

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 190

24 FEBRUARY 2014

PAGES 22990 TO 23164



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|---|---|
| <p style="text-align: right;">Page 22990</p> <p>1 [PROCEEDINGS ON 24 FEBRUARY 2014] 2 [09:20] CHAIRPERSON: The Commission resumes. 3 Major-General, you're still under oath. Mr Chaskalson, I 4 believe you're going to cross-examine the witness? 5 GENERAL NAIDOO: s.u.o. 6 MR CHASKALSON SC: I am, Chairperson, but 7 I thought that SAPS might want to show their video before I 8 start. 9 CHAIRPERSON: Oh yes, there was a 10 discussion about the video. Are you ready to show the 11 video, Mr – 12 MR SEMENYA SC: We are indeed, Chair. 13 CHAIRPERSON: Very well, so the cross- 14 examination will not yet begin and effectively it's part of 15 the evidence-in-chief. If it's not been shown before we 16 have to give it an exhibit number. 17 EXAMINATION BY MR SEMENYA SC (CONTD.): 18 The exhibit is KKK55, 39 minutes – 19 CHAIRPERSON: Sorry, is it KKK55.39? Is 20 that what you say? 21 MR SEMENYA SC: 999 55, 49th minute into 22 the video. 23 CHAIRPERSON: How do I describe it? 24 Video of? 25 MR SEMENYA SC: I don't know, Chair, if</p> | <p style="text-align: right;">Page 22992</p> <p>1 CHAIRPERSON: Where is that on the video 2 clip so we can – you know, it's, no, no, I didn't mean – 3 it's 31 seconds, is it? 4 MR SEMENYA SC: It looks like 33 to us, 5 Chair. General, is that what you're referring to in your 6 evidence? 7 GENERAL NAIDOO: That's correct, 8 Chairperson. 9 MR SEMENYA SC: Those are the questions 10 we have for the witness. 11 CHAIRPERSON: It's a picture of one 12 individual throwing one object, is that correct? 13 MR SEMENYA SC: That's correct, Chair. 14 CHAIRPERSON: Thank you, and that's the 15 end of your evidence-in-chief? 16 MR SEMENYA SC: That's the end of the 17 evidence-in-chief. 18 CHAIRPERSON: Thank you. Mr Chaskalson. 19 MR MPOFU: Sorry, Chairperson, I'm sorry, 20 I didn't quite get the description of what is supposed to 21 be happening? 22 CHAIRPERSON: There was a person who was 23 being circled by the arrow, who appeared to have a bare top 24 actually, just trousers, and he appeared to be throwing an 25 object of some kind.</p> |
| <p style="text-align: right;">Page 22991</p> <p>1 it will be adequate to refer to it as depicting the 2 interference with the medical – 3 CHAIRPERSON: Video depicting 4 interference – 5 MR SEMENYA SC: With the medical 6 personnel. 7 CHAIRPERSON: With medical personnel. 8 Alright and you say that's KKK30? 9 MR SEMENYA SC: 55. 10 CHAIRPERSON: 55, alright. 11 [VIDEO IS SHOWN] 12 MR SEMENYA SC: Sorry, can we just go 13 back a few seconds? 14 [VIDEO IS SHOWN] 15 MR SEMENYA SC: If you can go just 16 slightly back and perhaps slower. 17 [VIDEO IS SHOWN] 18 CHAIRPERSON: Please put on record the 19 point at which you want us to start looking so that when 20 the record is read later, it can be appreciated what 21 actually it is that we've been asked to look at. 22 [VIDEO IS SHOWN] 23 MR SEMENYA SC: The image, Chair, we wish 24 to point to is an individual throwing an object at the 25 medical personnel.</p> | <p style="text-align: right;">Page 22993</p> <p>1 MR MPOFU: To? Where was he throwing at? 2 We don't know. Okay. 3 CHAIRPERSON: - can tell you, the witness 4 can perhaps be asked about it in cross-examination. My 5 understanding from Friday was that it was allegedly at 6 medical personnel, allegedly at medical personnel. That's 7 a point that can be elaborated at a later – 8 MR MPOFU: Alright, but that's not shown 9 in the picture. Thank you, Chairperson. 10 MR CHASKALSON SC: Chairperson, just for 11 the record purposes, is this a clip that's been extracted 12 from KKK55? Then I think we ought to give it a separate 13 exhibit number so that we can find it again because if we 14 look on KKK55 it's going to be somewhere else. So if we 15 could call this 55.1 or if you could give us the – 16 CHAIRPERSON: [Microphone off, inaudible] 17 Let's call it video – let's call it 55.1, video depicting, 18 well, I've describe it as depicting interference with 19 medical personnel but I'd better say allegedly depicting 20 interference with medical personnel because that may be the 21 subject of further questions. 22 MR MPOFU: Yes. 23 CHAIRPERSON: And it starts, it's round 24 about 30 to 33 seconds, is that correct? 25 CROSS-EXAMINATION BY MR CHASKALSON SC:</p> |

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1 Thank you, Chairperson. Major-General, I'd like to start
 2 this morning by clarifying your evidence on your movements
 3 on the afternoon of the 16th and if we can start with the
 4 special JOCCOM.
 5 GENERAL NAIDOO: Yes, Chair.
 6 MR CHASKALSON SC: From what I can
 7 gather, you weren't present at that meeting, is that
 8 correct?
 9 GENERAL NAIDOO: That is correct, Chair.
 10 MR CHASKALSON SC: Where were you at
 11 ?
 12 GENERAL NAIDOO: I was at forward holding
 13 area 1.
 14 MR CHASKALSON SC: Were you aware that
 15 there was a special JOCCOM taking place at 1:30?
 16 GENERAL NAIDOO: No, Chair.
 17 MR CHASKALSON SC: When did you find out
 18 that there had been a special JOCCOM meeting at 1:30?
 19 GENERAL NAIDOO: Chair, when we were
 20 informed that there would have to be a meeting at 2:30 and
 21 subsequent to the JOCCOM at 1:30.
 22 MR CHASKALSON SC: If I can just ask you
 23 to go to the list of cell phone calls which is KKK4. In
 24 fact, let me introduce now the list of cell phone, of your
 25 cell phone calls as opposed to KKK4, which will make it

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1 easier for us to focus in this cross-examination, so –
 2 CHAIRPERSON: Sorry, will this be MMM4?
 3 MR CHASKALSON SC: This will be – I had
 4 thought it would be MMM3 but if yours is MMM4.
 5 CHAIRPERSON: MMM3 is extract from
 6 Alexander et al, Marikana, a view from the mountain –
 7 MR CHASKALSON SC: Oh, of course, of
 8 course. MMM4, MMM4 it is and if we can then call up MMM4.
 9 CHAIRPERSON: How do we describe it?
 10 Telephone calls?
 11 MR CHASKALSON SC: To and from Major-
 12 General Naidoo's cell phone in the period 14 to 16 August
 13 2012.
 14 CHAIRPERSON: Yes, from his mobile
 15 telephone?
 16 MR CHASKALSON SC: That's correct.
 17 CHAIRPERSON: From 14 to 16 –
 18 MR CHASKALSON SC: No, no, I'm sorry,
 19 Chairperson. This is the wrong – can we just take that one
 20 down?
 21 CHAIRPERSON: We'll take that one down
 22 but I want to get the description of the one you want to
 23 give. So it's telephone calls to and from Major-General
 24 Naidoo's mobile telephone from 14 to 16 August 2012, is
 25 that right?

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1 MR CHASKALSON SC: Just in the interests
 2 of privacy though, for the exhibit we've removed the
 3 telephone numbers and so you've been given the one with the
 4 telephone numbers. I can, well, we can, I'll arrange for
 5 the – oh, we have the correct one and if we can go down to
 6 16 August at 13:08.
 7 CHAIRPERSON: Mr Mpfu, I'm sorry, I
 8 forgot to warn those present to turn their cell phones off
 9 so I can't do anything to you because I didn't warn you
 10 beforehand.
 11 MR MPOFU: Yes, thank you.
 12 CHAIRPERSON: But I've now warned you and
 13 everybody else and you know what I do if people's
 14 telephones –
 15 MR MPOFU: I know, Chairperson. I was
 16 saved by that.
 17 CHAIRPERSON: I can't blame you, I didn't
 18 warn you.
 19 MR MPOFU: Thank you, Chairperson.
 20 CHAIRPERSON: You have to be reminded.
 21 MR MPOFU: Thank you, Chairperson.
 22 MR CHASKALSON SC: I'd just like us to
 23 look at that entry at 13:08:26 which was a 47 second call
 24 which was made by Brigadier Pretorius to your cell phone.
 25 That's at 13:08. Did Brigadier Pretorius not mention that

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1 there was going to be a JOCCOM in approximately 20 minutes
 2 after that call ended?
 3 GENERAL NAIDOO: Not specifically, I
 4 can't specifically remember that, Chairperson. As you
 5 would see on the telephone records we had been
 6 communicating continuously in my supporting role, in
 7 communication with the JOC but as I indicated, I did not
 8 know that there was a special JOCCOM being held.
 9 CHAIRPERSON: If you had known, would you
 10 have gone?
 11 GENERAL NAIDOO: I was not invited,
 12 Chair.
 13 CHAIRPERSON: No, no, well, weren't you a
 14 member? You were a member of the JOCCOM, weren't you?
 15 GENERAL NAIDOO: I was placed at forward
 16 holding area 1.
 17 CHAIRPERSON: No, I know you were based
 18 at forward holding area 1 but were you a member of the
 19 JOCCOM? Were you at the 6 o'clock meeting?
 20 GENERAL NAIDOO: Yes, Chair.
 21 CHAIRPERSON: And you were there not as a
 22 visitor –
 23 GENERAL NAIDOO: No.
 24 CHAIRPERSON: You were there as a member.
 25 GENERAL NAIDOO: As the commander of –

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1 CHAIRPERSON: Ja.
 2 GENERAL NAIDOO: - forward holding area
 3 1.
 4 CHAIRPERSON: So you would have been
 5 entitled to go, even without an invitation. So what I'm
 6 asking you, if you'd been told that there was a meeting,
 7 would you have gone?
 8 GENERAL NAIDOO: If I had been asked to
 9 attend, I would have. Otherwise I would not have left the
 10 forward holding area, Chair.
 11 MR CHASKALSON SC: Have you ever asked
 12 why you weren't invited to the 13:30 JOCCOM?
 13 GENERAL NAIDOO: No, Chair.
 14 MR CHASKALSON SC: Did it not strike you
 15 as odd that you, who were possibly the second or third most
 16 senior officer in the operation, wasn't invited to the
 17 JOCCOM meeting that took the crucial decision to move to
 18 phase 3?
 19 GENERAL NAIDOO: Chair, there's been
 20 several meetings whilst I was at my post at forward holding
 21 area 1 which I did not attend, which includes Wednesday's
 22 meeting with the union leaders, et cetera, but I think the
 23 focus was on me executing my responsibilities at forward
 24 holding area 1.
 25 MR CHASKALSON SC: But what were your

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1 responsibilities at forward holding area 1 at half past 1
 2 on Thursday the 16th?
 3 GENERAL NAIDOO: Chair, that was lunch
 4 time. I had to ensure that all the personnel in the
 5 forward negotiation area as well as in the holding area
 6 received their lunch and other provisions.
 7 MR CHASKALSON SC: Was that not the sort
 8 of responsibility that an officer of your rank would have
 9 been capable of delegating?
 10 GENERAL NAIDOO: Well, Chair, the way we
 11 did this was I ensured that the necessary resources went to
 12 the relevant commanders who, in turn, distributed it to
 13 their personnel but it was still my responsibility to
 14 ensure that this occurred because personnel were deployed
 15 for long hours under very difficult circumstances and that
 16 was one of my roles at forward holding area 1 to support
 17 the personnel that had deployed.
 18 MR CHASKALSON SC: So you're essentially
 19 saying that because you had to organise lunch for people at
 20 forward holding area 1, you weren't surprised that you were
 21 not invited to the JOCCOM, it took the decision to move in
 22 or to move to phase 3?
 23 GENERAL NAIDOO: No Chair, what I'm
 24 saying is I was at my post at forward holding area 1 and I
 25 was not invited to the JOCCOM.

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1 CHAIRPERSON: Now, if you look at exhibit
 2 L slide 67 you'll see a slide dealing with what's described
 3 as the command cell. You were listed there as commander of
 4 reserve and support forces.
 5 GENERAL NAIDOO: That's correct, Chair.
 6 CHAIRPERSON: Doesn't that mean that you
 7 were ex officio, as it were, a member of the JOCCOM?
 8 GENERAL NAIDOO: As was the operational
 9 commander for the operation, Chair.
 10 CHAIRPERSON: That's another question as
 11 to why he wasn't there but we won't, you're not being asked
 12 that at the moment. You're simply being asked about your
 13 absence, your failure to attend for the reasons you've
 14 explained.
 15 GENERAL NAIDOO: I was not informed of
 16 the convening of the meeting and I was at the post where I
 17 was posted, Chair.
 18 MR CHASKALSON SC: Right, well, let's
 19 move on then to the briefing at forward holding area 1 and
 20 you dealt with that in your evidence-in-chief and in your
 21 statement. It's addressed in paragraph 55 of your
 22 statement. Can we call up paragraph 55.4? I can read the
 23 relevant passage it's not controversial. You say, "The
 24 briefing was done using a laptop computer where he" and
 25 that's Colonel Scott, Lieutenant-Colonel Scott then,

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1 "showed us slides which outlined the different positions
 2 and conveyed to each commander of each unit at the
 3 briefing, including commanders of my group at FHA1, what
 4 was expected of them." You recall that passage in your
 5 statement?
 6 GENERAL NAIDOO: That is correct, Chair.
 7 MR CHASKALSON SC: Now, if we can just
 8 all up the slide 181 from exhibit L, because this is the
 9 slide which Colonel Scott indicated was the only slide he
 10 showed at his briefing. And the evidence of Colonel Scott
 11 was that this was the only slide that was shown at the
 12 briefing and it was shown in this form, save for the fact
 13 that the boxes with text in white were not there at the
 14 briefing, those he put in later. Do you recall that that
 15 was the case?
 16 GENERAL NAIDOO: Looks like it was the
 17 slide, Chair.
 18 MR CHASKALSON SC: Now, this slide says
 19 nothing about forward holding area 1 or its
 20 responsibilities or movements. You accept that?
 21 GENERAL NAIDOO: That is correct, Chair.
 22 MR CHASKALSON SC: So you got no written
 23 or electronic briefing from Lieutenant-Colonel Scott of
 24 what was expected of you, you only got an oral briefing?
 25 GENERAL NAIDOO: An oral briefing based

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1 on the electronic map that was shown to us, correct, Chair.
 2 MR CHASKALSON SC: Being slide 181 that
 3 we see now?
 4 GENERAL NAIDOO: Chair, I'm not sure if
 5 that's exactly the same slide but it seems like, to be
 6 similar.
 7 CHAIRPERSON: That was his evidence.
 8 GENERAL NAIDOO: Yes.
 9 CHAIRPERSON: His evidence is he showed
 10 that and only that, minus the white boxes.
 11 GENERAL NAIDOO: Then I would accept
 12 that, yes.
 13 MR CHASKALSON SC: You indicate what you
 14 were told at the briefing in paragraph 55 of your
 15 statement. You say, "I was expected to provide support in
 16 this action which I anticipated would entail releasing fire
 17 trucks, medics or other support functions to wherever they
 18 would be required. It is usual during dispersal action
 19 people tend to injure, whether by running and falling,
 20 rubber bullets or the use of Colonel Scott gas. The canine
 21 unit was to conduct a sweep of the area after dispersal to
 22 find any weapons, especially firearms which may have been
 23 discarded in the bushes and rocks as well as to ensure no
 24 strikers were hidden in the area, whilst also providing an
 25 escort service for the emergency service personnel deployed

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1 with us. Similarly, the mounted unit was to be utilised to
 2 identify any persons or weapons that were lying hidden in
 3 the area, using their height as an advantage." And now
 4 does that accurately describe what Lieutenant-Colonel Scott
 5 told you would be your function at the briefing?
 6 GENERAL NAIDOO: Chair, he indicated to
 7 us the different roles and he indicated that forward
 8 holding area 1 would continue with their support role and
 9 the units remaining would be deployed as briefed that
 10 morning in terms of the canine, in terms of the mounted
 11 unit, yes.
 12 MR CHASKALSON SC: When you say the units
 13 remaining, you mean the units remaining at forward holding
 14 area 1?
 15 GENERAL NAIDOO: That is correct, Chair.
 16 MR CHASKALSON SC: And that would be
 17 canine, mounted unit, the reserve forces had already been
 18 released to the front by then?
 19 GENERAL NAIDOO: That's correct, Chair.
 20 MR CHASKALSON SC: Apart from canine and
 21 mounted were there any other units that were actually
 22 remaining at forward holding area 1?
 23 GENERAL NAIDOO: Crime scene –
 24 MR CHASKALSON SC: Crime scene and
 25 detectives.

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1 GENERAL NAIDOO: And detectives, as well
 2 as the fire and medical.
 3 MR CHASKALSON SC: But those weren't
 4 units so much as support services from outside.
 5 GENERAL NAIDOO: As I indicated them,
 6 yes.
 7 MR CHASKALSON SC: And so the brief, if I
 8 understand your evidence, was that you were briefed in the
 9 morning on what your function was, forward holding area 1,
 10 you still had the same function save in respect of the
 11 reserve forces that had been released and to have been
 12 briefed separately, is that correct?
 13 GENERAL NAIDOO: That's correct, Chair.
 14 [09:40] MR CHASKALSON SC: Now in the morning had
 15 you been instructed to take the support services, the
 16 medics and the fire personnel, to immediate reaction area
 17 1?
 18 GENERAL NAIDOO: Chair, in the
 19 deployment, we were indicated that when we get into
 20 operational mode the forces that will be deployed must be
 21 moved into the immediate reaction area 1. That morning the
 22 special task force and the national intervention unit were
 23 the two forces that were deployed to immediate reaction
 24 area 1 in anticipation that the strikers would lay down
 25 their weapons, their responsibility was to secure the scene

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1 so that the weapons could be recovered. So based on that
 2 indication at the briefing, yes. Prior to deployment our
 3 standing point would be at the immediate reaction area to
 4 reduce the reaction time.
 5 MR CHASKALSON SC: So you knew from that
 6 briefing that following that briefing you were to move your
 7 troops to immediate reaction area 1, that was your tasking.
 8 GENERAL NAIDOO: Police officials, yes.
 9 MR CHASKALSON SC: And medics and fire
 10 support services?
 11 GENERAL NAIDOO: As well.
 12 MR CHASKALSON SC: Were you present
 13 through the whole of the briefing of Lieutenant-Colonel
 14 Scott?
 15 GENERAL NAIDOO: No Chair, I was – I
 16 arrived a little late but I was there, yes.
 17 CHAIRPERSON: Where did you arrive from
 18 because the briefing was at forward holding area 1?
 19 GENERAL NAIDOO: I arrived from
 20 Potchefstroom.
 21 CHAIRPERSON: Oh, so when you got the
 22 telephone call, the mobile phone call from Brigadier
 23 Pretorius which we referred to earlier, were you not at
 24 forward holding area 1?
 25 GENERAL NAIDOO: No Chair, I was at

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1 forward holding area 1. The reference I think here is to
 2 the 6 o'clock briefing, if I am –
 3 MR CHASKALSON SC: We're at cross-
 4 purposes -
 5 GENERAL NAIDOO: Okay.
 6 MR CHASKALSON SC: - Major-General, I was
 7 talking about the 1:30 briefing, were you present for the
 8 whole of that briefing?
 9 GENERAL NAIDOO: At the 2:30 briefing I
 10 was present for the entire briefing, yes.
 11 MR CHASKALSON SC: Sorry, 2:30, you're
 12 correct. So you were aware of the details of the plan that
 13 Lieutenant-Colonel Scott disclosed at that briefing?
 14 GENERAL NAIDOO: All that he communicated
 15 to the commanders, yes.
 16 MR CHASKALSON SC: In particular, you
 17 knew where the barbed wire was going to be laid out?
 18 GENERAL NAIDOO: He did indicate to us,
 19 yes.
 20 MR CHASKALSON SC: It's on the slide, you
 21 can see it.
 22 GENERAL NAIDOO: Yes.
 23 MR CHASKALSON SC: You knew that the plan
 24 was to disperse the miners to the area to the west.
 25 GENERAL NAIDOO: That is correct, Chair.

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1 MR CHASKALSON SC: And in particular, if
 2 one looks at the movement of the tactical forces in blue,
 3 it was to the area to the west, to the south of koppie 3.
 4 GENERAL NAIDOO: Koppie 3 – Chair, rather
 5 say koppie 3 lies to the south of the dispersal area.
 6 MR CHASKALSON SC: [Microphone off,
 7 inaudible] down here.
 8 GENERAL NAIDOO: That's correct.
 9 MR CHASKALSON SC: I'm marking, I'm
 10 pointing to the north mark in the top right-hand corner of
 11 the slide and I'm suggesting, did he indicate that the
 12 tactical forces were to move along the blue lines which
 13 appear on slide 181?
 14 GENERAL NAIDOO: That's correct, Chair.
 15 MR CHASKALSON SC: That the strikers from
 16 the koppies were to be dispersed to the west, west-cum-
 17 south-west.
 18 GENERAL NAIDOO: West, Chair, the
 19 direction he used was west.
 20 MR CHASKALSON SC: And what did you
 21 understand that from the slide? Did you understand that
 22 the strikers would be dispersed into koppie 3, underneath
 23 koppie 3 or above koppie 3 or all three of those
 24 possibilities?
 25 GENERAL NAIDOO: Chair, in our briefing

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1 there was no mention made of koppie 3. What was indicated,
 2 that the strikers would be dispersed west into the veld in
 3 the open veld in the direction of the mine hostel and the
 4 other end.
 5 MR CHASKALSON SC: The Karee hostel?
 6 GENERAL NAIDOO: I would take it Karee
 7 hostel, Chair.
 8 MR CHASKALSON SC: And if we look at this
 9 diagram, where do we see open veld on this diagram to the
 10 west of koppies 1 and 2?
 11 GENERAL NAIDOO: Chair, the picture does
 12 not depict the entire geographical layout. It's zoomed in.
 13 MR CHASKALSON SC: Well, where did you
 14 understand the miners were going to go, if you can mark on
 15 this picture or indicate on this picture?
 16 GENERAL NAIDOO: Chair, west, as far as I
 17 understood, being the white block that says phase 2, the
 18 right-hand corner at the top, in that direction – based on
 19 the indication of where north is.
 20 MR CHASKALSON SC: So if I can just mark
 21 the top right-hand corner of the block that starts phase 2,
 22 which I'm marking now.
 23 GENERAL NAIDOO: That's correct, Chair.
 24 MR CHASKALSON SC: So you understood that
 25 the strikers were going to be dispersed in a direction

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1 which, if they were on koppie 1, would take them straight
 2 through koppie 3?
 3 GENERAL NAIDOO: That's correct, Chair.
 4 CHAIRPERSON: He didn't say that. He
 5 simply said west.
 6 GENERAL NAIDOO: He said west in the
 7 direction of the mine, yes.
 8 CHAIRPERSON: Oh, I see. Because I must
 9 say it looks to me as if koppie 3 is really north-west of
 10 koppie 1 but it may be an impression that others may not
 11 agree with.
 12 MR CHASKALSON SC: But let's go back to
 13 the details of the briefing that you were aware of.
 14 GENERAL NAIDOO: Chair?
 15 MR CHASKALSON SC: You were aware that
 16 the dispersal would, in the first instance, be executed by
 17 POPS who were going to use public order policing methods.
 18 GENERAL NAIDOO: That is correct, Chair.
 19 MR CHASKALSON SC: And you were aware
 20 also that there would be a TRT line to support them if they
 21 needed protection.
 22 GENERAL NAIDOO: That is correct, Chair.
 23 MR CHASKALSON SC: You would presumably
 24 have known that the TRT line would be armed with R5s.
 25 GENERAL NAIDOO: That is correct, Chair.

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1 MR CHASKALSON SC: And you would have
 2 known from the briefing as well that if at any stage there
 3 was a need to protect the POPS unit after the dispersion
 4 action or to make high risk arrests of armed miners who'd
 5 entrenched themselves in difficult terrain, the tactical
 6 units would be brought in and the STF and the NIU in
 7 particular would be brought in to perform that function.
 8 GENERAL NAIDOO: That was part of the
 9 plan, Chair.
 10 MR CHASKALSON SC: And all of this you
 11 were aware of from that briefing?
 12 GENERAL NAIDOO: Yes, Chair.
 13 MR CHASKALSON SC: You then proceed to
 14 describe in your statement at paragraph 57 that you moved
 15 from the briefing at forward holding area 1 to brief the
 16 SAPS personnel under your control and you say, "I briefed
 17 all my commanders as well as canine personnel on the
 18 decision which was to be executed in terms of the morning
 19 briefing and placed them on a state of readiness to support
 20 the negotiating team which would initiate the dispersal
 21 process."
 22 GENERAL NAIDOO: That is correct, Chair.
 23 MR CHASKALSON SC: And when you refer to
 24 negotiation team you're referring to the POPS team in
 25 armoured vehicles under the control of Brigadier Calitz.

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1 GENERAL NAIDOO: That is correct, Chair.
 2 MR CHASKALSON SC: Now, this briefing to
 3 the personnel under your control, where did it take place?
 4 GENERAL NAIDOO: At forward holding area
 5 1.
 6 MR CHASKALSON SC: And how long did it
 7 last?
 8 GENERAL NAIDOO: A few minutes, Chair.
 9 MR CHASKALSON SC: Can you be a bit more
 10 precise than that? Well, not necessarily more precise than
 11 that but are we talking two or three minutes, five or 10
 12 minutes, a rough estimate?
 13 GENERAL NAIDOO: Approximately five or 10
 14 minutes, Chair.
 15 MR CHASKALSON SC: When did it take
 16 place?
 17 GENERAL NAIDOO: Immediately after the
 18 14:30 briefing.
 19 MR CHASKALSON SC: Can we just look at
 20 that, at MMM4 again just to look at your cell phone records
 21 again to try to place in the sequence of those cell phone
 22 records when it would have taken place? Can we call up
 23 MMM4, the cell phone records and if we can go to 15:01.
 24 We've been told that the briefing ended at approximately 3
 25 o'clock, does that square with your recollection?

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1 GENERAL NAIDOO: I can't precisely say
 2 but it could be.
 3 MR CHASKALSON SC: If we look at your
 4 cell phone records, we see that from 3 o'clock until
 5 roughly 3:07, which would be the end of that call to
 6 Brigadier Nkabinde, you were on your cell phone.
 7 GENERAL NAIDOO: Correct, Chair.
 8 MR CHASKALSON SC: Now presumably that
 9 was before you conducted your briefing.
 10 GENERAL NAIDOO: Possibly, Chair.
 11 MR CHASKALSON SC: Well, if you –
 12 GENERAL NAIDOO: I can't specifically
 13 remember.
 14 MR CHASKALSON SC: I we look at that
 15 period there's very little space between cell phone calls
 16 for you to do anything. You presumably weren't on the cell
 17 phone to other people while you were doing your briefing to
 18 the personnel under your control.
 19 GENERAL NAIDOO: Chair, it also could be
 20 that my, one of the members who could have possibly been
 21 talking on my phone. We were communicating with the JOC,
 22 confirming our vehicle details, number of personnel, et
 23 cetera, before deployment. I know I asked my driver to
 24 assist me with the count, et cetera, so it could possibly
 25 be my driver also speaking and giving through particulars.

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1 MR CHASKALSON SC: Well, you see, if we
 2 look at those calls, the only one that could conceivably
 3 have related to Marikana seems to be Major-General, a call
 4 from Major-General Mpembe which lasts 83 seconds because
 5 the others are, seem to be police matters unrelated to
 6 Marikana. I don't know the rank of officer Alexander but
 7 we're told that his or her function is supply chain
 8 management.
 9 GENERAL NAIDOO: That's correct, Chair.
 10 MR CHASKALSON SC: And Brigadier Molefe
 11 we're told is in the North-West training unit.
 12 GENERAL NAIDOO: She is the deputy
 13 Provincial Commissioner for human resource management,
 14 Chair.
 15 MR CHASKALSON SC: Okay. Brigadier
 16 Nkabinde we're told is in human resources as well.
 17 GENERAL NAIDOO: The provincial head of
 18 human resources, yes.
 19 MR CHASKALSON SC: So would any of those
 20 calls to – sorry, what is the rank of officer Alexander?
 21 GENERAL NAIDOO: Brigadier.
 22 MR CHASKALSON SC: Brigadier Alexander.
 23 Any of the calls to Brigadier Alexander, Brigadier Molefe
 24 or Brigadier Nkabinde have to do with Marikana business?
 25 GENERAL NAIDOO: Yes, Chair, we were at

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1 that stage also busy with the funeral arrangements of the
2 personnel that were killed on Monday.

3 MR CHASKALSON SC: Would that have been a
4 matter that you might have delegated to your driver?

5 GENERAL NAIDOO: No.

6 MR CHASKALSON SC: So those calls would
7 have had to have been calls you made?

8 GENERAL NAIDOO: Yes, Chair.

9 MR CHASKALSON SC: So it seems to me, I'm
10 just trying to get the timing right here because if we look
11 at these cell phone records it seems to me that when you
12 would've conducted this briefing is sometime between 15:09
13 and 15:19:36 because that's the only gap that we see of a
14 sustained period between 3 o'clock and the point at which
15 the operation began. Would that square with your
16 recollection or inference?

17 GENERAL NAIDOO: Chair, no, I think it
18 would be more, closer to 15:30 or even a few minutes after
19 15:30 because we, immediately after the briefing, took up
20 our position at immediate response area 1.

21 MR CHASKALSON SC: So immediately after
22 the briefing you moved to IRA 1?

23 GENERAL NAIDOO: That's correct, Chair.

24 COMMISSIONER HEMRAJ: General, you said
25 immediately after 15:30.

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1 GENERAL NAIDOO: No, I said in the
2 vicinity of 15:30. We were informed that the operation
3 would commence at 15:30 so the idea was that personnel
4 would be in a state of readiness from 15:30 onwards.

5 MR CHASKALSON SC: So at 15:31 you've got
6 a three and a half minute call which is a number that we've
7 removed because it doesn't seem to be a police number,
8 which would've taken you up to 15:35, I think. Before that
9 there was a call from supply chain management again for 39
10 seconds, which would've ended at 15:27. Is it possible,
11 are you suggesting that the briefing would've taken place
12 between 15:27 and 15:31, a kind of –

13 GENERAL NAIDOO: Chair, as I indicated, I
14 estimated the time of the briefing between five and 10
15 minutes, so it could be five or less or up to 10. I don't
16 think it exceeded that, I approximate it.

17 MR CHASKALSON SC: Or could it have been
18 less than five?

19 GENERAL NAIDOO: Approximately five, yes.

20 MR CHASKALSON SC: Or could it have been
21 less than five is my question?

22 GENERAL NAIDOO: I'm not sure Chair.

23 MR CHASKALSON SC: Because unless it
24 could be less than five, we're talking it couldn't have
25 happened at 15:26:31 because the gap, there isn't a five

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1 minute gap between the end of that call and the start of
2 the next one.

3 GENERAL NAIDOO: Chair, as I indicated,
4 the briefing was the detailed briefing that we had that
5 morning, it was merely to affirm what was happening and
6 what was expected of us, you know, so as I indicated I
7 estimated the time. I cannot say for sure exactly how many
8 minutes it took.

9 MR CHASKALSON SC: Let's try and pin
10 down. The times are very important, Major-General, in this
11 exercise so I would like to try to pin down where this
12 briefing took place.

13 GENERAL NAIDOO: Okay.

14 MR CHASKALSON SC: Sorry, not where,
15 you've told us where it was, FHA1, when it took place and
16 for how long. You had to brief the dogs, the dog squad,
17 you had to brief the mounted unit, you had to brief the
18 detectives and the LCRC. Did you have a briefing for the
19 medical and fire personnel?

20 GENERAL NAIDOO: They were there, Chair.

21 MR CHASKALSON SC: And – no, no, but did
22 you have a separate briefing for them?

23 GENERAL NAIDOO: No.

24 MR CHASKALSON SC: In the course of your
25 briefing did you give any explanation of what the operation

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1 that was about to unfold, entailed?

2 GENERAL NAIDOO: Chair, maybe to go past,
3 to address the particular issue, my briefing entailed the
4 following. It was not separate briefings to separate
5 units. As I indicated, the commanders of the other units
6 plus the canine unit commander and members were present. I
7 indicated to them, number 1, that there had been a decision
8 to go to stage 3 to disperse, number 2, our role in the
9 supporting function as they had been briefed by their
10 commanders this morning would now come into play in terms
11 of the support role being the sweeping and searching for
12 suspects, weapons, et cetera and providing support in terms
13 of medical and fire, the crime scene management. We would
14 be going into immediate response area 1 with the medical,
15 fire and the canine. The detectives as well as the crime
16 scene people would be remaining at forward holding area 1
17 and the mounted people would take their insertion area
18 which was discussed on Friday and then I cautioned them on
19 the use of firearms, which we normally do at such things
20 when we're going into an operation, to remember the rules
21 regarding the use of firearms and I wished them well and we
22 departed. I think I summarise basically what we discussed
23 at that briefing, other than asking them if there's any
24 problems or anything that I should know about before the
25 deployment.

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1 MR CHASKALSON SC: When you say what we
 2 discussed at that briefing, would that be the briefing that
 3 Colonel Scott had just given you?
 4 GENERAL NAIDOO: Chair, no. The briefing
 5 on the roles and responsibilities of the different units
 6 was given by Colonel Scott at the 6 o'clock briefing and
 7 after the 6 o'clock briefing the various commanders of the
 8 units went back and briefed their members as to what is the
 9 status for the day and what was expected. So it was not
 10 for me to repeat in detail what Colonel Scott had
 11 communicated to commanders, that we done by the commanders.
 12 It was just to affirm that that briefing would now become
 13 valid.
 14 MR CHASKALSON SC: But did you not give
 15 your personnel any indication of what phase 3 was now going
 16 to entail because this was the first two that phase 2 had
 17 been detailed – sorry, phase 3.
 18 GENERAL NAIDOO: Chair, as I indicated, I
 19 indicated specifically to the commanders what our role was.
 20 It was a supporting role and, on instruction, what was
 21 expected of them and that was not a, not necessary for a
 22 detailed briefing as I was the overall co-ordinator of the
 23 various different units. They had their specific
 24 commanders in charge of specific disciplines, who had
 25 already communicated with them what the expectation was.

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1 So I was not going to repeat but I did make provision for
 2 if there was no clarity, that it could be sought.
 3 [09:59] MR CHASKALSON SC: But surely the
 4 commanders and the personnel needed to have even a vague
 5 sense of what the stage 3 was going to entail so that they
 6 could understand how their support function was going to
 7 fit in. But at the very simplest they needed to know in
 8 which direction the miners were going to be dispersed.
 9 GENERAL NAIDOO: Chair, yes but as I
 10 indicated, Colonel Scott had already briefed all the
 11 commanders. I was not going to repeat Colonel Scott's
 12 briefing because this briefing was given to us all and this
 13 was in turn communicated by the various commanders to their
 14 specific disciplines.
 15 MR CHASKALSON SC: Major-General, are you
 16 talking now about what Colonel Scott had done at the 6:00am
 17 JOCCOM?
 18 GENERAL NAIDOO: Well both the 6:00am as
 19 well as the 2:30.
 20 MR CHASKALSON SC: Let's leave the 2:30
 21 for the meantime, aside for the meantime. At 6:30
 22 Lieutenant Colonel Scott couldn't have briefed you on the
 23 details of phase 3 because those hadn't been decided by the
 24 6:30 JOCCOM.
 25 GENERAL NAIDOO: That's correct.

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1 MR CHASKALSON SC: So no one could have
 2 got a briefing, none of your personnel could have been
 3 briefed on the details of phase 3 previously. Did you not
 4 give them any briefing on the details of phase 3 following
 5 the 2:30 JOCCOM?
 6 GENERAL NAIDOO: Chair, as I indicated,
 7 the chain of command and the briefing worked in a
 8 particular fashion, in a cascading fashion. So Colonel
 9 Scott briefed us, all commanders. The commanders in turn
 10 went to their members and ensured that they were briefed.
 11 That was the chain of command or the operation methodology
 12 we followed from Tuesday.
 13 MR CHASKALSON SC: But you had to brief
 14 people after the 2:30 JOCCOM, people who – throughout the
 15 2:30 briefing, people who didn't know what had been decided
 16 and briefed at the 2:30 briefing. Did you not give those
 17 people any indication of what phase 3 was not going to
 18 entail?
 19 GENERAL NAIDOO: Chair, I think I've
 20 already indicated I communicated to the effected personnel
 21 that a decision had been taken to go to stage 3. I
 22 summarised the expectations because the detailed brief,
 23 there were various disciplines there. I was not going to
 24 try and usurp the responsibilities of the line commanders
 25 because each discipline had their specific responsibility.

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1 So when I summarised, I have indicated because the
 2 responsibility from people like the crime scene managers
 3 deferred from the mounted units to the K9. And they had
 4 their specialist commanders who was at the briefing and
 5 went back to ensure that their personnel were ready.
 6 MR CHASKALSON SC: So you're saying that
 7 the people, the commanders who you briefed at forward
 8 holding area 2 had already been at – forwarding holding
 9 area 1, sorry, had already been at Lieutenant-Colonel
 10 Scott's briefing?
 11 GENERAL NAIDOO: That is correct, Chair.
 12 The 14:30 meeting was attended by all commanders, from the
 13 negotiating group, forward holding area 1 as well as
 14 forward holding area 2. So I was not attending the
 15 briefing on my own. Each K9, the Special Task Force, the
 16 National Intervention Unit, the mounted unit, I ensured
 17 that all the commanders that fall under my command were
 18 there so that we cut the chain of communication down as
 19 short as possible.
 20 MR CHASKALSON SC: So the only people who
 21 attended your briefing hadn't already been briefed on what
 22 their – sorry Commissioner. I'm sorry, was I talking over
 23 you, Commissioner?
 24 COMMISSIONER HEMRAJ: No, not at all.
 25 MR CHASKALSON SC: Major-General, are you

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1 saying that the only people who attended your briefings who
 2 hadn't already been briefed at the Lieutenant-Colonel Scott
 3 briefing were the K9 personnel?
 4 GENERAL NAIDOO: That is correct, Chair.
 5 As well as possibly the emergency service personnel.
 6 COMMISSIONER HEMRAJ: May I just
 7 understand, General, that those briefings done by the
 8 individual commanders would have been prior to the briefing
 9 you gave all of them.
 10 GENERAL NAIDOO: Chair, that's the
 11 purpose why I called them, to ensure from all the other
 12 commanders whether they were in place and reiterated the
 13 fact that there had been a decision and obviously
 14 emphasised the use in terms of the use of firearms and
 15 ensure that everybody was fine. That would be role I would
 16 typically play.
 17 MR CHASKALSON: You say you gave a
 18 special briefing on the use of firearms, do you recall what
 19 that briefing entailed?
 20 GENERAL NAIDOO: Chair, I would not call
 21 it a special briefing, I would say I made mention, as
 22 normally is the case when we have such deployment, that we
 23 remind the members on the instructions pertaining to the
 24 use of firearms because as you know, the police is often in
 25 the spotlight for the excessive use of force, etcetera. So

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1 I reminded them we have existing instructions that they
 2 should keep that in mind when using firearms. And
 3 obviously nobody says that they can't protect themselves or
 4 protect other people, but they should keep the bigger
 5 picture in mind when doing so.
 6 MR CHASKALSON SC: So you specifically
 7 mentioned their right to use firearms in self defence.
 8 GENERAL NAIDOO: Chair, that's correct.
 9 MR CHASKALSON SC: Do you normally do
 10 that?
 11 GENERAL NAIDOO: That is a normal,
 12 general briefing that's given to members to sensitise them
 13 about the use of force which is done on most, or supposed
 14 to be done at all briefings and deployment of personnel.
 15 MR CHASKALSON SC: I don't recall that
 16 being the evidence of Brigadier Calitz. Brigadier Calitz,
 17 if I recall his testimony correctly, indicated that it
 18 wasn't usual to specifically remind people about their
 19 right to use firearms in self defence.
 20 MR SEMENYA SC: No, that is not the
 21 evidence. Mr Chaskalson may want to refer us to the
 22 transcript –
 23 MR CHASKALSON SC: I'll come back to that
 24 after tea time, I don't want to waste time now, it's not a
 25 particularly important issue.

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1 COMMISSIONER HEMRAJ: But is any protocol
 2 laid down that you are required in a briefing to include
 3 this, this aspect of firearms?
 4 GENERAL NAIDOO: Chair, no what is
 5 required is we have to ensure firstly that all people are
 6 present, they are correctly equipped, they have got no
 7 injuries and we should raise pertinent issues which they
 8 should be aware of before deployment. And one of the
 9 pertinent issues in this particular deployment for example,
 10 as in most, we must always remind them in terms of the use
 11 of firearms as well as not to break away from the group.
 12 There are various things that I can't at this stage, tell
 13 you, but we normally before deployment members raise
 14 certain issues so that they are aware and sensitised on
 15 certain things. They have already had the training, they
 16 have the skills, they have the knowledge. But as
 17 commanders we should raise issues which are commonly coming
 18 up, that's our responsibility, as we would tell them on
 19 modus operandi of wherever we're going to go and apprehend
 20 or whatever the operation entails. These are the general
 21 factors which we must raise when we are briefing personnel
 22 before deployment.
 23 MR CHASKALSON SC: Now you say after your
 24 briefing, immediately after your briefing you took your
 25 personnel, with the exception of the mounted unit, to IRA

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1 1, Immediate Response Area 1.
 2 GENERAL NAIDOO: That's correct, on the
 3 road alongside the power station.
 4 MR CHASKALSON SC: I'd just like to
 5 clarify your starting and ending position because you moved
 6 from forwarding holding area 1 to an ending position at
 7 immediate response area 1. If we can start with the
 8 starting position at forward holding area 1. When Colonel
 9 Scott was presenting exhibit L to this Commission he
 10 identified your starting position with reference to one of
 11 the photographs on slide 270 of exhibit L. Now 270 is a
 12 video compilation, I'm not sure if we can play it, but I
 13 can – the slide that he referred to is in fact a photograph
 14 that appears at JJJ10, point 4534. So if we can just call
 15 that one up. JJJ10, point 4534. Now that is what
 16 Lieutenant-Colonel Scott identified and for record, if
 17 anyone want to check the reference it's on the 14th of
 18 November at page 1335. With reference to that photograph
 19 Lieutenant-Colonel Scott said – in view now is forward
 20 holding area 1 where General Naidoo has lined up the
 21 vehicles. Was that your starting point?
 22 GENERAL NAIDOO: Chair, no what we have
 23 there is a view of both forward holding area 1 as well as
 24 immediate response area 1. Forward holding area 1 is to
 25 the bottom of the picture, the intersection with the little

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| <p style="text-align: right;">Page 23026</p> <p>1 building just off the intersection. That road was used as 2 forward holding area 1 and visible there at the 3 intersection is the vehicles of the mounted unit. And 4 further down, under the trees, along the road is the 5 vehicles of the crime scene managers as well as the 6 detectives. What we have with the convoy of vehicles – 7 CHAIRPERSON: There you're referring to 8 the extreme right-hand side of the screen are you? 9 GENERAL NAIDOO: That is correct, Chair. 10 On the left-hand side to the centre of the photograph the 11 column of vehicles that you see there is vehicles that are 12 deploying to immediate response area 1. We formed up there 13 and then we moved slowly until we came in line with the 14 power station. 15 SPEAKER: Chair, can I get to know 16 whether the General doesn't have a pointer so that, you 17 know, the areas he's indicating on picture can be pointed 18 out, just for us. 19 CHAIRPERSON: I'm sure Mr Pretorius can – 20 SPEAKER: Whatever it's called – 21 MR CHASKALSON SC: Major-General, I'm 22 reluctant to surrender my pointer, but maybe I can assist 23 if you guide me where to point. Let's start at the 24 crossroads which you say is forward holding area 1. I'm 25 marking it now, it's the crossroads just to the right of</p> | <p style="text-align: right;">Page 23028</p> <p>1 the field is up there. 2 MR CHASKALSON SC: Higher up where 3 vehicles are parked. 4 GENERAL NAIDOO: That's correct, Chair. 5 MR CHASKALSON SC: Where vehicles are 6 parked roughly between a half – a third of the way down the 7 right-hand side of the photograph. 8 GENERAL NAIDOO: That is correct, Chair. 9 CHAIRPERSON: Sorry, you referred earlier 10 to some trees and they are, as I understand it, on the 11 extreme right-hand side of the photograph. Again just 12 under halfway, or just over halfway down from the top of 13 the page, is that right? 14 GENERAL NAIDOO: Chair, yes opposite the 15 field where we have the three or so vehicles there is a few 16 trees there and that's where the detectives were located, 17 just across the road. 18 MR CHASKALSON SC: Chairperson, I have a 19 different difficulty which is that the Marikana Commission 20 of Inquiry banner prevents me from marking certain points 21 on the – Mr Pretorius shows us another screen in his – 22 CHAIRPERSON: The versatile Mr Pretorius 23 is showing different aspects of his versatility every day. 24 Thank you, Mr Pretorius, you've now cleared the way for Mr 25 Chaskalson to show us the trees.</p> |
| <p style="text-align: right;">Page 23027</p> <p>1 centre of the bottom of the picture. Is that the 2 crossroads that you say is forward holding area 1? 3 GENERAL NAIDOO: Chair, that's the start 4 of forwarding holding area 1. The area behind the 5 intersection was where the vehicles were normally parked 6 and the members were on standby. 7 MR CHASKALSON SC: Now when you say 8 behind do you mean down to the bottom of the photograph as 9 I'm marking now, to the bottom left or to the bottom right? 10 GENERAL NAIDOO: Chair, no to the centre 11 there's a little structure there, along the road, a little 12 way down the road on the other side. Ja, it was along that 13 road we had a deployment which was known as forward holding 14 area 1. We were not using the structure, that was a 15 private business. 16 MR CHASKALSON SC: So you parked the – 17 the usual parking position of the vehicles was on the 18 branch of the crossroads that heads off to the right-hand 19 side of the photograph. 20 GENERAL NAIDOO: And the field to the 21 right of that road as well. 22 MR CHASKALSON SC: And the field to the 23 right of the road that I'm marking now that has a sort of 24 white colouring to it. 25 GENERAL NAIDOO: No that's not the field,</p> | <p style="text-align: right;">Page 23029</p> <p>1 GENERAL NAIDOO: No, Chair, those are the 2 trees, yes. 3 MR CHASKALSON SC: I'm now marking the 4 trees roughly halfway up the right-hand side of the 5 photograph just to the left of the road. Now we've seen in 6 various statements in Afrikaans, reference to Die Groot 7 Kruis in relation to forwarding holding area 1. I presume 8 that would be a reference to this cross-roads at the base 9 of forward holding area 1. 10 GENERAL NAIDOO: Possibly, I'm not sure. 11 MR CHASKALSON SC: You didn't know that 12 term Groot Kruis in relation to forward holding area 1. 13 GENERAL NAIDOO: No, Chair, I'm English 14 speaking. 15 MR CHASKALSON SC: Now, if I understood 16 your evidence correctly you had suggested that this is the 17 line of vehicles that was on route from forward holding 18 area 1 to immediate reaction area 1. 19 GENERAL NAIDOO: That is correct, Chair. 20 MR CHASKALSON SC: Were they stationary 21 or moving, do you know if this is where they lined up 22 before they set off or whether this would have to be a 23 photograph of vehicles that are already moving? 24 GENERAL NAIDOO: Chair, we first lined up 25 and we ensured that everybody was in and then we proceeded</p> |

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1 a little more forward so that we were closer to the
 2 proximity of the power station.
 3 MR CHASKALSON SC: Now you were to go to
 4 – sorry if I can just clarify your answer to the last
 5 question. So what see now is this the position in which
 6 you lined up?
 7 GENERAL NAIDOO: Possibly, yes, Chair.
 8 MR CHASKALSON SC: What do you mean by
 9 possibly? Why would it not be the position in which you
 10 lined up?
 11 GENERAL NAIDOO: Chair, it was indicated
 12 that this was a video, so it could have been whilst in
 13 movement as well, I'm not sure. But as I indicated, this
 14 is we started, we lined up and then moved forward a little
 15 bit more until we were closer to the power station.
 16 MR CHASKALSON SC: And you lined up after
 17 you had given your briefing.
 18 GENERAL NAIDOO: That is correct, Chair.
 19 MR CHASKALSON SC: Okay so now we've
 20 clarified the starting position. If we can go to the end
 21 position, immediate reaction area 1 and for that if we can
 22 keep this slide to hand because we'll mark it in due
 23 course. But if I can first ask that MMM1 be called up.
 24 This is MMM1, the gridded map that you spoke to on Friday
 25 and you'll see there's a green box straddling squares B7

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1 and C7.
 2 GENERAL NAIDOO: That's correct, Chair.
 3 MR CHASKALSON SC: Now if we look at
 4 other slides from the time that is the box, that is the
 5 area that is designated immediate reaction area 1. For
 6 instance if we go to slide 148 it's labelled immediate
 7 response area 1.
 8 GENERAL NAIDOO: Correct, Chair.
 9 MR CHASKALSON SC: Can we call up slide
 10 148?
 11 CHAIRPERSON: This is exhibit L.
 12 MR CHASKALSON SC: Of exhibit L. So
 13 immediate response area 1 is right below the sub-station.
 14 GENERAL NAIDOO: Opposite the sub-
 15 station, correct, Chair.
 16 CHAIRPERSON: Below on the slide.
 17 GENERAL NAIDOO: Okay, Chair, that's
 18 correct.
 19 MR CHASKALSON SC: Is that what you
 20 understood, the location of immediate response area 1 to
 21 be?
 22 GENERAL NAIDOO: That is correct, Chair.
 23 MR CHASKALSON SC: And if we can then go
 24 back to the previous photograph which I think was JJJ10
 25 4534. So if you were moving, we're not going to, it's a

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1 bad one too.
 2 [10:19] You're not going to see the substation clearly
 3 enough on this one, I take that back. Let's go back to
 4 slide 148, I'm sorry. So if you were moving from forward
 5 holding area 1 which I'm marking now with the pointer just
 6 to the left of the little truck icon that says FHA1, to
 7 immediate response area 1, the green box is where you
 8 would've taken your convoy to.
 9 GENERAL NAIDOO: Approximately, yes,
 10 Chair.
 11 MR CHASKALSON SC: And you knew that
 12 position and that is the position to which you intended to
 13 take your convoy.
 14 GENERAL NAIDOO: That is correct, Chair.
 15 MR CHASKALSON SC: And when in your
 16 statement you describe the point at which you brought your
 17 convoy to a halt at immediate response area 1, is that
 18 broadly in the area of the green box?
 19 GENERAL NAIDOO: Chair, just before the
 20 green box. As I indicated in my evidence that there's a
 21 little road running before the power station so I used that
 22 as a marker as to where the convoy started.
 23 MR CHASKALSON SC: Started or stopped?
 24 GENERAL NAIDOO: Started, Chair.
 25 MR CHASKALSON SC: Started at what point?

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1 They originally started at forward holding area 1.
 2 GENERAL NAIDOO: Chair, when I say
 3 started I mean the first vehicle of the convoy was just
 4 opposite that road.
 5 MR CHASKALSON SC: But at what point? If
 6 we can now go back to JJJ, if we can go back to that
 7 preceding photograph. Now, here is your convoy. At this
 8 point the first vehicle is being marked now. It's probably
 9 a full kilometre away from the point that you marked as the
 10 road around, the road in front of the power station which
 11 is broadly in the area which I'm marking now, up at the top
 12 left-hand corner of the photograph. So when you say the
 13 front of the convoy started there, was that before or after
 14 you had moved it from forward holding area 1?
 15 GENERAL NAIDOO: Chair, I'm not sure,
 16 Chair, whether we're talking about the same power station.
 17 If my recollection is correct the power station is just
 18 opposite the smelter. What we have in the distance there
 19 is the informal settlement.
 20 MR CHASKALSON SC: Chair, if we can go
 21 back to slide 148 you'll see, Major-General, that you're
 22 slightly confused. Here is where your starting position
 23 was.
 24 GENERAL NAIDOO: That's correct.
 25 MR CHASKALSON SC: There is a very small

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1 substation here.

2 GENERAL NAIDOO: That's correct.

3 MR CHASKALSON SC: Which is the one that

4 we can see clearly in the photograph we've just been

5 looking at.

6 GENERAL NAIDOO: Yes.

7 MR CHASKALSON SC: When I say - for the

8 purposes of the record, I'm now marking a grid which is

9 approximately 40% of the way across from the left hand side

10 of the page towards the bottom of the page but above the

11 road.

12 GENERAL NAIDOO: Chair, correct. Now -

13 MR CHASKALSON SC: So the immediate

14 response area is right underneath the big power station -

15 GENERAL NAIDOO: The second one, that's

16 correct.

17 MR CHASKALSON SC: The second one.

18 GENERAL NAIDOO: That's correct.

19 MR CHASKALSON SC: And so where, when you

20 indicate the green box - sorry, not when you indicate the

21 green box, when I indicate the green box immediate response

22 area, is that where you took your convoy to and the road

23 that would go round it I'm marking now, which is just to

24 the right of the green box, is that where you parked the

25 front of your convoy?

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1 GENERAL NAIDOO: That is correct, Chair.

2 CHAIRPERSON: May I make a suggestion,

3 that we take the tea adjournment now. If it's necessary

4 for the witness during the tea adjournment to look at the

5 video, because you'll remember he was shown one section of

6 the video, one clip really, frame I suppose from the video,

7 if it's necessary for him to look at it to orient himself

8 or to elaborate, he can do so. It won't hold up the

9 proceedings as we, the rest of us will be having tea. Is

10 that convenient, Mr -

11 MR CHASKALSON SC: Mr Chairperson, I

12 think I've been misunderstood. It's a video compilation

13 but the photograph that I show is not part of the video.

14 It's a discreet photograph which is spliced into a

15 succession of photographs so the witness will see no more

16 than what we've seen already.

17 CHAIRPERSON: Presumably on the other

18 ones into which it's been spliced, you'll see the column in

19 other positions, will you?

20 MR CHASKALSON SC: Unfortunately not. I

21 looked very hard for this purpose.

22 CHAIRPERSON: I see. Anyway, we'll take

23 the tea adjournment now. If there's anything the witness

24 wants to look at in order to elaborate on his evidence so

25 far, he's at liberty to do so. Quarter of an hour.

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1 [COMMISSION ADJOURNS COMMISSION RESUMES]

2 [11:10] CHAIRPERSON: The commission resumes.

3 Last week we indicated that applications for leave to

4 cross-examine this witness have to be made by the end of

5 Friday. We've received only two applications. It's

6 possible that other parties intend to reply and haven't

7 done so because for some reason or other they hadn't

8 realised that the applications had to be made by the end of

9 Friday. In the circumstances I'm prepared to extend the

10 period until tomorrow morning first thing. But I want to

11 make it clear that in future that those time limits will be

12 strictly adhered to. You're still under oath, General.

13 GENERAL NAIDOO: Still under oath, Chair.

14 CHAIRPERSON: Mr Chaskalson?

15 MR CHASKALSON SC: General, just to pick

16 up where we left off and if we can call up slide, just call

17 up MMM1 and just to confirm that the green box represents

18 immediate response area, you were taking your convoy to the

19 road just to the right of the green box which is roughly in

20 the middle of block C7.

21 GENERAL NAIDOO: That is correct, Chair.

22 MR CHASKALSON SC: And you reached that

23 destination from immediate reaction area 1 which I'm

24 marking at the intersection, on the line between I7 and J7.

25 GENERAL NAIDOO: Chair, forward holding

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1 area 1.

2 MR CHASKALSON SC: Sorry forward holding

3 area 1, I apologise for the imprecision. But you confirm

4 you confirm that that is correct, you moved from forward

5 holding area 1 to immediate reaction area 1 where I've

6 marked it?

7 GENERAL NAIDOO: That's correct, Chair.

8 MR CHASKALSON SC: Now this movement of

9 the convoy was it a direct movements, did you have any

10 stops on route or did you move continuously?

11 GENERAL NAIDOO: Chair, as I indicated we

12 first had to form up and the vehicles moved forward until

13 everybody was in place and then we moved forward slowly

14 until we came to the point I indicated as immediate

15 response area 1 and that's where we stopped. So it's

16 possible that we would have slowed down and stopped to make

17 sure that everybody was accommodated.

18 MR CHASKALSON SC: When you were forming

19 up or in the course of the movement itself?

20 GENERAL NAIDOO: Forming up, Chair.

21 MR CHASKALSON SC: But once you formed up

22 and started moving, once the convoy was moving it moved

23 continuously to the end point that you've marked at, that

24 you've identified at C7?

25 GENERAL NAIDOO: As far as I can recall,

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1 yes, Chair.
 2 MR CHASKALSON SC: And you say you moved
 3 slowly, could you estimate the speed for us?
 4 GENERAL NAIDOO: Under 40 ks, possibly 20
 5 plus ks.
 6 MR CHASKALSON SC: Did you say under 40?
 7 GENERAL NAIDOO: Yes, Chair.
 8 MR CHASKALSON SC: And you're clear you
 9 were under 40?
 10 GENERAL NAIDOO: I would, I would
 11 estimate it, I was not driving, Chair, I was a passenger.
 12 MR CHASKALSON SC: Now the purpose of
 13 moving the convoy to immediate response area 1 was to be
 14 able to provide assistance quicker, because it was closer
 15 to where the action would be, is that correct?
 16 GENERAL NAIDOO: That is correct, Chair.
 17 MR CHASKALSON SC: And in your evidence
 18 on Friday you indicated that least in relation to the
 19 medical services in that convoy you had very specific
 20 obligations in that regard. If I can take you to what you
 21 said at page 22977 of the record, when you were explaining
 22 why you chose to move into koppie 3 without a request from
 23 Brigadier Calitz, 22973, sorry 229 double 7, 22977. The
 24 easiest way to get there is with a search function. It may
 25 be that Friday's transcript hasn't made its way to the

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1 video –
 2 CHAIRPERSON: I suspect so because what
 3 we were seeing on the screen was passages or consisted of
 4 passages, several hundred pages earlier than the passage to
 5 which you, the page to which you refer.
 6 MR CHASKALSON SC: Brigadier, let me read
 7 what you said and if you, if you need it to be called up so
 8 that you can see it yourself we can arrange to have a file
 9 copied over to the video people. Your counsel had asked
 10 you to comment on criticism that you had forward holding
 11 area 1, you ought not to have moved to koppie without the
 12 command of Brigadier Calitz. I'm reading from 22977 line
 13 10. You say "Chair, Mr Semenya says what's your reaction
 14 and your answer is, in terms of my responsibility for the
 15 deployment of tactical units for a particular thing there
 16 would normally be an instruction to engage. However in
 17 this instance the deployment that we had was responsible
 18 for provision of emergency services, medical and fire and
 19 there's an international expectation everywhere where in
 20 such situations arise that we would respond as the
 21 authorities appropriately to ensure that people receive the
 22 treatment and services they require and it was quite
 23 clearly, quite clear on the radio conversation that
 24 Brigadier Calitz was not aware of this until Colonel
 25 Vermaak raised the issue and raised the need for emergency

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1 services to respond". So are you happy, would you like
 2 that passage in text in front of you or can I just put to
 3 you how I paraphrase, I understand your evidence.
 4 GENERAL NAIDOO: Chair, I'd prefer to
 5 have the text. I have the transcript in front of me, if I
 6 could get the specific page.
 7 MR CHASKALSON SC: 22977.
 8 GENERAL NAIDOO: Okay, I have it.
 9 MR CHASKALSON SC: Your answer is from
 10 line 16, that's the answer I'm interested in.
 11 GENERAL NAIDOO: That's correct.
 12 MR CHASKALSON SC: So if I understand
 13 your evidence correctly that you perceived the situation to
 14 be that for whatever reason Brigadier Calitz wasn't
 15 calling, wasn't taking steps to ensure that the medics
 16 could get to scene 1, for whatever reason, let's not
 17 speculate as to why. You had an obligation to get the
 18 medical services to scene 1 as quickly as possible and a
 19 duty to do everything within your power to facilitate that
 20 process and that's why you moved into koppie 3?
 21 GENERAL NAIDOO: Chair, yes the need for
 22 the medical came over the radio via Colonel Vermaak,
 23 initially indicating that people were down. I think later
 24 he even counted how many people. So that gave me the
 25 indication that the medical emergency was required.

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1 MR CHASKALSON SC: And that was the
 2 single most important duty that you carried at that time?
 3 Everything else that you did, sorry I interrupted you.
 4 GENERAL NAIDOO: That's my primary duty
 5 at that time, correct.
 6 MR CHASKALSON SC: And everything else
 7 that you had to do, had to be done with a view to
 8 discharging that primary duty?
 9 GENERAL NAIDOO: That is correct, Chair.
 10 MR CHASKALSON SC: Now I saw in your
 11 statement in paragraph 8 that you had some experience in
 12 commanding emergency services in multi disciplinary force
 13 operations.
 14 GENERAL NAIDOO: Chair, yes, the
 15 emergency services invariably form part of operations,
 16 especially in the visible policing environment.
 17 MR CHASKALSON SC: And have you ever had
 18 any training yourself in basic emergency treatment or first
 19 aid?
 20 GENERAL NAIDOO: No, Chair.
 21 MR CHASKALSON SC: So those training
 22 courses that you list in paragraph 15 of your statement,
 23 the list of the training courses you've done through SAPS,
 24 do none of them even involve a basic training in emergency
 25 services, sorry emergency treatment?

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1 GENERAL NAIDOO: Not to my knowledge.
 2 Although I would remember possibly in basic training where
 3 we were taught the elementary issues on first aid.
 4 MR CHASKALSON SC: That's what I'm
 5 talking about. I'm talking about basic training in first
 6 aid in an emergency situation.
 7 GENERAL NAIDOO: Elementary training,
 8 yes. It forms part of police basic training.
 9 MR CHASKALSON SC: And what you recall
 10 from that training?
 11 GENERAL NAIDOO: Chair, it was more than
 12 30 years ago. Basically stabilising a person that has been
 13 injured with a broken limb, etcetera, using a splint, CPR,
 14 just basic indication of what these things where and what
 15 could be done by a police official.
 16 MR CHASKALSON SC: The use of tourniquets
 17 to stop bleeding?
 18 GENERAL NAIDOO: It's possible, I can't
 19 specifically remember.
 20 MR CHASKALSON SC: If you were in an
 21 operation with a colleague and the colleague next to you
 22 got shot would you be in a position to administer basic
 23 first aid to that colleague?
 24 GENERAL NAIDOO: I would do what I could,
 25 yes. I would have to do what I could.

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1 MR CHASKALSON SC: I know you'd do what
 2 you could but would you have any knowledge as to what to
 3 do, I mean if I was in that situation I'd like to do what I
 4 could but I'm not sure if it would be very helpful. Would
 5 you be in a better situation then I would be?
 6 GENERAL NAIDOO: I don't think I would be
 7 much better than any other layman. As I've indicated the
 8 instruction we received was of a very basic nature. I
 9 think more sensitising on what could be done rather than
 10 training us to do whatever it is.
 11 MR CHASKALSON SC: As an aside do you not
 12 think that it's appropriate that every police officer ought
 13 to receive some basic training in emergency medicine and
 14 emergency treatments so that they are confident that they
 15 know what to do in a situation where a colleague or a
 16 member of the public is shot in front of them?
 17 GENERAL NAIDOO: Chair, as I indicated
 18 some of these aspects are covered in basic training and
 19 this more advanced or more specific knowledge is covered in
 20 in service training where people are specially called up
 21 for a specific cause and police officials are trained up to
 22 level 3. We had for instance one of the officers that was
 23 deployed at the incident who was a trained first aider up
 24 to level 3, that's Lieutenant Colonel, the negotiator.
 25 MR CHASKALSON SC: MacIntosh?

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1 GENERAL NAIDOO: That's correct, he was
 2 one of the people that went for the special, the specific
 3 training. We have members like that. So aside from the
 4 basic training that's given as part of your training, basic
 5 training they are specialised based on the tasks and
 6 responsibility of the people which are conducted.
 7 MR CHASKALSON SC: And is there any
 8 protocol or system within the SAPS to ensure that within
 9 tactical units in particular, where the risk of trauma
 10 injuries is highest I would imagine either to, the members
 11 ought to, people against whom the members are acting, that
 12 within those units there is training in emergency
 13 treatment?
 14 GENERAL NAIDOO: Chair, as I indicated I
 15 can't remember specifically when, if or where in policy is
 16 contained but I am aware that based on the tasks, the
 17 responsibilities of the various units, members are trained
 18 and the example I gave was one that I knew, I realised that
 19 he was trained from the emblem that he wore, that he was a
 20 trained paramedic or first aider, I'm not sure which one.
 21 MR CHASKALSON SC: But if NIU section
 22 goes into a tactical situation where there's a higher than
 23 normal risk of gunshot injury, either to themselves to,
 24 people against whom they operate is it not standard
 25 practice to have someone with in, to ensure that someone

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1 within that unit will be able to take the necessary
 2 emergency treatment steps if there is a gunshot injury?
 3 GENERAL NAIDOO: I'm sure that would be
 4 an advisable thing. However I'm not aware whether it is a
 5 written policy as we do work in an integrated fashion with
 6 the emergency services in most of our operations. So I'm
 7 not sure whether it's a policy but we do as a matter of
 8 practice try to train people based on their requirements of
 9 the job. So if that was a requirement yes people would be
 10 trained.
 11 MR CHASKALSON SC: One of the things,
 12 this Commission has to consider at the end is
 13 recommendations. Do you think a recommendation that
 14 tactical units should have within them personnel trained in
 15 the, at first level emergency care operative level would be
 16 a sensible recommendation?
 17 GENERAL NAIDOO: I think it's something
 18 all police officials, we normally arrive first at a scene
 19 of a crime or a scene of an incident and we're expected to
 20 do something and very often, yes not everybody is trained.
 21 So however the skill requirements and all the requirements
 22 to be such a person would have to be taken into
 23 consideration before such a decision but yes it would be
 24 desirable that we have more people to assist our own
 25 members plus members of the public.

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1 MR CHASKALSON SC: Well moving from the
 2 hypothetical and the desirable to your personal knowledge.
 3 You've mentioned the basic training you've received 30
 4 years or so ago. Either from that training or from your
 5 experience of commanding emergency services in the context
 6 of operations have you ever heard of the term the golden
 7 hour in the context of emergency treatment? The golden
 8 hour.
 9 GENERAL NAIDOO: It's possible I can't
 10 indicate whether I specifically remember no.
 11 MR CHASKALSON SC: So if I were to ask
 12 you what the golden hour is you wouldn't be able to answer
 13 me?
 14 GENERAL NAIDOO: I would it it's got
 15 something to do with time.
 16 MR CHASKALSON SC: Can't fault you there,
 17 Major-General.
 18 CHAIRPERSON: That sounds a safe
 19 assumption, General.
 20 GENERAL NAIDOO: Yes.
 21 MR CHASKALSON SC: Well let me put the
 22 question to you differently. Have you ever been informed
 23 or briefed about the need of getting emergency services to
 24 victims of gunshot injuries and other trauma victims as
 25 quickly as possible, about how time is absolutely of the

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1 essence in that situation?
 2 GENERAL NAIDOO: I think from my lay
 3 perspective it's necessary for any medical emergency to get
 4 the relevant personnel there as soon as possible. That's
 5 how I perceive it, yes.
 6 MR CHASKALSON SC: If we continue then to
 7 your movements on the day. Your evidence on Friday was
 8 that you had reached immediate reaction area 1 before the
 9 shootings, do you recall that?
 10 GENERAL NAIDOO: That's correct.
 11 MR CHASKALSON SC: And I now, you've said
 12 earlier that you estimated that the movement of the convoy
 13 would have been round about 3:30 shortly after 3:30 in the
 14 context of when we discussed the briefing. I'd like go to
 15 your cell phone calls to see if we can pin it down a little
 16 bit more specifically with reference to some of the
 17 possibly more easily rememberable calls that you made and
 18 if we can go to MMM4 on page 6 at 15:46 and you'll see that
 19 at 15:46:27 you made a 36 second call to Major-General
 20 Mpmembe.
 21 GENERAL NAIDOO: That's correct, Chair.
 22 MR CHASKALSON SC: Do you have any
 23 recollection of what that call was about?
 24 GENERAL NAIDOO: Chair, I can recall that
 25 I didn't get him because he's phone went into voicemail. I

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1 can recall that much.
 2 MR CHASKALSON SC: Can you recall why you
 3 wanted to get him?
 4 GENERAL NAIDOO: Chair, as I indicated I
 5 was busy parallel to this facilitating the memorial service
 6 and the funeral of the members that had been killed on
 7 Monday. So it's possibly linked to that.
 8 MR CHASKALSON SC: So you think that this
 9 is a, if you were to, well you don't think that was a call
 10 about Marikana itself?
 11 [11:29] GENERAL NAIDOO: Chair, I know didn't
 12 speak to him and the reason that I was communicating at
 13 that stage with so many people from the HR environment was
 14 to facilitate, and supply chain, was to facilitate the
 15 arrangements.
 16 MR CHASKALSON SC: Now would you be able
 17 to place that call relative to when you arrived at
 18 immediate reaction area 1?
 19 GENERAL NAIDOO: Not specifically, Chair.
 20 MR CHASKALSON SC: Presumably you
 21 wouldn't have made that call after the shootings.
 22 GENERAL NAIDOO: No, possibly yes – no, I
 23 would have remembered that.
 24 MR CHASKALSON SC: Okay.
 25 CHAIRPERSON: I think it goes further

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1 than that. I mean I understand the funeral arrangements
 2 had to be made but surely once the shootings had taken
 3 place there were more urgent matters that you had to deal
 4 with, as a matter of priority.
 5 GENERAL NAIDOO: That's my assumption as
 6 well, Chair.
 7 MR CHASKALSON SC: Let's go a little
 8 lower down.
 9 GENERAL NAIDOO: Chair.
 10 MR CHASKALSON SC: 15:49:54.
 11 GENERAL NAIDOO: Yes, Chair.
 12 MR CHASKALSON SC: There's a call of
 13 essentially two minutes, 119 seconds, to Brigadier Calitz
 14 that you make.
 15 GENERAL NAIDOO: That's correct, Chair.
 16 MR CHASKALSON SC: Do you recall that
 17 call?
 18 GENERAL NAIDOO: Chair, similarly, like
 19 General Mpmembe, I called and people were not answering
 20 their phones, it was ringing. General Mpmembe specifically
 21 went into voicemail. Brigadier Calitz's initial call rang
 22 for some time and then went into voicemail and I could not
 23 get him in the end as well.
 24 MR CHASKALSON SC: Major-General, I think
 25 you may be confusing two calls there because there is a

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1 call at 15:53:31 that went to Brigadier Calitz's voicemail.
 2 GENERAL NAIDOO: Yes.
 3 MR CHASKALSON SC: But if I understand
 4 Brigadier Calitz's cell phone records correctly, the 119
 5 second call did not go to voicemail. Indeed if it did go
 6 to voicemail you would have had to have left a message for
 7 two minutes for it to be 119 seconds.
 8 GENERAL NAIDOO: Possibly, or never cut
 9 the call, but as I indicated I specifically did not speak
 10 to Brigadier Calitz on both the occasions that I tried to
 11 get him.
 12 MR CHASKALSON SC: There's no record of a
 13 call going to voicemail on that 15:49:54 call. It didn't
 14 go to voicemail, it was answered or it was at least – yes,
 15 it was answered, it would have to have been answered if it
 16 didn't go to voicemail and it reflected like this.
 17 CHAIRPERSON: I take it if one looks at
 18 column E on this exhibit in relation to the call at – the
 19 following call, the subsequent call, there you see the word
 20 "voicemail" appears. So I take it that's an indication,
 21 that relates to the call at 15:53:31, 12 seconds.
 22 MR CHASKALSON SC: Chairperson, that's
 23 just my annotation on the record –
 24 CHAIRPERSON: That's your annotation –
 25 MR CHASKALSON SC: It doesn't take it

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1 further than the records, than my –
 2 GENERAL NAIDOO: I was going to say,
 3 Chair, that twice that I tried to get hold of General
 4 Mpembe the voice went, the telephone went into voicemail
 5 and it's not indicated there either.
 6 MR CHASKALSON SC: I haven't done an
 7 exhaustive check of the voicemails to see which ones did go
 8 to voicemail and which ones didn't but I know that the –
 9 but I have looked at 15:49:54 and 15:53:31 and the one is
 10 reflected as going to voicemail, the other is not.
 11 CHAIRPERSON: You see if the second call,
 12 the one at 15:53:31 went to voicemail, there we see that
 13 the conversation or the call, there wasn't a conversation,
 14 the call took 12 seconds. Now the previous one at 15:49:54
 15 was 119 seconds. Now are you saying that you dictated a
 16 message into his voicemail for two minutes?
 17 GENERAL NAIDOO: No, Chair. As I
 18 indicated, it rang. As in the case of General Mpembe I did
 19 not leave a message. It rang for some time and then I cut
 20 the call. I did not speak to anybody at that particular
 21 time.
 22 CHAIRPERSON: I still don't understand
 23 why, in the case of the following call, it's reflected as
 24 only lasting 12, 12 seconds. Now in the one case did it
 25 ring for two minutes and then you terminate it without

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1 speaking and the second one did it last for 12 seconds
 2 before the voicemail kicked in? I'm sorry, I don't
 3 understand.
 4 GENERAL NAIDOO: Chair, possibly it went
 5 straight to voicemail, I'm not sure. I can't at this stage
 6 specifically remember but as I indicated, at both occasions
 7 when I tried to get hold of him I could not get him.
 8 MR CHASKALSON SC: Major-General, the
 9 Vodacom cell records distinguish between a call which is
 10 received and a call which goes to voicemail and is then
 11 forwarded to voicemail.
 12 GENERAL NAIDOO: Okay.
 13 MR CHASKALSON SC: A call that is
 14 received has the indication MTC. So where it has MTC on
 15 your records, that's a call that you received. Calls that
 16 go to voicemail have CF on them. I notice that your
 17 records don't have any CFs on them which suggests to me
 18 that you didn't have your voicemail activated on the period
 19 14 to 16 August, but Brigadier Calitz did and the 12 second
 20 call at 15:53:31 is a CF call when we look at his records,
 21 it was forwarded to voicemail. The two minute call at
 22 15:49:54 is an MTC call which means it was received by him.
 23 How do you explain that?
 24 GENERAL NAIDOO: Chair, I'm not familiar
 25 with the technical jargon. What I can indicate is I did

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1 try to call him on two occasions and I did not get him on
 2 both occasions.
 3 MR CHASKALSON SC: But Major-General,
 4 there's a difference. When it goes to his voicemail it
 5 will say something like, this is Brigadier Calitz, please
 6 leave a message for me over the tone.
 7 GENERAL NAIDOO: That's correct.
 8 MR CHASKALSON SC: When it doesn't go to
 9 his voicemail it won't say that. So if you make a call
 10 that is reflected on the Vodacom records as MTC, you'll
 11 know that it hasn't gone to voicemail.
 12 GENERAL NAIDOO: Chair, as I indicated,
 13 the first call rang for a long time, that is what I can
 14 remember.
 15 CHAIRPERSON: Sorry, I don't understand
 16 that either. Four minutes later when there was a call his
 17 voicemail kicked in, if that's the correct word.
 18 GENERAL NAIDOO: Immediately, yes Chair.
 19 CHAIRPERSON: It didn't four minutes
 20 earlier at 15:49?
 21 GENERAL NAIDOO: It rang.
 22 CHAIRPERSON: I don't understand that.
 23 GENERAL NAIDOO: I don't know the
 24 technical aspects, Chair, but that's what happened.
 25 MR CHASKALSON SC: You see, Major-

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1 General, what would've happened on these calls if you
 2 didn't speak to Brigadier Calitz, would've been that you
 3 would have called and for this to have happened he would
 4 have to have pressed the receive button on his cell phone.
 5 So even if you didn't speak to him, you would've heard a
 6 loud noise or whatever was going on inside the Nyala, you
 7 would have heard that the call had gone through.
 8 MR SEMENYA SC: Chair, I don't know
 9 whether this is expert opinion correct. It seems to move
 10 from a premise of logic, logic.
 11 CHAIRPERSON: Yes. Well, of course if
 12 necessary we'll have to have an affidavit I suppose from
 13 Vodacom, explaining how these things work. At the moment
 14 Mr Chaskalson is putting what he understands to be the
 15 position. If it's challenged by the SAPS, only if it's
 16 challenged by the SAPS will it be necessary to have an
 17 affidavit from Vodacom explaining it.
 18 MR CHASKALSON SC: I stand by my
 19 proposition to you, Major-General, which is for the call to
 20 reflect on Brigadier Calitz's cell phone as an MTC call as
 21 opposed to a CF call, a call forwarding call, it would have
 22 to have been answered by Brigadier Calitz, whether
 23 deliberately or unintentionally, which means you on the
 24 other side would have had to have heard something for 119
 25 seconds that wasn't voicemail.

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1 GENERAL NAIDOO: Chair, I'm not in a
 2 position to address what the advocate is indicating but I
 3 can say yes, I did call Brigadier Calitz, however I did not
 4 get him.
 5 CHAIRPERSON: We've heard your evidence
 6 on the point. If there's an affidavit from Vodacom along
 7 the lines that supports what Mr Chaskalson has put to you,
 8 then certain inferences may be drawn. If there isn't such
 9 an affidavit, they won't be.
 10 COMMISSIONER HEMRAJ: Mr Chaskalson, if
 11 the recipient is busy on a call and a second point is put
 12 on hold or waiting, is it shown as an incoming call on the
 13 record?
 14 MR CHASKALSON SC: The call has to be
 15 completed. In other words, it has to be answered at the
 16 second side to be reflected as an MTC call.
 17 COMMISSIONER HEMRAJ: Even if it's put on
 18 hold? If that second call is -
 19 MR CHASKALSON SC: Well, if it's answered
 20 and immediately put on hold then it would but then you
 21 would have the cell phone message, "Your call has been
 22 placed on hold, your call has been placed on hold" playing
 23 through. The call has to be completed to the phone as
 24 opposed to voicemail for this message, for this
 25 classification to present itself.

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1 CHAIRPERSON: As I've said, this is a
 2 matter that presumably can be cleared up by an affidavit
 3 from Vodacom unless the police, after they've investigated
 4 the matter, are satisfied with what Mr Chaskalson is
 5 putting, in which case there can be some kind of agreement
 6 but if there isn't such an agreement and Vodacom don't come
 7 up with an affidavit along the lines that Mr Chaskalson has
 8 put to you, well, then the point will fall away but if they
 9 do then other considerations may operate.
 10 GENERAL NAIDOO: Thank you, Chair.
 11 MR CHASKALSON SC: I'm still interested
 12 in why you were trying to contact Brigadier Calitz. Do you
 13 recall that?
 14 GENERAL NAIDOO: Chair, I think at that
 15 particular time we probably heard on the radio, I
 16 specifically remember, can't specifically remember but at
 17 that time we were hearing about dispersal, et cetera. I
 18 was trying to establish what was the situation because
 19 initially there was - no, initially there was an indication
 20 that dispersal would take place at 15:30, which did not
 21 happen, and I could have - two things, I can't specifically
 22 remember, one possibly would have been to check what is the
 23 delay and the second one was probably once the tactical
 24 intervention took place there were on the radio
 25 conversations that the police were under attack, et cetera.

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1 I'm not sure, I won't say which is which but ja, that was
 2 the things that probably led to my conversation or my
 3 attempted conversation with Brigadier Calitz.
 4 MR CHASKALSON SC: You see, Major-
 5 General, that's what I had inferred as well but I'd
 6 actually inferred it slightly differently. It struck me
 7 that the call to Major-General Mpembe at 15:46 may well
 8 have been to find out from the overall commander why the
 9 operation hadn't started. Is that a possibility?
 10 GENERAL NAIDOO: Possibility, but I can't
 11 specifically remember that. As I indicated, I was also at
 12 the same time engaged in some parallel activities, yes.
 13 CHAIRPERSON: I take it you - I mean
 14 you're expecting something to happen at 15:30 and you
 15 presumably knew that you had to be ready to do what you
 16 were supposed to do at some stage thereafter. I can
 17 understand you were busy arranging the funeral as well but
 18 still, 15:30 was the time when you expected that those
 19 arrangements would have to stop. I would have, I must say
 20 I would've expected you to have been on the lookout, shall
 21 we say, for some development after 15:30. I'm not saying
 22 it doesn't mean you wouldn't have gone on arranging the
 23 funeral but you would've been on the lookout for something.
 24 When you get to 15:49 you say, I would imagine you would've
 25 thought this is a bit funny now, this is something like 20

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1 minutes, nothing has happened, what's going on? And I
 2 would have, I must tell you I would have expected you to
 3 have made some enquiry but it's just a prima facie view.
 4 It may be incorrect, perhaps you can help me to deal with
 5 that aspect of the matter.
 6 GENERAL NAIDOO: Yes, Chair, could I – as
 7 I indicated, or what we have not actually put into,
 8 factored in here, there was a continuous stream of radio
 9 conversation which was indicated that, you know, the union
 10 leaders were still at the koppie, et cetera. So the delay
 11 would have been known to everybody because there was an
 12 indication that the union leaders were at that koppie but
 13 after they've departed obviously yes, we would want to –
 14 CHAIRPERSON: You see there was,
 15 according to the occurrence book there was a report by
 16 Brigadier Calitz to the effect that – reporting effectively
 17 what had happened in relation to Mr Mathunjwa and saying
 18 that he left, I think. Now Mr Chaskalson will presumably
 19 be able to tell us what time that report was but it was on
 20 the radio, and heard by the people in the JOC and recorded
 21 in the OBB, you would have heard it as well.
 22 GENERAL NAIDOO: That's correct, Chair.
 23 MR CHASKALSON SC: You see what struck me
 24 as interesting about your two minute call to Brigadier
 25 Calitz, is that call ends at just about the time that

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1 Brigadier Calitz starts moving his Nyala from its position
 2 where it was next to the mast in front of the koppie. So I
 3 was very interested to find out what you'd been talking
 4 about. You say you hadn't been talking at all.
 5 GENERAL NAIDOO: That's correct, Chair.
 6 MR CHASKALSON SC: Let's go to the next
 7 one. At 15:53:31, which roughly corresponds to the time of
 8 the shootings, there's another call to Brigadier Calitz.
 9 This one goes to voicemail.
 10 GENERAL NAIDOO: Correct, Chair.
 11 MR CHASKALSON SC: After 12 seconds. Is
 12 it not – can you remember what that call was about?
 13 GENERAL NAIDOO: It's possibly in
 14 response to the shooting, I cannot specifically remember.
 15 MR CHASKALSON SC: It seems to me a very
 16 logical response that if you had heard shootings and you
 17 had heard shootings, would you not have wanted to phone the
 18 operational commander to get a report on what had happened?
 19 GENERAL NAIDOO: That would be the
 20 logical conclusion.
 21 MR CHASKALSON SC: Now the calls to
 22 Brigadier Calitz, are you able to recall whether you made
 23 them from the position where you had stopped at immediate
 24 reaction area 1 or before that or after that?
 25 GENERAL NAIDOO: I would say, yes, on

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1 that road, we were on that road.
 2 MR CHASKALSON SC: Well, at – on, not
 3 just on the road but where you had stopped at just in front
 4 of the power station at immediate reaction area 1.
 5 GENERAL NAIDOO: Chair, I would not be
 6 able to say exactly where I was in terms of [inaudible] but
 7 I can say yes, we were at that stage either at or almost at
 8 the immediate response area 1, probably at.
 9 MR CHASKALSON SC: And you know that you
 10 were at immediate response area 1 when you heard the
 11 shootings.
 12 GENERAL NAIDOO: That's correct.
 13 MR CHASKALSON SC: Now, you deal – sorry,
 14 before we get there. Can you describe to me where you were
 15 in this convoy? It's a particularly large convoy. I think
 16 it's 25 or 26 vehicles. Were you at the front, the back,
 17 the middle?
 18 GENERAL NAIDOO: Chair, I was in the
 19 front. I did go down the convoy once or twice just to make
 20 sure that everybody was fine but yes, we were at the front
 21 of the convoy.
 22 MR CHASKALSON SC: No, when you say you
 23 went down the convoy once or twice to see that everyone was
 24 fine, was that before the convoy left or while the convoy
 25 was moving?

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1 GENERAL NAIDOO: Chair, I would say while
 2 the convoy was moving and after we came to a halt I did
 3 alight from the vehicle, I was on foot.
 4 MR CHASKALSON SC: So while the convoy
 5 was moving you took your car as it were to let it be passed
 6 by the convoy, just to check that the convoy was in order.
 7 GENERAL NAIDOO: Yes, Chair.
 8 MR CHASKALSON SC: And then after the
 9 convoy had stopped at immediate reaction area 1, you got
 10 out on foot to check that everything was in order.
 11 GENERAL NAIDOO: Well, Chair, I was – as
 12 you could see, I was on my phone and yes, listening to the
 13 radio, but I was outside the vehicle.
 14 MR CHASKALSON SC: When you say you were
 15 listening to the radio, was that a radio inside the vehicle
 16 or was it a hand-held radio?
 17 GENERAL NAIDOO: A hand-held radio which
 18 I had with me.
 19 MR CHASKALSON SC: And did you have that
 20 hand-held radio for the whole operation on the day, or
 21 going forward at any rate?
 22 GENERAL NAIDOO: That's correct.
 23 MR CHASKALSON SC: And I just want to get
 24 clarity on what you mean when you say you alighted from the
 25 vehicle and on foot checked that the convoy was in order.

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1 Did you physically walk down the full length of the convoy
 2 or did you just get out of the vehicle and take a look?
 3 GENERAL NAIDOO: No, Chair, I just got
 4 out of the vehicle, took a look, I think I walked to the
 5 first two or three vehicles and spoke to the members. One
 6 of the vehicles was the commander of the canine.
 7 MR CHASKALSON SC: Would that be Colonel
 8 Mopedi?
 9 GENERAL NAIDOO: That is correct.
 10 MR CHASKALSON SC: Can you recall whether
 11 you were in the vehicle or out of the vehicle when you
 12 heard the shooting?
 13 GENERAL NAIDOO: I think I was outside
 14 the vehicle, Chair.
 15 MR CHASKALSON SC: You say you think you
 16 were outside the vehicle?
 17 GENERAL NAIDOO: I – yes, as far as I can
 18 recall.
 19 [11:49] MR CHASKALSON SC: Now, in your evidence-
 20 in-chief you described the gunshots as “quite loud to us.”
 21 Let me actually read your evidence, it’s page 22909, if you
 22 can go to 22909 and if I can just pick it up at the end of
 23 the first line, “We heard a few stun grenades and we heard
 24 activity of vehicles moving. Obviously we’d not have heard
 25 the firing of rubber because it does not make a loud

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1 detonation and a little after the conversation,” you’re
 2 talking about the conversation where the negotiation group
 3 is saying it’s coming under attack, “a little after the
 4 conversation whilst the conversation was on, we heard a
 5 shot volley of live ammunition and that’s the unexpected
 6 gunfire which we heard.” “How loud was that?” You say,
 7 “It was quite loud because as the crow flies we’re not too
 8 far away from where these things happened so it was quite
 9 loud.” “And lasting how long?” “A few seconds. It was
 10 not a continuous thing, it’s just a few seconds. There
 11 were a volley and a few stuttered shots after that as
 12 well.”
 13 CHAIRPERSON: Yes, I think there are two points
 14 about the transcript. The reference to the shot volley
 15 earlier is presumably short and the “stuttered” I think
 16 should be staccato, just a few seconds there, a volley and
 17 a few staccato shots after that as well, I think that’s
 18 what the witness said.
 19 GENERAL NAIDOO: Sporadic.
 20 CHAIRPERSON: Sporadic. Not staccato,
 21 sporadic.
 22 GENERAL NAIDOO: I said sporadic, Chair.
 23 CHAIRPERSON: Well, you’ll remember
 24 better than I would. I was right on the other one, you
 25 talked about a short volley and not a shot volley?

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1 GENERAL NAIDOO: That’s right.
 2 CHAIRPERSON: I get 50% on that one.
 3 MR CHASKALSON SC: Now, Major-General,
 4 elsewhere in your testimony you spoke about hearing
 5 automatic gunfire. I’m not interested in – did this sound,
 6 did the volley sound like automatic gunfire to you?
 7 GENERAL NAIDOO: Chair, yes, there was
 8 some automatic gunfire in the volley. That’s where the
 9 sporadic comes from because there was a main lot of shots
 10 and then there were a few that went over the main volley as
 11 well.
 12 MR CHASKALSON SC: And are you able to
 13 distinguish between the sound that a 9 millimetre makes and
 14 an R5 makes?
 15 GENERAL NAIDOO: Chair, other than to say
 16 that the volume, noise volume is much louder on an R5 than
 17 a 9 mill, I can’t scientifically tell you that this is an
 18 R5 and that’s a 9 millimetre.
 19 MR CHASKALSON SC: When you heard these
 20 shots did you think it was 9 mills or R5?
 21 GENERAL NAIDOO: Chair, there were shots,
 22 they could have been a combination. As far as I could hear
 23 it was loud. My assumption, that there were rifles in the
 24 shooting but I cannot exclude that there were 9 millimetre
 25 used as well.

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1 MR CHASKALSON SC: I’m generally
 2 interested in your state of mind at this, at this – so you
 3 say your assumption was that there were R5 shots in the
 4 shooting?
 5 GENERAL NAIDOO: Due to the volume,
 6 Chair, yes.
 7 MR CHASKALSON SC: Could you identify
 8 where the gunshots came from?
 9 GENERAL NAIDOO: Chair, yes, it came from
 10 the direction where we knew that the negotiation group was
 11 deployed. As I indicated in my statement, as the crow
 12 flies we were not too far from there.
 13 MR CHASKALSON SC: Now, at the same time
 14 as the gunshots there were stun grenades and teargas
 15 released, do you recall that?
 16 GENERAL NAIDOO: Chair, I think I
 17 indicated specifically there was before the shooting, the
 18 stun grenades, et cetera which we heard before the
 19 shooting.
 20 MR CHASKALSON SC: Now, did you look in
 21 the direction of where the gunshots came from?
 22 GENERAL NAIDOO: That’s the normal
 23 reaction, Chair, one would immediately look in the
 24 direction of the shots, yes.
 25 MR CHASKALSON SC: Now because there’d

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1 been stun grenades and teargas fired, you'd have seen a
 2 cloud of smoke roughly in that direction.
 3 GENERAL NAIDOO: Chair, no. From where
 4 we were, where I was, I could not have a view of where the
 5 incident was occurring. The power station was directly in
 6 front of me.
 7 MR CHASKALSON SC: But the power station
 8 has a mesh fence. You can see through the power station,
 9 can you not, or not?
 10 GENERAL NAIDOO: Chair, it does have a
 11 mesh fence with a lot of substation equipment within the
 12 mesh fence, which obstructed my view.
 13 MR CHASKALSON SC: But earlier you said
 14 you'd parked at the road in front of the substation. Can
 15 we get JJJ – sorry, can we get 148, slide 148 back up? I'm
 16 marking the points on the road where the round around the
 17 substation starts, I'm now marking the road around the
 18 substation. You say that this was the front point of your
 19 convoy?
 20 GENERAL NAIDOO: That's correct, Chair.
 21 MR CHASKALSON SC: Are you suggesting to
 22 us –
 23 CHAIRPERSON: For those who have to read
 24 the record later without the benefit of having been here
 25 today, you're pointing to a spot to the right of the green

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1 block as the spot where the witness said he stopped. I
 2 think he had said it earlier but I'm just making the point,
 3 that's what you're pointing out.
 4 MR CHASKALSON SC: And are you suggesting
 5 that from this point, which was the front of the convoy, it
 6 wasn't possible to get a line of sight through to the
 7 kraal, marking the line through to the kraal?
 8 GENERAL NAIDOO: Chair, that is correct
 9 because if you look onto the right side of the substation,
 10 that is not a wire mesh fence. As far as I recall it was a
 11 brick wall of some sort, I'm not sure what it was.
 12 MR CHASKALSON SC: Am I now marking the
 13 area that you say was a brick wall?
 14 GENERAL NAIDOO: I think more towards the
 15 road, lower, yes. If I can recall I think that was a wall
 16 of some sort.
 17 MR CHASKALSON SC: But your convoy –
 18 sorry, Chair, if you can describe the wall that the witness
 19 is referring to, or should I try?
 20 CHAIRPERSON: Well, it's a wall that
 21 starts, as one looks at the slide it's a wall that starts
 22 somewhere, if one takes the top right corner of the green
 23 block and moves diagonally towards the top right-hand
 24 corner of the slide, the wall begins a short distance from
 25 the top right-hand corner of the yellow block and continues

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1 up for some distance. I think that would be visible to
 2 anybody who looks at the slide in years to come.
 3 MR CHASKALSON SC: And you're saying that
 4 that was a wall and that obscured your vision.
 5 GENERAL NAIDOO: Chair, what I'm saying
 6 is that we did not have a view from the position that I was
 7 at, at immediate response area 1, of the negotiation group.
 8 MR CHASKALSON SC: The negotiation group
 9 at which point?
 10 GENERAL NAIDOO: The negotiation group
 11 led by Brigadier Calitz.
 12 MR CHASKALSON SC: No, I know it was led
 13 by Brigadier Calitz but I'm asking at which point in time
 14 because the group moved, so what couldn't you see?
 15 GENERAL NAIDOO: Chair, I had no idea
 16 that the group had moved. As I indicated, I had an
 17 approximate idea as to where the negotiation group was.
 18 From my line of sight I had no view of them at the time
 19 when I was at immediate response area 1.
 20 MR CHASKALSON SC: Well, I've measured
 21 the length of your convoy at its starting point. The
 22 convoy on Google maps at its starting point was over 100
 23 metres, would you accept that some members of your convoy
 24 would have had a clear view through to the scene where the
 25 shootings had taken place, people towards the back of your

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1 convoy?
 2 GENERAL NAIDOO: Chair, I am not aware if
 3 anybody had a view. Nobody mentioned it to me specifically
 4 that they had a view.
 5 CHAIRPERSON: May I say when we have an
 6 inspection in loco, as we're going to have to have in due
 7 course, we'll be able to check these things out, won't we?
 8 We'll be able to understand, the witness will show us where
 9 he was, we'll get someone to fire off a CS gas canister at
 10 the scene of the shooting and we will then be able to see
 11 from this road immediately to the right of the immediate
 12 response area on the slide what we can see.
 13 COMMISSIONER HEMRAJ: May I just ask a
 14 question to clarify? General, as you proceeded from
 15 forward holding area 1 to immediate response area 1 along
 16 that road at any stage would you have sight of the
 17 deployment as it was, the deployment of vehicles close to
 18 the koppie?
 19 GENERAL NAIDOO: Chair, I did not
 20 specifically. As you know, we were travelling along that
 21 road. On the right hand side there were some shrubs, there
 22 was traffic, there was a truck that was also travelling
 23 alongside us for a little of the way, so I personally did
 24 not have sight of – I would have liked to have had sight of
 25 where the operation was taking place. It would have helped

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1 me to orientate myself here.

2 MR CHASKALSON SC: We'll sort this out at

3 an inspection in loco but before we get there I have to put

4 to you what my concerns with your answer are and to do that

5 I'd like us to see the footage of the stun grenades and the

6 teargas canisters that were fired within 20 seconds of the

7 shooting that appears on the Roland headgear camera clock

8 at, which is exhibit KKK9. So if we can call up KKK9 and

9 go to Roland headgear clock time 16:15:55. Are we having

10 difficulties with KKK9? Maybe I can use another exhibit

11 while we try and sort out KKK9. If KKK9 is taking a while

12 to load, maybe we can go to JJJ10, 4533. JJJ10 4533 and if

13 we could zoom in on the area of the substation which is in

14 the top right-hand corner of this photograph. Come back

15 because it's the fence that is important. Now, Major-

16 General, can you identify on this photograph the fence that

17 you say obscured your view?

18 GENERAL NAIDOO: Chair, no, not

19 specifically.

20 COMMISSIONER HEMRAJ: He said a wall –

21 CHAIRPERSON: The witness did -

22 MR CHASKALSON SC: Sorry, a wall.

23 GENERAL NAIDOO: Chair, yes. I said some

24 sort of wall, yes.

25 MR CHASKALSON SC: Well, if I can mark

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1 the wall on the right hand side or the barrier on the right

2 hand side that you identified as the wall, that is not an

3 impermeable barrier for vision. Do you accept that?

4 GENERAL NAIDOO: Chair, I think that

5 would have to be seen because depending on the angle that

6 you are, you can't see.

7 MR CHASKALSON SC: Major-General, are you

8 suggesting that you positioned yourself, you were

9 positioned at an angle where a mesh fence obscured your

10 vision and it didn't occur to you to move 10 yards in

11 either direction so you could change the angle and see

12 through the mesh?

13 GENERAL NAIDOO: Chair, what I indicated

14 is that I could not see the operational area where the

15 negotiation team was deployed.

16 MR CHASKALSON SC: And I'm still

17 interested in why you couldn't see that. Are you saying

18 that this mesh fence is what obscured your vision?

19 GENERAL NAIDOO: Chair, as I indicated,

20 from my position, no, I could not see. I know that the

21 substation was between us. If I go back to the scene

22 possibly I would remember because at this stage my

23 recollection was that I had no vision of the area where the

24 dispersal was taking place or I would have then, would have

25 gone towards the dispersal taking place.

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1 MR CHASKALSON SC: So Major-General, you

2 would like to go back to the scene before you have to

3 answer this question so that you can refresh your memory on

4 what's there and what isn't?

5 GENERAL NAIDOO: Chair, what I'm saying

6 is yes, I was not in the position to see the dispersal

7 taking place because of where I was and if necessary, yes,

8 I could go and refresh my memory.

9 MR CHASKALSON SC: Well, it may be

10 necessary for us then to ask for your recall after an

11 inspection in loco at which you've had the opportunity but

12 while we're here and while we have you here I'd like just

13 to take up a few other issues in relation to this

14 photograph. Can we just run the photograph a little to the

15 left? No, to the left so that we get the road and zoom out

16 a little bit and now move a little bit back to the right so

17 that the road is visible on the left hand side of the

18 photograph. Okay, stop. Now Major-General, I'm marking

19 the turnoff to the east side of the power station which you

20 say is where your vehicle was, just before that turnoff.

21 You stand by that?

22 GENERAL NAIDOO: Plus-minus, yes.

23 MR CHASKALSON SC: And you stand by your

24 evidence that from that position your vision to scene 1 was

25 impaired by the substation? You stand by your evidence

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1 that your vision to scene 1 was impaired by the substation

2 from that position?

3 GENERAL NAIDOO: Chair, what I said was I

4 had no vision of the operational area. It was not only the

5 substation as you can see, there is also some trees there

6 but yes, I could not see from the position I was to the

7 operational area.

8 CHAIRPERSON: Just to be clear, the

9 turnoff that you've indicated is, I suppose, more or less

10 between a third and halfway –

11 MR CHASKALSON SC: Sorry to interrupt,

12 Chair, but this is a zoomed in section of the photograph.

13 I think we need to zoom all the way back out.

14 CHAIRPERSON: Perhaps you can then

15 describe it for us.

16 MR CHASKALSON SC: It is the turnoff that

17 goes, it goes to the right of the road just at the end of

18 the slimes dam that is visible on the left hand side of the

19 road. That slimes dam is a broadly rectangular structure.

20 CHAIRPERSON: That's below the slimes

21 dam, is it, as we see it on the slide, is that correct?

22 MR CHASKALSON SC: It's past the slimes

23 dam, it's at the far right-hand corner of the slimes dam,

24 the turnoff.

25 CHAIRPERSON: I see. No, no, I see now,

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1 yes, alright. So those who in years to come will have to
 2 look at this will now be able to understand what's going
 3 on.
 4 MR CHASKALSON SC: Do we have KKK9 ready
 5 yet?
 6 CHAIRPERSON: While it's being looked
 7 for, it's been suggested to me that it might be sensible to
 8 take the comfort break now and then we can run on to 1
 9 o'clock. We're adjourning at 1 and we're resuming at 2
 10 because of something that one of the Commissioners has to
 11 attend to during the lunch adjournment. So let's take the
 12 comfort break now. In the meanwhile find the relevant
 13 slide and we will then resume and look at it immediately.
 14 [COMMISSION ADJOURNS COMMISSION RESUMES]
 15 [12:17] CHAIRPERSON: The commission resumes. I
 16 understand the video has been found. So Major-General,
 17 you're still under oath.
 18 GENERAL NAIDOO: Still under oath.
 19 CHAIRPERSON: Mr Chaskalson.
 20 MR CHASKALSON SC: If we can then call up
 21 KKK9, the Roland headgear video and start it from 16:15:45
 22 and just to orientate ourselves, that is 15:53:16 ETV time
 23 which is 34 seconds before the shooting. So we're 34
 24 seconds before the shooting and if we can run the video
 25 now.

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1 [VIDEO SHOWN]
 2 If we can just pause at this point.
 3 CHAIRPERSON: Put on record the point at
 4 which you paused.
 5 MR CHASKALSON SC: 16:16:02 which in ETV
 6 time is going to be 15:53:33 and if I can just mark the
 7 beginnings of a tear gas cloud emerging on the left hand
 8 side of the screen. It's the smoke on the left hand side
 9 of the screen. If we can keep playing.
 10 [VIDEO SHOWN]
 11 Stop.
 12 CHAIRPERSON: Where have you stopped?
 13 MR CHASKALSON SC: 16:16:10.
 14 CHAIRPERSON: Thank you. About three
 15 times the smoke, you see that?
 16 MR CHASKALSON SC: Two stun grenades
 17 which have just exploded and the teargas spreading out. If
 18 we can keep running.
 19 [VIDEO SHOWN]
 20 Can we stop at this point.
 21 CHAIRPERSON: This is 16:16:18.
 22 MR CHASKALSON SC: And maybe if we can go
 23 back a couple of frames because unfortunately the camera is
 24 going to pan right at this point and we're going to lose
 25 the smoke clouds that are rising.

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1 CHAIRPERSON: After scene 16:14 on the
 2 screen.
 3 MR CHASKALSON SC: And scroll it forward
 4 to about 16:16:17. Stop. We're losing the smoke to the
 5 left of our screen but I'm marking the top point of the
 6 smoke with my marker, if we play it backwards which we can
 7 do on the reserve play. It may be a little bit clearer.
 8 Can we just, and now play forwards.
 9 [VIDEO SHOWN]
 10 And the stun grenade smoke is still, stop now.
 11 CHAIRPERSON: Time stopped at 16:16:22.
 12 MR CHASKALSON SC: Now 16:16:22 is three
 13 seconds after the shootings. Now Major-General you're
 14 suggesting to us that this cloud that we see in the centre
 15 of the picture at 16:16:22 was not visible from your
 16 position?
 17 GENERAL NAIDOO: Chair, what I said was I
 18 did not see it yes.
 19 MR CHASKALSON SC: Well you said you did
 20 turn to look in the direction of where you thought the
 21 shootings had come from, if it was -
 22 GENERAL NAIDOO: That's correct.
 23 MR CHASKALSON SC: So you looked in that
 24 direction but didn't see that cloud, is what you're saying?
 25 GENERAL NAIDOO: That is correct, Chair.

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1 MR CHASKALSON SC: I must put it to you
 2 Major-General, that I find it very difficult to accept that
 3 evidence, but I will move on.
 4 CHAIRPERSON: Can you think of any
 5 explanations as to why you wouldn't have seen that smoke if
 6 you looked in that direction at the relevant time?
 7 GENERAL NAIDOO: Chair, none comes to
 8 mind at the moment. I said I'm not aware if anybody else
 9 in the convoy saw it. But me specifically -
 10 CHAIRPERSON: You -
 11 GENERAL NAIDOO: Yes, I -
 12 CHAIRPERSON: Giving hearsay about other
 13 people.
 14 GENERAL NAIDOO: Yes. I just indicate I
 15 did not see this smoke.
 16 MR CHASKALSON SC: Well, Major-General,
 17 you say you're not aware that anybody else in the convoy
 18 saw it. Surely if you hadn't seen it, let's assume that
 19 your memory is faulty and you hadn't looked, you had heard
 20 but you hadn't looked. Surely if you hadn't looked and you
 21 hadn't seen or even if you had looked and you hadn't seen
 22 you had a real interest in trying to establish where the
 23 shootings had taken place, would you accept that?
 24 GENERAL NAIDOO: Chair, yes but I think
 25 here we're talking about the stun grenades and the tear gas

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1 which I indicated I did hear them but I did not see them.
 2 MR CHASKALSON SC: Major-General, you may
 3 be misunderstanding us. What we see now is smoke from
 4 teargas and stun grenades three seconds after the
 5 shootings. So why didn't you ask somebody else in the
 6 convoy has anybody, does anybody have a sense of where
 7 that, where those shootings happened?
 8 GENERAL NAIDOO: Chair, I'm sure if
 9 somebody had seen something they would have reported to us
 10 as I indicated there were members in their vehicles.
 11 Nobody did report anything to me and I was following the
 12 conversation on the radio at that stage, yes.
 13 MR CHASKALSON SC: You see, Major-
 14 General, the only explanation I can imagine for people not
 15 reporting to you where the shootings were is that it was so
 16 obvious where the smoke was coming from that they didn't
 17 think it was necessary to report to you. What's your
 18 comment on that?
 19 GENERAL NAIDOO: That is possible, Chair,
 20 because a dispersion was expected.
 21 MR CHASKALSON SC: I'm not sure I
 22 understand that answer. A dispersion was expected, do you
 23 accept that this smoke cloud should have been obvious to
 24 many people in your convoy if they looked in that
 25 direction?

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1 GENERAL NAIDOO: If they had, yes.
 2 MR CHASKALSON SC: But you did look in
 3 that direction, you say you didn't see it.
 4 GENERAL NAIDOO: Chair, when I heard the
 5 shots I did look, I did not see it.
 6 CHAIRPERSON: I just want to understand
 7 what you meant when you said that the dispersion was
 8 expected, that was in accordance with the briefing you got
 9 from –
 10 GENERAL NAIDOO: That is correct, Chair.
 11 CHAIRPERSON: Now what did you expect
 12 would happen at the dispersion, did you expect there would
 13 be a short volley of automatic fire for about eight
 14 seconds, is that what you expect would happen at the time
 15 of the dispersion?
 16 GENERAL NAIDOO: No, Chair.
 17 CHAIRPERSON: So what did you expect?
 18 GENERAL NAIDOO: Dispersions normally you
 19 would have an announcement and they would probably use
 20 teargas and stun grenades. Those are the, the stun
 21 grenades is what we would hear and we did hear. I did
 22 indicate that the volley of shots was unexpected.
 23 Obviously we had not expected any live ammunition to be
 24 fired.
 25 CHAIRPERSON: But you had your radio on

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1 did you?
 2 GENERAL NAIDOO: That is correct, Chair.
 3 CHAIRPERSON: Now according to the
 4 occurrence book which is exhibit before us, FFF25, page 25
 5 entry 1017 what is recorded is as follows which I take it
 6 you would have heard. It says "situation report, this is
 7 15:55, that's the time that's recorded by the scribes in
 8 the JOC, Papa1 the evidence is that must be a mistake, it
 9 should be Chopper 1.
 10 GENERAL NAIDOO: That's correct.
 11 CHAIRPERSON: "Chopper 1 reporting the
 12 group are moving," the group is obviously the strikers.
 13 "The group are moving to TRT members and they tried to
 14 attack them. Chopper 1, it says Papa, but it should be
 15 chopper, Chopper 1 reporting that the people are moving
 16 around and some are down". Now did you hear that?
 17 GENERAL NAIDOO: Chair, that's true. I
 18 did hear that, I did indicate in my statement.
 19 CHAIRPERSON: Yes, I know you did. Now
 20 when the, you heard that the group were moving to the TRT
 21 members, in other words no longer to the POP members but
 22 the TRT members and they tried to attack them what did you
 23 think the TRT members would do in order to repel the attack
 24 which is being made upon them?
 25 GENERAL NAIDOO: Chair, the TRT members

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1 are obviously not armed with the teargas rubber bullets
 2 etcetera. They were armed with sharp point ammunition and
 3 I suppose if they were attacked they would use their
 4 firearms.
 5 CHAIRPERSON: So when you heard this
 6 over the radio did you expect that the TRT members would
 7 respond to the attempt to attack them on the part of the
 8 strikers by firing back with their R5s?
 9 GENERAL NAIDOO: Chair, that is why I
 10 indicated that was unexpected number 1 and number 2 they
 11 could have also fired warning shots if, that volley could
 12 have been a warning shots volley.
 13 CHAIRPERSON: But then you heard Chopper
 14 1 reporting that the people are moving around and some are
 15 down. So what did you think that indicated had happened?
 16 GENERAL NAIDOO: Chair, that's where I
 17 assume that people were injured. I did not assume that
 18 they were shot at that stage because obviously there was a
 19 dispersion, a start of a dispersion action before the
 20 volley of shots. However I can't rule that out, that
 21 people could have possibly been shot.
 22 CHAIRPERSON: I take it it was very at
 23 least a possibility which passed through your mind but that
 24 may have happened.
 25 GENERAL NAIDOO: Yes, a possibility.

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1 MR CHASKALSON SC: Brigadier, you've just
 2 heard a volley of -
 3 CHAIRPERSON: Not Brigadier.
 4 MR CHASKALSON SC: Sorry, Major-General.
 5 CHAIRPERSON: A Major-General.
 6 MR CHASKALSON SC: Major-General I'm
 7 sorry. You just heard a volley of gunfire which we now
 8 know was more than 350 shots.
 9 GENERAL NAIDOO: Yes, Chair.
 10 MR CHASKALSON SC: Did you not think it
 11 was more than a possibility but an overwhelming likelihood
 12 that if people were down after hearing that volley someone
 13 was going to have been suffering from a gunshot injury.
 14 GENERAL NAIDOO: Chair, the Chopper that
 15 was giving us report did not indicate that these people had
 16 been shot. He just said people had been down. I at that
 17 stage as I indicated was not aware of, they were down due
 18 to what. However I did respond.
 19 MR CHASKALSON SC: I must say, Major-
 20 General, I do find it hard to accept that you didn't
 21 contemplate it as a strong possibility that you were going
 22 to be responding to deal with gunshot injuries, but you say
 23 that didn't cross your mind, you thought this was an
 24 ordinary dispersal operation, you're dealing with people
 25 with sprained ankles.

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1 GENERAL NAIDOO: Chair, no. I said I was
 2 not aware of the nature of the injuries.
 3 CHAIRPERSON: There was a distinct
 4 possibility was it not?
 5 GENERAL NAIDOO: It was a possibility,
 6 Chair.
 7 CHAIRPERSON: I mean there was a
 8 possibility of a fusillade of warning shots but that wasn't
 9 very likely was it? I can understand one or two warnings
 10 but you wouldn't have a fuselage of warning shots would
 11 you, normally?
 12 GENERAL NAIDOO: Normally, Chair, there
 13 has been an incident before this which was reported to us
 14 where members fired warning shots, a fusillade of warning
 15 shots as well in an earlier strike in the Rustenburg area
 16 and obviously I can't rule that out. I had seen that
 17 report.
 18 CHAIRPERSON: To be fair, I think you've
 19 conceded that you realised there was a distinct possibility
 20 that people had been injured.
 21 GENERAL NAIDOO: Yes, Chair, which is why
 22 I responded.
 23 MR CHASKALSON SC: But the nature of the
 24 injuries is important because your evidence-in-chief at
 25 page 22901 in response to Mr Semanya. Mr Semanya says

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1 "what did you understand to mean that there were people
 2 down and you say people down, Chair, as I indicated
 3 yesterday this does occur during dispersal actions when
 4 people are stampeding and fleeing that they fall, that they
 5 injure themselves etcetera and Mr Semanya says there's a
 6 mental picture that you had and you say that's correct,
 7 Chair". So you told this Commission that the mental
 8 picture that you had was that you were dealing with
 9 injuries from falls in a stampede. Do you stand by that
 10 evidence?
 11 GENERAL NAIDOO: Chair, I don't think we
 12 ever conceived that there would ever be a shooting of that
 13 scale. We did plan for a dispersal and my response was to
 14 deal with a possibility that people were injured in the
 15 dispersal. The magnitude at that stage that's not the
 16 picture I had in my mind.
 17 CHAIRPERSON: What do you mean by the
 18 magnitude, you mean, you're referring to the magnitude of
 19 the injuries or the number of people? I could understand
 20 you didn't expect 18 people, did you expect possibly five?
 21 GENERAL NAIDOO: There could possibly be
 22 people injured in shooting, a number obviously was
 23 something that we did not have.
 24 CHAIRPERSON: Even if there were five
 25 injured by gunshot that's something that was, somewhat of

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1 an emergency, it had importance even if you never heard of
 2 the golden hour, to get people there as quickly as possible
 3 to deal with it and in case some of them had not been
 4 killed but were in urgent need of medical attention.
 5 GENERAL NAIDOO: Chair, yes. As I
 6 indicated I did not, I was not familiar with the term the
 7 golden hour. But I was aware that even if one person was
 8 injured that I had to ensure that the medical services were
 9 rendered.
 10 MR CHASKALSON SC: But it's also the
 11 nature of the injuries. If you were aware that there was a
 12 possibility of gunshot injuries from R5s the need to get
 13 medical treatment there quickly was all the greater. Would
 14 you accept that as a proposition.
 15 GENERAL NAIDOO: Chair, I think I've
 16 indicated an injury, the expectation was to get medical
 17 attention to the injured irrespective of the injuries. I
 18 was not in a position to make that assessment of a critical
 19 injury and a non critical injury. That would be the people
 20 that I would get onto the scene as soon as possible to
 21 respond to that.
 22 CHAIRPERSON: And you had to assume that
 23 it might be a critical injury or might be critically
 24 injured.
 25 GENERAL NAIDOO: I had to work on the

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1 worst case scenario.

2 CHAIRPERSON: Yes, yes.

3 MR CHASKALSON SC: And were you working

4 on the worst case scenario?

5 GENERAL NAIDOO: I think I outlined,

6 Chair, my worst case scenario in terms of that incident.

7 MR CHASKALSON SC: Sorry are you

8 referring to the passage in the evidence that I just read

9 to you?

10 GENERAL NAIDOO: That's affirmative,

11 Chair, correct, Chair.

12 MR CHASKALSON SC: So you still stand by

13 evidence that you thought that the worst case scenario with

14 which you were dealing was a sprain or a stampede injury?

15 GENERAL NAIDOO: Chair, I think I

16 indicated the nature of the injury I was not sure. I just

17 did not expect the scale of the injuries that we had

18 encountered at scene 1.

19 MR CHASKALSON SC: But are you suggesting

20 to this Commission that you didn't anticipate that, from

21 that volley of gunfire that you had heard someone may have

22 been hit?

23 GENERAL NAIDOO: I did not exclude it but

24 I did not hope that it was so.

25 MR CHASKALSON SC: Yes, but then the

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1 worst case scenario with which you had to deal, not the

2 scenario that you were hoping for, but the worst case

3 scenario wouldn't have been sprains and stampede injuries

4 it would have been R5 bullet wounds. Would you accept

5 that?

6 GENERAL NAIDOO: Chair, as I indicated

7 the scenario I anticipated that people will be injured.

8 Whilst I did not specifically indicate gunshot wounds my

9 expectation was that we will not be dealing with gunshot

10 wounds in terms of the briefing we had received and in

11 terms of the planning.

12 CHAIRPERSON: Ja but briefing related to

13 dispersion by POP people.

14 GENERAL NAIDOO: That's correct.

15 CHAIRPERSON: What you heard over the

16 radio was the POP people were no longer there, no longer in

17 the frame. The TRT people were lined behind, the people

18 there to protect them they had been attacked or attempts

19 was being made to attack them. So that changed the

20 situation slightly from the expectations arrived by the

21 briefing that there was simply going to be a dispersion

22 operation.

23 GENERAL NAIDOO: Chair, hence my comment

24 that it was an unexpected volley of gunfire, I did not

25 anticipate that as well.

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1 MR CHASKALSON SC: Major-General I don't

2 for a minute suggest that you or indeed anybody else

3 anticipated this volley of gunfire. It's a truly horrific

4 episode and I don't think anybody anticipated it. But

5 after you had heard it what then did you contemplate,

6 that's the question. Surely you contemplated that there

7 may have been people hit by R5 bullets.

8 GENERAL NAIDOO: Chair, as I indicated at

9 that stage I did not exclude the possibility. I have

10 conceded that, Chair. But what we were responding to was

11 an incident that people were down. There was no

12 description of whether they were shot or injured. So I

13 can't indicate to this Commission, you know what I

14 perceived when I didn't know.

15 CHAIRPERSON: I don't think you're doing

16 yourself justice, Major-General. You've said you treated

17 it as a worse case. Possibly worse case. So therefore you

18 were responding to a situation. You didn't know precisely

19 what happened.

20 GENERAL NAIDOO: No.

21 CHAIRPERSON: You thought people might

22 have been injured by R5 fire I take it and you had to treat

23 it as if that were so because you had to treat it as a

24 worst case scenario, is that fair?

25 GENERAL NAIDOO: That's fair, Chair.

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1 CHAIRPERSON: Ja.

2 MR CHASKALSON SC: And you get this call

3 from Colonel Vermaak to bring medics to the scene and you

4 then move off from your position where you had stopped at

5 immediate reaction area 1.

6 [12:36] GENERAL NAIDOO: That is correct, Chair.

7 MR CHASKALSON SC: And you say that you

8 had to use a gravel road around the power station. If we

9 can back JJJ – let's go back to MMM1 so that we can mark it

10 on MMM1 because it's got grids. Can we call up MMM1? Now

11 in your statement – we're back at MMM1 and I'm marking your

12 position at C7 where your convoy had stopped. Was this the

13 position from which you moved off when you got the call

14 from Lieutenant-Colonel Vermaak?

15 GENERAL NAIDOO: More or less yes, Chair.

16 MR CHASKALSON SC: Now in your statement

17 you say you had to use the gravel road around the power

18 station because that was the only road that the soft skin

19 vehicles within your convoy could use. Now I understand

20 that to refer to a road which I'm marking now and which

21 then picks up on a more substantial gravel road running

22 through to the koppie. I'll describe it for the record in

23 a minute, but I just want to first understand, clarify that

24 I understood your original evidence, your evidence

25 correctly before I start giving block numbers and so on.

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1 GENERAL NAIDOO: Chair, what I indicated
 2 in my evidenced in chief was I first turned immediately
 3 right and went down a little road, this is indicated in
 4 there, that's D6 approximately. And we came to the point
 5 where there was not road, it was then a ditch. Our
 6 vehicles which were light motor vehicles, sedans, there
 7 were two sedans and bakkies, could not proceed any further.
 8 The convoy then turned around on that road that's indicated
 9 in D6 and went back to the main road and proceeded down to
 10 a road that's in A7 and went left around the power station.
 11 MR CHASKALSON SC: All right, Major-
 12 General, am I marking with my marker correctly as we go
 13 along?
 14 GENERAL NAIDOO: Yes more or less, more
 15 or less.
 16 MR CHASKALSON SC: And in your statement
 17 -
 18 CHAIRPERSON: Sorry, what you're marking
 19 is it goes from A7 to A6 and then goes to A5 and then goes
 20 into what looks like B5? Is that what you say about it?
 21 MR CHASKALSON SC: That's correct,
 22 Chairperson. In paragraph 62 of your statement you say
 23 that "Due to the fact that my group had soft skin sedans
 24 and bakkies I had to use the road around the electricity
 25 sub-station to pass what is now known as koppie 3 to move

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1 towards koppie 1." Now you've described getting up to the
 2 point at the top of the block B5 on that gravel road.
 3 There is a, I hesitate to say major road, but by the
 4 standards of gravel roads around Wonderkop this road that
 5 I'm marking now that runs from A5 up into B4 and then turns
 6 down again in the middle of B4 and then runs across sort of
 7 C4, D4, E4 is one of the more prominent roads. Is that how
 8 you planned to get to koppie 1?
 9 GENERAL NAIDOO: That is correct, Chair,
 10 however, I just want to indicate that we made it as far as
 11 A5, that was where the bulk of the vehicles congregated.
 12 To the right of that block there's a little pylon, the
 13 pylon was to our right.
 14 MR CHASKALSON SC: So you took these
 15 vehicles around the gravel road to A5 and then congregated
 16 there.
 17 GENERAL NAIDOO: That's correct, Chair.
 18 MR CHASKALSON SC: If we can get back to
 19 your evidence which wasn't in the statement, but which was
 20 in your evidence in chief and which you've just repeated,
 21 about the attempt to pass to the east of the power station
 22 first.
 23 GENERAL NAIDOO: That's correct, Chair.
 24 MR CHASKALSON SC: Do you have a very
 25 clear memory of trying that road?

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1 GENERAL NAIDOO: Chair, I was not
 2 driving. My driver was responsible for that, but I know
 3 that we came to a point, yes I have some memory of that.
 4 MR CHASKALSON SC: So you're clear in
 5 your own mind that you did make that attempt to pass on the
 6 east side and had to turn back?
 7 GENERAL NAIDOO: Chair, yes I think our
 8 vehicle location device will indicate where we made that
 9 attempt and turned around. We have a tracking device on
 10 each vehicle.
 11 MR CHASKALSON SC: So that would be
 12 particularly helpful. I wonder if we could access to that
 13 tracking device. Can the SAPS legal team assist us in that
 14 regard?
 15 CHAIRPERSON: You turned around somewhere
 16 in D6, is that right?
 17 GENERAL NAIDOO: I would say ja.
 18 CHAIRPERSON: Is that right?
 19 GENERAL NAIDOO: As far as my
 20 recollection of the map is, yes.
 21 CHAIRPERSON: I understand it's difficult
 22 to be precise, but that's your impression as well?
 23 GENERAL NAIDOO: Yes we went down, Chair,
 24 down the dirt road to a point where the vehicles couldn't
 25 go further because the idea was to go directly to what we

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1 now know as scene 1 and obviously the road ran out and then
 2 we had to do a U-turn and the whole convoy almost did that
 3 U-turn.
 4 MR CHASKALSON SC: So the whole convoy
 5 you say had to do a U-turn at that point.
 6 GENERAL NAIDOO: That is correct, Chair.
 7 MR CHASKALSON SC: 25 vehicles?
 8 GENERAL NAIDOO: Plus, minus, I said
 9 almost. Yes, those that were not on the dirt road
 10 obviously waited.
 11 MR CHASKALSON SC: So about how many of
 12 you went down that route?
 13 GENERAL NAIDOO: Most of the vehicles,
 14 Chair.
 15 MR CHASKALSON SC: So up to 20?
 16 GENERAL NAIDOO: I would not rule that
 17 out.
 18 MR CHASKALSON SC: And about how long did
 19 this detour take?
 20 GENERAL NAIDOO: A couple of minutes,
 21 Chair, it was a bit difficult to turn and obviously there
 22 were vehicles one behind the other. So we had to make
 23 provision for the vehicles to turn and then reform the
 24 convoy.
 25 MR CHASKALSON SC: I thought it would be

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1 more than a couple of minutes if you're trying to turn
 2 around a convoy of 20 odd vehicles in impassable dirt
 3 roads.
 4 CHAIRPERSON: Sorry, Mr Chaskalson, I
 5 would imagine the wouldn't all have got there yet. If you
 6 remember the length of the convoy and you assume the front
 7 vehicles had moved from the road to D6 it's unlikely that
 8 the whole convoy would already be in D6. Am I right?
 9 MR CHASKALSON SC: The whole convoy,
 10 Chair, is 26 vehicles, that's I asked the Major-General if
 11 he estimated 20.
 12 CHAIRPERSON: Hear my question. Was the
 13 whole convoy already in D6 or I suppose we could say D6 and
 14 D7, was the whole convoy already off the road in the
 15 direction of koppie 1 or were some of the vehicles still on
 16 the road at the time you encountered a ditch and realised
 17 you had to do a U-turn?
 18 GENERAL NAIDOO: Chair, there were still
 19 some vehicles on the road, as indicated it was a long
 20 convoy and the road ran out quite quickly. It was not far
 21 down when we ran and we had to do a U-turn.
 22 MR CHASKALSON SC: If you were to
 23 estimate how long that whole exercise took in minutes?
 24 GENERAL NAIDOO: Chair, a couple of
 25 minutes. Chair, I don't if five minutes would be

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1 reasonable, I'm not sure, but yes a couple of minutes to
 2 reorganise ourselves.
 3 MR CHASKALSON SC: I'm going to pick this
 4 up with you a bit later, but before I do that I want to
 5 discuss with you possible routes to scene 1 that your
 6 convoy might have taken if the shootings had happened
 7 before you moved from your first position at forwarding
 8 holding area 1. So let's assume your convoy is at
 9 forwarding holding area 1 for present purposes and I want
 10 to discuss with you a range of possible routes that you may
 11 have taken.
 12 COMMISSIONER HEMRAJ: Just before you go
 13 there. General, it was not part of your plan to use this
 14 particular road that starts on D6.
 15 GENERAL NAIDOO: Chair, what was
 16 indicated was that the immediate response area would be a
 17 forward staging area from where we would be able to access
 18 the koppie 1 at a shorter time. So when I got to this
 19 place, it was the first time that I had got there and based
 20 on the maps that we had obviously that would make logical
 21 sense for us to take the first turn. As I indicated as the
 22 crow flies directly to where we know koppie 1 was. So this
 23 particular point was used by other groups before us, such
 24 as the task force, the TRT, the NIU. They had been at
 25 immediate response area in the morning and even in

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1 preceding days when we were assisting. So the assumption
 2 was yes it was a clear road to where we had to go.
 3 MR CHASKALSON SC: In fairness to you,
 4 General, that is in fact is the route that the barbed wire
 5 Nyalas took on the morning of the 16th, up that road that
 6 you say you went up. So when the barbed wire Nyalas
 7 deployed in the morning, and we can show you a photograph,
 8 I don't think it's necessary, but they took that road, the
 9 road that goes from, what is it, C7 up to D6. And then
 10 around – they got round the point where you say you had to
 11 turn back at D6 and then deployed straight up into the line
 12 that we see them broadly described on this grid.
 13 GENERAL NAIDOO: Chair, yes the Nyala
 14 versus a standard bakkie I think we can't really compare.
 15 Nyala is a 4X4 altering vehicle, the bakkie obviously has
 16 limitations.
 17 MR CHASKALSON SC: No I'm not suggesting
 18 that they are the same sorts of vehicles, but let's go and
 19 look at the range of possible routes for getting to scene 1
 20 from forward holding area 1. We'll discuss later whether
 21 it's fair to use forwarding holding area 1 as a starting
 22 point for our routes. If we can stay on this grid and the
 23 first route to scene 1 from forwarding holding area 1 is a
 24 route along the main road at the crossroads. It starts on
 25 the main road at the crossroads. So I'm marking the line

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1 between, what is it, between I7 and J7 where it says
 2 forwarding holding area 1. And going up the road to where
 3 we see an intersection going to the right at I5. And a
 4 lesser quality road running to the left at I5, all the way
 5 up to G4 where it runs along the perimeter of Nkaneng
 6 picking up the road or turning in at F4 to the road that
 7 was ultimately the road by which you wanted to reach the
 8 koppie in the opposite direction. Do you accept that?
 9 MR SEMENYA SC: Chair, I object. I'm
 10 raising an objection against this, Chair. I think what Mr
 11 Chaskalson is having us do is to plot possible routes to
 12 get to koppie 1, but he's not moving from a premise where
 13 we were stationed when the movement became necessary.
 14 There's no point in going to FHY at all. As a possible
 15 route of moving from a particular position.
 16 CHAIRPERSON: - as I understand it, at
 17 the time he was at immediate reaction area 1.
 18 MR CHASKALSON SC: No, Chairperson, in
 19 fact he wasn't. That evidence is false. I will show that
 20 he was still at forwarding holding area 1.
 21 CHAIRPERSON: He will endeavoured to show
 22 that his starting point is correct, so on the assumption
 23 that he succeeded in showing that, we'll let him carry on
 24 for the time being.
 25 MR CHASKALSON SC: So if we can chart

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1 these routes then. The first route is in fact is the route
 2 the Commission took to get to the scene which is the route
 3 up the crossroads at forward holding area 1 across to the
 4 outskirts of Nkaneng which it reaches at G4. And then
 5 cutting across row 4 till it reaches where the TRT icons
 6 will be at E4. And in fact this road is the same road that
 7 you wanted to pick up from the opposite direction at B5.
 8 Do you accept that that is a possible and possibly the most
 9 obvious route to take to the koppie from forward holding
 10 area 1?
 11 GENERAL NAIDOO: Chair, from the position
 12 that I was, that was the immediate response area, it was
 13 not the most feasible route. I deployed in terms of the
 14 planning and the immediate response area was the identified
 15 from where we would have been deployed.
 16 MR CHASKALSON SC: Major-General, that
 17 wasn't my question. My question was assume that you were
 18 at forward holding area 1, would that be a possible route?
 19 GENERAL NAIDOO: If I had been at
 20 forwarding holding area 1, yes.
 21 MR CHASKALSON SC: Let's take the second
 22 possible route.
 23 CHAIRPERSON: Please proceed, Mr
 24 Chaskalson. You moved from the assumed starting point,
 25 forwarding holding area 1.

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1 MR CHASKALSON SC: Yes.
 2 CHAIRPERSON: The witness has conceded
 3 that if that assumption is correct that that would be the
 4 starting point that would have been a possible route.
 5 You're now moving to the second assumed starting point,
 6 what's that?
 7 MR CHASKALSON SC: Now let's assume that
 8 the witness's convoy was where we saw it in Lieutenant-
 9 Colonel Vermaak's photograph that was in slide 270 which
 10 I'm marking broadly now, which was between I – let me just
 11 get my positions exactly right. The back of the convoy on
 12 that slide was at the point I'm marking here which is
 13 around about the middle of I7 and the front ran towards H7.
 14 So let's assume your convoy was there would you accept that
 15 from that position you could have taken the route that I
 16 had just described?
 17 GENERAL NAIDOO: Chair, no that was in
 18 the opposite direction from the direction that the convoy
 19 was pointing.
 20 MR CHASKALSON SC: You were on a wide
 21 gravel road. You could have just turned your convoy around
 22 and taken it up the other route surely.
 23 GENERAL NAIDOO: Chair, as I indicated,
 24 in terms of where I was my assumption was the shortest
 25 possible route was the one that we took first. When we

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1 failed to get across we turned around and we then went
 2 around what we know as the power station.
 3 CHAIRPERSON: But you through – turned
 4 right at D6 roughly and you thought that that was the
 5 shortest way. You didn't know at that time that there was
 6 a ditch, that you'd have to make the U-turn. Is that –
 7 GENERAL NAIDOO: Chair, as I indicated,
 8 it was my first time to get to the immediate response area.
 9 MR CHASKALSON SC: Major-General, I must
 10 ask you to accept my hypotheses for this cross-examination.
 11 We'll address whether the hypotheses is good or bad at a
 12 later stage, but I must be able to structure my cross-
 13 examination as I see fit. I want to put to you that there
 14 are various aspects of your evidence that are manifestly
 15 false.
 16 CHAIRPERSON: Well we'll get to those
 17 later, Mr Chaskalson –
 18 MR CHASKALSON SC: But another one is the
 19 suggestion of a detour around the koppie. I can't be
 20 forced to – sorry a detour around the right-hand side of
 21 the power station.
 22 CHAIRPERSON: He's not forcing you to do
 23 anything. What he's saying is – you say, you're now
 24 dealing with the situation as to where the back of the
 25 convoy was and where the front of the convoy was. And

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1 you're saying to him if he had turned around at that point
 2 and gone back to forwarding holding area A then the first
 3 point, scenario you dealt with would have applied. I
 4 didn't understand him to quarrel with you on that. What he
 5 says is he didn't know at the time that there was a ditch
 6 in D6 which would necessitate a U-turn where he's already
 7 going over the veld. So that's why he went that way and
 8 having gone that way, instead of taking the U-turn you
 9 suggest he should have done, having gone that way when he
 10 discovered the ditch he had turn around. That's his
 11 evidence, he's not forcing you to cross-examine in any way,
 12 he's simply giving an explanation as to why he didn't take
 13 up what one would call your second assumption, your second
 14 suggestion he's giving his evidence on that. I don't think
 15 you can quarrel with that.
 16 [12:54] MR CHASKALSON SC: Alright, well, let me
 17 take the second possible route that you could have got to
 18 the koppie by and that involves turning right at the road
 19 that crosses the gravel road at F7 and coming up the left
 20 hand side of the small substation going up the following,
 21 going straight up row, sorry, column F and picking up what
 22 we've called the main dirt road that you would have picked
 23 up from the other direction at block F4. Do you accept
 24 that that was an alternative route that you may have taken
 25 if your starting point was where I've asked you to assume

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1 it was?

2 GENERAL NAIDOO: If my starting point

3 was, possibly. As I said, it was the first time I was on

4 that scene or in that road so I was not familiar with that,

5 sir, but if it was my –

6 MR CHASKALSON SC: Sorry –

7 CHAIRPERSON: I didn't hear his answer.

8 What's your answer, Major-General?

9 GENERAL NAIDOO: Chair, I said if my

10 starting point would have been where the evidence leader is

11 indicating, that would possibly have been a possible route.

12 I did indicate I was not familiar with that terrain. I had

13 an officer who was driving me who comes from that

14 particular area so I was obviously dependent on, as he

15 drove.

16 CHAIRPERSON: Mr Chaskalson, when you get

17 to an appropriate stage, tell me and we can take the lunch

18 adjournment. I'm not necessarily stopping you now, I'm

19 just saying when it's convenient please let me know.

20 MR CHASKALSON SC: Chairperson, just in

21 relation to that I'll just put one photograph to the

22 witness in relation to the second route at F7 to show that

23 that was a route used by an entire convoy of SAPS vehicles

24 around the time that he says he was moving to immediate

25 reaction area 1.

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1 CHAIRPERSON: Show us that but you

2 remember his evidence is that he wasn't driving, he had a

3 driver from the area. He assumed the driver from the area

4 knew the best routes and he more or less accepted his

5 judgment on the point but still, I understand what you're

6 going to show us, that a convoy driven obviously by

7 somebody else used this other route. So perhaps we can

8 look at that and then take the lunch adjournment.

9 MR CHASKALSON SC: Can we go to JJJ10

10 4533 and if we can orient ourselves, I'm marking the

11 substation here, it's in the top right-hand corner of this

12 photograph. Again I'm marking the road which the Major-

13 General says he took as his first attempt, which crosses

14 the main road at the top right-hand corner of the slimes

15 dam. I'm now marking the convoy of vehicles that one sees

16 running down the middle of the road and one can see that

17 these vehicles are turning up at the point that I have

18 marked on the grid as in block – sorry, F8. If needs be we

19 can show further pictures to show that the full convoy

20 turns up on that road. This photograph is taken at ETV

21 time 15:36:24, 15:36:24. Maybe we should take the

22 adjournment at this point, Chairperson.

23 CHAIRPERSON: Do you see that, Major-

24 General?

25 GENERAL NAIDOO: I see that, Chair.

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1 CHAIRPERSON: Anyway, you can deal with

2 it when we resume.

3 GENERAL NAIDOO: When we resume we will –

4 CHAIRPERSON: In an hour's time. We're

5 taking an hour lunch adjournment today.

6 GENERAL NAIDOO: Okay, Chair.

7 CHAIRPERSON: We will now adjourn.

8 [COMMISSION ADJOURNS COMMISSION RESUMES]

9 [14:06] CHAIRPERSON: The Commission resumes.

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

11 GENERAL NAIDOO: Still under oath, Chair.

12 CHAIRPERSON: Mr Chaskalson?

13 GENERAL NAIDOO: s.u.o.

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

15 Thank you, Chairperson. When we left before lunch we were

16 looking at JJJ10 4533 which showed a convoy turning up at a

17 point equivalent to F8 on the grid on MMM1 on the road that

18 will take that convoy past the small substation and, Major-

19 General, I understood you to accept that this was a

20 possible route to scene 1 from the hypothetical starting

21 point that I've asked you to assume. Were you aware of

22 that route on the day?

23 GENERAL NAIDOO: Chairperson, no, I

24 wasn't aware.

25 MR CHASKALSON SC: I'd like to show you

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1 two or three photographs around JJJ10 4533 if we can start

2 first with JJJ10 4532, it's the preceding photograph.

3 That's a photograph of your convoy at its starting point

4 next to forward holding area 1, would you accept that?

5 GENERAL NAIDOO: Correct, Chair.

6 MR CHASKALSON SC: Now, the time of that

7 photograph is 15, ETV time 15:35:06 which is 12 seconds

8 before we saw the next photograph which we have just looked

9 at, 4533, of the convoy turning off the road a couple of

10 hundred metres ahead of you. If we can –

11 CHAIRPERSON: Oh, I see, let me just be

12 clear. The convoy we saw in the previous slide, that was

13 not the witness's convoy, it was another convoy.

14 MR CHASKALSON SC: Not the Major-

15 General's convoy, it was a separate convoy.

16 CHAIRPERSON: But this photograph

17 indicates, you say, that his convoy was not very far away

18 from that convoy at the time it turned into the road that

19 we saw.

20 MR CHASKALSON SC: Indeed and it was

21 facing in the direction of the convoy that turned into the

22 road. Would you accept that?

23 GENERAL NAIDOO: Chair, I'm not sure what

24 should I accept?

25 MR CHASKALSON SC: That your convoy was a

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1 relatively short distance away from the other convoy that
 2 we just saw turning off at F8 and was facing that convoy?
 3 GENERAL NAIDOO: Chair, no, I did not see
 4 an oncoming convoy although there was traffic coming in
 5 front. I don't remember seeing an oncoming convoy of
 6 police vehicles.
 7 MR CHASKALSON SC: Well, then let's go
 8 forward to 4533 again so that we can get the full sequence
 9 of the time line.
 10 CHAIRPERSON: Mr Chaskalson, are you
 11 suggesting that the convoy we see turning into this road
 12 and moving across from left to right on the slide was a
 13 convoy of police vehicles or other vehicles?
 14 MR CHASKALSON SC: Yes, Chairperson, I'm
 15 suggesting that it was a convoy of police vehicles and we
 16 can follow it a little later. Maybe if we zoom in it will
 17 be evident that we're dealing with police vehicles. Were
 18 you aware of any convoys of these sorts of vehicles other
 19 than police vehicles operating on the day?
 20 GENERAL NAIDOO: Chair, there was normal
 21 traffic, police vehicles as well as private vehicles and
 22 trucks on the road, yes. In fact the traffic was quite
 23 constant.
 24 CHAIRPERSON: The vehicle we see which is
 25 the, it looks like the head of the convoy which has already

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1 turned and is proceeding from left to right on the slide,
 2 can you identify that as a police vehicle from the
 3 markings? It's not very clear to me but you would look
 4 with the eyes of a policeman, I look with the eyes of a
 5 retired legal man.
 6 GENERAL NAIDOO: Chair, no, I would not
 7 be able to specifically say that that is a police vehicle
 8 because normally the police vehicles will have police
 9 markings on it but I can't say strictly that it is not a
 10 police vehicle as there were a few police vehicles that
 11 were not marked.
 12 MR CHASKALSON SC: Well, let's go to the
 13 next photograph which is your, we've been to your 4533
 14 which is –
 15 CHAIRPERSON: 4533 is the one we've just
 16 looked at, so we're now going to look at the next one?
 17 MR CHASKALSON SC: Sorry, then 4534 –
 18 CHAIRPERSON: Yes, alright, let's look at
 19 that.
 20 MR CHASKALSON SC: Which is 12 seconds
 21 later, shows your convoy still in the same position and if
 22 we zoom in, in the area above the small substation which is
 23 roughly 15% of the way down the screen, one can see that
 24 the convoy that we previously saw has now proceeded up that
 25 road at F8. Do you accept that?

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1 GENERAL NAIDOO: I accept that there's
 2 vehicles there but in terms of the line of sight, no, we
 3 did not see that convoy going in, Chair.
 4 MR CHASKALSON SC: You didn't see that.
 5 GENERAL NAIDOO: That's correct, Chair, I
 6 didn't see that convoy going in.
 7 MR SEMENYA SC: Chair, can I get clarity
 8 on what basis Mr Chaskalson says it's the same convoy.
 9 MR CHASKALSON SC: Chairperson, it's a
 10 minute later on this photograph and there's no other –
 11 CHAIRPERSON: I thought you said 12
 12 seconds.
 13 MR CHASKALSON SC: Sorry, 12 seconds. It
 14 was a minute, the minute was the gap between the previous
 15 photograph and this one.
 16 CHAIRPERSON: That sounds like a
 17 satisfactory basis if you say it's 12 seconds, I'm not sure
 18 about a minute but 12 seconds would be okay.
 19 MR CHASKALSON SC: The ETV time of this
 20 convoy, of this photograph 4534 is 15:36:18. And if we can
 21 just follow the route of that convoy on 4535 which will be
 22 ETV 15:36:24, another six seconds later, we'll see them
 23 picking up. Is this 4535? I think it's –
 24 CHAIRPERSON: - what the computer says.
 25 MR CHASKALSON SC: Yes, it is. Sorry,

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1 can one zoom out and zoom back a bit? And one sees the
 2 main road running past Nkaneng, which I'm marking now in
 3 the top right-hand corner. In fact let's zoom out the
 4 whole way so that we can describe it with reference to the
 5 picture as it will be seen on the record. That that I'm
 6 marking now in the top right-hand, well, just left of
 7 centre at the top of the screen moving all the way down to
 8 the right hand side of the screen is the main road running
 9 alongside Nkaneng. The convoy which I'm marking now, which
 10 is just below the top of the screen on a road, gosh, maybe
 11 5% down the photograph, is heading towards that road which
 12 in turn will head to the koppie if one were to follow the
 13 trajectory of that road through the edge of the photograph.
 14 Can we go to the next photograph which is 4537 and that,
 15 will you accept, is your convoy still in its starting
 16 position next to forward holding area 1.
 17 GENERAL NAIDOO: Chair, it looks like my
 18 convoy.
 19 MR CHASKALSON SC: And for the record,
 20 the time of that is 15:36:50, that's 26 seconds after we
 21 saw the last photograph.
 22 CHAIRPERSON: Do I understand the
 23 vehicles in your convoy are stationary? Is that suggested?
 24 GENERAL NAIDOO: Chair, as I indicated,
 25 we initially formed up, we were stationary, we moved

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1 forward until everybody was in and then we slowly moved
 2 forward until what was the immediate response area where we
 3 waited.
 4 CHAIRPERSON: Yes, I understand. What I
 5 want to know is on this slide, is this a slide of your
 6 vehicles stationary or is this a slide of them moving
 7 forward or can't you –
 8 GENERAL NAIDOO: I am not sure. It could
 9 be moving forward because I see there's a gap between some
 10 of the vehicles as well, but I could not say.
 11 MR CHASKALSON SC: Maybe the easiest way
 12 of comparing it, Chairperson, is to look at the start and
 13 end point of the convoy and we'll see that there's no
 14 material difference between the convoy in this position at
 15 15:36:50 and in its starting position at 15:35:06. So if
 16 we look at the starting point of the convoy here, I'm
 17 marking the front white vehicle in the convoy, and we can
 18 measure it as just past this concrete silo looking, silo-
 19 like structure, if we go back to 4532 – can we zoom back
 20 out – we see the silo structure and the front vehicle of
 21 the convoy in essentially the same position at 15:35:06,
 22 which was one minute and 44 seconds before the picture that
 23 we have just seen.
 24 CHAIRPERSON: So it does seem, Major-
 25 General, that it is, these vehicles are stationary on the

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1 slide we're looking at.
 2 GENERAL NAIDOO: It could be, Chair.
 3 CHAIRPERSON: Ja.
 4 MR CHASKALSON SC: The next possible
 5 route to scene 1 from my hypothetical starting point is the
 6 road, if we can call up MMM1, the road that leads the main
 7 gravel road in block E8 just close to the line dividing E8
 8 and F8 and then moves towards the substation and then picks
 9 up the road that we've already been looking at, which will
 10 then run through towards Nkaneng at F8 and across towards
 11 scene 1. Do you accept that that is a route that you could
 12 have used to get to scene 1 from my hypothetical starting
 13 point?
 14 GENERAL NAIDOO: Chair, based on the
 15 hypothetical, however I must indicate this exhibit MMM1 was
 16 a map that we had in our possession and is quite – there is
 17 no clear indication of roads, as you could see, because as
 18 I already indicated I was not the driver of the vehicle and
 19 the driver was somebody given to me from Rustenburg who was
 20 supposed to be familiar with the area and I obviously
 21 indicated to him this is where we have, want to be, and
 22 this is how we're going to work. So I would take it, what
 23 the evidence leader is saying, hypothetically as being a
 24 possible road. I am not familiar with that.
 25 MR CHASKALSON SC: Well, I can show you

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1 photographs of other vehicles using that road on the day.
 2 We'll get to those in a minute but I first want to take you
 3 up on your previous answer about your not being the driver.
 4 Would you agree that in terms of your posting at forward
 5 holding area 1, the most important function that you would
 6 possibly have to perform in the course of the operation was
 7 the function of getting medical assistance to injured
 8 victims or injured parties in the course of the operation.
 9 GENERAL NAIDOO: Chair, I would say it's
 10 one of the responsibilities, yes.
 11 MR CHASKALSON SC: Well, I want you – in
 12 terms of the range of responsibilities that you might
 13 possibly have to exercise, I want to put to you that that
 14 was the most important one.
 15 GENERAL NAIDOO: Chair, I'm not sure how
 16 we arrive at which is more important than the others. I am
 17 indicating it is important, just as it was important to
 18 deploy members for a particular incident. So I'm conceding
 19 it is important, I wouldn't say it was most important or
 20 the least important.
 21 MR CHASKALSON SC: But Major-General,
 22 when we went to your evidence earlier about why it was so
 23 important for you to get the medics to scene 1, you
 24 conceded that – or you didn't concede, you actively
 25 testified that because of the particular duties in respect

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1 of medical treatment, everything else had to be
 2 subordinated and geared towards the need for getting
 3 medical personnel to scene 1. That's why you sent the dog
 4 squad in to koppie 3. Do you recall that?
 5 GENERAL NAIDOO: I recall saying it was
 6 very, it was crucial that I get the medical personnel to
 7 the scene of shooting, Chair.
 8 CHAIRPERSON: That duty was involved with
 9 the preservation, possible preservation of life. Now other
 10 duties that you, the other functions you had to perform in
 11 your capacity as commander of the forward holding area 1,
 12 did any of those involve preservation of life in the same
 13 way, possible preservation of life?
 14 GENERAL NAIDOO: Chair, yes, the
 15 deployment of the tactical teams, if they were under attack
 16 or searching for people that could possibly be injured in
 17 the bushes, the mounted unit, those are also linked to
 18 preservation of life.
 19 MR CHASKALSON SC: I can understand your
 20 answer to a certain degree in respect of the tactical units
 21 but of course by 1 o'clock on the 16th that was no longer
 22 your function, they had already been moved away from your
 23 jurisdiction up to the scene. Do you accept that?
 24 GENERAL NAIDOO: The other tactical
 25 units, only the canine and the mounted remained in holding,

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1 yes, Chair.
 2 MR CHASKALSON SC: Sorry, do you describe
 3 the canine and the mounted as tactical units?
 4 GENERAL NAIDOO: They also are tactical
 5 units, Chair.
 6 MR CHASKALSON SC: And how, in the
 7 context of this operation, were the canine or the mounted
 8 units going to be involved in the preservation of life?
 9 GENERAL NAIDOO: Chair, as I indicated,
 10 the canine as well as the mounted units were going to be
 11 used to sweep the area to find injured, wounded people that
 12 may be lying where, in the bush and in the veld, also to
 13 find weapons, et cetera. So the issue of finding people
 14 that may be injured or lying in the veld I think also
 15 relates to the preservation of life because it's some of
 16 the functions that the dog, canine specifically does,
 17 search and rescue.
 18 CHAIRPERSON: Somewhere here in the
 19 audience has got his or her headphones off. They're on the
 20 bench. We can hear the voice coming from them, it's a bit
 21 disturbing. So I'd be grateful if that person would either
 22 turn the headphones off or put them on his or her ears so
 23 we can't hear them. We still hear it. It sounds a bit
 24 better. Maybe there's nothing to interpret. No, I can
 25 still hear it. Please, who is it? Alright, well, carry on

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1 and get it sorted. I think the lady concerned is being
 2 assisted to make sure we haven't got a problem. Alright,
 3 you can proceed, Mr Chaskalson.
 4 MR CHASKALSON SC: Well, whether it was
 5 getting the medics to the scene or getting the dog squad to
 6 the scene, was it not important for you as the commander
 7 who had that responsibility to know which route you were
 8 going to take, which was the best route, which route would
 9 work, which route wouldn't work, what your range of routes
 10 was?
 11 GENERAL NAIDOO: Chair, I think I've
 12 already testified that personally I was not familiar with
 13 the terrain, which is why I had engaged the services of a
 14 driver who came from the area. I indicated to the driver
 15 where we had to be in terms of the briefing that we had and
 16 the driver then took us and led us to the various places.
 17 So I worked on the basis that I had somebody who was
 18 knowledgeable with the terrain and could take us to where
 19 we were required, based on the exhibit MMM1 which each
 20 section commander had received at the briefing.
 21 MR CHASKALSON SC: So you yourself did no
 22 reconnaissance of the area with a view to working out how
 23 you were going to get medics or the dog squad to the place
 24 that you had to get them to?
 25 [14:26] GENERAL NAIDOO: No as far as I know

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1 nobody had the opportunity to do reconnaissance. We were
 2 deployed where we were deployed.
 3 MR CHASKALSON SC: And from that answer I
 4 gather that you didn't task anyone with the job of
 5 reconnaissance.
 6 GENERAL NAIDOO: Chair, as my driver had
 7 indicated he's familiar with the area and he knew what was
 8 expected, I did not see the need for further
 9 reconnaissance.
 10 MR CHASKALSON SC: And did your driver
 11 know the details of the operation?
 12 GENERAL NAIDOO: Chair, he's a
 13 lieutenant-colonel and at 1:30 he was, sorry at 14:30 he
 14 was with us when Colonel Scott gave us the briefing and
 15 handed these maps over to us.
 16 MR CHASKALSON SC: So he knew where the
 17 operation was going to take place and you trusted him to
 18 pick the best route to get there.
 19 GENERAL NAIDOO: That is correct, Chair.
 20 MR CHASKALSON SC: Who is the lieutenant-
 21 colonel who was your driver?
 22 GENERAL NAIDOO: Lieutenant-Colonel
 23 Tongwane of the mounted unit of Rustenburg.
 24 MR CHASKALSON SC: Let's get back to the
 25 hypothetical routes or not the hypothetical routes, the

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1 routes on the basis of my hypotheses. We've already
 2 discussed three routes, there is a fourth route that I want
 3 to put to you which is a route which takes at starting
 4 point, the starting point that you had which is just before
 5 the, or that you say that you had which is just before
 6 immediate reaction area 1 in block C7. There is also a
 7 road and I put it to you it's actually a better quality
 8 road than the one that you ultimately chose, that runs
 9 diagonally from immediate reaction – from C7 into D6.
 10 Sorry from C7 across D7 – I need to look at a better – if I
 11 can speak to it from my map which has definite resolution.
 12 It goes C7, sorry C8 is where it starts, D7 then through to
 13 E7 and then cuts the corner of F7 before going into F8 and
 14 joining up with the road that we've just been looking at.
 15 So if we run it back from F8, cutting the corner of F where
 16 I am marking it now, running it through down to E7 across –
 17 sorry I'm struggling with the marker because I don't have
 18 resolution. Maybe if I can –
 19 CHAIRPERSON: As far as I can see it runs
 20 from, am I correct? It runs from the middle of the line
 21 between 6 and 5 in the F column. Is that correct? And
 22 then it goes across to E6, is that right? And then goes
 23 down to D7 and hits the road there?
 24 MR CHASKALSON SC: No, Chair, it joins up
 25 the other road where you stated in the middle of F6, it

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1 then cuts the corner at the bottom of F6 running into F7.
 2 So it cuts the corner of F7, the top corner there at 7. It
 3 comes down into E7 –
 4 CHAIRPERSON: And then hits the road in
 5 E7, is that right?
 6 MR CHASKALSON SC: No it carries on
 7 across to D7 cutting the corner at the top of D8 before
 8 hitting at the road at the same point as the – no, no hang
 9 on. I have the wrong grid which might explain –
 10 CHAIRPERSON: Everything.
 11 MR CHASKALSON SC: It might explain
 12 everything which is very disconcerting. Yes, no that would
 13 explain why. Let's start again. E7 is where the road
 14 turns off the main road, sorry C7, cuts up cutting the
 15 corner of D7, goes across E6 and then cuts the corner of F6
 16 before joining the road in F5 and carrying on to Nkaneng.
 17 COMMISSIONER HEMRAJ: Would it help if
 18 someone could plot all these various routes for you in
 19 colour on one of these maps, Mr Chaskalson? They'd be so
 20 clearer to us then.
 21 MR CHASKALSON SC: I have a slide which
 22 does that, so maybe what I should do is copy that to – I
 23 can copy that right now if the memory stick comes down and
 24 we can then show it up and introduce it as an exhibit. Can
 25 someone just give me a memory stick to –

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1 CHAIRPERSON: How long is this exercise
 2 going to take?
 3 MR CHASKALSON SC: It will take a minute.
 4 CHAIRPERSON: I see, all right. Anyway I
 5 think it's clear where we are. You're showing a number of
 6 alternate routes which you say the witness could have taken
 7 to have got to scene 1. He says, as I understand him, he
 8 doesn't deny that that may well be so, but he put himself
 9 in the hands of a local driver who he understand has local
 10 knowledge. And therefore he didn't concern himself with
 11 the question there were other, quicker, shorter routes to
 12 scene 1 than the one he was being taken on. I think that's
 13 the summary of his evidence.
 14 MR CHASKALSON SC: Thank you, Chair, if I
 15 can just quickly save this and then – what is our current
 16 exhibit, is it MMM –
 17 CHAIRPERSON: MMM4 would be telephone
 18 calls taken from the witness's mobile telephone from 14 to
 19 16 August. So now we're going to have MMM5 are we? And
 20 what would that be, a map indicating – a grid map –
 21 MR CHASKALSON SC: A grid map indicating
 22 alternative to scene 1. Not necessarily shorter, well
 23 shorter than the one that was ultimately chosen. Yes well
 24 it can be called shorter, shorter than the one that was –
 25 CHAIRPERSON: The whole point is though

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1 that is shorter. Alternative shorter routes to scene 1.
 2 MR CHASKALSON SC: Yes.
 3 CHAIRPERSON: All right, so MMM5 will be
 4 a grid map indicating alternative shorter routes to scene
 5 1.
 6 COMMISSIONER HEMRAJ: General, was it
 7 intended that the convoy should come out on the police side
 8 of the barbed wire?
 9 GENERAL NAIDOO: That was the intention.
 10 COMMISSIONER HEMRAJ: Thank you.
 11 MR CHASKALSON SC: That then brings me to
 12 my next question. Commissioner Hemraj's question to you
 13 brings me to my next question. Could you indicate to me
 14 how you proposed to get to the police side of the barbed
 15 wire on the route that you were taking? Can you describe
 16 it to me and I will point it as we go.
 17 GENERAL NAIDOO: Chair, I think as I
 18 already indicated, I indicated the driver to get us there.
 19 What was in his mind about going around it etcetera I won't
 20 be able to testify. I was under the impression he was
 21 taking us on the shortest possible route to behind the
 22 police barbed wire.
 23 CHAIRPERSON: Perhaps a question that
 24 flows from that is did you convey to him that you wanted to
 25 end up on the police side of the barbed wire? Or did you

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1 say just take me to scene 1, of course you didn't call it
 2 that, you would have called it something else, take me to
 3 the place where the shooting's happening as quickly as you
 4 can?
 5 GENERAL NAIDOO: That's correct.
 6 CHAIRPERSON: Without saying which side
 7 of the barbed are you going to go?
 8 GENERAL NAIDOO: Well I indicated, as I
 9 indicated, the plan was, or in terms of the original
 10 briefing the K9 unit would never have been in any area
 11 where there have been large crowds. We do not use the K9
 12 unit for crowd management. The K9 unit was supposed to
 13 sweep from behind –
 14 CHAIRPERSON: Okay, I understand the
 15 reasoning for wanting to be on the police side of the
 16 barbed wire, I'm busy with a different point. And that is
 17 did you communicate to the lieutenant-colonel who was your
 18 chauffer that you wanted to be on the police side of the
 19 barbed wire?
 20 GENERAL NAIDOO: I didn't say
 21 specifically the police side, I said let us go to the
 22 scene.
 23 MR CHASKALSON SC: Because let me tell
 24 the difficulty with the route that you chose. If we follow
 25 this route you pick up the main road at the point that I'm

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| <p style="text-align: right;">Page 23122</p> <p>1 marking now which is B5. This is the main dirt road to get 2 you to Nkaneng. Now if you follow this road you're going 3 to straight into the police barbed wire. You can't get 4 around the police barbed wire because it runs – well 5 firstly it runs straight the road and secondly it runs all 6 the way down to the power station over there. So how was 7 your route going to work? 8 GENERAL NAIDOO: Chair, as I indicated, 9 what my requested to the driver was as to what his thinking 10 was, I can't testify. I, at that stage, assumed that I was 11 being taken to where the incident had occurred so that we 12 can render services that were required. So in going there 13 he did indicate that there was a better road, in his terms, 14 that comes along there. So I suppose which is why he took, 15 but I can't speculate onto that. 16 MR CHASKALSON SC: You see the first 17 road, or in fact all of the options that we discussed thus 18 far including the one that you say you tried first, would 19 get you on the police side of the barbed wire. The one 20 that you chose would get you on the wrong side of the 21 barbed wire. It wouldn't take you to the scene. Is that 22 your driver's mistake, not yours? 23 GENERAL NAIDOO: Chair, it would appear, 24 as I indicated, I can't testify in terms of what was in his 25 mind other than indicating he felt there was a better road</p> | <p style="text-align: right;">Page 23124</p> <p>1 – 2 CHAIRPERSON: - but perhaps you should 3 show it to the witness just to make sure that he agrees 4 with it and save time in the end. Perhaps he could 5 describe it to us or you can, I don't know which is better. 6 That will give us six routes then, so you'll have to think 7 of another colour indicating his one. 8 MR CHASKALSON SC: Yes, Chairperson, 9 that's something that we can sort after the Commission 10 today. Now Major-General, you just trusted your driver on 11 this one, but I want to put to that in respect of this 12 particular problem with the route, that was such a basic 13 problem that even you, with very little knowledge of local 14 terrain ought to have been alert to it. What's your 15 response to that? 16 GENERAL NAIDOO: Chair, as I indicated, 17 our experience of the first attempt at getting to scene 1, 18 what it was and as we drove back we then obviously took the 19 route that the driver felt was the best route. I already 20 indicated I had no, I was not familiar with the terrain and 21 would be the routes that were indicated. 22 MR CHASKALSON SC: It's not only an issue 23 of the routes that were indicated, Major-General, you had 24 the grid map, correct? 25 GENERAL NAIDOO: That is correct.</p> |
| <p style="text-align: right;">Page 23123</p> <p>1 after our last attempt where we could not go beyond a 2 particular point. 3 CHAIRPERSON: Sorry to interrupt you, Mr 4 Chaskalson, need to do a bit of housekeeping. We now have 5 on the screen what I take it is exhibit MMM5. It's the 6 slide that we were looking at which is MMM1 but it's now 7 got some roots on it, it looks five roots, blue arrows, 8 green arrows, red arrows, purple arrows and yellow arrows. 9 Is that right? 10 MR CHASKALSON SC: That's correct, 11 Chairperson. I must emphasise that the grid lines on this 12 document are not necessarily, in fact I don't think are the 13 same as the grid lines on the other document because – 14 CHAIRPERSON: I don't think it really 15 matters, it indicates what the routes are, not the route 16 which was taken by the witness and he says there's a reason 17 why he didn't go that route. Now you haven't indicated on 18 this the route that he did follow, but we can follow it 19 quite clearly from what you have said and it lands up on, 20 as you say, the wrong side of the barbed wire, unlike the 21 five coloured ones to which I've referred. We'll print it 22 out and we'll get copies of the exhibit in due course. Is 23 that right? 24 MR CHASKALSON SC: Yes, Chairperson, if 25 it would assist I can just mark the route actually taken by</p> | <p style="text-align: right;">Page 23125</p> <p>1 MR CHASKALSON SC: You knew where the 2 barbed wire was going to be thrown. 3 GENERAL NAIDOO: That is correct. 4 MR CHASKALSON SC: Now how did you 5 propose to get around the barbed into the safe zone by 6 going around the west side of the power station? How could 7 you not have seen that that would have been a problem. 8 GENERAL NAIDOO: Chair, I think at that 9 stage the instruction that I gave and that was being 10 executed was to get us to the scene. So in terms of the 11 route yes it would appear that we would be on the wrong 12 side of the barbed wire and as I indicated my understanding 13 was we would come behind the koppie which is koppie 1. 14 MR CHASKALSON SC: When you say behind 15 the koppie, we've discussed this earlier, it's along row 5. 16 Is that what you're suggesting? 17 GENERAL NAIDOO: That's correct, Chair. 18 MR CHASKALSON SC: If your understanding 19 was that you were then going to come behind the koppie on 20 what is row 5 on this exhibit MMM5 how did you think you 21 would ever get across the barbed wire, or did that not 22 cross your mind? 23 GENERAL NAIDOO: At that stage no, Chair. 24 MR CHASKALSON SC: So it didn't cross 25 your mind.</p> |

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|--|--|
| <p style="text-align: right;">Page 23126</p> <p>1 GENERAL NAIDOO: The barbed wire was not 2 a factor that I was focusing on at that stage, Chair. 3 MR CHASKALSON SC: Why not? 4 GENERAL NAIDOO: Chair, after the 5 disruption of our first attempt to get to scene 1 obviously 6 we were now concerned and trying to get to the scene as 7 soon as possible. So we made that a priority and as I said 8 that possibly disrupted my thoughts or thinking at that 9 time when I asked the driver to please get us there as soon 10 as possible. 11 MR CHASKALSON SC: But Major-General the 12 barbed wire was the centre piece of this plan, it's purpose 13 was to divide the terrain into a safe zone where the police 14 and support services and civilians would be safe. And an 15 action zone where there would be a high risk of conflict. 16 Do you accept that? 17 GENERAL NAIDOO: That is true. 18 MR CHASKALSON SC: And if there was one 19 thing that must have been communicated to you at the 20 briefing it was what the purpose of the barbed wire was and 21 where it was going to be. 22 GENERAL NAIDOO: Chair, yes the purpose 23 of the barbed wire was given to me as to protect the police 24 units if the crowd had decided to run through police lines. 25 MR CHASKALSON SC: So in those</p> | <p style="text-align: right;">Page 23128</p> <p>1 that to be the evidence we were giving in relation to the 2 roll out of the barbed wire. In fact one of the reasons 3 why it takes so long, we were told, is that you have to 4 physically attach the barbed wire A frame to the Nyala 5 behind it in the case of Nyala and I would assume to the 6 power station fence in the case of the power station fence. 7 Does that ring true for you? 8 GENERAL NAIDOO: Chair, no I was not 9 talking about the roll out of the barbed wire. What I 10 indicated was the A frame normally dropped backwards and it 11 forms an anchor. 12 [14:46] I did not, and I still have not seen what the 13 status was there. I indicated one of the possible options 14 when I was asked did we ever consider the fact that the 15 barbed wire was there. 16 CHAIRPERSON: Mr Chaskalson, just to get 17 a bit of housekeeping out of the way. Am I correct in 18 saying that the yellow arrows indicate, what you say is a 19 possible route, but what the witness says, if I understand 20 him correctly, that is the route he was trying to take. 21 But he encountered a ditch somewhere. I think it's in D7 22 is it. And that's why he had to do a U turn so that he 23 was in fact following that route, if I understand him 24 correctly, but he stopped and did a U turn because of this 25 ditch which we can't see from the photograph. Is that</p> |
| <p style="text-align: right;">Page 23127</p> <p>1 circumstances it seems to me a fairly major mistake not to 2 account of where the barbed wire is when you're ostensibly 3 bringing medical assistance to victims at scene 1. 4 GENERAL NAIDOO: Chair, actually based on 5 it, we thought we would be able to breach the barbed wire 6 at the power station, but as I said it was never something 7 that we gave thought to at that stage. But my impression 8 was we could pass between the power station and the barbed 9 wire where it started. 10 MR CHASKALSON SC: Well, Major-General, 11 that's at odds with your earlier answer that you didn't 12 give any attention to the barbed wire, do you accept that? 13 GENERAL NAIDOO: Chair, I did indicate 14 that we did not give that priority thought. 15 MR CHASKALSON SC: There's another 16 problem which is – firstly factually you couldn't breach 17 the barbed wire at the power station. On what basis did 18 you think that you could? 19 GENERAL NAIDOO: Chair, all it would have 20 required was the base of the barbed wire plate to be pulled 21 out of the way by a vehicle. It was possible to be done by 22 hand. The barbed wire plate falls and holds the wire in 23 place while it rolls out. It's not something that stands 24 and it's not attached to the power station as such. 25 MR CHASKALSON SC: I don't understand</p> | <p style="text-align: right;">Page 23129</p> <p>1 correct, Major- General? 2 GENERAL NAIDOO: That was my reasons, 3 Chair. 4 CHAIRPERSON: Alright, so that the 5 housekeeping cleared up as far as the yellow route is 6 concerned. But in relation to your existing evidence, the 7 point you are dealing with at the moment, I mean, the 8 trouble was all taking place on the – or thought to be 9 taking place on the western side, really, of the barbed 10 wire fence, is that right? That's where you thought the 11 people would be who would have to be dispersed. That's 12 where you thought that the strikers would be, is that 13 correct? 14 GENERAL NAIDOO: That is correct, Chair. 15 CHAIRPERSON: Now, wouldn't it have been 16 a bit of a risky business if you didn't know what could 17 happen to them, whether they had all moved on and so on. 18 If some of them were congregating around the place where 19 the barbed wire fence began next to the power station, it 20 might have been quite a risky business story to have got 21 your men out of the vehicles to move the barbed wire away. 22 You were after all in soft vehicles, weren't you? 23 GENERAL NAIDOO: Chair, that is correct, 24 which is why I indicated in my original evidence that when 25 we came around to what is indicated on the map, around A,</p> |

1 ja A5 we stopped to make an assessment of what the
 2 situation was. There were no strikers in sight to our
 3 right, or in the easterly direction. I did indicate we saw
 4 dispersing strikers on our left, moving in a westerly
 5 direction. So on face value before we proceeded we did not
 6 see any crowds. What we did see, number 1, was a line of
 7 NIU that was doing a sweep which indicated to us that they
 8 were at the rear end of the crowd. Because in terms of the
 9 planning the tactical units would sweep behind the public
 10 order police line.

11 And number 2, other than that there was no, on
 12 the terrain there was nothing to suggest that there will be
 13 crowds there. However I further indicated that one of the
 14 sources of concern for me was the fact of the gunfire which
 15 is why I did not deploy. Otherwise we would not have taken
 16 up a patrol sweeping position along that road, we would
 17 have proceeded straight with our vehicles to behind koppie
 18 1. Because it was, the NIU was already passed koppie 1.

19 CHAIRPERSON: I want to ask you a bit
 20 more about that but I have been asked to take an
 21 adjournment at ten to 3. We will take the tea adjournment
 22 now and we resume at five past 3.

23 [COMMISSION ADJOURNS COMMISSION RESUMES]
 24 [15:13] CHAIRPERSON: The Commission resumes. We
 25 have from time to time received requests for something to

1 be done about the fact that parts of the transcript is in
 2 Afrikaans where the witness testified in Afrikaans and
 3 certain of those taking part who are not able to understand
 4 Afrikaans have had difficulty. I'm happy to be able to
 5 report that a service provider has been obtained who is
 6 responsible for translating the Afrikaans sections of the
 7 record into English and these translations are already
 8 being put on the website. So those who have difficulties
 9 in that regard will I hope, find what they require on the
 10 website. If there are any suggestions people wish to make
 11 in regard to the translation then obviously we would be
 12 very happy to receive them, but I thought I should report
 13 that because I do know that it has been a source of
 14 difficulty to some of those who are participating. That's
 15 not a problem in relation to Major-General, you're still
 16 under oath to continue with your evidence in English. Mr
 17 Chaskalson will continue with his cross-examination in the
 18 same language.

19 GENERAL NAIDOO: Thank you, Chair.

20 MR CHASKALSON SC: Thank you,
 21 Chairperson. I just briefly want to go back to the route
 22 that you chose, we discussed the problem with the barbed
 23 wire. You said that you thought that it would be possible
 24 to get round the barbed wire by going to the fence of the
 25 substation and removing the A-frame, if I understood it and

1 creating an opening there. Did I understand you correctly?
 2 GENERAL NAIDOO: Chair, I think I
 3 indicated at that stage when we were taking the route the
 4 consideration of which side of the barbed wire we were
 5 going to end up with was not something that I talk about, I
 6 have testified to that. Then there were questions posed as
 7 to how would I possibly deal with that and I put
 8 possibilities that we could have moved the barbed wire but
 9 I think I clearly indicated at the time when we took the
 10 route, that was not the consideration as to get to the
 11 scene of the shooting.

12 MR CHASKALSON SC: Sorry, I'm not sure I
 13 understand that answer, Major-General, are you saying now
 14 that at the time that you took the route you really hadn't
 15 given any thought to where the barbed wire was and if you
 16 had banged into the barbed wire it would have come as a
 17 surprise to you.

18 MR SEMENYA SC: Chair, that is not what
 19 the witness is saying now. He said it even earlier.

20 MR CHASKALSON SC: Yes, but then he
 21 started giving an explanation of how he thought he might
 22 have got around the barbed wire, I just need to clarify
 23 what his state of mind was, if it was, he hadn't given any
 24 thought to the barbed wire at all then we can leave it
 25 there. If it was, hadn't really thought about the barbed

1 wire but thought that if we had any difficulties with the
 2 barbed wire, to get around at the power station, then we
 3 need to explore it further. So, Major-General, which is
 4 it?

5 GENERAL NAIDOO: Chair, as I indicated
 6 even earlier that I clearly indicated to the driver where
 7 we wanted to go. The driver was taking us there. The
 8 reason that it was not a consideration that I applied my
 9 mind on at that stage, because my understanding was the
 10 driver was taking us to the scene, obviously after we came,
 11 after we did come around that might have been a
 12 consideration had we got to the barbed wire. We had not
 13 yet got to the barbed wire, so I was working from the
 14 premise that the driver was taking us to where possibly the
 15 shooting, we were not sure exactly where the shooting had
 16 taken place, possibly where, and that would be obviously
 17 somewhere at the end of the barbed wire or somewhere in the
 18 region of the barbed wire. So at that stage when we were
 19 travelling I did not consider the barbed wire to possibly
 20 be an impediment because the driver was obviously taking me
 21 to where we had to go.

22 MR CHASKALSON SC: Sorry, Major-General,
 23 there is quite a lot in that answer that I just need to
 24 clarify. You said earlier in response to a question from
 25 Commissioner Hemraj on which side of the barbed wire you

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1 wanted to be. You said fairly unequivocally that you
 2 wanted to be on the police side of the barbed wire.
 3 GENERAL NAIDOO: That is correct, in
 4 terms of the planning and the briefing that was where we
 5 should be.
 6 MR CHASKALSON SC: So you stand by that
 7 answer, when you set off, however you thought you were
 8 going to get there, what you hoped the destination of your
 9 journey was, was the police side of the barbed wire?
 10 GENERAL NAIDOO: Chair, yes, I think
 11 before we closed, broke for tea I did also indicate we were
 12 supposed to be positioned behind the tactical units such as
 13 the National Intervention Unit, TRT, etcetera, because
 14 obviously the K9 sweep would have been after those units
 15 have done their sweep.
 16 MR CHASKALSON SC: But hang on a minute,
 17 Brigadier, you weren't, when you were trying to get to the
 18 koppie interested, when you were trying to get to the scene
 19 of the –
 20 CHAIRPERSON: No, you called him, you
 21 demoted him again, you did it unconsciously.
 22 MR CHASKALSON SC: Major-General, I
 23 apologise and if I do it again I apologise in advance, it
 24 won't be done deliberately. Major-General, when you were
 25 thinking of getting to the safe side of the barbed wire

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1 your intention had nothing to do with the K9 sweep, if we
 2 are to believe your earlier evidence, it had to do with
 3 getting the medics as quickly as possible to the scene of
 4 the shootings, is that not correct?
 5 GENERAL NAIDOO: That is true, Chair.
 6 MR CHASKALSON SC: Well, then why was it
 7 relevant to know what the position of the NIU was because
 8 the K9 was only going to have to come in behind the NIU?
 9 Why did that enter the equation?
 10 GENERAL NAIDOO: Chair, I could not take
 11 the K9 into, out of the focus of the original operation in
 12 executing the request for the emergency services. The K9
 13 would still have to be in play in terms of the duties that
 14 they originally had, so in asking or in going to the scene
 15 where the shooting took place I had to keep that in mind,
 16 that whilst I had the entire K9 with me I could not take
 17 them out of play should they be required where there were
 18 instances that suspects were in the bush or where they were
 19 required to sweep a particular area if a firearm was shown.
 20 I had to keep that in mind as well, so the intention was to
 21 arrive at a particular point where they would have entered
 22 anywhere had the normal dispersion taken place.
 23 MR CHASKALSON SC: But sorry, Major-
 24 General, we've discussed earlier the imperative of getting
 25 medical assistance to people in need of it.

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1 GENERAL NAIDOO: We agree, yes.
 2 MR CHASKALSON SC: Now was one of the
 3 functions of the K9 to escort the medics to the scene where
 4 they were needed?
 5 GENERAL NAIDOO: Chair, as I indicated in
 6 my evidence since Tuesday they had been performing that
 7 task. The medics were physically in our vehicles, I had
 8 medics in my vehicle as well, so yes, by implication I'm
 9 indicating that we had to escort them with K9.
 10 MR CHASKALSON SC: Now are you suggesting
 11 to me that until the K9 had performed their other functions
 12 in terms of the operation, the sweeping and sniffing
 13 functions, they couldn't be used to escort medical
 14 personnel and the medical personnel and the victims would
 15 just have to wait until that point?
 16 GENERAL NAIDOO: Chair, that is not what
 17 I indicated. I already indicated that, yes, it was a
 18 primary focus at that stage to get the medical personnel to
 19 the scene of the shooting. I also indicated that I should
 20 also not lose sight of the fact that I could have been
 21 asked for some part or most of the K9 units to be deployed
 22 in what they were originally briefed to do during this time
 23 that we were escorting. Had I arrived where the medical
 24 attention would have been required, I would have made an
 25 assessment as to whether I needed any or all of the K9 to

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1 continue guarding the medics and they would have then been
 2 available for the operation as they were briefed. So I had
 3 to keep that in mind when I continued with my deployment.
 4 MR CHASKALSON SC: But how would the
 5 ordinary operational needs for the K9 affect whether you
 6 could or couldn't take the medics to scene 1?
 7 GENERAL NAIDOO: Chair, I nowhere
 8 indicated that the operational requirements of the K9
 9 affected the deployment of the medics. In fact I indicated
 10 that we deployed the medics with the K9 as soon as it
 11 became apparent that the services of the medics were
 12 required. I have already testified to this.
 13 MR CHASKALSON SC: Sorry, Major-General,
 14 where this cross-examination is going is that it took, I
 15 don't know if it took you, but it took SAPS an hour to get
 16 medics to scene 1 while victims were in some cases bleeding
 17 to death on the ground, at least in one case.
 18 GENERAL NAIDOO: Chair, is a response
 19 required from me?
 20 MR CHASKALSON SC: No, no, -
 21 CHAIRPERSON: Let him finish, he is
 22 telling you where his cross-examination, Mr Chaskalson, he
 23 is taking us to, he is explaining that to you first and
 24 then he'll give you an opportunity to respond.
 25 MR CHASKALSON SC: I'm trying to find out

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1 why it took so long? You've given us an answer that
 2 suggests that in your decision making as to where to move
 3 the forces under your control, including the medics, you
 4 were having regard to the position of the NIU line which
 5 may or may not have been relevant to where the K9 units,
 6 were of when the K9 unit would perform their ordinary
 7 operations, do you accept that?
 8 GENERAL NAIDOO: No, Chair, I do not
 9 accept that. I indicated in passing that it was a
 10 consideration that I kept in mind should additional K9,
 11 should the K9 be requested but what I did indicate is that
 12 I committed the entire K9 capacity to escort the medics to
 13 the scene of the shooting or where we thought the scene of
 14 the shooting was.
 15 MR CHASKALSON SC: Well, why then was the
 16 position of the NIU line of any relevance at all to your
 17 decision making in relation to how to get the medics to the
 18 scene where they were needed?
 19 GENERAL NAIDOO: Chair, I think then that
 20 is an entirely different issue. As I indicated in my
 21 statement, when I came around to an area approximately, if
 22 you look at the map on the screen, approximately A5, I
 23 indicated that on my right hand side I could see the NIU
 24 sweeping line coming forward. That is significant in the
 25 light of the question, I'm not sure who asked it then, was

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1 I not concerned of being confronted with the crowd? I
 2 indicated that the positioning of the NIU gave me an
 3 indication as to how the dispersion line was running and
 4 that is all, because in terms of our operational procedure,
 5 when you arrive at a particular point before going further
 6 you do a particular assessment, looking at what is the,
 7 firstly understand our mission was to get the medics to,
 8 where they were required.
 9 We had to look at the terrain, the milieu, we had
 10 to look at what are the possible threats, all these things
 11 and the means that we had and that is what basically
 12 happened. We came around the power station, I made an
 13 assessment, based on the fact that there was shooting I
 14 decided to hold the medics there a little longer, I went
 15 forward to the smaller group to assess why the shooting was
 16 taking place because it would affect the deployment, the
 17 further deployment of the medics, all this was in my
 18 evidence. So the relevance of the NIU was merely an
 19 indication that he told me where the dispersion was at that
 20 particular point, responding to the fact that, did I not
 21 foresee that I would probably run into crowds. The NIU was
 22 one of the tactical units that was deployed to sweep behind
 23 the public or the police units.
 24 MR CHASKALSON SC: You see, Major-
 25 General, my confusion was caused by the fact that you then

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1 started talking about the ordinary functions of the K9 in
 2 operational terms as a third line behind the NIU. Are you
 3 now suggesting that that was not at all relevant to your
 4 decision to, in relation to how to get the medics to scene
 5 1?
 6 GENERAL NAIDOO: I used the NIU as an
 7 indicator to show you in terms of our briefing how I would
 8 understand where the deployments for the dispersion would
 9 be. I said that I was aware that the NIU, the TRT lines
 10 would be sweeping after the dispersion, thus I did not
 11 foresee the possibility of meeting large volumes of crowds,
 12 because had there been large volumes of crowds I would have
 13 still seen the Public Order Police units in front.
 14 MR CHASKALSON SC: Well, -
 15 GENERAL NAIDOO: That is an indication as
 16 to the scenario that I saw in front of me and my
 17 understanding of how the deployment would be.
 18 MR CHASKALSON SC: Maybe at this point it
 19 is important to mark on this map where you were and where
 20 you saw the NIU, but before we do that I just want to
 21 emphasise for the record that what we're looking at is MMM5
 22 and not MMM1 because the gridlines may not be the same, so
 23 these annotations are on MMM5. So, Major-General, your
 24 position if I understand you correctly when you say you saw
 25 the NIU was sort of roughly at this corner between A and B

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1 and 5 and 6, is that correct?
 2 COMMISSIONER TOKOTA: Sorry, Mr
 3 Chaskalson, I just want to clarify my mind. The way I
 4 understood him, I think he must correct me if I'm wrong, he
 5 mentioned this question of the NIU and so on, in the
 6 context as, when he was asked as to whether it wouldn't be
 7 dangerous to come to this side of the barbed wire and then
 8 he mentioned that, no, there were NIU members there,
 9 etcetera, so it would have been protected, that's how I
 10 understood it. He mentioned it in that context, not that
 11 he saw them when he got there, but I want him to correct me
 12 if I'm wrong.
 13 GENERAL NAIDOO: Chair, that's correct as
 14 the commissioner indicated, it gave me an indication of the
 15 possible deployment of forces because in terms of the
 16 planning that would give you an understanding of where the
 17 crowd would be. The crowd, the NIU would not be deployed
 18 directly behind the crowd because obviously they were not
 19 there for crowd control, so as the commissioner has
 20 indicated it gave me an indication of, in response to the
 21 question of, was I not afraid that I would bring the K9
 22 into contact with the crowd and I specifically indicated
 23 that I was also aware that the K9 is not used in the crowd
 24 management context.
 25 MR CHASKALSON SC: But Major-General, am

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1 I misunderstanding your evidence, did you see, did you see
 2 physically see the NIU line?
 3 GENERAL NAIDOO: That is correct, Chair,
 4 and I also testified to that fact.
 5 MR CHASKALSON SC: Ja, that is what I
 6 thought, so can we mark where you were and where you saw
 7 that NIU line?
 8 GENERAL NAIDOO: Chair, as I indicated
 9 approximately around A5, the right hand side, approximately
 10 as I said –
 11 CHAIRPERSON: Where you were?
 12 GENERAL NAIDOO: With the contingent of –
 13 CHAIRPERSON: Yes, you and your
 14 contingents were there –
 15 GENERAL NAIDOO: K9 and –
 16 CHAIRPERSON: A5, right hand side.
 17 GENERAL NAIDOO: We had just come around
 18 the power station, yes Chair.
 19 CHAIRPERSON: Yes, and then the NIU,
 20 where were they?
 21 GENERAL NAIDOO: Chair, I testified as
 22 the evidence leader indicated, the reference is not the
 23 same, I said they were in between koppie 1 and 3, I would
 24 say somewhere in the region of B3 on the right hand side of
 25 that square, somewhere there. The actual distance I would

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1 not be able to swear to, but they were actually coming from
 2 the direction, it was a long line and then they were coming
 3 from koppie 1 and 2.
 4 CHAIRPERSON: May I ask actually, Mr
 5 Chaskalson, I think you suggested something else but if I
 6 may say it, I think it would be more sensible for him to
 7 tell us on MMM1, because when he gave evidence previously
 8 he used MMM1 to indicate where he was and so on. So it
 9 helps to look at the same exhibit and presumably the same
 10 positions, so could we please have MMM1 and then you can
 11 tell us, maybe the answer will be the same but let us just
 12 make sure it is the same, and now we've got MMM1 up.
 13 [15:33] Can you tell us where you were firstly and where
 14 the NIU were at the time you're talking about?
 15 GENERAL NAIDOO: Chair, I indicated at
 16 that stage I was possibly in the region of, I think, B5
 17 approximately. And then I moved in the direction of B4 to
 18 B – ja, but I was in the region of B5 when I came around
 19 the station. The NIU was in the region of B3, B3
 20 plus/minus but as I indicated it was a long searching line.
 21 CHAIRPERSON: So the NIU, a long
 22 searching line in between koppie 1 and koppie 3.
 23 GENERAL NAIDOO: That's correct.
 24 CHAIRPERSON: And you'd just come round
 25 the power station?

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1 GENERAL NAIDOO: That's correct.
 2 CHAIRPERSON: And you were in the veld
 3 really. Initially, was it B5, but then B4, is that right?
 4 GENERAL NAIDOO: Yes, I moved in the
 5 direction of B3.
 6 CHAIRPERSON: Yes, yes, B4 and then
 7 toward B6?
 8 GENERAL NAIDOO: The three vehicles, yes.
 9 CHAIRPERSON: Did you actually enter B3?
 10 GENERAL NAIDOO: Chair, that's correct.
 11 MR CHASKALSON SC: And Major General,
 12 just to clarify what I'm interested in, the point at which
 13 you first saw the NIU, if I understand you correctly, you
 14 were in B5?
 15 GENERAL NAIDOO: Sorry, A5 B5 yes.
 16 MR CHASKALSON SC: A5 B5?
 17 GENERAL NAIDOO: Somewhere there.
 18 MR CHASKALSON SC: And the NIU at that
 19 stage, you say were in B3?
 20 GENERAL NAIDOO: I would say
 21 approximately, yes. As I indicated they were in between
 22 the two koppies, more than halfway past, yes.
 23 MR CHASKALSON SC: And Major General, you
 24 speak of an NIU line, can you give us an indication of the
 25 orientation of the line relative to this grid? Was it

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1 horizontal, in other words running along the row in the
 2 direction of the rows or was it vertical, running in the
 3 direction of the columns?
 4 GENERAL NAIDOO: I would say vertical
 5 from 4 upwards to 1, that way.
 6 MR CHASKALSON SC: And this was the NIU
 7 on foot?
 8 GENERAL NAIDOO: That is correct, Chair.
 9 MR CHASKALSON SC: And that's your
 10 recollection of how they were formed up when you first saw
 11 them at that point when you were sort of A5 B5?
 12 GENERAL NAIDOO: That's correct, Chair.
 13 MR CHASKALSON SC: Now Major General,
 14 when you saw the NIU in this vertical line were there
 15 vehicles from the POPs dispersion action visible, I was
 16 going to say ahead of them but let's, to the west of them,
 17 to the left of the grid as we look at it?
 18 GENERAL NAIDOO: Chair, as I originally
 19 testified what I did see in front of me was a special task
 20 force Casspir, I saw a water canon being accompanied by one
 21 Nyala, escorted by one Nyala.
 22 CHAIRPERSON: Where did you see them?
 23 Can you point them out to us? I think you may done it
 24 already but just to refresh our memories if we've done it
 25 already? Where did you see the Casspir and the water

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1 cannon and the Nyala?
 2 GENERAL NAIDOO: Chair, I used the other,
 3 the photograph and –
 4 CHAIRPERSON: Ja, but can you show us on
 5 MMM1?
 6 GENERAL NAIDOO: They were in B3, Chair
 7 but some were in front of the bushes, that's why I
 8 indicated I can't tell you specifically from this distance,
 9 but they were in B3 at the bottom end of what we now know
 10 as koppie 3.
 11 CHAIRPERSON: And I'm reminded that the
 12 actual positions is made much clearer if one looks at MMM2.
 13 GENERAL NAIDOO: Yes.
 14 CHAIRPERSON: Alright. Still in the same
 15 position where they on MMM2 as they were when you saw them
 16 first?
 17 GENERAL NAIDOO: That's correct, Chair.
 18 The Casspir didn't move, it was just the water cannon and
 19 the Nyala that moved.
 20 MR CHASKALSON SC: And the water cannon
 21 and the Nyala were broadly in the same position as we see
 22 the Casspir at the end of, in MMM3 or in a different
 23 position?
 24 GENERAL NAIDOO: Chair, as I indicated
 25 they were moving into position and then the Casspir stopped

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1 and the Nyala and the water canon –
 2 CHAIRPERSON: So it's MMM2.
 3 MR CHASKALSON SC: It's MMM2, sorry
 4 Chairperson.
 5 CHAIRPERSON: - book.
 6 MR CHASKALSON SC: Maybe if we can just
 7 call up MMM2 it would be the easiest way of dealing with
 8 this. So the Casspir is at the intersection at 4 ENF and
 9 the, that's the SDF Casspir, and the water cannon and the
 10 Nyala were where?
 11 GENERAL NAIDOO: The water cannon and the
 12 Nyala were in front of the STF Casspir. They were moving
 13 in a westerly direction to the right of the picture.
 14 MR CHASKALSON SC: So sort of column D-
 15 ish, or still column E?
 16 GENERAL NAIDOO: Chair, as I said they
 17 were moving, even the special task force Casspir, it did
 18 move a little before it got to that point where it stopped.
 19 So I would just say that there were a little before, I
 20 would not be able to say the distance at this stage.
 21 MR CHASKALSON SC: And all of this is
 22 what you saw before you took a decision to take your troops
 23 or your personnel into koppie 3?
 24 GENERAL NAIDOO: That is correct, Chair.
 25 MR CHASKALSON SC: At the point at which

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1 you just came round the, it was the scene that confronted
 2 you when you came round the power station?
 3 GENERAL NAIDOO: That's correct, Chair.
 4 MR CHASKALSON SC: Now there's another
 5 aspect of this scene that you spent some time on in
 6 evidence-in-chief and that was that you say you heard
 7 automatic gunfire at this point.
 8 GENERAL NAIDOO: That is correct, Chair.
 9 MR CHASKALSON SC: And again I want to
 10 just clarify time. You hear, did you hear the automatic
 11 gunfire at or shortly after the time at which you came
 12 round the power station?
 13 GENERAL NAIDOO: That is correct, Chair.
 14 CHAIRPERSON: Where was the automatic
 15 gunfire coming from, as far as you could hear?
 16 GENERAL NAIDOO: Chair, as I indicated it
 17 was from my right, that's more or less in the area where I
 18 noticed the NIU were doing their sweep.
 19 MR CHASKALSON SC: Sorry, Major General,
 20 so the automatic gunfire that you heard was coming from
 21 where you saw the NIU doing their sweep which was possibly
 22 column J, maybe even outside this MMM2?
 23 GENERAL NAIDOO: Chair, as I indicated in
 24 my evidence, it was on the right hand extremes of koppie 3,
 25 or –

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1 CHAIRPERSON: It was on your right hand
 2 side ahead of you?
 3 GENERAL NAIDOO: Right hand side, yes.
 4 CHAIRPERSON: Your right hand side ahead
 5 of you?
 6 GENERAL NAIDOO: That's right.
 7 CHAIRPERSON: I think you indicated to us
 8 once that on exhibit MMM2 –
 9 GENERAL NAIDOO: That's correct.
 10 CHAIRPERSON: We can see the remains of
 11 the NIU line.
 12 GENERAL NAIDOO: They were still there.
 13 CHAIRPERSON: That's on the line between
 14 H and I near the top?
 15 GENERAL NAIDOO: That's correct, Chair.
 16 CHAIRPERSON: So they were on your right
 17 but ahead of you, is that correct?
 18 GENERAL NAIDOO: Chair –
 19 CHAIRPERSON: You said that. They were
 20 on your right, ahead of you.
 21 GENERAL NAIDOO: That's correct.
 22 CHAIRPERSON: Ja.
 23 GENERAL NAIDOO: Approaching koppie 3,
 24 Chair.
 25 MR CHASKALSON SC: But again, I just need

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1 to clarify. Maybe you can just point it out, if it is
 2 possible to point out on this diagram, MMM2. Where did you
 3 think the automatic gunfire was coming from?
 4 GENERAL NAIDOO: Chair, it came from the
 5 direction of koppie 3, the bushes on the right. As I
 6 indicated I did observe the NIU there as well, hence I
 7 indicated that in the direction of the NIU line.
 8 MR CHASKALSON SC: So you feared that it
 9 was gunfire directed in the direction of the NIU line, you
 10 didn't think it was coming from the NIU line?
 11 GENERAL NAIDOO: Chair, I was not sure at
 12 that stage whether it was coming from the SAPS or it was
 13 coming from anybody else, but logically the SAPS had R5s
 14 and miners also were in possession of an automatic firearm,
 15 so I could not exclude the possibility of either people
 16 shooting.
 17 MR CHASKALSON SC: Okay, so you weren't
 18 sure whether it was SAPS or miners who was responsible for
 19 the automatic gunfire?
 20 GENERAL NAIDOO: That is correct, Chair.
 21 CHAIRPERSON: As I understand you to say
 22 that you knew the miners were in possession of an automatic
 23 firearm or did you –
 24 GENERAL NAIDOO: The R5 –
 25 CHAIRPERSON: But singular, the one that

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1 had been seized on the Monday?
 2 GENERAL NAIDOO: That's correct, Chair.
 3 CHAIRPERSON: So it was essentially one
 4 miner that was, may well have been in possession of one R5?
 5 GENERAL NAIDOO: Chair, that's correct.
 6 CHAIRPERSON: Ja.
 7 MR CHASKALSON SC: I notice that you
 8 didn't mention automatic gunfire in either your first
 9 statement or your second statement, you just mentioned
 10 gunfire, is there a reason for that?
 11 GENERAL NAIDOO: That's correct, Chair, I
 12 didn't mention it. As I said I heard heavy gunfire,
 13 automatic is something I said now. It could have been
 14 several firearms shooting at the same time but my
 15 assumption, or my presumption was it was, there was at
 16 least one automatic weapon shooting.
 17 MR CHASKALSON SC: And that was an
 18 assumption that you had at the time?
 19 GENERAL NAIDOO: That is correct, Chair.
 20 MR CHASKALSON SC: Why did you not
 21 mention it in your statements then?
 22 GENERAL NAIDOO: Chair, sometime heavy
 23 gunfire could also mean automatic gunfire but there was no
 24 specific reason why I didn't mention automatic as opposed
 25 to heavy.

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1 MR CHASKALSON SC: You see it does seem
 2 to me to be quite a significant distinction because if you
 3 or the SAPS perceived that you were coming under automatic
 4 gunfire from the miners, that seems to me to be a different
 5 situation from perceiving yourselves to becoming under
 6 possibly one or two shots with a handgun.
 7 GENERAL NAIDOO: Chair, I think a threat
 8 with a firearm is a threat with a firearm. The capacity to
 9 fire may vary but the threat remains what it is because the
 10 response obviously would be in terms of that.
 11 MR CHASKALSON SC: Major General, I have
 12 to take issue with that answer because if you go back to
 13 where we started, which is why you diverted from your plan
 14 to take the medics to scene 1, if you thought that there
 15 was someone with a pistol 300 metres away from you,
 16 possibly hostile to you, why would that have interfered
 17 with continuing to escort the medics to scene 1?
 18 GENERAL NAIDOO: True Chair, it is why I
 19 indicated it was heavy gunfire in the sense that it was not
 20 a sporadic shot which would have, could have diverted me
 21 from my original path. It was quite a large volume of
 22 gunfire. I would at this stage not be able to say yes, it
 23 was all automatic or it was just 9 mil. I have indicated
 24 as such and that is what I heard.
 25 MR CHASKALSON SC: So if you had thought

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1 that it was just 9 mil gunfire, there wouldn't have been a
 2 need for you to divert from your planned route to take the
 3 medics to scene 1, would you accept that?
 4 GENERAL NAIDOO: It would have
 5 significantly been less audible to us, yes, and obviously
 6 would have not been seen to be a threat as much as the
 7 heavy gunfire that I heard, yes.
 8 MR CHASKALSON SC: Well it's not just an
 9 issue of, the road that you were planning to take, we can
 10 do a brief measurement on Google earth to see what the
 11 closest distance to the koppie from that road is, at the
 12 closest point. And it's, I did it but I've lost my note so
 13 I will do it again. It's roughly 350 metres. Now a
 14 handgun at that range surely wouldn't pose a cognisable
 15 risk when you were thinking about getting medics to scene
 16 1?
 17 GENERAL NAIDOO: Chair, I don't think I
 18 am going to be able to debate the issue of ballistics or
 19 their range of fire, etcetera. As I indicated, based on my
 20 assessment of the situation, I heard heavy gunfire which
 21 could possibly have threatened the passage of our vehicles
 22 to the scene and that concerned me, not necessarily because
 23 they could have been shooting only at us but also a stray
 24 bullet could have struck one of the civilians we had in our
 25 care and based on that I made my decision.

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1 MR CHASKALSON SC: But Major General, if
 2 a stray bullet could have struck the civilians if you
 3 proceeded to scene 1, why couldn't it have struck the
 4 civilians if they sort of stayed at the point where you
 5 were which is on MMM1, if we can just go back to MMM1? At
 6 this point, somewhere along row 5 of MMM1.
 7 GENERAL NAIDOO: Chair, as I indicated
 8 that the front line of the vehicles escorting the medics
 9 were all police vehicles, they had formed a line there.
 10 The idea was to obviously turn right and go along the road
 11 to the scene. So possibility if it would have happened, I
 12 don't know but we did not want to take the risk of them
 13 actually going onto the road and then encountering such
 14 fire.
 15 CHAIRPERSON: What counsel's putting to
 16 you is wasn't there equally risk if they stayed where they
 17 were? Stray bullets you're talking about.
 18 GENERAL NAIDOO: Not from my assessment
 19 as I indicated that the front row of vehicles that, when we
 20 came around were all police vehicles, in a protection line
 21 and just like that the first five vehicles moved forward in
 22 a similar protection line. So I'm not saying it's not
 23 possible but I'm saying in the way we were escorting them,
 24 I feel that they were, we protected them as best as we
 25 could with the means available.

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1 CHAIRPERSON: You're not actually
 2 answering the question. I take it what you're talking
 3 about is two columns of vehicles parallel to each other,
 4 police vehicles being on the one side as a protection and
 5 the other vehicles on which the civilians were being
 6 conveyed were on the right hand side, being protected, is
 7 that right?
 8 GENERAL NAIDOO: Escorted and protected,
 9 Chair. Yes, what I indicated, Chair was there were police
 10 vehicles lined in the front, more than two and then these
 11 vehicles were behind the police vehicles. So yes, it would
 12 have been a real long stray bullet that would have missed
 13 all these other vehicles and then went right to the back.
 14 I can't rule it out but I think with the means available we
 15 tried to do what we were supposed to do.
 16 CHAIRPERSON: What counsel's suggesting
 17 to you is that if you people had proceeded going right,
 18 past the bottom as it were, of koppie 1, into admittedly
 19 into the area on the left hand side of the barbed wire but
 20 still there wasn't danger there, I think you said? If you
 21 continued in that way you wouldn't have materially
 22 increased the risk, I think that's what's being suggested
 23 to you.
 24 MR CHASKALSON SC: Chairperson, I must
 25 qualify, that is my proposition that I'm putting to the

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1 witness.
 2 CHAIRPERSON: Well you put your position
 3 as you wish, I was just trying to help the witness
 4 understand. Perhaps I'm making it more difficult.
 5 MR CHASKALSON SC: I've made an error in
 6 something that I put to the witness. The distance that I
 7 get on Google earth from your position, your front line of
 8 vehicle position to the koppie was roughly 360 metres, call
 9 it 360 metres. The distance that I get from the closest
 10 point on the road, because I took the wrong point is 269
 11 metres. So there is a material difference, I will grant
 12 you that. It's 269 metres versus 360 metres, but what I am
 13 putting to you is really two propositions. The first is
 14 unless you perceive yourselves to be under attack from
 15 rifle fire, taking a convoy to within 270 metres or 266
 16 metres to a place where you might be receiving fire with
 17 handguns is not a material risk if those vehicles are
 18 needed to get to people who are in need of medical
 19 treatment.
 20 [15:53] And if it is the material and insofar as it is a
 21 material risk it is not that much more of a material risk
 22 than leaving those vehicles in a position, 360 metres away
 23 from the same risk, those are the two propositions I'm
 24 putting to you.
 25 GENERAL NAIDOO: Chair, as I indicated

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1 already, based on the assessment that was in front of me I
 2 instructed them to hold where they were and obviously,
 3 approximately to the power station was seen as a possible
 4 shelter area if the situation got difficult, I did not do
 5 that particular - as it was suggested. What I focussed on
 6 was, the scenario in front of me, if we did move right what
 7 would be the possible implications whilst the shooting was
 8 taking place. At that stage there was no indication that
 9 the shooting was in our direction and based on that I made
 10 the decision they should wait until I go and assess whether
 11 it was safe for them to go through, and that's how the
 12 decision went.
 13 COMMISSIONER HEMRAJ: That formation,
 14 General, of five police vehicles in front of the civilians,
 15 you would not have been able to retain that if you
 16 proceeded along the road?
 17 GENERAL NAIDOO: Chair, no, we would then
 18 have to go in the column, possibly put the vehicles in
 19 between police vehicles, but I'm not sure at this stage
 20 whether we would have been able to put two, three vehicles
 21 in a row. I think more one, possibly one and a half. As I
 22 indicated we did not have off-road vehicles, so we would
 23 not be able to travel on the grass as well on the road
 24 leaving the ambulance on the road, so the possible scenario
 25 was to have a column of police vehicles on the outside and

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1 the ambulance on the inside, It's a possible scenario.
 2 MR CHASKALSON SC: But, Major-General, of
 3 course once you moved your police vehicles forward to
 4 approach the koppie and left your civilian vehicles behind,
 5 that formation of police vehicles protecting the civilian
 6 vehicles would be broken up because the police vehicles
 7 would no longer be shielding the civilian vehicles which
 8 would be ultimately a couple of hundred metres behind them.
 9 GENERAL NAIDOO: Chair, that was not
 10 true, it was only five vehicles that went forward. The
 11 bulk, more than 20 or possibly 20 vehicles approximately
 12 were still, would be escorted, so that would not be true.
 13 MR CHASKALSON SC: So the bulk of the
 14 escort stayed behind you and was there to protect, to
 15 continue to protect and to shield the civilian personnel.
 16 GENERAL NAIDOO: That is correct, Chair.
 17 CHAIRPERSON: Mr Chaskalson, when you get
 18 to a point at which we can adjourn would you let me know?
 19 I'm not suggesting we should stop now but at some
 20 convenient stage in the near future we will be able to
 21 adjourn.
 22 MR CHASKALSON SC: And I just want to get
 23 clarity on your motive for going forward, and there it may
 24 be useful to go to your testimony yesterday.
 25 CHAIRPERSON: I think you mean –

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1 MR CHASKALSON SC: On Friday, on Friday,
 2 on page 2295 from line 24, 2295, in response to a question
 3 from the chair, -
 4 GENERAL NAIDOO: Sorry, Chair, 22?
 5 MR CHASKALSON SC: 925.
 6 CHAIRPERSON: Oh 22925.
 7 GENERAL NAIDOO: I have it, Chair.
 8 MR CHASKALSON SC: Sorry, not in response
 9 to a question from the chair, the answer was addressed to
 10 the chair. At line 21, Mr Semenya says, "And what was the
 11 reason you tell us for moving to that koppie now as opposed
 12 to koppie 1. Chair, yes, it concerned us because we had to
 13 move pass the area known as koppie 3 to get to koppie 1
 14 with emergency service personnel. As I indicated I was
 15 responsible to ensure that they get safely to what we now
 16 know as scene 1. I could not guarantee that safety while
 17 there was discharge of firearms and should even one of the
 18 personnel, the emergency personnel get hit by a stray
 19 bullet or be directly shot that would obviously cause
 20 problems because we've given an undertaking to secure these
 21 personnel."
 22 Mr Semenya continues, "And you go to koppie 3 to
 23 do what there? Chair, yes, it was obvious I needed to
 24 determine why the shooting was taking place. I could see
 25 SAPS personnel there and we needed to address the issue of

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1 the shooting so that we could clear the routes for the
 2 emergency vehicles." Now what did you mean by that,
 3 "address the issue of the shooting so that we could clear
 4 the routes for the emergency vehicles?"
 5 GENERAL NAIDOO: Chair, as I already
 6 indicated, we had an indication that the NIU or we could
 7 see the NIU deployed in that particular position, as I
 8 already testified the shooting was coming from that
 9 direction, not to say that it was the NIU themselves
 10 shooting, and I indicated it was heavy gunfire at some
 11 stage. So the logical thing would be to address the police
 12 officials who were possibly shooting, to establish what the
 13 situation was. Had they indicated to us it was not safe or
 14 there was a crowd that's possibly breaking through,
 15 etcetera, then obviously my instruction would be to take
 16 the emergency personnel out of the area, back onto the
 17 road. That was it, and also as I indicated, I'm not sure
 18 if I did testify to that, that it was the shooting that was
 19 occurring in front of us, we had to as the police official
 20 also ascertain why the shooting was taking place. I
 21 already indicated that as far as our planning and briefing,
 22 now there is a next incident why the shooting was taking
 23 place when we were briefed in terms of the crowd
 24 dispersion.
 25 MR CHASKALSON SC: I just want to clarify

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1 this before we close, was it essentially to get information
 2 or was it to go in to assist the police in the koppie to
 3 bring the shooting under control?
 4 GENERAL NAIDOO: Chair, as I indicated,
 5 primarily it was to understand why there was shooting
 6 taking place there, but as a police official I was also
 7 required to, if my assistance was required to assist but I
 8 did not go there with the intention of going in and
 9 addressing the issue of the koppie. I was going to try and
 10 establish why the shooting was taking place because my
 11 primary objective at that stage was to get a clear route
 12 for the emergency vehicles.
 13 MR CHASKALSON SC: But, Major-General, if
 14 your concern was really just to establish what was going on
 15 why couldn't you do that on the radio or by cell phone, why
 16 did you have to take five armed vehicles of K9 personnel
 17 and yourself into the heart of the battle?
 18 GENERAL NAIDOO: Chair, I think we
 19 already testified to the fact that we had communication
 20 problem. At this stage also when we were moving forward we
 21 were directly under a pylon, so that communication problem
 22 was even worse. If I could have ascertained from the radio
 23 what the situation was I'm sure I would have, but based on
 24 the scenario I faced at that point in time I made a
 25 decision to go and establish for myself what the situation

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1 is there.

2 CHAIRPERSON: How long did you think this

3 reconnaissance would take or might take?

4 GENERAL NAIDOO: Chair, when we got

5 there, as I said it was just a few hundred metres, so you

6 would not really think that getting there, establishing

7 what would you take to a very long time, and –

8 CHAIRPERSON: But how long would you

9 think it might take?

10 GENERAL NAIDOO: Five minutes, ten

11 minutes, less than ten minutes, but as I said distance wise

12 it is close.

13 CHAIRPERSON: Ja, did you think of saying

14 to your driver, look here, we may have a problem getting

15 through here with all these bullets flying around, is there

16 not another route, can we not go back, is there not another

17 route which we can go along which will get us to the scene

18 where the shooting took place without having to go past

19 this potentially dangerous area? Did you ask that to your

20 driver?

21 GENERAL NAIDOO: Chair, no, what we

22 rather discussed was, as we came around he indicated this

23 is the best road to get to koppie 1. I did not have that

24 discussion with him, no.

25 CHAIRPERSON: Did I understand you to say

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1 that you had to go past koppie 3?

2 GENERAL NAIDOO: Chair, -

3 CHAIRPERSON: That's what you said in the

4 passage that was put on the screen?

5 GENERAL NAIDOO: Chair, if the road, if

6 you follow the road it goes in between koppie 1 and 3.

7 CHAIRPERSON: But wasn't there also an

8 alternative road between koppie 1 and the power station?

9 GENERAL NAIDOO: Chair, I'm not familiar

10 with that, I can't.

11 MR CHASKALSON SC: If I can just put it

12 higher than that, Chair, isn't the main road the road that

13 goes between koppie 1 and the power station?

14 GENERAL NAIDOO: Chair, as far as I know

15 it is the main road that goes in the direction of koppie 1.

16 I did not at that stage to that far down, so I'm unable to

17 testify that.

18 CHAIRPERSON: Well, you see there are

19 main roads and the secondary road, so even if there was a

20 secondary road, there have to be a main road, if there is a

21 secondary road between koppie 1 and the power station you

22 can get through without getting passed the battle zone,

23 between, you know the vicinity of koppie 3, you didn't have

24 to go passed koppie 3 and if you've gone the other way and

25 you got through, immediately you would be on the inside of

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1 the barbed wire area but you said that wasn't a problem

2 anymore and you could have got to scene 1 in good time,

3 much more quickly and in fact you did, isn't that so?

4 GENERAL NAIDOO: Chair, ja, had I been

5 aware of and had the sight that we had now, yes, I probably

6 would have made such a decision. As I said I made the

7 decision on the basis of what I saw and knew at that stage.

8 I was not advised that we could go this way and that way,

9 my understanding was that we were going in the direction

10 and we would pass on the outskirts of where the shooting

11 was taking place.

12 MR CHASKALSON SC: Chairperson, I do want

13 to proceed on this issue but it is not something that can

14 be done in a couple of minutes.

15 CHAIRPERSON: It is a topic that can be

16 resumed on the morrow?

17 MR CHASKALSON SC: Thank you,

18 Chairperson.

19 CHAIRPERSON: We'll adjourn nine o'clock

20 tomorrow.

21 [COMMISSION ADJOURNED]

22 .

23 .

24 .

25 .

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