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TRANSCRIPTION OF THE

COMMISSION OF INQUIRY

MARIKANA

BEFORE TRIBUNAL

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

HELD ON

DAY 64 14 MARCH 2013 PAGES 6753 TO 6854

HELD AT

CIVIC CENTRE, RUSTENBURG, NORTH WEST PROVINCE



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Page 6753

1 [PROCEEDINGS ON 14 MARCH 2013]
 2 [09:33] CHAIRPERSON: The Commission resumes.
 3 Yes, Mr Semenya?
 4 MR SEMENYA SC: Yes, thank you, Chair,
 5 Commissioners. I beg leave to call General Phiyega.
 6 CHAIRPERSON: General, would you please
 7 stand? Are you prepared to take the oath, or do you wish
 8 to affirm?
 9 GENERAL PHIYEGA: Yes.
 10 CHAIRPERSON: Will you take the oath, or
 11 affirm?
 12 GENERAL PHIYEGA: Yes.
 13 CHAIRPERSON: Which? Which do you want
 14 to do? Do you want to swear or do you want to affirm?
 15 GENERAL PHIYEGA: I can swear.
 16 CHAIRPERSON: Swear. Will you swear the
 17 evidence you'll give before this Commission will be the
 18 truth, the whole truth, and nothing but the truth? Please
 19 raise your right hand and say, "I swear, so help me God."
 20 MANGWASHI VICTORIA PHIYEGA: I swear, so
 21 help me God.
 22 CHAIRPERSON: Yes, you may be seated.
 23 GENERAL PHIYEGA: Thank you.
 24 MR MPOFU: Sorry, Chairperson, sorry,
 25 there is the – I know we finished late yesterday. There's

Page 6754

1 a matter that I had said I was going to raise between the
 2 two witnesses.
 3 CHAIRPERSON: - raise it now or can you
 4 raise it later?
 5 MR MPOFU: I'll prefer to raise it now,
 6 Chairperson.
 7 CHAIRPERSON: What is it?
 8 MR MPOFU: It's the matter that I
 9 mentioned yesterday of confirming the Carte Blanche issue.
 10 CHAIRPERSON: Oh, yes.
 11 MR MPOFU: Yes, thank you, Chairperson.
 12 Chairperson, it's quite a quick matter. The Chairperson
 13 will remember that a week or so ago there was a statement
 14 which was read, a public statement which was made at the
 15 Commission by my learned friend Mr Mathibedi for the South
 16 African Police Services regarding the Carte Blanche
 17 article, or rather –
 18 CHAIRPERSON: Article, it was a
 19 programme.
 20 MR MPOFU: Programme, correct, yes, about
 21 two Sundays ago, which dealt with the alleged torture of
 22 potential witnesses to the Commission. In the SAPS
 23 statement it was - one of the factual issues that was put,
 24 was that since November last year, which was round about
 25 the time that we had complained about the torture, no

Page 6755

1 further arrests had been made in relation to matters
 2 concerning the Commission. We have now been instructed
 3 that that statement was factually incorrect. As it
 4 happens, today –
 5 CHAIRPERSON: Did you raise that matter
 6 with your learned friend before you raised it here?
 7 MR MPOFU: I have, yes, of course.
 8 CHAIRPERSON: I see.
 9 MR MPOFU: Yes, thank you, Chairperson,
 10 and we've even given them some documentation to
 11 substantiate, ja. There are four persons who incidentally
 12 are appearing now at Rustenburg Magistrate Court. One of
 13 my attorneys is attending to that appearance. They were
 14 arrested on the 10th of January 2013 and they were only
 15 released on bail of 1 000 each on the 30th of January, some
 16 20 days later. They were arrested in connection with the
 17 events of the 13th, the events that happened on the 13th of
 18 August, but finally, and more significantly, Chairperson,
 19 each one of them made a short statement in support of their
 20 bail application and two of them alleged, the one says, "I
 21 was severely assaulted by four members of the police." The
 22 other one says, "I was extremely and severely assaulted by
 23 the police officials at the time of my arrest," and about
 24 three of them also say that, the one says, "Furthermore, we
 25 are part of the people who have to testify and give

Page 6756

1 evidence before the Commission." The one says that. The
 2 other one says that the events took place on the 13th and
 3 therefore are covered by the Commission, and so on. That's
 4 the pattern of, not all of them, I think three of them
 5 specifically mention the Commission to statements made to
 6 the police, and we therefore, obviously the implications of
 7 what was said in the Carte Blanche programme about
 8 potential scaring off of people from participating in the
 9 Commission, we'd like the Commission just to address that
 10 issue, only at that level, obviously not at the level of –
 11 CHAIRPERSON: Mr Semenya, I take it
 12 you'll be able to deal with this at some later stage. I
 13 don't think it's necessary that you deal with it
 14 immediately.
 15 MR SEMENYA SC: We elect to deal with
 16 that much later than now, Chairperson, if you permit us.
 17 CHAIRPERSON: Yes. Assurances were given
 18 by your learned friend when he addressed us last week on
 19 the topic of the programme, and I take it those assurances
 20 still stand, that people wouldn't be arrested, people
 21 wouldn't be tortured, and so on.
 22 MR SEMENYA SC: We'll give a
 23 comprehensive response –
 24 CHAIRPERSON: No, you've given those
 25 assurances before. I say they still stand and you will

<p style="text-align: right;">Page 6757</p> <p>1 deal with the matter comprehensively in due course.</p> <p>2 MR SEMENYA SC: We'll deal with the</p> <p>3 matter comprehensively in due course, Chair.</p> <p>4 CHAIRPERSON: Yes, thank you. Mr</p> <p>5 Semenya.</p> <p>6 EXAMINATION BY MR SEMENYA SC: Thank you,</p> <p>7 Chair. General, good morning.</p> <p>8 GENERAL PHIYEGA: Morning.</p> <p>9 MR SEMENYA SC: General, can we deal with</p> <p>10 and try to sketch the legal environment relevant to</p> <p>11 policing in this country?</p> <p>12 CHAIRPERSON: Mr Semenya, before you</p> <p>13 proceed with that, we have been given a copy of a</p> <p>14 statement. I take it you're going to hand it in and I take</p> <p>15 it the witness is going to confirm the contents are</p> <p>16 correct, so perhaps we can get that out of the way first</p> <p>17 before we – because the matters you're going to deal with,</p> <p>18 I take it are covered in the statement, so –</p> <p>19 MR SEMENYA SC: We'll deal with that at</p> <p>20 the relevant stage, actually.</p> <p>21 CHAIRPERSON: Yes.</p> <p>22 MR SEMENYA SC: General, section 207 of</p> <p>23 the Constitution, subsection 1 thereof, give the power to</p> <p>24 the President as head of the National Executive to appoint</p> <p>25 a man or a woman as the National Commissioner of Police,</p>	<p style="text-align: right;">Page 6759</p> <p>1 graduate diploma in Business Administration & Management at</p> <p>2 the University of Wales, which I obtained in 1996. I also</p> <p>3 studied an Executive Management Development programme at</p> <p>4 the University of Wharton in Pennsylvania, which I obtained</p> <p>5 in 1997. I studied another Executive Development programme</p> <p>6 at the National University of Singapore, which I obtained</p> <p>7 in 1998.</p> <p>8 MR SEMENYA SC: And can you tell us what</p> <p>9 in your career were areas of management that you're</p> <p>10 responsible for?</p> <p>11 GENERAL PHIYEGA: I will start in areas</p> <p>12 where I started being in the executive area. My</p> <p>13 occupational practice straddles both the private, public,</p> <p>14 and private consultancy space. I was a director for</p> <p>15 Development at the National Council for Child Welfare,</p> <p>16 where I was responsible for over 240 child welfare</p> <p>17 societies. I was the head and CEO of the Transnet CSI</p> <p>18 Foundation, which I established, for a period of four</p> <p>19 years.</p> <p>20 MR SEMENYA SC: And what would CSI stand</p> <p>21 for, General?</p> <p>22 GENERAL PHIYEGA: Corporate Social</p> <p>23 Investment, it was looking at the whole sustainability and</p> <p>24 corporate social responsibility programme of the company.</p> <p>25 I then moved on to be a group executive at the National</p>
<p style="text-align: right;">Page 6758</p> <p>1 with two distinct responsibilities, one, to control, and</p> <p>2 secondly, to manage the police service. You're aware of</p> <p>3 that, are you?</p> <p>4 GENERAL PHIYEGA: Yes, I do.</p> <p>5 MR SEMENYA SC: You were appointed the</p> <p>6 National Commissioner of Police by the President, weren't</p> <p>7 you?</p> <p>8 GENERAL PHIYEGA: Yes.</p> <p>9 MR SEMENYA SC: Regarding matters of</p> <p>10 management, can you give us an idea of what tertiary</p> <p>11 education you have?</p> <p>12 GENERAL PHIYEGA: I studied at the</p> <p>13 University of the North, where I obtained a BA Social</p> <p>14 Science degree in 1981.</p> <p>15 MR HANABE: Can you repeat again?</p> <p>16 GENERAL PHIYEGA: BA Social Work.</p> <p>17 MR HANABE: Social Work, in 1986?</p> <p>18 GENERAL PHIYEGA: 1981.</p> <p>19 MR HANABE: 1981, sorry, National</p> <p>20 Commissioner.</p> <p>21 GENERAL PHIYEGA: I continued to study BA</p> <p>22 Honours degree in Social Sciences at UNISA, which I</p> <p>23 completed in 1986. I then pursued my studies and obtained</p> <p>24 a Masters degree in Social Sciences at RAU University, now</p> <p>25 the University of Johannesburg, in 1992. I studied a post-</p>	<p style="text-align: right;">Page 6760</p> <p>1 Ports Authority, where I was responsible for all the seven</p> <p>2 ports of this country. All the port managers were</p> <p>3 reporting to me. It is an organisation that employed over</p> <p>4 14 000 people and it was the major revenue driver, driving</p> <p>5 billions into Transnet. I proceeded to be appointed a</p> <p>6 group executive at Transnet Holding, where I was</p> <p>7 responsible for numerous portfolios. They included inter</p> <p>8 alia the legal services, the strategy division, the company</p> <p>9 secretary, the procurement division, the new business</p> <p>10 development division, as well as the communications</p> <p>11 division. At that time I served on the, both the executive</p> <p>12 committee and observing member of the board of Transnet. I</p> <p>13 then proceeded to be a group executive at ABSA Limited,</p> <p>14 where I was responsible for their corporate services</p> <p>15 function. Post that I was then appointed by the President</p> <p>16 to chair the State-owned Enterprises Commission that looked</p> <p>17 into reviewing all State-owned enterprises of South Africa.</p> <p>18 Over and above those responsibilities, I've had other extra</p> <p>19 occupational responsibilities which I think may also add on</p> <p>20 to my management abilities and capabilities. I served as a</p> <p>21 commissioner on the Satchwell Commission that reviewed the</p> <p>22 Road Accident Fund. I served on the Bid, South African Bid</p> <p>23 Committee that saw the World Cup coming into this country.</p> <p>24 I was the deputy chairperson of the Public Office Bearers</p> <p>25 Commission.</p>

<p style="text-align: right;">Page 6761</p> <p>1 MR SEMENYA SC: Can you just tell us what 2 is the broad ambit of that commission? 3 GENERAL PHIYEGA: The Public Office 4 Bearers Commission is a commission that looks into the 5 salary determination of judges, of ministers, of the 6 presidency, of parliament. That is the remedy of that 7 committee. I've served on numerous business boards, NGO 8 boards, as well as community boards. I can just say I'm 9 grateful as a citizen of this country to have had the 10 opportunity to manage a number of portfolios. 11 MR SEMENYA SC: The Constitution also 12 provided in section 207(2) that as National Commissioner 13 you must exercise control over, and manage the police 14 service in accordance with national policing policy and 15 such directions as may be given by cabinet. You're aware 16 of that? 17 GENERAL PHIYEGA: Yes, I'm aware. 18 MR SEMENYA SC: And our national 19 Constitution also says in section 205(3) that, "Objects of 20 the police service are to prevent, combat, and investigate 21 crime, to maintain public order, to protect and secure the 22 inhabitants of the Republic and their property, and to 23 uphold and enforce the law." Are you aware of that 24 responsibility? 25 GENERAL PHIYEGA: Yes, I know about that.</p>	<p style="text-align: right;">Page 6763</p> <p>1 effect to section 218(1) of the Constitution." Am I right, 2 General? 3 GENERAL PHIYEGA: Yes, it is. 4 MR SEMENYA SC: And section 218(1) of the 5 Constitution related to the interim Constitution of 2003. 6 GENERAL PHIYEGA: Yes. 7 MR SEMENYA SC: And we know that in terms 8 of schedule 6 of the final Constitution, section 218 was 9 preserved. 10 GENERAL PHIYEGA: Yes. 11 MR SEMENYA SC: And that reference still 12 maintains, or endures in the Police Act as it stands. 13 GENERAL PHIYEGA: Yes. 14 MR SEMENYA SC: General, the Police Act 15 also provides, as we say in section 17 thereof, that, "The 16 National Commissioner shall, subject to section 218(1)(k) 17 of the Constitution, establish and maintain a national 18 Public Order Policing unit." We have covered this area 19 with you, haven't we? 20 GENERAL PHIYEGA: Yes, you have. 21 MR SEMENYA SC: Under subsection (2) of 22 section 17 of the Police Act, the law provides that, "The 23 National Commissioner may deploy the national Public Order 24 Policing unit, or any part thereof, at the request and in 25 support of a provincial commissioner, taking into account</p>
<p style="text-align: right;">Page 6762</p> <p>1 [09:53] MR SEMENYA SC: And policing in terms of 2 the Constitution has to respect various fundamental rights 3 mentioned therein, including section 17, which reads as 4 follows. "Everyone has the right, peacefully and unarmed, 5 to assemble, to demonstrate, to picket, and to present 6 petitions." Are you aware of the constitutional – 7 GENERAL PHIYEGA: Yes, I know. 8 MR SEMENYA SC: Can we also outline the 9 responsibilities of public service, which the police 10 service is part? That the Constitution provides in section 11 195, does it not, General? Have you found the provision, 12 General? 13 GENERAL PHIYEGA: No, I don't. 14 MR SEMENYA SC: Alright, we'll get to 15 that section in due course. But you also know that the 16 Police Act articulates how the police service is to be 17 conducted in this country. Am I right, General? 18 GENERAL PHIYEGA: Yes. 19 MR SEMENYA SC: The powers and duties and 20 functions of the National Commissioner are also expressed 21 in section 11 of the Police Act. Am I right, General? 22 GENERAL PHIYEGA: Yes, it is like that. 23 MR SEMENYA SC: And it provides that, 24 "The National Commissioner may exercise the powers and 25 shall perform the duties and functions necessary to give</p>	<p style="text-align: right;">Page 6764</p> <p>1 several factors." 2 GENERAL PHIYEGA: It is true. 3 MR SEMENYA SC: And that is a power that 4 you have in terms of that provision, which power you are 5 able to delegate. Am I correct, Commissioner? 6 GENERAL PHIYEGA: Yes, it is. 7 MR SEMENYA SC: That power must, when 8 exercised, look at the reason for the request. 9 GENERAL PHIYEGA: True. 10 MR SEMENYA SC: Must also look at the 11 personnel and equipment available to the unit. 12 GENERAL PHIYEGA: Yes, it is true. 13 MR SEMENYA SC: And it must also look at 14 any other circumstances anywhere in the national territory 15 which may have an influence on the maintenance of public 16 order and which may require the deployment of the unit, or 17 any part thereof, elsewhere. 18 GENERAL PHIYEGA: Yes, it is true. 19 MR SEMENYA SC: Under subsection (3) 20 tells - section 17 - all of us, that, "Where the national 21 Public Order Policing unit or any part thereof is deployed 22 under subsection (2), the unit shall perform its functions 23 subject to the directions of the provincial commissioner 24 concerned." 25 GENERAL PHIYEGA: It is true.</p>

<p style="text-align: right;">Page 6765</p> <p>1 MR SEMENYA SC: If you revert back to 2 what Chapter 10 of the Constitution provides for, there are 3 there, section 195 of the basic values and principles 4 governing public administration. 5 GENERAL PHIYEGA: Yes, they are there. 6 MR SEMENYA SC: Enumerated there are 7 that, "The public administration must be governed by the 8 democratic values and principles enshrined in the 9 Constitution, including the following principles. A high 10 standard of professional ethics must be promoted and 11 maintained; efficient economic and effective use of 12 resources must be promoted; public administration must be 13 development orientated; services must be provided 14 impartially, fairly, equitably, and without bias; people's 15 needs must be responded to, and the public must be 16 encouraged to participate in policy-making; public 17 administration must be accountable; transparency must be 18 fostered by providing the public with timely, accessible, 19 and accurate information; broad human resource management 20 and career development practices to maximise human 21 potential must be cultivated; public administration must be 22 broadly representative of the South African people, with 23 employment and personnel management practices based on 24 ability, objectivity, fairness, and the need to redress the 25 imbalances of the past, to achieve broad representation,"</p>	<p style="text-align: right;">Page 6767</p> <p>1 document as exhibit FFF1. There will also be evidence that 2 this document was generated in 1996; further, that the 3 Standing Order 262 governing Public Order Policing draws 4 its inspiration from this policy document. Commissioner, 5 if you go to page 3 of the document, you will see an 6 introduction there. The policy document says, "As a result 7 of the vast socio-political changes that have occurred in 8 South Africa over the past few years, new approaches, 9 tactics, and techniques must be developed to align the 10 management of crowds with the democratic principles of 11 transparency and accountability." It further provides 12 that, "Police actions must also be reconciled with the Bill 13 of Human Rights and the statutory provisions pertaining to 14 crowd management." Do you see that? 15 GENERAL PHIYEGA: Yes, I do. 16 MR SEMENYA SC: And the policy provides 17 that the emphasis has shifted from the control of crowds in 18 the past, to the philosophy of crowd management where 19 fundamental rights of all citizens are taken cognisance of. 20 Correct? 21 GENERAL PHIYEGA: Yes, it is. 22 MR SEMENYA SC: And the policy recognises 23 various significant events, amongst them is the unbanning 24 of political parties in February 2, of 1990. Correct? 25 GENERAL PHIYEGA: Yes, correct.</p>
<p style="text-align: right;">Page 6766</p> <p>1 and the Constitution tells us these principles apply inter 2 alia to organs of State. The police service is such an 3 organ of State, Commissioner. Am I right? 4 GENERAL PHIYEGA: Yes, it is. 5 MR SEMENYA SC: Now in terms of policy, 6 might I invite you to a policy document in the bundle of 7 documents you have there. Chair, it would be tab 5.12 on 8 the bundle of documents you have, Commissioner, and in 9 terms of the documents of SAPS it would be page 538. 10 CHAIRPERSON: Are we marking it as an 11 exhibit? 12 MR SEMENYA SC: It would become an 13 exhibit. 14 CHAIRPERSON: The new exhibit series then 15 begins FFF, so it will be FFF1, I take it. Thank you. 16 MR HANABE: Can I also have a copy, 17 Counsel? 18 MR SEMENYA SC: Do you have the document, 19 Commissioner? 20 GENERAL PHIYEGA: Yes. 21 MR SEMENYA SC: Do you have a document 22 whose first page reads "Public Order Police - Policy 23 document on crowd management?" 24 GENERAL PHIYEGA: Yes. 25 MR SEMENYA SC: We will refer to the</p>	<p style="text-align: right;">Page 6768</p> <p>1 MR SEMENYA SC: The policy document also 2 embraces the recommendations of the Goldstone Commission 3 dated 9 July of 1992. Am I right? 4 GENERAL PHIYEGA: Yes. 5 MR SEMENYA SC: And that in 1993, 6 February 12, came into operation the act on the Regulation 7 of Gatherings. 8 [10:13] GENERAL PHIYEGA: Yes, it is true. 9 MR SEMENYA SC: And it references the 10 interim Constitution, as well as the final Constitution. 11 GENERAL PHIYEGA: Yes, it does. 12 MR SEMENYA SC: I will just touch with 13 you various elements of the policy for emphasis. The 14 policy provides that, "The changing circumstances place a 15 high premium on the fundamental rights of individuals, and 16 that high premium requires the South African Police Service 17 to change and adapt its tactics and strategies according to 18 the circumstances so that the South African Police Service, 19 without forfeiting its ability, will still be able to 20 prevent violence effectively during gatherings and 21 marches." That's an environment you recognise, 22 Commissioner. Am I right? 23 GENERAL PHIYEGA: Yes, I do. 24 MR SEMENYA SC: The policy on page 4 25 deals with the goals that are sought to be achieved, and</p>

<p style="text-align: right;">Page 6769</p> <p>1 deals with the goals of the Public Order Police. Do you 2 see that?</p> <p>3 GENERAL PHIYEGA: Yes, I do.</p> <p>4 MR SEMENYA SC: The policy provides that, 5 "There should be established as standardised procedures in 6 the South African Police Service to manage crowds in such a 7 way that these conform to democratic values and accepted 8 international standards." Do you see that?</p> <p>9 GENERAL PHIYEGA: Yes.</p> <p>10 MR SEMENYA SC: Clause 2.2 should read 11 that, "The goal is to instil an approach in POP concurrent 12 with SAPS values of acting at all times in a professional, 13 acceptable, and an effective manner, in a way that is 14 community orientated and to be accountable for every 15 action. The actions of POP must comply with various 16 principles." Is that how you understand the policing 17 environment, of policing effective -</p> <p>18 GENERAL PHIYEGA: Yes.</p> <p>19 MR SEMENYA SC: Those principles include 20 upholding the constitutional rights of the individual or 21 groups or people to voice their concerns, grievances, 22 feelings, opinions, without infringing upon the right of 23 others. You are familiar with that injunction on the 24 conduct of policing. Am I right, Commissioner?</p> <p>25 GENERAL PHIYEGA: Yes, I do.</p>	<p style="text-align: right;">Page 6771</p> <p>1 recognises various legal aspects of crowd management, 2 including the provisions of the Constitution and the rights 3 of persons to gather in order to protest and to give 4 petitions peacefully and unarmed. Do you see that?</p> <p>5 GENERAL PHIYEGA: Yes, I do.</p> <p>6 MR SEMENYA SC: So too under that are 7 elements of situational appropriateness. I just wish to 8 focus you attention, Commissioner, to paragraph 3.3.5 of 9 the policy document. It provides there, Commissioner, that 10 "During an operation where individuals or crowds are 11 hostile towards the police, verbal abuse, stone-throwing, 12 etcetera, should be tolerated in order to defuse a 13 situation." Do you see that policy provision?</p> <p>14 GENERAL PHIYEGA: Yes.</p> <p>15 MR SEMENYA SC: The policy then deals, 16 Commissioner, with operational matters. I think we will 17 deal with those with the various other witnesses. Can I 18 now invite you to look at another policy framework 19 regulating these matters? I'm advised that that document 20 will be on your file, being tab 5.3, and it is exhibit R 21 already, Chairperson. Do you have the document whose 22 heading is "Policy and Guidelines – Policing of public 23 protests, gatherings, and major events?"</p> <p>24 GENERAL PHIYEGA: Yes.</p> <p>25 MR SEMENYA SC: That document,</p>
<p style="text-align: right;">Page 6770</p> <p>1 MR SEMENYA SC: Also that they must 2 acknowledge the right of citizens and the community to 3 demonstrate peacefully, without infringing on the rights of 4 others. Correct?</p> <p>5 GENERAL PHIYEGA: Yes, it is correct.</p> <p>6 MR SEMENYA SC: Commissioner, the policy 7 says that must happen with the police being firm, fair, and 8 impartial. You're familiar with that?</p> <p>9 GENERAL PHIYEGA: Yes, I am.</p> <p>10 MR SEMENYA SC: This, the policy document 11 says, is to accomplish ideals of no loss of life, no damage 12 to property, no injuries, and that it becomes executed with 13 all citizens satisfied with the conduct of the SAPS, and 14 all citizens present at gatherings will feel safe and 15 secure. Am I correct, you're familiar with that 16 environment from a policy perspective?</p> <p>17 GENERAL PHIYEGA: Yes, I am.</p> <p>18 MR SEMENYA SC: The policy then addresses 19 the principles of crowd management on page 4, which 20 provides that, "Interventions by South African Police 21 Service will be prepared and executed according to various 22 principles of crowd management," and various principles are 23 documented there, Commissioner. Do you see that?</p> <p>24 GENERAL PHIYEGA: Yes, I do.</p> <p>25 MR SEMENYA SC: Page 5 of the policy then</p>	<p style="text-align: right;">Page 6772</p> <p>1 Commissioner, you will see if you go to the last page of 2 it, it is a document signed on the 29th of August 2011.</p> <p>3 GENERAL PHIYEGA: Yes.</p> <p>4 MR SEMENYA SC: Again in the introduction 5 it broadly recognises the legal environment under the 6 Constitution in which public protest and gatherings are to 7 be handled. Am I right?</p> <p>8 GENERAL PHIYEGA: Yes.</p> <p>9 MR SEMENYA SC: Can I invite you to page 10 3 of that document under the scope and objectives of that 11 policy document? Under paragraph 2 says, the policy 12 document, "The policy aims to provide a framework with 13 guidelines for the South African Police Service in 14 reviewing and aligning its operational strategies and 15 instructions applicable on policing of public protest and 16 related major events, with a view of minimising 17 provocation, intimidation, and violence." Do you see that?</p> <p>18 GENERAL PHIYEGA: Yes.</p> <p>19 MR SEMENYA SC: It says, "The objectives 20 are to promote ideal crowd control in management capacity 21 within the police, in order to secure public trust and 22 maintenance of safety during public gatherings." Do you 23 see that?</p> <p>24 GENERAL PHIYEGA: Yes, I do.</p> <p>25 MR SEMENYA SC: The other objective is,</p>

<p style="text-align: right;">Page 6773</p> <p>1 "To provide a framework and facilitate the development of 2 appropriate guidelines by the South African Police Service 3 on the use of force in relation to crowd control and 4 management that adheres to international accepted 5 standards." Do you see that, Commissioner? 6 GENERAL PHIYEGA: Yes. 7 MR SEMENYA SC: And also, "To establish 8 the principle of intervention in controlling public protest 9 in order to proportionate the means of force that can be 10 applied by the police." Do you see that? 11 GENERAL PHIYEGA: Yes. 12 MR SEMENYA SC: Also, "To facilitate the 13 introduction of appropriate training initiatives which 14 must, amongst others, address the principle of first 15 responder, guide SAPS operational planning and response, 16 resource deployment, and physical execution." Under 4 you 17 will see, Commissioner, that the policy provides a policy 18 statement. Please confirm that it reads that, "One of the 19 key areas is to consider whether the policing of public 20 protests in its current occurrence are consistent with the 21 fact that police operations have to be undertaken within 22 the context of people's right to protest. This does not 23 diminish the threat to public order which some public 24 protest may bring about. This can go beyond law and order, 25 which, if the current policing of public events is to go</p>	<p style="text-align: right;">Page 6775</p> <p>1 GENERAL PHIYEGA: Yes, I see. 2 MR SEMENYA SC: And recognises, or states 3 that that order 262 provides that, "The use of force must 4 be avoided at all costs and members deployed for the 5 operation must display the highest degree of tolerance." 6 Do you see that, Commissioner? 7 MR HANABE: Senior Counsel if I may ask, 8 where are you reading? 9 MR SEMENYA SC: That would be the 10 provision at the bottom of that page 7. 11 MR HANABE: Thank you very much, Senior 12 Counsel. 13 MR SEMENYA SC: And Commissioner, South 14 Africa is a signatory to various international instruments 15 relating to the use of force and firearms by law 16 enforcement officials. That is also recognised in this 17 policy document. Am I right? 18 GENERAL PHIYEGA: Yes. 19 MR SEMENYA SC: And those instruments, 20 just to state it in broad terms, the policy document also 21 recognises is that during public protest or marches the 22 right to life of protesters, the police, and the general 23 public, may be at stake. Do you see that at the bottom of 24 page 8 of that document? 25 GENERAL PHIYEGA: Yes.</p>
<p style="text-align: right;">Page 6774</p> <p>1 by, is often applied loosely on any day that the police are 2 confronted with protesters." That's how it reads, 3 Commissioner. Am I correct? 4 GENERAL PHIYEGA: Yes, I see that. 5 MR SEMENYA SC: "In developing policy and 6 guidelines for the policing of public protests and 7 gatherings, we need to ensure our policing approach is 8 consistent with the constitutionally afforded rights for 9 all individuals. Effective and peaceful crowd control 10 demands an approach that does not impact negatively and 11 enhances tensions between the police and community at the 12 time of protest. This has potential to continue even 13 beyond the protest." The policy document says, "Policing 14 must have an approach not generating the very violence it 15 seeks to control in a public protest." Do you see that? 16 [10:33] GENERAL PHIYEGA: Yes, I do. 17 MR SEMENYA SC: The policy document then 18 deals with salient elements of the Regulation of Gatherings 19 Act. You see that, Commissioner? 20 GENERAL PHIYEGA: Yes, I do. 21 MR SEMENYA SC: Appreciate the relevant 22 elements of the South African Police Act. Do you see that? 23 GENERAL PHIYEGA: Yes, I do. 24 MR SEMENYA SC: So too the relevant 25 elements of the Standing Order 262 on crowd management.</p>	<p style="text-align: right;">Page 6776</p> <p>1 MR SEMENYA SC: And, says the document, 2 "The right to life, sometimes described as a supreme human 3 right, constitute an international law that is central in 4 the recognition of the rights enshrined in international 5 human rights treaties." There is also a comparison done 6 with how policing and the use of deadly force happens in 7 countries like Canada, the United States, Australia, Chile, 8 Senegal, etcetera. Do you see that? 9 GENERAL PHIYEGA: Yes. 10 MR SEMENYA SC: That is from pages 10 to 11 page 11. 12 GENERAL PHIYEGA: Yes, I do. 13 MR SEMENYA SC: On page 12, paragraph 8, 14 the document deals with policy implementation environment. 15 Can I ask you to go there, Commissioner? That document 16 reads, "This policy is aimed to provide a framework and 17 guidelines for the police in policing public protests and 18 to introduce stringent measures around the use of force 19 linked to public gatherings and protests." Do you see 20 that? 21 GENERAL PHIYEGA: Yes, I do. 22 MR SEMENYA SC: And says, "The policy and 23 guidelines must guide the South African Police Service in 24 developing appropriate and effective operational strategies 25 and systems in the policing of public protests, which must</p>

<p style="text-align: right;">Page 6777</p> <p>1 restore and enhance trust and confidence of the 2 communities." That's what the policy document provides, 3 Commissioner. Am I right? 4 GENERAL PHIYEGA: Correct. 5 MR SEMENYA SC: And under paragraph 9 on 6 page 13 of that document it addresses the policing of 7 public protests. Can I ask you to go there? It then says, 8 "In order to give impetus and ensure compliance with the 9 Bill of Rights, the Constitution, national legislation, and 10 international standards, the SAPS must urgently review its 11 current dispensation and operational approach to the 12 policing of public protests and riots." That's what the 13 document says, Commissioner. Am I right? 14 GENERAL PHIYEGA: Correct. 15 MR SEMENYA SC: I then invite you to page 16 14 under the heading, "Establishment" – sorry about that, 17 Commissioner. Can I invite you to go to the heading on 18 page 14 – 19 CHAIRPERSON: Can we be told first what 20 that was so that steps can be taken to ensure that there 21 isn't a recurrence? Do we know what happened when that 22 noise was heard? Was it something to do with the recording 23 equipment? Was it a problem with the recording equipment? 24 SPEAKER: No, Chair, I think everything 25 is fine now. I'll definitely go out and –</p>	<p style="text-align: right;">Page 6779</p> <p>1 'released to supplement much needed capacity at station 2 level.'" Do you see that? 3 GENERAL PHIYEGA: Yes. 4 MR SEMENYA SC: And that the area crime 5 combating units were accepted and the name was changed to 6 crime combating units, so the CCUs. On page 15 at the 7 bottom, the last paragraph, the document says that, 8 "Technically, it is thus argued that the POPS unit does not 9 exist anymore as 'a specialised (dedicated) Public Order 10 Policing function' as envisaged in the SAPS act." Do you 11 see that, Commissioner? 12 GENERAL PHIYEGA: Yes, I do. 13 MR SEMENYA SC: And then the policy 14 document says, "Until section 17 of the SAPS Act is amended 15 accordingly, the POP unit must be re-established, 16 maintained, and capacitated, to execute those functions the 17 act confers upon it," and there are other elements of the 18 policy document where other witnesses will be better placed 19 to testify on. Is that environment from a policy 20 perspective impacting on how Public Order Policing happens? 21 GENERAL PHIYEGA: Yes. 22 MR SEMENYA SC: And below policy you 23 would have your national instructions; you would have your 24 directions, and you'd also have your standard operating 25 procedures. Am I correct, Commissioner?</p>
<p style="text-align: right;">Page 6778</p> <p>1 CHAIRPERSON: I see, alright. 2 MR SEMENYA SC: Can I now, Commissioner, 3 invite you to look at that heading, "Establishment of a 4 dedicated Public Order Policing POPS unit" on page 14 of 5 the policy document? It reads there that, "In terms of the 6 SAPS Act the National Commissioner is obliged to establish 7 a national Public Order Policing unit and maintain the 8 same," and it makes reference to that section 17 we spoke 9 about earlier. Do you see that? 10 GENERAL PHIYEGA: Yes. 11 MR SEMENYA SC: And recognises that such 12 a unit was indeed established during 1996. You see that? 13 GENERAL PHIYEGA: Yes. 14 MR SEMENYA SC: The document then says, 15 "During 2002 the POPS unit was subject to the SAPS 16 restructuring and aligned to function at policing area 17 level as the area crime combating unit." Do you see that? 18 GENERAL PHIYEGA: Yes, I do. 19 MR SEMENYA SC: And observes that, "The 20 latter name," meaning the area crime combating unit, 21 "suggests the functions also changed to include crime 22 combating, and that unfortunately this relegated the crowd 23 management function into a secondary function, and that 24 during subsequent restructuring process in 2006 the 25 policing areas were disbanded and policing resources</p>	<p style="text-align: right;">Page 6780</p> <p>1 GENERAL PHIYEGA: Yes, it is true. 2 MR SEMENYA SC: Can we look at Standing 3 Order 262, Commissioner? In your file it would be under 4 tab 5.1, and Chairperson and the Commissioners, it would be 5 exhibit SS2. Do you have the document before you? 6 GENERAL PHIYEGA: Yes. 7 MR SEMENYA SC: Again there would be 8 other witnesses more competent to speak matters operational 9 who will deal with this, but this is the Standing Order 10 that deals with the management of Public Order Policing. 11 Am I correct, Commissioner? 12 GENERAL PHIYEGA: It is correct. 13 MR SEMENYA SC: It defines who authorised 14 members are, who are the convenors, who are crowd 15 management, as you'd see in section 2 of – I mean clause 2 16 of that Standing Order. You see that, Commissioner? 17 GENERAL PHIYEGA: Yes, I do. 18 MR SEMENYA SC: It also draws from the 19 various statutes, including the Regulation of Gatherings 20 Act. Do you see that, Commissioner? 21 GENERAL PHIYEGA: Yes, I do. 22 MR SEMENYA SC: And it deals with the 23 issues about the appointment of CJOC, the planning of 24 operations about which other witnesses would be more 25 competent to speak, Commissioner. Am I right?</p>

Page 6781

1 GENERAL PHIYEGA: Correct.

2 MR SEMENYA SC: Chair, we're about to

3 switch to a different area. Would this be a convenient

4 stage to break?

5 CHAIRPERSON: Very well, we'll take the

6 tea adjournment at this stage.

7 [COMMISSION ADJOURNS COMMISSION RESUMES]

8 [11:27] CHAIRPERSON: The Commission resumes.

9 National Commissioner, you're still under oath. Mr

10 Semenya?

11 MANGWASHI VICTORIA PHIYEGA: s.u.o.

12 EXAMINATION BY MR SEMENYA SC (CONTD.):

13 Thank you, Chair. Commissioner, just to round up, at the

14 commencement of the proceedings we made an opening

15 statement. I have placed that document before you. Can

16 you trace it?

17 GENERAL PHIYEGA: It is, I've seen it.

18 MR SEMENYA SC: Do you have it in front

19 of you?

20 GENERAL PHIYEGA: Yes.

21 MR SEMENYA SC: Might I invite you to go

22 to page 5 of that opening statement made on behalf of the

23 SAPS, and direct your attention to paragraph 14 thereof.

24 Perhaps let's start with paragraph 13, which reads, "To

25 ensure that the police service lives up to the

Page 6782

1 constitutional imperatives, all members are subjected to

2 the code of conduct of the South African Police Service

3 published on 10 June 2005." You see that?

4 GENERAL PHIYEGA: Yes, I do.

5 MR SEMENYA SC: The opening statement

6 continues to say that, "The code of conduct is a written

7 undertaking which each member of the South African Police

8 Service is obliged to uphold in order to bring about a safe

9 and secure environment for all people of South Africa." Is

10 that correct?

11 GENERAL PHIYEGA: It is correct.

12 MR SEMENYA SC: It continue to say,

13 "Members are called upon to make the code of conduct part

14 of their code of life, principles, and values." Do you see

15 that?

16 GENERAL PHIYEGA: Yes, I do.

17 MR SEMENYA SC: In paragraph 15 of that

18 page, it reads, "In addition, police services worldwide and

19 in this country have standard operating procedures, SOPs,

20 formulated national instructions and guidelines. Police

21 rely on them for their operational guidance. These SOPs,

22 instructions and guidelines, are there to ensure that

23 everyone will do and act in a common way. This is done

24 within the environment where police need to be self-

25 disciplined, while receiving controlled and limited

Page 6783

1 supervision." Is that the correct environment? Is the

2 environment correctly described in that paragraph,

3 Commissioner?

4 GENERAL PHIYEGA: Yes, it is the truth.

5 MR BIZOS SC: With respect, the witness

6 up to now has had documents read to her and asked whether

7 that is so or not, from what appears what the Standing

8 Orders are and everything else. She's not yet been asked a

9 simple question about whether – yes, the answer is "Yes, I

10 see it." I don't know what right my learned friend has to

11 read out his opening statement for her to confirm it. If

12 she wants to establish the policy to the knowledge of the

13 Commissioner, let him ask her what is the policy of the

14 commission and what does she know about it, not to read out

15 his opening statement for confirmation by the witness.

16 CHAIRPERSON: That procedure has been

17 followed in the past with relation to documents, witnesses

18 confirmed the content. It was seen as a way in fact of

19 shortening the proceedings and not lengthening them, but Mr

20 Semenya, do you wish to reply to what Mr Bizos has said?

21 MR SEMENYA SC: Firstly, up to this stage

22 we are dealing with documented information. There's no

23 controversy around them. Secondly, we will deal with the

24 evidence of the Commissioner later, on which there will be

25 nothing leading about it. I can either do it this way, or

Page 6784

1 I can ask the Commissioner, can you read what paragraph 15

2 says.

3 MR BIZOS SC: That could show, without

4 any disrespect, that she's a good reader. To endorse that

5 that is what happened –

6 CHAIRPERSON: I would have thought we can

7 accept that she wouldn't have been appointed to the high

8 position she holds if she weren't –

9 MR BIZOS SC: No, I agree with you.

10 Absolutely. This is why I say, with respect, but in answer

11 to my learned friend whether he reads it or the witness

12 reads it and asking her is that correct, is not a good way,

13 or permissible way in proving facts.

14 CHAIRPERSON: He doesn't ask her if it's

15 correct. He asks whether she identifies certain things as

16 being so, and confirming certain things. But the advantage

17 of getting him to do it is he is able to abbreviated

18 perhaps more easily than she can because he knows exactly

19 what passages he wants to emphasise. So I think for the

20 moment I will allow him to continue in the way that he has

21 been proceeding so far.

22 MR SEMENYA SC: Commissioner, the policy,

23 operational procedures, and the national instructions and

24 guidelines, are all instruments that are intended to make

25 sure that all concerned have the ability to anticipate each

Page 6785

1 other's conduct. Would that be accurate?

2 GENERAL PHIYEGA: It is correct and true.

3 MR SEMENYA SC: Is that standard for all

4 to monitor their colleagues?

5 GENERAL PHIYEGA: I confirm.

6 MR SEMENYA SC: To help assure proper

7 vigilance.

8 GENERAL PHIYEGA: True, it is.

9 MR SEMENYA SC: Provide the police with

10 tested safe methods of handling normal and abnormal

11 conditions or tasks.

12 GENERAL PHIYEGA: Correct.

13 MR SEMENYA SC: Facilitate communication

14 where there is task saturation and complexities.

15 GENERAL PHIYEGA: Yes, it is true.

16 MR SEMENYA SC: Also to keep officers

17 operating, being proactive and planning ahead.

18 GENERAL PHIYEGA: Yes.

19 MR SEMENYA SC: I would want us now to

20 deal with a document emanating from your office relating to

21 the use of shotguns and rubber bullets and rubber rounds.

22 Chair, I refer to exhibit T, which Commissioner, you will

23 find under file separation T before you, but it is the one

24 dated 20 December 2011. Do you have the document in front

25 of you, Commissioner?

Page 6786

1 GENERAL PHIYEGA: Yes, I do.

2 MR SEMENYA SC: Perhaps relevant to your

3 evidence, might I draw your attention and focus to

4 paragraph 5 of that document? This document says, "The use

5 of rubber rounds and shotguns must be stopped with

6 immediate effect. Less lethal methods to manage crowds

7 must be implemented. Negotiations is still the first

8 resort. A gradual response, such as the use of

9 pyrotechnics, water cannon, and the 40mm launcher must then

10 be used. The purpose of offensive actions must be to de-

11 escalate conflict with the minimum level of force to

12 accomplish the goal. The degree of force must be

13 proportional to the seriousness of the situation and the

14 threat posed in terms of situational appropriateness. The

15 use of force must always be reasonable in the

16 circumstances, and force must be discontinued once the

17 objective has been achieved," and that is under the

18 signature of Lieutenant-General Mawela, the Divisional

19 Commissioner – Operational Response Services at that time.

20 You see that document?

21 GENERAL PHIYEGA: Yes, I do.

22 MR SEMENYA SC: You subsequently had to

23 respond to this document following certain events, and

24 might I invite you to look at exhibit S, which is, or your

25 file separator, it is a document dated 20 July 2012, of

Page 6787

1 last year. Do you have the document, Commissioner?

2 GENERAL PHIYEGA: Yes.

3 MR SEMENYA SC: Can you identify for us

4 the signature appearing at the end of the document?

5 GENERAL PHIYEGA: It is my signature.

6 MR SEMENYA SC: And at the first page of

7 the document it says, "Evenly numbered letter dated 20

8 December 2012 has reference and is hereby withdrawn and

9 replaced by this instruction." You see that? This is with

10 reference to the earlier document that we made mentioned

11 of. Am I right, Commissioner?

12 GENERAL PHIYEGA: Yes, you are right.

13 MR SEMENYA SC: Significant about it is

14 the paragraph 3, which you will find as you page over, the

15 last page of the document. Am I right? Here it talks

16 about only the Beretta, and Chair, my document is not

17 particularly legible. If I get it wrong, I stand

18 corrected, of Musier 12-bore shotgun, and shotgun 12-bore

19 double," something, "must be used by –

20 CHAIRPERSON: Sorry to interrupt. I'm

21 sorry, but it's Musler. M-U-S-L—E-R.

22 MR SEMENYA SC: I'm corrected, Chair –

23 "must be used by the," something POP members.

24 CHAIRPERSON: Sorry, what is trained is

25 only the Beretta, is it Beretta or Musler 12-bore shotgun,

Page 6788

1 and shotgun 12-bore double-ball round M9A1 must be used by

2 trained POP members and dedicated in the use thereof.

3 Rubber rounds to be used from a distance of 20 metres and

4 more from the crowd." That's the passage. Our copy is

5 obviously clearer than yours.

6 MR SEMENYA SC: I'm indebted to you,

7 Chair. Do you recall stating that instruction, General?

8 GENERAL PHIYEGA: Yes, I do.

9 MR SEMENYA SC: Under 3.1 you say, "POP

10 members," you said, "POP members issued with a shotgun may

11 never act individually but only on the command of the

12 section leader, platoon commander, or operational

13 commander." That's what you provided in the instruction,

14 Commissioner. Correct?

15 GENERAL PHIYEGA: Yes, I did.

16 MR SEMENYA SC: And under paragraph 3.2

17 you say, "The rubber rounds must be skip fired to target at

18 the legs of the crowd." Am I right?

19 GENERAL PHIYEGA: Yes, it's true.

20 MR SEMENYA SC: And the instruction reads

21 in 3.3, "POP operational commanders must ensure that video

22 footage is taken of the crowd throughout the phases, and

23 including during the use of minimum force. A record keeper

24 must also record everything on the operational diary. The

25 member who gives the command for action must not take part

Page 6789

1 in the action.”

2 [11:47] That’s part of the instruction, Commissioner. Am

3 I correct?

4 GENERAL PHIYEGA: Yes, it is.

5 MR SEMENYA SC: “Disciplinary or criminal

6 steps will be taken against members who act beyond the

7 command or use force than what was necessary as per

8 command.”

9 CHAIRPERSON: I take it the word “more”

10 was omitted by error from before the word “force,” so it

11 should read, “Disciplinary and/or criminal steps will be

12 taken against members who act beyond the command or use

13 more force than was necessary as per command.” Would you

14 agree with that, General?

15 GENERAL PHIYEGA: Yes, it could be. It

16 makes sense.

17 MR SEMENYA SC: What you said to

18 countermand to disciplinary or other criminal steps is more

19 use of force than was required in the circumstances. Am I

20 right, Commissioner?

21 GENERAL PHIYEGA: I think it’s a

22 correction that has been given to us here, but the ethos,

23 or the sense is the same.

24 MR SEMENYA SC: Okay.

25 CHAIRPERSON: The sense is clear, that’s

Page 6790

1 why I thought it was a word that had obviously been omitted

2 in error. I don’t think any person who reads the document

3 would have any difficulty understanding it.

4 GENERAL PHIYEGA: I’m saying again, it’s

5 a language issue that I see here because the main, the

6 ethos and the spirit is that the force that is used, if it

7 is more than necessary. That’s the implication that is

8 being communicated here.

9 MR SEMENYA SC: And it also says, “Every

10 time minimal force is used, a review of the action taken

11 must always be done by an officer holding the rank of

12 captain and above, who was not part of the action and who

13 was also not on the scene.” The next, Chair, I have

14 legibility problems there, if I’m reading it incorrectly I

15 stand corrected. “As mentioned in paragraph 11(4)(c) of

16 Standing Order General 262, rubber rounds may only be used

17 to disperse a crowd in extreme circumstances, should other

18 less forceful methods prove ineffective. This means that

19 the use of rubber rounds is only as a last resort.” Was

20 that what the instruction provided? That was the

21 environment?

22 GENERAL PHIYEGA: Yes, it is.

23 MR SEMENYA SC: Can we now come and talk

24 about the statement you made in relation to these

25 proceedings, Commissioner? You made two statements which

Page 6791

1 were signed and commissioned. Am I right? The one dated

2 the 7th of March and the other the 12th of March.

3 GENERAL PHIYEGA: That is correct.

4 MR SEMENYA SC: The second statement

5 sought to correct typographical problems that were in the

6 statement of 7 March. Am I right?

7 GENERAL PHIYEGA: Yes, you’re right.

8 MR SEMENYA SC: In particular, if we look

9 at the last document, and I draw your attention to

10 paragraph 23, there the document reads, “On the afternoon

11 of August 16, 2012, I received a call from Lieutenant-

12 General Mbombo, who informed me of a decision to

13 implement,” then it goes, “stage 3 of the plan, which

14 information I relayed to the Minister.” Do you see that

15 paragraph?

16 GENERAL PHIYEGA: I see it.

17 MR SEMENYA SC: Is that a correct

18 statement appearing there, General?

19 GENERAL PHIYEGA: It is not my – it’s the

20 correct statement, because my original statement doesn’t

21 read like that.

22 MR SEMENYA SC: Chair, I beg leave to

23 hand up copies of the relevant page, for ease of reference,

24 of how that paragraph properly read in the earlier

25 document.

Page 6792

1 CHAIRPERSON: I think we’d better give

2 these documents exhibit numbers. So what do you suggest?

3 The statement of the 7th could be FFF2 and the substituted

4 page 7 can be FFF3. Is that –

5 MR SEMENYA SC: Would that make, Chair,

6 would that make the statement of the 12th March FFF4?

7 CHAIRPERSON: Ja.

8 MR HANABE: Can I get one copy, please?

9 MR SEMENYA SC: FFF2 would be statement

10 dated 7 March. FFF3 would be one page of corrections.

11 FFF3 would be the other page indicating the correction.

12 No, then I’m incorrect. The statement of 12 March should

13 be FFF3 as opposed to F4. Now let’s look at the earlier

14 statement, FFF2, how does it read on paragraph 23.

15 GENERAL PHIYEGA: FFF2 or FFF –

16 MR SEMENYA SC: How does paragraph 23 of

17 the first statement read, corresponding to the one that you

18 say is incorrect?

19 GENERAL PHIYEGA: “On the afternoon of

20 the 16th August 2012 I received a call from Lieutenant-

21 General Mbombo who informed me of the decision to implement

22 a dispersal operation of the plan.”

23 MR SEMENYA SC: And the second area of

24 your statement, FFF2, has paragraph 24. Do you see that?

25 GENERAL PHIYEGA: Yes, I do.

Page 6793

1 MR SEMENYA SC: Okay, can I read
2 paragraph 24 of F3, and please tell me whether it correctly
3 reflects your evidence and, if not, tell me where it
4 doesn't. It reads, "Later that day Lieutenant-General
5 Mbombo informed me about the tragedy that had just
6 occurred. She said that the protesters had charged at the
7 police line with an assortment of dangerous weapons." So
8 far is the statement correct?
9 GENERAL PHIYEGA: Yes, it is.
10 MR SEMENYA SC: "She relayed that the
11 police had also been fired at, and that the police had shot
12 and killed a number of protesters, which later turned out
13 as 34, in private defence." Is that correct still, or not?
14 GENERAL PHIYEGA: Yes, it is correct.
15 MR SEMENYA SC: "She stated that 259
16 protesters had also been arrested." Is that correct?
17 GENERAL PHIYEGA: Yes.
18 MR SEMENYA SC: "I then related the same
19 information to the Minister of Police telephonically, who
20 advised me to attend to the matter personally so that I can
21 have a first account of the incident." Is that correct?
22 GENERAL PHIYEGA: No, it is not correct.
23 MR SEMENYA SC: What is the correct
24 version?
25 GENERAL PHIYEGA: The statement I

Page 6794

1 submitted, I said I then related the same information to
2 the Minister of Police telephonically, and advised him that
3 I shall be attending to the matter personally.
4 MR SEMENYA SC: And that appears in your
5 earlier statement as the last sentence there. It reads, "I
6 then related the same information to the Minister of Police
7 telephonically, and advised him that I shall be attending
8 to the matter personally." Am I correct?
9 GENERAL PHIYEGA: It is correct.
10 MR SEMENYA SC: Okay, you say, General,
11 in the first paragraph of your statement, who you are. If
12 we just use FFF3 as your statement, as corrected. Do you
13 see that?
14 GENERAL PHIYEGA: Yes, I do.
15 MR SEMENYA SC: What do you say in
16 paragraph 4 of your statement, General? And perhaps maybe
17 let's start with paragraph 3.
18 GENERAL PHIYEGA: "I stand before you as
19 the National Commissioner of the South African Police
20 Service to tell you that the performance, professionalism,
21 and integrity of the service as a whole are ultimately my
22 responsibility."
23 MR SEMENYA SC: What do you further want
24 to say to the Commission, Commissioner? What do you say in
25 paragraph 4?

Page 6795

1 GENERAL PHIYEGA: "The events at Marikana
2 in August 2012 are of concern to me as well. The
3 protracted and ever-increasing violent protest at Marikana,
4 which culminated in the catastrophic and unprecedented loss
5 of life, is to me regrettable."
6 MR SEMENYA SC: Can I interrupt you here?
7 General, you'd recall some media had covered allegations
8 about you laughing in the auditorium when the relatives of
9 victims were seated close. Do you recall that?
10 GENERAL PHIYEGA: Yes, I have observed a
11 lot of those media reports and I may say at this point in
12 time that that was personally a very hurting observation.
13 It is not only inhuman, it is totally out of my personal
14 character, and it is not true. It was very hurting,
15 because I do not believe that the person that I am and in a
16 situation such as this one, I could, adult as I am and in
17 the responsible position that I am, laugh at a situation
18 like that. I reject that with every part and measure of my
19 body, and I am hoping that nobody's name would be dragged
20 like that and be humiliated like that for no apparent
21 reason. As I say in 4 of the statement, I do want to say
22 indeed what has happened on that day is of serious concern
23 to me and I find it very regrettable and I send my very,
24 very deepest condolences to all those who lost life during
25 this process, and I do hope that there could be that

Page 6796

1 collaboration and cooperation between ourselves as
2 operators and those that have the power and the capacity to
3 report, so that they can report in a balanced and
4 responsible fashion so that the hurt that the families had
5 suffered does not continue to be exacerbated by some of the
6 reporting that is less balanced and not truthful. I thank
7 you for the opportunity to talk.
8 MR SEMENYA SC: When we continue with
9 your statement, General, we find that you accessed data and
10 information within the police service. What extrapolation
11 is possible, given that data? You deal with that in
12 paragraph 5.
13 [12:07] GENERAL PHIYEGA: "As part of sharing
14 some of the experiences and the knowledge I have gathered
15 in my visiting this environment, I thought I would
16 extrapolate from some of the operations that the SAPS have
17 undertaken, and extrapolating from our operation since 2009
18 to 2012, the South African Police Service handled a total
19 of 33 521 – all in. Of these incidents, 30 326 were
20 peaceful. The remainder of those, which are 3 195, were
21 not peaceful. When we average that our annually over this
22 period, SAPS dealt with an average of 11 000 public order
23 incidents and protests, the vast majority of which," – per
24 annum, maybe let me stop there, ja.
25 "I can report that the vast majority of these

<p style="text-align: right;">Page 6797</p> <p>1 incidents are resolved without any loss of life or injury. 2 This is achieved through institutionalised standard 3 operating procedures, while further assisted by the fact 4 that they are carried out by trained and properly 5 supervised professionals from designated law enforcement, 6 as well as Public Order Policing units, and where 7 appropriate, such are assisted by specialised units of the 8 South African Police Service. 9 I think it is important to also mention that in 10 addition to that, the police provide services that are 11 underpinned by tested structures, by tested and experienced 12 management, and strategies in law enforcement and Public 13 Order Policing that have been repeated over and over again, 14 and it is that experience that assists us to be able to 15 handle this massive volume of public order incidences. As 16 I've said, 33 521 in three years. I would like to mention 17 that the events at Marikana had no precedent in the history 18 of our organisation in a democratic South Africa." 19 MR SEMENYA SC: And we have dealt with 20 your appointment, which would have been on the 12th of June 21 2012, as a National Commissioner of the Police. 22 GENERAL PHIYEGA: Yes, we have. 23 MR SEMENYA SC: And then I'll deal with 24 the resources available for you to discharge that mandate. 25 You address that issue in paragraph 7 of your statement.</p>	<p style="text-align: right;">Page 6799</p> <p>1 services, mostly to ensure that transformational safety and 2 security services are accessed by the citizens and 3 residents of this country. The total staff complement of 4 the South African Police Service is about 200 000 members. 5 This makes the South African Police Services one of the 6 largest government departments in the country. The 7 national police to population ratio of South Africa is 1 to 8 306 citizens. When we read global literature, South Africa 9 compares very well with many countries such as the United 10 States, which sits at 1 to 256. Brazil sits at 1 to 282. 11 Australia sits at 1 to 217. Botswana, our neighbour, sits 12 at 1 to 418. This is just to name but a few, to show that 13 what I've said earlier on that South Africa does compare 14 well with many other countries, and of different levels of 15 development. 16 MR SEMENYA SC: And what have these 17 numbers managed to do for the South African Police Service? 18 GENERAL PHIYEGA: The progressive and 19 delivery capacity growth of South African Police Service 20 contributed immensely towards the organisation's ability to 21 reduce crime and to maintain public order. It may be 22 helpful just to draw reference to the statistics that were 23 released last year, for this financial year, where we took 24 an eight-year longitudinal view of the performance of crime 25 in this country. We have seen many areas that have shown a</p>
<p style="text-align: right;">Page 6798</p> <p>1 GENERAL PHIYEGA: The South African 2 Police Service is a national service in the Republic of 3 South Africa and it is consisting of 1 116 police stations, 4 which are divided according to provincial demarcations. As 5 the National Commissioner in this regard, I'm supported by 6 a team of nine provincial commissioners, who are appointed 7 in each of the provinces. These commissioners, nine of 8 them, who are responsible over our nine provinces, report 9 to me directly. It is our duty, both myself as the 10 National Commissioner, and the nine provincial 11 commissioners, to ensure that we set up sound 12 administrative, operational, and technical support teams 13 that ensure that we as commissioners render efficient and 14 effective South Africa Police Services delivery and ensure 15 that the mandate that were given to, by the Constitution, 16 is fulfilled. It is for that reason that we would have at 17 any given time very experienced technical support teams in 18 both national as well as provincial environment." 19 MR SEMENYA SC: And how does South Africa 20 stand in relation to other countries? How does that 21 compare by way of ratio between the police and citizenry? 22 GENERAL PHIYEGA: I would like to report 23 that South Africa is comparing very well with many other 24 countries. A lot of that has been achieved post democracy 25 since 1994 where we have gone for up-scaling of our police</p>	<p style="text-align: right;">Page 6800</p> <p>1 south-facing progression of the decline of crime and I 2 think it is important maybe for us to also mention that 3 there are certain crime categories that are almost getting 4 obsolete. A case in point is bank robberies, which used to 5 be high, and perhaps in the minds of most of us we may 6 remember issues that were relating to ATM bombings when 7 every morning when you woke up, you'd hear about a bombing 8 of an ATM. We see those declining, and we do recognise 9 that it's a progressive, it's not an event matter; it's a 10 progressive, a process. There are areas that are still 11 stubborn, and we continue as the South African Police 12 Service to ensure that the capacity that has been invested 13 in us is used optimally and productively to ensure that we 14 advance the objectives of reducing crime in South Africa. 15 MR SEMENYA SC: You also tell us about 16 the organisation you lead. 17 GENERAL PHIYEGA: Indeed I am humbled by 18 the opportunity to serve and the opportunity to lead this 19 mighty organisation of our country, and as I talk about 20 this organisation that I lead, I do want to say my 21 commitment as the National Commissioner is to serve, is to 22 ensure that we give service for others before ourselves, 23 and is to ensure that we continue to strive for excellence. 24 I lead an organisation dedicated to upholding the 25 law. Our aspiration is to serve and protect the community</p>

Page 6801

1 and its property. We continue to work hard to ensure that
 2 the constitutional mandate that is congruent with the Bill
 3 of Rights as enshrined in our Constitution, which
 4 guarantees the right to peaceful and unarmed demonstration
 5 and protest, is embraced. I therefore discharge this
 6 mandate through my leadership and operational command
 7 structures of men and women who are committed to serve with
 8 professionalism, with integrity, with honesty, compassion,
 9 and commitment to excellence, as well as servicing the
 10 citizens.

11 As a leader of this organisation I would like to
 12 mention that there is no future in any society without law
 13 and order. South Africa as a young democracy is highly
 14 dependent on focussed, deliberate, and directed, law
 15 enforcement. Public order is the bedrock without which our
 16 democracy cannot succeed, and for that matter, of any other
 17 country.

18 MR SEMENYA SC: Of course you discharge,
 19 or strive to discharge your constitutional mandate under
 20 very trying circumstances, Commissioner, don't you?

21 GENERAL PHIYEGA: Yes, indeed.

22 MR SEMENYA SC: And you use human beings
 23 with life and limb to do so.

24 GENERAL PHIYEGA: Indeed, the largest
 25 commodity, output commodity, or output resource in the

Page 6802

1 services and product of the South African Police Service
 2 are people.

3 MR SEMENYA SC: Are they members who live
 4 in communities, who are brothers, fathers, sisters, of
 5 various other members of the community?

6 GENERAL PHIYEGA: Yes, they are also
 7 human beings.

8 MR SEMENYA SC: You deal with this
 9 element in paragraph 11 of your statement, Commissioner.

10 GENERAL PHIYEGA: Yes, I have.

11 MR SEMENYA SC: What do you have to say
 12 there?

13 GENERAL PHIYEGA: I think the important
 14 thing that I would like to start off with is that we
 15 receive a budget of about 63 billion, and of that budget
 16 70% goes to human resources. That shows you how
 17 significant our product and our services are tied to
 18 people.

19 [12:27] In underscoring the challenges that are faced by
 20 police in executing their duty, let me indicate that there
 21 is a significant prevalence of police attacks and killings
 22 in South Africa. As an organisation, we then in response
 23 to that, undertake diverse initiatives to eradicate these
 24 attacks, or to mediate the killings. I would like to
 25 report that for the period 2010 to 2012, 907 attacks on

Page 6803

1 police, both on and off duty, were recorded. Of those
 2 attacks, the attacks resulted in 174 police killings for
 3 that very same period. Recognising that the job is by
 4 nature traumatic and resulting in some of these issues, we
 5 have actually set up an employee health and wellbeing
 6 portfolio. It is a necessary structure, established to
 7 give support to the police, given the difficult challenges
 8 they face in their job.

9 I may well maybe just share, I met with the
 10 police chief of Tanzania some three weeks ago, and I did
 11 ask him whether in their country they have a similar
 12 challenge, and what he indicated to me was that in Tanzania
 13 at most they would have 10 per annum.

14 The employee health and wellness offers
 15 preventative and remedial, psychological, spiritual, and
 16 social work support to SAPS members, and recognising that
 17 they are not islands entirely of themselves, we do reach,
 18 extend our services to their family members, and the reason
 19 we do that is that being the, a major output commodity,
 20 their health and wellbeing is very critical to assist us to
 21 deliver on our constitutional remedy.

22 MR SEMENYA SC: With a sharper focus now
 23 to the events at Marikana, and you now go to look at August
 24 of 2012, when do you first get to be informed that there is
 25 unrest in this area?

Page 6804

1 GENERAL PHIYEGA: Perhaps just to
 2 paraphrase that by saying I have already indicated that I
 3 work with a team of nine commissioners who keep me informed
 4 of activities and processes in their respective provinces.
 5 As of the 10th of August when processes started in the
 6 province, I am given an update that there is some
 7 activities taking place in Marikana and that deployments
 8 are taking place, and the attention is being given to the
 9 issues, and this is routine reports that I get from most of
 10 the provincial commissioners. On the 13th of August 2012,
 11 in and around 15:00 I received a call from the provincial
 12 commissioner of the North West.

13 MR SEMENYA SC: What was the nature of
 14 the message the General was conveying to you?

15 GENERAL PHIYEGA: The message I got from
 16 General Mbombo was a message which he informed me that in
 17 the week before the 13th of August 2012 a situation had
 18 developed in Marikana, and more particularly at the Lonmin
 19 Platinum Mine, which claimed the lives of four people,
 20 including two security guards. She indicated that this
 21 necessitated the deployment of more police officers to keep
 22 the peace. She advised me that the violence had escalated,
 23 resulting in the deaths of five further people. She also
 24 indicated that these casualties included two police
 25 officers.

<p style="text-align: right;">Page 6805</p> <p>1 MR SEMENYA SC: General, you locate that 2 telephone call approximately, you say around 3. Do you 3 have a sense around precisely when that would have 4 happened? 5 GENERAL PHIYEGA: It could have even been 6 much later, 3 or much later. 7 MR SEMENYA SC: What did you do with that 8 information? 9 GENERAL PHIYEGA: I regarded the 10 information that I had been given at the time by General 11 Mbombo to be sufficiently grave to cause me to travel to 12 Marikana. When I received that telephone, I was visiting 13 the province of Gauteng. I left from the Gauteng province 14 office the same day and the provincial commissioner of 15 Gauteng province, hearing what I was hearing, Lieutenant 16 Mzwandile Petros decided to travel with me, and we arrived 17 in Marikana at approximately 18:00, or even much later. 18 MR SEMENYA SC: Where precisely in 19 Marikana do you arrive? 20 GENERAL PHIYEGA: We arrived at the 21 premises of Lonmin Mine. 22 MR SEMENYA SC: Any of your colleagues 23 that you meet? 24 GENERAL PHIYEGA: Yes. 25 MR SEMENYA SC: Who?</p>	<p style="text-align: right;">Page 6807</p> <p>1 informed us as the South African Police Services 2 delegation, that there were ongoing clashes between the 3 members of two labour unions, AMCU and NUM. The management 4 further stated that the clashes had already claimed the 5 lives of nine people as we were being briefed, as we were 6 briefed by the police. We were also informed that several 7 vehicles had been torched. The mine management further 8 stated that the protesters were not their employees and are 9 unknown to them, and that as such Lonmin found no reason to 10 negotiate with what they referred to at the time as 11 faceless people. 12 MR SEMENYA SC: Was there any information 13 given regarding damage to property? 14 GENERAL PHIYEGA: As stated, they did 15 mention that there were vehicles that have already been 16 torched, and there was some damage to other property. 17 MR SEMENYA SC: Was there anything done 18 in relation to identifying the culprits who were 19 responsible for all this unrest? 20 GENERAL PHIYEGA: In the light of Lonmin 21 stating that they had no knowledge of who the protesters 22 were, the SAPS delegation made a suggestion that it would 23 be important for those protesters to be profiled, using 24 some of the SAPS material, the pictures that have been 25 taken, for Lonmin to ascertain who these people were.</p>
<p style="text-align: right;">Page 6806</p> <p>1 GENERAL PHIYEGA: We met with Lieutenant- 2 General Mbombo, Major-General Mpembe, and Brigadier Calitz, 3 and there could have been some other members of that team 4 who were also assisting in this place, and those were the 5 operational commanders at the time. 6 MR SEMENYA SC: What do they tell you? 7 GENERAL PHIYEGA: General Mpembe and 8 Brigadier Calitz briefed us about the protest which had 9 been taking place at Lonmin, which had escalated into 10 violence and had spread beyond the Lonmin Platinum Mine 11 area, and have engulfed the whole area commonly known as 12 Marikana. They informed me that to then nine deaths had 13 been recorded. 14 MR SEMENYA SC: And after the briefing, 15 what do you do next? 16 GENERAL PHIYEGA: Lieutenant-General 17 Mbombo, Lieutenant-General Petros, General Mpembe, 18 Brigadier Calitz, and I, then proceeded to the Lonmin 19 Platinum Mine offices. At the mine offices we met with a 20 Lonmin delegation, which included Mr Mokwena, Mr Kgotle, 21 there were others, Mr Sinclair, the mine security head, and 22 I think there were others of Lonmin. 23 MR SEMENYA SC: What was the account 24 given to you by the mine management? 25 GENERAL PHIYEGA: Mine management</p>	<p style="text-align: right;">Page 6808</p> <p>1 MR SEMENYA SC: Was there a solution 2 found? 3 GENERAL PHIYEGA: At the meeting some 4 consensus was reached and the resolution had to be found to 5 end the violence. I instruction the provincial 6 commissioner to continue with their efforts to bring the 7 competing unions to the negotiating table so as to ensure 8 that the violence comes to an end. I further impressed 9 upon the management of Lonmin Platinum Mine, requesting and 10 pleading that they do everything in their power to ensure 11 that the situation is normalised. 12 MR SEMENYA SC: What interest do you have 13 in the resolution of what is being described as an 14 industrial dispute? 15 GENERAL PHIYEGA: I think the most 16 important thing is for us to ensure that peace prevails, 17 safety and security is restored, because the rights of 18 everybody would then be protected. People would be able to 19 go about their own social lives, as normal people would be 20 able to go about their economic activity as normal, and 21 those who are having concerns, their concerns are listened 22 to and resolutions are received, because in that regard 23 then public order would be ensured and there would be 24 normality and peace. 25 MR SEMENYA SC: So we know you arrive and</p>

Page 6809

1 you are briefed by the operational commanders. You then
 2 proceed to engage with Lonmin management. What do you do
 3 next, later that evening?
 4 GENERAL PHIYEGA: Ja, at about 23:00 of
 5 the same day we then met with the operational officers back
 6 at the SAPS JOC in Marikana.
 7 MR SEMENYA SC: The JOC would stand for
 8 Joint Operational Centre?
 9 GENERAL PHIYEGA: Yes.
 10 MR SEMENYA SC: Alright –
 11 GENERAL PHIYEGA: Yes, that's true, Joint
 12 Operational Centre.
 13 MR SEMENYA SC: What happened there?
 14 GENERAL PHIYEGA: The operational
 15 officers gave me an overview of the situation. I
 16 emphasised to the SAPS commanders that they key, and the
 17 team, the importance of ensuring that efforts be made to
 18 prevent further loss of life and destruction of property.
 19 [12:47] Recognising the escalation, I urged commanders to
 20 seek assistance from other SAPS units should they determine
 21 that they needed such assistance in order to carry out the
 22 South African Police Services constitutional mandate of
 23 protecting the lives and property of the citizens of the
 24 Republic.
 25 MR SEMENYA SC: And at we saw earlier,

Page 6810

1 you would be at national level, having the legal power for
 2 the deployment of resources – together?
 3 GENERAL PHIYEGA: Yes, it is my
 4 responsibility.
 5 MR SEMENYA SC: And then you left for
 6 home.
 7 GENERAL PHIYEGA: Yes, we left late for
 8 home.
 9 MR SEMENYA SC: What happens next
 10 relevant to the events at Marikana?
 11 GENERAL PHIYEGA: As a matter of practice
 12 I continued receiving regular situational reports about the
 13 events that were unfolding in Marikana.
 14 MR SEMENYA SC: Before we deal with the
 15 15th, the following day would have been the 14th. Do you
 16 recall where you were and what you were doing?
 17 GENERAL PHIYEGA: Can you repeat your
 18 question?
 19 MR MADLANGA SC: Mr Chairman,
 20 Commissioners, when the witness was testifying on the
 21 statutory matrix, my understanding was that the lady
 22 sitting next to her, who I understand is a chief legal
 23 advisor within the South African Police Service, was
 24 assisting her to locate tabs and so on and so on. Now she
 25 is being asked a question as to whether she knows where she

Page 6811

1 was on a certain date, and I see the lady sitting next to
 2 her whispering to the National Commissioner. That in my
 3 book is totally unacceptable, Mr Chairman.
 4 CHAIRPERSON: I didn't see her
 5 whispering. I thought she was merely –
 6 MR MADLANGA SC: I saw her. I saw that.
 7 CHAIRPERSON: No, I'm not – I'm just
 8 differing from you. I thought she was just helping the
 9 National Commissioner to find the relevant entry in her
 10 diary, or something of that kind. The point you made is of
 11 course a valid one. I take it, it won't happen anymore.
 12 If there is a diary which shows where the National
 13 Commissioner was to help to refresh her memory, obviously
 14 you can find that and show it to her, but please, don't
 15 whisper anything to her because if you do I'll have to ask
 16 you to move away and that won't be desirable either, will
 17 it? So let's carry on in a way that doesn't lead to an
 18 objection of this kind.
 19 MR BIZOS SC: Mr Chair, a related matter,
 20 we notice the Commissioner and the person sitting next to
 21 her having lengthy discussions and looking at documents and
 22 the one referring the other to documents, which gave us the
 23 impression - but we did not want to raise it – that the
 24 Commissioner was really being reminded, or discussing what
 25 she was to say. We did not object then and we didn't want,

Page 6812

1 because we thought that the matter would pass, but now that
 2 the matter has been raised, it is not only during the
 3 period of the cross-examination that the legal advisor has
 4 been identified –
 5 CHAIRPERSON: There has been no cross-
 6 examination so far. She's being led in chief.
 7 MR BIZOS SC: Well, the evidence-in-chief
 8 yes, sorry. Whilst the witness is giving evidence, even
 9 during intermissions, I think that the advisor should be
 10 advised that it is not proper in our procedure to discuss
 11 the evidence of the witness and to suggest what the answers
 12 may be either in chief or in cross-examination.
 13 CHAIRPERSON: - wish to comment. I must
 14 confess, I didn't notice that, but I – yes, our impression
 15 was that she was simply showing her documents which were
 16 relevant. I must confess, I obviously accept that anything
 17 beyond that would not be appropriate.
 18 MR BIZOS SC: Yes, that's all –
 19 CHAIRPERSON: I didn't observe it myself,
 20 neither did either of my fellow Commissioners. You've made
 21 the point. I see Mr Semenya still wants to say something,
 22 but –
 23 MR MPOFU: Chair –
 24 CHAIRPERSON: Mr Semenya, before you
 25 speak, I see Mr Mpofo has turned his microphone on.

Page 6813

1 MR MPOFU: Yes, Chairperson, I just
 2 thought let's rather deal with this matter once and for
 3 all. Firstly, I think the issue of having somebody sitting
 4 next to the witness is in itself unusual and Chairperson
 5 will remember that when we had Magidiwana's father, we had
 6 to ask for permission just for him simply to sit behind the
 7 witness, without taking part in the proceedings, and we
 8 were granted such permission. So to have somebody who has
 9 not been introduced to the Commission as such, has not been
 10 sworn in, if she's going to be even giving some of the
 11 evidence even partially or in whatever form, is something
 12 that somehow needs to be regularised. I'm not necessarily
 13 saying it should not be done, but we should all know what
 14 the terms of her participation is.

15 MR SEMENYA SC: Perhaps, Chair, before
 16 responding, might I ask, General Rantu can't sit with us
 17 here. There's nothing major that has happened here.

18 CHAIRPERSON: I must confess, I had
 19 merely assumed that documents were being shown to her, to
 20 be found for her, you know, to speed things up. I was a
 21 bit surprised that we weren't told in advance that it would
 22 happen and we weren't asked if we objected to that, but I
 23 didn't think it was a serious matter. I thought in fact it
 24 was assisting us in the sense that it was speeding things
 25 up, but I see it's now just before 1 o'clock. Perhaps it

Page 6814

1 might be appropriate to take the adjournment at this stage
 2 and you could discuss it with those instructing you and
 3 possibly the evidence leaders. How long do you think you
 4 will need to finish the evidence-in-chief of the National
 5 Commissioner? The reason I ask that is that should we
 6 adjourn until half past 1, or if we take the adjournment
 7 till 2 o'clock, will there be enough time in the rest of
 8 the afternoon to cover the evidence-in-chief?

9 MR SEMENYA SC: I would hope to be able
 10 to finish the evidence of the Commissioner in chief in the
 11 full time of the sitting, with us having a one-hour lunch
 12 adjournment, Chair.

13 CHAIRPERSON: And you can attend to the
 14 other matter which has been raised during that one hour as
 15 well –

16 MR SEMENYA SC: Can I get rid of that
 17 now?

18 CHAIRPERSON: Well, if you wish, yes.

19 MR SEMENYA SC: And perhaps the better
 20 place to start is the transcript of the record at page
 21 6319, this is where Mr Mathibedi says the following.

22 CHAIRPERSON: Sorry, you and I are at
 23 cross purposes. You're now dealing with the point raised
 24 about the Carte Blanche programme. Is that correct?

25 MR SEMENYA SC: Yes, it is this issue of

Page 6815

1 public –

2 CHAIRPERSON: No, no, I understand that.
 3 The other matter relating to the allegation that the
 4 National Commissioner is being assisted in giving her
 5 evidence by whispering from the lady next to her, that's
 6 the matter I suggest you attend to and take instructions
 7 on. I certainly didn't see it happening. All I saw – well
 8 I wasn't keeping a close eye on it – was that documents
 9 were being found for her, and I didn't have a problem with
 10 that. But perhaps you can deal with that over the lunch
 11 hour, but this other matter, the Carte Blanche matter,
 12 perhaps it's desirable to deal with that now.

13 MR SEMENYA SC: Chair, the better place
 14 to start in our submission would be page 6319 where the
 15 following appears against the name of my colleague, Mr
 16 Mathibedi SC. He says there, "Thanks, Mr Chairman, on
 17 behalf of the South African Police Service, SAPS, I issue
 18 the following statement. On the 3rd of March 2013 M-Net
 19 broadcast the programme Carte Blanche in which persons
 20 interviewed made allegations of arrest, torture, and
 21 intimidation, against members of the South African Police.
 22 Another interview expresses the view that the alleged
 23 conduct of SAPS may affect the willingness of witnesses to
 24 testify before the Commission. SAPS is concerned that the
 25 content and timing of the broadcast creates the wrong

Page 6816

1 impression that SAPS is or may be impeding the work of the
 2 Commission. Needless to say, this may affect how the
 3 public perceives the role of SAPS at the Commission, to the
 4 prejudice of SAPS. We place on record that on arrest
 5 relating to the events in Marikana have occurred since
 6 November 2012. SAPS is fully supportive of the work of the
 7 Commission and has offered its full cooperation to the
 8 Commission. The police denies allegations of torture and
 9 intimidation made against them. Any arrest that has
 10 occurred so far was done within the confines of the law.
 11 Thanks, Mr Chairman."

12 Then the next place to go is exhibit L, and in
 13 particular slide 265. Chairperson, you'll realise that the
 14 cases registered relevant to matters the Commission is
 15 inquiring upon, would be under CAS134 Marikana, CAS135,
 16 136, 137, 138, 139, 142, 205, 206. So those are issues
 17 over which this Commission is enjoined. What Mr Mpofo is
 18 talking about relates to a different CAS number completely.
 19 It relates to the attempted murder that occurred, not in
 20 matters involving the police at all. It is a case
 21 registered under CAS Marikana 04/10/2012. The warning
 22 statements relate to, are dated January of 2013, and relate
 23 to an attempted murder incident unrelated to the police.
 24 So if anything, what Mr Mathibedi, if he had anticipated
 25 difficulties that we are trying to resolve, his statement

Page 6817

1 would have read, "We place on record that no arrest
2 relating to the events in Marikana has occurred," and with
3 reference to those CAS numbers. It is my submission, we
4 could never make an undertaking, Chairperson, that the
5 police cannot do what the law says they have the power and
6 entitlement to do.

7 CHAIRPERSON: Sorry, that is not entirely
8 correct. You will recall that when this matter was raised
9 earlier in the context of earlier allegations, you agreed
10 to make available to the evidence leaders the dockets
11 relating to the arrests which form the subject matter of
12 the complaint, so the evidence leaders could satisfy
13 themselves that prima facie there was no attempt to
14 intimidate or interfere with the working of the Commission.
15 I understand that was done; the dockets were made
16 available. They satisfied themselves that it couldn't be
17 said that there was an attempt to interfere with the
18 working of the Commission, and that's where the matter
19 ended. It might be helpful if the dockets to which you now
20 refer are also shown to the evidence leaders for the same
21 purpose, and I'm not saying it's compulsory, but it would
22 be a helpful way of resolving the matter and establishing
23 the bona fides of your clients. You agreed to that before,
24 with the results that I have mentioned.

25 MR SEMENYA SC: We will consent to do

Page 6818

1 that, Chair, but it is not helpful to be moving always that
2 the conduct of the police is less than proper when there's
3 no foundation for that conclusion.

4 MR MADLANGA SC: Mr Chairman, may I just
5 ask to make a slight correction to what you said? There
6 was no way, and I do not even think that we would have
7 attempted to look into whether there was any intimidation.
8 Rather –

9 CHAIRPERSON: I didn't say intimidation;
10 I said, I think I said, or intended to say, prima facie
11 there was no intent to interfere with the work of the
12 commission.

13 MR MADLANGA SC: Even if you were putting
14 the prima facie, Mr Chairman, yes. What we were asked to
15 do was to look at whether the bare minimum requirement for
16 effecting an arrest appeared to have been satisfied, based
17 on the contents of the dockets, which that minimum
18 requirement, being whether there is a reasonable suspicion
19 of the commission of an offence, so when we looked at the
20 dockets, that is all that we required to satisfy ourselves
21 on. It was not so much the question of – perhaps, yes, I
22 do accept, Mr Chairman, that it does bear relevance to that
23 question in the sense that was there a possibility that the
24 people were being arrested for the sake of it, which in
25 context might have been an indication of intimidation, but

Page 6819

1 I thought I should just clarify what it is that we had been
2 asked to look into.

3 CHAIRPERSON: Yes, you have stated it
4 correctly. The main purpose of course was to see whether
5 there were any indications of an attempt to interfere with
6 the Commission and its operation. That certainly was a
7 factor which was operative as well. I think this is an
8 appropriate stage for us to take the –

9 MR MPOFU: Chairperson, no, no, no, no,
10 no –

11 CHAIRPERSON: If you want to say
12 something, Mr Mpofo, you can do so after lunch –

13 MR MPOFU: Yes, Chairperson –

14 CHAIRPERSON: Mr Mpofo –

15 MR MPOFU: I'm dealing –

16 CHAIRPERSON: Do me a favour; lower your
17 voice. You can say it after lunch. We will adjourn for
18 lunch.

19 MR MPOFU: No, Chairperson, I would like
20 to say it now.

21 CHAIRPERSON: I have adjourned for lunch,
22 Mr Mpofo.

23 [COMMISSION ADJOURNS COMMISSION RESUMES]

24 [14:00] CHAIRPERSON: Mr Semenya, dealing with
25 the other matter we were dealing with before lunch, the

Page 6820

1 question of the arrests, do I understand that you – I think
2 you did say that, that you're prepared to make the dockets
3 available to the evidence leaders, they can then satisfy
4 themselves - because we obviously can't have an inquiry
5 about it here now – they can satisfy themselves as to
6 whether the people arrested have been listed as witnesses
7 who it's proposed to be called, whether the charge in
8 respect of which they have been arrested are indeed covered
9 by the list to which you referred, or not, whether the
10 charges in respect of which they had been arrested have
11 relevance in respect of the matters which we were called
12 upon to inquire into. I take it you're quite happy to make
13 the dockets available to the evidence leaders on that
14 basis, as was done in the case of the other dockets?

15 MR SEMENYA SC: It's an unfortunate
16 precedent, but we'll abide by it.

17 CHAIRPERSON: Yes. Well, I don't know
18 that it was unfortunate, but certainly it's a precedent and
19 I'm glad you're prepared to abide by it. Mr Mpofo, you
20 wanted to say something before we adjourned. I take it
21 that deals with the problem, and once the evidence leaders
22 have seen those dockets the matter can, if necessary, be
23 raised again. In the meanwhile we have the assurance which
24 was given last time that it's not the intention of the SAPS
25 to arrest people who are – how was it put? – who are

Page 6821

1 involved in those cases that are listed in exhibit L.
 2 That's what Mr Semenya said his learned colleague should
 3 have said, is that correct?
 4 MR SEMENYA SC: No, Chair.
 5 CHAIRPERSON: Then put it right, please.
 6 MR SEMENYA SC: The transcript is that no
 7 arrest was in relation to the matters cited in L –
 8 CHAIRPERSON: Yes.
 9 MR SEMENYA SC: - as those cases
 10 mentioned.
 11 CHAIRPERSON: Yes.
 12 MR SEMENYA SC: But I must also place on
 13 record that for instance there are a whole number of blank
 14 spaces in the statement of Mr X.
 15 CHAIRPERSON: Yes.
 16 MR SEMENYA SC: Those people are subject
 17 to arrest when the police find it appropriate to effect
 18 those arrests.
 19 CHAIRPERSON: Yes. Alright. Yes, no, I
 20 was trying to remember the words, the assurance that your
 21 colleague gave us when he appeared before us. You have the
 22 transcript in front of you. What does it say?
 23 MR SEMENYA SC: It reads, Chair, "We
 24 place on record that no arrests relating to the events in
 25 Marikana have occurred since November 2012."

Page 6822

1 CHAIRPERSON: There were also allegations
 2 relating to torture. I take it you have no difficulty in
 3 giving an assurance that nothing which can be described as
 4 torture will take place?
 5 MR SEMENYA SC: By matter of law that
 6 must be so, Chair.
 7 CHAIRPERSON: Alright. Mr Mpofo, shall
 8 we leave it there for the time being?
 9 MR MPOFU: Well, we can't leave it there,
 10 Chairperson.
 11 CHAIRPERSON: And why can't we? What I
 12 suggested, what I would have thought gives protection to
 13 everybody in the meanwhile, if the statements – and there's
 14 a dispute of fact, as I understand it, between you and Mr
 15 Semenya as to whether the arrests that took place have
 16 relevance in relation to matters we're investigating. It's
 17 one of the issues. That's something which the evidence
 18 leaders can satisfy themselves about when they've seen the
 19 dockets.
 20 MR MPOFU: Chairperson, maybe you might
 21 want to hear me out. Thank you –
 22 CHAIRPERSON: I do propose hearing you
 23 out.
 24 MR MPOFU: Thank you.
 25 CHAIRPERSON: It wouldn't be appropriate

Page 6823

1 for me to make a ruling against you without hearing you.
 2 MR MPOFU: Yes, thank you very much,
 3 Chair. Or even in my favour, Chairperson. There is that
 4 possibility. Now –
 5 CHAIRPERSON: I will listen to you. If
 6 you persuade me you're entitled to a ruling in your favour,
 7 you'll get one. If you don't, you won't.
 8 MR MPOFU: Thank you, that's better.
 9 Thank you, Chair. Chairperson, firstly I just want to say
 10 this, that I think we must all resist any impression that
 11 might be created that the parties are not treated equally
 12 in relation to any matter, that all the parties represented
 13 here, whatever their ranks or status, must be treated
 14 exactly in the same manner. That's the first issue.
 15 The second issue is that these allegations of
 16 torture are quite serious and it's not just a technical
 17 matter of procedure. We raised this last year in exactly
 18 the same manner that it was raised in the Carte Blanche
 19 programme, namely the police obviously are entitled to
 20 carry on with their work. Now we can't stop them from
 21 doing so. However, the day I raised this, it was the
 22 following day after the, on the previous day people coming
 23 from here were stopped, including women, and manhandled and
 24 made to lie on the road and so on, and the following day
 25 people came and told us stories of gruesome torture, which

Page 6824

1 I don't want to repeat, and even then, Chairperson, with
 2 great respect, the debate suddenly became about whether
 3 matters of collegiality, whether Mr Semenya had been
 4 informed, and so on, and since then there has been no
 5 addressing of the fundamental issue that we raised, which
 6 was that by those allegations of torture alone, true or
 7 false, that the intention, or rather the effect would have
 8 been to dissuade potential witnesses to the Commission from
 9 coming forward. We're not dealing with whether the
 10 allegations themselves were true or not; the mere raising
 11 of that possibility that a potential witness was arrested,
 12 and so on.
 13 Now what has happened is, we were given
 14 assurances - that's why I'm not interested in assurances at
 15 this stage – we were given assurances then that this was
 16 not going to happen. Now we are in January this year, and
 17 really all I was raising this morning was a simple matter,
 18 which I think Mr Semenya in a way has addressed, which is
 19 that the sentence that he has raised which says, which was
 20 in Mr Mathibedi's statement, "We place on record that no
 21 arrests relating to the events in Marikana have occurred
 22 since November 2012," is not correct. It is factually not
 23 correct as it is put here. Maybe with the qualifications
 24 that have now been put, it may or may not be, but what we
 25 are raising this morning is that this is not true, and we

Page 6825

1 stick by that.

2 But that's not even the issue, Chairperson, with

3 great respect. The issue here is not about case numbers.

4 I think that is the worst red herring that I've ever heard.

5 Obviously when people are arrested in January, the case

6 number is not going to be those case numbers listed in

7 exhibit L, which are for August of 2012. I mean that's

8 just an obvious fact. Even the people who were arrested in

9 November when we raised this, were arrested under different

10 case numbers, for obvious reasons that I've just stated.

11 CHAIRPERSON: Case numbers? It's docket

12 numbers, CAS numbers –

13 MR MPOFU: Yes. Yes.

14 CHAIRPERSON: CAS isn't a case number –

15 MR MPOFU: Yes, a docket number –

16 CHAIRPERSON: It's what used to be called

17 an RCI in the old days.

18 MR MPOFU: Correct.

19 CHAIRPERSON: Or an RCA.

20 MR MPOFU: Ja.

21 CHAIRPERSON: It's the registration

22 number of that particular complaint –

23 MR MPOFU: Correct.

24 CHAIRPERSON: - or charge in the

25 registers of the relevant police station.

Page 6826

1 MR MPOFU: Yes, yes.

2 CHAIRPERSON: It's not case numbers.

3 MR MPOFU: Ja. Whatever it's called, the

4 docket number or whatever it is, but the CAS number, that

5 is not the issue. The only issue here which we have raised

6 and which was raised in the programme, you must remember,

7 this statement was not just made ex cathedra; it was made

8 to show that the Carte Blanche programme was factually

9 incorrect. That's the issue, and the Carte Blanche

10 programme was correct in the sense that these people that

11 we raised the issue of this morning, said to the police in

12 affidavits made on the 21st of January, which were used in

13 court on the 29th of January, when the police opposed their

14 bail, a Constable Mafora gave evidence opposing the bail of

15 these people, and these statements were submitted in court,

16 where the people said among others two things, (1), I have

17 been severely tortured; (2), I am expected to be a witness

18 in the Commission, or at least these matters that I'm

19 dealing with have something to do with the Commission. So

20 the Commission was specifically mentioned.

21 Of course we know that the SAPS is a large

22 organisation, so one can expect if, you know, some section

23 of it doesn't know what another one is doing. That's not

24 what I'm addressing. The point of the matter is that the

25 police at least as an institution are fully aware of these

Page 6827

1 allegations of torture, are fully aware of arrests which

2 have been made subsequent to November, and to come to the

3 Commission and make this statement, which is clearly not in

4 conformity with that, is something that we wanted to

5 correct, and the only reason we wanted to correct it in

6 this forum is simply because Carte Blanche produced a

7 programme; the SAPS on their own volition chose to respond

8 not to Carte Blanche but to come here to this Commission

9 and make a statement, and therefore it is in this very same

10 forum that we are trying to also be given a voice to

11 correct that statement, and that's the point I wanted to

12 make before lunch, was simply that we cannot allow them to

13 respond to something that was raised, without giving the

14 people who have raised the complaint a voice.

15 CHAIRPERSON: Clearly you're entitled to

16 respond to what they say, but I'm concerned about something

17 else, and that is I'm concerned that if there are, about

18 allegations that police have been guilty, particular

19 policemen have been guilty, policemen/women being guilty of

20 conduct which is calculated to interfere with the workings

21 of this Commission. It can interfere with the workings of

22 the Commission in several ways. Firstly it can discourage

23 people who can give important evidence from coming, if

24 these allegations are true. Alternatively, even if it

25 doesn't go that far, it can affect the perception of the

Page 6828

1 public in relation to this Commission. The public may come

2 under the belief that this Commission won't be able to

3 produce a proper answer to the questions posed to it

4 because of matters of this kind. That is why I've

5 suggested - and I persist in this request and it's been

6 acceded to, or we've got an undertaking that it will be

7 acceded to – that the dockets of the cases in question be

8 made available to the evidence leaders so that they can

9 examine them, because we can't have a factual inquiry here

10 –

11 MR MPOFU: Sure.

12 CHAIRPERSON: - they can examine them,

13 see a number of things, firstly whether these are witnesses

14 whose names have been given already as people proposed to

15 be called, which is one of the aspects; secondly, to see

16 whether the charges in respect of which they've been

17 arrested have a bearing on the matters which we're

18 investigating, because we've been told that they don't, but

19 that's something that can be, I would take it can be

20 verified. So Mr Semanya has agreed to do that, and let him

21 do that; let the evidence leaders look at the matter and

22 then in the light of what happens thereafter we can

23 possibly revisit it –

24 MR MPOFU: Sure.

25 CHAIRPERSON: But it is important that

Page 6829

1 the public should not have any perception that this
 2 Commission is being interfered with or being – interfered
 3 with is perhaps too strong a word – that things are being
 4 done which may prevent it from doing its work properly.
 5 That's something that we as Commissioners obviously are
 6 concerned about. So let's leave the matter there for the
 7 moment and carry on with the evidence –
 8 MR MPOFU: Chairperson, sorry, I won't be
 9 long. I just want to say this in aid of what you are
 10 saying, that whatever the solution is going to be, the
 11 impression must never be created that the torture of people
 12 who are linked, however tenuously, whether they are under
 13 case number X or Y or Z, to the work of the Commission, is
 14 allowed simply because it's one case number or another.
 15 The whole issue is that, as I say, however tenuous the
 16 link, the mere fact that people – I can assure you that one
 17 of these people, I took his statement myself in December,
 18 he may or may not be called as a witness but he doesn't
 19 know that. All he knows is that he's been approached by
 20 us, a statement has been taken, and that's all he said to
 21 the police, "I'm expected to be a witness at the
 22 Commission. So all I'm saying is that these technicalities
 23 about case numbers or CAS numbers, or whatever it is,
 24 should not detract from the real issue, which is that
 25 witnesses will be dissuaded or intimidated if they think

Page 6830

1 that another potential witness has been –
 2 CHAIRPERSON: Well, I hope the way I
 3 phrased it at the end doesn't enmesh me in any
 4 technicalities of any kind.
 5 MR MPOFU: Thank you.
 6 CHAIRPERSON: There's another point I
 7 want to make that's relevant, and that is, if there are
 8 allegations of torture, not directly relevant to what we're
 9 concerned with, we're not here to investigate them. That's
 10 what the IPID exists for.
 11 MR MPOFU: Sure, sure.
 12 CHAIRPERSON: And if there are people who
 13 allege that they've been tortured, then the matter must be
 14 reported to the Independent Investigation Division, IPID,
 15 and they will, I'm sure, investigate the allegations as
 16 thoroughly as can be done.
 17 MR MPOFU: Thank you. Thank you,
 18 Chairperson.
 19 CHAIRPERSON: Mr Semanya, would you –
 20 I've already reminded your witness that she's under oath.
 21 Would you please proceed with your evidence-in-chief?
 22 EXAMINATION BY MR SEMENYA SC (CONTD.):
 23 Thank you, Chair. General, just to tidy up another matter
 24 before the adjournment, can you explain through your own,
 25 and with your own words, what General Rantu was doing which

Page 6831

1 precipitated the objection?
 2 GENERAL PHIYEGA: This morning I
 3 appreciated the voluminous documents that I had to deal
 4 with and I requested assistance so that as we go through
 5 the process I could have somebody helping me just to page
 6 through the many documents that were before us, because I
 7 released that I could probably cause a lot of delays and a
 8 lot of confusion to this Commission. At the time when this
 9 matter was raised I had two documents before me and I
 10 realised that on the one document I had some notes and I
 11 was asking her to actually open that document for me where
 12 you asked me a question about the 14th.
 13 MR SEMENYA SC: Okay, let's proceed. The
 14 14th of August, did you remember where you were?
 15 GENERAL PHIYEGA: On the 14th of August I
 16 was not in Marikana; I was in parliament.
 17 MR SEMENYA SC: Did you receive any
 18 reports in relation to events at Marikana on the 14th?
 19 GENERAL PHIYEGA: Yes, I continued to
 20 receive reports and updates, and on that day the update I
 21 received was that another dead body was found of a person
 22 who was killed, who was alleged to be a supervisor of the
 23 mine, who had a skull on his chest.
 24 MR SEMENYA SC: A skull of a cattle?
 25 GENERAL PHIYEGA: Yes, a skull of a

Page 6832

1 cattle.
 2 MR SEMENYA SC: Then you continue to
 3 describe an event on the 15th of August 2012.
 4 GENERAL PHIYEGA: On the 15th of August
 5 2012, whilst I was attending the South African Police
 6 Services National Forum Meeting in Midrand, which General
 7 Mbombo attends as a provincial commissioner, I was informed
 8 by Lieutenant-General Mbombo of a possibility of a peaceful
 9 resolution being reached.
 10 [14:21] She informed me that she had been told that Mr
 11 Mathunjwa of AMCU had promised that the protesters would
 12 lay down their weapons at the koppie at 9 on the morning of
 13 the 16th August 2012, and that thereafter they will leave
 14 the koppie. Lieutenant-General Mbombo further informed me
 15 that if the above, that undertaking of putting down their
 16 weapons and leaving the koppie failed to materialise, the
 17 police would have to disperse the crowd.
 18 MR SEMENYA SC: What time more or less is
 19 this conversation happening?
 20 GENERAL PHIYEGA: This conversation took
 21 place in the early midday part of the morning when we were
 22 at the meeting.
 23 MR SEMENYA SC: Yes, and you deal with
 24 the afternoon of the 16th of August 2012. What happened
 25 there?

Page 6833

1 GENERAL PHIYEGA: On that afternoon I
 2 received a call from General Mbombo, who informed me also
 3 that the decision to implement a dispersal operation, of a
 4 decision to implement a dispersal operation plan.
 5 MR SEMENYA SC: A lot later that day
 6 though, do you again speak to Lieutenant-General Mbombo?
 7 GENERAL PHIYEGA: Later that date of the
 8 16th Lieutenant-General Mbombo informed me about the tragedy
 9 that had just occurred.
 10 MR SEMENYA SC: More or less what time
 11 does that happen?
 12 GENERAL PHIYEGA: That time is around
 13 late afternoon, maybe 3, 4, that time, it could have even
 14 been much later, around 3, 4, that, 3, 4, 5, that time.
 15 MR SEMENYA SC: What does she say about
 16 that tragedy?
 17 GENERAL PHIYEGA: She said that the
 18 protesters had charged at the police line with an
 19 assortment of dangerous weapons. She also relayed that the
 20 police had also been fired at and that the police had shot
 21 and killed a number of protesters, which later turned out
 22 as 34, and they had done so in private defence. I was also
 23 informed that there were other people who were injured.
 24 She also stated that 250 protesters had also been arrested.
 25 I then related the same information to the Minister of

Page 6834

1 Police telephonically, and advised him that I shall be
 2 attending to the matter personally.
 3 MR SEMENYA SC: Do you then go to
 4 Marikana?
 5 GENERAL PHIYEGA: Yes, late on the same
 6 day I travel to Marikana, where I met General Mbombo and
 7 the SAPS team at the JOC, and I was given a briefing of the
 8 events that had happened. I received a briefing from
 9 Lieutenant-General Mbombo, assisted by General Annandale,
 10 General Naidoo, Brigadier Calitz, and Lieutenant-Colonel
 11 Scott, and at that time at the JOC I was told that the
 12 scene of the accident is cordoned off and is being managed
 13 by IPID, had been prepared to be handed over to IPID and
 14 they are the managers of that scene.
 15 MR SEMENYA SC: Please proceed.
 16 GENERAL PHIYEGA: At the close of the
 17 briefing that day we agreed that we shall the next day hold
 18 a press conference, and I may also say that there was a lot
 19 of media who wanted us to hold a press conference on that
 20 day. We could not do so because all the facts were not yet
 21 collected and we thought it would be prudent for us to hold
 22 the press conference the next day, and we informed
 23 everybody accordingly.
 24 MR SEMENYA SC: Where was the President
 25 of the Republic that day?

Page 6835

1 GENERAL PHIYEGA: The President of the
 2 country was in Mozambique. There was a SADEC meeting.
 3 MR SEMENYA SC: Was he appraised of the
 4 developments that were happening in the country?
 5 GENERAL PHIYEGA: We were phoned by the
 6 Minister of International Relations to make an inquiry
 7 about this incident.
 8 MR SEMENYA SC: And was that done in
 9 writing?
 10 GENERAL PHIYEGA: Yes, we issued an
 11 internal briefing to the Minister.
 12 MR SEMENYA SC: Might I give you a
 13 document, Chair, which we would with your permission have
 14 it marked exhibit FFF4?
 15 MS PILLAY: Chair, I understood the
 16 single page 7 to be FFF4, which means that the new exhibit
 17 will be FFF5.
 18 CHAIRPERSON: You may be right, but I
 19 didn't make a note that we gave it a separate description.
 20 May I say that if we did, I hereby amend it that this will
 21 be FFF4 and the single page then can be called, if it's
 22 called anything else, can be called FFF3A. That will sort
 23 it out.
 24 MR SEMENYA SC: Thank you, Chair.
 25 CHAIRPERSON: This document is an

Page 6836

1 internal brief. For whom was it prepared?
 2 MR SEMENYA SC: Thank you, Chair. Well,
 3 the document in summary is drafted with the benefit of the
 4 commanders. Am I right?
 5 GENERAL PHIYEGA: Yes.
 6 CHAIRPERSON: That doesn't answer my
 7 question. I think possibly you didn't hear me. For whom
 8 was this internal brief prepared?
 9 GENERAL PHIYEGA: It was prepared for the
 10 Minister of International Relations, who called to inquire
 11 about the incident.
 12 CHAIRPERSON: I take it she was in
 13 Mozambique with the President at the SADEC meeting. Is
 14 that right?
 15 GENERAL PHIYEGA: Yes, she was.
 16 MR SEMENYA SC: And they were looking for
 17 this information to make what judgment call?
 18 MR HANABE: Can you repeat again, Senior
 19 Counsel?
 20 MR SEMENYA SC: To make what judgment
 21 call? What was this information necessary for them?
 22 GENERAL PHIYEGA: When I spoke to the
 23 Minister their concern was the gravity of the matter, and
 24 she indicated to me that she needed facts in order for the
 25 President to consider his continuation or non-continuation

Page 6837

1 of the meeting.

2 MR SEMENYA SC: Then the document deals

3 with the background, the history of the events, and the

4 actions of SAPS, but they are not issues over which you are

5 able to vouch for their factual correctness. Am I correct,

6 Commissioner?

7 GENERAL PHIYEGA: Yes. It was informed

8 by Operations.

9 MR SEMENYA SC: So what happens then on

10 the 16th, the evening, after you had agreed to hold a press

11 conference the following day?

12 GENERAL PHIYEGA: On the –

13 CHAIRPERSON: Sorry, forgive me for

14 interrupting. May I inquire when this document FFF4 was

15 prepared? Was it, I take it the request came on the 16th

16 because it was full of, the international news media were

17 full of reports of the incident, so I take it the Minister

18 of International Affairs asked for a brief on the same day,

19 or early the next day? What happened?

20 GENERAL PHIYEGA: It is almost very late

21 on the 16th and it's sent almost in the early hours of the

22 17th.

23 CHAIRPERSON: I see. So this document

24 was then sent in the early hours, some time after midnight

25 –

Page 6838

1 GENERAL PHIYEGA: Yes.

2 CHAIRPERSON: - on the morning of the

3 17th.

4 GENERAL PHIYEGA: Yes.

5 MR SEMENYA SC: On the 17th you then go to

6 Marikana.

7 GENERAL PHIYEGA: On the afternoon of the

8 17th we returned to Lonmin. I think there is something else

9 that I omitted, my apologies. I think on the 17th we start

10 off by addressing a press conference. I had already

11 indicated that on the 16th we decided to hold a press

12 conference on the 17th at 11. The purpose of the press

13 conference was to address the press with regard to the

14 events of the 16th of August. As the National Commissioner

15 I had to take the lead in giving that address and the

16 information.

17 MR SEMENYA SC: Can I give you another

18 document, and please identify it for us?

19 CHAIRPERSON: This I take it will be

20 FFF5.

21 MR SEMENYA SC: 5, Chair. Thank you very

22 much.

23 CHAIRPERSON: It is a media statement

24 effectively by the witness.

25 MR SEMENYA SC: Indeed, Chair. The

Page 6839

1 document, Commissioner, is a media statement. It deals

2 with the remorse the police have as a result of the

3 tragedy. Correct?

4 GENERAL PHIYEGA: Yes, it is correct.

5 MR SEMENYA SC: It refers to the legal

6 responsibilities of the police.

7 GENERAL PHIYEGA: Yes, it is true.

8 MR SEMENYA SC: It details some accounts

9 covering the period of 10th August 2012 to the 16th – to the

10 13th.

11 MR HANABE: To the 13th?

12 MR SEMENYA SC: To the 16th.

13 GENERAL PHIYEGA: Yes, it does.

14 MR SEMENYA SC: The facts in the document

15 would have who as their source, the factual account of

16 events?

17 GENERAL PHIYEGA: These are the facts

18 given by my commanders who were here in Marikana.

19 MR SEMENYA SC: And the afternoon of the

20 17th, after the press conference has happened, where did you

21 go?

22 GENERAL PHIYEGA: When I returned from

23 the press conference on the 17th, I returned to Lonmin,

24 where I attended a parade that was arranged by our employee

25 health and wellness team for the members of SAPS.

Page 6840

1 MR SEMENYA SC: Did you address the

2 parade?

3 GENERAL PHIYEGA: Yes, I did address

4 members at the parade, and I would like to indicate that I

5 met members that were very shaken, members that were very

6 traumatised, and at the time they needed to still continue

7 to do their work because issues at Marikana still required

8 the attention of the police. We had our spiritual leaders

9 at that meeting, and we sang and we prayed.

10 [14:41] We took time also to again just outline our

11 employee health and wellness offerings and we encourage

12 members who are feeling weak, to attend those sessions

13 because it was very necessary for their own spiritual,

14 emotional, and I presume physical healing.

15 MR SEMENYA SC: Do you know on the 17th,

16 the whereabouts of the President?

17 GENERAL PHIYEGA: On the 17th in the

18 evening the President visited Marikana, and we all attended

19 a press conference that he held.

20 MR SEMENYA SC: Anything significant with

21 that press conference?

22 GENERAL PHIYEGA: Two significant things

23 that came out of that conference was first and foremost his

24 announcement of an inter-ministerial committee that was to

25 come and work with communities in Marikana to assist

Page 6841

1 members who were also traumatised and had lost their loved
2 ones. He also at that press conference articulated his
3 intention to establish a commission of inquiry.
4 MR SEMENYA SC: And it is a notorious
5 fact that this Commission was established and later the
6 Terms of Reference settled.
7 GENERAL PHIYEGA: That is my
8 understanding.
9 MR SEMENYA SC: On the 18th of August one
10 member who was fatally wounded, on that day was buried,
11 Warrant-Officer Monene.
12 GENERAL PHIYEGA: Yes, it is true.
13 MR SEMENYA SC: Do you know what happened
14 in relation to his burial?
15 GENERAL PHIYEGA: Yes, we delegated
16 Lieutenant-General Masemola, who is the Deputy National
17 Commissioner for Visible Policing, to lead a delegation of
18 police to attend the funeral of Warrant-Officer Monene.
19 MR SEMENYA SC: And the following day was
20 the burial of Warrant-Officer Lepaaku. Can you tell us
21 about that?
22 GENERAL PHIYEGA: On the 19th of August
23 2012 I attended the funeral of late, of the late Warrant-
24 Officer Lepaaku, one of the two police officers who lost
25 their lives on the 13th of August, where I did address the

Page 6842

1 mourners and the members of SAPS, and encouraged them to be
2 resilient under the circumstances, given the fact that our
3 job at Marikana was continuing and as the nation was
4 mourning, SAPS members were also joining in the mourning
5 that the nation was going through.
6 MR SEMENYA SC: Might I give you a copy
7 of a document for identification by you?
8 CHAIRPERSON: This will be FFF6.
9 MR SEMENYA SC: I'm indebted to the
10 Chair.
11 CHAIRPERSON: Tribute by the provincial
12 commissioner at the funeral service of Warrant-Officer
13 Lepaaku.
14 MR SEMENYA SC: It is titled that way,
15 Chair, but we'll canvass evidence as to how the document
16 was dealt with.
17 CHAIRPERSON: So we'll just call it then
18 tribute at funeral of Warrant-Officer Lepaaku, 19 August
19 2012.
20 MR SEMENYA SC: I'm indebted to the
21 Chair. Can you describe this document, General?
22 GENERAL PHIYEGA: This is a speech that
23 was put together that was going to be read by General
24 Zukiswa Mbombo for the funeral service of late Warrant-
25 Officer Lepaaku. As a provincial commissioner in my

Page 6843

1 absence, she would be the functionary for the function. As
2 per our protocol when I come, I become the functionary. It
3 was for that reason that the prepared speech that was done
4 by SAPS, was read by myself at the funeral of Sello Ronnie
5 Lepaaku.
6 MR SEMENYA SC: The document recognises
7 various dignitaries. Correct?
8 GENERAL PHIYEGA: Yes.
9 MR SEMENYA SC: Draws from scripture
10 words of comfort.
11 GENERAL PHIYEGA: Yes, it does.
12 MR SEMENYA SC: And why the police were
13 there to pay their respect to Warrant-Officer Lepaaku.
14 GENERAL PHIYEGA: Yes.
15 MR SEMENYA SC: It also describes the
16 difficult circumstances under which the men and women in
17 blue experience in their daily workings for the service.
18 GENERAL PHIYEGA: Yes.
19 MR SEMENYA SC: There are unacceptable
20 facts about how they are attacked and brutally killed in
21 some of these confrontations.
22 GENERAL PHIYEGA: Yes.
23 MR SEMENYA SC: It also encourages
24 members to remain focussed in relation to their
25 responsibilities.

Page 6844

1 GENERAL PHIYEGA: Yes, it does.
2 MR SEMENYA SC: And cites a poem of an
3 unknown author about loss.
4 GENERAL PHIYEGA: Yes. May I also
5 indicate, with your permission, that on the first
6 paragraph, whereas those members are recognised, the
7 honourable Minister Nathi Mthethwa did not attend. The
8 Deputy Minister of Police was not at the funeral, Me Maggie
9 Soty. I was there. The MEC for Human Settlement, Public
10 Safety North West, Mr Nono Maloyi attended, and Lieutenant-
11 General Mbombo as the PC of the province.
12 MR SEMENYA SC: Next, on the 20th of
13 August you did address a parade again. Am I correct,
14 General?
15 GENERAL PHIYEGA: Yes, I confirm.
16 MR SEMENYA SC: What do you say at the
17 parade?
18 GENERAL PHIYEGA: I took the opportunity
19 to inform members about developments that were taking
20 place, that the President had decided to establish a
21 commission of inquiry into the Marikana tragedy. I also
22 informed them that a week of national mourning had also
23 been declared by the President. I also informed them of
24 the establishment of the IMC and what it was intended, what
25 role it was intended to play in Marikana. I thanked the

<p style="text-align: right;">Page 6845</p> <p>1 members for having put many, many hours per shift in 2 pursuit of peace and stability in the area. I also 3 underscored appreciation of the professional and embracing 4 of the SOPs, the guideline, the instruction through which 5 they should perform their duties.</p> <p>6 MR SEMENYA SC: And the Commission has 7 had a brief excerpt of your address of that parade and it 8 is exhibit WWW6. I'm told it's WW6, not WWW. We are not 9 there yet.</p> <p>10 CHAIRPERSON: Now this is an excerpt from 11 the address, WW6 that we had [inaudible].</p> <p>12 SPEAKER: Do that over, Mr Chair. You 13 were not on record. We didn't get that.</p> <p>14 CHAIRPERSON: Thank you. Yes, the 15 excerpt is WW6. It was I think shown to us. It was a 16 clip, if I remember, shown to us during Ms Jele's cross- 17 examination.</p> <p>18 MR SEMENYA SC: But for context, General, 19 and with the permission of the Chair, we should play that 20 videotape in its entirety.</p> <p>21 CHAIRPERSON: You will now have to give 22 the whole video clip a description. It will probably be 23 sensible to call it WW6.1 or something like that, so the 24 two are clearly linked. So it's the full clip of address 25 of 20 August.</p>	<p style="text-align: right;">Page 6847</p> <p>1 address of the parade you deal with the subsequent events, 2 paragraph 30 of your statement, Commissioner.</p> <p>3 GENERAL PHIYEGA: Having learned about 4 the announcement of the Commission by the President, 5 members were invited to Potchefstroom so that we can start 6 preparing, as I've already indicated in the, in some of the 7 facts mentioned before, that we start preparing ourselves 8 for the submission of the Commission. I had already 9 indicated earlier on that our commitment to making 10 contributions and inputs to the Commission were really 11 prioritised. As the National Commissioner of the South 12 African Police Service I took it upon myself to visit the 13 members to establish the progress of the preparation. All 14 this also in the light of how public services should be 15 conducted with transparency, accountability, and all those 16 issues being taken into account, I had to go there as a 17 leader and encourage my members to do exactly that.</p> <p>18 MR SEMENYA SC: Yes, and before we deal 19 with the concluding paragraph of your statement, during the 20 conduct of this Commission you got reports around evidence 21 tampering. You recall that, Commissioner?</p> <p>22 GENERAL PHIYEGA: Yes, I do.</p> <p>23 MR SEMENYA SC: As the National 24 Commissioner, what did you do in relation to that?</p> <p>25 GENERAL PHIYEGA: As the leader of SAPS I</p>
<p style="text-align: right;">Page 6846</p> <p>1 MS PILLAY: Chair, if I may interrupt, 2 despite the fact that only a portion of the clip was played 3 as an exhibit the last time around, the entire exhibit was 4 marked as WW6.</p> <p>5 CHAIRPERSON: I see, thank you. So we 6 don't have to give it a further description as an exhibit.</p> <p>7 MS PILLAY: No, we don't.</p> <p>8 CHAIRPERSON: Thank you.</p> <p>9 MR SEMENYA SC: Can you play that WW6 10 exhibit?</p> <p>11 [VIDEO RECORDING PLAYED]</p> <p>12 MR SEMENYA SC: Chair, may I suggest that 13 the interpreter in the meantime takes note for his 14 translation, which would happen after the tape had been 15 played.</p> <p>16 CHAIRPERSON: The suggestion is, we don't 17 want to have to interrupt the clip from time to time for 18 translation, so Mr Semenya suggests you make notes and then 19 interpret at the end.</p> <p>20 MR HANABE: Thank you, Commissioner.</p> <p>21 [VIDEO RECORDING PLAYED]</p> <p>22 [15:01] [VIDEO RECORDING PLAYED]</p> <p>23 MR SEMENYA SC: I thank you, Mr 24 Interpreter. Chair, we will arrange a transcript of the 25 speech and circulate it before the weekend. After the</p>	<p style="text-align: right;">Page 6848</p> <p>1 was personally very concerned about that. It is for that 2 reason that I appointed a time to investigate this matter 3 and to bring facts to my attention so that I can understand 4 what had happened. It was as a result of that, that those 5 who were there to provide first aid services and to bring 6 medical support in the environment, indicated that they 7 were aware of that process. There is a report that they 8 submitted where they indicated that in terms of their 9 international conventions they cannot attend to people who 10 are injured with weapons near them. The report in fact 11 relating to that matter had been duly submitted to our 12 lawyers.</p> <p>13 MR SEMENYA SC: Yes, the report was given 14 to the evidence leaders.</p> <p>15 MS PILLAY: Chair, the tampering report 16 has been circulated to parties.</p> <p>17 CHAIRPERSON: You said something that the 18 report has been, and then you dropped your voice.</p> <p>19 MS PILLAY: The report on tampering has 20 been circulated to the parties, Chair.</p> <p>21 CHAIRPERSON: Yes, perhaps it can be made 22 available to the Commissioners as well. We have a slight 23 interest in it also.</p> <p>24 MR SEMENYA SC: In paragraph 31 of your 25 statement, National Commissioner, you express some</p>

Page 6849

1 sentiments there.

2 GENERAL PHIYEGA: As the National
3 Commissioner for the South African Police Services, and
4 being the leader of the 200 000 men and women in blue, and
5 being a leader in government, I'm cognisant of my capacity
6 of the role I play as National Commissioner, and as a
7 member of the South African Police Services, and with a
8 sense of intense humility and humbleness, I respect and
9 have the necessary regard to the office I hold. I
10 appreciate quite intensely the complexity and intricacy of
11 the responsibilities I carry on my shoulders.

12 [15:21] Considering the fact that as the SAPS team were
13 entrusted with the safety and security of more than 50
14 million lives of South Africa's inhabitants, as well as the
15 safety of their property, with a big sense of consciousness
16 I am cognisant of the enormous pain and angst which the
17 tragedy has caused our country, and without any reservation
18 I therefore register my sincere condolences to the families
19 of all who tragically lost their lives during this
20 incident. It is within me as a leader –

21 CHAIRPERSON: Just pause for a moment and
22 give the lady who's very much upset, a chance to leave the
23 auditorium, and then you can proceed, National
24 Commissioner.

25 MR NTSEBEZA SC: Chair, shouldn't we

Page 6850

1 adjourn for a couple of minutes?

2 CHAIRPERSON: The National Commissioner
3 is right near the end of what she's going to say and the
4 lady concerned is being helped out. So I think we can just
5 pause quietly and wait for –

6 MR NTSEBEZA SC: Chair, it's just an
7 indication for my part. I think it would be more sensitive
8 – I mean, I don't know how it's going to, how long it's
9 going to last, but I think –

10 CHAIRPERSON: The lady who was overcome
11 by emotion has now left. I don't see anyone else who shows
12 any signs of being overcome in the same way. Please
13 proceed with what you have to say, National Commissioner.

14 GENERAL PHIYEGA: In closing, I wish to
15 express a heartfelt sympathy to those who sustained
16 injuries as a result of action and/or omissions by any of
17 the parties. I do believe that as police, like many
18 others, the situation shall never be regarded as an
19 ordinary situation, and all of us as a nation can only grow
20 from such an experience. I thank you.

21 MR SEMENYA SC: That is the evidence-in-
22 chief of the witness, Chair.

23 CHAIRPERSON: Thank you, Mr Semanya. I
24 understand you're going to cross-examine the National
25 Commissioner first, Mr Madlanga, but I understand you're

Page 6851

1 not yet ready to do so. Is that correct?

2 MR MADLANGA SC: Yes, Mr Chairman, the
3 reason being that the original sequence of witnesses was
4 that General Annandale would take the witness stand first,
5 followed by General Mpembe, and it's only a few days back
6 that our learned friends said they were requesting that the
7 National Commissioner be called first, and because our
8 attention was focussed at preparing for cross-examining the
9 first two generals, we had not applied ourselves at all to
10 the preparation for cross-examining the National
11 Commissioner, and I would imagine that this applies to some
12 of the parties as well. So when we approached the
13 Commissioners earlier this week, we did indicate that now
14 that there has been a change in the sequencing, there would
15 have to be a postponement - of course it was a request –
16 there would have to be a postponement in order to prepare
17 for the cross-examination. We had thought Mr Magidiwana
18 would finish his testimony much, much earlier in the week,
19 and we had thought that the postponement would only be for
20 Thursday and Friday. We are now on Friday, but we –

21 CHAIRPERSON: In the circumstances –

22 MR MADLANGA SC: We are now on Thursday,
23 yes, yes.

24 CHAIRPERSON: It seems in the
25 circumstances appropriate for us, to make sure that there's

Page 6852

1 no prejudice suffered by anybody, to adjourn until Tuesday
2 morning at 10 o'clock.

3 MR MPOFU: Chair, sorry –

4 MR BIZOS SC: - to me, because I actually
5 arranged with all the leaders, including, if I remember
6 correctly, the leader of – well, with Geoff Budlender, that
7 I would cross-examine this witness first.

8 CHAIRPERSON: Ja, we'll adjourn until
9 Tuesday morning at 10 o'clock and the question of who will
10 cross-examine first is a matter that can be discussed
11 between now and then.

12 MR MPOFU: Chairperson, if this matter is
13 over, I just wanted to raise a small separate issue. I
14 don't know if this hasn't resolved that.

15 CHAIRPERSON: Well I'd adjourned already
16 until Tuesday, but –

17 MR MPOFU: No.

18 CHAIRPERSON: - when I adjourn the
19 proceedings, sometimes there are appeals against –

20 MR MPOFU: Yes.

21 CHAIRPERSON: In this particular case
22 I'll allow the appeal, and you want to raise another
23 matter.

24 MR MPOFU: Yes.

25 CHAIRPERSON: The point that Mr Bizos

1 raised can be discussed among the parties.

2 MR MPOFU: Yes, among the parties.

3 CHAIRPERSON: They don't have to discuss
4 it here. Yes, Mr Mpofu, what's the other point you want
5 raise?

6 MR MPOFU: Thank you, Chairperson. It's
7 literally just one sentence, just so that we put that other
8 matter to bed. I just wanted to place on the record,
9 Chair, that my attorney who was attending that matter has
10 now returned, and the matter was postponed to the 31st of
11 October, of the people who had been allegedly tortured, and
12 the reason for that was because to await the report of the
13 Commission, and the point really that, and it was by
14 agreement. So from the point of view of the State and the
15 prosecution and the defence, at least the matter is
16 sufficiently connected to the Commission. Thank you.

17 CHAIRPERSON: Well, you make that, but I
18 hope that that doesn't mean that the Independent Police
19 Investigation Directorate won't investigate the allegations
20 of torture. They may have done so already –

21 MR MPOFU: Yes.

22 CHAIRPERSON: If they haven't, I'd like
23 to say here as part of the proceedings of the Commission,
24 that we would urge them to investigate these matters as
25 urgently as they can.

1 MR MPOFU: We are indebted to the
2 Chairperson.

3 CHAIRPERSON: The Commission will now
4 adjourn until Tuesday at 10 o'clock.

5 [COMMISSION ADJOURNED]

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<p>A</p> <p>abbreviated 6784:17</p> <p>abide 6820:16,19</p> <p>abilities 6760:20</p> <p>ability 6765:24 6768:19 6784:25 6799:20</p> <p>able 6756:12 6764:5 6768:19 6784:17 6797:14 6808:18,20 6814:9 6828:2 6837:5</p> <p>abnormal 6785:10</p> <p>ABSA 6760:13</p> <p>absence 6843:1</p> <p>Absolutely 6784:10</p> <p>abuse 6771:11</p> <p>acceded 6828:6,7</p> <p>accept 6784:7 6812:16 6818:22</p> <p>acceptable 6769:13</p> <p>accepted 6769:7 6773:4 6779:5</p> <p>accessed 6796:9 6799:2</p> <p>accessible 6765:18</p> <p>accident 6760:22 6834:12</p> <p>accomplish 6770:11 6786:12</p> <p>account 6763:25 6793:21 6806:23 6839:15 6847:16</p> <p>accountability 6767:11 6847:15</p> <p>accountable 6765:17 6769:14</p> <p>accounts 6839:8</p> <p>accurate 6765:19 6785:1</p> <p>achieve 6765:25</p> <p>achieved 6768:25 6786:17 6797:2 6798:24</p> <p>acknowledge 6770:2</p> <p>act 6762:16,21 6763:12 6763:14,22 6768:6 6774:19,22 6778:6 6779:10,14,17 6780:20 6782:23 6788:11 6789:6,12</p> <p>acting 6769:12</p> <p>action 6769:15 6788:25 6789:1 6790:10,12 6850:16</p> <p>actions 6767:12 6769:15 6786:10 6837:4</p> <p>activities 6804:4,7</p> <p>activity 6808:20</p> <p>adapt 6768:17</p> <p>add 6760:19</p> <p>addition 6782:18 6797:10</p> <p>address 6756:9 6773:14 6797:25 6838:13,15 6840:1,3 6841:25 6844:13</p>	<p>6845:7,11,24 6847:1</p> <p>addressed 6756:18 6824:18</p> <p>addresses 6770:18 6777:6</p> <p>addressing 6824:5 6826:24 6838:10</p> <p>adheres 6773:4</p> <p>adjourn 6814:6 6819:17 6850:1 6852:1,8,18 6854:4</p> <p>adjourned 6819:21 6820:20 6852:15 6854:5</p> <p>adjournment 6781:6 6814:1,6,12 6830:24</p> <p>ADJOURNS 6781:7 6819:23</p> <p>administration 6759:1 6765:4,7,12,17,21</p> <p>administrative 6798:12</p> <p>adult 6795:16</p> <p>advance 6800:14 6813:21</p> <p>advantage 6784:16</p> <p>advised 6771:19 6793:20 6794:2,7 6804:22 6812:10 6834:1</p> <p>advisor 6810:23 6812:3 6812:9</p> <p>Affairs 6837:18</p> <p>affect 6815:23 6816:2 6827:25</p> <p>affidavits 6826:12</p> <p>affirm 6753:8,11,14</p> <p>afforded 6774:8</p> <p>Africa 6760:17 6767:8 6775:14 6782:9 6797:18 6798:3,14,19 6798:23 6799:7,8,13 6800:14 6801:13 6802:22</p> <p>African 6754:16 6760:22 6765:22 6768:16,18 6769:6 6770:20 6772:13 6773:2 6774:22 6776:23 6782:2,7 6794:19 6796:18 6797:8 6798:1 6799:4 6799:5,17,19 6800:11 6802:1 6807:1 6809:22 6810:23 6815:17,21 6832:5 6847:12 6849:3,7</p> <p>Africa's 6849:14</p> <p>afternoon 6791:10 6792:19 6814:8 6832:24 6833:1,13 6838:7 6839:19</p> <p>ago 6754:13,21 6803:10</p> <p>agree 6784:9 6789:14</p> <p>agreed 6817:9,23 6828:20 6834:17 6837:10</p>	<p>agreement 6853:14</p> <p>ahead 6785:17</p> <p>aid 6829:9 6848:5</p> <p>aimed 6776:16</p> <p>aims 6772:12</p> <p>alia 6760:8 6766:2</p> <p>align 6767:9</p> <p>aligned 6778:16</p> <p>aligning 6772:14</p> <p>allegation 6815:3</p> <p>allegations 6795:7 6815:20 6816:8 6817:9 6822:1 6823:15 6824:6,10 6827:1,18,24 6830:8 6830:15 6853:19</p> <p>allege 6830:13</p> <p>alleged 6754:21 6755:20 6815:22 6831:22</p> <p>allegedly 6853:11</p> <p>allow 6784:20 6827:12 6852:22</p> <p>allowed 6829:14</p> <p>alright 6762:14 6778:1 6809:10 6821:19 6822:7</p> <p>Alternatively 6827:24</p> <p>ambit 6761:2</p> <p>AMCU 6807:3 6832:11</p> <p>amend 6835:20</p> <p>amended 6779:14</p> <p>and/or 6789:11 6850:16</p> <p>angst 6849:16</p> <p>Annandale 6834:9 6851:4</p> <p>announcement 6840:24 6847:4</p> <p>annually 6796:21</p> <p>annum 6796:24 6803:13</p> <p>answer 6783:9 6784:10 6828:3 6836:6</p> <p>answers 6812:11</p> <p>anticipate 6784:25</p> <p>anticipated 6816:24</p> <p>anybody 6852:1</p> <p>anymore 6779:9 6811:11</p> <p>apologies 6838:9</p> <p>apparent 6795:20</p> <p>appeal 6852:22</p> <p>appeals 6852:19</p> <p>appearance 6755:13</p> <p>appeared 6818:16 6821:21</p> <p>appearing 6755:12 6787:4 6791:18</p> <p>appears 6783:7 6794:4 6815:15</p> <p>applicable 6772:15</p> <p>application 6755:20</p> <p>applied 6773:10 6774:1 6851:9</p> <p>applies 6851:11</p>	<p>apply 6766:1</p> <p>appoint 6757:24</p> <p>appointed 6758:5 6760:5,15 6784:7 6798:6 6848:2</p> <p>appointment 6780:23 6797:20</p> <p>appraised 6835:3</p> <p>appreciate 6774:21 6849:10</p> <p>appreciated 6831:3</p> <p>appreciation 6845:3</p> <p>approach 6769:11 6774:7,10,14 6777:11</p> <p>approached 6829:19 6851:12</p> <p>approaches 6767:8</p> <p>appropriate 6773:2,13 6776:24 6797:7 6812:17 6814:1 6819:8 6821:17 6822:25 6851:25</p> <p>appropriateness 6771:7 6786:14</p> <p>approximately 6805:2 6805:17</p> <p>area 6759:12 6763:18 6778:16,17,20 6779:4 6781:3 6792:23 6803:25 6806:11,11 6845:2</p> <p>areas 6759:9,11 6773:19 6778:25 6799:25 6800:10</p> <p>argued 6779:8</p> <p>arrange 6846:24</p> <p>arranged 6839:24 6852:5</p> <p>arrest 6755:23 6815:20 6816:4,9 6817:1 6818:16 6820:25 6821:7,17</p> <p>arrested 6755:14,16 6756:20 6793:16 6818:24 6820:6,8,10 6824:11 6825:5,8,9 6828:17 6833:24</p> <p>arrests 6755:1 6817:11 6820:1 6821:18,24 6822:15 6824:21 6827:1</p> <p>arrive 6805:19 6808:25</p> <p>arrived 6805:16,20</p> <p>article 6754:17,18</p> <p>articulated 6841:2</p> <p>articulates 6762:16</p> <p>ascertain 6807:25</p> <p>asked 6783:6,8 6810:25 6813:22 6818:14 6819:2 6831:12 6837:18</p> <p>asking 6784:12 6831:11</p> <p>asks 6784:15</p> <p>aspects 6771:1 6828:15</p> <p>aspiration 6800:25</p>	<p>assaulted 6755:21,22</p> <p>assemble 6762:5</p> <p>assist 6803:20 6840:25</p> <p>assistance 6809:20,21 6831:4</p> <p>assisted 6797:3,7 6815:4 6834:9</p> <p>assisting 6806:4 6810:24 6813:24</p> <p>assists 6797:14</p> <p>assortment 6793:7 6833:19</p> <p>assumed 6813:19</p> <p>assurance 6820:23 6821:20 6822:3</p> <p>assurances 6756:17,19 6756:25 6824:14,14 6824:15</p> <p>assure 6785:6 6829:16</p> <p>ATM 6800:6,8</p> <p>attacked 6843:20</p> <p>attacks 6802:21,24,25 6803:2,2</p> <p>attempt 6817:13,17 6819:5</p> <p>attempted 6816:19,23 6818:7</p> <p>attend 6793:20 6814:13 6815:6 6840:12 6841:18 6844:7 6848:9</p> <p>attended 6839:24 6840:18 6841:23 6844:10</p> <p>attending 6755:13 6794:3,7 6832:5 6834:2 6853:9</p> <p>attends 6832:7</p> <p>attention 6771:8 6781:23 6786:3 6791:9 6804:8 6840:8 6848:3 6851:8</p> <p>attorney 6853:9</p> <p>attorneys 6755:13</p> <p>auditorium 6795:8 6849:23</p> <p>August 6755:18 6772:2 6791:11 6792:20 6795:2 6803:23 6804:5,10,17 6825:7 6831:14,15 6832:3,4 6832:13,24 6838:14 6839:9 6841:9,22,25 6842:18 6844:13 6845:25</p> <p>Australia 6776:7 6799:11</p> <p>author 6844:3</p> <p>authorised 6780:13</p> <p>Authority 6760:1</p> <p>available 6764:11 6797:24 6817:10,16 6820:3,13 6828:8 6848:22</p> <p>average 6796:21,22</p> <p>avoided 6775:4</p>
---	--	---	--	--

<p>await 6853:12 aware 6758:2 6761:15 6761:17,23 6762:6 6826:25 6827:1 6848:7</p> <hr/> <p style="text-align: center;">B</p> <p>BA 6758:13,16,21 back 6765:1 6809:5 6851:5 background 6837:3 bail 6755:15,20 6826:14,14 balanced 6796:3,6 bank 6800:4 bare 6818:15 based 6765:23 6818:16 basic 6765:3 basis 6820:14 bear 6818:22 Bearers 6760:24 6761:4 bearing 6828:17 bed 6853:8 bedrock 6801:15 beg 6753:5 6791:22 begins 6766:15 behalf 6781:22 6815:17 beings 6801:22 6802:7 belief 6828:2 believe 6795:15 6850:17 benefit 6836:3 Beretta 6787:16,25,25 better 6779:18 6792:1 6814:19 6815:13 6823:8 beyond 6773:24 6774:13 6789:6,12 6806:10 6812:17 bias 6765:14 Bid 6760:22,22 big 6849:15 Bill 6767:12 6777:9 6801:2 billion 6802:15 billions 6760:5 bit 6813:21 Bizos 6783:5,20 6784:3 6784:9 6811:19 6812:7,18 6852:4,25 Blanche 6754:9,16 6756:7 6814:24 6815:11,19 6823:18 6826:8,9 6827:6,8 blank 6821:13 blue 6843:17 6849:4 board 6760:12 boards 6761:7,8,8 body 6795:19 6831:21 bombing 6800:7 bombings 6800:6 bona 6817:23 book 6811:3 Botswana 6799:11 bottom 6775:10,23</p>	<p>6779:7 Brazil 6799:10 break 6781:4 brief 6836:1,8 6837:18 6845:7 briefed 6806:8 6807:5 6807:6 6809:1 briefing 6806:14 6834:7,8,17 6835:11 Brigadier 6806:2,8,18 6834:10 bring 6773:24 6782:8 6808:6 6848:3,5 broad 6761:2 6765:19 6765:25 6775:20 broadcast 6815:19,25 broadly 6765:22 6772:5 brothers 6802:4 brutally 6843:20 budget 6802:15,15 Budlender 6852:6 bullets 6785:21 bundle 6766:6,8 burial 6841:14,20 buried 6841:10 business 6759:1 6760:9 6761:7</p> <hr/> <p style="text-align: center;">C</p> <p>cabinet 6761:15 calculated 6827:20 Calitz 6806:2,8,18 6834:10 call 6753:5 6791:11 6792:20 6804:11 6805:2 6833:2 6836:17,21 6842:17 6845:23 called 6782:13 6820:7 6820:11 6825:16 6826:3 6828:15 6829:18 6835:21,22 6835:22 6836:10 6851:7 Canada 6776:7 cannon 6786:9 canvass 6842:15 can't 6813:16 6820:4 6822:9,11 6823:20 6828:9 capabilities 6760:20 capacitated 6779:16 capacity 6772:20 6779:1 6796:2 6799:19 6800:12 6849:5 captain 6790:12 career 6759:9 6765:20 carried 6797:4 carry 6809:21 6811:17 6823:20 6829:7 6849:11 Carte 6754:9,16 6756:7 6814:24 6815:11,19 6823:18 6826:8,9</p>	<p>6827:6,8 CAS 6816:18,21 6817:3 6825:12,14 6826:4 6829:23 case 6800:4 6816:20 6820:14 6825:3,5,6 6825:10,11,14 6826:2 6829:13,14,23 6852:21 cases 6816:14 6821:1,9 6828:7 casualties 6804:24 CAS134 6816:15 CAS135 6816:15 catastrophic 6795:4 categories 6800:3 cathedra 6826:7 cattle 6831:24 6832:1 cause 6805:11 6831:7 caused 6849:17 CCUs 6779:6 central 6776:3 Centre 6809:8,12 CEO 6759:17 certain 6784:15,16 6786:23 6800:3 6811:1 certainly 6815:7 6819:6 6820:18 chair 6753:4 6757:3,7 6760:16 6766:7 6777:24 6781:2,13 6785:22 6787:16,22 6788:7 6790:13 6791:22 6792:5 6811:19 6812:23 6813:15 6814:12 6815:13 6818:1 6821:4,23 6822:6 6823:3,9 6830:23 6835:13,15,24 6836:2 6838:21,25 6842:10 6842:15,21 6845:12 6845:19 6846:1,12,24 6848:15,20 6849:25 6850:6,22 6852:3 6853:9 Chairman 6810:19 6811:3 6815:16 6816:11 6818:4,14,22 6851:2 challenge 6803:12 challenges 6802:19 6803:7 chance 6849:22 change 6768:17 6851:14 changed 6778:21 6779:5 changes 6767:7 changing 6768:14 Chapter 6765:2 character 6795:14 charge 6820:7 6825:24 charged 6793:6 6833:18</p>	<p>charges 6820:10 6828:16 chest 6831:23 chief 6803:10 6810:22 6812:6,12 6814:10 6850:22 child 6759:15,16 Chile 6776:7 chose 6827:7 circulate 6846:25 circulated 6848:16,20 circumstances 6764:14 6768:14,18 6786:16 6789:19 6790:17 6801:20 6842:2 6843:16 6851:21,25 cited 6821:7 cites 6844:2 citizen 6761:9 citizenry 6798:21 citizens 6767:19 6770:2 6770:13,14 6799:2,8 6801:10 6809:23 CJOC 6780:23 claimed 6804:19 6807:4 clarify 6819:1 clashes 6807:2,4 clause 6769:10 6780:15 clear 6789:25 clearer 6788:5 clearly 6827:3,15 6845:24 clients 6817:23 clip 6845:16,22,24 6846:2,17 close 6795:9 6815:8 6834:16 closing 6850:14 code 6782:2,6,13,14 cognisance 6767:19 cognisant 6849:5,16 collaboration 6796:1 colleague 6815:15 6821:2,21 colleagues 6785:4 6805:22 collected 6834:21 collegiality 6824:3 combat 6761:20 combating 6778:17,20 6778:22 6779:5,6 come 6790:23 6827:2,8 6828:1 6840:25 6843:2 comes 6808:8 comfort 6843:10 coming 6760:23 6823:22 6824:9 6827:23 command 6788:11,25 6789:7,8,12,13 6801:6 commander 6788:12 6788:13 commanders 6788:21</p>	<p>6806:5 6809:1,16,19 6836:4 6839:18 commencement 6781:14 comment 6812:13 commission 6753:2,17 6754:15,22 6755:2 6756:1,3,5,9,9 6760:16,21,25 6761:2 6761:4,4 6768:2 6781:7,7,8 6783:14 6794:24 6813:9 6815:24 6816:2,3,7,8 6816:14,17 6817:14 6817:18 6818:12,19 6819:6,23,23 6824:8 6826:18,19,20 6827:3 6827:8,21,22 6828:1 6828:2 6829:2,13,22 6831:8 6841:3,5 6844:21 6845:6 6847:4,8,10,20 6853:13,16,23 6854:3 6854:5 commissioned 6791:1 commissioners 6753:5 6780:4 6798:6,7,11 6798:13 6804:3,10 6810:20 6812:20 6829:5 6848:22 6851:13 commitment 6800:21 6801:9 6847:9 committed 6801:7 committee 6760:12,23 6761:7 6840:24 commodity 6801:25,25 6803:19 common 6782:23 commonly 6806:11 communicated 6790:8 communication 6785:13 communications 6760:10 communities 6777:2 6802:4 6840:25 community 6761:8 6769:14 6770:2 6774:11 6800:25 6802:5 company 6759:24 6760:8 compare 6798:21 6799:13 compares 6799:9 comparing 6798:23 comparison 6776:5 compassion 6801:8 competent 6780:8,25 competing 6808:7 complained 6754:25 complaint 6817:12 6825:22 6827:14 complement 6799:3 completed 6758:23</p>
--	--	--	--	---

<p>completely 6816:18 complexities 6785:14 complexity 6849:10 compliance 6777:8 comply 6769:15 comprehensive 6756:23 comprehensively 6757:1,3 compulsory 6817:21 concern 6795:2,22 6836:23 concerned 6764:24 6784:25 6815:24 6827:16,17 6829:6 6830:9 6848:1 6850:4 concerning 6755:2 concerns 6769:21 6808:21,21 concluding 6847:19 conclusion 6818:3 concurrent 6769:11 conditions 6785:11 condolences 6795:24 6849:18 conduct 6769:24 6770:13 6782:2,6,13 6785:1 6815:23 6818:2 6827:20 6847:20 conducted 6762:17 6847:15 conference 6834:18,19 6834:22 6837:11 6838:10,12,13 6839:20,23 6840:19 6840:21,23 6841:2 confers 6779:17 confess 6812:14,16 6813:18 confidence 6777:1 confines 6816:10 confirm 6757:15 6773:18 6783:11 6785:5 6844:15 confirmation 6783:15 confirmed 6783:18 confirming 6754:9 6784:16 conflict 6786:11 conform 6769:7 conformity 6827:4 confrontations 6843:21 confronted 6774:2 confusion 6831:8 congruent 6801:2 connected 6853:16 connection 6755:16 consciousness 6849:15 consensus 6808:4 consent 6817:25 consider 6773:19 6836:25 Considering 6849:12 consistent 6773:20 6774:8</p>	<p>consisting 6798:3 Constable 6826:14 constitute 6776:3 Constitution 6757:23 6761:11,19 6762:2,10 6763:1,5,5,8,17 6765:2,9 6766:1 6768:10,10 6771:2 6772:6 6777:9 6798:15 6801:3 constitutional 6762:6 6769:20 6782:1 6801:2,19 6803:21 6809:22 constitutionally 6774:8 consultancy 6759:14 CONTD 6781:12 6830:22 content 6783:18 6815:25 contents 6757:15 6818:17 context 6773:22 6817:9 6818:25 6845:18 continuation 6836:25 continue 6774:12 6782:12 6784:20 6796:5,8 6800:11,23 6801:1 6808:6 6832:2 6840:6 continued 6758:21 6810:12 6831:19 continues 6782:6 continuing 6842:3 contributed 6799:20 contributions 6847:10 control 6758:1 6761:13 6767:17 6772:20 6773:3 6774:9,15 controlled 6782:25 controlling 6773:8 controversy 6783:23 convenient 6781:3 convenors 6780:14 conventions 6848:9 conversation 6832:19 6832:20 conveying 6804:14 cooperation 6796:1 6816:7 copies 6791:23 copy 6757:13 6766:16 6788:4 6792:8 6842:6 cordoned 6834:12 corporate 6759:22,24 6760:14 correct 6754:20 6757:16 6764:5 6767:20,24,25 6770:4 6770:5,15 6774:3 6777:4,14 6779:25 6780:11,12 6781:1 6782:10,11 6783:1 6784:12,15 6785:2,12 6788:14 6789:3 6791:3,5,17,20</p>	<p>6793:8,13,14,16,21 6793:22,23 6794:8,9 6814:24 6817:8 6821:3 6824:22,23 6825:18,23 6826:10 6827:5,5,11 6837:5 6839:3,4 6843:7 6844:13 6851:1 corrected 6787:18,22 6790:15 6794:12 correction 6789:22 6792:11 6818:5 corrections 6792:10 correctly 6783:2 6793:2 6819:4 6852:6 correctness 6837:5 corresponding 6792:17 costs 6775:4 couldn't 6817:16 Council 6759:15 Counsel 6766:17 6775:7,12 6836:19 countermand 6789:18 countries 6776:7 6798:20,24 6799:9,14 country 6757:11 6760:2,23 6761:9 6762:17 6782:19 6799:3,6,25 6800:19 6801:17 6803:11 6835:2,4 6849:17 couple 6850:1 course 6755:7 6757:1,3 6762:15 6801:18 6811:11 6819:4 6826:21 6851:15 court 6755:12 6826:13 6826:15 cover 6814:8 covered 6756:3 6757:18 6763:18 6795:7 6820:8 covering 6839:9 created 6823:11 6829:11 creates 6815:25 crime 6761:21 6778:17 6778:20,21 6779:4,6 6799:21,24 6800:1,3 6800:14 criminal 6789:5,11,18 critical 6803:20 cross 6812:5 6814:23 6845:16 cross-examination 6812:3,12 6851:17 cross-examine 6850:24 6852:7,10 cross-examining 6851:8,10 crowd 6766:23 6767:14 6767:18 6770:19,22 6771:1 6772:20 6773:3 6774:9,25 6778:22 6780:14 6788:4,18,22 6790:17</p>	<p>6832:17 crowds 6767:10,17 6769:6 6771:10 6786:6 CSI 6759:17,20 culminated 6795:4 culprits 6807:18 cultivated 6765:21 Cup 6760:23 current 6773:20,25 6777:11</p> <hr/> <p style="text-align: center;">D</p> <hr/> <p>daily 6843:17 damage 6770:11 6807:13,16 dangerous 6793:7 6833:19 data 6796:9,11 date 6811:1 6833:7 dated 6768:3 6785:24 6786:25 6787:7 6791:1 6792:10 6816:22 day 6774:1 6793:4 6795:22 6805:14 6809:5 6810:15 6823:21,22,22,24 6831:20 6833:5 6834:6,17,17,20,22 6834:25 6837:11,18 6837:19 6841:10,19 days 6755:16 6825:17 6851:5 de 6786:10 dead 6831:21 deadly 6776:6 deal 6756:12,13,15 6757:1,2,9,17,19 6771:17 6780:9 6783:23 6785:20 6796:11 6797:23 6802:8 6810:14 6813:2 6815:10,12 6831:3 6832:23 6847:1,18 dealing 6783:22 6814:23 6819:15,24 6819:25 6824:9 6826:19 deals 6768:25 6769:1 6771:15 6774:18 6776:14 6780:10,22 6820:21 6837:2 6839:1 dealt 6754:21 6796:22 6797:19 6842:16 deaths 6804:23 6806:12 debate 6824:2 December 6785:24 6787:8 6829:17 decided 6805:16 6838:11 6844:20 decision 6791:12 6792:21 6833:3,4</p>	<p>declared 6844:23 decline 6800:1 declining 6800:8 dedicated 6778:4 6779:9 6778:2 6800:24 deepest 6795:24 defence 6793:13 6833:22 6853:15 defines 6780:13 definitely 6777:25 defuse 6771:12 degree 6758:14,22,24 6775:5 6786:12 delays 6831:7 delegate 6764:5 delegated 6841:15 delegation 6806:20 6807:2,22 6841:17 deliberate 6801:14 deliver 6803:21 delivery 6798:14 6799:19 demands 6774:10 demarcations 6798:4 democracy 6798:24 6801:13,16 democratic 6765:8 6767:10 6769:7 6797:18 demonstrate 6762:5 6770:3 demonstration 6801:4 denies 6816:8 departments 6799:6 dependent 6801:14 deploy 6763:23 deployed 6764:21 6775:4 deployment 6764:16 6773:16 6804:21 6810:2 deployments 6804:7 deputy 6760:24 6841:16 6844:8 describe 6832:3 6842:21 described 6776:2 6783:2 6808:13 6822:3 describes 6843:15 description 6835:19 6845:22 6846:6 designated 6797:5 desirable 6811:16 6815:12 despite 6846:2 destruction 6809:18 details 6839:8 determination 6761:5 determine 6809:20 detract 6829:24 developed 6767:9 6804:18 developing 6774:5 6776:24</p>
---	--	---	--	---

<p>development 6759:3,5 6759:15 6760:10 6765:13,20 6773:1 6799:15</p> <p>developments 6835:4 6844:19</p> <p>diary 6788:24 6811:10 6811:12</p> <p>didn't 6811:4,25 6812:14,19 6813:23 6815:7,9 6818:9 6835:19 6836:7 6845:13</p> <p>different 6781:3 6799:14 6816:18 6825:9</p> <p>differing 6811:8</p> <p>difficult 6803:7 6843:16</p> <p>difficulties 6816:25</p> <p>difficulty 6790:3 6822:2</p> <p>dignitaries 6843:7</p> <p>diminish 6773:23</p> <p>diploma 6759:1</p> <p>direct 6781:23</p> <p>directed 6801:14</p> <p>directions 6761:15 6764:23 6779:24</p> <p>directly 6798:9 6830:8</p> <p>director 6759:14</p> <p>Directorate 6853:19</p> <p>disbanded 6778:25</p> <p>discharge 6797:24 6801:5,18,19</p> <p>disciplinary 6789:5,11 6789:18</p> <p>disciplined 6782:25</p> <p>discontinued 6786:16</p> <p>discourage 6827:22</p> <p>discuss 6812:10 6814:2 6853:3</p> <p>discussed 6852:10 6853:1</p> <p>discussing 6811:24</p> <p>discussions 6811:21</p> <p>dispensation 6777:11</p> <p>dispersal 6792:22 6833:3,4</p> <p>disperse 6790:17 6832:17</p> <p>display 6775:5</p> <p>dispute 6808:14 6822:14</p> <p>disrespect 6784:4</p> <p>dissuade 6824:8</p> <p>dissuaded 6829:25</p> <p>distance 6788:3</p> <p>distinct 6758:1</p> <p>diverse 6802:23</p> <p>divided 6798:4</p> <p>division 6760:8,9,10,11 6830:14</p> <p>Divisional 6786:18</p> <p>docket 6825:11,15 6826:4</p>	<p>dockets 6817:10,15,19 6818:17,20 6820:2,13 6820:14,22 6822:19 6828:7</p> <p>document 6766:6,18,21 6766:23 6767:1,2,4,5 6767:6 6768:1 6770:10 6771:9,19,21 6771:25 6772:2,10,11 6772:12 6774:13,17 6775:17,20,24 6776:1 6776:14,15 6777:2,6 6777:13 6778:5,14 6779:7,14,18 6780:5 6781:15 6785:20,24 6786:4,4,20,23,25 6787:1,4,7,10,15,16 6790:2 6791:9,10,25 6831:10,11 6835:13 6835:25 6836:3 6837:2,14,23 6838:18 6839:1,14 6842:7,15 6842:21 6843:6</p> <p>documentation 6755:10</p> <p>documented 6770:23 6783:22</p> <p>documents 6766:7,8,9 6783:6,17 6792:2 6811:21,22 6812:15 6813:19 6815:8 6831:3,6,9</p> <p>doesn't 6784:14 6791:20 6793:4 6811:17 6826:23 6827:25 6829:18 6830:3 6836:6 6853:18</p> <p>doing 6810:16 6823:21 6826:23 6829:4 6830:25</p> <p>don't 6756:13 6762:13 6783:10 6790:2 6801:20 6811:14 6820:17 6823:7 6824:1 6828:18 6846:6,7,16 6850:8 6850:11 6852:14 6853:3</p> <p>double 6787:19</p> <p>double-ball 6788:1</p> <p>drafted 6836:3</p> <p>dragged 6795:19</p> <p>draw 6786:3 6791:9 6799:22</p> <p>draws 6767:3 6780:18 6843:9</p> <p>driver 6760:4</p> <p>driving 6760:4</p> <p>dropped 6848:18</p> <p>due 6757:1,3 6762:15</p> <p>duly 6848:11</p> <p>duties 6762:19,25 6845:5</p> <p>duty 6798:9 6802:20 6803:1</p>	<p style="text-align: center;">E</p> <p>earlier 6778:9 6787:10 6791:24 6792:13 6794:5 6799:13 6809:25 6817:9,9 6847:9 6851:13,18</p> <p>early 6832:21 6837:19 6837:21,24</p> <p>ease 6791:23</p> <p>easily 6784:18</p> <p>economic 6765:11 6808:20</p> <p>education 6758:11</p> <p>effect 6763:1 6786:6 6821:17 6824:7</p> <p>effecting 6818:16</p> <p>effective 6765:11 6769:13,17 6774:9 6776:24 6798:14</p> <p>effectively 6768:20 6838:24</p> <p>efficient 6765:11 6798:13</p> <p>efforts 6808:6 6809:17</p> <p>eight-year 6799:24</p> <p>either 6783:25 6811:16 6812:12,20</p> <p>elect 6756:15</p> <p>element 6802:9</p> <p>elements 6768:13 6771:7 6774:18,22,25 6779:17</p> <p>emanating 6785:20</p> <p>embraced 6801:5</p> <p>embraces 6768:2</p> <p>embracing 6845:3</p> <p>emotion 6850:11</p> <p>emotional 6840:14</p> <p>emphasis 6767:17 6768:13</p> <p>emphasise 6784:19</p> <p>emphasised 6809:16</p> <p>employed 6760:3</p> <p>employee 6803:5,14 6839:24 6840:11</p> <p>employees 6807:8</p> <p>employment 6765:23</p> <p>encourage 6840:11 6847:17</p> <p>encouraged 6765:16 6842:1</p> <p>encourages 6843:23</p> <p>ended 6817:19</p> <p>endorse 6784:4</p> <p>endures 6763:12</p> <p>enforce 6761:23</p> <p>enforcement 6775:16 6797:5,12 6801:15</p> <p>engage 6809:2</p> <p>engulfed 6806:11</p> <p>enhance 6777:1</p> <p>enhances 6774:11</p> <p>enjoined 6816:17</p> <p>enmesh 6830:3</p> <p>enormous 6849:16</p>	<p>enshrined 6765:8 6776:4 6801:3</p> <p>ensure 6774:7 6777:8 6777:20 6781:25 6782:22 6788:21 6798:11,13,14 6799:1 6800:12,13,22,23 6801:1 6808:7,10,16</p> <p>ensured 6808:23</p> <p>ensuring 6809:17</p> <p>enterprises 6760:16,17</p> <p>entire 6846:3</p> <p>entirely 6803:17 6817:7</p> <p>entirety 6845:20</p> <p>entitled 6823:6,19 6827:15</p> <p>entitlement 6817:6</p> <p>entrusted 6849:13</p> <p>entry 6811:9</p> <p>Enumerated 6765:6</p> <p>environment 6757:10 6768:21 6769:17 6770:16 6772:5 6776:14 6779:19 6782:9,24 6783:1,2 6790:21 6796:15 6798:18 6848:6</p> <p>envisaged 6779:10</p> <p>equally 6823:11</p> <p>equipment 6764:11 6777:23,23</p> <p>equitably 6765:14</p> <p>eradicate 6802:23</p> <p>error 6789:10 6790:2</p> <p>escalate 6786:11</p> <p>escalated 6804:22 6806:9</p> <p>escalation 6809:19</p> <p>establish 6763:17 6773:7 6778:6 6783:12 6841:3 6844:20 6847:13</p> <p>established 6759:18 6769:5 6778:12 6803:6 6841:5</p> <p>establishing 6817:22</p> <p>establishment 6777:16 6778:3 6844:24</p> <p>etcetera 6771:12 6776:8</p> <p>ethics 6765:10</p> <p>ethos 6789:22 6790:6</p> <p>evening 6809:3 6837:10 6840:18</p> <p>Evenly 6787:7</p> <p>event 6800:9 6832:3</p> <p>events 6755:17,17 6756:2 6767:23 6771:23 6772:16 6773:25 6786:23 6795:1 6797:17 6803:23 6810:10,13 6816:5 6817:2 6821:24 6824:21 6831:18 6834:8</p> <p>6837:3 6838:14 6839:16 6847:1</p> <p>everybody 6808:18 6822:13 6834:23</p> <p>ever-increasing 6795:3</p> <p>evidence 6753:17 6756:1 6767:1 6783:24 6786:3 6793:3 6812:8,11 6813:11 6814:3,10 6815:5 6817:10,12,20 6820:3,13,21 6822:17 6826:14 6827:23 6828:8,21 6829:7 6842:15 6847:20 6848:14</p> <p>evidence-in 6850:21</p> <p>evidence-in-chief 6812:7 6814:4,8 6830:21</p> <p>ex 6826:7</p> <p>exacerbated 6796:5</p> <p>exactly 6784:18 6823:14,17 6847:17</p> <p>examination 6757:6 6781:12 6812:6 6830:22 6845:17</p> <p>examine 6828:9,12</p> <p>excellence 6800:23 6801:9</p> <p>excerpt 6845:7,10,15</p> <p>execute 6779:16</p> <p>executed 6770:12,21</p> <p>executing 6802:20</p> <p>execution 6773:16</p> <p>executive 6757:24 6759:3,5,12,25 6760:6,11,13</p> <p>exercise 6761:13 6762:24</p> <p>exercised 6764:8</p> <p>exhibit 6766:11,13,14 6767:1 6771:20 6780:5 6785:22 6786:24 6792:2 6816:12 6821:1 6825:7 6835:14,16 6845:8 6846:3,3,6,10</p> <p>exist 6779:9</p> <p>exists 6830:10</p> <p>expect 6826:22</p> <p>expected 6826:17 6829:21</p> <p>experience 6797:14 6843:17 6850:20</p> <p>experienced 6797:11 6798:17</p> <p>experiences 6796:14</p> <p>explain 6830:24</p> <p>express 6848:25 6850:15</p> <p>expressed 6762:20</p> <p>expresses 6815:22</p> <p>extend 6803:18</p> <p>extra 6760:18</p> <p>extrapolate 6796:16</p>
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<p>extrapolating 6796:17 extrapolation 6796:10 extreme 6790:17 extremely 6755:22 eye 6815:8</p> <hr/> <p style="text-align: center;">F</p> <p>face 6803:8 faced 6802:19 faceless 6807:11 facie 6817:13 6818:10 6818:14 facilitate 6773:1,12 6785:13 fact 6773:21 6783:18 6797:3 6813:23 6822:14 6825:8 6829:16 6841:5 6842:2 6846:2 6848:10 6849:12 factor 6819:7 factors 6764:1 facts 6784:13 6834:20 6836:24 6839:14,17 6843:20 6847:7 6848:3 factual 6754:23 6828:9 6837:5 6839:15 factually 6755:3 6824:22 6826:8 failed 6832:16 fair 6770:7 fairly 6765:14 fairness 6765:24 false 6824:7 familiar 6769:23 6770:8,15 families 6796:4 6849:18 family 6803:18 far 6784:21 6793:8 6812:6 6816:10 6827:25 fashion 6796:4 fatally 6841:10 father 6813:5 fathers 6802:4 favour 6819:16 6823:3 6823:6 February 6767:24 6768:6 feel 6770:14 feeling 6840:12 feelings 6769:22 fellow 6812:20 FFF 6766:15 6792:15 FFF1 6766:15 6767:1 FFF2 6792:3,9,14,15 6792:24 FFF3 6792:4,10,11,13 6794:12 FFF3A 6835:22 FFF4 6792:6 6835:14 6835:16,21 6837:14 FFF5 6835:17 6838:20 FFF6 6842:8</p>	<p>fides 6817:23 file 6771:20 6780:3 6785:23 6786:25 final 6763:8 6768:10 finally 6755:18 financial 6799:23 find 6785:23 6787:14 6795:23 6796:9 6811:9,14 6821:17 fine 6777:25 finish 6814:4,10 6851:18 finished 6753:25 firearms 6775:15 fired 6788:17 6793:11 6833:20 firm 6770:7 first 6757:16 6766:22 6773:14 6777:19 6786:7 6787:6 6792:17 6793:21 6794:11 6803:24 6823:14 6840:23 6844:5 6848:5 6850:25 6851:4,7,9 6852:7,10 firstly 6783:21 6813:3 6823:9 6827:22 6828:13 five 6804:23 focus 6771:8 6786:3 6803:22 focussed 6801:14 6843:24 6851:8 followed 6783:17 6851:5 following 6765:9 6786:23 6810:15 6814:21 6815:15,18 6823:22,24 6837:11 6841:19 follows 6762:4 footage 6788:22 force 6773:3,9 6775:3 6775:15 6776:6,18 6786:11,12,15,16 6788:23 6789:7,10,13 6789:19 6790:6,10 forceful 6790:18 foremost 6840:23 forfeiting 6768:19 forgive 6837:13 form 6813:11 6817:11 formulated 6782:20 forum 6827:6,10 6832:6 forward 6824:9 fostered 6765:18 found 6762:11 6807:9 6808:2,4 6813:20 6815:9 6831:21 foundation 6759:18 6818:3 four 6755:11,21 6759:18 6804:19 framework 6771:18</p>	<p>6772:12 6773:1 6776:16 Friday 6851:20,20 friend 6754:15 6755:6 6756:18 6783:10 6784:11 friends 6851:6 front 6781:18 6785:24 6821:22 fulfilled 6798:16 full 6814:11 6816:7 6837:16,17 6845:24 fully 6816:6 6826:25 6827:1 function 6760:15 6778:16,23,23 6779:10 6843:1 functionary 6843:1,2 functions 6762:20,25 6764:22 6778:21 6779:16 Fund 6760:22 fundamental 6762:2 6767:19 6768:15 6824:5 funeral 6841:18,23 6842:12,18,24 6843:4 6844:8 further 6755:1 6767:2 6767:11 6794:23 6797:3 6804:23 6807:4,7 6808:8 6809:18 6832:14 6846:6 Furthermore 6755:24 future 6801:12 F3 6793:2 F4 6792:13</p> <hr/> <p style="text-align: center;">G</p> <p>gather 6771:3 gathered 6796:14 gatherings 6768:7,20 6770:14 6771:23 6772:6,22 6774:7,18 6776:19 6780:19 Gauteng 6805:13,13,15 generals 6851:9 generated 6767:2 generating 6774:14 Geoff 6852:6 getting 6784:17 6800:3 give 6753:17 6755:25 6756:22 6757:23 6758:10 6762:25 6771:3 6777:8 6792:1 6800:22 6803:7 6827:23 6835:12 6838:17 6842:6 6845:21 6846:6 6849:22 given 6755:10 6756:17 6756:24 6757:13 6761:15 6789:22 6796:11 6798:15,17 6803:7 6804:6,8</p>	<p>6805:10 6806:24 6807:13 6820:24 6824:13,15 6827:10 6828:14 6834:7 6839:18 6842:2 6848:13 gives 6788:25 6822:12 giving 6812:8 6813:10 6815:4 6822:3 6827:13 6838:15 glad 6820:19 global 6799:8 go 6767:5 6772:1 6773:24,25 6776:15 6777:7,17,25 6781:21 6803:23 6808:19,20 6816:12 6827:25 6831:4 6834:3 6838:5 6839:21 6847:16 goal 6769:11 6786:12 goals 6768:25 6769:1 God 6753:19,21 goes 6791:13 6802:16 going 6754:1 6757:14 6757:15,17 6813:10 6824:16 6825:6 6829:10 6842:5,23 6850:3,8,9,24 Goldstone 6768:2 good 6757:7 6784:4,12 governed 6765:7 governing 6765:4 6767:3 government 6799:6 6849:5 gradual 6786:8 graduate 6759:1 granted 6813:8 grateful 6761:9 grave 6805:11 gravity 6836:23 great 6824:2 6825:3 grievances 6769:21 group 6759:25 6760:6 6760:13 groups 6769:21 grow 6850:19 growth 6799:19 gruesome 6823:25 guarantees 6801:4 guards 6804:20 guidance 6782:21 guide 6773:15 6776:23 guideline 6845:4 guidelines 6771:22 6772:13 6773:2 6774:6 6776:17,23 6782:20,22 6784:24 guilty 6827:18,19,19</p> <hr/> <p style="text-align: center;">H</p> <p>half 6814:6 HANABE 6758:15,17 6758:19 6766:16 6775:7,11 6792:8 6836:18 6839:11</p>	<p>6846:20 hand 6753:19 6757:14 6791:23 handed 6834:13 handle 6797:15 handled 6772:7 6796:18 handling 6785:10 happen 6770:7 6811:11 6813:22 6824:16 6833:11 6846:14 happened 6755:17 6777:21 6784:5 6795:22 6805:4 6809:13 6813:17 6824:13 6832:24 6834:8 6837:19 6839:20 6841:13 6848:4 happening 6815:7 6832:19 6835:4 happens 6755:4 6776:6 6779:20 6810:9 6828:22 6837:9 happy 6820:12 hard 6801:1 hasn't 6852:14 haven't 6763:19 6853:22 head 6757:24 6759:17 6806:21 heading 6771:22 6777:16,17 6778:3 healing 6840:14 health 6803:5,14,20 6839:25 6840:11 hear 6800:7 6822:21 6836:7 heard 6777:22 6825:4 hearing 6805:15,15 6822:22 6823:1 heartfelt 6850:15 held 6840:19 help 6753:19,21 6785:6 6811:13 helped 6850:4 helpful 6799:22 6817:19,22 6818:1 helping 6811:8 6831:5 herring 6825:4 he's 6829:19 high 6765:9 6768:15,16 6784:7 6800:5 highest 6775:5 highly 6801:13 history 6797:17 6837:3 hold 6834:17,19,21 6837:10 6838:11 6849:9 holding 6760:6 6790:11 holds 6784:8 home 6810:6,8 honesty 6801:8 honourable 6844:7 Honours 6758:22 hope 6795:25 6814:9</p>
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6830:2 6853:18 hoping 6795:19 hostile 6771:11 hour 6814:14 6815:11 hours 6837:21,24 6845:1 human 6765:19,20 6767:13 6776:2,5 6801:22 6802:7,16 6844:9 humbled 6800:17 humbleness 6849:8 humiliated 6795:20 humility 6849:8 hurt 6796:4 hurting 6795:12,14	6778:21 included 6760:7 6804:24 6806:20 including 6762:3 6765:9 6771:2 6780:19 6788:23 6804:20 6823:23 6852:5 incorrect 6755:3 6792:12,18 6826:9 incorrectly 6790:14 indebted 6788:6 6842:9 6842:20 6854:1 Independent 6830:14 6853:18 indicate 6802:20 6840:4 6844:5 6851:13 indicated 6803:12 6804:2,20,24 6836:24 6838:11 6847:6,9 6848:6,8 indicating 6792:11 indication 6818:25 6850:7 indications 6819:5 individual 6769:20 individually 6788:11 individuals 6768:15 6771:10 6774:9 industrial 6808:14 ineffective 6790:18 influence 6764:15 inform 6844:19 information 6765:19 6783:22 6791:14 6793:19 6794:1,6 6796:10 6805:8,10 6807:12 6833:25 6836:17,21 6838:16 informed 6791:12 6792:21 6793:5 6803:24 6804:3,16 6806:12 6807:1,6 6824:4 6832:7,10,14 6833:2,8,23 6834:22 6837:7 6844:22,23 infringing 6769:22 6770:3 inhabitants 6761:22 6849:14 inhuman 6795:13 initiatives 6773:13 6802:23 injunction 6769:23 injured 6833:23 6848:10 injuries 6770:12 6850:16 injury 6797:1 inputs 6847:10 inquire 6820:12 6836:10 6837:14 inquiring 6816:15 inquiry 6820:4 6828:9 6835:6 6841:3	6844:21 inspiration 6767:4 instance 6821:13 instil 6769:11 institution 6826:25 institutionalised 6797:2 instructed 6755:2 instructing 6814:2 instruction 6787:9 6788:7,13,20 6789:2 6790:20 6808:5 6845:4 instructions 6772:15 6779:23 6782:20,22 6784:23 6815:6 instruments 6775:14 6775:19 6784:24 integrity 6794:21 6801:8 intended 6784:24 6818:10 6844:24,25 intense 6849:8 intensely 6849:10 intent 6818:11 intention 6820:24 6824:7 6841:3 inter 6760:7 6766:1 interest 6808:12 6848:23 interested 6824:14 interfere 6817:14,17 6818:11 6819:5 6827:20,21 interfered 6829:2,2 interim 6763:5 6768:10 intermissions 6812:9 internal 6835:11 6836:1,8 international 6769:8 6773:4 6775:14 6776:3,4 6777:10 6835:6 6836:10 6837:16,18 6848:9 interpret 6846:19 interpreter 6846:13,24 interrupt 6787:20 6795:6 6846:1,17 interrupting 6837:14 intervention 6773:8 Interventions 6770:20 interview 6815:22 interviewed 6815:20 inter-ministerial 6840:24 intimidate 6817:14 intimidated 6829:25 intimidation 6772:17 6815:21 6816:9 6818:7,9,25 intricacy 6849:10 introduce 6776:18 introduced 6813:9 introduction 6767:6 6772:4 6773:13 invested 6800:12	investigate 6761:20 6830:9,15 6848:2 6853:19,24 investigating 6822:16 6828:18 Investigation 6830:14 6853:19 Investment 6759:23 invite 6766:6 6771:18 6772:9 6777:15,17 6778:3 6781:21 6786:24 invited 6847:5 involved 6821:1 involving 6816:20 IPID 6830:10,14 6834:13,13 islands 6803:17 isn't 6777:21 6825:14 issue 6754:9 6756:10 6790:5 6797:25 6813:3 6814:25 6815:17 6823:14,15 6824:5 6825:2,3 6826:5,5,9,11 6829:15,24 6852:13 issued 6788:10 6835:10 issues 6754:23 6780:23 6800:6 6803:4 6804:9 6816:16 6822:17 6837:4 6840:7 6847:16 it's 6754:8,12 6756:13 6784:14 6787:21 6788:19 6789:21 6790:4 6791:19 6800:9,9,9 6813:25 6815:12 6817:21 6820:7,15,18,24 6822:16 6823:16 6825:11,16,21 6826:2 6826:3 6828:5 6829:14 6835:21 6837:21 6845:8,24 6850:6,8,8 6851:5 6853:6 I'd 6852:15 6853:22 I'll 6754:5 6777:25 6797:23 6811:15 6852:22 I'm 6761:8,17 6771:19 6787:20,22 6788:6 6790:4,14 6792:12 6798:5 6811:7,7 6813:12 6817:21 6819:15 6820:19 6824:14 6826:18,24 6827:16,17 6829:21 6829:22 6830:15 6842:9,20 6845:8 6849:5 I've 6760:18 6761:7 6781:17 6797:16 6799:13 6825:4,10 6828:4 6830:20 6847:6	J ja 6755:11 6792:7 6796:24 6809:4 6825:20 6826:3 6852:8 January 6755:14,15 6816:22 6824:16 6825:5 6826:12,13 Jele's 6845:16 job 6803:3,8 6842:3 JOC 6809:6,7 6834:7 6834:11 Johannesburg 6758:25 joining 6842:4 Joint 6809:8,11 judges 6761:5 judgment 6836:17,20 July 6768:3 6786:25 June 6782:3 6797:20
I idea 6758:10 ideal 6772:20 ideals 6770:11 identification 6842:7 identified 6812:4 identifies 6784:15 identify 6787:3 6838:18 identifying 6807:18 imagine 6851:11 imbalances 6765:25 IMC 6844:24 immediate 6786:6 immediately 6756:14 immensely 6799:20 impact 6774:10 impacting 6779:20 impartial 6770:8 impartially 6765:14 impeding 6816:1 imperatives 6782:1 impetus 6777:8 implement 6791:13 6792:21 6833:3,4 implementation 6776:14 implemented 6786:7 implication 6790:7 implications 6756:6 importance 6809:17 important 6797:9 6800:2 6802:13 6807:23 6808:16 6827:23 6828:25 impressed 6808:8 impression 6811:23 6812:14 6816:1 6823:10 6829:11 inaudible 6845:11 incidences 6797:15 incident 6793:21 6816:23 6835:7 6836:11 6837:17 6849:20 incidentally 6755:11 incidents 6796:19,23 6797:1 include 6769:19				K keep 6785:16 6804:3,21 keeper 6788:23 keeping 6815:8 key 6773:19 6809:16 Kgotle 6806:20 killed 6793:12 6831:22 6833:21 6843:20 killings 6802:21,24 6803:2 kind 6811:10,18 6828:4 6830:4 know 6753:25 6761:25 6762:7,15 6763:7 6777:21 6783:10,14 6808:25 6813:13,20 6820:17 6826:21,22 6826:23 6829:19 6840:15 6841:13 6850:8 6852:14 knowledge 6783:12 6796:14 6807:21 known 6806:11 knows 6784:18 6810:25 6829:19 koppie 6832:12,14,16
				L L 6816:12 6821:1,7 6825:7 labour 6807:3 lady 6810:21 6811:1 6815:5 6849:22 6850:4,10 language 6790:5 large 6826:21 largest 6799:6 6801:24 late 6753:25 6810:7 6833:13 6834:5 6837:20 6841:23,23 6842:24 laugh 6795:17 laughing 6795:8 launcher 6786:9 law 6761:23 6763:22

6773:24 6775:15 6776:3 6797:5,12 6800:25 6801:12,14 6816:10 6817:5 6822:5 lawyers 6848:12 lay 6832:12 lead 6800:16,18,20,24 6811:17 6838:15 6841:17 leader 6788:12 6801:11 6847:17,25 6849:4,5 6849:20 6852:6 leaders 6814:3 6817:10 6817:12,20 6820:3,13 6820:21 6822:18 6828:8,21 6840:8 6848:14 6852:5 leadership 6801:6 leading 6783:25 learned 6754:15 6755:6 6756:18 6783:10 6784:11 6821:2 6847:3 6851:6 leave 6753:5 6791:22 6822:8,9 6829:6 6832:13 6849:22 leaving 6832:16 led 6812:6 left 6805:13 6810:5,7 6850:11 legal 6757:10 6760:8 6771:1 6772:5 6810:1 6810:22 6812:3 6839:5 legibility 6790:14 legible 6787:17 legislation 6777:9 legs 6788:18 lengthening 6783:19 lengthy 6811:21 Lepaaku 6841:20,24 6842:13,18,25 6843:5 6843:13 lethal 6786:6 letter 6787:7 let's 6781:24 6792:13 6794:17 6811:17 6813:2 6829:6 6831:13 level 6756:10,10 6778:17 6779:2 6786:11 6810:1 levels 6799:14 lie 6823:24 Lieutenant 6791:11 6792:20 6805:15 6806:1 6844:10 Lieutenant-Colonel 6834:10 Lieutenant-General 6786:18 6793:4 6806:16,17 6832:8,14 6833:6,8 6834:9 6841:16 life 6770:11 6775:22	6776:2 6782:14 6795:5,24 6797:1 6801:23 6809:18 light 6807:20 6828:22 6847:14 limb 6801:23 limited 6760:13 6782:25 line 6793:7 6833:18 link 6829:16 linked 6776:19 6829:12 6845:24 list 6820:9 listed 6820:6 6821:1 6825:6 listen 6823:5 listened 6808:21 literally 6853:7 literature 6799:8 live 6802:3 lives 6781:25 6804:19 6807:5 6808:19 6809:23 6841:25 6849:14,19 locate 6805:1 6810:24 long 6814:3 6829:9 6850:8 longitudinal 6799:24 Lonmin 6804:18 6805:21 6806:9,10,18 6806:20,22 6807:9,20 6807:25 6808:9 6809:2 6838:8 6839:23 look 6764:8,10,13 6771:18 6778:3 6780:2 6786:24 6791:8 6792:13 6803:23 6818:7,15 6819:2 6828:21 looked 6760:16 6818:19 looking 6759:23 6811:21 6836:16 looks 6761:4 loosely 6774:1 loss 6770:11 6795:4 6797:1 6809:18 6844:3 lost 6795:24 6841:1,24 6849:19 lot 6795:11 6798:24 6831:7,8 6833:5 6834:18 loved 6841:1 lower 6819:16 lunch 6814:11 6815:10 6819:12,17,18,21,25 6827:12	Magidiwana 6851:17 Magidiwana's 6813:5 Magistrate 6755:12 main 6790:5 6819:4 maintain 6761:21 6763:17 6778:7 6799:21 maintained 6765:11 6779:16 maintains 6763:12 maintenance 6764:15 6772:22 major 6760:4 6771:23 6772:16 6803:19 6813:17 majority 6796:23,25 Major-General 6806:2 making 6847:9 Maloyi 6844:10 man 6757:25 manage 6758:2 6761:10,13 6769:6 6786:6 managed 6799:17 6834:12 management 6758:10 6759:1,3,9 6760:20 6765:19,23 6766:23 6767:10,14,18 6770:19,22 6771:1 6772:20 6773:4 6774:25 6778:23 6780:10,15 6797:12 6806:24,25 6807:3,7 6808:9 6809:2 managers 6760:2 6834:14 mandate 6797:24 6798:15 6801:2,6,19 6809:22 MANGWASHI 6753:20 6781:11 manhandled 6823:23 manner 6769:13 6823:14,18 March 6753:1 6791:2,2 6791:6 6792:6,10,12 6815:18 marches 6768:21 6775:21 Marikana 6795:1,3 6797:17 6803:23 6804:7,18 6805:12,17 6805:19 6806:12 6809:6 6810:10,13 6816:5,15,21 6817:2 6821:25 6824:21 6831:16,18 6834:4,6 6838:6 6839:18 6840:7,18,25 6842:3 6844:21,25 marked 6835:14 6846:4 marking 6766:10 Masemola 6841:16 massive 6797:15	Masters 6758:24 material 6807:24 materialise 6832:16 Mathibedi 6754:15 6814:21 6815:16 6816:24 Mathibedi's 6824:20 Mathunjwa 6832:11 matrix 6810:21 matter 6754:1,8,12 6755:5 6757:1,3 6793:20 6794:3,8 6800:9 6801:16 6810:11 6811:19 6812:1,2 6813:2,23 6814:14 6815:3,6,11 6815:11 6817:8,11,18 6817:22 6819:25 6820:22 6822:5 6823:12,17 6824:17 6826:24 6828:21 6829:6 6830:13,23 6831:9 6834:2 6836:23 6848:2,11 6852:10,12,23 6853:8 6853:9,10,15 matters 6755:1 6757:17 6758:9 6771:16,19 6780:8 6816:14,20 6820:11 6821:7 6822:16 6824:3 6826:18 6828:4,17 6853:24 Mawela 6786:18 maximise 6765:20 Mbombo 6791:12 6792:21 6793:5 6804:16 6805:11 6806:2,17 6832:7,8 6832:14 6833:2,6,8 6834:6,9 6842:24 6844:11 mean 6780:15 6825:7 6850:8 6853:18 meaning 6778:20 means 6773:9 6790:18 6835:16 measure 6795:18 measures 6776:18 MEC 6844:9 media 6795:7,11 6834:19 6837:16 6838:23 6839:1 mediate 6802:24 medical 6848:6 meet 6805:23 meeting 6808:3 6832:6 6832:22 6835:2 6836:13 6837:1 6840:9 member 6760:12 6782:7 6788:25 6841:10 6849:7 members 6755:21 6775:4 6780:14 6782:1,13 6787:23	6788:2,10,10 6789:6 6789:12 6799:4 6802:3,5 6803:16,18 6806:3 6807:3 6815:21 6839:25 6840:4,5,12 6841:1 6842:1,4 6843:24 6844:6,19 6845:1 6847:5,13,17 memory 6811:13 men 6801:7 6843:16 6849:4 mention 6756:5 6797:9 6797:16 6800:2 6801:12 6807:15 mentioned 6754:9 6762:3 6787:10 6790:15 6817:24 6821:10 6826:20 6847:7 mere 6824:10 6829:16 merely 6811:5 6813:19 message 6804:14,15,16 met 6803:9 6806:1,19 6809:5 6834:6 6840:5 methods 6785:10 6786:6 6790:18 metres 6788:3 microphone 6812:25 midday 6832:21 midnight 6837:24 Midrand 6832:6 mighty 6800:19 million 6849:14 minds 6800:5 mine 6804:19 6805:21 6806:10,19,19,21,24 6806:25 6807:7 6808:9 6831:23 minimal 6790:10 minimising 6772:16 minimum 6786:11 6788:23 6818:15,17 Minister 6791:14 6793:19 6794:2,6 6833:25 6835:6,11 6836:10,23 6837:17 6844:7,8 ministers 6761:5 minutes 6850:1 Mokwena 6806:20 moment 6784:20 6829:7 6849:21 Monene 6841:11,18 monitor 6785:4 morning 6757:7,8 6800:7 6824:17,25 6826:11 6831:2 6832:12,21 6838:2 6852:2,9 mourners 6842:1 mourning 6842:4,4 6844:22 move 6811:16 moved 6759:25 moving 6818:1
--	---	---	--	--

<p>Mozambique 6835:2 6836:13 Mpembe 6806:2,7,17 6851:5 Mpofu 6753:24 6754:5 6754:8,11,20 6755:7 6755:9 6812:23,25 6813:1 6816:17 6819:9,12,13,14,15 6819:19,22 6820:19 6822:7,9,20,24 6823:2,8 6825:13,15 6825:18,20,23 6826:1 6826:3 6828:11,24 6829:8 6830:5,11,17 6852:3,12,17,20,24 6853:2,4,6,21 6854:1 Mthethwa 6844:7 murder 6816:19,23 Musier 6787:18 Musler 6787:21,25 Mzwandile 6805:16 M-Net 6815:18 M-U-S-L—E-R 6787:21 M9A1 6788:1</p>	<p>needed 6779:1 6809:21 6836:24 6840:6 Needless 6816:2 needs 6765:15 6813:12 negatively 6774:10 negotiate 6807:10 negotiating 6808:7 Negotiations 6786:7 neighbour 6799:11 neither 6812:20 never 6788:11 6817:4 6829:11 6850:18 new 6760:9 6766:14 6767:8 6835:16 news 6837:16 NGO 6761:7 nine 6798:6,7,8,10 6804:3 6806:12 6807:5 nobody's 6795:19 noise 6777:22 Nono 6844:10 non-continuation 6836:25 normal 6785:10 6808:19,20 normalised 6808:11 normality 6808:24 North 6758:13 6804:12 6844:10 note 6835:19 6846:13 notes 6831:10 6846:18 notice 6811:20 6812:14 notorious 6841:4 November 6754:24 6816:6 6821:25 6824:22 6825:9 6827:2 NTSEBEZA 6849:25 6850:6 NUM 6807:3 number 6761:10 6793:12 6816:18 6821:13 6825:6,14,15 6825:22 6826:4,4 6828:13 6829:13,14 6833:21 numbered 6787:7 numbers 6792:2 6799:17 6817:3 6825:3,6,10,11,12,12 6826:2 6829:23,23 numerous 6760:7 6761:7</p>	<p>objectivity 6765:24 Objects 6761:19 obliged 6778:6 6782:8 observation 6795:12 observe 6812:19 observed 6795:10 observes 6778:19 observing 6760:12 obsolete 6800:4 obtained 6758:13,23 6759:2,4,6 obvious 6825:8,10 obviously 6756:6,10 6788:5 6790:1 6811:13 6812:16 6820:4 6823:19 6825:5 6829:5 occupational 6759:13 6760:19 occurred 6767:7 6793:6 6816:5,10,19 6817:2 6821:25 6824:21 6833:9 occurrence 6773:20 October 6853:11 offence 6818:19 offensive 6786:10 offered 6816:7 offerings 6840:11 offers 6803:14 office 6760:24 6761:3 6785:20 6805:14 6849:9 officer 6790:11 6841:24 6842:25 officers 6785:16 6804:21,25 6809:5,15 6841:24 offices 6806:19,19 officials 6755:23 6775:16 Oh 6754:10 Okay 6789:24 6793:1 6794:10 6831:13 old 6825:17 omissions 6850:16 omitted 6789:10 6790:1 6838:9 once 6786:16 6813:2 6820:21 ones 6841:2 one-hour 6814:11 ongoing 6807:2 open 6831:11 opening 6781:14,22 6782:5 6783:11,15 operating 6779:24 6782:19 6785:17 6797:3 operated 6768:6 6771:10 6775:5 6792:22 6796:17 6819:6 6833:3,4 operational 6771:16 6772:14 6773:15 6776:24 6777:11</p>	<p>6780:8 6782:21 6784:23 6786:19 6788:12,21,24 6798:12 6801:6 6806:5 6809:1,5,8,12 6809:14 operations 6773:21 6780:24 6796:16 6837:8 operative 6819:7 operators 6796:2 opinions 6769:22 opportunity 6761:10 6796:7 6800:18,18 6844:18 opposed 6792:13 6826:13 opposing 6826:14 optimally 6800:13 order 6761:21 6763:18 6763:23 6764:16,21 6766:22 6767:3,3 6769:1 6771:3,12 6772:21 6773:9,23,24 6774:25 6775:3 6777:8 6778:4,7 6779:9,20 6780:3,9 6780:10,16 6782:8 6790:16 6796:22 6797:6,13,15 6799:21 6801:13,15 6808:23 6809:21 6836:24 6851:16 Orders 6783:8 ordinary 6850:19 organ 6766:3 organisation 6760:3 6797:18 6800:16,19 6800:20,24 6801:11 6802:22 6826:22 organisation's 6799:20 organs 6766:2 orientated 6765:13 6769:14 original 6791:20 6851:3 other's 6785:1 outline 6762:8 6840:10 output 6801:25,25 6803:19 overcome 6850:10,12 overview 6809:15 o'clock 6813:25 6814:7 6852:2,9 6854:4</p>	<p>pages 6776:10 pain 6849:16 parade 6839:24 6840:2 6840:4 6844:13,17 6845:7 6847:1 paragraph 6771:8 6772:11 6776:13 6777:5 6779:7 6781:23,24 6782:17 6783:2 6784:1 6786:4 6787:14 6788:16 6790:15 6791:10,15 6791:24 6792:14,16 6792:24 6793:2 6794:11,16,17,25 6796:12 6797:25 6802:9 6844:6 6847:2 6847:19 6848:24 paraphrase 6804:2 parliament 6761:6 6831:16 part 6755:25 6762:10 6763:24 6764:17,21 6782:13 6788:25 6789:2 6790:12 6795:18 6796:13 6813:7 6832:21 6850:7 6853:23 partially 6813:11 participate 6765:16 participating 6756:8 participation 6813:14 particular 6791:8 6816:13 6825:22 6827:18 6852:21 particularly 6787:17 6804:18 parties 6767:24 6823:11,12 6848:16 6848:20 6850:17 6851:12 6853:1,2 pass 6812:1 passage 6788:4 passages 6784:19 pattern 6756:4 pause 6849:21 6850:5 pay 6843:13 PC 6844:11 peace 6804:22 6808:16 6808:24 6845:2 peaceful 6774:9 6796:20,21 6801:4 6832:8 peacefully 6762:4 6770:3 6771:4 Pennsylvania 6759:4 people 6755:25 6756:8 6756:20,20 6760:4 6765:22 6769:21 6782:9 6802:2,18 6804:19,23 6807:5,11 6807:25 6808:18,19 6818:24 6820:6,25 6821:16 6823:22,25 6825:5,8 6826:10,15 6826:16 6827:14,23</p>	
<p>N</p>					
<p>Naidoo 6834:10 name 6778:20 6779:5 6795:19 6799:12 6815:15 names 6828:14 Nathi 6844:7 nation 6842:3,5 6850:19 national 6757:24,25 6758:6,19 6759:6,15 6759:25 6761:12,14 6761:18 6762:20,24 6763:16,17,23,23 6764:14,20 6777:9 6778:6,7 6779:23 6781:9 6782:20 6784:23 6794:19 6797:21 6798:2,5,10 6798:18 6799:7 6800:21 6810:1 6811:2,9,12 6814:4 6815:4 6832:6 6838:14 6841:16 6844:22 6847:11,23 6848:25 6849:2,6,23 6850:2,13,24 6851:7 6851:10 nature 6803:4 6804:13 near 6848:10 6850:3 necessarily 6813:12 necessary 6756:13 6762:25 6789:7,13 6790:7 6803:6 6820:22 6836:21 6840:13 6849:9 necessitated 6804:21 need 6765:24 6774:7 6782:24 6814:4</p>	<p>oath 6753:7,10 6781:9 6830:20 object 6811:25 objected 6813:22 objection 6811:18 6831:1 objective 6772:25 6786:17 objectives 6772:10,19 6800:14</p>	<p>Oh 6754:10 Okay 6789:24 6793:1 6794:10 6831:13 old 6825:17 omissions 6850:16 omitted 6789:10 6790:1 6838:9 once 6786:16 6813:2 6820:21 ones 6841:2 one-hour 6814:11 ongoing 6807:2 open 6831:11 opening 6781:14,22 6782:5 6783:11,15 operating 6779:24 6782:19 6785:17 6797:3 operated 6768:6 6771:10 6775:5 6792:22 6796:17 6819:6 6833:3,4 operational 6771:16 6772:14 6773:15 6776:24 6777:11</p>	<p>Orders 6783:8 ordinary 6850:19 organ 6766:3 organisation 6760:3 6797:18 6800:16,19 6800:20,24 6801:11 6802:22 6826:22 organisation's 6799:20 organs 6766:2 orientated 6765:13 6769:14 original 6791:20 6851:3 other's 6785:1 outline 6762:8 6840:10 output 6801:25,25 6803:19 overcome 6850:10,12 overview 6809:15 o'clock 6813:25 6814:7 6852:2,9 6854:4</p>	<p>partially 6813:11 participate 6765:16 participating 6756:8 participation 6813:14 particular 6791:8 6816:13 6825:22 6827:18 6852:21 particularly 6787:17 6804:18 parties 6767:24 6823:11,12 6848:16 6848:20 6850:17 6851:12 6853:1,2 pass 6812:1 passage 6788:4 passages 6784:19 pattern 6756:4 pause 6849:21 6850:5 pay 6843:13 PC 6844:11 peace 6804:22 6808:16 6808:24 6845:2 peaceful 6774:9 6796:20,21 6801:4 6832:8 peacefully 6762:4 6770:3 6771:4 Pennsylvania 6759:4 people 6755:25 6756:8 6756:20,20 6760:4 6765:22 6769:21 6782:9 6802:2,18 6804:19,23 6807:5,11 6807:25 6808:18,19 6818:24 6820:6,25 6821:16 6823:22,25 6825:5,8 6826:10,15 6826:16 6827:14,23</p>	
<p>O</p>				<p>P</p>	
<p>oath 6753:7,10 6781:9 6830:20 object 6811:25 objected 6813:22 objection 6811:18 6831:1 objective 6772:25 6786:17 objectives 6772:10,19 6800:14</p>	<p>oath 6753:7,10 6781:9 6830:20 object 6811:25 objected 6813:22 objection 6811:18 6831:1 objective 6772:25 6786:17 objectives 6772:10,19 6800:14</p>	<p>Oh 6754:10 Okay 6789:24 6793:1 6794:10 6831:13 old 6825:17 omissions 6850:16 omitted 6789:10 6790:1 6838:9 once 6786:16 6813:2 6820:21 ones 6841:2 one-hour 6814:11 ongoing 6807:2 open 6831:11 opening 6781:14,22 6782:5 6783:11,15 operating 6779:24 6782:19 6785:17 6797:3 operated 6768:6 6771:10 6775:5 6792:22 6796:17 6819:6 6833:3,4 operational 6771:16 6772:14 6773:15 6776:24 6777:11</p>	<p>Orders 6783:8 ordinary 6850:19 organ 6766:3 organisation 6760:3 6797:18 6800:16,19 6800:20,24 6801:11 6802:22 6826:22 organisation's 6799:20 organs 6766:2 orientated 6765:13 6769:14 original 6791:20 6851:3 other's 6785:1 outline 6762:8 6840:10 output 6801:25,25 6803:19 overcome 6850:10,12 overview 6809:15 o'clock 6813:25 6814:7 6852:2,9 6854:4</p>	<p>partially 6813:11 participate 6765:16 participating 6756:8 participation 6813:14 particular 6791:8 6816:13 6825:22 6827:18 6852:21 particularly 6787:17 6804:18 parties 6767:24 6823:11,12 6848:16 6848:20 6850:17 6851:12 6853:1,2 pass 6812:1 passage 6788:4 passages 6784:19 pattern 6756:4 pause 6849:21 6850:5 pay 6843:13 PC 6844:11 peace 6804:22 6808:16 6808:24 6845:2 peaceful 6774:9 6796:20,21 6801:4 6832:8 peacefully 6762:4 6770:3 6771:4 Pennsylvania 6759:4 people 6755:25 6756:8 6756:20,20 6760:4 6765:22 6769:21 6782:9 6802:2,18 6804:19,23 6807:5,11 6807:25 6808:18,19 6818:24 6820:6,25 6821:16 6823:22,25 6825:5,8 6826:10,15 6826:16 6827:14,23</p>	

6828:14 6829:11,16 6829:17 6830:12 6833:23 6848:9 6853:11 people's 6765:14 6773:22 perceives 6816:3 perception 6827:25 6829:1 perform 6762:25 6764:22 6845:5 performance 6794:20 6799:24 period 6759:18 6796:22 6802:25 6803:3 6812:3 6839:9 permissible 6784:13 permission 6813:6,8 6835:13 6844:5 6845:19 permit 6756:16 persist 6828:5 person 6790:2 6795:15 6811:20 6831:21 personal 6795:13 personally 6793:20 6794:3,8 6795:12 6834:2 6848:1 personnel 6764:11 6765:23 persons 6755:11 6771:3 6815:19 perspective 6770:16 6779:20 persuade 6823:6 pertaining 6767:13 petitions 6762:6 6771:4 Petros 6805:16 6806:17 phases 6788:22 philosophy 6767:18 phoned 6835:5 phrased 6830:3 physical 6773:16 6840:14 picket 6762:5 pictures 6807:24 PILLAY 6835:15 6846:1,7 6848:15,19 place 6756:2 6768:14 6804:7,8 6806:4,9 6814:20 6815:13 6816:4,12 6817:1 6821:12,24 6822:4,15 6824:20 6832:21 6844:20 6853:8 placed 6779:18 6781:15 plan 6791:13 6792:22 6833:4 planning 6773:15 6780:23 6785:17 Platinum 6804:19 6806:10,19 6808:9 platoon 6788:12 play 6844:25 6845:19 6846:9 6849:6	played 6846:2,11,15,21 6846:22 pleading 6808:10 please 6753:6,18 6773:18 6792:8 6793:2 6811:14 6821:5 6830:21 6834:15 6838:18 6850:12 poem 6844:2 point 6795:11 6800:4 6811:10 6812:21 6814:23 6826:24 6827:11 6830:6 6852:25 6853:4,13,14 policemen 6827:19 policemen/women 6827:19 policing 6757:11 6761:14 6762:1 6763:18,24 6764:21 6767:3 6769:16,17,24 6771:22 6772:15 6773:19,25 6774:6,7 6774:13 6776:6,17,25 6777:6,12 6778:4,7 6778:16,25,25 6779:10,20 6780:10 6797:6,13 6841:17 policy 6761:14 6766:5 6766:6,22 6767:4,6 6767:16,22 6768:1,13 6768:14,24 6769:4 6770:6,10,16,18,25 6771:9,13,15,18,22 6772:11,11,12 6773:17,17 6774:5,13 6774:17 6775:17,20 6776:14,16,22 6777:2 6778:5 6779:13,18,19 6779:22 6783:12,13 6784:22 policy-making 6765:16 political 6767:24 POP 6769:11,15 6779:15 6787:23 6788:2,9,10,21 POPS 6778:4,15 6779:8 population 6799:7 port 6760:2 portfolio 6803:6 portfolios 6760:7 6761:10 portion 6846:2 ports 6760:1,2 posed 6786:14 6828:3 position 6784:8 6795:17 possibility 6818:23 6823:4 6824:11 6832:8 possible 6796:11 possibly 6814:3 6828:23 6836:7 post 6758:25 6760:15	6798:24 postponed 6853:10 postponement 6851:15 6851:16,19 Potchefstroom 6847:5 potential 6754:22 6756:8 6765:21 6774:12 6824:8,11 6830:1 power 6757:23 6764:3 6764:4,7 6796:2 6808:10 6810:1 6817:5 powers 6762:19,24 practice 6759:13 6810:11 practices 6765:20,23 prayed 6840:9 precedent 6797:17 6820:16,18 precipitated 6831:1 precisely 6805:3,18 prefer 6754:5 prejudice 6816:4 6852:1 premises 6805:21 premium 6768:15,16 preparation 6847:13 6851:10 prepare 6851:16 prepared 6753:7 6770:21 6820:2,19 6834:13 6836:1,8,9 6837:15 6843:3 preparing 6847:6,7 6851:8 present 6762:5 6770:14 preserved 6763:9 presidency 6761:6 President 6757:24 6758:6 6760:15 6834:24 6835:1 6836:13,25 6840:16 6840:18 6844:20,23 6847:4 press 6834:18,19,22 6837:10 6838:10,11 6838:12,13 6839:20 6839:23 6840:19,21 6841:2 presume 6840:14 prevails 6808:16 prevalence 6802:21 prevent 6761:20 6768:20 6809:18 6829:4 preventative 6803:15 previous 6823:22 prima 6817:13 6818:10 6818:14 principle 6773:8,14 principles 6765:3,8,9 6766:1 6767:10 6769:16,19 6770:19 6770:22,22 6782:14 prioritised 6847:11	private 6759:13,14 6793:13 6833:22 proactive 6785:17 probably 6831:7 6845:22 problem 6777:23 6815:9 6820:21 problems 6790:14 6791:5 procedure 6783:16 6812:10 6823:17 procedures 6769:5 6779:25 6782:19 6784:23 6797:3 proceed 6757:13 6809:2 6830:21 6831:13 6834:15 6849:23 6850:13 proceeded 6760:5,13 6806:18 proceeding 6784:21 proceedings 6753:1 6781:14 6783:19 6790:25 6813:7 6852:19 6853:23 process 6778:24 6795:25 6800:10 6831:5 6848:7 processes 6804:4,5 procurement 6760:9 produce 6828:3 produced 6827:6 product 6802:1,17 productively 6800:13 professional 6765:10 6769:12 6845:3 professionalism 6794:20 6801:8 professionals 6797:5 profiled 6807:23 programme 6754:19 6754:20 6756:7,19 6759:3,5,24 6814:24 6815:19 6823:19 6826:6,8,10 6827:7 progress 6847:13 progression 6800:1 progressive 6799:18 6800:9,10 promised 6832:11 promote 6772:20 promoted 6765:10,12 proper 6785:6 6812:10 6818:2 6828:3 properly 6791:24 6797:4 6829:4 property 6761:22 6770:12 6801:1 6807:13,16 6809:18 6809:23 6849:15 proportional 6786:13 proportionate 6773:9 propose 6822:22 proposed 6820:7 6828:14 prosecution 6853:15	protect 6761:21 6800:25 protected 6808:18 protecting 6809:23 protection 6822:12 protest 6771:3 6772:6 6772:15 6773:8,22,24 6774:12,13,15 6775:21 6795:3 6801:5 6806:8 protesters 6774:2 6775:22 6793:6,12,16 6807:8,21,23 6832:11 6833:18,21,24 protests 6771:23 6773:20 6774:6 6776:17,19,25 6777:7 6777:12 6796:23 protocol 6843:2 protracted 6795:3 prove 6790:18 provide 6772:12 6773:1 6776:16 6785:9 6797:10 6848:5 provided 6761:12 6765:13 6788:13 6790:20 provides 6762:10,23 6763:15,22 6765:2 6767:11,16 6768:14 6769:4 6770:20 6771:9 6773:17 6775:3 6777:2 providing 6765:18 province 6804:6 6805:13,13,15 6844:11 provinces 6798:7,8 6804:4 provincial 6763:25 6764:23 6798:4,6,10 6798:18 6804:10,11 6805:14 6808:5 6832:7 6842:11,25 proving 6784:13 provision 6762:11 6764:4 6771:13 6775:10 provisions 6767:13 6771:2 provocation 6772:17 prudent 6834:21 psychological 6803:15 public 6754:14 6759:13 6760:24 6761:3,21 6762:9 6763:18,23 6764:15,21 6765:4,7 6765:12,15,16,18,21 6766:22 6767:3 6769:1 6771:22 6772:6,15,21,22 6773:8,19,23,23,25 6774:6,15 6775:21,23 6776:17,19,25 6777:7 6777:12 6778:4,7
---	---	---	---	---

6779:9,20 6780:10 6796:22 6797:6,12,15 6799:21 6801:15 6808:23 6815:1 6816:3 6828:1,1 6829:1 6844:9 6847:14 published 6782:3 purpose 6786:10 6817:21 6819:4 6838:12 purposes 6814:23 pursued 6758:23 pursuit 6845:2 put 6754:23 6820:25 6821:5 6824:23,24 6842:23 6845:1 6853:7 putting 6818:13 6832:15 pyrotechnics 6786:9	6790:14 reads 6762:3 6766:22 6773:18 6774:2 6776:16 6778:5 6781:24 6782:18 6784:11,12 6788:20 6790:2 6791:10 6793:4 6794:5 6821:23 ready 6851:1 real 6829:24 realise 6816:13 realised 6831:10 really 6811:24 6824:17 6847:10 6853:13 reason 6764:8 6795:21 6798:16 6803:18 6807:9 6814:5 6827:5 6843:3 6848:2 6851:3 6853:12 reasonable 6786:15 6818:18 reasons 6825:10 recall 6788:7 6795:7,9 6810:16 6817:8 6847:21 receive 6802:15 6831:17,20 received 6791:11 6792:20 6804:11 6805:12 6808:22 6831:21 6833:2 6834:8 receiving 6782:25 6810:12 recognise 6768:21 6800:8 recognised 6775:16 6844:6 recognises 6767:22 6771:1 6772:5 6775:2 6775:21 6778:11 6843:6 recognising 6803:3,16 6809:19 recognition 6776:4 recommendations 6768:2 reconciled 6767:12 record 6788:23,24 6814:20 6816:4 6817:1 6821:13,24 6824:20 6845:13 6853:8 recorded 6803:1 6806:13 recording 6777:22,23 6846:11,21,22 recurrence 6777:21 red 6825:4 redress 6765:24 reduce 6799:21 reducing 6800:14 refer 6766:25 6785:22 6817:20 reference 6763:11	6778:8 6787:8,10 6791:23 6799:22 6817:3 6841:6 references 6768:9 referred 6807:10 6820:9 referring 6811:22 refers 6839:5 reflects 6793:3 refresh 6811:13 regard 6798:5 6808:22 6838:13 6849:9 regarded 6805:9 6850:18 regarding 6754:16 6758:9 6807:13 register 6849:18 registered 6816:14,21 registers 6825:25 registration 6825:21 regrettable 6795:5,23 regular 6810:12 regularised 6813:12 regulating 6771:19 Regulation 6768:6 6774:18 6780:19 reject 6795:18 relate 6816:22,22 related 6763:5 6772:16 6793:18 6794:1,6 6811:19 6833:25 relates 6816:18,19 relating 6775:15 6785:20 6800:6 6815:3 6816:5 6817:2 6817:11 6821:24 6822:2 6824:21 6848:11 relation 6755:1 6773:3 6783:17 6790:24 6798:20 6807:18 6821:7 6822:16 6823:12 6828:1 6831:18 6841:14 6843:24 6847:24 Relations 6835:6 6836:10 relatives 6795:8 relayed 6791:14 6793:10 6833:19 released 6755:15 6779:1 6799:23 6831:7 relegated 6778:22 relevance 6818:22 6820:11 6822:16 relevant 6757:10,20 6774:21,24 6786:2 6791:23 6810:10 6811:9 6812:16 6816:14 6825:25 6830:7,8 rely 6782:21 remain 6843:24 remainder 6796:20 remedial 6803:15	remedy 6761:6 6803:21 remember 6754:13 6800:6 6813:5 6821:20 6826:6 6831:14 6845:16 6852:5 reminded 6811:24 6830:20 remorse 6839:2 render 6798:13 repeat 6758:15 6810:17 6824:1 6836:18 repeated 6797:13 replaced 6787:9 reply 6783:20 report 6796:3,3,25 6798:8,22 6802:25 6848:7,10,13,15,18 6848:19 6853:12 reported 6830:14 reporting 6760:3 6796:6 reports 6795:11 6804:9 6810:12 6831:18,20 6837:17 6847:20 representation 6765:25 representative 6765:22 represented 6823:12 Republic 6761:22 6798:2 6809:24 6834:25 request 6763:24 6764:8 6828:5 6837:15 6851:15 requested 6831:4 requesting 6808:9 6851:6 require 6764:16 required 6789:19 6818:20 6840:7 requirement 6818:15 6818:18 requires 6768:16 reservation 6849:17 residents 6799:3 resilient 6842:2 resist 6823:10 resolution 6808:4,13 6832:9 resolutions 6808:22 resolve 6816:25 resolved 6797:1 6852:14 resolving 6817:22 resort 6786:8 6790:19 resource 6765:19 6773:16 6801:25 resources 6765:12 6778:25 6797:24 6802:16 6810:2 respect 6762:2 6783:5 6784:10 6820:8,10,11 6824:2 6825:3 6828:16 6843:13 6849:8 respective 6804:4	respond 6786:23 6827:7,13,16 responded 6765:15 responder 6773:15 responding 6813:16 response 6756:23 6773:15 6786:8,19 6802:22 responsibilities 6758:1 6760:18,19 6762:9 6839:6 6843:25 6849:11 responsibility 6759:24 6761:24 6794:22 6810:4 responsible 6759:10,16 6760:1,7,14 6795:17 6796:4 6798:8 6807:19 rest 6814:7 restore 6777:1 restored 6808:17 restructuring 6778:16 6778:24 result 6767:6 6839:2 6848:4 6850:16 resulted 6803:2 resulting 6803:4 6804:23 results 6817:24 resumes 6753:2 6781:7 6781:8 6819:23 returned 6838:8 6839:22,23 6853:10 revenue 6760:4 revert 6765:1 review 6777:10 6790:10 reviewed 6760:21 reviewing 6760:17 6772:14 revisit 6828:23 re-established 6779:15 rid 6814:16 right 6753:19 6762:4 6762:17,21 6763:1 6766:3 6768:3,22 6769:22,24 6770:2 6772:7 6773:22 6775:17,22 6776:2,3 6777:3,13 6780:25 6783:10 6787:11,12 6787:15 6788:18 6789:20 6791:1,6,7 6801:4 6821:5 6835:18 6836:4,14 6850:3 rights 6762:2 6767:13 6767:19 6768:15 6769:20 6770:3 6771:2 6774:8 6776:4 6776:5 6777:9 6801:3 6808:17 riots 6777:12 road 6760:22 6823:24 robberies 6800:4
Q				
qualifications 6824:23 question 6783:9 6810:18,25 6818:21 6818:23 6820:1 6828:7 6831:12 6836:7 6852:9 questions 6828:3 quick 6754:12 quietly 6850:5 quite 6754:12 6820:12 6823:16 6849:10				
R				
R 6771:20 raise 6753:19 6754:1,3 6754:4,5 6755:5 6811:23 6852:13,22 6853:5 raised 6755:6 6812:2 6814:14,23 6817:8 6820:23 6823:17,18 6823:21 6824:5,19 6825:9 6826:5,6,11 6827:13,14 6831:9 6853:1 raising 6824:10,17,25 rank 6790:11 ranks 6823:13 Rantu 6813:16 6830:25 ratio 6798:21 6799:7 RAU 6758:24 RCA 6825:19 RCI 6825:17 reach 6803:17 reached 6808:4 6832:9 read 6754:14 6769:10 6783:6,11,14 6784:1 6789:11 6791:21,24 6792:14,17 6793:1 6799:8 6817:1 6842:23 6843:4 reader 6784:4 reading 6775:8				

<p>role 6816:3 6844:25 6849:6 Ronnie 6843:4 round 6754:24 6781:13 6788:1 rounds 6785:21 6786:5 6788:3,17 6790:16,19 routine 6804:9 rubber 6785:21,21 6786:5 6788:3,17 6790:16,19 ruling 6823:1,6 Rustenburg 6755:12</p> <hr/> <p style="text-align: center;">S</p> <p>S 6786:24 SADEC 6835:2 6836:13 safe 6770:14 6782:8 6785:10 safety 6772:22 6799:1 6808:17 6844:10 6849:13,15 sake 6818:24 salary 6761:5 salient 6774:18 sang 6840:9 SAPS 6754:22 6766:9 6769:12 6770:13 6773:15 6777:10 6778:6,15 6779:10,14 6781:23 6796:16,22 6803:16 6807:22,24 6809:6,16,20 6815:17 6815:23,24 6816:1,3 6816:4,6 6820:24 6826:21 6827:7 6834:7 6837:4 6839:25 6842:1,4 6843:4 6847:25 6849:12 Satchwell 6760:21 satisfied 6770:13 6817:16 6818:16 satisfy 6817:12 6818:20 6820:3,5 6822:18 saturation 6785:14 saw 6760:23 6809:25 6811:6,6 6815:7 saying 6790:4 6804:2 6813:13 6817:21 6829:10,22 says 6755:20,22,24 6756:1,2 6761:19 6767:6 6770:7,11 6772:11,19 6774:13 6776:1,22 6777:7,13 6778:14 6779:7,14 6784:2 6786:4 6787:7 6790:9 6814:21 6815:16 6817:5 6824:19 scaring 6756:8 scene 6790:13 6834:12 6834:14 schedule 6763:8</p>	<p>Science 6758:14 Sciences 6758:22,24 scope 6772:10 Scott 6834:11 scripture 6843:9 seated 6753:22 6795:9 second 6791:4 6792:23 6823:15 secondary 6778:23 secondly 6758:2 6783:23 6828:15 secretary 6760:9 section 6757:22 6761:12,19 6762:3,10 6762:15,21 6763:1,4 6763:8,15,16,22 6764:20 6765:3 6778:8 6779:14 6780:15 6788:12 6826:22 secure 6761:21 6770:15 6772:21 6782:9 security 6799:2 6804:20 6806:21 6808:17 6849:13 see 6755:8 6767:5,14 6769:2,8 6770:23 6771:4,13 6772:1,17 6772:23 6773:5,10,17 6774:4,15,19,22 6775:1,6,23 6776:8 6776:19 6778:1,9,12 6778:17 6779:2,11 6780:15,16,20 6782:3 6782:14 6783:10 6786:20 6787:9 6790:5 6791:14,16 6792:24 6794:13 6800:8 6811:1,4 6812:21,25 6813:25 6815:7 6819:4 6828:13,15 6837:23 6846:5 6850:11 seek 6809:20 seeks 6774:15 seen 6781:17 6783:18 6799:25 6820:22 6822:18 self 6782:24 Sello 6843:4 send 6795:23 Senegal 6776:8 Senior 6775:7,11 6836:18 sense 6789:16,23,25 6805:3 6813:24 6818:23 6826:10 6849:8,15 sensible 6845:23 sensitive 6850:7 sent 6837:21,24 sentence 6794:5 6824:19 6853:7 sentiments 6849:1 separate 6835:19 6852:13</p>	<p>separation 6785:23 separator 6786:25 sequence 6851:3 sequencing 6851:14 series 6766:14 serious 6795:22 6813:23 6823:16 seriousness 6786:13 serve 6800:18,21,25 6801:7 served 6760:11,20,22 6761:7 service 6758:2 6761:14 6761:20 6762:9,10,16 6766:2 6768:16,18 6769:6 6770:21 6772:13 6773:2 6776:23 6781:25 6782:2,8 6794:20,21 6796:10,18 6797:8 6798:2,2 6799:4,17 6799:19 6800:12,22 6802:1 6810:23 6815:17 6842:12,24 6843:17 6847:12 services 6754:16 6760:8,14 6765:13 6782:18 6786:19 6797:10 6798:14 6799:1,2,5 6802:1,17 6803:18 6807:1 6809:22 6832:6 6847:14 6848:5 6849:3,7 servicing 6801:9 sessions 6840:12 set 6798:11 6803:5 settled 6841:6 Settlement 6844:9 seven 6760:1 severely 6755:21,22 6826:17 shaken 6840:5 share 6803:9 sharing 6796:13 sharper 6803:22 she's 6783:8 6784:4 6812:6 6813:10 6830:20 6850:3 shift 6845:1 shifted 6767:17 short 6755:19 shortening 6783:19 shot 6793:11 6833:20 shotgun 6787:18,18,25 6788:1,10 shotguns 6785:21 6786:5 shoulders 6849:11 shouldn't 6849:25 show 6784:3 6799:12 6811:14 6826:8 showing 6812:15 shown 6799:25 6813:19 6817:20 6845:15,16 shows 6802:16 6811:12</p>	<p>6850:11 signatory 6775:14 signature 6786:18 6787:4,5 signed 6772:2 6791:1 significant 6767:23 6787:13 6802:17,21 6840:20,22 significantly 6755:18 signs 6850:12 similar 6803:11 simple 6783:9 6824:17 simply 6812:15 6813:6 6827:6,12 6829:14 sincere 6849:18 Sinclair 6806:21 Singapore 6759:6 single 6835:16,21 sisters 6802:4 sit 6813:6,16 sits 6799:10,10,11,11 sitting 6810:22 6811:1 6811:20 6813:3 6814:11 situation 6771:13 6786:13 6795:16,17 6804:17 6808:11 6809:15 6850:18,19 situational 6771:7 6786:14 6810:12 sketch 6757:10 skip 6788:17 skull 6831:23,24,25 slide 6816:13 slight 6818:5 6848:22 small 6852:13 social 6758:13,16,17,22 6758:24 6759:22,24 6803:16 6808:19 societies 6759:17 society 6801:12 socio-political 6767:7 solution 6808:1 6829:10 somebody 6813:3,8 6831:5 SOPs 6782:19,21 6845:4 sorry 6753:24,24 6758:19 6777:16 6787:20,21,24 6812:8 6814:22 6817:7 6829:8 6837:13 6852:3 sort 6835:22 Soty 6844:9 sought 6768:25 6791:5 sound 6798:11 source 6839:15 South 6754:15 6760:17 6760:22 6765:22 6767:8 6768:16,18 6769:6 6770:20 6772:13 6773:2 6774:22 6775:13 6776:23 6782:2,7,9</p>	<p>6794:19 6796:18 6797:8,18 6798:1,3 6798:14,19,23 6799:4 6799:5,7,8,13,17,19 6800:11,14 6801:13 6802:1,22 6807:1 6809:22 6810:23 6815:17,21 6832:5 6847:11 6849:3,7,14 south-facing 6800:1 space 6759:14 spaces 6821:14 speak 6780:8,25 6812:25 6833:6 SPEAKER 6777:24 6845:12 specialised 6779:9 6797:7 specifically 6756:5 6826:20 speech 6842:22 6843:3 6846:25 speed 6813:20 speeding 6813:24 spirit 6790:6 spiritual 6803:15 6840:8,13 spoke 6778:8 6836:22 spread 6806:10 SS2 6780:5 stability 6845:2 staff 6799:3 stage 6756:12 6757:20 6781:4,6 6783:21 6791:13 6814:1 6819:8 6824:15 stake 6775:23 stand 6753:7 6756:20 6756:25 6759:20 6787:17 6790:15 6794:18 6798:20 6809:7 6851:4 standard 6765:10 6779:24 6782:19 6785:3 6797:2 standardised 6769:5 standards 6769:8 6773:5 6777:10 Standing 6767:3 6774:25 6780:2,9,16 6783:7 6790:16 stands 6763:12 start 6759:11 6781:24 6794:17 6802:14 6814:20 6815:14 6838:9 6847:5,7 started 6759:12 6804:5 state 6766:2,3 6775:20 6853:14 stated 6793:15 6807:4 6807:8,14 6819:3 6825:10 6833:24 statement 6754:13,14 6754:23 6755:3,19 6757:14,18 6773:18 6781:15,22 6782:5</p>
--	---	---	---	--

<p>6783:11,15 6790:24 6791:4,6,18,20,20 6792:3,6,9,12,14,17 6792:24 6793:8,25 6794:5,11,12,16 6795:21 6796:9 6797:25 6802:9 6815:18 6816:25 6821:14 6824:20 6826:7 6827:3,9,11 6829:17,20 6838:23 6839:1 6847:2,19 6848:25</p> <p>statements 6756:5 6790:25 6816:22 6822:13 6826:15 states 6775:2 6776:7 6799:10</p> <p>State-owned 6760:16 6760:17</p> <p>stating 6788:7 6807:21 station 6779:1 6825:25 stations 6798:3 statistics 6799:22 status 6823:13 statutes 6780:19 statutory 6767:13 6810:21 steps 6777:20 6789:6 6789:11,18 stick 6825:1 stone-throwing 6771:11 stop 6796:24 6823:20 stopped 6786:5 6823:23 stories 6823:25 straddles 6759:13 strategies 6768:17 6772:14 6776:24 6797:12 strategy 6760:8 stringent 6776:18 strive 6800:23 6801:19 strong 6829:3 structure 6803:6 structures 6797:11 6801:7 stubborn 6800:11 studied 6758:12,25 6759:3,5 studies 6758:23 study 6758:21 subject 6763:16 6764:23 6778:15 6817:11 6821:16 subjected 6782:1 submission 6815:14 6817:3 6847:8 submitted 6794:1 6826:15 6848:8,11 subsection 6757:23 6763:21 6764:19,22 subsequent 6778:24 6827:2 6847:1 subsequently 6786:22</p>	<p>substantiate 6755:11 substituted 6792:3 succeed 6801:16 suddenly 6824:2 suffered 6796:5 6852:1 sufficiently 6805:11 6853:16 suggest 6792:2 6812:11 6815:6 6846:12 suggested 6822:12 6828:5 suggestion 6807:22 6846:16 suggests 6778:21 6846:18 summary 6836:3 Sundays 6754:21 supervised 6797:5 supervision 6783:1 supervisor 6831:22 supplement 6779:1 support 6755:19 6763:25 6798:12,17 6803:7,16 6848:6 supported 6798:5 supportive 6816:6 supreme 6776:2 sure 6784:25 6828:11 6828:24 6830:11,11 6830:15 6851:25 surprised 6813:21 suspicion 6818:18 sustainability 6759:23 sustained 6850:15 swear 6753:14,15,16,16 6753:19,20 switch 6781:3 sworn 6813:10 sympathy 6850:15 systems 6776:25 s.u.o 6781:11</p> <hr/> <p style="text-align: center;">T</p> <hr/> <p>T 6785:22,23 tab 6766:7 6771:20 6780:4 table 6808:7 tabs 6810:24 tactics 6767:9 6768:17 take 6753:7,10 6756:11 6756:19 6757:14,14 6757:18 6766:15 6781:5 6788:25 6789:9 6811:11 6814:1,6 6815:6 6819:8 6820:12,20 6822:2,4 6828:19 6836:12 6837:15,17 6838:15,19 6851:4 taken 6767:19 6777:20 6788:22 6789:6,12 6790:10 6807:25 6829:20 6847:16 takes 6846:13 talk 6790:23 6796:7 6800:19</p>	<p>talking 6816:18 talks 6787:15 tampering 6847:21 6848:15,19 Tanzania 6803:10,12 tape 6846:14 target 6788:17 task 6785:14 tasks 6785:11 tea 6781:6 team 6798:6 6804:3 6806:3 6809:17 6834:7 6839:25 6849:12 teams 6798:12,17 technical 6798:12,17 6823:16 technicalities 6829:22 6830:4 Technically 6779:8 techniques 6767:9 telephone 6805:2,12 telephonically 6793:19 6794:2,7 6834:1 tell 6759:8 6761:1 6793:2,3 6794:20 6800:15 6806:6 6841:20 tells 6764:20 6766:1 tensions 6774:11 tenuous 6829:15 tenuously 6829:12 terms 6762:1 6763:7 6764:4 6766:5,9 6775:20 6778:5 6786:14 6813:14 6841:6 6848:8 territory 6764:14 tertiary 6758:10 tested 6785:10 6797:11 6797:11 testify 6755:25 6779:19 6815:24 testifying 6810:20 testimony 6851:18 thank 6753:4,23 6754:11 6755:9 6757:4,6 6766:15 6775:11 6781:13 6796:6 6822:21,24 6823:2,8,9 6830:5,17 6830:17,23 6835:24 6836:2 6838:21 6845:14 6846:5,8,20 6846:23 6850:20,23 6853:6,16 thanked 6844:25 Thanks 6815:16 6816:11 that's 6756:3 6768:21 6774:2 6777:2,12 6788:4,13 6789:2,25 6790:7 6809:11 6812:18 6815:5 6817:18 6821:2 6822:17 6823:8,14</p>	<p>6824:14 6825:2,7 6826:9,23 6827:11 6828:19 6829:5,20 6830:7,9 thereof 6757:23 6763:15,24 6764:17 6764:21 6781:23 6788:2 there's 6753:25 6783:22 6813:17 6818:2 6822:13 6830:6 6851:25 they've 6822:18 6828:16 6830:13 thing 6802:14 6808:16 things 6784:15,16 6813:20,24 6826:16 6828:13 6829:3 6840:22 think 6756:4,13 6760:19 6771:16 6777:24 6784:19 6789:21 6790:2 6792:1 6797:9 6800:2 6802:13 6806:22 6808:15 6812:9 6813:3,23 6814:3 6818:6,10 6819:7 6820:1 6823:10 6824:18 6825:4 6829:25 6836:7 6838:8,9 6845:15 6850:4,7,9 thoroughly 6830:16 thought 6784:6 6790:1 6796:15 6811:5,8 6812:1 6813:2,23 6819:1 6822:12 6834:21 6851:17,19 threat 6773:23 6786:14 three 6755:24 6756:4 6797:16 6803:10 Thursday 6851:20,22 tidy 6830:23 tied 6802:17 till 6814:7 time 6754:25 6755:23 6760:11 6774:12 6786:19 6790:10 6795:12 6798:17 6805:10 6806:5 6807:10 6814:7,11 6820:24 6822:8 6831:8 6832:18 6833:10,12,13,14 6834:11 6837:24 6840:6,10 6846:3,17 6846:17 6848:2 timely 6765:18 times 6769:12 timing 6815:25 titled 6842:14 today 6755:4 told 6777:19 6813:21 6823:25 6828:18 6832:10 6834:11</p>	<p>6845:8 tolerance 6775:5 tolerated 6771:12 topic 6756:19 torched 6807:7,16 torture 6754:21,25 6815:20 6816:8 6822:2,4 6823:16,25 6824:6 6827:1 6829:11 6830:8 6853:20 tortured 6756:21 6826:17 6830:13 6853:11 total 6796:18 6799:3 totally 6795:13 6811:3 touch 6768:12 trace 6781:16 tragedy 6793:5 6833:8 6833:16 6839:3 6844:21 6849:17 tragically 6849:19 trained 6787:24 6788:2 6797:4 training 6773:13 transcript 6814:20 6821:6,22 6846:24 transformational 6799:1 translation 6846:14,18 Transnet 6759:17 6760:5,6,12 transparency 6765:17 6767:11 6847:15 traumatic 6803:4 traumatised 6840:6 6841:1 travel 6805:11,16 6834:6 treated 6823:11,13 treaties 6776:5 tribute 6842:11,18 true 6764:2,9,12,18,25 6768:8 6780:1 6785:2 6785:8,15 6788:19 6795:14 6809:11 6824:6,10,25 6827:24 6839:7 6841:12 trust 6772:21 6777:1 truth 6753:18,18,18 6783:4 truthful 6796:6 try 6757:10 trying 6801:20 6816:25 6821:20 6827:10 Tuesday 6852:1,9,16 6854:4 turned 6793:12 6812:25 6833:21 two 6754:2,21 6755:20 6758:1 6790:25 6804:20,24 6807:3 6826:16 6831:9 6840:22 6841:24 6845:24 6851:9 typographical 6791:5</p>
---	---	---	---	---

<p style="text-align: center;">U</p> <p>ultimately 6794:21 unacceptable 6811:3 6843:19 unarmed 6762:4 6771:4 6801:4 unbanning 6767:23 underpinned 6797:11 underscored 6845:3 underscoring 6802:19 understand 6769:16 6810:22 6815:2 6817:15 6820:1 6822:14 6848:3 6850:24,25 understanding 6790:3 6810:21 6841:8 understood 6835:15 undertake 6802:23 undertaken 6773:21 6796:17 undertaking 6782:7 6817:4 6828:6 6832:15 unfolding 6810:13 unfortunate 6820:15 6820:18 unfortunately 6778:22 unions 6807:3 6808:7 UNISA 6758:22 unit 6763:18,24 6764:11,16,21,22 6778:4,7,12,15,17,20 6779:8,15 United 6776:7 6799:9 units 6779:5,6 6797:6,7 6809:20 University 6758:13,24 6758:25 6759:2,4,6 unknown 6807:9 6844:3 unprecedented 6795:4 unrelated 6816:23 unrest 6803:25 6807:19 unusual 6813:4 update 6804:6 6831:20 updates 6831:20 uphold 6761:23 6782:8 upholding 6769:20 6800:24 upset 6849:22 up-scaling 6798:25 urge 6853:24 urged 6809:19 urgently 6777:10 6853:25 use 6765:11 6773:3 6775:3,15 6776:6,18 6785:21 6786:4,8,15 6788:2,23 6789:7,12 6789:19 6790:19 6794:12 6801:22</p> <hr/> <p style="text-align: center;">V</p> <p>valid 6811:11</p>	<p>values 6765:3,8 6769:7 6769:12 6782:14 various 6762:2 6767:23 6768:13 6769:15 6770:21,22 6771:1,17 6775:14 6780:19 6802:5 6843:7 vast 6767:7 6796:23,25 vehicles 6807:7,15 verbal 6771:11 verified 6828:20 version 6793:24 victims 6795:9 VICTORIA 6753:20 6781:11 video 6788:21 6845:22 6846:11,21,22 videotape 6845:20 view 6772:16 6799:24 6815:22 6853:14 vigilance 6785:7 violence 6768:20 6772:17 6774:14 6804:22 6806:10 6808:5,8 violent 6795:3 Visible 6841:17 visit 6847:12 visited 6840:18 visiting 6796:15 6805:12 voice 6769:21 6819:17 6827:10,14 6848:18 volition 6827:7 volume 6797:15 voluminous 6831:3 vouch 6837:5</p> <hr/> <p style="text-align: center;">W</p> <p>wait 6850:5 Wales 6759:2 want 6753:13,14,14 6785:19 6794:23 6795:21 6800:20 6811:23,25 6819:11 6822:21 6823:9 6824:1 6829:9 6830:7 6846:17 6852:22 6853:4 wanted 6820:20 6827:4 6827:5,11 6834:19 6852:13 6853:8 wants 6783:12 6784:19 6812:21 warning 6816:21 Warrant 6841:23 6842:24 Warrant-Officer 6841:11,18,20 6842:12,18 6843:13 wasn't 6815:8 water 6786:9 way 6757:16 6769:7,13 6782:23 6783:18,25 6784:12,13,20 6798:21 6811:17</p>	<p>6817:22 6818:6 6824:18 6830:2 6842:14 6850:12 ways 6827:22 weak 6840:12 weapons 6793:7 6832:12,16 6833:19 6848:10 week 6754:13 6756:18 6804:17 6844:22 6851:13,18 weekend 6846:25 weeks 6803:10 welfare 6759:15,16 wellbeing 6803:5,20 wellness 6803:14 6839:25 6840:11 weren't 6758:6 6784:8 6813:21,22 West 6804:12 6844:10 we'd 6756:9 6792:1 we'll 6756:22 6757:2 6757:19 6762:14 6781:5 6820:16 6842:15,17 6852:8 we're 6781:2 6822:16 6824:9 6828:17 6830:8,9 we've 6755:10 6828:6 6828:18 Wharton 6759:4 what's 6853:4 whereabouts 6840:16 whilst 6812:8 6832:5 whisper 6811:15 whispering 6811:2,5 6815:5 who's 6849:22 willingness 6815:23 wish 6753:7 6771:7 6783:20 6812:13 6814:18 6850:14 withdrawn 6787:8 witness 6757:15 6783:5 6783:15 6784:11 6810:20 6812:8,11 6813:4,7 6824:11 6826:17 6829:18,21 6830:1,20 6838:24 6850:22 6851:4 6852:7 witnesses 6754:2,22 6771:17 6779:18 6780:8,24 6783:17 6815:23 6820:6 6824:8 6828:13 6829:25 6851:3 woke 6800:7 woman 6757:25 women 6801:7 6823:23 6843:16 6849:4 won't 6811:11,16 6823:7 6828:2 6829:8 6853:19 word 6789:9,10 6790:1 6829:3</p>	<p>words 6821:20 6830:25 6843:10 work 6758:16,17 6801:1 6803:16 6804:3 6816:1,6 6818:11 6823:20 6829:4,13 6840:7,25 working 6817:14,18 workings 6827:20,21 6843:17 World 6760:23 worldwide 6782:18 worst 6825:4 wouldn't 6756:20,21 6784:7 6822:25 wounded 6841:10 writing 6835:9 written 6782:6 wrong 6787:17 6815:25 WWW 6845:8 WWW6 6845:8 WW6 6845:8,11,15 6846:4,9 WW6.1 6845:23</p> <hr/> <p style="text-align: center;">X</p> <p>X 6821:14 6829:13</p> <hr/> <p style="text-align: center;">Y</p> <p>Y 6829:13 year 6754:24 6787:1 6799:23,23 6823:17 6824:16 years 6759:19 6767:8 6797:16 yesterday 6753:25 6754:9 young 6801:13 you'd 6779:24 6780:15 6795:7 6800:7 you'll 6753:17 6756:12 6816:13 6823:7 you're 6757:14,17 6758:2 6759:9 6761:15 6770:8,15 6781:9 6791:7 6814:23 6820:2,12,19 6823:6 6827:15 6850:24,25 you've 6756:24 6812:20</p> <hr/> <p style="text-align: center;">Z</p> <p>Z 6829:13 Zukiswa 6842:24</p> <hr/> <p style="text-align: center;">0</p> <p>000 6755:15 6760:4 6796:22 6799:4 6849:4 04/10/2012 6816:21 09:33 6753:2 09:53 6762:1</p> <hr/> <p style="text-align: center;">1</p> <p>1 6755:15 6757:23</p>	<p>6798:3 6799:7,10,10 6799:11,12 6813:25 6814:6 6826:16 10 6765:2 6776:10 6782:3 6803:13 6852:2,9 6854:4 10th 6755:14 6804:5 6839:9 10:13 6768:8 10:33 6774:16 11 6762:21 6776:11 6796:22 6802:9 6838:12 11(4)(c) 6790:15 11:27 6781:8 11:47 6789:2 116 6798:3 12 6768:6 6776:13 6792:12 12th 6791:2 6792:6 6797:20 12-bore 6787:18,18,25 6788:1 12:07 6796:13 12:27 6802:19 12:47 6809:19 13 6777:6 6781:24 13th 6755:17,17 6756:2 6804:10,17 6839:10 6839:11 6841:25 136 6816:16 137 6816:16 138 6816:16 139 6816:16 14 6753:1 6760:4 6777:16,18 6778:4 6781:23 14th 6810:15 6831:12 6831:14,15,18 14:00 6819:24 14:21 6832:10 14:41 6840:10 142 6816:16 15 6779:6 6782:17 6784:1 15th 6810:15 6832:3,4 15:00 6804:11 15:01 6846:22 15:21 6849:12 16 6791:11 16th 6792:20 6832:13 6832:24 6833:8 6837:10,15,21 6838:11,14 6839:9,12 17 6762:3 6763:15,22 6764:20 6778:8 6779:14 17th 6837:22 6838:3,5 6838:8,9,12 6839:20 6839:23 6840:15,17 174 6803:2 18th 6841:9 18:00 6805:17 19 6842:18 19th 6841:22 195 6762:11 6765:3</p>
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