

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 193

27 FEBRUARY 2014

PAGES 23503 TO 23656



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1 [PROCEEDINGS ON 27 FEBRUARY 2014]
 2 [09:13] CHAIRPERSON: The Commission resumes.
 3 Major-General, you're still under oath.
 4 GENERAL NAIDOO: Still under oath.
 5 CHAIRPERSON: Mr Chaskalson?
 6 GENERAL NAIDOO: s.u.o.
 7 CROSS-EXAMINATION BY MR CHASKALSON SC (CONTD.):
 8 Thank you, Chairperson. Major-General, when we closed
 9 yesterday we'd just seen footage of Mr Mdze lying
 10 unattended at the kraal at 16:08:05 and in the process of
 11 slowly bleeding to death while SAPS failed to give medical
 12 treatment to him and just to recap, 16:08:05 was 14 minutes
 13 and 15 seconds after the shootings and you had not, you did
 14 not dispute that your convoy with the medics would have
 15 reached Mr Mdze before 16:08:05 where we see him breathing
 16 heavily, if you had proceeded directly to the scene as you
 17 should have done immediately after the shootings or even if
 18 you'd turned around and proceeded to the scene after the
 19 second time that you got lost and found yourself on the
 20 wrong side of the power station, but instead of turning
 21 around you had your first four minute idling period while
 22 Mr Mdze was bleeding to death and then at the end of this
 23 four minute idling period instead of turning around and
 24 taking your medics to the scene through any one of the five
 25 available routes that would've got you there, you went

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1 forward on the wrong side of the barbed wire and had a
 2 second four minute idling period while Mr Mdze was slowly
 3 bleeding to death. I want to probe your evidence in
 4 relation to how you got lost twice while Mr Mdze was
 5 bleeding to death. You were responsible for getting medics
 6 to the scene, that's common cause, is it not?
 7 GENERAL NAIDOO: Correct, Chair.
 8 MR CHASKALSON SC: You knew that there
 9 was a risk of violent conflict and so getting medics
 10 promptly to the scene may have been a matter of life and
 11 death, do you accept that?
 12 GENERAL NAIDOO: It was, Chair.
 13 MR CHASKALSON SC: You were responsible
 14 for controlling access to the scene from forward holding
 15 area 1 through the week.
 16 GENERAL NAIDOO: Chair, I'm not sure.
 17 Controlling access to the scene, what is meant by that?
 18 MR CHASKALSON SC: Well, access to the
 19 koppies, let's call it access to the koppies. You were
 20 responsible for controlling access to the koppies through
 21 forward holding area 1 from Tuesday.
 22 GENERAL NAIDOO: Chair, I wouldn't say
 23 that I was responsible for controlling access because there
 24 were many different ways of accessing the koppie and that
 25 was one of the ways. I was responsible for providing

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1 support to the members that were deployed to the koppie, so
 2 it will be incorrect to say I was responsible for
 3 controlling access to the koppie.
 4 CHAIRPERSON: Were you responsible for
 5 controlling access to the koppie on one of the available
 6 routes to the koppie?
 7 GENERAL NAIDOO: Chair, I was stationary
 8 at the particular point which was one of the available
 9 routes to the koppie and we did have a checkpoint there,
 10 yes.
 11 MR CHASKALSON SC: And when anyone from
 12 SAPS or at the instance of SAPS went to the koppie, were
 13 they not directed to go through your boom gate, in a
 14 figurative sense?
 15 GENERAL NAIDOO: Chair, not necessarily.
 16 Members from forward holding area 2 used another route
 17 because there was another access which I was not familiar
 18 with, so it was not exclusive.
 19 MR CHASKALSON SC: Well, if someone came
 20 from the JOC would you be the boom gate through which they
 21 would pass to get to the scene?
 22 GENERAL NAIDOO: If somebody came from
 23 the JOC and chose to use the route in the direction of
 24 forward holding area 1, yes, they would come to the
 25 checkpoint that was being manned by the mounted unit of my

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1 section, yes.
 2 CHAIRPERSON: I take it your so-called
 3 boom gate was closer to the JOC than forward holding area 2
 4 was?
 5 GENERAL NAIDOO: Chair, there was no
 6 actual boom gate –
 7 CHAIRPERSON: No, I said so-called.
 8 GENERAL NAIDOO: Yes.
 9 CHAIRPERSON: That's why I said so-
 10 called.
 11 GENERAL NAIDOO: Ja, it was the point
 12 where forward holding area 1 started and we –
 13 CHAIRPERSON: It was the checkpoint.
 14 GENERAL NAIDOO: That's correct, Chair.
 15 CHAIRPERSON: Okay, let me rephrase the
 16 question so I don't get an objection. I take it your
 17 checkpoint was closer to the JOC than a checkpoint at
 18 forward holding area 2.
 19 GENERAL NAIDOO: That is – well, that's
 20 true, yes.
 21 MR CHASKALSON SC: And if you were to
 22 estimate how much of the vehicle traffic from the JOC to
 23 the koppies passed through forward holding area 1, what
 24 would your estimate be?
 25 GENERAL NAIDOO: Chair, I don't think I'm

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1 in a position to make that estimate because I'm not aware
 2 of all the traffic that came from the JOC other than the
 3 ones that came to me.
 4 MR CHASKALSON SC: Well, would you accept
 5 that the ordinary route that one would take from the JOC to
 6 the koppies would involve passing through forward holding
 7 area 1?
 8 GENERAL NAIDOO: Chair, I don't know
 9 because I think at some stage we led in evidence here that
 10 there was the same presumption made when Mr Mathunjwa was
 11 going to koppie 3, the assumption that was made by the JOC
 12 that he would pass through the area where my forward
 13 holding area started and he did not, he used a different
 14 route. So I don't think I would agree with that
 15 presumption offhand.
 16 MR CHASKALSON SC: Well, Mr Mathunjwa was
 17 not a SAPS member, do you accept that?
 18 GENERAL NAIDOO: That is correct.
 19 MR CHASKALSON SC: Why would the – so he
 20 might not necessarily choose the route that was adopted by
 21 SAPS members, he might choose his own route but if the JOC
 22 thought that Mr Mathunjwa would get to forward holding, get
 23 to the koppie through forward holding area 1, does that not
 24 indicate that the JOC thought that the ordinary route to
 25 the koppies was through forward holding area 1?

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1 GENERAL NAIDOO: Actually, Chair, the
 2 better route to forward holding area 1, to the koppies,
 3 would have been the other route where forward holding area
 4 2 was because there was less gravel roads but I don't think
 5 I'm in a position to indicate why one would prefer one or
 6 the other. The entrance from forward holding area 1 to the
 7 koppie was a much longer gravel road than from forward
 8 holding area 2.
 9 MR CHASKALSON SC: During the three days
 10 that you were regulating access to the scene through
 11 forward holding area 1, did you not find out how one gets
 12 to the scene through forward holding area 1?
 13 GENERAL NAIDOO: Chair, just I think a
 14 correction. I was not regulating access because there was
 15 still a normal flow of traffic which was not police
 16 traffic. It just happened that the start of my forward
 17 holding area was at that main intersection. I indicated
 18 we, after the second day, closed off one side of the
 19 intersection where forward holding area 1 vehicles were
 20 parked but it's not to say that I was, I had all four
 21 directions of the intersection closed and was manning it to
 22 regulate traffic.
 23 MR CHASKALSON SC: Can you now answer the
 24 question?
 25 GENERAL NAIDOO: Sorry, can we have the

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1 question?
 2 MR CHASKALSON SC: In the course of these
 3 three days when traffic was being regulated in part at
 4 forward holding area 1 under your control, traffic to the
 5 koppies, did you not establish how one reaches the koppies
 6 through forward holding area 1?
 7 GENERAL NAIDOO: Chair, yes, not
 8 physically but I had during that process learnt that if you
 9 went up the gravel road in the direction of the power
 10 station, it was on your right but as I said, I have never
 11 been on the road until the day of the 16th because I had no,
 12 at that stage, reason or expectation that I would go in
 13 that direction myself prior to that.
 14 MR CHASKALSON SC: You knew from as early
 15 as Tuesday that getting – or let's not talk about Tuesday,
 16 let's just talk about Thursday. At the 2:30 briefing on
 17 Thursday you knew an operation was about to take place and
 18 you knew that your responsibility would be to get medics to
 19 the scene should they be needed.
 20 GENERAL NAIDOO: That's correct, Chair.
 21 MR CHASKALSON SC: But you didn't know
 22 how to get medics to the scene, you say. You didn't know
 23 which road to take.
 24 GENERAL NAIDOO: Chair, I think I've
 25 already testified to this previously and also today.

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1 Firstly, when the indication was made to me as to the
 2 route, it did not seem that there would be an issue and
 3 secondly, I have testified that because of my lack of
 4 knowledge of the topography of the area I did request
 5 somebody who was from the Rustenburg cluster to drive me.
 6 So I did not foresee that we would have the difficulty that
 7 we experienced.
 8 MR CHASKALSON SC: So you yourself did
 9 not take responsibility for making yourself aware of what
 10 route or what various routes you could take for getting to
 11 the scene, you didn't see that as part of your
 12 responsibility.
 13 GENERAL NAIDOO: Chair, I think that is
 14 not correct. This is the reason why I specifically found
 15 and appointed a person familiar with –
 16 MR CHASKALSON SC: Major-General, please
 17 answer my question. The question was –
 18 MR SEMENYA SC: Chair, that is an answer
 19 to the question. Mr Chaskalson might not like it –
 20 CHAIRPERSON: He was asked, he did not
 21 personally make himself responsible and the answer he is
 22 giving is, "I appointed someone who had the knowledge to be
 23 the driver," which means he didn't make himself personally
 24 responsible. The answer must be, "I didn't make myself
 25 personally responsible because I had somebody else." That

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1 is an appropriate question, please carry on.

2 GENERAL NAIDOO: Chair, yes, I was not
3 going to personally drive myself and thus I did not see it
4 necessary for me to personally drive that route.

5 CHAIRPERSON: No, I don't think it's a
6 question about personally drive, it's personally make
7 yourself responsible for knowing what the routes were so if
8 deployment decisions had to be made, you would be able to
9 make them on viable routes. I take it that's the thrust of
10 the question, am I right, Mr Chaskalson?

11 MR CHASKALSON SC: That's correct, Mr
12 Chairperson.

13 GENERAL NAIDOO: Chair, yes, and based on
14 the map that I was utilising and which I presented
15 yesterday, it did not seem like there would be a major
16 challenge. The explanation was straightforward, so with
17 the knowledge that I had a local driver and we had a map
18 which did not appear problematic, it did not seem necessary
19 to do that.

20 CHAIRPERSON: Would it be fair to say you
21 didn't know – I would imagine it would be fair to say you
22 can't be blamed for not knowing – you didn't know that some
23 or other of the routes on the map you had weren't actually
24 viable routes. You didn't know there was a ditch, for
25 example, in the case of one of the routes which meant it

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1 wasn't passable. That's your answer, is it?

2 GENERAL NAIDOO: I have testified to that
3 effect, yes.

4 CHAIRPERSON: Ja.

5 MR CHASKALSON SC: Well, Major-General
6 Naidoo, where is there a route to the koppie on the map
7 which is not a viable route? Where does the map suggest
8 that there is a route which is not, and which in fact is
9 not viable?

10 GENERAL NAIDOO: Chair, I have not
11 testified to the effect that there was no viable, there was
12 a route that was not viable. I indicated that when I
13 looked at the map it looked fairly straightforward and I
14 did not foresee that we would have these challenges.

15 MR CHASKALSON SC: Well, Major-General,
16 when the Chairperson put to you that there was a route on
17 the map that did not appear to be unviable, you said yes
18 and that was in –

19 CHAIRPERSON: Sorry, the question was in
20 relation to the route on the other side of the small power
21 station where there was a ditch. It looked viable on the
22 map but when you go down and you come across the ditch
23 you've got to turn around. That was the basis of the
24 question.

25 GENERAL NAIDOO: That's correct.

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1 CHAIRPERSON: And I understood him to be
2 agreeing with that proposition.

3 GENERAL NAIDOO: That's correct, Chair.

4 MR CHASKALSON SC: Well, that's the
5 proposition with which I want to take issue because if one
6 looks at the map it doesn't look like there's a route
7 there, it looks like there's a road that ends at the end of
8 the small power station. That's not a route to the
9 koppies.

10 GENERAL NAIDOO: Chair, I would not agree
11 with that because we already yesterday conceded that when
12 we read the map versus where we were actually, it was based
13 on our assumption that there was a viable route and with
14 the mis-identification of the location, so I think we have
15 dealt with that aspect of it. We only found out that that
16 particular route that we took was not viable when we were
17 on it, not based on the map.

18 MR CHASKALSON SC: So you didn't
19 deliberately take a route that you had identified on the
20 map which looked on the map to be viable but turned out not
21 to be viable. That wasn't the explanation for your not
22 going there. Your explanation was in fact you got lost,
23 you took – you didn't realise where you were.

24 CHAIRPERSON: I don't think he said he
25 got lost. That's not a correct summary of what he said.

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1 You see part of the problem is if you look at the map he
2 had there are, from what we now know there are routes in
3 the sense of paths over which vehicles can travel across
4 the veld, which aren't actually visible on this map as I
5 see it, MMM11.1, and I assume, to be fair to him, that if
6 you take the road on the right-hand side of the small power
7 station the expectation was that he'd be able to proceed
8 across the veld from the top of that power station to the
9 various destinations. He didn't realise that there was a
10 ditch which prevented it. I think that's your evidence,
11 isn't it?

12 GENERAL NAIDOO: I have testified to that
13 effect, Chair.

14 MR CHASKALSON SC: I don't see a route up
15 there but let's test your evidence in relation to not
16 knowing where you were.

17 CHAIRPERSON: I'm sorry, Mr Chaskalson, I
18 don't think he said he didn't know where he was. Am I
19 right?

20 MR CHASKALSON SC: With respect,
21 Chairperson, that is his evidence. He thought he was next
22 to the big power station and he was in fact next to the
23 small power station.

24 CHAIRPERSON: Oh, you're talking about
25 what happened where – I see, you're talking about what

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1 happened when he was at the small power station.
 2 GENERAL NAIDOO: Chair, when I testified
 3 and I clarified yesterday the area that we had
 4 made*09:13/16-20 I quite clearly indicated that our
 5 perception at that point is that we were at what we know as
 6 immediate response area 1 and hence we took the right turn
 7 in front of what we thought was the power station and we
 8 later established was not the power station but actually
 9 what is now referred to as the substation.
 10 CHAIRPERSON: Do you mean to say that
 11 when you took the turn at the small power station you
 12 couldn't see the big power station a head of you?
 13 GENERAL NAIDOO: We thought we were at
 14 the correct place because if you look at the map, Chair,
 15 yes –
 16 CHAIRPERSON: When you took the right
 17 turn at the small power station, are you saying that you
 18 could not see the big power station ahead of you?
 19 GENERAL NAIDOO: Chair, I could not
 20 remember whether I had observed it and hence with this was
 21 introduced I indicated that yes, I thought I was at the
 22 correct place, I gave my movements which have been verified
 23 yesterday by the AvL in terms of where I thought I was, so
 24 at this stage I can't remember specifically whether I did
 25 see the power station before or after I moved down the road

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1 so – yes.
 2 CHAIRPERSON: I'm sorry I don't
 3 understand that at all. If you were going down the main
 4 road from right to left on the map –
 5 GENERAL NAIDOO: Yes.
 6 CHAIRPERSON: And if you look at the map
 7 you'll see there are two power stations. You'll see
 8 there's a small one which is first and then there's a big
 9 one ahead. Now as you're proceeding down from forward
 10 holding area 1 from right to left –
 11 MR NTSEBEZA SC: Excuse me, Chairman, can
 12 we have the map put up on the screen?
 13 CHAIRPERSON: Your request has been
 14 complied with. When you are proceeding from right to left
 15 on the map from forward holding area 1, the first power
 16 station you come to is a small power station. So you must,
 17 if you had the map in front of you, you would've realised
 18 that's the small power station. The main route, the big
 19 power station, the one you thought you were on, is still
 20 ahead because this was the first power station that you
 21 came across which, according to the map, was not the one
 22 you were looking for. So I'm afraid I don't understand
 23 your evidence.
 24 GENERAL NAIDOO: Sorry, Chair. Which
 25 part do you want me to clarify, Chair? The part that you

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1 want me to clarify?
 2 CHAIRPERSON: What I'm saying to you is,
 3 you were proceeding along the main road from right to left
 4 on the map from forward holding area 1, you're intending to
 5 go to the right near the big power station, that's what I
 6 understood you to say. You've got the map in front of you.
 7 As you go along the road you must realise from the map that
 8 the first power station is not the one you want to turn
 9 right at, you want to turn right at the second power
 10 station. You go along the road, you find the first power
 11 station and you turn right. I don't understand that.
 12 GENERAL NAIDOO: Chair, that's exactly
 13 what I explained yesterday.
 14 CHAIRPERSON: I'm sorry, you must forgive
 15 me. I didn't understand the explanation. There may be a
 16 bit of repetition but I'm afraid –
 17 GENERAL NAIDOO: Okay.
 18 CHAIRPERSON: - I must ask you, keep it
 19 as short as you can but try to make it comprehensible to
 20 me.
 21 GENERAL NAIDOO: Yes.
 22 CHAIRPERSON: Because I appreciate it's
 23 probably my fault but I must understand what you say.
 24 GENERAL NAIDOO: Of course, Chair.
 25 Chair, firstly if you look at the copy of the map that I

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1 gave you, what we refer to, a large and a small power
 2 station, what you've referred to as the small power station
 3 is not really, does not really stand out as a landmark.
 4 When we proceeded down that road we were told as you
 5 proceed down that road you would find a power station on
 6 your right and right in front of that power station is a
 7 road that goes directly to where the operations are taking
 8 place. So we worked on that presumption. Our movements
 9 showed that we went and we held at that particular point
 10 and when we started moving we turned right at that small
 11 power station and went down the road till we found out but
 12 there's this ditch, we can't go beyond that. Then we
 13 turned around and came back onto the main road and realised
 14 our mistake, that we were there. That was my evidence
 15 yesterday.
 16 [09:33] MR CHASKALSON SC: Major-General, are you
 17 – did you have a basic capacity of reading a map?
 18 GENERAL NAIDOO: Chair, I don't
 19 understand what's the basic capacity of reading a map
 20 because –
 21 MR SEMENYA SC: And the question was
 22 asked and answered yesterday.
 23 CHAIRPERSON: Mr Chaskalson, there's an
 24 objection. The objection raised is that this is repetition
 25 of matter –

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1 MR CHASKALSON SC: I withdraw the
 2 question, we don't need to waste further time on that.
 3 Major-General, if one looks at this map and has a basic
 4 appreciation of how a map works, one would have to realise
 5 that the small power station is less than half the distance
 6 away from the big power station, do you accept that?
 7 GENERAL NAIDOO: That is correct, Chair.
 8 MR CHASKALSON SC: And you drove and
 9 weren't able to work out that you'd turned off less than
 10 40% of the distance or approximately 40% of the distance
 11 that you had to travel?
 12 GENERAL NAIDOO: Chair, the presumption
 13 at that stage – and everybody spoke about it – was two
 14 things. Number 1, the road was gravel and very bumpy and
 15 it was not too far. So my expectation was not to travel
 16 too far. There was no specific distance given, saying
 17 travel one kilometre or two kilometres down the road.
 18 MR CHASKALSON SC: There's a large slimes
 19 dam to the left before you pass, before you reach the big
 20 power station. There's open veld before you reach the big
 21 power station. None of this, none of this alerted you to
 22 the fact that you weren't there yet?
 23 GENERAL NAIDOO: Chair, we must also
 24 accept we are looking at an aerial view. We are not on the
 25 road. I indicated when we proceeded down and in my

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1 statement I have outlined that on my left-hand side there
 2 was a smelter and a structure. So in location to the –
 3 it's not clearly allocated, indicated on the map that that
 4 structure or that marking is a slime dam. So we see the
 5 outlines of things and we proceed and on the basis of what
 6 we visualise there, we made our decisions. I have
 7 testified to that effect as well.
 8 MR CHASKALSON SC: Do you see anything on
 9 the map that could've been a smelter in the area of the
 10 slimes dam?
 11 GENERAL NAIDOO: Chair, this is an aerial
 12 view so I won't be able to see if there's something
 13 sticking out.
 14 MR CHASKALSON SC: Major-General, I
 15 would've thought that someone with 30 years' experience in
 16 the police force would be able to see from this map that if
 17 there's a smelter, the smelter is in the region of the
 18 small power station, not the large power station. Do you
 19 dispute that?
 20 GENERAL NAIDOO: Chair, if one looks at
 21 the map here there's no indication on the height of things
 22 or things that are going vertically into the air. It just
 23 shows you the layout of things, so it's not inconceivable
 24 for me not to know whether that black block there on the
 25 map is a structure that goes up and nowhere in the other

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1 indication of the map does it show height. So I'm looking
 2 at the map that I have and it was not unreasonable for me
 3 to think that the structure that I saw on my left was the
 4 structure that I identified on the left of the immediate
 5 response area.
 6 CHAIRPERSON: Mr Chaskalson, I think
 7 you've covered the point. We think that it's material you
 8 would want to argue on later. Whether the arguments will
 9 be accepted, of course, is another matter.
 10 MR CHASKALSON SC: Let's take the next
 11 time you got lost. You've now realised that you're at the
 12 wrong power station and turned around and you turn right
 13 now. Now presumably at this stage you're starting to
 14 appreciate that time is of the essence, there could be
 15 wounded and dying people lying on the ground while you are
 16 getting lost. Do you accept that?
 17 GENERAL NAIDOO: Chair, we have indicated
 18 that, yes, we wanted to get to the scene as soon as
 19 possible.
 20 MR CHASKALSON SC: And did you consult
 21 your map again?
 22 GENERAL NAIDOO: Chair, I had the map
 23 with me in the bakkie, yes.
 24 MR CHASKALSON SC: So did you realise now
 25 that you had been at the small power station and were you

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1 able to orient yourself on the map to know that, where you
 2 were on the map?
 3 GENERAL NAIDOO: Chair, I realised that
 4 we were at the wrong place, yes.
 5 MR CHASKALSON SC: But were you able to
 6 realise at which wrong place you were at?
 7 GENERAL NAIDOO: Chair, I don't recall
 8 specifically whether I did that in relation to the map, I
 9 can't remember specifically.
 10 MR CHASKALSON SC: Why did you turn right
 11 when MR came to the intersection with the main road?
 12 Presumably you must have realised that you had turned off
 13 too soon, not too late.
 14 GENERAL NAIDOO: That was what I
 15 testified yesterday as well, Chair.
 16 MR CHASKALSON SC: So now you know that
 17 you haven't reached the power station but when you reach
 18 the power station you must turn right to go around the
 19 eastern side of the power station.
 20 GENERAL NAIDOO: That is correct, Chair.
 21 MR CHASKALSON SC: On the way to the
 22 power station you pass three intersections that would've
 23 got you to the koppie if you'd taken any of them. I
 24 understand your evidence to be you didn't take any of them
 25 because you wanted to go to the power station so that you

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1 could go around the eastern side of the power station.
 2 GENERAL NAIDOO: That was the evidence
 3 that I gave, Chair.
 4 MR CHASKALSON SC: But when you get to
 5 the power station and you want to be east of it on the
 6 right-hand side, you turn west to go on the left-hand side.
 7 How do you explain that?
 8 GENERAL NAIDOO: Chair, I have already
 9 indicated I was not driving, I was a passenger and until we
 10 took the turn then I, we realised that we were travelling –
 11 and we did, as we went along the power station, did slow
 12 down as well to orientate ourselves because there was also
 13 a ditch that we had to circumvent. So yes, I have
 14 testified that we did take the wrong turn, that is not
 15 disputed.
 16 MR CHASKALSON SC: But how did you take
 17 the wrong turn? I mean I can possibly understand the first
 18 wrong turn to the power station. I think it's grossly
 19 negligent for a person in your position, but the second
 20 wrong turn when you want to end up on the right-hand side
 21 of the power station to the east, how do you end up on the
 22 left-hand side of the power station to the west? A power
 23 station is not something you can sort of miss. How did
 24 that happen?
 25 GENERAL NAIDOO: Chair, as I indicated, I

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1 was not driving. How did we miss the turn? I can't at
 2 this stage specifically remember but my expectation was
 3 when we get to the power station that we would find a way,
 4 find the road that was indicated to us.
 5 MR CHASKALSON SC: Were you not watching
 6 where the car was going while you were driving?
 7 GENERAL NAIDOO: Chair, I was doing
 8 several things. One of them, trying to also see, check the
 9 road, listening to the radio as well trying to follow what
 10 was happening. So yes, I was doing several things.
 11 Watching the road was probably one of them as well.
 12 MR CHASKALSON SC: Well, does listening
 13 to the radio prevent you from watching the road in any
 14 respect?
 15 GENERAL NAIDOO: It is distracting
 16 sometimes, Chair.
 17 MR CHASKALSON SC: Chair, we have now got
 18 agreement on what the correct intersection is and I have a
 19 screen shot of it. I wonder if we could put it up on the
 20 screen.
 21 CHAIRPERSON: Is this another exhibit?
 22 MR CHASKALSON SC: It will be another
 23 exhibit.
 24 CHAIRPERSON: Alright. I asked before I
 25 turned my mike on, is this another exhibit and the answer

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1 is yes. This will be MMM19, how do I describe it?
 2 MR CHASKALSON SC: Google Earth street
 3 view of the intersection that Major-General Naidoo missed
 4 at the power station.
 5 CHAIRPERSON: What we have got is MMM12,
 6 is a Google – what I described in my notes as Google Earth
 7 street view of intersection on eastern side of large power
 8 station. That was – it may be that that was the wrong, we
 9 actually saw the wrong clip but that's what MMM9, sorry,
 10 that's what MMM12 is supposed to be. Now am I correct in
 11 thinking that what you've now described as the correct
 12 intersection would be the one on the eastern side of the
 13 large power station?
 14 MR CHASKALSON SC: Yes, Chairperson, but
 15 let us use this image. This is the one that we have shown
 16 to SAPS, this is the one that SAPS agrees, it is a correct
 17 image –
 18 CHAIRPERSON: Google street view of – is
 19 this from – Google Earth street view of intersection, what
 20 you call correct intersection, of correct intersection at
 21 large power station, is that an accurate description?
 22 MR CHASKALSON SC: Yes, Chairperson.
 23 CHAIRPERSON: Alright, I have so marked
 24 it. There is the one – I think that is triple –
 25 MR CHASKALSON SC: No, no, it is the same

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1 photograph that we showed yesterday but the photograph that
 2 I showed to SAPS this morning where we agreed that this was
 3 the correct photograph is this one. I mean it's
 4 essentially the same image but –
 5 CHAIRPERSON: The image we saw yesterday
 6 and what you've effectively got is agreement that the image
 7 you saw yesterday was the correct one.
 8 MR CHASKALSON SC: No, no, it's a
 9 slightly different image because it's a different file. It
 10 was taken from – it's the same location.
 11 CHAIRPERSON: Okay, okay. What file is
 12 it from?
 13 MR CHASKALSON SC: No, it's taken from
 14 Google Earth of that intersection but it isn't the same
 15 file that was shown yesterday.
 16 CHAIRPERSON: I see, alright.
 17 MR CHASKALSON SC: Or the same picture
 18 exactly.
 19 CHAIRPERSON: Alright, I will keep to the
 20 description I gave and I'll keep MMM19 in.
 21 MR CHASKALSON SC: So you say you didn't,
 22 you missed this intersection?
 23 GENERAL NAIDOO: Chair, as the
 24 intersection doesn't show me in relation to the, or
 25 directly opposite the power station, I can't even recognise

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1 it as I look at it here. Maybe if it was more forward and
 2 looking directly down the intersection maybe there would be
 3 a better view as it looks unfamiliar from here.
 4 MR CHASKALSON SC: Major-General, what
 5 you see in the background is the power station. Those are
 6 the, that is the infrastructure of the power station.
 7 GENERAL NAIDOO: That's correct.
 8 MR CHASKALSON SC: But you missed this
 9 intersection right in front of that infrastructure on its
 10 eastern side.
 11 CHAIRPERSON: I think we had this covered
 12 yesterday so just repeat your answer from yesterday quickly
 13 please and let's move on.
 14 GENERAL NAIDOO: Yes, Chair. I indicated
 15 that I did not remember it and, yes, I was not driving. I
 16 think the whole idea was I was not driving, I could not
 17 specifically remember and there was also a discussion of
 18 maybe looking at it when there's an inspection in loco.
 19 That was basically the discussion around it.
 20 CHAIRPERSON: That's your answer, such as
 21 it is, on that point.
 22 GENERAL NAIDOO: Yes, Chair.
 23 CHAIRPERSON: I think we can move on, Mr
 24 Chaskalson.
 25 MR CHASKALSON SC: Well, when you packed

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1 your stun grenades and moved off to join the action at
 2 koppie 3, did you tell anyone in command that you had left
 3 the medics behind and that they would be delayed in getting
 4 to the victims at scene 1?
 5 GENERAL NAIDOO: Chair, when you say
 6 someone in command, who precisely are we indicating?
 7 CHAIRPERSON: The only two people, two
 8 sets of people I take it in command of relevance would be
 9 Brigadier Calitz and those people at the JOCCOM, is that
 10 right, or at the JOC?
 11 GENERAL NAIDOO: Chair, and I think we
 12 covered both yesterday.
 13 CHAIRPERSON: Yes, you covered both of
 14 them.
 15 GENERAL NAIDOO: Yes.
 16 CHAIRPERSON: Was there anybody else whom
 17 you could describe or regard as a person in command, other
 18 than those two, to whom it would have been appropriate to
 19 say, please be aware of the fact I'm not proceeding
 20 immediately to scene 1 now because there's another matter I
 21 have to attend to, so that other arrangements could perhaps
 22 be made.
 23 GENERAL NAIDOO: Possibly Major-General
 24 Mpembe who was the overall commander.
 25 CHAIRPERSON: Ja, but you didn't get hold

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1 of him either?
 2 GENERAL NAIDOO: No.
 3 MR CHASKALSON SC: Well, why didn't you,
 4 Major-General?
 5 GENERAL NAIDOO: Chair, I think I
 6 testified in respect of these questions yesterday. You did
 7 probe me on these questions as well.
 8 CHAIRPERSON: I'm sorry, forgive me, my
 9 memory may be faulty. I remember you being asked about the
 10 JOC and I remember you being asked about Brigadier Calitz,
 11 that was gone into in depth, I understand that. I'm not
 12 going to allow repetition of that but I don't remember your
 13 being asked or saying why you made no endeavour to get hold
 14 of the overall commander, Major-General Mpembe, to say
 15 look, I just want to tell you I'm supposed to be going
 16 urgently to scene 1, I can't do it for the moment, there's
 17 another problem I've got to attend to, please make other
 18 arrangements if you can.
 19 GENERAL NAIDOO: Chair, yes. That's why
 20 I indicated, we specifically dealt with it, even if we add
 21 the name of Major-General Mpembe into the equation. I
 22 indicated two things. I said the radio, I first introduced
 23 the issue of the radio and you indicated, ja okay, well,
 24 you understand and then secondly you said but you had a
 25 cell phone, why didn't you use a cell phone. So that's why

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1 I say we did deal with this in depth, we just didn't deal
 2 with Major-General Mpembe.
 3 CHAIRPERSON: Okay, I think just for the
 4 purpose of ticking all the boxes, let's ask you, let's get
 5 your answer. Was there any reason why, have you any excuse
 6 for not having tried to get hold of Major-General Mpembe?
 7 GENERAL NAIDOO: Chair, that was
 8 precisely what you asked me yesterday and I precisely said
 9 I could not make any excuse on that matter.
 10 MR CHASKALSON SC: Did it occur to you at
 11 the time that if you were going to go forward and people
 12 were maybe bleeding to death at the scene from where you
 13 had heard the gunshot fire, if you notified the JOC or
 14 Major-General Mpembe or Brigadier Calitz they could have
 15 made other arrangements, they could possibly have
 16 redeployed someone with a better sense of direction than
 17 you to get medics to the kraal. Did that occur to you?
 18 MR SEMENYA SC: Chair, those adjectives
 19 are not necessary for the question.
 20 CHAIRPERSON: I've pulled up other people
 21 for making comments, I have to do the same to you.
 22 MR CHASKALSON SC: With respect –
 23 CHAIRPERSON: You don't have to add the
 24 bit about a better sense of direction. You were asked a
 25 question, shorn of the comments that you don't have to

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1 respond to, the question is – did it occur to you that it
2 would be a good idea to inform one or other of those people
3 so that they could possibly send someone else? Is that,
4 did that occur to you or didn't it?

5 GENERAL NAIDOO: Chair, we dealt with
6 this issue yesterday as well.

7 CHAIRPERSON: Is the answer it didn't
8 occur to you?

9 GENERAL NAIDOO: And what I indicated
10 there was, here I was within sight of koppie 1, a few
11 hundred metres and remember you questioned me about the
12 five minutes to get to the place. So yes, if I'd thought
13 that this thing was too far and I would not get there in
14 the next few minutes surely I would have tried some way to
15 inform, but here we were in sight of koppie 1 as far as I
16 was concerned, a few hundred metres down the road and
17 that's the reason why I did not see it necessary of doing
18 what is being suggested.

19 MR CHASKALSON SC: Mr Chairperson, that's
20 not an answer to my question. My question is did it occur
21 to you? You've given me an explanation for how you acted
22 as – the witness has given me an explanation for how he
23 acted as he did. I want to know if it did occur to him and
24 he made a deliberate choice not to do it.

25 CHAIRPERSON: Implicit in his answer is

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1 that it didn't occur to him because he says if it had, he
2 would have done something.

3 MR CHASKALSON SC: No, with – I read his
4 answer differently, Mr Chairperson, that's why I would like
5 him to answer it.

6 CHAIRPERSON: Let's ask him pertinently.

7 MR SEMENYA SC: Chair -

8 CHAIRPERSON: The question is did it
9 occur to you or did it not occur to you? We understand all
10 sorts of reasons and, or possible reasons, but did it occur
11 to you, did that thought pass through your mind that look
12 here, I'm only going to take five minutes, it may take
13 longer because I've got to go in for reconnaissance, I've
14 got to deal with things, it may take longer. I can't
15 predict at this stage how long it will take, it may be
16 necessary to give someone else a chance to get to scene 1
17 to give the people medical attention. Did that thought
18 cross your mind at the time?

19 GENERAL NAIDOO: Chair yes, and it's not
20 yesterday, the day before I think it was, we dealt with
21 this issue because I said even if I had been held up at the
22 particular place where I saw the NIU and if I felt it was
23 safe for the convoy to go on, we would've indicate as such
24 that they can proceed. There were still more than 20
25 members with the ambulance that could safely escort them

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1 through. It was dealt with about a day or two ago. So if
2 it had occurred to me that there was going to be a delay
3 and I could not go through, yes, I would have contacted but
4 at that stage it did not seem like it was going to be, so
5 it did not occur to me.

6 CHAIRPERSON: So the short answer is, it
7 didn't occur to you?

8 GENERAL NAIDOO: No.

9 MR CHASKALSON SC: But Major-General –

10 CHAIRPERSON: He hasn't answered. The
11 short answer is, it didn't occur to you? Am I correct?

12 GENERAL NAIDOO: It didn't occur to me to
13 be necessary at that stage, Chair.

14 CHAIRPERSON: Alright, thank you.

15 MR CHASKALSON SC: Major-General, was
16 there any threats to the medics at all if they turned
17 around and took a route to the scene either through forward
18 holding area 1 or through any of the other routes that were
19 marked on MMM5? Was there any threat to them at all?

20 [09:53] GENERAL NAIDOO: They would have to still
21 be escorted at the Nkaneng Settlement, we did indicate, and
22 we showed a video of a crowd forming. We also tried to
23 illustrate that there was some stoning which is something
24 that still has to be confirmed or verified, so there was
25 that threat that I know of. I would not be able to

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1 indicate at this stage any other threat that comes to mind.

2 MR CHASKALSON SC: Well, if that was the
3 only threat that you can muster, why did you not then
4 indicate to your members who had stayed behind to turn
5 around and escort the medics to where they should be?

6 GENERAL NAIDOO: Chair, and once again, I
7 have testified to this, that in my view in terms of the
8 assessment I made when I was there, I was just a few
9 hundred metres to where I was supposed to go. So it,
10 logically to me, it would not have made sense to go
11 backwards all the way around when a few hundred metres I
12 would have been at what I –

13 CHAIRPERSON: I don't think you are
14 understanding the question. The medics were at the power
15 station.

16 GENERAL NAIDOO: That's correct, Chair.

17 CHAIRPERSON: Were there people with them
18 who could escort them if they had to be escorted?

19 GENERAL NAIDOO: Chair, I have testified
20 to that effect.

21 CHAIRPERSON: There were?

22 GENERAL NAIDOO: Yes, there were.

23 CHAIRPERSON: So you didn't have to go
24 back. Once you were moving forward, seeing the NIU people,
25 seeing the strikers, realising gunshots and so forth,

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1 realising you were going to perform a task the duration of
 2 which you couldn't predict with any accuracy.
 3 GENERAL NAIDOO: Yes, Sir.
 4 CHAIRPERSON: The question is, why didn't
 5 you then without going back yourself, send a message back
 6 to the people at the power station, and say, look here, I
 7 am busy with something else, but I don't know how long it
 8 will be, but please escort the medics on another route,
 9 either the right side of the power station, which I take it
 10 wouldn't be the problem, or if the eastern side of the
 11 power station, or back to forward holding area 1 along that
 12 way. But you didn't have to even specify what the other
 13 route was. The question is, why didn't you do that?
 14 GENERAL NAIDOO: Chair, and once again, I
 15 am saying, we did go with this issue previously at this
 16 sitting, at the cross-examination, and I did indicate when
 17 I arrived at the NIU, and when I made an assessment I saw
 18 that people had been short there already, and I even put it
 19 to the Commission that if I had made that decision which is
 20 being put as a proposal to me, the further question that
 21 will be asked by the Commission would be but here you were
 22 and you saw people that were shot and you sent the medics
 23 away rather than attending to these people. I did say that
 24 in my evidence. And if we recall, if yesterday's –
 25 CHAIRPERSON: I recall that evidence.

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1 You don't have to quote chapter and verse.
 2 GENERAL NAIDOO: Chair, no, I think in
 3 addition to that, because yesterday the Commission has got
 4 this report from Professor Boffard, and he quite
 5 unequivocally says that as far as the treatment of the
 6 people at scene 2, he will not make his comment because
 7 there were at this crime scene enough time to –
 8 CHAIRPERSON: No, no, I am aware of that.
 9 GENERAL NAIDOO: Yes.
 10 CHAIRPERSON: So you of course hadn't
 11 realised there'd be two scenes any way.
 12 GENERAL NAIDOO: No, we did not.
 13 CHAIRPERSON: So you now at scene 2, I
 14 think the question as you related to the question there
 15 were four people were actually shot but let's deal with the
 16 point you are dealing with. You were at scene 2, you
 17 realised people had been shot, they need medical attention.
 18 GENERAL NAIDOO: I testified to that.
 19 CHAIRPERSON: Giving them medical
 20 attention would necessarily mean that the medical attention
 21 required by the people at scene 1 would be further delayed.
 22 GENERAL NAIDOO: That is correct.
 23 CHAIRPERSON: Right. So therefore in
 24 retrospect now, do you think you should not have contacted
 25 someone in authority as it was put to say, look here I've

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1 got a problem at scene 2 where my medical people have to
 2 give attention to people who have been shot here. There
 3 are still the people waiting at scene 1, who haven't got
 4 attention yet, I was on my way, cannot other arrangements
 5 be made to get medical attention to them? Was that
 6 something that you thought about or in retrospect is it
 7 something you think you should have thought about?
 8 GENERAL NAIDOO: Chair, yes, that is
 9 something that I did think about after yesterday's cross-
 10 examination and I am, without going – I didn't have an
 11 opportunity to go and check further on this thing, based on
 12 the radio traffic, because I know at some stage there was
 13 an indication and that's why I say I am saying this without
 14 going and checking that. At some stage there was an
 15 indication that the additional medics had been mobilised
 16 but that I will, I can go and check as to when and how and
 17 follow up on that and give the specifics but yes, I could
 18 have. I have already testified and you have put it to me
 19 previously Chair, that I did not do that.
 20 CHAIRPERSON: Yes, I think you are
 21 correct, we haven't got a time to it, if we look at exhibit
 22 FFF25 page 25, there's an entry 10:18, have you got that
 23 exhibit in front of you?
 24 GENERAL NAIDOO: No.
 25 CHAIRPERSON: It's page 25, they are

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1 getting it on the screen, it's page 25. Now, 10:18 is in
 2 fact a whole series of entries that are recorded there and
 3 the evidence is that there were so many entries coming in,
 4 they couldn't give them special entry numbers, they just
 5 wrote them down. And one entry which is under 16:10 but I
 6 don't think the time is necessarily accurate, says this,
 7 "Major General Naidoo informed the JOC that the medics must
 8 go to the kraal with Captain Loest," that's obviously scene
 9 1.
 10 GENERAL NAIDOO: Mm.
 11 CHAIRPERSON: "Where the bodies are
 12 lying, they will more EMS for assistance." So what you say
 13 is confirmed by that entry. You did that?
 14 GENERAL NAIDOO: I could not, as I said,
 15 I could not remember because I, ja, my mind was focused on
 16 the task at hand.
 17 MR SEMENYA SC: Chair, the statement of
 18 Brigadier Pretorius deals with that entry.
 19 CHAIRPERSON: Yes, and above that, under
 20 16:05 there's another entry which says, "instruction given
 21 to the medics," presumably that's from the JOC, I take it,
 22 "to go and assist at holding area, there are 30 people,
 23 bodies lying down."
 24 GENERAL NAIDOO: That will be scene 1.
 25 CHAIRPERSON: Now of course, that holding

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1 isn't right, but I presume that that is a reference to
2 scene 2.

3 GENERAL NAIDOO: Scene 1, Chair.
4 CHAIRPERSON: That's scene 1 is it?
5 GENERAL NAIDOO: Yes. The 30 people
6 lying down.
7 CHAIRPERSON: That's scene 1 is it?
8 GENERAL NAIDOO: I am presuming scene 1.
9 CHAIRPERSON: Oh, I see. Alright,
10 anyway, the point of the matter is you did at some stage
11 after four o'clock, we don't know exactly when, but you did
12 inform the JOC as appears from the entry that I read, and
13 we've been told by Mr Semenya that Brigadier Pretorius
14 deals with that in her statement.
15 MR CHASKALSON SC: Major General, are you
16 confirming that you informed the JOC that medics had to go
17 to the kraal with Captain Loest where the bodies were lying
18 and that they would need more EMS for assistance.
19 GENERAL NAIDOO: Chair, what I am
20 indicating is I remember something on – some radio
21 communication I already testified, I could not specifically
22 remember that aspect of it. But last night, when
23 allegations were made that we were ignoring people that
24 were lying and which I think was not true and I did not
25 have the opportunity to go and confirm this thing, that's

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1 why I raised it and I was – well, you heard it, but I
2 thought I will go and find where did this thing come from.
3 CHAIRPERSON: The question Advocate
4 Chaskalson asked you, was "do you confirm then that you,
5 that that entry is correct, that you did inform the JOC as
6 is recorded?"
7 GENERAL NAIDOO: That's why I said,
8 Chair, I can't remember specifically what I said or did and
9 that's why I was going to go and confirm because this was
10 an aspect I never thought of and you did discuss it at
11 length with me yesterday.
12 CHAIRPERSON: I think we now understand
13 what you are saying.
14 MR CHASKALSON SC: Chairperson, I am
15 afraid I don't understand it clearly enough. A simple yes
16 or a no would have sufficed for me. So maybe we can get it
17 now. Did you inform the JOC –
18 CHAIRPERSON: No, no, Mr Chaskalson, he's
19 given the answer. What he says is he can't give a simple
20 yes or no, obviously I presume he would like to say yes, I
21 do confirm it, because I think it helps him, but he says "I
22 can't remember" but I did remember vaguely there was
23 something of that sort but I don't remember it with
24 sufficient clarity to be able to answer yes to the direct
25 question, can I confirm it? Is that what you are saying?

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1 GENERAL NAIDOO: That's what I said,
2 Chair.
3 CHAIRPERSON: Is that what you are
4 saying?
5 GENERAL NAIDOO: That's right.
6 CHAIRPERSON: Okay.
7 MR CHASKALSON SC: Major General, were
8 you aware or how were you aware that the place that the
9 medics had to go to was the kraal?
10 GENERAL NAIDOO: Chair, I didn't even
11 know about the kraal.
12 MR CHASKALSON SC: If that was the case,
13 Major General, then why didn't you just say "no" to me when
14 I said, "did you tell the JOC that medics must go to the
15 kraal with Captain Loest where bodies are lying?"
16 GENERAL NAIDOO: Chair, as I said, I did
17 not know and that is why I have already indicated. I can't
18 specifically remember specifically certain issues. I
19 didn't, actually you surprised me with the entry, I also
20 didn't even know about the entry.
21 CHAIRPERSON: What he is saying is clear,
22 he couldn't remember it so therefore he couldn't honestly
23 say either "yes" or "no" to the question. Presumably he
24 would like to say "yes," because the entry supports him but
25 he doesn't want to say that because he can't truthfully

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1 remember it, so the most he can say is –
2 MR CHASKALSON SC: Mr Chairperson, I
3 think he would like to say "no," because it contradicts his
4 earlier version that he didn't know that there were bodies
5 at the kraal.
6 GENERAL NAIDOO: Chair, no. I have
7 already just now indicated I didn't even know where the
8 kraal was.
9 MR CHASKALSON SC: Did you know that
10 there were bodies at the kraal wherever that was?
11 GENERAL NAIDOO: Chair, I only know that
12 there were people down at the dispersion area and that is
13 what I responded to.
14 CHAIRPERSON: And presumably, sorry, have
15 you finished your answer? I don't want to interrupt.
16 GENERAL NAIDOO: And I think you know,
17 the scribe who took it, would have to give that answer in
18 terms of you know the specifics, because I have already
19 indicated I did not know about the kraal.
20 CHAIRPERSON: Well there are two points
21 really, aren't they? The one is you didn't know about the
22 kraal. You knew the dispersal area. You didn't know there
23 was a kraal there. And the second thing I take it you
24 didn't know, was that Captain Loest was involved.
25 GENERAL NAIDOO: Not.

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1 CHAIRPERSON: Is that right?
 2 GENERAL NAIDOO: Ja.
 3 CHAIRPERSON: So either you said that, in
 4 which case certain things arise, which we don't have to go
 5 to for the moment. Alternatively, that was their
 6 interpretation of what you were saying because they knew
 7 that the bodies at the JOC, they knew that there were
 8 bodies at the kraal. They knew Captain Loest was there
 9 because Brigadier Pretorius had actually been in contact
 10 with him. So either they added that, or you knew it
 11 already, but you say you didn't know that.
 12 GENERAL NAIDOO: I didn't know that, that
 13 I have testified to.
 14 MR CHASKALSON SC: Major General, you say
 15 you didn't know that Captain Loest was at the kraal.
 16 GENERAL NAIDOO: Chair, I testified I did
 17 not know where the kraal was and neither did I at any stage
 18 know that Captain Loest was involved in the particular
 19 incident at that stage.
 20 MR CHASKALSON SC: At your briefing at
 21 forward holding area 1, was it not indicated to you who
 22 would be the relevant commanders who you would have to deal
 23 with if you had to bring medics in?
 24 GENERAL NAIDOO: Chair, yes and those
 25 were POP commanders and the, there was a Lieutenant Colonel

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1 from the TRT who attended the briefing. I can't remember
 2 specifically Captain Loest being at the briefing myself,
 3 no.
 4 MR CHASKALSON SC: So Captain Loest you
 5 say wasn't designated as a person who was going to be
 6 dealing with a medical emergency on behalf of the TRT.
 7 GENERAL NAIDOO: Chair, that's not what I
 8 said. What I indicated was who I could remember that was
 9 at the briefing at 02:30 who I assumed were the commanders
 10 there were going to be managing members at the operational
 11 area and the fact of the matter was not all the commanders
 12 who took part in that action came to there, because there
 13 were I think one or two that were left behind to maintain
 14 the status that the police had at that stage.
 15 MR CHASKALSON SC: What do you recall
 16 about a radio message that you have now been testifying
 17 about? What can you recall about that radio message?
 18 GENERAL NAIDOO: Chair, what I indicated
 19 was I do remember something of a radio message and about
 20 medics but I also testified I could not remember the
 21 specifics and I went and thought about this last night
 22 after yesterday's cross-examination and I have already
 23 indicated to the Commission, I vaguely remember something.
 24 I could not remember what it was and also I could very
 25 easily say yes, that's the one that's in front of me, but I

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1 can't remember the specifics and I have testified to this.
 2 MR CHASKALSON SC: This radio message
 3 that you can remember vaguely, was it one specifically
 4 directed at you?
 5 GENERAL NAIDOO: Chair, that's what I am
 6 saying, I am not sure whether I have made a radio message,
 7 or whether I've heard a radio message. I am trying to
 8 recollect my thoughts on that matter and that's why I said
 9 I need to go and check. I have not had the opportunity
 10 since that.
 11 MR CHASKALSON SC: Yesterday you were
 12 suggesting that it was almost impossible for you to make
 13 radio messages.
 14 GENERAL NAIDOO: That was in relation to
 15 going from around the power station until we got to koppie
 16 3 because we were under the pylon and I have testified to
 17 that effect as well.
 18 MR CHASKALSON SC: So once you took
 19 yourself away from the pylons you could make radio
 20 messages?
 21 GENERAL NAIDOO: Once we got to koppie 3,
 22 radio communication was almost normal, yes.
 23 MR CHASKALSON SC: And at any stage, if
 24 you wanted to make a radio message, at that stage, you
 25 could have done so.

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1 GENERAL NAIDOO: Yes, I could have,
 2 Chair.
 3 MR CHASKALSON SC: So if you had wanted
 4 to radio to the JOC as you set off to koppie 3 and took
 5 yourself away from the pylons, you could have done so.
 6 GENERAL NAIDOO: Chair, I think I
 7 testified to that effect as well, that when you questioned
 8 me of how would I have left the other people to move on,
 9 was it necessary for me to go all the way back? I
 10 testified that I could have radioed them from where I was,
 11 number 1. Number 2, the radio traffic was still very
 12 heavy, not as heavy as it originally was when we started
 13 moving, but it was still heavy.
 14 MR CHASKALSON SC: Major General, for
 15 better or worse we don't think we have been able to
 16 identify any radio messages that you made, but we can
 17 identify one that seems to have been addressed to you.
 18 Maybe this will jog your memory, it's not much of a
 19 message, but the timing is interesting. Can we look at
 20 exhibit I1. And can we play exhibit I1 from about 03:28
 21 and the sound we are interested in. Chairperson, there are
 22 no, I think it may be - I haven't looked at the visuals, I
 23 don't think there's anything of a distressing nature but it
 24 may be a sensible precaution to - in fact, what will
 25 probably be quicker is if I quickly look at the visuals now

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1 and if there's going to be a need for a comfort break
2 before the tea break why don't we take it now? Otherwise
3 it will take me 30 seconds to find the relevant point and I
4 can look at the visuals without the sound.

5 CHAIRPERSON: Let's wait, I will give you
6 45 seconds to check.

7 MR CHASKALSON SC: Chairperson, if we
8 start at 03:28 of the video, we will not see anything
9 distressing.

10 CHAIRPERSON: Alright, then we can
11 proceed without any warning.

12 MR CHASKALSON SC: And can we play the
13 sound up loud.

14 [VIDEO SHOWN]

15 MR CHASKALSON SC: If we can stop that.
16 Did you hear your name being called on the radio, General
17 Naidoo?

18 GENERAL NAIDOO: It sounded like, Chair.

19 MR CHASKALSON SC: Well, was there any
20 other general with a name that starts "Nai" in the
21 operation?

22 GENERAL NAIDOO: Chair, I think that
23 answer is apparent.

24 MR CHASKALSON SC: Well, do you accept
25 that your name was being called on the radio during that?

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1 CHAIRPERSON: Sorry, can we hear it
2 again, because it went quite fast.

3 MR CHASKALSON SC: You get "General Nai,"
4 and then it appears as if Captain Rylands moves his cell
5 phone which is doing the recording, away from his radio.
6 So one can't hear much more thereafter. But let us –

7 CHAIRPERSON: Let us just hear again.

8 [VIDEO SHOWN]

9 [10:13] MR CHASKALSON SC: Do you accept that
10 that seems to be a call on the radio to you?

11 GENERAL NAIDOO: Chair, I don't know.

12 CHAIRPERSON: I am sorry, I know I am
13 sometimes obtuse and sometimes very obtuse, I didn't hear
14 it on that occasion again. Is it near the beginning, or
15 the end, where must I listen for it?

16 [VIDEO SHOWN]

17 MR CHASKALSON SC: If we can go to about,
18 I think it was 31 on this counter. If we play it, I will
19 watch the counter and give an exact figure.

20 [VIDEO SHOWN]

21 34:35.

22 CHAIRPERSON: Did you hear your name
23 being mentioned, General, or part of it?

24 GENERAL NAIDOO: I heard something but I
25 don't know, what does that mean, Chair?

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1 MR CHASKALSON SC: Well, the question is,
2 on the day in question and you were listening to the radio,
3 did you hear someone trying to give you a message or
4 something?

5 GENERAL NAIDOO: Chair, had somebody
6 called me I would have responded, if I had been in a
7 position to respond. As I said, I had transmitting
8 problems when we were at a particular point, but otherwise
9 we were listening to the radio on a continuous basis. So,
10 if there was possible that somebody was calling me in the
11 normal communication traffic, yes, I would have responded.

12 MR CHASKALSON SC: Well, this particular
13 point where we heard "General Nai" and then it goes away,
14 came at 16:17:17 ETV time, 16:17:17 ETV time. Brigadier
15 Pretorius called you at 16:17:22 Vodacom time and do you
16 recall we estimated at 30 second gap, so that would be
17 16:17:47 Vodacom time – ETV time, 30 seconds after that
18 communication. Now what appears to us is that whatever was
19 being said to you, we do not know what was being said to
20 you on the radio, but that prompted a call from Brigadier
21 Pretorius in response to this radio message and that may
22 well be what resulted ultimately in what is reflected in
23 the OB as - that we see. We know you had a call from
24 Brigadier Pretorius at 16:17:47 and we know it was a
25 completed call and that it ran for, I forget the exact

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1 number of seconds, I think it was over 30.

2 MR SEMENYA SC: Chair, is there any
3 evidence by Mr Chaskalson that that is what prompted
4 Brigadier Pretorius to do something? Has he spoken to him,
5 is he going to give evidence?

6 CHAIRPERSON: He is putting it as an
7 inference.

8 MR CHASKALSON SC: I am putting it as an
9 inference and I am asking for the witness's response.

10 MR SEMENYA SC: Chair, it can't be an
11 inference to say something prompted somebody to do
12 something. That's direct evidence.

13 CHAIRPERSON: What Brigadier Pretorius
14 says in her statement, which is JJJ187 is the following,
15 "paragraph 14," second half of paragraph 14, he says, she
16 actually refers to that entry from the OB where I read, she
17 says, "I went back to my radio operator to instruct him to
18 please ensure that all information on the operations
19 recorded in detail as far as possible. At 15:45 chopper 1
20 reported on the radio that people are moving that people
21 are moving from the koppie. OB 10:16:08 20:12." And on
22 15:55 Brigadier Calitz reported that the group on the
23 koppie is moving towards TRT members and trying to attack
24 them." That's the passage we discussed earlier. "From
25 there, 15:56, the radio was taken over by members busy with

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1 the operation and all we could do was to monitor the
 2 messages and try to record all information on the scene as
 3 best as possible. OB 10:18/O, it should /08 actually,
 4 20.12 refers.” That’s that entry which I mentioned. Then
 5 she says this, “I picked up from the radio which was very
 6 busy during this period, that people were injured and
 7 killed, and I started to arrange for additional ambulances
 8 and other support personnel to attend immediately to the
 9 scene to assist.”
 10 So it would appear that she responded to what she
 11 heard on the radio, and I take it – and we know that among
 12 the things she heard, was – may well have been your voice,
 13 unless you actually phoned through, and then she then
 14 arranged as she puts it, for additional ambulances and
 15 other support personnel to attend immediately at the scene
 16 to assist. So that, I am not sure we are going to get any
 17 more clarity on the paper before us, I mean maybe Brigadier
 18 Pretorius can give oral evidence which amplifies it, but
 19 this seems to be the underlying information relating to
 20 that entry. I don’t know whether that assists in this
 21 regard to clarify what happened.
 22 GENERAL NAIDOO: Chair, I am still not
 23 sure what am I supposed to answer in terms of that video
 24 that was played.
 25 MR CHASKALSON SC: Well, do you still

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1 have no recollection of the telephone from Brigadier
 2 Pretorius to you at 16:17:22?
 3 GENERAL NAIDOO: Chair, I indicated
 4 already the first time that I actually used my telephone
 5 during this period, and I did this at length yesterday, was
 6 at the time when I phoned the JOC to tell them look this is
 7 where I am and you did cross-examine me on that in detail
 8 as well.
 9 MR CHASKALSON SC: So your answer is, you
 10 still had no recollection of the call that Brigadier
 11 Pretorius made to you and that was answered?
 12 GENERAL NAIDOO: That is correct, Chair.
 13 MR CHASKALSON SC: A 32 second call.
 14 GENERAL NAIDOO: Chair, if I had spoken
 15 to her then, I think I would have remembered because I
 16 would have told her the situation I was in.
 17 CHAIRPERSON: Forgive my saying this, we
 18 had an earlier instance yesterday indicated your memory was
 19 fallible, so people can’t be criticised for not remembering
 20 accurately everything particularly in times of great
 21 excitement and disturbance and turbulence and so on.
 22 Anyway, the fact is you say you can’t remember the call.
 23 GENERAL NAIDOO: Yes, I am saying that I
 24 do not remember speaking to Brigadier Pretorius. I’ve
 25 testified that the first time I spoke to Brigadier

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1 Pretorius was at the time when I phoned her.
 2 MR SEMENYA SC: Just for the record, the
 3 supplementary statement of Brigadier Pretorius on this
 4 point is ready, it will be issued shortly. I am just
 5 making the statement so that it must not be construed as an
 6 afterthought in the light of the cross-examination by Mr
 7 Chaskalson.
 8 CHAIRPERSON: Yes, it wasn’t in your
 9 bundle, but you say that the reason is it’s being prepared.
 10 MR SEMENYA SC: Ja.
 11 CHAIRPERSON: And as soon as it’s
 12 available, you will give it to us? Suitably punched, so we
 13 can put it in our files.
 14 MR SEMENYA SC: Indeed Chair.
 15 MR CHASKALSON SC: Maybe then I should
 16 put the further circumstance of your evidence, so that it
 17 too can be addressed in the supplementary statement and we
 18 can look in that regard at the unofficial notes taken by
 19 Captain van Heerden of the radio conversations forces moved
 20 in and the operation occurred, that is pages –
 21 CHAIRPERSON: If you can give us an
 22 exhibit number.
 23 MR CHASKALSON SC: JJJ19 – JJJ168, it’s
 24 the typed pages towards – I think pages 48 and 49 of this
 25 document. The typed pages that are, the only typed pages

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1 in these documents – in this document which – here we go.
 2 Those are retyped from Captain van Heerden’s handwritten
 3 notes. The entry that we’ve seen from the occurrence book
 4 about “Major General informed the JOC that the medics must
 5 go to the kraal with Captain Loest where the bodies are
 6 lying, they will need EMS for assistance.” Appears to
 7 correspond to the line if we can go a little bit lower
 8 down, “medics with Captain Loest move into the kraal.”
 9 That line there. The entry 3 above, can be timed on the
 10 radio transmissions, so we hear a water canon has stopped
 11 spraying and Canters must move faster at ETV time 16:14:06
 12 to about 16:14:20 on exhibit I1 from 24 seconds in. So the
 13 entry that appears to give rise to what’s in the occurrence
 14 book, comes shortly after – well, comes three entries after
 15 an entry that starts at 16:14:06 and we have the other
 16 circumstantial fact of at 16:17:17 there’s a call to you on
 17 the radio, and at 16:17:47 there is a telephone call to
 18 you, from Brigadier Pretorius. That’s the full range of
 19 the circumstantial evidence, possibly Brigadier Pretorius
 20 will help us to understand what it all means, if anything.
 21 CHAIRPERSON: While we are looking at
 22 circumstantial evidence, a couple of points arise, Captain
 23 van Heerden’s notes also indicate that a few entries above,
 24 three entries above the one which you say enables us to –
 25 or two entries, above the entries enables us to fix a time

<p style="text-align: right;">Page 23555</p> <p>1 to it, is an entry "instructions for medics to go in at 2 holding area." Now that presumably is an instruction to 3 the medics who were under the command of the witness. 4 Would you agree with that? 5 GENERAL NAIDOO: Chair, I think we have 6 to see in the context of time. 7 MR CHASKALSON SC: I can give you a very 8 good context because we can bound both ends of this one, 9 because the immediate preceding entry, "people, arrests can 10 be made is ETV 16:11:18." So it's between 16:11:18 and 11 16:14:06. 12 CHAIRPERSON: Alright. Sometime, just 13 before quarter past four, there was an instruction for 14 medics to go in at holding area. Now your medics were the 15 ones at the holding area, weren't they? There weren't 16 medics at the other holding area? So that sounds like an 17 instruction directed to what I can call your medics. Then, 18 some entries later, we have this entry, "medics with 19 Captain Loest move into the kraal," so someone, and we know 20 who it was I think, because we know it from Brigadier 21 Pretorius's statement we have already, that she then took 22 the initiative to get medics to go in with Captain Loest to 23 scene 1. So he must have known that for some reason or 24 other your medics weren't going to go there. That's right, 25 isn't it?</p>	<p style="text-align: right;">Page 23557</p> <p>1 CHAIRPERSON: It's a matter which he's 2 not really able to help us on the part of giving his – my 3 question, I was actually asking questions which in his 4 favour, and the inference suggested by Mr Semenya is I 5 would have thought less in the witness's favour than my 6 interests. 7 MR CHASKALSON SC: It may be more in Mr 8 Semenya's clients' favour than the witness's favour which 9 is precisely why the witness should answer independently. 10 CHAIRPERSON: Alright, anyway, the water 11 is under the bridge now. You heard the point I put to you, 12 you heard what Mr Semenya said. Now, can you, are able to 13 help us on this? If you aren't just say so and we can move 14 on to the next point. 15 GENERAL NAIDOO: Ja, Chair, just the one 16 point that I want to make is, that we had an emergency 17 response team. There was next to the JOC the entire 18 disaster management medical team that functioned for 19 Lonmin, and if I look at the people that were involved 20 eventually, I think we cannot rule out that those people 21 were mobilised to go to Captain Loest, that would be one of 22 the assumptions of where the bulk of the additional people 23 came from. 24 CHAIRPERSON: You see what Brigadier 25 Pretorius says, she was responsible for that mobilisation,</p>
<p style="text-align: right;">Page 23556</p> <p>1 GENERAL NAIDOO: Chair – 2 CHAIRPERSON: And that would appear, it 3 would appear that she derived that knowledge I would think, 4 I am just putting things to you that occur to me, from the 5 material before us. She must have got that information 6 from you, because there is an entry which we've seen, 7 "Major General Naidoo informed the JOC," etcetera. Now 8 whether you took the initiative in phoning them, or whether 9 they phoned you, it's not clear from the entry, but what is 10 clear, is the information that they'd have to send 11 additional ambulances and extra medics to scene 1, because 12 your people weren't able to go there, that appears to have 13 come from you, that's correct, isn't it? 14 MR SEMENYA SC: Chair, is the other 15 inference not competent on what we see that given now the 16 size of the operation that had to be attended to and 17 knowing that the medics with the general were only three, 18 that she was asking for additional medics? Does it 19 necessarily mean the two were talking to each other? 20 CHAIRPERSON: It's a point – 21 MR CHASKALSON SC: Chairperson, I must 22 object to Mr Semenya putting possible answers to the 23 witness. He can file the supplementary statement from 24 Brigadier Pretorius, but the witness should be obliged to 25 answer questions without assistance from counsel.</p>	<p style="text-align: right;">Page 23558</p> <p>1 whether she did it because she knew you hadn't gone to 2 scene 1, or whether she did it merely by way of sending 3 extra people, to help the ones she thought you had taken 4 there is a matter which she will help us on, you can't, we 5 are just wasting time, asking you to speculate. 6 GENERAL NAIDOO: Yes. 7 CHAIRPERSON: Can we take the comfort 8 break now, Mr Chaskalson? Unless you want to ask a 9 rounding off question. 10 MR CHASKALSON SC: Just one last question 11 before we move to a slightly different issue, which is when 12 you went forth into scene 3 – scene 2 koppie 3, did you 13 leave anybody else in command of the medics at the 14 substation? 15 GENERAL NAIDOO: Chair, it's also 16 indicated in my testimony that the main body of the K9, 17 with the K9 commander, as well as other officers were still 18 with the main body of people. Colonel – 19 CHAIRPERSON: Yes? Sorry, carry on. 20 GENERAL NAIDOO: So I am saying that the 21 K9 had in addition Colonel Mopedi also other officers, 22 Captains. 23 MR CHASKALSON SC: So you say Colonel 24 Mopedi was left behind? 25 GENERAL NAIDOO: Chair, what I mean –</p>

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1 MR CHASKALSON SC: So sorry, was left
 2 behind in command of the medics.
 3 GENERAL NAIDOO: Chair, what I said was,
 4 the question was, was anybody still in charge of the group
 5 that were at the –
 6 MR CHASKALSON SC: No, no, that wasn't
 7 the question, did you leave anybody else in command of the
 8 medics at the substation, with specific responsibility for
 9 the medics?
 10 GENERAL NAIDOO: Chair, the person that
 11 was, and I can get his name now, but he was the unit
 12 commander for Stilfontein, he was a captain, he was
 13 alongside me before we moved off and when I gave the
 14 instruction to hold here, when we moved forward, and I
 15 think we can get his particulars and testify to the fact
 16 that I gave him that instruction.
 17 CHAIRPERSON: What instruction did you
 18 give him?
 19 GENERAL NAIDOO: That they should hold –
 20 the main body should hold at the power station.
 21 CHAIRPERSON: Yes, but did you say, "you
 22 will now be in charge of the medics?" Or was that implied?
 23 GENERAL NAIDOO: Chair, it is implied.
 24 CHAIRPERSON: Okay.
 25 GENERAL NAIDOO: But as I said the

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1 commander of the K9 was Colonel Mopedi but I am not saying
 2 that I spoke to him at that stage, because there were a
 3 whole lot of members, and the member that was – or the
 4 officer that was directly next to me was the captain that I
 5 referred to.
 6 MR CHASKALSON SC: Chair, I do want to
 7 take it further but if you want to take the comfort break,
 8 it's not going to be quick.
 9 CHAIRPERSON: I think we should take the
 10 comfort break now. We must try to be back in ten minutes
 11 if we can.
 12 [COMMISSION ADJOURNS COMMISSION RESUME]
 13 [10:46] CHAIRPERSON: The Commission resumes.
 14 Major-General, you're still under oath.
 15 GENERAL NAIDOO: Thank you, Chair.
 16 CHAIRPERSON: Mr Chaskalson?
 17 GENERAL NAIDOO: s.u.o.
 18 CROSS-EXAMINATION BY MR CHASKALSON SC (CONTD.):
 19 Major-General, I understood your evidence before we broke
 20 to say that you left Colonel Mopedi in charge of the whole
 21 contingent at the power station with no specific
 22 instructions in relation to the medics.
 23 GENERAL NAIDOO: Chair, before we broke
 24 what I indicated was, I indicated to the Captain of the dog
 25 unit that was next to me – I can get his name, I can't

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1 remember his name offhand, he is the unit commander of the
 2 Stilfontein dog unit – I indicated that they should hold –
 3 CHAIRPERSON: You dropped your voice.
 4 He's the unit commander of the Stilfontein?
 5 GENERAL NAIDOO: K9 unit.
 6 CHAIRPERSON: K9 unit.
 7 GENERAL NAIDOO: Ja, who was part of the
 8 command structure of the dog units. There were, I think,
 9 two captains and Colonel Mopedi. I indicated that they
 10 should hold. At that stage, as I indicated, I did not have
 11 sight of Colonel Mopedi in the confusion of the vehicles
 12 that were pulling up and I asked them to hold at the area
 13 and then I moved forward. So I did not have a briefing,
 14 no.
 15 CHAIRPERSON: So what you're saying is,
 16 by implication, you left the senior police officer there
 17 whom you asked to hold the situation. By implication you
 18 left him in charge of the paramedics to do what you would
 19 have done if you'd been there.
 20 GENERAL NAIDOO: That's correct, Chair.
 21 MR CHASKALSON SC: I'm still a bit
 22 confused. You spoke to the Captain. You understood that
 23 that would be conveyed to the Colonel and the Colonel would
 24 also hold.
 25 GENERAL NAIDOO: Chair, yes. I have

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1 indicated that at that stage that the, what do you call it,
 2 convoy was still stopping and people were still organising
 3 themselves so I took it that the Colonel was in the mix
 4 there. So when I indicated him to hold, our indication was
 5 for the main body to hold because by then the advance
 6 vehicles were on the road and that is why I took those
 7 vehicles forward.
 8 MR CHASKALSON SC: You see, Major-
 9 General, if we look at the statement of Colonel Mopedi it
 10 doesn't appear that he did hold. Can we call up Colonel
 11 Mopedi's statement? It would be one of the exhibits that
 12 was provided a few days ago. It is in fact an affidavit.
 13 If we go down to paragraph 5 –
 14 CHAIRPERSON: Is this an exhibit?
 15 MR CHASKALSON SC: Sorry, Chairperson, it
 16 hasn't been made an exhibit yet.
 17 CHAIRPERSON: So we haven't seen it
 18 before, we'll make it MMM20, shall we? The witness hasn't
 19 seen it before either, have you? Have you seen it before,
 20 Major-General?
 21 MR CHASKALSON SC: He has, Chairperson.
 22 CHAIRPERSON: You have, okay. MMM20
 23 affidavit – we won't add the extra nonsense of the heading
 24 – affidavit by Colonel, how do you spell Mopedi? M-O-P-E-
 25 D-I.

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1 GENERAL NAIDOO: M-O-P-E-D-I, I think,
 2 yes.
 3 CHAIRPERSON: I see. He comes from
 4 Sekukuneland, I take it.
 5 GENERAL NAIDOO: From Lichtenburg, Chair.
 6 CHAIRPERSON: Where?
 7 GENERAL NAIDOO: No, he's stationed there
 8 but he sounds like a man from Sekukuneland originally.
 9 Anyway what does he say, the man from Sekukuneland?
 10 MR CHASKALSON SC: He says in paragraph
 11 5, "At about 15:25 I heard the gunshots at the mountain and
 12 Major-General Naidoo instructed us, all members of his
 13 group to form up a convoy and move slowly to the direction
 14 of the south." So the first thing that's interesting about
 15 Colonel Mopedi's affidavit is that he hears the shootings
 16 before the convoy starts moving. "Convoy consisted" –
 17 shootings at scene 1 – "consisted of K9 vehicles, POPS
 18 vehicles. When we reached the power station the members
 19 were ordered to leave the vehicles, form up and proceed
 20 with foot towards the mountain koppie scene 2. When we
 21 were nearer we were confronted with this group, with group
 22 of protesters who were armed with dangerous weapons. The
 23 shooting erupted between the police and the protesters and
 24 by that time could not see who was firing shots." So I
 25 read that affidavit to mean that Colonel Mopedi was part of

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1 the group that moved forward.
 2 GENERAL NAIDOO: Chair, as I indicated,
 3 at that stage when I moved forward I did not see Colonel
 4 Mopedi. The Captain that was alongside me was the one that
 5 I indicated to hold. I have testified to that.
 6 COMMISSIONER HEMRAJ: There were only 10
 7 or 12 of you that actually moved forward with the five
 8 vehicles?
 9 GENERAL NAIDOO: About 10, yes, 10
 10 members, two per vehicle.
 11 COMMISSIONER HEMRAJ: And was the Colonel
 12 one of them?
 13 GENERAL NAIDOO: Chair, it was a strung
 14 out line. That's why I indicated I could tell you the
 15 vehicle that was next to mine and the vehicle –
 16 MR CHASKALSON SC: The two Captains of
 17 whom we're aware from the K9 unit at forward holding area 1
 18 were Mowabe, Captain Mowabe and Captain Motshoeneng. Does
 19 that assist you?
 20 GENERAL NAIDOO: Chair, I can get the
 21 specific information if it's required. I'm not going to
 22 say one or the other if I can't remember the name.
 23 MR CHASKALSON SC: But neither of those
 24 two names rings a bell to you?
 25 GENERAL NAIDOO: No, Chair.

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1 MR CHASKALSON SC: Well, can you get the
 2 specific name and if needs be we'll return to this?
 3 GENERAL NAIDOO: I can do that, Chair.
 4 MR CHASKALSON SC: Major-General, thus
 5 far we've been focusing on issues relating to your
 6 responsibility for the state of affairs that left Mr Mdze
 7 bleeding to death on the ground for over an hour before he
 8 was treated by medics. I want now to look at the
 9 responsibility of other members of the SAPS and for this
 10 purpose I would, I'm going to play another three videos and
 11 in respect of these videos we do need a warning but
 12 possibly before we play the videos for orient – no, we'll
 13 need the warning for the photograph as well.
 14 CHAIRPERSON: For housekeeping purposes
 15 tell me what they are and let's enter them, as it were, in
 16 the record, then I'll give a warning and then we can
 17 proceed.
 18 MR CHASKALSON SC: They are JJJ194.36.
 19 CHAIRPERSON: So that's JJJ194.36?
 20 MR CHASKALSON SC: That's correct.
 21 CHAIRPERSON: I'll just describe it as
 22 video clip JJJ194.36. They are effectively exhibits
 23 already then, are they?
 24 MR CHASKALSON SC: Yes, yes.
 25 CHAIRPERSON: We don't have to give them

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1 exhibit numbers.
 2 MR CHASKALSON SC: No, no.
 3 CHAIRPERSON: You'll simply indicate as
 4 they are played, where they are found on the exhibit JJJ194
 5 which is already before us. I understand we're going to
 6 see some videos now which will depict scenes which will
 7 cause distress and sorrow and emotional pain to a number of
 8 the members of the family, loved ones and relatives of some
 9 of the deceased. So I ask that after what I've just said
 10 is interpreted, a minute elapse to enable those who feel
 11 that they may find seeing these videos a source of pain and
 12 distress for them, to leave the chamber. The minute will
 13 start now. The minute is up.
 14 MR CHASKALSON SC: Chairperson, before we
 15 show the videos I'd like to call up a still photograph
 16 which is exhibit JJJ.050 just for orientation purposes so
 17 that we can see where we are in the videos. Chairperson,
 18 this is a photograph – can we zoom back so that as much of
 19 the photograph as possible is visible? This is all we
 20 have. It's a photograph taken by Captain Loest of the
 21 scene after the shootings. We don't have an ETV time for
 22 it because we can't link Captain Loest's camera to our
 23 chain but Mr Mdze is lying in this position in the mouth of
 24 the kraal, which is where he lay for the entire period in
 25 which he was photographed after his fatal shooting. For

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1 orientation purposes I would draw attention to this vehicle
 2 which is the TRT vehicle which will be visible in some of
 3 the videos that follow because Mr Mdze is not visible in
 4 the videos that follow because this vehicle obscures him.
 5 So he is lying in the mouth of the kraal, the vehicle is to
 6 his left as you face the kraal.
 7 CHAIRPERSON: You say he's in the mouth
 8 of the kraal. Is he the one directly in the mouth of the
 9 kraal?
 10 MR CHASKALSON SC: Indeed.
 11 CHAIRPERSON: Or is he the one between
 12 that person who's in the mouth of the kraal and the
 13 vehicle?
 14 MR CHASKALSON SC: No, directly in the
 15 mouth of the kraal.
 16 CHAIRPERSON: I see, thank you.
 17 COMMISSIONER HEMRAJ: Mr Chaskalson,
 18 yesterday's photograph, I don't know which one it was that
 19 you referred us to, had another person lying in front of Mr
 20 Mdze. Had people been moved from the scene?
 21 MR CHASKALSON SC: It was a video,
 22 Commissioner. I would have to – at this stage nobody has
 23 been removed from the scene. There may well have been
 24 movement of bodies, physical moving of bodies. There are
 25 videos earlier which show TRT members dragging bodies away

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1 from each other.
 2 COMMISSIONER HEMRAJ: And this still is
 3 before medical attention?
 4 MR CHASKALSON SC: Long before medical
 5 attention. This is – well, actually I can't say long
 6 before medical attention but it well before medical
 7 attention.
 8 CHAIRPERSON: Now that we've seen the
 9 still, do we move on to see the video now? Is there
 10 anything else you want to point out to us on the still –
 11 MR CHASKALSON SC: No, it was just for
 12 orientation because we won't see Mr Mdze in the next video
 13 which is JJJ194.36. Can we play that video? Now the TRT
 14 vehicle which we have previously seen is this vehicle. So
 15 Mr Mdze would be probably just off this photograph to the
 16 left. The point that I want to draw attention to is the
 17 number of SAPS members who are within probably 10 to 15
 18 yards of Mr Mdze, still in the TRT line and if we just run
 19 this video – the time of this video is ETV 16:10:05,
 20 16:10:05 and that's 16 minutes and 15 seconds after the
 21 shootings.
 22 [VIDEO IS SHOWN]
 23 MR CHASKALSON SC: If we can then move to
 24 the next video which is 37, 16:10:57 which would be 17
 25 minutes and seven seconds after the shootings and these are

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1 POPS members in the vicinity of the kraal as Canters are
 2 being taken out, one would imagine either to arrest people
 3 who are capable of being arrested at the first scene or to
 4 the second scene. It's 16:10:57. I doubt, well, it's
 5 possible that the Canters could have gone to Brigadier
 6 Calitz's are at that stage.
 7 [VIDEO IS SHOWN]
 8 MR CHASKALSON SC: The third video,
 9 JJJ194.38, 16:11:17.
 10 [VIDEO IS SHOWN]
 11 MR CHASKALSON SC: A Canter passing and
 12 we now have POPS members milling around the victims at the
 13 front of the kraal. This will be, the Canters are passing
 14 the right-hand side of the kraal, are going in the
 15 direction of the right-hand side of the kraal. These POPS
 16 members would also be possibly within 25 metres of Mr Mdze.
 17 Now Major-General, we've seen how many SAPS members were in
 18 the immediate vicinity of Mr Mdze in the period 16 to 17
 19 minutes after the shootings when medical attention had
 20 still not arrived. In terms of SAPS protocols in this sort
 21 of situation, would it have been expected of any one of
 22 these members to attempt to administer first aid
 23 themselves?
 24 GENERAL NAIDOO: Chair, I'm sure, as I
 25 have already previously also testified, if there was

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1 somebody with a particular skill they would have. We have
 2 testified that there was a shooting and Lieutenant-Colonel,
 3 the negotiator –
 4 COMMISSIONER HEMRAJ: McIntosh.
 5 GENERAL NAIDOO: McIntosh, when he saw
 6 the shooting incident, he did. So if we see before us
 7 police officers not trying to – so it's my assumption, I
 8 don't know those police officers personally, that we did
 9 not see what happened immediately after the shooting,
 10 whether they ascertained whether the people were injured or
 11 dead. We are seeing people standing next to people lying
 12 down and the fact that they did not attend could imply that
 13 they don't have the skill or the knowhow to deal with
 14 something like a gunshot wound. It does not imply that
 15 they are ignoring this thing and they're not responding.
 16 MR CHASKALSON SC: Major-General, I want
 17 to separate two issues. The first is if there was within
 18 this group one or more people who were trained in first
 19 aid, in terms of SAPS protocols would it have been expected
 20 of them to intervene to administer first aid? Just a yes
 21 or a no.
 22 GENERAL NAIDOO: Chair, I don't know of a
 23 specific protocol which says that they should not attend
 24 and if they had the skill, yes, I think they would.
 25 MR CHASKALSON SC: No, I'm asking a

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1 systemic question. In terms of SAPS protocols are they
 2 under a duty to intervene to administer first aid if they
 3 have the skill?
 4 GENERAL NAIDOO: Chair, and that is why I
 5 have indicated with an example that if they had the skill
 6 one would've expected they would have responded and Colonel
 7 McIntosh did, so my assumption that these people who were
 8 there did not have it and they did not but –
 9 CHAIRPERSON: No, you're not answering
 10 the question – forgive me for interrupting, you're not
 11 answering the question. The question is a very simple
 12 question. If you don't know the answer then you must say
 13 so.
 14 GENERAL NAIDOO: Yes.
 15 CHAIRPERSON: Is there a police protocol
 16 that says that a member of the service with first aid
 17 training and skills arrives on a scene where someone is
 18 injured, make it more restricted, been injured by some
 19 kind of police action, is obliged – the member with the
 20 first aid skills is obliged to endeavour to administer
 21 first aid to the person so injured.
 22 GENERAL NAIDOO: I would –
 23 CHAIRPERSON: You don't know whether
 24 there's such a protocol.
 25 GENERAL NAIDOO: I would not think that I

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1 would know for a specific thing –
 2 CHAIRPERSON: So the answer is, you don't
 3 know?
 4 GENERAL NAIDOO: Yes.
 5 CHAIRPERSON: Okay.
 6 MR CHASKALSON SC: So there may be, there
 7 may not be.
 8 GENERAL NAIDOO: I don't know.
 9 CHAIRPERSON: I mean there's no kind of
 10 sort of Hippocratic oath applicable to a policeman with
 11 paramedical training – sorry, no, that's not right. You
 12 don't know whether there's something equivalent to a sort
 13 of Hippocratic oath. You know the Hippocratic oath, the
 14 doctor comes on the scene, someone requires medical
 15 attention, the doctor is obliged to give it. You don't
 16 know whether there's such an obligations in terms of a
 17 police protocol resting on members of the police service
 18 who have paramedic training such as Colonel McIntosh had,
 19 is that right? You don't know?
 20 GENERAL NAIDOO: Chair, no. I said I
 21 don't know. If I had known I would have given an
 22 indication.
 23 MR CHASKALSON SC: Do you know whether
 24 any investigation has been conducted by the SAPS into why
 25 there was no first aid administered by any of their members

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1 at scene 1?
 2 GENERAL NAIDOO: Chair, I do not know
 3 specifically of any investigation as indicated.
 4 [11:05] MR CHASKALSON SC: This involves a legal
 5 proposition which may be open to some debate but I would
 6 imagine or I would put it very firmly that at civil law, in
 7 terms of the civil obligations of a policeman to act, the
 8 law would expect of a policeman who has the capacity to
 9 administer first aid, to administer first aid when that is
 10 necessary in front of him or her.
 11 CHAIRPERSON: I don't think the witness
 12 can be expected to answer that. That, as you say, is a
 13 legal question. It would be the liability in delict for an
 14 omission and the person who was guilty of the omission, if
 15 one can use that language, would be liable in delict if he
 16 or she was under a legal duty to act. Whether there's a
 17 legal duty to act, as you say, is a legal question which
 18 the courts have to decide and I'm not sure that –
 19 MR CHASKALSON SC: I'm not asking –
 20 CHAIRPERSON: - but anyway –
 21 MR CHASKALSON SC: I'm not asking the
 22 witness to comment on that, I'm putting the proposition as
 23 a foundation for the –
 24 CHAIRPERSON: [Microphone off, inaudible]
 25 MR CHASKALSON SC: - to an end, yes.

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1 Major-General, in TRT vehicles that are taken to a scene
 2 like this in advance of the scene, would it be customary
 3 for first aid equipment to be packed in the vehicle?
 4 GENERAL NAIDOO: Chair, I'm not
 5 specifically aware but I do know that we try to equip
 6 police vehicles with certain basic equipment such as
 7 triangles, emergency stuff. Some vehicles do come with or
 8 are equipped with first aid kits, et cetera, the basic
 9 stuff but as to whether it is a compliance that must, I
 10 can't indicate that.
 11 CHAIRPERSON: I'm sure if there are such
 12 protocols or rules in the police service as to the
 13 equipment that must be carried in police vehicles, duty
 14 police, members of the service with paramedic training or
 15 first aid training to act, I take it the police legal team
 16 will be able to provide us with that information.
 17 MR CHASKALSON SC: With a view to
 18 assisting this Commission in making recommendations, would
 19 you accept that there should be a protocol which says that
 20 SAPS members with first aid training on the scene of an
 21 incident where first aid is called for, should administer
 22 first aid?
 23 GENERAL NAIDOO: Chair, I don't know.
 24 Here I am sitting on one side on a practical issue and on
 25 the other side as a question of law. I don't think I am

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1 competent to question, to respond on an issue of a
 2 competent – on the question of law, because obviously that
 3 will have implications, policies and legal, but on the
 4 practical side of it, it would be and we do try within our
 5 existing capacity to train – and I have testified to this
 6 as well before – members, where we can and we feel that
 7 they should have the skills, hence we have the example of
 8 Colonel McIntosh who – there are other members who have
 9 that training but as to the other aspect, I think that we
 10 would have to look at. It's a policy question and should
 11 be dealt with as such.

12 MR CHASKALSON SC: Well, one of the
 13 things this Commission has to do is to make policy
 14 recommendations. Can you see any reasons not to make a
 15 recommendation that policemen should be expected to
 16 administer first aid if they have first aid training in a
 17 situation where first aid is called for?

18 CHAIRPERSON: Is it suggested this
 19 witness is in a position to give us a meaningful
 20 recommendation by virtue of his experience and present duty
 21 –

22 MR CHASKALSON SC: Absolutely,
 23 Chairperson. If there are policy considerations which we,
 24 because we are lay people and not the deputy Provincial
 25 Commissioner of Police, are unable to see, certain

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1 complications that make the question a fairly glib
 2 question, then this witness ought to be able to identify
 3 them for us.

4 CHAIRPERSON: Let's ask him if he is in a
 5 position. What exactly is your sphere of responsibility as
 6 deputy Provincial Commissioner in the North-West Province?

7 GENERAL NAIDOO: Chair, I'm responsible
 8 for certain support functions such as planning,
 9 organisational development, communications and the
 10 inspection, maintaining monitoring evaluation of standards
 11 of services.

12 CHAIRPERSON: So does anything that you
 13 have to do as part of your responsibility or are able to do
 14 by virtue of your past experience, put you in a position to
 15 comment by way of making a recommendation as to what the
 16 policy should be, if it isn't policy already, in relation
 17 to the point you're being asked by Mr Chaskalson?

18 GENERAL NAIDOO: Chair, yes. I see a
 19 potential conflict and I see this coming out of the issue
 20 we dealt with, with the medics previously, the potential
 21 conflict being here we have a police official who is
 22 expected to carry arms, bear arms and possibly use force
 23 and also at the same time we're giving him the other
 24 responsibility. In some way he's got to be conflicted. On
 25 a normal basis the expectation is, any human being who sees

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1 another human being in need will render what assistance,
 2 not just the police, and the duty of the police as part of
 3 the emergency services so to speak, that supports our
 4 community, it's do what is within our means to ensure the
 5 safety and security of the community which may by
 6 implication include rendering what basic – but if we make
 7 it an imperative without balancing it with the other aspect
 8 because obviously there is a legal, as it was pointed out,
 9 implication of such a thing, if we make it an imperative
 10 without making sure that all the other things are in place
 11 I think we're creating a scenario where every corner we go
 12 around and if a police official is there and a person is
 13 seriously injured or passes away, then the SAPS is going to
 14 say but that was your obligation to do it because there's
 15 an imperative because that was not his primary objective,
 16 it's something that comes secondary.

17 CHAIRPERSON: This is not a matter you
 18 can comment on but as far as I can remember, Mr Chaskalson,
 19 I think Mr White deals with it in relation to the position
 20 in Northern Ireland and suggests there is some kind of
 21 obligation, I think. He refers to the McIntosh example but
 22 anyway, we don't have to debate with this witness, he
 23 doesn't know about it.

24 MR CHASKALSON SC: Next question along
 25 similar lines, can you see any disadvantage in a policy

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1 recommendation that within – that in any operation
 2 conducted by a tactical unit there should be first aid
 3 equipment in at least one of the vehicles that is taken to
 4 the scene of the operation.

5 GENERAL NAIDOO: Chair, yes. That's a
 6 two-edged sword. On the face value it would make sense.
 7 It doesn't make, it would be futile to say no, it doesn't
 8 make sense but it must grow and we make the policy and then
 9 it's a problem that we have. We need to follow that policy
 10 with proper infrastructure and backup to make those
 11 policies work. Having that equipment in the vehicle could
 12 not necessarily solve the problem. We need to then look at
 13 the skills of the people that we employ, we'd have to
 14 maintain those skills because from what I understand from
 15 Colonel McIntosh this is an annual renewal of your skills.
 16 So it's not a matter of just buying a first aid kit and
 17 putting it in the vehicle because if that member does not
 18 use that properly, there's also a legal implication saying
 19 that you should not have interfered if you did not know
 20 what you were doing. So it's a reasonable suggestion but
 21 the problem I have as a policy implementer, it must follow
 22 through with all the things that make a policy work
 23 otherwise we're going to make a nice policy and it's going
 24 to sit only with problems for the state, not practical to
 25 implement.

<p style="text-align: right;">Page 23579</p> <p>1 MR CHASKALSON SC: To assist us to make 2 recommendations in relation to policies that would be both 3 practical and nice, can you indicate to us what additional 4 requirements would be necessary to ensure that we don't 5 have a repeat of the situation that happened in this case 6 in relation to the failure to prevent Mr Mdze's death? 7 GENERAL NAIDOO: Chair, I think one of 8 the challenges the SAPS has and we are trying to address it 9 within the constraints of our available resources, is the 10 use of armoured vehicles because had the situation allowed 11 us, we would have had people on the scene in an armoured 12 vehicle - obviously we would not have allowed them in a 13 soft vehicle - and they would have been able to. We did 14 not have sufficient armoured vehicles because of the 15 constraints in terms of the cost of purchasing, maintaining 16 and running these armoured vehicles. So the greater use of 17 armoured vehicles as I indicated, with the issue of the 18 special task force yesterday, they did not see the need to 19 shoot because they were safe in them, no matter how many 20 shots were fired at them. It's a practical thing because 21 if you have some sort of setup like that there is no real 22 reason to shoot unless something happens. So the 23 deployment of medical personnel would not have been at 24 forward holding area 1, then they would have been somewhere 25 closer to the operational and they would have been with the</p>	<p style="text-align: right;">Page 23581</p> <p>1 GENERAL NAIDOO: Maybe, Chair, we are 2 missing each other on this point. My understanding and 3 response to that question was how, what steps or what 4 measures we would take, we would do or we will implement to 5 prevent such delays in the future. That was my 6 understanding and my answer moved from the premise that 7 then I would not depend on first aid, I would have more 8 advanced medical personnel, be it SAPS or from wherever we 9 source them, much closer to the scene in relative safety of 10 armoured vehicles, able to move in and assist when 11 required. The reason that medical personnel could not be 12 brought closer to the scene at that stage was because it 13 was not safe and that's why we had to escort them. 14 MR CHASKALSON SC: No, with respect, 15 Major-General, that last statement you're making is 16 palpably incorrect. By the time these photographs are 17 taken we have run 16 minutes after the shootings. There is 18 no suggestion of any threat to the safety of anybody at 19 scene 1. If you had turned around and taken your convoy 20 there, the medics would have been there. The reason they 21 weren't there is not that it wasn't safe, it was that you 22 hadn't taken them there. 23 GENERAL NAIDOO: Chair, I think we've 24 agreed not to agree on this matter. I've indicated a video 25 that we played on Monday morning indicating my perspective</p>
<p style="text-align: right;">Page 23580</p> <p>1 police officials in the vehicle but we did not have 2 sufficient resources in terms of that. 3 CHAIRPERSON: I understand that. I'm not 4 sure that the sole reason why the STF people didn't fire 5 was the one you mentioned but we won't debate that with you 6 now. 7 GENERAL NAIDOO: Chair, yes - 8 CHAIRPERSON: We won't debate that with 9 you. 10 GENERAL NAIDOO: No, of course - 11 CHAIRPERSON: We can ask them when they 12 come. 13 GENERAL NAIDOO: There was the perception 14 of how much threat they were under, yes. 15 MR CHASKALSON SC: Major-General, 16 resources and expenditure is something that falls squarely 17 within your ambit as deputy Provincial Commissioner, is 18 that not so? 19 GENERAL NAIDOO: Yes. 20 MR CHASKALSON SC: Does it strike you as 21 a sensible use of resources to invest in armoured vehicles, 22 sufficient armoured vehicles to ensure that first aid 23 personnel can be at scenes in armoured vehicles rather than 24 giving basic training and providing the basic equipment is 25 available to SAPS members themselves?</p>	<p style="text-align: right;">Page 23582</p> <p>1 on this issue in terms of the additional medical personnel 2 but my statement was, or my proposal, response to the 3 question in terms of armoured vehicles was given in the 4 context as to what I would foresee as a measure that we put 5 in that will prevent, that will have medical assistance 6 closer and that's how I responded, not necessarily relevant 7 to that context that we see before us. 8 COMMISSIONER HEMRAJ: General, surely 9 putting highly specialised medical personnel in a police 10 armoured vehicle is not going to be the end of it. You 11 will obviously need all the specialised equipment that for 12 example a medical vehicle would have. 13 GENERAL NAIDOO: Chair, I have already 14 testified for Tuesday and Wednesday the medical personnel 15 were not there in their own vehicle at forward holding area 16 1. They were in my vehicle with their equipment in the 17 back of my vehicle. So my assumption is based on the fact 18 that they had their kit in two bags and they saw that as 19 sufficient for dealing with whatever we said. So yes, 20 there may be and I'm not going to be the one to tell you 21 that this can or cannot be but it's based on what my 22 experience was for those two days. 23 MR CHASKALSON SC: But when you went to 24 the tactical phase you had three ambulances. I forget 25 whether it was two or three.</p>

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1 GENERAL NAIDOO: I testified to the fact
 2 that on Wednesday, sorry, on Thursday the 16th it was not
 3 the same personnel. The new people came. The first two
 4 days it was exactly the same personnel and these personnel
 5 came from somewhere in Johannesburg and they came with
 6 their own vehicles, yes, but the original two that were
 7 deployed on Tuesday and Wednesday, they were deployed in
 8 our vehicle. So it's a practical situation that can
 9 assist.

10 MR CHASKALSON SC: Major-General, is
 11 there anything else that you would like this Commission to
 12 have regard to in relation to what duties should rest on
 13 the SAPS in relation to the emergency treatment of victims
 14 of their action?

15 GENERAL NAIDOO: Chair, I think I've
 16 dealt with it as far as I could.

17 CHAIRPERSON: The answer to the question
 18 is there's nothing extra you want to mention?

19 GENERAL NAIDOO: No, nothing.

20 CHAIRPERSON: Alright.

21 MR CHASKALSON SC: I want to move to
 22 another photograph, it's JJJ29.161. This is Mr Mdze, ETV
 23 16:18:02, it's 27 minutes after the shooting and Mr Mdze
 24 died, according to Prof Boffard, in all likelihood from
 25 loss of blood principally from an upper, two R5 wounds to

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1 his upper left arm. If we look at the area at his left
 2 hand we can see what appears to be blood accumulating
 3 either on the ground or on the sleeve of his shirt. Can we
 4 zoom in at that area? This is after Mr Mdze has been
 5 bleeding unattended for 27 minutes. In those 27 minutes,
 6 Major-General, you've already managed to get two shots off
 7 at scene 2. The medics have been standing idle at the
 8 power station for about 19 minutes through two four minute
 9 idling periods and an indefinite period since you packed
 10 your stun grenades and headed off to join the action at
 11 scene 2. Let's go back to Prof Boffard's report on page
 12 20. Can we have Prof Boffard's report?

13 CHAIRPERSON: That's exhibit MMM10.

14 MR CHASKALSON SC: If we can go down, try
 15 19. No – no, sorry, just scroll down. Scroll down, if you
 16 will. I've lost my reference.

17 CHAIRPERSON: He deals with Mr Mdze on
 18 page 24.

19 MR CHASKALSON SC: 24, that is the –

20 CHAIRPERSON: Paragraph D.4.10 of his
 21 report.

22 MR CHASKALSON SC: Let's look at the
 23 injuries of Mr Mdze. Compound injuries, two projectiles
 24 with shattering of left upper arm. Compound injuries
 25 without fracture, right lower leg and then other injuries

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1 which Prof Boffard later describes as not, in his view,
 2 material to the death. If we go down, if we scroll down,
 3 with regard to TRISS scoring he is predicted as having a
 4 greater than 90% chance of survival and the cause of death
 5 was failure to control bleeding in a timeous fashion due to
 6 the non-availability of medical personnel. Bleeding in the
 7 upper and lower limb could have been controlled by direct
 8 pressure on the vessels or a tourniquet. Now Mr Mdze had
 9 no fractures in his leg. Prof Boffard doesn't say but it
 10 may have been possible for Mr Mdze to walk or to crawl with
 11 some difficulty. Let's assume that it was and let's assume
 12 that he attempted to walk or crawl to somewhere where he
 13 would find a friend to bandage his arm and leg and thus
 14 save his life. In terms of police protocols, what would
 15 the response of the TRT members at the scene have had to be
 16 if they saw Mr Mdze trying to walk or crawl to where he
 17 could get medical treatment?

18 [11:25] GENERAL NAIDOO: Chair, I am not sure -

19 MR CHASKALSON SC: Well –

20 GENERAL NAIDOO: - how will they treat
 21 that because it will depend on the individual that's there,
 22 would he perceive the person that's trying to move away,
 23 you know, trying to do something that's aggressive or would
 24 he have really perceived that this is a badly injured
 25 person that requires assistance. So it's based on the

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1 perception of the person that is there. In terms of
 2 handling of a particular scene, obviously rendering of
 3 assistance to people at the scene would be a priority but a
 4 shooting had occurred and I'm asking to make a presumption
 5 on something that I think each individual that handles it –
 6 because each person that handled that particular situation
 7 would make a call. There's nothing written in policy
 8 saying you've shot a suspect and he wants to go on his own
 9 for – I mean you understand, I'm sitting with a practical
 10 problem.

11 CHAIRPERSON: I take it to be practical,
 12 if he'd tried to move away they would have stopped him
 13 because I assume that they would have arrested him. I take
 14 it everyone who wasn't dead who had taken part in what the
 15 police perceived to be – rightly or wrongly is another
 16 matter – police perceived to have been an attack on them by
 17 the advancing group of strikers, anyone who wasn't dead
 18 would have been arrested and if he'd tried to get away or
 19 even to get medical assistance –

20 GENERAL NAIDOO: It would have been
 21 perceived –

22 CHAIRPERSON: I take it they would have
 23 stopped it, but of course then the next question is would
 24 they then themselves have given him medical – that was
 25 raised with the other questions and we cannot speculate, I

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1 suppose.

2 GENERAL NAIDOO: That's correct, Chair.

3 CHAIRPERSON: A further point is we don't

4 know the skills, if any, of particular members of the

5 service who would have handled the situation if he had

6 tried to get away, so that's the answer.

7 GENERAL NAIDOO: Yes, I think the

8 response, whilst the normal explanation would be that you

9 would give assistance to a person as soon as possible, we

10 are dealing with a situation that's now being treated as a

11 crime scene and somebody that is trying to leave the crime

12 scene who was shot by the police in circumstances where we

13 would treat him as a suspect. So the individual that's

14 handling that, it's a subjective thing. The normal

15 expectation is that when a police official gets to a

16 particular scene like that he would ensure that assistance

17 is rendered, that's either by facilitating or doing it

18 himself. So I don't know what would be the response of the

19 member that would see this.

20 MR CHASKALSON SC: You see that gets back

21 to our policy question, Major-General, because I want to

22 put to you that it is utterly untenable to have a policy

23 which would result in a situation where a wounded man,

24 bleeding to death, is unable to get medical assistance

25 through his own endeavours because the police will hold him

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1 under arrest but is similarly not provided with assistance

2 by the police. One can't have a situation where the policy

3 means that people die, bleeding to death on the ground

4 understood. Whatever resource issues are implicated, one

5 has to have a policy that will prevent someone bleeding to

6 death for no good reason. What's your response to that?

7 GENERAL NAIDOO: Obviously we are – we

8 are supposed to be a service to the community so things

9 that retard the provision of service to the community needs

10 to be addressed and the public service invariably addresses

11 these things by way of policies. So I agree that we should

12 have a policy clarifying. You must remember we are talking

13 about an individual and possibly very junior member who

14 faced, who has to face these tough questions and to make a

15 decision there at ground level on his own – when is say

16 tough questions, we are on a daily basis and it is an issue

17 which is in the media continuously, facing billions of

18 rands of civil claims for issues like a person that was

19 transported in a police vehicle to go and get medical

20 assistance and the police are now being sued for

21 contributing to the death because the person was in a

22 police vehicle. It happens. Or we have a person in a

23 police vehicle and we are transporting them to a medical

24 facility and there's a collision, so your policies have to

25 make, have to have a balance with some reality as well. So

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1 that individual police official has to implement that

2 policy and our job is to make it as easy as possible for

3 him to implement and I think that would be, not running

4 away from any responsibilities that the public service in

5 total and the police specifically have to ensure rendering

6 service but we are to protect them also from – it's also

7 the public funds that are being wasted on these civil

8 claims where things could be prevented by way of policy.

9 MR CHASKALSON SC: Chairperson, I'm going

10 to be about another five to 10 minutes before I close this

11 topic. I don't know if you want to take the tea

12 adjournment now or –

13 CHAIRPERSON: I was proposing to take it

14 at quarter to 12 but I'll take, if it's convenient for you

15 at this stage I'll take it now.

16 MR CHASKALSON SC: Oh no, I didn't

17 realise we were going to run till quarter to 12. I can

18 certainly run on.

19 CHAIRPERSON: Well, if we take the tea

20 adjournment now, we'll come back at quarter to and we'll

21 have an hour and a quarter before 1 o'clock. That's the

22 way I was working it. So let's take the tea adjournment

23 now then.

24 [COMMISSION ADJOURNS COMMISSION RESUMES]

25 [12:20] MR CHASKALSON SC: Chair, can you repeat

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1 that with the loudspeaker n, the mike?

2 CHAIRPERSON: I haven't come to say the

3 Commission resumes. I have come to say that it will resume

4 at quarter to two.

5 [COMMISSION ADJOURNS COMMISSION RESUMES]

6 [13:56] CHAIRPERSON: The Commission resumes.

7 Major-General, you're still under oath.

8 GENERAL NAIDOO: Thank you.

9 CHAIRPERSON: Mr Chaskalson?

10 GENERAL NAIDOO: s.u.o.

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

12 Chairperson, I'm not sure if we need to issue a new, a

13 fresh warning because there still will be some distressing

14 photographs.

15 CHAIRPERSON: I am informed that we are

16 going to be shown some photographs of some of the people

17 who were shot on the 16th of August 2012 at Marikana. These

18 are rather unpleasant to look at because of the nature of

19 the injuries that were sustained and those who were close

20 to the people whose pictures will be shown, loved ones,

21 relatives and so on will, I fear, suffer considerable

22 emotional distress and anxiety and unhappiness and pain at

23 looking at these photographs and so I am mentioning this so

24 that those who feel that they will be affected by this will

25 have an opportunity to leave the chamber. I take it what I

1 have said is being interpreted, simultaneous translation,
2 so I will give the people, anyone who feels the need to
3 leave or feels it may be desirable to leave, a minute to do
4 so before we proceed. The minute starts now. A minute has
5 now elapsed so I take it no-one wishes to leave so you may
6 proceed, Mr Chaskalson.

7 MR CHASKALSON SC: Thank you,
8 Chairperson. The first is just a clarifying issue flowing
9 from the question that Commissioner Hemraj put to me
10 earlier in relation to those two photographs of Mr Mdze and
11 if we can just play JJJ194.32 again, I think we can clarify
12 the cause of confusion.

13 COMMISSIONER HEMRAJ: Mr Chaskalson,
14 before you move to another point, arising from your last
15 line of cross-examination, does the post-mortem report
16 indicate the cause of death as exsanguination? I don't
17 have my report here so I couldn't check it.

18 MR CHASKALSON SC: The post-mortem
19 report, well, I'll alert you – we can call up the post-
20 mortem report.

21 COMMISSIONER HEMRAJ: You don't have to
22 do it now but I'd just like to know what the cause of death
23 was that was recorded.

24 CHAIRPERSON: Maybe we should do it now
25 because it won't take too long because it's a matter that

1 of the last hours of Mr Mdze's life by going to JJJ10.4551
2 and what we see in this slide if we zoom in around the ring
3 of vehicles on the edge of the road opposite the entrance
4 to the kraal is that the paramedics have just arrived at
5 the scene. If we go back, the men who I – these are
6 paramedics, sorry, the middle vehicle of the three – can we
7 screen it a little bit up a bit so I can get some context
8 in which to describe it? Sorry, zoom a bit back. The TRT
9 vehicle that we saw earlier on in the shot is still present
10 at the scene. It's to the right of the mouth of the kraal
11 as we look at the photograph. There is now an ambulance
12 that has parked itself across the road, which is one of a
13 ring of four vehicles opposite the mouth of the kraal and
14 people are getting, people in civilian clothing are
15 approaching the victims lying on the ground. If we zoom
16 into the mouth of the kraal we'll see that Mr Mdze is still
17 in – one has to zoom in a great deal because it's a small
18 image. If one looks at the sharper images, the sharp
19 images on the sharper screens, we see that Mr Mdze is still
20 in the same position and this would appear to be shortly
21 before the paramedics actually reach the victims. This is
22 now 59 minutes and 32 seconds after the shootings. On the
23 sharper images one can see Mr Mdze lying in the same
24 position across the mouth of the kraal, the same position
25 that he has been in since he was first photographed there

1 otherwise will be left hanging in the air. I don't know
2 whether the reference number DR595/2012 is one that will
3 help you. That's what is given on Prof Boffard's report.

4 MR CHASKALSON SC: Commissioner, I can
5 read you the conclusion. It's rather a sparse post-mortem
6 report but the conclusion is that "The cause/causes of
7 death was/were gunshot wounds to the left arm and abdomen
8 with signs of exsanguination" and it forms part of the
9 bundle at exhibit A, from page 662 of exhibit A. If we can
10 then show JJJ194.32 and, Commissioner, I've looked at this
11 video clip and the photograph at JJJ5.50 and they are in
12 fact the identical scene. It's an issue of foreshortening.
13 If one looks at the – if one takes a line of the victim in
14 front of Mr Mdze one sees that his legs are pointing
15 broadly in the direction of Mr Mdze's legs and because of
16 the foreshortening one doesn't see the distance between the
17 victim and Mr Mdze. If we can go to JJJ5.050, which is
18 taken at probably a 60% angle to this video – sorry, no,
19 let's just go to the photograph JJJ5.50. The man that we
20 see in JJ194 who appears to be next to Mr Mdze is in fact
21 this man but the distance is not visible in 194 because of
22 foreshortening. One can see also that there is a little
23 bit of a depression, as it were, in the direction of Mr
24 Mdze which would accentuate the foreshortening issue.
25 If we can just briefly complete the video record

1 on JJJ, or filmed there on JJJ194 which was at ETV time
2 16:08:05 approximately 45 minutes previously.

3 The first electronic record of Mr Mdze having
4 received treatment is in fact JJJ194.61, if we can call up
5 JJJ194.61. If we can play this video, Mr Mdze is the man
6 on the stretcher being stretched away from the scene by
7 two paramedics. That is at ETV time 17:25:01, 17:25:01.
8 It's one minute and – it's more than an hour and a half,
9 one hour and 31 minutes after the shootings. It is
10 possible, of course, that Mr Mdze was treated before this
11 point. It's just that this is the earliest record of his
12 treatment. We know that by one hour and 31 minutes after
13 the shootings he had been treated or had received the
14 attention of paramedics. We know that by 59 minutes and I
15 forget the number, 30 or 40 seconds, he had not. So he
16 first received treatment somewhere between an hour and an
17 hour and a half after the shootings.

18 CHAIRPERSON: Do we know when he died?

19 MR CHASKALSON SC: We don't know exactly
20 when he died but he died shortly after arrival at the
21 Andrew Saffi Memorial Hospital. We may be able to
22 ascertain a time of death with further investigation.

23 CHAIRPERSON: That reminds me that in the
24 report Dr Boffard, Prof Boffard talks about the nearest
25 hospital, hospitals and he mentions two hospitals and he

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1 talks about the time it would take to get to those
2 hospitals. He doesn't mention the Saffi Hospital. I'm not
3 sure how long it takes, will take to get from scene 1 to
4 the Saffi Hospital, Andrew Saffi Hospital and I'm not sure
5 of course how well equipped the Saffi Hospital is but it
6 struck me that it was potentially a gap that needs to be
7 filled in the report.

8 MR CHASKALSON SC: Chairperson, it was
9 raised with Prof Boffard. He, for the purposes of the
10 classification that he was using he was of the view that
11 the Saffi Hospital would not have sufficient equipment to
12 fall into the categories of hospitals that we're talking
13 about but we can get him to clarify that in more detail –

14 CHAIRPERSON: Perhaps his report could be
15 amplified in that respect.

16 MR CHASKALSON SC: I'm sure we could ask
17 him to do that.

18 CHAIRPERSON: It struck me that it might
19 be something that was overlooked. I don't know if it will
20 affect the result of anything but it is something that's
21 obviously got to be clarified.

22 MR CHASKALSON SC: We can get him to
23 clarify it. Now, Major-General, would you agree on the
24 basis of what we have seen that the death of Mr Mdze was an
25 avoidable death?

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1 GENERAL NAIDOO: Chair, I think it has
2 already been put in place in the report saying that this
3 was potentially avoidable. I have no medical expertise and
4 background to say his death was avoidable or not. That
5 presumption is made I see also in the report before me but
6 I don't think I am competent to make that, sir.

7 MR CHASKALSON SC: Do you personally feel
8 any responsibility for this death?

9 GENERAL NAIDOO: Chair –

10 MR CHASKALSON SC: Let me not say feel,
11 accept, accept any responsibility for this death.

12 GENERAL NAIDOO: Chair, if there's any
13 way that I could have contributed, prevented such a death
14 but as I said, based on my limited knowledge of the medical
15 profession I can't say that I could or could not accept
16 responsibility for such death.

17 MR CHASKALSON SC: Well, if it turns out
18 that the cause of the death was the delay in getting
19 paramedics to scene 1, would you accept any personal
20 responsibility for this death?

21 GENERAL NAIDOO: Chair, I would have to
22 deal with that particular thing when I get to it. I mean
23 it's pretty much like the statement that we already dealt
24 with previously, so I'm being asked to indicate on
25 something that I don't think I have the expertise on.

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1 CHAIRPERSON: The question is a bit
2 ambiguous. The ambiguity lies in the word "delay." I take
3 it, it will be argued that the period that elapsed from his
4 sustaining the injuries and his receiving treatment, if
5 that's regarded as a delay then according to what Prof
6 Boffard says it would appear that that delay may well be
7 causally connected to his death. The real question, of
8 course, as far as the witness is concerned is whether the
9 delay, in the objective abstract sense, is something which
10 he can be held responsible in the sense of to blame, in
11 other words whether he was guilty of culpable conduct which
12 contributed to the delay and but for which the delay would
13 not have occurred, in which case then the questions you ask
14 would arise but simply to ask him whether he is responsible
15 for the delay is not sufficiently specific in focus to
16 elicit a meaningful answer.

17 MR CHASKALSON SC: Chairperson, I'm not
18 looking here for legal culpability or an issue with a view
19 to legal causation. I'm looking at an issue which is
20 relevant to the terms of reference of this Commission in
21 terms of promoting reconciliation and trying to build a
22 future in which parties can relate to one another in a
23 different way and part of that, as in the Truth and
24 Reconciliation Commission, is that where parties are
25 responsible, not necessarily legal responsible but

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1 responsible at a moral level for the suffering or the
2 losses of other parties, they need to accept that
3 responsibility and then we can move forward or try to move
4 forward and that is what I'm asking this witness, whether
5 he would accept any of this responsibility.

6 CHAIRPERSON: Mr Semanya?

7 MR SEMENYA SC: Chair, as far as we are
8 aware there are no such terms of reference talking about
9 restoration.

10 CHAIRPERSON: Anyway I think the question
11 has been asked and the witness's answer is forthcoming so I
12 don't know that the point can be taken any further
13 actually. Mr Chaskalson, surely – you asked the question,
14 you got an answer and it may be the subject of argument
15 later but I don't know that there's any point in asking any
16 more questions of the witness on this point.

17 MR CHASKALSON SC: Alright, well, let's
18 leave Mr Mdze for now. Major-General, there were – am I
19 correct that there were three ambulances with you at
20 forward holding area 1?

21 GENERAL NAIDOO: That's correct, Chair.

22 MR CHASKALSON SC: And that was the full
23 complement of ambulances initially available in the
24 operation?

25 GENERAL NAIDOO: The standby, yes, Chair.

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1 MR CHASKALSON SC: Who decided on how
 2 many ambulances would be called for in this operation?
 3 GENERAL NAIDOO: Chair, the ambulance
 4 capacity as well as the fire brigade capacity was provided
 5 for us by Lonmin. We did not ask them for a specific
 6 number. They indicated to us that they had this available
 7 and as I indicated, in the two days preceding the incident
 8 we had just two paramedics, no ambulance and they were
 9 seated in our vehicle. So the SAPS didn't decide whether
 10 they wanted one or two, it was a gesture or an assistance
 11 that was rendered by Lonmin.
 12 [14:16] CHAIRPERSON: Did the SAPS ask for
 13 ambulances though?
 14 GENERAL NAIDOO: Chair, I personally
 15 don't know whether we asked, because when I was being
 16 deployed, I was then called back and said, look, the
 17 paramedics are also joining you. On Tuesday, it was not
 18 part of the original briefing, it happened just after that
 19 and since Tuesday, they've been with us. So we can
 20 establish how did we arrive at it, but as I said I am not
 21 aware of whether personally we asked or whether they
 22 provided.
 23 CHAIRPERSON: When were you told that the
 24 paramedics will be joining you?
 25 GENERAL NAIDOO: On Tuesday, Chair.

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1 CHAIRPERSON: On Tuesday.
 2 GENERAL NAIDOO: When we first moved to
 3 the forward holding area.
 4 CHAIRPERSON: I see.
 5 MR CHASKALSON SC: Major General, who was
 6 in the JOC who was responsible for organising ambulances,
 7 organising ambulances, not getting them to the scene?
 8 Organising the provision of ambulances for the operation.
 9 GENERAL NAIDOO: Chair, in this case, the
 10 Lonmin assets that we had with us, there was a
 11 representative from Lonmin in the JOC with us.
 12 MR CHASKALSON SC: No, but Major General,
 13 somebody had to take a decision, we need three ambulances,
 14 we need two – or we only need two paramedics or we need
 15 whatever you can give us and we are happy to deal with
 16 whatever you can give us. Who would that have been within
 17 the JOC?
 18 GENERAL NAIDOO: Chair, I have already
 19 indicated that I am not personally aware who made these
 20 arrangements other than to say that just as I left the JOC,
 21 I was called back to say, that the paramedic team will be
 22 joining us and I should place them in our vehicles. So as
 23 I said, on the briefing and in the planning we originally
 24 received on Tuesday, there was no indication of these
 25 people being on site with us. In the normal procedure in

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1 the JOC, in an operation that's running, the contact
 2 particulars and the details of the nearest ambulance and
 3 hospitals are normally kept at the JOC. And depending on
 4 the nature of the operation, then at some stage, if it's
 5 required then people are asked to come and stand by at a
 6 closer place. But at this stage, as I said on Tuesday, in
 7 the original briefing, there was no indication look so many
 8 ambulances will be required, etcetera. I think possibly
 9 because there was somewhere an ongoing discussion that came
 10 just after we left that was finalised.
 11 MR CHASKALSON SC: What about on Thursday
 12 when the tactical phase was now being contemplated and the
 13 need for ambulances was all the greater? Was there any
 14 discussion of this in the JOC?
 15 GENERAL NAIDOO: Not that I can recall,
 16 Chair. As I indicated on Tuesday, the first time I
 17 received the paramedics, the same paramedics reported again
 18 on Wednesday and they served with us. On Thursday, I was
 19 then informed before I left the JOC that there were new
 20 people, and that they had their own vehicles. So, that was
 21 the gist of it, Chair.
 22 CHAIRPERSON: So the new people, but was
 23 the number the same?
 24 GENERAL NAIDOO: No, the Tuesday and
 25 Wednesday there were two, and they came from a particular

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1 place and on Thursday it was three and they came from
 2 another place.
 3 CHAIRPERSON: Three paramedics?
 4 GENERAL NAIDOO: That's correct.
 5 CHAIRPERSON: And how many ambulances?
 6 GENERAL NAIDOO: Three.
 7 CHAIRPERSON: Three?
 8 GENERAL NAIDOO: Ja, well, it was – one
 9 was a car and the other two were units.
 10 CHAIRPERSON: Yes. The same number of
 11 ambulances or car and units as you put it?
 12 GENERAL NAIDOO: That's correct.
 13 CHAIRPERSON: And that remained constant
 14 from Tuesday to Thursday?
 15 GENERAL NAIDOO: No, Chair.
 16 CHAIRPERSON: So did you get more on
 17 Thursday?
 18 GENERAL NAIDOO: One more.
 19 CHAIRPERSON: One more. One more
 20 paramedic and one more ambulance or vehicle, anyway?
 21 GENERAL NAIDOO: No, no, Chair, as I
 22 indicated Tuesday and Wednesday there was no ambulance.
 23 The paramedics came with the equipment –
 24 CHAIRPERSON: I see.
 25 GENERAL NAIDOO: - and we put them into

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1 the police vehicles.

2 CHAIRPERSON: I see, you did say that.

3 So the first time the ambulances were there, was Thursday?

4 GENERAL NAIDOO: It was a different group

5 of people, yes.

6 CHAIRPERSON: And you don't know who

7 organised that?

8 GENERAL NAIDOO: No, Chair, we normally

9 had this liaison from Lonmin in the JOC with us and I am

10 sure it was done through that. We would not have directly

11 –

12 CHAIRPERSON: When I used the word

13 “organised,” I wasn't speaking clearly, presumably the

14 organisation on the Lonmin side, the provision of the

15 ambulances was done by a Lonmin person.

16 GENERAL NAIDOO: Yes.

17 CHAIRPERSON: But somebody presumably on

18 the JOC asked for it, but you don't know who that is?

19 GENERAL NAIDOO: I am not sure.

20 MR CHASKALSON SC: Now in terms of the

21 structure and functioning of the JOC, into whose portfolio

22 would this sort of an issue fall?

23 GENERAL NAIDOO: Chair, firstly, there

24 are representatives in the JOC and as you quite rightly

25 indicated previously in this testimony, people with

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1 specific responsibilities and we had somebody representing

2 communication, somebody representing the tactical forces,

3 the K9, the public order police, etcetera. And at this

4 stage, as far as I can remember the Lonmin representative

5 who was part of the JOC, assisted us with some categories

6 of the issues. Such as we made use of their CCTV cameras,

7 the medical personnel, the fire personnel, that was

8 accessed through the Lonmin representative. So basically

9 what happened is, the JOC representatives were part of the

10 planning, to ensure a plan was in place, and the plan

11 advised what resources are required, I would assume.

12 MR CHASKALSON SC: Well, who then would

13 be part of that planning group that would say we need three

14 ambulances as resources?

15 GENERAL NAIDOO: Chair, we could have –

16 we can check with the planner, and find out from him who

17 proposed the number of ambulances, because obviously he

18 would require that information from a particular source if

19 that was contained in his plan, if it said three

20 ambulances. I don't have that information as to who

21 provided him with the number because I myself did not know

22 who procured the services.

23 MR CHASKALSON SC: Do you know if Lonmin

24 were paid for the ambulances that they provided?

25 GENERAL NAIDOO: I am not aware, Chair.

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1 MR CHASKALSON SC: Well, surely it's

2 something that would ultimately have come out of your North

3 West policing budget if they had been paid.

4 GENERAL NAIDOO: Chair, yes, if there had

5 been a particular financial implication I would have been

6 aware of it. I am not specifically aware of such a

7 financial implication.

8 MR CHASKALSON SC: What sort of role did

9 you play in relation to the finances and accounts at the

10 Marikana operation? Were you responsible for dealing with

11 financial issues there?

12 GENERAL NAIDOO: No, Chair, we had a

13 Colonel Meiring who deal with the financial issues and we

14 had also somebody dealing with the supply chain issues,

15 another Colonel as well.

16 MR CHASKALSON SC: Would that be Colonel

17 Alexander?

18 GENERAL NAIDOO: No, that will be Colonel

19 Tufeni. Brigadier Alexander was the provincial head, she

20 was not at Marikana.

21 MR CHASKALSON SC: And have you played

22 any oversight role in terms of the Marikana accounts?

23 GENERAL NAIDOO: Chair, no, I did not

24 play, in terms of my deployment in Marikana I initially

25 when I arrived there, facilitated that these officers be

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1 released from their various posts to come and deal with the

2 supporting issues, and then I was deployed to where I was

3 deployed as indicated.

4 MR CHASKALSON SC: You see, one of the

5 issues that the Provincial Commissioner expressed concern

6 about in a meeting with Lonmin on the Tuesday, was the cost

7 of the operation to her budget. Is that an issue that she

8 raised with you at all?

9 GENERAL NAIDOO: Chair, the cost of

10 police operations is always an issue, and something that we

11 as line management always need to be aware of because our

12 resources are not infinite and we have to with the

13 available resources do much more than what's generally

14 expected. Currently in the North West we have indicated

15 you know, a series of unrest and other challenges which we

16 had to deal with.

17 MR CHASKALSON SC: You see, Major

18 General, I am trying to find out why the number 3 was

19 picked on. We know that there were no ambulances on

20 Tuesday and Wednesday and then on Thursday ambulances

21 arrived but it's three ambulances. I am trying to work out

22 why it was three as opposed to zero on Tuesday and

23 Wednesday, or as opposed to ten. Can you not help us any

24 further in this regard?

25 GENERAL NAIDOO: Chair, that's why I say

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1 we had somebody who ensured the provision of these services
 2 in the JOC and I am sure if we follow it backwards, we will
 3 get to how did they arrive at a particular number, but as
 4 far as I know, I am aware, I did not see any specific
 5 request for a specific number, so I am not able to indicate
 6 why two, and why three. On Tuesday, I was given two, just
 7 as I was about to deploy to forward holding area 1.
 8 MR CHASKALSON SC: You see, another thing
 9 about the number 3 ambulances that has struck me as
 10 potentially worrying, is that straight after the JOCCOM on
 11 the Thursday there are statements saying that Brigadier van
 12 Zyl tried to organise four mortuary vehicles. Do you know
 13 anything about this?
 14 GENERAL NAIDOO: Chair, I have heard
 15 about this recently, at that stage, no, I have never heard
 16 about it.
 17 MR CHASKALSON SC: Can you think of why
 18 SAPS might want more mortuary vehicles than ambulances at
 19 an operation?
 20 GENERAL NAIDOO: Chair, the fact that a
 21 mortuary vehicle was requested itself, it's for me unusual.
 22 At that stage we did not have a body that we need to deal
 23 with. I know on the days preceding we required mortuary
 24 vehicles and yes, we waited quite some time. I testified
 25 with regard to the body of Mr Twala, it took them many

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1 hours and eventually we were dealing with the, that
 2 particular scene until quite late, when it was getting
 3 dark. But as to why he requested it, I think it would be a
 4 good start to ask him why he requested it.
 5 MR CHASKALSON SC: We will in due course.
 6 We at this stage have only you. Can I ask you, I assume
 7 from your evidence thus far that this was not a matter that
 8 was discussed at the JOCCOM while you were present on the
 9 morning of the 16th?
 10 GENERAL NAIDOO: I have never heard about
 11 any mortuary van, no, Chair.
 12 MR CHASKALSON SC: And would you have
 13 heard all the discussions at the JOCCOM?
 14 GENERAL NAIDOO: Chair, it's something
 15 like that, and obviously there was minutes as well. It's
 16 not even reflected in the minutes, so –
 17 MR CHASKALSON SC: Those minutes were
 18 prepared at Roots quite a long time after the event.
 19 GENERAL NAIDOO: Based on notes taken at
 20 that particular time, Chair.
 21 MR CHASKALSON SC: I think the more
 22 pertinent point that you might have made, is it is not
 23 recorded in the notes either. You said earlier that you
 24 didn't arrive at the JOCCOM on time on the morning of the
 25 16th, is that correct?

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1 GENERAL NAIDOO: Chair, that's correct, I
 2 arrived a little later.
 3 MR CHASKALSON SC: So it's possible
 4 things may have been discussed in your absence.
 5 GENERAL NAIDOO: That is also possible,
 6 and as I indicated, I did get a further briefing from
 7 General Annandale with issues that I might have missed, but
 8 no, never mentioned mortuary vans.
 9 MR CHASKALSON SC: Did you see Brigadier
 10 Van Zyl at the JOCCOM when you did arrive?
 11 GENERAL NAIDOO: I can't specifically
 12 remember but I have been seeing him at the JOC during the
 13 entire period but that morning I can't specifically
 14 remember.
 15 MR CHASKALSON SC: Did you have any
 16 business with Brigadier Van Zyl that morning?
 17 GENERAL NAIDOO: I really can't remember,
 18 as far as Brigadier Van Zyl, specifically Chair, I can't
 19 remember, but I know that Provincial Commissioner was
 20 looking for various people. I did call a few people and
 21 sent a few people to her where she was looking for
 22 information. We found out that morning, that she was going
 23 to have some sort of media briefing.
 24 MR CHASKALSON SC: You see, according to
 25 the statements of the SAPS members involved in the request

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1 for the mortuary vehicles, the request from Brigadier Van
 2 Zyl came some time between eight o'clock and nine o'clock
 3 or 09:30 on the 16th, the request to the other SAPS members
 4 to action this. Now, it seems that around the same time
 5 that Brigadier Van Zyl was making this request, you were
 6 trying to get hold of him on the cell phone. Can we look
 7 at MMM6.
 8 GENERAL NAIDOO: Yes.
 9 MR CHASKALSON SC: MMM6 are the cell
 10 phone records. MMM4, I am sorry, MMM4. And if we can go
 11 to 8:12 a.m. on the morning of the 16th. There we see that
 12 you –
 13 SPEAKER: Sorry Chair, sorry to interrupt
 14 my colleague Mr Chaskalson, just to put on record that
 15 there are family members are for the Eastern Cape and
 16 Lesotho, not that they are walking out of the Commission,
 17 but just to put on record, they will be after the 10th of
 18 March.
 19 CHAIRPERSON: I am sorry, I didn't know
 20 that they were leaving because I could have said something
 21 before they went. But would you convey to them on our
 22 behalf that we wish them a safe journey home, and we trust
 23 they will be returning in due course to attend further
 24 sessions of the Commission, is that correct?
 25 SPEAKER: Will do so, Chair, we apologise

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1 for not bringing that to the attention of the Commission.
 2 CHAIRPERSON: Thank you.
 3 MR CHASKALSON SC: If we go back to MMM4
 4 at 8:12 you tried to get Brigadier Van Zyl, it's a five
 5 second call, I assume you were unsuccessful in getting him.
 6 And then again at 08:38 you called and spoke to him for 24
 7 seconds. Any recollection of what this might be about?
 8 GENERAL NAIDOO: Chair, the only thing
 9 that I could remember was coming from Potchefstroom back to
 10 Marikana, was the issue around, I was informed that morning
 11 that my communication personnel should be on hand to assist
 12 Captain Adrio to set up this media. So most of the
 13 discussions that I had was facilitating that my personnel
 14 come from Potchefstroom to Marikana and help set up the
 15 media briefing, and also she was looking for specific
 16 people to provide her with information, etcetera that was
 17 going to be used at the briefing. So I can't specifically
 18 say now I had a chat with Brigadier Van Zyl and I said this
 19 and that. I probably would have told him please, go and
 20 see the Provincial Commissioner or something, but I can't
 21 remember specifically what did I indicate to him as I had
 22 made several calls at that stage.
 23 MR CHASKALSON SC: What is Brigadier Van
 24 Zyl's function? What –
 25 GENERAL NAIDOO: He was the – at the

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1 Marikana JOC, he was the head of the investigation team
 2 that was leading the detectives that were investigating all
 3 the murders that have occurred during the unrest. So, that
 4 is why I am relating it possibly for something to do with
 5 the media briefing because there was a lot of information
 6 being sought to finalise that.
 7 MR CHASKALSON SC: It was the
 8 investigator of the murders, who was asking for mortuary
 9 vehicles, I will have to take that further with him.
 10 GENERAL NAIDOO: Yes, thanks.
 11 MR CHASKALSON SC: What, the briefing was
 12 a 09:30, was it not?
 13 GENERAL NAIDOO: Chair?
 14 MR CHASKALSON SC: The press briefing of
 15 the Provincial Commissioner.
 16 GENERAL NAIDOO: I think it was a ten
 17 o'clock. I was not present, I had already departed to
 18 forward holding area 1.
 19 MR CHASKALSON SC: We can check that, but
 20 you seem still to have been trying to get hold of Brigadier
 21 Van Zyl at 09:55, if we go down, when we see an attempt by
 22 you to get him.
 23 GENERAL NAIDOO: Yes.
 24 MR CHASKALSON SC: And then you did get
 25 hold of him, at 10:04, and spoke for a minute. Any idea

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1 what that might be about?
 2 GENERAL NAIDOO: Chair, at that stage, we
 3 were phoning so many people and making so many
 4 arrangements, for so many parallel issues. I can't
 5 specifically remember I told so and so such a thing. So,
 6 no, I would not be able to say, yes, I spoke to Brigadier
 7 Van Zyl about this or that.
 8 MR CHASKALSON SC: Then if we go down to
 9 10:05:54 you called him again. In fact, I think it would
 10 be fair to say that you didn't call anyone as much as
 11 Brigadier Van Zyl on the morning of the 16th. And you can't
 12 recall in any detail why you wanted that, why you were
 13 making those calls.
 14 GENERAL NAIDOO: Chair, if you look at my
 15 telephone account on any possible given time, you find that
 16 certain individuals I would call more others, because of my
 17 various responsibilities. Here I indicated that people
 18 were facilitating and trying to put in place various things
 19 such as the media briefing and I have and I do call
 20 Brigadier Van Zyl quite frequently still because of the
 21 responsibilities there for. There's a few other people you
 22 will find that I call very regularly as well. So I do not
 23 remember specifically when I speak to a person that number
 24 of times that in this call I said this and that unless
 25 there's something that's really significant that will stand

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1 out, so at this stage, I don't remember any significant
 2 issue that we discussed.
 3 [14:36] MR CHASKALSON SC: You see the version of
 4 the SAPS case thus far has been that the media briefing was
 5 at 9:30, that's what exhibit L says in slide 154. So if
 6 you were still trying to get hold of Brigadier Van Zyl
 7 after 10 it's unlikely that it would have to do with the
 8 media briefing. Would you accept that?
 9 GENERAL NAIDOO: Of course, Chair, I
 10 already indicated that the one reason I could have possibly
 11 been looking for him was that my communication officials
 12 were looking for information but I already testified I
 13 can't specifically remember what my conversations were with
 14 him or even Brigadier Pretorius who is somebody I called
 15 just as much, Chair.
 16 MR CHASKALSON SC: Were you aware on the
 17 16th that a mortuary vehicle had arrived at the scene at the
 18 instance of SAPS in advance of the operation?
 19 GENERAL NAIDOO: Chair, you mean at the
 20 scene where, Chair?
 21 MR CHASKALSON SC: Well, in this case at
 22 the JOC in advance of the operation.
 23 GENERAL NAIDOO: Chair, no –
 24 MR SEMENYA SC: Sorry, Chair, was it at
 25 Marikana police station or at the JOC?

<p style="text-align: right;">Page 23615</p> <p>1 MR CHASKALSON SC: It went first to 2 Marikana police station where it was directed to go to the 3 JOC, where it went and waited until after the operation at 4 which point it was directed to go to Nkaneng. 5 GENERAL NAIDOO: Chair, no, I had no 6 idea. As I've testified I recently, when these requests 7 came, established that there was such a situation. Prior 8 to that I had no idea. 9 MR CHASKALSON SC: Is it likely that 10 someone would direct a mortuary vehicle to come to the JOC 11 if the JOC hadn't cleared its presence beforehand? 12 GENERAL NAIDOO: Chair, yes. They would 13 have come to the JOC, anybody would have come to the JOC 14 and we've had previous delegations and representatives that 15 came to the JOC. They would not access the JOC directly, 16 they would come to the yard that was cordoned off at the 17 JOC and I'm sure that there they would be dealt with and 18 received and directed to whoever, for whatever business 19 they were there. That has happened to various people 20 during the time that we were there. 21 MR CHASKALSON SC: And to reach the JOC 22 from forward holding area 1, from Marikana police station 23 would you ordinarily go through forward holding area 1? 24 GENERAL NAIDOO: No, Chair. To come from 25 Marikana police station you would have come to the main</p>	<p style="text-align: right;">Page 23617</p> <p>1 in terms of addressing the situation that we faced. 2 MR CHASKALSON SC: Do you recall when you 3 were in the JOCCOM when discussions of this sort were 4 taking place? 5 GENERAL NAIDOO: Chair, there were 6 discussions always, in the morning and in the evening. We 7 quite often left there quite late even after the so-called, 8 the day's shift went off officers did not just leave and go 9 home. We tried to see what are the issues that need 10 assistance, what can we facilitate, how can we mobilise 11 certain resources to get it there. So it happened, there 12 was not a night that we left – if you finished work at say 13 6 o'clock in the evening you did not leave, you had to make 14 sure that whatever was done, needed to be done to prepare 15 for tomorrow was done. It was not just a matter of it's 16 now – let's clock out and go. We worked, we had barely 17 two, three hours' sleep a day as a result of that as well. 18 MR CHASKALSON SC: Were you yourself 19 directly involved in any discussions about changing the 20 tactical plan for phase 3? 21 GENERAL NAIDOO: Chair, I was present 22 when there were many discussions such as putting barbed 23 wire around the koppie, et cetera. There were a lot of 24 suggestions put that I can say I was there and, you know, 25 every time somebody came up with a suggestion somebody</p>
<p style="text-align: right;">Page 23616</p> <p>1 entrance of Lonmin Mine. The JOC is just outside the 2 entrance of Lonmin Mine. Forward holding area 1 is further 3 in Lonmin. 4 COMMISSIONER HEMRAJ: I'm sorry, I didn't 5 follow that, General? 6 GENERAL NAIDOO: Chair, the logical thing 7 is when you're entering through the Lonmin main gate, the 8 JOC is just after the entrance on the right-hand side. 9 Forward holding area 1 is about more than 2 ks inside the 10 Lonmin premises so you would pass the JOC before getting to 11 forward holding area 1. 12 COMMISSIONER HEMRAJ: I see, thank you 13 very much. 14 MR CHASKALSON SC: While we're talking 15 about the JOC, there's been evidence of informal 16 discussions in the JOCCOM either on the 15th or the morning 17 of the 16th about reviving the phase 3 tactical plan. Did 18 you participate in any of these discussions? 19 GENERAL NAIDOO: Chair, there were many 20 discussions about possible tactical options during the 21 discussion and there was a lot of, there was a wealth of 22 experience there, people with POPS experience and with 23 other experience. Yes, I was present at some stage when 24 some people made inputs. People were always free to give 25 inputs and make suggestions on any challenged that we faced</p>	<p style="text-align: right;">Page 23618</p> <p>1 would come up with a challenge, how would we achieve this, 2 how would we achieve that. That's why I say it was, there 3 were, there were lots of discussions about how and what and 4 if anybody came up with a suggestion obviously people want 5 to know how would we then do it with the available 6 resources or what would we need extra. To an extent I 7 think at some stage they were trying to look for even more 8 razor wire and you know, they said look, practically this 9 thing is not going to work because we don't have enough 10 razor wire, then another person said look, it takes too 11 long to put the razor wire around and another person said 12 you know, if they're on the koppie and you circle them 13 whilst they're on the koppie they would probably - it takes 14 so long to put the razor wire they'll probably just take a 15 walk and go and gather somewhere else and it becomes a 16 futile exercise. So there was that kind of discussions. I 17 know at some of them I was sitting in and these were 18 discussions. 19 MR CHASKALSON SC: What was your posting 20 during the days of the 15th and the 16th? When were you in 21 the JOC and when were you at forward holding area 1? 22 GENERAL NAIDOO: Chair, in the morning we 23 were posted to forward – everybody came to the JOC in the 24 morning, all the commanders and then went off to their 25 postings because I think it has been testified already that</p>

<p style="text-align: right;">Page 23619</p> <p>1 people came in and then the JOC – because people were being 2 mobilised from all across different provinces and not 3 everybody was staying in Marikana, they were travelling in 4 and out, so on a daily basis we had to establish whether 5 the force levels were being maintained or whether there 6 were any changes and then only the deployments, the 7 briefing and the deployments took place. So it was not 8 just, you know, you go and book on, report directly to 9 forward holding area 1, no.</p> <p>10 MR CHASKALSON SC: Well, you would go to 11 the JOC, there'd be a formal JOCCOM meeting.</p> <p>12 GENERAL NAIDOO: That's correct, Chair.</p> <p>13 MR CHASKALSON SC: And what then would 14 happen?</p> <p>15 GENERAL NAIDOO: Chair, whilst – there is 16 a, whilst the briefing was taking place on the other side 17 the junior members were being prepared, equipment checked, 18 roll calls confirming SAP or the duty sheets and then 19 confirming with the JOC or the JOCCOM, that was the inside. 20 The board would be written up in terms of the force levels 21 for the day and confirmation where people would be posted. 22 People from the intelligence would give us anything if 23 there was anything, the changes, etcetera, and once this 24 confirmation that everybody was there, there was a 25 particular time when the groups started moving. Normally,</p>	<p style="text-align: right;">Page 23621</p> <p>1 in the JOC at any time after 9, 9:30.</p> <p>2 GENERAL NAIDOO: Chair, no. I never 3 returned to the JOC after I left that morning.</p> <p>4 MR CHASKALSON SC: While we've got MMM4 5 up, I want to ask you about some other calls. General 6 Mbombo has testified that on the night of the 15th after the 7 National Management Forum she told you, Major-General 8 Mpmembe and Major-General Annandale that you would have to 9 move to the tactical phase the next day if the situation 10 was not resolved through negotiations. Do you confirm 11 that?</p> <p>12 GENERAL NAIDOO: Chair, no. I have 13 already testified that I only became aware of the tactical 14 phase when I got to the JOC and – at 2:30 when we had a 15 briefing and we were informed that a decision had been 16 taken. I had a couple of discussions with General Mbombo 17 that night but it was not related to moving to a tactical 18 phase.</p> <p>19 MR CHASKALSON SC: Well, you had more 20 than a couple of discussions with General Mbombo. If we 21 can look at MMM6 and maybe start at 18:43 which is while 22 the – MMM4, sorry – 18:43 which is while the National 23 Management Forum is still continuing, there General Mbombo 24 called you, spoke for over two minutes.</p> <p>25 GENERAL NAIDOO: Chair, that's true.</p>
<p style="text-align: right;">Page 23620</p> <p>1 you know, just between 9 and 9:30 to be in place by 10 2 normally.</p> <p>3 MR CHASKALSON SC: So from 9, 9:30 until 4 when would you be at forward holding area 1?</p> <p>5 GENERAL NAIDOO: Until we were – until 6 the night shift came in and if I was in forward holding 7 area 1 then the, if I remained at forward holding area or 8 let me rephrase that. I would remain at forward holding 9 area 1 as long as the negotiation group was in place. So I 10 would normally withdraw after the negotiation group 11 withdraws from forward holding, from the negotiation area 12 and that was what happened on the Tuesday and the 13 Wednesday. It's the first three days we're talking.</p> <p>14 MR CHASKALSON SC: And the Thursday?</p> <p>15 GENERAL NAIDOO: Chair, the Thursday was 16 different. I finished off very late, the night shift was 17 already on duty. I was with IPID and when they visited the 18 scene from one end to the other so the commanders, the JOC 19 called their people to fall back to the JOC and give their 20 feedback in terms of members, et cetera. I could not at 21 that stage do, my driver and I were still with the crime 22 scene people as well as IPID until quite late, probably 10 23 or so. I can't remember specifically the time, we can 24 establish that.</p> <p>25 MR CHASKALSON SC: But again you weren't</p>	<p style="text-align: right;">Page 23622</p> <p>1 MR CHASKALSON SC: Half an hour later you 2 called her, looks like you didn't get through, just a seven 3 second call but then the following minute a 34 second call. 4 So she called you.</p> <p>5 GENERAL NAIDOO: Mmm.</p> <p>6 MR CHASKALSON SC: Spoke for two minutes, 7 you called her back an hour later or half an hour later, 8 spoke for 34 minutes. What would those calls have been 9 about?</p> <p>10 GENERAL NAIDOO: Chair, if I remember 11 correctly we did speak about – she wanted to know how the 12 progress was with the union leaders that we were aware were 13 there and I indicated as such what the progress was. 14 Initially ja, that was the first two or three calls that 15 she wanted to know if we are making progress and where we 16 were there. I think she would have probably tried to get 17 some of the other generals as well but I'm not sure about 18 that.</p> <p>19 MR SEMENYA SC: I think my learned 20 colleague wanted to say 34 seconds, not minutes.</p> <p>21 MR CHASKALSON SC: Indeed, indeed, I 22 apologise. And what – well, what did you convey in 23 relation to the union negotiations? Were you the source of 24 the message that there had been an undertaking that the 25 strikers would leave the next morning?</p>

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1 GENERAL NAIDOO: Chair, initially I
 2 indicated that this matter was still ongoing because of the
 3 process of taking the union leaders, et cetera. I think at
 4 some stage I must have mentioned that and yes, when the
 5 meeting had ended with the union leaders I did inform her
 6 that look, this is what has transpired and it would seem
 7 that a particular union felt that – well, indicated that
 8 we'd be very happy the next morning because these things
 9 were going to happen.

10 MR CHASKALSON SC: Was that how you
 11 conveyed it or did you convey to her that an undertaking
 12 had been given?

13 GENERAL NAIDOO: Chair, my impression and
 14 I have testified to this, was that I had no reason to doubt
 15 what was told to us by a particular individual when he
 16 indicated, when he indicated that tomorrow they will lay
 17 their arms down, you will be happy SAPS and also even went
 18 further, I said, and I relayed this I think to the General
 19 that he even engaged Lonmin on how will this thing be
 20 implemented. So that is what, my impression is what I
 21 conveyed to her, yes.

22 MR CHASKALSON SC: So you didn't suggest
 23 to her that there had been any undertaking from Mr
 24 Mathunjwa?

25 GENERAL NAIDOO: I think the words that I

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1 used was that he said we're going to be very happy or
 2 something to that effect. I wouldn't indicate to the
 3 specific words that I possibly used, I can't recall but I
 4 generally indicated to her that we had received positive
 5 feedback from Mr Mathunjwa in terms of the ending of the
 6 strike, yes.

7 MR CHASKALSON SC: But I'm interested in
 8 where the Provincial Commissioner got the idea of an
 9 undertaking or a commitment. It wasn't from you, you say?

10 GENERAL NAIDOO: Chair, in my normal
 11 conversation with General Mbombo I don't think I would
 12 normally use a word "undertaking" or things like that. I'd
 13 just say it's going to happen or it's not going to happen
 14 or we are certain that it will happen but I – specifically
 15 the word "undertaking" I, it would not be something I would
 16 use normally.

17 MR CHASKALSON SC: But even if you didn't
 18 use the term, did you convey that there had been something
 19 in the nature of an undertaking or a commitment?

20 GENERAL NAIDOO: Chair, what I conveyed
 21 is what I already said. I tried to indicate, almost tried
 22 to be verbatim on what Mr Mathunjwa said as far as, you
 23 know, we would be very happy tomorrow because these people
 24 will lay these arms down and walk away from the koppie, et
 25 cetera. That is what I conveyed. So if it was taken as an

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1 undertaking, I am not sure but as I say I tried to convey
 2 what I heard. I was in the meeting when this discussion
 3 took place.

4 MR CHASKALSON SC: Now after the meeting
 5 –

6 CHAIRPERSON: The meeting, is this –
 7 MR CHASKALSON SC: Sorry, the National
 8 Management Forum meeting.

9 CHAIRPERSON: Oh.
 10 MR CHASKALSON SC: Let me take a step
 11 back.

12 GENERAL NAIDOO: Okay.
 13 MR CHASKALSON SC: You knew that the
 14 Provincial Commissioner was at the National Management
 15 Forum.

16 GENERAL NAIDOO: That is correct, Chair.
 17 MR CHASKALSON SC: You knew that she
 18 would be going to the National Management Forum for some
 19 time before she actually went on the 15th?

20 GENERAL NAIDOO: Chair, yes, the National
 21 Management Forum is a scheduled meeting.

22 MR CHASKALSON SC: Now what we're told
 23 happened at the National Management Forum was that a
 24 proposal of the Provincial Commissioner was endorsed by all
 25 of the operational members of the National Management Forum

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1 at an extraordinary session of those members after the main
 2 National Management Forum meeting but the Provincial
 3 Commissioner had put a proposal of sorts before them which
 4 they endorsed. Did she discuss anything of this nature
 5 with you before she went?

6 GENERAL NAIDOO: A proposal, Chair?
 7 MR CHASKALSON SC: A proposal that she
 8 would take to the operational members of the National
 9 Management Forum?

10 GENERAL NAIDOO: Chair, I don't remember
 11 discussing any proposal that will go to the National
 12 Management Forum. I do remember us having meetings prior
 13 to her departure around the planning, which I have already
 14 testified to, the planning process which started from
 15 Monday evening but I don't remember us taking a specific,
 16 dealing with a specific proposal to the National Management
 17 Forum.

18 MR CHASKALSON SC: Presumably you'd have
 19 remembered if the Provincial Commissioner had discussed
 20 with you that she was going to take to the National
 21 Management Forum operational members a proposal that you
 22 move to the tactical phase on Thursday.

23 GENERAL NAIDOO: Chair, yes, I've already
 24 testified to the fact that whilst we had discussed the
 25 tactical phase and its implications right from Monday

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1 evening and looked at the various options, but the only
 2 time that I became aware that we were going to execute a
 3 tactical phase was when we were briefed on Thursday at
 4 2:30.
 5 [14:56] CHAIRPERSON: Did she not tell you on
 6 Tuesday, for example – according to this conversation
 7 that's been transcribed that she had with the Lonmin people
 8 on the Tuesday, it would seem in the afternoon of the
 9 Tuesday, she said that, indicated that "we must act" I
 10 think was the phrase she used which clearly means a
 11 tactical option, "tomorrow," that was the Wednesday. Then
 12 it became clear that nothing could happen on Wednesday
 13 because arrangements had been made for the trade union
 14 presidents to come, attempts were made to get them to
 15 persuade the people to lay down their arms and leave the
 16 koppie, so Wednesday didn't work but did she not tell you
 17 either on the Tuesday or the Wednesday what her thinking
 18 was?
 19 GENERAL NAIDOO: Chair, we'd been talking
 20 all the time and there was no mention of, on a specific
 21 date we are going to a tactical phase. We were, on Tuesday
 22 when we discussed this I was at the meeting and we
 23 discussed the possibility, and I testified to this, of the
 24 other role players because initially it's just us, the
 25 police and the strikers that are engaging when really the

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1 problem was not between us or the police. So that is when
 2 I made this proposal as well to General Mpmembe that, you
 3 know, we are doing something wrong here, we need to bring
 4 in other people who can talk because you know the
 5 representatives talk about seeing the person who can
 6 address their issue and we were committed to the
 7 negotiation process. That's why we adopted the attitude
 8 right until Thursday morning that –
 9 CHAIRPERSON: You see there was also a
 10 discussion when the Provincial Commissioner was here as to
 11 when she took the decision that the tactical option should
 12 be proceeded to and what was before us was an admission by
 13 counsel for the police that the decision was taken on the
 14 Wednesday night by the Provincial Commissioner. She
 15 actually said she actually made the decision the previous
 16 day on the Tuesday, that was her evidence but what you say
 17 is that it may be so but she never communicated to you.
 18 GENERAL NAIDOO: No, Chair. As I said,
 19 there were discussions at all the JOCCOMs on a possible
 20 tactical and how it would be implemented but no decision.
 21 CHAIRPERSON: Anyway that –
 22 GENERAL NAIDOO: We had not moved to that
 23 stage of the plan anyway.
 24 CHAIRPERSON: That was her evidence. And
 25 then when you say it was first communicated to you at 2:30

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1 on Thursday afternoon –
 2 GENERAL NAIDOO: That's right.
 3 CHAIRPERSON: - that there was going to
 4 be a procession to, you would proceed to a tactical option,
 5 did you before that, however, hear that it was intended to
 6 proceed – earlier than that – it was intended to proceed to
 7 the tactical option if, on the Thursday, if the strikers
 8 didn't lay down their arms? I can understand the first
 9 unconditional communication to you that the tactical option
 10 is going to be proceeded to might well have been at 2:30 on
 11 the Thursday afternoon because before that there was always
 12 uncertainty as to whether the strikers would lay down their
 13 arms.
 14 GENERAL NAIDOO: Yes.
 15 CHAIRPERSON: But did you, before 2:30 on
 16 the Thursday, hear from the National Commissioner or
 17 anybody else for that matter, that if the strikers didn't
 18 lay down their arms on the Thursday, the tactical option
 19 would be proceeded to on that day?
 20 GENERAL NAIDOO: No, Chair. That's why I
 21 indicated that it was only at 2:30 that we received a firm
 22 decision that we are going to the tactical phase. In that
 23 morning again we spoke of what if and there was
 24 intelligence that these people, within there were some
 25 people resisting putting down their arms but when we

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1 deployed there was still the hope –
 2 CHAIRPERSON: Yes, yes, no –
 3 GENERAL NAIDOO: And –
 4 CHAIRPERSON: That's why I covered the –
 5 GENERAL NAIDOO: Exactly.
 6 CHAIRPERSON: - possibility of the first
 7 time that you heard of a firm decision to move to the
 8 tactical option by saying I can understand that was the
 9 first unconditional decision you heard about because there
 10 was always the hope that they would lay down their arms
 11 voluntarily, in which case any decision to proceed to a
 12 tactical option before that would have been a conditional
 13 one, the condition being if they don't lay down their arms
 14 then we'll go to the too.
 15 GENERAL NAIDOO: The next phase, yes.
 16 CHAIRPERSON: Did you hear of any
 17 conditional decision of the kind that I've mentioned to
 18 you, before that?
 19 GENERAL NAIDOO: No. That's why I'm
 20 being categoric about it that when I went, when I deployed
 21 on Thursday morning I was still hopeful that – and there
 22 was no firm decision communicated –
 23 CHAIRPERSON: I can understand the hope
 24 but were you at the 6:30, at the 6 o'clock JOC meeting the
 25 whole time?

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1 GENERAL NAIDOO: Chair, I did indicate I
 2 did arrive a bit late and I did indicate that General
 3 Annandale did brief me on – he summarised all the issues
 4 that I may have missed and in none of the issues that he
 5 raised with me did he say look, we are going into the
 6 tactical option. In fact General Annandale, I think I knew
 7 a little before him about the press conference because of
 8 my personnel that were required and Captain Adriaio.
 9 General Annandale was finding out at that stage that there
 10 was a press conference and he had to go with as well.
 11 CHAIRPERSON: Did anybody tell you after
 12 the press conference what the Provincial Commissioner said?
 13 GENERAL NAIDOO: Chair, no. The only,
 14 the first time I saw the press conference thing was a few
 15 days after when it was on TV even, not any internal –
 16 CHAIRPERSON: And when the ambulances
 17 arrived at the forward holding area on the Thursday, I
 18 understand you to say there were no ambulances the Tuesday
 19 or the Wednesday, this was a change.
 20 GENERAL NAIDOO: Chair, they didn't
 21 arrive at the forward holding area. At the JOC next-door
 22 is an ambulance base, the disaster management centre. So
 23 as I indicated earlier, everybody that's going to be
 24 deployed congregates and parades at the JOC, there was a
 25 cordoned off field, and departs from there. So they did

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1 not arrive directly, they –
 2 CHAIRPERSON: Did you see the ambulances
 3 there?
 4 GENERAL NAIDOO: Chair, yes and –
 5 CHAIRPERSON: They hadn't been there the
 6 day before?
 7 GENERAL NAIDOO: No, no.
 8 CHAIRPERSON: When did the ambulances get
 9 –
 10 GENERAL NAIDOO: Chair –
 11 CHAIRPERSON: Sorry, I interrupted you.
 12 Yes, carry on?
 13 GENERAL NAIDOO: Can I understand your
 14 question there?
 15 CHAIRPERSON: Did you see the ambulances
 16 when you left the JOC on the Thursday morning after the
 17 meeting, were the ambulances there yet?
 18 GENERAL NAIDOO: On Thursday? You mean
 19 when we deployed?
 20 CHAIRPERSON: No – no. You left the JOC
 21 at about 9:30, as I understand.
 22 GENERAL NAIDOO: Yes.
 23 CHAIRPERSON: To go to the forward
 24 holding area.
 25 GENERAL NAIDOO: That's correct.

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1 CHAIRPERSON: Were the ambulances near
 2 the JOC at that stage?
 3 GENERAL NAIDOO: Are you talking about
 4 the ambulances that were with me?
 5 CHAIRPERSON: Yes.
 6 GENERAL NAIDOO: Yes, they formed part of
 7 my convoy to forward holding area –
 8 CHAIRPERSON: No, yes, I thought there
 9 was a misunderstanding. Let's take it step by step. When
 10 you left the JOC at 9:30 –
 11 GENERAL NAIDOO: Yes.
 12 CHAIRPERSON: You said there were
 13 ambulances in the vicinity, there had been at some stage or
 14 were at some stage ambulances in the vicinity of the JOC,
 15 is that right?
 16 GENERAL NAIDOO: I indicated that next to
 17 the JOC at the disaster management centre –
 18 CHAIRPERSON: Yes, okay.
 19 GENERAL NAIDOO: - they have a whole
 20 contingent of ambulance personnel and resources.
 21 CHAIRPERSON: I see. And you saw them
 22 there, did you see them there when you left at 9:30, left
 23 the JOC to go to the forward holding area?
 24 GENERAL NAIDOO: I can't specifically, I
 25 assume that they were there because they were always there.

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1 CHAIRPERSON: I see, alright. And when
 2 you got to the forward holding area –
 3 GENERAL NAIDOO: Yes.
 4 CHAIRPERSON: - you had ambulances there
 5 later or were they there already when you got there?
 6 GENERAL NAIDOO: They went with the
 7 convoy from the JOC.
 8 CHAIRPERSON: They went with you as part
 9 of your convoy –
 10 GENERAL NAIDOO: The process, everybody
 11 that was going to deploy comes to the JOC.
 12 CHAIRPERSON: Yes.
 13 GENERAL NAIDOO: And reports themselves
 14 so that we can capture it on the board. That is how we
 15 knew on that day we were getting different people as
 16 opposed to the two days before.
 17 CHAIRPERSON: And you [inaudible]
 18 ambulances.
 19 GENERAL NAIDOO: And now I had somebody
 20 who came with their own transport as the other days they
 21 didn't come.
 22 CHAIRPERSON: Did you, previously you'd
 23 given them a lift yourself in your own vehicle.
 24 GENERAL NAIDOO: They were in my vehicle.
 25 CHAIRPERSON: Did you wonder why today

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1 was different from the previous days? Suddenly we've now
 2 got ambulances here, is something different going to happen
 3 today?
 4 GENERAL NAIDOO: Chair, on the first two
 5 days the explanation was that these members didn't have the
 6 appropriate vehicle with them to travel and hence they
 7 asked me to take them into our vehicle. And as I say, on
 8 Thursday different people came and they came with the
 9 vehicles so I suppose it was appropriate.
 10 CHAIRPERSON: So you weren't surprised?
 11 You didn't ask, is today different from any other day?
 12 GENERAL NAIDOO: It was different people
 13 so –
 14 CHAIRPERSON: So you didn't ask?
 15 GENERAL NAIDOO: No.
 16 CHAIRPERSON: Alright, thank you. I've
 17 stretched it into tea time. Is this convenient, Mr
 18 Chaskalson, if we take the tea adjournment or do you want
 19 to ask some other questions first?
 20 MR CHASKALSON SC: No, Chairperson, it's
 21 a convenient time.
 22 CHAIRPERSON: We'll take the tea
 23 adjournment.
 24 [COMMISSION ADJOURNS COMMISSION RESUMES]
 25 [15:29] CHAIRPERSON: The Commission resumes.

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1 Major-General, you're still under oath.
 2 GENERAL NAIDOO: Still under oath, Chair.
 3 GENERAL NAIDOO: s.u.o.
 4 CHAIRPERSON: I see we've got a new piece
 5 of paper.
 6 MR CHASKALSON SC: Yes, Chairperson.
 7 It's really just a housekeeping issue in response to
 8 questions from the Commissioners before we broke. This is
 9 the one page of medical records of Mr Mdze. I don't
 10 propose to question the witness in relation to them but –
 11 CHAIRPERSON: MMM21.
 12 MR CHASKALSON SC: MMM21 but if I might
 13 just point out certain features that I can decipher.
 14 CHAIRPERSON: What do I call it? Medical
 15 report re – out-patient's report re – ja, re Mr Mdze.
 16 MR CHASKALSON SC: Indeed, Mr
 17 Chairperson.
 18 CHAIRPERSON: Out-patient's report re Mr
 19 Mdze from Andrew Saffi Hospital.
 20 MR CHASKALSON SC: Yes, Chairperson.
 21 CHAIRPERSON: Thank you.
 22 MR CHASKALSON SC: What one sees in
 23 script at the bottom of the third column is "Gunshot left
 24 arm and hand, right lower leg, bled out. Deceased in
 25 casualty" and then underneath that, "Dead, taken by SAPS."

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1 The rest I can speculate about but not being medically
 2 trained and not being a code breaker of doctors'
 3 handwriting, I wouldn't want to commit myself to –
 4 COMMISSIONER HEMRAJ: Any indication what
 5 time he was attended to?
 6 MR CHASKALSON SC: None, unfortunately.
 7 It does appear that, it does appear – I say appear – that
 8 there were three blood pressure, no, possibly only two
 9 blood pressure readings taken. There are three blood
 10 pressures recorded but it's not clear whether the third and
 11 the second are from the same reading.
 12 CHAIRPERSON: Well, I take it if there's
 13 any extra information we can get, Mr Van As will be able to
 14 get it for us through Lonmin from the Andrew Saffi Hospital
 15 so if there are any queries anyone, or questions anyone
 16 wishes to address to the doctors and staff at Andrew Saffi
 17 about this deceased, they can do so and I'm sure Mr Van As
 18 will provide the information.
 19 MR VAN AS: We will do so, Mr Chairman.
 20 CHAIRPERSON: Mr Van As's clients will
 21 provide the information. We don't have to have oral
 22 information or anything of that kind. Perhaps we could,
 23 you know, I could indicate now to Mr Van As, we'd like to
 24 know what time he arrived at the hospital, how long he was
 25 in casualty before he was dealt with, what time he died and

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1 how long he was in the hospital before he died obviously.
 2 That'll come from being told when he arrived and when he
 3 died but anyway –
 4 MR VAN AS: We'll try and get the
 5 information, Mr Chairman.
 6 CHAIRPERSON: And the treatment, if any,
 7 that he received where they tried to stem the blood flow
 8 and how they did it. Anyway, so I would imagine that it's
 9 not necessary to spell out the kind of things that we would
 10 want to know, it's quite obvious, the things that are
 11 relevant. Mr Van As, if you could perhaps get a statement
 12 from the relevant people who dealt with the deceased –
 13 MR VAN AS: We'll try and get a statement
 14 from the person who treated him.
 15 CHAIRPERSON: Yes, an affidavit and then
 16 we can just hand it in, you know.
 17 MR VAN AS: Very well.
 18 CHAIRPERSON: Thank you.
 19 CROSS-EXAMINATION BY MR CHASKALSON SC (CONTD.):
 20 Major-General, it appears from your telephone records that
 21 there were a series of calls between yourself and the
 22 Provincial Commissioner after the National Management Forum
 23 meeting.
 24 GENERAL NAIDOO: That is correct, Chair.
 25 MR CHASKALSON SC: First you called the

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1 Provincial Commissioner at 21:55, a 41 second call. Sorry,
 2 could we have MMM4 up so that everyone can see these
 3 records? Then she called you back at 22:10, that's 15
 4 minutes later, approximately a three minute call, 175
 5 seconds. Then you called Major-General Annandale almost
 6 immediately after the end of your three minute call to the
 7 Provincial, with the Provincial Commissioner, that was at
 8 22:14. You spoke to him for just over a minute, 63 seconds
 9 and then approximately 10 minutes after that call finished
 10 you were called by the Provincial Commissioner again. Now
 11 you say none of these interactions, in none of these calls
 12 from the Provincial Commissioner she mentioned that a
 13 decision had just been taken that there would be a shift to
 14 the tactical option the following day?
 15 GENERAL NAIDOO: Chair, I've already
 16 testified to that effect, yes.
 17 MR CHASKALSON SC: What did she speak to
 18 you about?
 19 GENERAL NAIDOO: Chair, the last two
 20 calls I can maybe specifically shed light on because I do
 21 remember something there. At some stage when I was on my
 22 way back to Potchefstroom, I indicated I travelled through
 23 on an almost daily basis, the Provincial Commissioner
 24 contacted me to indicate that could I pick up some of her
 25 personal effects from her house in Potchefstroom because

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1 she won't be, she'll be coming directly from
 2 Midrand/Pretoria to Marikana and I indicated yes, I would
 3 and that when I called her, when I was at her house which
 4 was quite, much later, because her son lives with her, I
 5 had a problem accessing her premises. Her son was not
 6 answering so I called her to see how I could access it
 7 because I could not get hold of her son. I had guards with
 8 me the guards at her house. We tried and we couldn't so
 9 eventually I called her and then her son came in and let us
 10 in and gave us the personal effects and I left. That was
 11 the last two. I remember that distinctly because it was an
 12 errand that I was running for her because I was going to
 13 Potchefstroom.
 14 MR CHASKALSON SC: Sorry, Major-General,
 15 I'm not sure which are the last two that you're referring
 16 to because in fact there was another call at 11:30, 11:23,
 17 11:23:33.
 18 GENERAL NAIDOO: Yes, Chair.
 19 MR CHASKALSON SC: So which of the two
 20 calls that you're referring to –
 21 GENERAL NAIDOO: Chair, as I said, I'm
 22 assuming it's the last two calls that I would have dealt
 23 with that matter because I know specifically the time that
 24 I called her when I was at her house very late was with
 25 regard to trying to access the premises because we couldn't

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1 get her son, just to pick up her personal effects, that's
 2 all.
 3 MR CHASKALSON SC: I'm still not clear,
 4 Major-General. If you were to reconstruct on the basis of
 5 these records, when would you have been in the car on your
 6 way back to Potchefstroom, at what time?
 7 GENERAL NAIDOO: It's about, it's more
 8 than an hour from Marikana to Potchefstroom.
 9 MR CHASKALSON SC: Yes, but would that be
 10 an hour before leading up to the call at 23 minutes past 11
 11 or an hour leading up to the first call at 21:55 or an hour
 12 leading up to the second and third calls around, you know,
 13 10 past 10, 25 past 10? I just am genuinely not
 14 understanding what your evidence is in this regard. Which
 15 are the calls that you think were calls in relation to
 16 picking stuff up at her house?
 17 GENERAL NAIDOO: Well, Chair, I can
 18 specifically remember that there was about two calls, it
 19 could have been more. The last call, as I said I was at
 20 her house quite late that night so it would be the 23:23 if
 21 that's the last call and then obviously we work back from
 22 there, just over an hour then it would be the call that we
 23 discussed the arrangements that she wanted me to assist
 24 with.
 25 MR CHASKALSON SC: So she phones you to

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1 say pick up my stuff from my home, you get to her house,
 2 can't find it and you phone her to say the house is locked,
 3 how do I get in? Is that what's happening?
 4 GENERAL NAIDOO: Chair, not can't find
 5 it. She did indicate her son is at home and she would make
 6 arrangements with him to have them ready but when I arrived
 7 at her house obviously we had a problem and there were two
 8 guards on duty at her house, the three of us knocked and
 9 rang and eventually I let her know because I did not have
 10 her son's number.
 11 MR CHASKALSON SC: But the first call
 12 comes from her to make the request to you. The second call
 13 comes from you to say I'm locked out, I can't get in, how
 14 am I going to get it?
 15 GENERAL NAIDOO: What I'm saying is one
 16 call, yes, I did definitely inform I'm locked out and the
 17 other call from her to me could have been, yes, could have
 18 been the request.
 19 MR CHASKALSON SC: You see that evidence
 20 doesn't tie with the records because the records show the
 21 calls in the opposite direction. The only call that you
 22 made is the MOC, the 21:55.
 23 GENERAL NAIDOO: Yes.
 24 MR CHASKALSON SC: All of the others were
 25 calls from the National Commissioner to you.

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1 GENERAL NAIDOO: Provincial –
 2 MR CHASKALSON SC: Provincial
 3 Commissioner to you. Now she wouldn't have known that you
 4 were locked out of the house so she wouldn't have been
 5 calling you, it would have been you calling her.
 6 GENERAL NAIDOO: Yes.
 7 MR CHASKALSON SC: So that evidence
 8 doesn't square with these records.
 9 GENERAL NAIDOO: Chair, well, this is
 10 what I indicated, this was the only communication that I
 11 had with her after hours in terms of accessing her
 12 premises.
 13 MR CHASKALSON SC: But she speaks to you
 14 in four separate calls that night.
 15 GENERAL NAIDOO: That's correct, Chair.
 16 MR CHASKALSON SC: And she doesn't
 17 mention D-day – or not D-day, she doesn't mention that the
 18 next day is the tactical option.
 19 GENERAL NAIDOO: Chair, the only thing
 20 she mentioned, that she was still busy at the meeting. I
 21 suppose the reason why she called me, because she possibly
 22 anticipated that she will be sleeping in Potchefstroom that
 23 night but she didn't but no, as I indicated, I would have
 24 specifically remembered and I would not have stated in my
 25 statement that I only became aware of it on Thursday.

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1 MR CHASKALSON SC: But if we look at
 2 these calls, by the time the Provincial Commissioner first
 3 calls you, which is 20 to 10, the National Management Forum
 4 meeting is over so she wasn't still busy.
 5 GENERAL NAIDOO: I had no idea about that
 6 because she indicated to me she was still at the Management
 7 Forum in Midrand.
 8 MR CHASKALSON SC: And straight after
 9 that call you call Major-General Annandale, why that? What
 10 was that call about?
 11 GENERAL NAIDOO: Chair, I can't
 12 specifically remember what I said to General Annandale or
 13 why I called him, it's a long time.
 14 CHAIRPERSON: It doesn't sound, from what
 15 you tell us, as if you had any reason to telephone him, did
 16 you?
 17 GENERAL NAIDOO: Not necessarily, Chair.
 18 As I said, I can't specifically understand the reason why I
 19 would call him but I would definitely have remembered if I
 20 called him to say the word that was used, D-day, I would
 21 remember that because I think I clearly indicated the only
 22 time that I was aware that such dispersal action was going
 23 to take place was at 2:30 on Thursday.
 24 CHAIRPERSON: Yes, you told us that.
 25 You, of course, had been present when Mathunjwa reported to

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1 you and your colleagues what he thought was going to
 2 happen.
 3 GENERAL NAIDOO: Yes.
 4 CHAIRPERSON: But what did you think then
 5 on the Wednesday night was going to happen on the Thursday?
 6 I take it you thought that there was a fair prospect, to
 7 put it perhaps gently, that the strikers would voluntarily
 8 lay down their arms and leave the koppie. That was one
 9 thing that might well happen the following day, is that so?
 10 GENERAL NAIDOO: Chair, I testified to
 11 the fact, yes, we were very hopeful because the bearer of
 12 the message was very confident.
 13 CHAIRPERSON: What else did you think
 14 would happen the following day? Was there anything else
 15 you thought about would happen?
 16 GENERAL NAIDOO: Chair, I thought it
 17 would be the last day that I will be deployed at Marikana
 18 and so I wouldn't have to manage my office and there. I
 19 think, yes, that was my hope.
 20 CHAIRPERSON: You see what puzzles me is
 21 that you don't seem to have had a reason to phone General
 22 Annandale at 14 minutes past 10 in the evening and then you
 23 phoned Captain – well, you then phoned Captain Adriaan and
 24 he phoned you back. Now he's the public relations man,
 25 isn't he, he's the communications officer, isn't he?

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1 GENERAL NAIDOO: Chair, yes. That's why
 2 I indicated that at some stage and I could not say exactly
 3 when, the date, but at some stage I was contacted by him
 4 looking for, he was looking for my SAPS communications
 5 personnel to assist him with some resources. I called, you
 6 can see that I've called the standby telephone of our
 7 communications people to try and link these people up. I
 8 did not at that stage get involved in the details but with
 9 Captain Adriaan, he was not from my province. Any time that
 10 he needed assistance with regard to any resources he
 11 approached us, myself and I linked him up with the relevant
 12 officials that were under my command.
 13 CHAIRPERSON: But you appear to have
 14 phoned him first.
 15 GENERAL NAIDOO: Chair?
 16 CHAIRPERSON: You appear to have
 17 telephoned him first. The first call –
 18 GENERAL NAIDOO: Yes?
 19 CHAIRPERSON: 27 minutes past 10 in the
 20 evening.
 21 GENERAL NAIDOO: Yes.
 22 CHAIRPERSON: 61 seconds, a minute, you
 23 phoned him. He phones you back sometime later, about four
 24 minutes later, five minutes later and speaks to you for a
 25 minute. In the meanwhile you phone the - you've made this

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1 call to SAPS North-West corporate communications.
 2 GENERAL NAIDOO: Communications, that's
 3 correct.
 4 CHAIRPERSON: You phone him first.
 5 GENERAL NAIDOO: Chair, that's why I say
 6 I can't remember specifically what were the issues. I was
 7 phoning many people who were looking for assistance and I
 8 was facilitating. So it would make sense that calls
 9 related to Captain Adriaio and the North-West communications
 10 people would have been in relation to each other because I
 11 was continuously linking people up, so all the people that
 12 came from out of the province that were working in our
 13 province continuously needed assistance with something or
 14 the other and I made sure that the relevant people assisted
 15 them.
 16 CHAIRPERSON: Did General Mbombo perhaps
 17 ask you to phone Captain Adriaio or did your telephone to
 18 Captain Adriaio have something to do with something that
 19 General Mbombo had said to you?
 20 GENERAL NAIDOO: Chair, I would not
 21 specifically remember that. As I said, the main thing that
 22 I do remember with General Mbombo, the gist of my
 23 discussions were to, that she was still at Midrand and at
 24 some stage she said that I should go and fetch her personal
 25 items. Those things I remember because it was something, a

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1 tasking that I did and it was a problem. With the others I
 2 don't, because I'd been speaking to them so many times over
 3 that period, I would not remember specifically.
 4 CHAIRPERSON: Do you normally make phone
 5 calls of that kind at about half past 10 in the evening?
 6 GENERAL NAIDOO: Chair, we were all still
 7 travelling back to our residences, including General
 8 Annandale. We had left the JOC and we were all on our way.
 9 I did indicate, although a shift probably ends at 6 o'clock
 10 we never left immediately, we tried to deal with the issues
 11 that will be preparing the people for the next day, looking
 12 at all these issues that I already testified to. So we all
 13 moved from the JOC approximately the same time, General
 14 Annandale driving to Pretoria, myself to Potchefstroom,
 15 Captain Adriaio also was travelling to somewhere. So ja,
 16 the time is not unusual for that period because we were
 17 working till those times.
 18 MR CHASKALSON SC: You see what strikes
 19 me as odd in relation to the telephone records is that
 20 after the end of the National Management Forum meeting and
 21 after the end of the extraordinary session thereafter, the
 22 Provincial Commissioner had three calls with you before
 23 she'd spoken to any of her Marikana generals.
 24 GENERAL NAIDOO: Chair, I'm not aware of
 25 that and I was not even aware that she spoke to any of the

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1 other generals. I assume, normally we communicate,
 2 whenever she's out of office we normally keep in touch with
 3 each other so that she was up to date with whatever is
 4 happening in the province. So my assumption, that I was
 5 the only one that she was speaking to.
 6 [15:49] MR CHASKALSON SC: It was only after her
 7 third call to you, by which time you had had a call to
 8 Major-General Annandale, that she had calls to Major-
 9 General Mpembe, the first one was at 22:36 and she left a
 10 voicemail with Major-General Annandale at 22:38, 313
 11 seconds. Now the Provincial Commissioner's phone records
 12 are at LL3 and that's where these, this information
 13 emerges. Now, Major-General, we know that the Provincial
 14 Commissioner announced that the matter was going to be
 15 ended that day, at a press conference at 9:30 so it wasn't
 16 something she was trying to keep secret.
 17 GENERAL NAIDOO: Yes, Chair.
 18 MR CHASKALSON SC: We know also that
 19 somebody at the start of the JOCCOM said D-day because
 20 that's reflected in the handwritten notes that were taken
 21 at the JOCCOM on that day.
 22 GENERAL NAIDOO: Chair, I already
 23 testified at the beginning of the JOC I was not there, I
 24 joined them whilst the meeting was in progress so I didn't
 25 hear any D-day at such a meeting.

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1 MR CHASKALSON SC: Yes, that was before
 2 you arrived so you didn't witness that but the fact that it
 3 was announced at the JOCCOM and thereafter broadcast to the
 4 world at a press conference suggests that the Provincial
 5 Commissioner was not wanting to keep this a secret. It was
 6 a matter that she was quite happy to publicise and she had
 7 told someone who spoke at the JOCCOM first thing in the
 8 morning. Now, if the Provincial Commissioner was happy to
 9 let this information go public, surely she would have told
 10 the commanders in charge of the Marikana operation so they
 11 had more time to prepare for D-day the next day.
 12 GENERAL NAIDOO: Chair, what is now being
 13 referred to as D-day I thought was the day that I was going
 14 to be returning to my office with the matter resolved. I
 15 don't know whether she had informed any of the other
 16 generals about this D-day and my impression was if she
 17 indicated that, maybe it was referring to the fact that the
 18 weapons were going to be laid down. As I said, I was not
 19 aware of the contents of the press conference or what
 20 happened or what transpired there. I only became aware of
 21 this much – days later actually, because I'd never seen it
 22 before this. So what I'm confirming is I have spoken to
 23 General Mbombo several times that night but none of them
 24 did she indicate to me that she had taken a decision or the
 25 Management Forum had taken a decision to go to a tactical

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1 phase. I would have remembered that, I mean it was an
2 important thing. I probably wouldn't have arrived late to
3 deal with other issues in Potch before I come. I would
4 have made it a priority to be there.

5 CHAIRPERSON: Brigadier Calitz told us
6 that there was a report at the meeting, the 6 o'clock
7 meeting, that there was a possibility that the strikers
8 would lay down their arms voluntarily. There is also an
9 intelligence report that indicated they wouldn't –

10 GENERAL NAIDOO: Yes.

11 CHAIRPERSON: - and they would not hand
12 over their weapons and fight. And he said a decision was
13 then taken that a contingency plan should be drawn up to
14 deal with the situation if they didn't lay down their arms
15 and he said he expected that Colonel Scott would draw up
16 such a plan. Did you hear that?

17 GENERAL NAIDOO: Chair, I think we also
18 indicated that on Thursday they went to stage 2, the show
19 of force, et cetera. So yes, I did hear the issue that
20 crime intelligence had indicated that there was resistance
21 within the group and I just testified to that just now and
22 obviously the possibility of going to tactical phase was
23 something that was going to be looked at but that's why I'm
24 saying for the first time that I heard that there was a
25 firm decision to go to the tactical phase was at 2:30.

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1 CHAIRPERSON: Yes, you're not exactly
2 answering my question.

3 GENERAL NAIDOO: Yes.

4 CHAIRPERSON: The question was, Brigadier
5 Calitz said that it was decided that a contingency plan
6 would be drawn up to deal with the situation if they, the
7 strikers don't lay down their arms. It related to the form
8 that the tactical option would take if it had to be gone to
9 because the weapons weren't, in the event of the weapons
10 not being laid down voluntarily. All I want to know from
11 you is did you hear that, did you hear that being
12 discussed, that a contingency plan had to be drawn up as I
13 explained?

14 GENERAL NAIDOO: Maybe it's the wording,
15 Chair. When I indicated that I was aware of the fact that
16 they were saying what if the intelligence is true and how
17 would we go to the next stage, I suppose the wording that's
18 used now is a contingency plan. I didn't hear of a
19 contingency plan.

20 CHAIRPERSON: Contingency plan was his
21 expression but the point is, according to him a plan to
22 deal with that situation had to be drawn up and that was
23 one of the things that was decided, according to Brigadier
24 Calitz, and he said he expected that Colonel Scott would do
25 that and in fact he says he was surprised later that all

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1 that Colonel Scott had to show for his labours on the
2 Thursday morning was –

3 GENERAL NAIDOO: That map.

4 CHAIRPERSON: The map that you had
5 already, plus something that he, that the people saw on the
6 laptop and he asked him about that but anyway, you can't
7 help us, you don't know anything about that, am I right?

8 GENERAL NAIDOO: I don't, as I said I
9 knew that they were looking at how we would go to stage 3
10 but not the word contingency plan, no.

11 MR CHASKALSON SC: Major-General, what
12 were the inter-provincial and provincial national financial
13 arrangements in respect of the operation at Marikana? Who
14 footed the bill?

15 GENERAL NAIDOO: Chair, the North-West
16 Province carried most of the costs. There was some cost
17 that was carried by the division operational response
18 services where units such as the national intervention
19 unit, the special task force emanate from but yes, largely
20 the North-West Province footed the bill.

21 MR CHASKALSON SC: These sorts of
22 arrangements on an operation on the scale of Marikana, are
23 they not the sort of thing that would be appropriate to
24 take to the National Management Forum?

25 GENERAL NAIDOO: Chair, I think it was

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1 already testified that this was done at the National
2 Management Forum. However, maybe to give a quicker answer
3 to this, we've already indicated that on Monday the
4 National Commissioner had instructed us to ensure that
5 sufficient resources be mobilised and I indicated there's a
6 drastic escalation of resources. Now the National
7 Commissioner is our executive officer-in-charge and she did
8 not have to convene a National Management Forum to give
9 that instruction and that instruction was given but it was
10 essentially a provincial operation because the Provincial
11 Commissioner is responsible for policing in the province
12 and accountable to the National Commissioner.

13 MR CHASKALSON SC: But the issue of who
14 was going to pick up the tab hadn't been resolved by the
15 National Commissioner on Monday, had it?

16 GENERAL NAIDOO: Chair, she gave us an
17 instruction and it was up to us to deal with the technical
18 detail in terms of making the particular decisions to be
19 operationalised. We did not encounter any specific
20 difficulties because we dealt with the bulk of the issues
21 at provincial level. I indicated that a Colonel was placed
22 in charge of the issues around financing and a Colonel
23 around supply chain, we had a Colonel who dealt with the
24 communication and technology issues, so the province had
25 people in place. Should we have encountered any specific

1 problem, yes, we would revert to national but we don't go
2 to national level for every little – we first try to
3 address it and then go on only with our challenges.

4 CHAIRPERSON: Mr Chaskalson, it's nearly
5 4 o'clock. I'm proposing to adjourn soon, if not now, but
6 I'm in your hands. If there are some points you want to
7 ask quickly?

8 MR CHASKALSON SC: Can I just close this
9 point? It's one minute.

10 CHAIRPERSON: Alright, one minute.

11 MR CHASKALSON SC: What was the daily
12 cost to the province of Marikana, are you aware of that –
13 the Provincial Police Department?

14 GENERAL NAIDOO: Chair, I can establish
15 that cost and make it available because it's a project code
16 on our budget so that we can make it visible. I don't have
17 that daily cost that is being sought here now.

18 MR CHASKALSON SC: And issues relating to
19 cost and inter-provincial and provincial/national financial
20 arrangements, are those not issues that you discussed with
21 the Provincial Commissioner in advance of the National
22 Management Forum?

23 GENERAL NAIDOO: No, Chair. As I already
24 indicated, we had already put in place the capacity and we
25 felt at that stage the majority of the issues we could deal

1 with within our available resources. We had already spoken
2 to the relevant budget managers at head office indicating
3 that this is how it would be the most practical arrangement
4 and the system we have is that if there was something that
5 can be or needed to be charged to a different entity other
6 than the province, North-West, then we could, after dealing
7 with the issues and settling it, journalise such
8 expenditure against there. So for practicality's sake, we
9 could not have five different budgets trying to manage one
10 operation. It was going to be very cumbersome so the
11 practical thing, we ran the operation and the budget and we
12 had support from national in terms of resources.

13 MR CHASKALSON SC: Chairperson, this
14 would be an appropriate point.

15 CHAIRPERSON: We will adjourn now until 9
16 o'clock tomorrow morning.

17 [COMMISSION ADJOURNED]

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