

**IN THE MARIKANA COMMISSION OF INQUIRY**

BEFORE THE TRIBUNAL,

THE HONOURABLE MR JUSTICE FARLAM (RETIRED) - CHAIRPERSON

MR TOKOTA SC

MS HEMRAJ SC

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**REPLYING SUBMISSION BY THE DEPARTMENT OF MINERAL RESOURCES**

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IDENTIFICATION	SUBMISSION RELEVANT TO DMR/MINISTER	REPLY BY DMR/ Minister Shabangu
<p><b>Evidence Leaders</b></p>		<p><b>References -</b></p> <p><b>Witness statement, Exhibit CCCC5</b></p> <p><b>Transcript: day 278</b></p> <p><b>26 August 2014</b></p>
<p><a href="#">Page 533 par 967</a></p>	<p>On Wednesday 15 August, Mr Ramaphosa was to be in Cape Town for a meeting of the national planning Commission. He arranged that while he was there, he had a meeting with Minister Shabangu. Their accounts of that meeting differ. After the meeting, Mr Ramaphosa reported to Lonmin management that Minister Shabangu had agreed that:</p> <p>‘What we are going through is not a labour dispute but a criminal act. She will correct her characterization of what we</p>	<p>Witness statement Minister Shabangu – “11. On 15 August 2012 I received a call from Mr. Cyril Ramaphosa, who was then a Director at Lonmin.</p> <p>a. Mr. Ramaphosa informed me that the situation in Marikana had become very serious; in particular he mentioned that there had been loss of lives and destruction of property.</p> <p>b. He shared his view that what was then happening in Marikana could no longer be characterised as a "labour dispute", but that the issue had escalated to involve acts of criminality. I</p>

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	<p>are experiencing ... She is going into Cabinet and will brief the President as well and get the Minister of Police, Nathi Mthetwa to act in a more pointed way’.</p>	<p>agreed with him and in particular that the taking of innocent lives was manifestly criminal and should be dealt with accordingly.</p> <p>12. I was in Cape Town at that time, scheduled to attend a Cabinet Committee Meeting on National Planning the same afternoon (15 August 2012). It turned out that Mr Ramaphosa was also in Cape Town, so he suggested that we meet to discuss the deteriorating situation in Marikana. As I considered the situation in a very serious light, I agreed to meet with Mr Ramaphosa, which we did shortly before the Cabinet Committee Meeting.</p> <p>13. During our discussions Mr. Ramaphosa also informed me that it might be prudent for me to meet with Mr Roger Phillimore, the Chairman of Lonmin, to discuss possible solutions to the situation at Marikana. The proposed meeting with Mr Phillimore did not take</p>

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		<p>place, as it was overtaken by the tragic events of 16 August 2012.</p> <p>14. It is important to mention that at that stage, I had decided to brief the President and the Minister of Police on the situation if an opportunity could be found. However this did not happen as I had planned”.</p>
Page 533 par 968	Minister Shabangu agreed that in an earlier television interview she had characterised the matter as a labour dispute, and that it was only after her discussion with Mr Ramaphosa that she had characterised it as having escalated into a security or policing matter. She however denied that she had been persuaded in any way by Mr Ramaphosa, and insisted that she had not changed her view in any way.	<p><b>14 August 16h55 – the ‘Brakpan statement’</b></p> <p><b>The ‘Brakpan’ statement’ – 35562: 6 – 10:</b></p> <p>“Ms Pillay: Can we look at QQQQ1.1? We see, Minister, that this is a press article dated the <b>14th of August, it’s at 16:55</b>, so will you confirm that that would have been before any ...</p> <p>35562:17, “...this article written by Mr Reese has a timeline 16:55, that’s five to five. So this was <b>slightly over an hour and a half before you had your</b></p>

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		<p><b>conversation with Mr Ramaphosa.</b> That appears right doesn't it? MS SHABANGU: Yes, it means I spoke to him after I had gone to Brakpan..."</p> <p><b>Brakpan (continued)</b></p> <p>35563:9 - 24, "in this press report, Minister, we see that the writer is referring to a visit that you made to Brakpan and certain comments that you made there in relation to what was transpiring at Lonmin. And specifically if you look at the third paragraph it stated <b><i>"Meanwhile Minister of Mineral Resources, Susan Shabangu was in Brakpan where she told the media that finding peace is now the key concern."</i></b> But did that relate to what was happening at Lonmin at the time? MS SHABANGU: That's correct. MS PILLAY: And you further, Minister, <b><i>"As a country we have a law and we must abide by the law, she said, indicating that if workers wanted to go on strike</i></b></p>

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		<p><b><i>they have to use the steps provided by the Labour Relations laws.</i></b>” MS SHABANGU: Indeed, it’s true.” [emphasis added]</p> <p><b>Wed 15 August (morning): Radio interview heard by Mr Jamieson</b></p> <p><b>Radio interview</b> heard by Mr Jamieson (see email BBBB4) morning of <b>Wednesday the 15th of August 2012</b> transcript 35592:6 – 12, “I was phoned by Mr Xolani Gwala, asking me about the situation, what is happening there and I said, the issue, the current challenge was there were killings there. It was a labour dispute, it emanates from wage negotiations of the two parties and the conflict between NUM and what was then the worker’s committees at Lonmin”.</p> <p>35595: 22 – 25, “What I said, what was creeping in was criminality or a criminal act, but it does not change the strike, or</p>

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		<p>the labour dispute to be a criminal, or criminalising the strike itself or the illegal action".35642: 10 – 11, "Well, up to the last point where the matter was resolved it remained a labour dispute."</p> <p><b>Exhibit JJJJ3</b>, calls made by Mr Ramaphosa. Three calls to Minister Shabangu on the 14<sup>th</sup> Aug, 6:34pm (five seconds) 6:34 (18 seconds) and (218 seconds = 3,6 minutes).</p> <p>35665: 2 – 9, "MS SHABANGU: Mr Chairman, I must say it is not true. He (Ramaphosa) never influenced me. He never persuaded me and that cannot happen in about four or five minutes to be persuaded and I want to put it to you, through you, Mr Chairman, that Mr Ramaphosa never convinced me. I had already made up my mind what I need to do. Hence my keynote was about briefing the President and the minister of police".</p>

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Page 534 par 972	It is not in dispute that Mr Ramaphosa said to Minister Shabangu that these events went beyond a labour dispute, involved criminal conduct, and required the involvement of the police.	

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Page 536 par 976	It is self-evident why it was Mr Ramaphosa, and not another Lonmin director or a Lonmin executive, who made the call to the Minister of Police on Sunday 12 August, and who met Minister Shabangu on Wednesday 15 August. He was a senior office-bearer of the ANC, and he knew the Ministers and other key role-players in government. As a result, he had access to them and influence with them.	
Page 536 par 976 <b>Evidence Leaders (continued)</b>	Lonmin's previous attempts to gain access to the Minister Shabangu, for example by approaching the Director-General, had met with no success. Mr Ramaphosa was able to gain access by telephoning her.	

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Page 549 par 1004	The objective evidence shows that Mr Ramaphosa was not aware of this Decision (tactical option), and did not anticipate it, when he spoke to the Minister Shabangu on Wednesday 15 August.	<p><b>Text of the corrected witness statement (par 12):</b></p> <p>35541:18 – 35542:1, “I was in Cape Town on 15 August to attend a meeting of the cabinet committee on Economic Sector Employment Infrastructure Development. Mr Ramaphosa was also in Cape Town to attend the National Planning Commission meeting on the same day. He suggested that we meet to discuss the deteriorating situation in Marikana. As I considered the situation in a very serious light, I agreed to meet with Mr Ramaphosa, which we did.”</p>
Page 553 par 1011	<p><b>The attitude of the SAPS and Minister Shabangu to AMCU</b></p> <p>During May 2013, Minister Shabangu, addressed a meeting of NUM Shop Stewards:</p> <p>“You are under siege by forces determined to use every trick in the book to remove you from the face of the</p>	<p><b>The ‘siege’ comment in May 2013,</b></p> <p>QQQQ1.7 - 24th of May <b>2013</b> (meeting with NUM shop stewards and leaders of a central committee):</p> <p>35621:18 – 22, “Mineral Resources Minister Susan Shabangu on Friday</p>

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Evidence Leaders (continued)	earth..”	<p>expressed her solidarity and support with the National Union of Mineworkers which she said was ‘under siege from a force determined to remove it from the face of the earth.’</p> <p>35621:18 – 22, “Ms SHABANGU: So I was referring to the employers.</p> <p>MS PILLAY: You were referring to the employer, to Lonmin? MS SHABANGU: Exactly. Exactly”.</p>
Page 553 par 1012	In her oral evidence she said the forces she referred to were the mining industry and in particular Lonmin.	
Page 555 par 1018	These attitudes of Minister Shabangu, the National Commissioner and the Provincial Commissioner were not only inappropriate. <b>They also go to</b>	<p>We respectfully disagree.</p> <p>Whatever Minister Shabangu had to say (or what she meant to say) 9 months</p>

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	<p><b><i>illuminate why the SAPS leadership acted as they did in the days leading up to the events of 16 August [2012].</i></b> One of the motivating factors was a desire to support the NUM and undermine AMCU in its attempt to mobilise and recruit support amongst miners in the platinum industry.</p>	<p><b><i>after</i></b> the tragedy (in May 2013) cannot reliably inform the cause of the events under investigation. We respectfully submit that the speech made on 24 May 2013 is accordingly not relevant to the Commission's investigation.</p>
<p>Page 556 par 1019</p> <p>Sub par 10.19.2</p>	<p>We submit that the following conclusions may be drawn from this analysis:</p> <p>It was not improper or inappropriate for Mr Ramaphosa to attempt to persuade the Minister of Police and the Minister of Mineral Resources to perceive the matter as having a substantial criminal element.</p>	

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<p><b>Injured/ Arrested</b>  <a href="#">Page 212 par 564.2</a></p>	<p>Alleged “undue influence” by Mr Ramaphosa to bring about the change of ‘characterisation’ of the problem by Min. Shabangu.  “<i>He was telling the truth and Shabangu herself was lying (or, as charitably proposed by the Chair, she or he were “mistaken”, which was not the evidence)</i>”;</p>	<p>We deprecate these and similar <sup>1</sup> inappropriate comments. We have already identified the Minister’s evidence on the point – she denies that Mr Ramaphosa influenced or persuaded her.</p>
<p><a href="#">Page 212 par 566</a></p>	<p>The involvement of the Minister in any of these sordid matters should at least attract an adverse finding against her as an individual or her department or a referral for the investigation of her conduct by the Ethics Committee of Parliament and/or the Public Protector.</p>	<p>There are no grounds for these contentions. None of them would bear scrutiny.   There is accordingly no merit in the proposed request for referral to any of the agencies.</p>

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<sup>1</sup> Unfortunately counsel for the Injured and Arrested Persons, out of keeping with the high esteem in which he is held, lapsed into similar unacceptable conduct on a number of occasions in the course of the proceedings – see for example: transcript 32402-04 (“rather don’t spoil my cross-examination”), 34787-89 (threatening the witness), 35501 (interrupting the Chairperson), 35501 (“Okay, SAPS and the chairperson cannot see the shooting people we see’) 35672-74 (“No, I think, I thought the Chairperson was trying to rescue you there”) 35713-15 (insulting the Chairperson – “No, Chairperson, with the greatest respect, I’m sure everyone else understand that if –”) 35872-76 (insulting colleagues, MR MPOFU: “Shut up.” MR BUDLENDER SC: “He ... said to me shut up.”)

	This is in view of <b>the dire consequences of her alleged conduct.</b> [emphasis added]	
<a href="#">Page 213 par 567 and sub para</a>	She also lied to the Commission, under oath, when she testified (principally) about “the sinister force” (Lonmin) issue.	We have addressed this polemic – we respectfully submit that it is irrelevant.
<a href="#">Page 213 par 568</a>	The Minister is said to be “challenging Mr X for the prize of being the worst and most untruthful witness in the long life of the Marikana Commission”; “She breached both her oath of office and the oath she took at the commencement of her evidence before the Commission”	These (further) inappropriate comments are of no assistance. There is no substance to the gratuitous allegations directed at Minister Shabangu.

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<a href="#">Page 214 par 569</a>	<p>She (Shabangu) and the Department failed to supervise the labour and other licence conditions applicable to Lonmin.</p>	<p>The point, formerly covered by par 1.5 of the Terms of Reference, no longer falls within the remit of the Commission.</p> <p>This was pointed out by Chairperson at the inception of Minister Shabangu's evidence, 35545: 17 – 19</p> <p>“The extent to which the department discharged its responsibilities in relation to that monitoring is no longer a matter for us to investigate, but in terms of a ruling we gave yesterday we do intend to spend some time on looking at one particular aspect, or the evidence leaders propose to spend some time looking at one particular aspect of Lonmin's performance”.</p>
<a href="#">Page 214 par 570</a>	<p>Minister Shabangu denied that she had undertaken to take the matter to the Minister of Police and the Cabinet,</p>	

<p><a href="#">Page 214 par 571</a></p>	<p>Must be killed with no warning shots but with one shot, a kill shot! She refused to answer the question.</p>	<p>What the Minister (then Deputy Minister of Police) said on 10 April 2008 to reassure beleaguered residents of Danville, Pretoria West, Lotus Gardens, Hercules and Elandspoort, bears no relevance to the work of the Commission. The Minister's irritation with the irrelevant question is understandable.</p>
<p><a href="#">Page 214 par 572</a></p>	<p>Failed to discharge her duty to advance the lot of the historically disadvantaged South Africans</p>	<p>Since Counsel for the Arrested and Injured persons failed to raise the issue clearly, or at all, in the cross examination of Minister Shabangu, it is impossible to meaningfully respond to this accusation. We refer in this regard to the <i>Rule in Browne v Dunn</i> which was reconfirmed in <i>President of the RSA v SARFU 2000 (1) SA 1 (CC) (1999 (10) BCLR 1059; [1999] ZACC 11)</i> par [61].</p>
<p><a href="#">Page 285 par 770</a></p>	<p>He indicated that he would stress that Minister Shabangu should have a discussion with Mr Phillemore. Ramaphosa informed Lonmin that he had a discussion with the Minister in Cape Town</p>	

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Page 295 par 827.8	“Accursed (sic) No 8: Susan Shabangu (Corruption, Perjury)”	The worded “accursed” (to refer to Minister Shabangu) in the written submissions is presumably a {Freudian} slip which should read, “accused”. We respectfully submit that the charges against Minister Shabangu is devoid of merit.
<a href="#">Page 297 par 829.6</a>	The allegations of lying under oath, breach of oath of office and unethical conduct ought to be, on the part of Ramaphosa, Mthethwa and Shabangu, referred to parliament for further investigation	See above – there is no substance in the allegations or the proposed referral.
<b>Families</b>	The points made have been covered in other submissions described above.	
<b>AMCU</b>		
page 135 para 28.8	Communication strategies of NUM and Lonmin were, almost perfectly aligned. On the same day, Mr Jamieson, addressed a letter to Ms Susan Shabangu, in which he too called for the deployment of large numbers of SAPS members or the South African National	There is nothing to add.

	Defence Force in order to “resolutely bring the situation under control”.	
Page 177, par 38.4	“MR NTSEBEZA SC: ....Now against that backdrop tis (sic) exchange of e-mails I suggest I put it to you you’re attempting to persuade Minister Shabangu to change her characterisation and characterise it as criminal.	
Page 180 par 38.8	15 August 2012, Mr Jamieson and Mr Ramaphosa lobby government, and Minister Shabangu in particular, to “re-characterise” the situation at Lonmin as a criminal rather than an industrial relations event.	
Page 180 par 30.10	Later that afternoon at 2:58pm Mr Ramaphosa sent an e-mail to Mr Jamieson and others in which he said: She agrees that what we are going through is not a labour dispute but a criminal act.....	
<b>LRC</b>		
	Annexures to exhibit QQQQ2 par 21 – the Jamieson letter to the DMR dated 13 August 2012 - “The State should bring its might to bear on this crucial sector of the economy	The Minister testified that this letter only came to her attention in the following week – 35567/8.

	using resources at its disposal to resolutely bring the situation under control.”	
<b>SAHRC [I]</b>		
Page 213 Par 2.1.4 a	....in April 2008: “You must kill the bastards if they threaten you or the community. You must not worry about the regulations. I want no warning shots. You have one shot and it must be a kill shot...”	We referred to this irrelevant issue above.
Page 214 Par 2.1.5	Both Ministers Shabangu and Mthethwa argued that their comments were misunderstood and need to be read in context. The SAHRC submits that however you ‘contextualise’ the comments, they are unacceptable in a constitutional democracy where the right to life is guaranteed to all, including criminals.	

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Page 275 par 4.1.3	What would have been inappropriate, and potentially unlawful, is for Mr. Ramaphosa, Minister Mthethwa, or Minister Shabangu to have sought to dictate operational policing decisions, or otherwise sought to influence those decisions for improper purposes. ..the SAHRC is not concerned about the fact of political engagement..... but it is concerned at the content of that engagement.	
Page 278 par 4.1.8	....concerns of political interference in the policing operation is the body of evidence of pressure placed on those in political power by Mr. Ramaphosa, particularly throughout 15 August 2012. ....There was nothing necessarily wrong with his meeting with Minister Shabangu and there may not have been anything wrong with Minister Shabangu indicating that she would discuss his concern with President Zuma.	
<b>SAHRC [II]</b>		
Page 9 par 1.1.5 m ii	The extent to which DMR took appropriate steps in relation to any non-	This issue is no longer part of the Commission's mandate.

	compliance	
Page 10 Par 1.1.6 b i	the State's obligations to provide ... dovetail with the obligations assumed by Lonmin , which in turn is a right granted and which should be subject to oversight and monitoring by the DMR	This issue is no longer part of the Commission's mandate.
Page 14 Par 2.1.3 a i	Indeed, the SAHRC requested detailed discovery from.. DMR... and the Commission unfortunately did not compel full, or even meaningful, compliance with these requests	This issue is no longer part of the Commission's mandate.
Page 29 Par 1.1.2	The second recommendation proposed by the SAHRC is for the DMR to undertake a strategic and detailed review of the deficiencies and failures of the SLP system identified during the Commission's work, and to propose amendments, revisions or new initiatives to improve compliance with the legal and regulatory framework that establishes the SLP system.	This issue is no longer part of the Commission's mandate.
Page 29 Par 1.1.3	Third, the DMR should be directed to investigate Lonmin's compliance with its SLP commitments, and ensure full and proper enforcement of its SLP obligations.	This issue is no longer part of the Commission's mandate.
<b>LONMIN</b>	No references	

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<b>NUM/ Mrs Fundi</b>	No references	
<b>SELLO/SEPAA KU/ BALOYI</b>	No references	
<b>Mr Ramaphosa</b>		
<a href="#">Page 6 Par 13</a>	Mr Ramaphosa submitted phone records listing calls and text messages exchanged between him and Mr Mthethwa, the Minister of Police, and Ms Shabangu.	
Page 7 par 16	In the email listed at 12.11 above, Mr Ramaphosa referred to a discussion with Minister Shabangu in Cape Town. In his oral testimony to the Commission on 11 and 12 August 2014, Mr Ramaphosa said that he went to Cape Town on a scheduled trip for the launch of the National Development Plan on 15 August 2012. While in Cape Town he met briefly with the Minister on that day.	
Page 16 Par 40	Mr Phillimore did not, in his email, identify the Minister to whom he was referring. Mr Ramaphosa said that he thought it was the Minister of Mineral Resources.	

Page 16 Par 41	14 August 2012, Mr Ramaphosa spoke by telephone to Ms Shabangu. The discussions I had with Minister Shabangu, were that the situation at Lonmin was deteriorating.....being the minister responsible for these matters I felt that she needed to be communicating a government view.....	
Page 17 Par 42	15 August 2012, Mr Ramaphosa wrote an email to Mr Phillimore. It records the content of his telephone conversation with Ms Shabangu.	
Page 17 Par 43	Mr Ramaphosa had a discussion with Susan Shabangu in Cape Town”	
Page 17 Par 45	Ms Shabangu in her evidence before the Commission recalled that the meeting had taken place in the morning and not the afternoon of 15 August 2012. She also recalled that the telephone conversation between them had been very brief and entailed little more than setting up the meeting. That meeting was, in her words, “an extensive, sort of a very brief, but very detailed discussion..”	
Page 18 par 46	According to Ms Shabangu’s evidence, her interaction with Mr Ramaphosa was	

	<p>to the following effect:  .....it then turned out you'd both be in Cape Town on the Wednesday and you then said let's have a meeting and discuss it. – That's correct.....was that (the statement) the outcome of the discussion you had with Mr Ramaphosa on the 14<sup>th</sup>? - ...We already had agreed that we were going to issue a statement, it does not arise because of that discussion.</p> <p>Mr Ramaphosa indicated to you that you were silent on what had happened at Lonmin did you agree with him? - I said that we're not silent. Already during the day we had agreed that we must issue a statement.</p>	
Page 19 Par 47	Mr Ramaphosa wrote an email recording that Ms Shabangu agreed that it is not a labour dispute but a criminal Act	
Page 19 Par 48	Mr Ramaphosa testified that he thought he had persuaded Ms Shabangu to change her earlier characterisation of the events.	
Page 20 Par 49	Ms Shabangu however denied that she had been persuaded to correct her	

	characterisation by Mr Ramaphosa.	
	In X-exam Ms Shabangu said: ....I disagree what is written here to say I will correct my characterisation. I've never said we were characterizing that dispute now as criminal, because the dispute was relevant. What I said, what was creeping in was criminality or a criminal act, but it does not change the strike, or the labour dispute to be a criminal, or criminalising the strike itself or the illegal action.....	
Page 21 Par 50	Mr Ramaphosa's email reporting on his meeting with Ms Shabangu also records that the Minister "is going into Cabinet and will brief the President as well and get the Minister of Police to act in a more pointed way". He explained that he meant the following by his use of the phrase "a more pointed way".	
Page 21 Par 50	Acting in a pointed way would mean that those who are perpetrating those acts should be arrested so that that comes to a stop...	
Page 22 Par 51	Ms Shabangu disagreed that the characterisation of her own intervention with the President and the Minister of	

	Police was aimed at getting them to act in a more pointed way – she testified that she would raise it with the President.	
Page 22 Par 52	Ms Shabangu also denied that she was put under pressure by Mr Ramaphosa.... .....Well, Mr Chairman, as you can understand he's the one who was under pressure, so he had to find a way of making sure that his colleagues feel that he's doing well...	
<b>SA Police</b>	No references	

Minister of Police		
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<a href="#">Page 14 par 30.2</a>	Although the correspondence refers to Minister Shabangu's undertaking to discuss the matter with the President and to get my office to act "in a more pointed way..." there was no full Cabinet meeting on that day and the Minister was at no stage whatsoever asked to deal with the matter in a pointed way as alleged or at all.	
<a href="#">Page 11 par 23</a>	On 7 March 2013 SERI addressed a letter Madlanga SC (as he then was) in terms whereof it requested the Ministers of Police and of Mineral Resources should adduce oral evidence before this Commission..	

C H J Badenhorst SC  
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Instructed by The State Attorney Pretoria (ref Mr S Mathebula)  
Chambers  
Sandton  
3 November 2014