

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 196

06 MARCH 2014

PAGES 23907 TO 24065



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1 [PROCEEDINGS ON 6 FEBRUARY 2014]
 2 [09:13] CHAIRPERSON: The Commission resumes.
 3 Major General, you're still under oath.
 4 GANASEN NAIDOO: s.u.o.
 5 CHAIRPERSON: Mr Chaskalson, you'll
 6 cross-examine in a moment, but before we start I want to
 7 say something to the parties. We're now in March. In
 8 terms of the extended terms of reference that we have,
 9 proclamation setting up the Commission, we are due to stop
 10 hearing evidence at the end of April. It may well be that
 11 the parties are already doing what I'm now going to say,
 12 but if they're not I would suggest they immediately start
 13 doing something about it, and that is we're not going to be
 14 able to allow very much time between the end of the
 15 evidence and the beginning of argument.
 16 We've been given the period after the end of
 17 April to write the report. We may well have to use some of
 18 that time for hearing of argument, but we won't have the
 19 luxury of giving parties a lengthy period to prepare heads
 20 of argument. Many of the issues have been defined. A good
 21 deal of the evidence has been led on most of the issues in
 22 fact which will call, arise for decision, so I would urge
 23 the parties to, if they're not doing it already, to start
 24 preparing heads of argument which they will be able to
 25 present to us during the argument stage.

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1 We also will not have very long time for
 2 argument, so therefore it will be necessary for the parties
 3 to have full written argument. We may well have to have
 4 time limits for argument. We won't be quite as strict as
 5 the United States Supreme Court where the red light goes on
 6 sometimes in the middle of a word, so we'll be flexible in
 7 that respect, but we won't have a lot of time. So the oral
 8 argument will have to be focussed on highlights and so on.
 9 But anyway, please, the parties must please, if they're not
 10 doing it already - I imagine many of them are - to start
 11 preparing heads of argument so that we don't lose any time,
 12 which we won't have to lose anyway, at the end of the time
 13 allotted to us for the hearing of evidence.
 14 MR MPOFU: Chairperson, I'm sorry, I've
 15 not been here for a couple of days, so maybe there's
 16 something that I missed. Is this premised on finishing at
 17 the end of April?
 18 CHAIRPERSON: In terms of the extended
 19 proclamation we only have until the end of April.
 20 MR MPOFU: Yes.
 21 CHAIRPERSON: And it would be
 22 irresponsible for us to assume that the period might well
 23 be extended beyond that. I'm not saying it may not be, but
 24 we can't assume it will be.
 25 MR MPOFU: Yes.

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1 CHAIRPERSON: And so we have to plan our
 2 progress forward on the basis that that's the time which
 3 the President has given us, which is an extended period.
 4 When we asked for the original extension we gave an
 5 estimate of how long things would take and he gave us the
 6 full extension we asked for. There's no guarantee that he
 7 will necessarily give us a further extension. As I say, it
 8 would be irresponsible for us to assume automatically that
 9 we'll get it, so we have to plan ahead on the realistic
 10 pragmatic approach which I've outlined.
 11 MR MPOFU: Yes, well Chairperson, I
 12 appreciate that. On our estimation - we've obviously done
 13 the exercise as well because the time is running out, but
 14 on our estimation by the end of April we will not have
 15 finished even the police case. So I don't know how could
 16 we argue the case if -
 17 CHAIRPERSON: Well, we'll see about that.
 18 Don't be too pessimistic too soon.
 19 MR MPOFU: Well, we'll see about that
 20 then, Chairperson. Thank you.
 21 CHAIRPERSON: Mr Chaskalson? I've
 22 already reminded you, Major General, just in case you've
 23 forgotten, that you're still under oath.
 24 GENERAL NAIDOO: Under oath, Chair.
 25 CHAIRPERSON: Mr Chaskalson.

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1 CROSS-EXAMINATION BY MR CHASKALSON SC (CONTD.):
 2 Thank you, Chairperson. Major General, I want to go back
 3 to your briefings to Major General Annandale and the
 4 National Commissioner on the evening of the 16th and to
 5 clarify what you told them and then to compare that with
 6 what you would have seen at scene 2, and you'll recall that
 7 Major General Annandale in his testimony indicated that the
 8 view that he formed from your report to him on the evening
 9 of the 16th was that the people killed at scene 2 were
 10 killed by police officers acting in self-defence or private
 11 defence. You recall I took you to that passage in the
 12 evidence?
 13 GENERAL NAIDOO: Chair, I think you
 14 indicated that, yes, the information that he got from
 15 Brigadier Calitz and myself, yes.
 16 MR CHASKALSON SC: Now I understood your
 17 evidence on Tuesday to be that you had not conveyed to
 18 Major General Annandale that the deaths at koppie 3 were
 19 deaths caused in self-defence or private defence. Is my
 20 understanding correct?
 21 GENERAL NAIDOO: Chair, what I
 22 communicated on Tuesday was that at that particular point
 23 in time I had not had detailed accounts of each of the
 24 shooting incidents at koppie 3, so I gave the raw data as I
 25 had obtained it from the scene.

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1 MR CHASKALSON SC: So you conveyed
 2 nothing to Major General Annandale that would have led him
 3 to believe that we were dealing with cases of self-defence
 4 or private defence?
 5 GENERAL NAIDOO: Chair, what I've
 6 indicated is I could not specifically discuss any of the
 7 specific incidents of shooting at that stage because I did
 8 not have the detail knowledge.
 9 MR CHASKALSON SC: And did you explain to
 10 Major General Annandale that you had witnessed none of
 11 these shootings or deaths?
 12 GENERAL NAIDOO: Chair, I think I
 13 indicated that I narrated what I experienced and that would
 14 include what I saw or obviously that will exclude what I
 15 did not see.
 16 MR CHASKALSON SC: No, but was it clear
 17 to Major General Annandale that you yourself had not
 18 witnessed any of killings?
 19 GENERAL NAIDOO: Chair, I am not sure.
 20 At that stage he didn't specifically question me on that
 21 aspect.
 22 MR CHASKALSON SC: Well, you know what
 23 you told him. Should it have been clear to him that you
 24 had not witnessed any of the killings?
 25 GENERAL NAIDOO: Well, based on my

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1 narrative which I've also testified here I think it was
 2 clear that I did not specifically see any of the killings.
 3 MR CHASKALSON SC: Did you give him any
 4 indication of what you had witnessed in relation to where
 5 you found the dead bodies and the circumstances in which
 6 you found them?
 7 GENERAL NAIDOO: Chair, yes, I did
 8 indicate in terms of the bodies that we found and I'm not
 9 sure in terms of circumstances what that pertains to.
 10 MR CHASKALSON SC: Well, what information
 11 did you give in relation to the dead bodies that you had
 12 found?
 13 GENERAL NAIDOO: Chair, at that stage we
 14 indicated to him 13 dead bodies had been identified and a
 15 particular number of injured people that were located all,
 16 in various areas around the koppie 3.
 17 MR CHASKALSON SC: Well, I want to look
 18 at the circumstances in which you would have seen the dead
 19 bodies and question you in that regard, and to do this,
 20 Chairperson, I'm afraid we have to see photographs of dead
 21 bodies in particular positions and we would need to give a
 22 warning.
 23 CHAIRPERSON: I'm informed, as you would
 24 have heard, that we're now going to be asked to look at
 25 photographs of the dead bodies of some of those who were

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1 killed at scene 2 on koppie 3. These photographs, some of
 2 which we've seen already, or all of which I think we've
 3 seen already, are of such a nature that they may well cause
 4 emotional distress to those who were the loved ones and
 5 family members of the persons depicted on the photographs.
 6 So I'm going to give them an opportunity, those persons, to
 7 leave the chamber if they wish before the photographs are
 8 shown and I ask that the photographs are not shown until a
 9 minute has elapsed from now. There's no-one who shows any
 10 signs of wishing to leave the chamber, so I think we don't
 11 have to wait the full minute and we may now proceed.
 12 MR CHASKALSON SC: If we can then start
 13 with the photograph of you with Brigadier Calitz with your
 14 stun grenades clipped on to your chest in the heart of the
 15 koppie, that's JJJ29.253.
 16 CHAIRPERSON: The first picture we're
 17 seeing, you haven't told us what it is yet, Mr Chaskalson,
 18 it doesn't show a dead body, it shows Brigadier Calitz, two
 19 other policemen on his left and half of the picture of the
 20 witness with his stun grenades on the left, on – to the
 21 right of Brigadier Calitz.
 22 MR CHASKALSON SC: Well, Major General,
 23 for orientation – never mind orientation purposes. Do you
 24 know where this photograph was taken? Can you recognise
 25 the position in which this –

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1 CHAIRPERSON: For the purposes of the
 2 record tell us what it is, what the exhibit number is or
 3 whatever, so –
 4 MR CHASKALSON SC: We have recorded it.
 5 CHAIRPERSON: If you did then I didn't
 6 hear it.
 7 MR CHASKALSON SC: It's JJJ29.253.
 8 CHAIRPERSON: Thank you. I didn't hear
 9 that. Sorry about that.
 10 MR CHASKALSON SC: Can you identify where
 11 this position is?
 12 GENERAL NAIDOO: Chair, not specifically
 13 but broadly yes, I think it's somewhere in the middle of
 14 the koppie.
 15 MR CHASKALSON SC: Do you recall whether
 16 there were any dead bodies in the immediate vicinity of the
 17 position captured in this photograph?
 18 GENERAL NAIDOO: Chair, specifically I
 19 can remember that most of the injured people and some of
 20 those who later died were brought in from among the rocks
 21 to an open area possibly where this is the edge of that
 22 open area.
 23 MR CHASKALSON SC: I think your
 24 recollection is in fact – or your recollection in relation
 25 to injured people being brought into an open area is

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1 correct. Your placing of this picture is not. If we go to
 2 the next photograph of Warrant Officer Ramanala we can
 3 locate this picture, but before we do I'd ask people to
 4 note the black jacket in the bottom right-hand corner of
 5 this photograph, which will be visible in the zoomed out
 6 picture of the next shot of Warrant Officer Ramanala, which
 7 is JJJ29.254. That is the black jacket that we saw in the
 8 previous shot. Your position was possibly just off the
 9 bottom of the photograph on this shot and we see behind
 10 where you were the bodies of victims G and H. Those are Mr
 11 Mosebetsane and Mr Mabiya with the red blanket and the pink
 12 blanket around them, and you'll recall that we spent a long
 13 time looking at this gun that spinned round and round over
 14 a 90-minute period, which included your trip through this
 15 period. That's the scene we're looking at now. Does
 16 that –

17 CHAIRPERSON: I'm sorry to interrupt you,
 18 Mr Chaskalson. You refer to the bodies covered by the red
 19 blanket and the pink blanket. There is of course another
 20 body closer to the black jacket to which you've referred.
 21 You haven't said who that is.

22 MR CHASKALSON SC: That man is not dead.
 23 That man was slightly injured and we haven't been able to
 24 identify him. Does this help you to orient where you were?
 25

GENERAL NAIDOO: A little, yes.

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1 follows the route that he went in when he took the
 2 photograph of you and Brigadier Calitz. So we've seen 254
 3 and 253. If we look at JJJ252, that's – I beg your pardon,
 4 that is Mr Liau who is dead. He is body E. He would have
 5 been pretty close to your feet in the last photograph. If
 6 we, maybe to orient ourselves we can look at page 47 of
 7 exhibit B, which is Captain Mohlaki's sketch plan of the
 8 scene. Page 47. So where you are standing we can see F,
 9 which is the firearm which we've just been looking at. You
 10 were standing just to the right-hand side of where the
 11 arrow point marks F. Behind you were victims G and H, Mr
 12 Mabiya and Mr Mosebetsane. In front of you were victims D
 13 and E. We've seen Mr Liau. We're about to see Mr
 14 Mangcotywa. He is body D and he was on the previous
 15 photograph of Warrant Officer Ramanala. He is number 251,
 16 if we go to 251, JJJ29.251. He is lying right next to Mr
 17 Liau. We see that from 250, the previous photograph of
 18 Warrant Officer Ramanala which shows them both together.
 19 Can we go to 250? Do you recall seeing them?

20 GENERAL NAIDOO: Yes, I think so.

21 MR CHASKALSON SC: Right next to victims
 22 D and E is the man who I previously incorrectly identified
 23 as Mr Liau and I'm going to get his correct identification
 24 now. Can we see the previous shot of Warrant Officer
 25 Ramanala? That's 249. This man is one of the four victims

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1 MR CHASKALSON SC: Do you recall, and if
 2 we go back to JJJ253 – sorry, JJJ, it is 253, JJJ29.253 –
 3 you're walking away from where the bodies of Mr Mosebetsane
 4 and Mr Mabiya are. They're on the other side of these
 5 policemen. Do you recall how you got to this scene? Did
 6 you walk in the way that you're walking away, or did you
 7 walk in through the passage between the rocks to the left
 8 of the policemen – let's go back to 254 – behind the man
 9 lying on his side? Do you recall that?

10 GENERAL NAIDOO: Chair, no, not
 11 specifically. I can't remember.

12 MR CHASKALSON SC: You see, Major General
 13 Naidoo, that photograph of you and Brigadier Calitz is
 14 right in the heart of what we've described as the killing
 15 zone in koppie 2. It's –

16 CHAIRPERSON: Koppie 3.

17 MR CHASKALSON SC: In koppie 3, scene 2.
 18 It's in a position where within five to 10 metres of where
 19 you stood there were eight dead bodies and one almost dead
 20 body, the body of Mr Liau, who was alive when you walked
 21 past him but was dead quite soon thereafter, and I'd like
 22 us to go through the photographs of these bodies so we can
 23 see the circumstances in which you would have found them,
 24 and how we can go through them is by tracking back on
 25 Warrant Officer Ramanala's photographs which sort of

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1 who died en route to hospital after scene 2. He was alive
 2 when you would have come through. Do you recall seeing
 3 him?

4 GENERAL NAIDOO: Yes, I think so, Chair.

5 CHAIRPERSON: I didn't hear your answer.

6 GENERAL NAIDOO: Chair, I think I do
 7 remember him, yes.

8 CHAIRPERSON: Thank you.

9 MR CHASKALSON SC: His position, if we go
 10 back to slide 47 of exhibit B, his position would have been
 11 just above the position of victim K, Mr Mngxande. He was
 12 leaning, the rock that we saw him leaning against is the
 13 rock to which the victim K arrow points.
 14 [09:33] And he is just above the position of victim K on
 15 this diagram, very close to where you were standing. If we
 16 then go to the next victim you would have seen, that would
 17 have been Mr Ngxande himself, victim K, whose position we
 18 have seen marked on this sketch plan, Warrant Officer
 19 Ramanala photographed him in the previous shot, 248 JJJ29
 20 248, and sorry, before we leave 249, just note this brown
 21 blanket at the foot of the photograph 249, because that
 22 will appear again in 248 where we see Mr Ngxande and there
 23 is the blanket and there is the man who will die on his way
 24 to hospital. This is Mr Ngxande. If we go back to the
 25 koppie site, do you recall seeing Mr Ngxande lying on the

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1 ground?

2 GENERAL NAIDOO: I think I do.

3 MR CHASKALSON SC: Sorry, you say you

4 think you do? Or you don't think you do?

5 GENERAL NAIDOO: I said I think I do.

6 MR CHASKALSON SC: Can we go to the next

7 victim whom you would have seen, or you would probably have

8 seen? If we go – if we can get our orientation from the

9 sketch plan again, can we go back to the sketch plan? I

10 will indicate where this photograph is taken, and the route

11 that Warrant Officer Ramanala followed. We have followed a

12 route which started with victims G and H here, and has

13 moved round the rock in a clockwise direction picking up

14 the gun, victims D and E, the man who is about to die whose

15 name we are still tracking down, Mr Ngxande victim K, if we

16 go around the rock the other way, completing the clockwise

17 move around the rock, we will see the next photograph, and

18 if we can go there, the photograph that we just saw which

19 was 247, that is the man whom the Chairperson identified on

20 this very, the very first photograph I took us to after the

21 photograph of you and Brigadier Calitz, the man who

22 survived. The foot that we see in the top left-hand area

23 of this photograph, is in fact the foot of victim G, Mr

24 Mosebetsane, we've come full circle around that rock, and

25 that becomes clear if we go one photograph back, which is

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1 246 where we see Mr Mosebetsane with the red blanket over

2 him, and Mr Mabiya with the pink blanket over him. If we

3 go back one further to 245, we see that as we go clockwise

4 round the rock to reach this position, we pass two more

5 dead bodies. This is victim J, Mr Samphendu, at JJJ29 245,

6 and alongside him is victim I, Mr Nokamba who we will see

7 in 244, the preceding photograph of Warrant officer

8 Ramanala. And that is Mr Nokamba. If we can go back to

9 the sketch – well, before we go back to the sketch plan, do

10 you recall seeing Mr Nokamba and Mr Samphendu?

11 GENERAL NAIDOO: I think I do, yes.

12 MR CHASKALSON SC: If we go back to the

13 sketch plan we will orient their position again. We've

14 just gone round the rock, so I and J are Mr Nokamba and Mr

15 Samphendu, they are there. So going around the rock, we

16 see G and H is two, D and E is 4, the man who died later,

17 who I can identify, that's Mr Mogai, that's five, Mr

18 Ngxande, who is K, that's six, I and J is eight. We would

19 also, or from your position, you would also have been able

20 to see victim L. I am afraid my pointer has just died.

21 Victim L if one goes down the rock to where the Z marking

22 is, immediately below the centre of the rock is a spot

23 which is marked as Z, to the right of that Z spot, is

24 another spot which is marked as L. That's Mr Gadlela and

25 from the position where you were, you would probably have

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1 been able to see him even from the very position you were

2 at 253, certainly if you saw the other bodies, you would

3 have been likely to see him, because he was lying in the

4 open. If we go to JJJ29 274, we will see where he was

5 lying.

6 CHAIRPERSON: Or you mean 247?

7 MR CHASKALSON SC: 274, because Warrant

8 Officer Ramanala was just photographing as he went around

9 the rock. This is Mr Gadlela, and he is essentially in the

10 open, if we go back to the sketch plan, we will see where

11 he is relative to where you were. He is at this point, you

12 were there, I am marking the point of Mr Gadlela's, the

13 point marked as victim L on the sketch plan. The point

14 where Major General Naidoo was, was between the F point and

15 the K point. And as you can see, this is open ground, the

16 point from where you were to Mr Gadlela. The bushes that

17 we see in the photograph of Mr Gadlela are behind him from

18 where you were standing. Do you recall seeing Mr Gadlela,

19 would you like to see 274 again?

20 GENERAL NAIDOO: No, I think I do

21 remember.

22 MR CHASKALSON SC: Now, Major General,

23 that's the scene in the heart of the koppie, in the area

24 we've described as the killing zone of koppie 3. When you

25 and the NIU came over the rocks, if we mark the rocks, I am

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1 marking them on the sketch plan now, you would have come

2 over according to your evidence, on the area towards the

3 left of the rocks that are identified on the sketch plan.

4 It's the – there's a big rock just below the centre of the

5 sketch plan, which says "rocks" on it and to its right

6 there is another rock that says "rocks" and above that rock

7 is another rock that says "rocks." You would have come

8 over the first big rock that says "rocks" on the left-hand

9 side, is that correct?

10 GENERAL NAIDOO: That is correct, yes.

11 MR CHASKALSON SC: And when you came over

12 that rock, apart from Papa11 which would have been situated

13 near where the K indicating victim K is, but I am talking

14 about the actual letter K, as opposed to the point marked

15 by letter K. Apart from Papa11, you would have been the

16 first SAPS members with a sight of the area which I have

17 described as the killing zone of koppie 3, that area around

18 or the area in which bodies D to L were found. Would you

19 accept that?

20 GENERAL NAIDOO: I can't specifically

21 remember other members, I did mention I did POPs members,

22 yes.

23 MR CHASKALSON SC: But the POPs member

24 you saw would have been the POPs members in Papa11, is that

25 not correct? In and around Papa11.

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1 GENERAL NAIDOO: I am not sure who they
 2 were, but yes, they were POPs members.
 3 MR CHASKALSON SC: Well, when you first
 4 had sight of this area of the koppie, the – what I am
 5 describing as the killing zone of koppie 3, when you first
 6 had sight of that area, did you see any SAPS members in
 7 that area? In the area, in the heart of the koppie itself?
 8 GENERAL NAIDOO: Chair, I can't
 9 specifically remember because as we crested that koppie, I
 10 indicated in my evidence on the right-hand side in that
 11 cleft of the rocks, is where we found about three or four
 12 strikers and we arrested them, I think we had a discussion
 13 about that. They were lying in that cleft in the rock,
 14 somewhere there.
 15 MR CHASKALSON SC: Am I marking the cleft
 16 correctly? The cleft underneath, or to the right-hand side
 17 of T1 to T3.
 18 GENERAL NAIDOO: That's correct, we were
 19 there.
 20 CHAIRPERSON: And above that A? Is that
 21 correct? That's the cleft. Above letter A. And then an
 22 arrow, there's a letter A an arrow, pointing to a spot,
 23 next at the base of the rocks, and then the cleft is
 24 immediately above that, am I understanding correctly?
 25 GENERAL NAIDOO: Chair, I think that

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1 indication there is that it was a side of a rock as it was
 2 indicated, there was a higher rock and a lower rock. We
 3 were, we climbed up the lower rock on the left and as you
 4 came to the top, when it, one of the two, there was a cleft
 5 in – or a gap in the rock, where about three or four of the
 6 miners had taken refuge, who we arrested.
 7 CHAIRPERSON: Yes, I understand that, I
 8 am just trying for the benefit of those of us who have the
 9 read the record later, and others as well, follow this,
 10 what Mr Chaskalson is putting to you. He's talking about
 11 the cleft in the rock, saying, trying to describe where one
 12 can see the cleft, if one looks at the sketch plan. All I
 13 am saying, am I right there?
 14 GENERAL NAIDOO: You are correct, Chair.
 15 MR CHASKALSON SC: Sorry, Major General,
 16 you were explaining to me what happened as you came over
 17 the crest and you found these strikers in the cleft.
 18 GENERAL NAIDOO: Chair, as I indicated,
 19 it took us a couple of minutes to arrest them, remove them,
 20 pass them back down the line, the NIU members that were
 21 following.
 22 MR CHASKALSON SC: But during this
 23 period, there wasn't any shooting taking place in your
 24 immediate vicinity, you –
 25 GENERAL NAIDOO: No, not that I could

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1 recall.
 2 MR CHASKALSON SC: And you didn't hear
 3 any shooting in the direction of this killing zone?
 4 GENERAL NAIDOO: No, Chair, I – that
 5 would have affected us moving forward. If I remember after
 6 the arrests, we went directly down.
 7 MR CHASKALSON SC: Now, you spoke about
 8 what happened after you went down, and you talked about a
 9 POPs member firing rubber bullets into the koppie to
 10 persuade the strikers to come out. Do you recall that?
 11 GENERAL NAIDOO: Chair, I think I
 12 indicated he fired a rubber bullet whilst I was at his
 13 side, yes.
 14 MR CHASKALSON SC: A rubber bullet? Now,
 15 would the rubber bullet he fired have been in the direction
 16 of what I've described as the killing zone?
 17 GENERAL NAIDOO: Yes, it could be, Chair,
 18 yes.
 19 MR CHASKALSON SC: And then you saw a
 20 large number of strikers emerge from that area, was your
 21 testimony.
 22 GENERAL NAIDOO: Yes, initially they came
 23 in ones and twos and eventually more and more came out,
 24 yes.
 25 MR CHASKALSON SC: So the area that I've

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1 described as the killing zone was an area in which you
 2 subsequently found out that there had been relatively
 3 substantial number of strikers who were congregated.
 4 GENERAL NAIDOO: Congregated, I think in
 5 the rocks, yes because, maybe you should just indicate to
 6 me which area are you talking about.
 7 MR CHASKALSON SC: The area in and –
 8 well, let's say the area behind the rock, name, described
 9 as rock to the left of the point marking, victim K.
 10 GENERAL NAIDOO: Chair, what I would
 11 rather say is that in that entire bushy area with rock,
 12 there was a substantial number of people discovered, yes.
 13 MR CHASKALSON SC: For my purposes, what
 14 I would like to put to you is that you, you must have known
 15 by the time you were briefing Major General Annandale that
 16 the eight dead people you saw who we've now looked at in
 17 the photographs of Warrant Officer Ramanala had been killed
 18 in an area in which quite a large number of strikers had
 19 congregated. Would you accept that?
 20 GENERAL NAIDOO: Well, I subsequently
 21 found a large number of strikers, yes.
 22 CHAIRPERSON: The point is that by the
 23 time you spoke to Major General Annandale, you had found
 24 this large number of strikers, so the answer to the
 25 question you have been asked, I take it must be yes.

<p style="text-align: right;">Page 23927</p> <p>1 GENERAL NAIDOO: I did indicate, yes.</p> <p>2 MR CHASKALSON SC: And you must have</p> <p>3 known that they weren't killed at close quarters because</p> <p>4 there wasn't any shooting when you came over the rocks and</p> <p>5 they must have been dead before you came over the rocks.</p> <p>6 GENERAL NAIDOO: Chair, as to when</p> <p>7 exactly they were shot, I was not sure. As I indicated</p> <p>8 when I came down, the injured and the dead were either</p> <p>9 among the rocks or they were then brought out or some of</p> <p>10 them were lying in that area. I think this is the area</p> <p>11 that I have testified to that people were brought out of</p> <p>12 the rocks too.</p> <p>13 MR CHASKALSON SC: Well, the area where</p> <p>14 the field hospital was set up is the area roughly around</p> <p>15 the circle that says T1 to T3. That's where people were</p> <p>16 brought up for, brought out for medical attention and to be</p> <p>17 laid on the ground, to be arrested, and searched or to be</p> <p>18 searched and arrested. It's a bigger area than that so-</p> <p>19 called T1 to T3, but it's the area around that. Would you</p> <p>20 dispute that?</p> <p>21 GENERAL NAIDOO: Chair, initially the</p> <p>22 people that were being brought out were brought out to the</p> <p>23 area that we have been discussing now. Yes, and people</p> <p>24 were being moved beyond that as well afterwards. The</p> <p>25 people that were being arrested were further up between</p>	<p style="text-align: right;">Page 23929</p> <p>1 the time I had come down to the POPs members obviously</p> <p>2 there was a line of members now confronting the strikers</p> <p>3 who were hidden in the bushes and the rocks. So as to when</p> <p>4 I came over, did I see the people on the left, I did not</p> <p>5 specifically notice, I was engaged in something in my</p> <p>6 immediate vicinity, but by the time I came down there were</p> <p>7 members – well, there were members all over the place.</p> <p>8 MR CHASKALSON SC: Yes, we know from</p> <p>9 Warrant Officer Mamabolo that even if there were POPs</p> <p>10 members confronting those members, those members were not</p> <p>11 charging at the POPs members, were not firing at the POPs</p> <p>12 members, and the POPs members weren't shooting at them.</p> <p>13 That's all confirmed by Warrant Officer Mamabolo in KKK61.</p> <p>14 You recall that from Friday? None of these POPs members</p> <p>15 fired shots, fired live ammunition at those people, he saw</p> <p>16 none of them -</p> <p>17 GENERAL NAIDOO: Yes, that's correct,</p> <p>18 Chair.</p> <p>19 MR CHASKALSON SC: He saw none of them</p> <p>20 shooting or attacking the police with dangerous weapons, so</p> <p>21 Warrant Officer – so they couldn't have been killed by the</p> <p>22 POPs members who were there.</p> <p>23 GENERAL NAIDOO: At the time that I was</p> <p>24 there, no.</p> <p>25 [09:53] MR CHASKALSON SC: Can you think of any</p>
<p style="text-align: right;">Page 23928</p> <p>1 where the N is and the F, that was the area that was used</p> <p>2 for the people that were arrested were as lying on the</p> <p>3 ground.</p> <p>4 MR CHASKALSON SC: Major General, we can</p> <p>5 look at photographs, aerial photographs that will actually</p> <p>6 establish where that area was. You may, I may have put it</p> <p>7 too far east by saying it's T1 to T3, but the point that I</p> <p>8 want to put to you, is that you saw eight people dead in</p> <p>9 the circumstances that we've just seen in the photographs</p> <p>10 of Warrant Officer Ramanala. You knew that they couldn't</p> <p>11 have been killed after you came over the top of the koppie,</p> <p>12 over the top of the rocks because there was no shooting in</p> <p>13 that vicinity after you came over the top of the rocks. Do</p> <p>14 you accept that?</p> <p>15 GENERAL NAIDOO: Yes.</p> <p>16 MR CHASKALSON SC: So they must have been</p> <p>17 killed before then.</p> <p>18 GENERAL NAIDOO: That is correct, Chair.</p> <p>19 MR CHASKALSON SC: You didn't see any</p> <p>20 SAPS members in their immediate vicinity between the time</p> <p>21 or, you didn't see any SAPS members in their immediate</p> <p>22 vicinity when you came over the rocks?</p> <p>23 GENERAL NAIDOO: Chair, as I indicated,</p> <p>24 when we came to the top of the rocks we were distracted</p> <p>25 with the fact that we were busy with those arrests, and by</p>	<p style="text-align: right;">Page 23930</p> <p>1 circumstances in which these people could have been killed</p> <p>2 at close quarters?</p> <p>3 GENERAL NAIDOO: Chair, as I indicated, I</p> <p>4 had no idea as to how they were, I just noted that there</p> <p>5 were people that were injured and killed and I also</p> <p>6 indicated some of them were actually brought out within the</p> <p>7 rocks as well.</p> <p>8 MR CHASKALSON SC: And when you saw where</p> <p>9 these dead bodies were and the positions in which people</p> <p>10 had died, knowing that a large number of strikers had been</p> <p>11 present in that area, did you have any reason to believe</p> <p>12 that they had legitimately killed in self defence?</p> <p>13 GENERAL NAIDOO: Chair, as I have no idea</p> <p>14 of the circumstances of the shooting I could not draw any</p> <p>15 conclusions in either way.</p> <p>16 MR CHASKALSON SC: But can you think of</p> <p>17 any circumstances in which it would have been possible that</p> <p>18 these eight people could have been reasonably killed in</p> <p>19 self defence when we know where they were found, have no</p> <p>20 reason to believe they were killed at close quarters? And</p> <p>21 know that there was a large group of people in that area</p> <p>22 where the bodies were ultimately found? Can you think of</p> <p>23 any possible self defence scenario that would account for</p> <p>24 the reasonable killing, reasonable and justifiable killing</p> <p>25 of these eight people?</p>

<p style="text-align: right;">Page 23931</p> <p>1 GENERAL NAIDOO: Chair, as I indicated, I 2 don't know the circumstances of each of the shootings or 3 each of the victims that were involved and with whom. So 4 it will not be I think appropriate for me to make such 5 deductions. As I said, there was a lot of movement there, 6 people were being brought out from within the rocks, so in 7 terms of the placements that are being shown not everybody 8 was exactly where they were. And so for me to draw some 9 conclusion as to whether this person was killed in that 10 circumstance or not I think would be difficult. I 11 indicated I found and I reported that there were 13, I did 12 find all myself. I reported that there were 13 bodies 13 found at that time without specifying the specifics of each 14 one because I was not a position to do that. 15 MR CHASKALSON SC: And you didn't express 16 any view as to how these people may have died? 17 GENERAL NAIDOO: Chair, as I have not 18 heard from these individual shottists I could not express a 19 view in terms of the circumstances. One of the problems 20 that we had and we've over several times to try and 21 establish linking individual people to bodies, you know, 22 who was your target, can you indicate to us who 23 specifically you shot at and where. But, as I said, that 24 time when the information was still raw we were nowhere 25 establishing any of those things.</p>	<p style="text-align: right;">Page 23933</p> <p>1 information in my hand I think would for me not be 2 appropriate. 3 MR CHASKALSON SC: Major-General, at the 4 time that you spoke to Major-General Annandale you thought 5 that there were 13 people that had been killed at scene 2. 6 GENERAL NAIDOO: That's correct, Chair. 7 MR CHASKALSON SC: You'd seen 10 of those 8 13. You'd seen victims A and B from your position with the 9 NIU to the east of the koppie. Do you recall that? 10 GENERAL NAIDOO: Yes, Chair. 11 MR CHASKALSON SC: You'd seen the other 12 eight victims who we've just described or we've just gone 13 through now with the photographs of Warrant Officer 14 Ramanala. 15 GENERAL NAIDOO: Yes, Chair. 16 MR CHASKALSON SC: You'd also seen Mr 17 Mohai, but you didn't realise that he was going to die, he 18 wasn't one of the 13 that you had in mind. So you had seen 19 10 out of 13, you'd seen eight in circumstances where I 20 want to put to you a plausible explanation of self defence 21 is very difficult to imagine. What's your response to 22 that? 23 GENERAL NAIDOO: Chair, as I once again 24 indicated, I was not in a position to know where the 25 shottist who fired at them were from, from which direction,</p>
<p style="text-align: right;">Page 23932</p> <p>1 MR CHASKALSON SC: You see, Major- 2 General, what I want to put to you is that with the 3 information that you did know at the time, the positions of 4 the dead bodies, the fact that there had been a substantial 5 crowd of mine workers in that position, the prima facie 6 fact that none of these people had been killed at close 7 quarters, it seems to me that the most likely explanation 8 for their deaths that person in your position would have 9 drawn or would have reached is that they were killed in a 10 cross fire at scene 2. Not that they were killed in 11 legitimate self defence. What's your response to that? 12 GENERAL NAIDOO: Chair, as I clearly 13 indicated, I did not know the circumstances of each of 14 these shootings and at that stage I also did not know who 15 the specific shottist was for each of these corpses and 16 further than that I also did not visit all the corpses at 17 that stage. I only visited much later with IPID and I was 18 not party to the submissions or the explanations of various 19 shottists which possibly could have led to a conclusion 20 whether it was self defence or not. When I went and gave 21 my feedback, as I indicated, gave it on the raw data of 22 how many have been killed, how many people have been 23 injured. I could not express at that stage because I have 24 already testified that I did not see any of those shootings 25 when they occurred. So to draw a conclusion with the raw</p>	<p style="text-align: right;">Page 23934</p> <p>1 etcetera. The bodies were being moved, they were being 2 attended to, so for me to draw some conclusion as to from 3 where and how these people were shot I think would not have 4 been appropriate for me and I'm maintaining that that at 5 stage I had not even heard from any of the shottists in 6 terms of the circumstances they shot in. So how could I 7 have drawn a conclusion on one way or the other? 8 MR CHASKALSON SC: Are you suggesting 9 that the bodies that we see in Warrant Officer Ramanala's 10 photographs had been moved in any material sense from the 11 positions in which those people died? 12 GENERAL NAIDOO: Chair, yes some of them 13 were moved. For instance the one person who later died was 14 leaning against a rock. He was originally, I think, lying 15 down and somebody assisted him, spoke to him, etcetera. 16 CHAIRPERSON: The question, I think, 17 relates to those that were dead already when you arrived on 18 the scene. I can understand people who weren't dead yet, 19 but the people who were dead already, the bodies that Mr 20 Chaskalson showed you on the video clips, you're not 21 suggesting any of those had been, or are you, had been 22 moved prior to your seeing them. 23 GENERAL NAIDOO: Chair, I specifically 24 can't indicate that this body was moved or the other, but 25 what I'm indicating is dependant on the circumstances they</p>

<p style="text-align: right;">Page 23935</p> <p>1 were shot and by whom. I was not in a position to 2 determine whether that was done in the following 3 circumstances or not. I just found people that were shot, 4 injured and killed and they were being attended to. So to 5 draw a conclusion at that early stage without all this 6 information would have not been appropriate for me.</p> <p>7 MR CHASKALSON SC: You see someone within 8 the senior command of SAPS thought differently, thought it 9 was possible to draw a conclusion because they told the 10 world in a press statement and the President in exhibit 11 FFF4 that all of these people were killed in self defence. 12 Do you accept that that was first of all inappropriate, do 13 you accept that?</p> <p>14 GENERAL NAIDOO: Chair, as I indicated, I 15 was not present when all the people briefed, as we came in 16 we briefed and some were there before us and some were 17 there after us. So I don't know what shaped the opinion of 18 the people compiling. As I indicated, some of those bodies 19 that were involved, the TRT for example, I had no idea as 20 to what the circumstances of the shooting was there for an 21 example. So how the opinion was shaped in terms of whether 22 these cases, all the cases or some cases were self defence 23 and private defence I'm not sure. But as I indicated, what 24 I presented was the raw information in terms of the number 25 of people killed, the number of people injured etcetera.</p>	<p style="text-align: right;">Page 23937</p> <p>1 according to Major-General Annandale, from whom he could 2 have given – if he could have obtained this it would have 3 been Brigadier Calitz. And Brigadier Calitz had even less 4 knowledge of what happened inside scene 2 than you did. Do 5 you accept that?</p> <p>6 GENERAL NAIDOO: Chair, I don't think 7 that's entirely correct because I think at some stage I've 8 seen, I'm not sure if it's his statement or testimony that 9 he did indicate an incident of a shooting where a police 10 officer defended himself, etcetera. I think that was also 11 led here because that was a person that Colonel McIntosh 12 attended to in terms of the paramedics. I remember 13 specifically something like that was indicated. So he had 14 knowledge that I did not have.</p> <p>15 MR CHASKALSON SC: One incident that took 16 place outside the koppie and I don't recall his testimony 17 exactly. I don't think he actually saw that incident, he 18 responded to it. But you will concede that in relation to 19 the eight bodies that we've just looked at you were in a 20 much better position than Brigadier Calitz to convey any 21 information to Major-General Annandale.</p> <p>22 GENERAL NAIDOO: Chair, we both had a 23 look at the bodies at that particular place and as I 24 indicated, it was very clear what I communicated in terms 25 of the numbers, etcetera as I had no idea of the</p>
<p style="text-align: right;">Page 23936</p> <p>1 That was all I could provide because I had not interviewed 2 or spoken to shottists and tried to establish what were the 3 circumstances.</p> <p>4 MR CHASKALSON SC: You see, Major- 5 General, when Major-General Annandale was asked where he 6 got his information about scene 2 he just identified you 7 and Brigadier Calitz, not anybody else. He said you and 8 Brigadier Calitz. Now you're saying you didn't convey any 9 impression of self defence to Major-General Annandale.</p> <p>10 GENERAL NAIDOO: I'm indicating that I 11 did not have sufficient information to convey an opinion on 12 that thing.</p> <p>13 CHAIRPERSON: So the answer to the 14 question is yes. You're giving all the reasons now. You 15 were asked did you convey that to Major-General Annandale 16 and your answer must adamant because you didn't. Isn't 17 that right?</p> <p>18 GENERAL NAIDOO: No, I did not.</p> <p>19 CHAIRPERSON: Just do me a favour, just 20 give short answers if you can.</p> <p>21 GENERAL NAIDOO: Okay, Chair.</p> <p>22 CHAIRPERSON: Time is running out as you 23 heard at the beginning of it. Mr Mpofu's prediction may 24 come true if we don't look out.</p> <p>25 MR CHASKALSON SC: So the only person,</p>	<p style="text-align: right;">Page 23938</p> <p>1 circumstances at that stage.</p> <p>2 MR CHASKALSON SC: Yes, Major-General, 3 but you were present at that scene a good 20 to 30 minutes 4 before Brigadier Calitz, according to his testimony.</p> <p>5 GENERAL NAIDOO: I was present yes, 6 Chair.</p> <p>7 MR CHASKALSON SC: If we can move onto a 8 different topic, you describe in your statement when you 9 left the position adjacent to your vehicle to move to the 10 NIU you went with is it Sergeant Harmse?</p> <p>11 GENERAL NAIDOO: Sergeant Harmse, Chair.</p> <p>12 MR CHASKALSON SC: And you then describe 13 that as you went over the rocks Sergeant Harmse was on your 14 left-hand side.</p> <p>15 GENERAL NAIDOO: He was on my left-hand 16 side, a few paces, ja a little behind me.</p> <p>17 MR CHASKALSON SC: Now between the point 18 at which you and Sergeant Harmse left the position next to 19 the vehicle and the point at which you went over the rocks 20 were you essentially together for that whole period? Was 21 he close to you, physically close to you?</p> <p>22 GENERAL NAIDOO: Quite close. As I said, 23 when we joined the NIU we were a little separated because 24 there were a few NIU members between us, yes.</p> <p>25 MR CHASKALSON SC: How far away from each</p>

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1 other would you have been?
 2 GENERAL NAIDOO: I think there were about
 3 three or four NIU members between him and I.
 4 MR CHASKALSON SC: So two, three metres.
 5 GENERAL NAIDOO: It's possible, Chair, I
 6 can't specifically remember. He was a little to my rear as
 7 well.
 8 MR CHASKALSON SC: And he was with you
 9 when you shot, just behind you to your left-hand side.
 10 GENERAL NAIDOO: Chair, I assume that yes
 11 he was behind me, but immediately next to me were NIU
 12 members, yes.
 13 MR CHASKALSON SC: Well let's look at
 14 that shooting incident in some more detail and we started
 15 there on Tuesday where your testimony was that you and the
 16 NIU were coming up over the rocks with Sergeant Harmse and
 17 some NIU members on your left and some other members on
 18 your right-hand side.
 19 GENERAL NAIDOO: That's correct, Chair.
 20 MR CHASKALSON SC: And you said that you
 21 and the NIU members with you shot in self defence at a
 22 striker that was shooting at you.
 23 GENERAL NAIDOO: That's correct, Chair, I
 24 indicated that approximately two shots struck the rock in
 25 front of me.

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1 MR CHASKALSON SC: Yes and then you fired
 2 two shots and the NIU members fired some shots as well.
 3 GENERAL NAIDOO: That is correct, Chair.
 4 MR CHASKALSON SC: I can't recall how
 5 many shots you suggested the NIU members fired, do you have
 6 a recollection of it? I can't remember if you –
 7 GENERAL NAIDOO: No I can't specifically
 8 remember.
 9 MR CHASKALSON SC: But was it, you know,
 10 two or three shots, 20 or 30 shots, what are we talking
 11 about?
 12 GENERAL NAIDOO: Chair, I don't think it
 13 was 20 or 30, but as I said, they were using R5 rifles, but
 14 I could not specifically remember the number of shots.
 15 MR CHASKALSON SC: The picture that you
 16 create in your statement at paragraph 5 is an incident that
 17 was over almost as soon as it began. Would that be
 18 correct?
 19 GENERAL NAIDOO: Chair, yes it took a few
 20 minutes, seconds, minutes, yes.
 21 MR CHASKALSON SC: Sorry, there's a big
 22 difference between a few seconds or minutes.
 23 GENERAL NAIDOO: Ja, Chair, in terms of
 24 the specific time, you know, I think it was a bit – for me
 25 a bit slow motion, but yes it happened very quickly, yes.

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1 MR CHASKALSON SC: Well let's just go
 2 back to what you say in paragraph 75 of your statement.
 3 "Just as we move towards the second line of rocks we came
 4 under fire from one of the strikers to my left,
 5 approximately 50 metres and the bullets narrowly missed me
 6 and struck the rocks around me. I immediately returned
 7 fire with two rounds from my pistol at the individual I
 8 could see taking cover between rocks and trees with a
 9 firearm in his hands. Several NIU members to my left also
 10 simultaneously returned fire in the direction of the shots
 11 which immediately stopped. So it's an episode that starts
 12 and finishes very quickly.
 13 GENERAL NAIDOO: That's correct, Chair.
 14 MR CHASKALSON SC: And I understood your
 15 evidence on Tuesday to be that after these self defence
 16 shots you and the NIU members with you did no more shooting
 17 on the day.
 18 GENERAL NAIDOO: That's correct, Chair.
 19 MR CHASKALSON SC: Unless I misunderstood
 20 your evidence, I understood you to be saying that even
 21 before this incident the NIU members in your presence had
 22 done no shooting.
 23 GENERAL NAIDOO: The members that
 24 immediately were with me, yes. I indicated that the few
 25 members that were climbing the rock with me, no they did

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1 not shoot at that stage.
 2 MR CHASKALSON SC: So the only shooting
 3 took place from NIU members in your immediate presence was
 4 this incident that you've described you your statement.
 5 GENERAL NAIDOO: Chair, as I did testify
 6 previously, there was shooting taking place all around the
 7 place, but the members that were immediately with me, no
 8 they did not shoot.
 9 MR CHASKALSON SC: Now in your testimony
 10 at the end of Tuesday you mentioned that you shot your two
 11 shots before you managed to take cover.
 12 GENERAL NAIDOO: Yes I had managed to go
 13 low, out of the line of sight of the person that I saw
 14 shooting at us.
 15 MR CHASKALSON SC: You didn't mention any
 16 attempt to take cover in your statement, sorry before we
 17 get there, can you just describe what you mean by that?
 18 Are you saying that you managed to go down, explain to me
 19 how you took cover.
 20 GENERAL NAIDOO: Chair, the place that we
 21 were climbing, we were climbing up the left side of the
 22 rock, as we indicated, as we were climbing up I was a
 23 little in front of the group that were climbing. If I
 24 remember Colonel Modiba and his people were a little bit
 25 more to the right and as we crested the first, because the

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1 rocks, you come up the first lot and then you go up the
 2 second. As we were coming up the first rock the incident
 3 happened. So I merely went low and right, obviously coming
 4 out of – trying to get out of the line of sight of the
 5 person that was shooting at us.
 6 MR CHASKALSON SC: So you – maybe if you
 7 can just describe this with reference to MMM2 so that we
 8 understand where exactly you are and where you're moving to
 9 take cover.
 10 GENERAL NAIDOO: Chair, if we could zoom
 11 in a little bit I think it will help
 12 MR CHASKALSON SC: You said on Tuesday
 13 that the shooting was, I think in F, in block F3.
 14 [10:13] GENERAL NAIDOO: Yes, Chair.
 15 MR CHASKALSON SC: Can we zoom in towards
 16 block F3? Now if you can identify where you were and you
 17 say the shooting came from somewhere in E3, can you
 18 identify where you were and how you took cover? That's F3,
 19 that's E3. I'm marking F3 and E3 in the zoomed in
 20 photograph.
 21 GENERAL NAIDOO: No – Chair, yes, we were
 22 somewhere in the middle of F3. Ja, somewhere – I'm not
 23 sure in relation to where body A and B was, it was just –
 24 MR CHASKALSON SC: Body A is where these
 25 SAPS members are congregated in the top right-hand corner

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1 of F3.
 2 GENERAL NAIDOO: Okay, just to the left
 3 of body A and B we –
 4 MR CHASKALSON SC: To the left as we look
 5 at this photograph or to the left as you went up the rocks?
 6 GENERAL NAIDOO: To the left of body A
 7 and B.
 8 MR CHASKALSON SC: No, but as we look at
 9 the photograph, or as you went up the rocks? Because if
 10 you were -
 11 GENERAL NAIDOO: As we went up the rocks,
 12 Chair.
 13 MR CHASKALSON SC: So lower down in block
 14 F on this photograph.
 15 GENERAL NAIDOO: To what I –
 16 MR CHASKALSON SC: In block F3.
 17 GENERAL NAIDOO: Yes, from here the rock
 18 comes to a smaller plateau and then it goes to a higher
 19 plateau, so –
 20 MR CHASKALSON SC: So at the point where
 21 I'm marking towards the centre of F3, but a little bit
 22 above centre of F3 there's a plateau and then it starts
 23 climbing.
 24 GENERAL NAIDOO: So just as we – or just
 25 before we got up to the, fully to the first plateau when,

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1 is where the incident occurred.
 2 MR CHASKALSON SC: So you say the
 3 incident occurred when you were on this plateau in F3?
 4 GENERAL NAIDOO: Just as we were climbing
 5 that plateau, yes, Chair.
 6 MR CHASKALSON SC: Okay, and you
 7 retreated where?
 8 GENERAL NAIDOO: Chair, I indicated that
 9 I just moved to the right of where I was, just out of the
 10 line of sight, right and I think a step down.
 11 MR CHASKALSON SC: Sorry, Major General,
 12 the problem with left and right is that your left and right
 13 at the time are not the left and right as we look at MMM3,
 14 so if you can describe it with reference to the grid that
 15 we see in – sorry, MMM2 – the grid that we see here. You
 16 moved up towards road, up in the direction of road 2, up
 17 this way, which would have been your right at the time?
 18 GENERAL NAIDOO: Chair, I think what I
 19 indicated was I took a step back and right, yes, so I would
 20 have been slightly down and in the direction of where body
 21 – just for purposes of direction, where body A and B was.
 22 That's upwards to the picture.
 23 MR CHASKALSON SC: And you were then
 24 sheltering from –
 25 GENERAL NAIDOO: Somebody that was

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1 somewhere here, Chair.
 2 MR CHASKALSON SC: Previously you
 3 identified him in E3, which is the block to your left.
 4 Maybe we should zoom out so that you've got a better sense
 5 of perspective.
 6 GENERAL NAIDOO: Chair, the shottist was
 7 to the, sharp to my left, so hence I'm indicating to the
 8 bottom of F3.
 9 MR CHASKALSON SC: Yes –
 10 CHAIRPERSON: I'm sorry, the bottom left-
 11 hand corner of F3?
 12 GENERAL NAIDOO: Chair, I think it's more
 13 just three-quarters ways into the bush. As I said it's
 14 hard to pinpoint because there's a rock and there's a tree
 15 there.
 16 MR CHASKALSON SC: You see, your
 17 testimony when you initially placed the man who shot at you
 18 was not in that block, it was in the next block. It was in
 19 E3. Do you want to –
 20 GENERAL NAIDOO: Chair no, as I said I'm
 21 looking, when I'm looking at it now it was sharp to my
 22 left.
 23 CHAIRPERSON: [Microphone off, inaudible]
 24 how far over to your left, you see. If it was, you know,
 25 fairly close to you on your left –

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1 GENERAL NAIDOO: Chair, we –
 2 CHAIRPERSON: - then it would have been
 3 in F3, otherwise if it was further to the left it would
 4 have been in E3, wouldn't it?
 5 GENERAL NAIDOO: Yes –
 6 CHAIRPERSON: So which was it?
 7 GENERAL NAIDOO: I'm looking at it now,
 8 as I said it was sharp to my left. If you're really
 9 looking at it in relation to the Task Force Casspir I think
 10 it was before rather than in line or after the Task Force
 11 Casspir.
 12 MR CHASKALSON SC: You see, Major
 13 General, that also begs the question of where exactly you
 14 were on the rocks because if you were up to the top of F3,
 15 cresting the rocks, sharp to your left would have been down
 16 in E3 because you would have been moving up the rocks at a
 17 slight diagonal through the block F3 because that's the
 18 orientation of that lower path up the rocks, as it were, or
 19 the path through the lower rocks.
 20 GENERAL NAIDOO: Chair, I think I'm
 21 clear, it was on the first plateau before we got onto the
 22 second plateau because at the second plateau is where we
 23 arrested those three or four miners I indicated. So I'm
 24 clear that it was in the first plateau.
 25 CHAIRPERSON: While we're looking at

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1 this, can you perhaps indicate to us, Mr Chaskalson, the
 2 spot that you call the killing zone? Can we see that on
 3 MMM2?
 4 MR CHASKALSON SC: It's the area to the
 5 left of block C3. So it's C3 possibly going back into B3.
 6 CHAIRPERSON: Thank you.
 7 COMMISSIONER HEMRAJ: General, can [power
 8 outage].
 9 [11:14] CHAIRPERSON: The Commission resumes, the
 10 power has been restored. Let's hope that that position
 11 continues for the rest of the day. Major-General you're
 12 still under oath. Mr Chaskalson.
 13 MR CHASKALSON SC: Thank you, Chair.
 14 Major-General the description of the shooting incident that
 15 you now give in terms of the position of yourself and the
 16 striker differs materially from the version that you gave
 17 in evidence in chief. That version was at page 22938 and
 18 there you had the shooting coming from block E3, if we can
 19 put MMM2 up. You had shooting coming from E3 and you put
 20 your position - at page 22939, lines 9 to 13 I would say F3
 21 on the corner or just a quarter way on the top line. We
 22 were somewhere there, that I would say more or less the
 23 position. So what you were marking as your position was
 24 the corner at the top of F3 towards the E column and a
 25 quarter of the way across along the top line of F3. That

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1 would have placed you as you were cresting the rocks coming
 2 up from where victims A and B were. Is there any reason
 3 that you can give for this discrepancy?
 4 GENERAL NAIDOO: Chair, other than the
 5 fact that we zoomed, I think my orientation is about the
 6 same in terms of my explanation.
 7 MR CHASKALSON SC: Can we zoom in towards
 8 the top of F3? If we can just come down a bit, that's fine
 9 thanks. So the corner is this corner, a quarter of the way
 10 across on F3 is where I am marking. The top left-hand
 11 corner of F3, a quarter way across the top line.
 12 GENERAL NAIDOO: Chair, yes, but I want
 13 to indicate that that's the side of the cliff, that's why I
 14 indicate in terms of my orientation on my right-hand side
 15 was a sheer cliff. On the left-hand side was the bushes.
 16 MR CHASKALSON SC: So you are now
 17 confirming that you shot from the position about a quarter
 18 of the way across the top line of F3?
 19 GENERAL NAIDOO: Chair, no that's not
 20 what I'm confirming.
 21 CHAIRPERSON: What he puts and what he
 22 says in the relevant passage is he talks about a corner or
 23 just a quarter way on the top line, somewhere there more or
 24 less the position. So he's not saying definitely a quarter
 25 along, not saying definitely in the corner, but somewhere,

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1 as I understand it, in that area. Is what you said? It's
 2 more in position in relation to the plateau and the cliff
 3 and the area below that that's relevant I think.
 4 GENERAL NAIDOO: Exactly, Chair. What
 5 I'm trying to indicate was that the plateau is not clearly
 6 visible, how we rise to that first plateau because the
 7 shooting occurred on the first plateau.
 8 MR CHASKALSON SC: Sorry, would you
 9 indicate now where you say the first plateau is?
 10 GENERAL NAIDOO: Chair, I was doing this
 11 in relation to where I think bodies A and B were and I also
 12 said to the left of that there's the shelf or plateau which
 13 is lower than the higher one. And as we came up that
 14 plateau, not all the members were fully up on that plateau
 15 when the incident occurred. But what I'm pointing here now
 16 is subject to this being the plateau, I'm not sure if
 17 that's the plateau or here.
 18 MR CHASKALSON SC: So you're now saying
 19 it happened below the crest, well below the crest of the
 20 rocks.
 21 GENERAL NAIDOO: Chair, in my evidence I
 22 indicated –
 23 CHAIRPERSON: I've got to put this on
 24 record to make it clear for those of us who have to follow
 25 later and everybody else. What you're now indicating is

<p style="text-align: right;">Page 23951</p> <p>1 what I think you indicated earlier today and that is a spot 2 about between a quarter and a third of the way down from 3 the top line of that block and I would say about two thirds 4 of the way across. We're talking about F3, ja I'm talking 5 about F3, that's what you're now indicating. What Mr 6 Chaskalson is suggesting is that earlier you had put it in 7 a different position, more in the top left-hand corner of 8 F3 which means that you were on a higher level than the 9 level that you're now showing us. Am I correct, Mr 10 Chaskalson, is that the point? 11 MR CHASKALSON SC: Yes, Chairperson. And 12 when you say you took evasive action how did you take 13 evasive action on that plateau? 14 GENERAL NAIDOO: Chair, as I indicated, I 15 was still stepping up. I had not reached the fully level 16 portion of the plateau, I moved lower and to my right. The 17 members of NIU were on my left. 18 MR CHASKALSON SC: So you were then 19 moving in the direction of – I suppose in the direction of 20 where – on MMM2 we see the members congregate around body 21 A. 22 GENERAL NAIDOO: Well that was my right, 23 but in relation to where I was standing, Chair. 24 CHAIRPERSON: - try and understand this. 25 The place that I tried to describe which I said is about a</p>	<p style="text-align: right;">Page 23953</p> <p>1 fully flattened portion because it was still – I was able 2 to take a step downwards, backwards, Chair. 3 CHAIRPERSON: Yes the plateau isn't 4 entirely flat as I can see it. 5 GENERAL NAIDOO: No, no – 6 CHAIRPERSON: It tends to slope upwards 7 and then it presumable becomes steeper until you get to the 8 second plateau. 9 GENERAL NAIDOO: It's slightly rounded 10 and then up. 11 CHAIRPERSON: Ja, all right. So you were 12 effectively still in the first plateau as you call it and 13 more or less at the highest point of that plateau but 14 advancing upwards as it were. Is that correct? 15 GENERAL NAIDOO: Not yet at the highest 16 point. 17 CHAIRPERSON: No, I said more or less 18 that's what I said. 19 GENERAL NAIDOO: Yes, Chair. 20 CHAIRPERSON: You hadn't quite got to the 21 highest point. 22 GENERAL NAIDOO: No, Chair. 23 CHAIRPERSON: All right. 24 MR CHASKALSON SC: And you say you were 25 able to take evasive action by essentially stepping off the</p>
<p style="text-align: right;">Page 23952</p> <p>1 quarter of the way down or a little further way down and 2 around about probably two thirds of the way across in that 3 block. That seems to be more or less on the same level as 4 the people congregated around the body. And then if one 5 looks at the block further one sees that immediately what 6 would have been your left, in front of you, is a slope and 7 that goes up to what you've described as a plateau which is 8 more or less in the top left-hand corner of the block. Is 9 that correct? 10 GENERAL NAIDOO: Chair, as I indicated, 11 there were two plateaus – 12 CHAIRPERSON: Yes I know, that's why – 13 GENERAL NAIDOO: As we were cresting or 14 before we could crest the first plateau the incident 15 occurred. I indicated further we went up to the second 16 plateau, the crevices in the rock or the gap in the rock 17 where we found three more miners, yes. 18 CHAIRPERSON: I think Mr Chaskalson is 19 interested in the position where you were when you fired 20 with your pistol. 21 GENERAL NAIDOO: Chair, that was before I 22 crested the first plateau. 23 CHAIRPERSON: What exactly do you mean by 24 crest, if you'll forgive my ignorance? 25 GENERAL NAIDOO: Before I got to the</p>	<p style="text-align: right;">Page 23954</p> <p>1 plateau. 2 GENERAL NAIDOO: I didn't step off the 3 plateau, I indicated I moved my line of sight out of the 4 line of sight of the shooter, Chair. 5 CHAIRPERSON: How did you do that, did 6 you duck or did you – 7 GENERAL NAIDOO: Yes I stepped back and 8 right, Chair, yes. 9 CHAIRPERSON: And you ducked. 10 GENERAL NAIDOO: Yes. 11 CHAIRPERSON: You no longer stood 12 upright. 13 GENERAL NAIDOO: No, no, no, Chair. 14 CHAIRPERSON: You went low I think, I'm 15 reminded you said. And that was towards the right of the 16 block as we look at it and effectively towards those people 17 on the photograph as we now see them, they weren't there at 18 the time I take it. But around body A. 19 GENERAL NAIDOO: But they were behind. 20 CHAIRPERSON: Yes, yes I see. I'm 21 talking about as we see them now on the photograph. 22 GENERAL NAIDOO: That's correct, Chair. 23 CHAIRPERSON: So you moved towards that 24 direction, that direction and what's the English for buk? 25 You bent forward and downwards?</p>

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1 GENERAL NAIDOO: Downwards –
 2 CHAIRPERSON: Crouching is a word being
 3 used in another context, it probably covers the situation.
 4 MR CHASKALSON SC: I'm still not quite
 5 understanding your evidence because I don't understand the
 6 terrain around this plateau that you're talking about. I'm
 7 sure it is where you say it is. Can we look at JJJ29, 205?
 8 Chair this is going to be a photograph which will include
 9 the body of victim A. I don't know if we need to give
 10 another warning.
 11 CHAIRPERSON: Well I've given the warning
 12 before, I don't know if anyone has come back here who
 13 wasn't at the time I gave the warning. We're going to see
 14 a picture of a dead body. Whose body A again, the surname?
 15 MR CHASKALSON SC: Mr Mdizeni.
 16 CHAIRPERSON: So anyone who is here in
 17 the chamber who feels that he or she will be distressed,
 18 emotionally distressed by seeing this picture is given an
 19 opportunity to leave. I don't see anybody indicating an
 20 intention to leave, so I think we can carry on.
 21 MR CHASKALSON SC: It's JJJ205, 205.
 22 Now, Major-General, that's the position of Mr Mdizeni as
 23 you approach the rock, now where is the plateau that you
 24 are talking about?
 25 GENERAL NAIDOO: Chair, if you see

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1 there's an individual standing up there, I think that's
 2 more in the direction because we climbed up on the left-
 3 hand side.
 4 CHAIRPERSON: Sorry, let's take it
 5 slowly. Near the base of the photograph, the bottom of the
 6 photograph where the body is lying is a flattish portion.
 7 Now that's not the first plateau you're talking about.
 8 GENERAL NAIDOO: No, Chair.
 9 CHAIRPERSON: Then the ground slopes
 10 upwards beyond the dead body and then we see someone
 11 standing at effectively the top of the slope. That slope,
 12 where that person is standing is that the first plateau
 13 you're taking about?
 14 GENERAL NAIDOO: I should think so,
 15 Chair, we were a bit more to the left when we climbed up,
 16 yes. But it would appear –
 17 CHAIRPERSON: Yes and one can see other
 18 trees there, it does look as if there's a – it may be a bit
 19 deceptive, but it does look as if there's a flattish
 20 portion.
 21 GENERAL NAIDOO: Yes –
 22 CHAIRPERSON: At the top left –
 23 GENERAL NAIDOO: To the left – yes,
 24 Chair.
 25 CHAIRPERSON: All right.

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1 COMMISSIONER HEMRAJ: The directions of
 2 the shot were from your left as you climbed up that –
 3 GENERAL NAIDOO: On my left, Chair.
 4 COMMISSIONER HEMRAJ: - rock, that rock
 5 there.
 6 GENERAL NAIDOO: That's correct, Chair.
 7 MR CHASKALSON SC: So you say you –
 8 CHAIRPERSON: Sorry, I'm not sure, with
 9 respect, that's right. I understood you, you were saying
 10 you were near the top, if one can call it that, of the
 11 first plateau –
 12 GENERAL NAIDOO: That's right.
 13 CHAIRPERSON: - when you were shot at and
 14 I understood you to say that the section where that person
 15 is standing is the first plateau.
 16 GENERAL NAIDOO: Ja, it would appear that
 17 it is the first plateau or almost to the top.
 18 CHAIRPERSON: That's the first plateau,
 19 so you weren't in other words going up the slope from the
 20 dead body towards the person standing.
 21 GENERAL NAIDOO: No we were –
 22 CHAIRPERSON: You were actually –
 23 GENERAL NAIDOO: - almost at the top.
 24 CHAIRPERSON: You were at that plateau at
 25 the top and you were near of that and there was another

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1 plateau –
 2 GENERAL NAIDOO: And then –
 3 CHAIRPERSON: - to the left of the
 4 photograph which we can't see.
 5 GENERAL NAIDOO: No, another plateau more
 6 to the right I think.
 7 CHAIRPERSON: Anyway there's another
 8 plateau, a higher plateau –
 9 GENERAL NAIDOO: That's correct, Chair.
 10 CHAIRPERSON: Which is not obviously
 11 reflected on the photograph.
 12 GENERAL NAIDOO: That's correct, Chair.
 13 CHAIRPERSON: And you were near the top
 14 of, if one can call it that, of the slight rise of the
 15 first plateau when this incident took place. Am I
 16 understanding you correctly?
 17 GENERAL NAIDOO: That's correct, Chair.
 18 MR CHASKALSON SC: But relative to the
 19 man whom we see standing at the top of this photograph
 20 where would you have put your position?
 21 GENERAL NAIDOO: Chair, I think I won't
 22 be able to, I need to orientate myself with another view
 23 because it appears to be the top of the plateau, but I'm
 24 not sure.
 25 MR CHASKALSON SC: Maybe if we can give

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1 you another view with KKK16, 5139, KKK16, 5139.
 2 CHAIRPERSON: Is this what you want, Mr
 3 Chaskalson?
 4 MR CHASKALSON SC: It is, Chairperson.
 5 And if we can zoom in where I'm marking now. You see,
 6 Major-General, the rocks that we could see from the shot of
 7 Mr Mdizeni's body are the rocks that I'm marking now.
 8 CHAIRPERSON: Sorry and on the original
 9 photograph where would you describe –
 10 MR CHASKALSON SC: Chair, let's maybe go
 11 back to MMM2 so we can use grid lines, because we're going
 12 to zoom in. Can we zoom in around E, F2 to 3?
 13 CHAIRPERSON: If we look at E2 one
 14 essentially sees a flattish area and then halfway up
 15 towards the left two thirds of the block there is a slope,
 16 essentially a rocky slope. And then if one were to go up
 17 that towards the left, towards the block next to it one
 18 would see what looks like a higher plateau. Is that the
 19 area you're talking about?
 20 GENERAL NAIDOO: Chair, yes this view is
 21 not as clear as the previous photo we had, but.
 22 MR CHASKALSON SC: You see, Major-
 23 General, I think that your original evidence in chief is
 24 correct about where the first plateau is. The first
 25 plateau is in fact in the top left-hand corner of F3.

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1 GENERAL NAIDOO: No, Chair, it's not.
 2 MR CHASKALSON SC: So where do you say
 3 the plateau is?
 4 GENERAL NAIDOO: Chair, if we can go back
 5 to the previous photograph, I think it was much clearer.
 6 Chair, as you can see –
 7 CHAIRPERSON: Yes, I was just trying to
 8 get a description of that on record you see. What we're
 9 looking at now is a zoomed in picture of this exhibit.
 10 MR CHASKALSON SC: It's not this exhibit,
 11 it's a different exhibit, Chairperson.
 12 CHAIRPERSON: Anyway what I'm trying to
 13 do here on record is a description of a particular area
 14 that you're referring to. Now it doesn't help to give it
 15 on the zoomed picture because that means nothing to the
 16 future reader of the record. So we've got to back to the
 17 original and identify the spot. Now can we do that, can
 18 you perhaps help me, Mr Chaskalson?
 19 MR CHASKALSON SC: At the base of the
 20 koppie roughly halfway up the page and slightly right of
 21 centre when one zooms in one sees a group of SAPS members
 22 who are congregating around the body of Mr Mdizeni. We
 23 zoom in there and then we can use then as the reference
 24 point once we have zoomed in. So can we zoom in to where
 25 I'm marking? Then if one goes slightly up to the left of

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1 those members one sees several rocks with a plateau to the
 2 left and below those rocks. That I'm putting to you,
 3 Major-General Naidoo is the first plateau as you come up.
 4 GENERAL NAIDOO: Chair, no it does not
 5 look right to me because as I indicated, the second plateau
 6 in this area is where we arrested the three or four people.
 7 I indicated there was some sort of crevice among the rocks
 8 that they were lying in. So I would put the plateau
 9 somewhere here. As I said – at the best here.
 10 MR CHASKALSON SC: All right, but even if
 11 we go – even on that description, Major-General, if we go
 12 back to your –
 13 [11:33] CHAIRPERSON: He said things and he
 14 pointed but that's not on the record. As one looks at this
 15 picture, one sees the people around the dead body of – dead
 16 body A. If one goes to the left one sees some, what looks
 17 like a, I suppose to be the first, but it's slightly sloped
 18 upwards, then there's some rocks above it, and then if one
 19 goes to the left up further, one comes to what amounts to a
 20 second plateau, and there's a kind of a furrow in the
 21 middle of it. That I suspect is the crevice where the
 22 people were hiding, is that right?
 23 GENERAL NAIDOO: I think so, Chair.
 24 CHAIRPERSON: Right, and then you
 25 continue further, you've got a cliff ahead of you, if you

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1 go up that, it eventually goes up to what amounts to a
 2 third plateau which slopes upwards. Is that right?
 3 GENERAL NAIDOO: Chair, but our route was
 4 from there, then down, straight down.
 5 CHAIRPERSON: Yes, okay. So we've got
 6 the first plateau and the second plateau and what really
 7 amounts to a third plateau, it looks as if the second
 8 plateau, the one with a furrow in the middle of it, is
 9 where you found arrested people who were hiding in the
 10 crevice, is that correct?
 11 GENERAL NAIDOO: That's correct, Chair.
 12 CHAIRPERSON: Right, now, let's go back
 13 to what Mr Chaskalson was dealing with you, just before
 14 that.
 15 MR CHASKALSON SC: And can I just
 16 clarify, when you say your route was straight down from the
 17 second plateau, do I take it that it's down the diagonal
 18 rock face that moves from the top right to bottom left, or
 19 is it in a different direction.
 20 GENERAL NAIDOO: Chair, I think it's this
 21 direction, it would appear, ja. We, up that from the
 22 crevice and the cracks to the bottom level. I don't think
 23 it was so further in, I can't remember being that further
 24 in.
 25 CHAIRPERSON: What you are now showing is

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1 something, is another plateau, if I can call it that, to
 2 the left, is that correct? The plateau that I was talking
 3 about described as the first plateau, that's I suppose some
 4 – more or less, it's not very far away from the men who
 5 were standing around body A. But if one looked at that
 6 plateau and then moves straight left, and then slightly
 7 down, more or less in the middle of the picture, there's a
 8 larger plateau. Now we are not talking, is that where you
 9 came from?
 10 GENERAL NAIDOO: Sorry, Chair, I am lost
 11 now.
 12 CHAIRPERSON: I am trying to put on
 13 record what you showed us. Instead my trying, Adv Hemraj
 14 suggests instead of my trying every time to describe the
 15 words, perhaps you could agree to, on a copy of the
 16 photograph, to indicate the next one, the next two, the
 17 next three, which the first plateau is, which the second
 18 plateau is and which the third plateau is and where you
 19 were at various times with other letters, and every time,
 20 you know, it takes a long time if I had to try to describe
 21 it in words every time. If you can put it on a photograph
 22 for us, then you can show it to Mr Chaskalson during an
 23 adjournment or something. And that will save time. But we
 24 carry on for the moment, without my interrupting all the
 25 time, to try to put into words what you are saying.

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1 MR CHASKALSON SC: Let's, we can come
 2 back to this specifically once we have a diagram but –
 3 CHAIRPERSON: He goes on describing with
 4 this and that, and I can't think – but for the purposes of
 5 the record, he later puts on a photograph, X1, X2, X3, with
 6 a key, so the record will be able to be followed later on,
 7 but we don't have to hold ourselves up now about my now
 8 trying to put it in words every time.
 9 MR CHASKALSON SC: Alright, Major
 10 General, if you can then just indicate to us how you came
 11 down.
 12 GENERAL NAIDOO: Chair, after we've
 13 arrested those three or four people, then we moved down to
 14 the lower rocks, and directly to where the – well, I can't
 15 remember the Nyalas specifically but a POPs member that was
 16 standing facing the area that was under discussion this
 17 morning, I stood alongside that member.
 18 MR CHASKALSON SC: Well, in this
 19 photograph, the only POPs members are those next to Papa11.
 20 Would that be the position? Maybe if we can just zoom back
 21 a little bit so you can orient yourself. A little bit
 22 further.
 23 GENERAL NAIDOO: Chair, yes, I came down
 24 that rock, I remember too, maybe it's obscured by the tree,
 25 but that area behind the trees in front of the Nyalas, is a

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1 bit of a flatter area I think, because I came down, I stood
 2 next to a member in that area, he was facing the area where
 3 we could see a few people among the rocks.
 4 MR CHASKALSON SC: You see, Major
 5 General, I put to you Warrant Officer Mamabolo's version of
 6 the shooting, and the version that was corroborated by all
 7 of the members of Papa11 or in Papa11, and it seems to me
 8 that there are some very material discrepancies between
 9 that version and your version, and I'd like to put them to
 10 you.
 11 CHAIRPERSON: I suggest you put them to
 12 him all at once, and then he can answer quickly.
 13 MR CHASKALSON SC: Do you want, do you
 14 recall Warrant Officer Mamabolo's statement? You don't
 15 need me to read it or take you to it again?
 16 GENERAL NAIDOO: No, Chair.
 17 MR CHASKALSON SC: On the version –
 18 CHAIRPERSON: KKK61, is it?
 19 MR CHASKALSON SC: I have it as KKK61, Ms
 20 Pillay tells me it's KKK60.
 21 CHAIRPERSON: According to my notes, it
 22 was KKK60 but I see it was marked on the document you put
 23 up on the screen, was marked KKK61 and I went through my
 24 notes, and I saw I actually had a KKK60 which is diary
 25 Captain Makukule, so if that's KKK60, then this one is the

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1 following exhibit and that's KKK61. It's the last exhibit
 2 in the KKK series, as far as I can see from my notes. We
 3 can talk about it later.
 4 MR CHASKALSON SC: Indeed, Chairperson.
 5 The version from Warrant Officer Mamabolo and the POPs
 6 members in Papa11 is that your team of NIU members and
 7 yourself, were shooting at protesters when there was no
 8 shooting visible to anyone – no shooting at police visible
 9 to anyone in Papa 11. It was not a short incident that
 10 stopped almost immediately it started, it appears from
 11 Warrant Officer Mamabolo's statement that this was a
 12 sustained period of shooting.
 13 CHAIRPERSON: What paragraph are you
 14 referring to in the affidavit?
 15 MR CHASKALSON SC: Paragraphs 15 and 16
 16 of Warrant Officer Mamabolo. Maybe in fairness to the
 17 Major General, I should indicate what concerns me in these
 18 paragraphs.
 19 CHAIRPERSON: Shall I read them out
 20 quickly? "We parked our Nyalas such that the police, and
 21 arrested the protesters were separated. I got out of the
 22 Nyalas on the side of the police, on top of the boulder,
 23 firing live ammunition towards the direction of protesters.
 24 So I expected the members to notice me, and I shouted at
 25 them, 'cease fire and stop fire.' I raised my hand to

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1 indicate to the police to stop and cease fire, but the
 2 shooting continued. As the shooting of live ammunition
 3 described above continued, I observed General Naidoo
 4 emerging on top of the boulder in the same direction that
 5 the firing occurred, with a pistol in his hand but I am not
 6 in a position to state whether or not he shot. Except for
 7 General Naidoo, other police officers had rifles in their
 8 possession. At the koppie at that stage, I didn't see any
 9 deceased persons." That's 15. 16, "Once the shooting of
 10 live ammunition stopped I observed some of the protesters
 11 coming out of the bushes behind the boulders/rocks with
 12 their raised hands. Suddenly I saw one of the protesters
 13 falling on the ground. Some of the protesters were
 14 crawling towards the open area where the arrested
 15 protesters were. The shooting of live ammunition that I
 16 observed was not by POP members. I instructed the crew of
 17 Papa11 to get out of the Nyala and to direct the protesters
 18 to the area where other arrested protesters were. I did
 19 not see any protesters shooting at the police, using
 20 firearms or attacking the police with dangerous weapons."
 21 Those are the two paragraphs.
 22 MR CHASKALSON SC: Indeed, Chairperson.
 23 So he for the duration of the time that he was there, that
 24 was which was before you got there, until after you were
 25 there, didn't see anyone shooting at the police or using

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1 firearms to attack the police. If we go back to 15, he saw
 2 people firing live ammunition towards the direction of
 3 protesters. He shouted at them to cease fire and stop.
 4 The shooting continued. As the shooting continue, he
 5 observed you emerging on top of the boulder from the same
 6 direction that the shooting occurred, with a pistol in your
 7 hand. He couldn't see whether or not you shot. Constable
 8 Mathaba to whom I referred you on Tuesday, said he did see
 9 you shoot. He said he saw you shoot towards the south,
 10 while taking cover behind a rock. Now the version from the
 11 Papa11 members would suggest when the shooting of NIU
 12 members in your immediate vicinity was taking place, they
 13 could see no one shooting at the police because they didn't
 14 see any protesters shooting at the police. It also isn't
 15 an immediate shooting incident that's over as soon as it
 16 starts. On the contrary, it continues, and it continues
 17 through an attempt by Warrant Officer Mamabolo to stop it,
 18 to shout "cease fire." Stop fire. And then there's
 19 Constable Mathaba who sees you shooting, and shooting
 20 whilst taking cover from behind a rock. That's not your
 21 version either, is it? Your version is you shot when there
 22 was no cover, and ultimately you retreated to below the
 23 plateau.
 24 CHAIRPERSON: You nod your head, I take
 25 it you are saying yes.

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1 GENERAL NAIDOO: Chair, I am waiting for
 2 him to finish, and then –
 3 CHAIRPERSON: Sorry, carry on, Mr
 4 Chaskalson, I did say put the whole version, the whole
 5 discrepancy as it were to him, and then let him answer.
 6 MR CHASKALSON SC: So then, should we
 7 take these discrepancies one by one.
 8 GENERAL NAIDOO: Okay, Chair.
 9 CHAIRPERSON: It would be quicker if you
 10 put them all to him.
 11 MR CHASKALSON SC: Well, I have now put
 12 them all to him but I'd like him to respond to them.
 13 GENERAL NAIDOO: Okay.
 14 CHAIRPERSON: Are you ready to answer
 15 now?
 16 GENERAL NAIDOO: Chair, yes. I think
 17 firstly most of what Warrant Officer Mamabolo has indicated
 18 that he'd seen could have been what he saw and perceived
 19 because as I indicated that we were at the first plateau
 20 and the shooting occurred to my left. The shottist was
 21 among the trees on the left. So if one looks at that
 22 Warrant Officer Mamabolo would not have had sight of the
 23 shottist or shottists or people that were on his left, he
 24 would not even have had sight of us because we were still
 25 at the first plateau and there was this second plateau

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1 still that had to be reached.
 2 But in terms of the fact that he would have heard
 3 shooting, yes. As to the duration of the shooting, as I
 4 indicated I only managed to get off two shots before I got
 5 myself into some safety. The two members or three members
 6 that were on my left, from the NIU did return fire. I
 7 cannot specifically say it was five rounds, two rounds,
 8 etcetera, they were using R5s. And immediately after the
 9 shooting stopped, their members flanked that position on
 10 the left because that was a sweeping line that was going,
 11 we were on the rock, but there were people a bit also down,
 12 and some of us then proceeded up to the second plateau
 13 where I indicated that we had conducted arrests and we
 14 removed about three suspects. And at that time Warrant
 15 Officer Mamabolo would have seen me because for me, it was
 16 about nearly the highest point. So in principle, most of
 17 the issues that Warrant Officer Mamabolo says, would have
 18 been from his position, what he perceived, other than to
 19 say that we were firing live ammunition to the direction of
 20 the protesters because I am not sure how he would, if he
 21 could not see who was firing, how we would know it was in
 22 the direction of the protesters, number 1, because we were
 23 out of his line of sight and the incident occurred to the
 24 left which would have not been in his site. That deals
 25 with regard to the gist of what Warrant Officer Mamabolo

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1 says. So principally, how he would have experienced it and
 2 seen it, you know, with minor things in terms of time lines
 3 and direction, etcetera, how he probably would have
 4 experienced it from his position had he been now where I
 5 perceive Papa1 was, if he was standing there. With regard
 6 to –
 7 MR CHASKALSON SC: Papa11, not Papa1.
 8 GENERAL NAIDOO: Sorry, Papa11. With
 9 regard to the constable who says that he saw me firing, and
 10 describes my actions which before I can, I mean, describes
 11 my action which happened somewhere out of his sight, I
 12 don't reasonably see how he could have seen me firing
 13 because even by the statement of Warrant Officer Mamabolo,
 14 which is corroborated by the others, they agree, and I do
 15 agree, I had my pistol in my hand, because I had just been
 16 in a shooting incident. He would not have been able to see
 17 me firing that two shots that I say I fired, and thirdly,
 18 because this went on to paragraph 16, where he indicated
 19 that they saw protesters that were coming out and falling
 20 down. I think also a statement from Papa11 was then
 21 clarified by Constable Zondi where he says that he observed
 22 the protesters in paragraph 4.3. "Later on I observed
 23 protesters coming out of the bushes and behind the rocks.
 24 Most of the protesters carried dangerous weapons whilst
 25 their hands were raised. I shouted and instructed the

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1 armed protesters to drop their weapons, dangerous weapons
 2 and to lay down on the ground to which they obliged. Some
 3 of the protesters fell down because they were pushed by
 4 other protesters." I think just to clarify the issue of
 5 the "fell down," because I know that once the deluge from
 6 behind the rocks was coming out they were in a hurry to get
 7 out of the way and to safety.
 8 MR CHASKALSON SC: But Major General, on
 9 your version, neither Warrant Officer Mamabolo nor members
 10 of his POPs team could have seen you and the NIU people
 11 shooting.
 12 GENERAL NAIDOO: Chair, that's exactly
 13 what I testified to, and it would have been beneficial to
 14 me for me had somebody testified that they saw me that I
 15 had, I encountered something where I feared for my life and
 16 found it necessary to take cover. I mean, that supports my
 17 version in terms of somebody was shooting at me. But he
 18 could not, especially if this constable was sitting inside
 19 Papa11 according to him, he could not have seen what he
 20 alleges to have seen. He may have seen me coming up, he
 21 may have seen me with the firearm in my hands, he may have
 22 seen me even arresting those three people, but the shooting
 23 occurred out of the line of sight and that's what the bulk
 24 of the members of Papa11 said.
 25 CHAIRPERSON: Alright, we understand

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1 that. We understand your version and we understand the
 2 version that's been put. Do we have to take it further at
 3 this stage, Mr Chaskalson?
 4 MR CHASKALSON SC: No, Chairperson. Your
 5 version is that you are firing into a bush with a pistol at
 6 a moving target of 50 metres, where you knew there was at
 7 least one other person next to the striker who had
 8 allegedly fired at you. Is that correct?
 9 GENERAL NAIDOO: That is correct, Chair.
 10 MR CHASKALSON SC: 50 metres is right at
 11 the outer limit of the reliable accuracy of a pistol, is it
 12 not?
 13 GENERAL NAIDOO: Chair, when I said 50
 14 metres, I made an estimation and in terms of my action, it
 15 was dictated by that immediate threat on my life and I
 16 hoped that my action would not only possible get the
 17 shottist but disrupt the shottist because it was not just
 18 me who could have been shot, but in firing at him, disrupt
 19 his aim, and allow the other members like me to get into
 20 cover or to respond as well.
 21 MR CHASKALSON SC: You presumably have to
 22 go for shooting practice and shooting tests from time to
 23 time.
 24 GENERAL NAIDOO: Annually, Chair.
 25 MR CHASKALSON SC: What's your capacity

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1 to hit a stationary target at 50 metres?
 2 GENERAL NAIDOO: Chair, my scores range
 3 between 95 to 100% on my shooting.
 4 MR CHASKALSON SC: At stationary targets
 5 at 50, and over what distances?
 6 GENERAL NAIDOO: Chair, I can obtain the
 7 difference distances. I am not sure but there are set
 8 standards in terms of the shooting, and the set methods of
 9 shooting as well.
 10 MR CHASKALSON SC: You see, I understand
 11 the limit at which a pistol can safely be used accurately
 12 to be 50 metres.
 13 [11:53] That was the testimony, I think of Warrant
 14 Officer Wessels, page 2062. Cartridges capable of being
 15 fired accurately at quite a distance the biggest problem
 16 and what's normally used is 50 metres, however, much
 17 further effective and can be lethal much further than that.
 18 So 50 metres is the outer limit of the range at which a
 19 pistol is reckoned to be capable of accurate use.
 20 GENERAL NAIDOO: Chair, I think the
 21 Commission will appreciate at that particular time with
 22 that imminent threat the only means that was at my disposal
 23 to address that imminent threat was to use my pistol. I
 24 had up till then been in that the arrest of people with
 25 dangerous weapons without having the need to use it. The

<p style="text-align: right;">Page 23975</p> <p>1 issue of the measuring of the distance, etcetera was 2 furthest from my mind. 3 CHAIRPERSON: No I understand. I think 4 your version is on record and what Mr Chaskalson put to you 5 your 50 metres was an estimate, it might have been 40, it 6 might have been 60. Even if it was 50 it would have been 7 at the end of the range of accurate shooting as it were. 8 But if it was 50 or less than 50 it was within your 9 accurate range as I understand it. Is that right? 10 GENERAL NAIDOO: Chair, that's the way I 11 see them. 12 CHAIRPERSON: And the people weren't 13 stationery of course. The person you were shooting at and 14 GENERAL NAIDOO: Chair, as I indicated, 15 there was a rock and a tree and immediately at the shooting 16 I went out of the way, I went down. They were, as I've 17 indicated, ducking behind those trees. What the reaction 18 was when the other shooting took place I did not have a 19 view of it. 20 MR CHASKALSON SC: But you saw one person 21 with a firearm and you knew there were two people there. 22 GENERAL NAIDOO: I saw one person with a 23 firearm in the front and there was somebody at the back, 24 behind him as well. 25 MR CHASKALSON SC: As far as we can work</p>	<p style="text-align: right;">Page 23977</p> <p>1 fragments were recovered? 2 GENERAL NAIDOO: I'm not sure which tree 3 that was because there were quite a few trees that were 4 struck with bullets. But I did indicate the possibility 5 because as I indicated the individual was directly behind 6 the tree and could partially see him. 7 MR CHASKALSON SC: But, Major-General, 8 I'm trying to understand your version. On your version you 9 thought someone was trying to kill you. 10 GENERAL NAIDOO: Chair, I said somebody 11 was shooting at me and not thought, I said they were 12 shooting at me. So the intention could not have been very 13 friendly. 14 CHAIRPERSON: I think thought he means 15 what you believed at the time, probably on good ground if 16 what you say is correct, was that someone was shooting at 17 you and there was a distinct possibility that you would be 18 killed if the bullets that had been fired at you hit you in 19 the wrong place. So that the person that was firing either 20 wanted to kill you or was certainly reckless as whether you 21 would be killed. That was what you believed, isn't that 22 right, based on what you tell us, based on the fact that 23 shots had been fired at you? 24 GENERAL NAIDOO: Chair, I also testified 25 that at least two of the shots that I noticed struck the</p>
<p style="text-align: right;">Page 23976</p> <p>1 out no cartridges were ever found from the alleged shooter 2 to corroborate your version. Do you know if that's the 3 case? 4 GENERAL NAIDOO: Chair, I was not 5 involved in processing the crime scene, so I have no idea 6 if, you know, there was or there wasn't. During the 7 inspection in loco when we went there I did notice and it 8 was remarked that some cartridges were still being found on 9 the scene. So the fact that no cartridges found on the 10 day, I don't know what that signifies. 11 MR CHASKALSON SC: Well, Major-General, 12 did you tell the people who were processing the crime 13 scene, who you called in, that you'd been shot at and you 14 knew where the shooter when he shot at you? 15 GENERAL NAIDOO: Chair, I did not 16 specifically speak to the crime scene processors on 17 specific issues at the crime scene. As I indicated, there 18 were a lot of activity, but at some stage I know I did 19 mention to one of the crime scene, but it was not 20 immediately on the day. It was maybe a little after that 21 that the possibility of one of my bullets being in that 22 tree, I did mention that as a possibility to try and 23 identify where my shot had hit. 24 MR CHASKALSON SC: Are you talking about 25 the tree in which a bullet hole was found and bullet</p>	<p style="text-align: right;">Page 23978</p> <p>1 rock in front of me, so that what actually – it was not the 2 shots rather than the fact that the bullets were coming in 3 our direction that alerted us. 4 CHAIRPERSON: It was shots plus the 5 direction. 6 GENERAL NAIDOO: Chair, there was so much 7 of noise and things happening, my recollection was, you 8 know, the shock of the bullet ricocheting so closely. 9 MR CHASKALSON SC: But you thought 10 someone had tried to kill you. 11 GENERAL NAIDOO: Chair, I think that is 12 what I testified that somebody was shooting at me and could 13 possibly kill me. 14 MR CHASKALSON SC: Now you presumably 15 wanted that person brought to book. 16 GENERAL NAIDOO: That is correct, Chair. 17 MR CHASKALSON SC: You knew that several 18 guns had been found on the scene, three guns and these guns 19 could ostensibly be linked to individual miners. 20 GENERAL NAIDOO: That's correct, Chair. 21 MR CHASKALSON SC: And you knew then that 22 if you could find the cartridge from the bullet that was 23 shot at you, you'd be able to identify who tried to kill 24 you. 25 GENERAL NAIDOO: That is my presumption,</p>

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1 Chair.

2 MR CHASKALSON SC: So why didn't you go

3 to an LCRC person and say look in this area for a

4 cartridge, someone tried to kill me?

5 GENERAL NAIDOO: Chair, my understanding

6 was that they closed off the whole scene and processed the

7 whole scene. As I indicated, on that night there were many

8 things that happened. I did have a discussion with the

9 LCRC people, not on that night because as you understand

10 there were many things happening, etcetera. Where I

11 specifically indicated the direction I was shot at, I

12 specifically also speculated whether one of my rounds could

13 possibly be lodged in the tree there. So I don't know,

14 other than that in terms of pin pointing where the possible

15 suspect would have fired from what else would I have done.

16 If anything else as far as I'm concerned would be tampering

17 with the crime scene.

18 MR CHASKALSON SC: Did you tell your

19 version at Roots?

20 GENERAL NAIDOO: Chair, I'm not sure

21 which version.

22 MR CHASKALSON SC: The version of how and

23 why you shot.

24 GENERAL NAIDOO: Chair, as far as I can

25 remember I did indicate that I used my firearm. I can't

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1 specifically remember what I said, but I typed my statement

2 was the truth. So I can reasonably say that what I typed

3 is what I narrated as far as my role is concerned.

4 MR CHASKALSON SC: You see the strange

5 thing about your version is it's just not reflected

6 anywhere in exhibit L. Can you explain that?

7 GENERAL NAIDOO: Chair, I think we've

8 been over the issue of exhibit L and we've already

9 testified to the fact that exhibit L I'm sure that there

10 would have been lots of people that would have wanted

11 something very specific mentioned about them, etcetera. My

12 understanding that exhibit was a slide show which gave a

13 pictorial or a graphic account and would then be

14 accompanied by more specific information as to how it was

15 said and what was spoken about I'm not sure. But as far as

16 I'm concerned that exhibit L was a much higher level thing,

17 did not get into – did not cover all – there were many

18 specific details which we find now which were not there.

19 MR CHASKALSON SC: Well, Major-General, I

20 have to take issue with you on that answer because there is

21 a slide, slide 232 that tries to describe, in summary form,

22 the major incidents of shooting during – well at koppie 3.

23 Can we go to slide 232? Maybe start at 231 which starts

24 off "Incidents during phase 3 stage of 3. Synopsis of

25 shooting incidents reported at koppie 3." And now we're

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1 going to get a synopsis of the shooting incidents that were

2 reported. Incident 1. That's rub around from the TRT on

3 the west. Incident 2. That's victim N. Incident 3.

4 That's more TRT, it's you. Incident 4 is also TRT, it's

5 not you. Let's go to incident 5. "Forward holding area 1

6 members fired at a protestor who was firing at them from

7 the southern side of koppie 3. The protestor was moving

8 between bushes on the south western side of the koppie."

9 Okay the south western side of the koppie is not where you

10 say this protestor was or this shooter was.

11 GENERAL NAIDOO: No.

12 MR CHASKALSON SC: And it wasn't

13 essentially forwarding holding area 1 members who did the

14 firing that you did, it was essentially NIU plus yourself.

15 Do you agree.

16 GENERAL NAIDOO: Sorry, Chair, I didn't

17 get that. Read again.

18 MR CHASKALSON SC: It wasn't the forward

19 holding area 1 members who did the shooting that you

20 describe it was the NIU and you.

21 GENERAL NAIDOO: That's correct, Chair.

22 MR CHASKALSON SC: So Incident 6. "NIU

23 members on their approach fire at charging protestors on

24 the eastern side of the koppie, killing two protestors."

25 That looks to me like A and B. It's not what you're

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1 describing.

2 GENERAL NAIDOO: Okay.

3 MR CHASKALSON SC: Incident 7. "K9

4 members shot at an armed who was making his way through the

5 bushes on the south eastern side towards Major-General

6 Naidoo who was moving to NIU members." That's not what

7 you're describing.

8 GENERAL NAIDOO: No, Chair.

9 MR CHASKALSON SC: Incident 8. "NIU line

10 with Major-General Naidoo sweeps through the bushes on the

11 southern side of koppie 3 and fires shots at charging armed

12 protestors in the bushes." That sounds very much what like

13 you're except there's no mention of being shot at.

14 CHAIRPERSON: And there's no mention of

15 charging, armed protestors either.

16 GENERAL NAIDOO: No.

17 MR CHASKALSON SC: Well there's no

18 mention by you of charging, armed protestors and there's no

19 mention in exhibit L of anyone shooting at you.

20 GENERAL NAIDOO: No I don't think –

21 MR CHASKALSON SC: Incident 9. "NIU

22 members on the sweep line on the southern side positioned

23 one top of the large rock. Fire shots at protestors

24 between the rocks and bushes on the south western side of

25 the koppie when they see a firearm." Now the south western

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1 side of the koppie is not where you say you saw this person
 2 and you don't say that you are on the top of the large
 3 rock. You say you were on a plateau below.
 4 GENERAL NAIDOO: That's correct, Chair.
 5 MR CHASKALSON SC: And if we continue to
 6 the next slide. "K9 members approach and enter the bushes
 7 on the south western side and shoot at armed protestors who
 8 attempt to attack them when moving between the large
 9 rocks." That's not you. 11. "NIU members on the north
 10 eastern side of the koppie on open ground have a protestor
 11 charge at them from the bushes as their colleagues are
 12 arresting protestors. The NIU fire warning shots at the
 13 armed protestor who changes direction towards FHA 2 members
 14 to the west where he was fatally wounded when he attempted
 15 to stab a member with his spear." That's victim C. That's
 16 also not here.
 17 GENERAL NAIDOO: That's correct, Chair.
 18 MR CHASKALSON SC: So your version,
 19 although there are a description of 11 shooting incidents
 20 that SAPS are able to give some detail - in respect of
 21 which SAPS are able to give some detail, yours is not one
 22 of them.
 23 GENERAL NAIDOO: Chair, it would appear
 24 so.
 25 CHAIRPERSON: Are you sure that you told

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1 those present at Roots what you told us, that you described
 2 the incident which is dealt with in your statement and
 3 dealt with in your evidence. Your statement was only
 4 deposed, only sworn to in November.
 5 GENERAL NAIDOO: That's correct, Chair.
 6 CHAIRPERSON: But you told us you already
 7 had it in typed form at Roots in September.
 8 GENERAL NAIDOO: That's correct, Chair.
 9 CHAIRPERSON: And are you sure that you
 10 communicated to the people at Roots what is in your
 11 statement?
 12 GENERAL NAIDOO: Chair, as I indicated,
 13 the statement was typed at Roots and basically it
 14 summarised my narrative in terms of my experience, 1.
 15 Number 2 and the reason why my statement was not deposed
 16 immediately is that I already testified. I typed my
 17 statement on my own. At that time we had appointed legal
 18 representatives and we were interfacing with IPID. So I
 19 typed my statement and I obviously, because of the number
 20 of people that were taking statement, etcetera, I just
 21 submitted a unsigned copy indicating here's my draft
 22 statement and you know, what now. And what do I do. So in
 23 terms of when I deposed my statement it was only when they
 24 said look -
 25 CHAIRPERSON: I don't think you need any

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1 terms of the fact, for the present purposes, it's actually
 2 when you only signed and swore to it in November. The
 3 point is if you told the people at Roots about the incident
 4 that you describe in your statement how come it's not
 5 included among the 11 incidents which are set out in this
 6 slide dealing with the shooting incidents, similar
 7 incidents during phase 3 of stage 3.
 8 GENERAL NAIDOO: Chair, one of the things
 9 I could think - as I said, now I'm asking you to speculate
 10 because I don't know what went through the mind of the
 11 people that were preparing the final one. But one of the
 12 key things is that as far as we knew at stage, we did not
 13 locate anybody that had been shot or killed in that
 14 incident. So I don't know if that was a factor or whether
 15 in some of the other incidents people were shot and killed.
 16 But that's me just speculating, as I said -
 17 CHAIRPERSON: - stand up if we look at
 18 incident 10. The K9 members approach, enter the bushes on
 19 the south west side of the koppie 3 and shoot at armed
 20 protestors who attempt to attack them and moving between
 21 large rocks. It's not suggested that any of the shots
 22 fired by the K9 referred to in that incident hit any of the
 23 protestors. So they did include incidents where shots were
 24 fired without any suggestion that the shots hit anybody.
 25 GENERAL NAIDOO: Chair, if you look at

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1 the location of the incident, I think we have discussed
 2 this morning that the people that were killed in the so-
 3 called - was the area between the large rocks. Because one
 4 of the problems that we had and we would have liked - it
 5 was discussed in the development of annexure L was to say
 6 that particular person was shot by that. We were trying
 7 to, on a continuous basis, this was one area where we could
 8 not link specific individuals to specific bodies. So as I
 9 said, I'm only trying to give what my perception is. I
 10 won't be able to say why or why it was not.
 11 CHAIRPERSON: You're not answering the
 12 point. You see the point is that you say well because it
 13 isn't known to show that you hit anybody, that's why the
 14 incident wasn't mentioned. Well incident 10 is an incident
 15 where shots were fired, there is nothing to suggest that
 16 any of the shots hit anybody, but nevertheless the incident
 17 is recorded. Your one isn't. So the inference may be,
 18 obviously it's a matter to be taken up further I suppose.
 19 It may also be necessary to look at some of the material
 20 which was originally before the Commission of the working
 21 papers and working drafts and so forth, from Roots. But
 22 the evidence would be that the evidence you've given us,
 23 that you'd told that version at Roots may not be true.
 24 Because if you had told it, it would have found its way
 25 into this section of the report. That's the point

<p style="text-align: right;">Page 23987</p> <p>1 essentially which is being put to you. I don't know that 2 you can take it any further than you have, but you know 3 that's the point you've been invited to deal with. 4 GENERAL NAIDOO: That's true but I think 5 in addition to that the fact is that I did also report my 6 use of firearm to Brigadier Pretorius at that stage and 7 they were busy compiling their lists, etcetera. So in 8 compiling the slide show I'm not sure, did they cross- 9 reference and see all those things. So I think there's 10 many ways of looking and trying to verify this as you 11 indicated and I don't think there's a problem with using 12 those means to verify that. 13 MR CHASKALSON SC: Major-General, did I 14 understand you to say that you reported your use of the 15 firearm to Brigadier Pretorius at Roots? 16 GENERAL NAIDOO: No, Chair. I indicated 17 that I reported my use of firearm to Brigadier Pretorius on 18 the day of the incident telephonically. 19 MR CHASKALSON SC: Is that the phone call 20 that you had with Brigadier Pretorius when things had 21 calmed down? 22 GENERAL NAIDOO: Chair, there were quite 23 discussions between myself and Brigadier Pretorius, so I 24 can't indicate which specific call. I only know at some 25 stage that I informed her because I knew that they would be</p>	<p style="text-align: right;">Page 23989</p> <p>1 from behind you on the right? 2 GENERAL NAIDOO: Chair, I indicated that 3 there were shooting occurring all around the koppie at that 4 stage. 5 MR CHASKALSON SC: And some of it was 6 coming from behind you on the right? 7 GENERAL NAIDOO: There was a bush and few 8 rocks to my right, yes. 9 MR CHASKALSON SC: So if we go back to 10 MMM2, just so that we know what we are talking about. Can 11 we go to MMM2? Is the clump of bushes to your right that 12 you were talking about, behind it to your right, that GH 1 13 to 2. 14 GENERAL NAIDOO: Chair, yes, what I was 15 indicating is that that line when we were moving from about 16 between H and I3, somewhere there, moving in the direction 17 of where we saw the bodies, I had already almost reached 18 the bodies and there was shooting as I indicated around the 19 koppie, but I also remember specifically to my right as 20 well. 21 MR CHASKALSON SC: You see, Major 22 General, it's not just exhibit L that doesn't corroborate 23 your version, according to FFF8, there were 24 NIU members 24 who shot at scene 2. We've gone through the statements of 25 every one of those 24. Not one of them corroborates your</p>
<p style="text-align: right;">Page 23988</p> <p>1 recording, they would need to record this at some stage. 2 MR CHASKALSON SC: Can I ask you to look 3 at slide 243, the second bullet point? "Major-General 4 Naidoo joined the NIU team moving around the southern side 5 of the koppie towards the west. They encountered an armed 6 protestor hiding in the bushes who emerged charging at 7 them. Shots were fired at the protestor." Did you – do 8 you recall seeing a protestor charging at you? 9 GENERAL NAIDOO: Chair, as I indicated, 10 specifically not at me. As I indicated, when we were 11 cresting the rock there was shooting that occurred to the 12 left and right of us behind us. But I was not sure whether 13 it was the NIU or any other unit, but no protestor charged 14 at me when I was doing the advance movement, no. 15 [12:13] MR CHASKALSON SC: And you didn't see 16 shots fired at a protester by the NIU when a protester 17 charged at the NIU after you joined them? 18 GENERAL NAIDOO: Chair, that's why I 19 indicated that there was shooting occurring behind me 20 especially to the right. I did not have a view of who or 21 what was happening and it was the time after we, or when we 22 got to body A and B, so in terms of a protester charging me 23 specifically, no. 24 MR CHASKALSON SC: Sorry, you heard 25 shooting when you got to body A and B, you heard shooting</p>	<p style="text-align: right;">Page 23990</p> <p>1 story. If we can call up FFF28, and Chairperson, I don't 2 want to go through any of these statements one by one, I 3 merely want to make the – 4 CHAIRPERSON: The way to do it I would 5 imagine, simply, you've made the statement, if the police 6 can investigate. If they think that you have made a 7 mistake and there is one who corroborates you, that can be 8 dealt with in re-examination. I don't think we need to 9 spend time. 10 MR CHASKALSON SC: Indeed, if we can just 11 call up FFF8, so that I can identify the statements we've 12 been through, and if one goes to the divider with NIU, 13 there. Go a little bit to the left so we can see ranks. 14 Sergeant Chauke, Constable Dubeni, Constable Halam, 15 Constable Hembit, Constable Mandla, Warrant Officer 16 Mkhwanazi, Lieutenant-Colonel Modiba, Constable Mogege, 17 Sergeant Mothibedi, Sergeant Mtimkulu, Lieutenant Ndlela, 18 Constable Nduku, Constable Ngonyama, Warrant Officer 19 Nxandu, Constable Ngwaleni, Lieutenant-Colonel Nkebe, 20 Constable Nyatela, Constable Pogleli, Constable Platjie, 21 Constable Poswa, Constable Sefanyetso, Constable Silavana, 22 Constable Tufeni, and Sergeant Yeko. We have been through 23 all of their statements that have been made available to us 24 by SAPS, and not one of them provides any corroboration for 25 your version. If SAPS can indicate we've missed something,</p>

<p style="text-align: right;">Page 23991</p> <p>1 I'd ask them to put it to you in re-examination.</p> <p>2 GENERAL NAIDOO: Chair, yes, can I maybe</p> <p>3 at this stage, comment about that? Because –</p> <p>4 CHAIRPERSON: You have the fullest right</p> <p>5 to comment, I think the question has been put to -</p> <p>6 GENERAL NAIDOO: We have been through the</p> <p>7 similar exercise previously with the other lot of</p> <p>8 statements. I have also, I have received the statements,</p> <p>9 and I have studied every one. None of the members talk</p> <p>10 about any other member who shot alongside them with them,</p> <p>11 etcetera. The context within which these statements were</p> <p>12 taken was for the IPID investigation and I think they</p> <p>13 worked with the premise, did you shoot or did you not</p> <p>14 shoot? And where did you shoot? So just like the issue of</p> <p>15 Papa11 and the statements that were introduced, those were</p> <p>16 not the original statements. In the original statements,</p> <p>17 there's no mention of Major General Naidoo or any of the</p> <p>18 other things. They spoke specifically about what they did,</p> <p>19 because those statements were taken for the IPID</p> <p>20 investigation. So what I am saying is in my statement, I</p> <p>21 don't mention a specific person firing a shot, etcetera</p> <p>22 because I was asked to give a statement about my shooting</p> <p>23 and what I did. And I tried to broaden it because I needed</p> <p>24 to prepare this input, the narrative in terms of our input</p> <p>25 at Roots. So I think we must put it in that context that</p>	<p style="text-align: right;">Page 23993</p> <p>1 CHAIRPERSON: This will be MMM30 I think.</p> <p>2 Ms Pillay will give you permission and so to mark it.</p> <p>3 MR CHASKALSON SC: And paragraph 3, is</p> <p>4 possibly the best place to start, "Ons het die kleiner</p> <p>5 koppie genader van die weslike kant af. Terwyl ons die</p> <p>6 koppie genader het, het ek skote gehoor vanuit die koppie</p> <p>7 uit." Like the rest of the K9 group, Sergeant Harmse only</p> <p>8 talks about hearing shots as he approaches the koppie, not</p> <p>9 from the power station. "Ek en Generaal Naidoo het toe</p> <p>10 regs om die koppie beweeg waar ons van NIU se lede gekry</p> <p>11 het en saam hulle die koppie genader." The first shooting</p> <p>12 incident he describes, comes in paragraph 4. "Ek het 'n</p> <p>13 man bo op die koppie opgemerk wat gelyk het soos 'n R5</p> <p>14 waarmee hy geloop het. Ek het die person uitgewys aan</p> <p>15 Generaal Naidoo waarna daar skote gevuur is vanaf NIU se</p> <p>16 lede en die person het geval." Can I ask, can I just stop</p> <p>17 there, do you recall this?</p> <p>18 GENERAL NAIDOO: Chair, I remember a</p> <p>19 person being pointed with a rifle, I don't remember</p> <p>20 shooting, because I remember the person was running as I</p> <p>21 indicated in a westerly direction. But I don't remember a</p> <p>22 shooting. There were a lot of shots being fired but</p> <p>23 shooting or the person falling, I can't remember that, I</p> <p>24 distinctly remember the person running in a westerly</p> <p>25 direction.</p>
<p style="text-align: right;">Page 23992</p> <p>1 I've been through all the statements that were given to me,</p> <p>2 and they don't talk about Captain X, Colonel X, or whoever</p> <p>3 shot so many rounds and that. There are indications of the</p> <p>4 NIU team fired shots, etcetera but they don't go into that</p> <p>5 detail and say, all these things and also one of the things</p> <p>6 I picked up is, they don't all specifically indicate it was</p> <p>7 at this instance that I shot at that. So to draw the</p> <p>8 inference that what I said in my statement where I was</p> <p>9 being very specific in my statement is not corroborated I</p> <p>10 think will be incorrect and I would rather propose what you</p> <p>11 have suggested that be followed up and maybe dealt with in</p> <p>12 re-exam.</p> <p>13 CHAIRPERSON: In fairness to you, that's</p> <p>14 the obvious way, but you've commented on the matter, you</p> <p>15 put your point of view before us, and it will be taken up</p> <p>16 by your team when you are re-examined if there is something</p> <p>17 that's relevant for us to consider. Yes, Mr Chaskalson?</p> <p>18 MR CHASKALSON SC: Then we have Sergeant</p> <p>19 Harmse, your left-hand man as opposed to your right-hand</p> <p>20 man, he was with you during this incident, and if we could</p> <p>21 look at Sergeant Harmse's statement, because he also</p> <p>22 doesn't provide any corroboration.</p> <p>23 CHAIRPERSON: Is this an exhibit?</p> <p>24 MR CHASKALSON SC: Yes, this needs to</p> <p>25 become an exhibit, Chairperson.</p>	<p style="text-align: right;">Page 23994</p> <p>1 MR CHASKALSON SC: It's really a matter</p> <p>2 for legal argument but it would seem to me that the mere</p> <p>3 fact that someone is in possession of an R5 rifle, is not a</p> <p>4 licence to try to kill him. Would you think it is? Do you</p> <p>5 think it's acceptable just to shoot with an R5 at another</p> <p>6 person who you see in possession of an R5?</p> <p>7 GENERAL NAIDOO: Chair, I think the law</p> <p>8 is clear on that and what was being described did not</p> <p>9 necessarily describe any imminent threats or things. So as</p> <p>10 I indicated, what I perceived and what I saw, was a person</p> <p>11 running in a westerly direction. It was pointed out to me,</p> <p>12 and I don't think at that stage, I could say that I saw a</p> <p>13 specific NIU individual firing at that person because we</p> <p>14 were still just departing from our vehicles to the NIUs, so</p> <p>15 I don't know how he drew the conclusion that the NIU was</p> <p>16 shooting at that chap.</p> <p>17 MR CHASKALSON SC: Well, maybe this is a</p> <p>18 matter that IPID can take further with Sergeant Harmse. He</p> <p>19 then testifies further over the page, "Ons het verder</p> <p>20 inbeweeg in die koppie in. Ek het opgemerk that daar 'n</p> <p>21 man van links af uit die bosse uitgekom na ons rigting, toe</p> <p>22 lede van NIU het vir die man gese, hy moet op die grond lê,</p> <p>23 maar die man het nie gaan lê nie, waarna daar op die man</p> <p>24 geskiet is van my regtekant af, maar ek kan nie se wie</p> <p>25 nie." Now, Harmse was with you as you went up the rocks.</p>

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1 GENERAL NAIDOO: Chair, as I indicated,
 2 he was just a few paces behind me. When we linked up with
 3 the NIU personnel we became a little separated, two or
 4 three members between us. I was in front of him a few
 5 paces, not in line with him, yes.
 6 MR CHASKALSON SC: And on his right-hand
 7 side.
 8 GENERAL NAIDOO: I was to the front
 9 centre of the line, yes.
 10 MR CHASKALSON SC: No, no, but on his
 11 right-hand side. You described him as being on your left-
 12 hand side, as your –
 13 GENERAL NAIDOO: That's correct.
 14 MR CHASKALSON SC: Did you see this
 15 episode that he describes?
 16 GENERAL NAIDOO: Chair, no, as I already
 17 testified, I did not specifically see an incident where
 18 they were shooting at a particular person. I did indicate
 19 there were shots that were being fired behind us but I
 20 perceived that to be coming from the bushy area to the
 21 right. In terms of arrests, the people that we arrested
 22 there were the people that we arrested at body A and B.
 23 It's the first people that I encountered in terms of the
 24 arrests, so it could have happened slightly behind me, but
 25 I did not witness a charging or a particular incident

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1 that's been described here.
 2 MR CHASKALSON SC: You see, I would find
 3 it very odd that Sergeant Harmse didn't witness the
 4 incident that you described. Can you explain how he
 5 wouldn't have witnessed the incident that you described?
 6 GENERAL NAIDOO: Chair, which incident?
 7 MR CHASKALSON SC: The incident where
 8 someone allegedly shot at your while Sergeant Harmse was a
 9 little bit behind you on your right-hand side.
 10 GENERAL NAIDOO: Chair, I went through
 11 Sergeant Harmse –
 12 MR CHASKALSON SC: Sorry, on your left-
 13 hand side.
 14 GENERAL NAIDOO: There's a lot of things
 15 that I don't see in Sergeant Harmse's statement, yes,
 16 including the possible witnessing of the shooting where I
 17 was involved in which included the fact that at some stage,
 18 because he reported to me after that his firearm, he tried
 19 to shoot at the particular instance, I am not sure which
 20 instance, and his firearm jammed, and then none of these
 21 things are reflected in the statement. So that is why I am
 22 indicating that the statements for the purpose that they
 23 were taken did not provide the purpose to satisfy the
 24 questions here, and I propose that it be followed through.
 25 MR CHASKALSON SC: You see, Major

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1 General, you said to us that the only shooting by NIU
 2 members in your immediate vicinity was the shooting
 3 incident that you described.
 4 GENERAL NAIDOO: That is correct, Chair.
 5 MR CHASKALSON SC: Now, Sergeant Harmse
 6 was with you throughout the period that there were NIU
 7 members in your immediate vicinity.
 8 GENERAL NAIDOO: Chair, as I testified,
 9 the line, the members in the line that I was moving
 10 forward, as far as my knowledge is concerned, did not fire
 11 in the time that we were progressing. So I have already
 12 indicated yes, there was firing to the right especially
 13 near the clump of bushes but I did not see or directly
 14 observe who was shooting. I have already testified to that
 15 as well. I think to address the particular issue, then it
 16 should be clarified with Sergeant Harmse in terms of how he
 17 experienced it.
 18 CHAIRPERSON: Let's get clarity on this.
 19 The incident to which he refers at the top of, the second
 20 page of his statement, where a man came from the left side
 21 out of the bushes, in what he describes as "ons rigting."
 22 Presumably your direction as well, because you were with
 23 Harmse. And then he says, members of the NIU told the
 24 person, told the man you must lie on the ground. But he
 25 didn't go lie on the ground whereafter there was shot at

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1 him from Harmse's right-hand side. He can't say by whom.
 2 Now, did that, did such an incident take place in your
 3 presence?
 4 GENERAL NAIDOO: Chair, I did indicate
 5 that there were several shots actually –
 6 CHAIRPERSON: No, no, no. Never mind the
 7 several shots. What I mean is NIU people saying to this
 8 person, you must lie down and when he doesn't lie down, he
 9 is shot at. Now did such an incident take place in your
 10 presence?
 11 GENERAL NAIDOO: Chair, I have already
 12 indicated I did not witness such an incident. Harmse
 13 indicated he did, so we could ask him in terms of that.
 14 CHAIRPERSON: Now I understand. You see,
 15 it's difficult to speculate as to why Harmse wouldn't
 16 mention something which he should have known about because
 17 it happened in your presence because as you say, it's an
 18 IPID statement and the various limitations connected to
 19 those statements. But here we've got something that
 20 happened, it would seem, in your presence which you know
 21 nothing about. So either Harmse – unless there's an
 22 explanation, can you think of an explanation?
 23 GENERAL NAIDOO: Chair, the main reason
 24 he was specifically probably remembered to put it in his
 25 statement was related to the primary purpose of the

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1 statement that, did you shoot or did you not shoot? And if
2 he had probably observed a particular incident and made
3 mention of it possibly to indicate that he did not shoot in
4 that particular incident.

5 CHAIRPERSON: I understand that. I am
6 sorry to interrupt you, but we are busy with a different
7 question. The question is, he describes an incident. He
8 mentions he was in your presence. You say you were also in
9 his presence, he talks about how we, that's presumably
10 includes you, moved further into the koppie, and then he
11 describes this incident. Now, which is something you say
12 you know nothing about. That's what I am trying to
13 understand. Is there a, it doesn't help to talk about
14 limitations of IPID statement, that relates to things he
15 wouldn't say, now this deals with something he did say.

16 GENERAL NAIDOO: Yes.

17 CHAIRPERSON: And if you were present
18 with him, or he was in your immediate vicinity, then you
19 should know about this incident, if it happened. I mean
20 there's no reason to think Harmse would make it up.

21 GENERAL NAIDOO: Of course, Chair.

22 CHAIRPERSON: So you should know about
23 it, and yet you don't. So you say.

24 GENERAL NAIDOO: Let me indicate, Chair,
25 what happened when we moved forward from here. When we

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1 moved forward from here, we arrived at the bodies A and B,
2 plus approximately three other people. That was the short
3 walk where we arrived at the [indistinct] and that is where
4 we ascertained because remember I did testify that we had
5 to ascertain the condition of those people and we ascertain
6 that three of those were not shot at all. We arrested
7 those people, the NIU members took them away, cuffed them
8 and took them away. We ascertained that the other two were
9 fatally wounded and that's when we regrouped and some of
10 the people as were shown in the picture here, were still at
11 the scene, obviously dealing with the prisoners whilst we
12 decided to have a line going to the right-hand side of the
13 koppie and we went up on the left-hand side. So as I
14 indicated, there were activities that were occurring,
15 suspects were being detained and arrested, etcetera. So he
16 probably had witnessed an incident. He did not
17 specifically mention the incident too me. I know at some
18 time after the incident when we were on the other side, he
19 made specific mention about the fact that his firearm
20 jammed when he required to fire it. I assumed then it was
21 going to be at the incident that we were involved in, but I
22 don't see it mentioned in his statement. So I would go for
23 the option of first clarifying these issues. But I think
24 the important thing he indicates in his statement was that
25 we arrived when we went from our vehicle, we went around

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1 there, the NIU were in position, which are the NIU.

2 CHAIRPERSON: I understand. Adv Hemraj
3 wants to ask you a question.

4 COMMISSIONER HEMRAJ: Was Sergeant Harmse
5 one of the policemen who went with you up to the plateau
6 where the arrest of the there strikers took place?

7 GENERAL NAIDOO: Chair, yes, he was part
8 of the line, he was as I said two or three people to my
9 left as we were going up.

10 COMMISSIONER HEMRAJ: So there would have
11 been no way that he would not have been able to see you
12 firing your firearm?

13 GENERAL NAIDOO: That was my
14 understanding as well.

15 MR CHASKALSON SC: Major General, you
16 just said that you wanted to tell the Commission what
17 happened from here and I understand that you were referring
18 to what happened from the point at which you fired your
19 firearm. What happened after that?

20 GENERAL NAIDOO: No, Chair, when I was
21 referring to what happened from here, I said when we moved
22 forward and the activities that took place at body A and B.
23 [12:33] I think I was referring to that.

24 MR CHASKALSON SC: Yes, well you said
25 that what was the "here"? We were talking about the

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1 incident in which you fired your firearm and then you said
2 "I want to say what happened from here," because you were
3 trying to explain why Sergeant Harmse may have been in a
4 different position when he witnessed the shooting incident
5 that you didn't witness.

6 GENERAL NAIDOO: Chair, I don't think I
7 indicated that he was in a different position. As I
8 indicated, he was, as we were going up there he may have
9 been a few steps behind because there were members of the
10 NIU that were immediately alongside me.

11 CHAIRPERSON: Ja, a couple of steps

12 behind doesn't make a difference, I wouldn't have thought –

13 GENERAL NAIDOO: Yes, yes –

14 CHAIRPERSON: But anyway, I think we've
15 dealt with this issue, have we not, now? Shall we now take
16 a comfort break? I'm told that there may be a need for it,
17 just for five minutes and no longer.

18 MR CHASKALSON SC: Certainly,
19 Chairperson.

20 [COMMISSION ADJOURNS COMMISSION RESUMES]

21 [12:40] CHAIRPERSON: The Commission resumes.

22 Major General, you're still under oath.

23 GANASEN NAIDOO: s.u.o.

24 CHAIRPERSON: Mr Chaskalson.

25 CROSS-EXAMINATION BY MR CHASKALSON SC (CONTD.):

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1 Major General, I was questioning you in relation to your
 2 evidence about what happened from here and there was then a
 3 movement of your people to victims A and B. What I want to
 4 put to you is that if one looks at the version of your
 5 shooting incident in your statement and one compares it to
 6 the version of your shooting incident in oral evidence,
 7 there are very material differences and I want to put those
 8 differences to you because I also have a theory about why
 9 they were there and I have to put that theory to you as
 10 well in fairness to you.

11 So let me tell you what my concern about the
 12 differences is. If we go to your statement starting at
 13 paragraph 74, we get a sequence. 74 you're still with the
 14 NIU in the position where you originally found them. Maybe
 15 start 73. You're with the NIU in the position where you
 16 originally found them, which you described as I3 on the
 17 grid, MMM2. You realised the sun is going down and there's
 18 a need to move a bit quicker, so that's 73, and in 74 you
 19 instruct the personnel to "reform the line so that we could
 20 continue to move forward in a sweeping action to clear the
 21 rocks, as the NIU had been doing before the shooting."

22 Then 5, "Just as we moved forward towards the
 23 second line of rocks," now the second line of rocks are, as
 24 you've identified previously, the sort of, the big rocks
 25 around, the whole outcrop of rocks immediately around

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1 koppie 3, the E,F row. Do you want to call up MMM2 just to
 2 reconfirm that? The second line of rocks is these rocks
 3 that I'm indicating down columns E and F, so you've
 4 testified previously. Just as you moved forward towards
 5 that second line of rocks – and bear in mind that you're
 6 moving forward from a position in I3 – just as you move
 7 forward towards those rocks, that's when the shooting
 8 incident happens. "We came under fire from one of the
 9 strikers to my left, approximately 50 metres, and the
 10 bullets narrowly missed me and struck the rocks around me."
 11 Then you return fire. "Then several other NIU members to
 12 my left also simultaneously returned fire in the direction
 13 of the shots, which immediately stopped. When the NIU line
 14 reached the rocks where the shots had emanated from, they
 15 didn't find anyone there as the assailant had fled further
 16 in."

17 So that looks to me like shooting that came from
 18 these bushes and rocks as you were moving through either H3
 19 or G3, the NIU go in there and find no-one. Later two
 20 individuals are arrested apparently.

21 Then we continue, 76, "In our forward movement to
 22 the first bodies among the rocks which I observed on my
 23 arrival, we discovered that only two of the strikers were
 24 shot." Now that forward movement is to the position at the
 25 base of the koppie in F3. That's where the bodies A and B

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1 are to be found. So your movement still goes there. "We
 2 promptly disarmed" – "We discovered that only two or three
 3 of the strikers were shot and killed. Approximately three
 4 strikers were still among the bodies with pangas and
 5 assegais. We promptly disarmed them and they were arrested
 6 and secured. The line moved forward, focusing on the high
 7 ground as this was the area most of the shooting on the
 8 police was coming from." The high ground would be the
 9 left-hand side of F2 and 3 and E2 and 3. "We saw several
 10 strikers fleeing on the rocks, did not pursue them as they
 11 did not pose a threat to the police line as they were
 12 fleeing in the opposite direction. When we reached the top
 13 of the high ground on the large rock I held the line back
 14 to first check if the area was safe." That would have been
 15 the large rock, you would be holding the line back there.
 16 "I discovered four strikers lying in cover." You've
 17 indicated to us – sorry, the "there" that I referred to was
 18 E2. You've indicated that that was in the crevice that you
 19 identified at E3.

20 So your statement paints a picture of a steady
 21 movement from I3 forward along row 3, deviating to the high
 22 ground on F2, but in a direction that's broadly east to
 23 west and the shooting happens as you leave I3 towards the
 24 second set of rocks, "just as we move forward," and you're
 25 moving forward from I3.

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1 Now the version that you've given us in oral
 2 evidence is a very different version. That's a version
 3 where the shooting takes place at somewhere in F3 after you
 4 have already ascended the rocks and after you've already
 5 passed the bodies of victims A and B. Is there a reason
 6 for the discrepancy?

7 GENERAL NAIDOO: Chair, maybe because
 8 during my oral evidence I was now using the picture to
 9 indicate my movement, but as I indicated, in terms of the
 10 location of the shooting, what I've indicated in, on the
 11 picture is actually where the shooting occurred. So maybe
 12 the chronology was not a hundred percent, but in terms of
 13 the location of the shooting I'm very clear where we were
 14 and when I meant the second line of rocks I meant we were
 15 ascending towards the next, between, to go up to the next
 16 level.

17 MR CHASKALSON SC: It's certainly not the
 18 impression created by the statement, but would you agree
 19 that if, on the version that's in the statement your
 20 shooting wouldn't have been visible to anyone in Papa11?
 21 The rocks would have been between you and Papa11 on the
 22 version in the statement -

23 GENERAL NAIDOO: Chair –
 24 MR CHASKALSON SC: - if you shot just as
 25 you moved towards the second line of rocks in I3/H3.

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1 GENERAL NAIDOO: Chair, the reason why I
 2 indicated the shooting could not happen there is because I
 3 clearly indicated where it occurred. I indicated also
 4 where the shots struck before the shooting occurred and it
 5 was on the rocks, number 1. Number 2, either of the two
 6 locations was not visible to Papa11.
 7 MR CHASKALSON SC: Well, Papa11 seems to
 8 have seen - at least everyone in Papa11 saw people from the
 9 NIU in your group shooting in that incident.
 10 GENERAL NAIDOO: Chair, I think that
 11 statements do not specifically indicate that they saw them
 12 shooting, indicates that shooting was coming from that
 13 direction.
 14 CHAIRPERSON: I'm not sure if it's
 15 necessary to go into all the detail, but basically what
 16 you're busy doing is you're putting what you say are the
 17 discrepancies to give the witness an opportunity to answer.
 18 Have you put all the discrepancies that you want to give
 19 him an opportunity to answer?
 20 MR CHASKALSON SC: Yes, I have, but I
 21 want to put to him my concerns about the discrepancies as
 22 well.
 23 CHAIRPERSON: As long as you do it fairly
 24 briefly.
 25 MR CHASKALSON SC: You see, Major

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1 General, the statement, the version in the statement is the
 2 version in your original statement which was signed on 7th
 3 of November. You were committed to that from 7 November
 4 when you signed that statement.
 5 GENERAL NAIDOO: That's correct, Chair.
 6 MR CHASKALSON SC: And at the time of 7
 7 November the ballistics investigators hadn't yet identified
 8 which cartridge came out of your gun.
 9 GENERAL NAIDOO: That's correct, Chair.
 10 MR CHASKALSON SC: In fact, as we'll see
 11 later, the ballistics investigators hadn't even been told
 12 that you were one of the shooters and they hadn't been
 13 given your gun, but we'll get to that later. After you
 14 signed the first statement the ballistics investigators did
 15 manage to get hold of your gun, test it and link it to one
 16 of the cartridges, and if I can identify where this takes
 17 place by handing in the statement of Colonel Pieterse who
 18 did the ballistics examination -
 19 CHAIRPERSON: This will be exhibit MMM31.
 20 MR CHASKALSON SC: MMM31, and if we call
 21 up Colonel Pieterse, MMM31, go to page 14 -
 22 CHAIRPERSON: So you say page - is
 23 paragraph - oh, I see, it's page 14.
 24 MR CHASKALSON SC: Page 14, paragraph
 25 21.1 Pieterse confirms that "The following 9mm Parabellum

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1 calibre Victor Leo model Z88 semi-automatic pistol filed
 2 the following cartridge case in Marikana 1380812, serial
 3 number Q010032," is that your pistol?
 4 GENERAL NAIDOO: Sorry?
 5 MR CHASKALSON SC: Q010032.
 6 GENERAL NAIDOO: That's correct.
 7 MR CHASKALSON SC: Cartridge case is
 8 given a name and a letter P. If we can go to exhibit B,
 9 the sketch plan again, page 47, and there we will see where
 10 Captain Mohlaki marks where he found the cartridge case P.
 11 P is in the circle on the right-hand side of the picture.
 12 It's found on Captain Mohlaki's sketch plan at the top of
 13 the rocks that we see. It's above, top of the rocks above
 14 victim A. If we can go back to Colonel Pieterse's
 15 statement, MMM31, and go to paragraph 16, paragraph 16 up,
 16 there we see at 16.1 that it was only on 20 November,
 17 that's almost two weeks after you signed your statement,
 18 that your firearm with serial number Q010032 was made
 19 available to Colonel Pieterse.
 20 So what I want to put to you, on the 7th of
 21 November, what concerns me is that on the 7th of November
 22 you didn't know that a cartridge that would pin your
 23 position when you shot was going to be - well -
 24 CHAIRPERSON: A cartridge or a cartridge
 25 case?

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1 MR CHASKALSON SC: A cartridge case.
 2 Cartridge case. That Colonel Pieterse would be able to pin
 3 your position where you shot by means of a cartridge case.
 4 In fact at that stage you hadn't even handed your firearm
 5 over to Colonel Pieterse. You may well have thought at
 6 that stage that your firearm was not going to be tested.
 7 Did you think your firearm was going to be tested at that
 8 stage?
 9 GENERAL NAIDOO: Chair, all firearms that
 10 are used where shots are fired and declared are tested by
 11 IPID, so there was no reason to think it will not be
 12 tested. In fact I was waiting for them to request the
 13 firearm. They were requesting firearms and as they
 14 requested we supplied those firearms to them.
 15 MR CHASKALSON SC: We'll get to that in
 16 some detail shortly, but what I want to put to you is it
 17 looks like your version on the 7 November statement about
 18 where you shot was a version that didn't really have to
 19 take account of the real evidence that was established on
 20 the 20th of November and was framed accordingly. Do you
 21 have a comment to that?
 22 GENERAL NAIDOO: Chair, I don't agree
 23 with that. As I indicated, when I did make my statement, I
 24 have not changed my statement from the time that I made it
 25 in, at Roots to now, and I had an opportunity to change it

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1 if there was a suggestion that I would change it to adjust
 2 it to whatever else is coming in and I will still stand by
 3 what I have indicated and the corroboration obviously
 4 should come from the people that were with me and who
 5 experienced it, and as well as physical evidence as well.
 6 MR CHASKALSON SC: Well, we've yet to see
 7 any corroboration.
 8 CHAIRPERSON: That's just a statement you
 9 don't have to make. Can we go back to the sketch for a
 10 moment, the map which indicates where P was? Thank you.
 11 Where's P?
 12 MR CHASKALSON SC: P, Q1, R, S and X are
 13 all found at the tip of this arrow.
 14 CHAIRPERSON: Yes, yes, I see. Thank
 15 you.
 16 MR CHASKALSON SC: Well, let's look at
 17 why it was that your firearm only reached Colonel Pieterse
 18 on the 20th of November -
 19 CHAIRPERSON: Mr Chaskalson, I see it's
 20 now 1 o'clock, just before 1 o'clock. Is this a point you
 21 can deal with in two minutes, or shall we take the lunch
 22 adjournment?
 23 MR CHASKALSON SC: I'm afraid it can't be
 24 dealt with in two minutes, Chairperson.
 25 CHAIRPERSON: We'll take the lunch

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1 adjournment and we'll reassemble at 2 o'clock as there's
 2 some housekeeping we have to attend to during the lunch
 3 hour.
 4 [COMMISSION ADJOURNS COMMISSION RESUMES]
 5 [14:21] CHAIRPERSON: The Commission resumes, I'm
 6 afraid that housekeeping took a little bit longer than we
 7 thought, I apologise for that. Major-General, you're still
 8 under oath.
 9 GENERAL NAIDOO: I'm still under oath,
 10 Chair.
 11 CHAIRPERSON: Mr Chaskalson?
 12 MR CHASKALSON SC: Major-General, when we
 13 broke I was going through Colonel Pieterse's statement and
 14 indicating that your firearm only reached him, I think it
 15 was 20 November. What I would like to do now is to look at
 16 the correspondence between IPID and the SAPS in relation to
 17 Marikana, and that correspondence starts with a memorandum
 18 from IPID addressed to Brigadier Pretorius on 20 August
 19 2012 and I wonder if we can call that up, it will have to
 20 be a new exhibit, Chairperson?
 21 CHAIRPERSON: It will be MMM32, is this
 22 the memorandum dated the 20th of August 2012?
 23 MR CHASKALSON SC: That's correct,
 24 Chairperson.
 25 CHAIRPERSON: Memorandum from IPID to, it

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1 was really to the Provincial Commissioner, isn't it, dated
 2 20/08/2012 and it is Exhibit MMM32.
 3 MR CHASKALSON SC: And there IPID give
 4 notice of their investigation into the Marikana shootings
 5 and over the page, if we can just go down to page 2 of that
 6 document, they make a formal request for certain items and
 7 information in terms of the IPID Act, so if we can go to
 8 page 2 of the document? And there are ten items that they
 9 want, a completed form for reporting the matters for
 10 investigation by IPID, second is the operational plan
 11 indicating all commanders and their roles. The third is
 12 SAPS 15 for the JOC, the fourth is SAPS 15 for all units
 13 which participated in the operation, the fifth is the
 14 shooting incident report, the sixth is the OB entries
 15 starting from Monday, the 13th to the 17th of August, the
 16 seventh is official video footage taken by SAPS units, the
 17 eighth is transcript and DVD recording from radio
 18 operational control, the ninth is a list of members who
 19 have declared to have shot during the incident and the
 20 tenth is all firearms mentioned on the SAPS 15s and all
 21 firearms used during the operation including mine security
 22 to go to ballistics. Did you see this document?
 23 GENERAL NAIDOO: I did, Chair.
 24 MR CHASKALSON SC: The first response
 25 from SAPS to this document came the following day from

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1 Brigadier Pretorius, that's a letter that she sent to IPID
 2 on the 21st of August.
 3 CHAIRPERSON: With B4 in the top right
 4 hand corner?
 5 MR CHASKALSON SC: That is correct,
 6 Chairperson.
 7 CHAIRPERSON: And that's MMM33, a letter
 8 from Brigadier Pretorius to IPID dated 21/08/2012.
 9 MR CHASKALSON SC: And if we can just
 10 scroll down a little on that letter, she acknowledges
 11 receipt of the memorandum of the 20th and attaches three
 12 items. The first is a SAPS 15 of all units that took part
 13 in the operation, - sorry, possibly before we get to the
 14 contents of Brigadier Pretorius' letter, were you made
 15 aware of Brigadier Pretorius' letter at the time that it
 16 was sent?
 17 GENERAL NAIDOO: Chair, yes, Brigadier
 18 Pretorius did inform me. She is our liaison with IPID on a
 19 day to day basis anyway.
 20 MR CHASKALSON SC: And she attached to
 21 her letter SAPS 15 of all units that took part in the
 22 operation. Now, Major-General, you'll recall that there
 23 were two separate requests for SAPS 15s. Under 4 of the
 24 previous letter it was SAPS 15 of all units and under 3 it
 25 was SAPS 15s of the JOC. Are you in a position to say

<p style="text-align: right;">Page 24015</p> <p>1 whether the bullet point entry at the top line here would 2 have excluded the JOC? 3 GENERAL NAIDOO: Chair, I'm not sure. 4 MR CHASKALSON SC: We will consider that 5 further with the next letter, and then the OB entries she 6 sends through and she sends through a list of members who 7 declared to have shot during the incident. Did you see 8 that list? 9 GENERAL NAIDOO: Not the list 10 specifically, no, Chair. 11 MR CHASKALSON SC: We've been provided 12 with a copy of that list by SAPS and your name is not on 13 it. 14 CHAIRPERSON: Are you going to hand it in 15 as exhibits or – 16 MR CHASKALSON SC: We – 17 CHAIRPERSON: Well, if it is only 18 relevant in the negative sense that the witness' name is 19 not on it and that is accepted by the police to be correct 20 we don't have to burden the record with the document I 21 think, Mr Semenya? 22 MR SEMENYA SC: It is indeed so, Chair. 23 It is correct, Chair, the name is not on the list. 24 CHAIRPERSON: You accept that the 25 witness' name is not there and therefore it is not</p>	<p style="text-align: right;">Page 24017</p> <p>1 MR CHASKALSON SC: There is nothing that 2 leaps to mind as another obvious omission, but we got it 3 this morning, we haven't – 4 CHAIRPERSON: According to the evidence, 5 remind me, Brigadier Calitz was a member of the JOC, I 6 can't remember whether he admitted using his firearm? 7 MR CHASKALSON SC: He didn't use his 8 firearm. 9 CHAIRPERSON: I don't think he did, so if 10 he is omitted from the list it is not significant because 11 he didn't use his firearm, so the only member of the JOC 12 who used the firearm that we're aware of is this present 13 witness, is that right, - of the JOCCOM I mean, sorry. 14 MR CHASKALSON SC: Yes, as far as we're 15 aware. Major-General, do you know how that list would have 16 been put together? 17 GENERAL NAIDOO: Chair, possibly using 18 the SAP 15 because I think that was the primary source of 19 all the members that were on duty and the SAP 15 also has 20 on its reverse side the information that is required by 21 these lists. 22 MR CHASKALSON SC: Yes, but you didn't 23 vet that list before it went out? 24 GENERAL NAIDOO: No, I did not. 25 MR CHASKALSON SC: Let's go to the next</p>
<p style="text-align: right;">Page 24016</p> <p>1 necessary, I would think, for the document to be handed in. 2 COMMISSIONER HEMRAJ: Yes, are there 3 other persons who shot whose names are not on the list or 4 is it just this witness who doesn't appear on the list? 5 MR CHASKALSON SC: We haven't done an 6 exhaustive reconciliation, Commissioner, there are, you 7 know it is a list of many, many names broken down by unit. 8 It doesn't include members of the JOC, it doesn't have, - 9 it has a separate spreadsheet for each unit but not a 10 separate spreadsheet for members of the JOC. It appears to 11 us prima facie that the lists of names on each unit who 12 shot, nothing leaps out to us as somebody who didn't shoot 13 and we can do, we only were given this document this 14 morning but we'll do a full reconciliation and see if there 15 are other missing names. The key omission to us is that 16 the units that each has got a spreadsheet did not include 17 the JOC and so the Major-General wouldn't have found his 18 way onto that list. 19 COMMISSIONER HEMRAJ: But as far as we 20 know the only omission at this stage was the JOC. 21 MR CHASKALSON SC: We – 22 COMMISSIONER HEMRAJ: We don't know. 23 MR CHASKALSON SC: We don't, we haven't, 24 ja, let us do the exercise. 25 COMMISSIONER HEMRAJ: Yes.</p>	<p style="text-align: right;">Page 24018</p> <p>1 letter which is a letter on the 24th of August that you 2 addressed to IPID and that will be MMM34, and this will be, 3 there were two letters addressed by the Major-General on 4 the 24th of August, so let's call this the four line letter 5 addressed by Major-General Naidoo to IPID on 24 August 6 2012. 7 CHAIRPERSON: There is a letter with the 8 letters B22 in the top right hand corner and that's dated 9 the 24th of August and that is not a four line letter, so – 10 MR CHASKALSON SC: I have B23 and B24. 11 CHAIRPERSON: B24 is a letter, a four 12 line letter dated the 24th of August, is that the one you're 13 referring to? 14 MR CHASKALSON SC: It was the one I'm 15 referring to, in fact the one that's being called up is 16 B23, so let's take B23 first. 17 CHAIRPERSON: Oh, it looks like 22 18 actually, you say it is B23, I see it is, what is this, it 19 looks like a stroke under the 2, it is really part of the 20 3. So is that the one you want to make 34? 21 MR CHASKALSON SC: Yes, MMM34. 22 CHAIRPERSON: MMM34? 23 MR CHASKALSON SC: A letter from Major – 24 CHAIRPERSON: A letter from Major-General 25 Naidoo to IPID dated 24/08/2012. The heading is the same</p>

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1 in each case.

2 MR CHASKALSON SC: Let's just identify

3 them by the B23 and the B24.

4 CHAIRPERSON: In brackets marked B23.

5 MR CHASKALSON SC: Now –

6 CHAIRPERSON: I think while we're about

7 it, do you want to mark the other one as well, the four

8 line one, so that we get all the housekeeping out of the

9 way?

10 MR CHASKALSON SC: Yes, Chairperson, that

11 can be –

12 CHAIRPERSON: So it is MMM25.

13 MR CHASKALSON SC: 35.

14 CHAIRPERSON: Oh, 35, a letter from

15 Major-General Naidoo to IPID marked B24?

16 MR CHASKALSON SC: Yes, Chairperson, if

17 we can start with MMM34 which is the document on the screen

18 and we can just go to the signature just for you to confirm

19 that this is your letter?

20 GENERAL NAIDOO: That's correct, Chair.

21 MR CHASKALSON SC: And –

22 GENERAL NAIDOO: It is the letter I

23 signed –

24 MR CHASKALSON SC: - you in the letter

25 attach the following documents as requested, the first is a

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1 copy of contingency plans strike by employees of Lonmin

2 Eastern and Western Platinum Karee Mine. Now that is in

3 response to a request in MMM32 for the operational plan

4 presumably for the 16th, including all commanders and their

5 roles. What contingency plan did you attach or what plan

6 did you attach?

7 GENERAL NAIDOO: Chair, I can't

8 specifically remember, I'll have to look at the documents,

9 it has been a long time, but if it talks about contingency

10 plans it is possibly the original plan when this incident

11 started around the 10th, as far as I can remember, but as I

12 said I can't specifically remember the documents now.

13 MR CHASKALSON SC: So IPID asked you in

14 the context of an investigation which in MMM32 concerned a

15 complaint of shooting against members of the SAPS, it is a

16 letter written on 16 August 2012, "There is an unrest

17 situation at Marikana where drill workers from Lonmin Mine

18 were protesting regarding the wages," etcetera, etcetera.

19 "It is alleged that the police decided to disperse them and

20 during the confrontation the police used live ammunition

21 and thereby killing 34 people and many others sustained

22 serious gunshot wounds." In that context they asked you

23 for an operational plan and you give them what was the

24 contingency plan for the 13th?

25 GENERAL NAIDOO: Chair, -

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1 MR CHASKALSON SC: Or even the 10th?

2 GENERAL NAIDOO: Chair, yes, that plan

3 that was activated from the 10th was continuously built on

4 and upgraded as far as my understanding is concerned.

5 MR CHASKALSON SC: But they had asked you

6 in the context of the request for the operational plan,

7 they wanted an indication of all commanders and their

8 roles. Now maybe if we look at that contingency plan of

9 the 10th, Exhibit U –

10 CHAIRPERSON: Sorry, Mr Chaskalson,

11 before you carry on, I notice on the copy we've been given

12 someone has written, on MMM34, someone has written after

13 the reference of the contingency plan "A193/A194/195" and

14 there are similar notations in respect of the other

15 documents. The shooting incident report is A198, the OB is

16 A192, the minutes of the special JOCCOM meeting is 130 or

17 A197 and the Intelligence report is A196, so do we know

18 what A193, 194 and 195 are and do we know who made that

19 note on the document?

20 MR CHASKALSON SC: They appear to be

21 references to the IPID files, they match IPID file

22 references and they would probably have been marked on the

23 document by IPID at some stage after IPID had performed its

24 filing exercise.

25 CHAIRPERSON: Yes, and then of course the

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1 question really arises, there appear to be three documents

2 that IPID processed under the heading or copy of the

3 contingency plan and do we, in other words not just one,

4 but three, do we know what those three are? Presumably we

5 can be informed?

6 MR CHASKALSON SC: Chairperson, I don't

7 have them at my fingertips but I can, we can locate them.

8 CHAIRPERSON: I understand Major-General

9 Naidoo didn't write those, I take it?

10 GENERAL NAIDOO: Ja.

11 CHAIRPERSON: Write those things on the

12 letter when he signed it.

13 GENERAL NAIDOO: I didn't.

14 CHAIRPERSON: So it is internal IPID

15 notes but it may indicate what documents were annexed to

16 this letter which IPID then processed in the way suggested,

17 I don't know, but I'm speculating, but I think my

18 speculation may be right.

19 MR CHASKALSON SC: Your speculation

20 appears to be right, Chairperson, because we've looked at

21 the index to the IPID files. A193 is the contingency plan,

22 it is called contingency plan, A19, - sorry, A193 is called

23 contingency plan and A194 is called amended contingency

24 plan, A195 is called operational plan. We're now trying to

25 locate the documents that match those index items. While

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1 Mr Wesley does that exercise let me turn to another item on
 2 this letter. A copy of minutes, it is the second last
 3 bullet point, "A copy of minutes of special JOCCOM meeting
 4 of 16 August 2012 as requested by your office on 23 August
 5 2012." So you furnished the special JOCCOM meeting
 6 minutes, the 130 JOCCOM meeting minutes of the 16th to IPID
 7 on the 24th of August.

8 GENERAL NAIDOO: Chair, to tell you
 9 honestly I can't remember each and every document that was
 10 there. Yes, I did sign the cover letter based on it, at
 11 this stage I can't recall the details in terms of, I didn't
 12 even know there were three annexures to that plan. It has
 13 been a long time ago that I signed this, but if it
 14 indicates as such and there is an annexure I'm sure there
 15 is something. As I said I can't remember the specifics of
 16 each document that was attached.

17 COMMISSIONER HEMRAJ: General, did you
 18 actually compile these documents –

19 GENERAL NAIDOO: No –

20 COMMISSIONER HEMRAJ: - or were they done
 21 by the Minister's staff and you merely appended your
 22 signature?

23 GENERAL NAIDOO: You would see, Chair,
 24 that Brigadier Pretorius being the person who dealt with
 25 it, I was just her commander who signed on her behalf, so

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1 as to the intimate knowledge of all the documents I would
 2 just want to verify, do you have or what you say there,
 3 etcetera, and sign, just as the signing authority for a
 4 document leaving our office, but the intimate knowledge
 5 that is being sought I would not have all that intimate
 6 knowledge.

7 CHAIRPERSON: Well, her name is at the
 8 top of the letter under yours?

9 GENERAL NAIDOO: That's correct.

10 CHAIRPERSON: In the block against the
 11 word "enquiries".

12 GENERAL NAIDOO: It indicates that –

13 CHAIRPERSON: The significance of this is
 14 it means that, unlike the minutes for the 6 o'clock meeting
 15 on the 16th of August, the minutes for the special JOCCOM
 16 meeting at 1:30pm was sent to IPID before Roots.

17 GENERAL NAIDOO: It is possible, Chair.

18 CHAIRPERSON: Correct?

19 GENERAL NAIDOO: That's what the letter
 20 indicates.

21 CHAIRPERSON: Ja.

22 GENERAL NAIDOO: And I think Brigadier
 23 Pretorius' statement did indicate that she did take the
 24 minutes, so I'm not sure in what form it would have been
 25 submitted, I can't remember that.

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1 MR CHASKALSON SC: We have now located
 2 what the three plans that you sent through to IPID were.
 3 The first was the original contingency plan of the 10th, the
 4 second was the amended contingency plan of the 13th. The
 5 first was Exhibit U.

6 [14:41] In fact both of those two are Exhibit U and the
 7 third is a printout from Lieutenant-Colonel Scott, from a
 8 presentation of Lieutenant-Colonel Scott that still speaks
 9 of the encirclement plan. We'll make these documents
 10 available. What I want to raise with you is a letter at
 11 the bottom, a paragraph at the bottom of this letter. You
 12 were requested by IPID to make available all official video
 13 footage taken by SAPS units. Your letter says, "As this
 14 was a field operation facilities were not available for
 15 video/radio recordings of the operation and this office can
 16 therefore not provide the requested recordings."

17 GENERAL NAIDOO: That's correct, Chair.

18 MR CHASKALSON SC: Why did you say that?

19 GENERAL NAIDOO: Chair, on paragraph 8 of
 20 the IPID request, the request was for the transcript and
 21 DVD recordings from the radio and operational control and
 22 we had no recording, either DVD or voice of the radio
 23 communications and the radio control that were available
 24 and that is what we were referring to. With regard to the
 25 other photographs and the albums, that was dealt with

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1 directly between LCRC and IPID, they don't come via us
 2 because in that case the evidentiary issues, the chain is
 3 between IPID the client to the LCRC.

4 MR CHASKALSON SC: But, Major-General,
 5 MMM32, you referred to item 8, what about item 7, official
 6 video footage taken by SAPS units?

7 GENERAL NAIDOO: Chair, yes, this is not
 8 being addressed in the letter as we speak.

9 MR CHASKALSON SC: Well, no, it is being
 10 addressed, Major-General. "As this was a field operation
 11 facilities were not available for video/radio recordings,"
 12 video/radio recordings, video is 7, radio is 8 of the
 13 operation. "This office can therefore not provide the
 14 requested recordings."

15 GENERAL NAIDOO: Chair, the request or
 16 the line, the response to the request for a transcript or a
 17 DVD recording from the radio and Operational Control
 18 Centre, not, - and in terms of our response we were
 19 responding to that.

20 MR CHASKALSON SC: Major-General, maybe
 21 we need to call up MMM32, can we call up MMM32 just to see
 22 what the request was for? Sorry, MMM32 was the first of
 23 the documents in the IPID directory, yes. 7 says,
 24 "Official video footage taken by SAPS units", 8 says,
 25 "Transcript and DVD recording from radio/operational

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1 control." There were two separate requests, one is for
 2 video footage, another is for a transcript and DVD
 3 recording from radio control. Your response deals with
 4 both under the same sentence, MMM34, "As this was a field
 5 operation facilities were not available for video/radio
 6 recordings of the operation and this office can therefore
 7 not provide the requested recordings."
 8 GENERAL NAIDOO: Chair, I think we would
 9 take our lead from the fact that we refer to a field
 10 operation and a field operation means that we were not
 11 working from a particular area where we had the
 12 infrastructure to record voice and provide the DVD
 13 recordings. Of that I am clear because at some stage we
 14 did speak about these recordings, so it was nowhere
 15 addressing the issue of the official video footage taken by
 16 the SAPS units.
 17 CHAIRPERSON: Does the standing order 262
 18 deal with field operations?
 19 GENERAL NAIDOO: Chair, I can't remember.
 20 CHAIRPERSON: What would standing order
 21 262 deal with field operations?
 22 GENERAL NAIDOO: Chair, I can't remember
 23 specifically.
 24 CHAIRPERSON: 262 is –
 25 GENERAL NAIDOO: Yes, I know, but I'm –

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1 CHAIRPERSON: - and it has got all sorts
 2 of things that have to be done.
 3 GENERAL NAIDOO: Yes, I –
 4 CHAIRPERSON: And it says you have to
 5 have videographers and they have to, video recordings have
 6 to be made.
 7 GENERAL NAIDOO: We are aware of that,
 8 Chair.
 9 CHAIRPERSON: And clearly that relates
 10 amongst other things to field operations, doesn't it, it
 11 must?
 12 GENERAL NAIDOO: Chair, I agree with you
 13 in terms of the videographers that we had to have deployed
 14 as operational to film police actions. What I am saying
 15 is, in our response we were relating the issue of the
 16 recording of radio conversations, because I know that there
 17 was a discussion about this because we were on an analogue
 18 system and we did not have a recording at that stage of it.
 19 So when I'm indicating this I'm indicating on the basis of
 20 a discussion about the request where, remember when the
 21 request was received and Brigadier Pretorius had to deal
 22 with it she was now asking for assistance, can I get this
 23 and can I get that from various people. So that request
 24 was specifically made to our TMS person who was on site, do
 25 we have a recording as requested on this thing and he

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1 indicated, but we don't have that kind of infrastructure at
 2 the centre. So, but the police does have the capacity at
 3 other centres but not specifically in this centre.
 4 CHAIRPERSON: In the case of field
 5 operations, certainly covered by standing order 262, there
 6 should be video recordings and the fact that the field
 7 operation isn't a reason, isn't an excuse for the fact that
 8 there are no video recordings, is that correct?
 9 GENERAL NAIDOO: Chair, I think to just
 10 take a step back so that we talk on the same thing, when we
 11 were dealing with the issue of the transcripts or the DVD
 12 recordings we were dealing with those things related to the
 13 radio communication.
 14 CHAIRPERSON: Why does the word video
 15 appear before the word, the slash and the radio in your
 16 answer?
 17 GENERAL NAIDOO: Chair, because the
 18 request specifically asked for DVD recording I suppose and
 19 the compiler probably, because a DVD is normally associated
 20 with video recording as far as my knowledge goes, we can
 21 ask the compiler but my knowledge is that we would use a
 22 DVD recording for video, maybe it should have rather just
 23 said, your DVD/radio recording, it should have been rather
 24 than video recording.
 25 CHAIRPERSON: Ja, but your excuse relates

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1 to why you didn't give them what they asked for in
 2 paragraph 8, it doesn't deal with paragraph 7.
 3 GENERAL NAIDOO: No.
 4 CHAIRPERSON: And it purports to deal
 5 with paragraph 7, because it has got the word video in it
 6 which doesn't appear in 8 so what's the real explanation
 7 for the failure to provide the material provided in 7? It
 8 can't be, because it was a field operation, because in a
 9 field operation there should be video footage, so why was
 10 that not communicated to IPID?
 11 GENERAL NAIDOO: Chair, that's exactly
 12 what I am indicating, as I said I was not the compiler of
 13 the letter, yes, I signed the letter and my understanding
 14 of that particular one was related to the recording of the
 15 radio conversations, the radio network, not as I indicated
 16 the issue around videos and photographs, etcetera, was
 17 being dealt with already. We were linking the relevant
 18 people up to ensure that IPID got their stuff. So that
 19 particular line deals only with the issue around the radio
 20 communication.
 21 CHAIRPERSON: The letter says video/radio
 22 and I take it you read the letter before you signed it?
 23 GENERAL NAIDOO: That is true, Chair.
 24 CHAIRPERSON: And did you know that,
 25 never mind what happened on teh1 16th, did you know that on

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1 the 13th a video recording was, there was a police
 2 videographer present?
 3 GENERAL NAIDOO: Yes, Chair.
 4 CHAIRPERSON: Who took, who made a video
 5 film of what was happening, allegedly his camera
 6 malfunctioned at some stage, so he didn't get everything
 7 but there was certainly a video recording of what happened
 8 on the 13th, did you know that?
 9 GENERAL NAIDOO: Chair, at every of the
 10 public order operations we must have video operators, that
 11 is part of the instructions, so when I signed this letter
 12 my understanding of that particular one referred primarily
 13 to radio communications. It is nowhere indicated that we
 14 did not have those other recordings.
 15 CHAIRPERSON: But how could you have
 16 understood that when the letter you signed used the word
 17 "video/radio recordings"? I understand the radio recording
 18 part, but the letter you signed talks about video
 19 recordings. You knew very well, did you not, that there
 20 were video recordings in respect of some of the things that
 21 happened over this period, is that correct, am I right?
 22 GENERAL NAIDOO: About the incident, yes.
 23 CHAIRPERSON: Yes.
 24 GENERAL NAIDOO: Not of radio recordings.
 25 CHAIRPERSON: No, no, I'm not talking

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1 about recordings, I'm talking about video recordings, you
 2 knew there were video recordings. You signed a letter –
 3 GENERAL NAIDOO: Yes –
 4 CHAIRPERSON: - saying we haven't got any
 5 video recording amongst others because it was a field
 6 operation, so that was an untrue answer, wasn't it?
 7 GENERAL NAIDOO: No, Chair, if you're
 8 understanding the basis of what I am saying, because my
 9 understanding was it was a recording of the issues at the
 10 Operational Control Centre where radio conversations,
 11 etcetera, were taped and although I was not the compiler I
 12 know that part specifically, I understood it as dealing
 13 with the issue of the recordings in the Operational Control
 14 Centre, not related, - I mean it is common cause, we work
 15 with IPID on a daily basis and they know our procedures. I
 16 would not tell them that we do not have recordings of
 17 police operations, etcetera, unless there is a specific
 18 reason that we do find that. So when I signed that
 19 document I signed it on the basis of the request for the
 20 radio or the Operational Control Centre issues.
 21 COMMISSIONER HEMRAJ: Was there any other
 22 arrangement in place for the video footage taken by SAPS to
 23 be forwarded to IPID?
 24 GENERAL NAIDOO: Chair, we can check, as
 25 I said I did not liaise directly with them, but the

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1 coordinator, we can check in terms of that, because as I
 2 indicated that there was initiatives to link them directly
 3 with LCRC, etcetera, so that LCRC would not give us their
 4 albums and things directly, their client would be IPID, not
 5 us.
 6 MR CHASKALSON SC: Well, Major-General,
 7 did you know that there was in fact video footage of the
 8 operation taken by SAPS members?
 9 GENERAL NAIDOO: Of the operation, Chair,
 10 yes, at that stage I didn't even know that the two video
 11 operators that, so the assumption is that, yes, the video
 12 footage will all be available and we do not foresee any
 13 problem in terms of that.
 14 MR CHASKALSON SC: Now you had a request
 15 from IPID on the 20th of August to provide all official
 16 video footage taken by SAPS units. When did you, what
 17 steps did you take to comply with that request, when did
 18 you give any video footage to IPID?
 19 GENERAL NAIDOO: Chair, as I said I was
 20 not directly related to the coordination, only when there
 21 were specific issues that were requested, my intervention
 22 was requested, so I can establish that but I don't have
 23 that information on my hands.
 24 MR CHASKALSON SC: So you're saying you
 25 were not directly involved, who was involved?

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1 GENERAL NAIDOO: Chair, I already
 2 testified that the coordinator for IPID and the reason why
 3 I brought Brigadier Pretorius the first time anyway to
 4 Marikana on the 14th was to coordinate the issues of IPID
 5 because that's her line function in terms of her
 6 responsibilities, I'm her commander.
 7 MR CHASKALSON SC: So you're saying if
 8 video footage wasn't given to IPID in response to this
 9 request it is Brigadier Pretorius' responsibility?
 10 GENERAL NAIDOO: Chair, what I'm saying
 11 is that she would probably offer us an explanation as to
 12 what transpired.
 13 MR CHASKALSON SC: You don't assume any
 14 responsibility for not getting video footage to IPID after
 15 this operation?
 16 GENERAL NAIDOO: Chair, she is a
 17 subordinate under my command and obviously I share that
 18 responsibility with her, if she had specific difficulty and
 19 she could not comply she communicates with me.
 20 MR CHASKALSON SC: Well, we've got some
 21 indication of how video footage finally made its way to
 22 IPID because if we go to the next letter which will be
 23 MMM36, it is a letter from IPID to the Provincial
 24 Commissioner on the 12th of November, -
 25 CHAIRPERSON: That's MMM36, a letter from

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1 IPID to the Provincial Commissioner?
 2 MR CHASKALSON SC: Yes –
 3 CHAIRPERSON: Dated 12/11/2012.
 4 MR CHASKALSON SC: Now if we go to page 2
 5 of this letter, IPID recites its powers of investigation
 6 and then underneath, under the bold section, can we go
 7 down? "This office has noted with concern that during the
 8 cross-examination of Captain Mohlaki of the LCRC certain
 9 things came to light which were never revealed or handed to
 10 us during the investigations. We therefore request the
 11 following evidential material from your office as they will
 12 assist us to complete the criminal investigation in the
 13 above matter, one, video recording taken by Constable
 14 Molefe, LCRC from scene 2, two, video recording taken by
 15 Warrant-Office Henderson from scene 2, three, photo album
 16 taken by Warrant-Officer Ramanala from POPS Springs, four,
 17 video recording from POPS members on 16/08/2012 prior to
 18 the shooting, five, cell phone recordings handed to your
 19 office by any members and their names, six, aerial photo,
 20 seven, photo album of scene by Warrant-Officer Tamai and
 21 eight, list of all members who did not hand their firearms
 22 for ballistics investigations."
 23 So let's take these in sequence. It seems that
 24 prior to the testimony of Captain Mohlaki before this
 25 Commission IPID was still labouring under the

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1 misapprehension that the video recordings that they list in
 2 this email as video recordings that they required, didn't
 3 exist. What's your response to that?
 4 GENERAL NAIDOO: Chair, I am not sure as
 5 to what their perception was, but they indicated they were
 6 not aware of this because the IPID, the acting Provincial
 7 Head of IPID was in daily contact with the coordinator in
 8 our office. In fact they were almost daily together at the
 9 JOC where they came and made requests, etcetera, so as to
 10 why that communication was not there, as I said I cannot
 11 specifically comment.
 12 MR CHASKALSON SC: Well, might I suggest
 13 it is because they've received a letter from you which said
 14 that the facilities were not available for video recordings
 15 of the operation and your office therefore could not
 16 provide the requested recordings?
 17 GENERAL NAIDOO: Chair, that would not be
 18 entirely correct because most of the things that are
 19 requested here, Constable Molefe, Warrant-Officer
 20 Henderson, the photo album, ja, those things are the issues
 21 that are normally handled by the LCRC and the IPID would be
 22 aware that the LCRC attended the crime scene with them and
 23 obviously the existence of footage and photographs from
 24 them, so by indicating they were not aware of these things,
 25 I already testified that IPID is a client of the LCRC

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1 directly. It excludes us in the line function primarily
 2 because of the evidence, Chair, so that perception with
 3 regard to specifically those things could not be true.
 4 MR CHASKALSON SC: Well, what about video
 5 recordings of the POPS members?
 6 GENERAL NAIDOO: That's something that
 7 should have been made available, I agree.
 8 MR CHASKALSON SC: The cell phone
 9 recordings of Captain Ryland?
 10 GENERAL NAIDOO: Even those things, I
 11 agree, that should have been made available.
 12 MR CHASKALSON SC: The cell phone
 13 recordings of Sergeant Mhlatsi?
 14 GENERAL NAIDOO: I think it is, -
 15 Mhlatsi?
 16 MR CHASKALSON SC: Sergeant Mhlatsi also
 17 took cell phone footage of scene 2?
 18 GENERAL NAIDOO: Okay, no, I'm not sure,
 19 but as I said whatever we had in our possession we should
 20 make it available to IPID and that's a given.
 21 MR CHASKALSON SC: Of course there was
 22 some material in your possession which IPID still didn't
 23 know about, what about the videos of Captain Nel?
 24 GENERAL NAIDOO: Chair, I am not
 25 specifically aware of the nature of which they knew and

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1 which they didn't know, but as I indicated that the
 2 processes started while we were at the JOC and went onto
 3 Roots where we were trying to, and we sent a call-out to
 4 all members involved to bring all and any footage
 5 available, so if it was during that process, yes, it would
 6 be there and it should be made available. I mean that's
 7 the nature of how we interact with the IPID.
 8 MR CHASKALSON SC: The Protea Coin
 9 chopper video as well they seem not to have been told
 10 about, and that of course had some radio recordings on the
 11 video.
 12 [15:00] GENERAL NAIDOO: Chair, I'm not sure. As
 13 I said, I found that myself out a bit later, yes.
 14 MR CHASKALSON SC: Item 8 on this letter,
 15 "A list of all members who did not hand their firearms for
 16 ballistic investigations." Now as early as 20 August IPID
 17 had asked for all firearms of SAPS members who shot on the
 18 day to be made available for ballistics testing. This was
 19 now 12 November. Had your firearm been made available for
 20 ballistic –
 21 CHAIRPERSON: Has the witness responded
 22 to that?
 23 MR CHASKALSON SC: It's in the letter
 24 that we saw, MMM32, which the witness acknowledges he saw.
 25 CHAIRPERSON: Yes, I see. Alright.

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1 GENERAL NAIDOO: Yes. Chair, there were
 2 many firearms that were still not tested ballistic. The
 3 arrangement that we made with the people as far as the
 4 ballistic testing is, we worked on groups and they came and
 5 fetched groups as it went and much later we found that
 6 there were still a lot of firearms that were not still
 7 tested, including all the firearms of the 13th and a process
 8 started in November to deal with all the final firearms.
 9 MR CHASKALSON SC: You see, the request
 10 from IPID didn't relate to the 13th, the request I'm
 11 speaking of. The request of the 20th relates to the 16th.
 12 GENERAL NAIDOO: Chair, yes, I'm talking
 13 about firearms for both days, but okay, we'll restrict –
 14 there were still many firearms even from the 16th that were
 15 not dealt with by that time.
 16 MR CHASKALSON SC: You knew you'd shot.
 17 GENERAL NAIDOO: That is correct, Chair.
 18 MR CHASKALSON SC: You knew IPID wanted
 19 all firearms submitted for ballistics testing.
 20 GENERAL NAIDOO: That is correct, Chair.
 21 MR CHASKALSON SC: And yet close to two
 22 months after the request from IPID you still hadn't made
 23 your firearm available for inspection by IPID. Why?
 24 GENERAL NAIDOO: Chair, my firearm was
 25 always available and as the firearms were being drawn - I

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1 was not responsible for drawing the firearms. As I
 2 indicated, there's a coordination group and we can identify
 3 how did we, how did they arrive at the outstanding firearms
 4 that needed to be called. The day that my firearm was
 5 called for, the next day I personally delivered it to IPID
 6 and they did the ballistics. So they were working off
 7 lists and they dealt with people that came first from
 8 further afield that were returning and they had a system.
 9 I'm not going to try and explain the approach that they
 10 took, but what I can say is it was the day after that I
 11 received the request for my firearm that I did hand my
 12 firearm in for ballistic testing.
 13 MR CHASKALSON SC: Well, it seems to us
 14 that one of the reasons why IPID wouldn't have asked for
 15 your firearm until much later is that they were given a
 16 list of people who shot that didn't include you.
 17 GENERAL NAIDOO: Chair, that's why I'm
 18 indicating that there were specific individuals charged
 19 with coordinating this activity and I think it would be
 20 relevant to ask them that. I cannot, I could not be
 21 involved in coordinating that activity myself.
 22 MR CHASKALSON SC: You were the most
 23 senior officer who shot on the day.
 24 GENERAL NAIDOO: That is correct, Chair.
 25 MR CHASKALSON SC: Did you not think it

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1 was important for you to set an example for the rest of the
 2 force to make your firearm available to IPID right at the
 3 outset of the IPID investigation?
 4 GENERAL NAIDOO: Chair, as I indicated, I
 5 immediately reported it - as soon as the situation allowed
 6 it I reported it. There were two subsequent occasions when
 7 I was called to confirm my particulars, is the firearm
 8 serial number correct, etcetera. So as far as the
 9 coordination of the handover of the firearms between IPID
 10 and the SAPS, we can check with the people that are
 11 coordinating it and we can find out why mine was not called
 12 specifically at that time and it was called at the time
 13 when I was asked to give it. I won't be able to testify as
 14 to that. I can say that my firearm was available and the
 15 moment it was requested I provided it.
 16 MR CHASKALSON SC: My question was a
 17 different one, which you haven't answered, which was did
 18 you not think that as the most senior officer who shot on
 19 the 16th it was important for you to set an example to the
 20 rest of the force by making your firearm available for
 21 testing to IPID immediately?
 22 GENERAL NAIDOO: Chair, and I've answered
 23 that by saying it was available. The firearms were being
 24 drawn in a particular manner by the group that was
 25 facilitating this. We can establish from them why mine was

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1 called when it was called and why wasn't it called sooner.
 2 Had they asked me immediately on the day of the shooting I
 3 would have handed it on the day of the shooting. We tasked
 4 specific people who were exchanging firearms, issuing new
 5 firearms temporarily, withdrawing old firearms, etcetera.
 6 So there was a whole logistical process that they undertook
 7 and I'm not going to try and explain what they did and what
 8 was their rationale. All I can say is that there was a
 9 process and there were still several firearms even in
 10 November that were not ballistically tested and was
 11 subsequently done, and I'm sure we can get the detail from
 12 them. I'm going to try and explain something that I don't
 13 know.
 14 MR CHASKALSON SC: But you yourself
 15 didn't take any steps proactively to get your firearm to
 16 IPID in the immediate aftermath of the 16th?
 17 GENERAL NAIDOO: Chair, I submitted
 18 myself to the investigation. I declared that I shot and
 19 I've, as I've indicated, twice, on two occasions those
 20 particulars were verified with me. Anything further, won't
 21 it be bordering on tampering with the investigation?
 22 MR CHASKALSON SC: Well –
 23 COMMISSIONER HEMRAJ: You say particular
 24 were verified with you. By whom?
 25 GENERAL NAIDOO: Brigadier Pretorius at

<p style="text-align: right;">Page 24043</p> <p>1 the JOC. She originally took my details and at some stage 2 she did call me and establish is this number that I've got 3 correct or what was your correct number. There was a 4 subsequent occasion when she also called me again to 5 confirm the number, so I knew that the process was running 6 and I mean that was not my concern.</p> <p>7 COMMISSIONER HEMRAJ: In terms of the 8 established procedure with dealings between IPID and SAPS, 9 would a person who's been involved in a shooting take their 10 firearm of their own accord to IPID or do you go through 11 the SAPS –</p> <p>12 GENERAL NAIDOO: Hence I indicated that 13 if they attend a scene where a shooting happened they will 14 take that firearm back to the station, ensure it goes 15 through the books and sign for it through an exhibit 16 number. That was not existing in this situation because of 17 the magnitude of it, so we dedicated personnel to work with 18 IPID in terms of drawing firearms where they were signing 19 for it and we were replacing – because remember, these 20 members that were involved were still deployed in Marikana 21 during this time. So they were issued with new firearms 22 and when the firearms returned from ballistics then we 23 retrieved the loan firearms and issued them. So it was a 24 whole logistical exercise, but normally if a scene is 25 attended by IPID that firearm goes to the station, it's put</p>	<p style="text-align: right;">Page 24045</p> <p>1 Pretorius and Brigadier Pretorius on 13 November 2012 2 refers. The following footages as requested in 3 abovementioned letter was provided to Mr Ngobeni of IPID on 4 Thursday, 15 November, personally. Video recording of 5 Constable Molefe; video recording by Warrant Officer 6 Henderson; aerial photos by LCRC; photos taken by Captain 7 Mohlaki, Warrant Officer Thamae, of scenes 1 and 2; video 8 recording taken by Captain Nel; photos taken by POP camera 9 457; photos taken by Captain Ryland" – it should be videos 10 in fact – "photos taken by Lieutenant Colonel Mere; photos 11 taken by Lieutenant Colonel Vermaak; POP videos of 16 12 August; photos of Sergeant Mhlatsi" – again that's videos – 13 "photos of Warrant Officer Barnard; photos of Warrant 14 Officer Ramanala." Item 4 over the page, "Firearm of Major 15 General Naidoo was handed over to Mr Ngobeni," and then 5, 16 "Mr Ngobeni will provide list with regard to outstanding 17 firearms that they need to be submitted for ballistics 18 investigations." 6 needn't concern us.</p> <p>19 So Brigadier Pretorius handed over your firearm 20 to IPID at a meeting on Thursday, the 15th of November. Do 21 you know the circumstances in which that happened?</p> <p>22 GENERAL NAIDOO: Chair, I'm not sure what 23 meeting it was because I was present, I brought my firearm 24 to Brigadier Pretorius and the IPID representative was 25 there and he signed for it by her at the same time. So in</p>
<p style="text-align: right;">Page 24044</p> <p>1 through an exhibit register and then IPID signs for it so 2 that it has an exhibit register number as well.</p> <p>3 MR CHASKALSON SC: If we can go to the 4 next letter in this chain of correspondence, it's a letter 5 from Brigadier Pretorius to Mr Pretorius of Van Velden- 6 Duffey dated 15 November, which responds to the IPID 7 request of 12 November.</p> <p>8 CHAIRPERSON: This will be MMM37, will 9 it? I don't think we're seeing the right thing on the 10 screen, are we?</p> <p>11 MR CHASKALSON SC: It's the cover email 12 that we're seeing on the screen. The letter comes on the 13 next page.</p> <p>14 CHAIRPERSON: I see. So do you want the 15 email to be MMM37? Or do you just want –</p> <p>16 MR CHASKALSON SC: It can be, yes, can 17 all be MMM37.</p> <p>18 CHAIRPERSON: MMM37, it's a cover email 19 and letter from Brigadier Pretorius to Van Velden-Duffey 20 Inc.</p> <p>21 MR CHASKALSON SC: Yes, Chairperson. If 22 we go to the letter itself we see Brigadier Pretorius is 23 now responding to the IPID letter of the 12th of November 24 through SAPS' attorneys and this is the letter she sends to 25 SAPS' attorneys. Item 2, "Conversation between Mr</p>	<p style="text-align: right;">Page 24046</p> <p>1 terms of meeting, I'm not sure.</p> <p>2 MR CHASKALSON SC: Maybe not a meeting, 3 but a personal appointment with Mr Ngobeni. You met Mr 4 Ngobeni in person and handed over your firearm in the 5 presence of Brigadier Pretorius.</p> <p>6 GENERAL NAIDOO: Chair yes, I was called 7 and I agreed to bring the firearm the next day from 8 Potchefstroom. The meeting was at the Commission's 9 premises at the Rustenburg Civic Centre at the nodal point 10 that the SAPS had there. So when I arrived I immediately 11 handed my firearm to Mr Ngobeni.</p> <p>12 MR CHASKALSON SC: And what did Brigadier 13 Pretorius say to you to prompt your arrival with your 14 firearm?</p> <p>15 GENERAL NAIDOO: Chair no, she just 16 called me and indicated, "Look, we haven't handed your 17 firearm over yet. Can we do that tomorrow?" and I was 18 coming daily to the Commission, so I brought it.</p> <p>19 MR CHASKALSON SC: And maybe then just to 20 complete the picture, there is an IPID register, which 21 should be MMM38. It looks like an OB, or a register of 22 sorts, and there we will see that on the 15th of November 23 IPID records that it received requested materials from SAPS 24 as per letter attached and as recorded on external hard 25 drive, and loaded on external hard drive. That would</p>

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1 presumably relate to the video and photographic material
 2 that was finally made available to IPID on the 15th of
 3 November, and then under the second recording for 15
 4 November, "Received a firearm from General Naidoo to be
 5 taken to ballistics for testing," and the serial number of
 6 your firearm is recorded there.
 7 CHAIRPERSON: If I can intervene by
 8 saying I've marked this document, which I see is marked
 9 C/41 in the top right-hand corner, I've marked it MMM38,
 10 described as extracts I take it from IPID register,
 11 containing entries from 15 to 20 November 2012, and as I've
 12 said with C/41 in the top right-hand corner.
 13 MR CHASKALSON SC: Chairperson, I'm told
 14 that the correct description of this document is an extract
 15 from the IPID investigation diary.
 16 CHAIRPERSON: I've changed my note then,
 17 it's IPID investigation diary marked C/41 for period 15 to
 18 20-11-2012 and it does appear from some of the later
 19 entries on that page to other firearms. It looks like two
 20 other firearms.
 21 MR CHASKALSON SC: And Major General, you
 22 say that you delivered this firearm promptly in response to
 23 the first request that Brigadier Pretorius made to you to
 24 hand your firearm over to IPID.
 25 GENERAL NAIDOO: That's correct, Chair.

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1 MR CHASKALSON SC: That request was on,
 2 you say the 14th, day before?
 3 GENERAL NAIDOO: As I say, I think it was
 4 the day before, yes. I can check. I'm not – but I think
 5 it was the next day that I delivered the firearm, yes.
 6 MR CHASKALSON SC: Major General, I have
 7 two, or a few questions to put to you at the instance of
 8 legal representatives for Mr Fundi and Mr Mabelane; they
 9 relate to a completely different topic, but –
 10 CHAIRPERSON: Mr Chaskalson, I suggest we
 11 take a comfort and tea break at this stage. I think there
 12 are a number of people who would support such a proposal,
 13 which I hereby make and we'll have a tea and comfort break
 14 at this stage.
 15 [COMMISSION ADJOURNS COMMISSION RESUMES]
 16 [15:35] CHAIRPERSON: The Commission resumes.
 17 Major General, you're still under oath.
 18 GANASEN NAIDOO: Still under oath, Chair.
 19 CHAIRPERSON: Mr Chaskalson.
 20 CROSS-EXAMINATION BY MR CHASKALSON SC (CONTD.):
 21 Major General, can I ask you to look at exhibit U, which is
 22 the contingency plan for the 10th of August, and if we go to
 23 page 2 of this document – sorry, page 2 of the document,
 24 proper page 3 of the electronic file, page 4 of the
 25 electronic file. "Mission, the Deputy Provincial

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1 Commissioner North West Province has instructed that public
 2 order and crime prevention be maintained in the area of
 3 Marikana along the route to Eastern Platinum Mine and
 4 Western Platinum Mine before, during, and after the strike.
 5 Marikana Crime Prevention and Rustenburg POP will be
 6 deployed." That's a reference to you, is it not?
 7 GENERAL NAIDOO: Not necessarily, Chair.
 8 The, that would refer to the Deputy Provincial
 9 Commissioner, Operational Services, their line of reporting
 10 in terms of crime.
 11 MR CHASKALSON SC: But was Major General
 12 Mpembe not on leave at this time?
 13 GENERAL NAIDOO: So the person that would
 14 have been acting in his place would have fulfilled that
 15 portfolio. I can't remember at this stage who it was.
 16 MR CHASKALSON SC: So it wasn't your
 17 instruction; it came from Major General Mpembe's line of
 18 command, as it were.
 19 GENERAL NAIDOO: No, the line of command
 20 is different, Chair.
 21 CHAIRPERSON: Sorry, I know when a
 22 provincial commissioner is on leave one of the deputy
 23 provincial commissioners act as provincial commissioner.
 24 When a deputy provincial commissioner is on leave, does
 25 another deputy provincial commissioner act in his stead or

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1 could a brigadier who's immediately junior to him act in
 2 his place while he's away?
 3 GENERAL NAIDOO: Chair, depending on the
 4 circumstances and availability of a suitable person, either
 5 way, but normally what would happen in my line of command,
 6 I have three brigadiers under my command. In my absence I
 7 normally recommend to the Provincial Commissioner one of
 8 them to act in my place. It is also part of their
 9 development and their understanding of the specific
 10 environment. So –
 11 CHAIRPERSON: The reason why I ask the
 12 question was that if General Mpembe was away, I think he
 13 was on sick leave or something –
 14 GENERAL NAIDOO: On leave, Chair.
 15 CHAIRPERSON: - would Brigadier Calitz
 16 most likely have been the person acting in his place?
 17 GENERAL NAIDOO: Chair, in that
 18 environment as well there are three brigadiers, so I'm not
 19 sure, I can't remember off the top of my head now who was.
 20 Probably, but we can ascertain that.
 21 MR CHASKALSON SC: You see, one of the
 22 things that concerns me about this operational plan and
 23 what actually happened is if we go to 3.22 it says, "The
 24 JOC will be activated at 7:00 on 10 August 2012 and remain
 25 operational for the duration of the strike." The plan was

<p style="text-align: right;">Page 24051</p> <p>1 for a JOC to be set up on the 10th of August.</p> <p>2 GENERAL NAIDOO: Chair –</p> <p>3 MR CHASKALSON SC: We know that the JOC</p> <p>4 was only in fact set up on the 12th of August.</p> <p>5 GENERAL NAIDOO: Chair, I think we need</p> <p>6 to clarify. As I said, I'm subject to correction because</p> <p>7 there are two JOCS that are permanently fitted out, one at</p> <p>8 the cluster commander's environment in the Rustenburg, in</p> <p>9 Phokeng, and the other JOC that is permanently manned would</p> <p>10 be at the unit itself. That, and they function on a 24-</p> <p>11 hour basis. So it would not be unusual for, if there's not</p> <p>12 a specific incident to have the particular operation run</p> <p>13 through one of those JOCS. It would not be unusual, but in</p> <p>14 this case I specifically can't indicate that. I don't, I</p> <p>15 can ascertain that, but the need for a JOC on site normally</p> <p>16 occurs when, you know, there's a specific critical incident</p> <p>17 or we can locate the issue to a very narrow venue. That's</p> <p>18 where hence my, in my statement I quite often refer to a</p> <p>19 VOC, which is actually a venue operational centre as</p> <p>20 opposed to a JOC. So it refers to a JOC, yes, and I think</p> <p>21 the people in the command structure can indicate to us</p> <p>22 where they ran the JOC from, the physical location of the</p> <p>23 JOC.</p> <p>24 MR CHASKALSON SC: That's actually</p> <p>25 addressed in the plan under item 10.2, three pages lower</p>	<p style="text-align: right;">Page 24053</p> <p>1 Brigadier Calitz that he had set up the JOC, yes.</p> <p>2 MR CHASKALSON SC: Now once the JOC was</p> <p>3 set up on the 12th of August one of the big advantages of</p> <p>4 having a JOC at Middelkraal was that you could take</p> <p>5 advantage, the police could tap into the Lonmin CCTV</p> <p>6 coverage.</p> <p>7 GENERAL NAIDOO: I suppose so, yes,</p> <p>8 Chair.</p> <p>9 MR CHASKALSON SC: You recall that the</p> <p>10 reason that Brigadier Mpembe was alerted to – sorry, Major</p> <p>11 General Mpembe was alerted to the incident on the 13th was</p> <p>12 that the strikers were picked up on CCTV marching in the</p> <p>13 direction of Karee?</p> <p>14 GENERAL NAIDOO: That's correct, Chair.</p> <p>15 MR CHASKALSON SC: And so SAPS would have</p> <p>16 been in a position had the JOC been set up on the 10th of</p> <p>17 August to monitor what was going on at Marikana much more</p> <p>18 closely and to intervene much more effectively.</p> <p>19 GENERAL NAIDOO: They would be on site,</p> <p>20 yes, Chair.</p> <p>21 MR CHASKALSON SC: You see, a great deal</p> <p>22 happened between 7AM on the 10th of August and the afternoon</p> <p>23 of the 12th. The two major incidents were there was a march</p> <p>24 by strikers to the NUM office on the 11th and a shooting</p> <p>25 incident in the aftermath of that march and that's</p>
<p style="text-align: right;">Page 24052</p> <p>1 down. The JOC was to be at Middelkraal, so that's – "The</p> <p>2 JOC will be positioned at Middelkraal."</p> <p>3 GENERAL NAIDOO: Yes, Chair.</p> <p>4 MR CHASKALSON SC: That's on Lonmin</p> <p>5 premises, is it not?</p> <p>6 GENERAL NAIDOO: Middelkraal? I suppose,</p> <p>7 maybe it's the same place. I'm not sure. Middelkraal?</p> <p>8 MR CHASKALSON SC: And it's the position</p> <p>9 where the final JOC was set up.</p> <p>10 GENERAL NAIDOO: I know it was a disaster</p> <p>11 management centre, so possibly. I can't remember –</p> <p>12 MR CHASKALSON SC: And Mr Pretorius is</p> <p>13 confirming for me that the position was where the final JOC</p> <p>14 was set up.</p> <p>15 GENERAL NAIDOO: Okay.</p> <p>16 MR CHASKALSON SC: Now the plan</p> <p>17 contemplated that there would be a JOC at the site of the</p> <p>18 final JOC from 7AM on the 10th of August.</p> <p>19 GENERAL NAIDOO: That's correct, Chair.</p> <p>20 MR CHASKALSON SC: From what we've been</p> <p>21 able to establish it seems that the JOC was only</p> <p>22 established in that position, or only set up in that</p> <p>23 position in the afternoon of the 12th of August, on the</p> <p>24 Sunday afternoon.</p> <p>25 GENERAL NAIDOO: As reported to me by</p>	<p style="text-align: right;">Page 24054</p> <p>1 generally regarded as the trigger for the major escalation</p> <p>2 of violence in the strike. There had been no deaths up to</p> <p>3 that point, and then there were the murders of the two</p> <p>4 security guards on the 12th, all before SAPS had established</p> <p>5 a JOC at Middelkraal as the plan demanded. Now it seems to</p> <p>6 us that if SAPS had executed this plan as intended, it's</p> <p>7 quite possible that both of those two unfortunate events,</p> <p>8 the events of the 11th and the events of the 12th, the march</p> <p>9 to NUM offices and the shooting incident there, and the</p> <p>10 murder of the two security guards, would have been picked</p> <p>11 up on CCTV before they happened and would have been</p> <p>12 incidents to which SAPS could have responded much more</p> <p>13 quickly and might possibly have prevented. Do you have any</p> <p>14 comment on that?</p> <p>15 GENERAL NAIDOO: Chair, without having</p> <p>16 the specific detail in terms of all the circumstances and</p> <p>17 how SAPS responded to those specific incidents, I don't</p> <p>18 think I would be able to give a comment. When I, when</p> <p>19 Brigadier Calitz indicated to me that he'd established a</p> <p>20 JOC on the Sunday at the Lonmin disaster management</p> <p>21 offices, in that the key thing that he indicated that he</p> <p>22 established a record, he put in place an occurrence book</p> <p>23 where they started recording the events. So when we talk</p> <p>24 about the JOC, which should have been established as</p> <p>25 Brigadier Calitz has indicated, I would need to first</p>

<p style="text-align: right;">Page 24055</p> <p>1 ascertain that did we deploy any members to work with the 2 security there before indicating, because it does occur at 3 times that they would have – they, it would have made sense 4 to deploy a person with a police radio to work in 5 conjunction with the security since they had the 6 infrastructure in place. So dependent on what measures 7 they took in terms of their planning, I think I need that 8 information to give a proper answer in terms of that. The 9 operational people definitely were instructed to be on 10 scene. They were deployed, they were enhanced on Saturday 11 as well. So there must have been some measures, but I as I 12 said don't specifically know the measures.</p> <p>13 MR CHASKALSON SC: No, I appreciate there 14 would have to have been some measures, but I'm interested 15 in the issue of the JOC because the primary advantage of – 16 or not the primary, but one of the clear advantages of a 17 JOC at Middelkraal on Lonmin premises is the ability to tap 18 into Lonmin CCTV coverage of what's going on so that the 19 police can respond immediately there's a threat and not 20 wait for the threat to materialise, or to turn into 21 disastrous and murderous conduct, and without access to the 22 Lonmin coverage and to the JOC on Lonmin property SAPS 23 don't have that facility.</p> <p>24 GENERAL NAIDOO: Chair, I'm not 25 disagreeing with the feasibility of the proposal. As I</p>	<p style="text-align: right;">Page 24057</p> <p>1 it's an integrated approach, but there is definitely an 2 element of Public Order Police to deal with the crowd 3 management issues.</p> <p>4 MR CHASKALSON SC: If we go to 10.2 and 5 we see the command and control structure, overall commander 6 Lieutenant Colonel Msiza, operational commander Lieutenant 7 Moloby, VISPOL Captain Govender, media Captain Augustidis. 8 Did any one of those four carry responsibility for ensuring 9 that a plan is ultimately executed? Is it the overall 10 commander?</p> <p>11 GENERAL NAIDOO: That's the station 12 commander, Lieutenant Colonel Msiza whose station precinct 13 the entire operation, so it's not unusual to make him the 14 overall commander.</p> <p>15 MR CHASKALSON SC: But my question is if 16 we want to find out why a JOC was only established more 17 than two days after the plan intended and who is 18 responsible for that, where do we go?</p> <p>19 GENERAL NAIDOO: The command structure of 20 the executing instruction. I think we start there. The 21 command structure is indicated on the board and we should 22 start there because they were tasked in terms of the plan.</p> <p>23 MR CHASKALSON SC: So it's Lieutenant 24 Colonel Msiza?</p> <p>25 GENERAL NAIDOO: He's the station</p>
<p style="text-align: right;">Page 24056</p> <p>1 indicated, I, what I'm merely indicating is I did not know 2 what their operational deployment was at that stage because 3 they had received an instruction and in terms of their plan 4 they should have had a deployment there. So I am uncertain 5 and I can verify whether when we indicated that we have 6 opened a JOC, was it referring to the formal establishment 7 of an occurrence book to start recording the incidents or 8 was it including that we also then deployed people and not 9 at an earlier stage. But the proposal of having that kind 10 of deployment to support the operations obviously would 11 enhance our functioning, and we've seen that.</p> <p>12 MR CHASKALSON SC: This is a plan that's 13 ultimately approved by Colonel Merafe.</p> <p>14 GENERAL NAIDOO: I think this would be, 15 Chair, dealt with by the cluster commander. It's a 16 localised operation. Colonel Merafe would be the person 17 responsible for Public Order Policing and the overall 18 commander would be the cluster commander for Rustenburg.</p> <p>19 MR CHASKALSON SC: Who would be 20 responsible for ensuring that this plan gets executed?</p> <p>21 GENERAL NAIDOO: The cluster and the 22 station commander. Their support obviously is the Public 23 Order Police. When it becomes a pure crowd management 24 issue, Public Order Police take charge. If it's routine, 25 other crimes, the normal policing would deal with them. So</p>	<p style="text-align: right;">Page 24058</p> <p>1 commander, or even – I'm not sure if the cluster commander 2 signed this plan off. If he did he was –</p> <p>3 MR CHASKALSON SC: No, no, if we go to 4 the end it's signed off both by the cluster commander and 5 by Lieutenant Colonel Merafe as a unit commander. So are 6 they responsible for ensuring that the plan gets executed?</p> <p>7 GENERAL NAIDOO: They are accountable. 8 The responsibility lies in the command structure.</p> <p>9 MR CHASKALSON SC: So the responsibility 10 is with Lieutenant Colonel Msiza, but if he doesn't do 11 what's expected of him, Lieutenant Colonel Merafe and 12 Brigadier Seboloke are held accountable?</p> <p>13 GENERAL NAIDOO: That's correct, Chair.</p> <p>14 MR CHASKALSON SC: Do you know if within 15 the North West SAPS there's been any investigation as to 16 why the JOC was not established on the 10th as required by 17 this plan?</p> <p>18 GENERAL NAIDOO: I don't specifically 19 know in terms of any of those investigations, no.</p> <p>20 MR CHASKALSON SC: Those are all of my 21 questions, Chairperson.</p> <p>22 CHAIRPERSON: Thank you, Mr Chaskalson. 23 Ms le Roux, there's seven minutes available. Do you want 24 to use them just to start off and perhaps do some 25 housekeeping and get your exhibits in order?</p>

<p style="text-align: right;">Page 24059</p> <p>1 MS LE ROUX: Yes, Chair, I think let's 2 mark exhibits, and then we can adjourn. Chair, you should 3 have been provided with an updated and revised index which 4 lists first the existing exhibits, then begins with new 5 exhibits, starting with statements of K9 members. We 6 should probably start there in terms of marking exhibits 7 and then there's an additional documents and files index 8 which has been prepared, which essentially just splits out 9 into four separate documents one of the CALS analysis 10 documents referred to on the first index, but I'll guide 11 you when we get there. 12 So if we start with the statements of K9 members 13 at forward holding area 1 under the command of Major 14 General Naidoo, I assume we can just mark those as one 15 group and then – 16 CHAIRPERSON: Yes. 17 MS LE ROUX: - point 1, point 2. 18 CHAIRPERSON: Well, we're busy still with 19 the MMM-series, so the latest one, do you want me to make 20 the - some of the K9 ones, certainly at least one of them I 21 think is already in as an exhibit. Do you want me to make 22 them all MMM39, you know, 39.1, 2, 3, etcetera? 23 MS LE ROUX: Yes, Chair. 24 CHAIRPERSON: Alright, so MMM39, 25 statements by K9 members and then it will be, it goes down</p>	<p style="text-align: right;">Page 24061</p> <p>1 down to 31 then, do we? We were going to have 32 because 2 there were, it was FF which is 36 letters from the 3 beginning of the alphabet. 4 MS LE ROUX: Yes. 5 CHAIRPERSON: But we've got one in 6 already, I think – no, oh I see, you've already made the 7 point actually that you indicated already those that are 8 already exhibits – 9 MS LE ROUX: Yes. 10 CHAIRPERSON: Molangoanyane, there are 11 two statements, so you will only mark the one obviously. 12 MS LE ROUX: Yes. 13 CHAIRPERSON: We won't have to have a 14 point A or point B, and then the same applies to Motsemi 15 and Mutsi and Myburgh. 16 MS LE ROUX: Correct. 17 CHAIRPERSON: So you'll bear that in 18 mind, okay. Then shall we mark the – so it's clear how 19 we'll mark, you'll mark them for us – 20 MS LE ROUX: Yes, Chair. 21 CHAIRPERSON: - and perhaps prepare a 22 little schedule for us. Then MMM40 will be statements of 23 POP members at forward holding area 1. Is that right? 24 MS LE ROUX: Yes, Chair. Now two of 25 those have pocketbooks, but we can similarly do, you know,</p>
<p style="text-align: right;">Page 24060</p> <p>1 to FF. 2 MS LE ROUX: Yes, Chair. Now obviously 3 some of these members have made two and sometimes three 4 statements. So what I'll do overnight is just allocate, 5 you know, a point 1, point 2 to each individual statement 6 and provide that to you. 7 CHAIRPERSON: Anyway, but what I was 8 proposing we do is 39.1 would be say Brazer, 39.2 – 9 MS LE ROUX: Well, would be Brazer's 10 first statement. 11 CHAIRPERSON: 39.1A perhaps, A and B, you 12 know, will be Brazer and 39.2A, B, C, would be Breedt. 13 MS LE ROUX: Right. 14 CHAIRPERSON: And so on, and that takes 15 us down to 32 because I see your last one is FF, except 16 that I think Harmse, I think you've got Harmse there, 17 haven't you? Harmse is F, which is your sixth one. 18 MS LE ROUX: Yes, is an exhibit already. 19 CHAIRPERSON: And that's already been 20 handed in by Mr Chaskalson. That's MMM30. So we write 21 MMM30 next to that. 22 MS LE ROUX: Yes, and then Chair, there 23 are four other statements that are already exhibited. 24 CHAIRPERSON: Right, sorry, I didn't hear 25 the last comment. So we go down to, effectively then we go</p>	<p style="text-align: right;">Page 24062</p> <p>1 point 1A and B. 2 CHAIRPERSON: Yes, yes. And then 3 Tongwane's statement I think is in already, isn't it? 4 [15:54] MS LE ROUX: Yes, I believe so, Chair. 5 CHAIRPERSON: I think that's correct. So 6 we don't worry about that. You'll just at the appropriate 7 stage put that in on your index, and then your CALS 8 analyses, that's 4 and 5, have now been amplified, I think, 9 in – 10 MS LE ROUX: Yes, well Chair, the item 4 11 there, the CALS analysis statements of forward holding area 12 1 members, that can be marked, that stays as one analysis. 13 It has three parts to it because it has K9, POP and 14 Mounted, but it's one document. 15 CHAIRPERSON: Ja, that's – 16 MS LE ROUX: 41. 17 CHAIRPERSON: That will be MMM41, am I 18 right? And how do I describe that? MMM41, CALS analysis – 19 MS LE ROUX: CALS analysis, statements of 20 forward holding area 1 members, and Chair, that analysis is 21 broken into K9, POP, and Mounted, so we could have a 22 MMM41.1 for K9, point 2 for POP, point 3 for Mounted. 23 CHAIRPERSON: So it will be 41, the K9 24 lot will be 49.1; 49.2 will be POP and 49.3 will be the 25 Mounted Unit, okay.</p>

<p style="text-align: right;">Page 24063</p> <p>1 MS LE ROUX: Chair, aren't we up to 41? 2 CHAIRPERSON: Sorry? 3 MS LE ROUX: Aren't we up to 41, not 49? 4 CHAIRPERSON: Sorry, did I say 40? So I 5 should have said 41. Then the – 6 MS LE ROUX: Then item – 7 CHAIRPERSON: In other words the other 8 analysis – 9 MS LE ROUX: Yes. 10 CHAIRPERSON: - the phone call one, which 11 is a new one I think we got this morning, is that right? 12 MS LE ROUX: Yes, so Chair, ignore item 5 13 on the original index. If you can then move to the 14 additional documents and files index, that has now split 15 out into four separate documents, the components of that 16 movement analysis. So we can mark those as four separate 17 exhibits. So if we make the first, the CALS analysis 18 chronology of the movements and phone calls of Major 19 General Naidoo – 20 CHAIRPERSON: That will be – 21 MS LE ROUX: 42. 22 CHAIRPERSON: - MMM42. 23 MS LE ROUX: And then CALS analysis 24 routes from forward holding area 1 to scene 1 will be 25 MMM43. Then CALS analysis movement of forward holding area</p>	<p style="text-align: right;">Page 24065</p> <p>1 CHAIRPERSON: So we spent quite a lot of 2 time examining them last night and yesterday, so I would 3 hope we're reasonably on top of them, and I hope the 4 witness is as well, but we will discover tomorrow morning 5 how well we've prepared for your cross-examination. 6 COMMISSIONER HEMRAJ: Your MMM39, Ms le 7 Roux, your B and E, we have two out of the three statements 8 only in our bundles, Breedt and Dihlade. We only have two 9 statements. You have three listed. Perhaps if someone can 10 just give us – 11 MS LE ROUX: Commissioner, I'll find out 12 what happened there. We'll sort that out. 13 CHAIRPERSON: It's now 4 o'clock. I 14 think we have usefully employed the seven minutes at our 15 disposal and so there being no further business, we can 16 adjourn until 9 o'clock or shortly thereafter – we're going 17 to have a housekeeping meeting with the SAPS and the 18 evidence leaders at half past 8, so we hope to be ready by 19 9, but if we're not we will start as soon as possible 20 thereafter. But I would expect everybody concerned to be 21 available for us to start as soon after 9 as we can. So 22 we'll adjourn until tomorrow morning 9 o'clock. 23 [COMMISSION ADJOURNED] 24 . 25 .</p>
<p style="text-align: right;">Page 24064</p> <p>1 1 convoy to koppie 3 would be MMM44, and then Chair, 2 finally CALS analysis movement of K9 and NIU members on 3 foot at koppie 3 will be MMM45. 4 CHAIRPERSON: Yes. 5 MS LE ROUX: Now Chair, these have all 6 been provided to the SAPS and to Major General Naidoo and 7 I'll repeat the request that he familiarise himself with 8 its contents overnight, let me know if there are any 9 difficulties with that, and I should just point out for the 10 record, the MMM42, the CALS analysis chronology of 11 movements includes in it information coming from the AVL 12 tracking data that's been received. There appears to be an 13 issue with the correctness and accuracy of some of that 14 information. The evidence leaders have been alerted to it 15 and are investigating the cause of some of those apparent 16 inaccuracies. So you'll see in the chronology where those 17 are clearly marked, but often times the same movement is 18 confirmed with other evidence, but there are certain 19 material points where the AVL tracking data's accuracy has 20 been questioned by the Human Rights Commission team, but we 21 are engaging with the evidence leaders to try to solve 22 that. I should just note that for the record. 23 CHAIRPERSON: Alright. You have given us 24 all these documents already. 25 MS LE ROUX: Yes, Chair.</p>	

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