

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 255

14 JULY 2014

PAGES 32036 TO 32212



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1 [PROCEEDINGS ON 14 JULY 2014]
 2 [09:13] CHAIRPERSON: The Commission resumes.
 3 Before I swear in the next witness, I ask Adv Pillay to
 4 read the time allocations and the order of cross-
 5 examination that has been worked out.
 6 MS PILLAY: Thank you, Chair. Chair, the
 7 LRC will cross-examine first and they have three-quarters
 8 of an hour. Next will be the families and they've got an
 9 hour and a half. Then it will be the injured and arrested
 10 and they've got three and a half hours. Tomorrow it would
 11 be AMCU, they've got one hour. It will then be the HRC and
 12 they've got half an hour. Lonmin has got an allocation of
 13 half an hour and we're not sure at this stage if they'll
 14 use it and the evidence leaders will cross-examine last.
 15 CHAIRPERSON: Thank you. Ms Nkosi-
 16 Thomas, I understand you're going to call the former
 17 Minister of Safety and Security.
 18 MS NKOSI-THOMAS SC: Thank you,
 19 Chairperson. That is indeed the position. We are ready to
 20 call the former Minister of Police to the witness table but
 21 perhaps before we request you, Chair, to swear him in or –
 22 we propose to put before you the file containing material
 23 that we intend relying on during our evidence in chief and
 24 perhaps to enter documents that are not already entered as
 25 exhibits and mark them accordingly.

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1 CHAIRPERSON: Yes, we'll do some
 2 housekeeping before the witness is sworn in.
 3 MS NKOSI-THOMAS SC: I beg your pardon?
 4 CHAIRPERSON: We'll do some housekeeping
 5 before the witness is sworn in.
 6 MS NKOSI-THOMAS SC: May it please you.
 7 CHAIRPERSON: You've given us bundles of
 8 documents, many of them are new documents, not yet
 9 exhibits. The witness's statement is already an exhibit,
 10 it's FFF29 but I gather there's a supplementary statement
 11 with a number of documents that you wish to hand in. So
 12 shall we mark those now?
 13 MS NKOSI-THOMAS SC: Chair, for your
 14 convenience, you'll see my junior is dutifully handing out
 15 files, we have prepared files containing material that is
 16 to be relied upon so perhaps if we could use that because
 17 the Minister has been handed a similar file. It will –
 18 CHAIRPERSON: I've also been handed a
 19 document which is headed "Index – evidence in chief
 20 Minister EN Mthethwa."
 21 MS NKOSI-THOMAS SC: Indeed.
 22 CHAIRPERSON: So we can work with that.
 23 MS NKOSI-THOMAS SC: Indeed. Chair -
 24 CHAIRPERSON: The minister will be, his
 25 letters will be BBBB.

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1 MS PILLAY: Chair, CCCC.
 2 CHAIRPERSON: B for –
 3 MS NKOSI-THOMAS SC: C for Charlie.
 4 CHAIRPERSON: No, no –
 5 MS PILLAY: C for Charlie.
 6 CHAIRPERSON: B for –
 7 MS NKOSI-THOMAS SC: Bravo.
 8 CHAIRPERSON: Bravo.
 9 MS PILLAY: No, Chair, it will be CCCC.
 10 CHAIRPERSON: Sorry? CCCC? Oh, so it is
 11 C.
 12 MS NKOSI-THOMAS SC: Charlie.
 13 CHAIRPERSON: I'm sorry, so C for
 14 calypso, is it?
 15 MS NKOSI-THOMAS SC: So it's four Cs.
 16 CHAIRPERSON: Four Cs. Alright, now the
 17 first document I take it that you want to hand in is number
 18 2 on your index, that's the supplementary statement of the
 19 Minister.
 20 MS NKOSI-THOMAS SC: Indeed.
 21 CHAIRPERSON: That will be CCCC1.
 22 MS NKOSI-THOMAS SC: And Chair, what then
 23 follows would be the annexure to the statement.
 24 CHAIRPERSON: Yes.
 25 MS NKOSI-THOMAS SC: So perhaps those we

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1 could make them CCCC1.1, 1.2 because they really –
 2 CHAIRPERSON: That takes us up –
 3 MR CHASKALSON SC: Sorry, Chair and Ms
 4 Nkosi, I'm sorry to interrupt. I've just been told that
 5 the power has tripped in the overflow room so there's no
 6 interpretation going through.
 7 CHAIRPERSON: Well, I would imagine that
 8 it's not necessary for the moment to interpret the
 9 housekeeping and marking of documents. If, when we reach
 10 the end of that stage, the power has not untripped, we'll
 11 then have to adjourn for the necessary arrangements to be
 12 made. Thank you for –
 13 MR CHASKALSON SC: I apologise for the
 14 interruption.
 15 CHAIRPERSON: So – no, it's CCCC.8 will
 16 be the last of the series of –
 17 MS NKOSI-THOMAS SC: Indeed, Chair.
 18 CHAIRPERSON: - annexures, then you've
 19 got an e-mail dated 11 March 2013. That I take it will be
 20 CCCC2.
 21 MS NKOSI-THOMAS SC: Indeed.
 22 CHAIRPERSON: Then you've got a copy of a
 23 letter dated 8 April 2013, that'll be CCCC3. Then you've
 24 got an e-mail dated the 2nd of June from Adv Madlanga, as he
 25 then was, to you. That's CCCC4. Then we've got "Policy

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1 guidelines, policing of public protests," that's already an
2 exhibit, I think.

3 MS NKOSI-THOMAS SC: Indeed.

4 CHAIRPERSON: Exhibit R.

5 MS NKOSI-THOMAS SC: That is R.

6 CHAIRPERSON: Then we've got an extract
7 from the transcript, I don't think we have to make that an
8 exhibit, it's part of our transcript and you've identified
9 it. It comes from day 70, it's pages 7442 to 7503. It's
10 useful to have it in the bundle but we don't have to mark
11 it as an exhibit. Then we have another extract which is
12 from day 101 to which the same applies. Then your item 9
13 is a bundle of e-mails exchanged amongst the leadership of
14 Lonmin, that's already exhibit BBB4. A transcript of the
15 meeting between the Provincial Commissioner and
16 representatives of Lonmin on the 14th, that's Tuesday the
17 14th, that's already an exhibit, JJJ192. The minutes of the
18 special JOCCOM meeting on the 16th of August, EE, that's
19 already an exhibit. The next one is item 12 in your
20 bundle, that's a statement by Minister Shabangu, that we
21 would make –

22 MR NTSEBEZA SC: Excuse me, Mr Chair.

23 Sorry, Mr Chairman –

24 CHAIRPERSON: Yes, Mr Ntsebeza?

25 MR NTSEBEZA SC: Before we all go down

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1 the path of housekeeping, I don't know whether we have
2 similar files prepared for us or whether the expectation
3 was that we should have done it through, I notice it's that
4 –

5 CHAIRPERSON: I'm marking the exhibits in
6 the meanwhile. I hope that arrangements either have been
7 or will be made soon to make copies of the bundles
8 available to you and your colleagues.

9 MR NTSEBEZA SC: Just for a question of
10 good order, Mr Chair, I thought that as you mark them we
11 should be doing the same.

12 MS NKOSI-THOMAS SC: Chairperson, without
13 interrupting you Chair, we have endeavoured, our team has
14 endeavoured to circulate these very documents that we're
15 working from, so we expected that the evidence leaders
16 would have circulated it to all the parties. Now to the
17 extent –

18 CHAIRPERSON: Let's ascertain from Ms
19 Pillay –

20 MS PILLAY: Chair, we have circulated the
21 list of documents that will be used during evidence in
22 chief of the Minister.

23 CHAIRPERSON: Mr Ntsebeza is concerned
24 about copies of the documents, have they been e-mailed to
25 the parties already?

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1 MS PILLAY: The copies of the documents
2 were attachments to the supplementary statement. Those
3 have been e-mailed to the parties, Chair.

4 CHAIRPERSON: No, but we've now gone
5 beyond the annexures which were attached to the
6 supplementary statement, we're now dealing with other
7 topics, other documents, as I understand it.

8 MR MPOFU: Can I –

9 CHAIRPERSON: Yes, Mr Mpofo?

10 MR MPOFU: Thanks, Chairperson. Maybe a
11 shortcut would be - obviously photocopying the documents
12 might take time, if we could even be give the index so that
13 we follow what, the exercise you are doing now.

14 CHAIRPERSON: I'm told you've been given
15 the index -

16 MR MPOFU: No, well, I haven't.

17 CHAIRPERSON: That's what Ms Pillay said.

18 MR MPOFU: Well, no, I don't think that's
19 what was being said. What was being said is that the list
20 of documents was circulated. Whether that's identical to
21 the index from which you are working now, so that we can
22 follow, I think that would be a shortcut, yes.

23 MS NKOSI-THOMAS SC: Chair, to what Mr
24 Mpofo is saying, we have circulated the index that we are
25 working from, with the understanding that the evidence

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1 leaders will in turn circulate to the parties. Now if our
2 learned friends don't have it we may, we are in your hands,
3 we are happy for the matter to stand down so we make the
4 necessary arrangements but we took proactive steps to avoid
5 this very eventuality.

6 CHAIRPERSON: Let's find out what –

7 MS PILLAY: Chair, the index was
8 circulated on Thursday.

9 CHAIRPERSON: Was e-mailed on Thursday?

10 MS PILLAY: Was e-mailed on Thursday.

11 CHAIRPERSON: Yes, well, that's the
12 answer then, Mr Mpofo, you people have got the – they've e-
13 mailed them already, you can just download them if you
14 haven't done so already.

15 MR MPOFU: Okay, Chairperson, I'll check
16 with my attorney.

17 CHAIRPERSON: Let's carry on with the
18 housekeeping then.

19 MS NKOSI-THOMAS SC: Thank you,
20 Chairperson.

21 CHAIRPERSON: I want to use the time as
22 economically as we can.

23 MS NKOSI-THOMAS SC: Chairperson, that –

24 CHAIRPERSON: We'd reached – sorry, item
25 12 in your –

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1 MS NKOSI-THOMAS SC: Index.

2 CHAIRPERSON: - bundle, that's a new

3 statement by Minister Shabangu and that'll be CCCC5. The

4 remaining documents are either exhibits already or

5 transcripts from the, extracts of transcripts from the

6 evidence led before the Commission so we don't have to mark

7 them. So we've now marked all your, the statements that

8 you, the documents on which you wish to rely. Minister,

9 would you please stand? Are you prepared to take the oath

10 or do you wish to affirm? Sorry? You want to affirm?

11 MINISTER MTHETHWA: Yes.

12 CHAIRPERSON: Yes. Do you affirm that

13 the evidence that you'll give in this matter will be the

14 truth, the whole truth and nothing but the truth? Please

15 say, I so affirm.

16 MINISTER MTHETHWA: I so affirm.

17 EMMANUEL NKOSINATHI MTHETHWA: (affirms)

18 CHAIRPERSON: You may be seated.

19 MINISTER MTHETHWA: Thank you.

20 CHAIRPERSON: Yes, Ms Nkosi-Thomas? Oh,

21 what are your full names? Emmanuel Nkosinathi Mthethwa, is

22 that correct?

23 MINISTER MTHETHWA: Yes, Chair.

24 CHAIRPERSON: Yes, Ms Nkosi-Thomas?

25 MS NKOSI-THOMAS SC: Chair, I am informed

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1 that the interpretation issue and power challenge have

2 since been sorted out, so we –

3 CHAIRPERSON: You may indeed proceed.

4 EXAMINATION BY MS NKOSI-THOMAS SC: May

5 it please you. Minister, good morning. I've greeted you

6 before but I greet you again. It is common cause, Minister

7 Mthethwa, that you were the Minister of Police during the

8 time under review by this Commission. By that I mean at

9 the time of the happening of the tragedy in Marikana, is

10 that correct?

11 MINISTER MTHETHWA: Yes, it's correct.

12 MS NKOSI-THOMAS SC: So at the moment

13 currently you are, however, the Minister of Arts and

14 Culture, is that correct??

15 MINISTER MTHETHWA: Yes, sir.

16 MS NKOSI-THOMAS SC: Since when was that,

17 sir?

18 MINISTER MTHETHWA: Since the 25th of May

19 2014.

20 MS NKOSI-THOMAS SC: Very well. Now in

21 your capacity as the – let me just say that your evidence

22 today pertains to your role as Minister of Police before

23 you assumed your new incumbency. Now please tell this

24 Commission, or before we do that, you have deposed to a

25 witness statement, do you recall that? Now please turn to

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1 tab 1 of your file. Chairperson, I'm referring the

2 Minister to the document that occurs in tab 1 of the file

3 that's before you. That document –

4 CHAIRPERSON: Exhibit FFF29.

5 MS NKOSI-THOMAS SC: Indeed.

6 CHAIRPERSON: Yes.

7 MS NKOSI-THOMAS SC: Do you – is that

8 your statement, Minister?

9 MINISTER MTHETHWA: Yes, it is.

10 MS NKOSI-THOMAS SC: Please turn to the

11 last page of the statement, page 6. The signature that

12 occurs there, is that your signature? Do you confirm it as

13 yours?

14 MINISTER MTHETHWA: I do.

15 MS NKOSI-THOMAS SC: Now subject to what

16 you say in your supplementary statement, do you confirm the

17 correctness of this statement?

18 MINISTER MTHETHWA: Yes, I do confirm.

19 MS NKOSI-THOMAS SC: Thank you, Minister.

20 Now won't you please turn to the document now that occurs

21 at tab 2? That would now be your supplementary statement.

22 That document, I see it's been entered as exhibit CCCC1.

23 Is this, do you confirm that that is your supplementary

24 statement?

25 MINISTER MTHETHWA: Yes, I confirm.

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1 MS NKOSI-THOMAS SC: Duly signed by you

2 at page 34 thereof?

3 MINISTER MTHETHWA: Yes.

4 MS NKOSI-THOMAS SC: Now Minister, this

5 statement – just let me just address the Chair.

6 Chairperson, Mr Chairperson, for purposes of expediency I

7 propose to put leading questions here and there to the

8 witness just to expedite –

9 CHAIRPERSON: Yes, I'm sure you'll do it

10 appropriately. Matters that might be controversial you

11 won't ask leading questions. Matters that aren't, you can

12 ask leading questions to speed the matter on as quickly as

13 –

14 MS NKOSI-THOMAS SC: May it please you,

15 thank you. Now Minister, your statement deals in essence

16 with four topics, the first topic being your role as

17 Minister of Police, do you agree?

18 MINISTER MTHETHWA: Yes.

19 MS NKOSI-THOMAS SC: And the second topic

20 that your statement touches on relates to the policy that

21 you determined in the discharge of your constitutional

22 mandate, that being exhibit R before this Commission. Do

23 you confirm that?

24 MINISTER MTHETHWA: Yes, I confirm.

25 MS NKOSI-THOMAS SC: Thank you, Minister,

<p style="text-align: right;">Page 32048</p> <p>1 and the third topic that your statement deals with, 2 Minister, is certain allegations of undue influence, is 3 that correct? 4 MINISTER MTHETHWA: Yes. 5 MS NKOSI-THOMAS SC: I'm just talking 6 about what your statement deals with. 7 MINISTER MTHETHWA: Yes. 8 MS NKOSI-THOMAS SC: And the last, so to 9 speak, topic deals with another allegation which some 10 people have named maximum force, some have called it fire 11 with fire and some have called political rhetoric that is 12 allegedly causally connected to the happenings in Marikana 13 during the period under review. Is that correct, Minister? 14 MINISTER MTHETHWA: Yes. 15 MS NKOSI-THOMAS SC: Very well. Shall we 16 now deal with these issues in turn? During your term of 17 office as Minister of Police, how did you understand your 18 role in relation to SAPS? 19 MINISTER MTHETHWA: Thank you, 20 Chairperson. I was the Minister of Police and as the 21 constitution says, section 85(2) A to E of the constitution 22 and 205, mainly the political head of the South African 23 Police Service responsible primarily with determining and 24 formulating policy, policy which would be guiding the 25 police in their day to day work, will be guiding police in</p>	<p style="text-align: right;">Page 32050</p> <p>1 MINISTER MTHETHWA: I signed it off in 2 August 2011. 3 MS NKOSI-THOMAS SC: Yes and Minister, 4 please tell this community which mischief it is that this 5 police sought to cure or remediate, as it were? 6 MINISTER MTHETHWA: Well, the environment 7 of public protests and gatherings are governed by other 8 acts of Parliament like the Gatherings Act. What we were 9 seeking to do with this particular policy was to fill in 10 whatever gaps are there in the body of legislation we have, 11 mainly as a political direction of the government in 12 office, ensuring that when such gatherings are presided 13 over by the police take into account the human rights 14 culture. 15 [09:33] Which is mainly what government policy is 16 premised, ensuring that there are tools of trade, equipment 17 which would be responding accordingly to what is expected 18 to police. For instance the issue of other, equipment 19 other than firearms are mainly what we said should be 20 happening, or we should have and secure particularly in 21 this particular area. 22 MS NKOSI-THOMAS SC: Now your statement 23 deals extensively, Minister, with the objectives of the 24 policy, and that you will find at paragraph 29 of your 25 statement. Please turn to paragraph 29 of your</p>
<p style="text-align: right;">Page 32049</p> <p>1 their operations. In other words, the framework of police 2 action had to be initiated, determined and signed off by 3 myself. 4 MS NKOSI-THOMAS SC: Yes. 5 MINISTER MTHETHWA: That, in essence, was 6 my role. 7 MS NKOSI-THOMAS SC: Yes. Now in the 8 discharge of those functions, Minister – I'm now moving to 9 the next topic namely exhibit R – did you determine police 10 that governs crowd management and gatherings and public 11 protests? 12 MINISTER MTHETHWA: Yes, I did. 13 MS NKOSI-THOMAS SC: Exhibit R, where is 14 exhibit R? At this stage I'd like to refer you to exhibit 15 R, R which is to be found at tab 6, Chairperson and 16 Commissioners, tab 6 of the file. Minister, would now, 17 would that be the policy, that document called "Policy and 18 guidelines – policing of public protests, gatherings and 19 major events," would that now be – thank you – would that 20 now be the policy that you determined in the discharge of 21 your constitutional mandate insofar as the public crowd 22 management situations are concerned? 23 MINISTER MTHETHWA: Yes, it is. 24 MS NKOSI-THOMAS SC: When was that policy 25 determined or rather signed off by yourself?</p>	<p style="text-align: right;">Page 32051</p> <p>1 supplementary statement, Minister. May we please have that 2 on screen? 3 CHAIRPERSON: That's page 10. 4 MS NKOSI-THOMAS SC: Page 10 of the 5 witness statement, if that's at all feasible, but Minister, 6 there can you – 7 MINISTER MTHETHWA: Sorry, is it page 10 8 or 29? 9 CHAIRPERSON: It's paragraph 29, page 10. 10 Yes, we have the wrong exhibit up at the moment. This is 11 the new exhibit that was handed in this morning, CCCC1, 12 which is the supplementary statement of the Minister. 13 MS NKOSI-THOMAS SC: I see, so that 14 wouldn't be on screen. Thanks, Chair, because it's a new 15 exhibit. 16 CHAIRPERSON: It should be, if it hasn't 17 been set up yet then obviously they can't do it, but one 18 hopes that they can or would be able to do so soon. I 19 think you can proceed in the meanwhile without it being on 20 the screen. 21 MS NKOSI-THOMAS SC: No, I'm sure we can. 22 CHAIRPERSON: Unless it's going to be on 23 the screen in a minute. 24 MS NKOSI-THOMAS SC: Well, Chairperson, 25 we're able to proceed without it being put on screen.</p>

<p style="text-align: right;">Page 32052</p> <p>1 CHAIRPERSON: Yes, I suggested that.</p> <p>2 MS NKOSI-THOMAS SC: Thanks, Chair. Now</p> <p>3 Minister, paragraph 29 of your supplementary statement sets</p> <p>4 out the objectives of the policy. 29.1 states that, "One</p> <p>5 such is the promotion of ideal crowd control and management</p> <p>6 capacity within the police in order to secure public trust</p> <p>7 and maintenance of safety during public gatherings." Do</p> <p>8 you confirm that, Minister?</p> <p>9 MINISTER MTHETHWA: Yes.</p> <p>10 MS NKOSI-THOMAS SC: And do you confirm</p> <p>11 29.2, 29.3, and 29.4 as well, both as being the</p> <p>12 objectives –</p> <p>13 MINISTER MTHETHWA: The objectives, yes.</p> <p>14 MS NKOSI-THOMAS SC: - of the policy.</p> <p>15 MINISTER MTHETHWA: Yes.</p> <p>16 MS NKOSI-THOMAS SC: Now at paragraph 30</p> <p>17 mention is made of the re-establishment and re-capacitation</p> <p>18 of the Public Order Police units. Is that one of the</p> <p>19 objectives of the policy?</p> <p>20 MINISTER MTHETHWA: Well yes, in fact</p> <p>21 that would be one of the main reasons why we had to look</p> <p>22 into this area because at the time Public Order Policing</p> <p>23 unit had been dismantled as it was before. So we felt the</p> <p>24 need to re-establish it as a dedicated unit because we'd</p> <p>25 noticed that public protests, industrial actions and so on,</p>	<p style="text-align: right;">Page 32054</p> <p>1 at the capacity of the unit, the personnel and the</p> <p>2 equipment, as I said earlier on, necessary for this</p> <p>3 particular task. So it wasn't something which was going to</p> <p>4 happen overnight.</p> <p>5 We understood that, but the point I was</p> <p>6 emphasising that, was that because we had one experience on</p> <p>7 Public Order Policing, we had people who were, you know,</p> <p>8 earlier on given other tasks, now we are recalling some of</p> <p>9 those people and because of that people, or members of SAPS</p> <p>10 were then given the opportunity to implement those things</p> <p>11 which they were supposed to, and they were implementing it</p> <p>12 because it's not a situation where we were starting from</p> <p>13 scratch. We had people, we had personnel, and you know, we</p> <p>14 had to intensify other things, including training and</p> <p>15 personnel.</p> <p>16 MS NKOSI-THOMAS SC: Yes. Yes, and of</p> <p>17 course your statement deals elaborately with the, sending</p> <p>18 the policy to the then Commissioner of Police, General</p> <p>19 Cele, and EN1 deals with that, which will now be exhibit</p> <p>20 CCCC1.1. Do you confirm that this is the letter that was</p> <p>21 sent to the then National Commissioner –</p> <p>22 MINISTER MTHETHWA: Yes.</p> <p>23 MS NKOSI-THOMAS SC: - with a request</p> <p>24 that the policy be immediately implemented?</p> <p>25 MINISTER MTHETHWA: Yes.</p>
<p style="text-align: right;">Page 32053</p> <p>1 were on the rise in our country and we wanted to ensure</p> <p>2 that we have men and women who would be dedicated on this</p> <p>3 particular task.</p> <p>4 MS NKOSI-THOMAS SC: Thanks, Minister.</p> <p>5 Now having signed off on the policy, how did you ensure its</p> <p>6 implementation? In other words – yes, I'm just –</p> <p>7 MINISTER MTHETHWA: Okay, we – firstly I</p> <p>8 signed it off and sent it to the National Commissioner at</p> <p>9 the time, General Cele, and asking him to ensure the</p> <p>10 implementation of the policy.</p> <p>11 MS NKOSI-THOMAS SC: Now Minister –</p> <p>12 MINISTER MTHETHWA: But over and above</p> <p>13 that –</p> <p>14 MS NKOSI-THOMAS SC: Yes.</p> <p>15 MINISTER MTHETHWA: - get a civilian</p> <p>16 secretariat for police to monitor the process - as one of</p> <p>17 the oversight bodies within the police - to monitor the</p> <p>18 process of the implementation of the policy itself.</p> <p>19 MS NKOSI-THOMAS SC: Is the policy to</p> <p>20 your knowledge being implemented?</p> <p>21 MINISTER MTHETHWA: Yes, the policy –</p> <p>22 well firstly let me say that there are a number of things</p> <p>23 which had to be taken into account in the implementation of</p> <p>24 the policy. One was the fact that we were re-establishing</p> <p>25 the unit itself and in establishing the unit we had to look</p>	<p style="text-align: right;">Page 32055</p> <p>1 MS NKOSI-THOMAS SC: And that a costed</p> <p>2 plan, implementation plan as regards time and money as</p> <p>3 cost, financial cost, be sent to you?</p> <p>4 MINISTER MTHETHWA: Yes, Sir.</p> <p>5 MS NKOSI-THOMAS SC: And that as part of</p> <p>6 the implementation of exhibit R, Standing Orders, National</p> <p>7 Instructions, etcetera, should be reviewed accordingly for</p> <p>8 alignment?</p> <p>9 MINISTER MTHETHWA: Yes.</p> <p>10 MS NKOSI-THOMAS SC: And if you turn the</p> <p>11 page, page 2 of EN1 is an acknowledgement of receipt, as it</p> <p>12 were, of the policy, exhibit R, by the then Commission of</p> <p>13 Police. Is that correct, Minister?</p> <p>14 MINISTER MTHETHWA: Yes.</p> <p>15 MS NKOSI-THOMAS SC: And if you turn the</p> <p>16 page further, EN2, which is CCCC2, Minister, that is an</p> <p>17 implementation plan -</p> <p>18 MINISTER MTHETHWA: Yes.</p> <p>19 MS NKOSI-THOMAS SC: - of exhibit R.</p> <p>20 CHAIRPERSON: It's CCCC1.2.</p> <p>21 MS NKOSI-THOMAS SC: 1.2.</p> <p>22 CHAIRPERSON: Remember all the annexures</p> <p>23 are 1.1, .2, etcetera.</p> <p>24 MS NKOSI-THOMAS SC: I'm indebted to you,</p> <p>25 Chair. Do you have it before you, Minister?</p>

<p style="text-align: right;">Page 32056</p> <p>1 MINISTER MTHETHWA: Yes, I do. 2 MS NKOSI-THOMAS SC: And it is dated 3 2013, February the 19th. 4 MINISTER MTHETHWA: Mmmm. 5 MS NKOSI-THOMAS SC: Now your policy, or 6 rather your letter was dated September 2011. Did any work 7 happen in between your EN1, in other words CCCC1.2 and 1.1 8 in relation to the implementation of the policy? 9 MINISTER MTHETHWA: Yes, it happened. 10 Firstly this was the era where there was change of 11 management of police, especially at the National 12 Commissioner's level, but I had to engage the senior 13 management of SAPS, take them through on what we mean about 14 what needs to happen and get people, especially within 15 SAPS, because you have experts in the field of Public Order 16 Policing within the SAPS, engage them as well, interact 17 with them to ensure that they understand what this is all 18 about. 19 Over and above that I had to also engage the top 20 1500 within SAPS, that would be your National Commissioner 21 and a team of the national level, to your Provincial 22 Commissioners, your cluster commanders, your station 23 commanders throughout the country, mainly to familiarise 24 all of us with what is expected out of the policy itself, 25 but from the point of view of the department initiatives</p>	<p style="text-align: right;">Page 32058</p> <p>1 it, firstly the guidelines and the implementation continues 2 as we speak. There are things which we would have to 3 ensure that we meet their obligation, for instance we 4 should be comfortable that we have enough personnel on the 5 ground as we envisaged, and that would be incremental, 6 based on the availability of resources, the budget, and so 7 on, but it is a continuation. As I was saying earlier on, 8 it's not like there's been no implementation. It's a 9 continuation, but we are strengthening and emphasising 10 particularly the issue around the handling of these public 11 gatherings in a particular way which suits the handling of 12 public gatherings. 13 COMMISSIONER HEMRAJ: Yes, thank you. 14 MINISTER MTHETHWA: Okay. 15 MS NKOSI-THOMAS SC: Before we move to 16 the next topic, Minister, paragraph 44 of your statement, 17 page 13, you state there that the total cost for the 18 complete rolling out of the implementation plan is 19 approximately R1 billion. Do you confirm that, Minister? 20 MINISTER MTHETHWA: Yes. Within the MTF 21 period. 22 MS NKOSI-THOMAS SC: Medium term 23 expenditure framework? 24 MINISTER MTHETHWA: Yes. 25 MS NKOSI-THOMAS SC: Very well. So shall</p>
<p style="text-align: right;">Page 32057</p> <p>1 were taken to ensure that the process of meeting the 2 obligation which I put on them is done, precisely from a 3 point of view of ensuring that units are in place in 4 different, throughout the country, of Public Order 5 Policing, but also their control at a national level links 6 with them at a lower level. So those are the kind of 7 activities which were happening even before February 2013. 8 MS NKOSI-THOMAS SC: Now in the area of 9 procurement of equipment, do you know if anything occurred 10 in that regard before February 2013? 11 MINISTER MTHETHWA: Well, it did and I'm 12 certain that people would have seen some of the equipment. 13 Firstly some equipment were secured as we were preparing 14 for 2010 FIFA World Cup, and beyond that we continued with 15 procuring it up until even last year, continuing to ensure 16 that necessary equipment is procured, and that process 17 continues even now. 18 MS NKOSI-THOMAS SC: Thank you, Minister. 19 We're going to move now to another topic because your 20 statement deals extensively with those issues. 21 COMMISSIONER HEMRAJ: May I just enquire 22 how long it is that you envisage that it would take for 23 these guidelines and this policy to be actually put into 24 operation, Mr Minister? 25 MINISTER MTHETHWA: Well, the whole of</p>	<p style="text-align: right;">Page 32059</p> <p>1 we now move to the next topic, which some people have 2 called, dubbed "toxic collusion," have called "due 3 political influence." All manner of names have been used 4 to describe these theses and allegation, as it were. 5 Please turn to page 16, Minister, of your second statement. 6 MINISTER MTHETHWA: Page 16? 7 CHAIRPERSON: Which paragraph are you 8 referring to? 9 MS NKOSI-THOMAS SC: Paragraph 61, page – 10 CHAIRPERSON: Paragraph 61. Oh, you're 11 moving on to alleged political influence. Before you do 12 that I'd like to ask a question. It appears from the 13 policy document, which is exhibit R to which you referred, 14 that section 17 of the South African Police Service Act, 15 Number 68 of 1995, provided that a Public Order Policing 16 unit should be established. 17 That was done, and then as you yourself say in 18 your supplementary statement that was then done away with. 19 These offices were closed down and you had a situation that 20 there were no longer dedicated Public Order Policing units, 21 which is effectively what you then set about reversing in 22 the documents that you've referred to us, but the fact was 23 – it's correct, is it not? – that the Police Service Act 24 of 1995 provided in turn that there should be a Public 25 Order Policing unit. That was done, it was established,</p>

<p style="text-align: right;">Page 32060</p> <p>1 and then those offices were closed down and that turned out 2 to be an unsatisfactory policy decision, apart from the 3 fact that it was contrary to the provisions of the act, and 4 that's why you then set about reversing it. 5 But what could perhaps give rise to concern is 6 the fact that it took so long to implement what effectively 7 amounted to a return to the statutory provision, the 8 implementation of the statutory provision, that there 9 should be a Public Order Policing unit. Was it not 10 something that required fairly prompt action? The country 11 couldn't really afford to have a situation where it was 12 waiting for 18 months to go back to the Public Order 13 Policing system which was provided for by the act and which 14 it was apparent was required. 15 MINISTER MTHETHWA: You know if we go 16 through the policy itself we'll realise that at different 17 intervals there were something called restructuring of this 18 particular area and putting it in different ways. At one 19 point we had what we called area, an area commissioners. 20 At other point we did away with that. What we sought to do 21 this time around was to find a way of centralising Public 22 Order Policing at a national level so that anything which 23 happens has this helicopter view of what is happening. 24 [09:53] In other words at the end of the day this had to 25 be commanded at a national level, then leaving it at the</p>	<p style="text-align: right;">Page 32062</p> <p>1 to be a specialised public order policing unit. That was 2 done, that unit was set up. Later that policy was reversed 3 without amending the Act, so there were legal problems that 4 we don't have to debate now. What you were doing is you 5 were going back to what the section required but with an 6 extra component which you've explained and that it should 7 be on a centralised national basis so that you could deal 8 with a serious problem, say in one province, where the 9 resources available in that province were not enough to 10 deal with it, so you could then bring in resources from 11 elsewhere and that was the new principle you introduced of 12 centralising it and I think that appears clearly from the 13 documents you've prepared. Is that – that were prepared 14 and which you approved, is that correct? 15 MINISTER MTHETHWA: Yes, but you must 16 also understand that whilst the Act prescribed on the units 17 themselves and whilst people had been trained even as early 18 as 1995, effectively the unit as it was before the policy 19 itself, they were now in provinces in some instances not 20 conscious as units per se. We were revising that, that 21 there should be, people should know that there is a 22 specialised unit, you'll go to province and you would see a 23 specialised unit but at the end of the day there has to be 24 a clear command and control of those units at a national 25 level.</p>
<p style="text-align: right;">Page 32061</p> <p>1 provincial level because of the fact that if there are 2 public protests say in one area and in that particular 3 area, that province would not be able to deal with the 4 situation, you need somebody who would say, would – in a 5 position and say from the other area, go and complement 6 what is happening at that level. So it was more of an 7 organisation which would respond immediately to what was 8 happening and indeed it started to happen. It didn't wait 9 for 18 months but what has not, you know, been achieved 10 even now are issues relating to your equipment which 11 continues to be an issue, continuously having, you know, 12 force multiplier, getting more members in this particular 13 area, that practically for us we have even extended, we 14 extended the bounds and you know, interacted with even 15 Metro police officers exactly for the point of force 16 multiplier. Thank you. 17 CHAIRPERSON: Thank you. 18 MS NKOSI-THOMAS SC: Minister, is one 19 understanding you correctly, are you saying that what the 20 policy sought to achieve post the restructuring was to 21 create a specialised POP unit? 22 MINISTER MTHETHWA: Absolutely. 23 MS NKOSI-THOMAS SC: Thank you. 24 CHAIRPERSON: [Microphone off, inaudible] 25 isn't it? The Act in 1995 already provided that there had</p>	<p style="text-align: right;">Page 32063</p> <p>1 MS NKOSI-THOMAS SC: Chairperson, I'm 2 going to move now to the next topic. 3 CHAIRPERSON: This is paragraph 61 on 4 page 16 of the – 5 MS NKOSI-THOMAS SC: Indeed. 6 CHAIRPERSON: - new statement of the 7 witness. 8 MS NKOSI-THOMAS SC: That's right, thank 9 you Chair. 10 CHAIRPERSON: This is alleged undue 11 political influence, that's the topic. 12 MS NKOSI-THOMAS SC: That's indeed so. 13 CHAIRPERSON: As it's described in 14 statement. 15 MS NKOSI-THOMAS SC: That is indeed so. 16 Minister, perhaps I should first of all ask you this. Did 17 you or did you not bring undue political influence on the 18 operational team on how they should conduct themselves 19 during the period leading up to the tragedy and during the 20 tragedy itself? 21 MINISTER MTHETHWA: No, I did not because 22 that's not how I understand my mandate, not only in this 23 instance you are referring to but generally. 24 MS NKOSI-THOMAS SC: Now secondly - 25 CHAIRPERSON: I'm sorry, what puzzles me</p>

<p style="text-align: right;">Page 32064</p> <p>1 is the emphasis on the word "undue." You say you didn't 2 bring undue political influence to bear. Did you bring any 3 political influence to bear at all? 4 MINISTER MTHETHWA: No, the task of the 5 Minister is to ensure that policy is being implemented and 6 whatever is happening is done implementing the policy. So 7 there would be no need for any pressure except the 8 oversight over the police where people are supposed to do 9 the job and you ask them to do the job. 10 MS NKOSI-THOMAS SC: Now Minister, now in 11 relation to yourself now, did anybody, whoever they were, 12 were you ever brought, was pressure at any point whatsoever 13 ever brought to bear upon you to direct the affairs of SAPS 14 in a particular way? 15 MINISTER MTHETHWA: No. 16 MS NKOSI-THOMAS SC: Now you see, 17 Minister, I'm going to take you to a series of e-mail 18 correspondence that has been entered as exhibits before 19 this Commission and that's BBB4 and that is to be found at 20 tab 9 of the pile that is before you. Do you have that 21 before you, Minister? 22 MINISTER MTHETHWA: Yes, I do. 23 MS NKOSI-THOMAS SC: At page 289a you 24 will see – Chair, I'm being distracted, my colleagues, 25 perhaps if they could keep it soft, with respect – they're</p>	<p style="text-align: right;">Page 32066</p> <p>1 imagine it was during the sitting of this Commission - 2 MINISTER MTHETHWA: Yes. 3 CHAIRPERSON: - where some of these e- 4 mails were produced as exhibits, in fact as exhibit BBB4. 5 MINISTER MTHETHWA: Correct. 6 MS NKOSI-THOMAS SC: Yes, and now 7 Minister, this e-mail correspondence, I'll summarise them 8 for you. They make two points in the main it seems, main 9 points as it were. They make a lot of points but the focus 10 on what we consider to be the main points that emerge from 11 this series of e-mail correspondence. The first point is 12 that a cabinet meeting was to take place on the 15th of 13 August 2012 at which you were to be in attendance, I think, 14 and at which Minister Shabangu was to be in attendance and 15 in that meeting Minister Shabangu who had first briefed the 16 President about what was happening in Marikana and get you, 17 as Minister of Police, to act in a pointed way. That's the 18 one thing that emerged, one big thesis or rather crux that 19 emerged, thing that emerges from that. And the next one is 20 about the characterisation of what was happening in 21 Marikana, that it had ceased to be just a labour unrest 22 situation and it had assumed the characterisation of being 23 a criminal act because people had lost their lives – 24 MR MPOFU: Chairperson – 25 MS NKOSI-THOMAS SC: Are you with me, Mr</p>
<p style="text-align: right;">Page 32065</p> <p>1 distracting me. At page 289a if you look at the top of the 2 page please, Minister, you will see that the e-mail was 3 sent from Roger Selimo and the recipients are mentioned 4 there. Can you see that? 5 MINISTER MTHETHWA: Yes. 6 MS NKOSI-THOMAS SC: Now let me ask you 7 this, were you party to this e-mail correspondence? 8 MINISTER MTHETHWA: Not at all. 9 MS NKOSI-THOMAS SC: I beg your pardon? 10 MINISTER MTHETHWA: Not at all. 11 MS NKOSI-THOMAS SC: Were these or was 12 this correspondence ever forwarded to you at any stage 13 during the Marikana tragedy unfolding? 14 MINISTER MTHETHWA: No. 15 MS NKOSI-THOMAS SC: When did you learn 16 about the existence of this e-mail correspondence for the 17 first time? 18 MINISTER MTHETHWA: For the first time I 19 learnt from the media, these things. 20 CHAIRPERSON: I take it this was after 21 the tragedy – 22 MINISTER MTHETHWA: Yes. 23 CHAIRPERSON: - on the 16th. 24 MINISTER MTHETHWA: Yes. 25 CHAIRPERSON: In fact it was during, I</p>	<p style="text-align: right;">Page 32067</p> <p>1 Minister? 2 CHAIRPERSON: Mr Mpofu wants to say 3 something. Yes, Mr Mpofu? 4 MR MPOFU: Yes. No, I want to object to 5 the framing of that question, it's incorrect. There's 6 nowhere in the e-mails where it is said that it has ceased 7 to be just a labour matter. Actually the – 8 CHAIRPERSON: The reference is on page 9 289f of the exhibit. 10 MR MPOFU: Yes. 11 CHAIRPERSON: What was said was, "The 12 terrible events that have unfolded cannot be described as a 13 labour dispute." 14 MR MPOFU: Ja. 15 CHAIRPERSON: "They are plainly dastardly 16 criminal and must be characterised as such." So that's, I 17 think Adv Nkosi-Thomas was endeavouring to summarise that – 18 MR MPOFU: No – no, Chairperson. Maybe 19 to understand the point I'm making, it might be subtle but 20 it's important here. 21 CHAIRPERSON: Yes, Mr Mpofu? 22 MR MPOFU: Yes – 23 CHAIRPERSON: My problem was that your 24 learned friend used the word, added the word "just." 25 MR MPOFU: Yes, that's my point.</p>

<p style="text-align: right;">Page 32068</p> <p>1 CHAIRPERSON: Now if you take the word 2 "just" out – 3 MR MPOFU: Yes, then – 4 CHAIRPERSON: - you look at the paragraph 5 that I read, the sentence I read, then there's no problem. 6 MR MPOFU: If you take the word, if you 7 take that word out, Chairperson, there's no need for this 8 debate. 9 CHAIRPERSON: I'm quite sure she's happy 10 to withdraw the word and – 11 MR MPOFU: Okay. 12 CHAIRPERSON: Is that correct? 13 MS NKOSI-THOMAS SC: Oh, nothing turns on 14 the word "just," Chair, and I must just mention that I'm a 15 second language speaker, so I shouldn't be held to – 16 CHAIRPERSON: Well, you're doing very 17 well, don't worry about that. 18 MS NKOSI-THOMAS SC: But nothing turns on 19 the use of the word "just." 20 CHAIRPERSON: If you take the word "just" 21 out you can carry on. 22 MS NKOSI-THOMAS SC: And Chair, the 23 reason why we're approaching the matter in this manner is 24 we don't want to go e-mail by e-mail. We're just taking 25 out the things and we deal with them for, you know –</p>	<p style="text-align: right;">Page 32070</p> <p>1 into an exhibit EN7 and which is now, will be available to 2 the media and may already have been released to the media 3 if we don't stop it now. So Chair, can you just rule that 4 EN7 is not a – EN7 to the Minister's statement should not 5 be published further or circulated. 6 CHAIRPERSON: What I suggest we do is we 7 withdraw it at the moment and we can then perhaps at some 8 stage in chambers discuss how we're going to handle that 9 document, if at all, in a way which respects the 10 sensitivity of some of the material contained in it but 11 let's withdraw it for the moment and we'll – it's not to be 12 regarded as before the Commission and it cannot be 13 published at all by anybody. I'm reminded we received an 14 e-mail last week to say that it was not for our 15 consideration, it had been sent in error. So it's 16 obviously been included in the bundle by error as well but 17 anyway, I think I've dealt with that by saying it's to be 18 regarded as being removed. It's not before the Commission 19 and may not be published and we will, if it becomes 20 necessary, discuss in chambers how we can deal with it or 21 some of the material in it that is relevant for our 22 enquiry. Yes? 23 MINISTER MTHETHWA: Chair – 24 CHAIRPERSON: Yes, Minister? 25 MINISTER MTHETHWA: I don't know whether</p>
<p style="text-align: right;">Page 32069</p> <p>1 MR MPOFU: I agree with that. 2 MS NKOSI-THOMAS SC: - in a kind of a – 3 CHAIRPERSON: If you're summarising, very 4 sensibly to save time, summarising the – 5 MS NKOSI-THOMAS SC: May it please you, 6 yes. 7 CHAIRPERSON: - the e-mails, the main 8 points of the e-mails and the objection was to the use of 9 the word "just" in your summary – 10 MS NKOSI-THOMAS SC: I withdraw that 11 word. 12 CHAIRPERSON: If we take the word out we 13 can carry on. 14 MS NKOSI-THOMAS SC: Very well. I will 15 summarise again just so that – so two things emerge, the 16 one is the cabinet issue where a report was to be made to 17 the President and you were to be got into act in a pointed 18 way and of course another one relates to the 19 characterisation of what was happening in Marikana at the 20 time. Now you deal with the – 21 MR CHASKALSON SC: Sorry Chairperson, I 22 must apologise to Ms Nkosi-Thomas for interrupting but it's 23 just struck me that we need to stop something now which is 24 that there is a schedule of cell phone calls which is 25 sensitive and is not for distribution which has been turned</p>	<p style="text-align: right;">Page 32071</p> <p>1 I'm following what is happening now but I need clarity. Is 2 the suggestion that the records, telephone records have 3 been published to the media? Is that what is being said? 4 MR CHASKALSON SC: No. They have been 5 turned into, they were erroneously turned into an exhibit. 6 I'm saying that they should not be made an exhibit and that 7 nobody – they should not be circulated. Once they're made 8 an exhibit they are notionally a public document and the 9 press has access to them. 10 CHAIRPERSON: You're referring to EN7 11 which is – 12 MINISTER MTHETHWA: EN7 and 8. 13 CHAIRPERSON: Well, we'll look at 8 in a 14 minute but certainly as far as 7 is concerned this is a 15 document which contains a list of mobile telephone calls 16 that you made. 17 MINISTER MTHETHWA: Yes. 18 CHAIRPERSON: 8 is an extract. 19 MINISTER MTHETHWA: Okay. 20 CHAIRPERSON: I haven't considered 21 whether 8 is a document – 22 MINISTER MTHETHWA: Oh. 23 CHAIRPERSON: - that should be before us. 24 We can talk about that in a minute. 25 MINISTER MTHETHWA: Okay.</p>

<p style="text-align: right;">Page 32072</p> <p>1 CHAIRPERSON: But certainly 7 shouldn't 2 be and it was sent to us apparently in error. We were told 3 we didn't have to consider it. It's been included in the 4 bundle by error but I've now, I hope, dealt with that by as 5 it were metaphorically striking it out of the bundle. It's 6 not before us as an exhibit and what, if anything, we'll do 7 with it is a matter we'll discuss in chambers later. What 8 is the situation in relation to 8? 9 MS NKOSI-THOMAS SC: Chair – 10 MR CHASKALSON SC: CCCC8. 11 MS NKOSI-THOMAS SC: 8 is a summary – 12 CHAIRPERSON: Sorry, sorry, CCCC1 – 13 MS NKOSI-THOMAS SC: 1.8. 14 CHAIRPERSON: CCCC1.8, that's a summary 15 of calls and is that also a sensitive document? 16 MS NKOSI-THOMAS SC: That's a summary of 17 7. So this is a document that the evidence leaders and our 18 team agreed we will work from but what we may have to do to 19 take care of the sensitivities could be to obliterate the 20 numbers because that is something that has to be protected 21 if the matter were to reach the press. 22 CHAIRPERSON: Yes, I see. So exhibit 23 CCCC1.8 will also be, at least provisionally, withdrawn, 24 removed from the file. It can subsequently be reinserted 25 once sensitive material has been redacted out.</p>	<p style="text-align: right;">Page 32074</p> <p>1 For the sake of good order I want to repeat the ruling I 2 gave earlier, and that is that no photographs are to be 3 taken while the Commission is sitting. It's very 4 disturbing and distracting if the cameras are clicking away 5 in the background while one's trying to listen to the 6 evidence. So that's a ruling I gave and I would expect 7 that to be observed and if it's not I shall have to do 8 something about it. I'd also ask the photographers not to 9 come into the well of the chamber. They're welcome to be 10 in the chamber, they're welcome to take photographs when 11 the Commission is not sitting, but please not in the well 12 of the chamber and please no photographs while the 13 Commission is actually hearing evidence. You're still 14 under oath, Minister - sorry, I beg your pardon, you're 15 still bound by your affirmation. 16 EMMANUEL NKOSINATHI MTHETHWA: [affirms 17 further] 18 CHAIRPERSON: Ms Nkosi-Thomas, I 19 understand the problem that you wanted to talk to the 20 Minister about you've now satisfactorily dealt with. 21 EXAMINATION BY MS NKOSI-THOMAS SC (CONTD.): 22 I have indeed, Chair. Thanks. May I direct your 23 attention, Minister, to page 289E of the BBBB4-series under 24 tab 9. 25 MINISTER MTHETHWA: Yes, I'm on that.</p>
<p style="text-align: right;">Page 32073</p> <p>1 MS NKOSI-THOMAS SC: May it please you, 2 Chair. 3 CHAIRPERSON: So that's clear then. 4 CCCC1.7 has been removed from the papers, it's not before 5 the Commission and it may not be quoted and published at 6 all without my permission, which I'm not prepared to grant 7 at the moment. CCCC1.8 is in the same category, the same 8 will apply to it but what is envisaged is it will be 9 reinserted at some stage in the future when sensitive 10 material that's not relevant for the work of this 11 Commission has been redacted out. That's clear. Does that 12 deal with the situation, Mr Chaskalson? 13 MS NKOSI-THOMAS SC: May it please you, 14 Chair, may I request a five minute adjournment just to 15 clarify this aspect with the Minister, please, and – 16 CHAIRPERSON: Yes, of course. You can 17 have – we'll take an adjournment now and when you're ready 18 – I don't want to give you a limit of five minutes, that 19 may not be enough. 20 MS NKOSI-THOMAS SC: I'm indebted. 21 CHAIRPERSON: So when you're ready please 22 let me know and we'll come back. 23 MS NKOSI-THOMAS SC: We will do so. 24 [COMMISSION ADJOURNS COMMISSION RESUMES] 25 [10:16] CHAIRPERSON: The Commission resumes.</p>	<p style="text-align: right;">Page 32075</p> <p>1 MS NKOSI-THOMAS SC: Minister, you will 2 see on the margin on the left-hand side the email that 3 occurs at the bottom of the page, there's a 6, that's the 4 sixth, the email I'm referring you to. Can you see that, 5 Minister? 6 MINISTER MTHETHWA: Yes. 7 MS NKOSI-THOMAS SC: Now that email was 8 written by Mr Cyril Ramaphosa, currently the Deputy 9 President of the Republic of South Africa, and it has a 10 caption, a heading reading "Security situation." Can you 11 see that, Minister? 12 MINISTER MTHETHWA: Yes. 13 MS NKOSI-THOMAS SC: And of course in 14 similar vein to the one 289A it's common cause that it is 15 written to certain officials within Lonmin. Now this is 16 what the email says. I'll just read it out for context and 17 convenience. "Dear All," this is the Deputy President 18 writing – 19 CHAIRPERSON: Sorry, the gentleman who 20 was not then the Deputy President – 21 MS NKOSI-THOMAS SC: Yes. 22 CHAIRPERSON: - had no public office at 23 the time, he was a director of Lonmin and he's writing to 24 colleagues in Lonmin at 2:58PM on the afternoon of 25 Wednesday the 15th of August.</p>

<p style="text-align: right;">Page 32076</p> <p>1 MS NKOSI-THOMAS SC: Thank you, 2 Chairperson. So subject to the correction, kind correction 3 from the Chair, this was written by the current Deputy 4 President, then a colleague writing to his colleagues 5 within Lonmin on the 15th August 2012 at 2:58PM, addressing 6 the security situation. Mr Ramaphosa reports to his 7 colleagues as follows, "Dear All, I've just had a 8 discussion with Susan Shabangu in Cape Town. 9 1, She agrees that what we are going through is 10 not a labour dispute but a criminal act. She will correct 11 her characterisation of what we are experiencing; 12 2, She is going into cabinet and will brief the 13 President as well and get the Minister of Police, Nathi 14 Mthethwa, to act in a more pointed way. She'll be in 15 Johannesburg by 5PM and would be able to speak to Roger. 16 Let us keep the pressure on them to act correctly." 17 You've already told this Commission that you were 18 not party to this communication. Is that correct? 19 MINISTER MTHETHWA: Yes. 20 MS NKOSI-THOMAS SC: Now on the 15th of 21 August 2012 to your knowledge was there a full cabinet 22 meeting? 23 MINISTER MTHETHWA: Well, there was no 24 cabinet meeting on the 15th of August, but may I add also 25 that I was also not in Cape Town on that day.</p>	<p style="text-align: right;">Page 32078</p> <p>1 CHAIRPERSON: Yes, yes, I wasn't 2 suggesting that you were leading and shouldn't lead. As 3 you say, I take it, it will be an uncontroversial matter. 4 You can ask leading questions on it. If there's a – you 5 yourself will realise what's controversial, but if you and 6 I disagree on the point I'll let you know. But carry on 7 for the moment. 8 MS NKOSI-THOMAS SC: Now did anyone to 9 your knowledge ever prevail upon you, Minister, on the 15th 10 of August 2012 to act in a pointed way, whatever that 11 means? 12 MINISTER MTHETHWA: No. No. 13 MS NKOSI-THOMAS SC: Minister? 14 CHAIRPERSON: You dropped your voice. 15 I'm not sure it was recorded. You shook your head and your 16 lips indicated you were saying no, but I'm not sure it was 17 picked up by the microphone. 18 MINISTER MTHETHWA: No, no, I'm saying 19 no. 20 MS NKOSI-THOMAS SC: Yes. The difficulty 21 is that there's a mechanical recording, so when you shake 22 your head I'm afraid it doesn't record your answer, so it 23 does help to say it, to vocalise the answer. Now during 24 the period now leading to the 15th did anyone prevail upon 25 you to act one way or the other, a pointed way or whatever</p>
<p style="text-align: right;">Page 32077</p> <p>1 MS NKOSI-THOMAS SC: Where were you on 2 the 15th? 3 MINISTER MTHETHWA: On the 15th I was, it 4 was the last day of the, of my work, my ministerial work in 5 the province of KwaZulu-Natal, which had started three days 6 earlier. 7 MS NKOSI-THOMAS SC: So what is one to 8 understand you to be saying? That you were not, you did 9 not attend any cabinet meeting on the 15th because there was 10 no such a meeting? 11 MINISTER MTHETHWA: No. 12 MS NKOSI-THOMAS SC: Yes, now did – 13 CHAIRPERSON: He goes further. He says 14 he wasn't even in Cape Town. 15 MS NKOSI-THOMAS SC: Indeed. 16 CHAIRPERSON: So if there was a cabinet 17 committee meeting of some kind he wasn't at it because he 18 was in KwaZulu-Natal. That's what you're saying, isn't it? 19 MINISTER MTHETHWA: Yes. 20 CHAIRPERSON: Is that correct? 21 MINISTER MTHETHWA: Yes, yes, Chair. 22 MS NKOSI-THOMAS SC: Alright. Well, Mr 23 Chaskalson says to me that that is clear from the cell 24 phone records, so I take it that this is a matter that's 25 common cause.</p>	<p style="text-align: right;">Page 32079</p> <p>1 way? 2 MINISTER MTHETHWA: No. Perhaps during 3 that period I've had people who were contacting me, 4 concerned about what was happening in Marikana. 5 MS NKOSI-THOMAS SC: Ja, please tell the 6 Commission about it. 7 MINISTER MTHETHWA: Well, they were 8 expressing concern. Firstly I spoke to the Deputy 9 President now, Mr Ramaphosa, who had called earlier, or who 10 had left a message and I then returned the call. He 11 explained to me that the situation in Marikana is bad. I'm 12 not quoting his exact words, but he says he's concerned 13 because people are dying there, property is being damaged 14 there and as far as he can see there are no police, or 15 adequate police on the ground, and a similar message had 16 been left by Mr Zokwana then, who's the Minister of 17 Agriculture, Forests and Fisheries, now, expressing a 18 similar sentiment. 19 CHAIRPERSON: Mr Zokwana spoke to you, or 20 left a message then in his capacity as the president of 21 NUM. 22 MINISTER MTHETHWA: Of NUM, yes. 23 CHAIRPERSON: Now can you perhaps tell us 24 when did you receive this communication firstly from Mr 25 Zokwana and secondly when did you receive, or have this</p>

<p style="text-align: right;">Page 32080</p> <p>1 conversation with Mr Ramaphosa? Can you give us the day 2 firstly and thereafter if you can remember or by referring 3 to the records tell us the time? 4 MINISTER MTHETHWA: The date, I spoke to 5 both of them immediately after the other and it was on the 6 12th of August. 7 CHAIRPERSON: That was the Sunday. 8 MINISTER MTHETHWA: It was the Sunday, 9 yes. 10 CHAIRPERSON: In the afternoon or the 11 evening or the morning? 12 MINISTER MTHETHWA: In the afternoon, it 13 was after 18:00, if I may check – 14 CHAIRPERSON: Yes, in other words Sunday 15 evening. 16 MINISTER MTHETHWA: Sunday evening, yes, 17 ja. 18 MS NKOSI-THOMAS SC: Please proceed, 19 Minister. 20 MINISTER MTHETHWA: Well, as I said they 21 were expressing similar sentiment – 22 MS NKOSI-THOMAS SC: Yes. 23 MINISTER MTHETHWA: - about the fact that 24 they think that the major problem is that they don't see 25 enough police on the ground.</p>	<p style="text-align: right;">Page 32082</p> <p>1 time of SAPS, and we have had situations where people would 2 raise similar sentiments and they would respond, whether 3 it's this province or that province or even nationally, so 4 I had no reason now to doubt what she was saying, but I 5 also appreciated that the situation is volatile. 6 MS NKOSI-THOMAS SC: Now Minister, in 7 exhibit FFF29, which is your initial statement, paragraph 8 18 - you don't have to go there, please – you deal with 9 that issue at paragraph 82 and 83 of the supplementary 10 statement, page 23, please if you may turn. There you 11 state that "Paragraph 18 of my first statement I've stated 12 that having been alerted to the situation in Marikana I 13 discussed the issue with the National Commissioner and was 14 given the assurance that SAPS was capable of handling the 15 matter." You then continue to say, "I confirm the above 16 but however wish to add something." Please tell the 17 Commission in your own words why is it that reference to 18 the Provincial Commissioner did not occur, was not made in 19 this first statement? 20 MINISTER MTHETHWA: Well, it was an 21 oversight. It was an oversight. When the first, when I 22 made the first statement, in the normal workings within the 23 portfolio the immediate person I call if there's anything 24 is National Commissioner, so at any time if you'll ask me 25 did you tell the police, it would be the National</p>
<p style="text-align: right;">Page 32081</p> <p>1 MS NKOSI-THOMAS SC: Yes, and what did 2 you do about that? 3 MINISTER MTHETHWA: Well, I immediately 4 contacted the province, the Provincial Commissioner of 5 Police in the province firstly to ascertain the veracity of 6 what I heard from the two gentlemen of damage to property, 7 of lives lost, and you know, general violent situation as 8 it were, which the Provincial Commissioner confirmed that 9 there is some such a thing. Then I took time to want to 10 understand what is it that the management of police is 11 doing to deal with that kind of a situation - 12 MS NKOSI-THOMAS SC: Yes? 13 MINISTER MTHETHWA: - to curb, as it 14 were, that you prevent any damage. Well, the Commissioner, 15 the Provincial Commissioner said to me that they are 16 attending to the situation, they've interacted with the 17 national office, there is going to be reinforcement of 18 members on the ground so that they are able to deal with 19 the situation, as it were, ensure that the public order is 20 maintained in that area. 21 MS NKOSI-THOMAS SC: Were you satisfied 22 after that conversation that SAPS was indeed handling the 23 matter adequately? 24 MINISTER MTHETHWA: Well, I was satisfied 25 because I have been dealing with the, my officials at the</p>	<p style="text-align: right;">Page 32083</p> <p>1 Commissioner. In this instance I immediately, I had these 2 two calls and after the second call I immediately called 3 the Provincial Commissioner because the way the two 4 gentlemen were narrating the situation on the ground was 5 that right now even more things can still happen. So I 6 immediately called her. But the records of my telephone, 7 when I looked at them it struck me that indeed I spoke to 8 the Provincial Commissioner. 9 MS NKOSI-THOMAS SC: Did it make any 10 difference in your reaction who the callers were? In other 11 words would you have acted differently had you been called 12 by Mr Joe Soap saying that the situation in Marikana is 13 deteriorating rapidly? 14 MINISTER MTHETHWA: Whether it's Mr Joe 15 Soap or Mr Ramaphosa, to me it's the same. As the Minister 16 of Police then any person could pick up the phone and call 17 me. I've had a lot of people who would call, some I don't 18 even know, so it doesn't matter who would have called me. 19 MS NKOSI-THOMAS SC: Now your statement, 20 Minister, deals in detail with your further engagement with 21 the National Commissioner as well as the Provincial 22 Commissioner. Now perhaps let's talk about, let's conclude 23 this conversation about the Provincial Commissioner, your 24 telephonic conversations with her. How many times in total 25 did you speak to her during this period under review, the</p>

<p style="text-align: right;">Page 32084</p> <p>1 9th, the 12th, leading up to the 16th at 4, which is the 2 happening of the tragedy, the time of the happening of the 3 tragedy?</p> <p>4 MINISTER MTHETHWA: Well, we spoke once 5 with the National Commissioner. We spoke three times with 6 the Provincial Commissioner.</p> <p>7 MS NKOSI-THOMAS SC: Perhaps I should 8 refresh your memory. Please let me direct your attention 9 to paragraph 81 of your statement, Minister, and that 10 occurs at page 22 of the supplementary statement. 11 Paragraph 81 there is a general denial of you ever bringing 12 pressure of whatever sort to the operational team, and the 13 first reason that you proffer in that regard is that during 14 that period you were on ministerial business in KwaZulu- 15 Natal. Do you confirm that?</p> <p>16 MINISTER MTHETHWA: Yes, I do.</p> <p>17 MS NKOSI-THOMAS SC: And as far as the 18 National Commissioner is concerned you mentioned that 19 during the period under review you spoke twice.</p> <p>20 MINISTER MTHETHWA: Yes, yes, yes. Good 21 correction.</p> <p>22 MS NKOSI-THOMAS SC: Do you confirm that?</p> <p>23 MINISTER MTHETHWA: Yes, I must correct 24 myself, we spoke twice, yes.</p> <p>25 MS NKOSI-THOMAS SC: Yes, and as far as</p>	<p style="text-align: right;">Page 32086</p> <p>1 That would've been 81.3, page 22 of your supplementary 2 statement – 81.4, I beg your pardon, and the question 3 having been what was the general tenor, Minister, of your 4 discussion firstly with the provincial commissioner and 5 secondly with the national commissioner.</p> <p>6 MINISTER MTHETHWA: Well, having 7 convinced myself that a need has been identified by the two 8 callers who had called me earlier on my approach then was 9 to ensure that we address that which they have raised, 10 namely check whether what they were saying was indeed 11 correct that there no police or inadequate police 12 deployment in the area, but also wanting to know about 13 these things which have happened – the damage to property, 14 the injury to people and so on – and wanting to know what 15 is it that is being done. That's the general tenor of my 16 interaction with the provincial commissioner.</p> <p>17 MS NKOSI-THOMAS SC: We will deal with 18 the individual calls later. Suffice it to say that that 19 was in general what was discussed, what passed between you 20 and the people that you called at the time. Now, did you 21 set about to prescribe how SAPS perhaps should manage what 22 was unfolding in Marikana?</p> <p>23 MINISTER MTHETHWA: Well, that's the how 24 part. You as the minister, that's not your province how 25 operationally you have to carry your tasks. As police</p>
<p style="text-align: right;">Page 32085</p> <p>1 the Provincial Commissioner is concerned, at 1.3 you say 2 you spoke thrice.</p> <p>3 MINISTER MTHETHWA: Yes.</p> <p>4 MS NKOSI-THOMAS SC: And this accords 5 with the telephone records that you have since submitted to 6 this Commission?</p> <p>7 MINISTER MTHETHWA: Yes.</p> <p>8 MS NKOSI-THOMAS SC: Now what was the 9 general tenor of your communications, or your communication 10 as it were with –</p> <p>11 CHAIRPERSON: I wonder – I'm sorry to 12 interrupt to. I'm wonder if it would be appropriate for us 13 to take the first comfort break at this stage and the 14 witness can then give us the general tenor once we resume.</p> <p>15 MS NKOSI-THOMAS SC: When we resume. May 16 it please you, Chair.</p> <p>17 CHAIRPERSON: We'll take a first comfort 18 break for quarter of an hour.</p> <p>19 [COMMISSION ADJOURNS COMMISSION RESUMES]</p> <p>20 [10:53] CHAIRPERSON: The commission resumes. 21 You're still bound by your affirmation, Minister. Ms 22 Nkosi-Thomas.</p> <p>23 MS NKOSI-THOMAS SC: Thank you, 24 Chairperson. Minister, when we adjourned the question that 25 I was about to go to had to do with the general tenor.</p>	<p style="text-align: right;">Page 32087</p> <p>1 officers that's your job. I don't enter into that terrain. 2 It's not my terrain.</p> <p>3 MS NKOSI-THOMAS SC: Now, Minister, in 4 your supplementary statement page 23, paragraph 85 and 5 further, you deal with the individual phone calls. Is that 6 correct?</p> <p>7 MINISTER MTHETHWA: Yes.</p> <p>8 MS NKOSI-THOMAS SC: And this you do, 9 Minister, with reference to the call data, EN – shall we 10 call it CCCC1.8. Thank you, Commissioner Hemraj.</p> <p>11 MINISTER MTHETHWA: Yes.</p> <p>12 MS NKOSI-THOMAS SC: Now, 85.1 deals with 13 the telephone calls that you have already testified about 14 that you made to the current deputy president of the 15 country, Mr Ramaphosa. Is that correct?</p> <p>16 MINISTER MTHETHWA: Yes.</p> <p>17 MS NKOSI-THOMAS SC: Is there anything 18 that you wish to add here? You have already testified 19 about that so you can simply confirm that 85.1.1 deals with 20 that phone call, but if you wish to add anything there 21 please do so.</p> <p>22 MINISTER MTHETHWA: Well, it deals with 23 it as it happened. I'm satisfied with it. I did tell my 24 legal team the origins of this call which is the same like 25 the next call where messages were left and then after I'd</p>

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1 finished my meetings in Kwazulu-Natal I then called these
2 two gentlemen back.

3 MS NKOSI-THOMAS SC: Now, 85.1.2,
4 Chairperson, here may I just point out that this 189,
5 that's line 4, Mr Chair, recalls, this call lasted 189
6 seconds. In fact that's a typo. It's a typographical
7 error. It's actually 198 and that is capable of easy
8 ascertainment. We just have to look at the call data that
9 has been exhibited. Thanks, Mr Chair. Now, do you confirm
10 the contents of paragraph 85.1.2?

11 MINISTER MTHETHWA: Yes.

12 MS NKOSI-THOMAS SC: Now, 85.1.2, here,
13 Minister, you deal with the phone call that you made to Mr
14 Zokwana, the then president of National Union of
15 Mineworkers. Currently he's the minister of agriculture,
16 forestry and fisheries. Is that correct?

17 MINISTER MTHETHWA: Yes.

18 MS NKOSI-THOMAS SC: And this is the call
19 that you say here lasted for 198 seconds. Is that correct,
20 Minister?

21 MINISTER MTHETHWA: Yes.

22 MS NKOSI-THOMAS SC: And this is where he
23 raised with you the gravity of the situation as it was
24 unfolding in Marikana.

25 MINISTER MTHETHWA: Yes.

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1 MS NKOSI-THOMAS SC: And you then
2 promised, last line of that paragraph, to ensure that SAPS
3 handles the matter appropriately.

4 MINISTER MTHETHWA: Yes.

5 MS NKOSI-THOMAS SC: You do confirm that?

6 MINISTER MTHETHWA: Yes, I do.

7 MS NKOSI-THOMAS SC: Now, 85.1.3, a few
8 seconds later you then call the provincial commissioner.
9 Is that correct, Minister?

10 MINISTER MTHETHWA: Yes.

11 MS NKOSI-THOMAS SC: And there that call
12 lasts for 338 seconds.

13 MINISTER MTHETHWA: Yes.

14 MS NKOSI-THOMAS SC: And this is where as
15 you've testified before you sought to confirm the
16 information that was relayed to you by the, that was given
17 to you by the two gentlemen that had called you before you
18 made this telephone call. Is that correct?

19 MINISTER MTHETHWA: Yes.

20 MS NKOSI-THOMAS SC: Yes, and you've
21 already mentioned that you were satisfied during that
22 conversation that the police were actively seized with the
23 matter.

24 MINISTER MTHETHWA: Yes.

25 MS NKOSI-THOMAS SC: Is that right? Very

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1 well. Now, paragraph 85.1.4, Minister, on page 25, you
2 mention that your interactions, this is a general
3 statement, falls within your duties as the minister of
4 police at the time. And you mentioned that you would've
5 been derelict in the extreme if despite the tragedy that
6 was unfolding you hadn't contacted the relevant heads of
7 police to obtain an official account which would inform any
8 strategic intervention. Would you like to elaborate on
9 that, Minister?

10 MINISTER MTHETHWA: Well, yes, I think
11 any person would expect that the minister of police to
12 react when such things are raised with him. It's incumbent
13 on the minister of police to satisfy himself or herself
14 that indeed what has been raised is being attended to,
15 especially because this is about the issue of safety and
16 security of members of the public, so it was what I was
17 expected to do and I did it. Well, given a chance I would
18 do it again if there was such a chance because people can't
19 report such things to you pertaining to your mandate and
20 then you don't raise that with people who are supposed to
21 ensure that that happens.

22 MS NKOSI-THOMAS SC: Now, when you
23 mention – you use words there, in other words you state I
24 did not contact the – ja, I would've been derelict. Let me
25 put it this way. What you mention in this paragraph is

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1 that part of why you contacted the heads of police was so
2 as to obtain an official account which would inform whether
3 or not any form of strategic intervention is indicated.

4 MINISTER MTHETHWA: Yes.

5 MS NKOSI-THOMAS SC: Now, what is, what
6 sort of strategic intervention does Minister contemplate in
7 this passage? I mean, that's not what happened on the day
8 but –

9 MINISTER MTHETHWA: Well, it was going to
10 depend on what was the response going to be from the point
11 of view of the officials, in this instance the provincial
12 commissioner. Now that it turned out to be the way it did
13 as I say after probing her wanting to clarify myself and
14 knowing that indeed they are doing something on that I then
15 took that, took her word on that.

16 MS NKOSI-THOMAS SC: Now, what
17 information was given to you by these two gentlemen who
18 called you on the 12th in the evening? What did they tell
19 you exactly?

20 MINISTER MTHETHWA: Well, they were
21 saying that they are concerned about what is happening in
22 the area and particularly the deputy president now, Mr
23 Ramaphosa, saying that he doesn't think that what is
24 happening is pure industrial action in the true sense of
25 the word. It has criminality on it and violence, which

<p style="text-align: right;">Page 32092</p> <p>1 thing when the provincial commissioner spoke to me I tended 2 to understand where he was coming from because industrial 3 action as you would understand it is that the constitution 4 and the Gatherings Act allow people to picket, to march, to 5 demonstrate and do all sorts of things unarmed. Now, if 6 there's an action, a protest action or industrial action, 7 and lives of people are lost that's criminal so I 8 understood where they were coming from. That's all I want 9 to say on that.</p> <p>10 MS NKOSI-THOMAS SC: Yes, and at the foot 11 –</p> <p>12 COMMISSIONER HEMRAJ: Minister, were you 13 actually advised of the number of people that had been 14 killed and the circumstances in which they had been killed, 15 what damage there were to property? Were you actually told 16 of the details?</p> <p>17 MINISTER MTHETHWA: Well, the two 18 gentlemen said there are people who are – they had not 19 confirmed but he had said that there are people who have 20 been killed on that day or injured but they still were to 21 confirm. The main thing is that they were emphasising the 22 gravity of the situation in that area.</p> <p>23 MS NKOSI-THOMAS SC: Now, Minister, we're 24 still on the same page, 25, on the 13th now of August, 25 85.2.1. You sent an SMS to the provincial commissioner and</p>	<p style="text-align: right;">Page 32094</p> <p>1 the action that SAPS had embarked upon to deal with that 2 situation?</p> <p>3 MINISTER MTHETHWA: Firstly even before 4 the action I was told what police did to try and avert any 5 fatality or any injuries on that but also, yes, I was told 6 that even with the issue of deployment and having members 7 on the ground that this is being attended to but despite 8 that these things happened and the circumstances under 9 which they did was explained to me.</p> <p>10 MS NKOSI-THOMAS SC: When you say the 11 circumstances were explained are you now referring to the 12 circumstances surrounding the deceased of the police 13 officers and the other people who died on that day?</p> <p>14 MINISTER MTHETHWA: Yes.</p> <p>15 MS NKOSI-THOMAS SC: And you tried to get 16 hold of the national commissioner it seems but was not 17 successful – paragraph 85.2.3 and 85.2.4, page 26.</p> <p>18 MINISTER MTHETHWA: Yes.</p> <p>19 MS NKOSI-THOMAS SC: Now, on the 14th of 20 August, 85.3, it looks like you had a phone call, a 21 telephonic conversation, with the national commissioner at 22 19.52.50, that's 85.3.3, which lasted for 159 seconds. Do 23 you confirm that, Minister?</p> <p>24 MINISTER MTHETHWA: Yes, certainly.</p> <p>25 MS NKOSI-THOMAS SC: What was discussed</p>
<p style="text-align: right;">Page 32093</p> <p>1 subsequent thereto about two hours later you then called 2 the provincial commissioner. What are the circumstances 3 surrounding this phone call, 18.36.10 on the 13th? That you 4 will find, Minister, at page 25 paragraph 85.2.2, this 5 phone call that took place at 18.36.10 to the provincial 6 commissioner.</p> <p>7 MINISTER MTHETHWA: So what's the 8 question?</p> <p>9 MS NKOSI-THOMAS SC: What were the 10 circumstances surrounding? Why did you call and what was 11 discussed here?</p> <p>12 MINISTER MTHETHWA: Well, it was one 13 matter. it was one matter, the situation, whether the 14 situation is improving, also checking that if there is 15 further deployment that has happened and so on. It was 16 mainly to keep track of what was happening on the ground, 17 whether there's change or whether there's anything which 18 need to be done.</p> <p>19 MS NKOSI-THOMAS SC: Were you informed of 20 the killings that occurred on the 13th during this phone 21 call?</p> <p>22 MINISTER MTHETHWA: I was informed 23 because – yes, I was informed of people who were killed and 24 people who were injured.</p> <p>25 MS NKOSI-THOMAS SC: Were you informed of</p>	<p style="text-align: right;">Page 32095</p> <p>1 during this phone call?</p> <p>2 MINISTER MTHETHWA: Mainly to ascertain 3 what I've been informed by the provincial commissioner is 4 indeed the case or not and wanting to know what then from 5 the side of national commissioner she thinks need to happen 6 in the situation. It was mainly confirming because you 7 would realise that I spent time talking to the provincial 8 commissioner on the situation who was on the ground as I 9 understand.</p> <p>10 MS NKOSI-THOMAS SC: You say at this 11 paragraph, 85.3.3, that she provided an update by informing 12 me that another Lonmin employee was killed. Do you 13 remember that? Do you confirm that rather?</p> <p>14 MINISTER MTHETHWA: Yes.</p> <p>15 MS NKOSI-THOMAS SC: And she had assured 16 you that SAPS was dealing with the matter.</p> <p>17 MINISTER MTHETHWA: Yes.</p> <p>18 MS NKOSI-THOMAS SC: Did you at any point 19 suggest how she should go about discharging her mandate?</p> <p>20 MINISTER MTHETHWA: No, you can't do that 21 as the minister as I said, but you would want to know 22 answers and want to satisfy yourself that something is 23 being done in what has been raised as a problem, but how 24 you do it, no.</p> <p>25 MS NKOSI-THOMAS SC: On the next page you</p>

Page 32096	Page 32098
<p>1 deal with the matters of the 16th of August 2012 and there</p> <p>2 apart from the SMSs that were sent and so on it appears to</p> <p>3 be the case that you had a 175 seconds long conversation</p> <p>4 with the provincial commissioner at 10 to 7.</p> <p>5 [11:13] Do you confirm that, Minister? 10 to 7 in the</p> <p>6 morning.</p> <p>7 MINISTER MTHETHWA: Yes.</p> <p>8 MS NKOSI-THOMAS SC: 85.4.4.</p> <p>9 MINISTER MTHETHWA: Chair – oh yes, ja,</p> <p>10 ja, no I do. I was not seeing the 15th. It's on the other</p> <p>11 page, the date. Ja, ja, I confirm.</p> <p>12 MS NKOSI-THOMAS SC: Now this was in the</p> <p>13 morning?</p> <p>14 MINISTER MTHETHWA: Yes.</p> <p>15 MS NKOSI-THOMAS SC: And this call you</p> <p>16 say that you sought to be briefed before you commenced with</p> <p>17 your duties of the day?</p> <p>18 MINISTER MTHETHWA: Yes.</p> <p>19 MS NKOSI-THOMAS SC: And you were</p> <p>20 informed that the situation was still the same.</p> <p>21 MINISTER MTHETHWA: Yes, it was still the</p> <p>22 same, but I also noted that what has been reported earlier</p> <p>23 on in other days of people being killed in numbers had</p> <p>24 slightly changed, yes.</p> <p>25 MS NKOSI-THOMAS SC: Now this phone call</p>	<p>1 MS NKOSI-THOMAS SC: 85.5.5.</p> <p>2 MINISTER MTHETHWA: Yes.</p> <p>3 MS NKOSI-THOMAS SC: What was discussed</p> <p>4 there, please Minister?</p> <p>5 MINISTER MTHETHWA: It wasn't a long</p> <p>6 discussion. She was also trying to ascertain exactly how</p> <p>7 many people have been killed. She did confirm that indeed</p> <p>8 there are people who had died in the hands of the police.</p> <p>9 MS NKOSI-THOMAS SC: And another, two</p> <p>10 other phone calls happen at 10 past 9, 21:11:14 and</p> <p>11 21:13:32, at paragraph 85.5.9. Now was this where you were</p> <p>12 given not full details, but is this that stage – okay, let</p> <p>13 me ask the question. What did you discuss during this</p> <p>14 time, 85.5.9?</p> <p>15 MINISTER MTHETHWA: It was that coming</p> <p>16 back as she had said earlier on, so she came back and</p> <p>17 explained that what she has been told happened there, that</p> <p>18 in the main police were trying to disarm and disperse</p> <p>19 protesters, or people who were on strike, and then there</p> <p>20 was a shooting and police shot a lot of people. Some</p> <p>21 people, or a person in the, what, amongst the protesters</p> <p>22 was carrying firearm or were carrying firearms, but at that</p> <p>23 stage it was something which was not clear, but what she</p> <p>24 sought to do was to make a point that indeed people were</p> <p>25 killed, though initially it was 20, 28, it wasn't clear at</p>
Page 32097	Page 32099
<p>1 happened in the morning, the morning of the 15th, as it</p> <p>2 were. So there was no communication between you and the</p> <p>3 Provincial Commissioner and also between you and the</p> <p>4 National Commissioner on the other hand until the next day.</p> <p>5 Is that correct?</p> <p>6 MINISTER MTHETHWA: Yes.</p> <p>7 MS NKOSI-THOMAS SC: Now the next day,</p> <p>8 being the 16th now, the day of the tragedy, 85.5, after the</p> <p>9 tragedy at 16:48, 85.5.2 at the foot of the page, you</p> <p>10 sought status report by way of sending an SMS. Am I right?</p> <p>11 MINISTER MTHETHWA: Yes.</p> <p>12 MS NKOSI-THOMAS SC: What prompted that?</p> <p>13 This is 16:48 after the tragedy, Minister.</p> <p>14 MINISTER MTHETHWA: I was hearing the</p> <p>15 media that a tragedy was, had taken place, but I didn't</p> <p>16 know what exactly has happened.</p> <p>17 MS NKOSI-THOMAS SC: Where were you at</p> <p>18 this stage? Do you remember?</p> <p>19 MINISTER MTHETHWA: On the 16th I was in</p> <p>20 Limpopo, or I was driving from Gauteng to Limpopo.</p> <p>21 MS NKOSI-THOMAS SC: Now it appears to be</p> <p>22 the case that you made several other, at least two more</p> <p>23 attempts and at 5PM you received a telephone call from the</p> <p>24 National Commissioner. Is that correct?</p> <p>25 MINISTER MTHETHWA: Yes, it is.</p>	<p>1 that time, but what was clear is that police have shot</p> <p>2 people and there are people who have died in the hands of</p> <p>3 police.</p> <p>4 CHAIRPERSON: Just –</p> <p>5 MS NKOSI-THOMAS SC: In other words, she</p> <p>6 confirmed the media reports that you had received at that</p> <p>7 stage? Excuse me, Chairperson?</p> <p>8 CHAIRPERSON: No, I wanted to ask about</p> <p>9 that too. Where were you when you had this conversation</p> <p>10 with the National Commissioner when she told you what</p> <p>11 you've just told us?</p> <p>12 MINISTER MTHETHWA: I was in Limpopo.</p> <p>13 CHAIRPERSON: You were in Limpopo. Were</p> <p>14 you still travelling or had you arrived at your</p> <p>15 destination?</p> <p>16 MINISTER MTHETHWA: No, I had arrived.</p> <p>17 CHAIRPERSON: So you hadn't?</p> <p>18 MINISTER MTHETHWA: I had arrived. I was</p> <p>19 in Limpopo already.</p> <p>20 CHAIRPERSON: You had, I see. So did you</p> <p>21 have access to a television set for example? Had you seen</p> <p>22 the television footage which was flighted, which was</p> <p>23 broadcast at that stage, showing some of the events that</p> <p>24 occurred?</p> <p>25 MINISTER MTHETHWA: Yes, yes, I did.</p>

<p style="text-align: right;">Page 32100</p> <p>1 After I had finished my meeting when I came in Limpopo I 2 did see the footage and actually even there it wasn't clear 3 exactly how many people – 4 CHAIRPERSON: Yes, yes, no – 5 MINISTER MTHETHWA: It was confused, ja. 6 CHAIRPERSON: No, I understand. 7 MINISTER MTHETHWA: Yes. 8 CHAIRPERSON: And when you were 9 travelling, I think you said when you were travelling you 10 sent an SMS at 16:48. Were you listening to the radio in – 11 were you travelling by motor car? 12 MINISTER MTHETHWA: Yes, I was – 13 CHAIRPERSON: Were you listening to the 14 radio? 15 MINISTER MTHETHWA: I was driving. I 16 heard over the radio. 17 CHAIRPERSON: So there were radio reports 18 already? 19 MINISTER MTHETHWA: There were reports 20 already, yes. 21 CHAIRPERSON: So you knew that there had 22 been a shooting. 23 MINISTER MTHETHWA: I knew there had 24 been – 25 CHAIRPERSON: The details obviously</p>	<p style="text-align: right;">Page 32102</p> <p>1 MINISTER MTHETHWA: Well, I'd called for 2 the police jet to go to the area because I thought it's 3 necessary that I'm there and try to minimise time as much 4 as possible. 5 MS NKOSI-THOMAS SC: You wanted to be 6 there as soon as you possibly could? 7 MINISTER MTHETHWA: Yes. 8 MS NKOSI-THOMAS SC: Now Minister, may I 9 now direct your attention, please, to a document, exhibit 10 EE, and that document Minister will find behind tab 11 of 11 the file that is before you. Chairman, may I direct your 12 attention to EE, please? Now this minute, Minister, for 13 context is a minute of a special JOCCOM meeting of 16 14 August 2012 at half past 1, 13:30, and that information 15 appears on page 1 of this document. Paragraph 2 tells you 16 about the people who were in attendance. It's common 17 cause, Minister, that you were not in attendance at the 18 meeting. Do you confirm that you were not in attendance? 19 MINISTER MTHETHWA: Yes, I do. 20 MS NKOSI-THOMAS SC: Now please turn to 21 page 3 of this minute. Perhaps for context, it was at this 22 meeting that a decision to execute the so-called stage 3 of 23 the operational plan was taken. 24 CHAIRPERSON: That's a controversial 25 question and I think you should put it differently.</p>
<p style="text-align: right;">Page 32101</p> <p>1 weren't clear at that stage. 2 MINISTER MTHETHWA: Yes. 3 CHAIRPERSON: And that prompted you, I 4 take it, to send the SMS and later to contact the National 5 Commissioner? 6 MINISTER MTHETHWA: Yes. 7 MS NKOSI-THOMAS SC: Thank you, Chair. 8 Now Minister, what happened then after you received this 9 briefing, or rather this fuller briefing that occurred at 10 about 9PM when you had arrived in Limpopo? I mean from 11 your side – 12 MINISTER MTHETHWA: Yes. 13 MS NKOSI-THOMAS SC: - in relation to 14 this incident. 15 MINISTER MTHETHWA: Well, as we were 16 speaking the National Commissioner undertook to be going 17 there to the area to have firsthand information, of which 18 she did. She informed me about that and then I also 19 followed her the following day to Marikana. 20 MS NKOSI-THOMAS SC: From Limpopo 21 straight to Rustenburg? 22 MINISTER MTHETHWA: Yes, I had to make 23 arrangements other than driving. 24 MS NKOSI-THOMAS SC: What arrangements 25 did you make?</p>	<p style="text-align: right;">Page 32103</p> <p>1 According to the minutes all that happened was the 2 Provincial Commissioner who had actually been at a meeting 3 the night before of the National Management Forum, she 4 informed the meeting at 1:30 on the Thursday afternoon 5 that, or she instructed Major-General Annandale to proceed 6 with the implementation of stage 3 of the operational plan, 7 as the minute says. It's a controversial question which 8 has to some extent been resolved already by evidence we've 9 had as to whether the decision was taken then. 10 We were told by your learned friend Mr Semanya 11 that the police case now is, evidence to the contrary 12 notwithstanding, that the decision to implement the plan if 13 the weapons weren't laid down voluntarily was taken on the 14 Wednesday night. 15 So, but in any event, it's not relevant for the 16 witness. All that the witness need know is that the 17 Provincial Commissioner told General Annandale, as the 18 minute says, that he must proceed with the implementation 19 of stage 3 of the operational plan, and this then fits in 20 of course with the point you're coming to, which is what 21 she said further in the second paragraph under closing 22 remarks on page 3, which I take it is what you're going to 23 put to the witness. 24 MS NKOSI-THOMAS SC: Indeed. Minister, 25 against that background of the instruction to General</p>

<p style="text-align: right;">Page 32104</p> <p>1 Annandale to execute stage 3 of the plan, then the minute 2 records as follows, "The Provincial Commissioner indicated 3 that she had already communicated with the National 4 Commissioner, informing her of the current situation and 5 that a deadlock as reached with negotiations, and also that 6 stage 3 of the operational plan will be executed. She also 7 indicated" – now this is the – "She also indicated that the 8 National Commissioner indicated that she will inform the 9 Minister of Police on the current situation and action to 10 be taken." Does the Minister see that? 11 MINISTER MTHETHWA: Mmmm. 12 MS NKOSI-THOMAS SC: Now my question to 13 you is, were you informed by the National Commissioner of 14 the decision to implement stage 3 of the operational plan? 15 Were you at any stage whatsoever informed of such a 16 decision? 17 MINISTER MTHETHWA: No. 18 MS NKOSI-THOMAS SC: Is that the sort of 19 decision, sort of detail that would be reported to you in 20 the ordinary course of your execution of your duties as 21 Minister of Police at the time? 22 MINISTER MTHETHWA: Well, not really 23 because you see, you are talking about phase, phase? 24 MS NKOSI-THOMAS SC: 3. 25 MINISTER MTHETHWA: - 3.</p>	<p style="text-align: right;">Page 32106</p> <p>1 wrongly called, they were strikers involved on your 2 information in illegal gathering, many of them armed with 3 dangerous weapons. As we've heard, people had been 4 murdered, property had been damaged, other people had been 5 injured. It was on the media, or on the television screens 6 every night. There was an enormous amount of public 7 interest and concern in the matter. Isn't that so? 8 MINISTER MTHETHWA: Yes, it was. 9 CHAIRPERSON: So you in fact yourself had 10 telephoned the Provincial Commissioner early in the morning 11 I think the previous day to ask if there's anything extra 12 that you should know, just for an update on the situation. 13 MINISTER MTHETHWA: Yes. 14 CHAIRPERSON: Now once the police decide 15 they're going to disarm these strikers against their will, 16 in other words they're going to if necessary use some kind 17 of force to disarm them, that was potentially a situation 18 which could have had serious consequences, risks involved 19 and so on. There would surely have been nothing wrong for 20 the National Commissioner just to inform you as a matter of 21 courtesy almost, to keep you up to date because you wanted 22 to be kept up to date, that this was going to happen. 23 Isn't that so? 24 MINISTER MTHETHWA: It's correct. 25 CHAIRPERSON: So what you tell us is she</p>
<p style="text-align: right;">Page 32105</p> <p>1 MS NKOSI-THOMAS SC: Stage 3. 2 MINISTER MTHETHWA: Stage 3, ja, that's 3 very operational to me. I don't even think that even if 4 the National Commissioner got hold of me she was going to 5 be giving me those details. Maybe she would have said that 6 'We are continuing with the process of ensuring that 7 there's peace there or we are disarming or we're 8 dispersing,' but no, there was no interaction on that. 9 MS NKOSI-THOMAS SC: Would you have 10 understood, Minister, if the National Commissioner had 11 called you and said now we are implementing, executing 12 stage 3 of the plan? Would you have understood what that 13 meant? 14 MINISTER MTHETHWA: No. As I say, that 15 is not my province. It can't be my province that now the 16 police are on the ground, they have to implement this or 17 they have to use this equipment they have and so on, no 18 that's not my area. 19 MS NKOSI-THOMAS SC: Excuse me 20 [microphone off, inaudible]. 21 CHAIRPERSON: While your counsel is 22 taking instructions - discussing a matter with one of her 23 colleagues, perhaps I can ask you this. This of course was 24 not a routine situation. It was quite a serious business, 25 wasn't it? There were 3 000 protesters, as they're called,</p>	<p style="text-align: right;">Page 32107</p> <p>1 didn't do that and your phone records appear to support you 2 on that, but so it's a hypothetical question really. 3 MINISTER MTHETHWA: Yes. 4 CHAIRPERSON: But the fact is there 5 wouldn't have been anything unusual at all, this was a – in 6 fact this was a very unusual situation and frankly if I'd 7 been the Minister of Police I would have expected the 8 National Commissioner to have kept me informed if they 9 decide to go over to the so-called tactical option, which 10 means disarming these people against their will. So it 11 would have been nothing improper or inappropriate for her 12 to have informed you, isn't that so? 13 MINISTER MTHETHWA: Nothing. What, the 14 point I was making is that when we start talking stage 1, 15 stage 3 and all those detailed operational matters, I don't 16 think I would feature there, but I also don't see anything 17 wrong if the National Commissioner would have phoned me and 18 told me that we are moving to disarm strikers or people who 19 are on strike. I don't see anything wrong there, but the 20 reality of the situation is that when you start getting 21 into operational terms and operational details, this is 22 where I say I don't think that that's my area. 23 CHAIRPERSON: No, I can understand that, 24 but phase 3 of the operational plan is, translated into 25 English means we're going over to the tactical option.</p>

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1 That is to say we are going to go over to disarm the
 2 strikers against their will. We've asked them to lay down
 3 their arms voluntarily. They haven't done so. We've now
 4 got to go further and we've got to disarm them against
 5 their will. Now that in plain English is something that,
 6 that you would have understood. The phrase "phase 3 of the
 7 operational plan" was something you obviously wouldn't have
 8 understood, but if it's been put to you in plain English as
 9 I have put it –
 10 MINISTER MTHETHWA: Ja.
 11 CHAIRPERSON: - you would have understood
 12 immediately, wouldn't you?
 13 MINISTER MTHETHWA: Ja.
 14 CHAIRPERSON: And as you very fairly
 15 concede that's something which was quite appropriate for
 16 the National Commissioner to tell you about.
 17 MINISTER MTHETHWA: Absolutely.
 18 MS NKOSI-THOMAS SC: Now Minister, may I
 19 direct your attention to JJJ192, and that is to be found in
 20 tab 10 of the file, the bundle that's before you. Please
 21 turn to page 9 of that document. For context, Minister –
 22 MINISTER MTHETHWA: Ja.
 23 MS NKOSI-THOMAS SC: - this is a
 24 recording of a conversation that took place between the
 25 Provincial Commissioner and certain employees of Lonmin

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1 whose names are mentioned in this transcript. So I'd like
 2 to direct your attention to the foot of page 9, line –
 3 CHAIRPERSON: I think in fairness – sorry
 4 to interrupt you, but it would be fair I think if you told
 5 the Minister, just in case he doesn't know, that this was a
 6 conversation which took place apparently on the Tuesday
 7 afternoon, the afternoon of the 12th – sorry, afternoon of
 8 the 14th.
 9 MINISTER MTHETHWA: The 14th.
 10 CHAIRPERSON: The Tuesday afternoon, on
 11 the afternoon of the 14th, during the course of Tuesday
 12 afternoon. So it was two days effectively before the
 13 tragedy occurred.
 14 MINISTER MTHETHWA: Yes.
 15 MS NKOSI-THOMAS SC: Yes, and two days
 16 after your first conversation, your conversation with the
 17 Provincial Commissioner.
 18 [11:33] After speaking to the deputy president and the
 19 Minister of Arts and Culture currently and formerly we know
 20 their positions at the time.
 21 CHAIRPERSON: So the heading on the
 22 screen that was it was in the morning is apparently
 23 incorrect, it was the afternoon.
 24 MS NKOSI-THOMAS SC: Thanks, Chair. Now
 25 at the foot of the page, Minister, the SAPS Commissioner

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1 states as follows, "But when I was speaking to Minister
 2 Mthethu" - it's a typographical error that –
 3 MINISTER MTHETHWA: Is it at page 9?
 4 MS NKOSI-THOMAS SC: At the foot of page
 5 9, Minister, page 9 of the transcript line 29. The
 6 transcript, you will find that – you don't have it?
 7 MINISTER MTHETHWA: This is where,
 8 JJJ192?
 9 MS NKOSI-THOMAS SC: That's right.
 10 MINISTER MTHETHWA: Yes and I'm on page
 11 9, so where are you?
 12 MS NKOSI-THOMAS SC: At the foot of page
 13 9.
 14 MINISTER MTHETHWA: Yes? On the foot of
 15 page 9 there is Mr Mokwena and SAPS Commissioner.
 16 MS NKOSI-THOMAS SC: Yes.
 17 CHAIRPERSON: It's the passage, Mr
 18 Mokwena says "Yes" –
 19 MINISTER MTHETHWA: Yes, yes.
 20 CHAIRPERSON: The SAPS Commissioner,
 21 that's General Mbombo, says "But when I was speaking to
 22 Minister" – it should be Mthethwa – "he mentioned a name to
 23 me who is also calling him, that he's pressurising him."
 24 MINISTER MTHETHWA: Mm-mm.
 25 CHAIRPERSON: "Unfortunately it is

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1 politically high" and Mr Mokwena says, "It is Cyril" and
 2 she then continues, "Cyril Ramaphosa?" "Yes."
 3 MINISTER MTHETHWA: I can see it now.
 4 CHAIRPERSON: "Remember now when I was
 5 talking to the National Commissioner last night" – on the
 6 Monday night it would have been – "she says to me, look
 7 General, who are the shareholders here? So I said I do not
 8 know the shareholders but I know that when I spoke to the
 9 Minister he mentioned Cyril. And then she says, 'Now I got
 10 it.' Do you know why she says she got it? Remember Cyril
 11 was on the appeal committee of Malema, remember?" Mokwena,
 12 "Yes." Commissioner, "He was very strong in terms of the
 13 decision that was made" and then they go on to discuss that
 14 further but the key point I think that your counsel is
 15 putting to you is, what do you say about her allegation at
 16 the foot of page 9 on to the top of page 10 that this
 17 person who was politically high, who was apparently Mr
 18 Ramaphosa, was pressurising you.
 19 MS NKOSI-THOMAS SC: Thank you, Chair.
 20 MINISTER MTHETHWA: Firstly, I'm trying
 21 to understand politically high and –
 22 CHAIRPERSON: Well, he was, he was I
 23 think on the National Executive Committee of the ANC so
 24 that would be politically high, I would have thought.
 25 MINISTER MTHETHWA: Well –

<p style="text-align: right;">Page 32112</p> <p>1 CHAIRPERSON: Some people may not agree 2 but I would have thought – 3 MINISTER MTHETHWA: No, thanks Chair. I 4 have alluded to a call by Mr Ramaphosa, that he raised 5 concerns the same way Mr Zokwana did. So they were raising 6 concerns with the Minister of Police at the time. 7 MS NKOSI-THOMAS SC: Yes. 8 MINISTER MTHETHWA: And I took it that 9 way. Now I'm not sure, I never came to that situation 10 where somebody put pressure on me, on my job. So they were 11 raising concerns, I took it that way. 12 CHAIRPERSON: There are two points 13 really, aren't there? The first is, did you regard Mr 14 Ramaphosa as endeavouring to pressurise you or to put 15 pressure on you? 16 MINISTER MTHETHWA: Honestly, I don't 17 regard anybody who would put pressure on me. 18 CHAIRPERSON: That's the first point. 19 The second point is, did you use that word when you spoke 20 to the Provincial Commissioner? She says, "I was 21 speaking," "When I was speaking to Minister Mthethwa he 22 mentioned a name to me who was also calling him, that he is 23 pressurising him." Now did you use that word in your 24 conversation with the Provincial Commissioner? 25 MINISTER MTHETHWA: Well, I wouldn't know</p>	<p style="text-align: right;">Page 32114</p> <p>1 MINISTER MTHETHWA: Yes. 2 MS NKOSI-THOMAS SC: And you then say 3 Marikana was no different. 4 MINISTER MTHETHWA: Yes. 5 MS NKOSI-THOMAS SC: And you then 6 emphasise or restate the crux of what passed between you 7 and the National Commissioner on the one, operational team 8 on the one hand and the other people on the other hand 9 during your telephone conversations. I don't want you to 10 go there again because you've already testified about that. 11 I'm just wrapping up this section but do you confirm? 12 MINISTER MTHETHWA: Yes. 13 MS NKOSI-THOMAS SC: And you then 14 conclude with a denial therefore based on the facts that 15 you've stated to this Commission, of any allegation of 16 undue influence. 17 MINISTER MTHETHWA: Yes. 18 MS NKOSI-THOMAS SC: Thanks Minister. 19 Now that, Chairman, takes us to the next topic. I'm not 20 sure at what stage the Chairperson would like to take – 21 CHAIRPERSON: I was proposing to take it 22 at quarter to but if it's more convenient for you that I 23 should take it now, I will do so. Do you want me to take 24 the tea break now? 25 MS NKOSI-THOMAS SC: Please, Chair, just</p>
<p style="text-align: right;">Page 32113</p> <p>1 where pressure would come from but as I say, my 2 interpretation and listening to the two gentlemen talking 3 to me, they were talking as people who were concerned, 4 Chair, about what was happening and what I said to the 5 Provincial Commissioner is that I've been talking to Mr 6 Ramaphosa and Mr Zokwana on the phone and they raised these 7 things which I said that as far as they are concerned they 8 think the police are not adequate on the ground. 9 MS NKOSI-THOMAS SC: Thanks, Minister. 10 Now that takes us back to your statement now, concluding 11 this undue pressure topic. Paragraph 87 you state there 12 that at no stage did you exert undue influence upon any 13 member of the operational team. The call data attached to 14 the statement does not bear those allegations out. Do you 15 confirm that? 16 MINISTER MTHETHWA: Yes, I do. 17 MS NKOSI-THOMAS SC: Yes and you then 18 mention, paragraph 89, that you received reports of this 19 nature from time to time, i.e. reports of the sort that 20 you received from the current Deputy President and the 21 Minister of Agriculture and as a matter of course you 22 relayed that to the National Commissioner and her team for 23 appropriate intervention, if necessary. 24 MINISTER MTHETHWA: Yes. 25 MS NKOSI-THOMAS SC: You confirm that?</p>	<p style="text-align: right;">Page 32115</p> <p>1 so that – 2 CHAIRPERSON: Alright. Well, we'll come 3 back I hope at 12 o'clock. 4 MS NKOSI-THOMAS SC: Thank you, Chair. 5 [COMMISSION ADJOURNS COMMISSION RESUMES] 6 [12:02] CHAIRPERSON: The Commission resumes. 7 Minister, you're still bound by your affirmation. 8 EMMANUEL NKOSINATHI MTHETHWA: [affirms 9 further] 10 CHAIRPERSON: Ms Nkosi-Thomas. 11 EXAMINATION BY MS NKOSI-THOMAS SC (CONTD.): 12 Thank you, Chairperson, Commissioners. When we took the 13 adjournment, Minister, we were about to move to the next 14 topic, that topic being, we call it media statements in the 15 supplementary statement, page 31 of your supplementary, 16 Minister. 17 MINISTER MTHETHWA: That would be tab – 18 CHAIRPERSON: Yes, it's on the screen. 19 It's paragraphs 98 and following. 20 MS NKOSI-THOMAS SC: It's in your 21 supplementary statement, paragraph – that's it. Paragraph 22 98 and further. Now in this regard, Minister, let's start 23 off by asking you the question; is there a policy in 24 government or within the police service particularly, known 25 as "maximum force policy"? Are you aware of any such</p>

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1 policy?
 2 MINISTER MTHETHWA: No, there is no such
 3 policy.
 4 MS NKOSI-THOMAS SC: Now if people were
 5 to suggest to you that there is such a policy and that you
 6 are the author thereof, what would your response be?
 7 MINISTER MTHETHWA: Well, we have the
 8 SAPS Act which we are working, mainly the principal policy,
 9 or the principal act. We have the policy as we are talking
 10 about here. We have many other prescripts which underpins
 11 how policing should be conducted in South Africa. So these
 12 pieces of legislation and policies are speaking primarily
 13 to the orientation of policing in South Africa today under
 14 democracy. So there is adequacy of laws, policies which
 15 are governing how policing should take place in South
 16 Africa today.
 17 MS NKOSI-THOMAS SC: Now when you're
 18 saying there are structures that are out there can show
 19 accountability, which structures do you have in mind?
 20 MINISTER MTHETHWA: Well, there are quite
 21 a number. Some are structures which affect anybody, like
 22 the Auditor-General's office, that's specifically with
 23 police. It would be your police secretariat, the civilian
 24 secretariat for police. It would be IPID, the Independent
 25 Police Investigative Directorate. So those structures are

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1 seized with the task of ensuring oversight over the police
 2 service in South Africa today.
 3 MS NKOSI-THOMAS SC: Now mention has been
 4 made before this Commission of such statements as maximum
 5 force for example, fighting fire with fire, having been
 6 made by you, Minister, in some of the public addresses.
 7 I'm simply going to ask you to tell this Commission, give a
 8 context in other words that led to these statements being
 9 made, but perhaps before I do that let me ask you this
 10 direct question. Were these statements made within the
 11 crowd management context?
 12 MINISTER MTHETHWA: No.
 13 MS NKOSI-THOMAS SC: Now what is the
 14 context within which the statements were made?
 15 MINISTER MTHETHWA: Well, thanks, Chair.
 16 When I was given the responsibility to head the portfolio
 17 of police in 2008 the situation in the country at that time
 18 was dire, especially by the gangs, criminal gangs who were
 19 terrorising people in cash-in-transit heists. A lot of
 20 lives and limb was lost during that period because these
 21 were people who were driven by greed and pure criminality
 22 to rob banks and cars carrying cash.
 23 Now it was a situation where there was pressure
 24 on police and people suggesting that police are unable to
 25 deal with this thing, which was affecting everybody because

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1 of the level of violence and the kind of violence which was
 2 demonstrated through these cash-in-transit heists, and at
 3 the same time ordinary citizens, police were being killed.
 4 At some point, because it was a new task, we were tempted
 5 to think of following what the trend was that let's bring
 6 in the army so that it does away with this thing because
 7 police have failed.
 8 Now on second thought I said no, that won't
 9 happen; police must deal with this thing and they must deal
 10 with it head-on because it was creating such a situation of
 11 anarchy in our country, and I said to police that they must
 12 ensure that they meet these criminals head-on. They would
 13 have to fight them on the language they understand. They
 14 have to fight fire, because we are talking about highly
 15 trained people here who were using sophisticated weaponry,
 16 so that was the context. I would say it's history now
 17 because nobody's talking about that. Nobody's panicking
 18 about that now, and so on. It's like it never existed, but
 19 it was confronting us and we had to respond, we had to
 20 motivate members of SAPS to deal with this thing, and it
 21 was in that context that we were raising this thing of
 22 fighting fire with fire, because there was heavy fire in
 23 the hands of the criminals.
 24 MS NKOSI-THOMAS SC: What did you mean,
 25 fighting fire with fire? Can you please explain what you

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1 meant by that to the Commission?
 2 MINISTER MTHETHWA: It meant that when
 3 there is no opportunity to apprehend the scoundrels on the
 4 ground at the time, police should not subject South Africa
 5 to fear and pain. They must cut that, because they were
 6 using weapons, these people; police are armed as well, so
 7 they had to confront them. This is what we meant.
 8 MS NKOSI-THOMAS SC: Now Chair, may I
 9 direct now your attention please, to exhibit FFF17? It's
 10 not in that bundle, but Minister, you have it in the second
 11 bundle, the other, the cross-examination bundle, and may we
 12 request that it be put up on screen? FFF17. That would
 13 mean the submission by CASAC dated August 2012. Now page
 14 22, please, do you have that, Minister?
 15 MINISTER MTHETHWA: Yes, I can see it.
 16 MS NKOSI-THOMAS SC: Okay, you have it
 17 worked from the screen. Paragraph 19B, they quote you, and
 18 I just read it for convenience, "Five days later," speaking
 19 to Wits students on the sidelines of a meeting of the newly
 20 formed – the Minister said, they're quoting you now,
 21 "Police must return fire with fire. We will use maximum
 22 force based on the law itself. Those who want to break the
 23 law, such as cash-in-transit heists and bank robberies,
 24 must think again. They should know that we will not waiver
 25 in continuing to let them feel the heat and that we squeeze

<p style="text-align: right;">Page 32120</p> <p>1 them with maximum force." Can you see that, Minister?</p> <p>2 MINISTER MTHETHWA: Yes, I can.</p> <p>3 MS NKOSI-THOMAS SC: When you said police</p> <p>4 will return fire, must return fire with fire based on the</p> <p>5 law, what did you mean by that?</p> <p>6 MINISTER MTHETHWA: Well, we meant what</p> <p>7 we were saying in that we would emphasise police working</p> <p>8 within the law because in terms of section 49 it clarifies,</p> <p>9 and we sought to clarify even from the beginning when we</p> <p>10 were given this responsibility, it clarifies when to use</p> <p>11 deadly force and under what circumstances. So the point we</p> <p>12 were making here is that whatever is being done has to be</p> <p>13 done within the confines of the law.</p> <p>14 MS NKOSI-THOMAS SC: Now same page of the</p> <p>15 same exhibit, but paragraph 20, the last line there it</p> <p>16 says, "The point is that there is no need to be heavy-</p> <p>17 handed with people who are not harming people." Please</p> <p>18 talk to that, Minister.</p> <p>19 MINISTER MTHETHWA: Well, it relates to</p> <p>20 how police and what we have been preaching throughout our</p> <p>21 term of office, and what we have been preaching is that for</p> <p>22 police to succeed in any democracy one of the fundamental</p> <p>23 pillar they need to lean on is strengthening the</p> <p>24 partnership with the public and therefore approaching</p> <p>25 criminals armed to teeth, ready to kill at any slightest</p>	<p style="text-align: right;">Page 32122</p> <p>1 important direction which distinguishes us as a democracy</p> <p>2 from where we come, that whatever police do, in fact</p> <p>3 emphasising the point I have just made, is that they must</p> <p>4 think of people first. So in other words how they approach</p> <p>5 and how they deal with people should be humane as</p> <p>6 government so that we know that ours is a privilege of</p> <p>7 serving these people and there is no need to be seen to be</p> <p>8 fighting with people. And by the way, in our country today</p> <p>9 we have had a lot of protests, we have had a lot of</p> <p>10 gatherings and so on, and those gatherings, most of them</p> <p>11 have been peaceful precisely because we preach this gospel</p> <p>12 every time, and this is what we are about as a democracy.</p> <p>13 MS NKOSI-THOMAS SC: Now Minister, in</p> <p>14 conclusion, now just concluding your testimony, your</p> <p>15 evidence-in-chief really, is there anything that you wish</p> <p>16 to add to what you have told this Commission this morning?</p> <p>17 MINISTER MTHETHWA: Well, thanks, Chair.</p> <p>18 I would want to acknowledge really what happened in</p> <p>19 Marikana and say that whatever happened was not supposed to</p> <p>20 happen under democracy. Something terribly wrong took</p> <p>21 place there. Where exactly that happened, I'm sure this</p> <p>22 honourable Commission is seized with that and at the end we</p> <p>23 will get whatever happened, but this is a matter of</p> <p>24 national and international proportion and that is why</p> <p>25 government through the President in particular decided to</p>
<p style="text-align: right;">Page 32121</p> <p>1 provocation or no provocation, and policing ordinary</p> <p>2 citizens are two different things, and the point we are</p> <p>3 making here is that there is no need for police to be</p> <p>4 heavy-handed when they are dealing with ordinary people.</p> <p>5 People may be in their residential areas or elsewhere, but</p> <p>6 there is a distinct group we talk about when we talk about</p> <p>7 police having to defend themselves, because the import of</p> <p>8 this fire with fire, it's mainly defending because there's</p> <p>9 fire out there, but with general populace what we have been</p> <p>10 doing during our term of office was to go to communities</p> <p>11 almost in all provinces, interacting with ordinary people,</p> <p>12 getting feedback on how they are policed by police, going</p> <p>13 to areas not because there's trouble or something has</p> <p>14 happened, but just to interact and exchange views with</p> <p>15 members of the public. So this is what is meant, because</p> <p>16 we've emphasised the point that ours is a caring</p> <p>17 government, so therefore there is no need then to display</p> <p>18 something contrary to that as members of South African</p> <p>19 Police Service.</p> <p>20 MS NKOSI-THOMAS SC: Now Minister, in the</p> <p>21 section dealing with this political rhetoric so-called, you</p> <p>22 refer to the Batho Pele principles. Were those applicable</p> <p>23 within the police service?</p> <p>24 MINISTER MTHETHWA: When the – in fact</p> <p>25 the entire government's approach is that that is one very</p>	<p style="text-align: right;">Page 32123</p> <p>1 appoint this Commission to finalise its job within four</p> <p>2 months so that we are able to learn whatever lessons needed</p> <p>3 to be learned as a society and move forward, and on that</p> <p>4 one I think as we also expressed in the aftermath of this</p> <p>5 tragedy, because it was indeed a tragedy visiting</p> <p>6 democracy, our own democracy in the country. So thank you</p> <p>7 very much.</p> <p>8 MS NKOSI-THOMAS SC: Thank you. Thanks,</p> <p>9 Chair, just a second please, to confer with my colleagues</p> <p>10 before we conclude. That's the examination-in-chief,</p> <p>11 Chair, thank you.</p> <p>12 CHAIRPERSON: Thank you, Ms Nkosi-Thomas.</p> <p>13 Mr Bizos.</p> <p>14 MR BIZOS SC: Thank you, Mr Chairman.</p> <p>15 CHAIRPERSON: You are allocated three-</p> <p>16 quarters of an hour, which will take us to 1 o'clock and</p> <p>17 you'll have a short little period after lunch to round up</p> <p>18 with what you were dealing with.</p> <p>19 CROSS-EXAMINATION BY MR BIZOS SC: I'll</p> <p>20 sum up very shortly, Mr Chairman. Minister, please turn to</p> <p>21 paragraph 100 in your supplementary statement. Yes, it's</p> <p>22 exhibit CCCC1.</p> <p>23 MINISTER MTHETHWA: Yes.</p> <p>24 MR BIZOS SC: Paragraph 100. Have you</p> <p>25 got it?</p>

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1 MINISTER MTHETHWA: Yes, I do.
 2 MR BIZOS SC: Right. It is significant
 3 to clarify and provide context to the circumstances under
 4 which the statements "maximum force" and "fighting fire
 5 with fire" are articulated. Then we go on to paragraph
 6 101, "I made the following statement.
 7 [12:22] We don't believe that when you are faced with
 8 criminals armed with sophisticated weaponry the police's
 9 stance would be to take out some human rights charter." I
 10 want to stop there. What did you mean by that,
 11 Commissioner, I beg your pardon, Minister? What did you
 12 mean by that?
 13 MINISTER MTHETHWA: I meant what is said
 14 here from a point of police facing criminals who are
 15 wielding weapons that there is no time to take out and read
 16 the human rights charter to those criminals because they
 17 won't even hear you.
 18 MR BIZOS SC: What? Why did you use the
 19 expression in this context with the constitution or a
 20 constitutional charter? Why did you use that expression?
 21 MINISTER MTHETHWA: Well, I used the
 22 expression because the question had been about whether this
 23 statement is not violating the human rights of those
 24 scoundrels.
 25 MR BIZOS SC: I see. So you think that

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1 the constitution actually to use the expression often used
 2 by those that want to discredit the constitution is that
 3 the constitution protects criminals more than ordinary
 4 people. Is that what you meant?
 5 MINISTER MTHETHWA: I don't mean that. I
 6 think it's your interpretation. What I meant was
 7 responding to a specific question not about the
 8 constitution, about somebody asking me a question whether
 9 those people do not have human rights or they are not
 10 subjected, they are not supposed to be subjected to human
 11 rights.
 12 MR BIZOS SC: I want to know from you,
 13 Minister, whether you believe that the constitution is an
 14 impediment to proper policing.
 15 MINISTER MTHETHWA: Maybe I would need
 16 clarity. Where would that come from?
 17 MR BIZOS SC: No, I am asking you the
 18 question.
 19 MINISTER MTHETHWA: No, I –
 20 MR BIZOS SC: I'm looking for an answer
 21 from you.
 22 MINISTER MTHETHWA: No, no, I've never
 23 said the constitution is an impediment in the fight against
 24 crime.
 25 MR BIZOS SC: All right. Taken together

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1 with paragraph 104 over the page, the last sentence, "As
 2 long as section 49 is there these criminals will have a
 3 field day." You said that?
 4 MINISTER MTHETHWA: Yes, I did.
 5 MR BIZOS SC: What is your objection to
 6 section 49?
 7 MINISTER MTHETHWA: It was a discussion
 8 on the amendment of the section.
 9 MR BIZOS SC: Yes, I know.
 10 MINISTER MTHETHWA: Yes.
 11 MR BIZOS SC: But what is it? Is it a
 12 portion of the amendment that you are objecting to?
 13 MINISTER MTHETHWA: I was objecting to
 14 not to amend. I was objecting, pushing for amendment of
 15 section 49 in line with the judgment of the Constitutional
 16 Court and -
 17 MR BIZOS SC: Yes.
 18 MINISTER MTHETHWA: Yes.
 19 MR BIZOS SC: Have you had any legal
 20 training, Minister?
 21 MINISTER MTHETHWA: Legal training?
 22 MR BIZOS SC: You're an attorney?
 23 MINISTER MTHETHWA: No.
 24 MR BIZOS SC: No. Any legal training?
 25 MINISTER MTHETHWA: No.

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1 MR BIZOS SC: You seem to know the
 2 judgment in relation to section 49. Do you?
 3 MINISTER MTHETHWA: Yes, because the
 4 legal team in the department had to brief me about it.
 5 MR BIZOS SC: Yes. You know that the
 6 Constitutional Court unanimously held together with Justice
 7 Kriegler that it was not unconstitutional because it had to
 8 be interpreted in the manner in which the 11 judges set
 9 out. Did you know that?
 10 MINISTER MTHETHWA: I was informed, yes.
 11 MR BIZOS SC: You were informed. And the
 12 judge actually suggested that the legislature may find it
 13 convenient for the guidance of the police if what the court
 14 had said was incorporated into an amendment to section 49.
 15 Were you informed of that?
 16 MINISTER MTHETHWA: That it should be
 17 amended?
 18 MR BIZOS SC: Yes.
 19 MINISTER MTHETHWA: Yes.
 20 MR BIZOS SC: If the police chose to and
 21 they wanted clarity they should read the judgment and they
 22 should amend section 49 accordingly. You knew that.
 23 MINISTER MTHETHWA: Yes.
 24 MR BIZOS SC: Now you say, "As long as
 25 section 49 is there these criminals will have a field day."

<p style="text-align: right;">Page 32128</p> <p>1 You meant –</p> <p>2 MINISTER MTHETHWA: In, yes, in it –</p> <p>3 MR BIZOS SC: You meant that what the</p> <p>4 Constitutional Court unanimously decided and what the</p> <p>5 legislature decided to amend still was something that you</p> <p>6 wanted to get rid of.</p> <p>7 MINISTER MTHETHWA: No, that's not the</p> <p>8 interpretation.</p> <p>9 MR BIZOS SC: Well, what did you mean if</p> <p>10 not that?</p> <p>11 MINISTER MTHETHWA: That in the form it</p> <p>12 was creating ambiguity and uncertainty to people now who</p> <p>13 have to implement the Act itself without saying that doing</p> <p>14 away because changing or not changing the Act, that's the</p> <p>15 preserve of the legislatures.</p> <p>16 MR BIZOS SC: You know, Minister, I don't</p> <p>17 want to repeat the questions unnecessarily. What objection</p> <p>18 did you have to the amendment of the Act? We have it on</p> <p>19 the computer here. It says that you can use proportional</p> <p>20 force, proportional force. You remember?</p> <p>21 MINISTER MTHETHWA: Ja.</p> <p>22 MR BIZOS SC: Did you want to get rid of</p> <p>23 that amendment?</p> <p>24 MINISTER MTHETHWA: No.</p> <p>25 MR BIZOS SC: What did you want to go</p>	<p style="text-align: right;">Page 32130</p> <p>1 49 as it stood needed to be clarified and simplified so</p> <p>2 that whatever ambiguity is there is taken away of that. I</p> <p>3 understand what you are saying about how it is captured</p> <p>4 here but throughout the process of amending section 49 this</p> <p>5 is the point we have always made.</p> <p>6 MR BIZOS SC: No, words mean what they</p> <p>7 say, Minister, and I will leave it at that. I put to you</p> <p>8 this that you are trying to explain away the contents of</p> <p>9 your statement in paragraph 100, sorry, 101, and you say</p> <p>10 this is what I intended. What I want to put to you,</p> <p>11 Minister, that you were not alone of that view. You have</p> <p>12 had an opportunity, I'm sure that your legal</p> <p>13 representatives because we gave notice of the fact that we</p> <p>14 are going to use it, you have regard to the contents of</p> <p>15 FFF17, have you?</p> <p>16 MINISTER MTHETHWA: FFF, that would be</p> <p>17 tab what?</p> <p>18 MR BIZOS SC: FFF17.</p> <p>19 CHAIRPERSON: It's not in the – it's in</p> <p>20 the bundle of documents which – it's on the screen now.</p> <p>21 It's in the bundle of documents which were presented to the</p> <p>22 commission for use in your cross-examination. It's not</p> <p>23 among the documents used in your examination in chief but</p> <p>24 in the documents that's being used by the LRC in cross-</p> <p>25 examining you and there now it's on the screen. It's the</p>
<p style="text-align: right;">Page 32129</p> <p>1 away in relation to section 49?</p> <p>2 MINISTER MTHETHWA: With section 49 as</p> <p>3 I'm repeating even now we wanted to ensure that whatever we</p> <p>4 do there's no ambiguity. It becomes clear. In other words</p> <p>5 simplify it as much as possible so that those who are</p> <p>6 implementing the Act understand exactly what is expected of</p> <p>7 them. That's not opposition.</p> <p>8 MR BIZOS SC: That's not what you say.</p> <p>9 What you say, "As long as section 49 is there these</p> <p>10 criminals will have a field day." That put in other words</p> <p>11 is get rid of section 49 amendment. Isn't that what it</p> <p>12 means?</p> <p>13 MINISTER MTHETHWA: Well, it may be</p> <p>14 captured that way but if you check the records throughout</p> <p>15 we were talking about clarifying and –</p> <p>16 MR BIZOS SC: I'm asking you what you</p> <p>17 meant. Sir, please answer the question. What did you mean</p> <p>18 other than what I am putting to you?</p> <p>19 MINISTER MTHETHWA: I've said what I</p> <p>20 meant.</p> <p>21 MR BIZOS SC: I beg your pardon?</p> <p>22 MINISTER MTHETHWA: I have said what I</p> <p>23 meant.</p> <p>24 MR BIZOS SC: What did you mean?</p> <p>25 MINISTER MTHETHWA: I said that section</p>	<p style="text-align: right;">Page 32131</p> <p>1 submission by the Council for the Advancement of the South</p> <p>2 African Constitution.</p> <p>3 MS NKOSI-THOMAS SC: Chairperson, the</p> <p>4 minister has it under tab 14 of his cross-examination</p> <p>5 bundle. Minister, if you could please turn to – thank you.</p> <p>6 CHAIRPERSON: It looks to me as if you've</p> <p>7 got your cross-examination bundle there. I'm not sure</p> <p>8 you've got the right tab. Is that tab 14 that you're</p> <p>9 looking at?</p> <p>10 MINISTER MTHETHWA: Yes, it's FFF14, is</p> <p>11 it, or 17. This one. Is it – ja.</p> <p>12 CHAIRPERSON: Ja, look at the screen.</p> <p>13 You will see the document you're being referred to.</p> <p>14 MINISTER MTHETHWA: Yes.</p> <p>15 MS NKOSI-THOMAS SC: That's the correct</p> <p>16 one, thanks.</p> <p>17 MR BIZOS SC: Have you got it?</p> <p>18 MINISTER MTHETHWA: Yes.</p> <p>19 MR BIZOS SC: Now, what I am going to put</p> <p>20 to you is that you were not alone in the statement that you</p> <p>21 made in paragraph 101. You were part of a chorus, a chorus</p> <p>22 of people and I will name them, set out in this exhibit by</p> <p>23 a statement by safety and security deputy minister, Susan</p> <p>24 Shabangu, yourself, sorry, Mr Chairman – were a number of</p> <p>25 occasions, Mr Cele when he was commissioner for a certain</p>

<p style="text-align: right;">Page 32132</p> <p>1 period, President Zuma, and you over and over again and 2 this chorus is to this effect that the constitution as the 3 legislation protects criminals and we cannot control crime 4 as police force unless we ignore the constitutional 5 safeguards. That's what this means. So that we don't have 6 to confine ourselves to what you said and you're saying 7 that it's wrongly understood. Reading the two documents 8 together we will submit is ample evidence that you and your 9 colleagues involved in the police resented the fact that 10 there was protection by the constitution and by the 11 legislation I understand in all this in relation to people 12 committing crimes irrespective of what they made be 13 including – 14 CHAIRPERSON: Yes, Ms Nkosi-Thomas? 15 MR SEMENYA SC: Well, Chair, let me 16 rather, one, the question is too long but I want to take 17 exception and objection that there was any pronouncement by 18 members of government that the constitution must be 19 ignored. That proposition – 20 CHAIRPERSON: Yes, Mr Bizos, you made a 21 statement without citing the authority or quoting that the 22 person whose remarks or persons whose remarks you were 23 summarising. 24 MR BIZOS SC: Yes. 25 CHAIRPERSON: And what Mr Semanya says is</p>	<p style="text-align: right;">Page 32134</p> <p>1 is if you want to put a statement like that to the witness 2 for his comment you should quote the exact words relied on. 3 You're saying there are statements to the effect the 4 constitution is an impediment. Well, Mr Semanya says he 5 doesn't know of any. He may be wrong on that but if there 6 are statements that say that then you must put them to the 7 witness in fairness to him so he has an opportunity to deal 8 with them. 9 MR BIZOS SC: The statements that I am 10 relying on I am prepared to read out but I will apply for 11 an extension of the time period that I have to read them 12 out in order to – 13 CHAIRPERSON: This is an important - 14 MR BIZOS SC: To satisfy the objection 15 made by Mr Semanya. 16 CHAIRPERSON: This is an important point, 17 Mr Bizos. I understand that and I'll give you an extension 18 for that purpose. 19 MR BIZOS SC: Yes, thank you, Mr Chair. 20 Well, the exhibit FFF14 – I beg your pardon, FFF17 on page 21 13 under the heading "Statements actioned subsequent to 12 22 November 2009". Sorry. I'll start at the beginning, yes, 23 sorry. I had the pages mixed up. On page 11, statements 24 and actions during the period 2008 to 12th of November 2009. 25 CHAIRPERSON: You say page 11. We're</p>
<p style="text-align: right;">Page 32133</p> <p>1 that you're not correct in suggesting that any member of 2 the government said there's something wrong with the 3 constitution. Perhaps if you want a meaningful answer from 4 the witness you should put to him the precise wording upon 5 which you rely. 6 MR BIZOS SC: Yes. 7 CHAIRPERSON: I must confess my 8 impression is the same as Mr Semanya's. There were 9 provisions in the Police Act which provide that police must 10 use minimum force. There are provisions also in the 11 standing orders which say the same. While this witness was 12 minister he never did anything to cause the standing orders 13 to be changed in that regard. But I know there are certain 14 statements which you have in mind which are quoted in some 15 of the documents before us. Perhaps it would be helpful if 16 you put them directly to the witness so that we can get his 17 response. 18 MR BIZOS SC: Yes. What I'm putting to 19 you is that these statements, your statement and the other 20 statements of the other persons, show that the 21 constitution, provisions of the constitution and provisions 22 in the standings orders and provisions in the enactments 23 like section 49 were a hindrance to police carrying out 24 their duties properly. 25 CHAIRPERSON: The point Mr Semanya makes</p>	<p style="text-align: right;">Page 32135</p> <p>1 being shown page 13 at the moment. You want page – 2 MR BIZOS SC: 11, yes. 3 CHAIRPERSON: 11 is now coming up. Can 4 we get paragraph number – it's paragraph 7 and following 5 hey? 6 MR BIZOS SC: Yes. 7 CHAIRPERSON: Ja. 8 [12:42] MR BIZOS SC: I'll read what the exhibit 9 says. "It is submitted that the following statements 10 and/or actions during the period April 2008 to 12 November 11 2009 may be taken as evidence that the responsible 12 officials of government had a deliberate policy that 13 involves encouraging greater use of force by members of the 14 South African Police Service. 8. The statement by the 15 then Deputy Minister of Safety and Security, Susan 16 Shabangu, on the 9th of April 2008 to the effect, 'You must 17 kill the bastards (criminals) who threaten you or the 18 community, you must not worry about regulations, I want no 19 warning shots, you have one shot and that must be a kill 20 shot. I want assurance. The police station commissioners 21 and policemen and women from these areas, that they have 22 permission to kill these criminals. I will not tolerate 23 any pathetic excuses for you not being able to deal with 24 crime. You have been given guns, now use them. If 25 criminals dare to threaten the police or the livelihood or</p>

<p style="text-align: right;">Page 32136</p> <p>1 lives of innocent men, women and children, then they must 2 be killed." Did you know about this statement? Do you 3 associate yourself with it? 4 CHAIRPERSON: Before you answer that 5 question, can I ask you this? When were you appointed 6 Minister of Safety and Security? I think you were first, 7 the department was then called Safety and Security, it then 8 went back to its old name of Police later but when were you 9 appointed the Minister in that department? 10 MINISTER MTHETHWA: September 2008, 2008. 11 CHAIRPERSON: 2008? 12 MINISTER MTHETHWA: Yes. 13 CHAIRPERSON: So you were not the 14 Minister at the time when the then deputy – 15 MINISTER MTHETHWA: Yes. 16 CHAIRPERSON: - made the statement that's 17 been quoted here. 18 MINISTER MTHETHWA: Yes. 19 CHAIRPERSON: That's correct. Who was 20 your predecessor? 21 MINISTER MTHETHWA: Minister Nqakula. 22 CHAIRPERSON: I see. 23 MINISTER MTHETHWA: Ja. 24 MR BIZOS SC: Well, did you ever 25 dissociate yourself from your predecessor's –</p>	<p style="text-align: right;">Page 32138</p> <p>1 said. Would you agree with the President and with Ms 2 Shabangu? 3 MINISTER MTHETHWA: Am I supposed to be 4 answering for statements I never made? 5 MR BIZOS SC: No, no. 6 MINISTER MTHETHWA: I am – 7 MR BIZOS SC: You have made – 8 MINISTER MTHETHWA: I need clarity. 9 MR BIZOS SC: Sir, you have made a 10 similar statement. You wanted to put an interpretation on 11 it which we do not accept, in order to support our 12 submission that this is a trend, these, what your 13 colleagues have said. Do you associate yourselves, have 14 you associated yourself with the statements that they have 15 made or not, or do you associate or do you repudiate their 16 statements now? What is your view – 17 CHAIRPERSON: It's quite a tangled, 18 complicated question, Mr Bizos. It's about three or four 19 questions wrapped up in one. I think you put them – 20 MR BIZOS SC: One by one. 21 CHAIRPERSON: - you must put them 22 separately. So at the time, as we heard, he wasn't the 23 Minister in charge of that department. 24 MR BIZOS SC: Yes. 25 CHAIRPERSON: And Deputy Minister</p>
<p style="text-align: right;">Page 32137</p> <p>1 CHAIRPERSON: She wasn't his predecessor, 2 she was the deputy to his predecessor. 3 MR BIZOS SC: Yes. Did you ever 4 dissociate yourself from this statement? 5 MINISTER MTHETHWA: Well, there was a 6 Minister at that time. I don't think that that was my area 7 to associate or to dissociate myself. 8 MR BIZOS SC: The next paragraph of this 9 exhibit says, "The Deputy Minister Shabangu's words were 10 not repudiated by the leadership of the African National 11 Congress and the South African government. Mr Zuma became 12 President of South Africa in May 2009 and appears to have 13 represented a broad agreement reinforced as follows. The 14 fact that on 11th of April 2008, two days after Ms Shabangu 15 made the above statement, Mr Zuma, who was then the 16 President of the ANC, said 'If you have a Deputy Minister 17 saying this kind of things that the Deputy Minister was 18 saying, this is what we need to happen.'" What the Deputy 19 Minister – 20 CHAIRPERSON: I think in fairness you 21 should read the next sentence, Mr Bizos. 22 MR BIZOS SC: Yes. What the Deputy 23 Minister was saying is, what we are to be doing is dealing 24 with the criminals rather than talking about it. Now do 25 you subscribe to that view? This is what the President</p>	<p style="text-align: right;">Page 32139</p> <p>1 Shabangu was not his deputy. 2 MR BIZOS SC: Yes. 3 CHAIRPERSON: Then the other point is 4 that Mr Zuma was then, held no public office and was the 5 President of the ANC but not of the country, but I take it 6 the real question is, when he became the Minister of Safety 7 and Security in the latter part of 2008 did he at any stage 8 associate himself with what had been said earlier. That's 9 really the question you're asking, am I correct? That's 10 the first part of your question. There were four 11 questions, I think, but at the time Minister Shabangu made 12 these remarks, Deputy Minister Shabangu made these remarks 13 at the time, he wasn't the Minister in charge of that 14 department. So his point is he couldn't really be called 15 upon to deal with a matter relating to another department 16 and one of his colleague's deputies. Equally, Mr Zuma was 17 not holding public office at the time, he was just a 18 politician, President of a political party. When he – so 19 your real question surely I take it, must be, when you 20 became Minister of Safety and Security and thereafter the 21 same department differently named, Police, did you at any 22 stage associate yourself with or disassociate yourself from 23 these remarks? Is that the question? 24 MR BIZOS SC: Yes. 25 CHAIRPERSON: Well, let's get the</p>

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1 witness's answer.
 2 MR BIZOS SC: Yes. What is your answer?
 3 You've heard the question.
 4 MINISTER MTHETHWA: Well, firstly I saw
 5 these statements, some of them here in this package –
 6 MR BIZOS SC: Yes?
 7 MINISTER MTHETHWA: So I –
 8 MR BIZOS SC: Do you agree with them or
 9 disagree?
 10 MINISTER MTHETHWA: Did I agree with
 11 them?
 12 MR BIZOS SC: Do you agree –
 13 CHAIRPERSON: No, Mr Bizos, you're
 14 interrupting. The point he's making is that some of these
 15 statements he saw for the first time in the package so he
 16 couldn't have dissociated himself from them.
 17 MR BIZOS SC: Yes.
 18 CHAIRPERSON: But the real question is,
 19 which of them did you know about and then you can ask the
 20 following, the questions –
 21 MR MPOFU: Chairperson, no. I think
 22 we're going too far now.
 23 CHAIRPERSON: Mr Mpofo, this is not –
 24 you're not cross-examining –
 25 MR MPOFU: No, Chairperson – well, you

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1 allowed Mr Semenya, he was not cross-examining either. Can
 2 I intervene? I have an interest in this matter. The
 3 question that is being asked is whether the witness
 4 associates now, not whether he associated then. So let's
 5 not change the question –
 6 CHAIRPERSON: Mr Mpofo, Mr Mpofo, please
 7 –
 8 MR MPOFU: - just to suit the witness.
 9 CHAIRPERSON: - if you'd listened
 10 carefully to what I said you would realise that your
 11 objection is unfounded. I put to Mr Bizos, he'd asked
 12 about four questions wrapped up in one. The first lot
 13 related to his conduct at the time, whether he dissociated
 14 himself, et cetera. There were later questions about what
 15 his position is at the moment. I wasn't stopping him from
 16 asking those but my approach to these matters is to be fair
 17 to a witness, you shouldn't ask a witness four questions
 18 bundled up as one. You must ask the questions separately
 19 and the witness will answer them separately and Mr Bizos
 20 accepted that suggestion. So you're out of order, I
 21 disallow –
 22 MR MPOFU: No, Chairperson –
 23 CHAIRPERSON: Please carry on, Mr Bizos.
 24 MR MPOFU: Chairperson, no, no, I'm going
 25 to –

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1 CHAIRPERSON: Sorry –
 2 MR MPOFU: - assured by that. I'm saying
 3 I accept what you're saying, Chairperson, and in fact it's
 4 part of the dangers of asking too many questions but one of
 5 those dangers is that then the question sometimes gets
 6 changed and I'm saying that – I'm not saying it's your
 7 fault, Chairperson, but I'm saying that the question that
 8 was being asked is not whether the witness disassociated
 9 himself then, it's whether he dissociates himself,
 10 dissociates with the statements now and that's
 11 CHAIRPERSON: He asked two questions, he
 12 asked two questions or more than two questions. He's a
 13 very experienced senior counsel, a cross-examiner of many
 14 years' experience, I'm sure I can rely on him when he says
 15 he will ask the questions separately –
 16 MR MPOFU: No, it's you who made the
 17 mistake, not him, Chairperson. I'm just saying that the
 18 question must not change to whether he dissociated then.
 19 It's you, not Mr Bizos.
 20 CHAIRPERSON: Mr Mpofo, I don't want to
 21 waste further time on nonsense. The fact is, the question
 22 -
 23 MR MPOFU: Well, Chairperson, I take
 24 grave exception to that kind of language –
 25 CHAIRPERSON: - take that exception,

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1 we'll carry on.
 2 MR MPOFU: Well, Chairperson –
 3 CHAIRPERSON: Mr Bizos's question is on
 4 record –
 5 MR MPOFU: Chairperson, no – no. If, are
 6 you saying the question, I must allow the question to be
 7 changed and not answered on the basis that I'll ask it when
 8 I'm cross-examining?
 9 CHAIRPERSON: No, I'm not saying that at
 10 all. What I'm saying is something different. I'm saying
 11 Mr Bizos asked about four questions in one. I put – one of
 12 them related to the conduct of the witness in the past
 13 relating to disassociation.
 14 MR MPOFU: Yes.
 15 CHAIRPERSON: The latter part of the
 16 bundle relating to his present stance –
 17 MR MPOFU: Correct.
 18 CHAIRPERSON: When I said to him you must
 19 put the questions separately, he agreed, he said he was
 20 going to do that. So I'm quite sure that Mr Bizos, when
 21 he's got the answer to the first question in the bundle,
 22 will ask the questions at the latter end of the bundle. So
 23 there's no problem at all. Mr Bizos, please put -
 24 MR BIZOS SC: I want to assure my learned
 25 friend that I will ask, did he agree then and I'm going

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1 then to ask him does he agree now with what he said and
 2 then I have another third question, depending on his –
 3 CHAIRPERSON: Well, let's ask those
 4 questions separately or you ask the questions separately.
 5 Let's get the witness's answer and not waste further time
 6 on nonsense. Carry on.
 7 MR BIZOS SC: You were part of the
 8 government. What portfolio did you have when the –
 9 MINISTER MTHETHWA: I was the Minister of
 10 Safety and Security first and then Minister of Police –
 11 MR BIZOS SC: Minister of?
 12 MINISTER MTHETHWA: Minister of Safety
 13 and Security first, then Minister of Police.
 14 CHAIRPERSON: No, I don't think you're
 15 understanding the point. When these statements were made
 16 you weren't yet Minister of Safety and Security. What were
 17 you Minister of before you were appointed to the position
 18 of Minister of Safety and Security?
 19 MINISTER MTHETHWA: I was not a Minister.
 20 MR BIZOS SC: You were not a Minister.
 21 Were you a member of parliament?
 22 MINISTER MTHETHWA: Yes.
 23 MR BIZOS SC: You were interested in this
 24 matter because you had already made a statement at a
 25 committee meeting in parliament, so you were not – you were

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1 not ignorant of the debate that was going on as to whether
 2 –
 3 CHAIRPERSON: No – no, Mr Bizos –
 4 MS NKOSI-THOMAS SC: Chair –
 5 CHAIRPERSON: - the statement made at the
 6 select committee of parliament is referred to in paragraph
 7 101 of his supplementary statement, that was made on the
 8 12th of November 2008 after he had become the Minister of
 9 Safety and Security. That's my understanding. Am I right,
 10 Minister?
 11 MINISTER MTHETHWA: Yes, correct Chair,
 12 correct.
 13 MR BIZOS SC: Could I leave this out for
 14 a moment because of – but please look at paragraph 13 of
 15 the exhibit.
 16 MINISTER MTHETHWA: Page? What page?
 17 MR BIZOS SC: It says, "For the similar
 18 thing" –
 19 MINISTER MTHETHWA: Sorry, what page?
 20 MR BIZOS SC: I'm sorry.
 21 CHAIRPERSON: Page 12 of the exhibit.
 22 MR BIZOS SC: Page 12, paragraph 13.
 23 MINISTER MTHETHWA: Okay.
 24 MR BIZOS SC: "For the similar thing, Mr
 25 Mthethwa told the Sunday Independent newspaper interview

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1 that the police needed to be more aggressive in defending
 2 themselves. 'We don't want some hesitation from the police
 3 as 117 policemen died last year because they hesitated to
 4 defend themselves as they feared the media and some human
 5 rights practitioners.' Mr Mthethwa also said that 'We are
 6 at war with criminals.'" Did you say that?
 7 MINISTER MTHETHWA: Yes, I did.
 8 MR BIZOS SC: Does that mean that you
 9 found yourself in substantial agreement with Ms Shabangu?
 10 MINISTER MTHETHWA: If you read, as you
 11 were, this statement and other statements, I have
 12 emphasised the kind, the category of people I was referring
 13 to and I've always referred to.
 14 MR BIZOS SC: Do you –
 15 MINISTER MTHETHWA: Now if what, Deputy
 16 Minister Shabangu meant what I said and was referring to
 17 the category of people I've been talking about then it
 18 means we were saying the same thing. I don't know, I see
 19 this extract here, I don't have an appreciation of what is
 20 it that, what prompted Deputy Minister Shabangu or the
 21 President to say whatever they said.
 22 MR BIZOS SC: Do you believe that there
 23 are human rights practitioners who are feared by members of
 24 the police in carrying out their duties?
 25 MINISTER MTHETHWA: Yes, they would have

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1 expressed that to me, both the media and some people who
 2 always see everything wrong with them as police. They have
 3 said that, yes.
 4 MR BIZOS SC: And if we go back to the
 5 previous page, what do you say the answer is that human
 6 rights lawyers, for instance, judges, ordinary citizens,
 7 that the police are trigger happy, if I may use the
 8 expression, then they must be ignored?
 9 MINISTER MTHETHWA: Trigger happy, no,
 10 they should not be ignored but where necessary they have to
 11 do what the Act says they must do and in fact that very
 12 expression "trigger happy," if you read all the statements
 13 you will find in this very extract here that I talk about
 14 that, all the time that there is no place for members of
 15 SAPS who are trigger happy.
 16 CHAIRPERSON: Mr Bizos, it's one o'clock
 17 so when we reach an appropriate stage in your cross-
 18 examination, please tell me so we can then take the lunch
 19 adjournment.
 20 MR BIZOS SC: I'm going to quote a
 21 statement from Mr Cele, it's a brief one. Perhaps I should
 22 do it. Mr Cele, the appointment of Mr Bheki Cele as
 23 National Commissioner of the SAPS is July 2009. At the
 24 time when he was appointed Mr Cele already had a reputation
 25 –

<p style="text-align: right;">Page 32148</p> <p>1 CHAIRPERSON: I'm sorry to interrupt you, 2 Mr Bizos, are you quoting from the exhibit FFF17? If so, 3 will you please give us the paragraph number? 4 MR BIZOS SC: Paragraph 14. 5 CHAIRPERSON: Pardon? 6 MR BIZOS SC: Paragraph – page 12, 7 paragraph 14. 8 CHAIRPERSON: Alright, perhaps they can 9 show us – there we go. 10 MR BIZOS SC: Shall I start again, Mr 11 Chairman - "the appointment of Mr Bheki Cele as National 12 Commissioner of the South African, of SAPS, in July 2009. 13 At the time he was appointed, Mr Cele already had a 14 reputation for advocating the aggressive use of force and 15 continued to openly do so during his initial months after 16 he was appointed, for instance in an address to the 17 Pretoria Press Club in September 2009 Mr Cele is reported 18 to have said that criminals were heavily armed with R5 19 assault rifles and that the only language that R5s 20 understand is R5s. The police would not have to think 21 twice and lose their lives. Now – 22 CHAIRPERSON: What's the question you 23 want to ask the witness based on that? 24 MR BIZOS SC: This was a Commissioner of 25 Police.</p>	<p style="text-align: right;">Page 32150</p> <p>1 carrying R5s. 2 [13:02] And he is saying that those people understand 3 that language. That's what he was saying. 4 MR BIZOS SC: You say that you had no 5 objection to what Mr Cele said – 6 MINISTER MTHETHWA: No, I don't have – 7 MR BIZOS SC: And you would support 8 what he says? 9 MINISTER MTHETHWA: I don't have 10 objection. 11 MR BIZOS SC: I beg your pardon? 12 MINISTER MTHETHWA: I don't have 13 objection. 14 MR BIZOS SC: You don't have any 15 objection? 16 MINISTER MTHETHWA: No. 17 CHAIRPERSON: The short point is that Mr 18 Cele was appointed National Commissioner while you were 19 Minister. 20 MINISTER MTHETHWA: Yes. 21 CHAIRPERSON: And if you disagreed with 22 what he said, the statements he made received quite 23 extensive publicity and if you disagreed with what he said 24 you would have made that clear. 25 MINISTER MTHETHWA: Ja.</p>
<p style="text-align: right;">Page 32149</p> <p>1 CHAIRPERSON: I understand, but what's 2 the question you're asking the witness about? 3 MR BIZOS SC: Do you agree with his 4 statement? 5 MINISTER MTHETHWA: It's in line with 6 what I've been saying since this morning. He's very 7 specific, he's not talking about any other South African, 8 so it's in line with what I was saying. 9 MR BIZOS SC: Yes, you say that this is, 10 what Mr Cele says is in accordance with the constitution? 11 Is that what you're saying? 12 MINISTER MTHETHWA: It is in accordance 13 with the Act that if police are under danger they would 14 have to use deadly force and this is what he's saying here. 15 MR BIZOS SC: Aren't there some 16 qualifications, both in the constitution and in the Act and 17 section 49 in relation to proportionality and other 18 matters? 19 MINISTER MTHETHWA: Yes. 20 MR BIZOS SC: He doesn't say that – 21 MINISTER MTHETHWA: But – 22 MR BIZOS SC: He says that the only way 23 that they can do it is by answering fire with fire. 24 MINISTER MTHETHWA: But this is 25 proportionality, he is talking about people who are</p>	<p style="text-align: right;">Page 32151</p> <p>1 CHAIRPERSON: Ja. Can we take the lunch 2 adjournment now, Mr Bizos? 3 MR BIZOS SC: Yes, Mr Chairman. 4 CHAIRPERSON: 10 to 2. 5 [COMMISSION ADJOURNS COMMISSION RESUMES] 6 [13:58] CHAIRPERSON: The Commission resumes. 7 Minister, you're still bound by your affirmation. 8 EMMANUEL NKOSINATHI MTHETHWA: [affirms 9 further] 10 CHAIRPERSON: Mr Bizos. 11 CROSS-EXAMINATION BY MR BIZOS SC (CONTD.): 12 On page 12, paragraph 13 of the exhibit that we are 13 referring to, Mr Mthethwa also said that "We are at war 14 with criminals." Now let's get down to the facts of this 15 case, and also in context of Mr Cele's statement that the 16 only language that R5s understand is R5s. Now we know that 17 34 people were killed probably with R5s or other weapons of 18 war, and there were 76 seriously injured people at Marikana 19 on the 16th. A simple question; how many of the 3000 people 20 that were gathered there were criminals for the purposes of 21 the inquiry that the Commission is conducting? How many of 22 the 3000 would you regard as criminals? 23 MINISTER MTHETHWA: Well, I regarded 24 people who were there as people who are on strike, 25 demonstrators, if you like.</p>

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1 MR BIZOS SC: You regard them as
2 criminals? Is that what you're saying, they are criminals?
3 MINISTER MTHETHWA: I said I regarded
4 people who were out there in Marikana as people who were on
5 strike. In other words people who were demonstrating
6 against –
7 MR BIZOS SC: Were they criminals?
8 CHAIRPERSON: No, no, I don't think he's
9 finished his answer. He said "people were demonstrating
10 against," and he didn't say what they were demonstrating
11 against. So you must give him a chance to finish his
12 answer.
13 MR BIZOS SC: I'm sorry, I didn't get
14 that.
15 CHAIRPERSON: The witness hadn't finished
16 his answer. He said "people were strikers, demonstrating
17 against," and he didn't finish the sentence. So please
18 give him a chance to finish the sentence.
19 MR BIZOS SC: Were they criminals?
20 MINISTER MTHETHWA: I can't say that. I
21 am saying those were people who were working in some of
22 those mines and they were out on strike, demonstrating.
23 MR BIZOS SC: Did you regard them as
24 criminals?
25 MINISTER MTHETHWA: I never regarded

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1 people who were there as criminals.
2 MR BIZOS SC: Good, thank you. So that
3 the people with the R5s, hundreds of them, had no right to
4 shoot at the strikers. Is that right?
5 MINISTER MTHETHWA: Let me put this, my
6 answer to you this way –
7 MS NKOSI-THOMAS SC: Chair [microphone
8 off, inaudible] to object to this, because that's the very
9 question on which this Commission is to rule eventually,
10 and in any event, it is common cause that the Minister was
11 never in Marikana during the period under question. So to
12 ask this kind of question really is unfair to the witness,
13 Chair.
14 CHAIRPERSON: How do you deal with the
15 objection, Mr Bizos?
16 MR BIZOS SC: I don't understand the
17 objection, Mr Chairman. You were the Minister –
18 CHAIRPERSON: The objection is it's
19 unfair to ask the Minister the question because he wasn't
20 at Marikana at the time and according to his evidence he
21 had nothing to do with the planning or the decision to go
22 over to the tactical option. He didn't put it quite like
23 that, but that's effectively the expansion of what he said.
24 MR BIZOS SC: I'll abandon the question.
25 It was reported to you that 34 were killed, 76 were

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1 seriously injured. Did you regard them as criminals?
2 CHAIRPERSON: He's answered that. He
3 said he didn't, as I understood him. Am I correct,
4 Minister?
5 MINISTER MTHETHWA: I have answered.
6 CHAIRPERSON: Yes.
7 MR BIZOS SC: Did you say that you
8 regarded them as criminals?
9 CHAIRPERSON: He said the opposite.
10 MR BIZOS SC: Oh, I see.
11 CHAIRPERSON: He said he didn't regard
12 them as –
13 MR BIZOS SC: They weren't criminals.
14 Very well, thank you. Yes, thank you. So you didn't
15 regard them as criminals, so that we know as a fact that
16 although there were hundreds with arms such as R5s or
17 similar guns among the police, there were no such guns in
18 their possession, the strikers' possession. Do you agree?
19 MINISTER MTHETHWA: When – I didn't see
20 guns except one and the other weapons they were carrying.
21 MR BIZOS SC: Yes.
22 MINISTER MTHETHWA: Other dangerous
23 weapons they were carrying.
24 MR BIZOS SC: So that the statement of Mr
25 Cele that use R5s against people with R5s isn't applicable

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1 here.
2 MINISTER MTHETHWA: You know, I'm drawn
3 into standing judgment on what is being investigated here.
4 Now if, am I here on my - making opinions on what is
5 reported? Because I don't know, Chair, my understanding is
6 that there were questions which were put before me and I
7 was told why I'm here. Now I was never told that I would
8 have to make general commentary and opinions such as the
9 one I'm being asked here, but I'm up for guidance on this.
10 CHAIRPERSON: Mr Bizos and Minister,
11 there are two points really. The first is whatever your
12 own legal people told you, you would be likely to be asked
13 about, doesn't bind the Commission or counsel appearing.
14 You can be asked other matters on which you can be
15 legitimately expected to express an opinion. That's the
16 first point.
17 The second point is we have over and over again
18 in this Commission said but questions shouldn't be asked on
19 matters of opinion which are for the Commission to decide,
20 except possibly in the case of experts, and if you're
21 asking the witness for his opinion on some of the matters
22 which are before us, I tell you now, as I've said often in
23 the past, and with great respect to the Minister, I'm not
24 really interested in his opinion. We have to form our
25 opinion on the material before us at the end. He may well

<p style="text-align: right;">Page 32156</p> <p>1 have views, I'm sure he has, but I'm not sure they will 2 assist us to decide what the correct position is. 3 What you are busy with at the moment is something 4 which you've departed from a little bit, and that is you 5 were dealing with the speeches that he made and comments he 6 made and I understood it was directed to establish the 7 proposition, if it can be established, that the witness 8 when he was holding the portfolio that he held at the time, 9 by making statement of the kind he did may well have 10 contributed to a misunderstanding by the police of their 11 true functions and that may have somehow contributed to 12 perhaps – I'm not saying it's so, but the argument I think 13 is going to be put up to us – the attitude of mind which 14 caused them to behave as they did. I understood that to be 15 the thrust of the cross-examination. I haven't got a 16 problem with that, but I think to ask the witness his 17 opinion on the broader questions which we really have to 18 decide isn't going to help us. 19 MR BIZOS SC: Thank you, Mr Chairman, 20 I'll have a relative question. You were the Minister; in 21 terms of the law you are responsible for any wrong done by 22 your officers. Do you accept that? 23 CHAIRPERSON: No, that's an overbroad 24 proposition. The Minister would be vicariously liable for 25 all acts done by members of the police in the course and</p>	<p style="text-align: right;">Page 32158</p> <p>1 respect, that the witness is vicariously responsible for 2 the deaths, for the acts committed by his officers, Mr 3 Chairman. Whom do we sue whenever the police have killed 4 somebody? The Minister of Police, Mr Chairman. 5 CHAIRPERSON: I'm sure the Minister, when 6 he was Minister of Police, was the defendant in many 7 actions – 8 MR BIZOS SC: Yes. 9 CHAIRPERSON: - nomine officio, for many 10 things of which he had no knowledge. 11 MR BIZOS SC: Yes. 12 CHAIRPERSON: But on the principles of 13 vicarious liability he would, the actions were 14 appropriately brought against him in his official capacity 15 as Minister. 16 MR BIZOS SC: Yes. This is why I want to 17 ask him questions about his role for the appointment of the 18 people who were in charge, and more particularly Mr Scott. 19 MINISTER MTHETHWA: Mr who? 20 MR BIZOS SC: May I proceed, Mr Chairman? 21 CHAIRPERSON: So you're departing from 22 the point, you're now leaving the point that you have been 23 covering up to now, which is – 24 MR BIZOS SC: No, I was leading – 25 CHAIRPERSON: - may well mean that you've</p>
<p style="text-align: right;">Page 32157</p> <p>1 scope of their duties as such, performance of their duties 2 as such. 3 MR BIZOS SC: Yes. 4 CHAIRPERSON: If they're engaged on 5 frolics of their own he wouldn't be liable. 6 MR BIZOS SC: Yes. 7 CHAIRPERSON: There would of course be a 8 further proposition, sort of almost a constitutional 9 proposition that even if he's not vicariously liable in 10 delict, he might have some kind of political responsibility 11 for things that happened, subject to the basic provisions 12 that he's referred to earlier in his evidence. 13 MR BIZOS SC: Yes. 14 CHAIRPERSON: Those are the two, that 15 with respect is a more accurate way of stating the 16 proposition. He's not responsible for anything that any 17 policeman did, but he would be responsible civilly, or he 18 would have at the time responsible civilly in the law of 19 delict for everything they did in the course and scope of 20 their duties, performance of their duties, and he might 21 have a broader political responsibility which – 22 MR BIZOS SC: Yes. 23 CHAIRPERSON: - is also relevant in some 24 tangential way. 25 MR BIZOS SC: I am going to submit, with</p>	<p style="text-align: right;">Page 32159</p> <p>1 got enough – 2 MR BIZOS SC: I was leading up to where 3 they – 4 CHAIRPERSON: Well, carry on. Carry on – 5 MR BIZOS SC: - [inaudible] 6 responsibility for the conduct of Mr Scott who arranged for 7 R5s to be used against the crowd. 8 CHAIRPERSON: Well, then ask the question 9 you want to ask. 10 MINISTER MTHETHWA: Well, I, when I 11 started I explained what the Constitution obliges or 12 enjoins the Minister of Police to do, which is mainly 13 laying the law, laying the foundation, the framework for 14 members of SAPS to work on, and that would be found in the 15 policy determination, formulation, which we were talking 16 about earlier on. It would be found on the implementation 17 of that policy. 18 To the extent that the policy is implemented, or 19 to the extent that the policy is in place, overall as the 20 political head I would be responsible – 21 MR BIZOS SC: Do you consider yourself 22 responsible for the actions of the officer, Colonel 23 Scott's – 24 CHAIRPERSON: I think in fairness you 25 must explain to the witness before he can be expected to</p>

<p style="text-align: right;">Page 32160</p> <p>1 answer the question, what kind of responsibility you have 2 in mind in framing the question as you have done. 3 MR BIZOS SC: Civil and/or criminal 4 liability for the deaths. The officer in his office may be 5 responsible for what he did and what he did not do 6 properly – 7 CHAIRPERSON: But I understand that. 8 The – 9 MR BIZOS SC: And the witness is 10 vicariously responsible for that, Mr Chairman. 11 CHAIRPERSON: Alright, well let's get his 12 answer. What do you say to the question you've been asked; 13 do you regard yourself as responsible for the deaths, and 14 presumably the injuries? That follows as well. Now the 15 question is asked in respect of various kinds of 16 responsibility. Do you regard yourself as civilly liable, 17 responsible, or liable in terms of the criminal law? 18 That's the way the question was framed. Is that right? 19 MR BIZOS SC: Yes. 20 MINISTER MTHETHWA: What I know is that 21 as the political head at the time of the police I would be 22 responsible for all the things the police are doing. 23 MR BIZOS SC: Right, thank you for that. 24 Now we know that the plan that was executed on the 16th was 25 formulated by then Lieutenant-Colonel Scott. Now did you</p>	<p style="text-align: right;">Page 32162</p> <p>1 MR BIZOS SC: Yes, Mr Chairman, 2 vicariously the witness, if – 3 CHAIRPERSON: No, no, no, that wasn't the 4 basis of the objection. The basis of the objection was you 5 put it to the witness – 6 MR BIZOS SC: Yes. 7 CHAIRPERSON: - as a fact – 8 MR BIZOS SC: Yes. 9 CHAIRPERSON: - that Lieutenant-Colonel 10 Scott had no Public Order Policing experience at all. 11 MR BIZOS SC: That has, was his – 12 CHAIRPERSON: That was the basis of the 13 objection. 14 MR BIZOS SC: Yes. 15 CHAIRPERSON: My recollection was he had 16 done a course, and he had some experience, but I think it's 17 also clear that his experience was fairly minimal and he 18 certainly wasn't aware of the provisions of Standing Order 19 262. So possibly if you reformulate the question you may 20 be able to avoid the objection. 21 MR BIZOS SC: Colonel Scott told us that 22 he had minimal experience a long time ago in relation to 23 crowd control, and he was the architect of the plan. Did 24 you know that? 25 MINISTER MTHETHWA: I wouldn't know those</p>
<p style="text-align: right;">Page 32161</p> <p>1 know that crowd management was the primary business of POP, 2 the POP group of the police? Did you know that? 3 MINISTER MTHETHWA: If you talk of crowd 4 management in the strictest sense of crowd management – 5 MR BIZOS SC: Yes. 6 MINISTER MTHETHWA: Yes. 7 MR BIZOS SC: Yes. Did you know that Mr 8 Scott, or Colonel Scott had no public policing experience 9 at all? 10 MR SEMENYA SC: Objection. That's not 11 correct, Chair. Objection, Chair. The evidence is to the 12 contrary – 13 CHAIRPERSON: Yes, I've heard the 14 objection. I'm looking to Mr Bizos to see how he answers 15 it. 16 MR BIZOS SC: I'm sorry, is the question 17 allowed, Mr Chairman? 18 CHAIRPERSON: Well, there's the objection 19 that's been raised and I'm waiting to hear your answer as 20 to whether I should allow it or disallow it. 21 MR BIZOS SC: I submit, Mr Chairman – 22 CHAIRPERSON: The objection is raised. I 23 want to hear your reply to the objection before deciding 24 whether I should allow the objection or disallow the 25 objection.</p>	<p style="text-align: right;">Page 32163</p> <p>1 – we have about 200 000 members of SAPS, so to expect the 2 Minister of Police to know each and everyone what kind of 3 skills they have, those are purely operational matters and 4 I may not venture into that. 5 MR BIZOS SC: Yes, right. Now assume 6 that that evidence is correct; did you know that 7 Lieutenant-Colonel Scott had been responsible for the 8 killing of 11 or 12 people that he was supposed to arrest? 9 Did you know that? 10 MINISTER MTHETHWA: No – 11 MR SEMENYA SC: Chair, I object. Still 12 whether or not anybody is responsible for the deaths that 13 occurred is a matter that is squarely within your – 14 CHAIRPERSON: No, no, no, no, that's not 15 the question. The question is did the witness know – I 16 think we can predict what the answer will be. 17 [14:18] But did the witness know that Colonel Scott had – 18 so it is alleged. 19 MR SEMENYA: No. 20 CHAIRPERSON: No, I understand that. 21 The question was did the witness know that Colonel Scott 22 had been responsible in the past before he went to Marikana 23 for the killing of 11 or 12 people in a cash in transit 24 heist case. That's the question. 25 MS NKOSI-THOMAS SC: But sir –</p>

<p style="text-align: right;">Page 32164</p> <p>1 CHAIRPERSON: Let's see what the witness 2 says. I think I know what the answer is going to be. 3 Let's see if I'm right. Did you know that, Minister? 4 MINISTER MTHETHWA: No, Chair. 5 CHAIRPERSON: I was right. Yes, carry 6 on, Mr Bizos. 7 MR BIZOS SC: Yes. Did you know that he 8 received a commendation for that conduct? 9 MINISTER MTHETHWA: Which conduct? 10 CHAIRPERSON: I think the question is he 11 was involved in foiling a cash in transit heist in the 12 course of which 10 or 11 people died. You said you didn't 13 know that. The next question is did you know that he 14 received a commendation for his conduct in foiling this 15 cash in transit heist. Is that the question? 16 MR BIZOS SC: Yes. 17 MINISTER MTHETHWA: Well, Chair, as I 18 said you are not going to know each and every police 19 officer that this one got this commendation and everything 20 else. Now, on these questions I see them very much related 21 because they are very specific. 22 MR BIZOS SC: On the information that we 23 have this commendation was delivered to him during your 24 being the – 25 MINISTER MTHETHWA: My term of office.</p>	<p style="text-align: right;">Page 32166</p> <p>1 continuous basis. You cannot really keep track of who 2 today has been commended or whatever. You wouldn't know. 3 But that is happening, you know, in the normal course of 4 work of the police. 5 MR BIZOS SC: You yourself have expressed 6 regret for the tragedy that occurred on the 16th. Did it 7 occur to anybody in charge of promotions that in view of 8 the role that he may have played in Marikana it would not 9 be good public relations for the police as a whole if he 10 was promoted? 11 CHAIRPERSON: Sorry, Mr Bizos, are you 12 saying it as a fact that he was promoted because of what he 13 did in Marikana or are you speculating or are you saying if 14 it was so would it be bad public relations? The question 15 is a bit vague to me and if it's vague to me I think the 16 minister may have similar problems. Reformulate the 17 question more crisply. 18 MR BIZOS SC: Well, I say having regard 19 to the criticism of the police after the event it wasn't 20 good public relations for the police to promote Lieutenant- 21 Colonel Scott. 22 MS NKOSI-THOMAS SC: Chair, with respect, 23 with constraint, the minister has repeatedly mentioned that 24 these are operational matters in respect of which he would 25 not –</p>
<p style="text-align: right;">Page 32165</p> <p>1 MR BIZOS SC: The minister, yes. Do you 2 remember that? 3 MINISTER MTHETHWA: Well, I don't because 4 as I say there are many people in the police. People are 5 given commendation on a continuous basis so I really 6 wouldn't keep track on those specific matters. 7 MR BIZOS SC: And also after Marikana he 8 was promoted from lieutenant-colonel to colonel during your 9 term of office. Who decides to promote deputy colonels to 10 full colonels? 11 MINISTER MTHETHWA: That would be an 12 operational matter of the management of the police. 13 MR BIZOS SC: You wouldn't know about it? 14 MINISTER MTHETHWA: No, people are 15 promoted every day, Chairperson. I wouldn't know who's 16 promoted today or tomorrow or yesterday. I mean, where 17 would I start and you know – 18 CHAIRPERSON: Are there no documents 19 that come before the minister? Do you not have to sign a 20 commission or something like that? 21 MINISTER MTHETHWA: Well, the – 22 CHAIRPERSON: Well, it may be that you 23 have to sign so many you can't remember who gets – 24 MINISTER MTHETHWA: Well, it's precisely 25 the point I'm making, Chair, that these things happen on a</p>	<p style="text-align: right;">Page 32167</p> <p>1 CHAIRPERSON: He asked a different 2 question. He's being asked on something on which he can 3 express a meaningful opinion that as minister he regards it 4 as a public relations disaster or as minister he doesn't 5 regard it as a public relations disaster or it's more 6 complicated. I mean, I don't think I can disallow the 7 question. 8 MR BIZOS SC: I will leave it at that at 9 that point, Mr Chair. Now – I'm just looking at the 10 questions. 11 CHAIRPERSON: I didn't disallow your 12 question. I said I can't disallow it. You can ask it. 13 MR BIZOS SC: Oh, I'm sorry, my hearing 14 is little bit – 15 CHAIRPERSON: I think it's my fault. I 16 dropped my – it's my fault. I dropped my voice. I'll try 17 and speak louder next time. 18 MR BIZOS SC: What is your answer? 19 MINISTER MTHETHWA: My answer is that 20 matters of promotion are matters of management and control. 21 Why he was promoted for what reasons I would have to be 22 informed about that. 23 MR BIZOS SC: Now I want to turn to 24 another topic. One of the deceased that the Legal 25 Resources Centre has acted for his grandfather and five</p>

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1 other dependents, Mr Shadrack Polokile Ledingwane, and it's
 2 exhibit, it's a new exhibit which we want to put in, Mr
 3 Chairman, as an exhibit.
 4 CHAIRPERSON: I'm told that it would
 5 have to be CCCC6 I think is the latest one. It's a
 6 statement, an affidavit in fact I think?
 7 MR BIZOS SC: Yes.
 8 CHAIRPERSON: By – we did have a copy
 9 right in front of me. How did you spell your client's
 10 name?
 11 MR BIZOS SC: L-E-D-I –
 12 CHAIRPERSON: Oh, yes, it's on the
 13 screen, Ledingwane.
 14 MR BIZOS SC: Yes.
 15 CHAIRPERSON: The affidavit of Mr
 16 Ledingwane is, witness statement of Mr Ledingwane, is
 17 admitted as exhibit CCCC6.
 18 MR BIZOS SC: Yes. Now, the statement
 19 sets out in paragraphs 1, 3, 4, 5, 6, 8, 21 and 22 which I
 20 will read out. He sets himself out that he's an adult
 21 pensioner residing in Marikana. "I'm the grandfather of
 22 John Papi Lolwano Ledingwane who was one of the people
 23 killed on the 16th of August 2012. I affirm the contents of
 24 this statement are true and correct and except where I
 25 state otherwise within in my personal. John lived at 367

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1 Selekong Section, Wonderkop, where he had access to
 2 prepared electricity and water. He had lived in Selekong
 3 from 1994 after his father passed away. John lived in a
 4 house that I myself had built for him using materials that
 5 he had bought." Paragraph 8, "On the day of the" – sorry.
 6 No, I'm sorry, I must read 4. "John had been
 7 working at the Karee shaft of the Lonmin mine for about
 8 five years at a division known as K4 Engineering. He
 9 received a basic salary of R4 675 and a housing allowance
 10 of R1 850. In the period before the strike began John had
 11 been working the afternoon shift. His last day at work was
 12 11 August. After that he started attending meetings at the
 13 mountain. He would attend daily and then return home. He
 14 would leave home in his car and the number is HVN179NW and
 15 parked it at the Wonderkop hostel. His uncle, Chihidi
 16 Letseleng, saw John leave home on the 16th of August 2012
 17 and informs me that John was not carrying any weapons when
 18 he left home to go to the mountain and that he did not
 19 carry any weapons on any other days that he went there."
 20 Paragraph 8, "On the day of the incident John left his car.
 21 As usual his uncle did not see any weapons. He was not
 22 carrying a stick or knobkerrie. He went to the mountain to
 23 receive feedback from the striking workers who presented
 24 it."
 25 CHAIRPERSON: Mr Bizos, I must tell you

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1 that you've got five minutes left but I'm just warning you.
 2 MR BIZOS SC: Mr Chairman, it's very
 3 important.
 4 CHAIRPERSON: No, no, carry on. I'm
 5 just telling you.
 6 MR BIZOS SC: Yes, I may have to ask –
 7 CHAIRPERSON: We'll review the situation
 8 at the end of the five minutes. Carry on in the meanwhile.
 9 MR BIZOS SC: To finish because it's very
 10 important.
 11 CHAIRPERSON: No, I understand. Carry
 12 on.
 13 MR BIZOS SC: Then Mr Chairman –
 14 MR SEMENYA SC: Well, Chair, the witness
 15 must also be told that this is not evidence. Even the
 16 quality of its status is observable to all of us.
 17 CHAIRPERSON: I'm sure the witness is
 18 bright enough to - Carry on, Mr Bizos.
 19 MR BIZOS SC: 21, "John was a sole
 20 breadwinner supporting six dependents. They were his
 21 daughters, Sezolo, Sasha, Rapo, his niece, Boga, Kopane
 22 Ledingwane, and his sister, Tenawo Ledingwane, his brother,
 23 Rebomandiwe Gift Ledingwane, and Mohemese Joseph
 24 Ledingwane. John's oldest brother is still at school
 25 together with the other dependents and the niece who is at

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1 a crèche. There are no other means of supporting John's
 2 dependents. The responsibility of support has fallen on me
 3 as a pensioner." Mr Chairman, if need be we will file
 4 supplementary affidavits insofar as any hearsay.
 5 CHAIRPERSON: Right. What is the
 6 question you want to ask the witness? That's the –
 7 MR BIZOS SC: No, Mr Chairman, we want to
 8 show with respect a video or rather the spot where he died.
 9 Can we please have that –
 10 CHAIRPERSON: No, but what's the
 11 relevance of it as far as this witness is concerned?
 12 You're asking the witness these questions based upon this
 13 statement. I take it the witness has got no knowledge of
 14 any of the facts continued in the affidavit.
 15 MR BIZOS SC: No knowledge of it, Mr
 16 Chairman.
 17 CHAIRPERSON: So what is the bottom
 18 line? What is the question you're going to ask him based
 19 on – ask him to assume these facts for the sake of his
 20 answer? What's the question going to be?
 21 MR BIZOS SC: Yes, the question is going
 22 to be, Mr Chairman, that he was not killed in scene one and
 23 approximately 100 metres away from there.
 24 CHAIRPERSON: Okay, I understand that,
 25 but I assume, let's assume the minister is prepared to

<p style="text-align: right;">Page 32172</p> <p>1 accept that for the purposes of his evidence. What 2 question are you going to address to him? 3 MR BIZOS SC: I'm going to ask the 4 witness, Mr Chairman, what he has done. He has expressed 5 some regret for the tragedy. What I want to ask the 6 witness about is what did he as a minister or the police 7 under him did in order to assist this family after the 8 death of a person who could not possibly be one of the 9 persons that attacked – 10 CHAIRPERSON: Well, working on the 11 assumption that the facts set out in the affidavit are 12 correct, make that assumption please, Minister, have the – 13 I take it you wouldn't have done anything personally, but 14 to your knowledge have the police done anything to deal 15 with the situation of the dependents left behind by those 16 people who were killed and particularly if one accepts that 17 all 3 or 4 000 of them weren't armed – well, let's not talk 18 about 3 or 4 000. Of those who were killed there were 34. 19 If one assumes that all of them were not armed, just making 20 that assumption for the moment, have the police done 21 anything to redress the situation in which their dependents 22 are left? That's your question. 23 MR BIZOS SC: That is the question that 24 we want to examine, Mr Chairman. 25 CHAIRPERSON: Let's hear the minister's</p>	<p style="text-align: right;">Page 32174</p> <p>1 offence before they were shot and if not to take steps to 2 compensate them. 3 CHAIRPERSON: I think the question is do 4 you know whether any investigation is done apart from 5 appointing this commission and all the work that's gone 6 into the investigation of materials that come before the 7 commission, do you know of any investigation of the kind 8 suggested by Mr Bizos relating to people in the position of 9 the grandson of his client with a view to giving them 10 compensation in the interim even before the commissioner 11 has reported? Are you aware of any investigation of that 12 kind? 13 MINISTER MTHETHWA: Well, Chair, I'm 14 aware that whenever police have transgressed or have 15 done/committed an act which is like the one we are talking 16 about there is IPID. 17 [14:37] Which is, whose responsibility it is to follow up 18 such things and investigate and I know that IPID from the 19 beginning informed me that they are investigating but they 20 are also interacting with the Commission, so that's what I 21 know, not for one individual or two but for those cases 22 which needed to be investigated. 23 CHAIRPERSON: Your time is up, Mr Bizos. 24 Is there any final point you want to make? I'll give you a 25 chance to make one more, ask one more question if –</p>
<p style="text-align: right;">Page 32173</p> <p>1 answer. 2 MINISTER MTHETHWA: Well, thanks, Chair. 3 My recollection is that 44 people died in that week and 4 because of that the president of the republic appointed a 5 commission so that when the commission has done its work it 6 will make a determination and mind you the commission was 7 supposed to have done its job within four months, so it was 8 to make a determination of what then has to be done because 9 talking about one person and leaving other 33, I mean, 43 I 10 don't think it's going to help anyone. 11 MR BIZOS SC: So I would've thought that 12 the photograph that shows him as exhibit or rather as – on 13 the photograph he is shown as victim O and there is another 14 one there, victim N. These people are not dead at the 15 koppie. They are not dead bodies at scene one. They are 16 both shot in the head and the evidence of the wound of the 17 expert witness is that they were hit on the side or back of 18 the head and that was the cause of death and that they are 19 actually, the nature of the wounds are that they were 20 immediately fatal so that they couldn't have run there from 21 either scene one of the koppie. They're away from anyone 22 else. One would've thought any sort of investigation or 23 any detail in relation to these particular families and 24 particularly the one that we are acting for would've been 25 investigated as to whether or not they were guilty of any</p>	<p style="text-align: right;">Page 32175</p> <p>1 MR BIZOS SC: I've got one more question. 2 There is an Independent Police Commission that is supposed 3 to investigate matters. Has this matter been investigated 4 by this Commission or don't you know? 5 MINISTER MTHETHWA: Well, as I said, 6 Chair, that my understanding is that there is 7 investigation. I may not know individuals who are being 8 investigated. 9 CHAIRPERSON: Thank you. Mr Bizos, that 10 of course is correct. IPID have co-operated with the 11 office of the Commission in relation to investigations that 12 have been done. Anyway thank you, that's your cross- 13 examination. The next cross-examiner I think is Mr Dumisa 14 Ntsebeza for the families, correct? 15 CROSS-EXAMINATION BY MR NTSEBEZA SC: 16 Yes, Mr Chairman, thank you very much. 17 CHAIRPERSON: You have, according to my 18 notes, an hour and a half. 19 MR NTSEBEZA SC: It's two, Mr Chairman – 20 CHAIRPERSON: I hope that you may be able 21 to – too much? 22 MR NTSEBEZA SC: It's two. 23 CHAIRPERSON: Two hours? 24 MR NTSEBEZA SC: Yes. 25 CHAIRPERSON: Well, I've been</p>

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1 misinformed.
 2 MR NTSEBEZA SC: Well, it was –
 3 CHAIRPERSON: Let's not argue about the
 4 time, let's get on with your cross-examination.
 5 MS PILLAY: Chair, I think that the
 6 families and AMCU combined have a period of time and that
 7 was the initial division. I'm not sure if that has
 8 changed.
 9 CHAIRPERSON: I see, alright. Well,
 10 anyway, you're obviously going to cross-examine at least
 11 till the end of today –
 12 MR NTSEBEZA SC: Yes, Mr Chairman.
 13 CHAIRPERSON: Unless you're somehow able
 14 to shorten things and we can then take stock at the end of
 15 the day, tomorrow morning, as to what's going to happen
 16 then.
 17 MR NTSEBEZA SC: I just –
 18 CHAIRPERSON: Start now please.
 19 MR CHASKALSN SC: Sorry, Chairperson,
 20 before Mr Ntsebeza starts, together with Ms Nkosi-Thomas
 21 we've prepared a revised version of exhibit CCC1.8. Can we
 22 – we've circulated it to the parties by e-mail but can we
 23 hand up three copies for yourselves.
 24 CHAIRPERSON: Should we not make it
 25 CCC1.7 because we took 1.7 away, remember? If it's marked

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1 1.8 I suppose it's too late.
 2 MS NKOSI-THOMAS SC: Chair, I confirm
 3 that except to add that it's actually quadruple, no triple.
 4 CHAIRPERSON: It's got quadruple on the
 5 top, so we'll call it quadruple 1.8 and we will just note
 6 that 1.7 has been withdrawn. Thank you, Mr Chaskalson. Mr
 7 Ntsebeza, before you carry one, just an announcement I
 8 should have made when we started. It's been reported to me
 9 that somebody, either someone here or someone who has been
 10 in attendance here in the past, went away with – I'm sure
 11 it was done inadvertently – went away with the headphones
 12 and the receiver and that's causing a bit of difficulty and
 13 so I'd be grateful, I'm sure it wasn't done on purpose, so
 14 I'd be grateful if any one of you here did that, I'd be
 15 grateful if you'd please bring it back and if none of the
 16 people here is responsible but you know who was, I'd be
 17 grateful also if steps could be taken to bring it back
 18 because there are consequences that follow from our not
 19 being able to give it back to the contractor. So please,
 20 as I say, if anyone here has taken the headphones and the
 21 receiver away and left them at home by mistake, please
 22 bring them tomorrow. If none of the people here is
 23 responsible but you know who was, would you please tell the
 24 person concerned and I'm sure it's no use to the person
 25 away from here and I'm sure it was just inadvertence. Yes,

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1 Mr Ntsebeza, on that happy note you can begin.
 2 MR NTSEBEZA SC: Thank you, Mr Chair. Mr
 3 Chair, I just want to, before I start, to note that I was
 4 informed that evidence in chief would be led in one or one
 5 and a half hours and I've noted that it was actually led in
 6 three hours, give or take some –
 7 CHAIRPERSON: Right, but there were a
 8 number of interruptions, you may remember, and problems we
 9 had but –
 10 MR NTSEBEZA SC: No, no, I – you know, I
 11 know Mr Chairman that I can always rely upon you to give me
 12 the –
 13 CHAIRPERSON: Of course it wouldn't have
 14 affected your prepared cross-examination because the
 15 evidence given was in accordance with the statements which
 16 you'd been given beforehand and which you took into account
 17 when you prepared your cross-examination, but let's not
 18 waste any further time, you can cross-examine.
 19 MR NTSEBEZA SC: Yes, thank you, Mr
 20 Chairman. Minister, I need to make a declaration before we
 21 start with our cross-examination and the declaration is
 22 that you and I are known to each other. I see you nod.
 23 MINISTER MTHETHWA: Yes.
 24 MR NTSEBEZA SC: Yes. In fact, when you
 25 were Minister of Police there was, in the employ of the

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1 ministry, one Jenni Irish-Qhobosheane, do you recall her?
 2 MINISTER MTHETHWA: Yes, yes, I do.
 3 MR NTSEBEZA SC: And through Jenni Irish-
 4 Qhobosheane I got to be told that in the exercise of the
 5 constitutional command in section 208 you had established a
 6 civilian secretariat for the police service in your
 7 capacity as national Minister, do you recall that?
 8 MINISTER MTHETHWA: Yes.
 9 MR NTSEBEZA SC: And the national
 10 secretariat for the police service had an advisory body
 11 which was composed of civilians and I had the honour to
 12 serve in your civilian secretariat as one of the members,
 13 you recall that?
 14 MINISTER MTHETHWA: Yes, I remember.
 15 MR NTSEBEZA SC: Yes. And so I felt I
 16 need to make that declaration because, as you have noticed,
 17 sometimes there is heated debate in the triangle between
 18 the witness, the cross-examiner and the Chair, sometimes in
 19 the rectangle between the representative of SAPS, the
 20 cross-examiner, the witness and the Chair and I just want
 21 you to relax and to understand that if that happens it is
 22 because we are all performing our function. You do accept
 23 that. Now Minister, I stand corrected. I was listening to
 24 your examination when you were being led in examination in
 25 chief and I did get a sense that you did get some briefing

<p style="text-align: right;">Page 32180</p> <p>1 but it seems correct to say that in none of your statements 2 have you given a detail as to when you were briefed about 3 what happened in Marikana. If I recall your evidence it 4 seems to me that there was a time that you were travelling 5 and when you were told by phone as to what had happened but 6 it doesn't appear from your statements that there was a 7 specific time when you were briefed about what had 8 happened. Is it correct? Is it correct that you do not 9 seem, in your statements, to have pinpointed a period when 10 you would have been briefed about Marikana for the first 11 time. It's my observation because I want to go on to - 12 MINISTER MTHETHWA: I'm trying to check. 13 MR NTSEBEZA SC: Yes. 14 MINISTER MTHETHWA: I thought it's here. 15 MR NTSEBEZA SC: Yes. 16 MINISTER MTHETHWA: It is here in the 17 statement if you look at page 28 on the supplementary 18 statement. 19 MR NTSEBEZA SC: Yes? Where exactly, 20 Minister, does it say you got the kind of briefing that I'm 21 talking about? 22 CHAIRPERSON: The point that I think Mr 23 Ntsebeza is busy with is, in that paragraph that you 24 referred us to you tell us about the brief briefings if one 25 can use that expression -</p>	<p style="text-align: right;">Page 32182</p> <p>1 That is the 21:11, so she briefed me what happened on that 2 day, as I said - 3 CHAIRPERSON: Sorry to interrupt you. 4 What you're telling us then is that you received two 5 briefings in the course of two telephone calls which lasted 6 301 seconds, which means that they lasted for five minutes 7 and one second. Is that the only briefing you got? The 8 briefing lasted, the combined briefings lasting five 9 minutes and one security? 10 MINISTER MTHETHWA: As Chair, you would 11 recall that in this interaction the National Commissioner 12 was to go to Marikana, so she was briefed of what has 13 happened, so she then in turn briefed me but where the full 14 briefing of everything what happened on that day, happened 15 the following day. 16 MR NTSEBEZA SC: Right, but am I correct 17 in putting the question to you, which is what I put to you, 18 that you do not seem to be saying anything in either of 19 your statements other than the reference to a total of five 20 minutes of briefing, about when you were briefed about what 21 had happened in Marikana. I'm talking about the 22 statements, I'm not talking about your knowledge of what 23 happened thereafter. Is it correct that we can put it as a 24 fact that in your statements, in neither of your two 25 statements, you do not say when you were briefed about what</p>
<p style="text-align: right;">Page 32181</p> <p>1 MR NTSEBEZA SC: Yes. 2 CHAIRPERSON: - that you got about the 3 tragedy and in fact in 85.5.5 you say, "She," that's the 4 National Commissioner, "stated she would get a full 5 briefing and then brief me in turn thereafter. And then in 6 85.5.7 or 85.5.6 you say you called with a view to 7 obtaining a full briefing but was unsuccessful, but were 8 unsuccessful. And then at 85.5.7 you say you had a 68 9 second call, during this time you and the National 10 Commissioner spoke briefly about the tragedy. And then you 11 refer to two conversations that you had which are dealt 12 with in paragraph 85.5.9 where these two conversations 13 lasted for 88 and 213 seconds respectively. "At that stage 14 we spoke about the tragedy," you say. Now I can't see 15 where you say that you thereafter received a full briefing 16 which you'd asked for and I take it what Mr Ntsebeza wants 17 to know is, did you in fact receive the full briefing 18 thereafter which you had been trying to get earlier. And 19 if the answer to that is yes, then the next question would 20 be, well, when did you receive that full briefing? 21 MINISTER MTHETHWA: Well - 22 CHAIRPERSON: Is that right, Mr Ntsebeza? 23 MR NTSEBEZA SC: Exactly, Mr Chairman. 24 MINISTER MTHETHWA: Well, Chair, the 25 85.5.9 was the briefing which the Commissioner gave me.</p>	<p style="text-align: right;">Page 32183</p> <p>1 had happened. 2 MINISTER MTHETHWA: No, it is - 3 MR NTSEBEZA SC: It's not a trick 4 question - 5 MINISTER MTHETHWA: No, it's not. No, 6 it's not. No, as you can see the statement, what I've just 7 said now is not in the statement. 8 MR NTSEBEZA SC: It's okay. 9 MINISTER MTHETHWA: Yes. 10 MR NTSEBEZA SC: It's okay, it's alright. 11 Now if we could put up exhibit FFF5, that's a statement 12 that was made to the media and had been drafted during the 13 night of the 16th of August after, after the event. You see 14 that statement? "General Phiyega pronounces on mine 15 unrest." Do you see that? 16 MINISTER MTHETHWA: Yes. 17 MR NTSEBEZA SC: Now we are going to come 18 back to that statement but can we please put up exhibit A, 19 it's VTW, exhibit AAA. Mr Chairman, we are not going to 20 play it but that is the footage of the National 21 Commissioner when she was making the statement to the 22 media. I just want to orientate the Minister. Can we put 23 up that exhibit, please, exhibit AAA where Minister, I mean 24 General Phiyega is addressing the media? VTW-12, I don't 25 know what these things are called, underscore, 12</p>

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1 underscore 01. I'm sure you are familiar with this
 2 footage, Minister, and that is the time. Perhaps we must
 3 play the –
 4 CHAIRPERSON: How long does it go on for?
 5 MR NTSEBEZA SC: It's about one minute,
 6 eight seconds –
 7 CHAIRPERSON: Alright, then we'll invest
 8 that time.
 9 MR NTSEBEZA SC: Thank you, Mr Chairman.
 10 [VIDEO IS SHOWN]
 11 CHAIRPERSON: It would help if we had
 12 some sound because I can't lip-read very well.
 13 [VIDEO IS SHOWN]
 14 MR NTSEBEZA SC: Right. Now, did you see
 15 the media statement before it was delivered by the
 16 Commissioner?
 17 MINISTER MTHETHWA: I saw –
 18 MR NTSEBEZA SC: Or don't you recall it?
 19 MINISTER MTHETHWA: - statement.
 20 MR NTSEBEZA SC: You saw it?
 21 MINISTER MTHETHWA: It was sent to me.
 22 MR NTSEBEZA SC: Oh, okay.
 23 MINISTER MTHETHWA: Yes.
 24 MR NTSEBEZA SC: And when the Minister
 25 delivered the media statement –

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1 CHAIRPERSON: That's not answer to the
 2 question. It was sent to you, did you have a chance to
 3 read it?
 4 MINISTER MTHETHWA: Yes, it was sent to
 5 me, I read the statement, yes.
 6 MR NTSEBEZA SC: And when the Minister
 7 was delivering it, did you listen to her?
 8 CHAIRPERSON: No, the Commissioner, I
 9 think.
 10 MR NTSEBEZA SC: I mean – sorry,
 11 Minister.
 12 CHAIRPERSON: Provincial Commissioner.
 13 MR NTSEBEZA SC: When the Commissioner
 14 was delivering the statement, did you listen to her?
 15 MINISTER MTHETHWA: No, no.
 16 MR NTSEBEZA SC: Did you listen to her
 17 later on?
 18 MINISTER MTHETHWA: I don't recall
 19 listening to this particular statement.
 20 MR NTSEBEZA SC: There was one really
 21 that she made, relevant to this incident.
 22 MINISTER MTHETHWA: Well, that's why I'm
 23 listening to it now.
 24 MR NTSEBEZA SC: Are you saying you
 25 didn't ever hear this kind of footage, the delivery of this

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1 media statement before today?
 2 [14:57] MINISTER MTHETHWA: Well, as I said I
 3 didn't have time, or I didn't see it being delivered.
 4 MR NTSEBEZA SC: No, it's not the time.
 5 You see, I just wanted to know whether you had seen it
 6 before.
 7 MINISTER MTHETHWA: Ja.
 8 MR NTSEBEZA SC: Before, I believe you
 9 have told the Commissioner that you did. Now if we could
 10 put up FFF4 on the screen. This, Mr Chairman,
 11 Commissioners, is an internal brief that was prepared
 12 during the same night –
 13 CHAIRPERSON: This is the document that
 14 was prepared the night of the 16th -
 15 MR NTSEBEZA SC: Yes.
 16 CHAIRPERSON: - and sent to the
 17 President, who was then in Mozambique.
 18 MR NTSEBEZA SC: Exactly, Mr Chairman,
 19 yes. It was a document that was prepared for purposes of
 20 briefing you, of briefing the President, and of – yes.
 21 CHAIRPERSON: Is it correct that this
 22 document was prepared for briefing you? I know the
 23 evidence was it was sent to the, to I think the Minister of
 24 Foreign Affairs who was with the President at a meeting in
 25 Mozambique on the night of the 16th of August. Did you see

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1 it also?
 2 MINISTER MTHETHWA: Yes, I did.
 3 MR NTSEBEZA SC: I'm sorry, Mr Chairman,
 4 I don't know, because I was just going to put the question
 5 just for clarity sake; is that the internal brief document
 6 that was prepared in order to brief you, the President, and
 7 the DIRCO, the Department of Internal Relations,
 8 International Relations?
 9 MINISTER MTHETHWA: Yes.
 10 MR NTSEBEZA SC: Oh yes. When did you
 11 receive the document?
 12 MINISTER MTHETHWA: I must think now. I
 13 don't recall.
 14 MR NTSEBEZA SC: The point of departure
 15 must obviously be the 16th.
 16 MINISTER MTHETHWA: Mmmm.
 17 MR NTSEBEZA SC: In relation to, because
 18 you were going to be briefed about what had happened,
 19 unless you were briefed about what was going to happen.
 20 MINISTER MTHETHWA: No, which is not
 21 possible.
 22 CHAIRPERSON: I'm going to take the tea
 23 adjournment in a minute, but before we do that perhaps you
 24 can help us on this aspect. We understand the documents
 25 were prepared fairly late on the evening of the 16th.

<p style="text-align: right;">Page 32188</p> <p>1 MR NTSEBEZA SC: Yes.</p> <p>2 CHAIRPERSON: And were sent off, I think</p> <p>3 the evidence is in the early hours of the morning,</p> <p>4 presumably just after midnight, to Mozambique, or</p> <p>5 presumably to Pretoria first and then to Mozambique for the</p> <p>6 President. Did you see it that night, or did you only see</p> <p>7 it the next day?</p> <p>8 MINISTER MTHETHWA: Definitely not that</p> <p>9 night. It would be the next day –</p> <p>10 CHAIRPERSON: Alright.</p> <p>11 MINISTER MTHETHWA: - where there was a</p> <p>12 full briefing in Marikana.</p> <p>13 CHAIRPERSON: Now that full briefing in</p> <p>14 Marikana, did you go to Marikana –</p> <p>15 MINISTER MTHETHWA: The following –</p> <p>16 CHAIRPERSON: - on the 17th –</p> <p>17 MINISTER MTHETHWA: On the 17th.</p> <p>18 CHAIRPERSON: Yes.</p> <p>19 MINISTER MTHETHWA: Yes.</p> <p>20 CHAIRPERSON: And did you see the</p> <p>21 document when you were there?</p> <p>22 MINISTER MTHETHWA: I think I first saw</p> <p>23 it there because this is where the briefing of everything</p> <p>24 from the 10th, if you like, with all the documentation, this</p> <p>25 is the, including the kind of work which was done from</p>	<p style="text-align: right;">Page 32190</p> <p>1 very hard.</p> <p>2 [COMMISSION ADJOURNS COMMISSION RESUMES]</p> <p>3 [15:16] CHAIRPERSON: - have ruled that no</p> <p>4 photographs should be taken while the Commission is</p> <p>5 sitting, and if that ruling is not complied with I shall</p> <p>6 have to take action. You're still bound by your</p> <p>7 affirmation, Minister.</p> <p>8 EMMANUEL NKOSINATHI MTHETHWA: [affirms</p> <p>9 further]</p> <p>10 CHAIRPERSON: Mr Ntsebeza.</p> <p>11 CROSS-EXAMINATION BY MR NTSEBEZA SC (CONTD.):</p> <p>12 Thank you, Mr Chairman. Now have you thought, Mr Minister,</p> <p>13 whether there was anyone who orally briefed you, whether</p> <p>14 that night or even the following day, if there was anyone</p> <p>15 who orally briefed you?</p> <p>16 MINISTER MTHETHWA: About what had</p> <p>17 happened –</p> <p>18 MR NTSEBEZA SC: Yes.</p> <p>19 MINISTER MTHETHWA: - the previous day,</p> <p>20 yes.</p> <p>21 MR NTSEBEZA SC: Who was it? Who briefed</p> <p>22 you orally?</p> <p>23 MINISTER MTHETHWA: It was the National</p> <p>24 Commissioner and her team. The Provincial Commissioner was</p> <p>25 there.</p>
<p style="text-align: right;">Page 32189</p> <p>1 Monday by the police electronically.</p> <p>2 CHAIRPERSON: Yes, and did you see this</p> <p>3 document before the National Commissioner gave the media</p> <p>4 briefing that we've just seen on the video, or did you only</p> <p>5 see it afterwards? Or can't you remember?</p> <p>6 MINISTER MTHETHWA: No, I'm – no, I can't</p> <p>7 remember.</p> <p>8 CHAIRPERSON: You can't remember. Can we</p> <p>9 take the tea adjournment now, Mr Ntsebeza, with your</p> <p>10 permission?</p> <p>11 MR NTSEBEZA SC: Yes, Mr Chairman, but</p> <p>12 just –</p> <p>13 CHAIRPERSON: Thank you. 15 –</p> <p>14 MR NTSEBEZA SC: Just before we take the</p> <p>15 tea adjournment, Colonel – Minister, I'm demoting you every</p> <p>16 time –</p> <p>17 CHAIRPERSON: Talking about a demotion –</p> <p>18 MR NTSEBEZA SC: Minister, you know when</p> <p>19 we come back I just want you to try and recall whether you</p> <p>20 did get an oral briefing about this document and if so, who</p> <p>21 it was that gave the oral briefing. Then we'll get the</p> <p>22 answers after you have reflected upon them. I want to be</p> <p>23 fair to you. Thank you, Mr Chairman.</p> <p>24 CHAIRPERSON: Thanks. We must try to be</p> <p>25 back in 15 minutes. I know it's not easy, but we must try</p>	<p style="text-align: right;">Page 32191</p> <p>1 MR NTSEBEZA SC: Yes.</p> <p>2 MINISTER MTHETHWA: The Deputy Provincial</p> <p>3 Commissioner was also there.</p> <p>4 MR NTSEBEZA SC: And as you said that –</p> <p>5 CHAIRPERSON: [Microphone off, inaudible]</p> <p>6 the Deputy Provincial Commissioner, there are a number of</p> <p>7 deputy commissioners. I presume you mean General Mpembe.</p> <p>8 MINISTER MTHETHWA: General Mpembe, yes.</p> <p>9 MR NTSEBEZA SC: And that is when you</p> <p>10 said there was a fair amount of detail starting from Friday</p> <p>11 the 10th.</p> <p>12 MINISTER MTHETHWA: Yes.</p> <p>13 MR NTSEBEZA SC: And until the events of</p> <p>14 the 16th.</p> <p>15 MINISTER MTHETHWA: Yes.</p> <p>16 MR NTSEBEZA SC: Now if you could just</p> <p>17 look at FFF4, because I just want us to go to certain</p> <p>18 paragraphs there. Now this was the briefing document which</p> <p>19 had been prepared by the same team that had also prepared</p> <p>20 the media statement, which is FFF5. Now we'll come to</p> <p>21 FFF5. Now in FFF4, on page 2 thereof, if we went to the</p> <p>22 fifth paragraph on the second page you'll see that there is</p> <p>23 a paragraph that starts with "The dispersion. The</p> <p>24 dispersion action had commenced at this time and the</p> <p>25 protesters were driven from their stronghold to a high</p>

<p style="text-align: right;">Page 32192</p> <p>1 bushy ground in the close vicinity. The police members 2 encircled the area and attempted to force the protesters 3 out by means of water cannons, rubber bullets and stun 4 grenades. The police advanced to arrest the armed 5 protesters, resulting in police officers having to again 6 employ force to defend themselves at close quarters. This 7 resulted in 13 more protesters' deaths."</p> <p>8 Now in fact we should start with the paragraph 9 above that to read the second one in context, because 10 there's a flow there. I'm sorry about that, Minister. You 11 see where it says "When the police started deploying the 12 barbed wire fencing the militant group from the protesters 13 armed with weapons, pangas, spears, axes and firearms 14 hastily flanked the vehicles deploying the wire. They were 15 met by members from the police who tried to repost the 16 advance with stun grenades. Their attempt was unsuccessful 17 and the police members had to employ force to proceed and 18 protect themselves from the charging group. This resulted 19 in the death of 16 protesters, with 13 wounded at that 20 scene." You see that?</p> <p>21 MINISTER MTHETHWA: Yes.</p> <p>22 MR NTSEBEZA SC: Now you will know, but 23 if you don't I will tell you that there is common 24 understanding here that that is what has commonly come to 25 be referred to here at the Commission as scene 1. That was</p>	<p style="text-align: right;">Page 32194</p> <p>1 you were getting this briefing. In fact if you read the 2 paragraph, not the one-liner after the paragraph that we 3 had read, the paragraph that says "The total death toll of 4 the protesters currently stands at 29, with more than 71 5 critically injured and others being treated for minor 6 wounds." So that seems to be clear that that is what the 7 briefing document was saying to you, that there were two 8 scenes and at those two scenes, scene 1 and scene 2, there 9 were fatalities and as at that stage the fatalities were 10 standing at 29 and with those numbers injured. That is 11 what you understood when you were getting the briefing on 12 that day. Is that right?</p> <p>13 MINISTER MTHETHWA: Yes.</p> <p>14 MR NTSEBEZA SC: Yes, now if we went to 15 FFF5, now that in a nutshell is the press briefing 16 document. It complements what you saw in the clip. It's 17 the press briefing that she gives and which we would argue, 18 if you wouldn't accept it, correlates to what we saw in the 19 footage that we played a little while ago when we commenced 20 cross-examination. I want to draw your attention to the 21 second page thereof, to the paragraph that begins with 22 "When the police started deploying," you see that 23 paragraph?</p> <p>24 MINISTER MTHETHWA: Yes.</p> <p>25 MR NTSEBEZA SC: It's the seventh, the</p>
<p style="text-align: right;">Page 32193</p> <p>1 the first group of people, mineworkers, or protesters who 2 were killed in that first volley, which is probably what 3 you saw on television before you came for the briefing. Do 4 you understand that?</p> <p>5 MINISTER MTHETHWA: Yes.</p> <p>6 MR NTSEBEZA SC: So this briefing 7 document clearly states what happened in scene 1 and then 8 in the second paragraph, or the paragraph following that it 9 goes on to mention that "The police members encircled the 10 area and attempted to force the protesters out by means of 11 water cannons, rubber bullets and stun grenades. The 12 police advanced to arrest the armed protesters, resulting 13 in police officers having to again employ force to defend 14 themselves at close quarters. This resulted in 13 more 15 protesters' deaths, with 15 more wounded at the second 16 incident."</p> <p>17 So that paragraph you would agree with me states 18 another incident where more deaths of protesters occurred, 19 and what it has come to be known in the Commission as scene 20 2. You would accept that, that there was a second scene 21 where there were more deaths according to this briefing 22 document? Do you accept that?</p> <p>23 MINISTER MTHETHWA: Yes, yes, yes.</p> <p>24 MR NTSEBEZA SC: Yes, and you understood 25 that to be the position that was communicated to you when</p>	<p style="text-align: right;">Page 32195</p> <p>1 third-last and the eighth, second-last paragraph on that 2 page. There it is. "When the police started deploying the 3 barbed wire fencing the group of protesters, armed with 4 dangerous weapons and firearms, hastily flanked the 5 vehicles deploying the wire. They were met by members from 6 the police who tried to repost the advance with water 7 cannon and teargas, as well as stun grenades. The attempt 8 was unsuccessful and the police members had to employ force 9 to protect themselves from the charging group." You see 10 that?</p> <p>11 Now I will want to argue, and this is where I 12 want to get your view, that the media statement doesn't 13 create the impression that there were two scenes. Do you 14 agree? The media statement by General Phiyega –</p> <p>15 MINISTER MTHETHWA: Yes, yes. The second 16 paragraph after that, is it not talking to the second part?</p> <p>17 MR NTSEBEZA SC: Yes, but you see, it 18 doesn't distinguish in the manner in which the briefing 19 document had done, and I'll tell you why it is important 20 that a clear impression should have been created. Do you 21 know, and I think all of us do know, that scene 1 had been 22 captured in local and international media. It's one of 23 those scenes that were shocking and they went viral 24 throughout the world.</p> <p>25 MINISTER MTHETHWA: Yes.</p>

<p style="text-align: right;">Page 32196</p> <p>1 MR NTSEBEZA SC: So I'm saying, and I put 2 it to you for your reaction that whereas the briefing 3 document - and this was the briefing document to you - is 4 clear and you don't have to hunt around to find what it 5 says, it says scene 1, this is what happened at scene 1; 6 scene 2, this is what happened in scene 2, you don't get 7 the same messaging from the Police Commissioner's media 8 briefing. Would you agree with me? 9 MINISTER MTHETHWA: For - 10 MR NTSEBEZA SC: You can't from her 11 statement - 12 MINISTER MTHETHWA: Yes. 13 MR NTSEBEZA SC: - tell that there were 14 two incidents, each of which had its own toll of deaths, 15 and you must have been aware of that, or if you were not, 16 I'm bringing it to your attention now and I'm asking if you 17 didn't get that impression when later on you saw her 18 deliver that media statement and reading it and - because I 19 want to ask you, did it not occur to you that - 20 MINISTER MTHETHWA: Well, they are not 21 identical. I agree with you, including other things like 22 numbers of people who died. 23 MR NTSEBEZA SC: Yes, yes, but the 24 significant difference, as I'm suggesting to you, is that 25 the impression that is getting created here is that there</p>	<p style="text-align: right;">Page 32198</p> <p>1 responsibility for this alleged omission in a statement 2 that he did not write and dealing with circumstances that 3 arose in his absence, Chair. So we will really have to 4 object to this. It's unfair to the witness. 5 CHAIRPERSON: Mr Ntsebeza, how do you 6 respond to the objection? 7 MR NTSEBEZA SC: Mr Chairman, the witness 8 has been fairly candid. He saw the statement when it was 9 made. He saw the briefing document. He may not have seen 10 the statement, he doesn't recall. That was the evidence. 11 He doesn't recall whether he saw the statement being made 12 by the General, but he had seen it and our argument will be 13 that the same briefing team that had done the briefing 14 document is the same briefing team that did the media 15 statement. The Minister was aware - he has indicated that 16 - that there was going to be a media briefing. He was 17 fully advised - if you look at the media briefing, FFF5 and 18 the briefing document, the internal document, they all 19 categorise, or they purport to do so, what happened from 20 the 10th, Friday the 10th of August to the 16th. 21 So my response to my learned friend is that the 22 Minister is not being taken to task about it. He is the 23 Minister in charge of the police. He has been given a full 24 briefing now, orally as well as in terms of these 25 documents, and we should assume because of the scale of the</p>
<p style="text-align: right;">Page 32197</p> <p>1 was a mission by the police; they had to encircle, they 2 used barbed wire to encircle workers. The workers attacked 3 them and in order to defend themselves against this 4 charging horde of people who were armed with dangerous 5 weapons, pangas, assegais, this, that, and the next thing, 6 they took action and that resulted in the deaths. Now that 7 is the media briefing and it coincides with what the media 8 had captured. Do you agree? It doesn't tell you that 9 sometime thereafter people had run into the mountains, 10 people had been sought to be taken out of the mountains and 11 hills by means of cannon, water cannon and what have you. 12 Again they recharged and it resulted in additional deaths. 13 You don't get that from the media briefing. Is that 14 correct? Is it a fair assessment of a comparison between 15 the two? It's not just a question of artificial 16 difference, you know, don't mention so many and so many. 17 MINISTER MTHETHWA: Well, this is what 18 has been published. What you are saying is what is out 19 there in the public eye. 20 MR NTSEBEZA SC: And I'm saying it's a 21 material omission. It amounts to misleading the public, 22 which is expecting the Commissioner to tell the nation and 23 the world as exactly what happened - 24 MS NKOSI-THOMAS SC: Chair, may we object 25 at this stage. It's not clear why the Minister should take</p>	<p style="text-align: right;">Page 32199</p> <p>1 tragedy that he is conscious of what is being communicated 2 to the public. Now how on earth it can be argued that - 3 CHAIRPERSON: I'm sorry to interrupt you. 4 Are you going to contend in other words at the end of the 5 evidence that the Minister can be criticised personally for 6 the, what you suggest are fundamental or material conflicts 7 between the two statements which he had seen and therefore 8 inasmuch as he allowed them to go forward he can be 9 criticised? That's your argument. Whether the criticism 10 will be good or bad is another matter, but are you going to 11 criticise him on that basis? 12 MR NTSEBEZA SC: That's exactly the 13 point, Mr Chairman. 14 CHAIRPERSON: Okay. Well, if that's so, 15 Ms Nkosi-Thomas, surely it's only fair to the witness that 16 Mr Ntsebeza should put the problem to him so that he can 17 deal with the criticism which is going to be directed 18 against him at the end unless he comes up with an 19 explanation which is of such a nature that it induces Mr 20 Ntsebeza not to persist in that criticism. That must be 21 fair, surely. 22 MR NTSEBEZA SC: Thank you, Mr Chairman, 23 whilst my learned friend is trying to find another basis 24 for objection may I proceed on this basis. Minister, you 25 see -</p>

<p style="text-align: right;">Page 32200</p> <p>1 CHAIRPERSON: I'm sorry, am I not called 2 upon to rule on the objection? You're going to reformulate 3 the question in the hope that you thereby avoid – 4 MR NTSEBEZA SC: No, I thought you had 5 ruled, Mr Chairman. 6 CHAIRPERSON: Sorry? I haven't ruled. I 7 asked you a question and I then asked her what her answer 8 to it was and she didn't reply. So – 9 MS NKOSI-THOMAS SC: Chair, except to add 10 that when one has regard to the number of fatalities it's 11 very clear that there was no intention to conceal or 12 mislead the public, but be that as it may, Chair – 13 CHAIRPERSON: Well, that's matter, the 14 point – alright, now I think in the circumstances, regard 15 being had to the fact that the question is in effect a 16 prelude to a criticism which may well be mounted against 17 the Minister at the end unless the Minister's answer is of 18 such a nature as to induce or persuade Mr Ntsebeza not to 19 persist with the criticism. 20 [15:35] It's only fair it should be put to him so he gets 21 a chance to deal with it. 22 MR NTSEBEZA SC: Thank you, Mr Chairman. 23 Mr Minister, just so that there is no misunderstanding 24 between me and you, there clearly is one between me and my 25 learned friend, I'm not contesting the numbers of</p>	<p style="text-align: right;">Page 32202</p> <p>1 but also, even though you say as far as you are concerned 2 it's not important, also the number of fatalities 3 themselves. So when you look at the two you see here that 4 some things are still in a process, work in process, as it 5 were, because they really are not identical and that you 6 won't miss it. 7 MR NTSEBEZA SC: So what are you saying 8 about the numbers, perhaps if you could – 9 MINISTER MTHETHWA: As you have just 10 said, that at one point 29, on the other is 34, I also said 11 earlier on in my statement here that I got 28 for instance, 12 so the number kept on changing. 13 MR NTSEBEZA SC: But if you went to FFF5 14 and let's look on the second page, the 7th and the 8th, can 15 we go to that? 16 CHAIRPERSON: At the moment we've got 17 FFF5. I think you really mean FFF4. 18 MR NTSEBEZA SC: Oh yes. 19 CHAIRPERSON: What you mean is if one 20 reads what is said in regard to the numbers and so on – 21 MR NTSEBEZA SC: Yes. 22 CHAIRPERSON: - on FFF4, then you can use 23 that as a basis for comparing it to FFF5. 24 MR NTSEBEZA SC: Yes. 25 CHAIRPERSON: I think that, I think</p>
<p style="text-align: right;">Page 32201</p> <p>1 fatalities because as we all know, the number was not 29 on 2 that day. At the end of the day the people who got killed, 3 the miners who got killed, the number was 34. That's not 4 the point. The point with which fortunately the two of us 5 have agreed is that the briefing document is truly 6 reflective of two scenes in each of which there were 7 fatalities. That we are agreed upon, isn't it? Scene 1's 8 number of fatalities, scene 2's number of fatalities, that 9 much we have agreed upon. Now we say the media statement, 10 however, however you read it, creates the impression that 11 what started with the barbed wire, the encirclement, the 12 alleged attack by the mineworkers or protesters at the 13 police and the police line, the police having to do what 14 they had to do, fatalities, that is the impression that is 15 being created by the media briefing. Now you have conceded 16 that this is so. Now the question that I would like to put 17 to you to be fair to you is whether you were aware, as you 18 are aware now, that what was being communicated by the 19 General to the nation and I daresay to the world, was 20 materially misleading if it created the impression that the 21 fatalities occurred only at scene 1. Would you agree with 22 that? 23 MINISTER MTHETHWA: You know the two 24 statements, as I said earlier on, are not identical, not 25 only on the matter you are referring to of scene 1, scene 2</p>	<p style="text-align: right;">Page 32203</p> <p>1 you've got – you've got FFF5 on the – 2 MR NTSEBEZA SC: Yes. No – no, I was 3 looking everywhere – 4 CHAIRPERSON: You want FFF4. 5 MR NTSEBEZA SC: - Mr Chairman. In fact, 6 no, no, I need that page because you see the media briefing 7 was already right, do you see that, about the fatalities? 8 The total death toll of the protesters currently stands at 9 34. 10 MINISTER MTHETHWA: Mm-mm. 11 MR NTSEBEZA SC: So when she delivered 12 that statement she already knew the correct number of 13 deaths from two scenes, scene 1 and scene 2. And therefore 14 this statement, the media statement was delivered later 15 than had been, than the internal briefing document had been 16 compiled. So I don't know – what I'm getting at is this, 17 in fact you highlighting the differences between the 18 fatalities actually makes the point I'm making, that the 19 internal briefing document as at the stage that it was 20 compiled, it mentions 27 or so, the later document actually 21 says 34. So when it was delivered, it was giving the exact 22 number that has historically been accepted to have been the 23 number of the people who got killed by the police in two 24 scenes and what we are saying – 25 CHAIRPERSON: Mr Ntsebeza, Mr Ntsebeza,</p>

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1 sorry to interrupt you. Mr Semenya has turned his light
2 on.

3 MR SEMENYA SC: Chair, the document we
4 have on the screen has what I would call paragraph 3
5 starting from the bottom. It clearly is reference to scene
6 1 but the following paragraph is clearly dealing with scene
7 2 when there are people who are going to higher bushes and
8 it is also talking about water cannons being used there as
9 well as it did in the paragraph before. So this
10 impression of misleading, it's not obvious to me, Chair,
11 and I would seek that clarification.

12 CHAIRPERSON: Well –

13 MR NTSEBEZA SC: Mr Chairman –

14 CHAIRPERSON: - you'll have to make it
15 clear to Mr Ntsebeza, sorry, to Mr Semenya, you'll just
16 have to make it clear to the witness but perhaps you can
17 bear in mind what Mr Semenya has said.

18 MR NTSEBEZA SC: Yes, I will, Mr
19 Chairman.

20 CHAIRPERSON: And make it clear to the
21 Minister also.

22 MR NTSEBEZA SC: Yes, I will. The
23 Minister didn't seem to have any difficulty in
24 understanding what I'm putting to him. In fact that horse
25 is a significant distance from the stable because we are

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1 agreed that the media briefing, unlike the internal
2 briefing document, is not fuzzy about the stages. It says
3 at a particular stage in the first stage it deals with
4 fatalities. The second stage deals with the fatalities.
5 And if we have to argue about it at the end of the day, Mr
6 Chairman, we will. That is our proposition.

7 CHAIRPERSON: But put a question to the
8 witness so that he can deal with it.

9 MR NTSEBEZA SC: Yes.

10 CHAIRPERSON: And then you can perhaps
11 move on.

12 MR NTSEBEZA SC: Yes. So now the
13 question I was putting – look, if we had to do the exercise
14 we would do it, it's just that my time would be compromised
15 but if we went paragraph by paragraph, paragraph in the
16 briefing document, paragraph in the media statement, what I
17 am putting out to you will be clear but this is what I want
18 to ask you and the question is, you are now clear in terms
19 of the answer that you gave earlier on that there is a
20 difference between the internal briefing document insofar
21 as that internal briefing document identifies two distinct
22 scenes and says how many people were killed in each of the
23 two scenes and the media briefing which does not separate
24 the number of people who were killed in the first scene and
25 the number of people who were killed in the second scene,

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1 even though it gives a correct total of people who were
2 killed. Now were you aware at the time that there is this
3 difference which I'm highlighting to you?

4 MINISTER MTHETHWA: Well, not as clearly
5 as you are putting it because, as I said earlier on, that
6 the two documents are not identical but the two paragraphs
7 which come one after the other, whilst not clarifying that
8 this is not scene 2 but it does say that at this time and
9 it goes on and on and on in explaining whatever is being
10 explained here.

11 MR NTSEBEZA SC: I don't think I can take
12 it further.

13 CHAIRPERSON: You've put the point at
14 great length to the witness.

15 MR NTSEBEZA SC: Yes.

16 CHAIRPERSON: Such material as you would
17 have on record to base an argument on, you've got.

18 MR NTSEBEZA SC: Yes.

19 CHAIRPERSON: So move on to another
20 point.

21 MR NTSEBEZA SC: Yes. Now, I want to –
22 Mr Chairman, I just, there's a topic, Mr Chairman, which we
23 know we will not be dealing with and it's a topic that
24 might be dealt with by other parties. Mr Chaskalson
25 probably is going to deal with it and if, Mr Chairman, you

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1 will allow me some leeway to put a few questions in
2 relation thereto and it is this, were you aware before the
3 operation on the 16th, or put it – between the 13th and the
4 16th were you aware that at Marikana units were deployed
5 which, as their arsenal of weapons, used R1 rifles, R5
6 rifles, R4 rifles, what we have come to accept through an
7 expert of the SAPS in this Commission as military issue.
8 Were you aware?

9 MINISTER MTHETHWA: Well, I was informed
10 when I enquired about the deployment that there were going
11 to be personnel or members of SAPS deployed there. I
12 didn't ask a specific question on which unit is there and
13 which one is not there.

14 MR NTSEBEZA SC: Now, from your answer I
15 gather that you are conceding having been aware ahead of or
16 during the deployment of the units, that some of those
17 units would be armed with R1 rifles, R5 rifles, rifles
18 which in ordinary parlance are referred to as military
19 weapons. Am I correct in that assessment of your response,
20 you were aware that those rifles were used or at least
21 there were units that were deployed to deal with the
22 situation that were armed with those rifles? And I promise
23 you I'm not going to go to criminals and what have you,
24 Bheki Cele and all that, I just want to ask you.

25 MINISTER MTHETHWA: When there are – let

<p style="text-align: right;">Page 32208</p> <p>1 me, let me start this way. I talk through the Commission 2 on a specific matter which has been brought to my attention 3 and it was brought to my attention in the main, having warm 4 bodies on the ground. Insofar as that is concerned, the 5 deployment and the addition of members of SAPS, I was aware 6 of that and as I said, I never enquired who will be there, 7 who will not be there, because the main thing for me was 8 that we need police on the ground to avert any fatality. 9 MR NTSEBEZA SC: Let's test that a little 10 bit. It must have been reported to you that two police 11 officers had been fatally wounded on the 13th in an 12 encounter with protesters, wasn't it? 13 MINISTER MTHETHWA: Yes. 14 MR NTSEBEZA SC: And it must have been a 15 matter of concern for you as Minister of Police, wasn't it? 16 MINISTER MTHETHWA: Yes, it was. 17 MR NTSEBEZA SC: And I can take another 18 hour, if I had one, you know, trying to get a sense of how 19 it affected you, what you did, what you ordered the 20 Provincial Commissioner to do. We're not getting there. 21 What I'm trying to get at is this, after the 13th – I'm not 22 saying the incidents that had happened before the 13th were 23 not important, I mean security police people had been 24 killed and incinerated and there were all sorts of things. 25 There were a number of – mineworkers had died in that</p>	<p style="text-align: right;">Page 32210</p> <p>1 to you by the Chairman relevant to whether or not the 2 Police Commissioner had briefed you about what was going to 3 happen. 4 MINISTER MTHETHWA: Yes. 5 MR NTSEBEZA SC: You are a Minister of 6 Police, two members of which have been hacked to death, and 7 you know that there is a reaction that your department must 8 have to this because you are informed by the fact that 9 members of the police service have been killed. 10 Now I want to suggest to you that you must have a 11 rethink about your response because I want to put it to you 12 that if you didn't enquire you were derelict in your duty 13 at seeking to establish what the detail of the deployment 14 is going to be in reaction to the situation as it's arisen. 15 CHAIRPERSON: How do you respond to that 16 question? 17 MINISTER MTHETHWA: No, I still stand, 18 Chair, that the Minister of Police is not the person who's 19 supposed to ask police how many guns you are having, and so 20 on. It's not my – 21 CHAIRPERSON: That's an operational 22 detail – 23 MINISTER MTHETHWA: Which is an 24 operational detail. 25 CHAIRPERSON: Alright. I –</p>
<p style="text-align: right;">Page 32209</p> <p>1 skirmish on the 13th, but can I put it to you that on the 2 13th and thereafter, immediately thereafter, when once your 3 own members, when members of the police service – it was 4 called a police force, now I think – but when members of 5 the police service were killed, I want to put it to you 6 that it became a matter of concern for you, I mean the e- 7 mails are an indicator of that and this is what I want to 8 ask you, what are you saying to the Commissioner, the 9 Commissioners here, that you didn't want to know the 10 details of how this matter was going to be contained, what 11 units were going to be used, what were they going to be 12 using, what weapons will they be using in order to contain 13 this situation? Surely you are not suggesting that, are 14 you? 15 MINISTER MTHETHWA: Chair, I don't think 16 that you are suggesting that I was supposed to be asking 17 what sort of weapons are going to be used or what weapons 18 would be carried after the police have been killed, which 19 you wouldn't have asked before the police were killed. No, 20 frankly, I wouldn't be asking about the kind of weapons 21 which would be carried, I would rely on the experience of 22 the police in ensuring that there's public order in 23 gatherings as has happened in the past. 24 [15:55] MR NTSEBEZA SC: You see, Mr Minister, my 25 question is not really dissimilar to the poser that was put</p>	<p style="text-align: right;">Page 32211</p> <p>1 MINISTER MTHETHWA: So I can't be 2 expected – in fact I differ that it's dereliction of duty 3 because that's a purely operational matter of a police 4 service who would know what to do in any kind of situation 5 where they are interacting with the public. 6 CHAIRPERSON: Yes, and I understand that, 7 but can I ask you another question from a slightly 8 different angle. I take it as Minister you were aware of 9 the equipment that the various units had in the police 10 service. 11 MINISTER MTHETHWA: Yes, I am. 12 CHAIRPERSON: And did you know that there 13 were a substantial number of R5s which were in the police 14 inventory as it were, and that there were units who were 15 heavily reliant on R5s? Did you know that? 16 MINISTER MTHETHWA: Well, there are units 17 who use those types of equipment anyway. 18 CHAIRPERSON: Ja, okay. Now those units 19 were, amongst others were the TRT, the NIU, and the STF. 20 Is that right? 21 MINISTER MTHETHWA: Yes. 22 CHAIRPERSON: Did you know whether any of 23 those – in respect of the units that were sent to Marikana, 24 did you know whether there were TRT units? 25 MINISTER MTHETHWA: Well, as I said,</p>

1 Chair, I didn't enquire but I know that in certain
2 situations police would deploy different units, including
3 TRT, STF, as you have said.
4 CHAIRPERSON: And NIU.
5 MINISTER MTHETHWA: Come again?
6 CHAIRPERSON: And NIU, National
7 Intervention Unit.
8 MINISTER MTHETHWA: And NIU, yes.
9 CHAIRPERSON: And those units are the
10 ones that are equipped with R5s.
11 MINISTER MTHETHWA: Yes, they are.
12 CHAIRPERSON: As far as the POP units are
13 concerned, the evidence is that, I think every eight, they
14 all have side arms, you know, pistols, and one of them has
15 an R5. So you've got POP people, one-eighth of whom have
16 R5s and then you have STFs, NIUs, and TRTs. That's the
17 position. But anyway, I'm just correcting that. Sorry Mr
18 Ntsebeza, you've got chance for two more questions and then
19 we'll adjourn until tomorrow.
20 MR NTSEBEZA SC: Yes, Mr Chairman,
21 perhaps we should take the adjournment now.
22 CHAIRPERSON: Alright. We'll adjourn
23 until tomorrow morning, 9 o'clock.
24 [COMMISSION ADJOURNED]
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