9 keep 22660:17 22656:7 22657:2 22638:14 22629:5 22630:3 22633:1 22638:4 keep 22666:11 22669:16 22654:15 22673:18 22685:2 22641:8,11 22644:9 22662:12 22665:5,9 kep 22666:11 22666:11 lieutenants 2673:17 lieutenants 22673:19 22649:10 Leaders 22642:18 22661:8 22687:19 22666:12 2266:24 22666:12 2266:25 light 22687:22 22666:18 22687:19 22655:4 22673:18 22707:1 Kild 22728:24 22665:19 22641:42272 22666:18 2268:19 22655:4 22673:12 22737:1 Kild 22702:17	22583:7.8 22584:25		•		22705:2
22593:13,18 22595:6 22720:21 22723:17 22586:19 22629:21 launching 22629:3 lieutenant 22580:11 22596:24 22599:3 22731:18 22735:25 X 22663:19 22738:8 lieutenant 22580:11 22616:12,24 2262 22602:6,10 22616:4 22736:19 22738:8 keep 22642:20 law 22654:13,18,19 22638:10 22631:10 22623:8 22624:16 I've 22593:21 22598:11 22674:23 22692:22 law 22655:4 22660:13 22636:14 22629:5 22630:3 22633:1 22638:4 keeps 22666:9 keps 22666:11 22669:6 law yers 22729:5 lieutenant 22589:82625 22641:8,11 22644:9 22667:12 22665:5,9 22649:10 key 22648:17,20,23,24 lieutenants 22673:17 22666:12 22663:29:10 22652:17 22655:20 22737:1 Kidd 22729:10,23 leader 22702:2 22645:4 2274:6 light 22589:8 22687:22 22664:12,23 22673:19 22733:14 Ja 22594:24 22598:1,23 22639:10 22666:15 22645:14 22665:19 22660:5 limitations 22654:22 22675:16,22 Jacobus 22593:3,14 22648:16 22665:15 22661:1 22652:10 lime 22584:18 2258 2261:2 2256:25 22630:12 22641:1 22661:2 2263:12 2265:25 22630:21 22641:1 22700:7 22726:24 2262:25 26223:1 1imitatio				8	
$\begin{array}{ c c c c c c c c c c c c c c c c c c c$			0		
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22602:6,10 22616:4 2273:19 22738:8 keep 22642:20 22710:9 22737:7 22634:13,24 2263: 22618:18 22621:5 22739:14 keeping 22630:7 lawful 22654:15 22673:18 22685:2 22629:5 22630:3 22633:1 22638:4 22633:1 22638:4 keeps 22666:9 lawyers 22729:5 lieutenants 22673:1' 22642:6 2264:9 22662:12 22665:5,9 22642:6 22649:9 keep 22648:17,20,23,24 lead 22636:22 light 22589:8 22625 22648:17,20 22649:4 22670:19 22709:6 22649:10 kedp 22648:17,20,23,24 leaders 22642:20 light 22589:8 22625 22655:6,12 22662:24 22737:1 kild 22729:10,23 light 22589:8 22655:19 22696:16 227271:1 light 22687:19 22664:12,23 22737:1 kild 22729:10,23 leaders 22642:18 2269:16 227727:1 light 22684:16 22664:12,23 22737:21 Ja 22594:24 22598:1,23 22639:10 22646:15 22661:9 limitations 22654:24 22679:13 22678:25 Ja 22593:3,14 22703:16 22704:22 22706:11 22700:7 22726:24 22622:25 22623:1 22679:13 22680:13 January 22592:19,25 22615:22,23 22631:30 22716:5 learning 22655:25 22630:21 22641:1 22679:13 226			K		
22618:18 22621:5 22739:14 keeping 22630:7 lawful 22654:15 22673:18 22685:2 22623:8 22624:16 I've 22593:21 22598:11 22633:1 22638:4 22633:1 22638:4 22633:1 22638:4 22635:2,21 22639:25 22642:6 22649:9 22666:9 laws 22655:4 22660:13 22686:14 lieutenants 22673:17 22641:8,11 22649:9 22662:12 22665:5,9 22662:12 22665:5,9 kep 22648:17,20,23,24 leader 22702:2 226264:2629:10 22649:14 22650:14 22731:19 22732:1 22649:10 leaders 22642:18 22666:18 22687:19 22656:6,12 22665:20 22737:1 Kild 22728:24 22643:11 22644:22 22696:16 22727:1- 22656:6,12 22662:24					
22623:8 22624:16 22629:5 22630:3 22635:2,21 22639:25 22642:6 22649:9 	,				22634:13,24 22635:6
22629:5 22630:3 22635:2,21 22639:25 22642:6 22649:9 22642:6 22649:9 22642:6 22649:9 22662:12 22665:5,9 22648:17,20 22649:4 22667:19 22709:6 22648:17,20 22649:4 22667:19 22709:6 22648:17,20 22649:4 22667:19 22709:6 22652:17 22655:20 22652:66,12 22662:24 22652:66,12 22662:24 22652:66,12 22662:24 22663:8,10,21 22664:12,23 22664:12,23 22664:12,23 22664:12,23 22664:12,23 22665:16,22 22667:13 22678:25keeps 2263:1,23 22679:13 22678:25 Jacobus 22593:3,14 Jac22593:3,14 22679:13 22680:13 22679:13 22680:13 22678:12 22681:10keeps 22666:9 kept 22666:11 22669:6 key 22648:16 22607:17 22686:13 22702:16 22668:13 22702:15 22668:13 22702:15lieutenants 22673:11 light 22593:3,14 22686:13 22702:16 22702:16 22703:1622679:13 22680:13 22678:12 22680:13 22678:12 22680:13 22678:19Junuary 22592:19,25 22703:16keeps 22603:13,15 22663:13,15 22663:13,15lieutenants 22673:14 light 22642:18 22663:13,15 22702:16 22704:1Junuary 22592:19,25 2263:12 022716:5 2263:12 022716:5lieutenants 22673:14 2263:12 022716:5 2263:12 022716:522629:2063:25 2263:12 022716:5 22703:16Junuary 22592:19,25 2263:12 022716:5lieutenants 22673:14 2263:12 022716:52263:12 022716:5 22703:16Junuary 22592:19,25 2263:12 022716:5lieutenants 2263:12 2263:12 022716:52263:12 022716:5 22703:16Junuary 22592:19,25 2263:12 022716:5lieutenants 2263:12 2263:12 022716:522702:16 22704:1 22705:5,8,21 22707;5Junuary 22592:19,25 2263:17lieutenants 2263:12 2263:12 022716:522702:16 22704:1 22705:5,8,21 22707;5Junuary 22624:16 Junuary 22623:17lieutenants 2263:12<	22618:18 22621:5			lawful 22654:15	22673:18 22685:25
22629:5 22630:3 22635:2,21 22639:25 22642:6 22649:9 22642:6 22649:9 22642:6 22649:9 22662:12 22665:5,9 22648:17,20 22649:4 22667:19 22709:6 22648:17,20 22649:4 22667:19 22709:6 22648:17,20 22649:4 22667:19 22709:6 22652:17 22655:20 22652:66,12 22662:24 22652:66,12 22662:24 22652:66,12 22662:24 22663:8,10,21 22664:12,23 22664:12,23 22664:12,23 22664:12,23 22664:12,23 22665:16,22 22667:13 22678:25keeps 2263:1,23 22679:13 22678:25 Jacobus 22593:3,14 Jac22593:3,14 22679:13 22680:13 22679:13 22680:13 22678:12 22681:10keeps 22666:9 kept 22666:11 22669:6 key 22648:16 22607:17 22686:13 22702:16 22668:13 22702:15 22668:13 22702:15lieutenants 22673:11 light 22593:3,14 22686:13 22702:16 22702:16 22703:1622679:13 22680:13 22678:12 22680:13 22678:12 22680:13 22678:19Junuary 22592:19,25 22703:16keeps 22603:13,15 22663:13,15 22663:13,15lieutenants 22673:14 light 22642:18 22663:13,15 22702:16 22704:1Junuary 22592:19,25 2263:12 022716:5 2263:12 022716:5lieutenants 22673:14 2263:12 022716:5 2263:12 022716:522629:2063:25 2263:12 022716:5 22703:16Junuary 22592:19,25 2263:12 022716:5lieutenants 22673:14 2263:12 022716:52263:12 022716:5 22703:16Junuary 22592:19,25 2263:12 022716:5lieutenants 2263:12 2263:12 022716:52263:12 022716:5 22703:16Junuary 22592:19,25 2263:12 022716:5lieutenants 2263:12 2263:12 022716:522702:16 22704:1 22705:5,8,21 22707;5Junuary 22592:19,25 2263:17lieutenants 2263:12 2263:12 022716:522702:16 22704:1 22705:5,8,21 22707;5Junuary 22624:16 Junuary 22623:17lieutenants 2263:12<	22623:8 22624:16	I've 22593:21 22598:11	22674:23 22692:22	laws 22655:4 22660:13	22686:14
22635:2,21 22639:2522642:6 22649:9kept 22666:11 22669:6lead 22636:22light 22589:8 2262522641:8,11 22644:922662:12 22665:5,922662:12 22665:5,922649:10leader 22702:222626:4 22639:1022649:14 22650:1422731:19 22732:122632:17 22655:2022737:1light 22592:2422643:11 22644:2222696:16 22727:1422655:6,12 22662:2422737:1kiled 22729:10,2322645:4 22724:6lights 22687:22lights 22687:2222664:12,23Ja 22594:24 22598:1,2322639:10 22646:1522661:9limitations 22654:2422675:16,22Jacobus 22593:3,1422663:13 22702:15learned 22652:10lime 22584:18 2258622676:13 22678:25Jan 22593:3,1422704:22 22706:1122700:7 22726:2422622:25 22623:122679:13 22680:13January 22592:19,2522717:8learning 22655:2522630:21 22641:122683:18,2422703:16knew 22603:13,15learning 22655:2522630:21 22641:122684:10 22685:19JJJ 22624:1322615:22,23leave 22701:3 22733:1422642:9 22663:2522702:16 22704:1JJJ07 22623:1722631:20 22716:5leaves 22729:322670:24 22701:1522705:5,8,21 22707:5JJJ107 22623:1722718:7,13 22729:15leaves 22729:322670:24 22701:15			keeps 22666:9		lieutenants 22673:17
22641:8,11 22644:922662:12 22665:5,9key 22648:17,20,23,24leader 22702:222626:4 22639:1022648:17,20 22649:422670:19 22709:622649:10leaders 22642:1822661:8 22687:1922652:17 22655:2022737:1Kid 22728:2422643:11 22644:2222696:16 22727:1422656:6,12 22662:2422737:1killed 22729:10,2322645:4 22724:6lights 22687:2222664:12,23Ja 22594:24 22598:1,2322639:10 22646:1522659:19 22660:5limitations 22654:2422675:16,22Ja 22594:24 22598:1,2322639:10 22646:1522661:9limited 22654:2122675:16,22Jacobus 22593:3,1422686:13 22702:15leaning 22722:1622717:122679:13 22678:25January 22592:19,2522704:22 22706:1122700:7 22726:2422622:25 22623:122683:18,2422703:16knew 22603:13,15learning 22655:2522630:21 22641:21,25,2522684:10 22685:19JJJ07 22624:1322615:22,23leave 22701:3 22733:1422642:9 22663:2522702:16 22704:1JJJ07 22624:1622631:20 22716:5leaves 22729:322670:24 22701:1322705:5,8,21 22707:5JJJ107 22623:1722718:7,13 22792:15leaving 22615:922670:24 22701:13				e e	light 22589:8 22625:23
22648:17,20 22649:4 22649:14 22650:14 22652:17 22655:20 22656:6,12 22662:24 22663:8,10,21 22664:12,2322670:19 22709:6 22737:122649:10 Kidd 22728:24 killed 22729:10,23 killed 22729:10,23 killed 22729:10,23 kills 22738:2 kills 22738:2leaders 22642:18 22645:4 22724:6 leadership 22654:11 22659:19 22660:5 22661:922661:8 22687:19 22696:16 22727:1422656:6,12 22662:24 22664:12,23 22664:12,23J22737:1Lieaders 22642:18 22639:10,23 kille 22729:10,23 kills 22738:222649:10 Lieadership 22654:12 22639:10,23 kills 22738:2Lieaders 22642:18 22645:4 22724:6 Lieadership 22654:11 22639:10 22646:15 22661:922661:8 22687:19 22645:4 22724:6 Lieadership 22654:11 Lieadership 22654:11 Lieadership 22652:10Lieaders 22642:18 Lieadership 22654:11 Lieadership 22652:1022661:8 22687:19 22696:16 22727:1422679:13 22678:25 22679:13 22680:13 22683:18,24 22703:16January 22592:19,25 22703:1622686:13 22702:15 22701:1222603:21 22641:11 22705:5,8,21 22704:1Liearnag 22655:25 22631:20 22716:522630:21 22641:11 22631:20 22716:522684:10 22685:19 22702:16 22704:1JJJ07 22624:16 JJJ107 22623:1722615:22,23 2261:20 22716:5Liearnag 22654:24 22631:20 22716:522641:21,25,25 22615:2922615:22,23 22705:5,8,21 22707:5JJJ107 22623:1722615:22,23 22718:7,13 22729:15Liearnag 22615:922670:24 22701:11 2273:25					8
22649:14 22650:14 22652:17 22652:20 22656:6,12 22662:24 22663:8,10,2122731:19 22732:1 22737:1Kidd 22728:24 killed 22729:10,23 killed 22729:10,23 killed 22738:222643:11 22644:22 22645:4 22724:6 leadership 22654:11 22659:19 22660:522696:16 22727:14 lights 22687:2222664:12,23 22664:12,23Ja 22594:24 22598:1,23 22737:2122639:10 22646:15 22639:10 22646:1522659:19 22660:5 22661:9limitations 22654:24 limitations 22654:2422675:16,22 22675:16,22Jacobus 22593:3,14 Jan 22593:3,1422704:22 22706:11 22704:22 22706:1122700:7 22726:24 22702:1622622:25 22623:1.12 22630:21 22641:11 2263:13,1522679:13 22680:13 22683:18,24 22702:16 22704:1January 22592:19,25 22703:1622717:1 22615:22,23 22615:22,23lime 22584:18 22586 22630:21 22641:11 22654:2122684:10 22685:19 22702:16 22704:1JJJ07 22624:16 JJJ107 22623:1722615:22,23 22718:7,13 22729:15leave 22701:3 22733:14 leaves 22729:322642:9 2263:25 22670:24 22701:11	-		÷		
22652:17 22655:20 22737:1 killed 22729:10,23 22645:4 22724:6 lights 22687:22 22656:6,12 22662:24 J J killed 22729:10,23 leadership 22654:11 lights 22687:22 22664:12,23 Ja 22594:24 22598:1,23 22639:10 22646:15 22661:9 limited 22654:24 22675:16,22 Ja 22593:3,14 22686:13 22702:15 leaning 22722:16 22717:1 22676:13 22678:25 Jan 22593:3,14 22704:22 22706:11 22700:7 22726:24 22622:25 22623:1.2 22679:13 22680:13 January 22592:19,25 22711:8 learning 22655:25 22630:21 22641:1.2 22683:18,24 22703:16 knew 22603:13,15 learnt 22654:8 22641:21,25,25 22664:10 22685:19 JJJ 22624:13 22615:22,23 leave 22701:3 22733:14 22642:9 22663:25 22702:16 22704:1 JJJ07 22623:17 22631:20 22716:5 leaving 22615:9 22670:24 22701:11					
22656:6,12 22662:24 22663:8,10,21Jkills 22738:2 kind 22607:17leadership 22654:11 22659:19 22660:5likelihood 22684:1622664:12,23 22664:12,23Ja 22594:24 22598:1,23 22737:2122639:10 22646:15 22639:10 22646:1522659:19 22660:5 22661:9limitations 22654:24 limited 22654:2122675:16,22 22676:13 22678:25Jacobus 22593:3,14 Jan 22593:3,1422686:13 22702:15 22686:13 22702:15learned 22652:10 22704:22 22706:11lime 22584:18 22586 22700:7 22726:2422679:13 22680:13 22683:18,24January 22592:19,25 22703:1622711:8 22615:22,23learning 22655:25 learning 22655:2522630:21 22641:11 22642:9 22663:2522684:10 22685:19 22702:16 22704:1JJJ07 22624:16 22624:1622615:22,23 22631:20 22716:5leave 22701:3 22733:14 leaves 22729:322642:9 22663:25 22670:24 22701:11					
22663:8,10,21 22664:12,23 22671:19 22673:8J Ja 22594:24 22598:1,23 22737:21kind 22607:17 22639:10 22646:15 22668:13 22702:1522659:19 22660:5 22661:9limitations 22654:24 limited 22654:2122675:16,22 22675:16,22Jacobus 22593:3,14 Jan 22593:3,1422686:13 22702:15 22686:13 22702:15leaning 22722:16 22704:22 22706:1122717:1 22652:1022679:13 22680:13 22679:13 22680:13Jan 22593:3,14 22703:1622704:22 22706:11 22703:1622700:7 22726:24 22603:13,1522622:25 22623:12 22630:21 22641:1122684:10 22685:19 22702:16 22704:1JJJ07 22624:16 22624:1622615:22,23 22631:20 22716:5leave 22701:3 22733:14 leaving 22615:922642:9 22663:25 22670:24 22701:12		22737:1			-
22664:12,23 Ja 22594:24 22598:1,23 22639:10 22646:15 22661:9 22661:9 1imited 22654:21 22675:16,22 Jacobus 22593:3,14 22686:13 22702:15 22686:13 22702:15 1imited 22652:10 22622:25 22623:1.1 22679:13 22680:13 January 22592:19,25 22704:22 22706:11 22700:7 22726:24 22630:21 22641:11 22683:18,24 22703:16 knew 22603:13,15 1earning 22655:25 22641:21,25,25 22664:10 22685:19 JJJ 22624:13 22615:22,23 1eave 22701:3 22733:14 22642:9 22663:25 22702:16 22704:1 JJJ107 22623:17 22631:20 22716:5 1eaving 22615:9 22670:24 22701:11	22656:6,12 22662:24		kills 22738:2	leadership 22654:11	likelihood 22684:16
22664:12,23 22671:19 22673:8Ja 22594:24 22598:1,23 22737:2122639:10 22646:15 22648:16 22665:2522661:9 leaning 22722:16 learned 22652:10limited 22654:21 22717:122675:16,22 22676:13 22678:25Jacobus 22593:3,14 Jan 22593:3,1422686:13 22702:15 22704:22 22706:11learned 22652:10 22700:7 22726:24lime 22584:18 22586 22603:12 22603:1222679:13 22680:13 22683:18,24January 22592:19,25 22703:1622704:22 22706:11 22615:22,2322700:7 22726:24 learning 22655:2522630:21 22641:11 22642:9 2263:2522684:10 22685:19 22702:16 22704:1JJJ07 22624:16 22624:1622615:22,23 22631:20 22716:5leave 22701:3 22733:14 leaves 22729:322642:9 22663:25 22670:24 22701:12	22663:8,10,21	J	kind 22607:17	22659:19 22660:5	limitations 22654:24
22671:19 22673:822737:2122648:16 2265:25leaning 22722:1622717:122675:16,22Jacobus 22593:3,1422686:13 22702:15learned 22652:10line 22584:18 2258622676:13 22678:25Jan 22593:3,1422704:22 22706:1122700:7 22726:2422622:25 22623:122679:13 22680:13January 22592:19,2522721:8learning 22655:2522630:21 22641:1122683:18,2422703:16knew 22603:13,15learnt 22654:822641:21,25,2522684:10 22685:19JJJ 22624:1322615:22,23leave 22701:3 22733:1422642:9 22663:2522702:16 22704:1JJJ07 22624:1622631:20 22716:5leaves 22729:322670:24 22701:1222705:5,8,21 22707:5JJJ107 22623:1722718:7,13 22729:15leaving 22615:922723:25		Ja 22594:24 22598:1.23	22639:10 22646:15	22661:9	limited 22654:21
22675:16,22 22676:13 22678:25Jacobus 22593:3,14 Jan 22593:3,1422686:13 22702:15 22704:22 22706:11learned 22652:10 22700:7 22726:24line 22584:18 22586 22630:21 22621:1222679:13 22680:13 22683:18,24January 22592:19,25 22703:1622704:22 22706:11 22712:822700:7 22726:24 22702:1622630:21 22641:11 22632:1222684:10 22685:19 22702:16 22704:1JJJ 22624:13 JJJ07 22624:1622615:22,23 22631:20 22716:5leave 22701:3 22733:14 leaves 22729:322642:9 22663:25 22670:24 22701:1222705:5,8,21 22707:5JJJ107 22623:1722718:7,13 22729:15leaving 22615:922723:25					
22676:13 22678:25Jan 22593:3,1422704:22 22706:1122700:7 22726:2422622:25 22623:122679:13 22680:13January 22592:19,2522721:8learning 22655:2522630:21 22641:122683:18,2422703:16knew 22603:13,15learnt 22654:822641:21,25,2522684:10 22685:19JJJ 22624:1322615:22,23leave 22701:3 22733:1422642:9 22663:2522702:16 22704:1JJJ07 22624:1622631:20 22716:5leaves 22729:322670:24 22701:1222705:5,8,21 22707:5JJJ107 22623:1722718:7,13 22729:15leaving 22615:922723:25					
22679:13 22680:13 22683:18,24January 22592:19,25 22703:1622721:8 knew 22603:13,15learning 22655:25 learnt 22654:822630:21 22641:11 22641:21,25,2522684:10 22685:19 22702:16 22704:1JJJ 22624:13 JJJ07 22624:1622615:22,23 22631:20 22716:5leare 22701:3 22733:14 leaves 22729:322642:9 22663:25 22670:24 22701:1222705:5,8,21 22707:5JJJ107 22623:1722718:7,13 22729:15leaving 22615:922723:25					
22683:18,2422703:16knew 22603:13,15learnt 22654:822641:21,25,2522684:10 22685:19JJJ 22624:1322615:22,23leave 22701:3 22733:1422642:9 22663:2522702:16 22704:1JJJ07 22624:1622631:20 22716:5leaves 22729:322670:24 22701:1222705:5,8,21 22707:5JJJ107 22623:1722718:7,13 22729:15leaving 22615:922723:25					
22684:10 22685:19 22702:16 22704:1JJJ 22624:13 JJJ07 22624:1622615:22,23 22631:20 22716:5leave 22701:3 22733:14 leaves 22729:322642:9 22663:25 22670:24 22701:1222705:5,8,21 22707:5JJJ107 22623:1722718:7,13 22729:15leaving 22615:922723:25	/ 31 1 1 22			-	
22702:16 22704:1 JJJ07 22624:16 22631:20 22716:5 leaves 22729:3 22670:24 22701:12 22705:5,8,21 22707:5 JJJ107 22623:17 22718:7,13 22729:15 leaving 22615:9 22723:25	1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1 1				
22705:5,8,21 22707:5 JJJ107 22623:17 22718:7,13 22729:15 leaving 22615:9 22723:25	La La Derree				22642:9 22663:25
22705:5,8,21 22707:5 JJJ107 22623:17 22718:7,13 22729:15 leaving 22615:9 22723:25	22702:16 22704:1	JJJ07 22 624:16	22631:20 22716:5	leaves 22729:3	22670:24 22701:12
E 22107.13 22110.23 Z2021.0.1 Z 2021.0.1 Z 2021.0.1	22709:13 22716:25	22624:6,11	22729:20	22632:25	list 22666:20 22673:6
The THE PART AND THE PART OF THE	the most of the second second the	Park Walland Wall			22675:9,16 22693:23
22721.13 22723.8,20 333178 22000.12 Kilowing 22710.21 Ieu 22004.8 22039.4 22073.9,10 22093.			Showing 22710.21	icu 22004.0 22037.4	22013.7,10 22093.23

Tel: 011 021 6457 Fax: 011 440 9119

RealTime Transcriptions

22694:5 22695:522586:14 22589:2022584:25 22585:13McIntosh 22685:2522620:2 22645:15lists 22654:2122590:2,8 22591:422585:15 22586:1,1122686:14,2422734:24 22735:25little 22608:1522605:15 22608:2022637:11 22639:2522602:16 22615:1622738:13,13,1722645:922609:18 22610:2422654:3,5,7 22655:222618:7 22627:12methods 22586:21live 22699:10 22700:1022612:4,6 22613:1522655:16 22656:2522644:8 22654:19microphone 22648:15lives 22685:1 22705:1422615:10 22621:1022657:17 22659:2222665:17 22689:15Midrand 22633:2422705:17 22706:222621:13 22627:1522676:6,12 22677:722690:22 22691:25Mills 2277:1022710:1422652:22 22657:1822678:9,11,14,15,1922692:10 22693:1mind 22614:13LLL 22728:622666:17 22671:2422679:16,2122694:4 22699:1722615:13 22658:6LLL-series 22592:622673:21 22674:4,2122680:17,22 22681:222700:5 22701:4mind's 22613:15					
lisb: 22664:21 22590:28:291:41 22586:11 22666:41:23 22737:42 22737:41 22737:42 22737:41 22737:42 22737:41 22737:42 22737:41 22737:42 22737:41 22737					Page 1
lisb: 22664:21 22590:28:291:41 22586:11 22666:41:23 22737:42 22737:41 22737:42 22737:41 22737:42 22737:41 22737:42 22737:41 22737:42 22737:41 22737					
Intle 22080:15 22597:622599:2 22587:25 22064:22 mem.2587:52 5295:1 met.2587:52 5295:1 22620:16 2261:14-23 22605:15 22060:20 22637:11 22659:25 22605:17 22089:15 22080:17 22108:12 22665:17 22089:15 22080:17 22108:12 22665:17 22089:15 Mills 2277:10 Iver 2209:10 22700:10 22616:17 22671:24 22667:17 22675:12 22677:17 22689:12 22609:12 22091:2 22618:17 22671:24 22701:13 22071:15 22667:17 22671:24 22677:17 22709:14 22700:57 22701:44 2265:12 2265:10 mind 22633:14 22101:13 22071:15 22667:12 22071:24 22679:12 22071:22 22700:52 2701:42 mind 2263:15 mind 2263:16 2211:13 1 22060:17 22071:24 22679:12 22701:24 22700:52 27274:25 mind 22663:12 mind 22663:12 mind 22663:12 22661:12 2671:11 mind 2268:12 mind 2268:12 mind 2268:12 22661:12 2671:11 22661:12 2671:12 22701:12 22701:12 22701:12 22701:12 22701:12 22701:12 22701:12 22701:12 22701:12 22701:12 22701:12 22701:12 22701:12 22701:12 22701:12 22701:12					
22261:61 22601:61 22607:11 22607:11 22607:11 22607:11 22607:11 22607:11 22607:11 22607:11 22607:11 22607:11 22607:11 22607:11 22607:11 22607:11 22607:11 22607:12 22707:14 22607:12 22707:14 22607:12 22707:14 22607:12 22707:14 22707:14 22607:12 22707:14 22607:12 22707:14 22607:12 22707:14 22607:12 22607:12 22607:12 22607:12 22607:12 22607:12 22607:12 22607:12 22607:12 22607:12 22607:12 22607:12 22607:12 22607:12 22607:12 22607:12 22607:12 22607:12 22607:12	lists 22654:21	22590:2,8 22591:4	22585:15 22586:1,11	· · · · · · · · · · · · · · · · · · ·	
226459 22009/18 22010/24 22643:3.5 72265:22 22618:7 22677:12 microphone 22648:15 Wire 22699:10 22005:17 22612:12 22675:17 22665:17 2260	little 22608:15	22597:6 22599:2	22587:25 22604:22	mean 22587:5 22595:1	met 22714:15 22718:23
lite 2209:10 22700:10 22612-46 22613:15 22655:16 22665:25 22664:82 22694:25 midrand 22633:24 lite 2209:17 22006:1 22661:10 2269:17 22606:12 22091:25 midrand 22633:24 lite 2209:17 2206:2 22661:12 22091:25 22669:17 22092:16 midrand 22633:24 lite 2200:17 2206:17 22666:17 22091:12 22609:17 22090:12 22700:14 22669:17 22092:16 lite 2200:17 2208:17 22666:17 22092:16 22669:17 22092:16 22770:18 22742:16 mind 2261:13 22651:13 lite 2200:15 22666:17 22092:16 22770:14 22679:15 mind 22061:12 22730:11 2261:10:12061:11 2261:10:12061:11 mind 22061:12 22730:11 2261:11	22620:16 22641:23	22605:15 22608:20	22637:11 22639:25	22602:16 22615:16	22738:13,13,17
lite 2209:10 22700:10 22612-46 22613:15 22655:16 22665:25 22664:82 22694:25 midrand 22633:24 lite 2209:17 22006:1 22661:10 2269:17 22606:12 22091:25 midrand 22633:24 lite 2209:17 2206:2 22661:12 22091:25 22669:17 22092:16 midrand 22633:24 lite 2200:17 2206:17 22666:17 22091:12 22609:17 22090:12 22700:14 22669:17 22092:16 lite 2200:17 2208:17 22666:17 22092:16 22669:17 22092:16 22770:18 22742:16 mind 2261:13 22651:13 lite 2200:15 22666:17 22092:16 22770:14 22679:15 mind 22061:12 22730:11 2261:10:12061:11 2261:10:12061:11 mind 22061:12 22730:11 2261:11	22645:9	22609:18 22610:24	22654:3.5.7 22655:2	22618:7 22627:12	methods 22586:21
lives 22685:1 22706:14 2265:17 22609:12 22666:17 22609:12 Views 22669:11 Views 2269:12 22706:17 22706:12 22667:12 22609:12 22609:12 22609:12 22619:13 22619:13 LLL 2728:6 22667:12 22609:10 22609:12 22010:14 mind 22613:15 LLL 2728:6 22667:12 22700:14 22700:12 22700:14 mind 22613:15 LLL 2728:6 22667:12 22700:12 22700:12 22700:12 22700:12 22700:12 22700:12 22700:12 22700:12 22700:12 22700:12 22700:12 22700:12 22739:11 22660:12 2660:12 2660:12 2660:12 2660:12 2660:12 2660:12 2670:12 22739:11 22660:12 2660:12 2660:12 2670:12 2270:11 22660:12 2260:12 2270:12 2260:12 2270:11 2260:12 2260:12 2260:12 2260:12 2260:12 2260:12 2260:12 2260:12 2260:12 2260:12 2260:12 2260:12 2260:12 2260:12 2260:12 2260:12	live 22699·10 22700·10				
22700:17 22706:1 22676:6.12 22677:7 22690:10 22690:10 22690:17 22676:6.12 22677:7 22690:10 22690:17 2260:11 22670:14 22679:16.21 22679:16.21 22679:16.21 22679:16.21 22679:16.21 22679:16.21 22679:16.21 22679:16.21 22679:16.21 22679:16.21 22679:15.2270:17 22679:15.2270:17 22679:15.2270:17 22669:10 2269:17 22669:10 2269:17 22669:10 2269:17 22669:12 22671:12 22679:15.2270:19 22779:11 22779:11 2270:12 2270:11 22779:11 2260:25 2260:12 2279:12 22799:11 2260:25 2260:12 2260:25 2260:12 2260:25 2260:12 2260:25 2260:12 2260:25 2260:12 2260:25 2260:12 2260:25 2260:12 2260:25 2260:12 2260:25 2260:12 2260:25 2260:12 2260:25 2260:12 2260:12 2267:12 2260:12 2267:12 2260:12 2267:12 2260:12 2267:12 2260:12 2267:12 2260:12 2267:12 2260:12 2261:11 2260:12 2261:11 2260:12 2261:11 2260:12 2261:11 2260:12 2261:11 2260:12 2261:11 2260:12 2261:11 2260:12 2261:11 2260:12 2261:11 2260:12 2261:11 2260:12 2261:11 2260:12 2261:11 2260:12 2261:11 2260:12 2261:11 2260:11 <t< td=""><td></td><td></td><td></td><td></td><td>-</td></t<>					-
22701:4 22678:9.11,14,15,19 22696:9.10 22691:4 22691:5 22691:1 22691:1 22691:1<					
LLL 22728:6 22666:17 2207:14 22679:16.21 22679:16.21 22679:17 22615:13 22658:1 LLL 22800:18 22679:16.21 22689:12 22678:12 22709:12 22669:12			-		
LLL-series 22592.6 22673-21 22674-4,21 22680-17.22 22681-12 22700-13 22680-17.22 22681-2 22704-18 2270-14 mine 3265-5 22728-2 22010-10 22665-12 22709-13 22680-17.22 22002-13 22680-17.22 22070-11 22707-14 22606-12 22607-12 22707-14 22606-12 22607-12 22					
LLI, 122200:18 226766-22883:6 22681:5, 12, 14, 25 22701:12 22701:12 22707:12 22707:13 22707:13 22707:13 22707:13 22707:13 22707:13 22707:13 22707:13 22707:13 22707:13 22707:13 22707:13 22707:13 22773:17 22707:14 22607:21 22773:17 22607:21 22773:17 22607:21 22773:17 22607:21 <t< td=""><td></td><td></td><td>-</td><td></td><td></td></t<>			-		
22610:10 22686:17 22686:17 22686:17 22713:13 22686:17 22713:14 22713:12 22667:12 22671:12 22671:12 22671:12 22671:12 22671:12 22671:12 22671:12 22671:12 22671:12 22671:12 22671:12 22671:12 22671:12 22671:12 22671:12 22671:12 22671:12 22671:12 22671:12	LLL-series 22592:6	22673:21 22674:4,21	22680:17,22 22681:2	22700:5 22701:4	mind's 22613:15
22713:13 22603:20 22702:9 22701:2 22702:1 22731:7 22732:19 Minister 22587:4,12 22592:5 2050:51 22702:1 22732:12 22703:1 22703:1 22605:12 22605:1	LLL1 22600:18	22676:6 22683:6	22681:5,12,14,25	22704:18 22707:17	mine 22625:5 22728:20
22713:13 22603:20 22702:9 22701:2 22702:1 22731:7 22732:19 Minister 22587:4,12 22592:5 2050:51 22702:1 22732:12 22703:1 22703:1 22605:12 22605:1	22619:10 22652:17	22686:17 22692:13	22682:11,15,18,22	22707:18 22724:25	22729:14
LLL1 22580:15 22705:21 2270:2:2 22705:21 2270:2:1 22705:21 2270:2:2 22705:21 2270:2:2 22705:21 2265:21 22607:16 2265:1:8 managing 22677:12 managing 22677:12 2269:1:2 <					
22582:10 22722:17 22728:4,19 22704:10.23 22712:9 manage 2263:15 Minister's 2258:221 22592:5 22607:16 2265:11 manage 2268:624 manage 2268:624 manage 2268:624 22730:12 22593:12 6265:12 22693:12 6266:11 manage 7268:624 manage 7268:624 22731:2 22731:2 22593:12 6265:12 22693:12 6265:12 manage 7269:12 22695:19 manage 2268:16; 2269:16; manage 2268:12					
2259:2:5 Iooked 2259:2:6 managing 2267:21 22650:25 22661:13 22587:9 LL12 2259:1:4 2267:16 2269:1:6 manuscript 2259:2.9 22699:15 manuscript 2259:2.9 22699:15 manuscript 2259:2.9 22699:15 manuscript 2259:2.9 22609:15 manuscript 2259:1.9 22609:15 manuscript 2259:1.9 22609:15 manuscript 22609:15 22590:1.5 22590:1.5 22609:1.6 22609:1.6 22700:2.2 22617:1.2 22773:1.1 1 1 2260:1.5 2270:5.2 2270:5.2 22730:1.1 22617:1.2 22737:1.1 1 1 22617:1.2 22737:1.1 22617:1.2 22737:1.1 22737:1.1 22617:2 22737:1.1 22617:2 227373:1.1 2260:					
LL1.12 22269:12 22267:12 22260:12 22260:12 22260:12 22260:12 22260:12 22260:12 22260:12 22260:12 22260:12 22260:12 2260:12 <td></td> <td>,</td> <td></td> <td></td> <td></td>		,			
22593:1 22653:21 22667:9 22699:3 22699:15 manuscript 22993:29 22699:15 manuscript 2293:29 22699:19 minuted 22591:79 LLL14 22593:10 22683:20 22683:20 22689:16,17 22617:41 22617:41 22595:8 2270:61 22705:32 2269:71 22617:41 22617:41 22617:41 22595:8 2270:61 22705:32 2269:71 22617:41 22617:41 22617:41 22705:10 22705:32 2269:71 2270:510 22773:12 2271:11 22713:12 22617:12 2263:11 2260:22 2260:11 2271:11 2260:22 2260:12 2260:12 2260:12 2260:12 2260:12 2260:12 2260:12 2260:12 2260:12 2260:12 2260:12 2260:12 2260:12 2260:12 2260:12 2260:12 2260:12 2260:12			0 0		
LL13 2259:6.14 2273:8 2273:8 2259:15 2259:15 2259:15 2259:15 2266:15 2259:16 2266:15 2259:16 2266:15 2266:15 2259:16 2266:16 2266:15 2266:16 2266:15 2266:16 2266:15 2266:16 2266:16 2266:16 2266:16 2266:16 2266:16 2266:16 2266:16 2266:16 2270:16 Immute 2258:16.17 2260:15 2260:15 2260:15 2260:15 2260:15 2260:15 2260:15 2260:16 2260:16 2260:16 2260:16 2260:16 2260:16 2260:16 2260:16 2260:16 2260:17 2260:17 2260:17 2260:18 2260:17 2260:17 2260:17 2260:17 2260:17 2260:18 2260:17 2260:17 2260:18 2260:17 2260:18 2260:17 2260:18 2260:17 2260:18 2260:17 2260:18 2260:12 2270:11 2260:12 2260:12 2270:11 2260:12 2260:12 2260:12 2260:12 2260:12 2260:12 2260:12 2260:12<					
LL1.13 22593:6,14 22731:2 22593:13 22605:25 meanings 22695:19 minuted 22591:7 227328 L06king 22650:15 22686:619,19 maps 22602:15 maps 22602:15 22590:522677:12 22646:10 22676:10 22646:10 22676:10 22617:32260:45,82 22733:17 22708:24 22708:23 22605:722606:15 22605:722606:16,17 22695:1 22671:41,15,17 22771:15 b0 22613:722688:22 22663:71 22664:51 22701:16,23 22703:11 MIRRLAN 2280:4 22705:10 burch 22687:81.5 22657:12 22665:71 22703:14 MIRRLAN 2280:4 22703:11 22705:10 burch 22687:81.5 22657:12 22671:1 22703:10 MIRRLAN 2280:4 22703:10 22666:18 22667:11 22703:12 22693:12 22671:1 22695:1.8 meding 22714:13.14(-16) 22693:1.2 22666:18 22667:11 MA 22673:12 22677:12 22693:1.8 miscartage 22792:1.8 miscartage 22792:1.8 22669:19 22699:12 22691:1.2 22691:1.2 22692:1.2 22616:1.2,210:2.1 miscartage 2279:1.3 22669:19 22646:11 22647:6 22646:11 22647:6	22593:1 22655:21	22667:9 22699:3	manuscript 22593:2,9	22699:15	22612:25
22730:8 looking 22650:15 22730:10 means 22580:23 minutes 22581:16.19 LLL4 22593:9.15.25 22668:6.19.19 mags 22602:15 22509:5 22627:12 22649:16.17.26295:10 22616:7.23 22617:1,5 22595:8 22730:16 22669:12.07.23:11 22609:7 226108:12 22620:18 22665:12 22617:12 22595:8 22730:16 22709:3.8 22667:12 22645:11 22721:16.23 22670:18 22654:24 2260:18 22647:12 2270:15 lot 22613:7 22668:12 2271:16.23 mechanical 22654:24 2260:12 22648:10 2270:15 lot 22613:7 22669:12 2271:14 22669:12 02661:10 mechanical 22654:24 2260:12 2278:12 22507:12 22599:21 22713:3 22661:12 2267:12 media 22714:13.14.16 mistead 22613:25 22669:17 2269:18 22663:12 2267:10 media 22714:13.14.16 mistead 22613:25 22669:17 2269:18 22663:12 2267:11 media 22714:13.14.16 mistead 22613:25 22669:17 2269:14 22677:12 22677:12 mistead 22613:25 mistead 22613:25 22669:17 2269:14 22677:12 22681:17 media 22716:17 miste	LLL13 22593:6.14	22731:2		meanings 22695:19	minuted 22591:7
LL1.14 2299:9,15,25 2266% 6,19,19 maps 22602:15 22590:5 22671:12 22604:5 22601:15,22 227782:7,7 looks 22650:14 22674:8 Marikana 2280:19 22664:10 22676:10 22617:12,22601:15,22617:11 22733:17 22705:24,25 22706:2 22609:7,22098:3,20 22609:7,22098:3,20 22609:7,22098:3,20 22609:7,22098:3,20 22609:7,22098:3,20 22609:7,22098:3,20 22609:7,22098:3,20 22609:7,22098:3,20 22609:7,22098:3,20 22609:7,22098:3,20 22609:7,22098:3,20 22609:7,22098:3,20 22609:7,22098:3,20 22609:7,22098:3,20 22609:7,22098:3,20 22609:7,2206:7,12 22609:7,2208:7,11 mechanics 2266:6,12 22609:7,2208:7,11 mechanics 2266:7,12 22609:10,2206:7,12 22609:10,2206:7,12 22609:10,2206:7,12 22609:10,2206:7,12 22609:1,8,25 mechanics 2260:1,5 mistead 22617:2,12 2267:1,2206:7,12 22609:1,8,25 22509:1,8 mistead 22617:2,12 2267:1,2206:7,12 22609:1,8,25 22509:1,8 mistead 22617:2,2011:1,12 2260:1,25 22609:1,2208:1,16 mistead 22617:2,2208:1,12 22609:12 22609:1,10 Mabes 22609:2,12 22609:1,12 22609:1,12 22609:1,12 22609:1,12 22609:1,12	· · · · · · · · · · · · · · · · · · ·			-	
22728:2,7 Iooks 22650:14 22674:8 Marikana 22580:19 2264:610 22676:10 22616:7,23 2261:12 LL15 2259:8 22694:21 22703:21 22609:7 22610:8 22695:7 22698:3,20 22602:18 2264:19 22703:21 22709:32 8270:61 22705:22 2269:1617 22695:10 22617:12 2264:11 22701:20 2270:20 22701:20 22701:20 22701:20 22701:20 22701:20 22701:20 22701:20 22701:20 22701:20 22701:20 22701:20 22701:20 22701:20 22701:20 22701:20 22701:20 22701:20 22701:10 22701:12 22701:13 22651:18 22701:13 22661:18,25 22661:18,25 22660:11 mechanics 2263:62 22661:18,25 22669:11 22661:18 22671:12 2269:11 22661:18 22671:12 2269:11 22661:18 22671:12 2269:11 22661:18 22671:12 2269:11 22661:18 22671:12 2269:11 22701:13 2269:11 22701:13 2269:11 2270:12 2269:11 2270:12 2269:11 22701:12 2269:11 2269:11 2260:11 2269:11					
LL15 22594:8 22683:8 22694:58, 22703:21 22509:32608:22 22689:16, 122695:12 2260:18 2263:19 2260:18 2263:19 2260:18 2263:19 2260:18 2263:19 2260:18 2263:19 2260:18 2263:19 2260:18 2263:19 2260:18 2263:19 2260:18 2263:19 2260:18 2263:19 2271:16.23 MIRRIAM 22580:4 LL16 22595:10 LUL17 22595:13 22705:24,25 22706:2 22639:12 22645:11 22639:12 22645:11 2271:16.23 MIRRIAM 22580:4 22639:12 22661:0 mechanical 2265:24 22630:12 2264:11 22639:12 2269:10 22705:10 Imice 22637:13 22669:16:10 mechanical 2265:12 22705:12 22599:12 2269:11 2271:15:13 22661:18, 25 miscad 2261:32:25 miscad 2261:32:25 miscad 2261:32:25 miscad 2261:32:25 miscad 2261:32:25 miscad 2261:32:25 miscad 2269:12:20 miscad 2261:32:25 miscad 2261:32:25 miscad 2261:32:25 miscad 2261:32:25 miscad 2261:32:25 22659:12:270:10:22 2260:11:10 2260:12:260:12:20 miscad 2261:12:25 2260:12:22:25:12 2261:12:22:25:12 2261:12:22:25:25:12					
22595:8 22730:16 22694:21 22609:7 22609:7 22609:3.20 22620:18 226324:19 22703:21 22705:24,25 22637:12 22657:1 22705:20 22739:11 LL16 22595:1 22705:25 22652:42 22667:7 22662:85 mechanics 22630:8 2260:18 22630:18 2260:18 22630:18 2260:18 22630:12 22630:12 22630:12 22630:12 22630:12 22630:12 22630:12 22630:12 22630:12 22630:12 22630:18 22630:12					
22733:17 22705:24,25 22706:2 22618:22 22619:2 22702:20 22705:2 22739:11 LL16 22595:10 22709:38 22718:3 22637:12 22645:11 22711:16.23 MIRRIA 22580:4 22710:15 10 226137: 72638:22 226637:12 22645:10 mechanical 22654:24 mechanical 22654:24 22705:10 1unch 22687:8,15 22669:10 22660:10 mechanical 22654:24 miscad 22613:25 22666:18 22667:11 22673:12 22673:19 22605:13 miscad 22613:25 miscad 22613:25 22649:17 22648:19 22694:3,17 22695:23 22699:10 22700:10 22605:16,18,20,21,24 22675:12 22567:18 22680:1.5 Mabea 22799:11 22707:8 22711:15 22616:19,20,21,24 22675:12 22567:18 22680:1.5 Mabaa 22709:11 22707:12 22616:19,10,23 22699:10 22700:10 22616:19,20,21,24 22577:22 22646:11 22646:11 22647:6 mark 2259:15 22616:19,20,21,24 22675:12 LL122 12596:20 maintaine 2258:13 mark 22592:1,5 22616:19,20,424 22616:19,20,424 22644:11 22664:14 22617:52 2264:25 22644:11 22664:14 22664:14 22664:12 2269:1				-	
LLL16 22595:10 22709:3,8 22718:3 22637:12 22645:11 22721:16.23 MIRRIAM 22580:4 22701:15 lot 22613:7 22638:22 22657:1 22658:7 mechanics 22636:5 22620:22 22648:10 22705:10 lunch 22687:8,15 22659:1 22661:16 mechanics 22636:5 mechanics 22636:10 22666:18,22667:11 Lseries 22592:4 22667:22 22670:10 22695:1.8 miscarriage 22712:13 22649:7 226493:7 226493:12 72695:23 22699:10 2261:10 meting 22588:15 miscarriage 22705:12 22197:18 22680:1,5 Mabaa 22709:12 22707:12 22677:12 22619:9 2261:2 22619:9 2261:2 2257:12 22597:12 22596:19 maintain 22645:14 2271:15 22619:9 2261:2 22599:8 2269:9 22599:8 2269:9 22797:3:2 2269:9 22797:3:2 2269:9:1 22679:12 2269:14 22679:12 2269:14 22679:12 2269:14 22679:12 2269:14 22679:12 2261:12 2260:22 2269:10 2279:13 2261:20 2279:12 2279:12 2261:20 279:12 22598:12 22596:12 maintain 22645:14 2271:12 2261:20 270:12 2261:20 279:12 2259:8:12 2259:12 22598:12 2269:12 22598:12 22598:12<				22695:7 22698:3,20	22620:18 22634:19
22721:15 Iot 22613:7 22638:22 22647:1 22650:5 mechanics 22636:5 22632:12 22648:10 LL17 22595:13 1unch 22687:8,15 22652:24 22658:7 mechanics 22636:5 22731:14 22597:12 22599:12 22579:12 22662:1 22662:22 22670:10 22695:13 miscarriage 22702:13 22666:18 22667:11 2.5eries 2259:24 22663:12 22673:19 22694:9,23 miscarriage 22705:12 22664:12 22596:18 Mabasa 22693:23 22684:11 22685:12 22695:1,8 miscarriage 22795:12 22697:12 22596:18 Mabae 22709:11 22707:10 22605:1,2 22612:9 22614:24:25 misseading 2279:17,23,22 22597:12 22596:19 main 22645:14 22716:13 22706:12 22616:1,9,10,23 22599:8 22609:9 22597:22 22646:11 22647:6 22736:14 22713:22 22633:1,23 2264:21 misina 22645:18 22597:22 22598:12 22633:1,23 2264:21 22633:1,23 2264:21 22633:10:2263:18 22599:22 22598:12 22598:14 22667:12 22683:10 22683:12 22683:12 22599:12 maintaine 22587:18 maintaine 22587:18 22598:14 22667:12 22683:12	22733:17	22705:24,25 22706:2	22618:22 22619:2	22702:20 22705:2	22739:11
22721:15 Iot 22613:7 22638:22 22647:1 22650:5 mechanics 22636:5 22632:12 22648:10 LL17 22595:13 1unch 22687:8,15 22652:24 22658:7 mechanics 22636:5 22731:14 22597:12 22599:12 22579:12 22662:1 22662:22 22670:10 22695:13 miscarriage 22702:13 22666:18 22667:11 2.5eries 2259:24 22663:12 22673:19 22694:9,23 miscarriage 22705:12 22664:12 22596:18 Mabasa 22693:23 22684:11 22685:12 22695:1,8 miscarriage 22795:12 22697:12 22596:18 Mabae 22709:11 22707:10 22605:1,2 22612:9 22614:24:25 misseading 2279:17,23,22 22597:12 22596:19 main 22645:14 22716:13 22706:12 22616:1,9,10,23 22599:8 22609:9 22597:22 22646:11 22647:6 22736:14 22713:22 22633:1,23 2264:21 misina 22645:18 22597:22 22598:12 22633:1,23 2264:21 22633:1,23 2264:21 22633:10:2263:18 22599:22 22598:12 22598:14 22667:12 22683:10 22683:12 22683:12 22599:12 maintaine 22587:18 maintaine 22587:18 22598:14 22667:12 22683:12	LLL16 22595:10	22709:3,8 22718:3	22637:12 22645:11	22721:16,23	MIRRIAM 22580:4
LL17 22595:13 22705:10 22703:25 lunch 22687:81,5 22652:24 22688:7 22667:12 22597:12 22597:12 22667:13 media 22714:13,14,16 media 22714:13,14,16 misconduct 22705:12 misconduct 22705:12 22666:18 22667:11 22673:12 22673:12 22673:19 L-series 22592:4 22662:22 22670:10 media 22714:13,14,16 misconduct 22705:12 22667:12 22673:12 22673:12 22673:12 22673:12 22695:13 Mabas 22693:23 22695:12 22673:12 misconduct 22705:20 LL18 22596:18 22690:12 22691:17 Mabas 22693:23 22699:10 22601:12 22505:16,18,20,21,24 misreading 22705:20 LL10 22596:18 Mabe 22799:19 22700:13 22706:12 22612:9 22614:25 misread 22659:12 22597:22 22596:19 22646:11 22647:6 22736:14 22633:1,23 22634:21 missing 22593:17,23,24 22597:22 22596:19 22646:11 22647:6 22736:14 22633:1,23 2264:21 misunderstood 22597:22 22596:12 maintained 22581:18 marked 2259:14 22667:12 22604:24 misunderstood 22598:22 22596:29 maintenace 22691:14,15,19 22588:12 22609:16 misunderstood 22598:22 22596:29 maintained 22581:18 22599:19 22666:12 22645:11 22668:17 22598:12 22699:19 22669:14 22675:21 </td <td></td> <td></td> <td></td> <td>-</td> <td></td>				-	
22705:10 Iunch 22687:8,15 22569:10 22661:10 media 22714:13,14,16 miscartiage 22722:8 LLL 18 22596:11 22713:3 22663:12 22670:10 media 22728:21 miscartiage 2272:8 22667:12 22597:12 22597:12 22597:11 22663:12 22670:10 22663:12 22670:10 media 22585:15 miscartiage 22705:20 1LL 18, 122648:19 Mabasa 22693:23 22684:11 22685:2 22599:10 22617:12 22073:19 22617:12 22051:61, 82,02.124 22677:12 22673:12, 82705:12 1LL 19 22596:18 Maba 22709:11 22700:13 22706:12 22616:15, 91,02.33 22599:12 22617:5 22618:8,10 22573:17, 32,22 22597:12 22646:11 22647:6 22716:7 22735:14 22617:5 22618:8,10 22573:42 22599:12 22597:22 main 22645:14 2259:13 mark 22592:1,5 misunderstood misunderstood 22599:22 522596:21 maintaine 22587:18 22598:17 22648:19 22664:1 misunderstood 22599:12 22694:14 22691:14 marked 22593:17 22689:17 22689:17 22689:17 22689:17 22689:17 22689:16 22689:17 22689:17 22689:					
LLL18 22596:11.51.71 22713:3 22661:18.25 medics 22728:21 misconduct 22705:12 22660:12 22667:11 Lseries 22592:4 22667:12 22673:12 22695:1.8 misleading 22712:13 22649:17 22694:17 22695:23 22694:11 22673:12 22695:1.8 miscod uct 22705:20 LL18.1 22648:19 Mabasa 22693:23 22694:17 22695:23 22695:1.8 miscod uct 22705:12 22597:12 22596:18 Madma 22709:11 22707:12 2261:19 22610:19 (1.8,20,21,24) 22597:22 22597:12 22596:19 maintain 22645:14 22707:12 2261:19 (1.8,20,21,24) 22598:18 22598:17 22698:18,22509:19 22597:12 22596:19 maintaind 22587:13 mark 22592:1,5 22711:5 22598:13 22634:11 22698:12 22639:14 22597:12 22596:19 22649:11 22644:19 22691:11 (2.647:6) 22713:12 22713:12 mistaken 22635:18 22597:12 22598:12 22598:13 22588:12 22699:19 22598:12 22598:12 22713:12 22611:120 22598:12 22599:19 22699:16 maintaine 22587:18 mark 22592:15 22611:120 mistaken 22635:18 22599:12 22698:14 22699:12 22698:14 2269					
22597:12 2259:21 22666:18 22667:11 22673:12 2259:13 22673:12 2259:13 22673:12 22631:19 22673:12 22631:19 22693:12 22694:3,17 22695:23 22694:3,17 22695:23 22694:3,17 22695:23 22694:3,17 22695:23 22694:3,17 22695:23 22694:3,17 22695:23 22694:11 22685:2 22695:6,18,20,21,24 22695:6,18,20,21,24 22614:25 22614:25 22614:25 22614:12 22614:25 22616:1,9,10,23 22597:22 22597:12 22646:11 22647:6 22597:22 22596:20,21 22597:22 22596:20,21 22646:11 22647:1 22597:22 22597:22 22598:32 22598:3 22597:22 22598:32 22598:3 22598:12 22598:2 22598:12 22596:20 maintaine 22587:18 22597:22 22598:12 22596:20 maintaine 22587:18 22598:12 22598:2 22598:12 22598:2 22598:12 22598:2 22598:12 22598:2 22598:12 22598:2 22598:12 22598:19 22646:11 22647:6 maintaine 22587:18 22598:12 22648:19 22669:11,15,19 22669:11,22701:10 22669:12 02607:15 22669:12 02707:10 22669:12 02607:15 22669:12 02707:10 22695:6,8,24 22599:18 22691:14 22699:18 22697:13,22 22598:10 22701:10 22699:19 22699:5 22638:6,9,22 22639:9 22706:12 22683:11 22698:19 2269:12 22698:19 22699:5 22638:6,9,22 22639:9 22706:12 22687:13,21 22588:10 22669:12 02701:10 22698:19 22699:5 22638:6,9,22 22639:9 22706:12 22683:11 22696:12 22697:13,22 22589:19 22669:12 02607:13 material 22636:18 22709:12 22697:13,22 22589:19 22668:10 22607:13 22709:12 22689:19 22669:12 02607:13 22709:12 22689:19 22669:12 02607:13 22709:12 22689:19 22669:12 02607:13 22709:12 22689:19 22669:12 02607:13 22709:12 22689:19 22669:10 02260:12 22709:12 22689:19 22669:10 02260:12 22709:12 22689:19 22669:10 02260:12 22709:12 22689:19 22669:10 02260:12 22709:12 22689:19 22669:10 02260:12 22709:12 22689:19 22669:10 02260:12 22738:12 22731:12 0 22669:12 02738:26 22669:12 22731:12 02738:26 22669:12 22731:12 02738:26 22669:13 227731:12 22669:14 22669					
22666:18 22667:11 22672:12 22673:19 22695:1,8 misleading 22712:13 22673:25 22680:17 22695:1,7 22695:1,7 22695:1,7 22695:1,8 misleading 22702:0 22649:7 22694:3,17 22695:23 22699:10 22700:10 22605:16,18,20,21,24 22579:15 22615:19,10,23 22597:18 22680:1,5 Madaa 22709:11 22070:13 22706:12 22616:1,9,10,23 22599:12 22593:12 2269:13 22597:12 22596:20,21 maintained 22587:18 mark 22592:1,5 22711:2 22683:16 22733:12 22643:21 misined 2253:18 22599:209:20 maintained 22587:18 mark 22592:1,5 22713:22 misined e2263:11 22599:12 22616:1,9,10,23 22614:26 22734:10 22616:1,9,10,23 22599:209:219 22646:11 22647:6 mark 22592:1,5 22713:22 misined e2263:18 22693:21 22735:14 22666:14 22675:21 misined e2258:13 22699:12,22596:25 22699:14,22 42693:6,8 22695:21 22705:10 22683:17 22648:16 22679:12 22683:16 22685:12 22705:1 22685:12 22705:1 22685:12 2269:13 mislead 2259:13 1LL22 22596:14 22696:10 22697:15 maske 22655:5,7					
M 22673:2.5 (258):17 meeting 22585:15 misreading 22705:20 LLL18.1 22648:19 Mabasa 22693:23 22684:11 22685:2 22695:16.8(20.21,24) misreading 22598:12 LLL19 22596:18 Mabe 22729:19 22700:13 22706:12 22612:9 22614:25 misreading 22599:17,23,24 22597:22 main 22645:14 22707:8 22711:5 22633:1,23 22634:21 misreatore 2269:12,3 22597:22 2264:11 22647:6 22736:14 22633:1,23 22634:21 mission 22621:23 22597:25 22598:8 22599:19 maintain 22582:13 market 22593:14 22665:14 2264:14 22638:12 22684:19 mistaken 22635:18 22699:12 2264:14 22699:14,4 maintenance 22691:14,4 market 22593:14 22665:12 22683:11 22683:12 22683:16 22699:12 22694:18,19 22699:8 22695:6,2 22695:6,2 22695:6,2 22696:10 22697:13 22705:12 22683:11 22681:17 22683:11 22683:12 22689:16 LLL22 22598:10 22701:10 22695:6,12 22694:18 22697:21 22683:14 22697:21 22683:14 22696:12 22683:12 22580:15 22585:2 22598:10 22701:10 22696:12 22694:15 marked 22595:5,7 22696:12 22694:15	22597:12 22599:21	L-series 22592:4	22662:22 22670:10	medium 22694:9,23	mislead 22613:25
M 22673:2.5 (258):17 meeting 22585:15 misreading 22705:20 LLL18.1 22648:19 Mabasa 22693:23 22684:11 22685:2 22695:16.8(20.21,24) misreading 22598:12 LLL19 22596:18 Mabe 22729:19 22700:13 22706:12 22612:9 22614:25 misreading 22599:17,23,24 22597:22 main 22645:14 22707:8 22711:5 22633:1,23 22634:21 misreatore 2269:12,3 22597:22 2264:11 22647:6 22736:14 22633:1,23 22634:21 mission 22621:23 22597:25 22598:8 22599:19 maintain 22582:13 market 22593:14 22665:14 2264:14 22638:12 22684:19 mistaken 22635:18 22699:12 2264:14 22699:14,4 maintenance 22691:14,4 market 22593:14 22669:12 22683:11 22683:12 22689:16 22699:12 22694:18,19 22699:8 22695:6,2 22695:6,2 22695:6,2 22696:10 22697:13 22705:12 22683:11 22681:17 22683:12 22588:10 22701:10 22695:6,12 22694:14 22697:12 22683:14 22697:12 22683:12 22580:15 22580:5 Mithwanazi 22580:8 22598:10 22701:10 22695:6,2 22696:10 22697:15 masec2655:5,7 22696:12 22694:15	22666:18 22667:11		22672:12 22673:19	22695:1,8	misleading 22712:13
LLL18.1:22648:19 Mabasa 22693:23 22684:11 22685:2 22589:6 22604:20 missed 22598:12 22694:7 22694:3,17 22695:23 22699:10 22700:10 22605:16,18,20,21,24 22675:12 LL19 22596:18 Maba 22709:11 22707:8 22711:5 22614:25 22599:82 22599:82 LL20 22596:19 main 22645:14 22776:14 22633:1,23 22634:21 mission 22621:23 LL21 22596:20,21 maintaine 22587:18 22599:12,5 22736:14 22663:1,23 22634:21 mission 22621:23 22597:2,25 22598:3 22583:2 22593:17 22648:19 metings 22624:5 misunderstood 22598:10 22701:10 22691:11,15.19 22599:17 22648:19 member 22604:24 22683:11 22685:20 22693:21 22694:14 22691:11,15.19 22599:18 22618:4 22679:12 22683:11 22685:20 22683:12 22683:11 22685:20 22693:21 22694:14 22691:12 22697:15 mass 22655:5,7 22683:12 22697:1,3,21 22598:15 22854:2 22598:19 22705:2 22661:12 22705:2 22696:12 2269:13 22705:2 22661:12 22640:10 22705:3 2269:13 22705:2 22661:12 22640:13 <t< td=""><td></td><td>Μ</td><td></td><td>· · · · · · · · · · · · · · · · · · ·</td><td>5</td></t<>		Μ		· · · · · · · · · · · · · · · · · · ·	5
22649:7 22694:3,17 22695:23 22699:10 22700:10 22605:16,18,20,21,24 22675:12 LLL19 22596:18 Mada 22709:11 22700:13 22706:12 22612:9 22614:25 missing 22598:17,23,24 22597:12 22646:11 22647:6 22703:12 22633:1,23 22634:21 mission 22621:23 LLL21 22596:20 maintained 2588:13 mark 22592:1,5 22713:22 mission 22621:23 22597:22 22646:11 22647:6 22593:25 22596:2 meetings 22624:5 mission 22621:23 22597:22 2596:22 maintained 22587:18 22598:17 22648:19 member 22604:24 22611:20 22598:22 2596:25 maintained 22591:1, 22698:14 226691:11,15,19 22598:14 22667:12 22683:11 22685:12 22699:18 22692:24 22693:6,8 22655:21 22705:10 22688:17 22690:21 22588:15 22588:12 22598:10 22701:10 22696:10 22697:15 mass 22655:5.7 22696:3 22697:1,3,21 22589:19 LLL22 22598:14 22691:19 22699:5 22638:6,9,22 22639:9 22706:17 22708:4 module 22661:20 22703:23 22705:2 major 22616:11,14,22 2639:10 22640:13 22709:17 22708:4					
LLL19 22596:18 Mabe 22729:19 22700:13 22706:12 22612:9 22614:25 missing 22593:17,23,24 22597:18 22680:1,5 main 22645:14 22711:5 22616:1,9,10,23 22599:8 22650:9 LL20 22596:20 22596:20 22593:25 22596:2 22593:25 22596:2 22593:25 22596:2 LL22 22596:22 maintain 22587:18 22593:25 22596:2 22713:22 mistaken 22635:18 22599:25 22596:25 22699:21 22694:14 22699:21,5 22691:1,2 22683:1 22641:25 22598:8 22599:19 maintenance 22691:1,4 22599:18 22618:4 22698:14 22683:12 22689:16 mitkearca 22683:12 22689:16 22694:18,19 22699:2 22699:66,8,24 22730:18 22698:16 22689:16 22689:16 22689:16 22689:16 22689:16 22667:12 22681:12 22689:16 22667:12 22681:12 22689:16 22667:12 22700:23 22705:5 module 22591:3 22689:16 22667:12 22681:12 2268:16 22709:1,321 2258:16 22667:12 22684:17 22689:16 22667:12 22700:12 3268:16 22667:12 22700:12 32705:5 Mmm 22667:12 22700:12 32705:5 Mmm 22667:12 22700:12 32705:5					
22597:18 22680:1,5 Madam 22709:11 22707:8 22711:5 22616:1.9,10,23 22599:8 22650:9 22597:22 22646:11 22647:6 22736:14 22637:1,23 22638:1,23 22638:1,23 22734:10 22597:22 maintained 22587:18 22736:12 22637:1,23 22634:21 mistaken 22637:18 22597:22 maintained 22587:18 22593:25 22596:2 maintained 22587:18 22593:17 22648:19 22598:8 22599:19 maintained 22587:18 22599:17 22648:19 meetings 22604:24 22666:14 22675:21 22694:18,19 22699:8 22692:24 22693:6,8 22599:18 22618:4 22667:12 22683:11 22688:17 22680:16 22598:10 22701:10 22696:10 22697:15 mass 22655:5,7 22696:3 22697:1,3,21 22580:15 2258:2 22698:10 22701:10 22698:19 22699:1 22638:6,9,22 22639:0 22706:17 22708:4 module 22580:18 22703:24 22669:19 22690:5 22638:19 22640:13 22707:1,23 22719:20 module 22591:3 22703:24 22631:17 22634:10 22734:25 22736:9 22721:1,1,18,19,19 22598:8 22639:4 22598:16 22641:10,12 22642:7 Matunya 2263:2 2273:16,20 22673:5 22698:24		· · · · · · · · · · · · · · · · · · ·			
LLL20 main 22645:14 22716:7 22617:5 22617:5 2273:10 LL21 22596:22 maintain 2582:13 mark 22592:15 metings 22633:1,23 22634:1,23 22633:1,13 22633:1,23 22633:1,23 22633:1,23 22633:1,23 22633:1,23 22633:1,13 22633:1,23 22633:1,13 22633:1,23 22633:1,13 22633:1,23 22633:1,23 22633:1,23 22633:1,23 2270:1,3,23 22583:1,23 22703:1,23 22710:1,					
22597:22 22646:11 22647:6 22736:14 22633:1,23 22634:21 mission 22621:23 LLL21 22596:20,21 maintain 22582:13 22593:25 22596:2 22713:22 mistaken 22635:18 LL22 22596:22 maintained 22587:18 22593:17 22648:19 marked 22593:14 22666:14 22675:21 misione 22684:17 22693:21 22694:14 22691:11,15,19 22593:25 22593:10 22683:12 22683:11 22685:20 22694:18,19 22699:8 22692:24 22693:6,8 22655:21 22705:10 22688:16 Mkhwanazi 22580:8 LL23 22598:10 22701:10 22696:10 22697:15 mass 22655:5,7 22696:3 22697:1,3,21 22580:15 22588:1 22703:24 22694:14 22691:2 1,14,22 22638:10 22640:13 22706:17 22708:4 modules 22660:20 LL23 22598:14 22691:2 22631:7 22642:7 material 2263:19 22703:12 22708:14 modules 22660:20 LL24 22598:16 2261:19 2262:11 22640:19 22642:17 22703:12 22738:14 22598:8 22591:3 L2125 12598:16 22641:10,12 22642:7 Mathunya 2263:11 22703:12 22738:14 modules 22660:20 LL24 25298:16 22641:12 02262:11 22644:12 2666:22 22733:19,2	-	Madam 22709:11			22599:8 22650:9
LLL21 maintain 22582:13 mark 22592:1.5 22713:22 mistaken 2263:18 22597:2.25 22598:32 22593:25 22593:25 22593:24 22643:19 meetings 2264:14 22611:20 22694:18,19 22699:24 22693:68 22655:21 22705:10 22683:12 22683:12 22685:20 22598:10 22699:24 22697:15 masted 22598:16 22699:12 22683:12 22689:16 Mkhwanazi 22580:8 22598:10 22691:11,15,19 22699:13 22695:13 22699:12 22689:17 22689:12 22699:12 22698:19 22698:19 22698:19 22698:19 22698:19 22698:19 22698:19 22699:13 22702:23 22705:3 Mmmu 22667:12 22589:19 LLL24 22598:14 22697:12 22694:19 22640:19 22643:21 22706:17 22708:3 22709:32 22705:3 module 22591:3 LLL25 22598:16 22641:10,12 22643:12 22771:11,18 module	LLL20 22596:19	main 22645:14	22716:7 22735:14	22617:5 22618:8,10	22734:10
LLL21 maintain 22582:13 mark 22592:1.5 22713:22 mistaken 2263:18 22597:2.25 22598:32 22593:25 22593:25 22593:24 22643:19 meetings 2264:14 22611:20 22694:18,19 22699:24 22693:68 22655:21 22705:10 22683:12 22683:12 22685:20 22598:10 22699:24 22697:15 masted 22598:16 22699:12 22683:12 22689:16 Mkhwanazi 22580:8 22598:10 22691:11,15,19 22699:13 22695:13 22699:12 22689:17 22689:12 22699:12 22698:19 22698:19 22698:19 22698:19 22698:19 22698:19 22698:19 22699:13 22702:23 22705:3 Mmmu 22667:12 22589:19 LLL24 22598:14 22697:12 22694:19 22640:19 22643:21 22706:17 22708:3 22709:32 22705:3 module 22591:3 LLL25 22598:16 22641:10,12 22643:12 22771:11,18 module	22597:22	22646:11 22647:6	22736:14	22633:1,23 22634:21	mission 22621:23
22597:2,25 22598:3 22583:2 22593:25 22596:2 meetings 22624:5 misunderstood 22598:8 22599:19 22691:11,15.19 22691:11,15.19 22691:11,15.19 22691:12,22683:11 22685:20 22598:8 22599:19 22691:11,15.19 22692:24 22693:6,8 22595:18 22618:4 22691:12 22683:11 22685:20 22598:10 22701:10 22695:6,8,24 22697:21 22685:17 22696:3 22697:1,3,21 22589:15 22585:2 22598:10 22701:10 22697:21 22688:1,17 material 2263:18 22702:23 22705:5 Mkhwanazi 22580:8 2215258:14 22697:21 22684:1,11 material 2263:18 22709:1,23 22705:3 22598:19 22699:5 22698:19 22699:2 22639:10 22640:13 22709:1,23 22705:3 model 22591:3 LL25 22598:14 22641:10,12 22642:7 Mathunjwa 22634:1 22721:11,18 model 22591:3 LL25 22598:16 22641:10,12 22642:7 Mathunjwa 2263:1 22723:16,20 22593:8 22597:6 LL25 222 22599:4 making 22639:24 22641:14 22660:21 2273:12 22738:12 2273:12 22738:12 10cal 22584:5 22771:10 22776:2 22644:22678:25 member's 22708:6 monit				-	
LLL22 22596:22 maintained 22587:18 22598:17 22648:19 member 22604:24 22611:20 22598:8 22599:19 maintenance 22691:1,4 marked 22593:14 22666:14 22675:21 mitigate 22684:17 22693:21 22699:18 22699:18 22618:4 22679:12 22683:11 22689:16 Mkhwanazi 22580:8 LLL23 22596:25 22695:6,8,24 22730:18 22689:17 22690:1 22580:15 22580:8 22703:8 22705:3 22697:12 22698:1,17 material 2263:18 22702:23 22705:5 Mmmu 22667:12 22703:8 22705:3 22698:19 22699:5 22638:6,9,22 2263:9 22700:1,32 22709:1 module 22591:3 LLL25 22694:15 major 22616:11,14,22 22630:10 22640:13 22709:1,23 22719:20 module 22591:3 22703:24 22631:7 22634:10 22734:25 22736:9 22722:14,18,19,19 22598:8 22634:6 22599:3,18 22641:10,12 22642:7 Mathunjwa 22630:1 22723:16,20 22588:22 22698:24 22599:3,18 22641:10,12 22642:7 Mathunjwa 22634:1 22723:16,20 22598:8 22634:6 22599:3,18 22641:10,12 22742:2 22644:14 22666:22 22733:19,20 22738:4 22673:2 22698:24		maintain 22582.13		2.2.7 L 3. 2.2	mistaken 22635·18
22598:8 22599:19 maintenance 22691:1,4 marked 22593:14 22666:14 22675:21 mitigate 22684:17 22693:21 22694:14 22691:11,15,19 22599:18 22618:4 22679:12 22683:11 22685:20 22694:18,19 22699:8 22692:24 22693:6,8 22655:21 22705:10 22683:12 22689:16 Mkhwanazi 22580:8 22598:10 22701:10 22696:10 22697:15 mass 22655:5,7 22696:3 22697:1,3,211 22589:19 LLL24 22598:14 22697:21 22698:1,17 material 22636:18 22702:23 22705:5 Mmmm 22667:12 22703:8 22705:3 22698:19 22699:5 22638:6,9,22 22639:9 22706:17 22708:4 model 22591:3 LLL25 22694:15 major 22616:11,14,22 22639:10 22640:13 22709:1,23 22719:20 modules 22660:20 LLL25 22694:15 major 22616:11,14,22 22639:24 22640:19 22634:21 22711:11,18 modules 22581:13 22703:24 22653:3,7 22660:9 matter 22591:3 22722:14,18,19,19 22598:8 22594:6 LLL25.22 22599:4 making 22639:24 22615:20 22640:10 22733:19 22735:14 22718:20 local 22584:5 22721:10 22726:2 22644:14 22666:22 22736:12 22738:16					
22693:21 22694:14 22694:18,19 22699:822691:11,15,19 22692:24 22693:6,822599:18 22618:4 22655:21 22705:1022679:12 22683:11 22683:12 22689:1622685:20 Mkhwanazi 22580:8LLL23 22596:25 22598:10 22701:1022696:10 22697:15 22696:10 22697:15mass 22655:5,7 22663:22699:922689:17 22690:21 22693:1822589:13 22693:12 22693:1,3,2122589:10 22589:10 22693:12 22699:9Mmkmazi 22580:15 22589:10 22693:10 22609:12 22638:6,9,22 22639:922609:17 22609:21 22638:6,9,22 22639:9 22700:17 22708:4model 22591:3 model 22591:3LL25 22694:15 LL25 22694:15major 22616:11,14,22 22631:7 22634:10 22621:19 22621:11 22631:7 22634:10 22593:1822734:25 22706:17 22708:4 22641:10,12 22642:7 22641:10,12 22642:7 22633:7 22639:24model 22591:3 22736:9 22772:14,18,19,19 22733:19 22735:14 22773:16,20 22598:8 22597:6LL25.22 22599:4 LL25.22 22599:4making 22639:24 22673:22660:92 mater 22591:3 22721:10 22726:222644:14 22666:22 22644:14 22666:22 22733:19 22735:14 22773:19,2022584:16 22733:19 22735:14 22778:12,20Local 22584:5 22721:10 22726:2 22644:14 22666:22 22664:23 22701:322773:19,20 22733:19 22735:14 22733:19,20 22734:8 22773:19,20 22734:8 22773:12,27monitor 22663:14 22665:19,24 22663:14 22665:19,24 22667:22 22737:18 22631:10 2273:12,2737:18 22733:19,20 22734:8 22733:19,20 22734:8 22661:14 22663:14 22663:14 22663:14 22663:19 22644:19 22639:19 22644:19 22637:21,	22597:2,25 22598:3	22583:2	22593:25 22596:2	meetings 22624:5	misunderstood
22694:18,19 22699:8 22692:24 22693:6,8 22655:21 22705:10 22683:12 22689:16 Mkhwanazi 22580:8 LLL23 22596:25 22695:6,8,24 22730:18 22698:17 22690:21 22580:15 2258:2 22598:10 22701:10 22696:10 22697:15 mass 22655:5,7 22696:3 22697:1,3,21 22580:15 22580:2 LL24 22598:14 22697:21 22698:1,17 material 22636:18 22702:3 22705:5 Mmmm 22667:12 22703:8 22705:3 22698:19 22692:11 22638:6.9,22 22639:9 22706:17 22708:4 model 22591:3 LL25 22694:15 major 2261:11,14,22 22631:7 22634:10 22734:25 22736:9 22709:1,23 22719:20 model 22501:13 22703:24 22631:7 22634:10 22734:25 22736:9 22722:14,18,19,19 22593:8 22597:6 LL25.2 22599:3,18 22653:3,7 22660:9 matter 22591:3 22728:12,20 22673:5 22698:24 Local 22584:5 22711:10 22726:2 22644:14 22666:22 22733:19 22735:14 22718:20 money 22584:18 London 22684:22 max 22707:4,5 22728:15,21,23 22775:3 22718:4,17 22733:19,20 22734:8 22665:19,24 22620:11 22731:4,5 22728:15,21,23	22597:2,25 22598:3 LLL22 22596:22	22583:2 maintained 22587:18	22593:25 22596:2 22598:17 22648:19	meetings 22624:5 member 22604:24	misunderstood 22611:20
LLL2322596:25 22598:1022695:6,8,24 22696:1022730:18 mass22689:1722690:21 22696:322580:1522580:2 22589:19LLL2422598:14 22697:2122696:1022697:15 22698:19material22630:18 22638:6,9222702:2322705:5 22698:19Mmmm22667:12 22589:19LL2522694:15 22694:15major2261:11,4,22 22639:1022639:1022640:13 22703:2422709:1,2322719:20 22721:11,18model22581:13 22593:822703:24 22599:3,1822641:10,1222640:1922643:21 22641:10,1222734:2522736:9 22734:2522722:14,18,19,19 22733:16,2022593:822593:822597:6 22593:822593:822593:822597:6LLL25.2222599:3,18 22599:3,1822639:2726:24 22643:2422615:2022640:10 22731:2622738:12,20 22738:12,2022673:522698:24 22773:1922663:14 2273:16,2022598:822663:14 2273:1922738:12,20 2273:1222663:14 2273:1922663:14 2273:1922738:12,20 2273:1222663:14 2273:1922738:12,20 2273:1222663:14 2273:1222738:14 22663:1422718:20 2273:1222738:16,21 2273:1222738:16,21 2273:1222738:16 2273:1222738:16,21 2273:1222738:16 2273:1222738:16 2273:1222738:16 2273:1222738:16 2273:1222738:16 2273:1222738:16 2273:1222665:19,24 2273:12227710:3 2273:1222665:19,24 2273:1222771:5,17 2273:19,2022665:19,24 22677:422677:4 22677	22597:2,25 22598:3 LLL22 22596:22 22598:8 22599:19	22583:2 maintained 22587:18 maintenance 22691:1,4	22593:25 22596:2 22598:17 22648:19 marked 22593:14	meetings 22624:5 member 22604:24 22666:14 22675:21	misunderstood 22611:20 mitigate 22684:17
22598:10 22701:1022696:10 22697:15mass 22655:5,722696:3 22697:1,3,2122589:19LLL24 22598:1422697:21 22698:1,17material 22636:1822702:23 22705:5Mmmm 22667:1222703:8 22705:322698:19 22699:5major 22616:11,14,2222639:10 22640:1322709:1,23 22719:20model 22591:3LLL25-series 22703:2022621:19 22622:1122640:19 22643:2122721:11,18moment 22581:1322703:2422631:7 22642:722641:10,12 22642:722640:19 22643:2122723:16,2022598:8 22634:6LLL25.1 22598:1622641:10,12 22642:7Mathungwa 22634:122733:19 22735:1422598:8 22634:622599:3,1822653:3,7 22660:9matter 22591:32273:19 22735:1422718:20LLL25.2 22599:4making 22639:2422615:20 22640:1022733:19 22735:1422718:20local 22584:522721:10 2276:222644:14 22666:2222736:12 22738:2,6money 22584:18long 22581:14 22610:122718:18,19,22,2522684:23 22701:3mention 22623:622665:19,242260:11 22731:4,522728:15,21,2322715:3 22718:4,1722733:19,20 22734:822727:15,1722620:11 22731:4,522729:8 22733:21,2222733:12 22737:18mention 22623:622665:19,242261:16,2522698:20managed 22621:422639:19 22644:192261:52 22623:4month 22664:142260:16 22698:20managed 22621:422639:19 22644:1922673:2,15 22695:1322668:14 22710:222630:16 22698:20managed 22621:422657:23 22662:8mere 22704:18month 22664:14 <t< td=""><td>22597:2,25 22598:3 LLL22 22596:22 22598:8 22599:19 22693:21 22694:14</td><td>22583:2 maintained 22587:18 maintenance 22691:1,4 22691:11,15,19</td><td>22593:25 22596:2 22598:17 22648:19 marked 22593:14 22599:18 22618:4</td><td>meetings 22624:5 member 22604:24 22666:14 22675:21 22679:12 22683:11</td><td>misunderstood 22611:20 mitigate 22684:17 22685:20</td></t<>	22597:2,25 22598:3 LLL22 22596:22 22598:8 22599:19 22693:21 22694:14	22583:2 maintained 22587:18 maintenance 22691:1,4 22691:11,15,19	22593:25 22596:2 22598:17 22648:19 marked 22593:14 22599:18 22618:4	meetings 22624:5 member 22604:24 22666:14 22675:21 22679:12 22683:11	misunderstood 22611:20 mitigate 22684:17 22685:20
22598:10 22701:1022696:10 22697:15mass 22655:5,722696:3 22697:1,3,2122589:19LLL24 22598:1422697:21 22698:1,17material 22636:1822702:23 22705:5Mmmm 22667:1222703:8 22705:322698:19 22699:5major 22616:11,14,2222639:10 22640:1322709:1,23 22719:20model 22591:3LLL25-series 22703:2022621:19 22622:1122640:19 22643:2122721:11,18moment 22581:1322703:2422631:7 22642:722641:10,12 22642:722640:19 22643:2122723:16,2022598:8 22634:6LLL25.1 22598:1622641:10,12 22642:7Mathungwa 22634:122733:19 22735:1422598:8 22634:622599:3,1822653:3,7 22660:9matter 22591:32273:19 22735:1422718:20LLL25.2 22599:4making 22639:2422615:20 22640:1022733:19 22735:1422718:20local 22584:522721:10 2276:222644:14 22666:2222736:12 22738:2,6money 22584:18long 22581:14 22610:122718:18,19,22,2522684:23 22701:3mention 22623:622665:19,242260:11 22731:4,522728:15,21,2322715:3 22718:4,1722733:19,20 22734:822727:15,1722620:11 22731:4,522729:8 22733:21,2222733:12 22737:18mention 22623:622665:19,242261:16,2522698:20managed 22621:422639:19 22644:192261:52 22623:4month 22664:142260:16 22698:20managed 22621:422639:19 22644:1922673:2,15 22695:1322668:14 22710:222630:16 22698:20managed 22621:422657:23 22662:8mere 22704:18month 22664:14 <t< td=""><td>22597:2,25 22598:3 LLL22 22596:22 22598:8 22599:19 22693:21 22694:14</td><td>22583:2 maintained 22587:18 maintenance 22691:1,4 22691:11,15,19</td><td>22593:25 22596:2 22598:17 22648:19 marked 22593:14 22599:18 22618:4</td><td>meetings 22624:5 member 22604:24 22666:14 22675:21 22679:12 22683:11</td><td>misunderstood 22611:20 mitigate 22684:17 22685:20</td></t<>	22597:2,25 22598:3 LLL22 22596:22 22598:8 22599:19 22693:21 22694:14	22583:2 maintained 22587:18 maintenance 22691:1,4 22691:11,15,19	22593:25 22596:2 22598:17 22648:19 marked 22593:14 22599:18 22618:4	meetings 22624:5 member 22604:24 22666:14 22675:21 22679:12 22683:11	misunderstood 22611:20 mitigate 22684:17 22685:20
LLL24 22598:14 22703:8 22705:322697:21 22698:1,17 22698:19 22699:5material 22636:18 22638:6,9,22 22639:922702:23 22705:5 22706:17 22708:4 22708:12 22708:4Mmmm 22667:12 model 22591:3LL25 22694:15 LL125-series 22703:20 22621:19 22621:19 22622:11 22631:7 22634:1022639:10 22640:13 22734:25 22736:922709:1,23 22719:20 22721:11,18model 22591:3 modules 22600:20 22711:1,1822703:24 22599:3,1822631:7 22634:10 22641:10,12 22642:7 22639:3,7 22660:922734:25 22736:9 Mathunjwa 22634:1 22615:20 22640:10 22615:20 22640:10 22733:19 22735:1422593:8 22597:6 22733:19 22735:14 22733:19 22735:14 22718:12,20LL25.22 22599:4 local 22584:5 22721:10 22726:2making 22639:24 22644:14 22666:22 22644:14 22666:22 22644:14 22666:22 22674:24 22678:25 22644:14 22666:22 22736:12 22738:2,6 member's 22708:6montor 22663:14 22703:19,22734:8 22727:15,17 22665:19,24 22727:15,17long 22581:14 22610:1 22620:16 22698:20 2261:16,25 2261:16,25 2261:16,25 2260:11 22731:4,522778:15,21,23 22778:15,21,23 22723:12,2222718:4,17 22733:12 22737:18 22733:12 22737:18 22733:19 22734:11montor 22663:14 22665:19,24 2273:19,20 22734:8 22727:15,17longest 22710:3 Longin 22639:2management 22580:25 22582:11 22583:19 22582:14 22580:25matters 22580:14 22657:23 22662:8 22657:23 22662:8merely 22606:21look 22580:2022582:11 22583:19 22582:11 22583:1922726:22merely 22606:21	22597:2,25 22598:3 LLL22 22596:22 22598:8 22599:19 22693:21 22694:14 22694:18,19 22699:8	22583:2 maintained 22587:18 maintenance 22691:1,4 22691:11,15,19 22692:24 22693:6,8	22593:25 22596:2 22598:17 22648:19 marked 22593:14 22599:18 22618:4 22655:21 22705:10	meetings 22624:5 member 22604:24 22666:14 22675:21 22679:12 22683:11 22683:12 22689:16	misunderstood 22611:20 mitigate 22684:17 22685:20 Mkhwanazi 22580:8
22703:8 22705:322698:19 22699:522638:6,9,22 22639:922706:17 22708:4model 22591:3LLL25 22694:15major 22616:11,14,2222639:10 22640:1322709:1,23 22719:20modules 2260:20LLL25-series 22703:2022621:19 22622:1122640:19 22643:2122721:11,18modules 2260:2022703:2422631:7 22634:1022734:25 22736:922722:14,18,19,1922593:8 22597:6LLL25.1 22598:1622641:10,12 22642:7Mathunjwa 22634:122723:16,2022673:5 22698:2422599:3,1822653:3,7 22660:9matter 22591:322728:12,2022673:5 22698:24LLL25.2 22599:4making 22639:2422615:20 22640:1022733:19 22735:1422718:20local 22584:522721:10 22726:222644:14 22666:2222736:12 22738:2,6montery 22584:18long 22581:14 22610:122718:18,19,22,2522664:23 22718:4,1722733:19,20 22734:822727:15,17long 22587:1622729:8 22733:21,2222779:8:2737:18mention 22623:622665:19,242260:11 22731:4,522728:15,21,2322713:22737:18mention 22623:622665:19,242260:16 22698:20managed 2261:422733:12 22737:18mention 22623:622665:19,24longest 22710:322650:422639:19 22644:1922621:25 22623:4month 22664:14longest 22710:322650:422650:422639:19 22644:1922673:2,15 22695:1322668:14 22710:2longest 22710:322650:422650:422639:19 22644:1922673:2,15 22695:1322668:14 22710:2longest 22710:322650:422650:25 </td <td>22597:2,25 22598:3 LLL22 22596:22 22598:8 22599:19 22693:21 22694:14 22694:18,19 22699:8 LLL23 22596:25</td> <td>22583:2 maintained 22587:18 maintenance 22691:1,4 22691:11,15,19 22692:24 22693:6,8 22695:6,8,24</td> <td>22593:25 22596:2 22598:17 22648:19 marked 22593:14 22599:18 22618:4 22655:21 22705:10 22730:18</td> <td>meetings 22624:5 member 22604:24 22666:14 22675:21 22679:12 22683:11 22683:12 22689:16 22689:17 22690:21</td> <td>misunderstood 22611:20 mitigate 22684:17 22685:20 Mkhwanazi 22580:8 22580:15 22585:2</td>	22597:2,25 22598:3 LLL22 22596:22 22598:8 22599:19 22693:21 22694:14 22694:18,19 22699:8 LLL23 22596:25	22583:2 maintained 22587:18 maintenance 22691:1,4 22691:11,15,19 22692:24 22693:6,8 22695:6,8,24	22593:25 22596:2 22598:17 22648:19 marked 22593:14 22599:18 22618:4 22655:21 22705:10 22730:18	meetings 22624:5 member 22604:24 22666:14 22675:21 22679:12 22683:11 22683:12 22689:16 22689:17 22690:21	misunderstood 22611:20 mitigate 22684:17 22685:20 Mkhwanazi 22580:8 22580:15 22585:2
LLL25 22694:15major 22616:11,14,2222639:10 22640:1322709:1,23 22719:20modules 2260:2022703:2422621:19 22622:1122640:19 22643:2122721:11,18moment 22581:1322703:2422631:7 22634:1022734:25 22736:922722:14,18,19,1922593:8 22597:6LLL25.1 22598:1622641:10,12 22642:7Mathunjwa 22634:122723:16,2022598:8 22634:622599:3,1822653:3,7 22660:9matter 22591:322728:12,2022673:5 22698:24LLL25.2 22599:4making 22639:2422615:20 22640:1022733:19 22735:1422718:20local 22584:522721:10 22726:222644:14 22666:2222736:12 22738:2,6money 22584:18London 22684:22man 22707:4,522674:24 22678:25member's 22708:6monitor 22663:14long 22581:14 22610:122718:18,19,22,2522684:23 22701:3mention 22623:622665:19,242260:11 22731:4,522728:15,21,2322775:3 22718:4,1722733:19,20 22734:822727:15,17longer 22587:1622734:2,12,1322733:12 22737:18mentioned 22617:622677:422620:16 22698:20managed 22621:422639:19 22644:192261:25 22623:4month 22664:14longest 22710:322650:422639:19 22644:1922673:2,15 22695:1322668:14 22710:2look 22580:2022582:11 22583:1922657:23 22662:8mere 22704:1822711:22look 22580:2022582:11 22583:1922726:22morths 22677:17	22597:2,25 22598:3 LLL22 22596:22 22598:8 22599:19 22693:21 22694:14 22694:18,19 22699:8 LLL23 22596:25 22598:10 22701:10	22583:2 maintained 22587:18 maintenance 22691:1,4 22691:11,15,19 22692:24 22693:6,8 22695:6,8,24 22696:10 22697:15	22593:25 22596:2 22598:17 22648:19 marked 22593:14 22599:18 22618:4 22655:21 22705:10 22730:18 mass 22655:5,7	meetings 22624:5 member 22604:24 22666:14 22675:21 22679:12 22683:11 22683:12 22689:16 22689:17 22690:21 22696:3 22697:1,3,21	misunderstood 22611:20 mitigate 22684:17 22685:20 Mkhwanazi 22580:8 22580:15 22585:2 22589:19
LLL25-series 22703:2022621:19 22622:1122640:19 22643:2122721:11,18moment 22581:1322703:2422631:7 22634:1022734:25 22736:922722:14,18,19,1922593:8 22597:6LLL25.1 22598:1622641:10,12 22642:7Mathunjwa 22634:122723:16,2022598:8 22634:622599:3,1822653:3,7 22660:9matter 22591:322728:12,2022673:5 22698:24LLL25.22 22599:4making 22639:2422615:20 22640:1022733:19 22735:1422718:20local 22584:522721:10 22726:222644:14 22666:2222736:12 22738:2,6money 22584:18London 22684:22man 22707:4,522674:24 22678:25member's 22708:6monitor 22663:14long 22581:14 22610:122718:18,19,22,2522684:23 22701:3mention 22623:622665:19,2422620:11 22731:4,522728:15,21,2322715:3 22718:4,1722733:19,20 22734:822727:15,17long 22587:1622729:8 22733:21,2222733:12 22737:18mention 22623:622677:422620:16 22698:20managed 22621:422639:19 22644:1922621:25 22623:4month 22664:14longest 22710:322650:422639:19 22644:1922673:2,15 22695:1322668:14 22710:2look 22580:2022582:11 22583:1922726:22merely 22606:21moths 22677:17	22597:2,25 22598:3 LLL22 22596:22 22598:8 22599:19 22693:21 22694:14 22694:18,19 22699:8 LLL23 22596:25 22598:10 22701:10 LLL24 22598:14	22583:2 maintained 22587:18 maintenance 22691:1,4 22691:11,15,19 22692:24 22693:6,8 22695:6,8,24 22696:10 22697:15 22697:21 22698:1,17	22593:25 22596:2 22598:17 22648:19 marked 22593:14 22599:18 22618:4 22655:21 22705:10 22730:18 mass 22655:5,7 material 22636:18	meetings 22624:5 member 22604:24 22666:14 22675:21 22679:12 22683:11 22683:12 22689:16 22689:17 22690:21 22696:3 22697:1,3,21 22702:23 22705:5	misunderstood 22611:20 mitigate 22684:17 22685:20 Mkhwanazi 22580:8 22580:15 22585:2 22589:19 Mmmm 22667:12
22703:2422631:7 22634:1022734:25 22736:922722:14,18,19,1922593:8 22597:6LLL25.1 22598:1622641:10,12 22642:7Mathunjwa 22634:122723:16,2022598:8 22634:622599:3,1822653:3,7 22660:9matter 22591:322728:12,2022673:5 22698:24LLL25.22 22599:4making 22639:2422615:20 22640:1022733:19 22735:1422718:20local 22584:522721:10 22726:222644:14 22666:2222736:12 22738:2,6money 22584:18long 22581:14 22610:122718:18,19,22,2522684:23 22701:3member's 22708:6monitor 22663:1422620:11 22731:4,522728:15,21,2322715:3 22718:4,1722733:19,20 22734:8227277:15,17long 22587:1622734:2,12,1322733:12 22737:1822733:19,20 22734:822677:422620:16 22698:20managed 22621:422639:19 22644:1922611:25 22623:4month 22664:14longest 22710:3management 22580:2522657:23 22602:8mere 22704:1822711:22look 22580:2022582:11 22583:1922726:22merely 22606:21months 22677:17	22597:2,25 22598:3 LLL22 22596:22 22598:8 22599:19 22693:21 22694:14 22694:18,19 22699:8 LLL23 22596:25 22598:10 22701:10 LLL24 22598:14 22703:8 22705:3	22583:2 maintained 22587:18 maintenance 22691:1,4 22691:11,15,19 22692:24 22693:6,8 22695:6,8,24 22696:10 22697:15 22697:21 22698:1,17 22698:19 22699:5	22593:25 22596:2 22598:17 22648:19 marked 22593:14 22599:18 22618:4 22655:21 22705:10 22730:18 mass 22655:5,7 material 22636:18 22638:6,9,22 22639:9	meetings 22624:5 member 22604:24 22666:14 22675:21 22679:12 22683:11 22683:12 22689:16 22689:17 22690:21 22696:3 22697:1,3,21 22702:23 22705:5 22706:17 22708:4	misunderstood 22611:20 mitigate 22684:17 22685:20 Mkhwanazi 22580:8 22580:15 22585:2 22589:19 Mmmm 22667:12 model 22591:3
LLL25.1 22598:16 22599:3,1822641:10,12 22642:7 22653:3,7 22660:9 making 22639:24Mathunjwa 22634:1 22591:322723:16,20 22728:12,2022598:8 22634:6 22673:5 22698:24LLL25.22 22599:4 local 22584:5making 22639:24 22721:10 22726:222615:20 22640:10 22644:14 22666:2222733:19 22735:14 22733:19 22735:1422718:20 money 22584:18London 22684:22 long 22581:14 22610:1man 22707:4,5 22718:18,19,22,2522674:24 22678:25 22684:23 22701:3member's 22708:6 member's 22708:6money 22584:18 22665:19,2422620:11 22731:4,5 22620:11 22731:4,522728:15,21,23 22728:15,21,2322715:3 22718:4,17 22722:11 22725:1422733:19,20 22734:8 22733:19,20 22734:822665:19,24 22665:19,2422611:16,25 2260:16 22698:2022734:2,12,13 managed 22621:4 22650:422639:19 22644:19 22639:19 22644:1922621:25 22623:4 22673:2,15 22695:13 22668:14 22710:2month 22664:14 22668:14 22710:2 22668:14 22710:2Lonmin 22639:2 look 22580:20management 22580;25 22582:11 22583:1922657:23 22662:8 22726:22merely 22606:21months 22677:17	22597:2,25 22598:3 LLL22 22596:22 22598:8 22599:19 22693:21 22694:14 22694:18,19 22699:8 LLL23 22596:25 22598:10 22701:10 LLL24 22598:14 22703:8 22705:3 LLL25 22694:15	22583:2 maintained 22587:18 maintenance 22691:1,4 22691:11,15,19 22692:24 22693:6,8 22695:6,8,24 22696:10 22697:15 22697:21 22698:1,17 22698:19 22699:5 major 22616:11,14,22	22593:25 22596:2 22598:17 22648:19 marked 22593:14 22599:18 22618:4 22655:21 22705:10 22730:18 mass 22655:5,7 material 22636:18 22638:6,9,22 22639:9 22639:10 22640:13	meetings 22624:5 member 22604:24 22666:14 22675:21 22679:12 22683:11 22683:12 22689:16 22689:17 22690:21 22696:3 22697:1,3,21 22702:23 22705:5 22706:17 22708:4 22709:1,23 22719:20	misunderstood 22611:20 mitigate 22684:17 22685:20 Mkhwanazi 22580:8 22580:15 22585:2 22589:19 Mmmm 22667:12 model 22591:3 modules 22660:20
22599:3,1822653:3,7 22660:9matter 22591:322728:12,2022673:5 22698:24LLL25.22 22599:4making 22639:2422615:20 22640:1022733:19 22735:1422718:20local 22584:522721:10 22726:222644:14 22666:2222736:12 22738:2,6money 22584:18long 22684:22man 22707:4,522674:24 22678:25member's 22708:6monitor 22663:14long 22581:14 22610:122718:18,19,22,2522684:23 22701:322733:19,20 22734:822727:15,17long 22587:1622729:8 22733:21,2222722:11 22725:1422733:19,20 22734:822727:15,17longer 22587:1622734:2,12,1322733:12 22737:18mention 22623:622667:422620:16 22698:20managed 22621:422639:19 22644:1922621:25 22623:4monitor 22664:14longest 22710:322650:422657:23 22662:8mere 22704:1822711:22look 22580:2022582:11 22583:1922726:22merely 22606:21months 22677:17	22597:2,25 22598:3 LLL22 22596:22 22598:8 22599:19 22693:21 22694:14 22694:18,19 22699:8 LLL23 22596:25 22598:10 22701:10 LLL24 22598:14 22703:8 22705:3 LLL25 22694:15 LLL25-series 22703:20	22583:2 maintained 22587:18 maintenance 22691:1,4 22691:11,15,19 22692:24 22693:6,8 22695:6,8,24 22696:10 22697:15 22697:21 22698:1,17 22698:19 22699:5 major 22616:11,14,22 22621:19 22622:11	22593:25 22596:2 22598:17 22648:19 marked 22593:14 22599:18 22618:4 22655:21 22705:10 22730:18 mass 22655:5,7 material 22636:18 22638:6,9,22 22639:9 22639:10 22640:13 22640:19 22643:21	meetings 22624:5 member 22604:24 22666:14 22675:21 22679:12 22683:11 22683:12 22689:16 22689:17 22690:21 22696:3 22697:1,3,21 22702:23 22705:5 22706:17 22708:4 22709:1,23 22719:20 22721:11,18	misunderstood 22611:20 mitigate 22684:17 22685:20 Mkhwanazi 22580:8 22580:15 22585:2 22589:19 Mmmm 22667:12 model 22591:3 modules 22660:20 moment 22581:13
22599:3,1822653:3,7 22660:9matter 22591:322728:12,2022673:5 22698:24LLL25.22 22599:4making 22639:2422615:20 22640:1022733:19 22735:1422718:20local 22584:522721:10 22726:222644:14 22666:2222736:12 22738:2,6money 22584:18long 22684:22man 22707:4,522674:24 22678:25member's 22708:6monitor 22663:14long 22581:14 22610:122718:18,19,22,2522684:23 22701:322733:19,20 22734:822727:15,17long 22587:1622729:8 22733:21,2222722:11 22725:1422733:19,20 22734:822727:15,17longer 22587:1622734:2,12,1322733:12 22737:18mention 22623:622667:422620:16 22698:20managed 22621:422639:19 22644:1922621:25 22623:4monitor 22664:14longest 22710:322650:422657:23 22662:8mere 22704:1822711:22look 22580:2022582:11 22583:1922726:22merely 22606:21months 22677:17	22597:2,25 22598:3 LLL22 22596:22 22598:8 22599:19 22693:21 22694:14 22694:18,19 22699:8 LLL23 22596:25 22598:10 22701:10 LLL24 22598:14 22703:8 22705:3 LLL25 22694:15 LLL25-series 22703:20 22703:24	22583:2 maintained 22587:18 maintenance 22691:1,4 22691:11,15,19 22692:24 22693:6,8 22695:6,8,24 22696:10 22697:15 22697:21 22698:1,17 22698:19 22699:5 major 22616:11,14,22 22621:19 22622:11	22593:25 22596:2 22598:17 22648:19 marked 22593:14 22599:18 22618:4 22655:21 22705:10 22730:18 mass 22655:5,7 material 22636:18 22638:6,9,22 22639:9 22639:10 22640:13 22640:19 22643:21	meetings 22624:5 member 22604:24 22666:14 22675:21 22679:12 22683:11 22683:12 22689:16 22689:17 22690:21 22696:3 22697:1,3,21 22702:23 22705:5 22706:17 22708:4 22709:1,23 22719:20 22721:11,18	misunderstood 22611:20 mitigate 22684:17 22685:20 Mkhwanazi 22580:8 22580:15 22585:2 22589:19 Mmmm 22667:12 model 22591:3 modules 22660:20 moment 22581:13
LLL25.22 22599:4making 22639:2422615:20 22640:1022733:19 22735:1422718:20local 22584:522721:10 22726:222644:14 22666:2222736:12 22738:2,6money 22584:18London 22684:22man 22707:4,522674:24 22678:25member's 22708:6monitor 22663:14long 22581:14 22610:122718:18,19,22,2522684:23 22701:322733:19,20 22734:822665:19,2422620:11 22731:4,522728:15,21,2322715:3 22718:4,1722733:19,20 22734:822727:15,17longer 22587:1622729:8 22733:21,2222722:11 22725:1422733:19,20 22734:822727:15,17longest 2250:16 22698:20managed 22621:4matters 22580:1422621:25 22623:4monitor 22664:14longest 22710:322650:422639:19 22644:1922673:2,15 22695:1322668:14 22710:2longest 22710:322582:11 22583:1922726:22mere 22704:1822711:22longest 22580:2022582:11 22583:1922726:22merely 22606:21months 22677:17	22597:2,25 22598:3 LLL22 22596:22 22598:8 22599:19 22693:21 22694:14 22694:18,19 22699:8 LLL23 22596:25 22598:10 22701:10 LLL24 22598:14 22703:8 22705:3 LLL25 22694:15 LLL25-series 22703:20 22703:24	22583:2 maintained 22587:18 maintenance 22691:1,4 22691:11,15,19 22692:24 22693:6,8 22695:6,8,24 22696:10 22697:15 22697:21 22698:1,17 22698:19 22699:5 major 22616:11,14,22 22621:19 22622:11 22631:7 22634:10	22593:25 22596:2 22598:17 22648:19 marked 22593:14 22599:18 22618:4 22655:21 22705:10 22730:18 mass 22655:5,7 material 22636:18 22638:6,9,22 22639:9 22639:10 22640:13 22640:19 22643:21 22734:25 22736:9	meetings 22624:5 member 22604:24 22666:14 22675:21 22679:12 22683:11 22683:12 22689:16 22689:17 22690:21 22696:3 22697:1,3,21 22702:23 22705:5 22706:17 22708:4 22709:1,23 22719:20 22721:11,18 22722:14,18,19,19	misunderstood 22611:20 mitigate 22684:17 22685:20 Mkhwanazi 22580:8 22580:15 22585:2 22589:19 Mmmm 22667:12 model 22591:3 modules 22660:20 moment 22581:13 22593:8 22597:6
local 22584:522721:10 22726:222644:14 22666:2222736:12 22738:2,6money 22584:18London 22684:22man 22707:4,522674:24 22678:2522674:24 22678:25monitor 2263:14long 22581:14 22610:122718:18,19,22,2522684:23 22701:322733:19,20 22734:822665:19,2422620:11 22731:4,522728:15,21,2322715:3 22718:4,1722733:19,20 22734:822727:15,17longer 22587:1622729:8 22733:21,2222722:11 22725:1422733:19,20 22734:822727:15,1722620:16 22698:20managed 22621:4matters 22580:1422639:19 22644:1922673:2,15 22693:13monitor 22664:14longest 22710:322650:422650:2522657:23 22662:8mere 22704:1822711:22look 22580:2022582:11 22583:1922726:22merely 22606:21months 22677:17	22597:2,25 22598:3 LLL22 22596:22 22598:8 22599:19 22693:21 22694:14 22694:18,19 22699:8 LLL23 22596:25 22598:10 22701:10 LLL24 22598:14 22703:8 22705:3 LLL25 22694:15 LLL25-series 22703:20 22703:24 LLL25.1 22598:16	22583:2 maintained 22587:18 maintenance 22691:1,4 22691:11,15,19 22692:24 22693:6,8 22695:6,8,24 22696:10 22697:15 22697:21 22698:1,17 22698:19 22699:5 major 22616:11,14,22 22621:19 22622:11 22631:7 22634:10 22641:10,12 22642:7	22593:25 22596:2 22598:17 22648:19 marked 22593:14 22599:18 22618:4 22655:21 22705:10 22730:18 mass 22655:5,7 material 22636:18 22638:6,9,22 22639:9 22639:10 22640:13 22640:19 22643:21 22734:25 22736:9 Mathunjwa 22634:1	meetings 22624:5 member 22604:24 22666:14 22675:21 22679:12 22683:11 22683:12 22689:16 22689:17 22690:21 22696:3 22697:1,3,21 22702:23 22705:5 22706:17 22708:4 22709:1,23 22719:20 22721:11,18 22722:14,18,19,19 22723:16,20	misunderstood 22611:20 mitigate 22684:17 22685:20 Mkhwanazi 22580:8 22580:15 22585:2 22589:19 Mmmm 22667:12 model 22591:3 modules 22660:20 moment 22581:13 22593:8 22597:6 22598:8 22634:6
London 22684:22man 22707:4,522674:24 22678:25member's 22708:6monitor 22663:14long 22581:14 22610:122718:18,19,22,2522684:23 22701:322733:19,20 22734:822665:19,2422620:11 22731:4,522728:15,21,2322715:3 22718:4,1722733:19,20 22734:822727:15,17longer 22587:1622734:2,12,1322733:12 22737:1822733:12 22737:1822734:11monitor 22664:222260:16 22698:20managed 22621:422639:19 22644:1922621:25 22623:4month 22664:14longest 22710:322650:422657:23 22662:822673:2,15 22695:1322668:14 22710:2longest 22580:2022582:11 22583:1922726:22merely 22606:21months 22677:17	22597:2,25 22598:3 LLL22 22596:22 22598:8 22599:19 22693:21 22694:14 22694:18,19 22699:8 LLL23 22596:25 22598:10 22701:10 LLL24 22598:14 22703:8 22705:3 LLL25 22694:15 LLL25-series 22703:20 22703:24 LLL25.1 22598:16 22599:3,18	22583:2 maintained 22587:18 maintenance 22691:1,4 22691:11,15,19 22692:24 22693:6,8 22695:6,8,24 22696:10 22697:15 22697:21 22698:1,17 22698:19 22699:5 major 22616:11,14,22 22621:19 22622:11 22631:7 22634:10 22641:10,12 22642:7 22653:3,7 22660:9	22593:25 22596:2 22598:17 22648:19 marked 22593:14 22599:18 22618:4 22655:21 22705:10 22730:18 mass 22655:5,7 material 22636:18 22638:6,9,22 22639:9 22639:10 22640:13 22640:19 22643:21 22734:25 22736:9 Mathunjwa 22634:1 matter 22591:3	meetings 22624:5 member 22604:24 22666:14 22675:21 22679:12 22683:11 22683:12 22689:16 22689:17 22690:21 22696:3 22697:1,3,21 22702:23 22705:5 22706:17 22708:4 22709:1,23 22719:20 22721:11,18 22722:14,18,19,19 22723:16,20 22728:12,20	 misunderstood 22611:20 mitigate 22684:17 22685:20 Mkhwanazi 22580:8 22580:15 22585:2 22589:19 Mmmm 22667:12 model 22591:3 modules 22660:20 moment 22581:13 22593:8 22597:6 22598:8 22634:6 22673:5 22698:24
long 22581:14 22610:122718:18,19,22,2522684:23 22701:3mention 22623:622665:19,2422620:11 22731:4,522728:15,21,2322715:3 22718:4,1722733:19,20 22734:822727:15,17longer 22587:1622729:8 22733:21,2222722:11 22725:1422734:11monitors 22676:2222601:16,2522734:2,12,1322733:12 22737:18mentioned 22617:622677:4longest 22710:322650:422639:19 22644:1922673:2,15 22693:1322668:14 22710:2longest 22710:322650:422657:23 22662:8mere 22704:1822711:22look 22580:2022582:11 22583:1922726:22merely 22606:21months 22677:17	22597:2,25 22598:3 LLL22 22596:22 22598:8 22599:19 22693:21 22694:14 22694:18,19 22699:8 LLL23 22596:25 22598:10 22701:10 LLL24 22598:14 22703:8 22705:3 LLL25 22694:15 LLL25-series 22703:20 22703:24 LLL25.1 22598:16 22599:3,18 LLL25.22 22599:4	22583:2 maintained 22587:18 maintenance 22691:1,4 22691:11,15,19 22692:24 22693:6,8 22695:6,8,24 22696:10 22697:15 22697:21 22698:1,17 22698:19 22699:5 major 22616:11,14,22 22621:19 22622:11 22631:7 22634:10 22641:10,12 22642:7 22653:3,7 22660:9 making 22639:24	22593:25 22596:2 22598:17 22648:19 marked 22593:14 22599:18 22618:4 22655:21 22705:10 22730:18 mass 22655:5,7 material 22636:18 22638:6,9,22 22639:9 22639:10 22640:13 22640:19 22643:21 22734:25 22736:9 Mathunjwa 22634:1 matter 22591:3 22615:20 22640:10	meetings 22624:5 member 22604:24 22666:14 22675:21 22679:12 22683:11 22683:12 22689:16 22689:17 22690:21 22696:3 22697:1,3,21 22702:23 22705:5 22706:17 22708:4 22709:1,23 22719:20 22721:11,18 22722:14,18,19,19 22723:16,20 22728:12,20 22733:19 22735:14	 misunderstood 22611:20 mitigate 22684:17 22685:20 Mkhwanazi 22580:8 22580:15 22585:2 22589:19 Mmmm 22667:12 model 22591:3 modules 22660:20 moment 22581:13 22593:8 22597:6 22598:8 22634:6 22673:5 22698:24 22718:20
22620:11 22731:4,522728:15,21,2322715:3 22718:4,1722733:19,20 22734:822727:15,17longer 22587:1622729:8 22733:21,2222722:11 22725:1422733:12 22737:18monitors 22676:2222620:16 22698:20managed 22621:422639:19 22644:1922621:25 22623:4month 22664:14longest 22710:322650:422657:23 22662:8mere 22704:1822773:215 22695:1322668:14 22710:2Lonmin 22639:2management 22580:2522657:23 22662:8mere 22704:1822711:22look 22580:2022582:11 22583:1922726:22merely 22606:21months 22677:17	22597:2,25 22598:3 LLL22 22596:22 22598:8 22599:19 22693:21 22694:14 22694:18,19 22699:8 LLL23 22596:25 22598:10 22701:10 LLL24 22598:14 22703:8 22705:3 LLL25 22694:15 LLL25-series 22703:20 22703:24 LLL25.1 22598:16 22599:3,18 LLL25.22 22599:4 local 22584:5	22583:2 maintained 22587:18 maintenance 22691:1,4 22691:11,15,19 22692:24 22693:6,8 22695:6,8,24 22696:10 22697:15 22697:21 22698:1,17 22698:19 22699:5 major 22616:11,14,22 22621:19 22622:11 22631:7 22634:10 22641:10,12 22642:7 22653:3,7 22660:9 making 22639:24 22721:10 22726:2	22593:25 22596:2 22598:17 22648:19 marked 22593:14 22599:18 22618:4 22655:21 22705:10 22730:18 mass 22655:5,7 material 22636:18 22638:6,9,22 22639:9 22639:10 22640:13 22640:19 22643:21 22734:25 22736:9 Mathunjwa 22634:1 matter 22591:3 22615:20 22640:10 22644:14 22666:22	meetings 22624:5 member 22604:24 22666:14 22675:21 22679:12 22683:11 22683:12 22689:16 22689:17 22690:21 22696:3 22697:1,3,21 22702:23 22705:5 22706:17 22708:4 22709:1,23 22719:20 22721:11,18 22722:14,18,19,19 22723:16,20 22728:12,20 22733:19 22735:14 22736:12 22738:2,6	 misunderstood 22611:20 mitigate 22684:17 22685:20 Mkhwanazi 22580:8 22580:15 22585:2 22589:19 Mmmm 22667:12 model 22591:3 modules 22660:20 moment 22581:13 22593:8 22634:6 22673:5 22698:24 22718:20 money 22584:18
longer 22587:1622729:8 22733:21,2222722:11 22725:1422734:11monitors 22676:2222611:16,2522734:2,12,1322733:12 22737:18mentioned 22617:622677:422620:16 22698:20managed 22621:422639:19 22644:1922673:2,15 22695:1322668:14 22710:2longest 22710:322650:422657:23 22662:8mere 22704:1822673:2,15 22695:1322668:14 22710:2Lonmin 22639:2management 22580:2522657:23 22662:8mere 22704:1822711:22look 22580:2022582:11 22583:1922726:22merely 22606:21months 22677:17	22597:2,25 22598:3 LLL22 22596:22 22598:8 22599:19 22693:21 22694:14 22694:18,19 22699:8 LLL23 22596:25 22598:10 22701:10 LLL24 22598:14 22703:8 22705:3 LLL25 22694:15 LLL25.2694:15 LLL25.1 22598:16 22599:3,18 LLL25.22 22599:4 local 22584:5 London 22684:22	22583:2 maintained 22587:18 maintenance 22691:1,4 22691:11,15,19 22692:24 22693:6,8 22695:6,8,24 22696:10 22697:15 22697:21 22698:1,17 22698:19 22699:5 major 22616:11,14,22 22621:19 22622:11 22631:7 22634:10 22641:10,12 22642:7 22653:3,7 22660:9 making 22639:24 22721:10 22726:2 man 22707:4,5	22593:25 22596:2 22598:17 22648:19 marked 22593:14 22599:18 22618:4 22655:21 22705:10 22730:18 mass 22655:5,7 material 22636:18 22638:6,9,22 22639:9 22639:10 22640:13 22640:19 22643:21 22734:25 22736:9 Mathunjwa 22634:1 matter 22591:3 22615:20 22640:10 22644:14 22666:22 22674:24 22678:25	meetings 22624:5 member 22604:24 22666:14 22675:21 22679:12 22683:11 22683:12 22689:16 22689:17 22690:21 22696:3 22697:1,3,21 22702:23 22705:5 22706:17 22708:4 22709:1,23 22719:20 22721:11,18 22722:14,18,19,19 22723:16,20 22728:12,20 22733:19 22735:14 22736:12 22738:2,6 member's 22708:6	 misunderstood 22611:20 mitigate 22684:17 22685:20 Mkhwanazi 22580:8 22580:15 22585:2 22589:19 Mmmm 22667:12 model 22591:3 modules 22660:20 moment 22581:13 22593:8 22597:6 22598:8 22634:6 22673:5 22698:24 22718:20 money 22584:18 monitor 22663:14
longer 22587:1622729:8 22733:21,2222722:11 22725:1422734:11monitors 22676:2222611:16,2522734:2,12,1322733:12 22737:18mentioned 22617:622677:422620:16 22698:20managed 22621:422639:19 22644:1922673:2,15 22695:1322668:14 22710:2longest 22710:322650:422657:23 22662:8mere 22704:1822673:2,15 22695:1322668:14 22710:2Lonmin 22639:2management 22580:2522657:23 22662:8mere 22704:1822711:22look 22580:2022582:11 22583:1922726:22merely 22606:21months 22677:17	22597:2,25 22598:3 LLL22 22596:22 22598:8 22599:19 22693:21 22694:14 22694:18,19 22699:8 LLL23 22596:25 22598:10 22701:10 LLL24 22598:14 22703:8 22705:3 LLL25 22694:15 LLL25.series 22703:20 22703:24 LLL25.1 22598:16 22599:3,18 LLL25.22 22599:4 local 22584:5 London 22684:22 long 22581:14 22610:1	22583:2 maintained 22587:18 maintenance 22691:1,4 22691:11,15,19 22692:24 22693:6,8 22695:6,8,24 22696:10 22697:15 22697:21 22698:1,17 22698:19 22699:5 major 22616:11,14,22 22621:19 22622:11 22631:7 22634:10 22641:10,12 22642:7 22653:3,7 22660:9 making 22639:24 22721:10 22726:2 man 22707:4,5 22718:18,19,22,25	22593:25 22596:2 22598:17 22648:19 marked 22593:14 22599:18 22618:4 22655:21 22705:10 22730:18 mass 22655:5,7 material 22636:18 22638:6,9,22 22639:9 22639:10 22640:13 22640:19 22643:21 22734:25 22736:9 Mathunjwa 22634:1 matter 22591:3 22615:20 22640:10 22644:14 22666:22 22674:24 22678:25 22684:23 22701:3	meetings 22624:5 member 22604:24 22666:14 22675:21 22679:12 22683:11 22683:12 22689:16 22689:17 22690:21 22696:3 22697:1,3,21 22702:23 22705:5 22706:17 22708:4 22709:1,23 22719:20 22721:11,18 22722:14,18,19,19 22723:16,20 22728:12,20 22733:19 22735:14 22736:12 22738:2,6 member's 22708:6 mention 22623:6	misunderstood 22611:20 mitigate 22684:17 22685:20 Mkhwanazi 22580:8 22580:15 22585:2 22589:19 Mmmm 22667:12 model 22591:3 modules 22660:20 moment 22581:13 22593:8 22597:6 22598:8 22634:6 22673:5 22698:24 22718:20 money 22584:18 monitor 22663:14 22665:19,24
22611:16,25 22620:16 22698:2022734:2,12,13 managed 22621:422733:12 22737:18 matters 22580:14mentioned 22617:6 22621:25 22623:422677:4longest 22710:3 Lonmin 22639:222650:4 22580:2022639:19 22644:19 22580:2522673:2,15 22695:13 22657:23 22662:822668:14 22710:2 22726:22look 22580:2022582:11 22583:1922726:22merely 22606:21month 22677:17	22597:2,25 22598:3 LLL22 22596:22 22598:8 22599:19 22693:21 22694:14 22694:18,19 22699:8 LLL23 22596:25 22598:10 22701:10 LLL24 22598:14 22703:8 22705:3 LLL25 22694:15 LLL25.series 22703:20 22703:24 LLL25.1 22598:16 22599:3,18 LLL25.22 22599:4 local 22584:5 London 22684:22 long 22581:14 22610:1	22583:2 maintained 22587:18 maintenance 22691:1,4 22691:11,15,19 22692:24 22693:6,8 22695:6,8,24 22696:10 22697:15 22697:21 22698:1,17 22698:19 22699:5 major 22616:11,14,22 22621:19 22622:11 22631:7 22634:10 22641:10,12 22642:7 22653:3,7 22660:9 making 22639:24 22721:10 22726:2 man 22707:4,5 22718:18,19,22,25	22593:25 22596:2 22598:17 22648:19 marked 22593:14 22599:18 22618:4 22655:21 22705:10 22730:18 mass 22655:5,7 material 22636:18 22638:6,9,22 22639:9 22639:10 22640:13 22640:19 22643:21 22734:25 22736:9 Mathunjwa 22634:1 matter 22591:3 22615:20 22640:10 22644:14 22666:22 22674:24 22678:25 22684:23 22701:3	meetings 22624:5 member 22604:24 22666:14 22675:21 22679:12 22683:11 22683:12 22689:16 22689:17 22690:21 22696:3 22697:1,3,21 22702:23 22705:5 22706:17 22708:4 22709:1,23 22719:20 22721:11,18 22722:14,18,19,19 22723:16,20 22728:12,20 22733:19 22735:14 22736:12 22738:2,6 member's 22708:6 mention 22623:6	misunderstood 22611:20 mitigate 22684:17 22685:20 Mkhwanazi 22580:8 22580:15 22585:2 22589:19 Mmmm 22667:12 model 22591:3 modules 22660:20 moment 22581:13 22593:8 22597:6 22598:8 22634:6 22673:5 22698:24 22718:20 money 22584:18 monitor 22663:14 22665:19,24
22620:16 22698:20 managed 22621:4 matters 22580:14 22621:25 22623:4 month 22664:14 longest 22710:3 22650:4 22639:19 22644:19 22673:2,15 22695:13 22668:14 22710:2 Lonmin 22639:2 management 22580:25 22657:23 22662:8 mere 22704:18 22711:22 look 22580:20 22582:11 22583:19 22726:22 merely 22606:21 months 22677:17	22597:2,25 22598:3 LLL22 22596:22 22598:8 22599:19 22693:21 22694:14 22694:18,19 22699:8 LLL23 22596:25 22598:10 22701:10 LLL24 22598:14 22703:8 22705:3 LLL25 22694:15 LLL25.22694:15 LLL25.1 22598:16 22599:3,18 LLL25.22 22599:4 local 22584:5 London 22684:22 long 22581:14 22610:1 22620:11 22731:4,5	22583:2 maintained 22587:18 maintenance 22691:1,4 22691:11,15,19 22692:24 22693:6,8 22695:6,8,24 22696:10 22697:15 22697:21 22698:1,17 22698:19 22699:5 major 22616:11,14,22 22621:19 22622:11 22631:7 22634:10 22641:10,12 22642:7 22653:3,7 22660:9 making 22639:24 22721:10 22726:2 man 22707:4,5 22718:18,19,22,25 22728:15,21,23	22593:25 22596:2 22598:17 22648:19 marked 22593:14 22599:18 22618:4 22655:21 22705:10 22730:18 mass 22655:5,7 material 22636:18 22638:6,9,22 22639:9 22639:10 22640:13 22640:19 22643:21 22734:25 22736:9 Mathunjwa 22634:1 matter 22591:3 22615:20 22640:10 22644:14 22666:22 22674:24 22678:25 22684:23 22701:3 22715:3 22718:4,17	meetings 22624:5 member 22604:24 22666:14 22675:21 22679:12 22683:11 22683:12 22689:16 22689:17 22690:21 22696:3 22697:1,3,21 22702:23 22705:5 22706:17 22708:4 22709:1,23 22719:20 22721:11,18 22722:14,18,19,19 22723:16,20 22728:12,20 22733:19 22735:14 22736:12 22738:2,6 member's 22708:6 mention 22623:6 22733:19,20 22734:8	misunderstood 22611:20 mitigate 22684:17 22685:20 Mkhwanazi 22580:8 22580:15 22585:2 22589:19 Mmmm 22667:12 model 22591:3 modules 22660:20 moment 22581:13 22593:8 22597:6 22598:8 22634:6 22673:5 22698:24 22718:20 money 22584:18 monitor 22663:14 22665:19,24 22727:15,17
longest 22710:322650:422639:19 22644:1922673:2,15 22695:1322668:14 22710:2Lonmin 22639:2management 22580:2522657:23 22662:8mere 22704:1822711:22look 22580:2022582:11 22583:1922726:22merely 22606:21months 22677:17	22597:2,25 22598:3 LLL22 22596:22 22598:8 22599:19 22693:21 22694:14 22694:18,19 22699:8 LLL23 22596:25 22598:10 22701:10 LLL24 22598:14 22703:8 22705:3 LLL25 22694:15 LLL25.1 22598:16 22599:3,18 LLL25.2 22599:4 local 22584:5 London 22684:22 long 22581:14 22610:1 22620:11 22731:4,5 longer 22587:16	22583:2 maintained 22587:18 maintenance 22691:1,4 22691:11,15,19 22692:24 22693:6,8 22695:6,8,24 22696:10 22697:15 22697:21 22698:1,17 22698:19 22699:5 major 22616:11,14,22 22621:19 22622:11 22631:7 22634:10 22641:10,12 22642:7 22653:3,7 22660:9 making 22639:24 22721:10 22726:2 man 22707:4,5 22718:18,19,22,25 22728:15,21,23 22729:8 22733:21,22	22593:25 22596:2 22598:17 22648:19 marked 22593:14 22599:18 22618:4 22655:21 22705:10 22730:18 mass 22655:5,7 material 22636:18 22638:6,9,22 22639:9 22639:10 22640:13 22640:19 22643:21 22734:25 22736:9 Mathunjwa 22634:1 matter 22591:3 22615:20 22640:10 22644:14 22666:22 22674:24 22678:25 22684:23 22701:3 22715:3 22718:4,17 22722:11 22725:14	meetings 22624:5 member 22604:24 22666:14 22675:21 22679:12 22683:11 22683:12 22689:16 22689:17 22690:21 22696:3 22697:1,3,21 22702:23 22705:5 22706:17 22708:4 22709:1,23 22719:20 22721:11,18 22722:14,18,19,19 22723:16,20 22728:12,20 22733:19 22735:14 22736:12 22738:2,6 member's 22708:6 mention 22623:6 22733:19,20 22734:8 22734:11	misunderstood 22611:20 mitigate 22684:17 22685:20 Mkhwanazi 22580:8 22580:15 22585:2 22589:19 Mmmm 22667:12 model 22591:3 modules 22660:20 moment 22581:13 22593:8 22597:6 22598:8 22634:6 22673:5 22698:24 22718:20 money 22584:18 monitor 22663:14 22665:19,24 22727:15,17 monitors 22676:22
Lonmin 22639:2management 22580:2522657:23 22662:8mere 22704:1822711:22look 22580:2022582:11 22583:1922726:22merely 22606:21months 22677:17	22597:2,25 22598:3 LLL22 22596:22 22598:8 22599:19 22693:21 22694:14 22694:18,19 22699:8 LLL23 22596:25 22598:10 22701:10 LLL24 22598:14 22703:8 22705:3 LLL25 22694:15 LLL25.1 22598:16 22599:3,18 LLL25.2 22599:4 local 22584:5 London 22684:22 long 22581:14 22610:1 22620:11 22731:4,5 longer 22587:16 22611:16,25	22583:2 maintained 22587:18 maintenance 22691:1,4 22691:11,15,19 22692:24 22693:6,8 22695:6,8,24 22696:10 22697:15 22697:21 22698:1,17 22698:19 22699:5 major 22616:11,14,22 22621:19 22622:11 22631:7 22634:10 22641:10,12 22642:7 22653:3,7 22660:9 making 22639:24 22721:10 22726:2 man 22707:4,5 22718:18,19,22,25 22728:15,21,23 22729:8 22733:21,22 22734:2,12,13	22593:25 22596:2 22598:17 22648:19 marked 22593:14 22599:18 22618:4 22655:21 22705:10 22730:18 mass 22655:5,7 material 22636:18 22638:6,9,22 22639:9 22639:10 22640:13 22640:19 22643:21 22734:25 22736:9 Mathunjwa 22634:1 matter 22591:3 22615:20 22640:10 22644:14 22666:22 22674:24 22678:25 22684:23 22701:3 22715:3 22718:4,17 22722:11 22725:14 22733:12 22737:18	meetings 22624:5 member 22604:24 22666:14 22675:21 22679:12 22683:11 22683:12 22689:16 22689:17 22690:21 22696:3 22697:1,3,21 22702:23 22705:5 22706:17 22708:4 22709:1,23 22719:20 22721:11,18 22722:14,18,19,19 22723:16,20 22728:12,20 22733:19 22735:14 22736:12 22738:2,6 member's 22708:6 mention 22623:6 22733:19,20 22734:8 22734:11 mentioned 22617:6	misunderstood 22611:20 mitigate 22684:17 22685:20 Mkhwanazi 22580:8 22580:15 22585:2 22589:19 Mmmm 22667:12 model 22591:3 modules 22660:20 moment 22581:13 22593:8 22597:6 22598:8 22634:6 22673:5 22698:24 22718:20 money 22584:18 monitor 22663:14 22665:19,24 22727:15,17 monitors 22676:22 22677:4
look 22580:20 22582:11 22583:19 22726:22 merely 22606:21 months 22677:17	22597:2,25 22598:3 LLL22 22596:22 22598:8 22599:19 22693:21 22694:14 22694:18,19 22699:8 LLL23 22596:25 22598:10 22701:10 LLL24 22598:14 22703:8 22705:3 LLL25 22694:15 LLL25.1 22598:16 22599:3,18 LLL25.2 22599:4 local 22584:5 London 22684:22 long 22581:14 22610:1 22620:11 22731:4,5 longer 22587:16 22611:16,25 22620:16 22698:20	22583:2 maintained 22587:18 maintenance 22691:1,4 22691:11,15,19 22692:24 22693:6,8 22695:6,8,24 22696:10 22697:15 22697:21 22698:1,17 22698:19 22699:5 major 22616:11,14,22 22621:19 22622:11 22631:7 22634:10 22641:10,12 22642:7 22653:3,7 22660:9 making 22639:24 22721:10 22726:2 man 22707:4,5 22718:18,19,22,25 22728:15,21,23 22729:8 22733:21,22 22734:2,12,13 managed 22621:4	22593:25 22596:2 22598:17 22648:19 marked 22593:14 22599:18 22618:4 22655:21 22705:10 22730:18 mass 22655:5,7 material 22636:18 22638:6,9,22 22639:9 22639:10 22640:13 22640:19 22643:21 22734:25 22736:9 Mathunjwa 22634:1 matter 22591:3 22615:20 22640:10 22644:14 22666:22 22674:24 22678:25 22684:23 22701:3 22715:3 22718:4,17 22722:11 22725:14 22733:12 22737:18 matters 22580:14	meetings 22624:5 member 22604:24 22666:14 22675:21 22679:12 22683:11 22683:12 22689:16 22689:17 22690:21 22696:3 22697:1,3,21 22702:23 22705:5 22706:17 22708:4 22709:1,23 22719:20 22721:11,18 22722:14,18,19,19 22723:16,20 22728:12,20 22733:19 22735:14 22736:12 22738:2,6 member's 22708:6 mention 22623:6 22733:19,20 22734:8 22734:11 mentioned 22617:6 22621:25 22623:4	misunderstood 22611:20 mitigate 22684:17 22685:20 Mkhwanazi 22580:8 22580:15 22585:2 22589:19 Mmmm 22667:12 model 22591:3 modules 22660:20 moment 22581:13 22593:8 22597:6 22598:8 22634:6 22673:5 22698:24 22718:20 money 22584:18 monitor 22663:14 22665:19,24 22727:15,17 monitors 22676:22 22677:4 month 22664:14
	22597:2,25 22598:3 LLL22 22596:22 22598:8 22599:19 22693:21 22694:14 22694:18,19 22699:8 LLL23 22596:25 22598:10 22701:10 LLL24 22598:14 22703:8 22705:3 LLL25 22694:15 LLL25.1 22598:16 22599:3,18 LLL25.2 22599:4 local 22584:5 London 22684:22 long 22581:14 22610:1 22620:11 22731:4,5 longer 22587:16 22611:16,25 22620:16 22698:20 longest 22710:3	22583:2 maintained 22587:18 maintenance 22691:1,4 22691:11,15,19 22692:24 22693:6,8 22695:6,8,24 22696:10 22697:15 22697:21 22698:1,17 22698:19 22699:5 major 22616:11,14,22 22621:19 22622:11 22631:7 22634:10 22641:10,12 22642:7 22653:3,7 22660:9 making 22639:24 22721:10 22726:2 man 22707:4,5 22718:18,19,22,25 22728:15,21,23 22729:8 22733:21,22 22734:2,12,13 managed 22621:4 22650:4	22593:25 22596:2 22598:17 22648:19 marked 22593:14 22599:18 22618:4 22655:21 22705:10 22730:18 mass 22655:5,7 material 22636:18 22638:6,9,22 22639:9 22639:10 22640:13 22640:19 22643:21 22734:25 22736:9 Mathunjwa 22634:1 matter 22591:3 22615:20 22640:10 22644:14 22666:22 22674:24 22678:25 22684:23 22701:3 22715:3 22718:4,17 22722:11 22725:14 22733:12 22737:18 matters 22580:14 22639:19 22644:19	meetings 22624:5 member 22604:24 22666:14 22675:21 22679:12 22683:11 22683:12 22689:16 22689:17 22690:21 22696:3 22697:1,3,21 22702:23 22705:5 22706:17 22708:4 22709:1,23 22719:20 22721:11,18 22722:14,18,19,19 22723:16,20 22728:12,20 22733:19 22735:14 22736:12 22738:2,6 member's 22708:6 mention 22623:6 22733:19,20 22734:8 22734:11 mentioned 22617:6 22621:25 22623:4 22673:2,15 22695:13	misunderstood 22611:20 mitigate 22684:17 22685:20 Mkhwanazi 22580:8 22580:15 22585:2 22589:19 Mmmm 22667:12 model 22591:3 modules 22660:20 moment 22581:13 22593:8 22597:6 22598:8 22634:6 22673:5 22698:24 22718:20 money 22584:18 monitor 22663:14 22665:19,24 22727:15,17 monitors 22676:22 22677:4 month 22664:14 22668:14 22710:2
ARCHIVE FOR JUSTICE	22597:2,25 22598:3 LLL22 22596:22 22598:8 22599:19 22693:21 22694:14 22694:18,19 22699:8 LLL23 22596:25 22598:10 22701:10 LLL24 22598:14 22703:8 22705:3 LLL25 22694:15 LLL25.1 22598:16 22599:3,18 LLL25.2 22599:4 local 22584:5 London 22684:22 long 22581:14 22610:1 22620:11 22731:4,5 longer 22587:16 22611:16,25 22620:16 22698:20 longest 22710:3 Lonmin 22639:2	22583:2 maintained 22587:18 maintenance 22691:1,4 22691:11,15,19 22692:24 22693:6,8 22695:6,8,24 22696:10 22697:15 22697:21 22698:1,17 22698:19 22699:5 major 22616:11,14,22 22621:19 22622:11 22631:7 22634:10 22641:10,12 22642:7 22653:3,7 22660:9 making 22639:24 22721:10 22726:2 man 22707:4,5 22718:18,19,22,25 22728:15,21,23 22729:8 22733:21,22 22734:2,12,13 managed 22621:4 22650:4 management 22580:25	$\begin{array}{r} 22593:25\ 22596:2\\ 22598:17\ 22648:19\\ \textbf{marked}\ 22593:14\\ 22599:18\ 22618:4\\ 22655:21\ 22705:10\\ 22730:18\\ \textbf{mass}\ 22655:5,7\\ \textbf{material}\ 22636:18\\ 22638:6,9,22\ 22639:9\\ 22639:10\ 22640:13\\ 22640:19\ 22643:21\\ 22734:25\ 22736:9\\ \textbf{Mathunjwa}\ 22634:1\\ \textbf{matter}\ 22591:3\\ 22615:20\ 22640:10\\ 22644:14\ 22666:22\\ 22674:24\ 22678:25\\ 22684:23\ 22701:3\\ 22715:3\ 22718:4,17\\ 22722:11\ 22725:14\\ 22733:12\ 22737:18\\ \textbf{matters}\ 22580:14\\ 22639:19\ 22644:19\\ 22657:23\ 22662:8\\ \end{array}$	meetings 22624:5 member 22604:24 22666:14 22675:21 22679:12 22683:11 22683:12 22689:16 22689:17 22690:21 22696:3 22697:1,3,21 22702:23 22705:5 22706:17 22708:4 22709:1,23 22719:20 22721:11,18 22722:14,18,19,19 22723:16,20 22728:12,20 22733:19 22735:14 22736:12 22738:2,6 member's 22708:6 mention 22623:6 22733:19,20 22734:8 22734:11 mentioned 22617:6 22621:25 22623:4 22673:2,15 22695:13 mere 22704:18	 misunderstood 22611:20 mitigate 22684:17 22685:20 Mkhwanazi 22580:8 22580:15 22585:2 22589:19 Mmmm 22667:12 model 22591:3 modules 22660:20 moment 22581:13 22593:8 22597:6 22598:8 22634:6 22673:5 22698:24 22718:20 money 22584:18 monitor 22663:14 22665:19,24 22727:15,17 monitors 22676:22 22677:4 month 22664:14 22668:14 22710:2 22711:22
	22597:2,25 22598:3 LLL22 22596:22 22598:8 22599:19 22693:21 22694:14 22694:18,19 22699:8 LLL23 22596:25 22598:10 22701:10 LLL24 22598:14 22703:8 22705:3 LLL25 22694:15 LLL25.series 22703:20 22703:24 LLL25.1 22598:16 22599:3,18 LLL25.22 22599:4 local 22584:5 London 22684:22 long 22581:14 22610:1 22620:11 22731:4,5 longer 22587:16 22611:16,25 22620:16 22698:20 longest 22710:3 Lonmin 22639:2 look 22580:20	22583:2 maintained 22587:18 maintenance 22691:1,4 22691:11,15,19 22692:24 22693:6,8 22695:6,8,24 22696:10 22697:15 22697:21 22698:1,17 22698:19 22699:5 major 22616:11,14,22 22621:19 22622:11 22631:7 22634:10 22641:10,12 22642:7 22653:3,7 22660:9 making 22639:24 22721:10 22726:2 man 22707:4,5 22718:18,19,22,25 22728:15,21,23 22729:8 22733:21,22 22734:2,12,13 managed 22621:4 22650:4 management 22580:25	$\begin{array}{r} 22593:25\ 22596:2\\ 22598:17\ 22648:19\\ \textbf{marked}\ 22593:14\\ 22599:18\ 22618:4\\ 22655:21\ 22705:10\\ 22730:18\\ \textbf{mass}\ 22655:5,7\\ \textbf{material}\ 22636:18\\ 22638:6,9,22\ 22639:9\\ 22639:10\ 22640:13\\ 22640:19\ 22643:21\\ 22734:25\ 22736:9\\ \textbf{Mathunjwa}\ 22634:1\\ \textbf{matter}\ 22591:3\\ 22615:20\ 22640:10\\ 22644:14\ 22666:22\\ 22674:24\ 22678:25\\ 22684:23\ 22701:3\\ 22715:3\ 22718:4,17\\ 22722:11\ 22725:14\\ 22733:12\ 22737:18\\ \textbf{matters}\ 22580:14\\ 22639:19\ 22644:19\\ 22657:23\ 22662:8\\ \end{array}$	meetings 22624:5 member 22604:24 22666:14 22675:21 22679:12 22683:11 22683:12 22689:16 22689:17 22690:21 22696:3 22697:1,3,21 22702:23 22705:5 22706:17 22708:4 22709:1,23 22719:20 22721:11,18 22722:14,18,19,19 22723:16,20 22728:12,20 22733:19 22735:14 22736:12 22738:2,6 member's 22708:6 mention 22623:6 22733:19,20 22734:8 22734:11 mentioned 22617:6 22621:25 22623:4 22673:2,15 22695:13 mere 22704:18	 misunderstood 22611:20 mitigate 22684:17 22685:20 Mkhwanazi 22580:8 22580:15 22585:2 22589:19 Mmmm 22667:12 model 22591:3 modules 22660:20 moment 22581:13 22593:8 22597:6 22598:8 22634:6 22673:5 22698:24 22718:20 money 22584:18 monitor 22663:14 22665:19,24 22727:15,17 monitors 22676:22 22677:4 month 22664:14 22668:14 22710:2 22711:22

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Arbitration

1229.19 2278.12 2288.12 2288.42 2290.32 2290.33 2290.33 2290.33 2290.33 2290.33 2290.33 2290.33 2290.33 2290.33 2290.33 2290.33 2290.33 2290.33 2290.33 2290.33 2290.34 2290.34 2290.34 2290.34 2290.34 2290.34 2290.34 2290.34 2290.34 2290.34 2290.34 2290.34 2297.12 2207.11 2208.22 2208.12 2207.11 2208.22 2208.12 <t< th=""><th></th><th></th><th></th><th></th><th>Page 11</th></t<>					Page 11
22736.8 22590-20.22600.25 22721.8 2274-22 22427.12442-16 2267.115 22605.16 22661.17.10 22661.18 2267.115 2007.115 2007.115 22605.16 22661.18 22661.18 22661.18 2267.127					
morning 22580:11,12 22616:17,20 uev 2260:82,2728,47 22649:14,2262:66 odustsom 2277:13 22001:16,2201:16,2201:16,2201:16,2200:16 2206:88,22609:15,10 2206:82,2201 2206:82,2201 2206:82,2201 2206:82,2201 2206:82,2201 2206:82,2201 2206:82,2201 2206:81,18 2206:81,18 2206:81,18 2206:81,18 2206:81,18 2206:81,18 2206:81,18 2206:81,18 2206:81,18 2206:81,18 2206:81,18 2206:81,18 2206:81,18 2206:81,12		22588:21 22590:14		22633:13 22640:17	22608:3 22629:1
2229/12/2.3 2267/12 22670:12 22660:12 22670:12 22670:14 22670:14 22670:14 22670:14 22670:14 22670:14 22670:14 22670:14 22670:14 22670:14 22670:14 22670:14 22670:14 22670:14 22670:12 2266:12 2260:12		22590:20 22600:25	22721:8 22724:22	22642:7 22646:16	22671:15
222061:02 22061:02 22061:02 22061:02 22072:12 22071:12	morning 22580:11,12	22616:17,20	new 22620:8 22728:2,7	22649:14 22652:6	oldest 22671:19
22261:12 2263:12 2263:13 22570:12 2270:18 22707:17 coccasions 2268:110,11 22672:17 2268:12 coccasions 2268:110,11 22678:12 2268:12 coccasions 2268:110,11 22678:12 2268:12 coccasions 2268:110,11 22678:12 2268:12 coccasions 2268:12 cocca	22591:22,23	22617:10 22660:25	22730:4	22659:18 22678:4	omission 22673:23
2262:17 22643:12 22667:12 2265:12 22667:11 22712:16 22712:16 22712:16 22712:16 22712:16 22712:16 22712:16 22712:16 22712:16 22712:16 22712:16 22712:16 22712:16 22712:16 22712:16 22712:16 22723:59 22723:59 22723:59 22723:59 22723:59 22712:16 22773:16 22773:16 22773:15 22773:16 22773:15 22773:16 22773:15 22773:16 22773:15 22773:16 22773:16 22773:15 22773:16 22773:16 22773:15 22773:16 22773:16 22773:16 22773:16 22773:16 22773:12 22773:12 22773:12 22773:12 22773:12 22773:12 22773:12 22773:12 22773:12 22773:12 22773:12 22777:25 22661:12 22661:12 22661:12 22661:12 22661:12 22661:12 22661:12 22661:12 22661:12 22661:12 22661:12 22661:12 22661:12 22661:12 22661:12 22661:12 22661:12 22661:12 22661:12 <	22605:16 22615:16	22664:18 22667:16	NIU 22596:10,19	22682:7 22683:4,5	22675:12
22623:22 22624:4.24 22711:35 22715:18 22722:18 occ-asions 22681:10.11 22678:12 22684:10 22678:12 22684:10 22678:12 22684:13 22688:12 2278:13 22688:12 22688:12 2278:13 22688:12 2278:13 22688:12 2278:13 22688:12 2278:13 22688:12 2278:13 22668:12 2278:13 22668:12 2278:13 22668:12 2278:14 22668:12 2278:14 22668:12 2278:14 22668:12 2278:14 22668:12 22661:12 <t< td=""><td>22615:20,21</td><td>22668:8 22669:15,15</td><td>22597:20,21</td><td>22702:18 22707:17</td><td>omitted 22734:20</td></t<>	22615:20,21	22668:8 22669:15,15	22597:20,21	22702:18 22707:17	omitted 22734:20
22262:02 2267:12 2277:13 2277:13 2277:15 2266:12 <	22622:17 22623:15	22671:2,11 22672:4,5	22650:24 22651:6	22712:16 22717:7	once 22592:6 22627:25
2263:15 22679:17 normal 22709:22 occupational 2260:19 22694:20 22698:20 Motlabane 22701:11 225877 2268:62 22607:12 2264:17 22725:13 22727:42 2270:14 22608:12 22607:12 2264:17 22725:13 22727:42 22770:14 22694:20 2278:12 0cce-a-week 2267:16 22628:71 22629:21 2266:14 2270:12 2276:13 0cce-a-week 2267:16 0cce-a-week 2267:16 22630:13 2264:123 necesarrity 2263:12 22770:12 22770:14 0ccurring 2272:29 0ccurring 2272:20 22636:13 2270:16 22686:14 2270:12 22770:12 0ccurring 2272:20 0ccurring 2272:20<	22623:25 22624:4,24	22711:25 22715:18	22722:18	occasions 22681:10,11	22664:11 22678:21
2271/16.6 normally 22609/10 22662:1 22662:1 22662:1 22662:1 22703:5:12:2724:2 22713:5:12:2724:1 22703:5:12:2724:1 22703:5:12:2724:1 22703:5:12:2724:1 22703:5:12:2724:1 22703:5:12:2724:1 22703:5:12:2724:1 22703:5:12:2724:1 22703:5:12:266:1:12:266:1:10 22660:1:12:266:1:12:266:1:10 22660:1:12:266:1:12:266:1:10 22660:1:12:266:1:12:266:1:10 22660:1:12:266:1:12:266:1:10 22660:1:10:2266:1:12:266:1:10 22660:1:10:2266:1:10:2266:1:10 22660:1:10:2266:1:10:	22625:20 22626:5	nationally 22667:25	non-lethal 22688:10	22681:18	22678:22 22694:20
Motlabare 22701:11 225837:722686:22 22607:12 22646:17 22735:35.912 22726:19 22715:12 22726:16 move 22996:15 NDP* 52648:10 2270:12 2270:12 2270:12 2270:12 2270:12 0rce-streek 22668:16 0rce-streek 22668:12 0rce-streek 22668:16 0rce-streek 22668:16 0rce-streek 2268:12 0rce-streek 226	22632:15 22633:15	22679:17	normal 22709:22	occupational 22660:19	22694:20 22698:20
Motlabane 22701:11 22587:7 22686:22 22627:12 2264:17 2273:5,9,12 22726:19 000000000000000000000000000000000000	22716:6	nature 22586:17	normally 22609:10	22661:2 22662:1	22698:21 22700:4
nove 2290:15 NDP* 52043:10 22710:2 2273:62.5 once-off 22678:16 once-off 22678:17 once-off 22678:16 once-off 22678:16 once-off 22678:16 once-off 22678:16 once-off 22678:17 once-off 22678:16 once-off 22678:17 once-off 22678:17 <td>Motlabane 22701:11</td> <td>22587:7 22686:22</td> <td></td> <td>22723:5,9,12 22724:2</td> <td>22715:20 22726:16</td>	Motlabane 22701:11	22587:7 22686:22		22723:5,9,12 22724:2	22715:20 22726:16
22628:7,11 ner: 2258:9,2 occursion ocursion ocursion ocurs	22701:14	22691:22	22662:4 22709:20	22725:13 22726:19	once-a-week 22664:12
226292-426309-11 22686:14 North 22675:1 22660:18 2266:10 22681:19 22630:13.24 22632:122086:16 NOSAZISO 2280:4 22661:12 22663:12 22661:7 22663:12 22661:7 22663:12 22661:7 22663:12 22661:7 22663:12 22661:7 22663:12 22661:7 22663:12 22661:7 22663:12 22661:7 22663:12 22661:7 22663:12 22661:7 22663:12 22661:7 22663:12 22661:12 2266	move 22596:15	NDPP's 22643:10	22710:2	22736:25	once-off 22678:16
226292-426309-11 22686:14 North 22675:1 22660:18 2266:10 22681:19 22630:13.24 22632:122086:16 NOSAZISO 2280:4 22661:12 22663:12 22661:7 22663:12 22661:7 22663:12 22661:7 22663:12 22661:7 22663:12 22661:7 22663:12 22661:7 22663:12 22661:7 22663:12 22661:7 22663:12 22661:7 22663:12 22661:7 22663:12 22661:7 22663:12 22661:12 2266	22628:7,11 22629:22	near 22583:7 22686:2	norms 22589:3	occupationally	ones 22599:4 22679:16
22630:13,24 necessarily 2263:12 22707:25 22661:24 orgoing 22661:25 22631:24 2263:25,69 necessary 22584:19 22630:22 22648:10 occur 2263:18 22665:20.21 22703:8 22713:11 22598:12 2259:15 notebook 2259:17 22687:3 occur 22641:23 operation 2261:7 22028:19 22713:8 22713:11 22598:20 22500:8 notebook 2259:17 22687:3 occur 22641:27 operation 2261:7 22028:19 22713:8 2260:8 22665:12 2200:15 22702:4 operation 2259:11 operation 2259:11 moving 2260:8 22665:12 02506:52 22607:12 2270:12 22671:12 2200:12 22004:9 22631:7 2263:32:5 22600:11 2200:12 2000:12 2200:11 2200:12 2200:12 2200:12 2200:12 2200:12 2200:12 2	·				
22631:24 2263:2-5,0 22638:12 2268:16 NOSAZISO 2280:4 cour 22631:18 22665:12 2266:11 22636:12 22701:10 22588:12 2295:15 22711:14 22703:1272:272.3 cour 22631:18 22665:12 2270:12 22718:15 22727:24 22599:12 2260:84 note 22599:17 2268:19 cour 2261:12 cour 126:11 cour 2261:12 cour 126:11 cour 126:11 <td< td=""><td></td><td>necessarily 22623:12</td><td>22707:25</td><td>22661:24</td><td>ongoing 22661:25</td></td<>		necessarily 22623:12	22707:25	22661:24	ongoing 22661:25
22636:12 22641:2 percesary 22584:19 22620:22 22648:10 2272:9 2266:12 222:9 22656:11 2277:24 22599:25 22713:14 cocurring 2272:8 cocurring 2272:8 22718:15 22727:24 22599:22 22608:4 notbook 22592:4 cocurring 2272:8 cocurring 2272:8 226117:2 2260:12 2260:18 22665:12 2265:2 notbook 22592:4 cocurring 2272:8 operates 22584:23 2260:12 2260:18 22665:12 2265:28 noting 22734:1 0200:12 2260:17 22609:13 2260:18 22609:13 2260:18 22609:13 2260:18 22609:13 2260:17 22609:13 2260:18 22609:13 2260:17 22609:13 2260:18 22609:13 2260:17 22609:13 2260:17 22609:13 2260:17 22609:13 2260:17 22609:13 2260:17 22609:13 2260:17 22609:13 2260:17 22609:13 2260:17 22609:13 2260:17 22609:13 2260:12 22619:218 22619:218 22619:218 22619:218 22619:218 22619:218 22619:218 22619:218 22619:218 22619:218 22619:218 22619:218 2260:12 2269:214 22619:218 2260:12 2269:219 22619:218 22619:218 22619:218 22619:218 22619:219:219 22618:12 22619:218			NOSAZISO 22580:4	occur 22631:18	0 0
22656:11 22718:12 2258:12 22713:14 occurred opcurred 2722:8 opcurred 2272:8 opcurred 2271:11 opcurred 2267:11 opcurred 2271:12 opcurred 2271:12 opcurred 2267:11 opcurred 2267:12		necessary 22584:19	22620:22 22648:10		22665:20,21
22708:8 22718:11 22598:20 22599:12 note 22687:8 occurring 2272:8:15 22771:12 22687:8 one occurring 2277:8:15 22771:12 22687:12 22670:19 22670:19 22670:19 operates 22670:17 22600:11 22606:10 22600:11 22600:12 226		e e			,
227118:15 2259:22 occurs 2265:12 2267:11 perates 2258:22 22711:18 2265:52:02 note 2260:22 2276:11 operates 2258:22 2269:7 2266:32 2266:32 2266:32 2271:12 operates 2260:32					
mores 22617:25 22617:11 operates 22584:23 22711:18 22655:02 22660:8 noting 22764:4 22706:16 2264:7 22607:11 22607:11 22607:12 22699:7 22683:24 22737:14 22707:21 22708:17 22607:13 22607:13 22607:13 22607:14 22607:14 22607:14 22607:14 22607:14 22607:14 22607:14 22607:14 22607:14 22607:14 22607:13 22607:14 22607:13 22607:14 22607:13 22607:14 22607:13 22607:14 22607:13 22607:14 22607:13 22607:12 22607:14 22607:12 22607:12 22607:12 22607:12 22607:12 22607:12 22607:12 22617:12					-
22711:18 2265:20 22660:8 notice 22604:2.4 October 2261:7 operation 2259:11 2269:7 22662:18 22683:14 22704:4 22705:5.6.6 22707:3 22602:12 22604:21 22603:8 22582:5 22580:5 notion 22586:19 22703:21 22708:17 22607:18 22608:8,18 22603:8 22580:2 22580:22 22580:9 November 22561:21 offence 22637:9 22618:22 22619:22 2263:10 22662:9 22607:41,21.6 number 22584:13 22707:10,209:5.24 22619:22 2265:2:10 2269:24 22707:5 2263:22 2269:2.12 22661:12 22661:1 22569:24 2263:3.5 22707:10,19 22651:12 22651:1 22619:12 22651:1 2261:12 22651:1 2261:12 22651:1 2261:12 22651:1 22661:12 22651:1 22661:12 22661:1 22661:12 22661:1 22661:12 22661:1 22661:12 22661:1 2271:12:1 2271:12:1 22661:12 2268:11 22661:12 2268:11 2271:12:1 2271:12:1 22661:12 2268:11 2271:12:1 22661:12 2268:10 22661:12 22661:12 22661:12 22661:12 22661:12 22661:12 22661:12 22661:12 22661:12 22661:12 2273:12 22661:12 22661:12 22661:12 22661:12 22661:12 22661:12 2273:12 22661:12 22661:12 22661:12 22661:12 2273:12 22661:12 22661:12 22661:12 22661:12 22661:12 2273:12 22661:12 22661:12 22661:12 22661:12 22661:12 227					operates 22584:23
moving 22620:8 22669:7 22669:7 22689:7 2269:7					
22699:7 22683:24 22737:14 noting 22734:1 22707:12 22708:17 22607:18 22608:81 Mpembe 2261:25 22586:22 22589:9 22713:23 22718:24 22609:3,14 22610:8 22633:10 22635:25 22600:11 22060:25 22658:10 22695:24 22641:10 22705:16,21 22619:21 22619:21 22641:10 22642:7 22618:12 22611:17 22658:62 22707:16,19 22657:10 22685:18 22661:16 22662:9 22641:19 22642:11,13 22609:3,2258:10 22708:15 22707:5 22651:10,11,11,14,19 22661:16 22662:9 22641:12 22658:1 22669:8,23 22670:11 0761eces 22637:5 22661:10,19,25 22684:21 22668:15 22668:1 22709:42 2270:3 0761eces 2263:19 2268:17,25 22680:25 22715:13,6,14,23 22660:15 22666:1,3 22771:2 2270:19 22661:16 2268:11 22717:12,12 22705:1 22711:2 22661:12 2268:29 22661:12 2268:29 22717:14,223 22661:15 22666:1,3 22770:2 22661:12 2268:29 22662:12 22680:29 22716:12 22661:15 22668:11 22709:12 22711:11 2270:2:12 2270:12 22661:12 2261:14 22719:1,223 2270:12 <td></td> <td></td> <td></td> <td></td> <td>-</td>					-
Mpembe 22601:25 need 22582:5 22586:18 notion 22586:19 22713:23 22718:24 22609:3,14 22610:5 22603:8 22604:21 22586:22 22589:9 22604:15 22705:8,8 22611:12 22612:15 22646:15 22705:8,8 22618:22 2269:22 2269:10 22619:23 22640:22 2269:22 22640:2 22645:10 22642:7 22668:10 22662:9 22641:19 22642:11,13 22663:15 22705:8,8 22669:10 22662:9 22644:12 22646:3 22710:10.19 2265:10.11,11,14,19 22668:12 272662:9 22644:12 22655:8,19 22669:8,23 22670:16 22770:710,19 22661:10,19,2560:9 murder 22647:12 22655:12 52652:15 22669:8,23 22710:511 0ffences 22637:5 22661:10,19,256 22716:12,23 22661:12 6270:61 22770:22 22677:5 22667:17 22663:10 2264:21 22717:17,17,21,25 22707:16 22771:25,11 22783:12 0ffences 22636:19 22664:12 2707:16 22719:5,22727:1,41,17 22731:271:271 22667:16 22,125 22600:15,22 2260:24 2260:12,22 2260:24 2260:242:268:26 22719:7,10,14,18,22 22730:16 22712:12,211 22663:12 22663:12 22663:12 22661:10,220:272:222:222:222:222:22:22:22:22:22:22:2	-				
22603:8 22604:1 2258:22 2263:1 0vember 22651:21 offence 2263:9 22618:12 22658:10 22707:10 22651:10 22618:12 22658:10 22661:10 22659:10,19 22651:10 22669:10,19 22661:10 22659:10,19 22661:10 22661:10 2268:17 22708:12 2268:11 22709:11 22661:10 2268:17 22718:13 22661:12 2268:11 2270:11 2270:12 22661:12 2268:11 2270:11 2270:12 22661:12 22661:12 22661:12 22661:12 22661:12 22661:12 22661:12 22661:12 22661:12 22661:12 22661:12 22661:12 <td></td> <td></td> <td>0</td> <td></td> <td></td>			0		
22631:7 22633:25 22600:11 22606:25 22652:10 22695:24 222641:15 22705:8,8 22618:22 22619:2.18 22641:10 22642:7 22618:12 22621:17 22593:22988:10 22705:16.21 22645:10.11,11,14,13 22661:16 22662:9 22642:11 22642:12 22642:11 22645:12 22642:11 22645:12 2268:12 22684:12 22647:12 22653:12 22652:15 22669:8,23 22670:11 offences 22637:5 226661:10,19,25 22684:21 22655:11 22655:13 22666:13 22701:14 22662:22 22680:24 Myburgh 22713:14,23 22666:13 22701:12 22720:3 22666:12 22668:11 22715:3,6,14,23 22660:15 22666:1.3 22731:20 offences 22637:5 22661:10,19,25 22719:7,10,14,18,22 22707:16 numbere 22582:10 22644:21 22702:42 2270:42 2270:42 2270:12 2270:42 2270:42 2270:42 2270:42 2270:42 2270:12 2270:12 2270:12 2270:12 2270:12 2270:12 2270:12 2270:12 2270:12 2270:12 2270:12 2270:12 2270:12 2270:12 2270:12 2270:12					
22634:10.22635:25 22607:4,12,16 number 22584:13 22706:12,21 22619:23.22637:1,4 22658:10,15,21 226258:22638:25 22707:10,19 22645:10,11,11,14,19 22668:10,622662:9 22641:9.22642:11 22668:3,5,9,19,22 22710:14 22659:10,19,22660:9 murder 22647:12 22655:15 22665:22675:17 22667:12 22661:10,2,55 22684:21 22665:12 22665:12 22669:10,19,25 22662:22 22680:24 Myburgh 22713:14,23 22660:15 22666:13 22731:20 officer 22506:19 22681:7,25 22652:22 2268:12 2268:17,25 2262:22 22680:24 2270:23 22660:25 2266:23 2266:12 22681:7,25 2266:25 2266:25 2266:25 2266:25 2266:25 2266:12 2270:16 2270:27:16 2270:27:16 2270:27:16 2270:27:16 2270:27:16 2270:27:12 22664:23 2266:12 2270:11:12 2270:27:12 22661:12 2270:11:12 2270:27:12 22661:12 2270:11:12 2270:27:12 22661:12 22661:12 2270:11:12 22660:12 <td< td=""><td></td><td></td><td></td><td></td><td></td></td<>					
22641:10 22642:7 22618:12 22621:7 22596:3 22598:10 22706:22.24 22707:5 22637:13.25 22640:2 22651:16 22662:9 22642:14 22645:10 2268:5 22583:25 22707:10,19 22651:10 22661:10,11,11,14,19 22681:12 22642:14 22645:10 22668:3,5,9,19,22 22710:14 22650:12 22680:2 22660:15 22661:25 22660:2 22661:25 22660:15 22661:25 22660:15 22661:10,19,25 22662:22 22680:24 Myburgh 22713:14,23 22656:12 22658:11 22710:12 22710:14 22662:12 22680:14 22710:12 2272:12 22663:10 22644:21 22663:10 22644:21 22663:10 22644:21 22700:12 2270:4 22704:19 22664:12 22678:17,19 22664:12 22678:17,19 22710:12 2270:4 22704:19 22661:10,19,25 22660:15 22660:12 22664:12 22663:1,17,20 22643:10 22644:21 22700:16 22710:12 2270:42 2704:19 22667:13,2270:42 2704:19 22667:13,2270:42 2704:19 22667:13,22200:15,22 2260:16 22667:13,2270:42,2704:19 22667:13,2270:42,2704:19 22667:13,2266:12 22667:13,2266:12 22667:13,2270:42,2704:19 22667:13,2270:42,2704:19 22667:13,2270:42,2704:19 22667:13,2270:42,2704:19 22667:13,2270:42,2704:19 22667:13,22704:14 22667:13,22704:14 22671:13,227271:11 22667:13,2					
22658:10.15.21 22625:24 22628:3.8 22628:5 22638:25 22707:10.19 22645:10.11.11,11,41.9 22661:16 22662:9 22641:9 22642:11.13 22641:21 22646:3 22708:15 22709:7 22651:12 22658:1 murder 22647:12 22651:25 22652:15 22669:8.23 22670:11 22710:14 22669:10 22669:22 22710:12 22651:25 22652:15 22669:8.23 22670:11 22710:12 22669:10 22680:24 22711:21:23 22660:15 22666:1,3 22710:12 2272:3 22662:22 22680:24 22711:21:223 22661:12 22658:1 22710:12 22710:12 22663:16 22660:19 22661:12 2270:27 22711:21:23 22661:12 22671:12 22709:12 22711:1 22662:16 2264:21 22700:12 22711:19 22711:21:24 22713:12 22700:12 22700:12 22711:25 22600:15 22 22601:12 22600:15 22 22601:12 22712:12:23 22725:12 22671:12 22671:21 226071:16 2269:12 22609:12 22711:25 22609:12 22711:25 22609:12 22711:25 22609:12 22609:12 22609:12 22609:12 22609:12 22609:12 22609:12 22609:12 22609:12 22609:12 22609:12 22609:12 22609:12 22609:12 22600:15 22660:12 22609:12 22609:12 <					
22661:16 22662:9 22641:9 22642:11,13 22641:21 22646:3 22708:15 22709:7 22651:12 22658:1 Mpofu 22716:14 22642:14 22645:10 226683.5,9,19,22 22710:14 22659:10,19,25 22684:21 22654:11 22655:8,19 22675:17 22712:5,11 22708:15 22663:19 22661:7,25 22682:9 Myburgh 22713:14,23 22661:15 22666:1,3 22731:20 officeders 22637:5 22662:5,6 22663:7,19 22715:15,614,23 22671:4 22677:16 22709:4 22794:1 22662:5,6 22663:7,19 22710:16 22719:7,10,14,18,22 22730:16 22712:1,2 422713:5 22662:5,6 22663:7,19 22711:11 22719:25 22720:7,16 needig 2258:210 22667:16,21,25 22600:15,22 22601:4 22719:25 22720:7,16 needig 2258:10 oath 22580:3 2259:20 22671:12 22672:4,5 22600:15,22 22601:4 22772:12 32773:12 22653:6 22671:16 22648:9 2268:12 22631:8 2261:12 2262:13 2261:18 2261:14 22730:3,5,6,14 22656:6 22636:20 objective 22636:20 22661:15 22660:14 2261:18 2261:14 22772:12 32723:12 22653:6 22671:16 22654:15 22660:14 2261:18 22626:13 2261:18 2261:14 </td <td></td> <td></td> <td></td> <td></td> <td></td>					
Mpofu 22716:14 22642:14 22645:10 22668:3,5,9,19,22 22710:14 22659:10,19 22660:9 murder 22647:12 22651:25 22652:15 22651:12 2255:8,19 22675:17 22712:15 2272:3 22661:10,19,25 Myburgh 22713:14,23 22660:15 22666:1,3 2270:1 22712:1 2270:1 22712:1 2270:1 22712:1 22684:11 22701:16 227115:3,6,14,23 22661:1 22657:16 22713:1 20 offenders 22636:19 22684:11 22701:16 227115:12,23 22671:1 22672:14 22664:23 22666:12 22643:10 22644:21 2270:12 4 22704:19 22711:21,24 22713:1 22726:18 numbers 22599:9 22661:16 22.125 22600:15 22 2600:14 22712:23 22723:21 22671:12 22673:1 22712:1 22664:13 22666:12 22600:15 22 2601:4 22772:13,25 22720:7,16 needd 22586:10 onth 22580:3 2259:20 22674:13,15 22600:15 22260:14 22772:12,45,18 needd 22586:10 2259:3:20 2260:21 22648:9 22687:25 22647:12 22711:25 22610:15 22620:14 22772:14,15,18 22679:6 22733:4 objective 22688:16 22648:12 2270:7 22664:12 22601:12 22618:23 22618:19 22772:14,25,25,51,18				-	
murder 22647:12 22651:25 22652:15 22669:8,23 22670:11 offences 22637:5 22661:10,19,25 22684:21 22652:12 22658:11 22675:17 22712:5,11 22722:3 22662:22 22680:24 22715:3,6,14,23 22660:15 22666:1,3 22731:20 offences 22636:19 22663:10 22644:21 22663:17,25 22682:9 22715:3,6,14,23 22671:4 22677:16 numbered 22582:10 22643:10 22644:21 22702:24 22704:19 22717:17,21,25 22703:12 22712:1 22703:1 22730:26 22671:62,25 22667:16,21,25 22600:15,22 2260:14 22719:7,10,14,18,22 22730:16 22712:1,24 22713:5 22667:16,21,25 22607:16,22,5 22667:16,21,25 22606:10 22609:8,21 22727:24:2 22723:12 needing 22586:10 nath 22580:3 2259:20.21 22671:12 2271:1:2 22661:16,2256:11 22661:16,2256:11 22615:17,225 22660:14 2267:1,4 22615:19,2260:14 22615:19,2260:14 22615:19,2260:13 22616:19 22618:19 22731:25 22734:6 22671:16 22671:12 2271:12 22663:12 2270:12 22661:14 2267:14 22615:19 22615:19 22615:19 22615:19 22616:19 22618:19 2272					
22684:21 22654:11 22655:8,19 22675:17 22712:5,11 22722:3 22662:22 22680:24 Myburgh 22713:14,23 22656:21 22658:11 2270:4 22726:3 offenders 22636:19 22681:7,25 22882:9 22715:12,23 22667:14 22677:16 22731:20 offenders 22636:19 22643:10 22644:21 22702:24 22704:19 22715:12,23 22705:1 22712:1 22599:4 22694:14 22662:56 22666:12 operational 22584:2,22 22719:25 22720:7,16 numbers 22599:9 22667:16,21,25 22600:15,22 22601:4 22712:23 22723:21 22671:12 22671:12,24 22713:5 22666:12 operational 22584:2,22 22772:1,4,15,18 needed 22583:22 0 22671:12,24 22672:4,5 22600:15,22 22601:4 22728:1 22729:16,21 22642:11 22652:6 22673:13 22667:12 2271:25 22610:5,17,25 22771:4,15,18 needs 22586:10 22643:20 22602:21 officers 22638:16 22611:8 22612:14 22738:2,5,5,13,18 22679:24 22673:16 22615:15 22601:16 22731:13 22656:14 22616:19 22618:19 22738:2,5,5,13,18 needed 22586:20 objective 22638:16 22668:12 2268:3:13 22616:19 22618:19					<i>2</i>
Myburgh 22713:14,2322656:21 22658:1122720:4 22726:3offenders 22636:1922681:7,25 22682:922716:12,2322660:15 22666:1,322731:20office 22590:11,17,2022684:11 22701:1622716:12,2322705:1 22712:122599:4 22694:1422662:5,6 22663:7,1922702:24 22704:1922719:7,10,14,18,2222730:1622730:1622711:2122662:5,6 22666:12operational 22584:2,2222719:7,10,14,18,2222730:1622711:2122671:12 22672:4,522600:15,22 22601:422719:25 22707.7,16needig 22586:1022593:20 22607:12 2271:2271:2271:2222601:15 22600:15,22 22601:4227724:2 22725:12needig 22586:1022593:20 22607:2222637:7 22638:7,822611:8 22612:1422730:3,5,6,1422653:6 22671:1622573:1622673:1622618: 2061:21422730:3,5,6,1422671:22,24 22678:722663:2522637:7 22638:7,822616:19 22618:1922733:1622671:22,24 22678:70bjective 22688:1622678:5 22684:12,182261:12 22620:122738:10negatively 22582:120bjective 2268:1622678:5 22684:12,1822620:12 2260:14227373:10negotiations 22628:1822660:2222660:21 2270:1222636:20 22639:19mystery 22594:2022659:1222658:1722636:21 2270:1222636:20 22661:422601:17 22715:172263:110bligation 22582:2522701:1222656:1122656:1222601:17 22715:172263:1302625:1122772:12226560:2422656:1222601:17 22715:172263:130bligation 22567:100ffi					
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22716:12,23 22671:4 22677:16 numbered 22582:10 22643:10 22644:21 22702:24 22704:19 22719:17,12,25 22705:1 22712:1 22599:4 22694:14 22662:5,6 22666:12 operational 22584:2,22 22719:7,10,14,18,22 22730:16 22712:1,24 22713:5 22664:23 22666:12 operational 22584:2,22 22719:25 22720:7,16 needed 22583:22 22671:21 22674:13,15 22600:15,22 22601:4 22724:2 22725:12 22671:21 0 22674:13,15 22600:15,22 22601:4 22772:1,4,15,18 needig 22586:10 oath 22580:3 22592:20 22671:12 22712:5 22601:5,12 2260:18, 20 22773:1:25 2273:6 22642:11 22652:6 22648:9 22687:25 22637:7 22638:7.8 22616:19 22618:19 22738:2,55,13,18 22679:6 2273:4 objective 22688:16 22619:3,13 22668:12 2266:10 22667:3,22262:3 22700: 32720: 327218:4,13 22659:22 22633:12,14,19 22688:12 22668:12 22661:19 22613:4 22703: 32,55,13,18 22679:6 22733:4 objective 22688:16 22678:5 22684:12,18 22627:8,2027:19,263:14 22700: 32720: 327218:4,13 22630:42 22660:22					
22717:17,21,25 22705:1 22712:1 22599:4 22694:14 22662:5,6 22663:7,19 22711:11 22718:8,11,17 2273:1 22726:18 2270:16 22664:23 22666:12 0 22600:15,22 22601:4 22600:15,22 22601:4 22600:15,22 22601:4 22600:15,22 22601:4 22600:15,22 22601:4 22600:15,22 22601:4 22600:15,22 22601:4 22600:15,22 22601:4 22600:15,22 22601:4 22600:15,22 22601:4 22600:10 22609:8,21 22724:2 22725:12 needia 22586:10 needia 22580:3 22592:20 22637:12 22711:25 22611:8 22611:4 22637:12 22711:25 22601:8,20 22637:12 22711:25 22601:8,20 22601:8 2261:14 22609:8,21 22723:12 22729:16,21 22656:3,6 22671:16 22648:9 22687:25 22637:7 12 22638:7,8 22611:8 22612:14 22618:23 22619:3,13 22618:23 22619:3,13 22618:23 22619:3,13 22618:23 22619:3,13 22618:23 2260:14 22618:23 2260:3 22669:8,12 22668:21 2270:7 22668:21 2270:7 22668:21 2270:21 22666:8,9,12,15,19 22665:12,2266:63 22663:22,24 22655:31 22665:12,22626:31 22665:12,22626:31 22665:12,22626:63 22667:8,22655:11 22656:12,22626:63 22666:12 22771:21 22665:14 22657:19 <t< td=""><td></td><td></td><td></td><td></td><td></td></t<>					
22718:8,11,17 22723:1 22726:18 numbers 22599:9 22664:23 22666:12 operational 22584:2,22 22719:7,10,14,18,22 22730:16 neede 22583:22 22671:21,24 22713:5 22667:16,21,25 22600:15,22 22601:4 22712:1,23 22723:21 22671:21 0 22671:12 22672:4,5 22600:15,22 22600:15, 22 2610:19, 22 2618:19 22731:25 22734:6 22671:22, 24 22678:7 objective 22688:16 22678:5 22684:12, 18 22620:14 22618:19 22618:19 22733:25 25734:6 22671:22, 24 22673:7 objective 22688:16 22678:5 22684:12, 18 22620:12 22638:1, 12 22738:10 negatively 22582:12 22638:17 22686:21 22701:21 2263:14, 22657:19 22653:12 2278:12 22630:25 0bjeation 22582:25 22703:1 22712:11 22653:17 22654:6 22601:17 22719:8,11 negotiations 22602:13 02660:21 22701:21 22636:12 2260:19 02660:22 2260:14 Naidoo 22658:11,16,21					
22719:7,10,14,18,22 22730:16 22712:1,24 22713:5 22667:16,21,25 22600:15,22 22601:4 22719:25 22720:7,16 needed 22583:22 22671:21 22671:21 22601:12 22672:4,5 22600:15,22 22601:4 22721:23 22723:21 needing 22586:10 needs 22583:22 22671:21 22672:4,5 22601:5,22 22601:4 22727:1,4,15,18 needs 22586:10 oath 22580:3 22592:20 22637:7 22638:7,8 22610:5,17,25 22730:3,5,6,14 22656:3,6 22671:16 22731:13 22654:15 22660:14 22618:19 22618:19 22738:2,5,5,13,18 22679:6 22733:4 negatively 22582:10 objective 22688:16 22678:5 22684:12,18 226262:18 22620:1 Myburgh's 22718:4,13 negatively 22582:12 22653:12,14,19 22685:21 22686:10 22627:7,9 22631:4 22738:10 negotiation 22629:22 22688:17 22686:21 22701:21 22636:20 22639:19 mystery 22594:20 22630:24 22630:25 22607:8 22657:11 22705:8 22655:11 22653:12 2260:14 22661:17 22715:17 22632:12 c2630:12 c263:12 22601:2 22661:4 22661:17 22715:17 22632:11 obligation 22657:10					
22719:25 22720;7,16 needed 22583:22 22671:12 22672:4,5 22602:18,20 22721:23 22723:21 22671:12 22672:4,5 2260:10 22609:8,21 22724:2 22725:12 needing 22586:10 oath 22580:3 2259:20 22697:12 22711:25 22600:10 22609:8,21 22728:1 22729:16,21 22642:11 22652:6 22593:20 22620:21 officers 22588:16 22611:8 22612:14 22730:3,5,6,14 22657:12,2,24 22678:7 22648:9 22687:25 22637:7 22638:7,8 22616:19 22618:19 22731:25 22734:6 22671:22,24 22678:7 objective 22686:20 22684:22,24 22685:3 22626:15 22660:14 22618:23 22619:3,13 22720:3 22722:13 negatively 22582:12 objective 22686:20 22688:21 22686:10 22627:7,9 22631:4 22733:10 negotiation 22629:22 22688:17 22688:21 2270:12 22635:12,14,19 22636:21 2270:21 22636:20 22639:19 22742:3 22630:4,9,12 22630:25 objective 22687:10 22678:225511 22636:21 22626:3 Myburgh's 22718:17 22630:4,9,12 22637:7 2272:12 22636:20 22639:19 22625:14 22657:19 22661:17 22719:8,11 negotiations 22628:18 22772:7 2272:4:14,2					
22721:23 22723:21 22724:2 22725:12 22727:1,4,15,18 22728:1 22729:16,21 22738:1 22729:16,21 22656:3,6 22671:1222671:12 2258:10 22642:11 22652:6 22642:11 22652:6 22642:11 22652:6 22642:11 22652:6 22642:11 22652:6 22642:11 22652:6 22642:11 22652:6 22642:11 22652:6 22642:12,224 22678:7 22673:125 22734:6 22731:25 22734:6 22679:6 22733:4 22679:6 22733:4 22679:6 22733:4 22720:3 22722:13 22720:3 22722:13 22720:3 22722:13 22720:3 22722:13 22720:3 22722:13 22720:3 22722:13 22652:12 22653:12,14,19 22653:12,14,19 22668:16 22668:17 22688:17 22686:21 22701:21 22686:21 22660:14 22666:12 22701:21 22686:21 22660:14 22666:24 22660:24 22630:25 22660:14 22657:11 22660:24 22630:25 22607:8 22657:11 22607:8 22657:11 22660:24 22600:14 22660:24 22660:24 2260:14 22660:264 22660:2626114 22652:10 22660:2626114 22652:10 22660:2626114 22660:2626114 22660:2626114 22660:2626114 22660:			22712.1,24 22713.3		
22724:2 22725:12 needing 22586:10 oath 22580:3 22592:20 22697:12 22711:25 22601:5,17,25 22727:1,4,15,18 22642:11 22652:6 22648:9 22687:25 22637:7 22638:7,8 22616:19 22618:19 22730:3,5,6,14 22655:3,6 22671:16 22679:12 22715:12 22660:14 22618:23 22619:3,13 22731:25 22734:6 22679:6 22733:4 objectic 22700:7 22668:15 22678:16 22618:12 22626:3 Myburgh's 22718:4,13 negative 22586:20 objective 22688:16 22678:5 22684:12,18 22625:18,21 22626:3 22720:3 22722:13 negative 22586:20 objective 22688:16 22678:5 22684:12,18 22625:18,21 22626:3 22637:4 22594:20 22639:24 22630:25 22607:8 22668:17 22666:21 22701:21 22656:14 22657:19 22615:17 22715:17 22630:4,9,12 22630:4,9,12 22607:8 22667:11 22656:14 22657:19 22715:17 22719:8,11 nether 22629:13 22727:27 22772:14,21 official 22642:13 operations 2260:14 22658:17,23 22658:15 22737:17 22699:2 22660:22 22661:4 22658:17,23 22615:13 22619:13 22657:13 22641:12,12 official 22642:13 operations 22601:4 22658:17,227 22588:3,8,9 22666:19			0		
22727:1;4,15,18 needs 22586:11 22593:20 22620:21 officers 22588:16 22611:8 22612:14 22728:1 22729:16,21 22642:11 22652:6 22648:9 22687:25 22637:7 22638:7,8 22616:19 22618:19 22730:3,5,6,14 22667:122,24 22678:7 objected 22700:7 22660:15 22673:16 22619:15 22620:1 22738:2,5,5,13,18 22679:224 22678:7 objective 22688:16 22678:22684:12,18 22652:18,21 22626:3 Myburgh's 22718:4,13 negative 22586:20 objective 22683:16 22684:2,24 22685:3 22626:6,8,9,12,15,19 22720:3 22722:13 negative 22582:22 22688:17 22686:21 22701:21 22636:20 22639:19 22738:10 negotiation 22629:22 22647:8 22657:11 22665:21 22701:21 22636:20 22639:19 mystery 22594:20 22629:24 22630:25 22607:8 22657:11 22665:11 2265:11 22659:10,12 22611:1 22715:17 22632:11 obligations 22657:10 officer's 22655:11 22650:12 22660:12 22719:16 22658:15 22737:17 22699:2 22608:16 22637:20 0esrved 22644:12,12 official 22642:13 operations 22601:4 22658:17,225					
22728:1 22729:16,21 22730:3,5,6,14 22731:25 22734:6 22731:25 22734:6 22671:22,24 22678:7 22738:2,5,5,13,1822642:11 2265:6 22656:3,6 22671:16 22731:1322637:7 22638:7,8 22660:15 22660:14 22660:15 22673:16 22668:15 22660:14 22619:15 22620:122618:19 22618:19 22619:15 22620:1Myburgh's 22734:6 22738:2,5,5,13,1822671:22,24 22678:7 22679:6 22733:4 negatively 22586:20 negatively 22586:20 22632:12 22738:10objective 22688:16 22653:12,14,19 22653:12,14,1922664:12,24 22685:3 22684:22,24 22685:3 22684:22,24 22685:3 22664:22,24 22686:1022629:18,21 22626:3 22629:24 22630:42 22636:20 22636:20 22639:19M mystery 22594:20negotiation 22629:22 22629:24 22630:25 22644:23 22661:17 22715:17 22632:1122630:25 22632:12 22632:11 22630:4,9,12 22632:11 22632:11 22632:11 22632:1122607:8 22657:11 22772:7 22724:14,21 22660:24 22720:1222656:14 22657:19 22656:14 22657:19 22659:10,12 22659:10,12 22660:22 22661:4 22660:22 22661:4 22660:22 22661:4 22660:22 22661:4 22660:22 22661:4 22660:22 22661:4 22660:22 22661:4 22660:22 22661:4 22660:22 22661:4 22660:22 22661:4 22637:10 0bligations 22657:10 0bligations 22657:10 0bligations 22657:10 0bligations 22657:10 0bligations 22657:10 0bligation 22644:12,12 0bligation 22644:12,12 0bligation 22644:12,12 0bligation 22644:12,12 0bligation 22644:12,12 0bligation 22644:12,12 0bligation 22644:12,12 0bligation 22644:12,12 0bligation 22644:12,12 0bligation 22643:13 22594:12 22657:10 22657:10 22657:10 0bligation 22643:12 22591:13 22594:12 22657:10 22657:13 22661:14 22657:20 22656:10 22657:12 22650:13 22657:12 22660:11 22607:24 22650:9 22600:24 22650:9 22650:8					
22730:3,5,6,14 22731:25 22734:6 22731:25 22734:6 22738:2,5,5,13,1822656:3,6 22671:16 22671:22,24 22678:7 22679:6 22733:4 megative 22586:20 megative 22586:20 megative 22586:20 megative 22586:20 megative 22586:20 megative 22586:20 megative 22586:20 megative 22586:20 megative 22582:12 22688:17 22688:17 22688:17 22688:17 22688:17 22688:17 22686:21 2270:121 22686:21 2270:121 22686:21 2270:121 22663:12 2263:12,14,19 22686:21 2270:121 22663:12 2263:12,14,19 22686:21 2270:121 22663:12 2263:12 22663:12 2270:121 22663:12 2263:12 22663:12 2270:121 22663:12 2265:11 22653:17 22654:6 22660:15 22657:11 22607:8 22657:11 22607:8 22657:11 22607:8 22657:10 22607:8 22657:10 22607:8 22657:10 22660:22 22661:4 22660:22 22661:4 22660:19 0001ged 22724:16 22699:2 22654:10 22657:3 22598:6,11 22657:3 22598:6,11 22657:3 22598:6,11 22667:20 22650:13 22660:18 22660:18 22660:18 22660:18 22660:18 22660:11 22660:22 22661:14 22660:22 22660:18 22660:12 22660:12 22660:12 22660:12 226					
22731:25 22734:6 22738:2,5,5,13,18 Myburgh's 22718:4,13 22720:3 22722:13 22738:1022671:22,24 22678:7 22659:24 2268:20 negatively 22582:12 22629:24 22630:25 22629:24 22630:25objected 22700:7 objective 22688:16 22678:5 22684:12,18 22684:22,24 22685:3 22684:22,24 22685:3 22686:21 22701:21 22686:21 22701:21 22636:20 22639:19 22636:20 22639:19 22636:20 22639:19 22636:20 22639:19 22629:24 22630:25 22644:23 22644:23 22644:23 22660:14 22657:11 22607:8 22657:11 22630:4,9,12 22630:4,9,12 22630:4,9,12 22630:4,9,12 22630:4,9,12 22715:17 22715:17 22632:11 22632:11 22632:11 22632:11 22632:11 22715:17 22632:11 22632:11 22632:11 22632:11 22632:11 22632:11 22632:11 22724:24 22660:24 22600:24 22637:10 22600:24 2269:13 22658:15 22658:15 22658:15 22658:15 22658:16 22724:14 22658:15 22658:17 22658:16 22658:17 2269:2 22605:11 2269:2 22605:11 2269:2 22605:12 22605:12 22602:22661:4 2269:2 22605:13 22658:12 22658:12 22658:13 22658:13 22625:21 2266:19 22625:21 2266:19 22625:21 2266:67 22625:21 2266:67 2260:24 22657:10 0bigied 22724:16 0bigied 22724:16 0bigied 22724:16 0bigied 22724:16 0fficials 22697:9 22699:2 22608:16 22637:20 22608:16 22637:20 22608:16 22637:20 22608:16 22637:20 22608:16 22637:20 22608:16 22637:20 22608:10 22656:10 22609:2 22609:2 22609:2 22608:12 22594:12 22659:13 22600:24 22600:24 22650:9 22650:8 22673:16 22597:3 22598:6,11 22600:24 22600:24 22650:9 22600:24 22600:24 22600:23 22600:24 22600:24 22600:23 22600:24 22600:24 22600:2322600:15 22673:16 22600:24 22600:18 22600:24 22600:24 22600:24 22600:24 22600:24 22600:9 22600:24 22600:9 22600:24 22600:23<					
22738:2,5,5,13,1822679:6 22733:4 negative 22586:20 negatively 22582:12 2270:3 22722:13 22738:10objective 22688:16 objectives 22636:20 22653:12,14,19 22685:21 22686:10 22685:21 22686:10 22685:21 22686:10 22629:24 22630:25 22644:23objective 22688:16 22653:12,14,19 22688:17 22686:21 22701:21 22686:21 22701:21 22665:11 22702:12 22655:11 22703:1 22712:11 22655:11 22656:14 22657:19Nnegotiation 22629:22 2269:24 22630:25 22644:23objective 22688:17 22667:8 22657:11 22702:1222666:20 22639:19 22655:11 22656:14 22657:19 22656:14 22657:19Naidoo 22658:11,16,21 22661:17 22715:17 22715:17 22719:8,11 22719:16 name 22583:17,23 22658:15 22661:13 22619:13 22615:13 22619:13 22615:13 22619:13 22625:21 22626:6,7 22655:11 22625:21 22626:6,7 22653:17,23 22655:11 22655:12 22657:10 22657:10 22657:10 22737:17 22699:2 22608:16 22637:20 22608:16 22637:20 22608:16 22637:20 22608:16 22637:20 22608:16 22637:20 22656:10 22659:13 22619:13 22625:21 22626:6,7 2260:24 22644:12,12 22600:24 22650:9 22600:24 22650:9 22650:8 22673:16 22597:3 22598:6,11 22597:3 22598:6,11 22659:20 22660:18 22660:24 22660:24 22659:20 22660:18 22659:20 22660:18 22660:24 22650:9 22650:8 22673:16 22650:9 22650:8 22673:16 22660:24 22660:2422625:10 22659:10,12 22659:13 22659:13 22659:13 22659:13 22660:14 22660:14 22660:14 22660:14 22660:14 22660:14 22660:14 22660:24 22660:18 22660:14 22660:24 22650:9 22650:8 22673:16 22660:18 22660:24 22660:24 22660:24 22660:18 22660:24 22660:24 22660:24 22660:24 22660:24 22660:24 22660:25 22660:18 22660:24 22660:24 22660:24<					· · · · · · · · · · · · · · · · · · ·
Myburgh's 22718:4,13 22720:3 22722:13 megatively 22582:12 mystery 22594:20negatively 22586:20 negatively 22582:12 negotiation 22629:22 22629:24 22630:25 22644:23objectives 22636:20 22653:12,14,19 22685:21 22686:10 22686:21 22701:21 22686:21 22701:21 22686:21 22701:21 22636:20 22639:19 22636:20 22639:19 22636:20 22639:19 22636:20 22639:19 22636:20 22639:19 22636:20 22639:19 22636:20 22639:19 22663:17 22712:11 22653:17 22654:6 22660:12 22701:21 22655:11 22655:11 22655:11 22655:11 22660:24 22660:24 22660:24 22660:22 22661:4 22660:22 22661:4 22660:24 22660:22 22661:4 22660:22 22661:4 22660:22 22661:4 22660:24 22660:24 22660:22 22661:4 22660:22 22661:4 22660:22 22661:4 22660:24 22660:22 22661:4 22660:24 22660:22 22661:4 22660:24 22660:24 22660:22 22661:4 22660:22 22661:4 22660:24 22660:24 22660:22 22661:4 22660:24 22660:24 22660:24 22660:24 22660:22 22661:4 22660:24 22660:24 22660:24 22660:24 22660:24 22660:24 22660:24 22660:24 22660:24 22660:24 22660:24 22660:24 22660:24 22608:16 22637:20 22608:16 22637:20 22608:16 22637:20 22658:16 22637:20 22658:10 22658:17 22658:17 22658:18 22594:18 22594:12 22654:10 22656:10 22659:20 22660:18 22659:20 22660:18 22660:24 22650:9 22600:24 22650:9 22600:24 22650:9 22600:24 22650:9 22600:24 22650:9 22650:8 22673:16 22659:20 22660:18 22662:5,11 22681:6 22660:24 22660:19 22706:2322626:6,7 22660:12 22660:12			•		
22720:3 22722:13 22738:10negatively 22582:12 negotiation 22629:22 22629:24 22630:25 22644:2322653:12,14,19 22688:1722685:21 22686:10 22686:21 22701:21 22703:1 22712:11 22703:1 22712:11 22656:14 22657:1922627:7,9 22631:4 22636:20 22639:19 22630:4,9,12 22656:14 22657:19Naidoo 22658:11,16,21 22661:17 22715:17 22715:17 22719:8,11 22719:16neither 22629:13 22658:1522607:8 22657:10 22724:24officer's 22655:11 22660:2422650:22 22661:4 22660:24Naidoo 22658:11,16,21 22661:17 22715:17neither 22629:13 22632:11obligation 22587:10 22632:11offical 22642:13 22737:17operationally 22660:19 22699:2Nails 22623:10 name 22583:17,23neither 22587:24,25 22615:13 22619:13 22615:13 22619:1322631:12 22643:5 22731:6obligation 22637:10 22699:2obligation 22643:5 22731:6 22594:18,21,21 22650:18 22594:1222654:10 22656:10 22659:20 22660:18 22659:20 22660:18 22600:24 2260:24Names 22738:1 national 22582:252267:14,4,7 22682:3obtaining 22646:10 22600:24 22650:9 22600:24 22650:922608:16 22673:16 22706:2322625:21 22626:14 22650:12			•		
22738:10 mystery 22594:20negotiation 22629:22 22629:24 22630:25 22642:2322688:17 obligation 22582:25 22607:8 22657:11 2270:1222686:21 22701:21 22703:1 22712:11 2270:1222636:20 22639:19 2653:17 22654:6 22654:6 22654:14 22657:19Naidoo 22658:11,16,21 22661:17 22715:17negotiations 22628:18 22632:1122722:7 22724:14,21 22632:11officer's 22655:11 22660:2422659:10,12 22660:22 22661:4Naidoo 22658:11,16,21 22661:17 22715:1722630:4,9,12 22632:1122724:24 obligations 22657:10official 22642:13 official 22642:13operationally 22660:19 operations 22601:422715:17 22719:8,11 22719:16neither 22629:13 22658:15obliged 22724:16 22737:17officials 22697:9 22699:2operations 22601:4 22608:16 22637:20nails 22623:10 name 22583:17,23never 22587:24,25 22615:13 22619:13observed 22644:12,12 obtain 22643:5 22731:6oh 22581:18 22594:12 22594:18,21,2122657:20 22659:13 22657:20 22659:1322588:3,8,9 22666:19 names 22738:1 national 22582:2522671:4,17 22682:3obtaining 22646:1022706:2322603:11 22600:24 22650:9 22650:8 22673:1622602:5,11 22681:6 22706:23		5	•	-	
mystery 22594:2022629:24 22630:25 22644:23obligation 22582:25 22607:8 22657:1122703:1 22712:11 22720:1222653:17 22654:6 22656:14 22657:19Naidoo 22658:11,16,21 22661:17 22715:17negotiations 22628:18 22630:4,9,1222722:7 22724:14,21 22724:24officer's 22655:11 22660:2422650:10,12 22660:22 22661:422661:17 22715:17 22715:17 22719:8,11 22719:16neither 22629:13 22658:15obligations 22657:10 22737:17official 22642:13 22699:2operationally 22660:19 operations 22601:4name 22583:17,23 22588:3,8,9 22666:1922615:13 22619:13 22625:21 22626:6,7 22627:8 2260:11observed 22644:12,12 22600:24 22643:5 22731:6oh 22581:18 22594:12 22594:18,21,2122657:20 22659:13 22657:20 22659:13names 22738:1 national 22582:2522671:4,17 22682:3obtain 22640:1022706:2322600:24 2263:16 22706:2322602:12					
N22644:2322607:8 22657:1122720:1222656:14 22657:19Naidoo 22658:11,16,2122630:4,9,122272:7 22724:14,21officer's 22655:1122659:10,1222651:17 22715:1722632:11obligations 2262722724:242660:2422660:22 22661:422715:17 22719:8,11neither 22629:13obliged 22724:16official 22642:13operations 22601:422719:1622658:1522737:1722699:222608:16 22637:20nails 22623:10never 22587:24,25observed 22644:12,12oh 22581:18 22594:1222654:10 22656:10name 22583:17,2322615:13 22619:13obtain 22643:5 22731:622594:18,21,2122657:20 22659:1322588:3,8,9 22666:1922625:21 22626:6,7obtained 22587:122597:3 22598:6,1122659:20 22660:18names 22738:122627:8 22660:1122600:24 22650:922650:8 22673:1622662:5,11 22681:6national 22582:2522671:4,17 22682:3obtaining 22646:1022706:2322706:12		0			
Nnegotiations 22628:1822722:7 22724:14,21officer's 22655:1122659:10,12Naidoo 22658:11,16,2122630:4,9,1222724:2422660:2422660:22 22661:422661:17 22715:1722632:11obligations 22657:10official 22642:13operationally 22660:1922715:17 22719:8,11neither 22629:13obliged 22724:16officials 22697:9operations 22601:422719:1622658:1522737:1722699:222608:16 22637:20nails 22623:10never 22587:24,25observed 22644:12,12oh 22581:18 22594:1222654:10 22656:10name 22583:17,2322615:13 22619:13obtain 22643:5 22731:622594:18,21,2122657:20 22659:1322588:3,8,9 22666:1922625:21 22626:6,7obtained 22587:122597:3 22598:6,1122659:20 22660:18names 22738:122627:8 22660:1122600:24 22650:922650:8 22673:1622662:5,11 22681:6national 22582:2522671:4,17 22682:3obtaining 22646:1022706:2322706:12	тузиту 2237т.20				
Naidoo 22658:11,16,21 22661:17 22715:1722630:4,9,12 22632:1122724:240121111,121 22724:2422660:24 22660:2422600:22 22661:4 operationally 22660:19 operations 22601:422715:17 22719:8,11 22719:16neither 22629:13 22658:15obliged 22724:16 22737:17official 22642:13 22699:2operationally 22660:19 operations 22601:4nails 22623:10 name 22583:17,23never 22587:24,25 22615:13 22619:13observed 22644:12,12 obtain 22643:5 22731:6oh 22581:18 22594:12 22594:18,21,2122654:10 22656:10 22659:20 22659:1322588:3,8,9 22666:19 names 22738:1 national 22582:2522671:8,2160:11 22627:8 22660:11 22627:8 22660:1122600:24 22650:9 22600:24 22650:922597:3 22598:6,11 22650:8 22673:16 22706:2322659:20 22660:18 22626:25,11 22681:6	<u> </u>				
22661:17 22715:17 22632:11 obligations 22657:10 official 22642:13 operationally 22600:19 22715:17 22719:8,11 neither 22629:13 obliged 22724:16 officials 22697:9 operations 22601:4 22719:16 22658:15 22737:17 22699:2 22608:16 22637:20 nails 22623:10 never 22587:24,25 observed 22644:12,12 oh 22581:18 22594:12 22654:10 22656:10 name 22583:17,23 22615:13 22619:13 obtain 22643:5 22731:6 22594:18,21,21 22657:20 22659:13 22588:3,8,9 22666:19 22627:2 22626:6,7 obtained 22587:1 22597:3 22598:6,11 22659:20 22660:18 names 22738:1 22671:8 22600:11 22600:24 22650:9 22650:8 22673:16 22662:5,11 22681:6 national 22582:25 22671:4,17 22682:3 obtaining 22646:10 22706:23 22706:12					
22715:17 22719:8,11 22719:16neither 22629:13 22658:15obliged 22724:16 22737:17officials 22697:9 22699:2operations 22601:4 22608:16 22637:20nails 22623:10 name 22583:17,23never 22587:24,25 22615:13 22619:13observed 22644:12,12 observed 22643:5 22731:6oh 22581:18 22594:12 22594:18,21,2122654:10 22656:10 22657:20 22659:1322588:3,89 22666:19 names 22738:1 national 22582:2522627:8 22600:11 22671:4,17 22682:3obtained 22587:1 22600:24 22650:9 obtaining 22646:1022706:2322706:12					
22719:1622658:1522737:1722699:222608:16 22637:20nails 22623:10never 22587:24,25observed 22644:12,12oh 22581:18 22594:1222654:10 22656:10name 22583:17,2322615:13 22619:13obtain 22643:5 22731:622594:18,21,2122657:20 22659:1322588:3,8,9 22666:1922625:21 22626:6,7obtained 22587:122597:3 22598:6,1122659:20 22660:18names 22738:122627:8 22600:1122600:24 22650:922650:8 22673:1622662:5,11 22681:6national 22582:2522671:4,17 22682:3obtaining 22646:1022706:2322706:12					
nails 22623:10never 22587:24,25observed 22644:12,12oh 22581:18 22594:1222654:10 22656:10name 22583:17,2322615:13 22619:13obtain 22643:5 22731:622594:18,21,2122657:20 22659:1322588:3,8,9 22666:1922625:21 22626:6,7obtained 22587:122597:3 22598:6,1122659:20 22660:18names 22738:122627:8 22600:1122600:24 22650:922650:8 22673:1622662:5,11 22681:6national 22582:2522671:4,17 22682:3obtaining 22646:1022706:2322706:12	/ 31 1 196.		8		
name 22583:17,23 22588:3,8,9 22666:1922615:13 22619:13 22625:21 22626:6,7 22627:8 2260:11obtain 22643:5 22731:6 obtained 22587:1 22600:24 22650:922594:18,21,21 22597:3 22598:6,11 22650:8 22673:16 22650:8 22673:1622657:20 22659:13 22659:20 22660:18 22662:5,11 22681:6 22706:23names 22738:1 national 22582:2522615:17 22626:6,7 22671:4,17 22682:3obtained 22587:1 22600:24 22650:922597:3 22598:6,11 22650:8 22673:16 22706:2322659:20 22660:18 22662:5,11 22681:6 22706:12					
22588:3,8,9 22666:1922625:21 22626:6,7obtained 22587:122597:3 22598:6,1122659:20 22660:18names 22738:122627:8 22660:1122600:24 22650:922650:8 22673:1622662:5,11 22681:6national 22582:2522671:4,17 22682:3obtaining 22646:1022706:2322706:12	Di 11 Detter				
names 22738:122627:8 22660:1122600:24 22650:922650:8 22673:1622662:5,11 22681:6national 22582:2522671:4,17 22682:3obtaining 22646:1022706:2322706:12		press ()			
national 22582:25 22671:4,17 22682:3 obtaining 22646:10 22706:23 22706:12					
	The most of the second second the	Prof. Ward and the set of the set			
		22071.4,17 22082.5	55mining 220+0.10	22100.23	22,00.12

Tel: 011 021 6457 Fax: 011 440 9119

RealTime Transcriptions

Marikana Commission of Inquiry

				Page 1
operators 22637.3	o'clock 22624:4	paramedic 22728:20	22639:12 22646:19	phrase 22646:5
operators 22637:3	22739:13 22740:1	paramedics 22728:20		phrased 22040:5 phrased 22739:2
22641:17			22673:18,22,24	
opinion 22629:12	o'clock 22605:19	pardon 22598:7,11	22674:14,25 22680:9	physical 22642:15
22700:14 22702:8		part 22592:4,6	22691:7,14,17	22653:18 22654:23
22720:3 22736:24	P	22602:11 22608:8	22692:1 22703:13	pick 22675:7
22737:6,18	page 22580:20,21,23	22618:2 22625:8	22710:6,16	picked 22674:24
opportunities 22703:4	22582:22,22 22583:8	22639:25 22640:25	periods 22620:11	pictures 22624:7
opportunity 22581:22	22583:25 22586:12	22641:11 22643:16	permitted 22698:14	place 22612:16
22608:25 22652:1	22586:14 22588:20	22663:18 22690:12	22710:8 22723:14	22622:18 22642:17
22691:6 22703:3	22588:20 22589:21	22693:16 22694:15	persecuted 22724:22	22645:21 22663:14
opposition 22648:5	22592:24 22593:17	22706:11 22724:13	22724:23	22664:6 22679:6,11
options 22628:12,14	22593:22,24,25	22733:20	person 22602:10,18	22689:22 22690:5
oral 22618:20 22635:6	22594:1 22595:15	participate 22610:12	22611:10 22637:18	22698:25 22712:17
orally 22612:13	22600:13,18 22607:1	particular 22600:19	22642:12,13	placed 22627:8
22613:9,14 22631:11	22607:16 22616:13	22617:16 22623:19	22644:12 22646:8,10	22648:16
22634:14	22619:10 22621:15	22688:4 22691:22	22646:16,17,19	places 22668:4,5
order 22582:13,24	22621:17 22622:25	22698:9 22699:2	22648:16 22662:17	22669:3 22670:11
22583:1,9 22585:23	22623:18 22624:9	22701:23 22702:2	22666:15 22667:6	22703:5
22586:18,22	22625:14,25 22628:4	22708:4 22709:1	22673:22 22684:19	planned 22631:6
22587:16,21 22588:5	22628:20,22,24	22726:25 22728:3	22685:22 22691:7	planning 22637:1
22588:6,10,10,16	22629:11 22631:2	particularly 22639:10	22693:23 22699:1,21	22653:18 22657:19
22589:7 22600:23	22636:13 22641:8,15	22663:5 22670:2	22702:15 22708:22	22659:9,12 22671:21
22601:5 22603:18	22641:19 22642:1	22686:11,22	22702:13 22700:22	plans 22601:4
22604:12,20	22652:17 22653:11	pass 22691:23 22692:2	22719:24 22721:16	22712:11
		-		
22606:25 22607:2	22653:13,24 22654:1	22698:7 22702:11,11	22721:17 22722:5,7	play 22610:5 22681:18
22610:16 22618:19	22654:2 22655:21,23	passage 22583:5,7	22724:20,25 22725:1	22681:21
22620:1 22629:12,13	22656:12,12,21	22586:12 22730:19	22730:6	please 22580:9 22582:7
22631:24 22637:1,23	22657:17 22660:2,4	passed 22596:4	personally 22587:10	22600:18 22616:7
22649:7 22653:8	22683:2 22684:9	22698:9,11 22701:22	22603:2 22715:24	22618:6 22635:13
22656:25 22657:20	22703:12,14 22704:3	22703:25,25 22704:6	22719:15	22671:6 22687:20
22659:12 22660:9,18	22713:13,15,19,19	22704:9,20 22722:16	personnel 22728:18	22688:23 22708:10
22661:12 22662:6,14	22728:4,10 22730:18	passes 22722:15	persons 22647:15	pleased 22711:15
22662:14,19 22663:6	22733:24,24	peace 22630:8 22646:4	22668:22	pocketbook 22594:3,4
22663:19,21	pages 22616:8	22646:14	person's 22699:20	22594:6,18 22595:8
22664:10,18 22665:8	22730:11	pelvic 22728:22	22700:1	22730:17,22 22731:7
22665:12 22668:2	Pakati 22705:4,15	pending 22707:7,13	perspective 22653:25	22733:18,19,23
22670:3 22672:9,23	22711:2	penultimate 22652:12	22655:1	22734:9,21,25
22674:17 22676:24	Pakati's 22708:14	people 22581:11	Pertaining 22667:17	22735:8
22680:23 22692:21	22710:12	22603:7 22604:6	perusal 22651:15	pocketbooks 22732:24
22697:7 22701:21	paper 22627:12	22609:15 22612:8,15	PFMA 22584:18	22733:8 22736:10
22713:5 22727:12	22633:22 22635:21	22626:25 22635:20	phase 22605:13	point 22588:14,14
ordering 22629:4	22666:11	22638:22,25 22639:2	22610:9 22618:22	22589:11 22598:17
22630:1	para 22655:23	22639:2,7 22640:2,3	22619:1 22621:20,25	22604:19 22606:8
Orders 22642:10	paragraph 22580:21	22640:3,15 22643:7	22622:1,1,2,12,17,21	22609:4 22617:23
		· · · · · · · · · · · · · · · · · · ·		
ordinary 22702:13	22580:23,24	22645:22 22646:4,21	22622:22,23	22620:8 22632:7
organisation's 22654:8	22582:10,10 22584:9	22647:2,10 22659:11	22623:16,16 22624:2	22633:12 22636:17
organise 22664:24	22586:15 22587:13	22662:4,14 22663:8	22624:25 22625:1	22637:19 22639:23
organising 22668:6	22587:14 22588:20	22665:12 22668:20	22626:3 22711:2	22640:9,16 22641:2
orientate 22621:16	22600:18,22 22601:1	22669:20,24 22672:9	phoned 22633:2	22642:1,2 22653:13
original 22647:14	22607:1,16 22616:16	22672:23 22673:2,15	photo 22622:16	22662:21 22677:12
22731:6,9 22732:13	22619:10 22621:14	22673:24 22674:7,11	22623:12,14	22677:13 22678:2,2
22732:20,20	22621:16 22622:10	22675:17 22681:12	22729:17	22682:8,13 22683:6
outage 22687:19	22623:3,5,7,10,11	22681:14,15,18	photographers 22637:3	22685:1 22696:19
outdated 22659:14	22625:12,14	22682:20 22686:11	photographic 22638:15	22698:19 22699:8,23
outline 22622:1	22628:21 22629:11	22687:11,19,22	22638:22	22700:2,3,6 22701:3
22635:6	22631:2 22634:5,23	22692:19 22693:18	photographing	22700:2,3,0 22701:3
			22637:20	
outlined 22631:11	22637:10 22652:17	22712:7 22713:5		22706:7 22707:9
22634:14,25	22655:22 22656:12	22717:6 22722:20	photographs 22623:13	22717:3,14 22718:22
outside 22580:6	22657:18 22660:4	22725:2 22731:3	22623:18,19,21,23,24	22718:24 22719:2,5
outstanding 22650:24	22684:9 22686:13	22732:16	22624:8,19,23	22724:8 22729:18
22650:25	22713:15,17,18	percentage 22646:21	22637:15 22639:3,12	22739:18
	22718:16 22724:5	22650:8,9,9 22669:11	22640:11,14	points 22617:6,21
overall 22631:7	2	22669:14	photos 22621:24	22628:5,8 22652:3
overall 22631:7 22632:1 22634:10	22728:11 22729:4	22007.11		
22632:1 22634:10			-	22679:1.2 22717:12
22632:1 22634:10 oversight 22652:20	paragraphs 22636:16	perform 22584:17	22623:15	22679:1,2 22717:12 22737:14
22632:1 22634:10 oversight 22652:20 22664:4,24 22674:12	paragraphs 22636:16 22638:4 22654:1	perform 22584:17 performance 22660:24	22623:15 photostat 22730:25	22737:14
22632:1 22634:10 oversight 22652:20	paragraphs 22636:16	perform 22584:17	22623:15	

Tel: 011 021 6457 Fax: 011 440 9119

RealTime Transcriptions

Marikana Commission of Inquiry

Arbitration

				D 1
		I	1	Page 1
22585:21 22586:4	22712:17 22737:4	prescripts 22639:11	privy 22640:23	prosecution 22636:19
22588:5,9,16 22591:7	22739:25	present 22604:3,14,21	probably 22617:10	22636:25 22639:7
22595:12,21	positioning 22622:2	22604:25 22607:20	22635:21 22644:3	22640:7 22642:6
22599:24 22604:20	positions 22668:23	22608:19 22609:21	22646:21 22648:19	22643:22 22645:3,13
22608:19 22616:21	22669:23	22613:9 22615:3	22677:25 22678:19	prosecutions 22636:23
22637:4,15,15	possession 22643:20	22616:24 22617:5,17	22678:23 22733:1	Prosecution's 22644:21
22638:8 22640:9,11	22644:6 22647:20,22	22628:6 22632:2	problem 22595:6	protect 22725:4
22642:12 22644:20	22699:9	22633:22 22635:5	22638:6 22651:5	22727:3,17 22736:20
22651:11 22653:19	possibilities 22734:14	22637:3 22650:5	22685:15 22687:3	protected 22595:9,10
22654:3,5,11,13	22734:17	22685:2 22696:15	22697:18 22700:20	22721:14 22722:23
22655:1,12,16	possibility 22607:23	22730:1	22704:8,22 22724:3	22723:8,23 22725:1,2
22657:1 22659:21	22734:17,22 22735:1	presentation 22602:12	22704.8,22 22724.3	22725:6,10,18,21
22660:14 22661:3	22735:19,21 22736:2	22611:24 22614:25	problematic 22631:5	22726:2 22736:17
22662:14 22665:12	22736:14 22737:25	22615:3,6 22616:12	22651:5	22737:24
22665:25 22666:3,14	22738:3,7	22616:25	problems 22595:25	protection 22724:23
	possible 22581:3		-	
22675:16 22678:4		presentations 22589:8	22605:20 22674:10	22725:9,21,22
22679:12 22684:17	22649:15 22674:20	presented 22604:13	22674:22 22685:8	22726:10,17,18
22685:21 22690:6	22675:16 22685:14	22605:10 22607:20	22687:21 22697:8	protest 22657:6
22696:21 22697:9	22685:16	22608:18 22609:14	22724:9 22731:3	protester 22719:21
22699:2 22703:1	possibly 22619:23	22609:18,21 22611:8	Procedure 22646:3,5	protesters 22643:19
22706:12 22712:11	22685:8,8	22611:21 22613:2	22646:13 22647:5	protests 22584:13
22716:7,15 22718:1,3	post 22659:4 22670:5	22614:8,18,22	procedures 22652:19	22586:16 22587:6
22720:12 22721:1,6	postpone 22739:13	22615:10 22618:3,10	22655:8 22664:3	22653:3,7 22656:16
22721:14,18	potential 22608:10	22618:11,20 22621:3	proceed 22581:13	22656:17
22724:13 22726:11	22717:9	22686:9	22582:5 22583:7	protocol 22679:5
22728:12 22729:7,25	potentially 22604:10	presently 22614:9	22631:8,12 22634:12	protocols 22695:15,22
22731:20 22733:9	22723:20	presumably 22635:1	22634:15 22641:3	22699:19
policeman 22719:25	power 22645:24	22639:4 22651:24	22642:8 22651:22	provide 22599:22,24
22724:14	22703:23	22667:8 22677:15	22670:20 22708:10	22642:13,14
policies 22655:4,7	powers 22664:9	22731:8	proceedings 22580:1	22684:15,18,24
22656:14	practice 22596:21	presume 22592:3	22709:15	22685:21 22712:1,21
policing 22582:24	22598:3 22659:23	presumption 22726:13	process 22583:20	22717:23
22583:1,9,15,20,21	22660:11 22662:8	Pretorius 22600:1,3	22600:15 22607:17	provided 22599:18
22586:18,21,23	22676:5,7,11 22677:7	22712:24 22713:2,8	22608:4,17 22636:15	22643:1 22650:13,14
22587:16,21	22677:18,19,19,22,24	22732:11,12,22	22636:19 22637:24	22650:16,19 22651:1
22588:10 22591:3	22678:6,20 22679:4,5	pretty 22675:22	22638:16 22640:1	22651:2,2,7,20
22600:23 22601:5	22679:9,11,20	prevent 22647:3	22641:21 22642:12	22652:5 22665:17
22604:12 22645:9,11	22680:10 22698:17	22727:1	22643:4 22656:2	22667:14,15,25
22653:3,7,20	22698:20,23 22699:9	preventative 22646:16	22696:24 22710:4	22671:11 22672:14
22656:15,25	22700:9,16 22704:1,6	prevention 22586:10	22714:24 22716:20	22683:3,3 22686:3,11
22661:12 22663:6	22704:10	22588:4	22732:21	22705:7 22716:25
22665:8 22672:23	practices 22654:9	previous 22588:23	produce 22615:25	22724:5 22726:25
22674:17 22676:24	22657:4	22589:22,24 22590:5	produced 22606:1	22727:25
22680:23	practise 22688:5,6,12	22590:6,18 22615:7	22611:1	provides 22646:13
policy 22582:21,24	22688:18,25 22689:2	22621:17 22636:17	produces 22607:11	providing 22686:1
22587:3,9 22588:11	22689:4,12,14,16	previously 22589:12	professional 22654:16	province 22590:12
22629:6,14 22630:2	22690:1,4,5,15,16,20	prima 22702:9	22657:5 22660:14,21	22662:13 22663:2
22630:14 22637:10	22690:21,25 22691:1	22721:18	proficiency 22696:10	22664:5,5,6,16,21,25
22639:11 22653:1,2,6	22691:2,4,5,11,15,19	primarily 22602:4	proficient 22692:4	22665:4,11,16,22
22653:8,14 22654:20	22691:21 22692:22	primary 22584:25	22698:2,17,20,21	22667:15,18 22668:5
22656:4,5,11 22656:4,5,11	22692:24,25 22693:5	22601:14	profitably 22687:14	22668:9,24 22669:4
22657:15,16	22693:6,7,9,11,12,22	principle 22653:17	program 22666:8	22669:23 22670:11
22659:22 22662:24	22694:4,7,9,19,23	22654:13 22684:15	program 22000.8 programme 22655:25	22609:23 22670:11 22671:9 22672:9,10
22663:15,21 22664:8	22694:4,7,9,19,25	principles 22681:3,3	programme 22653:25 programmes 22652:19	22672:14,17 22673:4
			22664:2	
22678:9 22720:22,24	22696:1,25 22697:2,4	22682:15,18		22675:1,18 22676:22
22726:12 POPS 22582:24	22697:14,15,22	printed 22622:16,21 22623:15 22624:24	proper 22626:8	22677:4 22697:10 22711:23
POPS 22582:24	practising 22690:9		properly 22607:24	
22583:10,14	pre 22622:1	prior 22631:9 22634:12	22660:10 22661:11	provinces 22600:25
22584:19	preceding 22680:9	22673:21	22662:2,23 22663:3	provincially 22667:14
POP-related 22680:17	precisely 22662:21	prioritise 22676:23	22669:5,25 22676:14	provision 22637:21
portion 22607:25	22685:2 22723:21	22677:6	22686:14	22640:22 22642:25
portions 22731:1	22736:16	prioritised 22670:3	propose 22695:18	22646:2 22647:5
position 22606:16	prefer 22605:25	22676:16	22696:9	22672:9
22619:14 22625:17	prejudiced 22726:1	priority 22674:5	proposes 22696:17	provisional 22668:22
22629:23 22673:21	prepare 22615:17	private 22726:13	proposition 22678:8	provoked 22584:10
22674:9 22677:10	prepared 22666:17	privately 22580:6	prosecuted 22646:8,9	PSS 22704:4
ARCHIVE EO	R JUSTICE			

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RealTime Transcriptions

Marikana Commission of Inquiry

Arbitration

				Page
psychologist 22727:8,9	22656:8 22665:14	22620:9 22630:5	22673:10 22679:25	22639:8 22642:25
public 22582:13,23	22683:16 22693:10	22674:3 22681:8	22680:6,21 22682:10	22635.8 22642.25
22583:1,9 22586:16	22693:20 22713:2	22710:4	22708:5	22659:15 22708:1
22586:18,20,22	22726:4 22739:6,22	rebutted 22726:14	redo 22691:7	22713:14
22587:6,16,21	22739:23	recall 22585:19	redress 22656:20	relation 22635:23
22588:5,6,10,16	quite 22592:18,18	22586:3 22609:7,25	refer 22598:21,24	22640:11 22643:19
22589:7 22600:23	22638:22 22664:14	22614:22 22618:11	reference 22623:7	22643:21,22
22601:5 22604:12,20	22666:7 22668:18	22624:6 22625:13	22635:7 22730:15	22679:11 22682:3
22637:1 22644:6,20	22669:8,21 22672:22	22679:4	referred 22585:2	released 22583:21
22647:17,19 22653:3	22674:21 22675:17	recap 22734:2	22596:9 22623:23	22646:17
22653:7 22656:16,25	22677:9 22700:18	receive 22663:11	22632:8 22647:6	relegated 22583:18
22657:5,20 22659:12	22703:25 22706:23	22666:4 22684:11,13	22675:8,8 22681:20	relevance 22700:13
22660:17 22661:12	22724:8	22685:13 22686:23	22681:20 22715:3	relevant 22583:6
22662:6,13,14	quotation 22634:18	22696:25 22697:13	22717:17 22718:17	22595:24 22607:23
22663:5,19 22664:10	Quote 22582:11	22725:22	22721:13	22645:3 22646:2
22664:18 22665:8,12	quotes 22623:5	received 22618:20	referring 22661:14,16	22660:12 22700:14
22668:2 22670:3	quotes 22023.5	22651:22 22659:2,14	22681:24 22691:5	reliable 22587:4
22672:23 22674:17	R	22661:4,21 22665:25	22694:13	reliably 22689:18
				-
22676:24 22680:23	R 22582:20,21	22666:1,10 22667:3,3	refers 22582:24	relied 22655:15
22697:7 22701:21	22586:14 22653:2	22667:4 22674:16	22724:14 22733:25	rely 22587:4
22713:5 22720:23	22656:5	22683:8,10 22685:3	reflect 22614:20	remain 22660:16
22726:13	raise 22588:14 22625:9	22685:12 22717:20	22617:16,17	remaining 22584:6
pulled 22608:20	raised 22628:5	22730:9,23	22654:17	remains 22584:25
punctual 22687:14	range 22656:6	receives 22668:9	reflected 22634:23	22653:5
purport 22593:19	22690:15	22697:12	22641:11	remarkable 22584:12
purpose 22616:9		receiving 22590:15	reflecting 22634:20	remarks 22616:15
	ranging 22673:16		0	
22645:18 22646:12	rate 22641:1	22659:4 22665:20	reflects 22710:13	22617:1,18 22634:21
22660:16 22682:24	rationale 22629:3	recites 22660:4	refresh 22660:15	remedial 22698:10
purposes 22607:1	rationalisation	recognised 22729:8,22	refresher 22657:1,8	22703:3
22646:6 22689:13	22584:15	recollection 22615:5	22664:12,13,15	remedies 22723:11
22733:5	rationalised 22584:3	22681:4	22665:10 22678:10	remember 22585:7,14
pursue 22716:10	reaccreditation	recommend 22686:10	22711:21,24 22712:2	22585:15,24 22586:6
pursued 22716:20	22660:22	recommendation	22712:8	22590:15 22592:19
put 22581:3 22591:25	reached 22588:11	22686:20	refreshing 22677:16	22601:16 22603:6
22592:16 22603:24	22616:19	recommendations	refused 22636:21	22608:1 22609:20
22606:21 22607:8	read 22580:24	22591:14 22655:23	Reg 22705:8	22610:2,3 22611:10
22628:8 22633:13	22581:22 22582:7,11	22655:24 22656:20	regard 22675:12	22612:20 22645:20
22634:3 22641:1,18	22586:12 22595:1,1	22686:7	regarded 22698:6,9	22646:3,14 22668:19
22644:18,23	22634:6,7,7,8	recommended	22715:25	22668:25 22669:19
22645:10 22652:3	22638:4 22657:10	22659:22	regarding 22616:9	22682:1 22691:18
	22030.122037.10			
77663.1777667.6	22685.17 22707.16	reconstruct 22733.2	22642.22 22721.24	22727.20 22729.24
22663:14 22664:6	22685:17 22707:16	reconstruct 22733:2	22642:22 22721:24	22727:20 22729:24
22672:3 22677:6	22707:22 22708:7,19	record 22599:17	regards 22618:3	remembered 22625:8
22672:3 22677:6 22688:17 22689:6	22707:22 22708:7,19 22728:11 22730:20	record 22599:17 22600:12 22607:1,15	regards 22618:3 registered 22691:3	remembered 22625:8 Remembering 22663:4
22672:3 22677:6 22688:17 22689:6 22696:13,17 22707:7	22707:22 22708:7,19 22728:11 22730:20 22732:10,18,19	record 22599:17 22600:12 22607:1,15 22608:23 22609:5	regards 22618:3 registered 22691:3 regular 22678:5,10	remembered 22625:8 Remembering 22663:4 removed 22727:11
22672:3 22677:6 22688:17 22689:6 22696:13,17 22707:7 22722:18 22733:8,9	22707:22 22708:7,19 22728:11 22730:20 22732:10,18,19 readable 22731:9	record 22599:17 22600:12 22607:1,15 22608:23 22609:5 22614:6 22618:2	regards 22618:3 registered 22691:3 regular 22678:5,10 22680:25	remembered 22625:8 Remembering 22663:4 removed 22727:11 repeat 22613:6
22672:3 22677:6 22688:17 22689:6 22696:13,17 22707:7	22707:22 22708:7,19 22728:11 22730:20 22732:10,18,19	record 22599:17 22600:12 22607:1,15 22608:23 22609:5	regards 22618:3 registered 22691:3 regular 22678:5,10	remembered 22625:8 Remembering 22663:4 removed 22727:11
22672:3 22677:6 22688:17 22689:6 22696:13,17 22707:7 22722:18 22733:8,9 22734:24 22735:6	22707:22 22708:7,19 22728:11 22730:20 22732:10,18,19 readable 22731:9	record 22599:17 22600:12 22607:1,15 22608:23 22609:5 22614:6 22618:2 22628:4 22634:8	regards 22618:3 registered 22691:3 regular 22678:5,10 22680:25	remembered 22625:8 Remembering 22663:4 removed 22727:11 repeat 22613:6
22672:3 22677:6 22688:17 22689:6 22696:13,17 22707:7 22722:18 22733:8,9 22734:24 22735:6 puts 22685:19	22707:22 22708:7,19 22728:11 22730:20 22732:10,18,19 readable 22731:9 reading 22583:5,10 22694:11 22708:15	record 22599:17 22600:12 22607:1,15 22608:23 22609:5 22614:6 22618:2 22628:4 22634:8 22638:4 22641:3,8	regards 22618:3 registered 22691:3 regular 22678:5,10 22680:25 regularly 22665:1 22676:15 22677:19	remembered 22625:8 Remembering 22663:4 removed 22727:11 repeat 22613:6 22641:14 22671:6 22677:1 22680:18
22672:3 22677:6 22688:17 22689:6 22696:13,17 22707:7 22722:18 22733:8,9 22734:24 22735:6 puts 22685:19 putting 22602:4	22707:22 22708:7,19 22728:11 22730:20 22732:10,18,19 readable 22731:9 reading 22583:5,10 22694:11 22708:15 ready 22582:1	record 22599:17 22600:12 22607:1,15 22608:23 22609:5 22614:6 22618:2 22628:4 22634:8 22638:4 22641:3,8 22643:9 22649:2	regards 22618:3 registered 22691:3 regular 22678:5,10 22680:25 regularly 22665:1 22676:15 22677:19 22677:20,22	remembered 22625:8 Remembering 22663:4 removed 22727:11 repeat 22613:6 22641:14 22671:6 22677:1 22680:18 22688:22
22672:3 22677:6 22688:17 22689:6 22696:13,17 22707:7 22722:18 22733:8,9 22734:24 22735:6 puts 22685:19 putting 22602:4 22613:6 22630:19	22707:22 22708:7,19 22728:11 22730:20 22732:10,18,19 readable 22731:9 reading 22583:5,10 22694:11 22708:15 ready 22582:1 22591:20 22599:14	record 22599:17 22600:12 22607:1,15 22608:23 22609:5 22614:6 22618:2 22628:4 22634:8 22638:4 22641:3,8 22643:9 22649:2 22652:16 22665:10	regards 22618:3 registered 22691:3 regular 22678:5,10 22680:25 regularly 22665:1 22676:15 22677:19 22677:20,22 regulated 22595:5	remembered 22625:8 Remembering 22663:4 removed 22727:11 repeat 22613:6 22641:14 22671:6 22677:1 22680:18 22688:22 repeatedly 22698:19,22
22672:3 22677:6 22688:17 22689:6 22696:13,17 22707:7 22722:18 22733:8,9 22734:24 22735:6 puts 22685:19 putting 22602:4	22707:22 22708:7,19 22728:11 22730:20 22732:10,18,19 readable 22731:9 reading 22583:5,10 22694:11 22708:15 ready 22582:1 22591:20 22599:14 real 22613:22 22681:22	record 22599:17 22600:12 22607:1,15 22608:23 22609:5 22614:6 22618:2 22628:4 22634:8 22638:4 22641:3,8 22643:9 22649:2 22652:16 22665:10 22673:8 22683:1	regards 22618:3 registered 22691:3 regular 22678:5,10 22680:25 regularly 22665:1 22676:15 22677:19 22677:20,22 regulated 22595:5 regulation 22595:13,14	remembered 22625:8 Remembering 22663:4 removed 22727:11 repeat 22613:6 22641:14 22671:6 22677:1 22680:18 22688:22 repeatedly 22698:19,22 rephrase 22737:19
22672:3 22677:6 22688:17 22689:6 22696:13,17 22707:7 22722:18 22733:8,9 22734:24 22735:6 puts 22685:19 putting 22602:4 22613:6 22630:19 22735:3 22738:11	22707:22 22708:7,19 22728:11 22730:20 22732:10,18,19 readable 22731:9 reading 22583:5,10 22694:11 22708:15 ready 22582:1 22591:20 22599:14 real 22613:22 22681:22 realistic 22679:2	record 22599:17 22600:12 22607:1,15 22608:23 22609:5 22614:6 22618:2 22628:4 22634:8 22638:4 22641:3,8 22643:9 22649:2 22652:16 22665:10 22673:8 22683:1 22703:19 22705:7	regards 22618:3 registered 22691:3 regular 22678:5,10 22680:25 regularly 22665:1 22676:15 22677:19 22677:20,22 regulated 22595:5 regulation 22595:13,14 22595:15,18 22705:9	remembered 22625:8 Remembering 22663:4 removed 22727:11 repeat 22613:6 22641:14 22671:6 22677:1 22680:18 22688:22 repeatedly 22698:19,22 rephrase 22737:19 report 22580:8,15,15
22672:3 22677:6 22688:17 22689:6 22696:13,17 22707:7 22722:18 22733:8,9 22734:24 22735:6 puts 22685:19 putting 22602:4 22613:6 22630:19 22735:3 22738:11 Q	22707:22 22708:7,19 22728:11 22730:20 22732:10,18,19 readable 22731:9 reading 22583:5,10 22694:11 22708:15 ready 22582:1 22591:20 22599:14 real 22613:22 22681:22 realistic 22679:2 really 22588:14,17	record 22599:17 22600:12 22607:1,15 22608:23 22609:5 22614:6 22618:2 22628:4 22634:8 22638:4 22641:3,8 22643:9 22649:2 22652:16 22665:10 22673:8 22683:1 22703:19 22705:7 22707:16,21,22	regards 22618:3 registered 22691:3 regular 22678:5,10 22680:25 regularly 22665:1 22676:15 22677:19 22677:20,22 regulated 22595:5 regulation 22595:13,14 22595:15,18 22705:9 22705:10,11	remembered 22625:8 Remembering 22663:4 removed 22727:11 repeat 22613:6 22641:14 22671:6 22677:1 22680:18 22688:22 repeatedly 22698:19,22 rephrase 22737:19 report 22580:8,15,15 22580:19 22585:2
22672:3 22677:6 22688:17 22689:6 22696:13,17 22707:7 22722:18 22733:8,9 22734:24 22735:6 puts 22685:19 putting 22602:4 22613:6 22630:19 22735:3 22738:11 Q qualified 22665:11	22707:22 22708:7,19 22728:11 22730:20 22732:10,18,19 readable 22731:9 reading 22583:5,10 22694:11 22708:15 ready 22582:1 22591:20 22599:14 real 22613:22 22681:22 realistic 22679:2 really 22588:14,17 22598:10 22607:12	record 22599:17 22600:12 22607:1,15 22608:23 22609:5 22614:6 22618:2 22628:4 22634:8 22638:4 22641:3,8 22643:9 22649:2 22652:16 22665:10 22673:8 22683:1 22703:19 22705:7 22707:16,21,22 22708:8,14 22709:2,3	regards 22618:3 registered 22691:3 regular 22678:5,10 22680:25 regularly 22665:1 22676:15 22677:19 22677:20,22 regulated 22595:5 regulation 22595:13,14 22595:15,18 22705:9 22705:10,11 regulations 22595:12	remembered 22625:8 Remembering 22663:4 removed 22727:11 repeat 22613:6 22641:14 22671:6 22677:1 22680:18 22688:22 repeatedly 22698:19,22 rephrase 22737:19 report 22580:8,15,15 22580:19 22585:2 22589:21,23 22590:3
22672:3 22677:6 22688:17 22689:6 22696:13,17 22707:7 22722:18 22733:8,9 22734:24 22735:6 puts 22685:19 putting 22602:4 22613:6 22630:19 22735:3 22738:11 Qualified 22665:11 qualify 22722:22	22707:22 22708:7,19 22728:11 22730:20 22732:10,18,19 readable 22731:9 reading 22583:5,10 22694:11 22708:15 ready 22582:1 22591:20 22599:14 real 22613:22 22681:22 realistic 22679:2 really 22588:14,17	record 22599:17 22600:12 22607:1,15 22608:23 22609:5 22614:6 22618:2 22628:4 22634:8 22638:4 22641:3,8 22643:9 22649:2 22652:16 22665:10 22673:8 22683:1 22703:19 22705:7 22707:16,21,22	regards 22618:3 registered 22691:3 regular 22678:5,10 22680:25 regularly 22665:1 22676:15 22677:19 22677:20,22 regulated 22595:5 regulation 22595:13,14 22595:15,18 22705:9 22705:10,11	remembered 22625:8 Remembering 22663:4 removed 22727:11 repeat 22613:6 22641:14 22671:6 22677:1 22680:18 22688:22 repeatedly 22698:19,22 rephrase 22737:19 report 22580:8,15,15 22580:19 22585:2
22672:3 22677:6 22688:17 22689:6 22696:13,17 22707:7 22722:18 22733:8,9 22734:24 22735:6 puts 22685:19 putting 22602:4 22613:6 22630:19 22735:3 22738:11 Q qualified 22665:11	22707:22 22708:7,19 22728:11 22730:20 22732:10,18,19 readable 22731:9 reading 22583:5,10 22694:11 22708:15 ready 22582:1 22591:20 22599:14 real 22613:22 22681:22 realistic 22679:2 really 22588:14,17 22598:10 22607:12	record 22599:17 22600:12 22607:1,15 22608:23 22609:5 22614:6 22618:2 22628:4 22634:8 22638:4 22641:3,8 22643:9 22649:2 22652:16 22665:10 22673:8 22683:1 22703:19 22705:7 22707:16,21,22 22708:8,14 22709:2,3	regards 22618:3 registered 22691:3 regular 22678:5,10 22680:25 regularly 22665:1 22676:15 22677:19 22677:20,22 regulated 22595:5 regulation 22595:13,14 22595:15,18 22705:9 22705:10,11 regulations 22595:12	remembered 22625:8 Remembering 22663:4 removed 22727:11 repeat 22613:6 22641:14 22671:6 22677:1 22680:18 22688:22 repeatedly 22698:19,22 rephrase 22737:19 report 22580:8,15,15 22580:19 22585:2 22589:21,23 22590:3
22672:3 22677:6 22688:17 22689:6 22696:13,17 22707:7 22722:18 22733:8,9 22734:24 22735:6 puts 22685:19 putting 22602:4 22613:6 22630:19 22735:3 22738:11 Q qualified 22665:11 qualify 22722:22 quantum 22591:10	22707:22 22708:7,19 22728:11 22730:20 22732:10,18,19 readable 22731:9 reading 22583:5,10 22694:11 22708:15 ready 22582:1 22591:20 22599:14 real 22613:22 22681:22 realistic 22679:2 really 22588:14,17 22598:10 22607:12 22608:20 22616:2,3 22626:22 22639:18	record 22599:17 22600:12 22607:1,15 22608:23 22609:5 22614:6 22618:2 22628:4 22634:8 22638:4 22641:3,8 22643:9 22649:2 22652:16 22665:10 22673:8 22683:1 22703:19 22705:7 22707:16,21,22 22708:8,14 22709:2,3 22710:13 22712:16 22734:24	regards 22618:3 registered 22691:3 regular 22678:5,10 22680:25 regularly 22665:1 22676:15 22677:19 22677:20,22 regulated 22595:5 regulation 22595:13,14 22595:15,18 22705:9 22705:10,11 regulations 22595:12 22595:20 22600:2 22705:15,18	remembered 22625:8 Remembering 22663:4 removed 22727:11 repeat 22613:6 22641:14 22671:6 22677:1 22680:18 22688:22 repeatedly 22698:19,22 rephrase 22737:19 report 22580:8,15,15 22580:19 22585:2 22589:21,23 22590:3 22590:4,8 22607:19 22609:14 22686:9
22672:3 22677:6 22688:17 22689:6 22696:13,17 22707:7 22722:18 22733:8,9 22734:24 22735:6 puts 22685:19 putting 22602:4 22613:6 22630:19 22735:3 22738:11 Q qualified 22665:11 qualify 22722:22 quantum 22591:10 quarter 22678:22	22707:22 22708:7,19 22728:11 22730:20 22732:10,18,19 readable 22731:9 reading 22583:5,10 22694:11 22708:15 ready 22582:1 22591:20 22599:14 real 22613:22 22681:22 realistic 22679:2 really 22588:14,17 22598:10 22607:12 22608:20 22616:2,3 22626:22 22639:18 22682:21 22704:20	record 22599:17 22600:12 22607:1,15 22608:23 22609:5 22614:6 22618:2 22628:4 22634:8 22638:4 22641:3,8 22643:9 22649:2 22652:16 22665:10 22673:8 22683:1 22703:19 22705:7 22707:16,21,22 22708:8,14 22709:2,3 22710:13 22712:16 22734:24 recorded 22666:11	regards 22618:3 registered 22691:3 regular 22678:5,10 22680:25 regularly 22665:1 22676:15 22677:19 22677:20,22 regulated 22595:5 regulation 22595:13,14 22595:15,18 22705:9 22705:10,11 regulations 22595:12 22595:20 22600:2 22705:15,18 22710:15	remembered 22625:8 Remembering 22663:4 removed 22727:11 repeat 22613:6 22641:14 22671:6 22677:1 22680:18 22688:22 repeatedly 22698:19,22 rephrase 22737:19 report 22580:8,15,15 22580:19 22585:2 22589:21,23 22590:3 22590:4,8 22607:19 22609:14 22686:9 22715:20 22721:4,10
22672:3 22677:6 22688:17 22689:6 22696:13,17 22707:7 22722:18 22733:8,9 22734:24 22735:6 puts 22685:19 putting 22602:4 22613:6 22630:19 22735:3 22738:11 Q qualified 22665:11 qualify 22722:22 quantum 22591:10 quarter 22678:22 22687:12 22691:7,12	22707:22 22708:7,19 22728:11 22730:20 22732:10,18,19 readable 22731:9 reading 22583:5,10 22694:11 22708:15 ready 22582:1 22591:20 22599:14 real 22613:22 22681:22 realistic 22679:2 really 22588:14,17 22598:10 22607:12 22608:20 22616:2,3 22626:22 22639:18 22682:21 22704:20 22707:4 22712:23	record 22599:17 22600:12 22607:1,15 22608:23 22609:5 22614:6 22618:2 22628:4 22634:8 22638:4 22641:3,8 22643:9 22649:2 22652:16 22665:10 22673:8 22683:1 22703:19 22705:7 22707:16,21,22 22708:8,14 22709:2,3 22710:13 22712:16 22734:24 recorded 22666:11 22705:8 22706:23,24	regards 22618:3 registered 22691:3 regular 22678:5,10 22680:25 regularly 22665:1 22676:15 22677:19 22677:20,22 regulated 22595:5 regulation 22595:13,14 22595:15,18 22705:9 22705:10,11 regulations 22595:12 22595:20 22600:2 22705:15,18 22710:15 reinforcement 22655:3	remembered 22625:8 Remembering 22663:4 removed 22727:11 repeat 22613:6 22641:14 22671:6 22677:1 22680:18 22688:22 repeatedly 22698:19,22 rephrase 22737:19 report 22580:8,15,15 22580:19 22585:2 22589:21,23 22590:3 22590:4,8 22607:19 22609:14 22686:9 22715:20 22721:4,10 22724:14 22727:21
22672:3 22677:6 22688:17 22689:6 22696:13,17 22707:7 22722:18 22733:8,9 22734:24 22735:6 puts 22685:19 putting 22602:4 22613:6 22630:19 22735:3 22738:11 Q qualified 22665:11 qualify 22722:22 quantum 22591:10 quarter 22678:22 22687:12 22691:7,12 22691:16 22699:3	22707:22 22708:7,19 22728:11 22730:20 22732:10,18,19 readable 22731:9 reading 22583:5,10 22694:11 22708:15 ready 22582:1 22591:20 22599:14 real 22613:22 22681:22 realistic 22679:2 really 22588:14,17 22598:10 22607:12 22608:20 22616:2,3 22626:22 22639:18 22682:21 22704:20 22707:4 22712:23 22736:24 22739:18	record 22599:17 22600:12 22607:1,15 22608:23 22609:5 22614:6 22618:2 22628:4 22634:8 22638:4 22641:3,8 22643:9 22649:2 22652:16 22665:10 22673:8 22683:1 22703:19 22705:7 22707:16,21,22 22708:8,14 22709:2,3 22710:13 22712:16 22734:24 recorded 22666:11 22705:8 22706:23,24 22735:7	regards 22618:3 registered 22691:3 regular 22678:5,10 22680:25 regularly 22665:1 22676:15 22677:19 22677:20,22 regulated 22595:5 regulation 22595:13,14 22595:15,18 22705:9 22705:10,11 regulations 22595:12 22595:20 22600:2 22705:15,18 22710:15 reinforcement 22655:3 relate 22628:6 22705:4	remembered 22625:8 Remembering 22663:4 removed 22727:11 repeat 22613:6 22641:14 22671:6 22677:1 22680:18 22688:22 repeatedly 22698:19,22 rephrase 22737:19 report 22580:8,15,15 22580:19 22585:2 22589:21,23 22590:3 22590:4,8 22607:19 22609:14 22686:9 22715:20 22721:4,10 22724:14 22727:21 reported 22714:13
22672:3 22677:6 22688:17 22689:6 22696:13,17 22707:7 22722:18 22733:8,9 22734:24 22735:6 puts 22685:19 putting 22602:4 22613:6 22630:19 22735:3 22738:11 Q qualified 22665:11 qualify 22722:22 quantum 22591:10 quarter 22678:22 22687:12 22691:7,12 22691:16 22699:3 22711:22	22707:22 22708:7,19 22728:11 22730:20 22732:10,18,19 readable 22731:9 reading 22583:5,10 22694:11 22708:15 ready 22582:1 22591:20 22599:14 real 22613:22 22681:22 realistic 22679:2 really 22588:14,17 22598:10 22607:12 22608:20 22616:2,3 22626:22 22639:18 22682:21 22704:20 22707:4 22712:23 22736:24 22739:18 reason 22630:9,10,24	record 22599:17 22600:12 22607:1,15 22608:23 22609:5 22614:6 22618:2 22628:4 22634:8 22638:4 22641:3,8 22643:9 22649:2 22652:16 22665:10 22673:8 22683:1 22703:19 22705:7 22707:16,21,22 22708:8,14 22709:2,3 22710:13 22712:16 22734:24 recorded 22666:11 22705:8 22706:23,24 22735:7 records 22596:8,16	regards 22618:3 registered 22691:3 regular 22678:5,10 22680:25 regularly 22665:1 22676:15 22677:19 22677:20,22 regulated 22595:5 regulation 22595:13,14 22595:15,18 22705:9 22705:10,11 regulations 22595:12 22595:20 22600:2 22705:15,18 22710:15 reinforcement 22655:3 relate 22628:6 22705:4 22728:1	remembered 22625:8 Remembering 22663:4 removed 22727:11 repeat 22613:6 22641:14 22671:6 22677:1 22680:18 22688:22 repeatedly 22698:19,22 rephrase 22737:19 report 22580:8,15,15 22580:19 22585:2 22589:21,23 22590:3 22590:4,8 22607:19 22609:14 22686:9 22715:20 22721:4,10 22724:14 22727:21 reported 22714:13 22715:23 22719:18
22672:3 22677:6 22688:17 22689:6 22696:13,17 22707:7 22722:18 22733:8,9 22734:24 22735:6 puts 22685:19 putting 22602:4 22613:6 22630:19 22735:3 22738:11 Q qualified 22665:11 qualify 22722:22 quantum 22591:10 quarter 22678:22 22687:12 22691:7,12 22691:16 22699:3 22711:22 questioning 22664:1	22707:22 22708:7,19 22728:11 22730:20 22732:10,18,19 readable 22731:9 reading 22583:5,10 22694:11 22708:15 ready 22582:1 22591:20 22599:14 real 22613:22 22681:22 realistic 22679:2 really 22588:14,17 22598:10 22607:12 22608:20 22616:2,3 22626:22 22639:18 22682:21 22704:20 22707:4 22712:23 22736:24 22739:18 reason 22630:9,10,24 22647:6 22674:1	record 22599:17 22600:12 22607:1,15 22608:23 22609:5 22614:6 22618:2 22628:4 22634:8 22638:4 22641:3,8 22643:9 22649:2 22652:16 22665:10 22673:8 22683:1 22703:19 22705:7 22707:16,21,22 22708:8,14 22709:2,3 22710:13 22712:16 22734:24 recorded 22666:11 22705:8 22706:23,24 22735:7 records 22596:8,16 22597:10 22599:17	regards 22618:3 registered 22691:3 regular 22678:5,10 22680:25 regularly 22665:1 22676:15 22677:19 22677:20,22 regulated 22595:5 regulation 22595:13,14 22595:15,18 22705:9 22705:10,11 regulations 22595:12 22595:20 22600:2 22705:15,18 22710:15 reinforcement 22655:3 relate 22628:6 22705:4 22728:1 related 22622:21	remembered 22625:8 Remembering 22663:4 removed 22727:11 repeat 22613:6 22641:14 22671:6 22677:1 22680:18 22688:22 repeatedly 22698:19,22 rephrase 22737:19 report 22580:8,15,15 22580:19 22585:2 22589:21,23 22590:3 22590:4,8 22607:19 22609:14 22686:9 22715:20 22721:4,10 22724:14 22727:21 reported 22714:13 22715:23 22719:18 22727:5 22728:1
22672:3 22677:6 22688:17 22689:6 22696:13,17 22707:7 22722:18 22733:8,9 22734:24 22735:6 puts 22685:19 putting 22602:4 22613:6 22630:19 22735:3 22738:11 Q qualified 22665:11 qualify 22722:22 quantum 22591:10 quarter 22678:22 22687:12 22691:7,12 22691:16 22699:3 22711:22 questioning 22 664:1 22670:25 22689:13	22707:22 22708:7,19 22728:11 22730:20 22732:10,18,19 readable 22731:9 reading 22583:5,10 22694:11 22708:15 ready 22582:1 22591:20 22599:14 real 22613:22 22681:22 realistic 22679:2 really 22588:14,17 22598:10 22607:12 22608:20 22616:2,3 22626:22 22639:18 22682:21 22704:20 22707:4 22712:23 22736:24 22739:18 reason 22630:9,10,24	record 22599:17 22600:12 22607:1,15 22608:23 22609:5 22614:6 22618:2 22628:4 22634:8 22638:4 22641:3,8 22643:9 22649:2 22652:16 22665:10 22673:8 22683:1 22703:19 22705:7 22707:16,21,22 22708:8,14 22709:2,3 22710:13 22712:16 22734:24 recorded 22666:11 22705:8 22706:23,24 22735:7 records 22596:8,16 22597:10 22599:17 22599:21 22648:21	regards 22618:3 registered 22691:3 regular 22678:5,10 22680:25 regularly 22665:1 22676:15 22677:19 22677:20,22 regulated 22595:5 regulation 22595:13,14 22595:15,18 22705:9 22705:10,11 regulations 22595:12 22595:20 22600:2 22705:15,18 22710:15 reinforcement 22655:3 relate 22628:6 22705:4 22728:1 related 22622:21 22636:17	remembered 22625:8 Remembering 22663:4 removed 22727:11 repeat 22613:6 22641:14 22671:6 22677:1 22680:18 22688:22 repeatedly 22698:19,22 rephrase 22737:19 report 22580:8,15,15 22580:19 22585:2 22589:21,23 22590:3 22590:4,8 22607:19 22609:14 22686:9 22715:20 22721:4,10 22724:14 22727:21 reported 22714:13 22715:23 22719:18 22727:5 22728:1 22732:2,2 22738:18
22672:3 22677:6 22688:17 22689:6 22696:13,17 22707:7 22722:18 22733:8,9 22734:24 22735:6 puts 22685:19 putting 22602:4 22613:6 22630:19 22735:3 22738:11 Q qualified 22665:11 qualify 22722:22 quantum 22591:10 quarter 22678:22 22687:12 22691:7,12 22691:16 22699:3 22711:22 questioning 22664:1	22707:22 22708:7,19 22728:11 22730:20 22732:10,18,19 readable 22731:9 reading 22583:5,10 22694:11 22708:15 ready 22582:1 22591:20 22599:14 real 22613:22 22681:22 realistic 22679:2 really 22588:14,17 22598:10 22607:12 22608:20 22616:2,3 22626:22 22639:18 22682:21 22704:20 22707:4 22712:23 22736:24 22739:18 reason 22630:9,10,24 22647:6 22674:1	record 22599:17 22600:12 22607:1,15 22608:23 22609:5 22614:6 22618:2 22628:4 22634:8 22638:4 22641:3,8 22643:9 22649:2 22652:16 22665:10 22673:8 22683:1 22703:19 22705:7 22707:16,21,22 22708:8,14 22709:2,3 22710:13 22712:16 22734:24 recorded 22666:11 22705:8 22706:23,24 22735:7 records 22596:8,16 22597:10 22599:17	regards 22618:3 registered 22691:3 regular 22678:5,10 22680:25 regularly 22665:1 22676:15 22677:19 22677:20,22 regulated 22595:5 regulation 22595:13,14 22595:15,18 22705:9 22705:10,11 regulations 22595:12 22595:20 22600:2 22705:15,18 22710:15 reinforcement 22655:3 relate 22628:6 22705:4 22728:1 related 22622:21	remembered 22625:8 Remembering 22663:4 removed 22727:11 repeat 22613:6 22641:14 22671:6 22677:1 22680:18 22688:22 repeatedly 22698:19,22 rephrase 22737:19 report 22580:8,15,15 22580:19 22585:2 22589:21,23 22590:3 22590:4,8 22607:19 22609:14 22686:9 22715:20 22721:4,10 22724:14 22727:21 reported 22714:13 22715:23 22719:18 22727:5 22728:1
22672:3 22677:6 22688:17 22689:6 22696:13,17 22707:7 22722:18 22733:8,9 22734:24 22735:6 puts 22685:19 putting 22602:4 22613:6 22630:19 22735:3 22738:11 Q qualified 22665:11 qualify 22722:22 quantum 22591:10 quarter 22678:22 22687:12 22691:7,12 22691:16 22699:3 22711:22 questioning 22664:1 22670:25 22689:13 22723:25 22724:7	22707:22 22708:7,19 22728:11 22730:20 22732:10,18,19 readable 22731:9 reading 22583:5,10 22694:11 22708:15 ready 22582:1 22591:20 22599:14 real 22613:22 22681:22 realistic 22679:2 really 22588:14,17 22598:10 22607:12 22608:20 22616:2,3 22626:22 22639:18 22682:21 22704:20 22707:4 22712:23 22736:24 22739:18 reason 22630:9,10,24 22647:6 22674:1 22676:19 22686:5 22693:19 22722:1	record 22599:17 22600:12 22607:1,15 22608:23 22609:5 22614:6 22618:2 22628:4 22634:8 22638:4 22641:3,8 22643:9 22649:2 22652:16 22665:10 22673:8 22683:1 22703:19 22705:7 22707:16,21,22 22708:8,14 22709:2,3 22710:13 22712:16 22734:24 recorded 22666:11 22705:8 22706:23,24 22735:7 records 22596:8,16 22597:10 22599:17 22599:21 22648:21	regards 22618:3 registered 22691:3 regular 22678:5,10 22680:25 regularly 22665:1 22676:15 22677:19 22677:20,22 regulated 22595:5 regulation 22595:13,14 22595:15,18 22705:9 22705:10,11 regulations 22595:12 22595:20 22600:2 22705:15,18 22710:15 reinforcement 22655:3 relate 22628:6 22705:4 22728:1 related 22622:21 22636:17	remembered 22625:8 Remembering 22663:4 removed 22727:11 repeat 22613:6 22641:14 22671:6 22677:1 22680:18 22688:22 repeatedly 22698:19,22 rephrase 22737:19 report 22580:8,15,15 22580:19 22585:2 22589:21,23 22590:3 22590:4,8 22607:19 22609:14 22686:9 22715:20 22721:4,10 22724:14 22727:21 reported 22714:13 22715:23 22719:18 22727:5 22728:1 22732:2,2 22738:18
22672:3 22677:6 22688:17 22689:6 22696:13,17 22707:7 22722:18 22733:8,9 22734:24 22735:6 puts 22685:19 putting 22602:4 22613:6 22630:19 22735:3 22738:11 Q qualified 22665:11 qualify 22722:22 quantum 22591:10 quarter 22678:22 22687:12 22691:7,12 22691:16 22699:3 22711:22 questioning 22664:1 22670:25 22689:13 22723:25 22724:7 questions 22580:7	22707:22 22708:7,19 22728:11 22730:20 22732:10,18,19 readable 22731:9 reading 22583:5,10 22694:11 22708:15 ready 22582:1 22591:20 22599:14 real 22613:22 22681:22 realistic 22679:2 really 22588:14,17 22598:10 22607:12 22608:20 22616:2,3 22626:22 22639:18 22682:21 22704:20 22707:4 22712:23 22736:24 22739:18 reason 22630:9,10,24 22647:6 22674:1 22693:19 22722:1 reasonably 22647:18	record 22599:17 22600:12 22607:1,15 22608:23 22609:5 22614:6 22618:2 22628:4 22634:8 22638:4 22641:3,8 22643:9 22649:2 22652:16 22665:10 22673:8 22683:1 22703:19 22705:7 22707:16,21,22 22708:8,14 22709:2,3 22710:13 22712:16 22734:24 recorded 22666:11 22705:8 22706:23,24 22735:7 records 22596:8,16 22597:10 22599:17 22599:21 22648:21 22649:16 22652:13 22658:6,23 22659:1,9	regards 22618:3 registered 22691:3 regular 22678:5,10 22680:25 regularly 22665:1 22676:15 22677:19 22677:20,22 regulated 22595:5 regulation 22595:13,14 22595:15,18 22705:9 22705:10,11 regulations 22595:12 22595:20 22600:2 22705:15,18 22710:15 reinforcement 22655:3 relate 22628:6 22705:4 22728:1 related 22622:21 22636:17 relates 22600:14 22630:23 22652:13	remembered 22625:8 Remembering 22663:4 removed 22727:11 repeat 22613:6 22641:14 22671:6 22677:1 22680:18 22688:22 repeatedly 22698:19,22 rephrase 22737:19 report 22580:8,15,15 22580:19 22585:2 22589:21,23 22590:3 22590:4,8 22607:19 22609:14 22686:9 22715:20 22721:4,10 22724:14 22727:21 reported 22714:13 22715:23 22719:18 22727:5 22728:1 22732:2,2 22738:18 reporting 22718:2 22734:12
$\begin{array}{r} 22672:3\ 22677:6\\ 22688:17\ 22689:6\\ 22696:13,17\ 22707:7\\ 22722:18\ 22733:8,9\\ 22734:24\ 22735:6\\ \textbf{puts\ }22685:19\\ \textbf{putting\ }22602:4\\ 22613:6\ 22630:19\\ 22735:3\ 22738:11\\ \hline $	22707:22 22708:7,19 22728:11 22730:20 22732:10,18,19 readable 22731:9 reading 22583:5,10 22694:11 22708:15 ready 22582:1 22591:20 22599:14 real 22613:22 22681:22 realistic 22679:2 really 22588:14,17 22598:10 22607:12 22608:20 22616:2,3 22626:22 22639:18 22682:21 22704:20 22707:4 22712:23 22736:24 22739:18 reason 22630:9,10,24 22647:6 22674:1 22693:19 22722:1 reasonably 22647:18 22647:19	record 22599:17 22600:12 22607:1,15 22608:23 22609:5 22614:6 22618:2 22628:4 22634:8 22638:4 22641:3,8 22643:9 22649:2 22652:16 22665:10 22673:8 22683:1 22703:19 22705:7 22707:16,21,22 22708:8,14 22709:2,3 22710:13 22712:16 22734:24 recorded 22666:11 22705:8 22706:23,24 22735:7 records 22596:8,16 22597:10 22599:17 22599:21 22648:21 22649:16 22652:13 22658:6,23 22659:1,9 22661:9,20 22662:7	regards 22618:3 registered 22691:3 regular 22678:5,10 22680:25 regularly 22665:1 22676:15 22677:19 22677:20,22 regulated 22595:5 regulation 22595:13,14 22595:15,18 22705:9 22705:10,11 regulations 22595:12 22595:20 22600:2 22705:15,18 22710:15 reinforcement 22655:3 relate 22628:6 22705:4 22728:1 related 22622:21 22636:17 relates 22600:14 22630:23 22652:13 22694:17 22702:1	remembered 22625:8 Remembering 22663:4 removed 22727:11 repeat 22613:6 22641:14 22671:6 22677:1 22680:18 22688:22 repeatedly 22698:19,22 rephrase 22737:19 report 22580:8,15,15 22580:19 22585:2 22589:21,23 22590:3 22590:4,8 22607:19 22609:14 22686:9 22715:20 22721:4,10 22724:14 22727:21 reported 22714:13 22715:23 22719:18 22727:5 22728:1 22732:2,2 22738:18 reporting 22718:2 22734:12 reports 22589:22,24
22672:3 22677:6 22688:17 22689:6 22696:13,17 22707:7 22722:18 22733:8,9 22734:24 22735:6 puts 22685:19 putting 22602:4 22613:6 22630:19 22735:3 22738:11 Q qualified 22665:11 qualify 22722:22 quantum 22591:10 quarter 22678:22 22687:12 22691:7,12 22691:16 22699:3 22711:22 questioning 22664:1 22670:25 22689:13 22723:25 22724:7 questions 22580:7	22707:22 22708:7,19 22728:11 22730:20 22732:10,18,19 readable 22731:9 reading 22583:5,10 22694:11 22708:15 ready 22582:1 22591:20 22599:14 real 22613:22 22681:22 realistic 22679:2 really 22588:14,17 22598:10 22607:12 22608:20 22616:2,3 22626:22 22639:18 22682:21 22704:20 22707:4 22712:23 22736:24 22739:18 reason 22630:9,10,24 22647:6 22674:1 22693:19 22722:1 reasonably 22647:18	record 22599:17 22600:12 22607:1,15 22608:23 22609:5 22614:6 22618:2 22628:4 22634:8 22638:4 22641:3,8 22643:9 22649:2 22652:16 22665:10 22673:8 22683:1 22703:19 22705:7 22707:16,21,22 22708:8,14 22709:2,3 22710:13 22712:16 22734:24 recorded 22666:11 22705:8 22706:23,24 22735:7 records 22596:8,16 22597:10 22599:17 22599:21 22648:21 22649:16 22652:13 22658:6,23 22659:1,9	regards 22618:3 registered 22691:3 regular 22678:5,10 22680:25 regularly 22665:1 22676:15 22677:19 22677:20,22 regulated 22595:5 regulation 22595:13,14 22595:15,18 22705:9 22705:10,11 regulations 22595:12 22595:20 22600:2 22705:15,18 22710:15 reinforcement 22655:3 relate 22628:6 22705:4 22728:1 related 22622:21 22636:17 relates 22600:14 22630:23 22652:13	remembered 22625:8 Remembering 22663:4 removed 22727:11 repeat 22613:6 22641:14 22671:6 22677:1 22680:18 22688:22 repeatedly 22698:19,22 rephrase 22737:19 report 22580:8,15,15 22580:19 22585:2 22589:21,23 22590:3 22590:4,8 22607:19 22609:14 22686:9 22715:20 22721:4,10 22724:14 22727:21 reported 22714:13 22715:23 22719:18 22727:5 22728:1 22732:2,2 22738:18 reporting 22718:2 22734:12

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RealTime Transcriptions

Marikana Commission of Inquiry

Arbitration

				Page 1
request 22648:6	resumes 22580:2	rounds 22711:5	22642:9 22683:24	22602:3,14 22603:5
22724:6	22620:19,20 22648:7	Roux's 22582:2	22684:2,4,4 22690:11	22603:10,17
requested 22732:12	22648:8 22687:16,17	Rover 22730:1,2	22691:10 22697:13	22604:13 22605:8,12
require 22610:17	22731:11,12	row 22649:14	22698:16 22716:1	22608:12,24
22664:8	retain 22642:4	rubber 22606:21	22719:25 22738:4	22611:11,15,22
required 22607:20	retrieve 22733:11	22701:16 22702:14	says 22580:25 22583:2	22612:7 22613:2,7
22618:19 22620:1	return 22619:9,11	22704:9,21	22586:15 22587:5,17	22614:8,25 22615:4
22654:14 22683:25	22625:12,23 22656:5	ruled 22737:1	22588:20 22590:3	22615:25 22616:12
requirement 22607:2	revert 22700:4	rules 22655:6 22705:14	22598:13 22605:12	22619:6 22621:7,18
22629:5 22658:5	review 22655:3,5	22705:18 22706:2	22605:12 22607:19	22621:21 22622:11
22675:22	reviewed 22582:16	22710:15	22610:24 22614:12	22622:13,20 22623:5
requirements 22604:12	revise 22650:11	run 22636:15 22679:16	22621:21 22622:13	22624:1,8 22625:1
22629:14 22630:2	revisiting 22678:14	22731:19	22623:2,11 22628:1	22628:11 22631:10
requires 22615:23	re-establishing	runs 22730:11	22629:11,22,25	22632:13 22633:14
22660:19,22	22587:20	run-up 22638:24	22630:3,5,8 22633:9	22634:13,25 22635:6
22663:15	re-examination	rush 22687:20,23	22634:6 22636:16	22642:7,8
research 22654:2	22652:2 22739:12	Rustenburg 22729:14	22642:9 22645:8	Scott's 22602:8,20
22655:15 22656:23	rifle 22696:4 22710:23	Ryland 22685:25	22660:7,8 22662:4,25	22616:25 22618:2
resignation 22727:9	22711:5	R5 22693:24 22696:4	22678:1 22684:12	22621:8 22628:17
resolve 22628:13,14	right 22586:13,13	22698:4 22706:13	22685:18,24 22686:2	22630:23
resource 22653:18	22592:18,19	22707:6 22710:23	22700:24 22704:5	screen 22581:3 22583:6
resourced 22589:1	22597:12 22598:10	22711:5	22723:7 22730:5	22583:7 22586:13
resources 22583:21	22599:3 22623:1		22734:5 22735:20	22612:5,17 22614:10
22584:8 22588:1	22626:18 22641:24	S	22736:2,11	22627:14 22634:5
22591:10 22610:4	22652:7 22657:14	safety 22705:14,17	SC 22580:10,13,18	22641:14,18
respect 22590:20	22658:18 22659:25	22706:2 22710:15	22581:5,11,16,20	scroll 22653:13,23
22591:11 22596:14	22664:16 22667:10	22722:9	22582:4,9,18	22656:20
22597:5 22598:15	22699:16 22702:8	sake 22614:6	22583:12 22585:9,18	scrutiny 22586:20
22602:8,19 22605:9	22706:17 22713:11	sanctions 22721:9	22586:3,9 22587:2,11	search 22590:17
22629:23 22638:19	22715:11,19	SAP 22587:15	22588:13,19	22639:5
22642:24 22650:13	22719:12 22725:11	SAPS 22582:13	22589:10,17 22590:2	searched 22728:23
22650:21 22651:1	22726:7 22737:16	22583:1,14 22590:19	22590:10,16,22	seats 22668:9
22652:4,20 22661:23	rightly 22638:21	22591:5 22606:15	22591:8,16 22592:11	Sebayane 22729:20
22663:16 22668:6	rights 22581:24	22628:1,6 22629:6,14	22592:15,21	second 22583:2,10,13
22677:3 22678:8,15	22604:7 22618:16	22630:2,14 22642:19	22608:23 22617:19	22604:18 22616:15
22680:10,12 22681:1	22644:21 22650:1	22642:25 22645:3	22618:7,13 22626:11	22688:7,20 22693:23
22683:4 22694:17	22655:5 22656:8	22651:15,20	22639:15,18	22703:14 22725:22
22701:11 22706:8	22657:3,10 22662:21	22652:14 22653:2,17	22640:18 22643:9,17	22726:7 22734:18
22709:1 22715:2	22666:21 22667:10	22655:15,25	22644:3 22652:8	22735:20,25 22736:3
22717:18,24	22667:14,18,20	22656:15,16,18,24	22681:4,24 22689:21	22736:7,11,14
22723:20 22725:7,15	22672:22,22	22662:24 22663:15	22695:17 22696:8	22738:1
22725:16	22673:20,22,25	22664:8 22688:19,25	22699:13 22701:25	secondary 22583:19
respectively 22676:9	22674:5,18 22676:6	22689:5 22702:19	22707:23 22716:9,13	secondly 22584:18
22680:9	22676:12,16,25	22705:7,8,25 22708:5	22717:4 22719:23	22604:13
respects 22736:9	22677:7,13,15,24	22709:3 22714:6,18	22720:25 22724:17	seconds 22684:23
responder 22653:17	22678:7 22680:8	22715:6,14,22	22724:20 22725:15	section 22583:8
response 22584:2,23	22686:8 22722:21	22719:20 22720:21	22725:20,25 22726:5	22584:1 22587:14,22
22651:22 22653:18	22723:18 22734:15	22722:14 22729:14	22731:15,23	22636:13 22646:13
responses 22656:16	ring 22696:7	22732:2 22736:13,13	22732:11,23	22653:12,24,24
responsibility 22601:14	rise 22647:13	22738:5	22736:18 22739:16	22665:5 22683:2
22610:11 22622:19	risen 22670:12	satellite 22621:24	22740:2	22702:1,2,10,12,16
22663:2,8,16	risk 22608:7 22694:9	22622:15 22623:4	scene 22637:16	22704:2 22705:2
22664:18,23	22694:23 22695:1,6,8	satisfied 22628:2	22642:16 22683:4	22723:12 22732:18
22727:21	rock 22722:16	satisfy 22607:4	22686:2,4,15,25	22733:5
responsible 22602:4	rocks 22728:16	save 22687:14	22693:25 22696:3,4	sector 22726:13
22606:17 22652:18	22730:3 22734:1,2	saved 22684:25	22701:16 22706:14	see 22582:16,17,23
22664:2 22711:6	role 22602:8 22610:6	saw 22611:7,13,13	22714:1 22729:3,23	22583:5 22585:9
rest 22642:21	22660:23,24 22661:11 22664:4 24	22615:3 22619:13	22729:25 22730:1,3,6 22731:21	22586:11,21
restate 22717:16 restraint 22655:11	22661:11 22664:4,24	22626:24 22719:25		22590:18 22592:2
/ 31 1 1 22	22681:18,21	22722:18 22729:7	scenes 22640:12 schedule 22666:17 24	22593:18 22594:21 22595:4 22598:7
restructuring 22583:15	22720:17	22730:2 22736:8	schedule 22666:17,24	22595:4 22598:7
22583:20,25	roles 22622:19	22738:19	22693:24 22694:1,7	22600:25 22601:2
la la prime		coving 22500.4 22614-1		
22584:10 22585:21	Roots 22606:1 22613:2	saying 22589:4 22614:1	22694:19 22695:25	22604:5 22609:10
22584:10 22585:21 result 22644:22	Roots 22 606:1 22613:2 roughly 22668:15	22619:4 22622:20	scientific 22657:4	22612:5,11 22613:11
22584:10 22585:21	Roots 22606:1 22613:2			

Tel: 011 021 6457 Fax: 011 440 9119

RealTime Transcriptions

22637:3,6 22639:5 22644:10 22645:4sensitivities 22643:14 sent 22668:20 22669:2022738:2 short 22709:9 22728:2122677:5,20 22684:19 22685:22 22688:6,11 skip 22597:322699:14,1 spoke 22632 22633:22 222650:20 22656:4,22 22658:24 22659:122671:12 22696:3,4 22712:4 22715:922728:24 short age 22588:15,18skip 22597:3 skipped 22597:222633:22 2 spoke 2263	
22644:10 22645:4 sent 22668:20 22669:20 short 22709:9 22728:21 22685:22 22688:6,11 spoke 22632 22650:20 22656:4,22 22671:12 22696:3,4 22728:24 skip 22597:3 22633:22 2	
22650:20 22656:4,22 22671:12 22696:3,4 22728:24 skip 22597:3 22633:22 2	:23
22659.24 22650.1 22712.4 22715.0 shorters 22590.15 19 shirned 22507.2 shorters 2262	2719:8
22658:24 22659:1 22712:4 22715:9 shortage 22588:15,18 skipped 22597:2 spoken 2263	5:21
22661:19 22665:25 22727:7 shorthand 22589:19 slide 22612:4,11,16,25 22719:6	
22666:3 22673:15,17 sentence 22583:2,11,13 shortly 22609:3 22614:7,9,17 spreadsheet	22649:14
22676:8,20 22680:1,6 22617:9 22657:19 22646:18 22616:12,25 22676:3 22	679:24
22680:20 22682:10 22705:22 shot 22692:6 22704:9 22618:11 22626:25 spreadsheets	\$ 22648:20
22683:9 22685:15,17 sentenced 22709:8 22714:7,19 22719:24 22627:15 SS2 22607:1	
22689:22 22693:19 sentences 22587:13 22728:14,16,19,22 slowly 22582:8,11 stage 22603:2	24
22693:21,25 22694:4 separate 22709:13,14 22729:9 22730:6 22687:21,23 22604:25 2	2605:9,17
22694:7 22695:22 September 22696:2 22732:1 22733:21 smoking 22729:6 22606:7,8 2	22614:19
22699:8,19 22701:19 22718:17 22734:12 smoothly 22592:8 22614:20 2	2616:11
22703:24 22713:20 sequence 22694:15 shotgun 22698:4 soldier 22684:21 22616:19 2	2618:12
22717:11 22718:10 sergeant 22666:19,20 22701:16 22702:14 22702:13 22704:18 22620:12 2	2624:2
22723:6 22724:3 22667:2,9,20 22729:1 22704:8,21 solicit 22708:1 22627:25 2	2628:3,8
22725:7 22733:22 22729:7,11,15,21,22 shots 22673:3,9 solved 22594:19 22628:11,1	8 22629:3
seeing 22608:1 22730:3 22733:21,25 show 22612:14 22595:6 22732:21 22629:5,13	3,22,24
22674:15 22717:22 22734:1,12 22613:12,17 somebody 22604:11 22630:1,5,	
22722:14 22733:25 series 22596:6 22621:22 22622:20 22618:5 22724:24 22631:5,6,9	
seeking 22589:11 22654:21 22725:6 22624:2,21,23 22729:24 22732:1 22631:17,2	
seen 22584:4 22593:22 serious 22584:11 22630:7 22638:10 soon 22712:12 22632:10,2	
22607:18 22608:16 22631:14 22634:17 22705:10 22722:2 sorry 22581:2 22583:4 22634:9,12	
22609:8,12 22611:18 22656:13 22699:20 showed 22612:8,10 22593:9 22594:22 22634:25 2	
22637:11 22639:3 22730:7 22735:10 22613:21 22614:12 22596:12 22597:1 22635:18,2	
22640:15 22643:18 seriously 22739:3 22614:14,15 22598:6,7,11 22599:7 22636:20 2	
22643:20,21,24 service 22584:13 22626:24,25 22614:1 22618:24 22648:4 22	
22645:8 22667:9 22595:12,21 22596:5 22728:16 22729:17 22621:8 22624:16 22690:8 22	
22672:5 22684:23 22596:15 22665:10 22729:21 22730:2 22625:4 22632:6 22733:14	
22707:17 22709:3,7 22696:2 22720:23 showing 22586:25 22638:20 22641:13 stages 22586	:4
22719:20 22721:19 22726:11 22621:22 22641:24 22642:6 22635:17 2	2638:12
sees 22721:6 22722:15 Services 22584:2,23 shown 22612:24 22645:25 22648:1,14 22643:15	
Selebe 22586:8 set 22600:2 22616:13 22656:23 22706:22 22666:7 22680:2 stamp 22606	:21
selecting 22671:2 22628:11,22 22631:2 shows 22685:25 22705:19 22706:5,16 standards 22	
self 22655:8 22638:3 22660:20 22722:2 22706:21 22708:9,25 22654:18 2	2660:25
self-control 22655:10 22676:23 22679:5 side 22585:6 22617:7 22736:19 standing 226	03:18
22656:8 22695:15 22722:14 22728:25 sort 22716:8 22606:25 2	2607:2
Semenya 22608:23 22723:12 Siesta 22729:13 sorted 22595:25 22610:16 2	2618:19
22617:19 22618:1,7 sets 22607:17 22652:11 significance 22696:5 sorts 22681:16 22620:1 22	2642:10
22618:13 22626:11 22680:5 22705:7 significant 22638:1 sought 22651:12 22653:8 22	2729:18
22626:18 22639:15 setting 22597:5 22675:12 22712:11 sound 22696:14 stands 22704	:5
22639:18 22640:18 22655:22 signs 22699:1 sounds 22716:25 start 22596:1	22600:7
22642:21 22643:9 shaking 22724:18 similarly 22636:7 South 22591:6 22600:10 2	2621:5,12
22651:25 22652:7,8 she's 22717:10 22642:15 22592:25 22595:12 22621:15 2	2622:25
22681:4,24 22689:21 22732:23 22733:13 simply 22637:22 22595:21 22653:1 22	688:5
22695:14,17 22696:8 22739:18 22693:5,7 22699:18 Soweto 22705:5 22	2728:2
22696:17 22699:13 shocked 22625:22 22701:13 22730:15 22706:19,20 22739:12	
22700:2 22701:25 22626:7 22735:6 22707:25 started 2258.	5:7
22707:23 22708:21 shocks 22619:7 single 22611:14 speak 22589:5 22663:25 2	2678:10
22716:9,13,24 shoot 22684:20 22651:18 22622:23 22623:16 starts 22596:	16
22717:4 22719:23 22685:23 22688:9,13 singular 22596:24 22624:24 22690:4 22621:18 2	
22720:25 22721:4 22688:21,21 22689:5 Sir 22670:13 speaking 22621:23 state 22600:23	
22724:15,17 22689:19 22692:11 sit 22714:17,21 22644:9 22646:20 22655:4 22	
22732:23 22736:18 22700:10 22704:9 sitting 22620:11 22686:21 22721:17,2	20
22739:10,16 22740:2 22719:25 22729:11 22729:19 22731:3,4 speaks 22621:20 22726:14	
semi-annual 22654:15 shooter 22598:12 situation 22584:6 22623:6 22625:1 stated 22655	:9
send 22668:22 22671:2 shooters 22596:8,10,10 22616:18,22 specialised 22586:18 22669:10	
22706:10 22596:11,16,18,19,20 22628:13,15 22709:7 22587:16,21 statements 2	
senior 22598:7 22658:7 22596:20,22,23,24 22709:22 specialist 22680:11 22637:21 2	
22659:19 22660:5 22597:10,17,21,24 situations 22681:12 22684:12 22685:3 22638:19 2	
22662:22 22598:2,8,13 six 22658:7 22693:24 specific 22660:20 22640:25 2	
sense 22591:12 22666:18 22676:3 22696:5 22709:18 22665:19 22642:20,2	
22627:13,14 22679:25 22680:6 skilled 22588:23 specifically 22584:11 22643:8,18	
22726:18 22683:6 22693:21 22677:21 22652:24 22653:12 22645:5 22	
sensible 22591:25 shootings 22673:19,25 skills 22584:18 22656:6 22729:1 22650:3,6,7	
sensitive 22644:10 shoots 22701:16 22672:3,8 22676:23 spent 22639:1 22650:22,2	3 22651:4
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RealTime Transcriptions

Marikana Commission of Inquiry

Arbitration

22666:12 22705:1 substaniały 22701-2 22714:15 22724:8 22684:7 22687:8.1 22672:7 sztrosi 12 22705:1 substaniały 22670:12 22738:8 22694:1 22095:20 22697:12 statio 2258:22 successe 2264:6 surely 22611:1 22710:12 2270:11 22607:22 22584:4, 20 2258:7 successe 2263:1 22670:21 22670:21 22670:21 22670:21 22670:22 22670:21 22670:21 22670:21 22670:21 22670:21 22670:21 22670:12 22660:14 22770:12 22670:12 22660:14 22770:12 22670:12 22660:14 22770:12 22670:12 22670:12 22670:12 22670:12 22670:12 22680:14 22670:12 22680:14 22680:14 2269:11 2269:11 2269:11 2269:11 2269:11 2269:11 2269:11 2269:12 2269:11 2269:12 2269:12 2269:12 2269:12 2269:12 2269:12 2269:12 2269:12 2269:12 2269:12 2269:12 2269:12 2269:12 2269:12 2269:12 2269:12 2269:12 2269:12					Page 1
22272:24 22269:12 22666:16:19.25 term 2270:18 states 22031:6 subsequently 2205:13 2279:11:72:23:2771:15 22666:12:22075:11 term 2270:18 22266:12:22705:11 substantially 22670:12 2273:18:72:274:8 22064:12:22095:10 term 2270:018 22584:42:2258:25 successes 2263:16 surprised 22615:12, 15 22710:12:22705:11 term 2270:02:10:270	22651:7,10,12,16	subparagraphs	22687:24 22688:14	22652:7 22655:14	tend 22696:6
2273:117 22736:9 2258:117 22668:1.1 2270:11 222668:1.2 2270:11 terms 2263:2 2267:12 2270:51	22652:4,5 22717:23	22622:6	22688:16,24 22689:8	22657:7 22663:25	tendency 22727:7
2273:117 22236:9 22693:17 22210:11 22693:17 22270:31 terms 2263:22 2267 2270:51 2270:51 2270:51 2270:51 2270:51 1270:70:18 2270:51	22727:24 22729:6	subsequent 22583:20	22690:12 22693:17	22666:16,19,25	-
states 22631.6 subsequently 22615.13 227111:22.33 22712.5 226751 22679-6.11 terms 22632-22647 2270611 227051 substantially 22670-12 22738.8 220641.7 22687.81 22669-12 22669-12 22669-12 22669-12 22669-12 22669-12 22669-12 22669-12 22669-12 22669-12 22669-12 22669-12 22679-12 term develope 22716-12 22706-12 22709-11 teted 22607-22 22669-12 22669-12 22679-12 22669-14 22669-14 22669-14 22669-14 22669-14 22669-14 22669-14 22669-14 22669-14 22669-14 22669-12 22639-15 22639-15 22639-13 22669-12 22639-12 22669-12 22639-12 22669-12 22639-12 22669-12 22639-12 22669-12 22639-12 22669-12 22639-12 22669-12 22639-12 22669-12 22639-12 22669-12 22639-12 22669-12 22639-12 22669-12 22639-12 22669-12 22639-12 22669-12 22669-12 22669-12 22669-12 22669-12 2					term 22720:18
22056:12 22705:11 substance 22704:24 22714:15 22724:8 22684:7 22687.8.15 2277:7 State-wide 2265:12 substantive 2265:12 22738:18 22706:11 22706:18 22706:11 22706:14 22697:12 22585:42 22585:7 successful 2263:21 226615:12,15 22716:21 22726:14 22676:13 22706:14 22676:13 22706:14 22676:13 22706:14 22676:13 22706:14 22676:13 22706:14 22676:13 22007:24 22690:62 2260:12 22644:11 surrendering 22714:18 surrendering 22714:18 22586:7 22007:22 2256:19 22669:1,22007:14 22669:1,22007:14 22698:1,12,19 22609:12 22647:11 supercid 2270:17.16 supercid 2270:17.16 supercid 2270:17.16 supercid 2267:78 2260:11,220:25 supercid 22714:17 22669:1,22007:22 22676:13 22607:20 22767:12 2270:10.10 22669:1,22007:22 22669:1,22007:12 22618:12,25 supercid 22710:17 supercid 22710:17 supercid 22710:17 supercid 22710:17 supercid 22710:17 supercid 22710:17 supercid 22711:17 supercid 22711:17 22766:12 22766:12 22766:12 22766:12 22766:12 22776:12 2277:3 supercid 2277:3 <td></td> <td>subsequently 22615:13</td> <td></td> <td></td> <td>terms 22623:2 22647:4</td>		subsequently 22615:13			terms 22623:2 22647:4
2270:11 2278:83 22694:1 22695:2 22699:1 2271:1 2271:1 2271:1 2271:1 2271:1 2271:1 2271:1 22719:1 22719:1 22719					
State-wide 22654:19 substantive 22654:21 surely 22681:1 22700:11 22689:14 2209:22 22555:42 2256:22 successful 22632:11 220615:12,32 2016:3 22716:2 22715:49,10 22090:2 20270:11 22555:42 2256:2 such-and-such surprises 22701:20 22779:0 22779:12.5,59 22676:15 2209:20 22600:12 22610:11 suffer 22731:4 surrenderring 22714:8 22660:17 20260:11 setting 2260:16 22609:12 2260:14 suffer 22731:4 surrenderring 22714:8 22660:17 20260:12 22688:12,19 22609:12 2260:14 22660:17,18,20 22660:17,18,20 22669:13 (2260:14) 22698:11,2,12 22609:12 2270:14 22660:7,10 suspent 22710:10 22699:32 (2267):32 22699:32 (2267):32 22699:32 (2267):32 22690:12,22690:12,2289					
station 22583:22 successes 2263:46 surprised 22615:12,15 22701:02 22715:12 22690:10 22690:10 22690:10 22690:10 22690:10 2267:16 22773:11 Ested 22607:24 22690:10 2267:11 2267:16 22779:12 22676:16 22799:12 22676:16 22799:10 22696:16 22799:10 22696:16 22799:11 22698:16 22690:12 22679:12 22698:17 22689:17 22689:17 22689:17 22689:17 22698:18 22699:18 22699:18 22699:18 22699:12 22699:18 22699:18 22699:14 22699:23 22698:18 22699:11 22699:18 22699:23 22990:22:242:5 22990:22:242:5 22990:22:242:5 22990:22:242:5 22990:22:242:5 22990:22:242:5 22990:22:24:25 22990:22:24:25 22990:22:24:25 22990:22:24:25 22990:22:24:25 22990:22:24:25 22990:22:24:25 22990:22:24:25 22990:22:24:25 22990:22:24:25 22990:22:24:25 22990:22:24:25 22990:22:24:25 22990:22:24:25 22990:22:24:25 22990:22:24:25 22990:22:24:25 22990:22:24:25 22990:2		e e			· · · · · · · · · · · · · · · · · · ·
225844-20 228867 successful 22632-11 2261521.24 22616-3 22719-12 2270-11 Eved 22607-24 2258524 22690-12 such-and-such surrendered 22714-10 22739-11 22678-15 2260-20 22690-12 suffer 227314 surrendered 22714-18 22789-12 2276-14 22789-12 2270-11 testified 22619-6 22690-12 surrendered 22714-18 suspect 2266-78 22680-14 2268-12 22689-11 22689-11 22690-12 2260-12 suspect 2266-78 22640-14 2268-12 22689-11 82 2269-14 statistics 22652-23 sufficient 2578-31 suspend 22710-10 22699-23 2270-112 ttest 2266-11 22712 22602-12 22667-12 suspend 22710-17 227273-14 227273-14 227273-14 227273-14 227273-14 227273-14 227273-14 227273-14 2273-12 22600-12 2269-12 2269-12 2269-12 2269-12 2269-12 2269-12 2269-12 2269-12 2269-12 2259-12 2219-12 2279-13 3289-12 2279-12 2269-12 2269-12 2269-12 2269-12 2269-12 2269-12 2269-12 <t< td=""><td></td><td></td><td></td><td></td><td></td></t<>					
22585:42 22670:1 22677:16 22776:15 22676:15 22676:15 22676:15 22676:15 22676:15 22676:15 22676:15 22676:15 22778:11 22678:16 22778:11 22678:16 22778:11 22678:16 22778:11 22678:17 22678:17 22678:17 22678:17 22678:17 22678:17 22678:17 22678:17 22678:17 22678:17 22678:17 22678:17 22678:17 22678:17 2268:17 2268:17 2268:17 2268:17 2268:17 2268:17 2268:17 2268:17 2268:17 2268:17 2268:17 2278:11 2178:11 22699:23 2268:17 2278:12 2268:12			-		
225914 22679.12 such-and-such surprises 22701.20 22739.11 22698.4,16 22700.12 226906 22601.2 suffer 22731.4 surrendering 22714.98 22580.67 22607.22 22689.1,202.619.6 226907.12 surprises 2270.2 suspected 2267.88 22630.1,42269.23.21 tests 22688.12,19 226907.12 226607.1,022.629.44 22698.1,222.640.14 22698.13,22.040.14 22698.18,22.040.14 22698.18,22.040.14 22698.18,22.040.14 22698.18,22.040.14 22698.18,22.040.14 22698.18,22.040.14 22698.18,22.040.14 22698.18,22.040.14 22698.18,22.040.14 22698.18,22.040.14 22698.12,22.040.14 22698.12,22.040.14 22698.12,22.040.14 22698.12,22.040.14 22698.12,22.040.14 22698.12,22.040.14 22698.12,22.040.14 22698.12,22.040.14 22698.12,22.040.14 22698.12,22.040.14 22698.12,22.040.14 22698.12,22.040.14,22.040.14,22.040.14 22698.12,22.040.14,22.040.14,22.040.14,22.040.14 22608.12,22.040.14,22.040.14 22608.12,22.040.14,22.040.14,22.040.14,22.040.14 22608.12,22.040.14,22.040.14,22.040.14,22.040.14 22608.12,22.040.14,22.040.14,22.040.14,22.040.14,22.040.14 22608.12,22.040.14,22.040.14,22.040.14,22.040.14,22.040.14 22608.12,22.040.14,22.040.14,22.040.14,22.040.14,22.040.14,22.040.14,22.040.14,22.040.14,22.040.14,22.040.14,22.040.14	,				
22690:6 22691:2 2264:11 surrendered 22714:19 takine 2258:15,25 testified 22619:6 stationed 22610:11 surfered 2273:5 suspect 22596:8 22560:14 2263:2.3 tests 2268:1.1,9 statis 2265:19 22609:12 2209:2.3 22699:12 2208:5.2 22699:12 2268:5.2 22699:23 2270:1.2 22699:23 2270:1.2 22699:23 2270:1.2 22699:23 2270:1.2 22590:2.2 2259					
22603:13 surfer 2273:14 surrendering 22714:8 225867: 22607:22 22607:19 22679:12 22703:4 22724:2 suspected 22637:8 226047: 22692:10 22689:1.1,2.12 statistics 22652:3 sufficient 2288:2.1 22697:1820 22699:23 22698:1.820 statistics 22654:19 22609:23 22697:1820 22699:23 22704:6 statistics 22654:19 22609:23 22696:12 2268:12.19 22701:10 22699:23 22691:12 22596:12 2270:12 2270:12 22606:7.10 2260:12 22609:12 2260:12 22609:12 2260:12 2260:12 22609:12 2260:12 2260:12 2260:12 2260:12 2260:12 2260:12 2260:12 2260:12 2260:12 2260:12 2260:12 2260:12 2260:12 2260:12 2260:12					
stationed 22610:11 surfered 2273:5 suspect 2250:8 2260:14 22629:23 tests 2268:12.19 statis 2265:19 2200:10 2209:23 22069:21 2208:25 2209:23 2209:21 2209:39 2209:23 2209:21 2209:39 2209:23 2209:21 2209:29 22599:12 22599:6 22599:16 2219:20 22599:12 22599:6 22599:12 22599:6 22599:12 22599:6 22599:12 22599:6 22599:12 22599:6 22609:23 2260:24 2260:37:10 266:11 2260:37:10 266:11 2260:37:10 266:11 2260:37:10 266:11 2260:37:10 266:11 2260:25:11 2266:11 2260:25:11 2266:11 2260:21:12 2271:15 2269:21:12 2271:15 2269:21:12 2271:12 2269:21:12 2271:15 2269:21:12 2271:15 2269:21:12 2271:12 2269:12:12 2271:12 2269:12:12 2271:12 2271:23:12 2271:12 2269:12:12				-	
22679:12 22703:4 22724:2 suspected 22637:8 22649:722629:23 22699:1.1,2.12 stabistic 2265:1 22602:10 22699:21 22699:21 22699:22 2269:22 2269:22 2269:22 2269:22 2269:22 2269:22 2269:22 2269:22 2269:22 2269:22 2269:22 2269:22 2269:22 2259:22 2259:22 2259:22 2259:22 2259:22 2259:22 2259:22 2259:22 2259:22 2259:12 2259:22 2259:12 2259:22 2269:22 2259:12					
statistics 2265:3 sufficient 22588:21 22647:18.20 22363:3,12 2264:14 22698:8,18 22699:2 statis 22651:4 22669:7,10 suspend 22710:10 227074:6 22590:2,2425 statutes 2265:4 sufficiently 2279:3 22710:17,18 22773:10,15 22590:2,2425 statutes 2260:8 2263:16 22596:12,13 Swaret 2259:55:1 suspension 22710:22 takes 22623:22629:20 22590:2,2425 statutes 22610:8 2263:16 22596:16 2261:6 22594:6,21 22595:9 talk 22635:14 22600:2,2260:2,12 2260:3: STF 22602:21 22603:3 suggestid 22771:12 2273:44 22773:3,18 22607:6 22635:11 22637:10 22603:11.6 suggestid 22771:2 2273:24:4 22773:3,18 22607:42 2269:12 22638:11 22636:10 22603:12 2600:2 suggestid 22717:2 2273:24:5 22733:4,18 22607:42 2269:12 22648:12 2269:12 22601:4 2260:12 sustable 2260:12 sustable 2260:12 2273:24:5 2273:4,12 2270:37:271:12 22667:22 2667:14 stop 22540:4 2260:12 sustable 2260:12 2273:24:5 2273:4,12 2270:12:62 22648:12 22649:12 stop 2260:14 2265:14 sustable 2260:12					-
state 22651:19 22602:12 22637:23 suspects 22684:23.25 22704:6 stature 2265:4 sufficiently 22739:3 22710:12 22727:3 that 22580:11 stature 2265:4 sufficiently 22739:3 22710:12 22727:3 that 22580:12 stature 2265:4 sufficiently 22739:3 22710:12 22727:3 22590:12 22590:12 22590:12 22590:12 22590:12 22590:12 22590:12 22590:12 22590:12 22590:12 22590:12 22590:12 22590:12 2260:14 2260:15 talked 22617:6 2260:14 2262:12 2263:14 2263:14 2263:14 2263:14 2263:14 2263:14 2263:11 2263:12 2264:12 2264:12 2264:12 2264:12 2264:12 2264:12 2264:12 2264:12 2264:12 22662:14 2266:12			-		
statute 2265:19 2269:25 22637:23 suspend 22710:10 22699:23 22701:12 thank 22858:11 statutes 2265:54 sufficiently 2373:3 22710:19 22711:4 22773:3.10,15 22590:12 2259:3 statutes 2265:4 suggest 22590:5 suggest 22590:5 22596:12,13 22773:4 22590:12 2259:3 22500:22,24,25 stag 2262:9 22596:12,13 Swartz 2259:35,21 22506:4 22590:12 2259:1 14k:26253:14 22600:3,9,21 2250:12 2259:1 1260:5 2260:25 2263:1,1 2260:25 2263:1,1 2260:25 2263:1,1 2260:25 2263:1,1 2260:25 2264:12 22663:1 2266:1 22664:12 2264:12 22664:12 2264:12 22664:12 2264:12 22664:12 2266:1 22664:12 2266:1 22664:12 2266:1 22664:12 2266:1 22667:23 2266:1 22667:23 2266:1 22667:23 2266:1 22773:25 2273:4,7 2271:1:1 2271:5 22667:10 2266:1 22667:10 2266:1 22667:10 2266:1 22667:12 2266:1 2270:1:1 2271:5 22667:12 2266:1 22667:12 2266:1 2270:1:1 2271:5 22667:12 2266:1 2270:1:1 2271:5 2266:1 2266:1 2271:1:1 2271:5 2266:1 2266:1 2270:1:1 2271:5 2266:1 2266:1:1 260:1:1					-
22721-2 22600 ⁻⁷ ,10 supended 22710:17,18 22727.3,10,15 22583:12 22583:1 statutes 22655:4 suggest 22592:5 suggest 22593:6 22590:22,24,25 22590:22,42,55 statutes 2262:9 22598:16 22612:6 22598:16 22612:6 22598:16 22612:6 22598:16 22612:6 22598:16 22612:6 22598:16 22612:6 22598:16 22612:6 22598:16 22612:6 22598:16 22612:6 22598:16 22612:6 22598:16 22612:6 2260:12 2263:14 2263:11 2262:12 2263:12 2263:12 2262:22 2263:12 2263:12 2267:23 2263:11 2267:23 2263:11 2267:23 2263:11 2267:23 2263:11 2267:23 2263:11 2267:23 2263:12 2269:12 2273:12:12.223:12:12:23:23:26:223:20:42:27 22699:12 2269:11 2267:23 2269:12 2269:11 2266:11 2269:12 2269:11 2266:12 2273:12:12:2273:14 2270:7:12 2277:3:1 2263:12:26:60:1 2269:12 2269:11 2269:12 2269:11 2269:12 2269:11 2269:12 2269:13 2269:12 2269:13 2269:12 2269:13 2270:12 :271:12:12:2773:12 2273:12:12:223:13 2268:12 :26:13 2268:12 :26:13 2268:12 :26:13 2268:12 :26:13 226:11 :26:13 226:14:12:26:11 226:14:12:26:11 226:11 :26:11:26:11 2270:12:12:20:11:20:11:20:10:11:12:10:11 2270:12 :273:11:12:12:27					
statutory 2265:4: sufficiently 22739:3 22710:19 22711:4 22732:4 22732:4 22590:22,24.25 stap 2262:9 22676:3 22598:16 22612:6 22594:6,21 22595:9 takes 22623:3 22629:20 22500:22,24.25 stap 2262:9 22676:3 22598:16 22612:6 22594:6,21 22595:9 takes 22623:3 22629:20 22500:22,24.25 STF 22602:21 22603:3 suggestide 22612:6 22594:6,21 22595:9 talk 22635:14 22602:3:22625:1.1 22603:7,10,13 suggestide 22771:12 22733:24,5 22733:1,18 22602:3:22604:2 22639:16 2264:12 22640:4 22645:12 suggestide 22700:3 22733:25 2273:4:4,7 22711:21 2271:6,8 22649:24 22670:18 stop 22640:4 22645:12 sutable 2260:12 22733:25 2273:4:4,7 22710:12 2271:5 22668:12 22697:3 strategic 2265:14 sutmary 2566:14 sutable 2260:21 22738:1 22700:12 22710:12 22710:12 22710:12 22710:12 22710:12 22710:12 22710:12 22710:12 22710:12 22700:3 22669:12 22669:12 22669:12 22669:12 22669:12 22669:12 22669:12 22669:12 2266			-		
startury 22654:18 suggest 22592:5 suggest 22593:16 22593:16 22593:16 22593:16 2260:17 2261:14 2261:14 2261:14 2262:12 2263:11 2261:14 2262:12 2263:11 2263:11 2263:11 2263:11 2263:12 2263:1					
stay 2262:9 2267:3 2259:12.13 Swartz 22593:3.8.14 22690:5 22690:4.2 22610:8 22610:8 22610:8 22610:8 22610:8 22610:8 22610:8 22610:8 22610:8 22610:8 22610:8 22610:8 22610:8 22610:8 22610:8 22610:8 141kcg 22610:6 22600:12 22730:13,17 22609:23 22600:42 22630:1 22630:1 12630:10 22618:14 22618:14 22630:1 22630:1 22630:1 22630:1 22630:1 22630:1 22630:1 22630:1 22733:1 12733:4 22733:1 18 22700:2 22711:21 2273:2 22640:4 22640:1 22687:8 22736:2.1 2273:4:23 22711:1 22668:1 22669:10 22687:8 22736:1 22700:1 22700:2 22700:2 22700:2 2270:2 2270:2 22700:2 22700:2 22600:10 2270:10 2270:10 2270:10 2270:10 2270:11 22668:10 2270:11 2270:11 2270:11 2270:11 2270:11 2270:11 2270:11 2270:11 <td></td> <td></td> <td></td> <td></td> <td></td>					
steps 22610.8 22631:16 22598:16 22612:6 22594:6,21 2259:5 talk 22631:14 22620:25 22625:1.4 22773:1,4 22622:13 22648:3 22724:4,2277:25 talk 22631:14 2260:25 22625:1.1 22600:7,10,13 22723:4,22724:1 22731:21,22,23,24 22692:23 22694:22 22635:16 2264:1.1 22601:1.6 suggesting 2270:3 22731:21,22,23,24 22709:23 22694:22 22639:16 2264:1.1 stop 22640:4 22645:12 sutable 2260:12 22734:23 22735:6,20 22711:21 22171:6.8 22670:23 22680:4 stop 22640:4 22645:12 sutable 2260:12 22734:23 22736:4,7 22709:23 22670:23 22680:4 strategic 22665:14 22607:19 Swartz's 22734:18 22690:20 2269:11 22708:10 22608:12 strategic 32656:14 22607:19 Swartz's 22734:18 22690:20 2269:11 22711:21 2271:5 strength 22582:15 summarise 22648:20 swore 22592:25 target 22645:12 22733:1 22690:20 2269:11 22719:73:7373.75 strike 226451:15, 24 22709:10 Swore 2259:20 target 22645:12 22733:12 22739:12 22739:12 22739:12 22739:12 22739:12	÷.	66	-		
22727:3,1.4 2262:13 22648:3 22724:4 22727:25 talked 22617:6 2260:25 22625:1.1 STF 22602:21 22603:3 suggested 22721:12 22733:3,8 22730:5,10 talked 22617:6 22625:11 22627:23 22603:7,10,13 suggesting 22700:3 22733:1,13 22602:22 22694:22 22633:12 2263:12 stifle 22717:13 2274:7 suggesting 22700:3 22733:1,23 22707:24 2273:22 22694:22 22639:22640:42 stop 22640:4 22645:12 suitable 2260:12 2273:2:4,23 22707:24 2271:15 22687:02 strategic 22665:14 suitable 22607:10 Swart's 22734:18 22689:2,17 22600:13 22689:2,17 22600:13 strategic 22656:14 summarise 22596:6 sweop 22594:20 target 22688:7,12,16 22793:17 2273:7271:7273:7271:7273:7271:7273:7271:7273:7271:7273:7271:7273:7271:7273:7271:7273:7271:7273:7271:7273:7271:7273:7271:7273:72 striker 22714:1:6,71 22706:12 22773:17 22663:14 22664:20 2279:12 2279:12 2263:12 22773:17 2278:17 2278:17 2278:17 2278:17 2273:17 2278:17 2279:17:17:17 22669:12 2279:17:17 2278:17 2279:17:17:17 22669:12 2279:17:17 2278:18 2269:17		,	, ,		
STF 22602:21 22603:3 suggested 22721:12 22723:32 22730:10 talking 226066 22625:11 22627:23 22603:7,10,13 22723:427724:1 22730:13,17 22639:9 22674:4 22639:16 22642:21 stifle 22717:13 22724:7 suggesting 2270:3 22733:23 22734:4,7 22739:24 22711:12 22733:24 22734:4,7 stop 22640:4 22645:12 suitable 2260:12 22736:2,12 22738:4,9 22738:2,0 22779:2,2711:12 22738:2,4 22690:2,2 2268:2,2 2268:10 22690:13 22663:14 22690:12 22738:14 target 2268:7,12,16 2268:10 22690:13 22703:7,2 2710:25 22738:14 22690:20 22690:13 22703:7,2 2710:25 strengtic 2264:2 22596:8,16 sweeping 22681:16 22690:20 22690:13 22703:7,2 2770:12; 22738:1 22690:20 22690:13 22708:7,2 2779:12 strengtic 2264:15,24 22598:50 swomrarise 22590:5 target 22690:10 target 22690:10 Thanks 22708:17 22738:1 22690:10 Thanks 22708:12 2273:17 22766:13 22590:19 2279:17 22766:12 22737:7 22663:14 22690:10 Thanks 22708:12 22663:12 22778:17 22663:14 22690:10	-		-		
22603;7,10,13 2723:4 22724:1 22730:13,17 22692:23 22694:22 22635:11 2263:11 2263:12 suggesting 22700:3 22731:21,22,23,24 22692:23 22694:22 22639:16 22649:12 stop 22504/24 22645:12 suggesting 22700:3 22733:25 22734:4,7 22711:19 22648:12 22649:12 stop 22640/4 22645:12 22687:8 22735:20 22739:23 22670:23 22680:4 strategies 22656:14 22607:19 Swartz's 22734:18 22689:217 22690:13 22703:7 22710:25 strength 22584:5 summarise 22596:6 swoop 22594:20 target 22648:1,1 22715:11 22687:10 22688:1 strength 22584:5 summarise 22596:6 swoop 22594:20 target 22649:12 22733:17 22733:17 22739:7,5 striker 22719:12.5 22701:11 12705:6 swoor 22593:16 22680:15 2276:23 striker 22714:1.6,719 22583:15,19 22666:12 2266:12 2273:17:12 2276:23 target 22690:10 Thanks 22780:12 stroke 2266:23 supplement 22583:22 sympathise 22739:21 22680:15 2276:23 target 22690:10 2258:13 2258:15 22729:10 2278:13 suport 22636:14,2266:27 22667:7	-				-
22651:1,6 suggesting 22700:3 22731:21,22,23,24 22669:16,2242:21 22639:16,2246:12 stine 22717:13 suggests 2288:17 22733:2,4,5 22733:1,18 22707:12 22640:4 22645:12 22649:12 stop 22640:4 22645:12 suitable 22620:12 22734:23 22735:6,20 22779:12 22670:23 22669:16 22670:23 22680:12 22734:23 22670:23 22680:12 22734:23 22670:23 22680:12 22734:23 22670:13 22670:23 22680:12 22738:14 target 22681:16 22689:10 22689:10 22689:10 22680:12 22738:1 22690:20 22690:13 22703:7 22733:1 22690:20 22690:13 22715:11 22703:7 22733:1 22690:10 target 22645:12 227373:1 22709:17:5 22715:11 22708:7 22738:1 22690:10 target 22645:12 22715:11 22708:7 22733:1 22690:10 target 22645:12 227373:1 22590:19 22790:17:0 22598:17 22738:13 22690:10 target 22645:12 227373:17:17 22680:16 22691:14 22599:17:17 22598:17 <					
stife 22717:13 2272:7 suggestion 22717:2 22732:45 22733:11.8 22707:24 22711:19 22649:222649:2 stop 2260:2267:21 suggests 22583:17 22733:25 22738:4,7 22713:22 22735:2,0 22713:23 22690:12 strategic 2261:23 summarise 22977 22738:14 target 22687:7,12,16 22689:12 22689:13 strategic 2265:14 summarise 22977 22738:14 target 22687:7,12,16 22689:12 22703:7 2270:25 strengthen 22584:5 summarise 22594:20 22773:1 22699:11 22713:15 22719:12 2273:6 strike 2264:15,24 22599:22 sworp 22594:20 targets 2680:10 Tanks 22708:12 strike 2264:15,24 22703:7,11 22705:6 sworp 2259:25 targets 22600:10 task 22580:15 strike 2264:15,24 22593:15,19 22663:14 22664:20 task 22580:15 22726:23 strikes 22714:1,6,7,19 22593:15,19 22663:14 22664:20 2258:13 22589:20 22589:13 22589:20 structures 22600:25 22686:20 22667:45 22660:12 22661:61 22599:11,13 22596 structures 22600:25 22686:20 22667:45 22661:22661:13 22660:12 22661:11 subporte 2263:13<					
stood 22707:1 suggests 22583:17 22733:25 22734:47 22711:21 22717:6.8 226404 22670:18 stopped 22587:24,25 22687:8 22733:25 22738:4.9 22773:23 22735:6.20 227670:23 22680:4 strategie 22621:23 summaries 22597.7 22738:14 22690:20 22692:11 22688:10 22690:13 22703:7 22710:25 strengthen 22586:14 summaries 22695:66 sweeping 22681:16 22690:20 22692:11 22773:7 22710:25 strike 22645:15.24 summaries 22599:20 swoop 22594:20 target 22645:12 22733:17 227739:7.5 strike 22719:25 supplementary system 22654:1 22690:10 Thanks 22708:12 22728:15.19 22729:9 supplementary system 22654:7 22598:18 22691:10 22588:13 22592:25 strengt 22655:11 22680:14,23 22666:2 22667:6,7 22598:18 22621:1 22598:19,2259:110 structures 22600:25 support 2263:18,2 22670:25 22671:3,9 22598:18,22642:1 22599:11,13 22596:249:25 stroke 2263:24 support 2263:13 22666:2 22667:6,7 22598:18,22642:1 22598:18,22642:1 22598:18,22642:1 22698:18,22642:1 22608:1,22642:1 22608:1,22642:1					
stop 22640.4 2264:12 surable 22620:12 22734:23 22735:6.20 22729:23 22670:23 22680:4 strategic 2261:23 summarise 22597:7 22687:8 22738:14 talks 2271:15 22689:1.0 22680:1 strategic 22656:14 22607:19 Swartz's 22734:18 22689:2.17 22690:13 22703:7.12710:25 strengthen 22584:5 summarise 22596:6 sweming 22681:16 22693:1.15 22719:17 22732:16 strike 22645:12,2 22599:22 22599:2 swore 22592:25 targets 22600:10 tarks 2270:15 strike 22719:15 22709:11 22705: swore 22592:25 targets 22600:10 targets 22600:10 strike 22719:12 2270:11 12705:6 swore 2259:10 22786:12 22785:12 22729:10 22738:3 supplement 22583:22 synapthise 22739:21 22686:12 22595:11 22729:10 22738:3 suppert 22636:18,25 22666:2 22667:6,7 22781:2,5 22595:11,13 22596 struct 2260:22 22777:1 22666:12 22677:6,7 22731:2,5 22595:11,13 22596 support 2263:15 support 2263:15 22667:6,7 22731:2,5 22595:11,13 22596 str					
stopped 22587:24,25 22687:8 22736:2,15 22738:4,9 talks 22721:15 22687:10 22688:1 strategie 2265:14 22607:19 Swartz's 22734:18 22689:10 22689:10 22689:13 strengthen 22584:5 summarise 22648:20 Swartz's 22734:18 22690:20 22692:11 22715:11 22717:15 strengthen 22584:5 summarise 22596:6 sweeping 22681:16 summarise 22648:20 22738:1 22690:20 22692:11 22719:17 22732:6 strike 22645:15,24 22598:22 22599:2 swore 22594:20 targets 22646:12 22738:17 22739:7.5 strike 22714:1,67,19 22593:15,19 22663:14 22664:20 targets 22590:10 tharks 22780:15 22726:23 stroctures 22600:25 supplementary system 22654:7 22668:14 22664:20 targets 22590:10 targets 2259:29,21,23 structures 22600:25 support 22636:18,25 22666:2 22667:6,7 22731:9 22595:11,13 22590:15 structures 22600:25 support 22637:10 22676:22 22677:3 22601:21 22602:11 22690:15 22615:17 subject 22723:13 support 22637:13 22664:2 22667:23,24 22660:12 22729:14 22663:12 2261:12 2261:12 subject 22		66		-	
strategie 22621:23 strategie 2265:13 strengt 22582:15 strengt 22582:15 strengt 22582:15 summarise 22648:0 summarise 22596:6 summarise 22596:6 summarise 22596:6 summarise 22596:6 summarise 22596:6 summarise 22596:6 summarise 22596:6 summarise 22596:7 strike 22645:15,24 22703:11 22773:1 22689:2.17 22690:13 22609:2.17 22690:13 22669:2.17 22690:13 22669:2.11 22773:1 22718:11 22703:7 22710:25 22719:12 22773:1 strike 22645:15,24 22722:16 22728:13 22722:16 22728:13 22722:16 22728:13 22729:10 22738:3 supplement 22583:25 supplement 22583:22 supplement 22583:19 supplement 22583:19 22665:16,18,19,21 22665:16,18,19,21 22665:13 22666:2 22667:6,7 22773:19 target 2268:16 22648:15 22590:19 task 22590:19 22591:10 task 22590:19 22591:10 task 22590:19 22591:10 22668:3,1225 that's 22589:20 22772:12 22592:25 22772:12 22686:20 22687:4,5 22666:2 22667:6,7 22773:19 target 22680:15 22590:19,12 22591:10 22590:19,12 22591:10 22668:13 22590:19,12 22590:19,12 22591:11,12 22592:11,13 22596 struck 22636:23 22671:16,19 target 22680:15 22590:19,12 22591:10 22663:14 22664:22 22677:3 22666:12 22607:15 22590:19,19<22592:11,13 22596 22590:19,19<22590:19,19<22599:11,13 22596 22590:19,19<22590:19,19<22599:11,13 22596 22590:19,19<22590:19,19<22599:11,12 22590:19,19<22599:11,13 22596 22666:22 22677:3 22608:12 22601:12 22	-				
strategies 22656:14 22607:19 Swartz's 22734:18 22689:2,17 22690:13 22703:7 22710:25 strength 2258:15 summarise 22648:20 summarise 22648:20 22738:1 22690:20 22692:11 22715:11 22717:15 strike 22645:15,24 22598:22 22599:2 swore 22592:25 targeted 22645:15 22708:12 22733:17 22739:7,5 strike 22719:25 supplement 22583:22 sympathise 22739:21 22590:10 Tharks 22708:12 22588:13 22587:17 22722:16 22728:13 supplement 22583:22 sympathise 22739:21 22590:19 22591:10 that's 22587:17 22729:10 22738:3 supplement 22583:25 sympathise 22739:21 22648:3,5 22731:2,5 22592:9,2,1,23 strick 22636:23 support 22636:18,25 22666:2 22667:6,7 22648:3,5 22731:2,5 22593:13,13 22594:25 struck 22636:23 support 22637:10 22671:16,19 22590:19,19 22599:11,12,28 subped 22582:23 support 22637:10 22676:22 22677:3 22600:12 12602:11 22690:12,220211 subport 22583:14 22698:13 22710:10 22698:13 22710:10 22698:13 22710:10 22732:3 22644:12 22632:14 22666:12 22667:24					
strength 22582:15 summarise 22648:20 22738:1 22690:20 22692:11 22715:11 22717:15 strengthen 22586:20 summarised 22596:6 sweeping 22681:16 22693:1,15 22739:7,5 strike 22645:15,24 22598:22 22599:2 swore 22592:25 targeted 22645:12 22733:17 22736:7,5 22721:6 22728:13 supplement 22583:22 symplement 22583:22 symplement 22583:12 22598:19 22591:10 Thanks 22708:12 22729:10 22738:3 support 22636:18,25 support 22666:18,25 22666:2 22667:6,7 22731:9 22593:32 22592:9,2 struck 22636:23 22686:10 4266:2 22667:6,7 22731:9 22593:3 22592:9,2 22593:3 22592:9,2,1,23 support 22636:18,25 22666:2 22667:6,7 22731:9 22593:3 22592:9,2 22593:3 22592:9,2 struck 22636:23 22686:10 22671:3 22666:2 22677:3 22601:14 22602:11 22601:12 22602:11 22601:15 225251:11 subject 22583:14 22655:15 supports 22639:13 22666:23,24 22666:23,24 22666:21 22651:1 22601:12 22601:12 22601:12 22601:12 22601:12 22601:12 22601:12 22601:12 22601:12 22601:12 22601:12 22601:12 22601:12 2261:17 subject 22732:11 222698:12 22697:6 <td></td> <td></td> <td></td> <td></td> <td></td>					
strengthen 22584:5 summarised 22596:6 sweeping 22681:16 22693:1,15 22719:17 22732:6 strike 22645:15.24 22596:8,16 swoop 22594:20 targeted 22645:12 22703:17 22739:75 strike 22645:15.24 22701:11 22705:6 swoop 22593:16 targets 22690:10 Thanks 22708:12 22722:16 22728:13 supplementary sympathise 22739:21 22590:19 22591:10 22582:12 striker 22719:10 22738:3 support 22636:18,25 22665:16,18,19,21 22648:13 22589:20 22592:9,21,23 strong 22655:11 22680:14,23 22660:16,22 22677:3,9 22731:9 22599:11,13 22596:12 struct 22630:25 22772:1 22671:16,19 22590:19,19 22597:11,12,18 subject 22583:14 22655:15 supported 22637:10 22671:26,22 2677:3 22601:21 2260:211 22600:12 22620:12 22617:20 22689:23 supported 22637:10 supported 22632:2 22664:6 22665:23,24 22618:1,5 2264:21 22618:1,5 2264:21 22601:21 2260:11 22601:12 2260:11 22601:12 2260:11 22601:12 2260:12 22615:19,22 2261 subject 22583:14 22655:15 supported 22632:14 22665:23,24				-	
strengthened 22586:20 summary 22596:8,16 swoop 22594:20 targeted 22645:12 22733:17 22739:7,5 strike 22645:15,24 22598:22 22599:2 swoor 22592:25 targeted 22645:15 22708:12 striker 22719:25 22701:11 22705:6 sworr 22593:16 task 22580:15 22726:23 striker 22714:1,6,7,19 supplementary sympathise 22739:21 22684:1 22589:12 22593:13 22599:29,21,23 strong 22655:11 support 22636:18,25 22666:16,819,21 22648:3,5 22731:2,5 22593:32 22594:25 strong 22655:11 22680:14,23 22666:2 22667:6,7 22731:9 22599:19,13 2259:11,13 22596 structures 22600:25 22777:1 22671:6,19 22607:25 22671:3,9 team 22580:15 22597:11,12,18 subheading 2588:23 supported 22637:10 22676:22 22677:3 22601:12 22602:11 22608:15 22615:17 subheading 2588:23 supported 22632:2 systems 22654:2 22648:10 22721:4 22638:14 22636:12 2260:11 22636:19,22 2263:14 subheading 2572:13 22716:15 supported 22632:2 supported 22632:2 22732:3 22634:17 22664:2 22666:2 2266:2:3,24<				22690:20 22692:11	
strike 22645:15,24 22598:22 22599:2 swore 22592:25 targets 22690:10 Thanks 22708:12 22722:16 22728:13 supplement 22583:22 sympathise 22739:21 22590:19 22591:10 that's 22587:17 22728:15,19 22729:9 supplementary sympathise 22739:21 22666:14 22664:70 22668:1 22590:19 22591:10 that's 22587:17 22729:10 22738:3 supplementary system 22664:7 22666:2 22667:6,7 22731:9 22593:3 22594:25 strok 22636:23 22680:14,23 22666:2 22667:6,7 22731:9 22590:19,19 22599:11,13 22596 struct 22630:25 2277:1 22671:16,19 22590:19,19 22598:8,9,10 22600 22654:13 supported 22637:10 22676:2 22677:3 22601:12 12602:11 22600:15 22615:17 subleading 22582:23 suppore 22639:13 22664:6 22665:23,24 22669:21 22729:14 2263:10 2263:15 22706:7 22716:14,17 supposed 22639:13 22644:2 2263:14 22651:17 22664:1 2265:19 22727:13 supposed 22639:13 22644:2 2263:24 22654:1 22642:25 22650:1 2263:11 22651:17 2271:8 22722:7 226					
striker 22719:25 22701:11 22705:6 sworn 22593:16 tak 22580:15 22726:23 22722:16 22728:13 supplement 22583:22 sympathise 22739:21 22590:19 22591:10 that's 22587:17 22728:15.19 22729:9 supplementary system 22654:7 22684:1 22592:9,21,23 22729:10 22738:3 support 22636:18,25 22666:2 22667:7 22731:9 22593:3 22594:25 struck 22636:23 22686:20 22687:4,5 22670:25 22671:3,9 tean 22580:15 22595:11,13 22596 struck 22630:25 2277:1 22671:16,19 22590:19,19 22598:8,9,10 22600 22654:13 supported 22637:10 22671:26,22 2677:3 22601:21 22602:11 22600:15 22615:17 subheading 22582:23 suppose 22639:13 22664:6 22665:23,24 22696:21 22729:14 22630:10 22632:15 2271:8 2272:7 22698:13 22710:10 22732:3 22648:10 2273:11 22657:11 22661:17 22644:28 2272:13 22716:15 sup 2258:12 su.0 22880:4 2263:24 22657:4 22666:17 2277:14 22656:9 22652:17 22632:17 2272:13 22716:15 suposed 22639:13 22664:16 2263:24	0	•	-		-
22722:16 22728:13 22728:15,19 22729:9 supplement 22583:22 supplementary sympathise 22739:21 system 22654:7 22590:19 22591:10 that's 22587:17 22729:10 22738:3 supplementary 22590:19 22738:1 22590:19 22738:1 22590:19 22591:10 22588:13 22589:20 strikers 22714:1,6,7,19 22593:15,19 22665:16,18,19,21 22590:19 22591:10 22592:123 strong 22655:11 22680:14,23 22666:2 22667:6,7 22731:9 22599:13,12,25 structures 22600:25 22772:1 22670:25 22671:3,9 22601:12 22602:11 22590:19,19 22582:23 supports 22654:12 22670:22 22677:3 22601:12 22602:11 22600:15 22601:12 22600:15 subject 22583:14 22655:15 systems 22654:5 22604:12 12602:11 22600:15 22615:17 subject 22723:11 supports 22632:2 sup 02632:2 sup 02632:2 sup 02632:2 22691:3 22702:7 22605:12 22697:6 22681:10 2273:14 22633:14 22633:14 22633:14 22631:12 22632:14 22631:12 22632:14 22665:17 22667:10 22665:17 22667:10 22663:12 22671:4 22671:13 22671:14 22666:17 22667:10 22663:12 22671:14 22671:13 22671:14		22598:22 22599:2		targets 22690:10	Thanks 22708:12
22728:15,19 22729:19 supplementary system 22654:7 22684:1 22588:13 2259:20 22729:10 22738:3 support 22636:18,25 22663:14 22664:20 22648:3,5 22731:2,5 22599:33 22594:25 struck 22636:23 22686:20 22687:4,5 22665:16,18,19,21 22648:3,5 22731:2,5 22599:33 22594:25 struck 22636:23 22686:20 22687:4,5 22670:25 22671:3,9 22590:19,19 22599:11,12,18 subpert 22637:10 support 22637:10 22671:16,19 22601:21 22602:11 22600:15 22615:17 subpect 22583:14 22655:15 supports 22654:2 system 22654:5 22642:25 22650:1 22601:21 22602:11 22600:15 22615:17 22716:1 supposed 22639:13 supose 22639:13 22664:6 22665:23,24 22696:21 22729:14 22634:17 22644:8 22716:15 suposed 22639:76 22648:10 22731:14 22634:17 22644:8 22634:17 22644:8 22716:15 suposed 22639:76 22648:10 22731:14 22634:17 22664:12 22634:17 22667:10 subpission 22618:16 22586:24 22587:1,10 22648:10 22731:14 22657:11 22671:17 22678:24 submission 22602:7 22586:24 22587:1,10 <td></td> <td></td> <td></td> <td>task 22580:15</td> <td>22726:23</td>				task 22580:15	22726:23
strikers 22593:15,19 22663:14 22664:20 tea 22593:18 22621:1 22593:3 22503:1 22563:13 22611:1 22631:1 22601:2 22612:1 22631:1 22631:1 22631:1 22631:1 22631:1 22631:1 22631:1 22653:1 22631:1 22653:1	22722:16 22728:13	supplement 22583:22	sympathise 22739:21	22590:19 22591:10	that's 22587:17
22729:10 22738:3 support 22636:18,25 22665:16,18,19,21 22648:3,5 22731:2,5 22593:3 22594:25 strong 22655:11 22680:14,23 22666:2 22667:6,7 22731:9 22595:11,13 22596 struck 22636:23 22686:20 22687:4,5 22670:25 22671:3,9 22503:15 22597:11,12,18 supporte 22632:13 supported 22637:10 22671:16,19 22500:121 22602:11 22600:15 22615:17 subheading 22582:23 supported 22637:10 22664:62 22667:6,7 22691:3,4 22696:24 22601:21 22602:11 22600:15 22615:17 subject 22583:14 22655:15 suppored 22632:2 systems 22654:5 22642:25 22650:1 22624:12,14 22625 22718: 22718: 22716:14,17 supposed 22632:2 su.0 22580:4 2260:22 22732:3 22646:11 22651:17 subject 22723:13 22716:15 sup 22658:22 22697:6 22648:10 22731:14 teamwork 22655:9 22645:12 22657:14 submission 22618:16 22588:72 22595:6 table 22632:14 technical 22581:11 22677:13 22672:14 submissions 22682:7 22588:7 22595:6 tackle 22630:24 technical 2257:4 22666:17 22677:13 submissions 22604:8	22728:15,19 22729:9	supplementary	system 22654:7	22684:1	22588:13 22589:20
strong 22655:11 22680:14,23 22666:2 22667:6,7 22731:9 22595:11,13 22596 struck 22636:23 22686:20 22687:4,5 22670:25 22671:3,9 22590:19,19 22590:19,19 22590:19,19 22600:25 22607:15,20 22654:13 supports 22654:2 22691:3,4 22696:24 22617:3,20 22601:21 22602:11 22600:15 22615:17 subject 22583:14 22655:15 supports 22654:2 22691:3,4 22696:24 22618:1,5 22642:21 22615:19,22 22624 22706:7 22716:14,17 suppose 22639:13 suppose 22639:13 22664:6 22665:23,24 22696:21 22729:14 22630:10 22632:15 22725:13 suppose 22639:16 22716:15 suppose 22639:16 22648:10 22731:14 22655:9 22646:11 22651:17 submission 22618:16 22786:24 22587:1,10 22663:14 22663:14 22665:13 22667:12 2267:4 22665:12 2267:4 submission 22618:16 22618:22,25 22601:3 22673:14 22667:12 2267:4 22665:17 22667:10 22618:21,25 22612:9 22613:5 22660:13 22673:14 22655:9 22658:17 22663:2 submissions 22618:16 22699:17 22638:20	strikers 22714:1,6,7,19	22593:15,19	22663:14 22664:20	tea 22598:18 22621:1	22592:9,21,23
struck 22636:23 22686:20 22687:4,5 22670:25 22671:3,9 team 22580:15 22597:11,12,18 structures 22600:25 22727:1 22670:25 22677:3 22601:21 22602:11 22598:8,9,10 22600 subheading 22582:23 supports 22654:2 22691:3,4 22696:24 22611:21 22602:11 22600:15 22615:17 22617:20 22689:23 supports 22632:2 systems 22634:5 22696:2,24 22696:2,24 22696:2,122729:14 22630:10 22632:15 22706:7 22716:14,17 suppose 22639:13 22665:2 22697:6 22648:10 2273:14 22630:10 22632:15 22646:12 22729:14 22630:10 22632:15 subject 22723:1 22665:2 22697:6 22648:10 22731:14 teamwork 22655:9 22646:11 22651:17 subject 22723:1 22716:15 sure 22585:12 22643:14 technical 22587:14 22657:11,13,15 subject 22723:9 sure 22585:12 22716:15 sure 22587:14 22633:14 22665:17 22667:10 submitsions 22682:7 22612:9 22613:5 22660:13 22667:1 22671:4 22667:1 2267:14 22667:1 2267:14 22619:14,20,21,24 22639:7,13 22646:3 22660:13 22667:1 22671:3,17 22667	22729:10 22738:3	support 22636:18,25	22665:16,18,19,21	22648:3,5 22731:2,5	22593:3 22594:25
struck 22636:23 22686:20 22687:4,5 22670:25 22671:3,9 team 22580:15 22597:11,12,18 structures 22600:25 22727:1 22670:25 22677:3 22601:21 22602:11 22598:8,9,10 22600 subheading 22582:23 supports 22654:2 22691:3,4 22696:24 22611:21 22602:11 22600:15 22615:17 22617:20 22689:23 supports 22632:2 systems 22634:5 22696:2,24 22696:2,24 22696:2,122729:14 22630:10 22632:15 22706:7 22716:14,17 suppose 22639:13 22665:2 22697:6 22648:10 2273:14 22630:10 22632:15 22646:12 22729:14 22630:10 22632:15 subject 22723:1 22665:2 22697:6 22648:10 22731:14 teamwork 22655:9 22646:11 22651:17 subject 22723:1 22716:15 sure 22585:12 22643:14 technical 22587:14 22657:11,13,15 subject 22723:9 sure 22585:12 22716:15 sure 22587:14 22633:14 22665:17 22667:10 submitsions 22682:7 22612:9 22613:5 22660:13 22667:1 22671:4 22667:1 2267:14 22667:1 2267:14 22619:14,20,21,24 22639:7,13 22646:3 22660:13 22667:1 22671:3,17 22667	strong 22655:11	22680:14,23	22666:2 22667:6,7	22731:9	22595:11,13 22596:9
structures 22600:25 22727:1 22671:16,19 22590:19,19 22598:8,9,10 22600 22654:13 supported 22637:10 supports 22654:2 22676:22 22677:3 22601:21 22602:11 22600:15 22615:17 subheading 22582:23 supports 22654:2 22691:3,4 22696:24 22618:1,5 22642:21 22601:19,22 22624 22617:20 22689:23 suppose 22639:13 suppose 22632:2 22664:6 22665:23,24 22696:21 22729:14 22630:10 22632:15 227725:13 suppose 22697:6 22648:10 22731:14 22655:9 22646:11 22651:17 subjects 22723:9 sure 22585:12 suffects 22630:24 22633:14 22663:22 22677:4 submission 22618:16 22586:24 22587:1,10 22588:7 22595:6 T 22663:14 22666:17 22667:10 submissions 22682:7 22612:9 22613:5 22600:13 22673:14 22677:4 22667:12 22677:3 22619:14,20,21,24 22609:17 22638:20 22630:12 22601:13 22699:17 2268:21 22672:4 22630:7,13 22646:3 22595:13 22612:16 22699:24 22705:24 22682:5 22683:16 22672:4 226619:12 22601:1 22660:11	-	22686:20 22687:4,5		team 22580:15	
22654:13supported 22637:1022676:22 22677:322601:21 22602:1122600:15 22615:17subheading 22582:23supports 22654:222691:3,4 22696:2422618:1,5 22642:2122615:19,22 2262422617:20 22689:23suppose 22639:1322664:6 22665:23,2422696:21 22729:1422630:10 22632:1522706:7 22716:14,17supposed 22632:2su.o 22580:4 22620:2222732:322634:17 22644:822721:8 22722:722665:2 22697:622648:10 22731:1422655:922646:11 22651:27subjected 22723:1122698:13 22710:10	structures 22600:25	22727:1	22671:16,19	22590:19,19	22598:8,9,10 22600:5
subheading 22582:23supports 22654:222691:3,4 22696:2422618:1,5 22642:2122615:19,22 22624subject 22583:1422655:15systems 22654:522642:25 22650:122624:12,14 2262522617:20 22689:23suppose 22639:13suppose 22639:1322664:6 22665:23,2422696:21 22729:1422630:10 22632:1522706:7 22716:14,17supposed 22632:2suo 22580:4 22620:2222732:322634:17 22644:822725:1322698:13 22710:1022656:922652:8 22653:2222725:1322716:15T22656:922652:8 22657:12subjects 22723:9sure 22585:12table 22632:1422658:17 22660:3submissions 22618:1622586:24 22587:1,1022586:24 22587:1,222633:1422667:11 22651:17 22666:17submissions 22682:722612:9 22613:522660:2422678:1422671:13 22672:1422619:14,20,21,2422603:8 22608:922660:1322667:1 22671:13,1722673:2 22677:2522619:14,20,21,2422639:7,13 22646:322691:15 22585:122617:19 22689:2422684:3 22699:1622671:422639:7,13 22646:322691:15 22585:122671:19 22689:2422684:3 22699:1622672:422651:9 22660:1122613:15 22615:1422719:20 2270:1222700:24 22704:1122723:1922661:13 22663:222620:15,16,1722119:20 2270:1222700:24 22704:112273:1922668:13 22673:422622:18 22627:1322708:21 22738:1922725:13 22726:1922590:18 22728:822664:3 22673:422622:18 22627:1322708:21 22738:1922730:7,20,23,25 <td>22654:13</td> <td>supported 22637:10</td> <td></td> <td>22601:21 22602:11</td> <td></td>	22654:13	supported 22637:10		22601:21 22602:11	
subject 22583:1422655:15systems 22654:522642:25 22650:122624:12,14 2262522617:20 22689:23suppose 22639:13suppose 22632:222664:6 22665:23,2422696:21 22729:1422630:10 22632:1522721:8 22722:722665:2 22697:622648:10 22731:1422635:922646:11 22651:17subjected 22723:1122698:13 22710:1022716:15T22655:922646:11 22657:11,13,15subjects 22723:9sure 22585:1222586:24 22587:1,1022586:24 22587:1,1022633:1422665:922658:17 22660:3submission 22618:1622586:24 22587:1,1022588:7 22595:622633:1422671:13 22672:14226671:13 22672:14submit 22604:822603:8 22608:922612:9 22613:522660:13226671:12 22671:3,1722679:5,7 22683:2022618:21,2522612:9 22613:522660:13226671:19 2269:2422679:5,7 22683:2022619:14,20,21,2422639:7,13 22646:322613:15 22585:122671:19 2269:2422699:2422672:422651:9 2260:1122613:15 22615:1422719:20 22720:1222700:24 22704:1122723:1922661:13 22663:222620:15,16,1722699:24 22705:2422684:3 22699:16submitted 22590:11,1422668:13 22673:422622:18 22627:1322708:21 22738:1922725:13 22726:1922590:18 2278:822674:3,9 22677:9,1222631:15 22638:1122738:2322700:24 22707:8				22618:1,5 22642:21	22615:19,22 22624:1
22617:20 22689:23 22706:7 22716:14,17 22721:8 22722:7suppose 22639:13 supposed 22632:2 22665:2 22697:6 22665:2 22697:6 22665:2 22697:6 22665:2 22697:6 22725:1322665:2 22697:6 22665:2 22697:6 22665:9 22665:9 22665:9 22652:8 22653:22 22652:8 22653:22 22652:8 22653:22 22652:8 22653:22 22652:8 22653:22 22652:8 22653:11 22656:9 22655:9 22658:17 22666:17 22667:10 22666:17 22667:10 22666:17 22667:10 22666:17 22667:10 22666:17 22667:10 22672:4 22619:14,20,21,24 22629:17 22638:20 22661:13 22663:2 22661:13 22663:2 22660:13 22660:13 22660:13 22667:1 22671:3,17 22667:10 22689:24 22699:24 22705:24 22699:24 22705:24 22684:3 22699:16 22699:24 22705:24 22684:3 22699:16 22699:24 22705:24 22684:3 22699:16 22699:17 22638:10 22661:13 22663:2 22661:13 22663:2 22661:13 22663:2 22620:15,16,17 22601:15,16,17 22708:21 22738:19 22708:21 22738:19 22730:7,20,23,2522600:10 22632:15 22631:15 22638:11 22738:2322600:10 22632:15 22630:10 22632:15 22631:15 22638:11 22738:2322630:10 22632:15 22630:10 22632:15 22630:24 22673:2 22673:2 22677:25 22673:2 22677:25 22673:2 22677:25 22673:2 22677:25 22683:16 22699:16 22699:24 22705:24 22700:24 22704:11 22700:24 22704:11 22700:24 22704:11 22706:17 22707:8 22700:24 22707:8 22700:24 22707:8 22700:24 22707:8 22700:24 22707:8 22700:24 22707:9,12 22631:15 22638:11 22738:2322600:10 22630:10 22630:15 22630:10 22630:10 22730:7,20,23,25					22624:12,14 22625:7
22706:7 22716:14,17 supposed 22632:2 s.u.o 22580:4 22620:22 22732:3 22634:17 22644:8 22721:8 22722:7 22665:2 22697:6 22648:10 22731:14 teamwork 22655:9 22646:11 22651:17 subjected 22723:11 22698:13 22710:10 22716:15 teamwork 22655:9 22652:8 22653:22 subjects 22723:9 sure 22585:12 table 22632:14 technical 22581:11 22658:17 22660:3 submission 22618:16 22586:24 22587:1,10 22633:14 technical 22581:14 22666:17 22667:10 submissions 22682:7 22612:9 22613:5 22660:13 22667:1 22671:13 22672:14 22677:13 22677:25 22618:21,25 22612:9 22613:5 22660:13 22667:1 22671:3,17 22679:5,7 22681:23 22672:4 22639:7,13 22646:3 22595:13 22612:16 22699:24 22705:24 22682:5 22683:16 22672:4 22639:7,13 22646:3 22595:13 22612:16 22699:24 22705:24 22684:3 22699:16 submits 22722:21 22661:13 22663:2 22620:15,16,17 22613:15 22615:14 22719:20 22720:12 22700:24 22704:11 22723:19 22661:13 22663:2 22622:18 22627:13 22708:21 22738:19 22725:13 22726:19 submitted 22590:11,14 2266	ů –		•		22630:10 22632:15
22721:8 22722:722665:2 22697:622648:10 22731:14teamwork 22655:922646:11 22651:17subjected 22723:1122698:13 22710:1022716:1522585:1222652:8 22653:2222657:11,13,15subjects 22723:9sure 22585:12table 22632:1422658:17 22660:322658:17 22660:3submission 22618:1622586:24 22587:1,1022588:7 22595:622633:1422678:1422667:12 2671:13 22672:14submit 22604:822603:8 22608:9tackle 22630:2422678:1422671:13 22672:1422618:21,2522612:9 22613:522660:1322660:1322667:1 22671:3,1722673:2 22677:2522619:14,20,21,2422629:17 22638:20take 22581:15 22585:122667:1 22671:3,1722682:5 22683:1622672:422639:7,13 22646:322595:13 22612:1622699:24 22705:2422684:3 22699:16submits 22722:2122651:9 22660:1122613:15 22615:1422719:20 22720:1222700:24 22704:1122723:1922661:13 22663:222620:15,16,1722708:21 22738:1922725:13 22707:8submitted 22590:11,1422668:13 22673:422622:18 22627:1322708:21 22738:1922725:13 2276:1922590:18 22728:822674:3,9 22677:9,1222631:15 22638:1122738:2322730:7,20,23,25					
subjected 22723:11 22725:1322698:13 22710:10 22716:1522656:9 table 22632:1422652:8 22653:22 22657:11,13,15subjects 22723:9 submission 22618:16 submission 22682:7sure 22585:12 22586:24 22587:1,10table 22632:14 22633:14technical 22581:11 Technically 22587:14 22678:1422658:17 22660:3 22678:14submit 22604:8 22618:21,2522603:8 22608:9 22612:9 22613:5tackle 22630:24 22601:13 22660:1322667:1 22671:13 22672:14 22660:1322619:14,20,21,24 22672:422629:17 22638:20 22639:7,13 22646:3tacke 22585:12 22601:13 22612:1622671:19 22689:24 22699:24 22705:2422679:5,7 22681:23 22699:24 22705:24submits 22722:21 22723:1922651:9 22660:11 22661:13 22663:222613:15 22615:14 22620:15,16,1722719:20 22720:12 22708:21 22708:21 22706:17 22707:8 22706:17 22707:8submitted 22590:11,14 22590:18 22728:822668:13 22673:4 22674:3,9 22677:9,1222622:18 22627:13 22631:15 22638:1122708:21 22738:19 22738:2322725:13 22726:19 22730:7,20,23,25				teamwork 22655:9	22646:11 22651:17
22725:1322716:15Ttechnical 22581:1122657:11,13,15subjects 22723:9sure 22585:12table 22632:14Technically 22587:1422658:17 22660:3submission 22618:1622586:24 22587:1,1022633:14techniques 22657:422666:17 22667:10submit 22604:822603:8 22608:9tackle 22630:2422678:1422677:13 22677:2522618:21,2522612:9 22613:522660:1322667:1 22671:3,1722679:5,7 22681:2322619:14,20,21,2422629:17 22638:20take 22581:15 22585:122671:19 22689:2422682:5 22683:1622672:422639:7,13 22646:322595:13 22612:1622699:24 22705:2422684:3 22699:16submits 22722:2122651:9 22660:1122613:15 22615:1422719:20 22720:1222700:24 22704:1122723:1922661:13 22663:222620:15,16,17telling 22617:1122706:17 22707:8submitted 22590:11,1422668:13 22673:422622:18 22627:1322708:21 22738:1922725:13 22726:1922590:18 22728:822674:3,9 22677:9,1222631:15 22638:1122738:2322730:7,20,23,25					
subjects 22723:9sure 22585:12table 22632:14Technically 22587:1422658:17 22660:3submission 22618:1622586:24 22587:1,1022633:14techniques 22657:422666:17 22667:10submit 22604:822603:8 22608:9tackle 22630:2422678:1422677:13 22677:1422618:21,2522612:9 22613:522660:1322667:1 22671:3,1722679:5,7 22681:2322619:14,20,21,2422629:17 22638:20take 22581:15 22585:122671:19 22689:2422682:5 22683:1622672:422639:7,13 22646:322595:13 22612:1622699:24 22705:2422684:3 22699:16submits 22722:2122651:9 22660:1122613:15 22615:1422719:20 22720:1222700:24 22704:1122723:1922661:13 22663:222620:15,16,17telling 22617:1122706:17 22707:8submitted 22590:11,1422668:13 22673:422622:18 22627:1322708:21 22738:1922725:13 22726:1922590:18 22728:822674:3,9 22677:9,1222631:15 22638:1122738:2322730:7,20,23,25	ů –		T	technical 22581:11	
submission 22618:1622586:24 22587:1,1022633:14techniques 22657:422666:17 22667:10submissions 22682:722588:7 22595:6tackle 22630:2422678:1422671:13 22672:14submit 22604:822603:8 22608:9tactics 22655:1322667:1 22596:222677:2522618:21,2522612:9 22613:522600:1322667:1 22671:3,1722679:5,7 22681:2322619:14,20,21,2422629:17 22638:20take 22581:15 22585:122671:19 22689:2422682:5 22683:1622672:422639:7,13 22646:322595:13 22612:1622699:24 22705:2422684:3 22699:16submits 22722:2122651:9 22660:1122613:15 22615:1422719:20 22720:1222700:24 22704:1122723:1922661:13 22663:222620:15,16,17telling 22617:1122706:17 22707:8submitted 22590:11,1422668:13 22673:422622:18 22627:1322708:21 22738:1922725:13 22726:1922590:18 22728:822674:3,9 22677:9,1222631:15 22638:1122738:2322730:7,20,23,25			table 22632:14		
submissions 22682:722588:7 22595:6tackle 22630:2422678:1422671:13 22672:14submit 22604:822603:8 22608:9tactics 22655:1322673:2 22677:2522618:21,2522612:9 22613:522600:1322667:1 22671:3,1722679:5,7 22681:2322619:14,20,21,2422629:17 22638:20take 22581:15 22585:122671:19 22689:2422682:5 22683:1622672:422639:7,13 22646:322595:13 22612:1622699:24 22705:2422684:3 22699:16submits 22722:2122651:9 22660:1122613:15 22615:1422719:20 22720:1222700:24 22704:1122723:1922661:13 22663:222620:15,16,17telling 22617:1122706:17 22707:8submitted 22590:11,1422668:13 22673:422622:18 22627:1322708:21 22738:1922725:13 22726:1922590:18 22728:822674:3,9 22677:9,1222631:15 22638:1122738:2322730:7,20,23,25					22666:17 22667:10
submit 22604:822603:8 22608:9tactics 22655:13tell 22591:17 22596:222673:2 22677:2522618:21,2522612:9 22613:522600:1322667:1 22671:3,1722679:5,7 22681:2322619:14,20,21,2422629:17 22638:20take 22581:15 22585:122671:19 22689:2422682:5 22683:1622672:422639:7,13 22646:322595:13 22612:1622699:24 22705:2422684:3 22699:16submits 22722:2122651:9 22660:1122613:15 22615:1422719:20 22720:1222700:24 22704:1122723:1922661:13 22663:222620:15,16,17telling 22617:1122706:17 22707:8submitted 22590:11,1422668:13 22673:422622:18 22627:1322708:21 22738:1922725:13 22726:1922590:18 22728:822674:3,9 22677:9,1222631:15 22638:1122738:2322730:7,20,23,25					22671:13 22672:14
22618:21,2522612:9 22613:522660:1322667:1 22671:3,1722679:5,7 22681:2322619:14,20,21,2422629:17 22638:20take 22581:15 22585:122671:19 22689:2422682:5 22683:1622672:422639:7,13 22646:322595:13 22612:1622699:24 22705:2422684:3 22699:16submits 22722:2122651:9 22660:1122613:15 22615:1422719:20 22720:1222700:24 22704:1122723:1922661:13 22663:222620:15,16,17telling 22617:1122706:17 22707:8submitted 22590:11,1422668:13 22673:422622:18 22627:1322708:21 22738:1922725:13 22726:1922590:18 22728:822674:3,9 22677:9,1222631:15 22638:1122738:2322730:7,20,23,25					
22619:14,20,21,24 22672:422629:17 22638:20 22639:7,13 22646:3take 22581:15 22585:1 22595:13 22612:1622671:19 22689:24 22699:24 22705:2422682:5 22683:16 22699:24 22705:24submits 22722:21 22723:1922651:9 22660:11 22661:13 22663:222613:15 22615:14 22620:15,16,1722719:20 22720:12 telling 22617:1122700:24 22704:11 22706:17 22707:8submitted 22590:11,14 22590:18 22728:822668:13 22673:4 22674:3,9 22677:9,1222622:18 22627:13 22631:15 22638:1122708:21 22738:19 22738:2322725:13 22726:19 22730:7,20,23,25					
22672:422639:7,13 22646:322595:13 22612:1622699:24 22705:2422684:3 22699:16submits 22722:2122651:9 22660:1122613:15 22615:1422719:20 22720:1222700:24 22704:1122723:1922661:13 22663:222620:15,16,17telling 22617:1122706:17 22707:8submitted 22590:11,1422668:13 22673:422622:18 22627:1322708:21 22738:1922725:13 22726:1922590:18 22728:822674:3,9 22677:9,1222631:15 22638:1122738:2322730:7,20,23,25					-
submits22722:2122651:922660:1122613:1522615:1422719:2022720:1222700:2422704:1122723:1922661:1322663:222620:15,16,17telling22617:1122706:1722707:8submitted22590:11,1422668:1322673:422622:1822627:1322708:2122738:1922725:1322726:1922590:1822728:822674:3,922677:9,1222631:1522638:1122738:2322730:7,20,23,25					
22723:1922661:13 22663:222620:15,16,17telling 22617:1122706:17 22707:8submitted 22590:11,1422668:13 22673:422622:18 22627:1322708:21 22738:1922725:13 22726:1922590:18 22728:822674:3,9 22677:9,1222631:15 22638:1122738:2322730:7,20,23,25					
submitted22590:11,1422668:1322673:422622:1822627:1322708:2122738:1922725:1322726:1922590:1822728:822674:3,922677:9,1222631:1522638:1122738:2322730:7,20,23,25	In It Prese				
22590:18 22728:8 22674:3,9 22677:9,12 22631:15 22638:11 22738:23 22730:7,20,23,25		press ()			
Ph. Box all ball ball ball ball by Play					
	the most of the second states	Proceeding of the second secon			
			22040.3,3 22031.23	wing 22133.0 22137.11	22133.12 22134.22

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RealTime Transcriptions

				Page 18
22735:1 22737:7	22705:20 22706:17	22643:10 22686:1	22682:9,16,22	undergo 22683:21,24
thereof 22595:13	22708:20 22710:24	22693:8 22697:1,3	22683:5,6,9,14,19	undergone 22667:6
22622:6 22724:5	22716:24 22718:20	22712:8 22715:15,16	22684:11,13 22685:2	underlying 22694:6
22729:2	22719:23 22720:1	22715:20 22716:12	22685:12 22686:11	underpin 22599:19
there's 22587:5,15	22721:11 22724:15	22716:14,23	22686:21 22693:23	understand 22586:9
22593:24 22594:18	22735:12 22737:14	22717:21,25 22718:8	22694:17 22696:3	22587:11 22588:15
22597:4 22598:13	22737:17	22718:11,17,21	22697:6 22705:5	22589:3,10 22590:16
22616:10 22619:16	thinks 22656:2	22719:7,14 22726:12	22706:17	22597:4 22606:15
22630:8 22632:7	third 22656:12	22728:12,14,18,25	true 22606:6 22640:9	22607:8,11 22613:7
22638:21 22640:21	22657:18 22683:12	22729:1,1,8,9,16,23	22678:6 22708:25	22617:14 22627:3
22646:12 22652:16	thoroughly 22674:21	tomorrow 22633:5	22734:16,19 22735:5	22634:8 22639:8
22654:10 22657:14	thought 22607:24	22636:3	22735:6,21,25	22647:16 22652:15
22658:13 22673:17	22619:5 22627:19	Tonder 22731:20	22736:3	22652:17 22653:4
22673:21 22678:13	22629:21 22636:1	top 22616:13 22623:18	truth 22708:21	22661:18 22664:22
22679:4 22683:21	22638:1 22728:14	22666:19 22713:19	22738:20,23	22666:8 22668:15
22686:2 22708:16	22733:22 22734:12	topic 22600:19 22713.19	<i>truthful</i> 22734:19	22670:25 22671:8
22717:7 22723:10	22739:22	22636:12 22652:12	try 22687:11,13	22672:12 22673:14
22724:2,3 22725:5		22030.12 22032.12 22711:15,18	22691:6,11,16	22675:20 22678:17
	thoughts 22739:14			
22730:15,19	threat 22688:9,10	22713:12 22727:24	trying 22599:13	22681:2 22682:15,20
22733:20 22734:8	threats 22688:8	topics 22654:22	22605:3 22611:23	22685:11 22688:24
22735:19 22736:1	22689:19	22657:9	22629:18 22630:24	22691:10 22698:16
they'd 22685:22	three 22581:16,19	totally 22672:19	22639:2 22669:2	22700:6 22701:12
22714:19	22616:8 22636:16	track 22666:9	22672:1 22720:13	22702:4 22704:17
they're 22581:12	22638:3 22677:17	train 22665:12	Tuesday 22603:12	22706:23 22708:25
22620:3 22640:5	22683:9 22685:11	22669:24 22672:10	22631:20 22632:8,10	22715:1,19 22716:4
22646:22 22673:4	22696:11 22698:3,5	22712:11	22632:17,22 22633:1	22717:4,17 22720:16
22675:10 22676:14	22698:18 22708:16	trained 22603:17	22633:18 22635:15	22721:5,12 22727:16
22683:25 22686:10	thrust 22629:20	22657:22,25 22658:3	turn 22600:17 22616:6	22733:7 22735:24
22725:5	Thursday 22615:21	22660:10 22661:12	22622:24 22636:12	22736:22 22737:10
they've 22671:4	22616:1 22621:18	22661:22 22662:2,7	22652:12 22657:16	22737:13 22739:20
22677:19	22632:15 22633:14	22662:24,25 22663:3	22658:6 22660:2	22739:21
thing 22588:2 22614:14	22638:24 22739:13	22663:23 22664:7,8	22679:24 22701:10	understanding 22585:4
22614:15 22664:15	22740:1	22665:1,2 22666:15	22705:3 22730:8,16	22602:7 22614:11
22685:17 22719:19	time 22585:14,22	22669:5,9,15 22671:5	22730:18	22646:2,25 22647:2
22719:22 22720:7	22596:2 22603:23	22671:10,18 22676:4	turned 22610:23	22655:6 22682:12
things 22588:2 22589:6	22605:1,4,9,13,18,25	22676:8,10,14	22722:17 22730:3	22708:14 22709:4
22589:9 22595:5	22612:23 22613:19	22678:5 22683:14,19	twice 22694:20	22710:21 22732:15
22599:8,10 22610:6	22615:2,16,18	22701:21 22712:2,7,7	two 22581:16,19	understandings
22610:23 22639:4	22616:1 22619:21	22713:5	22587:13 22597:2	22660:5
22658:1,15 22678:23	22621:7 22633:8,22	trainers 22711:25	22598:5 22609:2	understood 22580:5
22681:16 22686:6,13	22634:21,24 22652:6	trainings 22588:1	22622:9 22623:19,20	22602:2,6,13
22687:12 22700:5	22660:12 22667:2	trains 22688:20	22624:7,9,22,23	undertake 22665:8
22701:4 22705:13	22668:4,4 22677:16	transcript 22618:4	22645:6 22646:6	underway 22591:25
22725:6 22732:16,17	22683:17 22687:14	22621:5 22622:4,24	22654:1 22658:1	undoubtedly 22660:8
think 22581:18	22687:14 22691:14	22625:8,25 22641:11	22668:20,21 22675:5	unfit 22596:25
22582:19 22585:13	22709:8 22712:14	transferring 22588:22	22680:7 22683:11,16	22691:20 22705:23
22585:21 22588:13	22713:24 22714:2,4,9	transformation	22688:6,11 22698:8	22706:4 22707:9,20
22590:8 22591:8,9	22714:13 22715:18	22584:14	22703:13 22710:3	22708:18
22592:11 22593:3	22720:14 22724:11	treatment 22723:23	22703.13 22710.3	unfortunate 22639:9
22598:18 22603:11	22726:21 22728:24	22736:17	type 22608:4 22649:15	unfortunately
22610:14 22611:19	22731:2,4 22738:23	trends 22589:2	22656:10 22696:8	22583:18 22673:12
22620:15 22625:21	times 22676:9,11	tribunal 22706:3	22716:16 22722:22	unhelpful 22702:4
22626:13,17	22678:22 22696:5	tried 22599:11	22723:22 22736:16	uniform 22655:6
22627:15 22628:16	22706:13	22620:25 22670:19	typed 22593:7,15	unit 22582:24 22583:1
22630:15 22633:5	tired 22739:19,21	22670:22 22701:6	22732:5	22583:3,10,13,14
22635:18 22639:24	titled 22636:14	22070:22 22701:0	types 22689:19	22585:5,10,15,14 22584:14,16,19,24
	today 22613:19	trouble 22651:8	22696:11	
22643:6,8,13 22644:17,25 22646:5	22712:21 22714:18	22730:24	22070.11	22586:18 22587:17 22588:25 22665:7
-			U	
22647:9 22648:4	22714:21 22727:16	troubling 22644:24		22672:2 22679:12
22654:18 22659:25	Tokota 22594:19	TRT 22596:9,18	UK 22660:17	22691:2 22693:13
22662:17 22669:14	told 22580:6 22601:19	22597:16,17	ultimate 22614:20	22702:2
22677:25 22678:14	22601:20 22602:9	22650:22,23 22651:6	ultimately 22632:18	units 22582:12
22681:9,10,19	22603:2 22608:12	22679:25 22680:6,7	22645:13	22583:16,24
22682:19 22683:20	22612:20 22613:18	22680:11,12,13,16,21	unanswered 22701:3	22585:22 22591:4
22687:1 22691:3	22613:20 22615:14	22680:22,24 22681:2	uncertainties 22607:11	22610:10 22622:18
22692:12,18 22701:5	22615:21 22633:3	22681:5,12,15,18,21	undated 22593:13	22656:22 22657:21
ARCHIVE FO	R JUSTICE	1	1	<u>I</u>

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RealTime Transcriptions

Marikana Commission of Inquiry

				Page 19
22671:25 22679:14	22640:12	West 22675:1 22707:25	22678:12,25	wouldn't 22642:11,12
22682:4	visible 22731:8	we'd 22699:18	22684:10 22685:18	22670:1 22674:2,9,25
unknown 22710:5	visual 22618:21	22704:12 22716:6	22718:18,19,22,25	22675:14 22676:18
22728:19 22729:12	voice 22618:25	we'll 22582:5 22592:13	White's 22600:11	22682:13,16
unlawful 22643:19,20		22593:25 22594:1	22628:4,20 22629:20	22699:13 22710:22
22736:13 22738:6	W	22597:6 22598:18	22631:23 22636:13	22735:22
unplanned 22656:17	wait 22581:13,19	22600:16 22619:20	22660:2 22661:23	wounded 22683:3
untrained 22739:16	22687:23	22619:21,24	22683:1 22684:7,8	22728:21 22734:1
updated 22667:7	waiting 22581:21	22620:17 22621:13	22685:1 22686:9	wounds 22684:14
up-to 22660:5	22729:5 22732:13	22641:23 22642:18	White's 22607:19	wrap 22620:16
urgent 22628:3	walked 22729:2,12	22643:17 22644:3	who'd 22704:20	write 22648:22
22656:21 22684:24	wall 22624:7	22649:4 22682:6	22707:4	writing 22612:12,25
urgently 22656:18	want 22580:13	22702:20 22705:1	who's 22644:6 22671:3	22627:1,12,18,20
22671:17 use 22607:2 22610:8	22582:18 22592:2,6	22724:17 22731:5,9	22671:17 22699:14	22695:15 written 22585:17
22621:1 22629:6,15	22594:8 22599:24 22604:16 22619:10	22733:1,14 22739:25 we're 22581:21	22723:11 22738:6 wide 22656:6	
22630:3,14 22654:16	22648:2,3,13	22592:23 22640:23	widely 22714:12	22609:17,22 22610:17,25
22654:23,23,24,25	22649:24,25	22650:14 22674:13	widen 22656:16	22612:14 22615:8,14
22655:7 22656:6	22649.24,25 22657:23 22663:22	22683:4 22686:8,19	wider 22627:13,19	22615:22,25
22672:8 22687:14	22665:4 22671:23	22686:22 22702:16	Wing 22718:18,19	22613:18 22619:2,13
22696:11 22698:13	22678:4 22682:8	22707:24 22710:10	wire 22610:10	22619:15,25
22698:14 22699:2	22688:4 22717:13	22716:16 22723:15	wish 22633:19	22625:18,21 22626:2
22704:1 22710:19,19	22724:7 22727:24	22726:11,20	22640:17 22712:12	22626:6,8,11,15,17
22720:23	22732:9 22739:13	22732:13	22739:12	22626:19,22 22627:2
useful 22641:5 22660:8	wanted 22580:6,7	we've 22589:12	witness 22580:7	22627:6,8,12,12,14
usually 22657:22	22588:14 22630:10	22592:4,7 22593:14	22599:1 22609:1	22627:14,20 22631:4
22709:18	22707:14 22712:23	22595:9,11 22597:2,6	22617:20 22639:18	22661:7
	wants 22623:20	22598:5,10,14	22652:2 22678:1,24	wrong 22596:24
V	22647:25 22702:7	22599:18 22600:6	22695:18 22696:15	22634:20 22647:16
value 22584:17	22733:14	22619:12 22620:8,10	22699:14,17,24	22666:24 22706:21
Van 22623:13,18	warning 22729:6	22621:4 22624:22	22702:6 22705:24	22720:2 22721:7
22624:19,23	wasn't 22615:25	22625:16 22626:5	22707:25 22720:2	22725:5 22737:17
22731:20	22627:1,2,18 22633:7	22648:15 22649:17	22737:3,5,6,15	wrongdoing 22735:14
various 22580:22	22639:19 22674:13	22650:3,4 22651:18	witnesses 22633:7	wrote 22681:11
22586:4 22639:4	22674:14 22738:24	22657:10 22658:12	22717:9 22721:1	T
22643:15 22666:9	wasn't 22608:14	22680:11 22683:7	witness's 22736:24	<u> </u>
22670:12 22674:16	22610:20 22611:1,20	22687:13 22705:9	22737:6	year 22592:25
22695:19 22696:6	22614:13	22720:13 22734:3	wonder 22731:1	22651:21 22668:11
verdict 22707:19	waste 22596:2	we'll 22696:18,20	won't 22598:17,19	22668:14,20 22669:4
22708:16	way 22582:20 22588:3	we're 22689:23	22652:6 22737:16	22669:7,23 22670:8
verified 22712:6 Vermaak 22681:11,20	22591:25 22609:8	we've 22696:15 what's 22594:13,16	Woolwich 22684:22 word 22625:22	22670:11 22671:12 22671:20 22678:18
22681:20 22718:21	22617:8,18 22636:2 22664:7 22666:16	22674:1 22723:19	22626:14,17	22678:22 22692:1
22719:3,7,9,10,14	22678:23 22684:8	22737:7	22627:13	22712:3 22729:13
version 22606:1	22688:19 22689:4	whilst 22586:1 22604:5	words 22613:13	yearly 22660:22
22615:17,19,20	22695:9 22697:16,18	whistle 22721:9	22627:14 22647:4	years 22675:5 22676:9
22722:14 22723:3	22697:21,24	22723:6,7	22702:10 22723:7	22680:8 22705:23
versions 22592:16	22698:12 22707:15	whistleblower	22726:6 22730:21	22706:5 22732:15
versus 22678:22	22708:5 22717:1	22720:17,18,22	22731:8 22732:9	you'd 22616:17
video 22637:3 22638:6	22720:2 22727:2,22	22721:2,13,23	work 22587:25 22591:1	22677:1 22735:16
22638:9,14 22639:8	22734:10	22724:22 22726:1,2,4	22631:11 22634:14	22739:2
22640:19 22642:20	weaknesses 22580:21	22726:9,17	22634:25 22662:4	you'll 22582:1 22624:6
videoing 22637:20	22580:22	whistleblowers	22666:12 22710:22	22625:13 22635:1
videos 22637:15	weapons 22638:23	22723:23 22736:21	22718:9 22727:7	22645:20 22650:11
22640:9	22640:15 22643:20	whistle-blowing	worked 22588:3	22657:25 22678:19
videotaped 22639:21	22644:7 22647:20	22722:24	workers 22671:22	22711:15 22719:17
22639:22	22698:18 22728:23	white 22600:13	working 22604:22	22719:21 22724:3
view 22628:14,17,17	Wednesday 22633:10	22607:16 22609:9	22630:6 22639:1	22734:16,22
22629:25 22630:12	22633:17,23	22612:11,11,13,17,25	22662:6,14 22718:18	you're 22580:3
22630:16 22646:22	week 22653:1 22664:11	22613:13,16 22627:1	22718:19 22727:9,20	22583:5,10 22589:4
views 22737:15,16	welcome 22708:3	22627:18,18 22628:1	workplace 22672:3,8	22620:21 22630:20
violence 22608:10	went 22729:25	22629:2,11 22631:1,3	22676:23 22677:5	22640:3 22642:9
	2	00 CO L		
22630:6 22644:6	weren't 22635:5	22634:4 22635:2	works 22721:17	22648:9 22649:20
22647:17,19	weren't 22635:5 22647:21 22677:14	22636:16 22637:11	worry 22673:5	22659:3 22660:10
22647:17,19 violent 22586:17	weren't 22635:5 22647:21 22677:14 weren't 22605:21	22636:16 22637:11 22638:3 22639:24	worry 22673:5 worse 22635:2	22659:3 22660:10 22661:13 22664:2
22647:17,19	weren't 22635:5 22647:21 22677:14	22636:16 22637:11	worry 22673:5	22659:3 22660:10

Tel: 011 021 6457 Fax: 011 440 9119

RealTime Transcriptions

22876-20 22876-20 22876-20 22865-20 22865-20 22865-20 22871-20 22876-20 22865-20 22865-20 22973-12 22731-12 22731-12 22731-12 22731-12 22731-12 22731-12 22731-12 22731-12 22731-12 22735-12 22731-12 22					Page 20	
2268/11 222098/22 22222113 22222113 22222113 22222113 22222113 22222113 22222113 222221313 222221313 222221313 222221313 2222221313 2222221313 2222221313 2222221313 2222221313 22222221313 22222221313 22222221313 22222221313 22222221313 222263113	22676:20 22677:12	110 22650:24	22652:10	2017 22706:5.6		
22698.20 22710:7 224 262:210.3.20 124 2263:21.1.1.20 22661:1.2.1.20 2257.22 227.1.2.1.20 227.1.2.1.20 227.1.2.1.20 227.1.2.1.20 227.1.2.1.20 227.1.2.1.20 227.1.2.1.20 227.1.2.1.20 227.1.2.1.20 227.1.2.1.20 227.1.2.1.20 227.1.2.1.20 227.1.2.1.20 227.1.2.1.20 227.1.2.1.20 227.1.2.20 227.2.20 227.2.20 227.2.20						
2272.12 2277.5 2263.7.11 2266.1.21 21993 2265.52 4.2 226.66.13 2272.46.18.277.55.80 1.267 2266.013 1.227 2266.01 2.259.112 2259.112						
2272418 22725 22727 22725 22727 <						
22253:2236:212-61.1 12:27280:13 22598:17 22598:17 22598:17 22598:17 22598:17 22598:17 22598:17 22598:17 22598:17 22599:19 22708:15 2250:12 2256:12 2250:12 2256:12 2250:12 2256:12 2250:12 2256:12 2271:13:13:16 2271:13:13:16 2271:13:13:16 2271:13:13:16 2271:13:13:16 2271:13:13:16 2271:13:13:16 2271:13:13:16 2271:13:13:16 2271:13:13:16 2271:13:13:16 2271:13:13:16 2271:13:13:16 2271:13:13:16 2271:13:13:16 2271:13:13:16 2271:13:13:16 2271:13:13:16 2271:13:13:16						
2273:113 2273:26:23 12:47 2263:22:26:11 22:26:23:22:26:11 22:26:23:22:26:11 22:26:23:22:26:11 22069:23:20:26:10 13:20:24:12:25 22:25:02:12:20:21:23:22:22:20:19 22:25:02:12:20:22:20:19 22:25:02:12:20:22:20:19 22:25:02:12:20:22:20:19 22:25:02:12:20:22:20:19 22:25:02:12:20:22:20:19 22:25:02:12:20:22:20:19 22:25:02:12:20:22:20:19 22:25:02:12:20:22:20:19 22:25:02:12:20:20:20:19 22:25:02:12:20:20:19 22:25:02:12:20:20:19 22:25:02:12:20:20:19 22:25:02:12:20:20:19 22:25:02:12:20:20:19 22:25:02:10:10 22:25:02:10:10 22:25:02:10:10 22:25:02:10:10 22:25:02:10:10 22:25:02:10:10 22:25:02:10:10 22:25:02:10:10 22:25:02:10:10 22:27:01:10 <td></td> <td></td> <td>1990 22585:5,14</td> <td>-</td> <td></td>			1990 22585:5,14	-		
you you <th td="" th<="" you<=""><td>,</td><td></td><td></td><td></td><td>4.4.1 22636:16</td></th>	<td>,</td> <td></td> <td></td> <td></td> <td>4.4.1 22636:16</td>	,				4.4.1 22636:16
22026):3 22067:32 42046 13 22041:32.53 22724:5 22021:12.02 52022:1 23 22599:10 22705:8 43 22708:1 14 32268:1 22069:3 22067:3 22064 130 22712:6 22023:16 22637:16 22023:16 22637:16 222070:17 22707:19 222060:18 2266:12 22060:18 22637:16 22060:18 2269:10 22606:12 22060:18 2260:12 22060:18 2260:12 22060:18 2260:12 22060:18 2260:12 22060:18 2260:12 22060:18 2260:12 22060:18 2260:12 22060:18 2260:12 22060:18 2260:12 22060:18 2260:13 2270:16:0 2270:					42 22680:9	
22269:23 226406 13:30 2263+1:12 22707:19 22708:15 22707:19 22708:15 22625:17:21:23 22707:19 22708:15 22625:17:21:23 2270:2270:22708:15 22625:17:21:23 2270:2270:22708:12 22636:12:22633:12 22637:15:2263:12:22633:12 22696:34 22708:12 22696:34 22708:12 22696:34 22708:12 22696:34 22708:12 22707:19 22708:15 32707:10 22037:12:22708:12 22666:12 22696:34 22708:12 22707:19 22708:11 22037:12:22708:12 22696:34 22708:12 22707:19 22708:12 22707:19 22708:12 22707:19 22708:12 22707:19 22708:12 22037:12 <t< td=""><td></td><td></td><td></td><td></td><td>42% 22650:23 22651:6</td></t<>					42% 22650:23 22651:6	
22467:3 236271:5 226271:5 226271:5 226271:5 226271:5 226271:5 226271:5 226271:5 226271:5 226271:5 226271:5 226271:5 22671:5 22671:5 22671:5 22671:5 22671:5 22671:5 22671:5 22671:5 22671:5 22671:5 22671:5 22671:5 22671:5 22671:5 2271:5			/		43 22728:5	
226457: 2262:3 130 22712:6 22623:16 22623:12 2263:16 226237:16 2259:10 2259:10 2269:12 2260:12 2270:14 2260:15 22623:16 2260:15 22623:16 2260:12 2263:16 2270:16:12 2263:12 2270:16:12 2263:12 2260:12 2263:12 2260:12 2263:12 2260:12 2263:12 2260:12 2263:12 2260:12 2263:12 2260:12 2263:12 2260:12 2263:12 2260:12 2263:12 2260:12 2263:12 2260:12 2263:12 2260:12 2263:12 2260:12 2260:12 2260:12 2260:12 2260:12 2260:12 2260:12 2260:12 2260:12 2260:12 2260:12 2260:12 2260:12 2260:12 2260:12 2260:12 2260:12 2260:12 2260:12 2260:12 2260:12 2260:12 2260:12 2260:12 2260:12 2260:12 2260:12 2260:12 2260:12 2260:12 2260:12 2260:12					45 22636:13	
22677:4,5 22678:22 135 22650:16 22640:12 22531:12 22640:12 22531:12 22640:12 22531:12 2265:12 2265:12 2265:12 2265:12 2265:12 2265:12 2265:12 2265:12 2265:12 2265:12 2265:12 2265:12 2265:12 2265:12 2265:12 2265:12 2265:12 2265:13 262:259:10 270:15 2270:16 2270:16 2270:16 2270:17:16 2270:17:16 226:12:17:13 261:270:07:16 2270:16 2270:11:13 2271:13:13 261:270:07:16 2270:16:12 226:11:15:18 2271:13:13 2271:13:13 2271:13:13 2271:13:13 226:11:15:18 226:12:13:12 226:11	22645:7 22652:3	130 22712:6	22623:16 22624:2,25	23rd 22706:24 22709:8		
22677:4,5 22678:22 135 22650:16 22640:12 2263:12 24th 2264:3 25th 22674:14 25t	22670:25 22671:9	134 22621:5 22622:25	22630:6 22637:16	24 22599:19	5	
22698:20 22700:2 14 2258:22,22 22686:2,15,25 250 22716:0 2203:14 3203:170 22701:22 22711:20 22666:12 22696:3,4 22703:12 2200:12 2210:12 2203:14 3203:170 22717:20 22711:30 14:00 22687:17 2273:12 2270:15 2260:17 226	22677:4,5 22678:22	135 22650:16	22640:12 22653:12	24th 22694:3		
22701;12:22703;12:22703;12 22656;12 22687;12:2693;25 2622595;10:2705;15 5.1725637;10 22717;16:2273;13:13 24609;2687;17 22635;13;23:2266;4 22714;14:22730;13;2069;15 22706;15 22707;19 22607;22:2260;116;24 52 2277;13;13;16;16 55 2277;13;13;16;16 55 22757;25;15;10;16;22;25;15;20;20;16 55 22680;17;22;25;15;20;20;10 55 22680;17;22;25;15;20;20;20;14 56 22680;17;22;25;15;20;20;10 56 22680;17;22;26;16;16 52 22667;10;22;26;14 52 22667;10;22;26;14 2200;22;26;16;16 52 2267;16;20;20;14 2200;20;26;16;12;20;20;14 2200;20;26;16;20;22;26;14 2206;25;22;26;16;16 220;25;20;20;10 16 22580;17;22;26;20;20;20;12 226;27;25;20;20;20;20;20;20;24;24 220;20;12;20;20;20;20;20;24;24 220;20;20;20;20;20;20;24;24 220;20;20;20;20;20;20;20;20;24;24 220;20;20;20;20;20;20;24;24 220;20;20;20;20;20;20;20;20;20;20;20;20;	22698:20 22700:2	14 22582:22.22	22686:2.15.25	25th 22674:14		
22707:17 22717:30 22666:3 22707:30 22707:30 22707:30 22707:30 22707:30 22707:30 22707:31 32707:32 32707:32						
$\begin{array}{c c c c c c c c c c c c c c c c c c c $						
22727:16 22738:13 14:00 22687:17 22731:21 2017:16 2017:17 2017:16 2017:17						
$ \begin{array}{ c c c c c c c c c c c c c c c c c c c$		-			,	
$\begin{array}{ c c c c c c c c c c c c c c c c c c c$						
$ \begin{array}{ c c c c c c c c c c c c c c c c c c c$	1 up 22397:25					
Jack Solution Jack Sol	7					
zero 22680:8 14235 2262:25 20 22595:13,14,15,18 22615:23 22618:19 56 22600:1,7 22683:9 ZUKISWA 22580:4 22604:9 22609:8 22700:9 27th 22592:24 6 6 22600:22 22648:10 19 226147,18,19 22705:9 273 22658:9 273 22658:9 22738:14 0 6 22620:22 6 622605:19 22624:4 0 6 22620:22 6 6.10:20:2718:12 2002 22580:5 175 22658:10 7.3 22658:9 22728:4.10:6 6.41:0A 22631:19 22623:22 22628:21 2263:21 2263:12					55 22673:2,5,15,20,24	
$\begin{array}{c c c c c c c c c c c c c c c c c c c $,	
22731:14 15 22586:12,14 20(e) 22705:9,10,11 27.2 22688.9 27.3 22659.1 27.3 22659.1 27.3 22659.1 27.3 22659.1 27.3 22659.1 27.3 22659.1 27.3 22659.1 27.3 22669.1 27.3 226	ZUKISWA 22580:4				6	
2273:1:4 15 22586:12,14 20(e) 22705:9,10,11 27.2 22658:9 22788:4,10 09:9 22580:2 15:00 22718:12 2000 22568:6 22595:11 27.4 22658:10 23.8 22607:16 09:9 22500:22 15:20 22730:22 2000 22588:6 22595:11 27.5 22658:10 23.8 22607:16 1 16 22580:12 22663:1 4 22585:3 22585:10,13 22586:5 3 25260:20 6.5.7 22589:14 22603:20 22636:1 220260:4 22656:21 22673:10 22586:10,13 22586:5,1 22600:7.8 22604:25 22609:7.1 322500:10 322580:20 2563:20 2260:1.3 322500:1.0 322604:25 22609:7.1 322604:25 22609:7.1 322604:25 22609:7.1 322606:1.8 66 22657:2.1.2.3 22605:12 22604:3 22600:10 22605:12 22603:1.6 22605:12 22603:1.6 22605:21 2261:1.14 22602:1.2.2.2 68 22607:1.6 68 22607:1.6 68 22607:1.6 68 22607:1.6 68 22607:1.6 68 22609:2.1.2 7 22608:1.2 22601:1.2 0:2619:1.2 22609:2.2 7 22609:2.2 7 22609:2.2 7 22609:2.2 7 22609:2.2 7 22609:2.2 7 22609:2.2 7 22609:1.1 <td>22620:22 22648:10</td> <td>149 22614:7,18,19</td> <td>22705:9</td> <td>27% 22650:25 22651:6</td> <td>6 22605.19 22624.4</td>	22620:22 22648:10	149 22614:7,18,19	22705:9	27% 22650:25 22651:6	6 22605.19 22624.4	
0 15th 22594:7 20/20 22686:19 27.3 22688:9 6AM 22621:19 09:09 22580:2 15:00 22718:12 200 22650:512 27.4 22658:10 22659:34 09:49 22603:22 15:40 22731:12 22659:34 22661:22 27.4 22658:10 23.8 22607:16 09:49 22603:22 15:40 22731:12 22663:31 22663:11 27.5 22658:10 5.8 22607:16 1 16 2280:12 92588:20 22588:10 22683:14 22858:51 22604:22 22607:16 5.7 22628:21 22600:22 22609:24 22609:22 22609:10 22604:22 22609:24 22609:22 22609:24 22609:21 22607:16 65.7 22607:16 65.2 22609:10 65.7 22608:12 22609:16 62 2655:21,23 65.7 22509:14 22609:21 22609:13 22609:13 22609:13 22609:13 22609:13 22609:13 22609:14 22709:14 22609:12 22609:14 22709:14 22609:12 22609:13 22609:13 22609:13 22609:13 22609:13 22609:13 22609:13 22609:14 22709:14 22629:21,22 22609:14 22609:13 22609:13 22609:14 22609:13 22609:14 22609:12	22731:14	15 22586:12,14	20(e) 22705:9,10,11	27.2 22658:9		
$\begin{array}{ c c c c c c c c c c c c c c c c c c c$		15th 22594:7	20/20 22686:19	27.3 22658:9	-	
09:09:22580:2 15:20:22730:22 2000:22588:6 22595:11 27.5 22658:10 6.3.8 2:2607:16 09:49:20:2500:10 15:40:22731:12 22659:3,4 22661:22 22633:12 22633:12 1 15248:22641:8;19 2000:22588:6 22595:11 27.6 22658:10 6.3.8 2:2607:16 1 162:2580:19 22588:10 22683:14 22585:3 22683:14 22585:3 22633:12 1 22637:16 22641:12 22636:21 22673:10 22588:10 22585:3,11 22606:17 22606:7.8 63:22607:16 22604:25 22605:10 22636:11 22650:2 22583:14 22585:3 22618:12 2261:1 64:2607:16 65:22650:6,18 22713:32 2718:24 22605:10 22585:1,8,20 22580:14 22601:12 2601:1 62:2655:2,1,23 22604:12 22614:9,12 22605:10 22587:15 22589:14 22602:12 02622:1,2 66:22652:1 62:2655:2,1,23 22614:20,12 22614:9,12 22603:14 22594:7 2263:14 22608:15 22621:12 22623:16 22625:1 62:2653:24 226:23:227:25 22614:20,12 22614:13 22629:14,2225 2009:22695:24 22623:16 2263:3; 7 7 7 22624:16 22625:12 22611:20:22614:9,12	0	15:00 22718:12		27.4 22658:10		
09:29 22590:10 15:40 22731:12 22659:3.4 22661:22 76 22658:11 64.10A 22631:3 09:49 22603:22 15247 22641:8.19 22683:14 22582:3 22583:14 22582:3 22583:14 22582:3 22630:20 64.10A 22631:3 1 16 22580:19 22588:20 22588:10 22589:14 22630:20 3 5.4 22603:24 22603:22 22604:15 22509:12 22650:5 2004 22585:8,10,14,24 22604:25 22605:9,13 3 62.32600:12 66.22650:12 2267:13 22706:14 22636:21 22673:10 22588:10 22616:22 22619:1 22618:22 22619:1 64.10A 22631:3 62.32600:13 22707:14 22630:52 12667:1 22586:5,7 22589:14 22610:9 2261:12.0 22618:22 22619:1 62 22655:1,23 67 22592:24 22605:12,19 22605:10 22605:12,22621:12 22607:16 22625:1 22607:16 22625:1 22607:16 22625:1 22703:16 22623:16,22625:1 22611:20 22611:3 22614:12,22,23 22607:12,224 2261:19 22607:15 22625:2 22703:16 2263:15,10,11,213 2273:14 22626:3,2247:25 22611:20 2261:13 22607:12 22651:13 22607:12 22651:3 22673:19,22260:12 <th< td=""><td>09:09 22580·2</td><td></td><td></td><td></td><td></td></th<>	09:09 22580·2					
09:49 22603:22 15247 22641:23 22683:11 202 22583:10 22582:21 65.4 22631:22 22631:4 22603:22 22631:4 22603:22 22631:4 22603:22 22633:4 226363:4 226363:4 226363:4 226363:4 226363:4 226363:4 226363:4 226363:4 226363:4 226363:4 226363:4 226363:4 226363:1 22603:12 22603:12 22603:12 22603:12 22603:12 22603:12 22603:12 22603:12 22603:12 22603:14 22603:12 22603:12 22603:12 22603:12 22603:12 22603:12 22603:12 22603:12 22603:12 22603:12 22623:12 22623:12 22631:16 22623:12 22631:16 22623:12 22631:16 22633:12 22631:16 22633:12 22631:16 22631:16 22633:12 22631:16 22633:12 22631:16 22633:12 22633:12 22633:12 22633:13 22633:12 22633:13 22633:12 22633:13 22633:12 22633:13 22633:12 22633:12 22633:12						
1 15248 22641:8,19 2002 22583:14 22585:3 3 3 3 22630:20 65.7 22680:14 22630:20 65.7 22680:20,21 22600:19 22589:14 22609:12 2260:59,13 22699:12 2260:19 22699:12 2260:19 22699:12 2260:19 22609:22 22601:3 22609:22 22601:4 22609:22 22601:4 22606:22 83:20 22606:21 22673:10 22589:14 22611:22 22601:5 64 22607:16 64 22607:16 64 22607:16 64 22607:16 64 22607:16 64 22607:16 64 22607:16 64 22607:16 66 22655:21,23 22609:12 22611:20 22609:12 22611:12 22609:12 22611:12 22609:12 22611:12 22609:13 22627:12,23 64 22607:16 66 22655:21,23 62 22655:21,23 67 22592:24 68 22730:18 22730:14 68 22730:18 22730:24 69 22733:24 69 22733:24 69 22733:24 69 22733:24 69 22733:24 69 22733:24 69 22733:24 69 22733:24 69 22733:24 69 2263:24 22733:24 72606:14 22606:32 22629:35,34,11,18 22606:32 2269:35,34,11,18 22606:32 2269:35,34,11,18 22606:32 2269:35,34,11,18 22606:32 2269:35,34,11,12 22633:14,91,10 22660:4 72606:4 72720628:22,22 726264:16 22653:24 227073						
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22683:4 22686:4 22694:15 22701:16 22618:22 22619:10 22632:12,14 22628:3 2004 22585:8,10,14,24 22605:17 22606:7,8 22600:13 64 22607:16 1st 22694:2 22695:4 22705:14 22655:21,214 22628:3 2006 22583:20 22616:11,19 64 22607:16 65 22650:6,18 1st 22694:2 22695:4 22604:25 22605:10 22583:20 22588:10,222 22616:11,19 66 22657:1,23 67 22592:24 1st 22694:2 22605:10 22603:23 22605:10 22587:5 22589:14 22602:12,23 67 22592:24 68 22730:18 22733:24 22605:12,19 22606:7 22601:2 22611:14 2007 22673:18,2,1,23,24 22622:12,23 69 22733:24 22616:120 22614:13 22605:22 42261:18 22703:14 22622:3,23,2260:3,3,11,18 7 22616:120 22614:13 22603:24 22631:1 2009 22695:24 22633:15,6,9,11,1,21,3 7 22616:3 22616:1,6 22633:3 22631:5,6,9,11,1,21,3 7 7.22624:4,24 2273:14 2263:21,2,21,22 22673:9,19 22679:25 2010 22675:3,2 22032:16,22633:4,2,27 70 22650:23 2261:3 2261:1,2 22673:9,19 22679:25 22631:4,2,1,2,2,2 22631:1,4,2,16 7 2261:2 2262:1,2 226						
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1st 22694:2 22695:4 22656:21 22673:10 22584:10 22585:3,11 22616:11,19 2602265:2,1,23 1:30 22603:22 22604:3 16th 22594:7 22603:14 22585:18,20 22586:1 22618:22 22619:1 22618:22 22619:1 22622:12,23 22605:12,19 22606:7 22605:16 22611:14 2007 22673:18,21,2,24 22623:16 22625:1 22628:3,8,11,18 69 22733:24 22619:2 22611:13 22619:2 2261:12 2009 22695:24 22628:3,8,11,18 722624:16 22653:24 226115:3 2261:1,22 22631:14,21,22,25 2009 22695:24 22630:1,5,10,0,11,13 7,319 22606:4 22611:7,24 2261:1,22 22631:4,21,22,25 2009 22695:24 22631:5,6,9,11,12,13 74 22623:22 22611:7,24 2263:1,22 2267:3,6 22631:1,7,24 22631:1,7,24 22631:1,7,24 70 2263:22 22604:14 161 22680:11 22770:1,5 22694:3 22694:2,21 2263:203:24 71 2263:22 10th 22639:13 160 22655:22,23 2011 22582:22 22587:4 22631:17,24 72632:3,4,4 722628:22,25 10th 22639:13 160 22655:22,23 2012 22580:19 22590:4 22636:20 2263:2,4 71 22628:4,2,2 10:22620:16 165 22650:22 22673:18 22675:6 34 22580:23 2258:1,2 2269:1					64 22607:16	
Ist 22694:2 22695:4 22656:1 22673:10 22584:10 22585:3,11 22616:11,19 66 22655:21,23 22604:25 22605:10 22603:23 22605:10 22585:18,20 22580:1 22618:22 22619:1 22618:22 22619:1 68 22730:18 2273:24 22604:25 22605:10 22603:23 22605:10 22603:23 22605:10 22587:5 22589:14 22622:12,23 69 22733:24 22604:25 22601:13 22622:11,22 2266:3 2266:7.25 22626:3 2266:7.25 22626:3 2266:7.25 7 22614:18,22,23 22624:4,24 22631:2 2009 22695:24 22626:3 2266:7.25 7 7 22615:3 2261:1,6 2263:14,21,22,25 2008 22588:7 22683:13 22626:3 2266:3 2266:7.25 7 7 72624:16 22653:24 22615:3 22616:1,6 2263:61,6 22651:4 22703:16 22631:5,6,9,11,12,13 7 7.27PW 22623:22 2263:14,9,16 22700:15 22701:15 22695:5,8 22696:1,1 22634:9,12,14,15,16 7 7.22628:12,25 22600:18 22651:6 16 22650:22 22594:7 22653:5 2268:3:22728:13,17 2268:23 22728:13,17 7 22628:22,25 22600:16 16 22650:22 22570:5,6 22673:10 2279:24 2263:20 7 2268:22,25 100:09 226		22636:21 22650:5			65 22650:6.18	
22713:23 22713:23 22713:23 22713:23 22713:23 22713:23 22713:23 22713:23 22713:23 22713:23 22713:23 22713:23 22713:23 22623:14 22735:18,20 22585:18,20 22585:1 22621:20 2262:1,2 22621:20 2262:1,2 22612:0 2262:1,2 22612:0 2262:1,2 2262:1,2 22605:10 22587:5 22580:1,4 21,23,24 22623:16 22625:1 22623:1,4 21,22,25 2006:9,12 22611:13 22623:14,21,22,25 2009 22695:24 22630:1,5,10,11,13 22613:2,24 22661:19 2009 22695:24 22630:1,5,10,11,13 22630:1,5,10,11,13 22630:1,5,10,11,1,1 22630:1,5,10,2,24 22630:1,5,10,11,1,2 22630:1,5,10,11,1,2 22630:1,5,10,11,1,2 22630:1,5,10,11,1,2 22630:1,5,10,11,1,2 22630:1,5,10,11,1,2 22630:1,5,10,11,1,2 22630:1,5,10,11,1,2 22630:1,5,10,11,1,2 22630:1,5,10,2,24 22630:1,5,10,11,1,2 22630:1,5,10,2,24 22630:1,5,10,2,24 22630:1,5,10,2,24 22630:1,5,10,2,1,2,1 22630:1,5,10,2,1,2,1 22630:1,5,10,11,1,2 22630:1,5,10,2,24 22630:1,5,10,2,1,2,1 22630:1,5,10,2,1,1,1,1,1,1,1,1,1,1,1,1,1,1,1,1,1,	1st 22694:2 22695:4		22584:10 22585:3,11	22616:11,19		
1:30 22603:22 22604:3 16th 225947 22603:14 22586:8,17,22 22622:12,23 22622:12,23 22622:12,23 22622:12,23 22622:12,23 22622:12,23 22622:12,23 22622:12,23 22622:12,23 22622:12,23 22622:12,23 22622:12,23 22622:12,23 22622:12,23 22622:12,23 22622:12,23 22622:12,23 22622:12,23 22622:12,223 22622:12,223 22622:12,223 22623:16,22625:1 22623:16,22625:1 22623:16,22625:1 22633:15,20,211,12,13 22623:16,22663:24 22630:15,10,11,13 22630:15,10,11,13 22630:15,10,11,13 22631:5,69,11,12,13 22630:15,10,11,13 22631:17,24 22631:17,24 22631:17,24 22631:17,24 22631:12,2263:14 7.2263:12 7.2263:22 2261:12,2262:13 22691:12,22701:15 22694:2,21 22634:25,22635:3,4 22634:25,22635:3,4 71,2263:22 71,2263:22 72,2263:12 74,22621:15,22628:4,20 102,22620:18,22651:6 16,22660:11 22707:15,22,22 22673:16,22653:5 22632:3,24 22632:3,24 74,22621:15,22628:4,20 74,22621:15,2263:4,20 74,22621:15,2263:4,20 102,22650:16 16,22660:11 22710:15,22,22,25 22632:3,24 22632:3,22,25 71,2263:2,2,25 22628:1.2 74	22713:23 22718:24	22735:8,15 22736:7	22585:18,20 22586:5			
22604:25 22605:10 22603:23 22605:10 22587:5 22589:14 22622:12,23 69 22733:24 22606:29,12 22611:13 22605:16 22611:14 2007 22673:18,21,23,24 226263: 22622:15 226263: 22625:1 7 22611:20 22614:9,13 22631:4,21,22,25 2008 22588:7 22683:13 226263: 32627:25 7 726624:16 22653:24 22611:30 2261:1,22 22673:9,19 22679:25 2009 22695:24 22631:5,6,9,11,12,13 22631:5,6,9,11,12,13 22611:30 22621:1,22 22673:9,19 22679:25 22681:6 22632:3 22631:4,9,16 22700:15 22701:15 22696:2 22631:4,9,16 22631:4,9,16 22701:5 22701:15 22696:2 22634:9,12,14,5,16 22632:20,22633:3,4 22632:20,22633:3,4 22640:14 161 22680:11 22594:7 22653:5 22682:3 22728:13,17 22632:20 22639:22 22632:20,22639:22 22629:11 22628:22,25 10:9 2261:6 18 22660:22 22707:3,18 22673:10 2272729:24 30 22641:7 22650:25 22628:12 2269:11 10:9 2263:16 18 22663:21 22699:10 22700:10 22705:15,21 22706:1 30 22641:7 22650:25 22628:12 22683:2 22707:3,31,9,20,21 22630:23 2261:6 22707:3,21 81 22660:24 81 226648:3	1:30 22603:22 22604:3	16th 22594:7 22603:14	22586:8,17,22	22621:20 22622:1,2		
22605:12,19 22605:16 22601:14 2007 22673:18,21,23,24 22623:16 22625:17 22606:9,12 22611:13 22623:14,21,22,25 2008 22588:7 22628:3,8,11,18 22623:15,5,13,22,24 22614:18,22,23 22636:8 22641:7 22636:8 2263:15,5,0,9,11,12,13 2263:15,6,9,11,12,13 22615:3 22619:21 22673:9,19 22673:9,19 22679:25 22681:6,2063:3 22620:18 22622:14,22 22673:9,19 22679:25 22681:6,2063:3 2263:15,6,9,11,12,13 22620:18 22651:6 22670:15 22695:5,8 22696:2 2263:20 70 2263:22 22640:14 161 22680:11 22695:5,8 22696:2 2263:20 71 2263:263:24 22640:14 161 22680:11 22695:5,8 22696:2 2263:20 70 2263:22 22640:14 161 22680:12 22670:5,6 2264:12 2263:20 71 2263:22 22620:12 22597:11 22670:5,6 2264:17 2263:22 2262:22 2263:22 10:9 2263:21 22699:10 22700:10	22604:25 22605:10	22603:23 22605:10	22587:5 22589:14			
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22611:20 22614:9,13 22614:18,22,23 22623:14,21,22,25 22624:4,24 22631:2 2008 22588:7 22683:13 2009 22695:24 22628:3,8,11,18 22629:3,5,13,22,24 7 22624:16 22653:24 22739:11 22615:3 22616:1,6 22636:8 22641:7 22703:16 22630:1,5,6,9,11,12,13 7.3.19 2260:4 22739:11 22623:6,16 22624:25 226373:9,19 22679:25 2011 22582:22 22587:4 22631:17,24 70 22630:23 71 22631:2 22631:4,9,16 22700:15 22701:15 22695:5,8 22696:1,1 22634:9,12,14,15,16 74 22621:2 70 22663:24 10 22620:18 22654:1 22711:7 2279:17 22696:2 22634:25 22635:3,4 77 22628:22,25 70 2268:22,25 22640:14 160 22655:22,23 2012 22580:19 22590:4 22636:20 2263:22 77 22628:22,25 22629:11 10% 22651:6 165 22650:22 22673:18 22675:6 3.4 22580:23 22728:13,17 72 2268:22,25 2269:11 10:9 22615:16 22713:13,15,19 22698:12 22694:3 30 22641:7 22650:25 22703:12,14 22706:18 30th 22703:16 325 22650:6,9 314 22663:21 22699:10 22700:10 22705:15,21 22706:11 32% 22650:6,9 314 22664:9 8/10/2017 22705:23 10:5 22651:7 181 22612:4 22614:9,11 22707:3,8,19,20,21	-				7	
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22621:3 22622:11,22 22673:9,19 22679:25 2011 22582:22 22587:4 22631:17,24 70 22650:23 22631:4,9,16 22700:15 22701:15 22695:5,8 22696:1,1 22634:9,12,14,15,16 74 22621:15 22628:4,20 10 22620:18 22654:1 22711:7 22729:17 22696:2 22636:20 22639:22 70 22650:22 22640:14 161 22680:11 22594:7 22653:5 22682:3 22728:13,17 22692:22 22692:31 10.5 22651:4 17 22587:14,22 22670:5,6 22673:10 22729:24 30 22641:7 22650:25 22692:11 10:9 22615:16 22713:13,15,19 22698:12 22694:3 30 22641:7 22650:25 30 22641:7 22650:25 22683:12 22694:3 10:9 22615:16 22713:13,15,19 22693:12 22706:1 30 22641:7 22650:25 30 22641:7 22650:25 2683:2 10:34 22620:20 18 122580:1 22597:11 22706:6,9,25 22707:1 32 % 22651:6 31 22684:9 8 122706:5,6,6 1020197 22623:20 18.1 22612:4 22614:9,11 22709:3,8,19,20,21 32 % 22650:14 32 % 22650:16 33 22676:9 81 3 22684:9 8/10/2017 22705:23 83 22676:9 1020197 226251:2 18 22625:25 2013 22641:8 22652:11 350 22685:24 36 227728:4 33 22676:9 81 3 22	· · · · · · · · · · · · · · · · · · ·					
22623:6,16 22624:25 22681:6 22683:3 22588:9 22694:2,21 22632:10,21 22633:4 71 22031:2 22631:4,9,16 22700:15 22701:15 22695:5,8 22696:1,1 22632:10,21 22633:4 71 22631:2 10 22620:18 22654:1 22711:7 22729:17 22696:2 22634:9,12,14,15,16 24 22621:15 22628:4,20 22640:14 161 22680:11 22597:7 22653:5 22670:5,6 22673:10 22709:24 22609:10 10.5 22651:4 17 22587:14,22 22673:18 22675:6 3.4 22580:225252 2269:11 10:9 22615:16 22713:13,15,19 22683:12 22694:3 30 22641:7 22650:25 22683:2 10:34 2260:20 18 22580:1 22597:11 22703:12,14 22705:8 22728:4,11,12 22683:2 10:20196 22623:20 181 22612:4 22614:9,111 22700:13 22713:23 30% 22650:14 31.3 22684:9 1020197 22623:20 181 22612:4 22614:9,111 22707:3,8,19,20,21 32.5 22650:6,9 33.4% 22669:18 11 22607:1 22651:2 183 22676:8 22729:18 348 22669:18 33.9% 22650:14 122607:1 22651:2 183 22676:8 22672:13,17 36 22728:4 37.22683:2 11:14 22643:24 189 22680:9 22673:12 39 22728:5 22729:5						
22631:4,9,16 22700:15 22701:15 22695:5,8 22696:1,1 22634:9,12,14,15,16 74 22621:15 22628:4,20 10 22620:18 22654:1 22711:7 22729:17 22696:2 22634:25 22635:3,4 77 22628:22,25 22640:14 161 22680:11 22594:7 22653:5 22682:3 22728:13,17 226282:3 22728:13,17 10% 22651:6 165 22650:22 22670:5,6 22673:10 22729:24 34 22580:23 22582:10 10.5 22651:4 17 22587:14,22 22683:12 22694:3 30 22641:7 22650:25 22683:2 10:59 22615:16 22713:13,15,19 22683:12 22694:3 30 22641:7 22650:25 22683:2 10:54 22620:20 18 22580:1 22597:11 22705:15,21 22706:1 30th 22703:16 30th 22703:16 1020196 22623:20 18th 22729:4 22707:3,8,19,20,21 32% 22650:6,9 33% 22650:14 106 22600:2.4 22627:15,15 2213 22614:8,22614:9,11 22707:3,8,19,20,21 33% 22650:14 83 22676:9 11 22607:1 22651:2 18 22612:4 22614:9,11 22672:13,17 36 22728:4 9 9 22588:7 22652:25 2013 22641:8 22652:11 36 22728:4 38 22651:3 9 9 11.6 22652:17 183 22676:8 22673:12 <	,					
10 22620:18 22654:1 22711:7 22729:17 22696:2 22634:25 22635:3,4 77 22628:22,25 10th 22639:13 160 22655:22,23 2012 22580:19 22590:4 22636:20 22639:22 226282:3 22728:13,17 10% 22651:6 165 22650:22 22670:5,6 22673:10 22729:24 30 22641:7 22650:25 22683:2 22683:2 10:5 22651:4 17 22587:14,22 22673:18 22675:6 3.4 22580:23 22582:10 30 22641:7 22650:25 22683:2 10:54 2260:20 18 22580:1 22597:11 22703:12,14 22705:8 22728:4,11,12 30th 22703:16 30th 22703:16 1020196 22623:20 18th 22729:4 22707:3,8,19,20,21 32% 22650:6,9 33% 22650:14 81.3 22684:9 106 22660:2,4 22627:15,15 22729:18 348 22669:18 81.3 22676:9 81/0/2017 22705:23 11:14 22643:24 189 22680:9 22673:12 36 22728:4 39 22728:5 22729:5 9 11:48 22648:8 19 22597:13 22642:9 2014 22580:1 22592:19 39 22728:5 22729:5 9 22739:13 22740:1						
10th 22639:13 22640:14160 22655:22,23 161 22680:112012 22580:19 22590:4 22594:7 22653:522636:20 22639:22 22682:3 22728:13,17 2279:2422636:20 22639:22 22682:3 22728:13,1722629:1110% 22651:6165 22650:2222670:5,6 22673:10 22713:13,15,1922670:5,6 22673:10 22683:12 22694:322729:24822607:1 22657:17 22683:2 22580:23 22582:1010:09 22615:1622713:13,15,1922683:12 22694:3 22699:10 22700:1030 22641:7 22650:25 22705:15,21 22706:130 22641:7 22650:25 22728:4,11,128 8 22607:1 22657:17 22683:210:20 196 22623:2018 th 22709:10 22623:2022706:6,9,25 22707:11 22709:1022706:6,9,25 22707:11 22705:15,21 22706:130th 22703:16 30th 22703:168th 22706:5,6,6 22707:3,211020 197 22623:2018.1 22648:23 22627:15,1522707:3,8,19,20,21 22709:1832.5 22650:6,9 33% 22650:14 350 22685:248th 22706:5,23 85 22676:9106 22660:2,422627:15,15 182 22652:252013 22641:8 22652:11 22672:13,17350 22685:24 36 22728:49 9 22588:7 22653:24 22739:13 22740:111:14 22643:24189 22680:9 19 22597:13 22642:92014 22580:1 22592:19 2014 22580:1 22592:1939 22728:5 22729:5					74 22621:15 22628:4,20	
10th 22639:13 22640:14 160 22655:22,23 161 22680:11 2012 22580:19 22590:4 22594:7 22653:5 22636:20 22639:22 22682:3 22728:13,17 22629:11 10% 22651:6 165 22650:22 22670:5,6 22673:10 22729:24 3.4 22580:23 22582:10 8 22607:1 22657:17 10:09 22615:16 22713:13,15,19 22683:12 22694:3 30 22641:7 22650:25 22683:2 22683:2 10:54 22632:1 22699:10 22700:10 22705:15,21 22706:1 30th 22703:16 22707:3,21 1020196 22623:20 18th 22729:4 22707:3,8,19,20,21 32% 22650:6,9 8th 22706:5,6,6 1020197 22623:20 18.1 22648:23 22707:3,8,19,20,21 32% 22650:14 33% 22650:14 106 22660:2,4 22627:15,15 22729:18 348 22669:18 83 22676:9 11.6 22652:17 183 22676:8 22672:13,17 36 22728:4 9 11:14 22643:24 189 22680:9 22673:12 38 22651:3 9 11:14 22648:8 19 22597:13 22642:9 2014 22580:1 22592:19 39 22728:5 22729:5 9 22739:13 22740:1						
22640:14 161 22680:11 22594:7 22653:5 22682:3 22728:13,17 10% 22651:6 165 22650:22 22670:5,6 22673:10 22729:24 10.5 22651:4 17 22587:14,22 22673:18 22675:6 3.4 22580:23 22582:10 8 22607:1 22657:17 10:09 22615:16 17 22587:14,22 22633:12 22694:3 30 22641:7 22650:25 22728:4,11,12 10:54 22632:1 22699:10 22700:10 22705:15,21 22706:1 30th 22703:16 32% 22651:6 1020196 22623:20 18th 22729:4 22706:6,9,25 22707:1 32% 22650:6,9 33% 22650:14 1020197 22623:20 18th 22729:4 22707:3,8,19,20,21 32% 22650:6,9 33% 22650:14 122607:1 22651:2 182 22625:25 2013 22641:8 22652:11 350 22685:24 38 22676:8 11 22607:1 22651:2 183 22676:8 22672:13,17 36 22728:4 39 22728:5 22729:5 9 11:14 22643:24 189 22680:9 22673:12 2014 22580:1 22592:19 39 22728:5 22729:5 39 22728:5 22729:5		· · · · · · · · · · · · · · · · · · ·				
10.5 22651:417 22587:14,2222673:18 22675:63.4 22580:23 22582:1010:09 22615:1622713:13,15,1922683:12 22694:330 22641:7 22650:2522683:210:34 22620:2018 22580:1 22597:1122699:10 22700:1022705:15,21 22706:130 22641:7 22650:2522683:210:54 22632:122699:10 22700:1022705:15,21 22706:130th 22703:1632% 22651:68th 22706:5,6,61020196 22623:2018th 22729:422707:3,8,19,20,2132% 22651:630th 22703:1681.3 22684:922624:21181 22648:2322707:3,8,19,20,2132.5 22650:6,931.3 22684:98/10/2017 22705:2322624:21181 22612:4 22614:9,1122710:13 22713:2333% 22650:1433% 22650:14106 22660:2,422627:15,1522729:18348 22669:18332 22676:911.6 22652:17183 22676:822672:13,1736 22728:4911.6 22643:24189 22680:922673:1238 22651:339 22728:5 22729:511:48 22648:819 22597:13 22642:92014 22580:1 22592:1939 22728:5 22729:539 22728:5 22729:5						
10.5 22651:417 22587:14,2222673:18 22675:63.4 22580:23 22582:1010:09 22615:1622713:13,15,1922683:12 22694:330 22641:7 22650:2510:34 22620:2018 22580:1 22597:1122703:12,14 22705:822728:4,11,1210:54 22632:122699:10 22700:1022705:15,21 22706:130th 22703:161020196 22623:2018th 22729:422706:6,9,25 22707:130th 22703:161020197 22623:2018.1 22648:2322707:3,8,19,20,2132.5 22650:6,922624:2118.1 22612:4 22614:9,1122710:13 22713:2333% 22650:14106 22660:2,422627:15,1522729:18348 22669:1811 22607:1 22651:2183 22676:822672:13,1736 22728:411.6 22652:17183 22676:822677:13 22641:8 22652:1111:4 22643:24189 22680:92013 22641:8 22592:1939 22728:5 22729:511:48 22648:819 22597:13 22642:92014 22580:1 22592:1939 22728:5 22729:5					8	
10:09 22615:16 22713:13,15,19 22683:12 22694:3 30 22641:7 22650:25 22683:2 10:34 22620:20 18 22580:1 22597:11 22693:12 22694:3 22703:12,14 22705:8 22728:4,11,12 30th 22703:16 32707:3,21 10:54 2263:20 18th 22729:4 22705:15,21 22706:1 30th 22703:16 32% 22651:6 32707:3,21 8th 22707:3,21 1020196 22623:20 18th 22729:4 22707:3,8,19,20,21 32% 22650:6,9 32.5 22650:6,9 8th 322684:9 22624:21 181 22612:4 22614:9,11 22710:13 22713:23 33% 22650:14 81.3 22684:9 106 22660:2,4 22627:15,15 22729:18 348 22669:18 332 22676:9 83 22676:9 11.6 22652:17 183 22676:8 22672:13,17 36 22728:4 9 9 22588:7 22653:24 9 11:14 22643:24 189 22680:9 2014 22580:1 22592:19 39 22728:5 22729:5 39 22728:5 22729:5 22739:13 22740:1	10.5 22651:4		22673:18 22675:6	3.4 22580:23 22582:10		
10:34 22620:20 18 22580:1 22597:11 22703:12,14 22705:8 22728:4,11,12 8th 22706:5,6,6 10:54 22632:1 22699:10 22700:10 22705:15,21 22706:1 30th 22703:16 32% 22651:6 32707:3,21 1020196 22623:20 18th 22729:4 22706:6,9,25 22707:1 32% 22650:6,9 32.5 22650:6,9 8th 22707:3,21 22624:21 181 22612:4 22614:9,11 22707:3,8,19,20,21 32% 22650:6,9 33% 22650:14 81.3 22684:9 106 22660:2,4 22627:15,15 22729:18 348 22669:18 348 22669:18 33 22676:9 11.6 22652:17 183 22676:8 22672:13,17 36 22728:4 9 9 22588:7 22653:24 11:14 22643:24 189 22680:9 22673:12 38 22651:3 39 22728:5 22729:5 9 22588:7 22653:24 11:48 22648:8 19 22597:13 22642:9 2014 22580:1 22592:19 39 22728:5 22729:5 9 22739:13 22740:1	10:09 22615:16	22713:13,15,19	22683:12 22694:3	30 22641:7 22650:25		
10:54 22632:122699:10 22700:1022705:15,21 22706:130th 22703:1622707:3,0,01020196 22623:2018th 22729:422705:15,21 22707:132% 22651:622707:3,211020197 22623:2018.1 22648:2322707:3,8,19,20,2132.5 22650:6,932.5 22650:6,922624:21181 22612:4 22614:9,1122710:13 22713:2333% 22650:1433% 22650:14106 22660:2,422627:15,1522729:18348 22669:1833% 22650:1411 22607:1 22651:2182 22625:252013 22641:8 22652:11350 22685:24911.6 22652:17183 22676:822672:13,1736 22728:4911:14 22643:24189 22680:922673:1238 22651:339 22728:5 22729:511:48 22648:819 22597:13 22642:92014 22580:1 22592:1939 22728:5 22729:52739:13 22740:1	10:34 22620:20	18 22580:1 22597:11	22703:12,14 22705:8	22728:4,11,12		
1020196 22623:2018th 22729:422706:6,9,25 22707:132% 22651:68.1.3 22684:91020197 22623:2018.1 22648:2322707:3,8,19,20,2132.5 22650:6,932.5 22650:6,922624:21181 22612:4 22614:9,1122710:13 22713:2333% 22650:1432.26260:2,4106 22660:2,422627:15,1522729:18348 22669:1811 22607:1 22651:2183 22676:822672:13,1736 22728:4911:4 22643:24189 22680:922673:1238 22651:339 22728:5 22729:511:48 22648:819 22597:13 22642:92014 22580:1 22592:1939 22728:5 22729:52739:13 22740:1						
102019722623:20 22624:2118.1 22612:4 22627:15,1522707:3,8,19,20,21 22710:13 22713:2332.5 22650:6,9 33% 22650:14 348 348 22669:188.1.3 22684:9106 22660:2,422627:15,15 22627:15,1522707:3,8,19,20,21 22710:13 22713:2332.5 22650:6,9 33% 22650:14 348 350 22685:2432.5 22650:6,9 33% 22650:14 36 22729:1832.5 22650:6,9 33% 22650:14 36 22729:1832.5 22650:14 36 22625:2532.5 22650:14 36 22729:1832.5 22650:14 36 22728:432.5 22650:21 22728:432.5 22650:224 22728:432.5 22650:224 22728:532.5 22650:224 22728:532.5 22650:14 22673:1232.5 22650:14 22653:24 22728:432.5 22650:14 22653:24 22739:13 22739:13 22740:132.5 22630:932.5 22650:14 22650:14 22673:1232.5 22650:14 22651:332.5 22650:14 22650:1232.5 22650:14 22650:14 22673:1232.5 22650:14 22651:332.5 22650:14 22650:14 22653:24 22739:13 22740:132.5 22630:932.5 22650:14 22650:1232.5 22650:14 22650:1232.5 22650:14 22650:1232.5 22650:14 22650:1232.5 22650:14 22650:14 22650:1232.5 22650:14 22650:1232.5 22650:14 22650:14 22650:1432.5 22650:1232.5 22650:14 22650:14 22650:1232.5 22650:14 22650:14 22650:1432.5 22650:14 22650:14 22670:1332.5 22650:14 22670:1332.5 22650:14 22650:14 22670:1332.5 22650:14 22650:14 22670:1332.5 22650:14 22670:14 <t< td=""><td></td><td></td><td></td><td></td><td>,</td></t<>					,	
22624:21 181 22612:4 22614:9,11 22710:13 22713:23 33% 22650:14 8710/2017 22703:23 106 22660:2,4 22627:15,15 22729:18 348 22669:18 348 22669:18 11 22607:1 22651:2 182 22625:25 2013 22641:8 22652:11 350 22685:24 9 11.6 22652:17 183 22676:8 22672:13,17 36 22728:4 9 9 11:14 22643:24 189 22680:9 2014 22580:1 22592:19 39 22728:5 22729:5 9 22588:7 22653:24 11:48 22648:8 19 22597:13 22642:9 2014 22580:1 22592:19 39 22728:5 22729:5 9 22739:13 22740:1						
106 22660:2,422627:15,1522729:18348 22669:1811 22607:1 22651:2182 22625:252013 22641:8 22652:11350 22685:2411.6 22652:17183 22676:822672:13,1736 22728:411:14 22643:24189 22680:922673:1238 22651:311:48 22648:819 22597:13 22642:92014 22580:1 22592:1939 22728:5 22729:5	/ /			-		
11 22607:1 22651:2182 22625:252013 22641:8 22652:11350 22685:24911.6 22652:17183 22676:822672:13,1736 22728:4911:14 22643:24189 22680:922673:1238 22651:3911:48 22648:819 22597:13 22642:92014 22580:1 22592:1939 22728:5 22729:52739:13 22740:1					03 22070:9	
11.6 22652:17183 22676:822672:13,1736 22728:411:14 22643:24189 22680:922673:1238 22651:311:48 22648:819 22597:13 22642:92014 22580:1 22592:1939 22728:5 22729:5						
11:14 22643:24 189 22680:9 22673:12 38 22651:3 22739:13 22740:1 11:48 22648:8 19 22597:13 22642:9 2014 22580:1 22592:19 39 22728:5 22729:5 2739:13 22740:1		press ()				
11:48 22648:8 19 22597:13 22642:9 2014 22580:1 22592:19 39 22728:5 22729:5						
		PLX V-T-DAY LOUP LA			22739:13 22740:1	
ARCHIVE FOR JUSTICE			2014 22380:1 22392:19	37 22128:3 22129:3	1	

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Page	21

