

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 199

11 MARCH 2014

PAGES 24296 TO 24450



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1 [PROCEEDINGS ON 11 FEBRUARY 2014]
 2 [09:11] CHAIRPERSON: The Commission resumes.
 3 Major General, you're still under oath.
 4 GANASEN NAIDOO: Yes, still under oath,
 5 Chair.
 6 CHAIRPERSON: Mr Ntsebeza, are you going
 7 to cross-examine next?
 8 MR NTSEBEZA SC: Yes, Mr Chair, as soon
 9 as Mr Chaskalson has not obscured my view of the
 10 Commission.
 11 CHAIRPERSON: Well, as soon as his
 12 conversation is over then you can start. Alright.
 13 MR NTSEBEZA SC: Thank you very much –
 14 CHAIRPERSON: Let's start with some
 15 housekeeping, I think. What you did was we were given in
 16 your absence by one of your agents a very interesting
 17 document headed "The deaths of victims A, B, M and O." Now
 18 according to my notes the next exhibit should be MMM46, but
 19 if that's not right, MMM47. We'll give it that, you'll
 20 describe it to us and when Ms Pillay comes we'll find out
 21 if we are correct. But it's I think MMM47. Is that
 22 correct? That's a document you want to hand in, I take it,
 23 Mr Ntsebeza?
 24 MR NTSEBEZA SC: Yes, Mr Chairman.
 25 CHAIRPERSON: So exhibit MMM47 is a

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1 document described as "The deaths of victims A, B, M and
 2 O." And perhaps I should, I don't know how long it is
 3 before you are going to get into the detail of it; at a
 4 suitable stage I think we will have to give a warning to
 5 the relatives of Mr Anele Mdizeni, Mr Thabiso Johannes
 6 Thelejane, Mr Nkosinathi Xalabile, and Mr Henry Mvuyisi
 7 Pato. Do I have to give the warning now, Mr Ntsebeza, or
 8 are you going to ask some preliminary questions which -
 9 MR NTSEBEZA SC: Mr Chairman, not –
 10 CHAIRPERSON: - will precede the showing
 11 of these slides?
 12 MR NTSEBEZA SC: Indeed, Mr Chairman, not
 13 now.
 14 CHAIRPERSON: So you'll give me warning
 15 in good time. I see the families haven't arrived yet.
 16 MR NTSEBEZA SC: I've been told that they
 17 are on their way from their hotels and they should be here
 18 at about 10. So, but we should go ahead in the meantime.
 19 CHAIRPERSON: Obviously it's no good
 20 issuing the warning before they come, but unless – and I
 21 see there are some gentlemen at the back who, I don't know
 22 whether they would need a warning. Are they Mr Mpfu's
 23 clients or yours, Mr Ntsebeza?
 24 MR NTSEBEZA SC: I believe they are Mr
 25 Mpfu's clients.

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1 CHAIRPERSON: Alright, so we'll carry on
 2 in the meanwhile.
 3 CROSS-EXAMINATION BY MR NTSEBEZA SC: We
 4 will, Mr Chairman. Good morning, General.
 5 GENERAL NAIDOO: Good morning.
 6 MR NTSEBEZA SC: General, we'll come
 7 much, much later to exhibit MMM47, as we have now marked it
 8 to be. There is just one aspect that I want to deal with
 9 quickly and that is about the NUM and its president. You
 10 do know about the NUM. You have now become familiar that
 11 there is a union called the National Union of Mineworkers.
 12 GENERAL NAIDOO: I'm familiar, yes.
 13 MR NTSEBEZA SC: You are aware that it
 14 has a president called Mr Zokwana?
 15 GENERAL NAIDOO: I'm aware of that.
 16 MR NTSEBEZA SC: You're aware, yes. Now
 17 there's just one aspect about him that I would like you to
 18 assist the Commission because out of all the evidence that
 19 has been led and you have been asked about it doesn't seem
 20 to me that the aspect I'm going to explore with you has
 21 been dealt with. Mr Chairman, there is the evidence that I
 22 would like to be shown up is on T4431, day 41, T4431, lines
 23 9 to 15 up to T4432, line 16 to 18.
 24 CHAIRPERSON: What day is this?
 25 MR NTSEBEZA SC: It's day –

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1 CHAIRPERSON: 41.
 2 MR NTSEBEZA SC: - 41.
 3 CHAIRPERSON: Day 41.
 4 MR NTSEBEZA SC: Yes.
 5 CHAIRPERSON: So you refer to day 41 in
 6 the transcript, and what page are we going to look at?
 7 4431 is the first one.
 8 MR NTSEBEZA SC: 4431.
 9 CHAIRPERSON: Ja, thank you. So this is
 10 Mr Tip cross-examining – sorry, no, I beg your pardon, Mr
 11 Tip leading Mr Zokwana.
 12 MR NTSEBEZA SC: He was leading, ja. He
 13 was leading Mr Zokwana. You see that, General?
 14 GENERAL NAIDOO: I see that.
 15 MR NTSEBEZA SC: Yes, then Mr Tip – have
 16 you read that, all of it?
 17 GENERAL NAIDOO: I have.
 18 MR NTSEBEZA SC: Particularly where he
 19 says, "Mr Zokwana, I'm going to turn to your description of
 20 the events of 12 August 2012 when you came onto the scene
 21 at Marikana. Before that I just want to ask you, did you
 22 in the course of the 11th of August" – you see, it's about
 23 the events of the 12th of August that I will want to ask you
 24 about. In fact I think that topic having been introduced,
 25 could we go to day 42, page T4560, lines 2 to 14.

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1 CHAIRPERSON: What lines did you say, Mr
2 Ntsebeza? Mr Ntsebeza, what lines did you say? Is this
3 the correct page?
4 MR NTSEBEZA SC: Lines 2 to 14. I want
5 where –
6 CHAIRPERSON: 2 to 14, those are on the
7 screen. Yes, thank you. Perhaps I should read them out.
8 Mr Semenya is cross-examining Mr Zokwana and he says, "In
9 evidence-in-chief I heard you say, and please if I'm wrong
10 just tell me, I heard you say that you spoke to General
11 Mbombo who told you that they do not have enough personnel,
12 is that correct?" Mr Zokwana said, "I said I spoke with a
13 provincial official at the offices of the SAPS and the
14 response thereof was not satisfactory that they will be
15 able to act accordingly. I didn't mention the name of any
16 person." Mr Semenya, "Okay, do you know that official?"
17 Mr Zokwana, "I am sorry, I can't remember." That's the
18 extract that's being put to you. Mr Ntsebeza, I take it
19 you want to ask him if he was the official?
20 MR NTSEBEZA SC: Do you see that?
21 GENERAL NAIDOO: I do.
22 MR NTSEBEZA SC: Yes, Mr Tip had earlier
23 asked Mr Zokwana to give the Commission a brief outline of
24 the persons whom he had spoken to and he said more or less
25 what we have there, namely that he had spoken to an

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1 official in the offices of the Provincial Commissioner and
2 he was not satisfied with the response that he was given
3 and they didn't have enough manpower in the SAPS. "Then I
4 tried to get the number of the Minister's office and I was
5 able to talk to somebody in his office," and they left a
6 message on his cell. You are aware of that evidence?
7 GENERAL NAIDOO: I am seeing it now, yes.
8 MR NTSEBEZA SC: You have seen that
9 evidence?
10 GENERAL NAIDOO: I am seeing it now,
11 Chair.
12 MR NTSEBEZA SC: Now there was also, this
13 conversation was also featured in day 43, T4625 starting
14 from line 13 and that was a question from Ms Barnes. "I'd
15 like us to, I'd like you to tell us, Sir, about those phone
16 calls that you made on that day." This was Ms Barnes, a
17 question put to Mr Zokwana. "You said that you phoned the
18 office" –
19 CHAIRPERSON: [Microphone off, inaudible]
20 have the correct page just yet on the screen. Give us the
21 page number again, please.
22 MR NTSEBEZA SC: Day 43.
23 CHAIRPERSON: Page?
24 MR NTSEBEZA SC: 4625.
25 CHAIRPERSON: We'll, we haven't got it.

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1 We've 4635 at the moment. Could we have 4635, please?
2 Sorry, could we have 4625? Yes, we've got 4635 –
3 MR NTSEBEZA SC: 4625 –
4 CHAIRPERSON: We need 4625. We're nearly
5 there. Yes, there we've got it. It's line 13.
6 MR NTSEBEZA SC: Yes.
7 CHAIRPERSON: That's the passage you're
8 putting to the witness.
9 MR NTSEBEZA SC: Indeed.
10 CHAIRPERSON: Ms Barnes says, "I'd like
11 us to, I'd like you to tell us, Sir, about those phone
12 calls that you made on that day. You said that you phoned
13 the office of the Provincial Commissioner, is that
14 correct?" Mr Zokwana says, "That is in my statement, yes."
15 Ms Barnes says, "Who did you speak to?" Mr Zokwana says,
16 "Given the situation, I couldn't remember who I spoke to.
17 Whoever I spoke to did not give me an answer I was happy
18 with." Ms Barnes, "Do you know the rank of the person you
19 spoke to?" Mr Zokwana, "I repeat, I could not have – I
20 mean, and if I could remember the rank I would be maybe
21 knowing the person. The only person I remember I spoke to
22 thereafter was the Minister of the Police." Ms Barnes,
23 "You said the response was unsatisfactory. What did this
24 person say to you?" Mr Zokwana, "They didn't have enough
25 personnel to deal with the situation as two of their

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1 personnel had been to the scene, as claimed by the report
2 of the security officer." Ms Barnes, "What level of
3 personnel did you think was required?" Mr Zokwana, "Given
4 the numbers of people who were involved here, I mean
5 between 2 000 and 3 000 and how they were described in
6 manner, in terms of being armed, I thought that the
7 security had to decide that, I'm not in a position to
8 determine. My training has not given me to know if people
9 are armed this way, you need so many," and I think that's
10 the end of the passage.
11 MR NTSEBEZA SC: Yes, that's it, and then
12 if we also went to day 101, page 10847, where then Mr Tip
13 places on record, lines 8 to 21.
14 CHAIRPERSON: So lines 8 to 21. Is that
15 right?
16 MR NTSEBEZA SC: On the 12th, ja –
17 CHAIRPERSON: "On the 12th Mr Zokwana
18 arrives because he has heard reports about the incident on
19 the morning of the 12th in which two security men were
20 killed and he comes to Lonmin because he is very, very
21 concerned. The first thing that he does is to arrange a
22 meeting with Lonmin and it's a logical and perfectly proper
23 recourse because Lonmin have the security apparatus that is
24 in place and he needs to establish whether or not there's
25 sufficient security. He is not entirely satisfied – I know

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1 that I'm repeating things I said previously, but he then
 2 calls the Provincial Commissioner's office. He is not yet
 3 satisfied that there has been a sufficient response on the
 4 part of the police and he then telephones, on the 12th of
 5 August, the Minister."

6 Then you want me to read the next sentence? "Now
 7 Mr Zokwana has given evidence and his evidence on this
 8 topic has been very, very clear and it is entirely
 9 unchallenged. He seeks police intervention because there
 10 has been a breakdown of law and order. Then –

11 MR NTSEBEZA SC: I think that –

12 CHAIRPERSON: - "the problem, because I
 13 imagine you want to move on to other points." "I do."

14 MR NTSEBEZA SC: Yes.

15 CHAIRPERSON: So that's it, is it?

16 That's the passage you want?

17 MR NTSEBEZA SC: Yes, that's the passage.
 18 You've seen that, General?

19 GENERAL NAIDOO: I have.

20 MR NTSEBEZA SC: Ja, now it seems to us
 21 from all of this evidence Mr Zokwana was not able to say
 22 whom actually in the office of the Provincial Commissioner
 23 he spoke to and General Mbombo in her testimony was asked
 24 about this aspect and if you looked at day 183, page 22120,
 25 she does say that it was not she to whom Mr Zokwana spoke,

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1 if we just could get there. Lines 12 to 16. Ms Lewis, "So
 2 General, we can see that on the 12th August Mr Zokwana spoke
 3 to someone from your offices. General, was it you to whom
 4 Mr Zokwana spoke?" "No, it's not me, Mr Chairperson." You
 5 see that?

6 GENERAL NAIDOO: I see that, Chair.

7 MR NTSEBEZA SC: And then in response to
 8 a question from the Chairperson, and we will find that on
 9 day 183, T22121, line 15 to 22122, line 20.

10 CHAIRPERSON: Perhaps I should read that.

11 MR NTSEBEZA SC: Yes.

12 CHAIRPERSON: I said to the Provincial
 13 Commissioner Mbombo, "Now you were still on sick leave on
 14 the 12th, weren't you?" She replied yes, she replied,
 15 "Correct, Chairperson." I then said, "General Naidoo was
 16 standing in for you, he was the Acting Provincial
 17 Commissioner." She said, "That is correct, Chair." And I
 18 then said, "So any phone call that was received by your
 19 office, would that have been referred to" – I think that
 20 should be you – "to your, the person who was acting in your
 21 place, namely General Naidoo, or would this have been
 22 referred to you when you came back to your office, when you
 23 came back from" – no, I don't think that's the next page,
 24 is it?

25 MR NTSEBEZA SC: No. I think that should

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1 be sufficient, Mr Chairman.

2 CHAIRPERSON: No, that's it, "when you
 3 came back from sick leave?"

4 MR NTSEBEZA SC: Yes.

5 CHAIRPERSON: And she said, "If it was on
 6 a Sunday, Chairperson, we do not work on Sunday, but the
 7 truth is, as you are putting to Chairperson, that if it was
 8 during the week it would have been referred to the person
 9 who was acting in my absence." And then I said, "Mr
 10 Zokwana of course doesn't say that he spoke to the official
 11 who was at the offices at the time he spoke to him; he
 12 spoke to an official in the offices. So Mr Zokwana might
 13 have had the telephone number of some official who – or his
 14 home number or cell phone number or something and that may
 15 be the answer, but of course a further point arises; if the
 16 official was spoken to on a Sunday and it was a matter for
 17 the Commissioner, the probability is that the call would
 18 have been referred to the Acting Commissioner, not to the
 19 person who was on leave, which is the witness. Is that
 20 right, Provincial Commissioner?" and she says, "I
 21 understand. You're quite right, Chairperson."

22 MR NTSEBEZA SC: Yes. Now according to
 23 these passages it would appear that the person who would
 24 have been referred to by the Provincial Commissioner as
 25 having been the Acting Commissioner at the time would have

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1 been you. Would that be correct?

2 GENERAL NAIDOO: I was the Acting
 3 Provincial Commissioner, correct.

4 [09:31] MR NTSEBEZA SC: Just to tie this loose
 5 end would it then have been you to whom Mr Sekwano spoke to
 6 on the 12th of August?

7 GENERAL NAIDOO: Chair, no. The only
 8 person that I spoke to or received a call in connection
 9 with this on the 12th of August was the Provincial
 10 Commissioner. I testified to that fact as well.

11 MR NTSEBEZA SC: Thank you, General, so
 12 we will have to contend with somebody having spoken to the
 13 office of the Provincial Commissioner, but it was neither
 14 you nor General Mbombo. Was any report to you that there
 15 had been a communication or a telephone received from Mr
 16 Zokwana?

17 GENERAL NAIDOO: Chair, no. I only
 18 became aware now during the Commission where they indicated
 19 they approached the police. But at that time I had no idea
 20 that –

21 MR NTSEBEZA SC: On the 12th of August?

22 GENERAL NAIDOO: I had no idea at that
 23 time of the NUM's involvement, no.

24 MR NTSEBEZA SC: So are you saying that
 25 you do not know that there was a communication from the

<p style="text-align: right;">Page 24308</p> <p>1 president of NUM on the 12th August or are you saying you 2 have not been told that there had been a communication from 3 the president of the NUM? 4 GENERAL NAIDOO: I say I was not aware of 5 any such communication. 6 MR NTSEBEZA SC: Is there someone at the 7 level of the leadership to whom Mr Zokwana could have 8 spoken on the 12th if he didn't speak to you ore if he 9 didn't speak, as we now know from her evidence, General 10 Mbombo? 11 GENERAL NAIDOO: Chair, I'm not familiar 12 with who Mr Zokwana knows. I have never met him until the 13 meeting of the 15th when I attended a session where he was. 14 So I have never met him before. So I'm not familiar with 15 who he's aware of, but in the command structure there's a 16 local station commander, there's a cluster commander, 17 there's the Deputy Provincial Commissioner for operations. 18 So there's a whole variety of people where were there much 19 longer than me. I was, at that stage, fairly new in the 20 province. So I'm not familiar if he could spoken to them 21 or had he known them. 22 CHAIRPERSON: Let me ask you this 23 question. Assuming that I had to speak urgently to the 24 Provincial Commissioner on a Sunday, she doesn't work on a 25 Sunday well criminals unfortunately do. So assuming I had</p>	<p style="text-align: right;">Page 24310</p> <p>1 I take it, well you can't speak to her, she's on sick 2 leave. I would say all right then who's acting in her 3 place or to whom can I speak at that level, would I have 4 been given your number on the 12th of August 2012? 5 GENERAL NAIDOO: My number or the duty 6 officer at the provincial level, the general, yes. 7 CHAIRPERSON: Now who was the duty 8 officer at the provincial level on the 12th of August 2012? 9 GENERAL NAIDOO: Chair, I can check, I 10 cannot specifically remember now. 11 CHAIRPERSON: It wasn't you. 12 GENERAL NAIDOO: I can't remember now. I 13 was the acting Provincial – no I can't remember. 14 CHAIRPERSON: Well if Mr Ntsebeza wants 15 to go on with this line of cross-examination I imagine it's 16 important for him to know who the duty officer at 17 provincial level was so he can ask the questions that he 18 has ready to ask. Is that correct, Mr Ntsebeza? 19 MR NTSEBEZA SC: Yes, Mr Chairman. 20 CHAIRPERSON: So can you get that 21 information please, perhaps during the tea adjournment you 22 can phone someone at your office and get the information 23 and give it to Mr Ntsebeza? 24 GENERAL NAIDOO: I will do that, Chair. 25 CHAIRPERSON: All right, thank you.</p>
<p style="text-align: right;">Page 24309</p> <p>1 a serious problem and I had to take it right to the top and 2 I tried to get hold of the Provincial Commissioner and 3 presumably unless I knew her private number which wouldn't 4 be information available to me, I take it phone the office. 5 Is that right? I want to speak to the Provincial 6 Commissioner, I don't want to deal with anybody below the 7 Provincial Commissioner. It's a very serious matter. 8 Okay, so how would I get hold – what number would I be 9 expected to phone? I take it there's a telephone number in 10 the telephone directory, Provincial Commissioner, is there 11 any number indicated for after hours, emergencies or 12 anything of that kind? 13 GENERAL NAIDOO: Chair, at all our police 14 stations we have a 24 hour service and they have a list of 15 people that are available after hours. So if somebody 16 wanted to access the Provincial Commissioner or any other 17 senior officer for whatever reason they would contact – 18 they just have to contact the nearest police station. On 19 that list it would indicate who was the general on duty and 20 that person obviously would deal with the matter or access 21 the Provincial Commissioner if it was that kind of matter. 22 CHAIRPERSON: Now let's assume I want to 23 speak to the Provincial Commissioner urgently on a Sunday, 24 I phone the nearest police station and I say how do I get 25 hold of the Provincial Commissioner. They would say to me,</p>	<p style="text-align: right;">Page 24311</p> <p>1 MR NTSEBEZA SC: Thank you very much, Mr 2 Chairman. Now, General, let's go to the events of the 13th. 3 I'm sure you have been asked extensively about the events 4 of the 13th and I will not traverse that field save only 5 insofar as in the reference both in your statement and in 6 the evidence you gave it seems that you talk about the 7 mobilisation or escalation of forces on that day. Do you 8 remember that? 9 GENERAL NAIDOO: I do remember, Chair. 10 MR NTSEBEZA SC: Yes, now if I could take 11 you to the reference, day 88, day 188, Mr Chairman, I'm 12 sorry. And I think it starts with line 22856, lines 1 to 13 6. 14 CHAIRPERSON: 22856 I understood Mr 15 Ntsebeza to say. 16 MR NTSEBEZA SC: Indeed, Mr Chairman. 17 Day 188 and it starts at T22856. 18 CHAIRPERSON: Sorry, I missed that, Mr 19 Ntsebeza – 20 MR NTSEBEZA SC: Lines 1 to 6 21 CHAIRPERSON: Lines 1 to 6. 22 MR NTSEBEZA SC: Yes. 23 CHAIRPERSON: And complaints – this must 24 be General Naidoo – this must be the witness speaking. 25 "Complaints from the mine management that the police were</p>

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1 not responding and assisting in stabilising the situation
 2 and we want to meet them on that because we had a large
 3 deployment there." And we felt, you know, we were trying
 4 to do what we could without understanding what were the
 5 real issues. We could do no more." That's the passage, do
 6 you remember saying that?

7 GENERAL NAIDOO: Chair, correct.
 8 MR NTSEBEZA SC: There is another passage
 9 where it starts "We had to firstly assess the situation,
 10 as I indicated previously."

11 CHAIRPERSON: On the previous page, in
 12 fact the passage I read to – no, no the bottom of that page
 13 – the passage I read to you previously is preceded on the
 14 previous page by the following which you are recorded to
 15 having said. "We had to firstly assess the situation, as I
 16 indicated previously, whether the situation had stabilised.
 17 And secondly, as was indicated in my statement, that there
 18 was continuous communication" and then it goes on in the
 19 passage "And complaints from the mine management that the
 20 police were not responding and assisting in stabilising the
 21 situation." Is that passage you want, Mr Ntsebeza?

22 MR NTSEBEZA SC: Yes that's the one that
 23 – now I'm sure I don't want extensive details about what
 24 you referred to there as complaints from mine management,
 25 but what I want to find out from you is whether the

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1 pressure from Lonmin of a nature that you decided, as you
 2 explain it elsewhere, to radically mobilise or escalate the
 3 deployment of forces?

4 GENERAL NAIDOO: No, I think firstly we
 5 indicated in the first instance, over the weekend, I
 6 testified that Lonmin had complained that there were
 7 incidents occurring and they felt that there was
 8 insufficient or no police presence. I contacted the public
 9 order police unit and they deployed – I established that
 10 yesterday, they deployed about 13 members during the day,
 11 additional, to the police station and 10 members on the
 12 night shift to conduct patrols and maintain a presence in
 13 the area. On Monday, after the incident where three police
 14 officials and three strikers were killed, obviously the
 15 operation went into a different phase because now we had to
 16 pursue – firstly there was direct violence against the
 17 police, confrontation with the police with the strikers.
 18 And secondly there was an investigation to pursue where
 19 several police firearms, etcetera, especially automatic
 20 firearms had been taken. There I indicated there was a
 21 meeting after having heard from Lonmin as well. There was
 22 a meeting and the National Commissioner indicated that we
 23 should stabilise the situation and investigations must
 24 proceed and perpetrators of the violence and the murders
 25 have to be arrested and prosecuted. And on that basis

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1 there was a drastic escalation of resources starting from
 2 Friday when there were approximately 27 police officials in
 3 total to on Sunday when after my call to our national head
 4 office, we had approximately 70 people. Sub sequent to
 5 that our figures went to more than 400, between 400 and at
 6 some stage 750 members. So that –

7 CHAIRPERSON: When was that?
 8 GENERAL NAIDOO: Subsequent to –
 9 CHAIRPERSON: No, subsequent but when?
 10 GENERAL NAIDOO: Tuesday –
 11 CHAIRPERSON: Oh Tuesday –
 12 GENERAL NAIDOO: - Wednesday, Thursday,
 13 yes.

14 CHAIRPERSON: How many did you actually
 15 have on the Thursday, the day of the shootings?
 16 GENERAL NAIDOO: I think it was
 17 approximately 600 and some odd in total.

18 CHAIRPERSON: Yes, I'm sorry to interrupt
 19 you. One of the or perhaps a number of the people who had
 20 just come, I want to welcome you. I see you arrived back
 21 from your trip away. I'm pleased to see you've arrived
 22 safely, but someone has either got her sound too high or
 23 else she hasn't got her earphones on properly because we
 24 have a disturbance of the sound track of the translation
 25 which we can hear. I can still hear it, so either someone

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1 hasn't got her earphones on or else the volume is too high
 2 and it's disturbing us in hearing the witness's answer. So
 3 someone could attend to that please before the cross-
 4 examination continues. Thank you, well let's hope that the
 5 problem's been solved. No it hasn't. I suppose I have to
 6 speak so that there's interpretation and then you can
 7 whether interpretation is then audible in the chamber
 8 without the benefit of earphones. We'll carry on for a
 9 while. I hope that things will improve. Is there anything
 10 further you wish to say in answer to the question you were
 11 asked, Major-General?

12 GENERAL NAIDOO: Chair –
 13 CHAIRPERSON: Before Mr Ntsebeza asks the
 14 next question?
 15 GENERAL NAIDOO: I've answered it, Chair.
 16 MR NTSEBEZA SC: Thank you, Mr Chairman.
 17 The meeting that you talk about involving the National
 18 Commissioner and the Provincial Commissioner is what you
 19 talk about in your statement, in paragraph 31. What has
 20 now become referred to as the consolidated –
 21 CHAIRPERSON: You're referring to JJJ108.
 22 MR NTSEBEZA SC: I would assume – I'm
 23 assured, Mr Chairman, you are spot on. Paragraph 31, is
 24 that the meeting that you are talking about, paragraph 31
 25 of the consolidated affidavit?

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1 GENERAL NAIDOO: That's correct, Chair.
 2 MR NTSEBEZA SC: "The National
 3 Commissioner and the Provincial Commissioner of Gauteng
 4 arrived at Lonmin later that evening at about 20h00 and
 5 they are given an overview, first by the SAPS and also by
 6 mine management. Thereafter after long deliberation
 7 between the National Commissioner and the Provincial
 8 Commissioner of North West in Gauteng as well as Major-
 9 General Mpmembe, Annandale and myself and Brigadiers Calitz,
 10 van Zyl, Engelbrecht and Tsiloane and a few other
 11 personnel it decided that a drastic escalation of the
 12 police resources will be necessary to both stabilise the
 13 public order situation as well as facilitate the
 14 investigation of the murders and attack which had occurred
 15 on police officers." Now, of course, three mine workers
 16 have also been killed in that skirmish in relation to which
 17 you referred to two police officers who had been killed.
 18 CHAIRPERSON: I'm sure that's entirely
 19 correct, it's clear that two were killed. There's a
 20 question mark over the circumstances in which the third,
 21 the one who died from bleeding.
 22 MR NTSEBEZA SC: Yes.
 23 CHAIRPERSON: Circumstances in which he
 24 met his death, but certainly two, it doesn't affect the
 25 thrust of your question. In addition to people referred to

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1 two strikers had also been killed.
 2 MR NTSEBEZA SC: You are aware of that,
 3 General, was the question that two mineworkers had been
 4 killed and the third there was doubt as to how you had
 5 killed him, did it feature as part of the reason for you to
 6 mobilise drastically, of course it's –
 7 GENERAL NAIDOO: Chair –
 8 MR NTSEBEZA SC: - or was it only the two
 9 police officers you were talking about?
 10 GENERAL NAIDOO: Chair, I think that's
 11 the understanding, that the actions of the police were not
 12 being investigated by the police, it was being investigated
 13 by IPID. Obviously with our support in terms of anything
 14 they required. So when I refer to the investigation of the
 15 actions of the police there was a couple of dockets and
 16 some dockets were handled by the police and the other
 17 dockets were handled by IPID.
 18 CHAIRPERSON: Yes, of course, the point
 19 made in your paragraph 31 is two aspects were being
 20 addressed. One was the investigation of the murders and
 21 the attack which occurred on the police officers, that was
 22 being handled by the police.
 23 GENERAL NAIDOO: That's correct, Chair.
 24 CHAIRPERSON: But there was also the
 25 stabilisation of the public order situation.

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1 GENERAL NAIDOO: That's correct.
 2 CHAIRPERSON: And the fact that the
 3 public order situation had increased in danger, as it were,
 4 and increased in severity which was indicated by the fact
 5 that two of three of the strikers had also been killed. It
 6 also was a factor to be borne in mind in regard to what was
 7 required to stabilise the public order situation. Is that
 8 not correct?
 9 GENERAL NAIDOO: Chair, I'm sure it was
 10 correct, yes.
 11 MR NTSEBEZA SC: What I want to establish
 12 was whether in that meeting the discussion went as far as
 13 saying five people died today, three of them were
 14 mineworkers and two of them were police officers? In this
 15 skirmish three deaths resulted on the side of the
 16 mineworkers, was there a discussion like that or was – I
 17 hear what you're saying about the IPID, but was there a
 18 discussion about the number of people who got killed on the
 19 13th?
 20 GENERAL NAIDOO: Chair, definitely. It
 21 was not just the people that were killed on the 14th, it was
 22 the number of people that were killed from the weekend
 23 running up to the 14th which was part of the understanding
 24 of the public order situation that exists. So the
 25 discussion did not restrict itself just to the fact that

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1 two police officers were killed. And we talked about the
 2 general public order situation. It started from the people
 3 that were injured, people that were killed through the
 4 weekend up to the incident which led to the confrontation
 5 between the police and the miners.
 6 MR NTSEBEZA SC: General, I don't want to
 7 belabour this point, but your own statement doesn't talk
 8 about the mineworkers who got killed in that skirmish. It
 9 talks only about the two police officers who had been
 10 killed and that was the reason or that is the reason that
 11 you are triggered to the decision to escalate the
 12 deployment of forces. Isn't that right in paragraph 31?
 13 GENERAL NAIDOO: Chair, maybe the
 14 emphasis about the issue with police officers was the fact
 15 that there now a number of firearms that were included into
 16 the equation that was circulating and there was a concern
 17 that what this meant in terms of the escalation of
 18 violence.
 19 MR NTSEBEZA SC: General, we don't seem
 20 to be understanding each other and I want to move beyond
 21 this point. I'm saying to you your own statement mentions
 22 a reason for the escalation of forces, the fact that two
 23 police officers had been killed. You may or may have also
 24 been influenced by the fact that firearms had been taken.
 25 Your statement is conspicuous by its not mentioning that in

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1 the same event in which two police officers were killed,
 2 mineworkers were also killed. Was that not a basis for the
 3 escalation of the forces also?
 4 [09:51] GENERAL NAIDOO: Chair, I have already
 5 indicated that the general public order situation in its
 6 totality was discussed. So that did not exclude any of the
 7 deaths, but maybe the reason of specifically mentioning the
 8 police officers, as I said it put a different spin in terms
 9 of the situation on hand and I think I testified to this
 10 fact. One of the reasons that the Special Task Force was
 11 brought in was to support the investigation of the
 12 detectives where the expectation was that they would track
 13 the firearms and go in and arrest and recover these
 14 firearms as well. So under the general public order
 15 situation we dealt with all the deaths that have occurred,
 16 running up to the clash between the police. We did not
 17 exclude any particular one.
 18 MR NTSEBEZA SC: Now in that discussion
 19 was the attitude that there had been an attack on the
 20 police officers?
 21 GENERAL NAIDOO: That's the way we
 22 understood it, Chair.
 23 MR NTSEBEZA SC: On that day was it the
 24 report that you got that the police officers were murdered
 25 as a consequence of an attack on the police line?

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1 GENERAL NAIDOO: That is how we had it,
 2 Chair.
 3 MR NTSEBEZA SC: Without investigation?
 4 GENERAL NAIDOO: Chair, that was the
 5 basis of the preliminary reports which we had from the
 6 people on the scene.
 7 MR NTSEBEZA SC: That had taken place on
 8 that day, is it?
 9 GENERAL NAIDOO: That is correct, Chair.
 10 MR NTSEBEZA SC: Ja, now that's why
 11 again, and I'm going to ask you this for the last time;
 12 that's why again I want to know whether your preliminary
 13 reports did say there had been unfortunate deaths here, we
 14 have five deaths today; three of the people who got killed
 15 in the same event or more or less in the same event - two
 16 certainly, the third one there's a doubt - in which these
 17 two police officers were killed were mineworkers and there
 18 had to be an explanation as to how the mineworkers had met
 19 their deaths.
 20 GENERAL NAIDOO: Chair, as I indicated,
 21 there were no deaths that were excluded in the discussions
 22 and we were well aware that IPID was also conducting their
 23 investigation in terms of - initially they wanted to take
 24 all the dockets and then eventually handed certain dockets
 25 back to the police for investigation, which excluded those

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1 that pertained to the miners that were killed, yes.
 2 MR NTSEBEZA SC: Was it the tenor of the
 3 report that you received, the preliminary report that you
 4 received, that the police who got killed got killed in the
 5 process of them defending themselves, in other words that
 6 the police were acting in self-defence and unfortunately
 7 these two died?
 8 GENERAL NAIDOO: Chair, from what I could
 9 remember of the report indication was the SAPS contingent
 10 was escorting the miners through and at some stage
 11 something that has triggered an attack and they turned on
 12 the police and that's when the two deaths occurred and the
 13 one injury, yes.
 14 MR NTSEBEZA SC: Well, we have now
 15 objective evidence which will still be tested a lot more,
 16 and I don't think you are the person who must be asked
 17 questions about how that skirmish took place and how it was
 18 initiated. That is a debate for another day for another
 19 witness who was actually there at the time.
 20 But the point I want to find out from you, is the
 21 frame of mind of your generals, of you, the National
 22 Commissioner, the Commissioner, Provincial Commissioner of
 23 Police, at the time when you received this preliminary
 24 report you used very loaded questions, I mean phrases here.
 25 In paragraph 31 you say, "It was both to stabilise the

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1 public order situation as well as facilitating the
 2 investigation of the murders and attack which occurred on
 3 the police officers." That's why I want you to let us have
 4 a sense of where you were at that meeting in terms of a
 5 frame of mind. Was it your conclusion that these
 6 fatalities did not occur as a result of a skirmish, a fight
 7 between two opposite forces, both of whom were engaged in
 8 inflicting, well, injuries and/or deaths as it took place?
 9 Was it your conclusion that these were not fatalities that
 10 were happening as a consequence of a fight between two
 11 forces?
 12 GENERAL NAIDOO: Chair, I think I've
 13 testified to my understanding as to what was narrated to us
 14 by the people that attended the incident and that's what I
 15 understood.
 16 MR NTSEBEZA SC: Okay, now, and I'm
 17 asking about you having been part of that meeting. Was it
 18 your view that the strikers had not been murdered by the
 19 police?
 20 GENERAL NAIDOO: Chair, I'm aware that in
 21 all the cases of the deaths a docket of murder is
 22 investigated and on the basis of evidence that was placed
 23 before the Director of Public Prosecution a decision is
 24 made. So all the deaths at that particular scene would
 25 have been treated as murders.

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1 MR NTSEBEZA SC: Now you don't say of
 2 course in paragraph 31 that because there were other deaths
 3 which could be attributable to police, that the matter is
 4 being handed over to the IPID, who are the ones who would
 5 investigate any wrongdoing on the part of the police, if
 6 that was so. You don't mention that there, do you?
 7 GENERAL NAIDOO: Chair no, I only
 8 focussed on the issues that were directly related to the
 9 resourcing of our operation, not to the operations of IPID.
 10 MR NTSEBEZA SC: No, I understand that.
 11 But you seem to be saying the investigation of whether or
 12 not the police had been guilty of any wrongdoing would have
 13 been the responsibility of IPID. Why I'm asking these
 14 question is because I want to be able to say right from the
 15 start, at that meeting there was only one understanding
 16 that was pervasive in that meeting and in subsequent
 17 conduct of the police. Two police officers have been
 18 murdered by mineworkers and that is the approach on which
 19 anything that should happen should take place. What would
 20 you say to that?
 21 GENERAL NAIDOO: Chair, as I indicated in
 22 the same paragraph I refer to the general public order
 23 situation and that does not exclude any specific group or
 24 grouping or role players.
 25 MR NTSEBEZA SC: And I've made this point

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1 and I'm moving, but insofar as murder is concerned, when
 2 you talk about fatalities it's as though the other three
 3 people who died in the same incident do not exist. When
 4 you write that statement, you write about two people, the
 5 police officers who got killed. The others do not exist.
 6 Do you want to comment?
 7 GENERAL NAIDOO: Chair, as I indicated,
 8 my statement was on the basis of the taskings that the
 9 police was dealing with. I specifically referred to the
 10 attack on police officials and I've during my testimony
 11 also indicated the resources that were put in place to
 12 support the investigation team. I at that stage had not
 13 been aware or had information with regard to what IPID was
 14 doing as far as their investigation was concerned, and as a
 15 result I did not specifically mention it. Other than
 16 knowing that they were conducting an investigation I did
 17 not have any other specific information.
 18 MR NTSEBEZA SC: General, I mean if you
 19 kept an open mind about what had happened there,
 20 notwithstanding what had been reported to you, I want to
 21 put it to you, you would have written something that
 22 indicated that the police were concerned about the fact
 23 that up to that point – how many people? – that there were
 24 about six people who had died up to that point. Now that
 25 is an attitude that we would expect from a person whose

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1 concern is keeping an open mind. What I want to put to you
 2 is that you didn't do that because you didn't keep an open
 3 mind. Yours was informed by an attitude that said the
 4 police were going about their duties, they were murdered by
 5 these mineworkers, and that framed the way in which you
 6 approached subsequent investigations and interventions in
 7 the entire saga.
 8 GENERAL NAIDOO: Chair, I don't –
 9 MR NTSEBEZA SC: Do you want to comment?
 10 GENERAL NAIDOO: I don't agree with that
 11 because that investigation team that was investigating,
 12 including the attacks on the two police officials, were
 13 investigating all nine murders up to date. So the task
 14 team was dealing with all the investigations and the
 15 support that was being rendered to them was going to be
 16 supporting all the investigations that had been handed to
 17 them. So I don't agree with that statement.
 18 MR NTSEBEZA SC: Now who took the
 19 decision to escalate forces?
 20 GENERAL NAIDOO: Chair, as I indicated
 21 that the meeting discussed what would be required to
 22 stabilise the situation and one of the key requests that
 23 was made from the operational people present was that the
 24 numbers were not sufficient to effectively manage the
 25 situation and it was on that basis that the various people

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1 indicated that they would require specific types of support
 2 and that's where the request was put to the National
 3 Commissioner to assist the province with the resources
 4 required.
 5 MR NTSEBEZA SC: General, did you
 6 understand the question?
 7 GENERAL NAIDOO: I did.
 8 MR NTSEBEZA SC: Do you still remember
 9 the question?
 10 CHAIRPERSON: He wants to know who took
 11 the decision to escalate.
 12 GENERAL NAIDOO: Chair, at the end of the
 13 day –
 14 CHAIRPERSON: Now whose decision was it
 15 to escalate? Was it the National Commissioner's decision,
 16 Provincial Commissioner's decision? Whose decision was it?
 17 GENERAL NAIDOO: Chair, I think the
 18 National Commissioner was informed that, and primarily
 19 possibly by the Provincial Commissioner. As I said, there
 20 was a discussion about how to address the situation, with
 21 the input from various people. At the end of the day it
 22 can only be the Provincial Commissioner who can make that
 23 request to say this is our situation and we would need
 24 assistance in terms of that, and obviously the National
 25 Commissioner in consultation with other provincial

<p style="text-align: right;">Page 24328</p> <p>1 commissioners can respond to provide that assistance.</p> <p>2 CHAIRPERSON: To cut it short, the way it</p> <p>3 works is this; the Provincial Commissioner said look here,</p> <p>4 we need more resources than we've got.</p> <p>5 GENERAL NAIDOO: That's correct.</p> <p>6 CHAIRPERSON: And we need extra resources</p> <p>7 from outside the province.</p> <p>8 GENERAL NAIDOO: That's correct.</p> <p>9 CHAIRPERSON: The National Commissioner</p> <p>10 obviously said yes, you've made out a case, so I'm</p> <p>11 satisfied that that should happen. She had the Provincial</p> <p>12 Commissioner Gauteng with her.</p> <p>13 GENERAL NAIDOO: That's correct.</p> <p>14 CHAIRPERSON: He obviously took part in</p> <p>15 the discussion as well, but I would imagine the answer to</p> <p>16 Mr Ntsebeza's question whose decision was it that the</p> <p>17 forces should be escalated inter alia by the deployment of</p> <p>18 resources from outside the province, that decision was</p> <p>19 taken by the National Commissioner. That must be right.</p> <p>20 After consulting with everybody -</p> <p>21 GENERAL NAIDOO: Well, the National</p> <p>22 Commissioner would have received a request from the</p> <p>23 Provincial Commissioner and she would have agreed. So the</p> <p>24 request came from the Provincial Commissioner -</p> <p>25 CHAIRPERSON: And the agreement came from</p>	<p style="text-align: right;">Page 24330</p> <p>1 MR NTSEBEZA SC: General, I don't want to</p> <p>2 interrupt your question -</p> <p>3 CHAIRPERSON: Mr Ntsebeza, I think you</p> <p>4 must give him a chance to answer. The way it works, I take</p> <p>5 it, if I can just intervene, was there was a discussion,</p> <p>6 how many people do we need to stabilise the situation.</p> <p>7 We've got so many.</p> <p>8 GENERAL NAIDOO: That's correct.</p> <p>9 CHAIRPERSON: That's not enough. So a</p> <p>10 number was I take it eventually worked out as to what would</p> <p>11 be required. Is that right?</p> <p>12 GENERAL NAIDOO: Yes.</p> <p>13 CHAIRPERSON: Now some of those could be</p> <p>14 brought from elsewhere in the province.</p> <p>15 GENERAL NAIDOO: That's correct.</p> <p>16 CHAIRPERSON: So that would have been a</p> <p>17 matter for the Provincial Commissioner herself to decide.</p> <p>18 GENERAL NAIDOO: That's correct, Chair.</p> <p>19 CHAIRPERSON: But insofar as she needed</p> <p>20 extra help from outside the province, that was ultimately</p> <p>21 the decision, after consultation and everything, it was a</p> <p>22 decision of the Provincial Commissioner -</p> <p>23 GENERAL NAIDOO: That's correct.</p> <p>24 CHAIRPERSON: - who amongst others I take</p> <p>25 it consulted with the Provincial Commissioner Gauteng who</p>
<p style="text-align: right;">Page 24329</p> <p>1 the National Commissioner and it was her, so ultimately it</p> <p>2 was her decision.</p> <p>3 GENERAL NAIDOO: In consultation with -</p> <p>4 CHAIRPERSON: Yes, yes, yes, her decision</p> <p>5 in consultation -</p> <p>6 GENERAL NAIDOO: The provincial</p> <p>7 commissioners of other -</p> <p>8 CHAIRPERSON: Ja, that's right. Okay.</p> <p>9 MR NTSEBEZA SC: Thank you, Mr Chairman,</p> <p>10 for that assistance. I don't want to be speculating when</p> <p>11 it comes for me to make some submissions at the end of the</p> <p>12 day. Do I understand you - because I would like to</p> <p>13 actually understand how that deliberations and decision-</p> <p>14 making process took place at that meeting - do I understand</p> <p>15 your evidence to be saying that the Provincial</p> <p>16 Commissioner, General Mbombo made a request for the</p> <p>17 escalation of forces?</p> <p>18 GENERAL NAIDOO: Chair, what I've</p> <p>19 indicated was that there was an assessment done of the</p> <p>20 situation based on the various meetings and the incidents</p> <p>21 that have occurred and how best to address the situation.</p> <p>22 In the sum of it all it was clear that there was</p> <p>23 insufficient resources to do exactly what was required to</p> <p>24 stabilise the situation.</p> <p>25 Then -</p>	<p style="text-align: right;">Page 24331</p> <p>1 was with her.</p> <p>2 GENERAL NAIDOO: That's correct, Chair.</p> <p>3 CHAIRPERSON: So the answer to your</p> <p>4 question is it was partly the decision of the Provincial</p> <p>5 Commissioner insofar as the deployment of extra resources</p> <p>6 from within the province was concerned, and for the rest it</p> <p>7 was a decision ultimately of the National Commissioner</p> <p>8 insofar as it related to resources from other provinces.</p> <p>9 GENERAL NAIDOO: That's correct.</p> <p>10 CHAIRPERSON: Is that the answer?</p> <p>11 GENERAL NAIDOO: That's correct, Chair.</p> <p>12 CHAIRPERSON: Alright.</p> <p>13 MR NTSEBEZA SC: Thank you, Mr Chairman.</p> <p>14 Now insofar as the National Commissioner - just to tag on</p> <p>15 the Chairman's clarification question - so insofar as the</p> <p>16 National Commissioner was there present, is it your</p> <p>17 evidence that she approved the decision that was taken?</p> <p>18 GENERAL NAIDOO: As I indicated, she</p> <p>19 agreed to assist with the resources that were requested.</p> <p>20 MR NTSEBEZA SC: She's the head of the</p> <p>21 national police service, isn't it? Did she approve the</p> <p>22 escalation of forces at that meeting?</p> <p>23 GENERAL NAIDOO: Chair, I think it's</p> <p>24 implied that if she's agreed with the, to assist with the</p> <p>25 request then she was not in disagreement, so she would have</p>

<p style="text-align: right;">Page 24332</p> <p>1 approved.</p> <p>2 MR NTSEBEZA SC: Now when you say it's</p> <p>3 implied, are you saying that you are not in a position to</p> <p>4 tell the Commission that when you got out of that meeting</p> <p>5 and you went to do what you did by all of this escalation</p> <p>6 of the forces, you inferred that there had been approval</p> <p>7 either from body language or from inferences? It's a</p> <p>8 straight question. Did she approve the final decision that</p> <p>9 you took that the forces must be escalated, at that meeting</p> <p>10 of the 13th of August 2012?</p> <p>11 GENERAL NAIDOO: Chair, I'm trying to</p> <p>12 remember specifically how the discussion went, but in</p> <p>13 saying that she approved, as I indicated she was in, the</p> <p>14 indication was made to the National Commissioner that the</p> <p>15 province required certain additional resources and there</p> <p>16 was also input from the Provincial Commissioner Gauteng</p> <p>17 then who indicated he's in agreement and that certain areas</p> <p>18 such as intelligence needed to be boosted up, and the</p> <p>19 National Commissioner said well – now this is my words –</p> <p>20 that as long as the resources that you're requesting is</p> <p>21 going to be sufficient to handle the situation, then I have</p> <p>22 no problem with that. I'm just trying to sum it up. I</p> <p>23 can't indicate verbatim she said "I approve" or "I</p> <p>24 disapprove." That's, hence I'm saying she didn't disagree.</p> <p>25 She actually agreed to assist with the request that the</p>	<p style="text-align: right;">Page 24334</p> <p>1 GENERAL NAIDOO: Chair no, it's, it works</p> <p>2 like this; with the exception of the Provincial</p> <p>3 Commissioner Gauteng who was with us in the meeting and he</p> <p>4 could already speak to his officers and give us an</p> <p>5 indication, the other people were contacted through our</p> <p>6 National Joint Operational Centre who normally facilitates</p> <p>7 these kind of activations. So they would have, they sit at</p> <p>8 national level and –</p> <p>9 CHAIRPERSON: Sorry to interrupt you.</p> <p>10 That's what you say in paragraph 32 of your statement.</p> <p>11 There you say "The escalation of police resources was</p> <p>12 facilitated via the NATJOC structures and the contingency</p> <p>13 plan in place was extended."</p> <p>14 GENERAL NAIDOO: Correct, Chair.</p> <p>15 CHAIRPERSON: Now, so but were you the</p> <p>16 person who got hold of the NATJOC structures and –</p> <p>17 [10:11] GENERAL NAIDOO: No.</p> <p>18 CHAIRPERSON: - had said please arrange</p> <p>19 for extra resources to be sent? Who –</p> <p>20 GENERAL NAIDOO: That was the –</p> <p>21 CHAIRPERSON: Who physically did the job</p> <p>22 of getting the extra people there?</p> <p>23 GENERAL NAIDOO: There, the line of</p> <p>24 communication there would be Major General Mpmembe. He was</p> <p>25 the Deputy Provincial Commissioner, Operations.</p>
<p style="text-align: right;">Page 24333</p> <p>1 Provincial Commissioner made.</p> <p>2 CHAIRPERSON: So if we look at paragraph</p> <p>3 33 of your statement you say that additional resources</p> <p>4 arrived the following day.</p> <p>5 GENERAL NAIDOO: That's correct, Chair.</p> <p>6 CHAIRPERSON: Some had already come, and</p> <p>7 I take it you weren't actually involved in their coming,</p> <p>8 that's the NIU and POP people who'd come already on the</p> <p>9 Sunday from Gauteng and Mpumalanga. Well, leaving them out</p> <p>10 of the picture for the moment, all the other additional</p> <p>11 resources arrived –</p> <p>12 GENERAL NAIDOO: Yes.</p> <p>13 CHAIRPERSON: - in consequence of your</p> <p>14 actions as detailed in the second sentence of paragraph 33,</p> <p>15 namely you activated the various support sections in the</p> <p>16 province to support the increased deployments, responded to</p> <p>17 any other requests for support as they were received.</p> <p>18 GENERAL NAIDOO: Correct, Chair.</p> <p>19 CHAIRPERSON: Were you the person who</p> <p>20 actually got on the telephone and telephoned the other</p> <p>21 provincial commissioners who were asked to send in</p> <p>22 additional resources –</p> <p>23 GENERAL NAIDOO: No –</p> <p>24 CHAIRPERSON: - to say we need so many</p> <p>25 police, send them, or how did it work?</p>	<p style="text-align: right;">Page 24335</p> <p>1 MR NTSEBEZA SC: Yes, now I think we get</p> <p>2 some indication from paragraphs 36 to 37 of your statement</p> <p>3 of the kind of drastic escalation of forces that we are</p> <p>4 talking about, and the kind of forces that were under your</p> <p>5 command in terms of that statement. You see that?</p> <p>6 GENERAL NAIDOO: I see that, Chair.</p> <p>7 MR NTSEBEZA SC: Yes. Special Task</p> <p>8 Force, National Intervention Unit, Tactical Response Units,</p> <p>9 Public Order Police, K9 Units, Mounted Units, Detectives, a</p> <p>10 whole range of people who were under your command in terms</p> <p>11 of that statement, certainly in the forward holding area</p> <p>12 they would be under your command. That was a consequence</p> <p>13 of that decision which you took on the 13th. Is that right?</p> <p>14 GENERAL NAIDOO: That's correct, Chair.</p> <p>15 MR NTSEBEZA SC: Alright, now when once</p> <p>16 obviously there is an involvement, I mean the situation was</p> <p>17 serious enough with two police officers having died and I</p> <p>18 would assume, and you will tell us if my assumption is</p> <p>19 wrong, that at that meeting there would have been a view</p> <p>20 expressed as to whether this is not a matter that should</p> <p>21 also get the approval of the Minister of Police, given the</p> <p>22 scale at which you were going to escalate the deployment of</p> <p>23 forces. Am I assuming correctly or incorrectly?</p> <p>24 GENERAL NAIDOO: Chair, there was no</p> <p>25 discussion about the Minister at that meeting, no.</p>

<p style="text-align: right;">Page 24336</p> <p>1 MR NTSEBEZA SC: None at all?</p> <p>2 GENERAL NAIDOO: No.</p> <p>3 MR NTSEBEZA SC: Now that you look back</p> <p>4 on things, wasn't it a kind of – I don't know how it works</p> <p>5 with the police. That was a huge decision that you were</p> <p>6 going to take; a member of the, I mean two members of the</p> <p>7 police service has been killed. There was now a decision</p> <p>8 to bring in those kinds of units that you mention in the</p> <p>9 paragraphs I've just referred to.</p> <p>10 GENERAL NAIDOO: Chair, no –</p> <p>11 MR NTSEBEZA SC: 36 and 37. Isn't it a</p> <p>12 kind of thing that you should have, or you would have had</p> <p>13 to advise the Minister about?</p> <p>14 GENERAL NAIDOO: Chair, I'm not sure how</p> <p>15 the relationship or interface between the Minister and the</p> <p>16 National Commissioner is, but my understanding is that the</p> <p>17 National Commissioner is operationally charged with issues</p> <p>18 related thereto, as is the Provincial Commissioner in terms</p> <p>19 of the province. So they would not require permission or</p> <p>20 any other type of indication from the Minister in terms of</p> <p>21 their day-to-day activities. Yes, I'm sure they would have</p> <p>22 to inform the Minister of the serious incidents happening</p> <p>23 from a point of view of accountability, but they are</p> <p>24 directly charged in terms of the Constitution with policing</p> <p>25 activities and they account for it.</p>	<p style="text-align: right;">Page 24338</p> <p>1 MR NTSEBEZA SC: Mr Chairman, thank you</p> <p>2 very much for reminding me once again. I will argue that I</p> <p>3 find that very unusual. Now can you just tell the</p> <p>4 Commission very briefly how the escalation was to occur?</p> <p>5 What was the plan and what was going to be the process?</p> <p>6 For instance which units were to be deployed, where were</p> <p>7 they to be deployed from?</p> <p>8 GENERAL NAIDOO: Okay, Chair, firstly</p> <p>9 there was an acknowledgement that the situation was not</p> <p>10 purely a public order one because there had been certain</p> <p>11 escalations, as I indicated, attacks by armed groups on</p> <p>12 various places and various people. So the reference that</p> <p>13 was made to this operation was a hybrid operation where it</p> <p>14 was a combination of the use of Public Order Police</p> <p>15 personnel, as well as tactical units to support them should</p> <p>16 the need arise, and the first agreement was that we should</p> <p>17 negotiate with the strikers and try and talk them down,</p> <p>18 because as things escalated from the 13th we were first told</p> <p>19 that these people were faceless and they were unknown, to a</p> <p>20 point after the incident of the 13th we had obtained</p> <p>21 photographs and established the identity of some of these</p> <p>22 people and they were employees of the Lonmin Mine, some of</p> <p>23 them. And so the decision was made to bring in some</p> <p>24 negotiators who could facilitate this dialogue with the</p> <p>25 strikers and the negotiation group, as they were referred,</p>
<p style="text-align: right;">Page 24337</p> <p>1 MR NTSEBEZA SC: Now General Mbombo who</p> <p>2 was part of that meeting, I believe she testified to the</p> <p>3 fact that on the 12th of August already the Minister had</p> <p>4 called her to enquire about the situation. Do you recall</p> <p>5 that?</p> <p>6 GENERAL NAIDOO: I've seen that</p> <p>7 testimony, yes.</p> <p>8 MR NTSEBEZA SC: Yes, now I just want you</p> <p>9 to try and recall; are you saying at a meeting of the top</p> <p>10 brass of the SAPS where a decision is to escalate</p> <p>11 drastically the forces to be deployed, against the backdrop</p> <p>12 of a Provincial Commissioner who testified that the</p> <p>13 Minister of Police had called her and asked her about the</p> <p>14 situation, that in that meeting no mention at all was made</p> <p>15 of the Minister?</p> <p>16 GENERAL NAIDOO: Chair, I can confirm as</p> <p>17 far as I was at that meeting there was no mention or</p> <p>18 indication about the Minister's involvement, as far as I</p> <p>19 know.</p> <p>20 MR NTSEBEZA SC: I see. I find that very</p> <p>21 unusual -</p> <p>22 CHAIRPERSON: No, you mustn't make</p> <p>23 comments, Mr Ntsebeza. Just ask questions. It's not</p> <p>24 appropriate for counsel to say what they find usual or</p> <p>25 unusual. It's for us to decide at the end of the day.</p>	<p style="text-align: right;">Page 24339</p> <p>1 were supported by Public Order Police personnel to, as a</p> <p>2 form of protection as it was already known that the, there</p> <p>3 were firearms in circulation and there were attacks that</p> <p>4 took place on the Monday.</p> <p>5 So the phase 1, or the step 1 that was agreed to</p> <p>6 was to engage with the miners and to try and talk them down</p> <p>7 so that we could stabilise the situation, stop the</p> <p>8 violence, and restore safety and security to the area, and</p> <p>9 that was the primary thrust of our operation.</p> <p>10 The other units were held in reserve. The</p> <p>11 Tactical Response Teams were utilised to protect the rear</p> <p>12 of the Public Order Police Unit, and the other units were</p> <p>13 pooled to the forward holding areas which were</p> <p>14 approximately a kilometre away from where the strikers had</p> <p>15 gathered on the koppie.</p> <p>16 CHAIRPERSON: Sorry, Major General, for</p> <p>17 interrupting. In the hope that this may shorten</p> <p>18 proceedings may I refer you to slides 136 and following of</p> <p>19 exhibit L? This apparently represents or gives us the,</p> <p>20 amongst other things the detail of the personnel involved</p> <p>21 on the 16th, divided up in the various sections. There's</p> <p>22 the command negotiation team which appears to have</p> <p>23 consisted of Brigadier Calitz and Lieutenant Colonel</p> <p>24 McIntosh and then there was an interpreter. I think the</p> <p>25 evidence is there were other people in the Nyala as well,</p>

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1 but anyway, that's what that says.
 2 Then there's the monitoring group, there we have
 3 the details of the personnel. There were POP members and
 4 information officers, and the commander was Colonel Mere.
 5 Then there was a neutral area Response Team, Captain Loest
 6 was the commander. There were 76 TRT members. Then there
 7 was a defensive measure team, Colonel Makhubela with 53 POP
 8 members. Then there was the immediate reaction area 1
 9 team, Lieutenant Colonel Gaffley in charge with 20 STF and
 10 25 NIU members. Then there was the immediate reaction area
 11 2 team, Lieutenant Colonel Modiba in charge, 74 National
 12 Intervention Unit people.
 13 Forward holding area 1 you were in charge and
 14 then there are details of your personnel set out in slide
 15 142.
 16 GENERAL NAIDOO: Correct, Chair.
 17 CHAIRPERSON: And then we can go on, I
 18 don't have to – there are also details of the personnel and
 19 whether they were POP or K9 or TRT or NIU, whatever. That
 20 appears also as far as forward holding area 2 is concerned
 21 in slide 144, the aerial response team slide 145, aerial
 22 command post 146, and then finally the air monitoring team,
 23 147.
 24 So is that as far as you know a more or less
 25 complete statement of the various members, the personnel

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1 resources, if one can call them that, of the SAPS at
 2 Marikana on the 16th?
 3 GENERAL NAIDOO: More or less, Chair. I
 4 don't know if the JOC is mentioned there, but that was
 5 just –
 6 CHAIRPERSON: Well, the JOC is mentioned
 7 earlier. They were, that's also set out in a slide. There
 8 was a bit of duplication because some of the JOC people
 9 were actually listed in the section I've read, but the JOC
 10 people are in an earlier slide, that's slide 67 where we
 11 have General Mpembe mentioned, we have General Annandale
 12 mentioned, and Brigadier Pretorius, and you are listed,
 13 although you then went to forward holding area 1, and
 14 Brigadier Calitz also went out into the field on the 16th,
 15 and I don't think that Colonel Scott is mentioned – oh,
 16 we've got the structure, no there he is, we've got the
 17 structure of the JOCCOM again with a bit of duplication
 18 because some of the people were involved in the other
 19 lists. That's in slide 68. So that's a more or less
 20 complete statement of the people who were there on the 16th.
 21 GENERAL NAIDOO: That's correct, Chair.
 22 CHAIRPERSON: Now I think other people
 23 had been there on the Wednesday, some of them, and gone
 24 away again. Is that correct?
 25 GENERAL NAIDOO: That's right.

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1 CHAIRPERSON: But was there, apart from
 2 the fact that in some ways there were more people on the
 3 Wednesday than on the Thursday in certain areas, was there
 4 a gradual build-up or were the people listed in the slides
 5 to which I've referred you more or less all there from the
 6 Tuesday?
 7 GENERAL NAIDOO: Chair, I think Tuesday
 8 we were not there yet. Wednesday was our larger build-up,
 9 and on Thursday we were slightly less because Gauteng had
 10 to withdraw some of their personnel. But that more or less
 11 describes the deployment, Chair.
 12 CHAIRPERSON: And you say this build-up,
 13 this escalation of forces, if one can call them that, that
 14 was facilitated through the NATJOC, you told us.
 15 GENERAL NAIDOO: That's correct, Chair.
 16 CHAIRPERSON: Is that the sort of
 17 information you wanted, Mr Ntsebeza?
 18 MR NTSEBEZA SC: Yes, Mr Chairman, and I
 19 think the slides that you indicated in exhibit L give a
 20 sense. But may I just ask, General, on that day was there
 21 more or less a view of the kind of forces that needed to be
 22 deployed, the ones that for instance you describe both in
 23 paragraph 37 of your statement and the ones which are
 24 reflected in the slides that the Chairman has kindly
 25 referred us to for perspective? Now would there have been

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1 on that day, on the 13th would there have been a clear view
 2 as to who needs to be deployed?
 3 GENERAL NAIDOO: Chair, on the 13th, is
 4 the reference to the meeting of the 13th where the
 5 escalation of resources were decided?
 6 MR NTSEBEZA SC: Yes.
 7 CHAIRPERSON: I think Mr Ntsebeza has
 8 been talking to you about the meeting in the evening of the
 9 13th, after the shootings and so forth on the, and killings,
 10 deaths in the afternoon, the meeting when the National
 11 Commissioner came with Major General Petros and so on –
 12 GENERAL NAIDOO: Yes.
 13 CHAIRPERSON: And other people were
 14 present, all listed in your statement.
 15 GENERAL NAIDOO: That's correct.
 16 CHAIRPERSON: And you then decided there
 17 had to be an escalation. That escalation was then
 18 implemented in the way which you've described –
 19 GENERAL NAIDOO: Yes.
 20 CHAIRPERSON: - and as appears from the
 21 slides to which I referred you.
 22 GENERAL NAIDOO: That's correct.
 23 CHAIRPERSON: But I think the starting
 24 point of Mr Ntsebeza's question, or series of questions is
 25 the evening meeting on the 13th. That's right, isn't it, Mr

<p style="text-align: right;">Page 24344</p> <p>1 Ntsebeza?</p> <p>2 MR NTSEBEZA SC: Yes, Mr Chairman.</p> <p>3 CHAIRPERSON: Yes, Mr Ntsebeza, I think</p> <p>4 you've almost exhausted the first topic I gave you</p> <p>5 permission to cross-examine on. Is it perhaps appropriate</p> <p>6 for us to take tea now and you can take stock whether</p> <p>7 there's anything left before you move on to the next point?</p> <p>8 MR NTSEBEZA SC: Yes, we –</p> <p>9 CHAIRPERSON: Actually we'll take a</p> <p>10 comfort break now, I think, and take tea later on, but</p> <p>11 we'll take a comfort break now for 10 minutes.</p> <p>12 MR NTSEBEZA SC: Thank you, Mr Chairman.</p> <p>13 [COMMISSION ADJOURNS COMMISSION RESUMES]</p> <p>14 [10:48] CHAIRPERSON: The Commission resumes.</p> <p>15 Major-General, you're still under oath.</p> <p>16 GENERAL NAIDOO: Still under oath, Chair.</p> <p>17 GENERAL NAIDOO: s.u.o.</p> <p>18 CROSS-EXAMINATION BY MR NTSEBEZA SC (CONTD.):</p> <p>19 I was just trying to wear myself into the seat, Mr</p> <p>20 Chairman, I was not intending to stand whilst I cross-</p> <p>21 examine General Naidoo. Now, General Naidoo, just to round</p> <p>22 off where we were at, I was asking whether (onhoorbaar) the</p> <p>23 13th at that meeting or as a result of that meeting that you</p> <p>24 had with the National Commissioner and the others, there</p> <p>25 was any clear view as to what kind of additional force is</p>	<p style="text-align: right;">Page 24346</p> <p>1 somebody compile a list, we need so many NIU, so many STF,</p> <p>2 so many extra POP and so on?</p> <p>3 GENERAL NAIDOO: Chair yes, the</p> <p>4 operational people were indicating the activities that</p> <p>5 would be undertaken and the type of capacity they would</p> <p>6 require and based on that the requests were being made. In</p> <p>7 addition to what's contained in my statement I know that</p> <p>8 there were a lot of intelligence and investigative people</p> <p>9 that assisted, also came from Gauteng to assist the</p> <p>10 investigation team. So it was based on the activities that</p> <p>11 were going to be conducted that the various specialists</p> <p>12 identified what the needs would be.</p> <p>13 MR NTSEBEZA SC: Do you know if there is</p> <p>14 any paper work that would be supportive of what was decided</p> <p>15 at that meeting?</p> <p>16 GENERAL NAIDOO: Chair, I am not sure</p> <p>17 exactly but I'm sure that there would be something from or</p> <p>18 to the NATJOC indicating the request and I am sure we can</p> <p>19 ascertain that, yes.</p> <p>20 MR NTSEBEZA SC: Well, can I just say</p> <p>21 that it would be useful if we could get any and all paper</p> <p>22 work that reflects the meeting of the 13th of August 2012</p> <p>23 and which would be reflective, or the decisions that were</p> <p>24 taken at least and the kinds of additional forces that were</p> <p>25 deployed. Now just to round off this aspect, you indicated</p>
<p style="text-align: right;">Page 24345</p> <p>1 needed to be deployed because we know now what kind of</p> <p>2 forces were subsequently deployed.</p> <p>3 GENERAL NAIDOO: Chair, as I testified,</p> <p>4 yes, mainly the requirement was for public order policing</p> <p>5 personnel and there was the need for national intervention</p> <p>6 unit people to conduct stability operations. The specific</p> <p>7 people that I remember to support the investigation was the</p> <p>8 special task force because the idea was that there would be</p> <p>9 rapid progress with the investigations and tracking down of</p> <p>10 suspects and recovery of arms and arresting of suspects.</p> <p>11 There also was TRT units that were identified and brought</p> <p>12 in to assist and K9 for searching for weapons, explosives</p> <p>13 dogs specifically, and then obviously the support team in</p> <p>14 order to ensure that the logistics infrastructure was there</p> <p>15 to support the operation.</p> <p>16 MR NTSEBEZA SC: Would you say that the</p> <p>17 units that you mention in paragraph 37 of your statement</p> <p>18 were the units that already at that meeting were decided</p> <p>19 would have to be deployed?</p> <p>20 GENERAL NAIDOO: Largely, yes. I think</p> <p>21 at that stage, I don't remember specific discussion about</p> <p>22 medical emergency and fire fighters but the other units,</p> <p>23 yes.</p> <p>24 CHAIRPERSON: I just want to get clarity.</p> <p>25 At this meeting when you were discussing these matters, did</p>	<p style="text-align: right;">Page 24347</p> <p>1 that the decision to escalate the deployment of additional</p> <p>2 forces had been informed by a view that public order police</p> <p>3 units were not sufficient or this matter had gone beyond</p> <p>4 being a public order policing matter.</p> <p>5 GENERAL NAIDOO: Chair, that's correct.</p> <p>6 I indicated that there was a recognition that the situation</p> <p>7 had proceeded beyond normal crowd management.</p> <p>8 MR NTSEBEZA SC: Yes, and was that</p> <p>9 informed by the fact that the police, two police officers</p> <p>10 had been killed -</p> <p>11 GENERAL NAIDOO: No, Chair.</p> <p>12 MR NTSEBEZA SC: - in the skirmish on</p> <p>13 that day?</p> <p>14 GENERAL NAIDOO: No, Chair. As I</p> <p>15 indicated that there was an overview of the incidents that</p> <p>16 took place on Saturday where various workers had been</p> <p>17 killed, various installations had been attacked, vehicles</p> <p>18 burnt –</p> <p>19 CHAIRPERSON: Was that Saturday or</p> <p>20 Sunday? On Saturday –</p> <p>21 GENERAL NAIDOO: Some Saturday –</p> <p>22 CHAIRPERSON: - there was an attack on</p> <p>23 the NUM office. It was believed that two people had been</p> <p>24 killed. It turned out they weren't, that was a story that</p> <p>25 was spread around that wasn't true although it may well be</p>

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1 that the people who spread the story believed it to be
 2 true, so I'm not making a point. Then on the Sunday
 3 morning two security guards were killed.
 4 GENERAL NAIDOO: That's correct.
 5 CHAIRPERSON: Sunday evening two people
 6 were killed, I think at K4.
 7 GENERAL NAIDOO: That's correct.
 8 CHAIRPERSON: And vehicles and so on were
 9 damaged, that was on the Sunday.
 10 GENERAL NAIDOO: That's correct.
 11 CHAIRPERSON: And then on the Monday of
 12 course there was the incident that –
 13 GENERAL NAIDOO: Chair, before the
 14 incident between the police these on Monday morning an
 15 additional body was discovered at the railway line,
 16 bringing the total to approximately nine on Monday.
 17 CHAIRPERSON: Yes, you talked about
 18 deaths on the Saturday, that's really what I was – I don't
 19 remember –
 20 GENERAL NAIDOO: No.
 21 CHAIRPERSON: If I'm wrong I'll be happy
 22 to be corrected. My recollection was it was thought two
 23 people had been killed on the Saturday. They were injured
 24 and they were taken to hospital and it was believed they'd
 25 been killed and I think there was a genuine belief but as

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1 far as I know, am I correct in thinking the first actual
 2 fatality was on the Sunday?
 3 GENERAL NAIDOO: Chair, that's correct.
 4 What I indicated, the question was, was it only the
 5 incident involving the police officials that triggered the
 6 drastic escalation of resources and I, my response was that
 7 the incidents starting from Saturday had indicated that
 8 there was a growing trend that needed to be arrested.
 9 MR NTSEBEZA SC: General, you know from
 10 the evidence that was led that on the 12th already the
 11 Minister had become so concerned about what had happened up
 12 to and including the 12th that he sought to establish from
 13 General Mbombo what the situation was. Isn't that right?
 14 GENERAL NAIDOO: From the evidence led I
 15 established that, yes.
 16 MR NTSEBEZA SC: In fact, some of the
 17 people who had died up to that point had died horrible
 18 deaths. One was incinerated, if some of the footage that I
 19 remember is relevant. I think one of the security guards
 20 at Lonmin.
 21 GENERAL NAIDOO: That's correct, Chair.
 22 MR NTSEBEZA SC: And on your proposition
 23 I would assume that that would have been a basis at that
 24 point on the 12th, to say this is now no longer a crowd
 25 control situation. Would you agree with me?

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1 GENERAL NAIDOO: Chair, I agree with you
 2 and I have testified to that effect. Hence the request for
 3 elements of the national intervention unit to come and
 4 support the units on Sunday.
 5 MR NTSEBEZA SC: Perhaps if I came up
 6 with the suggestion that the decision on the 13th at that
 7 meeting to escalate the deployment of forces was only
 8 caused by the death of the two police officers - maybe let
 9 me ask it differently. Would you agree that the deaths of
 10 the two police officers was an added impetus that informed
 11 the decision to escalate the forces?
 12 GENERAL NAIDOO: Chair, if we look at the
 13 deployment from Friday, from approximately 27 members to
 14 Sunday when we went to approximately 70 members and then
 15 until Monday when we then further escalated from Monday,
 16 beyond Monday, Tuesday, Wednesday, Thursday. So yes,
 17 incidents did add impetus to the escalation of the
 18 resources that were deployed there.
 19 MR NTSEBEZA SC: And is that a reason
 20 that you say at that meeting you decided that this matter
 21 had now gone beyond being a public order policing matter?
 22 GENERAL NAIDOO: That is correct, Chair.
 23 The review of the incidents, as I said, from Saturday until
 24 Monday, had indicated that this situation had gone beyond
 25 normal crowd management.

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1 MR NTSEBEZA SC: Right. Now I want to
 2 move to another topic, General, and that is –
 3 CHAIRPERSON: Before you move to another
 4 topic or rather before you move to the topic you have in
 5 mind, let me ask this. You were, I know the request was
 6 that you do it during tea-time and we haven't had tea-time
 7 yet, we had the comfort break but have you been able to
 8 ascertain in the meanwhile who the duty General was on the
 9 12th?
 10 GENERAL NAIDOO: Chair –
 11 CHAIRPERSON: Because one of Mr
 12 Ntsebeza's matters that I have given him leave to cross-
 13 examine on was held over until that information is
 14 available.
 15 GENERAL NAIDOO: Chair yes, I have
 16 secured the duty list for that week and I have the duty
 17 General as well as the duty Brigadier. The duty General
 18 was Major-General Nkomane and the duty Brigadier was
 19 Brigadier Calitz and I have checked with Brigadier, General
 20 Nkomane, he had not received any such call.
 21 CHAIRPERSON: No such call, you mean a
 22 call from Mr Zokwana?
 23 GENERAL NAIDOO: That's correct, Chair.
 24 CHAIRPERSON: Thank you.
 25 MR NTSEBEZA SC: General, I thought that

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1 you were being asked only to find out who was the duty
2 General on that day and not to pursue the further question
3 that I was putting to you as to whether or not he had
4 received – we'll have to accept your say-so that he says he
5 never got a call from Zokwana, but would he have been the
6 second-in-command or would he have been the one who would
7 be acting in the absence of yourself?

8 GENERAL NAIDOO: Chair, what I indicated,
9 the duty General and the duty Brigadier are the
10 representatives of the Provincial Commissioner's office for
11 that week after-hours, in other words, should there be a
12 need. It does not exclude the Provincial Commissioner from
13 going and attending to a particular incident should she
14 receive the information from them, but what is circulated
15 to every station is a duty list for the various functions,
16 from the National Commissioner's office to the last
17 cluster. So should there be an enquiry, that there is
18 somebody from management available to first become aware
19 and also give direction in terms of a particular incident
20 or issue that may arise.

21 MR NTSEBEZA SC: So in our attempt to
22 resolve the Zokwana telephone conundrum of the 12th of
23 August 2012, would this General, General Nkomane, would he
24 have been the person who would have received a telephone
25 call from Zokwana on the basis that you have indicated,

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1 after-hours on a Sunday and in the Provincial
2 Commissioner's office?

3 GENERAL NAIDOO: Chair, on the basis of,
4 as I explained, should Mr Zokwana have approached any of
5 the contact points or whoever police, to establish I need
6 to contact the Provincial Commissioner, then he would have
7 been given that these are the duty officers that are
8 available and then obviously he is free to contact them.

9 CHAIRPERSON: Of course he might, for all
10 we know, I don't know if anyone asked him this when he gave
11 evidence, he might have had a telephone number in his diary
12 of someone to telephone, a cell number or direct – so he
13 may have had his own information to give him access and he
14 wouldn't have gone through the route you've suggested for
15 finding out who was the duty officer supposedly at the
16 other end of a telephone that afternoon, is that correct?

17 GENERAL NAIDOO: Chair, yes. We were
18 working on the basis that he called the Provincial
19 Commissioner's office.

20 MR NTSEBEZA SC: Ja, he seems to be able
21 to call people in high office, including the Minister, from
22 what he indicated. Now who did you say the Brigadier was?
23 Calitz?

24 GENERAL NAIDOO: Brigadier Calitz.
25 MR NTSEBEZA SC: Okay. Thank you, Mr

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1 Chairman. Now, I want to move on to the topic of
2 paramedics. I was here when Mr Chaskalson dealt with this
3 aspect and I will not re-traverse with you what he was
4 cross-examining you about the delays in getting paramedics
5 to scene 1 and you will recall that he dealt at some length
6 with you about the case of Mr Mdze.

7 GENERAL NAIDOO: I do.
8 MR NTSEBEZA SC: And you know Mr Mdze is
9 one of the people whom I represent. I will not traverse
10 the area Mr Chaskalson dealt with except for just one
11 aspect and can we go to the evidence on – it's day 193 and
12 page 23587 starting at line 20 on that page and it goes on
13 to 23589 line 8. Now, Mr Chaskalson there is generally
14 exploring policy issues and now on 23588 – it's not mine,
15 Mr Chairman.

16 CHAIRPERSON: A cell phone went off
17 earlier and I thought I'd ignore it on the basis that
18 everybody here by this time knows that you must have your
19 cell phone turned off and if you don't, there'll be severe
20 consequences so I erred in not reminding everybody
21 concerned that that is so. Please make sure that your cell
22 phones are turned off. It's very – as you can see, it's
23 very disturbing, wastes time. That was something on the
24 computer that came through, those must also be turned off.
25 We don't want these disturbances, otherwise I shall have to

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1 take the kind of action that both I and the person I deal
2 with, will regret.

3 MR NTSEBEZA SC: Thank you, Mr Chairman.
4 Now, Mr Chaskalson put it to you, if you read from line 1
5 but the sentence in line 2, "One can't have a situation
6 where the policy means that people die, bleeding to death
7 on the ground understood. Whatever resource issues are
8 implicated, one has to have a policy that will prevent
9 someone bleeding to death for no good reason. What's your
10 response to that?" Then you gave a long response but that
11 is my area of concern. You say, "Obviously we are – we are
12 supposed to be a service to the community so things that
13 retard the provision of service to the community needs to
14 be addressed and the public service invariably addresses
15 these things by way of policies. So I agree that we should
16 have a policy clarifying. You must remember we
17 are talking about an individual and possibly very junior
18 member who faced, who has to face these tough questions and
19 to make a decision there at ground level on his own – when
20 I say tough questions, we are on a daily basis and it is an
21 issue which is in the media continuously, facing billions
22 of rands of civil claims for issues like a person that was
23 transported in a police vehicle to go and get medical
24 assistance and the police are now being sued for
25 contributing to the death because the person was in a

<p style="text-align: right;">Page 24356</p> <p>1 police vehicle." And then it goes on, "It happens." Now 2 firstly, I just want to find out whether you were, you are 3 satisfied that you were addressing the question. The 4 question was at two levels. It sought to find out whether 5 you have a policy that would almost compel a member of the 6 service to prevent a person bleeding to death. In fact the 7 question was framed in those kinds of words. And you'll 8 correct me if I'm wrong, your answer seems to be saying in 9 part that a member of the police service, specially a 10 junior member, would be justified in not doing anything to 11 stop the bleeding because members of the police service and 12 the police service itself is facing billions of claims, 13 billions of rands of civil claims. Am I capturing the 14 essence of your response correctly? 15 [11:08] GENERAL NAIDOO: Not entirely, Chair. 16 MR NTSEBEZA SC: Talk to me. 17 GENERAL NAIDOO: Chair, I agree that we 18 must make policy. I further indicate that that policy 19 should, it should not be just a document that you put on 20 the table saying that from today onwards police officials 21 must attend to people when they attend. I said that that 22 policy should be adequately resourced with training, 23 resources, et cetera, and the issue, the legal issues that 24 are frequently confronting police officials and which 25 contributes to police officials being reluctant to</p>	<p style="text-align: right;">Page 24358</p> <p>1 where the reluctance creeps in. 2 MR NTSEBEZA SC: General, the question 3 was a very specific one to a very specific case and your 4 response as a General in the SAPS was being solicited. Are 5 you saying that when a person is bleeding to death the SAPS 6 officers in the vicinity will be reluctant to stop the 7 bleeding – and I will come to stopping the bleeding in a 8 while – because the police service has been exposed to 9 billions of rands of civil claims. Is that what you're 10 saying? 11 GENERAL NAIDOO: No, Chair. What I'm 12 saying is when we make policy we should, in that policy, 13 resource it sufficiently and articulate it sufficiently so 14 that our junior personnel are empowered and feel secure in 15 doing what they have to do. There is a reluctance, I have 16 already indicated, for police officials to intervene in 17 medical issues. A normal expectation is a person would see 18 somebody injured and would want to assist. I think the 19 level of intervention that is being expected is what is at 20 issue here. We are asking police officials to render first 21 aid or paramedic assistance and we must make sure that we 22 create conditions, create the environment conducive for 23 them to be just that. 24 MR NTSEBEZA SC: General, are you saying 25 in your assessment of Mdze's situation where we know for a</p>
<p style="text-align: right;">Page 24357</p> <p>1 intervene personally should be addressed because it happens 2 on a frequent basis that a person is badly injured or sick 3 and is transported in a police vehicle to a medical 4 facility and the person passes on and then the police face 5 a civil claim. Now this generally generates a reluctance 6 in people to do these kind of things, so our policy and our 7 training and our resourcing to enable to do this should be 8 in place. Quite frequently what happens is we make a 9 policy and then we leave the young member out there to now 10 manage this policy and these issues, the legal issues, et 11 cetera, should be clarified to them so that they understand 12 that on the following basis the policy has been made, these 13 are your responsibilities, these are the dos and these are 14 the don'ts. I also indicated that police officials are 15 also in a difficult position and I think there was 16 reference to the issue of the Hippocratic oath because on 17 one side they also carry firearms and on the other side 18 they are also expected to tend to people. There's a little 19 bit of a conflict in terms of the codes of conduct but I 20 think on the basis of what I said, I said it would be a 21 thing in part of our community services to be able to 22 extend that particular service as part of our range of 23 services, provided it is properly dealt with and we are 24 putting our members in a position where they can respond 25 and handle the situation and not base it on the experiences</p>	<p style="text-align: right;">Page 24359</p> <p>1 long time he was there and SAPS members were in the 2 vicinity and he literally bled to death, is your evidence 3 that your assessment of non-action on the part of those 4 SAPS members who were there is that they may have been 5 disinclined to stop the bleeding because SAPS get exposed 6 to billions of rands of civil claims when they do 7 intervene, even when they are well-intentioned? Is that 8 what you want the Commission to accept with regard to this 9 specific case? 10 MR SEMENYA SC: Chair, that question has 11 been asked four times and the answers the witness has been 12 giving was that not entirely, the first time, he said no 13 the second time. I don't know why we're still ploughing 14 the same field. 15 CHAIRPERSON: Mr Ntsebeza, what do you 16 say about this? You have asked the question quite a lot. 17 Perhaps the way to do it is to ask, give the witness one 18 more chance to explain clearly what he met by referring to 19 the balance with reality – you see the last line on the 20 screen? He's talking about policy decision and then he 21 talks about there has to be a balance, policies have to 22 have a balance with some reality. Perhaps he could just 23 explain that shortly to us and then I think Mr Semanya's 24 objection should be upheld and you should move on to 25 something else.</p>

<p style="text-align: right;">Page 24360</p> <p>1 MR NTSEBEZA SC: Mr Chairman, maybe let 2 me put the same question now for the fifth time on Mr 3 Semenya's counting, but differently. 4 CHAIRPERSON: The way I put it, did you 5 hear the way I formulated the question? What exactly did 6 you mean by saying policies have to have a balance with 7 some reality? I understand it's a complicated question, 8 difficult for you to deal with in a short compass but just 9 if you can sketch it in a sentence or two, how the balance 10 would operate to some extent, what factors have to be taken 11 into account on either side of the balance, if one could 12 put it that way? 13 GENERAL NAIDOO: Chair, yes. I think 14 that balance with reality was outlining specifically what 15 we have now discussed several times, that it would be 16 simplistic to say yes, we'll just make a policy that says 17 that the police must attend to individuals that are injured 18 when they arrive at a particular scene. I sketched the 19 various factors that must be taken in, firstly the 20 training, the resourcing, I spoke about the legal 21 implications which we are continuously in the police being 22 told about that, you know, before you do this you must 23 remember the legal consequences of your actions and all 24 these things contribute to the attitude of the people that 25 we expect to do this job. So we need to create that</p>	<p style="text-align: right;">Page 24362</p> <p>1 proceed much longer. It seems to me there are important 2 policy considerations in respect of which we have to make, 3 may well have to make – I don't say we have to, we may have 4 to make recommendations or be asked to make recommendations 5 and I wouldn't think that the recommendations would be 6 based upon your evidence one way or t'other, if you'll 7 forgive my putting it as bluntly as that, but it is an 8 important matter but I don't think prima facie that we're – 9 and I'm not being unkind to the Major-General because he's 10 got his expertise in a number of fields that we respect but 11 I don't get the impression this is one where he can really 12 make a meaningful contribution, but I'm sure that this is a 13 matter which we may well receive valuable contributions, I 14 hope in writing and not by way of oral evidence, before we 15 give our reports. 16 MR NTSEBEZA SC: Now, General, I would 17 like you to appreciate that I'm putting these questions 18 because I represent people who are unsophisticated, you 19 know, these things about policy and all that. They – the 20 point of departure for whom I represent would be, there are 21 rudimentary, you don't need training, there are rudimentary 22 things that you do when you find a person bleeding. For 23 instance, in this case we know that Mr Mdze was bleeding 24 from a wound in the hand or in the arm. Now, and even in 25 standard 3 under bantu education we knew that if a person</p>
<p style="text-align: right;">Page 24361</p> <p>1 environment that's conducive and will also generate that 2 right attitude. 3 MR NTSEBEZA SC: Perhaps let's put policy 4 aside, General, and talk about the reality but before we do 5 that, let me just ask one question. Are you aware of any 6 case in which the SAPS has been sued because a member of 7 the SAPS was trying to stop the person from bleeding to 8 death? 9 GENERAL NAIDOO: Chair, I'm sure we can 10 establish if there is such a case. 11 MR NTSEBEZA SC: Are you saying, are you 12 really saying that there is a case like that? 13 GENERAL NAIDOO: Chair, I am saying that 14 I can establish whether there is such an instance. 15 CHAIRPERSON: You don't know. 16 GENERAL NAIDOO: Not off the top of my 17 head. 18 CHAIRPERSON: Maybe if there is such a 19 case you can draw it to the attention of the SAPS legal 20 team or they can make their own enquiries and then bring it 21 to our attention in the argument stage, I would imagine, or 22 possibly – if it's not something that can be dealt with by 23 referring to the law reports but short little affidavits or 24 a document setting out a case of that kind but I'm 25 reluctant to allow the cross-examination on this point to</p>	<p style="text-align: right;">Page 24363</p> <p>1 is bleeding it means the heart is pumping the blood and 2 therefore you must do something to stop the pumping of the 3 blood by the heart and therefore find a place between the 4 wound and the heart and tie something around there. I'm 5 sure you are aware of those sort of basic rudimentary steps 6 to try and stop bleeding, are you not, General? 7 GENERAL NAIDOO: Some, yes. 8 CHAIRPERSON: Mr Ntsebeza, I don't want 9 to stop you but you know I think you're arguing matters now 10 with the witness which you can argue at the end of the 11 case, I would think. I don't know what he learnt, what 12 first aid he learnt in sub-B, in standard 3 or grade 5. 13 There will be a legal debate. I can foresee I think with 14 some accuracy, the end of the case in relation to this 15 particular deceased and there will be argument as to 16 whether there was a legal duty on the police to give him 17 first aid before the medics arrived, whether there was a 18 duty to get medics there on time to deal with the situation 19 before it became out of control. All these matters will 20 obviously be covered in argument but I don't know, with 21 respect, that any evidence this witness will give us on the 22 point will assist us to make recommendations or express our 23 views insofar as we're called upon to do so, on the 24 questions that will be argued. So I think it might be 25 helpful to move on to something else. I'm not</p>

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1 unsympathetic. I understand the point you make. You're
 2 appearing for unsophisticated clients who don't understand
 3 concepts like policy and the kind of balancing that a court
 4 has to do in deciding whether there's a legal duty but – or
 5 they may not understand, I mustn't be unkind, they may well
 6 understand but I'm not sure that the answers that the
 7 witness will give us will assist them to understand these
 8 things any better, but they will have the satisfaction, I'm
 9 sure, of knowing that these points will be argued at the
 10 end and material that's relevant will be put before us,
 11 possibly on affidavit, to assist us to make the right
 12 recommendation. They need not fear that these points will
 13 be ignored merely because I'm stopping you from proceeding
 14 with this line.

15 MR NTSEBEZA SC: I'm sure they will, Mr
 16 Chairman. I did indicate to you that as much as could have
 17 been dealt with, with regard to Mr Mdze, was dealt with by
 18 Mr Chaskalson. Now there is exhibit MMM10 which I would
 19 like to go to in respect to the consequences to other, to
 20 other consequences which we want to argue resulted from the
 21 delay in getting paramedics very early to scene 1. Now in
 22 addition to Mr Mdze, Dr Boffard concludes that other
 23 victims could have been saved if paramedics had reached the
 24 scene without delay and in this regard he refers to Mr
 25 Mzukisi Sompeta, S-O-M-P-E-T-A, and Mr Lendingoane or

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1 Ledingoane, Ledingoane. I shouldn't be bothering – well, I
 2 shouldn't be involving myself about Ledingoane because –

3 CHAIRPERSON: If you can't – I'm sure you
 4 can pronounce the name correctly, can't you, Mr Ntsebeza?
 5 The trouble is the transcribers might not be able to, which
 6 is why you're giving the spelling, which is –

7 MR NTSEBEZA SC: Indeed, it's a Sotho
 8 name. Mr Chairman, that Mr Ledingoane is being represented
 9 by the LRC so I won't deal with that. Now page 21 of
 10 MMM10, if we could get to that with respect to Mr Sompeta,
 11 starting at where it says, "Although the injury rendered
 12 him paraplegic from a spinal cord injury, this was at low
 13 level so would not have affected his breathing. His only
 14 other injury from the report appears to have been a
 15 laceration of kidney. Had he had earlier access to care,
 16 although the ambulance personnel would not themselves have
 17 been able to stop the bleeding, they would have been able
 18 to manage his airway, place an IV line and transport to
 19 level 2 hospital. They should have had ample time to do
 20 this and his injuries under the circumstances are regarded
 21 as survivable had he reached a facility earlier which was
 22 capable of performing a laparotomy and stopping the
 23 bleeding.

24 [11:27] This death is therefore regarded as potentially
 25 preventable death. Now I'm told that a laparotomy is an

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1 incision through the abdominal wall to get access to the
 2 abdominal cavity. Now I believe that the Rustenburg
 3 hospital does perform this procedure called laparotomy and
 4 then the question is this, what is your reaction to what
 5 Doctor Boffard says about that death being one of those
 6 that could have been prevented had there been no delay in
 7 the deployment of paramedics?

8 MR SEMENYA SC: Chair, the witness can't
 9 offer medical opinion.

10 CHAIRPERSON: What do you say to that
 11 point Mr Ntsebeza?

12 MR NTSEBEZA SC: On the assumption that
 13 the medical opinion expressed by Doctor Boffard is correct
 14 –

15 CHAIRPERSON: - the opinion you're asking
 16 him to give, one that he is in no special position to give
 17 which puts him in a stronger position than we would be in
 18 forming an opinion on a point. It's a point we've had
 19 often in this Commission that witnesses are asked to
 20 venture opinions on matters on which they have no special
 21 expertise which the Commission is as well equipped to
 22 express an opinion on as the witness. Now isn't this such
 23 a case? I mean for example there are problems in relation,
 24 of course, to getting in time to Rustenburg, but I would
 25 like to know, if this point is to be taken further, whether

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1 this procedure was capable of being performed at the Andrew
 2 Saffy hospital because that was obviously much closer. But
 3 these are all matters that this witness can't help us on
 4 and the question you're asking also, I think or suspect is
 5 one in which he has no special expertise on. You can
 6 certainly argue the point at the end or it may be that
 7 perhaps an expert can be called, but we've already got
 8 Professor Boffard and I don't see any point in asking
 9 this witness anything on the point.

10 MR NTSEBEZA SC: Mr Chairman, I was not
 11 seeking his medical opinion, I am simply seeking his
 12 reaction as having been in charge. I mean he himself says
 13 in his statement that he was in charge of emergency
 14 services on the day and that included him being in charge –

15 CHAIRPERSON: I understand what you're
 16 saying, but how would his reaction assist us at the end in
 17 answering the questions posed in our terms of reference?
 18 Would his reaction take the matter any further one way or
 19 the other? If his reaction is that he doesn't think he's
 20 responsible in any way, that's his opinion, even if he says
 21 thinks perhaps that he is responsible in some way, we
 22 wouldn't be bound by that admission on his part would we?

23 MR NTSEBEZA SC: Except that if part of
 24 your duty as I sit behind you, you are committing to find
 25 the truth in the interests of restoration and justice, it

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1 might be important to get from this witness the extent to
 2 which with hindsight, even if he himself was not
 3 responsible for the delay because of all the reasons that
 4 he gave.
 5 CHAIRPERSON: Would his hindsight be any
 6 better than our hindsight assisted by learned argument from
 7 you and your colleagues? I think I'll disallow the
 8 question, you must move onto the next point. It doesn't
 9 mean, as I've indicated that you can't argue these points
 10 at the end. I don't want your clients to think that this
 11 point won't be the subject of argument before us and that
 12 all meaningful evidence is that – the relevant evidence
 13 won't be before us, I'm simply saying I don't think his
 14 evidence would be relevant on this matter. But they
 15 mustn't think, they mustn't fear that I'm stopping
 16 arguments on this point at the end because I most certainly
 17 won't.
 18 MR NTSEBEZA SC: Well, Mr Chairman –
 19 CHAIRPERSON: I've made my ruling.
 20 MR NTSEBEZA SC: Mr Chairman, let me just
 21 record to that, I'm not asking a question there, let me
 22 just record that we will argue that you knew the
 23 responsibility as having been in charge of the medical
 24 service is such that we will argue for him to be held
 25 culpable for the deaths that occurred and that we will even

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1 move for his prosecution for that the deaths that occurred.
 2 He may want to react to that, but, Mr Chairman, you have
 3 ruled. Now, Mr Chairman, can we go to exhibit EEE16 which
 4 I believe is a video clip and you might want to give a
 5 warning at this stage, Mr Chairman.
 6 CHAIRPERSON: I'm informed that we are
 7 going to see in a moment a video clip which shows,
 8 according to what you can see on the screen at the moment,
 9 what is described as the massacre unfolding. In other
 10 words we're likely to see shots being fired at people who
 11 died in consequence thereof and some of whose loved ones
 12 and relatives may be in the chamber. And I anticipate and
 13 I think Mr Ntsebeza does also that the loved ones and
 14 relatives to whom I have referred may experience extreme
 15 emotional distress at seeing these video clips. So I ask
 16 that they not be shown until a minute from now to give
 17 anyone who wishes to leave the chamber and avoid the
 18 emotional distress to which I have referred, the
 19 opportunity to leave. The minute will start now. Half a
 20 minute has expired, no one has showed any signs of wanting
 21 to leave, so I presume we can proceed.
 22 MR NTSEBEZA SC: Thank you, Mr Chairman,
 23 I believe that the clip starts at 12:15.
 24 [VIDEO SHOWN]
 25 CHAIRPERSON: Just put on record when

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1 that particular video came to and end, the clips that we
 2 saw. The whole section of the clip – it's an ENews clip
 3 isn't it? The whole section preceded by the writing on
 4 screen to the effect that no signs of first aid being
 5 administered. It goes right to the end of that section and
 6 then what now appears on the screen is the following, in
 7 the distance miners can be seen running, that's effected at
 8 the end of the section that we saw.
 9 MR NTSEBEZA SC: Now we know, General,
 10 that there were no paramedics at that scene because they
 11 only arrived an hour after the shooting and this was, I
 12 think, after the shooting. Would you agree with that?
 13 GENERAL NAIDOO: Chair, I am not sure at
 14 what time the paramedics arrived at the scene. As it was
 15 indicated in previous testimony Brigadier Pretorius, in her
 16 supplementary statement did make supplementary arrangements
 17 for additional paramedics but as to the when the paramedics
 18 arrived at the scene I am unable to testify.
 19 CHAIRPERSON: We saw video material which
 20 tended to indicate when they arrived. I understand that
 21 AVL evidence will be forthcoming from Lonmin which will
 22 indicate, one hopes with a fair degree of accuracy, when
 23 precisely the extra ambulances that Brigadier Pretorius
 24 asked to be sent arrived on the scene. But at the moment
 25 what we have on record is 58 minutes. That may require

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1 some revision in the light of this extra evidence we may be
 2 getting, but I think for present purposes we can work on
 3 the basis of 58 minutes.
 4 MR NTSEBEZA SC: Yes, I thought it was
 5 common cause that, Chair. Maybe not about the hour, but
 6 there were no paramedics at that stage of this clip. There
 7 is no quarrel about that, the –
 8 CHAIRPERSON: There are clearly no
 9 paramedics, I would think, at the time of the clip. I'm
 10 not quite sure at what time on the time line that what we
 11 see on the clip happened, but certainly it would seem
 12 there's no sign of any paramedic at all. Do we know, while
 13 we're about it, do you we know at what time what we saw on
 14 that clip took place? Mr Chaskalson normally has these
 15 things at his fingertips. Can you tell us, Mr Chaskalson?
 16 MR CHASKALSON SC: Chairperson, I don't
 17 know the source material for that particular clip, so I
 18 can't give you an exact time. I would be able to estimate
 19 that, but I can't give you –
 20 CHAIRPERSON: If Mr Ntsebeza needs it
 21 he'll let us know and we can get it later, but the point, I
 22 take it, he's making is there's no sign of a paramedic at
 23 that stage.
 24 MR NTSEBEZA SC: Yes that's the point. A
 25 further point is that –

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1 CHAIRPERSON: What I got reminded about
2 with him was it goes further than I put it. There's no
3 sign of any paramedic on the scene and there's no sign of
4 anybody else. The only other people on the scene are
5 members of the police service endeavouring to do what
6 Lieutenant-Colonel McIntosh did in the vicinity of scene 2
7 when someone was shot, giving first aid. No sign of that,
8 that's the point isn't it?
9 MR NTSEBEZA SC: I'm sure the General
10 agrees with that observation by the Chair.
11 GENERAL NAIDOO: Agreed, Chair.
12 MR NTSEBEZA SC: Yes, in fact what units
13 are those, TRT units is it?
14 GENERAL NAIDOO: That's correct, Chair.
15 MR NTSEBEZA SC: They certainly are not
16 administering first aid. You saw in that picture.
17 GENERAL NAIDOO: We've seen that, Chair.
18 MR NTSEBEZA SC: If anything it seems to
19 me that they just walk around amongst the dead and the
20 injured. In some cases they are dragging them and in one
21 case there's a suggestion that they're putting a boot on
22 the protestors faces. Did you see that?
23 GENERAL NAIDOO: I saw something there,
24 yes.
25 CHAIRPERSON: Something like that, ja.

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1 GENERAL NAIDOO: I think I saw something
2 like that, Chair.
3 CHAIRPERSON: You saw something like
4 that.
5 MR NTSEBEZA SC: It's not disputed, there
6 are other – ja at least you also say you saw something like
7 that. Now the other movements, there was a person there
8 with a blanket whose hand who was clearly moving, but there
9 is one person whom we see and he's alive at that stage and
10 that is Mr Nteneja the man in the orange jersey. Did you
11 see? The man who was attempting to sit up, shaking,
12 clearly in a lot of pain I would assume and then fell again
13 in the midst of gun wielding TRT forces. Did you see that,
14 General?
15 GENERAL NAIDOO: I saw that, Chair.
16 MR NTSEBEZA SC: Now is it your case
17 still that the way to respond to the injured and the dying
18 is to drag them around, to push boots into their faces?
19 GENERAL NAIDOO: Chair, I don't think
20 that ever was my case.
21 MR NTSEBEZA SC: I didn't hear that,
22 General.
23 CHAIRPERSON: It was never his case.
24 MR NTSEBEZA SC: Never your case. Is it
25 your case that instead of seeking to render any assistance

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1 to people who are obviously injured and dying, first aid or
2 not, the police didn't do so because there is a fear
3 generally that any intervention, even a well intentioned
4 one, to assist might lead to civil claims?
5 GENERAL NAIDOO: Chair, I'm not sure
6 where the training and the capacity of these individual
7 members, so I'm not sure, in terms of their reaction or
8 their well intentioned assistance if they could have
9 rendered whether they would have thought it possible. So
10 I'm unable to make a judgment on that.
11 CHAIRPERSON: Have you come to the end of
12 this point because I'm proposing to suggest that we have
13 the tea adjournment when you've finished the point? Your
14 junior nods her head and presumably she has a good idea of
15 what you're dealing with in your cross-examination. So
16 we'll take the tea adjournment now. Let's try to resume –
17 MR NTSEBEZA SC: Yes, yes Mr Chairman.
18 [COMMISSION ADJOURNS COMMISSION RESUMES]
19 [12:08] CHAIRPERSON: The Commission resumes.
20 Major General, you're still under oath.
21 GANASEN NAIDOO: Still under oath, Chair.
22 CHAIRPERSON: Mr Ntsebeza.
23 CROSS-EXAMINATION BY MR NTSEBEZA SC (CONTD.):
24 Thank you, Mr Chairman. Now General, what I do want to put
25 to you, especially with what we saw happened to Mr

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1 Ntenetya, the man in the orange jersey, is not so much what
2 the TRT did; that's a debate for another day and perhaps
3 for another witness. What I am putting to you is that the
4 delay in the deployment of paramedics to that scene
5 timeously quite clearly was responsible for the fatalities
6 that took place. Would you agree with that proposition?
7 CHAIRPERSON: That's something he needs
8 medical expertise to answer and he's not a medical man.
9 We've already got the views of Professor Boffard before us,
10 but can he add any value to that? I'm not saying that the
11 answer to the question you're asking is necessarily in the
12 negative, but I'm saying that I'm not sure that he can give
13 any meaningful answer that we can rely on one way or
14 t'other.
15 MR NTSEBEZA SC: I take the point, Mr
16 Chairman. What perhaps I should be putting to you, at the
17 very least, is that if the paramedics were there almost
18 immediately, even in respect of those who were injured but
19 whose deaths could not be prevented for a variety of
20 reasons that Dr Boffard talks about, at least there is
21 something that would have been of value, and this is what I
22 want to debate with you, if the paramedics were deployed
23 there immediately. For instance the paramedics would have
24 been able to alleviate the pain of those who were suffering
25 from pain as a consequence of the injuries they had

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1 received. Would you agree –

2 CHAIRPERSON: Are you able to answer that

3 question?

4 GENERAL NAIDOO: I don't have any

5 expertise in that, Chair.

6 CHAIRPERSON: Do you have the facts? I

7 mean did the paramedics have morphine for example with them

8 or anything that would assist them to alleviate pain?

9 GENERAL NAIDOO: I have no –

10 CHAIRPERSON: To your knowledge.

11 GENERAL NAIDOO: I have no idea, Chair.

12 MR NTSEBEZA SC: Do you know what the

13 paramedics had?

14 GENERAL NAIDOO: Chair, I know that they

15 had some equipment with them. I don't have an expertise in

16 terms of that, so I can't precisely say what they had.

17 MR NTSEBEZA SC: What equipment was this?

18 GENERAL NAIDOO: Chair, paramedic

19 equipment. As I said, I don't have expertise to say

20 exactly what equipment they had.

21 MR NTSEBEZA SC: What is paramedic

22 equipment?

23 GENERAL NAIDOO: They had their first aid

24 bags.

25 MR NTSEBEZA SC: First aid bags. What –

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1 CHAIRPERSON: Do you know what was in the

2 first aid bags?

3 MR NTSEBEZA SC: Exactly.

4 GENERAL NAIDOO: No, Chair.

5 CHAIRPERSON: I'm sorry, Mr Ntsebeza,

6 that's your question. Forgive me. You can regard it as

7 his question. What's the answer?

8 GENERAL NAIDOO: Chair, my assumption is

9 equipment that they would use to do their job.

10 CHAIRPERSON: So you don't know. You

11 haven't looked in the first aid bags to see what they had?

12 GENERAL NAIDOO: Not myself, no.

13 CHAIRPERSON: Is that correct?

14 GENERAL NAIDOO: Yes, Chair.

15 MR NTSEBEZA SC: I'll ask just one

16 question which does not call for medical expertise. It

17 certainly speaks to what human beings do. Paramedics I

18 would assume under your command would have given the

19 people, even those who died, the opportunity to die with

20 some measure of dignity. They would be attending to them

21 even if they died in their hands. Don't you think so?

22 GENERAL NAIDOO: I'm sure they would

23 have.

24 MR NTSEBEZA SC: Now Dr Boffard –

25 CHAIRPERSON: I think you'll find he's a

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1 professor, isn't he? Mr Chaskalson, he's a professor,

2 isn't he?

3 MR CHASKALSON SC: He is a professor,

4 Chairperson.

5 MR NTSEBEZA SC: He's not a doctor? Oh,

6 Prof Doc. Now he tells us that the following people would

7 not have died immediately, I think it should be on page 17

8 of his report, and that would be in addition to Mr

9 Ntenetya. Now if we turn to page 17 of his report he lists

10 the people as being Michael –

11 CHAIRPERSON: We have that on the screen

12 now, don't we?

13 MR NTSEBEZA SC: Oh yes.

14 CHAIRPERSON: Do you want to read out all

15 the names, as long as you can pronounce them correctly?

16 MR NTSEBEZA SC: No, there's no danger of

17 – well –

18 CHAIRPERSON: The Xhosa ones you won't

19 have a problem with, but –

20 MR NTSEBEZA SC: Yes.

21 CHAIRPERSON: - the Sotho ones, anyway

22 it's important that people's names be correctly pronounced,

23 if possible.

24 MR NTSEBEZA SC: Indeed, indeed, indeed.

25 CHAIRPERSON: So the kind of dignified

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1 treatment that the dead are entitled to.

2 MR NTSEBEZA SC: Exactly. For instance

3 5.8.1 I would be challenged. I have an idea what, how I

4 pronounce it, Msenyeho, but some people call it "Go,"

5 Msenyeho, Andries, even though it's spelt with an H. But

6 those are the people that Dr Boffard said – Michael –

7 CHAIRPERSON: That they were potentially

8 survivable, I think –

9 MR NTSEBEZA SC: Yes. Michael Ngweyi,

10 Bonginkosi Yona, Andries Msenyeho, Thobisile Zibambeke, and

11 Elias Khawamare Monesa. You've seen that, General? He

12 also on page 22 mentions Mr Jackson Lehupa. So I was just

13 seeking to draw your attention to those as being additional

14 to Mr Ntenetya and being people who we will argue would

15 have died dignified deaths instead of simply being

16 manhandled and left on the field to die. I don't know if

17 you want to make any comment thereto.

18 GENERAL NAIDOO: Chair, I don't

19 understand. If the list that was referred to was a list of

20 preventable deaths, because when I look at the list it

21 refers to specifically life-threatening injuries that are

22 listed there and the indication of preventable and non-

23 preventable are indicated further in the pages –

24 CHAIRPERSON: No, no, no, I think you're

25 missing the point. There was a list of people who were

<p style="text-align: right;">Page 24380</p> <p>1 regarded as potentially survivable and then in respect of 2 each of these the Professor expresses a view whether the 3 death was preventable or non-preventable, and I understand 4 Mr Ntsebeza to be dealing at the moment with those who are 5 potentially survivable, some of whom obviously are ones the 6 Professor regards as not capable of being saved, the death 7 is not capable of being prevented. There is a distinction 8 between the two because I take it that the difference is 9 this; a case where the person is regarded as potentially 10 survivable is measured at the time that the injuries were 11 inflicted. The case of whether the death is preventable 12 depends on the question of how long it would take to get 13 the person to hospital and so on. That's the distinction, 14 I think I'm correct.</p> <p>15 Mr Ntsebeza is dealing with the potentially 16 survivable cases at the moment, which include a number of 17 non-preventable ones. That's the point. Is that right, Mr 18 Ntsebeza?</p> <p>19 MR NTSEBEZA SC: Yes, Mr Chairman. In 20 fact I've just been looking on page 17 what the Professor 21 says there. Now the further point I'm making about those 22 deaths on page 17, the names that I have called out, 23 General, is that over and above what the Doctor says, but 24 also because of what he says, the point I was seeking to 25 make is that even if they would have died eventually, which</p>	<p style="text-align: right;">Page 24382</p> <p>1 statement and your testimony. Day 188 I believe you 2 outlined your experience in policing strikes, marches, mass 3 political gatherings, T22829, line 20, to 22827, line 7. 4 CHAIRPERSON: Sorry, what page? What 5 page? 6 MR NTSEBEZA SC: It's T – 7 CHAIRPERSON: Yes, that's the 8 transcripts, yes. 9 MR NTSEBEZA SC: 22829. 10 CHAIRPERSON: 22829. That we have before 11 us on the screen. 12 MR NTSEBEZA SC: And lines would be from 13 20. 14 CHAIRPERSON: What Mr Semenya at the 15 lines you read are, talking about his career, that he'd 16 been in command at times of multidisciplinary forces. Mr 17 Semenya said, "You mentioned then there your K9s, your 18 specialised police units, your POP, reaction units, 19 detectives, intelligence, emergency services, at times the 20 involvement of South African National Defence Force 21 members," and the witness replied, "That is correct. At 22 that time the capacity of the station on its own could not 23 deal with most of the issues that we were confronted with, 24 Chair. They had to be supplemented invariably by the 25 specialised units, especially the Public Order Police</p>
<p style="text-align: right;">Page 24381</p> <p>1 is the point I made just recently, they would have died 2 dignified deaths instead of being manhandled and left on 3 the field to die, and we have already dealt with that. 4 So in response to your desire to clarify the 5 issue here is yes, (1), there's an argument about whether 6 they were preventable deaths, that's a medical point. But 7 further than that there is the added point that I make, and 8 that is I'm sure your medical personnel would have done 9 things to them that would have caused their deaths to be 10 dignified if they had been there and deployed timeously. 11 I'm sure that answers your query, General, does it? 12 CHAIRPERSON: Before you answer, Mr 13 Semenya wants to say something. 14 MR SEMENYA SC: The question was put and 15 answered. It's just been repeated now. The witness 16 conceded. 17 MR NTSEBEZA SC: Thank you, Mr Semenya. 18 Thank you, Mr Chairman. 19 CHAIRPERSON: I think that's a good 20 point, you know. A question doesn't gain cogency merely 21 because it's repeated, unless it provokes a different 22 answer, but that's not likely to happen here. 23 MR NTSEBEZA SC: Yes, Mr Chairman, I 24 apologise for that. Now I'm moving to something else, 25 General. I've been reading about your career in your</p>	<p style="text-align: right;">Page 24383</p> <p>1 units," and he goes on to deal with that. This is dealing 2 with the time when you were in KwaZulu-Natal, as I 3 understand it. 4 GENERAL NAIDOO: Correct, Chair. 5 MR NTSEBEZA SC: You confirm that, 6 General? 7 GENERAL NAIDOO: That's correct, Chair. 8 MR NTSEBEZA SC: Yes, and you testified 9 that in the pre-election period you were responsible for 10 policing conflict between various political parties. 11 GENERAL NAIDOO: That is correct, Chair. 12 MR NTSEBEZA SC: Which was a 13 characteristic of the time and of the area. I think you do 14 that in 22827, lines 8 to 10. Now you were placed in 15 command of multidisciplinary forces. Is that right? 16 GENERAL NAIDOO: That's correct, Chair. 17 MR NTSEBEZA SC: In fact if you could 18 just go to there, because I think it's important the way 19 you put it. T22828, lines 1 to 12. There was also – ja, 20 that's the one. "There was also inter-political conflict 21 where we had groupings of the various political parties in 22 KwaZulu-Natal with a very low tolerance threshold and they 23 had a tendency firstly of attacking each other in their 24 designated areas as well as whenever meetings, rallies, 25 gatherings were held by either party it would normally be</p>

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1 attacked by the other party and in terms of policing we had
 2 to keep those people – there were also mobilisation of the
 3 democratic movements when starting to hold marches and
 4 rallies and mobilise people moving towards the election,
 5 and we had to ensure that these were held in a safe and
 6 secure condition so that it would be conducive for the
 7 election.” I would say it’s a time not unlike today, given
 8 the 7th of May. I see you agree, General.
 9 GENERAL NAIDOO: Not as drastic as –
 10 CHAIRPERSON: I don’t think that the
 11 parties presently in the field have the very low tolerance
 12 threshold to which the witness was referring. At least I
 13 certainly hope they don’t. Perhaps one of their leaders
 14 can tell us.
 15 MR NTSEBEZA SC: I will not have my
 16 client testify. Now just out of there, General, what did
 17 you mean by designated areas? Just as a matter of
 18 interest.
 19 GENERAL NAIDOO: Chair, I was in KwaZulu-
 20 Natal, the north of Durban, and there were designated areas
 21 – when I say designated areas, people from particular areas
 22 supporting a particular political view and quite often
 23 attacking another area who they suspected to have a
 24 contrary view. This was the order of the time where we had
 25 to ensure that these attacks did not take place.

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1 [12:27] MR NTSEBEZA SC: Now would hostels also
 2 have fallen under the designation, designated areas?
 3 GENERAL NAIDOO: Chair, my station area
 4 was semi-rural, or peri-urban. There were fortunately no
 5 hostels in my policing area.
 6 MR NTSEBEZA SC: Now this was all before
 7 1994.
 8 GENERAL NAIDOO: That is correct, Chair.
 9 MR NTSEBEZA SC: Now I don’t know how to
 10 put this question, but let me put it. Now during that
 11 period, during these operations before 1994 that you had
 12 experience in, during these operations did the SAPS kill a
 13 lot of people in which you were involved?
 14 GENERAL NAIDOO: I don’t know kill a lot
 15 of people. There were some shooting incidents, so a lot, I
 16 would not be able to say a lot, but as I said, I testified
 17 yesterday as well, I have attended incidents where police
 18 were involved in shootings.
 19 MR NTSEBEZA SC: Are you saying that they
 20 killed any people at all?
 21 GENERAL NAIDOO: There were incidents
 22 where police had killed people, yes.
 23 MR NTSEBEZA SC: Can you remember how
 24 many?
 25 GENERAL NAIDOO: Chair, no, that’s very

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1 long time ago.
 2 MR NTSEBEZA SC: [Microphone off,
 3 inaudible] that they were insignificant in terms of
 4 numbers?
 5 GENERAL NAIDOO: No, Chair, I would have
 6 more personal knowledge of shooting incidents that I would
 7 have attended myself, but overall there were various
 8 incidents and that were attended by different officers, so
 9 my knowledge would be limited to the breadth of what I
 10 know. I would not be able to accurately report on a
 11 broader scale of what the situation was.
 12 MR NTSEBEZA SC: I would assume that
 13 these operations were regarded as success. Is my
 14 assumption correct insofar as the SAPS, or the SAP some
 15 time before 1994, succeeded in containing the violence?
 16 GENERAL NAIDOO: Not all of them, Chair.
 17 MR NTSEBEZA SC: Now are you saying there
 18 is an instance you recall in which you would say the
 19 operation was not a success, the police failed, SAP failed
 20 to contain -
 21 GENERAL NAIDOO: Chair yes, there were
 22 instances.
 23 MR NTSEBEZA SC: - the violence?
 24 MR SEMENYA SC: Chair, we must ask for
 25 relevance of all this series of questions that go into 19 –

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1 CHAIRPERSON: I know what the topic is
 2 I’ve given permission on. I can see the relevance that’s
 3 being worked up to, but it’s being worked up rather slowly
 4 and laboriously. Perhaps Mr Ntsebeza needn’t fear any
 5 unfortunate consequences if he cuts to the chase
 6 immediately. The questions you want to ask I think have
 7 some relevance, but I can understand why Mr Semanya doesn’t
 8 see the relevance at this stage.
 9 MR NTSEBEZA SC: He always enjoys
 10 fighting with us.
 11 CHAIRPERSON: In defence of –
 12 MR NTSEBEZA SC: Part of it is relevant
 13 to his evidence. For instance if we go to day 188, T22828,
 14 line 16 to 21, for my next question, where you were asked
 15 about the numbers of people which were involved in these
 16 strikes that you were dealing about and you said it would
 17 be anything from 2 000 to 10 000 people. You see that?
 18 Starting from –
 19 GENERAL NAIDOO: 2 to 300 people.
 20 MR NTSEBEZA SC: Yes, in response to no
 21 less than Mr Semanya, I see, so that we gather some
 22 clarity, “These strikes would involve what type of numbers
 23 of people?” and your response was, “It would vary from
 24 small” – now is that 2 300, or is it 2? Two people, and
 25 then 300?

<p style="text-align: right;">Page 24388</p> <p>1 GENERAL NAIDOO: Chair, I think he said 2 from 2 to 300 people. 3 MR NTSEBEZA SC: To larger, 5, 10 000 4 people. Now 5 is 5 000 people – 5 CHAIRPERSON: The comma between the 2 and 6 the 300, it should be to, and equally the comma between the 7 5 and the 10 000 – 8 MR NTSEBEZA SC: Yes. 9 CHAIRPERSON: - in line 18 should also be 10 to. So the passage should read, the question was “These 11 strikes would involve what type of numbers of people?” 12 Answer, “It would vary from small, 2 to 300 people related 13 to taxi violence and taxi conflict, to larger, 5, 10 000 14 people with the mobilisation of communities for various 15 issues that were raised at the time running up to the first 16 democratic elections in South Africa.” That was the answer 17 he gave. 18 MR NTSEBEZA SC: And then you were asked, 19 which follows immediately thereafter, whether the people 20 were armed, and I think your answer was that they were 21 normally carrying firearms and a lot of traditional weapons 22 such as assegais, kieries, etcetera. Is that right? 23 GENERAL NAIDOO: That’s correct, Chair. 24 MR NTSEBEZA SC: And you were asked 25 whether the strikes often resulted in fatalities, and your</p>	<p style="text-align: right;">Page 24390</p> <p>1 it was in the context of management of these huge – because 2 that was generally the flow of the questions. You were 3 being asked, I assume, whether there were attacks on the 4 police in the context of those strikes and marches. Did 5 you understand that to have been the context in which you 6 were being asked about whether there were attacks on the 7 police? 8 GENERAL NAIDOO: Chair no, I understood 9 that during my service where the experience was being 10 tested, do I, were there any attacks on the police, hence I 11 indicated that the police were killed whilst on duty and 12 even whilst at home at their residences. 13 MR NTSEBEZA SC: I do not see the 14 question to have been framed in a way that suggested that 15 you were being asked for a general view as to whether the 16 police were killed either on duty or in their place of 17 work. I think the debate that was being introduced – 18 CHAIRPERSON: No, no, no, no, not at 19 their place of work. If you look at the answer, line 13 on 20 this page, what he says, or lines 12 and 13, he says, 21 “There were numerous attacks on police where policemen were 22 killed whilst on duty, as well as whilst at home at their 23 residences.” In other words he wasn’t talking about their 24 being attacked at their place of work. He was actually 25 talking amongst other things about their being attacked</p>
<p style="text-align: right;">Page 24389</p> <p>1 response in line 6 to 9 of 22829 is that there were a 2 number of instances where you had to intervene where there 3 were fatalities between the groups fighting, where the SAP 4 had to separate and there were fatalities as a result. Now 5 these fatalities, were those fatalities inflicted by group 6 upon group, or was it, were you making reference to 7 fatalities by police on the group or groups? 8 GENERAL NAIDOO: Chair, normally it was 9 groups upon groups. For example a group trying to move 10 towards a rally venue would be attacked. We had attacks on 11 mass meetings where devices like hand grenades were thrown 12 at one of the rallies as well and people were injured, I’m 13 not sure, killed as well. There were other instances where 14 the police and the SANDF had to go in and separate groups 15 that were fighting. So it’s a variety of scenarios that 16 we’re talking about. 17 MR NTSEBEZA SC: Now maybe before I ask 18 the next question, I need to be clear about what your 19 answer was about fatalities. When you give that response 20 in line 6 to 9, T22829, when you talk about fatalities was 21 it fatalities – I understand you now to be saying it would 22 have been fatalities by group upon group. 23 GENERAL NAIDOO: Normally, yes. 24 MR NTSEBEZA SC: In fact you were asked 25 whether there were attacks on the police and I assume that</p>	<p style="text-align: right;">Page 24391</p> <p>1 while they were at home, and so he was dealing generally it 2 would seem from that answer with attacks on the police in 3 general and not just at gatherings and – 4 MR NTSEBEZA SC: Yes, Mr Chairman, that’s 5 what I’m trying to probe. General, in the light of the 6 build-up to that part of the question that was put to you 7 by my learned friend Mr Semenya I would have thought that, 8 and I’ll ask it in any event, I would have thought that, 9 you know, the enquiry was whether there were any fatalities 10 on the side of the police that were as a result of their 11 trying to keep these warring factions apart. In other 12 words you have got 3 000, 10 000 people on strike or on a 13 march, you are the police, you are supposed to keep law and 14 order, maintain law and order, and in that context were 15 there any attacks on the police? Now I’m putting the 16 question to you. 17 GENERAL NAIDOO: Ja. Chair, I’m sure, 18 but I can’t remember specifically about attacks on the 19 police, but I do remember at some stage that there were 20 shots fired at police, etcetera. As to injury and 21 fatalities, I can’t remember specifically related to the 22 marches, but I know at various times there were shots fired 23 at police during some of these interventions, yes. 24 MR NTSEBEZA SC: But you can’t say there 25 were any fatalities?</p>

<p style="text-align: right;">Page 24392</p> <p>1 GENERAL NAIDOO: I can't specifically – 2 I've attended to many scenes where police officials were 3 injured or killed, so I can't specifically remember it in 4 the scenario that it's being set, no. 5 MR NTSEBEZA SC: Yes, now of course the 6 number that had been banded about relative to what 7 happened in Marikana is 3 000 to 4 000. You are aware of 8 that? 9 GENERAL NAIDOO: I'm aware of that, 10 Chair. 11 MR NTSEBEZA SC: It is not as high as in 12 your experience you've had to deal with 10 000 protesters 13 and/or strikers. It's three times less than the number you 14 have had to contain and deal with in that period. Do you 15 agree? 16 GENERAL NAIDOO: Chair, I am not sure 17 when you say contain and deal with, because I gave 18 instances of operations where we had large mass gatherings. 19 It's not necessarily that we had to contain them. We had 20 to work out how they would conduct their activities, and 21 obviously ensure that the incidents that I referred to, or 22 the scenario that I referred to in terms of attacks, 23 etcetera, were prevented as much as possible. So it's not 24 necessarily true that all these crowds were hostile 25 directly to the police. They may not have wanted to, were</p>	<p style="text-align: right;">Page 24394</p> <p>1 get that question. 2 MR NTSEBEZA SC: The people you dealt 3 with in the strike, marches, demonstrations that you 4 testified about when you were being led by Mr Semenya, in 5 terms of your evidence they normally carried firearms. 6 GENERAL NAIDOO: Some of them, yes. 7 MR NTSEBEZA SC: In addition they also 8 carried traditional weapons, including assegais. That was 9 your testimony. 10 GENERAL NAIDOO: That's correct, Chair. 11 MR NTSEBEZA SC: And was it also your 12 testimony that attacks on the police and attempts to kill 13 the police were numerous? 14 GENERAL NAIDOO: Chair, I think I 15 outlined the scenario on which I made that comment. 16 MR NTSEBEZA SC: Yes, now when you say 17 they normally carried firearms, are you able to indicate to 18 the Commission proportion? Was it so that – I just want to 19 get a sense, in a crowd of 5 000 for instance how many 20 would have been carrying firearms. 21 GENERAL NAIDOO: Chair, I don't think I'm 22 in a position to give an estimate of that. What I can say 23 is that whenever trouble broke out or a skirmish then there 24 would be a lot of exchange of gunfire, which led me to make 25 the statement that they normally would carry firearms</p>
<p style="text-align: right;">Page 24393</p> <p>1 not friendly to the police but they did not necessarily all 2 overtly take action against the police. There were 3 marches, permission was applied. We had structures that 4 were dealing with these things. There were instances, yes, 5 where illegal marches and illegal attacks were taking place 6 by one group on the other, but we can't say all these 7 gatherings that we policed were all unfriendly, 8 uncooperative members of the community. 9 MR NTSEBEZA SC: I mean there are various 10 ways in which you can characterise, you know, what happened 11 up to and including the 16th of August 2012, but we won't 12 enter into that debate. I'm just talking about size and 13 scale. You have mentioned that you used to deal as the 14 police with protesters, strikers, demonstrators, marchers, 15 of numbers up to 5 000, 10 000. That is in terms of your 16 testimony. 17 GENERAL NAIDOO: That's correct, Chair. 18 MR NTSEBEZA SC: And I'm simply saying it 19 is clear that the numbers that you have had to deal with in 20 the past just in terms of size and scale were obviously 21 larger than the numbers that you contended with in August 22 2012. Now one observation I make is that the people you 23 contended with normally carried firearms. Correct? In the 24 period that you're talking about. 25 GENERAL NAIDOO: Sorry, Chair, I didn't</p>	<p style="text-align: right;">Page 24395</p> <p>1 because whenever there was a clash between groups, 2 etcetera, or an incident during some of these, then 3 shooting would break out between the different groups, 4 indicating to me that they were carrying firearms. So to 5 indicate in proportion, it will be very difficult for me to 6 say that. 7 MR NTSEBEZA SC: Are you able to tell the 8 Commission what kind of firearms these groupings would be 9 having? Rifles? Pistols? A combination of all? 10 GENERAL NAIDOO: Chair, I know that there 11 were some cases where we did recover rifles, but generally 12 I think it was the smaller calibre weapons that were easily 13 concealable. 14 MR NTSEBEZA SC: AK47s? R5? R1s? 15 GENERAL NAIDOO: Chair, there were 16 instances of incidents where the AK47 was used, but as I'm 17 not generalising I'm saying that they all carried such 18 types of firearms. 19 [12:47] It depends on the different scenarios, the 20 different attacks, but yes AK47s were being used as well as 21 smaller pistols, handguns, etcetera. As well as, Chair, 22 homemade firearms were also popularly in use at that stage. 23 MR NTSEBEZA SC: So in August 2012 just 24 talking about you against that kind of experience, that was 25 not an unprecedented event I would agree.</p>

<p style="text-align: right;">Page 24396</p> <p>1 GENERAL NAIDOO: Chair, post '94 we 2 worked within a different context, a different framework 3 and policing was definitely working in terms of different 4 procedure. So it was definitely not expected to be 5 experienced in the new democratic South Africa. 6 MR NTSEBEZA SC: Would you say it was 7 unprecedented in terms of a level of violence that was 8 involved, the 2012 event? 9 GENERAL NAIDOO: Chair, we have since the 10 new democracy handled various protests in the South African 11 Police Service and the majority of them, especially issues 12 around strikes and those related even to service delivery, 13 we did not, to my knowledge, because my involvement post 14 '94 in the operations was been limited to – be limited. To 15 my knowledge I did not expect to see that level of violence 16 and I do not know of a scenario where that level of 17 violence occurs in a modern, democratic South Africa. 18 MR NTSEBEZA SC: I just want to be sure, 19 General, that I understand what you are saying. Are you 20 saying post 1994 and in the democracy those kinds of 21 warring factions came to an end just because we were now in 22 a democratic dispensation? Or, which I would propose to 23 you, ways of dealing with those kinds of demonstrations 24 were more inclined to encourage protest but within certain 25 boundaries?</p>	<p style="text-align: right;">Page 24398</p> <p>1 exercise those rights. There was no need for them to 2 exercise it with dangerous weapons or to the injury or to 3 the harm of others. It's guaranteed that they can protest, 4 I agree with the council. 5 MR NTSEBEZA SC: Now, Doctor, you will 6 correct me if I'm wrong, you are not seriously – you are a 7 Doctor of Public Administration. 8 CHAIRPERSON: That's why I didn't stop 9 you, he has a doctorate, he doesn't mind - by his proper 10 academic title from time to time. 11 MR NTSEBEZA SC: Yes, yes. Let's remain 12 with the time and tested, General. General, you are not 13 seriously suggesting that because 1994 we had this 14 constitutional dispensation rights based society that 15 rivalry of the major that existed between these political 16 parties immediately disappeared and that there was no need 17 for preparing for those kinds of conflicts that arose still 18 to 1994. I don't understand you to be suggesting that. 19 GENERAL NAIDOO: Chair, I'm not. What 20 I'm suggesting is the dispensation that existed prior to 21 '94 and that of post '94 were different and obviously the 22 expectation in terms of what we would experience was 23 different. 24 MR NTSEBEZA SC: Then let's call things 25 by their names. Before 1994 which is what we were</p>
<p style="text-align: right;">Page 24397</p> <p>1 GENERAL NAIDOO: Chair, yes. As I 2 indicated in my testimony, that political intolerance that 3 we experienced prior to 1994 was now contained and should 4 not exist because of the existence of the constitutional 5 framework that we have in the country where people were 6 endowed with certain rights and certain things which they 7 could do which previously the could not do. So for an 8 example, if these protestors, striking miners had not 9 engaged in that level of violence and a practical example, 10 two weeks after the incident the delegation came to the 11 SAPS led by Bishop Seoka, I met the delegation and they 12 indicated but there's a ban on meetings. And I indicated 13 there is no ban on meetings because there was a perception 14 that there is a general ban on meetings in the Marikana 15 area. There was no ban on meetings. I then explained to 16 them that you know that we have a gathering, it was a 17 Sunday and they wanted to have this meeting on a Monday. I 18 got the relevant people on the Sunday to assist them to 19 complete the relevant documentation, submit it to the 20 responsible person at the municipality, task people on 21 Monday to assist them in finalising and agreeing with the 22 municipality that they would have their meeting. So it's a 23 different dispensation and the outcomes, it is not 24 necessary to use violence to achieve the outcomes. There's 25 certain rights that they have and they just need to</p>	<p style="text-align: right;">Page 24399</p> <p>1 exploring there were these factopms, rival political 2 parties that were sometimes at each other's throats. Now 3 you are not suggesting that post 1994 that did not happen. 4 GENERAL NAIDOO: Chair, no I'm not 5 suggesting that it did not happen. I was referring to the 6 dispensation in place responding to what my expectation was 7 in terms of the levels of violence. People could exercise 8 their rights without needing to resort to those levels of 9 violence we've experienced prior to 1994. 10 MR NTSEBEZA SC: Yes. Now - 11 GENERAL NAIDOO: And, Chair – 12 MR NTSEBEZA SC: - and where, sorry - 13 CHAIRPERSON: He just wanted to add 14 something. 15 GENERAL NAIDOO: And obviously would 16 expect the police to protect them in exercising that right. 17 MR NTSEBEZA SC: Mr Chairman, I was – I'm 18 proposing to take – 19 CHAIRPERSON: I thought you were dealing 20 with topic 3 on your application, that's why I've given you 21 the opportunity to ask the questions you were going to ask 22 because you haven't actually got to the point that is the 23 culmination of topic 3 of your application. Wouldn't you 24 like to deal with that shortly or at least see whether the 25 witness can help us in respect of that before we take the</p>

<p style="text-align: right;">Page 24400</p> <p>1 adjournment? Or do you want me to ask the question?</p> <p>2 MR NTSEBEZA SC: Mr Chairman, can we deal</p> <p>3 with that after lunch?</p> <p>4 CHAIRPERSON: All right we'll take the</p> <p>5 lunch adjournment now, but I expect you to deal crisply</p> <p>6 with that issue when we resume what I hope will quarter to</p> <p>7 two.</p> <p>8 MR NTSEBEZA C: It may be one minute or.</p> <p>9 [COMMISSION ADJOURNS COMMISSION RESUME]</p> <p>10 [13:54] CHAIRPERSON: The Commission resumes.</p> <p>11 Major General, you're still under oath.</p> <p>12 GANASEN NAIDOO: Thank you, Chair.</p> <p>13 CHAIRPERSON: Mr Ntsebeza, you may</p> <p>14 address the Commission sitting down, if you wish.</p> <p>15 CROSS-EXAMINATION BY MR NTSEBEZA SC (CONTD.):</p> <p>16 Thank you, Mr Chairman. Now General, I want us to take a</p> <p>17 look at an affidavit by Professor Monique Marks, which is</p> <p>18 exhibit JJJ200, who gives an account of POP operations that</p> <p>19 were conducted in the Glebelands Hostel in KZN.</p> <p>20 CHAIRPERSON: Can we have it on the</p> <p>21 screen?</p> <p>22 MR NTSEBEZA SC: Yes, Mr Chairman, if we</p> <p>23 could.</p> <p>24 CHAIRPERSON: It's exhibit JJJ200.</p> <p>25 MR NTSEBEZA SC: Now this is way after</p>	<p style="text-align: right;">Page 24402</p> <p>1 says, "Between November 1997 and July 1998 there were</p> <p>2 approximately 50 murders committed in the hostel area, and</p> <p>3 by July 1999 it was known as the hostel of death." That's</p> <p>4 paragraph 7.</p> <p>5 "Sections of the Durban POP unit were deployed to</p> <p>6 the hostel and stationed there on a full-time basis."</p> <p>7 Paragraph 7, and then paragraph 12, which is what seems to</p> <p>8 be her conclusion of her study, or is it paragraph 11? She</p> <p>9 says, "The POP was successful in containing the violence</p> <p>10 and not a single person was killed by the police."</p> <p>11 Now are you familiar personally with the</p> <p>12 Glebelands Hostel in KZN? I'm just asking from the point</p> <p>13 of view that you spent quite some time –</p> <p>14 GENERAL NAIDOO: Chair no, I am not</p> <p>15 familiar with the hostel, although I have heard about it.</p> <p>16 As I indicated my, the policing area where I was deployed,</p> <p>17 policing areas that I was deployed in did not have any</p> <p>18 hostels as well.</p> <p>19 MR NTSEBEZA SC: So are you saying you</p> <p>20 don't know of their existence, or you heard about</p> <p>21 Glebelands?</p> <p>22 GENERAL NAIDOO: Chair, I indicated I've</p> <p>23 heard about Glebelands, but I don't have specific knowledge</p> <p>24 of it, yes.</p> <p>25 MR NTSEBEZA SC: Would that extend to</p>
<p style="text-align: right;">Page 24401</p> <p>1 1994 and she writes about the POP response to violence</p> <p>2 between the ANC and the IFP. Now if you looked at</p> <p>3 paragraph 6 for instance, because I'm seeing the kinds of</p> <p>4 similarities that I think are in this affidavit with the</p> <p>5 scene that you portrayed relevant to the pre-1994 period</p> <p>6 during which you were – you see there in paragraph 6 she</p> <p>7 says, "There were approximately 15 000 residents in the</p> <p>8 Glebelands Hostel, the majority of whom were armed." You</p> <p>9 see that?</p> <p>10 GENERAL NAIDOO: Chair.</p> <p>11 MR NTSEBEZA SC: And she says there just</p> <p>12 like the kind of situation we were talking about, she also</p> <p>13 says those people would be armed with a combination of</p> <p>14 traditional weapons and firearms. You see that, also in</p> <p>15 paragraph 6?</p> <p>16 GENERAL NAIDOO: I see that, Chair.</p> <p>17 MR NTSEBEZA SC: She says, "The ANC and</p> <p>18 the IFP were housed in separate sections of the hostel.</p> <p>19 They used to confront each other in combative style in the</p> <p>20 central area of the hostel, which was situated between the</p> <p>21 areas in which they were housed." It's still in paragraph</p> <p>22 6.</p> <p>23 She says, "Assassinations occurred in more</p> <p>24 private places in the hostel as part of this political</p> <p>25 rivalry." Paragraph 6 still, and then paragraph 7 she</p>	<p style="text-align: right;">Page 24403</p> <p>1 your not knowing about what Professor Marks talks about as</p> <p>2 being instances of violence between the ANC and the IFP at</p> <p>3 that hostel?</p> <p>4 GENERAL NAIDOO: Chair, I think I</p> <p>5 probably heard it, heard about it in the context of the</p> <p>6 violence there, but –</p> <p>7 MR NTSEBEZA SC: Yes.</p> <p>8 GENERAL NAIDOO: Ja.</p> <p>9 MR NTSEBEZA SC: And I'm sure as a person</p> <p>10 who has been in charge of this crowd control measures in</p> <p>11 the areas you testified about, not in the peri-urban areas</p> <p>12 as you said, you would have been aware, I take it, of the</p> <p>13 POP operations conducted in that hostel?</p> <p>14 GENERAL NAIDOO: Chair no, the period</p> <p>15 that's under question I was no longer in KwaZulu-Natal.</p> <p>16 MR NTSEBEZA SC: Yes, I noticed. I think</p> <p>17 you were in Gauteng already, or some –</p> <p>18 GENERAL NAIDOO: I was in Pretoria, yes.</p> <p>19 MR NTSEBEZA SC: Pretoria, yes. But what</p> <p>20 I want to be asking is whether as a senior police officer</p> <p>21 already at that stage you were not aware of POP operations</p> <p>22 in Glebelands Hostel because it seems to me it was quite a</p> <p>23 remarkable success story on the evidence of Professor</p> <p>24 Marks.</p> <p>25 GENERAL NAIDOO: Chair no, not</p>

<p style="text-align: right;">Page 24404</p> <p>1 specifically. As I indicated, my only knowledge I gleaned 2 possibly from the media in terms of the violence in that 3 area, but operationally no. In '96 I went into a different 4 facet and I was not directly involved with the issues 5 related to Public Order Policing.</p> <p>6 MR NTSEBEZA SC: I don't understand you 7 to be disputing her research and her report of the outcome 8 of her research.</p> <p>9 GENERAL NAIDOO: Chair, I have no grounds 10 to dispute that.</p> <p>11 MR NTSEBEZA SC: Yes, you see I think 12 what I want to suggest to you, and we can have a debate 13 about it, is that it seems to me that if her evidence of 14 what happened as contained in this affidavit is true, then 15 it is arguable that the confrontation of the SAPS on the 16 16th of August, or even in the days leading up to that date 17 in 2012, and the manner of dealing with huge crowds was not 18 unprecedented. Would you agree?</p> <p>19 GENERAL NAIDOO: Chair, I will not agree 20 with that primarily because I think the two scenarios are 21 different in the sense that the hostel would be a contained 22 environment and would be much easier to manage in terms of 23 what's contained in the affidavit, as opposed to the 24 situation at Marikana which was not really a contained 25 environment. Those less-than-lethal resources that were</p>	<p style="text-align: right;">Page 24406</p> <p>1 arguable that there is a difference of the nature that you 2 talk about between the situation in 2012 and the situation 3 that you were confronted with, that Professor Marks is 4 talking about. For one thing, we know from General Mpembe 5 in a conversation he had with Zokwana on the 15th of August 6 that he had indicated that the best way to disarm people is 7 not to confront them in the circumstances in which this 8 happened, but to go to where they sleep and disarm them 9 there. So there was the, and we know, unless you 10 contradict me on this, that in September of that same year, 11 2012, there was a successful operation by the police where 12 people were surrounded, the mineworkers were surrounded in 13 the informal area and a large quantity of arms were 14 retrieved. So it can't be that the situation was 15 different. You could have done exactly the same on the 16th 16 or days after that.</p> <p>17 GENERAL NAIDOO: Chair, when I said that 18 the scenarios are not identical I would like to point to 19 the following. Firstly, at that stage - and I'm not sure 20 if it was already testified to by other witnesses - the 21 Intelligence could not give us sufficient information to 22 articulate those arrests of people with arms, etcetera. 23 That was one problem; we could not locate where people, 24 individuals who were suspected of being in possession of 25 arms or having committed certain crimes were actually</p>
<p style="text-align: right;">Page 24405</p> <p>1 utilised would be more effective in a confined and 2 contained environment than as we've seen in the broader 3 open setting that we had at Marikana. So I don't think we 4 could draw, with the exception of the other issues about 5 people who's violent, etcetera, specifically in terms of 6 the action of the police and the resources they used, I 7 think it's two different scenarios.</p> <p>8 CHAIRPERSON: Now this phrase 9 "information-specific operations" which is used in the 10 penultimate line of paragraph 11, it's a bit vague but it 11 sounds to me like cordon and search operations, obtaining 12 weapons from people in the hostel based upon information as 13 to where the weapons were concealed in the hostel. That's 14 just a guess, but it's probably right, isn't it?</p> <p>15 GENERAL NAIDOO: Chair, probably, but the 16 specific reference to the POP information and planning 17 component, every Public Order Police unit has an 18 information component who liaises with the, with people 19 externally to gather information, including in the 20 Intelligence, they do liaise with Intelligence, organisers 21 of marches, etcetera. So they ensure that the unit is 22 resourced with information and intelligence to facilitate 23 planning.</p> <p>24 MR NTSEBEZA SC: General, I disagree with 25 you, but as I say it's arguable. For instance it is</p>	<p style="text-align: right;">Page 24407</p> <p>1 sleeping.</p> <p>2 Secondly, in the, Professor Marks's affidavit she 3 specifically refers to certain equipment which we are not 4 in use at this stage in the police. Case in point, the, 5 she indicated 37mm stopper guns that can fire rubber and 6 gas. That has stopped, is not in use by the SAPS. Shotgun 7 with pellets, we don't use that as part of our crowd 8 management.</p> <p>9 So when I indicate that the case studies are not 10 identical, the circumstances are not identical, as well as 11 I refer to the geographical situation, or the layout where 12 they're operating. I did nowhere suggest that a cordon and 13 search is not effective or could be successful.</p> <p>14 CHAIRPERSON: The thing with the 15 information of course, one of the criticisms that one sees 16 in some of the reports of the police action is that the 17 criticism is that the information wasn't, the intelligence 18 wasn't good enough. I haven't heard Brigadier Engelbrecht 19 on that, but my understanding from his affidavit is he 20 doesn't agree and he explains what exactly his section did 21 by way of providing intelligence and information.</p> <p>22 But on the subject of intelligence leading to a 23 cordon and search, Mr Zokwana was asked in your presence, I 24 think, by General Mpembe on the Wednesday night for 25 information to be obtained so that a proper cordon and</p>

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1 search could be done.

2 GENERAL NAIDOO: That's right.

3 CHAIRPERSON: Before, and he said they'd

4 do that provided their involvement was kept a secret. Time

5 was not then allowed for that information to be obtained

6 because of the decision which is in fact being made at the

7 same time virtually as you people were talking to Mr

8 Zokwana, being made at Midrand that the following morning

9 before the NUM people had time to come back with the

10 information, that the operation would be launched. That is

11 a fact that can't be avoided. Is that correct?

12 GENERAL NAIDOO: That's correct, Chair.

13 MR NTSEBEZA SC: So General, the argument

14 will be that the situations are not different. If anything

15 the situation in Glebelands it seems to me as reported by

16 Professor Marks was far more serious in terms of the

17 numbers that were involved and the firearms and the weapons

18 that were involved, but it's remarkable that the POP no

19 less were able to contain that to the degree that she says

20 they were, without killing a single person. Don't you

21 agree?

22 GENERAL NAIDOO: Chair, as I indicated, I

23 had my reservations, especially in comparison of a hostel

24 to the scenario that we had at Marikana. As I indicated,

25 I'm not sure whether it was testified already, but in terms

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1 of the intelligence that we were trying to obtain to

2 conduct certain raids to recover certain firearms and

3 arrest certain suspects, it was clear that those people

4 were not at hostels, they were in other areas and should

5 that information have been readily available and confirmed

6 I'm sure that our actions would have included that sooner

7 rather than later.

8 MR NTSEBEZA SC: Yes. As I say I mean we

9 could argue until the cows come home about this one, but

10 let's simply say I'm aware insofar as you responded and say

11 there are certain equipment that is no longer in use and

12 therefore the police didn't use them, we know that the

13 police used far more lethal, you know, equipment, R1s and

14 R5s and R4s, and hence the fatalities. But the point that

15 I'm making here is that the argument will be that the

16 difference between how the operation was handled at

17 Glebelands Hostel and how the police handled the operation

18 in Marikana is the manner in which it appears that the

19 police were determined that on the 16th, come what may,

20 there should be a dispersal and a disarming of the

21 mineworkers, not even wait for them to be in their homes.

22 Would you disagree with that assessment?

23 GENERAL NAIDOO: Chair, I think it's

24 clear that there was a decision taken and that decision was

25 being executed when the unfortunate incident occurred.

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1 MR NTSEBEZA SC: You will agree with me

2 that it didn't have to be executed on the 16th?

3 GENERAL NAIDOO: Chair –

4 MR NTSEBEZA SC: No-one has been able to

5 show me and those whom I represent why it had to happen on

6 that day.

7 GENERAL NAIDOO: Chair, I'm sure that the

8 person who took the decision had answered to that and

9 explained in terms of that decision.

10 [14:14] I did not take that decision.

11 MR NTSEBEZA SC: But you were part of it,

12 what can you –

13 CHAIRPERSON: You say he was part of it,

14 I'm not sure that that can be put without him being the

15 opportunity to comment. What do you say to the proposition

16 put to you by Mr Ntsebeza? You said the decision was taken

17 by, we know who it was taken by, it was taken by the

18 Provincial Commissioner. We know the matter was discussed

19 for up to an hour at the Management Forum, we know from her

20 evidence that no one there disagreed with her and they in

21 fact agreed with it by saying they were prepared to make

22 resources available. So that whatever the technical

23 position is and the factual position, those at the

24 Management Forum who took part in the – who attended that

25 part of the meeting approved. But what do you say to the

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1 proposition that's now being put to you by counsel that you

2 were also part to that decision?

3 GENERAL NAIDOO: Chair, in terms of the

4 hierarchy, when a decision that is made in that fashion

5 it's my job to implement the decision. So it was not a

6 case of whether I took part or not as it was indicated. I

7 was not at the discussion when this was done at 1:30, but

8 we received the instruction that a decision had been taken

9 and we proceeded with the implementation.

10 CHAIRPERSON: The evidence is given as

11 1:30, according to the minutes, at the very beginning of

12 the meeting, right near the beginning of the meeting the

13 Provincial Commissioner announced her decision. And when

14 the meeting was over Major-General Annandale insisted that

15 Brigadier Pretorius record that in the occurrence book and

16 stood over her while she made the relevant notes. So the

17 fact that you weren't at the meeting at 1:30 doesn't carry

18 it any further because no decision, as far as I can see,

19 was taken by the people at the meeting. It was conveyed to

20 them by the Provincial Commissioner and we were told by the

21 counsel for the police service that the decision had been

22 taken the previous night, Wednesday night at Midrand. And

23 so that's relevant in regard to the suggestion that you

24 were part of it.

25 GENERAL NAIDOO: And it's clear that I

<p style="text-align: right;">Page 24412</p> <p>1 was not party to any of those discussions or decisions, 2 Chair.</p> <p>3 MR NTSEBEZA SC: Can I just ask this 4 question then we'll get onto the next one. But there's a 5 seasoned senior police officer, Provincial Commissioner and 6 all of that, the decision has been taken by those who are 7 superior to you. But did it occur to you that the decision 8 taken and the manner of its execution might be disastrous? 9 GENERAL NAIDOO: Chair, one always hopes 10 that whatever one is doing, especially in the policing 11 environment it does not result in consequences such as what 12 has occurred on this particular day. Every day that a 13 police official goes out to attend to or deal with a 14 particular matter – so the instruction was no obviously 15 unlawful and we were not party to the finer details of the 16 discussion at 1:30. We were given a briefing in terms of 17 what the decision entailed and now it was going to be 18 executed. Risk yes, there's always this risk that 19 something could go wrong especially in the light of the 20 violence that we have seen. And from the briefing that we 21 had been given the indication was what steps will be taken 22 to minimise the risk for the police in terms of putting a 23 protective barbed wire etcetera. Learning from the lessons 24 of the few days before, so other than the fact that it was 25 not obviously an unlawful instruction, there was, at that</p>	<p style="text-align: right;">Page 24414</p> <p>1 hadn't been done and he was dissatisfied about it. 2 Apparently it's a matter you didn't know about until it was 3 raised here. But that would be an indication would it not, 4 maybe, no I withdraw the maybe, that's something that has 5 to be investigated. Whether part of what happened, 6 particularly on the Sunday morning, could have been 7 prevented if the intelligence which has been obtained and 8 had been communicated by Brigadier Engelbrecht to General 9 Mpmembe had in fact been taken into account. And visible 10 policing operations had been launched, I take it you'll 11 agree with that that's something that's got to be looked 12 at. Would you agree with that? 13 GENERAL NAIDOO: Chair, you actually 14 asked me yesterday to follow up on that in terms of the 15 visible policing and last night I did follow up with public 16 order policing. And the indication was they deployed 13 17 members from public order police during the day and 10 18 members during the night since we asked them to beef up the 19 policing. So in addition to the police station's normal 20 deployment, there was also these additional public order 21 police people that were deployed to the area to do the 22 visible policing. The patrols and the monitoring. I last 23 night called just to find out what the deployment was as 24 you requested, Chair. 25 CHAIRPERSON: Thank you, anyway General</p>
<p style="text-align: right;">Page 24413</p> <p>1 stage, not much other than to comply with the instruction 2 that we had.</p> <p>3 CHAIRPERSON: Although you were a member 4 of the JOCCOM you were not given the opportunity to take 5 part in the 1:30 meeting. 6 GENERAL NAIDOO: Correct, Chair. 7 CHAIRPERSON: The responsibility for not 8 inviting you to the meeting is not yours. 9 GENERAL NAIDOO: No. 10 MR NTSEBEZA SC: Now can I just move onto 11 another topic? 12 CHAIRPERSON: Another topic, can I ask a 13 question relating to the marked affidavit before you move 14 on? 15 MR NTSEBEZA SC: Yes, Mr Chair. 16 CHAIRPERSON: The sentence I referred you 17 to talked about information to specific operations and they 18 appear to have assisted substantially in solving the 19 problem in the way it was. Now this point's been touched 20 on already, but do you remember I asked you, I think it was 21 yesterday, about what Brigadier Engelbrecht said? It was 22 put to you by counsel that he said based on the information 23 he had, intelligence had received, he suggested that 24 visible policing operations be mounted already on the 25 Sunday. And later General Mpmembe admitted to him that it</p>	<p style="text-align: right;">Page 24415</p> <p>1 Mpmembe appears, according to Brigadier Engelbrecht not to 2 have been satisfied with what was actually done, but that's 3 a matter that you obviously can go into. 4 GENERAL NAIDOO: Chair, I have no idea, 5 but I can follow that. 6 MR NTSEBEZA SC: I would like to get to a 7 topic where the whole point is to be able to narrow the 8 area of establishing who caused the death of those I 9 represent. And I would like JJJ29.223 taken at 16:56 to be 10 put up. 11 CHAIRPERSON: I didn't catch that. What 12 would you like, this is what you'd like put on the screen. 13 JJJ? 14 MR NTSEBEZA SC: JJJ29 and then point 15 223. I'm giving it as I'm told. It seems to be a Ramanala 16 photograph. 17 CHAIRPERSON: Yes, I don't think you 18 asked me to give a warning. Take that picture of the 19 screen please. A moment ago we saw a picture which I'd 20 hoped some people here wouldn't have to see. I'm told 21 we're going to see a number of pictures from now on of some 22 of the people who were killed on the 16th of August. And 23 those people who are present in the chamber today who are 24 loved ones or relatives of those who were killed on the 25 16th, I must tell you that what we're going to see may well</p>

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1 cause you severe emotional distress. And you may wish to
 2 have the opportunity to leave the chamber so as not to have
 3 to suffer by seeing these pictures. So the pictures are
 4 please not to be put on the screen until 60 seconds from
 5 now. Mr Ntsebeza, should I mention specifically the
 6 relatives of victims A, B and O?
 7 MR NTSEBEZA SC: No we are not there yet,
 8 Chair.
 9 CHAIRPERSON: We're not there yet.
 10 MR NTSEBEZA SC: Yes.
 11 CHAIRPERSON: So is the warning I've
 12 given adequate?
 13 MR NTSEBEZA SC: Well, ja.
 14 CHAIRPERSON: Unless you want to add to
 15 it, you can.
 16 MR NTSEBEZA SC: No I think it was
 17 properly given –
 18 CHAIRPERSON: You can add to it in Xhosa
 19 if you wish.
 20 MR NTSEBEZA SC: No I think we will be
 21 fine, Mr Chairman. Now if we can [African language]. I've
 22 just indicated to them, Chair, that I do not consider that
 23 there will be pictures of dead bodies other than that we
 24 will try to show people who do not appear to be police
 25 officers that were around on the scene.

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1 CHAIRPERSON: Well I think the time that
 2 I gave has elapsed and no one has showed any sign of
 3 wanting to move, so I think we can now proceed.
 4 MR NTSEBEZA SC: I don't have a pointer,
 5 but the person in the middle who seems to wearing a khaki
 6 hat – I'm being resourced here, Mr Chairman. Do you see
 7 the person with the khaki hat?
 8 GENERAL NAIDOO: I see, Chair.
 9 MR NTSEBEZA SC: Yes. He is not a member
 10 of the SAPS is he?
 11 GENERAL NAIDOO: No he's not, Chair.
 12 MR NTSEBEZA SC: And he's carrying a
 13 weapon.
 14 GENERAL NAIDOO: That's correct, Chair.
 15 MR NTSEBEZA SC: Now another picture
 16 would be JJJ29.265 taken at 17:11. JJJ29.265. It also
 17 seems to be Ramanala's photograph. Those two gentlemen –
 18 CHAIRPERSON: Well there are more than
 19 two people in the picture, but on the left-hand side of the
 20 picture are two gentlemen with blue jeans and dark blue
 21 shirts with some red band on the top of their arms and
 22 firearms. Are those the gentlemen you're referring to? Do
 23 you recognise them, General, do you know who they are. Are
 24 they members of the police service?
 25 MR NTSEBEZA SC: They're not members of

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1 the police service, Chair.
 2 CHAIRPERSON: Do you know who they are?
 3 GENERAL NAIDOO: Chair, at some stage we
 4 did ascertain yes, they were security guards that escorted
 5 the additional medics from the disaster management centre.
 6 MR NTSEBEZA SC: And the man on the left
 7 seems to be carrying a shotgun, holding it with his right
 8 hand is it?
 9 GENERAL NAIDOO: That's correct, Chair.
 10 MR NTSEBEZA SC: Now then there is
 11 JJJ27.9472. Warrant Officer Barnard's photograph. Can you
 12 zoom in on that photograph? Mr Chair, because we want to
 13 see the man in the earlier photograph there, a khaki shirt,
 14 khaki hat. There he is. There is a man bending over and
 15 he is, well I don't know what he's doing in that –
 16 CHAIRPERSON: The gentleman bending over
 17 may well be a paramedic and behind him is the gentleman in
 18 the khaki hat.
 19 MR NTSEBEZA SC: Yes standing behind the
 20 man is a paramedic, but what I want to draw your attention
 21 to, General, is not the person in front of him. It's that
 22 he's now – it's clearer that he's carrying a shotgun. Do
 23 you see where his hand is, the right hand and the left hand
 24 it seems to be – the resolution in the photo to your left
 25 in the smaller screen –

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1 GENERAL NAIDOO: Chair, it's clear he's
 2 carrying a firearm.
 3 MR NTSEBEZA SC: Yes, now the Chairman
 4 did ask you just a while ago whether you knew who these
 5 people were and it appears that you said they were from a
 6 security company. Do you know which company it was that
 7 they were from?
 8 GENERAL NAIDOO: Chair, I'm not sure. It
 9 could be Lonmin because they had arranged the ambulances as
 10 well because the additional ambulance and the paramedics
 11 that came later they were escorted in by the security
 12 company that's there.
 13 CHAIRPERSON: Mr van As, if these people
 14 are – the ones we've seen, the ones we're looking at, at
 15 the moment, if they are either employees of Lonmin or were
 16 contracted to Lonmin on the day, would you please make
 17 enquiries from your client as to whether they were
 18 employees of Lonmin or alternatively were contracted to
 19 Lonmin. And their identities please.
 20 MR VAN AS: Mr Chairman, I can confirm
 21 that they were employees of Lonmin. The gentleman in the
 22 brown hat normally works at the precious metal refinery. I
 23 understand which is out on the East Rand and that's the
 24 reason he isn't dressed the same as the remaining Lonmin
 25 personnel. I'm in the process of trying to find out what

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1 his name is and I'll revert to the Commission.
 2 CHAIRPERSON: And the others we've seen?
 3 MR VAN AS: The others, if we can go back
 4 I can give you their names, Mr Chairman, those I have.
 5 CHAIRPERSON: Well let's go back now and
 6 get them. I'm sure the witness won't mind interrupting his
 7 evidence. I think it would be helpful for the operator if
 8 you give the details again so that we can find the pictures
 9 without – that's it yes. That's 265 isn't it? There's two
 10 gentlemen there you see, Mr van As.
 11 MR VAN AS: Chairman, the gentleman with
 12 the blue rubber gloves on - the shorter gentleman with the
 13 blue rubber gloves with the shotgun in his right hand, his
 14 name is Dewald Louw. And the other gentleman with his
 15 hands on his hips, his name is Martin Opperman.
 16 CHAIRPERSON: Thank you. The other
 17 picture showed us the gentleman with the khaki hat, is that
 18 right. Are there any other people whose photographs you
 19 want us to see so that Mr van As can tell us if they are
 20 Lonmin people and if so what their names are?
 21 [14:34] MR NTSEBEZA SC: On the present enquiry,
 22 Mr Chairman, I think those are the only people whose
 23 attention I wanted to draw the General's attention to.
 24 CHAIRPERSON: Well, you now have the
 25 information that you were seeking, not from the General but

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1 from Mr van As.
 2 MR NTSEBEZA SC: Yes, Mr –
 3 CHAIRPERSON: And you'll get the
 4 information in respect of the khaki-hatted gentlemen when
 5 that information comes to hand.
 6 MR NTSEBEZA SC: Indeed, Mr Chairman.
 7 That's the beauty about commissions.
 8 CHAIRPERSON: Thank you, Mr van As.
 9 MR NTSEBEZA SC: Now did you know at the
 10 time who those people were, or have you since made
 11 enquiries?
 12 GENERAL NAIDOO: Chair, I think at that
 13 time it was clear who they were because each one of them
 14 was, one or two of them were escorting a paramedic when
 15 they came in to the scene. So it was clear that they were
 16 security guards escorting the paramedics.
 17 MR NTSEBEZA SC: It would certainly not
 18 be some – or put it this way, let me just ask this. Was
 19 there a contemplation in your meeting of the 13th when you
 20 were deciding to drastically deploy additional forces, that
 21 some of those forces would be people from Lonmin?
 22 GENERAL NAIDOO: Chair no, that meeting
 23 dealt with the issue of policing, police resources that
 24 were required, that will be required. I have testified
 25 already that I only discovered on the 14th when we were

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1 deploying to forward holding area 1 that medics had been
 2 arranged, so before that I was not part, or I did not know
 3 of any discussion regarding the deployment of police,
 4 assets from Lonmin, no.
 5 MR NTSEBEZA SC: So your awareness of the
 6 – I don't want to call them security guards – those
 7 personnel from Lonmin was at the time that they came to the
 8 forward holding area, or am I making a mistake?
 9 GENERAL NAIDOO: Chair, I'm not sure
 10 what's the question.
 11 MR NTSEBEZA SC: When did you become
 12 aware of the fact that there were other people who were
 13 armed with shotguns?
 14 GENERAL NAIDOO: Chair, on site at Lonmin
 15 the security guards, or the security officers are clearly
 16 visible, guarding various assets of Lonmin. So on a daily
 17 basis we had seen the security officials protecting the
 18 assets of Lonmin. They were even manning certain
 19 intersections with access to certain installations. So we
 20 had seen guards, armed guards throughout our time at Lonmin
 21 because they were there on duty.
 22 MR NTSEBEZA SC: And their duty was to?
 23 GENERAL NAIDOO: As I indicated, they
 24 primarily seemed to be involved in asset protection.
 25 MR NTSEBEZA SC: Asset protection?

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1 GENERAL NAIDOO: Protection of key assets
 2 of Lonmin.
 3 MR NTSEBEZA SC: But at that crime scene
 4 what was their –
 5 GENERAL NAIDOO: I already indicated,
 6 Chair, that at this scene they escorted these additional
 7 medics that came from the disaster management centre. It
 8 was already testified previously that the medics feared for
 9 their safety at all times and required an escort from us
 10 the police as well, so at the stage when they came, the
 11 additional medics came, they came directly from their,
 12 wherever their station was, under escort from the security
 13 guards.
 14 MR NTSEBEZA SC: Is that what you were
 15 referring to when you responded to a question from my
 16 learned friend Mr Semanya on day 189 - I just want to round
 17 off this – day 189, T22955, line 6 to 23.
 18 CHAIRPERSON: [Microphone off,
 19 inaudible].
 20 GENERAL NAIDOO: Chair –
 21 MR NTSEBEZA SC: Mr Semanya was put, I
 22 don't know whether it's up already.
 23 CHAIRPERSON: Remind me what's the page
 24 you want?
 25 MR NTSEBEZA SC: The page is 22955.

<p style="text-align: right;">Page 24424</p> <p>1 CHAIRPERSON: We've got 22985 at the 2 moment. We've now got – 3 MR NTSEBEZA SC: Lines 6 to 23 - 4 CHAIRPERSON: - 22955, what line? 5 MR NTSEBEZA SC: Line 6 to 23, exactly 6 that – 7 CHAIRPERSON: Mr Semenya says, "Just as 8 if I interrupted here, General, there were visuals shown of 9 security at the scene who were not members of the South 10 African Police Service," to which the witness said, "That's 11 correct, Chair." Mr Semenya, "Were you able to know who 12 those were?" The witness, "Chair, as I indicated initially 13 I had a small number of medical personnel that were with 14 the SAPS to respond to the need for medical assistance. 15 Obviously with the escalation and the tragic incident there 16 was a number of people that were injured and killed and the 17 requirement for medical assistance escalated very 18 drastically, so the company that was contracted to provide 19 the medical assistance mobilised and brought in a large 20 number of support staff, medical support staff, and they 21 were brought in, escorted by security that was employed by 22 Lonmin." That's the passage to which you refer, Mr 23 Ntsebeza? 24 MR NTSEBEZA SC: Yes, Mr Chairman, that's 25 exactly the passage. Now General, are you still confirming</p>	<p style="text-align: right;">Page 24426</p> <p>1 CHAIRPERSON: So we won't have got to – 2 MR NTSEBEZA SC: - topic that I will deal 3 with. 4 CHAIRPERSON: We won't have got there 5 yet. So when we resume after the comfort break everybody's 6 interested can be here and then we'll give a warning when 7 you finished the penultimate topic, before you go on to the 8 ultimate topic, so that those who don't want to be exposed 9 to emotional distress will be able to leave. That's the 10 position? 11 MR NTSEBEZA SC: That's the position. 12 CHAIRPERSON: Alright, well it's been 13 suggested to me we should take the tea adjournment now, so 14 we'll do it until roughly 3 o'clock. Some of us will 15 absorb liquid and others won't. We'll adjourn. 16 [COMMISSION ADJOURNS COMMISSION RESUMES] 17 [15:07] CHAIRPERSON: The Commission resumes. 18 Major General, you're still under oath. 19 GANASEN NAIDOO: Still under oath, Chair. 20 CHAIRPERSON: Mr Ntsebeza. 21 CROSS-EXAMINATION BY MR NTSEBEZA SC (CONTD.): 22 Thank you, Mr Chairman. Mr Chairman, there's a reference I 23 want, it's day 189. We are just sorting ourselves as to 24 what the page is. It's 22982. It starts at line 16. 25 Maybe let's go up a bit. Maybe let's start at 22979,</p>
<p style="text-align: right;">Page 24425</p> <p>1 that to be your answer as to the presence of the people 2 whose photographs we're looking at? 3 GENERAL NAIDOO: Chair, that's what I've 4 indicated, that the security guards that came in with the 5 medics are some of those we're seeing in the pictures, yes. 6 MR NTSEBEZA SC: Mr Chairman, I'm going 7 to move to a penultimate theme and I've been drinking a lot 8 of liquid and I don't know if we could not – 9 CHAIRPERSON: Are you asking for a 10 comfort break? 11 MR NTSEBEZA SC: If we could, just a 10- 12 minute break. 13 CHAIRPERSON: And then after the comfort 14 break are you going to deal with matters in respect of 15 which it might be sensible to give a warning before we take 16 the comfort break? 17 MR NTSEBEZA SC: Indeed, Mr Chairman. 18 I'll be dealing with – ja, there will be. 19 CHAIRPERSON: There will. Alright, we're 20 going to take a comfort break now for 10 minutes. When we 21 resume we are going to be shown some video clips and stills 22 of, stills really of people who were killed at scene 2. Is 23 that correct, Mr Ntsebeza? 24 MR NTSEBEZA SC: Chair, in this 25 penultimate it's a very short, short –</p>	<p style="text-align: right;">Page 24427</p> <p>1 starting from line 14. Yes, because it introduces 23, line 2 23 there introduces exhibit MMM3. You have exhibit MMM3? 3 GENERAL NAIDOO: I do. 4 MR NTSEBEZA SC: And you have – this is 5 an expert that was introduced when that evidence was being 6 led by my learned friend and it seems settled that it's an 7 expert, it's an excerpt from a book by Mr Peter Alexander 8 and the title of the book is "A View from the Mountain and 9 a Case to Answer." You remember that that is the book you 10 have been referred to, the excerpt from that book. Is that 11 correct? 12 GENERAL NAIDOO: That's correct, Chair. 13 MR NTSEBEZA SC: Yes, now on page 114, 14 which is the same page that my colleague had referred you 15 to, can we go to MMM3? Now that we have identified what 16 we're looking for, can we go to page 114 thereof? 17 CHAIRPERSON: We've only got four pages 18 from the book, you see, so which of the – and the book has 19 obviously got far more than four pages, so which of the 20 four pages which are part of the exhibit do you want to 21 refer the witness to? 22 MR NTSEBEZA SC: It's 114 bottom, up to – 23 CHAIRPERSON: Let's just go to 24 [microphone off, inaudible] 25 MR NTSEBEZA SC: 114 –</p>

<p style="text-align: right;">Page 24428</p> <p>1 CHAIRPERSON: [Microphone off, 2 inaudible]. 3 MR NTSEBEZA SC: Exactly. Go down – 4 CHAIRPERSON: Sorry, that's part of the 5 fourth page of the exhibit – 6 MR NTSEBEZA SC: There you are. There 7 you are. Like I said – 8 CHAIRPERSON: So what you are reading is 9 an anonymous mineworker – 10 MR NTSEBEZA SC: Yes. 11 CHAIRPERSON: Now I indicated we tried to 12 ascertain the identity of these mineworkers from Professor 13 Alexander so that if necessary they could give evidence so 14 that their accounts could be tested, but he indicated he 15 couldn't give the names to us. The anonymous mineworker 16 says the following. "Like I said, everyone was running to 17 safety. I did not really see if people ran this direction 18 or not. It was when I was on those rocks that I noticed 19 that some had run in to the nearby houses, but I couldn't 20 see them very well because I was already hiding," and then 21 there are three dots. "I was arrested because I was hiding 22 – no, no, no, hiding. You were shot at if you put up your 23 hands." The interviewer, who I think is one of the co- 24 authors of the book, or co-editors of the book, says, "So 25 you did not put up your hands?" And the mineworker, this</p>	<p style="text-align: right;">Page 24430</p> <p>1 shot at koppie 3 whilst trying to surrender. 2 MR NTSEBEZA SC: Yes. 3 CHAIRPERSON: So "shot" doesn't 4 necessarily mean shot and killed – 5 MR NTSEBEZA SC: No, no, no, that's why I 6 think the General has made a point that is a case in point 7 that he was not killed. That's why he's able to tell the 8 story. But we are ad idem, I take it, General, that this 9 witness seeks to say that people, there were people at 10 scene 2 who were shot at even as they were putting up their 11 hands in a sign of surrender. Would you agree with that 12 now? 13 GENERAL NAIDOO: That's what he alleges, 14 Chair. 15 MR NTSEBEZA SC: Yes, now I want to 16 direct you to some other evidence which seems to support 17 the assertion, or we'll argue it does. Now if we went to 18 day 50, T5442, lines 2 to 10, and day 50, T5676, lines 22 – 19 CHAIRPERSON: What's the passage that you 20 wish to refer to? 21 MR NTSEBEZA SC: Okay, let's take one at 22 a time. 23 CHAIRPERSON: Yes, alright, well what 24 passage do you want to refer to? 25 MR NTSEBEZA SC: Line 2 to 10 on –</p>
<p style="text-align: right;">Page 24429</p> <p>1 is mineworker number 5, he says, "I did not put up my 2 hands," and this is the passage the witness referred to 3 when he gave evidence-in-chief, "I was taken by a gentleman 4 who was of Indian ancestry. He held me and when I tried to 5 stand up I was hit with guns and he stopped them. He 6 stopped them and that was how my life was spared," and that 7 was the passage he then explained in his evidence-in-chief. 8 MR NTSEBEZA SC: Now I don't know if you 9 will agree with me. It seems to me that this person to 10 which you were referred by my colleague, the sum total of 11 it is that there were people who were killed at scene 2 12 while they were trying to surrender. Would you agree with 13 that assessment of what he's saying? 14 GENERAL NAIDOO: Chair, I don't agree 15 with the assessment that people were killed. He had a 16 perception yes, that if he puts his hands up he'll be shot, 17 but in the case as it clearly indicates this was not so for 18 him. 19 MR NTSEBEZA SC: Ja, so he was not 20 killed. Right, can we put it to you – 21 CHAIRPERSON: I'm sorry, Mr Ntsebeza, the 22 topic which I gave you permission to cross-examine deals 23 with the suggestion that protesters were shot at. 24 MR NTSEBEZA SC: Yes, yes. 25 CHAIRPERSON: Was actually shot, it's</p>	<p style="text-align: right;">Page 24431</p> <p>1 CHAIRPERSON: Lines 2 to 10 – 2 MR NTSEBEZA SC: On 5442 – 3 CHAIRPERSON: Alright, Mr Mpofu is 4 leading Mr Phatsha and Mr Mpofu says, "And can you also now 5 tell the Commission in your own words what you observed in 6 respect of people who were being shot, as you state in your 7 statement, while coming out of their hiding places in the 8 rocks?" Mr Phatsha says, "What happened is at the time 9 people were raising their hands and asking forgiveness, 10 they were being shot at." That's the passage you rely on? 11 MR NTSEBEZA SC: Indeed, Mr Chairman. 12 You see what Mr Phatsha says, General? 13 GENERAL NAIDOO: Yes, I'm reading. 14 MR NTSEBEZA SC: And if we went to same 15 day 50, T5442 – no, no – 16 CHAIRPERSON: 5442, what line? 17 MR NTSEBEZA SC: No, no, that's – 18 CHAIRPERSON: That's the same witness. 19 MR NTSEBEZA SC: Yes, we have dealt with 20 that – 21 CHAIRPERSON: That's the passage we've 22 just looked at. It doesn't help to look at it twice. 23 MR NTSEBEZA SC: Mr Chairman – 24 CHAIRPERSON: If it's good the first time 25 it's good. It doesn't get better by being repeated. I</p>

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1 mean carbon copies don't –
 2 MR NTSEBEZA SC: Point is taken, Mr
 3 Chairman. I was actually wanting to refer to T5676, lines
 4 22 to 24.
 5 CHAIRPERSON: It sounds like a different
 6 day. It sounds like a different day.
 7 MR NTSEBEZA SC: No, it – well, that's
 8 the reference I was given as leader.
 9 CHAIRPERSON: Well, we haven't got – is
 10 it 5676? That will be the next day, is it? Look at the
 11 next day.
 12 MR NTSEBEZA SC: Yes, Mr Chairman, 5676,
 13 line 22 to 24.
 14 CHAIRPERSON: There we have it. Lines 22
 15 to 24, now this is Mr Phatsha speaking again and he says,
 16 "I then could run and reach the small koppie." Now this is
 17 the passage you're relying on. "That is where the real
 18 shooting took place" –
 19 MR NTSEBEZA SC: Yes.
 20 CHAIRPERSON: - "and where people died.
 21 People were raising their hands. Even if their hands were
 22 risen they were shot at. Because of the pain I was
 23 feeling, loss of blood, I could feel blood was running out
 24 of my system," and so on. So I've gone on beyond the
 25 passage that you rely on. The point you rely on is the

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1 passage that "Even if their hands," I take it, it means
 2 were raised, "they were shot at."
 3 MR NTSEBEZA SC: You see that, General?
 4 GENERAL NAIDOO: I see that, Chair.
 5 MR NTSEBEZA SC: Yes. Now there are also
 6 quite a fair amount of IPD statements. Now what is it
 7 called? It's I-P-I-D, is it?
 8 CHAIRPERSON: We normally say IPID. Are
 9 these exhibits or do we have to mark them?
 10 MR NTSEBEZA SC: They are new exhibits,
 11 I'm told.
 12 CHAIRPERSON: They will be, the first one
 13 – well, I suppose we make them all MMM48. How many are
 14 there? Three? So we'll mark them MMM – has the witness
 15 seen them already? 48.1, 48.2, and 48.3. IPID, the first
 16 one is the IPID statement of whom?
 17 MR NTSEBEZA SC: Nkosikhona –
 18 CHAIRPERSON: Please spell.
 19 MR NTSEBEZA SC: Mjuba. N-K-O-S-I-K-H-O-
 20 N-A, surname –
 21 CHAIRPERSON: N-A or –
 22 MR NTSEBEZA SC: N-A, surname M-J-U-B-A,
 23 A76.
 24 CHAIRPERSON: M-J-U?
 25 MR NTSEBEZA SC: B-A.

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1 CHAIRPERSON: B-A, okay. So that's 48.1,
 2 right. 48.2 is the IPID statement of whom?
 3 MR NTSEBEZA SC: It would be the IPID
 4 statement of Zwelimangele, I'll spell that, Mr Chair, Z-W-
 5 E-L-I-M-A-N-G-E-L-E, Mvakalelwa, M-V-A-K-A-L-E –
 6 CHAIRPERSON: Sorry, M-V?
 7 MR NTSEBEZA SC: M-V-A-K-A-L-E-L-W-A,
 8 Mvakalelwa.
 9 CHAIRPERSON: Thank you. That's 48.2,
 10 and the third one?
 11 MR NTSEBEZA SC: It would be the
 12 statement of Moeketsi, M-O-E –
 13 CHAIRPERSON: Yes, I see it's on the
 14 screen, it's already been given to the operator. Makhala,
 15 is it?
 16 MR NTSEBEZA SC: Yes. Makhala, yes,
 17 CHAIRPERSON: Mahala, Magala.
 18 MR NTSEBEZA SC: Magala.
 19 CHAIRPERSON: M-A-K-H-A, K-H-E –
 20 MR NTSEBEZA SC: I'm told it's Makhala.
 21 CHAIRPERSON: Is that right? The
 22 transcriber is going to battle with that. Have you read
 23 these three statements, Major General?
 24 GENERAL NAIDOO: Yes, Chair, I got them.
 25 CHAIRPERSON: You got them, alright.

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1 Alright, I don't think we've got them but we won't take
 2 that point now, as long as we get it by the end of the day.
 3 Carry on with your cross-examination.
 4 MR NTSEBEZA SC: Now in paragraph 5 of –
 5 CHAIRPERSON: The first one, this is
 6 48.1 –
 7 MR NTSEBEZA SC: Mjuba's statement –
 8 CHAIRPERSON: MMM48 point – hang on.
 9 Yes, 48.1, MMM48.1, that's the statement of Mr Mjuba, is
 10 it? Oh, just Mjuba, it's no E.
 11 MR NTSEBEZA SC: It's Mjuba.
 12 CHAIRPERSON: It's M-J-U-B-A.
 13 MR NTSEBEZA SC: Yes.
 14 CHAIRPERSON: Yes, okay.
 15 MR NTSEBEZA SC: "Some mineworkers hid
 16 themselves with trees and some under the rocks. Police
 17 officers started shooting at the mineworkers with long and
 18 short firearms. Some mineworkers put their hands on air to
 19 show that they aren't fighting or attacking the police
 20 officers, but they were shot." You see that?
 21 GENERAL NAIDOO: I see it.
 22 MR NTSEBEZA SC: Now if we went to
 23 Mvakalelwa's statement, paragraph 3, "We ran to different
 24 directions. By this time we were surrounded by police
 25 officials. The police stopped to shoot at us and I stopped

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1 running and raised my hands. Some of the miners also
 2 raised their hands, but they were shot dead in front of
 3 me." You see that?
 4 GENERAL NAIDOO: I see that, Chair.
 5 MR NTSEBEZA SC: Now Moeketsi's statement
 6 we need to add a paragraph there. We'll just have to count
 7 because right at the top, Mr Chairman, a point I must go to
 8 where it starts, "I saw," "I saw another guy raising his
 9 hands as a sign of surrender, but he was shot and died in
 10 front of me. I then ran, arrived at a certain rock where I
 11 hid myself. I was then arrested in that rock after we had
 12 surrendered." You see that, General?
 13 GENERAL NAIDOO: I saw that, Chair.
 14 MR NTSEBEZA SC: Now there's another
 15 we'll want to also refer –
 16 CHAIRPERSON: I'm sorry, before you carry
 17 on, Mr Ntsebeza, Mr Semenya has turned his light on.
 18 MR SEMENYA SC: Chair, whereas these
 19 statements are given exhibit numbers, we must place on
 20 record –
 21 CHAIRPERSON: I've given them exhibit
 22 numbers.
 23 MR SEMENYA SC: That's what I'm saying,
 24 Chair.
 25 CHAIRPERSON: Yes, yes.

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1 MR SEMENYA SC: I'm saying whereas –
 2 CHAIRPERSON: Whereas, I see. I see. I
 3 thought you said unless. Whereas.
 4 MR SEMENYA SC: Whereas they are given
 5 exhibit numbers, we do not accept them as evidentiary
 6 material except beyond stating that they are what they are.
 7 If anybody wants to rely on the correctness of the contents
 8 of the statements, we want those witnesses there so that
 9 their version can be tested.
 10 CHAIRPERSON: You hear what Mr Semenya
 11 has said.
 12 MR NTSEBEZA SC: Yes, I've heard, Mr
 13 Chair.
 14 CHAIRPERSON: Of course a commission
 15 isn't bound by the strict Rules of Evidence, so a
 16 commission can take evidential material of any kind and
 17 even use it to prove the truth of what's said, but where
 18 there is a specific challenge of the kind that we've just
 19 heard it may well be that it would be a wise course for
 20 those who wish to rely on the statements made by these
 21 people in these affidavits to submit them for cross-
 22 examination.
 23 But anyway, that's a matter which you and those
 24 assisting you must consider. I obviously can't tell you in
 25 advance that we will necessarily accept these statements as

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1 being true if the people who made these statements aren't
 2 submitted, don't submit themselves to cross-examination. I
 3 don't exclude it. As I've indicated, the rules in relation
 4 to commissions are different from those in trials, but
 5 obviously you can't assume in advance that that will
 6 happen, and specifically where there's been a challenge
 7 which has not been responded to certain consequences may
 8 follow.
 9 MR NTSEBEZA SC: Thank you, Mr Chairman.
 10 We didn't –
 11 [15:27] CHAIRPERSON: That doesn't affect your
 12 cross-examination. I mean you can't interrupt the cross-
 13 examination and call the witnesses; you've got to carry on
 14 with the cross-examination –
 15 MR NTSEBEZA SC: Yes, Mr Chairman –
 16 CHAIRPERSON: - and the witness must do
 17 as best he can to deal with what you put to him.
 18 MR NTSEBEZA SC: Yes, Mr Chairman. We
 19 have been down this path before and I don't understand the
 20 interjection from my learned friend to be an objection to –
 21 CHAIRPERSON: Well, we won't waste time
 22 now. Perhaps he can explain it to you after we adjourn,
 23 but carry on in the meantime.
 24 MR NTSEBEZA SC: Thank you, Mr Chairman.
 25 Now what Mr Semenya says is also true of the following that

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1 I want to put to you. There are also post mortem injuries
 2 which I want to put to you on the basis of which we'll
 3 argue later on that they are supportive –
 4 CHAIRPERSON: I'm sorry, Mr Ntsebeza, I'm
 5 not quite sure I understand you. When you say post mortem
 6 injuries, do you mean that literally? Do you mean these
 7 are injuries sustained on the corpse after the person
 8 concerned was dead, which is the true meaning of a post
 9 mortem injury, or do you mean injuries which have been
 10 recorded by the pathologist during the post mortem
 11 examination? There's a difference between the two.
 12 MR NTSEBEZA SC: Yes, there is a
 13 difference. It's in this I think I'm guilty of trying to
 14 short-circuit and in the process say things which are
 15 correctly being pointed out by Mr Chairman to not – what
 16 I'm talking about here is there have been post mortems and
 17 those post mortems have recorded certain findings which
 18 again on the tentative basis that they will be found to be
 19 unassailable in argument reflect injuries which we will
 20 argue support the assertion that some of the mineworkers
 21 were shot in their hands when it can be argued they were
 22 raising their hands in surrender. You do understand that,
 23 General, do you?
 24 GENERAL NAIDOO: I hear that.
 25 MR NTSEBEZA SC: Now Chair, let me just

<p style="text-align: right;">Page 24440</p> <p>1 get my bearings about whether these are exhibits. I'm told 2 it's exhibit A – 3 CHAIRPERSON: Yes, exhibit A is the post 4 mortem reports in respect of the 34 people who died on the 5 16th of August. So provided you give us the number, or the 6 sub-number as it were in exhibit A, it will be in order. 7 MR NTSEBEZA SC: I'm told [microphone 8 off, inaudible] that would be Gadlela [microphone off, 9 inaudible] - 10 CHAIRPERSON: Never mind the number. 11 There you are, now we've got it in front of us. We've got, 12 it's A2 actually. There are a number of, in fact it will 13 be more than 34 because this includes people who died 14 before the 16th as well. So give us the exhibits to which 15 you are specifically referring, give us A2, item, give us 16 the number. And while you're looking for the numbers, 17 Major General, have you got all exhibit A2, all the post 18 mortems? 19 GENERAL NAIDOO: I have them, Chair. 20 CHAIRPERSON: Good. Well, you're ahead 21 of us. Do you know which ones – was your attention 22 specifically directed to a number, or were you just told to 23 look through the whole file and see what you could find? 24 GENERAL NAIDOO: Chair, I'd received one, 25 two, three, four, I've received six post mortem reports.</p>	<p style="text-align: right;">Page 24442</p> <p>1 GENERAL NAIDOO: Six, Sir. Six, Chair. 2 CHAIRPERSON: What was the first one you 3 were referred to? 4 GENERAL NAIDOO: It's, it seems to have a 5 A578, I don't know if that's – 6 CHAIRPERSON: 578. Was that all you were 7 told? You weren't given the item number? So if they'll 8 show us more of the supplementary index – 578 is a page. 9 MS LEWIS: Chair, sorry, the name of the 10 first deceased person is Gadlela. The DR number is 576. 11 So if we just scroll down – 12 CHAIRPERSON: Let's scroll down, Mr 13 Operator, until we get 576. Can we see the next page, 14 please? The supplementary index, that's what we were 15 looking at. We're now being shown a post mortem – well, an 16 affidavit by a warrant officer who is involved in the 17 ballistics department. That's not what we want. We want 18 the second page of the supplementary index of the post 19 mortem reports. It does look as if we may have to take a 20 short adjournment. We'll adjourn for a very short time, at 21 least I hope it will be a very short time, and once all 22 this information has been obtained and collated we can 23 proceed. 24 MR NTSEBEZA SC: Thank you, Mr Chairman. 25 [COMMISSION ADJOURNS COMMISSION RESUMES]</p>
<p style="text-align: right;">Page 24441</p> <p>1 CHAIRPERSON: Alright, are these the ones 2 that he, the ones he was given, are they the ones you're 3 going to refer us to? So perhaps if you can't find the 4 numbers he can give them to us. 5 MR NTSEBEZA SC: I'm relying on – the 6 General seems to be ahead of everybody, including my 7 juniors. 8 MS LEWIS: Chair, are we looking for the 9 DR number or for the number on the – 10 CHAIRPERSON: On the – now there you're 11 asking me a question to which I may not be able to give an 12 accurate answer, but we were given a supplementary index 13 that was shown on the screen. There it is, and it lists 14 the various post mortem reports which are part of exhibit 15 A2. 16 MS LEWIS: Chair, could we – 17 CHAIRPERSON: There are item numbers and 18 then there are, you'll see there are DR numbers. Now if 19 you've got that document, if you know what the DR number is 20 you can find the item number very easily, it may take you a 21 minute of two. If you want a short adjournment in order to 22 sort of sort this out, I'll give it to you, but if the 23 witness knows the ones you're referring to that is short- 24 circuiting – were you referred to, how many were you 25 referred to?</p>	<p style="text-align: right;">Page 24443</p> <p>1 [15:45] CHAIRPERSON: The Commission resumes. I 2 see Mr Mpofu's not back yet. Major-General, you're still 3 under oath. Mr Ntsebeza proceed with your cross- 4 examination. I gather the problem has now been sorted out. 5 MR NTSEBEZA SC: Yes I'm told, Mr 6 Chairman. I'm told if we went by the numbers exhibit A 7 pages 263 to 294 will take us – 8 CHAIRPERSON: It's exhibit A2 isn't it? 9 Exhibit A2 – just A. Okay then what page? 10 MR NTSEBEZA SC: 263. 11 CHAIRPERSON: All right, let's look at 12 that please? 13 MR NTSEBEZA SC: And that is Mr Gablela, 14 G-A-B-L-E-L-A. If we view paragraph 4.5 – 15 CHAIRPERSON: I take it it's paragraph 16 4.5 that you want us to look at. 17 MR NTSEBEZA SC: Yes, yes Mr Chair. 18 CHAIRPERSON: Which reads "Tangential 19 gunshot wound, tangential through the lateral aspect of the 20 left-hand index finger is present." 21 MR NTSEBEZA SC: Do you see that, 22 General? I mean just to re-orientate ourselves we are 23 looking for evidence objective or otherwise that shows 24 consistency with what the unidentified mineworker in 25 exhibit MMM –</p>

<p style="text-align: right;">Page 24444</p> <p>1 MR SEMENYA SC: No, Chair, if Mr Ntsebeza 2 wants to give that evidence I would really welcome it. 3 There's nothing to infer that a tangential gunshot wound is 4 of a – 5 CHAIRPERSON: You can - for argument, Mr 6 Semenya. 7 MR SEMENYA SC: Not for this witness to 8 answer. Then I must make an objection. 9 CHAIRPERSON: Oh I see, yes. It's a 10 medical question I suppose, but the objection taken, Mr 11 Ntsebeza is that this witness is only going to be able to 12 conjecture when this is put to him. By the way how many 13 other wounds were there, gunshot wounds? Can we see 14 further on this page please? A fifth wound lists to this 15 tangential gunshot wound, now can we see higher up on the 16 page? And on the previous page please. Oh I see there 17 appear then to have been two wounds, two gunshot wounds. 18 The first is the one dealt with in paragraph 4.3 and 4.4. 19 4.3 giving the entrance, post lateral aspect of the right 20 thorax which is the chest, yes. And then 4.4 is the exit 21 wound of the same gunshot. And then there's this 22 tangential gunshot wound at 4.5. And you know, that's what 23 you put to the witness. Mr Semenya says we can't ask the 24 witness to conjecture whether that's a sign or 25 corroboration of the allegation that this deceased was shot</p>	<p style="text-align: right;">Page 24446</p> <p>1 small circular laceration of the palm of the left hand? 2 MR NTSEBEZA SC: Yes. 3 CHAIRPERSON: Yes and you'll ask us in 4 due course to infer from that evidence that it's 5 corroboration for the suggestion that some of the people 6 were shot while they were surrendering. 7 MR NTSEBEZA SC: Paragraph 5, A2, IMG is 8 the entrance wound and the exit wound would be 5 A3, the 9 suggestion seems to be that it went into his palm on the 10 palm of his hand and exited on the side of side of the left 11 thumb. And all I'm saying we would argue that it's 12 objective evidence that shows that he had his hand held up. 13 The last of the hand wounds would be on Van Wyk Sagalala - 14 Sagalala. Turn now to 721. 15 CHAIRPERSON: This is page 702 of the 16 exhibit. This is the body – well you'd better pronounce 17 it, I can pronounce his middle name, but I can't – 18 MR NTSEBEZA SC: We are in the same boat, 19 Mr Chairman, take solace in that. I must not try. I'm 20 told it's Modisaotsile Sagalala. 21 CHAIRPERSON: You could have mentioned 22 the middle name so people could understand what I was 23 talking about. His name is Modisaotsile Van Wyk Sagalala, 24 is that correct? 25 MR NTSEBEZA SC: I'm just slightly better</p>
<p style="text-align: right;">Page 24445</p> <p>1 at while he was surrendering. The witness may not be able 2 to conjecture because we're in as good a position to 3 conjecture as he is, but it's presumable a fact on which 4 you can rely at the end of the case when you argue. 5 MR NTSEBEZA SC: That's exactly the 6 point, it's just so that once we heard the witness was 7 having medical emergencies, medical services we should 8 point out what we would be arguing on the basis of. I 9 accept what Mr Semenya is saying about evidence having to 10 be led as to whether in fact this particular person was 11 raising his hand when the tangential wound was inflicted on 12 his left index finger. The next body would be Mr Henry 13 Mvuyisi Pato about which we deal in our – it would be on 14 pages 295 to 322, paragraph 5, A2, IMG, 0087 to 0088. 15 CHAIRPERSON: Now he is, of course, he is 16 described as victim M in exhibit MMM47, but you're busy 17 here with a different aspect of evidence relating to him. 18 Is that correct? 19 MR NTSEBEZA SC: Yes DR577. 20 CHAIRPERSON: You referred us to page, 21 well to DR577 which is part of exhibit A2. 22 MR NTSEBEZA SC: Yes. 23 CHAIRPERSON: And we're looking at page 3 24 of the post-mortem relating to Mr Pato and there's an 25 injury there, which is the one you rely on, the A2, the</p>	<p style="text-align: right;">Page 24447</p> <p>1 than you, Mr Chairman, but you know you are on your way 2 there. 3 CHAIRPERSON: Let's have a look at what 4 they say about his hand or injuries he had on his hand 5 because that's the point you want to make isn't it? 6 MR NTSEBEZA SC: Yes. Paragraph 14, 4[G] 7 not 14. 8 CHAIRPERSON: 4[G] is described as shot 9 4, a fourth gunshot related wound and was present to the 10 under side of the left wrist. It was only identifiable by 11 the disturbance of the fabric of the sleeve of the jersey. 12 The wound consisted out of, they don't need to out, the 13 wound consisted of a horizontal "cigar shape" superficial 14 abrasion of 20 millimetres by 10 millimetres. This was 15 classified as a "grazing" shot. The direction in which the 16 projectile travelled was not determinable. That's the 17 passage you rely on isn't it? 18 MR NTSEBEZA SC: I think that's the 19 passage, Mr Chairman. Mr Chairman the next topic is my 20 last topic, but I would like to spend quite some time with 21 the General on it. 22 CHAIRPERSON: On my watch it's about four 23 minutes to four and it seems unlikely that you'll be able 24 to deal with this topic. It's the one covered by exhibit 25 MMM47. So I take it you're asking for an adjournment until</p>

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<p>1 tomorrow morning.</p> <p>2 MR NTSEBEZA SC: I am, Mr Chairman.</p> <p>3 CHAIRPERSON: At 9 o'clock</p> <p>4 MR NTSEBEZA SC: I am.</p> <p>5 CHAIRPERSON: And we will start the day</p> <p>6 with your ultimate point which is covered by exhibit MMM47.</p> <p>7 MR NTSEBEZA SC: There will be no other.</p> <p>8 CHAIRPERSON: That would be victims A, B,</p> <p>9 M and O, that's to say Mr Anele Mdizeni, Mr Mdizeni is it?</p> <p>10 MR NTSEBEZA SC: Mr Mdizeni.</p> <p>11 CHAIRPERSON: Then there's a Mr Thabiso</p> <p>12 Johannes Thelejane, then there's Mr Nkosinati Xalabile and</p> <p>13 then there's Mr Pato to whom we have already, Mr Henry</p> <p>14 Mvuyisi Pato.</p> <p>15 MR NTSEBEZA SC: Mr Chairman, there will</p> <p>16 be a correction made, we probably could make it now because</p> <p>17 Simato actually should be Nkosiyabo, N-K-O-S-I and then Y-</p> <p>18 A-B-O, Nkosiyabo. We will replace the pages of</p> <p>19 presentation tomorrow.</p> <p>20 CHAIRPERSON: We're talking about victim</p> <p>21 O now and how do you spell his first name?</p> <p>22 MR NTSEBEZA SC: Nkosiyabo, N-K-O-S-I -</p> <p>23 CHAIRPERSON: Yes.</p> <p>24 MR NTSEBEZA SC: And then Y-A-B-O.</p> <p>25 CHAIRPERSON: Y-A-B-O?</p>	<p>1 9 o'clock.</p> <p>2 [COMMISSION ADJOURNED]</p> <p>3 .</p> <p>4 .</p> <p>5 .</p> <p>6 .</p> <p>7 .</p> <p>8 .</p> <p>9 .</p> <p>10 .</p> <p>11 .</p> <p>12 .</p> <p>13 .</p> <p>14 .</p> <p>15 .</p> <p>16 .</p> <p>17 .</p> <p>18 .</p> <p>19 .</p> <p>20 .</p> <p>21 .</p> <p>22 .</p> <p>23 .</p> <p>24 .</p> <p>25 .</p>
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<p>1 MR NTSEBEZA SC: Yes.</p> <p>2 CHAIRPERSON: So the Nati is wrong and it</p> <p>3 should be Nkosiyabo.</p> <p>4 MR NTSEBEZA SC: Nkosiyabo, yes.</p> <p>5 CHAIRPERSON: Xalabile?</p> <p>6 MR NTSEBEZA SC: Yes, Mr Chairman</p> <p>7 CHAIRPERSON: All right we've made that</p> <p>8 correction so we can proceed tomorrow with the –</p> <p>9 MR NTSEBEZA SC: 9 o'clock.</p> <p>10 CHAIRPERSON: At 9 o'clock referring to</p> <p>11 him by his correct name. We'll take the adjournment now</p> <p>12 till 9 o'clock tomorrow morning.</p> <p>13 MR NTSEBEZA SC: Thank you, Mr Chairman.</p> <p>14 CHAIRPERSON: And do we know, perhaps I</p> <p>15 should mention this now. Looking ahead, as far as I know</p> <p>16 there are two cross-examiners after you, Mr Ntsebeza, the</p> <p>17 one is Mr Mpofu who for some reason is not here this</p> <p>18 afternoon and the other is Mr Brickhill, I think from</p> <p>19 Cal's. Sorry the NRC. I trust they will both be here</p> <p>20 tomorrow because – but anyway if there's a problem I don't</p> <p>21 think we'll be prepared to just adjourn for the convenience</p> <p>22 of counsel who choose when they want to come. I'm</p> <p>23 not saying that by way of reflection on anybody, I'm just</p> <p>24 indicating that that kind of attitude is not going to be</p> <p>25 tolerated tomorrow. We will adjourn until tomorrow morning</p>	

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