

# 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 198

10 MARCH 2014

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1 [PROCEEDINGS ON 10 FEBRUARY 2014]  
 2 [09:12] CHAIRPERSON: I'd be grateful if  
 3 everybody in the chamber would follow my example and turn  
 4 his or her cell phone off and if they're not turned off,  
 5 I'll have to do something. Major General, I hope your cell  
 6 phone is turned off.  
 7 GENERAL NAIDOO: Yes.  
 8 CHAIRPERSON: Is your cell phone turn  
 9 off?  
 10 GENERAL NAIDOO: Yes.  
 11 CHAIRPERSON: Good. You're under oath.  
 12 GANASEN NAIDOO: s.u.o.  
 13 CHAIRPERSON: Ms le Roux, your cell phone  
 14 turned off?  
 15 MS LE ROUX: Yes, Chair.  
 16 CHAIRPERSON: Good. You may proceed with  
 17 your cross-examination.  
 18 MS LE ROUX: Thank you, Chair. Let me  
 19 first take care of a housekeeping issue that arose on  
 20 Friday. We have now updated MMM41.1, which is the  
 21 statement analysis of the K9 members, correct, Chair,  
 22 that's the document that has been provided both –  
 23 CHAIRPERSON: [Microphone off, inaudible]  
 24 I found a new document on the table next to my chair in the  
 25 room we use as our chambers and that is – what is it?

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1 MS LE ROUX: MMM41.1.  
 2 CHAIRPERSON: MMM41.1, thank you. I've  
 3 so marked it.  
 4 MS LE ROUX: This is the –  
 5 CHAIRPERSON: Has the witness got a copy?  
 6 MS LE ROUX: Yes.  
 7 GENERAL NAIDOO: Just receive it, thanks.  
 8 MS LE ROUX: So Chair, if I can just  
 9 explain what has changed on this summary, and first of all  
 10 let me say that the Human Rights Commission team apologises  
 11 for the error which occurred on our side. There are three  
 12 changes to the analysis which we've marked in red on the  
 13 revised document. The first appears on page 7 of the  
 14 document, which relates to the statements by Constable van  
 15 Zyl. What happened with Constable van Zyl's statement is  
 16 we had worked with translations of the Afrikaans  
 17 statements. The originals are in Afrikaans and they were  
 18 translated. Unfortunately in that exercise a paragraph was  
 19 skipped in one of his statements. That has now been  
 20 translated an corrected and added into the summary  
 21 document, as you'll note in red.  
 22 Two pages on we have revisions to the statements  
 23 by Warrant Officer Breedt. What happened with Warrant  
 24 Officer Breedt is unfortunately we did not have copies of  
 25 all three of his statements. When the Major General on

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1 Friday referred to his statement it became clear that we  
 2 didn't have the statement he was referring to. We've now  
 3 obtained that from the witness and from the SAPS legal team  
 4 and we've been able to analyse that and add it to the  
 5 summary.  
 6 And then finally with respect on the last page to  
 7 Warrant Officer Moorcraft again we've been provided now  
 8 with the second statement that we did not previously have.  
 9 So these have all been included.  
 10 We are also obviously in the process of  
 11 rechecking every other translation that we've done. They  
 12 were done through the course of last year and we're now  
 13 rechecking all of those translations. We have checked all  
 14 of the statements that are in the MMM41-series, K9, POP,  
 15 and Mounted. They all appear to be accurate and complete.  
 16 Chair, of course what would help us to avoid such  
 17 an error in the future is if we could obtain a consolidated  
 18 index of all the statements that have been provided, that  
 19 would assist us. I know the evidence leaders have also  
 20 mentioned the need for that. We'll follow up with them in  
 21 that respect.  
 22 CHAIRPERSON: An interesting question  
 23 arising, which I hope not to have to decide, and that is  
 24 who would be responsible for preparing such a consolidated  
 25 index. But perhaps I can get suggestions as to the answer

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1 to that.  
 2 MS LE ROUX: Chair, we're hopeful that  
 3 the SAPS legal team have such a working index that they've  
 4 been using and would be willing to share it, but we'll  
 5 pursue that.  
 6 CHAIRPERSON: I must say, Adv Hemraj  
 7 reminds me we didn't have the third statement either that  
 8 you referred to. Anyway, these are housekeeping matters  
 9 that we must sort out and we must decide who will have the  
 10 responsibility for preparing the consolidated list of  
 11 exhibits and obviously that's something we'll be able to  
 12 solve. But clearly, we need it. Would you like to proceed  
 13 now with your cross-examination, or is there some more  
 14 housekeeping you want to mention?  
 15 CROSS-EXAMINATION BY MS LE ROUX (CONTD.):  
 16 Yes, thank you, Chair. Good morning, Major General.  
 17 GENERAL NAIDOO: Morning.  
 18 MS LE ROUX: Major General, I just have  
 19 three issues left to canvass with you this morning. The  
 20 first of those is issues that arise from the statement  
 21 analysis that we have just been referring to, the MMM41-  
 22 series, so if I could ask you to have those three summaries  
 23 available to you. Again for the record what we've done  
 24 here is analysed and summarised the statements of members  
 25 that were under your command at forward holding area 1, so

<p style="text-align: right;">Page 24173</p> <p>1 it's 32 K9 members, six POP members and one member,  2 Lieutenant Colonel Tongwane from the Mounted Unit, who was  3 your driver. You've obviously reviewed the underlying  4 statements, but I'd like to just – it will be easier if we  5 just work off the summary analysis documents for this  6 purpose.  7 What we've looked for in here and what we've  8 analysed, as you can see from the table, is, the first  9 thing I'd like to start with is we've looked through the  10 statements for confirmation of your evidence as to the  11 events from, on the 16th from your, when you leave forward  12 holding area 1 and end up at scene 2.  13 So firstly if we could start with – we've  14 analysed for the claim that after the shooting at scene 1  15 the entire capacity of the members under your command, your  16 mission as the K9 members was to escort the medics to scene  17 1, to the scene of the shooting. This is the issue that's  18 summarised in the fifth column from the right-hand side,  19 and what we see here is that two members refer to escorting  20 medics into scene 2 when the shooting had concluded there,  21 but no member describes their role to be to escort medics  22 to scene 1 in their statements. Do you have any comment on  23 that?  24 GENERAL NAIDOO: Chair yes, the first I  25 want to repeat the statements were taken with regard to did</p>	<p style="text-align: right;">Page 24175</p> <p>1 to why the members did not include the fact that they were  2 escorting to scene 1, I've already indicated they were  3 asked to provide statements about their shooting or the  4 fact that they did not shoot. So I would assume that their  5 priority was to indicate that they did or did not shoot.  6 MS LE ROUX: Major General, if we can  7 then move on to the next issue, which is in the adjacent  8 column, not a single K9 or POPS member in their statement  9 refers to a diversion from the original destination of  10 going to koppie 1 and ending up at koppie 3. Do you have  11 any comment on why no K9 or POPS member records that  12 diversion?  13 GENERAL NAIDOO: Chair, I also answered  14 this question on Friday. On the additional statement of  15 Warrant Officer Breedt he quite clearly indicates that, in  16 his statement that we were going in the direction and then  17 when we heard the shooting I specifically indicated that we  18 would go in the direction of the shooting. This additional  19 statement was taken during the evidence tampering  20 investigation, thus it's more in detail than the statements  21 that were taken for the IPID shooting reports.  22 MS LE ROUX: Yes, but Major General, will  23 you accept that Warrant Officer Breedt doesn't talk about a  24 diversion, that he understood he was supposed to be going  25 to koppie 1 and ended up at koppie 3. That's the very</p>
<p style="text-align: right;">Page 24174</p> <p>1 members shoot or did not shoot. It's quite clear when you  2 go through these statements they are not a narrative of  3 everything that happened from the time we deployed till the  4 end of the operation.  5 Secondly, it's not entirely true that there are  6 members that did not indicate they were escorting the  7 medics. On Friday I supplied a statement of one of the  8 members of POPS, Constable Mabala, who clearly indicates in  9 his statement that he was guarding the medics and after he  10 got the call he brought the medics in to scene 2.  11 MS LE ROUX: Yes, Major General, the  12 point of the column we're debating is escorting medics to  13 scene 1, not scene 2. In the summary you'll see there are  14 statements that say, that make reference to the fact that  15 these members escorted medics in to scene 2, but nobody  16 makes any mention of understanding that their role before  17 you take them to koppie 3, that their role was to get  18 medics to scene 1. That's the issue.  19 GENERAL NAIDOO: Chair, I think one of  20 the things that we can see is there is an agreement that  21 the medics were being escorted, whether to scene 1 or scene  22 2, firstly. Secondly, in terms of where we were going,  23 I've already on Friday indicated there was a constable who  24 testified to that fact that we took the wrong turn and we  25 had to do a U-turn, which was a direct line to scene 1. As</p>	<p style="text-align: right;">Page 24176</p> <p>1 simple point. You know, we have his statement recorded  2 when he records that they hear the gunfire and then move to  3 koppie 3 and that you had instructed them to move towards  4 koppie 3. The only point I'm making is that even Warrant  5 Officer Breedt doesn't refer to an understanding that this  6 was a diversion from the original task of going to koppie  7 1.  8 GENERAL NAIDOO: Chair, once again I will  9 indicate at no time during any of our briefings or any of  10 our information was there a koppie 3. The koppie 3 issue  11 only arose when the operation was in its effect and the  12 fact that Warrant Officer Breedt indicates that we came  13 around the power station and that he heard shots, he says  14 pistol and firearms, in the direction of koppie 3, then he  15 specifically says that I was with them and I gave them an  16 instruction that we should move towards koppie 3. Now as  17 to why he did not refer to koppie 1 I can't, I did not  18 facilitate the taking of the statement, but earlier in his  19 statement he has a clear understanding that the operation  20 was taking place at koppie 1 and he says so in paragraph 3  21 of his statement, that the operation was taking place in  22 koppie 1.  23 MS LE ROUX: Major General, the next  24 issue we've analysed for is that it was that the reason on  25 your evidence, as I understand it, the reason you diverted</p>

<p style="text-align: right;">Page 24177</p> <p>1 to koppie 3 is because as you rounded the power station and 2 before you started approaching koppie 3 you testified that 3 you heard the heavy gunfire. 4 Now again we've analysed all of the K9 and POPS 5 statements that were with you and their mention of gunfire 6 is after they've started the approach to koppie 3. So 7 members talk about while they were walking in the direction 8 of koppie 3 already they heard gunfire, but nobody mentions 9 it as they're coming around the power station and before 10 they start approaching the koppie, and on our analysis the 11 accounts vary between that they heard the gunfire when they 12 were between 30 and 100 metres away from the koppie, so 13 they clearly were en route to the koppie already when they 14 heard the gunfire. Do you have any comment on that? 15 GENERAL NAIDOO: Yes Chair, two comments; 16 one we've already discussed, the issue of Warrant Officer 17 Breedt who quite clearly indicates that we heard the 18 gunshots and then I diverted them to koppie 3. 19 The second one was the issue of Constable van 20 Zyl. I think there is a, he, what he says was lost in 21 translation, if I look at the analysis, because what 22 Constable van Zyl says in his statement in paragraph 3, 23 that as we went off the tarred road alongside the power 24 station in the direction of Marikana, there were other 25 police officials that were at the koppie and the next</p>	<p style="text-align: right;">Page 24179</p> <p>1 supported by his unit commander, Constable Motswaneng – 2 sorry, Captain Motswaneng, who in his statement quite 3 clearly indicated that he was with the vehicles at the 4 large power station. So that gives you a clear location of 5 where they were when the incident occurred. 6 MS LE ROUX: But Major General, you can't 7 exclude the possibility that Constable van Zyl is referring 8 to the small power station. Obviously it's something we'll 9 have to follow up with him. 10 GENERAL NAIDOO: Chair, the reason why 11 I'm not including - and obviously this information can be 12 verified with various other members as well – the only 13 reason why I'm indicating that the location of what he has 14 heard would be the large power station, because the 15 incident of his vehicle getting stuck occurred at the large 16 power station and Captain Motswaneng was the captain, the 17 K9 captain that remained with the vehicles and the 18 ambulance and the constable quite clearly in his statement 19 indicated that this captain assisted him and stayed with 20 him at the vehicle. 21 CHAIRPERSON: Ms le Roux, in view of the 22 fact that Constable van Zyl is obviously going to have to 23 come and give evidence briefly – I hope briefly – on this 24 topic, I don't know, think there's any point in debating 25 what his statement means with this witness. It's</p>
<p style="text-align: right;">Page 24178</p> <p>1 moment there were shots heard and our convoy came around 2 the power station with the intention to arrest. He was the 3 driver of a motor vehicle and he goes on further to 4 indicate that his vehicle got stuck on a rock there and he 5 was assisted by Captain Motswaneng. Now this all is 6 clearly an indication to the large power station and an 7 indication of the incident at koppie 3. 8 MS LE ROUX: Well, Major General, this is 9 where we differ from you. On our analysis Constable van 10 Zyl is referring to the small power station when he says 11 his view was obscured and that it's likely that the 12 shooting he heard would have been scene 1 shooting, not 13 when he was at the large power station later on, and as we 14 track that to your evidence it was the heavy gunfire coming 15 from what became scene 2 that prompted your approach to 16 koppie 3. 17 So as we understand his chronology in that 18 statement it would be that his view was obscured at the 19 small power station and therefore it again doesn't support 20 your evidence that you heard the gunfire and then moved to 21 koppie 3. 22 GENERAL NAIDOO: Chair, I don't agree 23 with that because as I said you've got to read these three 24 paragraphs within each other and the fact that his vehicle 25 was stuck when he went around the power station and he was</p>	<p style="text-align: right;">Page 24180</p> <p>1 speculative; it's subject, clearly the best person to tell 2 us what he means in his statement is the constable himself 3 when he comes, so I suggest you – 4 MS LE ROUX: Yes, Chair, I am moving on. 5 CHAIRPERSON: Ja. 6 MS LE ROUX: Major General, what we then 7 did, and this appears in the four columns on the left-hand 8 side of the spreadsheet after the rank and name of the 9 member appears, is we've set out the account that those 10 members do give and specifically in each column we've 11 addressed what each member understood his role to be, based 12 on the briefing they received from you, what each member 13 understood to be the purpose of moving towards the power 14 station, what each member understood to be the purpose of 15 moving towards the koppie, and when each member first 16 records hearing any gunshots from koppie 3. 17 Now if we could start with MMM41.3, that's the 18 Mounted Unit, the only member from that unit that we deal 19 with is your driver, Lieutenant Colonel Tongwane. Now he 20 in his statements, and when he's referring to what he 21 understands his role to be it's that he believes that he's 22 there to give back-up to the other groups who are already 23 at the mountain and that they would proceed in a line 24 formation towards the mountain where the police and 25 protesters were heading. So again he doesn't seem to</p>

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1 reflect any understanding that his role was to get you and  
 2 the medics to scene 1 and he only seems to think that he's  
 3 giving back-up to koppie 3. Do you have any comment on  
 4 that?  
 5 GENERAL NAIDOO: Sorry Chair, yes, as I  
 6 indicated firstly the primary purpose of the statements  
 7 that were taken from the various members was to ascertain  
 8 whether they fired their weapons or not. Secondly by  
 9 indicating that, he clearly indicates his duties was to,  
 10 was, he was posted as my driver and we were going to  
 11 provide back-up to the other members who were at the koppie  
 12 1, at the mountain normally referred to koppie 1.  
 13 As to the specific, the detail in terms of the  
 14 rest of it, it does not refer specifically to all his  
 15 activities. For example I indicated that we took a wrong  
 16 turn and we had to do a U-turn. This is not contained in  
 17 the statement.  
 18 So I'm once again saying that the purpose of the  
 19 statement basically was to determine whether they shot or  
 20 did not shoot. So there were many facts in the narrative  
 21 that I have already given as to the sequence of events that  
 22 were not captured by the individual members.  
 23 [09:32] MS LE ROUX: Major-General, several  
 24 members also referred to understanding that their role was  
 25 to arrest miners. And again they don't refer to any

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1 concern getting medics to scene 1 or anything like that.  
 2 You've obviously seen in the statement where, for example,  
 3 Warrant Officer Breed as well as members Koswane, van Zyl,  
 4 Mabogwana from POP, Baloyi from POP and Mentesh. There  
 5 seem to be some confusion in the members. In fact the  
 6 statements of your K9 member, Mentesh he even says in his  
 7 statement he didn't know what was happening. Do you have  
 8 any comment on this apparent confusion that we do see in  
 9 the statements, when members are describing what they're  
 10 doing? Some of them think they are engaged in arresting,  
 11 some are only there in a third line to back up the other  
 12 units. Some seem to think they must only be using their K9  
 13 dogs to after the operation find firearms and weapons. Do  
 14 you have any comment on the briefing that you provided them  
 15 when we quite clearly see this confusion in the statements  
 16 as to what their role was?  
 17 GENERAL NAIDOO: Chair, yes I think the  
 18 priority of statements, I'm not going to back to, but 18 of  
 19 these members specifically indicate in their statements  
 20 that they were briefed by me at forward holding area 1 as I  
 21 testified. Of those 18, of that there's 19 members who  
 22 specifically indicate the primary purpose for deployment.  
 23 They are indicating that they were there as is indicated as  
 24 a third line of defence, to sweep the koppies and the  
 25 bushes, to go in after the NIU and the TRT have finished

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1 sweeping the place. And to identify and arrest suspects.  
 2 So they were clear in terms of what their primary reason  
 3 for being there was. The issue of escorting of the medics  
 4 was not their primary reason for deployment there, it was  
 5 my primary responsibility to ensure that the medics were  
 6 deployed where and when it was required. So I'm not  
 7 surprised that they did not mention in their statements.  
 8 But it is clear on some of the other statements that  
 9 everybody knew that the medics were with us. They were  
 10 part of the convoy and it was mentioned in some of the  
 11 statements.  
 12 MS LE ROUX: But, Major-General, I'm  
 13 confused by that evidence because if you're the only one at  
 14 forwarding holding area 1 who knows that your primary focus  
 15 is to escort medics in the event that they are required and  
 16 when the shooting happens at scene 1 that they are required  
 17 to be escorted to scene 1, yet the briefing that you  
 18 provide to everybody else doesn't mention that. Do you now  
 19 agree that that could cause some confusion and  
 20 misunderstanding about what the role of the members in your  
 21 convoy would be?  
 22 GENERAL NAIDOO: Chair, I don't see any  
 23 confusion. As I indicated, on the first two days, the  
 24 Tuesday and Wednesday the medics were in our vehicle. They  
 25 were not with their own vehicles. On Thursday a different

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1 of medics came and they came with their own vehicles. We,  
 2 in addition to that, on the Tuesday, also provided escorts  
 3 other services which were not at forward holding area 1. I  
 4 gave an example of the pathology services. When the need  
 5 came I tasked a particular vehicle to conduct the escort.  
 6 So the presence of the emergency services with us was a  
 7 clear indication that these people were working with us and  
 8 there was also an indication when we deployed the other  
 9 services how we would operate. In terms of the briefing of  
 10 the various units, their briefing was specific to their  
 11 primary tasks and obviously as we proceeded they would be  
 12 informed in terms of what changes there would be, based on  
 13 the situation that was unfolding. But, yes there could be  
 14 no doubt that the medics and the fire people were in our  
 15 convoy for purposes of protection and security.  
 16 MS LE ROUX: Major-General, I'd now like  
 17 to take you to some of the actual statements and ask you  
 18 about certain aspects that we see there of their conduct as  
 19 the scene. Can we start with Sergeant Molangoanyane? This  
 20 is marked as MMM39.18. There are two statements, A and B.  
 21 If we can start with MMM39.18A, not that's 18B, if we  
 22 could start with 18A. Yes that's the correct statement,  
 23 thank you. So this is MMM39.18A, the first statement by  
 24 Sergeant Molangoanyane. If we could just have a look at  
 25 the first six paragraphs. So he states that "On the 16th of

<p style="text-align: right;">Page 24185</p> <p>1 August I was officially on operation in Marikana Mine,  2 there miners on the hill, allegedly on illegal strike. We  3 were posted at forward holding area, we K9s. We received  4 instructions from General Naidoo that POP, NIU and TRT will  5 get those miners off the hill then we K9s will then get on  6 the hill to search for guns and dangerous weapons with dogs  7 [explosives]. We drove from forward holding area to the  8 southern side of the hill. General Naidoo gave instruction  9 again to get off the vehicles with dogs on leash. K9  10 members with their explosive dogs made extended line  11 approaching the hill. I drove with our K9 bakkie behind  12 members with dogs for cover purpose if anything can happen.  13 As we close, plus, minus 60 to 70 metres from a hill I  14 heard a shot. Immediately I got out of the bakkie. I lied  15 to the ground. The second shot was fired, that's where I  16 picked the direction where the shots were from. It was  17 from green bush, right in front of me, between rocks or  18 caves. It was pistol, sounded low calibre. I crawled  19 forward, alerted my colleagues on my right that the green  20 bush that's where shots are fired from. I took out my  21 pistol, shooting in that bush, eight shots. I realised I  22 cannot reach the suspect. I decided to crawl back to the  23 bakkie where I found TRT and K9 members, took cover with  24 the bakkie. I showed TRT members that green bush, he fired  25 two shots with his R5 rifle. I then saw a movement, I was</p>	<p style="text-align: right;">Page 24187</p> <p>1 shots fired into a green bush with no clear line of sight  2 to a specific target were reckless. Do you agree with that  3 submission?  4 GENERAL NAIDOO: Chair, two things. The  5 first one is it is clear that the member had an  6 understanding of his duties as contained in these preceding  7 paragraphs. Secondly, I think we've already had a similar  8 discussion on – at a previous evidence cross-examination  9 that in terms of the use of firearms there should be a  10 specific target and the shottist should aim at a specific  11 target. I've already testified to that as well.  12 MS LE ROUX: And, Major-General you  13 accept that the green bush is not a sufficiently  14 identified or risk.  15 GENERAL NAIDOO: Chair, as to whether he  16 only saw a bush or he saw an outline of a person, you know,  17 etcetera I can't in any way testify to that, what led to  18 his decision to fire at a particular place. What he  19 indicates he could see that the shots were coming from a  20 particular place, so what exactly he saw I can't testify to  21 that fact.  22 MS LE ROUX: Major-General, using exhibit  23 MMM2 can you identify where Sergeant Molangoanyane was  24 positioned at scene 2?  25 GENERAL NAIDOO: Chair, I think maybe</p>
<p style="text-align: right;">Page 24186</p> <p>1 not sure whether that person was falling or running away  2 because they were in the shade. I ran into that direction,  3 that's where came a man with panga, with blanket around his  4 chest from a cave or hole in fighting stand."  5 And then if we can look at MMM39.18B which is the  6 additional statement of Sergeant Molangoanyane. If we go  7 from the first four paragraphs of this he states that "We  8 K9 unit approached from southern side, I drove K9 bakkie.  9 In front of me there were K9 members with their dogs on  10 leash in the extended line approaching a hill. Plus, minus  11 60 to 70 metres from a hill I heard a shot, I got out of  12 the bakkie for cover, a shot came again [pistol], now I  13 realised where it came from, a green bush. I leopard-  14 crawled in order to position my firing pistol 9mm into that  15 bush. Because K9 members now took firing positions I  16 cautioned Constable Kwele that the bush in front of me was  17 problematic, I shot several [8 shots] in the direction of  18 that bush, but I realised I could not get the suspect  19 because he was out of reach. I crawled back to the bakkie  20 where I found TRT and K9 members taking cover at the back  21 of the bakkie. I then told TRT guys to use their R5 rifles  22 to that bush. After two shots in that bush we went towards  23 the hill." Now Major-General in circumstances where a  24 large crowd of people were hiding in bushes and rocks at  25 koppie 3 Human Rights Commission will submit that these</p>	<p style="text-align: right;">Page 24188</p> <p>1 exhibit L would be more appropriate because I L249 gives us  2 the indication of the different units. Chair, from the  3 description of the sergeant in his statement I would  4 probably put it at the vehicle which indicates forward  5 holding area 2, to the right. There's an arrow from  6 forward holding area 2 and there's another arrow from  7 forwarding holding area 1 K9 which points to a particular  8 vehicle because there were no TRT members at forward  9 holding area 1 at that stage.  10 CHAIRPERSON: In fact two vehicles to  11 which two arrows point, but I take it you're referring to  12 the one on the extreme right-hand side. Is that correct?  13 GENERAL NAIDOO: Extreme left.  14 CHAIRPERSON: Look there are two vehicles  15 to which arrows point from the block which is headed FHA2  16 and the block which is headed FHA1. One of them is more or  17 less to the right-hand side of the picture, the other one  18 is more or less in the centre. Which of the two are you  19 referring to?  20 GENERAL NAIDOO: Chair, it could have  21 been at any one. If the TRT members were at both then it  22 could have been at any one.  23 CHAIRPERSON: I see, so you're saying he  24 was either near the vehicle in the centre of the picture or  25 the one on the right-hand side? You can't be more specific</p>

<p style="text-align: right;">Page 24189</p> <p>1 than that, is that your answer?</p> <p>2 GENERAL NAIDOO: That's right because</p> <p>3 those are the two vehicles where the TRT members it seems</p> <p>4 from forward holding area were also at.</p> <p>5 MS LE ROUX: And, Major-General at this</p> <p>6 point in time when Sergeant Molangoanyane is at koppie 3</p> <p>7 who was in command of him?</p> <p>8 GENERAL NAIDOO: Chair, I think we've</p> <p>9 dealt with this on Friday. K9 work in buddy pairs, two</p> <p>10 each and the senior member of the buddy pair is in charge</p> <p>11 of that team.</p> <p>12 MS LE ROUX: Do you know who Sergeant</p> <p>13 Molangoanyane's buddy pair was?</p> <p>14 GENERAL NAIDOO: No, at this stage I</p> <p>15 won't be able to say, but I'm sure we can establish that,</p> <p>16 Chair.</p> <p>17 MS LE ROUX: Major-General, could you now</p> <p>18 look at the statements by Constable Kwele? These are</p> <p>19 marked as MMM39.7A and 7B. On MMM39.7A the warning</p> <p>20 statement if we could look at – well they're both very</p> <p>21 short statements. If we could just scroll down to</p> <p>22 paragraph 2 of that first statement. Here we see Constable</p> <p>23 Kwele saying that he had reported for duty and if we start</p> <p>24 with paragraph 3. "At approximately 3 o'clock the</p> <p>25 operation started. The command was give by the commanders.</p>	<p style="text-align: right;">Page 24191</p> <p>1 of any police official who was injured with a panga?</p> <p>2 GENERAL NAIDOO: I have no idea, Chair,</p> <p>3 of any police official that was injured.</p> <p>4 MS LE ROUX: Could I then ask you to turn</p> <p>5 to the second statement MMM39.7B? And it's the last</p> <p>6 paragraph on that first page, if we can go down, thank you.</p> <p>7 "We then parked our vehicle and walked with our dogs. I</p> <p>8 was having my dog with me at that time, at the time I</p> <p>9 approached that koppie because it was rocky and lots of</p> <p>10 bushes the group of people came out and in the bushes.</p> <p>11 They wanted to attack us and they were having pangas,</p> <p>12 assegais and spears. Immediately they shot at us with</p> <p>13 pistols, firearms and I heard bullets, projectile flying.</p> <p>14 I moved backwards and they continue shooting. I went down</p> <p>15 or lie down on my stomach, I then take out my firearm and</p> <p>16 fire three times to their direction in the bush. I was</p> <p>17 crawling to take cover at the back of the bakkie. Those</p> <p>18 people they were almost plus, minus 40 metres from us. I</p> <p>19 don't know whether I hit them as I was crawling to take</p> <p>20 cover." Now do you have – Major-General, do you share our</p> <p>21 concern that this member appears to be making essentially</p> <p>22 un-aimed shots because he describes crawling for cover at</p> <p>23 the same time. So he seems to be shooting without really</p> <p>24 aiming at any particular threat or target. Do you share</p> <p>25 our concern about that conduct?</p>
<p style="text-align: right;">Page 24190</p> <p>1 As we were having different units like, I think it was AMCU</p> <p>2 workers, they used water canon and tear gases and rubber</p> <p>3 bullets, driving their Nyalas. They tried and disperse</p> <p>4 those people, those mine workers attack our members with</p> <p>5 pangas and spears and assegai. They did not stop even when</p> <p>6 they were told to do so. We were in different units and</p> <p>7 formed a line. The mine employees tried to surround the</p> <p>8 police, our members, attacking us and the others came to</p> <p>9 our direction. Then we tried to stop them and went a</p> <p>10 little bit at the back. They were so aggressive and</p> <p>11 injured one of the police officials with panga. The other</p> <p>12 people were start shooting directly to us. They were</p> <p>13 holding firearms and pistols. It's then when I protect</p> <p>14 myself and discharge my firearm because there were so many</p> <p>15 and they were about 30 metres from us." Now the allegation</p> <p>16 in paragraph 4 that a police officer was injured by a</p> <p>17 striker attacking him with a panga, that's not true is it?</p> <p>18 MR SEMENYA SC: How can this witness</p> <p>19 know, Chair?</p> <p>20 MS LE ROUX: Do you know whether any</p> <p>21 police member was injured with a panga?</p> <p>22 CHAIRPERSON: The correct thing to do is,</p> <p>23 as Ms Le Roux has now amended her question to meet your</p> <p>24 objection, whether he knows.</p> <p>25 MS LE ROUX: Major-General, do you know</p>	<p style="text-align: right;">Page 24192</p> <p>1 GENERAL NAIDOO: Chair, I don't think</p> <p>2 that is correct because he just say in the direction of the</p> <p>3 people that he saw. So he did not say that he could not</p> <p>4 see where he was shooting. And he does indicate that he</p> <p>5 saw people with pangas, assegais and spears and then he</p> <p>6 says somebody shot at them with a pistol and he heard the</p> <p>7 projectile flying past him. So I don't think it would be</p> <p>8 correct to say he fired a shot at something he could not</p> <p>9 see because he says he fired in a specific direction.</p> <p>10 CHAIRPERSON: Ms Le Roux, aren't these</p> <p>11 really matters for argument? I mean whether the witness</p> <p>12 shares your concern is with respect no moment to us. The</p> <p>13 question is whether we share your concern, if I use your</p> <p>14 language. The witness's opinions and speculations as to</p> <p>15 what the deponent of the statement meant don't really carry</p> <p>16 the matter much further. If there's something specifically</p> <p>17 relevant about his actions then maybe he must come and give</p> <p>18 evidence. But I don't know that we are assisted to carry</p> <p>19 out our terms of reference by this witness's commentary as</p> <p>20 it were on what the statement contains. I understand</p> <p>21 you're making a point based on accumulative mass, if I can</p> <p>22 call it that, of statements in which certain things are</p> <p>23 said and certain things aren't said. So I'm not stopping</p> <p>24 you on that, but to ask this witness whether he thinks</p> <p>25 these were shots fired in legitimate self defence,</p>

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1 justifiable self defence or whether the person concerned  
 2 exceeds the bounds of self-defence, which is really what  
 3 you're asking. That, his views don't take it any further,  
 4 I don't think.

5 [09:52] MS LE ROUX: Major General, do you know  
 6 where Constable Kwele was stationed? Are you able to  
 7 identify him with any certainty in MMM2 or using exhibit L?

8 GENERAL NAIDOO: I would not be able to  
 9 say offhand where he actually was. As I indicated through  
 10 the line, a long line, I knew the people that were  
 11 immediately on my left, so it will be difficult for me to  
 12 specifically say on MMM3 where, which is the area where  
 13 Constable Kwele was.

14 MS LE ROUX: And similarly, Major  
 15 General, do you have any idea where Constable Mutsi was  
 16 positioned at scene 2?

17 GENERAL NAIDOO: Chair, as I indicated  
 18 that the line went to my left. I knew who was in the  
 19 vehicles immediately on my left. Further than that I would  
 20 not be able to say who specifically was where.

21 CHAIRPERSON: It may be possible for  
 22 these matters to be cleared up if the evidence leaders have  
 23 an interview with the particular constables whose positions  
 24 you consider to be important and we can get the information  
 25 in that way. If necessary they may have to give oral

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1 evidence, but it may be possible to avoid that by following  
 2 the procedure I've suggested. I understand from  
 3 discussions I've had in chambers with Mr Semenya he thinks  
 4 it may also be a way of shortening proceedings without  
 5 being unfair to anybody. That's correct, isn't it, Mr  
 6 Semenya?

7 MR SEMENYA SC: That's correct, Chair.

8 MS LE ROUX: Major General, one final  
 9 point arising out of the statements we've analysed, and  
 10 these relate to the statements of Sergeant Varner,  
 11 MMM39.30, and Constable Motseme, MMM39.23A and B, and a  
 12 statement that's already been marked as MMM6. These  
 13 statements both, the statements by both Sergeant Varner and  
 14 Constable Motseme appear to indicate an order to shoot and  
 15 I was wondering if you were aware of anyone giving such an  
 16 order at scene 2 and the circumstances of that order. Did  
 17 you ever – you didn't give an order to members to shoot,  
 18 did you?

19 GENERAL NAIDOO: Chair, I think we were  
 20 clear on that, that I did not give any order. I would like  
 21 to point out that Sergeant Varner was part of the forward  
 22 holding area 2 group, so he was a K9 member that was  
 23 deployed with Captain Kidd from forward holding area 2.

24 MS LE ROUX: But Major General, you don't  
 25 know who would have given an order to shoot to each

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1 Sergeant Varner or Constable Motseme, do you?

2 GENERAL NAIDOO: Chair, as is clear that  
 3 if they were near each other, they were on the extreme left  
 4 and far away from me, the point where I was before I left  
 5 the vehicles. As I indicated I did not give any  
 6 instruction and I am not aware of anybody that gave an  
 7 instruction to shoot.

8 CHAIRPERSON: The short point really is  
 9 you didn't hear anybody give an order to shoot, did you?

10 GENERAL NAIDOO: I have testified to that  
 11 effect.

12 CHAIRPERSON: Yes, well I say that's the  
 13 short point. So if an order was given, who gave it is  
 14 something you can't help us on because you didn't hear an  
 15 order being given. It doesn't mean that an order wasn't  
 16 given because –

17 GENERAL NAIDOO: No.

18 CHAIRPERSON: - it may have been someone  
 19 out of earshot to you, but you heard no such order.

20 GENERAL NAIDOO: That's correct.

21 CHAIRPERSON: That's your evidence.

22 GENERAL NAIDOO: That's correct, Chair.

23 CHAIRPERSON: Ja.

24 MS LE ROUX: Major General, moving on to  
 25 my penultimate point; and it's really only one question,

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1 could you turn to KKK42? These are the annotated notes of  
 2 Captain van Heerden. The fifth entry from the bottom of  
 3 that page says, "General Naidoo, why is detectives sent  
 4 back to station? They are needed at scene." Major  
 5 General, if you're having difficulty finding a hardcopy, it  
 6 is displayed on the screen.

7 GENERAL NAIDOO: Okay.

8 MS LE ROUX: Fifth entry from the bottom,  
 9 "General Naidoo, why is detectives sent back to station?  
 10 They are needed at scene." Do you have any – can you  
 11 provide the Commission with any assistance in understanding  
 12 this entry? Were you being asked this question or did you  
 13 ask the question about detectives? Do you have any insight  
 14 into the circumstances of the recording?

15 GENERAL NAIDOO: Chair, I don't have any  
 16 insight into the circumstances of the recording, but I do  
 17 know that I was trying to get hold of the detective and the  
 18 crime scene people to move in to take charge of the scene  
 19 and they were taking long. I don't remember saying that  
 20 they went to station. I just tried to locate where they  
 21 were and why were they not being prompt to the scene. But  
 22 as to the specifics of the entry, I'm not sure.

23 MS LE ROUX: And sitting here today do  
 24 you have any knowledge of detectives being sent back to the  
 25 station by anyone?



<p style="text-align: right;">Page 24197</p> <p>1 GENERAL NAIDOO: No, when I eventually 2 did locate the detectives the captain indicated that he 3 went as, to his knowledge he went directly to scene 1 and 4 hence his delay to arrive at scene 2, so nobody really went 5 back to their station, it was just that at that stage it 6 was only becoming clear then that there were two scenes of 7 shooting. So the delay was because when they were 8 instructed to move in they moved directly to scene 1. 9 MS LE ROUX: And Major General, when you 10 were trying to establish where the detectives were, who 11 were you in contact with? 12 GENERAL NAIDOO: The captain in charge of 13 the detectives. I tried calling him after getting his 14 number from – I'm not sure who, possibly the JOC, but we, I 15 eventually spoke to him and directed him to where I was so 16 that he got there. 17 MS LE ROUX: And at the time that you 18 were making these calls and following up, where were you? 19 GENERAL NAIDOO: At scene 2. 20 MS LE ROUX: Then finally, Major General, 21 as we understand the evidence by approximately 20 past 4 on 22 the 16th of August, approximately, you took control of the 23 crime scene at scene 2 and enabled the medics to come in, 24 enabled detectives to be called in to the scene and the 25 scene was then processed. First of all, am I correct in</p>	<p style="text-align: right;">Page 24199</p> <p>1 by cell phone announcing that you were going to be in 2 charge of processing the crime scene? 3 GENERAL NAIDOO: Chair, I communicated to 4 Brigadier Pretorius, who in turn handed the phone to 5 General Annandale. I gave him a short summary of what has 6 transpired. Most of the other conversation occurred via 7 radio transmission as well. 8 MS LE ROUX: Did you communicate at all 9 with Brigadier Calitz? 10 GENERAL NAIDOO: Chair, as I testified, 11 at the time when I came to the point where the suspects 12 were being arrested and the wounded were being attended to, 13 I met with Brigadier Calitz at the centre of the koppie. 14 That, I can't give you the exact time, and that is where we 15 decided that, he indicated he will proceed with the arrests 16 and removal of the arrested people from the scene and I 17 stayed on where the medics, I waited, the medics and the 18 crime scene people came and took over and did their job. 19 MS LE ROUX: Major General, when did you 20 first see Brigadier Calitz appear at scene 2? I understand 21 you won't be able to give me a time of day, but in terms of 22 the sequencing of events, when did Brigadier Calitz arrive 23 at scene 2 that you first saw him? 24 GENERAL NAIDOO: Chair, as the mass 25 arrests were starting to be, being carried out, it's in</p>
<p style="text-align: right;">Page 24198</p> <p>1 that understanding of the evidence, that by approximately 2 20 past 4 you were in control of scene 2? 3 GENERAL NAIDOO: Chair, I'm not sure of 4 the exact time, but 20 past 4 might be a little bit early, 5 but yes, other than the time I think everything else is 6 fine. 7 MS LE ROUX: Major General, two 8 questions, two issues arise from that for the Human Rights 9 Commission team. The first is that we can't identify any 10 radio communication to that effect. We don't, in the 11 transcripts we've got and the notes we have, the occurrence 12 book, etcetera, we can't seem to find any communication to 13 the JOC, to the overall commander, Major General Mpembe, or 14 to the operational commander, Brigadier Calitz, we can't 15 find you communicating to anybody that you are now in 16 control of the crime scene at scene 2, that you know, 17 you've managed to establish control there. Did you make 18 any such communication to anybody possibly by cell phone 19 rather than radio? 20 GENERAL NAIDOO: Chair, as I indicated, 21 as to the time I can't really confirm, but yes, I did 22 communicate to the JOC both by radio as well as by cell 23 phone, indicating where I was, etcetera, and I've testified 24 to that fact. 25 MS LE ROUX: Who did you communicate with</p>	<p style="text-align: right;">Page 24200</p> <p>1 front of the koppie that we, in front of the rocks and the 2 bushes that, where the majority of more than a hundred plus 3 people were arrested, I was still standing there whilst the 4 members were executing the arrests and the medics were 5 coming in. So that's when Brigadier Calitz joined me at 6 that point and that's when he indicated he will take care 7 of the people that I arrested. 8 MS LE ROUX: Major General, the medics 9 that you referred to coming in just before Brigadier Calitz 10 arrived, were they delivered by helicopter? 11 GENERAL NAIDOO: No, Chair, I indicated 12 that there were three medics with the K9 waiting at the 13 power station and they came forward and they started 14 processing the scene. 15 MS LE ROUX: Major General, do you recall 16 medics arriving by helicopter at any point? 17 GENERAL NAIDOO: I heard the helicopter 18 as well, yes. 19 MS LE ROUX: And was that before or after 20 you saw Brigadier Calitz? 21 GENERAL NAIDOO: I'm not sure if I was – 22 I think maybe I was even with him, but I can't remember 23 specifically but I do recall the medics chopper landing. 24 MS LE ROUX: Right, but you can't help us 25 with whether that was before or after Brigadier Calitz had</p>

<p style="text-align: right;">Page 24201</p> <p>1 joined you inside –</p> <p>2 GENERAL NAIDOO: I cannot specifically</p> <p>3 remember that, no.</p> <p>4 MS LE ROUX: When you first saw Brigadier</p> <p>5 Calitz, did you discuss scene 1 with him?</p> <p>6 GENERAL NAIDOO: Chair, no, we were</p> <p>7 discussing the scenario directly in front of us where there</p> <p>8 were several people that were injured and dead and there</p> <p>9 was large mass arrests that were taking place.</p> <p>10 MS LE ROUX: Other than what was</p> <p>11 happening immediately in front of you, what else did you</p> <p>12 discuss with Brigadier Calitz?</p> <p>13 GENERAL NAIDOO: Chair, as far as I can</p> <p>14 remember that was our primary discussion on how to contain</p> <p>15 the scene. I testified also that at that stage we noticed</p> <p>16 that some of the members were gathering the weapons to a</p> <p>17 central point and I testified that Brigadier Calitz called</p> <p>18 out to all the members, indicating that this is a crime</p> <p>19 scene, they should not move the weapons. That's basically</p> <p>20 the gist of what I can remember.</p> <p>21 MS LE ROUX: Did Brigadier Calitz tell</p> <p>22 you what his activities had been before he came in to scene</p> <p>23 2?</p> <p>24 GENERAL NAIDOO: Chair, we did not –</p> <p>25 MR SEMENYA SC: Chair, really, this now</p>	<p style="text-align: right;">Page 24203</p> <p>1 front of us with the number of people being arrested, so</p> <p>2 no, we didn't discuss his previous activities in detail.</p> <p>3 CHAIRPERSON: Is that the end of your</p> <p>4 cross-examination, Ms le Roux, or do you want to ask a</p> <p>5 follow-up question based upon the answer you've just</p> <p>6 received?</p> <p>7 MS LE ROUX: No Chair, I have no further</p> <p>8 questions.</p> <p>9 CHAIRPERSON: Thank you. Before I call</p> <p>10 upon Mr Gotz, Adv Hemraj wishes to ask a question.</p> <p>11 COMMISSIONER HEMRAJ: General, can you</p> <p>12 just clarify something: you had in excess of 60 policemen</p> <p>13 under your command from different units.</p> <p>14 GENERAL NAIDOO: Chair.</p> <p>15 COMMISSIONER HEMRAJ: And I don't expect</p> <p>16 you to commit all of them to escorting three medics.</p> <p>17 GENERAL NAIDOO: No, Chair.</p> <p>18 COMMISSIONER HEMRAJ: But what I'd like</p> <p>19 to know is at the time of the briefing after the 2:30</p> <p>20 meeting, the briefing to those members, did you specify</p> <p>21 which unit or which of the members would be tasked with</p> <p>22 escorting the medics, or did you brief that all the members</p> <p>23 would be tasked or what exactly did you do?</p> <p>24 GENERAL NAIDOO: Chair no, the deployment</p> <p>25 of the medics would be dependent on the situation because</p>
<p style="text-align: right;">Page 24202</p> <p>1 sounds like a discussion. It can't have any purpose at</p> <p>2 all.</p> <p>3 MS LE ROUX: Chair, it does, because we</p> <p>4 have Brigadier Calitz's evidence of when he first learned</p> <p>5 of scene 1, how long it took him to come in to scene 2, the</p> <p>6 timing of when he came in to scene 2, that's what I'm</p> <p>7 trying to confirm with the Major General.</p> <p>8 CHAIRPERSON: Alright, Mr Semenya, do you</p> <p>9 wish to reply? [Microphone off, inaudible] technically</p> <p>10 relevant. I don't think I can allow much time to be</p> <p>11 devoted to this, but I'll allow you to ask the question</p> <p>12 you've asked.</p> <p>13 MS LE ROUX: Chair, this was going to be</p> <p>14 my last question, whether the Major General recalls –</p> <p>15 CHAIRPERSON: Well, I'll allow you –</p> <p>16 you've asked the question. I will allow the question, so</p> <p>17 you've asked the question, let's get the answer.</p> <p>18 MS LE ROUX: Major General, did Brigadier</p> <p>19 Calitz discuss with you where he had been before he joined</p> <p>20 you at scene 2?</p> <p>21 GENERAL NAIDOO: Chair, no, he did</p> <p>22 indicate that there had been a shooting and one of the</p> <p>23 members was attending to somebody that was shot, etcetera,</p> <p>24 and they were arresting, but we never discussed his</p> <p>25 previous activities in detail as we had a massive task in</p>	<p style="text-align: right;">Page 24204</p> <p>1 the situation could have also been so bad that we could not</p> <p>2 have deployed them with a soft vehicle, we would have asked</p> <p>3 for an armoured vehicle to come in and take them. So at</p> <p>4 that stage the understanding was that the medics were there</p> <p>5 under our protection, but the actual deployment would</p> <p>6 depend on the unfolding situation. So I, at some stage had</p> <p>7 it been something that happened not directly in the area</p> <p>8 where the operations are, something on the peripheral, I</p> <p>9 could have sent one or two vehicles to go with a medic to</p> <p>10 go and attend to that particular scene. So the committing</p> <p>11 of resources would depend on the nature of the request and</p> <p>12 the circumstance of the request.</p> <p>13 COMMISSIONER HEMRAJ: What would have</p> <p>14 been the briefing that you gave to all the members there</p> <p>15 with regard to the escorting of the medics?</p> <p>16 GENERAL NAIDOO: Chair, as I indicated</p> <p>17 that we indicated that the medics and the fire were with</p> <p>18 us. I did not give them, tell, give them a specific</p> <p>19 tasking to say you K9, or you POPS, would be the people</p> <p>20 that will. That instruction to hold and guard the medics</p> <p>21 is something that came at the large power station, but it's</p> <p>22 not related to this briefing. For example I referred to a</p> <p>23 previous escort we did with the pathologist. At that stage</p> <p>24 it was deemed to be prudent to send an armoured vehicle to</p> <p>25 escort the pathologist because of the circumstances where</p>

<p style="text-align: right;">Page 24205</p> <p>1 the corpse was, and I then tasked an armoured vehicle to 2 the escort. So I could not upfront say how the demand 3 would be met. I would have to first receive the request to 4 see where and the circumstances before I task a specific – 5 COMMISSIONER HEMRAJ: Do I understand 6 that to mean it was not part of your briefing to the entire 7 contingent there under your command? 8 GENERAL NAIDOO: I did not indicate to 9 them that somebody will be specifically tasked because they 10 were with us as part of the larger group, yes. 11 COMMISSIONER HEMRAJ: Thank you, General. 12 CHAIRPERSON: Mr Gotz? 13 MR SEMENYA SC: Chair - 14 MR GOTZ: Good morning, Chairperson and 15 members of the Commission. Ah, I see my learned friend Mr 16 Semanya has something to say. 17 MR SEMENYA SC: Chair, the witness has 18 just received documents from AMCU this morning. Can we 19 establish whether he has had an opportunity to go through 20 them? 21 GENERAL NAIDOO: Chair, I just received 22 the file as I was coming in. I just need to go through it. 23 I see some of the documents are from previous, but there's 24 about two or three that are not. 25 CHAIRPERSON: Alright, I think in</p>	<p style="text-align: right;">Page 24207</p> <p>1 given leave. 2 MR GOTZ: Yes, Chairperson. I do not 3 intend to be particularly long. I hope we can finish this 4 within – 5 CHAIRPERSON: I don't want you to be even 6 short on topics which you haven't been given leave, and I'm 7 going to now not to be facetious but to indicate that from 8 now on parties must understand that I'm going to be much 9 stricter perhaps than I've been up to now in enforcing the 10 terms of the permissions I've granted for cross- 11 examination. I'm not suggesting that you will misbehave 12 and go beyond the bounds that you've been given, but it's a 13 salutary notice for anybody that that's going to happen. 14 Mr Gotz. 15 MR GOTZ: Chair, I think you'll find that 16 I will stay well within the bounds of what we've been 17 permitted. Major General, can we begin by looking at your 18 consolidated statement, which is exhibit JJ108, and 19 commence at paragraph 43 and 44 and we can find this on 20 page 7. In paragraph 43, we can start with that, you say 21 "During the late afternoon we received delegations from the 22 NUM and AMCU trade unions, escorted by the Special Task 23 Force." Now Major General, just to contextualise this, 24 we're talking about the events of the 15th of August 2012, 25 correct?</p>
<p style="text-align: right;">Page 24206</p> <p>1 accordance with the procedure we've followed, I think it 2 only fair the witness gets a chance to go through the 3 documents. I'll take the first comfort break a bit earlier 4 than I intended and we will adjourn now and when the 5 witness has finished going through the documents he will 6 let us know and we will resume. We'll now adjourn. 7 [COMMISSION ADJOURNS COMMISSION RESUMES] 8 [10:50] CHAIRPERSON: The Commission resumes. 9 I've been informed that the witness has had an opportunity 10 to study the documents which were drawn to his attention by 11 AMCU. Is that correct, Major General? 12 GENERAL NAIDOO: I went over it quickly, 13 yes, Chair. 14 CHAIRPERSON: Alright, you're still under 15 oath. 16 GANASEN NAIDOO: s.u.o. 17 CHAIRPERSON: Mr Gotz. 18 CROSS-EXAMINATION BY MR GOTZ: Thank you, 19 Chairperson. Good morning, Major General. 20 GENERAL NAIDOO: Good morning. 21 MR GOTZ: I'll be asking you a few 22 questions on behalf of AMCU. My name is Anthony Gotz and 23 I'm briefed by the Socio-Economic Rights Institute. 24 CHAIRPERSON: I take it you'll be 25 sticking to the topics in respect of which you've been</p>	<p style="text-align: right;">Page 24208</p> <p>1 GENERAL NAIDOO: That's correct. 2 MR GOTZ: And we're talking about the 3 delegations that went to address the strikers at the koppie 4 in the evening of the 15th, correct? 5 GENERAL NAIDOO: Among others, yes. 6 MR GOTZ: You say, "I instructed the 7 additional representatives of the trade unions to wait at 8 the forward holding area 1 and only allowed the agreed upon 9 three representatives to proceed to koppie 1 under police 10 protection." 11 GENERAL NAIDOO: That is correct. 12 MR GOTZ: "The delegations were allowed 13 to go one at a time whilst the other was held at forward 14 holding area 1. Once they'd had an opportunity to address 15 the crowd they returned to forward holding area 1 and sent 16 back to," and you've said that should be the JOC, J-O-C, at 17 Lonmin. 18 GENERAL NAIDOO: That's correct. 19 MR GOTZ: In paragraph 44 you say "I 20 thereafter proceeded to the offices at Lonmin near the JOC 21 where we, Major Generals Mpembe, Annandale, and myself, 22 attended a briefing session with the trade unions on what 23 had transpired. The Lonmin HR management facilitated the 24 session and AMCU refused to have a joint meeting with NUM 25 present, so we met with both unions separately."</p>

<p style="text-align: right;">Page 24209</p> <p>1 Now it's your allegation that AMCU refused to 2 have a joint meeting with NUM present that I'm concerned 3 about. Major General, perhaps we can look at the contrary 4 version that Mr Mathunjwa put up in his witness statement, 5 and that's in exhibit NN and it's on page 16, paragraph 52, 6 and there Mr Mathunjwa says "After we had addressed the 7 workers we went for a debriefing at the base with the SAPS, 8 NUM and Lonmin. NUM had a principled position that it 9 would not talk to AMCU around the same table. This had 10 been made clear during the earlier meeting. Because of 11 this the SAPS had a briefing with management and NUM and 12 thereafter AMCU was called and we had a separate 13 debriefing." 14 Now Major General, you are aware that there was 15 an earlier meeting where both AMCU and NUM representatives, 16 including Mr Mathunjwa, were present prior to them coming 17 to you at forward holding area 1? Are you aware of that? 18 GENERAL NAIDOO: I am aware of that. 19 MR GOTZ: To the best of my knowledge 20 this evidence was never challenged by SAPS. I could be 21 wrong, but I haven't seen anything which contradicted, 22 which was placed before Mr Mathunjwa when he gave his 23 testimony which contradicted this. We can see that his 24 version of what transpired is different from yours in 25 paragraph 44 of your statement.</p>	<p style="text-align: right;">Page 24211</p> <p>1 point is" and it's in the course of a statement by Mr 2 Zokwana of NUM. 3 CHAIRPERSON: Just go back a little bit 4 then if, and maybe the passage you're looking for we'll 5 find. I don't think you need to go back all the way to the 6 beginning, back to a passage near the end. I hope we'll 7 find the passage you're referring to without wasting too 8 much time. I suppose we'd better start on page 1 and go 9 through – it doesn't look as if this machine is prepared to 10 go backwards, so we'll have to humour it by going forward. 11 MR GOTZ: I wonder if the document can't 12 be opened in Microsoft Word rather than the viewer that the 13 operator is trying to use. 14 CHAIRPERSON: [Microphone off, inaudible] 15 asking me that question, but perhaps those – 16 MR GOTZ: I was speaking to the – 17 CHAIRPERSON: - who are competent to 18 answer it will be able to do so. 19 MR GOTZ: I was speaking to the operator. 20 CHAIRPERSON: Anyway, while this is being 21 looked at can I just ask you this, Major General; my 22 understanding is it has always been the position that the 23 people who didn't want to talk to, the union who didn't 24 want to talk to the other union was NUM. NUM said we're 25 not prepared to have a joint meeting with AMCU and Lonmin</p>
<p style="text-align: right;">Page 24210</p> <p>1 GENERAL NAIDOO: That's correct. 2 MR GOTZ: Now let's go to the transcript 3 of the earlier meeting, because it does give a reasonably 4 clear indication of the respective attitudes of NUM and 5 AMCU to the notion of a joint meeting. The transcript is 6 exhibit 004 – or OO4, I beg your pardon. The transcript is 7 OO4. I wonder whether we can have that up on screen. 8 That's it, and can we turn to page 12 of that transcript, 9 starting from – 10 CHAIRPERSON: [Microphone off, inaudible] 11 going to be in trouble because according to the heading 12 there are 11 pages to the corrected transcript. 13 MR GOTZ: Sorry, let's see whether – oh 14 yes, my transcript has 15 pages. 15 CHAIRPERSON: No, this is the corrected 16 transcript, you see. There was an earlier one. This has 17 been corrected, which is presumably the reason why the page 18 numbers changed. 19 MR GOTZ: Yes. 20 CHAIRPERSON: All you've got to do is 21 find the passage that you're referring to in the corrected 22 transcript. It shouldn't take too long. 23 MR GOTZ: Ja, I want to try and find a 24 passage which – and perhaps we can do a search through the 25 document using the search function – which starts "So the</p>	<p style="text-align: right;">Page 24212</p> <p>1 and that would then happen that there were separate 2 meetings. Now you of course in your statement said it was 3 the other way around, it was AMCU who insisted on a 4 separate meeting. Is it possible that you were incorrect? 5 I mean I don't know how much turns on the point. If you 6 have a clear recollection it was AMCU then obviously that's 7 set, but if you are prepared to concede that it may be the 8 other way around then we'll save a lot of time. 9 GENERAL NAIDOO: Chair yes, to maybe save 10 some time, the, that information about AMCU not joining us, 11 the facilitator clearly indicated to us when we were seated 12 there and we waited for a while, that as we know that AMCU 13 will not be joining us because of the fact that these 14 unions did not want to sit around the table and they have 15 indicated that they will prefer to brief us separately. 16 CHAIRPERSON: So what exactly you said, 17 you were told that AMCU will not be joining you – 18 GENERAL NAIDOO: That is correct. 19 CHAIRPERSON: - then you said because the 20 union – the union or the unions preferred to meet 21 separately? What exactly did the facilitator tell you? 22 Can you remember? 23 GENERAL NAIDOO: I can't remember 24 verbatim, but the reason why I specifically remember and 25 put this in the statement was the facilitator indicated,</p>

<p style="text-align: right;">Page 24213</p> <p>1 when we arrived at the place where the meeting was being 2 held the facilitator, we were seated for a few minutes 3 before we started and he indicated okay, we can start 4 because AMCU had indicated that they will not be joining us 5 now and that they will give us their feedback after we'd 6 finished meeting with the – 7 CHAIRPERSON: Okay. 8 GENERAL NAIDOO: So my statement in 9 paragraph 44 was based on what I heard – 10 CHAIRPERSON: Based on what he'd said. 11 GENERAL NAIDOO: I was not part of the 12 earlier meeting – 13 CHAIRPERSON: I understand. So there may 14 have been a misunderstanding or possibly the decision for 15 AMCU to talk second separately from NUM after going to the 16 koppie had been based upon what happened earlier before 17 they went to the koppie and you didn't know anything about 18 it? 19 GENERAL NAIDOO: I was not part of that 20 meeting, Chair. 21 CHAIRPERSON: Alright, because what is 22 being put to you is that certainly at the first meeting, 23 the pre-koppie meeting it was NUM who said we're not 24 prepared to sit down with AMCU. Is that right, Mr Gotz? 25 Have I got it right?</p>	<p style="text-align: right;">Page 24215</p> <p>1 the story where we stand as AMCU, where we are coming from 2 and where we want to go. The point is we want to get those 3 workers back to normality jointly, not pointing fingers," 4 and he goes on after talking about the role of a leader, if 5 it can be scrolled down a little bit, further down where it 6 says, "We cannot be seen as leaders in the boardroom, we 7 cannot be seen as leaders in our comfort zone. Let's show 8 leadership today. Let's show leadership, NUM and AMCU, 9 let's go there and address those workers. Let's go and 10 show the world that this violence, we are against it 11 jointly and to prevent," it says carnation but I suspect 12 that should be carnage. "I thank you." 13 And then, Major General, you'll also perhaps 14 recall that the NUM president took quite a different 15 stance. His attitude is reflected in a paragraph, I'll 16 just simply read it to you, "Even if NUM were to consider 17 any form of meeting, we won't be with AMCU together. We 18 won't. That is the stand we take as a union. We are going 19 to consult on our own, but meeting with AMCU on matters is 20 not possible." Now I understand that you – 21 CHAIRPERSON: I'm sorry, that's not on 22 the screen. Where is that? 23 MR GOTZ: That is in a separate 24 paragraph, Chairperson, I've got it at page 12 of my 25 transcript.</p>
<p style="text-align: right;">Page 24214</p> <p>1 MR GOTZ: Yes, Chairperson, and obviously 2 if Major General Naidoo is prepared to accept that the 3 transcript stands for that proposition and supports that 4 proposition, he has read the transcript, then I'm happy 5 to – 6 CHAIRPERSON: I don't think we need test 7 his memory whether he saw that in the transcript. I read 8 the transcript too and I can't remember seeing it 9 specifically there, but it doesn't really matter if he 10 concedes that he does, but he's got no personal knowledge 11 as to at whose insistence there were separate meetings with 12 the trade union representatives and isn't that all you need 13 for the present purposes? 14 MR GOTZ: Yes, Chairperson, perhaps I 15 can – 16 CHAIRPERSON: Can we save some time that 17 way? 18 MR GOTZ: Perhaps I can simply just 19 highlight for the record the relevant paragraphs. On the 20 paragraph on the passage on screen we have Mr Mathunjwa 21 talking. I'm not quite sure what page this will be of the 22 corrected transcript. Perhaps it could be pointed out. 23 22, I think it says, and Mr Mathunjwa says, "So the point 24 is as the way forward I was trying to address all these 25 allegations, General, trying to give you another side of</p>	<p style="text-align: right;">Page 24216</p> <p>1 CHAIRPERSON: So who says meeting with 2 AMCU is not possible? 3 MR GOTZ: That is Mr Zokwana who – 4 CHAIRPERSON: Mr Zokwana, the president 5 of NUM. 6 MR GOTZ: Of NUM. 7 CHAIRPERSON: So the point I put to the 8 witness originally was correct, but he doesn't know that. 9 Am I right, Major General? 10 GENERAL NAIDOO: That's correct, Chair. 11 CHAIRPERSON: Ja, so you're prepared to 12 accept that that's what the transcript says that the 13 insistence on separate meetings with Lonmin came from NUM 14 and not from AMCU. Is that right? 15 GENERAL NAIDOO: Chair, that's what the 16 first transcript says. As I indicated, I formed, and I put 17 that in my statement as a result of what the facilitator 18 indicated at the second meeting. So I was not there and 19 I'm not aware, so I can't comment. 20 CHAIRPERSON: Ja, but once the principle 21 was accepted of separate meetings, it more or less 22 followed, didn't it, from what happened before they went to 23 the koppie. So anyway, so I would have thought you'd be 24 happy so far, Mr Gotz – 25 MR GOTZ: I'm happy to move on, Chair.</p>

<p style="text-align: right;">Page 24217</p> <p>1 CHAIRPERSON: Well, I suggest you do 2 that. 3 MR GOTZ: But perhaps just one further 4 question. The facilitator that you talk of, that is 5 somebody from Lonmin? 6 GENERAL NAIDOO: That's correct, Lonmin 7 HR. I can't remember his name, but yes. 8 MR GOTZ: Could it have been Mr Kwadi? 9 GENERAL NAIDOO: It could have been, yes. 10 We can ascertain that. 11 MR GOTZ: We may take this up with the 12 relevant Lonmin person, Chair. Then on a separate topic, 13 Major General, I'd like to get your assistance, if 14 possible, in relation to certain events on the 13th of 15 August and perhaps we can turn to paragraph 23 to 26 of 16 your statement, JJJ108. Major General, I see that the 17 preview is quitting unexpectedly on the screen, but I think 18 most people have got a copy of your statement, so we'll 19 read it, the relevant paragraph, while the technical people 20 sort out the issue. 21 At paragraph 23 of your statement you talk about 22 – and I'll simply summarise - that while you were at the 23 Lonmin Mine you were shown the close circuit television 24 system where the mine was monitored from and you saw that 25 there was a large contingent of miners sitting on the</p>	<p style="text-align: right;">Page 24219</p> <p>1 as we were outside Potchefstroom the Provincial 2 Commissioner received a telephone call which she informed 3 me that the members under the command of Major General 4 Mpembe who were left at Marikana were attacked by the 5 miners and some police personnel had been killed and there 6 were other unspecified casualties among the protesters as 7 well." 8 Now you say in paragraph 25 that the Provincial 9 Commissioner received a telephone call in which she was 10 told of, let's say neutrally she was told of the 11 confrontation between the police and the strikers. Do you 12 know who made that telephone call to the PC? 13 GENERAL NAIDOO: Chair, no. I, she did 14 not indicate who had called her. 15 MR GOTZ: Between the time that the 16 Provincial Commissioner and you left Lonmin and the time 17 that she received this telephone call to which you refer in 18 paragraph 25 of your statement, was there a telephone call 19 that the PC received from Major-General Mpembe to talk 20 about what was happening on site as it were. 21 [11:10] GENERAL NAIDOO: I don't specifically 22 remember. The Provincial Commissioner possibly spoke on 23 the phone a number of times, but she had not indicated 24 until the stage where she indicated that the police 25 officials had been attacked that she had received a</p>
<p style="text-align: right;">Page 24218</p> <p>1 koppie and then a smaller group of armed miners had 2 gathered near a mineshaft. 3 What happens next is that the Provincial 4 Commissioner Mbombo gives a very clear instruction to Major 5 General Mpembe that, as you say in paragraph 24, "Armed 6 groups cannot be allowed to roam around and need to be 7 disarmed," and you then say that the Provincial 8 Commissioner and you then departed for Potchefstroom. Tell 9 me, Major General, were you in the same vehicle as the 10 Provincial Commissioner? 11 GENERAL NAIDOO: That is correct. I was 12 travelling with the Provincial Commissioner. 13 MR GOTZ: Was there anybody else in the 14 vehicle with you? 15 GENERAL NAIDOO: The Provincial 16 Commissioner's driver. 17 MR GOTZ: So you were being driven by the 18 driver and presumably sitting in the vehicle next to each 19 other? 20 GENERAL NAIDOO: Chair, I would think I 21 was either sitting in the back – I can't remember where, 22 possibly sitting in the back seat, yes, and the Provincial 23 Commissioner was sitting alongside her driver in the front 24 seat. 25 MR GOTZ: In paragraph 25 you say, "Just</p>	<p style="text-align: right;">Page 24220</p> <p>1 telephone call. So we never discussed her telephone calls, 2 no. 3 MR GOTZ: I want to point to a paragraph 4 in the transcript of the examination in chief of Major- 5 General Mpembe. Perhaps just to jog your memory. I 6 understand that you've said that you have no recollection 7 of that, but it is of some importance and perhaps we can 8 look at the transcript. It's the transcript of day 103 and 9 the page number is 11126 and it's commencing at line 23. 10 What's happening here is that Mr Ngalwana who's the counsel 11 for the SAPS is leading General Mpembe and showing him a 12 video and what can be seen on the video is Major-General 13 Mpembe standing at the railway line with the strikers, he's 14 making a telephone call. And he's asked by Mr Ngalwana 15 "Can you stop the video, is that you seemingly on the 16 telephone, General?" And General Mpembe responds 17 "Correct." If we can go up to the next page. "With whom 18 are you communicating there?" And he says "I was 19 communicating with the JOC and also informing the 20 Provincial Commissioner about the situation that I've 21 encountered." He goes on, well Mr Ngalwana asks him "Do 22 you remember in precise terms what the nature of the 23 conversation was and the contents of what you were telling 24 them?" And General Mpembe responds "I informed the JOC 25 that the strikers seem not to communicate to co-operate, to</p>

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1 hand over their weapons. Precisely the reason that I have  
 2 given to the Commission that I have taken a decision that  
 3 we will escort them. The same I did communicate to the  
 4 Provincial Commissioner and she said to me I'm the best  
 5 placed person on the ground to take a decision and she  
 6 agreed with me." And Mr Ngalwana says "Right so you took  
 7 the decision that you took and then you can continue with  
 8 the clip." Now, Major-General Naidoo, if that telephone  
 9 call had in fact been made to the Provincial Commissioner  
 10 she would have received it in the car while you were  
 11 driving back to Potchefstroom, correct?  
 12 GENERAL NAIDOO: That's correct, Chair.  
 13 MR GOTZ: It's a telephone call which is  
 14 of course of some importance because what Major-General  
 15 Mpmembe says he did was tell the Commissioner that instead  
 16 of complying with the instruction to disarm them at least  
 17 as soon as possible, what he had done was taken a decision  
 18 informed by a situation or appropriateness to escort the  
 19 strikers to the koppie. Do you see that?  
 20 GENERAL NAIDOO: I see that, Chair.  
 21 MR GOTZ: And he says that she agreed  
 22 with his decision that he do so. Do you see that?  
 23 GENERAL NAIDOO: I see that, Chair.  
 24 MR GOTZ: Do you have any recollection of  
 25 the Provincial Commissioner having had this conversation

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1 with General Mpmembe while you were in the car?  
 2 GENERAL NAIDOO: Chair, as I indicated, I  
 3 did not specifically remember or hear a particular  
 4 conversation, but it would not be unusual because the  
 5 Provincial Commissioner quite often speaks in her mother  
 6 tongue to some of the generals. So I would not be able to  
 7 say she spoke to General X and General Y. As I said we  
 8 were both, you know, sitting where we were sitting. At  
 9 some stage I was also on my phone, but I know that she was  
 10 in conversation both with the driver as well as on the  
 11 telephone at different times. So I would not be able to  
 12 say whether such a conversation with General Mpmembe took  
 13 place. In fact I thought that the telephone call on the  
 14 attack came from General Mpmembe at that stage.  
 15 MR GOTZ: Sorry, I asked you a couple of  
 16 minutes ago did you recall who called when you were  
 17 reflecting on the telephone call that you referred to in  
 18 paragraph 25 of your statement. Was that General Mpmembe?  
 19 GENERAL NAIDOO: I said I was not sure,  
 20 but the Provincial Commissioner indicated to us that  
 21 General Mpmembe and his members had been attacked.  
 22 CHAIRPERSON: Does it work like this?  
 23 You received a number of phone calls, spoke in Xhosa to the  
 24 person at the other end of the telephone in each case, she  
 25 didn't report to you what the conversation was about?

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1 GENERAL NAIDOO: No.  
 2 CHAIRPERSON: Then came this call, it's  
 3 referred to in paragraph 25 of your statement and that  
 4 telephone she told you about and informed what the message  
 5 was that she'd received. Is that how it works?  
 6 GENERAL NAIDOO: That's correct, Chair.  
 7 MR GOTZ: But she did not inform you that  
 8 she had received a telephone from Major-General Mpmembe  
 9 telling her that he had taken the decision which involved  
 10 escorting the strikers to the koppie.  
 11 GENERAL NAIDOO: No, Chair, not specifically, no.  
 12 MR GOTZ: Just for record purposes, the  
 13 Provincial Commissioner also has no recollection of  
 14 receiving a call from Major-General Mpmembe and the  
 15 reference to that is day 183 at page 22088, so it's 22088.  
 16 I'm not sure that we need to go there. We can look at it,  
 17 but - so it's 22088. So if you go down to the bottom of  
 18 that, she says in response to a question from my learned  
 19 friend, Ms Barnes, "Now General, do you not recall that  
 20 telephone call from General Mpmembe?" And she says at line  
 21 17 "I do not remember, Chairperson, but it is possible that  
 22 he phoned me." She then said "Because you see, General,  
 23 this his evidence, as you will have seen, is that what he  
 24 said to you is that he had taken the decision that he was  
 25 going to escort the strikers to the koppie with their

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1 weapons and that you agreed with that decision. That's  
 2 General Mpmembe's evidence." And General Mbombo says "As  
 3 you said, Chairperson, but I'm saying I do not remember  
 4 the discussion between me and him pertaining to that. But  
 5 I would not dispute that it take place and truly if it did  
 6 as he was says, he was the person on the ground who's in a  
 7 better position." Ms Barnes then goes on and says at line  
 8 12 and at line 17 she says "I totally do not remember this,  
 9 I heard him giving evidence to that effect, but I still  
 10 could not remember." So her evidence is that she could not  
 11 remember receiving that telephone call, Major-General. I  
 12 was hoping that you would be able to assist, but you say  
 13 you do not know whether such a call took place or you can't  
 14 recall that telephone call did take place.  
 15 GENERAL NAIDOO: Chair, as I indicated,  
 16 she did not discuss such a telephone call with me.  
 17 CHAIRPERSON: And when she spoke to  
 18 General Mpmembe normally, unless it was a matter in which it  
 19 was important that you should understand what was being  
 20 said, did she speak in the vernacular or did she speak in  
 21 English?  
 22 GENERAL NAIDOO: Yes, she spoke in the  
 23 vernacular, but sometimes if I'm in a conversation then  
 24 obviously she will go into English. Sometimes she forgets  
 25 and she speaks to me in vernacular as well. But we - ja.

<p style="text-align: right;">Page 24225</p> <p>1 MR GOTZ: Major-General, when did you 2 become aware of the circumstances, let's put it like that, 3 of the circumstances surrounding the confrontation between 4 the police and the strikers on the 13th? Was in the 5 briefing session that was held later that evening? 6 GENERAL NAIDOO: Chair, I think I 7 testified that it came in bits and pieces. When we arrived 8 there, General Mpmembe, Brigadier Calitz to give us some of 9 the stories in terms of exactly what happened, we also 10 visited the member that was killed at the mortuary. So by 11 the time the National Commissioner had arrived we've got 12 the different parts of the story from people as they 13 arrived back from the scene. So yes it was during that 14 period when we returned to the Lonmin JOC. 15 MR GOTZ: Did you go to the hospital to 16 visit the member, the SAPS member who had been injured with 17 the Provincial Commissioner? 18 GENERAL NAIDOO: I was with the 19 Provincial Commissioner, yes. 20 MR GOTZ: And that was in the afternoon 21 of the 13th. 22 GENERAL NAIDOO: That's correct, Chair. 23 MR GOTZ: The Provincial Commissioner 24 told us that she had only gone to see the member, whose 25 name I have now forgotten, on one occasion during that</p>	<p style="text-align: right;">Page 24227</p> <p>1 GENERAL NAIDOO: Much later, not at the 2 time of the incident. When we arrived back at the JOC we 3 had met General Mpmembe, he never brought that to our 4 attention either. And as I say it was not during the time 5 of the incident, it was – 6 CHAIRPERSON: It was not the same day. 7 GENERAL NAIDOO: No, Chair. 8 CHAIRPERSON: Not the same day. 9 GENERAL NAIDOO: No. 10 CHAIRPERSON: So how many days 11 thereafter? 12 GENERAL NAIDOO: Probably more than a 13 week or so. 14 CHAIRPERSON: I see, thank you. 15 MR GOTZ: Can I move onto a separate 16 topic, I may come back to this issue, but to a separate 17 topic and that's in relation to some evidence that you gave 18 on day 189. So if we can have that transcript up, 189 at 19 page 22908. And it's from line 5. And perhaps to give 20 some context, the Chairperson is asking you a question 21 about whether or not you can see Mr Mathunjwa's vehicle 22 from your position at forwarding holding area 1 and your 23 response at line 10 is, "No Chair, Chair I was informed by 24 the JOC that Mr Mathunjwa would be coming to me or coming 25 up that way and that I should intercept and speak to him</p>
<p style="text-align: right;">Page 24226</p> <p>1 week. 2 GENERAL NAIDOO: Chair, I think we are 3 mixing it up. It's the member who was deceased that was at 4 the Lonmin Mine hospital that we visited on the 13th and the 5 other visit that is being referred to was that of 6 Lieutenant Baloyi which happened when I was not present. 7 CHAIRPERSON: That happened according to 8 the evidence, if it only happened once on the 16th. 9 GENERAL NAIDOO: I was not with the 10 Provincial Commissioner at the time you're referring to. 11 CHAIRPERSON: No, I know you said you 12 weren't, but you may have it known when it was. 13 MR GOTZ: Did you not see, is it 14 Lieutenant Baloyi on the afternoon of the 13th? 15 GENERAL NAIDOO: No, Chair, by the time 16 we had arrived he had already been removed to hospital. 17 MR GOTZ: And, Major-General, we have 18 heard evidence that the life of Major-General Mpmembe was 19 threatened by various members of SAPS on the scene. Were 20 you aware of that? 21 GENERAL NAIDOO: I heard about it much 22 later, not at that time when we arrived there, no. 23 CHAIRPERSON: When you say much later, 24 what do you mean? How much later, the same day, a week 25 later, a month later, how much later?</p>	<p style="text-align: right;">Page 24228</p> <p>1 because of – but he never came back through the forward 2 holding area where we had a road block. He obviously took 3 another route." A couple of questions that I want to ask 4 you about this issue. You are aware that there was a 5 series of SMSs sent by Mr Mathunjwa at approximately 14:15, 6 in other words quarter past two in which he said in some 7 frustration that no person was prepared to talk to him and 8 AMCU and that he was going back to the strikers to tell 9 them that no-one from SAPS, Lonmin management was prepared 10 to engage with him. Are you aware of that? 11 GENERAL NAIDOO: At that time, no. I 12 came to be aware of it during this process of the 13 Commission. 14 MR GOTZ: Well let's look at Major- 15 General Mpmembe's evidence which can be found in one of his 16 statements and it's exhibit GGG12. And if we can go down 17 to paragraph 47, I'm afraid I don't know the page number. 18 Let's look at what Major-General Mpmembe says in this 19 paragraph because it does concern you, Major-General. He 20 says soon after he left and what he means by that is soon 21 after he left the JOC, "Mr Mathunjwa sent me an SMS at 22 14:15." The SMS read as follows, "Since no person is 23 available to me give feedback we are going back to the 24 employees to inform them no-one is available. We have 25 tried our best without co-operation from anyone, let peace</p>



<p style="text-align: right;">Page 24229</p> <p>1 prevail." And then Major-General Mpembe goes on to say "I 2 showed Major-General Annandale the SMS and he showed me 3 that he had received a similar SMS. I immediately tried to 4 call Mr Mathunjwa, two or three times, but he didn't answer 5 the phone. Major-General Annandale undertook to respond to 6 that SMS and he typed a message to Mr Mathunjwa in 7 response." And then Major-General Mpembe says "I requested 8 Major-General Annandale to contact Major-General Naidoo at 9 forward holding area 1 and tell him of the SMS and ask him 10 to speak to Mr Mathunjwa before he addressed the 11 protestors. Major-General Annandale contacted Major- 12 General Naidoo, but Major-General advised that Mr Mathunjwa 13 had already driven past forwarding holding area 1 by the 14 time General Annandale called." Do you remember receiving a 15 call from Major-General Annandale in connection with this? 16 GENERAL NAIDOO: Chair, yes I was asked 17 to, I was informed that Mr Mathunjwa was at the JOC, he had 18 requested transport and an escort and also that he had 19 departed before such was provided. I was asked to 20 intercept him at the crossroads at forwarding holding area 21 1 so that we could resolve that issue. I, at that stage, 22 was not told about an SMS and I did indicate to them at 23 that stage that Mr Mathunjwa had not passed, I had not seen 24 him, not that he had already driven past. That I had not 25 seen him at that stage at forward holding area 1</p>	<p style="text-align: right;">Page 24231</p> <p>1 CHAIRPERSON: You were asked to speak to 2 him? 3 GENERAL NAIDOO: Yes, Chair. 4 CHAIRPERSON: You said you couldn't 5 because he'd already gone past. 6 GENERAL NAIDOO: That's right, Chair. 7 CHAIRPERSON: But you were asked to speak 8 to him. 9 GENERAL NAIDOO: That's correct, Chair. 10 CHAIRPERSON: Now what were you asked – 11 were you asked to tell him something or to raise some 12 particular matter with him? What was to be the topic of 13 your conversation with him? 14 GENERAL NAIDOO: Chair, as I indicated 15 that the message that I'd received that he had been at the 16 JOC wanting transport and an escort to go and address the 17 strikers and that is the reason why I should intercept him 18 because they were, an indication was they were busy making 19 these arrangements and he had left before such a thing 20 happened. 21 CHAIRPERSON: He obviously had transport, 22 so the arrangements that – 23 GENERAL NAIDOO: Well - 24 CHAIRPERSON: - presumably, I'm guessing 25 now but the arrangements you would have had to discuss with</p>
<p style="text-align: right;">Page 24230</p> <p>1 intersection. 2 MR GOTZ: General, my question was 3 relatively simple one. 4 [11:29] Did you speak to Major General Annandale about 5 these matters? 6 GENERAL NAIDOO: He did communicate to me 7 about Mr Mathunjwa, yes. 8 MR GOTZ: So you received a phone call 9 from him? 10 GENERAL NAIDOO: A phone call or a radio 11 message. I'm not sure. 12 MR GOTZ: And did Major General Annandale 13 say to you that it was important to speak to Mr Mathunjwa 14 because Mr Mathunjwa seemed upset or frustrated by the fact 15 that he was not able to communicate with anybody and there 16 was a need for you, Major General Naidoo, to speak to Mr 17 Mathunjwa about these issues? 18 GENERAL NAIDOO: No, Chair. As I 19 indicated, the indication was that Mr Mathunjwa was at the 20 JOC requesting transport and an escort and that he had left 21 before this was finalised. The issue of the SMS was never 22 discussed. 23 CHAIRPERSON: [Microphone off, inaudible] 24 ask to speak to him? 25 GENERAL NAIDOO: I beg your pardon?</p>	<p style="text-align: right;">Page 24232</p> <p>1 him would have been in relation to an escort. Is that 2 correct? 3 GENERAL NAIDOO: That's correct, Chair. 4 MR GOTZ: So you have no recollection of 5 Major General Annandale saying it was important for you to 6 speak to Mr Mathunjwa because of the fact that he was 7 concerned that nobody from SAPS management was prepared to 8 speak to him? 9 GENERAL NAIDOO: Chair, as I indicated, 10 my understanding of the interaction I would have with Mr 11 Mathunjwa was the fact that he left before his request for 12 the SAPS were dealt with. So when they said speak to Mr 13 Mathunjwa, yes, I understood that I would have to engage 14 with him because his request had not been addressed, but 15 other than that I can't remember specifically indicating 16 any other issue. 17 MR GOTZ: Well, let's see what Major 18 General Annandale has to say on the question, and look at 19 the transcript of day 78 at page 8332, and we can start 20 with line 3 – well, start at the top of the page. "You 21 also deal with the contact you would have had with Mr 22 Mathunjwa via SMSs," Mr Semenya says to Major General 23 Annandale. Major General Annandale says, "Chairperson, 24 that is correct, yes. At 14:15 I received an SMS from Mr 25 Mathunjwa and if I can just read the exact details of the</p>

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1 SMS, the SMS indicated, and I quote, 'Since no person who  
2 is available to give feedback to we are going back to  
3 employees to inform them that no-one is available. We have  
4 tried our best without cooperation from anyone. Let peace  
5 prevail.'" And then he said, "This SMS concerned me,  
6 Chairperson, and I found Major General Mpembe was just  
7 standing outside of the joint operation centre and I  
8 discussed it with him and he indicated that he also  
9 received such an SMS. He indicated to me that he had tried  
10 on a number of occasions to see if he could get hold of Mr  
11 Mathunjwa on his cell phone, but he did not succeed. I  
12 then, at 14:28 I replied also by SMS, and I quote, 'SAPS is  
13 available at exactly the same spot as we had our earlier  
14 discussions. We're always available and willing to have  
15 discussions towards finding an amicable and peaceful  
16 solution.' I did not receive a response from him and it  
17 was my understanding from Major General Mpembe that some of  
18 his delegation, of the AMCU delegation indicated that Mr  
19 Mathunjwa was at the JOC area and that must have been the  
20 time when we had the special JOCCOM meeting and he," if we  
21 can go up to the next page, it's at the top of that page,  
22 8333, "indicated to me that it's his understanding that Mr  
23 Mathunjwa is upset. I then asked the joint operational  
24 centre, I think I asked Brigadier Pretorius, or it might  
25 have been one of the radio operators, to speak to Major

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1 General Naidoo at forward holding area 1 and see if he  
2 cannot intercept Mr Mathunjwa on his way to the koppie so  
3 that he can have a discussion with him and indicate SAPS'  
4 availability so that whatever he would then go and speak to  
5 the people, that he would be not still upset in terms of  
6 when he speaks to the people, and I left it at that." And  
7 then he says, "It's my understanding later on that day that  
8 they did not manage it. He drove past that forward holding  
9 area. He did not go through that area, took another route,  
10 and they saw him as he approached the actual koppie again  
11 with his vehicle." Now Major General Annandale says that  
12 he doesn't speak to you directly.

13 GENERAL NAIDOO: Yes, Chair.

14 MR GOTZ: He says that he either asked  
15 Brigadier Pretorius to speak to you or perhaps one of the  
16 radio operators.

17 GENERAL NAIDOO: Correct, Chair.

18 MR GOTZ: You say that you spoke to Major  
19 General Annandale directly.

20 GENERAL NAIDOO: Chair, I indicated I was  
21 not sure on how the communication, whether it was by cell  
22 or radio, but what I had was that Mr Mathunjwa was at the  
23 JOC and that he had left before the arrangements had been  
24 made for his escort and transport. I could not  
25 specifically remember who gave me the message as I, as well

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1 as the medium of communication. I did indicate that.

2 MR GOTZ: Well, I'd understood that you  
3 said that you spoke to Major General Annandale directly.

4 GENERAL NAIDOO: Chair, as I indicated, I  
5 was not sure of the medium and exactly who I spoke to, but  
6 I did indicate that I had receive a message and I indicated  
7 what message I had received.

8 MR GOTZ: Do you recall that you spoke to  
9 Brigadier Pretorius about this matter?

10 GENERAL NAIDOO: Chair, there was so much  
11 of communication on that day, it would be impossible for me  
12 to tell you who communicated each of the messages, but I do  
13 remember receiving a message to intercept him and I  
14 attempted to do that but he was not there. The purpose of  
15 the interception as far as I was concerned was the fact  
16 that he had left the JOC before being assisted with regard  
17 to transport and an escort.

18 MR GOTZ: So as far as you are concerned  
19 the only reason that you need to speak to Mr Mathunjwa is  
20 because of there are concerns about a police escort?

21 GENERAL NAIDOO: Chair, had I intercepted  
22 him I would have then been in discussion with the JOC in  
23 terms of what arrangement they had had with him and I would  
24 have got the additional information. But at that stage  
25 because I did not get hold of him we did not have a

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1 discussion further on that matter.

2 MR GOTZ: There is in fact a record of a  
3 telephone call made by Brigadier Pretorius to you, Major  
4 General Naidoo, at 14:25:09. It's a cell phone call which  
5 lasts for 27 seconds. Perhaps let's look at exhibit KKK4  
6 and go down to the entry 14:25 on the 16th. Do you see  
7 there that at 14:25 Brigadier Pretorius makes a 27-second  
8 call to you, Major General Naidoo? Could this have been  
9 the telephone call –

10 GENERAL NAIDOO: I see.

11 MR GOTZ: Could this have been the  
12 telephone call in which you were informed that there was a  
13 need to speak to Mr Mathunjwa?

14 GENERAL NAIDOO: Chair, I can't really  
15 say. I received during that day so many telephone calls  
16 from especially Brigadier Pretorius on various matters. I  
17 would not be able to say that that particular telephone  
18 call was dealing with a particular matter.

19 CHAIRPERSON: But in as far as this  
20 particular topic is concerned and the time that was  
21 irrelevant, it looks if it's probably the only relevant  
22 call in the list of calls that you received or made because  
23 we know more or less when Mr Mathunjwa returned to the  
24 koppie and so we can work out, I take it, more or less when  
25 this call, the relevant call that Mr Gotz is busy with must

<p style="text-align: right;">Page 24237</p> <p>1 have taken place, if it was a telephone call rather than a 2 radio communication. 3 GENERAL NAIDOO: Chair, yes – 4 CHAIRPERSON: And if it was only 27 5 seconds that fits with what you've told us. In other words 6 they would have phoned you to say intercept Mathunjwa, tell 7 him about the – intending to say tell him about the fact 8 that the police are available to speak, in response to the 9 SMS, but if you'd replied "I'm afraid I can't get hold of 10 him, he's already gone past," then there would be no point 11 in them continuing with the instructions to you about what 12 you should say to him because it would have been academic 13 and irrelevant. So a short call of about 27 seconds fits 14 with what you told us, if I may say so. I don't know if 15 I'm wrong, but that's the impression I get from what you've 16 told us – 17 GENERAL NAIDOO: Chair, the – 18 CHAIRPERSON: - read with this telephone 19 record. 20 GENERAL NAIDOO: Chair, that was a few 21 minutes before the 14:30 meeting as well, so whether that 22 telephone call dealt with Mr Mathunjwa or not, I can't 23 remember. As I indicated, there was communication to 24 intercept. I did instruct my members, but we did not find 25 him and we did not then discuss him further. So to</p>	<p style="text-align: right;">Page 24239</p> <p>1 [COMMISSION ADJOURNS COMMISSION RESUMES] 2 [12:13] CHAIRPERSON: The Commission resumes. 3 Major-General, you're still under oath. 4 GENERAL NAIDOO: Still under oath, Chair. 5 GENERAL NAIDOO: s.u.o. 6 CROSS-EXAMINATION BY MR GOTZ (CONTD.): 7 Major-General, before the tea adjournment we were dealing 8 with the concerns that Major-General Annandale and Major- 9 General Mpembe had that you should speak to Mr Mathunjwa 10 before he addressed the strikers at the koppie. My 11 understanding of your evidence is that that was never 12 clearly communicated to you, that Major-General Annandale 13 and Major-General Mpembe had this concern. 14 GENERAL NAIDOO: Chair, I indicated what 15 my understanding was why I should intercept Mr Mathunjwa 16 because of a possible perception that he might have that 17 the SAPS is not co-operating with him to assist with his 18 transport and escort. 19 MR GOTZ: It was important that that 20 conception or misconception be allayed, was it not, Major- 21 General Naidoo? 22 GENERAL NAIDOO: Chair, I just need some 23 clarity on the question. 24 MR GOTZ: Well, let me try and rephrase. 25 Both Major-General Annandale and Major-General Mpembe</p>
<p style="text-align: right;">Page 24238</p> <p>1 indicate whether that telephone call dealt with Mr 2 Mathunjwa specifically I would not be able to. 3 CHAIRPERSON: We understand you haven't 4 got a clear recollection of it, but in trying to work out 5 from the available material what the probabilities are in 6 respect of the subject matter of that conversation, it does 7 look in the light of the passages that's been put to you as 8 if that's what it was about. Would you agree with that? 9 GENERAL NAIDOO: Chair, just as probable 10 as it would be that indication that we are now departing 11 the JOC for the 14:30 meeting, so the probabilities are 12 vast. So – 13 CHAIRPERSON: Alright. 14 MR GOTZ: How long does it take to get 15 from the JOC to forward holding area 1, Major General? 16 GENERAL NAIDOO: About three to five 17 minutes, depends on the traffic. 18 CHAIRPERSON: Is this a convenient stage 19 for us to take the tea adjournment, Mr Gotz, or is there a 20 point you wanted – 21 MR GOTZ: No, I'm happy to take the tea – 22 CHAIRPERSON: Let's take – so this will 23 be a combined tea adjournment and comfort break, so we'll 24 carry on once this adjournment is over through until 1 25 o'clock.</p>	<p style="text-align: right;">Page 24240</p> <p>1 considered that it was very important, they say they 2 considered it to be very important that somebody from SAPS 3 management speak to Mr Mathunjwa. Would you agree? Would 4 you share that concern? 5 GENERAL NAIDOO: Chair, yes. They asked 6 me to intercept him and to speak to him and, as I indicated 7 before the tea break, had I managed to intercept him I 8 would have first spoken to them and get a more detailed 9 briefing as to the expectation. At that stage what I knew 10 is that I testified to. 11 MR GOTZ: What efforts did you make to 12 speak to Mr Mathunjwa, Major-General? 13 GENERAL NAIDOO: Chair, I think I've 14 testified he did not pass through my area because the call 15 was made to me with the understanding that he would have to 16 pass through the area where forward holding area 1 was and 17 that I would be able to intercept hm. I indicated that I 18 was not able to see him and I would not be able to 19 intercept him, so that was my report to the JOC. 20 MR GOTZ: And that was it, you simply 21 left it there? 22 GENERAL NAIDOO: Chair, at that stage, 23 yes, because I could not speculate further what I would 24 need to do without knowing where Mr Mathunjwa was and then 25 addressing it.</p>

<p style="text-align: right;">Page 24241</p> <p>1 CHAIRPERSON: But what is the position, 2 did you tell the person who spoke to you that Mr Mathunjwa 3 had already passed where you were or did you say he's 4 obviously gone some other way, we haven't seen him, he 5 hasn't come past here? There's a difference between the 6 two, isn't there? 7 GENERAL NAIDOO: Yes. 8 CHAIRPERSON: Now I understood the 9 evidence that was put to us before the tea adjournment, 10 that you had indicated that he'd passed forward holding 11 area A, sorry, forward holding area 1. I now understand 12 you to be saying something different, that he hadn't passed 13 forward holding area 1, he'd actually gone another route 14 and you hadn't seen him at all. Am I understanding 15 correctly or misunderstanding? 16 GENERAL NAIDOO: Chair, I testified to 17 this much earlier in my testimony, that I had not seen Mr 18 Mathunjwa so whether he had passed or not, I had not 19 noticed that. When I had received the message I alerted my 20 personnel that should Mr Mathunjwa be coming through we 21 would need to stop him, I need to speak to him and I at 22 some stage then reported to the JOC that we did not see 23 him. That's maybe where the perception that he must have 24 passed – he did, I could not say whether he did pass or 25 whether he did not pass.</p>	<p style="text-align: right;">Page 24243</p> <p>1 but he was at his destination. When did you become aware 2 that he was at the koppie? 3 GENERAL NAIDOO: Chair, I'm not sure if 4 that was part of the radio transmission from the 5 negotiation group that the union representatives were there 6 but I also said I cannot specifically recall when I became 7 aware that he was at the koppie but I know that at some 8 stage there was some communication that the union reps were 9 addressing the striking miners. 10 MR GOTZ: Well, let's look at two pieces 11 of further evidence on this score. Can we turn to Mr 12 Mathunjwa's statement which is exhibit NN and go to 13 paragraph 86? There Mr Mathunjwa says, "When I arrived at 14 the koppie" – so he's now either gone through forward 15 holding area 1 or through a back route, he's now arrived at 16 the koppie, he says, "I made another attempt to engage with 17 the SAPS. I spoke to a SAPS officer and asked who was in 18 charge. He referred me to a white SAPS officer who said 19 that he was in charge. I said to the white SAPS officer 20 that I am not receiving co-operation from the SAPS, that no 21 General is available, no management, no Provincial 22 Commissioner." And then Mr Mathunjwa says, "The officer 23 said to me that he would phone General Naidoo" and Mr 24 Mathunjwa says, "I waited and waited but he did not come 25 back." When Mr Mathunjwa was giving his evidence-in-chief</p>
<p style="text-align: right;">Page 24242</p> <p>1 CHAIRPERSON: So when you got the 2 communication from Brigadier Pretorius or whoever it was 3 who was giving you the message from Generals Mpembe and 4 Annandale, you didn't say he's gone past, I can't talk to 5 him, you said he hasn't, you hadn't seen him. He's either 6 gone another route or he's on his way, if he comes past 7 we'll stop him and speak to him, right? And then later on 8 you say you reported again, well, we haven't seen him and 9 he must have gone past. So there were effectively two 10 communications from your side, one, we haven't seen him, 11 he's either gone another route or passed and then later on 12 – but if he hasn't, if we see him we will tell him – and 13 then later on a second communication to say, well, the time 14 has gone for him to come past, we haven't seen him, he must 15 have gone another route. Is that how it worked? 16 GENERAL NAIDOO: It's possible that that 17 will be, I think, a more reasonable way of explaining it. 18 As I indicated when I received the message, I could not say 19 that he had passed or not yet. I was not aware. I just 20 merely alerted the members that should he come past – so 21 there would have been probably other communication to say 22 he had not yet passed us. 23 MR GOTZ: But Major-General, at a point 24 in time you must have become aware that he had reached the 25 koppie and had thus either passed or taken another route</p>	<p style="text-align: right;">Page 24244</p> <p>1 he says that he waited for 10 to 15 minutes and the 2 reference there is transcript day 22, page 2375. I don't 3 think it's necessary to put it up on screen. He also says 4 he waited for 10 to 15 minutes in his supplementary 5 statement which is exhibit KKK46. So what we see here is 6 that what Mr Mathunjwa is saying is that when he got to the 7 koppie, he made another attempt to engage with SAPS. He 8 spoke to a white police officer who said I would phone, he 9 would phone General Naidoo and Mr Mathunjwa is then left 10 waiting. Did you receive any telephone call from anybody 11 who was at the koppie at that point in time? 12 GENERAL NAIDOO: Chair, as I indicated, I 13 was not – I became aware that Mr Mathunjwa was at the 14 koppie due to the radio communication. The white officer 15 that he refers to, he confirmed in his supplementary 16 statement that he, the discussion that he had was with 17 Brigadier Calitz and no, I did not receive any request to 18 proceed to the negotiation area to discuss anything with Mr 19 Mathunjwa. My understanding was that the need for the 20 escort and the transportation was by then bypassed. 21 CHAIRPERSON: Sorry, may we see the 22 earlier part of para 86 please? "When I arrived at the 23 koppie I made another attempt to engage with SAPS. I spoke 24 to a SAPS officer and asked who was in charge. He referred 25 to a white SAPS officer and said he was in charge." Now</p>

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1 that would have been Brigadier Calitz, I take it?

2 GENERAL NAIDOO: He confirmed in his  
3 supplementary statement.

4 CHAIRPERSON: So it was Brigadier Calitz.

5 GENERAL NAIDOO: That's correct.

6 CHAIRPERSON: And he says "Brigadier  
7 Calitz" – it must have been Brigadier Calitz, you say –  
8 "said to me he would phone General Naidoo. I waited" – now  
9 Brigadier Calitz, he didn't phone you?

10 GENERAL NAIDOO: I don't remember him  
11 specifically phoning me about that, no.

12 MR GOTZ: Can we also have a look at the  
13 occurrence book which is exhibit FFF25 on page 25 and if we  
14 can look at item 1014? Now the entry is for 14:40, it says  
15 "Sitrep" – that stands for situation report, correct?  
16 Major-General?

17 GENERAL NAIDOO: Say again?

18 MR GOTZ: Sitrep –

19 GENERAL NAIDOO: Situation report.

20 MR GOTZ: Situation report.

21 GENERAL NAIDOO: Yes.

22 MR GOTZ: And it's a report from papa1  
23 which is Brigadier Calitz's Nyala, "Papa1 reported that the  
24 union rep wants to go to the koppie to tell the group that  
25 the mine management does not want to negotiate. General

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1 Naidoo to talk to the union rep as he requested to talk to  
2 the SAPS management." Is this the radio communication that  
3 you heard which confirmed that Mr Mathunjwa had reached the  
4 koppie?

5 GENERAL NAIDOO: Chair, I can't say  
6 whether that is the radio communication. As I indicated, I  
7 did hear radio communication that the union representatives  
8 were at the koppie and they were discussing or they were  
9 talking to the miners.

10 MR GOTZ: But what the occurrence book  
11 makes absolutely clear is that you, General Naidoo, is to  
12 talk to the union rep as he has requested to talk to the  
13 SAPS management and this is after Mr Mathunjwa has reached  
14 the koppie.

15 GENERAL NAIDOO: Chair, as I indicated,  
16 had I received a request –

17 CHAIRPERSON: No, I'm sorry – [microphone  
18 off, inaudible] – is that right, we're looking at entry  
19 1014, that's 14:40, "P1 reported union rep wants to go to  
20 the koppie" - wants to go to the koppie – "to tell the  
21 group the mine management doesn't want to negotiate." Now  
22 this is papa1, that's Calitz?

23 GENERAL NAIDOO: That's correct, Chair.

24 MR GOTZ: Indeed.

25 CHAIRPERSON: So Calitz – I see, so what

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1 must have happened is Calitz, by going to the koppie he  
2 means going from where Calitz was -

3 MR GOTZ: Yes.

4 CHAIRPERSON: - which was in front of the  
5 koppie near that pylon –

6 MR GOTZ: Yes.

7 CHAIRPERSON: Going forward to the koppie  
8 to speak to the people, is that what it is?

9 MR GOTZ: Indeed. That's our  
10 understanding, Chairperson.

11 CHAIRPERSON: And the problem was that  
12 Brigadier Calitz wasn't a General, wasn't part of  
13 management and what Mr Mathunjwa wanted was someone from  
14 management, the rank of a General or the equivalent.

15 MR GOTZ: Yes.

16 CHAIRPERSON: And he, Brigadier Calitz,  
17 wasn't senior enough to be the subject of the conversation,  
18 is that –

19 MR GOTZ: Indeed, indeed.

20 GENERAL NAIDOO: Chair, may I clarify two  
21 things? Firstly –

22 CHAIRPERSON: So this entry 1014 tends to  
23 corroborate Mr Mathunjwa's version that he spoke to the  
24 person in charge, who we know was Brigadier Calitz, that he  
25 wanted to go to the koppie to tell the group that the mine

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1 management doesn't want to negotiate but he also wanted to  
2 talk to the SAPS management, is what he said he said, and  
3 that seems to be corroborated by the second sentence of  
4 this entry. In other words - is that what you're putting?

5 MR GOTZ: Well, that is our reading –

6 CHAIRPERSON: I'm asking what you're  
7 putting, if that's what you're putting to the witness?

8 MR GOTZ: Yes. That is our reading,  
9 would you agree with that, Major-General Naidoo?

10 GENERAL NAIDOO: Chair, I would not agree  
11 with that for one simple reason. At 14:40 we were still,  
12 Brigadier Calitz was not at the negotiation group, we were  
13 being briefed by Colonel Scott at forward holding area 1.  
14 So he could not have had that conversation with Mr  
15 Mathunjwa. As I indicated, at no stage was I asked to go  
16 forward to the negotiation area.

17 CHAIRPERSON: 14:40 is the time the entry  
18 was made in the occurrence book. If this happened, I don't  
19 know whether Mr Mathunjwa tells us when it happened, the  
20 previous entry in the occurrence book is 13:56. So – and I  
21 think other evidence that we've had indicates that, I think  
22 even the police would argue strenuously in favour of what  
23 I'm now putting to you, that one go nap, if that's the  
24 correct expression, on the times recorded in the occurrence  
25 book because sometimes there appears to have been a delay

<p style="text-align: right;">Page 24249</p> <p>1 between the receipt of the message over the radio and the 2 actual entry in the book. I don't know whether Captain Van 3 Heerden deals with this in her notes. 4 GENERAL NAIDOO: I'm not sure. Chair, 5 but what I would want to say further to that is papa1 would 6 have been at the forward area because the vehicles did not 7 leave the area, just the members, a few commanders that 8 were withdrawn. So the discussion with Brigadier Calitz 9 would have occurred subsequent to him returning from the 10 briefing. 11 MR GOTZ: Sorry, Major-General, I'm not 12 sure I understood that evidence. Are you saying that papa1 13 moved from the koppie to forward holding area 1? 14 GENERAL NAIDOO: That's not what I 15 indicated, Chair. 16 CHAIRPERSON: I'm sorry to interrupt you 17 but surely this is how it works. Brigadier Calitz was not 18 at the koppie but effectively in front of the koppie near 19 that pylon that we see in that – 20 GENERAL NAIDOO: That's correct, Chair. 21 CHAIRPERSON: He was there. 22 GENERAL NAIDOO: Yes, Chair. 23 CHAIRPERSON: He was then summoned at 24 some time, which presumably we can ascertain, if we want 25 to, with more accuracy, he was summoned to go to forward</p>	<p style="text-align: right;">Page 24251</p> <p>1 yes. 2 CHAIRPERSON: Ja, so it sounds as if it 3 couldn't have been after the briefing. Look, I can 4 understand them making entries before the event, sorry, 5 after the event at the JOC. Of course they couldn't make 6 entries beforehand. 7 GENERAL NAIDOO: Yes, Chair. 8 CHAIRPERSON: So what makes sense, it 9 would appear, is that this must have happened before the 10 briefing. What is here recorded at 14:40 must have been a 11 message over the radio, I take it, or possibly by phone, 12 received at the JOC prior to the briefing. That makes 13 sense, doesn't it? 14 GENERAL NAIDOO: Chair, yes. I think I 15 received a message to intercept him prior to the briefing 16 anyway but what I was trying to indicate is the call sign 17 papa1 would have not left the negotiating area. The 18 individual, in Brigadier Calitz, would have. So there 19 would have been communication during that period from that 20 call sign. 21 MR GOTZ: Brigadier – 22 CHAIRPERSON: Yes, I understand that but 23 if Mr Mathunjwa is to be believed, and I don't think, I 24 can't remember if he was challenged directly on this – 25 GENERAL NAIDOO: No.</p>
<p style="text-align: right;">Page 24250</p> <p>1 holding area 1. 2 GENERAL NAIDOO: That's correct. 3 CHAIRPERSON: As were a number of other 4 people – 5 GENERAL NAIDOO: Commanders – 6 CHAIRPERSON: - to receive the briefing 7 from Colonel Scott and Brigadier Pretorius, right? 8 GENERAL NAIDOO: That's correct. 9 CHAIRPERSON: So he went there. 10 GENERAL NAIDOO: That's right. 11 CHAIRPERSON: And then presumably when 12 he'd got the briefing he went back. 13 GENERAL NAIDOO: And saw his people and 14 passed on the briefing that he received from Lieutenant- 15 Colonel Scott, is that correct? 16 GENERAL NAIDOO: That's correct, Chair. 17 CHAIRPERSON: Now, if the conversation 18 that's reported here in entry 1014 happened at some stage 19 just before half past two, it's not inconsistent because 20 Brigadier Calitz would have been there until he was 21 summoned to go to the briefing. Alternatively, if it 22 happened after the briefing when he got back, but I think 23 the briefing, how long did the briefing take? Didn't it 24 take about half an hour? 25 GENERAL NAIDOO: More or less, Chair,</p>	<p style="text-align: right;">Page 24252</p> <p>1 CHAIRPERSON: He says he spoke to someone 2 who said he was in charge and I think we've agreed it 3 probably was Brigadier Calitz. I suppose if Brigadier 4 Calitz left to go to forward holding area 1, he would have 5 left someone behind. 6 GENERAL NAIDOO: That's correct. 7 CHAIRPERSON: Who would have been in 8 temporary charge until he got back. 9 GENERAL NAIDOO: That's correct. 10 CHAIRPERSON: So that might have been the 11 person who was spoken to, you say, but Mr Mathunjwa in his 12 subsequent statement says it was Brigadier Calitz. 13 GENERAL NAIDOO: That's correct, Chair. 14 CHAIRPERSON: Ja. 15 MR GOTZ: Major-General, the content of 16 the entry 1014, leaving aside the question of the time but 17 the content of the entry does corroborate what Mr Mathunjwa 18 says in paragraph 86 of his first statement, does it not? 19 GENERAL NAIDOO: Of course, yes. 20 MR GOTZ: So we can accept, can we not, 21 that there was an indication to Mr Mathunjwa that you would 22 be contacted, by telephone perhaps, and that you would be 23 asked to talk to Mr Mathunjwa. This is quite separate from 24 the earlier request from Brigadier Pretorius, this is 25 another request that you talk to Mr Mathunjwa, isn't that</p>

<p style="text-align: right;">Page 24253</p> <p>1 so?</p> <p>2 GENERAL NAIDOO: Chair, yes, it would</p> <p>3 appear. As I indicated, the communication I received with</p> <p>4 regards to Mr Mathunjwa, I've already testified to, yes.</p> <p>5 [12:32] MR GOTZ: And so what I want to point out</p> <p>6 to you is that there's an expectation from Mr Mathunjwa,</p> <p>7 Major-General Annandale, Major-General Mpembe and probably</p> <p>8 also Brigadier Pretorius that you speak to Mr Mathunjwa.</p> <p>9 Isn't that so?</p> <p>10 GENERAL NAIDOO: And I indicated that I</p> <p>11 was quite prepared to and that's why we waited at forward</p> <p>12 holding area 1 for him to pass through.</p> <p>13 MR GOTZ: Was there any communication</p> <p>14 between you and Major-General Mpembe later that day where</p> <p>15 Major-General Mpembe requested that you speak to Mr</p> <p>16 Mathunjwa?</p> <p>17 GENERAL NAIDOO: Chair, I can't</p> <p>18 specifically remember the various communications that I had</p> <p>19 with General Mpembe but it could have or it could have not</p> <p>20 been, but I could not remember the specific communication</p> <p>21 with regard to Mr Mathunjwa.</p> <p>22 MR GOTZ: Because Major-General Mpembe</p> <p>23 testified that he spoke to you about the matter at 15:02.</p> <p>24 When he was being cross-examined by Mr Chaskalson, Mr</p> <p>25 Chaskalson asked him about various phone calls that had</p>	<p style="text-align: right;">Page 24255</p> <p>1 numerous requests that you speak to Mr Mathunjwa and the</p> <p>2 reason for that is that it's important to allay –</p> <p>3 CHAIRPERSON: Sorry, Mr Gotz, where do</p> <p>4 you get it that the evidence points to numerous requests?</p> <p>5 The evidence that we've had is of the one communication</p> <p>6 where he said he hasn't passed here yet, if he passes here</p> <p>7 we'll deal with it but he's gone another route, there's</p> <p>8 nothing we can do, and then he didn't come past. That's</p> <p>9 his evidence. The subsequent passage of evidence relates,</p> <p>10 based upon what Mr Mathunjwa says happened in front of the</p> <p>11 koppie, if one can use that expression. Communication with</p> <p>12 Brigadier Calitz who then said he would telephone the</p> <p>13 General and never came back, but there's no evidence to</p> <p>14 indicate that there was communication at that stage between</p> <p>15 the witness and Brigadier Calitz, isn't that right? So</p> <p>16 where do you get your numerous, all the evidence points to</p> <p>17 numerous –</p> <p>18 MR GOTZ: Well, that is so but at the</p> <p>19 same time there is an understanding at least when, as we</p> <p>20 read the occurrence book, that you will be asked to talk to</p> <p>21 the union rep as requested, as he requested to talk to the</p> <p>22 SAPS management.</p> <p>23 CHAIRPERSON: Sorry to interrupt but his</p> <p>24 answer to that is, he never received that request, as I</p> <p>25 understand him. Am I right?</p>
<p style="text-align: right;">Page 24254</p> <p>1 been made, the first which he had made to you at 15:02.</p> <p>2 Perhaps we can have a look at exhibit KKK4 again just to</p> <p>3 get the reference for that. You see at 15:02:26 there is a</p> <p>4 record of a one minute 23 second call from Major-General</p> <p>5 Mpembe to Major-General Naidoo, do you see that?</p> <p>6 GENERAL NAIDOO: Getting to it. Yes.</p> <p>7 MR GOTZ: Now, Major-General Mpembe in</p> <p>8 response to questions from Mr Chaskalson, said that this</p> <p>9 was a call that he had made to you to ask you to speak to</p> <p>10 Mr Mathunjwa and the reference for that is day 150, page</p> <p>11 16722, lines 7 to 17. I'm not sure that it's necessary to</p> <p>12 put that up but Major-General Naidoo, what do you say to</p> <p>13 that?</p> <p>14 GENERAL NAIDOO: Chair, as I indicated, I</p> <p>15 do not specifically remember the telephone call as there</p> <p>16 were various telephone calls that we communicated with most</p> <p>17 of the senior management in the course of the day. It may</p> <p>18 have, I cannot say it did not take place.</p> <p>19 MR GOTZ: Because you see, Major-General,</p> <p>20 if Major-General Mpembe is correct that he did speak to you</p> <p>21 at 15:02, that would be a third instance in which a request</p> <p>22 was made to you to speak to Mr Mathunjwa, would that not be</p> <p>23 so?</p> <p>24 GENERAL NAIDOO: That would be so.</p> <p>25 MR GOTZ: The evidence seems to point to</p>	<p style="text-align: right;">Page 24256</p> <p>1 GENERAL NAIDOO: My answer to that,</p> <p>2 Chair, was that the only request I received was to</p> <p>3 intercept Mr Mathunjwa because he had left the JOC before</p> <p>4 they had finalised the discussions there, yes.</p> <p>5 MR GOTZ: Well then, Chair, perhaps it is</p> <p>6 only two and maybe that doesn't make numerous but the</p> <p>7 second would be the request, if Major-General Mpembe is</p> <p>8 correct the second would be the request at 15:02.</p> <p>9 CHAIRPERSON: But his answer to that one</p> <p>10 is he never received that request. So you've got evidence</p> <p>11 of someone who was trying to speak to him but he denies</p> <p>12 having received the message and then the direct evidence</p> <p>13 that he gives of the one request which he's explained, so</p> <p>14 your question – I'm not saying you can't ask a question</p> <p>15 along those lines but it's got to be reformulated to fit</p> <p>16 the facts as we have them from his evidence.</p> <p>17 MR GOTZ: There certainly seems to be a</p> <p>18 concerted, from various parties, understanding that there's</p> <p>19 a need for you to speak to Mr Mathunjwa. Is that correct?</p> <p>20 GENERAL NAIDOO: To intercept him at</p> <p>21 forward holding area 1 and speak to him, yes. That was my</p> <p>22 understanding.</p> <p>23 MR GOTZ: But it doesn't seem like you</p> <p>24 made any particular effort to speak to Mr Mathunjwa.</p> <p>25 GENERAL NAIDOO: Chair, that is not</p>

<p style="text-align: right;">Page 24257</p> <p>1 correct. Firstly, I did not have Mr Mathunjwa's telephone 2 number. Secondly, I did deploy my members to stop Mr 3 Mathunjwa should he come to forward holding area 1 through 4 the crossroads. I think in terms of the effort required in 5 terms of the message I received, I thought that I was – and 6 I did not know at that stage that he will probably take 7 another route, et cetera. So when I received the message I 8 immediately responded and we did take up position to 9 intercept him. So I don't know if the indication was, what 10 other thing that I would be required to do in terms of my 11 posting. 12 COMMISSIONER HEMRAJ: Did you see his 13 vehicle at any stage – 14 GENERAL NAIDOO: No. 15 COMMISSIONER HEMRAJ: - that you could 16 make an effort to intercept him? 17 GENERAL NAIDOO: No, Chair. As I 18 indicated, we did not see him. After we received the 19 message we did not see him again. 20 MR GOTZ: But Major-General, I'd 21 understood you to say that you became aware, at least 22 through radio communications, that he'd reached the koppie. 23 GENERAL NAIDOO: Chair, I indicated that 24 was much later. 25 MR GOTZ: How much later?</p>	<p style="text-align: right;">Page 24259</p> <p>1 has been squeezed from it. I don't know whether you've got 2 any other facts you want to get on record relating to this 3 issue or whether you want to move on to the next one. 4 MR GOTZ: I wouldn't quite call it a 5 lemon, Chair, but that's the – 6 CHAIRPERSON: Well, it is – 7 MR GOTZ: That's the conclusion of our, 8 of my cross-examination and this issue. 9 CHAIRPERSON: I see, I'm sorry. I didn't 10 want to suggest that you concluded on a lemon kind of a 11 note. 12 MR GOTZ: Thank you, Chair. 13 CHAIRPERSON: Alright, thank you, Mr 14 Gotz. Anyway you covered the point, I think, as thoroughly 15 as you, as it was appropriate to take it. Alright, thank 16 you. I think you are the next cross-examiner, Ms Masebe, 17 is that correct? 18 MS MOSEBE: Chairperson – 19 CHAIRPERSON: On behalf of the family of 20 the late Warrant Officer Monene. 21 MS MOSEBE: Yes, Chairperson, that is 22 correct. Chairperson, we will request that Mr Gumbi starts 23 first because we haven't submitted our statements, the ones 24 that we would like to use, to the General so that he can 25 read them first. Mr Gumbi informs me that his statements</p>
<p style="text-align: right;">Page 24258</p> <p>1 GENERAL NAIDOO: I cannot give you the 2 exact time off the top of my head but at some stage the 3 radio message indicated to us that the union 4 representatives were at the koppie and were going to 5 address the strikers, so I became aware at that stage. 6 MR GOTZ: Did you make any effort to try 7 and establish what Mr Mathunjwa's cell phone number was? 8 There were certainly SAPS members, including Major-General 9 Annandale as well as Major-General Mpembe, who had his cell 10 phone number. 11 GENERAL NAIDOO: Chair, as I indicated, 12 the tasking I was given was to intercept him at forward 13 holding area 1 and talk to him and that was the tasking 14 that I focused on. In terms of phoning or indicating that 15 his cell phone number – I already indicated I did not have 16 his cell phone number and I did not request it from any of 17 the other Generals. 18 MR GOTZ: Despite the fact that it was 19 clear that Major-General Annandale, at the very least, 20 Major-General Annandale wished you to talk to him? 21 GENERAL NAIDOO: I indicated that I was 22 aware that he wanted me to talk to him and that is why I 23 took up the position to intercept him. 24 CHAIRPERSON: Mr Gotz, I'm inclined to 25 think that all the juice that was available in that lemon</p>	<p style="text-align: right;">Page 24260</p> <p>1 are already on record, all of them, so – 2 CHAIRPERSON: Alright. When are you 3 going to submit your – 4 MS MOSEBE: We are going to do that 5 during the lunch break and give the General an opportunity 6 to go through them. It's not new documents referred – 7 CHAIRPERSON: I understand. 8 MS MOSEBE: But we would like him to have 9 a look at them. 10 CHAIRPERSON: I understand. Mr Semenya, 11 do you want to say something? 12 MR SEMENYA SC: Mr Gumbi, I am told, has 13 given us the documents at 11 o'clock during teatime. 14 CHAIRPERSON: Has the witness not had an 15 opportunity to read them? Has the witness not had an 16 opportunity to read them? 17 MR SEMENYA SC: No. 18 CHAIRPERSON: Mr Gumbi, how long is your 19 list of documents? Are any of them documents that the 20 witness hasn't had a chance to refer to recently? 21 MR GUMBI: Yes, Chairperson, I'm not 22 going to be long. I think I will take 15 to 20 minutes, I 23 will not be long. 24 CHAIRPERSON: Alright. What documents, 25 are you going to refer to documents or are you just going</p>



<p style="text-align: right;">Page 24261</p> <p>1 to ask him questions without referring to documents</p> <p>2 initially?</p> <p>3 MR GUMBI: Yes. My proposition I'm going</p> <p>4 to put to the General emanates from those statements. I am</p> <p>5 not going through those statements –</p> <p>6 CHAIRPERSON: Alright, let's see how far</p> <p>7 you can go but if you want - the reason for the requirement</p> <p>8 that documents be provided, a list of documents be provided</p> <p>9 is so that a witness can't be ambushed by a reference to a</p> <p>10 passage in the middle of a document that he hasn't read or</p> <p>11 hasn't read recently. If that situation arises we'll have</p> <p>12 to do something about it to ensure that the witness is</p> <p>13 dealt with fairly but if you can proceed in the meanwhile</p> <p>14 without that problem arising, you may start.</p> <p>15 MR GUMBI: Yes. Thank you very much,</p> <p>16 Chairperson and the Commissioners.</p> <p>17 CROSS-EXAMINATION BY MR GUMBI: Good</p> <p>18 afternoon, Major-General.</p> <p>19 GENERAL NAIDOO: Good afternoon, sir.</p> <p>20 MR GUMBI: I represent the family of the</p> <p>21 late Warrant Officer Lepaaku who was killed on the 13th of</p> <p>22 August 2012 and I also represent Warrant Officer,</p> <p>23 Lieutenant Baloyi, I mean who was injured on the 13th of</p> <p>24 August 2012. My line of cross-examination, General, will</p> <p>25 focus on the information that was relayed to you after the</p>	<p style="text-align: right;">Page 24263</p> <p>1 it was never ever discussed in your presence at that</p> <p>2 briefing?</p> <p>3 GENERAL NAIDOO: Not specifically, no.</p> <p>4 MR GUMBI: When the National Commissioner</p> <p>5 arrived, were you present when he was briefed – I mean when</p> <p>6 she was briefed by General Mpembe about the incident of the</p> <p>7 13th?</p> <p>8 GENERAL NAIDOO: That's correct.</p> <p>9 MR GUMBI: And will I be correct again,</p> <p>10 General, that this topic of certain members firing without</p> <p>11 instruction was never discussed in that debriefing -</p> <p>12 GENERAL NAIDOO: No, not specifically.</p> <p>13 MR GUMBI: - with the National</p> <p>14 Commissioner. Thank you very much. Let's move on now to</p> <p>15 Potchefstroom when you were busy preparing for this</p> <p>16 Commission. Would I be correct, General, that members were</p> <p>17 divided into different groups while you were preparing this</p> <p>18 Commission, to discuss about the incidents of the 13th,</p> <p>19 14th, 15th, building up towards the 16th?</p> <p>20 GENERAL NAIDOO: That's correct, Chair.</p> <p>21 MR GUMBI: And did you participate in the</p> <p>22 discussion about the incident of the 13th?</p> <p>23 GENERAL NAIDOO: No, Chair, not in the</p> <p>24 specific group, no.</p> <p>25 MR GUMBI: According to your knowledge,</p>
<p style="text-align: right;">Page 24262</p> <p>1 incident of the 13th of August. On the 10th June 2013</p> <p>2 General Mpembe testified before this Commission that before</p> <p>3 the killing of the late Warrant Officer Lepaaku and</p> <p>4 Lieutenant Baloyi, certain members fired without</p> <p>5 instruction and that was the evidence that was adduced</p> <p>6 before this Commission. On your way to Potchefstroom in</p> <p>7 the company of General Mbombo, when this news was brought</p> <p>8 to General Mbombo in your presence, were you informed about</p> <p>9 the conduct of certain members, those who fired without</p> <p>10 instruction?</p> <p>11 GENERAL NAIDOO: Chair, I think I</p> <p>12 testified to what I heard. The only incident that I – the</p> <p>13 only facts that I could glean from what I heard was that</p> <p>14 the police had been attacked and that two members were</p> <p>15 killed and one very seriously injured and that there were</p> <p>16 some civilian casualties. So the specifics about who fired</p> <p>17 and when they fired, I was not aware of.</p> <p>18 MR GUMBI: Thank you very much, General.</p> <p>19 When you received briefing on that day late, when you</p> <p>20 received briefing from General Mpembe, would I be correct</p> <p>21 that you were also with Brigadier Calitz on that briefing</p> <p>22 about the incident of the 13th?</p> <p>23 GENERAL NAIDOO: That's correct.</p> <p>24 MR GUMBI: So this topic of certain</p> <p>25 members firing without instruction, would I be correct that</p>	<p style="text-align: right;">Page 24264</p> <p>1 General, the same again on this topic of certain members</p> <p>2 firing without instruction of General Mpembe –</p> <p>3 MR SEMENYA SC: Chair, I think Mr Gumbi's</p> <p>4 expression of members firing without instruction must be a</p> <p>5 reference to the teargas and the stun grenade.</p> <p>6 CHAIRPERSON: Yes, Mr Gumbi, that's</p> <p>7 correct.</p> <p>8 MR GUMBI: Yes, Chairperson.</p> <p>9 CHAIRPERSON: That is correct.</p> <p>10 MR GUMBI: Thank you very much for that</p> <p>11 correction. Your using the phrase "firing" does tend to</p> <p>12 create a different impression but as long as you're clear</p> <p>13 that's what you're talking about, you can carry on.</p> <p>14 MR GUMBI: Yes, thank you, Chairperson.</p> <p>15 CHAIRPERSON: The firing of, I think it's</p> <p>16 one teargas cartridge and one stun grenade.</p> <p>17 MR GUMBI: Yes, Chair. Yes, Chairperson.</p> <p>18 Thank you very much to Adv Semanya for that correction. I</p> <p>19 was referring to that, Chairperson. General, when you were</p> <p>20 there at Potchefstroom, according to your knowledge this</p> <p>21 topic was it ever, ever discussed?</p> <p>22 GENERAL NAIDOO: I think the relevant</p> <p>23 group would have discussed it, yes.</p> <p>24 MR GUMBI: After that meeting, the</p> <p>25 Potchefstroom meeting, there was a document, there was a</p>

<p style="text-align: right;">Page 24265</p> <p>1 report that was compiled after that meeting. That should 2 be HHH28. Are you in possession of that document, General? 3 GENERAL NAIDOO: HHH28. No, not on hand 4 here. 5 MR GUMBI: The report is on the screen. 6 GENERAL NAIDOO: The narrative, yes. 7 MR GUMBI: Do you see it? 8 GENERAL NAIDOO: I see it. 9 MR GUMBI: Can you go to page 35 of that 10 report, please? When you go to paragraph 3, if I can read 11 it to you. "To prevent them from entering settlements the 12 police used teargas, stun grenades, to disperse, 13 discouraging them from their intended path. Major-General 14 Mpembe issued command for stun grenades and teargas after 15 which Warrant Officer Koen fired shotgun, [indistinct] 16 grenade." Do you see that, General? 17 GENERAL NAIDOO: I see that. 18 MR GUMBI: That was a report that was 19 compiled after the meeting of Potchefstroom, do you agree 20 with me? 21 GENERAL NAIDOO: Roots, that's correct. 22 MR GUMBI: Roots, yes. Can I refer you 23 to paragraph, I mean to exhibit L? Exhibit L, are you in 24 possession of exhibit L? 25 GENERAL NAIDOO: I am.</p>	<p style="text-align: right;">Page 24267</p> <p>1 between the special task force and the K9 personnel where 2 they alleged that the special task force had shot and the 3 special task force had indicated, no. In that process we 4 brought the people around and they addressed the 5 disagreement and in the end it was agreed that there was no 6 proof that the special task force had shot and we resolved 7 it. So in a situation like this, if there was any 8 particular conflict, exactly the same process would have 9 been followed with that group and the relevant compiler. 10 [12:52] So as to – and then as I indicated at the end of 11 every day we ran the presentation so that people could see 12 what was being included and people could dispute it. So as 13 far as I can remember nobody specifically disputed either 14 of the documents to my knowledge when it was run through, 15 so as to why there's slightly less specific information on 16 the presentation as contained in the narrative, I'm not 17 sure. 18 MR GUMBI: Thanks very much, General. 19 While we were busy cross-examining General Mpembe on behalf 20 of the family of the late Warrant Officer Lepaaku and 21 Lieutenant Baloyi we produced statements before this 22 Commission, statements, extract from pocketbook, which 23 indicates that on the 13th of August 2012 before the killing 24 of Warrant Officer Lepaaku and before Lieutenant Baloyi was 25 injured indeed there was instruction issued by General</p>
<p style="text-align: right;">Page 24266</p> <p>1 CHAIRPERSON: Oh, of course, it's got a 2 lot of slides. It would be helpful if you referred him to 3 the particular slide that is relevant. 4 MR GUMBI: Yes, I'm referring to slide 5 47, Chairperson. Exhibit L, slide 47. Are you there, 6 General? 7 GENERAL NAIDOO: I'm here. 8 MR GUMBI: When you compare these two 9 documents, General, you see on exhibit L slide 47 this 10 information which says, "Major-General Mpembe issued a 11 command for stun grenades, teargas, after which Warrant 12 Officer Koen fired a shotgun *12:32/18-35 grenade" is not 13 contained in slide 47. Do you see that? 14 GENERAL NAIDOO: I see that, Chair. 15 MR GUMBI: Do you have knowledge, 16 General, why this information was deleted from slide 47? 17 GENERAL NAIDOO: Chair, two things. As I 18 indicated, I'm not aware of the circumstances of the 19 specific incident. The process that we followed was, the 20 groups that were involved in the various incidents 21 developed their submissions and they went to the 22 consolidators or the compilers of the two documents and 23 indicated to them what they had. I used the case in point 24 with scene 2, scene 3 koppie 2, koppie 3, sorry Chair – too 25 many koppies – at koppie 3 there was this disagreement</p>	<p style="text-align: right;">Page 24268</p> <p>1 Mpembe, some of the statement – 2 CHAIRPERSON: That was the evidence that 3 you presented, as you correctly say, and it was put to 4 General Mpembe and he denied it. 5 MR GUMBI: Yes. 6 CHAIRPERSON: Now is this witness able to 7 add any value in respect of that issue? I understand the 8 pocketbooks, you put them before us. I know what General 9 Mpembe said in reply, but is this witness in a position to 10 add any value to this particular debate? Because if he 11 isn't, I don't think there's any point in your putting the 12 question to him. 13 MR GUMBI: Yes, Chairperson, I was not 14 going to ask the witness as far as the content in the reply 15 of General Mpembe. I was taking another line of cross- 16 examination on that. Yes, General, we presented those 17 statement, extract from pocketbook, and we confronted 18 General Mpembe with those statement. When you were at 19 Potchefstroom maybe were you aware about the existence of 20 the statement? 21 GENERAL NAIDOO: Chair, not specifically. 22 I can't say specifically I remember a statement that was 23 being indicated here. 24 MR GUMBI: When did you become aware of 25 it?</p>

<p style="text-align: right;">Page 24269</p> <p>1 GENERAL NAIDOO: I'm not sure which 2 statement I should be aware of, Chair. 3 MR GUMBI: In conclusion, General, 4 General Mpembe also again testified before this Commission 5 that the SAPS is conducting internally inquiries 6 surrounding the death of Warrant Officer Lepaaku and 7 Lieutenant Baloyi. Are you aware of that inquiry? 8 CHAIRPERSON: Not the death of Lieutenant 9 Baloyi. The injuries sustained by Lieutenant Baloyi. 10 Fortunately he survived and has recovered. 11 MR GUMBI: Yes, I do apologise, 12 Chairperson. 13 CHAIRPERSON: The death of the one and 14 the injuries to the other. 15 MR GUMBI: Yes, I do apologise, 16 Chairperson, for making that mistake. The injury of 17 Lieutenant Baloyi. Are you aware of the internal inquiry 18 probing those facts – 19 GENERAL NAIDOO: Chair, all the deaths 20 and injuries, there has to be an administrative board's 21 inquiry. That is an administrative requirement that we do 22 have that. So I am now assuming that it's referring to the 23 – there is an inquiry in terms of every death a death board 24 is held and for every injury there's an injury board that 25 is held. So I'm assuming that those, yes, they must be</p>	<p style="text-align: right;">Page 24271</p> <p>1 to what I've added. 2 MS MOSEBE: Thank you. 3 [COMMISSION ADJOURNS COMMISSION RESUMES] 4 [14:07] CHAIRPERSON: The Commission resumes. 5 Major General, you're still under oath. 6 GANASEN NAIDOO: Still under oath, Chair. 7 CHAIRPERSON: Before the cross- 8 examination commences, I see we've now got a new document, 9 the deaths of victims A, B, M and O. 10 MS PILLAY: Chair, that document will be 11 relied on by the families tomorrow during their cross- 12 examination. 13 CHAIRPERSON: Yes, yes, they came to see 14 me last week, Adv Nic Lewis and, asked me to give them 15 permission, over and above the permission that I'd already 16 given them in respect of cross-examination, to deal with 17 the death of victims A, B, M and O. So this obviously 18 relates to that. So none of them are here at the moment, 19 so we won't mark this, we'll do that tomorrow when the 20 families come. We've also got a batch of statements here, 21 I see. Is that correct? 22 MS MOSEBE: Chairperson, that will be the 23 statements that we are going to use in our cross- 24 examination. Chairperson, most of them are already, almost 25 all actually are exhibits before this Commission, so we</p>
<p style="text-align: right;">Page 24270</p> <p>1 held, so as to the status and the whereabouts, I'm not in 2 Human Resource so I would not be able to indicate the 3 status of those. 4 MR GUMBI: Thanks very much, Chairperson, 5 that was our cross-examination. 6 CHAIRPERSON: Thank you very much, Mr 7 Gumbi. Ms Mosebe, you will resume after lunch 8 adjournment – 9 MS MOSEBE: At quarter to 2, Chairperson. 10 CHAIRPERSON: You will then cross- 11 examine. 12 MS MOSEBE: Yes. 13 CHAIRPERSON: In the meanwhile your 14 documents will be made available to the Major General. How 15 long do you think he will need to read them? 16 MS MOSEBE: Chairperson, it's statements 17 that have been used before, so I believe that 10, 15 18 minutes, just so that he can braise through them and know 19 and revive his knowledge of the contents. So – 20 CHAIRPERSON: Alright, it sounds as if 21 the appropriate thing for us to do is to adjourn until 22 quarter to 2 and if he needs more time then he can let us 23 know. So we must all try to be back here at quarter to 2, 24 unless the Major General requests longer to study these 25 documents. We will now adjourn until quarter to 2, subject</p>	<p style="text-align: right;">Page 24272</p> <p>1 just place them before the Commissioners for ease of 2 reference – 3 CHAIRPERSON: Yes, to make it easier for 4 us to follow the cross-examination. 5 MS MOSEBE: Yes. Yes, Chairperson. 6 CHAIRPERSON: No, thank you, that will be 7 very helpful. We're very grateful for that. 8 MS MOSEBE: Thank you, Chair. 9 CHAIRPERSON: Alright, I did remind you 10 you're under oath, didn't I? 11 GENERAL NAIDOO: Yes, you did, Chair. 12 CHAIRPERSON: And Ms Mosebe, you may now 13 commence with your cross-examination. 14 CROSS-EXAMINATION BY MS MOSEBE: Thank 15 you, Chairperson. Chairperson, just for the record I would 16 like to place it on record again that I appear for the 17 family of Warrant Officer Tsietsi Hendrick Monene in this 18 Commission. 19 CHAIRPERSON: He's actually the late 20 Warrant Officer Tsietsi Hendrick Monene, isn't he? He was 21 the one who was killed – 22 MS MOSEBE: That is correct, Chairperson. 23 CHAIRPERSON: - on the 13th. 24 MS MOSEBE: That is correct, Chairperson. 25 CHAIRPERSON: Yes, please proceed with</p>

<p style="text-align: right;">Page 24273</p> <p>1 your cross-examination.</p> <p>2 MS MOSEBE: Thank you. Major General,</p> <p>3 good afternoon.</p> <p>4 GENERAL NAIDOO: Good afternoon.</p> <p>5 MS MOSEBE: Major General, I hope you've</p> <p>6 had an opportunity to look at the various statements that</p> <p>7 we would like to briefly refer to.</p> <p>8 GENERAL NAIDOO: I glanced at them. The</p> <p>9 transcripts I did not get into detail because it's volume,</p> <p>10 but the statements, I glanced at them, yes.</p> <p>11 MS MOSEBE: Yes, I can certainly assure</p> <p>12 you that we are not going to refer much to the transcript</p> <p>13 per se and on the statements we are just going to take very</p> <p>14 few paragraphs thereon. Major General, can I refer you to</p> <p>15 the statement of Brigadier NA Engelbrecht, which is exhibit</p> <p>16 LLL6? It has been given to you during the lunch break.</p> <p>17 That is the statement of Brigadier Engelbrecht. Now I</p> <p>18 would like to refer to paragraph 2 thereof. Major General,</p> <p>19 Brigadier Engelbrecht states that on 11 August 2012 he</p> <p>20 received a report from – I'm paraphrasing – from a certain</p> <p>21 handler who informed him of certain information that he had</p> <p>22 obtained from a certain informant and in the report he</p> <p>23 states I think on line 6 of paragraph 2 that the report</p> <p>24 included information that there were going to be attacks</p> <p>25 that night against the supporters of NUM. Now that is</p>	<p style="text-align: right;">Page 24275</p> <p>1 GENERAL NAIDOO: Chair, I can't</p> <p>2 specifically remember an SMS to that effect. Ja, I can't</p> <p>3 remember specifically an SMS to that effect, no.</p> <p>4 MS MOSEBE: Now General, I suppose we'll</p> <p>5 then agree that if General Mpembe states that he forwarded</p> <p>6 that information to you, I believe that he probably did</p> <p>7 that. Now General, I –</p> <p>8 GENERAL NAIDOO: Chair, no, I think the,</p> <p>9 we'll have to verify that with my telephone records or</p> <p>10 General Mpembe's telephone records because I do not</p> <p>11 specifically remember an SMS. He may have well called me</p> <p>12 because I had several calls over the weekend, but an SMS I</p> <p>13 can't specifically remember.</p> <p>14 MS MOSEBE: Now General, did you from</p> <p>15 your recollection remember General Mpembe stating any</p> <p>16 planned attack to NUM per se?</p> <p>17 GENERAL NAIDOO: Chair, as I indicated</p> <p>18 that I would have - if I had discussed with anybody on the</p> <p>19 telephone I would have discussed what information I had</p> <p>20 received and what action had been taken, but I can't</p> <p>21 remember specifically discussing an attack that was</p> <p>22 planned, etcetera, in terms of the information that I was</p> <p>23 working on. The primary information that I was working on,</p> <p>24 as I have already testified, was the information I had</p> <p>25 received from the Provincial Commissioner.</p>
<p style="text-align: right;">Page 24274</p> <p>1 information that he received from a handler who in turn had</p> <p>2 received it from an informant that the protesters intend to</p> <p>3 attack the officers of NUM on that specific night. That is</p> <p>4 on the 11th of August. Can you see that, General?</p> <p>5 GENERAL NAIDOO: I see that.</p> <p>6 MS MOSEBE: Yes, General, he then goes</p> <p>7 further on paragraph 3 that he communicated that</p> <p>8 information to General Mpembe, who was on leave at the</p> <p>9 time. Can you see that?</p> <p>10 GENERAL NAIDOO: I see that.</p> <p>11 MS MOSEBE: Yes, and then he further</p> <p>12 states that he forwarded this specific information, which</p> <p>13 was contained in an SMS, to General Mpembe.</p> <p>14 GENERAL NAIDOO: I see that.</p> <p>15 MS MOSEBE: Yes, now Major General, can</p> <p>16 we quickly go to the statement of Zondasi William Mpembe,</p> <p>17 that is GGG12, and I would like to refer to paragraph 2</p> <p>18 thereof. Are you there, General?</p> <p>19 GENERAL NAIDOO: I'm here.</p> <p>20 MS MOSEBE: Yes, now General, on</p> <p>21 paragraph 2 of this statement General Mpembe states that</p> <p>22 whilst he had received the information that he received</p> <p>23 from Brigadier Nick Engelbrecht he forwarded the SMS which</p> <p>24 contained the planned attack to NUM to you. Did you</p> <p>25 receive that SMS, General?</p>	<p style="text-align: right;">Page 24276</p> <p>1 MS MOSEBE: Now General, can you then</p> <p>2 tell this Commission what specific information did you</p> <p>3 receive from General Mbombo? Did she specifically tell you</p> <p>4 that there is intelligence information that has been</p> <p>5 gathered and it has been sent to Mpembe, or –</p> <p>6 GENERAL NAIDOO: No, the specific</p> <p>7 information that I received from the Provincial</p> <p>8 Commissioner was that she had received a telephone call</p> <p>9 from an employee of Lonmin who had indicated that the</p> <p>10 situation had escalated at Lonmin and that I should ensure</p> <p>11 that sufficient resources are made available to the cluster</p> <p>12 to deal with the matter and I subsequently called Brigadier</p> <p>13 Calitz in that connection because the Public Order Police</p> <p>14 resorts under him and General Mpembe at that stage was on</p> <p>15 leave, so the time when I called Brigadier Calitz I had not</p> <p>16 spoken to General Mpembe.</p> <p>17 MS MOSEBE: Now, Major General, we know</p> <p>18 for a fact before this Commission, it has been submitted as</p> <p>19 evidence before this Commission that this attack indeed</p> <p>20 happened at the offices of NUM and it was not, this planned</p> <p>21 protest and this subsequent attack to NUM was not monitored</p> <p>22 by the police. In other words the police did not attend to</p> <p>23 the scene, or did not attend to the march when the</p> <p>24 protesters were busy attacking the offices of NUM, and we</p> <p>25 know, Major General, that two people sustained very serious</p>

<p style="text-align: right;">Page 24277</p> <p>1 injuries as a result thereof.</p> <p>2 Now the question is that, General, if there was a</p> <p>3 break in communication, information is communicated to</p> <p>4 Brigadier Engelbrecht who in turn communicated to General</p> <p>5 Mpembe, and General Mpembe who testified in this statement</p> <p>6 that he submitted the information to you and it never</p> <p>7 reached you, then it didn't reach Brigadier Calitz. Would</p> <p>8 you agree that there was a material breach of communication</p> <p>9 in as far as intelligence information is concerned at</p> <p>10 Marikana on that particular day?</p> <p>11 GENERAL NAIDOO: Chair, not necessarily.</p> <p>12 On two aspects, the Public Order Police units have their</p> <p>13 own liaison with the – the information office has their own</p> <p>14 links with the intelligence people, so if there had been</p> <p>15 such intelligence that was available it would have been</p> <p>16 supplied also to Public Order Police as their day-to-day</p> <p>17 liaison.</p> <p>18 Secondly, that I have already testified that on</p> <p>19 Saturday morning we had already tasked the Public Order</p> <p>20 Police to increase the deployment and to police the area</p> <p>21 based on the telephone call that we had received from the</p> <p>22 Provincial Commissioner.</p> <p>23 MS MOSEBE: But General, we know that the</p> <p>24 police were not in the vicinity of the NUM offices at the</p> <p>25 time of the attack. Now had this information reached the</p>	<p style="text-align: right;">Page 24279</p> <p>1 GENERAL NAIDOO: Chair, not specifically.</p> <p>2 I don't remember receiving this information. As I</p> <p>3 indicated that the information that I worked on, on the 12th</p> <p>4 was as a result of the telephone call from the Provincial</p> <p>5 Commissioner, whereupon we between Brigadier Calitz and I</p> <p>6 sourced additional reinforcements from National Deployment.</p> <p>7 MS MOSEBE: Now General, what is</p> <p>8 particularly concerning also is that there is a certain</p> <p>9 witness by the name, who's referred to in this Commission</p> <p>10 as Mr X and Mr X states on various parts of his</p> <p>11 supplementary statement - I don't know if you have reached</p> <p>12 it – particularly on paragraph 19, that is on page 11 of</p> <p>13 his statement –</p> <p>14 MS PILLAY: Chair, it's LLL26.</p> <p>15 MS MOSEBE: Thank you. Paragraph 11 –</p> <p>16 page 11, my apologies, it's just on top of page 11. Yes,</p> <p>17 that is where, Major General, he states the rituals that</p> <p>18 these protesters, or this group, the Makarapa group had</p> <p>19 been engaged in. He states, Major General, on line 5 there</p> <p>20 of that the Inyanga had advised them that human blood, a</p> <p>21 tongue and a chin were required to further strengthen this</p> <p>22 group. Can you see that?</p> <p>23 GENERAL NAIDOO: I see that.</p> <p>24 MS MOSEBE: Yes, now he says that on page</p> <p>25 12, that is on paragraph 22, that the body, it was the body</p>
<p style="text-align: right;">Page 24278</p> <p>1 Visible Policing or the POP which was deployed to Marikana</p> <p>2 at the time, I have no doubt that they would have probably</p> <p>3 attended to this specific scene.</p> <p>4 GENERAL NAIDOO: Chair, I disagree</p> <p>5 because the, right next to the NUM offices is a satellite</p> <p>6 manned by Visible Policing in the same building, so I do</p> <p>7 not agree that we would have not been on the scene,</p> <p>8 etcetera, because the satellite office is next-door anyway.</p> <p>9 CHAIRPERSON: This satellite you're</p> <p>10 referring to was a satellite police station. Is it staffed</p> <p>11 on a 24-hour/seven-days-a-week basis?</p> <p>12 GENERAL NAIDOO: As far as I could</p> <p>13 recall, yes. I can confirm that, Chair.</p> <p>14 MS MOSEBE: Now, Major General, on the</p> <p>15 12th of August 2012 the very same Brigadier NA Engelbrecht,</p> <p>16 that is on paragraph 4 of his statement, it's exhibit LLL6,</p> <p>17 says that he received further information that, and the</p> <p>18 information states that he received a further report that</p> <p>19 the protesters wanted to stop employees from going to work</p> <p>20 to Karee Mine on the nightshift, as well as the next day.</p> <p>21 Now the next day we all know that is the 13th of August 2012</p> <p>22 and then he says that he again telephoned Major General</p> <p>23 Mpembe and conveyed the content of the report received to</p> <p>24 him. Now did you receive this information on the 12th from</p> <p>25 Major General Mpembe?</p>	<p style="text-align: right;">Page 24280</p> <p>1 of Mr Fundi and he states on, that is paragraph 22, that Mr</p> <p>2 Fundi whose body was depicted on slide 29 – I don't propose</p> <p>3 that we have the slide shown - and Mr Mabelane were</p> <p>4 attacked and killed and he further testifies, I will not go</p> <p>5 into detail about that, on paragraph 24, that it was the</p> <p>6 body, the body parts of Mr Fundi that were subsequently</p> <p>7 used to strengthen the protesters on that particular day.</p> <p>8 Now General, it doesn't seem at all that from the</p> <p>9 information that Brigadier Engelbrecht had received there</p> <p>10 was an informant who was in touch basically with what the</p> <p>11 protesters were planning and reported back to the police in</p> <p>12 particular detail, and as a result Mr Fundi was then killed</p> <p>13 because there was no information to the police as to</p> <p>14 whether, stating particularly that the protesters are</p> <p>15 looking for a human tongue. Did you receive information,</p> <p>16 intelligence information stating categorically the planned</p> <p>17 activities of these protesters from Brigadier Engelbrecht?</p> <p>18 GENERAL NAIDOO: No.</p> <p>19 MR SEMENYA SC: But Chair, there is no</p> <p>20 evidence that all this detail was known to Brigadier</p> <p>21 Engelbrecht.</p> <p>22 CHAIRPERSON: What do you say in response</p> <p>23 to what Mr Semanya says?</p> <p>24 MS MOSEBE: Maybe, Chairperson, it will</p> <p>25 be wise to rephrase and start afresh –</p>

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1 CHAIRPERSON: Yes, you'll rephrase and  
 2 see whether you avoid an objection next time.  
 3 MS MOSEBE: Yes, Chairperson. Thank you.  
 4 Now, Major General, it doesn't seem that the information  
 5 which was available at Brigadier Engelbrecht's disposal,  
 6 that there was an informer who had information which was  
 7 specific relating to the planned activities of this group.  
 8 By then I'm referring to the fact, or the desire, or the  
 9 advice to have a human tongue and human blood. Now what I  
 10 would like you to comment on is that if there was such  
 11 information, wouldn't it have helped the police to track  
 12 the group's activities?  
 13 GENERAL NAIDOO: Chair, I think any  
 14 information that specific would have assisted the police to  
 15 do their work, but as far as I know there, I have no  
 16 knowledge of such specific information being available, or  
 17 I was never informed about such information.  
 18 MS MOSEBE: Major General, what measures  
 19 have been put in place to ensure that there is adequate  
 20 information that flows from various intelligence sources  
 21 and which specifically can tell what the planned activities  
 22 of a group or a particular – or, ja, of –  
 23 GENERAL NAIDOO: Chair, our intelligence  
 24 structures are structured parallel to the other operational  
 25 structures where they have in each cluster a cluster head

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1 of intelligence who then deploys intelligence handlers and  
 2 intelligence collectors throughout the various stations in  
 3 their cluster and is responsible to bring this intelligence  
 4 together, collate it and supply it to the relevant  
 5 operational unit that either requires it or should receive  
 6 it to do their job. That is the process of how our  
 7 intelligence at the police level works. There's also other  
 8 intelligence such as the civilian intelligence services,  
 9 but I'm not, I'm unable to comment on their methodologies  
 10 in the open.  
 11 COMMISSIONER HEMRAJ: Ms Mosebe, are you  
 12 implying that the details contained in paragraph 22 of Mr  
 13 X's statement were contained in the text message that was  
 14 received from the handler?  
 15 MS MOSEBE: No, Commissioner. What I'm  
 16 trying to establish is that it seems there was a lack of  
 17 information from the group's activities as it happened and  
 18 what their planned activities were. But to enable the  
 19 police to prevent further attacks that could have occurred  
 20 to various people, that –  
 21 COMMISSIONER HEMRAJ: You're not  
 22 suggesting that the police were aware of these details  
 23 and –  
 24 MS MOSEBE: No.  
 25 COMMISSIONER HEMRAJ: I see. I

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1 misunderstood you. Thank you.  
 2 MS MOSEBE: Now, Major General, I would  
 3 like us to briefly talk about the events of the 13th. You  
 4 testified –  
 5 CHAIRPERSON: Before you turn on to the  
 6 13th, there is a statement – I don't know whether I've  
 7 missed something. In the statement of Brigadier  
 8 Engelbrecht, LLL6, para 4, it's line 6 and following, are  
 9 you going to put that to the witness?  
 10 MS MOSEBE: Yes, Chairperson. Thank you.  
 11 [14:26] On paragraph 4 of Brigadier Engelbrecht's  
 12 statement he says that after he had telephoned Major-  
 13 General Mpembe and conveyed the content of the report that  
 14 he had received to him he also raised his concern with  
 15 Major-General Mpembe concerning the killing of two security  
 16 guards at Wonderkop. He said that "My concern being why  
 17 people had been killed when I had asked from the previous  
 18 day for visible policing to be deployed." Now, Major-  
 19 General –  
 20 CHAIRPERSON: Well perhaps you should  
 21 then put the next sentence the reply of Major-General  
 22 Mpembe which may afford a basis for asking further  
 23 questions because I think I'm correct in saying you were  
 24 the acting Commissioner –  
 25 GENERAL NAIDOO: Provincial Commissioner,

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1 yes.  
 2 CHAIRPERSON: Is that correct?  
 3 GENERAL NAIDOO: That's correct, Chair.  
 4 CHAIRPERSON: Well perhaps you could put  
 5 the next sentence to him as well. Ask him about that.  
 6 MS MOSEBE: The next says "Maybe General  
 7 Mpembe replied that he was attending to the issue and that  
 8 visible policing had not been employed as he would have  
 9 wanted them to be deployed." He says "I again forwarded  
 10 the SMS that I had received from the handler to General  
 11 Mpembe." Now did you receive this second SMS from General  
 12 Mpembe?  
 13 GENERAL NAIDOO: Chair, no. I had not  
 14 had a discussion on Sunday if I could remember, as far as  
 15 my memory recalls about anything with General Mpembe.  
 16 CHAIRPERSON: What is a matter of concern  
 17 is you were the acting Provincial Commissioner on that  
 18 date. What General Mpembe is reported by Brigadier  
 19 Engelbrecht to have said that he's attending to the issue,  
 20 that's to say the killing of the two security guards and  
 21 the deployment of visible policing had been asked for the  
 22 previous day by Brigadier Engelbrecht and Major-General  
 23 Mpembe said he was attending to the issue, visible police  
 24 had not been employed as he would have wanted them to be  
 25 deployed. Now that's quite a serious statement.

<p style="text-align: right;">Page 24285</p> <p>1 GENERAL NAIDOO: Yes –</p> <p>2 CHAIRPERSON: Did you know about it at</p> <p>3 the time?</p> <p>4 GENERAL NAIDOO: I had no indication of</p> <p>5 that concern of General Mpembe.</p> <p>6 CHAIRPERSON: When did you hear about it</p> <p>7 for the first time?</p> <p>8 GENERAL NAIDOO: Hear about which part,</p> <p>9 Chair?</p> <p>10 CHAIRPERSON: The fact that General</p> <p>11 Mpembe had alleged that visible policing had not been</p> <p>12 employed as he would have wanted them to be deployed after</p> <p>13 Brigadier Engelbrecht had requested that visible policing</p> <p>14 be employed on the basis of information he'd received the</p> <p>15 previous day.</p> <p>16 GENERAL NAIDOO: Chair, I'm reading about</p> <p>17 it for the first time in this statement. So it was not</p> <p>18 communicated to me that somebody was unhappy with the</p> <p>19 deployment which I tasked Brigadier Calitz to do on</p> <p>20 Saturday. So that's why I'm surprised and secondly I was</p> <p>21 acting Provincial Commissioner and Brigadier Engelbrecht</p> <p>22 was aware that General Mpembe was on leave. I think he</p> <p>23 says so. He never contacted me directly.</p> <p>24 CHAIRPERSON: So are saying or am I</p> <p>25 reading too much into this, are you saying that this</p>	<p style="text-align: right;">Page 24287</p> <p>1 Brigadier Engelbrecht's statement, I'll read again lines 3</p> <p>2 and 4. He states that the report was also that the</p> <p>3 protestors wanted to stop employees from going to work.</p> <p>4 Actually the report was also that the employees wanted to</p> <p>5 stop employees going to Karee mine on the night shift as</p> <p>6 well as the next day. The next day refers to the 13th of</p> <p>7 August. Can you see that General?</p> <p>8 GENERAL NAIDOO: I see that.</p> <p>9 MS MOSEBE: Yes now, General, on</p> <p>10 paragraph 22 of your own statement, that is exhibit JJJ108</p> <p>11 you state that "We thereafter proceeded," that is in</p> <p>12 reference to the events of the 13th. You say that "We</p> <p>13 thereafter proceeded to the joint operational centre as</p> <p>14 published the previous day at the mine, a CCTV observed</p> <p>15 room where we were given an overview of the operational</p> <p>16 situation by Brigadier Calitz supporting by the acting</p> <p>17 cluster commander, Brigadier Siveluki. The overview</p> <p>18 consisted primarily of what the assessment of the situation</p> <p>19 was from which the perspective of the current resources</p> <p>20 deployed and the incident which had occurred and available</p> <p>21 reservists for the coming day. We were also shown," – that</p> <p>22 is on paragraph 23 "the close circuit TV system where the</p> <p>23 mine had monitored from. It was brought to our attention</p> <p>24 here that besides a large contingent of miners on strike on</p> <p>25 a koppie at Wonderkop, a smaller group of armed miners had</p>
<p style="text-align: right;">Page 24286</p> <p>1 allegation that Brigadier Engelbrecht's request that</p> <p>2 visible policing be deployed in order to overcome a problem</p> <p>3 that would be revealed in information received had not been</p> <p>4 properly heeded? And that visible policing had not been</p> <p>5 employed as Major-General Mpembe would have wanted them to</p> <p>6 be deployed, is that allegation to your knowledge – you say</p> <p>7 you've heard it for the first time. Now I take it if you'd</p> <p>8 heard about it – if it had been the subject of</p> <p>9 investigation I would assume you would have heard about it</p> <p>10 wouldn't you, particularly as the Commissioner, acting</p> <p>11 Commissioner who was in charge on that day?</p> <p>12 GENERAL NAIDOO: Further to that, Chair,</p> <p>13 when we went to go on Monday to go and ascertain what the</p> <p>14 situation, that would have been one of the issues that we</p> <p>15 would have addressed with the people that had been deployed</p> <p>16 over the weekend there including the acting cluster</p> <p>17 commander and the station commander. So when we went and</p> <p>18 we addressed that information was not then available and</p> <p>19 General Mpembe was with us, so I'm not sure who he</p> <p>20 communicated with.</p> <p>21 MS MOSEBE: Now, Major-General, I would</p> <p>22 like us to talk about the events of the 13th and I will</p> <p>23 specifically refer you to paragraph 22 of your own</p> <p>24 statement, but before we go there, I would like us to speak</p> <p>25 to paragraph 4 of Brigadier Engelbrecht's statement.</p>	<p style="text-align: right;">Page 24288</p> <p>1 gathered near the mine shaft." Now, Major-General, when</p> <p>2 Warrant Officer Lepaaku and Warrant Officer Monene were</p> <p>3 killed they had gone to disarm and disperse this group of</p> <p>4 miners who were working from Karee mine. Now my question</p> <p>5 to you is that if it was known by the police and</p> <p>6 specifically by Brigadier Engelbrecht that these people</p> <p>7 were intending to attack the police why is it that any of</p> <p>8 the police officers who were present at the CCTV room</p> <p>9 specifically state but hang on, we had this information</p> <p>10 before. We know what the activities of this group are and</p> <p>11 why is it that sufficient plans were not made before to</p> <p>12 intercept these people before it was shown to you on the</p> <p>13 CCTV cameras?</p> <p>14 GENERAL NAIDOO: Chair, I think I</p> <p>15 testified to the fact that –</p> <p>16 CHAIRPERSON: Major-General, before you</p> <p>17 begin your answer Mr Semanya indicated he wanted to say</p> <p>18 something.</p> <p>19 MR SEMENYA SC: Again, Chair, the</p> <p>20 question assumes a fact not in evidence and I understand</p> <p>21 these is a question, but you cannot make a hypothesis of</p> <p>22 that kind and say why didn't you act on it.</p> <p>23 MS MOSEBE: I will rephrase, Chairperson.</p> <p>24 Now, General, when you were pointed to a group of armed</p> <p>25 strikers who were coming from the Karee mine did any of the</p>

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1 police officers state that we know of the activities of  
 2 this group, that is the intelligence information that we've  
 3 received before?  
 4 GENERAL NAIDOO: Chair, as I indicated,  
 5 two things. We had already called on the National  
 6 Deployment to supplement the local police in terms of  
 7 patrols overnight based on our understanding that the  
 8 critical period when people want to go to work, etcetera  
 9 would require us to a police key point and conduct patrols,  
 10 etcetera. I testified to that effect. Secondly, when we  
 11 observed the group on the CCTV camera the Provincial  
 12 Commissioner then instructed General Mpembe to deal with  
 13 matter and then we left. What was the subsequent  
 14 arrangements and discussions and how they approached it I'm  
 15 not sure because I left immediately after the Provincial  
 16 Commissioner gave the instruction. So I am not in a  
 17 position to indicate whether General Mpembe, who was there  
 18 and he had this information, how did he utilise this  
 19 intelligence. I cannot testify to this fact because when  
 20 he was addressing his commanders and making his plans I was  
 21 not there.  
 22 MS MOSEBE: Chairperson, we have no  
 23 further questions.  
 24 CHAIRPERSON: Thank you. Does anybody  
 25 else wish to ask any questions flowing from the questions

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1 that have been asked before I ask Mr Semenya if he wishes  
 2 to re-examine? So the answer is no. Yes sorry, Mr Semenya  
 3 you can't re-examine yet, I'm giving you an opportunity too  
 4 early because some of the absentee cross-examiners still  
 5 want to cross-examine. I see, all right. So I'd like to  
 6 ask you a question though before we go further and that is  
 7 two matters I must say I haven't been aware of before.  
 8 Perhaps I should have been which gives rise to concern.  
 9 The first is a point Mr Gumbe made last week that the JOC  
 10 should have been set up on the, I think it was the Friday  
 11 the 10th. It was only set up actually, the JOCCOM only set  
 12 up on the Sunday afternoon. And of course, in the  
 13 meanwhile the events of Sunday morning had happened and the  
 14 two security guards were killed.  
 15 GENERAL NAIDOO: Chair.  
 16 CHAIRPERSON: But then there's a further  
 17 information which has now been brought to our attention  
 18 from the statement of Brigadier Engelbrecht that he had  
 19 received information, he'd asked for visible policing to be  
 20 deployed which didn't happen as he would have wished. And  
 21 I take it one of the matters we have to look into and if  
 22 you could help us, probably not because I don't think you  
 23 were directly concerned was if the visible policing had  
 24 been deployed as Brigadier Engelbrecht expected it would  
 25 be, apparently Major-General Mpembe wanted it to happen and

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1 then the killings of the Sunday morning might have been  
 2 prevented also, been prevented by the deployment of visible  
 3 policing units. Are you able to assist us in that or is  
 4 that something we must just ask our evidence leaders to  
 5 investigate further and put evidence before us to deal with  
 6 it.  
 7 GENERAL NAIDOO: Chair, when this was  
 8 introduced I indicated there was a question about this at  
 9 the end of the first cross-examination as well. As I  
 10 indicated, in terms of the plan which was presented there  
 11 was a clear indication that there was a JOC going to be set  
 12 up at Middelkraal I think it was. As to the form and  
 13 whether there was actually somebody deployed there I was  
 14 unable to testify to. And we went over the fact that there  
 15 was a deployment and there was a command structure for that  
 16 and we can follow that through that particular channel. On  
 17 the second issue about had there been a deployment would it  
 18 have prevented, I'm not familiar with all the details, but  
 19 I think the one issue that comes to mind was that this  
 20 particular two attacks occurred inside the hostel area, not  
 21 in the public area. But it's something we already said can  
 22 be followed up and see where it happened.  
 23 CHAIRPERSON: Thank you. The attacks  
 24 took place near the taxi-rank as I understand it. This is  
 25 just around the corner from the NUM office and the

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1 satellite police station.  
 2 GENERAL NAIDOO: Chair –  
 3 CHAIRPERSON: And I must tell you that  
 4 the impression I got, again this is something that we  
 5 hadn't focused on directly, but the impression we got was  
 6 the satellite police station wasn't very active, it if was  
 7 manned at all on the Saturday morning when there was a  
 8 march on the NUM office. And I don't know what evidence if  
 9 any will be lead, we haven't had evidence directly on it  
 10 yet what the people in the satellite police station, if  
 11 there were any, were doing on the Sunday morning. This  
 12 wasn't very far from the taxi-rank. So these are -  
 13 Advocate Hemraj points out that at the inspection in loco  
 14 we were told that satellite police station is sometimes  
 15 closed. So these are all matters which give rise to  
 16 concern. But anyway you told us that your impression was  
 17 that the satellite was always staffed, but that, of course,  
 18 may not be correct on the facts. Anyway that perhaps the  
 19 evidence leaders can investigate further and put further  
 20 evidence. Presumably the SAPS will be able to give us  
 21 information, the SAPS legal team I think, they'll get  
 22 information for us.  
 23 COMMISSIONER HEMRAJ: General, you said  
 24 in the course of last week that at the end of each day that  
 25 some of you would gather and have discussions about the



<p style="text-align: right;">Page 24293</p> <p>1 possible or alternative methods of dispersal and these were 2 not recorded or minuted. 3 GENERAL NAIDOO: After the afternoon 4 parade or before we broke off, yes. 5 COMMISSONER HEMRAJ: Are you able to tell 6 us who the persons are that might be present in some of 7 these discussions? 8 GENERAL NAIDOO: Chair, as I indicated, 9 General Mpembe, General Annandale, myself, possibly 10 Brigadier Calitz, some of the other commanders as well. 11 Possibly even Colonel Scott, I'm not sure it's possible 12 whether Colonel Vermaak was there, but generally the people 13 that were at the JOC, some of them who were leaving to 14 further areas left immediately and some obviously stayed 15 behind just to do the housekeeping for the day and prepare 16 for the next day. 17 COMMISSIONER HEMRAJ: And these were not 18 minuted, recorded or anything. 19 GENERAL NAIDOO: Not to a formal meeting 20 no, Chair. 21 COMMISSIONER HEMRAJ: Thank you, General. 22 CHAIRPERSON: I take it if something 23 material had arisen surely it would have been mentioned at 24 the following JOCCOM meeting. 25 GENERAL NAIDOO: I'm sure, yes, Chair.</p>	<p style="text-align: right;">Page 24295</p> <p>1 tomorrow and as will my colleagues as well. 2 GENERAL NAIDOO: Okay, Chair. 3 CHAIRPERSON: All right, so we'll adjourn 4 until tomorrow morning at 9 o'clock. 5 [COMMISSION ADJOURNED] 6 . 7 . 8 . 9 . 10 . 11 . 12 . 13 . 14 . 15 . 16 . 17 . 18 . 19 . 20 . 21 . 22 . 23 . 24 . 25 .</p>
<p style="text-align: right;">Page 24294</p> <p>1 CHAIRPERSON: Isn't that right? 2 GENERAL NAIDOO: Yes, Chair. 3 CHAIRPERSON: All right. I don't think 4 there are any more questions to be asked of you today. 5 We've got to adjourn early because we received a specific 6 request from counsel for the families, to say the families 7 would be here tomorrow and it's very important that they 8 should see the questions that they particularly want to ask 9 asked and I agree to that on the basis we wouldn't lose 10 very much time. And anyway we can spend the time reading 11 documents, getting ready for the cross-examination. As 12 you've seen we've got a batch of documents relating to the 13 deaths of victims A, B, M and O which we have to read in 14 the meanwhile. So we'll adjourn early today. We will 15 resume again tomorrow morning at 9 o'clock when you'll be 16 questioned by counsel on behalf of the families. 17 GENERAL NAIDOO: Okay, Chair. 18 CHAIRPERSON: Have you got the documents 19 which – 20 GENERAL NAIDOO: I've just received a 21 file now. 22 CHAIRPERSON: You've just received them. 23 GENERAL NAIDOO: Yes. 24 CHAIRPERSON: So you and I will spend a 25 laborious evening reading these documents getting ready for</p>	

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