

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 256

15 JULY 2014

PAGES 32213 TO 32463



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1 [PROCEEDINGS ON 15 JULY 2014]
 2 [09:08] CHAIRPERSON: I'd like us to take a
 3 shorter lunch break than usual today because we want to use
 4 every available moment that we have. We're running out of
 5 time. So we'll take lunch from 1 to 1:30. You're still
 6 bound by your affirmation, Minister.
 7 EMMANUEL NKOSINATHI MTHETHWA: [affirms
 8 further].
 9 CHAIRPERSON: Mr Ntsebeza.
 10 CROSS-EXAMINATION BY MR NTSEBEZA SC (CONTD.):
 11 Thank you, Mr Chairman. Mr Minister, yesterday in response
 12 to a question from Mr Bizos you responded by saying you
 13 didn't regard the workers, or the protesters who were
 14 killed as having been criminals. Do you recall that?
 15 MINISTER MTHETHWA: Yes.
 16 MR NTSEBEZA SC: You just regarded them
 17 as protesters. Is that right?
 18 MINISTER MTHETHWA: Yes, Sir, I did say
 19 that –
 20 MR NTSEBEZA SC: Yes.
 21 MINISTER MTHETHWA: - they were
 22 protesters –
 23 MR NTSEBEZA SC: Yes, it was actually
 24 gratifying to hear you say that.
 25 MINISTER MTHETHWA: Sorry, but I noted

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1 that they were armed with dangerous weapons. I underscored
 2 that point.
 3 MR NTSEBEZA SC: Now I take it that that
 4 was your view at the time. You remember there was a debate
 5 as to whether you were referring to then or to now. It
 6 seems to me that it was your view at the time that you
 7 didn't regard them as criminals.
 8 CHAIRPERSON: Do you agree with that?
 9 Minister, do you agree with what Mr Ntsebeza puts to you,
 10 that at the time you didn't regard the strikers as
 11 criminals?
 12 MR NTSEBEZA SC: Regarded them as
 13 protesters, albeit protesters with dangerous weapons. Is
 14 that right?
 15 MINISTER MTHETHWA: Well, yes, at the
 16 time, yes.
 17 MR NTSEBEZA SC: Yes, and it seems to me
 18 that – well anyway, you know my assistants have drawn my
 19 attention to some footage which I would like to flight. Mr
 20 Chairman, let me try and get this footage. It's in the
 21 SAPS hard drive, DVD, SAPS Marikana press conference. I
 22 believe that the operator has the video. Can you put it up
 23 in terms of what you have been told is the reference? I
 24 believe there is a transcript that –
 25 CHAIRPERSON: Mr Ntsebeza, what exhibit

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1 is this? For the purposes of the record, what is the
 2 exhibit?
 3 MR NTSEBEZA SC: I think it will be a new
 4 exhibit because I believe that the arrested and injured
 5 have done a transcript.
 6 CHAIRPERSON: Alright, well is it a new
 7 exhibit?
 8 MS LEWIS: Chair, it is a new exhibit.
 9 CHAIRPERSON: So it will be CCCC7, video,
 10 how do we describe it?
 11 MR NTSEBEZA SC: It's a press
 12 conference –
 13 CHAIRPERSON: No, no, but how do you
 14 describe the video clip? The video clips have normally got
 15 numbers and references and so on.
 16 MR NTSEBEZA SC: Yes.
 17 MS LEWIS: Mr Chair, it's on the SAPS
 18 hard drive, media DVDs, SAPS Marikana press conference 17th,
 19 the video folder, and then it's VTS_01_2.VOB.
 20 CHAIRPERSON: Sorry, underscore – sorry,
 21 01_2?
 22 MS LEWIS: 2.VOB.
 23 CHAIRPERSON: VOB, so if we give it that
 24 description, video clip on SAPS hard drive, VTS_01_2.VOB,
 25 that will adequately describe it for those in the future

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1 who have to read the transcript?
 2 MS LEWIS: Mr Chair, just to note that
 3 after the SAPS hard drive it's in the media DVD folder,
 4 SAPS Marikana press conference 17th, video.
 5 CHAIRPERSON: Yes, alright, let me read
 6 that now. Video clip on SAPS hard drive, media DVD folder,
 7 SAPS Marikana press conference video. I think you also
 8 mentioned the date at some stage.
 9 MS LEWIS: 17th, SAPS Marikana –
 10 CHAIRPERSON: So Marikana press
 11 conference 17th –
 12 MS LEWIS: On the 17th.
 13 CHAIRPERSON: - 8/2012.
 14 MS LEWIS: Yes.
 15 CHAIRPERSON: And then video VTS01_2.VOB.
 16 Is that correct?
 17 MS LEWIS: That's correct, Mr Chair.
 18 MR NTSEBEZA SC: Now my impression
 19 yesterday, and I just want to check that with you, was that
 20 you did not recall whether you were at the press conference
 21 at which the National Commissioner spoke, the one we
 22 flighted yesterday. Do you recall your evidence in that
 23 regard that you were not sure whether you were present?
 24 MINISTER MTHETHWA: Yes, I do.
 25 MR NTSEBEZA SC: Have you thought about

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1 it now as to whether you were not there when she delivered
2 the media statement? Have you thought about whether you
3 were not there or not?
4 MINISTER MTHETHWA: I know that I arrived
5 there –
6 MR NTSEBEZA SC: So you thought about it
7 and your –
8 MINISTER MTHETHWA: I thought about it –
9 MR NTSEBEZA SC: - and your inclination
10 is to lean in the direction of saying you were there?
11 MINISTER MTHETHWA: Well, I know I
12 arrived, but whether I was there when the press conference
13 was taking place, no, I can't say that for sure.
14 MR NTSEBEZA SC: You know yesterday, Mr
15 Minister, you - I think to be fair to you, your answer was
16 that you did not recall if you were there or not and I want
17 to suggest to you now that we are dealing with this, such a
18 serious matter, that you cannot have mistaken whether you
19 were there or not. There was one press conference of the
20 magnitude that this press conference was on the 17th of
21 August. You would have remembered before international
22 media, local and international media. In fact this video
23 clip will show you sitting there, Mr Minister.
24 MINISTER MTHETHWA: There were two press
25 conferences on the day.

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1 MR NTSEBEZA SC: I see, and if you had
2 attended both you would know, isn't it? Certainly when I
3 wanted to draw your attention to your presence or not when
4 there was a press conference at which the National
5 Commissioner was speaking, you would have said I know for a
6 fact that there were two on that day and I was in one of
7 them, or I was in both of them. Is that right?
8 MINISTER MTHETHWA: As I say that the
9 press conference which we are referring to, which was the
10 first conference of the day, it happened in the early hours
11 of the day, I wouldn't say for sure that when the press
12 conference started and ended I was there because if I had
13 addressed the press conference myself I would have known.
14 I know that the later conference, press conference, I was
15 already there and I sat in the conference.
16 MR NTSEBEZA SC: Yes. So your position
17 is that you're still not sure whether you were not there
18 when the National Commissioner delivered the media
19 statement?
20 MINISTER MTHETHWA: Yes.
21 MR NTSEBEZA SC: When did you arrive?
22 MINISTER MTHETHWA: I must be reminded.
23 I think it was around lunchtime or so. I must – ja, I
24 think so.
25 MR NTSEBEZA SC: Yes, the video at 7:55 -

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1 can we show the video at 1:27? We need it with audio –
2 CHAIRPERSON: Who is the gentleman on the
3 extreme left as we look at the screen?
4 MINISTER MTHETHWA: It's me.
5 MR NTSEBEZA SC: So you were sitting
6 there.
7 MINISTER MTHETHWA: Yes.
8 MR NTSEBEZA SC: Are you sure you were
9 not there when General Phiyega delivered the media
10 statement?
11 MINISTER MTHETHWA: As I say –
12 MR NTSEBEZA SC: She's there, isn't it?
13 She's also there. She's the lady with the –
14 MINISTER MTHETHWA: No, I can see her.
15 MR NTSEBEZA SC: - with the glasses.
16 MINISTER MTHETHWA: I can see her. What
17 I was saying is that I was not certain on the time I came
18 there, whether the press conference was over or whether the
19 press conference was underway. I didn't say that I was not
20 there. This is what I've said to you, but I said for sure
21 I know the later conference that I was there.
22 MR NTSEBEZA SC: Now I just want –
23 CHAIRPERSON: Perhaps we should listen to
24 the clip and we'll see whether the press conference has
25 started yet or was over or if he got up halfway through and

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1 walked out or something of that kind.
2 MR NTSEBEZA SC: That's why it's
3 important to have the audio, Mr Chairman. It seems there
4 is a person who's saying "We'll take the last five
5 questions because we have to get to our next meeting."
6 [VIDEO IS SHOWN]
7 Can we stop there for a moment? I mean the
8 General –
9 CHAIRPERSON: That is 2:49.
10 MR NTSEBEZA SC: 2:49. The General
11 clearly indicates, Mr Minister, that she has given her
12 address and she records some of what she considers to be
13 the salient points of her address. Would you agree with
14 that assessment?
15 MINISTER MTHETHWA: Yes.
16 MR NTSEBEZA SC: And surely you are
17 sitting there. You wouldn't have known what she said if
18 you were not there when she said it.
19 MINISTER MTHETHWA: No, this clip is
20 showing the press conference, not the press conference
21 address from the – I don't even know where was this,
22 whether this was at the end, the question time, when did I
23 arrive there, I arrived at the question time or at the
24 beginning. This clip, I don't know whereabouts in the – if
25 you can start at the beginning I would then understand, but

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1 right now it's like a question time.
 2 COMMISSIONER HEMRAJ: Mr Chaskalson, can
 3 you assist with what time this clip refers to, because I'm
 4 a little bit in the dark on that –
 5 MR CHASKALSON SC: Unfortunately not,
 6 Commissioner. This clip does not have times, or accurate
 7 times on it. It appears to be a clip that has been copied
 8 off a tape onto a CD and then onto these files. The dates
 9 of these files are not, they're September the 17th, 2012,
 10 which would be when the download took place. We think,
 11 although we don't know, that this is SABC footage of the
 12 press conference of the 17th. It's in a, we know it's of
 13 the 17th, but we don't know when on the 17th.
 14 COMMISSIONER HEMRAJ: Ms Nkosi-Thomas,
 15 can you assist with the time of this conference?
 16 MS NKOSI-THOMAS SC: Not at this stage,
 17 but we will try and find out what time this occurred.
 18 COMMISSIONER HEMRAJ: Yes, thank you.
 19 CHAIRPERSON: Yes, that will be helpful,
 20 thank you. But by the way, I see it's been marked CCCC8.
 21 According to my notes it should be CCCC7, but unless
 22 there's a 7 that I missed. Ms Pillay, you are the record
 23 keeper here.
 24 MS PILLAY: Chair, it's CCCC7, the video
 25 clip.

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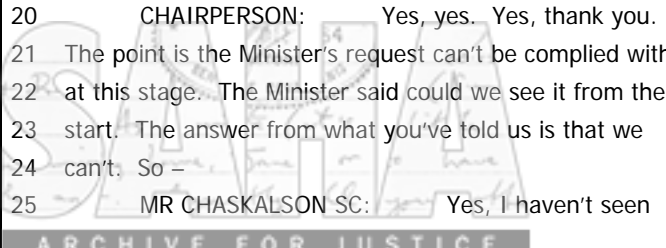
1 CHAIRPERSON: Alright, so they can please
 2 change it in due course. The Minister has requested that
 3 you start it at the beginning to help him to remember
 4 whether he was there at the beginning, so perhaps that can
 5 be done?
 6 MR CHASKALSON SC: Chairperson, if I can
 7 intervene at this point; there are two halves to this
 8 video. The video that the people at the, that our video
 9 people have starts midway in the press conference. They
 10 will have to – I can copy the other file at the start.
 11 What I can say is that I've been through the other file
 12 that records the start of the press conference. I haven't
 13 seen the Minister visible on that, but the camera doesn't
 14 pan to the right of the man in the black leather jacket,
 15 which is where the Minister is visible later on. So it's
 16 neutral.
 17 CHAIRPERSON: Anyway, so the point is –
 18 MR CHASKALSON SC: But I'll make the
 19 video available to Ms Nkosi-Thomas, so –
 20 CHAIRPERSON: Yes, yes. Yes, thank you.
 21 The point is the Minister's request can't be complied with
 22 at this stage. The Minister said could we see it from the
 23 start. The answer from what you've told us is that we
 24 can't. So –
 25 MR CHASKALSON SC: Yes, I haven't seen

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1 the Minister from the start.
 2 MR MPOFU: Chairperson, just for the sake
 3 of completeness, I wanted to, I was going to use this video
 4 for a different purpose and for that reason prepared the
 5 transcript, which should probably be CCCC7.1, but because I
 6 have not yet shown it to my learned colleagues I'll only
 7 submit it after tea, or during the time when I do cross-
 8 examination.
 9 CHAIRPERSON: Now we've got that for the
 10 sake of completeness, can we carry on with the cross-
 11 examination?
 12 MR NTSEBEZA SC: Thank you, Mr Chairman.
 13 Now Minister, there are just two points I want to make
 14 about this video at this stage. The first one, and I would
 15 hope you'd agree with me, is that it is clear that this is
 16 a question and answer session after the National
 17 Commissioner has given her press briefing. Would you agree
 18 with that on the face of it?
 19 MINISTER MTHETHWA: It looks like that,
 20 yes.
 21 MR NTSEBEZA SC: Yes.
 22 MR CHASKALSON SC: Chairperson, sorry –
 23 CHAIRPERSON: What is apparent to us is
 24 this is the question and answer session. We heard the
 25 question, the Commissioner gave her reply.

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1 MR NTSEBEZA SC: Yes.
 2 CHAIRPERSON: You had indicated that, and
 3 I think it's common cause really, that she read that media
 4 statement that we have as an exhibit – I think it's FFF5 –
 5 and then the meeting was open for questions, as it were,
 6 and members of the media asked her questions and she gave
 7 answers. So that's the position as I understand it. I
 8 think that's correct. What you're not sure about is if you
 9 were there for the first part when she read the media
 10 statement, but it's not very material because you admit
 11 that you read the media statement and you said you thought
 12 you read it before the conference. That's also right,
 13 isn't it?
 14 MINISTER MTHETHWA: Yes, Chair, I did –
 15 you would remember that we had a long discussion on this,
 16 trying to recall whether I read it.
 17 CHAIRPERSON: My summary is I think
 18 correct, that you said you thought you read it before, but
 19 that means necessarily that you are not sure.
 20 MINISTER MTHETHWA: Yes.
 21 CHAIRPERSON: You may have read it
 22 afterwards, but you certainly read it at some stage.
 23 That's correct, isn't it?
 24 MINISTER MTHETHWA: Yes. Yes, yes.
 25 MR NTSEBEZA SC: Yes, Mr Minister, the



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1 only point that I want to make at this stage is that given
 2 what we now see here.
 3 [09:27] And given that you say there were two media
 4 statements on that day and all of that. It seems to me,
 5 and I don't know if I will be fair to put this to you, that
 6 yesterday you were not absolutely candid –
 7 MS NKOSI-THOMAS SC: No, Chair, to
 8 clarify, the Minister didn't say, use the words "two media
 9 statements" but what he said is that –
 10 MR NTSEBEZA SC: Media conferences.
 11 MS NKOSI-THOMAS SC: Indeed.
 12 MR NTSEBEZA SC: Thank you very much to
 13 my learned friend.
 14 CHAIRPERSON: I think that –
 15 MR NTSEBEZA SC: Media conferences,
 16 that's what I meant.
 17 CHAIRPERSON: That's right.
 18 MR NTSEBEZA SC: Yes. Thank you very
 19 much for that, colleague, but the point, Minister, is that
 20 it seems to me that when yesterday you said you did not
 21 recall that you were present at any conference that the
 22 Commissioner was addressing, you were not absolutely candid
 23 about it, given now that at least here we have evidence
 24 that you were –
 25 MS NKOSI-THOMAS SC: Chair, again we are

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1 constrained to object. The evidence is he could not recall
 2 whether he was there when the media statement was read.
 3 MINISTER MTHETHWA: Yes.
 4 CHAIRPERSON: That coincides with my
 5 recollection, Mr Ntsebeza.
 6 MR NTSEBEZA SC: Yes, it does, it
 7 coincides with mine as well, Mr Chairman, but the point I
 8 make here is that – or let me put it to the Minister that
 9 the Minister could have said, with us, listen I don't
 10 recall this media conference but there was a media
 11 conference at which I was present. There was a media
 12 conference I attended at which the National Commissioner
 13 was present and was giving a briefing. I arrived at that
 14 press conference, I also even spoke at that press
 15 conference, as we showed. Now that's the level of
 16 candidness that I would have expected from him –
 17 CHAIRPERSON: You're making a speech now,
 18 Mr Ntsebeza. Don't you think it would be helpful for the
 19 witness if you put a question to which he could give an
 20 answer.
 21 MR NTSEBEZA SC: But there's an
 22 objection, Mr Chairman, and I'm responding to an objection
 23 and I'm trying to clarify why I say the Minister was not as
 24 candid as he should have been because we wanted to actually
 25 find whether he was present when there was a press

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1 briefing.
 2 MS NKOSI-THOMAS SC: Chair –
 3 MR NTSEBEZA SC: He knew that there was a
 4 press briefing, he knew that there was an internal
 5 briefing. He acknowledged that he knew about both of those
 6 documents and the only thing that he did not recall was
 7 whether he was there when there was a media briefing by the
 8 Commissioner to which we referred and I'm saying whilst one
 9 accepts his answer yesterday, I do not recall whether I was
 10 there when this media briefing took place, I can however
 11 tell you that there is an incident that I am aware of at
 12 which there was a briefing at which the National
 13 Commissioner addressed the media. I arrived late –
 14 CHAIRPERSON: Mr Ntsebeza, sorry to
 15 interrupt you but I understand that Ms Pillay may well have
 16 on her video, on her computer screen the transcript of what
 17 he said yesterday. Perhaps she can read that to us. That
 18 will then establish whether you were right or Ms Nkosi-
 19 Thomas is right in what the witness said yesterday.
 20 MS PILLAY: Thank you, Chair. At page
 21 32185 of day 255, Chair, the question asked by Mr Ntsebeza
 22 is, "When the Commissioner was delivering the statement,
 23 did you listen to her?" And the answer was, "No, no." The
 24 question, "Did you listen to her later on?" "I don't
 25 recall listening to this particular statement." That's the

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1 question that was put.
 2 MR NTSEBEZA SC: Yes, I don't disagree
 3 with that, Mr Chairman. The point I've made, I don't want
 4 to repeat myself, it's either the witness says you should
 5 have asked more questions then I would have been more
 6 candid with you or let me go on and ask the questions now
 7 premised on what we have.
 8 CHAIRPERSON: The real point is that
 9 you're suggesting to the Minister a lack of candour on his
 10 part and –
 11 MR NTSEBEZA SC: I still am –
 12 CHAIRPERSON: I think it would be –
 13 MR NTSEBEZA SC: I would argue with that,
 14 Mr Chairman –
 15 CHAIRPERSON: No – no, you suggested it.
 16 I think to be fair to the witness you should indicate to
 17 him precisely why you say there was a lack of candour on
 18 his part so he has an opportunity to deal with it, either
 19 to admit he wasn't entirely candid or to give an
 20 explanation justifying a denial, if there is going to be
 21 one, that he wasn't candid. Let's hear what his answer is
 22 to that but first tell why you say he wasn't candid.
 23 MR NTSEBEZA SC: When I get the
 24 opportunity to do that, which I think I now have, Mr
 25 Chairman, thank you very much, thank you to my learned

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1 friends as well. You see, Mr Minister, why I want to
 2 criticise you is that you should have left us with an
 3 impression that you, even if you were not there when that
 4 particular press briefing was given by the National
 5 Commissioner, you should have, I would argue, have
 6 indicated yesterday already that at least there was one
 7 press briefing by the National Commissioner which you
 8 arrived at, you probably arrived there late and – what do
 9 you say to that?

10 MINISTER MTHETHWA: You asked me a
 11 specific question about what the National Commissioner had
 12 said in that conference, in that press conference as she
 13 was addressing the press conference.

14 MR NTSEBEZA SC: Yes.

15 MINISTER MTHETHWA: And I said I couldn't
 16 recall that statement and that press conference what she
 17 was saying there, I could not recall. Now I – I would not
 18 agree with you when you say I was not candid because it
 19 amounts to saying that, you know, when I could not recall I
 20 was supposed to force myself to recall and feel under
 21 pressure. No, I was not going to do that.

22 MR NTSEBEZA SC: No, Minister –

23 MINISTER MTHETHWA: I could not recall
 24 but what she was saying there, which you showed me a one
 25 minute clip yesterday, I don't remember hearing –

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1 MR NTSEBEZA SC: Okay, that's okay. I
 2 mean look, I understand Mr Minister, but can I ask this.
 3 Today you say there were two press conferences actually on
 4 that day, do you recall that?

5 MINISTER MTHETHWA: Yes, I do.

6 MR NTSEBEZA SC: You could have said I
 7 don't recall this press conference but I know that there
 8 was another press conference at which I arrived where the
 9 National Commissioner had been briefing the media. It is
 10 not this one –

11 MS NKOSI-THOMAS SC: Chair –

12 MR NTSEBEZA SC: You could have said that
 13 –

14 CHAIRPERSON: Had he been asked a direct
 15 question to that effect –

16 MS NKOSI-THOMAS SC: Yes.

17 CHAIRPERSON: - he would've given an
 18 answer.

19 MS NKOSI-THOMAS SC: Yes.

20 CHAIRPERSON: But you know we criticise
 21 witnesses for not answering the question and adding extra
 22 material which is designed to answer what they think will
 23 be the next question. Now this witness does it the other
 24 way around, he doesn't answer the question which you may
 25 ask next and now you criticise him for not doing it. I

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1 don't think that's an appropriate way of going about cross-
 2 examination.

3 MR NTSEBEZA SC: Well, Mr Chairman, I'm
 4 not taking the point further than I have taken it but I've
 5 not, we've not seen the last of each other on this question
 6 but then that's for later on. Now Mr Minister, if we could
 7 go to 7:55 in the video because I think that shows you
 8 arriving at the press conference.

9 [VIDEO IS SHOWN]

10 MR NTSEBEZA SC: Yes, that's you Mr
 11 Minister.

12 CHAIRPERSON: Who is the lady?

13 MINISTER MTHETHWA: Yes.

14 CHAIRPERSON: This is now 7:42 of this
 15 video clip. Who is – we see a helicopter, we see what
 16 looks like two policemen and perhaps another one inside the
 17 helicopter and the Minister and a lady, who is the lady?

18 MINISTER MTHETHWA: Lady? Is it not – it
 19 looks like General Mbombo, is it? It looks like General
 20 Mbombo.

21 CHAIRPERSON: Because I didn't know,
 22 because I wasn't sure because when she appeared on the clip
 23 of the press conference she was in uniform and maybe it's
 24 just, she changed into her uniform. That's why I wasn't
 25 sure that it was she but she's carrying a bag, maybe her

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1 uniform is in the bag.

2 MR NTSEBEZA SC: Well, the Chair wanted
 3 to know who the lady is. I just wanted to know who you are
 4 in the picture. I don't want to embarrass you about who
 5 the lady is, just in case. Now if we could go to, Mr
 6 Chairman with your leave, to 9:08 where the Police
 7 Commissioner addresses members, if you can play from there
 8 until 10:00.

9 [VIDEO IS SHOWN]

10 MR NTSEBEZA SC: We're going to stop it
 11 there.

12 CHAIRPERSON: That is 11:30.

13 MR NTSEBEZA SC: Thank you, Mr Chairman.
 14 Now Mr Minister, as those words were delivered by the
 15 Commissioner, you were sitting there and you were hearing
 16 them, is that right? Is that right, Mr Minister – r you
 17 don't recall?

18 MINISTER MTHETHWA: Firstly, what time
 19 was this?

20 CHAIRPERSON: I think we've been told
 21 apparently, am I correct, that these videos don't tell us
 22 what time it was but is this another video or is this the
 23 one that we saw earlier? Mr Chaskalson?

24 MR CHASKALSON SC: It's part of the same
 25 video. One can see from the shadows that it's late

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1 afternoon but there's no specific time that can be given to
 2 that but in fact one – well, let me not anticipate cross-
 3 examination.
 4 CHAIRPERSON: Well, it did look as if we
 5 saw the Minister and a lady who is not identified at this
 6 stage, I'm not sure if it was a local, it was the Premier
 7 or perhaps the Minister of Mineral Resources or someone
 8 like that but we did see the Minister and this lady
 9 walking, it looked as if they were walking to the place
 10 where this was going to happen but of course that may be
 11 misleading, it may have been two videos that were spliced
 12 together or something.
 13 MR CHASKALSON SC: Yes.
 14 MR NTSEBEZA SC: Well, from what I could
 15 gather, Mr Chairman, it was the Minister and General Mbombo
 16 and Ms Thandi Modise who was the Premier -
 17 CHAIRPERSON: It was the Premier –
 18 MR NTSEBEZA SC: - of the North –
 19 CHAIRPERSON: That's the Premier. That
 20 was the Premier at the time.
 21 MR NTSEBEZA SC: I think she was the
 22 Premier at the time.
 23 CHAIRPERSON: Now the President of the
 24 National Council of Provinces.
 25 MR NTSEBEZA SC: Yes, Mr Chairman. Now

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1 if we could go to 13:07 of the clip, Mr Chairman –
 2 CHAIRPERSON: Before we get there, are
 3 you saying that you weren't present when that speech was
 4 made -
 5 MINISTER MTHETHWA: I'm not saying I was
 6 not present there –
 7 CHAIRPERSON: You can't remember it or
 8 you're not sure or what exactly are you saying?
 9 MINISTER MTHETHWA: No, I would be there
 10 if it was after lunch. That's why I was asking time, so I
 11 would definitely be there.
 12 CHAIRPERSON: Well, it was late afternoon
 13 because of the shadows, as indicated. It does look as if
 14 you're in the picture now.
 15 MINISTER MTHETHWA: Yes.
 16 MR NTSEBEZA SC: Well, we were going to
 17 suggest that when you arrived you were arriving at this
 18 same meeting where we now saw the Commissioner saying, but
 19 it is - 13:07 is a continuation of the same meeting. Can
 20 you play that?
 21 CHAIRPERSON: We're now at 13:02. Are
 22 you going –
 23 MR NTSEBEZA SC: 13:02 yes.
 24 CHAIRPERSON: Are we going to run it from
 25 13:02?

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1 MR NTSEBEZA SC: We can run it from
 2 13:00, Mr Chairman.
 3 CHAIRPERSON: I'm not running it. The
 4 gentleman I called –
 5 MR NTSEBEZA SC: Under your direction, Mr
 6 Chairman, could we run it?
 7 [VIDEO IS SHOWN]
 8 MR NTSEBEZA SC: Can you stop there?
 9 CHAIRPERSON: Let's hear the last words.
 10 You cut it off, you cut it off just before the Minister
 11 finished.
 12 MR NTSEBEZA SC: It's almost done, Mr
 13 Chairman, we can play it to the end there.
 14 CHAIRPERSON: Let's go back to 16:08 and
 15 then we can hear –
 16 MR NTSEBEZA SC: No, he can play it to
 17 the end, Mr Chairman, because I think –
 18 CHAIRPERSON: No, something was cut. So
 19 if we go back to 16:08, in other words a second earlier.
 20 MR NTSEBEZA SC: Yes.
 21 CHAIRPERSON: And run it through from
 22 there.
 23 [VIDEO IS SHOWN]
 24 [09:47] MR NTSEBEZA SC: Now, Minister, at least
 25 at this press conference or at least at this meeting you –

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1 let me ask the question, would I be right if I put to you
 2 that when you referred anarchists in the context of your
 3 speech you were referring to the protestors?
 4 MINISTER MTHETHWA: I was referring to
 5 people who were running amok and killing other people
 6 during that week.
 7 MR NTSEBEZA SC: And in the context, I
 8 mean firstly you referred to the police were killed on the
 9 13th.
 10 MINISTER MTHETHWA: Yes.
 11 MR NTSEBEZA SC: Yes, and you referred to
 12 life that was lost in the process, you must have been
 13 referring to those who had died contextually speaking from
 14 the security officers in Lonmin inclusive of the police,
 15 you didn't mention the security people in Lonmin but
 16 certainly you mentioned the two police officers. And you
 17 referred to life that was lost in the context of your
 18 indicating that the police service would not allow anybody
 19 to run amok in the country. Isn't that right?
 20 MINISTER MTHETHWA: Yes.
 21 MR NTSEBEZA SC: Who in that context are
 22 you referring to as anarchists?
 23 MINISTER MTHETHWA: Well I was referring
 24 to people who have caused mayhem during that week, who –
 25 MR NTSEBEZA SC: In relation for instance

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1 to the police who were killed –

2 CHAIRPERSON: No, no, Mr Ntsebeza, don't

3 interrupt the witness. When he's finished you can ask

4 something further, but carry on please.

5 MINISTER MTHETHWA: Okay. I interrupted,

6 yes.

7 CHAIRPERSON: At the beginning, start

8 again –

9 MR NTSEBEZA SC: I'm sorry, Mr Minister.

10 CHAIRPERSON: You started by saying

11 you're referring to people who, I think you said were

12 killed in the week or something like that.

13 MINISTER MTHETHWA: I was referring to

14 the people who killed others during that week, the whole of

15 that week.

16 MR NTSEBEZA SC: You apparently were not

17 referring to the members of the SAPS who had killed 34

18 people as at the time that you – 37 people actually as at

19 the time that you were talking to them.

20 MINISTER MTHETHWA: No, I was not.

21 MR NTSEBEZA SC: So the people who had

22 killed others are those other than the members of the

23 police and those were the ones whom you were referring to

24 as anarchists.

25 MINISTER MTHETHWA: Yes I was talking to

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1 people who had died before.

2 MR NTSEBEZA SC: No I don't think we

3 understand each other. When you were saying to the members

4 of the police service that you are not going to allow

5 anybody to run amok, anarchists will not be allowed to

6 think that South Africa is their stage. Now it was clear

7 that you were not referring to the members of the SAPS.

8 You refer then to say in that context you were

9 characterising the people who had been responsible in that

10 week for the killing of the police, the security officers

11 from Lonmin only.

12 MINISTER MTHETHWA: Not the police and

13 the security but all the lives which were lost that week.

14 MR NTSEBEZA SC: Well other than those

15 who were killed by the police those were the lives that we

16 can account for and I think which referred to when you say

17 up to that point about 40 people had been killed. What is

18 clear is that the anarchists that you refer to in the

19 context of that address are the protestors. Is it fair to

20 say that?

21 MINISTER MTHETHWA: Well if you say the

22 protestors we must be clear we are not talking about who

23 was there, but the people who killed others, who were part

24 of the protestors. Not all the protestors because it's not

25 all the protestors who killed people.

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1 CHAIRPERSON: You were also speaking

2 under the shadow of the deaths of 34 people the day before,

3 all of whom, which is common cause, were killed by police

4 action. Were you referring to their deaths in any way in

5 what you said?

6 MINISTER MTHETHWA: I did refer to their

7 deaths as a painful thing which happened.

8 MR NTSEBEZA SC: Mr Minister, I do not

9 understand you to have been including among those for whom

10 it was a painful process that life was lost but you were

11 referring to what you referred to as the anarchists. It

12 seems to me and we'll argue this and I don't want us to be

13 bogged down and I'm putting this to you, it seems to me

14 that here you were clear, the message that you were sending

15 across is that the police were justified in killing the 37

16 people that they killed up to that point. Because in your

17 view they were running amok, they were anarchists.

18 MINISTER MTHETHWA: Well I did refer to

19 the people who had died, 34 people you are talking about.

20 CHAIRPERSON: It's a minor point. It's

21 not clear that 37 people died as a result of police action,

22 there's a question mark over a third person who died on the

23 13th, the third striker who died on the 13th. But that's

24 just a detail really, but you do concede you were talking

25 about the 34 people who died on the 16th and also all the

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1 people who were killed in the run up to that – the other 10

2 people who died from the morning of the 12th up to the

3 afternoon, I think it's the afternoon of the 14th.

4 MINISTER MTHETHWA: Yes.

5 CHAIRPERSON: But Sunday morning to the

6 Tuesday afternoon.

7 MINISTER MTHETHWA: Yes, yes.

8 MR NTSEBEZA SC: I'm not sure that I got

9 a response to what I put to you, Mr Minister, do you still

10 remember what I put to you.

11 CHAIRPERSON: The answer, as I understand

12 it, was that he was talking about, amongst others, the 34

13 people who died on the 16th which is effectively the point

14 that you were putting to him was it not?

15 MR NTSEBEZA SC: Yes. But I'm not sure

16 whether those are the people who he was referring to as

17 anarchists.

18 CHAIRPERSON: But already he said by

19 anarchists he meant, amongst others anyway, those among the

20 strikers who were involved in the acts of violence and

21 intimidation over the week from the 10th or the 11th running

22 up to the 16th, that's all he said. But he did say he

23 wasn't referring to all the strikers, all three or 4000 of

24 them, but only those who had participated in acts of

25 violence and malicious damage and so forth. I think that's

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1 a summary of what you said.

2 MINISTER MTHETHWA: Precisely, Chair.

3 MR NTSEBEZA SC: Mr Minister, the

4 Chairman is giving a generous interpretation of what you

5 say but in your speech you didn't say it. You didn't say

6 now look I'm just isolating –

7 CHAIRPERSON: No, Mr Ntsebeza, I was

8 summarising his evidence here.

9 MR NTSEBEZA SC: I just want to put it to

10 you because I want to argue this. I want to put it to you,

11 Mr Minister, that in your address it is not clear, in fact

12 the distinction that is being given to what you are saying

13 by the Chair, is not clear. In your speech it is very,

14 very clear that you regard those people whom the members of

15 the SAPS killed, whom the General was praising in the

16 context of telling them that you did virtually nothing

17 wrong, you don't say there only those among those who were

18 killed who were killed because they are anarchists. What

19 comes across is that all the protestors, including those

20 who were killed, are anarchists.

21 MINISTER MTHETHWA: Well, Chair, that

22 would be Mr Ntsebeza's interpretation, but I think I have

23 clarified what I was saying and he'll be entitled to his

24 view which I don't agree with.

25 MR NTSEBEZA SC: And I will want –

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1 MINISTER MTHETHWA: Sorry, Chair. Let me

2 just add this, that the emphasis here is about

3 professionalism, that police should be doing their job

4 professionally. I just wanted to add that.

5 MR NTSEBEZA SC: Yes now, Mr Chairman,

6 I'll need a further indulgence of about 15 minutes. I know

7 that I've now five minutes. I just want to further suggest

8 to you, Mr Minister, that what you say today which is a

9 reflection of what you said in your speech there, does not

10 sit well with your response to Mr Bizos yesterday.

11 Yesterday you came across as suggesting that you didn't

12 regard the protestors as criminals. In fact you didn't say

13 any of them were regarded by you as criminals. Now today

14 the objective evidence says something else. You say they

15 were anarchists, they were running amok, they can't be

16 allowed to do so. They're undermining the rule of law in

17 the process. That I put to you is a clear contradiction of

18 what you tried to communicate to Mr Bizos yesterday.

19 CHAIRPERSON: Do you wish to reply? It's

20 an implied question, do you wish to reply to it?

21 MINISTER MTHETHWA: Well, Chair, I still

22 say that people who were there, who went out to strike did

23 that no as criminals and we don't regard those people

24 generally as criminals, but those who were involved in the

25 loss of lives of other people, of other citizens, of damage

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1 to property and so on would not evade being labelled as

2 anarchists and as criminals because those actions were

3 criminal.

4 MR NTSEBEZA SC: You know, Mr Minister,

5 yesterday you made a profound statement when you ended your

6 examination in chief and it was this and I may not be

7 quoting verbatim, you said, "what happened should never

8 have happened in a democracy." Do you remember saying

9 that?

10 MINISTER MTHETHWA: Yes.

11 MR NTSEBEZA SC: Now I don't know what

12 you meant by that, but I just want to take you through

13 epoch-making, slaughtering of the people by the SAPS in the

14 history of our country.

15 MS NKOSI-THOMAS: Chair, I think this

16 sensationalisation is to be discouraged, using words such

17 as massacre and slaughtering is unfair really because there

18 is no evidence to suggest that people went out to actively

19 slaughter and massacre people.

20 CHAIRPERSON: Well that's a matter you

21 can argue at the end. It's not a basis for objection.

22 MR NKOSI-THOMAS: But he's

23 sensationalising this thing and he's unfair.

24 CHAIRPERSON: I don't understand that

25 this question is asked in a sensational fashion or anything

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1 of that kind is necessarily a basis for disallowing it. A

2 fair amount of grandstanding has happened in this

3 Commission, it's difficult to stop it, but I'm not going to

4 disallow the question. I have, however, in the past –

5 MR NTSEBEZA SC: I know, Mr Chairman.

6 CHAIRPERSON: - called Mr Mpofu to order

7 when he's used the word massacre and I said when it's a

8 massacre it depends on the finding we'll make at the end

9 whether the police acted in self defence and he with grace

10 accepted the ruling, I would expect you to do the same.

11 Please ask the question.

12 MR NTSEBEZA SC: Yes thank you, Mr

13 Chairman, in the last ten minutes that I have I want to –

14 CHAIRPERSON: The time is actually up,

15 but never mind. Ask the question, let's get the answer out

16 the door.

17 MR NTSEBEZA SC: Yes, yes, Mr Chairman.

18 CHAIRPERSON: And your next colleague can

19 take over.

20 MR NTSEBEZA SC: You know, Mr Minister,

21 on a scale – you when you made that remark yesterday I

22 reflected on what I say I reflected.

23 [10:07] And it struck me that the killings by the police

24 of those civilians in 2012 was the largest killing on any

25 one day by the police since the 21st of March 1960. Do you

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1 get the question?

2 MINISTER MTHETHWA: Sorry, could you

3 please –

4 MR NTSEBEZA SC: I say it struck me

5 yesterday when you made that profound statement that that

6 kind of killing should never have happened in a democracy,

7 or the tragedy, as you put it, that it was actually the

8 largest number of people who were killed by the police in a

9 space of about an hour on all the objective evidence since

10 1960 on the 21st of March, where I think about 69 people

11 were killed. You recall that probably from your knowledge

12 of history. Isn't that right?

13 MINISTER MTHETHWA: Yes.

14 MR NTSEBEZA SC: And I reflected also

15 that 25 years after 1960 when there was a commemoration of

16 Sharpeville in Uitenhage in 1985 on the 21st of March again

17 between 20 to 48 people, as estimates run, the South

18 African Police killed people in what came to be known as

19 another Langa massacre. You recall that?

20 MINISTER MTHETHWA: Yes, I would recall.

21 MR NTSEBEZA SC: And the last incident

22 that I recalled when I reflected on your evidence was one

23 that should be close to your heart because it took place at

24 a time when the ANC and the SACP and all political parties

25 which had been proscribed have been unbanned, it is a

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1 matter that came to us in the Truth and Reconciliation

2 Commission, it took place at a time when there was a debate

3 in the country at Kempton Park for the transition of our

4 society to a democracy and it came with such a shock

5 because it took place on the 7th of September 1992, and you

6 know about this because your Deputy President was among

7 those ANC supporters who had gone to Bisho and the event

8 became known as the Bisho massacre. 28 supporters of the

9 ANC were killed in that mayhem, one military soldier. You

10 can take it for granted that I'm putting to you because

11 it's a matter that came to us in the TRC. You recall about

12 that massacre? It was called a Bisho massacre, under the

13 tin-pot dictator, Oupa Gqozo. Do you recall that?

14 MINISTER MTHETHWA: Yes, I do.

15 MR NTSEBEZA SC: You see the point I want

16 to make about this, Mr Minister, is that all of those

17 massacres - because they were called by that name and I'm

18 sure even by you in the ANC - were described as such

19 because the view was that nothing, nothing at all can ever

20 justify the mowing down of citizens in that fashion. Would

21 you agree with me?

22 MINISTER MTHETHWA: Yes, except that

23 there was no attempt to deal with those things the way this

24 one, this matter is being dealt with.

25 MR NTSEBEZA SC: Of course that's

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1 afterwards, I agree with you; it's an ex post facto attempt

2 to justify what you characterise as something that should

3 never have happened. This is what I want to put to you

4 that 36 of the 37 families whom I represent - Mr Bizos told

5 you about the family of Mr Ledingoane whom he represents –

6 those communities want to hear one thing and one thing from

7 you, and hopefully from the Deputy President Cyril

8 Ramaphosa if and when he comes, that you as a member of a

9 government founded on the constitutional values of freedom

10 foundation, freedom, dignity and equality, what those

11 families want to hear from you, Mr Minister, is that

12 nothing, nothing at all in a democracy should ever justify

13 the police killing its own people. The police are well

14 trained in other mechanisms that can contain whatever is

15 being done by protesters, short of killing them in that

16 fashion.

17 CHAIRPERSON: I take it that's your

18 point, Mr Ntsebeza.

19 MR NTSEBEZA SC: Yes.

20 CHAIRPERSON: How do you respond to that

21 point, Minister?

22 MINISTER MTHETHWA: Chair, the point is

23 in line with what I was saying yesterday, that such things,

24 or such a thing should not happen in a democracy and I

25 would want to concur with what Mr Ntsebeza is saying on

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1 that, that it really shouldn't happen. In fact, Chair, I'm

2 on record as calling on the public and especially

3 institutions, research institutions and everybody to

4 dialogue the national discourse in South Africa because

5 without dealing with the violent nature of the national

6 discourse in our country that everything which people want

7 over and above the guarantees in the Constitution still

8 people would feel that they need to be violent, and in this

9 instance I'm not specifically talking about this matter.

10 But I concur with what Mr Ntsebeza is saying that

11 everything, and I'm very confident that the outcome of this

12 very honourable Commission will put us on a pedestal where

13 such acts are not seen in South Africa. That's how –

14 CHAIRPERSON: Thank you. Thank you, Mr

15 Ntsebeza. I think Ms Barnes, you are next, aren't you?

16 MS BARNES: No, Chair, I believe Mr Mpofu

17 is going to cross-examine next.

18 CHAIRPERSON: Mr? Mr Mpofu? Oh sorry,

19 Mr Mpofu. Please proceed.

20 MR MPOFU: Thank you. Thank you,

21 Chairperson.

22 CHAIRPERSON: Do you want me to take the

23 – we've been sitting for just under an hour and a quarter.

24 Do you want me to take the first comfort break now, or

25 would you prefer to get your cross-examination underway, as

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1 it were, before we do that? I'm in your hands.
 2 MR MPOFU: Chairperson, I'll appreciate
 3 if we take the break now because also there might be some
 4 discussion on the sequence in that break, ja.
 5 CHAIRPERSON: We'll take the first
 6 comfort break for quarter of an hour.
 7 [COMMISSION ADJOURNS COMMISSION RESUMES]
 8 [10:38] CHAIRPERSON: The Commission resumes.
 9 I'm sorry it's a bit later than we thought but we had some
 10 housekeeping matters to attend to in the interim.
 11 Minister, you are still bound by your affirmation.
 12 EMMANUEL NKOSINATHI MTHETHWA: (affirms
 13 further)
 14 CHAIRPERSON: Mr Mpofu?
 15 MR MPOFU: Thank you, Chairperson.
 16 CHAIRPERSON: Anything that you want to
 17 hand in by way of housekeeping before we start?
 18 MR MPOFU: Yes, Chairperson, yes.
 19 CHAIRPERSON: Have you got documents or
 20 not, Mr Mpofu?
 21 MR MPOFU: I do, Chairperson.
 22 CHAIRPERSON: Do you want to hand them in
 23 now or do you want to do it later if you're not ready –
 24 MR MPOFU: Let's do it later,
 25 Chairperson. It looks like I'm one copy short for the

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1 bench, for yourselves.
 2 CHAIRPERSON: Yes, we haven't got them
 3 yet. Anyway carry on as best you can.
 4 MR MPOFU: Yes, thanks Chairperson.
 5 CHAIRPERSON: Perhaps during the tea
 6 adjournment –
 7 MR MPOFU: Thank you, Chairperson.
 8 CROSS-EXAMINATION BY MR MPOFU: Good
 9 morning, Minister.
 10 MINISTER MTHETHWA: Good morning, Mr
 11 Mpofu.
 12 MR MPOFU: We have a bit of a time issue
 13 so I'm going to try –
 14 CHAIRPERSON: That's putting it gently,
 15 Mr Mpofu.
 16 MR MPOFU: Yes, that's putting it very
 17 gently. I'm going to try and adopt an approach which might
 18 save us time by first asking you a few questions to
 19 signpost my cross-examination as it were. You have
 20 addressed and we will deal with this later, the issue of
 21 perceived or real political pressure and you have denied
 22 having exerted such political pressure, correct?
 23 MINISTER MTHETHWA: Yes.
 24 MR MPOFU: And that is because you know
 25 that to do so would have been a transgression of the

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1 constitutional obligations that you have, to exert such
 2 pressure would amount to that, correct?
 3 MINISTER MTHETHWA: Yes.
 4 MR MPOFU: And it would be against the
 5 law or what you call the legal framework which governed
 6 your position, correct?
 7 MINISTER MTHETHWA: Yes.
 8 MR MPOFU: And similarly if anyone had
 9 exerted or caused you to exert political pressure onto the
 10 Marikana situation, that would also be against the law,
 11 correct?
 12 MINISTER MTHETHWA: Yes.
 13 MR MPOFU: And thirdly, in the same vein,
 14 if anyone in the operational management of the police had
 15 taken decisions or acted as a result of political pressure,
 16 that would also be against the law, in a sense.
 17 MINISTER MTHETHWA: Yes, it would be.
 18 MR MPOFU: Thank you. And in fact in
 19 your case the implications would be very far reaching and
 20 serious if indeed you exerted political pressure which
 21 resulted in the deaths of 34 people.
 22 MINISTER MTHETHWA: Correct.
 23 MR MPOFU: That would be such a serious
 24 matter that it would have serious implications to you
 25 politically and personally, correct?

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1 MINISTER MTHETHWA: It would.
 2 MR MPOFU: Politically it would mean that
 3 effectively you were unfit for your office, correct?
 4 MINISTER MTHETHWA: It would mean a lot
 5 of things.
 6 MR MPOFU: One of them would be that you
 7 would be unfit for your office.
 8 MINISTER MTHETHWA: Well, that would be a
 9 judgment by the people who put you in the office but it
 10 would be.
 11 MR MPOFU: Serious. It would have
 12 serious implications.
 13 MINISTER MTHETHWA: Yes.
 14 MR MPOFU: Right?
 15 MINISTER MTHETHWA: I think I've
 16 answered, I said yes.
 17 MR MPOFU: No, well, answer again.
 18 CHAIRPERSON: He said yes.
 19 MINISTER MTHETHWA: No, I don't answer
 20 twice one question.
 21 MR MPOFU: Well, I'm asking you again –
 22 CHAIRPERSON: I'm talking to Mr Mpofu.
 23 He said yes, Mr Mpofu. How many times do you want him to –
 24 MR MPOFU: Ja, well, I didn't hear but –
 25 CHAIRPERSON: Well, you've heard now.

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1 MR MPOFU: I don't want attitude from the
 2 witness, Chairperson, please.
 3 CHAIRPERSON: - attitude from either of
 4 you, just carry on.
 5 MR MPOFU: Ja. Thank you. Okay, ja -
 6 CHAIRPERSON: Keep the temperature down,
 7 you'll be more successful in your cross-examination.
 8 MR MPOFU: That's fine -
 9 MS NKOSI-THOMAS SC: No, but the decorum
 10 has to be - indeed, Chair, I'm in full agreement. He must
 11 stick to the decorum, he can't -
 12 CHAIRPERSON: I've spoken to Mr Mpofo in
 13 the past about delivering concurring judgments if I gave a
 14 ruling.
 15 MR MPOFU: Yes.
 16 CHAIRPERSON: It applies to you too.
 17 Carry on, Mr Mpofo, let's keep the temperature down.
 18 MR MPOFU: Ja, I will, Chairperson, but
 19 let it not be risen otherwise I can rise up to it.
 20 Chairperson, okay, now one of the implications at a
 21 personal level which would be serious would be that you
 22 would have been implicated if you had - and this is a big
 23 if, of course, I know you have denied it - if you had
 24 exerted such pressure then you would have been implicated
 25 in the murders of those people, correct?

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1 MINISTER MTHETHWA: It would depend what
 2 kind of pressure but now we are talking hypothetically. I
 3 have not -
 4 CHAIRPERSON: Sorry, before you carry on.
 5 I don't know if it's appropriate to use the word "murder"
 6 in the context. One of the issues here is whether the
 7 police acted in self-defence and if they did, it wasn't
 8 murder. So you can't put it on the basis that it's to be
 9 accepted it was a murder. We may, at the end of the day,
 10 make findings upholding submissions you may make on the on
 11 the point but we may not, so put the question in a more
 12 neutral fashion.
 13 MR MPOFU: No, Chairperson, I think
 14 there's a misunderstanding. I understand that point
 15 correctly, very much. Remember that we have made certain
 16 statements in our opening statement. Obviously they
 17 presuppose, and you're quite right, they presuppose certain
 18 things but surely I'm entitled to put - maybe let me
 19 preface it by this -
 20 CHAIRPERSON: Put it this way, if you are
 21 correct -
 22 MR MPOFU: That's correct. That's -
 23 CHAIRPERSON: - that the police
 24 committed, members of the police committed murder.
 25 MR MPOFU: Ja.

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1 CHAIRPERSON: Then what you're saying is
 2 that the Minister would, as it were, be an accomplice or -
 3 MR MPOFU: Yes.
 4 CHAIRPERSON: - implicit in that, a co-
 5 accused as it were.
 6 MR MPOFU: Thank you, Chairperson.
 7 That's really, unfortunately the time pressure you know,
 8 gives us, okay let me -
 9 CHAIRPERSON: The question is modified.
 10 What is your answer?
 11 MINISTER MTHETHWA: I answered and I said
 12 it will depend what is that interference all about.
 13 MR MPOFU: Okay, no. Again you'll
 14 forgive me because as I say, this is based on a hypothesis
 15 that you have denied.
 16 MINISTER MTHETHWA: Yes.
 17 MR MPOFU: All, what I'm saying to you is
 18 this, if indeed you exerted pressure which resulted in the
 19 unlawful killings of 34 people then you would be implicated
 20 in those alleged murders, let me put it that way, correct?
 21 MINISTER MTHETHWA: As I said, this is a
 22 hypothetical situation -
 23 MR MPOFU: Yes, it is.
 24 MINISTER MTHETHWA: I exerted no
 25 pressure.

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1 MR MPOFU: But if you had it would -
 2 MINISTER MTHETHWA: I exerted no pressure
 3 to anyone.
 4 CHAIRPERSON: No, he's asking a
 5 hypothetical question. Your answer, you've already
 6 answered, is it would depend on the circumstances.
 7 MINISTER MTHETHWA: Yes.
 8 CHAIRPERSON: And depend on the pressure.
 9 MINISTER MTHETHWA: Absolutely.
 10 CHAIRPERSON: If you'd said to the
 11 police, disarm them using force if necessary and in the
 12 process of doing that, murders were committed, it wouldn't
 13 necessarily follow from the instruction you gave them which
 14 you -
 15 MINISTER MTHETHWA: Absolutely.
 16 CHAIRPERSON: It wouldn't necessarily
 17 follow the instruction you gave them, that you were telling
 18 them, disarm them in circumstances that would amount to
 19 murder. So the answer you give is -
 20 MINISTER MTHETHWA: Yes, you have summed
 21 it up, Chair.
 22 CHAIRPERSON: - a nuanced answer.
 23 MINISTER MTHETHWA: That's what I said.
 24 MR MPOFU: Ja, no, I understand that but
 25 I'm saying that all those niceties would be resolved one

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1 day in a criminal court. I am saying to you if you had
 2 exerted pressure which resulted in the deaths of people,
 3 you would at least have to be facing allegations of being
 4 complicit to murder. Whether you succeed in court or not
 5 is not, none of what I'm asking for. Do you understand
 6 that?

7 MINISTER MTHETHWA: In other words, if
 8 someone says –

9 MINISTER MTHETHWA: The pressure –

10 MR MPOFU: Yes -

11 MINISTER MTHETHWA: Pressure – listen.

12 MR MPOFU: Sorry, sorry, Minister.

13 MINISTER MTHETHWA: Listen, I'm on the
 14 floor. Pressure has to be clarified what pressure is that.
 15 The kind of pressure would determine what would you be
 16 responsible for because of that pressure or what you are
 17 not going to be responsible for because of that pressure.

18 MR MPOFU: Yes.

19 MINISTER MTHETHWA: Right now we are
 20 talking something in the dark, you don't even know what we
 21 are talking about –

22 MR MPOFU: No.

23 MINISTER MTHETHWA: It's a hypo – no,
 24 Chair – so that's what I'm saying.

25 MR MPOFU: Is that your answer? Okay

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1 look, no, you are the only one in the dark. I have said to
 2 you that if the pressure –

3 MS NKOSI-THOMAS SC: Chairperson –

4 MINISTER MTHETHWA: I have answered your
 5 question.

6 CHAIRPERSON: I'm not sure I heard what
 7 you said but whatever it was, it was a comment. Don't make
 8 comments, just ask questions. Mr Semenya?

9 MR SEMENYA SC: Well, the comment, the
 10 statement was he may be the only one in the dark.

11 MR MPOFU: Yes, you said you are in the
 12 dark.

13 MINISTER MTHETHWA: No –

14 CHAIRPERSON: It was just a comment, it
 15 was a comment.

16 MR MPOFU: Correct.

17 CHAIRPERSON: And I said you mustn't make
 18 comments, you must ask questions. Let's move on.

19 MR MPOFU: Ja. I'm saying, I'm asking
 20 you a very simple question. If you had exerted such
 21 pressure as would have resulted in the deaths of 34
 22 people, you would therefore be liable to be charged with
 23 murder.

24 MINISTER MTHETHWA: I said it depends
 25 what pressure you are talking about. Can you be explicit

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1 and tell me what pressure are you talking about, Mr Mpofo?
 2 MR MPOFU: Yes. Okay, I'll be very
 3 explicit. It's the pressure that you actually did exert
 4 which is to say that you are being pressurised by Mr
 5 Ramaphosa and you phoned the Provincial Commissioner to
 6 tell her that. I'm saying if that pressure somehow had
 7 resulted in the deaths of 34 people, you would be liable
 8 for those deaths, correct?

9 MS NKOSI-THOMAS SC: Mr Chairperson, the
 10 proposition that's being put to the witness does not accord
 11 with the evidence that is before this Commission. There is
 12 no evidence –

13 CHAIRPERSON: Well, I've got a more
 14 fundamental problem. It's really a conclusion of law that
 15 he's being asked to answer.

16 MR MPOFU: No.

17 CHAIRPERSON: But you are wrong on the
 18 facts. The facts are that according to the Provincial
 19 Commissioner she was told by the National Commissioner –

20 MR MPOFU: I'm coming to that,
 21 Chairperson.

22 CHAIRPERSON: There's no evidence –

23 MR MPOFU: - rather don't spoil my cross-
 24 examination –

25 CHAIRPERSON: There's no evidence that

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1 I'm aware of that this witness spoke to the Provincial
 2 Commissioner and told her that he'd received a phone call
 3 from Mr Ramaphosa. That's my recollection.

4 MR MPOFU: Fine, it doesn't matter
 5 really. Okay, would it make a difference to my question
 6 whether you put that pressure on the National Commissioner
 7 or the Provincial Commissioner?

8 CHAIRPERSON: Reformulate the question in
 9 accordance with the allegations before us on –

10 MR MPOFU: Ja, okay.

11 CHAIRPERSON: Then the witness can
 12 answer.

13 MR MPOFU: Ja, subject to that
 14 correction, that is the pressure I'm talking about. Now
 15 can you answer the question?

16 MINISTER MTHETHWA: There is no pressure
 17 which was put either to me by anybody else or myself to the
 18 officials who were working under my leadership.

19 MR MPOFU: Yes. But Chairperson,
 20 Chairperson I have a problem here. The witness is in my
 21 view now evading the question. I've asked a series of
 22 questions in this vein which he has answered, that you
 23 understand, Minister, that I've said to all the questions
 24 that you have answered, if indeed you had put that pressure
 25 and I've even qualified to say I accept that you have

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1 denied. Do you understand –

2 CHAIRPERSON: Mr Mpfu, I think there's a

3 simple way of solving it. I don't think the witness is

4 evading the question but never mind, let's –

5 MR MPOFU: Well –

6 CHAIRPERSON: Let's proceed –

7 MR MPOFU: I'm sure you don't,

8 Chairperson –

9 CHAIRPERSON: Let's move forward. What

10 Mr Mpfu really is about is this, is if it's ultimately

11 established that you put improper pressure, you brought

12 improper pressure to bear on either the National

13 Commissioner or the Provincial Commissioner to do things

14 which they wouldn't otherwise have done which resulted in

15 the deaths of the 34 people, you might well find yourself

16 being charged with criminal conduct. That's the question

17 he's asking you. It's a hypothetical question but it's

18 necessary, I think, for the questions he's going to ask you

19 thereafter. Now what's your answer to that?

20 MINISTER MTHETHWA: My answer, Chair, is

21 that if as I said earlier on, it depends what pressure are

22 you talking about. If the pressure is such that it caused

23 people to do things outside of the law, like murdering,

24 then indeed whoever was part of that process and decision

25 would be liable, including the Minister.

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1 MR MPOFU: Thank you very much, Minister.

2 Now the next – as I say, I'm just signposting, we're going

3 to come to those issues. The other issue that I wanted to

4 signpost is, you have said effectively that your remarks

5 about the use of maximum force, fight fire with fire and

6 all that are directed at criminals. You were at pains to

7 distinguish with Mr Bizos that those remarks were directed

8 at criminals, not at citizens in general.

9 MINISTER MTHETHWA: I specified the

10 category of people I was talking about yesterday.

11 MR MPOFU: Mm.

12 MINISTER MTHETHWA: To Mr Bizos.

13 MR MPOFU: Yes.

14 MINISTER MTHETHWA: But over and above

15 that, this country has laws and there is section 49 of the

16 Criminal Procedure Act which governs how the use of

17 firearms should be.

18 MR MPOFU: Ja. Well, I'm afraid section

19 49 does not feature in this.

20 MINISTER MTHETHWA: It does.

21 MR MPOFU: It's about – it doesn't, it's

22 about people being arrested but anyway be that as it may –

23 CHAIRPERSON: Well, it can be relevant in

24 the broad context in which he was speaking at time, it

25 deals with the amount of force that can be used when an

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1 arrest is effected. There were problems in regard to the

2 interpretation of the section, the Constitutional Court

3 ironed them out but it said the section should be redrafted

4 to make it clear to Constable Plod and others who read the

5 section, what exactly the law is and that was in due course

6 done, but of course it's not relevant for us.

7 MR MPOFU: Yes.

8 CHAIRPERSON: We're not concerned with

9 people who died while arrests were being attempted, we're

10 concerned with people who died, it is said by the police,

11 while they were defending themselves and their colleagues.

12 MR MPOFU: That's the point I'm making.

13 CHAIRPERSON: 49 isn't relevant to us but

14 it was relevant, to be fair to him, in the context in which

15 he was speaking before the portfolio committee, I think it

16 was –

17 MR MPOFU: No, I'm not talking about the

18 portfolio committee, I'm talking about his answer now. So

19 it's irrelevant, at least that we are clear, it's

20 irrelevant to the Marikana situation. And you are saying

21 that that category of people, as you call it, to whom fire

22 must be fought with fire and maximum force and all those

23 things, were not the people who were at the mountain,

24 correct?

25 MINISTER MTHETHWA: I was not talking

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1 about those people, I was talking about people who were

2 involved in bank robberies and cash in transit heists.

3 MR MPOFU: Yes. So that would exclude

4 the people at the mountain, correct?

5 MINISTER MTHETHWA: That's what we were

6 talking about in the context of yesterday.

7 MR MPOFU: Can you just answer the

8 question simply, does it –

9 MINISTER MTHETHWA: As I say –

10 MR MPOFU: Does it exclude them?

11 MINISTER MTHETHWA: If you ask me about

12 what happened yesterday, what we were discussing yesterday,

13 we were discussing about the issue of usage of firearms,

14 the fighting fire with fire which referred to those

15 specific people. Yesterday we were talking about that.

16 MR MPOFU: Yes. Okay, let's forget

17 yesterday. Today, does that, those categories exclude the

18 people at the mountain?

19 MINISTER MTHETHWA: Ja, what we were

20 talking about yesterday excludes those people.

21 MR MPOFU: No, I'm asking you about what

22 I'm talking about today.

23 CHAIRPERSON: He said that, Mr Mpfu. He

24 said what he was talking about yesterday doesn't apply to

25 the people on the mountain, he was talking about cash

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1 heists and so forth yesterday. Today he is talking about
 2 Marikana and he's already conceded, as I understand him,
 3 that those sentiments he expressed didn't apply to the
 4 people at Marikana.

5 MR MPOFU: Ja, but –

6 CHAIRPERSON: Is that what you want, so –

7 MR MPOFU: No, I want a yes, Chairperson,
 8 not a long convoluted answer.

9 CHAIRPERSON: You've got the answer –

10 MR MPOFU: Or to help the witness
 11 unnecessarily. Thank you, okay. So it's a yes?

12 MINISTER MTHETHWA: Again, yes.

13 MR MPOFU: Thank you. So those people at
 14 the mountain you did not regard them as criminals, you've
 15 already answered that, I think. You also did not regard
 16 them as anarchists, correct?

17 MINISTER MTHETHWA: Yes, you take that
 18 and add with the discussion we had this morning and you
 19 have the answer.

20 MR MPOFU: Is the answer yes?

21 MINISTER MTHETHWA: The answer is found
 22 in what we discussed yesterday and today, that those who
 23 were killing others were criminals.

24 MR MPOFU: Listen, can you please answer
 25 the questions that I'm asking you without reference to any

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1 other cross-examination unless if I ask you a question that
 2 refers to other cross-examination.

3 MINISTER MTHETHWA: I am saying to you
 4 that people who went out on strike didn't do so as
 5 criminals, they did so as workers –

6 MR MPOFU: Yes.

7 MINISTER MTHETHWA: - who were demanding
 8 their rights or whatever they wanted.

9 MR MPOFU: Wages, yes.

10 MINISTER MTHETHWA: The people who
 11 amongst them killed others, were criminals.

12 MR MPOFU: And the police to kill others,
 13 are they criminals as well?

14 MINISTER MTHETHWA: If they're found to
 15 be so, yes, they would be criminals.

16 MR MPOFU: Ja, but you – but the others,
 17 unqualified, are criminals but with the police it's if
 18 this, if that. Is that your evidence?

19 MINISTER MTHETHWA: There is a law
 20 governing how firearms should be used. There is a
 21 justifiable situation, there is unjustifiable situation.
 22 Those who are using firearms unjustifiably, yes, would be
 23 criminals.

24 [10:58] MR MPOFU: Yes, that's a better answer.
 25 So you don't know even of those people who were in the

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1 mountain who might have done whatever justifiably. That
 2 might be determined in a court later, correct?

3 MINISTER MTHETHWA: As I've said that we
 4 are talking about the usage of firearms by the police and
 5 we are talking about people who killed others and I'm
 6 saying that those who did that, it is a criminal act. It's
 7 not if; it's a criminal act.

8 MR MPOFU: How do you know, Minister, if
 9 I may ask?

10 MINISTER MTHETHWA: No, if somebody kills
 11 another then that person – and they are saying it is
 12 justifiable – that would be the court to decide, but the
 13 act of killing someone else who for whatever reason you
 14 don't agree with is a criminal act.

15 MR MPOFU: Okay. Well, on that basis
 16 then the police committed criminal acts because they killed
 17 other people.

18 MINISTER MTHETHWA: Well, that's your
 19 opinion.

20 MR MPOFU: Well no, you're the one who
 21 was giving us the legal opinion. The question is whether
 22 that legal opinion of yours also applies to the police or
 23 does it only apply to South African citizens who are not
 24 members of SAPS?

25 MINISTER MTHETHWA: The police are, by

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1 law have the right to carry firearms, have the right to use
 2 firearms when necessary, and within the bounds of the law
 3 they would have to do that, but if they do it outside of
 4 the law then they are not justifiable to have done that.

5 MR MPOFU: Ja, that applies to everybody.
 6 I also have a right to carry a gun. I have a right to use
 7 it. I have a right to kill people within the bounds of the
 8 law.

9 MINISTER MTHETHWA: No.

10 MR MPOFU: So what's the difference?

11 MINISTER MTHETHWA: No, you don't have
 12 the right to kill –

13 MR MPOFU: Within –

14 MINISTER MTHETHWA: You don't have the
 15 right to carry dangerous weapons in public and even using
 16 those dangerous weapons. By law you are not allowed.

17 CHAIRPERSON: Ms Nkosi-Thomas, you turned
 18 your light on. Do you want to say something? Have you got
 19 an opinion –

20 MS NKOSI-THOMAS SC: No, no, just to say,
 21 Chair, that to the extent that Mr Mpofo seeks to elicit
 22 opinion evidence on matters of law, that's not going to
 23 assist this Commission in any manner whatsoever. So
 24 perhaps he should stick to the factual inquiry as opposed
 25 to seeking to elicit evidence, rather opinion evidence as

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1 it were.

2 CHAIRPERSON: Mr Mpfu?

3 MR MPOFU: Well Chairperson, I'm not

4 doing anything of the sort. I'm not the one –

5 CHAIRPERSON: Alright, if you're not

6 doing anything of the sort then just carry on.

7 MR MPOFU: Yes, thank you. Alright, so I

8 think the real answer is that you could not sitting there

9 label the people sitting at the mountain as criminals.

10 Would you agree with that?

11 MINISTER MTHETHWA: Yes, but I have said

12 to you that there are people who were involved and engaged

13 in criminal acts and in acts of breaking the law. That I

14 said.

15 MR MPOFU: Okay.

16 MINISTER MTHETHWA: It doesn't have to be

17 proved in the court of law. You are not by law allowed to

18 carry dangerous weapons, period.

19 MR MPOFU: Alright, let me just round off

20 the previous point. Would it be fair to say the following

21 – I'm sorry to, I just want to finish off the point we

22 spoke about a bit earlier. Given the fact that you have

23 conceded that your maximum force statements referred to

24 people other than those at the mountain, would you agree

25 that then the use of maximum force had no applicability to

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1 the people at the mountain?

2 MINISTER MTHETHWA: As I said to you that

3 the utilisation of firearms is a governed process. Whether

4 it's justifiable to use it or not depends on what law says

5 about the utilisation of a firearm by a police officer –

6 MR MPOFU: Yes, I'm sorry, maybe it's my

7 fault, I didn't ask the question properly.

8 CHAIRPERSON: Mr Mpfu is actually

9 dealing with a slightly different topic at the moment.

10 You're not confining yourself to firearms. He's talking

11 about the doctrine of minimum force and the corollary

12 thereto, the use of maximum force, which is an expression

13 that you used on one occasion at least.

14 MINISTER MTHETHWA: Ja.

15 CHAIRPERSON: And he's asking you whether

16 you accept that maximum force, whether it was by use of

17 firearm of any other kind of force, whether maximum force

18 could appropriately have been used to deal with the

19 Marikana situation. That's your question, Mr Mpfu, am I

20 right?

21 MR MPOFU: Ja, that's correct,

22 Chairperson.

23 MINISTER MTHETHWA: Ordinarily not,

24 Chair, where strictly speaking when there are public

25 protests there is no expectation of using maximum force or

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1 deadly force at that. When people are out there protesting

2 there's no immediate expectation to use such force.

3 MR MPOFU: Do you know that the law

4 places an obligation on members of SAPS to use minimum

5 force?

6 MINISTER MTHETHWA: If you talk

7 generally, yes –

8 MR MPOFU: No –

9 MINISTER MTHETHWA: It also places –

10 MR MPOFU: Sorry.

11 MINISTER MTHETHWA: It also places, it's

12 minimum force but it also explains when to use deadly

13 force.

14 CHAIRPERSON: The trouble is – I'm sorry

15 to interrupt now, but it's a point I was going to ask you

16 later but I think I'll raise it now to get it out of the

17 way. The trouble is the expression "maximum force" is

18 susceptible to misinterpretation. As I understand the

19 position the police are obliged – not just the police, but

20 others generally, but let's confine ourselves to policemen.

21 Police are confined by the, are obliged by the laws

22 applicable to them and their Standing Orders when dealing

23 with a violent situation to use only such force as is

24 necessary. That is what minimum force is about; no more

25 than is strictly necessary actually.

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1 You can of course have a situation – very rare, I

2 would think, but you can have a situation where you've got

3 to use all the force at your disposal, it's necessary to

4 use all the force at your disposal to deal with a

5 situation. Your paramilitary gangs are engaged in cash

6 heists, may be an example in certain circumstances. That's

7 a case where paradoxically the maximum force available is

8 necessary, so therefore it's also the minimum force

9 available which is necessary. So paradoxically minimum

10 force equals maximum force in those circumstances, but to

11 talk about maximum force in general is misleading.

12 The case I'm talking about, it's correct that in

13 a sense it's maximum force, but it's also minimum force and

14 it's not an exception to the rule that minimum force must

15 be used.

16 Now you unfortunately before the Portfolio

17 Committee or interview with the Cape Argus used the

18 expression "maximum force" I think in the sense in which I

19 have used it, but it could lead to misinterpretation. In

20 fact I take it you would say it has because Mr Bruce in his

21 book and the CASAC people in that document that you looked

22 at have interpreted what you said as saying minimum force

23 is no longer the rule, the doctrine that applies, it's now

24 maximum force. Now I take it that's not what you meant.

25 You meant what I have explained. Is that correct?

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1 MINISTER MTHETHWA: Well, I think you are
 2 touching on the fundamental question, Chair, the necessity,
 3 or the necessary part, but it would be amiss if the people
 4 who we are referring to misinterpreted what we were saying
 5 because we were explicit on who are we talking about at
 6 that point –
 7 MR MPOFU: Yes –
 8 MINISTER MTHETHWA: - one. But two, we
 9 had explained that this is not a licence to kill. No
 10 trigger-happy police has, have a place within SAPS. So I
 11 don't know if they misinterpreted that.
 12 CHAIRPERSON: You see the problem is what
 13 you said – I'm expressing a prima facie view – what you
 14 said was susceptible to misinterpretation.
 15 MINISTER MTHETHWA: Oh.
 16 CHAIRPERSON: And Constable Plod, if one
 17 can mention him, Constable Plod may well have
 18 misinterpreted what you said and thought you meant he could
 19 use maximum force even where it was more than was
 20 necessary. I know you, I think you didn't mean that, but
 21 the trouble is you may have been misunderstood, but that's
 22 really the point that's being debated at the moment.
 23 What Mr Mpofo is saying to you, as I understand
 24 him, is that maximum force, which is more than is
 25 necessary, was not appropriate for Marikana, and I take it

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1 you agree with that.
 2 MINISTER MTHETHWA: Mmmm. More than –
 3 yes, yes, absolutely.
 4 MR MPOFU: Ja, no, firstly I can put
 5 money on it that when you were using the word "minimum
 6 force," and you can confirm, you didn't have in mind this
 7 esoteric and exceptional situation where there's a
 8 coincidence between – that's really not what you had in
 9 mind. That's a nice hypothesis, but that's not what you
 10 had in mind, correct?
 11 MINISTER MTHETHWA: I don't get your
 12 question.
 13 MR MPOFU: No, I'm saying when you were
 14 saying maximum force can be justified you did not have in
 15 mind a situation where that is the same thing as minimum
 16 force, whatever that means. I don't even understand it
 17 myself, but you didn't postulate that situation, correct?
 18 CHAIRPERSON: [Microphone off,
 19 inaudible] –
 20 MR MPOFU: Sorry –
 21 CHAIRPERSON: - let me say something to
 22 you so that you and everyone else can understand. Minimum
 23 force means no more than is strictly necessary. That's
 24 what minimum force means. You mustn't use more force than
 25 is strictly necessary. If it's strictly necessary to use

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1 all the force at your command then you're still applying
 2 minimum force, and that's not a – what did you say?
 3 Esoteric –
 4 MR MPOFU: Esoteric.
 5 CHAIRPERSON: That's not an esoteric
 6 distinction –
 7 MR MPOFU: Or exceptional.
 8 CHAIRPERSON: It's exceptional, yes.
 9 It's exceptional.
 10 MR MPOFU: Ja.
 11 CHAIRPERSON: And in a sense it's
 12 paradoxical, but it doesn't mean it's not valid. Anyway,
 13 the real question that you're being asked by Mr Mpofo is
 14 when you said that maximum force must be used in the
 15 context which was quoted in that paper that the CASAC
 16 people put before us, in what sense did you mean it?
 17 That's what Mr Mpofo wants to know.
 18 MR MPOFU: Yes.
 19 MINISTER MTHETHWA: Well, it was in a
 20 specific situation of a specific category of people we were
 21 referring to.
 22 MR MPOFU: Yes.
 23 MINISTER MTHETHWA: And what we meant is
 24 that you use everything you can use to stop this thing from
 25 happening.

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1 MR MPOFU: Yes, okay, that's exactly the
 2 problem. I'm saying it is against the law to have a
 3 specific category of people for whom you are going to
 4 reserve maximum force per se. That is against the law.
 5 MR SEMENYA SC: Chair –
 6 MR MPOFU: And what you were propagating
 7 was against the law –
 8 MR SEMENYA SC: No –
 9 MR MPOFU: And I'll tell you which law.
 10 MR SEMENYA SC: That proposition is
 11 completely incorrect in law. He cannot put that
 12 proposition to a witness.
 13 MR MPOFU: I can. It is against the law
 14 – I repeat the proposition – to have a specific category of
 15 people for whom you must reserve maximum force. Maximum
 16 force cannot be used against any category of people by law.
 17 CHAIRPERSON: I think we're probably
 18 engaged in semantic difficulties at the moment. There can
 19 be no category of persons per se –
 20 MR MPOFU: Sure.
 21 CHAIRPERSON: - against whom force can be
 22 used which is more than is necessary.
 23 MR MPOFU: Yes.
 24 CHAIRPERSON: But what the witness I
 25 think is trying to say, although remember, to be fair to

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1 him, he's not a lawyer; we won't hold that against him,
 2 that's not a crime either. What the Minister is saying,
 3 that he regarded cash-in-heist people as people against, in
 4 respect of whom it was necessary – it was necessary to use
 5 all the force that was available.
 6 MR MPOFU: Ja.
 7 CHAIRPERSON: And once you understand the
 8 distinction I've tried to explain you'll understand what he
 9 is trying to say, I think.
 10 MR MPOFU: Ja, I understand. I don't
 11 care whether it's cash-in-heists or rapists or mass
 12 murderers or whatever. You cannot have a category of
 13 people who are reserved for maximum force per se. That is
 14 the law, simply.
 15 CHAIRPERSON: You see the point is it's
 16 not the category of persons we're concerned with, it's the
 17 circumstances.
 18 MINISTER MTHETHWA: The circumstances.
 19 CHAIRPERSON: It's the circumstances as
 20 such –
 21 MINISTER MTHETHWA: Yes.
 22 CHAIRPERSON: - that you have to use, if
 23 it's necessary to use all the force at your command, then
 24 it's minimum force and maximum force coincide, but it's not
 25 because you're dealing with a category of people.

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1 MINISTER MTHETHWA: Yes.
 2 CHAIRPERSON: You're dealing with people
 3 in circumstances where that necessity to use all the force
 4 you have exists. That's the distinction.
 5 MINISTER MTHETHWA: Absolutely, and the
 6 circumstances in this case was referring to specific people
 7 who were doing a specific act, not that they are reserved
 8 as that per se, but through what they have done, through
 9 what they were continuing to do, precisely. It was the
 10 circumstances around which they were doing.
 11 MR MPOFU: Okay, let me just tell you
 12 just for the benefit of my learned friends as well what the
 13 law actually says. Section 13(3)(b) of the Police Act
 14 specifically says, "Where a member performs an official
 15 duty" – or rather, "Where a member who performs an official
 16 duty is authorised by law to use force, he or she may use
 17 only the minimum force which is reasonable in the
 18 circumstances."
 19 Now what that means is that there is already a
 20 rule in the common law about necessary force, what the
 21 Chairperson was talking to you about. I'm saying that in
 22 the Police Act, despite the fact that there is that common
 23 law rule, there is a specific section that says where you
 24 are entitled to use force, whether it's the section 49
 25 situation, whether it's the, whatever situation, cash-in-

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1 transit, what have you, you shall only, or you may use only
 2 the minimum force which is reasonable in the circumstances.
 3 Are you aware of that provision of the law?
 4 MINISTER MTHETHWA: Yes, you must read
 5 that with section 49 of the Criminal Procedure Act. It
 6 exists also. Can you go there?
 7 MR MPOFU: Ja, no, no –
 8 MINISTER MTHETHWA: - as well, because
 9 you seem to have –
 10 MR MPOFU: You see, no, let me tell you,
 11 where it say where it's authorised by law to use force,
 12 that incorporates section 49. Section 49 simply authorises
 13 the police to use force. So whether section 49 –
 14 MINISTER MTHETHWA: To use deadly force –
 15 MR MPOFU: Yes, that's what I'm saying,
 16 where –
 17 MINISTER MTHETHWA: For purposes where I
 18 was –
 19 MR MPOFU: Yes, all it says is that where
 20 you are authorised –
 21 MR SEMENYA SC: Chair –
 22 MR MPOFU: - to use force, and that
 23 includes section 49 –
 24 MR SEMENYA SC: We cannot have legal
 25 argument with a lay witness, Chair.

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1 CHAIRPERSON: I understand the point
 2 you're saying. It's a very interesting legal seminar we're
 3 having, but I don't think, with respect, that it's
 4 advancing the cause of this Commission very much to enable
 5 us to answer the terms, the questions set out in the terms
 6 of reference. I understand you're setting up, as it were,
 7 preparatory framework for the purposes of your cross-
 8 examination –
 9 MR MPOFU: No –
 10 CHAIRPERSON: You and the witness have
 11 had a debate about what the law is. You've got, some would
 12 say perhaps an advantage because you're legally trained.
 13 Others would say he's got an advantage because he wasn't
 14 confused by what he learned at law school, but either way I
 15 think that matter has been adequately covered. I suggest
 16 you move on now to the next point.
 17 MR MPOFU: Well Chairperson, I'm not the
 18 one who spoke about maximum force. It's the witness. So
 19 if now suddenly when I'm testing what he said it's a legal
 20 seminar, then I don't know what I'm – or what cross-
 21 examination is about. I'm saying –
 22 CHAIRPERSON: You've covered the points.
 23 MR MPOFU: Yes.
 24 CHAIRPERSON: You've covered the points.
 25 I made an intervention which may or may not have been ill-

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1 advised –

2 MR MPOFU: Yes, indeed.

3 CHAIRPERSON: The Minister may well have

4 not expressed himself in the same language of law I would

5 use, but I think we now know what he says he meant and I

6 think you can now proceed with your cross-examination, with

7 the theoretical structure that you're setting up before you

8 proceed to the other questions.

9 MR MPOFU: Ja. No, okay, well I might as

10 well round off this point to show that it's not

11 theoretical. Is it FFF4, I think is the –

12 CHAIRPERSON: FFF4 was the private

13 briefing for the President on what happened at –

14 MR MPOFU: Then it's FFF5.

15 CHAIRPERSON: FFF5 is the media statement

16 made by the National Commissioner.

17 MR MPOFU: Yes. Can we have FFF5? Go to

18 the next page, sorry. Just go down a little bit. Ja,

19 there it is.

20 CHAIRPERSON: You see at the foot of the

21 page which is on the screen you'll see that the penultimate

22 paragraph begins with "Dispersion action had commenced,"

23 etcetera, and it describes what happened at scene 2

24 actually and it ends up – well, I'm not sure how accurate

25 the transcription is, but we won't go there now. The last

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1 sentence reads, "The police retreated systematically and

2 were forced to utilise maximum force to defend themselves."

3 That's the passage Mr Mpofo is relying on.

4 MR MPOFU: Yes. Do you go along with

5 that?

6 MINISTER MTHETHWA: I wouldn't understand

7 this.

8 [11:18] MR MPOFU: Well, did you – when the

9 National Commissioner was saying it, did you say to her, or

10 gave you the document, did you say to her, I don't

11 understand that last sentence?

12 MINISTER MTHETHWA: No, I'm saying I

13 don't understand – there is a sentence here which talks

14 about police retreating, Chair, so what is the question

15 here?

16 MR MPOFU: No –

17 MR SEMENYA SC: Chair, before –

18 CHAIRPERSON: It goes on you see, "Police

19 retreated systematically and were forced to utilise maximum

20 force to defend themselves." Now he's concentrating on the

21 maximum force question there.

22 MINISTER MTHETHWA: Right.

23 CHAIRPERSON: Mr Semanya?

24 MR SEMENYA SC: Chair, the views of this

25 witness today are completely irrelevant to the terms of

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1 reference. We are invited by the terms of reference to

2 look at things that causally are connected from a

3 particular period in 2012, not today.

4 MR MPOFU: Ja.

5 CHAIRPERSON: It's not as simple as that.

6 We're investigating the facts, we've got to look at the

7 justifications made by the actors at the time and this was

8 the justification put up by the National Commissioner. She

9 said maximum force was used, the political head of the

10 police was present, either present when she said it or he

11 read what she said on the same day she said it and I don't

12 think I can –

13 MR SEMENYA SC: Chair, with respect, the

14 Commissioner was asked these questions. She answered what

15 she meant about that but the question now being asked of

16 the witness is today what is his view, does he associate

17 himself with the utterances of another witness two years

18 ago?

19 MR MPOFU: No, obviously that's not the

20 question. And by the way, Chairperson, without concurring

21 with what you're saying, the point really is that if –

22 CHAIRPERSON: [Microphone off, inaudible]

23 MR MPOFU: Yes.

24 CHAIRPERSON: I didn't put, that isn't on

25 record. Mr Semanya, you're saying Mr Semanya misunderstood

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1 your question.

2 MR MPOFU: Yes.

3 CHAIRPERSON: Give him a second chance to

4 understand it by repeating it.

5 MR MPOFU: Yes. Thank you, Chairperson.

6 You've already testified that either this statement was

7 read in your presence, if not it was given to you, correct?

8 MINISTER MTHETHWA: Yes.

9 MR MPOFU: Ja. Now I'm saying to you

10 when you were given that statement saying what the

11 Chairperson has read out to you, did you say you don't

12 understand what was meant at –

13 MINISTER MTHETHWA: I said I don't

14 understand your question –

15 MR MPOFU: My question is –

16 MINISTER MTHETHWA: - not this sentence.

17 MR MPOFU: Ja, did you agree with that or

18 did you query it –

19 MINISTER MTHETHWA: When?

20 MR MPOFU: - at that time.

21 CHAIRPERSON: He couldn't agree –

22 MINISTER MTHETHWA: No.

23 CHAIRPERSON: - because he didn't know

24 the facts.

25 MINISTER MTHETHWA: No -

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1 MR MPOFU: He didn't query it.

2 CHAIRPERSON: He didn't know whether the

3 factual allegations were correct.

4 MR MPOFU: No –

5 CHAIRPERSON: No, that's so.

6 MR MPOFU: It could not be correct to use

7 maximum force under – that's the whole point, Chairperson.

8 CHAIRPERSON: Well, then –

9 MR MPOFU: How could – it didn't matter.

10 The point is did you at that time think that there was

11 occasion to use maximum force or not?

12 CHAIRPERSON: I don't know if he'll know

13 the answer to that because he didn't know the circumstances

14 at all. Hearsay is what he – perhaps the best way of

15 posing it is this, what did you understand her to mean when

16 she said that maximum force would be used? It's relevant

17 because of course we heard you say things later that day

18 which may give rise to some comment elsewhere but what did

19 you understand her to mean when she said that the police

20 were forced to utilise maximum force?

21 MINISTER MTHETHWA: Live ammunition.

22 MR MPOFU: Okay. And is that your

23 understanding again today, the use of live ammunition

24 equals maximum force?

25 MINISTER MTHETHWA: What I understood

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1 here is that the police, as it is said here that they were

2 forced because remember this thing is explaining what

3 happened and it still needs to be tested that it happened

4 this way, that the police on their own retreated, as it is

5 said here, and used maximum force to defend themselves.

6 CHAIRPERSON: It goes further than that,

7 it says they were forced to use maximum force.

8 MINISTER MTHETHWA: They were forced.

9 CHAIRPERSON: The very use of the word

10 "forced" indicates that –

11 MINISTER MTHETHWA: There was –

12 CHAIRPERSON: - what was being asserted

13 was that it was necessary for them because that's why they

14 were forced to do it, to maximum force and you used the

15 expression maximum force meaning lethal force or

16 potentially lethal force which could kill and in fact did

17 kill a number of the people against whom it was used.

18 That's the way you understood it, am I accurately

19 summarising your evidence?

20 MINISTER MTHETHWA: Yes, yes, Chair.

21 MR MPOFU: Right, we'll come back to

22 that. Now the issue about, the other issue that I wanted

23 to ask you in this category of questions is around the

24 proposals for public policing which you made in 2011, you

25 remember those?

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1 MINISTER MTHETHWA: Yes.

2 CHAIRPERSON: That is exhibit CCCC1.1.

3 MR MPOFU: And 2, 1.2. It's point 2,

4 Chairperson.

5 CHAIRPERSON: No, 2 is the implementation

6 plan. The letter to the National Commissioner is 1.1.

7 MR MPOFU: Yes, I was talking about the

8 plan. Now that, do you believe that if that plan had been

9 in full swing, in full operational swing or implementation

10 swing, the massacre or tragedy might have, would have been

11 avoided?

12 CHAIRPERSON: Are you asking might or

13 would?

14 MR MPOFU: Would.

15 CHAIRPERSON: There's a difference.

16 MR MPOFU: Would.

17 MINISTER MTHETHWA: Firstly, the policy

18 on gatherings, the Gatherings Act first and the policy we

19 were amending assumes that things are happening in a

20 particular way. There's a legal process, there were

21 protests and nobody is armed and it should fit that kind of

22 a situation and in that sense there is no, there is nothing

23 which prepares police to govern or to control a crowd who

24 would otherwise have been armed in the situation.

25 MR MPOFU: No. Well, that can't be

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1 correct. Remember that the definition of crowd management

2 includes violent and non-violent protests, do you know

3 that?

4 MINISTER MTHETHWA: It does but what I'm

5 saying to you is that you move from the premise that the

6 public protests themselves and picketing and everything

7 should be done and is allowed to be done within the law and

8 the constitution, but unarmed.

9 MR MPOFU: Yes, but surely violent

10 protests must include armed protests, doesn't it?

11 MINISTER MTHETHWA: That's what I'm

12 saying, is that we are now talking outside of the law. Now

13 I'm saying that in terms of the law and the constitution is

14 that people are allowed, and this is the point everybody

15 including you should be preaching out in society, are

16 allowed by the laws of the land and the constitution to do

17 everything including demonstration, picketing, but unarmed.

18 MR MPOFU: Yes, but that is mightily

19 irrelevant to what we are discussing. Though people who

20 are unarmed and as you are describing, are not people to

21 whom the issue of use of force even applies, correct? It

22 doesn't even arise. Agreed?

23 MINISTER MTHETHWA: I don't understand

24 your point, can you put it –

25 MR MPOFU: Okay, I'm saying the situation

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1 you are describing of correctly, the constitutional right
 2 of people to march and so on and picket has got nothing to
 3 do with the use of force. We are talking about a different
 4 situation where there is a need for the use of force.
 5 MINISTER MTHETHWA: Yes.
 6 MR MPOFU: Do you agree? Okay, now what
 7 I'm saying to you is if that policy was in full
 8 implementation swing, this tragedy would have been avoided.
 9 What would you say to that?
 10 MINISTER MTHETHWA: Well, I wouldn't be
 11 certain about that because we have got to examine the
 12 actual action, the actual process which led to the deaths
 13 of the people who were striking, first and foremost, and I
 14 think this is what we are about.
 15 CHAIRPERSON: Do you say that – would is
 16 a bit too ambitious, you can't say what would have happened
 17 but the other part of the question that he eventually
 18 withdrew was "might." What is your opinion on the
 19 question, are you able to formulate one, if what you had
 20 said in your policy on policing of gatherings and protests
 21 in your letter of the 31st of August 2011, had been
 22 implemented with immediate effect as you had asked the
 23 National Commissioner to do, instead of only getting the
 24 response that you asked for to be given to you at the end
 25 of September 2011 you only got that in February 2013 after

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1 Marikana had happened – if your request that the matter be
 2 dealt with, with immediate effect and you got the
 3 implementation policy by end of September 2011 and all the
 4 necessary things had been done, what Mr Mpofu I think wants
 5 to know from you is do you think that what happened at
 6 Marikana might not have occurred.
 7 MINISTER MTHETHWA: Chair, you would
 8 recall yesterday that we said that whilst the letter came
 9 back on the 13th, things relating to the policy had started
 10 to happen including the procurement of the equipment,
 11 including paying of the police officers who were no longer
 12 part of the unit of public order policing. So it's not
 13 like nothing happened between 2011 to 2013. The point
 14 we're making is that not everything is intact and we
 15 specified the kind of weaknesses which are still there but
 16 I, that's what I would say about the policy and the
 17 implementation of the policy.
 18 MR MPOFU: Chairperson, I want to try for
 19 the last time to get an answer to this. Do you believe
 20 that had the policy which you recommended, which was
 21 obviously intended to improve the situation, had it been in
 22 full operational swing the possibility at least – I accept
 23 that you can't foretell the future – the possibility of the
 24 tragedy having happened would have been reduced, let's put
 25 it as light as that.

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1 MINISTER MTHETHWA: Mr Mpofu, when we
 2 talk about the implementation of the policy, let's be clear
 3 of what we're talking about. We need to desegregate what
 4 we are talking about because there are a lot of things
 5 involved. There is training involved, there's the
 6 equipment, so which part are you referring to as inadequate
 7 because inadequacy would always be there. For instance,
 8 North-West as a province was so inadequate to deal with
 9 this matter of the strike, it needed to have assistance
 10 from other provinces. So when you talk inadequacy let's be
 11 specific because if you are generalising, I may not be able
 12 to help you in your questions but I want to help you
 13 understanding clearly which part are you referring to.
 14 MR MPOFU: Okay. Well, you might help me
 15 firstly by listening to the question. I didn't say
 16 anything about inadequacy.
 17 CHAIRPERSON: No, Mr Mpofu, don't give
 18 him a lecture, just ask questions, please –
 19 MR MPOFU: Well, I did not say anything
 20 about inadequacy so the past three minutes has just been
 21 wasted. I'm saying if the policy that you proposed was in
 22 full implementation swing, would you agree that the
 23 massacre or tragedy might have been avoided or the chances
 24 of it happening might, would have been reduced? Yes or no?
 25 MINISTER MTHETHWA: I wish to agree with

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1 you but in all fairness what you are talking about is
 2 something which has no clarity. You are asking a question
 3 but when you say full swing, the full swing you are
 4 referring to would have components. Full swing because
 5 there's enough equipment for police to work, there's enough
 6 personnel, so you would have to be specific because clearly
 7 there is a part you are criticising, so that I agree with
 8 you on that or not agree with you on that.
 9 MR MPOFU: Okay. Please don't anticipate
 10 my questions as criticising something or another, just
 11 answer the question as it is. I am saying to you full
 12 swing obviously means full swing, 100%. I didn't say
 13 there's a part or another part –
 14 MINISTER MTHETHWA: Well, if it's 1005
 15 yes, if it was implemented 100% as you are saying now, yes
 16 maybe –
 17 MR MPOFU: Thank you.
 18 MINISTER MTHETHWA: There would have been
 19 –
 20 MR MPOFU: Reduced –
 21 MINISTER MTHETHWA: - averting or a
 22 reduction of any fatalities.
 23 MR MPOFU: Thank you. And that must be
 24 why you had asked as long ago as 31st August 2011 that the
 25 policy needed to be implemented with immediate effect,

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1 correct?

2 MINISTER MTHETHWA: Correct, yes.

3 MR MPOFU: So asking the same question

4 differently now, if the policy had been implemented with

5 immediate effect fully, then the tragedy would have been

6 avoided, correct?

7 MINISTER MTHETHWA: We would believe so.

8 MR MPOFU: Yes. Now, so among the causes

9 or the things that might have contributed to the tragedy

10 must be the non-implementation with immediate effect which

11 you had asked for, of the policy a year before the tragedy

12 in August 2011 when the tragedy happened in August 2012,

13 correct?

14 MINISTER MTHETHWA: Let's look at the

15 incident of Marikana and not generalise now and say in that

16 incident of Marikana was there anything which was

17 inadequate in the situation of Marikana? And I don't, I

18 don't think I would say I would agree with that. I think

19 that in this particular instance things were done to ensure

20 that that particular incident is handled within the

21 confines of the policy. So if there was anything extra or

22 outside of that, that then needs to be interrogated.

23 MR MPOFU: Alright, we will interrogate

24 it in due course. Now I want to ask you about the issue of

25 the political pressure.

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1 CHAIRPERSON: Sorry, before you move on

2 to that can I just raise, ask a question flowing from what

3 you said?

4 MR MPOFU: Yes, Chairperson.

5 CHAIRPERSON: One of the things that you

6 said in your policy document, remember your policy document

7 accompanied the letter that went to the National

8 Commissioner and set out what you wanted done and one of

9 the things you say in that document is that there must be

10 set up, that's exhibit R actually before us, there must be

11 set up a national unit of public order policing. That was

12 required under the Act, it was irregularly, as far as I can

13 see, done away with and you were saying it must come back.

14 And one of the things you made, one of the points you

15 wanted was a national public order policing unit. Now the

16 document that we've got from the reply you got eventually

17 in February 2013 deals with what had been done. As you

18 say, the poli8cy had been implemented gradually.

19 MINISTER MTHETHWA: Yes.

20 CHAIRPERSON: But as far as the national

21 capacity is concerned, the national unit is concerned, that

22 dealt with – unfortunately the pages aren't numbered but

23 it's dealt with as part of the schedule to that exhibit

24 which is quadruple 1.2 and it's actually section 4 of that

25 document and it talks about you need a management decision

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1 to transfer a POP Pretoria to national and then it goes on

2 about various things have to be done in regard to that and

3 the dates, the due dates they have there are all 2013

4 dates. So one of the things that you wanted was a national

5 POP unit. That was only planned to happen in 2013, so it

6 hadn't happened yet at the time of Marikana, so that is a

7 factor which is undoubtedly present. One of the problems,

8 and I don't expect you to answer this but I just mention it

9 for information because it may be relevant, one of the

10 problems that has been debated here was when the actual

11 plan was worked out that was going to be implemented on the

12 Thursday afternoon, the evidence is it came before the

13 Joint Operation Centre committee for the first time at 1:30

14 on the Thursday afternoon and at that stage there were no

15 POP people present, they were all out in the field. So

16 insofar as that plan was approved and it's argued there

17 were defects, we don't have to debate those with you, those

18 are operational matters but insofar as that plan had the

19 approval of the JOCCOM as it was called, it didn't, there

20 were no inputs at that stage from any POP people as such.

21 There are arguments that they could have objected later but

22 those are other matters we don't have to debate with you

23 now.

24 [11:38] The point is, I think, that if you already had

25 had a national POP established they, presumably, would have

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1 run the whole show if I can call it that and they would

2 come up with all the necessary inputs before the plan, such

3 as it was, was implemented. What in fact happened,

4 according to the evidence, is one of the leading characters

5 involved was Major-General Annandale who was not a POP man,

6 he was STF actually and one of his key adjutants in doing

7 it was the gentleman you heard about yesterday, Lieutenant-

8 Colonel Scott who was also, he had a bit of POP training in

9 the past, but he was basically a planner, also part of the

10 STF. They didn't have the detailed experience of POP work

11 which I assume the heads of the national POP units you

12 wanted set up would have had. So to that extent that it

13 may have some relevance in regard to the question which you

14 very fairly answered in the affirmative that if your plan

15 had already been implemented the result might have been

16 different. I don't know whether you want to respond to

17 that.

18 MINISTER MTHETHWA: Well, Chair, thanks.

19 As you say, we have responded to that question and we're

20 asking the specific areas to affirm, not to affirm and that

21 is one area which we can affirm.

22 CHAIRPERSON: I see your successor was

23 here, I don't whether he's heard what you said. Of course,

24 we're now already into 2014 and we're really with what the

25 position is now, but I take it he was still under your

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1 control, you were still Minister, was the national POP unit
 2 in fact established in 2013 on the date set out in this
 3 document?
 4 MINISTER MTHETHWA: Well, Chair, in what
 5 you were saying earlier on, I don't know why members of POP
 6 were not on the ground planning on that day, but it's
 7 something else. But there are members of the POP, there
 8 are things – let me say this, Chair, when the POP was
 9 discontinued, especially in 2006, you had about 12 000
 10 members on the ground as POP members. And if you compare
 11 that period and now you didn't have as many public protests
 12 as you have in the period under review. Perhaps I will be
 13 updated now but around that time you had 4000 members. So
 14 you can see that you still have to do a lot, insofar as
 15 that is concerned the police itself cannot be implemented
 16 fully because the people who are supposed to implement the
 17 policy are still being recruited. I'm just pointing one
 18 area which will make the policy easy to implement or not to
 19 implement.
 20 CHAIRPERSON: Yes, I understand that.
 21 You see we've had a lot of evidence already and submissions
 22 have been raised to the effect that the planning was
 23 defective, so that wouldn't necessarily impact on the
 24 number of feet on the ground, as it were, implementing it.
 25 If the planning was defective, I don't say it was, it's

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1 something that we have to decide at the end of the inquiry,
 2 but if the planning was defective then that problem might
 3 well have been adequately addressed if you'd already had
 4 your national POP unit established as you envisaged it
 5 should be done. That's correct isn't it?
 6 MINISTER MTHETHWA: Yes it's correct.
 7 But remember, Chair, that we said the POP was not done away
 8 with totally. So you had POP. What was happening is that
 9 they were not confined at a cluster level and at a police
 10 station level. What we're doing now was to get it up there
 11 and have it as a national so that national has a final say,
 12 we are able to do what was done in Marikana for instance if
 13 there's a need for extra personnel who would come outside
 14 of that particular province.
 15 CHAIRPERSON: Yes, I understand that.
 16 Sorry I interrupted you, Mr Mpofu but before we give you
 17 back to the baton to carry on with the race my colleague,
 18 Advocate Hemraj, would like to ask a question.
 19 COMMISSIONER HEMRAJ: Yes, Mr Minister,
 20 you said that the implementation of the policy was
 21 incremental, what would you say, what aspect of the policy
 22 if fully implemented would have made a difference at
 23 Marikana? Is it equipment, is it staff complement or is it
 24 something else? I'd just like to understand that.
 25 MINISTER MTHETHWA: Chair, I think we'd

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1 have to, you know, uncover really the elements which played
 2 to the witness or witnesses which happened there in
 3 Marikana if any, because one aspect we are talking about
 4 now, the aspect of personnel, I wouldn't say that the
 5 people who were deployed there were inadequate, I wouldn't
 6 say – I think there were a number of police officers as I
 7 was – I thought when I spoke to the Provisional
 8 Commissioner, so that aspect may not be a factor here. We
 9 would have to understand and interrogate them, I'm glad the
 10 Chair was talking about another aspect which is the aspect
 11 of planning which is very important in public order
 12 policing. There may be other aspects, he spoke about the
 13 experience of the commanders and their training particular
 14 or lack thereof in public order policing. So there may be
 15 other factors, maybe these are some of them or there are
 16 others, but insofar as personnel and the force levels I
 17 don't think that anybody can say that you had few members
 18 of SAPS on the ground.
 19 COMMISSIONER HEMRAJ: Thank you, Mr
 20 Minister.
 21 MINISTER MTHETHWA: Thank you.
 22 MR MPOFU: Thank you. Thank you,
 23 Chairperson, I hope Mr Wesley has taken into account – let
 24 me just take one example. The policy for example, the
 25 policy prescribes that forewarnings should be given to

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1 people, that's an important aspect of the policy, correct?
 2 MINISTER MTHETHWA: Yes, warnings and
 3 also negotiations with the people.
 4 MR MPOFU: Ja, I'm just using that as an
 5 example. If we can show that warnings were not given in
 6 both at scene 1 and at scene 2 then you would agree that
 7 had the policy been in place and fully implemented in that
 8 regard the deaths might have been avoided. At least you
 9 must agree with that.
 10 MINISTER MTHETHWA: Maybe in place won't
 11 apply here, but fully implemented maybe apply.
 12 MR MPOFU: Ja, no I'm just saying in that
 13 respect.
 14 CHAIRPERSON: He's given you the answer,
 15 hasn't he? He says if it had been fully implemented, the
 16 answer's yes.
 17 MR MPOFU: The answer's yes, oh.
 18 CHAIRPERSON: Can we perhaps take the tea
 19 adjournment now, or would you like to ask another question
 20 before we do that.
 21 MR MPOFU: If I may just ask another
 22 question, Chairperson, just in this regard so that I can
 23 then when we come back just get to the meat. Two, two
 24 quick ones. Would you agree that given your answers which
 25 you gave to Mr Bizos yesterday and which we discussed this

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1 morning, that on the issue of maximum force and all that
 2 that it was reserved for criminals or special types of
 3 people? That in that regard the question of the
 4 characterisation of what was happening in Marikana or the
 5 characterisation of the people who were there was crucial
 6 because that might have decided whether they fall under
 7 category A or category B against whom maximum force may or
 8 may not be used? Do you get my question?
 9 MINISTER MTHETHWA: Yes, no I do get your
 10 question. What was happening in Marikana was more of
 11 public order policing, that's what was happening. It was
 12 more of public order policing, the event itself and
 13 everything attests to that.
 14 MR MPOFU: Yes, no, no I accept that. I
 15 know that, in fact I agree with it, but I'm saying to you
 16 given your earlier testimony that certain types of force
 17 are reserved for certain types of people –
 18 CHAIRPERSON: He qualified that in the
 19 end.
 20 MR MPOFU: Oh he said that, Chairperson.
 21 CHAIRPERSON: No, no he did say that but
 22 he qualified it later. He made it clear, as I understood
 23 his evidence, that it wasn't just special types of people,
 24 it was very special circumstances, people who were involved
 25 in criminal acts and so on in special circumstances which

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1 required that all the force available should be used. So
 2 it's true he originally created the impression that it was
 3 special types of people, but I think to be fair one's got
 4 to have regard to what he said subsequently.
 5 MR MPOFU: Okay fine, let's use that
 6 formulation. Would you agree that if maximum force, for
 7 example, was reserved for certain circumstances then it was
 8 important to characterise particular circumstances as
 9 either those circumstances or not.
 10 MINISTER MTHETHWA: I think you've asked
 11 this question before.
 12 MR MPOFU: No, I'm asking it for the
 13 first time.
 14 MINISTER MTHETHWA: No, you've asked it.
 15 Let me –
 16 CHAIRPERSON: Even if he's asked it
 17 before would you like to answer it –
 18 MINISTER MTHETHWA: Yes I am answering,
 19 but I'm just reminding him that he asked that question
 20 before. What was happening there fell under the unit
 21 public order policing unit. That's what was happening
 22 because these were people on strike. Now your next leg of
 23 your question talks to something else, the determination of
 24 using force including deadly force. That's something else
 25 which gets decided in a particular way and the act is clear

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1 on that. And I've said that you look at what happened,
 2 look at that together because we even quoted our act, SAPS
 3 act, you look at that together with the section 49 of
 4 Criminal Procedure Act.
 5 MR MPOFU: Okay. I'll ask the question
 6 again. I'm not asking you that, I'm asking you in general,
 7 forget about Marikana or anything for the moment. I'm
 8 saying would you agree that if a particular type of use of
 9 force, particular methods of use of force is reserved for a
 10 particular set of circumstances, characterisation of a
 11 situation becomes important so that we can know whether we
 12 are dealing with that situation or the other situation, in
 13 general. Do you understand?
 14 MINISTER MTHETHWA: Absolutely.
 15 MR MPOFU: Yes, the answer is yes.
 16 CHAIRPERSON: Yes he agrees with. Let's
 17 take the tea adjournment now on that positive affirmative
 18 note. Let's try to be back at five past twelve. Remember
 19 we're going onto lunch – we're taking lunch at 1, and we're
 20 starting again at 1:30.
 21 [COMMISSION ADJOURNS COMMISSION RESUMES]
 22 [12:10] CHAIRPERSON: The Commission resumes.
 23 Minister, you're still bound by your affirmation.
 24 EMMANUEL NKOSINATHI MTHETHWA: [affirms
 25 further]

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1 CHAIRPERSON: Mr Mpofo.
 2 CROSS-EXAMINATION BY MR MPOFU (CONTD.):
 3 Thank you, Chairperson. Minister, just the last of those
 4 signpost questions. It's correct, isn't it, that – and I
 5 think that's indicated in your statement as well – that in
 6 terms of what you call the constitutional segregation of
 7 roles, on your own version the Constitution goes out of its
 8 way to ensure that the operational management of the
 9 police, headed by the National Commissioner, is shielded
 10 from political interference, correct?
 11 MINISTER MTHETHWA: Yes.
 12 MR MPOFU: And for the Constitution to do
 13 that it would be because it wants obviously to protect us
 14 as citizens from a likelihood of political interference in
 15 operational management, correct?
 16 MINISTER MTHETHWA: Yes.
 17 MR MPOFU: And according to you one of
 18 the key ways in which that segregation is practised is the
 19 fact that your port of call as far as operational
 20 management is concerned would be the National Commissioner,
 21 correct?
 22 MINISTER MTHETHWA: My port of call?
 23 Repeat that?
 24 MR MPOFU: Ja. No, okay, maybe I'll use
 25 a different expression. In order to implement that

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1 segregation the person with whom you would liaise, who's
 2 the linkage between you as the political head and the
 3 operational management is the National Commissioner?
 4 MINISTER MTHETHWA: National
 5 Commissioner, Provincial Commissioners and all other,
 6 including station commanders if there's a need, yes.
 7 MR MPOFU: Yes, but the primary person
 8 with whom you would liaise when issues are raised would be
 9 the National Commissioner. That would be the correct
 10 protocol.
 11 MINISTER MTHETHWA: Well, there's nothing
 12 like a Chinese wall on that –
 13 MR MPOFU: No –
 14 MINISTER MTHETHWA: - but if something
 15 would be needing the National Commissioner's attention, we
 16 are at a national level, I go to her, but if I have to get
 17 to the Provincial Commissioner I do that, but as a practice
 18 the National Commissioner would be informed about any other
 19 engagement I have with all other officials. So there's no
 20 official who's out of reach of the Minister of Police.
 21 MR MPOFU: No, let me explain this maybe
 22 using an example of a corporate entity. What I'm saying to
 23 you is that if there's a board which the equivalent would
 24 be you and there is management, and there's a CEO, of
 25 course you know if there's a crisis or as a last resort and

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1 all sorts of eventualities, the board could speak to
 2 anybody. But good governance would demand that it is, they
 3 don't jump the CEO. What I'm saying is that for you the
 4 best way to communicate with management would be to
 5 communicate with the person who reports to you, that is the
 6 National Commissioner, who's accountable to you. This is
 7 an accountability point actually.
 8 MINISTER MTHETHWA: Well, unlike the
 9 corporate world, as you are saying, in the thick of things
 10 within the police and if there is anybody the Minister of
 11 Police wants to have or wants to know or to communicate,
 12 will communicate with anybody.
 13 MR MPOFU: Yes –
 14 MINISTER MTHETHWA: The National
 15 Commissioner of the South African Police Service reports to
 16 the Minister, but she's not the only one who reports to the
 17 Minister.
 18 MR MPOFU: Ja, Minister, sorry, I don't
 19 want us to spend time on this. It's a very simple point.
 20 Putting aside exceptional circumstances, emergencies and
 21 what have you, is it good governance or good protocol that
 22 you would primarily communicate with the National
 23 Commissioner rather than the people who report to her or
 24 him?
 25 MINISTER MTHETHWA: Well, the person I

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1 interact with mostly is at the national level, who's the
 2 National Commissioner.
 3 MR MPOFU: Yes, but if there are
 4 exceptional circumstances you can go further down, correct?
 5 MINISTER MTHETHWA: We are one – I don't
 6 know why we are repeating this thing. We are at one in
 7 what we are talking about.
 8 MR MPOFU: I'll take that as a yes.
 9 Okay, now in fact that's what you say. In your first
 10 statement you say that you regularly receive complaints and
 11 so on, and then you say, "I take these up with the National
 12 Commissioner in order to ensure that matters are attended
 13 to." So I don't know why –
 14 MINISTER MTHETHWA: Yes.
 15 MR MPOFU: - we are having the problem
 16 now.
 17 MINISTER MTHETHWA: That's what I'm
 18 saying. Can we get another question?
 19 MR MPOFU: No well if you answer this one
 20 we'll get another one. Is it true –
 21 MINISTER MTHETHWA: I've affirmed what
 22 you are saying –
 23 CHAIRPERSON: He's given you an answer.
 24 Whether you –
 25 MINISTER MTHETHWA: I've affirmed what

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1 you are saying –
 2 CHAIRPERSON: Whether it's the answer you
 3 expect is another matter.
 4 MR MPOFU: Well, Chairperson, it would
 5 help a lot, Chairperson, if you could also protect me to
 6 get answers. Simple yes or a no will do, then I must get a
 7 single yes or no, not a lecture. Is that answer a yes?
 8 CHAIRPERSON: [Microphone off, inaudible]
 9 try this.
 10 MR MPOFU: Yes, you are –
 11 CHAIRPERSON: In your initial statement
 12 you said that you often received complaints from members of
 13 the public and so on, and what you then do is you take up
 14 these points with the National Commissioner.
 15 MINISTER MTHETHWA: Yes.
 16 CHAIRPERSON: That's what you said.
 17 MINISTER MTHETHWA: Yes.
 18 CHAIRPERSON: Now what Mr Mpofu wants to
 19 know, that I take it is because you expect it like that,
 20 that's the normal procedure that applies.
 21 MINISTER MTHETHWA: Yes.
 22 CHAIRPERSON: Is that right?
 23 MR MPOFU: Okay, so it's possible. Okay,
 24 now in the current situation you – I'm going to make a
 25 point that you, in your first statement you were

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1 deliberately misleading the Commission. If we go to FFF29,
 2 in that statement you concealed the fact that you
 3 communicated with the Provincial Commissioner.
 4 MINISTER MTHETHWA: I did not conceal it.
 5 I said yesterday that it was an oversight and upon seeing
 6 my records I then remembered that I spoke to the Provincial
 7 Commissioner and there would be no reason for me to conceal
 8 anything because voluntarily I went about to get my
 9 records, my phone records, telephone records, and I gave it
 10 to this honourable Commission.
 11 MR MPOFU: No, so when you say you
 12 remember are you suggesting that you had forgotten that you
 13 spoke to the Provincial Commissioner?
 14 MINISTER MTHETHWA: As I said, it was an
 15 oversight on my part. It's here in my statement. I said
 16 even yesterday that this was an oversight. I did speak to
 17 the Provincial Commissioner and when I got the records of
 18 my phone I then recalled that indeed I spoke to the
 19 Provincial Commissioner first.
 20 CHAIRPERSON: Yes, what Mr Mpofo wants to
 21 know is almost implicit in what you say already, that when
 22 you made your initial statement you forgot that you spoke
 23 to the Provincial Commissioner and that's what you mean by
 24 saying it was an oversight and that subsequently when you
 25 saw your phone records you remembered. Is that how it is?

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1 MINISTER MTHETHWA: Yes, that's what I'm
 2 saying, Chair.
 3 MR MPOFU: Good, so it's a yes, you
 4 forgot. Okay, but that's not, it's not as much as that you
 5 forgot; the point is that you said something that is not
 6 true, that is not correct. If you go to paragraph 17,
 7 paragraph 17 of FFF29, Chairperson, there you deal with
 8 your telephone calls to Mr Zokwana and Mr Ramaphosa and
 9 then paragraph 18 you say, "Having been alerted to the
 10 situation in Marikana as indicated above I discussed the
 11 issue with the National Commissioner and received
 12 assurances that SAPS as able to handle the matter." That
 13 did not happen.
 14 MINISTER MTHETHWA: I did talk to the
 15 National Commissioner. As I say in my statement that I
 16 spoke to both the National Commissioner and the Provincial
 17 Commissioner. I spoke to the National Commissioner to
 18 ascertain what Provincial Commissioner has been briefing me
 19 about, whether or not that is correct. So I did talk to
 20 the National Commissioner.
 21 MR MPOFU: No, Minister, please. I'm
 22 saying to you according to your own records, within a space
 23 of five minutes of having received, or rather of having
 24 spoken to Mr Ramaphosa and Mr Zokwana, you immediately
 25 called the Provincial Commissioner. Is that correct?

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1 MINISTER MTHETHWA: Yes, I called the
 2 Provincial Commissioner.
 3 MR MPOFU: Yes, so that's the first thing
 4 you did as soon as you spoke to the two gentlemen was to
 5 call the Provincial Commissioner.
 6 MINISTER MTHETHWA: Yes.
 7 MR MPOFU: Ja, and now you want to say
 8 that you forgot such an important thing. You speak to
 9 these people, this is the whole trigger of your involvement
 10 in this saga. You get called by politicians and then your
 11 immediate reaction within five minutes is to call the
 12 Provincial Commissioner, and you forget? Is that your
 13 evidence?
 14 MINISTER MTHETHWA: I think I have
 15 answered that and I have said that I forgot and I say in my
 16 statement here that I discovered when I looked at my
 17 records and I corrected that.
 18 MR MPOFU: But you were asked,
 19 specifically asked by the evidence leaders to record
 20 conversations with a list of people, including the
 21 Provincial Commissioner, and you omitted the Provincial
 22 Commissioner.
 23 MS NKOSI-THOMAS SC: No, Chairperson,
 24 perhaps Mr Mpofo wants to show us that request that lists
 25 the Provincial Commissioner.

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1 MR MPOFU: Yes. No, I don't have to do
 2 that. I'll just go to the –
 3 MS NKOSI-THOMAS SC: Because,
 4 Chairperson, it simply does not exist. There was no
 5 request from the evidence leaders that says tell us about
 6 your communications with the Provincial Commissioner.
 7 MR MPOFU: Okay Chairperson, I hope that
 8 I will get an apology for that. If you go to the statement
 9 of the witness, CCCC1, the witness says himself at
 10 paragraph 2, "There was a request addressed to me through
 11 the evidence leaders under the leadership of Madlanga J, at
 12 the time the leader of evidence leading the Commission.
 13 The request in the main concerned –
 14 2.1, my conversations with the National
 15 Commissioner of the Police, the Provincial Commissioner of
 16 the North West, Mr Ramaphosa," and so on and so on. So
 17 that's where the request – I'm waiting for my apology.
 18 CHAIRPERSON: What do you say about that,
 19 Ms Nkosi-Thomas? In the interest of collegial –
 20 MS NKOSI-THOMAS SC: No, Chair, Chair,
 21 Chair, there is no need for me to apologise.
 22 MR MPOFU: Okay.
 23 MS NKOSI-THOMAS SC: And I will explain
 24 this statement if I have to –
 25 MR MPOFU: That's fine.

<p style="text-align: right;">Page 32313</p> <p>1 MS NKOSI-THOMAS SC: But I'd just like 2 the question to be put to the witness that there is – 3 CHAIRPERSON: Alright, well let's go on 4 with the cross-examination. 5 MS NKOSI-THOMAS SC: I beg your pardon? 6 CHAIRPERSON: Let's go on with the cross- 7 examination. 8 MR MPOFU: That's fine, I'll go on. 9 Thank you, Chairperson. Please answer the question. 10 CHAIRPERSON: It might be helpful if you 11 repeated the question. 12 MR MPOFU: Yes. 13 CHAIRPERSON: The Minister may remember 14 it, but I don't. So repeat the question – 15 MR MPOFU: Yes, certainly – 16 CHAIRPERSON: - out of consideration for 17 my – 18 MR MPOFU: Yes, thank you, Chairperson. 19 This is what I was asking you before I was interrupted, 20 Minister. You had, on your words you had received a 21 specific request asking you to give communications with 22 among others, specified by the person now referred to here 23 as Madlanga J, among others the Provincial Commissioner. 24 It was not a long list. You were simply asked those, the 25 people that you communicated with, it was the National</p>	<p style="text-align: right;">Page 32315</p> <p>1 you're entitled to. I don't agree with your opinion on 2 that. 2, I have said that for transparency purposes I 3 decided I will take all my records here to ensure that that 4 which you are alleging is dealt with accordingly, because 5 it doesn't exist. 6 MR MPOFU: Well, I'm going to argue 7 further that that is not the reason. The reason is that at 8 the stage at which you did this statement it was before the 9 evidence leaders had unearthed certain information which 10 indicated that you had actually spoken to the Provincial 11 Commissioner, and your second statement was made 12 thereafter. 13 MINISTER MTHETHWA: Well, as I said that 14 was an oversight and I went about correcting that 15 oversight. Nobody forced me to, but I am open to the 16 scrutiny of this Commission. That's your view. It's okay 17 with you. 18 MS NKOSI-THOMAS SC: Chairperson, perhaps 19 just to assist really, it's mainly a point of being of 20 assistance rather than objecting and so on; the questions 21 that prompted the first statement, Chairperson, they are 22 contained in the bundle that is before you and this is what 23 paragraph 2 seeks to summarise, and that you will find 24 under tab 3 of that bundle, Chairperson. There's a series 25 of email correspondence. If Chair were to turn the page</p>
<p style="text-align: right;">Page 32314</p> <p>1 Commissioner, Provincial Commissioner, Mr Ramaphosa and Mr 2 Zokwana, and you did the statement as a direct result of 3 that request. 4 MINISTER MTHETHWA: There is – 5 MR MPOFU: And somehow you forgot – 6 MINISTER MTHETHWA: There is nothing more 7 I can say, Chair, and I said this was an oversight which I 8 corrected and I can't answer anymore the same question. 9 CHAIRPERSON: It sounds as if you've 10 taken the point in cross-examination as far as you can. 11 MR MPOFU: Yes. 12 CHAIRPERSON: You have material on which 13 you can argue at the end and we must leave it there and 14 move on to the next one, I think. 15 MR MPOFU: Yes, well save to say, 16 Minister, that I'm going to argue – and it's only fair to 17 you – I'm going to argue at the end that it's not even 18 possible that you, when you have been asked to do something 19 specifically, you can simply forgot about it and that you 20 were deliberately misleading the Commission. And also 21 sorry, just to finish that, and the reason for that was 22 because you knew that that communication was improper. It 23 was the political pressure with you running away from. 24 MINISTER MTHETHWA: Well, there was no 25 political pressure and as I said, that's your opinion</p>	<p style="text-align: right;">Page 32316</p> <p>1 Chair will find an email from SERI and this is the email 2 that paragraph 2 of the statement makes reference to. That 3 email from SERI reads as follows. It's addressed to 4 Madlanga J, at the time the evidence leader, the leader of 5 the evidence leading team as it were, and it makes specific 6 enquiry and it was to this specific questions that the 7 Minister was responding and hence the Minister took the 8 approach of clarifying the roles, just so that the question 9 is put in its proper context and the summary offered at 10 paragraph 2.1 that my learned friend refers to is also 11 understood within a proper context, Chair. 12 So what Chairperson will see there is that SERI, 13 the email states as follows, "We need the Ministers' 14 testimony to deal with their engagement about the Lonmin 15 strike from the 9th to the 16th and the interventions that 16 they undertook upon request to intervene." Now they 17 mention, then they specify the specificity that is 18 proffered there, but nowhere did Madlanga J ask the 19 question when did you speak to the Provincial Commissioner, 20 just so that there's context to this question what my 21 learned friend is putting, Chair. Thanks. 22 MR MPOFU: Well, Chairperson, I don't 23 know if that was – 24 MS NKOSI-THOMAS SC: And also tab – 25 MR MPOFU: I don't know who that is</p>

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1 supposed to assist; definitely not me.

2 MS NKOSI-THOMAS SC: Well, maybe the

3 Commission, with respect. Chair, and tab 4 then –

4 CHAIRPERSON: Ms Nkosi-Thomas, I'm

5 sorry –

6 MR MPOFU: Chairperson, with respect,

7 can't this be left for argument?

8 CHAIRPERSON: It's not quite as simple as

9 you say, Ms Nkosi-Thomas. The SERI request is indeed under

10 tab 3 and it says, amongst other things, the "Minister is

11 asked to say," or ministers actually, but who, it should be

12 whom, "whom did they contact to implement the intervention?

13 Who contacted them and when?

14 [12:30] What was the context of the communication, what

15 intervention did they order, what action did they take,

16 whom do they contact to implement the intervention. Then,

17 but it appears that thereafter Mr Madlanga had a meeting

18 with the Minister's representative. That appears from the

19 e-mail which he sent to Lezondo saying, "I met with the

20 Minister's representatives." What is then stated in the

21 supplementary statement by the Minister, which I take it

22 reports what was said at the meeting between Mr Madlanga,

23 as he then was, and the Minister's representatives was the

24 following. The first, in paragraph 2 of the supplementary

25 statement the following appears, "The first statement was

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1 in response to specific questions raised by SERI but

2 addressed to me through the evidence leaders under the

3 leadership of Madlanga, J. The request in the main

4 concerned, 2.1 my conversations with the National

5 Commissioner of Police, the Provincial Commissioner of

6 Police, North-West, Mr Ramaphosa and Mr Zokwana." So what

7 is admitted by the witness in his supplementary statement

8 is that he received a request by Mr Madlanga, ultimately

9 from SERI, and this request concerned his conversations

10 with not only the National Commissioner but also the

11 Provincial Commissioner. The point Mr Mpofo is entitled to

12 make is based upon that statement, admission by the

13 Minister himself. The fact that the e-mail material

14 doesn't go that far, doesn't alter it – so Mr Mpofo may

15 proceed.

16 MR MPOFU: Thank you, Chairperson. I'm

17 sorry, my time is really getting wasted but, and what is

18 more, Minister, and I'm really doing this in fairness to

19 you so that when I argue, because it's going to be a

20 serious allegation to make that you were deliberately

21 misleading the Commission so I have to give you the

22 opportunity to answer, what is more is that in your

23 statement, the part that I raised, to justify exactly what,

24 the "misleading" part, you say that you frequently receive

25 this complaint, "In such situations I take these up with

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1 the National Commissioner in order to ensure the matters

2 are attended to. My approach is based on the

3 constitutional segregation of the roles of Minister and

4 that of National Commissioner." So which means you know

5 exactly that this is what you are supposed to do. I'm

6 going to argue that if, let's assume that you took the

7 default position or the exception or the emergency route

8 and so on, that is – you cannot forget the default

9 position. You would have forgotten if you did what you

10 normally do but in this case you deviated from what you say

11 is how you usually deal with these matters and within five

12 minutes called the Provincial Commissioner and it's not

13 possible that you can forget such a deviation. What do you

14 say –

15 CHAIRPERSON: What's your response to

16 that?

17 MINISTER MTHETHWA: Well, firstly, it's

18 not necessarily a deviation and as I said that maybe as you

19 said yourself, that there are normal circumstances and

20 there would be other instances where things which have been

21 done in a particular way are not done but may I, Chair, go

22 back to what you have just read, the statement, my

23 supplementary statement, that when I was told by my legal

24 team that there are things which evidence leaders want to

25 put to me so that they determine whether I would have to be

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1 called here or not and when I made the statement, my first

2 statement, it was based on very specific questions and

3 those very specific questions are the ones we were reading

4 before but subsequent to that I was told that they have

5 seen my statement, which is my first statement but then

6 they feel that I need or they need more from me. That's

7 the Provincial Commissioner, the National Commissioner,

8 where it was specified but when I made the statement here

9 it was based on what the legal team has shown me to be

10 coming from this house. I wanted to clarify that.

11 MR MPOFU: Ja, well, but you can't have

12 it both ways. Well, if that is true then it was not an

13 oversight, it was based on those questions.

14 MINISTER MTHETHWA: Now the questions had

15 nothing to do with specific people you are referring to.

16 MR MPOFU: Yes.

17 MINISTER MTHETHWA: The Provincial

18 Commissioner or the National Commissioner or whoever. It

19 was just questions and based on those questions then the

20 first statement was made.

21 MR MPOFU: Yes, so you did write – so

22 there was no oversight. So why did you say in your second

23 statement you had an oversight if indeed this issue was not

24 asked? You can't have it both ways, Minister.

25 MINISTER MTHETHWA: No, as I say, that we

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1 were responding to a question or the questionnaire which
 2 came here and as far as I could recall I was responding to
 3 all what I needed to respond on.
 4 MR MPOFU: Yes.
 5 MINISTER MTHETHWA: And as I said earlier
 6 on, that these parts which I'm referring to of the
 7 Provincial Commissioner is the part which was an oversight
 8 on my statement and I'm stating that in the supplementary
 9 statement.
 10 MR MPOFU: Yes, but –
 11 MINISTER MTHETHWA: I emphasise –
 12 MR MPOFU: Sorry, sorry.
 13 MINISTER MTHETHWA: Let me emphasise the
 14 point, Chair. Besides, there is no reason for me to have
 15 led or misled this house because as I said, if I really
 16 wanted to mislead I was not going to go out to ensure that
 17 we dispel this notion, the so-called toxic collusion, we
 18 dispel it through records. I was not going to be doing
 19 that but all what I'm saying is that it triggered my
 20 memory, I remembered and I said it in my supplementary
 21 statement.
 22 MR MPOFU: Okay. Would it strike you as
 23 a coincidence that the Provincial Commissioner herself,
 24 quote/unquote, "forgot" that in her first statement that
 25 she had had this telephone call with you?

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1 MINISTER MTHETHWA: I would not speak for
 2 the Provincial Commissioner.
 3 MR MPOFU: Well –
 4 MINISTER MTHETHWA: I'm stating what
 5 happened, which was directed to me, what I did or did not
 6 do. I am stating that.
 7 MR MPOFU: You had two phone calls with
 8 the National Commissioner, correct?
 9 MINISTER MTHETHWA: Yes.
 10 MR MPOFU: You had three phone calls with
 11 the Provincial Commissioner, correct?
 12 MINISTER MTHETHWA: Yes.
 13 MR MPOFU: So you forget, the person that
 14 you spoke to the most is the one that you forgot and you
 15 remember the one that you spoke to the least. Is that what
 16 you want the Commission to believe?
 17 MINISTER MTHETHWA: You know you have
 18 read in my statement here that under normal circumstances
 19 if you ask any question pertaining to the police I will
 20 tell you that I've spoken to the National Commissioner,
 21 without thinking. I would immediately, that's the first
 22 thing which comes. Now in this instance I'm saying it's
 23 not something which happened, which may then have
 24 contributed in the oversight I've pointed out.
 25 MR MPOFU: I don't understand that, what

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1 are you trying to say?
 2 MINISTER MTHETHWA: I've said what I've
 3 said.
 4 MR MPOFU: Well, say it again.
 5 MINISTER MTHETHWA: I'm saying that –
 6 MR MPOFU: In an intelligible fashion.
 7 CHAIRPERSON: He says it's his normal
 8 reaction if he gets a query about a police operational
 9 matter is to get hold of the National Commissioner. That's
 10 what he normally does so that's what you would call the
 11 default position, get a query, go to the National
 12 Commissioner. On this occasion, as I understand him, he –
 13 and I can understand why it was a fairly serious matter, it
 14 was important to get the information soon, if he went
 15 through the national ministry he might wait, judging by
 16 some of the other –
 17 MR MPOFU: Chairperson, that's your
 18 reading – that's your explanation, not his.
 19 CHAIRPERSON: Well, it may be. Sometimes
 20 he might have waited a day or two. They got hold of the
 21 national, got hold of the Provincial Commissioner. He
 22 then, he said – it's for us to decide at the end of the day
 23 whether he's truthful in saying he forgot but he says he
 24 forgot and the reason he gives and you say, accuse him of
 25 not answering the question, the reason he gives is he says

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1 he normally gets to the National Commissioner, gets to her
 2 and he thought that happened on this occasion. He later
 3 discovered it wasn't so and he told us.
 4 MR MPOFU: Ja.
 5 CHAIRPERSON: Whether that's a
 6 satisfactory explanation is a matter you'll argue but I
 7 don't know if there's any point in hammering him any
 8 further. You're not likely to get any more information
 9 that will help us.
 10 MR MPOFU: Ja.
 11 CHAIRPERSON: Whether you've got enough
 12 is a matter we'll have to decide later.
 13 MR MPOFU: Yes, Chairperson, thank you
 14 very much but with respect, that's not the point. The
 15 point I'm probing with the witness has got absolutely
 16 nothing to do with the fact that on this particular
 17 occasion he phoned the Provincial Commissioner. In fact we
 18 know that that's what happened, so I can't be querying
 19 that. The point I'm simply making is that he could not
 20 have forgotten having deviated from what we call the normal
 21 practice, I'm making a different point.
 22 CHAIRPERSON: What I'm saying to you is
 23 you've made that point. You've put it to him, he's given
 24 an answer. Whether it's a satisfactory answer is a matter
 25 you'll argue and we will have to decide.

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1 MR MPOFU: Yes, Chairperson, I'm simply
 2 giving you more reasons why I'm going to argue it at the
 3 end. If the witness, I must not give him an opportunity to
 4 react, that's fine but I think it's fair with such a
 5 serious accusation to give the witness an opportunity to
 6 react.
 7 CHAIRPERSON: Put the reasons as crisply
 8 as you can and we'll get his response.
 9 MR MPOFU: Thank you. Well, the reason,
 10 the real reason Minister, I'm going to argue, is because
 11 you knew that the content of those communications was
 12 unlawful and improper and constituted political pressure.
 13 That's why you concealed them deliberately.
 14 MINISTER MTHETHWA: You are wrong.
 15 MR MPOFU: Now you can go to triple –
 16 alright, do you accept that your telephone calls to the
 17 Provincial Commissioner or National Commissioner were at
 18 least interpreted by them, whatever your own motives were,
 19 as constituting political pressure?
 20 CHAIRPERSON: Mr Mpofu, why do you say
 21 interpreted by them? I can understand part of the
 22 question, certainly the Provincial Commissioner said
 23 something about them to Mr Mokwena but that's one person.
 24 I'm not sure that she said that she was pressurised but
 25 what she'd said was that she'd received a communication

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1 from the National Commissioner, but I think the plural in
 2 your question is perhaps incorrect.
 3 MR MPOFU: Well –
 4 CHAIRPERSON: You can reformulate the
 5 question to deal with my point and it'll be more accurate.
 6 MR MPOFU: That's fine, it's justified
 7 but I'd rather, if there was a shortcut I'll take your
 8 route, Chairperson. Do you accept that it was interpreted
 9 at least by the Provincial Commissioner as constituting
 10 political pressure?
 11 MINISTER MTHETHWA: That was not her
 12 evidence, Chair.
 13 CHAIRPERSON: [Microphone off, inaudible]
 14 – around. According to the transcript, the Provincial
 15 Commissioner said that the National Commissioner had said
 16 to her that she'd been pressurised. That's the way it is,
 17 as I understand it. You put it upside down.
 18 MR MPOFU: Chairperson, with the greatest
 19 respect really, if she was repeating that to someone else
 20 to say the National Commissioner was pressurised, does that
 21 mean she doesn't believe it? Really, let's not be
 22 pedantic. I'm saying that do you –
 23 CHAIRPERSON: I believe it's a bit of
 24 hearsay. It was hearsay in the mouth of the Provincial
 25 Commissioner but if the National Commissioner said to the

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1 Provincial Commissioner what the Provincial Commissioner
 2 said she did, then the National Commissioner appears to
 3 have interpreted the phone call as amounting to pressure.
 4 That's the accurate position.
 5 MR MPOFU: Ja. Anyway look, I think
 6 this, Chairperson –
 7 MS BARNES: Chair, I'm sorry to
 8 interrupt. On page 9 of the transcript General Mbombo
 9 referred to her conversation with Minister Mthethwa
 10 directly.
 11 MS NKOSI-THOMAS SC: Yes. Chair, Chair,
 12 I've got the evidence just to pick up on what my learned
 13 friend has said and the evidence of General Mbombo is that
 14 the word "pressure" was her own creation.
 15 CHAIRPERSON: Yes, I know what –
 16 MS NKOSI-THOMAS SC: It was not intended
 17 to convey that there was indeed pressure that was being
 18 brought to bear.
 19 CHAIRPERSON: We heard that evidence.
 20 MR MPOFU: Ja.
 21 CHAIRPERSON: We heard that. Pressure is
 22 a sort of metaphorical expression which is meaningless in
 23 police vocabulary. I know she said that and you can argue
 24 that at the end.
 25 MR MPOFU: Ja.

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1 CHAIRPERSON: But what we must look at is
 2 the passage on page 9 –
 3 MR MPOFU: At the foot of page 9, yes.
 4 Maybe it's better to show it up so that –
 5 CHAIRPERSON: - pointed out to me that I
 6 also got it wrong. What is said at the foot of page 9, we
 7 all make mistakes, what is at the foot of page 9 is this,
 8 that General Mbombo says, "When I was speaking to the
 9 Minister he mentioned a name to me that's also calling him
 10 that is pressurising him."
 11 MR MPOFU: Yes.
 12 CHAIRPERSON: So her interpretation of
 13 what the Minister had said to her –
 14 MR MPOFU: That's correct.
 15 CHAIRPERSON: - was that he, the
 16 Minister, had been pressurised by Mr Ramaphosa.
 17 MR MPOFU: To her, the Provincial
 18 Commissioner. Thank you, Chairperson. That is exactly the
 19 point –
 20 CHAIRPERSON: No – no, let's get this
 21 right once and for all.
 22 MR MPOFU: Well, I can only, "I" means
 23 the Provincial Commissioner. Let's get that quickly out of
 24 the way.
 25 CHAIRPERSON: Pressurised him.

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1 MR MPOFU: Ja, but "when I was speaking
 2 to the Minister."
 3 CHAIRPERSON: Mr Mpofu, let's –
 4 MR MPOFU: It could only be referring to
 5 herself.
 6 CHAIRPERSON: It doesn't, let's bring the
 7 pressure down. General Mbombo is talking to Mr Mokwena.
 8 MR MPOFU: Yes.
 9 CHAIRPERSON: He says I, Mbombo –
 10 MR MPOFU: Yes.
 11 CHAIRPERSON: - had a conversation with
 12 the Minister.
 13 MR MPOFU: Correct.
 14 CHAIRPERSON: And the Minister said
 15 someone had called him.
 16 MR MPOFU: Yes.
 17 CHAIRPERSON: Mr Ramaphosa. And he said
 18 that is pressurising him.
 19 MR MPOFU: Yes.
 20 CHAIRPERSON: In other words, the
 21 Minister says, according to her –
 22 MR MPOFU: Ja.
 23 CHAIRPERSON: - that I was pressurised by
 24 Mr Ramaphosa.
 25 MR MPOFU: Yes, that's correct. That's

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1 exactly what I mean.
 2 CHAIRPERSON: That's the correct
 3 position.
 4 MR MPOFU: That's correct.
 5 CHAIRPERSON: So let's proceed on that
 6 basis.
 7 MR MPOFU: Yes, that's what I'm saying.
 8 So the Minister – let's translate it this way, try and
 9 replay the fatal phone call. You said General Mbombo, I
 10 have been called by a political high individual, whatever,
 11 and pressurising me, quote/unquote. Make it simple so that
 12 everyone can understand.
 13 CHAIRPERSON: The question therefore to
 14 the witness is did you say to General Mbombo that Mr
 15 Ramaphosa had telephoned you, that's the first part. I
 16 take it the answer to that is yes because you reported to
 17 her why you were phoning her. And did you go on to say
 18 that Mr Ramaphosa was pressurising you or had pressurised
 19 you? What's your answer to that?
 20 MINISTER MTHETHWA: Thanks, Chair. Well
 21 –
 22 MS NKOSI-THOMAS SC: Chair, perhaps
 23 that's where my objection comes in. Just to put context so
 24 that this is clear. The witness –
 25 CHAIRPERSON: I'll listen to your

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1 objection. Are you objecting to my question?
 2 MS NKOSI-THOMAS SC: No, I'm not wanting
 3 to object to your question, I'm here to assist where I can.
 4 CHAIRPERSON: No, but –
 5 MS NKOSI-THOMAS SC: And may I –
 6 CHAIRPERSON: No, no, the witness – wag
 7 so bietjie. The witness – please, the witness has been
 8 asked, I know what General Mbombo said and you say, you can
 9 argue that at the end. The witness has been asked a
 10 question and I think he should be allowed to give the
 11 answer without any assistance one way or t'other from
 12 anybody else. Let us hear your answer please, Minister?
 13 MINISTER MTHETHWA: Thanks, Chair. No, I
 14 told the Provincial Commissioner that I've been called or
 15 I've been talking to Mr Ramaphosa and Mr Zokwana. They are
 16 saying that there's damage of property there, as far as
 17 they can see there's no adequate police, I mean police
 18 deployment, is that true? I put that to her. That's what
 19 I said. Now at no stage did I ever talk about any
 20 pressure. In fact yesterday I said here in this house that
 21 I don't remember anybody who put pressure on me on what I
 22 know and what I do.
 23 MR MPOFU: Okay. Look Minister, it's
 24 supposed to be simple. I can see now it's complicated by
 25 all sorts of interventions. This –

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1 CHAIRPERSON: Okay –
 2 MR MPOFU: But you have said –
 3 CHAIRPERSON: Sorry, Mr Mpofu.
 4 MR MPOFU: I'm sorry, Chair.
 5 CHAIRPERSON: Now when we've had the
 6 witness's answer can you perhaps give me the assistance you
 7 were going to give me?
 8 MS NKOSI-THOMAS SC: No, thanks Chair,
 9 but all that I wanted to say at the time was that General
 10 Mbombo had already said to this Commission that the word
 11 "pressure" was her own creation.
 12 CHAIRPERSON: Yes, no, no.
 13 MS NKOSI-THOMAS SC: That's alright,
 14 perhaps that would not have assisted, Chair. I'm happy to
 15 let that –
 16 CHAIRPERSON: Well, thank you. We'll
 17 bear that in mind. Carry on, Mr Mpofu.
 18 MR MPOFU: Thank you, Chairperson. Well,
 19 the original question really was very simple before I was
 20 incorrectly –
 21 CHAIRPERSON: No more concurring
 22 judgments, just carry on with the question.
 23 MR MPOFU: No, I have to ask the
 24 question, Chairperson, shouldn't I? Yes. The question
 25 which I was asking where the Chairperson incorrectly

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1 corrected me was that the statement that you made, whatever
 2 you said in the telephone conversation, do you accept that
 3 it was interpreted by General Mbombo as you having been
 4 subjected to pressure from a politically high individual?
 5 That's all, it's quite simple.
 6 MR SEMENYA SC: Again repeated, the
 7 evidence of General Mbombo on the point is that –
 8 CHAIRPERSON: We're reminded, we've been
 9 reminded of that. The question is whether we'll accept
 10 that at the end of the day.
 11 MR MPOFU: Yes.
 12 MR SEMENYA SC: No, the proposition is
 13 that she interpreted it as political pressure. That's not
 14 her evidence.
 15 MR MPOFU: No –
 16 MR SEMENYA SC: Her evidence is, I did
 17 not interpret it that way, it is a word that I used.
 18 [12:50] CHAIRPERSON: Yes, I know that evidence
 19 and we'll have – it will be argued to us at the end of the
 20 day we must accept her evidence on the point and other
 21 people would say we mustn't, and we will then decide that
 22 point now. But the fact of the matter is she used the word
 23 and she claims it's a meaningless word in police parlance
 24 and that may be so, that may not be so.
 25 MR MPOFU: Yes.

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1 CHAIRPERSON: Carry on, Mr Mpofo.
 2 MR MPOFU: Thank you, Chairperson.
 3 CHAIRPERSON: But I think to be fair I
 4 suppose you should say that –
 5 MR MPOFU: Yes, no fair enough.
 6 CHAIRPERSON: - that's the word she used
 7 and then do thing –
 8 MR MPOFU: Yes, no that's fair. That's
 9 fair. That's fair, Chairperson. Let's put it like this
 10 maybe to make it easier and fairer. If the Commission, if
 11 we argue successfully, as we are going to, that –
 12 CHAIRPERSON: You'd better argue –
 13 MR MPOFU: - that General Mbombo's
 14 evidence on this point should be rejected, and if we
 15 succeed, then will you at the very least acknowledge that
 16 she – and I'm not even ascribing the word to you for the
 17 purposes of this question – that she interpreted whatever
 18 you were saying to her on the telephone as amounting to
 19 political pressure by a highly placed individual?
 20 CHAIRPERSON: Mr Mpofo, I'm not going to
 21 allow that question because it's a hypothetical question on
 22 which the witness is asked to express an opinion. We are
 23 in as good a position as anybody to decide, form an opinion
 24 on that point and the witness's views on the matter are,
 25 with respect to him, not going to assist us.

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1 MR MPOFU: Okay, well Chairperson, this
 2 is a very important aspect which goes to this issue of
 3 political pressure, but maybe I'll rephrase the question.
 4 Let me put it this way maybe to make it easier for you. Do
 5 you accept that from the point of view of Mr Ramaphosa what
 6 he was doing was to put pressure?
 7 MINISTER MTHETHWA: Put pressure on me?
 8 MR MPOFU: Ja, among others.
 9 MINISTER MTHETHWA: No. No.
 10 MR MPOFU: You don't accept that?
 11 MINISTER MTHETHWA: No.
 12 MR MPOFU: Well, Mr Ramaphosa says in his
 13 email, which is on page 289(e) – BBB4, sorry, BBB4, page
 14 289(e), that email –
 15 CHAIRPERSON: [Microphone off, inaudible]
 16 MR MPOFU: The bottom one.
 17 MS NKOSI-THOMAS SC: Tab 9.
 18 MR MPOFU: Oh, sorry.
 19 MS NKOSI-THOMAS SC: In bundle 3.
 20 CHAIRPERSON: If it's tab 9 –
 21 MR MPOFU: I don't know the tab –
 22 CHAIRPERSON: - in the bundle that we've
 23 been given by the police service, and it's email number 6,
 24 you say 289(e), is it, Mr Mpofo? Ja, email number 6,
 25 289(e), email sent 15th of August, that's the Wednesday at

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1 2:58 from Mr Ramaphosa to, I take it these are colleagues
 2 of his on the board of Lonmin.
 3 MR MPOFU: Yes, well – yes, it's to
 4 Jameson and all sorts of other people.
 5 CHAIRPERSON: Ja, they're all directors
 6 of Lonmin, I think.
 7 MR MPOFU: Yes, all Lonmin – okay, thank
 8 you. It's the bottom one. Have you got that, Minister?
 9 MINISTER MTHETHWA: Yes.
 10 MR MPOFU: Ja, that email says, for the
 11 sake of completion, "I have just had a discussion with
 12 Susan Shabangu in Cape Town.
 13 1, She agrees that what we are going through is
 14 not a labour dispute but a criminal act. She will correct
 15 her characterisation of what we are experiencing;
 16 2, She's going into cabinet and will brief the
 17 President as well and get the Minister of Police, Nathi
 18 Mthethwa, to act in a more pointed way;
 19 3, She will be in Johannesburg by 5PM and would
 20 be able to spoke to Roger.
 21 Let us keep the pressure on them to act
 22 correctly."
 23 The pressure; that's what Mr Ramaphosa says.
 24 "Let us keep the pressure on them." "Them" must mean those
 25 people mentioned there, Minister Nathi Mthethwa and all

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1 sorts of others. You would at least accept that, I'm sure.
 2 MINISTER MTHETHWA: Accept what?
 3 MR MPOFU: That when he says "Let us keep
 4 the pressure on them to act correctly" –
 5 MINISTER MTHETHWA: Well I see it's
 6 written here –
 7 MR MPOFU: Yes.
 8 MINISTER MTHETHWA: - that he said that.
 9 MR MPOFU: Yes, so do you now, now that
 10 I've read it out to you, do you accept that at least from
 11 his point of view what he was doing was to put pressure?
 12 MINISTER MTHETHWA: I won't talk on
 13 behalf of Mr Ramaphosa, but this email, Minister Shabangu
 14 is saying that she's going to talk to me and get the
 15 President so that I act in a pointed way. That's what Mr
 16 Shabangu is saying and this other thing, "Let us keep the
 17 pressure on them," but I think I have answered these things
 18 that all these things never happened to me. They never
 19 came to me.
 20 MR MPOFU: Ja, well come to that –
 21 CHAIRPERSON: Yes, I understand that, but
 22 I think Mr Mpofu's point is slightly different. He's
 23 relying on the words "keep" and "pressure," "keep." So
 24 what he's saying is Mr Ramaphosa – I'm more interested in
 25 Mr Ramaphosa's answer to the question when he comes, but

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1 what Mr Mpofu says is Mr Ramaphosa said "Let's keep the
 2 pressure on them," which means there's already pressure and
 3 we're going to keep it there. Whether it really was
 4 pressure, whether Mr Ramaphosa thought of it as pressure,
 5 these are matters Mr Ramaphosa will have to tell us, but
 6 can you yourself take the matter any further?
 7 MINISTER MTHETHWA: Well, I did say,
 8 Chair, that I see that he's saying he has to keep pressure.
 9 So I see that.
 10 MR MPOFU: No, that is –
 11 CHAIRPERSON: Mr Mpofu, I don't know that
 12 getting this witness to say what he thinks Mr Ramaphosa
 13 meant is going to help us very much.
 14 MR MPOFU: No, I'm afraid –
 15 CHAIRPERSON: You may well have a lot of
 16 questions to ask Mr Ramaphosa on the matter. I'm sure you
 17 will –
 18 MR MPOFU: No, no, no, I'm sorry,
 19 Chairperson –
 20 CHAIRPERSON: Yes, you will –
 21 MR MPOFU: - with the greatest respect,
 22 you can bet on it I'll ask Mr Ramaphosa about this, but –
 23 CHAIRPERSON: It's immoral to bet on a
 24 certainty.
 25 MR MPOFU: Yes, thank you, that's

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1 correct, Chairperson. But remember that the, let's call it
 2 the chain, at least on our version the chain of political
 3 pressure starts with Mr Ramaphosa through this witness to
 4 Mbombo, right to the killing of people. That's the chain
 5 of pressure. So I can't, with the greatest respect, with
 6 this particular witness, who is a crucial part of that
 7 chain, say no I'll ask Mr Ramaphosa. I want his role in
 8 the chain, in the deadly chain of pressure that he had
 9 played –
 10 CHAIRPERSON: Hasn't he told us that?
 11 He's told us what he did or didn't do. Now you're dealing
 12 with another question. You're using the language of Mr
 13 Ramaphosa, "keep the pressure," and you're saying to him
 14 doesn't that show that in Mr Ramaphosa's mind he was busy
 15 with pressure, and the answer to that I presume is yes, he
 16 says yes, that's what he said. What exactly he meant, how
 17 he meant it, what justifies the belief –
 18 MR MPOFU: Will be Mr Ramaphosa –
 19 CHAIRPERSON: - is a matter for Mr
 20 Ramaphosa.
 21 MR MPOFU: Sure –
 22 CHAIRPERSON: I don't know that this
 23 witness, with respect, can help us anymore on this issue.
 24 MR MPOFU: No, okay. Okay, Chairperson,
 25 let me – this is my third attempt. I've tried to approach

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1 it from Mbombo, from Ramaphosa. Now I'll try again. What
 2 we're going to argue, Minister, is that your denial of
 3 having exerted any pressure whatsoever, as you put it in
 4 your statement, cannot be sustained and cannot be honestly
 5 articulated because among other things – and I'm going to
 6 take the most benevolent interpretation of this, favourable
 7 to you – you were the conduit through which the political
 8 pressure from Mr Ramaphosa was transmitted to General
 9 Mbombo and transmitted to the killers. So now the question
 10 as to whether you were wittingly or unwittingly –
 11 MR SEMENYA SC: Chair –
 12 MR MPOFU: - as that conduit is a
 13 matter –
 14 MR SEMENYA SC: Is it useful that we must
 15 object to things like killers and stuff like that?
 16 MR MPOFU: Oh please.
 17 MR SEMENYA SC: Can't my learned
 18 colleague put questions that require that kind of –
 19 CHAIRPERSON: We had that debate once
 20 before, you know. The word "killer" can technically mean
 21 someone who killed someone.
 22 MR MPOFU: That's all.
 23 CHAIRPERSON: You know, but the
 24 dictionary also says – I looked it up after our last
 25 discussion – the word "killer" can mean a murderer. It's

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1 used also in that sense according to the dictionary, so –
 2 MR MPOFU: Of course.
 3 CHAIRPERSON: No, in any event, so just
 4 cool it a bit. You don't need this point for the purpose
 5 of the present question. Rephrase the question and we'll
 6 get there much sooner.
 7 MR MPOFU: Well Chairperson –
 8 CHAIRPERSON: It's emotive language
 9 which –
 10 MR MPOFU: No –
 11 CHAIRPERSON: The word "killer" can mean
 12 technically the person who killed even [inaudible]. It can
 13 also mean, according to my dictionary it can mean a
 14 murderer. It's a word that raises the temperature. We
 15 will get the truth in this matter far more easily and
 16 quickly if we keep the temperature down. Rephrase the
 17 question and put it to him.
 18 MR MPOFU: No, okay. Well, I'll take on
 19 step back. Minister, do you accept that 34 people on the
 20 16th were killed by the police?
 21 MINISTER MTHETHWA: Well, this is what we
 22 have seen happening here, Mr Mpofo, even in the media.
 23 People have been shot by the police.
 24 MR MPOFU: That's a yes?
 25 MINISTER MTHETHWA: Yes.

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1 MR MPOFU: Thank you. Now if you accept
 2 that the 34 were killed by the police, the point I was
 3 making earlier to you is this; what I'm going to argue is
 4 that irrespective of motives for now, because I don't want
 5 to ascribe particular motives for you. I will do that
 6 later. What we are going to argue is you were the
 7 intermediary or conduit through which the pressure that Mr
 8 Ramaphosa refers to in the extract that I've just read to
 9 you was conveyed to the operational management, senior
 10 operational management of the police, and ultimately to
 11 those police that you say killed the people on the 16th. Do
 12 you understand that premise? You don't have to agree with
 13 me. Do you understand that's what I'm going to argue?
 14 MINISTER MTHETHWA: Because you know I
 15 don't agree with you.
 16 MR MPOFU: Yes.
 17 MINISTER MTHETHWA: I understand and
 18 disagree –
 19 MR MPOFU: Yes, you understand but you
 20 disagree –
 21 CHAIRPERSON: Ms Nkosi-Thomas, you turned
 22 your light on. What do you want say, Ms Nkosi-Thomas?
 23 MR MPOFU: Fair enough.
 24 MS NKOSI-THOMAS SC: Thanks, Chair. Just
 25 so that that proposition is not fairly put to the witness.

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1 The word "pressure" there, it says "Let's keep the pressure
 2 on them to act correctly." So only if my learned friend
 3 could rephrase the proposition and say did they put
 4 pressure on you to act correctly, if he is indeed relying
 5 on –
 6 CHAIRPERSON: Or he could just use the
 7 word "pressure," but the sting of the "correctly" is they
 8 must do the right thing, not that they must act improperly.
 9 MR MPOFU: Well no, Chairperson, I'm not
 10 prepared to entertain that.
 11 CHAIRPERSON: Well, there's obviously –
 12 MR MPOFU: I mean that's obviously a
 13 subjective thing, so that part you can say let's put to Mr
 14 Ramaphosa because it's a subjective thing as to what he
 15 thinks is correct. He might think what is correct is to
 16 mow down 34 people and kill them. That's a subjective
 17 thing. We can't deal with it as –
 18 CHAIRPERSON: Well, we won't go there
 19 yet, but I don't know there's ever an intention to mow down
 20 34 people.
 21 MR MPOFU: Well, I think there was –
 22 CHAIRPERSON: But that's a matter, I –
 23 MR MPOFU: My case is that there was.
 24 CHAIRPERSON: I may be proved wrong on
 25 that, but the, and in any event 34 people were killed,

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1 there's no question about that.
 2 MR MPOFU: That's correct.
 3 CHAIRPERSON: And there may well be
 4 liability of some kind for that. That's one of the things
 5 we're busy with, but anyway, rephrase your question.
 6 MR MPOFU: Okay.
 7 CHAIRPERSON: Let's get a short question,
 8 short answer, then we'll take the lunch break, come back at
 9 just after half past 1.
 10 MR MPOFU: Yes. I'm saying the real
 11 issue is this; what prompts this cross-examination,
 12 Minister, is in answer to your rhetorical question which is
 13 why would I want to conceal my discussions with the
 14 Provincial Commissioner, I'm saying to you the reason for
 15 that is because those discussions were unlawful, were
 16 against the constitutional framework, were against the law
 17 and were activities through which pressure, political
 18 pressure was being conveyed by you to the Provincial
 19 Commissioner. That is the reason why you would want to
 20 conceal it. That's what we're going to argue. That's the
 21 real point. Do you understand that, even if you don't
 22 agree with it?
 23 MINISTER MTHETHWA: I understand what you
 24 say.
 25 CHAIRPERSON: The question is, do you

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1 agree with it?

2 MINISTER MTHETHWA: I understand, Chair,

3 what Mr Mpofo is saying. I disagree with what he's

4 asserting. For me it's a figment of his imagination.

5 CHAIRPERSON: Thank you. On that –

6 MR MPOFU: Well, Chairperson –

7 CHAIRPERSON: On that imaginative note we

8 will take the lunch adjournment –

9 MR MPOFU: No, Chairperson, are you going

10 to, having been telling us what – are you going to allow a

11 witness to insult me and then just take lunch?

12 MINISTER MTHETHWA: No.

13 MR MPOFU: Really, Chairperson –

14 CHAIRPERSON: I don't know –

15 MR MPOFU: After you've been telling us

16 we mustn't say people were killed when they were killed –

17 CHAIRPERSON: I don't think it was an

18 insult. It's his –

19 MR MPOFU: And murdered.

20 CHAIRPERSON: It's his description, with

21 which you obviously don't agree, of the –

22 MR MPOFU: But is it the language –

23 CHAIRPERSON: - of the submission which

24 you've made –

25 MR MPOFU: Should we, the temperature,

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1 you want it to be at that level, Chairperson; fine, then

2 we'll do it after lunch. Thank you.

3 CHAIRPERSON: No, we'll keep the

4 temperature down after lunch as well.

5 [COMMISSION ADJOURNS COMMISSION RESUMES]

6 [13:34] CHAIRPERSON: The Commission resumes.

7 Minister, you're still bound by your affirmation.

8 EMMANUEL NKOSINATHI MTHETHWA: [affirms

9 further]

10 CHAIRPERSON: Mr Mpofo.

11 CROSS-EXAMINATION BY MR MPOFU (CONTD.):

12 Thank you. Thank you, Chairperson. Minister, just

13 regarding your last answer, I just wanted to get clarity.

14 I was talking to you about the use of the word "pressure"

15 by both Mr Ramaphosa and General Mbombo and explaining what

16 I'm going to be arguing in relation to that. I don't know

17 which part of that were you saying is a figment of my

18 imagination, the use of the pressure by Ramaphosa or by

19 Mbombo?

20 MINISTER MTHETHWA: Both are incorrect.

21 MR MPOFU: They never used that word?

22 CHAIRPERSON: You see, he's given the

23 answer both, I think –

24 MR MPOFU: Yes. No, I'm saying does he –

25 well, that can mean a million things, Chairperson. I'm

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1 probing further. Does that mean both are, never used the

2 word "pressure" or one of them or none of them?

3 MINISTER MTHETHWA: Well Chair, on the

4 screen there I did say that I see written "pressure." I

5 confirmed that, that I saw that.

6 MR MPOFU: So which part was imaginary?

7 MINISTER MTHETHWA: That there was

8 pressure, because you said you are going to be arguing that

9 there was pressure, political, undue political pressure.

10 MR MPOFU: I said that?

11 MINISTER MTHETHWA: You said there was a

12 chain of that starting from Mr Ramaphosa and then you

13 counted all of us.

14 MR MPOFU: Alright. Would it be fair to

15 say that if an officer is called by the Minister about any

16 situation, let's say in a police station and so on, just

17 because of the highness of the office that would have

18 called that person, that alone would amount to a certain

19 amount of pressure?

20 MINISTER MTHETHWA: No, I don't think so.

21 MR MPOFU: So if your boss called you and

22 said you must act, or do this, I just got a report about

23 this or that situation and this and that should be done

24 about it, you wouldn't regard that as constituting some

25 form of pressure on your, as opposed to if that position

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1 was coming from someone below you?

2 MINISTER MTHETHWA: No, I wouldn't

3 consider it as pressure. I would consider it as being

4 asked to do what I'm asked to do.

5 MR MPOFU: Ja. Is it also a coincidence

6 that in the communications that you had with these,

7 particularly with the Provincial Commissioner, that the

8 communication was downwards; it came from you to her,

9 rather than her calling you?

10 MINISTER MTHETHWA: And what's your

11 question?

12 MR MPOFU: The question is – we're still

13 talking about the perceptions of pressure. I'm saying that

14 – well, first do you concede that in the majority of cases

15 this communication came from you, the prompting came from

16 you rather than them calling you?

17 MINISTER MTHETHWA: I called the

18 Provincial Commissioner, yes.

19 MR MPOFU: Yes, that's what I'm saying.

20 It was not them giving you unsolicited information. It was

21 you pressurising them for answers.

22 MINISTER MTHETHWA: Pressurising, no. I

23 called them and I exercised my oversight duty over them.

24 CHAIRPERSON: Would you describe what you

25 did as prompting?

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1 MINISTER MTHETHWA: Come again?

2 CHAIRPERSON: Would you describe what you

3 did during your conversation with General Mbombo as

4 amounting to prompting?

5 MINISTER MTHETHWA: Prompting?

6 CHAIRPERSON: Prompting. That's the word

7 Mr Mpofu used.

8 MR MPOFU: Yes.

9 MINISTER MTHETHWA: P-R-O-M –

10 CHAIRPERSON: P-R-O-M-P-T-I-N-G.

11 MINISTER MTHETHWA: Well, I regarded that

12 as communicating with necessary or relevant people. I was

13 communicating a message to them, but over and above that,

14 Chair, I was exercising my duty over them.

15 CHAIRPERSON: Yes, yes, I understand

16 that, but when you spoke to her you said "What are you

17 people doing?" as I understand it, and she said what they

18 were doing and the matter was being adequately dealt with

19 and then you left it there, according to your evidence. Is

20 that right? If you'd said to her look here, you've only

21 got two units there, you should have three, send a third

22 unit in –

23 MINISTER MTHETHWA: No –

24 CHAIRPERSON: - that might have been

25 prompting.

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1 MINISTER MTHETHWA: Yes.

2 CHAIRPERSON: That might have been

3 pressure.

4 MINISTER MTHETHWA: Oh, no, no, no, I

5 wouldn't –

6 CHAIRPERSON: But you asked the

7 question –

8 MINISTER MTHETHWA: I wouldn't –

9 CHAIRPERSON: - what are you doing.

10 MINISTER MTHETHWA: Yes.

11 CHAIRPERSON: And they say what they're,

12 she says what they're doing.

13 MINISTER MTHETHWA: Yes.

14 CHAIRPERSON: And if that is satisfactory

15 then you don't have to apply any pressure –

16 MINISTER MTHETHWA: Absolutely.

17 CHAIRPERSON: - or prompting or anything

18 of that sort.

19 MINISTER MTHETHWA: Absolutely.

20 CHAIRPERSON: Is that right, or am I

21 misunderstanding?

22 MINISTER MTHETHWA: You're interpreting

23 it correctly, Chairperson, and that is what I've been

24 saying.

25 MR MPOFU: Well, would I also be

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1 interpreting it correctly to say you didn't stop at what

2 the Chairperson is saying; you actually went to ensure that

3 they do certain things?

4 MINISTER MTHETHWA: Certain things like

5 what?

6 MR MPOFU: I don't know. Anything. Did

7 you ensure that they do anything?

8 MINISTER MTHETHWA: I think the

9 Chairperson has interpreted correctly my communication with

10 the Provincial Commissioner Mbombo.

11 MR MPOFU: Yes, I heard you, but did you

12 on top of that ensure that certain actions are taken?

13 MR SEMENYA SC: Chair, the witness is

14 entitled to know what Mr Mpofu is referring to.

15 MR MPOFU: No, Mr Semenya must not

16 interrupt my cross-examination. Let the witness answer the

17 question –

18 MINISTER MTHETHWA: I don't understand

19 your question –

20 MR MPOFU: Why is he entitled to what –

21 CHAIRPERSON: I think it's a permissible

22 question, Mr Semenya. I think he asked did you do

23 anything. It's like the last –

24 MR MPOFU: Yes, yes, and he can –

25 CHAIRPERSON: If he wants to put

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1 something then your point applies. Did you in fact tell

2 her to do anything? You asked her, according to your

3 evidence you asked her what, you told her what report you'd

4 received and you then sought to confirm the – as you put it

5 in your statement – the factual correctness of the report

6 you'd received, established what the SAPS was doing. She

7 confirmed the reports, said the SAPS is in fact actively

8 seized with the matter by deploying more members to

9 heighten police visibility in the area. So if the

10 conversation went any further than that and you said no,

11 no, that's not enough, you must do this, then you would

12 have applied pressure or perhaps, or prompted her to do

13 something.

14 MINISTER MTHETHWA: Yes.

15 CHAIRPERSON: But if you were satisfied

16 with what she said then of course there was no question of

17 prompting arising, as I understand it.

18 MINISTER MTHETHWA: I was satisfied with

19 what she said when she explained what is it that they are

20 going to do and I took it from there.

21 MR MPOFU: Did you in addition ensure

22 that they act in a certain way and deal with the matter?

23 MINISTER MTHETHWA: The response I got

24 from the question I had asked about the visibility of

25 police, or the adequacy of deployment of police on the

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1 ground was satisfactory as far as I was concerned, so I
 2 took it that way.
 3 MR MPOFU: Okay, now can you answer the
 4 question? Did you on top of taking it that way or
 5 whatever, did you also ensure that they deal with the
 6 matter?
 7 MINISTER MTHETHWA: What does "ensure"
 8 mean? Do what?
 9 MR MPOFU: I don't know.
 10 MINISTER MTHETHWA: No, I ended where I
 11 ended.
 12 MR MPOFU: You did not ensure anything?
 13 MINISTER MTHETHWA: I ended when the
 14 Provincial Commissioner told me what is it that they are
 15 doing in relation to the question I had asked.
 16 MR MPOFU: Okay, now will you answer the
 17 question? Did you on top of that ensure that they would be
 18 dealing with the matter? Take any steps to ensure that
 19 they – ja –
 20 MINISTER MTHETHWA: I took –
 21 MR MPOFU: Or ask them to take any
 22 steps –
 23 MINISTER MTHETHWA: Yes, I took the step
 24 to ensure that something is done by calling the Provincial
 25 Commissioner and the Provincial Commissioner responding to

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1 me. In that way, if you are asking that, yes I ensured
 2 that something is being done with the situation in Marikana
 3 at that time.
 4 MR MPOFU: Yes, and that something,
 5 according to you, you are not supposed to interfere with
 6 the "how," as you call it, with how things are done,
 7 correct?
 8 MINISTER MTHETHWA: Yes.
 9 MR MPOFU: And part of what you are not
 10 supposed to interfere with, which you considered
 11 operational matters, would include the numbers of members
 12 which are deployed in a particular situation, correct?
 13 MINISTER MTHETHWA: That is the job of
 14 the operators, commissioners, and it has always been like
 15 that. Even in this instance there was no change.
 16 MR MPOFU: Yes. Well, so effectively
 17 then Mr Ramaphosa and Mr Zokwana were asking you to do
 18 something that was outside of your province, as you call
 19 it.
 20 MINISTER MTHETHWA: It's not outside of
 21 my province. What would be outside of my province would be
 22 when I dictate to the commissioners that put five police
 23 officers there, put 10 there, give them this kind of
 24 calibre of firearm and so on, but when I ask whether or not
 25 they are doing anything about the situation, which included

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1 the death of people, the damage to property, that is within
 2 my right to do that and that's my responsibility.
 3 MR MPOFU: Well, in paragraph 17 of your
 4 initial statement you said that you informed – FFF29 - you
 5 informed Mr Zokwana and Ramaphosa in response that you
 6 would convey their requests. Those requests are for the
 7 numbers of police to be increased, correct?
 8 MINISTER MTHETHWA: The response there
 9 was both the issue, the matter of ensuring that there's
 10 police visibility and ensuring that what they term as
 11 criminal activity is curbed.
 12 MR MPOFU: No, that's not an answer to my
 13 question. My question is when you said you conveyed their
 14 request, you are referring to their request for the
 15 deployment of more members, correct?
 16 MINISTER MTHETHWA: Amongst others.
 17 MR MPOFU: Yes, and that issue is an
 18 operational issue, the deployment of numbers and so on,
 19 correct?
 20 MINISTER MTHETHWA: Yes.
 21 MR MPOFU: Ja, alright, and then you also
 22 say that you would, "and concerns to the National
 23 Commissioner, and ensure that SAPS was dealing with the
 24 matter. I also informed them that I would ensure that SAPS
 25 attended to this matter." Is that what happened?

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1 MINISTER MTHETHWA: Attended –
 2 MR MPOFU: And you know what "ensure"
 3 means now.
 4 MINISTER MTHETHWA: Yes, and – yes.
 5 MR MPOFU: And that's what happened?
 6 MINISTER MTHETHWA: Yes.
 7 MR MPOFU: Alright. You were – well, you
 8 were not. Are you aware now that actually Mr Ramaphosa's
 9 mission, if one can call it that, among others was to
 10 influence the executive members, like yourself, more
 11 particularly on issues of the numbers of police to be
 12 deployed?
 13 MINISTER MTHETHWA: There's nowhere where
 14 there are numbers here spoken about, but –
 15 MR MPOFU: Okay, then go to –
 16 MINISTER MTHETHWA: No, just wait. There
 17 are no numbers spoken about here. There is a concern
 18 raised by the two gentlemen, which concern was raised with
 19 people who are working on the ground and those people
 20 informed me what is it that they are doing, especially the
 21 Provincial Commissioner, because the issues of safety and
 22 security of the people in the area was the core of all what
 23 was happening.
 24 MR MPOFU: Okay, I'll try again. Are you
 25 aware now that part of what Mr Ramaphosa was being asked

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1 for, or asked to do by the people of his company, Lonmin,
 2 was to influence issues such as the number of policemen to
 3 be deployed?
 4 MINISTER MTHETHWA: Well, I've not seen
 5 anywhere where it talks about numbers to be deployed, but
 6 all I'm saying to you is that the operational members, how
 7 many people to be deployed were, those operational matters
 8 reside with the commissioners, but overall I have the
 9 responsibility of ensuring that people are safe and secure.
 10 If that means asking whether there are police on the
 11 ground, I would do that. It is my duty to do that. Now
 12 what Mr Zokwana and Mr Ramaphosa were raising with me is
 13 part of my portfolio and it was going to be derelict of me
 14 being approached by people who were concerned and raising
 15 something which also concerned me, I would have folded my
 16 arms and not talk to the people who are responsible. So I
 17 did that and I don't see anything wrong with that.
 18 MR MPOFU: You don't see anything wrong
 19 with it?
 20 MINISTER MTHETHWA: Nothing.
 21 MR MPOFU: Ja. So in your view the fact
 22 that these were – are you familiar with the concept of
 23 conflict of interest?
 24 MINISTER MTHETHWA: Yes.
 25 MR MPOFU: Ja, so in your view the fact

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1 that these were your political colleagues in the ANC had
 2 nothing to do with it?
 3 MINISTER MTHETHWA: As I said yesterday
 4 when I was asked, people always phone the Minister of
 5 Police on any matter related to security. Whether they are
 6 Joe Soap or Ramaphosa or anybody, it makes no difference.
 7 Whether those people are people who belong to where I come
 8 from politically has nothing to do with my job, including
 9 people who'd be coming from opposition –
 10 MR MPOFU: Yes, so –
 11 MINISTER MTHETHWA: - because that is the
 12 task and the job of the Minister.
 13 MR MPOFU: Yes. Yes. Ja, no, that's
 14 exactly what I'm trying to show. Your evidence is that
 15 therefore it makes no difference whatsoever who the people
 16 who were putting the pressure is, or were making the calls.
 17 Let's keep it neutral.
 18 MINISTER MTHETHWA: Ja. Ja. No, now I
 19 think I can agree with that.
 20 MR MPOFU: You agree?
 21 MINISTER MTHETHWA: Ja.
 22 MR MPOFU: Well, if you agree with that
 23 then can you explain to the Commission why was it necessary
 24 for you to say to General Mbombo that "I've been called by
 25 Cyril Ramaphosa" if it makes no difference?

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1 MINISTER MTHETHWA: Well, in the area of
 2 North West, if you will take North West, there would be
 3 many people who would be calling the Minister of Police and
 4 I'll relate to the Provincial Commissioner that so and so
 5 has called, if somebody has identified his name, is it
 6 true, and for me it matters not whether I've said who that
 7 person is or I didn't say who that person is.
 8 MR MPOFU: No, no, Minister, I don't
 9 think it's that easy.
 10 [13:54] The point is, are you naming names or name-
 11 dropping the names of Cyril Ramaphosa? If it made no
 12 difference whatsoever then you could have simply said I
 13 hear there's something in Marikana, Joe Soap as you call
 14 it, has said so. Why did you feel it necessary to say to
 15 them that it was Cyril Ramaphosa, not someone else who
 16 called?
 17 MINISTER MTHETHWA: Well, it doesn't
 18 matter whether I said it or not but in this instance I told
 19 her that these people talk as if they are people on the
 20 ground and this is what they are saying. And for me it's
 21 no big deal who was calling, it doesn't matter.
 22 MR MPOFU: Well, look what you did. It
 23 must be a big deal because as we know now and I want to go
 24 back to JJJ192, because of you having identified the
 25 person, they viewed it as so-called a politically high

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1 person was pressurising you, so it made a difference.
 2 MINISTER MTHETHWA: Police, when they
 3 deal with their work on a day to day basis they come across
 4 people from all walks of life, from all the stations of
 5 society and by law they are expected to act whether that
 6 person is whoever in the country, South Africa, so there is
 7 nothing which would make or which would put pressure on
 8 members of SAPS to act where they're supposed to act to
 9 fulfil their duty.
 10 MR MPOFU: I don't think that's an answer
 11 to what I'm asking you. I'm saying to you that in practice
 12 now, despite your view that it does not matter what the
 13 name of the caller is, or complainant, what actually
 14 happened in practice is because you chose to identify the
 15 caller, that was taken to mean that this politically high
 16 person was putting pressure. So do you see the difference
 17 that it can make?
 18 MINISTER MTHETHWA: No. No.
 19 MR MPOFU: You think that if you had said
 20 to General Mbombo that Themba Mkhize had called, she would
 21 have construed that as political pressure from a high,
 22 politically high person, nevertheless it would have made no
 23 difference?
 24 MINISTER MTHETHWA: Yes.
 25 MR MPOFU: Okay. Well, in fairness I

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1 must tell you that I'm going to argue that that answer is
 2 not credible or to be believed, that you know very well –
 3 in fact more so, you knew very well, forget about what
 4 you're saying now, you knew very well by mentioning the
 5 name of the caller that it would achieve your intended
 6 purpose which was to transmit the pressure towards the
 7 operational management.
 8 MINISTER MTHETHWA: That's your opinion.
 9 You are entitled to it, I think.
 10 MR MPOFU: Yes. You have also said that
 11 if somebody says that – okay, if somebody testifies in this
 12 Commission that you were asked to act in a more pointed
 13 way, that person would be telling lies, correct?
 14 MINISTER MTHETHWA: Yes.
 15 MR MPOFU: And do you know of any reason
 16 why Mr Ramaphosa said that you were going to be, or that
 17 they were going to get you to act in a more pointed way, to
 18 get the Minister of Police, Nathi Mthethwa, to act in a
 19 more pointed way if it was false?
 20 MINISTER MTHETHWA: Well, what I've seen
 21 here is what Minister Shabangu promised or said to Mr
 22 Ramaphosa.
 23 MR MPOFU: Yes.
 24 MINISTER MTHETHWA: That she will get me,
 25 she will get, she will talk to the President and I so that

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1 I act in a pointed way.
 2 MR MPOFU: Yes.
 3 MINISTER MTHETHWA: That's what I saw
 4 here and there is no such thing which happened. Minister
 5 Shabangu never met me, never raised that thing, including
 6 the pointed way which we saw here.
 7 MR MPOFU: Yes, but you know this is a
 8 serious matter. You understand that I know you are here to
 9 give explanations but do you understand the gravity of this
 10 matter, that if these matter is left unexplained as it
 11 were, and we hear that a cabinet minister was going to
 12 cabinet and brief the President and get you as Minister to
 13 act in a pointed way, if within about 24 hours of that 34
 14 people were killed by the police of which you are a
 15 Minister, then this is a matter than can have far-reaching
 16 implications, implicating the cabinet, the President, the
 17 Minister of Minerals and yourself in possible criminal
 18 activity.
 19 MINISTER MTHETHWA: Well, I have said
 20 that there was no cabinet meeting on the 15th as said here
 21 in the correspondence. I have also said that that week I
 22 was not in Cape Town. So if you talk about the cabinet, I
 23 have given an answer on that.
 24 MR MPOFU: No, again I think you are not
 25 being open, totally candid with the Commission. You know

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1 that the week before that there was a cabinet meeting.
 2 MINISTER MTHETHWA: Yes, there was a
 3 cabinet meeting a week before that.
 4 MR MPOFU: Yes. And you know that, you
 5 are just taking advantage of the fact that maybe some of
 6 the people here, including the Commissioners, are not
 7 familiar with how these things work. You know that every
 8 other Wednesday when there's been a cabinet meeting there
 9 are cabinet committees that sit on the following Wednesday,
 10 is that correct?
 11 MINISTER MTHETHWA: Yes, it is correct.
 12 MR MPOFU: So let's not split hairs. The
 13 point of the matter is that on that day there would have
 14 been cabinet committee meetings, correct, attended by
 15 ministers of state.
 16 MINISTER MTHETHWA: They are always there
 17 –
 18 MR MPOFU: Yes.
 19 MINISTER MTHETHWA: Yes.
 20 MR MPOFU: Thank you. So we shouldn't
 21 make a mountain out of a molehill. If Minister Shabangu
 22 must have said to Mr Ramaphosa I'm going to a cabinet
 23 meeting or a cabinet committee meeting, being a Wednesday
 24 she would have meant in this case, if you are right that
 25 there was no cabinet, she would have meant cabinet

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1 committee which is also attended by cabinet ministers,
 2 correct?
 3 MINISTER MTHETHWA: Yes.
 4 MR MPOFU: Ja.
 5 MINISTER MTHETHWA: I was responding to a
 6 question of the cabinet. There was a question raised with
 7 me of the cabinet of the 15th and I responded to that.
 8 MR MPOFU: Yes, but – yes, I'm saying
 9 that you –
 10 MINISTER MTHETHWA: I hear what you say
 11 about cabinet committee.
 12 MR MPOFU: Yes.
 13 MINISTER MTHETHWA: But all what I'm
 14 saying to you is that the question put on me was not about
 15 cabinet committee meeting, it was about cabinet meeting.
 16 MR MPOFU: Yes, I accept that but it's
 17 like what Mr Ntsebeza was putting to you. If you were
 18 being open and candid and being honest with the Commission,
 19 you would know that that is just a semantic difference.
 20 MINISTER MTHETHWA: Not semantic.
 21 MR MPOFU: Well, you would know that
 22 there –
 23 MINISTER MTHETHWA: Can I correct it,
 24 Chair –
 25 MR MPOFU: - were cabinet committee

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1 meetings on that day?

2 CHAIRPERSON: Give him a chance to ask

3 the question then you can answer, then you can answer.

4 MINISTER MTHETHWA: Ja, but let me

5 correct something here which is fundamental and it's not

6 about semantics. Can I do that?

7 CHAIRPERSON: Ja, alright.

8 MINISTER MTHETHWA: Yes. I don't think

9 that we want to be bogged down on what is being said here,

10 that a cabinet meeting has within it particular powers and

11 particular connotations, there's a cabinet meeting. If

12 there are committee meetings, it's not a matter of

13 semantics because it has to do with the running of the

14 country and the decisions taken in those structures which

15 are fundamentally different, so it can't be a semantic.

16 MR MPOFU: Well –

17 CHAIRPERSON: I'm sorry, before you carry

18 on, there's the further point of course that if it was a

19 cabinet meeting the likelihood is that you would have been

20 there. You'll normally presumably arrange your programme

21 in such a way that you can be present at the cabinet

22 meetings if –

23 MINISTER MTHETHWA: The cabinet, yes.

24 CHAIRPERSON: Cabinet.

25 MINISTER MTHETHWA: Yes.

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1 CHAIRPERSON: And clearly from the e-mail

2 it looks as if BBB4289E, what Mr Ramaphosa said she, that's

3 Minister Shabangu, is going into cabinet and will brief the

4 President as well and get the Minister of Police, Nathi

5 Mthethwa, to act in a more pointed way. So what obviously

6 Ramaphosa thought was going to happen was that Minister

7 Shabangu was going to go into a cabinet meeting, going to

8 meet the President and meet you –

9 MINISTER MTHETHWA: Yes.

10 CHAIRPERSON: - brief the President and

11 get you to act in a more pointed way. That is what he

12 thought was going to happen. What you tell us is that

13 didn't happen that way. There wasn't a cabinet meeting,

14 there was a committee meeting. According to her statement,

15 Minister Shabangu's statement, there was a cabinet

16 committee meeting on national planning. She went to the

17 meeting, she met Mr Ramaphosa beforehand apparently, he

18 spoke to her, but you weren't there and then you go on –

19 you tell us that she didn't in fact speak to you.

20 MINISTER MTHETHWA: Yes.

21 CHAIRPERSON: Thereafter, is that

22 correct?

23 MINISTER MTHETHWA: Yes, correct.

24 MR MPOFU: Ja, well, that's not correct.

25 Nobody said you were there. I mean she obviously could not

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1 speak to you if you were not there. The point I'm simply

2 making is that – or firstly let me say to you your own

3 cabinet committee would have met on that same day, correct?

4 MINISTER MTHETHWA: No. No – no. The

5 cabinet committee I belonged to then was JCPS.

6 MR MPOFU: Yes.

7 MINISTER MTHETHWA: And JCPS they, all

8 committees have their dates, is or was Thursday then,

9 unless that has been changed now it was Thursday.

10 MR MPOFU: Yes. So her cabinet committee

11 was Wednesday, that was the economic cluster, correct?

12 CHAIRPERSON: No, it's national planning,

13 is what –

14 MR MPOFU: Ja, that's the economic

15 cluster, Chairperson. I know what I'm talking about.

16 CHAIRPERSON: Alright.

17 MR MPOFU: National planning falls under

18 economic cluster.

19 CHAIRPERSON: Well, I –

20 MR MPOFU: The cabinet committee that she

21 was –

22 CHAIRPERSON: I bow to your superior

23 knowledge.

24 MR MPOFU: Ja, thank you. The cabinet

25 committee that she would have met which would have

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1 discussed this national plan, national economic plan, was

2 the economic cluster, correct?

3 MINISTER MTHETHWA: As I heard, yes,

4 correct.

5 MR MPOFU: Thank you.

6 MINISTER MTHETHWA: From there,

7 Chairperson.

8 MR MPOFU: And that particular meeting

9 was an important meeting. Actually that was the day, the

10 15th of August was the day of the adoption of the national

11 development plan. It was an important cluster meeting,

12 correct?

13 MINISTER MTHETHWA: I must go back and

14 check that –

15 MR MPOFU: Okay, well, you can take it –

16 ja, you can accept that.

17 CHAIRPERSON: I think that's correct.

18 There was an interesting combination of dates in that week.

19 MR MPOFU: So there would have been

20 nothing untoward with Ms Shabangu going into that cabinet

21 committee meeting, briefing the President as it is said

22 here, who would get you to act in a more pointed way. You

23 didn't have to be there, he could get you in a thousand

24 ways to act in a more pointed way, correct?

25 MINISTER MTHETHWA: I don't think that

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1 there would be anything wrong with the Minister raising an
 2 issue of national importance as this one. I don't think
 3 there would have been anything wrong.
 4 MR MPOFU: Yes, so it's possible, you
 5 can't say, it's possible that she went into that meeting
 6 and briefed the President and to get you to act in a more
 7 pointed way but that for some reason that message didn't
 8 get to you.
 9 MINISTER MTHETHWA: I wouldn't want to
 10 venture that because I don't want to answer something I
 11 don't know.
 12 MR MPOFU: Is it possible that as is
 13 reflected in this, Ms Shabangu indeed went into that
 14 meeting and briefed the President to get you to act in a
 15 more pointed way but for some reason or another –
 16 MINISTER MTHETHWA: I said I don't know –
 17 MR MPOFU: It did not get to you – you
 18 don't know what?
 19 MINISTER MTHETHWA: I don't know whether
 20 that is possible or not, I don't know. I don't –
 21 MR MPOFU: Is that an honest answer?
 22 MINISTER MTHETHWA: No – no, I don't want
 23 to answer something I don't know. I'm sure this Commission
 24 will have an opportunity to interact with Minister
 25 Shabangu.

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1 MR MPOFU: No, Minister –
 2 CHAIRPERSON: She's coming as a witness
 3 in due course.
 4 MINISTER MTHETHWA: I was told –
 5 CHAIRPERSON: Minister Shabangu is coming
 6 and –
 7 MR MPOFU: I know that, Chairperson, I'm
 8 cross-examining this witness, not Minister Shabangu. I'm
 9 asking you whether is it possible or is it not? I'm going
 10 to ask Minister Shabangu.
 11 MINISTER MTHETHWA: Well, it is, it is
 12 possible –
 13 MR MPOFU: Thank you.
 14 MINISTER MTHETHWA: - and also
 15 impossible.
 16 MR MPOFU: It's also impossible?
 17 MINISTER MTHETHWA: Yes.
 18 MR MPOFU: Is that an honest answer?
 19 MINISTER MTHETHWA: Yes, because it was
 20 impossible to get the message to me so it means it can be
 21 impossible also on the other side.
 22 MR MPOFU: How do you know that it was
 23 impossible to get the message to you? Who told you that?
 24 MINISTER MTHETHWA: To get the message to
 25 me? I don't have to be told by anybody whether the message

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1 gets, got to me or not.
 2 MR MPOFU: No.
 3 MINISTER MTHETHWA: I have to hear, a
 4 person has to talk to me for me to get the message.
 5 MR MPOFU: No, but you are giving us a
 6 reason, not the fact that it didn't get to you. Are you
 7 saying it didn't get to you because it was impossible, who
 8 told you that?
 9 MINISTER MTHETHWA: No – no, it's a fact,
 10 it didn't get to me. Whatever happened, it ended up not
 11 getting to me and –
 12 MR MPOFU: Ja, but that does not mean it
 13 was impossible –
 14 MINISTER MTHETHWA: And those are
 15 semantics actually.
 16 CHAIRPERSON: As a matter of language, Mr
 17 Mpofo is right. It may well have been possible, the phone
 18 lines went down, the cell phones were working, it may have
 19 been possible but you say as a fact it didn't happen. It
 20 may have been possible, they could have possibly tried to
 21 get through but in fact you say they didn't, they didn't
 22 get through to you and you didn't get any message of that
 23 kind, that's your evidence.
 24 MINISTER MTHETHWA: Yes.
 25 CHAIRPERSON: It was possible for them to

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1 do it maybe, but they didn't. That's your answer.
 2 MINISTER MTHETHWA: Ja, it's possible
 3 maybe.
 4 MR MPOFU: Thank you. Okay, thank you.
 5 And equally it's possible that Ms Shabangu told the
 6 President to do it, correct?
 7 MINISTER MTHETHWA: To do what?
 8 MR MPOFU: To get the Minister of Police,
 9 Nathi Mthethwa, to act in a more pointed way.
 10 MINISTER MTHETHWA: But that's the
 11 question, that's the question you have asked. It's
 12 possible maybe, it's the very same question you have just
 13 asked.
 14 MR MPOFU: No, we were talking about you
 15 receiving a message. I think you are confusing yourself –
 16 MINISTER MTHETHWA: No – no, it's –
 17 CHAIRPERSON: He's moved on to the next
 18 point. The first one was whether it was physically
 19 possible for them to get through to you if they did the
 20 necessary things. The answer to that is they, it was
 21 physically possible but they didn't. That's your first
 22 point. He is now moving on to the next question. He says
 23 was it possible for Minister Shabangu to speak to the
 24 President, to ask the President to get the message through
 25 to you, you must act in a more pointed way?

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1 MINISTER MTHETHWA: No, I don't –

2 CHAIRPERSON: That's something that you

3 can't testify about.

4 MINISTER MTHETHWA: No, I can't testify

5 to that, I don't –

6 MR MPOFU: Why can't you testify as to

7 whether it's possible for her to open her mouth?

8 MINISTER MTHETHWA: I think you should

9 ask, you should ask Minister Shabangu that question.

10 MR MPOFU: No. I'll ask Minister

11 Shabangu whether she did in fact speak to the President.

12 I'm asking you whether it was possible for her to do so.

13 That's a different question.

14 CHAIRPERSON: Again I take it the answer

15 is a question of semantics but technically it would have

16 been possible if she had –

17 MINISTER MTHETHWA: I said possible

18 maybe.

19 CHAIRPERSON: Yes.

20 MINISTER MTHETHWA: But I cannot talk for

21 the other Minister who is not here.

22 CHAIRPERSON: There are two legs to the

23 question. Is it possible? Your answer is yes, possible

24 maybe. Did it happen? You don't know. That's the correct

25 position, isn't it?

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1 MINISTER MTHETHWA: Yes, I don't know.

2 MR MPOFU: Thank you.

3 CHAIRPERSON: The next question that of

4 course follows from that is, did the President get hold of

5 you and tell you to act in a more pointed way?

6 MINISTER MTHETHWA: No.

7 MR MPOFU: He's answered that many times.

8 And you can't explain why Mr Ramaphosa would tell that

9 untruth.

10 CHAIRPERSON: No, no, I'm sorry, Mr

11 Mpofo. Let's look at the e-mail which contains the untruth

12 or what you say is an untruth.

13 MR MPOFU: It's 289E.

14 CHAIRPERSON: Sorry?

15 MR MPOFU: 289E of BBB4 –

16 MINISTER MTHETHWA: What tab is that?

17 CHAIRPERSON: It's bundle –

18 MR MPOFU: Tab 9, I think.

19 CHAIRPERSON: Tab 6, it's tab 9 in the

20 bundle and it's exhibit BBB4 as you correctly say and it's

21 page 29, sorry, 289E, is that right? He is reporting in

22 that –

23 MR MPOFU: I know.

24 CHAIRPERSON: - e-mail which is number 6

25 on that page.

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1 [14:13] That he had a conversation with Minister Shabangu

2 and that he says that she said she was going to go to the

3 cabinet – well, we've gone through that – and that she

4 would brief the President and get the Minister to act in a

5 more pointed way. That's, whether anything happened

6 thereafter is a matter that Mr Ramaphosa can't tell us.

7 MR MPOFU: So what's your point,

8 Chairperson? I'm asking the witness a question as to

9 whether he agrees that it was physically possible for this

10 to have been carried out. What's the problem?

11 CHAIRPERSON: I understood him to concede

12 that already to be the case, after we had the semantic

13 discussion and you held, it turned out that you were

14 correct in the way you phrased your question.

15 MR MPOFU: Ja, thank you, Chairperson.

16 I'm saying, Minister - and this is a point I really want to

17 canvass with you, in fairness – that if in this, what I

18 call the chain of political pressure, if what is said here

19 happened, fully or partly, it would have serious

20 implications. This is a matter where government – this is

21 government people. This is no longer a matter about you as

22 a person. The President is mentioned. The cabinet is

23 mentioned. The Minister, one minister is mentioned and you

24 are mentioned. If those matters could e connected to the

25 death of people, I'm saying those are grave matters which

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1 might have to go to the International Criminal Court.

2 These are serious prima facie allegations. There may well

3 be explanations, but I'm saying to you these are grave

4 matters that are postulated in these passages. Do you

5 understand that?

6 MINISTER MTHETHWA: I think the entire

7 Commission's business is grave, so it then follows that

8 everything which is being dealt with in this Commission is

9 grave.

10 MR MPOFU: Yes, that's true, but –

11 CHAIRPERSON: I take it that there would

12 be degrees of gravity.

13 MR MPOFU: Yes.

14 CHAIRPERSON: And if it is correct – this

15 is the hypothesis, and I don't know anything about the

16 International Criminal Court and I'll something about that

17 in a moment –

18 MR MPOFU: I do.

19 CHAIRPERSON: But if it's correct – I

20 won't bow to your superior knowledge on that one – if it is

21 correct, as Mr Mpofo is suggesting may have happened, that

22 the President took it upon himself to contact you to say

23 you must use your position as Minister of Police to get the

24 police to act in a "more pointed way," which in the context

25 presumably means to act inappropriately and do violent

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1 things they wouldn't otherwise do, that would be a very
 2 serious matter. That I take it is what Mr Mpofu is saying
 3 and I presume you'd have to agree with that.
 4 MINISTER MTHETHWA: Chair –
 5 CHAIRPERSON: Am I correct?
 6 MINISTER MTHETHWA: Chair –
 7 CHAIRPERSON: If that should happen.
 8 MINISTER MTHETHWA: Well, we are agreed,
 9 but I even went further and say any other – we, as
 10 government we take this that this is serious. I understand
 11 we are saying the levels of gravity. They, whatever the
 12 Commission is dealing with here is grave and this one and
 13 other matters would be grave. It's a serious Commission
 14 and this is our attitude to it.
 15 MR MPOFU: So is your answer that whether
 16 the Commission finds that – to use your expression – Joe
 17 Soap was responsible for the deaths, or whether it finds
 18 that the Minister of Police in a situation that implicates
 19 the Deputy President currently, the President as his
 20 messenger, and the Minister of Resources, it would be of
 21 equal gravity in your mind, in your imagination?
 22 MINISTER MTHETHWA: I say –
 23 MR MPOFU: Is that your answer?
 24 MINISTER MTHETHWA: I have responded to
 25 the question which I've been asked in the affirmative.

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1 MR MPOFU: No, that's not true. You said
 2 no, all matters are equally grave –
 3 CHAIRPERSON: Sorry, I'm not sure you're
 4 understanding the answer. You conceded there were degrees
 5 or levels of gravity, of seriousness.
 6 MINISTER MTHETHWA: Yes.
 7 CHAIRPERSON: What Mr Mpofu says to you
 8 is if Mr Joe Soap intervened and he persuaded the police at
 9 the JOCCOM to go beyond what they should have done and
 10 people died, that would obviously be a serious matter, but
 11 what he says to you is if Mr Joe Soap wasn't involved, but
 12 the Minister of Police acted improperly by interfering and
 13 went to cross that separation of powers line you spoke
 14 about and gave improper instructions to the police which
 15 they then carried out, and if he did so on the instigation
 16 of the President, who also behaved incorrectly by going
 17 beyond the line that he should have gone, and if the
 18 President had done that because he had in turn been
 19 encouraged to do that by the Minister of Mineral Resources,
 20 that would be obviously far more serious than the Joe Soap
 21 matter. That's his point and I take it the answer to that
 22 must be yes.
 23 MINISTER MTHETHWA: Yes, that's why
 24 Chair, I was saying these are grave matters because at the
 25 end of the day if you link them to the death of people it's

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1 grave. I answered that and I'm answering it now to the
 2 affirmative.
 3 MR MPOFU: No, I'm sorry, I have to ask
 4 you this again. Is there –
 5 CHAIRPERSON: Mr Mpofu, he's agreed with
 6 you. He's agreed with the proposition you put.
 7 MR MPOFU: No, Chairperson, he has not.
 8 He says all these matters are grave.
 9 CHAIRPERSON: [Microphone off,
 10 inaudible] –
 11 MR MPOFU: Is it graver if it's the
 12 President and if it's Joe Soap, Minister?
 13 MINISTER MTHETHWA: Well, it would be
 14 graver –
 15 MR MPOFU: Thank you.
 16 MINISTER MTHETHWA: And I think that
 17 should be obvious because of the station the President
 18 occupies in our society.
 19 MR MPOFU: Yes, I would have thought so,
 20 but we've had to spend so much time on that obvious –
 21 CHAIRPERSON: The degrees of comparison
 22 would be grave, graver, gravest, and this would be the
 23 gravest one.
 24 MR MPOFU: No, I'm happy to settle for
 25 graver. The next issue is did you brief the President

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1 about this Marikana issue?
 2 MINISTER MTHETHWA: Well, we got a
 3 briefing together with the President in Marikana and this
 4 is after the tragedy, so both of us were briefed.
 5 MR MPOFU: Did you apart from that brief
 6 the President over the telephone or face to face about this
 7 matter?
 8 MINISTER MTHETHWA: No.
 9 MR MPOFU: No?
 10 MINISTER MTHETHWA: No.
 11 MR MPOFU: Are you aware of any other
 12 briefing or briefings that the President received in
 13 respect of this matter?
 14 MINISTER MTHETHWA: I take it when you
 15 say this matter we mean the 16th of August.
 16 MR MPOFU: Yes, yes.
 17 MINISTER MTHETHWA: Yes.
 18 MR MPOFU: We mean not just the 16th, the
 19 whole Marikana saga.
 20 CHAIRPERSON: That's a very big question.
 21 I take it you mean presumably from the 13th onwards, 13th of
 22 August.
 23 MR MPOFU: From the –
 24 CHAIRPERSON: Sorry, sorry, the 12th, I
 25 beg your pardon. The 12th, from the 12th onwards through to

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1 the 16th and possibly the day thereafter, that timeframe.
 2 MR MPOFU: I can live with that,
 3 Chairperson, yes. Yes?
 4 MINISTER MTHETHWA: No.
 5 MR MPOFU: Pardon?
 6 MINISTER MTHETHWA: No, not that I know
 7 of.
 8 MR MPOFU: In the briefings where you
 9 were present where the President was briefed did the police
 10 concede to having made certain mistakes in the execution of
 11 the operation?
 12 MINISTER MTHETHWA: Well, I don't
 13 remember that question being asked, but the briefing which
 14 took place took place just before the President made his
 15 announcement about this Commission.
 16 MR MPOFU: Whenever it happened, did in
 17 any of those briefings anybody from the police concede to
 18 having made any mistakes in the course of the operation?
 19 MINISTER MTHETHWA: No.
 20 MR MPOFU: Do you know what would have
 21 led the President to conclude that mistakes were committed,
 22 or a mistake?
 23 MINISTER MTHETHWA: I wouldn't have
 24 known.
 25 MR MPOFU: Are you aware that in the

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1 course of defending you – or let's put it like this; in the
 2 course of resisting calls for your resignation in the wake
 3 of the Marikana massacre that the President said that a
 4 mistake had happened?
 5 MINISTER MTHETHWA: I don't recall this.
 6 MR MPOFU: Don't recall, okay. Can we go
 7 to FFF30, three-zero? Okay, the heading is "Jacob Zuma
 8 says response to Lonmin massacre shows democracy is
 9 working." Whoever wrote that obviously are not part of
 10 this Commission.
 11 CHAIRPERSON: We need a bit more – yes,
 12 you're right, subeditors sometimes get beyond themselves.
 13 Let's see a bit more of the text apart from just the
 14 headline.
 15 MR MPOFU: I think the second page,
 16 Chairperson, we start from "Zuma rejected." I'll just read
 17 it out quickly. "Zuma rejected calls for the Police
 18 Minister Nathi Mthethwa to quit, saying the unrest was
 19 caused by a dispute over wages." Do you agree with that
 20 part? The dispute was caused by, or rather the unrest was
 21 caused by a dispute over wages.
 22 MINISTER MTHETHWA: Yes, I can see that
 23 part.
 24 MR MPOFU: Thank you. No, I'm not
 25 interested in your sight, Minister. Do you agree with it?

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1 MINISTER MTHETHWA: It's a matter of
 2 fact, the dispute was caused by wages.
 3 MR MPOFU: Thank you. Okay, now –
 4 CHAIRPERSON: [Microphone off, inaudible]
 5 goes further than that. The unrest was caused by a dispute
 6 over wages.
 7 MR MPOFU: Yes.
 8 CHAIRPERSON: The unrest, the original –
 9 you know very often there are many causes for events, but
 10 in this particular case there was unrest and what set the
 11 ball rolling, what got the –
 12 MINISTER MTHETHWA: Over wage –
 13 CHAIRPERSON: - the unrest underway was a
 14 dispute over wages.
 15 MINISTER MTHETHWA: Over wages.
 16 CHAIRPERSON: That's correct, yes.
 17 MR MPOFU: Yes, thank you. And then the
 18 President then is quoted as saying, "Now you can't say the
 19 Minister of Police is responsible for that, the start of
 20 the thing," I suppose. "When the workers were striking
 21 they had every other kind of weapon in their hands. In
 22 fact long before the shooting 10 people had died, including
 23 two policemen, two security policemen. Now all that is not
 24 taken into account," and then let's jump to the last – or
 25 no, no, the next paragraph. "How many people would have

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1 died if for example police did not disarm those people?"
 2 CHAIRPERSON: "Did not move to disarm."
 3 MR MPOFU: "Move to disarm those people.
 4 Nobody can tell." And then this is the part that I was
 5 referring to, "At the spur of a moment a mistake happened.
 6 Now if such a mistake happened you throw the Minister away?
 7 I don't know on what basis because there are facts that
 8 need to be weighed." All the other stuff is just for
 9 context. The issue, the question I'm asking you now is the
 10 mistake that happened at the spur of the moment on the
 11 basis of which your dismissal or resignation would be
 12 uncalled for, can you assist us as Minister of Police?
 13 Because I don't think we are going to call the President.
 14 CHAIRPERSON: What's the question?
 15 MINISTER MTHETHWA: What's the – ja.
 16 CHAIRPERSON: What's the question? The
 17 question is what is the mistake? What was the –
 18 MR MPOFU: Ja, it's the same question
 19 I've asked before –
 20 CHAIRPERSON: What was the President
 21 talking about?
 22 MR MPOFU: I already asked the question.
 23 I was just referring him to the passage.
 24 MINISTER MTHETHWA: So what is the
 25 question?

<p style="text-align: right;">Page 32385</p> <p>1 CHAIRPERSON: The question is what was 2 the mistake. The President said there was mistake – 3 MINISTER MTHETHWA: No, but – 4 CHAIRPERSON: - and he says what was, do 5 you know what mistake the President had in mind when he 6 made that statement according to – 7 MINISTER MTHETHWA: Well, Chair, I 8 wouldn't know what the President was referring to, but I 9 think it's in line with what I've said yesterday that most 10 certainly something terribly went wrong there. Whatever it 11 is I can't point finger at now because there is a 12 Commission which is looking to that, but I can't speak for 13 the President. I was merely saying what I think actually 14 this means. 15 MR MPOFU: Okay, so the short answer is 16 you don't know what mistake he was referring to. 17 MINISTER MTHETHWA: Well, I've said that 18 and I went further to make my interpretation. 19 MR MPOFU: Yes, no, fair enough, you 20 speculated, ja. Okay, the people who were to be contacted 21 by Mr Ramaphosa, or who were contacted according to him 22 were the Minister of DMR, of Mineral Resources, Mr Gwede 23 Mantashe of the ANC, Mr Senzeni Zokwana of the NUM, and 24 yourself indirectly. Well firstly did you have a 25 conversation – Mr Ramaphosa said to you that you were</p>	<p style="text-align: right;">Page 32387</p> <p>1 MR MPOFU: You did not understand this, 2 Mr Ramaphosa made you to understand that you are dealing 3 with a criminal act, correct? 4 MINISTER MTHETHWA: I did not understand 5 what? 6 MR MPOFU: No, he says it was important 7 for you to understand that you are dealing with a criminal 8 act, which would suggest that you did not – 9 CHAIRPERSON: [Microphone off, inaudible] 10 I'm not sure that interpretation of the email is right. 11 I'll tell you why. The background of course is that 12 Minister Shabangu had said at one stage this was just a 13 wage dispute and that got the people in Lonmin – 14 MR MPOFU: I know. 15 CHAIRPERSON: - very agitated. What he 16 says here, he talked all about going to talk to the 17 Minister, in some of the other emails about going to talk 18 to Minister Shabangu. Then he says, "You're absolutely 19 correct in insisting that the Minister, and indeed all 20 government officials need to understand we're essentially 21 dealing with a criminal act. I have said as much to the 22 Minister of Safety and Security." Now if the Minister 23 referred to in the previous sentence, beginning "You're 24 absolutely correct," was the Minister of Safety and 25 Security then the next sentence would have simply said "I</p>
<p style="text-align: right;">Page 32386</p> <p>1 dealing with a criminal matter. He also lobbied you on the 2 characterisation, correct? 3 MINISTER MTHETHWA: He didn't lobby me. 4 He said what he interpret the situation to be. 5 MR MPOFU: He said it was a criminal act. 6 MINISTER MTHETHWA: Yes, he said that 7 what is happening there is not, cannot be characterised as 8 an industrial action as he knows industrial action, but – 9 MR MPOFU: It's criminal. 10 MINISTER MTHETHWA: There is a lot of 11 criminal activity happening in that particular area. I may 12 not be quoting him verbatim – 13 MR MPOFU: Sure. 14 MINISTER MTHETHWA: - but he said 15 something to that sentiment. 16 MR MPOFU: Ja. No, fair enough. In fact 17 he says himself words to that effect at 28(9)(b) of BBB4, 18 and I won't hold you to the exact wording, but he says 19 "You," meaning that, Roger I suppose, Roger Phillimore, 20 yes, "you are absolutely correct in insisting that the 21 Minister and indeed all government officials needs to 22 understand that we are essentially dealing with a criminal 23 act. I have said as much to the Minister of Safety and 24 Security." That would be yourself, hey? 25 MINISTER MTHETHWA: Yes.</p>	<p style="text-align: right;">Page 32388</p> <p>1 have said as much to the Minister," or I said as much to 2 him or something of that sort. The fact that the Minister 3 of Safety and Security is named as such in the second 4 sentence is an indication that the Minister referred to in 5 the first section, first sentence, is Minister Shabangu. 6 MR MPOFU: Ja, but so? Chairperson, 7 that's not what I'm saying. That's got nothing to do with 8 the question. I'm saying he's saying that he's correct in 9 insisting that the Minister - Shabangu, yes - and indeed 10 all government officials need to understand that they are 11 essentially dealing with a criminal act. He has said so to 12 this Minister. 13 [14:33] In other words he has said to this Minister that 14 they need to understand that they are essentially dealing 15 with a criminal act which the witness has conceded. Where 16 is the – 17 CHAIRPERSON: Yes, yes. This e-mail of 18 course is sent on Wednesday the 15th at 18 minutes past 19 noon. Mr Ramaphosa had spoken to the witness already on 20 the Sunday night and – 21 MR MPOFU: Whenever. 22 CHAIRPERSON: Yes, and said it was a 23 criminal act with which I do not understand the witness to 24 say that he disagreed in any way. 25 MR MPOFU: No, he didn't disagree,</p>

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1 Chairperson, but you are saying that I'm saying that this
 2 Minister or that Minister. I didn't say anything of the
 3 sort. So did Mr Ramaphosa, when he said you must, you need
 4 to understand or you and all government officials need to
 5 understand that you are essentially dealing with a criminal
 6 act, did that suggest that you did not understand that
 7 until he made you to understand it?
 8 MINISTER MTHETHWA: When he spoke to me
 9 there was nothing, understanding. He expressed his
 10 concerned at what was happening there and how he
 11 characterised what was happening.
 12 MR MPOFU: Yes. Now I'm saying you don't
 13 think that there was a conflict of interest in all these
 14 communications which involved, as it were, your political
 15 colleagues?
 16 MINISTER MTHETHWA: Well, I see only one
 17 colleague of mine who was the Minister of Mineral Resources
 18 at the time.
 19 MR MPOFU: Is that a serious answer?
 20 CHAIRPERSON: [Microphone off, inaudible]
 21 his answer but I take it we must assume he's serious.
 22 MINISTER MTHETHWA: So that's the
 23 Minister I see and when I follow up what is being said
 24 here, I don't see it much different from what was relayed
 25 to me by both Mr Ramaphosa and Mr Zokwana. So I don't see

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1 anything out of, you know, line in this because I see
 2 people expressing what they feel to government and there's
 3 nowhere else than government where people would have to
 4 raise issues affecting the governing of the country.
 5 MR MPOFU: Are you aware that, well, if
 6 you're not I'm making you aware that the viewpoint of the
 7 Lonmin people was that this was a matter or a situation
 8 that could not be resolved without political intervention
 9 and which needed to be stabilised by the police or the
 10 army?
 11 MINISTER MTHETHWA: Well, it was a matter
 12 of intervention by the state anyway because where you have
 13 actions like strikes and demonstrations, the state would
 14 have to be part of that and where they say things must be
 15 dealt with, I don't know which side are they coming from
 16 but from the side which was raised with me, which is the
 17 side of Mr Ramaphosa in this instance, was there was a need
 18 for government to intervene on criminal activities which
 19 were happening at that time.
 20 MR MPOFU: No, I'm not – you know I'm not
 21 talking about that. I'm saying – well, do you agree with
 22 them that this was a matter which could not be resolved
 23 without political intervention? Do you agree with that?
 24 MINISTER MTHETHWA: It depends. If you
 25 say this matter, which matter specifically were they

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1 referring to?
 2 MR MPOFU: Well, which matter were you
 3 referring to now when you gave the long answer about state
 4 intervention? It's the same matter. I'm saying to you
 5 that would you agree that, do you agree with their
 6 conclusion that the unrest and all those things that were
 7 happening there could not be resolved without political
 8 intervention? In other words, let me simplify it, it could
 9 not be resolved from the level of the National Commissioner
 10 downwards because that's not political.
 11 MINISTER MTHETHWA: Well, there will
 12 always have to be people who are dealing with issues
 13 because those people you are referring to, Commissioners
 14 and them, report to their political principals. So I don't
 15 see any Chinese wall between the political principals and
 16 the officials in government. I agree that government had
 17 to be involved for the matter to be resolved if, strictly
 18 on that, I agree now. Government is made up of political
 19 leaders and political people like ourselves.
 20 MR MPOFU: No. Minister, really, I think
 21 you are evading the question. I'm saying to you that same,
 22 that same e-mail is the one that I read to you earlier
 23 where it says if you can talk to the Minister, please could
 24 you influence these things. So we know which political
 25 level we are talking about.

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1 MINISTER MTHETHWA: Yes.
 2 MR MPOFU: I'm saying would you agree
 3 with these people that this matter could not be resolved
 4 without political intervention?
 5 CHAIRPERSON: Mr Mpofo, Ms Nkosi-Thomas
 6 has got her light on and this is not the e-mail I think
 7 that talks about talking to the Minister of –
 8 MR MPOFU: It is, 289B.
 9 CHAIRPERSON: Yes, I've got 289B in front
 10 of me.
 11 MS NKOSI-THOMAS SC: But it's not on the
 12 screen.
 13 MR MPOFU: No, you have D.
 14 CHAIRPERSON: I've got B in front of me.
 15 MR MPOFU: Oh, well, then you must read
 16 from the middle where it says, after the word "not" where
 17 that is highlighted, "should not be" ra-ra-ra,
 18 "characterise this as not an industrial relations issue but
 19 a civil unrest destabilisation criminal issue and that
 20 could not be resolved without political intervention."
 21 Then jump to the bottom where it says, "If you can talk to
 22 the Minister, please could you influence these things."
 23 The same e-mail –
 24 CHAIRPERSON: With her, with her, so
 25 clearly it's a reference to the Minister –

<p style="text-align: right;">Page 32393</p> <p>1 MR MPOFU: Yes.</p> <p>2 CHAIRPERSON: Not this Minister.</p> <p>3 MR MPOFU: Nobody said it's this witness,</p> <p>4 Chairperson. The witness was saying that the state and</p> <p>5 government and all that. I'm saying they were talking</p> <p>6 about that level of the Minister, that's all I'm</p> <p>7 illustrating. I'm not saying with him. Do you understand</p> <p>8 the question now? I'm sure you don't. Let me ask you</p> <p>9 again. The political intervention that is postulated here</p> <p>10 or the things that need to be influenced, including the</p> <p>11 number of policemen who are deployed or members, that is</p> <p>12 what was being spoken about here, the political</p> <p>13 intervention. Do you agree that the matter needed that</p> <p>14 kind of political intervention?</p> <p>15 MINISTER MTHETHWA: Yes, yes.</p> <p>16 MR MPOFU: And in the previous e-mail Mr</p> <p>17 Ramaphosa also said, "I will be speaking to Gwede Mantashe,</p> <p>18 the ANC secretary-general, and suggest that the ANC should</p> <p>19 intervene." Was that also necessary, that political</p> <p>20 intervention?</p> <p>21 MINISTER MTHETHWA: Well, I'm not sure</p> <p>22 about that one. What I'm referring to here is the</p> <p>23 political intervention particularly of people who are</p> <p>24 responsible in these areas, your ministers in particular.</p> <p>25 I'm not sure about the latter one.</p>	<p style="text-align: right;">Page 32395</p> <p>1 they are sorry for the massacre?</p> <p>2 MINISTER MTHETHWA: Mr Mpofu, as we are</p> <p>3 here in the Commission, we are here on a fact finding</p> <p>4 mission and when the result comes out of that and it points</p> <p>5 to the state, I don't think that there would be anything</p> <p>6 which would make the state not to apologise when it's</p> <p>7 supposed to apologise.</p> <p>8 MR MPOFU: I see.</p> <p>9 MINISTER MTHETHWA: I don't think so.</p> <p>10 MR MPOFU: Yes.</p> <p>11 MINISTER MTHETHWA: Because now you are</p> <p>12 prejudging the process which is on and right now as I</p> <p>13 understand it, everybody is put under scrutiny so that at</p> <p>14 the end of the day you are able to get to the truth and to</p> <p>15 the bottom. I can say that there would be no qualms from</p> <p>16 the side of the state if the state has to apologise. I</p> <p>17 don't think that that would be an effort.</p> <p>18 MR MPOFU: You don't think that the rules</p> <p>19 of common decency and ubuntu and bathopele, irrespective</p> <p>20 of what the report of the Commission will say, demand from</p> <p>21 you just as human beings who were responsible for the</p> <p>22 deaths of so many people, justified or unjustified, is as</p> <p>23 you correctly point out, a matter that might still be</p> <p>24 determined but humanity, a human being doesn't rely on</p> <p>25 legalities. You don't think that you have a duty to</p>
<p style="text-align: right;">Page 32394</p> <p>1 MR MPOFU: Yes. No, that's what I'm</p> <p>2 trying to say. Would you say there was room in this matter</p> <p>3 for what Mr Ramaphosa says, he'll be speaking to the ANC</p> <p>4 secretary-general and suggest that he intervenes. How was</p> <p>5 that possibly going to resolve the situation, in your view?</p> <p>6 MINISTER MTHETHWA: I don't know.</p> <p>7 MR MPOFU: You don't know.</p> <p>8 MINISTER MTHETHWA: Mm.</p> <p>9 MR MPOFU: And the real question was, you</p> <p>10 don't think that this correspondence which suggests that</p> <p>11 these interventions were, the communicators or the players,</p> <p>12 as it were, were the president of NUM, secretary-general of</p> <p>13 the ANC, Minister Shabangu, yourself and others, you don't</p> <p>14 think there was a conflict of interest due to the fact that</p> <p>15 those people belonged to a particular political party?</p> <p>16 MINISTER MTHETHWA: Well, I see people</p> <p>17 who were, in one way or the other, involved or part of the,</p> <p>18 of what was going on because there are union members there</p> <p>19 and the secretary-general of the ANC I think maybe Mr</p> <p>20 Ramaphosa will have to explain. I think that he approached</p> <p>21 him because he's the secretary-general of the ruling party.</p> <p>22 That's an assumption, I don't know what was the actual –</p> <p>23 MR MPOFU: Yes. No, fair enough. We'll</p> <p>24 ask him about that. Why is it that representatives of the</p> <p>25 state like yourself find it difficult to apologise and say</p>	<p style="text-align: right;">Page 32396</p> <p>1 apologise to the people of South Africa and the people who</p> <p>2 were affected by the killings at the hands of the police?</p> <p>3 MINISTER MTHETHWA: Well, yes, I agree</p> <p>4 with you that –</p> <p>5 MR MPOFU: So are you prepared to –</p> <p>6 MINISTER MTHETHWA: - remorse has to be</p> <p>7 shown and to express that especially on those people who</p> <p>8 died and at any time I don't think that we would have a</p> <p>9 problem with that because one life is one too many. Just</p> <p>10 to remind you that the inter-ministerial committee went to</p> <p>11 Marikana and apologised on what happened and that happened</p> <p>12 actually, ministers apologised but if it has to be said</p> <p>13 again because as we said, it's not something which is</p> <p>14 supposed to happen under our democratic dispensation, it</p> <p>15 won't be a difficult thing to do because we said we are</p> <p>16 apologising for the loss of life of people there and at the</p> <p>17 same time we give the Commission an opportunity but we did</p> <p>18 not wait for the Commission. All what I'm saying to you is</p> <p>19 that taking it from there that immediately, it didn't have</p> <p>20 to wait for two years for us to come here and apologise.</p> <p>21 We did apologise as government ministers in the ministerial</p> <p>22 committee.</p> <p>23 MR MPOFU: Well, are you prepared to</p> <p>24 repeat that apology here and now?</p> <p>25 MINISTER MTHETHWA: It's not, you know,</p>

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1 let me repeat what we said.
 2 MR MPOFU: No –
 3 MINISTER MTHETHWA: We, as government of
 4 the Republic of South Africa, are pained with what happened
 5 and we apologise to the lives which were affected by this
 6 because it was not supposed to happen. So for us, that we
 7 know that is not going to, you know, heal people
 8 immediately as it were but we are remorseful of what
 9 happened. It, as I said, it should never happen and we
 10 hope and believe that through this process this will never
 11 happen again.
 12 MR MPOFU: If there – well, okay, you
 13 don't want to just give a straightforward apology.
 14 MINISTER MTHETHWA: Oh –
 15 MR MPOFU: Ja, you can just say it,
 16 Minister. We are sorry that the people that were killed –
 17 MINISTER MTHETHWA: No, no –
 18 MR MPOFU: You can say it.
 19 MINISTER MTHETHWA: No, don't be
 20 sensational, Chair.
 21 MS NKOSI-THOMAS SC: Chairperson –
 22 MR MPOFU: No, listen, listen here –
 23 MINISTER MTHETHWA: Chair, I think –
 24 MR MPOFU: Minister, you are just a
 25 witness –

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1 CHAIRPERSON: No, no, let's have some –
 2 MR MPOFU: This is not –
 3 CHAIRPERSON: - order here, let's not
 4 have everybody talking at once.
 5 MR MPOFU: Ja.
 6 CHAIRPERSON: Everybody keep quiet please
 7 for a moment, right. Now you wanted to say something?
 8 MINISTER MTHETHWA: No, I wanted to say,
 9 Chair, if it was not heard, I said that as government we
 10 are pained with what happened and we apologise. I'm saying
 11 it for the second time. We apologise for what happened and
 12 the lives of people who were affected by this and we know
 13 that we are not going to heal them immediately but we are
 14 sorry with what happened on that particular week.
 15 MR MPOFU: Thank you, those are the words
 16 I was looking for, we are sorry. Now it would be correct
 17 in that vein that if anybody falling under your department
 18 misrepresented the position of government, let's say the
 19 National Commissioner or the Provincial Commissioner – I'll
 20 make a wild example, if they said look, the South African
 21 Police is only going to serve black people, something which
 22 is outrageous, if they misrepresented, you would have a
 23 duty as a political head to repudiate that, correct?
 24 MINISTER MTHETHWA: If people transgress
 25 the laws of the country and that governs different

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1 portfolios like the police, would be faced with the
 2 necessary measures.
 3 MR MPOFU: No, sorry, maybe it's my
 4 fault. I'm saying if somebody said something in public
 5 which did not represent the views of SAPS, you would have a
 6 duty as a political head to repudiate somebody making the
 7 kind of outrageous statement like the example I made.
 8 MINISTER MTHETHWA: Well, you'll have to
 9 go through each thing which is said.
 10 MR MPOFU: No, okay –
 11 CHAIRPERSON: It's a hypothetical
 12 question at the moment. He says if something wildly
 13 outrageous is said.
 14 MR MPOFU: Ja.
 15 CHAIRPERSON: Assuming the National
 16 Commissioner – the example he gave, I think, was if the
 17 National Commissioner says look here, the South African
 18 Police Service is only here to look after blacks, if blacks
 19 suffer from crimes we'll deal with it, if whites suffer
 20 from crimes we're not going to deal with it, that's our
 21 approach. That would be an outrageous statement, it would
 22 never be made but if it were made, Mr Mpofu says, it would
 23 then be your duty as the political head of the police to
 24 say, well, that's what the National Commissioner said, I
 25 want to make it clear to everybody that that's not

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1 government policy, that's not the approach of the SAPS.
 2 The answer to that must be yes, I take it.
 3 MINISTER MTHETHWA: Yes. Well, it's yes,
 4 Chair. I was saying that we will regard processes because
 5 if somebody is accused of doing something you would have to
 6 go through processes so that you come to the conclusion of
 7 that.
 8 MR MPOFU: Yes, but before all those
 9 processes, those processes might take years, you would
 10 stand up and say as the Minister of Police, this racist
 11 statement made on behalf of SAPS, I'm repudiating it. You
 12 wouldn't wait for the so-called processes to unfold over
 13 years and appeals and –
 14 CHAIRPERSON: If it was clear the
 15 statement was made.
 16 MINISTER MTHETHWA: Yes.
 17 CHAIRPERSON: And he terms of it were as
 18 Mr Mpofu put them and as I repeated them, if that was clear
 19 you obviously wouldn't hesitate, you'd immediately say,
 20 well, that's nonsense, that's not what we say, that's not
 21 government policy and I – I don't know whether you'd go
 22 further and say I repudiate the statement but you'd put it
 23 very strongly, wouldn't you? You would?
 24 MINISTER MTHETHWA: Yes. Well,
 25 government does that all the time when it's misrepresented,

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1 it does that.

2 MR MPOFU: Thank you. Now if you go –

3 why then did you not, you've just said now that government

4 is sorry or has apologised.

5 [14:53] If you go to FFF27, what was out there was those

6 chilling words, "We are not sorry," and nobody took any

7 steps to repudiate that, at least not until months later.

8 Do you think that is proper? Do you – what I'm saying is

9 if there were statements like this which were made or

10 alleged to be made which go exactly contrary to what you

11 have just said here, do you expect the victims to accept

12 your apology willy-nilly?

13 MINISTER MTHETHWA: There are things –

14 MR MPOFU: Wouldn't it have been better

15 to first repudiate this?

16 MR SEMENYA SC: Chair –

17 MINISTER MTHETHWA: There are things –

18 CHAIRPERSON: No sorry, let him answer.

19 Sorry.

20 MINISTER MTHETHWA: I'm responding –

21 CHAIRPERSON: This is an article that

22 appeared in The Sowetan. Yes, Mr Semenya?

23 MR SEMENYA SC: Chair, it would be fair

24 to say to the witness –

25 CHAIRPERSON: I was just going to say

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1 what you say would be fair to say to him. This is an

2 article that appeared in The Sowetan with this headline –

3 MR MPOFU: Chair –

4 CHAIRPERSON: And it was alleged that

5 National Commissioner Phiyega had said that "We're not

6 sorry."

7 MR MPOFU: Chairperson –

8 CHAIRPERSON: Yes?

9 MR MPOFU: I'm sorry to interrupt. Can I

10 please ask that the witness ask himself without any

11 assistance? I mean answers the question –

12 CHAIRPERSON: Yes, I wasn't proposing to

13 assist him. I'm just giving him the context.

14 MR MPOFU: Well –

15 CHAIRPERSON: This statement appeared in

16 The Sowetan, banner headline, allegation that the National

17 Commissioner said that, and that's the background against

18 which the question has to be considered.

19 MR MPOFU: Thank you, Chairperson. Yes,

20 no then I apologise, Chairperson.

21 CHAIRPERSON: Mr Semenya?

22 MR SEMENYA SC: Chair, also the evidence

23 of the National Commissioner on that very headline is on

24 record. It is fair that the witness must be told what her

25 account is of that very –

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1 CHAIRPERSON: Yes, okay, there are two

2 points. One is she denies that she said it; she said that

3 in the Commission, and secondly she admitted though that

4 she never as I understood it did anything to correct it,

5 didn't contact The Sowetan at the time to say I was

6 misquoted, and there was a whole debate about that.

7 MR MPOFU: Yes. Chairperson, ja, that's

8 what I meant. I apologise for the remark of assisting the

9 witness. That should be more attributed to Mr Semenya.

10 I'm saying, Chairperson –

11 CHAIRPERSON: No, no, do me a favour;

12 don't fight –

13 MR MPOFU: No, I do –

14 CHAIRPERSON: Don't fight with him. The

15 fact is the context –

16 MR MPOFU: I'm not –

17 CHAIRPERSON: Sorry, sorry. Quiet. The

18 fact is I gave the full context to the witness. It's the

19 first part read with the third part that is relevant for

20 your question.

21 MR MPOFU: Yes.

22 CHAIRPERSON: But in fairness, the second

23 part is part of the context, but you've gotten the material

24 that you want for the question. Just ask him without

25 getting involved in –

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1 MR MPOFU: Thank you.

2 CHAIRPERSON: - unnecessary dogfights

3 with your learned friend.

4 MR MPOFU: Thank you, Chairperson. No,

5 what I'm saying, Minister, that's why I used the word

6 advisedly, I said until a few months later. I was using

7 those words advisedly, actually something like six months.

8 What I –

9 MINISTER MTHETHWA: Chair –

10 MR MPOFU: No, let me finish. What I was

11 intending to convey with those words was the fact that six

12 months or seven months later the Commission of Police when

13 she was being questioned here, when I put this same article

14 to her gave an account - which I'm going to argue later

15 should not be believed - that she had not made those

16 remarks, at which, as the Chairperson correctly points out,

17 I then reposed by saying that for such a serious statement

18 she would have taken some steps to repudiate them. So

19 that's the background, that's quite correct.

20 The point, I'm making to you a completely

21 different point. I'm not accusing you of making a

22 statement or anything like that. I'm simply saying if a

23 statement like that was made and unrepudiated for so many

24 months, don't you think that that would affect the weight

25 or the credibility of the apology that you have just given

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1 now? Because that goes exactly, is the exact opposite of
 2 what was left unchecked for six months or so in the public
 3 domain.
 4 CHAIRPERSON: Mr Mpfu, that's an
 5 incomplete question because the witness also said that the
 6 apology he repeated now had been made by the inter-
 7 ministerial committee at the time, but –
 8 MR MPOFU: Well –
 9 CHAIRPERSON: But it doesn't necessarily
 10 detract –
 11 MR MPOFU: I don't believe that either.
 12 CHAIRPERSON: - from the thrust of your
 13 question, but it is a relevant factor. The fact of the
 14 matter is we, as far as we understand nothing was done to
 15 correct the situation. Nothing was done to repudiate this
 16 alleged statement made by the National Commissioner, and Mr
 17 Mpfu's point is would you then accept that being so
 18 there'd be a certain degree of reluctance on the part of
 19 the people to whom the apology was addressed to accept the
 20 apology in the light of this history. That's your
 21 question, Mr Mpfu?
 22 MR MPOFU: Yes. Sorry, Minister, I don't
 23 want to bombard you but so that you give one answer, even
 24 more so if what the Chairperson is saying is correct, or
 25 rather if what you are saying is correct, that there was an

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1 earlier apology, because then it would have meant the
 2 National Commissioner is actually going against an official
 3 apology from government. I don't believe there was such an
 4 apology, but put that aside. It would have even been more
 5 so because now she would be going against a government
 6 decision and an apology that has already been given by the
 7 inter-ministerial committee. That would make the matter
 8 graver.
 9 CHAIRPERSON: Mr Mpfu's time is up. In
 10 fact it was up a few minutes ago, but I'll let him go on to
 11 finish this point because it's obviously a very important
 12 point for him and his clients. What is your answer?
 13 MINISTER MTHETHWA: Okay, no Minister
 14 Mapisa-Nqakula in the aftermath of the tragedy which
 15 happened in Marikana publicly stated on behalf of
 16 government our apology as government. You can check your
 17 record on that. I would, I won't come here to this
 18 Commission and say something which is not true.
 19 MR MPOFU: Okay.
 20 MINISTER MTHETHWA: On this matter, as
 21 the Minister of Police, in fact it's not this matter only,
 22 there are two matters which were alluded to have been said
 23 by the National Commissioner. She said that she never said
 24 this thing that she is not sorry. That's what she relayed
 25 to me and from there it was the matter of getting the media

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1 and correcting what she said, which doesn't represent what
 2 she was saying. So she said that to me. There was no need
 3 therefore to repudiate. There was a need for the
 4 correction of what would have been out there. I take the
 5 point of the Chair that it only happened when the National
 6 Commissioner was here, but that is what was said, she never
 7 said this thing.
 8 MR MPOFU: I don't think we understand
 9 each other. Let me do it like this. For the sake of this
 10 question let's accept two things and get them out of the
 11 way. Let's say –
 12 CHAIRPERSON: Mr Mpfu, your time is up
 13 but I'll give you a chance to finish off the point you're
 14 making because it's obviously an important one for you.
 15 MR MPOFU: No, Chairperson, really, you
 16 know my time is up but it has been –
 17 CHAIRPERSON: Mr Wesley has already –
 18 MR MPOFU: - taken up by all this
 19 interventions.
 20 CHAIRPERSON: No, but –
 21 MR MPOFU: I would like to –
 22 CHAIRPERSON: No, no, no. Finish off
 23 this question, that's the end of your time.
 24 MR MPOFU: No, Chairperson, with the
 25 greatest respect, I have another important matter to put to

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1 this witness which if it's not put now I'm going to have to
 2 apply for him to be recalled because these are crucial
 3 matters for my witnesses, Chairperson, or rather for my
 4 clients. Remember my clients were cross-examined for
 5 weeks, so it's not fair on them that we can't put some of
 6 the material to this witness. I do accept the questions of
 7 the time pressures that have come into the Commission.
 8 We've all accepted them, but –
 9 CHAIRPERSON: Just put your question to
 10 the witness now and we'll take tea and I'll think about the
 11 point you've raised now.
 12 MR MPOFU: Okay. The problem with – or
 13 there are two problems. Maybe let me roll it into one
 14 because of the time pressure. The one problem about the
 15 statement having remained in the public domain unreputed
 16 for many months we've already dealt with, but the other
 17 issue is that which makes your apology not credible, is
 18 that the same National Commissioner who said we are not
 19 sorry also said that what happened in Marikana represented
 20 the best of responsible policing and thanks to the police
 21 for that they did, and you also did the same. You also
 22 thanked them and told them that all the things that Mr
 23 Ntsebeza said, that they did the right thing because people
 24 would be running amok and making this a banana republic and
 25 all that. That is not consistent with true remorse, both

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1 this statement, that this thing represents the best of
 2 responsible policing, which is outrageous, and the fact
 3 that these people were thanked for what they did by you and
 4 the National Commissioner. What do you say to that?
 5 MINISTER MTHETHWA: I don't understand –
 6 MR MPOFU: If you were in their shoes
 7 would you understand them taking your apology with a pinch
 8 of salt?
 9 MINISTER MTHETHWA: Well, I don't agree
 10 with the sentiment you are making, but whether the people
 11 concerned would accept or not, we'll respect what they say,
 12 but we have said what we needed to say, as I repeated it
 13 now here.
 14 CHAIRPERSON: Very well, we'll take the
 15 tea adjournment at this stage. I'd like to see the counsel
 16 for AMCU and the Human Rights Commission and Lonmin and the
 17 evidence leaders and you, Mr Mpfu, during the tea break.
 18 MR MPOFU: Thank you, Chairperson.
 19 [COMMISSION ADJOURNS COMMISSION RESUMES]
 20 [15:21] CHAIRPERSON: The Commission resumes.
 21 The position is that the Municipality has very kindly
 22 agreed that we can continue in this chamber until half past
 23 four. I've agreed to give Mr Mpfu an extra 10 minutes,
 24 but it must be understood that there's an automatic
 25 guillotine that's going to operate at 4:30 and those who

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1 don't get out of the way in time will have their heads
 2 chopped off. The witness is still bound. I must remind
 3 you, Minister you're still bound by your affirmation. Mr
 4 Mpfu, use your ten minutes as economically as you can.
 5 MR MPOFU: Thank you, Chairperson.
 6 Minister, I'm just going to ask you sometimes very
 7 compounded questions because of time, just so that I cover
 8 all the material. And I've decided that I'm not going to
 9 play the video. I'll hopefully rely on your memory for the
 10 video that was played this morning with particular
 11 reference to your speech made in that video. Do you
 12 remember that?
 13 MINISTER MTHETHWA: Yes I do.
 14 MR MPOFU: Okay firstly before we get to
 15 the video. You already said to me that it would be
 16 unlawful for the Provincial Commissioner, let's just go
 17 direct, to take into account political consideration in the
 18 execution of her duties, correct?
 19 MINISTER MTHETHWA: Yes.
 20 MR MPOFU: And the evidence, I will
 21 paraphrase, the evidence is that she took into account not
 22 only the so-called political pressure that you and I have
 23 discussed at length, but also she took into account issues
 24 to do with whether or not AMCU would gain an upper hand.
 25 She took into account the questions as to whether or not Mr

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1 Malema would provide a solution which had to be stopped.
 2 In other words the solution - he had to be prevented,
 3 that's Mr Malema, from providing the solution as he did at
 4 Impala. He took into account the fact that Mr Cyril
 5 Ramaphosa was the person who was chairing Mr Malema's
 6 disciplinary hearing in the ANC, all of those being
 7 political considerations. And she said that hence, in
 8 other words that because of those considerations and I'm
 9 paraphrasing, we had to kill this matter. In other words
 10 they had to deal with it very quickly and it had to be done
 11 at a particular time. And sorry, this is the compounded
 12 part. One of things I'm going to argue is that had it not
 13 been for those considerations the operation, even if it was
 14 still going to be carried might have been done on the 18th,
 15 the 19th, the 20th and it would have had different
 16 consequences and maybe the deaths could have been avoided.
 17 So the timing which is the 16th and the rush, rush was
 18 directly influenced by the political considerations and
 19 therefore the deaths of the 34 people were directly
 20 influenced by the rush. If indeed she took those matters
 21 into consideration would you agree that that is unlawful,
 22 actionable and a matter for which she ought to be charged.
 23 And all those who played a role in that. Sorry I know it's
 24 a long question.
 25 CHAIRPERSON: I understand, Minister, the

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1 question is based essentially on the transcripts which is
 2 behind tab 10 in the file you've got. The concept of the
 3 conversation between the Provincial Commissioner and
 4 representatives of Lonmin on Tuesday afternoon the 14th of
 5 August, exhibit JJJ192 and the passage in particular which
 6 Mr Mpfu relies on at page 10.
 7 MR MPOFU: Yes thank you, Chair.
 8 CHAIRPERSON: Having put all that just
 9 put the question crisply to the witness -
 10 MR MPOFU: And not with the tail end yes
 11 which is that if all that is accepted as having occurred
 12 would you agree that that conduct would be against the law
 13 and actionable in various forms.
 14 CHAIRPERSON: I don't think you need ask
 15 him what the law is, he's not a legal expert.
 16 MR MPOFU: No I'm not telling him –
 17 CHAIRPERSON: With your question is
 18 whether it would have been inappropriate I think you would
 19 say entirely inappropriate for the Provincial Commissioner
 20 to take those factors into account. Is that a fair summary
 21 of your point.
 22 MR MPOFU: I'd go slightly further,
 23 Chairperson. In other words he has given us what he calls
 24 the legal framework that it would be in breach of that
 25 legal framework.

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1 MINISTER MTHETHWA: I'm prepared to say,
 2 Chair, it would be improper and accordingly action would be
 3 –
 4 MR MPOFU: Called for.
 5 MINISTER MTHETHWA: Ja, it would be equal
 6 whatever which would have been found, but it's improper,
 7 especially because of what you said earlier on that our
 8 understanding is that members of SAPS execute their jobs
 9 professionally as people are supposed to do that.
 10 MR MPOFU: Yes, no, thanks I accept that.
 11 And if further than that it could be shown to be causally
 12 connected to the deaths of the 34 people then it would be –
 13 the action would have to be quite severe, it might even
 14 include criminal action. Yes, no?
 15 CHAIRPERSON: It's a legal question.
 16 MR MPOFU: It is a leading question.
 17 CHAIRPERSON: It's a legal question isn't
 18 it?
 19 MR MPOFU: Oh.
 20 CHAIRPERSON: I mean you can ask leading
 21 questions, you're cross-examining. It's a legal question.
 22 You say it would involve criminal action, that means you're
 23 contending that it would be a crime on her part to do
 24 those.
 25 MR MPOFU: If it was linked to that, ja.

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1 CHAIRPERSON: Yes, yes, yes I understand
 2 and I'm not sure if the Minister is in a position to answer
 3 what the law is on the point.
 4 MR MPOFU: Well he told us so many times
 5 about what's criminal and what's not.
 6 MINISTER MTHETHWA: No, no, no, Chair, I
 7 think if permissible I would want to be advised on that
 8 than just answering the question because that's all I would
 9 want to say.
 10 CHAIRPERSON: Well if it led to the
 11 deaths of the people or might well have led to the deaths
 12 of people who wouldn't otherwise have died that would be
 13 very, very serious.
 14 MINISTER MTHETHWA: Well, Chair, as the
 15 question was asked I did say that that would be improper.
 16 That would be against the law and whatever would be taken
 17 would be according to what has been committed and proven to
 18 be committed. So I think that I would be prepared to say
 19 that.
 20 MR MPOFU: Yes, no, I'm happy with that,
 21 Chairperson, thank you. Then in the video, you've got the
 22 transcript.
 23 CHAIRPERSON: Transcripts have been
 24 prepared of the video, I think we must put it in now. It
 25 will CCCC81.

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1 MR MPOFU: We've come to 7.2,
 2 Chairperson.
 3 CHAIRPERSON: Oh all right.
 4 MR MPOFU: Remember the video –
 5 CHAIRPERSON: Okay make the other one
 6 7.1, this will be 7.2, transcript of Minister's Speech. Is
 7 that –
 8 MR MPOFU: Yes that's correct,
 9 Chairperson. Now you said when you were thanking these
 10 people and telling them about banana republics. You said
 11 that as your Minister and on behalf of the government, the
 12 executives as a whole, on behalf of the President of the
 13 Republic, Commander in Chief of all armed forces in this
 14 country were all behind you. Well I have a few things to
 15 ask about that. Firstly, the armed forces you are
 16 referring to include SAPS, correct?
 17 MINISTER MTHETHWA: Yes.
 18 MR MPOFU: And also when you said on the
 19 next page, it would be painful that in the process of - but
 20 you are a professional force and you must keep to that.
 21 You were also referring to SAPS.
 22 MINISTER MTHETHWA: Yes.
 23 MR MPOFU: Is SAPS a force?
 24 MINISTER MTHETHWA: Yes.
 25 MR MPOFU: An armed force?

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1 MINISTER MTHETHWA: It is an armed force,
 2 it's South African Police Service.
 3 MR MPOFU: No, I know but do you know
 4 that the whole debate about, during the - which I'm not
 5 going to get into, but I'm saying if no less than the
 6 Minister refers to SAPS as a force do you expect the foot
 7 soldiers to act differently other than being trigger happy?
 8 MINISTER MTHETHWA: Well you would, from
 9 time to time use that word to emphasise the point, but it
 10 doesn't mean that we have changed SAPS as such and the
 11 prescripts which govern SAPS because in the statement you
 12 are referring to underpinning the statement is the emphasis
 13 on the role of law and acting professionally.
 14 MR MPOFU: Okay and did you have
 15 blessings or maybe to put it properly, the mandate of the
 16 government, the executives as a whole and the President of
 17 the Republic, Commander in Chief of all armed forces to say
 18 the things you said because you said everything you said on
 19 their behalf?
 20 MINISTER MTHETHWA: Well the
 21 responsibility we are given we are given on behalf of
 22 government.
 23 MR MPOFU: Yes and in any event and
 24 nobody, none of those people that you thanked the people
 25 about and talked about anarchists and running amok and so

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1 on, none of them ever repudiated that you were not speaking
2 for them. Correct?

3 MINISTER MTHETHWA: When I speak I speak
4 on behalf of government as the person responsible for this
5 particular portfolio. So I see nothing wrong there.

6 MR MPOFU: No that's not my question.
7 Obviously you see nothing wrong. If you saw that something
8 was wrong you wouldn't have said it. I'm saying to you did
9 any of those people, the President, the government and the
10 executives as a whole, the Commander in Chief of all armed
11 forces ever repudiate your statement and say you were not
12 speaking on their behalf?

13 MINISTER MTHETHWA: Well as far as I
14 could remember my statement was made and directed to
15 members of SAPS. I don't remember the members of the media
16 there or the public. I don't know whether any other person
17 other than people here would have known or seen the
18 statement.

19 MR MPOFU: Okay finally, Minister and
20 Chair to round off I want at least one thing I must do to
21 you in fairness which is that I'm going to argue at the end
22 that due to your involvement in the what I call the chain
23 of political pressure which we will argue was causally
24 connected to the fact that the massacre occurred at a
25 particular time or on a particular date at the least. And

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1 due to the role you played in that which resulted in the
2 deaths of 34 people and the injury of about 80 or more that
3 you together with other people that we have listed should
4 be charged with the murder of those people for whatever
5 role you might have played in the event that led to their
6 deaths and injuries. And we have you on the list of
7 accused as accused number 2.

8 CHAIRPERSON: Do you want to comment to
9 that?

10 MINISTER MTHETHWA: It's his views but I
11 think it's the wrong one.

12 CHAIRPERSON: I see, thank you. Thank
13 you, Mr Mpofu.

14 MR MPOFU: I didn't get the –

15 MINISTER MTHETHWA: It's your view and
16 it's the wrong view.

17 CHAIRPERSON: I think that's where we
18 leave it. Thank you Mr Mpofu.

19 Now we move onto AMCU.

20 MS BARNES: Yes thank you, Chair.

21 CHAIRPERSON: Ms Barnes.

22 MS BARNES: Good afternoon, Minister. As
23 the Chair has indicated, I'm over here, I represent AMCU in
24 this Commission. Minister, I'm only really going to deal
25 with one topic with you this afternoon. I am going to

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1 refer to quite a few documents. If we could move through
2 them as quickly as possible so that we finish within the
3 allotted time. The first document I need to refer you to
4 is your supplementary statement which is CCCC1, page 21
5 paragraph 80.

6 MINISTER MTHETHWA: Yes.

7 MS BARNES: Do you have it in front of
8 you?

9 MINISTER MTHETHWA: Yes, I do.

10 MS BARNES: Perhaps we can start. Now in
11 this paragraph you refer to a minute of a JOCCOM meeting
12 which was held at half past one on the 16th of August 2012
13 and you quote the following from that minute, you say "The
14 Provincial Commissioner indicated that she had already
15 communicated with the National Commissioner informing her
16 of the current situation and that a deadlock was reached
17 with negotiations and also that phase 3 of the operational
18 plan will be executed." And this is the important part.
19 Again you're still quoting the minute. "She also indicated
20 that the National Commissioner indicated that she will
21 inform the Minister of Police on the current situation and
22 the actions that will be taken." Now of course, you don't
23 know what happened in that meeting because you weren't
24 there but what you have said is that the National
25 Commissioner did not inform you of the actions that were

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1 going to be taken on the 16th of August 2012, correct?

2 MINISTER MTHETHWA: Correct.

3 MS BARNES: And you in fact say so in
4 your statement. You say "I can confirm" I think it's at
5 the top of the next page, page 22 "I can confirm that I at
6 no stage was informed of the decision to execute stage 3 of
7 the operational plan. This is not the sort of detail that
8 I would engage in given this operational nature." Now do
9 you stand by that, Minister?

10 MINISTER MTHETHWA: Correct.

11 MS BARNES: You're quite sure about that?

12 MINISTER MTHETHWA: Yes.

13 MS BARNES: What's interesting, Minister,
14 is what the National Commissioner had said about this, both
15 in her statements and in her evidence before this
16 Commission and I'd like us to look at that. Now the
17 National Commissioner has submitted a series of statements
18 before the Commission, we're going to look at two of them.
19 The first one is exhibit FFF2, we're also going to look at
20 FFF3, but if we could start at FFF2. It was one of the
21 documents that you were given notice that AMCU was going to
22 rely on. If we could go to page – we must perhaps just
23 check that this is the correct FFF2 since there has been
24 some confusion about this in these proceedings. The FFF2
25 should be a document that is commissioned and signed on the

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1 7th of March 2013.

2 MS NKOSI-THOMAS: Chairperson, that

3 document is tab 16 of the –

4 MS BARNES: Then unfortunately, Chair, we

5 have a problem. I can refer the Commission to the part of

6 the transcript where it was indicated precisely what FFF2

7 and FFF3 are. This is not the correct FFF2.

8 CHAIRPERSON: Do that quickly, the point

9 doesn't involve a lengthy passage. You can just read it to

10 the witness I think.

11 MS BARNES: If we can go to page 7 of

12 this document please. If we can go to the bottom of the

13 page please. The difficulty, Chair, is that this is not

14 the correct FFF2 and it's going to be problematic for me in

15 my cross-examination if I do not have the correct FFF2 up

16 on the screen.

17 COMMISSIONER HEMRAJ: This exhibit is

18 dated the 12th of March and you're referring to the 7th of

19 March statement aren't you?

20 MS BARNES: Yes, yes.

21 COMMISSIONER HEMRAJ: And I see it's

22 different.

23 MS BARNES: Yes. The simplest to do

24 this, Chair, is to copy the correct FFF2 and correct FFF3

25 and give them to the witness.

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1 CHAIRPERSON: Let's solve the problem

2 this way. You stop your cross-examination now and we'll

3 get Ms Le Roux to do her cross-examination from the Human

4 Rights Commission. While that's being done, Mr Matthew

5 Chaskalson – is it being put up? Maybe it's being handed

6 up now. Oh the problem's been solved. You may be able to

7 carry on with your cross-examination. Otherwise Mr

8 Chaskalson can transfer the correct one to a memory stick

9 and it can be taken to the operator, but it sounds to me as

10 if it's not going to be necessary.

11 MS BARNES: I would prefer to sort it out

12 properly otherwise it is simply going to wreak havoc with

13 my cross-examination.

14 CHAIRPERSON: All right there are a few

15 ways of solving it. If the memory stick or whatever it is

16 that's been handed to the operator now is what we think it

17 is then you can carry on. Well let's just see otherwise Ms

18 Le Roux will have to take over and Mr Chaskalson will have

19 to do his magic with his magic stick, with the memory

20 thing. Which paragraph do you want?

21 MS BARNES: I want page 7 - that's the

22 same document. I think it might be best, Chair, if Ms Le

23 Roux takes over given the time constraints and I'll sort

24 this out.

25 CHAIRPERSON: All right.

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1 MS BARNES: And then resume when I have

2 the correct document.

3 CHAIRPERSON: Certainly. Ms Le Roux are

4 you ready? On the horse, have your spurs on your boots,

5 you're ready to carry on.

6 CROSS-EXAMINATION BY MS LE ROUX: Yes,

7 Chair, that's fine.

8 [15:40] Good afternoon, Minister. I represent the South

9 African Human Rights Commission in these proceedings and I

10 have two topics that I need to canvass with you. Chair,

11 I've taken the liberty of marking the exhibits. I'll give

12 you the full descriptions later but as long as Ms Pillay

13 can confirm for me that the last exhibit marked was CCCC7,

14 then my timing should be right.

15 CHAIRPERSON: It's CCCC7.1 and 7.2.

16 MS LE ROUX: Right.

17 CHAIRPERSON: So you're 8.

18 MS LE ROUX: So then, Chair, I take the

19 liberty of marking what I'm going to do and then we can,

20 I'll sort it out with you when we adjourn. Minister, I'd

21 like to start in your supplementary statement which is

22 CCC1. Again for time constraints I'm going to summarise

23 this. Am I correct that I understand your evidence as

24 follows, that page 3 paragraph 3 of your supplementary

25 statement you explain how you as the political head are

Page 32424

1 distanced from operational responsibilities such as those

2 held by the National Commissioner. Page 4 paragraph 7

3 until paragraph 24 you set out what you describe as your

4 political oversight framework that you describe as being

5 set up to ensure structural and operational autonomy for

6 the SAPS from your ministry. Page 6 paragraph 16 you say

7 that this entire constitutional scheme is designed to imbue

8 SAPS with sufficient structural and operational autonomy so

9 as to shield it from undue political influence to

10 institutional and legal mechanisms. And then over the

11 page, page 7 paragraph 21 you set out the various

12 safeguards that are aimed at preventing political

13 interference by providing structural and operational

14 autonomy. So am I summarising your evidence correctly to

15 say that you see your role as to provide political

16 oversight and that from the National Commissioner down are

17 the individuals responsible for what you call structural

18 and operational autonomy of the South African Police

19 Service?

20 MINISTER MTHETHWA: Yes.

21 MS LE ROUX: You then in your evidence in

22 chief use the phrase, where you said that operational

23 details were not part of your area, so again I just want to

24 confirm and you said it repeatedly throughout your

25 evidence, you do not see your responsibility as including

<p style="text-align: right;">Page 32425</p> <p>1 the operational details, that is for the members of the 2 South African Police Service, correct? 3 MINISTER MTHETHWA: Yes. 4 MS LE ROUX: Now are you aware that the 5 SAPS have engaged Mr Cees de Rover who is an expert on the 6 use of force in policing to give expert evidence to the 7 Commission? Are you aware of his appointment and brief? 8 MINISTER MTHETHWA: No. 9 MS LE ROUX: So you haven't played any 10 role in his brief, in his application, you don't know that 11 there is a man called Mr De Rover who is the SAPS policing 12 expert before this Commission. 13 MINISTER MTHETHWA: No. 14 MS LE ROUX: Okay. Well, I'm interested 15 in your view on something that Mr De Rover has provided to 16 the Commission. The fact that you haven't previously been 17 aware of his role is immaterial for that purpose. So 18 Chair, if we would use what will be marked as CCCC8.1, that 19 is a letter from my attorneys, CALS, to the SAPS on the 30th 20 of May 2014. It's headed "Interrogatories to Mr De Rover" 21 and if you turn to the last page of that document, there 22 you'll see an interrogatory number 10. Chair, I'm going to 23 read it into the record so that we can keep moving. So 24 Minister, interrogatory 10 was posed to the SAPS expert 25 where it was asked of him, "Does Mr De Rover accept that</p>	<p style="text-align: right;">Page 32427</p> <p>1 if we turn to the last page of that document, there Mr De 2 Rover sets out his answer which seems to contradict the 3 Minister's evidence and I'd like the Minister's comment on 4 Mr De Rover's answer because there Mr De Rover states, with 5 respect to the question of whether political interference 6 in operational policing is undesirable, he says, "I make 7 reference to the preamble of the South African Police 8 Service Act of 1995 which states in its preamble, 'Where 9 section 214 of the Constitution requires legislation to 10 provide for the establishment and regulation of the South 11 African Police Service which shall be structured at both 12 national and provincial levels and shall function under the 13 direction of the national government as well as the various 14 provincial governments,'" Mr De Rover then says, "I cannot 15 agree with CALS' assertion that operational policing should 16 be free from political interference, particularly not when 17 we consider a situation like Marikana where the 18 implications of an ongoing strike impact on the platinum 19 industry, on labour relations, on unions and their members, 20 on public order, on the South African economy, on South 21 African society at large. It would be the absence of 22 political interference that would greatly concern me in a 23 case like that." Minister, do you agree or disagree with 24 the view that Mr De Rover expresses there because it seems 25 to us to be contradicted by your evidence on this point.</p>
<p style="text-align: right;">Page 32426</p> <p>1 it's a fundamental principle of law enforcement in 2 democracies that operational policing decisions should be 3 taken by operational police based on the situation on the 4 ground and free from the interferences of political 5 authorities? If Mr De Rover agrees, please can you set out 6 the reason for this principle." Now Minister, as I 7 understand your evidence, you would agree with that 8 interrogatory, that it's a fundamental principle of law 9 enforcement in democracies to have a separation between 10 operational policing decisions taken by operational police 11 based on the situation on the ground, free from the 12 interferences of political authorities? If I understand 13 your evidence you would agree with that proposition, 14 correct? 15 MINISTER MTHETHWA: Yes. 16 MS LE ROUX: And to put that a little 17 more crisply, as the Minister of Police you did not see it 18 as your role to involve yourself in the operational 19 policing decisions at Marikana or to seek to influence any 20 action taken by the operational leadership of the operation 21 at Marikana, correct? 22 MINISTER MTHETHWA: Yes. 23 MS LE ROUX: Chair, if we then turn to 24 what would be marked as CCCC8.2, this is Mr De Rover's 25 response to CALS. This is dated the 12th of June 2014 and</p>	<p style="text-align: right;">Page 32428</p> <p>1 MINISTER MTHETHWA: Chair, again it is 2 important to highlight that the words "political 3 interference" in his response is in quotes, so he uses it 4 in a specialised way, not in the ordinary way. 5 MS LE ROUX: Yes, Chair, to the – 6 obviously this is something we would need to canvass when 7 Mr De Rover comes to testify but the CALS question was, 8 which is being quoted is, "Does Mr De Rover accept that it 9 is a fundamental principle of law enforcement in 10 democracies" – 11 CHAIRPERSON: There are no quotes in the 12 question. 13 MS LE ROUX: Yes, but he seems to be 14 referencing the question which said it should be free from 15 the interferences of political authorities. He seems to be 16 summarising that in the quote, political interference. Now 17 obviously I must just make clear to the Minister, we don't, 18 we don't mean – I mean interference means what it needs to 19 mean. It doesn't mean political awareness, political 20 awareness, political intervention, political engagement, it 21 means political interference in the operational policing 22 decisions and that's what I understand the Minister's 23 evidence to have been, that there shouldn't be political 24 interference in operational policing. Minister, could you, 25 do you confirm that that is your position?</p>

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1 MINISTER MTHETHWA: Yes, I confirm.
 2 MS LE ROUX: Minister, what concerns us
 3 is that Mr De Rover's response seems to indicate that he
 4 seems to have some knowledge that there was some political
 5 interference because he lists all the different aspects of
 6 the political consequences and contexts to Marikana in his
 7 answer. You don't have any knowledge as to what Mr De
 8 Rover may have in mind when he lists all those different
 9 aspects in his answer, do you?
 10 MINISTER MTHETHWA: I don't really know
 11 those aspects.
 12 MS LE ROUX: Right, so you can't assist
 13 the Commission on what Mr De Rover had –
 14 MINISTER MTHETHWA: I can't, I can't
 15 comment –
 16 MS LE ROUX: - as the basis for his
 17 statements.
 18 MINISTER MTHETHWA: Yes, I can't.
 19 MS LE ROUX: Then Minister, I can move on
 20 to my second topic which is where I'd like to explore a
 21 series of propositions with you about ensuring
 22 accountability in an organisation. So I'd like you to
 23 understand that all of my questions relate to the time when
 24 you were the Minister and the political authority or
 25 principal of the SAPS and that they relate to the SAPS as

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1 an organisation. So my questions don't relate to whether
 2 there will be consequences for the SAPS out of this
 3 Commission process, out of any civil claims that may follow
 4 and be pursued through the courts or out of any criminal
 5 prosecutions that may follow. My questions also do not
 6 relate to anything IPID does. So given those parameters,
 7 I'm only asking you about when you were the political
 8 authority for the SAPS as an organisation, distinct from
 9 Commission, IPID, civil claim or criminal prosecution. So
 10 Minister, do you understand the ambit of what I'd like to
 11 focus on?
 12 MINISTER MTHETHWA: I think I'm following
 13 you.
 14 MS LE ROUX: Thank you. And if anything
 15 is unclear please just ask me and I'll clarify. So looking
 16 at the SAPS as an organisation and your role as its
 17 political principal, will you agree with me that it's an
 18 objective of the SAPS to continually raise standards and
 19 meet best practice in policing?
 20 MINISTER MTHETHWA: Correct.
 21 MS LE ROUX: Would you agree with me that
 22 one of the key mechanisms for raising standards is to
 23 ensure that there's accountability when existing standards
 24 are not met?
 25 MINISTER MTHETHWA: Yes.

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1 MS LE ROUX: Would you agree with me that
 2 ensuring accountability in an organisation requires strong
 3 leadership?
 4 MINISTER MTHETHWA: Yes.
 5 MS LE ROUX: And that if the leadership
 6 of an organisation doesn't demand accountability and
 7 transparency when standards are not met, it's unlikely that
 8 there will actually be any accountability when standards
 9 are not met.
 10 MINISTER MTHETHWA: Yes.
 11 MS LE ROUX: Chair, if I could then turn
 12 to a document that we'll mark in due course as CCCC9. This
 13 is a document, it's a Mail and Guardian article dated the
 14 25th August 2012. It has the headline, "Marikana – Mthethwa
 15 receives preliminary report on assault allegations." And
 16 Minister, in this article it's reported that you were
 17 provided with a preliminary report on allegations of
 18 assault by SAPS members on those individuals who were
 19 detained and held after Marikana on the 16th of August. Now
 20 at the time – Minister, you've had an opportunity to read
 21 this report, I understand, because we provided your legal
 22 team with these documents yesterday. You've had an
 23 opportunity to read this article, correct?
 24 MINISTER MTHETHWA: Ja, I think I saw it.
 25 MS LE ROUX: Yes. And in this article

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1 you – so as I understand the context of this article, it
 2 reports that you were given a preliminary report on the
 3 allegations of assault by SAPS members on detainees and so
 4 that obviously means you didn't yet have any final
 5 conclusions as to whether there was any truth to those
 6 allegations, that's correct?
 7 MINISTER MTHETHWA: Yes.
 8 MS LE ROUX: And in the article you're
 9 quoted as saying, "Any police officer who conducts him or
 10 herself in a manner that is not in line with constitutional
 11 principles should face the full might of the law and I
 12 encourage IPID to investigate these allegations without
 13 fear or favour." So in that statement you're obviously not
 14 prejudging anything that IPID will do but you make a clear
 15 statement to the members of SAPS that any breaches of the
 16 standards you expect of them would not be tolerated and you
 17 make clear to them and to the SAPS leadership that co-
 18 operation with IPID would be essential. Do you agree that
 19 that's what you were trying to convey by making such a
 20 strong statement?
 21 MINISTER MTHETHWA: Yes.
 22 MS LE ROUX: And as the political
 23 principal of SAPS, that's obviously the kind of statement
 24 that was important to make because it sets the tone as to
 25 how SAPS would deal with any allegations of misconduct by

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1 its members, correct?

2 MINISTER MTHETHWA: Yes.

3 MS LE ROUX: Now I put that article to

4 you and the very clear statement that you made there that

5 there would be consequences for members who misconducted

6 themselves because it stands in very marked contrast to the

7 public statements made by the SAPS about killing 34 people

8 on the 16th of August because my colleagues have canvassed

9 some statements with you, we have tried to find any similar

10 public statement by you or any other member of SAPS

11 leadership, whether the National Commissioner or the

12 Provincial Commissioner, where you say to the members of

13 SAPS that if any member is found to have misconducted

14 themselves or somehow acted not in line with their

15 constitutional obligations, that they would face the full

16 might of the law for what happened on the 16th of August.

17 Have you made any such statement?

18 MINISTER MTHETHWA: No, no statement has

19 been made in relation to this particular matter, especially

20 after the, after the start of the work of the Commission,

21 no.

22 MS LE ROUX: And you're not aware of any

23 other member of SAPS leadership, whether a commissioner or

24 any high ranking officer, making a similar statement to

25 members that if it turns out that the member had

Page 32434

1 misconducted themselves, that they would face very serious

2 consequences. You don't know of anyone else making that

3 statement?

4 MINISTER MTHETHWA: Not that I recall of.

5 MS LE ROUX: Now I'm also correct,

6 though, that in your evidence in chief you accepted the

7 possibility – sorry, under cross-examination, am I correct

8 that you accepted the possibility that if police members

9 were found to have used firearms without justification they

10 would be guilty of a criminal act because that was outside

11 the bounds of law and you would, am I correct that you

12 would then expect the full might of the law to hold that

13 SAPS officer responsible?

14 MINISTER MTHETHWA: Well, the law has to

15 be adhered to by everybody so I would -

16 MS LE ROUX: Including the police.

17 MINISTER MTHETHWA: Yes, including the

18 police. I would be affirming what you are saying.

19 MS LE ROUX: Now, a phrase that you've

20 used repeatedly in your evidence over the last few days is

21 that something terribly wrong took place there.

22 MINISTER MTHETHWA: Mm.

23 MS LE ROUX: And if I could, Chair, give

24 you a record reference but I don't think we need to go

25 there, Mr White's statement, that is the policing expert

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1 retained by the South African Human Rights Commission in

2 his final statement, exhibit JJJ178 page 27 section 4.2 and

3 particularly paragraph 4.2.1, Mr White says there that what

4 happened on the 16th of August was a failure of public order

5 policing and he says that quite clearly, as you have said,

6 something went terribly wrong at Marikana. Would you

7 accept, and let me be clear, I'm not saying that the SAPS

8 could potentially be found to bear the sole responsibility

9 for something going terribly wrong. Perhaps there are

10 other parties that can be held responsible for things going

11 terribly wrong but you'll agree with me that there's a

12 possibility that at least the SAPS would be a party

13 responsible for things going terribly wrong at Marikana.

14 That's a possibility that will be explored.

15 MINISTER MTHETHWA: Maybe before I answer

16 your question, if you say SAPS and possibly other parties,

17 what are you referring to, just for my clarity?

18 MS LE ROUX: Minister, it could be the

19 protesters at the koppie, it could be third parties such as

20 trade unions or Lonmin.

21 MINISTER MTHETHWA: Okay, okay.

22 MS LE ROUX: So when you say something

23 went terribly wrong, there may be other parties that may

24 have played some role but you accept that the SAPS would be

25 one party that could possibly have played a role in things

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1 going terribly wrong.

2 MINISTER MTHETHWA: Even though I'm

3 speculating or you are asking me to speculate now, but

4 anything is possible here. I'm sure we'll be able to

5 unearth the exact happenings through this Commission.

6 MS LE ROUX: And where it was a policing

7 operation and we know that it's undisputed that it was

8 police members who killed 34 people and injured more than

9 70 others, it would, you would agree with me that it would

10 be the responsibility of the leadership of that police

11 service to ensure that three things happened. The first is

12 that what went wrong as an organisation, so leave aside any

13 other parties that may be responsible. SAPS itself should

14 look at if anything went wrong by the police, would you

15 agree with that?

16 MINISTER MTHETHWA: Yes.

17 MS LE ROUX: And you would agree that

18 that investigation should be something other than what IPID

19 do or whether there are any subsequent litigations. You

20 would agree that it's something different to what IPID

21 does, different to what the criminal justice system or any

22 High Court claim for civil compensation would look at.

23 MINISTER MTHETHWA: Well, look, I'm

24 tempted to say we'll cross that bridge when we come there

25 but at the same time I'm sure we would want to employ all

<p style="text-align: right;">Page 32437</p> <p>1 possible means to get to the bottom, including implementing 2 the laws of the land, amongst others, which has IPID as 3 having a role of oversight over police action. 4 MS LE ROUX: Now Minister, as I 5 understand your position, to some extent your position is 6 that you are waiting for the outcome of this Commission and 7 obviously I understand now your portfolio has changed but 8 when you were Minister responsible for the SAPS you were 9 waiting for this Commission to make its findings before you 10 took any internal steps. 11 [16:00] Is that a correct statement of your position? 12 MINISTER MTHETHWA: Yes. 13 MS LE ROUX: When it became clear to you 14 that the Commission would not finish its work within four 15 months did you consider doing something internally within 16 SAPS in the interim to get to the bottom of whether the 17 police had done anything that contributed to the death of 18 34 people and injury of more than 70 others? 19 MINISTER MTHETHWA: In other words a 20 parallel process? 21 MS LE ROUX: Yes, once – 22 MINISTER MTHETHWA: No. 23 MS LE ROUX: Because as I understand it 24 you said you want the Commission outcome. My question to 25 you is when it became clear to you that the Commission</p>	<p style="text-align: right;">Page 32439</p> <p>1 familiar with those two statements, that Brigadier Calitz 2 said "We did nothing wrong. From the planning to execution 3 was 110%" - he was the operational commander on the day – 4 and the National Commissioner saying that "Marikana 5 represents the best of responsible policing"? Are you 6 aware of those statements? 7 MINISTER MTHETHWA: I've heard about 8 that, yes. 9 MS LE ROUX: Okay, would you consider 10 those two statements to be consistent with the 11 responsibility of police leadership to be accountable and 12 to try to encourage members to be, or to set the tone in an 13 organisation that members will be held accountable to the 14 full extent of the law if they are found to have 15 misconducted themselves? Do you think those statements 16 leave open the possibility that police members acted 17 unlawfully? 18 MINISTER MTHETHWA: Well, to me really 19 it's immaterial the statements which are made either by the 20 National Commissioner or as you say others. What matters 21 is the testing of those views and those statements they are 22 making or we are making by this process and get to the 23 bottom of it. So for me that's, that would be my take. 24 MS LE ROUX: But Minister, do you accept 25 that there's an inconsistency between, you agreed with me</p>
<p style="text-align: right;">Page 32438</p> <p>1 would not be able to finish its work in four months did you 2 not consider trying to do something in parallel in the 3 interim so that you could learn from any mistakes that the 4 SAPS made at Marikana? 5 MINISTER MTHETHWA: No. 6 MS LE ROUX: It's been covered with you 7 today as well and I just want to be clear; you would accept 8 that any investigation that the SAPS undertook, whether in 9 parallel to this Commission or when it's completed, would 10 have to be done with an open mind to the possibility that 11 it was some of the police that acted unlawfully, or without 12 justification? 13 MINISTER MTHETHWA: Well anything is 14 possible under this process, Chair, and I think the 15 approach would be that, that we approach this matter in 16 that open and transparent way, yes. 17 MS LE ROUX: Now Minister, several 18 statements were canvassed with you both by yourself as well 19 as that of the National Commissioner and if I can briefly 20 just refer to the statement by the National Commissioner, 21 which is exhibit WW6 on the 20th of August 2012 where she 22 said that whatever happened "represents the best of 23 responsible policing," and then Brigadier Calitz at a 24 briefing on the 18th of August, JJJ81, said "We did nothing 25 wrong. From the planning to execution was 110%." Are you</p>	<p style="text-align: right;">Page 32440</p> <p>1 earlier that it would be important for leadership to make a 2 strong statement, like you did when the allegations of 3 assault came out against detainees, that it would be 4 important for leadership to be shown to make a strong 5 statement saying that any member who has misconducted 6 themselves will face consequences. You agreed with that 7 proposition, yet we seem to have a series of statements - 8 and this is two of them, we've canvassed others today – 9 where SAPS leadership don't seem to entertain the 10 possibility that police members should be held responsible 11 for any misconduct. It seems to be a blanket endorsement 12 of the operation, rather than anyone saying most of you did 13 a fine job, but if any of you were found to have acted 14 outside the law you will be held responsible. 15 MINISTER MTHETHWA: The people you have 16 quoted, firstly you started by somebody who was on the 17 ground talking about planning, which I consider as a very 18 operational matter, that if somebody makes an assertion 19 that everything was, as you say 110% in place on the 20 planning front, that would have to be tested. Now if I 21 contradict that I must be able to say to you based on what 22 expertise do I have on the issue of planning, particularly 23 for an operation like that one you are referring to. 24 MS LE ROUX: No, Minister, I think we've 25 missed each other. You agreed with me earlier that it was</p>

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1 important for clear leadership to make a strong statement
 2 saying if any member has acted unjustifiably they will be
 3 held responsible.
 4 MINISTER MTHETHWA: Yes.
 5 MS LE ROUX: Instead we've had blanket
 6 statements of endorsement that don't have the possibility
 7 in them that members acted unlawfully.
 8 MINISTER MTHETHWA: Right.
 9 MS LE ROUX: I'm asking you whether you
 10 accept that inconsistency.
 11 MINISTER MTHETHWA: Well yes, as I said
 12 there hasn't been any such thing. Since the start of the
 13 Commission there hasn't been such a statement, yes.
 14 MS LE ROUX: And Chair, I'm conscious of
 15 the time so I'm going to put two statements together
 16 because, Minister, we found two statements by yourself that
 17 are similarly a blanket endorsement without any possibility
 18 that SAPS members acted unlawfully. Those will be CCCC10
 19 and 11. The first is a statement issued on the day at
 20 9:19PM by your office where you are reported to have said
 21 "Police at Lonmin Mine in Marikana in the North West did
 22 their best in a volatile situation." And it said, "What
 23 should police do in these situations where clearly" –
 24 MINISTER MTHETHWA: Sorry Chair, what tab
 25 is that? Tab what?

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1 CHAIRPERSON: I think it's the Business
 2 Report, I think it's the extract from the Business Report –
 3 MS LE ROUX: This is the Business Report
 4 article, "Police did their best: Mthethwa." So this is a
 5 statement issued by your office through your official
 6 spokesman Zweli Mnisi saying "Police at Lonmin Mine did
 7 their best."
 8 CHAIRPERSON: And then I take it while
 9 we're about it, CCCC11 is the extract from Hansard.
 10 MS LE ROUX: Correct, Chair. So then in
 11 Hansard, which as you know records your parliamentary
 12 speeches on the 21st of August, it's page 4 of the document
 13 that we've marked, you said in parliament, "The South
 14 African Police Service is saddened by the events that
 15 unfolded on that fateful day. The police did all in their
 16 power to avert such a situation." Now Minister, at the
 17 time that you made both of those statements, first of all
 18 you didn't leave open the possibility that the police did
 19 anything wrong, did you?
 20 MINISTER MTHETHWA: No.
 21 MS LE ROUX: And secondly you didn't yet
 22 have sufficient factual basis to say that all SAPS officers
 23 on the day did their best and tried to avoid, did all in
 24 their powers to avert the situation. You didn't yet know
 25 that that was true.

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1 MINISTER MTHETHWA: Yes, but the
 2 statement mainly was talking about the week, throughout the
 3 week until the 16th.
 4 MS LE ROUX: Then Minister, in the
 5 statement issued that night you also say, you also are
 6 reported to have said "What should police do in such
 7 situations where clearly they're faced with armed and
 8 hardcore criminals who murder police?" At the time that
 9 that statement was released in your name you didn't know
 10 that the 34 protesters who'd been killed were either armed
 11 or were hardcore criminals or had murdered any police, did
 12 you? You didn't yet know that the 34 protesters who died
 13 that day were either armed, you didn't know that all of
 14 them were armed, you didn't know that all of them were
 15 hardcore criminals and you didn't know that all of them had
 16 murdered police, did you?
 17 MINISTER MTHETHWA: As I said, the
 18 statement on that day was not talking about the day, it was
 19 talking about the week and the experience of the week
 20 preceding the day of the 16th.
 21 MS LE ROUX: Minister, lastly, because
 22 I'm conscious of time, the statement you made to parliament
 23 also said "The events of Thursday were not a sudden
 24 eruption but a culmination of events that were building
 25 over months and months." What was the basis for you making

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1 that statement? Why did you tell parliament that the
 2 events of Thursday 16 August were not a sudden eruption but
 3 they were a culmination of events that had been building
 4 over months and months?
 5 MINISTER MTHETHWA: You would recall that
 6 the strike of the, in August was not the first of its kind.
 7 The display of violence during strike was not the first of
 8 its kind in that belt, that Platinum Belt, and therefore
 9 the statement was based on that kind of information and
 10 that factual situation which has been happening since the
 11 beginning of the year.
 12 CHAIRPERSON: Ms le Roux, your time is
 13 up.
 14 MS LE ROUX: Sir, I know. I would love
 15 to have more questions, but my time is up. Thank you,
 16 Minister. My learned friend Ms Barnes will continue her
 17 cross-examination.
 18 MINISTER MTHETHWA: Thank you.
 19 CHAIRPERSON: Thank you. Ms Barnes?
 20 MS BARNES: Thanks, Chair. I seem to now
 21 only have 15 minutes. I'm not sure that I'll be able to
 22 finish, but I'll do my best.
 23 CHAIRPERSON: Do your best, yes please.
 24 The guillotine will come down, I'm afraid.
 25 CROSS-EXAMINATION BY MS BARNES: I think

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1 that we now all have the correct version of FFF2. Now
 2 Minister, this is a statement deposed to by the National
 3 Commissioner. It's commissioned. It's dated the 7th of
 4 March 2013 and I'd like you to look at page 7 of the
 5 statement. Have you got that?
 6 MINISTER MTHETHWA: Yes.
 7 MS BARNES: Now you'll see first of all –
 8 MINISTER MTHETHWA: FFF2, hey?
 9 MS BARNES: It's FFF2, that's right.
 10 MINISTER MTHETHWA: Oh, yes.
 11 MS BARNES: You'll see that first of all
 12 page 7 doesn't follow on from page 6 and it also doesn't
 13 follow into page 8. The paragraphs don't follow
 14 sequentially. Can you quickly check and confirm that
 15 that's the case?
 16 MINISTER MTHETHWA: For page 7 for me –
 17 CHAIRPERSON: You see on page 6 the last
 18 two lines are repeated at the top of page 7. So that's why
 19 she says the one doesn't follow on page 6, and then at the
 20 foot of the page you will see that it's paragraph 25, which
 21 ends foot of the page and page 8 then it obviously starts
 22 with something –
 23 MINISTER MTHETHWA: Oh, yes.
 24 CHAIRPERSON: - that is from paragraph
 25 26, but not the beginning of it. That's the point she's

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1 making, Ms Barnes is.
 2 MS BARNES: She does. Then the other
 3 thing you'll see, Minister, is that page 7 is there's only
 4 one initial on page 7, whereas all the other pages have got
 5 two initials, and I can tell you that the initial that you
 6 see is the initial of the commissioner of oaths. So the
 7 National Commissioner's initials do not appear on page 7.
 8 You see that?
 9 MINISTER MTHETHWA: Yes.
 10 MS BARNES: Now I'd like to direct your
 11 attention to paragraph 23 on that page, which says the
 12 following on page 7, "On the afternoon of August the 16th,
 13 2012, I received a call from Lieutenant-General Mbombo who
 14 informed me of the decision to implement a dispersal
 15 operation of the plan." You see that?
 16 MINISTER MTHETHWA: Yes.
 17 MS BARNES: Okay, I'm going to have to
 18 take you through another document before I get to the
 19 point. If you could now go to exhibit FFF3, this is now a
 20 further statement by the National Commissioner, also
 21 commissioned, dated the 12th of March 2013. So it comes
 22 after FFF2 that we've just looked at. If you go to page 7
 23 of this statement you will see firstly that page 7 is a
 24 fit, it follows on from page 6 and into page 8. You see
 25 that?

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1 MINISTER MTHETHWA: Yes.
 2 MS BARNES: And then you'll also see that
 3 page 7 bears the initials of both the commissioner of oaths
 4 and the National Commissioner, as well as all the other
 5 pages.
 6 MINISTER MTHETHWA: Yes.
 7 MS BARNES: And then if we look at
 8 paragraph 23 of that statement it says the following, "On
 9 the afternoon of August the 16th, 2012, I received a call
 10 from Lieutenant-General Mbombo who informed me of the
 11 decision to implement stage 3 of the plan, which
 12 information I relayed to the Minister." Do you see that
 13 that sentence is in paragraph 23 of this statement but not
 14 the previous statement, or the very last portion of that
 15 sentence, correct?
 16 MINISTER MTHETHWA: Yes.
 17 MS BARNES: Now I need to explain to you
 18 what the National Commissioner said about this in the
 19 Commission. She said that, the first, FFF2 came first,
 20 right, and then FFF3 came after that, but despite the fact
 21 that the page 7 in FFF3 is a fit the National Commissioner
 22 said to the Commission that it was in fact wrong and that
 23 the correct page was in fact the page 7 in FFF2, in other
 24 words the misfit page was correct. That was her evidence.
 25 Do you follow me?

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1 MINISTER MTHETHWA: Yes.
 2 MS BARNES: Okay, so what she then – what
 3 that amounted to was that she said that the portion of
 4 paragraph 23 in which she said that she had relayed the
 5 information to you was wrong. That was her evidence. Do
 6 you follow?
 7 MINISTER MTHETHWA: Yes.
 8 MS BARNES: Now the question, Minister,
 9 is how that piece of information, or that statement "which
 10 information I relayed to the Minister" came to be in her
 11 statement, in one of her statements. You follow?
 12 MINISTER MTHETHWA: How what?
 13 MS BARNES: Well, a question that arises
 14 is how that, the last portion of that sentence which says
 15 that she relayed information to yourself –
 16 MINISTER MTHETHWA: Yes.
 17 MS BARNES: - the question arises how did
 18 that come to be in one of her statements, and the
 19 Chairperson asked the National Commissioner some questions
 20 about that and I'd like us to go to that portion of the
 21 evidence. It's day 105 and it's page 11319.
 22 MINISTER MTHETHWA: What tab?
 23 MS BARNES: It's a portion of the
 24 transcript, so it will on the screen. So it starts at
 25 11319 and if we could start at line 11 where the

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1 Chairperson says, "Yes, yes, I understand that." Okay, so
 2 it's a fairly lengthy passage but we need to go through it.
 3 So the Chairperson is now asking the National Commissioner
 4 about this, precisely about how that portion of the
 5 paragraph came to be in her statement and the Chairperson
 6 says, "Yes, yes, I understand that, but then who added the
 7 information, the first bit of misinformation, namely that
 8 you relayed the information that you received about the
 9 implementation of the dispersal and disarmament plan? Who
 10 was responsible for inserting that bit of misinformation
 11 into the draft? You've explain how the documents evolved.
 12 Now if you put it in that's fine, that's, I think that
 13 should be the answer to the question, if you inserted it,
 14 but I understood the evidence to be you didn't, it wasn't
 15 correct. So somebody else did it. Now what I want to know
 16 is who is that person? Do you know?"
 17 General Phiyega then says, "I have two people who
 18 assisted me in that regard; Brigadier Sithole in my office
 19 and Major-General Zuma who'd been assisting me in this
 20 process of the hearing."
 21 Chairperson then says, "So would one of them,
 22 would that be fair, one of them must have been responsible
 23 for inserting those words 'which information I relayed to
 24 the Minister' in paragraph 23 of the draft at some stage of
 25 its evolution to finality? Would that be fair?" General

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1 Phiyega says, "I beg your pardon?"
 2 The Chair says, "I say one of those two people,
 3 the Brigadier, or I think you said the Major-General, one
 4 of those two must have been the person who inserted those
 5 words 'which information I relayed to the Minister' in the
 6 draft in paragraph 23 of your statement on its route to
 7 finality. Is that correct?"
 8 General Phiyega then says, "That is inserted by
 9 me. I told me the way you captured it, you haven't
 10 captured it correctly;" but then she says, "'which
 11 information I relayed to the Minister,' that is me saying
 12 that," and the Chair then asks, "Oh, you said that?" and
 13 General Phiyega says "Yes."
 14 So do you see, Minister, that the National
 15 Commissioner's evidence here is that she was the one who
 16 said those words. She was the one who inserted those words
 17 into her statement, which can only mean that the National
 18 Commissioner did in fact relay the information to you about
 19 what the police were going to do on the 16th of August.
 20 Isn't that what happened?
 21 MINISTER MTHETHWA: No.
 22 [16:20] MS BARNES: Well Minister, we will argue
 23 at the end of the Commission that that is in fact what
 24 happened, and I need to put this to you so that you can
 25 comment on it. Our basis for arguing this will be

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1 threefold. We will rely first of all on the National
 2 Commissioner's concession that I've just pointed out to you
 3 that those were her words and she inserted them into her
 4 statement. We'll also rely on the fact that those are the
 5 words, the only words, or those are the words and the only
 6 version of page 7 that is a fit in the National
 7 Commissioner's statement, and then thirdly we will argue
 8 that this also accords with the minutes of the JOCCOM
 9 meeting of the 16th of August 2012, which records that the
 10 National Commissioner told the Provincial Commissioner that
 11 that is what she was going to do. In other words the
 12 National Commissioner told the Provincial Commissioner that
 13 she was going to report to you that they're about to embark
 14 on stage 3. I know it's a long question. Would you like
 15 to comment?
 16 MINISTER MTHETHWA: Let me say this;
 17 firstly, if it had happened that the National Commissioner
 18 called me I don't see anything wrong there if she did that.
 19 But the reality is that there are records and you know,
 20 we'd be able to clarify that, but there wasn't such a
 21 communication which was done either from the point of view
 22 of the JOCCOM meeting, as you are quoting, or from this
 23 day. The records are clear when we were communicating with
 24 the National Commissioner, everything. So I would say that
 25 we will await that argument you are raising.

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1 MS BARNES: You maintain that you were
 2 never told by the National Commissioner on the 16th of
 3 August that they were going to go to stage 3 of the plan,
 4 which was essentially that they were going to go to the
 5 tactical phase of the plan and confront the strikers? You
 6 maintain that you were never told that by the National
 7 Commissioner?
 8 MINISTER MTHETHWA: Yes.
 9 MS BARNES: What we will also argue,
 10 Minister, is that it seems to us that the only inference
 11 that can be drawn from the various different versions that
 12 the National Commissioner's statements went through is that
 13 pressure was brought to bear on her and that she was
 14 eventually prevailed upon to adopt the misfit page
 15 essentially as part of her statement.
 16 Let me just flesh that out for you a little bit.
 17 We've gone earlier to the misfit page 7. You see that it
 18 doesn't fit into the statement and you see that it's not
 19 initialled by the National Commissioner. So it appears
 20 that that statement was slipped in by somebody. You would
 21 accept that that's how it appears?
 22 MINISTER MTHETHWA: I don't know what
 23 happened, but as I emphasised to you the point earlier on
 24 there was no communication between the National
 25 Commissioner and I around the time you are talking about.

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1 I noticed that the pages are not following each other
 2 consistently. I noticed that and I confirmed that to you.
 3 MS BARNES: And then we see that the
 4 situation is put right because we see that the page, the
 5 misfit page 7 that has been slipped in by somebody is
 6 removed and the statement FFF3 reverts back to the original
 7 page 7, which is a fit, so matters are at some stage put
 8 right. You accept that?
 9 MINISTER MTHETHWA: Well, I see that
 10 there is anomaly with what, with how this, both the
 11 documents are not speaking to each other and I can confirm
 12 that.
 13 MS BARNES: But we that then despite
 14 that, despite the matter of page 7 having being put right
 15 in FFF3, the National Commissioner then says in her
 16 evidence that that page 7 is wrong, in other words the fit
 17 page 7 is wrong and the misfit page 7 is right. Now we
 18 will argue that the only inference that can be drawn is
 19 that the National Commissioner was eventually prevailed
 20 upon to adopt the misfit page 7 as part of her statement
 21 because it removes the reference to yourself. Would you
 22 like to comment?
 23 MINISTER MTHETHWA: Well, that's your
 24 view and as far as I'm concerned it's a wrong view.
 25 MS BARNES: If I can then just deal

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1 briefly with some of the telephone calls that were made on
 2 the, during the week in question, I'm going to refer to
 3 CCCC1.8 in, but I don't want us to go through it in any
 4 detail because we don't have the time. Perhaps you can
 5 have it in front of you just in case you need to refer to
 6 it. So what we see, we know that on Sunday there was a
 7 call from Mr Ramaphosa and I think you responded to Mr
 8 Zokwana after he left a message for you, and you then
 9 called the Provincial Commissioner. That happened on
 10 Sunday the 12th of August, correct?
 11 MINISTER MTHETHWA: Yes.
 12 MS BARNES: And then from then on we see
 13 that from the Sunday until the massacre on the 16th, we see
 14 that it is you calling the Provincial Commissioner and the
 15 National Commissioner for progress reports, rather than
 16 them who were providing you with information. Is that
 17 correct?
 18 MINISTER MTHETHWA: Yes.
 19 MS BARNES: And in fact if we go through
 20 the entire document, that's CCCC1.8, there are only two
 21 calls of more than four seconds which come from either the
 22 Provincial Commissioner or the National Commissioner and
 23 which do not appear to be a response to a message from you,
 24 to either a voice message or a text from you. The first
 25 one is on the 14th of August at 18:41, that is from General

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1 Phiyega, and then the second one is on the 16th of August at
 2 8 minutes past 7 in the morning, that's also, that's a
 3 voicemail to you from, left for you by General Phiyega.
 4 You see that? It's a 30-second voicemail.
 5 MINISTER MTHETHWA: What time is that?
 6 MS BARNES: And this is the one that we
 7 are particularly interested in. It's on the 16th of August,
 8 it's at 8 minutes past 7 in the morning. It's a 30-second
 9 voicemail left for you by General Phiyega. Are you with
 10 me?
 11 CHAIRPERSON: Remind me, what does CF
 12 stand for?
 13 MR CHASKALSON SC: Call forwarding,
 14 Commissioner. It's a voicemail message.
 15 CHAIRPERSON: In other words General
 16 Phiyega, the National Commissioner –
 17 MR CHASKALSON SC: So that's a voicemail
 18 that General Phiyega would have left on the Minister's
 19 voicemail.
 20 CHAIRPERSON: Yes.
 21 MS BARNES: Now what I'd like to point
 22 out about this, Minister, is that first of all this
 23 particular message appears to have been unsolicited in the
 24 sense that it doesn't appear to be a response to either a
 25 message or a text from yourself. Is that correct?

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1 MINISTER MTHETHWA: I'm not sure whether
 2 I'm – I would either – ja, okay. You are on the 14th?
 3 MS BARNES: No, no, no –
 4 MINISTER MTHETHWA: On the 16th?
 5 MS BARNES: No, you can leave the 14th.
 6 We're on the 16th –
 7 MINISTER MTHETHWA: We are on the 16th.
 8 MS BARNES: In the morning.
 9 MINISTER MTHETHWA: Where is your time
 10 here?
 11 MS BARNES: It's the first entry for the
 12 16th of August, so it's CF, which is call forwarding.
 13 MINISTER MTHETHWA: Yes.
 14 MS BARNES: The 16th of August, 8 minutes
 15 past 7, there's a 30-second voicemail message left on your
 16 phone by General Phiyega.
 17 MINISTER MTHETHWA: Right.
 18 MS BARNES: So we say, Minister, that
 19 that does not appear to have been a response to a message
 20 left by you and we also make the point that that appears to
 21 be the first communication with you after the operational
 22 members of the National Police Management Forum meeting had
 23 met the night before and taken the decision that
 24 essentially the tactical operation would be embarked upon
 25 the next day if the strikers did not disperse. We –

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1 CHAIRPERSON: The real question is can
 2 you remember whether you received that voicemail early in
 3 the morning on the Thursday the 16th, just after 7 o'clock,
 4 and if so, what did she say?
 5 MINISTER MTHETHWA: No, I don't remember
 6 receiving that voice message.
 7 MS BARNES: Well, a message was left,
 8 Minister. Isn't it correct that General Phiyega advised
 9 you in her message that morning of the decision that had
 10 been taken on Wednesday night by the National Management
 11 Forum meeting that essentially the police were going to go
 12 in and embark on a tactical operation the next day? Isn't
 13 that what that message said?
 14 MINISTER MTHETHWA: Well, as I said –
 15 MS BARNES: Well that day, that day. I
 16 beg your pardon.
 17 MINISTER MTHETHWA: Ja, as I said I would
 18 remember if there's something of that sort which happened
 19 on that day relating to what was going to be happening, and
 20 I said earlier on that there would be no reason for me not
 21 to accept that if it's done, because I don't think that
 22 there would be anything there. If she told me that - look,
 23 materially for me I don't see any substance. If she told
 24 me that the police are moving now to disperse or to disarm
 25 people, whichever way, I don't think that that should, that

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1 would have been a problem.
 2 MS BARNES: But you can't remember what
 3 the message was about?
 4 MINISTER MTHETHWA: No. No.
 5 MS BARNES: Thank you, Chair, those are
 6 our questions.
 7 CHAIRPERSON: Is it still the position
 8 there's no re-examination? No re-examination?
 9 MS NKOSI-THOMAS SC: Chairperson, there
 10 will be no re-examination from us, thank you.
 11 CHAIRPERSON: Alright. [Microphone off,
 12 inaudible] half past 4, the time when we adjourn, but I was
 13 going to ask you a question. I'd be grateful if you'd
 14 listen carefully to the question, if you're prepared to
 15 send us a written answer.
 16 MINISTER MTHETHWA: Yes.
 17 CHAIRPERSON: It's a very short question,
 18 but the written answer may be longer. What comments do you
 19 have to make on the findings and recommendations regarding
 20 the police service made by the National Planning Commission
 21 in the National Development Plan Report? I'll read it
 22 again. What comments have you to make on the findings and
 23 recommendations regarding the South African Police Service
 24 made by the National Planning Commission in the National
 25 Development Plan Report? I had hoped to ask you, but

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1 obviously there isn't time for it now, but if you don't
 2 mind giving us the answer to that I'd be grateful.
 3 MINISTER MTHETHWA: You mean now?
 4 CHAIRPERSON: Well, when you have an
 5 opportunity. I mean there isn't time to give us the answer
 6 now, that's why I suggest you give it to us in writing.
 7 MINISTER MTHETHWA: Oh, okay.
 8 CHAIRPERSON: Because I would suspect –
 9 and then forward it to us. I would suspect that you can
 10 send it to us via the SAPS legal representatives.
 11 MINISTER MTHETHWA: Ja.
 12 CHAIRPERSON: I'm sure your successor
 13 will permit you to do that.
 14 MINISTER MTHETHWA: Yes.
 15 CHAIRPERSON: And thank you for your
 16 evidence.
 17 MINISTER MTHETHWA: Okay.
 18 CHAIRPERSON: Sorry we took up a full two
 19 days, but there was a danger we might have taken even
 20 longer, but thank you for coming and thank you for
 21 testifying before us.
 22 MINISTER MTHETHWA: Okay.
 23 MR MPOFU: Chair –
 24 CHAIRPERSON: Yes, Mr Mpofo?
 25 MR MPOFU: Thank you, Chairperson. On a

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1 completely unrelated matter, Chairperson, I wanted just to
 2 give an indication or notice that I've received
 3 instructions, which I'm going to discuss with my learned
 4 friend Mr Semanya during the break tomorrow, but
 5 anticipating if those discussions don't succeed then I've
 6 received instructions to bring an oral application on
 7 Thursday morning for Mr X to be brought to testify in the
 8 auditorium.
 9 CHAIRPERSON: Well, if Mr Semanya agrees
 10 to that then you won't have to bring the application, and
 11 if he doesn't, you will have to argue it.
 12 MR CHASKALSON SC: Sorry, Chair –
 13 CHAIRPERSON: But I'm not sure the oral
 14 application is a smart idea because I'm not sure what facts
 15 you'll be relying on, but anyway, it's not for me to advise
 16 you how to run your case. Mr Chaskalson?
 17 MR CHASKALSON SC: Sorry, Chairperson, I
 18 wanted to make a similar point. We are really pressed for
 19 time. If an application needs to be made it needs to be
 20 made on paper and I would submit it needs to be disposed of
 21 by yourself, Chairperson, outside of ordinary sitting
 22 hours. We are on a programme at the moment where we are
 23 having to curtail cross-examination, we are having to
 24 curtail witnesses who come to this Commission, in an
 25 attempt to finish by September. We can't spend hearing

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1 time, which has to take place in the presence of all three
 2 Commissioners, for applications.
 3 CHAIRPERSON: Yes. No, I must say I
 4 agree with that. Mr Mpofo, what occurs to me immediately
 5 is that Mr X is going to be at the secret venue on Thursday
 6 morning.
 7 MR MPOFU: Yes.
 8 CHAIRPERSON: He's going to carry on with
 9 his evidence on Thursday morning.
 10 MR MPOFU: I accept that.
 11 CHAIRPERSON: Mr Budlender is going to
 12 finish his cross-examination.
 13 MR MPOFU: Ja.
 14 CHAIRPERSON: And then there will be
 15 further cross-examination. So clearly he's not going to be
 16 here on Thursday.
 17 MR MPOFU: No, certainly.
 18 CHAIRPERSON: I think Mr Chaskalson is
 19 right, this is an application that can be made outside of
 20 ordinary hours to me alone. So I will obviously, give me
 21 as much as you can on paper and if necessary you can come
 22 and address me in chambers or something of that kind.
 23 Obviously I'll give it careful consideration and if you
 24 persuade me that you're right then your application will
 25 succeed –

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1 MR MPOFU: Yes, Chairperson, no, that's –
 2 CHAIRPERSON: And vice versa, if you
 3 don't.
 4 MR MPOFU: Chairperson, I accept that in
 5 terms of this truncated proceeding. I just want to say
 6 that it's important that the application be entertained
 7 because the so-called hearing time that Mr Chaskalson is
 8 talking about is exactly the hearing time that my clients
 9 are concerned with insofar as Mr X is concerned. So the
 10 more so-called hearing time that continues with him in the
 11 secret venue when they felt that the time has come for him
 12 to come here, the more prejudice they potentially suffer,
 13 ja.
 14 CHAIRPERSON: Alright, and the other
 15 thing I want to do is I want us to sit until 2 o'clock on
 16 Friday. We obviously have to take some sort of short break
 17 because it will be a long – we can't normally sit for more
 18 than an hour and a half without it being unfair to the
 19 witness and to us who wish to concentrate. The rest of you
 20 can go to sleep, but so on Friday we will sit until 2, but
 21 we will obviously arrange for some extra break at some
 22 point to make it bearable.
 23 MR MPOFU: Thank you, Chairperson.
 24 CHAIRPERSON: We adjourn now till 9
 25 o'clock on Thursday morning. You're excused, Minister, on

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1 the basis if you have to come back we don't have to
 2 subpoena you.
 3 [NO FURTHER QUESTIONS – WITNESS EXCUSED]
 4 [COMMISSION ADJOURNED]
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<p>A</p> <p>able 32289:19 32291:11 32298:12 32310:12 32336:20 32395:14 32422:6 32436:4 32438:1 32440:21 32444:21 32451:20</p> <p>absence 32427:21</p> <p>absolutely 32225:6,22 32256:9,15 32274:3 32278:5 32303:14 32324:15 32350:16 32350:19 32386:20 32387:18,24</p> <p>accept 32260:25 32270:16 32290:22 32301:14 32325:16 32326:8 32333:2,9,20 32335:5,10 32337:1,2 32337:10 32341:19 32342:1 32364:16 32368:16 32401:11 32405:17,19 32407:10 32408:6 32409:11 32413:10 32425:25 32428:8 32435:7,24 32438:7 32439:24 32441:10 32452:21 32453:8 32457:21 32461:10 32462:4</p> <p>accepted 32244:10 32254:9 32408:8 32412:11 32434:6,8</p> <p>accepts 32227:9</p> <p>accompanied 32294:7</p> <p>accomplice 32255:2</p> <p>accord 32259:10</p> <p>accords 32451:8</p> <p>account 32238:16 32299:23 32383:24 32402:25 32404:14 32410:17,21,23,25 32411:4 32412:20</p> <p>accountability 32306:7 32429:22 32430:23 32431:2,6,8</p> <p>accountable 32306:6 32439:11,13</p> <p>accurate 32221:6 32281:24 32326:5 32327:4</p> <p>accurately 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