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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Marikana Commission of Inquiry

1	Page 23907 [PROCEEDINGS ON 6 FEBRUARY 2014]	1	Page 23909
1		1	CHAIRPERSON: And so we have to plan our
2		2	progress forward on the basis that that's the time which
3	Major General, you're still under oath. GANASEN NAIDOO: s.u.o.	3	the President has given us, which is an extended period.
4 5		4	When we asked for the original extension we gave an
	CHAIRPERSON: Mr Chaskalson, you'll cross-examine in a moment, but before we start I want to	5	estimate of how long things would take and he gave us the
6		6	full extension we asked for. There's no guarantee that he
7	say something to the parties. We're now in March. In	7	will necessarily give us a further extension. As I say, it
8	terms of the extended terms of reference that we have,	8	would be irresponsible for us to assume automatically that
9	proclamation setting up the Commission, we are due to stop	9	we'll get it, so we have to plan ahead on the realistic
10	hearing evidence at the end of April. It may well be that	10	pragmatic approach which I've outlined.
11	the parties are already doing what I'm now going to say,	11	MR MPOFU: Yes, well Chairperson, I
12	but if they're not I would suggest they immediately start	12	appreciate that. On our estimation - we've obviously done
13	doing something about it, and that is we're not going to be	13	the exercise as well because the time is running out, but
14	able to allow very much time between the end of the	14	on our estimation by the end of April we will not have
15	evidence and the beginning of argument.	15	finished even the police case. So I don't know how could
16	We've been given the period after the end of	16	we argue the case if –
17	April to write the report. We may well have to use some of	17	CHAIRPERSON: Well, we'll see about that.
18	that time for hearing of argument, but we won't have the	18	Don't be too pessimistic too soon.
19	luxury of giving parties a lengthy period to prepare heads of argument. Many of the issues have been defined. A good	19	MR MPOFU: Well, we'll see about that
20 21	deal of the evidence has been led on most of the issues in	20 21	then, Chairperson. Thank you. CHAIRPERSON: Mr Chaskalson? I've
21	fact which will call, arise for decision, so I would urge	21	already reminded you, Major General, just in case you've
22	the parties to, if they're not doing it already, to start	22	forgotten, that you're still under oath.
23 24	preparing heads of argument which they will be able to	23	GENERAL NAIDOO: Under oath, Chair.
24	present to us during the argument stage.	24 25	CHAIRPERSON: Mr Chaskalson.
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1	MR CHASKALSON SC: So you conveyed	1	killed at scene 2 on koppie 3. These photographs, some of
2	nothing to Major General Annandale that would have led him	2	which we've seen already, or all of which I think we've
3	to believe that we were dealing with cases of self-defence	3	seen already, are of such a nature that they may well cause
4	or private defence?	4	emotional distress to those who were the loved ones and
5	GENERAL NAIDOO: Chair, what I've	5	family members of the persons depicted on the photographs.
6	indicated is I could not specifically discuss any of the	6	So I'm going to give them an opportunity, those persons, to
7	specific incidents of shooting at that stage because I did	7	leave the chamber if they wish before the photographs are
8	not have the detail knowledge.	8	shown and I ask that the photographs are not shown until a
9	MR CHASKALSON SC: And did you explain to	9	minute has elapsed from now. There's no-one who shows any
10	Major General Annandale that you had witnessed none of	10	signs of wishing to leave the chamber, so I think we don't
11	these shootings or deaths?	11	have to wait the full minute and we may now proceed.
12	GENERAL NAIDOO: Chair, I think I	12	MR CHASKALSON SC: If we can then start
13	indicated that I narrated what I experienced and that would	13	with the photograph of you with Brigadier Calitz with your
14	include what I saw or obviously that will exclude what I	14	stun grenades clipped on to your chest in the heart of the
15	did not see.	15	koppie, that's JJJ29.253.
16	MR CHASKALSON SC: No, but was it clear	16	CHAIRPERSON: The first picture we're
17	to Major General Annandale that you yourself had not	17	seeing, you haven't told us what it is yet, Mr Chaskalson,
18	witnessed any of killings?	18	it doesn't show a dead body, it shows Brigadier Calitz, two
19	GENERAL NAIDOO: Chair, I am not sure.	19	other policemen on his left and half of the picture of the
20	At that stage he didn't specifically question me on that	20	witness with his stun grenades on the left, on $-$ to the
21	aspect.	21	right of Brigadier Calitz.
22	MR CHASKALSON SC: Well, you know what	22	MR CHASKALSON SC: Well, Major General,
23	you told him. Should it have been clear to him that you	23	for orientation – never mind orientation purposes. Do you
24	had not witnessed any of the killings?	24	know where this photograph was taken? Can you recognise
25	GENERAL NAIDOO: Well, based on my	25	the position in which this –
	Page 23912		Page 23914
1	narrative which I've also testified here I think it was	1	CHAIRPERSON: For the purposes of the
2	narrative which I've also testified here I think it was clear that I did not specifically see any of the killings.	2	CHAIRPERSON: For the purposes of the record tell us what it is, what the exhibit number is or
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1	Page 23915 correct. Your placing of this picture is not. If we go to	1	Page 23917 follows the route that he went in when he took the
2	the next photograph of Warrant Officer Ramanala we can	2	photograph of you and Brigadier Calitz. So we've seen 254
3	locate this picture, but before we do I'd ask people to	3	and 253. If we look at JJJ252, that's – I beg your pardon,
4	note the black jacket in the bottom right-hand corner of	4	that is Mr Liau who is dead. He is body E. He would have
5	this photograph, which will be visible in the zoomed out	5	been pretty close to your feet in the last photograph. If
6	picture of the next shot of Warrant Officer Ramanala, which	6	we, maybe to orient ourselves we can look at page 47 of
7	is JJJ29.254. That is the black jacket that we saw in the	7	exhibit B, which is Captain Mohlaki's sketch plan of the
8	previous shot. Your position was possibly just off the	8	scene. Page 47. So where you are standing we can see F,
9	bottom of the photograph on this shot and we see behind	9	which is the firearm which we've just been looking at. You
10	where you were the bodies of victims G and H. Those are Mr	10	were standing just to the right-hand side of where the
11	Mosebetsane and Mr Mabiya with the red blanket and the pink	11	arrow point marks F. Behind you were victims G and H, Mr
12	blanket around them, and you'll recall that we spent a long	12	Mabiya and Mr Mosebetsane. In front of you were victims D
13	time looking at this gun that spinned round and round over	13	and E. We've seen Mr Liau. We're about to see Mr
14	a 90-minute period, which included your trip through this	14	Mangcotywa. He is body D and he was on the previous
15	period. That's the scene we're looking at now. Does	15	photograph of Warrant Officer Ramanala. He is number 251,
16	that –	16	if we go to 251, JJJ29.251. He is lying right next to Mr
17	CHAIRPERSON: I'm sorry to interrupt you,	17	Liau. We see that from 250, the previous photograph of
18	Mr Chaskalson. You refer to the bodies covered by the red	18	Warrant Officer Ramanala which shows them both together.
19	blanket and the pink blanket. There is of course another	19	Can we go to 250? Do you recall seeing them?
20	body closer to the black jacket to which you've referred.	20	GENERAL NAIDOO: Yes, I think so.
21	You haven't said who that is.	21	MR CHASKALSON SC: Right next to victims
22	MR CHASKALSON SC: That man is not dead.	22	D and E is the man who I previously incorrectly identified
23	That man was slightly injured and we haven't been able to	23	as Mr Liau and I'm going to get his correct identification
24	identify him. Does this help you to orient where you were?	24	now. Can we see the previous shot of Warrant Officer
25	GENERAL NAIDOO: A little, yes.	25	Ramanala? That's 249. This man is one of the four victims
	D 0004/		D 00040
1	Page 23916 MR CHASKALSON SC: Do you recall, and if	1	Page 23918 who died en route to hospital after scene 2. He was alive
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	Page 23919		Page 23921
1	ground?	1	been able to see him even from the very position you were
2	GENERAL NAIDOO: I think I do.	2	at 253, certainly if you saw the other bodies, you would
3	MR CHASKALSON SC: Sorry, you say you	3	have been likely to see him, because he was lying in the
4	think you do? Or you don't think you do?	4	open. If we go to JJJ29 274, we will see where he was
5	GENERAL NAIDOO: I said I think I do.	5	lying.
6	MR CHASKALSON SC: Can we go to the next	6	CHAIRPERSON: Or you mean 247?
7	victim whom you would have seen, or you would probably have	7	MR CHASKALSON SC: 274, because Warrant
8	seen? If we go – if we can get our orientation from the	8	Officer Ramanala was just photographing as he went around
9	sketch plan again, can we go back to the sketch plan? I	9	the rock. This is Mr Gadlela, and he is essentially in the
10	will indicate where this photograph is taken, and the route	10	open, if we go back to the sketch plan, we will see where
11	that Warrant Officer Ramanala followed. We have followed a	11	he is relative to where you were. He is at this point, you
12	route which started with victims G and H here, and has	12	were there, I am marking the point of Mr Gadlela's, the
13	moved round the rock in a clockwise direction picking up	13	point marked as victim L on the sketch plan. The point
14	the gun, victims D and E, the man who is about to die whose	14	where Major General Naidoo was, was between the F point and
15	name we are still tracking down, Mr Ngxande victim K, if we	15	the K point. And as you can see, this is open ground, the
16	go around the rock the other way, completing the clockwise	16	point from where you were to Mr Gadlela. The bushes that
17	move around the rock, we will see the next photograph, and	17	we see in the photograph of Mr Gadlela are behind him from
18	if we can go there, the photograph that we just saw which	18	where you were standing. Do you recall seeing Mr Gadlela,
19	was 247, that is the man whom the Chairperson identified on	19	would you like to see 274 again?
20	this very, the very first photograph I took us to after the	20	GENERAL NAIDOO: No, I think I do
21	photograph of you and Brigadier Calitz, the man who	21	remember.
22	survived. The foot that we see in the top left-hand area	22	MR CHASKALSON SC: Now, Major General,
23	of this photograph, is in fact the foot of victim G, Mr	23	that's the scene in the heart of the koppie, in the area
24	Mosebetsane, we've come full circle around that rock, and	24 25	we've described as the killing zone of koppie 3. When you
25	that becomes clear if we go one photograph back, which is	25	and the NIU came over the rocks, if we mark the rocks, I am
	Page 23920		Page 23922
1	246 where we see Mr Mosebetsane with the red blanket over		marking them on the sketch plan now, you would have come
2	246 where we see Mr Mosebetsane with the red blanket over him, and Mr Mabiya with the pink blanket over him. If we	2	marking them on the sketch plan now, you would have come over according to your evidence, on the area towards the
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		I .	
1	Page 23923 GENERAL NAIDOO: I am not sure who they	1	Page 23925 recall.
2	were, but yes, they were POPs members.	2	MR CHASKALSON SC: And you didn't hear
3	MR CHASKALSON SC: Well, when you first	3	any shooting in the direction of this killing zone?
4	had sight of this area of the koppie, the – what I am	4	GENERAL NAIDOO: No, Chair, I – that
5	describing as the killing zone of koppie 3, when you first	5	would have affected us moving forward. If I remember after
6	had sight of that area, did you see any SAPS members in	6	the arrests, we went directly down.
7	that area? In the area, in the heart of the koppie itself?	7	MR CHASKALSON SC: Now, you spoke about
8	GENERAL NAIDOO: Chair, I can't	8	what happened after you went down, and you talked about a
9	specifically remember because as we crested that koppie, I	9	POPs member firing rubber bullets into the koppie to
10	indicated in my evidence on the right-hand side in that	10	persuade the strikers to come out. Do you recall that?
11	cleft of the rocks, is where we found about three or four	11	GENERAL NAIDOO: Chair, I think I
12	strikers and we arrested them, I think we had a discussion	12	indicated he fired a rubber bullet whilst I was at his
13	about that. They were lying in that cleft in the rock,	13	side, yes.
14	somewhere there.	14	MR CHASKALSON SC: A rubber bullet? Now,
15	MR CHASKALSON SC: Am I marking the cleft	15	would the rubber bullet he fired have been in the direction
16	correctly? The cleft underneath, or to the right-hand side	16	of what I've described as the killing zone?
17	of T1 to T3.	17	GENERAL NAIDOO: Yes, it could be, Chair,
18	GENERAL NAIDOO: That's correct, we were	18	yes.
19	there.	19	MR CHASKALSON SC: And then you saw a
20	CHAIRPERSON: And above that A? Is that	20	large number of strikers emerge from that area, was your
21	correct? That's the cleft. Above letter A. And then an	21	testimony.
22	arrow, there's a letter A an arrow, pointing to a spot,	22	GENERAL NAIDOO: Yes, initially they came
23	next at the base of the rocks, and then the cleft is	23	in ones and twos and eventually more and more came out,
24	immediately above that, am I understanding correctly?	24	yes.
25	GENERAL NAIDOO: Chair, I think that	25	MR CHASKALSON SC: So the area that I've
	Page 23924		Page 23926
1	indication there is that it was a side of a rock as it was	1	described as the killing zone was an area in which you
2	indicated, there was a higher rock and a lower rock. We	2	subsequently found out that there had been relatively
3	were, we climbed up the lower rock on the left and as you	3	substantial number of strikers who were congregated.
4	came to the top, when it, one of the two, there was a cleft	4	GENERAL NAIDOO: Congregated, I think in
5	in – or a gap in the rock, where about three or four of the	5	the rocks, yes because, maybe you should just indicate to
6	miners had taken refuge, who we arrested.	6	me which area are you talking about.
7	CHAIRPERSON: Yes, I understand that, I	7	MR CHASKALSON SC: The area in and –
8	am just trying for the benefit of those of us who have the	8	well, let's say the area behind the rock, name, described
9	read the record later, and others as well, follow this,	9	as rock to the left of the point marking, victim K.
10	what Mr Chaskalson is putting to you. He's talking about	10	GENERAL NAIDOO: Chair, what I would
11	the cleft in the rock, saying, trying to describe where one	11	rather say is that in that entire bushy area with rock,
12	can see the cleft, if one looks at the sketch plan. All I	12	there was a substantial number of people discovered, yes.
13	am saying, am I right there?	13	MR CHASKALSON SC: For my purposes, what
14	GENERAL NAIDOO: You are correct, Chair.	14	I would like to put to you is that you, you must have known
15	MR CHASKALSON SC: Sorry, Major General,	15	by the time you were briefing Major General Annandale that
16	you were explaining to me what happened as you came over	16	the eight dead people you saw who we've now looked at in
17	the crest and you found these strikers in the cleft.	17	the photographs of Warrant Officer Ramanala had been killed
18	GENERAL NAIDOO: Chair, as I indicated,	18	in an area in which quite a large number of strikers had
19 20	it took us a couple of minutes to arrest them, remove them,	19 20	congregated. Would you accept that? GENERAL NAIDOO: Well, I subsequently
20	pass them back down the line, the NIU members that were	20 21	
21	following. MR CHASKALSON SC: But during this	21	found a large number of strikers, yes. CHAIRPERSON: The point is that by the
22 23	period, there wasn't any shooting taking place in your	22	
23	immediate vicinity, you –	23 24	time you spoke to Major General Annandale, you had found this large number of strikers, so the answer to the
24	GENERAL NAIDOO: No, not that I could	24 25	question you have been asked, I take it must be yes.
	RCHIVE FOR JUSTICE	25	question you have been daked, i take it must be yes.
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Marikana Commission of Inquiry

Pretoria

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1	Page 23927 GENERAL NAIDOO: I did indicate, yes.	1	Page 23929 the time I had come down to the POPs members obviously
2	MR CHASKALSON SC: And you must have	2	there was a line of members now confronting the strikers
3	known that they weren't killed at close quarters because	3	who were hidden in the bushes and the rocks. So as to when
4	there wasn't any shooting when you came over the rocks and	4	I came over, did I see the people on the left, I did not
5	they must have been dead before you came over the rocks.	5	specifically notice, I was engaged in something in my
6	GENERAL NAIDOO: Chair, as to when	6	immediate vicinity, but by the time I came down there were
7	exactly they were shot, I was not sure. As I indicated	7	members – well, there were members all over the place.
8	when I came down, the injured and the dead were either	8	MR CHASKALSON SC: Yes, we know from
9	among the rocks or they were then brought out or some of	9	Warrant Officer Mamabolo that even if there were POPs
10	them were lying in that area. I think this is the area	10	members confronting those members, those members were not
11	that I have testified to that people were brought out of	11	charging at the POPs members, were not firing at the POPs
12	the rocks too.	12	members, and the POPs members weren't shooting at them.
13	MR CHASKALSON SC: Well, the area where	13	That's all confirmed by Warrant Officer Mamabolo in KKK61.
14	the field hospital was set up is the area roughly around	14	You recall that from Friday? None of these POPs members
15	the circle that says T1 to T3. That's where people were	15	fired shots, fired live ammunition at those people, he saw
16	brought up for, brought out for medical attention and to be	16	none of them -
17	laid on the ground, to be arrested, and searched or to be	17	GENERAL NAIDOO: Yes, that's correct,
18	searched and arrested. It's a bigger area than that so-	18	Chair.
19	called T1 to T3, but it's the area around that. Would you	19	MR CHASKALSON SC: He saw none of them
20	dispute that?	20	shooting or attacking the police with dangerous weapons, so
21	GENERAL NAIDOO: Chair, initially the	21	Warrant Officer – so they couldn't have been killed by the
22	people that were being brought out were brought out to the	22	POPs members who were there.
23	area that we have been discussing now. Yes, and people	23	GENERAL NAIDOO: At the time that I was
24	were being moved beyond that as well afterwards. The	24	there, no.
25	people that were being arrested were further up between	25	[09:53] MR CHASKALSON SC: Can you think of any
			Dogo 22020
1	Page 23928 where the N is and the F, that was the area that was used	1	Page 23930 circumstances in which these people could have been killed
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	Page 23931		Page 23933
1	GENERAL NAIDOO: Chair, as I indicated, I	1	information in my hand I think would for me not be
2	don't know the circumstances of each of the shootings or	2	appropriate.
3	each of the victims that were involved and with whom. So	3	MR CHASKALSON SC: Major-General, at the
4	it will not be I think appropriate for me to make such	4	time that you spoke to Major-General Annandale you thought
5	deductions. As I said, there was a lot of movement there,	5	that there were 13 people that had been killed at scene 2.
6	people were being brought out from within the rocks, so in	6	GENERAL NAIDDO: That's correct, Chair.
7	terms of the placements that are being shown not everybody	7	MR CHASKALSON SC: You'd seen 10 of those
8	was exactly where they were. And so for me to draw some	8	13. You'd seen victims A and B from your position with the
9	conclusion as to whether this person was killed in that	9	NIU to the east of the koppie. Do you recall that?
10	circumstance or not I think would be difficult. I	10	GENERAL NAIDOO: Yes, Chair.
11	indicated I found and I reported that there were 13, I did	11	MR CHASKALSON SC: You'd seen the other
12	find all myself. I reported that there were 13 bodies	12	eight victims who we've just described or we've just gone
13	found at that time without specifying the specifics of each	13	through now with the photographs of Warrant Officer
14	one because I was not a position to do that.	14	Ramanala.
15	MR CHASKALSON SC: And you didn't express	15	GENERAL NAIDOO: Yes, Chair.
16	any view as to how these people may have died?	16	MR CHASKALSON SC: You'd also seen Mr
17	GENERAL NAIDOO: Chair, as I have not	17	Mohai, but you didn't realise that he was going to die, he
18	heard from these individual shottists I could not express a	18	wasn't one of the 13 that you had in mind. So you had seen
19	view in terms of the circumstances. One of the problems	19	10 out of 13, you'd seen eight in circumstances where I
20	that we had and we've over several times to try and	20	want to put to you a plausible explanation of self defence
21	establish linking individual people to bodies, you know,	21	is very difficult to imagine. What's your response to
22	who was your target, can you indicate to us who	22	that?
23	specifically you shot at and where. But, as I said, that	23	GENERAL NAIDOO: Chair, as I once again
24	time when the information was still raw we were nowhere	24	indicated, I was not in a position to know where the
25	establishing any of those things.	25	shottist who fired at them were from, from which direction,
20		20	
	Page 23932		Page 23934
1	Page 23932 MR CHASKALSON SC: You see, Major-	1	Page 23934 etcetera. The bodies were being moved, they were being
1 2	•	1 2	0
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1	Page 23935	1	Page 23937
1	were shot and by whom. I was not in a position to	1	according to Major-General Annandale, from whom he could
2	determine whether that was done in the following circumstances or not. I just found people that were shot,	2	have given – if he could have obtained this it would have
3	injured and killed and they were being attended to. So to	3	been Brigadier Calitz. And Brigadier Calitz had even less
4		4	knowledge of what happened inside scene 2 than you did. Do
5	draw a conclusion at that early stage without all this	5	you accept that?
6	information would have not been appropriate for me.	6	GENERAL NAIDOO: Chair, I don't think
7	MR CHASKALSON SC: You see someone within	7	that's entirely correct because I think at some stage I've
8	the senior command of SAPS thought differently, thought it	8	seen, I'm not sure if it's his statement or testimony that
9	was possible to draw a conclusion because they told the	9	he did indicate an incident of a shooting where a police
10	world in a press statement and the President in exhibit	10	officer defended himself, etcetera. I think that was also
11	FFF4 that all of these people were killed in self defence.	11	led here because that was a person that Colonel McIntosh
12	Do you accept that that was first of all inappropriate, do	12	attended to in terms of the paramedics. I remember
13	you accept that?	13	specifically something like that was indicated. So he had
14 15	GENERAL NAIDOO: Chair, as I indicated, I	14	knowledge that I did not have.
15	was not present when all the people briefed, as we came in	15	MR CHASKALSON SC: One incident that took place outside the koppie and I don't recall his testimony
16	we briefed and some were there before us and some were	16	
17 18	there after us. So I don't know what shaped the opinion of the people compiling. As I indicated, some of those bodies	17 18	exactly. I don't think he actually saw that incident, he responded to it. But you will concede that in relation to
19		19	the eight bodies that we've just looked at you were in a
20	that were involved, the TRT for example, I had no idea as to what the circumstances of the shooting was there for an	20	much better position than Brigadier Calitz to convey any
20	example. So how the opinion was shaped in terms of whether	20	information to Major-General Annandale.
22	these cases, all the cases or some cases were self defence	22	GENERAL NAIDOO: Chair, we both had a
22	and private defence I'm not sure. But as I indicated, what	22	look at the bodies at that particular place and as I
24	I presented was the raw information in terms of the number	23	indicated, it was very clear what I communicated in terms
25	of people killed, the number of people injured etcetera.	25	of the numbers, etcetera as I had no idea of the
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1	That was all I could provide because I had not interviewed	1	circumstances at that stage.
1 2	That was all I could provide because I had not interviewed or spoken to shottists and tried to establish what were the	1 2	
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2	or spoken to shottists and tried to establish what were the	2	circumstances at that stage. MR CHASKALSON SC: Yes, Major-General,
2 3	or spoken to shottists and tried to establish what were the circumstances.	2 3	circumstances at that stage. MR CHASKALSON SC: Yes, Major-General, but you were present at that scene a good 20 to 30 minutes
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	Page 23939		Page 23941
1	other would you have been?	1	MR CHASKALSON SC: Well let's just go
2	GENERAL NAIDOO: I think there were about	2	back to what you say in paragraph 75 of your statement.
3	three or four NIU members between him and I.	3	"Just as we move towards the second line of rocks we came
4	MR CHASKALSON SC: So two, three metres.	4	under fire from one of the strikers to my left,
5	GENERAL NAIDOO: It's possible, Chair, I	5	approximately 50 metres and the bullets narrowly missed me
6	can't specifically remember. He was a little to my rear as	6	and struck the rocks around me. I immediately returned
7	well.	7	fire with two rounds from my pistol at the individual I
8	MR CHASKALSON SC: And he was with you	8	could see taking cover between rocks and trees with a
9	when you shot, just behind you to your left-hand side.	9	firearm in his hands. Several NIU members to my left also
10	GENERAL NAIDOO: Chair, I assume that yes	10	simultaneously returned fire in the direction of the shots
11	he was behind me, but immediately next to me were NIU	11	which immediately stopped. So it's an episode that starts
12	members, yes.	12	and finishes very quickly.
13	MR CHASKALSON SC: Well let's look at	13	GENERAL NAIDOO: That's correct, Chair.
14	that shooting incident in some more detail and we started	14	MR CHASKALSON SC: And I understood your
15	there on Tuesday where your testimony was that you and the	15	evidence on Tuesday to be that after these self defence
16	NIU were coming up over the rocks with Sergeant Harmse and	16	shots you and the NIU members with you did no more shooting
17	some NIU members on your left and some other members on	17	on the day.
18	your right-hand side.	18	GENERAL NAIDOO: That's correct, Chair.
19	GENERAL NAIDOO: That's correct, Chair.	19	MR CHASKALSON SC: Unless I misunderstood
20	MR CHASKALSON SC: And you said that you	20	your evidence, I understood you to be saying that even
21	and the NIU members with you shot in self defence at a	21	before this incident the NIU members in your presence had
22	striker that was shooting at you.	22	done no shooting.
23	GENERAL NAIDOO: That's correct, Chair, I	23	GENERAL NAIDOO: The members that
24	indicated that approximately two shots struck the rock in	24	immediately were with me, yes. I indicated that the few
25	front of me.	25	members that were climbing the rock with me, no they did
	Page 23940		Page 23942
1			-
	MR CHASKALSON SC: Yes and then you fired	1	not shoot at that stage.
2	two shots and the NIU members fired some shots as well.	2	not shoot at that stage. MR CHASKALSON SC: So the only shooting
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1	Page 23943	1	Page 23945
1	rocks, you come up the first lot and then you go up the	1	is where the incident occurred.
2	second. As we were coming up the first rock the incident	2	MR CHASKALSON SC: So you say the
3	happened. So I merely went low and right, obviously coming	3	incident occurred when you were on this plateau in F3?
4	out of – trying to get out of the line of sight of the	4	GENERAL NAIDOO: Just as we were climbing
5	person that was shooting at us.	5	that plateau, yes, Chair.
6	MR CHASKALSON SC: So you – maybe if you	6	MR CHASKALSON SC: Okay, and you
7	can just describe this with reference to MMM2 so that we	7	retreated where?
8	understand where exactly you are and where you're moving to	8	GENERAL NAIDOO: Chair, I indicated that
9	take cover.	9	I just moved to the right of where I was, just out of the
10	GENERAL NAIDOO: Chair, if we could zoom	10	line of sight, right and I think a step down.
11	in a little bit I think it will help	11	MR CHASKALSON SC: Sorry, Major General,
12	MR CHASKALSON SC: You said on Tuesday	12	the problem with left and right is that your left and right
13	that the shooting was, I think in F, in block F3.	13	at the time are not the left and right as we look at MMM3,
14	[10:13] GENERAL NAIDOO: Yes, Chair.	14	so if you can describe it with reference to the grid that
15	MR CHASKALSON SC: Can we zoom in towards	15	we see in – sorry, $MMM2$ – the grid that we see here. You
16	block F3? Now if you can identify where you were and you	16	moved up towards road, up in the direction of road 2, up
17	say the shooting came from somewhere in E3, can you	17	this way, which would have been your right at the time?
18	identify where you were and how you took cover? That's F3,	18	GENERAL NAIDOO: Chair, I think what I
19	that's E3. I'm marking F3 and E3 in the zoomed in	19	indicated was I took a step back and right, yes, so I would
20	photograph.	20	have been slightly down and in the direction of where body
21	GENERAL NAIDOO: No – Chair, yes, we were	21	- just for purposes of direction, where body A and B was.
22	somewhere in the middle of F3. Ja, somewhere – I'm not	22	That's upwards to the picture.
23	sure in relation to where body A and B was, it was just -	23	MR CHASKALSON SC: And you were then
24	MR CHASKALSON SC: Body A is where these	24	sheltering from –
25	SAPS members are congregated in the top right-hand corner	25	GENERAL NAIDOO: Somebody that was
1	Page 23944 of F3.	1	Page 23946 somewhere here, Chair.
2	GENERAL NAIDOO: Okay, just to the left	2	MR CHASKALSON SC: Previously you
3	of body A and B we –	2	identified him in E3, which is the block to your left.
4	MR CHASKALSON SC: To the left as we look	4	Maybe we should zoom out so that you've got a better sense
4 5	at this photograph or to the left as you went up the rocks?	4 5	of perspective.
	GENERAL NAIDOO: To the left of body A	6	GENERAL NAIDOO: Chair, the shottist was
6	and B.	7	to the, sharp to my left, so hence I'm indicating to the
7			bottom of F3.
8	MR CHASKALSON SC: No, but as we look at	8 9	
9	the photograph, or as you went up the rocks? Because if	9 10	MR CHASKALSON SC: Yes – CHAIRPERSON: I'm sorry, the bottom left-
10	you were -		hand corner of F3?
11 12	GENERAL NAIDOO: As we went up the rocks,	11 12	
12	Chair.		GENERAL NAIDOO: Chair, I think it's more
13 14	MR CHASKALSON SC: So lower down in block	13 14	just three-quarters ways into the bush. As I said it's
14	F on this photograph.	14 15	hard to pinpoint because there's a rock and there's a tree
15	GENERAL NAIDOO: To what I –	15	there.
16	MR CHASKALSON SC: In block F3.	16	MR CHASKALSON SC: You see, your
17	GENERAL NAIDOO: Yes, from here the rock	17	testimony when you initially placed the man who shot at you
18	comes to a smaller plateau and then it goes to a higher	18	was not in that block, it was in the next block. It was in
19	plateau, so –	19	E3. Do you want to –
20	MR CHASKALSON SC: So at the point where	20	GENERAL NAIDOO: Chair no, as I said I'm
21	I'm marking towards the centre of F3, but a little bit	21	looking, when I'm looking at it now it was sharp to my
22	above centre of F3 there's a plateau and then it starts	22	left.
23	climbing.	23	CHAIRPERSON: [Microphone off, inaudible]
24	GENERAL NAIDOO: So just as we – or just	24	how far over to your left, you see. If it was, you know,
4			
25	before we got up to the, fully to the first plateau when,	25	fairly close to you on your left -

	Page 23947		Page 23949
1	GENERAL NAIDOO: Chair, we –	1	would have placed you as you were cresting the rocks coming
2	CHAIRPERSON: - then it would have been	2	up from where victims A and B were. Is there any reason
3	in F3, otherwise if it was further to the left it would	3	that you can give for this discrepancy?
4	have been in E3, wouldn't it?	4	GENERAL NAIDOO: Chair, other than the
5	GENERAL NAIDOO: Yes –	5	fact that we zoomed, I think my orientation is about the
6	CHAIRPERSON: So which was it?	6	same in terms of my explanation.
7	GENERAL NAIDOO: I'm looking at it now,	7	MR CHASKALSON SC: Can we zoom in towards
8	as I said it was sharp to my left. If you're really	8	the top of F3? If we can just come down a bit, that's fine
9	looking at it in relation to the Task Force Casspir I think	9	thanks. So the corner is this corner, a quarter of the way
10	it was before rather than in line or after the Task Force	10	across on F3 is where I am marking. The top left-hand
11	Casspir.	11	corner of F3, a quarter way across the top line.
12	MR CHASKALSON SC: You see, Major	12	GENERAL NAIDOO: Chair, yes, but I want
13	General, that also begs the question of where exactly you	13	to indicate that that's the side of the cliff, that's why I
14	were on the rocks because if you were up to the top of F3,	14	indicate in terms of my orientation on my right-hand side
15	cresting the rocks, sharp to your left would have been down	15	was a sheer cliff. On the left-hand side was the bushes.
16	in E3 because you would have been moving up the rocks at a	16	MR CHASKALSON SC: So you are now
17	slight diagonal through the block F3 because that's the	17	confirming that you shot from the position about a quarter
18	orientation of that lower path up the rocks, as it were, or	18	of the way across the top line of F3?
19	the path through the lower rocks.	19	GENERAL NAIDOO: Chair, no that's not
20	GENERAL NAIDOO: Chair, I think I'm	20	what I'm confirming.
21	clear, it was on the first plateau before we got onto the	21	CHAIRPERSON: What he puts and what he
22	second plateau because at the second plateau is where we	22	says in the relevant passage is he talks about a corner or
23	arrested those three or four miners I indicated. So I'm	23	just a quarter way on the top line, somewhere there more or
24	clear that it was in the first plateau.	24	less the position. So he's not saying definitely a quarter
25	CHAIRPERSON: While we're looking at	25	along, not saying definitely in the corner, but somewhere,
	0		5. 5 5 5 F
-			
	Page 23948		Page 23950
1	Page 23948 this, can you perhaps indicate to us, Mr Chaskalson, the	1	Page 23950 as I understand it, in that area. Is what you said? It's
1 2		1 2	
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2	this, can you perhaps indicate to us, Mr Chaskalson, the spot that you call the killing zone? Can we see that on	2	as I understand it, in that area. Is what you said? It's more in position in relation to the plateau and the cliff
2 3	this, can you perhaps indicate to us, Mr Chaskalson, the spot that you call the killing zone? Can we see that on MMM2?	2 3	as I understand it, in that area. Is what you said? It's more in position in relation to the plateau and the cliff and the area below that that's relevant I think.
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	Page 23951		Page 23953
1	what I think you indicated earlier today and that is a spot	1	fully flattened portion because it was still – I was able
2	about between a quarter and a third of the way down from	2	to take a step downwards, backwards, Chair.
3	the top line of that block and I would say about two thirds	3	CHAIRPERSON: Yes the plateau isn't
4	of the way across. We're talking about F3, ja I'm talking	4	entirely flat as I can see it.
5	about F3, that's what you're now indicating. What Mr	5	GENERAL NAIDOO: No, no –
6	Chaskalson is suggesting is that earlier you had put it in	6	CHAIRPERSON: It tends to slope upwards
7	a different position, more in the top left-hand corner of	7	and then it presumable becomes steeper until you get to the
8	F3 which means that you were on a higher level than the	8	second plateau.
9	level that you're now showing us. Am I correct, Mr	9	GENERAL NAIDOO: It's slightly rounded
10	Chaskalson, is that the point?	10	and then up.
11	MR CHASKALSON SC: Yes, Chairperson. And	11	CHAIRPERSON: Ja, all right. So you were
12	when you say you took evasive action how did you take	12	effectively still in the first plateau as you call it and
13	evasive action on that plateau?	13	more or less at the highest point of that plateau but
14	GENERAL NAIDOO: Chair, as I indicated, I	14	advancing upwards as it were. Is that correct?
15	was still stepping up. I had not reached the fully level	15	GENERAL NAIDOO: Not yet at the highest
16	portion of the plateau, I moved lower and to my right. The	16	point.
17	members of NIU were on my left.	17	CHAIRPERSON: No, I said more or less
18	MR CHASKALSON SC: So you were then	18	that's what I said.
19	moving in the direction of – I suppose in the direction of	19	GENERAL NAIDOO: Yes, Chair.
20	where – on MMM2 we see the members congregate around body	20	CHAIRPERSON: You hadn't quite got to the
21	Α.	21	highest point.
22	GENERAL NAIDOO: Well that was my right,	22	GENERAL NAIDOO: No, Chair.
23	but in relation to where I was standing, Chair.	23	CHAIRPERSON: All right.
24	CHAIRPERSON: - try and understand this.	24	MR CHASKALSON SC: And you say you were
25	The place that I tried to describe which I said is about a	25	able to take evasive action by essentially stepping off the
	Page 23952		Page 23954
1	quarter of the way down or a little further way down and	1	plateau.
2	around about probably two thirds of the way across in that	2	GENERAL NAIDOO: I didn't step off the
3	block. That seems to be more or less on the same level as		plateau, I indicated I moved my line of sight out of the
Λ		3	plateau, i indicated i moved my line of sight out of the
4	the people congregated around the body. And then if one	3 4	line of sight of the shooter, Chair.
4 5	the people congregated around the body. And then if one looks at the block further one sees that immediately what		
		4	line of sight of the shooter, Chair.
5	looks at the block further one sees that immediately what	4 5	line of sight of the shooter, Chair. CHAIRPERSON: How did you do that, did
5 6	looks at the block further one sees that immediately what would have been your left, in front of you, is a slope and	4 5 6	line of sight of the shooter, Chair. CHAIRPERSON: How did you do that, did you duck or did you –
5 6 7	looks at the block further one sees that immediately what would have been your left, in front of you, is a slope and that goes up to what you've described as a plateau which is	4 5 6 7	line of sight of the shooter, Chair. CHAIRPERSON: How did you do that, did you duck or did you – GENERAL NAIDOO: Yes I stepped back and
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		1	
1	Page 23955 GENERAL NAIDOO: Downwards –	1	Page 23957 COMMISSIONER HEMRAJ: The directions of
2	CHAIRPERSON: Crouching is a word being	2	the shot were from your left as you climbed up that –
3	used in another context, it probably covers the situation.	3	GENERAL NAIDOO: On my left, Chair.
4	MR CHASKALSON SC: I'm still not quite	4	COMMISSIONER HEMRAJ: - rock, that rock
5	understanding your evidence because I don't understand the	5	there.
6	terrain around this plateau that you're talking about. I'm	6	GENERAL NAIDOO: That's correct, Chair.
7	sure it is where you say it is. Can we look at JJJ29, 205?	7	MR CHASKALSON SC: So you say you –
8	Chair this is going to be a photograph which will include	8	CHAIRPERSON: Sorry, I'm not sure, with
9	the body of victim A. I don't know if we need to give	9	respect, that's right. I understood you, you were saying
10	another warning.	10	you were near the top, if one can call it that, of the
11	CHAIRPERSON: Well I've given the warning	11	first plateau –
12	before, I don't know if anyone has come back here who	12	GENERAL NAIDOO: That's right.
13	wasn't at the time I gave the warning. We're going to see	13	CHAIRPERSON: - when you were shot at and
14	a picture of a dead body. Whose body A again, the surname?	14	I understood you to say that the section where that person
15	MR CHASKALSON SC: Mr Mdizeni.	15	is standing is the first plateau.
16	CHAIRPERSON: So anyone who is here in	16	GENERAL NAIDOO: Ja, it would appear that
17	the chamber who feels that he or she will be distressed,	17	it is the first plateau or almost to the top.
18	emotionally distressed by seeing this picture is given an	18	CHAIRPERSON: That's the first plateau,
19	opportunity to leave. I don't see anybody indicating an	19	so you weren't in other words going up the slope from the
20	intention to leave, so I think we can carry on.	20	dead body towards the person standing.
21	MR CHASKALSON SC: It's JJJ205, 205.	20	GENERAL NAIDOO: No we were –
22	Now, Major-General, that's the position of Mr Mdizeni as	22	CHAIRPERSON: You were actually –
23	you approach the rock, now where is the plateau that you	23	GENERAL NAIDOO: - almost at the top.
24	are talking about?	24	CHAIRPERSON: You were at that plateau at
25	GENERAL NAIDOO: Chair, if you see	25	the top and you were near of that and there was another
		20	
	Page 23956		Page 23958
1	there's an individual standing up there, I think that's	1	plateau –
2	more in the direction because we climbed up on the left-	2	GENERAL NAIDOO: And then –
3	hand side.	3	CHAIRPERSON: - to the left of the
4	CHAIRPERSON: Sorry, let's take it	4	photograph which we can't see.
5	slowly. Near the base of the photograph, the bottom of the	5	GENERAL NAIDOO: No, another plateau more
6	photograph where the body is lying is a flattish portion.	6	to the right I think.
7	Now that's not the first plateau you're talking about.	7	CHAIRPERSON: Anyway there's another
8	GENERAL NAIDOO: No, Chair.	8	plateau, a higher plateau –
9	CHAIRPERSON: Then the ground slopes	9	GENERAL NAIDOO: That's correct, Chair.
10	upwards beyond the dead body and then we see someone	10	CHAIRPERSON: Which is not obviously
11	standing at effectively the top of the slope. That slope,	11	reflected on the photograph.
12	where that person is standing is that the first plateau	12	GENERAL NAIDOO: That's correct, Chair.
13	you're taking about?	13	CHAIRPERSON: And you were near the top
14	GENERAL NAIDOO: I should think so,	14	of, if one can call it that, of the slight rise of the
15	Chair, we were a bit more to the left when we climbed up,	15	first plateau when this incident took place. Am I
16	yes. But it would appear –	16	understanding you correctly?
17	CHAIRPERSON: Yes and one can see other	17	GENERAL NAIDOO: That's correct, Chair.
18	trees there, it does look as if there's a – it may be a bit	18	MR CHASKALSON SC: But relative to the
19	deceptive, but it does look as if there's a flattish	19	man whom we see standing at the top of this photograph
20	portion.	20	where would you have put your position?
21	GENERAL NAIDOO: Yes -	21	GENERAL NAIDOO: Chair, I think I won't
22	CHAIRPERSON: At the top left –	22	be able to, I need to orientate myself with another view
23	GENERAL NAIDOO: To the left – yes,	23	because it appears to be the top of the plateau, but I'm
24	Chair,	24	not sure.
25	CHAIRPERSON: All right.	25	MR CHASKALSON SC: Maybe if we can give
	RCHIVE FOR JUSTICE	1	

		1	
1	Page 23959	1	Page 23961
1 2	you another view with KKK16, 5139, KKK16, 5139. CHAIRPERSON: Is this what you want, Mr	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	Chaskalson?	3 4	Major-General Naidoo is the first plateau as you come up. GENERAL NAIDOO: Chair, no it does not
4	MR CHASKALSON SC: It is, Chairperson.		
5	And if we can zoom in where I'm marking now. You see,	5	look right to me because as I indicated, the second plateau
6	Major-General, the rocks that we could see from the shot of	6	in this area is where we arrested the three or four people.
7	Mr Mdizeni's body are the rocks that I'm marking now.	7	I indicated there was some sort of crevice among the rocks
8	CHAIRPERSON: Sorry and on the original	8	that they were lying in. So I would put the plateau somewhere here. As I said – at the best here.
9 10	photograph where would you describe – MR CHASKALSON SC: Chair, let's maybe go	9 10	
10	MR CHASKALSON SC: Chair, let's maybe go back to MMM2 so we can use grid lines, because we're going	10	MR CHASKALSON SC: All right, but even if we go – even on that description, Major-General, if we go
12	to zoom in. Can we zoom in around E, F2 to 3?	12	back to your -
12	CHAIRPERSON: If we look at E2 one	12	[11:33] CHAIRPERSON: He said things and he
14	essentially sees a flattish area and then halfway up	14	pointed but that's not on the record. As one looks at this
14	towards the left two thirds of the block there is a slope,	14	picture, one sees the people around the dead body of – dead
16	essentially a rocky slope. And then if one were to go up	16	body A. If one goes to the left one sees some, what looks
17	that towards the left, towards the block next to it one	17	like a, I suppose to be the first, but it's slightly sloped
18	would see what looks like a higher plateau. Is that the	18	upwards, then there's some rocks above it, and then if one
19	area you're talking about?	19	goes to the left up further, one comes to what amounts to a
20	GENERAL NAIDOO: Chair, yes this view is	20	second plateau, and there's a kind of a furrow in the
21	not as clear as the previous photo we had, but.	21	middle of it. That I suspect is the crevice where the
22	MR CHASKALSON SC: You see, Major-	22	people were hiding, is that right?
23	General, I think that your original evidence in chief is	23	GENERAL NAIDOO: I think so, Chair.
24	correct about where the first plateau is. The first	24	CHAIRPERSON: Right, and then you
25	plateau is in fact in the top left-hand corner of F3.	25	continue further, you've got a cliff ahead of you, if you
	Page 23960		Page 23962
1	GENERAL NAIDOO: No, Chair, it's not.	1	go up that, it eventually goes up to what amounts to a
2	MR CHASKALSON SC: So where do you say	2	third plateau which slopes upwards. Is that right?
3	the plateau is?	3	GENERAL NAIDOO: Chair, but our route was
4 5	GENERAL NAIDOO: Chair, if we can go back	4	from there, then down, straight down.
5	to the previous photograph, I think it was much clearer.	5	CHAIRPERSON: Yes, okay. So we've got the first plateau and the second plateau and what really
6 7	Chair, as you can see – CHAIRPERSON: Yes, I was just trying to	6 7	amounts to a third plateau, it looks as if the second
8	get a description of that on record you see. What we're	8	plateau, the one with a furrow in the middle of it, is
9	looking at now is a zoomed in picture of this exhibit.	9	where you found arrested people who were hiding in the
10	MR CHASKALSON SC: It's not this exhibit,	10	crevice, is that correct?
11	it's a different exhibit, Chairperson.	11	GENERAL NAIDOO: That's correct, Chair.
12	CHAIRPERSON: Anyway what I'm trying to	12	CHAIRPERSON: Right, now, let's go back
13	do here on record is a description of a particular area	13	to what Mr Chaskalson was dealing with you, just before
14		14	that.
1	that you referring to. Now it doesn't help to give it	1	
15	that you're referring to. Now it doesn't help to give it on the zoomed picture because that means nothing to the	15	MR CHASKALSON SC: And can I just
15 16		15 16	MR CHASKALSON SC: And can I just clarify, when you say your route was straight down from the
	on the zoomed picture because that means nothing to the		-
16	on the zoomed picture because that means nothing to the future reader of the record. So we've got to back to the	16	clarify, when you say your route was straight down from the
16 17	on the zoomed picture because that means nothing to the future reader of the record. So we've got to back to the original and identify the spot. Now can we do that, can	16 17	clarify, when you say your route was straight down from the second plateau, do I take it that it's down the diagonal
16 17 18	on the zoomed picture because that means nothing to the future reader of the record. So we've got to back to the original and identify the spot. Now can we do that, can you perhaps help me, Mr Chaskalson?	16 17 18	clarify, when you say your route was straight down from the second plateau, do I take it that it's down the diagonal rock face that moves from the top right to bottom left, or
16 17 18 19	on the zoomed picture because that means nothing to the future reader of the record. So we've got to back to the original and identify the spot. Now can we do that, can you perhaps help me, Mr Chaskalson? MR CHASKALSON SC: At the base of the	16 17 18 19	clarify, when you say your route was straight down from the second plateau, do I take it that it's down the diagonal rock face that moves from the top right to bottom left, or is it in a different direction.
16 17 18 19 20	on the zoomed picture because that means nothing to the future reader of the record. So we've got to back to the original and identify the spot. Now can we do that, can you perhaps help me, Mr Chaskalson? MR CHASKALSON SC: At the base of the koppie roughly halfway up the page and slightly right of	16 17 18 19 20	clarify, when you say your route was straight down from the second plateau, do I take it that it's down the diagonal rock face that moves from the top right to bottom left, or is it in a different direction. GENERAL NAIDOO: Chair, I think it's this
16 17 18 19 20 21	on the zoomed picture because that means nothing to the future reader of the record. So we've got to back to the original and identify the spot. Now can we do that, can you perhaps help me, Mr Chaskalson? MR CHASKALSON SC: At the base of the koppie roughly halfway up the page and slightly right of centre when one zooms in one sees a group of SAPS members	16 17 18 19 20 21	clarify, when you say your route was straight down from the second plateau, do I take it that it's down the diagonal rock face that moves from the top right to bottom left, or is it in a different direction. GENERAL NAIDOO: Chair, I think it's this direction, it would appear, ja. We, up that from the
 16 17 18 19 20 21 22 23 24 	on the zoomed picture because that means nothing to the future reader of the record. So we've got to back to the original and identify the spot. Now can we do that, can you perhaps help me, Mr Chaskalson? MR CHASKALSON SC: At the base of the koppie roughly halfway up the page and slightly right of centre when one zooms in one sees a group of SAPS members who are congregating around the body of Mr Mdizeni. We zoom in there and then we can use then as the reference point once we have zoomed in. So can we zoom in to where	 16 17 18 19 20 21 22 	clarify, when you say your route was straight down from the second plateau, do I take it that it's down the diagonal rock face that moves from the top right to bottom left, or is it in a different direction. GENERAL NAIDOO: Chair, I think it's this direction, it would appear, ja. We, up that from the crevice and the cracks to the bottom level. I don't think
 16 17 18 19 20 21 22 23 24 	on the zoomed picture because that means nothing to the future reader of the record. So we've got to back to the original and identify the spot. Now can we do that, can you perhaps help me, Mr Chaskalson? MR CHASKALSON SC: At the base of the koppie roughly halfway up the page and slightly right of centre when one zooms in one sees a group of SAPS members who are congregating around the body of Mr Mdizeni. We zoom in there and then we can use then as the reference point once we have zoomed in. So can we zoom in to where	 16 17 18 19 20 21 22 23 	clarify, when you say your route was straight down from the second plateau, do I take it that it's down the diagonal rock face that moves from the top right to bottom left, or is it in a different direction. GENERAL NAIDOO: Chair, I think it's this direction, it would appear, ja. We, up that from the crevice and the cracks to the bottom level. I don't think it was so further in, I can't remember being that further

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1	Page 23963 something, is another plateau, if I can call it that, to	1	Page 23965 bit of a flatter area I think, because I came down, I stood
2	the left, is that correct? The plateau that I was talking	2	next to a member in that area, he was facing the area where
3	about described as the first plateau, that's I suppose some	3	we could see a few people among the rocks.
4	- more or less, it's not very far away from the men who	4	MR CHASKALSON SC: You see, Major
5	, , , , , , , , , , , , , , , , , , ,	5	General, I put to you Warrant Officer Mamabolo's version of
	were standing around body A. But if one looked at that		
6	plateau and then moves straight left, and then slightly	6	the shooting, and the version that was corroborated by all
7	down, more or less in the middle of the picture, there's a	7	of the members of Papa11 or in Papa11, and it seems to me
8	larger plateau. Now we are not talking, is that where you	8	that there are some very material discrepancies between
9	came from?	9	that version and your version, and I'd like to put them to
10	GENERAL NAIDOO: Sorry, Chair, I am lost	10	you.
11	now.	11	CHAIRPERSON: I suggest you put them to
12	CHAIRPERSON: I am trying to put on	12	him all at once, and then he can answer quickly.
13	record what you showed us. Instead my trying, Adv Hemraj	13	MR CHASKALSON SC: Do you want, do you
14	suggests instead of my trying every time to describe the	14	recall Warrant Officer Mamabolo's statement? You don't
15	words, perhaps you could agree to, on a copy of the	15	need me to read it or take you to it again?
16	photograph, to indicate the next one, the next two, the	16	GENERAL NAIDOO: No, Chair.
17	next three, which the first plateau is, which the second	17	MR CHASKALSON SC: On the version –
18	plateau is and which the third plateau is and where you	18	CHAIRPERSON: KKK61, is it?
19	were at various times with other letters, and every time,	19	MR CHASKALSON SC: I have it as KKK61, Ms
20	you know, it takes a long time if I had to try to describe	20	Pillay tells me it's KKK60.
21	it in words every time. If you can put it on a photograph	21	CHAIRPERSON: According to my notes, it
22	for us, then you can show it to Mr Chaskalson during an	22	was KKK60 but I see it was marked on the document you put
23	adjournment or something. And that will save time. But we	23	up on the screen, was marked KKK61 and I went through my
24	carry on for the moment, without my interrupting all the	24	notes, and I saw I actually had a KKK60 which is diary
25	time, to try to put into words what you are saying.	25	Captain Makukule, so if that's KKK60, then this one is the
	Page 23964		Page 23966
1	Page 23964 MR CHASKALSON SC: Let's, we can come	1	Page 23966 following exhibit and that's KKK61. It's the last exhibit
1 2		1 2	-
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2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24	MR CHASKALSON SC: Let's, we can come back to this specifically once we have a diagram but – CHAIRPERSON: He goes on describing with this and that, and I can't think – but for the purposes of the record, he later puts on a photograph, X1, X2, X3, with a key, so the record will be able to be followed later on, but we don't have to hold ourselves up now about my now trying to put it in words every time. MR CHASKALSON SC: Alright, Major General, if you can then just indicate to us how you came down. GENERAL NAIDOO: Chair, after we've arrested those three or four people, then we moved down to the lower rocks, and directly to where the – well, I can't remember the Nyala specifically but a POPs member that was standing facing the area that was under discussion this morning, I stood alongside that member. MR CHASKALSON SC: Well, in this photograph, the only POPs members are those next to Papa11. Would that be the position? Maybe if we can just zoom back a little bit so you can orient yourself. A little bit further.	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22	following exhibit and that's KKK61. It's the last exhibit in the KKK series, as far as I can see from my notes. We can talk about it later. MR CHASKALSON SC: Indeed, Chairperson. The version from Warrant Officer Mamabolo and the POPs members in Papa11 is that your team of NIU members and yourself, were shooting at protesters when there was no shooting visible to anyone – no shooting at police visible to anyone in Papa 11. It was not a short incident that stopped almost immediately it started, it appears from Warrant Officer Mamabolo's statement that this was a sustained period of shooting. CHAIRPERSON: What paragraph are you referring to in the affidavit? MR CHASKALSON SC: Paragraphs 15 and 16 of Warrant Officer Mamabolo. Maybe in fairness to the Major General, I should indicate what concerns me in these paragraphs. CHAIRPERSON: Shall I read them out quickly? "We parked our Nyalas such that the police, and arrested the protesters were separated. I got out of the Nyala on the side of the police, on top of the boulder,

	Page 23967		Page 23969
1	indicate to the police to stop and cease fire, but the	1	GENERAL NAIDOO: Chair, I am waiting for
2	shooting continued. As the shooting of live ammunition	2	him to finish, and then –
3	described above continued, I observed General Naidoo	3	CHAIRPERSON: Sorry, carry on, Mr
4	emerging on top of the boulder in the same direction that	4	Chaskalson, I did say put the whole version, the whole
5	the firing occurred, with a pistol in his hand but I am not	5	discrepancy as it were to him, and then let him answer.
6	in a position to state whether or not he shot. Except for	6	MR CHASKALSON SC: So then, should we
7	General Naidoo, other police officers had rifles in their	7	take these discrepancies one by one.
8	possession. At the koppie at that stage, I didn't see any	8	GENERAL NAIDOO: Okay, Chair.
9	deceased persons." That's 15. 16, "Once the shooting of	9	CHAIRPERSON: It would be quicker if you
10	live ammunition stopped I observed some of the protesters	10	put them all to him.
11	coming out of the bushes behind the boulders/rocks with	11	MR CHASKALSON SC: Well, I have now put
12	their raised hands. Suddenly I saw one of the protesters	12	them all to him but I'd like him to respond to them.
13	falling on the ground. Some of the protesters were	13	GENERAL NAIDOO: Okay.
14	crawling towards the open area where the arrested	14	CHAIRPERSON: Are you ready to answer
15	protesters were. The shooting of live ammunition that I	15	now?
16	observed was not by POP members. I instructed the crew of		GENERAL NAIDOO: Chair, yes. I think
17	Papa11 to get out of the Nyala and to direct the protesters	17	firstly most of what Warrant Officer Mamabolo has indicated
18	to the area where other arrested protesters were. I did	18	that he'd seen could have been what he saw and perceived
19	not see any protesters shooting at the police, using	19	because as I indicated that we were at the first plateau
20	firearms or attacking the police with dangerous weapons."	20	and the shooting occurred to my left. The shottist was
20	Those are the two paragraphs.	20	among the trees on the left. So if one looks at that
22	MR CHASKALSON SC: Indeed, Chairperson.	22	Warrant Officer Mamabolo would not have had sight of the
22	So he for the duration of the time that he was there, that	22	shottist or shottists or people that were on his left, he
23 24	was which was before you got there, until after you were	23 24	would not even have had sight of us because we were still
24 25	there, didn't see anyone shooting at the police or using	24	at the first plateau and there was this second plateau
25	there, during see anyone shooting at the police of using	20	at the first plateau and there was this second plateau
_			
	Page 23968		Page 23970
1	Page 23968 firearms to attack the police. If we go back to 15, he saw	1	Page 23970 still that had to be reached.
1 2	5	1 2	
	firearms to attack the police. If we go back to 15, he saw		still that had to be reached.
2	firearms to attack the police. If we go back to 15, he saw people firing live ammunition towards the direction of	2	still that had to be reached. But in terms of the fact that he would have heard
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2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24	firearms to attack the police. If we go back to 15, he saw people firing live ammunition towards the direction of protesters. He shouted at them to cease fire and stop. The shooting continued. As the shooting continue, he observed you emerging on top of the boulder from the same direction that the shooting occurred, with a pistol in your hand. He couldn't see whether or not you shot. Constable Mathaba to whom I referred you on Tuesday, said he did see you shoot. He said he saw you shoot towards the south, while taking cover behind a rock. Now the version from the Papa11 members would suggest when the shooting of NIU members in your immediate vicinity was taking place, they could see no one shooting at the police because they didn't see any protesters shooting at the police. It also isn't an immediate shooting incident that's over as soon as it starts. On the contrary, it continues, and it continues through an attempt by Warrant Officer Mamabolo to stop it, to shout "cease fire." Stop fire. And then there's Constable Mathaba who sees you shooting, and shooting whilst taking cover from behind a rock. That's not your version either, is it? Your version is you shot when there was no cover, and ultimately you retreated to below the plateau.	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	still that had to be reached. But in terms of the fact that he would have heard shooting, yes. As to the duration of the shooting, as I indicated I only managed to get off two shots before I got myself into some safety. The two members or three members that were on my left, from the NIU did return fire. I cannot specifically say it was five rounds, two rounds, etcetera, they were using R5s. And immediately after the shooting stopped, their members flanked that position on the left because that was a sweeping line that was going, we were on the rock, but there were people a bit also down, and some of us then proceeded up to the second plateau where I indicated that we had conducted arrests and we removed about three suspects. And at that time Warrant Officer Mamabolo would have seen me because for me, it was about nearly the highest point. So in principle, most of the issues that Warrant Officer Mamabolo says, would have been from his position, what he perceived, other than to say that we were firing live ammunition to the direction of the protesters because I am not sure how he would, if he could not see who was firing, how we would know it was in the direction of the protesters, number 1, because we were out of his line of sight and the incident occurred to the

	Page 23971		Page 23973
1	says. So principally, how he would have experienced it and	1	that. We understand your version and we understand the
2	seen it, you know, with minor things in terms of time lines	2	version that's been put. Do we have to take it further at
3	and direction, etcetera, how he probably would have	3	this stage, Mr Chaskalson?
4	experienced it from his position had he been now where I	4	MR CHASKALSON SC: No, Chairperson. Your
5	perceive Papa1 was, if he was standing there. With regard	5	version is that you are firing into a bush with a pistol at
6	to –		
		6	a moving target of 50 metres, where you knew there was at
7	MR CHASKALSON SC: Papa11, not Papa1.	7	least one other person next to the striker who had
8	GENERAL NAIDOO: Sorry, Papa11. With	8	allegedly fired at you. Is that correct?
9	regard to the constable who says that he saw me firing, and	9	GENERAL NAIDOO: That is correct, Chair.
10	describes my actions which before I can, I mean, describes	10	MR CHASKALSON SC: 50 metres is right at
11	my action which happened somewhere out of his sight, I	11	the outer limit of the reliable accuracy of a pistol, is it
12	don't reasonably see how he could have seen me firing	12	not?
13	because even by the statement of Warrant Officer Mamabolo,	13	GENERAL NAIDOO: Chair, when I said 50
14	which is corroborated by the others, they agree, and I do	14	metres, I made an estimation and in terms of my action, it
15	agree, I had my pistol in my hand, because I had just been	15	was dictated by that immediate threat on my life and I
16	in a shooting incident. He would not have been able to see	16	hoped that my action would not only possible get the
17	me firing that two shots that I say I fired, and thirdly,	17	shottist but disrupt the shottist because it was not just
18	because this went on to paragraph 16, where he indicated	18	me who could have been shot, but in firing at him, disrupt
19	that they saw protesters that were coming out and falling	19	his aim, and allow the other members like me to get into
20	down. I think also a statement from Papa11 was then	20	cover or to respond as well.
21	clarified by Constable Zondi where he says that he observed	21	MR CHASKALSON SC: You presumably have to
22	the protesters in paragraph 4.3. "Later on I observed	22	go for shooting practice and shooting tests from time to
23	protesters coming out of the bushes and behind the rocks.	23	time.
24	Most of the protesters carried dangerous weapons whilst	24	GENERAL NAIDOO: Annually, Chair.
25	their hands were raised. I shouted and instructed the	25	MR CHASKALSON SC: What's your capacity
	Page 23972		Page 23974
1	Page 23972 armed protesters to drop their weapons, dangerous weapons	1	Page 23974 to hit a stationary target at 50 metres?
1 2		1 2	
	armed protesters to drop their weapons, dangerous weapons		to hit a stationary target at 50 metres?
2	armed protesters to drop their weapons, dangerous weapons and to lay down on the ground to which they obliged. Some	2	to hit a stationary target at 50 metres? GENERAL NAIDOO: Chair, my scores range
2 3	armed protesters to drop their weapons, dangerous weapons and to lay down on the ground to which they obliged. Some of the protesters fell down because they were pushed by	2 3	to hit a stationary target at 50 metres? GENERAL NAIDOO: Chair, my scores range between 95 to 100% on my shooting.
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	Page 23975		Page 23977
1	issue of the measuring of the distance, etcetera was	1	fragments were recovered?
2	furthest from my mind.	2	GENERAL NAIDOO: I'm not sure which tree
3	CHAIRPERSON: No I understand. I think	3	that was because there were quite a few trees that were
4	your version is on record and what Mr Chaskalson put to you	4	struck with bullets. But I did indicate the possibility
5	your 50 metres was an estimate, it might have been 40, it	5	because as I indicated the individual was directly behind
6	might have been 60. Even if it was 50 it would have been	6	the tree and could partially see him.
7	at the end of the range of accurate shooting as it were.	7	MR CHASKALSON SC: But, Major-General,
8	But if it was 50 or less than 50 it was within your	8	I'm trying to understand your version. On your version you
9	accurate range as I understand it. Is that right?	9	thought someone was trying to kill you.
10	GENERAL NAIDOO: Chair, that's the way I	10	GENERAL NAIDOO: Chair, I said somebody
11	see them.	11	was shooting at me and not thought, I said they were
12	CHAIRPERSON: And the people weren't	12	shooting at me. So the intention could not have been very
13	stationery of course. The person you were shooting at and	13	friendly.
14	GENERAL NAIDOO: Chair, as I indicated,	14	CHAIRPERSON: I think thought he means
15	there was a rock and a tree and immediately at the shooting	15	what you believed at the time, probably on good ground if
16	I went out of the way, I went down. They were, as I've	16	what you say is correct, was that someone was shooting at
17	indicated, ducking behind those trees. What the reaction	17	you and there was a distinct possibility that you would be
18	was when the other shooting took place I did not have a	18	killed if the bullets that had been fired at you hit you in
19	view of it.	19	the wrong place. So that the person that was firing either
20	MR CHASKALSON SC: But you saw one person	20	wanted to kill you or was certainly reckless as whether you
21	with a firearm and you knew there were two people there.	21	would be killed. That was what you believed, isn't that
22	GENERAL NAIDOO: I saw one person with a	22	right, based on what you tell us, based on the fact that
23	firearm in the front and there was somebody at the back,	23	shots had been fired at you?
24	behind him as well.	24	GENERAL NAIDOO: Chair, I also testified
25	MR CHASKALSON SC: As far as we can work	25	that at least two of the shots that I noticed struck the
	Page 23976		Page 23978
1	out no cartridges were ever found from the alleged shooter	1	rock in front of me, so that what actually - it was not the
2	to corroborate your version. Do you know if that's the	2	shots rather than the fact that the bullets were coming in
3	case?	3	our direction that alerted us.
4	GENERAL NAIDOO: Chair, I was not	4	CHAIRPERSON: It was shots plus the
5	involved in processing the crime scene, so I have no idea	5	direction.
6	if, you know, there was or there wasn't. During the	6	GENERAL NAIDOO: Chair, there was so much
7	inspection in loco when we went there I did notice and it	7	of noise and things happening, my recollection was, you
8	was remarked that some cartridges were still being found on	8	know, the shock of the bullet ricocheting so closely.
9	the scene. So the fact that no cartridges found on the	9	MR CHASKALSON SC: But you thought
10	day, I don't know what that signifies.	10	someone had tried to kill you.
11	MR CHASKALSON SC: Well, Major-General,	11	GENERAL NAIDOO: Chair, I think that is
12	did you tell the people who were processing the crime	12	what I testified that somebody was shooting at me and could
13	scene, who you called in, that you'd been shot at and you	13	possibly kill me.
14	knew where the shooter when he shot at you?	14	MR CHASKALSON SC: Now you presumably
15	GENERAL NAIDOO: Chair, I did not	15	wanted that person brought to book.
16	specifically speak to the crime scene processors on	16	GENERAL NAIDOO: That is correct, Chair.
17	specific issues at the crime scene. As I indicated, there	17	MR CHASKALSON SC: You knew that several
18 10	were a lot of activity, but at some stage I know I did	18 10	guns had been found on the scene, three guns and these guns
19 20	mention to one of the crime scene, but it was not	19 20	could ostensibly be linked to individual miners.
20	immediately on the day. It was maybe a little after that	20 21	GENERAL NAIDOO: That's correct, Chair.
21	that the possibility of one of my bullets being in that	21 22	MR CHASKALSON SC: And you knew then that
22	tree, I did mention that as a possibility to try and identify where my shot had hit.	22 23	if you could find the cartridge from the bullet that was
23 24	identify where my shot had hit. MR CHASKALSON SC: Are you talking about	23 24	shot at you, you'd be able to identify who tried to kill you.
	WIN CHASINALSON SC. ARE YOU LAIKING ADOUL	24	you.
25	the tree in which a bullet hole was found and bullet	25	GENERAL NAIDOO: That is my presumption,

		I	
1	Page 23979	1	Page 23981
1	Chair. MR CHASKALSON SC: So why didn't you go	1	going to get a synopsis of the shooting incidents that were
2 3	MR CHASKALSON SC: So why didn't you go to an LCRC person and say look in this area for a	2 3	reported. Incident 1. That's rub around from the TRT on the west. Incident 2. That's victim N. Incident 3.
4	cartridge, someone tried to kill me?	4	That's more TRT, it's you. Incident 4 is also TRT, it's
4 5	GENERAL NAIDOO: Chair, my understanding	4 5	not you. Let's go to incident 5. "Forward holding area 1
6	was that they closed off the whole scene and processed the	6	members fired at a protestor who was firing at them from
7	whole scene. As I indicated, on that night there were many	7	the southern side of koppie 3. The protestor was moving
8	things that happened. I did have a discussion with the	8	between bushes on the south western side of the koppie."
9	LCRC people, not on that night because as you understand	9	Okay the south western side of the koppie is not where you
10	there were many things happening, etcetera. Where I	10	say this protestor was or this shooter was.
11	specifically indicated the direction I was shot at, I	11	GENERAL NAIDOO: No.
12	specifically also speculated whether one of my rounds could	12	MR CHASKALSON SC: And it wasn't
13	possibly be lodged in the tree there. So I don't know,	13	essentially forwarding holding area 1 members who did the
14	other than that in terms of pin pointing where the possible	14	firing that you did, it was essentially NIU plus yourself.
15	suspect would have fired from what else would I have done.	15	Do you agree.
16	If anything else as far as I'm concerned would be tampering	16	GENERAL NAIDOO: Sorry, Chair, I didn't
17	with the crime scene.	17	get that. Read again.
18	MR CHASKALSON SC: Did you tell your	18	MR CHASKALSON SC: It wasn't the forward
19	version at Roots?	19	holding area 1 members who did the shooting that you
20	GENERAL NAIDOO: Chair, I'm not sure	20	describe it was the NIU and you.
21	which version.	21	GENERAL NAIDOO: That's correct, Chair.
22	MR CHASKALSON SC: The version of how and	22	MR CHASKALSON SC: So Incident 6. "NIU
23	why you shot.	23	members on their approach fire at charging protestors on
24	GENERAL NAIDOO: Chair, as far as I can	24	the eastern side of the koppie, killing two protestors."
25	remember I did indicate that I used my firearm. I can't	25	That looks to me like A and B. It's not what you're
	-		
	D		
	Page 23980		Page 23982
1	specifically remember what I said, but I typed my statement	1	describing.
2	specifically remember what I said, but I typed my statement was the truth. So I can reasonably say that what I typed	2	describing. GENERAL NAIDOO: Okay.
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	Page 23983		Page 23985
1	side of the koppie is not where you say you saw this person	1	terms of the fact, for the present purposes, it's actually
2	and you don't say that you are on the top of the large	2	when you only signed and swore to it in November. The
3	rock. You say you were on a plateau below.	3	point is if you told the people at Roots about the incident
4	GENERAL NAIDOO: That's correct, Chair.	4	that you describe in your statement how come it's not
5	MR CHASKALSON SC: And if we continue to	5	included among the 11 incidents which are set out in this
6	the next slide. "K9 members approach and enter the bushes	6	slide dealing with the shooting incidents, similar
7	on the south western side and shoot at armed protestors who	7	incidents during phase 3 of stage 3.
8	attempt to attack them when moving between the large	8	GENERAL NAIDOO: Chair, one of the things
9	rocks." That's not you. 11. "NIU members on the north	9	I could think – as I said, now I'm asking you to speculate
10	eastern side of the koppie on open ground have a protestor	10	because I don't know what went through the mind of the
11	charge at them from the bushes as their colleagues are	11	people that were preparing the final one. But one of the
12	arresting protestors. The NIU fire warning shots at the	12	key things is that as far as we knew at stage, we did not
13	armed protestor who changes direction towards FHA 2 members	13	locate anybody that had been shot or killed in that
14	to the west where he was fatally wounded when he attempted	14	incident. So I don't know if that was a factor or whether
15	to stab a member with his spear." That's victim C. That's	15	in some of the other incidents people were shot and killed.
16	also not here.	16	But that's me just speculating, as I said –
17	GENERAL NAIDOO: That's correct, Chair.	17	CHAIRPERSON: - stand up if we look at
18	MR CHASKALSON SC: So your version,	18	incident 10. The K9 members approach, enter the bushes on
19	although there are a description of 11 shooting incidents	19	the south west side of the koppie 3 and shoot at armed
20	that SAPS are able to give some detail - in respect of	20	protestors who attempt to attack them and moving between
21	which SAPS are able to give some detail, yours is not one	21	large rocks. It's not suggested that any of the shots
22	of them.	22	fired by the K9 referred to in that incident hit any of the
23	GENERAL NAIDOO: Chair, it would appear	23	protestors. So they did include incidents where shots were
24	S0.	24	fired without any suggestion that the shots hit anybody.
25	CHAIRPERSON: Are you sure that you told	25	GENERAL NAIDOO: Chair, if you look at
	Page 23984		Page 23986
1	those present at Roots what you told us, that you described	1	the location of the incident, I think we have discussed
2	the incident which is dealt with in your statement and	2	this morning that the people that were killed in the so-
3	dealt with in your evidence. Your statement was only	3	called – was the area between the large rocks. Because one
4	deposed, only sworn to in November.	4	of the problems that we had and we would have liked – it
5	GENERAL NAIDOO: That's correct, Chair.5		
		5	was discussed in the development of annexure L was to say
6	CHAIRPERSON: But you told us you already	6	that particular person was shot by that. We were trying
7	CHAIRPERSON: But you told us you already had it in typed form at Roots in September.	6 7	that particular person was shot by that. We were trying to, on a continuous basis, this was one area where we could
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1	Page 23987 essentially which is being put to you. I don't know that	1	Page 23989 from behind you on the right?
	you can take it any further than you have, but you know	2	
2 3	that's the point you've been invited to deal with.	2	GENERAL NAIDOO: Chair, I indicated that there were shooting occurring all around the koppie at that
4	GENERAL NAIDOO: That's true but I think	4	stage.
	in addition to that the fact is that I did also report my	5	MR CHASKALSON SC: And some of it was
5			coming from behind you on the right?
6 7	use of firearm to Brigadier Pretorius at that stage and they were busy compiling their lists, etcetera. So in	6 7	GENERAL NAIDOO: There was a bush and few
	, , , , , , , , , , , , , , , , , , ,	8	
8	compiling the slide show I'm not sure, did they cross-	_	rocks to my right, yes.
9	reference and see all those things. So I think there's	9	MR CHASKALSON SC: So if we go back to
10	many ways of looking and trying to verify this as you	10	MMM2, just so that we know what we are talking about. Can
11	indicated and I don't think there's a problem with using	11 12	we go to MMM2? Is the clump of bushes to your right that
12	those means to verify that. MR CHASKALSON SC: Major-General, did I		you were talking about, behind it to your right, that GH 1
13		13	to 2. GENERAL NAIDOO: Chair, ves. what I was
14	understand you to say that you reported your use of the	14	
15	firearm to Brigadier Pretorius at Roots? GENERAL NAIDOO: No, Chair. I indicated	15	indicating is that that line when we were moving from about
16		16	between H and I3, somewhere there, moving in the direction
17 18	that I reported my use of firearm to Brigadier Pretorius on the day of the incident telephonically.	17 18	of where we saw the bodies, I had already almost reached the bodies and there was shooting as I indicated around the
		10	koppie, but I also remember specifically to my right as
19	MR CHASKALSON SC: Is that the phone call	20	well.
20 21	that you had with Brigadier Pretorius when things had calmed down?	20	MR CHASKALSON SC: You see, Major
22	GENERAL NAIDOO: Chair, there were quite	21	General, it's not just exhibit L that doesn't corroborate
22	discussions between myself and Brigadier Pretorius, so I	22	your version, according to FFF8, there were 24 NIU members
23	can't indicate which specific call. I only know at some	23	who shot at scene 2. We've gone through the statements of
24	stage that I informed her because I knew that they would be	24	every one of those 24. Not one of them corroborates your
20	stage that I informed her because I knew that they would be	20	
	Page 23988		Page 23990
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	Page 23991		Page 23993
1	I'd ask them to put it to you in re-examination.	1	CHAIRPERSON: This will be MMM30 I think.
2	GENERAL NAIDOO: Chair, yes, can I maybe	2	Ms Pillay will give you permission and so to mark it.
3	at this stage, comment about that? Because –	3	MR CHASKALSON SC: And paragraph 3, is
4	CHAIRPERSON: You have the fullest right	4	possibly the best place to start, "Ons het die kleiner
5	to comment, I think the question has been put to -	5	koppie genader van die weslike kant af. Terwyl ons die
6	GENERAL NAIDOO: We have been through the	6	koppie genader het, het ek skote gehoor vanuit die koppie
7	similar exercise previously with the other lot of	7	uit." Like the rest of the K9 group, Sergeant Harmse only
8	statements. I have also, I have received the statements,	8	talks about hearing shots as he approaches the koppie, not
9	and I have studied every one. None of the members talk	9	from the power station. "Ek en Generaal Naidoo het toe
10	about any other member who shot alongside them with them,	10	regs om die koppie beweeg waar ons van NIU se lede gekry
11	etcetera. The context within which these statements were	11	het en saam hulle die koppie genader." The first shooting
12	taken was for the IPID investigation and I think they	12	incident he describes, comes in paragraph 4. "Ek het 'n
13	worked with the premise, did you shoot or did you not	13	man bo op die koppie opgemerk wat gelyk het soos 'n R5
14	shoot? And where did you shoot? So just like the issue of	14	waarmee hy geloop het. Ek het die person uitgewys aan
15	Papa11 and the statements that were introduced, those were	15	Generaal Naidoo waarna daar skote gevuur is vanaf NIU se
16	not the original statements. In the original statements,	16	lede en die person het geval." Can I ask, can I just stop
17	there's no mention of Major General Naidoo or any of the	17	there, do you recall this?
18	other things. They spoke specifically about what they did,	18	GENERAL NAIDOO: Chair, I remember a
19	because those statements were taken for the IPID	19	person being pointed with a rifle, I don't remember
20	investigation. So what I am saying is in my statement, I	20	shooting, because I remember the person was running as I
21	don't mention a specific person firing a shot, etcetera	21	indicated in a westerly direction. But I don't remember a
22	because I was asked to give a statement about my shooting	22	shooting. There were a lot of shots being fired but
23	and what I did. And I tried to broaden it because I needed	23	shooting or the person falling, I can't remember that, I
24	to prepare this input, the narrative in terms of our input	24	distinctly remember the person running in a westerly
25	at Roots. So I think we must put it in that context that	25	direction.
	Page 23992		Page 23994
1	I've been through all the statements that were given to me,	1	MR CHASKALSON SC: It's really a matter
2	I've been through all the statements that were given to me, and they don't talk about Captain X, Colonel X, or whoever	2	MR CHASKALSON SC: It's really a matter for legal argument but it would seem to me that the mere
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1	Page 23995 GENERAL NAIDOO: Chair, as I indicated,	1	Page 23997 General, you said to us that the only shooting by NIU
2	he was just a few paces behind me. When we linked up with	2	members in your immediate vicinity was the shooting
3	the NIU personnel we became a little separated, two or	3	incident that you described.
4	three members between us. I was in front of him a few	4	5
5	paces, not in line with him, yes.	5	MR CHASKALSON SC: Now, Sergeant Harmse
6	MR CHASKALSON SC: And on his right-hand	6	was with you throughout the period that there were NIU
7	side.	7	members in your immediate vicinity.
8	GENERAL NAIDOO: I was to the front	8	GENERAL NAIDOO: Chair, as I testified,
9	centre of the line, yes.	9	the line, the members in the line that I was moving
10	MR CHASKALSON SC: No, no, but on his	10	forward, as far as my knowledge is concerned, did not fire
11	right-hand side. You described him as being on your left-	11	in the time that we were progressing. So I have already
12	hand side, as your –	12	indicated yes, there was firing to the right especially
13	GENERAL NAIDOO: That's correct.	13	near the clump of bushes but I did not see or directly
14	MR CHASKALSON SC: Did you see this	14	observe who was shooting. I have already testified to that
15	episode that he describes?	15	as well. I think to address the particular issue, then it
16	GENERAL NAIDOO: Chair, no, as I already	16	should be clarified with Sergeant Harmse in terms of how he
17	testified, I did not specifically see an incident where	17	experienced it.
18	they were shooting at a particular person. I did indicate	18	CHAIRPERSON: Let's get clarity on this.
19	there were shots that were being fired behind us but I	19	The incident to which he refers at the top of, the second
20	perceived that to be coming from the bushy area to the	20	page of his statement, where a man came from the left side
21	right. In terms of arrests, the people that we arrested	21	out of the bushes, in what he describes as "ons rigting."
22	there were the people that we arrested at body A and B.	22	Presumably your direction as well, because you were with
23	It's the first people that I encountered in terms of the	23	Harmse. And then he says, members of the NIU told the
24	arrests, so it could have happened slightly behind me, but	24	person, told the man you must lie on the ground. But he
25	I did not witness a charging or a particular incident	25	didn't go lie on the ground whereafter there was shot at
1	Page 23996	1	Page 23998
1	that's been described here.	1	him from Harmse's right-hand side. He can't say by whom.
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1	Page 23999 statement that, did you shoot or did you not shoot? And if	1	Page 24001 there, the NIU were in position, which are the NIU.
1	he had probably observed a particular incident and made	2	CHAIRPERSON: I understand. Adv Hemraj
3	mention of it possibly to indicate that he did not shoot in	3	wants to ask you a question.
4	that particular incident.	4	COMMISSIONER HEMRAJ: Was Sergeant Harmse
5	CHAIRPERSON: I understand that. I am	5	one of the policemen who went with you up to the plateau
6	sorry to interrupt you, but we are busy with a different	6	where the arrest of the there strikers took place?
7	question. The question is, he describes an incident. He	7	GENERAL NAIDOO: Chair, yes, he was part
8	mentions he was in your presence. You say you were also in	8	of the line, he was as I said two or three people to my
9	his presence, he talks about how we, that's presumably	9	left as we were going up.
10	includes you, moved further into the koppie, and then he	10	COMMISSIONER HEMRAJ: So there would have
11	describes this incident. Now, which is something you say	11	been no way that he would not have been able to see you
12	you know nothing about. That's what I am trying to	12	firing your firearm?
13	understand. Is there a, it doesn't help to talk about	13	GENERAL NAIDOO: That was my
14	limitations of IPID statement, that relates to things he	14	understanding as well.
15	wouldn't say, now this deals with something he did say.	15	MR CHASKALSON SC: Major General, you
16	GENERAL NAIDOO: Yes.	16	just said that you wanted to tell the Commission what
17	CHAIRPERSON: And if you were present	17	happened from here and I understand that you were referring
18	with him, or he was in your immediate vicinity, then you	18	to what happened from the point at which you fired your
19	should know about this incident, if it happened. I mean	19	firearm. What happened after that?
20	there's no reason to think Harmse would make it up.	20	GENERAL NAIDOO: No, Chair, when I was
21	GENERAL NAIDOO: Of course, Chair.	21	referring to what happened from here, I said when we moved
22	CHAIRPERSON: So you should know about	22	forward and the activities that took place at body A and B.
23	it, and yet you don't. So you say.	23	[12:33] I think I was referring to that.
24	GENERAL NAIDOO: Let me indicate, Chair,	24	MR CHASKALSON SC: Yes, well you said
25	what happened when we moved forward from here. When we	25	that what was the "here"? We were talking about the
1	Page 24000	1	Page 24002
1	moved forward from here, we arrived at the bodies A and B,	1	incident in which you fired your firearm and then you said
2	plus approximately three other people. That was the short walk where we arrived at the [indistinct] and that is where	2 3	"I want to say what happened from here," because you were
5			trying to explain why Sergeant Harmse may have been in a
4			trying to explain why Sergeant Harmse may have been in a
4 5	we ascertained because remember I did testify that we had	4	different position when he witnessed the shooting incident
5	we ascertained because remember I did testify that we had to ascertain the condition of those people and we ascertain	4 5	different position when he witnessed the shooting incident that you didn't witness.
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		1	
1	Page 24003 Major General, I was questioning you in relation to your	1	Page 24005 are to be found. So your movement still goes there. "We
2	evidence about what happened from here and there was then a	2	promptly disarmed" – "We discovered that only two or three
3	movement of your people to victims A and B. What I want to	3	of the strikers were shot and killed. Approximately three
4	put to you is that if one looks at the version of your	4	strikers were still among the bodies with pangas and
5	shooting incident in your statement and one compares it to	5	assegais. We promptly disarmed them and they were arrested
6	the version of your shooting incident in oral evidence,	6	and secured. The line moved forward, focusing on the high
7	there are very material differences and I want to put those	7	ground as this was the area most of the shooting on the
8	differences to you because I also have a theory about why	8	police was coming from." The high ground would be the
9	they were there and I have to put that theory to you as	9	left-hand side of F2 and 3 and E2 and 3. "We saw several
10	well in fairness to you.	10	strikers fleeing on the rocks, did not pursue them as they
11	So let me tell you what my concern about the	11	did not pose a threat to the police line as they were
12	differences is. If we go to your statement starting at	12	fleeing in the opposite direction. When we reached the top
13	paragraph 74, we get a sequence. 74 you're still with the	13	of the high ground on the large rock I held the line back
14	NIU in the position where you originally found them. Maybe	14	to first check if the area was safe." That would have been
15		15	
16	start 73. You're with the NIU in the position where you		the large rock, you would be holding the line back there. "I discovered four strikers lying in cover." You've
	originally found them, which you described as 13 on the	16	
17 18	grid, MMM2. You realised the sun is going down and there's a need to move a bit quicker, so that's 73, and in 74 you	17 18	indicated to us – sorry, the "there" that I referred to was E2. You've indicated that that was in the crevice that you
19	instruct the personnel to "reform the line so that we could	19	identified at E3.
20	continue to move forward in a sweeping action to clear the	20	So your statement paints a picture of a steady
20	rocks, as the NIU had been doing before the shooting."	20	movement from 13 forward along row 3, deviating to the high
22	Then 5, "Just as we moved forward towards the	22	ground on F2, but in a direction that's broadly east to
22		22	west and the shooting happens as you leave 13 towards the
23 24	second line of rocks," now the second line of rocks are, as you've identified previously, the sort of, the big rocks	23 24	second set of rocks, "just as we move forward," and you're
24	around, the whole outcrop of rocks immediately around	24	moving forward from 13.
20	around, the whole outerop of rocks infinediately around	25	
	Page 24004		Page 24006
1	Page 24004 koppie 3, the E,F row. Do you want to call up MMM2 just to	1	Page 24006 Now the version that you've given us in oral
1 2		1 2	
	koppie 3, the E,F row. Do you want to call up MMM2 just to		Now the version that you've given us in oral
2	koppie 3, the E,F row. Do you want to call up MMM2 just to reconfirm that? The second line of rocks is these rocks	2	Now the version that you've given us in oral evidence is a very different version. That's a version
2 3	koppie 3, the E,F row. Do you want to call up MMM2 just to reconfirm that? The second line of rocks is these rocks that I'm indicating down columns E and F, so you've	2 3	Now the version that you've given us in oral evidence is a very different version. That's a version where the shooting takes place at somewhere in F3 after you
2 3 4	koppie 3, the E,F row. Do you want to call up MMM2 just to reconfirm that? The second line of rocks is these rocks that I'm indicating down columns E and F, so you've testified previously. Just as you moved forward towards	2 3 4	Now the version that you've given us in oral evidence is a very different version. That's a version where the shooting takes place at somewhere in F3 after you have already ascended the rocks and after you've already
2 3 4 5	koppie 3, the E,F row. Do you want to call up MMM2 just to reconfirm that? The second line of rocks is these rocks that I'm indicating down columns E and F, so you've testified previously. Just as you moved forward towards that second line of rocks – and bear in mind that you're	2 3 4 5	Now the version that you've given us in oral evidence is a very different version. That's a version where the shooting takes place at somewhere in F3 after you have already ascended the rocks and after you've already passed the bodies of victims A and B. Is there a reason
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2 3 4 5 6 7 8 9 10 11 12 13 14 15 16	koppie 3, the E,F row. Do you want to call up MMM2 just to reconfirm that? The second line of rocks is these rocks that I'm indicating down columns E and F, so you've testified previously. Just as you moved forward towards that second line of rocks – and bear in mind that you're moving forward from a position in I3 – just as you move forward towards those rocks, that's when the shooting incident happens. "We came under fire from one of the strikers to my left, approximately 50 metres, and the bullets narrowly missed me and struck the rocks around me." Then you return fire. "Then several other NIU members to my left also simultaneously returned fire in the direction of the shots, which immediately stopped. When the NIU line reached the rocks where the shots had emanated from, they didn't find anyone there as the assailant had fled further in."	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16	Now the version that you've given us in oral evidence is a very different version. That's a version where the shooting takes place at somewhere in F3 after you have already ascended the rocks and after you've already passed the bodies of victims A and B. Is there a reason for the discrepancy? <u>GENERAL NAIDOO:</u> Chair, maybe because during my oral evidence I was now using the picture to indicate my movement, but as I indicated, in terms of the location of the shooting, what I've indicated in, on the picture is actually where the shooting occurred. So maybe the chronology was not a hundred percent, but in terms of the location of the shooting I'm very clear where we were and when I meant the second line of rocks I meant we were ascending towards the next, between, to go up to the next level.
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2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	koppie 3, the E,F row. Do you want to call up MMM2 just to reconfirm that? The second line of rocks is these rocks that I'm indicating down columns E and F, so you've testified previously. Just as you moved forward towards that second line of rocks – and bear in mind that you're moving forward from a position in I3 – just as you move forward towards those rocks, that's when the shooting incident happens. "We came under fire from one of the strikers to my left, approximately 50 metres, and the bullets narrowly missed me and struck the rocks around me." Then you return fire. "Then several other NIU members to my left also simultaneously returned fire in the direction of the shots, which immediately stopped. When the NIU line reached the rocks where the shots had emanated from, they didn't find anyone there as the assailant had fled further in." So that looks to me like shooting that came from	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18	Now the version that you've given us in oral evidence is a very different version. That's a version where the shooting takes place at somewhere in F3 after you have already ascended the rocks and after you've already passed the bodies of victims A and B. Is there a reason for the discrepancy? <u>GENERAL NAIDOO:</u> Chair, maybe because during my oral evidence I was now using the picture to indicate my movement, but as I indicated, in terms of the location of the shooting, what I've indicated in, on the picture is actually where the shooting occurred. So maybe the chronology was not a hundred percent, but in terms of the location of the shooting I'm very clear where we were and when I meant the second line of rocks I meant we were ascending towards the next, between, to go up to the next level. <u>MR CHASKALSON SC:</u> It's certainly not the impression created by the statement, but would you agree
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2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	koppie 3, the E,F row. Do you want to call up MMM2 just to reconfirm that? The second line of rocks is these rocks that I'm indicating down columns E and F, so you've testified previously. Just as you moved forward towards that second line of rocks – and bear in mind that you're moving forward from a position in I3 – just as you move forward towards those rocks, that's when the shooting incident happens. "We came under fire from one of the strikers to my left, approximately 50 metres, and the bullets narrowly missed me and struck the rocks around me." Then you return fire. "Then several other NIU members to my left also simultaneously returned fire in the direction of the shots, which immediately stopped. When the NIU line reached the rocks where the shots had emanated from, they didn't find anyone there as the assailant had fled further in." So that looks to me like shooting that came from these bushes and rocks as you were moving through either H3 or G3, the NIU go in there and find no-one. Later two individuals are arrested apparently. Then we continue, 76, "In our forward movement to	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21	Now the version that you've given us in oral evidence is a very different version. That's a version where the shooting takes place at somewhere in F3 after you have already ascended the rocks and after you've already passed the bodies of victims A and B. Is there a reason for the discrepancy? <u>GENERAL NAIDOO:</u> Chair, maybe because during my oral evidence I was now using the picture to indicate my movement, but as I indicated, in terms of the location of the shooting, what I've indicated in, on the picture is actually where the shooting occurred. So maybe the chronology was not a hundred percent, but in terms of the location of the shooting I'm very clear where we were and when I meant the second line of rocks I meant we were ascending towards the next, between, to go up to the next level. <u>MR CHASKALSON SC:</u> It's certainly not the impression created by the statement, but would you agree that if, on the version that's in the statement your shooting wouldn't have been visible to anyone in Papa11? The rocks would have been between you and Papa11 on the
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2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	koppie 3, the E,F row. Do you want to call up MMM2 just to reconfirm that? The second line of rocks is these rocks that I'm indicating down columns E and F, so you've testified previously. Just as you moved forward towards that second line of rocks – and bear in mind that you're moving forward from a position in I3 – just as you move forward towards those rocks, that's when the shooting incident happens. "We came under fire from one of the strikers to my left, approximately 50 metres, and the bullets narrowly missed me and struck the rocks around me." Then you return fire. "Then several other NIU members to my left also simultaneously returned fire in the direction of the shots, which immediately stopped. When the NIU line reached the rocks where the shots had emanated from, they didn't find anyone there as the assailant had fled further in." So that looks to me like shooting that came from these bushes and rocks as you were moving through either H3 or G3, the NIU go in there and find no-one. Later two individuals are arrested apparently. Then we continue, 76, "In our forward movement to the first bodies among the rocks which I observed on my arrival, we discovered that only two of the strikers were shot." Now that forward movement is to the position at the	2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23	Now the version that you've given us in oral evidence is a very different version. That's a version where the shooting takes place at somewhere in F3 after you have already ascended the rocks and after you've already passed the bodies of victims A and B. Is there a reason for the discrepancy? GENERAL NAIDOO: Chair, maybe because during my oral evidence I was now using the picture to indicate my movement, but as I indicated, in terms of the location of the shooting, what I've indicated in, on the picture is actually where the shooting occurred. So maybe the chronology was not a hundred percent, but in terms of the location of the shooting I'm very clear where we were and when I meant the second line of rocks I meant we were ascending towards the next, between, to go up to the next level. MR CHASKALSON SC: It's certainly not the impression created by the statement, but would you agree that if, on the version that's in the statement your shooting wouldn't have been visible to anyone in Papa11? The rocks would have been between you and Papa11 on the version in the statement - <u>GENERAL NAIDOO: Chair –</u>

	Page 24007		Page 24009
1	GENERAL NAIDOO: Chair, the reason why I	1	calibre Victor Leo model Z88 semi-automatic pistol filed
2	indicated the shooting could not happen there is because I	2	the following cartridge case in Marikana 1380812, serial
3	clearly indicated where it occurred. I indicated also	3	number Q010032," is that your pistol?
4	where the shots struck before the shooting occurred and it	4	GENERAL NAIDOO: Sorry?
	C C	5	MR CHASKALSON SC: Q010032.
5	was on the rocks, number 1. Number 2, either of the two		
6	locations was not visible to Papa11.	6	GENERAL NAIDOO: That's correct.
7	MR CHASKALSON SC: Well, Papa11 seems to	7	MR CHASKALSON SC: Cartridge case is
8	have seen - at least everyone in Papa11 saw people from the	8	given a name and a letter P. If we can go to exhibit B,
9	NIU in your group shooting in that incident.	9	the sketch plan again, page 47, and there we will see where
10	GENERAL NAIDOO: Chair, I think that	10	Captain Mohlaki marks where he found the cartridge case P.
11	statements do not specifically indicate that they saw them	11	P is in the circle on the right-hand side of the picture.
12	shooting, indicates that shooting was coming from that	12	It's found on Captain Mohlaki's sketch plan at the top of
13	direction.	13	the rocks that we see. It's above, top of the rocks above
14	CHAIRPERSON: I'm not sure if it's	14	victim A. If we can go back to Colonel Pieterse's
15	necessary to go into all the detail, but basically what	15	statement, MMM31, and go to paragraph 16, paragraph 16 up,
16	you're busy doing is you're putting what you say are the	16	there we see at 16.1 that it was only on 20 November,
17	discrepancies to give the witness an opportunity to answer.	17	that's almost two weeks after you signed your statement,
18	Have you put all the discrepancies that you want to give	18	that your firearm with serial number Q010032 was made
19	him an opportunity to answer?	19	available to Colonel Pieterse.
20	MR CHASKALSON SC: Yes, I have, but I	20	So what I want to put to you, on the 7th of
21	want to put to him my concerns about the discrepancies as	21	November, what concerns me is that on the 7th of November
22	well.	22	you didn't know that a cartridge that would pin your
23	CHAIRPERSON: As long as you do it fairly	23	position when you shot was going to be – well –
23	briefly.	23	CHAIRPERSON: A cartridge or a cartridge
	5	24 25	case?
25	MR CHASKALSON SC: You see, Major	25	Case:
	Page 24008		Page 24010
1	Page 24008 General, the statement, the version in the statement is the	1	Page 24010 MR CHASKALSON SC: A cartridge case.
_	General, the statement, the version in the statement is the	1 2	MR CHASKALSON SC: A cartridge case.
2	General, the statement, the version in the statement is the version in your original statement which was signed on 7th	2	MR CHASKALSON SC: A cartridge case. Cartridge case. That Colonel Pieterse would be able to pin
_	General, the statement, the version in the statement is the version in your original statement which was signed on 7th of November. You were committed to that from 7 November	2 3	MR CHASKALSON SC: A cartridge case. Cartridge case. That Colonel Pieterse would be able to pin your position where you shot by means of a cartridge case.
2 3 4	General, the statement, the version in the statement is the version in your original statement which was signed on 7th of November. You were committed to that from 7 November when you signed that statement.	2 3 4	MR CHASKALSON SC: A cartridge case. Cartridge case. That Colonel Pieterse would be able to pin your position where you shot by means of a cartridge case. In fact at that stage you hadn't even handed your firearm
2 3 4 5	General, the statement, the version in the statement is the version in your original statement which was signed on 7th of November. You were committed to that from 7 November when you signed that statement. GENERAL NAIDOO: That's correct, Chair.	2 3 4 5	MR CHASKALSON SC: A cartridge case. Cartridge case. That Colonel Pieterse would be able to pin your position where you shot by means of a cartridge case. In fact at that stage you hadn't even handed your firearm over to Colonel Pieterse. You may well have thought at
2 3 4 5 6	General, the statement, the version in the statement is the version in your original statement which was signed on 7th of November. You were committed to that from 7 November when you signed that statement. GENERAL NAIDOO: That's correct, Chair. MR CHASKALSON SC: And at the time of 7	2 3 4 5 6	MR CHASKALSON SC: A cartridge case. Cartridge case. That Colonel Pieterse would be able to pin your position where you shot by means of a cartridge case. In fact at that stage you hadn't even handed your firearm over to Colonel Pieterse. You may well have thought at that stage that your firearm was not going to be tested.
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1	Page 24011 if there was a suggestion that I would change it to adjust	1	Page 24013 was really to the Provincial Commissioner, isn't it, dated
2	it to whatever else is coming in and I will still stand by	2	20/08/2012 and it is Exhibit MMM32.
3	what I have indicated and the corroboration obviously	3	MR CHASKALSON SC: And there IPID give
4	should come from the people that were with me and who	4	notice of their investigation into the Marikana shootings
5	experienced it, and as well as physical evidence as well.	5	and over the page, if we can just go down to page 2 of that
6	MR CHASKALSON SC: Well, we've yet to see	6	document, they make a formal request for certain items and
7	any corroboration.	7	
8	CHAIRPERSON: That's just a statement you	8	information in terms of the IPID Act, so if we can go to page 2 of the document? And there are ten items that they
0 9	don't have to make. Can we go back to the sketch for a	0 9	want, a completed form for reporting the matters for
9 10	C C	9 10	
11	moment, the map which indicates where P was? Thank you. Where's P?	10	investigation by IPID, second is the operational plan
12	MR CHASKALSON SC: P, Q1, R, S and X are	12	indicating all commanders and their roles. The third is
			SAPS 15 for the JOC, the fourth is SAPS 15 for all units
13	all found at the tip of this arrow.	13	which participated in the operation, the fifth is the
14 15	CHAIRPERSON: Yes, yes, I see. Thank	14	shooting incident report, the sixth is the OB entries
15	YOU.	15	starting from Monday, the 13th to the 17th of August, the
16 17	MR CHASKALSON SC: Well, let's look at why it was that your firearm only reached Colonel Pieterse	16 17	seventh is official video footage taken by SAPS units, the
	on the 20th of November -		eighth is transcript and DVD recording from radio
18 19	CHAIRPERSON: Mr Chaskalson, I see it's	18 19	operational control, the ninth is a list of members who
20		20	have declared to have shot during the incident and the tenth is all firearms mentioned on the SAPS 15s and all
20	now 1 o'clock, just before 1 o'clock. Is this a point you can deal with in two minutes, or shall we take the lunch	20	firearms used during the operation including mine security
22	adjournment?	21	to go to ballistics. Did you see this document?
22	MR CHASKALSON SC: I'm afraid it can't be	22	GENERAL NAIDOO: I did, Chair.
23	dealt with in two minutes, Chairperson.	23	MR CHASKALSON SC: The first response
25	CHAIRPERSON: We'll take the lunch	25	from SAPS to this document came the following day from
20		20	
	Page 24012		Page 24014
1	adjournment and we'll reassemble at 2 o'clock as there's	1	Brigadier Pretorius, that's a letter that she sent to IPID
2	some housekeeping we have to attend to during the lunch	2	on the 21st of August.
3	hour.	3	CHAIRPERSON: With B4 in the top right
4	[COMMISSION ADJOURNS COMMISSION RESUMES]	4	hand corner?
5	[14:21] CHAIRPERSON: The Commission resumes, I'm	5	MR CHASKALSON SC: That is correct,
6	afraid that housekeeping took a little bit longer than we	6	Chairperson.
7	thought, I apologise for that. Major-General, you're still	7	CHAIRPERSON: And that's MMM33, a letter
8	under oath.	8	
9		Ŭ	from Brigadier Pretorius to IPID dated 21/08/2012.
	GENERAL NAIDOO: I'm still under oath,	9	MR CHASKALSON SC: And if we can just
10	Chair.		MR CHASKALSON SC: And if we can just scroll down a little on that letter, she acknowledges
10 11	Chair. CHAIRPERSON: Mr Chaskalson?	9 10 11	MR CHASKALSON SC: And if we can just scroll down a little on that letter, she acknowledges receipt of the memorandum of the 20th and attaches three
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1	whether the bullet point entry at the top line here would	1	MR CHASKALSON SC: There is nothing that
2	have excluded the JOC?	2	leaps to mind as another obvious omission, but we got it
3	GENERAL NAIDOO: Chair, I'm not sure.	3	this morning, we haven't -
4	MR CHASKALSON SC: We will consider that	4	CHAIRPERSON: According to the evidence,
5	further with the next letter, and then the OB entries she	5	remind me, Brigadier Calitz was a member of the JOC, I
6	sends through and she sends through a list of members who	6	can't remember whether he admitted using his firearm?
7	declared to have shot during the incident. Did you see	7	MR CHASKALSON SC: He didn't use his
8	that list?	8	firearm.
9	GENERAL NAIDOO: Not the list	9	CHAIRPERSON: I don't think he did, so if
10	specifically, no, Chair.	10	he is omitted from the list it is not significant because
11	MR CHASKALSON SC: We've been provided	11	he didn't use his firearm, so the only member of the JOC
12	with a copy of that list by SAPS and your name is not on	12	who used the firearm that we're aware of is this present
13	it.	13	witness, is that right, - of the JOCCOM I mean, sorry.
14	CHAIRPERSON: Are you going to hand it in	14	MR CHASKALSON SC: Yes, as far as we're
15	as exhibits or –	15	aware. Major-General, do you know how that list would have
16	MR CHASKALSON SC: We –	16	been put together?
17	CHAIRPERSON: Well, if it is only	17	GENERAL NAIDOO: Chair, possibly using
18	relevant in the negative sense that the witness' name is	18	the SAP 15 because I think that was the primary source of
19	not on it and that is accepted by the police to be correct	19	all the members that were on duty and the SAP 15 also has
20	we don't have to burden the record with the document I	20	on its reverse side the information that is required by
21	think, Mr Semenya?	21	these lists.
22	MR SEMENYA SC: It is indeed so, Chair.	22	MR CHASKALSON SC: Yes, but you didn't
23	It is correct, Chair, the name is not on the list.	23	vet that list before it went out?
24	CHAIRPERSON: You accept that the	24	GENERAL NAIDOO: No, I did not.
25	witness' name is not there and therefore it is not	25	MR CHASKALSON SC: Let's go to the next
1	Page 24016	1	Page 24018
1	necessary, I would think, for the document to be handed in.	1	letter which is a letter on the 24th of August that you
2	necessary, I would think, for the document to be handed in. COMMISSIONER HEMRAJ: Yes, are there	2	letter which is a letter on the 24th of August that you addressed to IPID and that will be MMM34, and this will be,
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	D 01010		D 04004
1	Page 24019 in each case.	1	Page 24021 MR CHASKALSON SC: Or even the 10th?
2	MR CHASKALSON SC: Let's just identify	2	GENERAL NAIDOO: Chair, yes, that plan
3	them by the B23 and the B24.	3	that was activated from the 10th was continuously built on
4	CHAIRPERSON: In brackets marked B23.	4	and upgraded as far as my understanding is concerned.
5	MR CHASKALSON SC: Now –	5	MR CHASKALSON SC: But they had asked you
6	CHAIRPERSON: I think while we're about	6	in the context of the request for the operational plan,
7	it, do you want to mark the other one as well, the four	7	they wanted an indication of all commanders and their
8	line one, so that we get all the housekeeping out of the	8	roles. Now maybe if we look at that contingency plan of
9	way?	9	the 10th, Exhibit U –
10	MR CHASKALSON SC: Yes, Chairperson, that	10	CHAIRPERSON: Sorry, Mr Chaskalson,
11	can be –	11	before you carry on, I notice on the copy we've been given
12	CHAIRPERSON: So it is MMM25.	12	someone has written, on MMM34, someone has written after
13	MR CHASKALSON SC: 35.	13	the reference of the contingency plan "A193/A194/195" and
14	CHAIRPERSON: Oh, 35, a letter from	14	there are similar notations in respect of the other
15	Major-General Naidoo to IPID marked B24?	15	documents. The shooting incident report is A198, the OB is
16	MR CHASKALSON SC: Yes, Chairperson, if	16	A192, the minutes of the special JOCCOM meeting is 130 or
17	we can start with MMM34 which is the document on the screen	17	A197 and the Intelligence report is A196, so do we know
18	and we can just go to the signature just for you to confirm	18	what A193, 194 and 195 are and do we know who made that
19	that this is your letter?	19	note on the document?
20	GENERAL NAIDOO: That's correct, Chair.	20	MR CHASKALSON SC: They appear to be
21	MR CHASKALSON SC: And –	21	references to the IPID files, they match IPID file
22	GENERAL NAIDOO: It is the letter I	22	references and they would probably have been marked on the
23	signed –	23	document by IPID at some stage after IPID had performed its
24	MR CHASKALSON SC: - you in the letter	24	filing exercise.
25	attach the following documents as requested, the first is a	25	CHAIRPERSON: Yes, and then of course the
	Page 24020		Page 24022
1	copy of contingency plans strike by employees of Lonmin	1	question really arises, there appear to be three documents
2	copy of contingency plans strike by employees of Lonmin Eastern and Western Platinum Karee Mine. Now that is in	2	question really arises, there appear to be three documents that IPID processed under the heading or copy of the
2 3	copy of contingency plans strike by employees of Lonmin Eastern and Western Platinum Karee Mine. Now that is in response to a request in MMM32 for the operational plan	2 3	question really arises, there appear to be three documents that IPID processed under the heading or copy of the contingency plan and do we, in other words not just one,
2 3 4	copy of contingency plans strike by employees of Lommin Eastern and Western Platinum Karee Mine. Now that is in response to a request in MMM32 for the operational plan presumably for the 16th, including all commanders and their	2 3 4	question really arises, there appear to be three documents that IPID processed under the heading or copy of the contingency plan and do we, in other words not just one, but three, do we know what those three are? Presumably we
2 3 4 5	copy of contingency plans strike by employees of Lomin Eastern and Western Platinum Karee Mine. Now that is in response to a request in MMM32 for the operational plan presumably for the 16th, including all commanders and their roles. What contingency plan did you attach or what plan	2 3 4 5	question really arises, there appear to be three documents that IPID processed under the heading or copy of the contingency plan and do we, in other words not just one, but three, do we know what those three are? Presumably we can be informed?
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1	Page 24023 Mr Wesley does that exercise let me turn to another item on	1	Page 24025 MR CHASKALSON SC: We have now located
2	this letter. A copy of minutes, it is the second last	2	what the three plans that you sent through to IPID were.
3	bullet point, "A copy of minutes, it is the second last	3	The first was the original contingency plan of the 10th, the
4	of 16 August 2012 as requested by your office on 23 August	4	second was the amended contingency plan of the 13th. The
5	2012." So you furnished the special JOCCOM meeting	5	first was Exhibit U.
6	minutes, the 130 JOCCOM meeting minutes of the 16th to IPID		[14:41] In fact both of those two are Exhibit U and the
7	on the 24th of August.	7	third is a printout from Lieutenant-Colonel Scott, from a
8	GENERAL NAIDOO: Chair, to tell you	8	presentation of Lieutenant-Colonel Scott that still speaks
9	honestly I can't remember each and every document that was	9	of the encirclement plan. We'll make these documents
10	there. Yes, I did sign the cover letter based on it, at	10	available. What I want to raise with you is a letter at
11	this stage I can't recall the details in terms of, I didn't	11	the bottom, a paragraph at the bottom of this letter. You
12	even know there were three annexures to that plan. It has	12	were requested by IPID to make available all official video
13	been a long time ago that I signed this, but if it	13	footage taken by SAPS units. Your letter says, "As this
14	indicates as such and there is an annexure I'm sure there	14	was a field operation facilities were not available for
15	is something. As I said I can't remember the specifics of	15	video/radio recordings of the operation and this office can
16	each document that was attached.	16	therefore not provide the requested recordings."
17	COMMISSIONER HEMRAJ: General, did you	17	GENERAL NAIDOO: That's correct, Chair.
18	actually compile these documents –	18	MR CHASKALSON SC: Why did you say that?
19	GENERAL NAIDOO: No –	19	GENERAL NAIDOO: Chair, on paragraph 8 of
20	COMMISSIONER HEMRAJ: - or were they done	20	the IPID request, the request was for the transcript and
21	by the Minister's staff and you merely appended your	21	DVD recordings from the radio and operational control and
22	signature?	22	we had no recording, either DVD or voice of the radio
23	GENERAL NAIDOO: You would see, Chair,	23	communications and the radio control that were available
24	that Brigadier Pretorius being the person who dealt with	24	and that is what we were referring to. With regard to the
25	it, I was just her commander who signed on her behalf, so	25	other photographs and the albums, that was dealt with
	Page 24024	1	Page 24026
1	as to the intimate knowledge of all the documents I would	1	directly between LCRC and IPID, they don't come via us
2	as to the intimate knowledge of all the documents I would just want to verify, do you have or what you say there,	2	directly between LCRC and IPID, they don't come via us because in that case the evidentiary issues, the chain is
2 3	as to the intimate knowledge of all the documents I would just want to verify, do you have or what you say there, etcetera, and sign, just as the signing authority for a	2 3	directly between LCRC and IPID, they don't come via us because in that case the evidentiary issues, the chain is between IPID the client to the LCRC.
2 3 4	as to the intimate knowledge of all the documents I would just want to verify, do you have or what you say there, etcetera, and sign, just as the signing authority for a document leaving our office, but the intimate knowledge	2 3 4	directly between LCRC and IPID, they don't come via us because in that case the evidentiary issues, the chain is between IPID the client to the LCRC. MR CHASKALSON SC: But, Major-General,
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		I	
1	Page 24027 control." There were two separate requests, one is for	1	Page 24029 indicated, but we don't have that kind of infrastructure at
2	video footage, another is for a transcript and DVD	2	the centre. So, but the police does have the capacity at
3	recording from radio control. Your response deals with	3	other centres but not specifically in this centre.
4	both under the same sentence, MMM34, "As this was a field	4	CHAIRPERSON: In the case of field
5	operation facilities were not available for video/radio	5	operations, certainly covered by standing order 262, there
	recordings of the operation and this office can therefore	6	should be video recordings and the fact that the field
6		7	operation isn't a reason, isn't an excuse for the fact that
7	not provide the requested recordings."		
8	GENERAL NAIDOO: Chair, I think we would	8	there are no video recordings, is that correct?
9	take our lead from the fact that we refer to a field	9	GENERAL NAIDOO: Chair, I think to just
10	operation and a field operation means that we were not	10	take a step back so that we talk on the same thing, when we
11	working from a particular area where we had the	11	were dealing with the issue of the transcripts or the DVD
12	infrastructure to record voice and provide the DVD	12	recordings we were dealing with those things related to the
13	recordings. Of that I am clear because at some stage we	13	radio communication.
14	did speak about these recordings, so it was nowhere	14	CHAIRPERSON: Why does the word video
15	addressing the issue of the official video footage taken by	15	appear before the word, the slash and the radio in your
16	the SAPS units.	16	answer?
17	CHAIRPERSON: Does the standing order 262	17	GENERAL NAIDOO: Chair, because the
18	deal with field operations?	18	request specifically asked for DVD recording I suppose and
19	GENERAL NAIDOO: Chair, I can't remember.	19	the compiler probably, because a DVD is normally associated
20	CHAIRPERSON: What would standing order	20	with video recording as far as my knowledge goes, we can
21	262 deal with field operations?	21	ask the compiler but my knowledge is that we would use a
22	GENERAL NAIDOO: Chair, I can't remember	22	DVD recording for video, maybe it should have rather just
23	specifically.	23	said, your DVD/radio recording, it should have been rather
24	CHAIRPERSON: 262 is –	24	than video recording.
25	GENERAL NAIDOO: Yes, I know, but I'm –	25	CHAIRPERSON: Ja, but your excuse relates
	Page 24028		Page 24030
1	CHAIRPERSON: - and it has got all sorts	1	to why you didn't give them what they asked for in
2	of things that have to be done.	2	paragraph 8, it doesn't deal with paragraph 7.
3	GENERAL NAIDOO: Yes, I –	3	GENERAL NAIDOO: No.
3 4	GENERAL NAIDOO: Yes, I – CHAIRPERSON: And it says you have to	3 4	GENERAL NAIDOO: No. CHAIRPERSON: And it purports to deal
4	CHAIRPERSON: And it says you have to	4	CHAIRPERSON: And it purports to deal
4 5	CHAIRPERSON: And it says you have to have videographers and they have to, video recordings have	4 5	CHAIRPERSON: And it purports to deal with paragraph 7, because it has got the word video in it
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	Page 24035		Page 24037
1	IPID to the Provincial Commissioner?	1	directly. It excludes us in the line function primarily
2	MR CHASKALSON SC: Yes –	2	because of the evidence, Chair, so that perception with
3	CHAIRPERSON: Dated 12/11/2012.	3	regard to specifically those things could not be true.
4	MR CHASKALSON SC: Now if we go to page 2	4	MR CHASKALSON SC: Well, what about video
5	of this letter, IPID recites its powers of investigation	5	recordings of the POPS members?
6	and then underneath, under the bold section, can we go	6	GENERAL NAIDOO: That's something that
7	down? "This office has noted with concern that during the	7	should have been made available, I agree.
8	cross-examination of Captain Mohlaki of the LCRC certain	8	MR CHASKALSON SC: The cell phone
9	things came to light which were never revealed or handed to		recordings of Captain Ryland?
10	us during the investigations. We therefore request the	10	GENERAL NAIDOO: Even those things, I
11	following evidential material from your office as they will	11	agree, that should have been made available.
12	assist us to complete the criminal investigation in the	12	MR CHASKALSON SC: The cell phone
13	above matter, one, video recording taken by Constable	13	recordings of Sergeant Mhlatsi?
14	Molefe, LCRC from scene 2, two, video recording taken by	14	GENERAL NAIDOO: I think it is, -
15	Warrant-Office Henderson from scene 2, three, photo album	15	Mhlatsi?
16	taken by Warrant-Officer Ramanala from POPS Springs, four,	16	MR CHASKALSON SC: Sergeant Mhlatsi also
17	video recording from POPS members on 16/08/2012 prior to	17	took cell phone footage of scene 2?
18	the shooting, five, cell phone recordings handed to your	18	GENERAL NAIDOO: Okay, no, I'm not sure,
19	office by any members and their names, six, aerial photo,	19	but as I said whatever we had in our possession we should
20	seven, photo album of scene by Warrant-Officer Tamai and	20	make it available to IPID and that's a given.
21	eight, list of all members who did not hand their firearms	21	MR CHASKALSON SC: Of course there was
22	for ballistics investigations."	22	some material in your possession which IPID still didn't
23	So let's take these in sequence. It seems that	23	know about, what about the videos of Captain Nel?
24	prior to the testimony of Captain Mohlaki before this	24	GENERAL NAIDOO: Chair, I am not
25	Commission IPID was still labouring under the	25	specifically aware of the nature of which they knew and
	Page 24036		Page 24038
1	Page 24036 misapprehension that the video recordings that they list in	1	Page 24038 which they didn't know, but as I indicated that the
1 2	6	1 2	-
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2	misapprehension that the video recordings that they list in this email as video recordings that they required, didn't	2	which they didn't know, but as I indicated that the processes started while we were at the JOC and went onto
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ARCHIVE FOR JUSTICE

1 2 3 4	Page 24039 GENERAL NAIDOO: Yes. Chair, there were many firearms that were still not tested ballistic. The arrangement that we made with the people as far as the ballistic testing is, we worked on groups and they came and	1 2 3 4	Page 24041 was important for you to set an example for the rest of the force to make your firearm available to IPID right at the outset of the IPID investigation? GENERAL NAIDOO: Chair, as I indicated, I
5	fetched groups as it went and much later we found that	5	immediately reported it - as soon as the situation allowed
6	there were still a lot of firearms that were not still	6	it I reported it. There were two subsequent occasions when
7	tested, including all the firearms of the 13th and a process	7	I was called to confirm my particulars, is the firearm
8	started in November to deal with all the final firearms.	8	serial number correct, etcetera. So as far as the
9	MR CHASKALSON SC: You see, the request	9	coordination of the handover of the firearms between IPID
10	from IPID didn't relate to the 13th, the request I'm	10	and the SAPS, we can check with the people that are
11	speaking of. The request of the 20th relates to the 16th.	11	coordinating it and we can find out why mine was not called
12 13	GENERAL NAIDOO: Chair, yes, I'm talking about firearms for both days, but okay, we'll restrict –	12 13	specifically at that time and it was called at the time when I was asked to give it. I won't be able to testify as
13	there were still many firearms even from the 16th that were	13	to that. I can say that my firearm was available and the
15	not dealt with by that time.	15	moment it was requested I provided it.
16	MR CHASKALSON SC: You knew you'd shot.	16	MR CHASKALSON SC: My question was a
17	GENERAL NAIDOO: That is correct, Chair.	17	different one, which you haven't answered, which was did
18	MR CHASKALSON SC: You knew IPID wanted	18	you not think that as the most senior officer who shot on
19	all firearms submitted for ballistics testing.	19	the 16th it was important for you to set an example to the
20	GENERAL NAIDOO: That is correct, Chair.	20	rest of the force by making your firearm available for
21	MR CHASKALSON SC: And yet close to two	21	testing to IPID immediately?
22	months after the request from IPID you still hadn't made	22	GENERAL NAIDOO: Chair, and I've answered
23	your firearm available for inspection by IPID. Why?	23	that by saying it was available. The firearms were being
24	GENERAL NAIDOO: Chair, my firearm was	24	drawn in a particular manner by the group that was
25	always available and as the firearms were being drawn - I	25	facilitating this. We can establish from them why mine was
	Page 24040		Page 24042
1	was not responsible for drawing the firearms. As I	1	called when it was called and why wasn't it called sooner.
2	was not responsible for drawing the firearms. As I indicated, there's a coordination group and we can identify	2	called when it was called and why wasn't it called sooner. Had they asked me immediately on the day of the shooting I
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1 2 3 4	Page 24043 the JOC. She originally took my details and at some stage she did call me and establish is this number that I've got correct or what was your correct number. There was a subsequent occasion when she also called me again to	1 2 3 4	Page 24045 Pretorius and Brigadier Pretorius on 13 November 2012 refers. The following footages as requested in abovementioned letter was provided to Mr Ngobeni of IPID on Thursday, 15 November, personally. Video recording of
5	confirm the number, so I knew that the process was running	5	Constable Molefe; video recording by Warrant Officer
6	and I mean that was not my concern.	6	Henderson; aerial photos by LCRC; photos taken by Captain
7	COMMISSIONER HEMRAJ: In terms of the	7	Mohlaki, Warrant Officer Thamae, of scenes 1 and 2; video
8	established procedure with dealings between IPID and SAPS,	8	recording taken by Captain Nel; photos taken by POP camera
9	would a person who's been involved in a shooting take their	9	457; photos taken by Captain Ryland" – it should be videos
10	firearm of their own accord to IPID or do you go through	10	in fact – "photos taken by Lieutenant Colonel Mere; photos
11 12	the SAPS – GENERAL NAIDOO: Hence I indicated that	11 12	taken by Lieutenant Colonel Vermaak; POP videos of 16 August; photos of Sergeant Mhlatsi" – again that's videos –
12	if they attend a scene where a shooting happened they will	12	"photos of Warrant Officer Barnard; photos of Warrant
13	take that firearm back to the station, ensure it goes	14	Officer Ramanala." Item 4 over the page, "Firearm of Major
15	through the books and sign for it through an exhibit	15	General Naidoo was handed over to Mr Ngobeni," and then 5,
16	number. That was not existing in this situation because of	16	"Mr Ngobeni will provide list with regard to outstanding
17	the magnitude of it, so we dedicated personnel to work with	17	firearms that they need to be submitted for ballistics
18	IPID in terms of drawing firearms where they were signing	18	investigations." 6 needn't concern us.
19	for it and we were replacing – because remember, these	19	So Brigadier Pretorius handed over your firearm
20	members that were involved were still deployed in Marikana	20	to IPID at a meeting on Thursday, the 15th of November. Do
21	during this time. So they were issued with new firearms	21	you know the circumstances in which that happened?
22	and when the firearms returned from ballistics then we	22	GENERAL NAIDOO: Chair, I'm not sure what
23	retrieved the loan firearms and issued them. So it was a	23	meeting it was because I was present, I brought my firearm
24	whole logistical exercise, but normally if a scene is	24	to Brigadier Pretorius and the IPID representative was
25	attended by IPID that firearm goes to the station, it's put	25	there and he signed for it by her at the same time. So in
	Page 24044		_
1	raye 24044		Dago 24044
1	through an exhibit register and then IPID signs for it so	1	Page 24046 terms of meeting, I'm not sure.
1 2	0	1 2	Page 24046 terms of meeting, I'm not sure. MR CHASKALSON SC: Maybe not a meeting,
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1	Page 24047	1	Page 24049
1	presumably relate to the video and photographic material	1	Commissioner North West Province has instructed that public
2	that was finally made available to IPID on the 15th of	2	order and crime prevention be maintained in the area of
3	November, and then under the second recording for 15	3	Marikana along the route to Eastern Platinum Mine and
4	November, "Received a firearm from General Naidoo to be	4	Western Platinum Mine before, during, and after the strike.
5	taken to ballistics for testing," and the serial number of	5	Marikana Crime Prevention and Rustenburg POP will be
6	your firearm is recorded there.	6	deployed." That's a reference to you, is it not?
7	CHAIRPERSON: If I can intervene by	7	GENERAL NAIDOO: Not necessarily, Chair.
8	saying I've marked this document, which I see is marked	8	The, that would refer to the Deputy Provincial
9	C/41 in the top right-hand corner, I've marked it MMM38,	9	Commissioner, Operational Services, their line of reporting
10	described as extracts I take it from IPID register,	10	in terms of crime.
11	containing entries from 15 to 20 November 2012, and as I've		MR CHASKALSON SC: But was Major General
12	said with C/41 in the top right-hand corner.	12	Mpembe not on leave at this time?
13	MR CHASKALSON SC: Chairperson, I'm told	13	GENERAL NAIDOO: So the person that would
14	that the correct description of this document is an extract	14	have been acting in his place would have fulfilled that
15	from the IPID investigation diary.	15	portfolio. I can't remember at this stage who it was.
16	CHAIRPERSON: I've changed my note then,	16	MR CHASKALSON SC: So it wasn't your
17	it's IPID investigation diary marked C/41 for period 15 to	17	instruction; it came from Major General Mpembe's line of
18	20-11-2012 and it does appear from some of the later	18	command, as it were.
19	entries on that page to other firearms. It looks like two	19	GENERAL NAIDOO: No, the line of command
20	other firearms.	20	is different, Chair.
21	MR CHASKALSON SC: And Major General, you	21	CHAIRPERSON: Sorry, I know when a
22	say that you delivered this firearm promptly in response to	22	provincial commissioner is on leave one of the deputy
23	the first request that Brigadier Pretorius made to you to	23	provincial commissioners act as provincial commissioner.
24	hand your firearm over to IPID.	24	When a deputy provincial commissioner is on leave, does
25	GENERAL NAIDOO: That's correct, Chair.	25	another deputy provincial commissioner act in his stead or
	Page 24048		Page 24050
1	Page 24048 MR CHASKALSON SC: That request was on,	1	Page 24050 could a brigadier who's immediately junior to him act in
1 2		1 2	Page 24050 could a brigadier who's immediately junior to him act in his place while he's away?
	MR CHASKALSON SC: That request was on,		could a brigadier who's immediately junior to him act in
2	MR CHASKALSON SC: That request was on, you say the 14th, day before?	2	could a brigadier who's immediately junior to him act in his place while he's away?
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		1	
1	Page 24051	1	Page 24053
1	for a JOC to be set up on the 10th of August.	1	Brigadier Calitz that he had set up the JOC, yes. MR CHASKALSON SC: Now once the JOC was
2 3	GENERAL NAIDOO: Chair – MR CHASKALSON SC: We know that the JOC	2 3	MR CHASKALSON SC: Now once the JOC was set up on the 12th of August one of the big advantages of
4	was only in fact set up on the 12th of August.	4	having a JOC at Middelkraal was that you could take
5	GENERAL NAIDOO: Chair, I think we need	5	advantage, the police could tap into the Lonmin CCTV
6	to clarify. As I said, I'm subject to correction because	6	coverage.
7	there are two JOCS that are permanently fitted out, one at	7	GENERAL NAIDOO: I suppose so, yes,
8	the cluster commander's environment in the Rustenburg, in	8	Chair.
9	Phokeng, and the other JOC that is permanently manned would	9	MR CHASKALSON SC: You recall that the
10	be at the unit itself. That, and they function on a 24-	10	reason that Brigadier Mpembe was alerted to – sorry, Major
11	hour basis. So it would not be unusual for, if there's not	11	General Mpembe was alerted to the incident on the 13th was
12	a specific incident to have the particular operation run	12	that the strikers were picked up on CCTV marching in the
13	through one of those JOCS. It would not be unusual, but in	13	direction of Karee?
14	this case I specifically can't indicate that. I don't, I	14	GENERAL NAIDOO: That's correct, Chair.
15	can ascertain that, but the need for a JOC on site normally	15	MR CHASKALSON SC: And so SAPS would have
16	occurs when, you know, there's a specific critical incident	16	been in a position had the JOC been set up on the 10th of
17	or we can locate the issue to a very narrow venue. That's	17	August to monitor what was going on at Marikana much more
18	where hence my, in my statement I quite often refer to a	18	closely and to intervene much more effectively.
19	VOC, which is actually a venue operational centre as	19	GENERAL NAIDOO: They would be on site,
20	opposed to a JOC. So it refers to a JOC, yes, and I think	20	yes, Chair.
21	the people in the command structure can indicate to us	21	MR CHASKALSON SC: You see, a great deal
22	where they ran the JOC from, the physical location of the	22	happened between 7AM on the 10th of August and the afternoon
23	JOC.	23	of the 12th. The two major incidents were there was a march
24	MR CHASKALSON SC: That's actually	24	by strikers to the NUM office on the 11th and a shooting
25	addressed in the plan under item 10.2, three pages lower	25	incident in the aftermath of that march and that's
	Dev. 04050		D 04054
1	Page 24052 down. The JOC was to be at Middelkraal, so that's – "The	1	Page 24054 generally regarded as the trigger for the major escalation
2	JOC will be positioned at Middelkraal."	2	of violence in the strike. There had been no deaths up to
3	GENERAL NAIDOO: Yes, Chair.	3	that point, and then there were the murders of the two
4	MR CHASKALSON SC: That's on Lonmin	4	security guards on the 12th, all before SAPS had established
5	premises, is it not?	5	a JOC at Middelkraal as the plan demanded. Now it seems to
6	GENERAL NAIDOO: Middelkraal? I suppose,	6	us that if SAPS had executed this plan as intended, it's
7	maybe it's the same place. I'm not sure. Middelkraal?	7	quite possible that both of those two unfortunate events,
8	MR CHASKALSON SC: And it's the position	8	the events of the 11th and the events of the 12th, the march
9	where the final JOC was set up.	9	to NUM offices and the shooting incident there, and the
10	GENERAL NAIDOO: I know it was a disaster	10	murder of the two security guards, would have been picked
11	management centre, so possibly. I can't remember -	11	up on CCTV before they happened and would have been
12	MR CHASKALSON SC: And Mr Pretorius is	12	incidents to which SAPS could have responded much more
13	confirming for me that the position was where the final JOC	13	quickly and might possibly have prevented. Do you have any
14	was set up.	14	comment on that?
15	GENERAL NAIDOO: Okay.	15	GENERAL NAIDOO: Chair, without having
16	MR CHASKALSON SC: Now the plan	16	the specific detail in terms of all the circumstances and
17	contemplated that there would be a JOC at the site of the	17	how SAPS responded to those specific incidents, I don't
18	final JOC from 7AM on the 10th of August.	18	think I would be able to give a comment. When I, when
19	GENERAL NAIDOO: That's correct, Chair.	19	Brigadier Calitz indicated to me that he'd established a
20	MR CHASKALSON SC: From what we've been	20	JOC on the Sunday at the Lonmin disaster management
21	able to establish it seems that the JOC was only	21	offices, in that the key thing that he indicated that he
22	established in that position, or only set up in that	22	established a record, he put in place an occurrence book
23	position in the afternoon of the 12th of August, on the	23	where they started recording the events. So when we talk
24	Sunday afternoon.	24 25	about the JOC, which should have been established as
25	GENERAL NAIDOO: As reported to me by	25	Brigadier Calitz has indicated, I would need to first

	Page 24055		Page 24057
1	ascertain that did we deploy any members to work with the	1	it's an integrated approach, but there is definitely an
2	security there before indicating, because it does occur at	2	element of Public Order Police to deal with the crowd
3	times that they would have – they, it would have made sense	3	management issues.
4	to deploy a person with a police radio to work in	4	MR CHASKALSON SC: If we go to 10.2 and
5	conjunction with the security since they had the	5	we see the command and control structure, overall commander
6	infrastructure in place. So dependent on what measures	6	Lieutenant Colonel Msiza, operational commander Lieutenant
7	they took in terms of their planning, I think I need that	7	Molobye, VISPOL Captain Govender, media Captain Augustidis.
8	information to give a proper answer in terms of that. The	8	Did any one of those four carry responsibility for ensuring
9	operational people definitely were instructed to be on	9	that a plan is ultimately executed? Is it the overall
10	scene. They were deployed, they were enhanced on Saturday	10	commander?
11	as well. So there must have been some measures, but I as I	11	GENERAL NAIDOO: That's the station
12	said don't specifically know the measures.	12	commander, Lieutenant Colonel Msiza whose station precinct
13	MR CHASKALSON SC: No, I appreciate there	13	the entire operation, so it's not unusual to make him the
14	would have to have been some measures, but I'm interested	14	overall commander.
15	in the issue of the JOC because the primary advantage of –	15	MR CHASKALSON SC: But my question is if
16	or not the primary, but one of the clear advantages of a	16	we want to find out why a JOC was only established more
17	JOC at Middelkraal on Lonmin premises is the ability to tap	17	than two days after the plan intended and who is
18	into Lonmin CCTV coverage of what's going on so that the	18	responsible for that, where do we go?
19	police can respond immediately there's a threat and not	19	GENERAL NAIDOO: The command structure of
20	wait for the threat to materialise, or to turn into	20	the executing instruction. I think we start there. The
21	disastrous and murderous conduct, and without access to the	21	command structure is indicated on the board and we should
22	Lonmin coverage and to the JOC on Lonmin property SAPS	22	start there because they were tasked in terms of the plan.
23	don't have that facility.	23	MR CHASKALSON SC: So it's Lieutenant
24	GENERAL NAIDOO: Chair, I'm not	24	Colonel Msiza?
25	disagreeing with the feasibility of the proposal. As I	25	GENERAL NAIDOO: He's the station
	Dama 2405/		Dama 24050
1	Page 24056 indicated, I, what I'm merely indicating is I did not know	1	Page 24058 commander, or even – I'm not sure if the cluster commander
2	what their operational deployment was at that stage because	-	
		2	signed this plan off. If he did he was –
3	they had received an instruction and in terms of their plan	2 3	signed this plan off. If he did he was – MR CHASKALSON SC: No. no. if we go to
3	they had received an instruction and in terms of their plan they should have had a deployment there. So I am uncertain	2 3 4	MR CHASKALSON SC: No, no, if we go to
3 4 5	they should have had a deployment there. So I am uncertain	3	MR CHASKALSON SC: No, no, if we go to the end it's signed off both by the cluster commander and
4	they should have had a deployment there. So I am uncertain and I can verify whether when we indicated that we have	3 4	MR CHASKALSON SC: No, no, if we go to the end it's signed off both by the cluster commander and by Lieutenant Colonel Merafe as a unit commander. So are
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1 4	Page 24059		Page 24061
1	MS LE ROUX: Yes, Chair, I think let's	1	down to 31 then, do we? We were going to have 32 because
	rk exhibits, and then we can adjourn. Chair, you should	2	there were, it was FF which is 36 letters from the
	ve been provided with an updated and revised index which	3	beginning of the alphabet.
	s first the existing exhibits, then begins with new	4	MS LE ROUX: Yes.
	hibits, starting with statements of K9 members. We	5	CHAIRPERSON: But we've got one in
	ould probably start there in terms of marking exhibits	6	already, I think – no, oh I see, you've already made the
7 and	then there's an additional documents and files index	7	point actually that you indicated already those that are
8 whi	ich has been prepared, which essentially just splits out	8	already exhibits –
9 into	o four separate documents one of the CALS analysis	9	MS LE ROUX: Yes.
10 doc	cuments referred to on the first index, but I'll guide	10	CHAIRPERSON: Molangoanyane, there are
11 you	u when we get there.	11	two statements, so you will only mark the one obviously.
12	So if we start with the statements of K9 members	12	MS LE ROUX: Yes.
13 at f	forward holding area 1 under the command of Major	13	CHAIRPERSON: We won't have to have a
14 Ger	neral Naidoo, I assume we can just mark those as one	14	point A or point B, and then the same applies to Motsemi
15 gro	up and then –	15	and Mutsi and Myburgh.
16	CHAIRPERSON: Yes.	16	MS LE ROUX: Correct.
17	MS LE ROUX: - point 1, point 2.	17	CHAIRPERSON: So you'll bear that in
18	CHAIRPERSON: Well, we're busy still with	18	mind, okay. Then shall we mark the – so it's clear how
19 the	MMM-series, so the latest one, do you want me to make	19	we'll mark, you'll mark them for us –
20 the	- some of the K9 ones, certainly at least one of them I	20	MS LE ROUX: Yes, Chair.
21 thir	nk is already in as an exhibit. Do you want me to make	21	CHAIRPERSON: - and perhaps prepare a
22 the	m all MMM39, you know, 39.1, 2, 3, etcetera?	22	little schedule for us. Then MMM40 will be statements of
23	MS LE ROUX: Yes, Chair.	23	POP members at forward holding area 1. Is that right?
24	CHAIRPERSON: Alright, so MMM39,	24	MS LE ROUX: Yes, Chair. Now two of
25 stat	tements by K9 members and then it will be, it goes down	25	those have pocketbooks, but we can similarly do, you know,
1 to F	Page 24060	1	Page 24062 point 1A and B.
2	MS LE ROUX: Yes, Chair. Now obviously	2	CHAIRPERSON: Yes, yes. And then
	ne of these members have made two and sometimes three	3	Tongwane's statement I think is in already, isn't it?
	tements. So what I'll do overnight is just allocate,	4	[15:54] MS LE ROUX: Yes, I believe so, Chair.
i sta			
5 vou	u know, a point 1, point 2 to each individual statement	5	
-	u know, a point 1, point 2 to each individual statement	5	CHAIRPERSON: I think that's correct. So
6 and	d provide that to you.	6	CHAIRPERSON: I think that's correct. So we don't worry about that. You'll just at the appropriate
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1	MS LE ROUX: Chair, aren't we up to 41?	1	CHAIRPERSON: So we spent quite a lot of
2	CHAIRPERSON: Sorry?	2	time examining them last night and yesterday, so I would
3	MS LE ROUX: Aren't we up to 41, not 49?	3	hope we're reasonably on top of them, and I hope the
4	CHAIRPERSON: Sorry, did I say 40? So I	4	witness is as well, but we will discover tomorrow morning
5	should have said 41. Then the –	5	how well we've prepared for your cross-examination.
6	MS LE ROUX: Then item –	6	COMMISSIONER HEMRAJ: Your MMM39, Ms le
7	CHAIRPERSON: In other words the other	7	Roux, your B and E, we have two out of the three statements
8	analysis –	8	only in our bundles, Breedt and Dihlade. We only have two
9	MS LE ROUX: Yes.	9	statements. You have three listed. Perhaps if someone can
10	CHAIRPERSON: - the phone call one, which	10	just give us –
11	is a new one I think we got this morning, is that right?	11	MS LE ROUX: Commissioner, I'll find out
12	MS LE ROUX: Yes, so Chair, ignore item 5	12	what happened there. We'll sort that out.
13	on the original index. If you can then move to the	13	CHAIRPERSON: It's now 4 o'clock. I
14	additional documents and files index, that has now split	14	think we have usefully employed the seven minutes at our
15	out into four separate documents, the components of that	15	disposal and so there being no further business, we can
16	movement analysis. So we can mark those as four separate	16	adjourn until 9 o'clock or shortly thereafter - we're going
17	exhibits. So if we make the first, the CALS analysis	17	to have a housekeeping meeting with the SAPS and the
18	chronology of the movements and phone calls of Major	18	evidence leaders at half past 8, so we hope to be ready by
19	General Naidoo –	19	9, but if we're not we will start as soon as possible
20	CHAIRPERSON: That will be –	20	thereafter. But I would expect everybody concerned to be
21	MS LE ROUX: 42.	21	available for us to start as soon after 9 as we can. So
22	CHAIRPERSON: - MMM42.	22	we'll adjourn until tomorrow morning 9 o'clock.
23	MS LE ROUX: And then CALS analysis	23	[COMMISSION ADJOURNED]
24	routes from forward holding area 1 to scene 1 will be	24	
25	MMM43. Then CALS analysis movement of forward holding area	25	
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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 15	information. The evidence leaders have been alerted to it		
15 16	and are investigating the cause of some of those apparent		
16 17	inaccuracies. So you'll see in the chronology where those 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		
20	are engaging with the evidence leaders to try to solve		
21	that. I should just note that for the record.		
22	CHAIRPERSON: Alright. You have given us		
23	all these documents already.		
24	MS LE ROUX: Yes, Chair.		
20			

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