

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 223

29 APRIL 2014

PAGES 27458 TO 27640



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Page 27458

1 [PROCEEDINGS ON 29 APRIL 2014]
 2 [09:32] CHAIRPERSON: The Commission resumes. We
 3 had some housekeeping to attend to in chambers before we
 4 came, so I apologise to those who've been kept waiting.
 5 Luitenant-kolonel Vermaak, u is nou terug by ons.
 6 KOLONEL VERMAAK: Dis reg.
 7 VOORSITTER: Ek moet u daaraan herinner
 8 dat u nog steeds gebonde is daaraan, aan die plegtige
 9 onderneming wat u gegee het.
 10 SALMON JOHANNES VERMAAK: Dis korrek.
 11 VOORSITTER: Mnr Semenya, ek neem aan u
 12 gaan in Engels u vrae stel aan die getuie.
 13 MR SEMENYA SC: Thank you, Chair.
 14 CHAIRPERSON: No, I'm sure you're capable
 15 of doing it in Afrikaans, but it saves time on translation
 16 if you cross-examine the witness in English. Are you
 17 prepared to do that as a special favour to me?
 18 MNR SEMENYA SC: Ek is nie heeltemal vlot
 19 in my Afrikaans, Voorsitter. Ek sal probeer dit in Engels
 20 stel.
 21 CHAIRPERSON: Okay. U sal in Engels
 22 voortgaan.
 23 MR SEMENYA SC: Yes.
 24 CHAIRPERSON: Alright, okay. We've
 25 wasted enough time on that. We have a bundle, 'n lywige

Page 27459

1 dokument, a bundle of documents. I understand that they
 2 were emailed to you on Sunday. Is that correct?
 3 KOLONEL VERMAAK: That's correct, Chair.
 4 CHAIRPERSON: Yes, and some of them are
 5 exhibits already, some of them new documents. Do you want
 6 to mark them as you go along, Mr Semenya? The new
 7 documents – that's not been recorded. We've been given a
 8 hefty bundle of new documents which the witness says he got
 9 on Sunday. Do you want to mark them now or do you want to
 10 mark them as you go along?
 11 MR SEMENYA SC: If I can do that later,
 12 Chair.
 13 CHAIRPERSON: Alright, that's the best
 14 way. But there's one I'd like to ask you about quickly,
 15 very shortly. There's one which is misleadingly described
 16 as "Misconduct." It's number 60, six-oh, in the bundle.
 17 Now this is, it's misleadingly headed, it's headed
 18 "Misconduct" with your name, but it's in fact not a list of
 19 misconduct, it's a list of allegations –
 20 KOLONEL VERMAAK: That's correct, Chair.
 21 CHAIRPERSON: - against you. Both
 22 allegations, some of them were criminal cases, criminal
 23 dockets were opened, other cases there were departmental
 24 matters.
 25 KOLONEL VERMAAK: That's correct, Chair.

Page 27460

1 CHAIRPERSON: Now have you had a chance
 2 to go through the document? Are the entries therein
 3 correct?
 4 KOLONEL VERMAAK: Yes, Chair, I'm ready
 5 to –
 6 CHAIRPERSON: I see.
 7 KOLONEL VERMAAK: - answer on that.
 8 CHAIRPERSON: So it's not necessary for
 9 us to check in advance –
 10 KOLONEL VERMAAK: No, no, no.
 11 CHAIRPERSON: - or anybody to check in
 12 advance if these entries are correct?
 13 KOLONEL VERMAAK: No, that's fine.
 14 CHAIRPERSON: I see that in all of them
 15 except one no action was taken against you, or no finding
 16 was made against you. Is that right?
 17 KOLONEL VERMAAK: That's correct, Chair.
 18 CHAIRPERSON: There was one which I take
 19 it you'll be asked about by Mr Semenya, so I won't steal
 20 his –
 21 KOLONEL VERMAAK: I will –
 22 CHAIRPERSON: - his thunder or whatever
 23 it's going to be that –
 24 KOLONEL VERMAAK: I'll answer on that
 25 one.

Page 27461

1 CHAIRPERSON: But that document you say
 2 is accurate as far as the content is concerned, but the
 3 problem is the heading.
 4 KOLONEL VERMAAK: It's only the heading,
 5 that's correct, Chair.
 6 CHAIRPERSON: So how should we head it,
 7 Mr Semenya? Allegations of?
 8 MR SEMENYA SC: Complaints of misconduct.
 9 CHAIRPERSON: Oh, alright. So we'll call
 10 this document "Complaints," or possibly give it an exhibit
 11 number now seeing I've referred to it. "Complaints of
 12 misconduct." That will be the heading, and we were using
 13 the triple O-series with the witness and the next triple O
 14 one is –
 15 MR SEMENYA SC: This witness would have
 16 been triple L, Chair.
 17 CHAIRPERSON: Triple L? Triple O. Yes,
 18 that's right. So the last triple O according to my notes
 19 is OOO36, but Ms Pillay who's doubling up as leader of the
 20 evidence leaders today and also doing her usual task will
 21 tell us whether I'm right. Is it OOO37?
 22 MS PILLAY: That's correct, Chair. This
 23 would be OOO37.
 24 CHAIRPERSON: OOO37, Complaints of
 25 misconduct against Lieutenant-Colonel Vermaak, and that is

Page 27462

1 OOO37. Alright, so now I think we've reached the stage
 2 where you can commence your cross-examination.
 3 CROSS-EXAMINATION BY MR SEMENYA SC: I
 4 thank you, Chair. Lieutenant-Colonel, good morning. Good
 5 morning to you.
 6 COLONEL VERMAAK: Good morning.
 7 MR SEMENYA SC: Colonel, can we have the
 8 benefit of your experience in Public Order Policing?
 9 Firstly can we look at the legal framework that informs
 10 Public Order Policing. I'm correct that under the law of
 11 the land people have a right to assemble?
 12 COLONEL VERMAAK: That's correct.
 13 MR SEMENYA SC: It's a constitutionally
 14 protected right, correct?
 15 COLONEL VERMAAK: That's correct.
 16 MR SEMENYA SC: The exercise of which
 17 means that people are acting with authority of the law.
 18 COLONEL VERMAAK: That's correct.
 19 MR SEMENYA SC: They are also under the
 20 Constitution having the right to demonstrate. Is that
 21 correct?
 22 COLONEL VERMAAK: That's correct.
 23 MR SEMENYA SC: Also a constitutionally
 24 protected right.
 25 COLONEL VERMAAK: That's correct.

Page 27463

1 MR SEMENYA SC: To picket as well?
 2 COLONEL VERMAAK: If they comply with the
 3 law, yes.
 4 MR SEMENYA SC: Under the Constitution
 5 they have a right to picket. You accept that to be
 6 correct? That's the framework.
 7 COLONEL VERMAAK: That's correct.
 8 MR SEMENYA SC: And they also have a
 9 right to present petitions, etcetera.
 10 COLONEL VERMAAK: Yes.
 11 MR SEMENYA SC: It's a legally
 12 enforceable right of individuals under our law.
 13 COLONEL VERMAAK: That's correct, as long
 14 as it is in framework of the law.
 15 MR SEMENYA SC: But there is a very
 16 strong qualification to that right, is there not, Colonel,
 17 where the Constitution tells us they can only exercise
 18 these things unarmed? Am I correct?
 19 COLONEL VERMAAK: That is correct.
 20 MR SEMENYA SC: When they are armed they
 21 are not doing it within the protection of the law, do they?
 22 COLONEL VERMAAK: That's correct.
 23 MR SEMENYA SC: There is another caveat,
 24 or a qualification to the exercise of that right, is that
 25 it must be peacefully done.

Page 27464

1 COLONEL VERMAAK: That's correct.
 2 MR SEMENYA SC: So we can learn from the
 3 Constitution that if a bunch of 300, 400 spear-wielding
 4 individuals want to go and rob a bank, they are not
 5 exercising a constitutionally protected right under section
 6 17. Am I right?
 7 COLONEL VERMAAK: That's right.
 8 CHAIRPERSON: [Microphone off, inaudible]
 9 robbing banks. If they want to go and present a petition
 10 to somebody –
 11 COLONEL VERMAAK: That's correct.
 12 CHAIRPERSON: - but they do so in a
 13 violent, unpeaceful fashion –
 14 COLONEL VERMAAK: That's correct, Chair.
 15 CHAIRPERSON: - and they do so while
 16 armed, then they're not covered by the terms of the
 17 Constitution.
 18 COLONEL VERMAAK: Of the Constitution,
 19 that's correct.
 20 CHAIRPERSON: They are not exercising a
 21 right –
 22 COLONEL VERMAAK: No.
 23 CHAIRPERSON: - entrenched in the Bill of
 24 Rights.
 25 COLONEL VERMAAK: That's correct, Chair.

Page 27465

1 MR SEMENYA SC: Or if their purpose is to
 2 attack the police.
 3 COLONEL VERMAAK: That's correct –
 4 MR SEMENYA SC: They are not exercising a
 5 constitutionally protected right. Am I right?
 6 COLONEL VERMAAK: That is correct.
 7 MR SEMENYA SC: So my understanding is,
 8 and you must correct me if I'm wrong, then the legislature
 9 then seeks to give content to this right and passed the
 10 Regulation of Gatherings Act.
 11 CHAIRPERSON: That's not correct, it's
 12 the other way around. The Regulation of Gatherings Act was
 13 passed in 1993.
 14 COLONEL VERMAAK: That's correct.
 15 CHAIRPERSON: Before the constitutional
 16 era began.
 17 COLONEL VERMAAK: That's correct, Chair.
 18 CHAIRPERSON: It was drafted by a special
 19 committee of the Goldstone Commission –
 20 COLONEL VERMAAK: That's correct.
 21 CHAIRPERSON: - presided over by a
 22 Professor Heymann from Harvard University and the draft
 23 which was prepared by the Goldstone Commission's committee
 24 was adopted by parliament as the act before the
 25 constitutional era began.

<p style="text-align: right;">Page 27466</p> <p>1 COLONEL VERMAAK: That's correct.</p> <p>2 MR SEMENYA SC: Colonel, if I step back;</p> <p>3 the Regulation of Gatherings Act is intended to guide the</p> <p>4 exercise of the section 17 rights. Am I correct? As the</p> <p>5 law stands.</p> <p>6 COLONEL VERMAAK: Just repeat your</p> <p>7 question, Sir.</p> <p>8 MR SEMENYA SC: This is the legislative</p> <p>9 instrument defining how that exercise of section 17 of the</p> <p>10 Constitution is exercised, correct?</p> <p>11 COLONEL VERMAAK: That's correct.</p> <p>12 MR SEMENYA SC: It actually says –</p> <p>13 CHAIRPERSON: If parliament had wanted to</p> <p>14 change it, if parliament had been dissatisfied with</p> <p>15 anything in that act and felt it required amendment to</p> <p>16 bring it in line with section 17 of the Constitution it</p> <p>17 would have done so.</p> <p>18 COLONEL VERMAAK: That's correct.</p> <p>19 CHAIRPERSON: But it was content to leave</p> <p>20 it on the statute book because it was already –</p> <p>21 COLONEL VERMAAK: Implemented.</p> <p>22 CHAIRPERSON: - a precursor as it were of</p> <p>23 the new constitutional dispensation –</p> <p>24 COLONEL VERMAAK: That's correct.</p> <p>25 CHAIRPERSON: - as far as gatherings were</p>	<p style="text-align: right;">Page 27468</p> <p>1 gatherings you normally have to make sure there is minimal</p> <p>2 interference in the rights of the others.</p> <p>3 COLONEL VERMAAK: That's correct, from</p> <p>4 both sides.</p> <p>5 MR SEMENYA SC: From both sides. Make</p> <p>6 sure that whilst they can express this constitutionally</p> <p>7 protected right, there is no undue hindrance to the rights</p> <p>8 of others, correct?</p> <p>9 COLONEL VERMAAK: That's correct.</p> <p>10 MR SEMENYA SC: And then the statute</p> <p>11 creates a structure in terms of which that happens. Am I</p> <p>12 right?</p> <p>13 COLONEL VERMAAK: That's correct.</p> <p>14 MR SEMENYA SC: There would be meetings,</p> <p>15 section 4 meetings, etcetera, etcetera.</p> <p>16 COLONEL VERMAAK: That's correct.</p> <p>17 MR SEMENYA SC: Am I right?</p> <p>18 COLONEL VERMAAK: Yes.</p> <p>19 MR SEMENYA SC: Now when – shall I call</p> <p>20 it the RGA for short – when the Regulation of Gatherings</p> <p>21 Act makes various provisions, it also says, does it not,</p> <p>22 how the police are to act in a particular circumstances,</p> <p>23 even where there was non-compliance with the provisions of</p> <p>24 the regulation. Am I right?</p> <p>25 COLONEL VERMAAK: That's correct, Chair.</p>
<p style="text-align: right;">Page 27467</p> <p>1 concerned.</p> <p>2 COLONEL VERMAAK: That's correct, Chair.</p> <p>3 MR SEMENYA SC: And in its own language</p> <p>4 it says it is to regulate the holding of public gatherings</p> <p>5 and demonstration at certain places. That's what the act</p> <p>6 is intended to address. Am I right?</p> <p>7 COLONEL VERMAAK: Yes.</p> <p>8 MR SEMENYA SC: And then tells us that it</p> <p>9 is in recognition, so the preamble says, that every person</p> <p>10 has the right to assemble with other persons and to express</p> <p>11 his views on any matter freely in public and to enjoy the</p> <p>12 protection of the State while doing so, correct? And that</p> <p>13 protection of the State is really even the manner in which</p> <p>14 Public Order Policing would help those citizens who want to</p> <p>15 express that right to express it so unhindered. Am I</p> <p>16 correct?</p> <p>17 COLONEL VERMAAK: That is correct.</p> <p>18 MR SEMENYA SC: But in its preamble, says</p> <p>19 the Regulation of Gatherings Act, that such right shall</p> <p>20 take place peacefully and with due regard to the rights of</p> <p>21 others. You accept that?</p> <p>22 COLONEL VERMAAK: That is correct.</p> <p>23 MR SEMENYA SC: It's important a</p> <p>24 qualification that it is with regard to the rights of</p> <p>25 others because in these public demonstrations and</p>	<p style="text-align: right;">Page 27469</p> <p>1 MR SEMENYA SC: And that is captured in</p> <p>2 the powers of the police under section 9 of that statute,</p> <p>3 right?</p> <p>4 COLONEL VERMAAK: I accept it.</p> <p>5 MR SEMENYA SC: But principally it then</p> <p>6 tells us that if for some other reason the gathering does</p> <p>7 not comply with one of either of, any of the provisions of</p> <p>8 the act, one of the things a police member is entitled to</p> <p>9 do is to say disperse, correct?</p> <p>10 COLONEL VERMAAK: It depends what the</p> <p>11 circumstances is, Chair.</p> <p>12 MR SEMENYA SC: Ja, if for instance they</p> <p>13 are armed and the gathering is not in terms of the act and</p> <p>14 it is competent where a police officer has reason to</p> <p>15 believe that it might go out of hand to call on them to</p> <p>16 disperse?</p> <p>17 COLONEL VERMAAK: That's correct.</p> <p>18 MR SEMENYA SC: Yes. Significant though,</p> <p>19 section 9(3) of the RGA then says, "No common law</p> <p>20 principles regarding self-defence, necessity, and</p> <p>21 protection of property shall be affected by the provisions</p> <p>22 of this act."</p> <p>23 COLONEL VERMAAK: I accept.</p> <p>24 MR SEMENYA SC: Am I right? So to the</p> <p>25 extent that the police intend to explain their conduct to</p>

Page 27470

1 have been acting under common law principles regarding
 2 self-defence, the act doesn't apply. Is that your
 3 understanding?
 4 COLONEL VERMAAK: Yes.
 5 MR SEMENYA SC: And then there is the
 6 Standing Order 262 which is an administrative instrument.
 7 Am I correct?
 8 COLONEL VERMAAK: That is correct.
 9 MR SEMENYA SC: It is not law as we
 10 understand that concept to be. Am I right?
 11 COLONEL VERMAAK: No, it is instruction
 12 from the police side.
 13 MR SEMENYA SC: Correct. And that
 14 instruction also is intended to –
 15 MR BIZOS SC: Mr Chairman, I don't know
 16 that my learned friend is correct in submitting that the
 17 standing orders are not a law.
 18 MR SEMENYA SC: It's an administrative
 19 instrument.
 20 CHAIRPERSON: I'm inclined to think that
 21 he's right, but I don't propose deciding the issue at the
 22 moment because I don't think it arises directly, but you've
 23 put on record your contention that you think it has the
 24 force of law. It certainly would be binding on the police
 25 as being instructions they have received of a permanent

Page 27471

1 nature from the National Commissioner.
 2 MR BIZOS SC: My learned friend isn't
 3 putting that proviso. He says it's not law; it can be
 4 ignored at the instance of the police, if I understand the
 5 question correctly.
 6 MR SEMENYA SC: Happily I didn't say –
 7 CHAIRPERSON: Mr Semenya, make it clear
 8 what you do intend to submit and then perhaps Mr Bizos will
 9 be satisfied.
 10 MR SEMENYA SC: A standing order is an
 11 administrative instrument, the breach of which would submit
 12 a member to misconduct, nothing else. Am I right?
 13 COLONEL VERMAAK: That's correct, the
 14 police, the Police Act gives the power to the National
 15 Commissioner to issue certain standing orders.
 16 MR SEMENYA SC: Now even that –
 17 CHAIRPERSON: I'm sorry to interrupt.
 18 The point made is that they are binding on members of the
 19 police, with –
 20 COLONEL VERMAAK: That's correct.
 21 CHAIRPERSON: - consequences if they
 22 don't comply.
 23 COLONEL VERMAAK: That's correct, Chair.
 24 CHAIRPERSON: A policeman hasn't the
 25 power or the right or the discretion to deviate as he or

Page 27472

1 she considers appropriate from the provisions of the
 2 standing orders.
 3 COLONEL VERMAAK: Chair, there is
 4 standing orders that stipulate that when a member is not
 5 satisfied with specific instructions he can on a later
 6 stage make a representing to the senior people that he was
 7 not satisfied with the instruction or the standing order
 8 that he expect to execute at that stage.
 9 MR SEMENYA SC: Okay. I want us just to
 10 tidy up what the standing order then says in relation to
 11 various matters. It also is founded on the RGA. It seeks
 12 to give expression to the RGA. Am I right?
 13 COLONEL VERMAAK: That's correct.
 14 MR SEMENYA SC: And for that it has under
 15 article 2 various definitions, but 2 deal with, define what
 16 is called crowd management. Can I share it with you and
 17 tell me whether this is consistent with your understanding?
 18 It says, "Crowd management means the policing of
 19 assemblies, demonstrations, and all gatherings as defined
 20 in the act, whether recreational or peaceful, or of an" –
 21 CHAIRPERSON: Mr Semenya, Ms Lewis has
 22 put on her light; she wishes to make an objection of some
 23 kind. What is your objection, Ms Lewis?
 24 MS LEWIS: Chair, I would simply like to
 25 add to Mr Bizos' reservation. To the extent that Mr

Page 27473

1 Semenya is simply putting issues of law to this witness,
 2 our understanding is that those are issues to be argued at
 3 the end –
 4 CHAIRPERSON: We can certainly hear –
 5 MS LEWIS: - and for the Commission to
 6 decide.
 7 CHAIRPERSON: No, no, I've ruled that
 8 often, but he's prefaced his remarks by something that I
 9 don't think you heard. He said "I want to test your
 10 knowledge of the law in relation to crowd management and
 11 public gatherings," and so on. So it's preliminary to
 12 questions he's going to ask about the way the Colonel
 13 acted. So I don't think I can stop that question because
 14 it's not designed to persuade, to tell us what the law is,
 15 but to test what the witness knows about it. Is that
 16 right, Mr Semenya? But you won't go, you won't trespass
 17 across the line that has been firmly drawn in the past in
 18 this Commission, to which Ms Lewis has referred, will you?
 19 You won't trespass against that line?
 20 MR SEMENYA SC: No, I'm not asking for
 21 his legal opinion.
 22 MR BIZOS SC: Mr Chairman, may I also add
 23 with respect to our learned friend that our courts have
 24 pronounced, and particularly the Constitutional Court,
 25 about the right to life and serious injury which are to be

Page 27474

1 taken into consideration in interpreting the legislation
 2 that our learned friend is referring to.
 3 [09:51] And may I remind him, Mr Chairman, that the
 4 unequivocal rejection that a wrong of stealing an apple
 5 over the fence doesn't give you an opportunity literally to
 6 shoot the child that stole the apple. So please let us
 7 not –
 8 CHAIRPERSON: Yes, Mr Bizos, I'm sure Mr
 9 Semenya –
 10 MR BIZOS SC: - forget the interpretation
 11 of those laws and the moral responsibility that our courts
 12 expect the police to observe.
 13 CHAIRPERSON: I'm sure Mr Semenya is
 14 aware of that but I'm sure he's all the better for being
 15 reminded. Would you like to continue with your cross-
 16 examination, Mr Semenya?
 17 MR SEMENYA SC: Thank you, Chair.
 18 Colonel, then under the definitions, section K, there is a
 19 definition of JOCCOM and it reads, "means the Joint
 20 Operational Coordinating Committee that is an integrated
 21 operational body involving service as well as external
 22 role-players such as SANDF, the Metro Police," etcetera.
 23 COLONEL VERMAAK: That's correct.
 24 MR SEMENYA SC: Now what follows is more
 25 important because I want us later to deal with it. Then it

Page 27475

1 says under JOCCOM "The consultation process regarding the
 2 threat assessment is carried out by the JOCCOM and involves
 3 all information role-players, the threat determination,
 4 mandate and tasking for the event will come from this
 5 meeting." So it is the JOCCOM which addresses all of these
 6 issues. You agree with that?
 7 COLONEL VERMAAK: I agree.
 8 MR SEMENYA SC: "The JOCCOM meets weekly
 9 and only deals with planned activities such as the coming
 10 COSATU march. Furthermore the JOCCOM will activate a JOC,
 11 appoint an operational commander and identify all the
 12 required role-players involved." That is in line with your
 13 understanding of how the JOCCOM works.
 14 COLONEL VERMAAK: That's correct.
 15 CHAIRPERSON: I'm sorry, the problem that
 16 we had last week has recurred that someone, or some people
 17 perhaps, have either got their earphones on too loudly or
 18 they haven't got the earphones on their ears so that the
 19 noise we can hear. It's very disturbing and I think
 20 something should be done about it. Mr Semenya, would you
 21 like to carry on?
 22 MR SEMENYA SC: Thank you, Chair. I
 23 would like to read to you what then clause 11 says of the
 24 Standing Order so that you can confirm whether it is in
 25 line with your understanding of how matters work. It says,

Page 27476

1 and it is headed "Execution. The use of force must be
 2 avoided at all cost and members deployed for the operations
 3 must display the highest degree of tolerance." That's in
 4 line with your understanding, Colonel?
 5 COLONEL VERMAAK: That's correct.
 6 MR SEMENYA SC: "The use of force and
 7 dispersal of crowds must comply with the requirements of
 8 section 9(1) and (2) of the act. During any operation
 9 ongoing negotiations must take place between officers and
 10 conveners or other leadership elements." Are you familiar
 11 with that?
 12 COLONEL VERMAAK: Yes, Chair.
 13 MR SEMENYA SC: And then says under sub
 14 2, "If negotiations fail and life or property is in danger
 15 the following procedure must be followed." Can I highlight
 16 the first one? It says "Put defensive measures in place as
 17 a priority."
 18 COLONEL VERMAAK: Yes, Chair.
 19 MR SEMENYA SC: So when you talk
 20 Marikana, putting something like a barbed wire would be
 21 such typical defensive measure as is contemplated by the
 22 Standing Order. Am I right?
 23 COLONEL VERMAAK: That's correct.
 24 MR SEMENYA SC: And then under 5, which
 25 is another thing, it says "Force may only be used on

Page 27477

1 command or instruction of the CJOC or operational
 2 commander, if appointed. Members may never act
 3 individually without receiving a command from their
 4 commander." You're familiar with that too?
 5 COLONEL VERMAAK: I'm familiar with it.
 6 MR SEMENYA SC: And under 7, sub 7 it
 7 says, "Common law principle of self-defence or private
 8 defence are not affected by this order." Are you familiar
 9 with that?
 10 COLONEL VERMAAK: I'm familiar.
 11 MR SEMENYA SC: Okay. You would, given
 12 your experience, Colonel, then also be familiar with the
 13 provisions of the Dangerous Weapons Act which defines what
 14 type of weapons are dangerous weapons in terms of the act.
 15 COLONEL VERMAAK: That's correct.
 16 MR SEMENYA SC: And you have no
 17 difficulty that the weapons that were displayed in
 18 Marikana, the 13th for instance, the 16th for instance, of
 19 August 2012 were such weapons as are defined in terms of
 20 this act?
 21 COLONEL VERMAAK: That's correct. 13
 22 and, from the 13th to the 16th where I was involved, prior
 23 to that I was not.
 24 MR SEMENYA SC: Right, and I also want to
 25 deal with the helicopter operation manual. Do you have

Page 27478

1 that document with you?
 2 COLONEL VERMAAK: I haven't got it here
 3 now.
 4 MR SEMENYA SC: Could we then have that,
 5 Chair, as exhibit 000 –
 6 CHAIRPERSON: What number is it in your
 7 bundle? The bundle you've given us there are numbered tabs
 8 that tell us what the particular – which indicate various
 9 documents, which one is this? I saw it somewhere.
 10 MR SEMENYA SC: Colonel, I don't have the
 11 bundle with me. Are you able to identify it in your
 12 bundle?
 13 COLONEL VERMAAK: It wasn't on the list
 14 that you sent to me.
 15 COMMISSIONER HEMRAJ: Is it the emails
 16 that you're referring to, Mr Semenya?
 17 CHAIRPERSON: No it's –
 18 COMMISSIONER HEMRAJ: Not?
 19 COLONEL VERMAAK: No, Chair, it's not
 20 part of the topics that was sent to me that –
 21 MR SEMENYA SC: Okay, I'll tidy this up
 22 during break.
 23 CHAIRPERSON: I thought I saw it here but
 24 I must be wrong.
 25 MR SEMENYA SC: Alright. Shall we deal

Page 27479

1 with something in the meantime? Is it fair, Colonel, to
 2 say in broad terms that the South African Police Service
 3 deals with almost something like 150 000 events of public
 4 order management challenges –
 5 COLONEL VERMAAK: I haven't got the
 6 statistics but there's quite a lot, yes.
 7 MR SEMENYA SC: Particularly in the North
 8 West province, it has in recent times seen a fair amount of
 9 these events happening and being managed.
 10 COLONEL VERMAAK: That is correct.
 11 MR SEMENYA SC: And even with the
 12 resources limitations you have there have been a fair
 13 amount of good outcomes from those events.
 14 COLONEL VERMAAK: Definitely, yes.
 15 MR SEMENYA SC: With less, or no loss of
 16 life in many of these instances.
 17 COLONEL VERMAAK: That is correct, Chair.
 18 MR SEMENYA SC: And we may even say that
 19 by far the majority of them come and go without event,
 20 correct?
 21 COLONEL VERMAAK: That's correct.
 22 MR SEMENYA SC: So that a conclusion can
 23 fairly be drawn that there is a fair on-the-field
 24 experience that has been accumulating in the North West
 25 within the public order policing. Is that a fair statement

Page 27480

1 to say?
 2 COLONEL VERMAAK: Yes.
 3 MR SEMENYA SC: And that those incidents
 4 have been managed with some fair amount of consistency and
 5 learning has come out of it.
 6 COLONEL VERMAAK: Yes, I agree with that.
 7 MR SEMENYA SC: And a resultant outcome
 8 such as has happened in Marikana in particular is
 9 exceptional, highly exceptional.
 10 COLONEL VERMAAK: There was previous
 11 incidents at mines where more or less the same incidents
 12 happened and it was handled without loss of life.
 13 MR SEMENYA SC: But that's my point. It
 14 makes Marikana therefore quite exceptional that it produced
 15 the outcomes it did.
 16 COLONEL VERMAAK: I don't think I can
 17 really comment on that.
 18 MR SEMENYA SC: Your difficulty being?
 19 COLONEL VERMAAK: I testified that if the
 20 management did take notice of information that was conveyed
 21 to them from the 13th up to the morning of the 16th the
 22 outcome could have been something else as it was on that
 23 day.
 24 MR SEMENYA SC: I'm familiar with your
 25 evidence, Colonel. All I'm saying is - and we'll deal with

Page 27481

1 that later. All I'm saying is the results of Marikana are
 2 not consistent with the history of public order policing
 3 that has happened in the province in the past.
 4 COLONEL VERMAAK: I will not fully agree
 5 with you on that point –
 6 MR SEMENYA SC: Were there any other
 7 incidents where 34 people were killed in one incident?
 8 COLONEL VERMAAK: No, there was no
 9 incidents where police have to shoot people, where 34
 10 people were killed.
 11 MR SEMENYA SC: So that's the question
 12 I –
 13 COLONEL VERMAAK: My argument was that if
 14 another plan was followed the outcome could be otherwise.
 15 MR SEMENYA SC: No, I will test that, I
 16 accept that. All I'm asking is you can agree with me,
 17 can't you, Colonel, that no other incident has produced as
 18 many fatalities post democracy as this was the case?
 19 COLONEL VERMAAK: Yes, if you put it like
 20 that.
 21 MR SEMENYA SC: Okay. Now can I have the
 22 benefit again of your experience in this regard? Brigadier
 23 Calitz, you know him very well.
 24 COLONEL VERMAAK: Brigadier Calitz, just
 25 repeat.

Page 27482

1 MR SEMENYA SC: Brigadier Calitz –
 2 COLONEL VERMAAK: Yes.
 3 CHAIRPERSON: Yes, he knows Brigadier
 4 Calitz very well, I take it the answer is yes.
 5 COLONEL VERMAAK: Very well, for many
 6 years, yes.
 7 MR SEMENYA SC: I think since 2002 or
 8 something?
 9 COLONEL VERMAAK: Ja, more or less,
 10 that's correct.
 11 MR SEMENYA SC: In Public Order Policing?
 12 COLONEL VERMAAK: That's correct, Chair.
 13 MR SEMENYA SC: You have come to know his
 14 expertise in Public Order Policing?
 15 COLONEL VERMAAK: That's correct.
 16 MR SEMENYA SC: Never have had any reason
 17 in the past to question his judgment?
 18 COLONEL VERMAAK: No.
 19 MR SEMENYA SC: And you can consider him
 20 competent to manage a Public Order Policing event?
 21 COLONEL VERMAAK: Yes.
 22 MR SEMENYA SC: And you have no issues
 23 that he was appointed the operational commander for the
 24 Marikana events?
 25 COLONEL VERMAAK: No, not at all.

Page 27483

1 MR SEMENYA SC: You would consider that
 2 operation to have been under the control of an operational
 3 commander of outstanding experience in Public Order
 4 Policing?
 5 COLONEL VERMAAK: Yes, for that what he
 6 was appointed for.
 7 MR SEMENYA SC: Colonel Merafe, you know
 8 him well?
 9 COLONEL VERMAAK: Yes, I know him very
 10 well.
 11 MR SEMENYA SC: He is in the Public Order
 12 Policing as well?
 13 COLONEL VERMAAK: Yes.
 14 MR SEMENYA SC: You don't doubt his
 15 competence in relation to Public Order Policing matters?
 16 COLONEL VERMAAK: No.
 17 MR SEMENYA SC: Come to respect his
 18 experience in that regard?
 19 COLONEL VERMAAK: Yes.
 20 MR SEMENYA SC: And there is nothing
 21 untoward about him being present at one element of the
 22 Public Order Police management in Marikana during that
 23 period?
 24 COLONEL VERMAAK: No.
 25 MR SEMENYA SC: Colonel Pitsi you know?

Page 27484

1 COLONEL VERMAAK: Yes.
 2 MR SEMENYA SC: Public Order Police
 3 management, I mean Public Order Police – am I correct?
 4 COLONEL VERMAAK: Yes.
 5 MR SEMENYA SC: You know him very well
 6 too?
 7 COLONEL VERMAAK: That's correct.
 8 MR SEMENYA SC: Come to respect his
 9 experience in Public Order Policing?
 10 COLONEL VERMAAK: Yes.
 11 MR SEMENYA SC: Would not question his
 12 expertise in relation to matters of Public Order Policing?
 13 COLONEL VERMAAK: No.
 14 MR SEMENYA SC: And these are people,
 15 broadly, who were there during the Marikana period as well?
 16 COLONEL VERMAAK: That's correct.
 17 MR SEMENYA SC: Okay. Colonel, I just
 18 want us to start –
 19 CHAIRPERSON: Are you moving to another
 20 topic?
 21 MR SEMENYA SC: Yes.
 22 CHAIRPERSON: Well, I'd like to ask a
 23 question before you do that. But before I do that, I see
 24 there's a document against tab 57 in your bundle which is
 25 the job description of a unit commander of Air Wing at

Page 27485

1 Nelspruit. I don't whether that's the – that sets out all
 2 the duties and so forth of a person in that position. I
 3 don't know if that's the document you were looking for.
 4 MR SEMENYA SC: No, that's not the
 5 document. I propose to deal with that at a different
 6 stage.
 7 CHAIRPERSON: Alright, okay. Well, then
 8 let me ask a question about the topic you were dealing
 9 with. I understood you to say that your main criticism of
 10 what happened on the 16th related to the plan. You said if
 11 there had been another plan in place then the outcome might
 12 have been different.
 13 COLONEL VERMAAK: That's correct, Chair.
 14 CHAIRPERSON: You said a few minutes.
 15 COLONEL VERMAAK: That's correct.
 16 CHAIRPERSON: Now you were referred to
 17 three POP people with vast experience in whom you have
 18 great confidence. That's Brigadier Calitz, Lieutenant-
 19 Colonel Merafe and Colonel Pitsi.
 20 COLONEL VERMAAK: That's correct.
 21 CHAIRPERSON: Not one of them was
 22 responsible for the plan that was put into operation on the
 23 16th, is that correct?
 24 COLONEL VERMAAK: That is correct, Chair.
 25 MR SEMENYA SC: Well, check your answer,

Page 27486

1 Colonel, maybe you want to reflect on it. Was Merafe not
 2 part of the plan?
 3 COLONEL VERMAAK: Chair –
 4 MR SEMENYA SC: But I know you're not
 5 there, that's why I'm saying be careful with answers that
 6 you give.
 7 COLONEL VERMAAK: No, I will give the
 8 answer.
 9 CHAIRPERSON: Let me put it this way,
 10 were any of those gentlemen at the 1:30 JOCCOM meeting on
 11 the 16th, as far as you know, where the plan was for the
 12 first time put on the table by Colonel Scott?
 13 COLONEL VERMAAK: No, Chair, as far as I
 14 know Merafe was not there on the 16th at all.
 15 CHAIRPERSON: Merafe was at a funeral on
 16 the 16th.
 17 COLONEL VERMAAK: That's correct.
 18 CHAIRPERSON: Pitsi and Calitz were out
 19 in the field.
 20 COLONEL VERMAAK: That's correct, Chair.
 21 CHAIRPERSON: For some reason or other
 22 they weren't summoned back to the JOCCOM meeting –
 23 COLONEL VERMAAK: That's correct.
 24 CHAIRPERSON: - at 1:30 where the plan
 25 was for the first time tabled –

Page 27487

1 COLONEL VERMAAK: That's correct.
 2 CHAIRPERSON: - by Lieutenant-Colonel
 3 Scott.
 4 COLONEL VERMAAK: That's correct, Chair.
 5 MR SEMENYA SC: Well, later we'll deal
 6 with that, Colonel, but for now let me take it as I planned
 7 to do. In fact maybe let's do this. Let's deal with a
 8 whole number of small topics. For the entire duration and
 9 the entire operation in Marikana the only time, the only
 10 time in the entire operation in Marikana where a striker
 11 was shot at, at the command of an officer to fire live
 12 ammunition at an attacker was only once to your knowledge.
 13 Am I right?
 14 COLONEL VERMAAK: That's correct and that
 15 was me, if you're referring to that.
 16 MR SEMENYA SC: That is the only time
 17 where on instructions of an officer –
 18 MR FISCHER: Chairperson, I apologise for
 19 intervening but there are statements by other SAPS members
 20 who claim to have been given orders to fire live
 21 ammunition.
 22 CHAIRPERSON: Well, the witness doesn't
 23 know about them I think, is that right? You don't know
 24 about that. As far as you –
 25 COLONEL VERMAAK: That's correct, Chair,

Page 27488

1 the only one that I know is the one that I gave.
 2 CHAIRPERSON: That's right.
 3 MR SEMENYA SC: Now was that a Public
 4 Order Police management issue when you gave the
 5 instruction?
 6 COLONEL VERMAAK: That was part of where
 7 it started as a Public Order Police incident, although it
 8 was unlawful, and just to correct you, there's no proof
 9 that the person that was killed was shot by the member that
 10 I give the instruction to.
 11 MR SEMENYA SC: No, I didn't ask you that
 12 question either, Colonel, did I?
 13 COLONEL VERMAAK: Well, that is my
 14 answers.
 15 MR SEMENYA SC: Okay.
 16 CHAIRPERSON: You did say the only case
 17 where someone was killed as a result of instruction from an
 18 officer, that's what I heard. If I heard incorrectly then
 19 the witness and I obviously made the same mistake.
 20 MR SEMENYA SC: Let me rephrase. The
 21 only time a member fired live ammunition at a striker was
 22 at the command of you, correct?
 23 [10:11] COLONEL VERMAAK: That's correct.
 24 MR SEMENYA SC: And you are just trying
 25 to explain to us that it was not a Public Order Police

Page 27489

1 incident, you say it was what now?
 2 COLONEL VERMAAK: I said it started –
 3 MR SEMENYA SC: I know you said it
 4 started. Now at that time you are giving this instruction
 5 that somebody be shot with live ammunition, what type of
 6 incident are you managing now?
 7 COLONEL VERMAAK: Well, according to me,
 8 it was still public order.
 9 MR SEMENYA SC: Okay. Now in a public
 10 order we have Standing Order 262 that tells us the highest
 11 form of ammunition that can be used is rubber, am I right?
 12 COLONEL VERMAAK: That's correct –
 13 MR SEMENYA SC: It has to be non-lethal.
 14 COLONEL VERMAAK: It depends on the
 15 circumstances.
 16 MR SEMENYA SC: Sorry?
 17 COLONEL VERMAAK: It depends on the
 18 circumstances.
 19 MR SEMENYA SC: Oh, let's go –
 20 COLONEL VERMAAK: There are exceptional -
 21 MR SEMENYA SC: Okay, I accept, maybe you
 22 are correct. Can we go to that 262 and tell us under which
 23 exceptional circumstances –
 24 COLONEL VERMAAK: I haven't got it in
 25 front of me, Chair. It was also –

Page 27490

1 MR SEMENYA SC: Okay.

2 MS PILLAY: Chair, it's exhibit SS2.

3 MR SEMENYA SC: Can I give you my copy?

4 COLONEL VERMAAK: No, it's fine, it is on

5 the second part.

6 MR SEMENYA SC: Can we see the exception

7 where live ammunition can be shot at, on command of an

8 officer?

9 COLONEL VERMAAK: Prevent life.

10 MR SEMENYA SC: The?

11 COLONEL VERMAAK: To prevent the loss of

12 lives.

13 MR SEMENYA SC: No, I am saying 262, show

14 us where the exception is stated that live ammunition can

15 be fired on command of an instructor, of a senior officer,

16 or whatever.

17 COLONEL VERMAAK: Part of Public Order

18 Police is to protect life and properties.

19 MR SEMENYA SC: Are you able to show us

20 on Standing Order 262?

21 COLONEL VERMAAK: No, it's not

22 specifically spelled out in 262.

23 MR SEMENYA SC: Can you tell us where it

24 is impliedly stated in 262?

25 COLONEL VERMAAK: The Gatherings Act is

Page 27491

1 telling us that the police's responsibility is to protect

2 life and property.

3 MR SEMENYA SC: Okay.

4 CHAIRPERSON: 11(7) of Standing Order 262

5 provides that common law principles of self-defence or

6 private defence are not affected by the order.

7 MR SEMENYA SC: Do you want to hang your

8 peg on that one, Colonel?

9 COLONEL VERMAAK: You say 11?

10 MR SEMENYA SC: No, the Chair was just

11 saying that one of the provisions is the common law

12 principles of self and private defence do not apply.

13 CHAIRPERSON: On the screen above you.

14 MR SEMENYA SC: Let me try and establish

15 this; when you gave the instruction that this striker must

16 be shot at, did you say through the head or to the legs, or

17 what was the instruction?

18 COLONEL VERMAAK: No, you will never give

19 instruction to shoot somebody dead and every police member

20 knows when you had to shoot at the person it's not to shoot

21 him dead. It's actually to disable him, and to make sure

22 that you can arrest him, and in these circumstances to

23 prevent that he is shooting with a firearm at the police.

24 MR SEMENYA SC: The question I asked was,

25 do you tell him where to shoot?

Page 27492

1 COLONEL VERMAAK: No, it's not necessary

2 to tell a trained person where to shoot.

3 MR SEMENYA SC: Did you know the extent

4 of his training when you gave the instruction?

5 COLONEL VERMAAK: Well, Chair, if a

6 member goes through his college training, he is being

7 trained either as a TRT member, then he was supposed to

8 passed it, his course, or a public order police, he should

9 have also passed it, and if he has a firearm with him, he

10 knows according to the law.

11 MR SEMENYA SC: So you didn't know what

12 competence that individual had?

13 COLONEL VERMAAK: If he was not competent

14 to have a firearm, then the commander who issued that

15 firearm to him must be responsible for the fact that he

16 gives a firearm to a person who is not trained and who is

17 not according to, or competent to use that firearm.

18 MR SEMENYA SC: And by the way, the man

19 you instruct to fire this live ammunition is a TRT member,

20 right?

21 COLONEL VERMAAK: Chair, I can maybe

22 answer you on that. For the whole period, since Marikana,

23 up to where I started testifying, everybody was asking me

24 who was the members who was shooting, and every time I said

25 to the people I did not know the members by name, I am not

Page 27493

1 working every day with him, but what was very surprising to

2 me is that the police was, they had statements of the

3 members who was so-called with me, and they stated that I

4 gave them instructions and never for 18 months did the

5 police ever tell me they had statements from any police

6 member who was with me at that day. Now you want to ask me

7 what I know about the member. I think the police can

8 answer that question because why, they didn't give me that

9 information for 18 months, until I have started testifying

10 in this Commission.

11 MR SEMENYA SC: No, but you remember what

12 my question is Colonel? My question was the man you

13 instructed to fire live ammunition at the striker, was a

14 TRT member, was he not?

15 COLONEL VERMAAK: Yes, according to the

16 statements that the police –

17 MR SEMENYA SC: No, according to your

18 statement, Colonel.

19 COLONEL VERMAAK: Ja, ja. But

20 afterwards, I realised the police already have that

21 information for 18 months and they didn't share it with me,

22 while I was representing at that stage by the legal team of

23 the South African Police Service, and that put the big

24 question for me, why did they not share that information

25 with me and only share it with me after I have started

Page 27494

1 testifying?

2 MR SEMENYA SC: When you gave him

3 instruction you said he must fire with an R5, right?

4 COLONEL VERMAAK: That's correct.

5 MR SEMENYA SC: Now, I've got two

6 difficulties with that. I thought you said in one of your

7 criticisms is the use of TRT members in Public Order

8 Policing, that changed that day.

9 COLONEL VERMAAK: If you remember I said

10 it started as a Public Order Policing incident. I didn't

11 say it ended as a Public Order Police incident.

12 MR SEMENYA SC: Oh, sorry. It ended up

13 as what?

14 COLONEL VERMAAK: Protect lives.

15 MR SEMENYA SC: No, that happens even in

16 crime prevention. I am just trying to understand the

17 classification this now becomes.

18 COLONEL VERMAAK: What do you want me to

19 say more about it?

20 MR SEMENYA SC: Sorry?

21 COLONEL VERMAAK: What did you want me to

22 say more about? I said it started as a Public Order Police

23 incident, and it escalate in such a way that where firearms

24 were taken from police, and they were shooting at the

25 police and the people have to protect their own life and I

Page 27495

1 had the guts to sit here in this Commission and said I gave

2 instruction to a police member to shoot at somebody who was

3 shooting at the police, and as far as I remember not one of

4 the witnesses who was testifying before this Commission

5 ever have the guts to say I gave that instruction to a

6 junior member.

7 MR SEMENYA SC: You said one of the

8 criticisms is that this R5 shouldn't be used, I think you

9 were writing to everybody in authority and say it mustn't

10 be used in Public Order Policing. Am I right?

11 COLONEL VERMAAK: Chair, I have already

12 answered, my -

13 MR SEMENYA SC: Well, I've put another

14 angle to it. I say you have as one of the criticisms of

15 Public Order Policing management in North West the fact of

16 the use of R5s. Am I right?

17 COLONEL VERMAAK: It depends on the

18 circumstances, Chair. If people is throwing stones at

19 policemen, is it fair to shoot with R5s at them? No, I

20 don't think so. But if you are in a position where people

21 is shooting with an R5 at you, I think then it is fair to

22 shoot back with an R5. But in normal Public Order Policing

23 incidents, and I can take you back to May, in 2012, and I

24 think you are going to question me on that as well, Chair -

25 MR SEMENYA SC: You can be guaranteed.

Page 27496

1 Colonel, in all of your six statements, nowhere do you

2 mention the fact that you instructed a member of the TRT to

3 fire live ammunition with an R5 at a protester, am I right?

4 COLONEL VERMAAK: I haven't got them in

5 front of me.

6 MR SEMENYA SC: You can have a look at

7 them.

8 COLONEL VERMAAK: But I am testifying it

9 here, under oath.

10 MR SEMENYA SC: I know.

11 COLONEL VERMAAK: Yes.

12 MR SEMENYA SC: Nowhere in this whole

13 period in any of your six statements, do you say that. Am

14 I correct?

15 COLONEL VERMAAK: Well, I didn't deny it.

16 I acknowledge it and said, yes, I did gave that

17 instruction.

18 MR SEMENYA SC: No, you don't in your

19 statements -

20 COLONEL VERMAAK: Yes, that's why I -

21 MR SEMENYA SC: - that's my difficulty.

22 COLONEL VERMAAK: - I said now.

23 MR SEMENYA SC: Mmmm?

24 COLONEL VERMAAK: I testify here before

25 the Commission.

Page 27497

1 MR SEMENYA SC: I know you do, Colonel,

2 just answer my question.

3 COLONEL VERMAAK: That is my answer.

4 MR SEMENYA SC: Alright. Instead what

5 you say is, that "Die lede het teruggeskiet."

6 COLONEL VERMAAK: That's correct.

7 MR SEMENYA SC: What you omit to say is,

8 "on my instruction."

9 COLONEL VERMAAK: But I've rectified it

10 before the Commission.

11 MR SEMENYA SC: No, you say - you knew

12 this matter was being investigated by IPID, am I right?

13 COLONEL VERMAAK: That's correct.

14 MR SEMENYA SC: You know IPID was

15 investigating the correctness or otherwise of the shooting

16 that happened at the river there, correct?

17 COLONEL VERMAAK: Chair, no, at no stage

18 IPID asked any statement from me.

19 MR SEMENYA SC: No, no, no -

20 COLONEL VERMAAK: No, no, no, you said

21 they were investigating it. If they did investigate it,

22 why didn't they come to me as a senior member there on the

23 scene and asked me for a statement?

24 MR SEMENYA SC: Are you seriously saying

25 IPID did not investigate the incidents that happened at the

Page 27498

1 river where you were involved?
 2 COLONEL VERMAAK: I said they never came
 3 to me and asked for a statement.
 4 MR SEMENYA SC: But that's why I didn't
 5 ask that question.
 6 COLONEL VERMAAK: Well, I am giving you
 7 the answer.
 8 MR SEMENYA SC: No, you are giving me a
 9 reply, Colonel, with respect. You give me a reply. Let me
 10 ask the question again. Are you seriously saying to us
 11 that IPID did not investigate the incidents that happened
 12 at the river where you were involved?
 13 COLONEL VERMAAK: Chair, nobody from IPID
 14 ever approached me up to today to ask me an explanation
 15 what happened there.
 16 MR SEMENYA SC: Because –
 17 COLONEL VERMAAK: Nobody.
 18 MR SEMENYA SC: Because you did not give
 19 them a statement and say, you know what, I am aware, I am
 20 officer, I am aware I gave instructions for a discharge of
 21 a firearm, a R5 rifle, with live ammunition, and this is my
 22 statement and my account for it. Weren't you supposed to
 23 do that?
 24 COLONEL VERMAAK: Chair, again, sorry,
 25 never did IPID approach me to question me about that

Page 27499

1 incident. You said, if I am aware of it, and I am telling
 2 you, no. Because why? They didn't come to me and ask for
 3 a statement.
 4 MR SEMENYA SC: No, I accept that.
 5 CHAIRPERSON: Mr Semenya, do we have a
 6 warning statement from the witness? If they'd warned him,
 7 asked him to make a statement, presumably we would have it
 8 there. There isn't one as far as I am aware, am I correct?
 9 MR SEMENYA SC: No, nobody knew what he
 10 knows. That's precisely my difficulty with the evidence of
 11 the witness. You are the one who knows that you have
 12 instructed somebody to discharge an R5 rifle at a striker,
 13 correct?
 14 COLONEL VERMAAK: Chair –
 15 MR SEMENYA SC: Correct?
 16 COLONEL VERMAAK: - if you said that IPID
 17 investigate it, I accept if you said that, but I am taking
 18 you back where I said to you that for 18 months the police
 19 sit with statements of members who implicate me giving
 20 instructions to them. Now I am asking why did they not
 21 approach me then and ask me for a statement if they had
 22 that information before them? Then I will, then my only
 23 comment can be that they did not investigate it properly,
 24 because why, the first thing an investigating officer would
 25 do is to go to a senior member and ask him an explanation

Page 27500

1 what happened there. They know I was there. They know it.
 2 They have statements of members that they keep for
 3 themselves and not sharing it for me, with me for 18
 4 months.
 5 MR SEMENYA SC: Do you have a duty as a
 6 member of the police service to give a statement in
 7 instances where you have discharged a firearm?
 8 COLONEL VERMAAK: Chair, you know what?
 9 It's very funny, because why you were consulting with me
 10 for 18 months where I have informed you as the legal
 11 representative of the police that I was the person that
 12 gave that instruction. You never asked me, or one of your
 13 colleagues ask me to correct my statement, and now you want
 14 to cross-examination me on that?
 15 MR SEMENYA SC: Are you Colonel,
 16 seriously saying that? I thought I just heard you say you
 17 did come and say that matter here in the Commission, when I
 18 was asking you where in your statement doesn't this appear?
 19 Why don't you say, no, it's easy, I consulted with you,
 20 Semenya, I told you that I instructed people to do, and you
 21 said nothing about it. Now you are saying it.
 22 COLONEL VERMAAK: But I think you would
 23 know it because why, you were the people, Mr Pretorius was
 24 the person who was knowing they had that information. You
 25 had that information.

Page 27501

1 COMMISSIONER HEMRAJ: Colonel, sorry,
 2 Colonel, as a matter of course any and all shootings by
 3 police are investigated by IPID.
 4 COLONEL VERMAAK: That's correct, Chair.
 5 COMMISSIONER HEMRAJ: So the shooting at
 6 the river, you would be aware, would as a matter of course
 7 be investigated by IPID as well.
 8 COLONEL VERMAAK: That's correct.
 9 COMMISSIONER HEMRAJ: So you would have
 10 been aware of that?
 11 COLONEL VERMAAK: That's correct, Chair.
 12 COMMISSIONER HEMRAJ: Your only complaint
 13 is that they did not come to you for a statement?
 14 COLONEL VERMAAK: Nobody came to me for a
 15 statement.
 16 COMMISSIONER HEMRAJ: You were aware of
 17 the investigation?
 18 COLONEL VERMAAK: That's correct.
 19 COMMISSIONER HEMRAJ: Thank you.
 20 MR SEMENYA SC: Would this be a
 21 convenient stage, Chair?
 22 CHAIRPERSON: Do you want a comfort break
 23 now, Mr Semenya?
 24 MR SEMENYA SC: Indeed Chair, can we –
 25 CHAIRPERSON: Application granted.

Page 27502

1 [COMMISSION ADJOURNS COMMISSION RESUMES]

2 [10:55] CHAIRPERSON: The commission resumes. U

3 is nog steeds gebonde aan u plegtige onderneming. Mr

4 Semenya.

5 MR SEMENYA SC: Thank you, Chair.

6 Colonel, I was still exploring this. You have a duty as a

7 member of the police service to file a written report where

8 you use, where you discharge a firearm. Is that right?

9 COLONEL VERMAAK: No, Chair, that is the

10 senior officer who is attending the scene. He must file a

11 report and send it in, not myself. The senior officer on

12 the scene, it is his responsibility.

13 MR SEMENYA SC: Are you saying seriously

14 that if you are a member and you discharge a firearm you do

15 not have a duty to write a report?

16 COLONEL VERMAAK: Chair –

17 MR SEMENYA SC: Or give a statement?

18 COLONEL VERMAAK: You report it to your

19 senior officer or your duty officer if you are at a station

20 and you – if you fire live ammunition you report it to your

21 duty officer and there's a specific form that he must

22 complete and he must report it to higher authority.

23 MR SEMENYA SC: Did you report anything

24 to the duty officer in relation to the discharge of a

25 firearm that was discharged on your instruction?

Page 27503

1 COLONEL VERMAAK: That's correct. I

2 reported to Brigadier Calitz.

3 MR SEMENYA SC: In writing?

4 COLONEL VERMAAK: No, verbally. He was

5 on the scene.

6 MR SEMENYA SC: And you said to him I

7 instructed the R5 to be fired at that attackers?

8 COLONEL VERMAAK: That is correct.

9 MR SEMENYA SC: The attackers.

10 COLONEL VERMAAK: That is correct. When

11 he arrive at the scene I give him feedback, what have

12 happened. I also give him feedback regarding where I

13 contact the provincial commissioner to – according to the

14 threats against General Mpembe and I also report to him

15 about the incident at the river.

16 MR SEMENYA SC: No, no, no, I'm not

17 asking about incidents. I'm very specific with my

18 questions. Do you say to Brigadier Calitz I instructed

19 members of the TRT to discharge their firearm and aiming at

20 the strikers?

21 COLONEL VERMAAK: Chair –

22 MR SEMENYA SC: Or a striker.

23 COLONEL VERMAAK: I just said I report to

24 Brigadier Calitz the whole incident. That was my answer.

25 MR SEMENYA SC: Including this aspect?

Page 27504

1 COLONEL VERMAAK: That incident, yes.

2 MR SEMENYA SC: Including this aspect?

3 COLONEL VERMAAK: I said that incident.

4 MR SEMENYA SC: I know, Colonel, you're

5 saying that incident but I don't want any ambiguity. When

6 you say you reported to Brigadier Calitz that incident are

7 you saying inclusive of the detail that you instructed

8 somebody else to fire an R5 rifle at a striker, that also?

9 COLONEL VERMAAK: That was part of the

10 report to him.

11 MR SEMENYA SC: Can I ask that we flight

12 to exhibit 0008?

13 CHAIRPERSON: Certainly. Have you told

14 the operator that you intend flighting? If so can it

15 please be shown? Was there any warning I have to give?

16 MR SEMENYA SC: No, it's a statement.

17 CHAIRPERSON: All right.

18 MR SEMENYA SC: This is your statement,

19 Colonel, that you write on the 16th of August 2012. Am I

20 right?

21 COLONEL VERMAAK: That's correct.

22 MR SEMENYA SC: In your own handwriting.

23 COLONEL VERMAAK: That's correct.

24 MR SEMENYA SC: Uninfluenced by anybody.

25 COLONEL VERMAAK: That's correct.

Page 27505

1 MR SEMENYA SC: Given to the

2 investigating officer, Brigadier Van Zyl.

3 COLONEL VERMAAK: That's correct.

4 MR SEMENYA SC: Knowing that it is one of

5 the documents that is going to be used to review his bail

6 application?

7 COLONEL VERMAAK: That's correct.

8 MR SEMENYA SC: Nowhere – and you are

9 discussing the matters of the 13th, correct?

10 COLONEL VERMAAK: I can just repeat what

11 I have already stated. Brigadier Calitz, ag, Van Zyl asked

12 me a short statement just to give an overview what happened

13 on the 13th and more or less to explain the fact that the

14 people did not apply for a march without any specific

15 detail to what happened on the 13th. There's a lot of

16 information that on a later stage was given in my

17 statements that was also being required by the police legal

18 team. So this is not specifically handling of all the

19 incidents on the 13th.

20 MR SEMENYA SC: Ja, sure. One of the

21 things I'm able to say, Colonel, that in your entire career

22 – correct me if I'm wrong – it is one of the most

23 significant things to have happened for you to order a

24 member to discharge an R5 at a particular individual. Am I

25 right?

Page 27506

1 COLONEL VERMAAK: Yes.

2 MR SEMENYA SC: One of the most, single

3 most important most conspicuous elements in your career as

4 a police officer.

5 COLONEL VERMAAK: That's correct. That's

6 why I take the responsibility for that instruction, Chair.

7 MR SEMENYA SC: No, but I'm trying to

8 explore whether you do that or not, Colonel. You remember

9 what amongst others was to happen at Roots was that you

10 must tell everything that happened there, right? Correct?

11 COLONEL VERMAAK: On this incident.

12 MR SEMENYA SC: I know you are –

13 COLONEL VERMAAK: Is it a statement or is

14 it a question?

15 MR SEMENYA SC: It's a question.

16 COLONEL VERMAAK: Yes, I was at Roots.

17 MR SEMENYA SC: And you were there to go

18 and tell what happened in the operation in Marikana

19 including the 13th.

20 COLONEL VERMAAK: That is correct, Chair.

21 I must just maybe also mention that at Roots I gave a

22 statement to Mr Pretorius and he took the statement, go

23 through it, and he make specific places where I make

24 spelling faults and he rectify it. I still have that

25 document. It's not here unfortunately but it is available.

Page 27507

1 MR SEMENYA SC: I'll come to that

2 statement. I say at Roots the purpose was going to tell

3 exactly what happened including on the 13th.

4 COLONEL VERMAAK: That's correct.

5 MR SEMENYA SC: You don't tell anybody at

6 Roots do you?

7 COLONEL VERMAAK: I did.

8 MR SEMENYA SC: That you instructed

9 somebody to fire at a striker with an R5?

10 COLONEL VERMAAK: Yes.

11 MR SEMENYA SC: Who do you tell at Roots

12 now?

13 COLONEL VERMAAK: It was in the meeting

14 where all the people were together.

15 MR SEMENYA SC: Does it get noted?

16 COLONEL VERMAAK: Chair, I would like if

17 you can show me minutes of all that meetings because why, I

18 tried to get hold of the minutes and –

19 MR SEMENYA SC: Does it get noted,

20 Colonel?

21 COLONEL VERMAAK: I don't know.

22 MR SEMENYA SC: Okay.

23 COLONEL VERMAAK: Was anybody there

24 taking minutes? No, I don't know.

25 MR SEMENYA SC: Okay. One of the

Page 27508

1 elements of your evidence - you were vociferous that you

2 are not going to allow exhibit L to disclose things that

3 are not truthful, correct?

4 COLONEL VERMAAK: Just repeat your

5 question?

6 MR SEMENYA SC: One of your most

7 vociferous complaints in your evidence around Roots was

8 that Roots must not produce an untruth.

9 COLONEL VERMAAK: My evidence?

10 MR SEMENYA SC: Yes, your evidence. You

11 even went out and sat outside because you don't like what

12 is happening there.

13 MS PILLAY: No, Chair, Chair, just an

14 objection. I think Mr Semenya with the greatest of respect

15 is confusing the witness' testimony in relation to the

16 meeting with the national commissioner. That's when he

17 left – sorry, with Colonel Scott. That's when he left the

18 room and sat outside, not at Roots.

19 MR SEMENYA SC: No, at Roots, Chair, you

20 would remember General Annandale even came to speak to him

21 and calm him down.

22 COLONEL VERMAAK: No, you can, Chair, if

23 you can go back to my statement, my last statement, it was

24 on the 28th of October where we had a meeting at Mpanaga

25 where Colonel Scott made some allegations. Then I went out

Page 27509

1 and I said I cannot be part of it. So that is in my

2 statement.

3 MR SEMENYA SC: Ja, but that –

4 CHAIRPERSON: I'm sorry, Mr Semenya. If

5 there's a dispute between you and Ms Pillay as to what

6 precisely was said then I think perhaps it can stand over

7 until someone can find it in the transcript. I was reading

8 the transcript yesterday and it's certainly in the

9 transcript somewhere. And it will be a simple matter to

10 ascertain by looking at the relevant passage in the

11 transcript, but perhaps you can go on in the meanwhile and

12 when that passage has been found we can, you can return to

13 the matter and then I can consider the objection if the

14 objection is persisted in, in the light of what's in the

15 transcript.

16 MR SEMENYA SC: Thank you, Chair. The

17 thrust of my question is really, is something different.

18 I'm saying you were very vigilant at Roots that exhibit L

19 does not reflect anything that's inaccurate. Correct?

20 MS PILLAY: Chair, may I just ask what

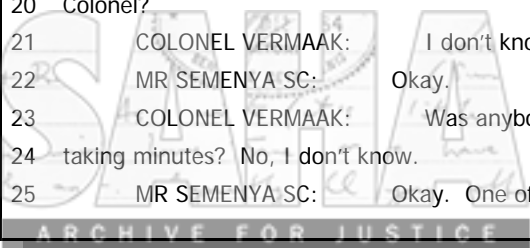
21 the basis is for this question because that was never the

22 witness' testimony and if we could be referred to the

23 transcript where the witness has testified to that effect?

24 MR SEMENYA SC: Chair, he said he even

25 complained and told people like Colonel Merafe and he was



Page 27510

1 making complaints in relation to General Mpmembe. He was
 2 really making sure that things happened there. I'll ask it
 3 as an open-ended question. Am I correct, Chair, Colonel?
 4 COLONEL VERMAAK: No. I was not
 5 complaining to Colonel Merafe. He was approaching me with
 6 a complaint, so that was not me complaining. That was him
 7 coming to me.
 8 MR SEMENYA SC: I'll ask it as an open
 9 question. Were you concerned that exhibit L which is the
 10 product at Roots reflect the truth and nothing else but the
 11 truth?
 12 COLONEL VERMAAK: I cannot agree on that.
 13 MR SEMENYA SC: No, maybe it's a language
 14 issue. Just examine your answer. Weren't you concerned
 15 that exhibit L depicts, reflects nothing but the truth but
 16 only the truth?
 17 COLONEL VERMAAK: I didn't speak to the
 18 people at Roots about the presentation because why, that
 19 was not the final document. They were every time just show
 20 to us how far they are with compiling the document and I
 21 have one problem there and that was the timelines with some
 22 of my photos where I object about the timelines that they
 23 want to change it to other times and that is the only time
 24 that I said I did not agree with that specific
 25 presentation.

Page 27511

1 MR SEMENYA SC: One of the ringing
 2 omissions in exhibit L is the fact that you instructed TRT
 3 members to shoot at a striker. Am I right?
 4 COLONEL VERMAAK: If they did not put in
 5 there I cannot stand in for it. I'm not compiling that
 6 report.
 7 MR BIZOS SC: - Mr Chairman, the question
 8 is the evidence is to shoot at a particular person and the
 9 assumption of the questions throughout is not caring
 10 whether he should live or die when the witness has made -
 11 that he was, that he assumed because of their training that
 12 there would not be lethal force used and my learned friend
 13 has repeatedly put the question in a manner in the hope
 14 that the witness would change his evidence and say, yes, I
 15 gave authority to shoot to kill. With respect it is unfair
 16 to repeatedly by implication put that across.
 17 CHAIRPERSON: Mr Semenya, how do you deal
 18 with that comment?
 19 MR SEMENYA SC: I have done no such
 20 thing, Chair.
 21 CHAIRPERSON: He denies it. Certainly
 22 he's not going to do it in future if he did it before. I
 23 must confess I didn't understood it to be put quite in
 24 those terms. The point is maybe is that in view of Mr
 25 Semenya has said that that's not his intention to put such

Page 27512

1 a question we can be quite satisfied he certainly won't do
 2 so from now on.
 3 COMMISSIONER HEMRAJ: Colonel, may I just
 4 ask you the last time that you would've seen exhibit L
 5 before it came to the commission at whichever stage that
 6 was -
 7 COLONEL VERMAAK: I only saw it here.
 8 COMMISSIONER HEMRAJ: No, no, just hear
 9 the question please. The last time you would've seen it
 10 before it was presented at the commission did you notice
 11 that it was missing from the presentation that you gave the
 12 order for a person to fire live ammunition on the 13th?
 13 COLONEL VERMAAK: Chair, on that
 14 presentation I didn't specifically go into each and
 15 everybody's instructions. That was only actually a
 16 overview what happened there at specific areas, specific
 17 incidents, but they never mentioned anybody's name
 18 specifically who given any specific instructions.
 19 COMMISSIONER HEMRAJ: So do I understand
 20 from that answer that it was not there?
 21 COLONEL VERMAAK: That's correct, Chair.
 22 COMMISSIONER HEMRAJ: Thank you, Colonel.
 23 MR SEMENYA SC: Even when the commission
 24 was running you were aware exhibit L does not have this
 25 most profound important detail which addresses the terms of

Page 27513

1 reference, Colonel. Am I right?
 2 COLONEL VERMAAK: Chair, I didn't go
 3 through that exhibit previously.
 4 MR SEMENYA SC: I don't know what you
 5 mean by previously but I'm saying even during the running
 6 of this commission and reference to exhibit L and your
 7 consultation even with the evidence leaders and you gave
 8 evidence in relation to exhibit L.
 9 COLONEL VERMAAK: Well, even with -
 10 MR SEMENYA SC: It must have occurred to
 11 you, Colonel, that the most obvious omission, as I call it
 12 a ringing omission in exhibit L is that it doesn't have
 13 this detail.
 14 COLONEL VERMAAK: Chair, you know what, I
 15 did not consult so intensive with evidence leaders but I
 16 did consult with your legal team and you never mentioned it
 17 to me.
 18 MR SEMENYA SC: Because you never told it
 19 to the legal team. That's why.
 20 COLONEL VERMAAK: No.
 21 MS PILLAY: Chair, can I just object? As
 22 I understood the arrangement on which the SAPS team would
 23 be allowed to cross-examine the colonel, it was on the
 24 basis that nothing that was covered during consultation
 25 would be -

Page 27514

1 CHAIRPERSON: The trouble is, I
 2 understand that, but the reason why I didn't stop Mr
 3 Semenya was he was responding to what the witness said.
 4 The witness put to him what was said in consultation
 5 between the witness and Mr Semenya. Mr Semenya didn't
 6 start it so in the circumstances I didn't think I could
 7 stop him. If Mr Semenya keeps away from what was said in
 8 consultation between him and the witness and the witness
 9 keeps away from what was said in consultation between him
 10 and Mr Semenya there won't be a problem, but once Mr
 11 Semenya is confronted with a statement by the witness then
 12 he's entitled to follow it up.
 13 MS PILLAY: Chair, the second part of
 14 that objection would be now that Mr Semenya is putting it
 15 to the witness as a positive assertion that this was never
 16 put, said to us in consultation then unfortunately we're
 17 going to have to ask for the factual basis on which that
 18 assertion is made.
 19 CHAIRPERSON: I understand what you're
 20 saying but you see it's the witness who makes the point
 21 first and what we get is essentially a retort or response
 22 from Mr Semenya to that. My own feeling, Colonel, is that
 23 we agreed that something rather unusual could happen here,
 24 namely Mr Semenya who consulted with you could cross-
 25 examine you, but it was done on the clear understanding

Page 27515

1 that he wouldn't ask you any questions about what was said
 2 in consultation between you and him. Now, the other side
 3 of that coin must surely be that you won't say anything
 4 about the consultation either because you can't expect to
 5 say things about the consultation you had with Mr Semenya
 6 but Mr Semenya isn't allowed to answer you, so my
 7 suggestion is let's leave out what happened in consultation
 8 between you and Mr Semenya.
 9 [11:15] You can be asked I think appropriately about what
 10 you said in consultation with Mr Wesley because that wasn't
 11 a privileged discussion, and there may well be a number of
 12 questions that can be asked about that, and I understand
 13 you've made the point, which I think we now all understand,
 14 that you say you told Brigadier Calitz you gave the order
 15 to shoot, you did it orally. No-one came back to you about
 16 that. IPID never questioned you, asked you to make a
 17 warning statement or any other statement. They may well
 18 have been in possession of a statement from the person to
 19 whom you gave the order saying it, but they didn't follow
 20 it up, but that point has been covered. We know all that.
 21 COLONEL VERMAAK: That's correct, Chair.
 22 CHAIRPERSON: I think, I suggest we carry
 23 on, but without your raising with Mr Semenya what you said
 24 in consultation with him so that he won't be obliged to
 25 combat what you said to him. So shall we carry on, on that

Page 27516

1 basis, Mr Semenya? Would that –
 2 MR SEMENYA SC: Thank you, Chair.
 3 CHAIRPERSON: - not unduly happy with
 4 your cross-examination.
 5 MR SEMENYA SC: Thank you, Chair. Okay –
 6 MS LEWIS: Chair, I'm sorry to intervene,
 7 interrupt my learned colleague, but I wonder really whether
 8 further thought should be given to SAPS bringing in an
 9 independent counsel to cross-examine Colonel Vermaak.
 10 CHAIRPERSON: In your absence, Ms Lewis,
 11 that matter was covered in chambers. The police have tried
 12 to do so and they haven't been able to do so. There were
 13 all sorts of problems in relation to counsel, when counsel
 14 was available, and so on. As you know, we are ending the
 15 evidence in this matter before the end of July and I was
 16 told by the police that it wasn't practically possible for
 17 them to get someone because they have to have evidence from
 18 Lonmin, they've got to have evidence from other people as
 19 well, and so it was then because the witness specifically
 20 waived the – he didn't want this thing hanging over him for
 21 a long time either and he then came one day and he actually
 22 said in terms he waived any right he has to object to Mr
 23 Semenya cross-examining him. But it has previously been
 24 stated by Mr Semenya that he was not going to ask any
 25 questions about anything that was said in consultation

Page 27517

1 between him and the witness and it was on that basis that
 2 we were happy that the thing would proceed. The witness
 3 has now actually raised the question and I've admonished
 4 him in that regard and I take it he will take my admonition
 5 to heart.
 6 MS LEWIS: Chair, sorry, I appreciate all
 7 of that but it seems from the previous questions from Mr
 8 Semenya that Colonel Vermaak's response may well be the
 9 only way in which he has to respond to those questions,
 10 which is that "I told this to you in consultation" and
 11 whether it appears, the fact that it doesn't appear in the
 12 statement –
 13 CHAIRPERSON: I think he says it was
 14 never raised with him and one of his complaints is that -
 15 never mind what Mr Semenya did or didn't do – one of his
 16 complaints is that the police generally didn't confront
 17 him, if that's the right word, with statements made by any
 18 of the people who were present with him on the day, saying
 19 that he gave the order, and he wasn't asked about it. As
 20 far as he was concerned he told Brigadier Calitz about it
 21 and that's the end of the matter. So I don't know that –
 22 MS LEWIS: Chair –
 23 CHAIRPERSON: - there's any future in
 24 going into this further, but we've got, Mr Bizos I think
 25 indicated he wanted to say something.

Page 27518

1 MR BIZOS SC: Yes, Mr Chairman, my
 2 learned friend repeatedly puts questions to this witness in
 3 the hope of getting an answer that will enable him to argue
 4 that the fact that the witness ordered a shooting with a
 5 particular rifle will anew to his advantage. Implied in
 6 all these questions is that this was deliberately kept
 7 back. I submit with the greatest respect that the witness
 8 in the circumstances is entitled to say I did not keep
 9 anything back, I told you about it. Mr Semenya is looking
 10 for it and he must pay the price if he continues with that
 11 line of cross-examination.

12 CHAIRPERSON: Well, that wasn't his
 13 evidence as I understand it. I can't disallow a question
 14 on the basis of the hope which is in the breast of the
 15 question when you ask the question. I never heard that as
 16 being a basis for disallowing a question. That's the first
 17 point.

18 The second point is that questions are asked
 19 which can either be allowed or disallowed, depending on
 20 what's asked. The matter can be argued at the end. The
 21 witness's evidence I would have thought so far is very
 22 clear; he says he gave an order, gave an instruction. He
 23 mentioned, reported it later to Brigadier Calitz. He
 24 doesn't know whether that instruction when carried out led
 25 to the death of anybody. He didn't mention it in his

Page 27519

1 statement, he admits that. I think on reflection he'd
 2 probably concede that it would have been wiser to have done
 3 so, but he didn't. It's a fact we have it wasn't
 4 mentioned. He says he told Brigadier Calitz that orally.
 5 IPID never asked him about it, he says, certainly didn't
 6 take a warning statement from him, didn't take any
 7 statement from him. If they were in possession of
 8 statements from the person, or a statement from the person
 9 who fired the shot that he ordered to be given, then you
 10 would have expected them to have come back to him. But I
 11 mean hasn't this matter been fairly thoroughly ventilated?
 12 I don't know that we can take it any further.

13 MR BIZOS SC: That's part of my point, Mr
 14 Chairman. Mr Semenya must advise himself as to whether
 15 it's worth his while seeking an answer to the question that
 16 he kept this information back deliberately. The witness
 17 can say I did not keep it back deliberately, I told you so.
 18 Mr Semenya must make up his mind whether he wants to
 19 continue along that line of cross-examination on this
 20 issue.

21 CHAIRPERSON: Alright. Yes, we've heard
 22 what you have said. Before I get Mr Semenya's reply, Mr
 23 Fischer who as far as I know is not an admitted South
 24 African legal practitioner but he is a member of one of the
 25 ends of court, so on that basis I'll give him the

Page 27520

1 opportunity to ask a question. This is a commission after
 2 all, not a court. Mr Fischer?

3 MR FISCHER: I'm grateful, Chair, thank
 4 you.

5 CHAIRPERSON: What do you want to say?
 6 MR FISCHER: Chair, my submission is this
 7 only –

8 MR SEMENYA SC: Chair, I don't know if Mr
 9 Fischer has the right of audience in this –

10 CHAIRPERSON: This is a commission, it's
 11 not confined to legal practitioners. Anyway, he is a legal
 12 practitioner, a member of one of the ends of court, so I in
 13 my discretion will allow him to speak and you can then
 14 reply to what he has to say. If you think I shouldn't
 15 allow it then you can leave what he says unanswered, but
 16 I'll leave that to you. Yes, Mr Fischer.

17 MR FISCHER: I'm grateful, Chair. In
 18 order to add to what Mr Bizos has been saying, Chair, I
 19 would submit that where questions are asked on omissions in
 20 a statement it must always be available to a witness to
 21 answer –

22 (a) I was advised not to put that in my
 23 statement;

24 (b) I told my legal adviser about this and I was
 25 told, and nothing was said about it.

Page 27521

1 It seems, Chair, that you're advising the witness
 2 that he should not give either of those two answers, but
 3 where the point of the cross-examination is the omission in
 4 a statement it must be available.

5 CHAIRPERSON: My impression was he'd
 6 already given an answer, but anyway, let's hear what Mr
 7 Semenya has to say.

8 MR SEMENYA SC: I will respond with
 9 questions to the Colonel, if you allow me, Chair.

10 MS PILLAY: Chair, just finally on this
 11 issue, because it is an extremely important issue; Mr
 12 Semenya's line of cross-examination is that this, what he
 13 describes as a most profound important detail was omitted
 14 from your statement. So this issue is quite a critical
 15 issue and the witness's testimony, as I understand it,
 16 Chair, is not only that he told Brigadier Calitz, but that
 17 he told his team as well. That's how I understand his
 18 testimony to be to that effect.

19 CHAIRPERSON: I understood him to say he
 20 didn't tell them and his complaint was that no-one ever
 21 asked him about it, and his complaint further was that IPID
 22 should have asked him about it and they didn't, but he says
 23 he told Brigadier Calitz and as far as he was concerned
 24 that was it. Obviously it's not in his statement, we know
 25 that. It may well be the subject of argument later. Even

Page 27522

1 if he did tell his legal team much, much later, it wasn't
 2 in any of the statements made earlier. So that point would
 3 always be there. So I think we should carry on as we are
 4 for the time being without this question of what was said
 5 in consultation between Mr Semenya and the witness being
 6 dealt with further. But I must confess my impression is in
 7 any event that he doesn't say he told Mr Semenya. His
 8 complaint is that Mr Semenya didn't ask him. Anyway, let's
 9 carry on in the meanwhile. Let's not waste time further on
 10 it –
 11 MR SEMENYA SC: Okay, let's make it
 12 easy –
 13 COLONEL VERMAAK: Chair, can I maybe just
 14 say something? When I was consulting with the legal team
 15 they were going through certain incidents and questions
 16 that might be asked to me in the Commission by other
 17 advocates. One of them was specifically that person that
 18 we were shooting, or the member was shooting at, and their
 19 response to me was you must prepare yourself for an answer
 20 because why you're going to get that question. So they
 21 knew about it. They did ask me that and I did report it to
 22 them because why that was one of the points that they said
 23 to me I must prepare myself for that questions because it's
 24 going to come to me.
 25 MR SEMENYA SC: Can we talk about LLL8,

Page 27523

1 and if we can have it on the screen as well, with your
 2 permission, Chair.
 3 CHAIRPERSON: [Microphone off, inaudible]
 4 OOO8, as I understand this –
 5 MR SEMENYA SC: No, no, LLL8, that's the
 6 statement of –
 7 CHAIRPERSON: Okay.
 8 MR SEMENYA SC: - of 2014.
 9 CHAIRPERSON: Alright.
 10 MR SEMENYA SC: This is the statement you
 11 draft on the 21st of January this year, correct?
 12 COLONEL VERMAAK: That's correct.
 13 MR SEMENYA SC: And you call it a final
 14 statement.
 15 COLONEL VERMAAK: That's correct.
 16 MR SEMENYA SC: You did it independent of
 17 any legal advice. Am I right?
 18 COLONEL VERMAAK: That's correct, Chair.
 19 MR SEMENYA SC: You wrote it down
 20 yourself.
 21 COLONEL VERMAAK: That's correct.
 22 MR SEMENYA SC: And you made sure that it
 23 includes in it all relevant material in relation to your
 24 conduct in this operation?
 25 COLONEL VERMAAK: That's correct.

Page 27524

1 MR SEMENYA SC: Without the advice of
 2 anybody?
 3 COLONEL VERMAAK: That's correct.
 4 MR SEMENYA SC: No lawyers at all?
 5 COLONEL VERMAAK: I did send it to them.
 6 MR SEMENYA SC: No, no, no, no, no, when
 7 you drafted the document –
 8 COLONEL VERMAAK: When I draft it, yes,
 9 and they were asking me for a final statement with all the
 10 questions that they have and I sent it through to them.
 11 MR SEMENYA SC: And your intention was to
 12 tell the complete truth about what happened?
 13 COLONEL VERMAAK: That's correct.
 14 MR SEMENYA SC: Show me in the document
 15 where you tell us you gave instructions to anybody to shoot
 16 with an R5 rifle live ammunition at a striker.
 17 COLONEL VERMAAK: If it is not in the
 18 statement I acknowledge in this Commission and I said that
 19 I did give that instruction. I didn't keep it away from
 20 anybody. I make it public; although it was not in the
 21 statement I didn't deny anything.
 22 CHAIRPERSON: In fact what we've got is
 23 this; we've got two fairly detailed statements that you
 24 made. The one is GGG17, which is a statement which you
 25 made - I think you also drafted it yourself, didn't you? -

Page 27525

1 which you made in, when did you make that statement? It's
 2 not very clear to me from the – oh yes, you made it on the
 3 30th of August 2012, typed at the bottom of the second page,
 4 bottom of the third page. Now did you draft that statement
 5 yourself?
 6 COLONEL VERMAAK: That's correct, Chair.
 7 CHAIRPERSON: Right, then later on you
 8 prepared, you gave a few other statements dealing with
 9 various points that arose and then subsequently you then
 10 compiled another statement, which is LLL8, this is the one
 11 that Mr Semenya is talking about, which was in January this
 12 year.
 13 COLONEL VERMAAK: That's correct, Chair.
 14 CHAIRPERSON: In that statement you
 15 incorporate a lot of the material which is in GGG17.
 16 COLONEL VERMAAK: That's correct.
 17 CHAIRPERSON: The statement of the 30th of
 18 August 2012, but you added extra stuff.
 19 COLONEL VERMAAK: That's correct.
 20 CHAIRPERSON: Now the passage that we're
 21 busy with in fact is the same, as I see it, in both these
 22 statements. Now let's have a look at that. First of all
 23 let's look at GGG17. GGG17 on the second page, it's in the
 24 middle of paragraph 5, could we have that on the screen,
 25 please? GGG17. Let's go down to para 5, it's on the

Page 27526

1 second page, para 5. About 12 lines down there's a
 2 paragraph, a sentence that begins as follows, "Ons het die
 3 groep gevolg tot waar hulle deur 'n waterstroom beweeg het
 4 en op ons begin skiet het met die R5 geweer en vermoedelik
 5 'n haelgeweer. Die lede het teruggeskiet op die
 6 aanvallers." "We followed the group to where they moved
 7 through a stream of water, or a stream, and began to shoot
 8 at us with the R5 rifle and presumably a shotgun. The
 9 members shot back, or returned the fire, I suppose, on the
 10 attackers," the members, in plural.

11 Exactly the same wording as far as I can see
 12 appears in exhibit LLL8, that's the statement you made in
 13 January this year, in paragraph 7, and it's at the top of
 14 the third page. It's the next page, here we are. Third
 15 line of this page, this is now the third page, the third
 16 line – sorry, the fourth line – no, no, the third line says
 17 – well, perhaps we should start in the first line. "Ek het
 18 kaptein Loest opdrag gegee om die lede bymekaar te maak
 19 sodat ons orde kon kry, waarop ek met die groepie SAPD-
 20 lede, wat bestaan het uit TRT en POP-lede, die groep gevolg
 21 het tot waar hulle deur 'n waterstroom beweeg het en op ons
 22 begin skiet het met die R5 geweer en vermoedelik 'n
 23 haelgeweer. Die lede het teruggeskiet op die aanvallers."
 24 So to translate that, "I gave Captain Loest an instruction
 25 to get the members together so that we could get order,

Page 27527

1 whereupon I together with the small group of SAPS members,
 2 which comprised, consisted of TRT and POP members, followed
 3 the group to where they moved through a stream and began to
 4 shoot at us with the R5 rifle and presumably a shotgun."
 5 Exactly the same words as in the previous statement. "Die
 6 lede het teruggeskiet op die aanvallers." "The members
 7 returned the fire, or fired back at the attackers."
 8 So effectively the same words are used in both
 9 your statement at the end of August 2012 and your statement
 10 of January this year, and in neither of those statements do
 11 you mention the fact that the return of fire took place on
 12 your instructions.

13 COLONEL VERMAAK: That's correct, Chair –
 14 CHAIRPERSON: But that was long before –
 15 or I don't know what happened in January 2014, but
 16 certainly the August 2012 statement was made long before
 17 you consulted any lawyers. Is that right?
 18 COLONEL VERMAAK: No, Chair, I think at
 19 that stage we already started consulting, but yes, I was
 20 asked this question previously and I explained that when I
 21 updated the statement as information was required you copy
 22 it and paste from your previous statements and that was a
 23 mistake from my side that instead of mentioned a member I
 24 put there members, but –
 25 CHAIRPERSON: Well, you made two mistakes

Page 27528

1 actually. One was you said "members" instead of a member,
 2 and secondly you omitted the fact, which you conceded is an
 3 important one –
 4 COLONEL VERMAAK: Ja.
 5 CHAIRPERSON: - that that member fired in
 6 compliance with an instruction you gave him.
 7 COLONEL VERMAAK: That's correct, ja.
 8 CHAIRPERSON: But the point is the
 9 original omission of, both those mistakes actually
 10 originated in August 2012.
 11 COLONEL VERMAAK: That's correct, Chair.
 12 CHAIRPERSON: And you – ja.
 13 MR SEMENYA SC: It is the size of the
 14 omission that is a concern for me. What could explain it?
 15 CHAIRPERSON: Let's confine ourselves to
 16 the omission at the end of August 2012, where no
 17 complicating factors happened after that. It was an
 18 important fact that the return of fire took place in
 19 compliance with a instruction from you. Is that correct?
 20 COLONEL VERMAAK: That was important and
 21 I take responsibility that I did not put it in the
 22 statement, but it was not, there was no, from my side to
 23 mislead anybody about that fact. That is why I think, and
 24 when I was testifying here I acknowledged that I didn't
 25 write it correctly in the statement and that is why I

Page 27529

1 testify here what was happening there.
 2 [11:34] MR SEMENYA SC: No, Colonel, you are not
 3 listening to my question. All admissions granted, it is
 4 the most significant on your own admission, event that ever
 5 happened in your career, what could explain that it is not
 6 in your statement? I know you acknowledge it. What could
 7 -
 8 COLONEL VERMAAK: I have given you an
 9 explanation now, and I will stick with that answer.
 10 MR SEMENYA SC: No, no, no.
 11 COLONEL VERMAAK: You can't force me to
 12 answer something that I already answered to you, Chair.
 13 MR SEMENYA SC: No, I am entitled to an
 14 answer, Colonel, not a reply and I am going to put my
 15 question again.
 16 CHAIRPERSON: Reply is the same thing.
 17 Now you want to give us your explanation now, as to why you
 18 didn't mention it in your statement at the end of August
 19 2012. You say, the failure to include it in the later one
 20 was you were cutting and pasting.
 21 COLONEL VERMAAK: That's correct, Chair.
 22 CHAIRPERSON: So the big question is, why
 23 didn't you mention it in your statement at the end of
 24 August 2012 when I take it, it was fresh in your memory?
 25 COLONEL VERMAAK: Chair, I can't explain

Page 27530

1 to you why didn't I mention it, but as I said, I never
 2 withheld it from anybody that I did give that instruction.
 3 So as I said, I take the responsibility that I did not
 4 write it in that statement, but there was no reason that I
 5 want to mislead anybody about it.
 6 MR SEMENYA SC: How many shots get fired
 7 on your command?
 8 COLONEL VERMAAK: Only one.
 9 MR SEMENYA SC: Only one shot?
 10 COLONEL VERMAAK: That's correct.
 11 MR SEMENYA SC: By one member?
 12 COLONEL VERMAAK: That's correct.
 13 MR SEMENYA SC: Nothing more?
 14 COLONEL VERMAAK: That's correct.
 15 MR SEMENYA SC: Can I ask that we have a
 16 look at QQQ7. You will see that is the statement of
 17 Sekgweleya and I will invite us to go to the last page so
 18 that we can identify the date when that statement is, you
 19 see it's in April the 7th of 2014, Colonel?
 20 COLONEL VERMAAK: That's correct.
 21 MR SEMENYA SC: Can we go to paragraph
 22 11? He says there, "Colonel Vermaak drew our attention to
 23 one striker who had an R5 rifle." You can't contradict
 24 that, can you?
 25 COLONEL VERMAAK: That's correct.

Page 27531

1 MR SEMENYA SC: "The armed striker then
 2 faced our direction and pointed us with an R5 rifle." You
 3 can't make issue with that line.
 4 COLONEL VERMAAK: That's correct.
 5 MR SEMENYA SC: Say it louder, Colonel?
 6 COLONEL VERMAAK: That is correct.
 7 MR SEMENYA SC: "Colonel Vermaak
 8 instructed us to shoot towards them but on the ground,
 9 which I did together with Sergeant Mguye." Is that
 10 correct?
 11 COLONEL VERMAAK: No.
 12 MR SEMENYA SC: What's wrong with that
 13 statement?
 14 COLONEL VERMAAK: "Us, instructed us."
 15 MR SEMENYA SC: Did you admonish Mguye
 16 when he was shooting, and say no, but I didn't even
 17 instruct you to shoot at all?
 18 COLONEL VERMAAK: Chair, if you can
 19 compare the two members who gave their statements,
 20 Sekgweleya and Mguye on the 7th of April, if I am correct,
 21 14 of April, and you go and compare those two members'
 22 statements and you go and look to the LCRC officer, who
 23 attended that scene, you will see that both these members
 24 in this last statement stated that they have fired four
 25 shots, each of them, R5s, but the captain from LCRC stated

Page 27532

1 that he only gave one R5 cartridge, spent cartridge on the
 2 scene. Now, for me, it puts a big question over this
 3 statement, because why, the fact that they make a statement
 4 on the 14th, and you can see clear from this statement it is
 5 just concentrating on my instructions, but it is not, if
 6 you compare it with LCRC statement about the spent
 7 cartridges, and their statements, then there's something
 8 wrong.
 9 MR SEMENYA SC: I am not talking about
 10 the statements, I am talking about what you observed on the
 11 13th as you walked with them to the river. You say there's
 12 only one shot that was fired, but you do see one of the
 13 gentlemen, I don't know whether this is the one you
 14 instructed to fire, says they all fired, both fired.
 15 COLONEL VERMAAK: Both fired? Okay, but
 16 I want to make clear to you they said both fired and if
 17 they both fired, where is that spent cartridges? I only –
 18 CHAIRPERSON: Colonel, you are now
 19 arguing the case already. These are matters that can be
 20 argued. What we are concerned about, is your recollection
 21 what you remember. Now what's been put to you, is that
 22 Constable Sekgweleya and Sergeant Mguye according to the
 23 statement, both fired at the person, the armed striker with
 24 the R5 and Sekgweleya says that you gave the instruction to
 25 both of them. Now I understand you've got an argument as

Page 27533

1 to why we should reject the evidence but you are not here
 2 to argue the case, you are just to give your evidence. Now
 3 what I want to know from you is this, did you only instruct
 4 one of them, or both of them or more than two?
 5 COLONEL VERMAAK: Only one member, Chair.
 6 CHAIRPERSON: Can you – and I take it,
 7 it's correct you don't know who they are, so you don't know
 8 whether you instructed Sekgweleya or Mguye?
 9 COLONEL VERMAAK: No, Chair.
 10 CHAIRPERSON: What was the exact
 11 instruction?
 12 COLONEL VERMAAK: Excuse me, Chair?
 13 CHAIRPERSON: What was the exact
 14 instruction?
 15 COLONEL VERMAAK: My exact instruction
 16 was that he must see if he can identify, well, we have it
 17 identified, my exact instruction was, he must shoot back at
 18 the person who was shooting at us.
 19 CHAIRPERSON: Okay, alright. That was
 20 your instruction. Now, as far as you can remember, did
 21 only one person respond to your instruction, or is it
 22 possible, thinking back, that two of them may have fired?
 23 COLONEL VERMAAK: No, Chair, only one.
 24 CHAIRPERSON: So if the, if these two,,
 25 the one constable and the one sergeant come and say

Page 27534

1 something different, you don' agree with them?

2 COLONEL VERMAAK: That's correct, Chair.

3 CHAIRPERSON: And presumably it will be

4 argued later by someone, that their evidence is to be

5 rejected in preference to yours but it's not your function

6 to argue that now. You've made a point which presumably

7 may be taken up but you are not here to argue, you are here

8 to testify, okay?

9 MR SEMENYA SC: You know, Colonel, maybe

10 even to wrap up the previous topic, nowhere in your diary

11 do you mention the fact that you instructed anybody to fire

12 a firearm at the striker. Isn't that profound?

13 COLONEL VERMAAK: I didn't write it into

14 the diary and there's no specific reason. A diary is not a

15 statement that you write down, the diary is only give you

16 more or less indications what you have done for the day

17 without specific information in your diaries.

18 MR SEMENYA SC: The most important thing

19 that ever happened in your career, you say it's not worthy

20 of entering in your diary.

21 COLONEL VERMAAK: I didn't say it's not

22 worth it, Chair. That's not my words.

23 CHAIRPERSON: Do you accept it's the most

24 important thing in your career?

25 COLONEL VERMAAK: No, no, Chair, I will

Page 27535

1 accept that.

2 CHAIRPERSON: I won't ask you what the

3 most important thing in your career was but was this one

4 the important thing in your career, most important thing in

5 your career?

6 COLONEL VERMAAK: No, Chair, no, there

7 was a lot.

8 MR SEMENYA SC: Well, some adjectives

9 here or there, but it is a very significant event in your

10 career as a police officer.

11 COLONEL VERMAAK: That's correct, Chair.

12 Maybe in the rest of topics there's been referred to

13 incidents in 1993 and 1996, and I also made copies and I

14 have my diaries of that days available for the Commission,

15 and I can hand it in. That specific one day, the Police

16 Act under my command, and there were seven people killed at

17 that day. So that is also a significant incident, and I

18 will give my diary and you can go through my diary and see

19 what I have wrote down in that diary as well.

20 MR SEMENYA SC: We will get to those

21 things. Let's get back to this one now. You say to the

22 Chairman's question what instructions did you give? What

23 words did you use?

24 COLONEL VERMAAK: What word did I use?

25 MR SEMENYA SC: What word or words did

Page 27536

1 you use in giving that instruction?

2 COLONEL VERMAAK: I said to the Chair,

3 what the instruction was, that I said to the person you

4 must shoot at the attacker.

5 MR SEMENYA SC: Now that we know that you

6 did not – must shoot at the attacker? Is that the words

7 you used?

8 COLONEL VERMAAK: At the person who was

9 shooting at us. I said to him, shoot at the person who was

10 shooting at us.

11 MR SEMENYA SC: Okay. Now, we know you

12 didn't know his name.

13 COLONEL VERMAAK: That's correct, Sir.

14 MR SEMENYA SC: How did you address him

15 as opposed to the other?

16 COLONEL VERMAAK: He was standing next to

17 me and he was the only person next to me. There was no

18 other people.

19 MR SEMENYA SC: Are you saying Mguye was

20 not with Sekgweleya when you gave the instruction?

21 COLONEL VERMAAK: That's correct, that's

22 what I said just now.

23 MR SEMENYA SC: Are you saying Mguye was

24 not with Sekgweleya when you gave the instruction?

25 COLONEL VERMAAK: No. Chair, I didn't

Page 27537

1 know the names. I didn't know who was the person who was

2 with me. I said, there was a person without mentioning any

3 names, because why, I only -

4 MR SEMENYA SC: Yes, are you saying that

5 there was only one member of the TRT that was next to you

6 when the instruction was given?

7 COLONEL VERMAAK: That's correct.

8 MR SEMENYA SC: Just the two of you?

9 COLONEL VERMAAK: The other people were

10 to the left side, a little bit further away from us.

11 CHAIRPERSON: Now, Colonel, was it quite

12 clear that you were only speaking to one –

13 COLONEL VERMAAK: That is correct, Chair,

14 the only person who was with me. There was only one person

15 with me.

16 CHAIRPERSON: Only one person, I see.

17 But you say only one person in any event complied with your

18 instruction? That's what you said as well.

19 COLONEL VERMAAK: The person who was with

20 me, he was the one who complied to my instruction.

21 CHAIRPERSON: That is your evidence.

22 COLONEL VERMAAK: Ja.

23 CHAIRPERSON: Can we take tea at this

24 point, Mr Semenya, or would you like to –

25 MR SEMENYA SC: Indeed, Chair.

Page 27538

1 CHAIRPERSON: - take the –
 2 MR SEMENYA SC: I am still going to be a
 3 little while on this point.
 4 CHAIRPERSON: Alright, we will take the
 5 tea adjournment.
 6 [COMMISSION ADJOURNS COMMISSION RESUMES]
 7 [12:06] CHAIRPERSON: The commission resumes.
 8 Seeing as you're giving evidence in English I remind you
 9 you're still under oath. Sorry, I beg your pardon. You're
 10 still bound by the affirmation that you made. Mr Semenya.
 11 MR SEMENYA SC: Thank you, Chair.
 12 Colonel, just also just to tidy it up I take it on the 13th
 13 General Annandale came there and you gave him an account of
 14 what happened.
 15 COLONEL VERMAAK: That's correct.
 16 MR SEMENYA SC: And you did not tell him
 17 about this piece of evidence we've been dealing with for
 18 the morning.
 19 COLONEL VERMAAK: No.
 20 MR SEMENYA SC: I take it also the LCRC
 21 people arrived at the scene on the day, correct?
 22 COLONEL VERMAAK: That's correct.
 23 MR SEMENYA SC: You did not give them,
 24 tell them about this detail we were discussing this
 25 morning.

Page 27539

1 COLONEL VERMAAK: No, I didn't.
 2 MR SEMENYA SC: I take it Brigadier Van
 3 Zyl of the detectives, was there as well.
 4 COLONEL VERMAAK: That is correct.
 5 MR SEMENYA SC: You saw him.
 6 COLONEL VERMAAK: That's correct.
 7 MR SEMENYA SC: You did not tell him
 8 about this detail as well.
 9 COLONEL VERMAAK: No, I've already
 10 informed Brigadier Calitz.
 11 MR SEMENYA SC: No, I'm talking the
 12 detective now, Brigadier Van Zyl.
 13 COLONEL VERMAAK: No, I know, but I said
 14 I already informed Brigadier Calitz about it.
 15 MR SEMENYA SC: Van Zyl, did Brigadier
 16 Van Zyl, the detective, you did not tell him about it.
 17 COLONEL VERMAAK: I said I didn't report
 18 it to him. I said I reported to Brigadier Calitz.
 19 MR SEMENYA SC: We were looking at
 20 exhibit –
 21 COMMISSIONER HEMRAJ: Are you moving away
 22 from the incident at the river?
 23 MR SEMENYA SC: For now but –
 24 COMMISSIONER HEMRAJ: Colonel, can I just
 25 ask the exercise in getting together a group of members and

Page 27540

1 going to the river was for the purposes of recovering a
 2 firearm that had been taken from one of the members of the
 3 force?
 4 COLONEL VERMAAK: That's correct. And
 5 also the person that we saw from the helicopter that they
 6 were taking away with the white overall, Chair, is to see
 7 if we can get that person. We didn't know was injured or
 8 was he dead and was he part of – well, he was part of the
 9 incident then so it was also to secure a crime scene if we
 10 could get hold of him.
 11 COMMISSIONER HEMRAJ: And was it
 12 imperative that you did that, that you went to the effort
 13 of going, following them, getting together a number of
 14 people, following them and trying to get that firearm back?
 15 COLONEL VERMAAK: That's correct, Chair.
 16 COMMISSIONER HEMRAJ: Thank you.
 17 MR SEMENYA SC: Just to complete the list
 18 General Mpembe was there as well on the 13th. You didn't
 19 give him that detail, did you?
 20 COLONEL VERMAAK: No, when I went to
 21 General Mpembe the first concern for me was his safety and
 22 that is why I reported to Brigadier Calitz.
 23 MR SEMENYA SC: No, I'm talking about the
 24 whole day. You went back to JOC. You did not tell –
 25 COLONEL VERMAAK: I did not see General

Page 27541

1 Mpembe there.
 2 MR SEMENYA SC: I think the national
 3 commissioner of police also arrived. Were you there?
 4 COLONEL VERMAAK: That's correct.
 5 MR SEMENYA SC: You didn't tell him this
 6 vital detail. Did you tell her this vital detail? Did
 7 you?
 8 COLONEL VERMAAK: Chair, I don't think it
 9 would be fair to expect from me to go straight to the
 10 national commissioner and tell her what's going on because
 11 why there was more senior officers who was addressing her.
 12 I wasn't addressing her.
 13 MR SEMENYA SC: You did not tell the
 14 provincial commissioner this vital detail, did you?
 15 COLONEL VERMAAK: No, because why, I've
 16 reported to my commander.
 17 MR SEMENYA SC: Incidentally it's just
 18 the chronology of the evidence has been quite unusual
 19 because Brigadier Calitz denies that you told him anything
 20 about this detail.
 21 COLONEL VERMAAK: I can't speak on behalf
 22 of him.
 23 MR SEMENYA SC: Okay. Can we go back to
 24 – no, sorry, I must ask this. Finally the only person you
 25 can claim to have told this detail despite it appearing

Page 27542

1 nowhere else is Brigadier Calitz.
 2 COLONEL VERMAAK: That's correct, Chair.
 3 CHAIRPERSON: Mr Semenya, you were going
 4 to discuss with him his diary. His diary is 0007, typed
 5 version 0007.1. I don't know whether you want to deal with
 6 it now.
 7 MR SEMENYA SC: No, Chair.
 8 CHAIRPERSON: On 0007.1 is the typed
 9 version of the diary. You don't mention this at all in the
 10 diary. Is that right?
 11 COLONEL VERMAAK: Excuse me, Chair.
 12 CHAIRPERSON: 0007.1 is the typed version
 13 of your diary for the 13th of August.
 14 COLONEL VERMAAK: That's correct, Chair.
 15 CHAIRPERSON: Now, you don't mention this
 16 incident at all.
 17 COLONEL VERMAAK: That's correct, Chair.
 18 CHAIRPERSON: All you say is this, the
 19 relevant section, this is now 15.30, "Verleen lugsteun waar
 20 groep SAPD lede aanval (verklaring). Kaptein Oosthuizen
 21 vlieënier, Kaptein Loest en myself passasiers. Verwyder
 22 Majoor-Generaal Mpembe van toneel na 'n dreigement dat hy
 23 geskiet gaan word deur lede. Twee lede doodgekap direk
 24 onder the helikopter. Traanrook 20 en 10 skok granate
 25 gegooi. Agtervolg 'n groep wat R5 gewere en beseerde het

Page 27543

1 geleen." The relevant section then reads really you pursue
 2 a group, it's not complete, but you've taken an R5 and then
 3 presumably there's a word missing. I presume that
 4 hopefully and –
 5 COLONEL VERMAAK: That's correct.
 6 CHAIRPERSON: And give assistance or
 7 whatever.
 8 COLONEL VERMAAK: That's correct.
 9 CHAIRPERSON: To an injured person.
 10 COLONEL VERMAAK: That's correct, Chair.
 11 CHAIRPERSON: That's all you wrote about.
 12 COLONEL VERMAAK: It's only small notes
 13 that you make in your diary normally that you can go back
 14 later on.
 15 MR SEMENYA SC: But you have already
 16 dealt with this that it was not in your diary, either the
 17 short one or the other new one. Am I right? You've got
 18 two diaries
 19 COLONEL VERMAAK: Yes, a rough one.
 20 MR SEMENYA SC: It doesn't appear in any
 21 rough one.
 22 COLONEL VERMAAK: No.
 23 MR SEMENYA SC: It doesn't appear in the
 24 other one.
 25 COLONEL VERMAAK: No, it did.

Page 27544

1 MR SEMENYA SC: Can you recall again –
 2 I'm going to come to the events of the river but I just
 3 want to tidy up some element here. Can we have a look at
 4 2227 that we had up and paragraph 11 thereof? You would
 5 see Constable Sekgweleya, "The armed striker then faced our
 6 direction and pointed us with the R5 rifle." Correct?
 7 What he doesn't say there is that that individual fired at
 8 you.
 9 COLONEL VERMAAK: Chair, I cannot comment
 10 on his statement.
 11 MR SEMENYA SC: No, but you see that's
 12 what the statement says.
 13 COLONEL VERMAAK: I saw what his
 14 statement is saying, yes.
 15 MR SEMENYA SC: And he says the
 16 instruction was then given to them to shoot towards them.
 17 COLONEL VERMAAK: Not to them.
 18 Instruction was given to a person.
 19 MR SEMENYA SC: Okay. Can we go forward?
 20 "The striker with the R5 rifle changed direction and
 21 followed the other strikers running towards the informal
 22 settlement." Was that your observation?
 23 COLONEL VERMAAK: I've testified that he
 24 was on the far right of the informal settlement and after
 25 the members shoot back at him he were running in between

Page 27545

1 the houses in the direction – well, I believe in the
 2 direction of the other people. I couldn't see exactly
 3 because why he was at the back of the houses.
 4 MR SEMENYA SC: Is that account factually
 5 correct that the striker with the R5 rifle change direction
 6 and followed the other strikers running towards the
 7 informal settlement?
 8 COLONEL VERMAAK: No, he was next to the
 9 informal settlement when he was shooting at us.
 10 MR SEMENYA SC: I didn't ask where he was
 11 standing when he was shooting at you. I'm asking whether
 12 that statement is factually accurate.
 13 COLONEL VERMAAK: No, that is not
 14 accurate. I cannot comment on another person's statement.
 15 MR SEMENYA SC: No, I'm asking whether it
 16 is consistent with your observations on the day.
 17 COLONEL VERMAAK: No.
 18 MR SEMENYA SC: No. Okay. "The armed
 19 striker all of a sudden changed direction, faced us again
 20 and pointed us with the R5 rifle." Did that happen?
 21 COLONEL VERMAAK: That is his
 22 observation.
 23 CHAIRPERSON: That's not the question.
 24 I've told you before we're interested in what you can
 25 remember. If somebody else says something, it's legitimate

Page 27546

1 to ask you, well, do you agree with what the person said.
 2 But all that Mr Semenya is doing now is he's saying
 3 Constable Sekgweleya is saying the armed striker – well,
 4 let me read the first sentence. "The striker with the R5
 5 changed direction and followed the other strikers running
 6 towards the informal settlement. The armed striker all of
 7 a sudden changed direction, faced us again and pointed us
 8 with the R5 rifle." It's not good English but you know
 9 what he means. "We then shot on the ground as before on
 10 the instruction of Colonel Vermaak and the armed striker
 11 ran towards the direction of the informal settlement. This
 12 happened a few times which resulted in me and Sergeant
 13 Mgyue utilising the R5 rifles on the instruction of Colonel
 14 Vermaak." And then he goes on in the next paragraph to
 15 say, "As members were busy firing live ammunition towards
 16 the strikers" – that's obviously just not himself and Mgyue
 17 – "I then observed a striker falling to the ground. He was
 18 not the protestor who was carried by the other strikers who
 19 was also wearing a white overall." Now, the question is
 20 are you able to confirm that what the constable says is
 21 correct or are you able to say it's not correct or are you
 22 able to say it may be right but you would argue the
 23 position to either confirm or deny what he said. Those are
 24 the three possibilities as I see it. Which is the correct
 25 one?

Page 27547

1 COLONEL VERMAAK: That is in read now is
 2 not correct according to me.
 3 MR SEMENYA SC: What are the wrong
 4 elements of it?
 5 COLONEL VERMAAK: I have said that we
 6 observed the person who was shooting at us next to the
 7 informal settlement close to the houses. There was
 8 instruction given to me, to a member to shoot back. After
 9 the member have shot one shot the person with the R5 turn
 10 around and disappear between the houses. That was my
 11 observation of the incident.
 12 MR SEMENYA SC: You gave us your
 13 evidence. Are you saying whatever that has been read to
 14 you by the chair, all of it is entirely incorrect?
 15 COLONEL VERMAAK: According to me, yes,
 16 Chair.
 17 MR SEMENYA SC: Now, I want us to look at
 18 the statement of –
 19 CHAIRPERSON: Before we move on to
 20 another statement, so a couple of points that interest me,
 21 the one is Constable Sekgweleya says that the instruction
 22 was to fire in the ground. Now, did you give such an
 23 instruction?
 24 COLONEL VERMAAK: No, Chair, I
 25 specifically give the instruction you must fire at the

Page 27548

1 person who was firing at us.
 2 CHAIRPERSON: The first point. The
 3 second point is in paragraph 13 having discussed what he
 4 and Mgyue had did according to him on your instructions he
 5 then moves on to another point and he says, "As members
 6 were busy firing live ammunition" – now presumably that's
 7 not himself and Mgyue. There must be other members I
 8 assume. "I then observed a striker falling on the ground."
 9 So this must be the person who was shot and fell down. "It
 10 was not the protestor who was carried by the other strikers
 11 who was also wearing a white overall." And then he goes
 12 on, "The members whilst pursuing the strikers did at no
 13 stage come under fire from the strikers." There he's
 14 talking about the strikers he's referring to earlier in
 15 that paragraph. Now, he doesn't suggest as I see the
 16 statement that the person who was shot, who fell down who
 17 was shot as a result of the firing by these members who he
 18 refers to, he doesn't suggest that you gave them any
 19 instruction so he doesn't appear to be suggesting that the
 20 person who was actually shot at and fell down was linked in
 21 any way with any instruction you gave.
 22 COLONEL VERMAAK: That's correct, Chair.
 23 CHAIRPERSON: So are you able to tell us
 24 whether what is set out in paragraph 13 is correct? Apart
 25 from the one person who shot as you've told us on your

Page 27549

1 instruction, one shot you said, apart from that were,
 2 thereafter were other members busy firing live ammunition
 3 towards the strikers?
 4 COLONEL VERMAAK: Chair, no, not while I
 5 was there because why I know on the other – you could see
 6 on the other side or the direction what the strikers was
 7 running to was houses so if they did shoot in my presence
 8 there I should stop him to shoot because why he could have
 9 injured or killed maybe somebody that was standing around
 10 the houses.
 11 MR SEMENYA SC: I don't understand the
 12 answer. If they should shoot at somebody they would injure
 13 somebody. The question is did they shoot at all or there's
 14 only one shot that you heard for the entire duration of
 15 your stay at the riverside?
 16 COLONEL VERMAAK: Chair, I said there
 17 wasn't shooting others than the person who I gave the
 18 instruction for.
 19 MR SEMENYA SC: Okay. Now –
 20 CHAIRPERSON: Can I just interpose?
 21 First when that one shot was fired that you have referred
 22 to as far as you could see was anybody hit by that one?
 23 COLONEL VERMAAK: No, Chair. The
 24 direction was, of the person who was shooting at us, he was
 25 on the far right of the informal settlement and he was

Page 27550

1 running away. I wasn't aware of a person who was shot or
 2 killed before when we go through the river and we found
 3 that person that was lying there.
 4 CHAIRPERSON: So would I be correct to
 5 say – or I mustn't put it in a leading form. The person –
 6 you came across as you told us the dead body of Mr Seboloki
 7 and you took a photograph and you took photographs.
 8 COLONEL VERMAAK: That's correct, Chair.
 9 CHAIRPERSON: Now, did you see any – had
 10 you previously seen anybody falling down there or anyone
 11 there?
 12 COLONEL VERMAAK: No, Chair, no, Chair.
 13 MR SEMENYA SC: Well, let's work at it.
 14 At the time that you called Captain Loest to organise TRT
 15 members for you were there any police who were pursuing
 16 anybody ahead of you?
 17 COLONEL VERMAAK: Not that I was aware
 18 of, Chair.
 19 MR SEMENYA SC: So you are not aware of
 20 any police officers that are pursuing this group other than
 21 your people that you are bringing to the scene?
 22 COLONEL VERMAAK: At that stage when we
 23 followed that persons there was no other policemen that I
 24 have –
 25 MR SEMENYA SC: All right.

Page 27551

1 COLONEL VERMAAK: Saw around.
 2 MR SEMENYA SC: Correct, and the fellow
 3 with an R5 rifle was throughout within your field of
 4 vision, correct, until he ultimately disappeared in the
 5 settlement?
 6 COLONEL VERMAAK: No, we saw him when we
 7 fly over him with the helicopter. After we have land I
 8 went to the warrant officer Monene and thereafter we
 9 followed the group. I get, I asked Captain Loest to get
 10 some members together for me and after we went through the
 11 river.
 12 MR SEMENYA SC: No, Colonel, you really
 13 know where I am. We started with you and Captain Loest,
 14 you are getting people, there are no other police line
 15 ahead of you. You then see this man in your field of
 16 vision. The next question is at no stage does this person
 17 disappear out of your field of vision until he's in the
 18 settlement, correct?
 19 COLONEL VERMAAK: That's correct.
 20 MR SEMENYA SC: So there could be no
 21 explanation why you on the other side of the river find a
 22 body lying there of Mr Sokanyile, right?
 23 COLONEL VERMAAK: That's correct.
 24 MR SEMENYA SC: According to you.
 25 COLONEL VERMAAK: According to me I

Page 27552

1 didn't know.
 2 MR SEMENYA SC: According to you there's
 3 no reason whatsoever that certain cartridges would be found
 4 at this other side of the river which we know -
 5 [12:26] CHAIRPERSON: The cartridges weren't
 6 found on the other side of the river. The cartridges were
 7 found in that orange circle remember. On the police side
 8 of the river, the cartridge cases were found, as I remember
 9 it, in that orange circle on the police side –
 10 MR SEMENYA SC: Indeed, Chair, I'm saying
 11 to the witness you have no account how those cartridges
 12 could have been there at all, correct?
 13 COLONEL VERMAAK: That's correct.
 14 MR SEMENYA SC: But what we do know from
 15 your evidence when you saw the body lying there the first
 16 thing you did is to make sure that nobody interferes with
 17 that crime scene.
 18 COLONEL VERMAAK: That's correct.
 19 MR SEMENYA SC: So those cartridges could
 20 not have arrived there subsequent to that event. Am I
 21 right – of Mr Sokanyile lying there? Sokanyile, sorry, the
 22 late Mr Sokanyile.
 23 CHAIRPERSON: I got the name wrong
 24 earlier as well, but it is Sokanyile.
 25 MR SEMENYA SC: Am I right?

Page 27553

1 COLONEL VERMAAK: Yes, I cannot explain
 2 when did that cartridges – was fired –
 3 MR SEMENYA SC: No, but on your version
 4 you can at least tell us that they must have been fired
 5 before you and your TRT members went to the river and
 6 subsequent to that you were in charge of the scene.
 7 COLONEL VERMAAK: I can only testify
 8 about the one incident where I gave instruction. If those
 9 were fired after or before I really cannot give you an
 10 indication of that.
 11 MR SEMENYA SC: No they couldn't have
 12 been fired after, that's my point precisely, Colonel. As
 13 far as you're concerned the scene after you saw the body
 14 has been under police observation throughout until the LCRC
 15 came, so it couldn't have been after. Am I right?
 16 COLONEL VERMAAK: I cannot say, I don't
 17 know what happened afterwards but –
 18 CHAIRPERSON: Sorry, sorry complete your
 19 answer first, sorry.
 20 COLONEL VERMAAK: Chair, according to me,
 21 the members who was with me didn't fire so I cannot comment
 22 when the cartridges was fired off. I understand Mr
 23 Semenya's question if it must be before or after.
 24 According to me I don't know really and I don't know what
 25 time the LCRC arrived at that scene and I also don't know

Page 27554

1 when they discovered the cartridges there because why we
 2 left the scene and I wasn't with the LCRC to that scene
 3 itself.
 4 CHAIRPERSON: Yes but – I understand all
 5 that. Theoretically you can't say whether they were there
 6 before or after but looking at the overwhelming
 7 probabilities when you left the scene you left people in
 8 charge, guarding the scene, making sure it wasn't
 9 interfered with, right?
 10 COLONEL VERMAAK: That's correct, at the
 11 body.
 12 CHAIRPERSON: Yes that's what I said and
 13 I take it we can assume, again it's a matter of
 14 overwhelming probability that they would have stayed there
 15 until the LCRC people came.
 16 COLONEL VERMAAK: I believe so yes,
 17 Chair.
 18 CHAIRPERSON: And therefore it's unlikely
 19 that anyone could have fired anything, any shots in that
 20 vicinity during the period, without anyone knowing about it
 21 without our having statements about it.
 22 COLONEL VERMAAK: That's correct.
 23 CHAIRPERSON: From the time that you left
 24 the scene, while the scene is being guarded by the people
 25 you left there until the LCRC people came.

Page 27555

1 COLONEL VERMAAK: That's correct.
 2 CHAIRPERSON: So therefore though
 3 theoretically anything could have happened but in the real
 4 world we can accept that the evidence points ineluctably to
 5 the conclusion that those cartridge cases at, what I call
 6 the orange circle, must have been there before you went to
 7 this place where the dead body was. And didn't arrive
 8 there somewhere afterwards. That must be right.
 9 COLONEL VERMAAK: Yes.
 10 CHAIRPERSON: Ja.
 11 COMMISSIONER HEMRAJ: And Colonel, if
 12 there were as many shots fired as there are cartridge cases
 13 that were found there and if it was in that vicinity of the
 14 river then you would have heard those shots being fired
 15 because you weren't terribly far off.
 16 COLONEL VERMAAK: Chair, yes. If it was
 17 fired when I was there I should have heard it.
 18 COMMISSIONER HEMRAJ: Or even before you
 19 arrived at that scene you would have heard the shooting
 20 because you were on the field not very far away from there.
 21 COLONEL VERMAAK: Chair, yes, ja.
 22 MR SEMENYA SC: But we do know from your
 23 evidence is there were no police members ahead of you. You
 24 were the first line of police to enter that area chasing
 25 the man with that R5.

Page 27556

1 COLONEL VERMAAK: I cannot confirm if I
 2 was the first because –
 3 MR SEMENYA SC: No you didn't see anyone
 4 ahead of you did you Colonel?
 5 COLONEL VERMAAK: I didn't see anybody in
 6 front of me but –
 7 MR SEMENYA SC: Can we have a look at
 8 QQQ8 which is the statement of Mguye, Sergeant Mguye.
 9 Shall we start at paragraph 7? For completeness sake so
 10 that we follow the sequence first Sergeant Mguye there "The
 11 members were inside the Nyala but because the Nyala driver
 12 was not present at that stage the members got out of the
 13 Nyala. Colonel Vermaak, myself armed with an R5 rifle and
 14 9 millimetre pistol together with Constable Sekgweleya also
 15 armed with an R5 rifle and a 9 millimetre pistol pursued
 16 the strikers on foot." That's correct, right, so far?
 17 COLONEL VERMAAK: No not – the part of
 18 the Nyala, I was not near a Nyala before we went following
 19 the protestors. There was no Nyala close to –
 20 MR SEMENYA SC: Okay, the first sentence
 21 you say you can't comment on it. The second sentence that
 22 Colonel Vermaak, myself armed with that R5 rifle, a 9
 23 millimetre pistol and Constable Sekgweleya also armed with
 24 R5 and 9 millimetre pistol pursued the strikers on foot, is
 25 that factually correct?

Page 27557

1 COLONEL VERMAAK: There was other members
 2 as well, not only the two of them.
 3 MR SEMENYA SC: Okay.
 4 COLONEL VERMAAK: There were POP and
 5 other TRT members as well.
 6 MR SEMENYA SC: Okay. Just another
 7 point, you don't have your 9 millimetre this time do you?
 8 COLONEL VERMAAK: No.
 9 MR SEMENYA SC: You are unarmed.
 10 COLONEL VERMAAK: Unarmed, no firearm.
 11 MR SEMENYA SC: Do your colleagues know
 12 that you are unarmed that are with you?
 13 COLONEL VERMAAK: Yes.
 14 MR SEMENYA SC: Oh you made it clear to
 15 them that you did not have your side arm.
 16 COLONEL VERMAAK: That's correct.
 17 MR SEMENYA SC: Okay, this is before you
 18 enter the – when you were calling them.
 19 COLONEL VERMAAK: When Captain Loest
 20 called them together –
 21 MR SEMENYA SC: Ja you –
 22 COLONEL VERMAAK: - and I asked him to go
 23 with me I did mention them that I haven't got a firearm
 24 with me.
 25 MR SEMENYA SC: Okay. Shall we go on?

Page 27558

1 "It appeared the group of strikers moved after noticing us.
 2 As the group of strikers moved I noticed that they were
 3 carrying a person who was wearing a white overall and
 4 amongst the strikers there was one who had an R5 rifle."
 5 Is that factually correct, in line with your observation?
 6 COLONEL VERMAAK: Yes.
 7 MR SEMENYA SC: "As we followed the group
 8 of strikers the one who was in possession of a rifle turned
 9 and looked at us. It is at that stage that I fired one
 10 warning shot into the ground and utilising the R5 rifle in
 11 my possession on the instruction of Colonel Vermaak."
 12 Correct, factual?
 13 COLONEL VERMAAK: No it's not correct.
 14 MR SEMENYA SC: Not. "The striker who
 15 was in possession of the R5 rifle turned and proceeded with
 16 the others."
 17 COLONEL VERMAAK: That's not correct.
 18 MR SEMENYA SC: Okay, but what you do see
 19 with him too you are not being fired at when the
 20 instruction is given to one of them, on your version, to
 21 shoot back.
 22 COLONEL VERMAAK: I only give instruction
 23 to one member.
 24 MR SEMENYA SC: Ja, the thrust of my
 25 question is, both of them, if they are correct, the

Page 27559

1 instruction is given not in retaliation of fire but in
 2 retaliation of a firearm being possessed and the firearm
 3 being pointed at you.
 4 COLONEL VERMAAK: No that's not correct.
 5 MR SEMENYA SC: Okay. "After some time
 6 the striker with the R5 rifle again turned and faced us at
 7 which stage I once again fired a warning shot into the
 8 ground utilising the R5 rifle on the instruction of Colonel
 9 Vermaak, he also repeats this." You say that's factually
 10 incorrect.
 11 COLONEL VERMAAK: It's incorrect.
 12 MR SEMENYA SC: "After which the striker
 13 turned and walked with a group of strikers." Did that
 14 happen?
 15 COLONEL VERMAAK: No.
 16 MR SEMENYA SC: "After firing the second
 17 warning shot was described above I noticed Nyala driving on
 18 my left side of the gravel road towards the direction of a
 19 group of strikers." Did you see that, Colonel?
 20 COLONEL VERMAAK: No that's not correct.
 21 MR SEMENYA SC: "At the same other POP
 22 members together with Constable Legota who is based in
 23 Rustenburg TRT were walking on foot in the same direction."
 24 Is that what you observed happening?
 25 COLONEL VERMAAK: No.

Page 27560

1 MR SEMENYA SC: "As a group of strikers
 2 approached the river the striker in possession of the R5
 3 rifle once again came towards us at which stage I responded
 4 to Colonel Vermaak's instruction and fired another warning
 5 shot into the ground with the R5 rifle." That didn't
 6 happen?
 7 COLONEL VERMAAK: No I only gave once an
 8 instruction.
 9 MR SEMENYA SC: "Both groups of members
 10 joined us in the vicinity of the red spot circle with a
 11 blue colour described in exhibit OOO23, page 23 as the
 12 position of the cartridges." You say that's wrong.
 13 COLONEL VERMAAK: That's wrong, yes.
 14 MR SEMENYA SC: Okay. I think with your
 15 cross-examination earlier, not with me you correctly
 16 conceded that the place where you put the body of the late
 17 Mr Sokanyile was wrong.
 18 COLONEL VERMAAK: No.
 19 MS PILLAY: Chair, you will recall,
 20 Chair, that there was a dispute around that. The questions
 21 were put by the families around the placement of Mr
 22 Sokanyile's body and both the witnesses and the evidence
 23 leaders reserved their position in regards to the
 24 placement.
 25 MR SEMENYA SC: No I don't know what that

Page 27561

1 means to reserve – did you concede or did you not concede
 2 that where you placed the body as depicted in the LCRC is
 3 actually not correct? Did you not concede it?
 4 MS PILLAY: Chair, the dispute was around
 5 on whether the placement by the families was consistent
 6 with LCRC placement. You will recall that the witness
 7 testified that if that is where the LCRC placed the body
 8 then he'd accept that that's where the body was. But the
 9 evidence leaders - there's an objection that that was – we
 10 took the view that the placement by the families was not
 11 consistent with the LCRC placement.
 12 CHAIRPERSON: Once again it's one of
 13 these things that we'll have to look at the transcript. I
 14 take it you can carry on the meanwhile, Mr Semenya.
 15 MR SEMENYA SC: I can, Chair.
 16 CHAIRPERSON: There's two matters that we
 17 need the transcripts.
 18 MR SEMENYA SC: I can, Chair. Now I want
 19 to ask this question, Colonel, and to me it's very
 20 important. You would have known that General Annandale
 21 told everybody who was going to Roots please bring all of
 22 your photographs, correct?
 23 COLONEL VERMAAK: That's correct.
 24 MR SEMENYA SC: And the chairman
 25 persistently said I've even invited members of the

Page 27562

1 international media, please I want any material that is
 2 relevant to the event that happened in Marikana. You are
 3 aware of that?
 4 COLONEL VERMAAK: No, I was not aware of
 5 that.
 6 MR SEMENYA SC: You were aware that as
 7 the SAPS we were desirous of giving all evidentiary
 8 material at our disposal to the Commission weren't you?
 9 COLONEL VERMAAK: That's correct.
 10 MR SEMENYA SC: Is it not startling that
 11 the only photograph that you keep, that is OOO14 is that of
 12 the late Sokanyile?
 13 COLONEL VERMAAK: I didn't keep any
 14 photographs back. I have given everything to Colonel
 15 Scott.
 16 MR SEMENYA SC: Even exhibit OOO14?
 17 COLONEL VERMAAK: Both of that photos
 18 that I've taken of him I've given it to them, it was on my
 19 Blackberry.
 20 MR SEMENYA SC: The question I'm asking
 21 is are you saying that includes exhibit OOO14 that the
 22 Commission was seeing for the first time this year?
 23 COLONEL VERMAAK: No if you can just put
 24 it up for me I can comment on it. I can't say –
 25 MS PILLAY: Chair, can I understand this

Page 27563

1 line of questioning, is the basis for this questioning that
 2 OOO14 was not on the police hard drive.
 3 CHAIRPERSON: There were other things on
 4 the police hard drive also which we didn't see until later
 5 but the basis of this is, as I understand the question, is
 6 that this photograph was kept back. It was not made
 7 available to the police at all. The statement that the
 8 police put everything before us is a matter that will be
 9 the subject for argument later but that's not relevant for
 10 the present discussion. What is being to the witness is
 11 that he held this photograph and he didn't give it to
 12 Colonel Scott. Is that right, Mr Semenya?
 13 MS PILLAY: Chair, can I just understand
 14 that according to SAPS this picture was not on the police
 15 hard drive.
 16 MR SEMENYA SC: SAPS will talk when it
 17 does, Chair, I want answers from the witness.
 18 MS PILLAY: Chair, I'm questioning the
 19 basis for the question because the witness needs to
 20 understand.
 21 CHAIRPERSON: The witness can be asked
 22 the question did you give it, if you didn't, did you or
 23 didn't you. His answer won't be conclusive one way or the
 24 other, there will further material that will have a bearing
 25 on it but I don't see any objection to him being asked the

Page 27564

1 question now. You say you gave it to Colonel Scott. Did
 2 you give it together with all your other photographs, or
 3 how does it work?
 4 COLONEL VERMAAK: No, as he arrived there
 5 at Marikana we started giving every photo that was in my
 6 possession, I gave it to him. Every, every photo, my
 7 Blackberry photos, my Pentax camera photos, everything.
 8 Nothing was withheld.
 9 CHAIRPERSON: I mean this photograph
 10 we're now talking about, was this a Blackberry photograph
 11 or a Pentax photograph?
 12 COLONEL VERMAAK: It's a Blackberry,
 13 Chair.
 14 CHAIRPERSON: Now how did you – in what
 15 way from a physical point of view did you give your
 16 Blackberry photographs to Colonel Scott?
 17 COLONEL VERMAAK: Chair, I withdraw it
 18 from the Blackberry phone onto my computer and then on a
 19 memory stick I gave it to Colonel Scott.
 20 MR SEMENYA SC: This is on the 13th.
 21 COLONEL VERMAAK: No, I said when Colonel
 22 Scott arrived at Marikana. He wasn't there on the 13th
 23 during the day.
 24 CHAIRPERSON: He arrived in the evening.
 25 COLONEL VERMAAK: The evening yes but –

Page 27565

1 CHAIRPERSON: The -
 2 COLONEL VERMAAK: The following day –
 3 CHAIRPERSON: The following day.
 4 COLONEL VERMAAK: - he start gather all
 5 the information, photos, everything that we had.
 6 MR SEMENYA SC: This is not one of those
 7 that you BBM-ing to the JOC?
 8 COLONEL VERMAAK: No, no.
 9 MR SEMENYA SC: Any particular reason why
 10 that didn't happen?
 11 COLONEL VERMAAK: Chair, at that stage
 12 Brigadier Pretorius was not there. Just after Brigadier
 13 Pretorius arrived we shared our Blackberry pin numbers and
 14 then it is from that point that I start sending photos to
 15 the JOC with the Blackberry.
 16 MR SEMENYA SC: Can I explore with you
 17 another area, Colonel? In your police experience whenever
 18 there is a helicopter used in these type of public order
 19 operations proper planning entails that there is a aerial
 20 command, correct?
 21 COLONEL VERMAAK: No, in other public
 22 order policing incidents especially in Rustenburg there was
 23 only the eye in the sky as he was at Marikana as well.
 24 Sometimes we only have the Robinson R44, that only take the
 25 pilot and the crew and no other passengers, so then it is

Page 27566

1 not possible for anybody else to fly with them, then there
 2 are only the eye in the sky, what they observe they give
 3 through to the commander on the ground.
 4 MR SEMENYA SC: No, I'm saying when JOC
 5 at times at aerial command then that must be the case, to
 6 give command from the air.
 7 COLONEL VERMAAK: If you assign somebody
 8 and it's possible for him to be in a helicopter in the
 9 area, yes.
 10 [12:46] MR SEMENYA SC: We know that Brigadier
 11 Fritz was assigned to do the aerial command by JOCCOM.
 12 Correct?
 13 COLONEL VERMAAK: No, I wasn't aware of
 14 it.
 15 MR SEMENYA SC: Yes, but I didn't ask
 16 whether you were aware of it, I say we know, don't we? You
 17 have looked at the documents, you have seen the assignments
 18 -
 19 COLONEL VERMAAK: Afterwards, yes, I take
 20 notice of that.
 21 MR SEMENYA SC: Now, you don't have any
 22 training in avionics and helicopters and aeroplanes, I take
 23 it.
 24 COLONEL VERMAAK: I did.
 25 MR SEMENYA SC: Ja?

Page 27567

1 COLONEL VERMAAK: I did the ten courses,
 2 the dangerous goods courses I have attend to.
 3 MR SEMENYA SC: Is it in your CV?
 4 COLONEL VERMAAK: No, no. It is a yearly
 5 thing that you attend. I have a certificate and I can
 6 organise it, you must get it.
 7 MR SEMENYA SC: You call it a what
 8 course?
 9 COLONEL VERMAAK: Dangerous goods, and
 10 Kudu resource and -
 11 MR SEMENYA SC: Tidy that up for me, you
 12 say you attend a course called?
 13 COLONEL VERMAAK: Dangerous Goods.
 14 MR SEMENYA SC: It is offered where?
 15 COLONEL VERMAAK: In Pretoria by the Air
 16 Wing.
 17 MR SEMENYA SC: As what?
 18 COLONEL VERMAAK: As a workshop that you
 19 attend yearly.
 20 MR SEMENYA SC: For what? I am trying to
 21 understand what course it is and how it relates to the
 22 helicopters.
 23 COLONEL VERMAAK: That's everything to do
 24 with the helicopters.
 25 MR SEMENYA SC: I will get there, but let

Page 27568

1 us understand to what the course is first. You are saying
 2 you attend it yearly.
 3 COLONEL VERMAAK: That's correct.
 4 MR SEMENYA SC: And it is called the name
 5 that you have mentioned. So what else happens there?
 6 COLONEL VERMAAK: There's a lot of things
 7 that is being discussed and presented during this workshops
 8 for LUs, pilots and I am the only commander who is not a
 9 pilot, who was also attending that workshops.
 10 MR SEMENYA SC: Workshop, courses, what
 11 are these?
 12 COLONEL VERMAAK: You can call it a
 13 workshop.
 14 MR SEMENYA SC: It's not a course. There
 15 is no competency testing -
 16 COLONEL VERMAAK: No, no, no.
 17 COMMISSIONER HEMRAJ: What does the
 18 dangerous goods refer to?
 19 COLONEL VERMAAK: Chair, that is
 20 especially things that you are allowed to have on the
 21 helicopter.
 22 MR SEMENYA SC: Ja, and one of them is
 23 not a stun grenade, am I right?
 24 COLONEL VERMAAK: No, you are wrong.
 25 MR SEMENYA SC: Okay, let's look at the

Page 27569

1 document, you say it is authorised to carry a stun grenade
 2 on a helicopter in terms of the workshop training you got?
 3 COLONEL VERMAAK: That's correct, when
 4 you are trained to handle it, you are allowed to use it or
 5 to have it with you. If I can maybe just explain, if we
 6 are not allowed to have it on the helicopter, then every
 7 pilot in the police must be charged, because why, task
 8 force, every time that they are deploying for specific
 9 operations they have those with them.
 10 MR SEMENYA SC: Can we have a look at
 11 what I will ask to be marked OOO38 now, The Helicopter
 12 Operations Manual.
 13 COLONEL VERMAAK: Chair, can I maybe
 14 assist.
 15 CHAIRPERSON: A copy we've just been
 16 handed. We have been handed a document that says, it's an
 17 extract from the Helicopter Operations Manual section 10,
 18 that there's dangerous goods and weapons. Is that -
 19 MR SEMENYA SC: That is the document.
 20 CHAIRPERSON: Has the witness got a copy?
 21 COLONEL VERMAAK: Yes, but I must maybe
 22 assist -
 23 CHAIRPERSON: Hang on, let's make - let
 24 me make a note first, of the exhibits.
 25 COLONEL VERMAAK: Sorry for that, Chair.

Page 27570

1 CHAIRPERSON: And then we can concentrate
 2 together on it. Helicopter Operations Manual section 10,
 3 Dangerous Goods and Weapons. That will be marked OOO38.
 4 Now do you want to tell us something about this exhibit, do
 5 you?
 6 COLONEL VERMAAK: Chair, there's a new
 7 one, this is an old one.
 8 MR SEMENYA SC: Yes, but the point is a
 9 new one -
 10 CHAIRPERSON: What page is this one, it
 11 says, "Effective 2007/09/01." So it came into force on the
 12 1st of September 2007. You say there's another one since
 13 then.
 14 COLONEL VERMAAK: That is correct, Chair.
 15 CHAIRPERSON: And also, at the foot of
 16 the page, it says "issued to original." Now this was
 17 presumably part of the original manual. You say it's been
 18 replaced now?
 19 COLONEL VERMAAK: That is correct, Chair,
 20 I am in possession of issue 2, reference 1, effective
 21 2008/12/01.
 22 CHAIRPERSON: The difference between the
 23 two, can you do that?
 24 COLONEL VERMAAK: Excuse me, Chair?
 25 CHAIRPERSON: What's the difference

Page 27571

1 between the two?
 2 COLONEL VERMAAK: There's a lot of
 3 differences, that have been changed from 2007 to 2008.
 4 MR SEMENYA SC: And one of those changes
 5 you can tell us, Colonel, they haven't altered the fact
 6 that dangerous goods can only be carried according to the
 7 International Civil Aviation Organisational technical
 8 instructions, am I right?
 9 COLONEL VERMAAK: No, you are wrong.
 10 MR SEMENYA SC: Huh?
 11 COLONEL VERMAAK: You are wrong.
 12 MR SEMENYA SC: It has changed?
 13 COLONEL VERMAAK: It has changed, because
 14 why, the police is not falling any more under the Civil
 15 Aviation Act. They are excluded, the same as the South
 16 African Air Force.
 17 CHAIRPERSON: The document we've been
 18 handed says in paragraph 10.1(a), "Dangerous goods can only
 19 be carried according to international Civil Organisations
 20 technical instructions for the safe transport of dangerous
 21 goods by air (technical instructions.)". Now the document
 22 you've now referred us to does that have those words at the
 23 beginning?
 24 COLONEL VERMAAK: No, Chair, I will see
 25 if I can get hold during the day of the latest one, but

Page 27572

1 what is not mentioned in this document is that the South
 2 African Police Service is not falling, is excluded from the
 3 Aviation Act regarding specific instructions according to
 4 the Aviation Act.
 5 MR SEMENYA SC: Chair, may I be indulged
 6 to ask for an early lunch adjournment? I want to look at
 7 this, and -
 8 CHAIRPERSON: With the extra five minutes
 9 that you'll get you can use looking at this document. We
 10 will take the lunch adjournment. And try to resume,
 11 please, at quarter to two. If you need longer you will let
 12 me know.
 13 [COMMISSION ADJOURNS COMMISSION RESUMES]
 14 [13:52] CHAIRPERSON: The Commission resumes.
 15 You're still bound by the affirmation that you made,
 16 Colonel.
 17 SALMON JOHANNES VERMAAK: (affirms
 18 further)
 19 CHAIRPERSON: Mr Semenya, are you now up
 20 to date with the Helicopter Operations Manual?
 21 CROSS-EXAMINATION BY MR SEMENYA SC (CONTD.):
 22 I am, Chair. [Microphone off, inaudible] if we flight
 23 OOO38, that would be the new document, Colonel. Am I
 24 right?
 25 CHAIRPERSON: [Microphone off,

Page 27573

1 inaudible]. Let me repeat that. The exhibit OOO38 is the
 2 original issue of section 10 of the Helicopter Operations
 3 Manual effective from the 1st of September 2007. Have we
 4 now got another document you want us to look at?
 5 MR SEMENYA SC: With permission that
 6 would be now marked OOO30 -
 7 CHAIRPERSON: 9.
 8 MR SEMENYA SC: 39.
 9 CHAIRPERSON: What's that? I'll write in
 10 my notebook next to my note on the exhibit OOO38, original
 11 issue, and then under OOO39 I'll write the same thing and
 12 say -
 13 MR SEMENYA SC: Updated version.
 14 CHAIRPERSON: Updated version. Is the
 15 one that we've now got the one that's currently in force?
 16 MR SEMENYA SC: The new one, we only have
 17 a softcopy and I will request that it be flighted.
 18 CHAIRPERSON: Yes, yes, I understand, but
 19 I say is this the one that's now, that's still in force
 20 today?
 21 COLONEL VERMAAK: Chair, yes, the latest
 22 one is 2013-04-01. That is the latest -
 23 CHAIRPERSON: Yes well of course the one
 24 that's relevant for us is the one that was in force on
 25 the -

Page 27574

1 COLONEL VERMAAK: 1st April 2013.
 2 CHAIRPERSON: Yes, no, that's no good to
 3 us. We need the one that was in force, was effective
 4 firstly on the 13th of August 2012 and thereafter on the
 5 16th of August 2012.
 6 COLONEL VERMAAK: Yes.
 7 CHAIRPERSON: Now you've got the latest
 8 one.
 9 COLONEL VERMAAK: The latest one. The
 10 previous one is 2008.
 11 CHAIRPERSON: 2008?
 12 COLONEL VERMAAK: That's correct.
 13 CHAIRPERSON: That was the one that was
 14 still in force in –
 15 COLONEL VERMAAK: That's correct.
 16 CHAIRPERSON: - in 2012. Okay, thank
 17 you. So I write in my notebook updated version effective
 18 August, or in force, in force August 2012, then there will
 19 be no difficulty.
 20 MR SEMENYA SC: But Colonel, section 10
 21 reads, it's identical. Am I right?
 22 COLONEL VERMAAK: That's correct.
 23 MR SEMENYA SC: So then it must still be
 24 reading, "Dangerous goods," in paragraph 10.1.A, "can only
 25 be carried according to the International Civil Aviation

Page 27575

1 Organisation's technical instructions for the safe
 2 transport of dangerous goods by air." Is that right?
 3 COLONEL VERMAAK: That's correct.
 4 MR SEMENYA SC: And if you go to page
 5 140, at the foot of the page it's paginated 140. Oops, all
 6 of it. Okay, all of them are –
 7 CHAIRPERSON: Which one are you quoting
 8 from?
 9 MR SEMENYA SC: They're identical. The
 10 documents are identical.
 11 CHAIRPERSON: So you're saying the one
 12 effective in August 2012 was for the purposes that we're
 13 now busy with, identical to the one which is in the
 14 exhibits?
 15 MR SEMENYA SC: At least in respect of
 16 chapter 10 -
 17 CHAIRPERSON: Even [inaudible] the page
 18 number.
 19 MR SEMENYA SC: Yes. If you page the
 20 first page, the second page, the third page, you will come
 21 to a page with a block and a table. Do you see that?
 22 COLONEL VERMAAK: That's correct, Chair.
 23 MR SEMENYA SC: Above it would be H.
 24 COLONEL VERMAAK: That's correct.
 25 MR SEMENYA SC: Reading, "Packages

Page 27576

1 containing dangerous goods can be identified by labels."
 2 Correct?
 3 COLONEL VERMAAK: That's correct.
 4 MR SEMENYA SC: "When these labels or
 5 similar ones are seen on items not identified as containing
 6 dangerous goods, it is often an indication that they do
 7 contain such goods." Right?
 8 COLONEL VERMAAK: That's correct.
 9 MR SEMENYA SC: "The labels indicate the
 10 hazard of the goods by their class or division. These are
 11 class 1, with a bomb symbol, explosives generally not
 12 permitted on a helicopter." Do you see that?
 13 COLONEL VERMAAK: That's correct.
 14 MR SEMENYA SC: That, Colonel, would
 15 relate to things like teargas, right?
 16 COLONEL VERMAAK: No.
 17 MR SEMENYA SC: Why not?
 18 COLONEL VERMAAK: It's not a bomb.
 19 MR SEMENYA SC: Does it not have
 20 explosives?
 21 COLONEL VERMAAK: It is not a bomb.
 22 MR SEMENYA SC: Does it not have
 23 explosives?
 24 COLONEL VERMAAK: That explosives –
 25 CHAIRPERSON: No, that can't be the right

Page 27577

1 question, Mr Semanya, because if you look at class 1 with
 2 bomb signal it says, "Explosives generally not permitted on
 3 a helicopter," and then the next one is class 1 without
 4 bomb symbol, "Explosives usually permitted on a
 5 helicopter." So the test to whether something is a bomb
 6 cannot depend upon whether it contains explosives –
 7 MR SEMENYA SC: No –
 8 CHAIRPERSON: - because some explosives
 9 are permitted on helicopters and some aren't. So that's an
 10 enquiry that's not going to help us.
 11 MR SEMENYA SC: Are you saying the – I
 12 intended to say they detonate, Chair, but are you saying
 13 that a stun grenade does not have a bomb symbol?
 14 COLONEL VERMAAK: No.
 15 MR SEMENYA SC: No?
 16 COLONEL VERMAAK: Not a bomb signal.
 17 MR SEMENYA SC: Symbol, not a signal.
 18 Symbol.
 19 COLONEL VERMAAK: I said symbol.
 20 MR SEMENYA SC: It doesn't have?
 21 COLONEL VERMAAK: It's only stamped on it
 22 "explosive." Explosive.
 23 MR SEMENYA SC: And I think you earlier
 24 said the STF would also be carrying stuns in the
 25 helicopter?

Page 27578

1 COLONEL VERMAAK: That's correct.
 2 MR SEMENYA SC: Are you saying as a
 3 matter of practice they detonate these things from the air?
 4 COLONEL VERMAAK: It depends on
 5 circumstances.
 6 MR SEMENYA SC: Are you saying in the
 7 circumstances where the STF would detonate them from the
 8 helicopter in the air?
 9 COLONEL VERMAAK: Chair, I cannot comment
 10 on what the STF is using in specific incidents, but if it
 11 is needed they will do it.
 12 MR SEMENYA SC: Okay Colonel, let us –
 13 CHAIRPERSON: Sorry, before we carry on,
 14 aren't we wasting a bit of time? Look at the last page of
 15 the document you gave us, paragraph 10.5, what does that
 16 say?
 17 MR SEMENYA SC: Are you able to comment,
 18 Colonel? Of course that is correct; members of the SAPS
 19 would carry all these munitions. The question is whether
 20 they can carry them and trigger – I mean detonate them in
 21 the helicopter.
 22 COLONEL VERMAAK: It's not detonated in a
 23 helicopter, Chair. You are trained to detonate it when
 24 your hands are outside the helicopter. You –
 25 CHAIRPERSON: Sorry, before we carry on

Page 27579

1 with that, 10.5 seems to me to render a lot of the
 2 discussion we've had up to now irrelevant. 10.5 in effect
 3 says that members of the SAPS when they are in helicopters
 4 may carry weapons, munitions of war and explosives.
 5 COLONEL VERMAAK: That's correct, Chair.
 6 CHAIRPERSON: Because this after all is
 7 part of the Helicopter Operations Manual.
 8 COLONEL VERMAAK: That's correct.
 9 CHAIRPERSON: So the previous discussions
 10 are all irrelevant. But there's one requirement apparently
 11 and that is they must be stable.
 12 COLONEL VERMAAK: That's correct.
 13 CHAIRPERSON: And they must be carried in
 14 a responsible manner.
 15 COLONEL VERMAAK: That's correct, Chair.
 16 CHAIRPERSON: Right, now you say that if
 17 you take the pin – I take it a stun grenade has got a pin,
 18 has it?
 19 COLONEL VERMAAK: That – that's correct,
 20 Chair. You –
 21 CHAIRPERSON: Ja, so when you take the
 22 pin out of a stun grenade you've got to throw it out of the
 23 helicopter immediately so that it won't explode in the –
 24 COLONEL VERMAAK: No, you've got the – if
 25 you take out the pin you've got a release handle. The

Page 27580

1 moment that you throw it then the release handle will go
 2 off and depending on what you are throwing, your stun
 3 grenades have got about two seconds before it, the first,
 4 shall I call it the explosion and your teargas about three
 5 seconds more or less before that went off.
 6 CHAIRPERSON: You're saying there's
 7 nothing in 10.5 to prevent or prohibit the carrying of stun
 8 grenades and teargas –
 9 COLONEL VERMAAK: That's correct.
 10 CHAIRPERSON: - on a helicopter?
 11 COLONEL VERMAAK: As long as it is, as it
 12 stipulated, stable and you handle it with the necessary
 13 care.
 14 CHAIRPERSON: And carried in a
 15 responsible manner. Right, anyway, I'm sorry to interrupt,
 16 Mr Semenya. I thought that might save a bit of time.
 17 MR SEMENYA SC: Thank you, Chair. My
 18 instructions are that it would detonate, that is the stun,
 19 in 1.5 seconds. You say two seconds.
 20 COLONEL VERMAAK: I said more or less.
 21 MR SEMENYA SC: And so too a teargas, my
 22 instructions are that it is one and a half seconds. Would
 23 you go along with that? The smoke may –
 24 COLONEL VERMAAK: The one and a half
 25 seconds on the stun grenade is between the first and the

Page 27581

1 second explosions. They've got two that went off and the
 2 one and a half is between the first and the second one.
 3 CHAIRPERSON: Lieutenant-Colonel, how do
 4 these things work? Assuming I was in a helicopter and I
 5 had a stun grenade or a teargas canister, would I open the
 6 window as it were and put my hand out and do the necessary
 7 first, or would I actually –
 8 COLONEL VERMAAK: Chair, you open the
 9 door.
 10 CHAIRPERSON: Open the door?
 11 COLONEL VERMAAK: We open the door.
 12 CHAIRPERSON: Yes?
 13 COLONEL VERMAAK: And they call it you've
 14 got a monkey chain, it's a safety belt that you put on
 15 your, on yourself so that you can lean over a little bit
 16 more than normally when you only have the safety belt on
 17 you.
 18 CHAIRPERSON: I seem to remember one of
 19 the exhibits we saw long, long ago when this Commission
 20 started, on this video we saw Sergeant Venter leaning out
 21 of the open door of the helicopter and throwing a stun
 22 grenade –
 23 COLONEL VERMAAK: That's correct, Chair.
 24 CHAIRPERSON: - as far as I remember. So
 25 that's how it works, is it?

Page 27582

1 COLONEL VERMAAK: That's correct, Chair.
 2 CHAIRPERSON: So that the actual – I
 3 don't know whether the right word is detonation, but the –
 4 is detonation the right word? But anyway, the right –
 5 COLONEL VERMAAK: The pulling of the
 6 pin –
 7 CHAIRPERSON: Pulling of the – that
 8 doesn't take place inside –
 9 COLONEL VERMAAK: No.
 10 CHAIRPERSON: - the aircraft.
 11 COLONEL VERMAAK: Not at all.
 12 CHAIRPERSON: It takes place outside.
 13 COLONEL VERMAAK: It must be outside,
 14 Chair.
 15 MR SEMENYA SC: Whilst we're still on
 16 this subject, the records I have seen show that the last
 17 time you ordered stun and teargas, CS gas, was before the
 18 operation of May 2012. Am I right?
 19 COLONEL VERMAAK: That's correct.
 20 MR SEMENYA SC: You did not order any
 21 ones for the operations in Marikana. Am I right?
 22 COLONEL VERMAAK: The JOC organised stun
 23 grenades from National Logistics and I sent Warrant Officer
 24 Kleynhans one day through to go and fetch the cases for the
 25 operation.

Page 27583

1 MR SEMENYA SC: And those that you had
 2 requisitioned, you haven't written any report as to the
 3 quantity you used and what remained of those quantities.
 4 Am I right?
 5 COLONEL VERMAAK: No, that is in the IRIS
 6 report. It has been reported. So it is supposed to be on
 7 the IRIS and also in the OB because why we have, and I
 8 personally have reported it.
 9 MR SEMENYA SC: No, what I mean is those
 10 that were used by yourselves in the operation in May.
 11 COLONEL VERMAAK: I didn't use any. I
 12 did not use any in May. I was on the ground.
 13 MR SEMENYA SC: Where were those that you
 14 requisitioned, when were they used?
 15 COLONEL VERMAAK: Chair, I don't know
 16 what you mean by requisition and from whom, if you can just
 17 give me clarity on that.
 18 MR SEMENYA SC: The ones you used on the
 19 22nd of May operation.
 20 COLONEL VERMAAK: That was on instruction
 21 of Colonel Merafe and the helicopter was sent by Colonel
 22 Merafe to go and fetch it at his unit and they give stun
 23 grenades and teargas to the members and the, in the
 24 helicopter, due to the fact that Colonel Merafe used the
 25 helicopter for the crowd control situation.

Page 27584

1 MR SEMENYA SC: Okay. Now in Marikana
 2 you had stun and gas in the helicopter when you were flying
 3 there, correct?
 4 COLONEL VERMAAK: That's correct.
 5 MR SEMENYA SC: You took it in advance
 6 already.
 7 COLONEL VERMAAK: I bring it from my
 8 unit, yes.
 9 MR SEMENYA SC: Where in your unit do you
 10 keep this? That's my interest.
 11 COLONEL VERMAAK: In a safe.
 12 MR SEMENYA SC: What safe is that?
 13 COLONEL VERMAAK: In an arms safe.
 14 MR SEMENYA SC: Is there a book and a log
 15 where you enter what –
 16 COLONEL VERMAAK: Everything, everything
 17 is there. Registers, OB, everything.
 18 MR SEMENYA SC: Are you able to have us
 19 access to it?
 20 COLONEL VERMAAK: Yes.
 21 MR SEMENYA SC: Okay. And from those
 22 entries we'll be able to see the amount of stun and teargas
 23 that you have used during the period in Marikana?
 24 COLONEL VERMAAK: That will be on the
 25 IRIS system.

Page 27585

1 MR SEMENYA SC: Can I ask we explore this
 2 area relating to the threat on, as you call it, the life of
 3 General Mpembe. You do know, don't you, that the evidence
 4 of the PC is that he spoke to General Mpembe on the 13th on
 5 her way back from Potchefstroom, correct?
 6 COLONEL VERMAAK: That's correct.
 7 MR SEMENYA SC: And you do know that her
 8 evidence is that immediately upon receiving the report she
 9 instructed that the operation must be stopped? You know
 10 that evidence?
 11 COLONEL VERMAAK: Yes, I know the
 12 evidence.
 13 MR SEMENYA SC: And her evidence is also
 14 that you then subsequently called to report the incident
 15 yourself. You know that evidence?
 16 COLONEL VERMAAK: Yes, I've read it in
 17 the transcripts.
 18 MR SEMENYA SC: And that you made the
 19 report about the fatalities that have been, that occurred
 20 in respect of members of the police service, right?
 21 COLONEL VERMAAK: That's correct.
 22 MR SEMENYA SC: And her response to you
 23 was to say that she has already told General Mpembe that
 24 the operation must cease.
 25 COLONEL VERMAAK: No, she did not say

Page 27586

1 anything like that to me.
 2 MR SEMENYA SC: Okay. Now your account
 3 is different, of course. You say that you requested that
 4 the General be removed from the scene.
 5 COLONEL VERMAAK: Not on the first call.
 6 It was later when we were moving back from the body.
 7 MR SEMENYA SC: Yes, and that she, you
 8 used the words, paraphrased, acquiesce, that she agreed to
 9 that he may be removed.
 10 COLONEL VERMAAK: Yes, I report to her
 11 that I was with members and that they threatened that they
 12 will shoot the General due to the fact that they take him
 13 responsible for their colleagues that died that day, that
 14 is when I immediately phoned General Mbombo.
 15 MR SEMENYA SC: Okay, now according to
 16 you the reason the members are angry or irate about how
 17 General Mpembe handled the operation is that he would have
 18 instructed them to leave their shotguns in the Nyalas.
 19 COLONEL VERMAAK: That was reported by
 20 the members to me, yes.
 21 MR SEMENYA SC: And that's the only
 22 reason why they were upset according to the report to you?
 23 [14:12] COLONEL VERMAAK: They were upset that
 24 their colleagues were killed and they felt that the general
 25 was responsible for that.

Page 27587

1 MR SEMENYA SC: Ja, what I'm trying to
 2 establish is the reason why they were upset with his
 3 conduct, that is the general, was that he would have
 4 instructed members to leave their shotguns in the Nyalas.
 5 COLONEL VERMAAK: That's correct.
 6 According to the members that was with me, they said that
 7 they were instructed by the general there at the railway
 8 line where the people was sitting where he was negotiating
 9 with them that they must go and put their long weapons in
 10 the vehicles or in the Nyalas, not to – for the reason why
 11 was not to provoke the people. That is according to them.
 12 MR SEMENYA SC: That is the only reason
 13 they offer.
 14 COLONEL VERMAAK: That is correct.
 15 MR SEMENYA SC: No other reason.
 16 COLONEL VERMAAK: That's correct, Chair.
 17 MR SEMENYA SC: Now, the people who are
 18 this angry, are they POP members or the TRT?
 19 COLONEL VERMAAK: That was the people who
 20 was walking back with me that was TRT and POP members.
 21 MR SEMENYA SC: The people who are irate
 22 about it, are they POP or POP or both of them?
 23 COLONEL VERMAAK: All of them were
 24 talking to me and I, and they confirm each other that that
 25 was the instruction and that is why they are angry with the

Page 27588

1 general. It was not only one member who mentioned it to
 2 me.
 3 MR SEMENYA SC: Assuming that such an
 4 instruction was given and I'm going to try and show you it
 5 wasn't, but assuming it was given can I invite you to look
 6 at FS2? That is the standing order 262. And if we can
 7 focus our attention on clause 14 of the standing order this
 8 relates to first members at the scene of an unforeseen
 9 spontaneous gathering. Would this describe the incident of
 10 the 13th?
 11 COLONEL VERMAAK: The first member?
 12 MR SEMENYA SC: No, the incident at the
 13 railway station, did it qualify as one of those unforeseen
 14 spontaneous gatherings?
 15 COLONEL VERMAAK: Yes.
 16 MR SEMENYA SC: It is?
 17 COLONEL VERMAAK: Ja.
 18 MR SEMENYA SC: And then under 14 there
 19 are – it's described there what type of steps can be taken.
 20 Am I right?
 21 COLONEL VERMAAK: That's correct.
 22 MR SEMENYA SC: And that would be the
 23 steps expected to be taken by General Mpembe, right?
 24 COLONEL VERMAAK: I believe so, yes.
 25 MR SEMENYA SC: Okay. And under step

Page 27589

1 three says the standing order, "Attempt to create an
 2 atmosphere which is conducive to negotiations but if
 3 failing from the display of aggression such as for instance
 4 the brandishing of firearms and special equipment." Did
 5 you see that?
 6 COLONEL VERMAAK: I saw that.
 7 MR SEMENYA SC: And you're familiar with
 8 that.
 9 COLONEL VERMAAK: That's correct.
 10 MR SEMENYA SC: Okay, so it was available
 11 for you to say to these members who are angry, no, but
 12 General Mpembe is acting consistent with the standing
 13 order. In those circumstances we should not display
 14 firearms and show any aggression. We must show tolerance
 15 and restraint. Correct?
 16 COLONEL VERMAAK: Chair, if I may answer
 17 to that for me it was a very serious threat that was made.
 18 I was really worried about the general's safety and I
 19 didn't waste time to go in a argument with the members
 20 because why, at that stage they was also upset and to go
 21 and argue with them at that stage I should've waste time,
 22 because if they really mean to do what they said they will
 23 do I felt that the first thing was to see over the safety
 24 of the general.
 25 CHAIRPERSON: Mr Semenya, what does the

Page 27590

1 word "brandish" mean? Does brandish mean display or does
 2 it mean to wave around and point at people?
 3 MR SEMENYA SC: It's both that.
 4 CHAIRPERSON: Certainly further on in 5
 5 they talk about firearms not having to be – must be used
 6 except in certain circumstances. I've always understood
 7 the word "brandish" to mean some idea of waving around or
 8 pointing it or doing something of that kind with it rather
 9 than just displaying it.
 10 MR SEMENYA SC: I understand the word to
 11 include displaying, Chair, with respect. Otherwise if you
 12 bring all of these things all you're doing is displaying
 13 and you're not shaking them around and say you are in
 14 compliance it would be inconsistent with the spirit of what
 15 that document is intended to convey.
 16 CHAIRPERSON: The point is what does the
 17 word – I'm just asking what does the word "brandish" mean.
 18 MR SEMENYA SC: I'll check the dictionary
 19 definition.
 20 CHAIRPERSON: Mustn't we know what the
 21 word means? And if it means display, well, then you're
 22 correct. If it means something more than that then you're
 23 not.
 24 MR SEMENYA SC: Let us have the benefit
 25 of your experience, Colonel. What does that mean? How

Page 27591

1 have you understood that instruction?
 2 COLONEL VERMAAK: Well, I'll understand
 3 it as it is put there that you mustn't wear it in a
 4 aggressive manner. There's different ways that you can
 5 keep your firearm without to be creating the impression
 6 that you are aggressive. I mean, because why, it is part
 7 of your equipment so you can either walk with your shotgun
 8 pointing it at the people or you can – it's got a belt on
 9 it, or you can just put it over your shoulder.
 10 MR SEMENYA SC: Or you can leave it in
 11 the Nyala.
 12 COLONEL VERMAAK: You can leave it in the
 13 Nyala but it will be irresponsible to do that.
 14 MR SEMENYA SC: What is irresponsible
 15 about it, Colonel, if you intend to not, if you intend to
 16 convey non-aggression and you leave a shotgun in a Nyala?
 17 What would be irresponsible about that?
 18 COLONEL VERMAAK: Chair, the Firearm Act
 19 stipulated very clearly if you are in possession of a
 20 firearm you must have proper control over it all the time.
 21 If you go and put a shotgun and a R5 in the Nyala I don't
 22 think you comply then with the Firearm Act.
 23 MR SEMENYA SC: Colonel –
 24 COLONEL VERMAAK: No, you asked me a
 25 question and I answered it.

Page 27592

1 MR SEMENYA SC: Colonel, are you saying
 2 in an operation there are shotguns of members in a Nyala,
 3 each and every time they get out of the Nyala they must
 4 take it with?
 5 COLONEL VERMAAK: Yes, because why they
 6 are responsible for that firearms unless there's a specific
 7 person appointed to look after it.
 8 MR SEMENYA SC: Ja, but we know you don't
 9 know those details. I'm asking –
 10 COLONEL VERMAAK: That's why I said to
 11 you so.
 12 MR SEMENYA SC: You don't know whether
 13 General Mpmembe left somebody in the Nyalas to look after
 14 them, do you?
 15 COLONEL VERMAAK: No, I didn't know but
 16 you asked me a question regarding the wearing of the
 17 firearms.
 18 MR SEMENYA SC: Okay, I'm asking the
 19 question again. Is a member irresponsible by leaving a
 20 firearm, a shotgun in a Nyala?
 21 COLONEL VERMAAK: Yes.
 22 MR SEMENYA SC: Per se.
 23 COLONEL VERMAAK: Yes.
 24 MS PILLAY: Okay, the witness has
 25 answered this question already.

Page 27593

1 MR SEMENYA SC: Can we examine even if on
 2 your version there is somebody to look after it?
 3 COLONEL VERMAAK: If there's specific
 4 persons appointed to must look after that firearms and they
 5 take the responsibility for that firearms that is a
 6 different situation.
 7 MR SEMENYA SC: Appointed I don't
 8 understand. Let me play the scenario for us.
 9 COLONEL VERMAAK: Or instructed in other
 10 words.
 11 MR SEMENYA SC: Let me play out this
 12 scenario for you, Colonel. A POP unit goes to attend to a
 13 public order management incident. They are in a Nyala.
 14 They have in the Nyala shotguns as well. It is suggested
 15 to them that the POP operation that will be done is a push
 16 back. They would obviously use their shields, correct?
 17 COLONEL VERMAAK: That's correct.
 18 MR SEMENYA SC: Meaning that the shotguns
 19 would be in the Nyala.
 20 COLONEL VERMAAK: As I said if somebody
 21 is given the instruction then it is acceptable for that.
 22 MR SEMENYA SC: Okay. Now, let's go back
 23 to this threat to the life of General Mpmembe. You say that
 24 immediately after you tell him that you then say that you
 25 want to follow up the people that you saw with the – you

Page 27594

1 want to go back to the scene. Is that your evidence?
 2 COLONEL VERMAAK: After?
 3 MR SEMENYA SC: After you communicated to
 4 General Mpembe that there is a threat on his life and do
 5 you then ask him whether you can go back?
 6 COLONEL VERMAAK: Ja, myself and Colonel
 7 Moolman went back to the scene.
 8 MR SEMENYA SC: And I thought your
 9 evidence was that his response to that was, ja, you can go
 10 as long as I don't lose any more members.
 11 COLONEL VERMAAK: No. That was not my –
 12 MR SEMENYA SC: Okay, refresh my memory,
 13 Colonel. What was General Mpembe's reaction to your
 14 request?
 15 COLONEL VERMAAK: Sorry, can I get
 16 clarity? You're referring before I went after the people
 17 or –
 18 MR SEMENYA SC: No, no, no, as you tell
 19 him that - I thought your evidence was that his life is in
 20 danger, you escort him to the car and you say you are
 21 going.
 22 COLONEL VERMAAK: No, Chair, that's not
 23 true.
 24 MR SEMENYA SC: Is it not?
 25 COLONEL VERMAAK: No.

Page 27595

1 MR SEMENYA SC: Sorry, sorry, sorry, my
 2 sequence is wrong. After you attended to Warrant Officer
 3 Monene.
 4 COLONEL VERMAAK: That's correct.
 5 MR SEMENYA SC: That's the moment.
 6 COLONEL VERMAAK: That's correct.
 7 MR SEMENYA SC: And you say you could see
 8 that he's emotionally unstable as a result of what has
 9 happened there.
 10 COLONEL VERMAAK: That's correct.
 11 MR SEMENYA SC: And you say his response
 12 to your request is, okay, you can go ahead with this
 13 operation as long as I don't lose any more members.
 14 COLONEL VERMAAK: No, I never said that.
 15 MR SEMENYA SC: How did you put it?
 16 COLONEL VERMAAK: I said he said that I
 17 mustn't go because why he don't want to loss any other
 18 members because why there's already people who were killed.
 19 And then I said to him but we saw that they were dragging a
 20 person with a white overall and we also saw a person with
 21 the R5, but I never said that he said I can continue as
 22 long as –
 23 MR SEMENYA SC: Did he give you
 24 permission to continue?
 25 COLONEL VERMAAK: No.

Page 27596

1 MR SEMENYA SC: You went despite –
 2 COLONEL VERMAAK: Due to the fact that I
 3 could see what emotional stress he was in and also that
 4 there is crime scenes that I have to secure that is part of
 5 any policeman's responsibility.
 6 MR SEMENYA SC: You went –
 7 COLONEL VERMAAK: I did go.
 8 MR SEMENYA SC: You went despite no
 9 permission being granted by the operational commander.
 10 COLONEL VERMAAK: That's correct, but due
 11 to his personal –
 12 MR SEMENYA SC: And you don't seek
 13 permission of anybody including JOC to go and do that.
 14 COLONEL VERMAAK: Chair, at that stage it
 15 was chaos, nothing else. You can, you can't explain it
 16 otherwise as chaos.
 17 MR SEMENYA SC: And in that chaos decide
 18 that you are going to take some members and go to the
 19 river?
 20 COLONEL VERMAAK: Yes, I took the – to
 21 the river?
 22 MR SEMENYA SC: To the river.
 23 COLONEL VERMAAK: I took the
 24 responsibility as a senior officer for that, yes.
 25 MR SEMENYA SC: Or as an individual

Page 27597

1 without informing anybody that that's the operation you're
 2 doing.
 3 COLONEL VERMAAK: At that stage I was the
 4 senior except the general.
 5 MR SEMENYA SC: Okay. You did know
 6 though that the instruction that had been given to members
 7 by before that time was to escort people to the koppie.
 8 COLONEL VERMAAK: No, I didn't know it.
 9 MR SEMENYA SC: So you take it upon
 10 yourself without even knowing what the operational command
 11 is in respect of this to say I'm going to chase after those
 12 ones and I'll take my TRT members with.
 13 COLONEL VERMAAK: Chair, if the people
 14 were just walking peacefully at that stage it's a other
 15 story but there was already people killed, policemen were
 16 killed. The operational commander was in such an emotional
 17 state that according to me he couldn't really take any
 18 decisions at that stage and I accept it that he was really
 19 upset about the policemen that were killed at that stage.
 20 MR SEMENYA SC: Okay, we know that you
 21 are able to speak to the PC. Do you say to the PC,
 22 provincial commissioner, the operational commissioner is
 23 now in bad emotional condition?
 24 COLONEL VERMAAK: I did report it to her.
 25 MR SEMENYA SC: No, just listen to the

Page 27598

1 question, Colonel. Can I now take over this operation and
 2 can do what has to be done?
 3 COLONEL VERMAAK: Chair, I didn't take
 4 the operation over. It was a isolated incident what I
 5 followed up. There was no other senior member there.
 6 MR SEMENYA SC: Because you removed him.
 7 COLONEL VERMAAK: For his own safety,
 8 yes.
 9 MR SEMENYA SC: And I'm going to suggest
 10 to you that this whole story that General Mzembe's life was
 11 under threat was a ploy on your part to remove him so that
 12 you can take control of that scene.
 13 COLONEL VERMAAK: That's a lie.
 14 MR SEMENYA SC: Now, the witnesses that
 15 we have consulted as a team deny that there was ever an
 16 instruction given to them that they must leave the shotguns
 17 in the Nyalas.
 18 MS PILLAY: Chair, if the proposition is
 19 being put we would like to know which witnesses
 20 specifically.
 21 MR SEMENYA SC: Merafe said so
 22 specifically.
 23 COLONEL VERMAAK: If I can remember I –
 24 CHAIRPERSON: Sorry, Colonel, anyway this
 25 witness doesn't say that that happened. He said that's

Page 27599

1 what he was told. But it's a perfectly permissible
 2 question Mr Semenya is asking based on the evidence that
 3 Colonel Merafe gave so I think you may proceed, Mr Semenya.
 4 MR SEMENYA SC: And you have no reason to
 5 question the account of Colonel Merafe on the point. Am I
 6 right?
 7 COLONEL VERMAAK: Chair, if I remember
 8 correctly I read some of the – in his statement, yes,
 9 that's correct. I read in his statement that at one stage
 10 when he confront the general about the actions being taken
 11 there he said in his statement he went back to his vehicles
 12 so I don't know if he was there when the general gave
 13 instructions.
 14 MR SEMENYA SC: No, he said he was there.
 15 COLONEL VERMAAK: Okay, but in his
 16 statement he stipulated at one stage he went back to the
 17 vehicle.
 18 MR SEMENYA SC: But let me tell you
 19 another thing. Even the members you are taking with you
 20 are having weapons with them. Is that consistent with the
 21 instruction that General Mzembe would have given them?
 22 COLONEL VERMAAK: Just repeat the
 23 question please.
 24 MR SEMENYA SC: Even the members that you
 25 take with to go to the river had even their own weapons

Page 27600

1 with them.
 2 COLONEL VERMAAK: They did have.
 3 MR SEMENYA SC: Yes, is that consistent
 4 with the instruction General Mzembe would have given them?
 5 COLONEL VERMAAK: At that stage I didn't
 6 know any instructions. It was only when we are back
 7 walking back from the river I heard –
 8 MR SEMENYA SC: I accept that but you say
 9 to them – and you are having them on you. How could the
 10 general have said you must leave them in the Nyalas? You
 11 are having them with you.
 12 COLONEL VERMAAK: I've explained to you
 13 that why I did not argue with them.
 14 MR SEMENYA SC: But this is the second
 15 indicator why the possibility of this threat to General
 16 Mzembe is dubious. Do you accept that from me?
 17 COLONEL VERMAAK: No, what will I achieve
 18 to just go and remove a general from a scene? That will be
 19 very stupid to do such a thing.
 20 MR SEMENYA SC: Well, we know that – I
 21 don't know whether it would be stupid, but we know even
 22 such a serious threat about the life of a general of the
 23 South African Police Service spoken to the colonel did not
 24 trigger in you to the interest to know which individual is
 25 doing that, correct?

Page 27601

1 [14:32] COLONEL VERMAAK: Who is making the
 2 threat?
 3 MR SEMENYA SC: Yes. It is not, it did
 4 not occur to you that you must -
 5 COLONEL VERMAAK: I have already
 6 testified why I didn't take any names, there was no time
 7 for that.
 8 MR SEMENYA SC: Yes, but subsequently you
 9 could have gone through Colonel Thupe and say, you know
 10 what, the people who have sat in the General's life, are
 11 your members. Correct?
 12 COLONEL VERMAAK: At that stage, Colonel
 13 Thupe was nowhere to be found.
 14 MR SEMENYA SC: Even to this day, even to
 15 this day Colonel, you have never gone to Colonel Thupe and
 16 say, Colonel, the persons that I moved with are your
 17 members, can I do an ID and I will identify this threat to
 18 the life of the General with the police service.
 19 COLONEL VERMAAK: Chair, that what you
 20 put to me is not true. I spoke to Captain Thupe. I was
 21 questioned and asked by senior why the General himself at
 22 Roots, who was the members while captain Thupe was sitting
 23 next to him, and I explained to the General there that I
 24 didn't know the members. I am not working with them every
 25 day. So I believe that if Captain Thupe, as the commander

Page 27602

1 should also do some enquiry who the members were.

2 CHAIRPERSON: Sorry to interrupt, Mr

3 Semenya, this question of the defence, that was raised at

4 Roots, wasn't it? Was mentioned at Roots.

5 COLONEL VERMAAK: No, it was discussed

6 there at Roots.

7 CHAIRPERSON: Now one of the things that

8 surprised me, and I mentioned this to other witnesses, was

9 that no one seems to have investigated, it was a serious

10 effect of mutiny effectively.

11 COLONEL VERMAAK: There was no –

12 CHAIRPERSON: Which doesn't appear to be

13 investigated. Now you raised it at Roots. Was anyone, any

14 detective for example, appointed to investigate, did anyone

15 interview you and ask you if you can identify the people,

16 while things are reasonably fresh in my memory, an

17 identification parade could have been set up. Was anything

18 of that kind done?

19 COLONEL VERMAAK: Nothing Chair.

20 CHAIRPERSON: Was it for you to take the

21 initiative to investigate this matter? You'd reported it.

22 Was it for you to take the initiative to investigate it

23 further, or should someone have been appointed to

24 investigate, interview you or interview the other people?

25 COLONEL VERMAAK: Chair, yes, I think it

Page 27603

1 should have been, the PC, the Provincial Commissioner who

2 should have appointed somebody to investigate it.

3 MR SEMENYA SC: At Roots you did not say

4 that those members are TRT Rustenburg, did you?

5 COLONEL VERMAAK: Come again?

6 MR SEMENYA SC: At Roots, you did not say

7 the people who told you that were TRT members, Rustenburg.

8 COLONEL VERMAAK: I did, in that meeting

9 where it was being discussed.

10 MR SEMENYA SC: Adv Wesley for the

11 evidence leaders did an exercise, I am told in the cross-

12 examination of Colonel Merafe showing at least 14 members

13 who were having shotguns there. Do you want us to play it

14 for you?

15 COLONEL VERMAAK: Are you referring to

16 the – next to the railway?

17 MR SEMENYA SC: No, on the incident of

18 the 13th.

19 CHAIRPERSON: It is next to the railway,

20 what happened was, Mr – I think 16 was the number at the

21 end. What happened was, Colonel Merafe and Mr Wesley went

22 away, during one of these adjournments, and looked at the

23 video, that was taken of the events by the railway line and

24 they counted people with shotguns, and I think I am correct

25 in saying that there was some debate whether the number was

Page 27604

1 14 to 16, but anyway it was more than a dozen that shotguns

2 were visible. So that's what Mr Semenya is referring to.

3 So the suggestion is that shot guns, certainly at least 14

4 or 16 shotguns weren't put away, that's the thrust of the

5 question, Mr Semenya?

6 MR SEMENYA SC: That's the thrust of the

7 question, and that you would have seen yourself on the

8 scene, am I right? There were other people with shotguns

9 there.

10 COLONEL VERMAAK: On which scene are you

11 referring to? To the one at the railway line, or where the

12 policemen were killed?

13 MR SEMENYA SC: In the operation of the

14 13th you did shotgun weapons there, did you not?

15 COLONEL VERMAAK: Yes, I did shotguns

16 when we landed, after the attacks happened.

17 MR SEMENYA SC: And if the version given

18 to you that the General would have said they must leave

19 them in the Nyalas, you would have seen ample example of

20 defiance of that order.

21 COLONEL VERMAAK: Just remember, at that

22 stage, when I land, the members was already going through

23 to their vehicles so if they did go and fetch their

24 firearms at that stage, I won't be able to say but what I

25 can say is on the video of the police at the railway line,

Page 27605

1 you could see, I think only one or two policemen with

2 shotguns or R5s.

3 CHAIRPERSON: That's not the result of

4 the exercise that Mr Wesley conducted with Colonel Merafe.

5 But the point that strikes me about, strange about the

6 whole thing, was that obviously no command could have been

7 given for all the weapons to be put away. If that had

8 happened, the strikers wouldn't have been able to get hold

9 of an R5 or a shotgun, would they? So at least one R5 and

10 one shotgun on the scene, but not only that, we know that

11 one at least, one striker at least was shot on what I call

12 the field, you know, so there was presumably at least one

13 other person in the possession of an R5. So the story that

14 people were told to put away their firearms, doesn't stand

15 up because all the circumstantial evidence indicates that

16 some people at least had their firearms with them and

17 either didn't hear the command, or if they heard it, didn't

18 comply with it, if it was given. But we know at any event

19 from Colonel Merafe that no such order was given. Now, the

20 real point of the questioning as I understand it, is Mr

21 Semenya says, when they made the threat and you actually

22 say in your original statement that a "verkeerde opdragte

23 gegee het," so they mentioned that he had given wrong

24 commands.

25 COLONEL VERMAAK: That's correct, yes.

Page 27606

1 CHAIRPERSON: And then in your more
 2 recent statement, the one in January this year, you then
 3 add that they said, they referred to putting the firearms
 4 away in the vehicles. And you said today, that that was
 5 the only complaint they made about the wrong commands
 6 given. But the point made, I think, by Mr Semenya is this,
 7 that when they said in effect we are going to kill him,
 8 why, because he gave wrong commands, what wrong commands?
 9 He told us to put the firearms away in the vehicles. Why
 10 didn't you say to them, but you people are talking
 11 nonsense? That can't be right, because there were
 12 firearms. Firearms were taken, a firearm, one R5 and one a
 13 shotgun, were taken by the strikers. At least one other
 14 person had a firearm, an R5 because one of the strikers had
 15 been killed. So you people are talking nonsense. And that
 16 is Mr Semenya's point. Now how do you answer that?
 17 COLONEL VERMAAK: Chair, at that stage I
 18 only concentrate on the fact about the threat that they
 19 made, what they informed me, and I didn't want to go in an
 20 argument with them because why, I couldn't say what they
 21 said to me about put away the firearms was true or not
 22 true. They only conveyed that to me and the first thing
 23 that comes up in my mind is to look after the safety of the
 24 General at that stage.
 25 COMMISSIONER HEMRAJ: Another thing, such

Page 27607

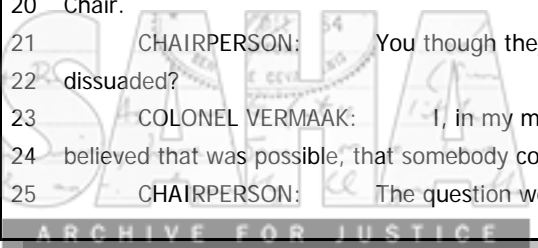
1 a command could not have been a selective one, if such a
 2 command was given by the General, it would apply to
 3 everyone there.
 4 COLONEL VERMAAK: That's correct, I
 5 believe so.
 6 COMMISSIONER HEMRAJ: And even if they
 7 had put away their shotguns and rifles, they all still had
 8 their 9 millimetres with them.
 9 COLONEL VERMAAK: That's correct.
 10 CHAIRPERSON: Did you get the impression
 11 that this was a serious threat they were making?
 12 COLONEL VERMAAK: Chair, yes, according
 13 to me, they were not joking or something like that about
 14 it, they were very serious because why, they were also
 15 emotional for the fact that their colleagues died that day,
 16 and that is -
 17 CHAIRPERSON: Did you think they were
 18 capable of being dissuaded from what they threatened to do.
 19 COLONEL VERMAAK: At that stage, yes,
 20 Chair.
 21 CHAIRPERSON: You though they could be
 22 dissuaded?
 23 COLONEL VERMAAK: I, in my mind, I
 24 believed that was possible, that somebody could do it.
 25 CHAIRPERSON: The question would be, why

Page 27608

1 didn't you try to dissuade them. I don't think you are
 2 understanding the question actually. Het u gedink dat dit
 3 vir u moontlik sou gewees het om vir hulle te sê hulle moet
 4 dit nie doen nie, om te oortuig om nie die General se lewe
 5 te neem nie?
 6 COLONEL VERMAAK: Chair, as I said, the
 7 only thing that comes into my mind, was contact the PC,
 8 inform about the threat, ask the permission if I can take
 9 the General away for his own safety, and that is, that was
 10 all that I was thinking about.
 11 MR SEMENYA SC: But why don't you remove
 12 them? Then the threat is gone. And you are a Colonel, you
 13 can give them an instruction, 1, 2, 3, you are out of here,
 14 go away.
 15 COLONEL VERMAAK: How can I say it was
 16 only them that was feeling like that?
 17 MR SEMENYA SC: You will hear from them.
 18 COLONEL VERMAAK: That's correct.
 19 MR SEMENYA SC: You say, "out of here."
 20 COLONEL VERMAAK: Well, the first thing
 21 that I thought was I must get the General to a safe place
 22 and that is what I have done. I can sit now in hindsight,
 23 and say I should have do this, and I should have done that.
 24 But what I've done, I've done.
 25 MR SEMENYA SC: Now, I thought that one

Page 27609

1 of the criticisms about how they -
 2 COMMISSIONER HEMRAJ: May I just enquire,
 3 how many of them there were in that group that made the
 4 threats?
 5 COLONEL VERMAAK: There were four, Chair.
 6 COMMISSIONER HEMRAJ: Thank you.
 7 MR SEMENYA SC: I thought one of the
 8 criticisms you had about how the General handled the
 9 incident on the 13th, is you wouldn't have allowed members
 10 to follow this group on foot. Did you make that as a
 11 criticism?
 12 COLONEL VERMAAK: That is correct.
 13 MR SEMENYA SC: And yet when you get to
 14 that scene yourself you organise the TRT members and you
 15 say, we must go on foot chasing after people who are armed,
 16 now with an R5.
 17 COLONEL VERMAAK: That's correct.
 18 MR SEMENYA SC: Just help me reconcile
 19 the two.
 20 COLONEL VERMAAK: At least we were
 21 prepared for what could happen, another thing is the Nyala,
 22 if I did have an Nyala with me, won't be able to go through
 23 the river there.
 24 MR SEMENYA SC: Well, let's test this,
 25 you were prepared, you didn't have a firearm, am I right?



Page 27610

1 COLONEL VERMAAK: That's correct.
 2 MR SEMENYA SC: You were walking on foot.
 3 COLONEL VERMAAK: That's correct.
 4 MR SEMENYA SC: - seen somebody who have
 5 got an R5 rifle.
 6 COLONEL VERMAAK: That's correct.
 7 MR SEMENYA SC: That are shooting it at
 8 you according to your version.
 9 COLONEL VERMAAK: That's correct.
 10 MR SEMENYA SC: And you are walking with
 11 the other members on foot.
 12 COLONEL VERMAAK: That's correct.
 13 MR SEMENYA SC: Why is that not the same
 14 as the criticism that you level at what the General did?
 15 COLONEL VERMAAK: It's two total
 16 different incidents.
 17 MR SEMENYA SC: Help me understand.
 18 COLONEL VERMAAK: Easily, there was not a
 19 big group of 100 or so or 300 people when we followed them.
 20 It was a small group of people. And the other thing is, as
 21 I said, we were prepared for any actions that might happen
 22 and that is why TRT is trained to handle such situations.
 23 MR SEMENYA SC: That's your answer?
 24 COLONEL VERMAAK: That's my answer,
 25 Chair.

Page 27611

1 MR SEMENYA SC: I understood your
 2 evidence, please correct me if I am wrong, I understood
 3 your evidence to be this, that from the air, you could see
 4 nothing, nothing to explain where the tear gas and the stun
 5 grenade were fired?
 6 COLONEL VERMAAK: Yes, I said that.
 7 MR SEMENYA SC: Okay, if we have to play
 8 the video, I will do it, but we may not need to do that.
 9 You do accept that Warrant Officer Lepaaku was killed next
 10 to the road separating the field and the settlement.
 11 COLONEL VERMAAK: No, next to the gravel
 12 road.
 13 MR SEMENYA SC: Yes. And that is not a
 14 direction to the koppie, is it?
 15 COLONEL VERMAAK: It is, yes.
 16 MR SEMENYA SC: Do you want us to play
 17 it, Colonel? That if you went where Warrant Officer
 18 Lepaaku and you are looking straight, you would go to the
 19 koppie.
 20 COLONEL VERMAAK: That is the direction
 21 of the koppie.
 22 MR SEMENYA SC: But it is more the
 23 direction into the settlement, is it not?
 24 COLONEL VERMAAK: The settlement is
 25 between the koppie and the incident.

Page 27612

1 MR SEMENYA SC: Colonel, I want to put it
 2 to you, and we may even play the video, the koppie would be
 3 left of where Warrant Officer Lepaaku was slaughtered.
 4 COLONEL VERMAAK: It was in the direction
 5 of the koppie.
 6 MR SEMENYA SC: Okay, I've -
 7 COLONEL VERMAAK: You can't, you draw a
 8 line specifically from this point to that point and say,
 9 this is the line that they followed. The normal direction
 10 -
 11 MS PILLAY: Chair, if I could just also
 12 enquire just to get some clarity, we know the evidence is
 13 that Warrant Officer Lepaaku was killed after the tear gas
 14 and stun grenades were deployed and after the strikers had
 15 changed direction and come back at the police. So if that
 16 is the case, how do we use the position of Warrant Officer
 17 Lepaaku's body to determine the direction in which the
 18 strikers were moving?
 19 MR SEMENYA SC: The visuals will tidy up
 20 this debate between my learned colleague and I. I will
 21 attempt during afternoon tea to get that played.
 22 CHAIRPERSON: Perhaps you can move onto
 23 another point in the meanwhile. Perhaps we can move onto
 24 another point in the meanwhile.
 25 MR SEMENYA SC: I want to tidy up

Page 27613

1 something that we left open. Chair, we have placed before
 2 you the earlier statements of Sekgweleya and Mguye. The
 3 index of exhibits would indicate it as QQ7.1 and QQ7.2.
 4 CHAIRPERSON: Which was which? What's
 5 Mguye?
 6 MR SEMENYA SC: Sekgweleya is 7.1, QQ7.1.
 7 CHAIRPERSON: And Mguye?
 8 MR SEMENYA SC: QQ7.2.
 9 CHAIRPERSON: QQ, two Qs.
 10 MR SEMENYA SC: Two Qs.
 11 CHAIRPERSON: Two QQs, three QQQs.
 12 [14:51] So the statement of Constable Mguye is QQQ7.2 and
 13 the statement of Constable Sekgweleya will be QQQ7.1.
 14 MR SEMENYA SC: Chair, I'm reluctant but
 15 I must request that we take the tea adjournment now, Chair.
 16 CHAIRPERSON: You don't have to explain
 17 your reluctance. We'll take the tea adjournment.
 18 [COMMISSION ADJOURNS COMMISSION RESUMES]
 19 [15:19] CHAIRPERSON: The Commission resumes.
 20 Lieutenant-Colonel, you're still bound by your affirmation.
 21 SALMON JOHANNES VERMAAK: (affirms
 22 further)
 23 CHAIRPERSON: Mr Semenya, are you ready
 24 to proceed with your cross-examination?
 25 CROSS-EXAMINATION BY MR SEMENYA SC (CONTD.):

Page 27614

1 I am indeed, Chair. Perhaps to tidy up one element of the
 2 cross-examination might I invite you, Colonel, to exhibit
 3 HHH29 and HHH30. These are the statements that have been
 4 in the Commission for a long time. They are that of
 5 Constable Sekgweleya and Sergeant Mguye.
 6 CHAIRPERSON: [Microphone off, inaudible]
 7 their first statements, the ones they made, did they make
 8 them on the 13th, was it not?
 9 MR SEMENYA SC: Yes, they're undated –
 10 CHAIRPERSON: My copy of Mguye's
 11 statement for example doesn't have a date. I suspect it
 12 may, I presume we have the – this one hasn't got, yours is
 13 exactly the same as mine, but it was on the day or day
 14 after.
 15 MR SEMENYA SC: Yes. Colonel, the only
 16 reason I'm bringing these documents to your attention is to
 17 say nowhere in those documents do they mention you by name.
 18 You accept that?
 19 COLONEL VERMAAK: That's correct. They
 20 not mention my name?
 21 MR SEMENYA SC: They don't mention your
 22 name, not at all.
 23 COLONEL VERMAAK: That's correct, Chair.
 24 MR SEMENYA SC: Yes, so the legal team
 25 could not have known that you are in one way or other

Page 27615

1 implicated in what they are talking about. Am I right?
 2 COLONEL VERMAAK: According to this
 3 statements, yes.
 4 MR SEMENYA SC: So your accusation that
 5 we withheld information from you which was implicating you
 6 through reference of these two witnesses would be unfair.
 7 Am I right, Colonel?
 8 COLONEL VERMAAK: I don't think it can
 9 quite be unfair –
 10 MR SEMENYA SC: That's alright. Let's
 11 talk about something more substantive. I take it that one
 12 of your criticisms about the police operation relates to
 13 the planning of the operation.
 14 COLONEL VERMAAK: On the 13th or 16th?
 15 MR SEMENYA SC: No, the 16th. Am I right?
 16 COLONEL VERMAAK: That's correct.
 17 MR SEMENYA SC: In fact you are
 18 criticising the plan that was implemented. Am I right?
 19 COLONEL VERMAAK: That is correct.
 20 MR SEMENYA SC: And the criticism you
 21 have on that plan is a plan that you did not know about
 22 when you were up in the air there. Am I right? You were
 23 not in the JOCCOM –
 24 COLONEL VERMAAK: Of the afternoon, no.
 25 MR SEMENYA SC: - meeting of 14:30 and

Page 27616

1 you did not know what plan was agreed upon by that JOCCOM.
 2 Am I right?
 3 COLONEL VERMAAK: That's correct.
 4 MR SEMENYA SC: And you do know that, as
 5 we started earlier, that that is where the decision-making
 6 about operations get done.
 7 COLONEL VERMAAK: That's correct.
 8 MR SEMENYA SC: And yet you were up in
 9 the air there, critical that they are implementing a plan
 10 that is wrong.
 11 COLONEL VERMAAK: That's correct.
 12 MR SEMENYA SC: But we do know, Colonel,
 13 don't we, that because of the work that you were doing
 14 yourself you left the area before sunset because of the
 15 flying times of the helicopter and you came in the morning.
 16 Am I right?
 17 COLONEL VERMAAK: That's correct.
 18 MR SEMENYA SC: So that we know on the
 19 16th that you only landed at 7:40 in the morning of the
 20 16th. Am I right?
 21 COLONEL VERMAAK: That's correct.
 22 MR SEMENYA SC: You could not have been
 23 in the JOCCOM meeting at 6 o'clock in that morning.
 24 COLONEL VERMAAK: The chopper landed that
 25 time. I was with my vehicle to the JOC.

Page 27617

1 MR SEMENYA SC: You know, even if I look
 2 at your statements you say you reported to work at 7
 3 o'clock that morning. Isn't that right? On your own
 4 statements.
 5 COLONEL VERMAAK: No, it is not correct.
 6 MR SEMENYA SC: What is not correct?
 7 COLONEL VERMAAK: I didn't report at 7, I
 8 was –
 9 MR SEMENYA SC: Oh, let's look at the
 10 statement –
 11 COLONEL VERMAAK: I was at 6 o'clock in
 12 the meeting.
 13 MR SEMENYA SC: Let us look at your
 14 statement then. Shall we go to exhibit LLL8 and look at
 15 paragraph 10 of that statement. It reads there, "Op
 16 Donderdag 16de Augustus 2012 was ek aan diens gewees vanaf
 17 7 uur."
 18 COLONEL VERMAAK: Was ek die bemanning.
 19 Dit was verwysend na die bemanning op die helikopter.
 20 MR SEMENYA SC: Explain that to me.
 21 COLONEL VERMAAK: It was referring to
 22 that I was from that time the ALEO, or the crew on the
 23 helicopter.
 24 MR SEMENYA SC: JOCCOM starts at 6.
 25 COLONEL VERMAAK: That's correct.

<p style="text-align: right;">Page 27618</p> <p>1 MR SEMENYA SC: You're in JOCCOM at 6?</p> <p>2 COLONEL VERMAAK: That's correct.</p> <p>3 MR SEMENYA SC: And at 7 you left, you</p> <p>4 were in the "bemanning"?</p> <p>5 COLONEL VERMAAK: That's – I was, from</p> <p>6 that time I was the crew, yes. I first drove with my</p> <p>7 vehicle there and then thereafter I was the crew on the</p> <p>8 helicopter.</p> <p>9 MR SEMENYA SC: The helicopter we know on</p> <p>10 the flight logs landed at 7:40.</p> <p>11 COLONEL VERMAAK: That's correct.</p> <p>12 MR SEMENYA SC: You were in that</p> <p>13 helicopter what time?</p> <p>14 COLONEL VERMAAK: After the JOC meeting.</p> <p>15 MR SEMENYA SC: No, you were in that</p> <p>16 helicopter what time? Just give me the time, Colonel.</p> <p>17 COLONEL VERMAAK: You can see in my</p> <p>18 statement round about 9 o'clock myself and Warrant Officer</p> <p>19 Padayachee, the pilot, went on patrol.</p> <p>20 MR SEMENYA SC: Okay, let's look at</p> <p>21 exhibit OOO7, which is a typed version of your diary. The</p> <p>22 typed version, there's the typed version of your diary. Am</p> <p>23 I right? Let's start –</p> <p>24 COLONEL VERMAAK: The 13th –</p> <p>25 MR SEMENYA SC: Let's start with the one</p>	<p style="text-align: right;">Page 27620</p> <p>1 is –</p> <p>2 MR SEMENYA SC: Why do you enter that</p> <p>3 time if it is not correct?</p> <p>4 COLONEL VERMAAK: Well, then we can go</p> <p>5 and have a look at the minutes and also the attendance list</p> <p>6 if I was in the JOC or not.</p> <p>7 MR SEMENYA SC: The statements say, the</p> <p>8 people who were in JOC they say you always arrived late.</p> <p>9 There was never a time when you were at the JOC at 6</p> <p>10 o'clock because you started at the Air Wing.</p> <p>11 COLONEL VERMAAK: No, that's a lie. I</p> <p>12 was always before the helicopters there because why I was</p> <p>13 driving with the vehicle through and I was taking the fuel</p> <p>14 of the choppers to the Marikana JOC, so there was nowhere</p> <p>15 that I was late ever for a JOC meeting.</p> <p>16 MR SEMENYA SC: Do you know –</p> <p>17 COLONEL VERMAAK: There was once, there</p> <p>18 was one incident where I was late and that is where I was</p> <p>19 in an accident and I have to wait for the duty officer of</p> <p>20 Rustenburg Police Station to attend it.</p> <p>21 MS PILLAY: Chair, in fairness to the</p> <p>22 witness, I think Mr Semenya could put to him which</p> <p>23 statements say that he used to attend the JOC late, the JOC</p> <p>24 meetings late.</p> <p>25 MR SEMENYA SC: Colonel, I want to invite</p>
<p style="text-align: right;">Page 27619</p> <p>1 of the 16th, not the 13th. That's the one, correct Colonel?</p> <p>2 COLONEL VERMAAK: That's correct.</p> <p>3 MR SEMENYA SC: It says what at 6</p> <p>4 o'clock?</p> <p>5 COLONEL VERMAAK: I report on duty as</p> <p>6 ALEO, and you can also see that I attend the JOC meeting,</p> <p>7 and as I did –</p> <p>8 MR SEMENYA SC: No, no, no, no, no, no,</p> <p>9 let's not rush it. At 6 o'clock it says you are where?</p> <p>10 COLONEL VERMAAK: I report on duty.</p> <p>11 MR SEMENYA SC: Where?</p> <p>12 COLONEL VERMAAK: For the main purpose of</p> <p>13 ALEO for that day.</p> <p>14 MR SEMENYA SC: Where?</p> <p>15 COLONEL VERMAAK: At the JOC.</p> <p>16 MR SEMENYA SC: No, at 7 it says "JOC</p> <p>17 vergadering." Do you see that?</p> <p>18 COLONEL VERMAAK: That's correct, and</p> <p>19 I've explained many times to you that my diary is only</p> <p>20 giving me – I wrote it up so that I can go back and refresh</p> <p>21 my mind. So there you can see that I wrote that I did</p> <p>22 attend the JOC meeting.</p> <p>23 MR SEMENYA SC: It does so, but it says 7</p> <p>24 o'clock.</p> <p>25 COLONEL VERMAAK: Oh well, and I think it</p>	<p style="text-align: right;">Page 27621</p> <p>1 you to look at – yes, at page 25272 of the transcript. I</p> <p>2 want to demonstrate something to you. If we go to line 24</p> <p>3 onwards the Chair says there, "Before we move on to</p> <p>4 paragraph 9," page 25272, line 24, "Before we move on to</p> <p>5 paragraph 9 I'd like to ask the witness one thing about the</p> <p>6 13th, what happened on the 13th. In your statement, this</p> <p>7 very statement you are being referred to, LLL8, paragraph</p> <p>8 6, I think the passage I'm going to refer you to now is</p> <p>9 actually also in your earlier statement, which is GGG17.</p> <p>10 Yes, it is. In the end of the fourth paragraph there are –</p> <p>11 well, it's four lines from the foot of the paragraph, you</p> <p>12 say, 'Ons het opgemerk dat iemand onbekend aan ons aan die</p> <p>13 regterflank 'n traanrook granaat afgevuur het in die</p> <p>14 rigting van die groep wat die grondpad wou oorstek om</p> <p>15 sodoende te verhoed'" – these are the words I'm stressing –</p> <p>16 "'om sodoende te verhoed dat hulle na die informele</p> <p>17 plakkerskamp kan beweeg.' It can be translated as, 'We</p> <p>18 noticed that someone unknown to us on the right flank fired</p> <p>19 a teargas canister in the direction of the group who wanted</p> <p>20 to cross the gravel road in order to prevent that they</p> <p>21 could move to the informal squatter camp.' Now I take it</p> <p>22 that from the helicopter you couldn't discern what the</p> <p>23 reason was why the teargas canister was fired. Am I</p> <p>24 correct?" To that you answer, Colonel, "Dis korrek."</p> <p>25 Chairperson, "So where did you get this phrase 'om sodoende</p>

Page 27622

1 te verhoed dat hulle na die informele plakkerskamp kan
2 beweeg?" "Mnr die Voorsitter," says you, "tydens
3 konsultasie met die regsman was dit die verduideliking
4 gewees dat dit die rede is waarvoor die traanrook en die
5 skokgranaat gegooi was. Dit is wel in die verklaring
6 bygewerk, maar u sal sien ek het in 2014 Januarie het ek 'n
7 verklaring opgestel wat ek gesê het finale verklaring, want
8 toe het ek beswaar gemaak, die feit dat daar kort-kort
9 aanvullende verklarings en verskillende verklarings en 'n
10 verduideliking gevra word, so toe het ek gaan sit en ek het
11 die hele ding uiteengesit soos wat ek dit ervaar het en nie
12 wat daar vir my gemeld is 'n moontlikheid kan wees hoekom
13 die traanrook en die skokgranaat sou gegooi gewees het
14 nie." Do you see that?

15 COLONEL VERMAAK: That's correct.

16 MR SEMENYA SC: So you're saying you
17 disabused your mind out of the suggestions made to you by
18 the legal team in making this statement and that statement
19 and that statement. You remember that?

20 COLONEL VERMAAK: That's correct.

21 MR SEMENYA SC: And you decided you are
22 going to write only about that which you experienced.

23 COLONEL VERMAAK: That's correct.

24 MR SEMENYA SC: Alright. Then it goes
25 on, "What is this final statement? It's not HHH because I

Page 27623

1 was reading to you from LLL8 this passage which appears
2 also in the earlier statement." Colonel Vermaak, "Die
3 laaste verklaring wat ek afgelê het was die 21ste Januarie
4 2014, mnr die Voorsitter." Chairperson, "So that's LLL8,
5 and HHH8 has that passage that I read to you, transcribed
6 verbatim from the earlier statement which is HHH4 – sorry,
7 not HHH4." Ms Pillay, "GGG17." Chairperson, "GGG17, yes.
8 The end of paragraph 4, but anyway, so I'm not sure that
9 you're right that you left that out of your final
10 statement, but the point I wanted to ascertain from you is
11 that phrase that the, which purports to give the reason why
12 the teargas canister was fired was something that you don't
13 know from your own knowledge." Kolonel, "Nee, nee, dit
14 is."

15 The point that is of interest to me is that you
16 import the same connotation which I'm suggesting to you was
17 obvious from the helicopter, that the group was going to
18 the direction of the settlement. That is what you
19 observed. Am I right?

20 COLONEL VERMAAK: Chair, it depends on
21 which settlement you are talking about.

22 MR SEMENYA SC: Next to where Warrant
23 Officer Lepaaku perished.

24 COLONEL VERMAAK: According to me there
25 was no settlement there. The settlement was over the

Page 27624

1 river. There was only a few houses next to the gravel
2 road.

3 MR SEMENYA SC: Now you're saying the
4 firing of this teargas was so that they don't go into the
5 settlement. What –

6 COLONEL VERMAAK: Chair, I've –

7 MR SEMENYA SC: Which one are you
8 referring to?

9 COLONEL VERMAAK: I've, as you've read it
10 just now, as I have testified there and sorry for, to refer
11 back to consultation sessions with you, but it was
12 mentioned during a consultation that the reason for firing
13 the teargas and the stun grenade was to prevent the people
14 to go to the right side of, to the, into the informal
15 settlement, and if you will take a look from an aerial
16 photo of that area you will see on the right-hand side is
17 no informal settlement except for the few houses that is
18 standing loose there.

19 MR SEMENYA SC: We'll look at that video
20 tomorrow morning. Let's deal with something else, Colonel.

21 CHAIRPERSON: Colonel, it's not as simple
22 as that. Never mind what happened in consultation.
23 Already at the end of August 2012 in the passage that I put
24 to you in, what we saw in the transcript, you had said in
25 the fourth paragraph of your statement GGG17, the last

Page 27625

1 sentence was, "Ons het opgemerk dat iemand onbekend aan ons
2 aan die regterflank 'n traanrook afgevuur het in die
3 rigting van die groep wat die pad wou oorsteek om sodoende
4 te verhoed dat hulle in die informele plakkerskamp
5 inbeweeg." No I don't think I have to translate it. I
6 think the translation already appeared from the transcript,
7 and then I put to you, "You didn't know that from your own
8 knowledge." That we see on page 25275, and you said, "Nee,
9 dit is." I said it's something you were told later. You
10 said, "Dis korrek." "Whether that was the reason, whether
11 the person who fired it gives that reason is a matter you
12 have no knowledge of," and you said, you agreed with that.

13 COLONEL VERMAAK: That's correct.

14 CHAIRPERSON: So now it's got nothing to
15 do with what you were told in consultation later because
16 already long before you'd had a consultation with Mr
17 Semanya you made your statement GGG17 and you made that
18 statement which I read, and you conceded later in the
19 passage we see in the transcript that that was something
20 you didn't know of your own knowledge, you put it in
21 because it was something that somebody else told you. That
22 correct?

23 COLONEL VERMAAK: That's correct, Chair.

24 CHAIRPERSON: Ja.

25 MR SEMENYA SC: But it could not have

Page 27626

1 been the legal team.
 2 COLONEL VERMAAK: It was one of the legal
 3 team.
 4 CHAIRPERSON: No, no, it couldn't have
 5 been the legal team because I'm not sure when the legal
 6 team became involved, but this was a statement you made
 7 yourself already at the end of August 2012.
 8 [15:39
 9 COLONEL VERMAAK: That's correct, Chair.
 10 CHAIRPERSON: Ja. You made the
 11 statement, I think Roots had just started.
 12 COLONEL VERMAAK: That's correct, Chair.
 13 CHAIRPERSON: Ja, and we are informed -
 14 and I have no reason to doubt this - that the legal team
 15 were not at Roots. The police of course had legal people.
 16 There was legal man, I can't remember his name now, I think
 17 he was the sort of chairman of Roots and of course someone
 18 like Captain Moolman, who's later Colonel Moolman, also a
 19 legal officer, I don't know whether she was at Roots, but
 20 what is clear I think is the present SAPS legal team
 21 weren't at Roots.
 22 COLONEL VERMAAK: Mr Pretorius was there,
 23 Chair.
 24 CHAIRPERSON: She's also a legal -
 25 COLONEL VERMAAK: No, Mr Pretorius.

Page 27627

1 CHAIRPERSON: Mr Pretorius was at Roots?
 2 MR SEMENYA SC: No, but -
 3 CHAIRPERSON: Oh, I see, counsel weren't
 4 there.
 5 MR SEMENYA SC: It was an IPID time and
 6 Mr Pretorius did not have a clue about what had happened at
 7 Marikana, man, whilst you were in the helicopter. Am I
 8 right?
 9 COLONEL VERMAAK: No, because why he was
 10 part of the discussions there at Roots, so I don't think
 11 that he didn't have a idea what was happening at Marikana.
 12 CHAIRPERSON: I assume that anything he
 13 said at Roots would have been based on information he got
 14 from somebody else. He didn't have -
 15 COLONEL VERMAAK: No, I would believe so.
 16 That's true, Chair.
 17 CHAIRPERSON: Ja.
 18 MR SEMENYA SC: And because it would have
 19 been inconsistent with your observation you would have said
 20 'No, no, no, Mr Pretorius, absolutely incorrect on that
 21 one, it couldn't have been. I was there, I was up there;
 22 there was no reason whatsoever to throw those teargases.'
 23 Correct?
 24 COLONEL VERMAAK: I did say to them
 25 according to me, but the explanation from their side was

Page 27628

1 that that was the reason why it was being thrown and then
 2 afterwards I realise that I must write my statement from
 3 what I said there, what I've experienced, what I saw, and
 4 not what that I hear from somebody.
 5 MR SEMENYA SC: Mr Bizos says you're a
 6 man of your word and your strength and dah-dah-dah. If it
 7 was factually incorrect it would not be in your statement.
 8 Fair judgment to make? [Microphone off, inaudible],
 9 Colonel? Can I then move on and invite you to look at the
 10 transcript, 25276. If we go to line -
 11 CHAIRPERSON: 12.
 12 MR SEMENYA SC: - line 12.
 13 CHAIRPERSON: Is that the right page?
 14 MR SEMENYA SC: No, day 205, page 25276.
 15 CHAIRPERSON: Yes, now you've got 25275
 16 on the screen. We'll get 76 in a minute, if we're patient.
 17 There we are. What line did you say?
 18 MR SEMENYA SC: 12, from line 12, Chair.
 19 Chairperson says there, "Yes, I'm sorry, I'm not sure that
 20 what Adv Pillay said was translated because the question
 21 was partly in Afrikaans. So perhaps I should read in
 22 English the first sentence of paragraph 9, just in case it
 23 hasn't been translated. 'On Tuesday the 14th of August 2012
 24 whilst I was on the way to the JOC at the Lonmin Mine I
 25 sent a BBM message,' that's a BlackBerry message, 'to

Page 27629

1 Brigadier Garnett because I was worried about the manner in
 2 which the situation was being handled since the Sunday."
 3 Is that right?
 4 COLONEL VERMAAK: That's correct.
 5 MR SEMENYA SC: Shall we go to LLL8,
 6 paragraph 9. You will see in paragraph 9, and I'm going to
 7 go where the message reads in bold, you see at the bottom,
 8 the body, you say, 6:37, "More Brigadier, jammer ek is so
 9 vroeg met 'n boodskap. Hierdie offisiere het geen
 10 ondervinding van mynonluste nie," but the particular
 11 interest I have is the time. You're not in the JOC at that
 12 time.
 13 COLONEL VERMAAK: Because why the JOC was
 14 not sitting at that time. It's -
 15 MR SEMENYA SC: Precisely my -
 16 COLONEL VERMAAK: It's start at 7 o'clock
 17 that morning.
 18 CHAIRPERSON: On Tuesday the 14th?
 19 MR SEMENYA SC: No, it started after 11,
 20 but you always say glibly, with respect I must say, that
 21 the JOCCOM meetings, you attended them at 6, and from the
 22 14th -
 23 COLONEL VERMAAK: Ja, most of the JOCCOM
 24 meetings -
 25 MR SEMENYA SC: - 14th, 15th and 16th,

Page 27630

1 should I point you down that road?

2 COLONEL VERMAAK: Most of them were from

3 6 o'clock but if we can maybe get the minutes you will see

4 that morning we meet at 7 o'clock the morning. There were

5 later meetings as well, which I did not attend.

6 MR SEMENYA SC: Shall we have the

7 transcript 25284? From line 7 says you there, "Ja, in die

8 JOC meeting van die 14de, 15de en 16de die oggende het ek

9 pertinent genoem dat hulle heroorweeg ten opsigte van hulle

10 planne wat hulle voorgehou het aan ons." Do you see that?

11 COLONEL VERMAAK: That's correct.

12 MR SEMENYA SC: Is that at 6 o'clock

13 meeting on the 14th?

14 COLONEL VERMAAK: Just repeat.

15 MR SEMENYA SC: Is that the 6 o'clock

16 JOCCOM on the 14th you're referring to?

17 COLONEL VERMAAK: That's the morning when

18 we had the JOC meeting, as you can –

19 CHAIRPERSON: From the passage, let me

20 translate the passage, 'Yes, in the JOC meetings of 14, 15

21 and 16 in the mornings I pertinently mentioned that they

22 reconsider in respect of their plans which they held out to

23 us. I mentioned to them that these people will not

24 voluntarily lay down any weapons and that was established

25 by CIG, Colonel Isaacs from Brigadier Engelbrecht's

Page 27631

1 office.' So the point is he simply said the JOC meetings

2 of 14, 15 and 16 in the mornings, no time was mentioned in

3 respect of any of them.

4 MS PILLAY: Chair, in the interest of

5 understanding the cross-examination and just getting

6 clarity for our sake as well as the witness, can we

7 understand what the proposition is? That there was a JOC

8 meeting at 6 o'clock on the 14th and that the witness did

9 not attend? Is that the proposition?

10 CHAIRPERSON: No, I understood the

11 proposition to be that he wasn't at the meeting on the 16th

12 at 6 o'clock and this was based upon his diary entry.

13 Diary entry says he was in the meeting at 7, but the diary

14 says he was, has got a reference to his coming on duty as

15 ALEO at 6. So that's part of the, what's been put. It was

16 then suggested to him that all the JOC meetings in the

17 morning started at 6 and that the passage that was cited

18 which showed the text of an SMS that he sent to Brigadier

19 Garnett where he admits he was on his way to the JOC

20 meeting has the time 6:37. So it was said you see, if they

21 all started at 6 you on your own version clearly couldn't

22 have been at the one on the 14th in the morning because you were

23 still on your way, sending an SMS to Garnett at 6:37.

24 MS PILLAY: Now that's the proposition

25 we're trying to clarify, Chair. Is it being put that there

Page 27632

1 was a 6 o'clock JOCCOM on the 14th? That's simply the

2 proposition we're trying to establish.

3 CHAIRPERSON: That I can't tell you.

4 That we'll have to ask Mr Semenya.

5 MR SEMENYA SC: Chair, can I continue?

6 If there's no answer to that, there's no answer to it.

7 CHAIRPERSON: No, no, no, no, no, no,

8 it's not as easy as that.

9 MR SEMENYA SC: I'm not persisting with

10 the –

11 CHAIRPERSON: Ms Pillay is entitled to

12 say that if a question is put which is not clear we should

13 get clarity because otherwise when we're reading the record

14 at the end and the matter has been argued and we're writing

15 a report, we won't know what exactly a particular answer

16 means. So I think that's a valid point that she raised, so

17 are you – I understand your point about –

18 MR SEMENYA SC: No –

19 CHAIRPERSON: - he wasn't in the meeting

20 on the 16th in the morning, but do you say that the meeting

21 on the 14th started at 6 and he clearly wasn't there at 6

22 because he was still on his way, sending an SMS at 6:37?

23 What exactly is your case in respect of that?

24 MR SEMENYA SC: No Chair, because of any

25 other reason I don't persist the witness must answer the

Page 27633

1 question. So the objection cannot be of any value. I'm

2 not insisting on an answer.

3 CHAIRPERSON: So are you abandoning the

4 question?

5 MR SEMENYA SC: I'm abandoning the

6 question.

7 CHAIRPERSON: If you're abandoning the

8 question then we don't have to worry about what any answer

9 may be.

10 MR SEMENYA SC: That's correct.

11 CHAIRPERSON: Okay, now you can't object

12 to that, Ms Pillay.

13 MS PILLAY: I absolutely don't. I

14 don't –

15 CHAIRPERSON: You object to the question,

16 the question is withdrawn, nothing to object to.

17 MS PILLAY: I absolutely don't object to

18 that, Chair.

19 CHAIRPERSON: There's no ruling we can

20 make. Let's move on to the next question.

21 MR SEMENYA SC: Now Colonel, according to

22 you and what you are saying are the objections you have in

23 the JOCCOM, when was the cordon and search to happen? What

24 day?

25 COLONEL VERMAAK: There wasn't decided on

Page 27634

1 a exact day when the cordon and search must be done.
 2 Colonel Moolman did prepare the documents to be approved by
 3 the PC, but as far as I know it wasn't being done and there
 4 was no cordon and search being done.
 5 MR SEMENYA SC: No, no, no, no, Colonel,
 6 if you were in JOCCOM all these days you would know cordon
 7 and search was one of the various phases, did you not?
 8 COLONEL VERMAAK: It was one of the
 9 phases discussed, but there wasn't a date decided on.
 10 MR SEMENYA SC: Yes, if it is one of the
 11 stages that are decided, your evidence is you are objecting
 12 to the ones that they want to implement because you want
 13 stage 6 to be done as stage 1. Am I understanding you
 14 correctly?
 15 COLONEL VERMAAK: Stage 6 refer –
 16 MR SEMENYA SC: Which is the cordon and
 17 search.
 18 CHAIRPERSON: Stage 6 was the cordon and
 19 search, you see, and that was going to take place according
 20 to one of the documents we've got, I'm not sure how
 21 contemporaneous the document is, but there is a document
 22 before us which purports to be the contemporaneous document
 23 setting out the plan, the various stages, you see, and the
 24 tactical option was stage 3. Then there was, other things
 25 were to happen and stage 6 was to be the cordon and search.

Page 27635

1 Now what Mr Semenya is putting to you is do you say that
 2 that was wrong and what should have happened was the cordon
 3 and search, instead of being the sixth and last stage of
 4 the operation should have been the first stage? That's
 5 your –
 6 COLONEL VERMAAK: That is what I
 7 suggested, yes, Chair.
 8 MR SEMENYA SC: Then I must ask you the
 9 question, when according to you was the cordon and search
 10 to happen?
 11 COLONEL VERMAAK: I haven't got –
 12 MR SEMENYA SC: As the first step.
 13 COLONEL VERMAAK: No, I don't know. I,
 14 according to the plan or according to my –
 15 MR SEMENYA SC: According to your own
 16 insistence. The reality is you're having a serious
 17 objection about the plan and your plan is these things
 18 could have been avoided, the consequences of Marikana could
 19 have been avoided had they followed your plan, i.e.
 20 implemented cordon and search as the first stage, right?
 21 COLONEL VERMAAK: That's correct.
 22 MR SEMENYA SC: Now when was according to
 23 your plan the cordon and search to happen in the week of
 24 the –
 25 COLONEL VERMAAK: I didn't have a plan.

Page 27636

1 I suggested it.
 2 MR SEMENYA SC: According to your
 3 suggestion when was that cordon and search to happen?
 4 COLONEL VERMAAK: No, there was no date
 5 or specific timeframe. I only suggest that they must do a
 6 cordon and search at the hostels and the surrounding areas.
 7 MR SEMENYA SC: Let's test it. You
 8 needed serious intelligence to do a cordon and search. Am
 9 I right?
 10 COLONEL VERMAAK: Not necessarily.
 11 MR SEMENYA SC: I don't follow that word,
 12 what does it mean?
 13 COLONEL VERMAAK: I have explained
 14 previously out of my experience where there was such
 15 unrests at mines the first thing that we have done is doing
 16 a cordon and search to remove as far as possible dangerous
 17 weapons. Information was there that there was dangerous
 18 weapons at Marikana. Information was that the firearms was
 19 taken from the security guards, and that is why I suggested
 20 that they should consider a cordon and search and then at
 21 every cordon and search there's always arrests being made
 22 and then they could question that people that they have
 23 arrested to see if they could maybe get any information.
 24 MR SEMENYA SC: You require reliable
 25 intelligence to do a cordon and search, Colonel. Am I

Page 27637

1 correct?
 2 COLONEL VERMAAK: No, not necessarily, as
 3 I explained to you.
 4 COMMISSIONER HEMRAJ: What area were you
 5 envisaging would be the subject of this cordon and search?
 6 COLONEL VERMAAK: Chair, the hostel area
 7 was specifically a problem and that is also where the
 8 attack was on the two security guards on the Sunday. So
 9 mainly we would, I would suggest that they start at the
 10 hostel area.
 11 MR SEMENYA SC: Based on which
 12 intelligence? That you saw people on the –
 13 COLONEL VERMAAK: It is a preventative
 14 action.
 15 MR SEMENYA SC: I accept, Colonel, it is
 16 a preventative action, but you won't go and cordon and
 17 search a hostel about which you know nothing. There must
 18 be intelligence that tells you that the things that you are
 19 looking for are most probably in that particular hostel,
 20 not right?
 21 COLONEL VERMAAK: There are people who's
 22 staying in that hostel who is working on the mine. Those
 23 people I believe was also part of the group who was
 24 protesting.
 25 MR SEMENYA SC: Belief is based on which

Page 27638

1 intelligence that was in the JOCCOM?
 2 COLONEL VERMAAK: That the people have –
 3 MR SEMENYA SC: The people who are having
 4 those arms and displaying them are in a particular hostel.
 5 COLONEL VERMAAK: You cannot cordon and
 6 search the whole place. You have to start at a specific
 7 area.
 8 MR SEMENYA SC: Precisely my point.
 9 COLONEL VERMAAK: Now the first area that
 10 you might have the most successes is at the hostel, out of
 11 experience.
 12 MR SEMENYA SC: Which hostel?
 13 COLONEL VERMAAK: The hostel there at the
 14 mine, at Marikana, at –
 15 MR SEMENYA SC: Which one?
 16 COLONEL VERMAAK: I don't know exactly
 17 what it is – the one next to Nkaneng.
 18 MR SEMENYA SC: Is this the intelligence
 19 you are sharing with the members in a JOCCOM meeting of
 20 that cordon and search you had in mind?
 21 COLONEL VERMAAK: I said I proposed it to
 22 them out of experience.
 23 MR SEMENYA SC: Now we know that the
 24 people were sleeping at koppie 3. Do you know what that
 25 operation would have resulted in? Go there, you do a

Page 27640

1 that according to the plan of the police in the beginning
 2 was a show of force.
 3 CHAIRPERSON: You see, what does backfire
 4 mean? I could understand it flopped, it could flop. It
 5 could fail. But that doesn't mean backfire. Backfire is
 6 when you point a pistol at somebody or a cannon at somebody
 7 and something goes wrong and the bullet comes, the cannon
 8 ball comes out the wrong direction and hits you in the
 9 face. That's backfire. That's not the same as flopping or
 10 failing. So what did you mean? Failing or flop, or
 11 backfire?
 12 MR SEMENYA SC: The other backfire I
 13 recall is what my car engine used to do back in the day,
 14 but Chair, fail is the point that I'm having in mind.
 15 Would this be a convenient stage for the day break?
 16 [15:58] CHAIRPERSON: I still don't know whether
 17 it's backfiring or flopping, but would you like to think
 18 about it overnight and tell me tomorrow morning?
 19 MR SEMENYA SC: May I sleep it over?
 20 CHAIRPERSON: On that optimistic note we
 21 will take the adjournment until tomorrow morning.
 22 [COMMISSION ADJOURNED]
 23 .
 24 .
 25 .

Page 27639

1 cordon and search and nothing is found there and the people
 2 and the weapons that you are looking for are in koppie 3.
 3 COLONEL VERMAAK: Did they know it at
 4 that time? No.
 5 MS PILLAY: Chair, can I just understand
 6 the factual basis on which that proposition is put?
 7 MR SEMENYA SC: It is the statement of Mr
 8 X.
 9 CHAIRPERSON: Koppie 3 or koppie 1?
 10 MR SEMENYA SC: Koppie 3. Koppie 3.
 11 CHAIRPERSON: Alright, so it's based upon
 12 a suggestion that Mr X makes, which may or may not be
 13 proved to be correct. So, but the question is permissible
 14 in the circumstances.
 15 MR SEMENYA SC: Do you see if they had
 16 implemented your suggestion without reliable intelligence
 17 it would have backfired badly?
 18 COLONEL VERMAAK: No, I can't agree, but
 19 because why Mr X didn't testify so far, I can't say that
 20 that what he put in on a statement is the truth.
 21 MR SEMENYA SC: If found to be correct,
 22 your plan would have backfired terribly, Colonel. That you
 23 must accept axiomatically.
 24 COLONEL VERMAAK: No, you must, I cannot
 25 agree that the plan will backfire. If you can remember

Page 27640

1 that according to the plan of the police in the beginning
 2 was a show of force.
 3 CHAIRPERSON: You see, what does backfire
 4 mean? I could understand it flopped, it could flop. It
 5 could fail. But that doesn't mean backfire. Backfire is
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 7 and something goes wrong and the bullet comes, the cannon
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 10 failing. So what did you mean? Failing or flop, or
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 12 MR SEMENYA SC: The other backfire I
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 19 MR SEMENYA SC: May I sleep it over?
 20 CHAIRPERSON: On that optimistic note we
 21 will take the adjournment until tomorrow morning.
 22 [COMMISSION ADJOURNED]
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 25 .

<p>A</p> <p>aan 27458:8,11,12 27502:3 27617:16 27621:12,12 27625:1 27625:2 27630:10</p> <p>aanval 27542:20</p> <p>aanvallers 27526:6,23 27527:6</p> <p>aanvullende 27622:9</p> <p>abandoning 27633:3,5 27633:7</p> <p>able 27478:11 27490:19 27505:21 27516:12 27546:20 27546:21,22 27548:23 27578:17 27584:18,22 27597:21 27604:24 27605:8 27609:22</p> <p>absence 27516:10</p> <p>absolutely 27627:20 27633:13,17</p> <p>accept 27463:5 27467:21 27469:4,23 27481:16 27489:21 27499:4,17 27534:23 27535:1 27555:4 27561:8 27597:18 27600:8,16 27611:9 27614:18 27637:15 27639:23</p> <p>acceptable 27593:21</p> <p>access 27584:19</p> <p>accident 27620:19</p> <p>account 27498:22 27538:13 27545:4 27552:11 27586:2 27599:5</p> <p>accumulating 27479:24</p> <p>accurate 27461:2 27545:12,14</p> <p>accusation 27615:4</p> <p>achieve 27600:17</p> <p>acknowledge 27496:16 27524:18 27529:6</p> <p>acknowledged 27528:24</p> <p>acquiesce 27586:8</p> <p>act 27465:10,12,24 27466:3,15 27467:5 27467:19 27468:21 27468:22 27469:8,13 27469:22 27470:2 27471:14 27472:20 27476:8 27477:2,13 27477:14,20 27490:25 27535:16 27571:15 27572:3,4 27591:18,22</p> <p>acted 27473:13</p> <p>acting 27462:17 27470:1 27589:12</p> <p>action 27460:15 27637:14,16</p> <p>actions 27599:10</p>	<p>27610:21</p> <p>activate 27475:10</p> <p>activities 27475:9</p> <p>actual 27582:2</p> <p>add 27472:25 27473:22 27520:18 27606:3</p> <p>added 27525:18</p> <p>address 27467:6 27536:14</p> <p>addresses 27475:5 27512:25</p> <p>addressing 27541:11 27541:12</p> <p>adjectives 27535:8</p> <p>ADJOURNED 27640:22</p> <p>adjournment 27538:5 27572:6,10 27613:15 27613:17 27640:21</p> <p>adjournments 27603:22</p> <p>ADJOURNS 27502:1 27538:6 27572:13 27613:18</p> <p>administrative 27470:6 27470:18 27471:11</p> <p>admission 27529:4</p> <p>admissions 27529:3</p> <p>admits 27519:1 27631:19</p> <p>admitted 27519:23</p> <p>admonish 27531:15</p> <p>admonished 27517:3</p> <p>admonition 27517:4</p> <p>adopted 27465:24</p> <p>Adv 27603:10 27628:20</p> <p>advance 27460:9,12 27584:5</p> <p>advantage 27518:5</p> <p>advice 27523:17 27524:1</p> <p>advise 27519:14</p> <p>advised 27520:22</p> <p>adviser 27520:24</p> <p>advising 27521:1</p> <p>advocates 27522:17</p> <p>aerial 27565:19 27566:5,11 27624:15</p> <p>aeroplanes 27566:22</p> <p>affirmation 27538:10 27572:15 27613:20</p> <p>affirms 27572:17 27613:21</p> <p>afgelê 27623:3</p> <p>afgevuur 27621:13 27625:2</p> <p>African 27479:2 27493:23 27519:24 27571:16 27572:2 27600:23</p> <p>Afrikaans 27458:15,19 27628:21</p> <p>afternoon 27612:21 27615:24</p> <p>ag 27505:11</p>	<p>aggression 27589:3,14</p> <p>aggressive 27591:4,6</p> <p>ago 27581:19</p> <p>agree 27475:6,7 27480:6 27481:4,16 27510:12,24 27534:1 27546:1 27639:18,25</p> <p>agreed 27514:23 27586:8 27616:1 27625:12</p> <p>Agtervolg 27542:25</p> <p>ahead 27550:16 27551:15 27555:23 27556:4 27595:12</p> <p>aiming 27503:19</p> <p>air 27484:25 27566:6 27567:15 27571:16 27571:21 27575:2 27578:3,8 27611:3 27615:22 27616:9 27620:10</p> <p>aircraft 27582:10</p> <p>ALEO 27617:22 27619:6,13 27631:15</p> <p>allegations 27459:19 27459:22 27461:7 27508:25</p> <p>allow 27508:2 27520:13,15 27521:9</p> <p>allowed 27513:23 27515:6 27518:19 27568:20 27569:4,6 27609:9</p> <p>alright 27458:24 27459:13 27461:9 27462:1 27478:25 27485:7 27497:4 27519:21 27523:9 27533:19 27538:4 27615:10 27622:24 27639:11</p> <p>altered 27571:5</p> <p>ambiguity 27504:5</p> <p>amendment 27466:15</p> <p>ammunition 27487:12 27487:21 27488:21 27489:5,11 27490:7 27490:14 27492:19 27493:13 27496:3 27498:21 27502:20 27512:12 27524:16 27546:15 27548:6 27549:2</p> <p>amount 27479:8,13 27480:4 27584:22</p> <p>ample 27604:19</p> <p>anew 27518:5</p> <p>angle 27495:14</p> <p>angry 27586:16 27587:18,25 27589:11</p> <p>Annandale 27508:20 27538:13 27561:20</p> <p>answer 27460:7,24 27482:4 27485:25 27486:8 27492:22</p>	<p>27493:8 27497:2,3 27498:7 27503:24 27510:14 27512:20 27515:6 27518:3 27519:15 27520:21 27521:6 27522:19 27529:9,12,14 27549:12 27553:19 27563:23 27589:16 27606:16 27610:23 27610:24 27621:24 27632:6,6,15,25 27633:2,8</p> <p>answered 27495:12 27529:12 27591:25 27592:25</p> <p>answers 27486:5 27488:14 27521:2 27563:17</p> <p>anybody 27460:11 27504:24 27507:5,23 27518:25 27524:2,15 27524:20 27528:23 27530:2,5 27534:11 27549:22 27550:10 27550:16 27556:5 27566:1 27596:13 27597:1</p> <p>anybody's 27512:17</p> <p>anyway 27520:11 27521:6 27522:8 27580:15 27582:4 27598:24 27604:1 27623:8</p> <p>apart 27548:24 27549:1</p> <p>apologise 27458:4 27487:18</p> <p>apparently 27579:10</p> <p>appear 27500:18 27517:11 27543:20 27543:23 27548:19 27602:12</p> <p>appeared 27558:1 27625:6</p> <p>appearing 27541:25</p> <p>appears 27517:11 27526:12 27623:1</p> <p>apple 27474:4,6</p> <p>application 27501:25 27505:6</p> <p>apply 27470:2 27491:12 27505:14 27607:2</p> <p>appoint 27475:11</p> <p>appointed 27477:2 27482:23 27483:6 27592:7 27593:4,7 27602:14,23 27603:2</p> <p>appreciate 27517:6</p> <p>approach 27498:25 27499:21</p> <p>approached 27498:14 27560:2</p> <p>approaching 27510:5</p> <p>appropriate 27472:1</p>	<p>appropriately 27515:9</p> <p>approved 27634:2</p> <p>April 27458:1 27530:19 27531:20 27531:21 27574:1</p> <p>area 27555:24 27565:17 27566:9 27585:2 27616:14 27624:16 27637:4,6 27637:10 27638:7,9</p> <p>areas 27512:16 27636:6</p> <p>aren't 27577:9 27578:14</p> <p>argue 27518:3 27533:2 27534:6,7 27546:22 27589:21 27600:13</p> <p>argued 27473:2 27518:20 27532:20 27534:4 27632:14</p> <p>arguing 27532:19</p> <p>argument 27481:13 27521:25 27532:25 27563:9 27589:19 27606:20</p> <p>arises 27470:22</p> <p>arm 27557:15</p> <p>armed 27463:20 27464:16 27469:13 27531:1 27532:23 27544:5 27545:18 27546:3,6,10 27556:13,15,22,23 27609:15</p> <p>arms 27584:13 27638:4</p> <p>arose 27525:9</p> <p>arrangement 27513:22</p> <p>arrest 27491:22</p> <p>arrested 27636:23</p> <p>arrests 27636:21</p> <p>arrive 27503:11 27555:7</p> <p>arrived 27538:21 27541:3 27552:20 27553:25 27555:19 27564:4,22,24 27565:13 27620:8</p> <p>article 27472:15</p> <p>ascertain 27509:10 27623:10</p> <p>asked 27460:19 27491:24 27497:18 27497:23 27498:3 27499:7 27500:12 27505:11 27515:9,12 27515:16 27517:19 27518:18,20 27519:5 27520:19 27521:21 27521:22 27522:16 27527:20 27551:9 27557:22 27563:21 27563:25 27591:24 27592:16 27601:21</p> <p>asking 27473:20 27481:16 27492:23 27499:20 27500:18</p>
--	--	---	--	--

<p>27503:17 27524:9 27545:11,15 27562:20 27590:17 27592:9,18 27599:2 aspect 27503:25 27504:2 assemble 27462:11 27467:10 assemblies 27472:19 assertion 27514:15,18 assessment 27475:2 assign 27566:7 assigned 27566:11 assignments 27566:17 assist 27569:14,22 assistance 27543:6 assume 27548:8 27554:13 27627:12 assumed 27511:11 assuming 27581:4 27588:3,5 assumption 27511:9 atmosphere 27589:2 attack 27465:2 27637:8 attacker 27487:12 27536:4,6 attackers 27503:7,9 27526:10 27527:7 attacks 27604:16 attempt 27589:1 27612:21 attend 27458:3 27567:2 27567:5,12,19 27568:2 27593:12 27619:6,22 27620:20 27620:23 27630:5 27631:9 attendance 27620:5 attended 27531:23 27595:2 27629:21 attending 27502:10 27568:9 attention 27530:22 27588:7 27614:16 audience 27520:9 August 27477:19 27504:19 27525:3,18 27527:9,16 27528:10 27528:16 27529:18 27529:24 27542:13 27574:4,5,18,18 27575:12 27624:23 27626:7 27628:23 Augustus 27617:16 authorised 27569:1 authority 27462:17 27495:9 27502:22 27511:15 available 27506:25 27516:14 27520:20 27521:4 27535:14 27563:7 27589:10 Aviation 27571:7,15 27572:3,4 27574:25 avionics 27566:22 avoided 27476:2</p>	<p>27635:18,19 aware 27474:14 27498:19,20 27499:1 27499:8 27501:6,10 27501:16 27512:24 27550:1,17,19 27562:3,4,6 27566:13 27566:16 axiomatically 27639:23</p> <hr/> <p style="text-align: center;">B</p> <hr/> <p>b 27520:24 back 27466:2 27486:22 27495:22,23 27499:18 27508:23 27515:15 27518:7,9 27519:10,16,17 27526:9 27527:7 27533:17,22 27535:21 27540:14 27540:24 27541:23 27543:13 27544:25 27545:3 27547:8 27558:21 27562:14 27563:6 27585:5 27586:6 27587:20 27593:16,22 27594:1 27594:5,7 27599:11 27599:16 27600:6,7 27612:15 27619:20 27624:11 27640:13 backfire 27639:25 27640:3,5,5,9,11,12 backfired 27639:17,22 backfiring 27640:17 bad 27597:23 badly 27639:17 bail 27505:5 ball 27640:8 bank 27464:4 banks 27464:9 barbed 27476:20 based 27559:22 27599:2 27627:13 27631:12 27637:11 27637:25 27639:11 basis 27509:21 27513:24 27514:17 27516:1 27517:1 27518:14,16 27519:25 27563:1,5 27563:19 27639:6 BBM 27628:25 BBM-ing 27565:7 bearing 27563:24 beg 27538:9 began 27465:16,25 27526:7 27527:3 beginning 27571:23 27640:1 begins 27526:2 behalf 27541:21 Belief 27637:25 believe 27469:15 27545:1 27554:16 27588:24 27601:25</p>	<p>27607:5 27627:15 27637:23 believed 27607:24 belt 27581:14,16 27591:8 bemanning 27617:18 27617:19 27618:4 benefit 27462:8 27481:22 27590:24 beseerde 27542:25 best 27459:13 bestaan 27526:20 beswaar 27622:8 better 27474:14 beweg 27526:3,21 27621:17 27622:2 big 27493:23 27529:22 27532:2 27610:19 Bill 27464:23 binding 27470:24 27471:18 bit 27537:10 27578:14 27580:16 27581:15 Bizos 27470:15 27471:2,8 27472:25 27473:22 27474:8,10 27511:7 27517:24 27518:1 27519:13 27520:18 27628:5 Blackberry 27562:19 27564:7,10,12,16,18 27565:13,15 27628:25 block 27575:21 blue 27560:11 body 27474:21 27550:6 27551:22 27552:15 27553:13 27554:11 27555:7 27560:16,22 27561:2,7,8 27586:6 27612:17 27629:8 bold 27629:7 bomb 27576:11,18,21 27577:2,4,5,13,16 boodskap 27629:9 book 27466:20 27584:14 bottom 27525:3,4 27629:7 bound 27538:10 27572:15 27613:20 brandish 27590:1,1,7 27590:17 brandishing 27589:4 breach 27471:11 break 27478:22 27501:22 27640:15 breast 27518:14 Brigadier 27481:22,24 27482:1,3 27485:18 27503:2,18,24 27504:6 27505:2,11 27515:14 27517:20 27518:23 27519:4 27521:16,23 27539:2 27539:10,12,14,15,18</p>	<p>27540:22 27541:19 27542:1 27565:12,12 27566:10 27629:1,8 27630:25 27631:18 bring 27466:16 27561:21 27584:7 27590:12 bringing 27516:8 27550:21 27614:16 broad 27479:2 broadly 27484:15 bullet 27640:7 bunch 27464:3 bundle 27458:25 27459:1,8,16 27478:7 27478:7,11,12 27484:24 busy 27525:21 27546:15 27548:6 27549:2 27575:13 bygewerk 27622:6 bymekaar 27526:18</p> <hr/> <p style="text-align: center;">C</p> <hr/> <p>Calitz 27481:23,24 27482:1,4 27485:18 27486:18 27503:2,18 27503:24 27504:6 27505:11 27515:14 27517:20 27518:23 27519:4 27521:16,23 27539:10,14,18 27540:22 27541:19 27542:1 call 27461:9 27468:19 27469:15 27513:11 27523:13 27555:5 27567:7 27568:12 27580:4 27581:13 27585:2 27586:5 27605:11 called 27472:16 27550:14 27557:20 27567:12 27568:4 27585:14 calling 27557:18 calm 27508:21 camera 27564:7 camp 27621:21 canister 27581:5 27621:19,23 27623:12 cannon 27640:6,7 can't 27481:17 27515:4 27518:13 27529:11 27529:25 27530:23 27531:3 27541:21 27576:25 27596:15 27606:11 27612:7 27626:16 27632:3 27633:11 27639:18 27639:19 capable 27458:14 27607:18 captain 27526:24 27531:25 27550:14</p>	<p>27551:9,13 27557:19 27601:20,22,25 27626:18 captured 27469:1 car 27594:20 27640:13 care 27580:13 career 27505:21 27506:3 27529:5 27534:19,24 27535:3 27535:4,5,10 careful 27486:5 caring 27511:9 carried 27475:2 27518:24 27546:18 27548:10 27571:6,19 27574:25 27579:13 27580:14 carry 27475:21 27515:22,25 27522:3 27522:9 27561:14 27569:1 27578:13,19 27578:20,25 27579:4 carrying 27558:3 27577:24 27580:7 cartridge 27532:1,1 27552:8 27555:5,12 cartridges 27532:7,17 27552:3,5,6,11,19 27553:2,22 27554:1 27560:12 case 27481:18 27488:16 27532:19 27533:2 27566:5 27612:16 27628:22 27632:23 cases 27459:22,23 27552:8 27555:5,12 27582:24 caveat 27463:23 cease 27585:24 certain 27467:5 27471:15 27522:15 27552:3 27590:6 certainly 27470:24 27473:4 27504:13 27509:8 27511:21 27512:1 27519:5 27527:16 27590:4 27604:3 certificate 27567:5 chain 27581:14 chairman 27470:15 27473:22 27474:3 27511:7 27518:1 27519:14 27561:24 27626:17 Chairman's 27535:22 challenges 27479:4 chambers 27458:3 27516:11 chance 27460:1 change 27466:14 27510:23 27511:14 27545:5 changed 27494:8 27544:20 27545:19</p>
---	--	--	--	--

<p>27546:5,7 27571:3,12 27571:13 27612:15 changes 27571:4 chaos 27596:15,16,17 chapter 27575:16 charge 27553:6 27554:8 charged 27569:7 chase 27597:11 chasing 27555:24 27609:15 check 27460:9,11 27485:25 27590:18 child 27474:6 chopper 27616:24 choppers 27620:14 chronology 27541:18 CIG 27630:25 circle 27552:7,9 27555:6 27560:10 circumstances 27468:22 27469:11 27489:15,18,23 27491:22 27495:18 27514:6 27518:8 27578:5,7 27589:13 27590:6 27639:14 circumstantial 27605:15 cited 27631:17 citizens 27467:14 Civil 27571:7,14,19 27574:25 CJOC 27477:1 claim 27487:20 27541:25 clarify 27631:25 clarity 27583:17 27594:16 27612:12 27631:6 27632:13 class 27576:10,11 27577:1,3 classification 27494:17 clause 27475:23 27588:7 clear 27471:7 27514:25 27518:22 27525:2 27532:4,16 27537:12 27557:14 27626:20 27632:12 clearly 27591:19 27631:21 27632:21 close 27547:7 27556:19 clue 27627:6 coin 27515:3 colleague 27516:7 27612:20 colleagues 27500:13 27557:11 27586:13 27586:24 27607:15 college 27492:6 colour 27560:11 combat 27515:25 come 27475:4 27479:19 27480:5 27482:13 27483:17 27484:8</p>	<p>27497:22 27499:2 27500:17 27501:13 27507:1 27519:10 27522:24 27533:25 27544:2 27548:13 27575:20 27603:5 27612:15 comes 27606:23 27608:7 27640:7,8 comfort 27501:22 coming 27475:9 27510:7 27631:14 command 27477:1,3 27487:11 27488:22 27490:7,15 27530:7 27535:16 27565:20 27566:5,6,11 27597:10 27605:6,17 27607:1,2 commander 27475:11 27477:2,4 27482:23 27483:3 27484:25 27492:14 27541:16 27566:3 27568:8 27596:9 27597:16 27601:25 commands 27605:24 27606:5,8,8 commence 27462:2 comment 27480:17 27499:23 27511:18 27544:9 27545:14 27553:21 27556:21 27562:24 27578:9,17 commission 27458:2 27465:19 27473:5,18 27493:10 27495:1,4 27496:25 27497:10 27500:17 27502:1,1,2 27512:5,10,23 27513:6 27520:1,10 27522:16 27524:18 27535:14 27538:6,6,7 27562:8,22 27572:13 27572:13,14 27581:19 27613:18 27613:18,19 27614:4 27640:22 commissioner 27471:1 27471:15 27478:15 27478:18 27501:1,5,9 27501:12,16,19 27503:13 27508:16 27512:3,8,19,22 27539:21,24 27540:11,16 27541:3 27541:10,14 27555:11,18 27568:17 27597:22 27597:22 27603:1 27606:25 27607:6 27609:2,6 27637:4 Commission's 27465:23 committee 27465:19,23 27474:20</p>	<p>common 27469:19 27470:1 27477:7 27491:5,11 communicated 27594:3 compare 27531:19,21 27532:6 competence 27483:15 27492:12 competency 27568:15 competent 27469:14 27482:20 27492:13 27492:17 compiled 27525:10 compiling 27510:20 27511:5 complained 27509:25 complaining 27510:5,6 complaint 27501:12 27510:6 27521:20,21 27522:8 27606:5 complaints 27461:8,10 27461:11,24 27508:7 27510:1 27517:14,16 complete 27502:22 27524:12 27540:17 27543:2 27553:18 completeness 27556:9 compliance 27528:6,19 27590:14 complicating 27528:17 complied 27537:17,20 comply 27463:2 27469:7 27471:22 27476:7 27591:22 27605:18 comprised 27527:2 computer 27564:18 concede 27519:2 27561:1,1,3 conceded 27528:2 27560:16 27625:18 concentrate 27570:1 27606:18 concentrating 27532:5 concept 27470:10 concern 27528:14 27540:21 concerned 27461:2 27467:1 27510:9,14 27517:20 27521:23 27532:20 27553:13 conclusion 27479:22 27555:5 conclusive 27563:23 condition 27597:23 conducive 27589:2 conduct 27469:25 27523:24 27587:3 conducted 27605:4 confess 27511:23 27522:6 confidence 27485:18 confine 27528:15 confined 27520:11 confirm 27475:24 27546:20,23 27556:1</p>	<p>27587:24 confront 27517:16 27599:10 confronted 27514:11 confusing 27508:15 connotation 27623:16 consequences 27471:21 27635:18 consider 27482:19 27483:1 27509:13 27636:20 consideration 27474:1 considers 27472:1 consisted 27527:2 consistency 27480:4 consistent 27472:17 27481:2 27545:16 27561:5,11 27589:12 27599:20 27600:3 conspicuous 27506:3 constable 27532:22 27533:25 27544:5 27546:3,20 27547:21 27556:14,23 27559:22 27613:12 27613:13 27614:5 Constitution 27462:20 27463:4,17 27464:3 27464:17,18 27466:10,16 constitutional 27465:15,25 27466:23 27473:24 constitutionally 27462:13,23 27464:5 27465:5 27468:6 consult 27513:15,16 consultation 27475:1 27513:7,24 27514:4,8 27514:9,16 27515:2,4 27515:5,7,10,24 27516:25 27517:10 27522:5 27624:11,12 27624:22 27625:15 27625:16 consulted 27500:19 27514:24 27527:17 27598:15 consulting 27500:9 27522:14 27527:19 contact 27503:13 27608:7 contain 27576:7 containing 27576:1,5 contains 27577:6 CONTD 27572:21 27613:25 contemplated 27476:21 contemporaneous 27634:21,22 content 27461:2 27465:9 27466:19 contention 27470:23 continue 27474:15 27519:19 27595:21 27595:24 27632:5</p>	<p>continues 27518:10 contradict 27530:23 control 27483:2 27583:25 27591:20 27598:12 conveners 27476:10 convenient 27501:21 27640:15 convey 27590:15 27591:16 conveyed 27480:20 27606:22 Coordinating 27474:20 copies 27535:13 copy 27490:3 27527:21 27569:15,20 27614:10 cordon 27633:23 27634:1,4,6,16,18,25 27635:2,9,20,23 27636:3,6,8,16,20,21 27636:25 27637:5,16 27638:5,20 27639:1 correctly 27471:5 27528:25 27560:15 27599:8 27634:14 correctness 27497:15 COSATU 27475:10 cost 27476:2 couldn't 27545:2 27597:17 27606:20 27621:22 27626:4 27627:21 27631:21 counsel 27516:9,13,13 27627:3 counted 27603:24 couple 27547:20 course 27492:8 27501:2,6 27567:8,12 27567:21 27568:1,14 27573:23 27578:18 27586:3 27626:15,17 courses 27567:1,2 27568:10 court 27473:24 27519:25 27520:2,12 courts 27473:23 27474:11 covered 27464:16 27513:24 27515:20 27516:11 create 27589:1 creates 27468:11 creating 27591:5 crew 27565:25 27617:22 27618:6,7 crime 27494:16 27540:9 27552:17 27596:4 criminal 27459:22,22 critical 27521:14 27616:9 criticising 27615:18 criticism 27485:9 27609:11 27610:14 27615:20</p>
--	---	---	---	---

<p>criticisms 27494:7 27495:8,14 27609:1,8 27615:12</p> <p>cross 27474:15 27514:24 27603:11 27621:20</p> <p>cross-examination 27462:2,3 27500:14 27516:4 27518:11 27519:19 27521:3,12 27560:15 27572:21 27613:24,25 27614:2 27631:5</p> <p>cross-examine 27458:16 27513:23 27516:9</p> <p>cross-examining 27516:23</p> <p>crowd 27472:16,18 27473:10 27583:25</p> <p>crowds 27476:7</p> <p>CS 27582:17</p> <p>currently 27573:15</p> <p>cutting 27529:20</p> <p>CV 27567:3</p> <hr/> <p style="text-align: center;">D</p> <p>daar 27622:8,12</p> <p>daaraan 27458:7,8</p> <p>dah-dah-dah 27628:6</p> <p>danger 27476:14 27594:20</p> <p>dangerous 27477:13,14 27567:2,9,13 27568:18 27569:18 27570:3 27571:6,18 27571:20 27574:24 27575:2 27576:1,6 27636:16,17</p> <p>dat 27458:8 27542:22 27608:2 27621:12,16 27622:1,4,8 27625:1 27625:4 27630:9</p> <p>date 27530:18 27572:20 27614:11 27634:9 27636:4</p> <p>day 27480:23 27493:1 27493:6 27494:8 27516:21 27517:18 27534:16 27535:15 27535:17 27538:21 27540:24 27545:16 27564:23 27565:2,3 27571:25 27582:24 27586:13 27601:14 27601:15,25 27607:15 27614:13 27614:13 27619:13 27628:14 27633:24 27634:1 27640:13,15</p> <p>days 27535:14 27634:6</p> <p>dead 27491:19,21 27540:8 27550:6 27555:7</p> <p>deal 27472:15 27474:25 27477:25</p>	<p>27478:25 27480:25 27485:5 27487:5,7 27511:17 27542:5 27624:20</p> <p>dealing 27485:8 27525:8 27538:17</p> <p>deals 27475:9 27479:3</p> <p>dealt 27522:6 27543:16</p> <p>death 27518:25</p> <p>debate 27603:25 27612:20</p> <p>decide 27473:6 27596:17</p> <p>decided 27622:21 27633:25 27634:9,11</p> <p>deciding 27470:21</p> <p>decisions 27597:18</p> <p>decision-making 27616:5</p> <p>defence 27477:8 27491:6,12 27602:3</p> <p>defensive 27476:16,21</p> <p>defiance 27604:20</p> <p>define 27472:15</p> <p>defined 27472:19 27477:19</p> <p>defines 27477:13</p> <p>defining 27466:9</p> <p>Definitely 27479:14</p> <p>definition 27474:19 27590:19</p> <p>definitions 27472:15 27474:18</p> <p>degree 27476:3</p> <p>deliberately 27518:6 27519:16,17</p> <p>democracy 27481:18</p> <p>demonstrate 27462:20 27621:2</p> <p>demonstration 27467:5</p> <p>demonstrations 27467:25 27472:19</p> <p>denies 27511:21 27541:19</p> <p>deny 27496:15 27524:21 27546:23 27598:15</p> <p>departmental 27459:23</p> <p>depend 27577:6</p> <p>depending 27518:19 27580:2</p> <p>depends 27469:10 27489:14,17 27495:17 27578:4 27623:20</p> <p>depicted 27561:2</p> <p>depicts 27510:15</p> <p>deployed 27476:2 27612:14</p> <p>deploying 27569:8</p> <p>describe 27588:9</p> <p>described 27459:15 27559:17 27560:11 27588:19</p> <p>describes 27521:13</p> <p>description 27484:25</p>	<p>designed 27473:14</p> <p>desirous 27562:7</p> <p>despite 27541:25 27596:1,8</p> <p>detail 27504:7 27505:15 27512:25 27513:13 27521:13 27538:24 27539:8 27540:19 27541:6,6 27541:14,20,25</p> <p>detailed 27524:23</p> <p>details 27592:9</p> <p>detective 27539:12,16 27602:14</p> <p>detectives 27539:3</p> <p>determination 27475:3</p> <p>determine 27612:17</p> <p>detonate 27577:12 27578:3,7,20,23 27580:18</p> <p>detonated 27578:22</p> <p>detonation 27582:3,4</p> <p>deur 27526:3,21 27542:23</p> <p>deviate 27471:25</p> <p>diaries 27534:17 27535:14 27543:18</p> <p>diary 27534:10,14,14 27534:15,20 27535:18,18,19 27542:4,4,9,10,13 27543:13,16 27618:21,22 27619:19 27631:12 27631:13,13</p> <p>dictionary 27590:18</p> <p>didn't 27471:6 27488:11 27492:11 27493:8,21 27494:10 27496:15 27497:22 27498:4 27499:2 27510:17 27511:23 27512:14 27513:2 27514:2,5,6 27515:19 27516:20 27517:15 27517:16 27518:25 27519:3,5,6 27521:20 27521:22 27522:8 27524:19,21,25 27528:24 27529:18 27529:23 27530:1 27531:16 27534:13 27534:21 27536:12 27536:25 27537:1 27539:1,17 27540:7 27540:18 27541:5 27545:10 27552:1 27566:15 27583:11 27589:19 27592:15 27597:8 27598:3 27600:5 27601:6,24 27605:17,17 27606:10,19 27608:1 27609:25 27617:7 27625:7,20 27627:11 27627:14 27635:25</p>	<p>27639:19</p> <p>die 27458:8,12 27497:5 27511:10 27526:2,4,5 27526:5,18,19,20,22 27526:23,23 27527:5 27527:6 27608:4 27617:18,19,19 27621:12,13,14,14,16 27622:1,2,3,3,4,4,4,5 27622:8,11,13,13 27623:2,3,4 27625:2 27625:2,3,3,4 27630:7,8,8</p> <p>died 27586:13 27607:15</p> <p>diens 27617:16</p> <p>difference 27570:22,25</p> <p>differences 27571:3</p> <p>different 27485:5,12 27509:17 27534:1 27586:3 27591:4 27593:6 27610:16</p> <p>difficulties 27494:6</p> <p>difficulty 27477:17 27480:18 27496:21 27499:10 27574:19</p> <p>ding 27622:11</p> <p>direction 27531:2 27544:6,20 27545:1,2 27545:5,19 27546:5,7 27546:11 27549:6,24 27559:18,23 27611:14,20,23 27612:4,9,15,17 27621:19 27623:18 27640:8</p> <p>directly 27470:22</p> <p>direk 27542:23</p> <p>Dis 27458:6,10 27621:24 27625:10</p> <p>disable 27491:21</p> <p>disabused 27622:17</p> <p>disallow 27518:13</p> <p>disallowed 27518:19</p> <p>disallowing 27518:16</p> <p>disappear 27547:10 27551:17</p> <p>disappeared 27551:4</p> <p>discern 27621:22</p> <p>discharge 27498:20 27499:12 27502:8,14 27502:24 27503:19 27505:24</p> <p>discharged 27500:7 27502:25</p> <p>disclose 27508:2</p> <p>discovered 27554:1</p> <p>discretion 27471:25 27520:13</p> <p>discuss 27542:4</p> <p>discussed 27548:3 27568:7 27602:5 27603:9 27634:9</p> <p>discussing 27505:9 27538:24</p> <p>discussion 27515:11</p>	<p>27563:10 27579:2</p> <p>discussions 27579:9 27627:10</p> <p>dispensation 27466:23</p> <p>dispersal 27476:7</p> <p>disperse 27469:9,16</p> <p>display 27476:3 27589:3,13 27590:1 27590:21</p> <p>displayed 27477:17</p> <p>displaying 27590:9,11 27590:12 27638:4</p> <p>disposal 27562:8</p> <p>dispute 27509:5 27560:20 27561:4</p> <p>dissatisfied 27466:14</p> <p>dissuade 27608:1</p> <p>dissuaded 27607:18,22</p> <p>disturbing 27475:19</p> <p>dit 27458:19 27608:2,4 27617:19 27622:3,4,5 27622:11 27623:13 27625:9</p> <p>division 27576:10</p> <p>dockets 27459:23</p> <p>document 27460:2 27461:1,10 27478:1 27484:24 27485:3,5 27506:25 27510:19 27510:20 27524:7,14 27569:1,16,19 27571:17,21 27572:1 27572:9,23 27573:4 27578:15 27590:15 27634:21,21,22</p> <p>documents 27459:1,5,7 27459:8 27478:9 27505:5 27566:17 27575:10 27614:16 27614:17 27634:2,20</p> <p>doen 27608:4</p> <p>doesn't 27470:2 27474:5 27487:22 27500:18 27513:12 27517:11 27518:24 27522:7 27543:20,23 27544:7 27548:15,18 27548:19 27577:20 27582:8 27598:25 27602:12 27605:14 27614:11 27640:5</p> <p>doing 27458:15 27461:20 27463:21 27467:12 27546:2 27590:8,12 27597:2 27600:25 27616:13 27636:15</p> <p>dokument 27459:1</p> <p>don 27534:1</p> <p>Donderdag 27617:16</p> <p>don't 27470:15,21,22 27471:22 27473:9,13 27478:10 27480:16 27483:14 27485:1,3 27487:23 27495:20 27496:18 27500:19</p>
--	---	---	---	--

<p>27504:5 27507:5,21 27507:24 27508:11 27513:4 27517:21 27519:12 27520:8 27527:15 27532:13 27533:7,7 27541:8 27542:5,9,15 27549:11 27566:16 27566:21 27582:3 27583:15 27585:3 27591:21 27592:8,12 27593:7 27594:10 27595:13,17 27596:12 27599:12 27600:21 27608:1,11 27613:16 27614:21 27615:8 27616:13 27623:12 27624:4 27625:5 27626:19 27627:10 27632:25 27633:8,13,14,17 27635:13 27636:11 27638:16 27640:16 doodgekap 27542:23 door 27581:9,10,11,21 doubling 27461:19 doubt 27483:14 27626:14 dozen 27604:1 draft 27465:22 27523:11 27524:8 27525:4 drafted 27465:18 27524:7,25 dragging 27595:19 draw 27612:7 drawn 27473:17 27479:23 dreigement 27542:22 drew 27530:22 drive 27563:2,4,15 driver 27556:11 driving 27559:17 27620:13 drove 27618:6 dubious 27600:16 due 27467:20 27583:24 27586:12 27596:2,10 duration 27487:8 27549:14 duties 27485:2 duty 27500:5 27502:6 27502:15,19,21,24 27619:5,10 27620:19 27631:14</p> <hr/> <p style="text-align: center;">E</p> <p>earlier 27522:2 27548:14 27552:24 27560:15 27577:23 27613:2 27616:5 27621:9 27623:2,6 early 27572:6 earphones 27475:17,18 ears 27475:18 Easily 27610:18</p>	<p>easy 27500:19 27522:12 27632:8 effect 27509:23 27521:18 27579:2 27602:10 27606:7 effective 27570:11,20 27573:3 27574:3,17 27575:12 effectively 27527:8 27602:10 effort 27540:12 either 27469:7 27475:17 27488:12 27492:7 27515:4 27516:21 27518:19 27521:2 27543:16 27546:23 27591:7 27605:17 ek 27458:7,11,18,19 27526:17,19 27617:16,18 27622:6 27622:6,7,8,10,10,11 27623:3 27629:8 27630:8 element 27483:21 27544:3 27614:1 elements 27476:10 27506:3 27508:1 27547:4 emailed 27459:2 emails 27478:15 emotional 27596:3 27597:16,23 27607:15 emotionally 27595:8 en 27526:4,4,20,21,22 27542:21,24,25 27622:4,9,9,10,11,13 27630:8 enable 27518:3 ended 27494:11,12 ends 27519:25 27520:12 enforceable 27463:12 Engelbrecht's 27630:25 Engels 27458:12,19,21 engine 27640:13 English 27458:16 27538:8 27546:8 27628:22 enjoy 27467:11 enquire 27609:2 27612:12 enquiry 27577:10 27602:1 entails 27565:19 enter 27555:24 27557:18 27584:15 27620:2 entering 27534:20 entire 27487:8,9,10 27505:21 27549:14 entirely 27547:14 entitled 27469:8 27514:12 27518:8</p>	<p>27529:13 27632:11 entrenched 27464:23 entries 27460:2,12 27584:22 entry 27631:12,13 envisaging 27637:5 equipment 27589:4 27591:7 era 27465:16,25 ervaar 27622:11 escalate 27494:23 escort 27594:20 27597:7 especially 27565:22 27568:20 essentially 27514:21 establish 27491:14 27587:2 27632:2 established 27630:24 etcetera 27463:9 27468:15,15 27474:22 evening 27564:24,25 event 27475:4 27479:19 27482:20 27522:7 27529:4 27535:9 27537:17 27552:20 27562:2 27605:18 events 27479:3,9,13 27482:24 27544:2 27603:23 everybody 27492:23 27495:9 27561:21 everybody's 27512:15 evidence 27461:20 27480:25 27499:10 27508:1,7,9,10 27511:8,14 27513:7,8 27513:15 27516:15 27516:17,18 27518:13,21 27533:1 27533:2 27534:4 27537:21 27538:8,17 27541:18 27547:13 27552:15 27555:4,23 27560:22 27561:9 27585:3,8,10,12,13 27585:15 27594:1,9 27594:19 27599:2 27603:11 27605:15 27611:2,3 27612:12 27634:11 evidentiary 27562:7 exact 27533:10,13,15 27533:17 27634:1 exactly 27507:3 27526:11 27527:5 27545:2 27614:13 27632:15,23 27638:16 examination 27474:16 27603:12 examine 27510:14 27514:25 27593:1 example 27602:14</p>	<p>27604:19 27614:11 exception 27490:6,14 exceptional 27480:9,9 27480:14 27489:20 27489:23 excluded 27571:15 27572:2 Excuse 27533:12 27542:11 27570:24 execute 27472:8 Execution 27476:1 exercise 27462:16 27463:17,24 27466:4 27466:9 27539:25 27603:11 27605:4 exercised 27466:10 exercising 27464:5,20 27465:4 exhibit 27461:10 27478:5 27490:2 27504:12 27508:2 27509:18 27510:9,15 27511:2 27512:4,24 27513:3,6,8,12 27526:12 27539:20 27560:11 27562:16 27562:21 27570:4 27573:1,10 27614:2 27617:14 27618:21 exhibits 27459:5 27569:24 27575:14 27581:19 27613:3 expect 27472:8 27474:12 27515:4 27541:9 expected 27519:10 27588:23 experience 27462:8 27477:12 27479:24 27481:22 27483:3,18 27484:9 27485:17 27565:17 27590:25 27636:14 27638:11 27638:22 experienced 27622:22 27628:3 expertise 27482:14 27484:12 explain 27469:25 27488:25 27505:13 27528:14 27529:5,25 27553:1 27569:5 27596:15 27611:4 27613:16 27617:20 explained 27527:20 27600:12 27601:23 27619:19 27636:13 27637:3 explanation 27498:14 27499:25 27529:9,17 27551:21 27627:25 explode 27579:23 explore 27506:8 27565:16 27585:1 exploring 27502:6 explosion 27580:4</p>	<p>explosions 27581:1 explosive 27577:22,22 explosives 27576:11,20 27576:23,24 27577:2 27577:4,6,8 27579:4 express 27467:10,15,15 27468:6 expression 27472:12 extent 27469:25 27472:25 27492:3 external 27474:21 extra 27525:18 27572:8 extract 27569:17 extremely 27521:11 eye 27565:23 27566:2</p> <hr/> <p style="text-align: center;">F</p> <p>face 27640:9 faced 27531:2 27544:5 27545:19 27546:7 27559:6 fact 27459:18 27487:7 27492:15 27495:15 27496:2 27505:13 27511:2 27517:11 27518:4 27519:3 27524:22 27525:21 27527:11 27528:2,18 27528:23 27532:3 27534:11 27571:5 27583:24 27586:12 27596:2 27606:18 27607:15 27615:17 factors 27528:17 factual 27514:17 27558:12 27639:6 factually 27545:4,12 27556:25 27558:5 27559:9 27628:7 fail 27476:14 27640:5 27640:14 failing 27589:3 27640:10,10 failure 27529:19 fair 27479:1,8,12,23,25 27480:4 27495:19,21 27541:9 27628:8 fairly 27479:23 27519:11 27524:23 fairness 27620:21 falling 27546:17 27548:8 27550:10 27571:14 27572:2 familiar 27476:10 27477:4,5,8,10,12 27480:24 27589:7 families 27560:21 27561:5,10 far 27461:2 27466:25 27479:19 27486:11 27486:13 27487:24 27495:3 27499:8 27510:20 27517:20 27518:21 27519:23 27521:23 27526:11 27533:20 27544:24</p>
---	---	---	---	--

27549:22,25 27553:13 27555:15 27555:20 27556:16 27581:24 27634:3 27636:16 27639:19 fashion 27464:13 fatalities 27481:18 27585:19 faults 27506:24 favour 27458:17 feedback 27503:11,12 feeling 27514:22 27608:16 feit 27622:8 fell 27548:9,16,20 fellow 27551:2 felt 27466:15 27586:24 27589:23 fence 27474:5 fetch 27582:24 27583:22 27604:23 field 27486:19 27551:3 27551:15,17 27555:20 27605:12 27611:10 file 27502:7,10 final 27510:19 27523:13 27524:9 27622:25 27623:9 finale 27622:7 finally 27521:10 27541:24 find 27509:7 27551:21 finding 27460:15 fine 27460:13 27490:4 fire 27487:11,20 27492:19 27493:13 27494:3 27496:3 27502:20 27504:8 27507:9 27512:12 27526:9 27527:7,11 27528:18 27532:14 27534:11 27547:22 27547:25 27548:13 27553:21 27559:1 firearm 27491:23 27492:9,14,15,16,17 27498:21 27500:7 27502:8,14,25 27503:19 27534:12 27540:2,14 27557:10 27557:23 27559:2,2 27591:5,18,20,22 27592:20 27606:12 27606:14 27609:25 firearms 27494:23 27589:4,14 27590:5 27592:6,17 27593:4,5 27604:24 27605:14 27605:16 27606:3,9 27606:12,12,21 27636:18 fired 27488:21 27490:15 27503:7 27519:9 27527:7 27528:5 27530:6	27531:24 27532:12 27532:14,14,15,16,17 27532:23 27533:22 27544:7 27549:21 27553:2,4,9,12,22 27554:19 27555:12 27555:14,17 27558:9 27558:19 27559:7 27560:4 27611:5 27621:18,23 27623:12 27625:11 firing 27546:15 27548:1,6,17 27549:2 27559:16 27624:4,12 firmly 27473:17 first 27476:16 27486:12,25 27499:24 27514:21 27518:16 27525:22 27526:17 27540:21 27546:4 27548:2 27549:21 27552:15 27553:19 27555:24 27556:2,10,20 27562:22 27568:1 27569:24 27575:20 27580:3,25 27581:2,7 27586:5 27588:8,11 27589:23 27606:22 27608:20 27614:7 27618:6 27628:22 27635:4,12,20 27636:15 27638:9 firstly 27462:9 27574:4 Fischer 27487:18 27519:23 27520:2,3,6 27520:9,16,17 five 27572:8 flank 27621:18 flight 27504:11 27572:22 27618:10 flighted 27573:17 fighting 27504:14 flop 27640:4,10 flopped 27640:4 flopping 27640:9,17 fly 27551:7 27566:1 flying 27584:2 27616:15 focus 27588:7 follow 27514:12 27515:19 27556:10 27593:25 27609:10 27636:11 followed 27476:15 27481:14 27526:6 27527:2 27544:21 27545:6 27546:5 27550:23 27551:9 27558:7 27598:5 27610:19 27612:9 27635:19 following 27476:15 27540:13,14 27556:18 27565:2,3 follows 27474:24	27526:2 foot 27556:16,24 27559:23 27570:15 27575:5 27609:10,15 27610:2,11 27621:11 force 27470:24 27476:1 27476:6,25 27511:12 27529:11 27540:3 27569:8 27570:11 27571:16 27573:15 27573:19,24 27574:3 27574:14,18,18 27640:2 forget 27474:10 form 27489:11 27502:21 27550:5 forth 27485:2 forward 27544:19 found 27509:12 27550:2 27552:3,6,7 27552:8 27555:13 27601:13 27639:1,21 founded 27472:11 four 27531:24 27609:5 27621:11 fourth 27526:16 27621:10 27624:25 framework 27462:9 27463:6,14 freely 27467:11 fresh 27529:24 27602:16 friend 27470:16 27471:2 27473:23 27474:2 27511:12 27518:2 Fritz 27566:11 front 27489:25 27496:5 27556:6 FS2 27588:6 fuel 27620:13 fully 27481:4 function 27534:5 funeral 27486:15 funny 27500:9 further 27516:8 27517:24 27519:12 27521:21 27522:6,9 27537:10 27563:24 27572:18 27590:4 27602:23 27613:22 Furthermore 27475:10 future 27511:22 27517:23	27466:3,25 27467:4 27467:19 27468:1,20 27472:19 27473:11 27490:25 27588:14 gebonde 27458:8 27502:3 gedink 27608:2 geen 27629:9 gegee 27458:9 27526:18 27605:23 gegooi 27542:25 27622:5,13 geleen 27543:1 gemaak 27622:8 gemeld 27622:12 general 27503:14 27508:20 27510:1 27538:13 27540:18 27540:21,25 27561:20 27585:3,4 27585:23 27586:4,12 27586:14,17,24 27587:3,7 27588:1,23 27589:12,24 27592:13 27593:23 27594:4,13 27597:4 27598:10 27599:10 27599:12,21 27600:4 27600:10,15,18,22 27601:18,21,23 27604:18 27606:24 27607:2 27608:4,9,21 27609:8 27610:14 generally 27517:16 27576:11 27577:2 general's 27589:18 27601:10 genoem 27630:9 gentlemen 27486:10 27532:13 geskiet 27542:23 gesê 27622:7 getting 27518:3 27539:25 27540:13 27551:14 27631:5 getuie 27458:12 gevolg 27526:3,20 gevr 27622:10 geweer 27526:4,22 gewees 27608:3 27617:16 27622:4,13 gewere 27542:25 GGG17 27524:24 27525:15,23,23,25 27621:9 27623:7,7 27624:25 27625:17 give 27461:10 27465:9 27472:12 27474:5 27486:6,7 27488:10 27490:3 27491:18 27493:8 27498:9,18 27500:6 27502:17 27503:11,12 27504:15 27505:12 27519:25 27521:2 27529:17 27530:2	27533:2 27534:15 27535:18,22 27538:23 27540:19 27543:6 27547:22,25 27553:9 27558:22 27563:11,22 27564:2 27564:15 27566:2,6 27583:17,22 27595:23 27608:13 27618:16 27623:11 given 27459:7 27477:11 27478:7 27487:20 27505:1,16 27512:18 27516:8 27519:9 27521:6 27529:8 27537:6 27544:16,18 27547:8 27558:20 27559:1 27562:14,18 27588:4 27588:5 27593:21 27597:6 27598:16 27599:21 27600:4 27604:17 27605:7,18 27605:19,23 27606:6 27607:2 gives 27471:14 27492:16 27625:11 giving 27489:4 27498:6 27498:8 27499:19 27536:1 27538:8 27562:7 27564:5 27619:20 glibly 27629:20 go 27459:6,10 27460:2 27464:4,9 27469:15 27473:16 27479:19 27489:19,22 27499:25 27506:17 27506:22 27508:23 27509:11 27512:14 27513:2 27525:25 27530:17,21 27531:21,22 27535:18 27541:9,23 27543:13 27544:19 27550:2 27557:22,25 27575:4 27580:1,23 27582:24 27583:22 27587:9 27589:19,20 27591:21 27593:22 27594:1,5,9 27595:12 27595:17 27596:7,13 27596:18 27599:25 27600:18 27604:23 27606:19 27608:14 27609:15,22 27611:18 27617:14 27619:20 27620:4 27621:2 27624:4,14 27628:10 27629:5,7 27637:16 27638:25 goes 27492:6 27546:14 27548:11 27593:12 27622:24 27640:7 going 27460:23 27473:12 27495:24
---	--	---	--	---

27505:5 27507:2 27508:2 27511:22 27514:17 27516:24 27517:24 27522:15 27522:20,24 27529:14 27538:2 27540:1,13 27541:10 27542:3 27544:2 27561:21 27577:10 27588:4 27594:21 27596:18 27597:11 27598:9 27604:22 27606:7 27621:8 27622:22 27623:17 27629:6 27634:19 Goldstone 27465:19,23 good 27462:4,4,6 27479:13 27546:8 27574:2 goods 27567:2,9,13 27568:18 27569:18 27570:3 27571:6,18 27571:21 27574:24 27575:2 27576:1,6,7 27576:10 granaat 27621:13 granate 27542:24 granted 27501:25 27529:3 27596:9 grateful 27520:3,17 gravel 27559:18 27611:11 27621:20 27624:1 great 27485:18 greatest 27508:14 27518:7 grenade 27568:23 27569:1 27577:13 27579:17,22 27580:25 27581:5,22 27611:5 27624:13 grenades 27580:3,8 27582:23 27583:23 27612:14 groep 27526:3,20 27542:20,25 27621:14 27625:3 groepie 27526:19 grondpad 27621:14 ground 27531:8 27546:9,17 27547:22 27548:8 27558:10 27559:8 27560:5 27566:3 27583:12 group 27526:6 27527:1 27527:3 27539:25 27543:2 27550:20 27551:9 27558:1,2,7 27559:13,19 27560:1 27609:3,10 27610:19 27610:20 27621:19 27623:17 27637:23 groups 27560:9 guaranteed 27495:25 guarded 27554:24 guarding 27554:8	guards 27636:19 27637:8 guide 27466:3 guns 27604:3 guts 27495:1,5 <hr/> H H 27575:23 haelgeweer 27526:5,23 half 27580:22,24 27581:2 hand 27469:15 27535:15 27581:6 handed 27569:16,16 27571:18 handle 27569:4 27579:25 27580:1,12 27610:22 handled 27480:12 27586:17 27609:8 27629:2 handling 27505:18 hands 27578:24 handwriting 27504:22 hang 27491:7 27569:23 hanging 27516:20 happen 27506:9 27514:23 27545:20 27559:14 27560:6 27565:10 27609:21 27610:21 27633:23 27634:25 27635:10 27635:23 27636:3 happened 27480:8,12 27481:3 27485:10 27497:16,25 27498:11,15 27500:1 27503:12 27505:12 27505:15,23 27506:10,18 27507:3 27510:2 27512:16 27515:7 27524:12 27527:15 27528:17 27529:5 27534:19 27538:14 27546:12 27553:17 27555:3 27562:2 27595:9 27598:25 27603:20 27603:21 27604:16 27605:8 27621:6 27624:22 27627:6 27635:2 happening 27479:9 27508:12 27529:1 27559:24 27627:11 happens 27468:11 27494:15 27568:5 Happily 27471:6 happy 27516:3 27517:2 hard 27563:2,4,15 Harvard 27465:22 hasn't 27471:24 27519:11 27614:12 27628:23 haven't 27475:18 27478:2 27479:5	27489:24 27496:4 27516:12 27571:5 27583:2 27635:11 hazard 27576:10 head 27461:6 27491:16 headed 27459:17,17 27476:1 heading 27461:3,4,12 hear 27473:4 27475:19 27512:8 27521:6 27605:17 27608:17 27628:4 heard 27473:9 27488:18,18 27500:16 27518:15 27519:21 27549:14 27555:14,17,19 27600:7 27605:17 heart 27517:5 heeltetal 27458:18 hefty 27459:8 held 27563:11 27630:22 hele 27622:11 helicopter 27477:25 27540:5 27551:7 27565:18 27566:8 27568:21 27569:2,6 27569:11,17 27570:2 27572:20 27573:2 27576:12 27577:3,5 27577:25 27578:8,21 27578:23,24 27579:7 27579:23 27580:10 27581:4,21 27583:21 27583:24,25 27584:2 27616:15 27617:23 27618:8,9,13,16 27621:22 27623:17 27627:7 helicopters 27566:22 27567:22,24 27577:9 27579:3 27620:12 helikopter 27542:24 27617:19 help 27467:14 27577:10 27609:18 27610:17 HEMRAJ 27478:15,18 27501:1,5,9,12,16,19 27512:3,8,19,22 27539:21,24 27540:11,16 27555:11,18 27568:17 27606:25 27607:6 27609:2,6 27637:4 herinner 27458:7 heroorweeg 27630:9 het 27458:9 27497:5 27526:2,3,4,5,17,20 27526:21,21,22,23 27527:6 27542:25 27605:23 27608:2,3 27621:12,13 27622:6 27622:6,7,8,10,10,11	27622:13 27623:3 27625:1,2 27629:9 27630:8,10 Heymann 27465:22 he'd 27519:1 27521:5 he's 27470:21 27473:8 27473:12 27474:14 27511:22 27514:12 27546:2 27548:13,14 27551:17 27595:8 HHH 27622:25 HHH29 27614:3 HHH30 27614:3 HHH4 27623:6,7 HHH8 27623:5 Hierdie 27629:9 higher 27502:22 highest 27476:3 27489:10 highlight 27476:15 highly 27480:9 hindrance 27468:7 hindsight 27608:22 history 27481:2 hit 27549:22 hits 27640:8 hoekom 27622:12 hold 27507:18 27540:10 27571:25 27605:8 holding 27467:4 hope 27511:13 27518:3 27518:14 hopefully 27543:4 hostel 27637:6,10,17,19 27637:22 27638:4,10 27638:12,13 hostels 27636:6 housekeeping 27458:3 houses 27545:1,3 27547:7,10 27549:7 27549:10 27624:1,17 Huh 27571:10 hulle 27526:3,21 27608:3,3 27621:16 27622:1 27625:4 27630:9,9,10 hy 27542:22 <hr/> I ID 27601:17 idea 27590:7 27627:11 identical 27574:21 27575:9,10,13 identification 27602:17 identified 27533:17 27576:1,5 identify 27475:11 27478:11 27530:18 27533:16 27601:17 27602:15 iemand 27621:12 27625:1 ignored 27471:4 immediately 27579:23 27585:8 27586:14	27593:24 imperative 27540:12 implement 27634:12 implemented 27466:21 27615:18 27635:20 27639:16 implementing 27616:9 implicate 27499:19 implicated 27615:1 implicating 27615:5 implication 27511:16 Implied 27518:5 impliedly 27490:24 import 27623:16 important 27467:23 27474:25 27506:3 27512:25 27521:11 27521:13 27528:3,18 27528:20 27534:18 27534:24 27535:3,4,4 27561:20 impression 27521:5 27522:6 27591:5 27607:10 inaccurate 27509:19 inaudible 27464:8 27523:3 27572:22 27573:1 27575:17 27614:6 27628:8 inbeweeg 27625:5 incident 27481:7,17 27488:7 27489:1,6 27494:10,11,23 27499:1 27503:15,24 27504:1,3,5,6 27506:11 27535:17 27539:22 27540:9 27542:16 27547:11 27553:8 27585:14 27588:9,12 27593:13 27598:4 27603:17 27609:9 27611:25 27620:18 Incidentally 27541:17 incidents 27480:3,11 27480:11 27481:7,9 27495:23 27497:25 27498:11 27503:17 27505:19 27512:17 27522:15 27535:13 27565:22 27578:10 27610:16 inclined 27470:20 include 27529:19 27590:11 includes 27523:23 27562:21 including 27503:25 27504:2 27506:19 27507:3 27596:13 inclusive 27504:7 inconsistent 27590:14 27627:19 incorporate 27525:15 incorrect 27547:14 27559:10,11
---	---	---	---	---

<p>27627:20 27628:7 incorrectly 27488:18 independent 27516:9 27523:16 index 27613:3 indicate 27478:8 27576:9 27613:3 indicated 27517:25 indicates 27605:15 indication 27553:10 27576:6 indications 27534:16 indicator 27600:15 individual 27492:12 27505:24 27544:7 27596:25 27600:24 individually 27477:3 individuals 27463:12 27464:4 indulged 27572:5 ineluctably 27555:4 inform 27608:8 informal 27544:21,24 27545:7,9 27546:6,11 27547:7 27549:25 27621:21 27624:14 27624:17 information 27475:3 27480:20 27493:9,21 27493:24 27499:22 27500:24,25 27505:16 27519:16 27527:21 27534:17 27565:5 27615:5 27627:13 27636:17 27636:18,23 informed 27500:10 27539:10,14 27606:19 27626:13 informele 27621:16 27622:1 27625:4 informing 27597:1 informs 27462:9 initiative 27602:21,22 injure 27549:12 injured 27540:7 27543:9 27549:9 injury 27473:25 inside 27556:11 27582:8 insistence 27635:16 insisting 27633:2 instance 27469:12 27471:4 27477:18,18 27589:3 instances 27479:16 27500:7 instruct 27492:19 27531:17 27533:3 instructed 27493:13 27496:2 27499:12 27500:20 27503:7,18 27504:7 27507:8 27511:2 27531:8,14 27532:14 27533:8 27534:11 27585:9</p>	<p>27586:18 27587:4,7 27593:9 instruction 27470:11 27470:14 27472:7 27477:1 27488:5,10 27488:17 27489:4 27491:15,17,19 27492:4 27494:3 27495:2,5 27496:17 27497:8 27500:12 27502:25 27506:6 27518:22,24 27524:19 27526:24 27528:6,19 27530:2 27532:24 27533:11 27533:14,15,17,20,21 27536:1,3,20,24 27537:6,18,20 27544:16,18 27546:10,13 27547:8 27547:21,23,25 27548:19,21 27549:1 27549:18 27553:8 27558:11,20,22 27559:1,8 27560:4,8 27583:20 27587:25 27588:4 27591:1 27593:21 27597:6 27598:16 27599:21 27600:4 27608:13 instructions 27470:25 27472:5 27487:17 27493:4 27498:20 27499:20 27512:15 27512:18 27524:15 27527:12 27532:5 27535:22 27548:4 27571:8,20,21 27572:3 27575:1 27580:18,22 27599:13 27600:6 instructor 27490:15 instrument 27466:9 27470:6,19 27471:11 integrated 27474:20 intelligence 27636:8,25 27637:12,18 27638:1 27638:18 27639:16 intend 27469:25 27471:8 27504:14 27591:15,15 intended 27466:3 27467:6 27470:14 27577:12 27590:15 intensive 27513:15 intention 27511:25 27524:11 interest 27547:20 27584:10 27600:24 27623:15 27629:11 27631:4 interested 27545:24 interfered 27554:9 interference 27468:2 interferes 27552:16 international 27562:1</p>	<p>27571:7,19 27574:25 interpose 27549:20 interpretation 27474:10 interpreting 27474:1 interrupt 27471:17 27516:7 27580:15 27602:2 intervene 27516:6 intervening 27487:19 interview 27602:15,24 27602:24 investigate 27497:21 27497:25 27498:11 27499:17,23 27602:14,21,22,24 27603:2 investigated 27497:12 27501:3,7 27602:9,13 investigating 27497:15 27497:21 27499:24 27505:2 investigation 27501:17 invite 27530:17 27588:5 27614:2 27620:25 27628:9 invited 27561:25 involved 27475:12 27477:22 27498:1,12 27626:6 involves 27475:2 involving 27474:21 IPID 27497:12,14,18 27497:25 27498:11 27498:13,25 27499:16 27501:3,7 27515:16 27519:5 27521:21 27627:5 irate 27586:16 27587:21 IRIS 27583:5,7 27584:25 irrelevant 27579:2,10 irresponsible 27591:13 27591:14,17 27592:19 Isaacs 27630:25 isn't 27471:2 27499:8 27515:6 27534:12 27617:3 isolated 27598:4 issue 27470:21 27471:15 27488:4 27510:14 27519:20 27521:11,11,14,15 27531:3 27570:20 27573:2,11 issued 27492:14 27570:16 issues 27473:1,2 27475:6 27482:22 items 27576:5 I'd 27459:14 27484:22 27621:5 I'll 27460:24 27478:21 27507:1 27510:2,8</p>	<p>27519:25 27520:16 27573:9,11 27590:18 27591:2 27597:12 I'm 27458:14 27460:4 27461:21 27462:10 27465:8 27470:20 27471:17 27473:20 27474:8,13,14 27475:15 27477:5,10 27480:24,25 27481:1 27481:16 27486:5 27503:16,17 27505:21,22 27506:7 27509:4,18 27511:5 27513:5 27516:6 27520:3,17 27539:11 27540:23 27544:2 27545:11,15 27580:15 27587:1 27588:4 27590:17 27592:9,18 27597:11 27598:9 27613:14 27614:16 27621:8,15 27623:8,16 27626:5 27628:19,19 27629:6 27632:9 27633:1,5 27634:20 27640:14 I've 27461:11 27473:7 27494:5 27495:13 27497:9 27517:3 27539:9 27541:15 27544:23 27545:24 27585:16 27590:6 27600:12 27608:24 27608:24 27612:6 27619:19 27624:6,9 27628:3 i.e 27635:19</p>	<p>27620:8,9,14,15,23 27620:23 27628:24 27629:11,13 27630:8 27630:18,20 27631:1 27631:7,16,19 JOCCOM 27474:19 27475:1,2,5,8,10,13 27486:10,22 27566:11 27615:23 27616:1,23 27617:24 27618:1 27629:21,23 27630:16 27632:1 27633:23 27634:6 27638:1,19 JOHANNES 27458:10 27572:17 27613:21 joined 27560:10 Joint 27474:19 joking 27607:13 judgment 27482:17 27628:8 July 27516:15 junior 27495:6</p> <hr/> <p style="text-align: center;">K</p> <p>K 27474:18 kan 27621:17 27622:1 27622:12 kaptein 27526:18 27542:20,21 keep 27500:2 27518:8 27519:17 27524:19 27562:11,13 27584:10 27591:5 keeps 27514:7,9 kept 27458:4 27518:6 27519:16 27563:6 kill 27511:15 27606:7 killed 27481:7,10 27488:9,17 27535:16 27549:9 27550:2 27586:24 27595:18 27597:15,16,19 27604:12 27606:15 27611:9 27612:13 kind 27472:23 27590:8 27602:18 Kleynhans 27582:24 knew 27497:11 27499:9 27522:21 knowing 27500:24 27505:4 27554:20 27597:10 knowledge 27473:10 27487:12 27623:13 27625:8,12,20 known 27561:20 27614:25 knows 27473:15 27482:3 27491:20 27492:10 27499:10 27499:11 Kolonel 27458:6 27617:18 27623:13 kon 27526:19 konsultasie 27622:3</p>
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koppie 27597:7 27611:14,19,21,25 27612:2,5 27638:24 27639:2,9,9,10,10 korrek 27458:10 27621:24 27625:10 kort-kort 27622:8 kry 27526:19 Kudu 27567:10	27604:18 leaving 27592:19 led 27518:24 lede 27497:5 27526:5 27526:18,20,23 27527:6 27542:20,23 27542:23 left 27508:17,17 27537:10 27554:2,7,7 27554:23,25 27559:18 27592:13 27612:3 27613:1 27616:14 27618:3 27623:9 legal 27462:9 27473:21 27493:22 27500:10 27505:17 27513:16 27513:19 27519:24 27520:11,11,24 27522:1,14 27523:17 27614:24 27622:18 27626:1,2,5,5,14,15 27626:16,19,20,24 legally 27463:11 legislation 27474:1 legislative 27466:8 legislature 27465:8 legitimate 27545:25 Legota 27559:22 legs 27491:16 Lepaaku 27611:9,18 27612:3,13 27623:23 Lepaaku's 27612:17 lethal 27511:12 let's 27487:7,7 27489:19 27515:7 27521:6 27522:8,9,11 27525:22,23,25 27528:15 27535:21 27550:13 27568:25 27569:23 27593:22 27609:24 27615:10 27617:9 27618:20,23 27618:25 27619:9 27624:20 27633:20 27636:7 level 27610:14 lewe 27608:4 Lewis 27472:21,23,24 27473:5,18 27516:6 27516:10 27517:6,22 lie 27598:13 27620:11 Lieutenant 27485:18 Lieutenant-Colonel 27461:25 27462:4 27487:2 27581:3 27613:20 life 27473:25 27476:14 27479:16 27480:12 27490:9,18 27491:2 27494:25 27585:2 27593:23 27594:4,19 27598:10 27600:22 27601:10,18 light 27472:22 27509:14	limitations 27479:12 line 27466:16 27473:17 27473:19 27475:12 27475:25 27476:4 27518:11 27519:19 27521:12 27526:15 27526:16,16,16,17 27531:3 27551:14 27555:24 27558:5 27563:1 27587:8 27603:23 27604:11 27604:25 27612:8,9 27621:2,4 27628:10 27628:12,17,18 27630:7 lines 27526:1 27621:11 linked 27548:20 list 27459:18,19 27478:13 27540:17 27620:5 listen 27597:25 listening 27529:3 literally 27474:5 little 27537:10 27538:3 27581:15 live 27487:11,20 27488:21 27489:5 27490:7,14 27492:19 27493:13 27496:3 27498:21 27502:20 27511:10 27512:12 27524:16 27546:15 27548:6 27549:2 lives 27490:12 27494:14 LLL8 27522:25 27523:5 27525:10 27526:12 27617:14 27621:7 27623:1,4 27629:5 Loest 27526:18,24 27542:21 27550:14 27551:9,13 27557:19 log 27584:14 Logistics 27582:23 logs 27618:10 long 27463:13 27516:21 27527:14 27527:16 27580:11 27581:19,19 27587:9 27594:10 27595:13 27595:22 27614:4 27625:16 longer 27572:11 Lonmin 27516:18 27628:24 look 27462:9 27496:6 27525:22,23 27530:16 27531:22 27544:3 27547:17 27556:7 27561:13 27568:25 27569:10 27572:6 27573:4 27577:1 27578:14 27588:5 27592:7,13 27593:2,4 27606:23	27617:1,9,13,14 27618:20 27620:5 27621:1 27624:15,19 27628:9 looked 27558:9 27566:17 27603:22 looking 27485:3 27509:10 27518:9 27539:19 27554:6 27572:9 27611:18 27637:19 27639:2 loose 27624:18 lose 27594:10 27595:13 loss 27479:15 27480:12 27490:11 27595:17 lot 27479:6 27505:15 27525:15 27535:7 27568:6 27571:2 27579:1 louder 27531:5 loudly 27475:17 lugsteun 27542:19 Luitenant-kolonel 27458:5 lunch 27572:6,10 LUs 27568:8 lying 27550:3 27551:22 27552:15,21 lywige 27458:25	27477:18 27480:8,14 27481:1 27482:24 27483:22 27484:15 27487:9,10 27492:22 27506:18 27562:2 27564:5,22 27565:23 27582:21 27584:1,23 27620:14 27627:7,11 27635:18 27636:18 27638:14 mark 27459:6,9,10 marked 27569:11 27570:3 27573:6 material 27523:23 27525:15 27562:1,8 27563:24 matter 27467:11 27497:12 27500:17 27501:2,6 27509:9,13 27516:11,15 27517:21 27518:20 27519:11 27554:13 27563:8 27578:3 27602:21 27625:11 27632:14 matters 27459:24 27472:11 27475:25 27483:15 27484:12 27505:9 27532:19 27561:16 Mbombo 27586:14 mean 27484:3 27513:5 27519:11 27564:9 27578:20 27583:9,16 27589:22 27590:1,1,2 27590:7,17,25 27591:6 27636:12 27640:4,5,10 Meaning 27593:18 means 27462:17 27472:18 27474:19 27546:9 27561:1 27590:21,21,22 27632:16 measure 27476:21 measures 27476:16 media 27562:1 meet 27630:4 meeting 27475:5 27486:10,22 27507:13 27508:16 27508:24 27603:8 27615:25 27616:23 27617:12 27618:14 27619:6,22 27620:15 27630:8,13,18 27631:8,11,13,20 27632:19,20 27638:19 meetings 27468:14,15 27507:17 27620:24 27629:21,24 27630:5 27630:20 27631:1,16 meets 27475:8 member 27469:8 27471:12 27472:4
L				
L 27461:16,17 27508:2 27509:18 27510:9,15 27511:2 27512:4,24 27513:6,8,12 laaste 27623:3 labels 27576:1,4,9 land 27462:11 27551:7 27604:22 landed 27604:16 27616:19,24 27618:10 language 27467:3 27510:13 late 27552:22 27560:16 27562:12 27620:8,15 27620:18,23,24 latest 27571:25 27573:21,22 27574:7 27574:9 law 27462:10,17 27463:3,12,14,21 27466:5 27469:19 27470:1,9,17,24 27471:3 27473:1,10 27473:14 27477:7 27491:5,11 27492:10 laws 27474:11 lawyers 27524:4 27527:17 lay 27630:24 LCRC 27531:22,25 27532:6 27538:20 27553:14,25 27554:2 27554:15,25 27561:2 27561:6,7,11 leader 27461:19 leaders 27461:20 27513:7,15 27560:23 27561:9 27603:11 leadership 27476:10 leading 27550:5 lean 27581:15 leaning 27581:20 learn 27464:2 learned 27470:16 27471:2 27473:23 27474:2 27511:12 27516:7 27518:2 27612:20 learning 27480:5 leave 27466:19 27515:7 27520:15,16 27586:18 27587:4 27591:10,12,16 27598:16 27600:10				M maak 27526:18 maar 27622:6 main 27485:9 27619:12 Majoor-Generaal 27542:22 majority 27479:19 making 27510:1,2 27554:8 27601:1 27607:11 27622:18 man 27492:18 27493:12 27551:15 27555:25 27626:16 27627:7 27628:6 manage 27482:20 managed 27479:9 27480:4 management 27472:16 27472:18 27473:10 27479:4 27480:20 27483:22 27484:3 27488:4 27495:15 27593:13 managing 27489:6 mandate 27475:4 manner 27467:13 27511:13 27579:14 27580:15 27591:4 27629:1 manual 27477:25 27569:12,17 27570:2 27570:17 27572:20 27573:3 27579:7 march 27475:10 27505:14 Marikana 27476:20

27488:9,21 27491:19 27492:6,7,19 27493:6 27493:7,14 27495:2,6 27496:2 27497:22 27499:25 27500:6 27502:7,14 27505:24 27519:24 27520:12 27522:18 27527:23 27528:1,5 27530:11 27533:5 27537:5 27547:8,9 27558:23 27588:1,11 27592:19 27598:5 memory 27529:24 27564:19 27594:12 27602:16 mention 27496:2 27506:21 27518:25 27527:11 27529:18 27529:23 27530:1 27534:11 27542:9,15 27557:23 27614:17 27614:20,21 mentioned 27512:17 27513:16 27518:23 27519:4 27527:23 27568:5 27572:1 27588:1 27602:4,8 27605:23 27624:12 27630:21,23 27631:2 mentioning 27537:2 Merafe 27483:7 27485:19 27486:1,14 27486:15 27509:25 27510:5 27583:21,22 27583:24 27598:21 27599:3,5 27603:12 27603:21 27605:4,19 message 27628:25,25 27629:7 met 27526:4,19,22 27622:3 27629:9 Metro 27474:22 Mguye 27531:9,15,20 27532:22 27533:8 27536:19,23 27546:13,16 27548:4 27548:7 27556:8,8,10 27613:2,5,7,12 27614:5 Mguye's 27614:10 Microphone 27464:8 27523:3 27572:22,25 27614:6 27628:8 middle 27525:24 millimetre 27556:14,15 27556:23,24 27557:7 millimetres 27607:8 mind 27517:15 27519:18 27606:23 27607:23 27608:7 27619:21 27622:17 27624:22 27638:20 27640:14 mine 27614:13 27628:24 27637:22	27638:14 mines 27480:11 27636:15 minimal 27468:1 minute 27628:16 minutes 27485:14 27507:17,18,24 27572:8 27620:5 27630:3 misconduct 27459:16 27459:18,19 27461:8 27461:12,25 27471:12 mislead 27528:23 27530:5 misleadingly 27459:15 27459:17 missing 27512:11 27543:3 mistake 27488:19 27527:23 mistakes 27527:25 27528:9 Mmmm 27496:23 mnr 27458:11,18 27622:2 27623:4 moet 27458:7 27608:3 moment 27470:22 27580:1 27595:5 Monene 27551:8 27595:3 monkey 27581:14 months 27493:4,9,21 27499:18 27500:4,10 Moolman 27594:7 27626:18,18 27634:2 moontlik 27608:3 moontlikheid 27622:12 moral 27474:11 morning 27462:4,5,6 27480:21 27538:18 27538:25 27616:15 27616:19,23 27617:3 27624:20 27629:17 27630:4,4,17 27631:17 27632:20 27640:18,21 mornings 27630:21 27631:2 move 27547:19 27612:22,23 27621:3 27621:4,21 27628:9 27633:20 moved 27526:6 27527:3 27558:1,2 27601:16 moves 27548:5 moving 27484:19 27539:21 27586:6 27612:18 Mpanaga 27508:24 Mpembe 27503:14 27510:1 27540:18,21 27541:1 27542:22 27585:3,4,23 27586:17 27588:23	27589:12 27592:13 27593:23 27594:4 27599:21 27600:4,16 Mpembe's 27594:13 27598:10 munitions 27578:19 27579:4 mustn't 27495:9 27550:5 27590:20 27591:3 27595:17 mutiny 27602:10 mynonluste 27629:10 <hr/> N <hr/> n 27458:25 27526:3,5 27526:21,22 27542:22,25 27621:13 27622:6,9 27622:12 27625:2 27629:9 name 27459:18 27492:25 27512:17 27536:12 27552:23 27568:4 27614:17,20 27614:22 27626:16 names 27537:1,3 27601:6 national 27471:1,14 27508:16 27541:2,10 27582:23 nature 27471:1 near 27556:18 necessarily 27636:10 27637:2 necessary 27460:8 27492:1 27580:12 27581:6 necessity 27469:20 nee 27623:13,13 27625:8 need 27561:17 27572:11 27574:3 27611:8 needed 27578:11 27636:8 needs 27563:19 neem 27458:11 27608:5 negotiating 27587:8 negotiations 27476:9 27476:14 27589:2 neither 27527:10 Nelspruit 27485:1 never 27477:2 27482:16 27491:18 27493:4 27498:2,25 27500:12 27509:21 27512:17 27513:16 27513:18 27514:15 27515:16 27517:14 27517:15 27518:15 27519:5 27530:1 27595:14,21 27601:15 27620:9 27624:22 new 27459:5,6,8	27466:23 27543:17 27570:6,9 27572:23 27573:16 nie 27458:18 27608:4,4 27608:4,5 27622:11 27622:14 27629:10 Nkaneng 27638:17 nog 27458:8 27502:3 noise 27475:19 nonsense 27606:11,15 non-aggression 27591:16 non-compliance 27468:23 non-lethal 27489:13 normal 27495:22 27612:9 normally 27468:1 27543:13 27581:16 North 27479:7,24 27495:15 note 27569:24 27573:10 27640:20 notebook 27573:10 27574:17 noted 27507:15,19 notes 27461:18 27543:12 notice 27480:20 27512:10 27566:20 noticed 27558:2 27559:17 27621:18 noticing 27558:1 nou 27458:5 no-one 27515:15 27521:20 number 27459:16 27461:11 27478:6 27487:8 27515:11 27540:13 27575:18 27603:20,25 numbered 27478:7 numbers 27565:13 Nyala 27556:11,11,13 27556:18,18,19 27559:17 27591:11 27591:13,16,21 27592:2,3,20 27593:13,14,19 27609:21,22 Nyalas 27586:18 27587:4,10 27592:13 27598:17 27600:10 27604:19 <hr/> O <hr/> O 27461:13,17,18 oath 27496:9 27538:9 OB 27583:7 27584:17 object 27510:22 27513:21 27516:22 27633:11,15,16,17 objecting 27634:11 objection 27472:22,23 27508:14 27509:13 27509:14 27514:14	27561:9 27563:25 27633:1 27635:17 objections 27633:22 obliged 27515:24 observation 27544:22 27545:22 27547:11 27553:14 27558:5 27627:19 observations 27545:16 observe 27474:12 27566:2 observed 27532:10 27546:17 27547:6 27548:8 27559:24 27623:19 obvious 27513:11 27623:17 obviously 27488:19 27521:24 27546:16 27593:16 27605:6 occur 27601:4 occurred 27513:10 27585:19 October 27508:24 offer 27587:13 offered 27567:14 office 27631:1 officer 27469:14 27487:11,17 27488:18 27490:8,15 27498:20 27499:24 27502:10,11,19,19,21 27502:24 27505:2 27506:4 27531:22 27535:10 27551:8 27582:23 27595:2 27596:24 27611:9,17 27612:3,13,16 27618:18 27620:19 27623:23 27626:19 officers 27476:9 27541:11 27550:20 offisiere 27629:9 oggende 27630:8 oh 27461:9 27489:19 27494:12 27525:2 27557:14 27617:9 27619:25 27627:3 okay 27458:21,24 27472:9 27477:11 27478:21 27481:21 27484:17 27485:7 27488:15 27489:9,21 27490:1 27491:3 27507:22,25 27516:5 27522:11 27523:7 27532:15 27533:19 27534:8 27536:11 27541:23 27544:19 27545:18 27549:19 27556:20 27557:3,6 27557:17,25 27558:18 27559:5 27560:14 27568:25 27574:16 27575:6 27578:12 27584:1,21
--	---	---	--	---

27586:2,15 27588:25 27589:10 27592:18 27592:24 27593:22 27594:12 27595:12 27597:5,20 27599:15 27611:7 27612:6 27618:20 27633:11 old 27570:7 om 27526:18 27608:3,4 27608:4 27621:14,16 27621:25 27625:3 omission 27513:11,12 27521:3 27528:9,14 27528:16 omissions 27511:2 27520:19 omit 27497:7 omitted 27521:13 27528:2 onbekend 27621:12 27625:1 once 27487:12 27514:10 27559:7 27560:3,7 27561:12 27620:17 onder 27542:24 onderneming 27458:9 27502:3 ondervinding 27629:10 ones 27576:5 27582:21 27583:18 27597:12 27614:7 27634:12 ongoing 27476:9 ons 27458:5 27526:2,4 27526:19,21 27621:12,12 27625:1 27625:1 27630:10 onwards 27621:3 on-the-field 27479:23 OOO 27478:5 OOO14 27562:11,16 27562:21 27563:2 OOO23 27560:11 OOO30 27573:6 OOO36 27461:19 OOO37 27461:21,23 27461:24 27462:1 OOO38 27569:11 27570:3 27572:23 27573:1,10 OOO39 27573:11 OOO7 27618:21 OOO8 27523:4 Oops 27575:5 oorsteek 27621:14 27625:3 oortuig 27608:4 Oosthuizen 27542:20 op 27526:4,5,21,23 27527:6 27617:15,19 opdrag 27526:18 opdragte 27605:22 open 27510:8 27581:5 27581:8,10,11,21 27613:1 opened 27459:23	open-ended 27510:3 operation 27476:8 27477:25 27483:2 27485:22 27487:9,10 27506:18 27523:24 27582:18,25 27583:10,19 27585:9 27585:24 27586:17 27592:2 27593:15 27595:13 27597:1 27598:1,4 27604:13 27615:12,13 27635:4 27638:25 operational 27474:20 27474:21 27475:11 27477:1 27482:23 27483:2 27596:9 27597:10,16,22 operations 27476:2 27565:19 27569:9,12 27569:17 27570:2 27572:20 27573:2 27579:7 27582:21 27616:6 operator 27504:14 opgemerk 27621:12 27625:1 opgestel 27622:7 opinion 27473:21 opportunity 27474:5 27520:1 opposed 27536:15 opsigte 27630:9 optimistic 27640:20 option 27634:24 orally 27515:15 27519:4 orange 27552:7,9 27555:6 orde 27526:19 order 27462:8,10 27467:14 27470:6 27471:10 27472:7,10 27475:24 27476:22 27477:8 27479:4,25 27481:2 27482:11,14 27482:20 27483:3,11 27483:15,22 27484:2 27484:3,9,12 27488:4 27488:7,25 27489:8 27489:10,10 27490:17,20 27491:4 27491:6 27492:8 27494:7,10,11,22 27495:10,15,22 27505:23 27512:12 27515:14,19 27517:19 27518:22 27520:18 27526:25 27565:18,22 27582:20 27588:6,7 27589:1,13 27593:13 27604:20 27605:19 27621:20 ordered 27518:4 27519:9 27582:17	orders 27470:17 27471:15 27472:2,4 27487:20 Organisational 27571:7 Organisations 27571:19 Organisation's 27575:1 organise 27550:14 27567:6 27609:14 organised 27582:22 original 27528:9 27570:16,17 27573:2 27573:10 27605:22 originated 27528:10 outcome 27480:7,22 27481:14 27485:11 outcomes 27479:13 27480:15 outside 27508:11,18 27578:24 27582:12 27582:13 outstanding 27483:3 overall 27540:6 27546:19 27548:11 27558:3 27595:20 overnight 27640:18 overview 27505:12 27512:16 overwhelming 27554:6 27554:14 o'clock 27616:23 27617:3,11 27618:18 27619:4,9,24 27620:10 27629:16 27630:3,4,12,15 27631:8,12 27632:1 O-series 27461:13	pardon 27538:9 parliament 27465:24 27466:13,14 part 27478:20 27486:2 27488:6 27490:5,17 27504:9 27509:1 27514:13 27519:13 27540:8,8 27556:17 27570:17 27579:7 27591:6 27596:4 27598:11 27627:10 27631:15 27637:23 particular 27468:22 27478:8 27480:8 27505:24 27511:8 27518:5 27565:9 27629:10 27632:15 27637:19 27638:4 particularly 27473:24 27479:7 partly 27628:21 passage 27509:10,12 27525:20 27621:8 27623:1,5 27624:23 27625:19 27630:19 27630:20 27631:17 passasiers 27542:21 passed 27465:9,13 27492:8,9 passengers 27565:25 paste 27527:22 pasting 27529:20 patient 27628:16 patrol 27618:19 pay 27518:10 PC 27585:4 27597:21 27597:21 27603:1 27608:7 27634:3 peaceful 27472:20 peacefully 27463:25 27467:20 27597:14 peg 27491:8 Pentax 27564:7,11 people 27462:11,17 27472:6 27475:16 27481:7,9,10 27484:14 27485:17 27492:25 27494:25 27495:18,20 27500:20,23 27505:14 27507:14 27509:25 27510:18 27516:18 27517:18 27535:16 27536:18 27537:9 27538:21 27540:14 27545:2 27550:21 27551:14 27554:7,15,24,25 27587:8,11,17,19,21 27590:2 27591:8 27593:25 27594:16 27595:18 27597:7,13 27597:15 27601:10 27602:15,24 27603:7 27603:24 27604:8 27605:14,16	27606:10,15 27609:15 27610:19 27610:20 27620:8 27624:13 27626:15 27630:23 27636:22 27637:12,21,23 27638:2,3,24 27639:1 perfectly 27599:1 period 27483:23 27484:15 27492:22 27496:13 27554:20 27584:23 perished 27623:23 permanent 27470:25 permissible 27599:1 27639:13 permission 27523:2 27573:5 27595:24 27596:9,13 27608:8 permitted 27576:12 27577:2,4,9 persist 27632:25 persisted 27509:14 persistently 27561:25 persisting 27632:9 person 27467:9 27485:2 27488:9 27491:20 27492:2,16 27500:11,24 27511:8 27512:12 27515:18 27519:8,8 27522:17 27532:23 27533:18 27533:21 27536:3,8,9 27536:17 27537:1,2 27537:14,14,16,17,19 27540:5,7 27541:24 27543:9 27544:18 27546:1 27547:6,9 27548:1,9,16,20,25 27549:17,24 27550:1 27550:3,5 27551:16 27558:3 27592:7 27595:20,20 27605:13 27606:14 27625:11 personal 27596:11 personally 27583:8 persons 27467:10 27550:23 27593:4 27601:16 person's 27545:14 persuade 27473:14 pertinent 27630:9 pertinently 27630:21 petition 27464:9 petitions 27463:9 phases 27634:7,9 phone 27564:18 phoned 27586:14 photo 27564:5,6 27624:16 photograph 27550:7 27562:11 27563:6,11 27564:9,10,11 photographs 27550:7 27561:22 27562:14
---	---	--	---	--

<p>27564:2,16 photos 27510:22 27562:17 27564:7,7 27565:5,14 phrase 27421:25 27623:11 physical 27564:15 picket 27463:1,5 picture 27563:14 piece 27538:17 Pillay 27461:19,22 27490:2 27508:13 27509:5,20 27513:21 27514:13 27521:10 27560:19 27561:4 27562:25 27563:13 27563:18 27592:24 27598:18 27612:11 27620:21 27623:7 27628:20 27631:4,24 27632:11 27633:12 27633:13,17 27639:5 pilot 27565:25 27568:9 27569:7 27618:19 pilots 27568:8 pin 27565:13 27579:17 27579:17,22,25 27582:6 pistol 27556:14,15,23 27556:24 27640:6 Pitsi 27483:25 27485:19 27486:18 place 27467:20 27476:9 27476:16 27485:11 27527:11 27528:18 27555:7 27560:16 27582:8,12 27608:21 27634:19 27638:6 placed 27561:2,7 27613:1 placement 27560:21,24 27561:5,6,10,11 places 27467:5 27506:23 plakkerskamp 27621:17 27622:1 27625:4 plan 27481:14 27485:10,11,22 27486:2,11,24 27615:18,21,21 27616:1,9 27634:23 27635:14,17,17,19,23 27635:25 27639:22 27639:25 27640:1 planne 27630:10 planned 27475:9 27487:6 planning 27565:19 27615:13 plans 27630:22 play 27593:8,11 27603:13 27611:7,16 27612:2 played 27612:21 please 27474:6</p>	<p>27504:15 27512:9 27525:25 27561:21 27562:1 27572:11 27599:23 27611:2 plegtige 27458:8 27502:3 ploy 27598:11 plural 27526:10 point 27471:18 27480:13 27481:5 27511:24 27514:20 27515:13,20 27518:17,18 27519:13 27521:3 27522:2 27528:8 27534:6 27537:24 27538:3 27548:2,3,5 27553:12 27557:7 27564:15 27565:14 27570:8 27590:2,16 27599:5 27605:5,20 27606:6,16 27612:8,8 27612:23,24 27623:10,15 27630:1 27631:1 27632:16,17 27638:8 27640:6,14 pointed 27531:2 27544:6 27545:20 27546:7 27559:3 pointing 27590:8 27591:8 points 27522:22 27525:9 27547:20 27555:4 policeman 27471:24 policeman's 27596:5 policemen 27495:19 27550:23 27597:15 27597:19 27604:12 27605:1 police's 27491:1 policing 27462:8,10 27467:14 27472:18 27479:25 27481:2 27482:11,14,20 27483:4,12,15 27484:9,12 27494:8 27494:10 27495:10 27495:15,22 POP 27485:17 27527:2 27557:4 27559:21 27587:18,20,22,22 27593:12,15 POP-lede 27526:20 position 27485:2 27495:20 27546:23 27560:12,23 27612:16 positive 27514:15 possessed 27559:2 possession 27515:18 27519:7 27558:8,11 27558:15 27560:2 27564:6 27570:20 27591:19 27605:13</p>	<p>possibilities 27546:24 possibility 27600:15 possible 27516:16 27533:22 27566:1,8 27607:24 27636:16 possibly 27461:10 post 27481:18 Potchefstroom 27585:5 power 27471:14,25 powers 27469:2 practically 27516:16 practice 27578:3 practitioner 27519:24 27520:12 practitioners 27520:11 preamble 27467:9,18 precisely 27499:10 27509:6 27553:12 27629:15 27638:8 precursor 27466:22 prefaced 27473:8 preference 27534:5 preliminary 27473:11 prepare 27522:19,23 27634:2 prepared 27458:17 27465:23 27525:8 27609:21,25 27610:21 presence 27549:7 present 27463:9 27464:9 27483:21 27517:18 27556:12 27563:10 27626:20 presentation 27510:18 27510:25 27512:11 27512:14 presented 27512:10 27568:7 presided 27465:21 presumably 27499:7 27526:8 27527:4 27534:3,6 27543:3 27548:6 27570:17 27605:12 presume 27543:3 27614:12 Pretoria 27567:15 Pretorius 27500:23 27506:22 27565:12 27565:13 27626:22 27626:25 27627:1,6 27627:20 prevent 27490:9,11 27491:23 27580:7 27621:20 27624:13 preventative 27637:13 27637:16 prevention 27494:16 previous 27480:10 27517:7 27527:5,22 27534:10 27574:10 27579:9 previously 27513:3,5 27516:23 27527:20 27550:10 27636:14</p>	<p>price 27518:10 principally 27469:5 principle 27477:7 principles 27469:20 27470:1 27491:5,12 prior 27477:22 priority 27476:17 private 27477:7 27491:6,12 privileged 27515:11 probabilities 27554:7 probability 27554:14 probably 27519:2 27637:19 probeer 27458:19 problem 27461:3 27475:15 27510:21 27514:10 27637:7 problems 27516:13 procedure 27476:15 proceed 27517:2 27599:3 27613:24 proceeded 27558:15 PROCEEDINGS 27458:1 process 27475:1 produce 27508:8 produced 27480:14 27481:17 product 27510:10 Professor 27465:22 profound 27512:25 27521:13 27534:12 prohibit 27580:7 pronounced 27473:24 proof 27488:8 proper 27565:19 27591:20 properly 27499:23 properties 27490:18 property 27469:21 27476:14 27491:2 propose 27470:21 27485:5 proposed 27638:21 proposition 27598:18 27631:7,9,11,24 27632:2 27639:6 protect 27490:18 27491:1 27494:14,25 protected 27462:14,24 27464:5 27465:5 27468:7 protection 27463:21 27467:12,13 27469:21 protester 27496:3 27548:10 protesting 27637:24 protestor 27546:18 protestors 27556:19 proved 27639:13 provides 27491:5 province 27479:8 27481:3 provincial 27503:13</p>	<p>27541:14 27597:22 27603:1 provisions 27468:21,23 27469:7,21 27472:1 27477:13 27491:11 proviso 27471:3 provoke 27587:11 public 27462:8,10 27467:4,11,14,25 27473:11 27479:3,25 27481:2 27482:11,14 27482:20 27483:3,11 27483:15,22 27484:2 27484:3,9,12 27488:3 27488:7,25 27489:8,9 27490:17 27492:8 27494:7,10,11,22 27495:10,15,22 27524:20 27565:18 27565:21 27593:13 pulling 27582:5,7 purports 27623:11 27634:22 purpose 27465:1 27507:2 27619:12 purposes 27540:1 27575:12 pursue 27543:1 pursued 27556:15,24 pursuing 27548:12 27550:15,20 push 27593:15 put 27470:23 27472:22 27476:16 27481:19 27485:22 27486:9,12 27493:23 27495:13 27511:4,13,16,23,25 27514:4,16 27520:22 27527:24 27528:21 27529:14 27532:21 27550:5 27560:16,21 27562:23 27563:8 27581:6,14 27587:9 27591:3,9,21 27595:15 27598:19 27601:20 27604:4 27605:7,14 27606:9 27606:21 27607:7 27612:1 27620:22 27624:23 27625:7,20 27631:15,25 27632:12 27639:6,20 puts 27518:2 27532:2 putting 27471:3 27473:1 27476:20 27514:14 27606:3 27635:1</p>
Q				
<p>QQ 27613:9 QQQs 27613:11 QQQ7 27530:16 QQQ7.1 27613:13 QQQ7.2 27613:12 QQQ8 27556:8 QQs 27613:11</p>				

<p>QQ7.1 27613:3,6 QQ7.2 27613:3,8 Qs 27613:9,10 qualification 27463:16 27463:24 27467:24 qualify 27588:13 quantities 27583:3 quantity 27583:3 quarter 27572:11 questioned 27515:16 27601:21 questioning 27563:1,1 27563:18 27605:20 questions 27473:12 27503:18 27511:9 27515:1,12 27516:25 27517:7,9 27518:2,6 27518:18 27520:19 27521:9 27522:15,23 27524:10 27560:20 quickly 27459:14 quite 27479:6 27480:14 27511:23 27512:1 27521:14 27537:11 27541:18 27615:9 quoting 27575:7</p> <hr/> <p style="text-align: center;">R</p> <p>railway 27587:7 27588:13 27603:16 27603:19,23 27604:11,25 raised 27517:3,14 27602:3,13 27632:16 raising 27515:23 ran 27546:11 reached 27462:1 reaction 27594:13 read 27475:23 27546:4 27547:1,13 27585:16 27599:8,9 27623:5 27624:9 27625:18 27628:21 reading 27509:7 27574:24 27575:25 27623:1 27632:13 reads 27474:19 27543:1 27574:21 27617:15 27629:7 ready 27460:4 27613:23 real 27555:3 27605:20 realise 27628:2 realised 27493:20 reality 27635:16 really 27467:13 27480:17 27509:17 27510:2 27516:7 27543:1 27551:12 27553:9,24 27589:18 27589:22 27597:17 27597:18 reason 27469:6,14 27482:16 27486:21 27514:2 27530:4 27534:14 27552:3</p>	<p>27565:9 27586:16,22 27587:2,10,12,15 27599:4 27614:16 27621:23 27623:11 27624:12 27625:10 27625:11 27626:14 27627:22 27628:1 27632:25 reasonably 27602:16 recall 27544:1 27560:19 27561:6 27640:13 received 27470:25 receiving 27477:3 27585:8 recognition 27467:9 recollection 27532:20 reconcile 27609:18 reconsider 27630:22 record 27470:23 27632:13 recorded 27459:7 records 27582:16 recovering 27540:1 recreational 27472:20 rectified 27497:9 rectify 27506:24 recurred 27475:16 red 27560:10 rede 27622:4 refer 27568:18 27621:8 27624:10 27634:15 reference 27513:1,6 27570:20 27615:6 27631:14 referred 27461:11 27473:18 27485:16 27509:22 27535:12 27549:21 27571:22 27606:3 27621:7 referring 27474:2 27478:16 27487:15 27548:14 27594:16 27603:15 27604:2,11 27617:21 27624:8 27630:16 refers 27548:18 reflect 27486:1 27509:19 27510:10 reflection 27519:1 reflects 27510:15 refresh 27594:12 27619:20 reg 27458:6 regard 27467:20,24 27481:22 27483:18 27517:4 regarding 27469:20 27470:1 27475:1 27503:12 27572:3 27592:16 regards 27560:23 Registers 27584:17 regspan 27622:3 regterflank 27621:13 27625:2</p>	<p>regulate 27467:4 regulation 27465:10,12 27466:3 27467:19 27468:20,24 reject 27533:1 rejected 27534:5 rejection 27474:4 relate 27576:15 related 27485:10 relates 27567:21 27588:8 27615:12 relating 27585:2 relation 27472:10 27473:10 27483:15 27484:12 27502:24 27508:15 27510:1 27513:8 27516:13 27523:23 release 27579:25 27580:1 relevant 27509:10 27523:23 27542:19 27543:1 27562:2 27563:9 27573:24 reliable 27636:24 27639:16 reluctance 27613:17 reluctant 27613:14 remained 27583:3 remarks 27473:8 remember 27493:11 27494:9 27495:3 27506:8 27508:20 27532:21 27533:20 27545:25 27552:7,8 27581:18,24 27598:23 27599:7 27604:21 27622:19 27626:16 27639:25 remind 27474:3 27538:8 reminded 27474:15 remove 27598:11 27600:18 27608:11 27636:16 removed 27586:4,9 27598:6 render 27579:1 repeat 27466:6 27481:25 27505:10 27508:4 27573:1 27599:22 27630:14 repeatedly 27511:13,16 27518:2 repeats 27559:9 rephrase 27488:20 replaced 27570:18 reply 27498:9,9 27519:22 27520:14 27529:14,16 report 27502:7,11,15 27502:18,20,22,23 27503:14,23 27504:10 27511:6 27522:21 27539:17 27583:2,6 27585:8,14</p>	<p>27585:19 27586:10 27586:22 27597:24 27617:7 27619:5,10 27632:15 reported 27503:2 27504:6 27518:23 27539:18 27540:22 27541:16 27583:6,8 27586:19 27602:21 27617:2 representative 27500:11 representing 27472:6 27493:22 request 27573:17 27594:14 27595:12 27613:15 requested 27586:3 require 27636:24 required 27466:15 27475:12 27505:17 27527:21 requirement 27579:10 requirements 27476:7 requisition 27583:16 requisitioned 27583:2 27583:14 reservation 27472:25 reserve 27561:1 reserved 27560:23 resource 27567:10 resources 27479:12 respect 27473:23 27483:17 27484:8 27498:9 27508:14 27511:15 27518:7 27575:15 27585:20 27590:11 27597:11 27629:20 27630:22 27631:3 27632:23 respond 27517:9 27521:8 27533:21 responded 27560:3 responding 27514:3 response 27514:21 27517:8 27522:19 27585:22 27594:9 27595:11 responsibility 27474:11 27491:1 27502:12 27506:6 27528:21 27530:3 27593:5 27596:5,24 responsible 27485:22 27492:15 27579:14 27580:15 27586:13 27586:25 27592:6 rest 27535:12 restraint 27589:15 result 27488:17 27548:17 27595:8 27605:3 resultant 27480:7 resulted 27546:12 27638:25 results 27481:1</p>	<p>resume 27572:10 resumes 27458:2 27502:1,2 27538:6,7 27572:13,14 27613:18,19 retaliation 27559:1,2 retort 27514:21 return 27509:12 27527:11 27528:18 returned 27526:9 27527:7 review 27505:5 RGA 27468:20 27469:19 27472:11 27472:12 rifle 27498:21 27499:12 27504:8 27518:5 27524:16 27526:8 27527:4 27530:23 27531:2 27544:6,20 27545:5 27545:20 27546:8 27551:3 27556:13,15 27556:22 27558:4,8 27558:10,15 27559:6 27559:8 27560:3,5 27610:5 rifles 27546:13 27607:7 rights 27464:24 27466:4 27467:20,24 27468:2,7 right-hand 27624:16 rigging 27621:14 27625:3 ringing 27511:1 27513:12 river 27497:16 27498:1 27498:12 27501:6 27503:15 27532:11 27539:22 27540:1 27544:2 27550:2 27551:11,21 27552:4 27552:6,8 27553:5 27555:14 27560:2 27596:19,21,22 27599:25 27600:7 27609:23 27624:1 riverside 27549:15 road 27559:18 27611:10,12 27621:20 27624:2 27630:1 rob 27464:4 robbing 27464:9 Robinson 27565:24 role-players 27474:22 27475:3,12 room 27508:18 Roots 27506:9,16,21 27507:2,6,11 27508:7 27508:8,18,19 27509:18 27510:10 27510:18 27561:21 27601:22 27602:4,4,6 27602:13 27603:3,6 27626:11,15,17,19,21</p>
--	---	---	---	---

<p>27627:1,10,13 rough 27543:19,21 round 27618:18 rubber 27489:11 ruled 27473:7 ruling 27633:19 running 27512:24 27513:5 27544:21,25 27545:6 27546:5 27549:7 27550:1 rush 27619:9 Rustenburg 27559:23 27565:22 27603:4,7 27620:20 R44 27565:24 R5 27494:3 27495:8,21 27495:22 27496:3 27498:21 27499:12 27503:7 27504:8 27505:24 27507:9 27524:16 27526:4,8 27526:22 27527:4 27530:23 27531:2 27532:1,24 27542:25 27543:2 27544:6,20 27545:5,20 27546:4,8 27546:13 27547:9 27551:3 27555:25 27556:13,15,22,24 27558:4,10,15 27559:6,8 27560:2,5 27591:21 27595:21 27605:9,9,13 27606:12,14 27609:16 27610:5 R5s 27495:16,19 27531:25 27605:2</p> <hr/> <p style="text-align: center;">S</p> <p>safe 27571:20 27575:1 27584:11,12,13 27608:21 safety 27540:21 27581:14,16 27589:18,23 27598:7 27606:23 27608:9 sake 27556:9 27631:6 sal 27458:19,21 27622:6 SALMON 27458:10 27572:17 27613:21 SANDF 27474:22 SAPD 27526:19 27542:20 SAPS 27487:19 27513:22 27516:8 27527:1 27562:7 27563:14,16 27578:18 27579:3 27626:20 sat 27508:11,18 27601:10 satisfied 27471:9 27472:5,7 27512:1 save 27580:16 saves 27458:15</p>	<p>saw 27478:9,23 27512:7 27539:5 27540:5 27544:13 27551:1,6 27552:15 27553:13 27581:19 27581:20 27589:6 27593:25 27595:19 27595:20 27624:24 27628:3 27637:12 saying 27480:25 27481:1 27486:5 27490:13 27491:11 27497:24 27498:10 27500:16,21 27502:13 27504:5,7 27509:18 27513:5 27514:20 27515:19 27517:18 27520:18 27536:19,23 27537:4 27544:14 27546:2,3 27547:13 27552:10 27562:21 27566:4 27568:1 27575:11 27577:11,12 27578:2 27578:6 27580:6 27592:1 27603:25 27622:16 27624:3 27633:22 says 27459:8 27466:12 27467:4,9,18 27468:21 27469:19 27471:3 27472:10,18 27475:1,23,25 27476:13,16,25 27477:7 27517:13 27518:22 27519:4,5 27520:15 27521:22 27526:16 27530:22 27532:14,24 27544:12,15 27545:25 27546:20 27547:21 27548:5 27569:16 27570:11 27570:16 27571:18 27577:2 27579:3 27589:1 27605:21 27619:3,9,16,23 27621:3 27622:2 27628:5,19 27630:7 27631:13,14 scenario 27593:8,12 scene 27497:23 27502:10,12 27503:5 27503:11 27531:23 27532:2 27538:21 27540:9 27550:21 27552:17 27553:6,13 27553:25 27554:2,2,7 27554:8,24,24 27555:19 27586:4 27588:8 27594:1,7 27598:12 27600:18 27604:8,10 27605:10 27609:14 scenes 27596:4 Scott 27486:12 27487:3</p>	<p>27508:17,25 27562:15 27563:12 27564:1,16,19,22 screen 27491:13 27523:1 27525:24 27628:16 se 27592:22 27608:4 search 27633:23 27634:1,4,7,17,19,25 27635:3,9,20,23 27636:3,6,8,16,20,21 27636:25 27637:5,17 27638:6,20 27639:1 Seboloki 27550:6 second 27490:5 27514:13 27518:18 27525:3,23 27526:1 27548:3 27556:21 27559:16 27575:20 27581:1,2 27600:14 secondly 27528:2 seconds 27580:3,5,19 27580:19,22,25 section 27464:5 27466:4,9,16 27468:15 27469:2,19 27474:18 27476:8 27542:19 27543:1 27569:17 27570:2 27573:2 27574:20 secure 27540:9 27596:4 security 27636:19 27637:8 see 27460:6,14 27484:23 27490:6 27514:20 27525:21 27526:11 27530:16 27530:19 27531:23 27532:4,12 27533:16 27535:18 27537:16 27540:6,25 27544:5 27544:11 27545:2 27546:24 27548:15 27549:5,22 27550:9 27551:15 27556:3,5 27558:18 27559:19 27563:4,25 27571:24 27575:21 27576:12 27584:22 27589:5,23 27595:7 27596:3 27605:1 27611:3 27618:17 27619:6,17 27619:21 27622:14 27624:16 27625:8,19 27627:3 27629:6,7 27630:3,10 27631:20 27634:19,23 27636:23 27639:15 27640:3 seeing 27461:11 27538:8 27562:22 seek 27596:12 seeking 27519:15 seeks 27465:9 27472:11 seen 27479:8 27512:4,9 27550:10 27566:17</p>	<p>27576:5 27582:16 27604:7,19 27610:4 Sekgweleya 27530:17 27531:20 27532:22 27532:24 27533:8 27536:20,24 27544:5 27546:3 27547:21 27556:14,23 27613:2 27613:6,13 27614:5 selective 27607:1 self 27491:12 self-defence 27469:20 27470:2 27477:7 27491:5 Semenya's 27519:22 27521:12 27606:16 Semenya's 27553:23 send 27502:11 27524:5 sending 27565:14 27631:23 27632:22 senior 27472:6 27490:15 27497:22 27499:25 27502:10 27502:11,19 27541:11 27596:24 27597:4 27598:5 27601:21 sent 27478:14,20 27524:10 27582:23 27583:21 27628:25 27631:18 sentence 27526:2 27546:4 27556:20,21 27625:1 27628:22 separating 27611:10 September 27570:12 27573:3 sequence 27556:10 27595:2 sergeant 27531:9 27532:22 27533:25 27546:12 27556:8,10 27581:20 27614:5 serious 27473:25 27589:17 27600:22 27602:9 27607:11,14 27635:16 27636:8 seriously 27497:24 27498:10 27500:16 27502:13 service 27474:21 27479:2 27493:23 27500:6 27502:7 27572:2 27585:20 27600:23 27601:18 sessions 27624:11 set 27548:24 27602:17 sets 27485:1 settling 27634:23 settlement 27544:22,24 27545:7,9 27546:6,11 27547:7 27549:25 27551:5,18 27611:10 27611:23,24 27623:18,21,25,25 27624:5,15,17</p>	<p>seven 27535:16 shaking 27590:13 share 27472:16 27493:21,24,25 shared 27565:13 sharing 27500:3 27638:19 She's 27626:24 shields 27593:16 shoot 27474:6 27481:9 27491:19,20,20,25 27492:2 27495:2,19 27495:22 27511:3,8 27511:15 27515:15 27524:15 27526:7 27527:4 27531:8,17 27533:17 27536:4,6,9 27544:16,25 27547:8 27549:7,8,12,13 27558:21 27586:12 shooting 27491:23 27492:24 27494:24 27495:3,21 27497:15 27501:5 27518:4 27522:18,18 27531:16 27533:18 27536:9,10 27545:9 27545:11 27547:6 27549:17,24 27555:19 27610:7 shootings 27501:2 short 27468:20 27505:12 27543:17 shortly 27459:15 shot 27487:11 27488:9 27489:5 27490:7 27491:16 27519:9 27526:9 27530:9 27532:12 27546:9 27547:9,9 27548:9,16 27548:17,20,25 27549:1,14,21 27550:1 27558:10 27559:7,17 27560:5 27604:3 27605:11 shotgun 27526:8 27527:4 27591:7,16 27591:21 27592:20 27604:14 27605:9,10 27606:13 shotguns 27586:18 27587:4 27592:2 27593:14,18 27598:16 27603:13 27603:24 27604:1,4,8 27604:15 27605:2 27607:7 shots 27530:6 27531:25 27554:19 27555:12 27555:14 shoulder 27591:9 shouldn't 27495:8 27520:14 should've 27589:21 show 27490:13,19 27507:17 27510:19</p>
---	--	---	--	---

<p>27524:14 27582:16 27588:4 27589:14,14 27640:2 showed 27631:18 showing 27603:12 shown 27504:15 side 27470:12 27515:2 27527:23 27528:22 27537:10 27549:6 27551:21 27552:4,6,7 27552:9 27557:15 27559:18 27624:14 27624:16 27627:25 sides 27468:4,5 sien 27622:6 signal 27577:2,16,17 significant 27469:18 27505:23 27529:4 27535:9,17 similar 27576:5 simple 27509:9 27624:21 simply 27472:24 27473:1 27631:1 27632:1 single 27506:2 Sir 27466:7 27536:13 sit 27495:1 27499:19 27608:22 27622:10 sitting 27587:8 27601:22 27629:14 situation 27583:25 27593:6 27629:2 situations 27610:22 six 27496:1,13 sixth 27635:3 six-oh 27459:16 size 27528:13 skiet 27526:4,22 skok 27542:24 skokgranaat 27622:5 27622:13 sky 27565:23 27566:2 slaughtered 27612:3 sleep 27640:19 sleeping 27638:24 small 27487:8 27527:1 27543:12 27610:20 smoke 27580:23 SMS 27631:18,23 27632:22 sodat 27526:19 sodoende 27621:15,16 27621:25 27625:3 softcopy 27573:17 Sokanyile 27551:22 27552:21,21,22,24 27560:17 27562:12 Sokanyile's 27560:22 somebody 27464:10 27489:5 27491:19 27495:2 27499:12 27504:8 27507:9 27545:25 27549:9,12 27549:13 27566:7 27592:13 27593:2,20</p>	<p>27603:2 27607:24 27610:4 27625:21 27627:14 27628:4 27640:6,6 soos 27622:11 sorry 27471:17 27475:15 27489:16 27494:12,20 27498:24 27501:1 27508:17 27509:4 27516:6 27517:6 27526:16 27538:9 27541:24 27552:21 27553:18,18,19 27569:25 27578:13 27578:25 27580:15 27594:15 27595:1,1,1 27598:24 27602:2 27623:6 27624:10 27628:19 sort 27626:17 sorts 27516:13 sou 27608:3 27622:13 South 27479:2 27493:23 27519:23 27571:15 27572:1 27600:23 so-called 27493:3 speak 27508:20 27510:17 27520:13 27541:21 27597:21 speaking 27537:12 spear-wielding 27464:3 special 27458:17 27465:18 27589:4 specific 27472:5 27502:21 27503:17 27505:14 27506:23 27510:24 27512:16 27512:16,18 27534:14,17 27535:15 27569:8 27572:3 27578:10 27592:6 27593:3 27636:5 27638:6 specifically 27490:22 27505:18 27512:14 27512:18 27516:19 27522:17 27547:25 27598:20,22 27612:8 27637:7 spelled 27490:22 spelling 27506:24 spent 27532:1,6,17 spirit 27590:14 spoke 27585:4 27601:20 spoken 27600:23 spontaneous 27588:9 27588:14 spot 27560:10 squatter 27621:21 SS2 27490:2 stable 27579:11 27580:12 stage 27462:1 27472:6</p>	<p>27472:8 27485:6 27493:22 27497:17 27501:21 27505:16 27512:5 27527:19 27548:13 27550:22 27551:16 27556:12 27558:9 27559:7 27560:3 27565:11 27589:20,21 27596:14 27597:3,14 27597:18,19 27599:9 27599:16 27600:5 27601:12 27604:22 27604:24 27606:17 27606:24 27607:19 27634:13,13,15,18,24 27634:25 27635:3,4 27635:20 27640:15 stages 27634:11,23 stamped 27577:21 stand 27509:6 27511:5 27605:14 standing 27470:6,17 27471:10,15 27472:2 27472:4,7,10 27475:24 27476:22 27489:10 27490:20 27491:4 27536:16 27545:11 27549:9 27588:6,7 27589:1,12 27624:18 stands 27466:5 start 27484:18 27514:6 27526:17 27556:9 27565:4,14 27618:23 27618:25 27629:16 27637:9 27638:6 started 27488:7 27489:2,4 27492:23 27493:9,25 27494:10 27494:22 27527:19 27551:13 27564:5 27581:20 27616:5 27620:10 27626:11 27629:19 27631:17 27631:21 27632:21 startling 27562:10 starts 27617:24 state 27467:12,13 27597:17 stated 27490:14,24 27493:3 27505:11 27516:24 27531:24 27531:25 statements 27487:19 27493:2,5,16 27496:1 27496:13,19 27499:19 27500:2 27505:17 27517:17 27519:8 27522:2 27524:23 27525:8,22 27527:10,22 27531:19,22 27532:7 27532:10 27554:21 27613:2 27614:3,7 27615:3 27617:2,4</p>	<p>27620:7,23 station 27502:19 27588:13 27620:20 statistics 27479:6 statute 27466:20 27468:10 27469:2 stay 27549:15 stayed 27554:14 staying 27637:22 steal 27460:19 stealing 27474:4 steeds 27458:8 27502:3 stel 27458:12,20 step 27466:2 27588:25 27635:12 steps 27588:19,23 STF 27577:24 27578:7 27578:10 stick 27529:9 27564:19 stipulate 27472:4 stipulated 27580:12 27591:19 27599:16 stole 27474:6 stones 27495:18 stop 27473:13 27514:2 27514:7 27549:8 stopped 27585:9 story 27597:15 27598:10 27605:13 straight 27541:9 27611:18 strange 27605:5 stream 27526:7,7 27527:3 strength 27628:6 stress 27596:3 stressing 27621:15 striker 27487:10 27488:21 27491:15 27493:13 27499:12 27503:22 27504:8 27507:9 27511:3 27524:16 27530:23 27531:1 27532:23 27534:12 27544:5,20 27545:5,19 27546:3,4 27546:6,10,17 27548:8 27558:14 27559:6,12 27560:2 27605:11 strikers 27503:20 27544:21 27545:6 27546:5,16,18 27548:10,12,13,14 27549:3,6 27556:16 27556:24 27558:1,2,4 27558:8 27559:13,19 27560:1 27605:8 27606:13,14 27612:14,18 strikes 27605:5 strong 27463:16 structure 27468:11 stuff 27525:18 stun 27568:23 27569:1 27577:13 27579:17</p>	<p>27579:22 27580:2,7 27580:18,25 27581:5 27581:21 27582:17 27582:22 27583:22 27584:2,22 27611:4 27612:14 27624:13 stuns 27577:24 stupid 27600:19,21 sub 27476:13 27477:6 subject 27521:25 27563:9 27582:16 27637:5 submission 27520:6 submit 27471:8,11 27518:7 27520:19 submitting 27470:16 subsequent 27552:20 27553:6 subsequently 27525:9 27585:14 27601:8 substantive 27615:11 successes 27638:10 sudden 27545:19 27546:7 suggest 27515:22 27548:15,18 27598:9 27636:5 27637:9 suggested 27593:14 27631:16 27635:7 27636:1,19 suggesting 27548:19 27623:16 suggestion 27515:7 27604:3 27636:3 27639:12,16 suggestions 27622:17 summoned 27486:22 Sunday 27459:2,9 27629:2 27637:8 sunset 27616:14 suppose 27526:9 supposed 27492:7 27498:22 27583:6 sure 27458:14 27468:1 27468:6 27474:8,13 27474:14 27491:21 27505:20 27510:2 27523:22 27552:16 27554:8 27623:8 27626:5 27628:19 27634:20 surely 27515:3 surprised 27602:8 surprising 27493:1 surrounding 27636:6 suspect 27614:11 symbol 27576:11 27577:4,13,17,18,19 system 27584:25 sê 27608:3</p>
--	---	--	---	--

T

tab 27484:24
table 27486:12
27575:21
tabled 27486:25

<p>tabs 27478:7 tactical 27634:24 take 27460:18 27467:20 27476:9 27480:20 27482:4 27487:6 27495:23 27506:6 27517:4,4 27519:6,6,12 27528:21 27529:24 27530:3 27533:6 27537:23 27538:1,4 27538:12,20 27539:2 27554:13 27561:14 27565:24 27566:19 27566:22 27572:10 27579:17,17,21,25 27582:8 27586:12 27592:4 27593:5 27596:18 27597:9,12 27597:17 27598:1,3 27598:12 27599:25 27601:6 27602:20,22 27608:8 27613:15,17 27615:11 27621:21 27624:15 27634:19 27640:21 taken 27460:15 27474:1 27494:24 27534:7 27540:2 27543:2 27562:18 27588:19,23 27599:10 27603:23 27606:12,13 27636:19 takes 27582:12 talk 27476:19 27522:25 27563:16 27590:5 27615:11 talking 27525:11 27532:9,10 27539:11 27540:23 27548:14 27564:10 27587:24 27606:10,15 27615:1 27623:21 task 27461:20 27569:7 tasking 27475:4 te 27526:18 27608:3,4 27608:5 27621:15,16 27622:1 27625:4 tea 27537:23 27538:5 27612:21 27613:15 27613:17 team 27493:22 27505:18 27513:16 27513:19,22 27521:17 27522:1,14 27598:15 27614:24 27622:18 27626:1,3,5 27626:6,14,20 tear 27611:4 27612:13 teargas 27576:15 27580:4,8,21 27581:5 27582:17 27583:23 27584:22 27621:19 27621:23 27623:12 27624:4,13</p>	<p>teargases 27627:22 technical 27571:7,20 27571:21 27575:1 tell 27461:21 27472:17 27473:14 27478:8 27489:22 27490:23 27491:25 27492:2 27493:5 27506:10,18 27507:2,5,11 27521:20 27522:1 27524:12,15 27538:16,24 27539:7 27539:16 27540:24 27541:5,6,10,13 27548:23 27553:4 27570:4 27571:5 27593:24 27594:18 27599:18 27632:3 27640:18 telling 27491:1 27499:1 tells 27463:17 27467:8 27469:6 27489:10 27637:18 ten 27567:1 27630:9 terms 27464:16 27468:11 27469:13 27477:14,19 27479:2 27511:24 27512:25 27516:22 27569:2 terribly 27555:15 27639:22 terug 27458:5 teruggeskiet 27497:5 27526:5,23 27527:6 test 27473:9,15 27481:15 27577:5 27609:24 27636:7 testified 27480:19 27509:23 27544:23 27561:7 27601:6 27624:10 testify 27496:24 27529:1 27534:8 27553:7 27639:19 testifying 27492:23 27493:9 27494:1 27495:4 27496:8 27528:24 testimony 27508:15 27509:22 27521:15 27521:18 testing 27568:15 text 27631:18 thank 27458:13 27462:4 27474:17 27475:22 27501:19 27502:5 27509:16 27512:22 27516:2,5 27520:3 27538:11 27540:16 27574:16 27580:17 27609:6 theoretically 27554:5 27555:3 thereof 27544:4 there's 27459:14,15 27479:6 27484:24</p>	<p>27488:8 27502:21 27505:15 27509:5 27517:23 27526:1 27532:7,11 27534:14 27535:12 27543:3 27549:13 27552:2 27568:6 27569:18 27570:6,12 27571:2 27579:10 27580:6 27591:4 27592:6 27593:3 27595:18 27618:22 27632:6,6 27633:19 27636:21 they'd 27499:6 they're 27464:16 27575:9 27614:9 they've 27516:18 27581:1 thing 27476:25 27499:24 27511:20 27516:20 27517:2 27529:16 27534:18 27534:24 27535:3,4,4 27552:16 27567:5 27573:11 27589:23 27599:19 27600:19 27605:6 27606:22,25 27608:7,20 27609:21 27610:20 27621:5 27636:15 things 27463:18 27469:8 27505:21,23 27508:2 27510:2 27515:5 27535:21 27561:13 27563:3 27568:6,20 27576:15 27578:3 27581:4 27590:12 27602:7,16 27634:24 27635:17 27637:18 think 27462:1 27470:20,22,23 27473:9,13 27475:19 27480:16 27482:7 27487:23 27493:7 27495:8,20,21,24 27500:22 27508:14 27509:6 27514:6 27515:9,13,22 27517:13,24 27519:1 27520:14 27522:3 27524:25 27527:18 27528:23 27541:2,8 27560:14 27577:23 27591:22 27599:3 27602:25 27603:20 27603:24 27605:1 27606:6 27607:17 27608:1 27615:8 27619:25 27620:22 27621:8 27625:5,6 27626:11,16,20 27627:10 27632:16 27640:17 thinking 27533:22 27608:10</p>	<p>third 27525:4 27526:14 27526:14,15,15,16 27575:20 thoroughly 27519:11 thought 27478:23 27494:6 27500:16 27516:8 27518:21 27580:16 27594:8,19 27608:21,25 27609:7 threat 27475:2,3 27585:2 27589:17 27593:23 27594:4 27598:11 27600:15 27600:22 27601:2,17 27605:21 27606:18 27607:11 27608:8,12 threatened 27586:11 27607:18 threats 27503:14 27609:4 three 27485:17 27546:24 27580:4 27589:1 27613:11 throw 27579:22 27580:1 27627:22 throwing 27495:18 27580:2 27581:21 thrown 27628:1 thrust 27509:17 27558:24 27604:4,6 thunder 27460:22 Thupe 27601:9,13,15 27601:20,22,25 tidy 27472:10 27478:21 27538:12 27544:3 27567:11 27612:19 27612:25 27614:1 time 27458:15,25 27486:12,25 27487:9 27487:10,16 27488:21 27489:4 27492:24 27510:19 27510:23 27512:4,9 27516:21 27522:4,9 27550:14 27553:25 27554:23 27557:7 27559:5 27562:22 27569:8 27578:14 27580:16 27582:17 27589:19,21 27591:20 27592:3 27597:7 27601:6 27614:4 27616:25 27617:22 27618:6,13 27618:16,16 27620:3 27620:9 27627:5 27629:11,12,14 27631:2,20,22 27639:4 timeframe 27636:5 timelines 27510:21,22 times 27479:8 27510:23 27546:12 27566:5 27616:15 27619:19 today 27461:20</p>	<p>27498:14 27573:20 27606:4 toe 27622:8,10 told 27500:20 27504:13 27509:25 27513:18 27515:14 27516:16 27517:10,20 27518:9 27519:4,17 27520:24 27520:25 27521:16 27521:17,23 27522:7 27541:19,25 27545:24 27548:25 27550:6 27561:21 27585:23 27599:1 27603:7,11 27605:14 27606:9 27625:9,15 27625:21 tolerance 27476:3 27589:14 tomorrow 27624:20 27640:18,21 toneel 27542:22 top 27526:13 topic 27484:20 27485:8 27534:10 topics 27478:20 27487:8 27535:12 tot 27526:3,21 total 27610:15 traangranaat 27625:2 traanrook 27542:24 27621:13 27622:4,13 trained 27492:2,7,16 27569:4 27578:23 27610:22 training 27492:4,6 27511:11 27566:22 27569:2 transcribed 27623:5 transcript 27509:7,8,9 27509:11,15,23 27561:13 27621:1 27624:24 27625:6,19 27628:10 27630:7 transcripts 27561:17 27585:17 translate 27526:24 27625:5 27630:20 translated 27621:17 27628:20,23 translation 27458:15 27625:6 transport 27571:20 27575:2 trespass 27473:16,19 tried 27507:18 27516:11 trigger 27578:20 27600:24 triple 27461:13,13,16 27461:17,17,18 trouble 27514:1 TRT 27492:7,19 27493:14 27494:7 27496:2 27503:19 27511:2 27526:20</p>
--	--	--	--	---

<p>27527:2 27537:5 27550:14 27553:5 27557:5 27559:23 27587:18,20 27597:12 27603:4,7 27609:14 27610:22 true 27594:23 27601:20 27606:21 27606:22 27627:16 truth 27510:10,11,15 27510:16 27524:12 27639:20 truthful 27508:3 try 27491:14 27572:10 27588:4 27608:1 trying 27488:24 27494:16 27506:7 27540:14 27567:20 27587:1 27631:25 27632:2 Tuesday 27628:23 27629:18 turn 27547:9 turned 27558:8,15 27559:6,13 Twee 27542:23 two 27494:5 27521:2 27524:23 27527:25 27531:19,21 27533:4 27533:22,24 27537:8 27543:18 27557:2 27561:16 27570:23 27571:1 27572:11 27580:3,19 27581:1 27605:1 27609:19 27610:15 27613:9,10 27613:11 27615:6 27637:8 tydens 27622:2 type 27477:14 27489:5 27565:18 27588:19 typed 27525:3 27542:4 27542:8,12 27618:21 27618:22,22 typical 27476:21</p>	<p>27563:20 27567:21 27568:1 27573:18 27590:10 27591:2 27593:8 27605:20 27610:17 27631:7 27632:17 27639:5 27640:4 understanding 27465:7 27470:3 27472:17 27473:2 27475:13,25 27476:4 27514:25 27608:2 27631:5 27634:13 understood 27485:9 27511:23 27513:22 27521:19 27590:6 27591:1 27611:1,2 27631:10 undue 27468:7 unduly 27516:3 unequivocal 27474:4 unfair 27511:15 27615:6,9 unforeseen 27588:8,13 unfortunately 27506:25 27514:16 unhindered 27467:15 unit 27484:25 27583:22 27584:8,9 27593:12 University 27465:22 unknown 27621:18 unlawful 27488:8 unpeaceful 27464:13 unrests 27636:15 unstable 27595:8 untoward 27483:21 untruth 27508:8 unusual 27514:23 27541:18 updated 27527:21 27573:13,14 27574:17 upset 27586:22,23 27587:2 27589:20 27597:19 use 27476:1,6 27492:17 27494:7 27495:16 27502:8 27535:23,24 27536:1 27569:4 27572:9 27583:11,12 27593:16 27612:16 usual 27461:20 usually 27577:4 utilising 27546:13 27558:10 27559:8 uur 27617:17</p>	<p>vanaf 27617:16 various 27468:21 27472:11,15 27478:8 27525:9 27634:7,23 vast 27485:17 vehicle 27599:17 27616:25 27618:7 27620:13 vehicles 27587:10 27599:11 27604:23 27606:4,9 Venter 27581:20 ventilated 27519:11 verbally 27503:4 verbatim 27623:6 verduideliking 27622:3 27622:10 vergadering 27619:17 verhoed 27621:15,16 27622:1 27625:4 verkeerde 27605:22 verklaring 27542:20 27622:5,7,7 27623:3 verklarings 27622:9,9 Verleen 27542:19 Vermaak's 27517:8 Vermaak's 27560:4 vermoedelik 27526:4 27526:22 version 27542:5,9,12 27553:3 27558:20 27573:13,14 27574:17 27593:2 27604:17 27610:8 27618:21,22,22 27631:21 verskillende 27622:9 Verwyder 27542:21 verwysend 27617:19 vicinity 27554:20 27555:13 27560:10 video 27581:20 27603:23 27604:25 27611:8 27612:2 27624:19 view 27511:24 27561:10 27564:15 views 27467:11 vigilant 27509:18 violent 27464:13 vir 27608:3,3 27622:12 visible 27604:2 vision 27551:4,16,17 visuals 27612:19 vital 27541:6,6,14 vlieënier 27542:21 vlot 27458:18 vociferous 27508:1,7 voluntarily 27630:24 voorgehou 27630:10 Voorsitter 27458:7,11 27458:19 27622:2 27623:4 voortgaan 27458:22 vrae 27458:12 vroeg 27629:9</p>	<p style="text-align: center;">W</p> <p>waar 27526:3,21 27542:19 waarop 27526:19 waarvoor 27622:4 wait 27620:19 waiting 27458:4 waived 27516:20,22 walk 27591:7 walked 27532:11 27559:13 walking 27559:23 27587:20 27597:14 27600:7 27610:2,10 want 27459:5,9,9 27464:4,9 27467:14 27472:9 27473:9 27474:25 27477:24 27484:18 27486:1 27491:7 27493:6 27494:18,21 27500:13 27501:22 27504:5 27510:23 27516:20 27520:5 27529:17 27530:5 27532:16 27533:3 27542:5 27544:3 27547:17 27561:18 27562:1 27563:17 27570:4 27572:6 27573:4 27593:25 27594:1 27595:17 27603:13 27606:19 27611:16 27612:1,25 27620:25 27621:2 27622:7 27634:12,12 wanted 27466:13 27517:25 27621:19 27623:10 wants 27519:18 war 27579:4 warned 27499:6 warning 27499:6 27504:15 27515:17 27519:6 27558:10 27559:7,17 27560:4 warrant 27551:8 27582:23 27595:2 27611:9,17 27612:3 27612:13,16 27618:18 27623:22 wasn't 27478:13 27515:10 27516:16 27517:19 27518:12 27519:3 27522:1 27541:12 27549:17 27550:1 27566:13 27588:5 27602:4 27631:11 27632:19 27632:21 27633:25 27634:3,9 wasn't 27554:2,8 27564:22 waste 27522:9 27589:19,21</p>	<p>wasted 27458:25 wasting 27578:14 wat 27458:9 27526:20 27542:25 27621:14 27622:7,11,12 27623:3 27625:3 27630:10 water 27526:7 waterstroom 27526:3 27526:21 wave 27590:2 waving 27590:7 way 27459:14 27465:12 27473:12 27486:9 27492:18 27494:23 27517:9 27548:21 27563:23 27564:15 27585:5 27614:25 27628:24 27631:19 27631:23 27632:22 ways 27591:4 weapons 27477:13,14 27477:14,17,19 27569:18 27570:3 27579:4 27587:9 27599:20,25 27604:14 27605:7 27630:24 27636:17 27636:18 27639:2 wear 27591:3 wearing 27546:19 27548:11 27558:3 27592:16 week 27475:16 27635:23 weekly 27475:8 wees 27622:12 wel 27622:5 went 27508:11,25 27540:12,20,24 27551:8,10 27553:5 27555:6 27556:18 27580:5 27581:1 27594:7,16 27596:1,6 27596:8 27599:11,16 27603:21 27611:17 27618:19 weren't 27486:22 27498:22 27510:14 27552:5 27604:4 27626:21 27627:3 weren't 27555:15 27562:8 Wesley 27515:10 27603:10,21 27605:4 West 27479:8,24 27495:15 we'll 27461:9 27480:25 27487:5 27584:22 27613:17 27624:19 27628:16 27632:4 we're 27514:16 27525:20 27545:24 27575:12 27582:15 27628:16 27631:25 27632:2,13,14</p>
<p style="text-align: center;">U</p> <p>u 27458:5,7,8,9,11,12 27458:21 27502:2,3 27608:2,3 27622:6 uit 27526:20 uiteengesit 27622:11 ultimately 27551:4 unanswered 27520:15 unarmed 27463:18 27557:9,10,12 undated 27614:9 understand 27459:1 27470:10 27471:4 27494:16 27512:19 27514:2,19 27515:12 27515:13 27518:13 27521:15,17 27523:4 27532:25 27549:11 27553:22 27554:4 27562:25 27563:5,13</p>	<p style="text-align: center;">V</p> <p>valid 27632:16 value 27633:1 van 27505:2,11 27539:2,12,15,16 27542:22 27621:14 27625:3 27629:10 27630:8,9</p>	<p>valid 27632:16 value 27633:1 van 27505:2,11 27539:2,12,15,16 27542:22 27621:14 27625:3 27629:10 27630:8,9</p>	<p>valid 27632:16 value 27633:1 van 27505:2,11 27539:2,12,15,16 27542:22 27621:14 27625:3 27629:10 27630:8,9</p>	<p>valid 27632:16 value 27633:1 van 27505:2,11 27539:2,12,15,16 27542:22 27621:14 27625:3 27629:10 27630:8,9</p>

<p>we've 27458:24 27459:7 27462:1 27517:24 27519:21 27524:22,23 27538:17 27569:15 27571:17 27573:15 27579:2 27634:20</p> <p>we'll 27561:13</p> <p>we're 27564:10</p> <p>whatsoever 27552:3 27627:22</p> <p>what's 27509:14 27518:20 27531:12 27532:21 27541:10 27570:25 27573:9 27613:4 27631:15</p> <p>whichever 27512:5</p> <p>whilst 27468:6 27548:12 27582:15 27627:7 27628:24</p> <p>white 27540:6 27546:19 27548:11 27558:3 27595:20</p> <p>who's 27461:19 27626:18 27637:21</p> <p>who've 27458:4</p> <p>window 27581:6</p> <p>Wing 27484:25 27567:16 27620:10</p> <p>wire 27476:20</p> <p>wiser 27519:2</p> <p>wishes 27472:22</p> <p>withdraw 27564:17</p> <p>withdrawn 27633:16</p> <p>withheld 27530:2 27564:8 27615:5</p> <p>witness 27458:16 27459:8 27461:13,15 27473:1,15 27487:22 27488:19 27499:6,11 27508:15 27509:22 27509:23 27511:10 27511:14 27514:3,4,5 27514:8,8,11,15,20 27516:19 27517:1,2 27518:2,4,7 27519:16 27520:20 27521:1 27522:5 27552:11 27561:6 27563:10,17 27563:19,21 27569:20 27592:24 27598:25 27620:22 27621:5 27631:6,8 27632:25</p> <p>witnesses 27495:4 27560:22 27598:14 27598:19 27602:8 27615:6</p> <p>witness's 27518:21 27521:15</p> <p>wonder 27516:7</p> <p>won't 27460:19 27473:16,16,19 27512:1 27514:10 27515:3,24 27535:2 27579:23 27604:24</p>	<p>27609:22 27632:15 27637:16</p> <p>word 27517:17 27535:24,25 27542:23 27543:3 27582:3,4 27590:1,7 27590:10,17,17,21 27622:10 27628:6 27636:11</p> <p>wording 27526:11</p> <p>words 27527:5,8 27534:22 27535:23 27535:25 27536:6 27571:22 27586:8 27593:10 27621:15</p> <p>work 27475:25 27550:13 27564:3 27581:4 27616:13 27617:2</p> <p>working 27493:1 27601:24 27637:22</p> <p>works 27475:13 27581:25</p> <p>workshop 27567:18 27568:10,13 27569:2</p> <p>workshops 27568:7,9</p> <p>world 27555:4</p> <p>worried 27589:18 27629:1</p> <p>worry 27633:8</p> <p>worth 27519:15 27534:22</p> <p>worthy 27534:19</p> <p>wou 27621:14 27625:3</p> <p>wouldn't 27515:1 27605:8 27609:9</p> <p>would've 27512:4,9</p> <p>wrap 27534:10</p> <p>write 27502:15 27504:19 27528:25 27530:4 27534:13,15 27573:9,11 27574:17 27622:22 27628:2</p> <p>writing 27495:9 27503:3 27632:14</p> <p>written 27502:7 27583:2</p> <p>wrong 27465:8 27474:4 27478:24 27505:22 27531:12 27532:8 27547:3 27552:23 27560:12,13,17 27568:24 27571:9,11 27595:2 27605:23 27606:5,8,8 27611:2 27616:10 27635:2 27640:7,8</p> <p>wrote 27523:19 27535:19 27543:11 27619:20,21</p>	<p>27525:12 27526:13 27527:10 27562:22 27606:2</p> <p>yearly 27567:4,19 27568:2</p> <p>years 27482:6</p> <p>yesterday 27509:8</p> <p>you'd 27602:21 27625:16</p> <p>you'll 27460:19 27572:9</p> <p>you're 27458:14 27477:4 27478:16 27486:4 27487:15 27504:4 27514:19 27521:1 27522:20 27538:8,9,9 27572:15 27575:11 27580:6 27589:7 27590:12,13 27590:21,22 27594:16 27597:1 27613:20 27618:1 27622:16 27623:9 27624:3 27628:5 27629:11 27630:16 27633:7 27635:16</p> <p>you've 27470:22 27478:7 27515:13 27532:25 27534:6 27543:2,17 27548:25 27571:22 27574:7 27579:22,24,25 27581:13 27624:9 27628:15</p>	<p>11 27475:23 27491:9 27530:22 27544:4 27629:19</p> <p>11(7) 27491:4</p> <p>11:15 27515:9</p> <p>11:34 27529:2</p> <p>12 27526:1 27628:11,12 27628:18,18</p> <p>12:06 27538:7</p> <p>12:26 27552:5</p> <p>12:46 27566:10</p> <p>13 27477:21 27548:3,24 13th 27477:18,22 27480:21 27505:9,13 27505:15,19 27506:19 27507:3 27512:12 27532:11 27538:12 27540:18 27542:13 27564:20 27564:22 27574:4 27585:4 27588:10 27603:18 27604:14 27609:9 27614:8 27615:14 27618:24 27619:1 27621:6,6</p> <p>13:52 27572:14</p> <p>14 27531:21 27588:7,18 27603:12 27604:1,3 27630:20 27631:2</p> <p>14de 27630:8</p> <p>14th 27532:4 27628:23 27629:18,22,25 27630:13,16 27631:8 27631:22 27632:1,21</p> <p>14:12 27586:23</p> <p>14:30 27615:25</p> <p>14:32 27601:1</p> <p>14:51 27613:12</p> <p>140 27575:5,5</p> <p>15 27630:20 27631:2</p> <p>15de 27630:8</p> <p>15th 27629:25</p> <p>15:30 27542:19</p> <p>15:19 27613:19</p> <p>15:39 27626:8</p> <p>15:58 27640:16</p> <p>150 27479:3</p> <p>16 27603:20 27604:1,4 27630:21 27631:2</p> <p>16de 27617:16 27630:8</p> <p>16th 27477:18,22 27480:21 27485:10 27485:23 27486:11 27486:14,16 27504:19 27574:5 27615:14,15 27616:19,20 27619:1 27629:25 27631:11 27632:20</p> <p>17 27464:6 27466:4,9 27466:16</p> <p>18 27493:4,9,21 27499:18 27500:3,10</p> <p>1993 27465:13 27535:13</p> <p>1996 27535:13</p>	<p>2</p> <p>2 27472:15,15 27476:8 27476:14 27570:20 27608:13</p> <p>20 27542:24</p> <p>2002 27482:7</p> <p>2007 27570:12 27571:3 27573:3</p> <p>2007/09/01 27570:11</p> <p>2008 27571:3 27574:10 27574:11</p> <p>2008/12/01 27570:21</p> <p>2012 27477:19 27495:23 27504:19 27525:3,18 27527:9 27527:16 27528:10 27528:16 27529:19 27529:24 27574:4,5 27574:16,18 27575:12 27582:18 27617:16 27624:23 27626:7 27628:23</p> <p>2013 27574:1</p> <p>2013-04-01 27573:22</p> <p>2014 27458:1 27523:8 27527:15 27530:19 27622:6 27623:4</p> <p>205 27628:14</p> <p>21st 27523:11</p> <p>21ste 27623:3</p> <p>22nd 27583:19</p> <p>2227 27544:4</p> <p>23 27560:11</p> <p>24 27621:2,4</p> <p>25272 27621:1,4</p> <p>25275 27625:8 27628:15</p> <p>25276 27628:10,14</p> <p>25284 27630:7</p> <p>262 27470:6 27489:10 27489:22 27490:13 27490:20,22,24 27491:4 27588:6</p> <p>28th 27508:24</p> <p>29 27458:1</p>
				2
				3
				4
				5
				6

6 27616:23 27617:11,24
 27618:1 27619:3,9
 27620:9 27621:8
 27629:21 27630:3,12
 27630:15 27631:8,12
 27631:15,17,21
 27632:1,21,21
 27634:13,15,18,25
6:37 27629:8 27631:20
 27631:23 27632:22
60 27459:16

7

7 27477:6,6 27526:13
 27556:9 27617:2,7,17
 27618:3 27619:16,23
 27629:16 27630:4,7
 27631:13
7th 27530:19 27531:20
7.1 27613:6
7:40 27616:19
 27618:10
76 27628:16

9

9 27469:2 27556:14,15
 27556:22,24 27557:7
 27573:7 27607:8
 27618:18 27621:4,5
 27628:22 27629:6,6
9(1) 27476:8
9(3) 27469:19

