

RealTime Transcriptions

TRANSCRIPTION OF THE

COMMISSION OF INQUIRY

MARIKANA

BEFORE TRIBUNAL

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

HELD ON

DAY 222

25 APRIL 2014

PAGES 27340 TO 27457



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Page 27340

1 [PROCEEDINGS ON 25 APRIL 2014]
 2 [09:08] CHAIRPERSON: The Commission resumes.
 3 Colonel, you're still under oath.
 4 OMPHILE JOSEPH MERAFE: (s.u.o.)
 5 CHAIRPERSON: Mr Mpfu, I've given you
 6 one topic to cross-examine on and that's the so-called
 7 Mkhwanazi work group, matters related thereto.
 8 MR MPOFU: Thank you, Chair.
 9 CHAIRPERSON: I understand that Adv Bizos
 10 who was going to cross-examine on that has given you his
 11 notes. I don't know whether they take it any further than
 12 the notes you prepared yourself, but in any event –
 13 MR MPOFU: Yes. Chairperson, yes, it is
 14 just a good coincidence that the one topic that Adv Bizos
 15 had not covered was the one that you had allowed me.
 16 CHAIRPERSON: Alright. Are you feeling
 17 better this morning, Colonel?
 18 COLONEL MERAFE: I am feeling better,
 19 Sir.
 20 CHAIRPERSON: You were heartbroken
 21 yesterday and we could see you were deeply moved. Anyway,
 22 you're able to proceed this morning?
 23 COLONEL MERAFE: No, I'm okay this
 24 morning.
 25 CROSS-EXAMINATION BY MR MPOFU: Thank

Page 27341

1 you. Good morning, Lieutenant-Colonel.
 2 COLONEL MERAFE: Morning, Advocate.
 3 MR MPOFU: I'm glad that you're feeling
 4 better today. Now I'm just going to cover one topic as
 5 such, but I just want to preface it with one or two
 6 questions so that you know where I'm going. It's correct
 7 that during your cross-examination by many of my
 8 colleagues, just so that we don't have to re-traverse that
 9 ground, you have conceded that there were many deviations
 10 from Standing Order 262, correct?
 11 COLONEL MERAFE: It is correct, Chair,
 12 yes.
 13 MR MPOFU: And therefore in the various
 14 meetings and internal discussions that you would have been
 15 involved in you would have expressed those criticisms in
 16 respect of non-compliance with 262, correct?
 17 COLONEL MERAFE: Yes, it is so.
 18 MR MPOFU: And surely you were not the
 19 only one who expressed criticisms. Other people as well
 20 might have either agreed with you or expressed other
 21 criticisms in relation to non-compliance with 262, correct?
 22 COLONEL MERAFE: It is so.
 23 MR MPOFU: And these places where you
 24 would have expressed, you and others would have expressed
 25 those criticisms would include Roots, correct?

Page 27342

1 COLONEL MERAFE: Yes, but Roots had
 2 occurred after the Marikana incident. Chairperson, even if
 3 I'd raised those concerns at Roots they would not have been
 4 of any help then, but only for the future.
 5 MR MPOFU: Yes, everything we are going
 6 to discuss happened after the massacre, or tragedy,
 7 whatever it's called. I'm saying to you, you and I have
 8 agreed that not only you but others had expressed concerns
 9 about various levels of non-compliance with 262, which I
 10 don't want to go into now because you've already testified
 11 about it. I'm saying the places where you – and you've
 12 said that you did express those reservations. I'm saying
 13 the places that, where you must have expressed those
 14 reservations would include Roots, correct?
 15 COLONEL MERAFE: That is correct, Sir.
 16 MR MPOFU: And they would also include
 17 your interactions with the Mkhwanazi investigation,
 18 correct?
 19 COLONEL MERAFE: Correct, Chairperson.
 20 MR MPOFU: And they would also have
 21 included your interactions with your legal team, correct?
 22 COLONEL MERAFE: Ja, to an extent, yes.
 23 MR MPOFU: Why to an extent? Why would
 24 you not express your reservations on deviations from 262 in
 25 your interactions with your legal team when that legal team

Page 27343

1 was about the Commission that deals with what happened
 2 during the massacre?
 3 COLONEL MERAFE: Chairperson, I did not
 4 see reason why I should raise reservations with my legal
 5 team because the assistance I wanted was from the team that
 6 I worked with.
 7 MR MPOFU: You know what this Commission
 8 is about, correct?
 9 COLONEL MERAFE: I do know, Sir, yes.
 10 MR MPOFU: You know that its primary
 11 purpose is to find out what went wrong or right during
 12 those fateful days, correct?
 13 COLONEL MERAFE: I know that, Sir, yes.
 14 MR MPOFU: So you know that one of the
 15 most relevant things for this Commission is to be informed
 16 of deviations from 262, among other things, correct?
 17 COLONEL MERAFE: What I know about the
 18 Commission is that the truth should be brought forward so
 19 that there would be restoration and justice.
 20 MR MPOFU: Ja, well okay, that you can
 21 read behind the Commissioners. I'm asking you about –
 22 CHAIRPERSON: [Microphone off, inaudible]
 23 MR MPOFU: Well ja, but it's not the
 24 truth about Father Christmas. It's a truth about what
 25 happened during the massacre, correct?

Page 27344

1 CHAIRPERSON: What I said wasn't
2 recorded. I say he is correct, that is what this
3 Commission is all about.
4 MR MPOFU: Ja, he is correct. But you
5 understand that that is not just the truth about football;
6 it's a truth about what happened during the Marikana
7 massacre and related events, correct?
8 COLONEL MERAPE: I understand,
9 Chairperson, but I do not understand how you bring about
10 football when we spoke about the Marikana incident.
11 MR MPOFU: Just answer the question. Do
12 you understand that the truth, justice and reconciliation
13 and all that that you've mentioned is in relation to the
14 events that happened between the 9th of August up to the
15 16th of August? Yes or no?
16 COLONEL MERAPE: Between the 10th of
17 August to the 16th.
18 MR MPOFU: Okay ja, between those dates,
19 if you insist. Is that correct?
20 COLONEL MERAPE: That is so.
21 MR MPOFU: Right, and that was, this
22 thing called Operation Platinum was effectively a crowd
23 management operation, correct?
24 COLONEL MERAPE: We're talking about the
25 Lonmin. Operation Platinum came thereafter.

Page 27345

1 MR MPOFU: Ja okay, forget about what
2 came before. Operation, I'm talking about Operation
3 Platinum. When it became Operation Platinum, that is what
4 the truth is supposed to be about, among other things,
5 correct?
6 COLONEL MERAPE: It is correct, Sir.
7 MR MPOFU: And at the core of the
8 evaluation of Operation Platinum must lie the compliance or
9 non-compliance with regulation 262, correct?
10 COLONEL MERAPE: Correct, Chair.
11 MR MPOFU: So then if we then agree that
12 the Commission is concerned with those events and that at
13 the core of that is Operation Platinum, and at the core of
14 Operation Platinum is the regulation 262, then when you
15 were consulting about this Commission you would have, you
16 should have at least expressed your reservations not to a
17 certain extent when you were consulting with your legal
18 team, correct? But to a full extent?
19 COLONEL MERAPE: When I consulted with my
20 legal team I spoke everything that was necessary, the whole
21 truth. As far as I'm concerned there's nothing that I left
22 out.
23 MR MPOFU: Let me put it simply as this.
24 When you were consulting with your legal team and when you
25 were drafting the statements for the Commission, did you

Page 27346

1 express the same reservations or as many reservations as
2 you had expressed at Roots and during the Mkhwanazi process
3 about non-compliance to 262?
4 MS BALOYI: Chairperson, I'm afraid Mr
5 Mpofo seems to want to get into what would otherwise be
6 privileged conversations. He's asking the witness about
7 conversations with his attorney or with his counsel and I'm
8 not sure that that is proper.
9 MR MPOFU: No, Chairperson, I'm not doing
10 anything of that sort. All I'm asking, I'm testing the
11 witness is whether whenever he had an opportunity to state
12 what went wrong, which is the core business of this
13 Commission, he expressed those reservations. His answer is
14 that yes, he did so at Roots, yes, he did so at, during the
15 Mkhwanazi investigation, but when it came to his legal
16 representatives, which is reflected in his statement which
17 I'll come to, he only did so to a certain extent, and
18 that's all. I'm just dealing with the question of the
19 extent, not the contents of what was discussed.
20 CHAIRPERSON: You correctly summarise his
21 evidence. Yes, perhaps you can help us. To what extent
22 did you raise these reservations during those
23 consultations? Don't give us the detail, but just to what
24 extent? You said you did it to a certain extent. To what
25 extent did you do it?

Page 27347

1 COLONEL MERAPE: I said, Chairperson, I
2 did it to a certain extent because in my own statement that
3 I have written, I have already raised all issues that I
4 needed to. I do not know what it was that I was raising
5 more than what was contained in my statements which I made
6 available to my legal team.
7 CHAIRPERSON: Mr Mpofo, you know I think
8 on reflection there's substance in the objection raised.
9 You are I think trespassing onto privileged ground. I'm
10 not sure that you need to do so for the purpose of the
11 points that you're going to make, so I would suggest you
12 keep away from –
13 MR MPOFU: Chairperson, no that's fine.
14 Thank you, Chairperson, but – ja, I certainly won't get
15 into the content of what you discussed with your – I was
16 just testing what you mean by "to a certain extent," but
17 that's fine. So let's forget what you said to your legal
18 representatives. The reason I'm asking you this is
19 because, let's now go to your statements; in your
20 statements, all of them, you do not go to any extent, as it
21 were, about criticisms of non-compliance with regulation
22 262, which –
23 CHAIRPERSON: Point of correction, it's a
24 standing order.
25 MR MPOFU: Standing order, sorry –

Page 27348

1 CHAIRPERSON: - point of accuracy.
 2 MR MPOFU: Yes, that's correct. Ja.
 3 Would you at least accept that? Because that we can test
 4 by looking at the statement, not what you said to your
 5 lawyers or whatever, correct? Is there a section in any of
 6 your statements where you deal with –
 7 COLONEL MERAFAE: In my statements, Chair,
 8 I was raising, I was telling what happened there and I
 9 wasn't criticising. My aim was not to talk about Standing
 10 Order 262 or to criticise whether Standing Order 262 was
 11 complied with or not. I was just telling my story in my
 12 statement.
 13 MR MPOFU: But at Roots you saw it
 14 necessary to criticise and to point out non-compliance with
 15 regulation 262, correct?
 16 COLONEL MERAFAE: It was necessary there
 17 that I mention because at Roots we were reflecting on what
 18 has happened. Yes, I was making those remarks.
 19 MR MPOFU: And Roots was the gathering
 20 which was called for the specific purposes of preparing for
 21 this Commission, correct?
 22 COLONEL MERAFAE: Correct, Sir.
 23 MR MPOFU: And the Mkhwanazi
 24 investigation was also a process to prepare for this
 25 Commission, correct?

Page 27349

1 CHAIRPERSON: I don't think that's
 2 correct –
 3 MR MPOFU: Well, I'm asking a question,
 4 Chair.
 5 CHAIRPERSON: Oh, I'm sorry.
 6 MR MPOFU: I'm not asking the
 7 Chairperson –
 8 CHAIRPERSON: No, you're quite right.
 9 MR MPOFU: - I'm asking the witness.
 10 CHAIRPERSON: The witness may know more
 11 about it than I do.
 12 MR MPOFU: Answer the question.
 13 COLONEL MERAFAE: The question again was?
 14 MR MPOFU: Similarly the Mkhwanazi
 15 investigation was a process leading up or in preparation of
 16 the Commission, correct?
 17 COLONEL MERAFAE: Chairperson, the
 18 explanation I received from Brigadier Mkhwanazi was that
 19 they had been mandated by the National Commissioner to look
 20 into the role played by POP.
 21 MR MPOFU: Yes, and she, in giving that
 22 instruction she said you have to check what went right and
 23 what went wrong, correct?
 24 COLONEL MERAFAE: That is correct.
 25 MR MPOFU: Yes, but that's exactly the

Page 27350

1 same thing that I'm saying. At Roots also you were dealing
 2 with what went right and what went wrong, correct?
 3 COLONEL MERAFAE: That is so.
 4 MR MPOFU: Ja, so the two processes were
 5 similar to that extent at least, correct?
 6 COLONEL MERAFAE: I am not sure, Sir.
 7 MR MPOFU: What is it that you're not
 8 sure of?
 9 COLONEL MERAFAE: I'm not sure whether the
 10 two were similarly. What I said is I was told that this
 11 meeting that I held with Mkhwanazi was to check about the
 12 role of POP, and then the other one of Roots we were
 13 reflecting at all incident that was happening to compile a
 14 police report in regard to the Marikana, but that one –
 15 MR MPOFU: Ja –
 16 COLONEL MERAFAE: That's why I say for me
 17 I could not say they are similarly.
 18 MR MPOFU: No, you must listen very
 19 carefully. When I say "to that extent" I meant this; I
 20 said to you to the extent that both processes were looking
 21 at what went right and what went wrong, to that extent they
 22 were similar, correct?
 23 COLONEL MERAFAE: Yes, to that extent,
 24 yes, they were.
 25 MR MPOFU: Thank you. And the Commission

Page 27351

1 also is to look into what went right and what went wrong.
 2 So to that extent it's also similar to the other two,
 3 correct?
 4 COLONEL MERAFAE: Correct.
 5 MR MPOFU: Well, Mkhwanazi is a POP man,
 6 correct?
 7 COLONEL MERAFAE: Yes, correct.
 8 MR MPOFU: And you are a POP man too.
 9 COLONEL MERAFAE: Correct.
 10 MR MPOFU: So in the Mkhwanazi process as
 11 it were, and to the extent that it dealt with deviations
 12 from 262 you would have been the main person to check out
 13 for deviations, correct? Or at least one of them. I'm not
 14 saying you're the only one, but one of the main people,
 15 correct?
 16 COLONEL MERAFAE: Yes, I am the one other,
 17 one of the people that consulted with Mkhwanazi –
 18 MR MPOFU: Yes.
 19 COLONEL MERAFAE: - to talk about POP.
 20 MR MPOFU: Yes.
 21 COLONEL MERAFAE: Because that is my
 22 environment.
 23 MR MPOFU: Correct. That's exactly what
 24 I'm saying, Sir. Now the – well, I'm putting this as a
 25 statement to you. You know that one of the, or rather the

Page 27352

1 product of Roots was exhibit L, correct?
 2 COLONEL MERAPE: It is so, Sir.
 3 MR MPOFU: And will you be surprised that
 4 despite the fact that you raised criticisms of non-
 5 compliance with regulation 262, in exhibit L they are
 6 nowhere to be found, despite the fact that you raised them
 7 at Roots?
 8 COLONEL MERAPE: I don't clearly
 9 understand, unless you direct me on according to you this
 10 was supposed to be in that report, then I would –
 11 MR MPOFU: No, it's fine. I'll do it
 12 slowly. Roots was a process which was meant to bring
 13 information from the police to the Commission.
 14 COLONEL MERAPE: That is so.
 15 MR MPOFU: In that process you raised
 16 among other things very sharp criticisms about non-
 17 compliance with regulation 262, correct?
 18 COLONEL MERAPE: Chair, I went to Roots
 19 to talk about the role that I played on the 13th at
 20 Marikana, and I did not stand up and say according to
 21 Standing Order 262 this was supposed to be done. I never
 22 criticised –
 23 MR MPOFU: No.
 24 COLONEL MERAPE: - or talk about the
 25 deviation as, at Roots.

Page 27353

1 MR MPOFU: Colonel, listen, it's too late
 2 for you to change your evidence now. You've already
 3 testified that you raised your criticism about non-
 4 compliance both at Roots and at the Mkhwanazi
 5 investigation, so you can't change that evidence now,
 6 unless if you want to contradict yourself. You are under
 7 oath.
 8 COLONEL MERAPE: Yes, I am under oath,
 9 but things will not be put into my mouth, whether I'm under
 10 oath or not. I'm going to talk what I know.
 11 MR MPOFU: Okay, I'm going to put words
 12 in your mouth now –
 13 CHAIRPERSON: Mr Mpofu, sorry, before you
 14 proceed.
 15 [09:28] You were with primarily concerns of what happened
 16 from the 13th to the 15th, is that right?
 17 COLONEL MERAPE: Correct, Chairperson.
 18 CHAIRPERSON: You weren't there on the
 19 16th?
 20 COLONEL MERAPE: I wasn't there on the
 21 16th.
 22 CHAIRPERSON: You couldn't give any input
 23 from your own knowledge as to what happened on the 16th?
 24 COLONEL MERAPE: No.
 25 MR MPOFU: Okay, so when you were

Page 27354

1 highlighting the deviation from Regulation 262 at Roots you
 2 were dealing with the 13th and the 15th, is that what that
 3 means?
 4 COLONEL MERAPE: Yes, Chairperson,
 5 according to 262, the person of, a POP senior member on the
 6 scene should have been the operational commander.
 7 MR MPOFU: Ja –
 8 COLONEL MERAPE: That is 262.
 9 MR MPOFU: Ja, let me assist you, I don't
 10 care what date you're talking about –
 11 COLONEL MERAPE: Pertaining to the 13th.
 12 MR MPOFU: Okay, it could have been
 13 whatever, the point of the matter is that at Roots you
 14 highlighted criticisms according to 262 about any date
 15 whatsoever in the calendar, correct?
 16 COLONEL MERAPE: I hear you, Sir.
 17 MR MPOFU: Ja, alright. Now I'm saying
 18 to you, you must make up your mind, you've testified
 19 earlier that you highlighted those deviations and now you
 20 are saying you didn't. Which one is the truth, which one
 21 is the lie?
 22 COLONEL MERAPE: I believe you heard me,
 23 the operational commander in a Crowd Management situation
 24 should be a senior POP member, that is the criticism that I
 25 raise and it stands.

Page 27355

1 MR MPOFU: So you did raise a criticism?
 2 COLONEL MERAPE: That is the criticism
 3 I'm talking about –
 4 MR MPOFU: So why did you say two
 5 questions you did not raise a criticism?
 6 COLONEL MERAPE: I am saying that is the
 7 criticism I –
 8 MR MPOFU: Colonel Merafe, don't waste
 9 time here.
 10 CHAIRPERSON: But Mr Mpofu, Mr Mpofu, the
 11 two –
 12 MR MPOFU: Well, -
 13 CHAIRPERSON: - there is, (a), people
 14 talking over each other which isn't good for the
 15 transcribers.
 16 INTERPRETER: Thank you, Sir.
 17 CHAIRPERSON: And secondly, if he wastes
 18 time I will pull him up –
 19 MR MPOFU: Okay, well, -
 20 CHAIRPERSON: It is not –
 21 MR MPOFU: - then let's waste time –
 22 CHAIRPERSON: It is not for you to, - no,
 23 no, that sarcastic remark is not worthy of you, Mr Mpofu,
 24 let's –
 25 INTERPRETER: That is fine –

Page 27356

1 CHAIRPERSON: - just carry on without
 2 unnecessary comments of that kind?
 3 MR MPOFU: Okay, well, then we'll have to
 4 go around this merry go round. Did you –
 5 CHAIRPERSON: No, no, no, Mr Mpofu, let's
 6 not go around merry go around and mulberry bushes, just
 7 repeat the question and let's see if we get an answer and
 8 if he doesn't give you an answer, - I don't think the
 9 answer has been interpreted. Mr Merafe, can you remember
 10 what the answer was?
 11 COLONEL MERAFE: Yes, Sir.
 12 CHAIRPERSON: Or shall we hear what Mr
 13 Mpofu –
 14 COLONEL MERAFE: The answer was –
 15 CHAIRPERSON: - and take a step back?
 16 COLONEL MERAFE: The answer was, I am
 17 repeating what I have already said which is on record.
 18 MR MPOFU: Okay, did you or did you not
 19 say two or three questions ago that you did not raise
 20 criticisms of 262, at which point I reminded you that
 21 earlier on in the morning you said you had raised those
 22 criticisms, did that happen or is it a figment of my
 23 imagination?
 24 COLONEL MERAFE: I said, Chairperson, I
 25 raised the issue that the most senior member of the POP in

Page 27357

1 terms of Standing Order 262 is the person, the right person
 2 to take control in a Crowd Management situation. That is
 3 the thing that I raised at Roots. When I was asked if I
 4 had raised a criticism I said, yes, that is what I meant
 5 that.
 6 MR MPOFU: So you raised one criticism,
 7 that's what you are saying now, this is the third version
 8 you are giving us.
 9 CHAIRPERSON: If this is a third version,
 10 a matter you can argue it later. Did you only raise one
 11 criticism or did you raise more criticisms?
 12 COLONEL MERAFE: The response, Sir, is
 13 that we discussed quite a number of things there and to be
 14 specific I will sometimes miss the ball because there were
 15 many points that were being discussed. Like for instance
 16 talking about the Standing Order, Chairperson, if I was not
 17 in charge there I am unable to say so and so did right or
 18 wrong here.
 19 MR MPOFU: Do you even remember the
 20 question, did you raise one criticism or did you raise many
 21 criticisms?
 22 COLONEL MERAFE: I raised many
 23 criticisms.
 24 CHAIRPERSON: Do you remember what they
 25 were, apart from the one about the senior POP person at the

Page 27358

1 scene should be in charge in a Crowd Management situation,
 2 apart from that one which you do remember and you told us
 3 about, can you remember any of the other criticisms that
 4 you raised?
 5 COLONEL MERAFE: The other criticisms
 6 that I raised was that –
 7 CHAIRPERSON: If you can't remember then
 8 you must just say so. I can see you're racking your brains
 9 trying to remember, but if you can't remember then you must
 10 just say so.
 11 COLONEL MERAFE: Unless I refer to my
 12 notes, Chairperson.
 13 CHAIRPERSON: Yes, you're perfectly
 14 entitled to refer to your notes, you are perfectly entitled
 15 to refer to your notes, do you have your notes here?
 16 MR MPOFU: Ja, I have my notes.
 17 CHAIRPERSON: Do you want him to go
 18 there, Mr Mpofu?
 19 MR MPOFU: No, I don't, Chairperson.
 20 Listen, Colonel, -
 21 CHAIRPERSON: No, Mr Mpofu, you've asked
 22 him a question and he said he can't remember –
 23 MR MPOFU: I haven't, you asked him that
 24 question, I don't want that answer to that question. I'm
 25 saying –

Page 27359

1 CHAIRPERSON: I see –
 2 MR MPOFU: - I don't want to know what
 3 the criticisms were, all I've asked him, did he raise one
 4 or many and he said, many. I'm happy with that, I don't
 5 want to know what they are.
 6 CHAIRPERSON: Okay, if we can now move on
 7 without referring to his notes.
 8 MR MPOFU: Yes.
 9 CHAIRPERSON: Let's move on to the next
 10 point.
 11 MR MPOFU: Correct, ja. So to cut the
 12 story short, Lieutenant-Colonel Merafe, I don't want to
 13 know what those many criticisms were. My question is
 14 simply this. Are you surprised or are you not surprised
 15 that the many criticisms, whatever they are that you raised
 16 do not appear in Exhibit L, which was the product of Roots,
 17 yes or no?
 18 COLONEL MERAFE: Yes, Chairperson.
 19 MR MPOFU: Yes, you're surprised, okay,
 20 good. Would you even be more surprised if actually what
 21 appears in the police version is that there was great
 22 compliance with 262, but even worse than just, it not being
 23 there but the opposite being –
 24 CHAIRPERSON: Mr Mpofu, I'm not sure –
 25 MR MPOFU: - accepted?

Page 27360

1 CHAIRPERSON: I'm not sure if you phrased
 2 that question correctly, I think it would be more correct
 3 to phrase it, there is no suggestion in L that there was
 4 any noncompliance. I'm not sure you can put it –
 5 MR MPOFU: No –
 6 COLONEL MERAFAE: - positively, more
 7 positively than that, unless there is something, except if
 8 you want to -
 9 MR MPOFU: Well, Chairperson, I'm afraid
 10 you're making a mistake. Both in the opening statement of
 11 SAPS and in 262 and in the evidence of, I mean Exhibit L,
 12 in the evidence of –
 13 CHAIRPERSON: I'm –
 14 MR MPOFU: - the National Commissioner,
 15 the evidence of this one and that one –
 16 CHAIRPERSON: No, Mr Mpofu, I'm sorry but
 17 can I say something? My comment was based on L, my
 18 understanding is I don't remember, if there something I
 19 have overlooked I'll be grateful to be reminded of it, I
 20 don't remember any positive statement that they complied
 21 with 262, but what I do remember is, I can't remember
 22 anything critical of the police conduct in Exhibit L. It
 23 is a matter that has been covered repeatedly here in cross-
 24 examination, that L –
 25 MR MPOFU: Yes –

Page 27361

1 CHAIRPERSON: - is a partial statement of
 2 what happened –
 3 MR MPOFU: Fair enough, -
 4 CHAIRPERSON: - whether he –
 5 MR MPOFU: - no, fair enough –
 6 CHAIRPERSON: - doubt the points of
 7 criticism, but if there is something specific that goes
 8 beyond what I've said then obviously you must bring it to
 9 my attention and the witness, but for the moment you can
 10 put to the witness that, - well, you can put it in your own
 11 words, I won't endeavour to paraphrase it because I may get
 12 it wrong.
 13 MR MPOFU: Yes, no, no, fair enough,
 14 Chairperson, yes. No, maybe I was moving too fast, I spoke
 15 about L but now I'm talking about the version which is a
 16 different thing. I was saying, would you be more surprised
 17 that in the version, and that encapsulates a whole lot of
 18 things, of SAPS, there are assertions that there was
 19 compliance with Regulation 262. That's the question, we
 20 know that you are surprised that is not in L, I was asking
 21 you a completely different thing now to say, are you even
 22 more surprised that in the version of the police there is
 23 an assertion that there was compliance with 262 despite
 24 your many criticisms and your pointing out many deviations
 25 there from. Are you equally surprised or even more

Page 27362

1 surprised?
 2 COLONEL MERAFAE: Chair, what I understand
 3 Exhibit L to have been, Chairperson was, they were giving
 4 the side of the police as to what happened and what's
 5 happening, they were not speaking of criticisms that were
 6 raised.
 7 CHAIRPERSON: Mr Mpofu now goes further
 8 you see, Mr Mpofu puts it that the police version as
 9 presented here in the opening statement, in the evidence of
 10 the National Commissioner and so on, goes further. I'm not
 11 quite sure if he is right but for the purpose of the
 12 question I think we can assume he is right.
 13 COLONEL MERAFAE: Yes.
 14 CHAIRPERSON: That their case is or was
 15 perhaps, comparatively recently, that they complied with
 16 262. Now are you surprised at that, that's the question he
 17 asked?
 18 COLONEL MERAFAE: Chairperson, at one time
 19 I read the - hybrid, that this was a hybrid situation and
 20 not an ordinary POP operation. They were trying to explain
 21 that in case that it is said that they did not comply, the
 22 operation itself was not one of the Standing Order 262, I
 23 heard them saying so.
 24 CHAIRPERSON: I think you're right.
 25 COLONEL MERAFAE: That's what I

Page 27363

1 understand.
 2 CHAIRPERSON: The real thrust of the
 3 State's case certainly, - sorry, the police case, certainly
 4 as presented by people like General Annandale, was that you
 5 can't just look at 262 to see whether 262 was complied with
 6 because 262 didn't exactly cover the situation because it
 7 was a hybrid situation, that was what he said here.
 8 COLONEL MERAFAE: That -
 9 CHAIRPERSON: And you've already said you
 10 don't agree with that, so we don't have to, - Mr Mpofu, I
 11 take it we don't have to go over that again. I take it one
 12 of these days we're going to get to the Mkhwanazi topic
 13 directly that I gave you permission to deal with. I
 14 understand this is leading up to it, -
 15 MR MPOFU: This is –
 16 CHAIRPERSON: I understand it is leading
 17 up to it, but ja.
 18 MR MPOFU: Ja, this is the Mkhwanazi
 19 topic, Chairperson. What I'm saying is this, that this
 20 witness is a POP man and Mkhwanazi is a POP man, to the
 21 extent that he participated in the Mkhwanazi process it
 22 would have been around 262 which is what we are dealing
 23 with now, thanks, Chairperson. Now your criticisms or the
 24 deviations that you pointed out from the many deviations
 25 that you pointed out from Standing Order 262, which were

Page 27364

1 communicated to the Mkhwanazi process, do you know what
 2 became of that in relation to the Commission? Was that
 3 presented to the Commission, to your knowledge?
 4 CHAIRPERSON: I don't think it is that, I
 5 don't think it is necessary to ask him that, we know
 6 ourselves. You've read the, what's called the final
 7 interim report of what's being called the Mkhwanazi working
 8 group, is that correct?
 9 COLONEL MERAFAE: It is so, Sir.
 10 CHAIRPERSON: And eventually it surfaced
 11 here at the Commission, rather late in the day but anyway,
 12 that's not something that you know about?
 13 COLONEL MERAFAE: No, Sir.
 14 MR MPOFU: Yes, and I just want to
 15 understand the relationship between these things, if you
 16 can maybe help. Would it be correct that in any event
 17 Mkhwanazi's involvement at Roots was exactly for that
 18 purpose to determine what went right and what went wrong
 19 from a POP point of view, correct?
 20 COLONEL MERAFAE: It is so, yes.
 21 MR MPOFU: Ja. Well, unfortunately
 22 Brigadier Mkhwanazi did not disclose to this Commission
 23 that he was asked to conduct a separate investigation from
 24 Roots.
 25 CHAIRPERSON: Would the witness know

Page 27365

1 that?
 2 MR MPOFU: Well, I'm telling him, that's
 3 why I'm telling him that.
 4 COLONEL MERAFAE: I accept what you're
 5 telling me.
 6 MR MPOFU: Yes, and are you able to tell
 7 us and I might have missed this in the transcripts, which
 8 came first, the Mkhwanazi process or Roots?
 9 COLONEL MERAFAE: Roots came first.
 10 MR MPOFU: Okay.
 11 CHAIRPERSON: When you appeared before
 12 this working group, was Roots already over or did you leave
 13 Roots as it were for a while to appear before the working
 14 group and then go back to Roots?
 15 COLONEL MERAFAE: Roots, I was not at
 16 Roots at that time, I was back to my unit, it was over, I
 17 think so.
 18 MR MPOFU: Yes, so from a POP's point of
 19 view the Mkhwanazi process was Roots 2, because they were
 20 looking to the same thing, what went right, what went
 21 wrong, correct?
 22 CHAIRPERSON: I don't know if your way of
 23 putting it, Roots 2 could mean a number of things. It was
 24 certainly not intended to be a presentation that was put
 25 before us because it was kept away from us until a very

Page 27366

1 late stage, and it wasn't at Roots either, I don't think.
 2 So on no basis does it qualify Roots 2 –
 3 MR MPOFU: Yes, I meant –
 4 CHAIRPERSON: It was a separate, you're
 5 correct in saying, I don't think you need the witness to
 6 give us this information, we have it already, it was a
 7 separate inquiry into whether the policies, precepts, rules
 8 and so forth applicable to the police operations, the Crowd
 9 Management operations had been complied with.
 10 MR MPOFU: Yes.
 11 CHAIRPERSON: I think that's correct and
 12 to the extent that Roots was involved in that it was a
 13 duplication, but to the extent that Roots wasn't, it wasn't
 14 a duplication, but I think all those facts we have.
 15 MR MPOFU: Yes.
 16 CHAIRPERSON: We don't know if you need
 17 to ask the witness about them.
 18 MR MPOFU: Thank you, Chairperson, yes,
 19 the chairperson is correct, when I said Roots 2 I meant it
 20 in that sense, not literally that it was in Potchefstroom
 21 and so on and so on, but to the extent that both processes,
 22 which you and I have already agreed, from a POP point of
 23 view were looking at what went right and what went wrong.
 24 It was a repetition of what had occurred at Roots, correct?
 25 COLONEL MERAFAE: It was not a repetition

Page 27367

1 of Roots, I have already said the Mkhwanazi meeting, we
 2 discussed POPS at Roots, there were many units that were
 3 involved at Marikana, so Roots was covering the whole
 4 spectrum of everything that went, that was happening at
 5 Marikana.
 6 MR MPOFU: Yes.
 7 COLONEL MERAFAE: The one with Mkhwanazi
 8 dealt specifically with –
 9 MR MPOFU: POPS –
 10 COLONEL MERAFAE: - POPS, so –
 11 MR MPOFU: Yes, no, no, we are together,
 12 again maybe I didn't make it clear or you didn't listen to
 13 the question. I'm saying I accept all that, the other one
 14 was bigger, it was in Potchefstroom and all those
 15 differences. All I'm saying to you is that to the extent
 16 that we are dealing with POP issues and Mkhwanazi being a
 17 POP man, what happened at Roots which was looking at what
 18 went right, what went wrong was repeated in the Mkhwanazi
 19 process, or what we now call the Mkhwanazi process which is
 20 what went right and what went wrong from a POP point of
 21 view, correct, to that extent it was a repetition?
 22 COLONEL MERAFAE: I say it was not a
 23 repetition, it was a single meeting talking about POPS. At
 24 Roots it was a meeting of all components that was at
 25 Marikana, it cannot be a repetition.

Page 27368

1 MR MPOFU: No, I think you understand the
 2 question, you are just –
 3 CHAIRPERSON: Mr Mpofu, I think you must
 4 agree to differ on that, I understand what's the point
 5 you're putting, I understand what the witness says, I think
 6 we're in –
 7 MR MPOFU: Well, that's fine –
 8 CHAIRPERSON: Well, you can address us at
 9 the end as to what the correct interpretation is, but I'm
 10 not sure if the resolution of the difference between the
 11 two of you will take us much further in dealing with our
 12 terms of reference.
 13 MR MPOFU: Alright, you were, at all
 14 these processes you were seen as a kind of POP expert or
 15 Crowd Management expert, correct?
 16 COLONEL MERAFAE: It is correct.
 17 MR MPOFU: For example that could be the
 18 only reason that you would have been asked about the
 19 deployment of barbed wire on the 16th when you were not even
 20 there, it was because of your broader knowledge of those
 21 kinds of issues, correct?
 22 COLONEL MERAFAE: Correct, Chair.
 23 MR MPOFU: Who are the other people from
 24 POP to your knowledge who gave evidence or participated in
 25 the Mkhwanazi process?

Page 27369

1 COLONEL MERAFAE: Colonel Mkhari of
 2 Gauteng Provincial office, Colonel Twala, Public Order in
 3 National.
 4 [09:48] Former Colonel Ali who was with us at the
 5 training POP.
 6 CHAIRPERSON: I'm sorry to interrupt
 7 you. I'm not sure –
 8 COLONEL MERAFAE: He was with us at
 9 training at POP training.
 10 CHAIRPERSON: Yes, I'm not sure that you
 11 and Mr Mpofu are dealing with the same point. The people
 12 you've mentioned to us as far I know were members of the
 13 panel of which Brigadier Nkwanazi was a member. I
 14 understood Mr Mpofu to be interested in whether other
 15 witnesses, other witnesses is perhaps the wrong word, but
 16 other POP people to your knowledge participate in the sense
 17 that they appeared before the panel as you did and gave
 18 their opinion. Obviously you wouldn't know what they said
 19 but I think Mr Mpofu wants to know do you know what other
 20 POP people did what you did and went and appeared before
 21 the panel to give their views on such matters that the
 22 panel asked them about. Can you answer that? Is that
 23 right, Mr Mpofu, that's what you're about?
 24 MR MPOFU: That's correct.
 25 CHAIRPERSON: Ja.

Page 27370

1 COLONEL MERAFAE: I was called alone on
 2 that day, Chairperson, whether other people were called or
 3 not I don't know. I did not see any known POP person
 4 there.
 5 MR MPOFU: Alright before I deal, I'm now
 6 just going to deal with some of the contents of the
 7 Nkwanazi report. I just want you to comment on this.
 8 Given what you and I have discussed this morning so far I'm
 9 going to argue that the version that was given to the
 10 Commissioner either in exhibit L or your statement or by
 11 other witnesses is the sanitised version of the full extent
 12 of what happened at Roots. In other words by that I mean
 13 for example that sanitisation means cleaning out something.
 14 That while you introduced into the mix there many
 15 criticisms and deviations those deviations were sanitised
 16 out and edited out. By the time exhibit L was brought here
 17 it did not contain those criticisms, not only from you from
 18 other people as you have testified.
 19 CHAIRPERSON: Mr Mpofu –
 20 MR MPOFU: What do you say to that?
 21 CHAIRPERSON: I don't think he can
 22 answer in relation to the evidence given by other witnesses
 23 here.
 24 MR MPOFU: Okay.
 25 CHAIRPERSON: He can only testify about

Page 27371

1 himself and what he's seen.
 2 MR MPOFU: Agreed. Yes, okay so subject
 3 to that, so what I've already asked you if you still
 4 remember but take out the fact that other people might have
 5 also voiced criticisms. That it was sanitised only to the
 6 extent that your criticisms were eliminated.
 7 COLONEL MERAFAE: If you want to argue, I
 8 am saying it is in the powers of counsel, Sir, to argue in
 9 that way. If he feels that some of the things that I
 10 mentioned did not appear in the presentation he has the
 11 right to do that argument.
 12 MR MPOFU: Yes. No, thank you for
 13 defining my right. What I'm saying to you is that I'm
 14 asking you that when I say that your criticisms were
 15 eliminated deliberately will I be right or will I be wrong
 16 at the end?
 17 CHAIRPERSON: I'm not sure he can deal
 18 with the deliberate part.
 19 MR MPOFU: Well, okay.
 20 CHAIRPERSON: But with respect does the
 21 question take any further.
 22 MR MPOFU: Ja.
 23 CHAIRPERSON: We've seen L, we've heard
 24 his evidence. We're in a position to decide to what extent
 25 L didn't contain matter which you will contend it should

Page 27372

1 have contained but I'm not sure this witness's opinion on
 2 the matter will take it any further.
 3 MR MPOFU: No, fine. That's okay,
 4 alright. The, you've now seen the Nkwanazi report?
 5 COLONEL MERAFAE: I saw it there.
 6 MR MPOFU: And do you agree with its
 7 contents?
 8 COLONEL MERAFAE: If you want to see
 9 whether I agree with, I think you should go to the specific
 10 points because there are many things that are being
 11 mentioned there.
 12 MR MPOFU: Ja, I'm doing exactly that.
 13 I'm doing a shortcut. Are there points in the report that
 14 you don't agree with?
 15 COLONEL MERAFAE: I am reading that we
 16 don't do shortcuts, that we go through –
 17 MR MPOFU: No, you can't tell me how I
 18 must do my cross-examination. I'm asking you a question.
 19 Is there points that you don't agree with?
 20 CHAIRPERSON: Mr Mpofo, sorry you can't
 21 tell him how to answer. Would you prefer to have a, to
 22 look, to have a copy up on the screen of the report and you
 23 don't have to go through it in-depth. Obviously Mr Mpofo
 24 has very commendably tried to cut this as short, keep this
 25 as short as he can. Something I would support. But if it

Page 27373

1 will help you to answer his question in a helpful way to us
 2 then if the report were put on the screen then perhaps we
 3 must do. Would you prefer that? Would that help you to
 4 answer his question?
 5 COLONEL MERAFAE: Ja, Chairperson, I'd
 6 prefer that because I don't want to go wild without
 7 focusing on what I'm answering about.
 8 CHAIRPERSON: We don't have to read it
 9 aloud. It's just sufficient to be put on the screen.
 10 COLONEL MERAFAE: Okay.
 11 CHAIRPERSON: And you can look at it,
 12 page by page.
 13 COLONEL MERAFAE: Okay.
 14 CHAIRPERSON: Pick up points, and tell
 15 us if there's anything there that you don't agree with.
 16 That's the point that Mr Mpofo is concerned.
 17 COLONEL MERAFAE: Thank you, Chairperson.
 18 That would be fair for me.
 19 MR MPOFU: That's fine, we're going to be
 20 fine. But from your own memory can you remember anything
 21 that you don't agree with in that report?
 22 CHAIRPERSON: I don't think he need to
 23 answer that question. Let's have it on the screen and you
 24 can look at it page by page. Make little notes as you go
 25 along. If you see anything you disagree with and then when

Page 27374

1 you've looked through the whole thing on the screen you can
 2 then tell us what it is that you don't agree with, if there
 3 is anything that you don't agree with.
 4 COLONEL MERAFAE: Okay.
 5 CHAIRPERSON: Exhibit LLL11.
 6 MR MPOFU: 11, LLL11, Chairperson.
 7 CHAIRPERSON: The purpose is the first
 8 paragraph. Then there are unique challenges in the second.
 9 Is there anything specific that you want to put to the
 10 witness from the report?
 11 MR MPOFU: No, not at all. I've asked
 12 him a simple question. Is there anything in the report
 13 that he disagrees with so that we know, if the answer is no
 14 then we know he agrees with all of it.
 15 CHAIRPERSON: Okay well it's not a very
 16 long report. So you've seen the first page of it.
 17 COLONEL MERAFAE: I've seen the first
 18 page, Chairperson.
 19 CHAIRPERSON: Let's move to the second
 20 page.
 21 COLONEL MERAFAE: I've got nothing.
 22 CHAIRPERSON: Alright. You've seen the
 23 second page now, anything on the second page you don't
 24 agree with?
 25 COLONEL MERAFAE: Ja, Chairperson the

Page 27375

1 issue of the language Fanagalo used there, I don't agree
 2 with it.
 3 MR MPOFU: You don't agree that it is
 4 used in the mining environment. Generally in the country.
 5 COLONEL MERAFAE: I agree that it is used
 6 in the mining environment but during the time when we,
 7 General Mpembe was speaking with the miners they were able
 8 to hear each other and they responded accordingly.
 9 CHAIRPERSON: The suggestion is the use
 10 of the language was an inhibiting factor in communication.
 11 You say that's not correct, General Mpembe spoke Zulu to
 12 them, I think, most of, well the majority of them I think
 13 were Xhosa speakers or certainly speakers of the Nguni
 14 language and they appeared to understand him and they
 15 communicated with each other.
 16 COLONEL MERAFAE: Yes, Chairperson.
 17 CHAIRPERSON: So there wasn't an
 18 inhibiting factor in communication?
 19 COLONEL MERAFAE: No.
 20 CHAIRPERSON: Alright. Anything else on
 21 that, that's your evidence, is that right?
 22 MR MPOFU: Can I deal with that.
 23 CHAIRPERSON: That's fine, you're cross-
 24 examining aren't you?
 25 MR MPOFU: Thank you. Well, so you think

Page 27376

1 that when General Mpembe asked for Mr Blou, for a Fanagalo
 2 interpreter he was just wasting his time?
 3 COLONEL MERAFAE: I don't say he was
 4 wasting his time. My argument is General Mpembe was
 5 speaking to the miners and the miners and General Mpembe
 6 including myself who is Setswana speaking we hear each
 7 other, we were understanding what we said to each other.
 8 So it cannot be right to say Fanagalo was -
 9 MR MPOFU: An inhibiting factor.
 10 COLONEL MERAFAE: There was a problem
 11 there.
 12 MR MPOFU: So you think, look it's one
 13 thing for people to make do, I can speak in Xhosa, you
 14 answer me in Tswana. But you do agree that the better
 15 solution is if we are speaking in the same language and we
 16 understand each other? That is preferable.
 17 COLONEL MERAFAE: The better thing is for
 18 us to hear each other and understand each other. That is
 19 the basis of my argument regarding that.
 20 CHAIRPERSON: There's a complicating
 21 factor here. He was concerned that what happened on the
 22 13th. Subsequently in the period up to the 15th I think
 23 when there was negotiations with Lieutenant Colonel
 24 Macintosh there I think Fanagalo was used and there was an
 25 interpreter who interpreted. But and the suggestion seems

Page 27377

1 to be the fact that Fanagalo was used was an inhibiting
 2 factor but if the witness doesn't know anything about that
 3 because he wasn't involved in those negotiations -
 4 MR MPOFU: Ja, I'm only confining to the
 5 one where he was involved. I'm putting a simple
 6 proposition. I'm saying if the two people speaking in
 7 different languages was not an inhibiting factor then Mr
 8 Mpembe, General Mpembe would not have asked for a Fanagalo
 9 interpreter. Would you at least accept that? That he,
 10 when he could not get an interpreter then he took the
 11 second best solution which was he speaks in Zulu and the
 12 answer in Fanagalo. But that was the second best thing.
 13 It's simply because he was denied the first, his first
 14 choice of having a Fanagalo interpreter. Would you at
 15 least accept that?
 16 COLONEL MERAFAE: Chairperson, I can't at
 17 least accept. I say the people who were there at the
 18 railway crossing and General Mpembe were understanding,
 19 hearing each other and they were able to at least agree at
 20 the end of the day. Now for us to say the Fanagalo was a
 21 problem there, people should have come and speak Fanagalo
 22 in order for the people to communicate, it's wrong.
 23 MR MPOFU: Okay, that's fine, it's wrong,
 24 totally wrong. Alright what other points do you disagree
 25 with in the report?

Page 27378

1 CHAIRPERSON: Any other criticisms on
 2 this page, I don't think we've got the whole page. Let's
 3 just move the page down a bit.
 4 COLONEL MERAFAE: It's okay, you can go,
 5 Chairperson. The page can proceed.
 6 CHAIRPERSON: That's the end of the
 7 page. Any other criticism that you have with anything on
 8 that, on that page before we move onto the next page.
 9 COLONEL MERAFAE: No, let's move to the
 10 next page.
 11 CHAIRPERSON: Okay, no other criticisms
 12 on that page. Now we're onto the next page. There's a
 13 number of points I would imagine that you agree with, they
 14 talk about the capacity to rapidly -
 15 COLONEL MERAFAE: Ja, I agree with.
 16 CHAIRPERSON: Capacity rapidly to
 17 mobilise and deploy which previously existed didn't exist
 18 thereafter because of the changes, restructuring and that
 19 caused a problem, you agree with that?
 20 COLONEL MERAFAE: I agree with that.
 21 CHAIRPERSON: You don't dispute that.
 22 Anything that you disagree with on that page.
 23 COLONEL MERAFAE: I do agree with
 24 everything in the page.
 25 CHAIRPERSON: Page. I think we've got

Page 27379

1 the whole page now on the screen. Anything there you
 2 disagree with?
 3 COLONEL MERAFAE: No, I do agree,
 4 Chairperson.
 5 MR MPOFU: Okay fine, thank you. So the
 6 only thing in that whole report that you disagree with is
 7 the fact that Fanagalo was or was not an inhibiting factor.
 8 Otherwise you agree with the whole report. If you can take
 9 out that paragraph, you'll agree with the whole report
 10 correct?
 11 COLONEL MERAFAE: I do agree with the
 12 whole report.
 13 MR MPOFU: Thank you. Now do you think
 14 that issues like undermining of collective bargaining
 15 processes which are contained in that report should have
 16 been concerns of the police?
 17 CHAIRPERSON: I am not sure that, that
 18 question's sufficiently clear for me to understand it, I
 19 don't know whether the witness understands it.
 20 MR MPOFU: I think the witness
 21 understands otherwise he'll say so.
 22 CHAIRPERSON: Do you understand the
 23 question fully?
 24 COLONEL MERAFAE: I want Advocate to go
 25 clear and tell me the bargaining processes between whom and

Page 27380

1 whom so that the part of the police also I should
 2 understand before I respond. Can you tell me what you say.
 3 MR MPOFU: What do you think, bargaining
 4 processes –
 5 COLONEL MERAFE: You talk about –
 6 MR MPOFU: Between the union and
 7 management.
 8 COLONEL MERAFE: Okay.
 9 MR MPOFU: That's obvious. Do you think
 10 that the issues about the bargaining, the undermining of
 11 the bargaining processes between the union and management
 12 in, were, should have been concerns of the police or not?
 13 COLONEL MERAFE: No, that's not a police
 14 problem.
 15 MR MPOFU: And do you think that the
 16 issues like the impact on the strike on the economy should
 17 have been concerns of the police?
 18 COLONEL MERAFE: Not to do with the
 19 police, Chair.
 20 MR MPOFU: So the inclusion of those
 21 kinds of considerations would be something you would
 22 criticise, correct?
 23 COLONEL MERAFE: Inclusion of it where?
 24 MR MPOFU: In the evaluation by the
 25 police of Nkwanazi, of the situation in, of the operation

Page 27381

1 as such.
 2 COLONEL MERAFE: That is so, Sir.
 3 MR MPOFU: But you said you agree with
 4 all those things.
 5 CHAIRPERSON: I understood he agreed
 6 with what was in the report, he didn't say whether, because
 7 you didn't ask him, whether there were other matters that
 8 he thought that they should have dealt that they didn't
 9 deal with, which is what you really busy with now. Well I
 10 suppose I'll ask the question. You say you agreed with
 11 apart from the Fanagalo point that you mentioned you're
 12 agreeing with what's in the report? Were there other
 13 factors which in your view were relevant which were not
 14 considered or dealt with in the report?
 15 COLONEL MERAFE: Chairperson, I've said
 16 the report of Brigadier Nkwanazi, I do agree with it. But
 17 the thing that counsel is raising some of the things that
 18 are not covered by the Nkwanazi. We need to deal with them
 19 and I should respond where I can.
 20 MR MPOFU: Okay, can you go to 2.2, can
 21 you roll back. 2.2 of the report. Can you read that,
 22 either silently or openly, 2.2. It says "the collective
 23 bargaining processes was created to ensure that it provided
 24 a structured platform to concern around labour issues could
 25 be addressed. Undermining of this process by the union

Page 27382

1 resulted in a power struggle at the time that led to
 2 rivalry among the employees" and so on and so on. Those
 3 issues that are discussed in that paragraph about
 4 undermining of collective bargaining processes concerns of
 5 the police or not?
 6 COLONEL MERAFE: No, they are not.
 7 MR MPOFU: Yes.
 8 COLONEL MERAFE: The police problem.
 9 MR MPOFU: And therefore the, to the
 10 extent that the report contains things that should not be
 11 concerns of the police it can be criticised as including
 12 things which should not be there, correct?
 13 MS BALOYI: Chairperson, the, on a
 14 reading of this paragraph 2.2 it's not clear that this is
 15 considered to be a concern of the police and I'm not sure
 16 that it is fair in fact to ask the witness questions along
 17 the lines that Mr Mpofo is doing now.
 18 CHAIRPERSON: Yes, well I don't think we
 19 should put words in the witness's mouth. But I must say
 20 well I won't say what I think, let's get the witness –
 21 MR MPOFU: I think that's –
 22 CHAIRPERSON: The, do you have any
 23 comment to make about this paragraph. You say that the
 24 undermining of collective bargaining process which it talks
 25 about and was allegedly caused by rivalry and a power

Page 27383

1 struggle between different unions said that that then led
 2 to a fight for dominance resulting in murder, assault,
 3 damage to property and arson. To what extent if at all
 4 matters raised in this paragraph matters of concern to the
 5 police?
 6 COLONEL MERAFE: I am saying, Chair, the
 7 bargaining processes between the employer and the employee
 8 is not a problem of the police. It belongs to the two
 9 mentioned groups, the employer and the employee. The
 10 problem of the police is when a crime has been committed or
 11 is being committed. Because once a crime has been
 12 committed the police should be there.
 13 [10:07] In order to prevent crime, in order to stop
 14 people from killing each other and so forth.
 15 MR MPOFU: Yes. Yes, and in fairness,
 16 that's exactly the steadfast evidence of the National
 17 Commissioner of Police when she was sitting where you are
 18 sitting, was that the police had no concern whatsoever on
 19 labour issues, but was there, as you are saying, for crime
 20 prevention. So you agree with her?
 21 COLONEL MERAFE: It is so, Sir.
 22 MR MPOFU: And similarly the impact of
 23 the strike to the economy, that's no business of the
 24 police, correct?
 25 COLONEL MERAFE: Correct, Sir.

Page 27384

1 MR MPOFU: And do you agree with what is
 2 contained in the report as well that the dispersion of the
 3 people from the koppie would have to be voluntary because
 4 of the terrain?
 5 CHAIRPERSON: He certainly agreed with
 6 everything in the report if he looked through –
 7 MR MPOFU: Yes.
 8 CHAIRPERSON: - looked through it before
 9 he answered, so I take it you can assume the answer to that
 10 is yes.
 11 MR MPOFU: Yes. Well, Chairperson, I'm
 12 grateful for that, but it was a question that was prefacing
 13 my next questions, because I didn't want to ask him about
 14 things he didn't agree with –
 15 CHAIRPERSON: No, no, no, I gave an
 16 answer which I think was a repetition of what he'd said
 17 earlier, so that forms the launching pad for your next
 18 question. You can proceed.
 19 MR MPOFU: Yes.
 20 MR NTSONKOTA: Chair, sorry, pardon to
 21 interrupt Mr Mpofo. Just with reference to paragraph 2.2
 22 of the report I just want to make it clear that at least
 23 insofar as the evidence led in the Commission thus far
 24 there's no evidence to suggest, even faintly so, that NUM
 25 undermined this process of –

Page 27385

1 CHAIRPERSON: No, no, [inaudible]
 2 objection to the question was it's really a disagreement
 3 with the reports, but we're not concerned with whether NUM
 4 disagrees with the report. We're not concerned whether the
 5 report is correct or not. Mr Mpofo is simply asking the
 6 witness, who was one of the witnesses before that working
 7 group, to what extent he agrees with that report. But it's
 8 a different matter, so –
 9 MR NTSONKOTA: I'm just raising it,
 10 Chair, just –
 11 CHAIRPERSON: You've made the point, not
 12 quite properly because it's not really an objection, but
 13 it's been made. So the water is under the bridge. Mr
 14 Mpofo will continue.
 15 MR MPOFU: Chair, I'm going to move away
 16 from this very quickly. All I'm saying for now is – the
 17 Chairperson is correct. In fact I don't even have to ask
 18 you. I must assume that you agree with what is contained
 19 in the report that dispersion from the koppie would have to
 20 be voluntary because of the terrain because that's not
 21 something you said you disagree with, correct?
 22 COLONEL MERAFAE: Correct, Chairperson.
 23 MR MPOFU: And that would mean that any
 24 dispersion that is involuntary, or that is forced or
 25 imposed would be incorrect, would be wrong.

Page 27386

1 COLONEL MERAFAE: Mostly in many instances
 2 the police ask the people to do things voluntarily on their
 3 own, but there are times, Chairperson, when after such a
 4 request there is no compliance with it, you enforce the
 5 law.
 6 MR MPOFU: No, please listen to me very
 7 carefully. I accept what you are saying. Even the
 8 apartheid police would pretend to give you five minutes and
 9 then charge after one minute. I'm saying to you it's one
 10 thing if you were in a, if these people had gathered on a
 11 soccer field, okay, you would still have to ask them nicely
 12 first, okay, and if they don't then you would have to
 13 enforce the law. Is that correct?
 14 COLONEL MERAFAE: Correct, Chairperson.
 15 MR MPOFU: Yes, but now because of the
 16 terrain – that's what the report says – because of the
 17 terrain that they were at, which is not a flat soccer
 18 stadium, it was not advisable to have an involuntary
 19 dispersion. That's the only reading you can get from this.
 20 Is that correct? Agreed? Nodding doesn't help. Do you
 21 agree or do you not agree?
 22 COLONEL MERAFAE: Chairperson, I've said,
 23 and I will repeat, the police will request nicely, get out
 24 of that place. You then get the police will remove you the
 25 next time. They told you that now we remove you, then they

Page 27387

1 will remove you.
 2 MR MPOFU: No, no, Colonel, please,
 3 please, please, I'm begging you, listen to the question.
 4 I'm saying again, if protesters let's say are in a petrol
 5 refinery, okay, it would not be advisable to throw, to
 6 shoot there because there might be a big explosion. Do you
 7 understand that?
 8 COLONEL MERAFAE: I understand that,
 9 Counsel.
 10 MR MPOFU: Ja, so as a function of the
 11 terrain, the fact that what you might be doing if it was a
 12 nice flat ground at a stadium, the terrain might determine
 13 that you do not enforce the law in the same way because of
 14 the terrain. That's what is meant here. Here, because of
 15 the terrain, only a voluntary dispersion was advisable and
 16 not an involuntary one, a forced one. Do you agree?
 17 COLONEL MERAFAE: Okay.
 18 MR MPOFU: Now you understand?
 19 COLONEL MERAFAE: Now I understand.
 20 MR MPOFU: And you agree?
 21 COLONEL MERAFAE: I agree.
 22 MR MPOFU: Thank you. Thank you very
 23 much. Alright, now let's move on. Again obviously you
 24 also agree with what Brigadier Mkhwanazi says the lessons
 25 that were learnt from the whole episode, correct?

Page 27388

1 COLONEL MERAPE: Correct, Chairperson.
 2 MR MPOFU: Now I know that you said you
 3 can't remember all the criticisms, but is it possible that
 4 one of the criticisms that you raised as far as non-
 5 compliance with the prescripts as such was the fact that
 6 pellets were used which were burned by the police?
 7 COLONEL MERAPE: No, Chairperson.
 8 MR MPOFU: Ja, no okay, and that might be
 9 because maybe at that stage you were not aware that pellets
 10 were used. Otherwise if you were aware you would have put
 11 that as one of your criticisms, correct?
 12 COLONEL MERAPE: Correct, Chairperson.
 13 MR MPOFU: Yes, okay, now you were in
 14 charge of the operation more recently on Mothotlung when
 15 pellets were also used, correct?
 16 COLONEL MERAPE: Incorrect. No.
 17 MR MPOFU: Okay, let me put it this way.
 18 It was –
 19 CHAIRPERSON: Mr Mpofu, this isn't
 20 covered by the topic for which I gave you permission –
 21 MR MPOFU: Well, Chairperson –
 22 CHAIRPERSON: And I'm not interested in
 23 what happened subsequently at Mothotlung. It's not covered
 24 by our terms of reference either, unless you can – but in
 25 any case, it's not an issue on which you asked permission

Page 27389

1 to cross-examine this witness, and –
 2 MR MPOFU: Ja, Chairperson, I can accept
 3 that, and I can justify why it is relevant, but honestly,
 4 you can't say you're not interested, Chairperson, when
 5 people were killed in Marikana with pellets that were
 6 disallowed and they were killed again by the same police,
 7 Bophuthatswana police or whatever it's called.
 8 CHAIRPERSON: We know –
 9 MR MPOFU: North West police, ja.
 10 CHAIRPERSON: Mr Mpofu, we know that
 11 fact. We know, it's been put before us. It indicates that
 12 the ban on pellets was not an entirely successful one and
 13 the use of pellets persisted after the ban. That's a fact
 14 we now know –
 15 MR MPOFU: Yes.
 16 CHAIRPERSON: It's been established
 17 before us. The actual details of how the ban was
 18 contravened –
 19 MR MPOFU: That's not what I'm asking.
 20 CHAIRPERSON: - are not a matter of
 21 concern to us.
 22 MR MPOFU: No, that's not what I'm
 23 asking.
 24 CHAIRPERSON: You put to the witness he
 25 was in charge at that subsequent operation. He's denied

Page 27390

1 it.
 2 MR MPOFU: Okay, let me just say one
 3 thing –
 4 CHAIRPERSON: Even though it wasn't
 5 covered by the topics you were given permission to cross-
 6 examine on.
 7 MR MPOFU: Yes. No, that's true,
 8 Chairperson. I'm saying that in – okay, you are a senior
 9 POP commander in the North West, correct?
 10 COLONEL MERAPE: That is so, in
 11 Rustenburg, Sir.
 12 MR MPOFU: Yes, in the Madibeng area.
 13 COLONEL MERAPE: Madibeng area have got a
 14 satellite unit there.
 15 MR MPOFU: Yes, and both the areas I'm
 16 talking about are in the Madibeng area. I'm saying to you
 17 as both in the operation that we are talking about, you and
 18 I are talking about here in relation to deviations from the
 19 prescripts, in the same area of your jurisdiction in the
 20 Marikana incident and in the Mothotlung incident it would
 21 seem that pellets were used, although they were banned. Is
 22 that so?
 23 COLONEL MERAPE: That is so, yes.
 24 MR MPOFU: Ja, and I'm asking this, the
 25 only relevance to that with the Mkhwanazi report is simply

Page 27391

1 this; had you known, and I'm accepting that you might not
 2 have known that pellets were used at the Marikana incident
 3 at that stage, but had you known that, that would have been
 4 one of the criticisms that you would have raised with the
 5 Mkhwanazi people as a deviation from the prescripts,
 6 correct?
 7 COLONEL MERAPE: Correct, yes.
 8 MR MPOFU: Thank you. Chairperson, if I
 9 can just check my notes. Do you know the origin of the
 10 assertion in the Mkhwanazi report that the strikers
 11 regarded the koppie as holy ground, which you agree with?
 12 COLONEL MERAPE: I saw it.
 13 MR MPOFU: No, not only have you seen it,
 14 you also agree with it. I'm saying do you know its origin?
 15 COLONEL MERAPE: I don't know where it
 16 originated, but what I'm saying is that I saw it.
 17 MR MPOFU: So why do you agree with
 18 something you don't know, whose origins you don't know?
 19 COLONEL MERAPE: You asked me if I saw
 20 that the strikers in the report are said to regard the
 21 mountain as holy. I said I saw that. You did not ask me
 22 if I agree with it.
 23 MR MPOFU: I did. I asked you earlier to
 24 point out – you said the only thing you did not agree with
 25 was the Fanagalo thing. That means you agree with

Page 27392

1 everything else. So why do you agree with something whose
 2 origin you don't know?
 3 CHAIRPERSON: I don't think you're
 4 putting it accurately.
 5 MR MPOFU: Okay –
 6 CHAIRPERSON: He was asked "What do you
 7 disagree with?" Now he told us what he disagreed with.
 8 I'm not sure that that necessarily means he agrees with
 9 everything else –
 10 MR MPOFU: No, it doesn't, but I asked
 11 the question –
 12 CHAIRPERSON: There are two categories.
 13 One is he agrees with things. The other things he's not
 14 able to disagree –
 15 MR MPOFU: No –
 16 CHAIRPERSON: - but it may be that you
 17 asked him in terms does he agree, in which case he should
 18 have said there are some things I can't comment on, but
 19 that's the point you're busy with.
 20 MR MPOFU: Yes, Chairperson.
 21 CHAIRPERSON: Alright, carry on, on that
 22 basis.
 23 MR MPOFU: Yes, Chairperson. I did not
 24 make that mistake. I asked him, that's why I asked him
 25 exactly that question. Once we've finished with Fanagalo I

Page 27393

1 said does that mean you agree with the rest, and he said
 2 yes. So I'm working on that basis, Chairperson –
 3 CHAIRPERSON: Okay, carry on –
 4 MR MPOFU: I didn't leave that gap. I
 5 wouldn't do that mistake.
 6 CHAIRPERSON: Carry on, on that basis.
 7 MR MPOFU: Ja. You remember that I asked
 8 you a specific question after the Fanagalo discussion that
 9 said that means you agree with the rest and you said yes?
 10 COLONEL MERAFAE: That is so.
 11 MR MPOFU: Yes, thank you very much. Now
 12 in respect of the holy ground allegation, why do you agree
 13 with something whose origin you don't know?
 14 COLONEL MERAFAE: When you speak of an
 15 origin, Sir, exactly what do you mean?
 16 MR MPOFU: Okay, let me put it this way.
 17 Do you agree that the strikers regarded the koppie as their
 18 holy ground?
 19 COLONEL MERAFAE: If people refuse to move
 20 from a particular place it means they believe it is their
 21 own place.
 22 MR MPOFU: When did they refuse to leave?
 23 COLONEL MERAFAE: After the police had to
 24 move them out of there on the 16th.
 25 MR MPOFU: Well firstly we're not there,

Page 27394

1 but that's not true because the evidence is that they moved
 2 from the so-called holy ground and in fact they moved, they
 3 went home every day, leaving the holy ground behind, and
 4 when the barbed wire was rolled out they also left the holy
 5 ground. So your justification of that is just based on
 6 nonsensical –
 7 MS BALOYI: Chairperson –
 8 MR MPOFU: - or absent evidence.
 9 MS BALOYI: Objection, Chairperson. What
 10 Mr Mpofo has put to the witness now is not accurate. The
 11 evidence is that every evening the majority would leave and
 12 some would remain on the koppie. That is the evidence.
 13 MR MPOFU: Oh, I see. So was it holy
 14 ground for some?
 15 CHAIRPERSON: Mr Mpofo –
 16 MR MPOFU: Colonel –
 17 CHAIRPERSON: Mr Mpofo, I'm reluctant to
 18 interrupt you, but you're busy now with a point which will
 19 give us no assistance whatever when we come to write our
 20 report in our terms of reference. The question is in my
 21 opinion irrelevant and I disallow it. Please move on to
 22 the next point.
 23 MR MPOFU: Well then, Chairperson, you
 24 should have disallowed my entire cross-examination because
 25 I've asked about other aspects of –

Page 27395

1 CHAIRPERSON: Mr Mpofo –
 2 MR MPOFU: I mean really –
 3 CHAIRPERSON: Mr Mpofo, I don't propose
 4 to go back and to adopt what you now suggest. I've allowed
 5 you to ask questions in the hope that you get evidence
 6 which will assist us in our terms of reference and I've
 7 been very patient, but this particular issue is one which,
 8 par excellence is one which will not assist us at all to
 9 write our report. I've disallowed the question. Please
 10 move on.
 11 MR MPOFU: Okay. Alright, Chairperson.
 12 Chairperson, if I can just consult my notes. As a senior
 13 POP person you would agree that some of the requirements
 14 regarding the behaviour of SAPS members during an operation
 15 might not be written in black and white in 262, but might
 16 emanate just from common sense? Would you agree with that?
 17 CHAIRPERSON: [Microphone off, inaudible]
 18 got to do with the topic you were given permission to ask
 19 questions on?
 20 MR MPOFU: It's exactly to do with the
 21 issue of deviations, Chairperson. If they deviated from
 22 both the letter and the spirit of 262 then those would be
 23 equal deviations. I mean that's obviously what I'm asking
 24 him about. I'm saying to him some of the prescripts might
 25 be written in black and white, but others would flow

Page 27396

1 logically from common sense, and if there's deviation from
 2 one or the other it's the same, it should have the same
 3 weight on you, Chairperson.
 4 CHAIRPERSON: Well they are matters that
 5 you can argue, but I don't, the –
 6 MR MPOFU: Well, I'm just asking a
 7 question. The answer might be no, in which case I won't –
 8 CHAIRPERSON: Alright, well ask the
 9 question. You've asked the question. What's the answer?
 10 COLONEL MERAFAE: I'm not aware,
 11 Chairperson.
 12 MR MPOFU: Ja, okay. I'll give you an
 13 example. For example even though 262 doesn't say so, if
 14 you as a senior POP person saw that one of your troops was
 15 drunk, you would exclude him from the operation. You don't
 16 have to - common sense, do you understand that? It's not
 17 written in 262, but it's something that you as a senior
 18 leader would disallow.
 19 COLONEL MERAFAE: Yes, we have orders,
 20 police orders, not only 262. We work with all those
 21 orders.
 22 MR MPOFU: Yes, but that's exactly what
 23 I'm trying to say. I'm saying some of the behavioural
 24 prescripts might either be contained in other documents or
 25 just emanate from common sense.

Page 27397

1 COLONEL MERAFAE: Not from common sense,
 2 but they are there, they are noted somewhere. We don't
 3 work with things that are common sense.
 4 MR MPOFU: Okay, so if you had a
 5 policeman who can't hear properly you wouldn't deploy them
 6 in a situation where the detection of noise was important.
 7 That's common sense. It doesn't have to be written
 8 anywhere. Do you understand that?
 9 COLONEL MERAFAE: Mr Mpofo, I don't
 10 understand that and I won't –
 11 CHAIRPERSON: I don't think that's a
 12 question –
 13 COLONEL MERAFAE: I don't understand that
 14 and I won't –
 15 CHAIRPERSON: I don't think that question
 16 raises a relevant consideration for us. I disallow the
 17 question. Please move on to the next point.
 18 MR MPOFU: Okay. Okay, I won't ask you.
 19 [10:27] But yes, I'm saying to you, is it, - okay, let me
 20 put it directly. Would common sense dictate that you
 21 should not deploy people who are psychologically
 22 traumatised?
 23 COLONEL MERAFAE: By law a person who is
 24 psychologically traumatised cannot be deployed, it is not a
 25 common sense.

Page 27398

1 MR MPOFU: Okay, which law is that?
 2 COLONEL MERAFAE: SHE Management, Health
 3 and Safety Law Act, it says if a person is somehow affected
 4 you can't put that man, he is a risk.
 5 MR MPOFU: Yes.
 6 COLONEL MERAFAE: You put him in a risk
 7 his life is at risk.
 8 MR MPOFU: Very good.
 9 COLONEL MERAFAE: Good.
 10 MR MPOFU: Very good, so it would be
 11 risky to deploy someone if there was a possibility that
 12 they might be psychologically affected by something?
 13 COLONEL MERAFAE: It might be it is
 14 another term because I can't pre-empt, Ntate Mpofo.
 15 MR MPOFU: No, no, no, no, you've given
 16 not only the prescript but you've even given the
 17 justification for it. So your evidence is that because of
 18 SHE or whatever prescript, you cannot deploy someone who is
 19 psychologically affected and you know the reason for that
 20 is because it is risky to do so, is that your evidence
 21 COLONEL MERAFAE: That is correct.
 22 MR MPOFU: Thank you, and you yourself
 23 were emotionally affected by what happened on the 13th,
 24 correct?
 25 COLONEL MERAFAE: No.

Page 27399

1 MR MPOFU: Others were?
 2 COLONEL MERAFAE: Yes.
 3 MR MPOFU: So you're just superman?
 4 CHAIRPERSON: It is an inappropriate
 5 question.
 6 MS BALOYI: Yes.
 7 CHAIRPERSON: I disallow it.
 8 MR MPOFU: Okay, sorry, ja. Now, okay,
 9 but to the extent that other people were affected, not you,
 10 it would be risky to deploy those people correct?
 11 COLONEL MERAFAE: Chairperson, in our
 12 environment, the police environment, we have people that do
 13 the checking if that person has been affected and make
 14 sure, and after checking that person and we as commanders
 15 can see the person is traumatised, we cannot deploy those
 16 people, we remove them.
 17 MR MPOFU: Yes, but when it came to
 18 deploying the people on the 16th miraculously nobody was
 19 affected by the traumatic and the brutal killings that they
 20 had observed of their colleagues two days before, is that
 21 your evidence?
 22 COLONEL MERAFAE: I'm not sure if I'm
 23 right here, some members were not there, some attended the
 24 memorial service of Lepaaku, other members [African
 25 language], so I'm not going to say everyone, who was

Page 27400

1 involved in the 13th was involved in the 16th operation –
 2 MR MPOFU: Yes, no fair enough.
 3 COLONEL MERAFAE: - as I was not there for
 4 that matter.
 5 MR MPOFU: No, I accept it –
 6 COLONEL MERAFAE: Briefly what he said –
 7 MR MPOFU: That includes you, ja, but to
 8 your knowledge nobody was excluded or rather those who were
 9 excluded were excluded because they went to a funeral or
 10 whatever, nobody was excluded for the purposes that they
 11 were psychologically affected by what they had observed, to
 12 your knowledge?
 13 COLONEL MERAFAE: I'm not sure,
 14 Chairperson, I totally don't know.
 15 CHAIRPERSON: But were the people who
 16 participated in the operation on the 13th, interviewed by
 17 social workers and others after the incident on the 13th to
 18 give them trauma counselling if they required it and to
 19 assess whether that would be appropriate to withdraw them
 20 from further operations for the time being, or aren't you
 21 able to answer that?
 22 COLONEL MERAFAE: I have already said
 23 that, Chairperson, they were attended and then after being
 24 attended some, those that cannot stand it were voluntarily
 25 withdrawn from the operations and they attended other

Page 27401

1 matters like the preparation for the funeral of the late
 2 Warrant-Officer Lepaaku as well as the late Warrant-Officer
 3 Monene, so I believe those members who could not handle it
 4 went home to go and sort out themselves.
 5 MR MPOFU: And that included you, you
 6 also went to Lepaaku?
 7 COLONEL MERAFAE: I went there because I
 8 am the direct commander of Lepaaku, not necessarily because
 9 I, - it was only human for me to go there as a commander.
 10 MR MPOFU: Ja, well, I put it to you that
 11 that is just, you're just concocting the evidence.
 12 CHAIRPERSON: What basis is there for
 13 that –
 14 MR MPOFU: Well, it is because –
 15 CHAIRPERSON: Will that –
 16 MR MPOFU: I've asked this question, ja,
 17 thank you, Chairperson. The reason is that I've asked
 18 these questions to everybody who was involved in that
 19 operation, including General Mzembe and it is the first
 20 time that anybody says people were excluded because they
 21 were psychologically affected. The evidence has been that
 22 nobody was excluded on that –
 23 CHAIRPERSON: I'm not sure of the
 24 evidence, I'm not sure if that statement of the evidence is
 25 correct.

Page 27402

1 MR MPOFU: Well, -
 2 CHAIRPERSON: Who made the decision, are
 3 you aware of who made the decision insofar as decisions
 4 were made, to exclude people from further participation in
 5 the operations at Marikana because it was feared that they
 6 were traumatised by what happened on the 13th? Who
 7 effectively withdrew them or directed them to, or deployed
 8 them to other activities such as arranging and attending
 9 the funeral?
 10 COLONEL MERAFAE: Chair, because I've lost
 11 a member who worked directly under my command, then I
 12 requested to go and bury him. Secondly, other members that
 13 are working with them also requested that they can attend,
 14 then we granted them permission.
 15 MR MPOFU: Yes, but that's because they
 16 loved the person and they wanted to go and bury him, but
 17 your evidence was that they were excused because they were
 18 psychologically affected, which is a lie.
 19 MS BALOYI: Chairperson, objection
 20 Chairperson, it is improper –
 21 MR MPOFU: Okay, it is new –
 22 MS BALOYI: Chairperson, may I please
 23 register my objection? Mr Mpofo is putting things that he
 24 has no basis whatsoever to put. One, when he says they
 25 went because they loved the person, he has absolutely no

Page 27403

1 basis to say that. Two, the language that he uses with the
 2 witness, Chairperson, it is unacceptable, you have made
 3 rulings previously that counsel may not refer to witnesses
 4 and say they are lying. It is unacceptable coming from him
 5 too.
 6 MR MPOFU: Okay, it is untrue.
 7 CHAIRPERSON: I didn't hear him use the
 8 word lying.
 9 MR MPOFU: Okay, it is –
 10 CHAIRPERSON: If he used it, -
 11 MR MPOFU: - not true.
 12 CHAIRPERSON: If he used it, I'm not
 13 saying he didn't use it, but if he did use it, I've already
 14 reprimanded counsel for using that and saying that, -
 15 MR MPOFU: Yes –
 16 CHAIRPERSON: I don't allow that, I
 17 didn't allow it when I was a judge in my court and I'm not
 18 proposing to allow it in this Commission.
 19 MR MPOFU: Thank you, Chairperson.
 20 CHAIRPERSON: As far as I am concerned
 21 that is unacceptable behaviour by counsel and it shouldn't
 22 be permitted.
 23 MR MPOFU: Thank you, Chairperson, -
 24 CHAIRPERSON: But if you –
 25 MR MPOFU: - it is not a lie, it is just

Page 27404

1 not the truth.

2 CHAIRPERSON: You can rephrase the

3 question differently.

4 MR MPOFU: Yes.

5 CHAIRPERSON: But can I ask you this, how

6 much longer are you likely to be with your cross-

7 examination?

8 MR MPOFU: I have two small sections,

9 Chairperson, two –

10 COLONEL MERAFAE: Chair, -

11 MR MPOFU: We can take a short break –

12 CHAIRPERSON: I'll ask for a comfort

13 break now.

14 MR MPOFU: Yes.

15 COLONEL MERAFAE: Yes, I request a comfort

16 –

17 CHAIRPERSON: But I'll hold you to your

18 two short points.

19 MR MPOFU: Thank you, not two questions,

20 two topics, Chairperson.

21 CHAIRPERSON: Two short points?

22 MR MPOFU: Yes, two points, yes.

23 INTERPRETER: Chairperson, there is a

24 request from the witness.

25 CHAIRPERSON: Before we adjourn was there

Page 27405

1 something that –

2 INTERPRETER: No, it was actually –

3 CHAIRPERSON: - the witness wished to

4 say, or you wish to say, Mr Mahlangu?

5 INTERPRETER: I wasn't aware that you are

6 adjourning, it was a request from the witness for a comfort

7 break.

8 CHAIRPERSON: Oh, before he even raised

9 the matter directly on some sort of telepathic basis, the

10 idea was communicated and the comfort break is being

11 granted.

12 INTERPRETER: Thank you, Chair.

13 [COMMISSION ADJOURNS COMMISSION RESUMES]

14 [11:08] CHAIRPERSON: The Commission resumes. I

15 want to announce at this stage that we will be sitting next

16 week on Tuesday and Wednesday. Wednesday will be treated

17 as Fridays normally are. We hope if we get an extension to

18 resume sitting on the 8th of May, but that obviously depends

19 upon whether we get an extension. If for some reason or

20 other it's not possible for administrative reasons to sit

21 on the 8th but we'll be sitting thereafter, we will inform

22 everybody by email and we'll also have a public statement

23 issued. You're still under oath, Colonel.

24 OMPHILE JOSEPH MERAFAE: (s.u.o.)

25 CHAIRPERSON: Mr MpoFU, two short points.

Page 27406

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

2 Thank you, Chairperson. Colonel, okay, I just want to

3 round off the point that we were busy with before I get to

4 my two last points. You see, I don't want to fight with

5 you, so I apologise for saying it's a lie, but what I was

6 putting to you is this; that it's not true that anybody was

7 excused from attending, from being part of the operation on

8 the 16th because they had been psychologically or

9 emotionally affected on the 13th. You would agree with

10 that?

11 COLONEL MERAFAE: I agree with you.

12 MR MPOFU: Thank you. Okay, but we do

13 know that emotions were high, as the Provincial

14 Commissioner put it, correct?

15 COLONEL MERAFAE: It is so.

16 MR MPOFU: And some – well, you say you

17 were not psychologically or emotionally affected by the

18 killings, correct?

19 COLONEL MERAFAE: Not to an extent where I

20 could not perform my duties as a police officer.

21 MR MPOFU: Well, then why were you

22 emotionally and psychologically affected yesterday? Why

23 were you crying?

24 COLONEL MERAFAE: The question that was

25 put to me yesterday, Sir, was whether I was happy about the

Page 27407

1 police killing people. The death of any person, Mr

2 Chairperson, affects me and I cannot be happy about the

3 death of people who have been killed by the police.

4 MR MPOFU: Yes, true. That's why you

5 were emotional yesterday, because the death of any person

6 affects you emotionally and psychologically, correct?

7 COLONEL MERAFAE: It is so.

8 MR MPOFU: And equally the deaths of

9 those three policemen, of the two policemen and those three

10 civilians would have affected you emotionally and

11 psychologically equally as well because they are also

12 people, correct?

13 COLONEL MERAFAE: It is so.

14 MR MPOFU: And therefore if we then – we

15 now know that you yourself was emotionally and

16 psychologically affected and so were others, but we know

17 that but for the fact that you just had gone to a funeral

18 you would have been deployed on the 16th. Is that correct?

19 COLONEL MERAFAE: As I have already

20 explained, Sir, I was affected though as a policeman I had

21 a job to do.

22 MR MPOFU: Yes.

23 COLONEL MERAFAE: And also I am a

24 commander. I couldn't just leave members to operate there

25 on their own.

Page 27408

1 MR MPOFU: No, that's true, but emotions
 2 know no commander. I'm just saying that if you were so
 3 psychologically affected, commander or no commander, that
 4 it was a bad idea for you to be involved on the 16th, then
 5 you should have been withdrawn even if you are a commander.
 6 MS BALOYI: Chairperson, objection. The
 7 witness has said that "I was affected but not to the extent
 8 that I couldn't do my work." He said that.
 9 MR MPOFU: That's one answer,
 10 Chairperson. The answer he's giving now is that he had to
 11 be there; whatever his emotional state, because he's a
 12 commander he had to be there.
 13 CHAIRPERSON: Perhaps ask him the
 14 question –
 15 MR MPOFU: Yes, thank you, Chairperson.
 16 CHAIRPERSON: - in a way that
 17 accommodates the objection, then we can move on. This is
 18 your first short point, is it? It's your first short point
 19 of the two?
 20 MR MPOFU: No, no, I was just rounding
 21 off the old point, Chairperson.
 22 CHAIRPERSON: Well round it off fairly
 23 crisply and –
 24 MR MPOFU: Okay, I'm done, subject to the
 25 Chairperson's question.

Page 27409

1 CHAIRPERSON: Alright –
 2 MR MPOFU: I thought the Chairperson was
 3 saying he was going to ask the question.
 4 CHAIRPERSON: No, I thought you were
 5 going to. You say you were affected by the events of the
 6 13th, but you felt you were capable of functioning properly
 7 on the 16th if you didn't have to go to the funeral. Is
 8 that right?
 9 COLONEL MERAFAE: That is so, Chairperson.
 10 CHAIRPERSON: Now if you had felt that it
 11 has affected you so badly that you couldn't do your work
 12 properly on the 16th, would you still have insisted on doing
 13 it because you were in a leadership position and you didn't
 14 want to leave your people without your leadership?
 15 COLONEL MERAFAE: I would have asked to be
 16 replaced by another person, Chairperson, until such a time
 17 that I was correct.
 18 MR MPOFU: Alright, okay, we'll leave
 19 that point for argument. Thank you. One of the – I'm
 20 going back to the issues of 262 and Mkhwanazi report. It's
 21 true that one of the requirements of 262 is that there
 22 should be clarity of roles. We must know who is the
 23 overall commander, who is the operational commander,
 24 correct?
 25 COLONEL MERAFAE: Correct, Chairperson.

Page 27410

1 MR MPOFU: If we don't know and there's
 2 ambiguity about that question, that would be a recipe for
 3 disaster, correct?
 4 COLONEL MERAFAE: Correct, Chair.
 5 MR MPOFU: Who was the operational
 6 commander on the 13th?
 7 COLONEL MERAFAE: I am, I was the
 8 operational commander, Chairperson.
 9 MR MPOFU: Ja, you see so that means that
 10 there was ambiguity and that's why there was chaos, because
 11 Major-General Mpembe says he was the operational commander.
 12 COLONEL MERAFAE: From the beginning,
 13 Chairperson, the Provincial Commissioner had chosen General
 14 Mpembe as the overall commander.
 15 MR MPOFU: Yes.
 16 COLONEL MERAFAE: But somehow when we
 17 arrived at the railway crossing he decided to take over
 18 even the operation part.
 19 MR MPOFU: Yes, no, that's exactly the
 20 point I'm making. Now it means SAPS doesn't know who was
 21 the operational commander. You say you were the
 22 operational commander. General Mpembe says he was both the
 23 overall commander and the operational commander. That is a
 24 recipe for disaster, isn't it?
 25 COLONEL MERAFAE: I do not agree with you

Page 27411

1 when you say SAPS doesn't know. POPS senior officer on the
 2 scene during crowd management resume responsibility of
 3 operational commander.
 4 MR MPOFU: Yes.
 5 COLONEL MERAFAE: Now SAPS knows because
 6 of Standing Order 262.
 7 MR MPOFU: Okay, maybe SAPS knows, but
 8 the Commission doesn't know, because you say you think you
 9 were the operational commander and General Mpembe also
 10 thinks he was the operational commander. That's the kind
 11 of ambiguity that should not happen in an operation as
 12 sensitive as this one, correct?
 13 COLONEL MERAFAE: Chairperson, about
 14 General thinking that and the likes, according to Standing
 15 Order 262 that I have explained it is given that I was the
 16 senior POPS commander. The General was not a senior POP
 17 commander by then.
 18 CHAIRPERSON: Did you at the scene on the
 19 13th issue any orders or commands? Was there any scope for
 20 misunderstanding on the part of the members there as to who
 21 was giving the instructions to be followed and what they
 22 were?
 23 COLONEL MERAFAE: When we arrived at the
 24 scene, Chair, and the workers, the mineworkers squatted on
 25 the floor, the officers who were with me, those that I

Page 27412

1 mentioned, Diolo, Tsiloane and Mpembe, stood and I
 2 proceeded forward to communicate with the workers and then
 3 I was told I should reverse, I should go back, these people
 4 are going to kill me. It was from there that the General
 5 took over and communicated with them.
 6 MR MPOFU: Yes, all I'm saying, and I'm
 7 not going to belabour this point, is that from us sitting
 8 outside looking in, you would agree that it's a recipe for
 9 disaster if in a team, as it were, two people are confusing
 10 their roles and are – okay, I'll stay away from football.
 11 Let's say it was a choir. If two people both thought they
 12 were conductors of the choir, that's a bit of a problem.
 13 COLONEL MERAFFE: It is so, though I must
 14 explain, Chairperson, that I went back when the General
 15 took over. We were not talking at the same time.
 16 MR MPOFU: Yes, but when I asked you a
 17 few minutes ago who was the operational commander you said
 18 it was you. You didn't say you stepped back.
 19 COLONEL MERAFFE: I explained, I also
 20 explained that it was in terms of Standing Order 262. I
 21 also explained the reasons why I stepped back and the
 22 General took over.
 23 MR MPOFU: Yes. Well you know, this kind
 24 of confusion was actually perpetuated even on the 16th. Who
 25 was the overall commander on the 16th, to your knowledge?

Page 27413

1 COLONEL MERAFFE: General Mpembe.
 2 MR MPOFU: And who was the real overall
 3 commander? Who was giving the shots?
 4 COLONEL MERAFFE: The one that gives the
 5 shot was the operational commander on the ground. I am not
 6 clear which shots –
 7 MR MPOFU: Okay, I'm sorry. Yes, no,
 8 it's not clear. Ja, no okay, as the team General Mpembe
 9 and General Annandale, who was calling the shots?
 10 COLONEL MERAFFE: Chairperson, I was not
 11 present on that day, Chairperson, and as such I don't know
 12 who it was, whether it's General Mpembe or General
 13 Annandale who was calling the shots.
 14 MR MPOFU: Fair enough.
 15 CHAIRPERSON: This point has been
 16 extensively canvassed with other witnesses, but as the
 17 witness says, he can't help us on it.
 18 MR MPOFU: No, Chairperson, with the
 19 greatest respect, this point, I'm relating it to exactly
 20 the same confusion as to who's the overall leader in a
 21 particular situation where he was involved, and I'm
 22 relating that –
 23 CHAIRPERSON: No, no, I understand –
 24 MR MPOFU: Yes.
 25 CHAIRPERSON: All I'm saying is he can't

Page 27414

1 help us on what happened on the 16th. As far as the 13th is
 2 concerned –
 3 MR MPOFU: Okay, well –
 4 CHAIRPERSON: - the evidence is that, as
 5 I understand it, that General Mpembe took over and was
 6 issuing the orders. As far as you were concerned was there
 7 any scope for any confusion on the 13th? You say you stood
 8 back, you let General Mpembe go forward. Is that right?
 9 COLONEL MERAFFE: Correct, Chair, there
 10 was no confusion, Chairperson, because from there on we all
 11 followed the instruction by General Mpembe, including
 12 myself.
 13 MR MPOFU: Yes, but that's why I asked
 14 you the simple question three or four questions ago, who
 15 was the operational commander. You said it was you. There
 16 was no confusion. But if I put that same question to
 17 General Mpembe he would say it was him. So you might not
 18 be confused, but I'm confused. You understand? Because
 19 you can't have two choir masters of the same choir, both
 20 thinking that they are conducting the choir.
 21 CHAIRPERSON: Remember your –
 22 MR MPOFU: That's a recipe for disaster.
 23 CHAIRPERSON: Mr Mpofo –
 24 MR MPOFU: You and I have agreed.
 25 CHAIRPERSON: Mr Mpofo, your confusion

Page 27415

1 isn't relevant. You weren't one of the members of the
 2 police service –
 3 MR MPOFU: Well, but you are,
 4 Chairperson –
 5 CHAIRPERSON: - who were there on the
 6 13th. So –
 7 MR MPOFU: It's for the Commission must
 8 know, not me.
 9 CHAIRPERSON: Yes, no –
 10 MR MPOFU: Forget about me.
 11 CHAIRPERSON: No, you can argue the point
 12 in due course. So that's the first of your short points.
 13 What's the second one?
 14 MR MPOFU: Then I just want clarification
 15 on something. Sorry, Chairperson, I have to find this on
 16 my transcript. Alright, while I'm looking for this you
 17 might as well just answer this –
 18 CHAIRPERSON: No, no, no, Mr Mpofo. I
 19 said you can have two short points and you're now trying to
 20 slip a third one in between the first and the second while
 21 you're looking for the second one. I'm prepared to wait
 22 while you find the second one in your notes.
 23 MR MPOFU: Well, Chairperson, no, it's
 24 one point but a point is not a question. I'm just saying
 25 I'm going to ask him a question. A point might have 20

Page 27416

1 questions –

2 CHAIRPERSON: As long as the question

3 relates to the point I haven't got a problem.

4 MR MPOFU: Yes, but a point might have 20

5 questions. I'm just asking him one of the questions on the

6 point.

7 CHAIRPERSON: I said as long as the

8 question relates to the point –

9 MR MPOFU: Yes, it does.

10 CHAIRPERSON: - I haven't got a problem.

11 MR MPOFU: But you're saying it doesn't,

12 Chairperson, before you hear it.

13 CHAIRPERSON: Please ask a question

14 relevant to the point you're busy dealing with.

15 MR MPOFU: Yes, yes. That's exactly what

16 I'm doing. Colonel, finally I'm going to ask you a couple

17 of questions on one point and what I was saying is you

18 might as well answer this. It's in relation to something

19 that you and I have discussed about the inadvisability of

20 effecting an involuntary dispersion. You remember we

21 discussed that?

22 COLONEL MERAFAE: I remember that.

23 MR MPOFU: Now would you agree that in a

24 situation – let's not talk theoretically. In this

25 situation if the diagnosis was that an involuntary

Page 27417

1 dispersion, or dispersal is not advised, then one of the

2 logical conclusions of that would have been to stick to the

3 original plan of encircling the people. Would you agree

4 with that?

5 COLONEL MERAFAE: No, I don't agree with

6 you, Sir.

7 MR MPOFU: Are you aware as one of the

8 planners to some extent, I know that you were not the main

9 planner, but are you aware that at some stage it was

10 considered that the people should rather be encircled while

11 they are at the koppie?

12 CHAIRPERSON: He gave slightly different

13 evidence about that yesterday before you arrived.

14 MR MPOFU: No, I read it. I've read

15 everything he said, Chairperson.

16 CHAIRPERSON: I'm not sure how this, what

17 relevance this is to Mkhwanazi work group, but let's get

18 the answer. What he's putting to you, shortly, is that if

19 it wasn't advisable to try a dispersal operation, regard

20 being had to the terrain, on the Thursday, would it not

21 have been better to have stuck to the original encirclement

22 plan, or a plan that had been worked out earlier?

23 MR MPOFU: Yes.

24 CHAIRPERSON: Are you able to answer that

25 or not?

Page 27418

1 COLONEL MERAFAE: I said I'm unable to

2 respond to that question.

3 MR MPOFU: Oh, I'll assist you. I'm

4 saying given the Mkhwanazi diagnosis, which you agree with,

5 that an involuntary dispersal was not to be advised, given

6 that, which you and I have agreed on, would you agree that

7 an alternative, a more suitable alternative would have been

8 the original plan of rather encircling the people at the

9 koppie? It's very simple.

10 COLONEL MERAFAE: I don't agree with it.

11 MR MPOFU: You don't agree, okay. Would

12 you agree that, again logically, if I say to you look, once

13 these people are in this terrain, once they are there it's

14 not advisable to disperse them involuntarily, that again a

15 logical way to deal with the situation would be to prevent

16 them from gathering in that terrain at all?

17 COLONEL MERAFAE: That is so.

18 MR MPOFU: Okay. Thank you, Chairperson,

19 I have nothing further.

20 CHAIRPERSON: Thank you, Mr Mpofo. Ms

21 Baloyi, are you ready for your re-examination?

22 [11:28] RE-EXAMINATION BY MS BALOYI: Thank you,

23 Chairperson. Colonel Merafe, we discussed in your evidence

24 in chief and cross-examination the operations of the 22nd of

25 May and the 13th of August in 2012. Now if I may just ask

Page 27419

1 you to look gain at Standing Order 262, in fact maybe you

2 don't even need to look at it, 262, Clause 14 which

3 provides for a first member who arrives at a spontaneous

4 gathering and it prescribes what steps they should take.

5 Now that first member, in fact the specific wording is

6 "first member", and that first member that arrives there,

7 is it required that they should be a POP member, the first

8 member who responds to that?

9 COLONEL MERAFAE: The Standing Order does

10 not say whether POP or not POP, first member means any

11 policeman.

12 MS BALOYI: Yes, now with the operations

13 on the 22nd of May, you have testified that you had the NIU,

14 TRT and VISPOL and you also mentioned the air wing, the

15 assistance of Colonel Vermaak, am I correct?

16 COLONEL MERAFAE: Correct, Chair.

17 MS BALOYI: Yes, now the TRT, the air

18 wing and VISPOL, am I correct that none of them are POP

19 members?

20 COLONEL MERAFAE: That is so.

21 MS BALOYI: And yet in your evidence, am

22 I correct that you testified that every member of the SAPS

23 must take part in Crime Prevention as part of their job,

24 they are required to do that?

25 COLONEL MERAFAE: I agree with that,

Page 27420

1 Chair.

2 MS BALOYI: Now in fact if you look at

3 the final report of Mr Hendrickx at paragraph 88 –

4 CHAIRPERSON: This is the, - it is the

5 Hendrickx report we need, not the –

6 MS BALOYI: Yes, LLL12, Chairperson.

7 CHAIRPERSON: Now we've got it, yes.

8 MS BALOYI: If you look at paragraph 88

9 thereof –

10 CHAIRPERSON: Now I got paragraph 88 on

11 the screen.

12 MS BALOYI: Yes, now the second sentence

13 of that statement which reads, "The uses of tactical forces

14 trained solely are specifically in the use of deadly force

15 in relation to Public Order Policing should be limited and

16 exceptional and accordingly require special justification."

17 Do you see that?

18 COLONEL MERAFAE: I see that.

19 MS BALOYI: Yes, am I correct to

20 understand that Mr Hendrickx does contemplate that special

21 units may well be used in relation to Crowd Management

22 situations in special circumstances he says?

23 COLONEL MERAFAE: It is so, Chair, but I

24 also mention that the specialised unit should not outnumber

25 the people who are primarily doing Crowd Management being

Page 27421

1 POP.

2 MS BALOYI: Yes, now you also –

3 COMMISSIONER HEMRAJ: Sorry, the tactical

4 forces then you say are used as a support to the POP's

5 unit?

6 COLONEL MERAFAE: That's positive,

7 Chairperson.

8 COMMISSIONER HEMRAJ: And would you still

9 call such an operation with all the tactical units, would

10 you still call it a POP's operation?

11 COLONEL MERAFAE: It is a POP's operation,

12 the other components are used as a support.

13 MS BALOYI: And then if we could perhaps

14 now talk about the plan, Mr Bizos yesterday discussed with

15 you that the criticism, Mr Hendrickx' criticism that there

16 was no comprehensive plan for the operation on the 16th of

17 August, do you remember that?

18 COLONEL MERAFAE: I remember that, Chair.

19 MS BALOYI: Yes, now if we could look at

20 SS3, the contingency plan for the 13th of August, please,

21 and then specifically paragraph 3 –

22 CHAIRPERSON: You said you want the 13th

23 August, we have on the screen the one for the 10th? Have

24 you got the number, you see in the top right hand corner we

25 have the police hard-drive page numbers. Have you got the

Page 27422

1 police hard-drive page number that you want, because I'm

2 not sure that we're looking at the moment at the document

3 to which you are referring?

4 MS BALOYI: Chair, if the chair would

5 bear with me, I think it was page 7, I'm looking for

6 paragraph 3.1, Chairperson. Yes, that's the one with the

7 heading, "Concept and focus", do you see that?

8 CHAIRPERSON: So what we're looking at is

9 Exhibit SS3 at page 8 of 89.

10 MS BALOYI: Yes, thank you, Chair. Now

11 you see at 3.1 it says, firstly the heading is "Concept and

12 focus" and then 3.1 says, "Date and duration," and then is

13 says, "Monday, 20/12/08, 13 until the situation

14 normalised," do you see that?

15 COLONEL MERAFAE: I see it, Chairperson.

16 MS BALOYI: Yes, it may appear obvious,

17 what does this mean, what does this capture, 3.1?

18 COLONEL MERAFAE: This mean this operation

19 will be used until such time that the situation is

20 normalised, but furthermore it needed us to have a proper

21 plan given the fact that we get the necessary information

22 which will help us to compile the proper plan, but if we

23 don't get that to that stage it means we will operate with

24 this contingency plan until we finish the operation.

25 MS BALOYI: Yes, now you've, - perhaps

Page 27423

1 again Clause 9.2 of Standing Order 262, it talks about, if

2 you would look at Clause 9.2 –

3 CHAIRPERSON: 9.2 on the screen.

4 MS BALOYI: Yes.

5 CHAIRPERSON: Which subparagraph of 9.2

6 are you referring to?

7 MS BALOYI: Number 1, paragraph 1, yes.

8 CHAIRPERSON: What's called "Step one"?

9 MS BALOYI: Yes, do you see that, it

10 says, "Develop a comprehensive original operation plan" and

11 then in brackets it says, "See the guidelines contained in

12 Module 2 of the Crowd Management for SAPS Management

13 Module," do you see that?

14 COLONEL MERAFAE: I see that.

15 MS BALOYI: Yes, now with your knowledge

16 of guidelines, of the guidelines that I referred to there

17 and your experience, this plan that we're looking at now,

18 SS3 for the 13th, in what respect do you say it doesn't meet

19 the requirements in subparagraph 1, if at all?

20 COLONEL MERAFAE: Chairperson, like I say

21 it is a plan but it is general. This one is when you got

22 the information whereby you are going to have a

23 comprehensive plan where it covers, - where you are

24 information driven in terms of how are you going to work,

25 how are you going to police the situation.

Page 27424

1 MS BALOYI: Yes, I'm not sure, Colonel
 2 Merafe, that your answer is clear, I'm trying to get you to
 3 make us understand. When you look at SS3, we all have SS3,
 4 we see that paragraph 2.1 or Clause 9.2.1 says, "A
 5 comprehensive written operational plan in accordance with
 6 the guidelines."
 7 CHAIRPERSON: Do you say SS1, we're
 8 looking at Exhibit SS2 at the moment, - sorry, you said SS3
 9 I think, we look at SS2?
 10 MS BALOYI: Yes, Chair, - well, perhaps
 11 let me say that again. Chair, what I'm saying is that we
 12 have Exhibit SS3 which is a plan and we have one for the
 13 13th of August and then you have Clause 9.2.1 of the
 14 Standing Order which says, "Develop a comprehensive written
 15 operational plan." What I'm asking you is to assist us to
 16 understand that when we look at SS3 what is the detail that
 17 is missing that should have been there in terms of the
 18 guidelines?
 19 COLONEL MERAFAE: There is nothing that is
 20 missing there, Chairperson.
 21 MS BALOYI: Now if you would go back to
 22 SS3, the plan again and then you look at paragraph 5.1.1,
 23 5.1.1 says, the heading is "Planning" and then it says,
 24 "Daily planning to be conducted at the JOC." What does
 25 that mean, Colonel?

Page 27425

1 COLONEL MERAFAE: What it means is that at
 2 the JOC, the Joint Operational Centre, on a daily basis,
 3 the sooner we get information pertaining to what is going
 4 to happen we immediately update or develop a plan that we
 5 will use in order to deal with the situation.
 6 MS BALOYI: Yes, now moving to another
 7 topic, yesterday Ms Le Roux discussed with you the planning
 8 and the failure to update the plan and one of the areas of
 9 criticism was that the police failed to take into account,
 10 to update the plan, to take into account that the strikers
 11 would attack the police, do you remember that conversation
 12 with Ms Le Roux?
 13 COLONEL MERAFAE: I do remember it,
 14 Chairperson.
 15 MS BALOYI: Yes, and in particular she
 16 was referring to the development and taking into account
 17 the developments on the 10th, the 11th and the 12th and then
 18 she said, with all of that you failed to provide for that
 19 risk of an attack on the police. Do you remember that?
 20 COLONEL MERAFAE: I remember that, Chair.
 21 MS BALOYI: Now did you have any reason
 22 to suspect that the strikers would attack the police at any
 23 point?
 24 COLONEL MERAFAE: I had no reason to
 25 suspect that the police could be attacked, Chairperson.

Page 27426

1 MS BALOYI: And when you saw on the 13th
 2 now, when you saw the strikers on the CCTV, I think that is
 3 your evidence, you say while in the JOC, after you returned
 4 from the meeting with Lonmin and you went back to the JOC
 5 you saw the strikers on the CCTV, am I correct, that's your
 6 evidence?
 7 COLONEL MERAFAE: That's correct,
 8 Chairperson.
 9 MS BALOYI: When you saw those strikers
 10 did you know that these strikers that you saw on CCTV are
 11 the people that underwent a ritual on the Sunday, on the
 12 11th, did you know that?
 13 CHAIRPERSON: The Sunday was the 12th.
 14 MS BALOYI: On the 12th, thank you,
 15 Chairperson, did you know that?
 16 COLONEL MERAFAE: I did not know that,
 17 Chairperson.
 18 MS BALOYI: And when you saw those same
 19 strikers on the CCTV did you know that those strikers or
 20 any of them were involved in any of the attacks on the 11th
 21 and the 12th?
 22 COLONEL MERAFAE: I was not aware,
 23 Chairperson.
 24 MS BALOYI: And at the -
 25 MR MPOFU: Chairperson, I'm not sure I

Page 27427

1 follow what is being said, when Ms Baloyi says, did you
 2 know that they were the same people, is she saying, did you
 3 know whether they were the same people or is she suggesting
 4 that she has evidence that they're the same people?
 5 CHAIRPERSON: I think it has fallen in
 6 regard to the answer, she said, no, so, - I understand the
 7 distinction you're drawing.
 8 MR MPOFU: No, I'm objecting to the
 9 question, not to the answer, Chair.
 10 CHAIRPERSON: I know but the answer
 11 renders the objection irrelevant. Please proceed.
 12 MS BALOYI: Thank you, Chairperson.
 13 Further, when you saw these strikers on the CCTV did you
 14 know whether that group of people had been at the koppie
 15 earlier, before you saw them by the railway line, did you
 16 know that?
 17 COLONEL MERAFAE: I did not know that,
 18 Chairperson.
 19 MS BALOYI: And in the same line did you
 20 know whether that group of strikers, when you saw them on
 21 the CCTV, that they were going to the koppie when you saw
 22 them at that point?
 23 COLONEL MERAFAE: I did not know that.
 24 MS BALOYI: Now when Mr Gumbi was talking
 25 to you, was examining you he, amongst the things that he

Page 27428

1 put on behalf of Lieutenant Baloyi, was that General Mpmembe
 2 should have briefed the members personally, do you remember
 3 that conversation?
 4 COLONEL MERAFAE: I remember that, Chair.
 5 MS BALOYI: Now, and we are talking about
 6 the 13th here. Now can I ask that we look at Standing Order
 7 262, Clause 10, subparagraph 2? Yes, now paragraph 2,
 8 subparagraph A says, "The operational commander must
 9 personally brief all members in the command structure," do
 10 you see that?
 11 COLONEL MERAFAE: I see that, Chair.
 12 MS BALOYI: Is that the same as saying
 13 the operational commander must brief all members, is it the
 14 same?
 15 CHAIRPERSON: Do we need the answer to
 16 that because isn't –
 17 MS BALOYI: No, we –
 18 CHAIRPERSON: - the answer clear from 2,
 19 sub 10.2B?
 20 MS BALOYI: Yes.
 21 CHAIRPERSON: The operational commander
 22 must, A, personally brief all members at the command
 23 structure. B, ensures that all members of the command
 24 structure communicate the objectives to the operation
 25 clearly to all members deployed for the event. So clearly

Page 27429

1 A and B read together makes it clear that all members of
 2 the command structure are the commanders and B says the
 3 commanders must then deal communicate the objectives to all
 4 members?
 5 MS BALOYI: Yes.
 6 CHAIRPERSON: So clearly there are two
 7 tiers, those in the command structure and those not in the
 8 command structure, so I don't know –
 9 MS BALOYI: Thank you, Chair, -
 10 CHAIRPERSON: - when you asked the
 11 witness the question, the answer seems clear from the
 12 wording of the standing order.
 13 MS BALOYI: Thank you, Chair.
 14 CHAIRPERSON: Am I right?
 15 COLONEL MERAFAE: That's correct,
 16 Chairperson.
 17 MS BALOYI: Thank you, Chair. Now when
 18 the members are at the, and I'm still talking about the
 19 incident of the 13th at the railway line and General Mpmembe
 20 gives the command that the strikers should be escorted,
 21 what is the role of the sectional commanders? After
 22 General Mpmembe has given that instruction what role do the
 23 sectional commanders play with respect to their members?
 24 COLONEL MERAFAE: They should go and brief
 25 their members about their roles.

Page 27430

1 MS BALOYI: Yes.
 2 COLONEL MERAFAE: What to do after the
 3 instruction has been given.
 4 MS BALOYI: So again General Mpmembe
 5 doesn't tell members, doesn't deal directly with members to
 6 tell them what to do, it is the sectional commanders that
 7 speak to the members?
 8 COLONEL MERAFAE: Ja, the general speaks
 9 to the commanders.
 10 MS BALOYI: Another criticism that was
 11 raised with you was that, and I think this is Mr Bizos
 12 referring to the report of Mr Hendrickx, that the SAPS did
 13 not have any intelligence about the strikers, do you
 14 remember that?
 15 COLONEL MERAFAE: I remember it,
 16 Chairperson.
 17 MS BALOYI: Now we've heard evidence that
 18 after the attack on the, after the attack of the 13th, that
 19 evening the SAPS management met with Lonmin
 20 representatives, are you aware of that?
 21 COLONEL MERAFAE: I am aware of that,
 22 Chairperson.
 23 MS BALOYI: Were you part of those
 24 meetings?
 25 COLONEL MERAFAE: I was not part of the

Page 27431

1 meetings with Lonmin officials during the night.
 2 MS BALOYI: Are you aware that at those
 3 meetings the SAPS, that is the evidence and I'm asking you
 4 if you are aware of that, that in that meeting the SAPS
 5 requested that Lonmin assist them to identify some of the
 6 strikers from the photographs that were taken earlier in
 7 the day, are you aware of that?
 8 COLONEL MERAFAE: Ja, that was the fact
 9 that before the police went to Lonmin we discussed it
 10 amongst ourselves.
 11 [11:48] MS BALOYI: Yes, and are you aware that
 12 at the, as at the 13th, are you aware that as at the 13th,
 13 you may not have known personally on the 13th, are you aware
 14 that the SAPS had information that some of the strikers
 15 gathered on the koppie were seen undergoing a ritual with
 16 the assistance of the Sangoma, are you aware of that?
 17 COLONEL MERAFAE: I am aware of that,
 18 Chairperson.
 19 MS BALOYI: And are you aware that the
 20 SAPS in the discussions with the union requested that Mr
 21 Zokwana assist the police to identify some of the
 22 witnesses, some of the strikers involved in the incident of
 23 the 13th?
 24 COLONEL MERAFAE: That one I'm not aware
 25 of, Chairperson.

Page 27432

1 MS BALOYI: Another topic that was
 2 discussed with you had to do with the negotiations and
 3 there was two parts to it. The one is that the wrong
 4 person was appointed to negotiate, you remember that?
 5 COLONEL MERAFAE: I do remember it, Chair.
 6 MS BALOYI: And the second was that the
 7 negotiations was conducted inappropriately because there
 8 was Nyalas, they were negotiating from inside a Nyala and
 9 there were a lot of police vehicles and police presence
 10 there. You remember that criticism?
 11 COLONEL MERAFAE: I do remember it,
 12 Chairperson.
 13 MS BALOYI: Now we know from your
 14 evidence that on the 14th you stayed at the JOC the whole
 15 time, you were not at the koppie, am I correct?
 16 COLONEL MERAFAE: Correct, Chairperson.
 17 MS BALOYI: And that on the 16th you were
 18 not at the operation?
 19 COLONEL MERAFAE: That is correct.
 20 MS BALOYI: So you were only at the
 21 koppie on the 15th, that is correct?
 22 COLONEL MERAFAE: On the 15th, yes I was
 23 there.
 24 MS BALOYI: Now from where you were, were
 25 you able to hear the discussions or the negotiations

Page 27433

1 between Colonel Macintosh and the representatives of the
 2 strikers that were involved in negotiation or discussion
 3 with the strikers, were you able to hear any of those
 4 conversations?
 5 COLONEL MERAFAE: I was five Nyalas away
 6 from where it was taking, I could not hear a thing,
 7 Chairperson.
 8 COMMISSIONER HEMRAJ: Even though the
 9 communication was over a loudhailer at some stage?
 10 COLONEL MERAFAE: No, I did not hear what
 11 they were talking about, Chairperson.
 12 MS BALOYI: Now not having had any of the
 13 negotiations because of the position where you were do you,
 14 are you in a position to say whether any of the
 15 negotiations that was conducted by Colonel Macintosh was
 16 not done properly?
 17 COLONEL MERAFAE: I'm not in a position,
 18 Chairperson, but I must add that our POPS commander
 19 Brigadier Calitz as well as Warrant Officer Mere were
 20 amongst the team that negotiated together with Lieutenant
 21 Colonel Macintosh. They were within that team that was
 22 there during the negotiations. So although I was not aware
 23 what was taking place I believe they were there as
 24 experienced POP, they would have helped there.
 25 MS BALOYI: Yes. Now about the

Page 27434

1 negotiating team negotiating from inside the Nyala was that
 2 the position on the 14th already?
 3 COLONEL MERAFAE: I said on the 14th I was
 4 not there.
 5 MS BALOYI: Okay.
 6 COLONEL MERAFAE: So I can't comment on
 7 that.
 8 MS BALOYI: But we know that on the 15th
 9 when you were there they were negotiating from inside the
 10 Nyala, am I correct?
 11 COLONEL MERAFAE: That is so, yes.
 12 MS BALOYI: And do you know what the
 13 reason was for them negotiating from inside the Nyala?
 14 COLONEL MERAFAE: Ja, the police were
 15 afraid that they might be attacked, that's why they went
 16 into the Nyala.
 17 MS BALOYI: Yes. In fact we know that
 18 later that day and you have testified to this that later on
 19 the 15th the union representatives were brought to the
 20 koppie and they were caused to address the strikers from
 21 inside police Nyalas, they were not allowed to get out of
 22 the Nyala, is that correct?
 23 COLONEL MERAFAE: That is so, I was
 24 present.
 25 MS BALOYI: And do you know what the

Page 27435

1 reasons were for that?
 2 COLONEL MERAFAE: The reason is the
 3 possibility of an attack.
 4 COMMISSIONER HEMRAJ: Was there a threat
 5 made already on the 15th, I don't seem to remember.
 6 MS BALOYI: A threat to the negotiating
 7 Nyala?
 8 COMMISSIONER HEMRAJ: Yes.
 9 MS BALOYI: Not to my recollection.
 10 COMMISSIONER HEMRAJ: Then I'm mistaken,
 11 I beg your pardon.
 12 CHAIRPERSON: I seem to remember the
 13 evidence was that there was a threat on them. One threat
 14 on the 15th and a number of threats on the 16th. There was
 15 cross-examination about that and the suggestions that there
 16 was various contradictions and so on. But the, as far as I
 17 can recall the evidence was there was one threat on the 15th
 18 and a number on the 16th. But my memory may be inaccurate
 19 in that part but we'll both check it up in due course.
 20 COMMISSIONER HEMRAJ: That's my
 21 recollection as well I must say. Perhaps the evidence
 22 leaders can help us.
 23 MS BALOYI: Thank you, Chair, I don't
 24 have any independent recollection on that part of the
 25 evidence. The other topic that, Chairperson, we're still

Page 27436

1 checking if I could be allowed to come back to it. The
 2 other topic that was discussed with you Colonel is the and
 3 this is a criticism again by Mr Hendrickx that, and he
 4 criticises that the police did not give a warning before
 5 the barbed wire was rolled out. You remember that?
 6 COLONEL MERAFAE: I do remember that one.
 7 MS BALOYI: Now if you could look at
 8 standing order 262 clause 11. Clause 11 sub 2 item 1, step
 9 1. It says "put defensive measures in place as a
 10 priority", you see that?
 11 COLONEL MERAFAE: I see that, Chair.
 12 MS BALOYI: And then two, it says "warn
 13 participants according to the act or the action that will
 14 be taken against them should defensive measures fail". You
 15 see that?
 16 COLONEL MERAFAE: I see that, Chair.
 17 COMMISSIONER HEMRAJ: Back to that point,
 18 exhibit L there is reference, I can't remember what slide
 19 but -
 20 CHAIRPERSON: 118, reference according
 21 to exhibit L is to something that happened on the 15th. It
 22 looks as if it was round about 10:15. There was
 23 discussion, according to slide 118 about the
 24 representatives wanting, representatives of strikers
 25 wanting the telephone number of the commander of the

Page 27437

1 operation because they want to provide him or her with the
 2 telephone of their advocate, Advocate Shapiro and they were
 3 told the request shall be forwarded to the JOC for the
 4 decision to be made and then the slide 118 continues, "at
 5 this point one of the representatives became very
 6 aggressive and stated the police should not be there and
 7 that the people in the Hippos, referring to the armoured
 8 vehicles would die there and not one Nyala would leave the
 9 ground". That's what -
 10 MS BALOYI: Thank you, Chairperson. I'm
 11 indebted to the Commissioner.
 12 CHAIRPERSON: And then the evidence of
 13 course is that the following day when Mr Mathunjwa was
 14 there and this is actually recorded on, I think it's 006,
 15 009 there's a statement about the commander from the
 16 homelands and what would happen to him and that was the
 17 subject, that was in Mr Mathunjwa's presence and that was
 18 the subject of cross-examination of Mr Mathunjwa. But, and
 19 there's evidence about other threats as well but the
 20 evidence was contradictory. But any way that seems to be
 21 the position.
 22 MS BALOYI: Thank you, Chairperson. I'm
 23 indebted to the Commissioners. Colonel, I have asked that
 24 we look at standing order 262 paragraph 11 or clause 11.2
 25 step one which talks about put defensive measures in place

Page 27438

1 as a priority and then two, "warn participants according to
 2 the act of the action that will be taken against them
 3 should defensive measures fail". You see that?
 4 COLONEL MERAFAE: I see that, Chairperson.
 5 MS BALOYI: Yes, now the defensive
 6 measures referred to in 2.1 what is that? What kind of
 7 steps or options available there?
 8 COLONEL MERAFAE: The defensive measures
 9 that was put in place, that actually should have been put
 10 in place was a barbed wire.
 11 MS BALOYI: Yes.
 12 COLONEL MERAFAE: To defend the people
 13 being attacked first.
 14 MS BALOYI: Yes. So am I correct in
 15 understanding that clause 11.2.1 contemplates that before a
 16 warning is given a defensive measure will still be, will be
 17 put in place first?
 18 COLONEL MERAFAE: Ja, according to ja
 19 standing order 262 it says so, yes.
 20 MS BALOYI: Now the, if we could then
 21 talk about the discussion that you had with Mr Wesley and
 22 this relates to the statements that you submitted. QQQ2
 23 and GGG15 and you recall that in his cross-examination of
 24 you Mr Wesley did an exercise in which he pointed out, in
 25 which he sought to point out that the two statements that

Page 27439

1 you have contained differences, you remember that?
 2 COLONEL MERAFAE: I remember that,
 3 Chairperson.
 4 MS BALOYI: And that he also said that
 5 some of the differences were significant others not, you
 6 remember that?
 7 COLONEL MERAFAE: I do remember that,
 8 Chairperson.
 9 MS BALOYI: Now Mr Wesley, I do not
 10 recall him specifying which of the differences did he
 11 consider as insignificant and others significant but I
 12 would like us to talk about QQQ2. You said, you testified
 13 that you prepared that statement, the unsigned statement?
 14 COLONEL MERAFAE: That is so, Chair.
 15 MS BALOYI: Now how did it come about,
 16 please explain to the Commission how did it come about that
 17 you ended up preparing QQQ2?
 18 COLONEL MERAFAE: I was called for a
 19 consultation in Rustenburg, Chairperson, by the evidence
 20 leaders. Where I was told to go and prepare a statement.
 21 MS BALOYI: Yes.
 22 COLONEL MERAFAE: Then I was also like
 23 during the consultation told to, not to concentrate at the,
 24 on the day the 13th, on that I should start a little bit
 25 earlier on during the year about the incident that took

Page 27440

1 place at my area of policing, that is the strikes that
 2 happens earlier and the incident of the 22 whereby, the
 3 incident whereby the mine workers wanted to go to Tlhabane
 4 Court, that's why some of the things I started there in my
 5 statement.
 6 MS BALOYI: Yes. When you say you
 7 consulted with the evidence leaders do you remember who of
 8 the evidence leaders you consulted with?
 9 COLONEL MERAFAE: The, they are not here.
 10 I can remember but I was with Mr Mokotedi, he may assist
 11 us.
 12 MS BALOYI: Chairperson, with your leave
 13 if I may, my instructions are that he consulted with Mr
 14 Danie Van Tonder and Mr Piet Beyleveld.
 15 COLONEL MERAFAE: Piet Pienaar, ja.
 16 MS BALOYI: These are the investigators –
 17 CHAIRPERSON: Either of those - evidence
 18 leader, they were both, they are both investigators?
 19 MS BALOYI: Yes.
 20 COLONEL MERAFAE: Yes, those
 21 investigators.
 22 MS BALOYI: Now you included in that
 23 statement material or paragraphs that are not an account of
 24 what happened with the operation in Marikana. You talk in
 25 that statement about the operation on the 22nd of May and

Page 27441

1 you talk about meetings with management and other
 2 activities, you remember in that statement?
 3 COLONEL MERAFAE: It is correct,
 4 Chairperson.
 5 MS BALOYI: Yes. Why did you decide to
 6 include those paragraphs, those accounts?
 7 COLONEL MERAFAE: It was as per
 8 instructions that I got during the consultation.
 9 MS BALOYI: Now Mr Wesley spent some time
 10 with you to point out differences in the two statements, in
 11 QQQ2 and GGG15. But before he did that, he put to you that
 12 your QQQ2 is your comprehensive statement, you remember him
 13 saying that? That was a comprehensive statement?
 14 COLONEL MERAFAE: I remember that, Chair.
 15 MS BALOYI: And he also said that QQQ2
 16 was in fact the most reliable, I think that's the
 17 expression he used, he will correct me if I'm wrong, was
 18 that that was the most reliable statement that you
 19 prepared, do you remember that?
 20 COLONEL MERAFAE: Yes, I remember him
 21 saying so.
 22 MS BALOYI: Now on it being comprehensive
 23 you, we have established now through your evidence-in-chief
 24 and cross-examination that in fact QQQ2 does not contain
 25 quite a lot of material that you find in the other

Page 27442

1 statements, in particular in QQQ1, am I correct?
 2 COLONEL MERAFAE: It is so.
 3 MS BALOYI: It doesn't for example speak
 4 about the session at Roots, am I correct?
 5 COLONEL MERAFAE: Correct, Chairperson.
 6 MS BALOYI: It doesn't speak about the,
 7 your meeting with the team of experts, the Nkwanazi team of
 8 experts, am I correct?
 9 COLONEL MERAFAE: That is so.
 10 MS BALOYI: And it doesn't also speak
 11 about your account of the 13th that you saw Colonel Vermaak
 12 chase after the strikers after the attack?
 13 COLONEL MERAFAE: That is also so, yes.
 14 MS BALOYI: Now the conversation that you
 15 had, on these two statements were in QQQ2 at paragraph 5
 16 thereof, in the first line where you say "during all these
 17 challenges police management in the province –
 18 CHAIRPERSON: It's not on the screen.
 19 Oh it is, it's the second paragraph on the page.
 20 MS BALOYI: It is, Chair.
 21 CHAIRPERSON: During these challenges
 22 police management in the provinces –
 23 MS BALOYI: Yes, and you say that "during
 24 all these challenges police management in the province and
 25 national made some intervention by providing us with

Page 27443

1 additional personnel and resources". You see that?
 2 COLONEL MERAFAE: I see that.
 3 MS BALOYI: And then Mr Wesley compared
 4 that with GGG15 paragraph 8. If we may have GGG15
 5 paragraph 8 and he specifically read, he said, "due to the
 6 extent of some of these incidents and to ensure that it's
 7 been addressed effectively and sufficiently provincial and
 8 national management had to intervene and provide additional
 9 resources", you see that?
 10 COLONEL MERAFAE: I see that.
 11 MS BALOYI: Yes, now the difference, Mr
 12 Wesley says these are different, they don't say the same
 13 thing. He says they don't say the same thing and in fact
 14 GGG15 you were trying to, someone was trying to make, may
 15 well have been trying to make the SAPS not look so bad from
 16 your original statement QQQ2.
 17 [12:07] Now, what is your understanding about any
 18 differences between you saying Provincial and National made
 19 some interventions in where you say they had to intervene.
 20 Do you understand for there to be a difference, and if you
 21 do, what is the difference that you understand?
 22 COLONEL MERAFAE: According to me they are
 23 not different, Chairperson.
 24 MS BALOYI: In the same paragraph, QQQ2,
 25 paragraph 5, in the third, it starts in the second line,

Page 27444

1 the second sentence, it reads, "There has been several
 2 meetings held where management raised their concerns
 3 regarding the use of force during unrest situations." You
 4 see that?
 5 COLONEL MERAFAE: I see that, Chair.
 6 MS BALOYI: And in the same paragraph 8,
 7 GGG15, if we go to the same paragraph 8, GGG15, in the
 8 second paragraph it says, "In addition to above several
 9 meetings were also held in order to address amongst others
 10 the following challenges," and then you list insufficient
 11 personnel, use of force during uprising, and training. You
 12 see that?
 13 COLONEL MERAFAE: I see that, Chair.
 14 MS BALOYI: Yes, now what is the
 15 difference in your understanding between you having used in
 16 the one case where management raised concerns, the word
 17 "concerns," and in GGG15 you speak of challenges, "the
 18 following challenges," and you list pretty much the same
 19 thing. What is the difference in your understanding?
 20 COLONEL MERAFAE: The challenges and the
 21 concern as far as I'm concerned are two, are the same,
 22 English words that says the same thing, two English words
 23 with the same meaning.
 24 CHAIRPERSON: The difference of course is
 25 that in QQQ2 the management had raised these concerns or

Page 27445

1 challenges and they were matters which caused concern on
 2 the part of management and that's why they raised them,
 3 whereas here they're just referred to as challenges that
 4 were addressed. So there is a slight difference, isn't
 5 there? Now the management to which you were referred in
 6 your statement QQQ2, that management had raised these
 7 concerns, was that the management in the North West?
 8 COLONEL MERAFAE: That is so, Sir.
 9 CHAIRPERSON: So the management in the
 10 North West were concerned about these problems and that's
 11 why they raised them with National Management. Is that so?
 12 COLONEL MERAFAE: That is so.
 13 CHAIRPERSON: And that point is not clear
 14 from paragraph 8 of GGG15. That's correct, isn't it?
 15 COLONEL MERAFAE: Ja, at QQQ2 it talks
 16 about raising with the Provincial, but here mentions the
 17 Provincial and National.
 18 MS BALOYI: Now Colonel Merafe, on that,
 19 in GGG15, paragraph 8, you do not say management raised the
 20 – you don't mention that it is management that raised the
 21 concern. That's the difference that the Chairperson is
 22 pointing out to you. Did you decide, or did you seek to
 23 withhold in GGG15, paragraph 8, did you seek to withhold
 24 that management raised concerns?
 25 COLONEL MERAFAE: No, Chairperson.

Page 27446

1 MS BALOYI: Chairperson, those are my
 2 questions.
 3 CHAIRPERSON: Thank you. Yes, Mr
 4 Budlender?
 5 MR BUDLENDER SC: Chair, there is one
 6 question which Mr Wesley would like to ask arising out of
 7 that re-examination.
 8 CHAIRPERSON: Let's hear what the
 9 question is first.
 10 MR WESLEY: Chair, it concerns the origin
 11 of the statement GGG15 and the witness's mention of a
 12 consultation that was had with Mr Beyleveld and Mr Van
 13 Tonder. Colonel, the consultation that you had with Mr
 14 Beyleveld and Mr Van Tonder, that was on the 29th of
 15 November 2012.
 16 COLONEL MERAFAE: That is so, yes.
 17 MR WESLEY: And that interview was
 18 conducted also in the presence of Mr Mokotedi.
 19 COLONEL MERAFAE: Correct, Chairperson.
 20 MR WESLEY: Now after that consultation,
 21 I want to get exactly what it was you requested, what you
 22 were told you must now prepare or draft or deal with in the
 23 statement that you were going to prepare. A detailed
 24 statement dealing with both your observations of the
 25 incident on 13 August and the facts related to your

Page 27447

1 position as commander of the POP unit which was deployed on
 2 10 August 2012. Let me put it to you this way. I'm going
 3 to hand this in, Chair, with your leave, as –
 4 CHAIRPERSON: [Microphone off, inaudible]
 5 MR WESLEY: It's an email. What
 6 happened, Chair –
 7 CHAIRPERSON: No, no – well let me look
 8 at the email.
 9 MS BALOYI: Chair –
 10 CHAIRPERSON: Ms Baloyi?
 11 MS BALOYI: Chairperson, I have no idea
 12 what this is. I don't know the emails that are being
 13 handed up. Mr Wesley had the opportunity when he cross-
 14 examined the witness about this statement, QQQ2, to put to
 15 him everything relating to the statement. He chose not to.
 16 This seems to me highly improper, Chair.
 17 MR BUDLENDER SC: [Microphone off,
 18 inaudible]
 19 MS BALOYI: No, I'm addressing the Chair,
 20 please. I'm addressing the Chair. You're not chairing the
 21 Commission.
 22 CHAIRPERSON: Mr Budlender, we must let
 23 Ms Baloyi speak without – if there's some response you can
 24 give it after she's finished addressing us. Yes, carry on.
 25 MS BALOYI: Yes, Chairperson, I'm raising

Page 27448

1 an objection about this irregular procedure or process. Mr
 2 Wesley cross-examined the witness on this statement. He
 3 had opportunity to raise any issue relating to the
 4 statement and consultations, which in fact he was aware of.
 5 He was aware of the consultations with the investigators.
 6 He had opportunity to raise it with the witness. He
 7 elected not to. I'm entitled to have re-examined the way
 8 that I did to establish the genesis of the statement, and
 9 he's not entitled to cross-examine again, Chairperson,
 10 especially without explanation.
 11 MR BUDLENDER SC: Chair, may I respond –
 12 MS BALOYI: And the document that is
 13 handed up, Chair, we haven't seen it. I have no idea what
 14 it is.
 15 CHAIRPERSON: Have you finished now, Ms
 16 Baloyi?
 17 MS BALOYI: I have, thank you, Chair.
 18 CHAIRPERSON: Mr Budlender, do you wish
 19 to respond?
 20 MR BUDLENDER SC: Chair, this is a new
 21 matter arising out of the re-examination. In re-
 22 examination the witness was asked what he was asked at a
 23 consultation. This is an email which was sent by the
 24 evidence leaders to the SAPS legal team immediately after
 25 the consultation, sent by me, saying we refer to the

Page 27449

1 consultation with Mr Mokotedi. He's going to prepare a
 2 statement, could he please address the following matters in
 3 the statement. So all we're asking, it's not a matter of
 4 cross-examining the witness; it's just to check that this
 5 is, these are the matters that he was asked to address in
 6 his statement, which is the very matter which was a new
 7 matter which was raised by our colleague in re-examination.
 8 We're not trying to score a point or discredit the witness
 9 or anything. All we're trying to do is to get before the
 10 Commission all of the evidence as to what the witness was
 11 asked to do after that consultation. I don't understand
 12 why it's controversial even. All we would like to ask the
 13 witness is, is this what he was asked to address in his
 14 statement.
 15 CHAIRPERSON: Well, I'll allow that
 16 question to be asked. I don't think the email should go in
 17 as the email covers other matters as well, but I can
 18 understand the point raised. The consultation was raised
 19 in re-examination and what was addressed, if that is the
 20 right word, to be used, and I haven't got a problem with
 21 the topics that were addressed being the subject of a
 22 question, but I don't think it's necessary for us to have
 23 the email put in between counsel and so on. So Mr Wesley,
 24 you may ask that question.
 25 MR WESLEY: Thank you, Chair, but I need

Page 27450

1 to make one, clarify one thing. I specifically gave this
 2 email to the SAPS attorneys, a copy on Friday –
 3 CHAIRPERSON: Ja, okay, Mr Wesley, don't
 4 give evidence. You're asking a question, that's all. Ask
 5 the question and that's it. If you want to give evidence
 6 you can be sworn in later and cross-examined about it, but
 7 I don't think that would be an appropriate procedure. So
 8 let's just carry on with the question.
 9 MR WESLEY: As it pleases you, Chair.
 10 Colonel, what we want to know is, I'm going to read the
 11 body of the email, it's one paragraph and all we want to
 12 know is, is this what you were asked to deal with in your
 13 statement. That's the only question; were you asked to
 14 deal with these matters. I'm going to read it to you.
 15 I'll read it to you as it stands in the email. "We
 16 requested a detailed statement from him dealing both with
 17 his observations of the incident on 13 August and with
 18 facts related to his position as commander of the POP unit
 19 which was deployed on 10 August, and your statement should
 20 also include the following matter; your unit's logistical
 21 preparedness, resources, available trained manpower and
 22 capability to deal with matters of this nature in the
 23 recent past before the events of August 2012." You've
 24 heard that. Is that what you were asked to deal with?
 25 COLONEL MERAFA: That is correct,

Page 27451

1 Chairperson.
 2 MR WESLEY: Thank you.
 3 CHAIRPERSON: Commissioner Hemraj wishes
 4 to ask some questions.
 5 COMMISSIONER HEMRAJ: Colonel, can you
 6 just please clarify something you said to the Chairman
 7 yesterday when he asked you something about QQQ5, your
 8 notebook. It related to the first query on the 13th. Now
 9 with the kind assistance of Ms Baloyi and Mr Budlender
 10 we've had a look at the original and it seems to me there
 11 are entries that relate to the 13th and then the next date
 12 is the 15th. Is that right?
 13 COLONEL MERAFA: That's correct,
 14 Chairperson.
 15 COMMISSIONER HEMRAJ: And you said to the
 16 Chair yesterday that the first entry on the 13th, that you
 17 might have confused it with something that happened on the
 18 15th.
 19 COLONEL MERAFA: No, I said something
 20 that happens on the 14th because what happens, the issue
 21 regarding the barbed wire and these other things that I
 22 listed here happens in the early morning of the 14th when we
 23 had to go and draw the plan. That's where I started noting
 24 these things.
 25 COMMISSIONER HEMRAJ: I understand that.

Page 27452

1 And that entry, does it relate to some of the options that
 2 were discussed?
 3 COLONEL MERAPE: Correct, Chairperson.
 4 COMMISSIONER HEMRAJ: Okay, thank you.
 5 And the second thing, if you could please assist in
 6 clarifying, the plan that was eventually presented at 13:30
 7 on the 16th, I know you weren't there but had you had any
 8 knowledge of this plan prior, at any stage prior to that?
 9 COLONEL MERAPE: I had the insight of it
 10 on the 15th, yes, I saw it, but as and when it is updated I
 11 was not aware of the contents thereof, if there was any
 12 amendment on it.
 13 COMMISSIONER HEMRAJ: When you say you
 14 were aware of it, were there any discussions surrounding
 15 this at any stage prior to the 16th, relating to the actual
 16 plan that was presented at 13:30 on the 16th?
 17 COLONEL MERAPE: Ja, Chairperson, on the
 18 14th in the morning and on the 15th – actually on the 15th in
 19 the morning the commanders had the opportunity to put
 20 their, to say whatever they wanted to, actually there was a
 21 discussion surrounding the plan on that day.
 22 COMMISSIONER HEMRAJ: And as long as you
 23 were there until your involvement ended on the 15th, if
 24 there were any major non-compliances with whatever laws or
 25 prescripts applied, would you have been in a position to

Page 27453

1 correct them, and did you?
 2 COLONEL MERAPE: No, I was not in the
 3 position to correct whatever changes or something that went
 4 wrong when I was not there.
 5 COMMISSIONER HEMRAJ: No, no, while you
 6 were there until the end of the 15th, if there was anything
 7 that was not in accordance with any of the prescripts.
 8 COLONEL MERAPE: I would have corrected
 9 it, Chairperson.
 10 COMMISSIONER HEMRAJ: And did you have –
 11 COLONEL MERAPE: Or raised it.
 12 COMMISSIONER HEMRAJ: And did you have
 13 occasion to correct anything?
 14 COLONEL MERAPE: Come again, Chairperson?
 15 COMMISSIONER HEMRAJ: Did you have
 16 opportunity, did an opportunity arise or did occasion arise
 17 where you had to correct certain instances?
 18 COLONEL MERAPE: Definitely so,
 19 Chairperson, because I was part of the meeting in the
 20 morning.
 21 CHAIRPERSON: This meeting you're talking
 22 about, is that the JOCCOM meeting on the 15th?
 23 COLONEL MERAPE: Yes, in the morning,
 24 Chairperson.
 25 CHAIRPERSON: Which was the subject of

Page 27454

1 minutes.
 2 COMMISSIONER HEMRAJ: Thank you very
 3 much, Colonel.
 4 CHAIRPERSON: I'd like to ask you one
 5 question which relates to exhibit QQQ1. It's paragraph
 6 5.18 of exhibit QQQ1, 5.18. It reads, "As the police and
 7 marchers were walking someone at the front on the right of
 8 the strikers fired a teargas canister. The marchers did
 9 not appear to be affected by the teargas and continued
 10 walking." And then according to what we could see on the
 11 video it appears that the teargas canister actually came
 12 from the left of the strikers. The strikers were going in
 13 the direction of the koppie. They had their backs to the
 14 main group of members who were walking behind them, and as
 15 far as we could see from the video the teargas canister
 16 came from the strikers' left. You say in the statement
 17 that someone at the front on the right of the strikers
 18 fired a teargas canister. Is that perhaps a mistake in the
 19 light of what we can see on the video?
 20 COLONEL MERAPE: Ja, Chairperson, I was
 21 not privileged to see the video before I make a statement,
 22 but what I saw, because it was flying, I thought it was
 23 from the right. I was driving, so I couldn't verify
 24 whether left or right. I was inside the car by then.
 25 CHAIRPERSON: I understand. You were

Page 27455

1 inside a car.
 2 COLONEL MERAPE: Yes, Chairperson.
 3 CHAIRPERSON: I see. So you were –
 4 COLONEL MERAPE: It might be that I was
 5 mistaken –
 6 CHAIRPERSON: You might be mistaken.
 7 COLONEL MERAPE: Yes, Chairperson.
 8 CHAIRPERSON: Thank you. Thank you. Any
 9 questions arising from the questions asked by members of
 10 the Commission?
 11 MR MPOFU: Yes, just one, Chairperson.
 12 CHAIRPERSON: What's the question?
 13 MR MPOFU: I promise. I think it's L47 –
 14 or I won't go there. The version of the police until, I
 15 think until the previous witness Vermaak, I put the
 16 question but the version that's contained in exhibit L, you
 17 can accept is that these people who were marching on the
 18 11th were being prevented from going to an informal
 19 settlement on the left –
 20 CHAIRPERSON: Mr Mpofo, I'm sorry, that –
 21 oh yes, you can –
 22 MR MPOFU: I'm sorry, on the 13th –
 23 CHAIRPERSON: Yes, you can ask that
 24 question.
 25 MR MPOFU: Shall I continue, Chairperson?

Page 27456

1 CHAIRPERSON: It doesn't arise from the
 2 question I asked, but I understand what –
 3 MR MPOFU: Well, Chairperson, the
 4 canister, and if they were being prevented, whether it's
 5 left or right is very important.
 6 CHAIRPERSON: Ja, okay.
 7 MR MPOFU: Okay.
 8 CHAIRPERSON: One question.
 9 MR MPOFU: You allow me one question, ja.
 10 I don't want to waste my one question. What I'm saying is
 11 you would agree that it is incorrect to suggest, as it is
 12 suggested in exhibit L, that the strikers were being
 13 prevented from going towards the left of the direction that
 14 they were marching? Remember the left was this side. They
 15 were going towards the – or let me put it this way; the
 16 informal settlement that they were being prevented from
 17 going to was to their right –
 18 CHAIRPERSON: Allegedly prevented.
 19 MR MPOFU: Allegedly, yes, was to their
 20 right and not to their left.
 21 COLONEL MERAFAE: Ja, it was to their
 22 right, not to the left.
 23 CHAIRPERSON: That's right.
 24 MR MPOFU: Thank you.
 25 COLONEL MERAFAE: It was on their right,

Page 27457

1 not to their left.
 2 CHAIRPERSON: And you in fact had been
 3 instructed by General Mpembe to block, to ensure that they
 4 didn't go to that informal settlement and that was why
 5 Nyalas were moved up along the road, effectively blocked
 6 any access by them to that informal settlement.
 7 COLONEL MERAFAE: That's positive,
 8 Chairperson.
 9 CHAIRPERSON: Alright, okay. Alright, on
 10 this note we will adjourn then until Tuesday morning at 9
 11 o'clock. The witness is excused from further attendance on
 12 the usual understanding that if you have to come back or we
 13 ask you to come back you'll come back.
 14 COLONEL MERAFAE: Thank you, Chairperson.
 15 CHAIRPERSON: And otherwise you're
 16 excused, and that's the end of your evidence as far as we
 17 are aware.
 18 COLONEL MERAFAE: Thank you, Chairperson.
 19 CHAIRPERSON: Thank you very much.

20 [NO FURTHER QUESTIONS – WITNESS EXCUSED]

21 [COMMISSION ADJOURNED]

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ARCHIVE FOR JUSTICE

<p style="text-align: center;">A</p> <p>able 27340:22 27365:6 27375:7 27377:19 27392:14 27400:21 27417:24 27432:25 27433:3</p> <p>absent 27394:8</p> <p>absolutely 27402:25</p> <p>accept 27348:3 27365:4 27367:13 27377:9,15 27377:17 27386:7 27389:2 27400:5 27455:17</p> <p>accepted 27359:25</p> <p>accepting 27391:1</p> <p>access 27457:6</p> <p>accommodates 27408:17</p> <p>account 27425:9,10,16 27440:23 27442:11</p> <p>accounts 27441:6</p> <p>accuracy 27348:1</p> <p>accurate 27394:10</p> <p>accurately 27392:4</p> <p>act 27398:3 27436:13 27438:2</p> <p>action 27436:13 27438:2</p> <p>activities 27402:8 27441:2</p> <p>actual 27389:17 27452:15</p> <p>add 27433:18</p> <p>addition 27444:8</p> <p>additional 27443:1,8</p> <p>address 27368:8 27434:20 27444:9 27449:2,5,13</p> <p>addressed 27381:25 27443:7 27445:4 27449:19,21</p> <p>addressing 27447:19 27447:20,24</p> <p>adjourn 27404:25 27457:10</p> <p>ADJOURNED 27457:21</p> <p>adjourning 27405:6</p> <p>ADJOURNS 27405:13</p> <p>administrative 27405:20</p> <p>adopt 27395:4</p> <p>Adv 27340:9,14</p> <p>advisable 27386:18 27387:5,15 27417:19 27418:14</p> <p>advised 27417:1 27418:5</p> <p>advocate 27341:2 27379:24 27437:2,2</p> <p>afraid 27346:4 27360:9 27434:15</p> <p>African 27399:24</p> <p>aggressive 27437:6</p> <p>ago 27356:19 27412:17</p>	<p>27414:14</p> <p>agree 27345:11 27363:10 27368:4 27372:6,9,14,19 27373:15,21 27374:2 27374:3,24 27375:1,3 27375:5 27376:14 27377:19 27378:13 27378:15,19,20,23 27379:3,8,9,11 27381:3,16 27383:20 27384:1,14 27385:18 27386:21,21 27387:16,20,21,24 27391:11,14,17,22,24 27391:25 27392:1,17 27393:1,9,12,17 27395:13,16 27406:9 27406:11 27410:25 27412:8 27416:23 27417:3,5 27418:4,6 27418:10,11,12 27419:25 27456:11</p> <p>agreed 27341:20 27342:8 27366:22 27371:2 27381:5,10 27384:5 27386:20 27414:24 27418:6</p> <p>agreeing 27381:12</p> <p>agrees 27374:14 27385:7 27392:8,13</p> <p>aim 27348:9</p> <p>air 27419:14,17</p> <p>Ali 27369:4</p> <p>allegation 27393:12</p> <p>allegedly 27382:25 27456:18,19</p> <p>allow 27403:16,17,18 27449:15 27456:9</p> <p>allowed 27340:15 27395:4 27434:21 27436:1</p> <p>aloud 27373:9</p> <p>alright 27340:16 27354:17 27368:13 27370:5 27372:4 27374:22 27375:20 27377:24 27387:23 27392:21 27395:11 27396:8 27409:1,18 27415:16 27457:9,9</p> <p>alternative 27418:7,7</p> <p>ambiguity 27410:2,10 27411:11</p> <p>amendment 27452:12</p> <p>Annandale 27363:4 27413:9,13</p> <p>announce 27405:15</p> <p>answer 27344:11 27346:13 27349:12 27356:7,8,9,10,14,16 27358:24 27369:22 27370:22 27372:21 27373:1,4,23 27374:13 27376:14 27377:12 27384:9,16</p>	<p>27396:7,9 27400:21 27408:9,10 27415:17 27416:18 27417:18 27417:24 27424:2 27427:6,9,10 27428:15,18 27429:11</p> <p>answered 27384:9</p> <p>answering 27373:7</p> <p>anybody 27401:20 27406:6</p> <p>anyway 27340:21 27364:11</p> <p>apart 27357:25 27358:2 27381:11</p> <p>apartheid 27386:8</p> <p>apologise 27406:5</p> <p>appear 27359:16 27365:13 27371:10 27422:16 27454:9</p> <p>appeared 27365:11 27369:17,20 27375:14</p> <p>appears 27359:21 27454:11</p> <p>applicable 27366:8</p> <p>applied 27452:25</p> <p>appointed 27432:4</p> <p>appropriate 27400:19 27450:7</p> <p>APRIL 27340:1</p> <p>area 27390:12,13,16,19 27440:1</p> <p>areas 27390:15 27425:8</p> <p>aren't 27375:24 27400:20</p> <p>argue 27357:10 27370:9 27371:7,8 27396:5 27415:11</p> <p>argument 27371:11 27376:4,19 27409:19</p> <p>arising 27446:6 27448:21 27455:9</p> <p>armoured 27437:7</p> <p>arranging 27402:8</p> <p>arrived 27410:17 27411:23 27417:13</p> <p>arrives 27419:3,6</p> <p>arson 27383:3</p> <p>asked 27357:3 27358:21,23 27359:3 27362:17 27364:23 27368:18 27369:22 27371:3 27374:11 27376:1 27377:8 27388:25 27391:19 27391:23 27392:6,10 27392:17,24,24 27393:7 27394:25 27396:9 27401:16,17 27409:15 27412:16 27414:13 27429:10 27437:23 27448:22 27448:22 27449:5,11 27449:13,16</p>	<p>27450:12,13,24 27451:7 27455:9 27456:2</p> <p>asking 27343:21 27346:6,10 27347:18 27349:3,6,9 27361:20 27371:14 27372:18 27385:5 27389:19,23 27390:24 27395:23 27396:6 27416:5 27424:15 27431:3 27449:3 27450:4</p> <p>aspects 27394:25</p> <p>assault 27383:2</p> <p>assertion 27361:23 27391:10</p> <p>assertions 27361:18</p> <p>assess 27400:19</p> <p>assist 27354:9 27395:6 27395:8 27418:3 27424:15 27431:5,21 27440:10 27452:5</p> <p>assistance 27343:5 27394:19 27419:15 27431:16 27451:9</p> <p>assume 27362:12 27384:9 27385:18</p> <p>attach 27425:22</p> <p>attack 27425:11,19 27430:18,18 27435:3 27442:12</p> <p>attacked 27425:25 27434:15 27438:13</p> <p>attacks 27426:20</p> <p>attend 27402:13</p> <p>attendance 27457:11</p> <p>attended 27399:23 27400:23,24,25</p> <p>attending 27402:8 27406:7</p> <p>attention 27361:9</p> <p>attorney 27346:7</p> <p>attorneys 27450:2</p> <p>August 27344:14,15,17 27418:25 27421:17 27421:20,23 27424:13 27446:25 27447:2 27450:17,19 27450:23</p> <p>available 27347:6 27438:7 27450:21</p> <p>aware 27388:9,10 27396:10 27402:3 27405:5 27417:7,9 27426:22 27430:20 27430:21 27431:2,4,7 27431:11,12,13,16,17 27431:19,24 27433:22 27448:4,5 27452:11,14 27457:17</p>	<p>27381:21 27395:4 27409:20 27412:3,14 27412:18,21 27414:8 27424:21 27426:4 27436:1,17 27457:12 27457:13,13</p> <p>backs 27454:13</p> <p>bad 27408:4 27443:15</p> <p>badly 27409:11</p> <p>ball 27357:14</p> <p>ban 27389:12,13,17</p> <p>banned 27390:21</p> <p>barbed 27368:19 27394:4 27436:5 27438:10 27451:21</p> <p>bargaining 27379:14 27379:25 27380:3,10 27380:11 27381:23 27382:4,24 27383:7</p> <p>based 27360:17 27394:5</p> <p>basis 27366:2 27376:19 27392:22 27393:2,6 27401:12 27402:24 27403:1 27405:9 27425:2</p> <p>bear 27422:5</p> <p>beg 27435:11</p> <p>begging 27387:3</p> <p>beginning 27410:12</p> <p>behalf 27428:1</p> <p>behaviour 27395:14 27403:21</p> <p>behavioural 27396:23</p> <p>belabour 27412:7</p> <p>believe 27354:22 27393:20 27401:3 27433:23</p> <p>belongs 27383:8</p> <p>best 27377:11,12</p> <p>better 27340:17,18 27341:4 27376:14,17 27417:21</p> <p>Beyleveld 27440:14 27446:12,14</p> <p>beyond 27361:8</p> <p>big 27387:6</p> <p>bigger 27367:14</p> <p>bit 27378:3 27412:12 27439:24</p> <p>Bizos 27340:9,14 27421:14 27430:11</p> <p>black 27395:15,25</p> <p>block 27457:3</p> <p>blocked 27457:5</p> <p>Blou 27376:1</p> <p>body 27450:11</p> <p>Bophuthatswana 27389:7</p> <p>brackets 27423:11</p> <p>brains 27358:8</p> <p>break 27404:11,13 27405:7,10</p> <p>bridge 27385:13</p> <p>brief 27428:9,13,22 27429:24</p>
B				
<p>B 27428:23 27429:1,2</p> <p>back 27356:15 27365:14,16</p>				

<p>briefed 27428:2 Briefly 27400:6 Brigadier 27349:18 27364:22 27369:13 27381:16 27387:24 27433:19 bring 27344:9 27352:12 27361:8 broader 27368:20 brought 27343:18 27370:16 27434:19 brutal 27399:19 Budlender 27446:4,5 27447:17,22 27448:11,18,20 27451:9 burned 27388:6 bury 27402:12,16 bushes 27356:6 business 27346:12 27383:23 busy 27381:9 27392:19 27394:18 27406:3 27416:14</p> <hr/> <p style="text-align: center;">C</p> <p>calendar 27354:15 Calitz 27433:19 call 27367:19 27421:9 27421:10 called 27342:7 27344:22 27348:20 27364:6,7 27370:1,2 27389:7 27423:8 27439:18 calling 27413:9,13 canister 27454:8,11,15 27454:18 27456:4 canvassed 27413:16 can't 27353:5 27358:7 27358:9,22 27360:21 27363:5 27388:3 27389:4 27392:18 27397:5 27398:4,14 27413:17,25 27414:19 capability 27450:22 capable 27409:6 capacity 27378:14,16 capture 27422:17 car 27454:24 27455:1 care 27354:10 carefully 27350:19 27386:7 carry 27356:1 27392:21 27393:3,6 27447:24 27450:8 case 27362:14,21 27363:3,3 27388:25 27392:17 27396:7 27444:16 categories 27392:12 caused 27378:19 27382:25 27434:20 27445:1 CCTV 27426:2,5,10,19</p>	<p>27427:13,21 Centre 27425:2 certain 27345:17 27346:17,24 27347:2 27347:16 27453:17 certainly 27347:14 27363:3,3 27365:24 27375:13 27384:5 chair 27340:8 27341:11 27345:10 27348:7 27349:4 27352:18 27362:2 27368:22 27380:19 27383:6 27384:20 27385:10 27385:15 27402:10 27404:10 27405:12 27410:4 27411:24 27414:9 27419:16 27420:1,23 27421:18 27422:4,4,10 27424:10,11 27425:20 27427:9 27428:4,11 27429:9 27429:13,17 27432:5 27435:23 27436:11 27436:16 27439:14 27441:14 27442:20 27444:5,13 27446:5 27446:10 27447:3,6,9 27447:16,19,20 27448:11,13,17,20 27449:25 27450:9 27451:16 chairing 27447:20 Chairman 27451:6 Chairperson's 27408:25 challenges 27374:8 27442:17,21,24 27444:10,17,18,20 27445:1,3 change 27353:2,5 changes 27378:18 27453:3 chaos 27410:10 charge 27357:17 27358:1 27386:9 27388:14 27389:25 chase 27442:12 check 27349:22 27350:11 27351:12 27391:9 27435:19 27449:4 checking 27399:13,14 27436:1 chief 27418:24 choice 27377:14 choir 27412:11,12 27414:19,19,20 chose 27447:15 chosen 27410:13 Christmas 27343:24 circumstances 27420:22 civilians 27407:10 clarification 27415:14</p>	<p>clarify 27450:1 27451:6 clarifying 27452:6 clarity 27409:22 clause 27419:2 27423:1 27423:2 27424:4,13 27428:7 27436:8,8 27437:24 27438:15 cleaning 27370:13 clear 27367:12 27379:18,25 27382:14 27384:22 27413:6,8 27424:2 27428:18 27429:1,11 27445:13 clearly 27352:8 27428:25,25 27429:6 coincidence 27340:14 colleague 27449:7 colleagues 27341:8 27399:20 collective 27379:14 27381:22 27382:4,24 come 27346:17 27377:21 27394:19 27436:1 27439:15,16 27453:14 27457:12 27457:13,13 comfort 27404:12,15 27405:6,10 coming 27403:4 command 27402:11 27428:9,22,23 27429:2,7,8,20 commander 27354:6 27354:23 27390:9 27401:8,9 27407:24 27408:2,3,3,5,12 27409:23,23 27410:6 27410:8,11,14,21,22 27410:23,23 27411:3 27411:9,10,16,17 27412:17,25 27413:3 27413:5 27414:15 27428:8,13,21 27433:18 27436:25 27437:15 27447:1 27450:18 commanders 27399:14 27429:2,3,21,23 27430:6,9 27452:19 commands 27411:19 commendably 27372:24 comment 27360:17 27370:7 27382:23 27392:18 27434:6 comments 27356:2 Commission 27340:2 27343:1,7,15,18 27344:3 27345:12,15 27345:25 27346:13 27348:21,25 27349:16 27350:25 27352:13 27364:2,3 27364:11,22</p>	<p>27384:23 27403:18 27405:13,13,14 27411:8 27415:7 27439:16 27447:21 27449:10 27455:10 27457:21 Commissioner 27349:19 27360:14 27362:10 27370:10 27383:17 27406:14 27410:13 27421:3,8 27433:8 27435:4,8,10 27435:20 27436:17 27437:11 27451:3,5 27451:15,25 27452:4 27452:13,22 27453:5 27453:10,12,15 27454:2 Commissioners 27343:21 27437:23 committed 27383:10 27383:11,12 common 27395:16 27396:1,16,25 27397:1,3,7,20,25 communicate 27377:22 27412:2 27428:24 27429:3 communicated 27364:1 27375:15 27405:10 27412:5 communication 27375:10,18 27433:9 comparatively 27362:15 compared 27443:3 compile 27350:13 27422:22 completely 27361:21 compliance 27345:8 27352:5,17 27353:4 27359:22 27361:19 27361:23 27386:4 27388:5 complicating 27376:20 complied 27348:11 27360:20 27362:15 27363:5 27366:9 comply 27362:21 components 27367:24 27421:12 comprehensive 27421:16 27423:10 27423:23 27424:5,14 27441:12,13,22 conceded 27341:9 concentrate 27439:23 Concept 27422:7,11 concern 27381:24 27382:15 27383:4,18 27389:21 27444:21 27445:1,21 concerned 27345:12,21 27373:16 27376:21 27385:3,4 27403:20 27414:2,6 27444:21</p>	<p>27445:10 concerns 27342:3,8 27353:15 27379:16 27380:12,17 27382:4 27382:11 27444:2,16 27444:17,25 27445:7 27445:24 27446:10 conclusions 27417:2 concocting 27401:11 conduct 27360:22 27364:23 conducted 27424:24 27432:7 27433:15 27446:18 conducting 27414:20 conductors 27412:12 confining 27377:4 confused 27414:18,18 27451:17 confusing 27412:9 confusion 27412:24 27413:20 27414:7,10 27414:16,25 consider 27439:11 consideration 27397:16 considerations 27380:21 considered 27381:14 27382:15 27417:10 consult 27395:12 consultation 27439:19 27439:23 27441:8 27446:12,13,20 27448:23,25 27449:1 27449:11,18 consultations 27346:23 27448:4,5 consulted 27345:19 27351:17 27440:7,8 27440:13 consulting 27345:15,17 27345:24 contain 27370:17 27371:25 27441:24 contained 27347:5 27372:1 27379:15 27384:2 27385:18 27396:24 27423:11 27439:1 27455:16 contains 27382:10 CONTD 27406:1 contemplate 27420:20 contemplates 27438:15 contend 27371:25 content 27347:15 contents 27346:19 27370:6 27372:7 27452:11 contingency 27421:20 27422:24 continue 27385:14 27455:25 continued 27454:9 continues 27437:4 contradict 27353:6 contradictions</p>
---	---	---	--	---

<p>27435:16 contradictory 27437:20 contravened 27389:18 control 27357:2 controversial 27449:12 conversation 27425:11 27428:3 27442:14 conversations 27346:6 27346:7 27433:4 copy 27372:22 27450:2 core 27345:7,13,13 27346:12 corner 27421:24 corrected 27453:8 correction 27347:23 correctly 27346:20 27360:2 couldn't 27353:22 27407:24 27408:8 27409:11 27454:23 counsel 27346:7 27371:8 27381:17 27387:9 27403:3,14 27403:21 27449:23 counselling 27400:18 country 27375:4 couple 27416:16 course 27415:12 27435:19 27437:13 27444:24 court 27403:17 27440:4 cover 27341:4 27363:6 covered 27340:15 27360:23 27381:18 27388:20,23 27390:5 covering 27367:3 covers 27423:23 27449:17 created 27381:23 crime 27383:10,11,13 27383:19 27419:23 crisply 27408:23 critical 27360:22 criticise 27348:10,14 27380:22 criticised 27352:22 27382:11 criticises 27436:4 criticising 27348:9 criticism 27353:3 27354:24 27355:1,2,5 27355:7 27357:4,6,11 27357:20 27361:7 27378:7 27421:15,15 27425:9 27430:10 27432:10 27436:3 criticisms 27341:15,19 27341:21,25 27347:21 27352:4,16 27354:14 27356:20 27356:22 27357:11 27357:21,23 27358:3 27358:5 27359:3,13 27359:15 27361:24</p>	<p>27362:5 27363:23 27370:15,17 27371:5 27371:6,14 27378:1 27378:11 27388:3,4 27388:11 27391:4 cross 27360:23 27375:23 27390:5 27404:6 27447:13 crossing 27377:18 27410:17 cross-examination 27340:25 27341:7 27372:18 27394:24 27406:1 27418:24 27435:15 27437:18 27438:23 27441:24 cross-examine 27340:6 27340:10 27389:1 27448:9 cross-examined 27448:2 27450:6 cross-examining 27449:4 crowd 27344:22 27354:23 27357:2 27358:1 27366:8 27368:15 27411:2 27420:21,25 27423:12 crying 27406:23 cut 27359:11 27372:24</p> <hr/> <p style="text-align: center;">D</p> <p>daily 27424:24 27425:2 damage 27383:3 Danie 27440:14 date 27354:10,14 27422:12 27451:11 dates 27344:18 day 27364:11 27370:2 27377:20 27394:3 27413:11 27431:7 27434:18 27437:13 27439:24 27452:21 days 27343:12 27363:12 27399:20 deadly 27420:14 deal 27348:6 27363:13 27370:5,6 27371:17 27375:22 27381:9,18 27418:15 27425:5 27429:3 27430:5 27446:22 27450:12 27450:14,22,24 dealing 27346:18 27350:1 27354:2 27363:22 27367:16 27368:11 27369:11 27416:14 27446:24 27450:16 deals 27343:1 dealt 27351:11 27367:8 27381:8,14 death 27407:1,3,5 deaths 27407:8 decide 27371:24</p>	<p>27441:5 27445:22 decided 27410:17 decision 27402:2,3 27437:4 decisions 27402:3 deeply 27340:21 defend 27438:12 defensive 27436:9,14 27437:25 27438:3,5,8 27438:16 defining 27371:13 Definitely 27453:18 deliberate 27371:18 deliberately 27371:15 denied 27377:13 27389:25 depends 27405:18 deploy 27378:17 27397:5,21 27398:11 27398:18 27399:10 27399:15 deployed 27397:24 27402:7 27407:18 27428:25 27447:1 27450:19 deploying 27399:18 deployment 27368:19 despite 27352:4,6 27361:23 detail 27346:23 27424:16 detailed 27446:23 27450:16 details 27389:17 detection 27397:6 determine 27364:18 27387:12 develop 27423:10 27424:14 27425:4 development 27425:16 developments 27425:17 deviated 27395:21 deviation 27352:25 27354:1 27391:5 27396:1 deviations 27341:9 27342:24 27343:16 27351:11,13 27354:19 27361:24 27363:24,24 27370:15,15 27390:18 27395:21 27395:23 diagnosis 27416:25 27418:4 dictate 27397:20 didn't 27354:20 27363:6 27367:12,12 27371:25 27378:17 27381:6,7,8 27384:13 27384:14 27393:4 27403:7,13,17 27409:7,13 27412:18 27457:4 die 27437:8</p>	<p>differ 27368:4 difference 27368:10 27443:11,20,21 27444:15,19,24 27445:4,21 differences 27367:15 27439:1,5,10 27441:10 27443:18 different 27361:16,21 27377:7 27383:1 27385:8 27417:12 27443:12,23 differently 27404:3 Diole 27412:1 direct 27352:9 27401:8 directed 27402:7 direction 27454:13 27456:13 directly 27363:13 27397:20 27402:11 27405:9 27430:5 disagree 27373:25 27377:24 27378:22 27379:2,6 27385:21 27392:7,14 disagreed 27392:7 disagreement 27385:2 disagrees 27374:13 27385:4 disallow 27394:21 27396:18 27397:16 27399:7 disallowed 27389:6 27394:24 27395:9 disaster 27410:3,24 27412:9 27414:22 disclose 27364:22 discredit 27449:8 discuss 27342:6 discussed 27346:19 27347:15 27357:13 27357:15 27367:2 27370:8 27382:3 27416:19,21 27418:23 27421:14 27425:7 27431:9 27432:2 27436:2 27452:2 discussion 27393:8 27433:2 27436:23 27438:21 27452:21 discussions 27341:14 27431:20 27432:25 27452:14 dispersal 27417:1,19 27418:5 disperse 27418:14 dispersion 27384:2 27385:19,24 27386:19 27387:15 27416:20 27417:1 dispute 27378:21 distinction 27427:7 document 27422:2 27448:12 documents 27396:24</p>	<p>doesn't 27356:8 27386:20 27392:10 27396:13 27397:7 27410:20 27411:1,8 27416:11 27423:18 27430:5,5 27456:1 doing 27346:9 27372:12,13 27382:17 27387:11 27409:12 27416:16 27420:25 dominance 27383:2 doubt 27361:6 draft 27446:22 drafting 27345:25 draw 27451:23 drawing 27427:7 driven 27423:24 driving 27454:23 drunk 27396:15 due 27415:12 27435:19 27443:5 duplication 27366:13 27366:14 duration 27422:12 duties 27406:20</p> <hr/> <p style="text-align: center;">E</p> <p>earlier 27354:19 27356:21 27384:17 27391:23 27417:22 27427:15 27431:6 27439:25 27440:2 early 27451:22 economy 27380:16 27383:23 edited 27370:16 effecting 27416:20 effectively 27344:22 27402:7 27443:7 27457:5 either 27341:20 27366:1 27370:10 27381:22 27388:24 27396:24 27440:17 elected 27448:7 eliminated 27371:6,15 email 27405:22 27447:5,8 27448:23 27449:16,17,23 27450:2,11,15 emails 27447:12 emanate 27395:16 27396:25 emotional 27407:5 27408:11 emotionally 27398:23 27406:9,17,22 27407:6,10,15 emotions 27406:13 27408:1 employee 27383:7,9 employees 27382:2 employer 27383:7,9 encapsulates 27361:17 encircled 27417:10</p>
--	---	--	--	---

<p>encircling 27417:3 27418:8</p> <p>endeavour 27361:11</p> <p>ended 27439:17 27452:23</p> <p>enforce 27386:4,13 27387:13</p> <p>English 27444:22,22</p> <p>ensure 27381:23 27443:6 27457:3</p> <p>ensures 27428:23</p> <p>entire 27394:24</p> <p>entirely 27389:12</p> <p>entitled 27358:14,14 27448:7,9</p> <p>entries 27451:11</p> <p>entry 27451:16 27452:1</p> <p>environment 27351:22 27375:4,6 27399:12 27399:12</p> <p>episode 27387:25</p> <p>equal 27395:23</p> <p>equally 27361:25 27407:8,11</p> <p>escorted 27429:20</p> <p>especially 27448:10</p> <p>establish 27448:8</p> <p>established 27389:16 27441:23</p> <p>evaluation 27345:8 27380:24</p> <p>evening 27394:11 27430:19</p> <p>event 27340:12 27364:16 27428:25</p> <p>events 27344:7,14 27345:12 27409:5 27450:23</p> <p>eventually 27364:10 27452:6</p> <p>everybody 27401:18 27405:22</p> <p>evidence 27346:21 27353:2,5 27360:11 27360:12,15 27362:9 27368:24 27370:22 27371:24 27375:21 27383:16 27384:23 27384:24 27394:1,8 27394:11,12 27395:5 27398:17,20 27399:21 27401:11 27401:21,24,24 27402:17 27414:4 27417:13 27418:23 27419:21 27426:3,6 27427:4 27430:17 27431:3 27432:14 27435:13,17,21,25 27437:12,19,20 27439:19 27440:7,8 27440:17 27448:24 27449:10 27450:4,5 27457:16</p> <p>evidence-in-chief</p>	<p>27441:23</p> <p>exactly 27349:25 27351:23 27363:6 27364:17 27372:12 27383:16 27392:25 27393:15 27395:20 27396:22 27410:19 27413:19 27416:15 27446:21</p> <p>examination 27360:24 27404:7 27448:22</p> <p>examine 27390:6</p> <p>examined 27447:14</p> <p>examining 27375:24 27427:25</p> <p>example 27368:17 27370:13 27396:13 27396:13 27442:3</p> <p>excellence 27395:8</p> <p>exceptional 27420:16</p> <p>exclude 27396:15 27402:4</p> <p>excluded 27400:8,9,9 27400:10 27401:20 27401:22</p> <p>excused 27402:17 27406:7 27457:11,16 27457:20</p> <p>exercise 27438:24</p> <p>exhibit 27352:1,5 27359:16 27360:11 27360:22 27362:3 27370:10,16 27374:5 27422:9 27424:8,12 27436:18,21 27454:5 27454:6 27455:16 27456:12</p> <p>exist 27378:17</p> <p>existed 27378:17</p> <p>experience 27423:17</p> <p>experienced 27433:24</p> <p>expert 27368:14,15</p> <p>experts 27442:7,8</p> <p>explain 27362:20 27412:14 27439:16</p> <p>explained 27407:20 27411:15 27412:19 27412:20,21</p> <p>explanation 27349:18 27448:10</p> <p>explosion 27387:6</p> <p>express 27342:12,24 27346:1</p> <p>expressed 27341:15,19 27341:20,24,24 27342:8,13 27345:16 27346:2,13</p> <p>expression 27441:17</p> <p>extension 27405:17,19</p> <p>extensively 27413:16</p> <p>extent 27342:22,23 27345:17,18 27346:17,19,21,24,24 27346:25 27347:2,16 27347:20 27350:5,19 27350:20,21,23</p>	<p>27351:2,11 27363:21 27366:12,13,21 27367:15,21 27370:11 27371:6,24 27382:10 27383:3 27385:7 27399:9 27406:19 27408:7 27417:8 27443:6</p> <hr/> <p style="text-align: center;">F</p> <hr/> <p>fact 27352:4,6 27371:4 27377:1 27379:7 27382:16 27385:17 27387:11 27388:5 27389:11,13 27394:2 27407:17 27419:1,5 27420:2 27422:21 27431:8 27434:17 27441:16,24 27443:13 27448:4 27457:2</p> <p>factor 27375:10,18 27376:9,21 27377:2,7 27379:7</p> <p>factors 27381:13</p> <p>facts 27366:14 27446:25 27450:18</p> <p>fail 27436:14 27438:3</p> <p>failed 27425:9,18</p> <p>failure 27425:8</p> <p>faintly 27384:24</p> <p>fair 27361:3,5,13 27373:18 27382:16 27400:2 27413:14</p> <p>fairly 27408:22</p> <p>fairness 27383:15</p> <p>fallen 27427:5</p> <p>Fanagalo 27375:1 27376:1,8,24 27377:1 27377:8,12,14,20,21 27379:7 27381:11 27391:25 27392:25 27393:8</p> <p>far 27345:21 27369:12 27370:8 27384:23 27388:4 27403:20 27414:1,6 27435:16 27444:21 27454:15 27457:16</p> <p>fast 27361:14</p> <p>fateful 27343:12</p> <p>Father 27343:24</p> <p>feared 27402:5</p> <p>feeling 27340:16,18 27341:3</p> <p>feels 27371:9</p> <p>felt 27409:6,10</p> <p>field 27386:11</p> <p>fight 27383:2 27406:4</p> <p>figment 27356:22</p> <p>final 27364:6 27420:3</p> <p>finally 27416:16</p> <p>find 27343:11 27415:15 27415:22 27441:25</p> <p>fine 27347:13,17 27352:11 27355:25</p>	<p>27368:7 27372:3 27373:19,20 27375:23 27377:23 27379:5</p> <p>finish 27422:24</p> <p>finished 27392:25 27447:24 27448:15</p> <p>fired 27454:8,18</p> <p>first 27365:8,9 27374:7 27374:16,17 27377:13,13 27386:12 27401:19 27408:18,18 27415:12,20 27419:3 27419:5,6,6,7,10 27438:13,17 27442:16 27446:9 27451:8,16</p> <p>firstly 27393:25 27422:11</p> <p>five 27386:8 27433:5</p> <p>flat 27386:17 27387:12</p> <p>floor 27411:25</p> <p>flow 27395:25</p> <p>flying 27454:22</p> <p>focus 27422:7,12</p> <p>focusing 27373:7</p> <p>follow 27427:1</p> <p>followed 27411:21 27414:11</p> <p>following 27437:13 27444:10,18 27449:2 27450:20</p> <p>football 27344:5,10 27412:10</p> <p>force 27420:14 27444:3 27444:11</p> <p>forced 27385:24 27387:16</p> <p>forces 27420:13 27421:4</p> <p>forget 27345:1 27347:17 27415:10</p> <p>Former 27369:4</p> <p>forms 27384:17</p> <p>forth 27366:8 27383:14</p> <p>forward 27343:18 27412:2 27414:8</p> <p>forwarded 27437:3</p> <p>found 27352:6</p> <p>four 27414:14</p> <p>Friday 27450:2</p> <p>Fridays 27405:17</p> <p>front 27454:7,17</p> <p>full 27345:18 27370:11</p> <p>fully 27379:23</p> <p>function 27387:10</p> <p>functioning 27409:6</p> <p>funeral 27400:9 27401:1 27402:9 27407:17 27409:7</p> <p>further 27340:11 27362:7,10 27368:11 27371:21 27372:2 27400:20 27402:4 27418:19 27427:13</p>	<p>27457:11,20</p> <p>furthermore 27422:20</p> <p>future 27342:4</p> <hr/> <p style="text-align: center;">G</p> <hr/> <p>gain 27419:1</p> <p>gap 27393:4</p> <p>gathered 27386:10 27431:15</p> <p>gathering 27348:19 27418:16 27419:4</p> <p>Gauteng 27369:2</p> <p>general 27363:4 27375:7,11 27376:1,4 27376:5 27377:8,18 27401:19 27410:13 27410:22 27411:9,14 27411:16 27412:4,14 27412:22 27413:1,8,9 27413:12,12 27414:5 27414:8,11,17 27423:21 27428:1 27429:19,22 27430:4 27430:8 27457:3</p> <p>Generally 27375:4</p> <p>genesis 27448:8</p> <p>GGG15 27438:23 27441:11 27443:4,4 27443:14 27444:7,7 27444:17 27445:14 27445:19,23 27446:11</p> <p>give 27346:23 27353:22 27356:8 27366:6 27369:21 27386:8 27394:19 27396:12 27400:18 27436:4 27447:24 27450:4,5</p> <p>given 27340:5,10 27370:8,9,22 27390:5 27395:18 27398:15 27398:16 27411:15 27418:4,5 27422:21 27429:22 27430:3 27438:16</p> <p>gives 27413:4 27429:20</p> <p>giving 27349:21 27357:8 27362:3 27408:10 27411:21 27413:3</p> <p>glad 27341:3</p> <p>go 27342:10 27347:19 27347:20 27356:4,4,6 27356:6 27358:17 27363:11 27365:14 27372:9,16,23 27373:6,24 27378:4 27379:24 27381:20 27395:4 27401:4,9 27402:12,16 27409:7 27412:3 27414:8 27424:21 27429:24 27439:20 27440:3 27444:7 27449:16 27451:23 27455:14 27457:4</p>
--	---	--	---	---

<p>goes 27361:7 27362:7 27362:10 going 27340:10 27341:4,6 27342:5 27347:11 27353:10 27353:11 27363:12 27370:6,9 27373:19 27385:15 27399:25 27409:3,5,20 27412:4 27412:7 27415:25 27416:16 27423:22 27423:24,25 27425:3 27427:21 27446:23 27447:2 27449:1 27450:10,14 27454:12 27455:18 27456:13,15,17 good 27340:14 27341:1 27355:14 27359:20 27398:8,9,10 granted 27402:14 27405:11 grateful 27360:19 27384:12 great 27359:21 greatest 27413:19 ground 27341:9 27347:9 27387:12 27391:11 27393:12 27393:18 27394:2,3,5 27394:14 27413:5 27437:9 group 27340:7 27364:8 27365:12,14 27385:7 27417:17 27427:14 27427:20 27454:14 groups 27383:9 guidelines 27423:11,16 27423:16 27424:6,18 Gumbi 27427:24</p>	<p>27422:1 haven't 27358:23 27416:3,10 27448:13 27449:20 heading 27422:7,11 27424:23 Health 27398:2 hear 27354:16 27356:12 27375:8 27376:6,18 27397:5 27403:7 27416:12 27432:25 27433:3,6 27433:10 27446:8 heard 27354:22 27362:23 27371:23 27430:17 27450:24 hearing 27377:19 heartbroken 27340:20 held 27350:11 27444:2 27444:9 help 27342:4 27346:21 27364:16 27373:1,3 27386:20 27413:17 27414:1 27422:22 27435:22 helped 27433:24 helpful 27373:1 Hemraj 27421:3,8 27433:8 27435:4,8,10 27435:20 27436:17 27451:3,5,15,25 27452:4,13,22 27453:5,10,12,15 27454:2 Hendrickx 27420:3,5 27420:20 27421:15 27430:12 27436:3 he'd 27384:16 he'll 27379:21 he's 27346:6 27371:1 27389:25 27392:13 27408:10,11 27417:18 27448:9 27449:1 high 27406:13 highlighted 27354:14 27354:19 highlighting 27354:1 highly 27447:16 Hippos 27437:7 hold 27404:17 holy 27391:11,21 27393:12,18 27394:2 27394:3,4,13 home 27394:3 27401:4 homelands 27437:16 honestly 27389:3 hope 27395:5 27405:17 27447:6 27451:17 happening 27350:13 27362:5 27367:4 happens 27440:2 27451:20,20,22 happy 27359:4 27406:25 27407:2 hard-drive 27421:25</p>	<p>imagination 27356:23 imagine 27378:13 immediately 27425:4 27448:24 impact 27380:16 27383:22 important 27397:6 27456:5 imposed 27385:25 improper 27402:20 27447:16 inaccurate 27435:18 inadvisability 27416:19 inappropriate 27399:4 inappropriately 27432:7 inaudible 27343:22 27385:1 27395:17 27447:4,18 incident 27342:2 27344:10 27350:13 27390:20,20 27391:2 27400:17 27429:19 27431:22 27439:25 27440:2,3 27446:25 27450:17 incidents 27443:6 include 27341:25 27342:14,16 27441:6 27450:20 included 27342:21 27401:5 27440:22 includes 27400:7 including 27376:6 27382:11 27401:19 27414:11 inclusion 27380:20,23 incorrect 27385:25 27388:16 27456:11 indebted 27437:11,23 independent 27435:24 indicates 27389:11 inform 27405:21 informal 27455:18 27456:16 27457:4,6 information 27352:13 27366:6 27422:21 27423:22,24 27425:3 27431:14 informed 27343:15 inhibiting 27375:10,18 27376:9 27377:1,7 27379:7 input 27353:22 inquiry 27366:7 inside 27432:8 27434:1 27434:9,13,21 27454:24 27455:1 insight 27452:9 insignificant 27439:11 insist 27344:19 insisted 27409:12 insofar 27384:23 27402:3 instance 27357:15 instances 27386:1</p>	<p>27453:17 instructed 27457:3 instruction 27349:22 27414:11 27429:22 27430:3 instructions 27411:21 27440:13 27441:8 insufficient 27444:10 intelligence 27430:13 intended 27365:24 interactions 27342:17 27342:21,25 interested 27369:14 27388:22 27389:4 interim 27364:7 internal 27341:14 interpretation 27368:9 interpreted 27356:9 27376:25 interpreter 27355:16 27355:25 27376:2,25 27377:9,10,14 27404:23 27405:2,5 27405:12 interrupt 27369:6 27384:21 27394:18 intervene 27443:8,19 intervention 27442:25 interventions 27443:19 interview 27446:17 interviewed 27400:16 introduced 27370:14 investigation 27342:17 27346:15 27348:24 27349:15 27353:5 27364:23 investigators 27440:16 27440:18,21 27448:5 involuntarily 27418:14 involuntary 27385:24 27386:18 27387:16 27416:20,25 27418:5 involved 27341:15 27366:12 27367:3 27377:3,5 27400:1,1 27401:18 27408:4 27413:21 27426:20 27431:22 27433:2 involvement 27364:17 27452:23 in-depth 27372:23 irregular 27448:1 irrelevant 27394:21 27427:11 isn't 27355:14 27388:19 27410:24 27415:1 27428:16 27445:4,14 issue 27356:25 27375:1 27388:25 27395:7,21 27411:19 27448:3 27451:20 issued 27405:23 issues 27347:3 27367:16 27368:21 27379:14 27380:10</p>	<p>27380:16 27381:24 27382:3 27383:19 27409:20 issuing 27414:6 item 27436:8 it's 27341:6 27342:7 27343:23,24 27344:6 27347:23 27351:2 27352:11 27353:1 27385:2,7,12,13 27386:9 27388:23,25 27389:7,11,16 27395:20 27396:2,16 27396:17 27405:20 27406:5,6 27408:18 27409:20 27412:8 27413:8,12 27415:7 27415:23 27416:18 27418:9,13 27447:5 27449:3,4,12,22 27450:11 27454:5 27455:13 27456:4 I'd 27342:3 27373:5 27454:4 I'll 27346:17 27352:11 27360:19 27381:10 27396:12 27404:12 27404:17 27412:10 27418:3 27449:15 27450:15 I've 27340:5 27359:3 27361:8 27371:3 27374:11,17,21 27381:15 27386:22 27394:25 27395:4,6,9 27401:16,17 27402:10 27403:13 27417:14</p>
J				
<p>ja 27342:22 27343:20 27343:23 27344:4,18 27345:1 27347:14 27348:2 27350:4,15 27354:7,9,17 27358:16 27359:11 27363:17,18 27364:21 27369:25 27371:22 27372:12 27373:5 27374:25 27377:4 27378:15 27387:10 27388:8 27389:2,9 27390:24 27393:7 27396:12 27399:8 27400:7 27401:10,16 27410:9 27413:8 27430:8 27431:8 27434:14 27438:18,18 27440:15 27445:15 27450:3 27452:17 27454:20 27456:6,9 27456:21 job 27407:21 27419:23 JOC 27424:24 27425:2 27426:3,4 27432:14</p>	<p>idea 27405:10 27408:4 27447:11 27448:13 identify 27431:5,21</p>	<p>idea 27405:10 27408:4 27447:11 27448:13 identify 27431:5,21</p>	<p>idea 27405:10 27408:4 27447:11 27448:13 identify 27431:5,21</p>	<p>idea 27405:10 27408:4 27447:11 27448:13 identify 27431:5,21</p>

27437:3 JOCOM 27453:22 Joint 27425:2 JOSEPH 27340:4 27405:24 judge 27403:17 jurisdiction 27390:19 justice 27343:19 27344:12 justification 27394:5 27398:17 27420:16 justify 27389:3	laws 27452:24 lawyers 27348:5 Le 27425:7,12 leader 27396:18 27413:20 27440:18 leaders 27435:22 27439:20 27440:7,8 27448:24 leadership 27409:13,14 leading 27349:15 27363:14,16 learnt 27387:25 leave 27365:12 27393:4 27393:22 27394:11 27407:24 27409:14 27409:18 27437:8 27440:12 27447:3 leaving 27394:3 led 27382:1 27383:1 27384:23 left 27345:21 27394:4 27454:12,16,24 27455:19 27456:5,13 27456:14,20,22 27457:1 legal 27342:21,25,25 27343:4 27345:17,20 27345:24 27346:15 27347:6,17 27448:24 Lepaaku 27399:24 27401:2,6,8 lessons 27387:24 letter 27395:22 let's 27347:17,19 27355:21,24 27356:5 27356:7 27359:9 27373:23 27374:19 27378:2,9 27382:20 27387:4,23 27412:11 27416:24 27417:17 27446:8 27450:8 levels 27342:9 lie 27345:8 27354:21 27402:18 27403:25 27406:5 Lieutenant 27376:23 27428:1 27433:20 Lieutenant-Colonel 27341:1 27359:12 life 27398:7 light 27454:19 likes 27411:14 limited 27420:15 line 27427:15,19 27429:19 27442:16 27443:25 lines 27382:17 list 27444:10,18 listed 27451:22 listen 27350:18 27353:1 27358:20 27367:12 27386:6 27387:3 literally 27366:20 little 27373:24 27439:24	LLL11 27374:5,6 LLL12 27420:6 logical 27417:2 27418:15 logically 27396:1 27418:12 logistical 27450:20 long 27374:16 27416:2 27416:7 27452:22 longer 27404:6 Lonmin 27344:25 27426:4 27430:19 27431:1,5,9 look 27349:19 27351:1 27363:5 27372:22 27373:11,24 27376:12 27418:12 27419:1,2 27420:2,8 27421:19 27423:2 27424:3,9,16,22 27428:6 27436:7 27437:24 27443:15 27447:7 27451:10 looked 27374:1 27384:6,8 looking 27348:4 27350:20 27365:20 27366:23 27367:17 27412:8 27415:16,21 27422:2,5,8 27423:17 27424:8 looks 27436:22 lost 27402:10 lot 27361:17 27432:9 27441:25 loudhailer 27433:9 loved 27402:16,25 lying 27403:4,8 L47 27455:13	27442:17,22,24 27443:8 27444:2,16 27444:25 27445:2,5,6 27445:7,9,11,19,20 27445:24 mandated 27349:19 manpower 27450:21 marchers 27454:7,8 marching 27455:17 27456:14 Marikana 27342:2 27344:6,10 27350:14 27352:20 27367:3,5 27367:25 27389:5 27390:20 27391:2 27402:5 27440:24 massacre 27342:6 27343:2,25 27344:7 masters 27414:19 material 27440:23 27441:25 Mathunjwa 27437:13 27437:18 Mathunjwa's 27437:17 matter 27354:13 27357:10 27360:23 27371:25 27372:2 27385:8 27389:20 27400:4 27405:9 27448:21 27449:3,6,7 27450:20 matters 27340:7 27369:21 27381:7 27383:4,4 27396:4 27401:1 27445:1 27449:2,5,17 27450:14,22 mean 27347:16 27360:11 27365:23 27370:12 27385:23 27393:1,15 27395:2 27395:23 27422:17 27422:18 27424:25 meaning 27444:23 means 27354:3 27370:13 27391:25 27392:8 27393:9,20 27410:9,20 27419:10 27422:23 27425:1 meant 27350:19 27352:12 27357:4 27366:3,19 27387:14 measure 27438:16 measures 27436:9,14 27437:25 27438:3,6,8 meet 27423:18 meeting 27350:11 27367:1,23,24 27426:4 27431:4 27442:7 27453:19,21 27453:22 meetings 27341:14 27430:24 27431:1,3 27441:1 27444:2,9 member 27354:5,24 27356:25 27369:13	27402:11 27419:3,5,6 27419:6,7,8,10,22 members 27369:12 27395:14 27399:23 27399:24 27401:3 27402:12 27407:24 27411:20 27415:1 27419:19 27428:2,9 27428:13,22,23,25 27429:1,4,18,23,25 27430:5,5,7 27454:14 27455:9 memorial 27399:24 memory 27373:20 27435:18 mention 27348:17 27420:24 27445:20 27446:11 mentioned 27344:13 27369:12 27371:10 27372:11 27381:11 27383:9 27412:1 27419:14 mentions 27445:16 Mere 27433:19 merry 27356:4,6 met 27430:19 Microphone 27343:22 27395:17 27447:4,17 mind 27354:18 mine 27440:3 miners 27375:7 27376:5,5 mineworkers 27411:24 mining 27375:4,6 minute 27386:9 minutes 27386:8 27412:17 27454:1 miraculously 27399:18 missed 27365:7 missing 27424:17,20 mistake 27360:10 27392:24 27393:5 27454:18 mistaken 27435:10 27455:5,6 misunderstanding 27411:20 mix 27370:14 Mkhari 27369:1 Mkhwanazi 27340:7 27342:17 27346:2,15 27348:23 27349:14 27349:18 27350:11 27351:5,10,17 27353:4 27363:12,18 27363:20,21 27364:1 27364:7,22 27365:8 27365:19 27367:1,7 27367:16,18,19 27368:25 27387:24 27390:25 27391:5,10 27409:20 27417:17 27418:4 Mkhwanazi's 27364:17 mobilise 27378:17
K keep 27347:12 27372:24 kept 27365:25 kill 27412:4 killed 27389:5,6 27407:3 killings 27383:14 27407:1 killings 27399:19 27406:18 kind 27356:2 27368:14 27411:10 27412:23 27438:6 27451:9 kinds 27368:21 27380:21 knowledge 27353:23 27364:3 27368:20,24 27369:16 27400:8,12 27412:25 27423:15 27452:8 known 27370:3 27391:1,2,3 27431:13 knows 27411:5,7 koppie 27384:3 27385:19 27391:11 27393:17 27394:12 27417:11 27418:9 27427:14,21 27431:15 27432:15 27432:21 27434:20 27454:13	learned 27387:25 leave 27365:12 27393:4 27393:22 27394:11 27407:24 27409:14 27409:18 27437:8 27440:12 27447:3 leaving 27394:3 led 27382:1 27383:1 27384:23 left 27345:21 27394:4 27454:12,16,24 27455:19 27456:5,13 27456:14,20,22 27457:1 legal 27342:21,25,25 27343:4 27345:17,20 27345:24 27346:15 27347:6,17 27448:24 Lepaaku 27399:24 27401:2,6,8 lessons 27387:24 letter 27395:22 let's 27347:17,19 27355:21,24 27356:5 27356:7 27359:9 27373:23 27374:19 27378:2,9 27382:20 27387:4,23 27412:11 27416:24 27417:17 27446:8 27450:8 levels 27342:9 lie 27345:8 27354:21 27402:18 27403:25 27406:5 Lieutenant 27376:23 27428:1 27433:20 Lieutenant-Colonel 27341:1 27359:12 life 27398:7 light 27454:19 likes 27411:14 limited 27420:15 line 27427:15,19 27429:19 27442:16 27443:25 lines 27382:17 list 27444:10,18 listed 27451:22 listen 27350:18 27353:1 27358:20 27367:12 27386:6 27387:3 literally 27366:20 little 27373:24 27439:24	M Macintosh 27376:24 27433:1,15,21 Madibeng 27390:12,13 27390:16 Mahlangu 27405:4 main 27351:12,14 27417:8 27454:14 major 27452:24 majority 27375:12 27394:11 Major-General 27410:11 making 27348:18 27360:10 27410:20 man 27351:5,8 27363:20,20 27367:17 27398:4 management 27344:23 27354:23 27357:2 27358:1 27366:9 27368:15 27380:7,11 27398:2 27411:2 27420:21,25 27423:12,12 27430:19 27441:1	27402:11 27419:3,5,6 27419:6,7,8,10,22 members 27369:12 27395:14 27399:23 27399:24 27401:3 27402:12 27407:24 27411:20 27415:1 27419:19 27428:2,9 27428:13,22,23,25 27429:1,4,18,23,25 27430:5,5,7 27454:14 27455:9 memorial 27399:24 memory 27373:20 27435:18 mention 27348:17 27420:24 27445:20 27446:11 mentioned 27344:13 27369:12 27371:10 27372:11 27381:11 27383:9 27412:1 27419:14 mentions 27445:16 Mere 27433:19 merry 27356:4,6 met 27430:19 Microphone 27343:22 27395:17 27447:4,17 mind 27354:18 mine 27440:3 miners 27375:7 27376:5,5 mineworkers 27411:24 mining 27375:4,6 minute 27386:9 minutes 27386:8 27412:17 27454:1 miraculously 27399:18 missed 27365:7 missing 27424:17,20 mistake 27360:10 27392:24 27393:5 27454:18 mistaken 27435:10 27455:5,6 misunderstanding 27411:20 mix 27370:14 Mkhari 27369:1 Mkhwanazi 27340:7 27342:17 27346:2,15 27348:23 27349:14 27349:18 27350:11 27351:5,10,17 27353:4 27363:12,18 27363:20,21 27364:1 27364:7,22 27365:8 27365:19 27367:1,7 27367:16,18,19 27368:25 27387:24 27390:25 27391:5,10 27409:20 27417:17 27418:4 Mkhwanazi's 27364:17 mobilise 27378:17	

<p>Module 27423:12,13 Mokotedi 27440:10 27446:18 27449:1 moment 27361:9 27422:2 27424:8 Monday 27422:13 Monene 27401:3 morning 27340:17,22 27340:24 27341:1,2 27356:21 27370:8 27451:22 27452:18 27452:19 27453:20 27453:23 27457:10 Mothotlung 27388:14 27388:23 27390:20 mountain 27391:21 mouth 27353:9,12 27382:19 move 27359:6,9 27374:19 27378:3,8,9 27385:15 27387:23 27393:19,24 27394:21 27395:10 27397:17 27408:17 moved 27340:21 27394:1,2 27457:5 moving 27361:14 27425:6 Mpembe 27375:7,11 27376:1,4,5 27377:8 27377:8,18 27401:19 27410:11,14,22 27411:9 27412:1 27413:1,8,12 27414:5 27414:8,11,17 27428:1 27429:19,22 27430:4 27457:3 mulberry 27356:6 murder 27383:2</p> <hr/> <p style="text-align: center;">N</p> <p>national 27349:19 27360:14 27362:10 27369:3 27383:16 27442:25 27443:8,18 27445:11,17 nature 27450:22 necessarily 27392:8 27401:8 necessary 27345:20 27348:14,16 27364:5 27422:21 27449:22 need 27347:10 27366:5 27366:16 27373:22 27381:18 27419:2 27420:5 27428:15 27449:25 needed 27347:4 27422:20 negotiate 27432:4 negotiated 27433:20 negotiating 27432:8 27434:1,1,9,13 27435:6 negotiation 27433:2 negotiations 27376:23</p>	<p>27377:3 27432:2,7,25 27433:13,15,22 never 27352:21 new 27402:21 27448:20 27449:6 Nguni 27375:13 nice 27387:12 nicely 27386:11,23 night 27431:1 NIU 27419:13 Nkwanazi 27369:13 27370:7 27372:4 27380:25 27381:16 27381:18 27442:7 Nodding 27386:20 noise 27397:6 non 27352:4,16 27353:3 27388:4 noncompliance 27360:4 nonsensical 27394:6 non-compliance 27341:16,21 27342:9 27345:9 27346:3 27347:21 27348:14 non-compliances 27452:24 normalised 27422:14 27422:20 normally 27405:17 North 27389:9 27390:9 27445:7,10 note 27457:10 notebook 27451:8 noted 27397:2 notes 27340:11,12 27358:12,14,15,15,16 27359:7 27373:24 27391:9 27395:12 27415:22 noting 27451:23 November 27446:15 Ntate 27398:14 NTSONKOTA 27384:20 27385:9 NUM 27384:24 27385:3 number 27357:13 27365:23 27378:13 27421:24 27422:1 27423:7 27435:14,18 27436:25 numbers 27421:25 Nyala 27432:8 27434:1 27434:10,13,16,22 27435:7 27437:8 Nyalas 27432:8 27433:5 27434:21 27457:5</p> <hr/> <p style="text-align: center;">O</p> <p>oath 27340:3 27353:7,8 27353:10 27405:23 objecting 27427:8 objection 27347:8 27385:2,12 27394:9</p>	<p>27402:19,23 27408:6 27408:17 27427:11 27448:1 objectives 27428:24 27429:3 observations 27446:24 27450:17 observed 27399:20 27400:11 obvious 27380:9 27422:16 obviously 27361:8 27369:18 27372:23 27387:23 27395:23 27405:18 occasion 27453:13,16 occurred 27342:2 27366:24 office 27369:2 officer 27406:20 27411:1 27433:19 officers 27411:25 officials 27431:1 oh 27349:5 27394:13 27405:8 27418:3 27442:19 27455:21 okay 27340:23 27343:20 27344:18 27345:1 27353:11,25 27354:12 27355:19 27356:3,18 27359:6 27359:19 27365:10 27370:24 27371:2,19 27372:3 27373:10,13 27374:4,15 27377:23 27378:4,11 27379:5 27380:8 27381:20 27386:11,12 27387:5 27387:17 27388:8,13 27388:17 27390:2,8 27392:5 27393:3,16 27395:11 27396:12 27397:4,18,18,19 27398:1 27399:8,8 27402:21 27403:6,9 27406:2,12 27408:24 27409:18 27411:7 27412:10 27413:7,8 27414:3 27418:11,18 27434:5 27450:3 27452:4 27456:6,7 27457:9 old 27408:21 OMPHILE 27340:4 27405:24 once 27383:11 27392:25 27418:12 27418:13 opening 27360:10 27362:9 openly 27381:22 operate 27407:24 27422:23 operation 27344:22,23 27344:25 27345:2,2,3 27345:8,13,14</p>	<p>27362:20,22 27380:25 27388:14 27389:25 27390:17 27395:14 27396:15 27400:1,16 27401:19 27406:7 27410:18 27411:11 27417:19 27421:9,10,11,16 27422:18,24 27423:10 27428:24 27432:18 27437:1 27440:24,25 operational 27354:6,23 27409:23 27410:5,8 27410:11,21,22,23 27411:3,9,10 27412:17 27413:5 27414:15 27424:5,15 27425:2 27428:8,13 27428:21 operations 27366:8,9 27400:20,25 27402:5 27418:24 27419:12 opinion 27369:18 27372:1 27394:21 opportunity 27346:11 27447:13 27448:3,6 27452:19 27453:16 27453:16 opposite 27359:23 options 27438:7 27452:1 order 27341:10 27347:24,25 27348:10,10 27352:21 27357:1,16 27362:22 27363:25 27369:2 27377:22 27383:13,13 27411:6 27411:15 27412:20 27419:1,9 27420:15 27423:1 27424:14 27425:5 27428:6 27429:12 27436:8 27437:24 27438:19 27444:9 orders 27396:19,20,21 27411:19 27414:6 ordinary 27362:20 origin 27391:9,14 27392:2 27393:13,15 27446:10 original 27417:3,21 27418:8 27423:10 27443:16 27451:10 originated 27391:16 origins 27391:18 outnumber 27420:24 outside 27412:8 overall 27409:23 27410:14,23 27412:25 27413:2,20 overlooked 27360:19 o'clock 27457:11</p> <hr/> <p style="text-align: center;">P</p>	<p>pad 27384:17 page 27373:12,12,24,24 27374:16,18,20,23,23 27378:2,2,3,5,7,8,8 27378:10,12,12,22,24 27378:25 27379:1 27421:25 27422:1,5,9 27442:19 panel 27369:13,17,21 27369:22 par 27395:8 paragraph 27374:8 27379:9 27382:3,14 27382:23 27383:4 27384:21 27420:3,8 27420:10 27421:21 27422:6 27423:7 27424:4,22 27428:7 27437:24 27442:15 27442:19 27443:4,5 27443:24,25 27444:6 27444:7,8 27445:14 27445:19,23 27450:11 27454:5 paragraphs 27440:23 27441:6 paraphrase 27361:11 pardon 27384:20 27435:11 part 27371:18 27380:1 27406:7 27410:18 27411:20 27419:23 27419:23 27430:23 27430:25 27435:19 27435:24 27445:2 27453:19 partial 27361:1 participants 27436:13 27438:1 participate 27369:16 participated 27363:21 27368:24 27400:16 participation 27402:4 particular 27393:20 27395:7 27413:21 27425:15 27442:1 parts 27432:3 patient 27395:7 pellets 27388:6,9,15 27389:5,12,13 27390:21 27391:2 people 27341:19 27351:14,17 27355:13 27363:4 27368:23 27369:11 27369:16,20 27370:2 27370:18 27371:4 27376:13 27377:6,17 27377:21,22 27383:14 27384:3 27386:2,10 27389:5 27391:5 27393:19 27397:21 27399:9,10 27399:12,16,18 27400:15 27401:20 27402:4 27407:1,3,12</p>
--	---	---	--	--

<p>27409:14 27412:3,9 27412:11 27417:3,10 27418:8,13 27420:25 27426:11 27427:2,3,4 27427:14 27437:7 27438:12 27455:17 perfectly 27358:13,14 perform 27406:20 period 27376:22 permission 27363:13 27388:20,25 27390:5 27395:18 27402:14 permitted 27403:22 perpetuated 27412:24 persisted 27389:13 person 27351:12 27354:5 27357:1,1,25 27370:3 27395:13 27396:14 27397:23 27398:3 27399:13,14 27399:15 27402:16 27402:25 27407:1,5 27409:16 27432:4 personally 27428:2,9 27428:22 27431:13 personnel 27443:1 27444:11 pertaining 27354:11 27425:3 petrol 27387:4 photographs 27431:6 phrase 27360:3 phrased 27360:1 Pick 27373:14 Pienaar 27440:15 Piet 27440:14,15 place 27386:24 27393:20,21 27433:23 27436:9 27437:25 27438:9,10 27438:17 27440:1 places 27341:23 27342:11,13 plan 27417:3,22,22 27418:8 27421:14,16 27421:20 27422:21 27422:22,24 27423:10,17,21,23 27424:5,12,15,22 27425:4,8,10 27451:23 27452:6,8 27452:16,21 planner 27417:9 planners 27417:8 planning 27424:23,24 27425:7 platform 27381:24 Platinum 27344:22,25 27345:3,3,8,13,14 play 27429:23 played 27349:20 27352:19 please 27386:6 27387:2 27387:3,3 27394:21 27395:9 27397:17 27402:22 27416:13</p>	<p>27421:20 27427:11 27439:16 27447:20 27449:2 27451:6 27452:5 pleases 27450:9 point 27347:23 27348:1 27348:14 27354:13 27356:20 27359:10 27364:19 27365:18 27366:22 27367:20 27368:4 27369:11 27373:16 27381:11 27385:11 27391:24 27392:19 27394:18 27394:22 27397:17 27406:3 27408:18,18 27408:21 27409:19 27410:20 27412:7 27413:15,19 27415:11,24,24,25 27416:3,4,6,8,14,17 27425:23 27427:22 27436:17 27437:5 27438:25 27441:10 27445:13 27449:8,18 pointed 27363:24,25 27438:24 pointing 27361:24 27445:22 points 27347:11 27357:15 27361:6 27372:10,13,19 27373:14 27377:24 27378:13 27404:18 27404:21,22 27405:25 27406:4 27415:12,19 police 27350:14 27352:13 27359:21 27360:22 27361:22 27362:4,8 27363:3 27366:8 27379:16 27380:1,12,13,17,19 27380:25 27382:5,8 27382:11,15 27383:5 27383:8,10,12,17,18 27383:24 27386:2,8 27386:23,24 27388:6 27389:6,7,9 27393:23 27396:20 27399:12 27406:20 27407:1,3 27415:2 27421:25 27422:1 27423:25 27425:9,11,19,22,25 27431:9,21 27432:9,9 27434:14,21 27436:4 27437:6 27442:17,22 27442:24 27454:6 27455:14 policeman 27397:5 27407:20 27419:11 policemen 27407:9,9 policies 27366:7 policing 27420:15 27440:1 POP 27349:20</p>	<p>27350:12 27351:5,8 27351:19 27354:5,24 27356:25 27357:25 27362:20 27363:20 27363:20 27364:19 27366:22 27367:16 27367:17,20 27368:14,24 27369:5 27369:9,16,20 27370:3 27390:9 27395:13 27396:14 27411:16 27419:7,10 27419:10,18 27421:1 27433:24 27447:1 27450:18 POPS 27367:2,9,10,23 27411:1,16 27433:18 POP's 27365:18 27421:4,10,11 position 27371:24 27409:13 27433:13 27433:14,17 27434:2 27437:21 27447:1 27450:18 27452:25 27453:3 positive 27360:20 27421:6 27457:7 positively 27360:6,7 possibility 27398:11 27435:3 possible 27388:3 27405:20 Potchefstroom 27366:20 27367:14 power 27382:1,25 powers 27371:8 precepts 27366:7 preface 27341:5 prefacing 27384:12 prefer 27372:21 27373:3,6 preferable 27376:16 preparation 27349:15 27401:1 prepare 27348:24 27439:20 27446:22 27446:23 27449:1 prepared 27340:12 27415:21 27439:13 27441:19 preparedness 27450:21 preparing 27348:20 27439:17 prescribes 27419:4 prescript 27398:16,18 prescripts 27388:5 27390:19 27391:5 27395:24 27396:24 27452:25 27453:7 presence 27432:9 27437:17 27446:18 present 27413:11 27434:24 presentation 27365:24 27371:10 presented 27362:9</p>	<p>27363:4 27364:3 27452:6,16 pretend 27386:8 pretty 27444:18 prevent 27383:13 27418:15 prevented 27455:18 27456:4,13,16,18 prevention 27383:20 27419:23 previous 27455:15 previously 27378:17 27403:3 pre-empt 27398:14 primarily 27353:15 27420:25 primary 27343:10 prior 27452:8,8,15 priority 27436:10 27438:1 privileged 27346:6 27347:9 27454:21 problem 27376:10 27377:21 27378:19 27380:14 27382:8 27383:8,10 27412:12 27416:3,10 27449:20 problems 27445:10 procedure 27448:1 27450:7 proceed 27340:22 27353:14 27378:5 27384:18 27427:11 proceeded 27412:2 PROCEEDINGS 27340:1 process 27346:2 27348:24 27349:15 27351:10 27352:12 27352:15 27363:21 27364:1 27365:8,19 27367:19,19 27368:25 27381:25 27382:24 27384:25 27448:1 processes 27350:4,20 27366:21 27368:14 27379:15,25 27380:4 27380:11 27381:23 27382:4 27383:7 product 27352:1 27359:16 promise 27455:13 proper 27346:8 27422:20,22 properly 27385:12 27397:5 27409:6,12 27433:16 property 27383:3 propose 27395:3 proposing 27403:18 proposition 27377:6 protesters 27387:4 provide 27425:18 27437:1 27443:8 provided 27381:23</p>	<p>provides 27419:3 providing 27442:25 province 27442:17,24 provinces 27442:22 provincial 27369:2 27406:13 27410:13 27443:7,18 27445:16 27445:17 psychologically 27397:21,24 27398:12,19 27400:11 27401:21 27402:18 27406:8,17 27406:22 27407:6,11 27407:16 27408:3 public 27369:2 27405:22 27420:15 pull 27355:18 purpose 27343:11 27347:10 27362:11 27364:18 27374:7 purposes 27348:20 27400:10 put 27345:23 27353:9 27353:11 27360:4 27361:10,10 27365:24 27373:2,9 27374:9 27382:19 27388:10,17 27389:11,24 27393:16 27394:10 27397:20 27398:4,6 27401:10 27402:24 27406:14,25 27414:16 27428:1 27436:9 27437:25 27438:9,9,17 27441:11 27447:2,14 27449:23 27452:19 27455:15 27456:15 puts 27362:8 putting 27351:24 27365:23 27368:5 27377:5 27392:4 27402:23 27406:6 27417:18</p> <hr/> <p style="text-align: center;">Q</p> <p>QQQ1 27442:1 27454:5,6 QQQ2 27438:22 27439:12,17 27441:11,12,15,24 27442:15 27443:16 27443:24 27444:25 27445:6,15 27447:14 QQQ5 27451:7 qualify 27366:2 query 27451:8 question 27344:11 27346:18 27349:3,12 27349:13 27356:7 27357:20 27358:22 27358:24,24 27359:13 27360:2 27361:19 27362:12</p>
--	--	---	---	--

<p>27362:16 27367:13 27368:2 27371:21 27372:18 27373:1,4 27373:23 27374:12 27379:23 27381:10 27384:12,18 27385:2 27387:3 27392:11,25 27393:8 27394:20 27395:9 27396:7,9,9 27397:12,15,17 27399:5 27401:16 27404:3 27406:24 27408:14,25 27409:3 27410:2 27414:14,16 27415:24,25 27416:2 27416:8,13 27418:2 27427:9 27429:11 27446:6,9 27449:16 27449:22,24 27450:4 27450:5,8,13 27454:5 27455:12,16,24 27456:2,8,9,10 questions 27341:6 27355:5 27356:19 27382:16 27384:13 27395:5,19 27401:18 27404:19 27414:14 27416:1,5,5,17 27446:2 27451:4 27455:9,9 27457:20 question's 27379:18 quickly 27385:16 quite 27349:8 27357:13 27362:11 27385:12 27441:25</p> <hr/> <p style="text-align: center;">R</p> <p>racking 27358:8 railway 27377:18 27410:17 27427:15 27429:19 raise 27343:4 27346:22 27354:25 27355:1,5 27356:19 27357:10 27357:11,20,20 27359:3 27448:3,6 raised 27342:3 27347:3 27347:8 27352:4,6,15 27353:3 27356:21,25 27357:3,4,6,22 27358:4,6 27359:15 27362:6 27383:4 27388:4 27391:4 27405:8 27430:11 27444:2,16,25 27445:2,6,11,19,20 27445:24 27449:7,18 27449:18 27453:11 raises 27397:16 raising 27347:4 27348:8 27381:17 27385:9 27445:16 27447:25 rapidly 27378:14,16 read 27343:21 27362:19 27364:6</p>	<p>27373:8 27381:21 27417:14,14 27429:1 27443:5 27450:10,14 27450:15 reading 27372:15 27382:14 27386:19 reads 27420:13 27444:1 27454:6 ready 27418:21 real 27363:2 27413:2 really 27381:9 27385:2 27385:12 27395:2 reason 27343:4 27347:18 27368:18 27398:19 27401:17 27405:19 27425:21 27425:24 27434:13 27435:2 reasons 27405:20 27412:21 27435:1 recall 27435:17 27438:23 27439:10 received 27349:18 recipe 27410:2,24 27412:8 27414:22 recollection 27435:9,21 27435:24 reconciliation 27344:12 record 27356:17 recorded 27344:2 27437:14 refer 27358:11,14,15 27403:3 27448:25 reference 27368:12 27384:21 27388:24 27394:20 27395:6 27436:18,20 referred 27423:16 27438:6 27445:3,5 referring 27359:7 27422:3 27423:6 27425:16 27430:12 27437:7 refinery 27387:5 reflected 27346:16 reflecting 27348:17 27350:13 reflection 27347:8 refuse 27393:19,22 regard 27350:14 27391:20 27417:19 27427:6 regarded 27391:11 27393:17 regarding 27376:19 27395:14 27444:3 27451:21 raises 27402:23 register 27345:9,14 27347:21 27348:15 27352:5,17 27354:1 27361:19 relate 27451:11 27452:1 related 27340:7</p>	<p>27344:7 27446:25 27450:18 27451:8 relates 27416:3,8 27438:22 27454:5 relating 27413:19,22 27447:15 27448:3 27452:15 relation 27341:21 27344:13 27364:2 27370:22 27390:18 27416:18 27420:15 27420:21 relationship 27364:15 relevance 27390:25 27417:17 relevant 27343:15 27381:13 27389:3 27397:16 27415:1 27416:14 reliable 27441:16,18 reluctant 27394:17 remain 27394:12 remark 27355:23 remarks 27348:18 remember 27356:9 27357:19,24 27358:2 27358:3,7,9,9,22 27360:18,20,21,21 27371:4 27373:20 27388:3 27393:7 27414:21 27416:20 27416:22 27421:17 27421:18 27425:11 27425:13,19,20 27428:2,4 27430:14 27430:15 27432:4,5 27432:10,11 27435:5 27435:12 27436:5,6 27436:18 27439:1,2,6 27439:7 27440:7,10 27441:2,12,14,19,20 27456:14 reminded 27356:20 27360:19 remove 27386:24,25 27387:1 27399:16 renders 27427:11 repeat 27356:7 27386:23 repeated 27367:18 repeatedly 27360:23 repeating 27356:17 repetition 27366:24,25 27367:21,23,25 27384:16 rephrase 27404:2 replaced 27409:16 report 27350:14 27352:10 27364:7 27370:7 27372:4,13 27372:22 27373:2,21 27374:10,12,16 27377:25 27379:6,8,9 27379:12,15 27381:6 27381:12,14,16,21 27382:10 27384:2,6</p>	<p>27384:22 27385:4,5,7 27385:19 27386:16 27390:25 27391:10 27391:20 27394:20 27395:9 27409:20 27420:3,5 27430:12 reports 27385:3 representatives 27346:16 27347:18 27430:20 27433:1 27434:19 27436:24 27436:24 27437:5 reprimanded 27403:14 request 27386:4,23 27404:15,24 27405:6 27437:3 requested 27402:12,13 27431:5,20 27446:21 27450:16 require 27420:16 required 27400:18 27419:7,24 requirements 27395:13 27409:21 27423:19 reservations 27342:12 27342:14,24 27343:4 27345:16 27346:1,1 27346:13,22 resolution 27368:10 resources 27443:1,9 27450:21 respect 27341:16 27371:20 27393:12 27413:19 27423:18 27429:23 respond 27380:2 27381:19 27418:2 27448:11,19 responded 27375:8 responds 27419:8 response 27357:12 27447:23 responsibility 27411:2 rest 27393:1,9 restoration 27343:19 restructuring 27378:18 resulted 27382:1 resulting 27383:2 resume 27405:18 27411:2 resumes 27340:2 27405:13,14 returned 27426:3 reverse 27412:3 re-examination 27418:21,22 27446:7 27448:21 27449:7,19 re-examined 27448:7 re-traverse 27341:8 right 27343:11 27344:21 27349:8,22 27350:2,21 27351:1 27353:16 27357:1,17 27362:11,12,24 27364:18 27365:20 27366:23 27367:18</p>	<p>27367:20 27369:23 27371:11,13,15 27375:21 27376:8 27399:23 27409:8 27414:8 27421:24 27429:14 27449:20 27451:12 27454:7,17 27454:23,24 27456:5 27456:17,20,22,23,25 risk 27398:4,6,7 27425:19 risky 27398:11,20 27399:10 ritual 27426:11 27431:15 rivalry 27382:2,25 road 27457:5 role 27349:20 27350:12 27352:19 27429:21 27429:22 roles 27409:22 27412:10 27429:25 roll 27381:21 rolled 27394:4 27436:5 Roots 27341:25 27342:1,3,14 27346:2 27346:14 27348:13 27348:17,19 27350:1 27350:12 27352:1,7 27352:12,18,25 27353:4 27354:1,13 27357:3 27359:16 27364:17,24 27365:8 27365:9,12,13,14,15 27365:16,19,23 27366:1,2,12,13,19 27366:24 27367:1,2,3 27367:17,24 27370:12 27442:4 round 27356:4 27406:3 27408:22 27436:22 rounding 27408:20 Roux 27425:7,12 rules 27366:7 rulings 27403:3 Rustenburg 27390:11 27439:19</p> <hr/> <p style="text-align: center;">S</p> <p>Safety 27398:3 Sangoma 27431:16 sanitisation 27370:13 sanitised 27370:11,15 27371:5 SAPS 27360:11 27361:18 27395:14 27410:20 27411:1,5,7 27419:22 27423:12 27430:12,19 27431:3 27431:4,14,20 27443:15 27448:24 27450:2 sarcastic 27355:23 satellite 27390:14 saw 27348:13 27372:5 27391:12,16,19,21</p>
--	---	--	--	---

<p>27396:14 27426:1,2,5 27426:9,10,18 27427:13,15,20,21 27442:11 27452:10 27454:22 saying 27342:7,11,12 27350:1 27351:14,24 27354:17,20 27355:6 27357:7 27358:25 27361:16 27362:23 27363:19 27366:5 27367:13,15 27371:8 27371:13 27377:6 27383:6,19 27385:16 27386:7,9 27387:4 27390:8,16 27391:14 27391:16 27395:24 27396:23 27397:19 27403:13,14 27406:5 27408:2 27409:3 27412:6 27413:25 27415:24 27416:11 27416:17 27418:4 27424:11 27427:2 27428:12 27441:13 27441:21 27443:18 27448:25 27456:10 says 27368:5 27381:22 27386:16 27387:24 27398:3 27401:20 27402:24 27410:11 27410:22 27413:17 27420:22 27422:11 27422:12,13 27423:10,11 27424:4 27424:14,23,23 27427:1 27428:8 27429:2 27436:9,12 27438:19 27443:12 27443:13 27444:8,22 SC 27446:5 27447:17 27448:11,20 scene 27354:6 27358:1 27411:2,18,24 scope 27411:19 27414:7 score 27449:8 screen 27372:22 27373:2,9,23 27374:1 27379:1 27420:11 27421:23 27423:3 27442:18 second 27374:8,19,23 27374:23 27377:11 27377:12 27415:13 27415:20,21,22 27420:12 27432:6 27442:19 27443:25 27444:1,8 27452:5 secondly 27355:17 27402:12 section 27348:5 sectional 27429:21,23 27430:6 sections 27404:8 see 27340:21 27343:4</p>	<p>27356:7 27358:8 27359:1 27362:8 27363:5 27370:3 27372:8 27373:25 27394:13 27399:15 27406:4 27410:9 27420:17,18 27421:24 27422:7,11 27422:14,15 27423:9 27423:11,13,14 27424:4 27428:10,11 27436:10,11,15,16 27438:3,4 27443:1,2 27443:9,10 27444:4,5 27444:12,13 27454:10,15,19,21 27455:3 seek 27445:22,23 seen 27368:14 27371:1 27371:23 27372:4 27374:16,17,22 27391:13 27431:15 27448:13 senior 27354:5,24 27356:25 27357:25 27390:8 27395:12 27396:14,17 27411:1 27411:16,16 sense 27366:20 27369:16 27395:16 27396:1,16,25 27397:1,3,7,20,25 sensitive 27411:12 sent 27448:23,25 sentence 27420:12 27444:1 separate 27364:23 27366:4,7 service 27399:24 27415:2 session 27442:4 Setswana 27376:6 settlement 27455:19 27456:16 27457:4,6 Shapiro 27437:2 sharp 27352:16 she's 27447:24 shoot 27387:6 short 27359:12 27372:24,25 27404:11,18,21 27405:25 27408:18 27408:18 27415:12 27415:19 shortcut 27372:13 shortcuts 27372:16 shortly 27417:18 shot 27413:5 shots 27413:3,6,9,13 shouldn't 27403:21 side 27362:4 27456:14 significant 27439:5,11 silently 27381:22 similar 27350:5,22 27351:2 similarly 27349:14</p>	<p>27350:10,17 27383:22 simple 27374:12 27377:5 27414:14 27418:9 simply 27345:23 27359:14 27377:13 27385:5 27390:25 single 27367:23 Sir 27340:19 27342:15 27343:9,13 27345:6 27348:22 27350:6 27351:24 27352:2 27354:16 27355:16 27356:11 27357:12 27364:9,13 27371:8 27381:2 27383:21,25 27390:11 27393:15 27406:25 27407:20 27417:6 27445:8 sit 27405:20 sitting 27383:17,18 27405:15,18,21 27412:7 situation 27354:23 27357:2 27358:1 27362:19 27363:6,7 27380:25 27397:6 27413:21 27416:24 27416:25 27418:15 27422:13,19 27423:25 27425:5 situations 27420:22 27444:3 slide 27436:18,23 27437:4 slight 27445:4 slightly 27417:12 slip 27415:20 slowly 27352:12 small 27404:8 soccer 27386:11,17 social 27400:17 solely 27420:14 solution 27376:15 27377:11 sooner 27425:3 sorry 27347:25 27349:5 27353:13 27360:16 27363:3 27369:6 27372:20 27384:20 27399:8 27413:7 27415:15 27421:3 27424:8 27455:20,22 sort 27346:10 27401:4 27405:9 sought 27438:25 so-called 27340:6 27394:2 speak 27376:13 27377:21 27393:14 27430:7 27442:3,6,10 27444:17 27447:23 speakers 27375:13,13 speaking 27362:5</p>	<p>27375:7 27376:5,6,15 27377:6 speaks 27377:11 27430:8 special 27420:16,20,22 specialised 27420:24 specific 27348:20 27357:14 27361:7 27372:9 27374:9 27393:8 27419:5 specifically 27367:8 27420:14 27421:21 27443:5 27450:1 specifying 27439:10 spectrum 27367:4 spent 27441:9 spirit 27395:22 spoke 27344:10 27345:20 27361:14 27375:11 spontaneous 27419:3 squatted 27411:24 SS1 27424:7 SS2 27424:8,9 SS3 27421:20 27422:9 27423:18 27424:3,3,8 27424:12,16,22 stadium 27386:18 27387:12 stage 27366:1 27388:9 27391:3 27405:15 27417:9 27422:23 27433:9 27452:8,15 stand 27352:20 27400:24 standing 27341:10 27347:24,25 27348:9 27348:10 27352:21 27357:1,16 27362:22 27363:25 27411:6,14 27412:20 27419:1,9 27423:1 27424:14 27428:6 27429:12 27436:8 27437:24 27438:19 stands 27354:25 27450:15 start 27439:24 started 27440:4 27451:23 starts 27443:25 state 27346:11 27408:11 stated 27437:6 statement 27346:16 27347:2 27348:4,12 27351:25 27360:10 27360:20 27361:1 27362:9 27370:10 27401:24 27405:22 27420:13 27437:15 27439:13,13,20 27440:5,23,25 27441:2,12,13,18 27443:16 27445:6 27446:11,23,24</p>	<p>27447:14,15 27448:2 27448:4,8 27449:2,3 27449:6,14 27450:13 27450:16,19 27454:16,21 statements 27345:25 27347:5,19,20 27348:6,7 27438:22 27438:25 27441:10 27442:1,15 State's 27363:3 stay 27412:10 stayed 27432:14 steadfast 27383:16 step 27356:15 27423:8 27436:8 27437:25 stepped 27412:18,21 steps 27419:4 27438:7 stick 27417:2 stood 27412:1 27414:7 stop 27383:13 story 27348:11 27359:12 strike 27380:16 27383:23 strikers 27391:10,20 27393:17 27425:10 27425:22 27426:2,5,9 27426:10,19,19 27427:13,20 27429:20 27430:13 27431:6,14,22 27433:2,3 27434:20 27436:24 27442:12 27454:8,12,12,16,17 27456:12 strikes 27440:1 structure 27428:9,23 27428:24 27429:2,7,8 structured 27381:24 struggle 27382:1 27383:1 stuck 27417:21 sub 27428:19 27436:8 subject 27371:2 27408:24 27437:17 27437:18 27449:21 27453:25 submitted 27438:22 subparagraph 27423:5 27423:19 27428:7,8 subsequent 27389:25 subsequently 27376:22 27388:23 substance 27347:8 successful 27389:12 sufficient 27373:9 sufficiently 27379:18 27443:7 suggest 27347:11 27384:24 27395:4 27456:11 suggested 27456:12 suggesting 27427:3 suggestion 27360:3 27375:9 27376:25</p>
--	---	---	---	---

<p>suggestions 27435:15 suitable 27418:7 summarise 27346:20 Sunday 27426:11,13 superman 27399:3 support 27372:25 27421:4,12 suppose 27381:10 supposed 27345:4 27352:10,21 sure 27346:8 27347:10 27350:6,8,9 27359:24 27360:1,4 27362:11 27368:10 27369:7,10 27371:17 27372:1 27379:17 27382:15 27392:8 27399:14,22 27400:13 27401:23 27401:24 27417:16 27422:2 27424:1 27426:25 surely 27341:18 surfaced 27364:10 surprised 27352:3 27359:14,14,19,20 27361:16,20,22,25 27362:1,16 surrounding 27452:14 27452:21 suspect 27425:22,25 sworn 27450:6 s.u.o 27340:4 27405:24</p> <hr/> <p style="text-align: center;">T</p> <p>tactical 27420:13 27421:3,9 take 27340:11 27356:15 27357:2 27363:11,11 27368:11 27371:4,21 27372:2 27379:8 27384:9 27404:11 27410:17 27419:4,23 27425:9,10 taken 27431:6 27436:14 27438:2 talk 27348:9 27351:19 27352:19,24 27353:10 27378:14 27380:5 27416:24 27421:14 27438:21 27439:12 27440:24 27441:1 talking 27344:24 27345:2 27354:10 27355:3,14 27357:16 27361:15 27367:23 27390:16,17,18 27412:15 27427:24 27428:5 27429:18 27433:11 27453:21 talks 27382:24 27423:1 27437:25 27445:15 team 27342:21,25,25 27343:5,5 27345:18 27345:20,24 27347:6</p>	<p>27412:9 27413:8 27433:20,21 27434:1 27442:7,7 27448:24 teargas 27454:8,9,11 27454:15,18 telepathic 27405:9 telephone 27436:25 27437:2 tell 27365:6 27372:17 27372:21 27373:14 27374:2 27379:25 27380:2 27430:5,6 telling 27348:8,11 27365:2,3,5 term 27398:14 terms 27357:1 27368:12 27388:24 27392:17 27394:20 27395:6 27412:20 27423:24 27424:17 terrain 27384:4 27385:20 27386:16 27386:17 27387:11 27387:12,14,15 27417:20 27418:13 27418:16 test 27348:3 testified 27342:10 27353:3 27354:18 27370:18 27419:13 27419:22 27434:18 27439:12 testify 27370:25 testing 27346:10 27347:16 thank 27340:8,25 27347:14 27350:25 27355:16 27366:18 27371:12 27373:17 27375:25 27379:5,13 27387:22,22 27391:8 27393:11 27398:22 27401:17 27403:19 27403:23 27404:19 27405:12 27406:2,12 27408:15 27409:19 27418:18,20,22 27422:10 27426:14 27427:12 27429:9,13 27429:17 27435:23 27437:10,22 27446:3 27448:17 27449:25 27451:2 27452:4 27454:2 27455:8,8 27456:24 27457:14 27457:18,19 thanks 27363:23 theoretically 27416:24 thereof 27420:9 27442:16 27452:11 thereto 27340:7 there's 27345:21 27347:8 27373:15 27376:20 27384:24 27396:1 27410:1 27437:15,19</p>	<p>27447:23 they're 27427:4 27445:3 thing 27344:22 27350:1 27357:3 27361:16,21 27365:20 27374:1 27376:13,17 27377:12 27379:6 27381:17 27386:10 27390:3 27391:24,25 27433:6 27443:13,13 27444:19,22 27450:1 27452:5 things 27343:15,16 27345:4 27352:16 27353:9 27357:13 27361:18 27364:15 27365:23 27371:9 27372:10 27381:4,17 27382:10,12 27384:14 27386:2 27392:13,13,18 27397:3 27402:23 27427:25 27440:4 27451:21,24 think 27347:7,9 27349:1 27356:8 27360:2 27362:12,24 27364:4,5 27365:17 27366:1,5,11,14 27368:1,3,5 27369:19 27370:21 27372:9 27373:22 27375:12 27375:12,25 27376:12,22,24 27378:2,25 27379:13 27379:20 27380:3,9 27380:15 27382:18 27382:20,21 27384:16 27392:3 27397:11,15 27411:8 27422:5 27424:9 27426:2 27427:5 27430:11 27437:14 27441:16 27449:16 27449:22 27450:7 27455:13,15 thinking 27411:14 27414:20 thinks 27411:10 third 27357:7,9 27415:20 27443:25 thought 27381:8 27409:2,4 27412:11 27454:22 threat 27435:4,6,13,13 27435:17 threats 27435:14 27437:19 three 27356:19 27407:9 27407:9 27414:14 throw 27387:5 thrust 27363:2 Thursday 27417:20 tiers 27429:7 time 27355:9,18,21</p>	<p>27362:18 27365:16 27370:16 27375:6 27376:2,4 27382:1 27386:25 27400:20 27401:20 27409:16 27412:15 27422:19 27432:15 27441:9 times 27386:3 Tlhabane 27440:3 today 27341:4 told 27350:10 27358:2 27386:25 27392:7 27412:3 27437:3 27439:20,23 27446:22 Tonder 27440:14 27446:13,14 top 27421:24 topic 27340:6,14 27341:4 27363:12,19 27388:20 27395:18 27425:7 27432:1 27435:25 27436:2 topics 27390:5 27404:20 27449:21 totally 27377:24 27400:14 tragedy 27342:6 trained 27420:14 27450:21 training 27369:5,9,9 27444:11 transcribers 27355:15 transcript 27415:16 transcripts 27365:7 trauma 27400:18 traumatic 27399:19 traumatised 27397:22 27397:24 27399:15 27402:6 treated 27405:16 trespassing 27347:9 tried 27372:24 troops 27396:14 TRT 27419:14,17 true 27390:7 27394:1 27403:11 27406:6 27407:4 27408:1 27409:21 truth 27343:18,24,24 27344:5,6,12 27345:4 27345:21 27354:20 27404:1 try 27417:19 trying 27358:9 27362:20 27396:23 27415:19 27424:2 27443:14,14,15 27449:8,9 Tsiloane 27412:1 Tswana 27376:14 Tuesday 27405:16 27457:10 Twala 27369:2 two 27341:5 27350:4 27350:10 27351:2</p>	<p>27355:4,11 27356:19 27368:11 27377:6 27383:8 27392:12 27399:20 27403:1 27404:8,9,18,19,20 27404:21,22 27405:25 27406:4 27407:9 27408:19 27412:9,11 27414:19 27415:19 27429:6 27432:3 27436:12 27438:1,25 27441:10 27442:15 27444:21 27444:22</p> <hr/> <p style="text-align: center;">U</p> <p>unable 27357:17 27418:1 unacceptable 27403:2 27403:4,21 undergoing 27431:15 undermined 27384:25 undermining 27379:14 27380:10 27381:25 27382:4,24 understand 27340:9 27344:5,8,9,12 27352:9 27362:2 27363:1,14,16 27364:15 27368:1,4,5 27375:14 27376:16 27376:18 27379:18 27379:22 27380:2 27387:7,8,18,19 27396:16 27397:8,10 27397:13 27413:23 27414:5,18 27420:20 27424:3,16 27427:6 27443:20,21 27449:11,18 27451:25 27454:25 27456:2 understanding 27360:18 27376:7 27377:18 27438:15 27443:17 27444:15 27444:19 27457:12 understands 27379:19 27379:21 understood 27369:14 27381:5 underwent 27426:11 unfortunately 27364:21 union 27380:6,11 27381:25 27431:20 27434:19 unions 27383:1 unique 27374:8 unit 27365:16 27390:14 27420:24 27421:5 27447:1 27450:18 units 27367:2 27420:21 27421:9 unit's 27450:20 unnecessary 27356:2</p>
--	--	---	---	--

unrest 27444:3 unsigned 27439:13 untrue 27403:6 update 27425:4,8,10 updated 27452:10 uprising 27444:11 use 27375:9 27389:13 27403:7,13,13 27420:14 27425:5 27444:3,11 uses 27403:1 27420:13 usual 27457:12	Warrant 27433:19 Warrant-Officer 27401:2,2 wasn't 27344:1 27348:9 27353:20 27366:1,13,13 27375:17 27377:3 27390:4 27405:5 27417:19 waste 27355:8,21 27456:10 wastes 27355:17 wasting 27376:2,4 water 27385:13 way 27365:22 27371:9 27373:1 27387:13 27388:17 27393:16 27408:16 27418:15 27437:20 27447:2 27448:7 27456:15 Wednesday 27405:16 27405:16 week 27405:16 weight 27396:3 went 27343:11 27346:12 27349:22 27349:23 27350:2,2 27350:21,21 27351:1 27351:1 27352:18 27364:18,18 27365:20,20 27366:23,23 27367:4 27367:18,18,20,20 27369:20 27394:3 27400:9 27401:4,6,7 27402:25 27412:14 27426:4 27431:9 27434:15 27453:3 weren't 27353:18 27415:1 27452:7 Wesley 27438:21,24 27439:9 27441:9 27443:3,12 27446:6 27446:10,17,20 27447:5,13 27448:2 27449:23,25 27450:3 27450:9 27451:2 West 27389:9 27390:9 27445:7,10 we'll 27356:3 27405:21 27405:22 27409:18 27435:19 we're 27344:24 27363:12 27368:6 27371:24 27373:19 27378:12 27385:3,4 27393:25 27422:2,8 27423:17 27424:7 27435:25 27449:3,8,9 we've 27371:23,23 27378:2,25 27392:25 27420:7 27430:17 27451:10 whatsoever 27354:15 27383:18 27402:24 what's 27362:4	27364:6,7 27368:4 27381:12 27396:9 27415:13 27423:8 27455:12 white 27395:15,25 who's 27413:20 wild 27373:6 wing 27419:14,18 wire 27368:19 27394:4 27436:5 27438:10 27451:21 wish 27405:4 27448:18 wished 27405:3 wishes 27451:3 withdraw 27400:19 withdrawn 27400:25 27408:5 withdrew 27402:7 withhold 27445:23,23 witness 27346:6,11 27349:9,10 27361:9 27361:10 27363:20 27364:25 27366:5,17 27368:5 27374:10 27377:2 27379:19,20 27382:16,20 27385:6 27389:1,24 27394:10 27403:2 27404:24 27405:3,6 27408:7 27413:17 27429:11 27447:14 27448:2,6 27448:22 27449:4,8 27449:10,13 27455:15 27457:11 27457:20 witnesses 27369:15,15 27370:11,22 27385:6 27403:3 27413:16 27431:22 witness's 27372:1 27382:19 27446:11 won't 27347:14 27361:11 27396:7 27397:10,14,18 27455:14 word 27369:15 27403:8 27444:16 27449:20 wording 27419:5 27429:12 words 27353:11 27361:11 27370:12 27382:19 27444:22 27444:22 work 27340:7 27396:20 27397:3 27408:8 27409:11 27417:17 27423:24 worked 27343:6 27402:11 27417:22 workers 27400:17 27411:24 27412:2 27440:3 working 27364:7 27365:12,13 27385:6 27393:2 27402:13 worse 27359:22	worthy 27355:23 wouldn't 27369:18 27393:5 27397:5 write 27394:19 27395:9 written 27347:3 27395:15,25 27396:17 27397:7 27424:5,14 wrong 27343:11 27346:12 27349:23 27350:2,21 27351:1 27357:18 27361:12 27364:18 27365:21 27366:23 27367:18 27367:20 27369:15 27371:15 27377:22 27377:23,24 27385:25 27432:3 27441:17 27453:4	09:08 27340:2 09:28 27353:15 09:48 27369:4 <hr/> 1 1 27423:7,7,19 27436:8 27436:9 10 27428:7 27447:2 27450:19 10th 27344:16 27421:23 27425:17 10.2B 27428:19 10:07 27383:13 10:15 27436:22 10:27 27397:19 11 27374:6 27436:8,8 27437:24 11th 27425:17 27426:12,20 27455:18 11.2 27437:24 11.2.1 27438:15 11:08 27405:14 11:28 27418:22 11:48 27431:11 118 27436:20,23 27437:4 12th 27425:17 27426:13,14,21 12:07 27443:17 13 27422:13 27446:25 27450:17 13th 27352:19 27353:16 27354:2,11 27376:22 27398:23 27400:1,16,17 27402:6 27406:9 27409:6 27410:6 27411:19 27414:1,7 27415:6 27418:25 27421:20,22 27423:18 27424:13 27426:1 27428:6 27429:19 27430:18 27431:12,12,13,23 27439:24 27442:11 27451:8,11,16 27455:22 13:30 27452:6,16 14 27419:2 14th 27432:14 27434:2 27434:3 27451:20,22 27452:18 15th 27353:16 27354:2 27376:22 27432:21 27432:22 27434:8,19 27435:5,14,17 27436:21 27451:12 27451:18 27452:10 27452:18,18,23 27453:6,22 16th 27344:15,17 27353:19,21,23 27368:19 27393:24 27399:18 27400:1 27406:8 27407:18	
<hr/> V Van 27440:14 27446:12,14 various 27341:13 27342:9 27435:16 vehicles 27432:9 27437:8 verify 27454:23 Vermaak 27419:15 27442:11 27455:15 version 27357:7,9 27359:21 27361:15 27361:17,22 27362:8 27370:9,11 27455:14 27455:16 video 27454:11,15,19 27454:21 view 27364:19 27365:19 27366:23 27367:21 27381:13 views 27369:21 VISPOL 27419:14,18 voiced 27371:5 voluntarily 27386:2 27400:24 voluntary 27384:3 27385:20 27387:15	<hr/> V Van 27440:14 27446:12,14 various 27341:13 27342:9 27435:16 vehicles 27432:9 27437:8 verify 27454:23 Vermaak 27419:15 27442:11 27455:15 version 27357:7,9 27359:21 27361:15 27361:17,22 27362:8 27370:9,11 27455:14 27455:16 video 27454:11,15,19 27454:21 view 27364:19 27365:19 27366:23 27367:21 27381:13 views 27369:21 VISPOL 27419:14,18 voiced 27371:5 voluntarily 27386:2 27400:24 voluntary 27384:3 27385:20 27387:15	<hr/> X Xhosa 27375:13 27376:13	<hr/> Y year 27439:25 yesterday 27340:21 27406:22,25 27407:5 27417:13 27421:14 27425:7 27451:7,16 you'll 27379:9 27457:13 you're 27340:3,22 27341:3 27347:11 27349:8 27350:7 27351:14 27354:10 27358:8,13 27359:19 27360:10 27362:24 27365:4 27366:4 27368:5 27369:23 27375:23 27381:11 27389:4 27392:3,19 27394:18 27399:3 27401:11 27405:23 27415:19,21 27416:11,14 27427:7 27447:20 27450:4 27453:21 27457:15 you've 27342:10,11 27344:13 27353:2 27354:18 27358:21 27363:9 27364:6 27369:12 27372:4 27374:1,16,22 27385:11 27396:9 27398:15,16 27422:25 27450:23	<hr/> Z Zokwana 27431:21 Zulu 27375:11 27377:11	<hr/> 0 006 27437:14 009 27437:15

<p>27408:4 27409:7,12 27412:24,25 27414:1 27421:16 27432:17 27435:14,18 27452:7 27452:15,16</p>	<p>9 27457:10 9th 27344:14 9.2 27423:1,2,3,5 9.2.1 27424:4,13</p>			
<p style="text-align: center;">2</p> <p>2 27365:19,23 27366:2 27366:19 27423:12 27428:7,7,18 27436:8 2.1 27424:4 27438:6 2.2 27381:20,21,22 27382:14 27384:21 20 27415:25 27416:4 20/12/08 27422:13 2012 27418:25 27446:15 27447:2 27450:23 2014 27340:1 22 27440:2 22nd 27418:24 27419:13 27440:25 25 27340:1 262 27341:10,16,21 27342:9,24 27343:16 27345:9,14 27346:3 27347:22 27348:10 27348:10,15 27351:12 27352:5,17 27352:21 27354:1,5,8 27354:14 27356:20 27357:1 27359:22 27360:11,21 27361:19,23 27362:16,22 27363:5 27363:5,6,22,25 27395:15,22 27396:13,17,20 27409:20,21 27411:6 27411:15 27412:20 27419:1,2 27423:1 27428:7 27436:8 27437:24 27438:19 29th 27446:14</p>				
<p style="text-align: center;">3</p> <p>3 27421:21 3.1 27422:6,11,12,17</p>				
<p style="text-align: center;">5</p> <p>5 27442:15 27443:25 5.1.1 27424:22,23 5.18 27454:6,6</p>				
<p style="text-align: center;">7</p> <p>7 27422:5</p>				
<p style="text-align: center;">8</p> <p>8 27422:9 27443:4,5 27444:6,7 27445:14 27445:19,23 8th 27405:18,21 88 27420:3,8,10 89 27422:9</p>				
<p style="text-align: center;">9</p>				