

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 200

12 MARCH 2014

PAGES 24451 TO 24597



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1 [PROCEEDINGS ON 12 FEBRUARY 2014]
 2 [09:17] CHAIRPERSON: The Commission resumes.
 3 When we arrived this morning we received a message that the
 4 witness wasn't feeling well and he would be here later, and
 5 I'm pleased to see that he is here. Are you feeling
 6 alright to carry on, Major General?
 7 MR NTSEBEZA SC: Yes, Mr Chairman.
 8 CHAIRPERSON: No, I am not talking to
 9 you; I'm talking to the Major General. I received a
 10 message that you felt unwell, that you asked not to come.
 11 Did I get the wrong message? Is it someone else who wasn't
 12 well?
 13 GENERAL NAIDOO: Chair, it was not me.
 14 CHAIRPERSON: Not you? Anyway, you are
 15 well. That's the – so what was the message about?
 16 MR SEMENYA SC: My learned instructing
 17 attorney was just making light of something, he tells me.
 18 CHAIRPERSON: Well, I would have to say
 19 Mr Mpofo is not feeling well, but we won't go into that.
 20 You're still under oath, Major General.
 21 GANASEN NAIDOO: Still under oath, Chair.
 22 CHAIRPERSON: Mr Ntsebeza. Are you
 23 feeling well, Mr Mpofo?
 24 MR MPOFU: Under the circumstances,
 25 Chairperson, I think the Chairperson could give me –

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1 CHAIRPERSON: Well, I'm pleased to see
 2 you with a smile on your face.
 3 MR MPOFU: Yes, I thought of bringing a
 4 doctor's certificate for today, but it's a temporary
 5 setback.
 6 CHAIRPERSON: I would have summoned the
 7 doctor here to give evidence under oath and he would have
 8 to be cross-examined by Ms Lewis. Mr Ntsebeza.
 9 CROSS-EXAMINATION BY MR NTSEBEZA SC (CONTD.):
 10 Thank you, Mr Chairman. General, I think over the last two
 11 nights you have, I'm told you should have had a
 12 presentation which is headed "The deaths of victims A, B, M
 13 and O."
 14 CHAIRPERSON: Before you carry on, may I
 15 say I'm grateful we've received an extra page, which is
 16 page 31, but we've also received a typed document headed
 17 "References for the deaths of victims A, B, M and O," which
 18 contains material which we will transcribe into our copies
 19 of the relevant pages of the exhibit MMM47.
 20 MR NTSEBEZA SC: Yes.
 21 CHAIRPERSON: And I'm grateful for that
 22 because it saves a lot of time in trying to find the
 23 references in exhibit A. I take it Mr Semanya has got a
 24 copy, have you? Ja.
 25 MR NTSEBEZA SC: So that's exhibit MMM47,

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1 the presentation. Mr Chairman, I think it is one of the
 2 sections in our cross-examination of the General where a
 3 warning is appropriate to the families because there are
 4 images that we capture in exhibit MMM47, on various slides
 5 thereof –
 6 CHAIRPERSON: Yes, thank you, Mr
 7 Ntsebeza. I see a number of members of the families are
 8 here again today and it's very encouraging and it's very
 9 commendable that you are here in order to be present and to
 10 see our endeavours to ascertain the truth as to the death
 11 of your relatives and loved ones. But as we've experienced
 12 in the time we've been sitting in the Commission, from time
 13 to time we are shown, there are put on the screen video
 14 clips and photographs of people who were killed at Marikana
 15 in the period that we're dealing with and these pictures
 16 are of such a nature as to cause severe emotional distress
 17 and trauma to the relatives and loved ones of the people
 18 depicted on the photographs and video clips.
 19 I'm informed that a series of such photographs
 20 are to be shown to us this morning in the course of Mr
 21 Ntsebeza's cross-examination. They relate particularly to
 22 four people, that is to say Mr Anele Mdizeni, who's
 23 described as victim A, Mr Thabiso Johannes Thelejane, who
 24 is described as victim B, Mr Nkosiyabo Xalabile, who is
 25 described as victim O, and Mr Henry Mvuyisi Pato, who is

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1 described as victim M. So if any member of the family of
 2 any of those four people or a loved one of them is here and
 3 fears that he or she will suffer acute emotional distress
 4 at seeing the pictures we are to have on the screen, I will
 5 ask that these pictures not be shown until a minute has
 6 elapsed from the time I've finished speaking so that those
 7 who wish to leave will have an opportunity to do so. The
 8 minute will start now.
 9 We've been handed copies of the documents, IPID
 10 statements and so forth referred to yesterday. They
 11 haven't been marked with the exhibit numbers yet, but I'm
 12 sure that that will be done during teatime. We've also
 13 been given of the PA report which are already exhibits, but
 14 it will obviously make it easier for us to follow the
 15 cross-examination and we're grateful for that courtesy
 16 that's been extended to us.
 17 The minute has now elapsed. You may proceed with
 18 your cross-examination, Mr Ntsebeza.
 19 MR NTSEBEZA SC: Thank you, Mr Chairman.
 20 Now General, you will have noticed that the first page,
 21 page 2 of the presentation is a rough sketch plan that
 22 forms part of the exhibit in the Commission, exhibit B,
 23 starting from page 47. So that is a reflection of page 47,
 24 or did you not?
 25 GENERAL NAIDOO: I have it, Chair.

<p style="text-align: right;">Page 24455</p> <p>1 MR NTSEBEZA SC: And what you see up 2 there on the left-hand side, top left-hand side, is the 3 legend that speaks to the authorship of that sketch plan as 4 being Captain AJ Mohlaki. You see that? 5 GENERAL NAIDOO: It's correct, I have. 6 MR NTSEBEZA SC: Captain Mohlaki 7 obviously is known to you as a member of the SAPS. Do you 8 know him? 9 GENERAL NAIDOO: He's a member of the 10 Criminal Record Centre, yes. 11 MR NTSEBEZA SC: Yes. You will also have 12 noticed that we rely particularly on pages 4, and I believe 13 on page 5 and 7, and all the other pages which I will be 14 coming to as and when I lead evidence on that respect, that 15 some of those have been taken from exhibit L. For instance 16 on page 3 of our presentation we refer, we have footage, or 17 we have an extract as it stands in exhibit L on page 241. 18 I repeat, on page 4 of our presentation we have a 19 reflection as is of what stands on slide 241 of exhibit L. 20 Have you noticed that? You have exhibit L with you? 21 GENERAL NAIDOO: I do have. 22 MR NTSEBEZA SC: And you confirm that we 23 have literally extracted page 4 of this presentation from 24 what you have on slide 241 of exhibit L. Other than just 25 the highlighting in red, what you read on page 4 of this</p>	<p style="text-align: right;">Page 24457</p> <p>1 referred you to slides 3 and 4 and I've indicated that they 2 have been extracted from L241 and L242. Now I want to make 3 a proposition to you and that proposition will start 4 firstly with us looking at slide 4 of our presentation, 5 which is slide 241 of exhibit L. You see the bullet 6 paragraph that is highlighted in red, "Groups of protesters 7 brandishing dangerous weapons emerged from behind the rocks 8 and charged at the NIU members approaching from the 9 southeast." You see that? 10 GENERAL NAIDOO: I see that, Chair. 11 MR NTSEBEZA SC: Now that is in terms of 12 a presentation that was made right at the beginning of this 13 Commission, as we see in exhibit L. Now if we went to 14 slide 5 of our presentation you will see that the SAPS in 15 their presentation of exhibit L indicated the direction 16 from which the NIU would be coming. You see where it says 17 "eastern"? 18 GENERAL NAIDOO: I see that, Chair. 19 MR NTSEBEZA SC: And you can see the NIU 20 line and there are dotted lines which have arrows at the 21 end thereof and my submission would be that that indicates 22 the direction of the firing by the NIU. You wouldn't 23 disagree with that, would you? 24 GENERAL NAIDOO: Chair, I think it 25 indicates the direction of the movement of the NIU line</p>
<p style="text-align: right;">Page 24456</p> <p>1 presentation is exactly what you read from slide 241 of 2 exhibit L, right up to the fourth bullet ending with 3 "protesters." In fact I believe if what we have on the 4 screen could be raised up a bit it would show at the bottom 5 left corner 241. You see that, General? 6 GENERAL NAIDOO: I see that, Chair. 7 MR NTSEBEZA SC: Yes, and page 5, or 8 slide 5 of our presentation you will see has been extracted 9 as is literally from slide 242 of exhibit L. You see that, 10 General? 11 GENERAL NAIDOO: I see that, Chair. 12 MR NTSEBEZA SC: And as we continue with 13 the presentation it will become apparent that our 14 presentation has not sought to be innovative in any sense 15 in terms of the photographs that form part of it. They are 16 extracted from material which already is before us, I can 17 assure you. Now if we went to the sketch plan, do you see 18 the positions marked on the sketch plan as positions A, B, 19 M and O? 20 GENERAL NAIDOO: I do, Chair. 21 MR NTSEBEZA SC: I don't have a pointer, 22 otherwise I think they are the ones that are highlighted in 23 red. You see that? 24 GENERAL NAIDOO: I see that, Chair. 25 MR NTSEBEZA SC: Yes, and I've already</p>	<p style="text-align: right;">Page 24458</p> <p>1 rather than necessarily the firing. 2 MR NTSEBEZA SC: We know that where those 3 arrows end below the rocks in terms of the sketch plan is 4 where you find the bodies of A and B. 5 GENERAL NAIDOO: That is correct, Chair. 6 MR NTSEBEZA SC: Yes, and A and B would 7 be dead bodies there because they had been fired at by 8 somebody and we are making submission that it's the NIU 9 members who had fired in that direction, given their 10 advance. Would you disagree with that seriously? 11 GENERAL NAIDOO: Chair, I think in my 12 testimony I did testify to the fact that this is where I 13 joined the NIU and I had seen these bodies that were lying 14 at the base of the rock and the report that was given to me 15 was that they were charged by protesters, etcetera. So the 16 fact that the NIU took, or participated in that shooting, I 17 think I've already testified to that fact. 18 MR NTSEBEZA SC: Yes, we know that. I 19 mean some of these things are common cause, just that in 20 the course of our presentation we don't want to take 21 anything for granted, and where we can agree about certain 22 positions we take, we can. 23 [09:37] All I'm simply saying is that slide 5 seems to 24 suggest that the dotted line below which are the 25 inscriptions in capitals NIU indicates the NIU line that</p>

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1 was advancing towards the rocks. Would you disagree with
2 that?

3 GENERAL NAIDOO: Chair, I agreed with
4 that already.

5 MR NTSEBEZA SC: Yes and I am saying what
6 you see there at the end of arrows not only signifies the
7 direction in which the NIU were proceeding, it also shows
8 where they would have been shooting at given that at the
9 foot of that rock is where you find two bodies, the bodies
10 of Anele Mdizeni and Thabiso Thelejane. Do you agree with
11 that?

12 GENERAL NAIDOO: Chair, other than the
13 dotted line does not necessarily indicate specifically
14 where the shots were fired from, otherwise yes I do agree
15 with that.

16 MR NTSEBEZA SC: I think something else
17 that you can agree on which has been established is the
18 distance. I'm told that the distance between and we go to
19 slide 7, the distance or maybe let's introduce page 7
20 properly. Now do you see where on page 7 it says rifle
21 cartridges BB9-BB20 at the bottom of the page, foot of the
22 page.

23 GENERAL NAIDOO: I see that, Chair.

24 MR NTSEBEZA SC: And you also see to the
25 left of the rifle cartridges, BB9 to BB20, another legend,

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1 rifle cartridges BB1 to BB8, BB21 to BB41, do you see that?

2 GENERAL NAIDOO: I see that, Chair.

3 MR NTSEBEZA SC: Now I'm told that a
4 distance and we are dealing with A now, body A, the
5 distance between Mr Mdizeni's body, we now know Mr Mdizeni
6 is A and a rifle cartridge BB41 was measured as 41,9
7 metres. That's about 42 metres and these measurements
8 purport to be taken from page 58 of exhibit B. You then
9 take it as – have you verified that or do you accept my say
10 so?

11 GENERAL NAIDOO: I accept that.

12 MR NTSEBEZA SC: Yes. Now what kind of a
13 distance is 41 metres from where you're sitting, 42 metres,
14 would it be from where you are sitting to for instance
15 where we enter this hall? Or would it be beyond that?
16 It's quite a distance.

17 GENERAL NAIDOO: Chair, possibly beyond.

18 MR NTSEBEZA SC: Yes.

19 CHAIRPERSON: Two tricky pictures isn't
20 it? The police put it at 22 yards, so two tricky pictures
21 would be 44 yards and I haven't translated that into
22 metres, but it's more or less in that vicinity isn't it?

23 GENERAL NAIDOO: Sure, Chair.

24 MR NTSEBEZA SC: So I think the point I
25 want to make, General, is that it is a sizeable distance.

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1 It's as though we're talking about the distance between me
2 and you which I would estimate at about 4, 5 metres. Do
3 you agree with that.

4 GENERAL NAIDOO: The distance is
5 considerable, yes.

6 MR NTSEBEZA SC: Yes now I want to relate
7 that with the allegation that is being made that the NIU
8 had to react to a group of protestors or groups of
9 protestors branding dangerous weapons who emerged from the
10 behind the rocks and charged the NIU members. It seems to
11 me and they'll argue this, that 42 metres is a big distance
12 for lethal force to have been unleashed by the NIU. It
13 doesn't seem that at that distance they were endangered
14 that warranted them unleashing high velocity fire power.
15 Would you agree or disagree with that?

16 GENERAL NAIDOO: Chair, as I was not
17 present when the incident occurred and I arrived there
18 after the incident occurred, I don't think I would be able
19 to comment on the reason that the members who fired the
20 shots reacted in a particular way. I would not be able
21 pronounce on how the individual members that used their
22 firearms perceived the threat and how they responded.

23 MR NTSEBEZA SC: Chair, you must allow
24 for the fact that I'm talking to an experienced member of
25 the SAPS of long standing, of high intelligence and of a

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1 person who is capable of making objective assessment of
2 situations. You say from where you sit 42 metres would be
3 almost outside of these premises in terms of distance. And
4 I'm saying and I'm putting it to you that that distance
5 seems to me and we'll argue that, is too big a distance for
6 members of the NIU to have felt that they were so
7 threatened that they should unleash high velocity fire
8 power.

9 CHAIRPERSON: Yes, Mr Semenya.

10 MR SEMENYA SC: Chair, the witness says
11 he was not there, he's unable to give helpful comment.

12 MR NTSEBEZA SC: I'm not asking him on
13 the basis that he was there, I'm asking him on the basis
14 that he can give an objective view given his experience.

15 CHAIRPERSON: Well isn't the problem that
16 you have in the context the point that's arisen a number of
17 times in this Commission, that if a witness is asked, who
18 wasn't there, to express an opinion on something which the
19 Commission is in as a good a position to express an opinion
20 on then the question is not allowed. I can understand a
21 witness with expertise on the matter, but we can do the
22 sums ourselves. I've actually done a sum. As far as I can
23 see 42 metres equals 45.5 yards which is just over two
24 cricket pitches. Now we know that many of us can take
25 judicial notice of the length of a cricket pitch. So we

<p style="text-align: right;">Page 24463</p> <p>1 know two cricket pitches is quite a long distance and we 2 will be able – I think we can say with the necessary 3 humility and modesty to express an opinion on in regard to 4 the question that you just asked the witness. So I think 5 that in line with rulings I've given previously on similar 6 points, I must disallow the question. I want to make it 7 clear I don't want your clients to be under any 8 misunderstanding. I'm not saying you can't argue your 9 point at the end. I'm simply saying that this is not an 10 appropriate for this question to be addressed.</p> <p>11 MR NTSEBEZA SC: Mr Chairman, as always I 12 accept you ruling. The only difference, of course, between 13 the Chair and me and the General is that the General was 14 also being relied upon in the question on his experience as 15 a police person. But –</p> <p>16 CHAIRPERSON: I don't know how much 17 experience he's got on the particular topic that you're 18 busy at the moment. Anyway you've accepted my ruling and 19 we can proceed.</p> <p>20 MR NTSEBEZA SC: Indeed, Mr Chairman. 21 Right, now can I ask you to turn to page 8 of the 22 presentation, General? Is there a way of us getting a 23 better resolution, I think – well I suppose that's as good 24 as it can get. Now I'm told that is the body of Mr 25 Mdizeni. You don't dispute that.</p>	<p style="text-align: right;">Page 24465</p> <p>1 I mean what killed Mr Mdizeni is recorded as being a high 2 velocity gunshot wound, entrance on the side of his right 3 hip. Now if we look at the body as it is, never mind the 4 legend direction of the bullet, but the right hip would be 5 where the end of that red pointer is as the body is lying 6 there. Do you see that?</p> <p>7 GENERAL NAIDOO: I see that, Chair. 8 MR NTSEBEZA SC: Yes, we agree on that. 9 That the right hip, that is his right hip where that red 10 thing ends.</p> <p>11 GENERAL NAIDOO: That is his right side, 12 yes.</p> <p>13 MR NTSEBEZA SC: Yes and that would then 14 be consistent with the state post-mortem report, paragraph 15 4.1. That same report says the bullet perforated the 16 pelvis from right to left. So as he is lying there facing 17 down the bullet would have been from the direction where 18 the NIU would have been coming from and therefore firing 19 from on the basis of what we had sketched before. Do you 20 agree?</p> <p>21 GENERAL NAIDOO: Not necessarily, Chair. 22 CHAIRPERSON: Of course that's a little 23 bit misleading isn't it? I'm not suggesting intentionally 24 so. The probabilities, I would think, again I would 25 imagine we're in as good a position as the witness is to</p>
<p style="text-align: right;">Page 24464</p> <p>1 GENERAL NAIDOO: No, Chair. 2 MR NTSEBEZA SC: And I'm also told and 3 there is an exhibit, Mr Chair that I would like to 4 introduce. It's a one pager which I'm told has been 5 circulated, but it is intended to facilitate references for 6 the deaths of the four people that we're talking about, 7 relative to the post-mortem reports for which allegations 8 are made.</p> <p>9 CHAIRPERSON: I think it's the document 10 headed References for the deaths of victims A, B, M and O. 11 MR NTSEBEZA SC: Yes – 12 CHAIRPERSON: I've already transcribed 13 those references onto my copy of exhibit MMM47, but you 14 want this document to be given an exhibit number as well.</p> <p>15 MR NTSEBEZA SC: Yes, Mr Chairman. 16 CHAIRPERSON: Shall we make it page 32 of 17 that exhibit, MMM47? Would that satisfy you? 18 MR NTSEBEZA SC: It would be superbly so, 19 Mr Chairman. 20 CHAIRPERSON: I'll mark it exhibit, I'll 21 mark my copy exhibit MMM47 page 32. 22 MR NTSEBEZA SC: Page 32. 23 CHAIRPERSON: Thank you. 24 MR NTSEBEZA SC: Very pleased, Mr 25 Chairman. Now, General, the cause of death of Mr Mdizeni,</p>	<p style="text-align: right;">Page 24466</p> <p>1 express an opinion on those probabilities. The 2 probabilities are that he wasn't shot in the position that 3 his body is found, the probabilities are he was standing 4 when he was shot so that the direction of the bullet would 5 be, of course, from the – would be parallel, I'd assume, 6 parallel with the line that you have on the slide, but it 7 would higher up on the photograph. If he was standing in 8 the middle of the rock for example which is behind the body 9 then the shot would have been fired from a position further 10 to the left and higher up as one looks at the photograph. 11 It's not a point of major moment, but it's necessary for 12 purposes of accuracy. And there's a further factor that 13 you really need which I think is somewhere in the record, 14 but you haven't given us the reference. And that is if 15 it's correct that the shot was of a kind to kill him 16 virtually instantaneously so that he wouldn't have had an 17 opportunity to move of his own volition and motion as it 18 were prior to falling where he died then the point would 19 have validity. If the injury was, of course, of a kind 20 which enabled him to move for some distance before falling 21 down dead or falling down and then dying then, of course, 22 even the argument that he was standing higher up or even on 23 top of the rock when he fell would also not be valid. 24 But I think somewhere in the record, I'm not sure 25 whether it relates to this witness, but somewhere in the</p>

<p style="text-align: right;">Page 24467</p> <p>1 record there's, I think, an agreed statement which was 2 handed in where one of the pathologists, I've got an idea 3 it may have been Doctor Perumal, actually dealt with the 4 question. But I may be wrong on that, but dealt with the 5 question of how soon after the various injuries were 6 inflicted on the various deceased it's probable that they 7 died. That's the necessary link in the chain of the point 8 that you're busy with. Am I correct? 9 MR NTSEBEZA SC: Yes, Mr Chairman, 10 because I think I recall that document where the – I think 11 it's the Legal Resources Centre document where there's a 12 reconciliation between what the state pathologist and what 13 LRC pathologists say and – 14 CHAIRPERSON: Anyway we can find the 15 document. Of course, you see it's also relevant because if 16 he could have moved, if he lived for some time after being 17 shot and could move for some – then, of course, even the 18 argument about the direction in which he was facing would 19 fall away. Because he might have turned, something of that 20 kind during that period. But, of course, if there's no 21 significant period well then the argument gains strength. 22 Mr Semanya. 23 MR SEMENYA SC: Chair, may we place on 24 record that these inscriptions that appear on these 25 exhibits as commentary of an evidentiary nature, we do not</p>	<p style="text-align: right;">Page 24469</p> <p>1 if for example it is said that this witness could have 2 lived for five minutes after getting the injury and could 3 have moved around, that's a point you would advance in 4 argument to say that the inference we're asked to draw in 5 the legend here is incorrect, but you're correct in saying 6 that – I think subject to what Mr Ntsebeza is going to say 7 - prima facie you're right, this is really argument. It 8 may be convenient for us to have it before us in this form, 9 which will help us and help you actually when you seek to 10 answer it, but it's certainly not evidence. It's now 11 merely a submission. They may be good submissions, they 12 may be bad submissions, but I'm not saying they should be 13 struck out of the document, but Mr Semanya is right in 14 saying they're not really evidence. Insofar as they go 15 beyond reference to the evidence before us already, or 16 references to what we can see with our own eyes on the 17 photographs they're argument. Whether they're good 18 argument or bad argument we will discover at the end of the 19 matter. 20 MR NTSEBEZA SC: Indeed, Mr Chairman. I 21 can assure my colleague Mr Semanya that we proceed on that 22 basis – 23 CHAIRPERSON: Learned friend, please, Mr 24 Ntsebeza. 25 MR NTSEBEZA SC: Mr Chairman?</p>
<p style="text-align: right;">Page 24468</p> <p>1 accept as accurate. 2 [09:57] Except insofar as the witnesses may concede to 3 them and this we mention in relation also to what Mr 4 Chaskalson was doing with various exhibits, and no less 5 that which CALS is doing with the analysis. Insofar as 6 those assertions in the commentary is not confirmed by 7 witnesses, our witnesses, we don't accept the commentary as 8 accurate, Chair. 9 CHAIRPERSON: Mr Semanya, is the correct 10 position not the following; that insofar as the 11 inscription, the legends on these photographs are an 12 accurate summary of the evidence before us and an accurate 13 summary of the references in the post mortem reports and so 14 on, they are before us simply as references to material 15 already before us. Insofar as they go further than that, 16 for example the statement "He could not therefore have been 17 facing the person who shot him," that is not evidential 18 material, it is mere argument. It may be good argument, 19 but that's another matter. The correctness or otherwise of 20 the argument would depend in any event on the points that 21 I've raised with regard to how long after the shots were 22 inflicted the person died, whether he could have moved, to 23 what extent he could have moved, and so on. So that's not 24 in this document. 25 It would be a necessary part of the argument and</p>	<p style="text-align: right;">Page 24470</p> <p>1 CHAIRPERSON: Learned friend. 2 MR NTSEBEZA SC: My learned friend and 3 colleague, Mr Chairman. 4 CHAIRPERSON: Touché. 5 MR NTSEBEZA SC: Like Archbishop Tutu 6 would say it, I thought I could get two for the price of 7 one. Mr Chairman, really the commentary is in fact 8 intended to be exactly that which the Chairman said it's 9 intended to do. We are doing no more really with that 10 running commentary than Mr Semanya and his clients did when 11 they compiled exhibit 11. You will see exhibit 11 is 12 replete with commentary – exhibit L – 13 CHAIRPERSON: Exhibit L, yes. What was 14 this other exhibit you were referring to? Exhibit 11? 15 MR NTSEBEZA SC: Exhibit L. I'm sorry. 16 CHAIRPERSON: Well, I could understand if 17 you were thinking of Roman numerals exhibit L you might 18 think is exhibit 50, but anyway, we know what you're 19 talking about, exhibit L. 20 MR NTSEBEZA SC: Exactly. Exactly. So 21 we'll accept the caution with which the Commission is being 22 enjoined to regard the running commentary in our 23 presentation, in just as much a way as I think the 24 Commission will take heed of the running commentary in 25 exhibit L. I believe that the document that does –</p>

<p style="text-align: right;">Page 24471</p> <p>1 CHAIRPERSON: Of course there is a 2 difference. Some of the things in exhibit L may be capable 3 of being used as admissions against the police, whereas I'm 4 not sure that these could be used as admissions against 5 your clients. So it may be that exhibit L is in a slightly 6 different category. 7 MR NTSEBEZA SC: Yes. 8 CHAIRPERSON: If the police commit 9 themselves to a version and it turns out to be awkward for 10 them, it will be awkward for them, but it wouldn't apply, I 11 would think, to comments that you make as far as the 12 position of your clients is concerned. 13 MR NTSEBEZA SC: No, it's only to the 14 extent that we were highlighting the fact that the 15 commentary is not an invention of the families when they 16 put up the presentation. I believe FFF20 would be the 17 document that states the nature of the injury and whether 18 or not Mdizeni could have been killed by something else 19 other than the single bullet. It doesn't appear that there 20 were any other gunshot wounds. 21 CHAIRPERSON: The question of course is 22 once he sustained that gunshot wound did he die instantly, 23 was he capable of moving, how long did he live, how far 24 could he move, could he turn. All those questions, if 25 they're not covered by this document we may have to have</p>	<p style="text-align: right;">Page 24473</p> <p>1 pelvis. 2 MR NTSEBEZA SC: Yes. 3 CHAIRPERSON: Went from right to left, 4 one shot. 5 MR NTSEBEZA SC: Yes. 6 CHAIRPERSON: "Traditional marks, nil 7 recorded. Pertinent distinction between State and 8 independent reports, none. Rapid death, immediate 9 incapacitation, lower limb paralysis with spinal injury." 10 That's what you want? 11 MR NTSEBEZA SC: So it, that report, yes. 12 That – 13 CHAIRPERSON: You say it sounds as if you 14 may – 15 MR NTSEBEZA SC: That's it. That's the 16 one. 17 CHAIRPERSON: It sounds as if you may be 18 in business on the point that you're making in respect of 19 this particular deceased, but that's a matter for argument 20 later in the day and may well – not later in the day, later 21 in the life of the Commission, and Mr Semenya may or may 22 not have an answer to it, so we will hear him when he deals 23 with this. 24 MR NTSEBEZA SC: I'm just laying the 25 ground for me to be able to make sensible argument at the</p>
<p style="text-align: right;">Page 24472</p> <p>1 evidence, which I hope would be before us by way of 2 agreement, an affidavit rather than oral evidence, but we 3 need evidence of that kind before inference of the sort you 4 wish to draw can be drawn. 5 MR NTSEBEZA SC: Maybe if we – I see that 6 FFF20 is on screen. Maybe if just for this exercise – 7 CHAIRPERSON: Let's look at it. What 8 does it say about, what does this exhibit FFF20 say about 9 Mr Anele Mdizeni? 10 MR NTSEBEZA SC: Yes, Mdizeni, yes. 11 Perhaps if we went to page 14 – 12 CHAIRPERSON: If you can tell us what 13 page you're looking at. 14 MR NTSEBEZA SC: Page 14, Mr Chairman. 15 CHAIRPERSON: Is this Mr – 16 MR NTSEBEZA SC: 567. 17 CHAIRPERSON: Is this Mdizeni? 18 MR NTSEBEZA SC: Mdizeni is – 19 CHAIRPERSON: The document we're looking 20 at now which is described as page 14 of 22 of – oh, the 21 third entry on this page is 567 and that's the post mortem 22 reference number to Mr Mdizeni. I see, okay. What does it 23 say? He died of – 24 MR NTSEBEZA SC: It says high velocity – 25 CHAIRPERSON: - gunshot wound of the</p>	<p style="text-align: right;">Page 24474</p> <p>1 required time. So you have been following the debate 2 between the Chair and us and – 3 GENERAL NAIDOO: Yes, I have. 4 MR NTSEBEZA SC: Yes, it seems to be 5 this, that there was one gunshot wound. It ends at the 6 right hip of Mr Mdizeni, perforated the pelvis from right 7 to left, terminated in the muscles of the left hip. No 8 other gunshot wounds. Immediately paralysed him so he 9 could not move. So wherever he was shot in that scenario 10 which you find on page 8 of our presentation, that single 11 shot incapacitated him and made it impossible for him to 12 move. I will talk about the other features that are very 13 curious about what we are told his body revealed. Now – 14 CHAIRPERSON: I'm sorry, just to 15 introduce some order into the debate, what this amounts to 16 is this; that you are showing the witness the photograph, 17 you're showing a summary of the argument that you're going 18 to advance at the end, which is the legend on the slide. 19 You have referred in further support to what appears, I 20 think it's page 14 of exhibit FFF20 in relation to this 21 deceased, and you're saying that you're going to argue 22 what's set out in the legend there. Is that right? 23 MR NTSEBEZA SC: Yes, yes, Mr Chairman. 24 CHAIRPERSON: I take it you are asking 25 the witness if he has any comment. You can't ask him what</p>

<p style="text-align: right;">Page 24475</p> <p>1 his opinion is because we've gone over that ground. 2 MR NTSEBEZA SC: Yes. 3 CHAIRPERSON: But is there any comment 4 that he wishes, based on the fact that he was there on the 5 scene at the time of the shots were fired, or shortly after 6 they were fired, whether he's got any comment which would 7 take the matter any further than you have it in your 8 argument and the references upon which you rely? That's 9 really what you're asking him? 10 MR NTSEBEZA SC: Yes, Mr Chairman. 11 CHAIRPERSON: Well, you've heard the 12 question of the counsel that I reformulated. Is there any 13 comment you wish to make? 14 GENERAL NAIDOO: Chair, as you've already 15 indicated, I can't render any expert opinion on this 16 matter, but I think two issues that need to be factored 17 into this particular discussion is the following; the first 18 one, the issue of ricochets of bullets against this rock 19 face which we notice on the rock, and the second one being 20 the fact that I have testified that there were other people 21 who were arrested who were among – I'm not sure whether 22 it's under or over the body of victim A as well. They 23 were, you will see there's cable ties, they were actually 24 arrested and removed from that scene. So I think in this 25 discussion at some stage that also has to be taken into</p>	<p style="text-align: right;">Page 24477</p> <p>1 NIU in the manner described in exhibit L. They would have 2 been coming sideways, and I mean – ja. 3 MR SEMENYA SC: Chair, the witness is 4 really being called to offer conjecture of no value to – 5 CHAIRPERSON: I thought I indicated that 6 I wasn't going to allow that, Mr Ntsebeza. You can't ask 7 him to offer conjecture. It's a point that cuts both ways, 8 of course. He can't offer conjecture in your favour, nor 9 can he offer conjecture against you, but he can comment on 10 the basis of extra facts that he has that we haven't got, 11 because he was there. 12 MR NTSEBEZA SC: Yes. 13 CHAIRPERSON: But I think prima facie Mr 14 Semanya is right; you want ask him for conjecture. You can 15 argue fully at the end of the matter, relying on all the 16 facts that we have before us and such other facts as you 17 can adduce. Mr Semanya can do the same. The witness's 18 function is to tell us as someone who's there more or less 19 at the time whether any extra facts we need to bear in 20 mind. Isn't that so? Now I think you're going a bit 21 beyond that, if I may say so. 22 MR NTSEBEZA SC: Yes, Mr Chairman, we'll 23 say that there is a section where the SAPS puts him there 24 in terms of exhibit L. We'll come to that. But do you 25 have any comments that you can make about the position of</p>
<p style="text-align: right;">Page 24476</p> <p>1 account. 2 MR NTSEBEZA SC: No, we've certainly 3 taken it into account, as you will see from the questions 4 that will follow. But what are you saying about the 5 inference that we are making that he died, or put it this 6 way; he was incapacitated by that first bullet in terms, if 7 we accept the report, the PM report, post mortem report, 8 the report by the doctors, that single high velocity 9 gunshot wound shattered his pelvis and rendered him 10 incapable of moving on his own. 11 GENERAL NAIDOO: Chair, I don't think I'm 12 in any position to dispute the post mortem report other 13 than to indicate that's no indication of where he was 14 standing when he was particularly shot. 15 MR NTSEBEZA SC: Are you suggesting that 16 he could have been standing elsewhere, like for instance 17 higher up in the rocks? 18 GENERAL NAIDOO: Chair, that's a 19 possibility. 20 MR NTSEBEZA SC: And given what we have 21 seen and we have submitted was the direction from which the 22 NIU were coming, whether he was higher up in the rocks or 23 whether he was at the foot of the rocks, it's difficult to 24 imagine how he gets shot in the hip on the right if he's 25 charging, or he's one of those who are charging, facing the</p>	<p style="text-align: right;">Page 24478</p> <p>1 his legs? 2 GENERAL NAIDOO: Chair, no – 3 MR NTSEBEZA SC: When you look at that 4 body. 5 GENERAL NAIDOO: Not specifically – 6 MR NTSEBEZA SC: It seems to me that the 7 legs are behind him at almost 90 degrees to his body – 8 CHAIRPERSON: I think we can all see 9 that, Mr Ntsebeza. 10 MR NTSEBEZA SC: Yes. 11 CHAIRPERSON: I don't think you need ask 12 him about that. You are obviously going to argue that 13 seems to indicate he must have fallen from the rock and Mr 14 Semanya may or may not have contrary arguments, but I don't 15 know that this witness can take it any further. We all can 16 see the photograph. You can see where his legs are. 17 That's it, isn't it? 18 MR NTSEBEZA SC: Now page 9 of exhibit – 19 thank you, Mr Chairman. Now if you went to page 9 of 20 [microphone off, inaudible]. You see page 9? 21 GENERAL NAIDOO: I see it, Chair. 22 MR NTSEBEZA SC: Now you will see in the 23 commentary there, which you have read overnight, over two 24 nights, that I believe that your evidence at some stage was 25 that at scene 2 you used cable ties to tie the hands of the</p>

<p style="text-align: right;">Page 24479</p> <p>1 people whom you arrested at scene 2. Was that your 2 evidence? 3 GENERAL NAIDOO: Chair, my evidence was 4 that yes, the National Intervention Unit, the NIU, did use 5 cable ties. 6 MR NTSEBEZA SC: When I say "you," it's 7 because at some stage the NIU said you joined them and you 8 became part of them. So I'm using sort of royal "you." 9 Now as you can see that scene there is littered with blue 10 cable ties. In fact you can see one on top of his – now 11 I've got to orientate myself – left leg – 12 CHAIRPERSON: You can see three; one on 13 his leg, upper leg, one as you look at the photograph on 14 his left, the other side of the rock, and then in the 15 bottom left-hand corner of the photograph. I don't know if 16 there are any others. 17 MR NTSEBEZA SC: And the one closer to us 18 just below his head as his, as the photograph – 19 CHAIRPERSON: That's the third one. 20 That's the one I mentioned in the bottom left-hand corner. 21 MR NTSEBEZA SC: Oh, okay. One, two, 22 three, yes. 23 CHAIRPERSON: There are three. 24 MR NTSEBEZA SC: Yes. You see that, 25 General?</p>	<p style="text-align: right;">Page 24481</p> <p>1 circumstances of our submissions that's an unfortunate 2 choice of words, but if that is how you express an arrest – 3 CHAIRPERSON: Well, the technical term 4 for carrying out an arrest is to execute the arrest. So – 5 MR NTSEBEZA SC: That's why I wanted 6 clarity, Mr Chairman – 7 [10:16] CHAIRPERSON: It may in this particular 8 case not be the most appropriate choice of words, but 9 grammatically and so on he's correct. Do we have – we 10 haven't got it before us. Do we have any photographs taken 11 while injured people were lying on the ground before they 12 were taken away? The photographs that we have seen, the 13 sketch plan, which is page 2 of your exhibit, which is 14 exhibit B, page 47, that only indicates the position of 15 deceased persons. Am I correct? 16 MR NTSEBEZA SC: Well, on our 17 presentation I believe that other bodies were dealt with by 18 Mr Chaskalson. 19 CHAIRPERSON: Yes. Yes, no, but what I'm 20 interested in, you see the witness says that in the 21 vicinity of the deceased, and we're busy with Mr Mdizeni, 22 there were also when the police arrived on the scene 23 injured persons or arrested persons in the vicinity. That 24 is particularly I take it the arrested persons. I don't 25 know whether injured persons had to have blue cable ties</p>
<p style="text-align: right;">Page 24480</p> <p>1 GENERAL NAIDOO: I see them, Chair. 2 CHAIRPERSON: Have you any comment to 3 make about those, or any explanation you wish to proffer in 4 relation to these cut, these blue cable ties? 5 GENERAL NAIDOO: Chair, I see one is cut. 6 The other two don't appear to have been used. As I 7 indicated that the NIU did execute arrests here and they 8 did secure prisoners, as to why they dropped and why they 9 had to cut a cable tie, I'm not sure. We can establish 10 that from the members that were executing the arrests. 11 MR NTSEBEZA SC: I didn't get that. You 12 said the NIU executed? 13 GENERAL NAIDOO: Chair, what I indicated 14 was that I have testified that there were approximately 15 three people arrested among, that were between body A and 16 body B, that were also lying down, but they were not 17 injured people. They had not been injured in the shooting 18 and – 19 MR NTSEBEZA SC: I just wanted to know 20 what phrase did you use? You said they did execute what? 21 GENERAL NAIDOO: Chair, I said when they 22 executed their arrests. 23 MR NTSEBEZA SC: Oh, I see. 24 GENERAL NAIDOO: The members – 25 MR NTSEBEZA SC: I would say in the</p>	<p style="text-align: right;">Page 24482</p> <p>1 around their wrists and so on, but what I'm asking you is 2 do we, is there any photograph, or sketch plan for that 3 matter, indicating these other people the witness is 4 referring to? 5 MR NTSEBEZA SC: Who were being arrested? 6 CHAIRPERSON: Ja, because he says that in 7 addition to the dead body of Mr Mdizeni at this spot there 8 were also in the vicinity people lying there who were 9 injured and/or arrested. Now – 10 MR NTSEBEZA SC: My juniors tell me that 11 we can go to MMM45, page 21. 12 CHAIRPERSON: Now the first thing to do 13 is you must tell us where is the dead body of Mr Mdizeni on 14 this exhibit. 15 MR NTSEBEZA SC: He's in the green ring. 16 CHAIRPERSON: The green ring? 17 MR NTSEBEZA SC: Yes. 18 GENERAL NAIDOO: That's right. 19 CHAIRPERSON: Alright. 20 MR NTSEBEZA SC: And Thelejane would be – 21 CHAIRPERSON: So maybe we can zoom in 22 there and near him, as appears from the sketch plan, there 23 was also the body of Mr Thelejane. 24 MR NTSEBEZA SC: No, I believe Mr 25 Thelejane would be to the right of the green ring, the</p>

<p style="text-align: right;">Page 24483</p> <p>1 white spot above –</p> <p>2 GENERAL NAIDOO: Yes.</p> <p>3 CHAIRPERSON: As appears from exhibit B,</p> <p>4 page 47, Mr Thelejane was reasonably close to Mr Mdizeni.</p> <p>5 The question is was anybody else lying in that area? It</p> <p>6 doesn't appear very clear from this photograph. There may</p> <p>7 be other photographs, or it may even be that some enhancing</p> <p>8 could be done to this photograph, but – or let's ask the</p> <p>9 witness. Major General, you say there were other bodies in</p> <p>10 the vicinity. Can you remember with any degree of</p> <p>11 precision what the situation was?</p> <p>12 GENERAL NAIDOO: Chair, I did not</p> <p>13 indicate any other bodies. What I indicated that bodies A</p> <p>14 and B were there and there were I think approximately three</p> <p>15 other people that were lying with, in between the body,</p> <p>16 especially body A. When we approached the body then we</p> <p>17 realised that they were not injured or shot in any way and</p> <p>18 those are the people that the NIU promptly arrested and</p> <p>19 secured, and I think that picture indicates that kind of</p> <p>20 activity there –</p> <p>21 MR NTSEBEZA SC: In the purple ring?</p> <p>22 GENERAL NAIDOO: In the green ring,</p> <p>23 Chair, because they were, the body and the three people</p> <p>24 that were arrested were in the same place –</p> <p>25 MR NTSEBEZA SC: Oh, I see. You are</p>	<p style="text-align: right;">Page 24485</p> <p>1 me that during the adjournment that we had, a comfort</p> <p>2 break, that we've established the sort of ground rules for</p> <p>3 this cross-examination. A good deal of what follows in</p> <p>4 your document is exactly as was the case with the previous</p> <p>5 witness. So I take it we can proceed quite swiftly now</p> <p>6 dealing with the other three. I take it you're finished</p> <p>7 with the first deceased.</p> <p>8 CROSS-EXAMINATION BY MR NTSEBEZA SC (CONTD.):</p> <p>9 Mr Chairman, there are just, as happens always with these</p> <p>10 things there are just a few loose ends that I would like to</p> <p>11 pursue. The first one is relevant to page 5 of this</p> <p>12 presentation, which corresponds to slide 242 of exhibit L.</p> <p>13 Now General, I just want to put it to you that</p> <p>14 there is no question from that inscription, unless of</p> <p>15 course you want to disown what is there, that what is the</p> <p>16 legend that says 1 is the first shooting incident on the</p> <p>17 eastern side, tells us when it occurred, and it</p> <p>18 emphatically says it's a depiction of members firing at</p> <p>19 armed protesters charging at them. Do you see that?</p> <p>20 GENERAL NAIDOO: I see the slide, Chair.</p> <p>21 MR NTSEBEZA SC: Yes, so that's why I was</p> <p>22 saying those arrows are not just indicative of the</p> <p>23 direction in which the NIU line was proceeding. In SAPS'</p> <p>24 own terms it's a depiction of NIU firing at mineworkers, or</p> <p>25 the protesters who were allegedly armed and charging at</p>
<p style="text-align: right;">Page 24484</p> <p>1 saying that those where we have indicated is body A, there</p> <p>2 also is an activity there which is illustrative of an</p> <p>3 arrest taking place?</p> <p>4 GENERAL NAIDOO: That's correct, Chair.</p> <p>5 MR NTSEBEZA SC: In much the same way as</p> <p>6 the purple ring seems to be exhibiting an activity of an</p> <p>7 arrest?</p> <p>8 GENERAL NAIDOO: That's correct, Chair.</p> <p>9 CHAIRPERSON: When it's convenient for</p> <p>10 you, Mr Ntsebeza, I propose taking the first comfort break,</p> <p>11 but I won't do it immediately unless it's convenient for</p> <p>12 you that I do so. You may wish to round this point off or</p> <p>13 shortly deal with another point before – shortly deal with</p> <p>14 another point – before we take the first comfort break.</p> <p>15 I'm in your hands.</p> <p>16 MR NTSEBEZA SC: We'll take the break</p> <p>17 now, Mr Chairman.</p> <p>18 CHAIRPERSON: [Microphone off, inaudible]</p> <p>19 MR NTSEBEZA SC: I gladly give you my</p> <p>20 hand.</p> <p>21 [COMMISSION ADJOURNS COMMISSION RESUMES]</p> <p>22 [10:46] CHAIRPERSON: The Commission resumes.</p> <p>23 Major General, you're still under oath.</p> <p>24 GANASEN NAIDOO: Still under oath, Chair.</p> <p>25 CHAIRPERSON: Mr Ntsebeza, it occurs to</p>	<p style="text-align: right;">Page 24486</p> <p>1 them. Do you see that?</p> <p>2 GENERAL NAIDOO: Chair, I'm not sure if</p> <p>3 it's an indication that the picture is displaying it or are</p> <p>4 we talking about the legend?</p> <p>5 MR NTSEBEZA SC: The only thing I'm</p> <p>6 saying, General, is that when I was putting a question to</p> <p>7 you regarding slide 5 of our presentation, which is a lift-</p> <p>8 off literally from exhibit L at slide 242, I was not coming</p> <p>9 with something new. I was putting to you what your own</p> <p>10 exhibit in this regard was conveying. Do you understand</p> <p>11 that?</p> <p>12 GENERAL NAIDOO: I understand that,</p> <p>13 Chair.</p> <p>14 MR NTSEBEZA SC: Yes, and slide 7 of our</p> <p>15 presentation relative to where the bodies are not only</p> <p>16 shows the NIU line, it also shows where the cartridges were</p> <p>17 found. You see that?</p> <p>18 GENERAL NAIDOO: I see that, Chair.</p> <p>19 MR NTSEBEZA SC: And that's the distance</p> <p>20 that I indicated. So it seems to me, and I would argue</p> <p>21 this if needed, that the rifle cartridges found where they</p> <p>22 are, are indicative of where the NIU line was as they were</p> <p>23 firing at where the bodies were found. Do you disagree</p> <p>24 with that?</p> <p>25 GENERAL NAIDOO: Chair, I think I just</p>

<p style="text-align: right;">Page 24487</p> <p>1 need a repeat on that so that I can understand it.</p> <p>2 MR NTSEBEZA SC: I didn't realise that</p> <p>3 you wanted me to repeat the question. What I was putting</p> <p>4 to you is that the position of the rifle cartridges on page</p> <p>5 7 of our presentation, which is up on the screen, I would</p> <p>6 argue reflects where those who were shooting at the persons</p> <p>7 who now turn out to be bodies A and B were at the time that</p> <p>8 they were shooting, in other words there's a correlation</p> <p>9 between slide 5 and slide 7 insofar as they depict a</p> <p>10 shooting exercise.</p> <p>11 GENERAL NAIDOO: Chair, I think there's</p> <p>12 two comments on that. First one is the location of the</p> <p>13 rifle cartridges is not an indication of where the shottist</p> <p>14 stood. I think you'll have to take into consideration that</p> <p>15 ejection pattern of a rifle, etcetera, so it's an</p> <p>16 indication where the shells are, I agree –</p> <p>17 CHAIRPERSON: There is evidence actually</p> <p>18 from one of the witnesses who's called by the police</p> <p>19 earlier on as to the maximum distance that a –</p> <p>20 GENERAL NAIDOO: That's right.</p> <p>21 CHAIRPERSON: - a cartridge case can</p> <p>22 travel after a shot's been fired. So the mere position of</p> <p>23 the cartridge case isn't enough. You've got to also read</p> <p>24 that with the evidence that was given about the maximum</p> <p>25 distance it can travel.</p>	<p style="text-align: right;">Page 24489</p> <p>1 looks like – and this is something you can comment from</p> <p>2 your factual knowledge – the nearest people who were firing</p> <p>3 towards A and B at the relevant time were the NIU people.</p> <p>4 Is that correct?</p> <p>5 GENERAL NAIDOO: They did fire, yes.</p> <p>6 CHAIRPERSON: Ja, so if the fatal shot</p> <p>7 came from a southerly direction then it would have been</p> <p>8 fired from even further away.</p> <p>9 GENERAL NAIDOO: That's correct, Chair.</p> <p>10 MR NTSEBEZA SC: Thanks for that, Mr</p> <p>11 Chair, and thanks for that, General. The other thing just</p> <p>12 relevant to what your testimony was with respect to the</p> <p>13 exercises of arrests as the police, you remember that you</p> <p>14 said the slide showing the green ring as well as the purple</p> <p>15 ring were indicative of being arrested. Now we know from</p> <p>16 the evidence of Captain Mohlaki who testified on day 7,</p> <p>17 T706, lines 1 to 6, that there were no traditional weapons</p> <p>18 found near body A, or body B for that matter. If we could</p> <p>19 just go there, just to verify. Day 7, page –</p> <p>20 CHAIRPERSON: This is the legend on your</p> <p>21 slide 10, day 7, page 706, lines 1 to 6. He was asked, I</p> <p>22 take it by Mr Madlanga, "Captain, did you find any</p> <p>23 traditional weapons close to bodies A and B, and perhaps</p> <p>24 because close to may be a relative term, say within four</p> <p>25 metres of the spot where you found them, were there any</p>
<p style="text-align: right;">Page 24488</p> <p>1 GENERAL NAIDOO: That's correct, Chair.</p> <p>2 Secondly, second comment is I'm not sure if these cartridge</p> <p>3 cases are an indication of how, the firearms that, from</p> <p>4 where these cartridge cases were ejected, were the actual</p> <p>5 firearms that resulted in the shooting of A and B. I'm not</p> <p>6 sure. What I can concur is that there is an indication of</p> <p>7 where cartridge cases lie and where A and B lie. The other</p> <p>8 evidence I don't think I'm in a position to draw any</p> <p>9 inference from that.</p> <p>10 CHAIRPERSON: Yes, well again this would</p> <p>11 be a matter really for argument. You're only helping us</p> <p>12 with such factual inputs as you can.</p> <p>13 GENERAL NAIDOO: That's right.</p> <p>14 CHAIRPERSON: If of course it's correct –</p> <p>15 I stress the conditionality of the statement – if it's</p> <p>16 correct that he was shot from right to left and he was</p> <p>17 facing effectively in an easterly direction, which I take</p> <p>18 it is the contention, then of course the shot that struck</p> <p>19 him wouldn't have been fired from the NIU line at all. On</p> <p>20 the basis of which the question is put it would have been</p> <p>21 fired from somewhere on the left of the photograph, which</p> <p>22 effectively would be from the south, because that of course</p> <p>23 makes it worse for the police in a way because it seems</p> <p>24 clear prima facie that whoever was shooting, firing from</p> <p>25 the south was even further away. So the nearest people it</p>	<p style="text-align: right;">Page 24490</p> <p>1 traditional weapons?" Captain Mohlaki said, "No, body A</p> <p>2 and body B, there was no close traditional weapons that</p> <p>3 were found by myself."</p> <p>4 MR NTSEBEZA SC: Yes. So even if we</p> <p>5 accept that that was the evidence of the arrests that were</p> <p>6 taking place, I think the point we make here is that there</p> <p>7 were no traditional weapons found there and it will be our</p> <p>8 argument that it will be unlikely that Mdizeni was shot,</p> <p>9 incapacitated, and eventually died as he was charging at</p> <p>10 the police, the NIU line that was approaching and was</p> <p>11 shooting back. You may or may not want to make a comment</p> <p>12 on that, General.</p> <p>13 GENERAL NAIDOO: Chair, as I've indicated</p> <p>14 I arrived at the scene after the shooting had already</p> <p>15 occurred and I think with the issue of the weapons the</p> <p>16 various members of the NIU that secured and removed the</p> <p>17 prisoners, we can ascertain from them what exactly occurred</p> <p>18 to them. But other than that I would not be able to</p> <p>19 comment on that proposition.</p> <p>20 MR NTSEBEZA SC: You would not –</p> <p>21 CHAIRPERSON: Could I interrupt you for a</p> <p>22 moment? When you arrived at the scene where the body of</p> <p>23 the late Mr Mdizeni was found -</p> <p>24 GENERAL NAIDOO: Yes.</p> <p>25 CHAIRPERSON: - had the K9 people already</p>

<p style="text-align: right;">Page 24491</p> <p>1 fired in the direction of koppie 3 from the south? 2 GENERAL NAIDOO: Chair, I'm not sure. As 3 I said, I left before that. Do remember hearing some 4 gunfire. At exactly which direction and who I could not 5 see because remember when I arrived I had then left them in 6 the vehicle and I went around to the NIU. By then the 7 shooting, or this particular incident had already occurred 8 when I arrived by then. 9 CHAIRPERSON: [Microphone off, inaudible] 10 is really by the time you saw the dead body of the late Mr 11 Mdizeni, what time was that roughly? 12 GENERAL NAIDOO: Chair, I would not be 13 able to give you the time exactly. It was – 14 CHAIRPERSON: Quite a lot of things have 15 happened by then, I take it. 16 GENERAL NAIDOO: Yes, I stopped the 17 vehicle. We ascertained that there were, the NIU was on 18 the right and then I moved towards the NIU on the right. 19 So the time I would not be able to give you with certainty. 20 CHAIRPERSON: You see, the reason I ask 21 you the question is if one looks at exhibit L, which as I 22 said earlier to some extent can be regarded as an admission 23 by the police, you've been referred to 242, slide 242. 24 GENERAL NAIDOO: Yes. 25 CHAIRPERSON: But if one looks at slide</p>	<p style="text-align: right;">Page 24493</p> <p>1 GENERAL NAIDOO: That's right. 2 CHAIRPERSON: Now how many shots were 3 fired from the south-eastern side a minute – according to 4 the times given in exhibit L, how many shots were fired in 5 the incident that you were involved in? 6 GENERAL NAIDOO: Chair, I fired two shots 7 and I'm not sure, the members from the NIU, they were using 8 an R5, I'm not specifically sure how much. 9 CHAIRPERSON: You understand the point 10 I'm getting at? Were shots fired in other words from the 11 south or the southeast in the direction of the position 12 where body A, the body of Mr Mdizeni was found before you 13 got to the spot where the dead body was? 14 GENERAL NAIDOO: Chair, as I indicated, I 15 won't be able to specifically say, no. 16 CHAIRPERSON: You can't. It's a 17 possibility which you can't exclude. On the other hand you 18 can't put it stronger than that. That's correct? 19 GENERAL NAIDOO: No, I can't. 20 CHAIRPERSON: Alright, thank you. 21 MR NTSEBEZA SC: Thank you, Mr Chairman. 22 What Mr Chairman of course is referring to is what we deal 23 with in our slide, I mean in our presentation, slides 16 to 24 18. We'll come to that when we deal with Mr Thelejane, or 25 Xalabile – no, Xalabile. So we will deal with that when we</p>
<p style="text-align: right;">Page 24492</p> <p>1 244 – sorry, I want to make another point. Slide 242 2 according to exhibit L took place at 16:12. Now we haven't 3 got Mr Chaskalson here to tell us where that fits in on the 4 agreed timeline, but I assume for the purposes of what I'm 5 going to ask you, that that's more or less right. But the 6 lack of materiality of any possible difference will become 7 clear in a moment. 8 If you look at slide 244, that refers to an 9 incident which according to exhibit L took place at 16:13. 10 So it's a minute after the incident on 242. So it doesn't 11 matter where it fits in on the timeline. What is there 12 said is that members fired at an armed protesters charging 13 at them in the bushes, and this is on the south-eastern 14 side, and there one sees where shots and so on were fired. 15 This is the south-eastern side. The NIU are depicted as 16 being on the eastern side and on the south-eastern side 17 there's a line and a red circle and arrow. So it appears, 18 if I'm reading 244 correctly, that shots were fired about a 19 minute after the NIU fired from the south-eastern side. Am 20 I interpreting it correctly? 21 GENERAL NAIDOO: Chair, without getting 22 into the time or, that is indicated there, the second 23 incident on 244 that's indicated on the left, that would 24 appear the incident that I was involved in. 25 CHAIRPERSON: Yes, yes.</p>	<p style="text-align: right;">Page 24494</p> <p>1 deal with the relevant person who died. Just to round off 2 on Mdizeni, on page 10 of our presentation we see that he 3 has his right hand behind his back in a kind of fashion you 4 would expect a person who had been handcuffed would be 5 having their hands at their back. You see the position of 6 his right hand behind his back? 7 GENERAL NAIDOO: Chair, I see that. 8 MR NTSEBEZA SC: And there is this blue 9 tag, cable tie just around there. 10 [11:05] GENERAL NAIDOO: I see. 11 MR NTSEBEZA SC: Just around there. 12 GENERAL NAIDOO: I see two cable ties, 13 Chair. 14 MR NTSEBEZA SC: Now I take it that in 15 terms of your other evidence you did go up those rocks. 16 Can we have page 8 on the screen? Now it seems to me from 17 what I understand to have been part of your evidence at 18 some stage you did go up that rock face. 19 GENERAL NAIDOO: That's correct, Chair. 20 MR NTSEBEZA SC: And the only dispute 21 would be whether you were closer to the person who is at 22 the top of that rock formation, or whether you were 23 slightly below. 24 GENERAL NAIDOO: The exact position, 25 Chair, yes.</p>

<p style="text-align: right;">Page 24495</p> <p>1 MR NTSEBEZA SC: Where do you put 2 yourself? Do you put yourself closer to the person who is 3 at the extreme left or just below him? 4 GENERAL NAIDOO: Chair, from this angle – 5 MR NTSEBEZA SC: Where? 6 GENERAL NAIDOO: From this angle it would 7 be difficult to give that indication. I was climbing a 8 little more to the left of this particular place, as far as 9 I could remember. So we already went through this, the 10 exact location would be difficult from this angle. 11 MR NTSEBEZA SC: So you – or let me just 12 ask the question directly. Did you see body A as you were 13 going up? 14 GENERAL NAIDOO: Chair, we had already 15 passed this place. I indicated the NIU were busy, that 16 some of the NIU members were busy arresting those people 17 that were not injured or killed, yes. 18 MR NTSEBEZA SC: So what is the reply? 19 Did you see body A as you were going up? 20 GENERAL NAIDOO: Chair, we see, I saw 21 both the bodies plus the people that were arrested. It was 22 the same line that I was part of that were busy detaining 23 the people that were arrested here. 24 MR NTSEBEZA SC: Did he have his hands 25 manacled behind his back when you saw him?</p>	<p style="text-align: right;">Page 24497</p> <p>1 to the end if we are direct to direct questions. So when 2 you observed the body of Mr Mdizeni – 3 GENERAL NAIDOO: Yes, Chair. 4 MR NTSEBEZA SC: - did you see these 5 cable ties strewn around in the way in which they are in 6 the photograph? 7 GENERAL NAIDOO: No, Chair. 8 MR NTSEBEZA SC: So you don't know why 9 they are there now, or when Mr Mohlaki took the 10 photographs? 11 GENERAL NAIDOO: Chair, that's why I 12 indicate that some of the members that were in the NIU line 13 proceeded to execute arrests. At the time when I left them 14 they were busy arresting and securing the prisoners, so my 15 indication earlier that the NIU was using cable ties came 16 from that. 17 MR NTSEBEZA SC: Is it your – 18 CHAIRPERSON: I find it rather puzzling – 19 I'm sorry to interrupt you, Mr Ntsebeza. I'm sure you'll 20 forgive me. I find it rather puzzling that there are two 21 cable ties, whatever the correct expression is of the 22 police, being close to the body, one as Mr Ntsebeza pointed 23 out earlier on round about behind the knee, it looks like, 24 of Mr Mdizeni, and one on the ground near him, a short 25 distance from his right shoulder. Can you give us any</p>
<p style="text-align: right;">Page 24496</p> <p>1 GENERAL NAIDOO: Who, Chair? 2 MR NTSEBEZA SC: Body A. 3 GENERAL NAIDOO: Chair, none of the – 4 MR NTSEBEZA SC: Or just call them by 5 their names, really, not these numbers. Mr Mdizeni. 6 GENERAL NAIDOO: None of the people when 7 we arrived there were manacled. As I indicated, we, when I 8 approached there I thought that all the people that were 9 lying there had been shot, but then we discovered it was 10 only two people that were shot, the others were not shot. 11 So some of the NIU members proceeded with arresting and 12 moving the people off the scene and the rest of us started 13 climbing the rock. 14 MR NTSEBEZA SC: So when you say "we 15 discovered," I take it that you pause there to look at the 16 body? 17 GENERAL NAIDOO: That's correct, Chair, 18 somebody ascertained that the person had been killed. One 19 of the members did check. 20 MR NTSEBEZA SC: General, I don't 21 understand that response. I am proceeding on the basis of 22 when you say "we," you were part of it. I'm asking you now 23 because you are the one who is on the stand. 24 GENERAL NAIDOO: Yes, Chair. 25 MR NTSEBEZA SC: Yes, we'll get quicker</p>	<p style="text-align: right;">Page 24498</p> <p>1 explanation - I mean you were there; can you give us any 2 explanation of how that happened? 3 GENERAL NAIDOO: Chair, he – 4 CHAIRPERSON: The suggestion is by Mr 5 Ntsebeza that the indications are that - they refer to his 6 right hand - that either his right hand was, and presumably 7 his right arm and his left arm were tied together, which of 8 course is not what we see, or possibly some attempt was 9 made to do that and it was then realised that he was dead, 10 but I mean, but we're in the realm of speculation, I 11 understand, but can you from your actual knowledge of what 12 was happening perhaps help us to understand what these two 13 cable ties are doing there? 14 GENERAL NAIDOO: Chair, there's three 15 cable ties on page 9 that can be seen. 16 CHAIRPERSON: I'm sorry, I was looking on 17 page 10. 18 GENERAL NAIDOO: Okay. 19 CHAIRPERSON: But you're right, we looked 20 at that earlier. There are actually, there are three. The 21 third one is the one on the other side of that rock - 22 GENERAL NAIDOO: That's correct. 23 CHAIRPERSON: - near the left-hand side 24 of slide 9. 25 GENERAL NAIDOO: Yes, so in terms –</p>

<p style="text-align: right;">Page 24499</p> <p>1 CHAIRPERSON: But closer to the body are 2 the two we see on 10, the one actually on the body, it 3 looks like more or less behind the knee. One can't see so 4 clearly from 9 that this extends both from behind the left 5 knee, that it extends from behind the left knee to behind 6 the right knee, and then there's one on the ground near the 7 right shoulder. But anyway, now that we know what they 8 are, can you help us to understand what they're doing 9 there? 10 GENERAL NAIDOO: Chair – 11 MR NTSEBEZA SC: Chair, can I just ride 12 on that question and say do you also observe that these 13 cable ties have been cut? 14 GENERAL NAIDOO: Only one. 15 MR NTSEBEZA SC: Whatever the number – 16 CHAIRPERSON: That's in the legend. You 17 see the second sentence the legend in slide 9 says, "The 18 scene is littered with blue cable ties." We debated 19 whether it was littered; there were three. Then the next 20 sentence however says, "The ties had been used and then 21 cut," and then they go on to raise another point I'm not 22 concerned with at the moment, but what are they doing 23 there? Here's a dead body. Why does someone firstly drop 24 a cut cable tie on the body, on the legs, and why is 25 another one dropped near the right shoulder? If you don't</p>	<p style="text-align: right;">Page 24501</p> <p>1 specifically ask the members that were executing the 2 arrests there. I did not see them cutting a cable tie, 3 etcetera. 4 MR NTSEBEZA SC: Can you look at page 10 5 of that presentation, and zoom in – well, I think it's, 6 zoom on that cable tie and the one next to the head. That 7 cable tie has been cut. You - 8 GENERAL NAIDOO: I can't see it from 9 here. 10 CHAIRPERSON: What we're now looking at 11 is the one – 12 MR NTSEBEZA SC: That's on page 10. 13 CHAIRPERSON: - is on page 10 – 14 MR NTSEBEZA SC: It's the one near – 15 CHAIRPERSON: It's the one – 16 MR NTSEBEZA SC: - closest to his head. 17 CHAIRPERSON: - close to the right, on 18 the ground, close to the right shoulder of Mr Mdizeni. But 19 while I'm talking, may I correct something I said earlier? 20 I said that my impression was from slide 10 that the cable 21 tie on the body of the deceased, Mr Mdizeni, was behind 22 both his left and his right knee. I think that's 23 incorrect. If one looks closely at slide 10 it appears 24 above the back of his left knee and I think it goes down 25 into the space between -</p>
<p style="text-align: right;">Page 24500</p> <p>1 know then obviously you must tell us – 2 GENERAL NAIDOO: Okay, Chair – 3 CHAIRPERSON: - but can you throw some 4 light on that? 5 GENERAL NAIDOO: Two things; I think you 6 agree that we are speculating because we don't know all the 7 facts. I indicated that it was about three people that 8 were lying with the body and they were being arrested by 9 the NIU. As to, there's, as far as I could see in the 10 picture there's one cut cable tie and the other two appear 11 to be just open, unused cable ties. 12 CHAIRPERSON: Alright, so which is the 13 cut one? 14 GENERAL NAIDOO: The one that lies close 15 to, or on the leg of the deceased. 16 CHAIRPERSON: Now the question is what is 17 a cut cable – can you help us - if you can't obviously – 18 GENERAL NAIDOO: No – 19 CHAIRPERSON: I don't want you to 20 speculate. I want you to tell us based on your knowledge 21 of what happened when you were there. Can you help us to 22 understand what a cut cable tie is doing on the dead body 23 of someone who's been shot? 24 GENERAL NAIDOO: Chair, that, as I 25 indicated earlier in my testimony, we would have to</p>	<p style="text-align: right;">Page 24502</p> <p>1 GENERAL NAIDOO: Between his legs. 2 CHAIRPERSON: - between his two legs. 3 GENERAL NAIDOO: Yes. 4 CHAIRPERSON: And certainly that appears 5 to be clearer if one looks at slide 9. So there's a 6 possibility of a misleading impression from slide 10, but I 7 think if you look at slide 10 in conjunction with 9 it 8 becomes clear what the position was. I don't think 9 anything turns on the point. The point is still what is a 10 cut tie doing on a dead body, but if you can't from your 11 own knowledge tell us, I think you said you can't – 12 GENERAL NAIDOO: No, I can't. 13 CHAIRPERSON: - we'd have to ask the NIU 14 people. 15 GENERAL NAIDOO: Chair, yes, and the 16 other – 17 CHAIRPERSON: It seems a mystery – 18 GENERAL NAIDOO: Yes. 19 CHAIRPERSON: - but it may, we may never 20 resolve it. 21 GENERAL NAIDOO: Yes, Chair, the other 22 aspect that was raised about the position of the deceased's 23 right hand, as you could see in slide 9 his left hand is 24 lying flat, whereas his right hand in slide 9 and 10 25 appears to be backwards. If you look, the reason that I</p>

<p style="text-align: right;">Page 24503</p> <p>1 could see from here is that, the existence of a rock that 2 had it not been there would probably result in his hand 3 also being flat. I think the rock, I'm – you asked me to 4 speculate, Chair, and I'm speculating.</p> <p>5 CHAIRPERSON: I didn't ask you to 6 speculate. I asked you to tell us on the basis of what you 7 saw when you were there, but nevertheless, it may be 8 speculation but it sounds like good speculation if one 9 looks at the picture. His right arm is being held up 10 higher than ground level by the rock.</p> <p>11 GENERAL NAIDOO: That's so, Chair.</p> <p>12 CHAIRPERSON: Whereas there's no such 13 rocks that perform a similar function in relation to his 14 left hand and arm.</p> <p>15 GENERAL NAIDOO: Correct, Chair.</p> <p>16 CHAIRPERSON: I think that's the point, 17 isn't it? That's a matter not of speculation but 18 observation. Yes, Mr Ntsebeza, I'm sorry to have 19 interrupted you, but I hope I didn't interrupt the flow of 20 your cross-examination.</p> <p>21 MR NTSEBEZA SC: No, not at all, Mr 22 Chair. Now from the position of the body on slide 10 I 23 don't think – well, 9 and 10, I don't think there's an 24 argument that Mr Mdizeni is lying on his right cheek. I 25 just want to ascertain that we agree.</p>	<p style="text-align: right;">Page 24505</p> <p>1 MR NTSEBEZA SC: Yes, Mr Chairman, but 2 over and above that –</p> <p>3 CHAIRPERSON: Let's ask the witness –</p> <p>4 MR NTSEBEZA SC: I'm highlighting 4.3 for 5 what seems to be multiple abrasions all over his body, for 6 a person who on evidence of the forensic experts had his 7 spinal column shattered, one single shot. There has to be 8 an explanation of where these abrasions came from.</p> <p>9 CHAIRPERSON: I take the witness – can 10 you give us an explanation without speculating?</p> <p>11 GENERAL NAIDOO: Chair, no, I'm still 12 trying to find that report.</p> <p>13 CHAIRPERSON: Well, it's on the screen. 14 I mean if you need it, Adv Hemraj will give you her copy, 15 provided you give it back. But when you've looked at it 16 I'll ask you a question. Now the question is are you able 17 to explain two things, the abrasion on the left cheek, 18 regard being had to the fact that he's lying on his right 19 cheek, and then one can then ignore the small irregularly 20 shaped abrasions on the right cheek near the upper and 21 lower lips, the sternomastoid muscle, but there are also 22 abrasions along the right posterior waistline, on the left 23 elbow, left knee, in the middle of the left shin, and 24 behind the right ear. Those are the ones that Mr Ntsebeza 25 is interested in. Are you able to explain them without</p>
<p style="text-align: right;">Page 24504</p> <p>1 GENERAL NAIDOO: That's correct, Chair.</p> <p>2 MR NTSEBEZA SC: Now my only puzzle – or 3 put it this way; there seems to be a post mortem report, 4 paragraph 4.2, that records an irregular abrasion on the 5 left cheek. It's exhibit A66(a).</p> <p>6 CHAIRPERSON: Para 4.2.</p> <p>7 MR NTSEBEZA SC: There is a four 8 centimetre by four centimetre irregular shaped abrasion on 9 the left cheek and if you read that with 4.3 there are 10 multiple small irregularly shaped abrasions on the 11 following areas, the right cheek just above the jaw line, 12 the right side of upper and lower lips, in middle of skin 13 area of right sternomastoid muscle, wherever that is, 14 horizontally along the right posterior waistline where 15 there is a belt imprint, left elbow, left knee, and middle 16 of left shin and behind right ear. Do you see that? 17 You've got the reference. It's on the board. Well, I 18 belong to the old school, I talk about board still. It's 19 on the screen. You see that?</p> <p>20 CHAIRPERSON: I take it 4.3 describes, as 21 it says, describes the right cheek, and then it's depicted 22 on the basis, he's lying on his right cheek in the 23 photograph. The one that interests you is 4.2 which is the 24 abrasion on the left cheek, how it got there, but I take it 25 the position does not make any –</p>	<p style="text-align: right;">Page 24506</p> <p>1 speculating, in other words have you got some facts at your 2 disposal, based on the fact that you were there, which 3 helps us to understand that, or is this something that 4 maybe we must ask the NIU people who were present to help 5 us with?</p> <p>6 GENERAL NAIDOO: Chair, no, as I said I 7 don't recall these specific details.</p> <p>8 MR NTSEBEZA SC: Did you see anybody 9 being dragged along the rock cliff or falling down the rock 10 cliff whilst you were there?</p> <p>11 GENERAL NAIDOO: Chair, as I indicated, 12 when we got there the people were already lying at the base 13 of the cliff. There were approximately three people that 14 were either under or around the body, who were not injured 15 or killed, and they were being arrested. So that was the 16 thing that I saw.</p> <p>17 MR NTSEBEZA SC: Is that a no to the 18 answer asked?</p> <p>19 GENERAL NAIDOO: I did not see any 20 dragging of the body, no.</p> <p>21 MR NTSEBEZA SC: Yes.</p> <p>22 CHAIRPERSON: The question is a double 23 question, which I shouldn't have allowed but it's too late 24 now. Did you see anybody being dragged, or did you see 25 anyone falling down the cliff? The second part was the</p>

<p style="text-align: right;">Page 24507</p> <p>1 falling down a cliff. The answer to that I take it is also 2 no. 3 GENERAL NAIDOO: Chair, I indicated when 4 I arrived that they were already down at the base of the 5 cliff. 6 CHAIRPERSON: Alright. 7 [11:25] MR NTSEBEZA SC: Thank you, Mr Chairman. 8 Right, just so you should know, and you may want to comment 9 on that, the argument we'll make is that these facts, all 10 of them taken together, as we say in the slides, are 11 inconsistent with any suggestion that Mr Mdizeni was 12 charging at SAPS members when he was shot. You may want to 13 respond to that. 14 GENERAL NAIDOO: Chair, I think I've 15 already responded to that particular probability by 16 indicating that I was not there when the incident occurred. 17 So I would not be able to indicate anything about – 18 CHAIRPERSON: So the short answer really 19 is apart from speculating, which you're not allowed to do 20 and are not prepared to do, there's nothing you from your 21 own personal knowledge of what happened on the day that you 22 can add which helps us in that regard? 23 GENERAL NAIDOO: That's true, Chair. 24 CHAIRPERSON: Okay. 25 MR NTSEBEZA SC: Now if you turn to page</p>	<p style="text-align: right;">Page 24509</p> <p>1 MR NTSEBEZA SC: Yes, Mr Chair, let me 2 just – 3 CHAIRPERSON: I think if I can interfere 4 with your cross-examination, it seems to me it might help, 5 and we'll have to be told probably what the DR-number was, 6 but I take it that those assisting you will be able to give 7 us that. I'm told it's 566. 8 MR SEMENYA SC: Chair, may I ask really 9 all this line of questioning, how is this witness ever 10 going to help us – 11 CHAIRPERSON: Mr Semenya, I think I've 12 indicated broad sympathy with the point that you're making 13 and I've said that all that really – the witness can't 14 speculate. The only question is whether the witness, 15 because he was on the scene at or near the relevant time, 16 whether there are any factual inputs that he can give us 17 that will be relevant in regard to the argument which is 18 set out in the legend on the relevant pages. Beyond that 19 he can't go. I think that's already been accepted. This 20 is why I told Mr Ntsebeza that I thought that in the case 21 of bodies B, M and O we would be much shorter than we were 22 previously because the ground rules as it were have been 23 set, and I have been trying to see to it those ground rules 24 are adhered to. But perhaps you can help me if there are 25 problems in –</p>
<p style="text-align: right;">Page 24508</p> <p>1 12 of our presentation, and as you look at page 12 you 2 should have one finger at page 7 to orientate yourself 3 relative to the positions of bodies A and B, Mr Mdizeni and 4 Mr Thelejane. So if you had page 7 and page 12 together. 5 Now Mr Thelejane in terms of the post mortem report was 6 shot not once, but twice in the back of the head, shot with 7 a high velocity gun to the back of his head on the right 8 side, two centimetres above his right ear, and you'll get 9 that at paragraph 4.1. The exit wound for this shot was on 10 the left side of the back of his head. That would be in 11 terms of paragraph 4.2. He was then shot in the left side 12 of his head above and behind his left ear, paragraph 4.3. 13 Now – 14 CHAIRPERSON: Mr Ntsebeza, before we 15 carry on, there's another wound of course as well which was 16 also on the head, but should we not look at exhibit FFF20 17 in relation to this, that we've looked at before in 18 relation to this – 19 MR NTSEBEZA SC: Mr Thelejane. 20 CHAIRPERSON: - Mr Thelejane to see what 21 the pathologists tell us about how long after he sustained 22 his wounds did he live and could he have moved, and all 23 that kind of thing. Those questions are probably 24 necessary, or rather the answers are necessary before you 25 proceed.</p>	<p style="text-align: right;">Page 24510</p> <p>1 MR SEMENYA SC: And on top, Chair, the 2 witness tells us by the time he got there the individuals 3 had sustained the fatal injuries. So what can he tell us 4 more than that? 5 CHAIRPERSON: Well, I think to be fair, 6 let Mr Ntsebeza put his question – or rather not put his 7 question, say what he's going to argue and let's give the 8 witness an opportunity to say I have no comment that I can 9 make, which is what you suggest he may well say, or to say 10 well yes, there is a comment I can make that you're 11 overlooking something which has a bearing. So I mean 12 theoretically such comments may help you, and we're here to 13 get the truth. So let's see if we can do that. But do we 14 have the answer to the question I raised, Mr Ntsebeza? 15 It's not visible on the screen. 16 MR NTSEBEZA SC: I have FFF20. I'm told 17 it's page 14. 18 CHAIRPERSON: Perhaps we could have page 19 14 on the screen, and I'm told it's 566, is the number of 20 this particular – 21 MR NTSEBEZA SC: Yes. 22 CHAIRPERSON: - DR report. 23 MR NTSEBEZA SC: That will be item number 24 2, and you'll see PM number – 25 CHAIRPERSON: It says "Rapid death, not</p>

<p style="text-align: right;">Page 24511</p> <p>1 immediately unconscious, but incapacitation likely due to 2 high velocity head and pelvic injury." That's what is 3 recorded there. So – 4 MR NTSEBEZA SC: And you will – 5 CHAIRPERSON: - shot also from right to 6 left, as in the case of the other one we're dealing with, 7 which might have a bearing on the direction from which it 8 was fired. It might not have been the NIU people, 9 depending which way he was facing at the time, and of 10 course you might be on weaker ground here anyway because he 11 wasn't immediately unconscious, although it is suggested 12 that incapacitation was likely. But anyway, those are the 13 basic facts. Now put the relevant passage of the legend in 14 your exhibit which will indicate your argument that you're 15 going to advance at the end, and let's see whether the 16 witness has got any comments based on his factual 17 knowledge, and depending on that answer we can proceed with 18 what he says, alternatively go to the next deceased. 19 MR NTSEBEZA SC: Indeed, Mr Chairman. 20 Now on FFF20 on the relevant, what is there, I think there 21 is a reconciled finding of all the pathologists that the 22 cause of death was a gunshot wound of the head, high 23 velocity. Of course they do record that there was a wound 24 to the right buttock, but that does not seem to have 25 influenced their decision, and if we look under column 11,</p>	<p style="text-align: right;">Page 24513</p> <p>1 which I'm not going to allow you to do and I think you're 2 reluctant to do anyway, there's nothing of a factual nature 3 which you can contribute to this debate which will help us 4 to draw the right inference at the end of the day. Am I 5 correct in summarising that? 6 GENERAL NAIDOO: Chair, other than 7 indicating that the body was lying when I arrived there, 8 no, nothing. 9 MR NTSEBEZA SC: Now if we went to page 10 12 of our presentation, and if we looked at where his body 11 is lying relative to the rock, it seems to me it is, you 12 would conclude that it is facing towards the rock 13 formation. Would you disagree with that? 14 GENERAL NAIDOO: Chair, if we go to slide 15 7, which I think is a much clearer indication if it's seen 16 in conjunction with slide 12, it's a clear indication that 17 it's lying diagonally to the large rock in, directly behind 18 the smaller rocks that we can see in slide 7, just for 19 orientation purpose. 20 MR NTSEBEZA SC: And the body had on 21 pages 12 and 13 – or let's stick with 12. You see where 22 the NIU would be horizontal to the body to the left, out of 23 the picture. That's the direction they would be coming 24 from. Would you disagree with that? 25 GENERAL NAIDOO: Chair, I don't</p>
<p style="text-align: right;">Page 24512</p> <p>1 the vertical column, "Concur with State pathology who 2 records a right buttock injury as high velocity gunshot 3 wound of pelvis," so that might be something to take into 4 account, given what they had said about a high velocity 5 gunshot wound to the pelvis with regard to incapacitation, 6 but they say that's aggravated by the fact that there was 7 this high velocity gunshot wound to the head. So we have 8 an incapacitation both in terms of gunshot wounds to the 9 head and to the pelvis. Now the direction of course is 10 from right to left in the ways in which they had described 11 it in detail. Now I don't know if you accepted this to be 12 a true reflection of the wounds that Mr Thelejane got from 13 being shot at. 14 GENERAL NAIDOO: Chair, I can't dispute 15 the pathologist report. I don't think I'm in a position to 16 do that, no. 17 MR NTSEBEZA SC: And on that basis we 18 will argue that on the basis of these wounds it would seem 19 to be inconceivable that Mr Thelejane was facing those who 20 were shooting at him. I don't know whether you want to 21 engage with that. 22 GENERAL NAIDOO: Chair, that's once again 23 as I was not present in terms of the actual incident, I do 24 not think I'm in a position to engage with that. 25 CHAIRPERSON: So short of speculating,</p>	<p style="text-align: right;">Page 24514</p> <p>1 understand that question. 2 MR NTSEBEZA SC: The approach by the NIU, 3 I put it to you, would be to the left, from the left in 4 relation to the body. 5 GENERAL NAIDOO: Chair, yes, if one also 6 uses the location of the rifle cartridge cases I think that 7 can be inferred that there was an approach from that 8 direction. 9 MR NTSEBEZA SC: Yes, and if you look at 10 pages 12 and pages 13 and pages 14 of our presentation, 11 certainly the body is lying in a direction away from the 12 advance of the NIU. Do you agree to that? 13 GENERAL NAIDOO: Chair, it would appear 14 so. 15 MR NTSEBEZA SC: Now of course the 16 Chairman will not allow you to speculate, neither will I 17 goad you in that direction – 18 CHAIRPERSON: I will allow you to put to 19 the witness what your argument will be at the end for the 20 purposes that we've dealt with previously, were there any 21 facts he can give us which will help us to draw the right 22 inferences. That I'll allow you to do. 23 MR NTSEBEZA SC: Thank you, Mr Chairman. 24 General, on the scenario that we have indicated relevant to 25 the position in which Mr Thelejane's body is lying, our</p>

<p style="text-align: right;">Page 24515</p> <p>1 argument will be that at its very least it appears as 2 though he was running away from the NIU rather than 3 charging towards them. You may want to make a comment 4 relevant thereto. 5 GENERAL NAIDOO: Chair, no comment on 6 that. 7 MR NTSEBEZA SC: And I will make the same 8 remark that I made relevant to body A, and that is Captain 9 Mohlaki in the testimony that was shown on the screen on 10 day 7, page 706, lines 1 to 6, there were no weapons, or to 11 use the words that were used, there were no traditional 12 weapons that were found by him near body B, which is the 13 body of Mr Thelejane. You can't gainsay that, can you? 14 GENERAL NAIDOO: I'm not in a position 15 to, Chair. 16 MR NTSEBEZA SC: Now I would like us to 17 turn to the page that puts you in the scene. Well, I don't 18 know if I did say this, but let me just make sure for the 19 sake of completeness, that all of the facts, and I'll say 20 objective facts that we have tried to canvass with you, 21 will be a basis for us arguing that they are inconsistent 22 with an allegation by SAPS that a group of mineworkers, or 23 protesters were charging at them when they met their fate – 24 CHAIRPERSON: You can't put it as strong 25 as that. You can, what you can say is your argument will</p>	<p style="text-align: right;">Page 24517</p> <p>1 the day must be drawn from the facts that he's assembled 2 and put before us? 3 [11:45] GENERAL NAIDOO: That is – 4 CHAIRPERSON: Would that be an accurate 5 summary of your evidence? 6 GENERAL NAIDOO: That's correct, Chair. 7 CHAIRPERSON: Alright, we'll now take the 8 tea adjournment and then we'll move on to the third 9 deceased, Mr Pato. 10 MR NTSEBEZA SC: Thank you, Mr Chairman. 11 [COMMISSION ADJOURNS COMMISSION RESUMES] 12 [12:17] CHAIRPERSON: The Commission resumes. 13 Major-General, you're still under oath. 14 GENERAL NAIDOO: Still under oath, Chair. 15 CHAIRPERSON: Mr Ntsebeza, I gather we're 16 now moving on to the third deceased, Mr Pato? 17 MR NTSEBEZA SC: Yes, Mr Chairman. 18 GENERAL NAIDOO: s.u.o. 19 CROSS-EXAMINATION BY MR NTSEBEZA SC (CONTD.): 20 Now, General, I would like us to look at, in exhibit L 21 slide 242, the first shooting incident. Do you see that? 22 GENERAL NAIDOO: I see that, Chair. 23 MR NTSEBEZA SC: Yes. The time has been 24 given there as having been approximately 16:12 and then if 25 you went to slide 244, the so-called second shooting</p>
<p style="text-align: right;">Page 24516</p> <p>1 be based on the facts we're looking at the moment, that the 2 two people with whom we are concerned, Mr Thelejane and Mr 3 Mdzizeni weren't part of any group – there may have been one 4 – weren't part of any charging group. That's the, surely 5 that's – 6 MR NTSEBEZA SC: Thanks for the 7 correction. I meant exactly that. 8 CHAIRPERSON: It must be right. May I 9 ask you then, put the question, put the proposition and see 10 whether the witness can comment on it. Then I think we can 11 take the tea adjournment, but I don't want to interrupt you 12 at a crucial stage of your cross-examination on this point, 13 so round it off first. 14 MR NTSEBEZA SC: In fact I was going to 15 go to the next slide, which is the slide that puts the 16 General on the scene and that will take us to exploring 17 with the General the deaths of Mr Pato and Mr Xalabile. I 18 think we could take the adjournment now. 19 CHAIRPERSON: Let's finish Mr Thelejane 20 then, get his – you were virtually finished. Is there any 21 comment you – the point has been put to you, am I correct 22 in summing up your evidence that there's nothing you can 23 add of a factual nature based on your observation at the 24 scene which could throw any light one way or the other on 25 the inference which Mr Ntsebeza will argue at the end of</p>	<p style="text-align: right;">Page 24518</p> <p>1 incident, the time is given as 16:13. Do you see that? 2 GENERAL NAIDOO: I see that, Chair. 3 MR NTSEBEZA SC: There is a one minute 4 time difference between the two shooting incidents. 5 Perhaps, and whilst we are at it, if we looked at exhibit L 6 slide 243. The second bullet is the one that talks to you 7 joining the NIU team, moving around the southern side of 8 the koppie towards the west. Now can I just get 9 clarification when or where do you join the NIU? If we 10 looked at, for instance, slide number 7, if you could look 11 at slide number 7 of our presentation. 12 GENERAL NAIDOO: Chair, yes. If we look 13 at – 14 MR NTSEBEZA SC: Do you see the NIU line? 15 GENERAL NAIDOO: That's correct, Chair. 16 MR NTSEBEZA SC: Is it there that you 17 joined the NIU? 18 GENERAL NAIDOO: Chair, I can't say 19 exactly. What I can say is I came from the left-hand side, 20 somewhere above the block that says "Rifle cartridges." I 21 came around that bush and the NIU were in position around 22 that area, yes. 23 COMMISSIONER HEMRAJ: Sorry, which rifle 24 cartridges are you referring to there? 25 GENERAL NAIDOO: BB37, BB41 on the left-</p>

<p style="text-align: right;">Page 24519</p> <p>1 hand side.</p> <p>2 MR NTSEBEZA SC: So you joined the NIU</p> <p>3 line there where the small bluish ring, you were in that</p> <p>4 area?</p> <p>5 GENERAL NAIDOO: Chair, at that stage</p> <p>6 they were not really a line, rather than they had taken up</p> <p>7 positions. It was not a straight line as indicated here.</p> <p>8 They had taken up various positions facing the direction of</p> <p>9 where bodies A and B were.</p> <p>10 MR NTSEBEZA SC: Yes. Now, Mr Chairman,</p> <p>11 if you could bear with me? Now I believe on slide 28 of</p> <p>12 our presentation, would that be more or less where you say</p> <p>13 you joined the NIU line because that's where your</p> <p>14 cartridges, which you referred to –</p> <p>15 GENERAL NAIDOO: Chair, it's possibly,</p> <p>16 yes. As I indicated, it was not really a line, members had</p> <p>17 taken up positions facing the rock, yes.</p> <p>18 MR NTSEBEZA SC: Now, do you see where it</p> <p>19 points to Mdizeni's body position?</p> <p>20 GENERAL NAIDOO: I see that, Chair.</p> <p>21 MR NTSEBEZA SC: And that is the,</p> <p>22 approximately 42 metre distance that we are agreed upon.</p> <p>23 Remember we talked about 41,9?</p> <p>24 GENERAL NAIDOO: Yes, Chair.</p> <p>25 MR NTSEBEZA SC: Metres, ja. And</p>	<p style="text-align: right;">Page 24521</p> <p>1 MR NTSEBEZA SC: What I'm saying is, you</p> <p>2 would have been with the NIU at the time that Mr Mdizeni</p> <p>3 fell.</p> <p>4 GENERAL NAIDOO: Chair, I don't think I</p> <p>5 testified to that effect. What I testified is when I</p> <p>6 joined the NIU in the approximate area indicated on this</p> <p>7 slide, I further indicated that I could see a number of</p> <p>8 bodies lying, including at the position where A was. That</p> <p>9 was what I testified.</p> <p>10 MR NTSEBEZA SC: Yes. So is that what</p> <p>11 you're saying when you say when you came and you saw Mr</p> <p>12 Mdizeni's body, it had already happened?</p> <p>13 GENERAL NAIDOO: That's correct, Chair.</p> <p>14 MR NTSEBEZA SC: Well, let's consider</p> <p>15 what you, what happened. If we went to slide number 16,</p> <p>16 it's the same slide that we showed when we were positioning</p> <p>17 you relevant to – it's the same slide as we find in exhibit</p> <p>18 L. Now in the sketch plan, if we can go back to the sketch</p> <p>19 plan, bodies – in other words Mr Pato and Mr Xalabile were</p> <p>20 killed on the south-western side of the koppie, do you</p> <p>21 agree on that?</p> <p>22 GENERAL NAIDOO: Chair, I think more on</p> <p>23 the southern side than south-western.</p> <p>24 MR NTSEBEZA SC: Yes. Now, would they</p> <p>25 have been then killed in the incident talked about in slide</p>
<p style="text-align: right;">Page 24520</p> <p>1 relative to that, Mdizeni's body would be to the right.</p> <p>2 GENERAL NAIDOO: That's correct, Chair.</p> <p>3 MR NTSEBEZA SC: Right. Now, we know</p> <p>4 that from the sketch plan, we know that slide, sketch plan,</p> <p>5 the distance between where Mdizeni's body was and where</p> <p>6 Thelejane's body was, what's the distance? It's about 21</p> <p>7 metres. Now the measurements on exhibit - what is that,</p> <p>8 exhibit B – exhibit B, there is a page there that says</p> <p>9 "Measurements" which measures the distances between body</p> <p>10 this and body that. Body O to body A, that distance is</p> <p>11 measured as 26,6 metres which, if we translated it onto</p> <p>12 slide 7, would be the distance between body A and body B.</p> <p>13 Can we get slide 7, please? So you would have come up from</p> <p>14 the small green, not green, bluish ring and is it your</p> <p>15 evidence that as you came up from there, the position of</p> <p>16 the small green ring, what happened at A, you didn't see</p> <p>17 or you have no facts to say what happened at A.</p> <p>18 GENERAL NAIDOO: That's correct, Chair.</p> <p>19 MR NTSEBEZA SC: That is, that would be</p> <p>20 whilst you were with the NIU?</p> <p>21 GENERAL NAIDOO: Chair, I'm not certain</p> <p>22 about the last comment.</p> <p>23 MR NTSEBEZA SC: Come again?</p> <p>24 GENERAL NAIDOO: I'm not sure what the</p> <p>25 last question was.</p>	<p style="text-align: right;">Page 24522</p> <p>1 16 of our presentation, which is the same slide as exhibit</p> <p>2 L slide 244?</p> <p>3 GENERAL NAIDOO: Chair –</p> <p>4 MR NTSEBEZA SC: And when you were with</p> <p>5 the NIU?</p> <p>6 GENERAL NAIDOO: Chair, that I would not</p> <p>7 be able to indicate. What I would be able to indicate is</p> <p>8 that that particular area was an area where shooting</p> <p>9 occurred from two sides, from the rock as well as from the</p> <p>10 southern side with the K9 members that were firing into</p> <p>11 that area as well.</p> <p>12 MR NTSEBEZA SC: Now according to slide</p> <p>13 L244 and 245, the incident occurred when members fired at</p> <p>14 an armed protester who charged at them in the bushes and</p> <p>15 fired at a protester on the high rocks who was armed with a</p> <p>16 firearm. You see that on slide 16, that is as I say, slide</p> <p>17 16 has been lifted literally from slide 243 of exhibit L.</p> <p>18 You can put up either side 16 or -. Would you agree with</p> <p>19 me that this probably is an account, in fact we'll submit</p> <p>20 this is an account of the incident in which Mr Xalabile and</p> <p>21 Mr Pato were killed.</p> <p>22 GENERAL NAIDOO: Chair, I would not be</p> <p>23 able to say specifically that, other than to indicate that</p> <p>24 the line that was progressing along somewhere going towards</p> <p>25 the rocks and there were NIU members that were also going</p>

<p style="text-align: right;">Page 24523</p> <p>1 through the bush, so when they indicate members that were 2 specifically in the bushy area, it was part of the line to 3 the left of where body A was found. There were members 4 that were sweeping the bush itself and there were other 5 members who were with me that, after we arrived at where 6 the bodies were, we proceeded to climb the rocks. So we're 7 talking about two separate groups of people and I'm sure 8 two separate incidents.</p> <p>9 MR NTSEBEZA SC: So you were not with the 10 people in the bush?</p> <p>11 GENERAL NAIDOO: Chair, no. I have 12 testified I was with the group of people that approached 13 the rocks and climbed up the rocks.</p> <p>14 MR NTSEBEZA SC: So to the extent that 15 243 might suggest that you were one of the people who were 16 clearing through the southern bushes –</p> <p>17 GENERAL NAIDOO: Chair –</p> <p>18 MR NTSEBEZA SC: It would not be correct.</p> <p>19 GENERAL NAIDOO: Chair, that's why I 20 indicate that, the possible little mixture of two incidents 21 but I was with the group that climbed the rock, not the 22 ones who went through the bush, yes.</p> <p>23 [12:37] MR NTSEBEZA SC: But slide 17, which is a 24 lift of slide 244 of exhibit L, depicts what we are saying 25 about two lines more or less, one from the eastern side,</p>	<p style="text-align: right;">Page 24525</p> <p>1 MR SEMENYA SC: Background evidence only, 2 Chair.</p> <p>3 COMMISSIONER HEMRAJ: Well, it does 4 appear to me –</p> <p>5 MR NTSEBEZA SC: Mr Chairman, it seems – 6 my comment in this regard does not pretend to be my own. 7 It simply is influenced by what the forensic or the post- 8 mortem reports say and on the basis that there is no 9 dispute about what they say. For instance it says that the 10 direction of wound A to B is a downwards and backwards 11 direction and that's what it will say in paragraph 4.7.</p> <p>12 COMMISSIONER HEMRAJ: There's a diagram 13 on page 6 of the post-mortem report, Mr Ntsebeza, which 14 shows the direction quite clearly.</p> <p>15 MR NTSEBEZA SC: So –</p> <p>16 CHAIRPERSON: You obviously can't give 17 evidence, Mr Ntsebeza, whether you have the expertise or 18 not is neither here nor there. You can't give evidence, 19 you can simply refer us to what is in the documents before 20 us. I make no finding on whether you have -</p> <p>21 MR NTSEBEZA SC: Exhibit A, what's the 22 page? Page 648(a), oh, a picture is more than a thousand 23 words. In that diagram he shows exactly what I was trying 24 to portray when my learned friend –</p> <p>25 CHAIRPERSON: I think, Mr Semanya, he</p>
<p style="text-align: right;">Page 24524</p> <p>1 one from the southern side.</p> <p>2 GENERAL NAIDOO: Chair, I think I've 3 testified that the terrain did not allow the line to 4 maintain its form. The terrain dictated how the line moved 5 forward and there were members that went to the north of 6 the large boulders, there were members that went straight 7 to the base of this cliff and climbed over the rocks and 8 there were members that swept the bush on the left on the 9 southern side. So the NIU line in its form was broken by 10 the terrain.</p> <p>11 MR NTSEBEZA SC: Now if we went to slide 12 21, now this is a photo of Mr Xalabile, you see that? Now, 13 we lifted from the post-mortem reports what we have 14 depicted in that photo. The wounds are described as being 15 high velocity entrance wounds to the left side of the 16 bottom of his neck and the exit wounds, two slit shaped 17 exit wounds on the right chest. It seems to me and I would 18 call for your comment in this regard, it seems to me that 19 it's the kind of bullet that would have travelled in a 20 downward trajectory.</p> <p>21 MR SEMENYA SC: Chair, I know Mr 22 Ntsebeza's talents. One of them is not forensic ballistic 23 expertise and I don't know what value could be –</p> <p>24 CHAIRPERSON: Are you giving evidence, Mr 25 Semanya?</p>	<p style="text-align: right;">Page 24526</p> <p>1 must be permitted to put what he put because it appears 2 from this diagram. Whether he has forensic expertise is 3 neither here nor there, he's covered by what's before us. 4 So you may proceed, Mr Ntsebeza, I hope with due expedition 5 and brevity.</p> <p>6 MR NTSEBEZA SC: Do you see – well, it's 7 on the screen – the doctors, and not I, say that was the 8 direction of the bullet. Do you see that?</p> <p>9 GENERAL NAIDOO: I see that, Chair.</p> <p>10 MR NTSEBEZA SC: And I will make the – if 11 on nothing else but on the strength of this diagram, I will 12 make the submission that Mr Xalabile was shot from above. 13 Do you agree?</p> <p>14 GENERAL NAIDOO: Chair, not necessarily. 15 I don't have the expertise in terms of ballistics but it 16 will depend on his position and the direction he was facing 17 the shooter, so –</p> <p>18 CHAIRPERSON: Again it's a question of 19 whether, conjecture and argument based on evidence which is 20 before us. The real point, as I indicated earlier, was 21 whether you've got any special facts that you can bring to 22 our attention based on your presence on the scene which 23 would enable us, if we have to make inferences from the 24 facts to which Mr Ntsebeza has referred, to come to the 25 correct inference.</p>

<p style="text-align: right;">Page 24527</p> <p>1 GENERAL NAIDOO: And I'm not in that 2 position, Chair.</p> <p>3 MR NTSEBEZA SC: Now whilst you were 4 there, just to explore what might be factual evidence, do 5 you recall if you saw any NIU member shooting at victims in 6 a downward direction, in other words where there victims 7 would be below where he or she was standing as he or she 8 was shooting?</p> <p>9 GENERAL NAIDOO: Chair, I would not be 10 able to say specifically that where body O was, but I think 11 I testified to the fact that there was an incident where 12 NIU members also used their firearms from the position I'd 13 indicated previously.</p> <p>14 MR NTSEBEZA SC: They would have been, 15 they would have been shooting from, at people below them 16 from above.</p> <p>17 GENERAL NAIDOO: There was a shottist in 18 the bush that fired at us, yes, and that's where he 19 returned fire.</p> <p>20 MR NTSEBEZA SC: I don't know if we are 21 talking the same, the same concept. Did you see any NIU 22 members who were shooting at protesters in a manner that 23 would support a bullet that enters the neck and exits at 24 the side of the chest as depicted in that diagram which 25 shows bullet wounds described in paragraph 4 of that</p>	<p style="text-align: right;">Page 24529</p> <p>1 to five metres away from Xalabile's body? Would that be a 2 fair distance?</p> <p>3 GENERAL NAIDOO: Chair, I won't be able 4 to estimate the distance from here.</p> <p>5 MR NTSEBEZA SC: Well, based on those 6 measurements that I talked to you about, the distance 7 between A and O is about 21 metres. Now, do you know if 8 you hit anyone when you shot?</p> <p>9 GENERAL NAIDOO: Chair, it was not 10 confirmed. As I indicated in my testimony, the members in 11 the bush that were also sweeping the area immediately 12 surrounded that area because of the fact that there was a 13 perpetrator with a firearm and they were not able to find 14 somebody at that location where the shooting occurred but 15 they did not report to me at that stage of any body or any 16 injured person.</p> <p>17 MR NTSEBEZA SC: So you don't know if you 18 either injured or killed anybody in the shooting that you 19 say you did?</p> <p>20 GENERAL NAIDOO: Chair, whether anybody 21 was injured, no, because as I indicated the location of the 22 shooter was immediately flanked by the NIU because of the 23 shooting incident and the shooter had already disappeared 24 further into the bush.</p> <p>25 MR NTSEBEZA SC: Now if we looked at</p>
<p style="text-align: right;">Page 24528</p> <p>1 report?</p> <p>2 GENERAL NAIDOO: Chair, as I indicated, 3 what I saw and what I know is that there were NIU members 4 who fired from the, what I referred to as the first plateau 5 on the rock at a person that was firing a pistol at us. 6 As to the angle and the trajectory, I don't think I'm in a 7 position to indicate that in relation to the question that 8 was asked.</p> <p>9 MR NTSEBEZA SC: If you would bear with 10 me, Mr Chairman. You yourself, you had a – what kind of 11 firearm did you have when you shot?</p> <p>12 GENERAL NAIDOO: A pistol, Chair.</p> <p>13 MR NTSEBEZA SC: A pistol. And where 14 were you standing when you started to shoot, on the rocks?</p> <p>15 GENERAL NAIDOO: Chair, I indicated the 16 position, I was just getting up on the rocks when this 17 incident occurred.</p> <p>18 MR NTSEBEZA SC: Relative to slide 7, can 19 you indicate where you were, between A and B, A and O?</p> <p>20 GENERAL NAIDOO: Chair, if we can see on 21 the right-hand side where body O was, there's a pathway up. 22 I was to the left, those rocks were in front of us.</p> <p>23 MR NTSEBEZA SC: Would that – where O is.</p> <p>24 GENERAL NAIDOO: Yes.</p> <p>25 MR NTSEBEZA SC: That's about what, four</p>	<p style="text-align: right;">Page 24530</p> <p>1 slide 30, or 3-0 of our presentation, now we – see where it 2 says "Rifle cartridge V1 to V3?"</p> <p>3 GENERAL NAIDOO: I see that, Chair.</p> <p>4 MR NTSEBEZA SC: Relative to all of that, 5 where would you have been?</p> <p>6 GENERAL NAIDOO: Chair, if I was facing 7 the photograph I would be a little to the right and the 8 three, two or three members were to my left.</p> <p>9 MR NTSEBEZA SC: Did you see Mr Xalabile 10 being shot?</p> <p>11 GENERAL NAIDOO: Chair, as I indicated I 12 did not see the specific incident. I said that there were 13 members that were firing from that position but I did not 14 see a specific individual being shot at that stage.</p> <p>15 MR NTSEBEZA SC: On this photograph would 16 it be possible for you to indicate where this someone who 17 was shooting from the bush, was shooting from?</p> <p>18 GENERAL NAIDOO: Chair, the angle is 19 difficult because I can't really get a view of the area 20 where we were shooting from, so it would be impossible but 21 it was, as I said, to the left. The exact location from 22 this photograph is not possible.</p> <p>23 MR NTSEBEZA SC: Relative to where 24 Xalabile's body is, would it have been to the left of where 25 his body was at the foot of the tree?</p>

<p style="text-align: right;">Page 24531</p> <p>1 GENERAL NAIDOO: As I've indicated, 2 Chair, I would not be able to specifically point because 3 the view is not the same. I would have a difficulty in 4 terms of the angle, so if I had a view from the other side 5 maybe I could indicate. 6 MR NTSEBEZA SC: You don't know of any 7 record that reflects whether there was a firearm found in 8 that vicinity? 9 GENERAL NAIDOO: Chair, all I know is 10 that there were two suspects arrested with firearms 11 somewhere there and a third suspect was arrested a further 12 in who had the firearm concealed in the leaves underneath 13 his body, yes. The suspects with the firearms were 14 arrested in this same bush. 15 MR NTSEBEZA SC: You see that the 16 cartridges are depicted as being, they are marked V, V1 to 17 V3 and U1 to U6 and these – is it possible that he was 18 fired, he was shot at by one of these bullets? 19 GENERAL NAIDOO: Chair, as I indicated, I 20 can testify that members of the NIU did fire from there but 21 as to whether it was possible that they had struck him, I 22 mean relative to where he was found, I am not sure. 23 MR NTSEBEZA SC: Now if we went to page 24 22 of our presentation, now that is Mr Xalabile's body, 25 never mind the legend but it's a photo of Mr Xalabile from</p>	<p style="text-align: right;">Page 24533</p> <p>1 be suggesting, General, that as he was dying he held both 2 his arms at the back of his body in that fashion as he was? 3 [12:57] GENERAL NAIDOO: Chair, I didn't make any 4 such suggestion. All I indicated is I can't make any 5 conclusion as proposed. That's all I indicated. 6 CHAIRPERSON: Before you put it to bed, 7 it's a possibility that his hands were tied behind his 8 back. It's also a possibility they weren't. 9 GENERAL NAIDOO: Exactly, Chair. 10 CHAIRPERSON: Yes. 11 MR NTSEBEZA SC: Would you raise one of 12 the possibilities as having him having fallen with his arms 13 in that position? 14 GENERAL NAIDOO: Chair, I have not made 15 any proposal in that regard. As I indicated, I am not in a 16 position to. 17 MR NTSEBEZA SC: Well, I thought you 18 might assist me in disabusing my mind of the suggestion 19 that I'm putting to you, and that suggestion is that there 20 is a, it's consistent with a person whose hands had been 21 tied behind his back. Now all you are saying is to say no, 22 there are other possibilities, and I've been exploring some 23 of the possibilities and it seems it is a fruitless 24 exercise because you don't – 25 CHAIRPERSON: Those again are matters for</p>
<p style="text-align: right;">Page 24532</p> <p>1 behind. His arms, just like Mdizeni's arms, but here it is 2 very clear that both of his arms are behind his back, 3 criss-crossing at the wrists. Can you see that? 4 GENERAL NAIDOO: I see that, Chair. 5 MR NTSEBEZA SC: And I would suggest that 6 that position of the arms would be consistent with the arm, 7 with the hands of a person whose hands were tied behind 8 him, behind his back. Would you agree with that? 9 GENERAL NAIDOO: Chair, I don't think I'm 10 in a position to make such a – 11 CHAIRPERSON: Isn't the answer it's 12 consistent with it but it's not necessarily inconsistent 13 with other situations? It could, it's consistent with it 14 but there could be other things that happened which led to 15 the same criss-crossing of the wrists, as it were, which 16 are different. In other words, it could be consistent with 17 that, it could also be consistent with certain other facts 18 which are not before you? 19 GENERAL NAIDOO: Exactly, Chair – 20 CHAIRPERSON: In other words, there are a 21 number of possibilities. That's, this is one that is put 22 to you but that doesn't mean it's the only one. 23 GENERAL NAIDOO: As long as it doesn't 24 exclude all the other possibilities, of course. 25 MR NTSEBEZA SC: You certainly wouldn't</p>	<p style="text-align: right;">Page 24534</p> <p>1 conjecture which this witness is not in a better position 2 than the Commission is to indicate what they are. He's not 3 in a special position because of the fact he was at scene 2 4 on the day to deal with those possibilities, is he? So the 5 ruling I'd given before applies, surely. You're open to 6 argue the point at the end. 7 MR NTSEBEZA SC: Yes. 8 CHAIRPERSON: The point you raise may 9 well be correct, but all I'm saying to you is I'm not sure 10 this witness can add any value to that debate. Would you 11 agree with that? 12 MR NTSEBEZA SC: Yes, Mr Chairman. 13 CHAIRPERSON: Alright. Is this perhaps a 14 suitable stage to adjourn? 15 MR NTSEBEZA SC: Oh, I was not aware, Mr 16 Chairman, yes. 17 CHAIRPERSON: No, I know that time passes 18 when one's having fun and one doesn't notice it is. But 19 before we adjourn I'd like to put something to the witness. 20 You said you saw, I'm not sure if you saw or heard shots 21 being fired from the bush. 22 GENERAL NAIDOO: Yes, Chair. 23 CHAIRPERSON: In which direction were 24 these shots being fired? Towards you? 25 GENERAL NAIDOO: Chair, it was fired</p>

<p style="text-align: right;">Page 24535</p> <p>1 upwards – yes, towards the line as we proceeded, yes.</p> <p>2 CHAIRPERSON: Now would you look, please,</p> <p>3 at slide 249 of exhibit L? Now we know that people who</p> <p>4 came from forward holding area 2 also fired shots.</p> <p>5 GENERAL NAIDOO: That's correct, Chair.</p> <p>6 CHAIRPERSON: I don't think it's yet an</p> <p>7 exhibit but I'm not going to give it an exhibit number yet</p> <p>8 because we'll do some housekeeping in a moment, but we've</p> <p>9 been given a copy of a statement made by Captain Kidd -</p> <p>10 GENERAL NAIDOO: Captain Kidd?</p> <p>11 CHAIRPERSON: - by SAPS. I understand</p> <p>12 it's a consolidated statement. It's been – oh, it is an</p> <p>13 exhibit, sorry. It's HHH12, but I understand a</p> <p>14 consolidated statement is being prepared, but it's an</p> <p>15 exhibit already. What he says in paragraph – well, let me</p> <p>16 read you 10 and 11 of his statement. "At about 15:40 we</p> <p>17 heard the barbed wire was being deployed." Remember he was</p> <p>18 at forward holding area 2 –</p> <p>19 GENERAL NAIDOO: Other area, yes.</p> <p>20 CHAIRPERSON: "I then called the members</p> <p>21 and formed the basic line. I gave the instruction to move</p> <p>22 forward. Before we reached our intended position I heard</p> <p>23 over the radio the police were being attacked. We moved</p> <p>24 towards the power lines and the koppies and arrived at</p> <p>25 koppie 3 at about 16:05." So he was there at the –</p>	<p style="text-align: right;">Page 24537</p> <p>1 possibility, isn't it?</p> <p>2 GENERAL NAIDOO: Chair, not from the</p> <p>3 position we were because we were screened, as you know, by</p> <p>4 this large rock –</p> <p>5 CHAIRPERSON: Yes.</p> <p>6 GENERAL NAIDOO: And that was (1), and</p> <p>7 number (2), in this particular incident that we were</p> <p>8 involved in we had sight of the shottist. I testified to –</p> <p>9 CHAIRPERSON: How many shots can you</p> <p>10 attribute or ascribe to the shottist that you saw?</p> <p>11 GENERAL NAIDOO: The maximum is two,</p> <p>12 Chair.</p> <p>13 CHAIRPERSON: Two, that's right.</p> <p>14 GENERAL NAIDOO: That's right.</p> <p>15 CHAIRPERSON: But there were more shots</p> <p>16 that also came from that direction, were there?</p> <p>17 GENERAL NAIDOO: There were only –</p> <p>18 CHAIRPERSON: Are you only talking about</p> <p>19 two shots?</p> <p>20 GENERAL NAIDOO: I was talking about the</p> <p>21 two shots.</p> <p>22 CHAIRPERSON: Ja.</p> <p>23 GENERAL NAIDOO: Other members, as we</p> <p>24 went through their statements, also indicated, not members</p> <p>25 with me, especially members of K9 indicated that there was</p>
<p style="text-align: right;">Page 24536</p> <p>1 GENERAL NAIDOO: Opposite end.</p> <p>2 CHAIRPERSON: - as we can see from this</p> <p>3 slide, at the western end while you were at the eastern</p> <p>4 end. You didn't know he was there –</p> <p>5 GENERAL NAIDOO: That's –</p> <p>6 CHAIRPERSON: - think he knew you were</p> <p>7 there. Is that right?</p> <p>8 GENERAL NAIDOO: That's right, Chair.</p> <p>9 CHAIRPERSON: He then says in 11, "All</p> <p>10 the ammunition discharged by TRT members under my command</p> <p>11 was at scene 2," and he then says, 11.1, "11 pistol rounds</p> <p>12 and four R5 rounds in response to the attack on a member on</p> <p>13 the north-western side of the koppie." 11.2, "Five R5</p> <p>14 rounds fired at a charging protester on the south-western</p> <p>15 side of the koppie," and then 11.3, "32 R5 rounds fired as</p> <p>16 warning shots at charging and shooting protesters." So</p> <p>17 it's not quite – and then he says in 12, "POP discharged 57</p> <p>18 rubber bullets and 37 pistol rounds at charging</p> <p>19 protesters." Now so I take it there is a possibility,</p> <p>20 seeing we're in the realms of possibility at the moment,</p> <p>21 there is a possibility that the shots that, or many of the</p> <p>22 shots that you thought were coming from the bushes were</p> <p>23 actually coming from the western side, being fired by</p> <p>24 Captain Kidd's people, some of the shots being shots</p> <p>25 referred to in the passages I've read. That's a</p>	<p style="text-align: right;">Page 24538</p> <p>1 a particular shottist and people were shooting at that</p> <p>2 shottist.</p> <p>3 CHAIRPERSON: And the shottist we've also</p> <p>4 got, there's a possibility at this stage that might be</p> <p>5 argued later, that we actually got his firearm and say we</p> <p>6 know how many shots he fired. But what I'm putting to you</p> <p>7 - asking you, not putting to you, I don't put things, I</p> <p>8 just ask – is there a possibility that some of the shots</p> <p>9 that came in your direction, shall we say, were fired by</p> <p>10 some of those forward holding area 2 people and were among</p> <p>11 the shots listed by Captain Kidd in the paragraph I read?</p> <p>12 GENERAL NAIDOO: Chair, as I said the</p> <p>13 two, the two things that would make me say no is that</p> <p>14 number 1, we saw the shottist, he was shooting at us, and</p> <p>15 the second thing is the angle, if you, possible forward</p> <p>16 holding area 1 people may have fired, but in this instance</p> <p>17 it was both what we saw and what we heard.</p> <p>18 CHAIRPERSON: Yes, what I was really</p> <p>19 leading up to was if one looks at page 2 of Mr Ntsebeza's</p> <p>20 exhibits that we'd been going through, MMM47, look at the</p> <p>21 sketch plan, we see where M and O were. Is it possible – I</p> <p>22 just ask in the realm of possibilities at this stage, this</p> <p>23 is an area to be investigated obviously –</p> <p>24 GENERAL NAIDOO: Of course.</p> <p>25 CHAIRPERSON: Is it possible that they</p>

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1 could have been shot, those two people, Pato and –

2 MR NTSEBEZA SC: Xalabile.

3 CHAIRPERSON: - Xalabile.

4 MR NTSEBEZA SC: Yes.

5 CHAIRPERSON: That they could have been

6 shot by some of the, what I can describe for the purpose of

7 brevity as FHA2 fire?

8 GENERAL NAIDOO: Chair, victim M is

9 closer to that area. Victim O is a bit difficult. It's,

10 I, as I said the angle and the fact that there are rocks

11 would make it a bit difficult for somebody from that far –

12 CHAIRPERSON: You can't exclude it

13 though? You can't exclude it.

14 GENERAL NAIDOO: Can't exclude it, no.

15 CHAIRPERSON: Alright. Perhaps we'll

16 take lunch now and we will continue with the last phase of

17 your cross-examination, Mr Ntsebeza, after we've taken

18 lunch. Is that correct?

19 MR NTSEBEZA SC: Thank you, Mr Chairman,

20 that's correct.

21 CHAIRPERSON: We will take the lunch

22 adjournment.

23 MR NTSEBEZA SC: Thank you.

24 [COMMISSION ADJOURNS COMMISSION RESUMES]

25 [14:03] CHAIRPERSON: The Commission continues.

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

2 GENERAL NAIDOO: Still under oath.

3 CHAIRPERSON: Mr Ntsebeza?

4 GENERAL NAIDOO: s.u.o.

5 CROSS-EXAMINATION BY MR NTSEBEZA SC (CONTD.):

6 Thank you, Mr Chairman. General, I would like us to

7 revisit part of your evidence in relation to which I think

8 I need some clarification. Now if we go to page 30 of our

9 presentation, now you testified that you were, when you got

10 to that place you were to the right of – you would have

11 been to the right of the picture. Now, in relation to the

12 furthest cone to the right, where would you be?

13 GENERAL NAIDOO: Chair, I said had we

14 been facing the photographer I would be on the right-hand

15 side of the photographer. In relation to the first cone,

16 somewhere to the right. I can't precisely say, the angle

17 is difficult. In relation to the angle that we climbed up

18 I am unable to say here but in terms of my understanding of

19 what I see in front of me, I should be to the right of this

20 cone, not the left, if I was facing the photographer.

21 MR NTSEBEZA SC: And as well looking at

22 the picture, would you be to the right or to the left of

23 the cone to the furthest right?

24 GENERAL NAIDOO: If I'm looking at the

25 picture I would be to the left of the cone.

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1 MR NTSEBEZA SC: Now as I understand the

2 terrain, and I think when Mr Chaskalson talked about an

3 inspection, I think this will assist at that point – as I

4 understand it, that area where you would have been is

5 something of a plateau which then dips into some form of an

6 embankment where you see those trees. In other words - ja.

7 GENERAL NAIDOO: Chair, the bushes were

8 to the left of the area that we climbed up and the area we

9 climbed up comes to this plateau. This is the plateau that

10 we were talking about.

11 MR NTSEBEZA SC: The plateau would be

12 where we have the writing "Rifle cartridges V1 to V3," that

13 area?

14 GENERAL NAIDOO: Starting a little bit

15 backward, yes.

16 MR NTSEBEZA SC: Yes. And where we see a

17 red line that seems to point and it says point 62 point,

18 Xalabile's body was at the foot of the tree. That is the

19 area that begins to dip, as I understand.

20 GENERAL NAIDOO: I think that's – ja,

21 it's a, I'm not sure if it's sheer but it's let's say side

22 of the rock, yes.

23 MR NTSEBEZA SC: If we went to page 20 we

24 see there is a body of a tree between which and a rock is

25 the deceased. Do you see behind Xalabile's body there is a

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1 tree trunk, do you see that?

2 GENERAL NAIDOO: I see that, Chair.

3 MR NTSEBEZA SC: And we see it again on

4 page 22. You see the tree trunk there?

5 GENERAL NAIDOO: I see that, Chair.

6 MR NTSEBEZA SC: No, on slide 13 we would

7 see a tree trunk too, or at least you can see the tree just

8 behind the red line and we would submit that that is the

9 tree whose trunk we have seen in slides 20 and 22. Would

10 you have a difficulty with that?

11 GENERAL NAIDOO: Chair, I think without

12 an inspection in loco I can't really indicate whether it is

13 the same tree because I see the tree and I see another tree

14 to the left of it, so I would not be able to say

15 specifically whether that is the tree that we had seen.

16 MR NTSEBEZA SC: Fair enough. I was

17 trying to see and I don't know whether you can zoom on the

18 cone that seems to indicate "Rifle cartridges V1 to V3."

19 You see in the zoomed what – so the likelihood would be

20 that whoever was using the rifle from which cartridges V1

21 to V3 were fired, would have been next to where the cone is

22 because that's where the cartridges were found. I know

23 what you said earlier on about the position of the

24 cartridge is not necessarily indicative of where the person

25 was when the firearm was discharged, I mean the bullet was

<p style="text-align: right;">Page 24543</p> <p>1 discharged from the firearm but bar that, would it be safe 2 to say where the cartridges were found would be where a 3 person would likely have been when the rifles were fired? 4 GENERAL NAIDOO: Chair, I would rather 5 say the position of the rifle cartridges can give us an 6 indication approximately where the person could have been 7 when they were firing. Only the location of the cartridges 8 themselves is not an indication of where the person was 9 firing from. 10 MR NTSEBEZA SC: Yes. And if we have 11 regard to what the post-mortem report said about the 12 direction of the bullet from left to right, if it is so 13 that whoever was firing at Mr Xalabile was standing where 14 the cartridges were found, it would explain the direction 15 of the bullet as described by the pathologists, top to 16 bottom as was illustrated in that diagram. Would you 17 agree? 18 GENERAL NAIDOO: Chair, I don't think 19 I've got the ballistic knowledge to make that kind of 20 conclusion. It's a possibility, yes, but I can't say with 21 any authority that says it could – 22 MR NTSEBEZA SC: I'm happy with a 23 possibility. I'm happy with a possibility because taken 24 with the other evidence it would, I would argue, strengthen 25 our presentation that this would be inconsistent. The</p>	<p style="text-align: right;">Page 24545</p> <p>1 GENERAL NAIDOO: To my left, Chair. 2 MR NTSEBEZA SC: To your left. 3 GENERAL NAIDOO: Yes, Chair. 4 MR NTSEBEZA SC: And they are? They are 5 who? 6 GENERAL NAIDOO: I don't have their names 7 with me, Chair. 8 MR NTSEBEZA SC: You don't have them now, 9 you don't have them now or you don't know them at all? 10 GENERAL NAIDOO: Chair, it's the first 11 time I worked with those people on that particular 12 operation, I don't know them at all. 13 MR NTSEBEZA SC: Well, surely General, 14 people you have seen – at least you saw that people died, 15 you saw them firing at people, didn't you seek to know who 16 they were, then and now? 17 GENERAL NAIDOO: Chair, each shottist 18 made their statements on their own. They were not spoken 19 to by me or any other senior officer. We did not in any 20 way discuss these matters, so that is the reason why I did 21 not engage with the individual members at all. 22 MR NTSEBEZA SC: Have you yourself made 23 any statement to the IPID as a consequence of your own 24 actions on that day? 25 GENERAL NAIDOO: Chair, I've submitted my</p>
<p style="text-align: right;">Page 24544</p> <p>1 killing of Xalabile would be inconsistent with the killing 2 of a person who was charging at the police in the manner 3 described in shooting number 2. Would you care to comment? 4 GENERAL NAIDOO: Chair, I'm not sure what 5 further I should comment other than the one that I have 6 made. 7 MR NTSEBEZA SC: You know, the sequence 8 of events in terms of slide 243 is that some of the NIU 9 members who had opted for higher ground on top of the rock 10 on the southern side who were allegedly shot at by a 11 protester amongst the lower rocks and bushes on the south- 12 western side, the NIU member returned fire and retreated to 13 safety. Now if we are saying that would be the scenario in 14 which Xalabile was shot, it seems to us that on the 15 strength of the direction of the bullet and where his body 16 was found, he seems to have been shot by a person standing 17 on higher ground in a direction that would have been from 18 top to bottom, as that diagram indicated. Do you disagree 19 with that? 20 GENERAL NAIDOO: Chair, as I already 21 indicated, I am in no position to disagree with the post- 22 mortem result when I have already indicated in terms of the 23 proposition that was made what my position is. 24 MR NTSEBEZA SC: Do you say there were 25 two members, is it two or three NIU members to your right?</p>	<p style="text-align: right;">Page 24546</p> <p>1 statement and my statement is a statement which is the 2 first statement here that is also part of the exhibits, 3 yes. 4 MR NTSEBEZA SC: Did you hear the 5 question, General? 6 GENERAL NAIDOO: I heard the question, 7 Chair. 8 MR NTSEBEZA SC: What was the question? 9 GENERAL NAIDOO: Whether I'd made a 10 statement with regard to the shooting. 11 MR NTSEBEZA SC: It seems to me you 12 didn't hear the question. Did you make a statement to the 13 IPID about your involvement in the shooting of a person? 14 GENERAL NAIDOO: Chair, the statement 15 that I made was for the IPID. I made it and I handed it to 16 the legal team, as did every other member who made their 17 statements. 18 MR NTSEBEZA SC: So the statement we have 19 in the Commission is the statement you made to the IPID, is 20 that right or am I getting you wrongly? 21 GENERAL NAIDOO: That's the first 22 statement that I made, yes, Chair. 23 CHAIRPERSON: You made two statements. 24 Do I understand – 25 GENERAL NAIDOO: That's correct.</p>

<p style="text-align: right;">Page 24547</p> <p>1 CHAIRPERSON: The first statement that 2 was handed in was the IPID one. 3 GENERAL NAIDOO: It's the one I made for 4 the shooting, yes. 5 CHAIRPERSON: Yes, which you also gave to 6 the legal team and then – 7 GENERAL NAIDOO: Correct, Chair. 8 CHAIRPERSON: There were further 9 consultations with you and a – 10 GENERAL NAIDOO: Consolidated. 11 CHAIRPERSON: An amplified statement was 12 then prepared. 13 GENERAL NAIDOO: That's correct, Chair. 14 CHAIRPERSON: And both of them are before 15 us. 16 GENERAL NAIDOO: That's right, Chair. 17 MR NTSEBEZA SC: You see, General, when I 18 – and I'll get to Pato in a moment – when I earlier said to 19 you that when you talked about how members executed the 20 arrests and I said it was an unfortunate choice of words in 21 the circumstances, I was referring to exactly this, the way 22 in which the medico-legal reports report about the 23 trajectory of bullets in the body of Mr Xalabile. It's one 24 of those kinds of killings which often attract the 25 colloquial description of execution style killings, a</p>	<p style="text-align: right;">Page 24549</p> <p>1 put the question directly, do you agree that there were no 2 cartridges, rifle cartridges that we have talked about, 3 there were no cartridges found in the area which would be 4 evidence of fire coming from the protesters or have I 5 missed something? 6 GENERAL NAIDOO: Chair, I can't indicate 7 whether there were or were not any cartridges found from 8 the protesters. I am not familiar with all the details of 9 the ballistics reports of whatever was recovered. 10 MR NTSEBEZA SC: Certainly at page, or 11 the sketch plan as Mr Gotz has indicated to me correctly, 12 it appears, on the sketch plan on page 2 of our 13 presentation, in that whole area there is no indication, 14 the entire bushy area O and M, in that bushy area there, 15 there is no indication of any cartridges that were found 16 and it can't be an omission because elsewhere where 17 cartridges were found there is an indication on the sketch 18 plan. 19 CHAIRPERSON: Cartridge cases or 20 cartridges – 21 MR NTSEBEZA SC: Cartridge cases. 22 CHAIRPERSON: The doppie, would that be 23 correct? 24 MR NTSEBEZA SC: Mr Chairman, I know very 25 little about firearms but –</p>
<p style="text-align: right;">Page 24548</p> <p>1 person standing above and shooting into the head or body of 2 a person who is being killed. And that will be our 3 submission, that far from it having been a death that was 4 as a result of the police shooting at people whilst 5 charging at them, all objective evidence shows that this 6 person was being killed execution style for whatever 7 reason. Would you care to make a comment? 8 GENERAL NAIDOO: Chair, as I indicated 9 previously, I was not involved in any incident of persons 10 charging at the group that I was with. We responded to an 11 incident of a person shooting at the police, so I would not 12 be able to comment on the issue of charging. 13 MR NTSEBEZA SC: Now on the assumption, 14 just to test a little bit of that evidence, on the 15 assumption that beyond that red line which seems to point 16 to the body of Mr Xalabile, now how would you have seen a 17 person, if the plateau dips in that area, how would you 18 have seen a person who was shooting from that area from 19 where you were? 20 GENERAL NAIDOO: Chair, I think that that 21 particular explanation would be best done on an inspection 22 in loco because I have, at length, testified on that 23 particular issue as well with the evidence leaders. 24 MR NTSEBEZA SC: Okay. There will be an 25 inspection, I understand. Now I haven't found or let me</p>	<p style="text-align: right;">Page 24550</p> <p>1 CHAIRPERSON: Well, you get a cartridge 2 in a – 3 MR NTSEBEZA SC: Cartridge cases. 4 CHAIRPERSON: A cartridge case, when 5 fired from a gun, you have a cartridge case that comes out 6 and you have the cartridge that goes much further normally 7 and does – 8 MR NTSEBEZA SC: The cartridge is a 9 bullet. 10 CHAIRPERSON: - damage if it comes into 11 contact with something, whereas the cartridge case just 12 falls on the ground somewhere. 13 MR NTSEBEZA SC: Okay, ja. 14 CHAIRPERSON: Are you talking about 15 cartridge cases? 16 MR NTSEBEZA SC: I think that's where the 17 – ja. Now General, you understand what I'm trying to put 18 to you? 19 GENERAL NAIDOO: Yes, Chair. 20 MR NTSEBEZA SC: You see – ja? 21 GENERAL NAIDOO: Okay, carry on. Sorry. 22 MR NTSEBEZA SC: No, I was suggesting 23 that in the whole of that bushy area that you see there, 24 there doesn't seem to be an indication of cartridge cases 25 found that would be in keeping with the claim that somebody</p>

<p style="text-align: right;">Page 24551</p> <p>1 was shooting at yourselves with a firearm from the bushy 2 area.</p> <p>3 GENERAL NAIDOO: Chair, two things. I 4 think it is an indication of a cartridge case M5 in that 5 area, number 1. Number 2, when we testified about this 6 previously I indicated even during the inspection in loco 7 on the 1st of October when we were there in that particular 8 area when you were visiting the various scenes, cartridge 9 cases were still being picked up. So the fact that it 10 doesn't appear on this particular sketch plan is not an 11 indication that there were no cartridge cases.</p> <p>12 CHAIRPERSON: I'm not sure that what I'm 13 putting to you is correct but I'm asking you, the 14 impression I have and it may be something I heard outside 15 the chamber and it may not yet be evidence, it may never be 16 evidence but I seem to remember being told that no 17 cartridge case was found at the scene which was shown to 18 have been fired from any gun other than a police gun.</p> <p>19 GENERAL NAIDOO: I have no idea.</p> <p>20 CHAIRPERSON: Apparently this area was 21 under police control for quite a long time. The explosives 22 dogs were brought on the scene and they searched. I 23 understand you say even when we had the inspection in loco 24 there were still cartridge cases there.</p> <p>25 GENERAL NAIDOO: Being found.</p>	<p style="text-align: right;">Page 24553</p> <p>1 not even a cartridge, it's not a bullet, it's a fragment.</p> <p>2 CHAIRPERSON: I take it that's obviously 3 right.</p> <p>4 GENERAL NAIDOO: Of course, yes.</p> <p>5 CHAIRPERSON: You can't quarrel with 6 that.</p> <p>7 MR NTSEBEZA SC: Mr Chairman, it's 8 difficult for the General to say yes.</p> <p>9 CHAIRPERSON: No, he said he agreed.</p> <p>10 GENERAL NAIDOO: I did say yes, Chair.</p> <p>11 MR NTSEBEZA SC: Oh yes, okay.</p> <p>12 CHAIRPERSON: I don't think he finds any 13 difficulty. Sometimes the question is such that he feels 14 he can't just confine himself to a monosyllabic answer but 15 that doesn't matter.</p> <p>16 MR NTSEBEZA SC: Now, General –</p> <p>17 CHAIRPERSON: Have you –</p> <p>18 MR NTSEBEZA SC: I think I have –</p> <p>19 CHAIRPERSON: You have covered everything 20 now, Mr Ntsebeza.</p> <p>21 MR NTSEBEZA SC: I have covered, I have 22 covered Mr –</p> <p>23 CHAIRPERSON: Maybe you just want a 24 minute or two to discuss it with those assisting you just 25 to make sure there's nothing that you've left out because –</p>
<p style="text-align: right;">Page 24552</p> <p>1 CHAIRPERSON: But I am informed, and 2 whether this is correct or not we'll find out, that the 3 ballistic evidence doesn't indicate that any cartridge case 4 that was found was fired from any gun other than a police 5 gun. Do you know anything about that?</p> <p>6 GENERAL NAIDOO: I am not sure about 7 that, no Chair, but as I indicated that, firstly, the fact 8 that when we did the inspection in loco, they were still 9 picking up cartridge cases there and I know – before that 10 process also there was a journalist who did an article 11 about the number of things that he picked up on the scene 12 and was also commenting on the fact that cartridge cases – 13 so you know, for what it's worth.</p> <p>14 MR NTSEBEZA SC: Insofar as you talked 15 about M5, I've just been shown that in exhibit B page 55, 16 Captain Mohlaki who drew up this sketch plan shows that to 17 be the position of a fragment, a bullet fragment, which is 18 not the same thing as a cartridge, as I understand it. 19 It's a bullet that has become fragmented. So M5 in your 20 response is no explanation. Do you agree?</p> <p>21 GENERAL NAIDOO: Chair, I had no idea 22 what M5 was. I just indicated there is an arrow indicating 23 M5 there.</p> <p>24 MR NTSEBEZA SC: As I say, page 55, there 25 it is on this thing or – it is not a cartridge case, it's</p>	<p style="text-align: right;">Page 24554</p> <p>1 MR NTSEBEZA SC: No, we are left with Mr 2 Pato only now, Mr Chairman.</p> <p>3 CHAIRPERSON: That's pages 24 and 4 following of the exhibit.</p> <p>5 MR NTSEBEZA SC: Yes, Mr Chairman. Now 6 you see slide 24, that's Mr Pato. Now he – we are told by 7 relevant evidence that he died as a result of the following 8 injures, a high velocity gunshot entrance wound to the 9 right upper back between the shoulders and at the base of 10 the neck. That would be stage, post-mortem report 11 paragraph 5A1 and the exit wound was on the right, I mean 12 on the front right side of the neck and on the basis of 13 that information the wound or the direction of the wound 14 was therefore from back to front. Let's just find this 15 post-mortem report.</p> <p>16 CHAIRPERSON: With the post-mortem report 17 – perhaps we can see from exhibit, I think it's FFF20, what 18 the consensus of opinion is regarding whether the injury 19 was, whether death was instantaneous and so forth.</p> <p>20 MR NTSEBEZA SC: Yes.</p> <p>21 CHAIRPERSON: What is the number of the 22 PM57? 577, so it'll be on the next page or perhaps the one 23 after that. Can we please see the next page of this 24 annexure C? Those are – yes, sorry. 577, no it's the 25 page, it's the following page. We've now seen the second</p>

<p style="text-align: right;">Page 24555</p> <p>1 page, we now need the third page. If it could be turned 2 sideways so that we can see it? 577, rapid death following 3 neck vascular injury. Possible immediate incapacitation 4 due to high velocity neck para-spinal wound track. Gunshot 5 wound to the neck and another injury, a gunshot wound in 6 the left hand. Main shot direction back to front. Two 7 shots recorded, those seem to be the main points and the 8 state pathologist was Dr Murat and the LRC pathologist was 9 a Dr Naidoo, presumably a distant relation of yours.</p> <p>10 GENERAL NAIDOO: No.</p> <p>11 MR NTSEBEZA SC: Now my reading of the 12 report is that Mr Pato was shot in the back, would you 13 agree?</p> <p>14 GENERAL NAIDOO: According to the post- 15 mortem report.</p> <p>16 MR NTSEBEZA SC: Yes.</p> <p>17 GENERAL NAIDOO: Yes.</p> <p>18 MR NTSEBEZA SC: And it will be on that 19 basis that we will submit that he was clearly not charging 20 the person who shot him. Would you not have come to that 21 conclusion too?</p> <p>22 GENERAL NAIDOO: Chair, I think I want to 23 point out that victim M was in between two rocks and if you 24 look at the position of the photograph on page 24, what's 25 clearly visible is the rocks with where the word "rock" is</p>	<p style="text-align: right;">Page 24557</p> <p>1 injury that can be associated with a person who is charging 2 at the person who is shooting at him. Is that difficult to 3 concede?</p> <p>4 GENERAL NAIDOO: Chair, without knowing - 5 obviously the person, the gunshot wound is from the rear so 6 he would not have been charging backwards. That inference 7 I have not objected to.</p> <p>8 CHAIRPERSON: There are a number of 9 possibilities here. I mean if there was only one shot 10 fired I can understand the argument but if a number of 11 shots were fired one can understand a charging person might 12 turn around and run way, to run away and if a number of 13 shots had been fired at a charging group, if he'd suddenly 14 turned around just before, say, the fifth shot was fired, 15 then he might be shot in the back. So I'm not sure that 16 the proposition that's put to you is necessarily correct. 17 Obviously one inference, it may well be argued that the 18 more probable inference is that he was not charging when he 19 was shot but I'm not sure that that's the only inference, 20 which is - whether the inference that he was shot from 21 behind while he was not, and was therefore not charging, 22 that inference may be the only inference but as I say there 23 are other possibilities. These have to be weighed up but 24 I'm not sure that you're in possession of any special facts 25 which will enable us, enable you to draw a more effective</p>
<p style="text-align: right;">Page 24556</p> <p>1 written, so if that was his back and he was shot from the 2 back then obviously the shooting would have been in that 3 direction.</p> <p>4 MR NTSEBEZA SC: What are you saying, 5 General? Where the post-mortem report says he was shot in 6 the back, the exit wound was in the front of the neck.</p> <p>7 GENERAL NAIDOO: I am not disagreeing 8 with that, Chair.</p> <p>9 MR NTSEBEZA SC: Yes.</p> <p>10 GENERAL NAIDOO: I am trying to locate 11 the position of the body on the sketch plan.</p> <p>12 MR NTSEBEZA SC: Yes, I hear what you're 13 saying but what I'm putting to you, which will be my 14 submission, is that on the strength of - never mind the 15 body and he position in which it is in the presentation - 16 on the strength of what the pathologists are saying was the 17 entry wound and the exit wound, this is not a person who 18 would have been shot whilst charging at the person who was 19 shooting him. That, I think that much is logical on the 20 post-mortem report.</p> <p>21 GENERAL NAIDOO: Chair, I did not 22 disagree with the post-mortem report in any way.</p> <p>23 MR NTSEBEZA SC: Yes. I want to see if 24 you can find your way clear to agreeing further that it 25 would support the proposition that it is not the kind of</p>	<p style="text-align: right;">Page 24558</p> <p>1 inference than we can in the circumstances, is that 2 correct??</p> <p>3 GENERAL NAIDOO: No Chair, I don't have 4 any additional facts other than that we've put here now.</p> <p>5 MR NTSEBEZA SC: Now, I think we did deal 6 with the theme of people who, we submitted, were shot in 7 circumstances that are consistent with them trying to 8 surrender and I think we dealt with Mr Pato in that regard 9 and I will not go into it, to the extent that the post- 10 mortem report shows that he was shot in the left hand, I 11 think we did put to you yesterday that we would argue that 12 this is consistent with those people who were trying to 13 surrender as they were shot.</p> <p>14 GENERAL NAIDOO: Chair, on that issue, 15 where you - during the previous cross-examination we went 16 over that testimony which the evidence leader introduced, 17 where a member in his statement also indicated that he shot 18 two people in the hand, among other places. So whether any 19 of the people who were shot in the hand are the people that 20 we're talking about, I'm not in a position to say but the 21 statement of Sergeant Molangoanyane that was presented to 22 me by the evidence leader, who indicated two instances 23 where he shot people, among other places on their hands as 24 well and whether any of these bodies that we have seen were 25 those bodies, I'm not in a position to indicate. So I just</p>

<p style="text-align: right;">Page 24559</p> <p>1 want to indicate that in response to the assertion that all 2 the people that were shot in the hands had been 3 surrendering because there's a person who testified or 4 submitted a statement to IPID where he indicated that he 5 had shot two people.</p> <p>6 MR NTSEBEZA SC: On page 25 we just 7 depict him to be – page 25 of the slide, I mean slide 25 of 8 the presentation. Can I ask you, were there people who 9 were found between rock formations as they were being 10 arrested in a manner that suggested that they were trying 11 to hide away from being found by members of the service?</p> <p>12 GENERAL NAIDOO: Chair, I did testify to 13 a number of those instances where we've arrested people 14 that were hiding in crevices and between rocks, yes.</p> <p>15 MR NTSEBEZA SC: And this would appear to 16 be one of those except that he never got arrested but shot 17 at. You can see he is between two crevices in the manner 18 you testify.</p> <p>19 CHAIRPERSON: One crevice between two 20 rocks, isn't that more accurate? It doesn't detract from 21 the force of the point that you're making, insofar as it 22 has force, it's just more accurate.</p> <p>23 MR NTSEBEZA SC: There are no weapons 24 found in the vicinity, just to make the point. Do you see 25 any weapons?</p>	<p style="text-align: right;">Page 24561</p> <p>1 indicating that it's not going to be part of our 2 questioning. It's just that I now see that's part of the 3 presentation and I'm not going to deal with it because I 4 was told that Mr Chaskalson traversed that area to the 5 extent that –</p> <p>6 CHAIRPERSON: I gave you leave on the 7 basis that you weren't to duplicate Mr Chaskalson's points.</p> <p>8 MR NTSEBEZA SC: Now, General, we have 9 taken you through four deaths and what I want to simply put 10 to you is that we've dealt with these four, having been 11 deaths at scene 2, because our sense is that Mr Chaskalson 12 who dealt with a number of deaths at that scene did not 13 cover these four, and what I simply want to put to you is 14 that the fact that we have not dealt with others, quite 15 apart from the fact that we didn't get leave to deal with 16 other things, is a fact that should not be construed as 17 being an admission of claims that are made in exhibit L 18 that any of our clients ever charged at police lines, as 19 suggested by the SAPS in their presentation in exhibit L 20 and elsewhere. We are firm and we will make the submission 21 that those members of the families whom we represent in 22 relation to which there has not been as extensive a cross- 23 examination as there has been in relation to these four, 24 should not be construed to have been aggressors in the 25 manner suggested, and I would like you to make a comment</p>
<p style="text-align: right;">Page 24560</p> <p>1 GENERAL NAIDOO: I do not see any weapons 2 on this photograph.</p> <p>3 MR NTSEBEZA SC: I should have made the 4 point also with respect to Mr Xalabile, there was no 5 firearm found on Mr Xalabile. You testified about two 6 other people who were found with firearms. Mr Xalabile 7 himself was found with no firearm, isn't that right?</p> <p>8 GENERAL NAIDOO: Chair, I am unable to 9 state specifically which body – there was one body where a 10 firearm was found but I am not in a position to give you 11 which body that was.</p> <p>12 MR NTSEBEZA SC: I think Mr Chaskalson 13 dealt with the situation where, as you can find in slide 26 14 – now a firearm or a panga was found beneath his head, I 15 think Mr Chaskalson dealt with that when he was cross- 16 examining you.</p> <p>17 [14:43] CHAIRPERSON: Yes, that point was dealt 18 with, wasn't it? That Warrant Officer Breedt, presumably 19 it was Warrant Officer Breedt, or did he deny that he put 20 that on there? The trouble is he can't remember where 21 exactly the weapons were initially, so he can't be sure he 22 put them back in the right places. So it's difficult to 23 make a finding based upon his guess as to where the weapon 24 had been before he removed it.</p> <p>25 MR NTSEBEZA SC: That was why I was</p>	<p style="text-align: right;">Page 24562</p> <p>1 relevant thereto, if you want to.</p> <p>2 GENERAL NAIDOO: Chair, I think on the 3 other, issue of the other corpses we had dealt with it in 4 detail, so I don't think there's any further comments that 5 I would want to make in terms of that, other than noting 6 what was said.</p> <p>7 MR NTSEBEZA SC: Mr Chairman, you'll be 8 happy to know that that's the end of my cross-examination.</p> <p>9 CHAIRPERSON: I note what you say. I'm 10 not sure I like hearing you say that you think I'll be 11 happy to hear you've finished cross-examining. Our job is 12 to probe these matters as fully as we can. We accept 13 counsel are doing their duty as ably and as fully as they 14 can. The end of cross-examination just means someone else 15 takes over, but happiness isn't quite the right expression. 16 But thank you for your cross-examination.</p> <p>17 MR NTSEBEZA SC: I take note of that, Mr 18 Chairman.</p> <p>19 CHAIRPERSON: Yes, but don't interpret in 20 future that indicating that you've cross-examined 21 substantially longer than you should because I'll be happy 22 to hear you cross-examine even if you're repeating 23 yourself, because that will be a wrong inference as well. 24 Mr Brickhill, I understand you're going to cross-examine 25 now.</p>

<p style="text-align: right;">Page 24563</p> <p>1 MR BRICKHILL: Yes, Chair, we're ready to 2 proceed.</p> <p>3 CHAIRPERSON: On behalf of the LRC? 4 MR BRICKHILL: On behalf of the LRC. 5 CHAIRPERSON: And who is your client? 6 Does the LRC have a client? 7 MR BRICKHILL: Chair, we act for the 8 Ledingwane family and also in relation to phase 2, in 9 particular the Benchmarks Foundation – 10 CHAIRPERSON: No, we're busy with phase 1 11 now. 12 MR BRICKHILL: The Ledingwane family. 13 CHAIRPERSON: Thank you. You've given 14 the witness notice of the documents and so on to which you 15 refer and on which you will rely. 16 MR BRICKHILL: We have, Chair. There are 17 two particular new documents. Copies have been provided to 18 the SAPS and to the parties and will be brought up in due 19 course. I'll seek to introduce them as exhibits in due 20 course during the course of my cross-examination. 21 CHAIRPERSON: Have you seen these two new 22 documents that Mr Brickhill refers to? 23 GENERAL NAIDOO: I'm not sure, Chair, 24 which ones? 25 CHAIRPERSON: You're going to see them</p>	<p style="text-align: right;">Page 24565</p> <p>1 of forward holding area 1 and it identifies you as the 2 commander. Do you see that? 3 GENERAL NAIDOO: I see that, Chair. 4 MR BRICKHILL: It then reflects the 5 personnel stationed at forward holding area 1. 6 GENERAL NAIDOO: Yes, Chair. 7 MR BRICKHILL: And they include a group 8 of TRT members and a group of POP members. Those groups, 9 those members were subsequently deployed. They didn't 10 accompany you to koppie 3. 11 GENERAL NAIDOO: Chair, with the 12 exception of the Mounted Unit members and the detectives 13 and the LCRC, that was the, the balance of the members were 14 the members that were in the convoy. 15 MR BRICKHILL: And among this personnel 16 allocated to you and under your command were the K9 members 17 who have specific expertise in relation to among other 18 things locating firearms, bombs, and other potential 19 evidence. 20 GENERAL NAIDOO: That's correct, Chair. 21 MR BRICKHILL: And the detectives and 22 LCRC also stationed at forward holding area 1 have specific 23 expertise similarly in relation to locating and assessing 24 evidence. 25 GENERAL NAIDOO: That's correct, Chair.</p>
<p style="text-align: right;">Page 24564</p> <p>1 now apparently. Mr Pretorius is taking them to you. Never 2 mind, we will take tea at about 5 past, 10 past 3, and 3 while we're having tea you can look at the documents. Mr 4 Brickhill. You don't have to look at them now, Major 5 General. You don't have to look at them now. Mr Brickhill 6 is going to ask you some other questions in the meanwhile. 7 Mr Brickhill. 8 CROSS-EXAMINATION BY MR BRICKHILL: 9 Chair, in any event I'm not sure that those are the 10 documents in question, but we'll ensure that the witness 11 has the copies. 12 General Naidoo, we intend to deal with issues 13 relating to the crime scene. I'd like to begin by 14 clarifying some basic facts relating to the sequence of 15 events and an overview of the events, which ought not to be 16 contentious. You were in command of the reserve team 17 stationed at forward holding area 1? 18 GENERAL NAIDOO: That's correct, Chair. 19 MR BRICKHILL: And you subsequently led a 20 group of that reserve team consisting of approximately 10 21 K9 members, including yourself, to what is now known as 22 koppie 3. 23 GENERAL NAIDOO: That's correct, Chair. 24 MR BRICKHILL: If we could pull up 25 exhibit L and slide 142, slide 142 reflects the designation</p>	<p style="text-align: right;">Page 24566</p> <p>1 MR BRICKHILL: Medical personnel and fire 2 fighters also have special expertise of relevance to a 3 crime scene, not in relation to evidence but in relation 4 obviously to addressing potential fires and assisting 5 injured persons. 6 GENERAL NAIDOO: Correct, Chair. 7 MR BRICKHILL: So the personnel under 8 your command at forward holding area 1 included discrete 9 groups with specific expertise relevant to a potential 10 crime scene? 11 GENERAL NAIDOO: Not just crime scene, 12 Chair, but in terms of specific support to operational 13 units, yes. 14 MR BRICKHILL: But the groups that we've 15 discussed, excluding the TRT and the POP members, all have 16 expertise relevant to a crime scene? 17 GENERAL NAIDOO: Excluding the TRT and 18 the? 19 MR BRICKHILL: POP. And the POP. 20 GENERAL NAIDOO: Relevant yes, to handle 21 specific issues, yes. 22 MR BRICKHILL: And if we can then go to 23 slide 143 we'll see in the first bullet that one of the 24 functions designated under comments of the forward holding 25 area 1 personnel was to release the LCRC and detectives for</p>

<p style="text-align: right;">Page 24567</p> <p>1 handling of crime scenes, evidence and suspects, on command 2 of the JOC, considering the safety of the members at the 3 scene and the preservation of the crime scene thereafter. 4 Do you see that? 5 GENERAL NAIDOO: That's correct. 6 MR BRICKHILL: And that was one of the 7 functions of the forward holding area 1 grouping. 8 GENERAL NAIDOO: That's correct, Chair. 9 MR BRICKHILL: You've explained in your 10 statement and also confirmed this in your previous 11 testimony that following the cessation of shooting at 12 koppie 3 you secured the scene. 13 GENERAL NAIDOO: I gave an instruction 14 for the scene to be secured, yes. 15 MR BRICKHILL: And at that stage you were 16 the most senior officer present at koppie 3? 17 GENERAL NAIDOO: That is correct, Chair. 18 MR BRICKHILL: Brigadier Calitz has 19 described you as being at that stage factually in command 20 at scene 2. 21 GENERAL NAIDOO: Well, I did not in any 22 way take away from his command. I think we've testified 23 and discussed that. 24 MR BRICKHILL: If we could go to the 25 transcript of Brigadier Calitz's evidence, this is day 157,</p>	<p style="text-align: right;">Page 24569</p> <p>1 evidence-in-chief in fact you hadn't expected to find him 2 at koppie 3 when you got there," and Brigadier Calitz says, 3 "Korrek, mnr die Voorsitter" – "Correct, Mr Chairman." 4 Then I say, "You mean he was, I take it you mean he was 5 factually in command; he wasn't just standing there with 6 his arms folded as a spectator, he was functioning as the 7 person in command when you arrived there. Is that correct? 8 Is that what you mean?" and Brigadier Calitz says, "Korrek, 9 mnr die Voorsitter, hy het die persone van 'forward holding 10 area 1' by hom gehad wat dan die speurders is, die 'crime 11 scene managers,' daardie persone was onder sy bevel en 12 beheer. Hulle was dan besig op die toneel," which means, 13 being translated from Afrikaans, "Correct, Mr Chairman, he 14 had the people from forward holding area 1 with him, who 15 were then the detectives, the crime scene managers, those 16 persons who were under his command and control, and they 17 were then busy at the scene." 18 MR BRICKHILL: I'm indebted to you, 19 Chair. General Naidoo, do you disagree with Brigadier 20 Calitz's assessment of your role at that stage? 21 GENERAL NAIDOO: No, Chair, he is correct 22 in the role. 23 MR BRICKHILL: At that stage you then 24 made a telephone call, as we understand it, to Captain 25 Ngcobo, detective, to make a request that the crime scene</p>
<p style="text-align: right;">Page 24568</p> <p>1 page 17877, and a little lower we'll see Mr Budlender's 2 proposition put to you. Towards the foot of 17877 Mr 3 Budlender, referring to Mr Calitz's statements, states, "I 4 later found the arrested suspects at a nearby koppie where 5 Major General Naidoo was in command," and he asks Brigadier 6 Calitz, "Now is that correct that Major General Naidoo was 7 in command at koppie 3?" and the response, which is in 8 Afrikaans, I'm advised confirms that that is correct. 9 CHAIRPERSON: No, no, no, no, in fact 10 what happened was Mr Budlender, as he put it, took a step 11 back and confirmed that the koppie referred to was koppie 3 12 and the witness then said, "Ek het hier verwys na koppie 3, 13 dis korrek," meaning "Here I was referring to koppie 3, 14 that's correct," and then the question is asked – this is 15 on page 17878, line 2, "Was Major General Naidoo in command 16 at koppie 3?" and Brigadier Calitz says, "Nie volgens die 17 plan nie, mnr die Voorsitter, maar ek het hom aangetref toe 18 ek daar aankom en hy was die meer senior offisier wat dan 19 beheer gevat het by koppie 3," which means in answer to the 20 question, "Was Major General Naidoo in command at koppie 21 3?" "Not according to the plan, but I found him there when 22 I arrived and he was the," it should be the most, I 23 suppose, "the more senior officer," he probably means the 24 most, "who then had taken charge or command at koppie 3," 25 and then Mr Budlender says, "I think you said in your</p>	<p style="text-align: right;">Page 24570</p> <p>1 be processed. 2 GENERAL NAIDOO: Chair, yes, I was trying 3 to raise him on the radio and I eventually got his 4 telephone number and I called him on his cell number 5 because they indicated on the radio that he was on his way 6 to the scene and he was not arriving, so I subsequently 7 phoned him to find out that he had started from scene 1 and 8 worked his way to scene 2, yes. 9 MR BRICKHILL: And the LCRC team 10 subsequently arrived at scene 2. 11 GENERAL NAIDOO: Chair, that's correct. 12 MR BRICKHILL: They included Captain 13 Mohlaki and Captain Molefe, as well as Warrant Officer 14 Thamae. 15 GENERAL NAIDOO: I think it's Constable 16 Molefe. There was one captain, Captain Mohlaki. 17 MR BRICKHILL: They arrived and met you 18 at scene 2. 19 GENERAL NAIDOO: That is correct. 20 MR BRICKHILL: You then conducted what is 21 known as a walk-through of the two scenes. 22 GENERAL NAIDOO: Not correct, Chair. 23 MR BRICKHILL: You accompanied LCRC 24 personnel, and in particular Warrant Officer Thamae to the 25 two scenes.</p>

<p style="text-align: right;">Page 24571</p> <p>1 GENERAL NAIDOO: That's not correct as 2 well, Chair. 3 MR BRICKHILL: What is the correct 4 position? 5 GENERAL NAIDOO: Chair, the, when the 6 crime scene personnel arrived the medics had already 7 arrived and I indicated to Captain Mohlaki that we have a 8 huge crime scene and we need to start taking control of the 9 crime scene, he needs to indicate what – he needs first 10 take control and indicate what assistance he requires and 11 we would need to control the members that are on the scene, 12 busy with various things, such as arresting, assisting the 13 paramedics, etcetera. So we stood at a point – it was a 14 huge crime scene. It's not something that you're going to 15 do a walk-through just easily, and I had at that stage not 16 even been through half of the crime scene myself. 17 MR BRICKHILL: General Naidoo, I'm at 18 this stage just dealing with an overview of the events. I 19 will hone in on some of these aspects. 20 GENERAL NAIDOO: Okay. 21 MR BRICKHILL: But following the events 22 that you've now described, did you then conduct a walk- 23 through of the scenes with these personnel? 24 GENERAL NAIDOO: No, Chair, we did not. 25 MR BRICKHILL: Is your difficulty with</p>	<p style="text-align: right;">Page 24573</p> <p>1 CHAIRPERSON: Scene 1, by the kraal you 2 mean? 3 MR BRICKHILL: Yes, Chair. 4 GENERAL NAIDOO: Chair, I testified to 5 the fact after the IPID had joined us much later that night 6 we started from scene 1 and then did a walk through scene 7 1, scene 2. 8 MR BRICKHILL: So you did a walk-through 9 first of scene 1? 10 GENERAL NAIDOO: And then of scene 2, 11 together with IPID, the detectives, and the crime scene 12 personnel. 13 [15:03] MR BRICKHILL: Okay, we're on the same 14 page. Chair, at this stage we seek to introduce – 15 CHAIRPERSON: Is this the end of the 16 overview? 17 MR BRICKHILL: That's the end of the 18 overview, Chair. 19 CHAIRPERSON: I've said we'll take tea 20 round about 5 past 3. It's a bit early, but the witness 21 has an opportunity to read the new document you've given 22 him and we will take tea and I don't know what he will do, 23 and then we will resume. 24 [COMMISSION ADJOURNS COMMISSION RESUMES] 25 [15:24] CHAIRPERSON: The Commission resumes,</p>
<p style="text-align: right;">Page 24572</p> <p>1 the term "walk-through" or with the sequence of events? 2 GENERAL NAIDOO: Chair, my difficulty is 3 with the term "walk-through." My understanding that we 4 were, if we had a walk-through, through the entire crime 5 scene, that I would have started from where I had joined 6 the NIU and worked my way through the bushes to where 7 various bodies were lying, where various incidents 8 occurred, coming around to the south, south-western side 9 where the TRT dealt with it, moved around through the 10 bushes and the rock. I did not. At that stage I was at 11 the, just where the medical area was and there were various 12 activities that were occurring all around the koppie where 13 the K9 was searching, the medics were dealing with medical 14 personnel, and suspects were being arrested, taken out from 15 among the rocks and being arrested. So at that particular 16 time it was not possible to do a walk-through, hence I 17 indicated to Captain Mohlaki that this is a huge crime 18 scene and we need to, or he needs to engage his personnel 19 as soon as possible because it was not just a huge crime 20 scene, it was an active crime scene with the various 21 activities still taking place. 22 MR BRICKHILL: Did you subsequently 23 accompany Warrant Officer Thamae to scene 1? 24 GENERAL NAIDOO: Chair, I have testified 25 to the effect –</p>	<p style="text-align: right;">Page 24574</p> <p>1 Mayor-General, you're still under oath. Mr Brickhill? 2 GENERAL NAIDOO: I'm still under oath, 3 Chair. 4 MR BRICKHILL: Chair, we seek at this 5 stage to introduce two documents as exhibits, they're 6 related and it is convenient to introduce them together. 7 CHAIRPERSON: That will be MMM, I take it 8 MMM49(1) and (2), will it, or would you want them MMM49 and 9 MMM50, what do you want? 10 MR BRICKHILL: 49(1) and (2) is suitable, 11 Chair. Chair, the first document is headed and perhaps it 12 can be drawn up at this stage, it is headed "SAPS Policy 13 2/2005, a policy on Crime Scene Management." 14 CHAIRPERSON: I will just describe it as 15 SAPS Policy on Crime Scene Management and what is MMM, - 16 that's 49.1, what's MMM49.2? 17 MR BRICKHILL: Chair, MMM49.2 is a 18 document entitled "Detective Learning Programme, Module 19 Crime Scene Management, Learner's Guide." 20 CHAIRPERSON: Detective Learning 21 Programme, Module – 22 MR BRICKHILL: Crime Scene Management, - 23 CHAIRPERSON: Crime Scene Management – 24 MR BRICKHILL: Learners' Guide, but 25 Chair, in respect of this document we seek only to refer to</p>

Page 24575	Page 24577
<p>1 a discrete portion of it which is itself a self standing 2 document. It begins from page 37 of the overall bundle. 3 CHAIRPERSON: Pages 37 to? 4 MR BRICKHILL: To the end of the 5 document, Chair. 6 CHAIRPERSON: Which is what page, 136? 7 According to what – 8 MR BRICKHILL: Chair, there are series of 9 annexures that begin at page 90, those annexures are not – 10 CHAIRPERSON: So it is 37 to 89? 11 MR BRICKHILL: Indeed so, Chair, but the 12 annexures also form part of the document. 13 CHAIRPERSON: No, are they part of the 14 exhibit you want to put before us? 15 MR BRICKHILL: They are, Chair, - 16 CHAIRPERSON: Alright, so – 17 MR BRICKHILL: - but they are not 18 numbered. 19 CHAIRPERSON: No, no, do you mean the 20 pages are not numbered? 21 MR BRICKHILL: The pages are not 22 numbered, Chair, of the annexures. 23 CHAIRPERSON: Alright, well, I wonder 24 whether you shouldn't just put the whole document and then 25 you will refer us to the bits that are relevant. So just</p>	<p>1 GENERAL NAIDOO: Well, as I indicated I 2 have secured both the documents myself last night when I 3 saw the list, so maybe we would have a problem with page 4 reference numbers, etcetera, but I'm sure if we check the 5 numbering – 6 CHAIRPERSON: Ja, these matters, are the 7 paragraphs numbered? 8 GENERAL NAIDOO: The paragraphs are 9 numbered. 10 CHAIRPERSON: Well, - 11 GENERAL NAIDOO: So we might – 12 CHAIRPERSON: - we won't have a problem. 13 Alright, Mr Brickhill, would you like to proceed with your 14 cross-examination? 15 MR BRICKHILL: Thank you, Chair, and 16 we'll ensure that copies are made available for the 17 Commission, I apologise for that oversight. Chair, just by 18 way of explanation in relation to the second document, the 19 overall document is a Detective Learning Programme Module 20 on Crime Scene Management, but the pages from page 37 21 onwards are a procedural manual on Crime Scene Management, 22 so in my cross-examination to follow I will refer to 23 MMM49.1 as the policy on Crime Scene Management and to 24 MMM49.2 as the procedural manual. Chair, we are not aware 25 of any provisions or amendments to the policies, to the</p>
Page 24576	Page 24578
<p>1 for purposes of clarity, Exhibit MMM49.1 is SAPS Policy on 2 Crime Scene Management, and Exhibit MMM49.2 is Detective 3 Learning Programme - Module Crime Scene Management and then 4 Learners' Guide, page 37 to 89 plus annexures? 5 MR BRICKHILL: Indeed so, Chair. 6 CHAIRPERSON: Alright, you've got copies 7 for us, I trust? You've got copies for us? 8 MR BRICKHILL: Chair, I had assumed that 9 copies would be made available to you. 10 CHAIRPERSON: Well, have they been, I 11 haven't seen them? Anyway, I'm sure if you give them to us 12 by tomorrow no prejudice will be suffered by anybody and I 13 would suspect the witness didn't really need a copy because 14 I take at some stage he read them already but anyway, did 15 you give him a copy, have you? He was handed some 16 documents by Mr Pretorius. There was some doubt whether 17 they're the right ones. Mayor-General, have you got these 18 documents? 19 GENERAL NAIDOO: Chair, I have both the 20 documents. 21 CHAIRPERSON: We need not spend further 22 time on it at the moment. 23 GENERAL NAIDOO: Yes. 24 CHAIRPERSON: Unless there is something 25 you want to tell us that we need to know?</p>	<p>1 policy or the procedural manual. 2 CHAIRPERSON: Let's just ask the witness, 3 he should know. Are there any amendments to these manuals 4 to which you've been referred? 5 GENERAL NAIDOO: Sorry, Chair, that's why 6 I indicated the training manual that I drew last night was 7 the one in use. I drew it from our training division, so I 8 have not had an opportunity to compare it to the document 9 that is being submitted by the cross-examiner, so – 10 CHAIRPERSON: Maybe at the end of the 11 hearing today you can speak to him about it and check with 12 them. We obviously, we want to current document I take it, 13 or maybe the current document in 2012, if there is a 14 difference, because you can't be criticised if what you did 15 was in accordance with the then extant manual in 2012, any 16 amendments thereafter may not be relevant, but in any event 17 that's something that you can discuss outside the Chamber 18 with the Legal Resources Centre, and you can report 19 results, if there are any, tomorrow morning when we start. 20 MR BRICKHILL: Chair, we'll ensure that 21 that's done. General, if I could begin by taking you to 22 the policy on Crime Scene Management, you should have it 23 before you? 24 GENERAL NAIDOO: Yes. 25 MR BRICKHILL: It is designated as SAPS</p>

<p style="text-align: right;">Page 24579</p> <p>1 Policy 2/2005?</p> <p>2 GENERAL NAIDOO: Correct.</p> <p>3 MR BRICKHILL: And just for record</p> <p>4 purposes the copy that you have before you, is that the</p> <p>5 copy that was furnished to you by ourselves, by the Legal</p> <p>6 Resources Centre or a copy furnished by on your request by</p> <p>7 the SAPS?</p> <p>8 GENERAL NAIDOO: Chair, as I indicated</p> <p>9 these documents I accessed last night from our intranet and</p> <p>10 from Training, but the title is SAPS Policy 2/2005 with</p> <p>11 another subheading within a header that says, "SAPS Policy</p> <p>12 1/2004", so if that's the document we're talking about it</p> <p>13 seems to be the one on the screen.</p> <p>14 MR BRICKHILL: Thank you, General, it</p> <p>15 does seem to be the same document. Chair, the witness is</p> <p>16 pointing out that between the tramlines at the head of the</p> <p>17 document there is the designation, SAPS Policy 1/2004.</p> <p>18 We're not able to explain that discrepancy but we'll simply</p> <p>19 deal with the content of the policy at this stage.</p> <p>20 General, if I can take you then to Clause 1 of the policy</p> <p>21 headed "Purpose", do you see that?</p> <p>22 GENERAL NAIDOO: I see that, ja.</p> <p>23 MR BRICKHILL: And it reads, "The purpose</p> <p>24 of this policy is to provide guidelines for the management</p> <p>25 of all crime scenes, irrespective of the scale or the</p>	<p style="text-align: right;">Page 24581</p> <p>1 go to page 2? This is Clause 2, Sub-clause 6 of the</p> <p>2 policy, the definition of a crime scene. "A crime scene is</p> <p>3 defined there to mean the place, including the surrounding</p> <p>4 area where an alleged offence was committed or where items</p> <p>5 with potential evidential value may be collected. In terms</p> <p>6 of that definition what is known in these proceedings as</p> <p>7 scene 1 would constitute a crime scene," is that correct?</p> <p>8 GENERAL NAIDOO: Can you repeat that,</p> <p>9 sorry?</p> <p>10 MR BRICKHILL: In terms of the definition</p> <p>11 of crime scene in the policy what is known in these</p> <p>12 proceedings as scene 1 would constitute a crime scene in</p> <p>13 terms of the policy.</p> <p>14 GENERAL NAIDOO: That's correct, Chair.</p> <p>15 MR BRICKHILL: And similarly what is</p> <p>16 known in these proceedings as scene 2 would constitute a</p> <p>17 crime scene in terms of the policy.</p> <p>18 GENERAL NAIDOO: That is correct, Chair.</p> <p>19 MR BRICKHILL: If I can take you then to</p> <p>20 page 3 and the definition of a major incident, do you see</p> <p>21 it before you?</p> <p>22 GENERAL NAIDOO: I do see that, Chair.</p> <p>23 MR BRICKHILL: The term "major incident"</p> <p>24 is defined in Clause 2, Sub-clause 18 to mean, "An</p> <p>25 occurrence which causes or threatens to cause (a), death,</p>
<p style="text-align: right;">Page 24580</p> <p>1 nature of the crime and to ensure that crime scenes are</p> <p>2 properly controlled, managed, documented and that the</p> <p>3 integrity of items with potential evidential value is</p> <p>4 unquestionable." Is that correct?</p> <p>5 GENERAL NAIDOO: That's correct, Chair.</p> <p>6 MR BRICKHILL: And is it correct that in</p> <p>7 terms of Clause 1 the policy is intended to provide</p> <p>8 guidelines for the management of all crime scenes?</p> <p>9 GENERAL NAIDOO: That is correct, Chair.</p> <p>10 MR BRICKHILL: If I can take you then to</p> <p>11 Clause 3, which is on page 3 of the policy, it is headed</p> <p>12 "Mandate", do you see that?</p> <p>13 GENERAL NAIDOO: I see that, Chair.</p> <p>14 MR BRICKHILL: And it reads, "This policy</p> <p>15 must be read in conjunction with any relevant national</p> <p>16 instructions, policy documents or directives and inter alia</p> <p>17 the procedural manual on Crime Scene Management," is that</p> <p>18 correct?</p> <p>19 GENERAL NAIDOO: That's correct, Chair.</p> <p>20 MR BRICKHILL: So among other things the</p> <p>21 policy must be read in conjunction with the procedural</p> <p>22 manual on Crime Scene Management, is that correct?</p> <p>23 GENERAL NAIDOO: I would take it, ja.</p> <p>24 MR BRICKHILL: I would like to touch now</p> <p>25 on some of the definitions which begin from page, if we can</p>	<p style="text-align: right;">Page 24582</p> <p>1 injury or disease and (b), damage to property,</p> <p>2 infrastructure or the environment; or disruption of a</p> <p>3 community of such a magnitude that a single line function,</p> <p>4 division or department cannot deal with the incident alone</p> <p>5 and inter departmental coordination and multi departmental</p> <p>6 execution is required to effectively deal with the</p> <p>7 situation." In your earlier evidence you placed the events</p> <p>8 at Marikana in the context of similar events that have</p> <p>9 taken place, in particular within the province that we're</p> <p>10 concerned with and you referred to other similar large</p> <p>11 scale industrial unrest and protests on mines and other</p> <p>12 locations within the province. Do you recall that</p> <p>13 testimony?</p> <p>14 GENERAL NAIDOO: Chair, I'm not</p> <p>15 specifically sure which?</p> <p>16 MR BRICKHILL: We can locate a transcript</p> <p>17 reference but it may not be necessary.</p> <p>18 GENERAL NAIDOO: Okay.</p> <p>19 MR BRICKHILL: What I want to put to you</p> <p>20 is that large scale industrial unrest such as arose at</p> <p>21 Marikana and the events that took place on the 16th of</p> <p>22 August would constitute a major incident as defined.</p> <p>23 GENERAL NAIDOO: Chair, it could be, yes.</p> <p>24 MR BRICKHILL: The events at Marikana</p> <p>25 were an occurrence which caused or threatened to cause</p>

<p style="text-align: right;">Page 24583</p> <p>1 death, injury or disease, is that correct?</p> <p>2 GENERAL NAIDOO: That's correct.</p> <p>3 MR BRICKHILL: And they also caused and</p> <p>4 threatened to cause damage to property, infrastructure or</p> <p>5 the environment and disruption of the community, is that</p> <p>6 correct?</p> <p>7 GENERAL NAIDOO: That is correct, Chair.</p> <p>8 MR BRICKHILL: And the occurrence was of</p> <p>9 such a magnitude that a single line function within the</p> <p>10 SAPS or division or department could not deal with the</p> <p>11 incident alone, is that correct?</p> <p>12 GENERAL NAIDOO: That is also correct,</p> <p>13 Chair.</p> <p>14 MR BRICKHILL: And you've testified</p> <p>15 previously to this inter departmental coordination and</p> <p>16 multi departmental execution was required in the event.</p> <p>17 GENERAL NAIDOO: That is correct, Chair.</p> <p>18 MR BRICKHILL: I would like then to turn</p> <p>19 to Clause 5 which is on page 4 of the policy. This clause</p> <p>20 deals with the responsibilities of a Provincial</p> <p>21 Commissioner in terms of the policy, and just to recall,</p> <p>22 you were appointed as acting Provincial Commissioner at the</p> <p>23 time that the events at Marikana unfolded. What were the</p> <p>24 dates on which you served as acting Commissioner, acting</p> <p>25 Provincial Commissioner, excuse me?</p>	<p style="text-align: right;">Page 24585</p> <p>1 NUM incident took place?</p> <p>2 GENERAL NAIDOO: Correct.</p> <p>3 CHAIRPERSON: And on the –</p> <p>4 GENERAL NAIDOO: The Sunday –</p> <p>5 CHAIRPERSON: - Sunday when the security</p> <p>6 guards were killed?</p> <p>7 GENERAL NAIDOO: That's correct.</p> <p>8 CHAIRPERSON: And the two employees, I</p> <p>9 think at K4 on the Sunday evening?</p> <p>10 GENERAL NAIDOO: That night, yes.</p> <p>11 CHAIRPERSON: On Sunday night and</p> <p>12 vehicles and so on were damaged?</p> <p>13 GENERAL NAIDOO: Yes, yes.</p> <p>14 MR BRICKHILL: But outside of that period</p> <p>15 General Mbombo was the incumbent of the position?</p> <p>16 GENERAL NAIDOO: That is correct, Chair.</p> <p>17 MR BRICKHILL: If we can look at Clause</p> <p>18 5, Clause 5, Sub-clause 1 under the heading,</p> <p>19 "Responsibilities of a Provincial Commissioner," refers to</p> <p>20 implementation of the Crime Scene Management policy and</p> <p>21 states in paragraph A, "Each Provincial Commissioner must</p> <p>22 ensure that crime scenes are managed in accordance with</p> <p>23 this policy," is that correct?</p> <p>24 GENERAL NAIDOO: That is correct, Chair.</p> <p>25 MR BRICKHILL: And Sub-clause 2 then</p>
<p style="text-align: right;">Page 24584</p> <p>1 GENERAL NAIDOO: My acting term ended</p> <p>2 actually on Friday, the 10th of August and I was appointed</p> <p>3 acting from the Monday until Friday.</p> <p>4 MR BRICKHILL: Yes, and –</p> <p>5 CHAIRPERSON: According to the evidence,</p> <p>6 I thought the evidence of Provincial Commissioner was that</p> <p>7 you were still the acting Provincial Commissioner over the</p> <p>8 weekend?</p> <p>9 GENERAL NAIDOO: Chair –</p> <p>10 CHAIRPERSON: She was still on sick</p> <p>11 leave?</p> <p>12 GENERAL NAIDOO: Chair, she –</p> <p>13 CHAIRPERSON: And Major-General Mpembe</p> <p>14 was also on leave apparently?</p> <p>15 GENERAL NAIDOO: Chair, that is correct,</p> <p>16 in terms of my appointment she had been expected to return</p> <p>17 by Friday but obviously I had not, - I remained, I</p> <p>18 continued exercising control, I couldn't abandon my post</p> <p>19 before she returns and resumed command, which she did on</p> <p>20 Monday morning.</p> <p>21 CHAIRPERSON: That means that you were</p> <p>22 acting Commissioner on the Friday when the march and so on</p> <p>23 took place?</p> <p>24 GENERAL NAIDOO: That is correct.</p> <p>25 CHAIRPERSON: On the Saturday when the</p>	<p style="text-align: right;">Page 24586</p> <p>1 deals with the development of contingency plans. "It</p> <p>2 provides that a Provincial Commissioner must ensure that</p> <p>3 each Area Commissioner and Station Commissioner under</p> <p>4 his/her command is maintaining specific contingency plans</p> <p>5 for the handling of at least the following major</p> <p>6 incidents." The five types of major incidents are listed,</p> <p>7 one, bomb threats, two, explosion, three, hazardous</p> <p>8 materials, four, hostage takings and five, accidents</p> <p>9 involving aircraft. The listed items do not include</p> <p>10 industrial unrest, is that correct?</p> <p>11 GENERAL NAIDOO: That is correct, Chair.</p> <p>12 MR BRICKHILL: But the wording of Clause</p> <p>13 2A is that a Provincial Commissioner must ensure that Area</p> <p>14 Commissioner and Station Commissioners maintain specific</p> <p>15 contingency plans for the handling of at least the</p> <p>16 following major incidents, is that correct?</p> <p>17 GENERAL NAIDOO: That is correct, Chair.</p> <p>18 MR BRICKHILL: So the Provincial</p> <p>19 Commissioner may also determine that it is appropriate to</p> <p>20 ensure that contingency plans are in place for other types</p> <p>21 of major incidents?</p> <p>22 GENERAL NAIDOO: She may.</p> <p>23 MR BRICKHILL: In Sub-clause, it is</p> <p>24 paragraph B, Clause 5(2)(B), details what a contingency</p> <p>25 plan must contain. "It must contain the additional actions</p>

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1 to be followed for each incident, the names and contact
 2 details of every role-player to be recorded when such
 3 incidents are reported." To your knowledge was a
 4 contingency plan in place at the level of either Area
 5 Commissioner or Station Commissioner in relation to
 6 industrial unrest?
 7 GENERAL NAIDOO: Chair, every station has
 8 what is commonly referred as a mobilisation instruction
 9 which basically covers some of these areas contained here
 10 where it deals with activation of relevant role-players and
 11 the external role-players as well as internal personnel who
 12 might have to be mobilised for a specific event or
 13 incident. So I would read this within the context of such
 14 mobilisation structure in which, to exist for every station
 15 and each cluster as well.
 16 MR BRICKHILL: So there may well be
 17 contingency plans that in general terms might cover events
 18 similar to Marikana, but as far as you're aware there isn't
 19 any contingency plan in place in the province relating
 20 specifically to industrial unrest on this scale?
 21 GENERAL NAIDOO: Chair, if we now talk
 22 about contingency plan we have already heard testimony
 23 about the existence of a contingency plan put in place by
 24 the cluster from the 10th of August and covering that
 25 weekend as a result of that specific industrial unrest. It

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1 is the one that we discussed in cross-examination.
 2 MR BRICKHILL: I'm aware of that, General
 3 Naidoo, but that's a contingency plan, I would put it to
 4 you, of a different nature. I'm talking about the question
 5 of a contingency plan specifically in terms of the Crime
 6 Scene Management policy to deal with major incidents in the
 7 form of large scale industrial unrest.
 8 GENERAL NAIDOO: Chair, as I indicated
 9 the mobilisation instructions that each station keeps is in
 10 place specifically to deal generally without predicting
 11 which particular incident, but putting in place the details
 12 of all relevant role-players, as well as the local station
 13 and clusters form part of the disaster management planning
 14 of all the local authorities. So it is not something that
 15 was restricted just to the SAPS as well. Our contingency
 16 plans involve external role-players as well.
 17 [15:43] MR BRICKHILL: General Naidoo, perhaps I
 18 can cut to the chase, one of the roles of this Commission
 19 at the end of the proceedings is to make recommendations to
 20 the SAPS and other role-players, to the extent that a
 21 contingency plan, or one or more contingency plans are not
 22 in place in the province in relation to large scale
 23 industrial unrest would it be appropriate to recommend to
 24 the Provincial Commissioner to ensure that such contingency
 25 plans are put in place for future events?

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1 GENERAL NAIDOO: Chair, as I said we have
 2 within each station plus the Public Order Police Units
 3 themselves, have their mobilisation structures because they
 4 are the primary role-players in terms of crowd management
 5 and they have a standby mobilisation plan in terms of the
 6 area they serve. We have three units that serve particular
 7 areas and in terms of that they have their mobilisation
 8 plans, so how this proposal would defer from what we have
 9 in existence is something that we'll have to establish
 10 before I'm able to say that we have to make another
 11 proposal for another plan.
 12 CHAIRPERSON: You see one of the problems
 13 with the fact that we haven't seen these documents before,
 14 because we don't know what follows, clause or paragraph or
 15 whatever the correct term is, 6, has a first sub paragraph
 16 or sub-clause headed "Development of contingency plan," but
 17 I don't know what, if there is a paragraph or sub paragraph
 18 2 or is it Sub-clause 2 or 3, which deals with, contingency
 19 plans have to deal with special circumstances, major
 20 matters that have to be dealt with. Now, - because they
 21 have to be, as set out in paragraph 5.2. Now elsewhere in
 22 this clause or paragraph 6 do they deal with the ordinary
 23 plan that exists as a matter of routine all the time to
 24 deal with crime scenes?
 25 MR BRICKHILL: Chair, those matters are

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1 regulated elsewhere in the policy and in particular in the
 2 procedural manual.
 3 CHAIRPERSON: Yes, you see one of the
 4 questions is whether it would be, despite the extent of the
 5 activities and actions at Marikana, it may well be that the
 6 ordinary rules or the procedures can be sensibly applied
 7 and it is not necessary to make special recommendations for
 8 situations of that kind. In fact what happened in Marikana
 9 insofar as there were crimes, there was a whole series of
 10 crimes committed over various days, culminating the events
 11 on the 16th where there were 34 deaths and a number of
 12 injuries. Each, and it presumably would be the attitude of
 13 IPID that potentially each of those deaths might give rise
 14 to a murder charge and each of those injuries might give
 15 rise to a charge of assault or attempted murder or
 16 something of that kind, so it is a whole series of crimes,
 17 alleged crimes.
 18 We can't say they were crimes until we've heard
 19 all the evidence, a whole series of alleged crimes, each
 20 one of which may be appropriately dealt with as far as
 21 Crime Scene Management is concerned by the ordinary rules,
 22 I don't know. That's something that we have to look at. I
 23 don't know whether the witness can help us, I don't want to
 24 take you out of your sequence but my problem is, because we
 25 haven't seen the documents before I raised these points now

<p style="text-align: right;">Page 24591</p> <p>1 so that they can be addressed, but perhaps we can get the 2 witness' comments on it? Major-General? 3 GENERAL NAIDOO: Chair, yes – 4 CHAIRPERSON: Have you got a docket in 5 Police Management, I take it this kind of thing is part of 6 the problem you dealt with, how do you respond to the 7 comments I've made to Mr Brickhill? 8 GENERAL NAIDOO: Chair, to narrow this 9 down to the actual problems that we have in terms of 10 Marikana, it may very well be the level of resourcing 11 rather than a problem with the plan. If you remember 12 yesterday there was a discussion about, or was it a day 13 before, where there was a discussion about the deployments 14 on Saturday and Sunday and how many, etcetera, because 15 there was a complaint of visibility. We have established 16 there was a plan. We also established that there were 17 personnel deployed and in terms of that contingency plan 18 but maybe the resources were not – 19 CHAIRPERSON: The problem is whether they 20 were enough and were they at the right place. 21 GENERAL NAIDOO: Exactly. 22 CHAIRPERSON: That's something we'll look 23 at, at the end of the day, but now you say applying the 24 same considerations to the problem presently under 25 consideration, you say there may be mainly resource</p>	<p style="text-align: right;">Page 24593</p> <p>1 important to know what the policy is insofar as it related 2 or would have related to potential scene 2. 3 GENERAL NAIDOO: Yes, Chair. 4 CHAIRPERSON: And then to check what you 5 did against the policy, that's what Mr Brickhill is busy 6 with. Anyway, Mr Brickhill, I'm sorry I interrupted you 7 but I thought I put my problems to you at the beginning so 8 that you will know what to do. 9 MR BRICKHILL: Indeed, Chair, you've 10 highlighted what is perhaps a debatable question, whether a 11 contingency plan specifically dealing with industrial 12 unrest would be an appropriate step for the SAPS to take. 13 I approached the issue, Chair, on the basis that this 14 clause, Clause 5 deals with the responsibility of a 15 Provincial Commissioner, an office that General Naidoo held 16 at the, albeit on an acting basis. The clause empowers the 17 Provincial Commissioner to ensure that contingency plans 18 are in place for certain types of major incident. Perhaps 19 I can put it to General Naidoo slightly differently in 20 light of some of his responses. General Naidoo, you've 21 identified that this is a debatable question whether a 22 specific contingency plan would be appropriate for this 23 type of event. Would you at least accept that a review of 24 the existing contingency plans in the province would be 25 appropriate so that it may be determined by the Provincial</p>
<p style="text-align: right;">Page 24592</p> <p>1 problems rather than actual detailed procedural provisions 2 which are lacking. 3 GENERAL NAIDOO: We'll test what we have 4 against what is being proposed and see what the problem is, 5 what I'm saying is that every station has to have this 6 plan. It is something that has been in place for a long 7 time in terms of how to mobilise necessary resources. In 8 the current dispensation it even goes further because the 9 local authority is the lead role-player in terms of 10 disaster planning, that's in terms of legislation. So the 11 planning is even in further detail in terms of the 12 contingency planning that we have in place, so we could 13 then add another plan or fix the current scenario so that 14 it addresses whatever the issue may be. 15 CHAIRPERSON: These are interesting 16 questions that we can think about. I don't think I'll be 17 offending Mr Brickhill if I reveal to you that the topics 18 in respect of which I gave permission for you to be cross- 19 examined as far as the present irrelevant, were the SAPS 20 policy on Crime Scene Management with which Mr Brickhill is 21 now busy and then your responsibility to manage the crime 22 scene at koppie 3, scene 2, and clearly the questions which 23 have been asked lead up to that. 24 GENERAL NAIDOO: Okay. 25 CHAIRPERSON: But obviously it is</p>	<p style="text-align: right;">Page 24594</p> <p>1 Commissioner whether a contingency plan should be put in 2 place in relation to larger scale industrial unrest? 3 GENERAL NAIDOO: Chair, I think I've 4 already concurred to that. 5 MR BRICKHILL: Chair, in due course we'll 6 address that issue in argument. 7 CHAIRPERSON: - in respect of which I was 8 asked to give permission for cross-examination to proceed, 9 but you were concerned more with the actual existing policy 10 and then the second part relates to the extent to which, if 11 at all, what the witness did at scene 2 fell short of the 12 SAPS policy. I was not concerned about the questions de 13 lege ferenda as to what the policy should be, but the 14 questions to what the policy was at the relevant time. 15 MR BRICKHILL: Indeed, Chair, that shall 16 indeed be the focus of the rest of our cross-examination 17 but this seemed to us to be one possible policy gap that 18 might be addressed. Chair, I intend now to move on to a 19 discrete topic. I note that there is still five minutes to 20 go, I will proceed if that's the preference of the chair, 21 but – 22 CHAIRPERSON: On my watch we've got seven 23 minutes, I suggest we use up the seven minutes so that we 24 don't have to use them tomorrow. 25 MR BRICKHILL: Indeed, Chair. General</p>

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1 Naidoo, if I could then take you to Exhibit MMM49.2 and to
 2 ensure that we are on the same page we'll just provide you
 3 with a copy of the identical version that we're working
 4 off.

5 CHAIRPERSON: It looks as Exhibit MMM49.2
 6 should have been described as Module 9, you didn't mention
 7 the 9 but it appears in the document which you've handed,
 8 that the correct description of the exhibit is "Detective
 9 Learning Programme Module 9, Crime Scene Management."

10 MR BRICKHILL: Chair, -

11 CHAIRPERSON: I've amended my notes
 12 accordingly.

13 MR BRICKHILL: Chair, this is a new
 14 version that has been presented by the SAPS, we haven't yet
 15 had an opportunity to study it. Perhaps it might be
 16 introduced as MMM49.3, it may be that it is a revised or
 17 updated version of the Detective Learning Manual and we may
 18 then direct our questioning on the basis of this document,
 19 but it is a different document.

20 CHAIRPERSON: I wonder whether I should
 21 revise my view about using the seven minutes. If the
 22 document we've got is the document which is not the
 23 document you have and you're going to cross-examine him on
 24 an old document, the one that was relevant in August 2012,
 25 then we're going to have a lot of crossed wires and a lot

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1 of communication problems, it is not exactly as serious as
 2 though we experienced in Marikana, but it is introducing
 3 the same kind of difficulty. So what is the difference in
 4 this document we've been handed which runs I see, from
 5 pages 385 to – it is a document which goes to 493 and then
 6 there are some other annexures which are not numbered. If
 7 this isn't the documents to which you are referring and in
 8 respect of which you propose to cross-examine the witness,
 9 then I think attempts must be made to ensure that we have
 10 the correct documents and the witness has, by correct
 11 documents I mean the documents to which you will be
 12 referring which is the relevant document to August 2012,
 13 because otherwise we're going to go around in circles
 14 without making much progress. Now what is the position, is
 15 the document you have the document which was relevant in
 16 August 2012?

17 MR BRICKHILL: Chair, we'll need to
 18 verify that. The second part of the document that we put
 19 up consists of the procedural manual which was enclosed in
 20 the learning material. The new document that has been made
 21 available at a quick scan does not appear to include the
 22 procedural manual. We may need to verify the differences,
 23 Chair. It may be that that portion of our document, 49.2
 24 remains relevant and it may indeed be that those documents
 25 are relevant.

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1 CHAIRPERSON: This matter has been looked
 2 at, but while we're on the subject are there other
 3 documents to which you'll be referring to later which we
 4 haven't got and the witness hasn't got?

5 MR BRICKHILL: No, Chair.

6 CHAIRPERSON: Let's get all the
 7 housekeeping in order so that when we start tomorrow
 8 morning we can proceed without further difficulties?

9 MR BRICKHILL: There are no further
 10 documents, Chair.

11 CHAIRPERSON: Alright. Well, there is
 12 three minutes I'm afraid we won't be able to use, but we
 13 will adjourn until tomorrow morning at nine o'clock.

14 [COMMISSION ADJOURNED]
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