



CYRIL RAMAPHOSA

FURTHER DOCUMENTATION

1. Rule 3.3 notices
2. Correspondence
3. Additional documents from
Presidency
4. Transcripts
5. Additional documents from SCC



**JUDICIAL COMMISSION OF INQUIRY INTO ALLEGATIONS OF STATE CAPTURE,
CORRUPTION AND FRAUD IN THE PUBLIC SECTOR INCLUDING ORGANS OF STATE**

2nd floor, Hillside House
17 Empire Road,
Parktown
Johannesburg
2193

Tel: (010) 214 to 0651

Email: inquiries@sastatecapture.org.za

Website: www.sastatecapture.org.za

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SECTION 1

Rule 3.3 Notices issued



2nd floor, Hillside House
17 Empire Road,
Parktown
Johannesburg
2193
Tel (International): +27 (10) 214-0651
Tel (Tollfree): 0800 222 097
Email: inquiries@sastatecapture.org.za
Web: www.sastatecapture.org.za

**JUDICIAL COMMISSION OF INQUIRY INTO ALLEGATIONS OF STATE CAPTURE,
CORRUPTION AND FRAUD IN THE PUBLIC SECTOR INCLUDING ORGANS OF STATE**

NOTICE IN TERMS OF RULE 3.3

TO : HIS EXCELLENCY, PRESIDENT CYRIL RAMAPHOSA

CONTACT : 072 054 3634 / 012 300 5502

**EMAIL : nomusa@presidency.gov.za
nokukhanya@presidency.gov.za
geofrey@presidency.gov.za
nokukhanyaj@presidency.gov.za**

IN TERMS OF RULE 3.3 OF THE RULES OF THE JUDICIAL COMMISSION OF INQUIRY INTO ALLEGATIONS OF STATE CAPTURE, CORRUPTION AND FRAUD IN THE PUBLIC SECTOR INCLUDING ORGANS OF STATE (“THE COMMISSION”), YOU ARE HEREBY GIVEN NOTICE THAT:

- 1 The Commission’s Legal Team intends to present the evidence of the **INSPECTOR-GENERAL OF INTELLIGENCE (“IGI”), DR SETLHOMAMARU ISAAC DINTWE**, at its hearing to be held at the Old Council Chamber of the Municipality of the City of Johannesburg, 158 Civic Boulevard Braamfontein, Johannesburg. The presentation of the witness’s evidence will be heard on a date to be advised. In the event of a change of date, it will be announced on the Commission’s website (www.sastatecapture.org.za) and in the media. The evidence in question implicates or may implicate you in unlawful, illegal or improper conduct in the respects set out below.
- 2 The allegations set out in the evidence of the witness which implicates or may implicate you is as follows:

- 2.1 Section 7(8)(a) of the Oversight Act requires the IGI to consult with any of the responsible Ministers and the President prior to disclosing any information obtained from a Head of a Service and/or any employee. Pursuant to this provision, the IGI consulted with yourself and the other relevant Ministers.
- 2.2 Dr Dintwe avers that this consultative process has been completed. After it was completed, Dr Dintwe made a decision as to which aspects he could properly disclose to the Commission. He received written confirmation from your Office that he had duly completed the consultative process.
- 2.3 Dr Dintwe states that the consultation process was not without difficulty and it is alleged that an accusation was made that Dr Dintwe had disclosed information to the Commission prior to the consultative process. This was, amongst other issues, used by the three Ministers to lodge a complaint against him with you and to recommend that he should be suspended. This, it is alleged, was done in order to intimidate Dr Dintwe and prevent him from testifying at the Commission.
- 2.4 It is averred that following this complaint, you referred the matter to the Joint Standing Committee on Intelligence (“**JSCI**”) and informed Dr Dintwe that he would be suspended if this was the recommendation of the JSCI. At this time, Dr Dintwe was awaiting the inputs from the Ministers with regard to the consultative process.
- 2.5 Dr Dintwe is of the view that this was done in order to intimidate him and prevent him from testifying at the Commission.
- 2.6 Dr Dintwe avers that the JSCI cleared him of any wrongdoing and found that the allegations against him were unsubstantiated.
- 3 The relevant portions of the statement of the witness which implicate or may implicate you in the above allegations are annexed hereto marked “**A**”. Your attention is drawn to **paragraphs 4 to 6**.
- 4 Due to the fact that you are implicated or may be implicated by the evidence of the witness, you are entitled to attend the hearing at which that evidence is being presented. You are also entitled to be assisted by a legal representative of your choice when that evidence is

presented. The full statement will be uploaded on the Commission's website as soon as he concludes his evidence. The transcript will be uploaded daily.

5 If you wish to:

5.1 give evidence yourself;

5.2 call any witness to give evidence on your behalf; or

5.3 cross-examine the witness

then you must apply, within fourteen (14) calendar days of this notice, in writing to the Commission for leave to do so.

6 An application referred to in paragraph 5 above must be submitted to the Secretary of the Commission. The application must be submitted with an affidavit from you in which you respond to the witness's statement insofar as it implicates you. The affidavit must identify what parts of the witness's statement are disputed or denied and the grounds on which they are disputed or denied.

7 If you wish to apply to cross-examine the witness, your application must follow the requirements of Rule 11.3. In other words, it must be a substantive application on affidavit accompanied by a notice of motion.

8 In the event that you believe that you have not been given a reasonable time from the issuance of this notice to the date on which the witness is to give evidence as set out above and you are prejudiced thereby, you may apply to the Commission in writing for such order as will ensure that you are not seriously prejudiced.

9 Please take note that even if you do not make an application under Rule 3.4:


9.1 in terms of Rule 3.10, the Chairperson may, at any time, direct you to respond in writing to the allegations against you or to answer (in writing) questions arising from the statement; and

9.2 in terms of Regulation 10(6) of the Regulations of the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State GN 105 of 9 February 2018 published in

Government Gazette 41436, as amended, the Chairperson may direct you to appear before the Commission to give evidence which has a bearing on a matter being investigated.

- 10 The witness statement and annexures provided to you are confidential. Your attention is drawn to Regulations 11(3) and 12(2)(c) governing the Commission, which make it a criminal offence for anyone to disseminate or publish, without the written permission of the Chairperson, any document (which includes witnesses' statements) submitted to the Commission by any person in connection with the Commission's inquiry.
- 11 Any response to or application in regard to this notice must be sent to Advocate André Lamprecht, Ms Shannon van Vuuren and Ms Rachel Niewenhuis at secretary@commissionsc.org.za.

DATED AT PARKTOWN ON THIS 29th DAY OF MARCH 2021



PROF ITUMELENG MOSALA
Secretary
Judicial Commission of Inquiry into Allegations
of State Capture, Corruption and Fraud
in the Public Sector including Organs of State

**In the Judicial Commission of Inquiry into Allegations of State Capture, Corruption
and Fraud in the Public Sector including Organs of State**

STATEMENT

I, the undersigned:

SETLHOMAMARU ISAAC DINTWE

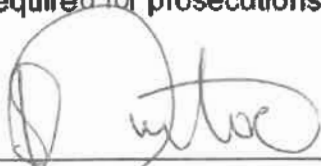
do hereby state under oath:

- 1 I am an adult male of full legal capacity, the Inspector-General of Intelligence ("IGI") of the Republic of South Africa, duly appointed by the President on 15 March 2017 in accordance with the provisions of Section 7(1) of the Intelligence Services Oversight Act, 40 of 1994 ("the Oversight Act"). My place of work is at Bogare Building, Corner Lois and Atterbury Road, Menlyn, Pretoria.
- 2 The facts contained herein are, except where otherwise indicated or appears from the context, within my personal knowledge and are to the best of my belief both true and correct.
- 3 The purpose of this submission is to bring to the attention of the Commission the manner in which the Intelligence Services, over which I have oversight, has facilitated, enabled, enhanced and allowed state capture. Instances will be provided hereunder to illustrate this.
- 4 Section 7(8)(a) of the Oversight Act requires the IGI to consult with any of the responsible Ministers and the President prior to disclosing any information obtained from a Head of a Service and/or any employee. Pursuant to this provision, I consulted with the respective


Ministers of the South African Police Services, State Security and Defence and Military Veterans as well as with His Excellency, President Ramaphosa. This consultative process has been completed. After it was completed, I made a decision as to that which I could properly disclose to the Commission. This decision was made with due regard to section 10(4) of the Intelligence Services Act 65 of 2002 ("the Intelligence Services Act"), which seeks to protect national security intelligence, intelligence methods and sources of information, which I shared with the abovementioned persons. I received written confirmation from the President that I had duly completed the consultative process.

- 5) The consultative process was not without difficulty: an accusation was made that I had disclosed information to the Commission prior to the consultative process. This was, amongst other issues, used by the three Ministers to lodge a complaint against me with the President and recommended that I should be suspended. I then received a letter from the President informing me that this complaint has been referred to the Joint Standing Committee on Intelligence ("JSCI"). I was further informed in that letter that there was a consideration to suspend me but that will be done if the JSCI so recommended. This happened at an exact moment that I was expecting the inputs from the Ministers with regard to the consultation process. This, in my view, was done in order to intimidate me and prevent me from testifying at the Commission. There are several letters that I received from the Ministers which illustrate this view further. I appeared before the JSCI and was cleared of any wrongdoing. In fact, the JSCI found that the allegations were unsubstantiated.
- 6) An attempt was also made to persuade me to limit my evidence to only that which was expressly asked by the Commission. I declined to do so and have in this submission included all aspects which I believe fall within my mandate as IGI and fall within the terms of reference of the Commission.

it is necessary that the OIGI be entirely distinct from the SSA and be funded separately from it, have full access to all information and documentation and be granted powers of enforcement. It is also essential that such services be fully audited by the Auditor General and that there be proper consequent management. This includes not only that disciplinary steps be taken by those implicated but that law enforcement agencies are supported by declassifying documents required for prosecutions.


SETLHOMAMARU ISAAC DINTWE

I hereby certify that the deponent knows and understands the contents of this affidavit and that it is to the best of the deponent's knowledge both true and correct. This affidavit is signed and sworn to before me at PRETORIA on this the 16 day of March 2021, and that the Regulations contained in Government Gazette No. R1258 of 21 July 1972 as amended by Government Notice Regulation 1648, Government Notice Regulation 1428 and Government Notice Regulation 773 have been complied with.


COMMISSIONER OF OATHS
Full Names: Natasha Vorster
Designation: MO
Address: 271 Johnny Claassensstr.
Garsfontein

SOUTH AFRICAN POLICE SERVICE
GARSFONTEIN
2021 -03- 16
COMMUNITY SERVICE CENTRE
SUID-AFRIKAANSE POLISIEDIENS



2nd floor, Hillside House
17 Empire Road,
Parktown
Johannesburg
2193
Tel (International): +27 (10) 214-0651
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**JUDICIAL COMMISSION OF INQUIRY INTO ALLEGATIONS OF STATE CAPTURE,
CORRUPTION AND FRAUD IN THE PUBLIC SECTOR INCLUDING ORGANS OF STATE**

NOTICE IN TERMS OF RULE 3.3

TO : HONOURABLE PRESIDENT CYRIL RAMAPHOSA

CONTACT : 072 054 3634 / 012 300 5502

**EMAIL : nomusa@presidency.gov.za
nokukhanya@presidency.gov.za
geofrey@presidency.gov.za
nokukhanyaj@presidency.gov.za
njjele@law.co.za
roshene@presidency.gov.za**


IN TERMS OF RULE 3.3 OF THE RULES OF THE JUDICIAL COMMISSION OF INQUIRY INTO ALLEGATIONS OF STATE CAPTURE, CORRUPTION AND FRAUD IN THE PUBLIC SECTOR INCLUDING ORGANS OF STATE (“THE COMMISSION”), YOU ARE HEREBY GIVEN NOTICE THAT:

- 1 The Commission’s Legal Team has been presenting the evidence of **MR MATSHELA KOKO (“Mr Koko”)** at its hearing to be held at the Old Council Chamber of the Municipality of the City of Johannesburg, 158 Civic Boulevard Braamfontein, Johannesburg. The presentation of the evidence of Mr Koko will continue on **Tuesday, 4 May 2021 at 10h00** or so soon thereafter as the evidence may be heard. In the event of a change of date, it will be announced on the Commission’s website (www.sastatecapture.org.za) and in the media. The evidence in question implicates or may implicate you in unlawful, illegal or improper conduct in the respects set out below.

- 2 The statement of Mr Koko, **dated 13 April 2021**, which implicates or may implicate you in the above allegations is annexed hereto marked “A”. Your attention is drawn to **paragraphs 3, 5, 9, 11, 14, 16 and 17**.
- 3 Due to the fact that you are implicated or may be implicated by the evidence of Mr Koko, you are entitled to attend the hearing at which that evidence is being presented. You are also entitled to be assisted by a legal representative of your choice when that evidence is presented. The full statement of Mr Koko will be uploaded on the Commission’s website as soon as he concludes his evidence. The transcript will be uploaded daily.
- 4 If you wish to:
 - 4.1 give evidence yourself;
 - 4.2 call any witness to give evidence on your behalf; or
 - 4.3 cross-examine the witnessthen you must apply, within fourteen (14) calendar days of this notice, in writing to the Commission for leave to do so.
- 5 An application referred to in paragraph 4 above must be submitted to the Secretary of the Commission. The application must be submitted with an affidavit from you in which you respond to the witness’s statement insofar as it implicates you. The affidavit must identify what parts of the witness’s statement are disputed or denied and the grounds on which they are disputed or denied.
- 6 If you wish to apply to cross-examine the witness, your application must follow the requirements of Rule 11.3. In other words, it must be a substantive application on affidavit accompanied by a notice of motion.
- 7 In the event that you believe that you have not been given a reasonable time from the issuance of this notice to the date on which the witness is to give evidence as set out above and you are prejudiced thereby, you may apply to the Commission in writing for such order as will ensure that you are not seriously prejudiced.
- 8 Please take note that even if you do not make an application under Rule 3.4:

- 8.1 in terms of Rule 3.10, the Chairperson may, at any time, direct you to respond in writing to the allegations against you or to answer (in writing) questions arising from the statement; and
- 8.2 in terms of Regulation 10(6) of the Regulations of the Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State GN 105 of 9 February 2018 published in Government Gazette 41436, as amended, the Chairperson may direct you to appear before the Commission to give evidence which has a bearing on a matter being investigated.
- 9 The witness statement and annexures provided to you are confidential. Your attention is drawn to Regulations 11(3) and 12(2)(c) governing the Commission, which make it a criminal offence for anyone to disseminate or publish, without the written permission of the Chairperson, any document (which includes witnesses' statements) submitted to the Commission by any person in connection with the Commission's inquiry.
- 10 Any response to or application in regard to this notice must be sent to Advocate André Lamprecht, Ms Shannon van Vuuren and Ms Rachel Niewenhuis at secretary@commissionsc.org.za.

DATED AT PARKTOWN ON THIS 19th DAY OF APRIL 2021



PROF ITUMELENG MOSALA
Secretary
Judicial Commission of Inquiry into Allegations
of State Capture, Corruption and Fraud
in the Public Sector including Organs of State

-1-

BEFORE THE JUDICIAL COMMISSION OF ENQUIRY INTO ALLEGATIONS OF
STATE CAPTURE, CORRUPTION AND FRAUD IN THE PUBLIC SECTOR
INCLUDING ORGANS OF STATE

HELD AT JOHANNESBURG

SUPPLEMENTARY AFFIDAVIT: M M KOKO

I, the undersigned,

MATSHELA MOSES KOKO

hereby state that:

1. I have in response to directives issued by the Chairman of the Judicial Commission of Enquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector, including Organs of State ("the Commission") previously delivered five affidavits to the Commission. The first is dated 1 September 2020, the second is dated 22 September 2020, the third is dated 1 December 2020, the fourth is dated 2 December 2020 and the fifth is dated 20 December 2020.
2. I dealt with the conclusion of my career with Eskom in paragraphs 44 – 57 of my main affidavit. In paragraph 44 of my main affidavit, I made mention of the of the media statement of 21 January 2018 by the Presidency announcing a new Board for Eskom.

MMK DM

-2-

3. In the same statement Presidency directed the new Board, which was not yet in office, to,

"immediately remove all Eskom executives who are facing allegations of serious corruption and other acts of impropriety, including Mr. Matshela Koko..."

4. I was not facing "allegations of serious corruption and other acts of impropriety". Allegations of conflict of interest relating to my stepdaughter's shareholding in Impulse International (Pty) Limited had been made against me. I had met disciplinary charges in relation to it and had been vindicated.
5. In its statement of 20 January 2018, the Presidency was directing the Board of Eskom as newly constituted to find reasons to dismiss me. The Presidency was overreaching. Its directive to the new Board of Eskom was unlawful and unconstitutional.
6. The Labour Court issued an interim order on 26 January 2018 interdicting and restraining Eskom from unlawfully terminating my contract of employment based on the directive issued by the Presidency in terms of the statement that the Government put out on Sunday, 20 January 2018.
7. The interim order was made final on 21 February 2018 by Justice GN Moshwana of the Labour Court and he concluded that¹:

"On the evidence before me, it is clear that the respondent [Eskom] is intent and actually is pressured to dismiss the applicant. Should the outcome of the current process not yield the desired results, there is a great possibility of the respondent pulling the ace up the sleeve. Legal advice has already been sought and dispensed with that the steps taken are justified in law. That being so, there is nothing that would prevent the respondent to flag the steps already interdicted to justify the termination once the interdict is gone. Therefore, the fear of the applicant is reasonable and ought to be entertained by this Court"

¹ Koko vs Eskom Labour Court 2018-J200-18 Par [32]

mmk dm

-3-

8. In terms of the of the final order of the Labour Court, Eskom was interdicted and restrained from unlawfully terminating my contract of employment on the basis of a directive issued to it by the Government of the Republic of South Africa in terms of a statement that the government put out on Sunday, 20 January 2018.
9. At the outset of the Commissions proceedings on Thursday, 3 December 2020 I made mention that Mr. Cyril Ramaphosa interfered in the affairs of Eskom by directing the Board of Eskom as newly constituted to find reasons to dismiss me. The new Board of Eskom had not even had its first meeting. I have since learned through the testimony of former Minister Lynne Brown at the Commission that three of the new Board members were not even vetted.
10. I was alerted by the then acting Director-General of Public Enterprises, Ms. Makgola Makololo and by the then Deputy Minister, Ben Martin of my impending dismissal by the then-Deputy President Ramaphosa and the new board. I received a call from Ms. Makgola Makololo about 30 minutes before the Presidency issued the statement to dismiss me.
11. Ms. Makgola Makololo told me that Mr. Ramaphosa is about to issue the statement directing the new Board of Eskom to dismiss me. I asked her what would be the reasons for my dismissal? She said Mr. Ramaphosa has directed the new Board to find the reasons to dismiss me. She then gave her phone to Mr. Ben Martin who confirmed same.
12. I resigned my employment with Eskom on 16 February 2018. I did so because it was clearly apparent that the then newly appointed Eskom Board was determined to act in accordance with Government's directive to dismiss me. I

gm
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-4-

was faced with powers that had been arraigned against me that I did not have the means to fight.


13. No-load shedding had occurred under my watch from 8 August 2015 until I resigned in February 2018. Load shedding came back in June 2018 four months after my resignation. CSIR has determined that R266-billion was lost to the economy between 2018 and 2020 because of load shedding after I left Eskom.
14. In a video recording at the University of Stellenbosch, Mr. Bonang Mohale who was then CEO of Business Leadership South Africa (BLSA) said that it was them who demanded that Mr. Ramaphosa dismiss the Board of Eskom and its Executives. If Mr. Mohale is to be believed, then Mr. Ramaphosa took illegal instructions from people who were outside of government and implemented them. This is nothing else but the capture of the state. The video recording of Mr. Bonang Mohale is attached² with this affidavit.
15. The World Bank, African Development Bank, European Investment Bank and KFW also demanded that the Eskom Board be dismissed. This they did in the attached letter dated 27 November 2017. They demanded from Government an Eskom Board that is constituted by "individuals who do not have conflict of interest".
16. Mr. Ramaphosa appointed Mr. Jabu Mabuza to be the new Chairman of Eskom and according to Mr. Bonang Mohale, Mr. Mabuza was one of the 5 names given to Ms. Lynne Brown by Business Leadership South Africa to be on the Board of Eskom.

² I also attach a similar video by Mr Paul Mashatile at the mining indaba suggesting that Government was taking instructions from external parties.

mmic

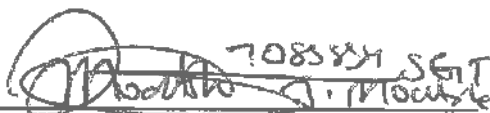
-5-

17. It was the Board of Eskom led by Mr. Mabuza that was directed to dismiss me by Mr. Ramaphosa who was executing the demands of BLSA, World Bank, African Development Bank, European Investment Bank and KFW and none of them were in government.
18. Mr. Mabuza was not free of conflict of interest and I can not rule out that he was one of the three board members who were not vetted³. He was an executive chairman of a company that owned a company that had a contract to maintain a third of Eskom boilers. He also had interests in Eskom coal business through his son.



 DEPONENT

SIGNED AND SWORN TO BEFORE ME ON THIS 13 DAY OF ^{April} ~~DECEMBER~~ 2021, THE DEPONENT HAVING ACKNOWLEDGED THAT HE KNOWS AND UNDERSTANDS THE CONTENTS OF THIS AFFIDAVIT, THAT HE HAS NO OBJECTION TO TAKING THE PRESCRIBED OATH AND THAT HE CONSIDERS THE OATH TO BE BINDING ON HIS CONSCIENCE.



 COMMISSIONER OF OATHS

FULL NAMES: Jennifer Moatshe

ADDRESS: 40 Topas & Douglas Drive
 Douglasdale

DESIGNATION: Sergeant

SOUTH AFRICAN POLICE SERVICE
CLIENT SERVICE CENTRE
2021-04-13
DOUGLASDALE
SOUTH AFRICAN POLICE SERVICE

³ Ms. Lynne Brown testified at the Commission that she was given names to be on the Eskom board and three of those names were not vetted.

mmk



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**JUDICIAL COMMISSION OF INQUIRY INTO ALLEGATIONS OF STATE CAPTURE,
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NOTICE IN TERMS OF RULE 3.3

TO : PRES CYRIL RAMAPHOSA

CONTACT : 072 054 3634 / 012 300 5502

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nokukhanya@presidency.gov.za
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- 1 The Commission’s Legal Team intends to present the evidence **MR LLOYD MHLANGA** (“**Mr Mhlanga**”) at its hearing held at Old Council Chamber of the Municipality of the City of Johannesburg, 158 Civic Boulevard Braamfontein, Johannesburg. The presentation of the evidence of Mr Mhlanga will be heard between **25 and 29 January 2021**, or so soon thereafter as his evidence may be heard. In the event of a change of date, it will be announced on the Commission’s website (www.sastatecapture.org.za) and in the media. The evidence in question implicates or may implicate you in unlawful, illegal or improper conduct in the respects set out below.
- 2 The allegations set out in the evidence of Mr Mhlanga implicate or may implicate you in the manner set out below:

- 2.1 Mr Mhlanga, employed at the State Security Agency (“SSA”) at the time, compiled a report at the instance and request of Advocate Mahlodi Sam Muofhe (“**Advocate Muofhe**”), the then Minister’s Advisor, relating to investigations that he referred to Directorate of Priority Crime Investigations (“**DPCI**”) concerning Project Veza and PAN 2 and PAN 1. Advocate Muofhe complained that the referral to the DPCI was made before it was discussed with him to which the witness explained that the role of Minister’s Advisor was not operational and that the report was provided as a courtesy in order for the Ministry to provide any input if they desired. Consequently, at a meeting on 24 April 2019, Advocate Muofhe criticised the investigation and instructed that all documentation be handed over as the Ministry was going to conduct its own investigation. The witness was also instructed to withdraw the matter from the DPCI. Handover of the documentation was refused as it was unlawful for the Minister to be involved in operational matters and to conduct such an investigation.
- 2.2 Six days after the meeting, on 30 April 2019, Mr Mhlanga was charged with an allegation that he received a double salary, both from DIRCO and SSA during the period of his transfer from DIRCO to SSA. It is alleged that Mr Mhlanga subsequently discovered that the charge of “double dipping” was laid by Advocate Muofhe.
- 2.3 On 15 May 2019, Mr Mhlanga addressed a letter to you in office appealing for your intervention on the basis that the charges laid against him were part of a stratagem to stop the investigation that he had been mandated to conduct. To the date of his affidavit, no response has been received.
- 2.4 In the result, no suspension processes were initiated against him and he was not afforded a hearing to make any representations which was viewed by the Office of the Inspector-General of Intelligence as an unfair labour practice. He has been left unemployed.
- 3 The relevant portions of the affidavit of Mr Mhlanga which implicate or may implicate you in the above allegations are annexed hereto marked “A”. Your attention is drawn to **paragraphs 7, 11 to 14 and 21 to 43**. The relevant annexures thereto which are not classified, namely **LM7, LM8 and LM9**, are attached and marked “B”. The letter

addressed to you in office, namely **LM6**, will be provided as soon as possible after its declassification.

- 4 Please note that the names of certain individuals recorded in the affidavit of Mr Mhlanga have been redacted for reasons of security. A pseudonym marked in red text will replace those names.
- 5 Due to the fact that you are implicated or may be implicated by the evidence of Mr Mhlanga, you are entitled to attend the hearing at which that evidence is being presented. You are also entitled to be assisted by a legal representative of your choice when that evidence is presented. The full statement of Mr Mhlanga will be uploaded on the Commission's website as soon as he concludes his evidence. The transcript will be uploaded daily.
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12 Any response to or application in regard to this notice must be sent to Advocate André Lamprecht, Ms Shannon van Vuuren and Ms Rachel Niewenhuis at secretary@commissionsc.org.za.


DATED AT PARKTOWN ON THIS 9th DAY OF JANUARY 2021



PROF ITUMELENG MOSALA
Secretary
Judicial Commission of Inquiry into Allegations
of State Capture, Corruption and Fraud
in the Public Sector including Organs of State

SECTION 2

Correspondence

From: Shannon S. Van Vuuren ShannonV@commissionsc.org.za 
Subject: Dr. S. Francis Moloi // Ramaphosa MC // Commission of Inquiry into Allegations of State Capture
Date: 28 April 2021 at 21:20
To: Nokukhanya Jele njjele@law.co.za, Roshene@presidency.gov.za, geofrey@presidency.gov.za, Mike Louw mike@presidency.gov.za
Cc: Itumeleng Mosala ItumelengM@commissionsc.org.za, Paul P. Pretorius PaulP@commissionsc.org.za, Andre J. Lamprecht AndreL@commissionsc.org.za, Devi D. Pillay DeviP@commissionsc.org.za



Dear Sirs / Mesdames

The evidence leader, Adv. Paul Pretorius SC, has directed that we send the following documentation to yourselves and his Excellency, President Ramaphosa, for your consideration.

- **Dr. Sehloho Francis Moloi** affidavit and annexures.

Secure WeTransfer Link: <https://we.tl/t-aQcuzybqCz>

Password: On Ms Jele's WhatsApp.

Adv. Paul Pretorius SC has not yet determined whether the President will be asked questions about this document.
You will be notified accordingly in due course.

Kind regards,

Shannon Van Vuuren
Legal Advisor: Operations & Investigative Support
COMMISSION OF INQUIRY INTO STATE CAPTURE
Hillside House, 17 Empire Road, Parktown,
Johannesburg, 2193|Gauteng| South Africa
Cell: 060 749 5687
Email: shannonv@commissionsc.org.za | www.sastatecapture.org.za



Please consider the environment before printing

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From: Shannon S. Van Vuuren
Sent: Tuesday, 27 April 2021 19:22
To: Nokukhanya Jele <njjele@law.co.za>; Roshene@presidency.gov.za; 'geofrey@presidency.gov.za' <geofrey@presidency.gov.za>; Mike Louw <mike@presidency.gov.za>
Cc: Itumeleng Mosala <ItumelengM@commissionsc.org.za>; Paul P. Pretorius <PaulP@commissionsc.org.za>; Andre J. Lamprecht <AndreL@commissionsc.org.za>
Subject: Re: CR-BUNDLE-02: EXHIBIT BBB2: Ramaphosa. MC // Commission of Inquiry into Allegations of State Capture

Dear Nokukhanya

My email below refers.

Herewith the secure link:

Link: <https://we.tl/t-modGD4AT7h>

The password will be sent to you via WhatsApp.

Both CR-BUNDLE-01 and CR-BUNDLE-02 will be available in hard copy for the witness (the President) to use during the proceedings.

Also, the Documents Team inform me that there will be an extra hard copy of each bundle for his team to use but please note that all copies need to be returned to the Commission at the close of the proceedings.

Kind regards
Shannon

From: Nokukhanya Jele <njjele@law.co.za>
Sent: Tuesday, April 27, 2021 7:03 PM
To: Shannon S. Van Vuuren; Roshene@presidency.gov.za; 'geofrey@presidency.gov.za'; Mike Louw
Cc: Itumeleng Mosala; Paul P. Pretorius; Andre J. Lamprecht
Subject: RE: CR-BUNDLE-02: EXHIBIT BBB2: Ramaphosa. MC // Commission of Inquiry into Allegations of State Capture

Thank you.

Kindly confirm a copy will be available at the hearing tomorrow.

It will be impossible for us to print and collate it for the President before reaching the Commission venue.

Regards,
Nokukhanya

----- Original message -----

From: "Shannon S. Van Vuuren" <ShannonV@commissionsc.org.za>
Date: 27/04/2021 18:55 (GMT+02:00)
To: njjele@law.co.za, Roshene@presidency.gov.za, "geofrey@presidency.gov.za"

<geotrey@presidency.gov.za>, Mike Louw <mike@presidency.gov.za>
Cc: Itumeleng Mosala <ItumelengM@commissionsc.org.za>, "Paul P. Pretorius"
<PaulP@commissionsc.org.za>, "Andre J. Lamprecht"
<AndreL@commissionsc.org.za>
Subject: CR-BUNDLE-02: EXHIBIT BBB2: Ramaphosa. MC // Commission of Inquiry
into Allegations of State Capture

Dear Sirs / Mesdames

RE: HIS EXCELLENCY THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA, MATAMELA CYRIL RAMAPHOSA

His Excellency, President Ramaphosa's scheduled appearance before this Commission refers.

A secure WeTransfer link will be sent to yourselves shortly, via which you will be able to access and download **CR-BUNDLE-02** containing **Exhibit BBB 2: Additional information re: Ramaphosa & ANC**.

The required details will be transmitted to Ms Jele's cell phone number via WhatsApp.

Kind regards,

Shannon Van Vuuren

Legal Advisor: Operations & Investigative Support

COMMISSION OF INQUIRY INTO STATE CAPTURE

Hillside House, 17 Empire Road, Parktown,

Johannesburg, 2193|Gauteng| South Africa|

Cell: 060 749 5687

Email: shannonv@commissionsc.org.za | www.sastatecapture.org.za



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From: Shannon S. Van Vuuren

Sent: Saturday, 24 April 2021 23:59

To: 'njjele@law.co.za' <njjele@law.co.za>; 'Roshene@presidency.gov.za' <Roshene@presidency.gov.za>; 'geofrey@presidency.gov.za' <geofrey@presidency.gov.za>; 'Mike Louw' <mike@presidency.gov.za>

Cc: Itumeleng Mosala <ItumelengM@commissionsc.org.za>; Paul P. Pretorius <PaulP@commissionsc.org.za>; Andre J. Lamprecht <andrel@commissionsc.org.za>

Subject: CR-BUNDLE-01: EXHIBIT BBB1: Ramaphosa. MC // Commission of Inquiry into Allegations of State Capture

Dear Sirs / Mesdames

RE: HIS EXCELLENCY THE PRESIDENT OF THE REPUBLIC OF SOUTH AFRICA, MATAMELA CYRIL RAMAPHOSA

His Excellency, President Ramaphosa's scheduled appearance before this Commission refers.

Via the below secure WeTransfer link, please access and download Bundle CR-Bundle-01 containing **Exhibit BBB1**:

Link: <https://we.tl/t-EE4e86TiOZ>

The password will be transmitted to Ms Jele's cell phone number via WhatsApp.

Kind regards,

Shannon Van Vuuren

Legal Advisor: Operations & Investigative Support

COMMISSION OF INQUIRY INTO STATE CAPTURE

Hillside House, 17 Empire Road, Parktown,

Johannesburg, 2193|Gauteng| South Africa|

Cell: 060 749 5687

Email: shannonv@commissionsc.org.za | www.sastatecapture.org.za



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THE PRESIDENCY
REPUBLIC OF SOUTH AFRICA

Private Bag X1000, Pretoria, 0001, Tel: 012 300 5200 / Private Bag X 1000, Cape Town, 8000, Tel: 021 464 2100

04 May 2021

Dear Secretary of the Commission,

I write to you on behalf of the President, in my capacity as his Chief of Staff to respond to the request of the Commission that we postpone the original dates of the appearance of His Excellency as Head of State.

We hereby notify you that we have now reserved Monday, 31 May and Tuesday, 01 June.

We will be filing his statement in line with the Commission rules.

We would appreciate your formal confirmation that these dates will be set aside by the Commission for the President's appearance. I trust you will appreciate our constraints in relation to the President's schedule.

Looking forward to hearing from you at your earliest convenience.

Sincerely,
Roshene Singh

Roshene Singh
Deputy Director-General:
Private office of the President

Prof Itumeleng Mosala
Hillside House
17 Empire Road
Parktown
Johannesburg
2193

Cc: Mr Paul Joseph Pretorius
Head of Legal Team



2nd floor, Hillside House
17 Empire Road,
Parktown
Johannesburg
2193
Tel: (010) 214-0651

Email: inquiries@sastatecapture.org.za
Website: www.sastatecapture.org.za

**JUDICIAL COMMISSION OF INQUIRY INTO ALLEGATIONS OF STATE CAPTURE,
CORRUPTION AND FRAUD IN THE PUBLIC SECTOR INCLUDING ORGANS OF STATE**

6 May 2021

Ms Roshene Singh
Deputy Director-General: Private Office of the President
Private Bag X100
Pretoria
0001
Tel: 012 300 5200
Per email: Roshene@presidency.gov.za

Dear Ms Singh

Re: Next appearance of the President before the Commission on 31 May 2021 and 1 June 2021

1. You are requested to advise the President that the Chairperson of the Commission has determined 31 May 2021 and 1 June 2021 as the next dates for the President's appearance before the Commission. On those days the President will be appearing in his capacity as the President of the Republic. However, the Chairperson indicates that, as agreed at the President's previous appearance, certain issues will still be dealt with which relate to the ANC.
2. The Chairperson of the Commission has taken the attitude that all oral evidence that remains to be heard must be heard during this month and it is not intended that any dates will be allocated for the hearing of oral evidence in June 2021 other than 1 June. In this regard the Chairperson has emphasised that it was intended that the Commission

would complete the hearing of all oral evidence in March so that April, May and June would be used for the preparation of the report. This is being brought to the attention of the Office of the President to emphasise the need to ensure that the two days referred to above which the Commission has set aside for the President's next appearance before it are strictly reserved for that purpose.

3. Your kind co-operation will be highly appreciated.

Yours sincerely


PROF IJ MOSALA
SECRETARY OF THE COMMISSION



2nd floor, Hillside House
17 Empire Road,
Parktown
Johannesburg
2193
Tel (International): +27 (10) 214-0651
Tel (Tollfree): 0800 222 097
Email: inquiries@sastatecapture.org.za
Web: www.sastatecapture.org.za

**JUDICIAL COMMISSION OF INQUIRY INTO ALLEGATIONS OF STATE CAPTURE,
CORRUPTION AND FRAUD IN THE PUBLIC SECTOR INCLUDING ORGANS OF STATE**

18 May 2021

To: Ms Roshene Singh
Deputy Director-General
Private Office of the President
Private Bag X100
Pretoria
0001
Tel: 012 300 5200

Per email: Roshene@presidency.gov.za ; Geofrey@presidency.gov.za

Cc: njjele@law.co.za; Fezile@presidency.gov.za>; Angeline@presidency.gov.za;
RSebelemetsa@justice.gov.za ; and PaulP@commissionsc.org.za

Dear Madam

**RE: ISSUES TO BE DEALT WITH AT PRESIDENT RAMAPHOSA'S SECOND HEARING
BEFORE THE STATE CAPTURE COMMISSION**

1. President Ramaphosa testified before the State Capture Commission ("**the Commission**") on 28 and 29 April 2021 ("**the first hearing**") in his capacity as President of the African National Congress ("**ANC**").
2. During the first hearing, a number of issues were raised in regard to which it was agreed or is now requested that President Ramaphosa should testify further and

provide detail at his second hearing (“**the second hearing**”) in which he will appear in his capacity as President of the Republic of South Africa.

3. This letter serves as a respectful reminder and request to the President to address the following issues in his second hearing.

3.1 *Records of ANC disciplinary inquiries:*

3.1.1 The President confirmed in evidence that the ANC keeps formal records of disciplinary proceedings conducted by it.

3.1.2 In this regard the President is respectfully requested to produce a summary of such records showing how many members or officials of the ANC have been disciplined for acts of corruption or fraud for the period 2009 to date; the number of guilty findings finally made; and the nature of any penalties finally visited upon such members or officials.¹

3.2 *Reports to Cabinet and to the President regarding the activities of State Owned Entities.*

3.2.1 During the first hearing, the Chairperson raised the issue of reports concerning the activities of SOE's made to the President and to Cabinet and the responses thereto.²

3.2.2 The President is respectfully requested to testify as to the nature of reports made to himself while President and to Cabinet during the period 2009 to date regarding the activities of SOE's. In particular, reference should be made to reports detailing allegations of corruption and fraud within SOE's as well as reports detailing appointments and dismissals of Board members and senior executives of SOE's.

3.2.3 The SOE's which should be covered in this evidence are PRASA, Denel, SAA, Eskom and Transnet.

¹ Transcript of testimony: Page 145 of day 385 (29 April 2021).

² Transcript of testimony: Page 115 of day 384 (28 April 2021).

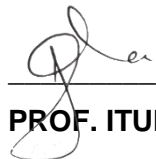
3.3 Signposts which alerted the President about the existence of state capture

3.3.1 During the first hearing, Advocate Pretorius asked the President: what were the signposts along the road or along the path of state capture that first alerted him to the existence of something much more than corruption? He asked: what was it for him that alerted him to the fact that state capture was a phenomenon that needed to be dealt with?³

3.3.2 The President is asked to respond to this question.

4. References to relevant portions of the relevant proceedings are included, and the Transcripts of Testimony for the two days of the first hearing are attached hereto for ease of reference.
5. The assistance of the Presidency is greatly appreciated.

Yours faithfully,



PROF. ITUMELENG MOSALA

Secretary

**JUDICIAL COMMISSION OF INQUIRY INTO ALLEGATIONS OF STATE CAPTURE,
CORRUPTION AND FRAUD IN THE PUBLIC SECTOR INCLUDING ORGANS OF STATE**

³ Transcript of testimony: Page 145 of day 385 (29 April 2021).

**THE PRESIDENCY: REPUBLIC OF SOUTH AFRICA**

Private Bag X1000, Pretoria, 0001

Prof I Mosala

The Secretary

Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State

2nd Floor, Hillside House

17 Empire Road

Johannesburg

Per email:

Attention Ms Boipelo B Ratshikana BoipeloR@commissionsc.org.za;

Roshene@presidency.gov.za Geofrey@presidency.gov.za, njjele@law.co.za,

Angeline@presidency.gov.za, RSebelemetsa@justice.gov.za; PaulP@commissionsc.org.za

Dear Prof Mosala

RE: SECOND HEARING OF THE PRESIDENT BEFORE THE STATE CAPTURE COMMISSION AND REQUEST FOR INFORMATION BY THE COMMISSION

Your letter dated 18 May 2021 (attached as annexure 1) refers. Paragraph 3.2, "Reports to Cabinet and to the President regarding the activities of State Owned Entities", lists a number of documents and reports the Commission requires the Presidency to testify on.

The Commission is requesting for this additional information prior to the President's next appearance on 31 May and 01 June 2021 respectively. This implies that these additional documents should be processed and filed by Friday 28 May 2021 at the latest. Taking into account the amount of work that would be involved, we submit that this deadline is not reasonably possible.

I wish to point out that Cabinet does not consolidate submissions on SOEs. In order to meet the request of the Commission, the Cabinet Office would have to look at each and every Cabinet, Cabinet Committee, and Lekgotla meeting held over a period of 11 years, and compile every single submission on the SOEs. Even if the exercise is limited to the 6 specified SOEs, this involves over a 1000 meetings. In addition, each department with oversight over the SOEs would need to look through their records for every single submission made to the Presidency over 11 years, to locate all reports written to the President. This also means that the Presidency and each Ministry involved would need to look through the diaries for every single day over that period to find meetings during which oral reports may have been made.

In addition to the above, paragraph 3.2.1 of your letter creates the impression that all the pertinent documents are required. Kindly confirm that our interpretation is correct. We would also like to point out that documents that served at Cabinet are classified and there is an extensive process that has to be followed to declassify such information. This process would cover more information than previously agreed between the Presidency and Commission and would clearly require more time.

Clarity is further required on the specified time line as reflected in the letter as "2009 to date" – Mr MC Ramaphosa was not part of the Cabinet before 2014 nor would any reports have ever to him been made before February 2018.

I wish to place it on record that the Presidency is committed, without any reservations to assist the Commission and this we have amply demonstrated thus far. However it will not be possible at this late stage to analyze, collate and prepare such an immense amount of information from 2009. It may be prudent for the Commission to rather specify and filter which documents they absolutely require, which the Presidency team can then provide.

Yours sincerely



.....
Phindile Baleni (Ms)

DIRECTOR-GENERAL AND SECRETARY OF THE CABINET

DATE: 20/05/2021



THE PRESIDENCY
REPUBLIC OF SOUTH AFRICA

Private Bag X1000, Pretoria, 0001, Tel: 012 300 5200 / Private Bag X 1000, Cape Town, 8000, Tel: 021 464 2100

24 May 2021

To: Prof Itumeleng Mosala
Secretary
Judicial Commission of Inquiry Into Allegations of State Capture, Corruption and
Fraud in the Public Sector Including Organs of State
Hillside House
17 Empire Road
Parktown
Johannesburg
2193

Cc: Mr Paul Joseph Pretorius
Head of Legal Team

Dear Mr Mosala,

We thank you for your letter dated 18 May 2021.

The records sought in point 3.1 in your letter relating to detailed reports of the ANC Disciplinary Committee have been referred to the office of the Secretary General, African National Congress, as custodian of said records. The ANC will respond accordingly.

Trust you find this in order.

Thank you.

Yours Sincerely,

Roshene Singh

Roshene Singh
Deputy Director-General:
Private office of the President



2nd floor, Hillside House
17 Empire Road,
Parktown
Johannesburg
2193
Tel (International): +27 (10) 214-0651
Tel (Tollfree): 0800 222 097
Email: inquiries@sastatecapture.org.za
Web: www.sastatecapture.org.za

**JUDICIAL COMMISSION OF INQUIRY INTO ALLEGATIONS OF STATE CAPTURE,
CORRUPTION AND FRAUD IN THE PUBLIC SECTOR INCLUDING ORGANS OF STATE**

25 May 2021

To: Ms Phindile Baleni
Director-General and Secretary of Cabinet
Private Office of the President

Per email: Angeline@presidency.gov.za ; Roshene@presidency.gov.za ;
Geofrey@presidency.gov.za

Cc: njjele@law.co.za; Fezile@presidency.gov.za>; RSebelemetsa@justice.gov.za ;
Odette@presidency.gov.za; Lusanda@presidency.gov.za ; Phumla@presidency.gov.za
and PaulP@commissionsc.org.za

Dear Madam

**RE: SECOND HEARING OF THE PRESIDENT BEFORE THE STATE CAPTURE
COMMISSION AND REQUEST FOR INFORMATION BY THE COMMISSION**

The President's appearance before the Commission on 31 May 2021 and 1 June 2021 refers.
I am informed by the Legal Team as follows: -

1. We acknowledge receipt of your letter dated 20 May 2021. Our letter to your Office dated 18 May 2021 requested reports to the Cabinet and President regarding the activities of State Owned Entities ("SOEs").

2. We must stress that we are not able to “specify and filter which documents [we] absolutely require”, simply because at present we are unaware which documents Cabinet and the President received during the period in question.
3. For the sake of efficiency, we may limit our request to the period 2014 – 2018, and would ask you please to do what you can to provide us with documentation in essence which informed the Cabinet and President of any examples of state capture, fraud and corruption within SOEs.
4. We understand that this is a wide request but we would ask at least for such documents as you are able to provide prior to Friday 28 May 2021.
5. Secondly, as we understood the evidence given by the President in April 2021, he had no objection to the Commission receiving copies of minutes of meetings held by the Deployment Committees of the African National Congress.
6. In order to allow us to prepare for the questioning of the President, and bearing in mind that at the time of writing of this letter we have not yet received his further statement, we require you please to provide us with minutes of the National Deployment Committee for the period December 2012 to December 2017.
7. Thirdly, we have been in communication with Ms Nokhukhanya Jele of your office.
 - 7.1. We are informed that we will receive Ministerial Performance Agreements, save for that of the Minister of Safety and Security. This document, we are informed, cannot be declassified.
 - 7.2. Nevertheless, the Chairperson will need to have sight of the document on the basis that it is thereafter not disclosed to the public.
 - 7.3. We would therefore be grateful if you would make arrangements for the document to be delivered in a sealed envelope for perusal and consideration by the Chairperson only.
8. We look forward to your prompt reply and we thank you for your cooperation.
9. The assistance of the Presidency is greatly appreciated.

Yours faithfully,



PROF. ITUMELENG MOSALA
Secretary

**JUDICIAL COMMISSION OF INQUIRY INTO ALLEGATIONS OF STATE CAPTURE,
CORRUPTION AND FRAUD IN THE PUBLIC SECTOR INCLUDING ORGANS OF STATE**



2nd floor, Hillside House
17 Empire Road,
Parktown
Johannesburg
2193
Tel (International): +27 (10) 214-0651
Tel (Tollfree): 0800 222 097
Email: inquiries@sastatecapture.org.za
Web: www.sastatecapture.org.za

**JUDICIAL COMMISSION OF INQUIRY INTO ALLEGATIONS OF STATE CAPTURE,
CORRUPTION AND FRAUD IN THE PUBLIC SECTOR INCLUDING ORGANS OF STATE**

03 June 2021

To: Ms Phindile Baleni
Director-General and Secretary of Cabinet
Private Office of the President

Per email: Angeline@presidency.gov.za ; Roshene@presidency.gov.za ;
Geofrey@presidency.gov.za

Cc: njjele@law.co.za; Fezile@presidency.gov.za>; RSebelemetsa@justice.gov.za ;
Odette@presidency.gov.za; Lusanda@presidency.gov.za ; Phumla@presidency.gov.za
and PaulP@commissionsc.org.za

Dear Madam

**RE: SECOND HEARING OF THE PRESIDENT BEFORE THE STATE CAPTURE
COMMISSION // AFFIDAVIT "MS K"**

1. Please find attached, for the attention of the President, the affidavit of "Ms K".
 - 1.1. Please access and download this affidavit via the secure link contained in the covering email to this letter.
2. "Ms K" has already testified before the Commission in relation to matters concerning the State Security Agency.

- 3. The affidavit attached will in due course be placed before the Chair. It has not yet been released to implicated parties. Please treat the affidavit as confidential.
- 4. It has not yet been determined by the Chair whether and if so when "Ms K" will give oral testimony. Nevertheless, there are several aspects of the statement that we would like to put to the President for his comment when he again gives evidence before the Commission.

Yours faithfully,



PROF. ITUMELENG MOSALA
Secretary

**JUDICIAL COMMISSION OF INQUIRY INTO ALLEGATIONS OF STATE CAPTURE,
CORRUPTION AND FRAUD IN THE PUBLIC SECTOR INCLUDING ORGANS OF STATE**

AFRICAN NATIONAL CONGRESS

SECRETARY GENERAL’S OFFICE



Chief Albert Luthuli House 54 Sauer Street Johannesburg 2001 PO Box 61884 Marshalltown 2107 RSA
Tel: 27.11.376.1000 Website: www.anc.org.za

Professor Itumeleng Mosala
Secretary
Judicial Commission of Inquiry into Allegations of
State Capture, Corruption, and Fraud in the Public
Sector including Organs of State
2nd Floor
Hillside House
Parktown

Per email: secretary@commissionsc.org.za 14 June 2021

Sir

REQUEST FOR DISCIPLINARY RECORDS AND MINUTES OF DEPLOYMENT COMMITTEE MEETINGS

We have been informed by the Presidency that President Ramaphosa will be appearing before the Commission at the end of June and early July in his capacity as President of the Republic of South Africa and that the Commission requires disciplinary records of the ANC’s National Disciplinary Committee (NDC) and National Disciplinary Committee of Appeal (NDCA) and minutes of Deployment Committee meetings.

We enclose herewith NDC and NDCA Findings for the period 2014 to 2021 in the undermentioned cases:-

NDC

CASE NUMBER	MEMBERS	DESCRIPTION OF CASE
4/2014	David Malatji and 21 others	Appeal from Limpopo Provincial DC
1/2015	Ntandazo Qamngwana and 3 others	Appeal from Eastern Cape Provincial DC
2/2015	Kabelo Mataboge	Appeal from North West Provincial DC
3/2015	Abraham Mashishi and 3 others	Appeal from Gauteng Provincial DC
4/2015	Zolile Masimini	Appeal from Eastern Cape Provincial DC

AFRICAN NATIONAL CONGRESS

SECRETARY GENERAL’S OFFICE



Chief Albert Luthuli House 54 Sauer Street Johannesburg 2001 PO Box 61884 Marshalltown 2107 RSA
Tel: 27.11.376.1000 Website: www.anc.org.za

6/2015	Jonton Snyman	Review application from Western Cape PDC
1/2016	Mbulelo Notyawwe	Appeal from Eastern Cape PDC
2/2016	Faiez Jacobs	NDC hearing
3/2016	George Matjila	Appeal from Eastern Cape PDC
1/2017	Marius Fransman	NDC hearing
2/2019	Michael Ngwenya and another	NDC hearing
1/2020	Sithembiso Sicenga	Appeal from Eastern Cape PDC
1/2021	Solomon Msane	Appeal from Gauteng PDC
2/2021	Bandile Masuku and another	Review application from Gauteng PDC
3/2021	Robert Nogumla and another	Appeal from Eastern Cape PDC

NDCA

CASE NUMBER	MEMBERS	DESCRIPTION OF CASE
1/2014	Mmeli Biyela and 10 others	Review application from Kwa Zulu Natal PDC
2/2014	Sabulone Mphofela	Appeal from NDC
4/2014	PG Mavundla	Review application from KZN PDC
5/2014	Bonakele Kleinbooi	Appeal from Eastern Cape PDC
7/2014	Mphumezi Nkumbesi and 7 others	Appeal from Eastern Cape PDC
4/2015	Mdu Khuzwayo and another	Review application from KZN PDC
1/2016	Susimpi Ngubane and 5 others	Review application from KZN PDC
2/2016	Faiez Jacobs	Appeal from NDC
3/2016	Tokyo Mataboge	Appeal from NDC
4/2016	Marius Fransman	Appeal from NDC
1/2017	Marius Fransman	Review application

AFRICAN NATIONAL CONGRESS

SECRETARY GENERAL'S OFFICE

Chief Albert Luthuli House 54 Sauer Street Johannesburg 2001 PO Box 61884 Marshalltown 2107 RSA
Tel: 27.11.376.1000 Website: www.anc.org.za



All the above cases were concerned with acts of organisational indiscipline allegedly conducted by members in terms of Rule 25.17 of the ANC Constitution (attached).

For the record, both the National Chairperson Gwede Mantashe, and President Ramaphosa, in his capacity as President of the African National Congress, have already given extensive testimony to the Commission on the development and deployment policy of the ANC and how the Deployment Committee functions and its singular output of making recommendations. Insofar as the Deployment Committee may have retained records of recommendations made by it since 2013, such information is the subject matter of a High Court application instituted by Dr Leon Schreiber and the Democratic Alliance against the ANC, in terms of the Promotion of Access to Information Act, in the South Gauteng High Court under case number 21/26339.

Regards

Sgd. K. Naidoo

KRISH NAIDOO
LEGAL ADVISER
AFRICAN NATIONAL CONGRESS

AFRICAN NATIONAL CONGRESS

SECRETARY GENERAL'S OFFICE



Chief Albert Luthuli House 54 Sauer Street Johannesburg 2001 PO Box 61884 Marshalltown 2107 RSA
Tel: 27.11.376.1000 Website: www.anc.org.za

Professor Itumeleng Mosala
Secretary
Judicial Commission of Inquiry into Allegations of State Capture
2nd Floor
Hillside House
17 Empire Road
Parktown

Per email:

24 June 2021

Sir

REQUEST FOR DEPLOYMENT COMMITTEE AND DISCIPLINARY COMMITTEE RECORDS OF THE AFRICAN NATIONAL CONGRESS (ANC)

Your letter dated 18 June 2021 bears reference.

In paragraph 3 of your abovementioned letter, you reiterate the Commission's request of 25 May 2021 for the "*minutes of the National Deployment Committee for the period December 2012 to December 2017*". Paragraph 3 of the letter states that despite the views expressed in our letter to the Commission dated 18 June 2021, the Commission persists in the request for the relevant Deployment Committee minutes.

Following receipt of the Commission's letter dated 18 June 2021, we have conducted a thorough search for minutes of the National Deployment Committee for the period December 2012 to December 2017. No minutes of the meetings of the National Deployment Committee for the relevant period could be found.

To our knowledge, the meetings of the National Deployment Committee were not being minuted during the period as requested.

We trust that the Commission will find the above to be in order.

Yours faithfully

KRISH NAIDOO
LEGAL ADVISER

Reply all

▼

Delete


Junk

▼

...

✕

REQUEST FOR RECORDS OF THE DEPLOYMENT COMMITTEE AND DISCIPLINARY COMMITTEE OF THE ANC // Krish Naidoo // Office of the Presidency // State Capture Commission



Secretary

Tue 06/07, 22:29

krish naidoo <krish-naidoo@outlook.com>; krishn@mweb.co.za; +7 more


✉

Reply all

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Action Items



Dear Mr Naidoo

Cc: *The Office of His Excellency, President Ramaphosa*

RE: REQUEST FOR RECORDS OF THE DEPLOYMENT COMMITTEE AND DISCIPLINARY COMMITTEE OF THE ANC

The Commission’s Legal Team require that we write to you as follows:

“We confirm the telephone conversation between yourself and Mr Paul Pretorius SC of 25 June 2021 and acknowledge receipt of your letter dated 24 June 2021.

We hereby request the minutes of the National Deployment Committee for any portion of 2017; and the period 2018 – 2021, being the period that the Deployment Committee has been under the Chairmanship of Deputy President David Mabuza.

We confirm that the minutes will be treated in the same manner as set out in our letter of 18 June 2021.”

Should you have any queries regarding this matter, please contact Ms Emma Franklin of the Commission’s Legal Team.

Please do not respond to this email address as this Secretariat email-account is not monitored daily for replies. Any response hereto must be sent to Boipelo Ratshikana BoipeloR@commissionsc.org.za (Executive Assistant to the Secretary) and Shannon Van Vuuren ShannonV@commissionsc.org.za (*copied herein*).

Yours faithfully,
THE SECRETARIAT
COMMISSION OF INQUIRY INTO STATE CAPTURE
Hillside House, 17 Empire Road, Parktown,
Johannesburg, 2193|Gautengl South Africal
Email: secretary@commissionsc.org.za | www.sastatecapture.org.za



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From: Krish Naidoo <krishn@mweb.co.za>
Sent: Thursday, 24 June 2021 21:04
To: Boipelo B. Ratshikana <BoipeloR@commissionsc.org.za>
Cc: 'Nokukhanya Jele' <njjele@law.co.za>; 'Metja Ledwaba' <MetjaL@lmz.co.za>
Subject: Letter from ANC

From: Boipelo B. Ratshikana <BoipeloR@commissionsc.org.za>
Sent: Friday, 18 June 2021 15:28
To: 'krishn@mweb.co.za' <krishn@mweb.co.za>
Cc: Paul P. Pretorius <PaulP@commissionsc.org.za>
Subject: Letter to the ANC // Krish Naidoo // REQUEST FOR DEPLOYMENT COMMITTEE RECORDS

Dear Sir/Madam

Please find the attached letter for your attention and kindly acknowledge receipt.

Kind Regards,

Boipelo Ratshikana
Executive Assistant to the Secretary
COMMISSION OF INQUIRY INTO STATE CAPTURE
Hillside House, 2rd Floor, 17 Empire Road, Parktown, Johannesburg, 2193
Tel: 010 214 0651 | Mobile: 071 319 7843 | [Email: boipelor@commissionsc.org.za](mailto:boipelor@commissionsc.org.za) | www.sastatecapture.org.za





2nd floor, Hillside House
17 Empire Road,
Parktown
Johannesburg
2193
Tel (International): +27 (10) 214-0651
Tel (Tollfree): 0800 222 097
Email: inquiries@sastatecapture.org.za
Web: www.sastatecapture.org.za

**JUDICIAL COMMISSION OF INQUIRY INTO ALLEGATIONS OF STATE CAPTURE,
CORRUPTION AND FRAUD IN THE PUBLIC SECTOR INCLUDING ORGANS OF STATE**

13 July 2021

Ms Phindile Baleni,
Director-General and Secretary of Cabinet,
Private Office of the President
PhindileB@presidency.gov.za

cc. Ms Roshene Singh
Deputy Director-General
Private of the President
Roshene@presidency.gov.za

Dear Ms Baleni

**THE JUDICIAL COMMISSION OF INQUIRY INTO ALLEGATIONS OF STATE CAPTURE,
CORRUPTION AND FRAUD IN THE PUBLIC SECTOR INCLUDING ORGANS OF THE
STATE**

By direction of the Chairperson of the Commission I write to ask you to advise the President that the Chairperson proposes to fix 29 and 30 July 2021 as the next dates for the President's appearance before the Commission. Would you please convey this to the President and let us have confirmation that the President will be able to appear.

You may recall that the hearing of oral evidence was completed last month except for a few witnesses plus the President. Accordingly the Chairperson said that July is the last month for the hearing of the oral evidence of these witnesses plus the President. The Chairperson proposes to allocate the last two days of July to the President so as to make sure that the President will be the last witness and all the other five or so remaining witnesses will testify before the President.



.....
PROF. ITUMELENG MOSALA

Secretary

**Judicial Commission of Inquiry into Allegations of State Capture, Corruption and Fraud
in the Public Sector Including Organs of State**



THE PRESIDENCY: REPUBLIC OF SOUTH AFRICA
Private Bag X 1000, Pretoria, 0001

14 July 2021

Prof. Itumeleng Mosala
Secretary of the Commission of Inquiry into State Capture
2nd floor, Hillside House
17 Empire Road
Parktown
Johannesburg
2193

Attention: Adv. Paul Pretorius SC

Dear Prof Mosala

**SECOND APPEARANCE OF THE PRESIDENT BEFORE THE STATE CAPTURE
COMMISSION OF INQUIRY**

We acknowledge receipt of your letter of 13 July 2021.

The President is unfortunately not available on the proposed dates. He has committed to a state visit that has so far already been postponed on more than one occasion. The President will furthermore unfortunately not be available for the first week and a half of August. We propose that the President appear at the Commission on Thursday, 12th and Friday, 13th August 2021.

We trust that you will find the above in order.

Yours Sincerely,

Roshene Singh

Ms Roshene Singh
Deputy Director-General:
Private office of the President



THE PRESIDENCY: REPUBLIC OF SOUTH AFRICA
Private Bag X1000, Pretoria, 0001

Ms Brigitte Tshabalala
Acting Secretary of the Commission
Commission of Inquiry into State Capture
Hillside House, 17 Empire Road
JOHANNESBURG, 2193

Dear Ms Tshabalala

1. Your letter addressed to the President of 15 September 2020 refers.
2. The letter has been referred to me for a response.
3. This response is further informed by consultations held with the Chairperson of the Panel, former Minister Sydney Mufamadi.
4. There are a number of principled matters we feel it necessary to address at the outset:
 - 4.1. Firstly, we unreservedly agree with the principles on the basis of which you make your request for declassification of the High Level Review Panel Report on the State Security Agency ("the Report"), as listed in your paragraph 4 and detailed in paragraphs 7 to 22 of your letter. However, we have concerns regarding the contents of paragraph 18.3 of your letter, referring to the prior testimonies of former members of the Services in public hearings of the Commission, which we will detail below.
 - 4.2. Secondly, Dr Mufamadi as the Chairperson of the High Level Review Panel cannot testify to the contents or details of projects that were referred to in the report; he can only testify to the information given to the panel. We would appreciate confirmation by the Commission that he is not expected to testify to the truth of the projects, and that relevant requests will be sent to the State Security Agency or departments responsible for or having officials with direct personal knowledge of the relevant facts.
 - 4.3. Thirdly, a number of persons implicated in the unredacted version of the report never had an opportunity to respond to allegations made against them in the Panel's process. It would be grossly unfair in our view to make these allegations public without more, and certainly inappropriate not to give them prior notice and an

opportunity to put their version to the Commission's teams. We identify these below.

- 4.4. In addition, the information contained in the Report would naturally have more weight, and in some cases more detail, and more direct sources than may have been made available in the public domain. Reference to facts contained in the Report will be taken as confirmed where facts in books published for example may not be received with similar credibility assurances. We are therefore of the view that mere reference to the theme or general description of a matter sought to be declassified, or to a book or other publication, cannot alone inform whether a matter is properly in the public domain. Rather the nature or aspect of the information that has been made public needs to be compared with the precise information the panellists had access to and outlined in the Report – will the information in the Report, if declassified, give more detail than is already in the public domain for example? Will it help confirm facts that would otherwise not be so confirmed?
- 4.5. Last but not least, we wish to inform the Commission that in our respectful view, declassification of the information they refer to or seek to make use of in fulfilling their terms of reference is not a prerequisite to them having access to or making use of the information at issue. The members of the Commission Investigative or Legal team that have obtained security clearance may have access to classified information without more, and evidence of this nature may well be used by the Commission to inform any conclusions or recommendations it may want to make, without being declassified or made public. We would appreciate the Commission indicating to us what measures it has taken to make such arrangements possible, which would facilitate the Commission's work while putting to rest any concerns regarding the risks involved in declassifying much of the information at issue.
5. As regards the matter of prior testimony of former members of the Services:
 - 5.1. As you are no doubt aware section 27 of the Intelligence Services Act, 2002 governs the disclosure of classified information or material by former members.
 - 5.2. No such information can be disclosed to any person unless the Director-General has granted permission for the disclosure in terms of section 27(1).
 - 5.3. Section 1 of the Act defines a "former member" as "any member of the Agency or of the former National Intelligence Agency, South African Secret Service or South African National Academy of Intelligence whose services have been terminated for any reason".
 - 5.4. The type of information covered by section 27, per section 27(2), is "any information or material received by the former member during, or subsequent to, the former member's employment or other service with the Agency or with the former National Intelligence Agency, the South African Secret Service or the South African Academy of Intelligence, that was marked as classified or that the former member knew or ought reasonably to have known was classified." In our view this does not limit the

information in question to written documents but includes information gathered or obtained in the course of their employment with the Services.

- 5.5. The Act's definition of a "person" includes "(a) a trust; (b) a foundation; and (c) any body of persons corporate or unincorporated". In our view this is not an exhaustive list of what persons the disclosure in question may be made to, and therefore includes the Commission.
- 5.6. Applicable regulations detail the process to be followed to obtain the requisite information.¹
- 5.7. Disclosure of classified information or material without the permission of the Director-General is an offence in terms of section 26(1)(f)(i) of the Act; an offence serious enough to carry a penalty of "a fine or ... imprisonment for a period not exceeding 10 years".
- 5.8. Notably no-one other than the Director-General may provide the relevant permission.
- 5.9. We made enquiries regarding the evidence of former members to the Commission that was given in public hearings. Your letter asserts that their testimony related to matters in the Report, the content of which you seek declassification on the grounds that it is already in the public domain.
- 5.10. Your Ms September kindly answered our query in part in her email of 23 September 2020. In that regard we are enjoined to point out that:
 - 5.10.1. Any discussions the witnesses in question may have had with the Inspector General of Intelligence or members of the Minister's staff, as we understand was the case, is of no consequence. Neither had authority to allow disclosure of any classified information the witnesses testified to.
 - 5.10.2. We understand that while permission was sought from the Director General from Ambassador Shaik. Ambassador Maqetuka and Mr Njenje to testify before the Commission, their testimony went beyond the issues for which they sought and received permission to speak to (in the main limited to the PAN).
 - 5.10.3. Where Ms September refers to a Mr B Mahlangu we do not know who she is referring to. Mr B. Mhlangu was head of the Domestic Branch of the State Security Agency for a few months but no person of that name was to our knowledge employed as a Ministerial Adviser. In any event such a person would have no legal authority to give the permission required in section 27 of the Act.
- 5.11. The mere proffer of some of the testimony of these witnesses in public hearings is therefore potentially akin to the commission of a criminal offence in terms of the Act;

¹ See the Intelligence Services Regulations, 2014 published in Government Notice 63 of 29 January 2014, in government Gazette 37280 and in particular Chapter 24 of the Regulations read with Appendix A.

an offence which can only be determined as such by the Director-General in full consideration of the nature of the information disclosed, which inquiry is only possible once the full content of the testimony is analysed by his or her office.

- 5.12. Since the Commission relies on the testimony of these witnesses in some respects as information in the public domain, that would therefore prevent arguments against declassification of relevant sections of the Report, you will appreciate that we would require assurances that in accepting this argument we are not suborning the violation of clearly set out legal prescripts, let alone condoning the possible commission of an offence, and would ask that the Commission engage with the State Security Agency in order to address this concern urgently.
- 5.13. Lastly, we note from Ms September's email that the discussions held about this testimony between the witnesses and the Inspector General took place some two (2) years ago. The IGI as you know has no authority to declassify information or authorise the disclosure of classified information without having first consulted the President and relevant Minister, in terms of section 7(8)(b) of the Intelligence Oversight Services Act, 1994. Failure to abide by this section is an offence for which a fine or imprisonment not exceeding five (5) years may be imposed on conviction. We would therefore appreciate further information on the nature of these engagements and on what basis the Commission believes that discussions between the former members and the IGI could ground the former members' testimony being made at all let alone in public. Where reference is made to requests for declassification of information by Ms September kindly advise by whom and to whom these were made; kindly confirm whether they were related to the information in the Report relevant to the former members' testimony and whether or not the requests were granted and when.
6. With the above-mentioned in mind, we now deal with each element of the appendix to the letter:
- 6.1. **Thulani Dlomo:** we have no objection to this information being declassified.
- 6.2. **Special Operations Projects – General:** Kindly see our detailed input below.
- 6.3. **Project Construção:** we accept the proposal made in your letter's paragraphs 30 and 31 with regards to this Project.
- 6.4. **Project Commitment:** we accept the proposal made in your letter's paragraphs 32 and 33 with regards to this Project.
- 6.5. **Project Justice:** we accept the proposal made in your letter's paragraphs 34 and 35 with regards to this Project.
- 6.6. **Operation Lock:** we have no objection to the declassification of this section of the Report.

- 6.7. **Project Wave:** we have no objection to the declassification of this section of the Report.
- 6.8. **Project Accurate / Khusela:** as we understand it, this issue relates to duplication of a mandate held by the SAPS, by the Services. No link exists between this matter, to our knowledge, and the poisoning allegation. We have no objection to the declassification of the mandate duplication issue as dealt with in the Report. We would appreciate the Commission not making a link between this matter and the poisoning allegation where none appears from the Report itself.
- 6.9. **Project Tin Roof:** we have no objection to the declassification of the information related to the expenditure incurred in this matter. We would advise that the affected person's legal representatives be alerted of the Commission's intention to refer to this information.
- 6.10. **The SSA and civil society:** we have no objection to the declassification of this information. The claim by Mr Maswabi for payment of monies allegedly due to him as a result of an alleged settlement agreement between him and the former Minister of State Security is still pending before our courts.
- 6.11. **Project Academia:** we have no objections to the declassification of this information.
- 6.12. **Mr Fraser's "Boast" Report:** we have no objections to the declassification of this information.
- 6.13. **Gupta investigation by SSA leadership:** in light of the concerns we have expressed above we would ask the Commission to engage with the State Security Agency to regularise the testimony on the basis of which they assert the facts are already in the public domain. The Commission would still have access to the information and could use it, subject to restrictions per our suggestions at paragraph 4.5 **Error! Reference source not found.** above.
- 6.14. **Irregularities in Temporary Advance System:** we have no objection to the declassification of this information.
- 6.15. **Centralisation of budgetary power:** in light of the reference in this regard to the current Secretary of Defence we would prefer the information remain classified subject to arrangements being made in relation to our paragraph 4.5 above. The destabilisation of a critical element of government – the Defence Force, should be averted if possible. In addition, we are informed (see paragraph 4.3 above) that Ambassador Kodjoe was never confronted with these allegations nor alerted to their existence and therefore would be entitled as a matter of fairness to be given notice of these and an opportunity to respond thereto.
- 6.16. **Burglary of R17 million from SSA safe:** we have no objection to the declassification of this information.

- 6.17. Loss of €200,000 *en route* to a foreign country: we accept the proposal made in your letter's paragraph 59 with regards to this issue.
- 6.18. Theft of assets: we have no objection to the declassification of this information.
- 6.19. The Auditor General's qualified audit: audits by the Auditor General are documents over which he has control. We would recommend the Commission ask him for access to this report.
- 6.20. Nepotistic appointments in PAN: we are unsure whether the portions of the report referring to Mr Makhwathana were ever brought to his attention nor if he was given the opportunity to respond to these. We would guard against making this information public prior to basic fairness being applied, as is the case regarding the current Secretary of Defence. As regards the PAN appointments and Mr Fraser, we refer the Commission to our concerns in paragraph 4.4 above and recommend a process as suggested in paragraph 4.5 above.
7. We look forward to hearing from you on our concerns outlined above and trust this response to your request will be received in the spirit of our sincere commitment to assist the Commission, while abiding by applicable law and appreciating the inherent risk in disclosure of information to the public that may have an impact on the national interest, national security going forward, and the work of the Services.

Yours sincerely,



Ms Lusanda Mxenge
Acting Director General and Acting Secretary of Cabinet

Date: 07/10/2020

CC: Acting DG of State Security, Loyiso Jafta
Dr Sydney Mufamadi

SECTION 3

Additional documentation
from the Presidency

African National Congress



National Disciplinary Committee of Appeal (NDCA)

OFFICE OF THE CHAIRPERSON: CDE JEFF RADEBE

IN THE NATIONAL DISCIPLINARY COMMITTEE OF APPEAL
(NDCA)
HELD AT ST GEORGES HOTEL, IRENE, PRETORIA
ON 19 SEPTEMBER 2014

CASE NUMBER: 1/2014

In the appeal of:

MMELI BIYELA
JABU DUBE
MANDLA HADEBE
TWO BOY HADEBE
SPHAMANDLA HLATSWAYO
SICELO KHUZWAYO
ZANELE KUBHEKA
LUCKY MABASO
JOMO RV NKOSI
KINGDOM SHONGWE
MANDLA RADEBE

1st Appellant
2nd Appellant
3rd Appellant
4th Appellant
5th Appellant
6th Appellant
7th Appellant
8th Appellant
9th Appellant
10th Appellant
11th Appellant

and

AFRICAN NATIONAL CONGRESS

Respondent

FINDING

Background and proceedings before the PDC

1. The PEC in Kwazulu Natal instituted disciplinary proceedings against 26 members, including the 11 Appellants, for various acts of misconduct in terms of Rules 25.5(c), 25.5(i), 25.5(j), 25.5(k) and 25.5(o) aa.bb. and cc of the previous ANC Constitution.
2. It was alleged that the 26 members conducted a sit-in at the Respondent's regional office in Emalahleni in Kwazulu Natal on 7 and 8 September 2011, rendered the office dysfunctional by their conduct, issued press statements which brought the Respondent into disrepute, refused to accept instructions from the PEC and engaged in factional activity.
3. The Appellants were represented by comrade Muzi Ntshangase and the other charged members by comrade Sbonelo Mtshali.
4. The 26 members were suspended in terms of the ANC Constitution pending the finalisation of the disciplinary hearing.
5. The PDC hearing commenced on 24 October 2011 but was postponed by mutual agreement.
6. The PDC convened again on 12 December 2011 and the Provincial Presenter, comrade Roy Ainslie, led evidence. The matter could not be finalised and was postponed.
7. Thereafter the representatives of the charged members and the Provincial Presenter communicated with each other for the purpose of arranging a mutually acceptable date for the continuation of the disciplinary hearing.
8. According to the record, these communications continued until March 2012 when it was agreed that the PDC hearing would be held on 16 July 2012 at the ANC office in Durban.
9. On 16 July 2012 twelve of the charged members pleaded guilty to the charges except the charge that they made media statements. Another three of the charged members (Morgan Mlambo, Sizwe Khoza and Mlamule Kunene) also pleaded guilty to the charges including the charge that they made media statements which brought the ANC into disrepute. Their representative, comrade Sbonelo Mtshali, was present and confirmed the guilty pleas.

10. The PDC imposed the following sanction:-

10.1 That the charged members tender a written apology to the Respondent;

10.2 That the charged members were suspended for two years which was further suspended for a period of three years, subject to certain conditions;

10.3 That the charged members undergo a 3 month political education programme under the guidance of the PEC.

11. Except for comrade Zanele Kubheka (7th Appellant), the other Appellants and their representative did not attend the PDC hearing.

12. The PDC decided to re-convene on 23 July 2012 in Durban to continue with the hearing of the Appellants.

13. This was communicated by the PDC to the 7th Appellant, who was present, and subsequently by the Provincial Presenter to the Appellants' representative.

14. On 18 July 2012 the Appellants' representative wrote to the PDC Chairperson requesting that the PDC hearing be held in Newcastle for the convenience of the Appellants. The representative sent a follow-up email on 20 July 2012 to the Provincial Presenter. The request was denied.

15. On 23 July 2012 the PDC proceeded with the disciplinary hearing in Durban in the absence of the Appellants and their representative.

16. The PDC found the Appellants guilty and made the following Finding and imposed the following sanction:-

16.1 Mmeli Biyela (1st Appellant) was found guilty on all charges. The other Appellants were found guilty except for the charge of making media statements.

16.2 Mmeli Biyela (1st Appellant), Jomo RV Nkosi (9th Appellant), Lucky Mabaso (8th Appellant) and Zanele Kubheka (7th Appellant) were suspended for 3 years and had to undergo a 6 month political education programme under the guidance of the PEC.

16.3 Siphamandla Hlatswayo (5th Appellant), Two-Boy Hadebe (4th Appellant), Mandla Hadebe (3rd Appellant), Jabu Dube (2nd Appellant), Kingdom Shongwe (10th Appellant), Sicelo Khuzwayo (6th Appellant) and Mandla Radebe (11th Appellant) were suspended for 2 years and had to undergo a 3 month political education programme under the guidance of the PEC.

17. The eleven Appellants lodged an appeal with the NDCA on 13 August 2012.

Application of NDCA Rules of Procedure

18. Having perused the documents of record and the Appellants' Notice of Appeal, the NDCA was satisfied that this appeal could be adjudicated and finalised in terms of Rule 11.4 of the NDCA Rules of Procedure without the necessity of convening a formal appeal hearing.

Notice to the parties

19. The Appellant's representative and the Respondent were notified that the NDCA would be sitting on 19 September 2014 in Pretoria to adjudicate and finalise the appeal and the Respondent was invited to make written submissions by 14 September 2014.

20. The Respondent chose to abide by the decision of the NDCA.

Appellants' grounds of appeal

21. Appellants argued that the PDC hearing was procedurally unfair because, in terms of Rule 25.10 of the previous ANC Constitution, the PDC should have concluded the disciplinary hearing within 6 months. Since this time limit was not adhered to, the PDC Finding against the Appellants was invalid.

22. Although procedural in nature, the Appellants advanced the following 'substantive' arguments:-

22.1 That the charges were politically motivated;

22.2 That the Appellants were prosecuted in absentia;

22.3 That the PDC did not inform the Appellants that the proceedings would continue on 23 July 2012; and

22.4 That the PDC had no formal proof that the change of venue was formally communicated to the Appellants.

Appellants' argument that the PDC proceedings should be set aside in terms of Rule 25.10.

23. The NDCA agrees that Rule 25.10 under the previous Constitution placed an onus on the Respondent to deal with disciplinary proceedings expeditiously and complete the process within 6 months.
24. The rationale for the rule was to prevent the Respondent from instituting charges of misconduct against a member and then adopting a dilatory attitude towards finalisation of the disciplinary proceedings.
25. In the present case, there is evidence that the PDC commenced with the disciplinary hearing on 24 October 2011 and led evidence on 12 December 2011 with the intention of commencing and finalising the hearing. The proceedings were then postponed by mutual consent.
26. There is also evidence that the parties communicated with each other until March 2012 to set a mutually acceptable date for the continuation of the hearing.
27. In the circumstances no fault can be attributed solely to the Respondent for delaying the proceedings beyond the 6 month time limit prescribed by Rule 25.10 of the previous ANC Constitution.
28. Generally, the PDC is entitled to nominate any date for the expeditious finalisation of disciplinary proceedings. However, the date of 16 July 2012 was mutually agreed to by the parties.
29. In the view of the NDCA, where a charged member willingly agrees to dates beyond the 6 month limit prescribed by Rule 25.10 of the previous Constitution, he or she is deemed to have waived the right to invoke prescription as a defence.
30. Consequently, the Appellants' argument that the PDC Finding should be set aside because the 6 month time limit prescribed by Rule 25.10 was exceeded, is rejected.

Appellants' argument that the charges were politically motivated

31. The Constitution contains sufficient safeguards to prevent disciplinary proceedings from being used to settle political scores and personal vendettas. If such circumstances prevailed, it was open for the Appellants to apply for the charges or the proceedings to be set aside.
32. Although the Appellants suggested in their appeal that the charges could have been instituted to settle political scores, no cogent evidence was advanced in this regard to persuade the PDC.
33. Moreover, the NDCA finds it difficult to ignore the charge and the evidence that a sit-in did in fact take place to warrant the institution of the charges.
34. Consequently, the NDCA rejects the argument that the charges were politically motivated.

Appellants' argument that the Appellants were prosecuted in absentia

35. As pointed out by the PDC, the fact that the representative on 18 July 2012 requested the PDC to move the venue to Newcastle for the hearing on 23 July 2012 is adequate proof that the representative was aware that the PDC was sitting on 23 July 2012.
36. In the circumstances the representative had a duty to inform the Appellants of this date and to appear before the PDC himself.
37. If the PDC was not amenable to a change in venue, it was still the duty of the representative to appear before the PDC in Durban and persuade the PDC to move to a venue in Newcastle. In the view of the NDCA, his failure to do so prejudiced the Appellants.
38. The Appellants must also accept that their failure to appear before the PDC in Durban and without explanation, notwithstanding financial hardship, entitled the PDC to continue with the hearing in their absence.
39. Both the Appellants and their representative should have known that the ANC Constitution makes provision for disciplinary hearings to be conducted in absentia and that adverse findings could be made

against charged members.

40. Consequently, the NDCA rejects the Appellants' argument that they were prosecuted in absentia. The NDCA finds that the PDC acted within the ambit of the ANC Constitution on 23 July 2012.

Appellants' arguments that the PDC did not inform the Appellants that the proceedings would continue on 23 July 2012 and had no formal proof that the change of venue was formally communicated to the Appellants

41. It is common cause that the Appellants' representative was aware that the PDC was due to continue with the hearing on 23 July 2012 in Durban. As the chosen representative of the Appellants, it was his duty to communicate this information to the Appellants.
42. There was no duty on the PDC to inform the Appellants personally when they had a representative.
43. In the view of the NDCA, the Appellants must have known that the hearing was taking place in Durban on 23 July 2012 because the instruction to move the hearing to Newcastle could only have come from the Appellants.
44. Consequently, the NDCA rejects the Appellants' arguments that the PDC did not inform the Appellants that the proceedings would continue on 23 July 2012 and that there was no formal proof that the change of venue was formally communicated to the Appellants.

NDCA evaluation of the merits

45. All the Appellants were positively identified by the witnesses to have participated in the sit-in on 7 and 8 September 2011. The NDCA also notes that none of the Appellants denied that they were positively identified or put forward an alibi defence (that they were somewhere else on those days).
46. Consequently, the NDCA rejects the Appellants' grounds of appeal and confirms the PDC Finding on the merits.

NDCA evaluation of the sanction imposed by the PDC

47. The NDCA is of the view that the 26 charged members, including the

Appellants, were found guilty of very serious offences.

48. The ANC is a voluntary organisation and, as such, members have an absolute duty to maintain discipline within the organisation and obey instructions from elected office bearers who have the obligation to maintain discipline.
49. In the absence of discipline, the ANC will be put at risk of not achieving its strategic objectives as set out in the Constitution.
50. All members, including the Appellants, should be mindful of the membership oath they swore to when they joined the ANC, the character and values of the organisation and President Zuma's directive at the NGC in September 2010 that discipline would be enforced without exception.
51. The NDCA is of the view that the PDC erred in imposing a suspended sanction in the case of those charged members who pleaded guilty. The PDC placed too high a premium on the fact that they pleaded guilty and failed to accord due weight to the seriousness of the acts of misconduct.
52. In the view of the NDCA, those charged members who pleaded guilty should have been sanctioned to an effective term of suspension. However, since they have not appealed, the NDCA has no basis to interfere with the sanction imposed by the PDC.
53. The PDC also made a distinction in the sanctions imposed on the Appellants. Comrades Biyela, Nkosi, Mabaso and Kubheka were found to be the ring leaders of the group and were suspended for 3 years.
54. The NDCA was not able to find sufficient evidence to support the PDC Finding to make the distinction. In the NDCA's view, such a Finding could only have been made if evidence of pre-planning of the sit-in was placed before the PDC.
55. Although the Appellants did not have an opportunity to give evidence in mitigation, the NDCA has accepted that they were first offenders.
56. The NDCA is also not persuaded by the imposition of compulsory education programmes on the Appellants *after* serving their terms of suspension. If the PDC intended to rehabilitate the Appellants, then,

in the view of the NDCA, there was no reason for not conducting the education programme concurrently with the period of suspension.

57. The Finding of the PDC that the Appellants should undergo rehabilitation after serving their effective term of suspension had the effect of being punitive and, consequently, resulted in an outcome which could not have been intended by the PDC.

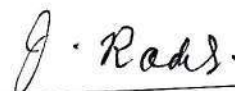
58. For the above reasons the NDCA finds sufficient grounds to vary the sanction imposed by the PDC as follows:-

58.1 All the Appellants are suspended for an effective period of two years.

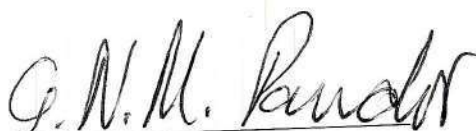
58.2 All the Appellants are eligible to resume their membership of the ANC with effect from 1 August 2014 (two years after the date of the PDC Finding) upon payment of their membership fees.

59. Finally, the NDCA wishes to apologise to the Appellants and their representative for the delay in finalising this appeal. Due to the onerous duties placed on NDCA members in the preparation for the National Conference in Mangaung in 2012, the change in the membership of the NDCA and substantial amendments to Rule 25 of the ANC Constitution, this appeal was inadvertently overlooked.

Dated at Pretoria this 19th day of September 2014

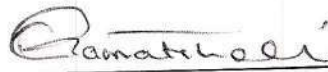



**JEFF RADEBE
CHAIRPERSON
NDCA**

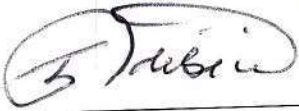


**NALEDI PANDOR
MEMBER
NDCA**

**PRAVIN GORDHAN
MEMBER
NDCA**

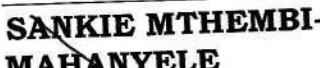

NGOAKO RAMATLHODI
MEMBER
NDCA


GUGILE NKWINTI
MEMBER
NDCA


SBU NDEBELE
MEMBER
NDCA


PAM TSHWETE
MEMBER
NDCA


SUE VAN DER MERWE
MEMBER
NDCA


**SANKIE MTHEMBI-
MAHANYELE**
MEMBER
NDCA

**IN THE NATIONAL DISCIPLINARY COMMITTEE OF THE AFRICAN
NATIONAL CONGRESS
(SITTING AS A COMMITTEE OF APPEAL)**

Case Number: 1/2014

between:

SABULONE MATABANE MPHOFELA

Appellant

and

AFRICAN NATIONAL CONGRESS

Respondent

FINDING

Proceedings before the Regional Disciplinary Committee (RDC)

1. On 19 November 2012 the Peter Mokaba Regional Executive Committee charged the Appellant with the following 2 (two) acts of misconduct in terms of the ANC Constitution:-
 - 1.1 Contravention of Rule 25(5) (j) for undermining the respect for or impeding the functioning of the structures of the organisation in that he defied Resolution No. 61 of the ANC National Conference in 2007, as well as the 3rd NGC Report in 2010 for taking the ANC to court without exhausting the internal processes; and
 - 1.2 Contravention of Rule 25(5)(c), 25(5) (o) (b) and 25(5) (o) (c) for behaviour which brings the organisation into disrepute or which manifests a flagrant violation of the moral integrity expected of members and public representatives or for conduct unbecoming that of a member or public representative in that on 13 October 2012 the Appellant was alleged to have assaulted and forcibly removed the BGM package from comrade Maria Thamaga, who was deployed to his branch to facilitate the BGM.

2. At the time the disciplinary proceedings were instituted, the Appellant was Chairperson of his branch in ward 29 Sefako Mapogo Sub Region and a proportionate representative (PR) councillor for the ANC in the Lepelle Nkumpi Municipality, Limpopo Province.
3. The disciplinary hearing subsequently took place on 16 February 2013 after due notice was given personally to the Appellant on 4 February 2013 and receipt was acknowledged by his representative in writing on 7 February 2013.
4. The REC Secretary, comrade Mafikeng Matome Johannes, and comrade Maria Thamaga testified before the RDC on behalf of the ANC.
5. After the guilt of the Appellant was proved on a balance of probabilities, the Appellant was suspended for 10 years (5 of which was further suspended subject to certain conditions) and the sanction was publicly announced on 1 March 2013.
6. The Appellant and his representative did not attend any sitting of the disciplinary hearing. In his Notice of Appeal the Appellant confirmed that he did not attend the disciplinary hearing because he believed he was being victimised and would not get a just and fair hearing.
7. The Appellant instituted an urgent application in the North Gauteng High Court in August 2012 and was reinstated as a PR councillor. According to the evidence of comrade Mafikeng, the ANC did not oppose the application.
8. It is public knowledge that in June 2013, after the disciplinary hearing, the Appellant was appointed as the Regional Task Team Co-ordinator of the Peter Mokaba Region.

Appellant's grounds of appeal

9. The Appellant raised the following grounds of appeal:-
 - 9.1 Disciplinary proceedings were instituted against him to settle political scores;
 - 9.2 The request by the REC that he resign as a PR councillor constituted an abuse of power;
 - 9.3 He had taken the ANC to the High Court to obtain procedural fairness;
 - 9.4 Comrade Maria Thamaga instituted a criminal charge of assault against him. Consequently, the REC should have waited for the criminal trial to be concluded in the Malips Magistrates' Court before instituting disciplinary action against him; and

9.5 The charge sheet contained the following procedural flaws:-

9.5.1 The charge sheet was not delivered 7 days before the disciplinary proceedings since the charge sheet was served on 19th November 2012 and the disciplinary proceedings was scheduled to take place on 23rd and 24th November 2012;

9.5.2 The Disciplinary Notice did not identify the Presenter;

9.5.3 The Disciplinary Notice did not inform the charged member of his right to be represented by a member in good standing, to have an interpreter present and to call witnesses in his defence.

9.5.4 The REC did not have the power to temporarily suspend the charged member; and

9.5.5 The charges were fatally defective.

NDC Evaluation of Appellant's refusal to attend the disciplinary proceedings

10. As correctly pointed out by the RDC, the maintenance of discipline in the ANC is necessary to provide a conducive environment for the organisation to flourish, maintain its character, uphold its values and create the space to achieve its aims and objectives.
11. All members, without exception, are subject to the disciplinary machinery of the ANC which is set out fully in the Constitution. Members join the ANC voluntarily and the membership oath demands respect for the Constitution from all members.
12. In the view of the NDC, any member who argues that he or she has no faith in any of the disciplinary structures of the ANC is in fact, by association, implying that he or she has no faith in the ANC.
13. The Appellant stated in his appeal that the REC instituted disciplinary proceedings to settle political scores and solving private problems. He also argued that the RDC had no jurisdiction over him.
14. The ANC Constitution in Rule 25.6 contains sufficient safeguards to protect members who could suffer prejudice at the instance of another member or structure of the ANC.
15. In the view of the NDC, the Appellant should have attended the disciplinary hearing and made out a complete case, coupled with relevant evidence, to support his belief that the REC was settling a political score or that the disciplinary hearing was set up to stifle

debate or solve private problems.

16. This approach would have given the NDC the benefit of deciding objectively, after studying the record, whether the belief of the Appellant was real and reasonable and whether the RDC had given due consideration to his fear.
17. Mere allegations to this effect are insufficient.
18. Consequently, the NDC rejects the Appellant's arguments that the disciplinary hearing was instituted to settle political scores or solve a private problem.

NDC Evaluation of the Appellant's procedural arguments

19. Rule 25.35 of the ANC Constitution grants a charged member the right to either appeal against or apply to review proceedings of a lower tribunal but not both.
20. The ANC Constitution was amended at the National Conference at Mangaung and came into effect on 21 December 2012.
21. The RDC made its Finding on 16 February 2013 and the Appellant noted his appeal on 7 March 2013. The acts of misconduct were committed before the amended Constitution came into effect.
22. Although not obliged to do so, the NDC has decided to consider the arguments raised by the Appellant both on the merits and on review solely because of the close proximity of his appeal to the date of amendment of the ANC Constitution.
23. The NDC takes the view that it could be possible that the Appellant may not have known of the amendment to the ANC Constitution and consequently should not be prejudiced.
24. The RDC dealt with the procedural issues raised by the Appellant and rejected the Appellant's preliminary arguments. The RDC also found that the Appellant and his representative should have attended the disciplinary hearing and raised these points in that forum.
25. The purpose of being given 7 days notice of disciplinary proceedings (now extended to 14 days in the amended Constitution) is to enable a charged member to prepare his defence. Had the disciplinary hearing commenced on 23rd November 2013, then the Appellant could have successfully argued that he was given short notice and did not have time to prepare his defence, arrange for a representative and call his witnesses.

26. In such event, the RDC would have had to postpone the hearing to a suitable date. In the present case the Appellant already had a representative and the disciplinary hearing only took place on 16 February 2013. Consequently, in the view of the NDC, the Appellant had sufficient time to prepare for the disciplinary hearing.
27. Rule 25.9 of the ANC Constitution empowers a REC to institute disciplinary proceedings. Consequently, the RDC had jurisdiction to discipline the Appellant who is a member of the Peter Mokaba Region.
28. However, the NDC finds that the REC did not have the power to temporarily suspend the Appellant. In terms of Rule 25.56 only the NEC, NWC, PEC or PWC may suspend a member. Consequently, the NDC finds that the temporary suspension of the Appellant by the REC was unlawful.
29. The failure to disclose the identity of the Presenter is not fatal and could have been rectified by the Presenter at the disciplinary hearing.
30. The NDC does not find the charges to be fatally defective. The NDC finds that both charges set out sufficient details which enabled the Appellant to have prepared his defence.
31. Based on its own evaluation, the NDC agrees with the Finding of the RDC that the procedural arguments were without merit, except for the temporary suspension of the Appellant which the RDC had no power to impose.

NDC Evaluation of the merits of the appeal

32. After perusing all the documents and listening to the tape recording of the RDC proceedings, the NDC is satisfied that the Appellant's appeal could be decided and finalised on the documents before it, as it is entitled to do in terms of Rule 11.2 of the NDC Rules of Procedure, without the necessity of convening a formal appeal hearing.

Appellant's argument that the request by the REC that he resign as a PR councillor constituted an abuse of power

33. The ANC takes into consideration a variety of factors when selecting candidates to represent the organisation as PR councillors in municipalities. These public representatives are not elected to office but represent the ANC at its behest. In other words, the relationship between the ANC and a PR councillor is the same as between an agent and a principal.

34. In terms of the principle of agency, an agent is hired by a principal for a particular purpose and his or her mandate can be revoked by the principal at any time during the term of the agency. In such event, the agent has no option but to stop representing the principal. The principal does not have to provide any reason for terminating the mandate.
35. Similarly, the ANC, as principal, may, in its sole discretion, terminate the mandate of any PR councillor by informing the Municipality concerned and the Independent Electoral Commission (IEC) without the requirement of instituting disciplinary action.
36. According to the evidence before the RDC, the Appellant was not authorised by the REC and the PEC to represent the ANC as a PR councillor. The placement of his name on the list submitted to the IEC was done by the previous secretary of the REC by unauthorised means after the Appellant failed to win the election as a ward councillor. Comrade Mafikeng testified that this was the first time that such a situation had occurred. The REC and the PEC took steps to rectify the situation by terminating the mandate of the Appellant and informing the municipality and the IEC.
37. However, the Appellant instituted an application in the North Gauteng High Court in Pretoria and was reinstated as a PR councillor after alleging that the REC did not allow him to exhaust his right of appeal before removing him as a PR councillor. The ANC did not oppose the application.
38. The Appellant was subsequently charged by the REC for indiscipline.
39. In light of the above, the NDC is of the view that the REC had the power to terminate the mandate of the Appellant. Consequently, its action did not constitute an abuse of power.

Charge 1

40. Charge 1 was premised on the fact that the Appellant's act of misconduct was to take the ANC to court. Such action, according to the charge sheet, was in defiance of a resolution adopted at the 52nd National Conference in Polokwane in 2007 as well as the 3rd NGC Report in 2010. This was clearly spelt out by the RDC Chairperson in his Finding.
41. The NDC is of the view that a member, after exhausting all internal processes, would always have a right, although in very limited circumstances, to take any decision of the ANC or its structures (which affects him personally) on review to a court of law if such structure acted irrationally in arriving at a decision or if a final decision was taken before a member could exercise his or her right of

appeal and review in terms of the ANC Constitution.

42. In the present case, the Appellant should have been charged for failing, refusing or neglecting to carry out or execute an instruction or mandate (after his mandate to represent the ANC as a Councillor was terminated) and should not have been charged for taking the organisation to court.
43. Consequently, the NDC is of the view that the act of misconduct in Charge 1 was incorrectly formulated because it relied solely on the fact that a member cannot take the ANC to court under any circumstances. As shown above, this is not entirely correct.
44. Consequently, Charge 1, as formulated, cannot be sustained. The Finding of the RDC on Charge 1 is set aside and the Appellant is found not guilty.

Charge 2

45. The Appellant's defence to Charge 2 for assaulting a member and bringing the organisation into disrepute is that the REC should have waited for the outcome of the criminal proceedings instituted against him by comrade Maria Thamaga before disciplining him. In other words, his defence is that the REC acted prematurely.
46. In the view of the NDC this defence must fail for the following reasons:-
 - 46.1 The ANC and its structures are empowered by its Constitution to regulate the conduct of its members for acts of misconduct set out in Rule 25 and the authority to do so is not dependent on the outcome of any other external process. In other words, it was permissible for the ANC to sanction the Appellant as a member of the ANC;
 - 46.2 The criminal case is a matter between the Appellant and the State and is an entirely separate matter. The ANC is not a party to the criminal case. If found guilty, the court will impose a sentence which will have consequences for the Appellant as a member of society;
 - 46.3 The criminal proceedings do not constitute a pre-requisite for the ANC to discipline its own members for committing acts of misconduct in terms of Rule 25 of the ANC Constitution; and
 - 46.4 Even in his appeal, the Appellant did not deny the charge of assaulting comrade Maria Thamaga.
47. The NDC upholds the RDC's Finding that the Appellant is guilty on

Charge 2 and the appeal against this charge is dismissed.

NDC Evaluation of the sanction

48. The NDC is satisfied that the RDC took into consideration relevant factors in determining an appropriate sanction.
49. If the NDC had upheld the conviction on both acts of misconduct, the 10 years sanction (5 of which was suspended) imposed by the RDC would have been appropriate since both acts of misconduct were serious and brought the ANC into disrepute.
50. In determining its sanction, the RDC placed a high premium on the fact that the Appellant had breached the NEC resolution and brought the ANC into disrepute by approaching a court of law and, consequently, devoted the major part of the sanction to this transgression.
51. In light of its Finding of not guilty on Charge 1, the NDC is of the view that the sanction imposed by the RDC should be reduced.
52. In determining an appropriate sanction for the assault charge, the NDC took into consideration the following factors:-
 - 52.1 From the documents on record, it was apparent that the Appellant had the benefit of a representative who was a practising lawyer and was not acting as a lay person.
 - 52.2 The Appellant was prejudiced when he was unlawfully suspended by the REC and he was justified, in the circumstances, to approach a court of law for relief because the REC had already taken steps prematurely to have him removed as a PR councillor.
 - 52.3 The 6 month period – March to August 2012 - during which the Appellant was prevented from participating in the affairs of the ANC prejudiced him.
 - 52.4 The Appellant made a conscious decision not to attend the RDC proceedings and, in doing so, abandoned the opportunity to place mitigating factors before the RDC. Since no evidence of previous transgressions was placed before the RDC, the NDC believes it would be fair to treat the Appellant as a first offender.
 - 52.5 In his appeal, the Appellant offered a technical defence to the assault charge, which was found by the NDC to be incorrect in law, and made no effort to put up a defence to the substance of

the charge or place any mitigating factors, including remorse, before the NDC.

52. 6 The ANC is very dependent on members who volunteer their time and expertise to achieve the aims and objectives of the organisation. Every member, especially female members, should feel safe when executing duties on behalf of the organisation and if the safety of any member is compromised, the ANC has a duty to act without fear or favour.

52.7 The Appellant submitted his appeal in March 2013 and his appeal was only considered some 10 months later due to an administrative oversight on the part of the ANC.

52.8 The NDC apologises to the Appellant for this delay and is of the view that such delay should not serve to prejudice him.

52.9 At the time, comrade Maria Thamaga was a REC member and President of the Women's League in the region. According to the evidence, some elderly female members in the meeting began to cry when the Appellant manhandled the comrade. In the view of the NDC, the reputation of the ANC is judged by the behaviour of its leaders, of which the Appellant is one.

52. 10 In a voluntary association, as the ANC is, the evidence of forcibly removing documents from a member authorised to perform a lawful duty and manhandling that member are sufficient for an assault to have been committed. In an organisational context, these acts constitute misconduct of a serious nature.

52.11 The NDC has taken into consideration the 12 month effective sanction imposed by the NDCA in the case of cde Sindiso Magaqa for issuing a derogatory statement about an NEC member, cde Malusi Gigaba, and is of the view that the facts of the present case merit a more serious sanction.

53. For the above reasons and in light of its Finding of not guilty on Charge 1, the NDC considers it necessary and in the interest of fairness and equity, to vary the sanction imposed by the RDC, as it is empowered to do.

NDC Finding

1. The Appellant is found not guilty on Charge 1.
2. The RDC's Finding that the Appellant is guilty on Charge 2 is confirmed and his appeal against this charge is dismissed.

3. The sanction of 10 years imposed by the RDC is varied as follows:-

- 3.1 The Appellant is suspended for an effective period of 18 (eighteen) months, such suspension to operate retrospectively from 16 February 2013 and terminate on 15 August 2014;
- 3.2 By virtue of his suspension, the Appellant is required to vacate his position as Chairperson of his branch in ward 29 Sefako Mapogo Sub Region, his position as RTT Co-ordinator of the Peter Mokaba Region and any other position he currently holds in the ANC;
- 3.3 The Appellant's name is removed from the list which entitled him to represent the ANC in local government and he is required to vacate his position as PR Councillor in the Lepelle Nkumpi Municipality; and
- 3.4 During the period of suspension, the Appellant is precluded from exercising any right in terms of the ANC Constitution, is not able to participate in the affairs of the ANC in any manner and is not eligible for appointment to any office in the organisation.

Signed at Irene, Gauteng Province this 25th day of January 2014

NDC members
D. Hanekom Chairperson
L. Zulu
F. Xasa

African National Congress



National Disciplinary Committee (NDC)

OFFICE OF THE CHAIRPERSON: CDE DEREK HANEKOM

**IN THE NATIONAL DISCIPLINARY COMMITTEE (NDC) HELD
ON 20 APRIL 2015 AT LUTHULI HOUSE, JOHANNESBURG AND ON 28
APRIL 2015 IN CAPE TOWN**

Case No. 1/2015

In the appeal of:-

**NTANDAZO QAMNGWANA
NTSIKELELO CWEBI
KEM JONGA
NOMBULELO YALIWE**

**1st Appellant
2nd Appellant
3rd Appellant
4th Appellant**

AND

AFRICAN NATIONAL CONGRESS

Respondent

FINDING

Background

1. On 25 January 2015 the Eastern Cape PDC found the Appellants guilty of contravening:-
 - 1.1 Rule 25.17.3 (failure to comply with ANC policy);
 - 1.2 Rule 25.17.4 (bringing the ANC into disrepute);
 - 1.3 Rule 25.17.11 (undermined the respect for an ANC structure and

impeded its functioning); and

1.4 Rule 25.17.16.3 (undermined the effectiveness of the ANC as an organisation)

of the ANC Constitution and suspended them for 5 years.

2. The specific allegation was that they intentionally disrespected the directive of the ANC Caucus of the Inkwanca Local Municipality on 21 and 23 May 2014, given by the Provincial and Regional ANC Structures, to implement the Kabuso forensic report as ordered by the High Court on 12 May 2014.

3. The specific act of misconduct alleged and relied upon by the PDC in its Finding was that:-

“On 21 and 23 May 2014 in an ANC caucus of the Inkwanca Local Municipality they [the Appellants] were advised by comrade Gladys Mkhusele Lufele (the ANC Chief Whip in that municipality) and by members of the Chris Hani Regional Executive committee that the ANC had directed that the High Court Order under case no. 1246/164 (Eastern Cape Division, Grahamstown dated 12 May 2014) be complied with and the Respondents [Appellants in this appeal] defied, refused and intentionally disrespected the directive set out herein above.”

4. At the instance of the MEC for Local Government, Eastern Cape, the High Court ordered the Municipality and the 1st Appellant, in his capacity as the mayor, to convene a special council meeting on 23 May 2014 and to deliberate the findings and recommendations of the Kabuso report.

5. The Appellants lodged an appeal with the NDC on 18 February 2015 against the PDC's finding and sanction.

Application of NDC Rules of Procedure

6. The NDC was satisfied that the information before it was sufficient to determine the appeal without the necessity of convening a formal appeal hearing and accordingly proceeded to deal with the appeal in terms of Rule 11.1 of the NDC Rules of Procedure.

Appellants' grounds of appeal

7. Although the Appellants did not set out the grounds of appeal with any clarity as required by the NDC Rules of Procedure, the NDC was able to discern the following grounds relevant to this appeal:-

- 7.1 The instruction of an Official of the ANC is not necessarily an instruction of the ANC;
- 7.2 The PDC erred in relying on the evidence of the Chief Whip as the basis for finding the Appellants guilty; and
- 7.3 The PDC should have found that there cannot be a case for defiance of an instruction that has not been proven to exist.
8. In their Notice of Appeal, the Appellants also sought to review the Finding on the grounds that the PDC was biased.

Evaluation by NDC

Appellants' argument of bias

9. After perusing the record, the NDC was satisfied that the PDC conducted the proceedings in a fair and equitable manner with due regard for the principles of natural justice. Consequently, the Appellants' argument that the PDC was biased has no foundation and is dismissed.

Appellants' arguments on the conviction

10. Since the grounds of appeal are inter-related, the NDC has decided to deal with them together.
11. The ANC is a national organisation with structures at provincial, regional and branch levels throughout the country and it is dependent on these structures to execute the tasks and objectives of the organisation.
12. Regional secretaries are in fact the chief administrative officers and key decision makers at regional level. One of their main responsibilities is to communicate political decisions of the ANC to government structures such as caucuses in municipalities.
13. In the case of *Mbongeni Zondi and 6 others* (Case Number: 2/2014), the NDCA considered the role of the Caucus and referred to a circular published on the ANC website by the ANC Chief Whip in the National Parliament, comrade Stone Sizani, where the following was stated:

"The members of the ANC Caucus at all levels of their deployment derive their broad mandates from Caucus. At all material times such mandates will be consistent with resolutions of the ANC constitutional structures."



The principal tasks of caucuses of political parties are to keep MPs of each political formation informed about the parliamentary programme and to enable the MPs to discuss and agree on the approach of their parties to all matters on the parliamentary agenda.

Caucuses also serve as the organ within which those elected by caucus to parliamentary positions account to the organisation.

Caucuses also serve as the point of contact between MPs and the leadership of the organisation to which they belong.

Caucuses also manage the work of the study groups. The ANC Caucus carries out the above functions under the supervision of the political committee”.

14. The NDC supports the view of the NDCA that Caucuses exist for the purpose of furthering ANC policy and goals through strategies used in various *fora* (in this case a municipality) to achieve the political objectives of the ANC as set out in its Constitution. In such circumstances, there is very little opportunity for members of a Caucus not to obey the Caucus decision.
15. Each case must be considered independently to determine whether the Caucus members had wilfully disregarded the Caucus directive or whether the Caucus directive was unlawful or unreasonable so that there was sufficient justification for members not to obey it.
16. In the present appeal, the political directive of the ANC's Provincial and Regional structures to the Caucus of the Inkwanca Local Municipality to implement the High Court Order pertaining to the Kabuso Forensic Report was clear, reasonable and lawful.
17. Consequently, in the view of the NDC, it was not open for the Caucus members, including the Appellants, to take any other decision.
18. The NDC finds that the political directive in fact became the Caucus decision and the Appellants were obliged to follow that decision.
19. With regard to the Appellant's grounds of appeal set out in paragraph 7 above, the NDC finds that a lawful instruction of the organisation can be conveyed by one person on behalf of the organisation, be it the Provincial Secretary, Regional Secretary or Chief Whip.
20. According to the evidence, the Appellants did not dispute that the Chief Whip of the Inkwanca Municipality conveyed the directive of the ANC to the Caucus meeting.
21. Accordingly, the hearsay evidence rule has no application because the Chief Whip was conveying a directive as instructed by the Regional Secretary and not merely reporting in the third person what the Regional Secretary said.

22. In the view of the NDC, the act of misconduct committed by the Appellants undermined the respect for the ANC Caucus and impeded its functioning and undermined the effectiveness of the ANC as an organisation.
23. For these reasons the NDC finds that the PDC correctly found that the causal connection between the alleged act of misconduct as set out in Rules 25.17.11 and 25.17.16.3 with which the Appellants were charged was established and that the guilt of the Appellants on these two counts was proved on a balance of probabilities.
24. Insofar as a contravention of Rule 25.17.3 (failure to comply with ANC policy) and Rule 25.17.4 (bringing the ANC into disrepute) is concerned, the NDC finds that the Appellants were properly charged with contravention of these rules. However, in the view of the NDC, insufficient evidence was placed before the PDC to support a finding of guilt on a balance of probabilities.
25. For this reason the Appellants are found not guilty of contravening Rules 25.17.3 and 25.17.4 of the ANC Constitution.

Appellants' argument on the sanction imposed


26. The Appellants argued that the sanctions imposed were severe and should be reduced.
27. The NDC is of the view that the act of misconduct committed by the Appellants was so severe that it warranted the urgent intervention of the MEC for Local Government using the High Court and at great cost to the taxpayer.
28. Local councillors that are selected by the ANC as public representatives play a key role in conveying the aspirations of the ANC and delivering goods and services to the public at a local level.
29. The Appellants' conduct not only breached the trust that the ANC placed in them but they also let down the community that was dependent on them for the provision of basic services.
30. The NDC is of the view that having regard to the nature and seriousness of the act of misconduct committed by the Appellants, a conviction under Rules 25.17.11 and 25.17.16.3 would have been sufficient to justify an expulsion of all 4 Appellants.
31. The NDC is of the view that the PDC was lenient by imposing a sanction of five years. However, since the ANC did not cross-appeal, argue for a more severe sanction or place evidence in aggravation of sanction before the NDC in this appeal, the NDC has decided not to interfere with the sanction imposed by the PDC.


NDC Finding

32. The PDC decision that the Appellants were guilty for contravening Rules 25.17.11 and 25.17.16.3 of the ANC Constitution is confirmed.
33. The Appellants are found not guilty of contravening Rule 25.17.3 and Rule 25.17.4 of the ANC Constitution.
34. The sanction of 5 years imposed by the PDC is confirmed.

Dated at Cape Town this 7th day of May 2015


SUSAN SHABANGU
MEMBER
NDC


DEREK HANEKOM
CHAIRPERSON
NDC


LINDIWE ZULU
MEMBER
NDC

African National Congress



National Disciplinary Committee (NDC)

OFFICE OF THE CHAIRPERSON: CDE DEREK HANEKOM

**IN THE NATIONAL DISCIPLINARY COMMITTEE (NDC) HELD ON FRIDAY
27 MAY 2016 AT ST GEORGE HOTEL, IRENE, PRETORIA**

Case No. 1/2016

In the matter between:-

MBULELO PAUL GLADSTONE NOTYAWA

Appellant

AND

AFRICAN NATIONAL CONGRESS

Respondent

FINDING

Background

1. On 13 March 2015 the ANC Caucus in the Makana Municipality issued a directive at an ANC caucus meeting that the Appellant, a PR councillor and mayoral committee member, should decline a recommendation of the Makana Municipality that he be appointed as the municipal manager.
2. The Appellant initially agreed in writing to accept the directive of the ANC caucus but subsequently stated publicly that he was coerced to accept the directive and instituted a review application in the High Court for various relief, *inter alia*, that the MEC for Local Government confirms his appointment as municipal manager of the Makana Municipality.

Charges

3. The Appellant was charged with contravening Rules 25.17.4 (bringing the ANC into disrepute), 25.17.11 (undermining the respect for or impeding the functioning of any structure or committee of the ANC), 25.17.16 (prejudicing the integrity or repute of the Organisation), 25.17.19 (breaching his or her contract of deployment concluded with the NEC) and 25.17.20 (in the case of a member of an ANC caucus, failing, refusing or neglecting to carry or execute an instruction or mandate of such caucus).
4. The specific act of misconduct alleged by the ANC was that the Appellant failed, refused or neglected to carry out the instruction of the ANC caucus viz. to decline a recommendation that he be appointed as the municipal manager. The ANC alleged that such conduct contravened Rule 25.17.20 of the ANC Constitution.

Proceedings before the Eastern Cape PDC

5. The PDC commenced the disciplinary hearing on 1 November 2015 and the Appellant was present.
6. He raised a point *in limine* pertaining to the pre-hearing conference and other procedural points and also complained about the manner in which the Chief Provincial Presenter, Advocate Sishuba, was conducting the hearing.
7. After a short adjournment the PDC dismissed the points *in limine* and ordered the continuation of the disciplinary hearing.
8. At that point, the Appellant stated, *"I guess that is the end of the road for me. I cannot continue with this hearing. I am an officer of the Court and I have raised legitimate and legal reasons, justifying my reasons for not continuing with this hearing"*.
9. When asked by the PDC Chairperson whether he was aware that the hearing would continue in his absence, he said he did and walked out.
10. The PDC proceeded with the disciplinary hearing in the absence of the Appellant as it is entitled to do in terms of the ANC Constitution.
11. Comrade Sishuba advanced the following argument in support of the Appellant's conviction:-

"He lied under oath. He committed perjury. He admitted to being instructed by caucus not to accept the appointment as the Municipal Manager. He accepted the instruction and wrote a letter to that effect and then turned around to say he was made to write the letter under duress. I ask that he be found guilty as charged and that the ANC has made its case".

See: P8 of PDC Record

12. The Appellant was found guilty as charged and the Chief Provincial Presenter wrote to the Appellant to inform him of the PDC finding and to invite him to lead evidence in mitigation of sanction.
13. The Appellant ignored this recommendation and failed to appear before the PDC when the sanction was considered.
14. On 30 November 2015 the PDC suspended the Appellant for 5 years.

Appellant's Grounds of Appeal

15. The Appellant advanced the following substantive grounds of appeal:-
 - 15.1 The PDC erred in condoning that a pre-hearing conference was not held two days before the hearing.
 - 15.2 The PDC erred in not finding that the subject matter of the disciplinary hearing was sub judice as review proceedings were pending before the High Court in Grahamstown.
 - 15.3 The PDC hearing was not fair.
 - 15.4 The PDC erred in finding that the ANC has the right to direct a member not to accept the position when this is in direct violation of Rule 25.6.1 of the ANC Constitution.
16. The ANC did not oppose the appeal.

Additional information sought by the NDC

17. In order to obtain greater clarity on the matter, the NDC requested the Deputy Chief National Presenter, comrade Andries Nel, to provide information on the procedure that is followed when appointing a municipal manager in local government. The NDC also requested the

Executive Mayor of Makana Municipality to provide details as to how it came about that the Appellant was recommended for the position of municipal manager.

18. Comrade Nel did not respond but the Executive Mayor of Makana Municipality provided the following information:-
 - 18.1 The position of municipal manager was advertised on 10 November 2014 and the Appellant applied;
 - 18.2 He was subsequently interviewed and shortlisted for the position;
 - 18.3 His appointment was subject to the concurrence of the MEC for Local Government which was not granted;
 - 18.4 The Appellant instituted legal action against the municipality demanding that he be appointed and the matter is pending in the High Court.

Evaluation by the NDC

Appellant's argument that the PDC erred in condoning that a pre-hearing conference was not held two days before the hearing

19. In the view of the NDC, the PDC correctly found that the purpose of a pre-hearing conference was to get an appreciation of the issues and limit, where possible, the issues in dispute. The overall purpose is to expedite the disciplinary proceedings and render swift justice. As such, the purpose of a pre-hearing conference overrides the formal requirement that it be held two days before the hearing.
20. There may be good reason for a pre-hearing conference to be held a day before the disciplinary hearing or even on the morning before the commencement of the disciplinary hearing, provided that the parties agree.
21. In the present case, the Appellant voluntarily agreed to engage with the Chief Provincial Presenter in a pre-hearing conference a day before the commencement of the disciplinary hearing.
22. In the view of the NDC, the Appellant cannot, after being party to this voluntary arrangement, claim that the pre-hearing conference was not held two days before the hearing as stipulated in the Appendix to the

Constitution and therefore seek a postponement of the hearing on that basis.

23. In the circumstances, the PDC correctly condoned non-compliance with the two day requirement.

Appellant's argument that the PDC erred in not finding that the subject matter of the disciplinary hearing was sub judice as review proceedings were pending before the High Court in Grahamstown

24. In the view of the NDC, the subject matter that was being adjudicated in the disciplinary hearing viz. that the Appellant, in the main, was guilty of contravening Rule 25.17.20 of the ANC Constitution, has no connection to the relief sought by the Appellant in the High Court proceedings. Consequently, the PDC was correct in finding that the sub-judice rule did not apply and the Appellant's argument is rejected.

Appellant's argument that the PDC hearing was not fair

25. The Appellant voluntarily left the disciplinary hearing.
26. The ANC Constitution expressly provides that a disciplinary hearing may continue in the absence of the charged member. Moreover, the Appellant confirmed to the PDC Chairperson that he was aware of this provision in the Constitution.
27. The NDC finds that the hearing was fair and in compliance with the ANC Constitution.

Appellant's argument that the PDC erred in finding that the ANC has the right to direct a member not to accept the position when this is in direct violation of Rule 25.6.1 of the ANC Constitution

28. There is no Rule 25.6.1 in the ANC Constitution. However, it appears to the NDC that the Appellant is arguing that the ANC caucus cannot direct him not to accept the position of municipal manager for which he was recommended by the municipality.
29. In terms of Rule 25.17.20 of the ANC Constitution, it is an act of misconduct if a Councillor fails, refuses or neglects to execute an instruction or mandate of the ANC Caucus.
30. Before proceeding to establish whether the Appellant's conduct

constituted a breach of the Rule, the NDC first has to decide whether the Appellant's conduct fell within the ambit of Rule 25.17.20.

31. In the case of **Mbongeni Zondi and others** (case no. 2 of 2014), the NDCA referred to a circular published on the ANC website by the then ANC Chief Whip in the National Parliament, comrade Stone Sizani, in which he articulated the mandate and functioning of caucuses as follows:-

"The members of the ANC Caucus at all levels of their deployment derive their broad mandates from Caucus. At all material times such mandates will be consistent with resolutions of the ANC constitutional structures.

The principal tasks of caucuses of political parties are to keep MPs of each political formation informed about the parliamentary programme and to enable the MPs to discuss and agree on the approach of their parties to all matters on the parliamentary agenda.

Caucuses also serve as the organ within which those elected by caucus to parliamentary positions account to the organisation.

Caucuses also serve as the point of contact between MPs and the leadership of the organisation to which they belong.

Caucuses also manage the work of the study groups. The ANC Caucus carries out the above functions under the supervision of the political committee."

32. In the view of the NDC, it is an established rule that such instruction, directive or mandate of the ANC caucus must be lawful (i.e. it must be within the bounds of the ANC Constitution) and reasonable in order to compel or direct a member to obey it or to penalise him or her for failing, refusing or neglecting to obey it.
33. In the present case, the NDC had to decide whether the directive issued by the ANC caucus in the Makana Municipality (viz. that the Appellant declines a recommendation that he be appointed as the municipal manager) fell within the mandate and functioning of the caucus. In other words, was the directive lawful and reasonable.
34. In the **Zondi** case, the NDCA stated that, *"in addition to the comments of the Chief Whip, ANC Caucuses exist for the purpose of furthering ANC policy and goals through strategies used in various fora (in this case a municipality) to achieve the political objectives of the ANC as set out in its Constitution. In such circumstances, there is very little opportunity for members of a caucus not to obey the caucus decision."*
35. The Appellant's decision to apply for the position of municipal manager

was a personal one.

36. Rule 25 of the ANC Constitution deals with organisational discipline and manages the relationship between the organisation and its members.
37. The ANC is a voluntary political organisation and a structure of the ANC cannot direct a member not to do something which is, in effect, a personal decision.
38. The jurisdiction of the ANC to discipline its members is limited to acts of misconduct set out in Rule 25 and does not extend to personal decisions made by members in respect of their career and job opportunities.
39. The NDC is of the view that the ANC caucus went beyond the limits of organisational discipline in issuing the directive that it did. Furthermore, the decision of the ANC caucus is not one that falls within the ambit of the purpose and functioning of a caucus.
40. The PDC, in its Finding, accepted the principle of voluntariness when it said, *"Any person including a member of the ANC deployed to a municipality may apply to be appointed as Municipal Manager for the same municipality, but he will have to resign as a councillor and assume the position of Municipal Manager. He cannot hold both positions"*.

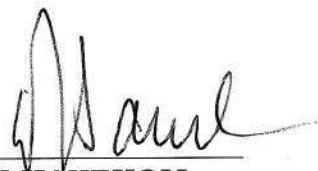
See: paragraph 27.5 of PDC Finding

41. It is axiomatic that the Appellant would have had to resign as a councillor if he was appointed to the position of municipal manager.
42. However, in the view of the NDC, the PDC's reasoning went astray when it took the view that the Appellant could not hold both positions.
43. In the view of the NDC, the Appellant was not obliged to resign as a Councillor before his appointment as municipal manager was finalised. At no stage did the Appellant suggest or contemplate that he would hold both positions.
44. Although the Appellant adopted an aggressive attitude and disrespected the PDC, the NDC has not allowed these issues to cloud its steadfast approach towards procedural and substantive fairness.


NDC Finding

1. The appeal is upheld and the conviction and 5 year suspension imposed by the PDC is reviewed and set aside.

Dated at Irene, Pretoria this 27th day of May 2016



DEREK HANEKOM
CHAIRPERSON
NDC



EDNA MOLEWA
MEMBER
NDC



LINDIWE SISULU
MEMBER
NDC

African National Congress



National Disciplinary Committee of Appeal (NDCA)

OFFICE OF THE CHAIRPERSON: CDE JEFF RADEBE

**IN THE NATIONAL DISCIPLINARY COMMITTEE OF APPEAL
(NDCA) HELD AT ST. GEORGE HOTEL ON 25TH JANUARY 2016**

CASE NUMBER: 1/2016

In the application of

**THE CHAIRPERSON
KWA ZULU NATAL PDC**

Applicant

In the matter between

AFRICAN NATIONAL CONGRESS

Complainant

AND

**SUSIMPI NGUBANE
SAM DUMA
MORGAN NGUBANE
MUSA NGUBANE
TU NGUBANE
SGUBHU SHELEMBE
SENZO NDLOVU**

Charged Members

NDCA RULING

PDC request for extension of time

1. On 15 December 2015 the Chairperson of the PDC in Kwa Zulu Natal applied to the NDCA in terms of Rule 25.53 of the ANC Constitution

for an extension of time to conclude the disciplinary proceedings against the above-named charged members.

Background

2. Charges 1 and 2 relate to the alleged disruptive behaviour of the charged members and the subsequent stoning of busses and vehicles on 7 December 2014 at Ward 1, Kwa Ximba at or near an ANC branch meeting which was in progress at the time. The charge sheet alleges that the charged members, by their conduct, contravened various sub-sections of Rule 25 of the ANC Constitution.
3. Charge 3, which was preferred against comrade Morgan Ngubane only, relates to an incident during November 2014 when he allegedly slapped the branch secretary of Ward 1 Kwa Ximba branch.
4. Charge 4 was preferred against comrade Sam Duma only. It was alleged that his disruptive behaviour (referred to in charges 1 and 2 above) was also sufficient to support a charge of factional behaviour as provided for in Rule 25 of the ANC Constitution.
5. The PWC decided to institute disciplinary action against the charged members and a charge sheet was prepared and was ready to be served by 28 January 2015.
6. For various reasons, which are dealt with below, the charge sheet was only served on the charged members on 5 July 2015.
7. The proceedings commenced before the PDC on 25 July 2015 and was postponed to 6 September 2015 at the request of the representative of the charged members.
8. On various dates thereafter the disciplinary hearing could not continue due to an unsuccessful plea bargain, sudden illness of the wife of one of the charged members and the unavailability of PDC members who had to attend to other duties in the ANC.

Evaluation by NDCA

9. When considering an application for an extension of time, the NDCA is obliged, in terms of Rule 25.54, to take into account all the circumstances, including the competency of the charges and the prospects of success, to establish whether good cause exists for the granting of the application.
10. Furthermore, each charge must be considered separately.

Charge 3

11. Charge 3 against comrade Morgan Ngubane relates to an alleged assault committed during November 2014 when he slapped the branch secretary of Ward 1 Kwa Ximba branch.
12. This charge is unrelated to the other charges; is preferred against one of the comrades only and has no relevance to or common purpose with the other charged members.
13. In the view of the NDCA, this charge should have been preferred against comrade Morgan Ngubane on a separate charge sheet.
14. Thereafter and with the consent of the PDC Chairperson, the charges against comrade Morgan Ngubane could have been brought together for the sake of convenience and to save time and included in a consolidated charge sheet. This is the only way that Charge 3 could have been included in the current proceedings.
15. The current charge sheet makes no reference to this procedure or the intention of the Provincial Presenter to follow this procedure when the disciplinary proceedings eventually got underway.
16. In ANC disciplinary proceedings, procedural fairness is just as important as substantive fairness. This mechanism is designed to protect both the interest of the ANC and charged members and the ANC Constitution sets out this requirement in express and clear terms.
17. The NDCA is of the view that the ANC failed to follow proper procedure in instituting Charge 3 against comrade Morgan Ngubane.
18. Furthermore, even if the ANC sought and obtained the consent of the PDC at the next sitting to follow proper procedure in consolidating the charge sheet to include Charge 3 against the comrade, it would be outside the 3 month time limit prescribed by Rule 25.49 of the ANC Constitution.
19. For these reasons, the PDC's application for an extension of time in respect of Charge 3 is refused.
20. It is still open, however, for the PEC and the branch secretary to institute a criminal charge of assault with the SA Police Services against comrade Morgan Ngubane.

Charge 4

21. Based on substantially the same allegations to support Charges 1 and 2, the PEC decided to charge comrade Sam Duma only for

factional behaviour as provided for in Rule 25 of the ANC Constitution.

22. The specific wording of the charge is that, the charged member *"refused to go into the meeting and participate in the processes of the Organisation. Instead he remained outside with the intention to disrupt the meeting."*
23. In the view of the NDCA, the ANC would have to lead more substantive evidence to prove factional behaviour in order to sustain a conviction for contravening Rule 25.17.6 or Rule 25.17. 9 of the ANC Constitution.
24. Moreover, it would not be possible for a member acting alone to engage in factional activity. In the view of the NDCA, factional behaviour is an act of misconduct which can only be committed in concert with other ANC members and/or third parties.
25. For these reasons, the NDCA is of the view that the PDC should not continue with Charge 4 against comrade Sam Duma. Consequently, the PDC's application for an extension of time in respect of Charge 4 is refused.

Charges 1 and 2

26. The charge sheet was served on the charged members on 5 July 2015 i.e. 8 months after the acts of misconduct were allegedly committed.
27. For the purpose of evaluating procedural fairness both to the ANC and the charged members, the NDCA was obliged to take into account Rule 25.49 which provides that, *"notice of the charge shall be delivered to the charged member or his or her representative within 3 (three) months of the date when knowledge of a member's alleged act of misconduct or conviction in a court of law is brought to the attention of the ANC."*
28. The purpose of Rule 25.49 of the ANC Constitution is to give certainty to members who face disciplinary proceedings by the organisation. They should know within 3 months after the alleged commission of an act of misconduct whether or not the organisation intends to discipline them. The Rule is also designed to give the ANC sufficient time to consider the allegations against the charged members, draw up a charge sheet and serve it on the charged members.
29. If the ANC conducts its investigations in a dilatory manner and fails to act timeously within the 3 month time limit, then, on the grounds of procedural fairness, the ANC Constitution gives the benefit to the charged member and precludes the ANC from proceeding any further

with the disciplinary proceedings.

30. In the present case, there is no evidence of dilatoriness on the part of the ANC. The charge sheet was prepared and ready to be served by 28th January 2015 – well within the 3 month time limit prescribed by Rule 25.49.
31. The affidavits submitted by the Provincial Presenter, comrade Ravi Pillay, and the Provincial Secretary, comrade Sihle Zikalala, point to the deep divisions in Ward 1 and an atmosphere of fear which has become such a pervasive feature in this ward that even the Chairperson of the branch was afraid to assist with serving the charge sheet on the charged members.
32. Ultimately, the ANC had to secure the services of comrade Ben Ntuli, the Chairperson of the Peace and Security sub-committee to serve the charge sheet.
33. Charges 1 and 2 are of a very serious nature and the ANC will be severely prejudiced if the charged members were allowed to create a ring of untouchability around themselves and prevent the ANC from exercising its authority over them.
34. Consequently, no fault can be attributed to the ANC for failing to serve the charge sheet within the 3 month time limit prescribed by Rule 25.49.

NDCA Finding

35. The PDC's application for an extension of time in respect of Charge 3 against comrade Morgan Ngubane is refused.
36. The PDC's application for an extension of time in respect of Charge 4 against comrade Sam Duma is refused.
37. The PDC's application for an extension of time in respect of Charges 1 and 2 against all the charged members is granted.
38. The PDC Chairperson is directed to send a strongly worded letter to the charged members to indicate the following:-
 - 38.1 The number of witnesses that will be permitted at the hearing is entirely at the discretion of the PDC Chairperson and the threat by the charged members to call 300 witnesses appears to be a time-wasting exercise which would not be tolerated;
 - 38.2 Once a date has been set by the PDC, the disciplinary hearing will continue even in the absence or unavailability of the representative of the charged members and/or in the absence of

any or all of the charged members.

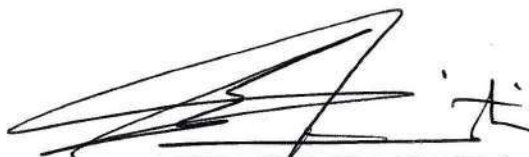
Dated at IRENE, PRETORIA on this 25th day of January 2016



JEFF RADEBE
CHAIRPERSON
NDCA



NALEDI PANDOR
MEMBER
NDCA



GUGILE NKWINTI
MEMBER
NDCA

NGOAKO RAMATHLODI
MEMBER
NDCA

PRAVIN GORDHAN
MEMBER
NDCA



SUE VAN DER MERWE
MEMBER
NDCA



PAM TSHWETE
MEMBER
NDCA

African National Congress



National Disciplinary Committee of Appeal (NDCA)

OFFICE OF THE CHAIRPERSON: CDE JEFF RADEBE

IN THE NATIONAL DISCIPLINARY COMMITTEE OF APPEAL

CASE NUMBER: 1 /2017

In the review application of

MARIUS LLEWELLYN FRANSMAN

Applicant

and

AFRICAN NATIONAL CONGRESS

Respondent

NDCA FINDING

Background

1. On 9 November 2016 the National Disciplinary Committee (NDC) found the applicant guilty on two counts of misconduct and suspended his ANC membership for a period of 5 (five) years.
2. On 1 December 2016 the Applicant applied to the NDCA to review the decision of the NDC and on 9 December 2016 submitted a supplementary submission.
3. The applicant's application to the NDCA was preceded by an urgent application to the Western Cape High Court to review and set aside the decision of the NDC. The first part of this two part application was dismissed with costs. The applicant has not as yet pursued the second part of his urgent application.

Application of NDCA Rules of Procedure

4. Having perused the bundle of documents submitted by the NDC, the NDCA is satisfied that the review application can be considered on the documentary evidence before it without the necessity of hearing any oral representation or argument by the parties.

Grounds of review

5. The applicant advanced a number of grounds for the decision of the NDC to be reviewed which, for the purpose of this Finding, need not be set out in detail.

Evaluation by NDCA

6. The NDCA has noted from media reports, subsequent to the announcement of the NDC Finding in November last year, that the Applicant has persisted with his claim that he was not afforded a procedurally fair hearing, more particularly in that the evidence of his two witnesses, submitted to the NDC by email, was not considered by the NDC.
7. In the view of the NDCA, the NDC provided cogent reasons for proceeding with the hearing in the absence of the Applicant and for not considering the evidence of his witnesses.
8. The ANC is a voluntary political organisation. As such, both the ANC and all its members, including the Applicant, have a positive duty to enhance and to protect the image and reputation of the organisation.
9. The Applicant's wilful refusal to attend the NDC hearing detracted from his positive duty to cure the negative public perception about the ANC which he created.
10. Consequently, the NDCA is of the view that preferring further charges of misconduct against the applicant would not cure the negative public perception about the ANC that has been created.
11. In order to protect the image and reputation of the ANC, the NDCA is of the view that the most equitable approach in the interest of the ANC would be for the matter to be referred back to the NDC with an appropriate directive as provided for in Rule 25.27.4 of the ANC Constitution.

NDCA Finding

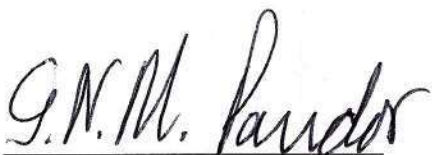
12. The matter is referred back to the NDC with the following directive:-

- 12.1 That the applicant adduces evidence to support his allegation that the NDC was biased and a judge in its own cause and that he did not get a fair hearing;
- 12.2 That the two witnesses, which the applicant intended to call, adduce factual evidence to show cause why the finding of the NDC on Charge 1 should be reviewed and set aside.
- 12.3 That the NDC convenes the hearing within 21 calendar days; and
- 12.4 That the applicant, his representative and witnesses rearrange their schedules to make themselves available on the date set by the NDC for the hearing.

Dated at Luthuli House, Johannesburg on this 3rd day of April 2017

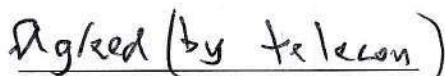


JEFF RADEBE
CHAIRPERSON
NDCA



NALEDI PANDOR
MEMBER
NDCA

GUGILE NKWINTI
MEMBER
NDCA



NGOAKO RAMATHLODI
MEMBER
NDCA

PRAVIN GORDHAN
MEMBER
NDCA

SANKIE MTHEMBI MAHANYELE
MEMBER
NDCA

PAM TSHWETE
MEMBER
NDCA

African National Congress



National Disciplinary Committee (NDC)

OFFICE OF THE CHAIRPERSON: CDE DEREK HANEKOM

**IN THE NATIONAL DISCIPLINARY COMMITTEE (NDC) HELD ON 20
APRIL 2017 AT LUTHULI HOUSE, JOHANNESBURG**

Case No. 1/2017

In the matter between:

AFRICAN NATIONAL CONGRESS

And

MARIUS LLEWELLYN FRANSMAN

Charged member

FINDING

Background

1. The charged member is the Provincial Chairperson of the ANC in the Western Cape.
2. On 9 November 2016 the National Disciplinary Committee (NDC) found the charged member guilty on two counts of misconduct and suspended his ANC membership for a period of 5 (five) years.
3. On 1 December 2016 the charged member applied to the National Disciplinary Committee of Appeal (NDCA) to review the decision of the NDC.
4. On 3 April 2017 the NDCA considered the review application and referred

the matter back to the NDC with the following directive:-

- 4.1 That the charged member adduces evidence to support his allegation that the NDC was biased and a judge in its own cause and that he did not get a fair hearing;
 - 4.2 That the two witnesses, which the charged member intended to call, adduce factual evidence to show cause why the Finding of the NDC on Charge 1 should be reviewed and set aside;
 - 4.3 That the NDC convenes the hearing with 21 calendar days: and
 - 4.4 That the charged member, his representative and witnesses rearrange their schedules to make themselves available on the date set by the NDC for the hearing.
5. The NDC set the matter down for hearing on 20 April 2017 and the charged member and his representative were duly notified.
6. At the commencement of the hearing the NDC was informed that on 18 April 2017 the representative of the charged member, comrade Brandell Turner, informed the NDC Note Taker in writing that the charged member decided not to subject himself to any further processes of the NDC and the NDCA and accordingly will not attend the scheduled hearing on 20 April 2017. He likened the proposed rescheduled NDC hearing to a 'kangaroo court which was intent on imposing a factional outcome on the disciplinary process'. The representative went on to state that his client 'will be petitioning the NEC shortly where he will ventilate his case more fully in the hope of receiving a proper constitutional consideration of the issues at hand and a fair outcome.' The letter was read into the Record.

Submission made by the complainant

7. The Chief National Presenter, comrade Uriel Abrahamse, argued that the conduct of the charged member showed further disdain for ANC processes and structures. Since the NDC Finding in November last year the charged member's conduct in public contradicts what he says that he is a disciplined member of the ANC.
8. The Chief National Presenter cited Rules 25.35 and 25.41 of the ANC Constitution to underscore the point that a charged member is entitled to one opportunity only to either appeal or review a finding of a disciplinary committee and that he had exhausted that opportunity when he applied

to the NDCA on 1 December 2016 to review the finding of the NDC. Consequently, he submitted, the Finding of the NDC in this hearing will be final and binding on the charged member to which no further appeal or review will lie.

9. In light of the charged member's continued negative outbursts since the NDC's previous finding in November last year, he submitted that the NDC should review its previous sanction and expel the charged member.

Evaluation by NDC

10. The NDC took cognisance of an article in the New Age newspaper of even date titled, 'Fransman snubs ANC probe', in which the charged member made it abundantly clear that he would not be attending the NDC hearing.
11. After considering the correspondence between the Note Taker and the charged member and his representative to inform them of the details of the hearing, the NDC was satisfied that the charged member was properly and timeously notified of the hearing and consequently, the NDC could proceed with the hearing in his absence as provided for in rule 25.72 of the ANC Constitution.
12. Notwithstanding the charged member's prior notification that he would not be attending the hearing, the NDC is of the view that it is under a constitutional obligation to convene and execute the directive of the NDCA.
13. The NDC is also of the view that the charged member has denied himself a second opportunity to present his case and prove his innocence which he protested publicly after the allegation of sexual assault became public knowledge in January 2016. The Finding of the NDCA was intended precisely to afford the charged member such an opportunity because he had complained publicly that the NDC denied him procedural justice.
14. The NDC expressed its disappointment that the charged member, as a senior leader, misled the public that he was cleared by the NDCA whereas in truth the NDCA in paragraph 11 of its Finding made the point that the referral of the matter back to the NDC was being done to further fulfil a point of procedure and protect the image and reputation of the ANC and not because of any procedural irregularity committed by the NDC or on a point of law raised by the charged member. Also, the ANC did not present any new evidence to make a different finding.

15. The NDC also took into account that the ANC is very dependent on its internal structures such as the NDC and NDCA to maintain discipline in the organisation. The charged member's conduct in undermining these structures, reflected his disdain for such structures and the organisation itself.
16. In all the circumstances, the NDC is satisfied that it has complied with the NDCA directed that the charged member be afforded a further opportunity of procedural fairness and that the charged member has elected not to utilise this opportunity and attend the hearing and present his evidence and that of his witnesses.

NDC Finding

17. The NDC confirms its previous finding that the charged member is guilty on two counts of misconduct and that his membership of the ANC is suspended for a period of 5 (five) years.

Dated at Luthuli House, Johannesburg this 20th day of April 2017


SUSAN SHABANGU
ACTING CHAIRPERSON
NDC

AGREED BY TELECON
EDNA MOLEWA
MEMBER
NDC


LINDIWE SISULU
MEMBER
NDC


JOE PHAAHLA
MEMBER
NDC


FIKILE XASA
MEMBER
NDC

- NDC Chairperson, comrade Derek Hanekom, recused himself

African National Congress



National Disciplinary Committee (NDC)

OFFICE OF THE CHAIRPERSON: CDE DEREK HANEKOM

**IN THE NATIONAL DISCIPLINARY COMMITTEE (NDC) HELD
ON 20 APRIL 2015 AND 11 MAY 2015 AT LUTHULI HOUSE,
JOHANNESBURG**

Case No. 2/2015

In the application of:-

AFRICAN NATIONAL CONGRESS

Applicant

In the disciplinary action of:-

AFRICAN NATIONAL CONGRESS

Complainant

and

KABELO MATABOGE

Charged member

RULING

Nature of application

1. At the request of the Officials, the Secretary General, on behalf of the African National Congress, applied to the NDC in terms of Rule 25.22 of the ANC Constitution to suspend the operation of the remaining 13 months of the sanction imposed on comrade Kabelo Mataboge, the former Provincial Secretary of the North West Province, pursuant to a disciplinary hearing on 24 May 2013.

Background

2. On 24 May 2013 the NDC suspended comrade Kabelo Mataboge for a period of 3 years.
3. Comrade Mataboge pleaded guilty to prejudicing the integrity and repute of the ANC by impeding its activities and undermining its effectiveness as an organisation. He admitted that on 7 December 2012 he was served with a notice by a third party to bring an urgent High Court application against the ANC and failed to inform the party.
4. The NDC found that the consequences of his action could have precluded more than 100 delegates of the North West Province from attending the ANC's National Conference at Mangaung.
5. After considering the evidence in mitigation of sanction, the NDC found that comrade Mataboge was capable of rehabilitation and consequently recommended that a senior comrade work with him during the suspension period to reinforce his understanding of the values and culture of the ANC.
6. In its application, the ANC, supported by the PEC of the North West Province, confirmed that the recommendation of the NDC was put into effect by the Provincial structure in the North West Province which worked with comrade Mataboge over the past two years to rehabilitate him.

Evaluation by NDC

7. Rule 25.22 of the ANC Constitution empowers the NDC to suspend the operation of any of the sanctions imposed in terms of Rule 25.21, with or without conditions, for a period to be determined by the NDC.
8. The NDC took into consideration the following factors in exercising its discretion in terms of Rule 25.22:-
 - 8.1 that the ANC and its Provincial PEC structure in the North West Province were satisfied that comrade Mataboge was rehabilitated;
 - 8.2 that comrade Mataboge had served almost two years of his 3 year suspension;
 - 8.3 that during the period of suspension, comrade Mataboge did not commit

- any act of misconduct contained in Rule 25 of the ANC Constitution;
- 8.4 that comrade Mataboge was willing to re-dedicate himself to the ANC membership oath and serve the organisation; and
- 8.5 that the purpose of discipline in the ANC is rehabilitative and not punitive in nature.

NDC Ruling

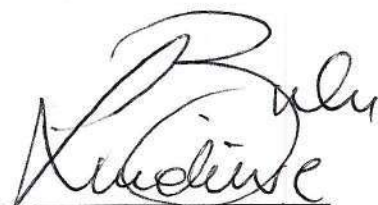
9. Having considered the above factors, the NDC Ruling is:-

- 9.1 The operation of the remaining 13 months of comrade Mataboge's 3 year suspension is suspended without any conditions.
- 9.2 Comrade Mataboge shall be entitled to resume his activities as an ANC member once he has paid the prescribed membership fee.

Dated at Luthuli House, Johannesburg this 11th day of May 2015



DEREK HANEKOM
CHAIRPERSON
NDC



LINDIWE ZULU
MEMBER
NDC



FIKILE XASA
MEMBER
NDC

SUSAN SHABANGU
MEMBER
NDC

African National Congress



National Disciplinary Committee of Appeal (NDCA)

OFFICE OF THE CHAIRPERSON: CDE JEFF RADEBE

**IN THE NATIONAL DISCIPLINARY COMMITTEE OF APPEAL
(NDCA)**

**HELD AT ST. GEORGE HOTEL, IRENE, PRETORIA
ON MONDAY 25 JANUARY 2016**

CASE NUMBER: 2/2016

In the application of

FAIEZ JACOBS

Applicant

In the matter of:

AFRICAN NATIONAL CONGRESS

Complainant

AND

FAIEZ JACOBS

Charged member

NDCA FINDING

Background

1. The Applicant, the Provincial Secretary of the ANC in the Western Cape Province, allegedly assaulted a fellow employee on 30 November 2015 in the ANC Provincial Office.
2. On 2 December 2015 the PEC decided to place the Applicant on precautionary leave.

3. From the correspondence between the acting Provincial Secretary and the Applicant dated 13 January 2016, it seems that the Applicant was placed on leave in lieu of being suspended in terms of the ANC Constitution.
4. The PEC subsequently decided to institute disciplinary proceedings against the Applicant for the alleged assault and the matter is due to be heard by the Western Cape PDC shortly.
6. The Applicant has applied to the NDCA in terms of Rule 25.66 and 25.68 to set aside his "suspension".
7. The Applicant advanced the following arguments in support of his application:-
 - 7.1 The PEC's decision to place the Applicant on involuntary or precautionary forced leave was unlawful, irregular and contrary to the ANC Constitution; and
 - 7.2 The PEC did not follow the procedure set out in Rule 25.57 of the ANC Constitution.

Evaluation by NDCA

8. At the outset, the NDCA wishes to point out that comrade Faiez Jacob's application to set aside his temporary suspension is separate from his disciplinary hearing and the NDCA decision does not in any way pronounce on the Applicant's guilt or innocence in the disciplinary hearing.
9. In the ANC Constitution there is no provision for involuntary or precautionary forced leave. Consequently, for the purpose of this application, the NDCA has assumed that the PEC suspended the Applicant temporarily in terms of Rules 25.56 to 25.69 of the ANC Constitution.
10. Furthermore, temporary suspension is not an automatic process after disciplinary proceedings are contemplated or are in fact instituted against a member.
11. Temporary suspension of a member is preceded by an inquiry as set out in the Constitution.
12. Rule 25.57 sets out the procedure to be followed by the relevant structure which has jurisdiction to suspend a member. A suspension can only follow after the relevant structure has complied with the provisions of Rule 25.57 and is satisfied that the conditions for temporary suspension exists before a decision is taken to suspend that

member.

13. In the exercise of its discretion to suspend the Applicant, the PEC was required to have put the accusation to the Applicant and given him an opportunity to respond as provided for in Rule 25.57.4 and 25.57.5.
14. There is no evidence before the NDCA that this was done. Instead the PEC engaged with the Applicant in a meeting on 2 December and this was followed by a meeting between the Applicant and the Provincial Chairperson on 6 December 2015.
15. An allegation of assault is a serious charge. Consequently, the provision of Rule 25.57.1 was met.
16. There was no evidence from the Applicant's past conduct or his conduct immediately after the alleged act of misconduct on 30 November 2015 to establish that the Applicant had the propensity to commit further acts of misconduct as stipulated by Rule 25.57.2.
17. The alleged assault would certainly have brought the ANC into disrepute as evidenced by the various newspaper articles attached to the Applicant's application. Consequently, part of the requirement in Rule 25.57.3 would have been satisfied.
18. From the above analysis, the NDCA is of the view that Rule 25.57 was complied with partially but not substantively.
19. The substantive element in Rule 25.57 requires compliance with the *audi alteram partem* rule (hear the other side).
20. Fairness and equity are the cornerstones of the ANC Constitution and the NDCA has made this pronouncement in many of its Findings.
21. The suspension of a member is a very invasive step to curtail a member's participation in the ANC and such a drastic decision should only be taken after all the steps outlined in Rule 25.57 have been followed and the conditions which exist in this sub-rule have been satisfied.
22. In the view of the NDCA, partial compliance with Rule 25.57 is insufficient to warrant the decision to suspend a member.
23. The NDCA has taken into consideration that the Applicant and the Complainant's witness would be working in the same environment should the suspension be set aside.
24. The NDCA has also taken into consideration that by virtue of the main allegation against the Applicant viz. assault, the evidence at the disciplinary hearing would be that of the comrade that was allegedly


assaulted, the charged member and witnesses, if any. As such, the issue of interfering with the investigations and tampering with evidence does not arise.

25. Moreover, if the Applicant had any intention of interfering with witnesses, that would have occurred by now since the disciplinary hearing is due to commence shortly.
26. The PEC may at any stage during the disciplinary hearing suspend the Applicant provided that it complies fully with the provisions of Rule 25.57 of the ANC Constitution.


NDCA Finding

27. For the above reasons, the application succeeds and the temporary suspension is set aside subject to the condition that the Applicant does not interfere with comrade Wesley Seale, the Complainant's witness.

Dated at IRENE, PRETORIA on this 25th day of January 2016




JEFF RADEBE
CHAIRPERSON
NDCA



NALEDI PANDOR
MEMBER
NDCA



GUGILE NKWINTI
MEMBER
NDCA



PAM TSHWETE
MEMBER
NDCA

African National Congress



National Disciplinary Committee (NDC)

OFFICE OF THE CHAIRPERSON: CDE DEREK HANEKOM

**IN THE NATIONAL DISCIPLINARY COMMITTEE (NDC) HELD
ON 27 FEBRUARY 2016 and 1 APRIL 2016 IN CAPE TOWN**

Case No. 2/2016

In the matter between:-

AFRICAN NATIONAL CONGRESS

Complainant

AND

FAIEZ JACOBS

Charged Member

FINDING

Background

1. On 6 December 2015, the Provincial Executive Committee (PEC) of the Western Cape decided to charge its Provincial Secretary, comrade Faiez Jacobs, for misconduct in terms of Rule 25 of the ANC Constitution. It was alleged that he assaulted comrade Wesley Seale, an ANC employee responsible for policy co-ordination, in the ANC Provincial office on 30 November 2015.
2. The PEC referred the matter to the Provincial Disciplinary Committee for adjudication.
3. On 1 February 2016 the National Officials met with the PEC and the NEC Deployees in the Province to discuss a range of challenges facing the Province.

4. Pursuant to this meeting, the National Officials decided to refer the disciplinary case of comrade Faiez to the National Disciplinary Committee for adjudication.
5. The disciplinary hearing was held on 27 February and 1 April 2016 in Cape Town.
6. The ANC was represented by comrade Uriel Abrahamse in his capacity as Chief National Presenter of the ANC. By agreement with the charged member's representatives, he was assisted by comrade Joseph Thee, the Vice Chairperson of the Dullah Omar Region and the chairperson of its regional disciplinary committee.
7. The charged member was represented by comrades Johnny de Lange and Rafeek Hendricks.
8. The NDC wishes to thank both parties for the preparation of the bundle of documents, including exhibits, and a transcript of the record, all of which were of great assistance to the Committee.
9. The NDC has noted that comrades Wesley Seale and Faiez Jacobs have laid criminal charges against each other with the South African Police Service.

Charges

10. Comrade Faiez was charged with contravening the following sections of Rule 25 of the ANC Constitution:-

Main charge

- 10.1 Contravening Rule 25.17.15 – fighting, assaulting another member or behaving in a disorderly or unruly manner at ANC meetings, assemblies or gatherings and/or disrupting meetings and interfering with the orderly functioning of the ANC. The specific allegation was that on 30 November 2015 and at the Western Cape Office of the ANC, 7th Floor Sahara House, Thibault Square, Cape Town, the charged member assaulted a member of the ANC, namely Wesley Seale, who is also an employee of the ANC, by hitting and kicking him in his face and abdomen and thereby causing him serious bodily injury.

Alternative charges

- 10.2 First alternative charge - contravening Rule 25.17.16.3 for prejudicing the integrity or repute of the Organisation, its personnel or its operational capacity by doing any act which undermines the ANC's

effectiveness as an organisation;

10.3 Second alternative charge - contravening Rule 25.17.4. for behaving in a manner or making any utterance which brings or could bring or has the potential to bring or as a consequence thereof brings the ANC into disrepute; and

10.4 Third alternative charge - contravening Rule 25.17.11 for undermining the respect for or impeding the functioning of any structure or committee of the ANC.

Plea

11. The charged member pleaded not guilty to the charges. It was later submitted that his defence was self-defence.

Summary of evidence led by ANC

12. The ANC called four witnesses and a summary of their evidence is as follows:-

Wesley Seale

13. Comrade Wesley was the policy co-ordinator of the ANC in the Western Cape.
14. On 23 November 2015 comrade Wesley agreed with the Provincial Secretary that he would compile the Provincial Executive Committee Report in preparation for the Provincial Executive Committee which was due to take place in two weeks from then.
15. By virtue of this assignment, his task was to liaise with the Regions and the Leagues and to obtain their reports to prepare the provincial report.
16. He also testified that he was asked to perform certain duties in the Dullah Omar Region although he was not an office bearer in that Region and it was not part of his job description with the ANC.
17. The compilation of the Provincial Report was not within his competency and direct area of responsibility. He was going beyond the call of duty to assist comrade Faiez.
18. He wrote to the Regions to provide information for the report and by 26 November none of the Regions had responded.

19. On 27 November 2015, the charged member contacted comrade Wesley and wanted to know whether he had completed the report.
20. On 30 November 2015, comrade Wesley met the charged member and explained that he was not able to make progress on the report because he was deployed to conduct BGMs on the weekend of 28 and 29 November and the Regions had not provided the required information.
21. Comrade Wesley testified that when he went into comrade Faiez's office, comrade Faiez was finalising some documents with his personal assistant, comrade Elma Geswindt. Comrade Elma went out of the office and left the door open.
22. Comrade Faiez closed the door to his office, stood directly behind him and wanted to know what his problem was.
23. Without provocation, comrade Faiez punched him from behind on the side of his head. The force of the punch dislodged him from his chair and he fell to the floor.
24. He testified further that the charged member kicked him in his stomach and face and he shouted out for help.
25. From his position on the floor, he saw that comrades Elvis and Ruwayda had entered the room.
26. He received medical attention and seven stitches for the laceration to his left ear and laid a charge of assault with the SA Police Service against the charged member.

Under cross-examination

27. He denied that he provoked the charged member at any stage and expressed shock that such an incident could happen in the workplace.
28. The stitches to his left ear were necessary after being kicked by the charged member.
29. There were also bruises on his right arm and neck.
30. He left the employ of the ANC on 29 January 2016.
31. He disputed Exhibit 6 which was a photograph of the layout of the

charged member's office, stating that the furniture was not in those positions on the day of the incident.

32. He said that the doctor's medical report (Exhibit 7) was wrong because it stated that he was bruised on the left arm whereas in his testimony he pointed to his right arm.
33. He was not able to explain omissions and certain discrepancies between the statements he had made to the ANC and the one to the police.
34. The charged member kicked him between three and six times on his face and abdomen while he was on the floor.
35. The report to the PEC was only due in the first week of December, for its meeting on the 6th, and he was not able to understand the charged member's anxiety about the report.
36. The meeting between him and the charged member was short before the charged member assaulted him.
37. He denied that he prodded and pushed the charged member and that the charged member only slapped him. He also denied that he fell backwards against the safe.

Re-examination

38. Comrade Wesley testified that the ANC did not have a social media policy and he was never warned or reprimanded for his postings on Facebook.
39. He was not aware that the charged member had lodged a complaint of insubordination against him with the ANC Human Resources department and denied being in any meeting with a member of the ANC Human Resources department to discuss the issue of insubordination.

Elvis Malibongwe Terblanche Dyongo

40. Comrade Elvis testified that he was employed by the ANC as a security guard since 1996.
41. On 30 November 2015, in the afternoon, he heard screaming coming from comrade Faiez's office.
42. When he entered he found comrade Wesley lying on the floor and crying. He saw blood on comrade Wesley's left ear.

43. He said that comrades Elma and Ruwayda were trying to intervene between comrade Wesley and comrade Faiez. He heard comrade Faiez saying to them, "get out of my office."
44. He said to comrade Faiez that this behaviour does not happen in the ANC office.
45. Comrade Faiez listened to him when he told him to stop. Comrades Wesley, Ruwayda, Elma and him left comrade Faiez's office.
46. He enjoyed good personal relations with comrade Faiez.

Under cross examination

47. In all the time he was employed at the ANC office, he did not witness any assault taking place in that office.
48. When he entered comrade Faiez's office he did not witness any assault.

Ruwayda Mohamed

49. She was employed by the ANC since 2011 as the Provincial Administrator and reports to the Provincial Secretary.
50. On 30 November 2015 she was in the office. She heard a scream for help coming from the charged member's office.
51. I went into the charged member's office and saw that comrade Wesley was lying on the floor and was bleeding.
52. I asked comrade Faiez what happened and he replied that it was none of my business and that I should shut up. He turned to comrade Wesley and said that he was not done with him.
53. As she tried to help comrade Wesley to get up, her hands were full of blood. She went out to wash her hands. Comrade Elma helped comrade Wesley to get up on his feet.
54. She saw no reason for the use of physical violence and everyone in the office was stunned.

Under cross examination

55. She confirmed that by 30 November 2015 no reports had been received from the lower structures. If reports were sent directly to the Provincial Secretary, she would not know.
56. She was not aware of any tension between comrade Wesley and comrade Faiez.
57. Comrade Elma was the first person to go in the Provincial Secretary's office. She came out and shouted that she needed help. I went into the Provincial Secretary's office with her.

Thandi Makivana

58. She is the elected Deputy Secretary and, due to the suspension of comrade Faiez, she is acting as the Provincial Secretary.
59. She has comradely relations with comrade Faiez.
60. She was at home and not in the office on 30 November 2015 when the incident took place.
61. Comrade Wesley sent her a picture on her cell phone of his bleeding ear.
62. She contacted comrade Faiez. He said that he had messed up and lost it. Comrade Wesley did not want to account to him.
63. The incident affected the ANC negatively and brought the organisation into disrepute. She was taken through four newspaper articles and confirmed the negative reports about the ANC.

Under cross examination

64. Comrade Thandi was referred to Exhibit 21 which was a document submitted by comrade Faiez to the PWC on 11 December 2015 in which he tabled alleged acts of misconduct by ANC members, notably comrades Yonela Diko, Bulelwa Ntoyato and Wesley Seale and asked why nothing was done about this complaint. Her response was that these incidents would be dealt with after comrade Faiez's case, which was given priority.
65. She agreed that staff were not normally deployed to conduct political work in the Regions and branches.
66. She denied that she would benefit if comrade Faiez was suspended or

expelled from the ANC.

The ANC closed its case

Case for the charged member

67. The charged member testified and called one witness.

Faiez Jacobs

68. He was a political activist since the age of fourteen and was part of the ANC underground structures.

69. He brought comrade Wesley into the ANC in 2012 and enjoyed good relations with him.

70. After his election as Provincial Secretary in 2015, he got the impression that comrade Wesley was part of comrade Marius Fransman's group and was working against him.

71. Comrade Wesley did not accept him as Provincial Secretary, openly undermined him and questioned his authority.

72. Comrade Faiez complained to the ANC's Human Resources department last year about comrade Wesley's insubordination.

73. When comrade Faiez asked comrade Wesley for the Report, he said it was not part of his job description, he was doing comrade Faiez a favour but has changed his mind.

74. He said that comrade Wesley prodded him in the chest. He instinctively struck out at him and slapped him with his open hand on the left side of his face. He did not hit him with his fist.

75. Comrade Wesley fell against the safe. He did not kick or punch comrade Wesley.

76. Comrade Elma came into his office and was followed by comrade Ruwayda.

77. He did not have an opportunity to give his version to the Provincial Officials nor apologise to comrade Wesley but he did meet with the Chairperson, comrade Marius, who allegedly said that this case was a

Christmas box to him.

78. He was very remorseful and regretted the incident. He was sorry about what happened. His emotions got the better of him. It was a big mistake.

Under cross examination

79. When asked to explain his conduct, he replied that he was provoked by comrade Wesley.
80. When asked whether he apologised, he said he reached out to comrade Wesley through the Catholic Church. He was not given an opportunity to apologise to the ANC.

Elma Geswindt

81. She was the Professional Assistant to comrade Faiez.
82. She had known comrade Wesley since 2009 and had a good relationship with him.
83. She closed the door after she led comrade Wesley into comrade Faiez's office.
84. She was the first person to enter comrade Faiez's office and saw comrade Wesley on the floor with a few drops of blood on the side of his face.

Under cross examination

85. When asked whether she heard anything from comrade Faiez's office, she replied she heard comrade Wesley say twice that he was not accountable to the Provincial Secretary.

The charged member closed his case

Argument

ANC

86. The ANC argued that the defence of private defence put up by comrade Faiez should be rejected because the force he used was disproportional to any threat he may have faced and his life, limb or property were not under threat.

87. He assaulted comrade Wesley without provocation.
88. Since only comrades Wesley and Faiez were in the room, the NDC would have to exercise its discretion and decide which version to accept.
89. His conduct brought the ANC into disrepute.
90. Comrade Faiez was not remorseful.
91. Assault was a very serious transgression of the ANC's code of conduct and comrade Faiez should be expelled for his behaviour.
92. The ANC also argued that comrade Faiez was defiant because he participated in the voter registration weekend in March 2016, although the NWC resolved on 27 January 2016 that comrade Faiez's suspension should remain in force until the finalisation of the disciplinary proceedings against him.

Charged member

93. The charged member set out the principles of private defence and argued that the charged member acted in self-defence and in the circumstances of the case, the defence of self defence or private defence constituted a complete defence and comrade Faiez should be acquitted.
94. He also argued that provocation, although it diminished responsibility, did not wipe out the charged member's liability completely. In short, it was a mitigating factor.
95. The ANC did not have jurisdiction to charge comrade Faiez with assault under Rule 25.17. 15 because it was a spat between two members and was not embraced by the rule which was limited to fighting and assault at ANC meetings.
96. In evaluating the evidence, the NDC should be mindful of the cautionary rule when dealing with the evidence of a single witness viz. comrade Wesley.
97. Comrade Wesley's was not a credible witness because he made contradictory statements to the ANC and the SA Police Service and the doctor's reports were contradictory because he sought to exaggerate his injuries and was not able to explain the contradictions under cross examination.

98. Insofar as the alternative charge that the newspaper reports brought or had the potential to bring the ANC into disrepute, the charged member conceded that he could be found guilty of bringing the ANC into disrepute because of the wide ambit of the rule in the ANC Constitution relating to disrepute.
99. He did argue, however, that the publication of the incident was done by comrade Wesley and therefore blame should not be apportioned to him.
100. He also argued that with respect to all the charges, expulsion was not an appropriate sanction.

Evaluation by the NDC

101. From an organisational perspective, the NDC took judicial notice that the tension among the Provincial leaders and Provincial office staff at the disciplinary hearing was palpable. It appeared to the NDC that the discipline among the cadres had broken down. In the view of the NDC, these internal tensions, coupled with structural weakness, is probably responsible for the perception in the public domain that the ANC's Western Cape Provincial structure lacks unity of purpose and is a collection of different groups or factions.
102. It is common cause that comrade Faiez assaulted comrade Wesley and that comrade Wesley suffered a laceration and received stitches and medical treatment as detailed above.
103. With regard to the argument that comrade Faiez defied his suspension and circulated pictures on social media of his participation in the voter registration weekend, the view of the NDC is that suspension of membership in the ANC attaches to a member and not to a position. It follows that comrade Faiez should not have participated in ANC activities during the voter registration weekend.
104. However, the fact that he sought legal advice and was in the company of NEC members does not smack of defiance or contempt for the decision of the NWC. In the view of the NDC; it was a case of an over-enthusiastic member.
105. Comrade Faiez testified that he complained to the ANC Human Resources department about comrade Wesley and sought advice from the organisation.
106. With the consent of both parties, the NDC approached comrade

Khawulizile Noruka of the ANC Human Resources department at Luthuli House to establish whether comrade Faiez complained to the ANC in October 2015 about the trust and working relationship between him and comrade Wesley and sought urgent advice from the ANC (see Exhibit 14).

107. Comrade Khawulizile Noruka, in his written response, marked Exhibit 28, confirmed that comrade Faiez complained about comrade Wesley to the Human Resources department of the ANC in writing on 28 October 2015 and verbally to comrade Khawulizile in September 2015 when he was in Cape Town to conduct employment interviews.
108. From this information the NDC concludes that comrade Faiez did raise his concerns about comrade Wesley with the ANC and sought advice from the organisation, prior to the incident, as to how the matter should be dealt with. The NDC also concludes that comrade Wesley did not take instructions from comrade Faiez as the Provincial Secretary.

Argument that Rule 25.17.15 does not apply to the assault

109. The charged member argued that Rule 25.17.15 does not cover an altercation between two members and therefore the main charge was not a competent charge.
110. Prior to amendment at the 53rd National Conference at Mangaung in 2012, Rule 25.5 (p) of the ANC Constitution provided that, “fighting or behaving in a grossly disorderly or unruly way” was an act of misconduct.
111. At the Mangaung Conference, the ANC Constitution was amended to regulate organisational discipline between the ANC and its members. In other words, there must be a causal connection between the alleged misconduct of a member and the functioning of the ANC. This means that the act of misconduct of fighting and assault had to take place at an ANC meeting, gathering or assembly to be brought within the ambit of Rule 25 of the ANC Constitution. Consequently the ANC’s jurisdiction was restricted. As such, the ANC would not have jurisdiction over acts of fighting or assault between two ANC members in their home or at a soccer match.
112. The current rule 25.17.15 provides that, *“fighting, assaulting another member or behaving in a disorderly or unruly manner at ANC meetings, assemblies or gatherings and/or disrupting meetings and interfering*

with the orderly functioning of the ANC” constituted misconduct.

113. The NDC agrees with the charged member’s interpretation of Rule 25.17.15 of the ANC Constitution.
114. Applying this interpretation to the facts of the case, gives rise to the conclusion, in the view of the NDC, that the meeting between comrades Faiez and Wesley was an ANC meeting because they were meeting at the ANC Provincial office to discuss ANC business viz. the production of the Report for the PEC. It was a formal meeting between the Chief Provincial Administrator and his subordinate.
115. Consequently, the charged member’s argument that the ANC did not have jurisdiction to discipline him for assaulting comrade Wesley must fail.

Argument that the NDC should apply the cautionary rule

116. Disciplinary committees of the ANC make decisions and findings on the principles of fairness and equity and on a balance of probabilities.
117. The charged member’s argument is based on the assumption that comrade Wesley was the only witness and that the admissibility of his evidence should be treated with caution.
118. The cautionary rule normally applies in criminal charges where the onus to prove the guilt of an accused person has to be beyond a reasonable doubt. This burden of proof is intended to remind judicial officers that they should be reluctant to convict an accused person if there is only one witness and there are doubts when assessing the evidence of that single witness.
119. In the view of the NDC, the cautionary rule has no application in the present case because six witnesses including the charged member and his witness testified.

Argument that the charged member’s defence of private defence should be upheld

120. The charged member set out the principles and requirements that should be met for the defence of private defence to succeed.
121. Some of the essential elements include that the attack must be

unlawful, and the private defence must be to protect life, limb or property.

122. The defence of private defence becomes applicable if the charged member, in the face of an imminent attack, was prevented from fleeing and therefore had to defend himself. No such evidence arose in this case.
123. Comrades Wesley and Faiez had given almost mutually exclusive accounts of what transpired in the office of the Provincial Secretary that day and, in the view of the NDC, it would not be fair and equitable to accept the version of any one party to the exclusion of the other.
124. In the absence of direct evidence, the NDC has to resort to secondary and corroborative evidence to establish whether the ANC has proved its case on a balance of probabilities or whether the defence of the private defence should be upheld and the charged member acquitted.
125. In the view of the NDC, the evidence tendered by comrade Elvis probably stands as the most reasonable secondary evidence to establish that the charged member exceeded the bounds of self defence.
126. Comrade Elvis testified that when he entered the room, comrade Wesley was lying on the floor crying and comrades Ruwayda and Elma were trying to intervene between comrades Faiez and Wesley. He spoke directly to comrade Faiez to stop and comrade Faiez listened to him. This version is corroborated by the evidence of comrade Ruwayda.
127. The charged member did not challenge the evidence of comrade Elvis. In the view of the NDC this secondary evidence offers the most probable and reasonable account of what happened in the aftermath of the meeting between comrades Faiez and Wesley.

See: pages 140 – 141 of Record

128. Based on this secondary and corroborative evidence, the NDC finds that comrade Faiez fought with and assaulted comrade Wesley and did not act in self defence.
129. Consequently, the NDC finds that the ANC has established the causal connection between the evidence tendered and the contravention of Rule 25.17.15 and proved its case on a balance of probabilities.

130. Comrade Faiez is found guilty on the main charge.

The alternative charge of bringing the ANC into disrepute

131. Comrade Thandi provided compelling evidence that the charged member's conduct brought the ANC into disrepute.

132. The ANC did not lead evidence on the first and third alternative charges.

133. The general rule in proceedings of tribunals and courts is that once a finding is made on the main charge, the alternatives fall away. Any other approach would result in double jeopardy for the charged member or accused person and would detract from the principles of fairness and equity.

134. In the charge sheet, the charge of bringing the ANC into disrepute was present as an alternative to the main charge. This was confirmed by the Chief National Presenter during argument.

135. Pursuant to a guilty finding on the main charge, the alternative charges will fall away and not be considered.

Sanction

136. In determining an appropriate sanction, the NDC took into consideration the following factors:-

136.1 the seriousness of the misconduct;

136.2 the interest of the ANC and its membership;

136.3 the interest of the member who was assaulted; and

136.4 the interest of the charged member.

137. The ANC is a voluntary political organisation and persons join the organisation in the expectation that their physical safety would be respected and protected.

138. The ANC has an obligation to protect the reputation of the organisation

in the interest of the organisation and its members and to act with fairness, particularly with reference to paragraph 64 above, which must be resolved as recommended in paragraph 147 below.

139. Assaulting another member is a very serious act of misconduct in the ANC Constitution.

140. An act of assault committed in the workplace is seen as very serious misconduct. In the view of the NDC this is primarily because of the harm that is or could be caused to workplace harmony.

141. In June 2014, the NDC suspended comrade **Sabulone Mphofela** for 18 months for assaulting a female member who was deployed to facilitate the BGM at the branch which he chaired. The charged member was also required to vacate his position as a local councillor. The charged member instituted a High Court application against the ANC for his reinstatement which failed and was unrepentant for his conduct in the disciplinary proceedings before the Regional Disciplinary Committee in Limpopo.

142. In the present case, the NDC has taken into account the following distinguishing factors from comrade Sabulone's case:-

142.1 The charged member was remorseful for his conduct;

142.2 The charged member was about 6 months into his position as Provincial Secretary. The sheer pressure and workload was in all likelihood a contributory factor to explain his conduct;

142.3 His perception that comrade Wesley provoked him and was out to undermine him, although a subjective view, probably contributed to his actions. The NDC also noted as a fact that he reported the matter to the Human Resources department of the ANC;

142.4 He reached out to apologise to comrade Wesley;

142.5 The statement by comrade Wesley that he was going beyond the call of his duties in producing the report required of him by the charged member served to incense and provoke the charged member and contributed to his action;

142.6 The charged member started out in politics at the tender age of fourteen and knows no other political home; and

142.7. The charged member is capable of being rehabilitated.

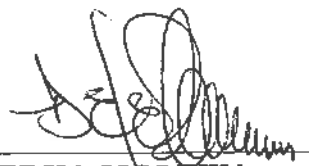
143. For these reasons, the NDC is of the view that expulsion or outright

suspension would be harsh and inappropriate sanctions in the circumstances of this case.

NDC Finding

144. The charged member is found guilty of contravening Rule 25.17.15 of the ANC Constitution for fighting with and assaulting comrade Wesley Seale by punching him when they met to discuss ANC business at an ANC meeting on 30 November 2015 at the ANC Provincial Office, Sahara House, Thibault Square, Cape Town.
145. The charged member is suspended for 18 months.
146. The operation of the 18 month sanction, referred to above, is suspended for a period of 3 years, subject to the condition that should the charged member be found guilty of *any* act of misconduct specified in Rule 25.17 of the ANC Constitution during the next 3 years, the 18 month sanction shall become operative and the charged member shall be required to vacate his position as the Provincial Secretary of the ANC in the Western Cape.
147. The NDC recommends that the Western Cape Provincial Executive Committee, with the support of the National Executive Committee deployees, enlists the help of religious groups and professionals in the Province to reinforce the unity and strengthen governance in the organisation and to help re-dedicate the Provincial structure to the character, culture, values and purpose which held the ANC in high esteem over the past one hundred years of its existence.

Dated at Cape Town this 6th day of April 2016



EDNA MOLEWA
MEMBER
NDC



SUSAN SHABANGU
ACTING CHAIRPERSON
NDC



JOE PHAAHLA
MEMBER
NDC

African National Congress



National Disciplinary Committee (NDC)

OFFICE OF THE CHAIRPERSON: CDE DEREK HANEKOM

**IN THE NATIONAL DISCIPLINARY COMMITTEE (NDC) HELD
ON 16 MAY 2015 AT ST. GEORGE HOTEL, IRENE, PRETORIA**

Case No. 3/2015

In the application of:-

**ABRAHAM MASHISHI
APSON MAKANG
SAM MASANGO**

**1st Applicant
2nd Applicant
3rd Applicant**

APPLICATION IN TERMS OF RULE 25.20.2 OF THE ANC CONSTITUTION

Background

1. The Applicants, members of the Tshwane region, were charged for misconduct in September 2014 in terms of Rule 25 of the ANC Constitution.
2. On 3 occasions during November 2014 the Regional Disciplinary Committee (RDC) did not quorate and the hearing was postponed to 19 January 2015.
3. On 19 January 2015 the RDC could not proceed with the hearing because the chairperson was involved in a motor car accident and did not attend.
4. The disciplinary hearing was only able to get underway on 26 January 2015. The charged members pleaded to the charge and requested further particulars. The case was adjourned to 6 February 2015.

5. The disciplinary hearing could not proceed on the adjourned date of 6 February 2015 because the ANC had not provided the further particulars that were requested.
6. On the adjourned date of 19 February 2015, the disciplinary hearing had to be postponed because there was no electricity due to load-shedding.
7. On 6 March 2015, when the hearing was due to continue, the applicants applied for the proceedings to be stopped and the charge withdrawn because more than 6 months had passed and the disciplinary proceedings were not finalised.
8. The RDC dismissed the application without providing reasons. Hence, this application to the NDC.

Applicants' arguments

9. The Applicants advanced the following two arguments:-
 - 9.1 That the NDC has jurisdiction to consider the application in terms of Rule 25.20.2 of the ANC Constitution.
 - 9.2 That 6 months had passed after the charge sheet was served and the disciplinary proceedings were not finalised.


Respondent's response

10. At the request of the NDC, the regional secretary of the Greater Tshwane Region informed the NDC in writing on 5 May 2015 that on or about 20 April 2015, the parties presented their closing arguments to the RDC and the RDC Finding is imminent.

Evaluation by NDC

That the NDC has jurisdiction to consider the application

11. Rule 25.20.2 gives the NDC jurisdiction to act as an appeal committee in respect of cases adjudicated upon by a Provincial Disciplinary Committee.
12. The current disciplinary hearing is currently being adjudicated by a regional disciplinary committee and has not been finalised.

13. On this ground the NDC has no jurisdiction to hear the application and it should be dismissed.
14. However, the NDC is of the view that the applicants feel aggrieved because of the delays occasioned and are seeking redress. In such event the applicants should have brought their application in terms of Rule 25.52 which provides:-
- “Where a BDC, RDC, PDC or NDC unduly delays the commencement or finalisation of disciplinary proceedings within the time limit referred to in Rule 25.50 above, the charged member may apply for the charge to be withdrawn or proceedings to be stopped, as the case may be.”***
15. For the sake of fairness and equity, which are cornerstones of the ANC Constitution, the NDC has decided to consider this application as if it was instituted in terms of Rule 25.52. In such event the NDC would have the necessary jurisdiction.
16. A second reason for the NDC’s decision to hear this application is that the NDC would not be involved in the further prosecution of this matter. If the Applicants are found guilty by the RDC and they decide to appeal, such appeal would lie to the PDC and would be final. The NDC would have no further role in this matter. 

That the disciplinary proceedings were not finalised within 6 months

17. The act of misconduct was allegedly committed on 1 August 2014 and the charge sheet was served on the Applicants between 1 and 3 September 2014. The delay of one month can be attributed solely to the Respondent.
18. Rules 25.48 and 25.50 provide that disciplinary proceedings should be finalised within a reasonable time considered to be 6 months from the date the charge sheet was delivered to the charged member.
19. A period of 9 months has passed (1 September 2014 to end of May 2015).
20. However, the delay of about 3 months due to the failure of the RDC to quorate and the car accident of the Chairperson cannot be attributed to the Respondent.
21. Furthermore, the disciplinary hearing could have been finalised in March 2015 had the Applicants not instituted an application to dismiss the


charge.


22. The reluctance of the Applicants to proceed with the hearing in February 2015 because further particulars were not provided also contributed to the delay.
23. The Gauteng PDC decision in the disciplinary case of *Muleki Nkosi and Others*, upon which the applicants rely, is distinguishable from the present case. In that case the PDC found that the delay was occasioned substantially by the dilatory and time-wasting attitude of the presenters of the Respondent.
24. In the present case, the delay can be attributed mainly to the failure of the RDC to quorate. In the absence of a quorum of the RDC, the disciplinary proceedings could not have proceeded. In such event, it would be unfair to prejudice and penalise the Respondent and stop the proceedings against the Applicants.
25. It appears from the written response of the Respondent that the Finding of the RDC is imminent.

NDC Finding

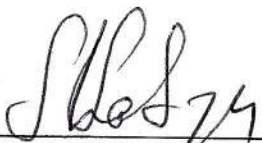
26. For the above reasons, the NDC finds that the delay in finalising the proceedings within 6 months cannot be attributed solely to the conduct of the Respondent and the application is dismissed.

Dated at St. George Hotel, Irene, this 16th day of May 2015


LINDIWE ZULU
MEMBER
NDC


DEREK HANEKOM
CHAIRPERSON
NDC


FIKILE XASA
MEMBER
NDC


SUSAN SHABANGU
MEMBER
NDC

African National Congress



National Disciplinary Committee (NDC)

OFFICE OF THE CHAIRPERSON: CDE DEREK HANEKOM

**IN THE NATIONAL DISCIPLINARY COMMITTEE (NDC) HELD ON
SATURDAY 28 MAY 2016 AT ST. GEORGE HOTEL**

Case No. 3/2016

In the review application of-

GEORGE MATJILA

Applicant

AND

AFRICAN NATIONAL CONGRESS

Respondent

FINDING

Background

1. On 20th July 2015 the Provincial Office bearers in the Gauteng Province received a report that six comrades (Samuel Rabohlale, Jackie Mawela, Jeffrey Mohodi, Jacob Manganye, David Matsheni and Lazarus Nkuna) allegedly committed acts of misconduct, on the instruction of comrade George Matjila at the Grootvlei Conference Centre in Tshwane during the ANC Youth League regional conference on 8 and 9 August 2014.
2. The matter was referred to the PDC on 11 August 2015 and after investigation, the PDC charged comrade George Matjila
3. The Applicant was charged with 6 counts of misconduct for contravening Rules 25.17.6; 25.17.9; 25.17.11; 25.17.16.1; 25.17.16.2 and 25.17.16.3 of

the ANC Constitution.

4. In March 2016, the PDC found the Applicant guilty on all 6 counts and expelled him from the ANC.
5. The Applicant subsequently applied to the NDC to review the decision of the PDC on the grounds that the ANC failed to comply with the provisions of Rule 25.49 of the Constitution.

Evaluation by the NDC

6. What was apparent to the NDC from the record and PDC Finding was the time lapse between the date of the alleged offence and the date on which the Applicant was charged.
7. Consequently, on 3 May 2016 the NDC sought an explanation from the Gauteng PDC.
8. In response, the Provincial Secretary of Gauteng confirmed:-
 - 8.1 that the act of misconduct was allegedly committed on 8 and 9 August 2014 at the Grootvlei Conference Centre in Tshwane;
 - 8.2 that the acts of misconduct were allegedly committed by the 6 comrades named in paragraph 1 above;
 - 8.3 that they allegedly acted on the instruction of the Applicant;
 - 8.4 that the case was referred to the PDC on 11 August 2015;
 - 8.5 that the notice of the charges was served on the Applicant on 13 October 2015; and
 - 8.6 that the matter was first set down for hearing on 4 November 2015.
9. In short, the Provincial Secretary did not explain the time lapse between the date of the alleged commission of the misconduct and the date the charge sheet was served on the Applicant – more than 14 months. Instead, he sought to answer the query about prescription on the basis that the acts of misconduct were first brought to the attention of the Provincial Office Bearers on 20 July 2015 and the charges were served on the Applicant on 13 October 2015 which was within the 3 month period stipulated in Rule 25.49 of the ANC Constitution.

10. Rule 25.49 provides that, *"notice of the charge shall be delivered to the charged member or his or her representative within 3 months of the date when knowledge of a member's alleged act of misconduct or conviction in a court of law is brought to the attention of the ANC."*
11. On 27 March 2015 all six witnesses deposed to affidavits at the Johannesburg Central Police Station.
12. The essence of their affidavits was the same and made the point that they were instructed by the Applicant, George Matjila, to disrupt the registration for the ANC Youth League conference on 8 and 9 August 2014 in Pretoria.
13. These comrades testified on behalf of the ANC at the PDC hearing and were questioned extensively on the affidavits made to the police which the Provincial Presenter handed in as evidence.

See: Page 148 A-F of Applicant's bundle of documents

14. Some of them were asked why they decided to make the affidavits and their responses were the following:-

- 14.1 Comrade Lazarus Nkuna testified that he realised that disrupting the ANC conference was a mistake and his actions were not right.

See: Page 205 of Applicant's bundle of documents and Page 54 of PDC Record

- 14.2 Witness Jackie Mawela testified that he was instructed by the Applicant to lodge his concern with the regional secretary in Tshwane. However, he realised that things could get worse if he lodged a complaint with the regional secretary because one of the things the Applicant wanted to do was to get them to fight with the regional secretary. So he, together with the others, [implied from the use of the word, 'we'] went to the ANC Provincial Office.

See: Page 250 of Applicant's bundle of documents and Page 99 of PDC Record

- 14.3 Witness Madiba Rabohlale testified that "we" went to the Provincial Office. "We found comrade Khabazela then we explained that we had a situation. Comrade Khabazela said to us there is nothing he can do but he can give another comrade we can talk to. Because it was word of mouth, he could not take our explanation. He wanted

something in writing. It is then we decided to make it in writing”.

See: Page 290/1 of Applicant’s bundle of documents and Page 140 of PDC Record

14.4 Witness Jacob Manganye testified that “when we were asked to confront comrade Mojapelo we started to have a problem. For this reason we decided to approach the provincial officer for advice”.

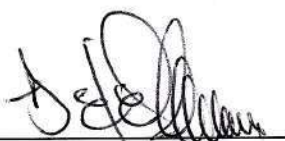
See: Page 304 of Applicant’s bundle and Page 153 of PDC Record

15. Procedural fairness is a cornerstone of the ANC Constitution.
16. There is a line of cases in the NDCA and NDC which stress the importance of procedural fairness and to which the Applicant referred in his review application.
17. ‘Khabazela’ is the *nom de guerre* of comrade Sipho Mkhize. He is employed by the ANC as the professional assistant to the Provincial Secretary and is based at the ANC Provincial headquarters at Walter Sisulu House in Johannesburg. He is also a member of the Provincial Presenter’s team.
18. Based on the evidence of the ANC’s own witnesses, the NDC concludes that the ANC became aware of the acts of misconduct for the first time on 27 March 2015 when the Provincial Office advised the witnesses to depose to affidavits which they did at the police station nearby.
19. It follows from the provisions of Rule 25.49, that by virtue of this knowledge of the acts of misconduct, the ANC had 3 months (until 26 June 2015) to deliver the charge sheet to the Applicant and it is common cause that the ANC did not do so.
20. Prescription set in as from 27 June 2015 and, according to the evidence, the ANC only considered the acts of misconduct against the Applicant on 20 July 2015.
21. Consequently, the ANC’s argument that it complied with the 3 month prescriptive period by serving the charge sheet on 13 October 2015 is misplaced.
22. In the absence of any explanation for the delay, the failure to comply with Rule 25.49 of the ANC Constitution is fatal.

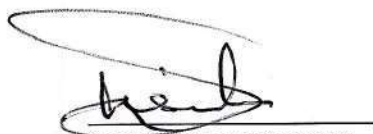
NDC Finding

23. The review application succeeds and the sanction of expulsion imposed by the PDC is reviewed and set aside.

Dated at Irene, Pretoria this 28th day of May 2016



EDNA MOLEWA
MEMBER
NDC



LINDIWE SISULU
MEMBER
NDC



DEREK HANEKOM
CHAIRPERSON
NDC



FIKILE XASA
MEMBER
NDC

African National Congress



National Disciplinary Committee of Appeal (NDCA)

OFFICE OF THE CHAIRPERSON: CDE JEFF RADEBE

IN THE NATIONAL DISCIPLINARY COMMITTEE OF APPEAL (NDCA)

HELD AT ST. GEORGE HOTEL, IRENE, PRETORIA

ON FRIDAY 12 AUGUST 2016

CASE NUMBER: 3/2016

In the application of

TOKYO MATABOGE

Applicant

NDCA FINDING

Background

1. On 7 July 2016 the Applicant applied in terms of Rule 25.68 of the ANC Constitution to set aside the temporary suspension imposed on him by the ANC North West Provincial Working Committee (PWC) on 8 June 2016.
2. According to the Applicant, he only received the letter of suspension on 28 June 2016.
3. Due to the commitment and engagement of NDCA members in the Local Government elections, it was not possible for the NDCA to meet to Consider this application earlier.
4. The Applicant is the regional secretary of the Bojanala Region.
5. From the Applicant's application, it appears that two sets of charges were

preferred against the Applicant- the first set in February 2016 and the second set in May 2016.

6. With regard to the first set of charges, the Secretary General directed that the disciplinary hearing be adjudicated by the National Disciplinary Committee (NDC) and not the Provincial Disciplinary Committee.
7. This matter is still to be heard by the NDC.
8. In the second set of charges, the Applicant is alleged to have defied the PEC, established and associated himself with parallel structures, refused to attend meetings with PEC Officials and tampered with nomination list packages for the Local Government elections.

Evaluation by NDCA

9. The Applicant has sought to defend himself in his application. In the view of the NDCA, these matters should be ventilated before the NDC in due course. This application is concerned solely with the issue whether the temporary suspension should be confirmed or be set aside.
10. It is not automatic that a charged member should be suspended. When deciding whether a charged member should be suspended, different considerations are taken into account such as the gravity of the offences, the risk of tampering with the investigation and intimidating witnesses.
11. Suspension of a public representative (in this case a regional secretary who is a full-time paid official) would have serious consequences for the ANC and should only be resorted to in cases where justifiable circumstances exist such as the likelihood of the Applicant:-
 - 11.1 Engaging in further conduct which would or could bring the ANC into disrepute;
 - 11.2 Tampering with or destroying evidence held by him in his capacity as the custodian of files, records and correspondence of the Bojanala region; and
 - 11.3 Intimidating witnesses and/or staff members in his office.
12. In terms of Rule 25.64 of the ANC Constitution, the PWC, after it decided to suspend the Applicant, was obliged to *"immediately forward a report of such suspension and the reasons for it to the NDCA and the NDCA may, in its discretion, at any stage set aside such suspension"*.
13. The reason for the constitutional requirement that a report be sent to the NDCA is for the NDCA to make an independent assessment whether the temporary suspension was justified.

14. The ANC Constitution empowers the NDCA to review temporary suspensions on its own volition without any application to be made to it. The NDCA can only exercise this power if it is informed by the structure which has decided to suspend a member.
15. In making this determination, the NDCA would not only be persuaded by the seriousness of the allegations. The factors referred to in paragraph 11 above should also be taken into consideration.
16. In this case, the PWC has failed to comply with Rule 25.64 of the ANC Constitution – to make available to the NDCA the necessary information as it was required to do. As such, the NDCA has no information before it to determine whether the temporary suspension of the Applicant was justified or not.
17. Procedural fairness is a cornerstone of organisational discipline in the ANC. In the view of the NDCA, the failure of the PWC to comply with Rule 25.64 of the ANC Constitution is materially defective.
18. In the view of the NDCA, the charges preferred against the Applicant are of a very serious nature.
19. The NDCA wishes to stress that should the Applicant in the future exhibit conduct which warrants that he be suspended pending the finalisation of his disciplinary hearing, the PWC is not precluded by this ruling from doing so.
20. The only requirement is that the PWC comply with the ANC Constitution pertaining to temporary suspension by setting out cogent reasons why the member should be suspended and how the reputation of the ANC would or could be prejudiced, giving the member an opportunity to respond and providing full information to the NDCA after a decision of temporary suspension is taken.
21. In the NDCA's view, an overriding consideration when suspending a member pending disciplinary action is to protect the interest and reputation of the ANC.

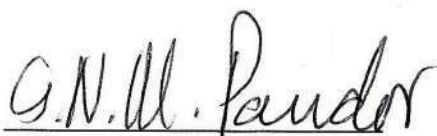
NDCA Finding

22. The temporary suspension imposed by the PWC is reviewed and set aside.
23. The North West Provincial Disciplinary Committee is required to urgently submit the file to the Chief National Presenter so that the NDC could commence with the disciplinary hearing of comrade Mataboge.

Dated at IRENE, PRETORIA on this 13th day of August 2016



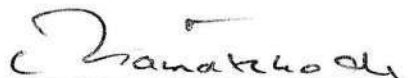
JEFF RADEBE
CHAIRPERSON
NDCA



NALEDI PANDOR
MEMBER
NDCA



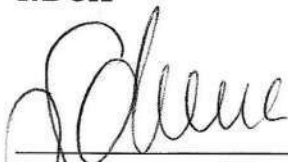
GUGILE NKWINTI
MEMBER
NDCA



NGOAKO RAMATHLODI
MEMBER
NDCA



PRAVIN GORDHAN
MEMBER
NDCA



SUE VAN DER MERWE
MEMBER
NDCA



PAM TSHWETE
MEMBER
NDCA

African National Congress



National Disciplinary Committee of Appeal (NDCA)

OFFICE OF THE CHAIRPERSON: CDE JEFF RADEBE

**IN THE NATIONAL DISCIPLINARY COMMITTEE OF APPEAL
(NDCA)**

HELD AT ST. GEORGE HOTEL, IRENE, PRETORIA

ON SATURDAY 22 AND SUNDAY 23 NOVEMBER 2014

CASE NUMBER: 4/2014

In the application of

**THE CHAIRPERSON
PDC KWAZULU NATAL**

Applicant

In the matter between

AFRICAN NATIONAL CONGRESS

Complainant

AND

PG MAVUNDLA

Charged Member

NDCA RULING

PDC request for extension of time

1. On 20 May 2014 the Chairperson of the PDC in KwaZulu Natal applied to the NDCA in terms of Rule 25.53 of the ANC Constitution for an extension of time to conclude the disciplinary proceedings against the abovenamed charged member.

Background to charges

2. Comrade Mavundla was the Mayor of the Umvoti Municipality in Greytown.
3. On 20 August 2013 he was charged for contravening Rules 25.17 4, 25.17.6, 25.17.16.3 and 25.17.19 of the ANC Constitution.
4. The specific allegation was that on or about 12 July 2013 he resigned as the Mayor of the Umvoti Municipality without consulting and/or getting the permission of the deploying structure, namely, the Provincial Executive Committee and/or the Provincial Secretary of the ANC.

Basis of PDC application

5. The Chairperson of the PDC sought an extension of time on the grounds that the members of the PDC and the Chief Provincial Presenter were PEC members and, as such, were fully involved in campaign activities for the General Elections from about September 2013 and would only be able to continue with the disciplinary hearing in the first or second week of June 2014.

Evaluation by NDCA

6. When considering an application for extension of time, the NDCA is obliged in terms of Rule 25.54 to take into account all the circumstances, including the competency of the charges and the prospects of success, to establish whether good cause exists for the granting of the application.
7. The fact that the PDC members and the Chief Provincial Presenter were fully engaged in electioneering and therefore not available to continue with the disciplinary hearing is not in dispute.
8. The ANC is a voluntary political organization and members are chosen to represent the organization as public representatives with their consent.
9. It follows that no member can be compelled to represent the ANC in any forum.

10. Conversely, a public representative may resign from his or her position as a public representative or even resign from the ANC itself without fear of reprisal.
11. Based on the voluntary nature of the relationship between the ANC and its members, Rule 25.17 of the ANC Constitution does not contain any provision which makes it an act of misconduct if a member resigns as a public representative or from the organisation itself.

NDCA Finding

12. The charge is not a competent charge.
13. In the interest of equity and fairness, the PDC should not pursue the charge against the comrade and the application for an extension of time is dismissed.

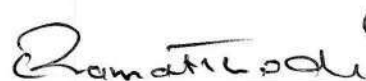
Dated at IRENE, PRETORIA this 23rd day of November 2014



JEFF RADEBE
CHAIRPERSON
NDCA



NALEDI PANDOR
MEMBER
NDCA



NGOAKO RAMATLHODI
MEMBER
NDCA

SANKIE MTHEMBI-
MAHANYELE
MEMBER
NDCA

African National Congress



National Disciplinary Committee of Appeal (NDCA)

OFFICE OF THE CHAIRPERSON: CDE JEFF RADEBE

**IN THE NATIONAL DISCIPLINARY COMMITTEE OF APPEAL
(NDCA)**

HELD AT ST. GEORGE HOTEL, IRENE, PRETORIA

ON FRIDAY 27 NOVEMBER 2015

CASE NUMBER: 4/2015

In the application of

**THE CHAIRPERSON
KWA ZULU NATAL PDC**

Applicant

In the matter between

AFRICAN NATIONAL CONGRESS

Complainant

AND

**MDU KHUZWAYO
MXOLISI NDZIMBOMVU**

Charged Members

NDCA RULING

PDC request for extension of time

1. On 5 November 2015 the Chairperson of the PDC in Kwa Zulu Natal applied to the NDCA in terms of Rule 25.53 of the ANC Constitution for an extension

of time to conclude the disciplinary proceedings against the abovenamed charged members.

Background

2. On 5 February 2015 the charged members allegedly uttered words or made statements that were disrespectful and/or insulting and/or undermining the dignity and authority of the Provincial leadership, in particular the provincial secretary.
3. They were subsequently charged for contravening the following provisions of Rule 25 of the ANC Constitution:-
 - 3.1 Rule 25.17.3 – failing, refusing or neglecting to execute any ANC policy;
 - 3.2 Rule 25.17. 4 - bringing the ANC into disrepute;
 - 3.3 Rule 25.17.6 – behaving in a manner which provokes or is likely to provoke or has the potential to provoke division or impact negatively on the unity of the ANC;
 - 3.4 Rule 25.17.9 - participating in organised factional activity;
 - 3.5 Rule 25.17.15 – disrupting meetings or interfering with the orderly functioning of the ANC.
4. The proceedings commenced before the PDC 25 April 2015 and was postponed.
5. On 30 May 2015 the PDC withdrew the charges against comrade Mxolisi Ndzimbomvu.

Evaluation by NDCA

6. When considering an application for an extension of time, the NDCA is obliged in terms of Rule 25.54 to take into account all the circumstances, including the competency of the charges and the prospects of success, to establish whether good cause exists for the granting of the application.
7. One of the fundamental principles of a fair trial is the charged member should be given sufficient particulars of the charge to enable him or her to plead to the charges.
8. In the present case, the charged members were not informed what were the words uttered by them against the provincial leadership or the provincial secretary in particular.

9. As such, the charges were vague and embarrassing, the charged members would not have been able to prepare adequately for their disciplinary hearing or understand what act of misconduct in Rule 25.17 they could have been charged for.
10. The NDCA is also of the view that the charges of factional activity (Rule 25.17.9) and causing disunity and division in the ANC (Rule 25.17.6) could not be sustained on the facts of the case.

NDCA Finding

11. The PDC should withdraw the charges against comrade Mdu Khuzwayo.
12. The PDC's application for an extension of time is refused.

Dated at Irene, Pretoria on this 27th day of November 2015

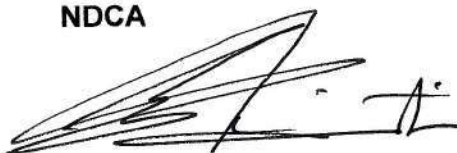


JEFF RADEBE
CHAIRPERSON
NDCA



NALEDI PANDOR
MEMBER
NDCA

PRAVIN GORDHAN
MEMBER
NDCA



GUGILE NKWINTI
MEMBER
NDCA

NGOAKO RAMATHLODI
MEMBER
NDCA

SUE VAN DER MERWE
MEMBER
NDCA

PAM TSHWETE
MEMBER
NDCA

African National Congress



National Disciplinary Committee (NDC)

OFFICE OF THE CHAIRPERSON: CDE DEREK HANEKOM

**IN THE NATIONAL DISCIPLINARY COMMITTEE (NDC) HELD
ON 19 AUGUST 2015 AT 120 PLEIN STREET, CAPE TOWN**

Case No. 4/2015

In the appeal of:-

ZOLILE MASIMINI

Appellant

AND

AFRICAN NATIONAL CONGRESS

Respondent

FINDING

Background

1. On 6 June 2015 the Appellant was suspended for three years pursuant to being found guilty on 4 counts of misconduct in terms of Rule 25 of the ANC Constitution, in particular:-

1.1 Rule 25.17.4 (bringing the ANC into disrepute);

1.2 Rule 25.17.10 (publishing or distributing any media publication without authorisation);

1.3 Rule 25.17.11 (undermining the respect for an ANC structure and

impeding its functioning); and

- 1.4 Rule 25.17.16.3 (undermined the effectiveness of the ANC as an organisation).
2. The specific allegation was that on 4 October 2014 the Appellant divulged to the Daily Dispatch newspaper aspects of a confidential meeting of the ANC's National Working Committee held at the Cala Indoor Sports Centre on 28 September 2014, which information was subsequently found to be false.
3. On 4 October 2014 the Daily Dispatch newspaper published an article entitled, "EC snub to Gwede's political ambitions".
4. The Appellant was quoted in the article as having said:-
 - 4.1 Mantashe even claimed that we carried placards to Calata House saying Mantashe cannot be president; and
 - 4.2 He [Appellant] was shocked when Mantashe mentioned other provincial leaders by name, saying they were receiving preferential treatment as opposed to Gauteng's Paul Mashatile.

Application of NDC Rules of Procedure

5. The NDC was satisfied that the information before it, including the notice of suspension, charge sheet, return of service, PDC record and PDC Finding, was sufficient to determine the appeal without the necessity of convening a formal appeal hearing and accordingly proceeded to deal with the appeal in terms of Rule 11.1 of the NDC Rules of Procedure.

Appellants' grounds of appeal

6. The Appellant advanced, *inter alia*, the following grounds of appeal:-
 - 6.1 There is no evidence that the alleged statement was made by the Appellant;
 - 6.2 In the absence of any other evidence before the PDC, there is no reason why the testimony of the Appellant should be rejected;
 - 6.3 The PDC did not consider other forms of sanction; and

- 6.4 The sanction of three years suspension was disproportional to the nature of the offence and a warning would have been an appropriate sanction.

Evaluation by NDC

Appellants' argument that there is no evidence that the alleged statement was made by the Appellant

7. The Provincial Presenter submitted a copy of the newspaper article as evidence.
8. The Appellant testified that the newspaper contacted him telephonically and he believed that as a leader he had a responsibility to correct what was put to him by the journalist [see pages 16 and 18 of PDC record].
9. The Appellant did not deny that he spoke to the journalist of the Daily Dispatch newspaper.
10. Consequently, the Appellant's argument that there is no evidence that the alleged statement was made by him is rejected.

Appellant's argument that in the absence of any other evidence before the PDC, there is no reason why his testimony should be rejected

11. The Appellant argued that the newspaper article constituted hearsay evidence and was inadmissible because there was no evidence of corroboration [see pages 12 and 13 of PDC record].
12. With regard to the production of documents, video material and photographs, Rule 50 of Appendix 3 of the ANC Constitution provides that, "*it shall not be necessary for either the Presenter or the charged member to call any witness to confirm the authenticity of any document, video or photograph submitted in evidence.*"
13. Consequently the production of the newspaper article was sufficient to prove that the Appellant issued the statement. Consequently, the NDC rejects his argument that in the absence of other evidence his testimony should be accepted.

Merits of the appeal

14. The NDC is satisfied that the Appellant was guilty of contravening:-

- 14.1 Rule 25.17.4 (making an utterance which brought the ANC into disrepute);
- 14.2 Rule 25 17.11 (undermining the respect for the PEC of the ANC in the Eastern Cape); and
- 14.3 Rule 25.17.16.3 (undermining the ANC's effectiveness as an organisation through his utterance).
15. The NDC is not convinced that the Appellant should have been found guilty of contravening Rule 25.17.10 of the ANC Constitution.
16. Rule 25.17.10 makes it an act of misconduct if a member publishes or distributes any media publication without authorisation which purports to be the view of any organised grouping, faction or tendency, within the ANC.
17. In the view of the NDC, the above quoted Rule is intended to curtail the behaviour of members who pursue factional activity within the organisation by distributing media publications such as pamphlets. In the present case, there is no evidence to this effect.
18. Consequently, the Appellant is found not guilty of contravening Rule 25.17.10 of the ANC Constitution.

Sanction imposed by the PDC

Appellant's arguments that the PDC did not consider other forms of sanction and the sanction of three years suspension was disproportional to the nature of the offence and a warning would have been an appropriate sanction


19. In the view of the NDC, divulging information to the media about the discussion at NWC meetings constitutes a serious breach of the trust relationship that is expected of all members when dealing with matters concerning the organisation in a closed meeting.
20. The Appellant's conduct not only brought the ANC into disrepute and publicly undermined the organisation but also served to fuel the perception that the ANC is a divided organisation.
21. Such conduct by the Appellant in the view of the NDC was serious. Consequently, a warning would not have been an appropriate sanction.

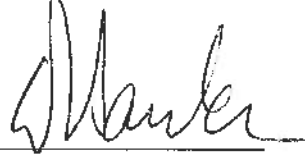
22. The NDC is of the view that an effective suspension of three years would have been appropriate if the Appellant was found guilty on all four charges.
23. However, as a consequence of the NDC's finding that the Appellant was not guilty of contravening Rule 25.17.10, the NDC believes it would be fair and equitable to reduce the sanction imposed by the PDC.

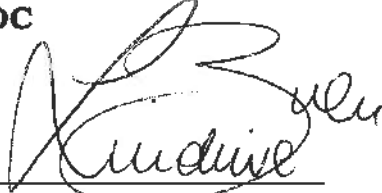
NDC Finding

24. The NDC confirms the PDC Finding that the Appellant was guilty of contravening Rules 25.17.4, 25.17.11 and 25.17 16.3 of the ANC Constitution.
25. The NDC finds the Appellant not guilty of contravening Rule 25.17.10 of the ANC Constitution.
26. The three year sanction imposed by the PDC is reduced to two years and shall terminate on 5 June 2017 (i.e. two years from the date the sanction was imposed by the PDC).

Dated at Cape Town this 19th day of August 2015


SUSAN SHABANGU
MEMBER
NDC


DEREK HANEKOM
CHAIRPERSON
NDC


LINDIWE ZULU
MEMBER
NDC

African National Congress



National Disciplinary Committee of Appeal (NDCA)

OFFICE OF THE CHAIRPERSON: CDE JEFF RADEBE

**IN THE NATIONAL DISCIPLINARY COMMITTEE OF APPEAL
(NDCA)**

CASE NUMBER: 4/2016

In the application of

MARIUS FRANSMAN

Applicant

NDCA FINDING

Background

1. On 8 January 2016 a complaint of sexual assault was lodged against the applicant at a police station in Rustenburg by a female companion who travelled with the applicant from Cape Town to Rustenburg.
2. The ANC subsequently directed the Integrity Commission to investigate the allegation.
3. The Integrity Commission is comprised of respected elders in the ANC who are empowered to protect the good name and reputation of the ANC and to safeguard and promote its character and values.
4. From time to time the Integrity Commission is called upon to interrogate allegations levelled against senior leaders in the organisation which border on ethical, financial or moral impropriety or which brings or could bring or have the potential to bring the ANC into disrepute.

5. On 27 January 2016 the Applicant, the Provincial Chairperson of the ANC in the Western Cape, was directed by the National Working Committee (NWC) to step aside as the Provincial Chairperson until the South African Police Service has taken a final decision on the criminal charge preferred against him on 8 January 2016 at Rustenburg AND the Integrity Commission has investigated the case against him and made its Findings.

6. The preamble to the NWC decision was set out in a letter to the Applicant in the following terms:-

“The National Officials, who are seized with the overall supervision of the ANC, considered representations made to it by structures of the ANC and decided to refer your matter to the NWC”.

7. The NWC also stated in the preamble to its resolution that the decision was taken in the best interest of the organisation.

8. The NWC resolution was signed by the majority of members in the NWC and the decision was sent to the applicant by electronic transmission on 28 January 2016 and a copy was sent to the ANC Deputy Provincial Secretary.

Applicant’s arguments raised in his correspondence

9. The Applicant seeks to set aside his suspension on the grounds that Rule 25.65 of the ANC Constitution provides that a temporary suspension shall lapse if a notice of a charge relating to such suspension is not delivered to the member within 30 (thirty) days from the date of commencement of the temporary suspension.

10. His argument is that his current suspension is invalid because the ANC only charged him in August 2016.

11. The applicant also raised his defences on the 3 charges preferred against him by the NDC and called on the NDCA to quash the charges.

Evaluation by NDCA

12. The ANC is a voluntary political organisation and is managed by its members.

13. For the purpose of this ruling, reference will be made to 3 structures of the organisation - the National Conference, NEC and the NWC.

13.1 The National Conference is the supreme ruling and controlling body of the ANC and is convened at least once every 5 years.

- 13.2 The NEC meets at least once every quarter; and
- 13.3 The NWC meets at least once every fortnight.
14. All 3 structures, together with the Officials, make decisions which are within the aims and objectives of the organisation; are encompassed by the character and value system of the organisation and which are in the best interest of the organisation.
15. The Officials and NWC make decisions on a regular basis, all of which are considered by the NEC at its quarterly meeting and are either ratified, amended or rejected.
16. In terms of the ANC Constitution, the President is the political head and chief directing officer of the ANC. He is empowered to make pronouncements for and on behalf of the NEC outlining and explaining the policy or attitude of the ANC on any question and to direct and orient the activities of the ANC.
17. The Secretary General is the Chief Administrative Officer of the ANC.
18. The other Officials enjoy similar authority which they exercise collectively.
19. On 27 January 2016 the Officials considered representations made by ANC structures regarding the Provincial Chairperson in the Western Cape and subsequently called on the NWC to take appropriate steps in respect of the applicant.
20. The practical effect of the NWC decision that the applicant be directed to step aside is that the applicant would not be permitted to exercise his powers and duties and not obliged to discharge his obligations to the organisation until the conditions set out in the NWC resolution were fulfilled.
21. In the view of the NDCA, a decision to step aside or step down is distinguishable from a temporary suspension imposed on a member in terms of Rules 25.56 to 25.70 of the ANC Constitution.
22. The temporary suspension provisions in the ANC Constitution (Rules 25.56 to 25.70) can only be invoked if a decision has been taken to charge a member for misconduct in terms of Rule 25 and the charge sheet has not been served or where the charge sheet was served but disciplinary proceedings have not as yet commenced or if a member has been charged in a court of law on any charge.
23. The applicant was not facing any disciplinary action for misconduct nor was he indicted to appear in a court of law on any charge as at the relevant time (27 January 2016). As such, the NWC could not

invoke the temporary suspension provisions of the ANC Constitution.

24. In the view of the NDCA, the NWC would have acted unlawfully if it suspended the applicant in terms of the temporary suspension provisions of the ANC Constitution.
25. The NWC directed the applicant to step aside and not exercise his rights, duties and obligations until two conditions were fulfilled – finalisation of the criminal charges and finalisation of the Integrity Commission report. No reference was made in the NWC resolution to the temporary suspension provisions in the ANC Constitution.
26. At the time the NWC decision was conveyed to him (28 January 2016), the applicant tacitly and by his conduct accepted that the NWC and the Officials had the necessary authority to direct him to step aside and he did not question such decision.
27. In the view of the NDCA, every voluntary association has the inherent power to protect its interests and consequently to make decisions and take actions which are in the best interest of the organisation.
28. In the ANC Constitution, the powers of the Officials, NWC and NEC are framed in sufficiently wide terms to enable these structures to act in the best interest of the organisation and make decisions that are rational and within the lawful parameters of the Constitution.
29. Hence, the NWC's decision to direct the applicant to step aside was **not** taken in terms of the temporary suspension provisions of the ANC Constitution in contemplation of disciplinary proceedings but was taken by decision-making structures (Officials and NWC) which had the necessary authority to make such a decision in the best interest of the organisation and for the purpose of protecting the organisation and upholding its character and value system.
30. In the view of the NDCA, the overriding factor when the ANC makes such decisions is whether it is made in good faith and in the best interest of the organisation.
31. Having regard to the facts of this case, the NDCA is satisfied that the Officials and the NWC acted in the best interest of the ANC; acted in good faith and within the legal parameters of the ANC Constitution and not for any arbitrary purpose.
32. In light of the above, the applicant's argument that his suspension lapsed by virtue of the provisions of Rule 25.65 of the ANC Constitution is misplaced.

NDCA Finding

- 33. The applicant’s application is dismissed.
- 34. The applicant’s argument that the NDCA should quash the charges preferred against him for the reasons set out in his correspondence to the NDCA cannot be considered. The NDCA directs that these arguments should be placed before the NDC as the appropriate forum to consider and finalise them.

Decision taken by round robin on 15 September 2016

JEFF RADEBE	CHAIRPERSON NDCA	<i>J. Radeg.</i>
NALEDI PANDOR	MEMBER NDCA	<i>G. N. M. Pandor</i>
GUGILE NKWINTI	MEMBER NDCA	<i>G. N. M. Pandor</i>
NGOAKO RAMATHLODI	MEMBER NDCA	<i>G. N. M. Pandor</i>
PRAVIN GORDHAN	MEMBER NDCA	<i>P. Gordhan</i>
PAM TSHWETE	MEMBER NDCA	
SUE VAN DER MERWE	MEMBER NDCA	

African National Congress



National Disciplinary Committee of Appeal (NDCA)

OFFICE OF THE CHAIRPERSON: CDE JEFF RADEBE

**IN THE NATIONAL DISCIPLINARY COMMITTEE OF APPEAL
(NDCA)**

HELD AT ST. GEORGE HOTEL, IRENE, PRETORIA

ON SATURDAY 22nd AND SUNDAY 23rd NOVEMBER 2014

CASE NUMBER: 5/2014

In the application of

**THE CHAIRPERSON
PDC KWAZULU NATAL**

Applicant

In the matter between

AFRICAN NATIONAL CONGRESS

Complainant

AND

BONAKELE KLEINBOOI

Charged Member

NDCA RULING

PDC request for extension of time

1. On 20 May 2014 the Chairperson of the PDC in KwaZulu Natal applied to the NDCA in terms of Rule 25.53 of the ANC Constitution for an extension of time to conclude the disciplinary proceedings against the abovenamed charged member.

Background to charges

2. The charged member is a Councillor in the Umzimkhulu Municipality.
3. He was charged on 25 September 2013 for contravening Rules 25.17.4, 25.17.8, 25.17.16.3 and 25.17.19 of the ANC Constitution.
4. The specific allegation was that during the period March/April 2013, at or near Riverside Farm, Umzimkhulu, he personally and/or in concert with others, directed and/or facilitated and/or assisted in the theft or attempted theft of material viz. steel, which was the lawful property of the Umzimkhulu Municipality, and/or the State, and/or the Riverside community.

Basis of PDC application

5. The Chairperson of the PDC sought an extension of time on the grounds that the members of the PDC and the Chief Provincial Presenter were PEC members and, as such, were fully involved in campaign activities for the General Elections from about September 2013 and would only have been able to continue with the disciplinary hearing in the first or second week of June 2014.

Evaluation by NDCA

6. According to the representations made by the Chairperson of the PDC, the disciplinary hearing commenced on 13 October 2013 and resumed on 26 January 2014.
7. At a subsequent hearing on 12 February 2014, the charged member gave notice of his intention to bring an application for the withdrawal of the charges and the matter was postponed until after the General Elections.
8. The fact that the PDC members and the Chief Provincial Presenter were fully engaged in electioneering and therefore not available to continue with the disciplinary hearing is not in dispute.
9. When considering an application for an extension of time, the NDCA is obliged in terms of Rule 25.54 to take into account all the circumstances, including the competency of the charges and the prospects of success, to establish whether good cause exists for the granting of the application.

10. The charged member is a local councillor and a public representative of the ANC. As such, he is expected to set a high moral standard for the general public and the ratepayers of his municipality to emulate.
11. He also has a duty to protect the good name and reputation of the ANC and not to engage in any conduct, in his capacity as a public representative, which could or would or have the likelihood to bring the ANC into disrepute.
12. Theft is a very serious criminal offence. The particular allegation against the charged member takes on a more serious proportion if one has regard to the fact that he was entrusted by the ANC and the public to take care of public property.
13. In the view of the NDCA, the PDC should have acted in a more forceful manner in upholding the good name and reputation of the ANC. The PEC itself should have laid criminal charges with the S.A. Police Service against the charged member to demonstrate to the general public and ANC members that the ANC is serious about routing out criminal conduct in the organization. If a criminal charge has not been opened, the PEC should do so without delay.
14. Had the PEC taken these steps, it would have been possible for the PEC to have invoked Rule 25.70 of the ANC Constitution to suspend the charged member and impose terms and conditions to regulate his participation and conduct in the ANC during the period of his suspension.
15. The fact that the PEC did not take these steps conveys the incorrect impression that the ANC is not serious about crime and that discipline is implemented selectively within the organization.
16. There is no specific provision in Rule 25.17 of the ANC Constitution which entitles the ANC or any of its structures to enforce organizational discipline by instituting disciplinary proceedings against any member for the alleged commission of a criminal act which was not committed during ANC meetings, assemblies, gatherings or associated with the orderly functioning of the ANC.
17. However, Rules 25.17.1, 25.17.2 and 25.17.17 of the ANC Constitution makes it permissible to discipline any member *after* he or she has been convicted in a court of law.

NDCA Finding

18. For the above reasons, the application for an extension of time is dismissed.
19. If the charged member is convicted in a court of law, the PEC should apply its discretion at that stage to consider disciplinary action against the charged member.

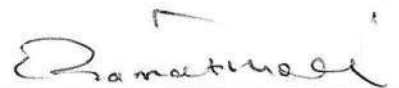
Dated at IRENE, PRETORIA this 23rd day of November 2014



**JEFF RADEBE
CHAIRPERSON
NDCA**



**NALEDI PANDOR
MEMBER
NDCA**



**NGOAKO RAMATLHODI
MEMBER
NDCA**

African National Congress



National Disciplinary Committee of Appeal (NDCA)

OFFICE OF THE CHAIRPERSON: CDE JEFF RADEBE

**IN THE NATIONAL DISCIPLINARY COMMITTEE OF APPEAL
(NDCA)**

HELD AT ST. GEORGE HOTEL, IRENE, PRETORIA

ON FRIDAY 27 NOVEMBER 2015

CASE NUMBER: 5/2015

In the application of:

The KZN PDC Chairperson Applicant

In the matter between

AFRICAN NATIONAL CONGRESS Complainant

AND

Sifiso Mkhize

Nkosimpendulo Dlamini

Bongumuso Mkhize

Stanley Moonsamy

Mwolisi Ndzimbomvu

Application Granted

Reason appear in attached ruling

Members Present:

- | | |
|-----------------------|-------------|
| 1. Cde Jeff Radebe | Chairperson |
| 2. Cde Naledi Pandor | Member |
| 3. Cde Gugile Nkwinti | Member |

J. Radebe

Cde Jeff Radebe
NDCA Chairperson

African National Congress



National Disciplinary Committee of Appeal (NDCA)

OFFICE OF THE CHAIRPERSON: CDE JEFF RADEBE

**IN THE NATIONAL DISCIPLINARY COMMITTEE OF APPEAL
(NDCA)**

HELD AT ST. GEORGE HOTEL, IRENE, PRETORIA

ON FRIDAY 27 NOVEMBER 2015

CASE NUMBER: 5/2015

In the application of

**THE CHAIRPERSON
KWA ZULU NATAL PDC**

Applicant

In the matter between

AFRICAN NATIONAL CONGRESS

Complainant

AND

**SIFISO MKHIZE
NKOSIPHENDULE DLAMINI
BONGUMUSA MKHIZE
STANLEY MOONSAMY
MWOLISI NDZIMBOMVU**

Charged Members

NDCA RULING

PDC request for extension of time

1. On 5 November 2015 the Chairperson of the PDC in Kwa Zulu Natal applied to the NDCA in terms of Rule 25.53 of the ANC Constitution for an extension of time to conclude the disciplinary proceedings against the abovenamed charged members.

Background

2. On 23 February 2015 the charged members allegedly led a march to the provincial ANC office and disrupted the provincial executive committee meeting which was in progress and uttered words or made statements that were disrespectful and/or insulting and/or undermining the dignity and authority of the Provincial leadership, in particular the provincial chairperson.
3. They were subsequently charged for contravening the following provisions of Rule 25 of the ANC Constitution:-
 - 3.1 Rule 25.17. 4 - bringing the ANC into disrepute;
 - 3.2 Rule 25.17.6 – behaving in a manner which provokes or is likely to provoke or has the potential to provoke division or impact negatively on the unity of the ANC;
 - 3.3 Rule 25.17.9 - participating in organised factional activity;
 - 3.4 Rule 25.17.11 – impeding the functioning of any structure or committee of the ANC;
 - 3.5 Rule 25.17. 15 - disrupting meetings or interfering with the orderly functioning of the ANC.
4. The proceedings commenced before the PDC 25 April 2015 and was postponed.
5. At subsequent PDC hearings on 6 June, 26 July and 12 September, the proceedings could not be finalised due to the unavailability of the representative of the charged members.

Evaluation by NDCA

6. When considering an application for an extension of time, the NDCA is obliged in terms of Rule 25.54 to take into account all the circumstances, including the competency of the charges and the prospects of success, to establish whether good cause exists for the granting of the application.

7. On 23 April 2015 the charged members requested further particulars to the charges, in particular they wanted to know what were the words they allegedly uttered which were disrespectful and/or insulting and/or undermining the dignity and authority of the Provincial leadership, in particular the provincial chairperson.
8. The ANC in its reply stated that the words uttered were a matter of evidence but went to state that the charged members, inter alia, howled, 'No' and 'that one has betrayed the struggle'.
9. One of the fundamental principles of a fair trial is the charged member should be given sufficient particulars of the charge to enable him or her to plead to the charges.
10. In the present case, the charged members were not informed what were the words uttered by them against the provincial leadership or the provincial chairperson in particular that would constitute a breach of Rule 25.17 of the ANC Constitution.
11. As such, the charged members would not have been able to prepare adequately for their disciplinary hearing or understand what act of misconduct in Rule 25.17 they could have been charged for.
12. The NDCA also finds that the facts of the charge (disrupting a PEC meeting) do not provide any basis or constitute a prima facie case for the members to be charge for engaging in factional activity or provoking divisions or impacting negatively on the unity of the ANC.
13. In the view of the NDCA, the ANC would have to lead more substantive evidence to sustain a conviction for contravening Rule 25.17.6 or Rule 25.17. 9 of the ANC Constitution.
14. Consequently, the NDCA is of the view that the PDC should not continue with the two charges for contravening Rule 25.17.6 or Rule 25.17. 9 of the ANC Constitution.
15. On the last three sittings, the PDC could not continue with the hearing due to the unavailability of the representative of the charged members.
16. Consequently, no fault can be attributed to the PDC for failing to finalising the disciplinary hearing within the prescribed time stipulated in the ANC Constitution.

NDCA Finding

17. The PDC should withdraw the charges for contravening Rule 25.17.6 and 25.17.9 of the ANC Constitution.

18. The charge that the comrades uttered derogatory words which were disrespectful and/or insulting and/or undermining the dignity and authority of the Provincial leadership, in particular the provincial chairperson should also be withdrawn.
19. Insofar as the remaining charge is concerned, the NDCA is satisfied that a prima facie case exists for the PDC to continue with the charge that the charged members disturbed or disrupted a provincial executive committee meeting. For this purpose, the PDC's application for an extension of time is granted.
20. The PDC Chairperson is directed to send a strongly worded letter to the charged members that the ANC would not tolerate their dilatory conduct and that should their representative not appear on the next date of the hearing, the proceedings will continue in the absence of their representative.

Dated at Irene, Pretoria on this 27th day of November 2015

Sgt. J. Radabe

JEFF RADEBE
CHAIRPERSON
NDCA

Sgt. N. Pandor

NALEDI PANDOR
MEMBER
NDCA

PRAVIN GORDHAN
MEMBER
NDCA

NGOAKO RAMATHLODI
MEMBER
NDCA

Sgt. G. Nkwinti

GUGILE NKWINTI
MEMBER
NDCA

SUE VAN DER MERWE
MEMBER
NDCA

PAM TSHWETE
MEMBER
NDCA

African National Congress



National Disciplinary Committee of Appeal (NDCA)

OFFICE OF THE CHAIRPERSON: CDE JEFF RADEBE

**IN THE NATIONAL DISCIPLINARY COMMITTEE OF APPEAL
(NDCA)**

HELD AT ST. GEORGE HOTEL, IRENE, PRETORIA

ON SATURDAY 22nd AND SUNDAY 23rd NOVEMBER 2014

CASE NUMBER: 7/2014

In the application of

**THE CHAIRPERSON
PDC KWAZULU NATAL**

Applicant

In the matter between

AFRICAN NATIONAL CONGRESS

Complainant

AND

**MPHUMEZI NKUMBESI
BUSI MDINGARA
BHEKANI GCABA
THABISILE NCAYIYANE
REVEREND VH MABASO
THANDA MTHEMBU
LULU MTHEMBU
NOLUBABALO MTHEMBU**

Charged Members

NDCA RULING

PDC request for extension of time

1. On 20 May 2014 the Chairperson of the PDC in KwaZulu Natal applied to the NDCA in terms of Rule 25.53 of the ANC Constitution for an extension of time to conclude the disciplinary proceedings against the abovenamed charged members.

Background to charges

2. The comrades were charged on 7 January 2014 for contravening Rules 25.17.4, 25.17.5, 25.17.6, 25.17.11, 25.17.15, 25.17.16.1, 25.17.16.2 and 25.17.16.3 of the ANC Constitution.
3. The specific allegation against all the charged members was that on or about 8 November 2012 at the Lamontville Community Hall, where the eThekweni Branch General Meeting was scheduled to be held, they acted in a threatening manner and uttered derogatory words as set out in the charge sheet which were targeted at comrade Stanley Moonsamy, the regional deployee to the BGM.
4. The charge sheet was served on 7 January 2014. The disciplinary hearing was set down for 9 February 2014 but was postponed.

Basis of PDC application

5. The Chairperson of the PDC sought an extension of time on the grounds that the members of the PDC and the Chief Provincial Presenter were PEC members and, as such, were fully involved in campaign activities for the General Election from about September 2013 and would only be able to continue with the disciplinary hearing in the first or second week of June 2014.

Evaluation by NDCA

6. The fact that the PDC members and the Chief Provincial Presenter were fully engaged in electioneering and therefore not available to proceed with the disciplinary hearing is not in dispute.
7. In terms of Rule 25.54 the NDCA, when considering an application for an extension of time, is obliged to take into account all the circumstances, including the competency of the charges and the

prospects of success, to establish whether good cause exists for the granting of the application.

8. In the view of the NDCA, comrade Stanley Moonsamy, as a regional deployee to the BGM, would have reported his ordeal at the eThekweni BGM almost immediately to the REC.
9. The charges were instituted on 7 January 2014 - one year and two months after the date of the alleged act of misconduct and in clear contravention of Rule 25.49 of the ANC Constitution which require the charge sheet to be delivered within 3 months.
10. The PEC should investigate why the REC failed to institute disciplinary action at the time the act of misconduct was allegedly committed.
11. The PEC should also strengthen its disciplinary machinery to ensure that such a lapse does not occur again and that the general public and ANC membership is not left with the wrong impression that the ANC does not take discipline seriously.
12. Although the act of misconduct is very serious, the NDCA is mindful that procedural fairness is a cornerstone of the ANC's disciplinary machinery as set out in the Constitution.

NDCA Finding

13. Although the charges against the comrades are very serious, the NDCA finds that the continuation of disciplinary action would be grossly unfair and prejudicial to the charged members because the time limit of 3 months prescribed in Rule 25.49 was not adhered to.
14. For the sake of procedural fairness, the disciplinary proceedings should be stopped.
15. For the above reasons, the application for an extension of time is dismissed.
16. In the furtherance of the ANC's social cohesion campaign, the NDCA directs the PEC to reprimand the charged members for their conduct and educate them about the values, character and strategic objective of the ANC to form a South African nation, comprised of Africans, Coloureds, Indians and Whites.

Dated at IRENE, PRETORIA this 23rd day of November 2014

J. Radtke

**JEFF RADEBE
CHAIRPERSON
NDCA**

G.N.M. Pandor

**NALEDI PANDOR
MEMBER
NDCA**

Ngako Ramatlhodi

**NGOAKO RAMATLHODI
MEMBER
NDCA**

**SANKIE MTHEMBI-
MAHANYELE
MEMBER
NDCA**

African National Congress



National Disciplinary Committee of Appeal (NDCA)

OFFICE OF THE CHAIRPERSON: CDE JEFF RADEBE

**IN THE NATIONAL DISCIPLINARY COMMITTEE OF APPEAL
(NDCA)**

HELD AT ST. GEORGE HOTEL, IRENE, PRETORIA

ON FRIDAY 27 NOVEMBER 2015

CASE NUMBER: 7/2015

In the application of

**THE CHAIRPERSON
KWA ZULU NATAL PDC**

Applicant

In the matter between

AFRICAN NATIONAL CONGRESS

Complainant

AND

**SIYABONGA THANGO
ZANELE NDZOYIYA
SDUDUZO MAGWAZA**

Charged Members

NDCA RULING

PDC request for extension of time

1. On 5 November 2015 the Chairperson of the PDC in Kwa Zulu Natal applied to the NDCA in terms of Rule 25.53 of the ANC Constitution

for an extension of time to conclude the disciplinary proceedings against the abovenamed charged members.

Background

2. The allegation against the charged members was that on 15 March 2015 at the Ward 30 BGM of the ANC held at the Chesterville Community Hall, they consciously worked towards the failure of the BGM by:-
 - 2.1 discouraging members from attending;
 - 2.2 failing to participate effectively in programmes of the ANC towards a successful BGM;
 - 2.3 intimidating members not to attend; and
 - 2.4 refusing to sign the register for the BGM.
3. The charged members were alleged to have contravened the following acts of misconduct:-
 - 3.1 Rule 25.17.3 – failing or neglecting to execute ANC policy;
 - 3.2 Rule 25.17.4 – bringing the ANC into disrepute;
 - 3.3 Rule 25.17.5 – sowing racism or any other form of discrimination;
 - 3.4 Rule 25.17.6 – provoking divisions or impacting negatively on the unity of the ANC;
 - 3.5 Rule 25.17.8 – abuse of an elected or employed office to obtain an undue advantage;
 - 3.6 Rule 25.17.9 – participating in organized factional activity;
 - 3.7 Rule 25.17.11 – impeding the functioning of any structure or committee of the ANC; and
 - 3.8 Rule 25.17.15 – behaving in an unruly manner at ANC meetings and/or disrupting meetings.

4. Charge Two was preferred against comrade Siyabonga Thango for carrying a firearm to the said meeting.
5. The disciplinary hearing was postponed on 25 July 2015 at the request of the charged members and was postponed again on 8 August 2015 due to the absence of one of the charged members.

Evaluation by NDCA

6. When considering an application for an extension of time, the NDCA is obliged in terms of Rule 25.54 to take into account all the circumstances, including the competency of the charges and the prospects of success, to establish whether good cause exists for the granting of the application.
7. On Charge One, the NDCA is of the view that the charge is too widely framed. The alleged acts of misconduct should be set out separately so that the charged members would be placed in a position to understand the precise nature of the charges against them.
8. The charge against Comrade Thango for carrying a firearm to an ANC meeting and pointing that firearm at members in an ANC meeting is a very serious charge.
9. In the view of the NDCA such action is not only criminal conduct which brings the ANC into disrepute in the community which it purports to serve but it also subverts the very essence of a voluntary association where members should feel free to associate with each other without fear of criminal acts being visited upon them.
10. On the last two sittings, the PDC could not continue with the disciplinary hearing due to a request for a postponement by the charged members' representative on the first occasion and the unavailability of one of the charged members on the second occasion.
11. Consequently, no fault can be attributed to the PDC for failing to finalising the disciplinary hearing within the prescribed time as stipulated in the ANC Constitution.

NDCA Finding

12. The application for an extension of time is granted.
13. The PDC should reformulate Charge One against the charged members.
14. The PDC should proceed with Charge Two against comrade Siyabonga Thango.

Dated at Irene, Pretoria on this 27th day of November 2015

Sgd. J. Radebe

**JEFF RADEBE
CHAIRPERSON
NDCA**

Sgd. N. Pandor

**NALEDI PANDOR
MEMBER
NDCA**

Sgd. G. Nkwinti

**GUGILE NKWINTI
MEMBER
NDCA**

African National Congress



National Disciplinary Committee of Appeal (NDCA)

OFFICE OF THE CHAIRPERSON: CDE JEFF RADEBE

**IN THE NATIONAL DISCIPLINARY COMMITTEE OF APPEAL
(NDCA)**

HELD AT ST. GEORGE HOTEL, IRENE, PRETORIA

ON SATURDAY 22 AND SUNDAY 23 NOVEMBER 2014

CASE NUMBER: 8/2014

In the application of

THANDAZA BOOI

Applicant

In the matter between

AFRICAN NATIONAL CONGRESS

Complainant

AND

THANDAZA BOOI

Charged Member

NDCA RULING

1. The Eastern Cape PWC suspended the Applicant on 30 October 2014 pending the institution of disciplinary proceedings against him.

2. On 13 September 2014 the Applicant allegedly informed his branch members, through SMSs, that the branch audit meeting was cancelled.
3. This information contradicted a directive from the Secretary of the sub region, issued on 12 September 2014, that it was important for all branch members to attend the audit meeting.
4. The Applicant applied to the NDCA to set aside the temporary suspension on the grounds that the accusation was not true and that it was a once-off incident which did not justify a suspension.
5. The disciplinary hearing is scheduled to commence today in King Williams Town.

EVALUATION BY NDCA

6. Branch audits are necessary to determine the authenticity of membership of branch members, the eligibility of branch members to contest elections within the branch and higher structures of the ANC and the representivity of branches at elective conferences of the ANC.
7. The audit is a very importance and expensive exercise. It is intended to maintain fairness and democracy within the ANC and the orderly functioning of the organisation.
8. The alleged conduct of the Applicant constitutes a serious violation of the democratic right of members and put the orderly functioning of the ANC at risk.
9. The Applicant is an office bearer in his branch and it is very likely that members of his branch would have regarded any information send out by him as true.
10. The act of sending out SMSs is a simple act conducted by a person individually and does not require the collaboration of any other member.
11. Other than a bare denial and that the alleged misconduct was a once-off act (which will be tested at the disciplinary hearing), the Applicant has not provided any assurance to the PWC that he will not conduct similar acts in the future.
12. In the circumstances of this case, the interest of the ANC to maintain order takes precedence over any prejudice which the applicant may suffer by his temporary inability to participate in the activities of his branch during his disciplinary hearing.

13. The high premium placed by the ANC on maintaining orderly functioning is underpinned by Rule 25.58 which authorises structures of the ANC to suspend a member telephonically and without prior notice.

NDCA Ruling

14. The application to set aside the temporary suspension is dismissed.

Dated at Irene, Pretoria this 23rd day of November 2014



JEFF RADEBE
CHAIRPERSON
NDCA



NALEDI PANDOR
MEMBER
NDCA



NGOAKO RAMATLHODI
MEMBER
NDCA

African National Congress



National Disciplinary Committee of Appeal (NDCA)

OFFICE OF THE CHAIRPERSON: CDE JEFF RADEBE

**IN THE NATIONAL DISCIPLINARY COMMITTEE OF APPEAL
(NDCA)**

HELD AT ST. GEORGE HOTEL, IRENE, PRETORIA

ON SATURDAY 22 AND SUNDAY 23 NOVEMBER 2014

CASE NUMBER: 9/2014

In the application of

ZOLILE MASIMINI

Applicant

In the matter between

AFRICAN NATIONAL CONGRESS

Complainant

AND

ZOLILE MASIMINI

Charged Member

NDCA RULING

1. The Eastern Cape PWC suspended the Applicant on 27 October 2014 pending the institution of disciplinary proceedings against him.

2. The PWC alleged that on 28 September 2014 the Applicant provided false information to the media relating to a meeting held by the NWC when it visited the Chris Hani region.
3. The Applicant applied to the NDCA to set aside the temporary suspension on the grounds that the PWC chose to believe the editor of the newspaper concerned, the allegation was not true and that it was a once-off incident which did not justify a suspension.
4. The disciplinary hearing is scheduled to commence today in King Williams Town.

EVALUATION BY NDCA

5. The visit by the NWC to the region was a high profile event which generated much interest among members in the region. As such, members were prone to believe as true whatever is said in the media about the meeting.
6. The alleged conduct of the Applicant, if proved at the disciplinary hearing, constitutes a serious breach of the ANC Constitution and would put the orderly functioning of the ANC at risk.
7. Misinformation is a very destabilising act and threatens the stability of the ANC.
8. Other than a bare denial and that the alleged misconduct was a once-off act (which will be tested at the disciplinary hearing), the Applicant has not provided any assurance to the PWC that he will not conduct similar acts in the future.
9. The Applicant did not deny speaking to the journalist nor is it likely that the journalist or the editor of the newspaper concerned will appear before the disciplinary inquiry to substantiate the contents of the media statement.
10. In the circumstances of this case, the interest of the ANC to maintain order and stability within the organisation takes precedence over any prejudice which the applicant may suffer by his temporary inability to participate in the activities of the organisation during his disciplinary hearing.
11. The high premium placed by the ANC on maintaining orderly functioning is underpinned by Rule 25.58 which authorises structures of the ANC to suspend a member telephonically and without prior notice.

NDCA Ruling

12. The application to set aside the temporary suspension is dismissed.

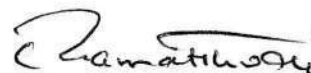
Dated at Irene, Pretoria this 23rd day of November 2014



**JEFF RADEBE
CHAIRPERSON
NDCA**



**NALEDI PANDOR
MEMBER
NDCA**



**NGOAKO RAMATLHODI
MEMBER
NDCA**

**SANKIE MTHEMBI-
MAHANYELE
MEMBER
NDCA**

African National Congress



National Disciplinary Committee of Appeal (NDCA)

OFFICE OF THE CHAIRPERSON: CDE JEFF RADEBE

**IN THE NATIONAL DISCIPLINARY COMMITTEE OF APPEAL
(NDCA)**

HELD AT ST. GEORGE HOTEL, IRENE, PRETORIA

ON SATURDAY 22 AND SUNDAY 23 NOVEMBER 2014

CASE NUMBER: 10/2014

In the application of

AYANDA NUKU

Applicant

In the matter between

AFRICAN NATIONAL CONGRESS

Complainant

AND

AYANDA NUKU

Charged Member

NDCA RULING

1. The Eastern Cape PWC suspended the Applicant on 30 October 2014 pending the institution of disciplinary proceedings against him.

2. The PWC alleged that the Applicant was continuing to deny a directive of the NEC issued in June 2013 regarding the holding of two positions simultaneously.
3. The Applicant applied to the NDCA to set aside the temporary suspension on the grounds that the PWC did not give him an opportunity to be heard prior to imposing and that the allegation against him was vague.
4. The disciplinary hearing is scheduled to commence today in King Williams Town.

EVALUATION BY NDCA

5. In deciding whether a temporary suspension should be enforced or dismissed, the primary consideration is whether the applicant is likely to engage in further acts of misconduct during his disciplinary hearing.
6. Failing to obey a directive of the NEC, the highest decision-making structure in the ANC between National Conferences is a very serious offence.
7. The Applicant's current continuing conduct of refusing to obey the NEC directive is sufficient to convince the NDCA that the Applicant has no regard for the authority of the highest decision-making structure in the ANC.
8. The alleged conduct of the Applicant if proved at the disciplinary hearing, constitutes a serious breach of the ANC Constitution and would put the orderly functioning of the ANC at risk.
9. In the circumstances of this case, the interest of the ANC to maintain order and stability within the organisation takes precedence over any prejudice which the applicant may suffer by his temporary inability to participate in the activities of the organisation during his disciplinary hearing.
10. The high premium placed by the ANC on maintaining orderly functioning is underpinned by Rule 25.58 which authorises structures of the ANC to suspend a member telephonically and without prior notice.

NDCA Ruling

11. The application to set aside the temporary suspension is dismissed.

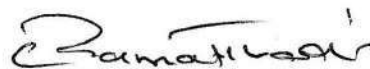
Dated at Irene, Pretoria this 23rd day of November 2014



JEFF RADEBE
CHAIRPERSON
NDCA



NALEDI PANDOR
MEMBER
NDCA



NGOAKO RAMATLHODI
MEMBER
NDCA

SANKIE MTHEMBI-
MAHANYELE
MEMBER
NDCA

African National Congress



National Disciplinary Committee (NDC)

OFFICE OF THE CHAIRPERSON: CDE MILDRED OLIPHANT

IN THE NATIONAL DISCIPLINARY COMMITTEE

Case Number 1/2020

In the matter between:-

SITHEMBISO SICENGU

Appellant

and

AFRICAN NATIONAL CONGRESS

Respondent

NDC FINDING

Background

1. The Appellant is the ward councillor of Ward 19 in the Mbashe Local Municipality representing the African National Congress.
2. The Appellant was charged on four counts of misconduct for sowing political intolerance; failing, neglecting or refusing to execute or to comply with a PEC resolution; behaving in a manner that brought the ANC into disrepute and breaching the membership oath.
3. The background to the charges was that the ANC regional and provincial structures, after consultation with the community, decided to redeploy the Appellant to another position because he was not achieving the objectives of the organisation in ward 19 where he is a ward councillor.
4. Whilst the Appellant was awaiting re-deployment, the ANC undertook to pay him a salary on the same level he was being paid as a councillor.

5. In June 2019 the Appellant initially agreed to resign but subsequently changed his mind because he wanted written assurance from the ANC of the position to which he was to be re-deployed.
6. After months of negotiations without success, the PEC in November 2019 decided to institute disciplinary action against the Appellant.
7. At the PDC hearing on 16 February 2020, the Appellant was found guilty on two counts of misconduct and suspended for three years.
8. The PDC informed the Appellant of his right to appeal.
9. The next day, 17 February 2020, the Appellant filed a document styled as 'Application for Leave to Appeal' and purportedly sent copies to the ANC at Calata House in King Williams Town, the Amatole region in Stutterheim and the ANC Head Office at Luthuli House in Johannesburg.
10. The application for leave to appeal never reached the intended parties nor did the Appellant provide any documentary proof to the NDC that the document was in fact sent to these parties.
11. After the period for appealing the PDC finding had lapsed, the ANC communicated the Appellant's three-year suspension to the Independent Electoral Commission and a vacancy was duly declared in Ward 19. This vacancy is due to be filled through a by-election on 11 November 2020.
12. In light of this development, the Appellant applied to a High Court to interdict the abovementioned process.

NDC Rules of Procedure

13. Despite the time lapse and notwithstanding the point *in limine* raised by the ANC that the appeal was out of time and that there is no procedure in the ANC disciplinary processes for an application for leave to appeal, the NDC has decided to adjudicate the appeal for the following reasons:-
 - 13.1 Although the Appellant had the benefit of representation, his representative was unable to attend the PDC hearing.
 - 13.2 Although he was informed by the PDC of his right to appeal, the Appellant acted impulsively and filed an application for leave to appeal the next day.
 - 13.3 Without condoning the incorrect procedure followed and the failure to provide proof that an appeal was indeed lodged, it is apparent that the Appellant intended to appeal – and this intention was expressed within the 21-day time limit prescribed

in the ANC Constitution for lodging appeals.

13.4 Based on the above, the NDC decided to hear the appeal and not uphold the point *in limine*.

14. The NDC also directed both parties to file additional documents if they so desired and to make oral representations on 9 November when the matter was heard.

15. Due to the restrictions brought about by the COVID 19 pandemic, the appeal was conducted in a virtual meeting.

Appellant's grounds of appeal

16. At the NDC hearing Appellant raised a number of procedural points viz. that he did not receive all the documents, there was no deployment commitment from the ANC, his postponement request was denied by the PDC and finally that the Province raised new charges in its Heads of Argument.

17. After considering the PDC record and the documents of record filed in the appeal, the NDC dismissed these procedural arguments.

18. The Appellant's main ground of appeal was based on a technicality viz. that there was no resolution of the PEC that the Appellant should resign his position as a councillor.

19. The Appellant also argued that exhibits handed in by the ANC at the PDC hearing should have been excluded because the Appellant did not consent to them being handed in without formal proof.

20. The Appellant also argued that the 3-year sanction was excessive.

21. In response to a written request by the NDC for an explanation, the Appellant denied that he walked out of a meeting convened at the ANC Provincial Head Office at Calata House in November 2019 to discuss his resignation and re-deployment.

Appellant's representation at hearing

22. Appellant indicated that he was being represented by attorney Moodley and an advocate, both of whom were experiencing difficulty in connecting with the virtual meeting.

23. Mr Moodley eventually succeeded in joining the meeting.

24. ANC provincial representative, advocate Sishuba, wanted to know whether Mr Moodley was a member in good standing of the ANC.

25. After Mr Moodley indicated that he was not, the NDC Chairperson

informed him that the ANC Constitution provided for representation by a member in good standing of the organisation. Since he was not, he was requested to leave the meeting. Mr Moodley left.

26. The Chairperson then gave the Appellant an opportunity to contact his other representative before commencing proceedings.
27. After about 10 minutes, the Appellant indicated that he still could not contact his representative but consented to the appeal proceeding.
28. The Chairperson left it open for the Appellant's representative to join the meeting at any stage thereafter. For the record, during the 3-hour appeal, the Appellant's second representative did not join the meeting.

Matters raised by NDC members

29. After both the Appellant and Advocate Sishuba made their representations, NDC members were given an opportunity to raise points of clarification and both parties were given an opportunity to respond.
30. In the case of the ANC, the NDC allowed comrade Ndabeni, a PEC member who had first hand knowledge of the case, to respond to some of the issues raised by NDC members.

NDC Evaluation

31. The Chairperson thanked the parties for their input and requested them to leave the meeting so that the NDC could deliberate and make a finding as provided for in Rule 60 of Appendix 3 of the ANC Constitution.
32. In the view of the NDC, procedural fairness is a cornerstone of ANC disciplinary proceedings and the onus rests upon the organisation to ensure that a fair and just procedure prevails.
33. Although the PDC had informed the Appellant of his right to appeal, the ANC has not explained, for the purposes of this appeal, why it proceeded to call on the Independent Electoral Commission to declare a vacancy in Ward 19 without any further recourse to the Appellant or the ANC Caucus in the Mbashe municipality to establish whether an appeal had been noted with the 21-day period.
34. From the PDC record, it seems that the ANC relied on a deployment agreement that the Appellant signed in 2016 to the effect that he would voluntarily vacate his seat in the council if called upon by the ANC to do so or pursuant to disciplinary proceedings.
35. The NDC notes that this matter is currently before a High Court and

will not comment further.

36. In terms of Rule 50 of Appendix 3 of the ANC Constitution, it is not necessary for either the Presenter or the charged member to call any witness to confirm the authenticity of any document, video or photograph submitted in evidence.
37. Moreover both parties can present any number of documents and visual forms of evidence which are relevant to the proceedings without seeking the consent of the other.
38. Also, according to the PDC record, a pre-hearing conference was held on the morning of 16 February before the PDC hearing commenced, and both parties agreed to the admissibility of documents which constitute the record.
39. Consequently, the Appellant's argument that he did not consent to the admission of documents is dismissed.

Charge 2

40. The PDC found the Appellant guilty of breaching Rule 25.17.3 of the ANC Constitution for failing, refusing or neglecting to comply with a PEC resolution.
41. The only PEC resolution that was available to the PDC and the NDC was the PEC's decision to institute disciplinary action against the Appellant after he had failed to resign as a councillor pursuant to discussions between him and the regional and provincial leadership and the troika of the Mbashe Local Municipality which took place between 19 June and 28 November 2019.
42. In the view of the NDC, it is the ANC's prerogative to recall and re-deploy public representatives should circumstances warrant such action.
43. These decisions are made at various levels of the organisation such as the national and provincial deployment committees, list committees, the NEC or NWC, the PEC or PWC, RECs and by the ANC Caucus in municipalities. In short, these are organisational decisions which are made by the ANC from time to time after considering all the local dynamics.
44. From the evidence presented to the PDC and NDC, it is apparent that sufficient grounds existed, particularly the concerns raised by the community in Ward 19, for the ANC to conclude that the Appellant was not adequately discharging his duty to serve the constituency to which he was deployed.
45. Charge 2 specifically provides that the Appellant was found guilty for

not complying with a PEC resolution. As stated above, there is no evidence of such a resolution.

46. The NDC believes that the narration of events between June and November 2019 and the conduct of the Appellant was considered by the PEC when the decision was taken to institute disciplinary action against him. In short, the events and conduct of the Appellant would have informed the PEC decision to institute disciplinary proceedings.
47. However, the charge sheet is framed in a manner which states that it was the PEC which decided to recall and redeploy the Appellant.
48. The Appellant raised this point in his Heads of Argument.
49. But from the facts, it is clear that the decision to recall and redeploy the Appellant was an organisational decision taken after painstaking consultations with the community, regional and provincial leaders and the Appellant himself. It was not a PEC decision.
50. The charge sheet expressly states that the Appellant failed to comply with a PEC resolution.
51. This weakness in the charge sheet was not amended at any stage nor cured by evidence during the PDC hearing.
52. From a procedural fairness point of view, the NDC finds that the Appellant should be given the benefit of doubt arising from the weakness in the charge sheet.
53. The NDC finds the Appellant not guilty on Charge 2.

Charge 3

54. The narration in paragraph 4.3 of the charge sheet alleged that the Appellant *"unceremoniously defiantly marched out and abandoned the ANC meeting of 28 November 2019 by you cheekily leaving same without permission."*
55. Based on this allegation of misconduct, the Appellant was found guilty of behaving in a manner that brought the ANC into disrepute and, by doing so, breached Rule 25.17.5 of the ANC Constitution.
56. In October 2020, the NDC directive both parties to address this matter of the "walkout" in their oral representations.
57. The ANC's version is that the meeting was a serious attempt to resolve the impasses that had developed, The Appellant asked for a caucus break so that he could consult with the troika members who were present. After a while the troika members returned and informed the meeting that the Appellant decided to leave.

58. The Appellant's version is that he had sought and obtained permission from the troika members to leave.
59. The NDC finds that the ANC's version of events is more probable. It was a serious effort by the ANC to resolve the impasse and included all the decision-makers in the province, region and municipality, including the Provincial Secretary who is the chief administrative officer in the Province.
60. The Appellant's version on the other hand that he obtained the permission of the troika to leave cannot be sustained because it was a meeting of the ANC and only the ANC could have given permission for the Appellant to leave.
61. The NDC finds that the Appellant was correctly found guilty on Charge 3 for bringing the ANC into disrepute and his appeal is dismissed on this count.

Sanction

62. The Appellant was suspended for 3 years based on the finding of guilt on two counts.
63. The PDC correctly considered the seriousness of the misconduct and the personal circumstances of the Appellant when it applied its mind to an appropriate sanction but did not make a distinction between the sanction in the two charges.
64. This task now falls to the NDC.
65. The ANC is a voluntary organisation and its success is dependent on members respecting the authority of the organisation.
66. Walking out of a meeting called at the highest level in the Province constitutes serious misconduct.
67. In the view of the NDC, it is a strong indication that the Appellant has little regard for his leaders.
68. The ANC is undergoing a process of renewal and respect for the office and decisions of leadership and the views of the community which the ANC seeks to serve are an integral part of this renewal process.
69. The NDC considered all the facts, including the fact that the Appellant spurned an offer from the ANC to pay him a salary equivalent to what he earned as a councillor during the holding period while he was awaiting redeployment.
70. Having considered all the circumstances, the decision of the PDC is

set aside and substituted as follows:-

“the membership of comrade Sicengu in the ANC is suspended for a period of 18 (eighteen) months for bringing the organisation into disrepute, such suspension to commence from 16 February 2020.”

Dated at Johannesburg this 10th day of November 2020



**MILDRED OLIPHANT
CHAIRPERSON
NATIONAL DISCIPLINARY COMMITTEE**

Agreed

Susan Shabangu
Sidumo Dlamini
Nocawe Mafu
Pinky Moloi
Faith Muthambi

N.B. Tito Mboweni participated in the meeting but left to attend a State commitment before the NDC deliberated on the outcome of the appeal

AFRICAN NATIONAL CONGRESS

SECRETARY GENERAL'S OFFICE



Chief Albert Luthuli House 54 Sauer Street Johannesburg 2001 PO Box 61884 Marshalltown 2107 RSA
Tel: 27.11.376.1000 Website: www.anc.org.za

Comrade Mildred Oliphant
Chairperson
National Disciplinary Committee

Per email moliphant28@gmail.com

19 February 2020

Dear cde Chair

APPEAL OF COMRADES ADAMS, MOKALE AND MAGAGANE OF PHOKWANE MUNICIPALITY IN THE NORTHERN CAPE

Pursuant to a court order obtained by the three comrades in the South Gauteng High Court on 5 February 2020 that their expulsion from the ANC should be suspended until their appeal has been finalised by the ANC's Disciplinary Appeals Committee, the Officials decided that the appeal should be moved from the NDC to the NDCA to comply with the court order.

All the relevant documents in the case have been handed to comrade Nomvula Mokonyane, the Chairperson of the NDCA.

Regards,

KRISH NAIDOO
ANC LEGAL ADVISER &
NDC NOTE TAKER

cc. cde Tshepiso Mthembu
mthembu.tshepiso@gmail.com

African National Congress



National Disciplinary Committee (NDC)

OFFICE OF THE CHAIRPERSON: CDE MILDRED OLIPHANT

Comrade Jessie Duarte
Deputy Secretary General

By email

13 October 2020

Dear Cde DSG

REQUEST TO CONSIDER APPEALS BY COMRADES MAPHEFO LETSIE AND BOYCE MANELI

I have considered the request and documents sent to me regarding these comrades. I have also discussed it with other members of the NDC.

The NDC also had the benefit of the consultation that Cde Krish Naidoo, NDC adviser, had with Cde Trevor Fowler, the Chairperson of the Gauteng Provincial Integrity Commission (PIC), on the procedure the PIC follows and the nature of the findings it makes.

For the reasons set out in the attached document, the NDC cannot consider the appeals. However, the NDC has recommended an organisational process that the PEC should follow.

Yours in the Struggle

A handwritten signature in black ink, appearing to read 'M. Oliphant', is written over a horizontal line.

**MILDRED OLIPHANT
CHAIRPERSON
NATIONAL DISCIPLINARY COMMITTEE**

African National Congress



National Disciplinary Committee (NDC)

OFFICE OF THE CHAIRPERSON: CDE MILDRED OLIPHANT

**IN THE NATIONAL DISCIPLINARY COMMITTEE SITTING AS AN
APPEAL/REVIEW COMMITTEE**

CASE NO. 2/2021

In the matter between:-

BANDILE MASUKU

Appellant

KHUSELA DIKO

Applicant

and

AFRICAN NATIONAL CONGRESS

Respondent

NDC FINDING

Background

1. In the midst of the fight against the Covid 19 pandemic which engulfed the world in early 2020, the financial irregularities in the procurement of Personal Protective Equipment (PPE) by some provincial government departments, including the department of health in Gauteng, had drawn national and international condemnation, including from the World Health Organisation.
2. Without doubt, such criminal action by government officials and businesses in the private sector and possibly politicians brought the ANC,

as the governing party in South Africa, into disrepute.

3. For ease of reading this Finding, the appellant will be referred to as cde Bandile and the applicant for review will be referred to as cde Khusela.

Charges against cde Bandile Masuku

4. Cde Bandile was charged for contravening Rules 25.17.4 and 25.17.5 of the ANC Constitution in that:-

- 4.1 On 20 October 2020 the PEC received a report from the Gauteng Provincial Integrity Committee (PIC) on the allegations of conflict of interest and irregularities involving the award of supply of PPE to a company and/or contractor, Royal Bhaca Projects, without complying with the procurement policy, PFMA and section 217 of the Constitution of the Republic of South Africa Act which provides that:-

“when an organ of state in the national, provincial or local sphere of government or any other institution identified in national legislation, contracts for goods or services, it must do so in accordance with a system which is fair, equitable, transparent, competitive and cost-effective.”

- 4.2 In his capacity as the MEC responsible for Health in Gauteng, cde Bandile failed in his duties to play an oversight role to ensure compliance with the statutory provisions mentioned in 4.1 above.
- 4.3 His action constituted misconduct in terms of Rules 25.17.4 and 25.17.5 of the ANC Constitution and undermined the respect for and impeded the functioning of the ANC’s Provincial Executive Committee, damaged the ANC’s image to serve people and compromised service delivery and undermined the values, ethics and morality demanded of him as a leader and ANC deployee in government.

Charges against Cde Khusela Diko

5. The charge sheet of cde Khusela was exactly the same except that she is cited in her capacity as an ANC PEC member and was alleged to have used her position to obtain a direct undue advantage to enrich herself and further to unduly influence the Department of Health officials to disregard the statutory provisions.

PDC Finding and sanction

6. On 7 April 2021 both comrades were found guilty of contravening Rules 25.17.4 and 25.17.5 of the ANC Constitution.
7. The sanction imposed was that they cannot participate as PEC members until the Special Investigating Unit (SIU) had completed its investigations and they were directed to perform certain remedial actions and to undergo political development.
8. In the case of cde Bandile the PDC recommended that he be relieved of his position as MEC for Health.

Appeal by cde Bandile

9. On 20 April 2021, the Appellant, cde Bandile, appealed against the decision of the Gauteng Provincial Disciplinary Committee (PDC).
10. On the same day viz. 20 April 2021 cde Khusela applied to review the decision of the Gauteng PDC.

Matters of common cause

11. It is common cause:-
 - 11.1 That cde Bandile was a public representative and deployed as the MEC for Health in the Gauteng Province and cde Khusela was recommended and subsequently employed as Head of Communications and Spokesperson in the Office of the Presidency.
 - 11.2 That cde Bandile was relieved of his position as MEC for Health by the Premier of the Gauteng Province;
 - 11.3 That both comrades are members of the Gauteng Provincial Executive Committee and are currently on suspension;
 - 11.4 That cde Khusela was married to a businessman, comrade Thandisizwe Diko, who allegedly received a contract from the Department of Health for the supply of PPE;
 - 11.5 That the SIU is currently investigating the award of the contract to comrade Thandisizwe Diko and the role of cde Bandile in the grant of that award; and

11.6 That this finding will have no impact on the SIU investigation.

12. Comrade Thandisizwe Diko passed away recently.

Joiner of cases by NDC

13. Since the issues to be considered in both matters are the same or substantially the same, the NDC decided, for the sake of convenience, to consolidate both matters and adjudicate both the appeal by cde Bandile and the review application by cde Khusela together.

Representation of the parties

14. Cde Bandile was represented by cde Raphepheng Mataka

15. Cde Khusela was represented by cde Ramaiti Modibeng.

16. The ANC was represented by its Chief National Presenter, cde Uriel Abrahamse, and Chief Provincial Presenter, cde Mashudu Fedzane.

Cde Bandile's grounds of appeal

17. Cde Bandile argued that the PDC misdirected itself in that:-

17.1 it failed to take into account the undisputed evidence as led by the appellant;

17.2 it arrived at a conclusion that is not rationally connected to the facts and evidence;

17.3 it apportioned a sanction which it not provided for in the Constitution;

17.4 it refused to hear and consider the points *in limine* raised by the appellant;

17.5 it made a determination about the work of the SIU, notwithstanding that there was no evidence being led in this regard;

17.6 it made a determination about the charged member having been requested by the Provincial Chairperson and Secretary to voluntarily resign as MEC, in line with the recommendation of the PIC, which was never the evidence;

- 17.7 it made a determination about the charged member having been requested by the Provincial Chairperson and Secretary to voluntarily resign as MEC on the basis of serious allegations of corruption which was never the evidence led by any of the parties;
- 17.8 it took into account evidence that was never before it;
- 17.9 it did not take into account the undisputed evidence led by the appellant on the factual situation prevailing on or about April 2020;
- 17.10 it did not take into account the undisputed evidence led by the appellant on the doctrine and principles of separation of powers between the MEC and the accounting authority;
- 17.11 it did not take into account the evidence that the appellant is not responsible for procurement processes;
- 17.12 it did not take into account the undisputed evidence led by the appellant that he was not responsible for what the media wrongly associated to him with any wrongdoing during the procurement of the PPEs;
- 17.13 it did not take into account the undisputed evidence led by the appellant that he was not responsible for what the media wrongly associated with him; and
- 17.14 it did not take into account the undisputed evidence that appellant took all reasonable steps to correct the misinformation in the media;

Cde Khusela's grounds of review

18. Cde Khusela sought to review the PDC Finding on the following grounds: _

- 18.1 The PDC hearing was premature, irregular and lacked legal competence to investigate and charge the applicant in that the issue with which it was concerned, viz. the allegations of impropriety relating to the procurement of PPE, by still being investigated by the SIU.
- 18.2 The findings of the PDC, in particular the sanction thereof, were unlawful, irregular and invalid.
- 18.3 The PDC hearing was predicated on a defective and incompetent charge

sheet.

- 18.4 The PDC and ANC's reliance on section 217 of the Constitution Act 1996 is unlawful and impermissible in terms of the constitutional doctrine of subsidiarity;
- 18.5 The PEC and ANC acted unreasonably in supplementing the PIC Report;
- 18.6 The manner in which the disciplinary hearing was conducted was an egregious violation of applicant's right to a fair hearing;
- 18.7 That the PDC and ANC did not have the jurisdiction to adjudicate the issue of whether the applicant had an obligation to disclose her late husband's business dealings;
- 18.8 The ANC has no rule or policy requiring a disclosure by its members of potential conflicts of interest and there is no ANC rule or policy barring ANC members and/or their spouses from doing business with government entities; and
- 18.9 The applicant was charged and sanctioned for conduct that is not in violation of any rule or policy of the ANC.

ANC Opposition

19. The ANC opposed the appeal and the application for review.
20. In its written submission, the ANC supported the PDC Finding and raised a number of technical issues in the appeal and review application, but did not address the merits.

NDC Rules of Procedure

21. In terms of Rule 11.1 of the NDC Rules of Procedure, the NDC, having had regard to the nature of the appeal by cde Bandile and the application for review by cde Khusela, decided to finalise both matters on the basis of the documents submitted to it by the parties without the necessity of convening a formal hearing with the parties present and hearing evidence or argument.

Oral evidence

22. After the first sitting of the NDC on 7 May 2021, the Chairperson, in her discretion, directed all parties to lead oral evidence and adduce argument on 14 and 15 May 2021 when the case resumed.

23. On this occasion the ANC addressed the merits of both matters.

Evaluation by NDC

24. The NDC noted that this was the first time it was called upon to adjudicate an appeal or review of a contravention of Rule 25.17.4 relating to unethical and immoral conduct.

25. At the outset, the NDC had to decide what actions or utterances constitute unethical conduct that would detract from the character, values and integrity of the ANC as contemplated in Rule 25.17.4 of the ANC Constitution and thereafter to assess the conduct of the comrades.

26. To make this determination, the NDC developed a framework of reference under the following heads:-

26.1 What is the value system and ethical framework of the ANC?

26.2 What actions or behaviour on the part of comrades Bandile and Khusela are complained of?

26.3 What were the findings of the Gauteng PIC?

26.4 Is there a causal connection between the ANC's value system and ethical framework AND the conduct of comrades Bandile and Khusela?

26.5 If so, did their conduct bring the ANC into disrepute?

Value system and ethical framework of the ANC

27. The value system and ethical framework of the ANC continues to evolve over time and it is informed by the ANC Constitution, "through the eye of a needle" document, the terms of reference of the Integrity Commission, Constitution of the Republic of South Africa, policies and resolutions of the ANC.

(i) ANC Constitution

28. The character, values and objectives of the ANC, which contain the policy positions of the ANC over time, have been distilled and documented in Rules 2 and 3 of the Constitution and include:-

- The non-racial, non-sexist and democratic underpinning of the organization;
- The principles of fairness and accountability;
- The combatting of all forms of racial, tribalistic or ethnic exclusivism or chauvinism;
- Respect for the linguistic, cultural and religious diversity of its members;
- Support for the emancipation of women, combat sexism, and ensure that the voice of women is fully heard in the organisation and that women are properly represented at all levels;
- The principle of freedom of speech and free circulation of ideas and information;
- Open membership without regard to race, colour or creed;
- Co-operation with all religious bodies and provision, on an interfaith basis, for the recognition of the spiritual needs of members;
- End apartheid in all its forms and transform South Africa into a united, non-racial, non-sexist, democratic and prosperous country;
- Defend the democratic gains of the people;
- Fight for social justice;
- Build a South African nation with a common patriotism and loyalty;
- Promote economic development for the benefit of all;
- Support and promote the struggle for the rights of children and the disabled; and
- Support and advance the cause of national liberation, development, world peace, disarmament and environmentally sustainable development.

29. Arising out of the above character, values and objectives, Rule 25.17 sets out specific acts of misconduct for which disciplinary proceedings may be instituted against a member.

30. These include, *inter alia*, failing or refusing to obey ANC policy, rules, regulations or resolutions; sowing racism, sexism, tribalism and religious intolerance; provoking division; engaging in sexual or physical abuse of women or children; fighting or acting in an unruly manner in ANC meetings and misappropriating funds.

31. What is noteworthy is that the ANC manages organisational discipline by

disciplining members for acts of commission and not omission. In other words, the code of conduct sets out positive actions that a member should refrain from transgressing but does not purport to discipline a member for not doing or not saying something that he or she should or ought to have done or said.

(ii) Constitution of the country

32. Legal principles such as natural justice, the rule of law and unethical conduct as set out in the country's constitution must be incorporated into the ANC's framework of values and unethical conduct.

(iii) Through the Eye of a Needle - 2001

33. In 2001 the "Eye of a Needle – choosing the best comrades to lead transformation" document was incorporated into the value system of the ANC.
34. This document guides the organisation on the calibre of leadership it should put in place, the selection process to choose comrades who have the courage of their convictions and how leadership should relate to the people.

(iv) Establishment of the Integrity Commission - 2012

35. At the 53rd National Conference in 2012, the ANC established an Integrity Commission whose primary responsibilities are, *inter alia*, to protect the image and reputation of the ANC; to enhance the standing of the ANC in society and to ensure that members, office-bearers and public representatives uphold, respect and defend the moral foundation and the character and values of the organisation.
36. The Integrity Commission is not precluded from considering how a member or public representative conducts himself/herself and to deduce whether he or she acted immorally or unethically.

(v) Inclusion of Rule 25.17.4 as an act of misconduct

37. At the same conference, the ANC Constitution was amended to include Rule 25.17.4 which makes it a breach of the code of conduct of the ANC to engage in any unethical or immoral conduct which detracts from the values, character and integrity of the ANC and which brings the organisation into disrepute. This must be added to the value system of the organisation.

(vi) Nasrec resolution - 2017

38. At the 54th National Conference in December 2017, the definition of unethical conduct was expanded to include acts of corruption and corrupt practices committed by a member, office bearer deployed member or public representative as defined in the ANC Constitution.
39. The resolution also noted that the lack of integrity perceived by the public, has seriously damaged the ANC image, the people's trust in the ANC, its ability to occupy moral high ground, and its position as leader of society.
40. The resolution also reinforced the 2015 NGC resolution that the NEC and PECs should urgently implement new measures to strengthen the members' understanding of its values, ethics and morality, and the demands that the people, the constitution and the rule of laws place the ANC as the guardians of the state and its resources.

(vii) 2020 NEC decision on step aside

41. In 2020 the NEC resolved that members who were charged with corruption and other serious crimes should step aside voluntarily in accordance with their own political consciousness and sense of ethics and morality.
42. The above narrative constitutes the value system and ethical framework of the ANC.
43. The same framework of reference will be used to judge the behaviour of a member who is deployed to government as a public representative (cde Bandile) or as a deployee (cde Khusela).
44. Both the National and Provincial Integrity Commissions of the ANC use the same framework to decide what conduct by a member amounts to or constitutes unethical conduct.
45. However, in order to deduce whether a member, elected office bearer or public representative acted unethically in breach of Rule 25.17.4 of the ANC Constitution by engaging in corrupt practices, which is the import of the charge against both comrades, there must some basis to infer that the comrades either acted in concert with others, induced people to give him or her some gratification, promised gratification to others, exerted undue pressure and influence on subordinates or breached some

provision of the Constitution Act, 1996, relating to misconduct which constitutes unethical conduct.

What actions or behaviour on the part of comrades Bandile and Khusela are complained of

46. On 26 July 2020 Independent newspaper published a front-page article stating:-

- That a company called Royal Bhaca Projects was one of several companies which had benefitted from the Gauteng Department of Health multimillion rand PPE procurement;
- That the sole owner of Royal Bhaca Projects was Mr Thandisizwe Diko, husband to Khusela Diko, presidential spokesperson and member of the ANC Gauteng Provincial Committee;
- That Khusela Diko is close friends with Bandile Masuku and Loyiso Masuku;
- That Royal Bhaca Projects scored two contracts worth R125m, days after the national lockdown;
- That these contracts were offered on the 30th March and 1st April respectively;
- That the contracts were signed by Thandi Pino, Chief Director of supply chain management; and
- That there has been disregard for Treasury pricing regulations and that prices had been inflated.

47. On 30 July 2020 the Gauteng PEC requested its Provincial Integrity Committee (PIC) to investigate whether any conflict of interest arose in keeping with the comrades' responsibility as ANC members and the responsibility given to them in government and the allegations of PPE procurement AND to investigate and to evaluate whether the behaviour of the comrades in their positions as representatives of the ANC in government contributed in any way to bringing the ANC into disrepute, during the period of the PPE procurement.

What were the findings of the Gauteng PIC?

48. The PIC made the following findings in respect of cde Bandile:-

- That cde Bandile, although not directly responsible for the PPE procurement processes, did not exercise sufficient oversight, having been made aware of non-compliance and irregularities early in the process;
- That he should have been much closer to the processes on Covid 19 PPE procurement, given the nature of the pandemic, the emergency nature of the crisis, the early warning signs, and the amount of money that may have been irregularly spent;
- That given the closeness, both politically and in friendship between the Masuku's and the Diko's, cde Bandile did relatively little to prevent the public perception that comrade Loyiso Masuku and him, could be involved, directly or indirectly, in the Gauteng PPE procurement corruption allegations.
- That the PIC on the information provided could not provide any indication of involvement of cde Bandile either in influencing tenders/contracts to preferred companies or that he may have benefitted in any financial way directly or indirectly.

49. After taking the above into consideration, the PIC reported as follows:-

- Cde Bandile, by not exercising sufficient care, failed to adhere to the standards that the ANC demands of a public representative. In addition, the Constitution of the Republic of South Africa sets a standard of accountability of public representatives and the ANC requires that public representatives display a level of accountability. This indicated that he was not accountable to South Africa.
- Cde Bandile has done a disservice to the people because of the perception that he personally benefitted from the PPE procurement and therefore brought disservice to the responsibility given to him by the ANC.
- Cde Bandile failed to recognise that which needed to be done in order for him to hold himself accountable. This delayed action resulted in the ANC being brought into disrepute.

- Cde Bandile contributed to the perception that he may have benefitted by his relationship with Mr Thandisizwe Diko, which he ought to have known as a leader in office and should have distanced himself.
50. Based on these conclusions, the PIC found that cde Bandile contributed to bringing the ANC into disrepute and went on to recommend that he voluntarily resigns as MEC for Health and undergoes training to improve his skills in the areas of accountability, conflict of interest, oversight, and Public Finance Management Act. Should he fail or refuse to resign, he should face disciplinary proceedings.

Is there a causal connection between the ANC's value system and ethical framework AND the conduct of comrade Bandile?

51. To make this causal connection the NDC had to consider the following related questions: -
- Is there a correlation between how cde Bandile performed his oversight obligations AND unethical conduct? and
 - How does an ANC disciplinary committee that is tasked with managing organisational discipline between the ANC and its members extend its reach to make a value judgement on unethical conduct based on how a public representative performs in the execution of his responsibilities as a deployee in government?
52. The following example serves to explain what the ANC Constitution means by unethical conduct. If a member or public representative makes a racist statement or conducts himself or herself in a manner which clearly smacks of racist behaviour, that member or public representative will be found to be acting unethically and in breach of the value system of the ANC.
53. Consequently, that member will initially be referred to the Integrity Commission and thereafter charged for contravening Rule 25.17.4 for engaging in unethical conduct which detracts from the character, values and integrity of the ANC as may be determined by the Integrity Commission, and which brings or could bring or has the potential to bring or as a consequence thereof brings the ANC into disrepute.
54. Based on its conclusions, the PIC found that cde Bandile contributed to bringing the ANC into disrepute and went on to recommend that he voluntarily resigns as MEC for Health and undergo training to improve his skills in the areas of accountability, conflict of interest, oversight, and Public Finance Management Act. Should he fail or refuse to resign, he should face disciplinary proceedings.

Is there a causal connection between the ANC's value system and ethical framework AND the conduct of comrade Khusela?

55. The PIC made the following findings, inter alia, in respect of cde Khusela:-

- That on the information provided there was nothing to indicate that cde Khusela was in any way involved in Thandisizwe Diko's business interests;
- That on the information provided there was nothing to indicate that cde Khusela influenced in any way the successful application by Royal Bhaca for contracts relating to the Gauteng Department of Health PPE procurement;
- That on the information provided, cde Khusela had not consulted or influenced Cde Bandile or comrade Loyiso to provide any special favour to comrade Thandisizwe Diko when his company, Royal Bhaca, applied for contracts regarding the PPE procurement;
- That cde Khusela had not in any way gained financially either directly or indirectly from the PPE procurement;
- That by not disclosing her husband's business interests, she has contributed largely to her personal difficulties in this matter of the PPE procurement corruption allegations;
- Her relationship and close friendship with cde Bandile could be perceived as a conflict of interest in the public eye, particularly with respect to the Gauteng PPE procurement and could have been addressed differently; and
- She showed a distinct lack of judgement and should have been more forceful and vigilant about difficulties that could be created after learning that her husband was doing business with the Gauteng Department of Health on PPE procurement.

56. After taking the above into consideration, the PIC made the same report viz. that cde Khusela was accountable to the people of South Africa; had done a disservice to the people; failed to recognise what needed to be done to hold herself accountable and abrogated her leadership role.

Is there a causal connection between the ANC's framework of reference of values and ethical conduct and the actions or behaviour of comrades Bandile and Khusela?

The case of Cde Bandile

57. In the view of the NDC, cde Bandile's case raises two issues:-

57.1 Assuming cde Bandile did not perform his oversight obligations, where is the correlation for one to conclude that he acted unethically or was involved in corrupt practices in order for his conduct to fall within the purview of Rule 25.17.4? and

57.2 How does a disciplinary committee that is tasked with managing organisational discipline between the ANC and its members extend its reach to make a value judgement on unethical conduct based on how a member performs in the execution of his responsibilities as a deployee in government?

58. Even if it is assumed that cde Bandile was overwhelmed by the pandemic to the extent that he was rendered dysfunctional and lost control over his oversight responsibility, the NDC is of the view that this is not a basis to make a finding that he acted unethically.

59. Moreover, there was no basis to infer that he was engaged in corrupt practices.

60. In fact, the PIC was not able to provide any indication of involvement of cde Bandile either in influencing tenders/contracts to preferred companies or that he may have benefitted in any financial way directly or indirectly.

61. Based on its own report, the NDC finds that the PIC's conclusions set out in Paragraph 55 above are irrational because there is no causal connection between the findings and the far-reaching conclusions.

62. In terms of its Constitution, the ANC manages organisational discipline between itself and its members.

63. If a public representative is found wanting in the performance of his or her obligations in government, a state institution can invoke the Public Finance Management Act to take action against such non-performing public representative.

64. If a public representative engages in corrupt practices, there is legislation, including the PFMA and the Prevention and Combating of

Corrupt Activities Act, available to the state to act.

65. The ANC, for its part, may recall a public representative who is not observing and upholding the character and values of the organisation, or if it is not satisfied with his or her performance or it can demand that a public representative, who has been charged for corruption or other serious charges, to step aside or face disciplinary action. In all these circumstances, the ANC would be acting within the ambit of its Constitution.
66. However, for a disciplinary committee to adjudicate on a charge of unethical conduct against a public representative based on how he performs his oversight responsibilities in government is, in the view of the NDC, a clear case of overreach.

The case of Cde Khusela

67. Cde Khusela informed the PIC that she cautioned and advised her husband that because of her position on the Gauteng PEC, her friendship with cdes Bandile Masuku and Loyiso, her position in the Presidency, that he needed to reconsider accepting these contracts given the potential conflicts that could arise and perceptions that could be developed.
68. At no time had she known or had any relationship with any official involved in the Gauteng Department of Health PPE procurement process.
69. One of the findings of the PIC was that cde Khusela's failure to inform the ANC leadership that her husband was intending to do business with Gauteng's department of Health showed a lack of judgement.
70. In the view of the NDC, this finding brings into focus the following two issues:-
- 70.1 the obligation on the part of cde Khusela to disclose the business interest of her spouse in the absence of policy in the ANC that makes such disclosure obligatory; and
- 70.2 the party/state distinction.
71. Although there was discussion over the years, the ANC has not as yet, finalised policy that requires disclosure by Politically Exposed Persons (PEPs) and Politically Connected Persons (PCPs).

72. Consequently, in the absence of policy, it is not clear to the NDC on what basis the PIC found that cde Khusela showed a lack of judgement by not disclosing her husband's business interests and that non-disclosure had largely contributed to her personal difficulties.
73. Moreover, having regard to the party/state distinction, it is not clear to the NDC on what basis was cde Khusela obliged to disclose her husband's business interests to the Gauteng PEC or even to the ANC for that matter.
74. Placing a responsibility on politicians to disclose the business interests of their spouses, in circumstances where there is no legal or ethical requirement to do so, could contribute to the subliminal narrative doing the rounds in some quarters that Black politicians are inherently corrupt and once they get into public office, they will dispense patronage to their spouse and children. In other words, they are self-serving and have no interest in serving the people.
75. In the view of the NDC, the Gauteng PEC and the PIC have acted outside the policy and ethical framework of the ANC and placed an unreasonable burden on cde Khusela and then proceeded to make a value judgement on her character.

Did the conduct of the comrades constitute misconduct as contemplated in Rule 25.17 of the ANC Constitution and bring the ANC into disrepute?

76. The act of misconduct of bringing the ANC into disrepute is a consequence of what a member utters or does which in itself must constitute an act of misconduct as set out in Rule 25.17.
77. For example, a member who is found guilty by a disciplinary committee for fighting at an ANC meeting in contravention of Rule 25.17.16 of the ANC Constitution can also be found guilty of contravening Rule 25.17.5 for bringing the ANC into disrepute if he or she is so charged.
78. On the contrary, if the primary conduct is found by a disciplinary committee not to constitute misconduct, it follows that a secondary charge, which is dependent on the primary charge, of bringing the ANC into disrepute in terms of Rule 25.17.5, cannot be sustained.
79. The ANC's case was premised on acts of omission. As stated above, the ANC code of conduct in Rule 25 does not provide for negative duties.

80. In the absence of a causal connection between the behaviour of both comrades and the ANC's value system and ethical framework, the NDC finds that no act of misconduct was committed.

Procedural irregularities

(i) Submitting the Provincial Integrity Committee report as evidence

81. Both comrades Bandile and Khusela submitted themselves to be interviewed by the PIC.
82. The PDC in its Finding recorded that it did not differ with the report of the PIC. As a matter of fact, the PDC based its guilty finding on the PIC Report.
83. The NDC finds that the submission of the PIC Report as evidence compromised the right of both comrades to a fair hearing and was detrimental to the administration of justice because, in effect, both comrades were found guilty on their own evidence submitted to the PIC. Moreover, the decision by the PEC to discipline them constituted double jeopardy because it was taken *after* their appearance before the PIC.
84. The NDC was faced with a similar situation in 2017 in the case of **ANC vs Marius Fransman**. Cde Marius was interviewed by the Integrity Commission and the ANC sought to adduce the report in evidence. The NDC rejected the admissibility of the report on the grounds that it would have compromised cde Marius and denied him the right to a fair hearing. The ANC had to adduce other evidence.
85. Similarly, the use of the PIC report which contained evidence of cdes Bandile and Khusela and which was used by the PDC to make its findings, was a material irregularity and, consequently, rendered the hearing a nullity.

86. The PEC was obliged to use other evidence to prove its case.

(ii) Calling integrity commissioner cde Fazel Randera as a witness

87. Integrity Commissions and disciplinary committees serve entirely different purposes in the disciplinary hierarchy of the ANC.
88. The Integrity Commission is concerned with protecting the image and

reputation of the ANC and deals with issues of unethical conduct.

89. On the other hand, disciplinary committees deal with the innocence or guilt of members through a quasi-judicial process.
90. Ideally, these committees should not intersect in their work.
91. The Terms of Reference of the Gauteng PIC provide that once its report is accepted by the PEC, the PEC takes ownership of the report and the PIC would have discharged its mandate and have no further duty.
92. The mere production of the report (assuming the two comrades were not interviewed by the PIC) by the Provincial Secretary at the disciplinary hearing, would have sufficed and the Gauteng PDC would have either had to rely exclusively on the report or call witnesses on the merits to evaluate the guilt or innocence of the charged members.
93. The calling of comrade Fazel Randera, Deputy Chairperson of the Gauteng PIC, as a witness at the disciplinary hearing was unfortunate because it impacted negatively on the integrity and independence of the PIC.

(iii) Closing the Gap Report

94. After considering the PIC report, the PEC directed the Provincial Working Committee and Provincial Office Bearers to deal with specific issues which were not fully covered in the Report. This second report became known as the 'Closing the Gap Report.'
95. The PEC sought additional information on the perceived influence on the outcome of the supply chain management process which was not covered in the report. According to the PEC, the information gap was caused by not interviewing the CFO and Head of Supply Chain management in the Gauteng Department of Health.
96. The PEC was also of the view that the conflict of interest issue in the award of the contract to Royal Bhaca was not canvassed.
97. The former CFO declined to be interviewed due to a criminal legal process that was underway and, for logistical reasons, the report of the Head of Supply Chain was not provided.
98. The NDC notes that the SIU in its report on cde Bandile stated that no

evidence had been established relating to conflict of interest, corruption and malfeasance.

99. With regard to cde Khusela the SIU made no findings with regard to her role.
100. It should be emphasized that the SIU is still investigating the matter.
101. The ANC is going through a process of renewal and enhancing the integrity of the organisation is a key part of that process.
102. Moreover, the element of trust is a key ingredient of the renewal process.
103. After an Integrity Commission has finalised its report, the NEC or PEC, as the case may be, takes ownership of the report and either decides to accept or reject the report.
104. The calling for a Closing of the Gap report, for whatever purpose, was an unusual step which, in the view of the NDC, flawed the process, detracted from the element of trust and sent a signal, albeit unintended, that the PEC has a pre-conceived notion that both comrades should be disciplined.
105. In the case of cde Khusela, this notion came through very pointedly after the PEC noted cde Khusela's submission that she did not participate in the soliciting and contracting of services by Royal Bhaca but nonetheless decided to discipline her.
106. The NDC notes that the same findings applied to cde Loyiso Masuku but the PEC decided not to discipline her.
107. The conduct of the PEC smacks of procedural unfairness and is a sufficient ground to vitiate the proceedings.

Cde Bandile's High Court application to set aside SIU Report

108. The ANC is cautioned to be circumspect when deciding to institute disciplinary action against members, especially where state agencies, which have more resources and statutory investigative powers, are involved.
109. In this regard the remarks of the three High Court judges are apposite.

The court stated that although cde Bandile was not accused of corruption or nepotism, scepticism emerged at times about his explanations.

110. Notwithstanding this criticism, the court said that cde Bandile's "reputation as a public office bearer has been dented. In the short term his political career clearly has been truncated."

Demeanour of Chief Provincial Presenter

111. The NDC noted that the manner in which the Chief Provincial Presenter, cde Mashudu, questioned both comrades, especially cde Khusela, was not comradely.

Conflict of interest

112. A conflict of interest arises in a situation in which a person is in a position to derive personal benefit from actions or decisions made in his or her official capacity.
113. A typical example is a businessperson sitting on a Board of a company or State-Owned Enterprise (SOE). When the Board or SOE is seized with making a decision which involves an entity in which the businessperson has a financial interest, the businessperson will be faced with the competing interests between his or her personal financial interest and his or her fiduciary interest to the Board or SOE.
114. In such circumstance, the businessperson cannot participate and must recuse himself/herself from the meeting for the duration of the decision-making process.
115. Failure to do so will render the businessperson to be in conflict of interest.
116. In both cases there was no information before the PIC to show that either of the comrades was conflicted. Moreover, the SIU stated in its report that there no evidence of conflict of interest.

Competent verdicts of the NDC where it acts as an appeal or review tribunal

117. Besides dismissing appeals and review applications, the NDC, in terms of Rule 25.23 of the ANC Constitution, has the competence:-

- To uphold an appeal and set aside the decision of the PDC – Rule 25.23.1.
- To uphold the application for review and refer the matter back to the PDC for re-hearing – Rule 25.23.4; and
- To uphold the application for review, consider the merits and impose an appropriate sanction, if necessary – Rule 25.23.5.

118. Having had regard to the manner in which these cases were dealt with by the PDC and the demeanour of the Chief Provincial Presenter, the NDC is of the view that justice will not be served by referring the case of cde Khusela back to the PDC for re-hearing.

119. The NDC has given due consideration to the merits of the review application in its deliberations.

120. Consequently, the review application is considered finalised by the NDC and will not be referred back to the PDC for re-hearing.

NDC Finding

121. For the reasons set out above, the PIC report, which contained evidence obtained from both comrades, should not have been allowed as evidence. The hearing was rendered a nullity by its admission.

122. There is no causal connection between the conduct of comrades Bandile and Khusela AND the value system and ethical framework of the ANC to support the conclusion that the two comrades acted in an unethical manner and, consequently, were guilty of contravening Rule 25.17.4 of the ANC Constitution.

123. In the absence of finding that the comrades engaged in unethical conduct, which is a foundational requirement to support a charge in terms of Rule 25.17.4, it follows that the guilty finding of bringing the ANC into disrepute in terms of Rule 25.17.5 was flawed.

124. In both matters, the Gauteng PDC misdirected itself in a material respect.


125. For the reasons given above, the appeal of Cde Bandile is upheld.

126. For the reasons above, the review application of Cde Khusela succeeds

and the decision of the Gauteng PDC is reviewed and set aside.

- 127. As a general rule, the sanctions imposed in paragraphs 78.2 and 78.3 would fall away and both comrades would be eligible to resume their positions as members of the Gauteng PEC.
- 128. The NDC notes that Cde Bandile was relieved of his responsibility as MEC for Health by executive decision.
- 129. The NDC notes that the NEC of the ANC, as part of organisational renewal, has started with the process of making recommendations of lifestyle audits and performance contracts in national government to reshape the character of the cadre of the ANC.
- 130. The NDC recommends that all Gauteng PEC members, including cdes Bandile and Khusela, should be schooled in topics such as ethical and moral conduct, the ANC Constitution, political accountability and the responsibilities of deployees in government, conflict of interest and legislation such as the Public Finance Management Act.

Dated at Johannesburg on this 17th day of May 2021


CDE MILDRED OLIPHANT
CHAIRPERSON
NATIONAL DISCIPLINARY COMMITTEE

- | | |
|--------------------------------|----------|
| NDC Member Cde Nathi Mthethwa | - agreed |
| NDC Member Cde Nocawe Mafu | - agreed |
| NDC Member Cde Boitumelo Moloi | - agreed |
| NDC Member Cde Faith Muthambi | - agreed |

**IN THE ANC NATIONAL DISCIPLINARY COMMITTEE HELD AT LUTHULI HOUSE,
JOHANNESBURG ON 26 and 27 SEPTEMBER 2019**

CASE NO: 2/6/2019

In the matter between:

AFRICAN NATIONAL CONGRESS (ANC)

Complainant

and

MICHAEL NGWENYA

1st Charged member

PHINDILE NKUNA

2nd Charged Member

NDC FINDING

Background

1. Comrades Michael Ngwenya and Phindile Nkuna were charged on two counts of misconduct for contravening various provisions of Rule 25.17 of the ANC Constitution.
2. On Charge One the charged members were alleged to have undermined the respect for or impeded the functioning of the ANC, and by their behaviour provoked or had the potential to provoke divisions within the organisation. The specific act of misconduct in 1.1 of the charge was that on or about 17 July 2019 the charged members deliberately disrupted a meeting convened under the ANC Constitution, namely the Regional General Council.
3. On Charge Two the charged members were alleged to have instructed a group of people to assault the acting Provincial Secretary, comrade Lindiwe Ntshalintshali, and to have actively participated in the assault on her.

Pre-hearing conference

4. A pre-hearing conference was convened by Note Taker, cde Krish Naidoo, on 12 September 2019. Comrade Uriel Abrahamse represented the ANC, in his capacity as Chief National Presenter, and comrade Isaac Mahlangu represented the charged members.
5. The ANC withdrew Charge 1.2 of Charge One.
6. Comrade Isaac Mahlangu said that the charged members would plead not guilty and he also gave notice of the charged members' intention to raise a point *in limine* and subsequently filed a document setting out details of the point *in limine*.

Point in limine

7. At the commencement of the hearing on 26 September 2019, the charged members raised their point *in limine* viz. whether there was a Special RGC of the ANC on 17 July 2019 at 12h00 at Nutting House, Mbombela, Mpumalanga Province.
8. The NDC allowed oral evidence from 3 witnesses to be led when the point in limine was argued precisely to get a fuller picture of how events transpired on the day.
9. The charged members argued that since the Special RGC was postponed during the course of the day, the gathering thereafter was a 'non-ANC' event. Accordingly, they argued that the alleged acts of misconduct, for which they were charged, could not have been committed at an ANC meeting, assembly or gathering.
10. In essence, they argued that the ANC lacked jurisdictional powers to adjudicate a non-ANC event. Consequently, it was argued that if the point *in limine* was upheld, the charges should fall away.
11. The NDC dismissed the point *in limine* and said that it would provide reasons for its decision in this Finding.

NDC evaluation of point *in limine*

12 On 12 July 2019 the PWC made the following recommendations to the PEC:-

12.1 that the two affected regions (Bohlabela and Ehlanzeni) be re-aligned as one region to comply with Rule 21.2 of the ANC Constitution;

12.2 that a Regional Task Team (RTT) be put in place comprised of the two RWCs from Bohlabela and Ehlanzeni and identify other leaders, between 6 (six) and 8 (eight), to meet the directive from the SGO on the unity project; and

12.3 that the PEC call for an Regional General Council (RGC) and formally communicate the decision to the structures.

13. The PEC met on 15 July 2019 and accepted the recommendation of the PWC and mandated the PWC to finalise the Task Team and convene the Special RGC.

14. The Special RGC was scheduled to be held on 17 July 2019 to communicate the proposed names of the RTT to structures and the way forward on the re-alignment of the former regions.

15. The PWC was scheduled to meet at 10H00 to finalise the composition of the RTT and the Special Regional General Council meeting was scheduled to start at 12H00.

16. On the morning of 17th July, the acting Provincial Secretary was advised by the office of the Secretary General that it had received information that the Special RGC might be violent and recommended a postponement.

17. The acting Provincial Chairperson, cde Mandla Ndlovu, was later informed by the SGO that if people are safe, they should continue with the Special RGC.

18. In the interim the venue for the Special RGC was moved to Nutting House.

19. During the course of the afternoon, the PWC resolved to continue with the meeting, although about 4 PWC members were on the premises at Nutting House but did not attend.
20. It also transpired that from about 14h40 that day an SMS was sent to comrades informing them that the RGC was postponed. As a result, many comrades left.
21. At about 18h00 the acting Provincial Chairperson opened the meeting and explained the purpose. He then called on the acting Provincial Secretary to read out the names of the comrades who would constitute the RTT.
22. As the Provincial Secretary was concluding her input, groups of comrades entered the hall chanting and singing and the RGC had to be postponed.
23. Rule 21.8 of the ANC Constitution empowers the PEC to convene additional Regional Council meetings.
24. The term, “assembly or gathering” is defined in the ANC Constitution as a grouping of ANC members who come together for a specific purpose.
25. Due to the special circumstances arising from the amalgamation and re-alignment of two Regions which existed and operated independently for a number of years, the PEC saw fit to convene a special regional meeting to inform structures of the process that was underway; composition of the interim structure (RTT) that would lead the process and the roadmap culminating in the election of leaders of the amalgamated region at a subsequent Regional Conference.
26. For all intents and purposes, the PWC was delegated by the PEC to conduct the Special RGC.
27. From the submission of the parties, it appears that two processes were underway at Nutting House on 17 July. The acting Chairperson and Acting Secretary, together with other PWC members made it known from about 16h00 that the Special RGC was proceeding. A group of 4 (four) PWC members, led by

the Provincial Treasurer, and pursuant to their own meeting, notified members that the Special RGC was postponed.

28. From the evidence presented by the witnesses, it is common cause that the grouping of ANC members came together at Nutting House for a specific purpose i.e. to receive a report of the re-alignment process and to be informed of the composition of the RTT.
29. The purpose of the meeting was informative and not elective. It follows, in the view of the NDC, that the issue of whether a quorum for the gathering was present or not, or the fact that some of the members left the venue from about 14h40 under the impression that the Special RGC was postponed is irrelevant.
30. Although some members of the PWC were not in favour of the Special RGC proceeding, there was no evidence before the NDC that the PWC formally postponed the Special RGC.
31. Consequently, the NDC is of the opinion that the Special RGC meeting which commenced at 18h00 on 17 July 2019 at Nutting House was a gathering, assembly or meeting as defined in the ANC Constitution.
32. The point *in limine* was dismissed for these reasons.

Onus and burden of proof

33. The onus was on the ANC to prove the guilt of the charged members on a balance of probabilities.
34. To secure a conviction on the charges, the ANC was required to prove that a causal connection existed between the elements of the charges and the evidence led by the witnesses for the ANC and that such causal connection was established on a balance of probabilities.

35. In the case where witnesses gave different versions of what transpired in the hall on that day, the NDC had to decide which version was more probable.

Case for the ANC

36. The ANC called two witnesses, comrade Lindiwe Ntshalintshali, the acting Provincial Secretary, and Captain Khoza.

37. The acting Provincial Secretary testified that the meeting was concluded and the acting Provincial Chairperson had left the hall. As she was almost done with reading the names of the RTT members, she could hear chanting come from outside the hall.

38. She got off the stage and headed towards the door. Comrade Sgudla blocked her path and threatened her.

39. As she was conversing with comrade Sgudla, a group entered the hall. They said they were looking for Lindiwe. This was the Pienaar group which wanted to know why there was no representative on the RTT from their area because there were 11 branches in their area.

40. A second group stormed into the hall and was led by comrade Phindile Nkuna.

41. Shortly thereafter, she saw comrade Michael Ngwenya entering the hall and coming towards her.

42. Whilst she was in discussion with the Pienaar group, comrade Phindile Nkuna approached her from the side and punched her in the face. She was surprised and shocked by her conduct.

43. Comrade Michael Ngwenya approached her from the front and 'attacked' her.

44. She was eventually escorted out of the hall by the police.

45. Captain Khoza testified that he stood directly in front of the acting Provincial Secretary to protect her.
46. The situation was very volatile and at one stage he was concerned for his own safety when a chair was thrown at him.
47. Comrades Michael Ngwenya and Phindile Nkuna entered the hall together.
48. Comrade Michael Ngwenya was making his way directly towards the Acting Provincial Secretary.
49. He knew comrade Michael Ngwenya well. But on that day he was very angry and displayed uncharacteristic behaviour.
50. He got into a tussle with comrade Michael Ngwenya. Eventually comrade Michael Ngwenya got past him and moved towards the acting Provincial Secretary.
51. The ANC closed its case.

Case for the charged members

52. Comrade Isaac Mahlangu outlined the defence of the charged members.
53. Put briefly, comrade Michael Ngwenya denied that he attacked the acting Provincial Secretary because he was not in a position to reach her. He explained that there was a line of chairs between him and the acting Provincial Secretary. He did lift one chair to move towards the acting Provincial Secretary but was stopped by a comrade from MKMVA who were assisting with providing security. He eventually left the hall.
54. He did not see Captain Khoza at the venue.
54. Comrade Phindile Nkuna's defence was that she was provoked by the acting Provincial Secretary who made a derogatory remark to her. Out of anger, she lashed out and pushed the acting Provincial Secretary with an open hand.

55. The evidence of the witnesses on behalf of the charged members - comrades Noah Mhaule, Mafika Mthethwa and Reinwick Zwane - were substantially the same and can be summarised as follows:-

. 55.1 They witnessed a confrontation between comrade Phindile Nkuna and the acting Provincial Secretary.

55.2 Comrade Michael Ngwenya removed a chair from the barricade of chairs which was set up to prevent comrades from going to the stage.

55.3 Comrade Ngwenya was requested by an MKMVA comrade to stop removing the chairs. He obliged and left the conference hall.

Evaluation by NDC

56. In respect of Charge One, the ANC had to adduce evidence on the following elements of the charge:-

56.1 that the meeting was deliberately disrupted;

56.2 that the comrades at the meeting were encouraged not to recognise the RTT;

56.3 that only the disbanded REC should be recognised.

57. According to the evidence of the acting Provincial Secretary, the meeting was concluded when comrades entered the hall protesting. As such, it is unlikely to conclude that the charged members disrupted the meeting which, according to evidence of the acting Provincial Secretary, was concluded by the time the protesters entered.

58. Moreover, the charged members were not among the first group which entered the hall. To isolate the two charged members and prosecute them when many comrades were also protesting, would, in the view of the NDC, constitute selective prosecution and would be unfair to them.

59. The ANC did not lead any evidence to prove that the charged members

disapproved of the RTT or were protesting in support of the disbanded REC.

60. For these reasons, the NDC is not convinced that the ANC established the causal connection between the elements of the charge that had to be proved and the conduct of the charged members.

61. The charged members are found not guilty and acquitted.

62. In respect of Charge Two, the ANC had to adduce evidence on the following elements of the charge:-

62.1 that the charged members instructed a group of people to assault the acting Provincial Secretary; and

62.2 that the charged members actively participated in assaulting the acting Provincial Secretary.

63. No evidence was led by the ANC to prove that the charged members instructed a group of people to assault the acting Provincial Secretary.

64. With regard to the second element viz. that the charged members assaulted the acting Provincial Secretary, the NDC's reasoning is as follows:-

64.1 Two diametrically opposed versions were presented in the case of comrade Michael Ngwenya. Comrade Ngwenya said that he was not able to reach the acting Provincial Secretary because of the barricade of chairs which prevented him from doing so. On the other hand, the acting Provincial Secretary testified that comrade Ngwenya 'attacked' her.

64.2 In her evidence in chief, the acting Provincial Secretary did not say that comrade Ngwenya punched her. She used a generic term that he 'attacked' her. It was only when a member of the NDC sought clarity did she say that Ngwenya punched her a few times.

- 64.3 Captain Khoza testified that he was directly in front of the acting Provincial Secretary and shielded her. His primary responsibility was to protect the acting Provincial Secretary who was an MEC in government. However, he does not say what happened after comrade Ngwenya got past him. All he had to do, in the view of the NDC, was to turn around and he would have been best placed to tell the NDC whether comrade Ngwenya attacked or punched the acting Provincial Secretary or had any physical contact with her.
65. In view of the diametrically opposed versions presented by the ANC and comrade Ngwenya and in the absence of evidence by Captain Khoza to corroborate the version of the acting Provincial Secretary, the NDC finds that the ANC has not proved on a balance of probabilities that comrade Michael Ngwenya assaulted the acting Provincial Secretary. He is found not guilty and acquitted.
66. In the case of comrade Phindile Nkuna, it is common cause that there was physical contact between her and the acting Provincial Secretary.
67. The NDC rejects the defence of provocation advanced by comrade Phindile Nkuna. As a regional leader, she had a responsibility to restrain herself and assert her right in another forum.
68. Comrade Phindile Nkuna is found guilty of assault.
69. The NDC also wishes to record two other findings it makes with regard to the evidence led.
70. There was a material contradiction in the evidence of the acting Provincial Secretary and Captain Khoza. The Acting Provincial Secretary testified that the charge members came into the conference hall separately whereas Captain Khoza testified that they came in together.
71. During argument, the ANC called for the evidence of witness Mafika Mthethwa to be expunged from the record because he contradicted himself in a material respect. In his oral evidence he said that he did not know Comrade Nkuna whereas

in his witness statement he referred to her by name. The NDC agrees with the submission of the ANC and directs that the evidence of comrade Mafika Mthethwa be expunged from the record.

Evidence in aggravation and mitigation of sanction

72. In the case of comrade Michael Ngwenya, the ANC called for his expulsion because of his un-ANC character. The defence called for a sanction of reprimand because the comrade was a good organiser and had leadership potential.
73. In the case of comrade Phindile Nkuna, the ANC called for her to be suspended for two years. The defence called for a sanction of remedial action because she was provoked. Moreover, it was argued that she was a young person and was the regional treasurer of her region before the disbandment. With appropriate guidance she had leadership potential which should not be stymied with a severe sanction of suspension of her membership.
74. By virtue of comrade Ngwenya's acquittal, it was not necessary to consider the submissions on sanction.
75. In the case of comrade Nkuna, the NDC is of the view that she should have conducted herself more appropriately and showed more responsibility because she was a regional leader. However, a sanction of two years would be inappropriate in the circumstances. She was a first offender, was truthful with the NDC and did not deny that she assaulted the acting Provincial Secretary but put up a defence of provocation. She was still young and with guidance and training, the NDC was of the opinion that she could be groomed for leadership in the Province.

NDC FINDING

76. Comrade Michael Ngwenya is found not guilty and acquitted on both charges.
77. Comrade Phindile Nkuna is found guilty of assault and is reprimanded. In addition,

the comrade is directed to apologise to the ANC and to the acting Provincial Secretary personally for her misconduct within 7 days.

NDC RECOMMENDATION

78. The NDC wishes to bring to the attention of the SGO the lack of cohesion among the leaders and serious underlying tensions in the Province which detracts from the unity project of the organisation. The NDC has noted that inter-personal relations are so low that comrades did not even speak to each other at the disciplinary hearing. Furthermore, the anger of the comrades was palpable.
79. From the evidence led at the hearing it was apparent that a degree of bullying was present which does not augur well for future relations among the provincial and regional leaders.
80. The NDC recommends that the leaders at Provincial and Regional level be sent to the OR Tambo Political School of Leadership to expand their political understanding, be referred for anger management and be equipped with the tools to deal with organisational issues.
81. From an organisational perspective, the NDC recommends that the NEC deployees play a more pro-active role in building institutional capacity in the Province and assisting the leaders with the current challenges in governance which was evident from the decision-making ability of the leaders and the quality of documents which were before the NDC.

Dated at Benoni this 30th day of September 2019

MILDRED OLIPHANT
NDC CHAIRPERSON

NATHI MTHETHWA
NDC MEMBER

NOCAWE MAFU
NDC MEMBER

PINKY MOLOI
NDC MEMBER

BEAUTY DLULANE
NDC MEMBER

BONGANI BONGO
NDC MEMBER

FAITH MUTHAMBI
NDC MEMBER

- NDC members **Nocawe Mafu** and **Pinky Moloi** did not deliberate in the finding on the point *in limine* because they had to attend to their respective government duties and could not be present for the entire time when the point *in limine* was argued.

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African National Congress



National Disciplinary Committee (NDC)

OFFICE OF THE CHAIRPERSON: CDE MILDRED OLIPHANT

**IN THE NATIONAL DISCIPLINARY COMMITTEE
SITTING AS AN APPEAL COMMITTEE**

CASE NO. 1/2021

In the matter between:-

SOLOMON MSANE

Appellant

and

AFRICAN NATIONAL CONGRESS

Respondent

NDC FINDING

Background

1. On 19 January 2021 the Appellant was found guilty by the Kwa Zulu Natal Provincial Disciplinary Committee of contravening rules 25.17.12, 25.17.20 and 25.17.1 of the ANC Constitution and was expelled from the organisation.

Appellant's appeal

2. The Appellant subsequently noted an appeal to the National Disciplinary Committee and advanced the following grounds of appeal:-

2.1 The Disciplinary Committee members who attended the PEC meeting

on 14 August 2020 and participated in the decision to discipline him should have recused themselves as PDC members;

2.2 The disciplinary proceedings should not have proceeded when the Appellant was in hospital; and

2.3 No evidence of misconduct was placed before the disciplinary hearing.

3. NDC Hearing

3.1 Due to the Covid 19 pandemic, the hearing was conducted virtually.

3.2 At the outset the Chairperson clarified that the Appellant and the Respondent would each be afforded 30 minutes to present their arguments and respond to questions and points of clarification raised by NDC members. Thereafter the Appellant and Respondent would leave the meeting and the NDC would deliberate on the appeal.

3.3 The Chairperson also confirmed that all relevant documentation for the appeal, including the charge sheet, PDC Finding, record and transcript of proceedings before the PDC, and Appellant's Notice of Appeal and Heads of Argument, was received and distribution to NDC members prior to the hearing.

4. Presentation by Appellant

4.1 Appellant is the Speaker of the Mkhanyakude District Municipality.

4.2 At 21h47 on 17 August 2020 he received a SMS message from the ANC provincial secretary that he should step down as Speaker by midday the following day.

4.3 He checked the veracity of the message to authenticate the sms with the regional secretary first and wanted to know why a letter was not written to him as is the tradition in the ANC when it communicates decisions.

4.4 On 27 August 2020 he received a letter from the Provincial Secretary that the PEC had, at its meeting on 10 August, decided to institute disciplinary action against him for defying a directive of the organisation.

4.5 He was unable to attend his disciplinary hearing on 15 December 2020

because he was in hospital since 14 December 2020.

- 4.6 This information was conveyed to the PDC by his representative, advocate Sibeko.
- 4.7 After the PDC refused a request for postponement, advocate Sibeko withdrew from the proceedings.
- 4.8 The Appellant subsequently sent an email to cde Ramesh who works with the Provincial Presenter, confirming that he was in hospital.
- 4.9 He denied receiving any information from the Provincial Secretary.

5. Presentation by Provincial Presenter

- 5.1 Comrade Ravi Pillay, the Provincial Presenter, said that after being informed of the PEC decision, the Appellant made representations to the Provincial Office in writing requesting reasons why he should resign.
- 5.2 The Provincial Secretary replied on 2 September.
- 5.3 The Province had conducted an assessment of the district because of poor service delivery and reports of dysfunctionality in the Mkhanyakude District Municipality.
- 5.4 The Provincial Officials and PWC agreed with the assessment and the PEC decided to intervene by redeployment. The ANC wanted to make changes to the leadership in the district.
- 5.5 The Province had made similar interventions in other areas such as eThekweni.
- 5.6 Prior to the commencement of disciplinary proceedings, the Appellant instituted an urgent application in the High Court to stop the proceedings. The application was dismissed with costs.
- 5.7 The Appellant had employed delaying tactics during his disciplinary proceedings and raised several points *in limine*, including the recusal of the PDC members. He did not deal with the merit of the charges against him.
- 5.8 On 14 December 2020, the day he was supposed to be in hospital, the

Appellant was addressing a public meeting in Ward 12 in his district.

5.9 Advocate Sibeko withdrew on his own and not on the instruction of the Appellant.

5.10 The Appellant had not presented any defence to the charges.

5.11 The Provincial Secretary, comrade Mdumiseni Ntuli, in his evidence to the PDC, underscored the implications for organisational discipline when a member defies an instruction of the highest structure in the Province.

5.12 The Province lost trust in the Appellant after several delaying tactics. Hence, the excuse that he was in hospital since 14 December was not readily accepted especially after evidence was led that he was addressing a public meeting on that day.

6. Reply by Appellant

6.1 The Chairperson gave the Appellant an opportunity to reply specifically to a matter raised by NDC member, comrade Faith Muthambi, viz. to explain where he was on 14 December - in hospital or addressing a public meeting.

6.2 The Appellant confirmed that he was addressing a public meeting on 14 December. At 11h40 that day he received a text message from the doctor at the hospital that his results for the Covid 19 test had come back positive and he had to be admitted to hospital. He left the meeting immediately after receiving the message, was admitted and remained in hospital until sometime in January 2021.

6.3 The Appellant said he was 63 years old and a committed member of the ANC.

7. Evaluation by NDC

7.1 The NDC commenced its evaluation of the appeal after the Appellant and Respondent were excused from the meeting.

Merits of the appeal

7.2 The NDC is of the view that Rule 19 of the ANC Constitution gives wide

powers to the PEC to supervise and direct the work of the ANC and all its organs in the Province, including the ANC Provincial and local government caucuses.

- 7.3 Consequently, it was within the power and authority of the PEC to assess the performance of local municipalities and district municipalities from time to time.
- 7.4 The purpose of such assessments was to enhance service delivery to the people.
- 7.5 Although the NDC expressed concern about the manner in which the Appellant was notified that he should resign, the NDC is of the view that, overall, it was within the competence and authority of the PEC to intervene when necessary.
- 7.6 The Appellant did not present any evidence on the first ground of his appeal that the PDC members were conflicted.
- 7.7 At the PDC hearing the Provincial Secretary provided documentary evidence, including attendance registers, to show that the PDC members recused themselves when the PEC discussed and decided to institute disciplinary action against the Appellant for misconduct.
- 7.8 The Appellant also did not present any evidence to rebut the substance of the charges levelled against him.
- 7.9 The Appellant was able to show that he was admitted to hospital on 14 December. On the contrary, the PDC could not be faulted for continuing with the hearing in the absence of the Appellant especially in light of his delaying tactics and evidence presented to it at the hearing that the Appellant was addressing a public meeting on 14 December which the Appellant admitted in these proceedings.
- 7.10 Based on the above evaluation, the NDC dismisses the appeal on the merits.

Sanction

- 7.11 In the view of the NDC, the sanction of expulsion is imposed in cases where a charged member is beyond redemption and there is no prospect of rehabilitating the member.

7.12 The Appellant is 63 years old and joined the ANC when he was young. He testified that he could not think of any other political organisation that he would want to join.

7.13 There was no evidence that the Appellant had transgressed the ANC code of conduct since joining the organisation.

7.14 The NDC's view is that in the circumstances of this case, expulsion from the organisation was harsh and unwarranted.

7.15 Accordingly, the sanction of expulsion is reviewed and set aside.

7.16. In accordance with Rule 25.23.3, where the NDC sits as an appeal tribunal, it has the competence to impose an appropriate sanction.

7.17 Having taken into consideration:-

7.17.1 The interest of the organisation;

7.17.2 The need to expedite service delivery in the region;

7.17.3 The perceived breakdown in the relationship between the Appellant and the regional structure;

7.17.4 The need for political cohesion and reconciliation in the region;

7.17.5 What would be in the best interest of the Mkhanyakude District Municipality; and

7.17.6 The personal circumstance of the Appellant.


17.18 The NDC has decided to impose the following sanction:-

7.18.1 The Appellant must resign as the Speaker of the Mkhanyakude District Municipality but remain as a councillor of that municipality.

7.18.2 The Province must commence with a process of reconciliation in the region, including political training for the comrades in the region and counselling for the Appellant.

7.18.3 The Province and the region must take steps to improve organisational processes to enhance governance and better communication among comrades.

Signed at *Empangeni* on this *23* day of March 2021.


MILDRED OLIPHANT
CHAIRPERSON
NATIONAL DISCIPLINARY COMMITTEE

- AGREED**
- TITO MBOWENI - NDC MEMBER
 - SIDUMO DLAMINI - NDC MEMBER
 - BOITUMELO MOLOI - NDC MEMBER
 - NOCAWE MAFU - NDC MEMBER
 - FAITH MUTHAMBI - NDC MEMBER
 - BONGANI BONGO - NDC MEMBER

AFRICAN NATIONAL CONGRESS

SECRETARY GENERAL'S OFFICE



Chief Albert Luthuli House 54 Sauer Street Johannesburg 2001 PO Box 61884 Marshalltown 2107 RSA
Tel: 27.11.376.1000 Website: www.anc.org.za

Professor Itumeleng Mosala

Secretary

Judicial Commission of Inquiry into Allegations of State Capture ("the Commission")

2nd Floor

Hillside House

17 Empire Road

Parktown

Per email

6 August 2021

Dear Sir

REQUEST FOR MINUTES OF THE ANC NATIONAL DEPLOYMENT COMMITTEE FOR THE PERIOD BETWEEN 2018 AND MAY 2021

We refer to the mail of 6 July 2021 from the Secretariat of the Commission in terms of which the Commission requested the minutes of the ANC National Deployment Committee (the Deployment Committee) for the period between 2018 and May 2021, while the Deployment Committee was under the Chairmanship of Deputy President David Mabuza.

The e-mail from the Secretariat follows an earlier formal request for minutes of the Deployment Committee, required for purposes of cross examination of President Ramaphosa for the period between 2013 and 2017 which the ANC responded to after diligent search. The ANC has received and dealt with the e-mail as an additional request outside of the period indicated in the formal request for documents of the Deployment Committee that is intended.

It should be noted that there is a pending matter instituted by a Democratic Alliance member of Parliament and the Democratic Alliance itself in the High Court of South Africa under case number 26339/2021 ("High Court matter"), requesting for the minutes of the Deployment Committee including the ones in the period between 2018 and May 2021. For this reason, the ANC has sought and received legal advice in relation to the request, the structure in terms of which the abovementioned minutes of the Deployment Committee can be provided to the Commission and how to deal with the concerns of the ANC has in relation to the confidentiality which, in the ANC's opinion, the requested minutes ought to be treated with.

The concerns that the ANC has in relation to the confidentiality of the abovementioned minutes include the fact that they are at the heart of the High Court

AFRICAN NATIONAL CONGRESS

SECRETARY GENERAL'S OFFICE



Chief Albert Luthuli House 54 Sauer Street Johannesburg 2001 PO Box 61884 Marshalltown 2107 RSA
Tel: 27.11.376.1000 Website: www.anc.org.za

matter instituted by the applicants in that matter in reaction to the very evidence that President Ramaphosa will be cross examined on before the Commission. The ANC is opposing the High Court matter and the publication of the minutes before the conclusion of the court case will prejudice the ANC's case currently before the High Court.

Further to the above, the abovementioned minutes of the Deployment Committee refer to discussions about specific individuals, with the names of those individuals disclosed in the minutes. The individuals mentioned in the minutes have not been informed that they are mentioned in the documents requested in the e-mail of the Secretariat of the Commission. This raises a further confidentiality concern which, in the ANC's opinion, would need to be addressed.

The ANC has been advised that the structure for providing documents to the Commission is regulated by Rule 10 of the Rules Governing Proceedings of the Commission ("Commission Rules"). The ANC's understanding of the operation of Rule 10 is that if it has a claim of confidentiality in relation to the abovementioned minutes as requested by the Commission, it would need to bring an application in order for the Commission to treat the minutes confidentially.

According to the ANC's understanding of Rule 10, an application in terms of Rule 10.4 for documents to be treated with confidentiality, must be preceded by a summons from the Commission issued in terms of Rule 10.1 of the Commission Rules. Since the abovementioned of the Deployment Committee are not being requested pursuant to a summons issued by the Commission, it is not clear to the ANC how the Commission intends to deal with its concerns to have the documents treated with the requisite degree of confidentiality.

Notwithstanding the above and in the spirit of transparency, the ANC provides the Commission with the minutes of the Deployment Committee which it was able to find. However, the ANC wishes to provide the minutes for information purposes only and not for the purpose of the Commission being able to deal with the minutes formally as part of the information which the Commission is at liberty to publish. Should the Commission wish to rely on or use the minutes in the manner that they become public information, the ANC kindly requests that the Commission grants the ANC the opportunity for the documents to be formally received by the Commission subject to confidentiality protections.

We hope that the Commission will receive the above to be in good order and we provide the Commission with the requested minutes of the Deployment Committee

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Chief Albert Luthuli House 54 Sauer Street Johannesburg 2001 PO Box 61884 Marshalltown 2107 RSA
Tel: 27.11.376.1000 Website: www.anc.org.za

under cover of this letter and on the clear understanding as stipulated above.

Yours faithfully

KRISH NAIDOO
LEGAL ADVISER

ANC DEPLOYMENT SUB-COMMITTEE MEETING

Date : Friday, 11 May 2018
Venue : 10th Floor Boardroom, Luthuli House
Time : 08H30 - 10H10

Present:

David Mabuza (Chair), Jessie Duarte (Coordinator), Sdumo Dlamini (NEC), Mildred Oliphant (NEC), Sfiso Buthelezi (NEC), Susan Shabangu (NEC), Natso Khumalo (ANCVL), Skhumbuzo Mpanza (SANCO), Solly Phetoe (Cosatu), Meokgo Matuba (ANCWL).

Apologies:

Dr Nkosazana Dlamini Zuma

Minutes:

The minutes of the previous meeting held 19/03/2018 were adopted.

Inputs from Deployed Cadre in Government:

1. Department of Environmental Affairs

1.1 SANPARKS Board

A list of 48 names was made available with CV's abbreviated. The Deployment Committee agreed that Comrade Edna could appoint an interim board that should add the names of ANC cadre as per her discussion with the DP.

Comrade Edna is requested to provide full details including work experience of the people to be appointed.

1.2 CEO Isimangaliso

Comrade Edna is allowed to choose from her identified short list. She is required to send full CV particulars to the next meeting of the Deployment Committee which sits on 21 May 2018.

2. Appointment of Non-Executive Members of the Board of Directors of SEDA an agency in the DSBD

2.1 Comrade Lindiwe Zulu expressed a view that the Deployment Committee creates a database of all ANC members who are deployed in every position in government, business, boards and also research names of those previously deployed.

2.2 Deployees nominated to SEDA Board

Comrade Zulu provided a list of 10 names of which three (3) are from the previous board and their term expires in August 2018.

The Deployment Committee requested two (2) spaces on the board.

The names must reflect a better geographic spread, namely Free State, Mpumalanga and North West.

3. Public Enterprises board

A general point was raised that all the boards needed to be reviewed.

3.1 Eskom urgently needs to appoint a CEO.

The Deployment Committee agreed to support Phagamani Hadebe

3.2 The Eskom Interim board needed to be regularized and properly appointed within the existing rules of the state. Comrade Pravin will check the conditions under which the interim board was established.

3.3 Transnet Board

The CEO and CFO are members of the board. The CFO has been suspended and the position is vacant and will be advertised.

The nomination to the board presented was pulled from the database of the DPE.

The Deployment Committee agreed that the Minister appoints an interim board. That he chooses six (6) people and the Deployment Committee will forward six (6) nominations to him by Friday 19 May 2018.

3.4 Denel Board

The Chair has resigned.

Comrade Pravin provided the names of 16 people of which two (2) spaces on the board are reserved for the CEO and CFO.

The Deployment Committee noted that there were three (3) vacancies and supported the nomination of Comrade Siphile Nyanda as well as forward two (2) additional named by 19 May 2018.

3.5 SAA Board

The three (3) airlines are expected to be merged.

The Deployment Committee will provide four (4) names to Comrade Pravin. The appointment of a full time CEO is in abeyance until the issue of the merge is concluded.

A labour person is required on the board. The board must comply with EEA.

Black newly qualified pilots to be employed by SAA as interns.

3.6 SAFCOL

The board is to be replaced. The requirement is for 10 Non-Executive Directors.

Comrade Pravin will provide six (6) names and the Deployment Committee will provide four (4) names.

3.7 Comrade Ayanda Dlodlo to provide a presentation at the next Deployment Committee.

The next meeting of the Deployment Committee is on 21 May 2018 at 8am, Luthuli House 10th Floor Boardroom.

Matters Arising:

In the meeting of 11 May 2018 the Deployment Committee agreed to forward names of people requesting for deployment to Comrade Pravin Gordhan for consideration in State Owned Enterprise Boards by 19 May 2018. On 18 May 2018 a list of abridged CV's and the full CV's were forwarded to Comrade Pravin Gordhan for consideration.

1. Denel Board

The Deployment Committee agreed to forward two (2) names by 19 May 2018 for consideration on the Denel Board.

The following people were appointed on the board:

1. Ms Monhla Hlala - Chairperson of the board
2. Mr Zoli Kunene
3. Prof Tshilidzi Marwala
4. General TT Matanzima
5. Ms Gloria Serobe
6. Ms Talib Sadiq
7. Ms Sue Rabkin
8. Dr Sibusiso Sibisi
9. Ms Cheryl Carolus
10. Ms Nonzukiso Siyotula
11. Mr Thami Magazi
12. Mr Martin Mnisi

2. Transnet SOC Limited

The Deployment committee and Comrade Pravin agreed that he chooses six (6) people and the Deployment Committee will forward six (6) nominations to him by Friday 19 May 2018.

The Minister has appointed a new interim board, pending a full appointment, in consultation with Cabinet. The Interim board comprises of:

- 1. Mr. Popo Molefe as chairperson
- 2. Mr. Louis Zeuner
- 3. Ms. Ramasela Ganda
- 4. Ms. Ursula Fikelepi
- 5. Mr. Edward Kieswetter
- 6. Ms. Dimakatso Matshoga

DEPLOYMENT COMMITTEE

**10th Floor Boardroom
Luthuli House
03 AUGUST 2018 (9-12h00)**

1. Welcome

The Deputy President welcomed the members to the meeting.

2. Apologies

-) Cde Lindiwe Sisulu.
-) The Secretariat need to re-check the e-mail addresses and mobile numbers.

3. Minutes of the Previous Meeting

The previous minutes were adopted, with the following amendments:

-) Transnet Board, Cde Sifiso Buthelezi recused himself.
-) All CVs were sent on Denel. Cde Simphiwe Nyanda was recommended to the Board of Denel, but he may have declined due to possible conflict of interests of his companies.
-) It was noted that a person may have been appointed to the Board of Sanparks.
-) There was a request for Cde Pravin Gordhan, Minister of Public Enterprises to present on the Transnet, Denel, SAA and SAFCOL.
-) Follow up should also be made with Cde Edna Molewa, Minister of Environment, Cde Ayanda Dlodlo, Minister of Public Services on the 'state of the State'.

4. COGTA – Municipal Demarcation Board, Minister Zweli Mkhize

The Minister presented on two matters under consideration, the Municipal Demarcation Board (MDB) and the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities (CRL Rights Commission).

The process is beginning therefore the purpose of the Minister attending was to alert the Deployment committee, so that the Committee could encourage the competent persons to apply. MDB is expected to conclude by 19 February 2019 and the CLR on 28 February 2019.

The Minister requested for the Committee to take note that in terms of the MDB, a major challenge is that the Act is instructive, and many categories were pre-determined.

The Committee were quite heartened by the initiative of the Minister to present to the Committee well in advance. The Committee was appreciative of this, and hoped that other Ministers would emulate him.

5. Science & Technology - Minister Kubayi-Ngubane

Minister Kubayi-Ngubane presented on the National Advisory Council of Innovation, the National Space Council, and the National Research Foundation Board. The Minister apologised that her office has seemed to have sent documents only to the Deputy President and not the Deputy Secretary General.

a) National Advisory Council of Innovation

The approach has been to attract young people, especially women with an interest in the sciences. Advertisements have already been placed.

It was advised by the Committee, that three from the previous Board is retained. Further noting that Cde Derek Swartz is firm supporter of the ANC. The view of the Committee was that attracting expertise should not be an excuse for the under-representation of women. Therefore the Committee resolved that the in the nine spaces that the Minister appoints, one of the men should be replaced by a woman.

The Committee also recommended that the Minister should try to ensure geographic spread and a balance amongst the various universities.

b) Space Agency

It was noted that there were more than 14 people, and a serious need for persons with an engineering background. There was a challenge on racial representivity, although in this matter there with 9 females as opposed to 6 males. However there had been no applications from the so-called 'Coloured' community.

c) National Research Foundation Board

The meeting noted that no-one can be appointed who holds a political office. Nevertheless, there seems to be a good team with a number of people associated with the ANC movement. There are 7 females and 6 males

6. Trade and Industry - Director-General Lionel October

The Committee agreed on the Re-appointment of the Deputy-Chair of the National Consumer Commission.

However, the Deployment Committee preferred not to offer opinion on the other matters raised by the department on the Export Credit and Insurance Corporation and the Non-proliferation Council. The matters have been presented as a *fait accompli* and this is not the first time this particular department has done this. The Committee therefore resolved that the matters should be discussed with the Minister of Trade Industry and the Committee. The Minister should be invited to the next meeting of the Deployment Committee.

7. Transport – Chief of Staff of the Minister of Transport

The Committee was sympathetic of the challenge facing the Minister, in that the terms of office of the many of the boards within his Ministerial envelope were coming to an end, and he was appointed just recently.

It was agreed that the members must submit their proposals, and the abridged CVs must be submitted to the Minister. Furthermore, the Committee expected the Minister to meet with the Committee on the appointments to the Board. The Committee will provide the names of 3 persons plus the one woman.

8. Request for Deployment (Abridged CVs)

This matter could not be discussed and was deferred to the next meeting.

9. Closure & Date of Next Meeting

It was agreed that the Committee would re-convene next Monday, 06 August 2018, and the Minister of Public Service and Administration, Cde Ayanda Dlodlo, the Minister of Public Enterprises, Cde Pravin Gordhan, the Minister of Trade and Industry, Cde Rob Davies, and the Minister of Environment, Cde Edna Molewa, should be invited to present to the Committee.

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DEPLOYMENT COMMITTEE

**10th Floor Boardroom
Luthuli House
03 AUGUST 2018 (9-12h00)**

1. Welcome

The Deputy President opened and welcomed the members to the meeting.

2. Apologies

-) Cde Lindiwe Sisulu.
-) The Secretariat need to re-check the e-mail addresses and mobile numbers of members as some members did not receive the invites.

3. Minutes of the Previous Meeting

The previous minutes were adopted, with the following amendments:

-) Transnet Board, Cde Sifiso Buthelezi recused himself.
-) All CVs were sent to Cde Pravin and they did not appear on the final list.
-) Cde Simphiwe Nyanda was recommended to the Board of Denel, but did not appear on the final list.
-) It was noted that a person may have been appointed to the Board of Sanparks.
-) There was a request for Cde Pravin Gordhan, Minister of Public Enterprises to present on the Transnet, Denel, SAA and SAFCOL.

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-) Follow up should also be made with Cde Edna Molewa, Minister of Environment.
-) Cde Ayanda Dlodlo, Minister of Public Services to be invited to come and present on the ' Status of appointment of DG's.

4. COGTA – Municipal Demarcation Board, Minister Zweli Mkhize

The Minister presented on two matters under consideration, the Municipal Demarcation Board (MDB) and the Commission for the Promotion and Protection of the Rights of Cultural, Religious and Linguistic Communities (CRL Rights Commission).

The process is still at the beginning therefore the purpose of the Minister attending was to alert the Deployment committee, so that the Committee could encourage the competent persons to apply. MDB is expected to conclude by 19 February 2019 and the CLR on 28 February 2019. The current CLR Board performance must be evaluated.

The Minister requested for the Committee to take note that in terms of the MDB, a major challenge is that the Act is instructive, and many categories were pre-determined.

The Committee appreciated and commended the initiative of the Minister to present to the Committee well in advance and hoped that other Ministers would emulate him.

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5. Science & Technology - Minister Kubayi-Ngubane

Minister Kubayi-Ngubane presented on the National Advisory Council of Innovation, the National Space Council, and the National Research Foundation Board.

a) National Advisory Council of Innovation

The approach has been to attract young people, especially women with an interest in the sciences. Advertisements have already been placed.

The Minister recommended that the 3 members to be retained from the previous Board. The recommendation also include 3 developing researchers who are Doctors. It was noted that Cde Derek Swartz is firm supporter of the ANC. The view of the Committee was that attracting expertise should not be an excuse for the under-representation of women and that there should be a balance. Therefore the Committee resolved that the in the nine spaces that the Minister appoints, one of the men should be replaced by a woman.

The Committee also recommended that the Minister should try to ensure geographic spread and a balance amongst the various universities.

b) Space Agency

Ministry expected to appoint the maximum 14 people, and needed a persons with an engineering background. The recommendation has 9 females and 6 males. However there had been no applications from the so-called 'Coloured' community.

The Committee recommended the appointment.

c) National Research Foundation Board

The meeting noted that no-one can be appointed who holds a political office. The committee was advised that one recommended member was married to a non-

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South
African.

It was emphasise that this committee must drive transformation. Nevertheless, there seems to be a good team with a number of people associated with the ANC movement.

The committee recommended the names for appointment.

6. Trade and Industry - Director-General Lionel October

The Committee agreed on the Re-appointment of the Deputy-Chair of the National Consumer Commission.

However, the Deployment Committee preferred not to offer opinion on the other matters raised by the department on the Export Credit and Insurance Corporation and the Non-proliferation Council. The matters have been presented as a *fait accompli* and this is not the first time this particular department has done this. The Committee therefore resolved that the matters should be discussed with the Minister of Trade Industry by the Committee. The Minister should be invited to the next meeting of the Deployment Committee.

7. Transport – Chief of Staff of the Minister of Transport (Cde L Masuku)

The Committee was sympathetic of the challenge facing the Minister, in that the terms of office of the many of the boards within his Ministerial envelope were coming to an end, and he was appointed just recently.

ACSA recommendations were accepted and the 3 names left for the committee. DSG was mandated to engage the Minister on the issue of Aviation.

SANRAL recommendations were accepted with one name added by the Minister. DSG was mandated to add from the database 1 name.

The committee resolve to request the Minister to come and present on the other processes to appoint Board members.

It was agreed that the members must submit their proposals, and the abridged CVs must be submitted to the Minister.

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8. Request for Deployment (Abridged CVs)

This matter could not be discussed and was deferred to the next meeting.

9. Closure & Date of Next Meeting

It was agreed that the Committee would re-convene next Monday, 06 August 2018, and the Minister of Public Service and Administration, Cde Ayanda Dlodlo, the Minister of Public Enterprises, Cde Pravin Gordhan, the Minister of Trade and Industry, Cde Rob Davies, and the Minister of Environment, Cde Edna Molewa, should be invited to present to the Committee. DSG was mandated to engage with the Ministers to be invited.

MINUTES OF THE DEPLOYMENT COMMITTEE

**10th Floor Boardroom
Luthuli House
26 NOVEMBER 2018 (10- h00)**

1. Welcome

Welcomed all, and apologised to all that we have not sat in a while for various reasons.

2. Apologies

-) Cde Nkosazana Dlamini-Zuma
-) Cde Bheki not confirmed.
-) Cde Skhumbuzo Mpanza
-) Cde Jeff Radebe, the Deputy Minister will come in his place.
-) Minister Lindiwe Sisulu.

3. Minutes of Previous Meeting

Minutes unanimously adopted without amendment.

Record people who attended the meeting as well.

4. CSIR – Minister Kubayi-Ngubane

10:00 – 10:30

Finalising the board of CSIR, current term ends by December, and the new board will take over from January 2019. A pack has been prepared for briefing to the Deployment Committee.

Noted the emphasis on age. As well as the concentration of appointments from Gauteng. Noted the need for a board of experts and advised that some of the candidates with academic qualifications be re-looked at, especially candidates with qualifications in artificial intelligence. It was further noted that the current candidate is

actually internationally based making meeting attendance very difficult. Also advised that there is greater non-racial representivity in future boards. Cognisant that the CSIR is an industrial research agency and not general research. Moreover, though, Mr. Noge will be removed so that a white person with experience in the Oceans economy be placed. Will inform the DSG office on the change.

5. SASSA CEO
Minister Susan Shabangu

10:30 – 11:00

Operating with an acting CEO since last year. Permission had been sought from the Deployment Committee to advertise. Requesting the Committee to grant permission for the final interviews of the short list of five (5) candidates to go ahead and the subsequent appointment.

The Committee commended that she has approached the Committee on every step.

The five are solely Black African. Advised to increase the interviews to seven people so as to include more national groups. Also cautioning that the advertisement making a preference, could be illegal. Apparently the advert was corrected. The water person, was the CFO and now that department is in the red, candidate number one discouraged. Investigate why the one candidate not employed.

6. Nuclear Energy Board
Minister Jeff Radebe – Deputy Minister

11:00 – 11:30

Will return with the short list and not just the nominated individuals. Dr. Mangoba Nene. Percentage of young people. Note that Ms. Masango is a member of the CSIR board as well, but that is not incorrect.

7. IDC
Minister Ebrahim Patel

11:30 – 12:00

CEO position of the IDC. There is the wider issue of the IDC board at another time, not today. The IDC is the main DFI for industrial funding, as a funder and a co-funder. It doesn't receive money from the state, but it's model is based on profit and then re-invest it to produce Black industrialists, young, women and rural areas.

The short list has already been done, and the interviews have been conducted.

In the light of that the Minister was advised to cast the net wider, and provide the long list so that a short list can be jointly arrived upon.

Monday, 3 December to meet again and finalise the matter, and Thursday or Friday (29 and 30 November 2018) will expand interviewed.

8. DIRCO

Minister Lindiwe Sisulu

12:00 – 12:30

Deferred to the next meeting. Noting that she is a member of the Deployment Committee, but we acknowledge her hectic schedule. The DSG will take the presentation and it will be circulated. Need to look at the grading of the embassies. Next committee meeting will look at the grading based on DIRCO’s explanations.

9. Request for Deployment (Abridged CVs)

12:30 – 13:00

Advertising the National Development Agency and DDG corporate services and Disaster Management Fund

10. Closure

13:00

Treat everyone very fairly and consistently and help both government and the organisation.

DEPLOYMENT COMMITTEE

**10th Floor Boardroom
Luthuli House**

03 DECEMBER 2018 (08h30-12h00)

1. Welcome

2. Apologies

) Cde Sifiso Buthelezi

) Cde Jessie Duarte, Deputy Secretary General

3. Minutes of Previous Meeting (26 November 2018)

4. Energy

9:00 – 9:30

Minister Jeff Radebe

The Deputy Minister also present, previously, the short list was requested. She explained that the advertisement was for all boards and therefore there is a list of 266 and the recommended names.

Nuclear Energy Board, requiring 8 members. The criteria used was that persons needed to understand board governance, audit skills, legal skills and technical skills for the nuclear sector, and human resource practitioners. There are persons in the later 30s, and there is a gender balance. The Chair is a long-standing member of the ANC, and all the members are from the ANC.

The recommended names are approved, but if there are changes the Ministry will inform the Committee.

The other Boards are Central Energy Fund, it's subsidiaries PETROSAS, PRASA, Strategic Fuel Fund, i-Gas, African Exploration Mining Company, NECSA subs, the NTP (medical isotopes), NERSA. Should be presented in January.

Next meeting the proposal on all the Boards will be submitted, noting that a person should not serve for more than two Boards. Also noting that a member on the holding board, may serve on a subsidiary board. There are a no former board members on the incoming board. There have been a litany of infractions, which resulted in the almost shut-down of NTP, and a host of audit queries. The list must be compared to the database for the common names.

5. Defence

9:30 – 10:00

Minister Nosiviwe Mapisa-Nqakula

Apologise for not bringing this matter to the Deployment Committee. Unsure that an Advisory Council – Defence Force Service Commission – needed to be brought to the Deployment Committee. The DFSC advises on the service conditions of the defence force.

There are 6 vacancies, based on the long list we are appointing three. After consideration by retired generals and parliament. The current applications only had one woman application.

The Deputy President will assist in ensuring that the President is briefed on matters relating to defence. There must be constant engagement between the Deputy President and Minister.

6. DIRCO

10:00 – 10:30

Minister Lindiwe Sisulu

The Minister had to unfortunately cancel at the last moment. She has requested that her advisor attend on her behalf. However, the Committee, as previously decided to not have advisors to make representations. It is also noted that there are two deputy Ministers. Noting that this is the last meeting for the year.

When the administration changed the letters of appointment of ambassadors were not updated, and some have had to return and those who have not yet left are now unemployed because they have not been appointed as well. The SG must be alerted, and the DP must raise the matter sharply with the Minister.

7. STATSSA Advisory Council

Previously the names were not brought to the Deployment Committee or Cabinet, so that there is no suspicion of interference or the veracity of the statistical conclusions. Therefore the names will be discussed at officials' level.

We must be cautious that previously this is how the Deployment Committee was avoided, even though in this particular instance the Advisory Council did not come to Cabinet or the Deployment Committee.

8. IDC
Minister Patel

Procedures were not followed (especially since the process was outsourced), but you are dealing with a bank. Therefore let the matter be concluded by the officials.

We must be cautious that previously this is how the Deployment Committee was avoided. All Ministers must provide the Boards and the advertisements. It is important that we set out our scope.

9. Request for Deployment (Abridged CVs)11:00 – 12:00
10. Closure12:00

Let's work on who should be deployed to the many energy boards and the foreign deployments.

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DEPLOYMENT COMMITTEE

**10th Floor Boardroom
Luthuli House
22 FEBRUARY 2019 (10-13h00)**

1. Welcome 11h00 – 11h05

The Deputy President welcomed and opened the meeting.

2. Apologies 11h05 – 11h10

-) Cde Solly Mpaila, from the SACP, apologised for not being able to attend. They also have raised that we should meet more regularly and consistently on set dates. Also so as to discuss broader deployment issues, and not just names.
-) Agreed that on Fridays, twice a month, once in a fortnight.
-) Cde Bheki Ntshalintshali from COSATU has also apologised for not being able to attend
-) Cde Sdumo will have to leave before the meeting adjourns, due to other commitments, in particular the SACP CEC

3. Minutes of Previous Meeting & Matters Arising 11h10 – 11h15

7 – letter not latter

Minutes adopted unanimously.

4. COGTA – 11h15 – 11h30

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Deputy Minister Obed Bapela

CRL Commissioners

Initially, the nominees were mainly culturalists and the religious nominees were also from the evangelical churches, not the mainstream churches or the non-Christian religious. Therefore the Minister headhunted and added names.

There were 78 names and a shortlist of 37.

Comments & Decision: The Committee will not yet endorse the shortlist. The DSG, with each member here, will headhunt a certain number and approach certain groupings etc, and compile a preferred list, and submit a list by Friday next week. It will be confined to members of the Committee who are here. The Ministers will appoint four and the Committee to the Interview Panel.

The current Chair will not remain. Cde Bridgitte Mabandla will be the Chair and the current Deputy Chair will be retained.

Municipal Demarcation Board

The panel made up of judges have made recommendations, seven males and six females, geographic FS 3, Gauteng 1, and they cover the criteria. The Chair is full-time and the other board members are part-time. The current chair has requested to be recused as a Chair and Deputy Chair. The recommendation is that Mr. Thabo Manyoni is the new Chair.

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The Board selects and appoints the Deputy Chair. It will have to be a woman.

Comments: Our input is limited, because the selection panel is appointed after consultation with the President. Happy that the current Chair is remaining as a member of the Committee. She was excellent as a Chair. The recommended person to Chair is highly qualified, although the ANC should support the person, similar to how Cde Parks Tau is supported in SALGA.

It is positive that there is a town planner also in the Board, since previously the Board has been rigid in their approach and not as rational as it should be.

It is noted that the Minister did previously inform the Committee about the pending appointment, however, the matter was not sufficiently followed up by the Committee and the sector organisations.

5. Social Development –
Minister Susan Shabangu 11h30 – 11h45

Advert for DDG for Corporate Services, as reported in the previous meeting. A position which has been vacant for eight years. The vetting has been concluded and the *dpsa* has been contacted to prepare the submission to Cabinet.

Comment: The Committee supports the recommendation.

The NDA

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The NDA used to be under Treasury and over time has ended up with Social Development. It is an institution that needs to be reviewed, so that it can be a focused institution. Therefore there should be a temporary board (1 year) and not a five year board. The Act does not precludes the term being less than five years. There are 6 independent members and the rest from the department.

Comment: Only two are retained. Judy Hermanus and Hanekom retained. 2 and 4 recommended. Retain the four and review the institution. We expect the motivation on the review from the Minister.

SASSA

The matter is being finalised.

6. Commission for Gender Equality 11h45 – 12h00

Received 90 applications, two withdrew and therefore 88 applications. Will shortlist 24, and recommend 8. Due to timeframe, must be done by 19 March 2019. Human resources on verification of qualifications and State security on vetting have not responded as yet.

The DSG's Office has provided names of candidates.

Comment: The Committee endorsed the names.

7. Portfolio Committee on Communication (SABC) 12h00 – 12h15

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There will be two engagements. One now, and when the names are finalised. Mainly, because the study group has not met. The Deployment Committee is scheduled to meet in two weeks time.

There are good candidates, based on the CVs, that have applied. The Study Group will consider the names and shortlist so as to ensure gender, skills, geographic spread, covering SABC and MDDA.

Comment: The Committee members will scrutinise the list and submit preferred applicants to be shortlisted, by Monday. They will return upon the interviews have been concluded.

For Noting:

8. Science & Technology – Minister Kubayi-Ngubane
Appointment of DDGs

9. Minerals – Minister Gwede Mantashe
Appointment of CFO

10. Application for Deployment

Sectors must update their lists, via the DSG's office.

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The next meeting must update and finalise the overall list.

11. Closure

12h32 meeting closed.

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DEPLOYMENT COMMITTEE

**10th Floor Boardroom
Luthuli House
08 March 2019 (10-13h00)**

1. Welcome 10h00 – 10h05

The Deputy President welcomed and opened the meeting.

2. Apologies 10h05 – 11h10

-) The Communications Portfolio Committee apologised they will not make it to report.
-) Nkosazana Dlamini-Zuma
-) Susan Shabangu
-) Meokga Matuba
-) Mildred Oliphant

The Committee is dependent on the co-operation and respect for process that includes the Deployment Committee by the Ministers serving in Cabinet.

In May, after elections, we host a Workshop with all newly-appointed Ministers, and Premiers of provinces. There is a general misunderstanding of the concept of democratic centralism, as well as lack of adherence to NEC authority. And we continue with the decision of every second Friday of the month we meet, whilst we are in the election campaign, we shall meet only when necessary.

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3. Minutes of Previous Meeting & Matters Arising 10h10 – 11h15

Minutes adopted unanimously with the amendment on P3.

Matters arising on the Chair on the CRL, the nominee is in training to be an Ambassador, and therefore not able to be appointed. The DSG and Deputy President will discuss the alternatives for the CRL with the Minister.

Decision: Noted Cde Yvonne Chaka Chaka, who is also a UN Ambassador on Social Development, and a high profile person, could be the Chair. The Minister should consider a person from the Khoi and San community to also be included in the CRL.

Matters arising on the SABC Board. Initially, we had requested that Parliament appoint an interim board. But that was not possible, because there were still four members of the Board, and Parliament can only replenish the Board. The SABC Board interviews with the shortlisted candidates have been concluded. They will follow due processes and appoint the members of the Board before the elections. The Study Group has to present the names they are recommending. The new board must ensure that the debate and news mandate of the SABC is not outsourced. And it must have a person from organised labour. There should be a discussion on how the SABC Board is appointed.

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4. DSG Report

11h15 – 11h30

Members of Parliament

The ANC will be approached by a number of persons, and ipso facto the Deployment Committee.

We must identify who can be deployed into the Foreign Missions, Boards, etc after consultation with the Officials. Look at the administration and advisors to Ministers. Noting that Attaches in missions have to come from their respective departments.

We need to get a sense of their skills.

Comments & Decision:

DGs Contracts

Comments: Consult with the Officials on the DGs who's terms are coming to an end. Consult with Cde Ayanda on this list. Those who are under 65, and performed well and must stay.

Vacant Missions:

Comments & Decisions: Who is acting in these 'vacant' positions.

McBride matter must also be dealt with. We need to look at where we deploy Cde McBride. The Deployment Committee should call him.

Cde Supra is also available for international deployment.

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Need to reconcile the work of the Committee and the provincial deployment committees. Must meet with the Provincial Deployment Committees.

The DSG and DP will take the matter to the Officials.

There should be a strongly worded message from the Deployment Committee to the officials. All deployments in that area are henceforth stopped.

5. Communication Portfolio Committee (SABC) 11h30 – 11h45

Comment: Discussed in Matters Arising

6. Public Works 11h45 – 12h00
Minister Thulas Nxesi

Presentation on appointment of the CFO

The person has been acting in the position. He is young and an enthusiastic worker.

Presentation on appointment of Property Management Entity

The CEO is on the level of a DG. The post was advertised with a closing date of 14 December 2018. There were applications from about twenty-five individuals. Five persons were shortlisted. Interviews have not been conducted.

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Comment & Decision: All the shortlisted candidates are male, women must be included from the overall application list. Need to look at a strict 'Conflict of Interest' guide.

Presentation on Supply Chain

It is a post at DDG level. The post was advertised, and was shortlisted to four, two males and two females.

Comment:

7. Energy 12h00 – 12h15

Central Energy Fund

Comment: The Minister indicated that he wants to consult with the DP, before coming to the Committee.

8. Minister of Water and Sanitation Gugile Nkwinti

Rand Water CEO

Nkomati, Bloemfontein, TransCaledon TA Boards.

Note that there is no water in Jagersfontein in the Free State, where there is a new hospital.

The Deployment Committee condones the appointments.

Recommend that the Deployment Committee persons for the Selection Panel, because it does the shortlisting and interviews.

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The Minister will appoint one person, and the Premier appoints one, the Board, and the community.

There is a danger of the Deployment Committee outsourcing its duties and therefore they must come to the Committee with the proposed shortlisting, and then proceed with the interviews.

There are three boards Magalies, Sedibeng, Umgeni, and Overberg (WC). The DSG will talk to the Secretary and Chair of the Province. The Minister will talk to the Premier. The Umgeni one is quite a priority.

9. Closure

The meeting was closed.

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DEPLOYMENT COMMITTEE

**10th Floor Boardroom
Luthuli House
22 March 2019**

1. Welcome 10h00 – 10h05

The Deputy President welcomed and opened the meeting. And indicated that DDG from Basic education will submit to the DC on behalf of the Minister.

2. Apologies 10h05 – 11h10

) Cde Sdumo Dlamini
) Cde Susan Shabangu
) Cde Bheki Ntshalintshali

3. Minutes of Previous Meeting & Matters Arising 10h10 – 10h15

Minutes adopted unanimously.

Matters arising

4. Deputy Director-General in Basic Education

Position for DDG- teacher's education, research vacant for the last few years. Struggle to finalise it. The person recommended is a Chief Director in the relevant branch. The Deployment Committee concurs.

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No explanation on why the Deputy Minister was not here in the absence of the Minister.

Correct that no officials come to this Committee.

Worrying that senior appointments just 6 weeks before the election. Nevertheless, there shouldn't be appointments of DGs and Ministers should not be appointing DGs but retain the one's in the positions. DGs leaving cause departmental instability.

5. Defence Ministry – Minister Mapisa-Nqakula 10h15 – 10h30

ARMSCOR Board. The Chair has resigned for health reasons. Vice Admiral Refilwe Modmo. The person deputising Modimo has been Tuthukile Skweyiya, for the last two terms. The Deputy Chair becomes the Chair.

Malusi Motimele to take up the vacant position, and becomes the new Deputy Chair, allowing him to become the Chair in the next term.

Comments & Decision: The Deployment Committee confirms that Cde Skweyiya become the Chair, and Cde Motimele is appointed as the Deputy Chair.

6. Water & Sanitation – Minister Nkwinti 10h30 – 10h45

Comment & Decision

7. Transport – Minister Nzimande 10h45 – 11h00

Comment & Decision: Remove Nazir Alli, has proven to be dogmatic. Kweyama on a lot of boards. Matlatla was a part of the previous board and has not been up to the task.

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Irene Charnley & Notty Ngcobo & possibly one person from the Veterans, Khathu Ramakumba

8. Justice & Correctional Service - Minister Masutha 11h00 – 11h15

Sitting of the Judicial Services Commission to consider the filling of vacancies in the judiciary. Names are shortlisted by a structure within the JSC, and published for comment. At the end of January these processes were concluded.

ConCourt: Two vacancies, due to retirement of Justice Cameron and Nkabinde.

When vacancies are to be filled, there has to be three additional. So there needs to be consideration of at least 5, in this case this is 6.

Majiet and Tshiki (female) recommended.

Recommends: Justices Kollapen & Tshiqi

SCA: Deputy President of the SCA, recall that the Justice Maya is the President of the SCA and her position is now vacant.

Petse recommended.

Labour Court – the acting Deputy Judge President, who is Judge Molahlehi, and is made permanent.

Eastern Cape Division Judge – only one candidate.

DJP for Northern Cape – Phatswane is recommended

Recommends

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5

Candidates to fill out of 9.

Recommends that we have a dynamic link with NADEL.

Recommends that the current process is incestuous. It contributes very little if anything towards judicial independence. The ANC prizes and values judicial independence. The current process provides for a system that has the judiciary having too much of oower in determining the leadership of the

9. Applications for Deployment 11h15 – 11h30

10. Closure 11h30

The meeting was closed. Communicate with the Ministers who did not turn up about our concerns.

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DEPLOYMENT COMMITTEE

**10th Floor Boardroom
Luthuli House
19 August 2019**

1. Welcome 10h00 – 10h05

The Deputy President welcomed and opened the meeting.

2. Apologies 10h05 – 11h10

-] Cde Bheki Ntshalintshali
-] Cde Solly Mapaila
-] Cde Susan Shabangu
-] Cde Sdumo Dlamini

3. Minutes of Previous Meeting & Matters Arising 10h10 – 10h15

Will deal with it at the next meeting.

Minutes adopted unanimously.

Matters arising

4. Minister of Mineral Resources and Energy

Filling many vacancies, only PETROSA is a full board. Still will come with the NECSA group. Normally, the CEF board only is brought to the DepComm, but the Minister felt the subsidiary boards are also brought.

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In all the boards, we are dealing with proxies of interests. All of them are dysfunctional. They should be pumping money into government but they are a drain on resources.

Two unsolicited bids, which made one believe that our people are destroying value and could sell it as a song.

Unless we get governance right, we cannot get operational matters to improve.

PETROSA has not had a CEO since 2014.

CEF Group

4 out of 9 posts.

Will we still retain the 50-50 parity, and is there a possibility to appoint a woman to lead. There seems to be an emphasis on persons from the Eastern Cape, rather than other regions. And the question of youth.

Dr. Mnyande is not serving in any other board, and there should be a greater appreciation of the economic issues.

On geographic spread, we should not be seen to have one region over-represented, without discounting expertise.

Therefore the Minister will re-look at it, so there is gender and regional balance, without sacrificing the expertise required. And write back to the DepComm on the outcome.

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PETROSA

It is a desperate situation. The DepComm to talk this issue beyond the Board. It has no fixed stock. The exploration and drilling has been killed. PetroSA has to be rebuilt.

Suggesting that Frans Baleni is deployed to Chair. He was in the team that raised the first

Cheeky HR specialist. A number of unions which are very disruptive.

Pheko, trading

Delport geologist on upstream

Corne, engineer in the midstream

Ndamase lawyer

Gogo midstram

Heywood refinery specialist

Investment economist

Therefore the Minister will re-look at it, so there is gender and regional balance, without sacrificing the expertise required. And write back to the DepComm on the outcome.

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DECISION: The DepComm will write to all Ministers indicating that they need to take into account gender parity, geographic spread without sacrificing expertise.

African Exploration Mining & Finance Corporation

We wanted to bring mining skills into the AEMFC. Shortlist of three.

Therefore the Minister will re-look at it, so there is gender and regional balance, without sacrificing the expertise required. And write back to the DepComm on the outcome. Of the three boards there must be one woman chair at least.

Strategic Fuel Fund

Chaired by a male, who is not being replaced.

I-Gas

Therefore the Minister will re-look at it, so there is gender (noting all are women) and regional balance, without sacrificing the expertise required. And write back to the DepComm on the outcome.

Petroleum Agency of South Africa

Nominating Madala Masuku to chair it. He is mature and well-qualified.

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Agreed. Therefore the Minister will re-look at it, so there is gender and regional balance, as well as youth presence, without sacrificing the expertise required. And write back to the DepComm on the outcome.

5. Applications for Deployment 11h15 – 11h30

We will try and get Cde Naledi to attend the meeting, as well as get the names proposed by the President. We also want to propose names. We should look at DIRCO, at the proportions of who are career diplomats and political appointments, so that we do not overwhelm with political appointments.

We need to look at the list, and see who has been deployed, etc.

6. Closure 11h30

The meeting was closed. Communicate with the Ministers who did not turn up about our concerns.

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**Deployment Committee
10th Floor Boardroom
Luthuli House
14 October 2019**

1. Welcome

The Deputy President welcomed and opened the meeting

2. Apologies

-) Cde Nkosazana Dlamini-Zuma
-) Cde Solly Mapaila (Apologies received after meeting)
-) Cde Susan Shabangu

Attendees:

-) Cde David Mabuza
-) Cde Yasmin Duarte
-) Cde Sfiso Buthelezi
-) Cde Mduduzi Manana (Arrived late)
-) Cde Sibongile Besani
-) Cde Meokgo Matuba
-) Cde Louise Thipe

3. Minutes of Previous Meeting & Matters Arising (19 August 2019)

The minutes of the meeting was adopted

4. Minister of Communications and Telecommunications

The Minister presented a board for NEMISA which is responsible for teaching and the development of e-skills and works with relevant Post School Education and Training Institutions. There are 7 vacancies which need to be filled, 15 were shortlisted and 7 recommended. The 7 recommended included 4 women, 3 men and a balance of youth, race, experience and geographic spread. A female chairperson

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was recommended. Further boards which are appointed to Parliament will come to the Deployment Committee within the next two weeks. The Post Bank and SETA

have had posts already advertised and applications closed, they will be brought to the Committee soon.

The board of SAPO was also discussed. It has a 10 member board with a vacancy of 8 members, 2 of the vacancies will be appointed from the Unions, which are reappointments from the previous board. The remaining 6 will be appointed by the committee. Posts have been advertised and applications closed. Communications committee and youth league have made some recommendations. 4 of the 6 are African females, one male and one female, there is a broad geography spread, youth and race are all covered. A female chairperson has been chosen. Traditional leaders were consulted and have been represented in the board to assist with communication and mobilisation for the role out of programs.

ZEDNA is the domain name authority that deals with internet governance .za. It has been run by the industry with Afriforum having people in key positions. This SOE is strategic in the fourth industrial revolutions. There are 9 vacancies with 6 females. A geographic spread was hard to achieve because of the scarce skills which are largely based in Gauteng. A female chairperson was recommended.

5. Minister for Women, Youth and Persons with Disabilities

The minister's item was not on the agenda; however provision was made to allow the minister to brief the deployment committee on the lack of a director general in the department of women, youth and persons of with disability for the past 2 years. The minister was briefing the committee before putting out an advert for the position. The post will be advertised before the end of October, the ANC Deputy Secretary General in consultation with the Women's League and the minister must come up with a candidate, who may be outside the list provided.

6. Minister in the Presidency

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The minister presented on the board for Brand SA. Brand SA has a 15 member board, 13 are required excluding one of CEO. A 23 name shortlist was provided and 13 recommended which has 7 women and 6 men, 4 of the members are below the age of 40, 2 of the members are reappointments. There was one change that was made to the recommended list, which was supported by the women's league. A female chairperson was chosen to lead the board.

7. Minister of Transport

The minister had several boards which need boards however there are only two boards which the committee had time to go through, which were PRASA and RAF.

The PRASA board process had started before the minister was appointed; the adverts have gone out and have been closed. The current interim board has been extended twice and needs to be finalised urgently. PRASA has an 11 member board of which 3 members are to be seconded from Treasury, SALGO and Transport. The 8 members recommended include 5 females, 4 reappointments for continuity who have proven to be competent. An advert was posted looking for a CEO however could not find a suitable candidate, are now head hunting, this will be done through the office of the DSG in consultation with the Minister. The minister would like to appoint a CEO whom will put a management in place to ensure that the CEO can work with the management effectively. In all appointment letters, there should be provision for review of performance after a year where the minister has the authority to replace any board member.

The Road Accident Fund is in urgent need of a board, A 12 member board was presented with 4 females. The current board has many doctors and lawyers, however the new list has a more broad skill base. The list was however sent back to be reconsidered because of lack of women and geographic spread, the age spread is good. At least two men need to be replaced with by women. List of applications must be provided to the DSG, two women will be chosen from there.

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8. General Resolutions

The office of the DSG should send all ministers the guidelines and procedures of deployment which include informing the deployment committee before any posts are advertised. All presentations should include a brief background and a summary of the respective challenges. The committee should be mindful of rotating members between boards or having a member on too many boards.

The reminder of the boards which could not be presented will be presented at the next deployment committee.

9. Closure

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DEPLOYMENT COMMITTEE

SPARTAN HALL, MIDDLE ROOM

ST GEORGE HOTEL

20 JANUARY 2020

1. Opening and Welcoming

The Deputy President welcomed everyone to the meeting

Apologies

) Cde Lindiwe Sisulu

No confirmation from Cde Mike Soko and Cde Sdumo Dlamini

Attendance

) Cde David Mabuza
) Cde Yasmin Duarte
) Cde Sfiso Buthelezi
) Cde Susan Shabangu
) Cde Mildred Oliphant
) Cde Meokgo Matuba
) Cde Mduduzi Manana
) Cde Sbongile Besani
) Cde Solly Mapaila
) Cde Natso Khumalo
) Cde Bheki Ntshalintshali
) Cde Nkosazana Dlamini-Zuma

2. Minutes from Previous Meeting (12 November 2019)

To be looked at in the next meeting

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3. Department of Environment Forestry and Fisheries

Minister of Environment Forestry and Fisheries came to present on the filling of vacancies in 3 boards namely: SANParks (South African National Parks), SANBI (South African National Biodiversity Institute) and Isimangaliso Board.

The Minister was commended in the process that she has engaged the ANC in KZN for Isimangaliso board and for the inclusion of white candidates in her proposals. The Committee resolved to accept the 3 proposals.

4. Department of Public Service and Administration

The Minister came to present the filling of the vacancy of the DG and the Principal for the National School of Governance. The Minister extended his apology for not complying with the process on the Deployment till now. The Minister indicated that for the DG position, they have shortlisted 4 candidates and all 4 meet the requirements.

The first candidate for DG position is a woman who has Master's degree as one of her qualification and she is currently Head of Department. The second candidate is also a female with relevant experience and she is currently a DDG. 3rd candidate has relevant experience and is currently a DDG. The fourth candidate has relevant experience and is currently a DDG.

The Committee resolved to accept the first woman candidate to be a DG as there is a shortage of woman DG's within the Public Sector.

National School of Governance:

The post of the principal has been vacant since November 2019, shortlisting have been done and the interviews have been scheduled for the 21 January 2020. Five candidates with good profiles have been shortlisted. There were two women and the other one fell off during further assessments.

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The
committee resolved that the Minister can proceed to interview the candidates.

5. Department of Public Enterprises

The Committee raised serious concerns that the Minister always present fate accomplished matters, the matter of CEO that the Minister wanted to present on is already in the media.

The Minister was reminded that he must always follow the processes of Deployment before there are any adverts.

The Committee made it known to the Minister that he must follow the correct procedure of informing the Committee before any appointments of such are made.

6. Department of Mineral & Energy

The Minister presented that members of the NECSA board resigned one after the other and only 3 members remained. An advert was issued for the filling of vacancies with the intention that the 3 remaining board members will be maintained. The 3 remaining have subsequently resigned this week.

There is a proposal that the 3 boards be measured into one board of NECSA but the Minister is still looking at the legal processes. Currently the Chairpersons of the other boards have been included in the proposed list of the new board.

The Committee noted that one candidate has been proposed on the other boards and she is currently serving in many boards and thus her name should be removed.

The Committee resolved to accept the Ministers proposals and that the Minister must further engage with the DSG

7. Defence

The Minister presented on the filling of vacancy of CEO Armscor, she was reminded that she has not complied with the process of the Deployment and that she has been reminded for the second time. An advert was issued and 87 applicant responded and shortlisting was done and only 15 remained. The competency assessment process reviewed that only 2 candidates can be considered. The board proposed the name of the current Acting CEO to be considered which is what the Minister came to present.

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The Committee allowed the Minister to go ahead with the process but was also reminded that in future she must work with the office of the DSG.

8. Communication

The DSG presented On ICASA board that the Minister had informed that there will be advert for ICASA boards, 75 applicants applied, 75 names were discussed by ANC Communications Sub-Committee, and the Minister is supposed to be present and defend the shortlist. Interviews are to take place on 5th of February 2020.

The Committee accepted the process so far, and agreed to meet with the Minister before they start the interviews. The Committee agreed not to proceed without the views of the Minister. Chairperson proposed that this matter be put aside until the next meeting. The committee raised the issue that the list is not clear, on the qualifications or disability. The DSG to speak to the Chairperson of the Communication Sub -Committee to postpone the shortlisting.

9. Conclusion

The office of the DSG was requested to write a reminder to all the minister on the process of the Deployment.

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AFRICAN NATIONAL CONGRESS

Deployment Committee Minutes
10th Floor Boardroom
Luthuli House
23 March 2020

1. Welcome

The Deputy President welcomed and opened the meeting

2. Apologies

-) Cde 'Mduduzi Manana
-) Cde Sfiso Buthelezi
-) Cde Mildred Oliphant
-) Cde Bheki Ntshalintshali
-) Cde Solly Mapaila
-) Cde Meokgo Matuba

Attendees:

-) Cde David Mabuza
-) Cde Yasmin Duarte
-) Cde Lindiwe Sisulu
-) Cde Nkosazana Dlamini-Zuma
-) Cde Sidumo Dlamini
-) Cde Natso Khumalo
-) Cde Susan Shabangu

3. Minutes of Previous Meeting

The minutes of the previous meeting were adopted

4. Matters Arising

The matters arising are on the last page as requested by meeting.

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5. Department of Minerals & Energy - Cde Gwede Mantashe

There were 9 items on the agenda under Minerals and Energy. Time constraints due to Cde Gwede Mantashe being summoned by the President resulted in only one board being presented.

Central Energy Fund (CEF) required a CEO to be appointed. There are multiple subsidiaries under CEF which require boards to be appointed, this will however be done by the board of CEF.

A list of three candidates were presented in order of preference, the committee decided to maintain the order of as recommended by the process despite the recommendation of the national chair

6. Department of Communications and Telecommunications – Cde Stella Ndabeni-Abrahams

The Postbank Board was presented to the committee. The post as signaled in Cde Stella's previous presentation to the committee had already been advertised. The term of the board expires in April. A list of 11 candidates were presented for 7 to be selected by SARB, the balance would be on standby if there are any resignations. The committee decided that 12 should be presented and adjusted the shortlist to ensure gender balance with 7 women of the 12.

7. Minister of Transport

The minister was due to present three boards, however was unable to make it due to the Corona Virus issues. The item will be deferred to the next meeting.

8. Matters Arising

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Please find these on the next page.

9. Closure

Matters Arising

1. Follow-up from Minister of Minerals and Energy

The minister was tasked with ensuring that the last board that was presented that no person must serve more than 3 boards. The Minister explained that the person was informed that they were appointed before he could make the changes. Due to an oversight on the last presentation the chairperson was meant to be an additional person whom the board included in the numbers, so minister appointed her.

2. The Director General of COCGTA

The long list has been concluded and interviews were to be conducted. A list of the applicants was to be emailed to all members of the committee.

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AFRICAN NATIONAL CONGRESS

Deployment Committee Meeting
Zoom Video Conference Call
13 April 2020 08:00

1. Welcome

The Deputy President opened the meeting and welcomed the comrades.

2. Attendance

- ✓ Cde David Mabuza
- ✓ Cde Jessie Duarte
- ✓ Cde Nkosazana Dlamini Zuma
- ✓ Cde Lindiwe Sisulu
- ✓ Cde Sfiso Buthelezi
- ✓ Cde Susan Shabangu
- ✓ Cde Solly Mapaila
- ✓ Cde Mduduzi Manana
- ✓ Cde Mookgo Matuba
- ✓ Cde Sibongile Besani

3. Apologies

- ✓ Cde Natso Khumalo
- ✓ Cde Sidumo Dlamini

4. Department of Cooperative Governance and Traditional Affairs - Director General

There were 105 applications of which after screening and interviews they came to a short list of 4. The 4 consisted of 3 women and 1 man. The man was an internal application. Each candidate was made to make a presentation on how to transform the department. From the presentations and questions, one stood out, the women. She has good corporate and public experience, another factor was that most of the

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senior positions in the department are African males, this should bring diversity. The department has been without a DG for a while. The committee was happy with the candidate and process.

5. Closure

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Chief Albert Luthuli House 54 Sauer Street Johannesburg 2001 PO Box 61884 Marshalltown 2107 RSA
Tel: 27.11.376.1000 Website: www.anc.org.za



AFRICAN NATIONAL CONGRESS

Deployment Committee
10th Floor Boardroom
Zoom Video Conference
11 May 2020

1. Welcome

The Deputy President welcomed and opened the meeting

2. Apologies

-) Cde Natso Khumalo
-) Cde Meokgo Matuba

Attendees:

-) Cde David Mabuza
-) Cde Yasmin Duarte
-) Cde Lindiwe Sisulu
-) Cde Nkosazana Dlamini-Zuma
-) Cde Natso Khumalo
-) Cde Susan Shabangu
-) Cde Sfiso Buthelezi
-) Cde Mildred Oliphant
-) Cde Bheki Ntshalintshali
-) Cde Solly Mapaila
-) Cde Sibongile Besani

3. Department of Water & Sanitation - Cde Lindiwe Sisulu

Cde Lindiwe Sisulu indicated that several water boards had their terms extended due to Covid-19. Three water boards, namely Lepelle Northern Water Board, Magalies Water Board and Sedibeng Water Board which the documentation was not ready, required that an interim board be appointed. The Office of the DSG was tasked with sending names for consideration for these boards.

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4. Department of Transport - Cde Fikile Mbalula

a) Railway Safety Regulator

There were 182 applications received for the board positions. From the applications Cde Mbalula came with a recommendation of 9 Cdes, of which 4 were male and 5 female. Among the males, one was white and another coloured. The list presented to the Deployment Committee covered all stakeholders which the minister is required to cover.

b) Road Traffic Infringement Agency

The post had 50 Applicants which the minister appoints 5, then one must come from the NPA. The 5 presented included 3 male and 2 female, one male was Indian and all other candidates were African. The list was approved as is.

Cde Mbalula indicated that there would be a number of posts that will be sent out soon, he will inform the committee.

5. Minister of Communications – Cde Jackson Mthembu (Acting)

a) GCIS – Director General

Cde Jackson Mthembu presented the 27 applicants for the position. From the 27 6 were shortlisted, 2 were female and 4 were men. All were African with the exception of 1 male who was Indian. The preferred candidate was a female, which the deployment committee agreed on.

b) ICASA

The process started with 75 applicants for the position. After going through the parliamentary process, 10 names were presented of which only 3 were females. 9 of the applicants were approved by the parliament process and one name came after, which Cde Jackson was unable to speak to. The board at the time still had three females sitting, two African and one coloured. The meeting concluded that the process will go back and be finalized with the communications subcommittee chairperson and the Communications portfolio chairperson.

6. Matters Arising

President: C Ramaphosa Deputy President: D.D. Mabuza National Chairperson: G Mantashe Secretary General: E.S. Magashule

Deputy Secretary General: J Duarte, Treasurer-General: P. Mashatile

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Please find these on the next page.

7. Closure

Matters Arising

1. Meeting Resolutions

- i) The Deployment Committee is not obligated to deploy any person after their term has come to an end.
- ii) Members of the deployment Committee should be given documents ahead of time to allow them to process.
- iii) The database of comrades for deployment should be circulated.
- iv) Cde Naledi Pandor should make a presentation in the next meeting.
- v) An alternative platform to host meetings should be found because of the security concerns raised with Zoom.

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DEPLOYMENT COMMITTEE MINUTES

Zoom Conference Call

25 May 2020, 08H00

- 1. Opening & Welcome**
- 2. Apologies**
- 3. Department of Treasury – Minister Mboweni**

) CEO of PIC

) South African Risk Insurance Association (SASRIA)

The presentation was noted, process had not been followed however the candidates recommended were diverse, skilled and experienced. The committee on those grounds allowed the two items to process.

- 4. Closure**

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AFRICAN NATIONAL CONGRESS

Deployment Committee Meeting
Zoom Video Conference Call
26 June 2020 10:00

1. Welcome

The Deputy President opened the meeting and welcomed the comrades.

2. Attendance

- ✓ Cde David Mabuza
- ✓ Cde Lindiwe Sisulu
- ✓ Cde Sfiso Buthelezi
- ✓ Cde Mduduzi Manana
- ✓ Cde Meokgo Matuba
- ✓ Cde Sibongile Besani
- ✓ Cde Mildred Oliphant
- ✓ Cde Natso Khumalo

3. Apologies

- ✓ Cde Jessie Duarte
- ✓ Cde Sidumo Dlamini
- ✓ Cde Nkosaza Dlamini-Zuma
- ✓ Cde Susan Shabangu
- ✓ Cde Solly Mapaila
- ✓ Cde Bheki Ntshalintshali

4. President on Special SOE Council

The President was called to make a presentation based on the previous resolution of the Deployment Committee. The President started by apologising for the appointment of the SOE Council without the involvement of the Deployment Committee, explained that it was an omission due to the pressure. A breakdown of

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the members of the council was given and the process which was used to get to the members. The involvement of labour federations was requested by the President.

5. Discussion

The members of the council are male dominated, the absence of women was an issue raised. There is a vacancy on the council which should be filled in consultation with the Deputy President and Deputy Secretary General.

The committee members took advantage of the Presidents presence to raise the following challenges faced by the deployment committee;

-) Deployment Committee used to rubber stamp appointments, lack of compliance by members
-) Appointments brought to the Deployment Committee but another name presented to cabinet. This however will be looked into by the Deputy President
-) Cde Naledi Pandor to work more closely with the Deployment Committee, she will present to the next Deployment Committee.

6. Department of Women, Children and Persons with Disabilities – Director General

The Minister made a presentation on the process that was followed to reach the recommended candidate. The Deployment Committee Procedures were followed and the Deployment Committee agreed with the recommended candidate.

7. Closure

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DEPLOYMENT COMMITTEE MINUTES

ZOOM VIDEO CONFERENCE CALL

14 August 2020 10:00

- 1. Welcome**
- 2. Apologies**
- 3. Department of Home Affairs – Minister Motsoaledi**

- a) Appointment of Director General

The presentation on the item was welcomed and supported as processes had been followed and candidate met all the required criteria.

- 4. Department of Communication & Digital Technologies – Minister Ndabeni-Abrahams**

- a) Adverts

Director General

- b) CEO Positions

Appointment of NEMISA CEO

South African Post Office CEO

- c) Boards

South African Post Office 4 Vacancies

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The advert for the Director General of the department was presented and members were requested to encourages skilled comrades to apply.

The remaining items did not follow processes as the presenter was unaware of the process. The presentations were supported as the candidates had a balance of gender, skills, youth and geographic spread.

5. Closure

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DEPLOYMENT COMMITTEE MINUTES

ZOOM VIDEO CONFERENCE CALL

24 August 2020 08:00

- 1. Welcome**
- 2. Apologies**
- 3. Department of Environment Forestry & Fisheries – Minister Barbara Creecy**

- a) Director General

The committee welcomed and supported the presentation and preferred candidate as the candidate was skilled and had experience within the department at a provincial level.

- 4. Department Of Small Business Development – Minister Khumbudzo Ntshavheni**

- a) Executive Positions

Appointment of Small Enterprise Development Agency (SEDA) Chairperson

Appointment of Small Enterprise Finance Agency (SEFA) CEO

The presentations were welcomed and supported by the committee as the candidates were skilled and met the respective requirements.

- 5. Department of Treasury – Minister Tito Mboweni**

- a) Board

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Appointment of Development Bank of South Africa board

The committee welcomed the presentation however was not happy with the failure to follow the processes. The committee recommended that further consultations be made before proceeding with the item.

6. Closure

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DEPLOYMENT COMMITTEE MINUTES

ZOOM VIDEO CONFERENCE CALL

21 September 2020 08:00

- 1. Welcome**
- 2. Apologies**
- 3. Department of Water and Sanitation – Minister Lindiwe Sisulu**
 - a) Amatole Water Board

The presentation of an interim board was supported by the deployment committee and the process to appoint a permanent board was to be initiated to provide stability.

- 4. Department Of Defence and Military Veterans – Minister Nosiviwe Mapisa-Nqakula**
 - a) Director General of Military Veterans
 - b) Armscor Board

The shortlisted candidates for the Director General position were supported by the committee in the order of preference presented as process was followed.

The presentation for the Armscor Board was welcomed; more skills in finance, an engineer and a labour representative were suggested. The presentation was supported with the recommendation that the suggested skills be included.

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5. Department of Agriculture, Land Reform & Rural Development – Minister Thoko

Didiza

a) Appointment of Board for Onderspoort Biological Products (SOC) Limited

The presentation on the board was welcomed, the process was followed and the presentation was supported as it covered the gender, youth and skills.

6. Deployment Committee Outstanding Matters Report

The National Youth Development Agency was discussed and the committee was not happy with the process that was followed. A presentation on the matter was requested in the next meeting to resolve the challenges in the process.

7. Closure

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DEPLOYMENT COMMITTEE MINUTES

ZOOM VIDEO CONFERENCE CALL

9 October 2020 08:00

- 1. Welcome**
- 2. Apologies**
- 3. Department Transport – Minister Fikile Mbalula**
 - a) PRASA Board

The presentation was welcomed and supported as it included youth, experience, skills and gender balance. There was a request for labour representation on future transport boards.

- 4. Department Of Transport – Minister Ronald Lamola**
 - a) Director General of Justice and Constitutional Development

The presentation was welcomed by the Deployment Committee, the two candidates presented were recommended as the process was yet to be finalised and the committee.

- 5. Closure**

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DEPLOYMENT COMMITTEE MINUTES

ZOOM VIDEO CONFERENCE CALL

9 November 2020 08:00

- 1. Welcome**
- 2. Apologies**
- 3. Department of Trade, Industry and Competition – Minister Patel**
 - a. National Lotteries Commission Chairperson
 - b. National Lotteries Commission Non-Executive Position

There was a presentation made which was supported for both the board and chairperson.

- 4. Department of Communication & Digital Technologies – Minister Ndabeni-Abrahams**
 - a. Director General
 - b. South African Post Office CEO

The recommendations of the presentation were supported for both positions

- 5. Department of Mineral & Energy Resources – Minister Mantashe**
 - a. Chairperson of Central Energy Fund
 - b. CEO of National Energy Regulator SA

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The presentation was a second attempt after the first was interrupted due to the National Chairperson being called into a meeting by the President. The recommendation of the recruitment process was favoured over the preference of the Minister for the Central Energy Fund. The National Energy Regulation recommendation which was in line with recruitment process recommendation was supported.

6. Closure

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DEPLOYMENT COMMITTEE

ZOOM VIDEO CONFERENCE CALL

30 November 2020 08:00

- 1. Welcome**
- 2. Apologies**
- 3. Department of Public Enterprise – Minister Gordhan**
 - a. Eskom Board
 - b. South African Airways Board

A presentation was made for an interim structure that would provide stability to both institutions. Processes were not followed; however the deployment committee would be consulted on the appointment of both boards.

- 4. Department of Transport – Minister Mbalula**
 - a. Cross-Border Road Transport Agency

The presentation was not accepted by the deployment committee. There were issues raised with regard to processes being followed and the candidates and the make-up of the board. The item was sent back to be refined.

- 5. Closure**

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DEPLOYMENT COMMITTEE MINUTES

ZOOM VIDEO CONFERENCE

26 January 2021 09H00

1. **Welcome**
2. **Apologies**
3. **Department of Transport – Minister Mbalula**

) Cross-Border Road Transport Agency Board

The presentation was welcomed and supported with the recommendation that a representative with labour expertise be considered as an addition.

4. **Department of Environment, Forestry & Fisheries – Minister Creecy**

) CEO South Africa Weather Services

The presentation was welcomed and the candidate was supported.

5. **Department of Water & Sanitation – Minister Sisulu**

) Amatola Water Board

The presentation was welcomed and supported as processes were followed and the board had the adequate skills and experience.

6. **Closure**

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DEPLOYMENT COMMITTEE MINUTES

1 April 2021, 15H00

1. Welcome
2. Apologies
3. Department of Communications & Digital Technology – Ndabeni-Abrahams

) Council for Film & Production Board

The presentation was supported, it followed processes, had gender balance, youth and attempted geographic spread but was unsuccessful due to concentration of skills in Gauteng.

4. Department of Small Business Development – Minister Ntshavheni

) Director General

The recommended candidate was supported, processes were followed.

5. Department of Environment, Forestry & Fisheries – Minister Creecy

) CEO South Africa Biodiversity Institute

The candidate was supported as processes were followed and recruitment process was open. There preferred candidate met the required criteria as therefore allowed to proceed.

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6. Department of Agriculture, Land Reform & Rural Development – Minister Didiza

) National Agriculture Marketing Council

The presentation was welcomed and the recommended candidates were supported

7. Department of Water & Sanitation – Minister Sisulu

) Lepelle Northern Water Board

The recommendation was supported as process was followed and had the required skills.

8. Department of Employment & Labour – Minister Nxesi

) UIF Advisory Board

The deployment committee accepted the presentation as majority of the appointments were given by the respective NEDLAC partners as stipulated in the process. The partners should be consulted to include a greater gender balance.

9. Department of Home Affairs – Minister Motsoaledi

) CEO of Government Printing Works

The recommended candidate was supported, as the candidate was a female who had experience and adequate qualifications

10. Closure

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DEPLOYMENT COMMITTEE

17 May 2021, 08H00

1. **Welcome**
2. **Apologies**
3. **Department of Communications & Digital Technology – Ndabeni-Abrahams**

) Broadband Infraco Board

The Deployment Committee supported the presentation, the only point made was that HR skills were missing from the recommendations. A higher demographic spread was encouraged moving forward.

4. **Parliamentary Portfolio of Justice & Correctional Services – Bulelani Magwanishe**

) Human Rights Commission, Deputy Chair & Fulltime Commissioner

The Committee supported the recommendations presented. The recommendation of female candidates was welcomed as it brought youth into the commission and was addressing the gender imbalance.

5. **Department of Water & Sanitation – Minister Sisulu**

) Magalies Water Board

) Sedibeng Water Board

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) Umgeni Water Board

The deployment committee raised concerns over the number of recommended candidates who were over the age of 60, the lack of youth representation with the exception of the Umgeni Water Board and the geographic spread of the candidates.

The Deployment Committee also suggested a review of the criteria required for appointment, the process excludes youth participation.

6. Closure

SECTION 4

Transcripts

COMMISSION OF INQUIRY INTO STATE CAPTURE
HELD AT
CITY OF JOHANNESBURG OLD COUNCIL CHAMBER
158 CIVIC BOULEVARD, BRAAMFONTEIN

28 APRIL 2021

DAY 384



Gauteng Transcribers
Recording & Transcriptions

22 Woodlands Drive
Irene Woods, Centurion
TEL: 012 941 0587 FAX: 086 742 7088
MOBILE: 066 513 1757
info@gautengtranscribers.co.za

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I, the undersigned, hereby certify that, *in as far as it is audible*, the foregoing is a **VERBATIM** transcription from the soundtrack of proceedings, as was ordered to be transcribed by Gauteng Transcribers and which had been recorded by the client

COMMISSION OF INQUIRY INTO STATE CAPTURE

HELD AT

CITY OF JOHANNESBURG OLD COUNCIL CHAMBER

158 CIVIC BOULEVARD, BRAAMFONTEIN

DATE OF HEARING:

28 APRIL 2021

TRANSCRIBERS:

B KLINE; Y KLIEM; V FAASEN; D STANIFORTH



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Recording & Transcriptions

28 APRIL 2021 – DAY 384

PROCEEDINGS RESUME ON 28 APRIL 2021

CHAIRPERSON: Good morning Mr Pretorius, good morning Mr President.

ADV PRETORIUS SC: Morning Chair.

CHAIRPERSON: Good morning everybody. Thank you. Mr Pretorius are you ready?

ADV PRETORIUS SC: Yes we are ready Chair.

CHAIRPERSON: Yes.

ADV PRETORIUS SC: The President will testify today and
10 tomorrow. I will introduce the bundles in a moment if the President could be sworn in please?

CHAIRPERSON: Sorry.

ADV PRETORIUS SC: If the President could be sworn in?

CHAIRPERSON: Oh yes, no that is fine. Before that is done I just want to say a few things. Mr President we are happy that you are here representing the ruling party. We are happy that the President of the party is the one who comes to give evidence to the commission but I also want to say that your appearance before this commission is not
20 a result of a decision taken recently it is a decision that was taken in 2018 as you will remember because soon after the commission had started its hearings I realised that the commission could not properly complete its task without the ruling party appearing before the commission because the ruling party is the party that was given power

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by the voters to form the government for – so it was important that the ruling party should appear before the commission and say what it knew about all sorts of allegations that have been heard in this commission when it knew it and what it did about those things and also to indicate what it is prepared to do to make sure that those things never happen again.

I also realise that it would be important that the current President should appear because during at least
10 part of the time when these allegations – these things were alleged to have happened it was a time when he was Deputy President of the ANC and Deputy President of the country so that he could indicate also what he may have known and what he did not know and what was done to deal with purely allegations of state capture and the high levels of corruption that we have seen.

So towards the end of 2018 I had a meeting with the President where I conveyed to him my view that it would be important that the ruling party appears before the
20 commission and that he or the executive should also appear to deal with these matters and the President agreed that he would appear before the commission and he indicated also that the ANC would appear.

So I thought I must just remind everybody how it comes about that he appears today. It is not a recent

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decision. But I want to also take this opportunity to indicate Mr President that the commission appreciates the support for the work of the commission that both you as President of the country and the ruling party has shown. So that is appreciated. Thank you. Mr President you will need to take the oath or affirmation depending on what you will be taking. Which one would it be Mr President?

PRESIDENT RAMAPHOSA: I will take the oath.

CHAIRPERSON: You will take the oath. Okay may you
10 please stand. I do not know whether you would like to take off your mask.

PRESIDENT RAMAPHOSA: Is it safe to do so?

CHAIRPERSON: Well – well if – if we can hear you with it on clearly you can keep it on but what has happened in the past is that usually we cannot hear people clearly. But ...

PRESIDENT RAMAPHOSA: It is okay

CHAIRPERSON: If we can hear you and you would like to keep it on that would be fine. Please give your full names for the record Mr President.

20 **PRESIDENT RAMAPHOSA:** My name is Matamela Cyril Ramaphosa.

CHAIRPERSON: Do you have any objection to taking the prescribed oath?

PRESIDENT RAMAPHOSA: No I do not have any objections.

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CHAIRPERSON: Do you consider the oath binding on your conscience?

PRESIDENT RAMAPHOSA: Yes I do.

CHAIRPERSON: Do you swear that the evidence you will give will be the truth; the whole truth and nothing else but the truth; if so please raise your right hand and say, so help me God.

PRESIDENT RAMAPHOSA: So help me God.

CHAIRPERSON: Thank you. You may be seated. Yes Mr
10 Pretorius.

ADV PRETORIUS SC: Thank you Chair. Mr President a few housekeeping matters. Before you is a bundle – Bundle 1 and in that bundle is Exhibit BBB1 Statement of the President together with annexures. Then there is a second bundle Exhibit – containing Exhibit BBB2 which is a collation of certain documents that are relevant to the evidence.

CHAIRPERSON: Mr Pretorius I just want to – I do see that there is social distancing between many people but I think
20 some can do with some more space so we just need to make sure. There is a lot of space available in the room. Okay. Ja I see some are sitting next to each other so – well just – we all know what the social distancing is I am just reminding everybody if – if there is social distancing between people that is fine. Okay you may proceed Mr

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Pretorius.

ADV PRETORIUS SC: Thank you Chair. So there are two bundles as I have said Bundle 1 and Bundle 2. Bundle 1 contains the statement of the President, Bundle 2 contains certain additional documentation.

Bundle 2 has only been recently compiled and I will explain why in a moment.

CHAIRPERSON: Do I need it immediately – Bundle 2?

ADV PRETORIUS SC: No you do not need it immediately
10 Chair.

CHAIRPERSON: Okay.

ADV PRETORIUS SC: May I then ask Mr President if you would take the first bundle, do you have it?

CHAIRPERSON: Please switch on the mic Mr President there..

PRESIDENT RAMAPHOSA: Okay permanently?

CHAIRPERSON: Yes. Mr Pretorius I think it would convenient – it would be important before you start to for the benefit of the public to explain what will be covered
20 and what will not be covered with the President this time.

ADV PRETORIUS SC: Oh I had planned to do that next Chair.

CHAIRPERSON: That is fine – that is fine.

ADV PRETORIUS SC: If that is okay?

CHAIRPERSON: That is fine.

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ADV PRETORIUS SC: And I will do that in full.

CHAIRPERSON: Okay alright.

ADV PRETORIUS SC: At page 79 and we will refer to the black numbers in the top left hand corner is a page with your – with a signature above your name could you please confirm that that is your signature? Page 79 black numbers in the top left hand corner.

PRESIDENT RAMAPHOSA: Yes indeed it is my signature.

ADV PRETORIUS SC: And if you would go please to the
10 same bundle at page 5 and particularly at page 6.

PRESIDENT RAMAPHOSA: Yes.

ADV PRETORIUS SC: Is that the beginning of your affidavit?

PRESIDENT RAMAPHOSA: Indeed.

ADV PRETORIUS SC: And are you satisfied that the contents of that affidavit insofar as you are aware are true and correct?

PRESIDENT RAMAPHOSA: Yes they are.

ADV PRETORIUS SC: Thank you. Chair may the affidavit
20 and annexures and I see each page has been initialled be admitted then as Exhibit BBB1?

CHAIRPERSON: Is that BBB?

ADV PRETORIUS SC: BBB we have been through the alphabet 3 times in this commission.

CHAIRPERSON: The affidavit of President Matamela Cyril

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Ramaphosa which starts at page 6 will be admitted as an exhibit and will be marked as Exhibit BBB1.

ADV PRETORIUS SC: Yes. And then Mr President I believe that you wish to make an opening statement but just before we do that if I may place certain matters on record Chair.

There is a statement that we have just placed on record as an affidavit. It is attested to in your capacity as President of the ANC and former Deputy President of the
10 ANC am I correct?

PRESIDENT RAMAPHOSA: Yes you are correct.

ADV PRETORIUS SC: And there is a further statement that will be placed before the commission dealing with matters in our capacity as President of the Republic and former Deputy President of the Republic but that is yet to be obtained. Is that correct?

PRESIDENT RAMAPHOSA: Yes that is so.

ADV PRETORIUS SC: We received your statement on the 22nd of April 2021 and we proceeded to undertake the
20 necessary research that process is not yet complete and accordingly we may have to deal with certain issues on your return towards the end of May.

PRESIDENT RAMAPHOSA: Indeed.

ADV PRETORIUS SC: In these first two days of your evidence Mr President we will deal with our terms as ANC

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Deputy President and President.

PRESIDENT RAMAPHOSA: Yes indeed.

ADV PRETORIUS SC: And those facts or facts relevant to that are contained in your affidavit just admitted. I will deal with certain matters and then Advocate Freund will deal with certain matters tomorrow.

In these second two days towards the end of the month we will deal with matters related to your office as Head of State and there will be questions from the legal
10 team Advocate Seleka, Soni and Myburgh in relation to that as well as questions from myself. And that is just the background I think that the DCJ wanted placed on record.

PRESIDENT RAMAPHOSA: Thank you. I will be here.

CHAIRPERSON: Thank you. Well Mr Pretorius you have said that you will deal with other matters with the President towards the end of the month now the public does not know towards the end of the month. They know mid-May.

ADV PRETORIUS SC: Yes I was leaving that to you Chair it is an announcement from the Chair.

20 **CHAIRPERSON:** Okay let me say this about that because Mr Pretorius forgot that it is – it was not public yet it – there was something that I discussed with him.

Mr President currently you are due to return to the commission wearing your cap as President of the country in mid-May I cannot remember the exact dates but mid-May

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but I indicated to Mr Pretorius that we will have to advise your office that those dates will need to be moved towards later in May because there are still a number of witnesses that the commission would like to hear and – so that was something that was still to be done but I do not know Mr Pretorius may have spoken to your team about it but that was – that is something that is in the pipeline. So you might also have been wondering why he was talking about towards the end of May but – so those dates will change
10 and we will move you towards the end of May. Yes Thank you. You are done Mr Pretorius?

ADV PRETORIUS SC: For the moment Chair.

CHAIRPERSON: For the moment obviously. Okay Mr President if you wish to make an opening statement this is the opportunity for you to do so.

PRESIDENT RAMAPHOSA: Thank you Chairperson and thank you Mr Pretorius.

I appear before this commission as you have stated Chairperson at the request of the commission but I also
20 appear to assist the commission in its work and I would like make this opening statement on behalf of the African National Congress.

When I was confirming that I would be appearing I happened to be talking to one of my colleagues who is also Head of State; we had to attend to some matter and I said I

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would be appearing before the commission and his reaction was Ah how can you do that as Head of State? I said this is how our democracy works. It works in such a way that when there are important matters that affect the state and the government and indeed the governing party we will not shy away from appearing before commissions so that we may shed light on the matters that the commission is dealing with and also be able to assist the commission in its mandate.

10 So I appear here in my capacity as President of the African National Congress having been elected to this position in December of 2017 at the ANC's 54th Conference.

Yesterday our country celebrated 27th anniversary of the advent of democracy. On that day we ushered in a new era and as a nation we made a decisive break to the horrible past of colonialism and apartheid.

20 The ANC working together with many anti-apartheid formations led and facilitated a process of crafting a new constitutional dispensation that is today the bedrock of our democracy.

This month marks 25 years since the first hearing of the Truth and Reconciliation Commission into apartheid era human rights abuse.

It was a remarkable moment in our history to hold

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that commission the Truth and Reconciliation Commission demonstrating our determination as a nation to unearth and confront the crimes of our past so that we may make a decisive break with those violations of human rights and so that we may forge a better future for all our people.

This commission on inquiry into allegations of state capture, corruption, fraud in the public sector carries a similar responsibility. This commission is the instrument through which we seek as a nation to understand the
10 nature and extent of state capture to confront it. To hold those responsible to account and to take the necessary measures and steps to ensure that such events do not occur ever again in our country.

State capture and corruption have taken a great toll on our society and indeed on our economy as well. They have eroded the values of our constitution and undermined the rule of law.

If followed or rather if allowed to continue they would threaten the achievement, the growth, development
20 and transformation of our country. It is for these reasons that the ANC's 54th National Conference in December 2017 resolved to support the establishment of this commission.

The ANC has consistently expressed its support for the objectives and the work of this commission. The National Executive Committee of the ANC has expressed

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itself in that regard and we continue to do so.

The ANC has taken this position knowing that the organisation would itself be placed under great scrutiny and that the process of examining these matters would very likely be difficult and painful for the ANC.

Nevertheless the ANC maintains that this commission is a necessary part of the broader social effort to end all forms of state capture and corruption.

The ANC's position has been that it is the
10 responsibility of ANC members and indeed all South Africans to assist the commission in its work.

Therefore I appear before the commission not to make excuses or to defend the indefensible. The ANC has agreed to not only support the work of the commission but to assist the commission in every way possible to fulfil its mandate.

My submission other submissions made on the ANC'S behalf are a number of my comrades and colleagues are therefore intended to provide whatever information
20 context and explanation the commission may require.

Corruption is not a new phenomenon in South Africa. The apartheid system was morally and systematically corrupt. Not only did its legal provisions appropriate to a small minority their assets and the resources that rightfully belonged to all South Africa's

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people but there was also a prevailing culture of corruption within the apartheid state also within its state owned enterprises but it also went broader than that into private business establishments and the numerous Bantustan administrations that had been set up to organise our country.

The advent of democracy in South Africa was an opportunity to make a decisive break with that past through the adoption of a new constitution we established a new
10 era of transparency, accountability, ethical conduct and respect for the rule of law.

The experience of the past 27 years shows that endeavour to have been for the most part successful and its success can also be measured by the establishment of this commission which is in a very transparent and open manner opening up a can of worms of corruption and state capture.

Our country has a National Parliament and Provincial Legislatures elected by universal suffrage and
20 regular and free fair elections. We are proud to have a strong and independent judiciary.

Our democracy is supported by robust institutions and we have a free and vibrant media.

An important aspect of the ANC's approach to corruption over the years is a recognition of the extent to

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which some ANC leaders and members were advertently and inadvertently complicit in corrupt actions and this recognition was well articulated in our conferences where we did say that we need to openly and publicly acknowledge that these are the problems that we have to deal with.

And as a consequence the extent to which corruption contributed to practices, patronage, factionalism and the manipulation of organisational processes in the
10 ANC is a matter of effort.

The recognition of these facts does not mean that the ANC is itself corrupt or uniquely affected by corruption. There are other institutions in society, various political and social formations as well as the private sector companies that have to confront corruption within their own ranks. Nor is South Africa alone in the world in having to deal with pandemic corruption.

Many other countries have to deal with corruption in the political, economic and social spheres and it is clearly
20 not sufficient for us to recognise the problems.

The task of any organisation like the African National Congress especially with its history of principled struggle, its values and its mission is to address the problem.

It should be noted that why there is broad

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consensus within South African society but a process of state capture took place over the course of several years. It took some time for the term state capture to gain currency and for the phenomenon it described to clearly recognised as such.

Therefor even though some of the incidents that I refer to in my submission may be regarded as instances of state capture they were not necessarily recognised or described as such at the time.

10 And even as the term gained currency there were individuals in the ANC and in society more broadly who contested both the use of the term and the existence of the phenomenon.

In my submission I outline how allegations of state capture arose within the structures of the ANC and how the organisation responded at different moments.

Without going into detail in this opening statement it is worth mentioning that one of the earliest claims made within ANC structures of the possibility that members of
20 the Gupta family may have had an improper role the functioning of the Executive was a statement by Minister Fikile Mbalula at an ANC meeting in 2011.

To my knowledge the matter was not taken further by the NEC or in any structure of the organisation after he had mentioned it.

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At the time the statement did not prompt any specific concerns about the capture of the state. With the passage of time more reports began to surface in the public domain about the alleged capture of public enterprises by a private interest and the undue influence of certain individuals notably members of the Gupta family in executive decisions and appointments.

As the volume of evidence began to mount in the public domain the issue of state capture even if it was not
10 described in those terms at the time began increasingly a subject under discussion in the National Executive Committee of the ANC and ANC structures.

It was also a matter taken up more directly by ANC's alliance partners, South African Communist Party and the Congress of South African Trade Unions. It was also ANC veterans and other outside structures of the organisation including service society formations including religious organisations. Corruption is by its nature a covert activity. Those who perpetrate corruption and
20 related to crimes, generally, seek to keep their actions hidden or masked and disguise their intentions without direct evidence, without any investigative capability and mandate and in the face of the vehement denials.

It is difficult for any structure to confront such activities. In addition, the ability of any organisation but

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especially a political formation to act on allegations of maleficiis relies not only on its formal rules and procedures but also on the balance of power within a structure.

The alignment of use within such an organisation is further influenced by access to the offices of state where the ability to appoint and to dismiss and even to dispense patronage is concentrated amongst a few individuals. For the ANC this was compounded by its own subjective challenges.

10 The ANC took time at its 54th National Conference to reflect on these subjective challenges and recognised the erosion of its organisational integrity as processes had been manipulated to advance the material interest of certain members and associated by that companies and individuals.

 This manifested itself in weak and pliable branches of the ANC. It also manifested itself with both buying and gate keeping, factionalism and open conflict. This provided fertile ground for state capture and
20 corruption. As I outlined in my submission, Chairperson, the ANC has over the course of several years recognised the existence of corruption within the state, within its own ranks and within other parts of society.

 It has taken a number of resolutions on measures to prevent corruption including on issues relating

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to state capture. These are evident in the statements of ANC National Executive Committee particularly from 2016 onwards which included a call for an independent investigation by competent authorities into these allegations.

The question that arises is whether these resolutions and pronouncement were followed by a meaningful action to fight corruption and state capture. In answering this question, we must acknowledge that the
10 issue of state capture was a matter of great political contestation within the ANC.

Differences over whether indeed state capture existed, its extent and form and what should be done about it, contributed to divisions within the National Executive Committee and other ANC structures. These divisions were evident also in government, in Parliament and other sections of society and indeed the issue of state capture and corruption was prominent in the contestation that took place ahead of the ANC's 54th National Conference in
20 December 2017.

However, we would argue that over the course of time, through political debate and democratic contestation, the organisation took active measures to confront state capture. This is evident, for example, in the events that unfolded in Parliament from late 2016 and into 2017, where

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the ANC and other parties initiated a number of inquiries into allegations of malfeasance and some state-owned enterprises and parts of government.

It is clear from the affidavit submitted to the Commission by the former ANC Chief Whip, the late Mr Jackson Mthembu but the determination by the ANC in Parliament to probe these allegations was both a response to the evidence of wrongdoing that was accumulating in the public domain and the implementations of the decisions
10 taken by the ANC's constitutional structure especially with NEC.

The ANC's 54th National Conference was in many ways a watershed moment in the ANC's effort to confront state capture and corruption within its ranks. Much of the discussion at the conference on the issues of state capture was framed by a diagnostic organisational report presented by the then Secretary General, Gwede Mantashe, on behalf of the National Executive Committee.

This report directly addressed the allegations of
20 corruption and the involvement of ANC members and leaders in the broader context of state capture. The conference consequently resolved to demand that every ANC member accused of or reported to be involved in corrupt practices should account to the Integrity Commission immediately or face disciplinary processes.

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It also resolved to summarily suspend people who failed to give an acceptable explanation or to voluntarily step down while they face disciplinary investigative prosecutorial procedures. Also, resolve to publicly exhaust this associate organisation from anyone whether business, donor, reporter or member accused of corruption or reported to be involved in corruption.

It further resolved to ensure that ANC members and structures cooperate with law enforcement agencies,
10 to criminally prosecute anyone of corruption and further it said it requires the ANC deployees to Cabinet. That is National Cabinet. Especially the Minister of Finance, the Minister of Police of Justice, the Correctional Services to strengthen state capacity to successfully investigate and prosecute corruption and account for any failure to do so.

Now these resolutions, in more ways than one, signalled a clear determination by the membership of the African National Congress to acknowledge the organisations failing, to make also a clean break with
20 corrupt practises and to initiate an ethical, political, and organisational renewal of the ANC.

Now following the 54th National Conference and in line with its resolution, the ANC embarked upon a process of organisational rebuilding and renewal. This included corrective measures both within the ANC and

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indeed the state by the latter I dealt with more extensively in my statement to the Commission in the capacity as the Head of State which was presented.

It is important to note that these measures were informed and inspired by the mandate of the ANC's National Conference which, as you might be aware, is attended by thousands of members of ANC branches across South Africa.

In one of the areas in which the ANC has taken
10 clear action is to require that members of the ANC who are formally charged with corruption, other serious charges must immediately step aside from all leadership positions in the ANC, legislatures or government structures pending the finalisation of their matters.

Such members who do not step aside may be summarily suspended. Furthermore, members of the ANC who are reported to be involved in corrupt and other criminal practises must go to the ANC's Integrity Commission and provide a credible explanation for these
20 allegations or reports.

Should members fail to give an acceptable explanation, they may be suspended subjected to disciplinary processes. In line with the ANC constitution, ANC members who are convicted of corruption or other serious crimes must resign from leadership positions and

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face disciplinary actions.

It is worth mentioning that some of these requirements, especially on the so-called step aside provision, have in the past been the subject of much contestation within the organisation. However, there is now broad support within the organisation or its implementation.

At its most recent meeting on the 26th to the 29th of March, the NEC directed that all members who have
10 been charged with corruption or other serious crimes must step aside within 30-days, failure which they should be suspended in terms of Rule 25.70 of the ANC's constitution.

The ANC has embarked on a process of renewal to build a movement characterised by integrity, accountability and the highest standards of ethical behaviour but the process renewal is by itself a process. It is not a one-day event and it is a process that is ongoing.

The rate or progress is determined not only by
20 the existence of political will and organisational capacity but also by the continued existence of invested interest and resistance from those who have much to lose from the corrective measures mandated by the ANC's 54th National Conference.

I will now turn to some specific issues that the

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Commission has asked me to address. The first of these are the ANC's approach to pave the development and deployment. This issue has been covered in some detail by the ANC National Chairperson, Mr Gwede Mantashe.

His testimony before the Commission, Mr Mantashe described the evolution and the development of the ANC's policies, the principles that informed this approach under structures and processes that the ANC has put in place to manage cadre development and deployment.

10 Since even before the advent of democracy, the ANC has said that in transforming the public service to reflect the values of our democracy and the demographics, or better still, the diversity of our country, we must emphasise professionalism and competency.

 This is reflect in our earliest policy pronouncement which were part of the ready to govern document which was release in 1991 as the ANC was preparing to enter government knowing that the level of support that it had would give it a mandate to do so but it
20 was also confirmed at the 54th National Conference.

 The ANC fully embraces the principle that all public servants should undertake their duties in a fair, balanced and non-partisan manner. It should be noted that the deployment of cadres to strategic positions is not unique to the ANC. It is practised in various forms and

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through various mechanisms even if not always acknowledged as such by other political parties in our country and also in other countries.

In our view, cadre development has acquired such prominence in part because of the perspective that there should not be political interference in the selection of people who work in the public sector. However, international practise suggests a more nuanced approach to this matter.

10 For example, an OECD working paper on public governance published in 2007 written by a number of scholars including one called Martinsen, said that with specific reference to appointments of senior public service staff:

“Political involvement in administration is essential for the proper functioning of a democracy.

However, public services need protection against being misused for partisan purposes.

20 They need technical capacity which survives changes of government and they need protection against being used to impair the capacity of future government to govern.”

In identifying suitable candidates for positions in public entities, the ANC does not seek to circumvent to

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establish an often legally mandated processes for the appointment of individuals for these positions. Candidates are expected to submit their applications, meet the necessary requirements and be subjected to the normal processes of recruitment, selection, and appointment.

Even with these requirements, there are several instances where individuals appointed to positions may not have been fit for purpose or may not have had the necessary experience or qualifications and this much I am
10 prepared to accept.

The ANC's 54th National Conference recognised this problem and resolved that the married principal must apply in the deployment to senior appointment based on legislative prescripts and in line with minimum competency standards.

It is the ANC's view that the practise of cadre development should not be inconsistent with the principles of fairness, transparency and merit in the appointment of individuals to public entities. Cadre deployment cannot be
20 faltered in principle. It is a common feature of democratic practise around the world and I think it properly describe and is not diluted to various other intents and forms.

It is a useful process used by governing parties around the world to make sure that the mandate that they had been given by the populous is carried out but we could

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concede that there are weaknesses in this practical implementation that make the case for greater clarity both within the political parties and the state.

Ultimately, political involvement in administration of the public service should be and must be circumscribed by legislation, by convention as well as by practice and we should do so to protect both political and administrative positions and to create certainty as to the division within political and administrative responsibilities. There are a
10 number of governments around the world who utilise this very mechanism as outlined in the OECD.

The Commission also asked that I address the funding of political parties. Any successful multi-party democracy requires a diversity of functioning of political parties that are capable of articulating and representing the needs, the interest and the concerns of the electorate. For this, political parties require funding and in the absence of sufficient public funds for this purpose need to rely on donations from their own members, from supportive
20 individuals, and yes indeed, from businesses.

Until adoption of the Political Party Funding Act which took effect on the 1st of April 2021, there were few, if any, specific restrictions on donations to political parties and no requirements on the reporting of donations, either publicly or to any particular authority. Like other parties,

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the ANC relies on several sources of funding. Many Treasurer Generals who run their financial affairs of various political parties will testify that the running of political parties as the government increasingly costly, expensive, and requires a lot of funding.

These includes funds allocated to represented political parties which are administered by the IEC, membership subscriptions as well as levies that are levied on members who are deployed by the Parliament of various
10 places, fundraising initiatives, like, in the ANC's case, the Progressive Business Forum, funding dinners and other events, and donations from individuals and companies.

Despite the absence of any official policy on donations, there is an expectation based on the ANC's constitution, its principles and its values that the ANC would not knowingly accept monies that are a product of a criminal act, are offered in exchange for favours or are from a source known in illegal or unethical activities.

The ANC has long recognised the risk presented
20 by the lack of regulation with respect for political funding. The lack of transparency in donations to political parties increases the potential for corruption and the exercise of improper influence on political activity and government processes. It wants to address this problem that the ANC resolve at its 52nd National Conference that:

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“The ANC should champion the introduction of a comprehensive system of public funding of representative political parties in the different spheres of government and serious society organisations.

This should include putting in place an effective regulatory architecture for private funding of political parties and civil society groups to enhance accountability and transparency to the citizens.”

It was not until the next ANC conference in December 2012 that the Political Party Funding Bill was introduced into Parliament to achieve this purpose. We believe that the Political Funding Act will have a far-reaching implication for the integrity and transparency of our political system and will help to rebuild public trust in the political process.

While the Political Party Funding Act deals with donations to political parties, the ANC has also identified weaknesses in its approach to the funding of internal party contests. That is leadership contests. Specifically, it has noted that its guidelines on the conduct of internal leadership elections are not suited for the conditions of the time that we live in and has initiated a process to review its policies on this matter.

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The issue form part of the discussion documents published last year in preparation for the ANC's upcoming National General Council. I am raising this issue during the MEC meeting of 26 July 1990. I said as President:

“In the absence of clear, appropriate and realistic guidelines, our leadership contest will continue to play themselves out in the shadows in conditions of secrecy and mistrust, encouraging patronage and factionalism.”

10 In conclusion. The position of the ANC on leaders and members who have been complicit in acts of corruption or other crimes is clear. Their actions had a direct violation, not only on the laws of the republic, but also of the ANC's constitution, its values and principles and the resolutions and decisions for the ANC's constitutional structures. Such members must face the full legal consequences from their action. They cannot rely on the ANC for support or protection, nor may they appeal to the principle of collective responsibility.

20 In accounting for their actions, they must be accountable for their actions themselves because the ANC did not and could never direct its members or leaders to commit acts of corruption. While the ANC distances itself from those within its ranks who have been involved in corruption or who are complicit in state capture, the

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organisation must and does acknowledge that it must provide explanations for the matters currently under investigation by the Commission.

We should do so because state capture took place under our watch as the governing party. It involves some members and leaders of our organisation and had fertile ground in the divisions and weaknesses and the tendencies that have developed in our organisation since 1994.

10 I should say, however, that the vast majority of ANC leaders, ANC cadres and ANC members are vehemently opposed to corruption in all its manifestations but we all acknowledge that the organisation could and should have done more to prevent the abuse of power and the misappropriation of resources that defined the era of state capture.

Particularly the period under review by this Commission, the ANC does admit that it made mistakes as we have admitted in our various conferences. We made
20 mistakes as it sought to execute the mandate that it was given by the voters. It had shortcomings and living up to the expectations of the people of South Africa in relation to enforcing accountability and in generating a culture of effective of consequence management.

The leadership of the ANC newly elected at its 54th

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National Conference, we acknowledge these shortcomings as an organisation and we did acknowledge that at our 54th National Conference and we do so now. For this, we acknowledge to the people of South Africa that we did not always live up to the values and the principles that have defined the glorious movement that we belong to for over more of a century of its existence.

We are, however, determined and we undertake to work alongside all South Africans to ensure that the era of
10 state capture is relegated to history and that the excesses that took place may never, never, never ever occur in our country. I thank you, Chairperson.

CHAIRPERSON: Thank you, Mr President. We are at nine minutes past eleven, we normally take an adjournment at quarter past eleven, I think we should take an adjournment now so that when we resume then we can continue. We are going to take the adjournment now, we will resume at twenty five past eleven. We adjourn.

INQUIRY ADJOURNS

20 **INQUIRY RESUMES**

CHAIRPERSON: Let us continue.

ADV PRETORIUS SC: Thank you, Chair, Mr President. By way of introduction it appears from your statement and your opening statement in addition to public statements that there are indeed three issues that the Commission

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should properly investigate.

The first is to understand what happened in the period under review and we have three years of evidence before the Commission and we have certain statements in the opening and in your general statement in that regard.

But the second is perhaps more important for present purposes and that is to understand how things could have happened and it is that regard that many of the questions will be put before you, Mr President. In other
10 words, what were the circumstances and events that allowed these things to happen which appears by public consensus, as you say, to have conceded to – be to conceded to have happened.

And the third element that is also very important, it may have to stand over to a large extent to the second session of your evidence as how can these things be prevented from happening again. So we will cover all three issues but concentrate principally on issues two and three.

Of course we will also ask questions of what you
20 knew was happening in terms of the – or in relation to the terms of reference and in relation to the third question, we will also ask what you, as President, the ANC and the executive which you are leading are doing or intend doing or think should be done to prevent it happening again and many of those elements are already in progress, for

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example matters in relation to law enforcement agencies, the Political Party Funding Act and others but there are other questions that will arise out of that and the object will be to ask on your part for evidence that will allow the Commission and the Chair in particular to understand what best are the remedies that it can recommend. But having said that by way of introduction, Mr President, there is a unique element to this evidence, this is your Commission, this Commission is reporting to you and in that sense it is
10 a unique situation but notwithstanding we hope that you will help us do our job for you properly.

CHAIRPERSON: Of course it is a Presidential Commission in his capacity as President of the country and not as President of the ANC.

ADV PRETORIUS SC: Yes, well that is also true, Chair, so maybe I should reserve that question for the next session.

Mr President, what we have done in response to your statement is look at certain paragraphs in the
20 statement and to deal with matters arising from those paragraphs and in particular your statements in those paragraphs but if we leave anything out in the sequence please alert us to it so that we can then go back and everything can be taken in its proper sequence. So the first issue that we do have to raise is on page 12 of

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bundle 1, EXHIBIT BBB1, but if there is anything before that you no doubt will alert us to it. This is the introductory portion of your statement.

CHAIRPERSON: I am sorry, Mr Pretorius, you said page 12?

ADV PRETORIUS SC: Page 12.

CHAIRPERSON: You explained to the President the black numbers and red numbers?

ADV PRETORIUS SC: Yes. We will be dealing – there
10 are two sets of numbers on each page, we will be dealing with the numbers at the top left hand corner and we have taken the liberty of using the acronym CR there.

CHAIRPERSON: My page 12, Mr Pretorius, starts with:

“In the course of this Commission’s work...”

ADV PRETORIUS SC: Yes.

CHAIRPERSON: Is that the right page?

ADV PRETORIUS SC: Yes.

CHAIRPERSON: Okay.

ADV PRETORIUS SC: In paragraph 21 on that page, Mr
20 President, you say:

“In such circumstances political parties do not merely represent their members but often act as instruments to advance the needs and interests of entire sections of society. This is among the reasons that the ANC describes itself as a liberation

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movement first and foremost that, among things,
contests elections as a registered political party.”

I understand from this paragraph as well as parts of your opening statement that the party is itself in terms of liberation, constitutional policies and principles the development of the South African society in accordance with this principles as a leader in society. There can be no doubt about that fact and, as I understand it, that would be the justification that the party holds for adopting the stance
10 that it is entitled to and does seek to control the leaders of power. Do you have any comment on that? Is that common cause?

PRESIDENT RAMAPHOSA: With reference that you make to paragraph 21, indeed the ANC characterises itself as a liberation movement which we really have been from formation and largely because we were set up to achieve certain objectives and those objectives remain current, to be executed and you could say, in part, some of them have been – now have a democratic dispensation but we still
20 want to pursue a truly non-racial South Africa. That has not yet been truly achieved.

We are also a liberation movement because we seek also to attain a non-sexist South Africa, sexism is still rife in our country and it is also compounded by a continued violence that is perpetrated against women. But

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more importantly, also, to attain a prosperous South Africa, that is an overarching objective and that remains what the ANC has as its objective, that characterises it as a liberation movement. But in the midst of all this, it still has to be a political party that contests elections and in doing so, it then is supported by millions and millions of South Africans, so when it acts it needs to fulfil the mandate that it has set itself out to achieve which is informed by the ordinary people who elected because as we craft our

10 manifestos, we do not do it just merely for ourselves as a party, we go out and gather the views and aspirations of ordinary people and therefore, when we are then elected, we represent the people of South Africa and it is for this reason that we say we hold power not just for ourselves, we hold power and execute power – exercise, rather, power in the interests of the people of South Africa, the many millions who elect us and it is for this reason that we say – and it has been conceded that we are leader of society and what the ANC does and says quite often determines the

20 mood in the country, determines the direction that the country should go, so it is the role that is given to the African National Congress by the majority of the people of this country and they expect the ANC to act in a way where it will lead government and it will lead transformation and achieve the objectives as set out by itself as a liberation

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movement.

ADV PRETORIUS SC: Thank you, Mr President. It may seem what you have said should be taken for granted but perhaps it should not be taken for granted. There are two things that flow from that statement, particularly the latter part of your statement that there is an expectation on the part of South Africans that the party will lead in dealing with policy, problems, solutions and the like and we will come back to that point later.

10 But the second is that the electorate would then be entitled to know how and what – how the ANC intends to go about its business and business of the country, the people and what it is doing in that regard. Is that a fair statement? Obviously there are exceptions, but...

PRESIDENT RAMAPHOSA: I would concede that, yes, they are entitled and in other ways we also describe ourselves as the ANC as the parliament of the people. When the ANC was formed in 1912 we – the leaders of past then characterised even that moment as the creation of the
20 parliament of the people because the people, as the whole of the majority were excluded from the so-called parliament that existed there. So yes, people are entitled to know and that is why the ANC for the most part has been one of the very few parties in the country that has been willing and prepared to open, as it were, its chest, its heart to the

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people of South Africa and admit its own mistakes and also set out the ways it seeks to correct much as sometimes, because it is a political movement, there will be contestation of some of the issues.

CHAIRPERSON: You may keep mic on, Mr President.

PRESIDENT RAMAPHOSA: Okay, I will do so.

CHAIRPERSON: Ja.

ADV PRETORIUS SC: Then, Mr President, after certain introductory structural remarks concerning the ANC's
10 structures and processes you deal with cadre development and deployment beginning at page 15 and in paragraph – well, perhaps I should presage that with a summary of the evidence – a very, very broad and perhaps superficial, but if it is superficial you will tell me, summary of the evidence in relation to cadre development and “cadre deployment”.

On the one hand there has been evidence that the policy goes far beyond mere recommendation and in fact is a policy implemented on the instruction and mandate of the deployment committee. That is one view and there is
20 certain evidence in regard to that. Whether that is exceptional or the rule, maybe we can deal with in due course when we come to detail.

The other view, which is reflected in your statement and other statements, Mr President, is that the deployment committee goes no further than make recommendations

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and abides by the formal selection processes that take place for example in the public service.

Those are the two extreme views and whether either is correct or not, Chair will have to consider and decide. Or it may be that neither is correct as a general rule and that there is quite a large grey area between. What would your comment be?

PRESIDENT RAMAPHOSA: The deployment committee, as I said in my statement-in-chief, should really be seen as
10 committee that recommends, the recommendation committee and having been the Chair of the deployment committee as Deputy President, the process that really gets underway is as follows, and maybe I am simplifying it. The minister concerned, for instance when it comes to say state owned enterprises - or state entities, would come forward and say I need to appoint the CEO of one of the key state owned enterprises and in doing so, they will then have that post advertised, as they should in terms of the regulations and corporate governance and so forth and a
20 message will then be forwarded to yes, the ANC deployment committee, that there is a position that the minister will come to the deployment committee with to articulate what position they need to fill but then they will have triggered the process of – the formal process of filling that position. So the advert then goes out so that

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whomsoever applies but then internally in the ANC people will then be encouraged to apply that there is a position, if you qualify, you could be one of those who are either shortlisted or whatever. So the minister will then say we have shortlisted a number of people and in the short listing these are people who have been shortlisted. Some of them may not even be ANC members, some of them may well be ANC members and what is then looked at by the deployment committee is to say we really need someone
10 with experience.

For instance, if it is a railway entity of railways and who has been well-trained and well-prepared and all that, and having done that, the deployment committee could well say well, in our view so and so fits the bill. It could be an ANC person, it could be an non-ANC person, completely unattached to the ANC, that we believe that this person can do the work. And then it then goes off, it goes off to the selection – final selection process, that the minister then gets involved in with her colleagues in cabinet
20 because an interviewing panel then is put up and if it is, for instance, a Director General, it happens in cabinet, if it is a state owned enterprise it happens in terms of company rules and what have you. So that then ensues.

And then at times, Chairperson, the desires of the deployment committee are not even fulfilled. They may

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well have said we want so and so and it may not happen and we say that should be in terms of the prescripts of the law, corporate governance and the prescripts of the selection process in, for instance, in the public service.

So having chaired the deployment committee, I know that for a fact that in some cases the deployment committee wishes may not happen. So it is for that reason that I describe in the main a deployment committee as a recommendation committee. And it takes into account a
10 whole number of considerations. You could ask are some of them political? Yes. For key positions where we seek to advance the mandate of the governing party? Yes.

But where, for instance, the requirements and the experience of a candidate overrides that. We then say we rely on this person as an South African to execute the task.

ADV PRETORIUS SC: Whether it always happens that way or not we can explore in due course with some of the more detailed evidence that we have been given but I understand you to have said that the whole process does
20 require some form of statutory or other regulation and we can explore that issue as well in due course. But, for the moment, in paragraph 25 on page 15, your statement reads:

“The policy of the ANC is aimed at ensuring that the person most fit for purpose is appointed whatever

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critical position has been identified.”

And the statement is quite a strong statement, in other words the object of the policy is to ensure, not merely to suggest, that the person most fit for purpose is appointed to a particular position. You have also now recently said that the deployment committee goes out to seek candidates. How does one ensure that a person most fit for purpose is appointed if it is only a recommendation and another body makes the decision?

- 10 **PRESIDENT RAMAPHOSA:** The process of selection of -
let me put it deployment of people – has evolved, has been evolving and has been a subject of discussion even in our past conference and in recent time, the last conference, the issue of professionalising the civil service, professionalising state owned enterprises and getting people who are fit for purpose has become accepted and has become more current. And as it has evolved, it has evolved from a past that did not necessarily subscribe to that. So, as everything evolves, as everything improves
20 and gets better, this is now where we are. And to this effect even the Minister of Public Service has now embraced this process and it is now in the process of being fully implemented in government so we now have a new era, a new dispensation that is going to see to it that we have people who have fit for purpose.

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So what the deployment committee will now to be doing is to yes, seriously ask itself whether people are fit for purpose. Even as it will recommend certain people who could head any state owned enterprise or head any department as DG, it has to this as a filter and ask itself is that person fit for purpose as it recommends? So I see – I do not see the two things as mutually exclusive, I see this process as being seamless.

Chairperson, we do so because we are serious
10 about correcting what has gone wrong in the past and this is an important plank that we are working on to make sure that we build this up as an important pillar of improving state capability. So when I will speak as head of the state I will talk about how we are going about improving state capability and this is one of the areas that I will address myself.

CHAIRPERSON: I am sorry, Mr President. What is the importance, Mr President, of this deployment committee having the power to recommend as opposed to simply
20 identifying potential candidates and encouraging them to apply like everybody and be considered and if they are considered, the most deserving, they get appointed. So what is the importance of the committee having to recommend as opposed to simply saying we know there is this position available, we would like some of our members

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that we know are qualified and we think are suitable or, as you say, people in society that the organisation is aware of that it thinks should be encouraged, encourage them to say you apply and you compete with – like with everybody. So if you did it that way, the people that the deployment committee thinks are appropriate will be the among those who will be considered but they will not be coming with the recommendation from the deployment committee that the minister knows about, they will be coming like everybody
10 but the deployment committee and the organisation should be covered because it has made sure that people that it thinks should take those positions are there with others and competing there.

PRESIDENT RAMAPHOSA: With respect, Chairperson, I hope you do not think that I am pedantic when I say maybe the two are not mutually exclusive.

CHAIRPERSON: Yes.

PRESIDENT RAMAPHOSA: And I say so advisedly because as previous chair of the deployment committee we
20 did have a situation, some situations were – the deployment committee will have identified two or three really suitable candidates and would say all of them, their names should go forward and in the end the final decision is then left to the final selection process in government. So what you are saying is that could the deployment

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committee not just identify instead of recommending, I would say the two are not mutually exclusive, it is impossible where two or three names have been sent forward and in other situations it has been a recommendation of one or so, so – and I take that and it is not impossible for the deployment committee to function in that way because all that it really seeks to do and should seek to do is to get whoever is fit for purpose, particularly now in this new, if you like, reformed era of making sure
10 we do have people who are really good and fit for purpose who would be able to execute the task at hand without feeling that they need to pursue – advance certain side interest.

CHAIRPERSON: Well, that question arises in my mind because it would seem to me that where a minister is the appointing authority, for example...

PRESIDENT RAMAPHOSA: Yes.

CHAIRPERSON: And he or she knows that among the candidates there is this candidate who enjoys a
20 recommendation of the deployment committee and remember, the deployment committee is chaired by the Deputy President of the party and the Deputy President of the country because that is how it works at the moment.

PRESIDENT RAMAPHOSA: Yes.

CHAIRPERSON: It seems to me that it might put some

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pressure on the minister to take this candidate unless one of the other candidates really excels. So, in other words, this candidate seems to come with an advantage that nobody else knows about other than the deployment committee and the minister. So the other candidates think we are all competing on an equal footing but this one already enjoys a recommendation from the deployment committee, of course a recommendation that has been made by the deployment committee, not knowing the
10 strengths and credentials of other possible candidates and then the minister is aware, the committee chaired by the Deputy President thinks this is the person who should – or recommends that this person should be appointed. Would you want to say something about that?

PRESIDENT RAMAPHOSA: I do indeed.

CHAIRPERSON: Yes.

PRESIDENT RAMAPHOSA: I do want to say something, Chairperson, and I will paint to you the practical experience that unfolds at the deployment committee and it
20 is good that you actually cite the situation of a minister who will come to the deployment committee. Quite often ministers come to the deployment committee, having gone through a process, a pre selection process themselves and the various other officials or committees embedded in their own ministry, where they sift through a number of say

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possible names.

When they come, they seek to convince the deployment committee about certain candidates who may be short listed. So in the end, quite often it is not even at the instance of the deployment committee. It is at the instance of the minister, who knows and should know the skills, the experience that are fit for purpose for the task that they manage or they run in the ministry.

So they would know for instance, the CEO of an
10 entity what the requirements are and the deployment committee does not know in full. So they come to the deployment committee and seek to convince the deployment committee and even put up a pitted not fight, but argumentation of why the persons that they may want to see appointed should be recommended by the deployment committee.

So that is the practical experience that I have had. So the deployment committee, in the end it will tell people that apply, there are these positions and but it is the
20 deployee in that ministry or in that who manages that state owned enterprise, who would know in greater detail, in finer detail precisely what is required.

So they seek to convince the deployment committee. So if you like, the deployment committee therefore plays a recommendation role, but it also plays

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more of a reactive type of role. You could ask is there any desirability for the deployment committee and we would say yes, there is because it should serve as a filter.

We are a political organisation and what we do in government is very political, so you do need that political filter but it should also not be a political filter that will go ahead and appoint people who are not fit for purpose. It should be a filter that will make sure and if you like, it should be a quality type of assurance, that in the larger
10 scheme of things we are going to have people in senior positions who are going to execute the mandate as set out in the manifestoes of the governing party.

CHAIRPERSON: Now the two approaches, you said they are not mutually exclusive.

MR RAMAPHOSA: Ja.

CHAIRPERSON: And I agree. I have already indicated what possible criticism can be directed at the approach as you have described it.

MR RAMAPHOSA: Ja.

20 **CHAIRPERSON:** Namely that the candidate recommended by the deployment committee has this added advantage, and I assume that is not known to anybody, other than the deployment committee and the appointing authority, the minister.

I may be wrong on that. What criticism would you

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have with the other approach, which simply says your interest as an organisation in making sure that you, that certain strategic positions are occupied by people who understand your policies and so on and so on.

That would be taken care of if you encourage candidates, suitably qualified candidates to apply, but once you ... once they have applied, why do you not leave it to the process and the appointing authority and the appointing authority is your own cadre who is supposed to
10 understand the policies of the ANC and he or she will then look at all of this.

But in that way the candidate does not come with some extra added advantage. Would you have criticism for that approach and say it would not be suitable?

MR RAMAPHOSA: No, I would not except that what often happens, it is actually the minister who ...[intervenes]

CHAIRPERSON: Who comes to you.

MR RAMAPHOSA: Who comes and say I am recommending the following and the deployment committee
20 then examines that and it is often convinced ...[intervenes]

CHAIRPERSON: About the ministers.

MR RAMAPHOSA: Oh yes.

CHAIRPERSON: Yes.

MR RAMAPHOSA: And I have been in situations where the minister would come back maybe two to three times.

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CHAIRPERSON: Ja.

MR RAMAPHOSA: And say ...[intervenes]

CHAIRPERSON: I want this one.

MR RAMAPHOSA: This is the best one.

CHAIRPERSON: Yes.

MR RAMAPHOSA: And I want to convince you and even
bring further documentation to prove the case.

CHAIRPERSON: Yes.

MR RAMAPHOSA: And then I am not suggesting that the
10 minister brow beats the deployment committee into
submission, but ...[intervenes]

CHAIRPERSON: Ja.

MR RAMAPHOSA: That is how it often happens.

CHAIRPERSON: Okay.

MR RAMAPHOSA: But having said that, your point is a
good one and I would say yes, because I do not really see
the two being so mutually exclusive, particularly because
of the role that the minister does play.

CHAIRPERSON: Yes, yes.

20 **MR RAMAPHOSA:** As the minister should because they
are the executive authority who has been deployed to do
precisely that.

CHAIRPERSON: Mr Pretorius?

ADV KENNEDY SC: Thank you Chair. Perhaps it bears
mention Mr President, that there are three issues that we

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will canvass in the time allowed. The first issue is, as you have elaborated in some detail, how is the system designed to work? How should it work.

The second issue is how, whether in part to the greater or lesser degree that may be debatable, how it did work in the past. What problems arose. You have mentioned some problems and we will come to it in a moment.

So that one can understand how best the third issue
10 can be addressed, and that is the regulation that you yourself have proposed in your statement towards the end and we will get there. There is another distinction that is quite important to bear in mind, and that is there are various categories of quota and quote deployment.

The first is executive positions, for examples ministers, deputy ministers and the like. The second is members of public service. EG's and employees employed in the public service, at whatever level and we will come to that as well, and the third is state institutions.

20 The Captain Nine institutions, other institutions, whether at the hands of parliament or the president. Perhaps we should be aware of those distinctions when, well I certainly will try and be aware of them when I am putting questions to you about that.

The deployment policy of the ANC is I presume a

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developing document. It is contained in your bundle, at page 122.

CHAIRPERSON: Did you say 182 Mr Pretorius?

ADV PRETORIUS SC: 122.

CHAIRPERSON: Paragraph 122?

ADV PRETORIUS SC: No, no on page 122.

CHAIRPERSON: Page 122, okay.

ADV PRETORIUS SC: Is this the deployment policy of the ANC?

10 **MR RAMAPHOSA**: Yes.

ADV PRETORIUS SC: And does it have a date or is it a developing document? Has it grown over time? I see if you look at page 138, there is a reference to 2018 in paragraph 67.

MR RAMAPHOSA: Yes. It is what I would call a living document. Living because as the ANC develops its own policies and polishes those policies up, so are these types of policies also being panel-beated into better shape. If I can put it in that way.

20 **ADV PRETORIUS SC**: Right. That point we can deal with perhaps at the end in more detail Mr President, but if one could ... if I could ask you please to go to page 105. This is a different document. This is the ANC constitution.

MR RAMAPHOSA: Yes.

CHAIRPERSON: What page Mr Pretorius?

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ADV PRETORIUS SC: 105.

CHAIRPERSON: Thank you.

ADV PRETORIUS SC: To paragraph or Clause 25 17.20.

This is the ANC constitution. That is how it is identified in your statement.

MR RAMAPHOSA: Yes.

ADV PRETORIUS SC: This, paragraph 25.17 appears on the face of it to be a list of active misconduct, which would apply to members of the ANC for which disciplinary
10 proceedings or in respect of which disciplinary proceedings may be instituted.

25.17.20 says:

“In the case of a public representative breaching his or her contract of deployment concluded with the NEC.”

Does that creature still exist? Contract of employment with the NEC, or please tell us about it.

MR RAMAPHOSA: Ja, this presupposes a public representative. An elected public representative. Public
20 representatives are substantively supposed to have a contract with the NEC. When I was secretary general and I think even during the tenure of the subsequent secretary general, we presumed the situation where a public representative would literally accept their deployment as a public representative and sign a contract with the NEC.

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In the end, you know with the secretary general where they say I accept my deployment, so that where it comes to a point where they have to be either removed, it is a termination of contract, because in the past we face a situation where some would say I have been elected and I am not stepping down or whatever.

I am not agreeing to being removed. So it deals more with publically elected representatives and not so much with the appointees who would be governed by other
10 provisions, which has to do with the appointment either in the civil service or in terms of company laws in the public enterprise.

ADV PRETORIUS SC: Understood. Would the contract of employment have any substantive provisions setting out the duties of the public representatives?

MR RAMAPHOSA: Yes, substantively it is supposed to have that, and I was also involved in the preparation and the drafting thereof in the past and I have not really kept abreast with the continuity of such, and I would say that if
20 it has not continued, it is a very good instrument to have, because it helps to regulate the relationship in the end between the organisation and the person who is deployed.

This would also apply to a president, where the president has a contract with the organisation, because even as president or minister or whoever you are, in the

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end deployed by the organisation because we have that type of political system.

ADV PRETORIUS SC: Would it be fair to say or would you accept that the electorate which elects the person to public office, would be entitled to know by what contractual provisions their representative is bound?

MR RAMAPHOSA: Absolutely, I would say yes. Just as right now we have even published as you might well know at government level and we can deal with that when I come
10 as president of the republic. Published the contracts I have entered into with the minister.

CHAIRPERSON: Well, in passing I must just say Mr President that the commission has struggled a lot to get previous performance contracts of ministers. We to the best of my recollection, we got documents which reflected how they were supposed to look like, and I am not sure that we ever got the ones that were actually signed, but maybe some units of the commission has, because we wanted them at a certain stage, starting from 2010 or
20 2009.

The information I was given at some stage was it looks like nobody knows where those contracts are, but maybe they have been found, I am not sure. But it would be good if the ones that have been signed are kept properly with the public or a commission like this wants

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them and they can get them.

MR RAMAPHOSA: Chairperson, I undertake when I come before you again, I undertake to bring a box full of documents.

CHAIRPERSON: I also hope Mr President, in the box will be included performance assessments of ministers during that time.

MR RAMAPHOSA: We are in the course of doing performance assessments now.

10 **CHAIRPERSON:** Now, ja.

MR RAMAPHOSA: Yes. So you may find a very incomplete process.

CHAIRPERSON: Alright.

ADV PRETORIUS SC: Including presidents.

MR RAMAPHOSA: Including presidents, yes.

CHAIRPERSON: Ja.

MR RAMAPHOSA: Maybe I will ask the Chairperson to assist me.

CHAIRPERSON: Mr Pretorius?

20 **ADV PRETORIUS SC:** May I ask you to go back to the deployment policy at page 124?

MR RAMAPHOSA: Yes.

ADV PRETORIUS SC: Paragraph 9 of the deployment policy says:

“Our immediate goal as set out in strategy and

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tactics, is to deepen the hold of the liberation movement over the leaders of state and begin to impact positively on other centres of authority and responsibility, outside the immediate realm of state institutions.”

Now can you assist, what are those other centres of authority and responsibility/

MR RAMAPHOSA: This put simply is a political speak about the ANC exercising its leadership role in society.
10 That the more we perform well, in the state that will have a cascading impact on a whole number of other institutions, be it whatever is your supporting bodies and all that, and we will all start working in a harmonious way.

With the ANC imposing this very positive developmental approach to how we should develop the country going forward. So that is what is envisaged here. It is more political.

ADV PRETORIUS SC: It does talk about positive impact.

MR RAMAPHOSA: Precisely.

20 **ADV PRETORIUS SC:** Rather than direct control.

MR RAMAPHOSA: Ja, positive impact which is the leadership of society.

ADV PRETORIUS SC: Right, and then in paragraph 10 the policy reads:

“The following are the key centres of authority

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and responsibility within the state and should be given priority.”

10.1, cabinet.

10.2, the entire civil service but most importantly from director level upwards, and

10.3, premiers and provincial administrations.”

Then over the page it goes on to legislatures, local government, parastatals, education institutions, independent statutory commissions, agencies, board and
10 institutes, ambassadorial appointment and international organisations and institutions.

That list from 10.1 to 10.10 does that entire list fall within the scope of activity for the deployment committee or is that list, should it be interpreted differently?

MR RAMAPHOSA: For the most part, yes it does. But I say for the most part advisably, because in some instances the deployment committee never really get involved or concerns itself with this. If you like the deployment committee has set itself its own limit that we will only limit
20 ourselves in terms of how we function or recommend people to these key positions.

For instance, the deployment committee does not get involved in the appointment of ministers to cabinet. That is left to the president, but the president does consult his immediate colleagues which are the officials of the

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ANC, but in the end in terms of the government system we have, it is the decision of the president and the president alone.

So the deployment committee does not get involved in that. When it comes to the entire civil service, that has to be read to mean the top leadership of the civil service, because it could never, it is not possible for the deployment committee to involve itself in the appointment of you know secretaries or you know, directors and so
10 forth.

But it does however get involved in the appointment of directors general, and to some limited extent to also deputy directors general, but for the most part, the civil service appointments are done within the civil service itself and in the end, even the minister does not also get involved in the appointment of directors.

It is the director general who gets involved in that. Of course with premiers, yes. It is the deployment committee. Provincial administrations hardly ever. The
20 positions of DG of the provincial administration is done at the provincial level.

The legislatures, there is a process of if you like deploying people there are legislatures as well. The national parliament and provincial and local, which really does not even, the deployment committee does not really

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get involved with that, because that is more of a very vigorous and robust democratic process that is involved there.

Local government and I explained somewhere in my affidavit, something quite innovative is now being done, as this has evolved in the ANC, where it is no longer only the branch committees, it is also the community that gets involved in the final selection of people who should go into local government.

10 Parastatals, yes. They key top positions. Education institutions, hardly ever. The deployment committee like with cabinet, hardly ever get involved. Independent institutions, only to the extent of your top key one, and for instance you will be interested to know that when it comes to the judiciary it is left to that process that we have in the law.

 Ambassadorial appointment. Those will be recommended and they are always often recommended by the minister. The minister, and in the end because
20 ambassadorial appointment are at the instance of the president.

It is the president who appoints ambassadors, because in terms of our system, they represent the president in where ever they are deployed. So that too is a process that he is engaged in, and the president in those

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cases takes the final decision, but he will also have discussed it with some of the colleagues.

So international organisations is even a much more complicated one, because we do not appoint people to international commission organisations. All we can do is to recommend, and after that, it is left to the board as it were.

ADV PRETORIUS SC: Yes, there has been some controversy on the latter point in relation to the Bricks Bank, but we did not go there at present. I note the
10 judiciary is not mentioned in paragraph 10 as one of the institutions falling within the scope of the policy.

But in relation to that scope, I understand you to be saying that that scope is, it does not although very broad and although would in terms of its policy statement, permit the deployment committee to intervene in those areas. As a matter of practice this is not done.

Is that correct?

MR RAMAPHOSA: It is.

ADV PRETORIUS SC: For example the entire civil service
20 is mentioned here.

MR RAMAPHOSA: It is not done. It is just the very top key positions as I have said, yes.

ADV PRETORIUS SC: Well perhaps a closer integration between policy and practice may be looked at.

MR RAMAPHOSA: Absolutely.

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ADV PRETORIUS SC: If I could take you to another paragraph, on page 133. Para 47. This refers to strategic centres of deployment and paragraph 47 reads:

“Deployment within each of the five pillars requires its own sets of strategic discussions. For example within the state sector, what principles should inform the deployment of cadres to institutions with judicial or investigative functions and how should cadres
10 be deployed to perform such functions, relate to the organisation.

There is a second point made later on, but we can come back to that. That seems to indicate that there is at least a discussion taking place in terms of the policy about judicial and investigative functions, persons deployed to those functions and how they should relate to the organisation.

Firstly, are persons deployed at least in the sense of being identified and encouraged to stand for
20 appointment in the judiciary?

MR RAMAPHOSA: In the judiciary, no hardly ever. Hardly ever and I think much as it might have been thought of, it has never really resulted in that, because the appointment of people in judiciary in our country, is so well managed through the dispensation we have through the judicial

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services commission which manages all these matter so well and in the end my full understanding is that whenever there is a vacancy there is a lot of activity amongst the legal organisations and fraternity who encourage one another, that why do you not apply, why do you not apply, why do you not seek to be chief justice or whatever.

So that is what I believe happens. So that one has if any, has actually been very much likes touch and not at all in as far as I am ...[intervenes]

- 10 **CHAIRPERSON:** Would those members of the judicial service commission who may be members of parliament, ANC members of parliament, not be expected to talk to the ANC, to say here are candidates for various positions that will be interviewed in due course.

Does the ANC have preference in terms of candidates? Do you know whether anything like that does happen?

MR RAMAPHOSA: Not as far as I am aware.

CHAIRPERSON: Okay.

- 20 **MR RAMAPHOSA:** We have always relied on what I have said now, yes.

CHAIRPERSON: Okay. Mr Pretorius?

ADV PRETORIUS SC: And again there appears to be at least on the face of it, and you may correct me if I am wrong, a disconnect between what the policy reads and the

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practice. You concede that?

MR RAMAPHOSA: Yes.

ADV PRETORIUS SC: The JSC, the judicial services committee, positions on the JSC. Are they subject to the activities of the deployment?

MR RAMAPHOSA: No.

ADV PRETORIUS SC: No. Then a second point is made which does not necessarily relate to the first point. It says:

10 “Within the “economy” the potential for cadres to accumulate capital in their personal capacities as manifest, should such capital accumulated by deployed cadres be regarded as under the command and control of the movement and if so, how.”

Is that something that should not stand or what do you say about that?

PRESIDENT RAMAPHOSA: The – I think this is impractical, wholly impractical and to the extent that this
20 may have been inserted here it could have meant that those who may well have been put in certain positions in the economy are meant to manage those centres very well, because it is improbable that anybody once you have accumulated capital for yourself you know acting in the economy you would then account to the organisation. It

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never happened.

ADV PRETORIUS SC: Well, it says two things, it suggests in the first sentence that there is an expectation that cadres and deployed cadres might accumulate personal wealth, whether that is in Government or outside Government it doesn't say but the second point is that there's a thought, at least expressed here, that the policy says that, well we should at least or consider whether that money should come to the movement, is that an
10 appropriate clause?

PRESIDENT RAMAPHOSA: No, it is wholly misplaced because as I say it is improbable and could never have happened because if people are in business, they do ...[indistinct] on personal accumulation processes and if they so want to donate money and give money to the movement then they should be able to do so and not that they should inherently be expected they should because they never would.

ADV PRETORIUS SC: Paragraph 56.1 on page 135, again
20 black number, I've just made the mistake of reading red numbers myself, 56.1 it says,

“Cadres should be ready to be deployed where the movement deemed it necessary to deploy them”,

That is quite a strong statement and veers towards the hard interpretation of the deployment policy, do you

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have any comment?

PRESIDENT RAMAPHOSA: Well, this really should be seen in a historical context and this is where the ANC acting as a liberation movement when it was banned and in exile you were deployed wherever and you could not question where you were deployed and if you were – for instance Umkhonto we Sizwe you would be told you were going to be deployed on the Mozambican front or Lesotho front or wherever and you go, no question asked because

10 you are the NS soldier and similarly people who were not in the armed forces would be deployed anywhere you'd be deployed to London, to Moscow wherever and this is a remnant from the past but today you actually do engage the discussion with a comrade and say, we would like to deploy you wherever but when – as President I appoint Cabinet, I say this is where I want you to go and quite often no question asked in fact no question asked, people are deployed as they are informed by their upper leader. So, in other situations there are discussions because you

20 have to take into account the circumstances of the comrade. You've got to take into account their skills space, you've got to take into account a whole number of other things. So, my answer to this would be, yes and no and the no part would represent the considerations that you need to have and the yes part, in certain deployment

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situations you've got to agree to go where you are deployed.

ADV PRETORIUS SC: Well, perhaps, as you've pointed out, Mr President, in a modern and democratic economy as opposed to the history or the historical situation in which the party found itself, perhaps it could be qualified or...[indistinct – dropped voice].

PRESIDENT RAMAPHOSA: Precisely.

ADV PRETORIUS SC: Paragraph 60 on page 136, this is
10 perhaps more of a commentary rather than a strict expression of policy, but it reads,

“The ANC’s range of national and regional deployment committees ebbed and flowed over time as the movement battled intra organisation positioning, optimisation of state governance, factionalism, careerealism and over the page opportunism, desperation for employment and the organisational dilemmas of having to act against corrupt comrades”,

20 Clearly – or perhaps I’m being presumptuous but if I am, you will tell me so, Mr President, clearly this is an expression of the problems faced in fact, in the history of the application of the deployment policy, am I correct in that?

PRESIDENT RAMAPHOSA: Yes, you are correct, I mean,

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as you correctly say, Chairperson, this is commentary and this is apt commentary because truth be told we have had to deal with issues like that, the deployment committee and as the ANC broadly, careerealism, opportunism and some of these deployments have caused internal ructions within the ANC because we are a living organisation composed of people with interests and people with aspirations and ambitions. So, in the end you've got to manage all of that, very, very delicately and carefully so it is apt commentary.

10 **ADV PRETORIUS SC:** Well, how would factionalism arise?

PRESIDENT RAMAPHOSA: Factionalism arises because members of the organisation, like it happens in any organisation would have different perspectives, different interests and some of the perspectives may be ideological some may be just organisational and some may even be economic where people have economic interest and they then cluster around those interests and become, say, a grouping within the organisation and become a faction that

20 then feed on things that happen in the organisation be they say, different deployments or appointments. So, that then involves into distinct groupings that could be pitted against each other but then there could also be groupings that have a minimum – minimum sort of agenda that pulls them together but at the other end both ends there are different

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ones, ideological, economic, or organisational.

ADV PRETORIUS SC: So, is it fair to say that in the history of the party in implementing and developing the deployment policy it has had to face particular factions seeking to further, legitimately, economic interest?

PRESIDENT RAMAPHOSA: Well, that does happen and as any organisation would attest to, it is something that can be faced but it really beholds on the organisation whether it recognises that as a challenge and addresses it
10 and I can never say that it has not affected the ANC and it has and it is this that we're now involved in, in our renewal process that we need to rid the organisation of elements, factions that pursue certain divergent interest to our broad strategic objective of advancing the interests of the people of South Africa.

ADV PRETORIUS SC: And, to get to the third large topic, how can it be prevented from happening again, these experiences, I understand from your evidence inform the degree to which regulation is required?

20 **PRESIDENT RAMAPHOSA:** Regulation, Chairperson, is required, regulation at a state level but because the ANC is so broadly supported, it is the leader of society, it has to do things not so much for its own interest but for the interest of the people of South Africa. It, therefore, needs to embark on a renewal process so that it corrects all

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these maladies within the organisation and if you like, clean up its own act so that it is much more presentable, even electorally to the people of South Africa and I comment on this in my document that over time we saw the electoral support of the ANC going down largely because of the corrosive corruption that our people found abhorrent and it is this, even at our 54th conference that we sought to address. That we've got to arrest this and reverse it and it is for that reason that we embarked on a renewal process

10 to renew the organisation and organisations do go through these ups and downs and that's what we've also gone through, renew our organisation but renewal should not just be in theory it should be in practice, which is precisely where we are now. We are putting into practice the entire renewal process and we – as it were, trying to herd everyone, everyone in the same direction and that is why I referred to the resolution that we passed at our 54th conference, were supported by thousands of members of the ANC who came from right across the length and the

20 breadth of the country. So, what remains now is the full implementation as we move.

ADV PRETORIUS SC: Moving between categories again, not to be confusing, Mr President, appointments to Law Enforcement Institutions for example the National Director of Public Prosecution the Commissioner of Police, the head

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of HAWKS, the head of IPID, SIU and others, we know, and perhaps it put a – obtained a mention that in the appointment of the NDPP most recently, a completely new process involving public participation was directed by yourself but let's go back to trying to understand how appointments in the past – and I'm now going before your reign Mr President, in the past did the deployment committee involve itself in appointments to Law Enforcement Institutions, for example NDPP, Commissioner
10 of Police and the like?

PRESIDENT RAMAPHOSA: No, not under my Chairpersonship, no it did not. So, we didn't do so, I need, maybe on further reflection, need to maybe correct the impression I may have made when you asked me about those who would apply to the Judicial Services Commission.

CHAIRPERSON: Oh yes.

PRESIDENT RAMAPHOSA: Ja, because I do recall once where vacancies were mentioned and it was just in
20 passing, I should say that it was in passing and as it should that the deployment committee would look at where are vacancies, but it never resulted or descended into saying this one would be good that one would not be good and so forth and it was just in passing. So, I thought I should correct that.

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CHAIRPERSON: Okay.

PRESIDENT RAMAPHOSA: But having said that my – under my Chairpersonship there was no involvement with Law Enforcement Agencies, like Commissioner of Police, NDPP and so forth, that never was the case.

ADV PRETORIUS SC: Right, and of course, there has also been evidence about the direct power to appoint being used for purposes that are, to put it quite plainly, illegitimate and these appointment in Law Enforcement
10 Agencies and the like are the subject matter of other evidence and do not involve evidence concerning the deployment committee and will be dealt with separately but we should not forget about those in an overview in relation to appointments to offices of state but may I raise a further question because we've spoken about how the deployment committee should work, it's architecture and design, as it has developed over time. We've spoken about how it might not have worked or did not work in the past in instances and the extent of those instances may be debated and
20 we've spoken about the need in relation to policies and legislation as you've stated in your statement and have spoken about now needs to be looked at it and perhaps even rewritten but there is a view that has been expressed before the Commission and perhaps your comment on this view would be useful by more than one witness and a view

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that has been expressed publicly that there is no need for a deployment committee anymore and if I may just put those views to you and then ask for your comment. In her testimony, Barbara Hogan stated,

10 “However, the usefulness of such a deployment committee these days is debatable, how can, just a handful of people possibly have the institutional knowledge and resources to pronounce on suitable candidates, for every senior position in Government and the private sector. It cannot be that closeness to or membership of the ANC or an of its alliance structures or to fractions within these structures should be the determining factors in the selection of candidate for senior positions. In this day and age there are a host of capable black and white professionals, women, and men from which to choose who clearly understand and have an appetite for making the economy grow. Directorships on Boards should never be granted to
20 the favoured few as a reward for loyalty to a party or a faction of a party or as a retirement benefit for the well connected”,

 There are several items or views in that passage, and you may want to consider it at more length, but do you have any comment?

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PRESIDENT RAMAPHOSA: Yes, I do, having listened to what you have referred to as put forward by former Minister Barbara Hogan I would say that, when dealing with these types of matters it's better to be circumspect and not to throw the baby out with the bathwater because if there is something that causes an irritation it does not mean that you just chuck everything out because the deployment committee has a number of considerations that it needs to keep in mind. One of those is, just having in mind the
10 developmental nature of the state that we are creating that we need to focus on this, what we refer to from the OECD paper of the political aspect which, in our book, would be the developmental side of the equation where we need to keep an eye on the mandate that we've been given in terms of our own manifesto in terms of support because you want – let me give you a good example. You want, for instance, the CEO or even Directors, say of an Eskom, you know right at the beginning we wanted an Eskom to electrify the country and make sure that even our people,
20 mostly the majority black people who never had electricity in their lives to have electricity. So, that person must have a developmental as well as a commercial orientation and if you just have someone who has commercial, my grandmother in Limpopo would never have had electricity because that person would just be infused or you know,

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focusing on just the commercial that she will never be able to pay because she's a pensioner and dah, dah, dah but you want someone who you know is going to be developmental who is going to have a very clear developmental agenda as well as a commercial one to make sure that that happens. So, in the end it's not necessary that they should be ANC members, no and in fact one would discover that. The other consideration, which is very, very strong in our case, which the
10 deployment committee oversees is the gender balance in all these institutions. We've long gone past where we just have men appointed to various positions so the development, I mean the deployment committee focuses on that and says, do we have a clear gender balance, do we have sufficiently selected women who can get into key positions and it is due to the deployment committee that is today in Government, more – over and over now we have balanced Boards of Directors, we have balanced even in the state we're seeking to balance – it's a matter of
20 concern, for instance, to the deployment committee that the Director General cohort that we have is largely male. So, the deployment committee will intervene and say to those deployed in Government, you've got an over abundance of men in key positions we need to see a balance and – so the deployment committee drives that.

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So, that is why I would say, yes, we shouldn't just tilt the pendulum one way, it should be balanced, and it should never be because someone is close to the ANC. We should appoint people who are close to South Africa who are South Africans who've got the loyalty and patriotism, but we are also professional who we assure have a developmental type of approach to doing things and who would be willing to promote the ideals that the ANC or the agenda and the mandate that the ANC was elected. So, 10 whilst I hear what Barbara Hogan is saying that, there's no further need I would say, right now there's even more need, however, deployment committee as decided by, even our recent conference must focus on ensuring that there are people who are fit for purpose, who are professional who know their craft who will go and execute their craft without fear or favour and who, themselves, will not be captured by any interest will just be there to serve the people of South Africa.

CHAIRPERSON: Well, I should have asked this question 20 earlier, Mr President, what does the deployment committee recommend, does it recommend that a particular person be appointed to a particular position, does it recommend that a particular person be considered for appointment to a particular position?

PRESIDENT RAMAPHOSA: Chairperson, it is the latter.

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CHAIRPERSON: It is the latter?

PRESIDENT RAMAPHOSA: Yes.

CHAIRPERSON: Yes.

PRESIDENT RAMAPHOSA: It is the latter because in the end it has to depend on the sort of final selection processes of that given institution or given position, say in Government.

CHAIRPERSON: And the processes.

PRESIDENT RAMAPHOSA: And the processes.

10 **CHAIRPERSON:** Okay.

ADV PRETORIUS SC: One of the points that Barbara Hogan makes in that passage that was quoted that perhaps there are selection committees with expertise more concentrated and more thorough to deal with selection to, for example, particular state owned entity Boards, should it not just be left to them, that was the statement?

PRESIDENT RAMAPHOSA: Chairperson, as it often happens, it is in the end left to a selection panel that the Executive Authority that has been deployed in that terrain
20 will put together for instance I've often seen how, for instance, if a Director General has to be appointed the Minister will make sure that the selection panel is diverse but behind that there is another layer that really goes into thorough details and they often rely on external entities where external entities go through, in a very expert way,

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the identification of those people who could be appointed and then the selection panel also has a number of, say Ministers and Deputy Ministers who are well versed in that sort of area but let me also say that, you know, the deployment committee is also composed of people who are quite knowledgeable. So, you know the deployment committee of the current period is composed of people from labour, people from labour are usually very sharp on human resource issues, you know, people from political
10 type of organisation, people from community based organisation, women, and the youth so it's a collection of people who are so diverse in their own experiences that in my view, gives rise to a wealth of wisdom in the recommendation of people which should be taken forward. So, whoever is then taken through a number of filters and processes before they are finally appointed.

ADV PRETORIUS SC: Would there be any warrant for the regulation about which you speak later on in your statement making special provision for positions which are
20 highly specialised requiring specialist skills and experience, is that catered for or would it specifically be catered for?

PRESIDENT RAMAPHOSA: It is something that we need, obviously, in accordance with what I've put forward that we need possibly to regulate that we should consider because

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when you look at what other countries also do they – some of them go through similar processes and when we talk about the professionalization of the state with a view to increasing or enhancing the capability of the state, this is precisely what we now need to do because we do really, seriously need to ensure that capture of the state does not happen again. So, we need to do things in a transparent, in a convincing way, whilst yes, because we're a political organisation we still keep our eye on the mandate we have
10 and ensuring that it is actually executed. So, it's a wonderful balance in as far as I'm concerned, we should really give rise to something that's quite new, innovative, and really beautiful for South Africa, as we go forward.

ADV PRETORIUS SC: Chair, I see it is one o'clock.

PRESIDENT RAMAPHOSA: Really?

CHAIRPERSON: Yes, okay.

PRESIDENT RAMAPHOSA: I thought it was five o'clock already.

ADV PRETORIUS SC: It is only one o'clock.

20 **CHAIRPERSON:** Let us take the adjournment and we will resume at two o'clock.

ADV PRETORIUS SC: Thank you.

CHAIRPERSON: We adjourn.

REGISTRAR: All rise.

INQUIRY ADJOURNS

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INQUIRY RESUMES

CHAIRPERSON: Before we proceed Mr Pretorius I think we must have in mind how far we would go this afternoon and I do not know whether the arrangement with the President and his team is that we would stop at four or five or whether if necessary he would be available for us to proceed beyond that time and I do not know your own situation and your team.

I am mentioning that because

- 10 1. I do not have an evening session this evening. So if the situation was such that we can beyond five o'clock I would be available but the President might have other plans because he might have worked on the basis that we would stop maybe at four or five. But tomorrow we do have an evening session.

So I am mentioning that in case if we do not use some time after five – after four today tomorrow might not be enough. I am just giving that information so that while we proceed everybody would be ready that when we come to four o'clock
20 whether the answer would be we can go up to five or we stop at four or whether what the position would be.

So you might have canvassed that with the President or his team.

ADV PRETORIUS SC: Yes Chair it has been rather tentatively raised with the President's team on this

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understanding that he does have a country to run

PRESIDENT RAMAPHOSA: Yes.

ADV PRETORIUS SC: But...

CHAIRPERSON: Ja.

ADV PRETORIUS SC: I am sure that they will express their views.

CHAIRPERSON: Yes.

ADV PRETORIUS SC: Either now or when the time comes.

CHAIRPERSON: Yes. Well Mr President you will indicate
10 what your situation is when either now or later on. So all I
was saying is tomorrow we have an evening session so we
would have to finish by five o'clock but in case tomorrow
might not be enough we might go beyond four o'clock;
beyond five o'clock today but only if that suits everybody
because there might have been other plans if that had not
been discussed.

But if we have to stop at five that is fine as well.
Okay alright.

PRESIDENT RAMAPHOSA: Thank you Chairperson. We
20 had envisaged that we would stop at four.

CHAIRPERSON: Yes.

PRESIDENT RAMAPHOSA: But I guess maybe to – to be
accommodative because there are other issues we have to
attend to five o'clock should be fine.

CHAIRPERSON: Yes. Yes. Well we could stop at four

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strictly speaking the day session goes up to four but we normally stretch it a little bit but if from your side you are comfortable with going up to five maybe we should do that. But it just depends I do not want you to be under pressure because four o'clock is generally the normal time.

PRESIDENT RAMAPHOSA: Ja I would wait for another message that will be sent from my office.

CHAIRPERSON: Okay.

PRESIDENT RAMAPHOSA: About that and then we will
10 indicate that.

CHAIRPERSON: Okay no that is fine. Even at four o'clock we – I will ask.

PRESIDENT RAMAPHOSA: Okay.

CHAIRPERSON: What the position is

PRESIDENT RAMAPHOSA: Okay.

CHAIRPERSON: And if we have to stop at four we stop at four if we can go up to five then we go up to five.

PRESIDENT RAMAPHOSA: Thank you.

CHAIRPERSON: Okay alright. Thank you. We may proceed
20 Mr Pretorius.

ADV PRETORIUS SC: I wanted to move on Mr President to a statement made by Mr Enoch Godongwana in an interview he gave to a television station on the 15th of April 2021 I do not know if you are aware of it. But he said the following and pointers first one ultimately

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“The objectives of the time were to change the demographics of the Public Service. Secondly to ensure that the transformation agenda is carried out.”

He is talking about deployment.

10 “The question one may pose and the current conjecture is have these objectives been achieved? If we look at the demographics of the civil servants as we speak they are clearly transformed from that perspective therefore that objective had been achieved.

If we look at the second transformation orientation I think there is no doubt that it diffused into the public service as a whole. So somebody may then say is there is a necessity to continue doing so? These are debates that we should be engaged on as you are aware the moment the Minister of Public Service is looking at
20 introducing a policy of what is called a professional civil service. The debate which is taking place in South Africa at the moment will impact on the form and content of the deployment policy.”

Simply put he is speaking about the

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professionalization policy which perhaps we can talk about later not now in this context. But he is asking the question and I would like to ask you whether this question is being asked within the ANC at the moment is whether deployment is necessary at all?

PRESIDENT RAMAPHOSA: Thank you Chairperson. I did become aware of what Mr Enoch Godongwana did say and he starts off his assertion on the basis that transformation was central to the necessity to have a Deployment
10 Committee and this started off 1994 because you will recall when we came into government we found an all-white headed civil service and it really cut across from the top to near the bottom and the bottom was largely black people and the top – the middle and the below middle were all white.

And in the main male as well so it was pale males who dominated the civil service so it was therefore necessary to have a Deployment Committee that would address that anomaly.

But today we continue to need that type of
20 intervention because what we are seeking to do is to build a diverse nation. A nation that is united across the various if you like cultures that we have in our country but also gender.

And transformation is not a one day affair; it does not happen all at one go it is a process that happens over time. And it does need to be guided; it does need a strategic

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intent and for instance one of the key issues I should have alluded to was not only the gender issue but also a demographic mix.

Each time when the demo – the Deployment Committee meets it looks at that. Are we able to have a diverse sort of Deployment of people? So that we do not have an all let us say African components of the civil service leaving aside white, coloured and Indian who make up what South Africa is all about.

10 And you therefore need that Deployment Committee because that is part of our transformation process.

Now the Deployment Committee asks itself those questions and seeks to create that balance because I have also seen that even in the government circles sometimes it is lost – that focus is lost and we have always believed that it can be better inspired and it can better led from political party point of view.

And this Chairperson is not unique only to the ANC. If you were to look at what has also happened to other
20 political parties and I can think of a party that is also in government alongside say the ANC like the Democratic Alliance. They do have that as well. They do in the end get approval process for the appointment of people from the party and sometimes and this occurred when a case had to be handled by the Public Protector and Mr Bredell had to say

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this cannot happen until an arm or a structure of the Democratic Alliance had to give its nay or yeah.

So without getting into those processes I am just alluding to the fact that the Deployment Committee in other organisations is there even if they may not call it that and I guess the ANC in its exuberance has gone ahead to say we will call it a Deployment Committee and there had been other cases it happened as it happens.

I know for instance and I have referred to it in my
10 affidavit that even in other countries I know for instance with – with the UK particularly under Margaret Thatcher the question needs to be asked is that person one of us? And there is even a book written to that effect One of Us.

And what that meant was even in her governance of the UK they always sought to find people who were one of them and so this is not unique to the ANC and you could never say that in Margaret Thatcher's era they were going through a hard core transformation process and maybe it was soft, harsh but they still needed to have one of them and
20 in our case we are not necessarily saying they must be one of us we are saying we would like to see that all these requirements are met because they are important for the development of our country and nation building and making sure that those who are given key positions in our state are representative of who we are as South Africans. Thank you.

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ADV PRETORIUS SC: In paragraph 32 on page 17 you...

CHAIRPERSON: Are you back in his affidavit?

ADV PRETORIUS SC: Yes Chair.

CHAIRPERSON: Okay.

ADV PRETORIUS SC: Another issue is raised that maybe significant in this discussion Mr President and that is the quote you had placed there by Matheson of the OECD that is the Organisation for Economic and Community Development times and it is an international organisation that has many
10 countries as members. Is South Africa a member? I know it is quoted in the survey?

PRESIDENT RAMAPHOSA: No we are not a member we are associated – they have always sought to have us as a member so – but we are not a member of the OECD.

ADV PRETORIUS SC: Anyway the quote here deals with the issue of the political loyalties of public servants.

PRESIDENT RAMAPHOSA: Yes.

ADV PRETORIUS SC: The responsiveness of public servants to the policies of the current executive and what
20 this says in your statement is the following:

“Political involvement in administration is essential for the proper functioning of a democracy. Without this an incoming political administration would find itself unable to change policy direction.”

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That is the import of that quote there are some caveats which follow but they more strongly stated and I see that in your opening statement care was taken to deal with that issue clearly well prepared.

But in Matheson and it is in Bundle 2 if you need to look at it he says the following:

10 “In their quest for legitimacy democratic regimes find themselves having to balance two values that can be in some tension. Fair and political partisan public service delivery and subject to the law – importantly subject to the law – the responsiveness of public servants to the policies of the current executive.”

Now we know that that is dealt with in our constitution to a degree to which the public service must fair and partial and independent and hopefully that will be reflected in legislation in time.

He goes on to say:

20 “Neutrality in the sense of political non-partisanship and public administration is of course a pre-condition for ensuring that regardless of their political orientation citizens are treated fairly and in an equitable manner. Operationally it is delivered by

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emphasising professionalism, merit and competence amongst public servants. These values are important to the level of justice and continuity and public administration. Arguably a significant determinant of how much trust citizens place in their system of government. At the same time public servants must be accountable to the government for the effective delivery of its programs and responsiveness of the administration to the government of the day within the law and its constitutions as key to the effective implementation of government policy.

And the report goes on to show how different countries have developed institutional arrangements which balance these two concerns to avoid the extremes of a self-serving public service immune to political leadership on the one hand or an over politicised public service hostage to patronage and serving partisan rather than national interests on the other.”

Now there is clearly a tension expressed. It was mentioned in your opening statement Mr President. To what

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extent and leave aside the history are the future plans of the party seeking to balance those two considerations and how will that be achieved?

PRESIDENT RAMAPHOSA: Well there needs to be balance between what I would say the political involvement of the governing party that I spoke about with ensuring that there is proficiency – technical proficiency, fairness in terms of service delivery and that those who execute such are able to be neutral enough and not to be biased in a partisan way.

10 Now that is quite important and it is what we want to engender going forward to ensure that when it comes not only to service delivery but also to for instance appointments of people be it for public employment projects that public servants should be colour blind when it comes to that.

They should not be partisan, they should seek to serve the people of South African with neutrality, with fairness and they should demonstrate their own technical capacity and capability.

20 That is so necessary for them to do so because the people that we serve are not blind when something is done on a partisan basis they see it and once it is done that way it basically means we are failing the people and we are therefore even violating their own basic rights as citizens of our country.

So we need to guard against that and we need to

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inculcate that culture and we will – we will seek even to – to have that approach also encoded in regulations also in legislation to the extent that we can.

It is so important and that is why I in my statement in chief if you like referred to the OECD and Matheson at 00:19:39 that they put the case so well in that document that much as you can have political involvement particularly when as a governing party you want to ensure that your mandated positions are adhered to. You do however need to balance
10 that with that technical proficiency in non-partisanship as you implement because a party like the ANC needs society and it cannot be seen to be partisan in favour of certain people when it executes ..

CHAIRPERSON: Sorry Mr President.

PRESIDENT RAMAPHOSA: It is not my fault.

CHAIRPERSON: Ja no it is not yours Mr President. Will everybody please switch off their cell phones. Okay let us continue.

PRESIDENT RAMAPHOSA: So it is therefore important and
20 I would agree with Mr Pretorius that we do need to have that balance but I would say that balance needs to be – to have a foundation and that foundation is what I spoke. Thank you.

ADV PRETORIUS SC: Right. Mr President you have spoken about a move or intention to introduce a policy of professionalization of the civil service what problems would

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that move seek to address and what is envisaged?

PRESIDENT RAMAPHOSA: It would seek to address the problems that we have had where and I think Minister – Mr Godongwana refers to that in his – in his interview where we do have and admittedly so we do have some people in our civil service who are ill-qualified, who are not that fit for the purpose, who do not have those qualifications that are necessary. Now we want to professionalise the civil service and that will happen in a variety of ways and we are not
10 talking about chucking people out we are talking about capacitating those people, having them properly trained and that is why the school of government – the National School of Government has moved into top gear now – moved into top gear in the sense that it is a really literally come alive in terms of its curricular, offerings, in terms of ensuring that many cohorts in the civil service do attend certain courses and we do want to move to a point where you know nearly everyone in the public service from President right down does attend lessons and courses at the School of
20 Government on an annual basis where I even as President would know that I do need to go and spend a week at a School of Government and to address that incapacity that we have say for instance the grouping of people who are ill-qualified to be capacitated, courses should be crafted for them and they should acquire the necessary skills so

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professionalising the civil service that would be part of that process.

But also going forward it would mean that we then appoint people who are fit for purpose. People who are well experienced but of course when we get say young people into the civil service the issue of experience is not something that it is actually something that the young people have said please discard that because we want to come in and once we are in then you should equip us with all the necessary skills
10 and I have agreed with young people that exactly what we should do and we should now find a way of encoding that.

But in the end professionalising the civil service means that we want to increase the capacity of the state. That is something that I am really if you like obsessed about because many of the challenges that we face in terms of implementation of our decisions and our policies revolves around the incapacity that we have in the state.

And it is a fairly straightforward matter that we can address through this professionalization, through getting
20 people who are fit for purpose, who have the experience and the expertise and if need be we go out and seek them out and head hunt them so that we bolster the capability of the state.

And that way I think we will – we will have achieved a great deal in this era of deforming processes that were

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damaged in them.

ADV PRETORIUS SC: Yes. In your preparation Mr President you have no doubt been forewarned that the answer to the Parliamentary question by the Minister of Public Service and Administration Mr Mchunu in a reply to a question he stated:

10 “According to information from Purcell that the quantum system for government employees as at 15 February 2021 there are currently a total of 9477 senior managers employed in the public service. Out of this total 3301 members do not have the required qualifications. However it needs to be stated that many departments do not capture the qualification information on Purcell and therefore the information in the tables below are skewed. This information also excludes the Department Of Defence And State Security Agency.”

20 However the statistics need to be adjusted rather there does seem to be a quite serious problem about qualifications in the public service and is that problem recognised?

PRESIDENT RAMAPHOSA: That problem is recognised and that is precisely the problem that we will now address

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through the professionalization for the public service.

Now it is a lot of people 3301 and I would say we are not about to chuck those people out. If anything we as the state are to blame for having brought in people who are ill-qualified. We therefore need to address the problem but we need to address it humanely. We need to address it taking into account the mistakes that we have made and the human rights or the rights of those people as per worker/employer and what then calls on us to do is to be innovative. To be
10 very creative of how we are going to capacitate all these people.

And it is not like you know they are done the heads or they do nothing they are doing something and we just need to – we channel their capability, their knowledge and the ability to do the work. So it is recognised and that is precisely what we are now going to be addressing.

The good thing Chairperson is that we have recognised the problem and often when you address problems and try to find solutions you should first know what
20 you are dealing with. You must know your business. You must be able to count what you are dealing with and once you have done that then the solutions will come quite more easily and then able to execute them.

ADV PRETORIUS SC: Mr President thus far in relation to the issue of deployment we have dealt with elements of the

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hard definition of employment that it is much more than recommendation.

PRESIDENT RAMAPHOSA: Ja.

ADV PRETORIUS SC: And we have dealt with the softer definition which is that it is recommendation only and we have looked at the exceptions that fill the space between and I think there has been a fair statement on your part if I may comment that regulation in the form of legislation and policy reform is – is underway. But there is an aspect of
10 appointments that may well fall right outside the question of deployment and that is what has happened in the period under review in the past and we have heard some three years of evidence of appointments which may have something to do with a definition of patronage – you have used that word patronage and we will come to that in due course in a different context. But if we look at appointments particularly within state owned entities in the past ten years and I am going to just recite a few for you and ask for your knowledge and comment.

20 In Transnet Mr Molefe, Gama, Ramasobudi, Peter, Singh, Sharma, Makwanazi, Shane, Seleke, Mabaso, Denel the entire board including the Chair. PRASA, Eskom, Molefe, Singh, Koko, Matshela, Ngubane, SAA, Dudu Myeni, Law Enforcement, Arthur Fraser, Tom Moyane, Bernie(?) Ntemensa(?), Shaun Abrahams. Now, clearly it would be

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unfair to discuss with you all the evidence related to each particular appointment but there is a common thread, certainly, in the evidence that goes through all of these appointments and the dismissals associated with them that have been linked with, certainly, a definition of patronage.

If I could ask you, please, what your knowledge was of these, what your comment is? Let me say, if anything to do with the deployment policy, at the existence of the deployment policy, have any relationship to these
10 appointments and dismissals. I know that I am making a cardinal error in the questioning here but this is a Commission not a...

And I am rolling up a whole lot of questions...
[laughs] ...if I carry on the DCJ will take me to task.

CHAIRPERSON: It is after lunch, Mr Pretorius. [laughs]

ADV PRETORIUS SC: [laughs]

PRESIDENT RAMAPHOSA: [laughs]

CHAIRPERSON: Yes, continue.

ADV PRETORIUS SC: Maybe I will be excused for that
20 reason. What was going on here? What was your knowledge?

PRESIDENT RAMAPHOSA: Yes. That is quite a broad sweep, I must say. It is a broad sweep because each one would need to be looked at it on its own merits and you will find that a number of those never even featured in the

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Deployment Committee and I will need to do some recalling to see if any of those that you have counted - been featured in my recollection or not really.

And let us accept Chairperson that some of those deployments were done in a particular era and in a particular way and right now as we look at that past slate whether able to look at it and say we actually need to do things differently. Move away from those types of deployment that happened and that ended up being or
10 some of them being deployments that were not fit for purpose, as I said in my opening statement.

So I would not know be able to particularise each one of them because they happened when they did and right now I would say the Deployment Committee would not have dealt with a whole lot of those. And I would say that the Deployment Committee today would deal with matters in a way that we have outlines with professionalism and all that, would be the real focus.

ADV PRETORIUS SC: Now, perhaps the problem lies with
20 the question in that it is too broad and too general and in that sense to ask for a particular approach, to put the least, that is least optimistic. But the first point is that there has been evidence that there were appointments influenced by or made by the former President to fit another purpose, an ulterior and illegitimate purpose. Are

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you aware of that? Is that evidence known to you?

PRESIDENT RAMAPHOSA: No, I was not – you know, as I said in my statement and in my – the bulk of my statement or affidavit and as I said, you know, some of these state capture issues became only evident in time as we moved on. And that is why I even referred to the statement by Minister – or let me call him comrade, Comrade Fikile Mbalula for purposes of the type of evidence I am giving now here. It was when he mentioned
10 in an NEC meeting how he had come to know about his appointment.

Even at that time we were not alive to the fact there was state capture and there was something horrible wrong going on. So some of these appointments would have happened in that course of time and one with hindsight then became aware that there was a common thread and if you joined the dots you would find that there was something that was amiss that was really happening.

So at the time, and some of them would have
20 happened even before I was even Deputy President, the process had been ongoing and only became evident what actually was happening then.

ADV PRETORIUS SC: One interpretation of Pastor Wentz(?), Mr President, is that the Deployment Committee, certainly, for a significant period of time during these

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appointments and you were Chair at the time of that Committee, as I understand it, was entirely bypassed in these appointments.

In other words, the ideal, as it should have worked, procedures that you have outlined today were not applied and in fact the Deployment Committee was not involved. Was there not then a duty on the Deployment Committee to put its hands up and say to the President: But these appointments are happening without our
10 knowledge. What is going on?

PRESIDENT RAMAPHOSA: There were some appointments where the Deployment Committee was not aware. I will give you a very good example where I was involved recently as President of the Republic where in finalising certain appointments, I bypassed the Deployment Committee myself and on realising that, I immediately went to the Deputy President, David Mabuza, and I said: I finalised these appointments without reference to you as the Deployment Committee.

20 And I think I even called the DSG then, Jessy Duarte, and said: I would like to apologise. But more than that, I am even prepared to come to the Deployment Committee and explain myself and I did and I said to my comrades that ordinarily I should have watched these or brought these to you so that you can either make

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recommendations. I did not. I was in a hurry to have these appointments. And it was *mea culpa* and it was accepted as such.

It has happened. I mean, when I was Chair of the Deployment Committee where some deployments were finalised without reference and one will admit that and accept that. And on those occasions, I would personally go to the President and say: President, you have short-changed me and the Deployment Committee here. We
10 were supposed to be primed and informed about this appointment and that appointment and it would be *mea culpa* but the appointment had been made and announced.

Now the approach that I have taken now is that, it is important to ensure that our structures are involved because they play a key-role in all these processes so that those types of mishaps do not happen. Now I would never say that it was intentional. Like, in my case when I did not approach the Deployment Committee, it was not intentional. It was inadvertent. It was one of those errors
20 that one made and unfortunately one must be able to own up to it.

So there are those that have been made in the past, as you would have heard from the evidence that was presented to you without reference but I thought I should give you a context of how some of these would have

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happened and they did happen. We cannot deny that.

ADV PRETORIUS SC: Alright. Insofar as they did happen and insofar as you have stated you took this up with the former President. The response was an acknowledgment and *mea culpa*, as you say?

PRESIDENT RAMAPHOSA: Yes, yes.

ADV PRETORIUS SC: Fortunately or unfortunately, we do not have time to go through each one but the general principles are clear.

10 **CHAIRPERSON:** May I ask this Mr President? Does the Deployment Committee ever go public about people it has recommended for appointments in terms of speaking publicly.

PRESIDENT RAMAPHOSA: Chairperson, no. It never goes public.

CHAIRPERSON: Yes.

PRESIDENT RAMAPHOSA: It has never been heard ...[intervenes]

CHAIRPERSON: Yes.

20 **PRESIDENT RAMAPHOSA:** ...to go public.

CHAIRPERSON: Yes.

PRESIDENT RAMAPHOSA: But the Deployment Committee does express its disquiet and dissatisfaction, may I say. In the case that I was involved in, now as President, it was members of the Deployment Committee

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who raised the concern which prompted me, finally, to go and address them and that was accepted but they never, not a single one ever goes public.

CHAIRPERSON: Well, I raise that because and maybe that can be dealt with later but you may or may not know much about it because I think you would not have been Chairperson of the Deployment Committee at the time. We – I have heard evidence in this Commission relating to, for example Mr Siyabonga Gama, who at a certain stage, I
10 think 2009/2010, at a certain stage was one of the applicants for the position of Group CEO for Transnet who was suspended as CEO of TFR, which is a division of Transnet.

And in the media there was a lot of talk about him and that position and various allegations, but there were reports in the newspapers of a number of senior ANC leaders who reportedly went public saying that Mr Gama should be appointed as Group CEO. And I wondered whether that might be because the Deployment Committee
20 had recommended him and that was maybe the reaction of some of its members who, if they were – if they thought if he was not being appointed.

So I thought you might be able to say whether they ever go public when maybe their recommendation does not seem to be accepted. But you say, as far you

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know, they do not?

PRESIDENT RAMAPHOSA: Yes, Chairperson as far as I know they do not and I guess in Siyabonga Gama's issue, he was then seen as a fairly successful CEO and that would have been something that was generally accepted and he would have been seen as a type of person whose capabilities could have been Head of Transnet.

So there would have been side noises, noises from the side but certainly not from the Deployment
10 Committee because it has always operated as, if you like, a rear dart type of committee.

CHAIRPERSON: H'm.

PRESIDENT RAMAPHOSA: Ja.

CHAIRPERSON: Well, just because we have touched on it. When Mr Mantashe gave evidence we have touched on it as well. But this was a case where, at least at a certain point, there was a black candidate who had been recommended by the Board of Transnet who was seen as a credible candidate but Mr Siyabonga Gama had not been
20 recommended.

And the then Minister, namely, Ms Barbara Hogan was supportive of the candidate that had been recommended by the board but there were reports of criticism of why Mr Siyabonga Gama was not the one who was recommended or who was not been appointed. I think

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Mr Mantashe told me that he had not been aware of a black candidate having been recommended because I think, at least from his point of view, he was looking at the issue of black managers been given opportunities to lead some of these parastatals.

So there was that concern to say, who – if the problem was that there should be change in the CEO's of parastatals, what was the problem? Because here was a black candidate ...[intervenes]

10 **PRESIDENT RAMAPHOSA**: Ja.

CHAIRPERSON: ...who appeared to be credible and nobody appeared to have issues with him who was recommended by a largely black board that had been appointed by the ANC government.

PRESIDENT RAMAPHOSA: H'm.

CHAIRPERSON: So what was sort of the issue? But as I say, one, you might not have personal knowledge and two, you might not have been a member of the Deployment Committee at the time.

20 **PRESIDENT RAMAPHOSA**: Chairperson, I certainly was not a member of the Deployment Committee nor was I an official at that stage.

CHAIRPERSON: Ja.

PRESIDENT RAMAPHOSA: But what I can address to you is. There was and there is still a concerted move to ensure

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that we do have as many black CEO leaders as possible, taking into account the diversity that we need to observe in our state-owned enterprises.

So that to me does not come as a surprise. It is very consistent with the approach that we also currently have that we need to have good diversity. That need to have diversity is so important and of course there are many who feel quite strongly about it to a point where they would say: When we appoint somebody who is not a black
10 African, they take umbrage but we then say but the call for diversity means that we must accept and embrace the fact that yes as much as, and we should, have the majority of the leaders of our SOE's and the DG's in government as being black African.

But we should also ensure that there is a balance because this country is not depopulated by Africans and our policy approach and thrust is for full diversity and we need to accept that that diversity will at times bringing in people who are not black Africans.

20 **CHAIRPERSON:** Yes, thank you. Mr Pretorius.

ADV PRETORIUS SC: Thank you. To return to the Gondwana[?] interview Mr President. In the context of deployment, once again, and we have now returned to the former deployment policies and your application. You spoke about patronage creeping in under the guides of

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deployment and to the best of my recollection you have used that term in this and other contexts. What is patronage? How does it work?

PRESIDENT RAMAPHOSA: Patronage would mean that you appoint someone who is not fit for purpose. Who is put in a position to advance certain sectional interests. Someone who you know will never really be able to execute the task properly or someone who is being appointed in return for some other favour or some other process that
10 needs to be met. And that is patronage.

And it goes against the grain of what we want to achieve because we want people who are fit for purpose, who will be able to execute the task, and who are appointed without having some interest in mind which are sectional or even factional. So that is what I would characterise as patronage. I have not looked at the dictionary meaning recently but that is how – that is the political understanding that I would give to it.

CHAIRPERSON: Would it include appointing somebody
20 who, as you have put not fit for purpose, who is not qualified of the job or maybe just basic standards, the requirements but the other people who meet and surpass those standards but particularly one who does not qualify because he or she will feel that she or he has been done a favour and therefore owes the appointing authority

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something, loyalty. Because otherwise, he or she could not get this job and therefore the appointing authority thinks there are good chances that such a person will be compliant. Does it include that in your view?

PRESIDENT RAMAPHOSA: Yes, Chairperson.

CHAIRPERSON: Ja.

PRESIDENT RAMAPHOSA: Not only be manoeuvrable but be compliant.

CHAIRPERSON: Yes, yes, yes.

10 **PRESIDENT RAMAPHOSA:** Be compliant ...[intervenes]

CHAIRPERSON: Yes.

PRESIDENT RAMAPHOSA: I think that is what you said complaint.

CHAIRPERSON: Yes.

PRESIDENT RAMAPHOSA: And ...[intervenes]

CHAIRPERSON: Ja, he would be manoeuvrable.

PRESIDENT RAMAPHOSA: Yes, manoeuvrable and be loyal to use ...[intervenes]

CHAIRPERSON: Ja.

20 **PRESIDENT RAMAPHOSA:** ...who have appointed them or who would enable their appointment.

CHAIRPERSON: H'm.

PRESIDENT RAMAPHOSA: And manoeuvrable in a sense where they will do their bidding and they were always be there to guard their interest.

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CHAIRPERSON: H'm, h'm.

PRESIDENT RAMAPHOSA: And that is patronage and that is the crude diversion of what we want to see in the state.

CHAIRPERSON: H'm.

PRESIDENT RAMAPHOSA: Ja.

CHAIRPERSON: Mr Pretorius.

ADV PRETORIUS SC: Of course, there is the further self-perpetuating element to patronage that a patron receives
10 favours or even receive financial gain, becomes more powerful and then in a greater and more powerful position as a patron.

PRESIDENT RAMAPHOSA: Yes.

ADV PRETORIUS SC: Has this happened and if it has, how is it intended to be dealt with?

PRESIDENT RAMAPHOSA: Well, as we have said and which we have dealt with in the African National Congress. We recognise that this is behaviour that has ensued and in recognising it we have come to the conclusion that we
20 need to rid our organisation of patronage. And in some cases we even say certain members join other members rather than the ANC.

Those are practices that we want to get rid off so that we free everyone in the ANC to know that they can stand in their own name and right and be appointed to

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positions in their own name and right. And how we do it is to inculcate this morality. And the renewal that we have been talking about is part of that process that there needs to be renewed morality in the ANC to enhance the integrity of the organisation. And without doing so, the renewal process falls flat on its face.

ADV PRETORIUS SC: In fairness to those who have given the evidence and in fairness to yourself, Mr President. I need to put to you certain passages from the evidence that
10 have told the Chair of the hard interpretation of deployment. In other words, that it goes much further than recommendation.

And then I would like to put to you, certainly of your own statement, which quite frankly highlights the problems that you face or have faced and do face. The evidence of Lynne Brown in relation to SOE boards, more than one, was to the following effect:

“It must be borne in mind that all appointments to the boards of state-owned entities must also
20 be approved by the African National Congress Deployment Committee where after it gets approved by Cabinet...”

That was her clear and unequivocal evidence. Do you have any comment?

PRESIDENT RAMAPHOSA: [No audible reply]

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ADV PRETORIUS SC: And this was in the period 2014 to 2015, at least.

PRESIDENT RAMAPHOSA: Yes, that is where the interpretation of this recommendation process would come in. And that is why I referred to the role of the minister because the minister as the executive or it plays a critical role because it is the minister who, in the first instance, knows and realises that the board's tenure has come to an end. I need to replenish the members of the board and
10 these are the skills that are needed. I need or we need accounting skills, corporate governance skills, financial skills, you name it, environmental and so forth and we need to have a gender balance.

So it beholds on the minister and I deal with this, you know, on an ongoing basis even now as President. It beholds on the minister to then come forward and say: I need to replenish the six members on the board.

And what she will often have to do or be
20 encountered with is. Have you sourced, have you worked out a list, a list of names that should be preferred? And the minister's task is to do precisely that and having done that, a wise minister would then say: I have got like 18 names and I need six or 12 names. They would then put that forward and say to the Deployment Committee – and

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then the Deployment Committee would say – and quite often a pamphlet is set out or an advert for people to apply.

And quite often you get many applications and I actually appreciate that because it basically means you are opening up quite a number of these positions to South Africans who can play a role in enhancing governance in some of our state-owned enterprises. And it is the minister who must then summarise all that, bring together a
10 summarised list or preferred list or summarise and then put it forward as a near or shortlist.

And once that has happened, the Deployment Committee would say: Well, we would recommend the following. And sometimes they need six and there is 18, they would recommend: Why do you not go forward with 12 and then let us see what the selection in government then comes up with. And that is where I would say maybe Lynne Brown then says this got to be approved.

But I will, as the former Chair of the Deployment
20 Committee, will be able to say clear emphatically that it is that recommendation process. And as you can hear, it goes through a number of processes and this may be confusing and this may even create doubt in people's minds but that is the actual process as it unfolds and as it happens. And in the end, Cabinet – even with Cabinet –

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Cabinet then will then be presented with say maybe a near final list.

But Cabinet then finally, Chairperson, deliberates on each of the names where Cabinet has a role in deciding because of legislation for that entity. It deliberates on that and some names fall off at Cabinet level and some on those lists are sent back to the minister or Cabinet says: Take this back. We are not about to approve this.

10 And the ministers pull out their hair and be frustrated but that is the rigorous role that is involved in the selection of those people. And may I add deployment committee level, I know of ministers who have been there three times or more just to get a list recommended.

So it is not as easy as that where you just have a list which is underpinned by nefarious intensions, just approved, it is quite vigorous and I have known and I have seen ministers coming out of that type of process just pulling the sweat off their foreheads because it means they
20 have achieved something. It is not an easy process.

CHAIRPERSON: Of course, Mr President, now that we are touching on the boards and the role of the deployment committee on the appointment of boards of SOEs, when one looks at what has happened, as the evidence has revealed in his Commission over the past two and half

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years, what has happened in various SOEs, Eskom, Transnet, SAA, PRASA, you name them, over a certain period, you are bound to ask the question how is it possible that in each one of those, these SOEs, the types of boards that were there did not do a, b, c, d. How could all of these things happen while they were there?

And that raises the question of how were they appointed? What criteria were followed in selecting people to be put into those boards? How could these SOEs be
10 where they are now or be where they were a few years ago but in some we can say now when they were – they had boards? It is like – it is like there is something common, common problem with all of these boards that made it possible for the SOEs they were supposed to run to be where they are and therefore, as the Commission, one of the things we – some of the things we want to look at is how do we – what recommendations should be made that would try and make sure that in the future if anything like this were to happen, it should just be one, not all of them.

20 **PRESIDENT RAMAPHOSA**: Yes, indeed.

CHAIRPERSON: So obviously you go back and say who were the people who were making appointments here? What was going on? So I am just highlighting that as you share with me what the deployment committee's role is and the ministers, there is that question to say the same thing

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happened with SAA, the same thing happened with Eskom, the same thing happened with Transnet, the same thing happened with Denel, same thing happened with PRASA. What was really going on? But there were boards? So you might want to say something, I am just saying that those are some of the questions we are asking ourselves.

PRESIDENT RAMAPHOSA: Indeed, Chairperson.

CHAIRPERSON: With a view to saying if we do not want to see the same thing happening to SOEs again in the
10 future, we have got to identify what caused these problems and seek to ensure that we recommend measures that will make sure that the same problems do not happen. But as you were saying a few minutes earlier, we have to go to identify where the problem is or what the weakness is in order to be able to make an appropriate recommendation.

PRESIDENT RAMAPHOSA: Quite correct, Chairperson, and I think the work of your Commission is to investigate precisely that. What I can say is that there was massive system failure and some of it could have happened
20 advertently where certain people were put in certain positions to advance certain agendas, as you are investigating now about the capture of some of those entities and – so what you are saying is germane to precisely what your Commission is dealing with and some of it was so hidden, so masked that you just could not see

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that a certain individual was there to advance a particular agenda and that is why we rely on your Commission to ferret the truth out so that we are able to see – but as regards going forward and which is where your Commission will make recommendations and we will be able to overlay some of the form processes that we are involved in, we will want to have a completely new chapter, we must open a new page and be able to say when it comes to state owned enterprises, we have come from a horrible past that
10 converted some of really top performing state owned enterprises into a shadow of themselves today, so we now need to move forward with greater firmness in as far as populating not only the boards but the management with people who are capable, who are focused and, Chairperson, we are already beginning to see that. That future that your Commission will point us forward to is already beginning to happen.

We are starting from a low base but already a number of those state owned enterprises are being
20 reformed, rebuilt, re-birthed, if one can use – reborn, that is, and a structure which possibly we will talk about when I come back as President of the state, the structure we will put in place by the state owned enterprise council is looking precisely at that so that the rules and regulations that we have put in place should not only be theoretical or

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in name only, they should now be, for lack of a better word, practilaised[sic] and implemented.

So those are issues that are top of mind to me, personally, and they are also top of mind to the ANC because it is only when these state owned enterprises function properly with proper boards and having identified South Africans who are loyal to the constitution and to the country that we will be able to reform them.

So basically I would say we no longer want people
10 who will be appointed to advance certain agendas and we will be scrutinising everyone more thoroughly and completely to make sure that we do have people who are fit for purpose and the term fit for purpose is what should be operative here. It is an English term but it is a term that is very applicable to correct the wrongs of the past so that is how we are going to proceed.

CHAIRPERSON: Well, I mention this for the session that will come later probably end of May, Mr President.

PRESIDENT RAMAPHOSA: Ja.

20 **CHAIRPERSON:** And the legal team may or may not have included this in the scope but I mention it, that one of the things that I want to know is, in regard to various SOEs, is what the executive know because this the situation was deteriorating from a certain point, one expects that there would have been regular reports to the relevant minister

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and to cabinet, you know, to the President and to the cabinet to say this is what is happening in that SOE, this is what is happening in that SOE and I would be interested to know, apart from the President, what was cabinet saying about the situation as it was deteriorating over a certain period of time? So that would be very useful because one wants also to see whether the situation could have been arrested at a certain stage if certain information was known to cabinet and cabinet did not act or what the
10 position is but I am just mentioning it, that that would be for the next session.

PRESIDENT RAMAPHOSA: I am happy to give you a liner on that.

CHAIRPERSON: Yes, yes.

PRESIDENT RAMAPHOSA: Because I think we will deal with it at the next session.

CHAIRPERSON: Yes.

PRESIDENT RAMAPHOSA: What we have had in the past – and I will just mention that in short, because we will deal
20 with it , is that we had a very silo style of work where, you know, almost everybody kept to their name and where there was no – a cross-dimensional type of collegiate involvement and I will be able to tell you, when I come back, that we are ridding ourselves of that so that there is more of a sharing of knowledge and experience in the work

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that we all do so that if an experience is being – something is being experienced in one SOE that in a particular portfolio it should be talked about to see whether it mirrors another experience elsewhere so there could be this cross-pollination but maybe we will leave that until I come back.

CHAIRPERSON: Yes. No, no, that is fine.

ADV PRETORIUS SC: Yes, Chair, I might just add that although I have approached it in general terms in the context of the questions that are now being asked, they
10 will be dealt with to the extent necessary in detail by individual evidence leaders at the second session.

CHAIRPERSON: Okay, alright.

ADV PRETORIUS SC: And the second point that I wanted to make in relation to the role of the Commission is that in August 2020 – and in fairness to you we will put these statements before the Chair, you made some very strong statements in newsletters and elsewhere about corruption and what was happening at the time and if I may say your language was quite unequivocal in that regard but what
20 you did say was that there is no room anymore for outsourcing, that the party must take responsibility for acting and acting decisively.

And in relation to that statement of yours, Mr President, was that or is that if one looks back, the evidence has been quite strong and I think you have all but

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quite frankly spoken about, is that there were improper or improperly motivated appointments and you have quite fairly made a number of statements and I will remind the Chair of those statements that you have made in that regard, whether these went through the deployment committee or whatever process was followed, ultimately I think is – well, I do not think, ultimately I suggest that the party must take account of it and take account for it. Is that not a fair proposition?

- 10 **PRESIDENT RAMAPHOSA:** No, it is fair proposition and hence we said, even in our conference, the 54th conference, we say we acknowledge some of these things had happened and we even had the courage to say it is when we acknowledge them publicly that we would be able to take remedial steps to correct them, which is precisely what we are involved in now because we have acknowledged and if you [indistinct] with that our ...[indistinct] people of this country. So yes, we will acknowledge and say things went horribly wrong but we are
- 20 here to work with everyone to correct those things and we do so with humility, we do so, you know, in a way also by bowing our heads and say because we are, if you like, a feature of a superstructure of this country, we cannot run away from all these matters, we are here to build a democratic society in South Africa and that requires that

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we must confront corruption, state capture and deal with it and which is why I am sitting here and which is why some leaders of the organisation have also been here, because we want to go to the root of it, so – and as I said in my last paragraph, my opening statement, that this never happens again.

CHAIRPERSON: Well, talking about the fact that the ANC acknowledges that there were certain shortcomings, there were certain things that it might not have done properly
10 and so on, I think that is quite important, that acknowledgement but I would like you, maybe before you finish today or even tomorrow, I would like you to identify the actual areas where you say, as a party, we have done our homework, we think this is where we did not do what we were supposed to do properly, this is where we did something we should not have done, so we identify exactly areas where, as a party, you say here we did not do things the way we should have and we acknowledge.

So why that is important is because while an
20 acknowledgement is good and it should be given its proper weight, it is even better if one knows what you are talking about because when one knows what the party is talking about and says this is where we accept we went wrong, then one can look at what should be put in place for the future so that there is no repeats. So it is something you

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can deal with either today or tomorrow, it is fine, it is just that, as I say, it would be useful so that it does not go – it does not get limited to simply acknowledging without being specific.

PRESIDENT RAMAPHOSA: With your kind permission...

CHAIRPERSON: Yes.

PRESIDENT RAMAPHOSA: You know, leading up to the point or addressing the point you are making, I would, with respect, however, say that maybe I should be able to do
10 that when I conclude my appearance before you forever because there comes a day when I will appear before you and never have to do so again.

PRESIDENT RAMAPHOSA: And you will not want to ever appear again.

PRESIDENT RAMAPHOSA: No, I never would want to. So I would say maybe when I end my evidence before you as President of the Republic.

CHAIRPERSON: Ja. Okay, no, that is fine.

PRESIDENT RAMAPHOSA: Because quite a bit of it will
20 touch also on what we should have done in the state and so forth.

CHAIRPERSON: Ja. Yes, no, no, that is right, it will give you enough time also to look at it properly.

PRESIDENT RAMAPHOSA: Yes.

CHAIRPERSON: Okay. Mr Pretorius?

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ADV PRETORIUS SC: Yes, thank you, Chair. The three big headings – you in fact reflected in your August 2020 newsletter of what happened, how did we get there and where to from here. You will recall those headings.

They mirror precisely the principle headings of the inquiry that has been outsourced. I know that labour law does not have a good connotation, but it is here.

The middle part of how did this happen, could it happen? There seems to be an acknowledgement that
10 those things that should not have happened, corruption, fraud, state capture, it happened.

There may be a question of degree and debate but for the purposes of the further questions, I am not sure how important that is, whether it is decisive of the answer to the question, how did this happen, how could it happen and only with an understanding of that will the outsourcee have the wherewithal and the ammunition really to make proper recommendations.

It seems that with your party hat on, with an
20 understanding of what happened, already one has moved to the stage of making sure that it does not happen again and perhaps we will explore that later but I think in fairness to yourself, it is appropriate to put at least three or four of your own statements to you that have recognised problems and if it is – they all follow the same pattern and

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if you do not mind, I could read them all them out and you can ask me to break it up. In your January 2020 newsletter you say:

“We are committed to end the practice of poorly qualified individuals being parachuted into positions of authority through political patronage.”

What were you describing there?

PRESIDENT RAMAPHOSA: Precisely the issue of us talking about that – where we do acknowledge that there
10 were and may well have been people who were put in certain positions when they were ill-qualified and they were certainly not really fit for purpose but they were appointed and whether it was clear at the time or not, that they were advancing certain agendas, you know, would not even be an issue then but the ill-qualification seemed to testify to a patronage behind that and that is precisely what one was addressing and something that we identified as a party that we are concerned about and what we want to vent from the party because, you see, in the party circle, ANC circles, it
20 just fuels and promotes factionalism because people then get to know that so and so is ill-qualified for this position but they have been appointed. Why were they appointed?

And then people started looking behind the reasons why they were appointed and it then becomes evidence that they were actually appointed to advance certain

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agendas and that then mutates into the formation of factions and groupings that in the end become pitted against each other.

And that is how patronage manifests itself in a very ugly way. That is why it is important to get rid of it so that when you look at someone who is appointed you just look at a plain vanilla ice cream and say this person was appointed because of their capability, for no other reason, no flavourant added and all that. So that is precisely the
10 approach that we need to have.

ADV PRETORIUS SC: In your August 2020 newsletter to ANC members, Mr President, you said:

“Then are jobs for pals where politicians and officials disregard hiring procedures to employ family members, friends or associates. Not only is this grossly unfair to other prospective candidates but it often means that the people employed are simply not up to the task. Public services are not rendered, public institutions are poorly managed
20 and public funds go to waste.”

Then if I may put the next to you, in your March 2021 newsletter you wrote:

“All too often people have been hired into and promoted to key positions for which they are neither suitable nor qualified. This affects government

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performance but also contributes to nepotism, political interference in the work departments, lack of accountability, mismanagement and corruption.”

So under the first head the problem is recognised. How do these things happen and in the regulatory process that you are undertaking, how would you address them?

PRESIDENT RAMAPHOSA: They happened – they have happened and the more we talk about them, the more raise everybody’s consciousness and awareness of it. I was in
10 the Free State yesterday and after addressing Freedom Day occasion, a number of ANC members wanted me to greet them and meet them and one of the issues, I had to receive a memorandum from a group of four people who were representing what they call as a business forum.

This very issue is precisely one of the issues they raised, they said we have a problem that are jobs for pals, people are overlooked, there is no fair way in which people are appointed, and this like at the municipal level, and they were raising it in a very fervent manner and you could see
20 in the way they were raising it that they were deeply concerned about this, as they should be because it evokes anger and the feeling of being overlooked by the state and it also demonstrates unfairness which people recognise.

And I went to a bigger meeting and precisely the same thing was also articulated.

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So this thing of patronage, of jobs for pals, is something that is abhorrent, that people see and notice and what should we do about it is a very relevant question and we need to be transparent in what we do.

In our selection processes there needs to be transparency so that people can see that everybody has a shot in getting either a position, a job or whatever and it should never be something that is done in darkness where people do not see because when it is transparent, when
10 there is a proper process of either election or application then nobody needs to worry because if you are selected and you are fit for that position and another person is not, then you have no real reason for complaint.

So, Chairperson, I may not have the various elements of all this now but it basically comes down to a simple process. There must be fairness, there must be equity, there must be transparency and openness and there must be a very good process that listen, once we have all this then we are well-positioned because then we are
20 accountable and people can see – and it must also start off with being consultative where you are – where everybody buys into the system or the process and sees that it is going to be fair and without fairness and equity then we will never be able to address this malady that exists.

ADV PRETORIUS SC: Thank you, Mr President. I was

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going to refer to other evidence that deal with the hard definition, as we have termed it, of deployment, not recommendation but compulsion in appointments.

There is the Amathole Municipality case, of which you are presumably aware, there is statements by Barbara Hogan and there is statements by Dr Ngubane that have been given to the Commission but in the interests of time, we have covered it in principle, I am going to move on to a different topic.

10 **PRESIDENT RAMAPHOSA:** I would like to comment on the Amathole one.

ADV PRETORIUS SC: Yes, if you would.

PRESIDENT RAMAPHOSA: Because I thought that that case is so descriptive of how we should bring about change, that is the appointment of the Municipal Manager.

ADV PRETORIUS SC: Yes.

PRESIDENT RAMAPHOSA: Yes.

ADV PRETORIUS SC: Or the mayor, I think,

PRESIDENT RAMAPHOSA: No, I thought it was Municipal
20 Manager.

CHAIRPERSON: Or maybe, Mr Pretorius, you could say something briefly about it so that when the President comments everybody can follow what it is about.

ADV PRETORIUS SC: This is a quote from the judgment, if I may. Pickering J:

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“Be that as it may, one fact emerges clearly from VM23...”

That is probably a document that was put up.

“...a fact which is not in any way refuted and that is that the Regional Executive Committee of the ANC instructed the caucus to appoint the 2nd respondent and the caucus carried out this instruction. This is not an example of democracy in action as was submitted by Mr Quinn, certainly not of constitutional democracy. I am not sure whether it makes a difference whether it was the major or municipal manager. It was the municipal manager.”

10

MR RAMAPHOSA: That one is Mr Chairperson, is so relevant in addressing the issues we are dealing with about getting a person fit for purpose. Where a person who was fit for purpose, who even in the interview process, clearly demonstrated that they know the job and when the other one was interviewed, they recognise this lack of capacity but still went ahead and appointed, and then they said we

20 recognise it but we believe that this person will really improve going forward, without adding other elements.

I would put that in a distinct way to say when we bring in young people, young people we are saying we need to bring young people in, even without experience because we need to prepare them to play a role going

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forward and then we capacitate them.

So that is separate, but in this case the person who was finally selected, this did not have the way with all and they disregarded a person who was more qualified. They then were unhappy and took the matter to court and the court said that person who had been rejected, should then be appointed.

Now this is where we bring in courts, to do what we should do ourselves as a political organisation. We should
10 be the ones to say this is the right way of doing things. This is, these are the people that we should appoint and I highlight it because in many ways it points us to a future that we must have.

If we recognise that the other person who was appointed wrongly had shortcomings, we need to prepare them, help them but still appoint the person who is going to advance the interest of the people as a whole, and we do not do that and finally we are guided by the [indistinct].

So I am saying you know, that is the outsourcing
20 process. A variation of the outsourcing. We are outsourcing what we should do and when we should ...[intervenes]

CHAIRPERSON: Yes, yes and of course and I am not talking about this particular case, sometimes when the courts do their job, same people are unhappy to say the

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courts are telling us what to do, how to run certain institutions.

So yes, okay. Mr Pretorius?

ADV PRETORIUS SC: Yes, one final point on the issues we have been discussing today Mr President. You know the eye of a needle document no doubt. It is a document that was composed within the ANC in 2001. It reads:

“Because ...”

Or part of it reads:

10 “Because leadership structures of the ANC
affords opportunities to assume positions of
authority in government, some individuals then
compete for ANC leadership positions in order
to get into government. Many such members
view positions in government as a source of
material riches for themselves. Thus,
resources, prestige and authority of
government positions become the driving force
in competition for leadership positions in the
20 ANC. Government positions also go hand in
hand with the possibility to issue contracts to
commercial companies. Some of these
companies identify ANC members, that they
can promote in ANC structures and into
government so that they can get contracts by

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hook or by crook. Positions in government also mean the possibility to appoint individuals in all kinds of capacities. As such, some members make promises to friends, that once selected in its constant government they would return the favour. Peaks and factions then emerge within the movement around personal loyalties driven by corrupt intentions. Members become voting fodder to serve individuals interests.”

10

Identifying precisely the issues that you have spoken about Mr President, and spoken in quite strong terms about. The question is, this was in 2001 and we are now 20 years later and in between the problem has been identified as you know by a succession of persons in high office.

The question is the public people would want to know what is different now? Why should the public of South Africa hear you and say at last something different is happening? What is different?

20

MR RAMAPHOSA: The eye of the needle is quite an iconic document in the life of the ANC. Much as it was crafted, if I can put it that way, in 2001. It was crafted to deal with problems that we already saw emerging as we were in government and we were already seeing those various

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tendencies which even Madiba spoke about in successive conferences in the 49th conference and in the 50th conference.

Going forward, our conferences have dealt with these, and what is different now, is that if you like the eye of the needle, much as it identified those problems was articulating the theory if you like and the ideology that needs to be fostered and ensued in the ANC.

What is different now arising from the 54th
10 conference, is that we are moving from theory, what we have been talking about now has to be attend to the tyre hitting the tar. Where we now say this must now happen. It must be practice.

That is why even when the MEC met, was it in August? They said we are drawing a line in the sand, and that is not being said lightly. It was the NEC that after much debate and discussion felt that we needed now to draw a line in the sand and say this is what the ANC is about. We are an organisation that should return back to
20 its founding values.

Its principles adopted in 1912. We should be the type of organisation that is fit to be the leader of society in our country. So that is what I would like to suggest and say is different. The eye of the needle I would say, I am glad you have read it, is the most beautiful document that

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sets out what are the problems.

It provides an in depth analysis, but then it also talks about the ideal situation, and the time has now arrived for us to grasp the metal and then restore the image of the African National Congress. I would say *kenako*, this is it.

ADV PRETORIUS SC: Hopefully we will have time tomorrow to deal with your August 2020 newsletter, you used much stronger language than tar hitting the road, but
10 we will leave that until tomorrow.

MR RAMAPHOSA: Okay.

ADV PRETORIUS SC: If we may then, Chair in the meanwhile I have received a very stern note from the right hand side of the room, your left hand side of the room. The office of the president, saying four o'clock and not five o'clock.

MR RAMAPHOSA: I am at their disposal.

CHAIRPERSON: Well, the president I guess confirms that four o'clock or ...[intervenes]

20 **MR RAMAPHOSA:** Yes, I am at their mercy because they know my program more than I do.

CHAIRPERSON: No, no ...[intervenes]

ADV PRETORIUS SC: They control his diary.

CHAIRPERSON: No, no it is fine, we will adjourn at four o'clock then. But I do not know Mr Pretorius and your

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team, you are in a better position to make an assessment whether tomorrow there may or may not be a need to go beyond four, maybe up to five because if there would be, it would be better that we talk about it now, so that the president then knows that tomorrow he could give up to five.

ADV PRETORIUS SC: Yes.

CHAIRPERSON: But it may be that your own assessment is such that we will not need to, but I would like us to use
10 as much time as we are able to, subject to the president's situation.

ADV PRETORIUS SC: I forgot to add in the bargaining process, there is an offer to start at 09H30 tomorrow.

CHAIRPERSON: Is that from the president's side?

ADV PRETORIUS SC: Yes.

CHAIRPERSON: Yes, no, no that is fine. We could even start at nine if that was suitable.

ADV PRETORIUS SC: I think it was George Benatshowi who said, he has friendly apologised. He did not have time
20 to write a short letter. He apologised for the long letter, so what I will do tonight is concentrate on trying to do precisely that.

CHAIRPERSON: Ja. Well, because the president says even nine o'clock would be fine, let us start at nine o'clock.

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MR RAMAPHOSA: That is fine, yes I will be up here.

CHAIRPERSON: Mr Pretorius, if the president says nine o'clock is fine ...[intervenes]

ADV PRETORIUS SC: I have no answer Chair.

CHAIRPERSON: You are from the commission, you cannot complain.

ADV PRETORIUS SC: I will not, Chair.

CHAIRPERSON: Okay, so that is fine. We will stop at four this afternoon and tomorrow we start at nine.

10 **ADV PRETORIUS SC**: Thank you. If we can move Mr President to a new topic and that is party funding. You deal with that at page 25 of the affidavit. Paragraphs 51 and 52. I must just say in closing off the first topic, that perhaps it would be apposite to talk in more detail at some stage if we get the time, about the solutions, that third category that are envisaged.

But in the meanwhile if we can move on to party funding. If I have left anything out, you will draw my attention to it if you need to Mr President.

20 **MR RAMAPHOSA**: Yes.

ADV PRETORIUS SC: Paragraph 51 the principle has stated:

“Despite the absence of an official policy on donations ...”

And that is donations to political parties, including

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the ANC.

MR RAMAPHOSA: Ja.

ADV PRETORIUS SC: “There is an exception based on the
ANC ...” ...[intervenes]

CHAIRPERSON: Expectation.

ADV PRETORIUS SC: Sorry.

CHAIRPERSON: Expectation.

ADV PRETORIUS SC: Not exception. There is an
expectation, my apologies:

10 “Based on the ANC constitution, its principles
and its values that the ANC would not
knowingly accept monies that are the product
of a criminal act, are offered in exchange for
favours or from a source known to engage in
illegal or unethical activities.”

Paragraph 52 reads:

20 “I have heard that evidence has been
presented to the commission that suggests
that the ANC may have been the recipient of
donations from individuals and companies that
receive contracts from the state, including in
instances where the awarding of those
contracts are alleged to be or to have been
unlawful.”

Before we get to examples, if those examples are

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necessary at all, the principles are stated in your statement, and the breaches are stated in your statement. Is that discrepancy between the principles and the breaches recognised, first question, and second how is this being dealt with or will it be dealt with?

MR RAMAPHOSA: Yes, the principle is quite clear. The ANC would not knowingly receive funding from tainted hands, either tainted in the form of the donor being involved in acts of criminality and all that. So that is very
10 clear.

The breaches themselves would happen in a way where maybe it is after effect, for instance businesses do donate money to all manner of organisations, including political organisations, and sometimes when they do do so, you do not know that those donations have come from entities that have been involved in unlawful contracts.

That presents us with a problem, because the money has already been donated and to a political party it is often very difficult to say, because the political parties
20 are always strapped for cash, especially the ANC, because as money comes in it is used for a variety of activities that you would say no, refund is possible.

So the issue of the breach happens after the fact. However, what we are saying now, is that through the political funding act there would be transparency and that

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is why we say the coming into effect of the political funding act, is actually in many ways revolutionary.

It has brought about a change and should be applauded by all in sundry. Much as in the end it is going to depend on the fiscus on whether the fiscus will be able to support democracy and make sufficient funds available to political parties, so that they are not tempted to go and receive the funds where these types of breaches could happen.

10 So I would say looking forward Chairperson, we have got a saving sort of dispensation that is going to enable us to open a new chapter in regard to advancing our democracy and the political funding, funding for political parties.

It is something that is new and which we should welcome and applaud because it rids us of all these processes where political parties receive funds from tainted entities.

ADV PRETORIUS SC: We can deal with the example of
20 BOSASA, Eastern general terms. It must have been known to parties in government, in the administration and in the executive that BOSASA was heavily reliant on government contracts, certainly the Department of Correctional Services, if not other departments as well.

It must also have been known that the ANC itself

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benefitted, at least in that elections war room and in a certain well publicised events that replace the former president's birthday party for example and there were others.

It may have been as you say that evidence about bribes, those events took place in dark corners. But how could it happen than that the party continued to receive benefits from a company that relied heavily on government contracts without a thorough investigation of what was
10 happening there.

MR RAMAPHOSA: Chairperson, it did happen. It is one of the anomalous events that did happen. What is prominent in my mind is to say what do we do to prevent it from happening, but having said that, let me say let me put on the one hand that the political funding act is going to be our saviour.

On the other hand we should also say that if for instance a company donates money to a political party, and it so happens as well that in some way or fashion it does
20 business with government, but that that funding is not being given to the political party in return for vetting contracts and all that.

I would say when it happens openly and transparently then there should not be any problem, because if you are going to give money and you know that

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it is going to be transparent, even if you have won a contract, the transparency itself will be such that it prevents you and it will alert the public that you should not be seeking favours.

So I put that in a different category. So the transparency, the openness for me is the biggest saving and also the limitation to the amount that should be given, because the limitation of the amount that should be given is going to stop any entity being able to have an
10 overarching control over a political party.

But in this case, it did happen and there is no way of running away from it or even hiding it, because it did happen that company BOSASA had contracts with government and which funded an ANC election room and all that.

I would say having happened, unless there is something criminal about it, which should be pursued following the investigation by the commission, we should now say how do we make sure that we move to a new
20 situation where they do not have a capture of that sort.

That is what I will say.

CHAIRPERSON: Of course Mr President, when it comes to a company such as BOSASA, a question that arises when one has regard to the number of years that it was enjoying contracts with government departments, number one

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...[intervenes]

MR RAMAPHOSA: Yes.

CHAIRPERSON: Number two, having regard to the fact that allegations of its involvement in irregular and corrupt contracts in government departments were all over the media over a long period of time, a question arises whether the ANC which ought to have been aware of whatever was in the media, like everybody whether it turned a blind eye because it was receiving donations from BOSASA.

10 That kind of question arises.

MR RAMAPHOSA: Certainly Chairperson, it does arise and in part it is one of those issues that you want me to address.

CHAIRPERSON: Yes, yes.

MR RAMAPHOSA: Which I have said that I would address at the end.

CHAIRPERSON: No, that is fine.

20 **MR RAMAPHOSA:** Because you are absolutely right. The ANC should have been aware that there are all these problems in relation to this company, obtaining contracts unlawfully, unfairly and all that. They should have been aware.

So it is one of those issues that I will ...[intervenes]

CHAIRPERSON: You will address, yes. Yes, well for what it is worth I just mention in passing that when I was

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hearing evidence relating to parliamentary oversight a few weeks ago, maybe not a few weeks ago but at some stage, I heard evidence which was to the effect that when the Chairperson of the relevant, I think correction services portfolio committee was doing his legacy report, that is what I understand they are called, which portfolio committees prepare when their term ends, to enable the next committee to see what they were busy with, despite the fact that when that committee started in 2009, they
10 were given the SIU report in relation to correctional services and BOSASA, and they looked at the report and the whole committee, almost the whole committee felt that it was shocking, what the report had about the allegations of corruption.

When the legacy report was prepared by the Chairperson, he did not mention anything for the next committee to take this issue further. Mr Freund is here who was leading evidence he is familiar with that. So there was that, I mean the whole committee says but this is
20 shocking.

But during the term not much seems to be done by the committee about this, and then when the legacy report is supposed to be prepared so that the next committee can see what issues should be taken further, this very important issue is not mentioned in the legacy report.

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So, but you will be able to deal with what you are able to deal with next time.

MR RAMAPHOSA: That is right.

CHAIRPERSON: Okay, Mr Pretorius?

ADV PRETORIUS SC: And the same principles would apply to the activities of the Guptas being known as least in the media, and the receipt of donations by the ANC from the Guptas. There is evidence to that effect. It is in the Bundle 2 which you have.

10 **MR RAMAPHOSA:** Ja.

ADV PRETORIUS SC: And perhaps in the morning you could deal with the CR17 issue as well, in fairness to all concerned and yourself.

MR RAMAPHOSA: Yes, I will.

ADV PRETORIUS SC: Then I would also need to deal tomorrow with the Dirco issue. I do not know if you are aware of that perhaps. We should try and get to the affidavits of Nyameko Koso and Francis Maloyi, who have submitted affidavits to the commission, stating that shortly
20 after their diplomatic appointment to very senior positions, Mr Koso to consult general in Toronto in 2013 and ambassador Maloyi to Sudan in 2015.

They were sent debit forms by the ANC for monthly contributions to the party. So if we could deal with that ...[intervenes]

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MR RAMAPHOSA: Yes.

ADV PRETORIUS SC: As well tomorrow. There are other examples the Free State Asbestos scheme and the like, which is a particularly glaring example of how things could go wrong in procurement, but perhaps two months before it would be unfair to ask for an answer.

CHAIRPERSON: Yes, no, no, that is fine. I think we will stop now. So Mr President, just to re-affirm this. The dates that you had been given for mid-May you can use.
10 Other dates for appearance to the commission, before the commission.

Other dates will be given, which will be towards the end of May. So the current dates that have been given for you ...[intervenes]

MR RAMAPHOSA: Okay, I can go to the beach and everything?

CHAIRPERSON: You can go to the beach Mr President.

MR RAMAPHOSA: Okay.

CHAIRPERSON: So we will look at other dates towards
20 the end of May.

MR RAMAPHOSA: Thank you.

CHAIRPERSON: Parties, thank you very much. Mr President, we will then adjourn and tomorrow we will commence as agreed, at nine o'clock the morning.

MR RAMAPHOSA: Thank you, thank you.

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CHAIRPERSON: We adjourn.

HEARING ADJOURNS TO 29 APRIL 2021

COMMISSION OF INQUIRY INTO STATE CAPTURE
HELD AT
CITY OF JOHANNESBURG OLD COUNCIL CHAMBER
158 CIVIC BOULEVARD, BRAAMFONTEIN

29 APRIL 2021

DAY 385



Gauteng Transcribers
Recording & Transcriptions

22 Woodlands Drive
Irene Woods, Centurion
TEL: 012 941 0587 FAX: 086 742 7088
MOBILE: 066 513 1757
info@gautengtranscribers.co.za

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COMMISSION OF INQUIRY INTO STATE CAPTURE

HELD AT

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158 CIVIC BOULEVARD, BRAAMFONTEIN

DATE OF HEARING:

29 APRIL 2021

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PROCEEDINGS RESUME ON 29 APRIL 2021

CHAIRPERSON: Good morning Mr Pretorius, good morning Mr President, good morning everybody.

ADV PRETORIUS SC: Morning Chair.

CHAIRPERSON: Thank you. Are you ready?

ADV PRETORIUS SC: Chair Mr Freund will deal with the Parliamentary questions.

CHAIRPERSON: Oversight.

ADV PRETORIUS SC: And Parliamentary oversight for the
10 next two hours until the short adjournment.

CHAIRPERSON: Okay no that is alright.

ADV PRETORIUS SC: Thank you.

CHAIRPERSON: That is alright. Mr President the oath you took yesterday will continue to apply today. Thank you.

ADV FREUND SC: Good morning Mr President. Perhaps you could turn on your microphone. Thank you.

CHAIRPERSON: Well I – I thought that maybe the President decided that this morning he will – today he will
20 keep his mask on.

PRESIDENT RAMAPHOSA: No. I decided it is pretty safe in here.

CHAIRPERSON: Ja okay. Yes Mr Freund.

ADV FREUND SC: Thank you Chair. Mr President you should have open in front of you Bundle 1 of your material

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which is your affidavit. I am going to start at page 48. Chair page 48 of Bundle 1 which is the one that contains the actual affidavit.

CHAIRPERSON: Using the black numbers again and not the red numbers.

ADV FREUND SC: Yes it is black numbers top left. Mr President do you have at that page the section headed Role of the ANC in Parliament? Now Mr President Mr Pretorius and yourself debated yesterday the basic
10 approach adopted by this commission. What happened, why did it happen and what can be suggested that might prevent future similar difficulties?

I am going to deal with those issues as well but I am going to be dealing with the question of whether it is so that Parliament failed to exercise due oversight over the executive in relation to the issues of concern to this commission, whether it failed to hold the executive properly accountable.

But on that issue we have had a lot of evidence and
20 I am not going to re-traverse with you evidence that has already been heard.

The second question of course is why did this happen and I will say at the outset that the picture is mixed on Parliamentary Oversight. There are some successes, there are arguably some failures and really the focus is not

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on the successes this focus is on the failures but it is appropriate to keep a balance to view on that. And in the questions I ask you – I am really going to be focussing on what explains the failures to the extent that there were failures?

And then very briefly because again on the third the question of – of what can be recommended to improve things? That is an issue we have canvassed at some considerable detail already particularly in the evidence
10 recently of Mr Mantashe so I am not proposing to spend a great deal of time on that with you I will touch on a couple of issues.

But the real focus then from my perspective is really if there were failures why did those failures take place?

And in relation to that I want to start just reaching common cause and agreement with you on things I am sure we would agree about and in particular what are the applicable constitutional principles? What is the
20 appropriate relationship as between Parliament and the executive?

Now you deal with that in your own affidavit and in particular if you have a look at paragraph 112 you will see that you summarise the duties of Parliament and at the footnote to 112.4 you refer to Section 42(3) of the

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Constitution and Mr President your own role in the formation of the constitution is well-known I presume we take it as read that you are reasonably familiar with the provisions of the constitution.

So just to so that we all start from the same starting point Section 42(3) to which you refer says as you know this – it says:

10 “The National Assembly is elected to represent the people and to ensure government by the people it does this by and then various things but one of the ways it does it by is by scrutinising and overseeing executive action.”

So we know that is part of Parliament’s functions and that is the function to which you expressly refer in your affidavit.

But I am sure you will also be aware that there is another provision of considerable importance here and that is Section 55(2).

20 Section 55(2) I will read to you.

“The National Assembly must provide for mechanisms

a. To ensure and I would hyphenate – I would underline that word to ensure that all executive organs of state and the national

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sphere of government are accountable to it

– to the National Assembly and

b.To maintain oversight of

1.The exercise of national executive authority

and

2.Any organ of state.”

So in short there is an oversight constitutional obligation
and there is a constitutional obligation resting on the
National Assembly to ensure that the executive in all its
10 components is accountable to it.

Now I presume there is no difference between you
and I on those principles?

CHAIRPERSON: Mr President when you agree with him or
do not agree better that you articulate whether you agree
so that it will be recorded. When you nod it is not
recorded.

PRESIDENT RAMAPHOSA: Okay. So my nod then not
recorded?

CHAIRPERSON: No.

20 **PRESIDENT RAMAPHOSA:** I agree.

ADV FREUND SC: So the first point that flows from that I
want to put for you – put to you to check that you agree
with me is that the obligation to hold the executive account
– to account to vest in the National Assembly it does not
vest only in the ANC’s party’s structures. I see you nod.

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PRESIDENT RAMAPHOSA: Yes I agree.

ADV FREUND SC: And secondly that the executive is accountable to the National Assembly and not merely not to the governing party. Again I presume you agree?

PRESIDENT RAMAPHOSA: Yes I agree.

ADV FREUND SC: Now can I take you to the – to the other bundle – Bundle 2 of your – of your material to page 564. You should find there a copy of a court judgment. Is that correct?

10 **PRESIDENT RAMAPHOSA:** Yes.

ADV FREUND SC: Now Mr President that is the reported judgment of the Constitutional Court in what is commonly ...

CHAIRPERSON: What is the page number?

ADV FREUND SC: 564.

CHAIRPERSON: Okay.

ADV FREUND SC: And Chair if I can indicate that my intention this morning is to move backwards and forwards between Bundle 1 and Bundle 2.

20 **CHAIRPERSON:** Okay that is fine.

ADV FREUND SC: That is the judgment of the Constitutional Court on the Nkandla issue. You will remember the Public Protector's Investigation Report on the Nkandla expenditure. You will recall that Parliament reacted in a particular way. The mezzo found its way to

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the Constitutional Court in a case brought by the EFF and others and the judgment as you will see was handed down on the 31st of March 2016. You will see that on page 564 but you can take it from me that is what it says.

PRESIDENT RAMAPHOSA: Yes.

ADV FREUND SC: Now if I take you to page 576 you will see at paragraph 95 that the Constitutional Court dealt there with it might be called the second issue that was before the court.

10 The first issue was the issue about whether the Public Protector's Reports are binding and have to be adhered to unless reviewed.

But there was the second issue and it is the second issue that is relevant for present purposes and that was whether Parliament itself had failed – and when I say Parliament I am particularly referring to the National Assembly – whether the National Assembly had failed in its oversight obligations of a type that we have just been discussing and in short the court found that it had failed.

20 It was in breach of its constitutional duties.

And what I want to draw to your attention in paragraph 95 is that what the court says is this:

“That because the Public Protector's Report implicated the Head of State or the Head of the Executive it was this factor that made it

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and I now quote “A high priority matter that required urgent attention of and investigation by the National Assembly it ought therefore to have triggered into operation the National Assembly whose obligation to scrutinise and oversee executive action and to hold the President accountable.”

Now that is a matter of record but the question
10 which arises from that and where again I am assuming that we are not going to be in any dispute between you and myself is that I want to know whether you accept this proposition.

Do you accept that where there is information in the public domain which if true appears to implicate a President – any President in conduct which is allegedly unconstitutional, allegedly illegal, allegedly improper conduct if that sort of information is in the public domain do you – in relation to the President do you accept that the
20 National Assembly is obliged by the constitution to do what it can firstly to establish whether there is any merit in those obligations and secondly if it finds that there is to take appropriate action?

PRESIDENT RAMAPHOSA: Yes I do.

ADV FREUND SC: And presumably you would accept that

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that same principle which we have said applies to the President must apply equally to Ministers, other senior representatives of the government, other senior officials and SOE's and the like the principle must be the same?

PRESIDENT RAMAPHOSA: Indeed I do agree.

ADV FREUND SC: And of course Mr President you would be aware having been a member of Parliament, having been sworn in as a President you know the oath of office that is taken – let us focus firstly on the – on every
10 member of Parliament and it includes this I am quoting from Schedule 2 Item 4 in the Constitution

“I and I leave out some words will obey,
observe, uphold and maintain the
constitution and all other law of the
Republic.”

You are familiar with that?

PRESIDENT RAMAPHOSA: I am familiar with it.

ADV FREUND SC: And indeed when one looks at the oath of office the former President took, that you took there are
20 words to identical effect to the words I have just quoted?

PRESIDENT RAMAPHOSA: Indeed.

ADV FREUND SC: And I presume it goes without saying that you would fully endorse and accept that that is binding on the members of Parliament, it is binding on the Presidents, effect must be given to that oath.

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PRESIDENT RAMAPHOSA: Pretty obviously.

ADV FREUND SC: Now what may be less of yes and what I want to examine is this. Do you accept that in its relationship with and in its instructions to its MP's in Parliament the ANC as a political party is obliged also to respect those oaths of office that we have just discussed?

PRESIDENT RAMAPHOSA: Yes.

ADV FREUND SC: Now I want to move on to a related but slightly different feature of the constitution. Both the
10 constitution and the rules of Parliament and that is the powers of Parliament and in particular the powers through committee inquiries.

PRESIDENT RAMAPHOSA: Yes

ADV FREUND SC: Now you will know I am sure but let me read it into the record. The Section 56 of the constitution says this:

“The National Assembly or any of its
committees may – and I leave out some
words – summon any person to appear
20 before it to give evidence on oath or
affirmation or to produce documents.”

It is built into our constitutional design that Parliament and its committees have those powers and I presume you are fully aware of that.

PRESIDENT RAMAPHOSA: Huh-uh.

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ADV FREUND SC: And similarly if I can draw your attention and perhaps I could take you to the second bundle at page 584.

PRESIDENT RAMAPHOSA: I must say these documents are well arranged Chairperson.

CHAIRPERSON: Oh.

PRESIDENT RAMAPHOSA: By your – by your staff.

CHAIRPERSON: Thank you Mr President.

PRESIDENT RAMAPHOSA: I want to compliment them.

10 **CHAIRPERSON:** Thank you very much Mr President.

PRESIDENT RAMAPHOSA: I may want to steal them to come and work for us.

CHAIRPERSON: Please wait let us finish the commission's work first.

PRESIDENT RAMAPHOSA: Yes I have got it.

ADV FREUND SC: Mr President at page 584 what you should have in front of you is an extract from the Rules of the National Assembly as they stood in their 8th edition which was applicable until March of 2016. Do you have
20 their Rule 138 page 584?

PRESIDENT RAMAPHOSA: No 584

ADV FREUND SC: Bundle 2? The other bundle sorry.

PRESIDENT RAMAPHOSA: I am on Bundle 1 sorry.

ADV FREUND SC: Not at all. Just for clarity and to remind you Mr President Bundle 1 is really..

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PRESIDENT RAMAPHOSA: Yes, no.

ADV FREUND SC: Your submission and the document you provided and Bundle 2 is really the documents the commission has put together. So I am now in Bundle 2.

PRESIDENT RAMAPHOSA: Indeed I have got it.

ADV FREUND SC: At page 584 you have the extract from the Rules of the National Assembly. And you will see there at Rule 138.

PRESIDENT RAMAPHOSA: Yes.

10 **ADV FREUND SC:** And for the purposes of performing its functions a committee may subject to the constitution, legislation and other provisions of these rules and resolutions of the assembly.

- a. Summon any person to appear before it to give evidence on oath or affirmation or to produce documents which is precisely what we saw in the constitution and then

- b. Conduct public hearings.

So you would have been aware presumably that
20 committees of Parliament have this power.

PRESIDENT RAMAPHOSA: Yes.

ADV FREUND SC: And just for the sake of completeness if you go to page 586 you will see that Rule 167 of the 9th Edition of the Rules which – and the reason why I focus on this is because the very moment at which the rules

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changed was a moment of deep crisis as we are going to see in a moment. May of 2016 or March of 2016 and you will see that although the rules changed they do not change in any relevant respect. So if we look at Rule 167a and Rule 167c you will see that they are absolutely identically worded to the provisions as they were so both before and after the rule amendment the power to compel oral testament, the power to compel the production of documents and the right to conduct public hearing is just
10 indisputable. Everybody knows that those powers exist. You accept that?

PRESIDENT RAMAPHOSA: Ja.

ADV FREUND SC: Now moving on from the as it were legal background to the factual background I presume that you accept that there have been indeed some instances in South Africa of effective Parliamentary Oversight through Portfolio Committee Inquiries and I would suggest that we focus right at the outset on the investigation by the Portfolio Committee on Public Enterprises in relation to
20 Eskom. You aware of that and do you accept it was a successful exercise?

PRESIDENT RAMAPHOSA: Indeed.

ADV FREUND SC: And as regards that I just want to as it were sketch a bit of a timeline. It was in May of 2017 that according to Ms Zukiswa Ranto's affidavit – evidence

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before this commission the – that committee took a decision to conduct its Eskom inquiry it was really flowing from the allegations in relation to Mr Brian Molefe, allegations in respect of the Eskom board, they sought and were furnished resources that they needed and evidence leader, there is an additional budget they produced their interim report in March and April 2018, they finalised their report in November 2018 and then what I want to point out is what they conclude.

10 They concluded amongst many other things but probably the key sentence is this that it was patently clear that there was undue influence by private individuals and companies over the appointment of the Eskom board members as well as procurement decisions.

That was as it were the bottom line of what they found and that of course was an allegation that had first been made many years earlier. You accept all of that?

PRESIDENT RAMAPHOSA: (Inaudible).

ADV FREUND SC: Now another example of which I am
20 aware but frankly possibly the only other example of which I am aware was the ad-hoc committee's inquiry into the SABC board and that was appointed by the National Assembly in November 2016 and it reported in February 2017.

And that too was widely welcomed as a – as an

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instance of effective Parliamentary Oversight and I presume that you would agree with that assessment?

PRESIDENT RAMAPHOSA: Yes.

ADV FREUND SC: So if we take those two examples do we also agree that an inquiry by a Parliamentary Committee whether it is an Ad-hoc Committee like the SABC's committee or whether it is a Portfolio Committee like in the PCPE Eskom inquiry is potentially at least an effective tool for Parliamentary Oversight when there is
10 information in the public domain that suggests that there are reasonable grounds for concern about the conduct or performance of members of the executive or other organs of state. It is potentially an effective tool for dealing with that sort of allegation. Do we agree on that?

PRESIDENT RAMAPHOSA: I would agree.

ADV FREUND SC: Now if I can take you to Bundle 1 your own affidavit at page 166 at paragraph 166 it is page 73.

CHAIRPERSON: What is that page number?

ADV FREUND SC: Page 173 in Volume 1.

20 **CHAIRPERSON:** Thank you.

ADV FREUND SC: Paragraph 166. Volume 1 is your own affidavit and it is page 166 – page 73.

PRESIDENT RAMAPHOSA: Yes I thought so. I thought so. Yes.

ADV FREUND SC: Now this comes in a portion of your

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affidavit in which you have sketched in some detail how allegations of alleged undue influence by the Gupta family allegations of alleged state capture, allegations of corruption had come to the attention of the senior structures of the African National Congress and you deal in your affidavit and Mr Pretorius later today I am sure will deal with this in a lot more detail and really directly relevant to my line of evidence but you deal with the discussions that took place within the NEC, the questions
10 of how do we address these problems and particularly the questions of what implications if any this should have of the position of the then sitting President.

But in paragraph 166 having sketched that background and having referred to certain attempts that were made you say this:

“Although the ANC as an organisation did not have direct evidence of state capture activities at the time they were being perpetrated and did not have the
20 investigative capacity to probe the various allegations it is necessary to address.”

And you can – want to deal with certain other issues. But the point you yourself make and it seems with respect to be a correct point is that the ANC does not have as an organisation the investigative capacity to probe

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allegations of this type. That is your own position as I understand it, correct?

PRESIDENT RAMAPHOSA: Indeed.

ADV FREUND SC: But would you accept that precisely that investigative capacity that you point out that the ANC as a party did not have but Parliament did have – Parliament had it through the provisions that we have just discussed this morning, you accept that?

PRESIDENT RAMAPHOSA: I would.

10 **ADV FREUND SC:** Alright let me move on. Can I take you to Bundle 2 page 409.

PRESIDENT RAMAPHOSA: What page is that?

ADV FREUND SC: 409.

PRESIDENT RAMAPHOSA: Okay.

ADV FREUND SC: Oh sorry my mistake it is 593 – 593. 409 was its pagination in a different (inaudible). 593.

PRESIDENT RAMAPHOSA: Yes.

ADV FREUND SC: Now...

CHAIRPERSON: 593?

20 **ADV FREUND SC:** 593 Chair.

CHAIRPERSON: Okay alright.

ADV FREUND SC: You will see Mr President that this is dated – it is issued as we see at the foot of the page by the Parliament of the Republic of South Africa. It is headed The Parliamentary Investigation into Alleged State

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Capture emails. It is dated as I said the 19th of June 2017 and let us just look at the first paragraph.

In the light of the recent accusations of State Capture linked to alleged emails involving a number of Ministers and if I can just pause in parenthesis that it would appear must be a reference to what has come to be known as the Gupta Leaks. So it says:

“In the light of these emails involving a number of Ministers Parliamentary
10 Committees have been directed to urgently probe the allegations and report back to the National Assembly.”

And it makes reference in the second paragraph towards the end of the second paragraph to the constitution the enshrined oversight function of Parliament and it says these committees must ensure immediate engagement with the concerned Ministers to ensure that Parliament gets to the bottom of the allegations and it says that these committees must report their recommendations
20 to the House urgently and again expresses Parliament's constitutional obligations when there are allegations of this type in the public domain.

Now can I ask you Mr President when you first became aware that this instruction had been issued or was to be issued?

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PRESIDENT RAMAPHOSA: The question is when did I first become aware?

ADV FREUND SC: Yes in other words were you aware of this before it was issued? Did you learn of it after? Did you only learn of it long after? I am trying to understand what you personally knew in relation to this set of investigations which we have come to refer to in this inquiry as the Frolick Inquiry. Because Mr Frolick the then Chair of Chairs issued a number of letters as reflected in this – in
10 this report to four chairs of four committees said please do these investigations. So my question to you is when for the first time did you become aware either that this was going to be happening or that it had already been decided and it was already underway?

PRESIDENT RAMAPHOSA: Well Chairperson once these Gupta Leak emails came out it became clear to many of us that there needed to be a response of one sort or another. The ANC itself without having the investigative powers clearly knew that it would need to rely to get to the bottom
20 of this on a number of other structures and indeed Parliament would be one of those so when the Chair of Chairs Cedric Frolick MP issued this; this in our view would have been in line with what Parliament needed to do at that time because a flood of evidence was now becoming evident and available. Personally whether I became aware

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of the move by Frolick I would not be able to put my finger on but once this instruction is noted and letter had been issued, I was quite relaxed and happy that this process had started.

ADV FREUND SC: Alright. Now, Mr Frolick testified that Mr Jackson Nthembo was particularly supportive of this exercise. I presume you can confirm that?

PRESIDENT RAMAPHOSA: Yes, I can confirm that.

ADV FREUND SC: That was you, Mr President because
10 although Mr Nthembo has furnished an affidavit, he, of course unfortunately, passed away. So he has never testified before us. So I need to try and ask, as it were, indirectly things that I would have otherwise would have asked Mr Nthembo.

PRESIDENT RAMAPHOSA: Yes.

ADV FREUND SC: Mr Frolick also testified as follows. He said:

20 “Later in 2017, I think it was in October or in November, the then Deputy President, who is now the President of the country, came to the Caucus to reinforce the importance of parliamentary committees to conduct these types of, be it inquiry or investigation or whatever...”

Do you accept that that evidence of Mr Frolick is

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factually correct?

PRESIDENT RAMAPHOSA: It is factually correct.

ADV FREUND SC: Perhaps you could explain to us what happened, why you went to the Caucus, what happened in the Caucus that he is referring to?

PRESIDENT RAMAPHOSA: I guess I would start it off with the processes that the ANC had decided that it should embark upon and those would go back the 53rd Conference of the ANC which would have been – which was held in
10 2012 when I was elected Deputy President where the ANC took a decision that we now needed to get our parliamentary structures to be more activist, to be more alert when it comes to the issue of oversight, to exercise more accountability or to demand more accountability on the Executive, whether it be at national level or provincial and indeed even lower than that.

Now I must confess that it took a while within the African National Congress for this type of initiative to take route and it was during this period that the activism of
20 parliamentary colleagues started moving forward in a much more demonstratable way and I remember very clearly that I had occasion to address Caucus and insisted that our parliamentary committees must now move ahead with greater vigour on the issue of oversight.

And this, in a way, was also prompted what was

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coming out in the open about this issue of state capture that we needed to go to the bottom of. So the events that happened activated this decision that had, in some ways, remained latent and it now was being activated and our committees became more activists and as we had said, we wanted an activist type of Parliament and that is what happened then. I addressed Caucus to that effect and that then started or further went on with this train of activism events that started unfolding.

10 **ADV FREUND SC:** I did hear you correctly. You say it was the 2012 NEC?

PRESIDENT RAMAPHOSA: Yes.

ADV FREUND SC: That specifically made such a decision as you described?

PRESIDENT RAMAPHOSA: Yes, it was the National Conference.

ADV FREUND SC: The National Conference?

PRESIDENT RAMAPHOSA: Yes, sir.

ADV FREUND SC: So when you say the National
20 Conference - I am sorry, I said NEC. Of course, that is wrong.

PRESIDENT RAMAPHOSA: Yes.

ADV FREUND SC: It is the ...[intervenes]

CHAIRPERSON: ...conference.

ADV FREUND SC: ...the elected conference.

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[Parties intervening each other – unclear]

PRESIDENT RAMAPHOSA: Yes.

ADV FREUND SC: Alright.

PRESIDENT RAMAPHOSA: National Conference.

ADV FREUND SC: And from that time – in fact, I think we have that document. I think it is at Bundle 1, page 140 and the following.

PRESIDENT RAMAPHOSA: 140, did you say?

ADV FREUND SC: 140 and following.

10 **PRESIDENT RAMAPHOSA**: Yes.

ADV FREUND SC: And you will find the resolutions from 150 and following. Mr President, I had not anticipated the answer you gave me about the 2012 Conference. So, I have not read through this document but I am just wondering if you are in a position to point out to us perhaps now or perhaps later you have had a moment where we will find in this – in these ...[intervenes]

PRESIDENT RAMAPHOSA: Yes.

ADV FREUND SC: ...conference resolutions what you are
20 talking about. Perhaps that is an unfair question.

PRESIDENT RAMAPHOSA: [laughs]

ADV FREUND SC: But I should find it somewhere in these ...[intervenes]

PRESIDENT RAMAPHOSA: It is not unfair. I should know but this morning I woke up on the other side of the bed.

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So...

ADV FREUND SC: [laughs]

CHAIRPERSON: [laughs] Well ...[intervenes]

ADV FREUND SC: We can come back to that.

CHAIRPERSON: Well... Ja, I think we can come back.

Your junior ...[intervenes]

ADV FREUND SC: ...activity ...[intervenes]

CHAIRPERSON: ...can have a look at the resolutions.

Ja.

10 **PRESIDENT RAMAPHOSA:** Ja. But it is there. It is there
...[intervenes]

CHAIRPERSON: Ja.

ADV FREUND SC: Now, Mr President. If we can step
back a little?

PRESIDENT RAMAPHOSA: Yes.

ADV FREUND SC: And focus on your own personal role.

PRESIDENT RAMAPHOSA: Yes.

ADV FREUND SC: You were, as I understand it, Deputy
President of the Republic from the 25th of May 2014 and
20 you remained in that capacity until your appointment as
President on the 15th of February 2018. Is that correct?

PRESIDENT RAMAPHOSA: Yes.

ADV FREUND SC: And as Deputy President of the
Republic, you performed several different roles of
relevance to this topic, the topic of parliamentary

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oversight. One of those is that you were appointed as the Leader of Government Business in Parliament. Is that correct?

PRESIDENT RAMAPHOSA: H'm?

ADV FREUND SC: Now, if you could just briefly describe to us so we have some understanding of what that role entails and particularly what that role entails in relation to the question of oversight by Parliament over the Executive and accountability by the Executive to Parliament?

10 **PRESIDENT RAMAPHOSA:** The role of the Leader of Government Business, it is really the facilitation of the link between the Executive and Parliament, two distinct bodies, obviously observing the separation of powers but more specifically to ensure that the Executive works, one, according to the rules of Parliament, the Executive responds to questions from Parliament, from parliamentarians in the form of written questions, in the form of appearing in Parliament, answering questions whenever.

20 And attend, whenever they are asked in attendance in Parliament, and ensuring that members of the Executive observe or fulfil, rather, their duties as members of Parliament. And also to work together with the heads of Parliament, specifically the Speaker, Deputy Speaker as well as the Chair of the House, of the NCOP,

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as we call it. And ensure that there is harmony in the working of all these structures. Now that is largely the role that the Leader of Government Business plays.

And indeed, to also ensure that - it is not so much to supervise, it is not to supervise activities of Parliament. It is to play that link between the two because Parliament is independent. It is a distinct organ of the state and the Executive is also. So, the Leader of Government Business plays that very delicate role between
10 the two just to ensure that there is that harmony.

And sometimes, even parliamentarians tend to want to exaggerate the role of the Leader of Government Business and it is not, and as Deputy President, you really work also under the leadership of their president who links the Executive. So in some ways, your role much as it would appear like it is expansive. It is also a role that is constricted in terms of your role as Deputy President working together with the President.

CHAIRPERSON: Is it largely a facilitation role?

20 **PRESIDENT RAMAPHOSA:** It is largely that.

CHAIRPERSON: Yes.

PRESIDENT RAMAPHOSA: Ja.

CHAIRPERSON: To make sure the smooth functioning of both the Executive and Parliament.

PRESIDENT RAMAPHOSA: It is not an Executive role.

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CHAIRPERSON: Ja.

PRESIDENT RAMAPHOSA: And I see it now that, you know. I play the role of President that the Deputy President plays that role and I am able now to look at it from an advantage point of view and see how that role spans itself out.

CHAIRPERSON: H'm, h'm.

PRESIDENT RAMAPHOSA: And of course, I should add that to the extent that it is an Executive role in those
10 inverted commas. It is where, as the Leader of Government Business, you are able to exert pressure on, for instance, towards ministers, if I can call them that, to answer questions. There are occasions when the Leader of Government Business will be quite precipitous in Cabinet in insisting that members of the Executive must answer questions and you know pull them on the carpet and even meet them and say you have got fulfil your obligations. So the role is a little behind the scenes to some extent.

20 **CHAIRPERSON:** Okay.

ADV FREUND SC: And I presume, it follows from what you have said, that where instances arose, and this Commission has heard of quite a few instances, where ministers were due to attend meetings in portfolio committees and simply did not turn up.

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PRESIDENT RAMAPHOSA: Yes.

ADV FREUND SC: That would be part of the LOGB business to try and address and rectify that sort of problem?

PRESIDENT RAMAPHOSA: Correct.

ADV FREUND SC: Can I take you back now to Bundle 1, page 177? I think we found the paragraphs we were looking for. Your bundle, Bundle 1, page 177.

PRESIDENT RAMAPHOSA: Yes.

10 **ADV FREUND SC:** And just to get your bearings.

PRESIDENT RAMAPHOSA: Indeed.

ADV FREUND SC: You will see that document starts at 157 and we are now dealing with the part that seems to be the part you had in mind.

PRESIDENT RAMAPHOSA: Yes.

ADV FREUND SC: In strengthening the legislature.

PRESIDENT RAMAPHOSA: Yes.

ADV FREUND SC: Is that the resolution you had in mind?

20 **PRESIDENT RAMAPHOSA:** That is the resolution I had in mind.

ADV FREUND SC: And I see, what it says amongst ...[intervenes]

CHAIRPERSON: I am sorry, Mr Freund. What is the paragraph?

ADV FREUND SC: It is paragraph 12 under the heading,

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Strengthening of the Legislatures, at page 177.

CHAIRPERSON: Yes?

ADV FREUND SC: And there are various sub-resolutions of 12.2 and I am just going to focus on several of those.

CHAIRPERSON: Oh, okay. No, no it is fine. I can see paragraph 12.2.1.

ADV FREUND SC: And if I then take you to 12.2.3, it says:

10 “The legislature’s oversight model and
 capacity should be improved...”

 That is, presumably, one of the decisions made at this conference?

PRESIDENT RAMAPHOSA: Yes.

ADV FREUND SC: And if I can just digress on that. In 2009, I am not sure if you know this but I imagine you do, the so-called Oversight and Accountability Model, the OVAC model was adopted by Parliament but that referred quite a bit of evidence in this Commission that good suggestions apparently adopted in 2009 had to this day not
20 yet been implemented.

PRESIDENT RAMAPHOSA: H’m.

ADV FREUND SC: And I think that what I am seeing here is that at the 2012 ANC Conference that problem was recognised. It was said it should be addressed. Am I understanding that correctly?

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PRESIDENT RAMAPHOSA: You are.

ADV FREUND SC: And is there anything else you would like to refer me to, to support the proposition that you made that this conference made a deliberate decision that there should be more vigorous parliamentary oversight over the Executive, more vigorous holding the Executive to account?

PRESIDENT RAMAPHOSA: Without referring to any specific document, I would say that, if I can call it a
10 political speak of this and the interpretation that was overlaid on 12.2.3 where we say improve the capacity of our oversight, meant that we needed to have our Parliament and legislatures to be more activist. To be much more – to improve their oversight role. And you – I could refer you to a number of speeches that were also given by a number of leaders including myself about activating, if you like, the activism of our parliamentary structures on the question of oversight. So it was recognised that this was one of the weak areas.

20 **CHAIRPERSON:** H'm.

PRESIDENT RAMAPHOSA: And that is why one of the paragraphs then refer to:

“The legislature should play a more effective role in shaping the national agenda...”

CHAIRPERSON: Well, actually, Mr President. Paragraph

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12.2.1 makes the point you made quite early in your answer to Mr Freund's question that:

“There should be a more activist people centred model of legislatures should be developed...”

PRESIDENT RAMAPHOSA: Precisely the point.

CHAIRPERSON: Yes, yes.

PRESIDENT RAMAPHOSA: Yes, Chairperson.

CHAIRPERSON: Yes.

10 **PRESIDENT RAMAPHOSA**: If you read from that and the interpretation, that was also put in various speeches that were made following that conference. It reinforced this activist role that we wanted our legislatures to play because there had been a realisation that it was lagging and lagging behind and it, therefore, for Parliament needed to be - and in political speak in the ANC, we always say, that Parliament was a sight of activism, it was a sight of struggle.

20 So we needed to have parliamentarians who would be more active particularly on oversight. So it was recognised. I should immediately add that it did take some time to take effect and to be fully activated and it took the better part of three years but when it did start happening ...[intervenes]

CHAIRPERSON: Well, I think five years Mr President.

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PRESIDENT RAMAPHOSA: Well, I would say four.

CHAIRPERSON: [laughs]

PRESIDENT RAMAPHOSA: [laughs] Give some change.
I would say four years.

CHAIRPERSON: [laughs] Oh, yes.

PRESIDENT RAMAPHOSA: I was being a more ambitious
when I said three. [laughs]

CHAIRPERSON: Well, you are the President of the ANC.
[laughs]

10 **PRESIDENT RAMAPHOSA:** [laughs] It did take up four
years before it was fully activated.

CHAIRPERSON: Yes.

PRESIDENT RAMAPHOSA: And as I said, Chairperson. It
was actually brought to full effect by the events that were
happening. The Gupta leak emails just really were a flood
of evidence that required that Parliament which had an
investigative and an oversight role should actually start
doing its work.

CHAIRPERSON: H'm. I want to put my understanding of
20 paragraph 12.2.1, Mr President and I would like you to say
whether you agree with my interpretation of it. My
interpretation of it – and let me say what it says firstly.

“There should be a more activist people
centred model of legislatures should be
developed...”

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My understanding of it, is that two features of this paragraph is that the ANC wanted to see more activism on the part of legislations including Parliament but two, people centred model seems to suggest to me that this resolution was saying, those who are in Parliament must put people first. Is my interpretation in accordance with yours?

PRESIDENT RAMAPHOSA: Absolutely. But it could also that the people centred approach would also mean that we
10 should also be willing and be prepared to work with non-parliamentary structures.

CHAIRPERSON: Yes. No, no I – ja.

PRESIDENT RAMAPHOSA: To listen to them.

CHAIRPERSON: Yes.

PRESIDENT RAMAPHOSA: To hear their views.

CHAIRPERSON: Yes.

PRESIDENT RAMAPHOSA: And that is hearing the views of the people.

CHAIRPERSON: Yes. No, not it does not exclude
20 ...[intervenes]

PRESIDENT RAMAPHOSA: It does not exclude
...[intervenes]

CHAIRPERSON: ...hearing other people.

PRESIDENT RAMAPHOSA: That is right.

CHAIRPERSON: Okay.

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PRESIDENT RAMAPHOSA: Ja.

CHAIRPERSON: Mr Freund.

ADV FREUND SC: Thank you, Chair. Mr President, can I refer you to Bundle 2 at page 602?

CHAIRPERSON: What is the page on bundle 2?

ADV FREUND SC: 602 in Bundle 2.

CHAIRPERSON: 602...

PRESIDENT RAMAPHOSA: Yes.

ADV FREUND SC: That should be headed, The Political
10 Committee. You have the right document?

PRESIDENT RAMAPHOSA: Yes.

ADV FREUND SC: Alright. Now, Mr President, we have heard very little in these proceedings about the Political Committee. This document, I simply downloaded it a couple of nights ago from the ANC's website under Parliament, under Caucus. You go through and this is what I find and we have printed it out and it tells us the following:

20 "The ANC Political Committee is responsible for the overall political guidance of the organisation's parliamentary Caucus and the Office of the Chief..."

That is presumable the Office of the Chief Whip?

PRESIDENT RAMAPHOSA: Chief Whip, yes.

ADV FREUND SC: Alright.

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“Amongst its chief responsibilities, the committee provides strategic direction to Caucus on macro political matters within the institution...”

Now I presume that is what we see in this document. This is correct, is it?

PRESIDENT RAMAPHOSA: It is correct.

ADV FREUND SC: And it says on the second paragraph that:

10 “The Political Committee is a sub-committee of the NEC...”

Is that also correct?

PRESIDENT RAMAPHOSA: It is correct.

ADV FREUND SC: And then it states:

“The members of the Political Committee, [it states as] member number one, Cyril Ramaphosa, Chairperson...”

And it then gives another ten names. I do not know if that is still correct or if this is an out of date
20 document, whether this referred to the period when you Deputy President or whether it still applies when you were President?

PRESIDENT RAMAPHOSA: No, it does not apply today. The Political Committee is chaired by the Deputy President of the ANC and its responsibility is as is set out in this

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page that you have referred to. So right now, David Mabuza is the Head of the Political Committee and all the other members would be, in terms of their titles, would be the Speaker, it would be the Chief Whip, and it would be the Chair of NCOP and so forth. And the others would then be brought in as per their members of the National Executive. So it is the sub-committee of the National Executive Committee.

ADV FREUND SC: And this particularly constituted
10 membership of the Political Committee that we see on this page. Would you be able to tell us what period this would have been referring – this would have been the composition of the Political Committee?

PRESIDENT RAMAPHOSA: It would be from the time I became a member of the National Assembly. That would be 2014.

ADV FREUND SC: Indeed.

PRESIDENT RAMAPHOSA: H'm.

ADV FREUND SC: And would that have remained the
20 case until you became President?

PRESIDENT RAMAPHOSA: That would have remained the case until I became President.

ADV FREUND SC: So, Naledi Pandor, Baleka Mbete, Thandi Modise and all the other names that we read there, they collective for that period compromised of the Political

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Committee?

PRESIDENT RAMAPHOSA: Indeed.

ADV FREUND SC: Now, I just want to read to you something Mr Frolick said. I think it is really saying the same thing as what we read here but I just want to put it to you. He says:

10 “The Political Committee is an internal ANC structure consisting of members of Parliament and members of the Executive who have been deployed by the ANC to serve on that structure.

That structure is usually chaired and convened by the Deputy President...”

Then I leave out something and he continues:

20 “The function of the Political Committee is to give guidance and oversee the work of the deployees of the African National Congress in the National Assembly and also in Parliament...”

And he says:

“...also to deal with any situation that may occur and may require further guidance...”

Would you accept that?

PRESIDENT RAMAPHOSA: Indeed.

ADV FREUND SC: Now, you were not, I do not think, in

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Parliament at the time, that you will recall that there was a SCOPA Inquiry into the arms deal quite some years ago and there was some considerable controversy about whether that committee had been enabled to do what it thought was appropriate. And I read recently at work, by an academic commentator – it is not in the bundle but I am quoting from Christie van der Westhuizen, Working Democracy, Perspective on South Africa's Parliament at 20 Years. And she says this.

10 She says:

“The Political Committee was formed after SCOPA's inquiry in 2000 into the arms deal with “parenting intention to exert direct control over ANC and...”

Do you think there is any fairness in that?
Would you like to comment on that view?

PRESIDENT RAMAPHOSA: I think that is fanciful because – I guess that is her position or the author's position but what I do know is that it did become necessary
20 to have a sub-committee of the ANC to give general guidance to members of the ANC in Parliament where a fairly senior leader of the ANC in the form of a Deputy President and not the President would lead this structure and be able to report back to the National Executive Committee.

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Now Parliament being what we characterise as a sight of struggle is seen by the ANC as a very important forum, really, where we need to give guidance on an ongoing basis, and we are involved in whose activities we need to get involved. It could not just be left without any form of giving guidance and that to me is the correct political posture to take in this regard.

ADV FREUND SC: Thank you. If I could ask you to turn to the next page in the same bundle, Bundle 2 at page 10 604? This is the linked document from the same website of the ANC that is headed ANC Parliamentary Caucus. Do you have that?

PRESIDENT RAMAPHOSA: Yes.

ADV FREUND SC: Now, I am not going to read into the record the whole – the detail there explains how the Parliamentary Caucus works but I want to draw your attention to the fourth paragraph, that is the one that starts with the Principle Tasks and the last sentence of that fourth paragraph, it reads as follows:

20 “The ANC Caucus carries out the above functions under the supervision of the Political Committee...”

PRESIDENT RAMAPHOSA: Yes.

ADV FREUND SC: Would that be a fair description?

PRESIDENT RAMAPHOSA: It is.

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ADV FREUND SC: Now, the Political Committee in the period 2014, 2015, 2016. Did it meet regularly?

PRESIDENT RAMAPHOSA: Yes, it did.

ADV FREUND SC: Could you give us some sort of insight into sort of how regularly, typically it would meet?

PRESIDENT RAMAPHOSA: Oh ...[intervenes]

ADV FREUND SC: Or is this monthly ...[intervenes]

PRESIDENT RAMAPHOSA: I would say ...[intervenes]

ADV FREUND SC: ...half-yearly? I have got no sense.

10 **PRESIDENT RAMAPHOSA:** No, at the very least, it would meet monthly.

ADV FREUND SC: At the least it would meet monthly?

PRESIDENT RAMAPHOSA: Ja.

ADV FREUND SC: So ...[intervenes]

PRESIDENT RAMAPHOSA: At times whenever there were issues that needed to be address it would be convened. So it did not meet annually or six-monthly. It would meet a little bit more regularly and certainly not weekly but I would say, at the very least, once a month.

20 **ADV FREUND SC:** So, therefore, if we want to understand where does the direction of the caucus come from on controversial issues of the day, it is fair to look to the political committee.

PRESIDENT RAMAPHOSA: Yes, it would be fair you looked at because there are a number of layers as well.

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The Chief Whip plays a critical role in the work and the affairs of the political committee but the Chief Whip also plays another role in the affairs of parliament as well so in a way they have a dual role and sometimes caucus meet without the political committee having discussed various matters, caucus having to deal with current matters, contemporary matters on an ongoing basis in relation to legislation, the budget and everything else.

ADV FREUND SC: And you have told us a moment ago
10 that although you cannot be specific and exact, the committee – the political committee would meet probably no less than monthly. Would you normally attend? I mean, I am sure there might have been exceptions but was it the normal practice for you as Chair of the committee to be present at those meetings?

PRESIDENT RAMAPHOSA: Yes, I would normally attend but certainly not every meeting. Some meetings would take place in my absence and a member of the committee would be delineated to chair the meetings of the political
20 committee.

ADV FREUND SC: And if you miss meetings was there some process of minutes or something like that where you could keep yourself abreast of what might have happened in your absence?

PRESIDENT RAMAPHOSA: Ja, I mean it was a committee

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so it had minutes and I would be, you know, kept abreast.

ADV FREUND SC: Yes, alright. I want to move to a different topic. Sorry, just one last question on this line. You told us earlier that in October or November 2017, as Mr Frolick described, you went to address the caucus in support of these portfolio committee inquiries. Can I ask you, in what capacity you did that, was that as chair of the political committee, what were you – what capacity were you speaking in the caucus on that occasion?

10 **PRESIDENT RAMAPHOSA:** Well, it would have almost – well, as chair of the political committee certainly because that was my official role in relation to the caucus, yes.

ADV FREUND SC: Yes. Now I want to go back a little earlier, we are going to come to the debate about whether it was three years or five years or whatever. This is the question that interests me.

CHAIRPERSON: But well, Mr President, I think you will probably need to think about whether it is not five years because even Mr Mantashe, when he testified here, he did
20 say the ANC is very slow to do things. Did he really say that? We will play the recording.

ADV FREUND SC: Mr President, can I take you to bundle 2, page 606?

PRESIDENT RAMAPHOSA: Yes.

CHAIRPERSON: I am sorry, what is the page number?

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ADV FREUND SC: 606.

CHAIRPERSON: Okay.

ADV FREUND SC: Bundle 2. This is a newspaper report that I also discussed with Mr Mantashe a few days ago. There are of course many hundreds of news articles that we could focus on but this one I choose to illustrate an issue. I would like us just to look at and understand what is being reported in the Sunday Times on the 27 February 2011 under a heading – and I am speaking from memory, I
10 might be wrong, but I think this was the banner headline on the front page of the Sunday Times:

“Ministers ‘shiver’ when summoned to family’s home.”

And I just draw your attention to some of the allegations in this report.

PRESIDENT RAMAPHOSA: They shiver when they are summoned to whose home?

ADV FREUND SC: It says family’s home.

PRESIDENT RAMAPHOSA: Oh, family’s home.

20 **ADV FREUND SC:** And the family, when one reads the article, is the Gupta family’s home.

PRESIDENT RAMAPHOSA: Oh, okay.

ADV FREUND SC: That is the allegation.

PRESIDENT RAMAPHOSA: Oh, okay.

ADV FREUND SC: That is the allegation.

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PRESIDENT RAMAPHOSA: Okay.

ADV FREUND SC: If you go down to about the fifth paragraph you will see there is a paragraph that starts:

“A member of the working committee...”

Do you see that?

PRESIDENT RAMAPHOSA: Yes.

ADV FREUND SC:

“A member of the working committee who attended the most recent meeting...”

10 This is presumably the National Working Committee which is the, as I understand it, the most senior day-to-day structure of the African National Congress.

“A member of the working committee who attended the most recent meeting said:

‘The concern is that these people (the Guptas) now have influence in the appointment of CEOs and Chairmen of state owned entities which then means the ANC has lost its way and its influence in these crucial deployments.’”

20 It says two paragraphs further down:

“The Gupta brothers, Atul, Ajay and Rajesh, also known as Tony are said to wield so much power that they often summoned cabinet ministers and senior government officials to their family compound in Saxonwold, Johannesburg.”

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And it continues:

10 “Other accusations levelled at the Guptas are that they telephoned at least three deputy ministers and told them that they were to be promoted days before Zuma announced his cabinet reshuffle; phoned several ministers to assure them that their jobs were secure ahead of Zuma’s announcement; bragged about their influence, telling one ANC Premier that he was fortunate they went to his office to see him, as many other public officials had to meet them at the Gupta’s home; pressured several top officials at the government communications’ section and directors of communication at various departments; placed advertisements in their newspaper at the New Age.”

And then in the middle of the page:

20 “A member of the working committee claimed ministers feared the family believing they had too much influence over Zuma, ‘people are scared of them and they are called to their house all the time’. The Guptas are known to be the President’s people and that is why even ministers shiver. Another top ANC leader said you must see the way they treat ministers.”

Now, Mr President, I understand this is merely a report in

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the Sunday Times but it is a report purporting to quote off the record very senior ANC personnel making very serious allegations. Do you accept, Mr President, that if those allegations were true, a matter yet to be determined certainly at that time and perhaps still by this Commission, but if those allegations were true, they reveal a subversion of our constitutional order. I see you nod?

PRESIDENT RAMAPHOSA: I nod, yes. Yes indeed, I mean, if these were true, they would be because our
10 constitutional architecture is such that things like the appointment of ministers, deputy ministers, should be the sole preserve of the President and there should really be no one who goes around offering people positions like that and telling him that you will be fired, you will be this and that and that. No, it would be subversion.

ADV FREUND SC: And they same when we look at the section dealing with the SOEs. You remember I read you the passage:

20 “The concern is that these people now have influence in the appointment of CEOs and chairmen of state owned entities and influenced those deployments.”

That too would be a subversion of our constitution on legal order.

PRESIDENT RAMAPHOSA: Precisely, that too would be a

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subversion particularly coming from people who have no real role either in the executive or even in the party and that, to me, would be unbecoming.

ADV FREUND SC: Now we have agreed this morning that when there are allegations that implicate a senior executive, parliament has a constitutional duty to get to the bottom, to investigate those allegations and to act appropriately in accordance with what emerges, with the benefit of hindsight at least. And do you agree that then
10 parliament should have been starting to investigate the veracity or otherwise of these allegations?

PRESIDENT RAMAPHOSA: I do agree that parliament has a role and when it comes to allegations of this nature, I would say it is the governing party that should activate its own processes and I guess where it fails, it then needs to yes, rely on parliamentary processes or structures. That would need to go beyond just newspaper article, they would need to have much more substantive information which is why the Gupta emails saga presented much more
20 weighty information that needed to be followed up, so it was no longer just an allegation, there was real substance with documents and what amounted – or adhered to the real evidence that could be followed through.

So whilst I agree that yes, parliament structures should – they need to do so based on more substantive

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information such as they did when they started their activist process.

ADV FREUND SC: Yes but, Mr President, as you well know, the Gupta Leaks were more than five years after this.

PRESIDENT RAMAPHOSA: Yes.

ADV FREUND SC: So for more than five years these allegations – and this is one example and I am sure you were aware that there were literally hundreds of articles.

10 **PRESIDENT RAMAPHOSA:** Yes.

ADV FREUND SC: Making allegations of this character. For more than five years, I want to put to you, parliament, as a matter of fact, did not investigate, hold inquiries or do what was appropriate to investigate the veracity of these facts. Do you accept that?

PRESIDENT RAMAPHOSA: I accept that and I concede that and it is for that reason that in 2012, the decision that I referred you to which you gladly showed me the relevant passages of the resolutions of – was then taken because,
20 Chairperson, it was realised that we now need to activate another arm to go into this much more deeply than the ANC itself could and that was the parliamentary process and yes, as you said earlier, there was a dropping of the ball, if I may say so, at that level. That will be conceded.

ADV FREUND SC: And just to get certainty, I assume that

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the conference to which you have referred, the 2012 conference, like all conferences, as I recall, take place in December, so it would have been December 2012 that that resolution was taken.

PRESIDENT RAMAPHOSA: Indeed.

ADV FREUND SC: Now in your affidavit at page 41 in bundle 1.

PRESIDENT RAMAPHOSA: 48 you say?

ADV FREUND SC: 41 I said.

10 **PRESIDENT RAMAPHOSA:** Got it.

ADV FREUND SC: Just before I ask you about that, there was a question I omitted to ask. When the Sunday Times report appeared and other reports in the Mail and Guardian, Business Day, various other media, the then Secretary General Mr Gwede Mantashe issued a statement, he said these allegations are simply racist. Do you agree with the benefit of hindsight there was no basis for that response?

PRESIDENT RAMAPHOSA: Yes, with the benefit of
20 hindsight I think all of us would agree that our reading and interpretation of a whole lot of things that happened then was blinded by the events of the time and that is why, Chairperson, I will comment the role of the media. The media has played a phenomenal role in investigating state capture and bringing it to light and continuously reporting

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on it and at times, as politicians, we do not always believe what the media writes because we look at what they write through a particular prism or lens but in this regard I have to commend them, the media, that is, for the role – phenomenal role that they have played and I would say they played a patriotic role and possibly I have never ever said patriotic role and I am prepared to say it now, that they have been patriotic in the way that they have followed all these matters through and they often make us very
10 uncomfortable as politicians but in this case, we will applaud.

CHAIRPERSON: Well, I must just say, Mr President, for what it is worth, I think I have said it before, I too think that the media played a very important role and facilitated to a very large extent, because of their investigation, the work of this Commission. There is a lot of assistance that this Commission in its investigations found in material that was unearthed by the media in their own investigations, in their articles, so there is no doubt that they have really
20 played an very important role.

PRESIDENT RAMAPHOSA: If I may add, Chairperson, that is why when they are targeted with threats, sometimes when they are attacked physically and sometimes when they are harmed and sometimes killed, it is an affront against democracy and what our country

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stands for and I have read in one of the affidavits that one journalist, Adriaan Basson, was threatened to a point where he needed to pen down an affidavit detailing the threat that he was subjected to as he was investigating, trying to ferret corruption and unlawful contracts that had been awarded. So it is important for our country to stand firm in defence of a human right that is enshrined in our constitution about the freedom of the press and upholding the right of journalists to do their work and to report on
10 these types of matters however uncomfortable it might make us feel.

CHAIRPERSON: Mr Freund?

ADV FREUND SC: Thank you, Chair. Mr President, I had referred you to page 41, I had in mind paragraph 93. I do not want to unduly belabour this point and I think you have touched on this paragraph yesterday with Mr Pretorius, but you will recall this is the incident where Minister Fikile Mbalula according to other evidence before the Commission, there was quite an outburst at this NEC
20 meeting and amongst the things that he said at the time was that he had been told by the Guptas, I think some two weeks or so before his appointment as minister that he was to appointed as minister. You say in your affidavit yes, that is quite right, I recall the incident. You say – and I am sure it is quite right, the ANC did not really act in response

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to that but you also said that:

“For me the statement did not at the time prompt any specific concerns about the capture of the state.”

Now I would just like to re-examine that statement in the light of the very article we have just looked at, the Sunday Times article which preceded it. It preceded it by three or four months. That was one of the core allegations made in that article, not specifically by name with reference to that
10 specific minister, but now you have a minister standing up in an NEC, I do not know if he was standing up or sitting down, but certainly expressing his view forcefully. Surely this must have been of very much greater concern and really ought to have elicited quite a different reaction given what was already being alleged in the public domain then to really just make the point well, it did not raise any specific concerns at the time.

PRESIDENT RAMAPHOSA: Yes indeed and to quite a number of it did not raise at the time the concern that it
20 should have evoked in us when one looks at it with the benefit of hindsight and that one is prepared to concede it did not and when one looks back at, including even the article that you are referring to, you will almost kick yourself in the foot and say these were the signs that we needed to pay attention to, the lights were flashing amber

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and we should have been more alert at looking at them, but we did not at the time.

ADV FREUND SC: Now, Mr President, if I can refer you to another article at page 609 in bundle 2.

CHAIRPERSON: What page?

ADV FREUND SC: Page 609 in bundle 2. We are now in 2013, in May of 2013 and three paragraphs from the bottom of page 609, Mr Mantashe is reported by The Star as saying this – not saying this, it is reported:

10 “Mantashe allegedly went so far as to tell some ministers to have the backbone and to refuse to take instructions from the Guptas.”

If you think back to that time were the members of the political committee already of the view that there was a problem of ministers taking instructions from the Guptas and the need for them to backbone to resist such instructions?

PRESIDENT RAMAPHOSA: Well, this was 2013, I was not yet a member of parliament again.

20 **ADV FREUND SC:** Ah, correct.

PRESIDENT RAMAPHOSA: I had been elected President – Deputy President, rather, but I was not yet in parliament.

CHAIRPERSON: Of the ANC?

PRESIDENT RAMAPHOSA: Yes, Deputy President of the ANC.

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CHAIRPERSON: Deputy President of the ANC, yes.

PRESIDENT RAMAPHOSA: I was not yet a member of parliament and so could not have been Chair of the political committee.

CHAIRPERSON: But of course just for the sake of completeness, being Deputy President of the ANC obviously you would have been a member of the NEC.

PRESIDENT RAMAPHOSA: Yes, I was a member of the NEC, indeed.

10 **ADV FREUND SC:** I think the point you make is a fair point, that you were not on that political committee in 2013 and therefore, certain questions that I would otherwise have asked I will not ask but I want to fast-forward now. We were in 2011, we were in 2013, I want to fast-forward to February of 2016.

PRESIDENT RAMAPHOSA: Yes.

ADV FREUND SC: And can I take you to page 612, bundle 2? This is an article reporting in some detail on what you yourself was saying publicly in February of 2016.

20 The article starts as follows:

“Deputy President Cyril Ramaphosa says the ongoing review into the performance of state owned enterprises will go a long way into rooting out the capture of government institutions by politically connected individuals for personal gain.”

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Now I presume you are fairly quoted in saying that?

PRESIDENT RAMAPHOSA: Indeed.

ADV FREUND SC: And I presume it seems to be a matter of logic that what that necessarily implies is that by February 2016 you personally were of the view that there was a need to root out the capture of government institutions by politically connected individuals for their personal gain.

PRESIDENT RAMAPHOSA: Yes, I agree with that.

10 **ADV FREUND SC:** And then you will recall that in March of 2016 a minister or Deputy Minister Mcebisi Jonas made a public statement and his statement included, that according to him, the Guptas represented that they could have been appointed as the Finance Minister and that they offered him a huge bribe if he would do their bidding, if appointed. I am sure that came to your attention at the time when that statement was made.

PRESIDENT RAMAPHOSA: Indeed.

ADV FREUND SC: Now did you or the political committee
20 in March of 2016 have any reason to doubt the credibility of Mr Jonas when he made those allegations?

PRESIDENT RAMAPHOSA: No, I personally did not doubt the credibility thereof but ...[intervenes]

ADV FREUND SC: And – sorry, I interrupted you.

PRESIDENT RAMAPHOSA: But we sat in a process

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through the ANC itself through the Secretary General's office to engage with Mcebisi Jonas so that we could go to the bottom of it.

ADV FREUND SC: Now that is where I think the tension between your views and the questions I am putting now starts to emerge because if I hear you, I hear you to be saying the proper way to deal with this is to deal with this internally through the party structures.

PRESIDENT RAMAPHOSA: H'm.

10 **ADV FREUND SC:** And I want to put to you for your comment that there is nothing wrong with that happening, of course the party is entitled internally to address its own internal affairs.

PRESIDENT RAMAPHOSA: Yes.

ADV FREUND SC: But when allegations of this type – and of course it was not just an allegation, of the Hogan's allegations, Mentor's allegations and lot so other allegations were made at that time. When allegations of that type were made, was it not incumbent on the political
20 committee, recognising what we recognised at the outset of your evidence this morning, to see to it that the National Assembly probe these inquiries and investigate it?

PRESIDENT RAMAPHOSA: Fair enough, I think we obviously initially wanted to get to the bottom of this through the party structure and that does not mean that we

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did not believe that it could not be better done but as you will have seen, it may well have taken a number of months but it was then when the parliamentary structures became activated to look into these matters.

When we realised that the party structures had their limitations, serious limitations, even Secretary General at the time did say there is just no way we can investigate this matter and get to bottom of it and the best way would be through the structures that we are part of in parliament
10 to go into this matter. I would not immediately say whether this one was then referred for such an investigation, I think the accumulation of all these matters then prompted, I would say again, the activation of the resolution that we took, that we now needed to have a much more activist parliament that would look into these matters and that is when a flurry of activity then commenced starting off, as the late Jackson Mthembu says in his affidavit, and he says that was the turning point when some of these committees then started their work of looking closely into
20 all these matters. And a turning point had to be reached because it was just a flood and a flurry of all these, so – but that is how it happened.

ADV FREUND SC: Thank you. Can I ask you please to go to page 619 in volume 2?

PRESIDENT RAMAPHOSA: Yes.

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ADV FREUND SC: There you will find a letter, about which quite a lot of evidence has been led already, from Natasha Mazzone, the shadow Minister of Public Enterprises, she was the then chairperson of the portfolio committee on Public Enterprises, page 619, are you with me? Page 619 in Bundle 2 it should be a letter ...[intervenes]

CHAIRPERSON: This is the bundle that had the article that we just talked about, page 619, black numbers.

10 **PRESIDENT RAMAPHOSA:** 619, oh, I am looking at 618 sorry about that.

ADV FREUND SC: Not at all.

PRESIDENT RAMAPHOSA: Ja, yes.

ADV FREUND SC: That you will see is the letter dated the 14th of March 2016, which is very much the period we just been talking about addressed by the Shadow Minister of Public Enterprises, Natasha Mazzone, to the Chairperson of the Portfolio Committee on Public Enterprises, requesting that the Portfolio Committee on
20 Public Enterprises conducts a full Parliamentary inquiry into the capture of SOE's by the Gupta's, it refers to a number of allegations of undue influence that had been raised in relationship with Gupta's involvement in a number of State owned enterprises.

And asks that the Gupta's be summoned to appear

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that, amongst others Minister Gigaba being summoned to appear that SOE's and Chairpersons of the largest SOE's be summoned to appear, and the evidence says that the committee, because of the view taken by the African National Congress members of Parliament refused to conduct that inquiry.

Now, my first question to you is this with the benefit of hindsight, do you agree that that was ill advised and it would have been far better had they exceeded to that request?

PRESIDENT RAMAPHOSA: Yes, it was ill advised as it turns out, this mistake, this error was then corrected as we moved forward, as set out in late Jackson Mthembu's affidavit, where he says these committees started being very active, but at the time, I would say it was ill advised.

ADV FREUND SC: Now, Mr President, this would have been a measure of great sensitivity, I assume, whether or not at that time in our history, a Portfolio Committee should or should not accede to a request for a public inquiry of the type we seeing here. Did this matter come before the Political Committee for guidance?

PRESIDENT RAMAPHOSA: Not in that direct manner, it did not come to the Political Committee in that direct manner. What obviously was being discussed on an ongoing basis was these concerns that were continuously

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being raised, and to find a way of having to deal with them.

And also, to find a way we would have discussed a way of empowering our Portfolio Committees to be able to take up the issues and in many ways, because the ANC was the leading party in Parliament, it needed to be activated by the ANC as well and when it was, then I would not want to say all hell broke loose but that is when the process really started in earnest.

ADV FREUND SC: Can I refer you Mr President, to the
10 article at page 621 in the same bundle.

PRESIDENT RAMAPHOSA: Yes, 621, yes.

ADV FREUND SC: You will see it is an article dated the 8th, if I read it correctly, the 8th sorry it is the 29th of March 2016, a week or two after that request that we just looked at from Ms Mazzone and it is dealing with the ANC's response to that request under the headline, ANC:

“DA’s claims of support for Gupta probe is delusional.”

And then in the second paragraph, you will see that,
20 according to a statement issued by the African National Congress:

“The DA Chief Whips ridiculous claims in the media that the ANC Chief Whip, Jackson Mthembu has agreed the DA’s opportunistic proposal for Parliament to institute an investigation into the

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alleged State Capture by the Gupta family are imaginary and baseless.”

This is the ANC in a statement attributed to the office of the party's Chief Whip, and then if I can take you to the next page, the 3rd last paragraph, starting with the ANC:

“The ANC said only a delusional misapprehension would interpret this clear assertion on Parliamentary debates to mean that the ANC chief whip supports the DA’s proposal for Parliamentary investigation into alleged State influenced by the Gupta family.”

10

Now, Mr President, this must call into question the commitment that you say was expressed in the preceding national conference about the need to utilise Parliament as an instrument for oversight.

Again, with the benefit of hindsight, is this not an entirely regrettable stance that was adopted by the African National Congress in relation to Parliamentary oversight?

PRESIDENT RAMAPHOSA: Well, I think these types of responses should be seen within the context of the fulcrum of contestation between various political parties in Parliament and revolve around when an issue is raised.

20

How it is raised, who raises it, but as you can see, there was an interaction between the then Chief Whip of the ANC, late Mthembu and representatives of the other

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party and their discussion could have led to something which the two of them could have had an understanding around it.

But in the end, as matters were evolving there was that contestation, but I think what we should be grateful for is that our democracy much as it is a young democracy and a recent democracy at that it is developing, it is growing and maturing, maturing to a point where now in 2016/2017, we started seeing a see change on matters like these
10 where issues that had been raised were now being properly and fully entertained, and so the process was developing and growing.

ADV FREUND SC: Mr President, can I refer you to page 624, please in Bundle 2. Now, this is the beginning of an extract, where you will see it is from Hansard and it relates to allegations of State Capture by certain individuals and there alleged undue influence of the government and we have the whole Hansard quote.

But if I can then take you what is really pertinent,
20 which is at page 654.

PRESIDENT RAMAPHOSA: 654?

ADV FREUND SC: 654.

PRESIDENT RAMAPHOSA: Yes.

ADV FREUND SC: There you will see that one Mr Maimane of the Democratic Alliance moves a motion in the

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House on the floor of the National Assembly, do you have it?

PRESIDENT RAMAPHOSA: Yes.

ADV FREUND SC: And the motion is that the House,

1. notes the allegations of State Capture by certain individuals and their alleged undue influence over the government;
2. Establishes an *ad hoc* Committee in terms of Rule 2531A.

10 The committee,

2A Investigate the alleged capture of State resources and undue influence over the government.

B recommend measures in line with the assembly's oversight constitutional mandate to prevent such incidents from occurring.”

And then it goes on to propose how this should be constituted. Now it is a matter of record that the ANC caucus voted against this motion and what I have not
20 specifically referred you to is what appears on the next page, at page 655.

There you will see that a counter motion was proposed, and the counter motion was far from Parliament appointing an *ad hoc* Committee to investigate.

What the African National Congress proposed was

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the following, to be replaced with the following:

2:

“Refers all such allegations of State Capture to the SA Police Service or Chapter Nine Institutions for investigation including the Public Protector.”

3:

“Notes that all parties and individual members of Parliament with evidence of such alleged State Capture should make available such evidence to the
10 Police Service or Chapter Nine Institution.”

And 4:

“Further notes that such investigations by either Police Service or a Chapter Nine Institution should culminate in prosecution of all individuals or companies engaged in such State Capture if such is proved as a criminal activity.”

Now, that seems to be in line with aligning of evidence in your affidavit about the approach adopted by the NEC. The NEC’s approach was, as I understand it, on the one
20 hand, there was in March of 2016, a proposal that if persons with information of relevance, would please come to the officers of the African National Congress, presumably to the Secretary General's office, they can bring them information or to go to the Police or other institutions.

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But what seems absolutely clear, I want to put to you for comment, is that there was a very determined resistance and unwillingness that Parliament should exercise what you have said this morning was its duty, in the face of these sorts of accusations, a complete unwillingness to enable Parliament to investigate and exercise oversight, again, with the benefit of hindsight, do you accept that is fair?

PRESIDENT RAMAPHOSA: Let me put it this way, I think,
10 at the time Chairperson, the thinking would clearly have been, which of the structures we have got, we have in the State that would have a greater effectiveness of investigating these matters and coming to a conclusion that prosecutorial processes should commence. And at this stage, rather than say it was distance as such to have these matters investigated, I would say no.

It was thought at the time that the other institutions the Public Protector, the Police, would possibly have a much better grip on all these matters because they would
20 go way beyond maybe what Parliament can do, they would immediately if they find fault have prosecutorial powers.

But if you look at it with hindsight, I would say the two would not be mutually exclusive and if anything, both checks could easily have been followed. The Parliamentary process, as well as another more effective

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investigative process.

So I would not say it was a cop out, I think it was then the alternative motion that was being put on the table was let us get this done more effectively to the extent that it could.

ADV FREUND SC: Can I refer you please, Mr President, back to your affidavit in Bundle 1 at page 52.

PRESIDENT RAMAPHOSA: Oh, Bundle 1.

ADV FREUND SC: Bundle 1.

10 **PRESIDENT RAMAPHOSA:** Yes, indeed, I apologise for that.

ADV FREUND SC: Not at all.

PRESIDENT RAMAPHOSA: I am looking at the wrong bundle, yes.

ADV FREUND SC: You will recall this is in your own affidavit, paragraph 125. You say:

20 “It is clear from Mr Mthembu’s account, and you are referring there to the affidavit he submitted to the Commission, that the determination of the ANC in Parliament to probe these allegations was both a response to the evidence of wrongdoing that was accumulating in the public domain and the implementation of the decisions taken by the ANC’s constitutional structures, especially at NEC to ensure proper investigation into these allegations.”

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Now, what I want to put to you for comment, is this we will come in a moment with further committee's investigations and how successful they were or were not.

But what I want to put to you at the moment for comment is that it is simply not correct as a matter of fact, that prior to the further clatters Parliament, the ANC in Parliament in response to evidence of wrongdoing that was accumulating was determined in Parliament to probe these allegations. The true fact of the matter is; it was
10 determined not to probe them in Parliament. Is that not correct?

PRESIDENT RAMAPHOSA: Well, I would not say so that it was not determined to probe them in Parliament, I would say it was determined to have them probed. I mean, initially there was inertia, there was not much movement that we will concede and when it became clear that the evidence was just accumulating. Initially, the thinking was, investigate them through your law enforcement agencies or your chapter - one of your Chapter Nine Institutions and in
20 the end, the Parliamentary process or the Parliamentary track was then activated, go ahead.

I think where you could say there was fault Chairperson was the delay in having it done and I would be the first to concede that, that there was a delay, which should have been done a lot earlier.

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CHAIRPERSON: May I should say at this stage Mr President, because I wanted to say it but I was going to say it later because Mr Freund has got a certain amount of time to use, and I want him to use it.

I was going to ask you exactly that, whether the delay in acting both in respect of the ANC as a party and in respect of Parliament and maybe one should focus both in regard of the fact that the majority of MP's are ANC. Whether the delay was not was not acceptable particularly
10 for me, quite a platform what was coming out in the media, but also taking that into account after the Waterkloof landing.

That the ANC and Parliament took a number of years after 2013, the Waterkloof landing was in end of April 2013, that they took another three years or so – June 2017, that is now the Portfolio Committee has to start being active. It seems to me to be a delay that is difficult to accept you know, and we also factor the same in regard to the ANC to say, with what Mr Fikile Mbalula had said at
20 the NEC meeting in 2011, with what was in the media after that certainly the ANC ought to have done something much earlier than it did to say something needs to be done.

This is this is something that needs to be done urgently. I do not know whether you want to comment on that Mr President, I just think 2017 was too far and there

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seems to have been enough that had happened for the ANC and Portfolio Committees and Parliament to have acted much earlier and if they had done so, it may well be that some of the damage that happened in the meantime may have been avoided.

PRESIDENT RAMAPHOSA: Chairperson, I did say in my opening statement that I am not here to make any excuses.

CHAIRPERSON: Yes, you did Mr President.

PRESIDENT RAMAPHOSA: And I also said that I am not
10 here to defend the indefensible. I also said that, yes, I am also here to explain.

CHAIRPERSON: Yes.

PRESIDENT RAMAPHOSA: Some of the lapses that happened and what I can say is that, yes, you are absolutely right, Chairperson, DCJ, in saying that the delay to reaction to all this was not a correct way to handle matters and I will concede to that, and I did also say that in my opening statement that because we are a political organism, and there are continuous debates and
20 contestations and even in society, and in the ANC, a contestation on the existence of State Capture, continued for quite a while.

And I guess it will continue, right until you present your report, because there are those in the nation who deny that there was State Capture and indeed, in many

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sectors of society and organisations the same obtains, as it does in the ANC as well. So that amount of contestation about matters of this nature could in many ways have led also to the delayed reaction.

And these contestations do take place, as I said without bemoaning the point in various organisations. What we should be grateful for Deputy Chief Justice is that we have now arrived at the African National Congress, the point where, as I said, the majority, majority of members of
10 the African National Congress agreed that State Capture is something that militates against the interests of our people at a social and economic level, and it also weakens our own organisation, as it gives rise to all manner of challenges like factionalism and divisions.

But what is good is that we are now here. Many other leaders of the ANC have appeared here.

CHAIRPERSON: Yes.

PRESIDENT RAMAPHOSA: And so am I and to agree with you that delay did not serve our country well.

20 **CHAIRPERSON:** Yes.

PRESIDENT RAMAPHOSA: But we are here to take corrective measures and say we have got a country that belongs to all of us, let us work together to build this country going forward.

CHAIRPERSON: Thank you, Mr Freund.

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ADV FREUND SC: Thank you, Mr President. I have very little time remaining so certain issues I would have covered with you I am going to leave but there are two aspects that I would like to wrap up with. The first is if I could refer you to page 74 in Bundle 1.

PRESIDENT RAMAPHOSA: Of Bundle 1, 74.

ADV FREUND SC: Your own affidavit.

PRESIDENT RAMAPHOSA: Yes.

ADV FREUND SC: You yourself make the point and with
10 respect correctly, we say this, this is paragraph 167.2 at
page 74:

“The ability of any organisation, but especially a political formation to act on allegations of malfeasance relies not only on its formal rules and procedures, but also on the balance of power within its structures.”

The question I want to ask you is whether you accept and if you do accept if you could elaborate a little that precisely this factor, the balance of power within ANC
20 structures, actually, is the true explanation for the delays that you now say, of the benefit of hindsight regrettable?

PRESIDENT RAMAPHOSA: Yes, I would say so, this is precisely the point I was making to you, Chairperson that there has been contestation, in terms of even understanding what State Capture is, is it the capture of

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the judiciary? Is it the capture of the executive? Is it the capture of which arm of the State?

So those contestations have ensued, and the preponderance of views now in the African National Congress, is that, there has been a major problem and as I said, yesterday, has been a massive system failure and we need to correct what has happened in the past and chart a new path, a completely different path of our country and correct the wrongs of the past.

10 I think that is generally accepted and that is the balance of understanding, the balance of conviction, and the balance of conscience as well. That I am also addressing here.

ADV FREUND SC: Mr President finally, I want to turn to a very controversial question, which has been much debated before the Commission and precisely because it has been much debated I will leave it in the hands of the Chair, to what extent he wishes me to pursue this. But it is the question of party discipline, and party instructions in
20 relation to questions such as the votes of no confidence, which is part of a bigger question, and the bigger question, which you address in your affidavit, and will be part of the record should of course be taken into consideration by the Commission.

But the bigger question is, whether having regard to

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the oath of office of MP's...[intervene]

PRESIDENT RAMAPHOSA: Towards, sorry?

ADV FREUND SC: To the oath of office taken by MP's which we debated right at the outset, there are issues on which the party must accept that whatever views it would prefer its MP's to take there comes a point at which the duty of the member is to act in accordance with the members own understanding of the constitutional obligations and where necessary, to vote, as for example,
10 Dr Makhosi Khoza did on the vote of no confidence.

Now, as I read your affidavit you are a little equivocal but if I have to say, where do you finally come down, I think you have come down on the point of view that an ANC MP, must simply accept party discipline and do as told. And what I want to explore with you is whether I understand you correctly, or whether you accept that there comes a point that there must be an exception to that rule.

PRESIDENT RAMAPHOSA: Our political system is granted by our Constitution is that of a party system under
20 where representatives that are elected by our people vote to represent their party. That is our system, they do not go and represent themselves and their jacket.

That being said, though, they do take an oath, as each member of Parliament goes into their position and the oath that they take places the Constitution and the country

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and the nation first and we accept that but in order for the party to put a member in Parliament, they do not put themselves there.

Notwithstanding the decisions of the Constitutional Court recently, they are transported, as it were, by the party to be in Parliament and the party functions as a collective on all matters, we – that is why we have a caucus and this happens all over the world. We have adopted a Westminster system you know has the caucus
10 system as well where members of parliament of a particular party will meet on their own, collectively take decisions on how to approach certain issues that are debated in parliament. So there is a party line on all issues, even where there is a single member who will propose the bill, the party basically coalesces around behind that member.

Given that that is the case, the party itself will insist on party discipline and insist that we vote together, but that vote is also inspired or based on discussions that happen in the party, there are study groups where people
20 study issues very intricately and there are party discussions in the party itself and in the caucus so that informs the understanding and indeed the conscience of members to vote as they would.

However, there are matters Chairperson where the individual conscience of a member would be such that it

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would compel them to act and vote in a particular way and that too needs to be discussed. It needs to be put on the table.

In our past we have had votes on issues such as termination of pregnancy where certain members have had strong religious views that are based on religious affiliation and those have had to be discussed, and in those cases an allowance has been made that your religious affiliation and your conscience needs to be given consideration and that
10 is brought to bear on what needs to happen.

But in the main I must say with the current political dispensation we have it is the party line that is followed and followed all over the world. We, it was of great interest to watch what was happening in the United States recently, where and I do not know whether they have a caucus system like we have in their congress and senate, where members voted slightly differently from the party line and that led to a lot of ostracisation and a whole lot of other challenges that some of those members have.

20 Because there is a down side to doing things like that, but when your conscience drives you I guess you are prepared to take the downside. So whilst you may argue that I am equivocal, I am a party person. So I am a party animal because and have to be because I am the president of the ANC.

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If I am to be faltered, let me be faltered on that. But I do however open a window to look at issues of conscience that drive particular individuals who want to bark the trend, who want to go against what a party might well want, and that is often exceptional.

It is not often the rule by and large members of a party, certainly the members of the ANC will always want to go along with the party rules, but I think former secretary general Mantashe addresses this quite pointedly in his
10 affidavit, because on a matter which Mr Freund refers to of a vote of no confidence, where anyone outside would say you know, vote as you wish.

He argues that you have got to look very, very closely at the consequences of that action because you need to look at if you vote to you know remove and we have done that within the party ourselves, we remove a president through a vote of no confidence.

What then ensues because when you do that, you are actually imploding the executive. You are imploding it
20 and you have got to do all manner of things to reconstitute that and members then had to ask themselves is that what we want, and certainly if that is the desire which is collectively agreed to, then that is what should be opted for.

But we are actually saying you need to analyse the

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situation very carefully so that we just do not run blindly into something that is emotionally charged. I hope that helps you.

ADV FREUND SC: Ja, thank you Mr President. Chair, I think my time is up and unless there is anything you would like me to pursue further.

CHAIRPERSON: No, that is fine. I know that you cannot be with us for a long time, as I understand the position. I do want to take this issue further with the president after
10 the tea break. I thought he would. I definitely want to. So if you are still around.

ADV FREUND SC: I am certainly here Mr Chairperson.

CHAIRPERSON: Okay, alright. So I think let us take the tea adjournment and then we can take it further. Okay, it is twenty past eleven. Let us take the tea break. We will resume at twenty five to twelve. We adjourn.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Okay so I will have some – few questions
20 for the President in regard to the last question you raised Mr Freund and his answer.

Now Mr President from what you have said it is quite clear that you accept that it is very important that Parliament should perform its functions of oversight properly and should hold the executive accountable.

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You agree? Ja.

PRESIDENT RAMAPHOSA: My apologies I do agree.

CHAIRPERSON: Yes.

PRESIDENT RAMAPHOSA: What you have just (inaudible).

CHAIRPERSON: Yes and of course you referred also to one
of the resolutions of the National Conference of the ANC in
2012 in terms of which the conference resolved that you
know Parliament should be more active which you explained
includes performing its oversight functions as I understand it
10 properly.

PRESIDENT RAMAPHOSA: Yes.

ADV FREUND SC: That's alright.

PRESIDENT RAMAPHOSA: Chairperson.

CHAIRPERSON: And you would accept too would you not
that the provisions relating to the vote of no confidence in
the constitution constitute part of the mechanisms that the
constitution makes available to Parliament in order to hold
the executive accountable.

PRESIDENT RAMAPHOSA: I have – I accept and I agree.

20 **CHAIRPERSON:** Yes. Would you also accept that the oath
of office to which Mr Freund referred earlier on means that
the members of Parliament have got to put the interests of
the people of South Africa first?

PRESIDENT RAMAPHOSA: I accept and I agree to that.

CHAIRPERSON: You agree to that?

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PRESIDENT RAMAPHOSA: Ja.

CHAIRPERSON: Now when there is a motion of no confidence placed before members of Parliament my understanding is this and I just want you to comment whether you agree with my understanding.

My understanding is that what each member of Parliament is called upon to do is to ask himself the question or herself the question do I still have confidence in this President?

10 **PRESIDENT RAMAPHOSA:** Yes.

CHAIRPERSON: You agree?

PRESIDENT RAMAPHOSA: Yes.

CHAIRPERSON: Yes. Now

PRESIDENT RAMAPHOSA: Or do we collectively have confidence?

CHAIRPERSON: Well

PRESIDENT RAMAPHOSA: (Speaking in vernacular).

CHAIRPERSON: Mr President. So now if that is the correct question that each member of Parliament is called upon to answer is the position not that when his or her political party
20 instructs her or him to vote in a particular way irrespective of what her position is as to whether she still has confidence in this President or not is that not that should not be right? Because she has taken an oath this is a constitutional obligation that the constitution contemplates he or she

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should perform – she thinks I have lost confidence in this President. It is not in the interest of the people of South Africa that he or she should continue to be President. He or she is taking the country somewhere else. That is what she or he believes so if the party says no, no, no vote a different way is that not acceptable in the constitutional framework that we are talking about within her oath of office and within the context of the question that he or she is called upon to answer?

10 **PRESIDENT RAMAPHOSA:** Yes Chairperson it is a controversial issue and there is a tension between.

CHAIRPERSON: Yes.

PRESIDENT RAMAPHOSA: And let me say we are not the only ones who are postulating or thinking about this – this matter. We are not the only ones in the world even your oldest democracies are at this point in time deliberating over these types of matters.

20 The constitution obviously looks and in a way there is a bit of a schizophrenic type of relationship that – because the constitution has given rise to a party system in our constitution but at the same time in terms of our con – the very same constitution in terms of what the Constitutional Court decided recently about the freedom of every person to exercise their own political rights has actually said you stand as an individual.

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But we also have a constitution where a member takes as I was saying earlier their oath as an individual and pledging their loyalty to the...

CHAIRPERSON: Their country

PRESIDENT RAMAPHOSA: Republic and to the constitution. So there is a tension that is created there. But political parties by their nature have what you could call a herd mentality so like cattle they move together as a herd. So that being the case we do say and I do say that there is
10 always an exception for one or two or a few members of the herd to hold different views but the general rule of thumb in a party system is that you go along the party 00:07:26 or party line. And in exceptional circumstances for instance where there is a major risk to democracy where it is clear that the conscience of a particular or particular members is driving them towards saying we have got to defend democracy and one of the ways we can defend democracy is to go against what the herd who believes should be the direction. So I would argue yes that is allowable but it is an
20 exception because the general rule of thumb is party discipline and if you look even at our current parties and in – you will find that even other parties in our system are much more disciplinarian than the ANC where if you violate party rules you get dismissed and get fired instantly without even a hearing and the ANC has tended to have a slightly more

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liberal type of approach to this.

Also with a view of saying we want to herd everyone in the same direction. So in exceptional circumstances where democracy is at risk or where there is a real conscientious member who believes that my religion, my certain beliefs are propelling me to go in a different direction it is a matter that should be discussed and this being a party system it is allowable that it should be discussed, it should be understood and then in the end the party leadership will say we will
10 allow that. And they would then be free to vote in whatever way.

So whilst I tend to follow more to what is party discipline there is the other if you like liberal side of me that says you – you can actually have an exception where conscientiousness as well as a risk to democracy has to be
00:10:06 attention. That is what I would say.

CHAIRPERSON: Of course the position would be most of the time I guess that whoever is President of the country because the vote no confidence is directed I think ...

20 **PRESIDENT RAMAPHOSA:** At the President you mean?

CHAIRPERSON: At the President.

PRESIDENT RAMAPHOSA: Ja.

CHAIRPERSON: Ja. The President of the country will I think almost always be ...

PRESIDENT RAMAPHOSA: The victim.

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CHAIRPERSON: The – ja – or the target – or the target. But also the – the President of the country is likely to be most of the time the President of the majority party.

PRESIDENT RAMAPHOSA: Indeed.

CHAIRPERSON: And he is – he or she is President of the majority party because he or she enjoys majority support in the party. And if she or he enjoys majority support in the party he or she is likely to enjoy majority support among members of Parliamentary of that party in Parliament.

10 **PRESIDENT RAMAPHOSA:** Indeed.

CHAIRPERSON: And if that is so it may well be that the issue of a vote of no confidence – I mean the mechanism of accountability of the vote of no confidence which is meant to keep the President on his or her toes will be rendered ineffective if the President will know that there is no way Parliament can pass a vote of no confidence in me because my party will never allow that. What do you say to that?

PRESIDENT RAMAPHOSA: Well I think any President should want to serve the people and the country knowing
20 that they enjoy the support of the Parliament if not the entire Parliament the majority of the members of the Parliament which elects him or her into that position. And if they no longer enjoy that support of the majority of the Parliamentarians then they should accept that they have lost it and be willing to being subjected to that type of vote of no

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confidence because it basically means that they would be saying well you –you have basically failed to – to lead government. However if amongst that majority of the members there are a few who would hold a different view but then the majority still retains then I would say they should not have any fear. And those few would be all – some of those would then have articulated their concerns about the confidence that they still have in that President. So in other words the debate would have had to have ensued in the
10 majority party where it would have had to be clear to the President that I no longer have the support because those who are in Parliament are then really representatives of the entire body of the party itself.

CHAIRPERSON: Of course Mr President the approach that you take that the ANC takes because I think Mr Mantashe also took the same line means in effect and I would like you to comment on this – means in effect that before a President of the country can be voted out of office through a motion of no confidence the majority party should have lost confidence
20 in him on its or – in him or her on its own.

PRESIDENT RAMAPHOSA: Yes.

CHAIRPERSON: In which case probably it might not need to go through that process even to just use its own structures and processes to recall him.

PRESIDENT RAMAPHOSA: Yes.

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CHAIRPERSON: And if that is so the question arises why do we then need these provisions of the constitution about a vote of no confidence in the President of the country if everything will be dictated by the majority party can be dictated by the majority party outside of Parliament.

PRESIDENT RAMAPHOSA: No. I hold a different view.

CHAIRPERSON: Yes.

PRESIDENT RAMAPHOSA: Chairperson.

CHAIRPERSON: Yes.

10 **PRESIDENT RAMAPHOSA:** Because we need checks and balances.

CHAIRPERSON: Yes.

PRESIDENT RAMAPHOSA: The check and balance that is embedded in our constitution is a strong enough sword of Damascus which hangs over the head of a President. But the other important check and balances in the party itself where the party system – well the party will go through a number of processes and I think that it where the strength of our constitutional structure or architecture rests that it does not
20 necessarily just revolve around an individual it resolves around a collection of people who will apply their minds and sometimes you could argue well maybe they could be brainwashed or they could all be captured or whatever there is that risk but in the main the check and balance is that it will be in the party. We have had in our history two

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situations where we have had Presidents removed or recalled rather not removed but recalled by their own party. A very painful process – deeply painful and that brought divisions in the governing party that almost tore the governing party apart but it was an important check and balance which in many ways if it had cascaded all the way through to Parliament would have really even divided the party down the middle and maybe that is not that and decisions were then taken in the party itself.

10 So I do not think we should ever see political parties as alien entities they are part of our constitutional architecture and they have very good checks and balances. Sometimes they fail but for the most part there would be you know good checks and balances that can put the brakes on a runaway vehicle that is going to crash.

 But then again it does not mean that that dilutes the efficacy of the construct that we have in the constitution that provides for a vote of no confidence in a President because when the wheels have come off in the party itself you do
20 need that check and balance in the constitution of the country where you would be able to – to have the type of outcome that you are talking about.

CHAIRPERSON: Well let me just say this in case it is misunderstood.

PRESIDENT RAMAPHOSA: Yes.

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CHAIRPERSON: I think what I am saying would apply to even opposition parties I think that – that is now if it is correct to say in the context of a vote of no confidence is the individual who must make up his or her mind about whether he or she has lost confidence in the President and bearing in mind their oath of office so that even with the opposition parties it would – if it is not right for the majority party to give an instruction it would not be right for the opposition party to say you are instructed in effect to vote in support of
10 the vote of no confidence. So – so it would apply both – or both sides. It is a question of whether it is correct and of course we know that there was the secret ballot judgment of the constitutional court which dealt with some of these issues and obviously we will have – we all have to have due regard to what it said. But I agree that it is not an easy subject. It is controversial in the context of party – the kind of system that we have but obviously faced with what this commission is investigating it would be failing in its duty if it did not look as deep as possible into saying what are the
20 things that made these things happen?

Because one the questions we posed to Parliament was the mechanisms of oversight and of holding the executive accountable that you have are they adequate? Were they adequate or for the purposes to which they have been put in place? Were they used you know? And of

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course when you come to the vote of no confidence the evidence emerged that well sometimes the majority party gave instruction to members of Parliament to say though shalt not vote that way or to this way. And the question arises whether what that does to what the – is that what the constitution contemplated? Is that the right thing constitutionally or not? But I think you have put your views Mr President so – so I do not know whether you want to say anything before I (speaking over one another).

10 **PRESIDENT RAMAPHOSA:** I do.

CHAIRPERSON: Yes, ja.

PRESIDENT RAMAPHOSA: I do because it is interesting that you also talk about opposition parties because opposition parties here also have that same herd mentality and when they vote they vote as a block. Even when they walk out of Parliament they walk out as a block – as a herd of cattle. You just see one of them walking out and they all follow. And that is in a way that is another check and balance because what it does it shows disapproval that they
20 want to display of whatever and sometimes when the Presiding Officers rule that one of them should walk out they all walk out – so it is a very controversial issue.

CHAIRPERSON: It is yes.

PRESIDENT RAMAPHOSA: It really is and ...

CHAIRPERSON: No it is very controversial and yes. Mr

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Freund.

ADV FREUND SC: Thank you Chair. I have no further questions.

CHAIRPERSON: Okay thank you. Thank you Mr Freund.

PRESIDENT RAMAPHOSA: Thank you.

ADV FREUND SC: Thank you Mr President.

PRESIDENT RAMAPHOSA: Thank you.

CHAIRPERSON: Mr Pretorius.

PRESIDENT RAMAPHOSA: Can I go home now?

10 **CHAIRPERSON:** It is too early Mr President. Too early. Mr Pretorius will toyi toyi if you leave now.

ADV PRETORIUS SC: Thank you Chair. Morning Mr President.

PRESIDENT RAMAPHOSA: Morning Mr Pretorius.

ADV PRETORIUS SC: We stopped yesterday at the issue of party funding and we were dealing with the funding relationship at least between BOSASA on the one hand and the African National Congress on the other.

20 By way of background between 2007 and 2009 there were a number of press articles about corruption involving BOSASA and the administration at least.

There was a SIU investigation that received a lot of publicity and in 2009 charges were contemplated. For some reason nothing happened for over ten years and that reason has been explored fully or virtually fully in evidence and the

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Chair will make his findings in regard to that.

In 2015 Ms Dudu Myeni handed copies of the investigation file to Mr Angelo Agrizzi that evidence as we regard it stands and at least the former President it was probable that he knew of it because she was there on the foundation of the former President's defences.

There were several meetings between Mr Watson and the leadership of the ANC and finally in the media the relationship between Mr Gavin Watson and the party –
10 leadership in the ANC was manifest. There was that War Room at the elections you will know about that that was financed by BOSASA operations and it was no secret.

In those circumstances it is difficult to accept that vigilant members of the ANC would not have been aware firstly of the fact that BOSASA was helping the African National Congress through donations and benefits.

And secondly that the company involved BOSASA was the recipient of large contracts under dubious circumstances from government. That being so how – how
20 could it happen and the facts are there – how could it happen and that is the second question – broad question that we ask that the party continued to receive benefits from and be financed by BOSASA?

PRESIDENT RAMAPHOSA: I think it is a valid question – a very, very valid question and one should have been aware at

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an earlier stage about all this. I went to the election centre which BOSASA have to finance during the election campaign and even then it never really I must be honest occurred to me firstly that they were bank rolling or they were financing in full that whole centre for – on behalf of the ANC.

The Treasury General as well as colleagues or comrades who ran the elections knew and I must say it never really fully occurred to me.

So with hindsight as they say hindsight is the
10 00:28:18 signs one would say we should have been more alert particularly to those reports that had emerged a lot earlier because during the course of all this I mean there was almost like a nine year – ten year period after they had occurred according to my own recollection so there had been a lapse. Ordinarily I think I said in my evidence – my opening statement we would not knowingly – knowingly and intentionally accept donations from companies or donors with – who had been involved in criminal activity and all that so that should be regarded as a major lapse in our part
20 particularly it had been proven that they had obtained their contracts unlawfully.

ADV PRETORIUS SC: That is viewed at hindsight but looking at what was happening at the time I am not sure that hindsight is an accounting for what happened. It is an explanation one can shot – shut the door on it and one can

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resolve not to do so in the future and that is being the trend of the evidence thus far and I am going to deal with that issue in due course.

PRESIDENT RAMAPHOSA: Ja.

ADV PRETORIUS SC: But it is difficult to avoid the conclusion on the facts that in the circumstances the ANC received donations from BOSASA and BOSASA officials, board members, leaders in BOSASA in circumstances which was such that required a proper investigation and
10 that the principle that it would not knowingly accept donations in these circumstances, was in fact a breach because people knew, the President of the time knew.

PRESIDENT RAMAPHOSA: Yes. Yes, Chairperson.

CHAIRPERSON: H'm.

ADV PRETORIUS SC: And is it not correct, and this theme would come up later, that the reason why there was no reporting of this particular receipt of donations was that, in fact, the President was in control of the party, the then President?

20 **PRESIDENT RAMAPHOSA:** Yes, certainly the President plays a very key-role in the life the party it leads or she leads the party and provides leadership and gives direction. That is so.

ADV PRETORIUS SC: Now we have been accused in the media, Mr President, of having kept blindside(?) [laughs]

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PRESIDENT RAMAPHOSA: [laughs]

ADV PRETORIUS SC: It certainly will not remain on today. [laughs]

PRESIDENT RAMAPHOSA: [laughs]

ADV PRETORIUS SC: And perhaps it is important for the public to understand, Chair. This is a commission of inquiry. It is not a trial. We are not here to panel beat the answers in accordance with any particular view. This is an opportunity for you, Mr President, to say and you have said
10 what you think. Good or bad. Whatever the public might think about it, this is your opportunity to say it.

Nevertheless, there are certain things that we do have to raise which we will raise today and the one is the CR17 Donation from BOSASA operations into the FNB account. Now this has been dealt with by – I have gave you for, and yesterday, just an opportunity to explain to the public and the Commission what happened.

PRESIDENT RAMAPHOSA: Well, there are two aspects to this. The one aspect is. The donation that was solicited
20 by one of my colleagues into the funds of CR17 Campaign. Now the campaign managers had taken a conscious decision that they would not involve me at all in the fundraising process.

They had also taken a conscious decision to say they would not want me to even know who would give

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money to the campaign because they wanted to almost create a wall that those people who give money should never really think that there is anything that they will get in return. That if I knew that there could be that compromise.

So they took a conscious decision and they told me that that is what we have decided. We – you are the candidate, we are the campaign managers, and we are building a wall and we are going to make sure you do not know where the money will come from. We would,
10 however, as it – when time went on, we will, however, want money from you.

They solicited money directly from me which I gladly gave and it was put in account and I never knew. Up to today I do not know how those funds had been managed. I did meet some of the people who gave money, at dinners or whatever to explain precisely what we were seeking to achieve by my candidature and that is where it ended.

So, when one of my colleagues then approached,
20 I think one of the Watson brothers, whom he knew from long ago because he was a comrade before he passed away, a comrade in the ANC structures, UDF structures and all that, to give money, he seems to have said: I want you to give money personally from your own money and not... It seems like he made that distinction from your own

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purse and not from the company itself. So that is what I believe he seems to have done.

So, of course, as the story, you know, was made public, it seems like it came from BOSASA. I do not quite remember the finer detail. I think it came from him or one of his companies or accounts. And I think the Public Protector and the legal processes looked into all that. So that is the one aspect that had to do with monies that had to do with anything BOSASA related even though I think
10 the money never really came from there.

So I was far away from the finances that financed the CR17 Campaign for the reasons that I have articulated that the managers did not want me to know so that I should never be beholden to any of the people who gave money to the campaign. And as it turned out, we had by – maybe by osmosis in the ANC arrived at a situation where there are formal campaigns that are now mounted for people to be elected to positions.

It never used to be like that in the past and we
20 still demean the fact the we have now arrived at a campaign style type of contestation for leadership which is regrettable but that is where we are and I will remark on this in a little while. The other part was how the campaign managers then went ahead to raise money for the campaign.

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It has been said a billion rand was raised. It was never a billion rand. I am told that the money that was raised was some R 300 million or so but never a billion but I do not know the full facts because they have neutrally decided to keep it away from me. And the money, what was it used for? There is a legend that goes around that the money was used to buy homes and far from it.

And I said to my comrades right in the beginning, I never want to be part of a campaign that is
10 going to descent into all these deviant part of behaviours that we talk about in the ANC about vote buying. And I even said I would rather lose the race rather than have votes bought.

So what was the money used for? It was used to transport people, to hire venues, and actually I got really surprised that it has become so expensive to have all these things, like, meetings, bussing people, feeding people, the paraphernalia T-shirts, caps and so forth that have been given out for the campaign.

20 And I think people who run campaigns will know that yes there is a cost to all of that. As it turns out, there is still a debt that still has to be paid in a number of forms and ways after that campaign that happened in 2017. So money was used for that.

And I guess one of the key-issues and

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challenges is that the people who were running the campaign were so methodical. They recorded everything in black and white. They recorded who was given money, what was it for, and some of the money was deposited into people's account to pass onto to others, to people in the regions and people all over.

And most of that money was then distributed or advanced towards a meeting, to hire a venue, for people to travel, for airtime, and all those types of things. So when
10 it came to – people often talk about these accounts that are locked up or where the courts decided and that had nothing to do with me because I did not block from all that.

And the comrades who ran the campaign have been quite, almost in ensuring that that is held to themselves and I never get involved in all that. But be that it may. That is now being deliberated by the courts and in some ways quite a bit of the information of who gave monies is known.

Those who have taken the matter to court know
20 who gave the money and the money that was given was also donated by a number of people. And many people, as they give money, the old dispensation before the new law about political funding takes place. They gave money on the understanding that we want – we do not want it to be publicised that we had given money for a political

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campaign.

So they wanted their own identity, to be kept out of the media and it was on that condition which the campaign managers agreed. They said: Okay, of course, you are giving money and we will keep your information confidential to ourselves. As it has always been the case with a number of monies that are given to political parties. Political parties by their very nature go around asking for donations and I think it will not be surprising for them to
10 hear that other donors do not want their information to be known but this is now a subject of a major court battle.

But in the end, Chairperson, there was nothing sinister, I must say, about the CR17 Campaign. Nothing underhand. People will always say and fear that those who gave money wanted something in return. I will never allow that and I would also say – and because I do not know, that to me is a safeguard, you know, how much so and so gave and all that because they kept it away from me.

I should say so that I never been seen to be
20 economic with the truth. Some of the people who gave money I got to know because some of them would tell me that: I had given money. And how much they had given, I do not know. So I should never be heard to be saying I do not know or some of them I know but I would say the majority I do not know until today.

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And I have to say: No, we agreed at the beginning of the campaign that we are not going to tell you and we are sticking to that. And there are like three or four people who are the key principles of this. They are like the able bodied people who refuse to even come out with the information. So that is how CR17 went and beyond that there were lots of court cases.

The Public Protector got involved because – I should explain this when some of the money was given,
10 particularly by Mr Watson, it went one from account to another and that was his own arrangement having been asked by one of my colleagues to give money and even that colleague never told me, by the way, that he asked for money from Watson and he moved the money from one account to the other.

And it sounded then to the Public Protector that that was money laundering and there was no such money laundering. And that is what I can say about the CR17 Campaign saga, if I can call it that. And then there have
20 been calls by other people to say: Well, we should also look at other campaigns. Let us look at other campaigns. And I have often said: Comrades, it is enough. Look at the CR17. It is enough. Let us put this behind us.

I have said that because soon after this whole story broke out, I went to the NEC and I said to the NEC I

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would like us as the ANC now to start regulating how internal leadership contents are managed in the ANC because we do not have such rules. I should hasten to add that in 2012 – no, after I think the Polokwane Conference, an attempt was made to regulate this and there was ...[intervenes]

CHAIRPERSON: The Mangaung Conference or the Polokwane Conference?

PRESIDENT RAMAPHOSA: I think it was ...[intervenes]

10 **CHAIRPERSON:** [Indistinct]

PRESIDENT RAMAPHOSA: ...2012. Ja, 2012.

CHAIRPERSON: 2012 was Mangaung, I think.

PRESIDENT RAMAPHOSA: It was Mangaung. Yes, yes.

CHAIRPERSON: H'm.

PRESIDENT RAMAPHOSA: You see, Chief Deputy Justice, you know so much. [laughs]

CHAIRPERSON: [laughs]

PRESIDENT RAMAPHOSA: It was at the Mangaung Conference where a constitutional provision was drafted
20 and the NEC was instructed, in one way or another, to finalise this and that constitutional provision never saw its way into the constitution. Until today, we do not know how it happened, why it happened, and some journalists have written about it.

And that provisions was going to be saying, we

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need to regulate how these contests are run and funded and it basically said there should be no fundraising, there should be no this and that and that. So that was never regulated and that is why these campaigns and almost on their own – there were seven campaigns for leadership for president leading up to Nasrec or to the 54th Conference. And they were all somehow funded.

They were all somehow managed in way or another which in a way, you know, shows that a new era
10 has arrived in the ANC but it needs to be regulated. So I was the first to go to the NEC and said: In the light of what we have been through and in the light of what I personally have been through it is important that we should regulate the running of these campaigns.

We should regulate the funding thereof, the management of the campaigns, how much money should be given, if any, and there should be accountability. After each campaign there should be full accountability of money that was given, what it was used for, where it came from
20 and so forth.

So this issue, Mr Pretorius, that you also glassed together with political party funding, originates largely from the ANC. The first issue about political party funding was first discussed in the ANC in – at – was it 2012? Or even earlier. I think it was in Polokwane which

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was – would have been the earlier conference, the 50th Conference or the 51st Conference.

We discussed it then and said we need to regulate party political funding. The law that we know have originated from discussions in the ANC and similarly this provision that I am calling for regulate political party funding for internal contents.

It is something that we will discuss and come for a more sensible conclusion around it, so that we never
10 have any doubt that conferences were bought as there had been a doubt about my election that my election was bought which is absolutely untrue, completely devoid from any truth whatsoever and I am prepared to lay out everything. Thank you very much.

ADV PRETORIUS SC: You referred to litigation, President, and we know that matters related to the Public Protector were before court and the high court was given your full explanation under oath and its comment was that that explanation was both honest and reasonable. That is
20 a matter of public record. You recall that?

PRESIDENT RAMAPHOSA: Yes.

ADV PRETORIUS SC: But two issues arise out of your answer. Well, three perhaps. And I think you have answered the three issue now. Is that the principles which applied to party funding should also apply to individual

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campaigns within a party.

PRESIDENT RAMAPHOSA: Yes.

ADV PRETORIUS SC: Is that acceptable?

PRESIDENT RAMAPHOSA: It is acceptable to me. Yes.

ADV PRETORIUS SC: Alright. The second issue is that, if those principles applied to internal contest, party contest, then the public... Well, first of all the recipient of the donation should note that fireball is perhaps not the best idea in those circumstances. And secondly, and
10 perhaps more importantly, the electorate, the ANC electorate and the people out there who may be affected in the sense of public officials are now – their careers are at stake. They should also know that is an acceptable principle.

PRESIDENT RAMAPHOSA: Yes, I would accept that and the reasons I would is that. You know, there needs also to be a limitation. A limitation of how much should be given even as we raise money because to avoid a situation where you could have huge amounts coming from one donor,
20 because that will give rise to a sense and a suspicion that they need to be given pre-eminence in any relationship. So if there is a limit and everybody know that this is the limit that everybody could...

Like, now we have created a limit that R 15 million is the most that can be given. So it basically

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means that there can be no donor who could give much more than that. Of course it is to the disadvantage of political parties but that is how our democratic system should work because that adds to transparency, openness and also confidence. It gives people confidence in that regard. So I would agree to that.

ADV PRETORIUS SC: Similarly, to the BOSASA acts and history and its relation to the ANC, there had been an admission by ANC Treasurer General, Zweli Mkhize, that
10 the Guptas also donated money to the ANC over the years.

PRESIDENT RAMAPHOSA: Yes, the then Treasurer General has admitted to that fact.

ADV PRETORIUS SC: And there can be no doubt that the conduct of the Guptas have also received visibility in the media and elsewhere. There can be no doubt that any donation from the Guptas should have been investigated.

PRESIDENT RAMAPHOSA: Yes, I would say so too.

ADV PRETORIUS SC: There was, in fact, an allegation that was made to the Treasurer General that the Guptas
20 the bill for the ANC's 2012 Conference in Mangaung. Is that correct?

PRESIDENT RAMAPHOSA: I have heard of this allegation, yes.

ADV PRETORIUS SC: Do you know whether it is correct?

PRESIDENT RAMAPHOSA: No, I do not.

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ADV PRETORIUS SC: Alright. The point about that and the point about the BOSASA donations is that surely there was enough information current against the principle that the ANC would never knowingly accept donations that were the proceeds criminal conduct but there should have been an internal investigation. Is that right? Both in relation to BOSASA investigations and in relation to Gupta donations.

PRESIDENT RAMAPHOSA: Yes, I would concede that there should have been, possibly, an internal examination.

10 I do not know to the extent to which an investigation would have been possible but an examination because investigation conjures up in one's mind an idea that you will subpoena this document. You will get this and that and being a political party, I know the limitations, even of the powers of the Secretary General to subpoena documentation and evidence. So there should have been an examination.

ADV PRETORIUS SC: Could it have been outsourced?

PRESIDENT RAMAPHOSA: Pardon?

20 **ADV PRETORIUS SC:** It could have been outsourced the investigation.

PRESIDENT RAMAPHOSA: Well, that is a thought. It could certainly have been outsourced, yes.

ADV PRETORIUS SC: Okay. To move on to a different topic in regard to party funding. I raised the issue

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yesterday, Mr President, with you about the – what I understood then to be two affidavits. It is in fact one affidavit which was provided to your team overnight. That, to put it briefly, the affidavit is some 170 pages.

You make some very strong allegations but to put it very briefly and given the restrictions of time. Ambassadors appointed by the President because the President appoints ambassadors, were required to sign debit forms to – in order to pay monthly contributions to
10 the ANC. Do you know of that?

PRESIDENT RAMAPHOSA: Well, let me say I know of this in a different guide. I did not have the benefit of going through the 177 pages for my bedtime reading last night. So I did not go through that but let me say. Those who would have received that would have received that as per their membership of the African National Congress.

Now as ANC members right from 1994, we took the view that we are a party that is strapped for money and we need to scour all over to find the money and one of the
20 best ways was to ask those who are members of the ANC to sign a levy form that they agree that the banks should tunnel money from their salaries or their accounts to the ANC.

Now when I was in business, as a member of the ANC, I did that as well. I signed a levy form and every

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month the money was docked from my account to the ANC coffers as per ANC member. Now that happens to many people. And those that it gets to be known are, you know, active in places where the ANC knows that you are getting a salary. In the private sector – when I was in the private sector, I paid or in the public sector.

For instance, today every member of Parliament representing the ANC legislature and local government, we pay levies to the ANC so that we can boost the coffers of
10 the ANC. And the same would happen if you are an ANC member, if you are, let us say, the chair or the CEO of one of the entities or if you are an ANC member. I know when I was Secretary General I used to solicit members who were in the private sector to sign levy forms.

Just anyone I knew would be a member of the ANC I would say: Sign the levy form and give money. And because you are in the private sector, give more money which is exactly what happened to me. Whereas others would be given five thousand or two-and-a-half thousand, I
20 would be giving ten to fifteen thousand because presumable one would be earning more.

So it is in that context that I would say, you know, even ambassadors who are ANC members would – they do not do it because they are appointed as ambassadors. They do it because they are ANC members.

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ADV PRETORIUS SC: Thank you. Mr Malloy, as I understand it, does say – or Ambassador Malloy does say that this contribution required by the ANC is paid by even those who are not members of the ANC as a reciprocal obligation for being appointed to ambassadorship in the first place. Do you know anything about that?

PRESIDENT RAMAPHOSA: No, I do not know anything about that, I would have a huge question mark around that.

ADV PRETORIUS SC: Alright, something that perhaps
10 may be investigated.

PRESIDENT RAMAPHOSA: Ja.

ADV PRETORIUS SC: The practice of donations to the parties, does it apply to all persons deployed into public office?

PRESIDENT RAMAPHOSA: Yes, it does. I am afraid it does. As I said, every member of representing the ANC at local, provincial and national level does give money to the ANC.

ADV PRETORIUS SC: There is a third aspect to the
20 funding relationship that the ANC has with members or even non-members. There has been evidence of the Free State asbestos scheme, you would have known about that, where to put it in very broad terms and subject obviously to certain qualifications, a contract was awarded to Blackhead Consulting, a firm owned by Mr Edwin Sodi. Its

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tender value was approximately R255 million, a subcontractor for R50 million, it was again subcontracted for approximately R20 million and there was still profit left for the second subcontractor to take over. Mr Sodi then, to the knowledge, it must be, of those who granted the contract, officials in the Free State, made a large profit and from that profit made several substantial donations to the ANC.

Now that is a matter of record and also a matter of
10 criminal charges now. Two aspects arise. One, it is evidence of the very patronage practice that has been identified by the ANC and spoken about by the ANC and we will deal with that in due course.

But is it not a concerning practice or pattern that proceeds of procurement, state procurement, go to private companies associated with and known to persons who are members of the ANC or might be members of the ANC and then come back to the party? In other words, the proceeds of procurement, around which there is a question mark,
20 come to the party as donations. Is that not an important issue that requires consideration?

PRESIDENT RAMAPHOSA: Well, I think in the way you have qualified this by saying around which there is a question mark, that certainly should be a matter that makes us take a second look at this and say should this be

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happening?

However, I should say - and the backdrop to this is that we now have legislation that is going to regulate donations. I should, however, say that there is inherently nothing wrong if – in the past there would have been nothing if a business entity then donated money which money was not given in return for anything, for any favours. If a business entity, whatever business it does, as long as it is not illegal, unlawful, gives money and does not
10 want anything in return, in my book is patently nothing wrong.

There is everything wrong – everything wrong if that business wants something in return, that we want you to favour us when it comes to a procurement or a service that we need to provide and all that. So that, in my book, should not be allowed.

But, Chairperson, we now have a revolution underway which in many ways is going to save our democracy in that donations that now have to be made
20 have to be accounted for. If a political party receives a donation it has to be kept at a particular amount and it must be accounted for in the books and the IEC is going to be rigorous when it comes to this and I would expect that our other agencies would also be wide awake when it comes to this.

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So one is not able to comment fully on the asbestos case because it is a subject of legal processes, so one leaves that as it is but in terms of the question that you have qualified, I would say yes.

ADV PRETORIUS SC: Right. The next source of political party funding is the use of state resources for political party activities. We have evidence that Telkom sponsored an ANC conference, Mr Montana and Mr Molefe, albeit that they were on either side of a fence, spoke about PRASA
10 providing facilities, transport and other support for the ANC. Again, pressures of time, surely that cannot be accepted?

PRESIDENT RAMAPHOSA: I would agree that that should not happen because those are public monies and it creates a problem when monies that are meant are to be managed by one of our state institutions are then utilised for party political funding.

Now you could say if the situation were to allow – if they were going to give money right across to all parties
20 that will be different, but I do not think that too should be allowed because the monies that aid PRASA and Eskom and all these others have to be used for developmental purposes, develop infrastructure, develop everything they do for the majority of the people.

So the Party Political Funding Act comes in handy

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here as well because it will help us to prevent these sorts of things from happening.

ADV PRETORIUS SC: The Political Party Funding Act, I am told by our research team, that it was passed by parliament in 2018 and signed into law by yourself, Mr President, in January 2019 but promulgated in April this year. Why was there that delay? Were the political pressures involved.

PRESIDENT RAMAPHOSA: You know, all things like
10 these have to properly and fully discussed and fully embraced and as, you know, Mr Mantashe said, you know, things in political organisations take a long time to happen. That is precisely what happened here as well.

Whilst it was the ANC conference that decided – and if my recollection is correct, it decided at its 50th conference that there should be regulation of party political funding and the process leading up to where it is finally, to where the President was able to set a date for the commencement of the Act has been fraught with a lot of
20 discussion and some of it, just to give you a flavour, is that even the political parties in parliament themselves had great challenges with this law because once the ANC had discussed and once it was introduced by some of - ja, into parliament, we found that political parties were not ready. Simply put, they were not ready for this to come into effect.

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When they started looking at their balance sheets where they get money from, they realised that unless the fiscus is able to, you know, give sufficient money to fuel their own democratic processes, it was going to be difficult to have money, sufficient money and even their donors would baulk at the idea of being - their information, that they have given money be known by everyone.

So whilst it is good for democracy, in the end it is going to be very difficult for political parties for their
10 funding purposes. So it took a while. It took quite a while. Debates internal to many of the political parties and even in the ANC and finally we have arrived where we are and in the end the President had to say we have got to sign this bill and it must come into effect and that is the journey that we have travelled and with the maturing of our democracy, some of these things take a while, they take some time to happen but I would say even – there is a saying in Afrikaans which I now – *die agteros kom ook in die kraal*, even the slowest ox does come into the kraal, so I would
20 say that exactly what has happened.

ADV PRETORIUS SC: It was a very slow ox, it seems.

PRESIDENT RAMAPHOSA: It was a slow ox.

ADV PRETORIUS SC: There is one other aspect in relation to party funding that we can probably better deal with when you return, Mr President, but on the principle

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that secrecy should never be utilised to trump or cover up criminality, that principle is expressed in a regulation which ironically is itself secret but that we may come to in due course.

The State Security Agency, there has been evidence that money has been used, state money, taxpayer money, has been used in funding political activities. That is a matter that I would like to deal with next time but for the moment simply to ask you to comment.

10 There has also been evidence that the CR17 campaign was disrupted to funds supplied by the SSA. Do you know anything about it? That would be entirely criminal ...(intervenes)

PRESIDENT RAMAPHOSA: That is was disrupted?

ADV PRETORIUS SC: Yes. Well, the precise manner of disruption is not entirely clear but the reports were that the regalia that was being provided to your supporters was interfered with, let me put it that way. You know of that?

PRESIDENT RAMAPHOSA: No, I do not know about that.

20 **ADV PRETORIUS SC:** Alright. Perhaps we will get further information in that regard. But do you know of any circumstances where State Security funds have been used in relation to party activities?

PRESIDENT RAMAPHOSA: I have heard but I have no evidence that yes, they have been utilised but I have no

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evidence.

ADV PRETORIUS SC: We will deal more comprehensively with the State Security evidence but it does seem that many of these issues require proper outsourced and empowered investigation and I know that will be put to you and it seems without much [indistinct – dropping voice]

Then there is one other issue that has arisen in papers clearly submitted by yourself and that is the issue of branches and vote buying but I would like to deal with
10 that later, if I may.

If I may go back to another issue briefly, hopefully. We discussed yesterday the eye of the needle document, that 2001 document which was a very important document in the history of the African National Congress, as I understand it. There was in 2020 a review of this document and it appears in your own bundle at page 449, bundle 1, 449.

PRESIDENT RAMAPHOSA: 549?

ADV PRETORIUS SC: 449.

20 **CHAIRPERSON:** Did you say bundle 1 or bundle 2?

ADV PRETORIUS SC: Bundle 1, 449.

CHAIRPERSON: Okay.

PRESIDENT RAMAPHOSA: Yes. I try to be like you.

ADV PRETORIUS SC: That document is a review of the eye of the needle document, do I understand it correctly?

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PRESIDENT RAMAPHOSA: Yes.

ADV PRETORIUS SC: It says many things but it does say in its 2020 review – and we have put on record the problems highlighted in 2001 in the document but something deeper has gone wrong.

“Deviant behaviour is finding protection and is thriving inside the ANC liberation alliance.”

Now the proposition has already been put and it may be put again ...[intervenes]

10 **PRESIDENT RAMAPHOSA:** Where were you reading?

ADV PRETORIUS SC: If I may just get it for you, page 450.

PRESIDENT RAMAPHOSA: Okay.

ADV PRETORIUS SC: Paragraph 14, bottom of the first column.

PRESIDENT RAMAPHOSA: Yes.

ADV PRETORIUS SC:

20 “It is now acknowledged that something deeper has gone wrong in the movement. Deviant behaviour is finding protection and is thriving inside the ANC-led liberation alliance. It is perhaps the fact that the document is dealing with a needle and not the needle, it is the size of the needle.”

And then it goes into a series of analogies. If one goes to the first paragraph, to put that statement in its context, the

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introduction reads in paragraph 1 on page 449:

“It has been 30 years since the unbanning of the ANC, it has been 26 years since the democratic breakthrough, it has more than 19 years since through the eye of a needle choosing the best cadres to lead transformation document was produced. In these years the ANC has grown in membership and yet the qualities of its cadres is fast diminishing.”

10 Now we do not have time, unfortunately, but it would be instructive to go through the various statements made by various presidents, amongst others, over the intervening years between 2001 and 2020 and I will come to your own documents shortly but it seems that the problems not only generally but in particular patronage corruption and the like, factionalism were always present throughout these years.

They had never been successfully dealt with and the language as indeed got stronger but South Africa looks
20 to the party which governs the levers of power, which govern the people of South Africa for some change and the question arises what is new? But before we get there, may I just go to the – there is a document on page 581, paragraph 8 of the bundle 1. This is the 52nd national conference report, the Polokwane conference of 2007.

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PRESIDENT RAMAPHOSA: What page are you on?

ADV PRETORIUS SC: I am on page 580.

PRESIDENT RAMAPHOSA: Oh, 580.

ADV PRETORIUS SC: Of bundle 1.

PRESIDENT RAMAPHOSA: Yes, I indeed. Yes.

ADV PRETORIUS SC: If you would just bear with me a moment?

PRESIDENT RAMAPHOSA: Of course.

ADV PRETORIUS SC: In paragraph – I am sorry, that is
10 my notes, that is my error. Paragraph 8 on page 581, now
this is 2007, it reads:

“Our accumulated weaknesses include inability to
effectively deal with new tendencies arising from
being a ruling party such as social distance,
patronage, careerism, corruption and abuse of
powers, ineffective management of the interface
between the movement and the stage, a flawed
approach to membership, recruitment decline, and
ideological depth amongst cadres and a lack of
20 institutional resources to give practical effect to the
movement’s leadership role.”

Quite a strong and stark repetition of the issues facing the
ANC over the years, this is 2007. What is interesting
about it is that a reference is made to new tendencies but
these were not really new, were they? Were they – did

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they arise somehow in 2007?

PRESIDENT RAMAPHOSA: No, I would agree that they were not new tendencies but they have been evolving and evolving around the number of eras that we have been through, one of those being, as you read in one of the paragraphs, that being a governing party has given rise to a number of opportunities to be in government, their access to resources, be able to dispense patronage, to be in control of, if you like, procurement, resources and
10 opportunities and that is – well, that started in 1994 but as time went on, we got used to being the incumbent. Incumbency then gave rise to a whole number of deviant behaviours which we have acknowledged openly that this, in many ways, is a source of our problems and we have got to navigate our way around or – well, out of these type of problems that we now have.

So in 2007 this would not have been new but I guess if you are asking – we have always known that these are the challenges and the problems and are you able to
20 get yourself out of all these challenges? I guess that is your question.

ADV PRETORIUS SC: Well, perhaps we can deal with that after the long adjournment. I do want to get to three statements that you made in August 2020, a month in which you must have been angry, your blood pressure must

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have been very high. But we will get to them in due course.

PRESIDENT RAMAPHOSA: Okay.

CHAIRPERSON: Okay, it is six minutes past one, let us take the lunch adjournment and we will resume at five past two. We adjourn.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Before we continue let us have a
10 common understanding about what time we will adjourn this afternoon. Yesterday we spoke about the possibility of going up to five if necessary but later on we decided to start at nine, one hour earlier but I think we did not have clarification whether - because we started at nine we will stop at four, whether if necessary we could still go to five. Maybe – Mr President what is your situation?

PRESIDENT RAMAPHOSA: I am at your service
Chairperson.

CHAIRPERSON: Yes, okay. Okay, no thank you, thank
20 you. Okay Mr Pretorius so we see how it goes but the President is able to go up to five if we need to, ja.

ADV PRETORIUS SC: Thanks Chair, I did negotiate ten past five with his office.

CHAIRPERSON: [laughing] No that is alright, okay.
Okay let us continue.

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ADV PRETORIUS SC: Thank you. Mr President would you look at what is known as the Diagnostic Report of July 2017, you will recognise that document. It is in Bundle 1 at page 836, or that is certainly the passage I would like to refer to. For the record the first page of the document is on page 821. It is a document prepared I understand for the National Policy.

CHAIRPERSON: I am sorry Mr Pretorius, you said 835, but I think you said another page after that.

10 **ADV PRETORIUS SC:** Yes, the document begins at page 821.

CHAIRPERSON: Yes, you want us to go to that page?

ADV PRETORIUS SC: Yes, please it is a document dated July 2017. It is known as a Diagnostic Report and it was prepared for the, is it the July 2017 conference, is that correct? If you go to page 836 and you refer to this report, Mr President in paragraph 131 of your own statement, that is on page 58, Bundle 1 and it is the date of the statement that is important, as well as, of course, the content. It

20 reads:

“The public outcry about the influence of the Gupta family has led to investigations by both the office of the Public Protector and the South African Council of Churches, serious allegations were made against a number of the leaders of the ANC. Instead of

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dealing with the reality facing the movement, a defence was developed by using the real threats we face as a movement. A narrative was developed to link any discomfort with the influence of the Gupta family to the regime change agenda. While it must be acknowledged, that regime change is a real threat, that needs to be analysed and a strategy to defend the country and the movement needs to be developed. This cannot be used as a response to
10 the perception or reality of corruption both objective and subjective factors in this regard, need to be understood.”

And then in paragraph 6.5:

“Another defence that has been bandied out is the one that counter pose as the behaviour of this family to (white) monopoly capital. White monopoly capital is invented as if it is a new phenomenon instead of affirming that its defeat is at the heart of the revolution and the essence of NDR.”

20 And then in the middle of paragraph 6.6, five lines down the statement is made that:

“Society on the other front expects the ANC to take a stand against corruption by taking serious action or being seen to do so.”

It seems that this document, Mr President, and the short

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passages I have referred to indicate what you have referred to as internal contestation, that there was within the governing party - and I think it is no secret an internal context and back there is a period through which the ruling or governing party went during the period under review.

It seems here that what you refer to as the line being drawn at its origins, the most recent line being drawn but had been drawn many times over 20 years, is that correct?

10 **PRESIDENT RAMAPHOSA:** Yes.

ADV PRETORIUS SC: Then if you go to the December 2015, NASREC 54th Conference Report, that is in Bundle 1, page 256 you refer to it as well, in paragraph 133 and following of your own statement, and many of these statements that I have put to you in fairness have not been discovered by us they are in your own statement.

Page 256 of Bundle 1.

PRESIDENT RAMAPHOSA: Yes.

20 **ADV PRETORIUS SC:** There is on that page a resolution that was taken at the conference and I would just like if I may to refer to certain parts of that resolution. It is resolution headed ANC credibility and integrity dealing with corruption. The first bullet reads:

“An increase in corruption, factionalism, dishonesty, and other negative practices that seriously threaten

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the goals and support of the ANC.”

Again, the phrase an increase in corruption, it is not the first time it's been used, we pointed it out this morning.

The third bullet:

“That corruption robs our people of billions that could be used for their benefit.”

The fifth bullet:

10 “That current leadership structures seem helpless to arrest these practices, either because they lack the means or the will or are themselves held hostage by them.”

Now, I understand, Mr President, that you are here as a party leader, and what is said and how it is said is important in relation to, let me say, how the party responds to issues and strategies going forward, no one is blind to that fact.

But what is being referred to there, is it correct to assume that one is talking about the hold that previous leadership had over the party?

20 **PRESIDENT RAMAPHOSA:** Yes, the leadership is to be seen as a continual that leadership of the ANC and this is what in large measure distinguishes us from other organisations that the leadership that we have would have been in place for quite a while, though it continues.

But I think what we have is that we are now having

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to respond to precisely some of the challenges that we face, which you articulated in the noting part on 256. Where we say there is an increase in corruption, factionalism, that seriously threatens the goals and support of the ANC that the leadership right now that has had to draw a line is responding to precisely to the increase in corruption, factionalism and that this problem is not going away, it is continuing to entrench itself by increasing.

Therefore, it requires a drastic action that should
10 be taken because it is resulting in less and less support for the ANC, weakening the ANC, dividing the ANC and simply making the ANC less of a modern party by lack of renewing itself, because it is a living organism, it needs to continue renewing itself and it remains merry bound and therefore it needs to change and this is what has led to realigning the set.

ADV PRETORIUS SC: This is...[intervene]

CHAIRPERSON: I am sorry, Mr Pretorius. When I see
this part of the report, Mr President, I am reminded of the
20 fact that earlier this morning when Mr Freund was leading your evidence and questioning you on Parliamentary oversight, there was a time where he made the proposition that it seemed that the Portfolio Committees I think he was talking about that did not have the will or were unwilling to do the necessary to deal with these allegations of the

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Gupta's, there influence on government and so on.

But it is interesting that in this report, one of the things that is said is, well, maybe the current leadership does not have the means, but maybe does not have the will. Maybe they are themselves held hostage by these challenges.

So maybe Mr Freund might not have been too far from what the ANC itself was talking about, this is 2017 August, I think and I think he was talking about the period
10 in 2016 here if I am not mistaken.

ADV PRETORIUS SC: And this is a resolution of the conference.

CHAIRPERSON: Yes, so it seems to me that he might not have been far from what the ANC itself were - after analysing the situation came to.

PRESIDENT RAMAPHOSA: Yes, if you do read this noting part, the ANC is being very honest with its – it is being very realistic.

CHAIRPERSON: Yes, yes.

20 **PRESIDENT RAMAPHOSA:** And it goes even further and this is precisely what we have experienced, sadly, where it also says that, at times, we do things that are not according to ANC, or government policies or not legal or constitutional, and wait for Courts to correct our actions and that is the sad part that this conference was talking

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about. But it goes on to resolve what now needs to be done, which is precisely what we are now working on towards.

CHAIRPERSON: Yes.

ADV PRETORIUS SC: So just to put that in its context in relation to a statement you made yesterday, that this is about drawing a line in the sand that the - what was recognised in this resolution, on the face of it are two things.

10 Firstly, that corruption had increased and quite simply had become intolerable with the ANC.

But secondly, that current leadership was unable to deal with it, something new had to happen, is that correct?

We will deal with this the next time around but whilst we are here, Clause 7 of the resolution reads;

“ANC deploys to cabinet especially finance, police and justice to strengthen the State capacity to successfully investigate and prosecute corruption and account for any failure to do so.”

20 There has been, let me put it, overwhelming evidence before the Commission over the last three years that law enforcement agencies over the period under review were weakened, is that a fair statement?

PRESIDENT RAMAPHOSA: Indeed they were weakened.

ADV PRETORIUS SC: But we will deal with that insofar

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as is necessary in the next session.

PRESIDENT RAMAPHOSA: Indeed.

ADV PRETORIUS SC: A third statement was made in January 2018 and this is again in reference to the drawing of the line, it appears in Bundle 1 at page 152 and in your own statement, at paragraph 143, you yourself refer to the statement, if I could ask you to turn to page 862, please.

PRESIDENT RAMAPHOSA: I seem to have made life very easy for you.

10 **ADV PRETORIUS SC:** As it appears from page 852 this is a statement of the National Executive Committee of 8 January 2018.

PRESIDENT RAMAPHOSA: Yes.

ADV PRETORIUS SC: And if I could take you to page 862.

PRESIDENT RAMAPHOSA: Yes, that is where I am.

ADV PRETORIUS SC: It is a very clear statement is made again, which accords with your description of drawing a line in the sand in the 4th paragraph:

20 “We shall confront corruption and State Capture in all the forms and manifestations that these scourges assume. This includes the immediate establishment of a Commission of inquiry into State Capture, the investigation and prosecution of those responsible will be given top priority mechanisms

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for the appointment of individuals to senior government positions, State owned entities and law enforcement agencies will be strengthened to improve transparency, prevent undue influence, and ensure adequate vetting of candidates.”

And a lot more is said in the same vein, about that renewal, the drawing of the line in the sand and the move forward. But if we could, then fast forward to August 2020 by all accounts a difficult month for you, Mr President you
10 will remember, but if we could go to Bundle 1, page 934 and you deal with this in paragraph 147 of your statement.

This is a statement of the NEC of August 2020.

PRESIDENT RAMAPHOSA: Yes.

ADV PRETORIUS SC: It is an ANC statement on the outcomes of the National Executive Committee meeting and on page 934, under the head corruption drawing a line it reads:

“The ANC is outraged and deeply embarrassed by recent allegations that some including its own
20 leaders and members have sought to benefit unlawfully from the devastating suffering and impoverishment caused by the COVID-19 pandemic. These developments caused us collectively to dip our heads in shame and to humble ourselves before the people. We acknowledge the justifiable public

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outrage caused by the depravity and heartlessness played by some elements in government, our organisation and the private sector. We unequivocally condemn all forms of corruption, dishonesty and State Capture involving the public and private sectors including collusion, price fixing, tender fraud, bribery, illicit financial flows, illegal imports and misuse of tax havens. We will comprehensively fight corruption combining both
10 prevention and punishment. Those who loot public resources must face the full might of the law.”

And then over the page:

“The moral standing of the ANC has been severely damaged by the conduct of some of its members who in fact do not deserve to be in our ranks. We are committed to draw a clear line.”

This is another drawing of the line;

“Between our organisation and those who steal from the people thereby subverting the very essence and
20 reason for the ANC’s existence as a servant to the people.”

The next paragraph reads:

“The meeting recognise that the NEC was clearly mandated at the 54th National Conference to deal decisively with corruption, and to restore the

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integrity and values of the ANC. This is a responsibility that cannot defer, outsource, or avoid.”

And that is the page at which the term outsourcing was used as being something that could no longer to be done. If I may just refer to, two other statements, before asking the questions that we need to, if you go to Bundle 1, page 940. This is also dealt with in your statement at paragraph 148. This is a letter to the members of the African National
10 Congress if I understand it correctly dated 23 August 2020 and authored by yourself, is that correct?

This is the well-known statement, which has caused some controversy. If one goes to page 942, it reads two thirds the way down the page, well, let us deal a little more thoroughly with it on page 942 under the heading we need to take responsibility, it reads:

“As the inheritors of the legacy of Lathuli, Thambo and Mandela, we must be honest with our people and ourselves. We must acknowledge that our
20 movement the African National Congress has been and remains deeply implicated in South Africa's corruption problem. We have to be sensitive to the concerns that are being raised by our people about our role as a movement in corruption.”

Certain further statements are made, but further down the

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page the statement is made:

“Today the ANC and its leaders stand accused of corruption. The ANC may not stand alone in the dock but it does stand as accused number one.

This is the stark reality that we must now confront.”

And then if we go finally to the Presidential newsletter of August 2020 at page 560. Sorry, that is the wrong page, Bundle 2 I am afraid sorry I have misled you, Bundle 2, page 560. This is a newsletter...[intervene]

10 **CHAIRPERSON:** Hang on, Mr Pretorius I am still waiting for my bundle.

ADV PRETORIUS SC: I am sorry.

CHAIRPERSON: What is the page Mr Pretorius?

ADV PRETORIUS SC: 560.

CHAIRPERSON: Okay, I am there.

ADV PRETORIUS SC: It reads, this is a communication from yourself, Mr President, to the nation in your capacity as President of the nation but it is appropriate to deal with it now:

20 “Dear fellow South Africans corruption during a national disaster is a particularly heinous type of crime and perpetrators are going to be dealt with decisively and harshly.”

And then a few paragraphs down before the next heading:

“Attempting to profit from a disaster that is claiming

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the lives of our people every day is the action of scavengers, it is like a pack of hyenas circling wounded prey.”

And then an issue that I would like to raise later, Mr President over the page under the head multidisciplinary approach, you say:

“Experience here and in many other countries shows that a multi-disciplinary approach to tackling the commission of alleged criminality is needed for the fight against corruption to be successful. A broad range of investigative and prosecutorial capability need to be brought together under one roof.”

And that is one issue regarding the way forward that perhaps we can canvass later. But for the present, this is perhaps the strongest language used in the history of 20 years of identifying corruption, corrupt activity and undertaking for the nation as a whole to deal with it decisively.

In other words - and we have seen it before from 2001 and perhaps before that too, in fact, before that too, many lines have been drawn in the sand. It has been drawn in the sand repeatedly, the language, particularly under your Presidency, has got stronger and less equivocal.

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But the question remains in 2018 the line was drawn, in 2020 the nation refused, what is it about corruption and how can it be explained that despite the statements and let us accept that those statements were made with seriousness. What is it about our society that in 2020 you have to say what you have say about circling hyenas when that line has been drawn decisively so many times before?

PRESIDENT RAMAPHOSA: Chairperson I do state it quite
10 clearly in my both opening statement and in my main statement that over the periods, including the period under review, there has been recognition of malaise of corruption in the ANC, and what I said earlier, before the break about this issue of incumbency that we got into government, and we were robed with the powers of the State and ability to manage resources, dispense patronage and all that.

And we have accepted and admitted in the past that that has resulted in a number of deviant type behaviours and having recognised this over time we have said we need
20 to act against it. And with the elapse of time, we have seen the price that is being paid by the people as a whole, as they are deprived of good service delivery, because the resources are being diverted, have been plundered.
We have realised that at an economic level, it is having a dent against our economy and at a social level it is also

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having a serious impact. But over and above that it is also having an impact on the ANC itself because it results in the breakdown of party discipline, the breakdown of party morality and the disregard of our principles and what that leads to is the ANC becomes less attractive to ordinary citizens and we should support it, we should join it and finally it leads to election loss or diminishing support that we can see and with this in mind, we decided that we need to plug those holes so that the ANC can renew itself and
10 regenerate itself, because if we do not we are just on a one way ticket to oblivion really, to defeat the poles and we therefore need to do something, and either two people would have taken less, paid less regard to the impact that it has on the ANC itself and on our electoral position.

This time around, that realisation is there, that we have got to change direction and do it at the pain if you like, you knowing that we could lose support and we have seen the decline of our electoral support going down continuously.

20 So all these measures and initiatives and solutions have to be embarked upon so that the ANC rids itself of those who may well be having other intentions on the resources of public.

CHAIRPERSON: Well, it seems to me Mr President that because of the influence that the ANC has in society and

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because it is the majority party in parliament, the government is its government. It has a very important role to play in where the country is going, and if one looks at the types of issue that the commission is investigating, one can see that whatever it is that the ANC may say we did, did not do.

Simply to the point. That is why corruption has reached the levels that it has reached. That is why we hear the kind of evidence that the commission has been
10 hearing. So to the extent that the ANC wishes to be part or to even play an important role because it must I think, in changing the situation in the country on these matters, it cannot do so it seems to me and you may comment on this, by looking at those things that are comfortable for it to change.

It cannot make a meaningful impact. It cannot make a serious contribution for making a meaningful impact on corruption and issues of State Capture unless it confronts issues that are painful to confront, and say to
20 change things we will have to deal, we have to do certain things that we are not comfortable to do.

So as you prepare to come back later, because even though you will be dealing with matters wearing your cap as president of the country, there will still be ... there is still some homework to do as president of the party as

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we discussed yesterday.

It is going to be important to really look at what are those really important things that may need to be looked at.

MR RAMAPHOSA: That is so true and we have gone through the period of retro - what is it?

CHAIRPERSON: Introspection.

MR RAMAPHOSA: Introspection, of introspection Chairperson, and in part the reason we then decided that
10 we are going to advocate seriously advocate for the establishment of this commission, whilst there was doubt and whilst there was even talk that this commission could tear the ANC apart, we were brave enough, courageous enough to say this is a necessary process that we must go through as part of our own renewal process.

It is almost akin to this legend that is spread around of an eagle. An eagle that has reached its old age, as it were and finds that it can no longer catch its preys and feed itself. There is a legend that when that time comes, it
20 withdraws and goes to the highest peak of the mountains and whilst there, it goes through a very painful process of shedding its claws.

Of plucking out its feathers. They argue that, and it is a legend I think, that it bleeds. It goes through pain and suffering and after it has plucked its feathers and taken out

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its claws, they grow back and it emerges with new feathers, new claws and it then starts to fly off and it soars and goes even higher and then it functions a lot better.

So this commission is a cathartic moment for the ANC, I must say. It is a very difficult period for the ANC to go through because whether people like it or not, the ANC is the governing party and it has a dominant presence in the life of this country.

It has got to renew itself and this is what has
10 brought us here, and our presence here and our support for the commission and our participation, is that whole process of plucking out our claws and pulling out our feathers, so that we may come out of this process new, as part of the renewal process.

So this is what we are doing. Not that it was doubted, it was feared, it was contested. But in the end this is where we are and we have got to go through this process and beyond your report we should be able to fully renew ourselves and deal with the matters that brought us
20 here.

CHAIRPERSON: Thank you. Mr Pretorius?

ADV PRETORIUS SC: The Chair has raised the issue a number of times and we have, and in fairness you have Mr President, and that is to pry over and above introspection which is aimed at the future, but in retrospection to look at

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the past, to try and understand that things that did happen within the party actually happened in order to inform the way forward, and is there not, although this is succinctly stated, and it is in a sense carefully stated.

It is never the less quite clear and firm and it is noting part of the resolution of the 54th national conference which says current leadership structures seem helpless to arrest these practices. Either because they lack the means or the wealth or are themselves held hostage by them.

10 In other words the practices of corruption and State Capture. Is there not a need to look at that statement more carefully, to dissect it, to understand why this conference got to where it was, who made the decision?

MR RAMAPHOSA: Conference made that it was the noting statement and conference being a conference of more than 5000 delegates from branches, the predominant views that are expressed at conference are from ordinary members who are representing the branches of the ANC.

20 As conference reflected on this, it did correctly say we seem to be helpless and the leaders seem to be helpless as well, and it is either they lack the will or they themselves are captured in one way or another but that is conference noting and noting with a measure of sadness that this is where we are.

Are you helpless, are you do you lack the political

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will. So it is a proper analytical observation by delegates at the conference and I agree with that, but would say it is not true that the entire leadership is captured and it was an observation by the delegates.

In a way the proper interpretation of that resolution means to me that proof to us as delegates that you, the leaders, you have the political will and you are not captured and you are going to do something about this. So for me that is the flip side of the coin of that noting
10 statement.

So we then have as a leadership to prove to the membership that no, as leaders who were then elected at that conference, we are not and that is why we fully embrace the decision that was taken at the conference that we will, we will have this commission established, purported and we will appear before it to come and testify, because we are now involved in a new process.

ADV PRETORIUS SC: The concern remains and perhaps it does not bear repeating more than once more. But this
20 statement was made, quite starkly made in 2017. Three years later or almost three years later you used the language of the heinous of accused number one in the dock.

Is there a concern that the observer might have that although the will is there, the means will be, the

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achievements and the methods are not?

MR RAMAPHOSA: I would argue that the contrary is true now. The will is there, we are all for instance the conference having taken the decision, the national executive committee having endorsed that decision. Also as clearly exemplified through the letter that I send to members of the ANC, particularly after the Covid procurement debacle.

The NEC endorsed the fact that we now need to
10 draw a line. We have got to underscore what we have been saying with now action and that is precisely where we are headed to now, because we do not want to keep talking about this forever and a day.

We now need to be seen to be taking action. So the will is there, the political will is there unquestionably. Secondly, the means are also articulated in the same resolution that those who are in charge of certain key organs of state, like finance, like the police and all that must act, and which is precisely what is now happening.

20 You referred earlier to a multi-disciplinary organ or entity that should investigate and opt to prosecuting criminality. This is unprecedented. It is happening for the first time where we have all these disciplines working together, but we will talk about that I guess in the next session.

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So the means are being found, the will is there, and there is clearly proving that where there may have been doubt that action is not being taken because people were either not having the will or the means of themselves captured with disproving.

CHAIRPERSON: I think the resolution or the noting in the resolution was new leadership.

MR RAMAPHOSA: Yes.

CHAIRPERSON: We think some of you are held hostage,
10 are captured.

MR RAMAPHOSA: Yes sir.

CHAIRPERSON: Not all of you, but some do not have the will.

MR RAMAPHOSA: Yes sir.

CHAIRPERSON: Some have the will but there is no, they do not have the means, but some of you are captured. Okay.

MR RAMAPHOSA: That is the noting part.

CHAIRPERSON: Ja, that is the noting part.

20 **ADV PRETORIUS SC:** Mr President, if we could move briefly to another topic. Since the line was drawn in the sand, the most recent 2017, 2018 line.

MR RAMAPHOSA: Yes.

ADV PRETORIUS SC: The question that the Chair would be interested in, in order to assist him to formulate his own

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recommendation, would be what has the ANC done, tried to do, what has been successful, what has not been successful and if I could assist in that analysis Mr President.

As I understand it, for corrupt activities within the party, there are two categories of recourse. The one is internal discipline or referral to the integrity committee, and the other is an external consequence or outcome and that is criminal prosecution.

10 Are records kept within the ANC of internal disciplinary proceedings and internal criminal prosecutions? Is there a record?

MR RAMAPHOSA: Chairperson, there would be a record of internal disciplinary proceedings, because the disciplinary proceedings are quite formal. I used to be the Chairperson of the national disciplinary committee of appeal and we kept formal records.

 There was nothing that was loose and informal. So they would be there. They would be scattered all over
20 because discipline starts right at the bottom, right through to the top. The criminal prosecutions, I would doubt if we would have such a record, because it is a much more state formal process which I am sure if we sought to find it, we would find it.

ADV PRETORIUS SC: We may follow that up in due

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course Mr President, but for the moment can I ask you please to go to page 38 of your own affidavit, paragraph 86. This is again in the category of recourse. Paragraph 86 reads:

10 “A recurring challenge in the management or organisational discipline is that in certain instances, the institution of disciplinary proceedings is dependent on a conviction in a court of law. This is particularly the case with respect to offences related to corruption and fraud. This has meant that the organisation has been unable to act against members facing serious charges or financial impropriety until the completion of court processes, which then often be lengthy.”

20 Now that statement can be understood in two senses. The first is that the ANC will only take disciplinary action once court proceedings have been concluded or conviction in a criminal court is itself a ground for disciplinary action in terms of the ANC constitution, but whichever way it is regarded, is there any necessary logic behind the reservation that one has to wait for criminal proceedings to be concluded before internal disciplinary proceedings can take place?

 Should they not, as our law allows, be

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independently treated? Our law is quite clear that, well at least it is now, that internal disciplinary proceedings and voluntary organisations or companies or elsewhere [indistinct – dropping voice], there is no right to remain silent. You may remain silent and suffer the consequences and still be disciplined.

I do not want to get into detail and argue the law with you. But there is no need, there is no necessary legal barrier to internal disciplinary proceedings being instituted
10 and completed before criminal conviction.

MR RAMAPHOSA: Yes, I think Chairperson the difficulty has always been a person is charged and then at the same time simultaneously they are disciplined. They stand trial and the disciplinary process has been done and concluded and then they are found not guilty.

In the former state law enforcement. So what do you then do? Do you go back and undo, for instance if the charge was theft in the ANC and the charge is theft in the state, what do you then do when they are found not guilty,
20 and where we have sort to deal with it, is to say if you have been charged of a serious crime that has to do with corruption and so forth you should step aside and you are then given an opportunity to go and clear your name, while having stepped aside. Go clear your name, and having done that, then the disciplinary process in the ANC can

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then ensue.

Unless of course you could be charged with the charge of bringing the ANC into disrepute by having stolen a chicken, stolen money or whatever, that will be a different matter, but people will always want to link the two.

So we thought that the safest route is actually to say people should step aside, which were provided for in our resolution.

- 10 **CHAIRPERSON:** Well, ja. Why should it only be ANC which has got this problem? Of course Mr President, with your trade union background you know that in the workplace for instance, if an employee is alleged to have done something that is a criminal offence, the employer is not going to wait for the criminal, for the police to investigate and for him to be convicted.

The employer will convene a disciplinary hearing, come to a conclusion and if the police get involved and there is a criminal case, that is a different process
20 governed by Criminal Procedure Act and the criminal law, but the employer is done.

If the employee is aggrieved by the employer's decision, there are forums where to go to. There are processes where to go to and challenge it, and sometimes the decision in a criminal court and the decision in a

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disciplinary inquiry would be different, but the standards are different too.

They are applied to the determine the guilt and so on. I mean, within government too, government departments. I know that the government departments are notorious for keeping people's suspensions for a long time.

MR RAMAPHOSA: They do that even to judges.

CHAIRPERSON: Well, judges have got certain processes that are compulsory, but the government departments have
10 got no processes that are compulsory for them to wait. So and I do not think that those delays are because they are waiting for criminal force, but they have got those delays, but they do not need to have those delays.

So the proposition is that is not a good ground. Every organisation you know, has its own rules. You cannot let somebody who you believe has done something completely unacceptable to your organisation, not be disciplined by the organisation because if you are going to wait until the outcome of a criminal case, which might
20 finish in three years and then there might be an appeal which might take another three years.

By the time the process is finished, how can you still say you are going to have a disciplinary hearing? So it is like you just wait for the courts and when you can deal with the matters yourselves. So the proposition would be

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that the organisation would need to reconsider that because I do not think anybody else follows that route.

MR RAMAPHOSA: I think Chairperson, a political organisation is very different of say a company and a non-governmental organisation of another sort. This is an organisation that is composed of very active members who take views and positions, and who when they have a sense that they are being treated unfairly, respond.

They can either go to court, disrupt your
10 organisational purpose, processes and all that, and this is what we have thought would be fitting for us as the ANC, because it has not really been the practice to say if you are charged you must step aside.

It has not been the practice. I know that in many organisations, including the private sector, that is the norm that if you are charged, you immediately step aside and some even do it voluntarily, because they fear that they will compromise the image and the integrity of the organisation.

20 So they step aside, and could also sometimes argue that allow me space, I will take a leave of absence to clear my name and of course the hopes on the organisation itself, whether they are going to prefer charges against that type of person.

So for us it has been a major, major step for the

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ANC to take, that when charged you have got to step aside and when serious allegations, you have got to go to the integrity commission and explain yourself. Now this is a new way of dealing with issues that have to do with wrongdoing, and it needs space and time to be allowed, it needs the space and time so that this new process which will eventually emerge as a culture should – should mature in the organisation

I would argue that you know suddenly changing it
10 before it is tried and tested would lead to a lot of confusion
hither to people have always argued that innocent until proven guilty and they have always said I stay where I am, come hell or high water and yet it has an impact – a very negative impact on the integrity of the organisation.

ADV PRETORIUS SC: Ja.

CHAIRPERSON: Mr Pretorius.

ADV PRETORIUS SC: Thank you. There is a great deal of academic writing which I am not going to refer to this is not an academic occasion that says that in relation to corruption
20 a systemic approach should be adopted and it is not enough simply to say well if someone does wrong we must discipline or charge in a criminal court for whatever it is.

You yourself have mentioned and the resolution of the 54th National Conference spoke about weakening of law enforcement agencies. That we can deal with if we have

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time next time around.

PRESIDENT RAMAPHOSA: For sure.

ADV PRETORIUS SC: But I would like to raise it insofar as appointments and dismissals are concerned because that is a topic we have dealt with here today and yesterday.

The constitution makes it very clear that the head of the NPA the NDPP National Director of Public Prosecutions has a term of ten years and it has emphasised in that judgment that that is very important because it goes to the
10 independence and security of tenure of the office.

It is an interesting fact that since 1994 or since the establishment of the NPA not one NDPP has lasted his or her full term. What – and you have already taken certain steps but perhaps these should be clarified not only in relation to the NPA but other law enforcement agencies what steps have been taken or considered by the ANC in relation to appointment of the heads of the law enforcement agencies and their security of tenure and how they should be selected and how they should be appointed?

20 I am not going to ask you to account for the evidence led – it has been given over a long period of time before the Chair about appointments and dismissals and the period under review by the commission but to look at it and we all understand that this is the contributing factor as the resolution does. What steps in relation to appointments has

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– have been considered?

PRESIDENT RAMAPHOSA: None – none have been considered. When I initiated the process of appointing the current head of the NPA it was like unchartered territory, unchartered waters and one did that precisely we wanted to have a very transparent process – a process which everyone in the country would have confidence in which would go through a number of candidates who would be interviewed by a selection committee which I appointed at the time it was
10 headed by former Minister Jeff Radebe who is well experienced and well 00:04:26 in doing this and he helped considerably well in getting us to arrive at this point and he was very, very scrupulous in going through a myriad of applications that we received. So that – that was a very good process whether we will do it with – for others is a matter that one would still need to consider.

So in the ANC itself know it has not been including the tenure.

ADV PRETORIUS SC: And appointments to the civil service
20 clearly that is a matter that concerns the ANC as a party has referred but also may be dealt with through legislation and elsewhere as we have – yourself pointed out. But is there any step that can be taken to isolate appointments and dismissals from patronage policy or is that too general a question to be fair at this stage?

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PRESIDENT RAMAPHOSA: No it is not too general a question. We mean to put into effect what we have said that we need to move away from the politics of patronage. We need to exercise fairness, openness and equity.

Now those are generally accepted principles of doing things and there is nothing wrong with approaching the appointment of people in that way. So – and that – that saves you from an attack on the issue of patronage that so and so was appointed because they are going to be news of
10 this and that purpose or nepotism and what have you.

So – so those are principles that I would want to see observed as well.

ADV PRETORIUS SC: Has any consideration then arising from your answer been given to precluding party officials or government employees from doing business with the state that has been met?

PRESIDENT RAMAPHOSA: Yes that has been mentioned and when it comes to the government officials as it is clearly stated in our regulations and in our law that it is prohibited.
20 You have got to declare your interest upfront when it comes to even public representatives who are in the executive positions like ministers that too is prohibited and you have got to declare your interests as well.

The one that has to do with the party officials who may not be employed in government that is under discussion.

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We have got strong views on both sides. There are people who argue that what is wrong with me as a party official doing business without me and others who hold a strong view that once you are a party official you and your close relatives should not find yourself doing business with (inaudible). So the latter is still in discussion.

ADV PRETORIUS SC: Then has any thought been given to legislation specifically directed at governing executive employment and board appointments of state owned
10 entities? I know they are covered in certain 00:08:55 of legislation?

PRESIDENT RAMAPHOSA: What was the question?

ADV PRETORIUS SC: Appointment of senior executives and board appointments in state owned entities need consideration given to directed legislation?

PRESIDENT RAMAPHOSA: Well that falls under the rubric that I spoke about that there are some really key top positions that we would still want to have well-appointed and for the rest it should really depend on the entity itself as to
20 who it appoints. We should never find ourselves bothering about the employment of the janitor of – to the building where the state owned enterprise operates or the sweeper or you now secretary or director. So we would only want to focus on those who have a bearing whose appointment rather has a bearing on the general direction of the company

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or the entity.

With regards to legislation and of course I mean any legislation that would enhance good governance, good leadership and everything that is good is – should always be welcomed and the state owned enterprise counsel which is the presidential state owned enterprise counsel is ceased with this matter if I can use a parochial term like that so and it is dealing with this and we should be able to get really good outcomes and in fact there are already drafts that is
10 going to be addressed in precisely this.

ADV PRETORIUS SC: The two further topics that perhaps could be dealt with in the next round Mr President and the first is the draft national implementation framework or its professionalization of public service.

PRESIDENT RAMAPHOSA: Yes.

ADV PRETORIUS SC: I am sure that would be of great interest to the Chair.

PRESIDENT RAMAPHOSA: Yes.

ADV PRETORIUS SC: And the second is procurement
20 reform and what is envisaged in relation to that legislation that it might – well that is on the table.

PRESIDENT RAMAPHOSA: Yes.

ADV PRETORIUS SC: At present. I may then move to another topic please. It is a topic related to party financing in a way or the allocation of party finances. In your

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statement at page – to the annexure to your statement in the alliance summit declaration page 750 of Bundle 1 there is talk of 00:11:55 vote buying.

CHAIRPERSON: What page did you say it is?

ADV PRETORIUS SC: 750 Chair.

CHAIRPERSON: Thank you.

ADV PRETORIUS SC: This is a statement made by the former President in 2015 he says:

PRESIDENT RAMAPHOSA: Which page is it?

10 **ADV PRETORIUS SC:** The statement begins at page 748.

PRESIDENT RAMAPHOSA: 48?

ADV PRETORIUS SC: I want to if I may Mr President refer to page 750.

PRESIDENT RAMAPHOSA: Yes.

ADV PRETORIUS SC: The last paragraph reads:

20 “Among other things we have identified the debilitating effect of money politics. Many comrades gave concrete examples of how some of us participate in the practice of buying other comrades to vote for us.”

And then on page 753 the last few paragraphs read:

“I want to talk briefly on the challenges we are having on the membership system especially how we have approached it as primarily a technical matter. Virtually all

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comrades talked about this. Comrades have talked about instances where the membership system is abused, manipulated and subverted. We have talked about people being given money and wined and dined in exclusive hotels. In other words comrades here know who has been given money by whom, when, how. The question is whether we reported this to the relevant structures, what has been done about it? Does a list exist of cases that are being investigated and what progress has been made? The officials and the national working committee should give urgent attention to this.”

Now just by way of introduction it is – would be obvious to any close observer that the practice of buying votes is a very important part of the circle of patronage politics in other words a person is put in an important position cumulates well is able then to buy membership of the ruling party and that if anything is a – I do not suppose it is a matter of – that could even be debated but I will say it anyway that the complete distortion of the constitution democratic 00:15:10 system and the (inaudible) association and the like but do you have any comment on that practice as it occurred, to what extent has it occurred, what has been

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done to stop that practice?

PRESIDENT RAMAPHOSA: Well we have spoken about this practice of the usage of money and the usage of compromising comrades through money, vote buying, yes even wining and dining and just spreading money around. And when it comes to distorting our membership system which former President speaks about here steps have been taken to – to streamline our membership systems so that it is not made subject to manipulation or to being hijacked by
10 those who may want to just buy a membership for others or pay membership for others.

It is – it is now digital, it is almost human free in terms of the way it functions, so that outside human free it depends on the member you have to do work through various other identity items or devices so it frees us from manipulation so that helps a lot and what former President is talking about here is absolutely to the point.

The one about wining and dining and handing out money and all that it is much more difficult to deal with I
20 guess because it happens in the shadows, dark corners and those type of places. In the end you need to more broadly guard against you know those who would be brought into various positions for patronage purposes and this is where we will work very hard to uphold the values and principles of the ANC so that those who may get into the grip of such

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people should be minimised to a large extent.

ADV PRETORIUS SC: You yourself Mr President – sorry had you finished?

PRESIDENT RAMAPHOSA: Yes.

ADV PRETORIUS SC: You yourself raised the issue in quite clear terms in paragraph 167.3 of your statement at page 74 of Bundle 1 if I can read it to you?

PRESIDENT RAMAPHOSA: Yes.

ADV PRETORIUS SC:

10 “The ANC has recognised the erosion over
time of its organisational integrity. This
process as had been manipulated to advance
the material interest of certain members and
associated private companies and
individuals. This manifests itself and weak
and pliable branches vote buying and gate
keeping where certain potential members are
deliberately prevented from joining or
participating factionalism and even open
20 conflict this provides fertile ground for state
capture and corruption.”

We have spoken about the patronage circle where it
compounds itself like compound interest to the patron
obtaining resources favours and money to be able to cement
his or her position through these processes. Do you have

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any comment on that articulation of the issue?

PRESIDENT RAMAPHOSA: No, no, no, no comment except to say yes and I agree entirely those are ills that you want to get rid of in the ANC. It will take time but the will and the means are certainly there to ensure that we – we rid the organisation of such ills.

ADV PRETORIUS SC: And it is in effect those branch members who elect senior officials in the party who have a great influence on the way the country is run and what
10 happens in (inaudible) but also in effect the President. They elect the President of the ANC who becomes the President of the country so it is an enormous power in our democracy that can be so manipulated. It is a serious issue.

PRESIDENT RAMAPHOSA: It is a very serious issue and it is for that reason that the – we raise this issue because it is serious and we raise the level of consciousness and alertness against such deviant behaviour within our membership structure. So we – it is a process that we need to embark on and we have already started with that one
20 (inaudible).

ADV PRETORIUS SC: In your ...

CHAIRPERSON: Mr Pretorius if we are going to go up to four maybe we can proceed up to four without an adjournment. If we are going to go to five maybe this might be the right time for a short adjournment?

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ADV PRETORIUS SC: Chair I ...

PRESIDENT RAMAPHOSA: It depends on what you...

ADV PRETORIUS SC: I certainly do not want to be presumptuous.

CHAIRPERSON: Yes.

ADV PRETORIUS SC: But I think it is for the President to ..

CHAIRPERSON: Hm?

ADV PRETORIUS SC: I – it just appears to me that it has been two long days and the President should be free to say
10 whether and when.

CHAIRPERSON: Yes.

PRESIDENT RAMAPHOSA: So I can go home now?

ADV PRETORIUS SC: With my permission.

PRESIDENT RAMAPHOSA: I am just pulling your leg.

CHAIRPERSON: Well – maybe whatever the position is maybe let us take a ten minutes break whatever – whether it is going to be four or whatever let us take a ten minutes break.

PRESIDENT RAMAPHOSA: That is fine.

20 **CHAIRPERSON:** Okay.

PRESIDENT RAMAPHOSA: That is fine with me.

CHAIRPERSON: We adjourn.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: The President is the only one who is

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being questioned here, so maybe you are right to say we must find out whether his instance where he was earlier. They said we can go in – up to five. Is that still the position?

PRESIDENT RAMAPHOSA: Yes, that is the position.

CHAIRPERSON: Oh, okay. Thank you, Mr President. Mr Pretorius, I know that you are the only one standing, who has been standing for some time. [laughs] But I guess, if you still have issues to deal with, let us try and
10 go up to five because the President is making himself available.

ADV PRETORIUS SC: Yes, it will be until quarter to five because ...[intervenes]

CHAIRPERSON: That is fine.

ADV PRETORIUS SC: ..the President does have a closing statement he wishes to make.

CHAIRPERSON: Okay. No, that is fine.

ADV PRETORIUS SC: So if I may go for, say, an hour but I am not sure I will take that time.

20 **CHAIRPERSON**: Yes, ja.

ADV PRETORIUS SC: Because I intend to wrap up ...[intervenes]

CHAIRPERSON: Ja, the idea is just that we must use every minute we can, that we should use it. We still have issues to deal with ...[intervenes]

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ADV PRETORIUS SC: Well ...[intervenes]

CHAIRPERSON: ...subject to ...[intervenes]

ADV PRETORIUS SC: ...where I fail you will...

CHAIRPERSON: H'm?

ADV PRETORIUS SC: I am sure if I stop early, you will fill the time.

CHAIRPERSON: [laughs] Okay alright.

ADV PRETORIUS SC: You have a section of your statement Mr President, that talks about your response to
10 the ANC allegations of state capture and you deal with that at paragraph 93, page 41 and following. The concept of state capture has been defined by yourself, I do not want to put words into your mouth in your statement, but how do you understand the concept of state capture? It is still something that the Chair will have to deal with in the fullness of time but perhaps you could assist him in that regard.

PRESIDENT RAMAPHOSA: Well, in our country the state or the concept of state capture, really, it is wrapped up
20 with corruption and it gained prominence as we were observing how certain interests positioned themselves to have control over, you know, state institutions in relation to the appointment of people to them, in relation to the resources of those institutions, and also how they had ensconce to themselves with political leaders who they

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sought to, as it appeared, to want to influence and what we got to hear was how it manifested itself in the form of whisperings by those people about dispensing patronage, dispensing positions, appropriating government contracts in various state institutions as well.

And that smacked of unlawful involvement in those institutions and undermined the processes, the known and legal processes that those institutions were supposed to have. And it was represented through a family
10 who befriended certain people in government up to and including getting those people to claim that these our friends and they even underpinned what they were doing with ideological articulations that they were advancing the concept of black economic empowerment.

And as it involved, we started seeing how even that concept of black economic empowerment was being undermined and in fact eroded because they tendered also to monopolise and appropriate onto themselves nearly as many contracts as possible in the most lucrative ones that
20 pushed out your black economic players who by deemed of our own policies as government we should have been placing more emphasis on because they were previously disempowered and we needed to empower them.

So the capture was multifaceted and was so effective in that it was all pervasive. And it was in many

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ways done in the most clever way because they tended to know which contracts will becoming available, where they will becoming available. But I guess, Chairperson, one will talk about that in the next session. So one should not carried away. So ...[intervenes]

CHAIRPERSON: No, no ...[intervenes]

PRESIDENT RAMAPHOSA: ...that is how I understood the matter of state capture.

CHAIRPERSON: That is fine. May I ask this question
10 because it crossed my mind earlier. I seem to read somewhere and maybe it was not true that one or more of the Gupta brothers were members of the ANC. Would you know that or is that something that you do not know?

PRESIDENT RAMAPHOSA: Chairperson, I have also heard that. I never saw the evidence or proof of that.

CHAIRPERSON: Yes.

PRESIDENT RAMAPHOSA: Yes.

CHAIRPERSON: Okay.

PRESIDENT RAMAPHOSA: Ja.

20 **CHAIRPERSON:** Okay, okay.

ADV PRETORIUS SC: There were certain signposts along the road of state capture history in the period under review or alleged state capture. As the Legal Team we must confine ourselves to the moment. The signs were quite clear. It deserves more attention but perhaps if we have

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time in the next round we can deal with it in more detail but there was the address to the NEC by Mr Mbalula.

There was the Waterkloof landing and the response to the Waterkloof landing. I must say in that regard, it is a matter of some amazement but Mr Koloane, who clearly breached security, became an ambassador with a security clearance. Should that not cause huge outrage within the party?

PRESIDENT RAMAPHOSA: Well, it did raise eyebrows, 10 let me say. It raised quite a few eyebrows but it happened as it did and that is how it happened.

ADV PRETORIUS SC: I see your eyebrows are raised as far as they can go. [laughs]

PRESIDENT RAMAPHOSA: [laughs]

ADV PRETORIUS SC: But perhaps that belongs in the state portion. It is such an alarming event that I should not comment further but I could not resist mentioning it. Then there was the dismissal of Mr Nene and the appointment of Minister Van Rooyen and related to that 20 was the March 2006 revelation of Mr Jonas and you have dealt with that this morning but those issues gave rise to at least series of events that I think should be dealt with and to one observation that I would wish to put to you for your comment.

He says the events was the appointment of the

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internal inquiry. We know that the internal inquiry that was mandated by the ANC NEC received one written response, eight people came forward with oral responses and there was, as it appears from your own bundle, at page 126 and following, a sense that these eight at least said they were prepared to make submissions to an independent body. How does one explain that? How does one explain, firstly, the failure of the internal inquiry?

Secondly, the sentiment that they would prefer to
10 testify before an independent body? And thirdly, the fact that the knowledge was within the ANC and it did not come out. What happened there? What was the explanation for that series of events?

PRESIDENT RAMAPHOSA: Chairperson, I guess the inquiry that was initiated by the Secretary General was a rather proper process to follow because he wanted as the Head of the SGO, that is the Secretary General's Office, to formulise the receipt of the complaints because one person had complaint publicly and we realised that it is much
20 bigger problem and let us elicit more of such and in the event, only one person was prepared to put that in writing.

I guess the others, I guess, for reasons best known to them, wanted a more formal a process which would be two things. Which would be able to conduct a thorough investigation and two, which would in some ways

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also shield them so that they can speak freely because for a variety of reasons because some of these things are so sensitive.

People did not just want to talk about them freely and loosely. They wanted a more formalised process. And I think we should applaud them because in many ways those seven are the unsung heroes and heroines who helped us to get to this Commission because they basically said we are prepared to talk so long as there
10 can be a formal process.

That they then asked to realise that this is a much bigger problem. We now need to advocate for the establishment of a commission and that, in many ways, was the beginning processes of, in a way, demanding, advocating and calling for the establishment of your Commission, Chairperson. So I would say the realisation within the ANC was growing and growing and this is where we are now.

ADV PRETORIUS SC: Yes. Mr Mantashe had certain
20 comments to make about it. He said that, in fact, that because of the low numbers of submissions it would be a fruitless exercise for the ANC to investigate. He said: When they do not come forward to the ANC, the ANC will not force them. It does not mean that we are walking away from it but if you make allegations then you must be bold

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enough to take the matter through.

Many did say that the discussion of the ANC on state capture is going to continue for a long time. So he did not see it as the end of the road, clearly. But you have commented on what it says about the eight members concerned and what their view was. Was that say about the ANC? Did they trust the ANC as it was constituted at that time and if they did not, why not?

PRESIDENT RAMAPHOSA: I guess they did not distrust
10 the ANC. They were rather grateful that their inputs had been solicited because for them too it would have represented an opportunity, almost a valve to take out, you know, the tension and everything. But then again, knowing the limitations of a political organisation like the ANC in terms of investigating very fine allegations and all that, they felt that a more state sponsored or appointed entity would be better placed and would be able to add also credibility more publicly. And I think it is less about not trusting the ANC and more about wanting a formal process.

20 **ADV PRETORIUS SC:** Alright.

CHAIRPERSON: But also, Mr President, I must say that I have a feeling that there are many maybe current DG's, DDG's and past DG's and heads of departments who maybe members of the ANC who must have known a lot of things that should have been brought before the

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Commission and who simply have not responded positively, both to my own cause or people in South Africa to come forward with information which I have made over the two-and-a-half years, as well as to the cause by the ANC itself to say its members must come forward and assist the Commission.

So one wonders what it is because there must be so many others. Those who have come forward who have testified, I think we applaud them but I think they are a
10 very small minority if one has to think of how many DG's and HOD's in provinces and so who must know quite a lot of things that happened.

PRESIDENT RAMAPHOSA: Chairperson, I think we need to look at the personal circumstances of people because the human element does kick in. Your Commission is a very highly publicised forum. It takes guts and courage for anyone to come here to testify and I am filled with awe as I have looked at the many people who have become before the Commission to testify. Others had to come, they have
20 been directed to come and some you have subpoenaed and others have volunteered. So it is not everyone who will be inclined in that way and who will have that type of courage ...[intervenes]

CHAIRPERSON: Ja.

PRESIDENT RAMAPHOSA: ...to have their testimony

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...[intervenes]

CHAIRPERSON: H'm, ja.

PRESIDENT RAMAPHOSA: ... in public ...[intervenes]

CHAIRPERSON: Yes.

PRESIDENT RAMAPHOSA: ...and under the scrutiny of the media. And sometimes people may think it is career limiting.

CHAIRPERSON: H'm. I suspect so. [laughs]

PRESIDENT RAMAPHOSA: Its career - it could affect
10 their families, it could affect them personally and their career prospects. So it is not easy, Chair, to come before you. People come here trembling and fearful. So it is not everyone who is brave enough to come here.

CHAIRPERSON: H'm. Thank you. Mr Pretorius.

ADV PRETORIUS SC: Thank you, Chair. Mr President, there was over time in the period under review a series of approaches to the ANC and to the ANC leadership, both from within and from without the party, in relation to the observation to state capture and I will ask you about your
20 own in due course and its manifestation and the frustration amongst many but there was the memorandum from the veterans. You will recall that. That was dealt with at page 517 of Bundle 02 for the record.

There was the letter from - Watts Foundations. You will recall that. There was the memorandum from the

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Director General. You will recall that. There was the inquiry conducted by the South African Council of Churches and there was, of course, the Public Protector Inquiry. In that context, I want to put to you if I may, and if I am taking it out of context, you will pull me up for it.

Paragraph 103 on page 45 of your affidavit where you say:

10 “Another important development during this time was the decline in the ANC’s electoral support and the local government elections of August 2016.

The ...[indistinct] research at the time indicated that the issue of corruption was becoming an issue of greater concern amongst votes and that it was among the factors that contributed to the ANC’s weaker performance. This was one of the more direct ways, although not the only one, in which public opinion contributed to a shift in the ANC’s response to state capture...”

20 Let me repeat that last sentence:

“This was one of the more direct ways, although not the only one, in which public opinion contributed to a shift in the ANC’s response to state capture...”

Now you will recall, Mr President, our discussion

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at the beginning of our evidence yesterday when we spoke about the leadership role of the party which you acknowledged. If an observer was to say to you what the ANC did here, was not to respond to the glaring signals of state capture and corruption in the period under review.

Even those various approaches made from within and without the party, did not seem to take hold until the truth of the loss of electoral support hit home and that was the reason the ANC reacted. In other words, not as leader
10 but as follower. What would you say to that observation?

PRESIDENT RAMAPHOSA: Well, it is true that it was the reaction of ordinary South Africans that was demonstrated through the electoral support that got the ANC to sit up and reflect on what corruption and state capture was doing to its fortunes. Even that issue alone was contested in the ANC. There were those who did not think so although they were the minority but the majority took heed and this became apparent leading to those elections with the various election surveys that the ANC does which is done
20 by nearly every political party.

Wherever we went and as we engaged with people, the number one issue that people were concerned about was corruption/state capture. They were most unhappy that their movement that they love so much seems to be so deeply emerged in corruption and things to have

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been captured because as all these reports came out and particularly the emails issue it had a negative impact whether one likes it or not. A very, very negative impact, the integrity of the party, the image of the party was dented and that was reflected in the electoral returns.

So that in itself also had a huge impact on getting the ANC to then have the sense that it needed to do something because otherwise it would just be a continuant slide in its electoral fortunes. Ja.

- 10 **ADV PRETORIUS SC:** For yourself, Mr President, what were the signposts along the road or along the way of the path of state capture that first alerted you to the existence of something much more than corruption? What was it for you that alerted you to the fact that state capture was a phenomenon that needed to be dealt with?

PRESIDENT RAMAPHOSA: Should I answer you on that now or when I come back as President of the Republic?

ADV PRETORIUS SC: Maybe both but perhaps a summary ...[intervenes]

- 20 **PRESIDENT RAMAPHOSA:** [laughs]

ADV PRETORIUS SC: But if it is something you need to think about, we ...[intervenes]

PRESIDENT RAMAPHOSA: That is exactly what I wanted to plot out very, very clearly in ...[intervenes]

CHAIRPERSON: Ja.

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PRESIDENT RAMAPHOSA: Because I want to look at the various markers for me that indicated where we were. And just like yesterday when I said, you asked me a very good and clear question: What is that we believe were indicators that things were going wrong and what should be done? Which is what I will undertake to focus more attention on when I return for the next session.

CHAIRPERSON: Ja, h'm.

ADV PRETORIUS SC: So if you also consider that there
10 were these markers and signals and approaches on the one hand.

PRESIDENT RAMAPHOSA: Ja.

ADV PRETORIUS SC: And then there were almost contemporaneously events that seemed to counter what ought to have been recognised, for example the closure of the bank accounts and the response of the ANC Cabinet and the pop sticks to that but maybe a matter that could be dealt with.

But if one looks at the timeline of warning
20 signals and actions taken and actions not taken and look, actually, at what was happening within government at the time, there is a call for an explanation which would take me to and I am happy to wait for the fuller explanation because after all the reason you have given two days of your time so far, Mr President, is to give a full explanation.

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PRESIDENT RAMAPHOSA: Yes.

ADV PRETORIUS SC: A considered explanation and which is understandable.

PRESIDENT RAMAPHOSA: Let me say, the issues that you raised, what were the markers before me is contained in my statement which you have not seen yet. You have just ...[intervenes]

ADV PRETORIUS SC: Oh, you will ...[intervenes]

PRESIDENT RAMAPHOSA: ...the content. The full
10 statement is going to be handed in and it will deal with it. It is not a question of avoidance now. It is a question of seeking to do it systematically.

CHAIRPERSON: Ja.

PRESIDENT RAMAPHOSA: So that I do not do it on a piece-fully basis.

CHAIRPERSON: Ja, ja. No, that is fine.

ADV PRETORIUS SC: Alright. By way of summary, there are two issues that I would like to deal with. One is a summary on deployment just to put very clearly where the
20 Commission and the Legal Team stands on the evidence. The other is to outline, by way of summary, what we have discussed earlier but it seems clear that there is an acknowledgment by yourself on behalf of the party, Mr President, that there is no doubt that it is in the evidence that you have put out that corruption and state

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capture was to a serious degree is acknowledged. No question about that issue. There may be a debate about the degree.

PRESIDENT RAMAPHOSA: Yes.

ADV PRETORIUS SC: And those issues will be dealt with by the Chair, finally, in reviewing two years' of evidence before the Commission. The second area and perhaps could be more systematically explored and that is how could these things happen, what was going on within the
10 party that allowed these things to happen to the extent they did and we have certain clues and signs and resolutions and the like. And perhaps it will be up to the Chair to translate the careful political language and the rest of the issues...

PRESIDENT RAMAPHOSA: [laughs] Yes.

ADV PRETORIUS SC: ...into a more clearly directed language and I am sure the Chair will not shy away from that.

CHAIRPERSON: [laughs]

20 **PRESIDENT RAMAPHOSA:** [laughs]

ADV PRETORIUS SC: But it does, I think, a more systematic approach particularly in regard to the second round where we will... And the third thing is, the way forward in terms of the proposed legislation and reforms, procurement, deployment, appointments to support SOEs

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and the like and perhaps that will be summarised the next time around but there is one gap that we have not dealt with and that is the consequences. We have closed the door gently on the past but we have not really spoken of who should be called to account and for what.

Now again that is up to the Chair to deal with, it is wrapped up with the question of law enforcement agencies but I certainly I think that – not that I think, certainly there is a view that accountability should be a priority in this
10 whole process, we cannot just shut the door gently on the past and perhaps apart from internal discipline, which we have dealt with, the question of accountability before law enforcement agencies, how that is going to be approach, what is to be done, whether it should be done or whether we should just leave the door, be shut gently, can be discussed in the next round because it is a matter of state governance, law enforcement agencies and the like.

And the final issue that perhaps should be closely explored – it is a sensitive issue but it is an issue that I
20 certainly think should be dealt with – those institutions of government whose job it was to alert government leadership of what was really happening, where were they? Were they disempowered? Were they misdirected? What happened there? That I think is an important element for understanding what happened, how it should have

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happened or how it could have happened and why it was not detected a prevented earlier and I am talking particularly about State Security Agency in this case, but we can deal with next time.

CHAIRPERSON: You are done?

ADV PRETORIUS SC: Done. Well, yes, in more ways than one.

CHAIRPERSON: But you are done for now?

ADV PRETORIUS SC: Yes, Chair.

10 **CHAIRPERSON:** Is there an answer?

ADV PRETORIUS SC: Apart from the closing statement that the President wishes to make.

CHAIRPERSON: Ja. But you have not asked him a question that he still needs to answer, is that right?

PRESIDENT RAMAPHOSA: No.

CHAIRPERSON: Okay. Well, Mr President ...[intervenes]

ADV PRETORIUS SC: Certainly it has not been interpreted.

20 **CHAIRPERSON:** Well, let me ask you this – let me raise this issue with you, Mr President. The current electoral that we have does not give the people, the voters the right to choose or elect their President, that is the President of the country. It allows each political party that is taking part in elections to put up its own candidate and the voters have – or the voters know that if I vote for this party this

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will be the – this candidate or their candidate will be the President. Now I cannot remember whether there is a requirement legally that each party must indicate who its presidential candidate is at the time of campaigning or not, probably it can change, I am not sure, but basically the voters cannot – do not elect the President, they vote for a party and effectively the majority party in parliament after the elections will get their own candidate to be voted as a President.

10 Now what do you say to the proposition that that system puts at least some voters in a predicament if the party that they would like to vote for and that they love puts up a candidate that they consider to be unsuitable to be president because they cannot say I am voting for the party but not for this person. If they vote for the party, they are taken to have voted for that candidate and yet they know they do not want this candidate because they do not think the candidate is suitable but that is the system, as it stands. What would you say to the proposition that

20 consideration should be given to changing that part of the system at least to enable the president of the country to be voted directly by the voters so that the system would be, if I want to vote for this party but I do not want their candidate because I think they have made a wrong choice but I see somebody else who is a good candidate, I can

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vote for that person, I am not tied to this either party that I like or nothing. So, in other words, you give the power to the people to that extent.

Obviously each party could still say so and so is our candidate, presidential candidate, but when you come to the actual voting, a vote for the party is not necessarily a vote for that candidate, you can vote separately and in that way the president of the country comes directly from being voted by the people and in a way parties are encouraged to
10 put up candidates that are suitable because if they put up candidates that might not be suitable, the voters might not vote for them. Have you got some view on that?

PRESIDENT RAMAPHOSA: Lots of views, Chairperson. Lots and lots of views. It is a proposition that is quite complex and obviously requires a lot of time and maybe it goes to the origins of the constitutional construct because when we started off – and maybe it was a problem of learning from so many constitutions around the world that we ended up wanting to craft a different path and in
20 crafting a different path, we opted for the Westminster type of system but which is not, you know, full Westminster process because with Westminster, it is party-based but it is also constituency-based which is what obtains in say Lesotho, which is pure Westminster, which is what obtains in the UK, so we in a way opted for that but at the same

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time we opted for no constituency at the national and provincial level but still went for constituency and proportional representation at the local level. And, if you like, would have said well, we wanted to attain certain objectives at the local level because we saw local government as being the level of government that matters most.

But at a national level what we were seeking to achieve as the unity of the nation, we did not want to go
10 for pure Westminster which would be based on winner takes all because if we had one that, we feared that a dominant party like the ANC would take too many seats and you would remain with too few parties or maybe a two party system as they have largely in a country like the UK. We wanted more representation, even smaller parties should feel that they are represented in the parliament of the people.

When it comes to the point that you are raising, which is the election of the president, I could say that we
20 are – possibly the one odd out on our continent because many countries on the African continent and indeed many other countries around the world who have a presidential system where people vote for a president, at the same time vote for the party and then it in some cases cascades further down to a constituency system and sometimes a

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mixed system.

Now we did not consider that, we rather opted for a system where the party would be the one to be voted for through a proportional voting system and that even if it is not written in any regulation or law it is presumed and that is what has evolved through practice, that every party that will be running for elections will nominate the face of the campaign who, if they win, would presumably become the number one or sort of be the president.

10 Now clearly in our system, when people vote, they would know – and in the ANC constitution and systems it has been written clearly that the President of the ANC becomes the face of the campaign, so ANC members and I say supporters would know that the ANC President automatically becomes the candidate for the party. So that is known but it is not part of the national constitutional system.

 So what you are saying, clearly it is a matter that we have never really subjected to debate within the ANC
20 and largely because we have never really seen the need for it because when we go to the polls it is known who is going to be the face of the campaign as well as when we do win, who becomes the president.

 Now I suppose what you are saying is based on the ability of the populace to either recall in one form, shape

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or other and they would only be able to recall through another vote, another national vote, I presume, without being seen as being negative. We have been able to do that through international party processes where unfortunately, we have had to do President Zuma being recalled.. So I think it is a matter that can be discussed and one need to demonstrate its attractiveness.

CHAIRPERSON: Ja.

PRESIDENT RAMAPHOSA: What would be attractive with
10 it.

CHAIRPERSON: Yes, ja.

PRESIDENT RAMAPHOSA: You look at – let me for one moment – you look at for instance a pure presidential system as, I would say, operates in a few countries and the United States for me stands out where a President basically without so much hearty full party support, you know, amasses a machinery that propels a person. And then they then start acting as Lone Rangers, as it were, on a whole number of things. One would argue that is that
20 what we want? Do we want almost like an imperial type of political system where a president acts, you know, on a lone basis on many things or do you want a president who is – who operates on a collegiate basis with his other colleagues in the party, who is bound by party strictures, if I can put it that way, party rules, party policies, so that it is

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never seen like it is an individual who propounds a policy and then acts on it on their own and yet in the system that we have, you will hardly ever find [indistinct] for the ANC, an ANC president who would just wake up one morning and just say we are going to build a wall from here to Beitbridge without having discussed it in the party. So one needs to consider things like that.

CHAIRPERSON: Yes.

PRESIDENT RAMAPHOSA: Whether we want a sole-
10 acting president or we want a president who acts within the confines of the collegiate type of a forum where issues are properly discuss but, more importantly, where policy – where policy is properly discussed and where the president does not pronounce policy through Twitter, through Facebook where the president pronounces policy as it emerges from a collective discussion. So those are the issues that we would need to discuss.

CHAIRPERSON: Ja. No, no, that is fine. I now give you – or Mr Pretorius, you want to say something?

20 **ADV PRETORIUS SC:** There is perhaps once thing I should mention. In fact I intended to mention it and that was in relation to cadre deployment or deployment, that the topic is still live, Mr President. We have discussed your views which we put on one side of the spectrum, that it is recommendations only, we have discussed to a certain

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extent the evidence on the other side of the spectrum, the hard definition of deployment, where it is a compulsory appointment in the hands of the committee and we have discussed a third category which was appointment principally by the former president and ministers in the period under review which may or may not have anything to do with the deployment committee.

There will be evidence that deals with the issues of appointments particularly to state institutions like National
10 Prosecuting Authority, law enforcement agencies as well as the state owned entities in which the issue will be canvassed further and after that there may be some issues to raise concerning whether the deployment committee should continue to exist, but that is a party decision, it is not our decision. And, if so, the form of regulation that might exist which might be within the province, Chair.

CHAIRPERSON: Okay, Mr Pretorius, there are two matters that have crossed my mind which the President needs to be asked questions on at some stage or another. The one
20 relates to a matter that could have been dealt with while he was appearing as President of the ANC but he can be asked next time because there are other matters relating to the party that he will still deal with when he comes back.

The other one falls under the session where he will be appearing as President of the country. The one is a

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matter which was raised by – relates to evidence that was given by a witness here who complained that the President, while he was Deputy President, gave an instruction to an SOE that affected his employee in the SOE. So that clearly falls under the next session because that relates to government.

The other one relates to, as I see it, at least in part, when he was not in government, yes, and that is where a witness alleged that he was chairperson of a certain
10 company at a certain time and maybe he should not have played a certain role after he went into government so they will have to be dealt with in the next session. So I just thought ...[intervenes]

ADV PRETORIUS SC: Indeed, Chair. That is currently dealt with by one of the SOE evidence leaders.

CHAIRPERSON: Ja, not that is – I mean, the one clearly falls under the next session but the other one could be said to fall under when he appears as president of the party but can be dealt with the next time because there are
20 matters that fall under party that will still be dealt with.

ADV PRETORIUS SC: Yes, Chair, and there is one other matter that relates to the question that the President is going to consider and that is the warning signs along the path.

CHAIRPERSON: Ja.

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ADV PRETORIUS SC: And that relates to the President's affidavit filed with the Commission in 2019.

CHAIRPERSON: Yes, ja.

ADV PRETORIUS SC: And that will be raised then.

CHAIRPERSON: Ja. No, that is fine. Mr President, I now give you the opportunity to make the statement that you wish to make.

PRESIDENT RAMAPHOSA: No, thank you, Chairperson. It is really a statement to say thank you to the Commission
10 but maybe before doing so, I would just like to take a moment to reflect on one matter.

It is about the passing away of the first Mayor or Executive Mayor of Johannesburg who served the City from this building here. He passed away a few days ago at the age of 89 and that was Mr Isaac Mogase. And I do so to pay respect – may respect to him, to his memory as the first Mayor of Johannesburg and the fact that we are meeting here in a room where he worked. It is significant to mention his passing at this time because it was in this in
20 this very chamber that Mr Mogase so ably represented the people of this city but it is also a joy for me to pay my respects to him because I worked with him in 1990 when we were both together with Mama Albertina Sisulu, members of the Soweto People's Delegation led by Mr Isaac Mogase as we engaged with the then Transvaal

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Provincial Administration to deal with the rent boycott in Soweto but also to deal with another important issue which was the transfer of the ownership of the houses to the people of Soweto. As you well know, in the past our people never owned their homes, they just rented forever and ever and part of the rent – the boycott of paying rent was largely around that and he led us very ably. So, for me, this is an opportunity to pay my respects to him particularly because we are here and to pay condolences
10 to his family.

But I would like, on behalf of the ANC to thank the Commission for allowing the organisation the space and the time to present our statement and to present ourselves to be questioned by you as well as by the evidence leaders to give an explanation of what happened. We hope that this testimony together with the testimony that has also been given by other leaders of the ANC who testified on behalf of the ANC will assist the Commission because our understanding is that this is not a trial, this is a
20 Commission of Inquiry and we have come here to assist you, Chairperson, so that you can form a clearer picture of the ANC's approach to corruption so that we can also explain our knowledge of and response to allegations of state capture.

I know that there are a number of other issues that

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you will still need to put questions to me on as the President of the Republic and but you also hopefully have heard the measures that we have put in place to address some of the mishaps, the gaps and state capture itself so that we ensure that it never ever happens again and how we are addressing it with regard to our own organisational measures.

Now over the past two days we have traversed what I see as a number of matters. These are matters that have
10 been of public interest and of importance to your work as a Commission. Now due to the constraints of time we were not able, as clearly evidenced by the evidence leaders saying that they would have wanted to ask more questions, but we have been able in the past two days to cover quite a lot of ground and I hope, Chairperson, you would be able to read through the detailed account in my own statement as well as the annexures that I presented so as to shed more light on our own explanations on what we have put forward.

20 Obviously when I return to the Commission I will reflect on the actions that we have taken in the state to end state capture, to dismantle the networks that made it possible and to rebuild the efficacy and integrity of state or public institutions.

We are mindful of the fact that the mandate of the

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Commission does not extend to how political parties must function and that it is the sole prerogative of political parties themselves, particularly the ANC to determine their own organisational arrangements and some of the thoughts and the suggestions that have been put there obviously we will reflect on with a view of seeing how best we too can improve the way that we function. For instance, we too can be able at a very early stage to see all those markers, those indicators which we have spoken about.

10 We do, however, accept that it is necessary for the Commission to examine how internal processes and practices of political parties impact on the functioning of public institutions, we fully appreciate how the state capture occurred because in the way that we have functioned as a party, it has an impact on public institutions in our country and we must accept that and your Commission has patently made that very clear to us.

 Now in undertaking this examination, it is necessary to recall that there was significant contestation within the
20 African National Congress on some of the matters that are before the Commission and I think we have articulated that. So as we examine all this, we should not be just lineal in our examination of this. We should be able to deal with the contours of the various issues that the party itself had to deal with.

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It is also important to remember that state capture not only undermined the integrity and the capability of public institutions, it also deeply damaged the effectiveness of the African National Congress itself. So it did affect us a party, it did affect the state. As we recognised at our 54th conference, state capture has had a profound impact on the coherence and the unity of the ANC, its ability to carry out its mandate and mission to work for the people of South Africa, as part of its efforts to make what I would all
10 a decisive break with the era of State Capture. The ANC itself has embarked as I sought to explain on a journey of a new world regeneration and I believe that the work of this Commission, as much as its purpose is to serve the nation will in the end also assist the ANC along the path of renewal.

Although it is at times very uncomfortable and difficult for the ANC we welcome this scrutiny as a necessary step in tackling corruption in the State and across the side, and when I say across the side I say so
20 advisedly because in many ways it would also be helpful if we could have reflected on greater scrutiny on other entities other than the State in the way they themselves aided and abetted State Capture. That is various companies because in the end it is possible and indeed it is not only the Gupta related companies that participated,

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it is other companies as we well, but I wish to conclude by paying tribute to all those South Africans who have played a role in unearthing corrupt activities that we now know as State Capture.

Here I make reference to those who have been whistleblowers and whistleblowers have not had a great time in our country, once they blow the whistle they have been subjected to enormous pressures, pressures that have affected them personally, professionally, career wise
10 and also has affected their own household. There have been brave men and women of our country who because of their abhorrence of corruption blew the whistle and I regret that in many instances we have not treated them well, and we therefore need to have some process, legislation, of being able to protect whistleblowers.

We could say that we have got various policies but they have not really proven that they are effective. Some whistleblowers have even been killed, but I also want to pay tribute to journalists. Journalists have really gone
20 beyond the call of duty in many respects, in getting the country to be where we are today. ...[Indistinct] spoke about some of the challenges that journalists face but we pay tribute because they have in many ways been very patriotic and played a very key role.

I also want to pay tribute to law enforcement

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officials, staff of Chapter 9 Institutions, members of the judiciary, no doubt members of parliament and government officials as well as members of the governing party and other parties as well as the alliance partners of the governing party and leaders of a whole number of other parties and various civil society formations who were vital in bringing many issues to light and to the fore, and they continue where there is wrongdoing they are even courageous enough to be able to bring those to the fore.

10 There are many people who paid a great price Chairperson for taking a principled stand, and as I was saying it takes a lot for people to come to this Commission but it even takes a great deal more to either be a whistleblower, to be a journalist and to be an active citizen who will want to take a stand.

 There are many people who withstood great pressure and took great risks. The nation owes much to each of these people for they have each in different ways reaffirmed the values of our constitution and our
20 democracy.

 Now the existence of this Commission owes much to the determination of ordinary South Africans who stood up against corruption and State Capture. The existence of this Commission and the fact that it is able to undertake such a far-reaching denomination or investigation,

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expensive as it has been, is a testament to the strength of our democracy and the institutions that support it.

So a sitting president come to a Commission such as this one, a Commission that he has established, some people said it is unheard of, but we felt that it was important to come both as President of the Governing Party as well as President of the country. Now as the ANC we deeply appreciate the work of this Commission and reaffirm our total commitment to provide whatever assistance we
10 can to ensure that this Commission fulfils its mandate and it is with those words Chairperson that without being patronising that I would like to thank you and thank this opportunity that you have given to the ANC.

Thank you very much.

CHAIRPERSON: Thank you very much Mr President for your remarks, we appreciate them very much.

I was going to say and I don't know whether you read my mind, I was going to also refer to the fact that I am not aware in the history of this country of a sitting
20 President appearing before a Commission, I may be mistaken but I cannot remember but I think it is very important and I say that quite alive to the fact that yesterday and today you were appearing not as President of the country but as President of the ANC but the reality is that you are President of the country as well, that you have

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appeared before the Commission but also to state that it is quite important that the ruling party, the majority party in Parliament, has taken the attitude that you have conveyed to the Commission and to the nation at large that they decided that they would support this Commission. They know that some of the things – they knew that some of the things that would come out of the Commission would not be easy to deal with but nevertheless concluded that it was a process that they should support and the President of the

10 Ruling Party, President of the country, came to the Commission and said I will give evidence on all the matters that I have knowledge of and that the party has knowledge of and I am opening myself up to being questioned openly in front of the nation because as the ruling party we support this process, we support the work of the Commission.

So I think that it is very important and it is something that suggests that the ruling party wants to account to the nation through this Commission, because it

20 realises that while a lot of the things that the Commission is looking into were happening it was the ruling the party but it wants to come to the Commission and say to the nation we may have gone wrong somewhere but we are here and we will account and we will explain what we can explain and we accept that there may have been certain

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shortcomings. I think that that is quite important and as the Commission we appreciate that.

As I – as we have agreed the questions have not been exhausted they will still be pursued next time, both in respect of your position as President of the country and as President of the ANC, but I think it is important and the fact that the ANC came here also voluntarily is important, so thank you very much for making yourself available to assist the Commission.

10 Thank you.

We are going to adjourn the day session of the Commission, some of us will come back after a few minutes and start the evening session of the Commission.

PRESIDENT RAMAPHOSA: Can I go home now?

CHAIRPERSON: But you can go home, you can go home now Mr President, you are allowed to go home. I note that you ask whether you can go home.

Thank you we are going to adjourn now, the time is one minute to five, I will adjourn for 15 minutes and then I
20 will return to deal with another matter.

We adjourn.

INQUIRY ADJOURNS

[REDACTED]

[REDACTED]

[REDACTED]

SECTION 5

Additional documentation from SCC

INTELLIGENCE SERVICES OVERSIGHT ACT 40 OF 1994

(Short title, previously 'Committee of Members of Parliament on and Inspectors-General of Intelligence' and then 'Intelligence Services Control Act', substituted respectively by s. 7 of Act 31 of 1995 and by s. 9 of Act 66 of 2002)

[ASSENTED TO 23 NOVEMBER 1994]

[DATE OF COMMENCEMENT: 1 JANUARY 1995]

(Afrikaans text signed by the President)

as amended by

Committee of Members of Parliament on and Inspectors-General of Intelligence Amendment Act 31 of 1995
Intelligence Services Control Amendment Act 42 of 1999
Intelligence Services Control Amendment Act 66 of 2002
General Intelligence Laws Amendment Act 52 of 2003
Prevention and Combating of Corrupt Activities Act 12 of 2004

also amended by

Regulation of Interception of Communications and Provision of Communication-related Information Act 70 of 2002
[with effect from a date to be proclaimed - see PENDLEX]

ACT

To provide for the establishment of a Committee of Members of Parliament on Intelligence and to define its functions; and for the appointment of Inspectors-General of Intelligence and to define their functions; and to provide for matters connected therewith.

1 Definitions

In this Act, unless the context otherwise indicates-

'Academy' means the South African National Academy of Intelligence established in terms of the Intelligence Services Act, 2002;

[Definition of 'Academy' inserted by s. 1 (a) of Act 66 of 2002.]

'accounting officer' means the Head of a Service;

'Agency' means the National Intelligence Agency referred to in section 3 of the Intelligence Services Act, 1994 (Act 38 of 1994);

[Definition of 'Agency' substituted by s. 1 (b) of Act 66 of 2002.]

'Auditor-General' means the Auditor-General referred to in section 188 of the Constitution;

[Definition of 'Auditor-General' substituted by s. 1 (a) of Act 42 of 1999.]

'CEO' means the Chief Executive Officer of the Academy or Comsec, as the case may be;

[Definition of 'CEO' inserted by s. 1 (c) of Act 66 of 2002.]

'chairperson' means the person appointed under section 2 (4) (b) as chairperson of the Committee;

'Commission'.....

[Definition of 'Commission' deleted by s. 1 (a) of Act 31 of 1995.]

'Committee' means the Joint Standing Committee on Intelligence established by section 2;

[Definition of 'Committee' substituted by s. 1 (b) of Act 31 of 1995.]

'Comsec' means the Electronic Communications Security (Pty) Ltd established in terms of the Electronic Communications Security (Pty) Ltd Act, 2002;

[Definition of 'Comsec' inserted by s. 1 (d) of Act 66 of 2002.]

'Constitution' means the Constitution of the Republic of South Africa, 1996 (Act 108 of 1996);

[Definition of 'Constitution' substituted by s. 1 (b) of Act 42 of 1999.]

'counter-intelligence' means counter-intelligence as defined in section 1 of the National Strategic Intelligence Act, 1994;

'Director' means Director as defined in section 1 of the Regulation of Interception of Communications and Provision of Communication-related Information Act, 2002 (Act 70 of 2002);

[Definition of 'Director' inserted by s. 3 (a) of Act 52 of 2003.]

'Evaluation Committee' means the Secret Services Evaluation Committee established by section 2 of the Secret Services Act, 1978 (Act 56 of 1978);

'Head of a Service' means the Director-General of the Agency or of the South African Secret Service, the head of the Intelligence Division of the National Defence Force or the head of the Intelligence Division of the South African Police Service, but for the purposes of financial and administrative accounting, the head of the Intelligence Division of the South African National Defence Force means the Secretary for Defence and of the South African Police Service means the National Commissioner;

[Definition of 'Head of a Service' substituted by s. 1 (e) of Act 66 of 2002.]

'Inspector-General' means the person appointed under section 7;

[Definition of 'Inspector-General' substituted by s. 1 (f) of Act 66 of 2002.]

'intelligence' means the process of gathering, evaluation, correlation and interpretation of security information, including activities related thereto, as performed by the Services;

'intelligence services' means the National Intelligence Agency and the South African Secret Services as referred to in section 1 of the Intelligence Services Act, 2002;

[Definition of 'intelligence services' inserted by s. 1 (h) of Act 66 of 2002.]

'Intelligence Services Entities' means Comsec, the Academy and the Office;

[Definition of 'Intelligence Services Entities' inserted by s. 3 (b) of Act 52 of 2003.]

'Minister' means the President or the member of the Cabinet designated by the President in terms of section 209 (2) of the Constitution to assume political responsibility for the control and direction of the intelligence services established in terms of section 209 (1) of the Constitution;

[Definition of 'Minister' substituted by s. 1 (g) of Act 66 of 2002.]

'money' means all money whatsoever received or held by an accounting officer for or on behalf of the State;

'National Defence Force' means the Force established by section 224 of the Constitution;

'Office' means Office as defined in section 1 of the Regulation of Interception of Communications and Provision of Communication-related Information Act, 2002 (Act 70 of 2002);

[Definition of 'Office' inserted by s. 3 (c) of Act 52 of 2003.]

'prescribed' means prescribed by regulation;

[Definition of 'prescribed' inserted by s. 1 (i) of Act 66 of 2002.]

'regulation' means a regulation made under this Act;

'Services' means the Agency, the South African Secret Service, the Intelligence Division of the National Defence Force and the Intelligence Division of the South African Police Service;

[Definition of 'Services' substituted by s. 1 (j) of Act 66 of 2002.]

'South African Police Service' means the service referred to in section 214 of the Constitution;

'South African Secret Service' means the South African Secret Service referred to in section 3 of Intelligence Services Act, 1994 (Act 38 of 1994);

[Definition of 'South African Secret Service' substituted by s. 1 (k) of Act 66 of 2002.]

'Speaker' means the Speaker of the National Assembly contemplated in section 52 of the Constitution;

[Definition of 'Speaker' inserted by s. 1 (c) of Act 31 of 1995 and substituted by s. 1 (c) of Act 42 of 1999.]

'this Act' includes the regulations.

2 Establishment of Committee on Intelligence

(1) There is hereby established a Parliamentary Committee to be known as the Joint Standing Committee on Intelligence, which shall, subject to the Constitution, perform the oversight functions set out in this Act-

- (a) in relation to the intelligence and counter-intelligence functions of the Services, which include the administration, financial management and expenditure of the Services; and
- (b) in respect of the administration, financial management and expenditure of the Intelligence Services Entities,

and report thereon to Parliament.

[Sub-s. (1) substituted by s. 2 (a) of Act 66 of 2002 and by s. 4 of Act 52 of 2003.]

(2) (a) The Committee shall consist of 15 members of Parliament appointed on the basis of proportional representation determined according to the formula in paragraph (c): Provided that-

- (i) if the total number of seats on the Committee allocated to the political parties in terms of paragraph (c) is less than 15, the unfilled seats shall not be allocated to any political party, but the Committee shall nevertheless be deemed to be properly constituted; and
- (ii) if one political party has been allocated more than eight seats in terms of paragraph (c) and more than five political parties are represented in Parliament, the five minority parties with the largest representation in Parliament are entitled to at least one member each on the Committee, and the Committee so constituted shall be deemed to be properly constituted regardless of whether the total number of seats so allocated on the Committee is more or less than 15; and
- (iii) if any political party is unwilling to serve or to continue to serve on the Committee, the seats of such political party on the Committee shall not be allocated to any other political party but the Committee shall nevertheless be deemed to be properly constituted.

(b) No member of Parliament shall be appointed as a member of the Committee before the Agency has issued a security clearance in the prescribed manner in respect of that member.

[Para. (b) substituted by s. 2 (b) of Act 66 of 2002.]

(c) Political parties shall be entitled to designate a member or members to the Committee in accordance with the principle of proportional representation and as determined according to the following formula: By dividing the number of seats held by the party in the National Assembly by the total number of seats in the National Assembly, multiplying the result by 15 and discarding all decimals.

[Sub-s. (2) substituted by s. 2 (a) of Act 42 of 1999.]

(3) (a) A member referred to in subsection (2) shall be appointed by the Speaker or the Chairperson of the National Council of Provinces, depending upon the House of Parliament from which the member is

appointed, acting with the concurrence of the President, who shall act with the concurrence of the leader of the political party concerned.

[Para. (a) substituted by s. 2 (b) of Act 42 of 1999.]

(b) In the event that agreement is not reached in respect of the appointment of a particular member, the matter shall be referred for determination to a committee consisting of the President, the Speaker, the Chairperson of the National Council of Provinces and the leader of the political party concerned, and the decision of the committee shall be final.

[Para. (b) substituted by s. 2 (c) of Act 42 of 1999.]

(c) The Committee shall within a period of two years after its first meeting review the appointment procedures referred to in paragraphs (a) and (b).

(4) The Speaker and the Chairperson of the National Council of Provinces acting with the concurrence of the President, who shall act after consultation with the leaders of the political parties represented on the Committee, shall appoint a member of Parliament, excluding a member appointed to the Committee in terms of subsection (3), as the chairperson of the Committee and subsection (2) (b) shall apply with the necessary changes to such member.

[Sub-s. (4) substituted by s. 2 (d) of Act 42 of 1999 and by s. 2 (c) of Act 66 of 2002.]

(5) A member of the Committee-

- (a) shall, subject to paragraph (b), be appointed as a member until the Parliament to which he or she has been elected under the Constitution, is dissolved in terms of the Constitution;
- (b) shall be replaced with a member of his or her party in accordance with subsection (3) or (4), as the case may be-
 - (i) at the request of the leader of his or her party; or
 - (ii) if he or she has conducted himself or herself in a manner which constitutes a threat to national security in the opinion of the Speaker or the Chairperson of the National Council of Provinces, as the case may be, with the concurrence of the Committee and the President, acting after consultation with the leader of the party concerned.

[Sub-para. (ii) substituted by s. 2 (e) of Act 42 of 1999.]

- (c) may resign by notice in writing to the Speaker or the Chairperson of the National Council of Provinces, as the case may be, in which event a substitute shall be appointed in accordance with paragraph (b) and subsection (3) or (4), as the case may be.

[Para. (c) substituted by s. 2 (f) of Act 42 of 1999.]

(6) (a) The Committee shall meet at such times and follow such procedures as may be prescribed by the rules and orders contemplated in section 45 of the Constitution.

[Para. (a) substituted by s. 2 (g) of Act 42 of 1999.]

(b) The Committee may initiate and recommend to the Joint Rules Committee of Parliament any such rules and orders in so far as they relate to the functions and activities of the Committee.

[Para. (b) substituted by s. 2 (d) of Act 66 of 2002.]

(7) No person other than members of the Committee or members of the staff referred to in subsection (8) may be present during the proceedings of the Committee, except with the permission of the Committee.

(8) The Committee shall be assisted in the performance of its functions by-

- (a) officers of Parliament designated for that purpose by the Speaker and the Chairperson of the National Council of Provinces; and

[Para. (a) substituted by s. 2 (h) of Act 42 of 1999.]

- (b) persons designated for that purpose by the Minister, after consultation with the Speaker, the Chairperson of the National Council of Provinces, the chairperson and the Heads of the Services.

[Para. (b) substituted by s. 2 (h) of Act 42 of 1999.]

[S. 2 substituted by s. 2 of Act 31 of 1995.]

3 Functions of Committee

The functions of the Committee are-

- (a) notwithstanding anything to the contrary contained in any other law or the common law, to obtain from-
 - (i) the Auditor-General an audit report compiled in accordance with section 4 (6) of the Auditor-General Act, 1995 (Act 12 of 1995), and after obtaining the report, to consider-
 - (aa) the financial statements of the Services, Academy and Comsec;
 - (bb) any audit reports issued on those statements; and
 - (cc) any reports issued by the Auditor-General on the affairs of the Services and the Intelligence Services Entities,

[Item (cc) substituted by s. 5 (a) of Act 52 of 2003.]

and report thereon to Parliament;

[Sub-para. (i) substituted by s. 3 (a) of Act 42 of 1999 and by s. 3 (a) of Act 66 of 2002.]

- (ii) the Evaluation Committee a report on the secret services and intended secret services evaluated and reviewed by it, together with any comments or

recommendations which the Evaluation Committee may deem appropriate;

- (iii) any judge as defined in section 1 of the Interception and Monitoring Prohibition Act, 1992 (Act 127 of 1992), a report regarding the functions performed by him or her in terms of that Act including statistics regarding such functions, together with any comments or recommendations which such judge may deem appropriate: Provided that such report shall not disclose any information contained in an application or direction contemplated in section 3 of that Act;

[NB: Sub-para. (iii) has been substituted by s. 61 of the Regulation of Interception of Communications and Provision of Communication-related Information Act 70 of 2002, a provision which will be put into operation by proclamation. See PENDLEX.]

- (iv) the Ministers responsible for the Services and the Intelligence Services Entities, a report regarding the budget for each Service or Entity for which he or she is responsible;

[Sub-para. (iv) substituted by s. 3 (b) of Act 66 of 2002 and by s. 5 (b) of Act 52 of 2003.]

- (b) to consider and make recommendations on the report and certificate transmitted to it in terms of section 7 (7) (d);
- (c) to consider and make recommendations on all proposed legislation relating to a Service and any other intelligence and intelligence-related activities, and to initiate legislation in connection with such Service, intelligence and activities;
- (d) to review and make recommendations on regulations made under section 6 of the National Strategic Intelligence Act, 1994 (Act 39 of 1994), and regulations regarding the intelligence and counter-intelligence functions of a Service, made under section 29 of the Intelligence Services Act, 1994 (Act 38 of 1994), section 87 of the Defence Act, 1957 (Act 44 of 1957), or section 24 of the South African Police Service Act, 1995 (Act 68 of 1995);

[Para. (d) substituted by s. 3 (b) of Act 42 of 1999.]

- (e) to review and make recommendations regarding interdepartmental co-operation and the rationalisation and demarcation of functions relating to intelligence and counter-intelligence between the Agency, the South African Secret Service, the National Defence Force and the South African Police Service;
- (f) to order investigation by and to receive a report from the Head of a Service or the Inspector-General regarding any complaint received by the Committee from any member of the public regarding anything which such member believes that a Service has caused to his or her person or property: Provided that the Committee is satisfied that such complaint is not trivial or vexatious or made in bad faith;

[Para. (f) amended by s. 3 (c) of Act 66 of 2002.]

- (g) to refer any matter in relation to a Service or intelligence activity which comes to its attention and which it regards as relevant to the promotion of, respect for, and protection of the rights

entrenched in Chapter 2 of the Constitution to the South African Human Rights Commission referred to in section 184 of the Constitution, and to receive a report from such Commission concerning the matter;

[Para. (g) substituted by s. 3 (c) of Act 42 of 1999.]

- (h) to consider and make recommendations regarding any matter falling within the purview of this Act and referred to it by the President, any Minister responsible for a Service or Parliament;

[Para. (h) substituted by s. 3 (d) of Act 66 of 2002.]

- (i) to request the officials or bodies referred to in paragraphs (a), (b) and (f) to explain any aspect of a report;

[Para. (i) substituted by s. 3 (b) of Act 31 of 1995.]

- (j) to deliberate upon, hold hearings, subpoena witnesses and make recommendations on any aspect relating to intelligence and the national security, including administration and financial expenditure;

[Para. (j) substituted by s. 3 (e) of Act 66 of 2002.]

- (k) to consult with any member of the Cabinet appointed in terms of the Constitution, regarding the performance of the functions of the Committee in terms of this Act;
- (l) to consider and report on the appropriation of revenue or moneys for the functions of the Services and the Intelligence Services Entities.

[Para. (l) added by s. 3 (c) of Act 31 of 1995 and substituted by s. 3 (f) of Act 66 of 2002 and by s. 5 (c) of Act 52 of 2003.]

[S. 3 amended by s. 3 (a) of Act 31 of 1995.]

4 Access to intelligence, information and documents

(1) The Committee shall, notwithstanding anything to the contrary contained in any other law or the common law, but subject to subsection (2) and the proviso to section 3 (1) (a) (iii), in the performance of its functions, have access to intelligence, information and documents in the possession or under the control of a Service, on condition that-

- (a) such access is necessary for the performance of such functions;
- (b) such intelligence, information and documents shall be handled in accordance with the written security guidelines and measures of, or the conditions prescribed or determined by, the chairperson with the concurrence of the Heads of the Services; and
- (c) such documents shall after inspection thereof be returned to a Service as determined by the Head of that Service.

(2) (a) Notwithstanding anything to the contrary contained in this Act or any other law, a Service shall not be obliged to disclose to the Committee-

- (i) the name or identity of any person or body engaged in intelligence or counter-intelligence activities;
- (ii) any intelligence, information or document in a form which could reveal the identity of any source of such intelligence, information or document if that intelligence, information or document was provided to such Service under an express or implied assurance of confidentiality;
- (iii) any intelligence or counter-intelligence method employed by a Service if such disclosure could reveal or lead to the revelation of the name or identity of any person or body engaged in intelligence or counter-intelligence activities or the identity of the source of any intelligence, information or document: Provided that this provision shall not prevent the disclosure of any part of intelligence, information or a document if such part can be separated from the part which could reveal the name, identity or method referred to in subparagraphs (i) and (ii) and this subparagraph.

(b) In the event of a dispute arising from-

- (i) the provisions of paragraph (a) as to whether or not the disclosure of any intelligence, information or document may reveal the name or identity of any person or body engaged in intelligence or counter-intelligence activities or intelligence or counter-intelligence methods employed or the identity of the source of intelligence, information or document; or
- (ii) the provisions of subsection (1) (a) as to whether access to certain intelligence, information or any document is necessary to perform the functions of the Committee,

such dispute shall be referred for determination to a committee composed of the Inspector-General, the Head of the Service in question, the chairperson of the Committee and the Minister responsible for that Service, which decision of the Committee shall be final.

[Para. (b) amended by s. 4 (a) of Act 66 of 2002.]

(3) The Committee may, for the purposes of the performance of its functions, require any Minister responsible for a Service or an Intelligence Services Entity, the Head of a Service, the CEO, the Director or the Inspector-General to appear before it to give evidence, to produce any document or thing and answer questions put to him or her: Provided that such person shall-

- (a) be given reasonable notice of such appearance;
- (b) be given reasonable details regarding the purpose of such appearance; and
- (c) have the right to be assisted by members of the Services or Intelligence Services Entities in question.

[Para. (c) substituted by s. 4 (c) of Act 66 of 2002 and by s. 6 (b) of Act 52 of 2003.]

[Sub-s. (3) amended by s. 4 (b) of Act 66 of 2002 and by s. 6 (a) of Act 52 of 2003.]

5 Secrecy

(1) The Committee shall conduct its functions in a manner consistent with the protection of national security.

(2) No person shall disclose any intelligence, information or document the publication of which is restricted by law and which is obtained by that person in the performance of his or her functions in terms of this Act, except-

- (a) to the extent to which it may be necessary for the proper administration of any provision of this Act;
- (b) to any person who of necessity requires it for the performance of any function in terms of this Act;
- (c) with the written permission of the chairperson, which permission may be given only with the concurrence of the Head of a Service and the Inspector-General;

[Para. (c) substituted by s. 5 of Act 66 of 2002.]

(d) as prescribed by regulation.

(3)

[Sub-s. (3) deleted by s. 4 of Act 42 of 1999.]

6 Report to Parliament

(1) The Committee shall, within five months after its first appointment, and thereafter within two months after 31 March in each year, table in Parliament a report on the activities of the Committee during the preceding year, together with the findings made by it and the recommendations it deems appropriate, and provide a copy thereof to the President and the Minister responsible for each Service.

[Sub-s. (1) substituted by s. 6 of Act 66 of 2002.]

(2) The Committee may at the request of Parliament, the President or the Minister responsible for each Service or at any other time which the Committee deems necessary, furnish Parliament, the President or such Minister with a special report concerning any matter relating to the performance of its functions, and shall table a copy of such report in Parliament or furnish the President and the Minister concerned with copies, as the case may be.

[Sub-s. (2) substituted by s. 6 of Act 66 of 2002.]

(3) Nothing shall be included in any report of the Committee, the inclusion of which will be more harmful to the national security than its exclusion will be to the national interest.

[S. 6 substituted by s. 4 of Act 31 of 1995.]

7 Inspector-General

(1) The President shall appoint an Inspector-General of Intelligence-

- (a) nominated by the Committee; and
- (b) approved by the National Assembly by a resolution supported by at least two thirds of its members:

Provided that if the nomination is not approved as required in paragraph (b), the Committee shall nominate another person.

(2) The Inspector-General shall be a South African citizen who is a fit and proper person to hold such office and who has knowledge of intelligence.

(3) The remuneration and other conditions of employment of the Inspector-General shall be determined by the President with the concurrence of the Committee and such remuneration shall not be reduced, nor shall such conditions be adversely altered during his or her term of office.

(4) The Inspector-General may be removed from office by the President, but only on the grounds of misconduct, incapacity, withdrawal of his or her security clearance, poor performance or incompetence as prescribed.

(5) If the Inspector-General is the subject of an investigation by the Committee in terms of subsection (4) he or she may be suspended by the President pending a decision in such investigation.

(6) The Inspector-General shall be accountable to the Committee for the overall functioning of his or her office, and shall report on his or her activities and the performance of his or her functions to the committee at least once a year.

(7) The functions of the Inspector-General are, in relation to the Services-

- (a) to monitor compliance by any Service with the Constitution, applicable laws and relevant policies on intelligence and counter-intelligence;
- (b) to review the intelligence and counter-intelligence activities of any Service;
- (c) to perform all functions designated to him or her by the President or any Minister responsible for a Service;
- (cA) to receive and investigate complaints from members of the public and members of the Services on alleged maladministration, abuse of power, transgressions of the Constitution, laws and policies referred to in paragraph (a), the commission of an offences referred to in Part 1 to 4, or section 17, 20 or 21 (in so far as it relates to the aforementioned offences) of Chapter 2 of the Prevention and Combating of Corrupt Activities Act, 2004, and improper enrichment of any person through an act or omission of any member;

[Para. (cA) substituted by s. 36 (1) of Act 12 of 2004.]

- (d) to submit the certificates contemplated in subsection (11) (c) to the relevant Ministers;

[Para. (d) substituted by s. 7 (b) of Act 52 of 2003.]

- (e) to submit reports to the Committee pursuant to section 3 (1) (f); and
- (f) to submit reports to every Minister responsible for a Service pursuant to the performance of functions contemplated in paragraphs (a), (b), (c) and (cA): Provided that where the Inspector-General performs functions designated to him or her by the President, he or she shall report to the President.

[Sub-s. (7) amended by s. 7 (a) of Act 52 of 2003.]

(7A) The reports of the Inspector-General contemplated in subsection (7) (f) in respect of monitoring and reviewing shall contain the findings and recommendations of the Inspector-General.

(8) Notwithstanding anything to the contrary contained in this or any other law or the common law, the Inspector-General-

- (a) shall have access to any intelligence, information or premises under the control of any Service if such access is required by the Inspector-General for the performance of his or her functions, and he or she shall be entitled to demand from the Head of the Service in question and its employees such intelligence, information, reports and explanations as the Inspector-General may deem necessary for the performance of his or her functions;
- (aA) shall inform the Head of a Service prior to his or her access to the premises of such Service in writing of his or her intention to have access to such premises: Provided that the notice shall specify the date and the nature of access to the premises;
- (b) may, if the intelligence or information received by him or her in terms of paragraph (a) is subject to any restriction in terms of any law, disclose it only-
 - (i) after consultation with the President and the Minister responsible for the Service in question; and
 - (ii) subject to appropriate restrictions placed on such intelligence or information by the Inspector-General, if necessary; and
 - (iii) to the extent that such disclosure is not detrimental to the national interest;
- (c) shall have access to any other intelligence, information or premises which is not under the control of any Service if such access is necessary for the performance of his or her functions in terms of subsection (7) and he or she shall be entitled to demand from any such person such intelligence, information, reports and explanations as he or she may deem necessary for the performance of his or her functions: Provided that the Inspector-General shall not have access if such intelligence or information is not necessary for the performance of his or her functions: Provided further that the Inspector-General shall first obtain a warrant issued in terms of the Criminal Procedure Act, 1977 (Act 51 of 1977), if such information, intelligence or premises are not under the control of the Services in question;

- (d) may, if the intelligence or information received by him or her in terms of paragraph (c) is subject to any privilege or restriction in terms of any law, disclose it only-
 - (i) after he or she has given written notice of his or her intention to do so to the lawful possessor of such intelligence or information; and
 - (ii) after consultation with the President and the Minister responsible for the Service in question; and
 - (iii) subject to appropriate restrictions placed on such intelligence or information by the Inspector-General, if necessary; and
 - (iv) to the extent that such disclosure is not detrimental to the national interest.

(9) No access to intelligence, information or premises contemplated in subsection (8) (a) may be withheld from the Inspector-General on any ground.

(10) The Inspector-General-

- (a) shall comply with all security requirements applicable to the employees of the intelligence services; and
- (b) shall serve impartially and independently and perform his or her functions in good faith and without fear, favour, bias or prejudice.

(11) (a) Each Head of a Service shall, in respect of every period of 12 months or such lesser period as is specified by the Minister responsible for that Service, submit to that Minister, a report on the activities of that Service during that period, and shall cause a copy of such report to be submitted to the Inspector-General.

(b) (i) Each Head of a Service shall report to the Inspector-General regarding any unlawful intelligence activity or significant intelligence failure of that Service and any corrective action that has been taken or is intended to be taken in connection with such activity or failure.

(ii) Each Head of a Service shall submit the report referred to in subparagraph (i) to the Inspector-General within a reasonable period after such unlawful intelligence activity or significant intelligence failure came to his or her attention.

(c) As soon as practicable after receiving a copy of a report referred to in paragraph (a), the Inspector-General shall submit to the Minister responsible for the Service in question, a certificate stating the extent to which the Inspector-General is satisfied with the report and whether anything done by that Service in the course of its activities during the period to which the report relates, in the opinion of the Inspector-General-

- (i) is unlawful or contravenes any directions issued by the Minister responsible for that Service; or
- (ii) involves an unreasonable or unnecessary exercise by that Service of any of its powers.

(d) As soon as practicable after receiving a report referred to in paragraph (a) and a certificate of the Inspector-General referred to in paragraph (c), the Minister responsible for the Service in question shall, subject to section (4) (2), cause the report and certificate to be transmitted to the Committee.

(12) The Minister may, after consultation with the Inspector-General, appoint such number of persons to the office of the Inspector-General as may be necessary for the performance of the functions of that office, on such conditions of employment as are applicable to members of the intelligence services.

The National Commissioner of the South African Police Service and the Chief of the South African National Defence Force may, if requested by the Inspector-General, second employees of the Service or the Force, as the case may be, to the office of the Inspector-General with the consent of the employees concerned and in terms of the laws governing the secondment in question.

[Sub-s. (12A) inserted by s. 7 (c) of Act 52 of 2003.]

(13) The budget of the office of the Inspector-General shall be appropriated by Parliament as part of the budget vote of the intelligence services, and shall be expended in accordance with the rules and procedures as set out in the Public Finance Management Act, 1999 (Act 1 of 1999).

(14) The Inspector-General may, in writing, delegate any function contemplated in subsection (7) to any employee in his or her office, and any function performed in terms of such a delegation shall be deemed to have been performed by the Inspector-General.

[S. 7 amended by s. 5 of Act 31 of 1995 and by s. 5 of Act 42 of 1999 and substituted by s. 7 of Act 66 of 2002.]

7A Offences and penalties

Any person who-

- (a) contravenes section 5 (2) or 7 (9); or
- (b) fails to comply with section 7 (8),

shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding five years.

[S. 7A inserted by s. 6 of Act 42 of 1999.]

8 Regulations

(1) The Minister, acting with the concurrence of the Committee, may make regulations regarding-

- (a) any matter that is required or permitted to be prescribed in terms of this Act;
- (b) the performance of his or her functions by the Inspector-General;
- (c) the reports to be submitted by the Inspector-General and the Heads of the Services;
- (d) the suspension or removal from office of the Inspector-General and the termination of

employment of the Inspector-General;

- (e) an oath or affirmation of secrecy to be subscribed to by the Inspector-General, members and staff of the Committee, the leaders of political parties represented or willing to serve on the Committee, and staff appointed in terms of section 7 (12);
- (f) security clearance for the Inspector-General and members of the Committee;
- (g) the procedure for appointment of staff to the office of the Inspector-General;
- (h) the conditions of employment applicable to the personnel appointed to the office of the Inspector-General; and
- (i) the procedure for the lodging and investigation of complaints.

[Sub-s. (1) amended by s. 7 of Act 42 of 1999 and substituted by s. 8 of Act 66 of 2002.]

(2) A regulation made under this section need not be published in the *Gazette*, but shall be notified to any person affected thereby in such manner as the Minister acting with the concurrence of the Committee may determine.

[Sub-s. (2) substituted by s. 8 of Act 66 of 2002.]

(3) A regulation made under this section may provide that any person who contravenes a provision thereof or fails to comply therewith shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding five years.

[Sub-s. (3) added by s. 7 (d) of Act 42 of 1999.]
[S. 8 substituted by s. 6 of Act 31 of 1995.]

9 Short title

This Act shall be called the Intelligence Services Oversight Act, 1994.

[S. 9 substituted by s. 7 of Act 31 of 1995 and by s. 9 of Act 66 of 2002.]

PENDLEX: *Intelligence Services Oversight Act 40 of 1994* after amendment by the Regulation of Interception of Communications and Provision of Communication-related Information Act 70 of 2002

Section 3 (a) (iii)

any designated judge as defined in section 1 of the Regulation of Interception of Communications and Provision of Communication-related Information Act, 2002, a report regarding the functions performed by him or her in terms of that Act, including statistics regarding such functions, together with any comments or recommendations which such designated judge may deem appropriate: Provided that such report shall not disclose any information contained in an application or direction referred to in that Act;

AFFIDAVIT OF PETER HENRY BISHOP

I the undersigned,

PETER HENRY BISHOP

declare under oath as follows:

1.

I am an adult male and a senior investigator at the Judicial Commission of Inquiry into State Capture, (SCC) as was proclaimed by the President of the Republic of South Africa.

2.

The facts contained herein fall within my own personal knowledge, unless the contrary appears from the contents hereof, and to the best of my belief are both true and correct.

3.

During March 2011, I served as a member of the executive committee of the Special Investigating Unit ("SIU") and was appointed as the Acting Projects Director and Head of Operations. The SIU is established in terms of the Special Investigating Unit and Special Tribunals Act 74 of 1996 (Amended).

4.

On 31 March 2011, I prepared and forwarded an overview to the then head of the National Intelligence Agency ("NIA"), Mr LG Njenje ("Njenje"), of the SIU's business proposal to assist the NIA with a preliminary assessment of alleged irregularities in relation to the Covert Support Unit's ("CSU") Principal Agent Network ("PAN") programme, (See Annexure PHB1).



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5.

The business proposal came about after several meeting were held in March 2011, between members of NIA and my office. At the meetings, NIA requested that the SIU appoint a dedicated capacity to:

- identify, investigate and redress improprieties, including fraud, corruption and maladministration, within NIA's Covert Support Unit (CSU) Principal Agent Network (PAN) Programme;
- facilitate the recovery of any losses incurred;
- facilitate the laying of criminal charges where evidence collected support such improprieties/allegations.

6.

The purpose of conducting of a preassessment, once a government agency requests the SIU's assistance, is to establish whether grounds exist to apply for a Presidential Proclamation for purposes of investigating such alleged irregularities.

7.

After I had forwarded the overview of the SIU's assessment to Njenje, I received a call from one of the NIA members that had met with me and requested if I could amend the projects costing. I subsequently discussed this with the then head of the SIU, Mr Willie Hofmeyr, who agreed that we reduce the project cost.

8.

Shortly after I had advised NIA that the SIU would consider reducing the said project costs, I received another phone call from NIA who advised that NIA's management had advised that the investigation should rather be dealt with by the Inspector-General of Intelligence. The SIU had no further dealings thereafter with NIA with regards to the PAN investigation.

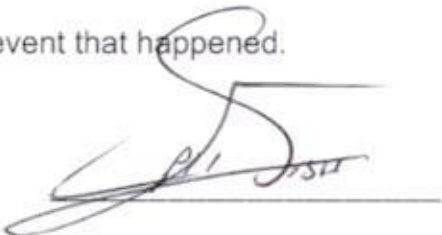


9.

After completion of the statement, the following questions were put to the deponent and his answers were recorded accordingly:

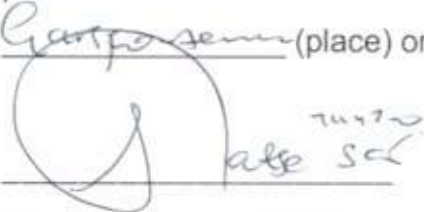
1. Q. Do you know and understand the contents of this statement?
yes
2. Q. Do you have any objections in taking the prescribed oath?
no
3. Q. Do you consider the prescribed oath as binding in your conscience?
yes

I believe the statement gives a fair account of the event that happened.



Signature of Deponent

I certify that the above statement was obtained by me and that the deponent has acknowledged that he knows and understand the contents of this statement. This statement was acknowledge and the deponent signature was placed thereon in my presence at Gauteng (place) on 27/06 /2021 (date) at about 16:30 (time)

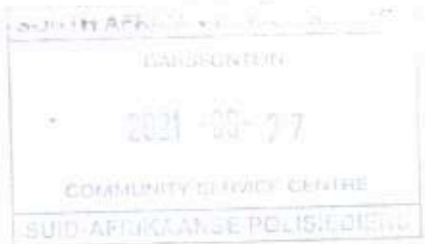


Commissioner of Oaths

Print Name: Shirley Matsenela

Rank: SAF

Address: 271 Johnny Claassen
Gauteng



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Annexure Part 1.

SPECIAL INVESTIGATING UNIT Rautmeester Park, 2nd Floor, 74 Watermeyer Street, Meyers Park, 0184

Tel +27 12 843 0000 Fax +27 12 843 0115 website siu.org.za e-mail info@siu.org.za

Ref:

31 March 2011



Mr LG Njenje
Head: National Intelligence Agency
Musanda Complex
Comsec Building
Delmas Road
Pretoria
Per hand

Dear Mr Njenje

OVERVIEW OF THE SPECIAL INVESTIGATING UNIT'S BUSINESS PROPOSAL TO ASSIST THE NATIONAL INTELLIGENCE AGENCY WITH A PRELIMINARY ASSESSMENT OF ALLEGED IRREGULARITIES IN RELATION TO THE COVERT SUPPORT UNIT PRINCIPAL AGENT NETWORK PROGRAMME

1 INTRODUCTION AND BACKGROUND

We refer to the meetings which were held between members of the National Intelligence Agency (NIA) and members of the Special Investigating Unit (SIU) on 23 February 2011, 2 March 2011 and 17 March 2011.

At the meeting you expressed NIA's willingness to engage the SIU's services to appoint a dedicated capacity within the SIU to:

- identify, investigate and redress improprieties, including fraud, corruption and maladministration, within NIA's Covert Support Unit (CSU) Principal Agent Network (PAN) Programme;
- facilitate the recovery of any losses incurred;
- facilitate the laying of criminal charges where evidence collected support such improprieties/allegations.

Working together to rid society of corruption



NIA's request for the SIU's assistance comes against the backdrop of allegations of prevalent irregular practices within the CSU's PAN programme. This would include, but is not limited to:

- Irregular use by CSU of allocated funds, roll over funds and savings from the NIA budget;
- Irregular establishment of the PAN programme;
- Irregular implementation of the PAN programme;
- Irregular employment and deployment of members in the PAN programme;
- Irregular conducting of covert operations;
- Reporting of information collected by the PAN programme;
- Acquisition and pre-payment of rentals for safe houses;
- Procurement irregularities within the CSU Supply Chain Management processes.

2 PURPOSE OF THIS BUSINESS PROPOSAL

In view of what is set out above, we present to you an overview of our business proposal to –

- assess whether grounds exist to apply for a Presidential Proclamation in respect of the abovementioned irregularities (**pre-proclamation activities**); and
- conduct a forensic investigation pursuant to obtaining a Presidential Proclamation.

This overview covers *inter alia*:

- the focus areas for our pre-proclamation activities;
- the professional team that will be dedicated to the project;
- the proposed budget; and
- the associated timeframes.



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3 THE SIU'S MANDATE

The SIU has a legal mandate in terms of the Special Investigating Units and Special Tribunals Act No. 74 of 1996, (SIU Act) to investigate and institute legal proceedings, where applicable, in instances where any of the following has occurred:

- serious maladministration in connection with the affairs of any state institution;
- improper or unlawful conduct by employees of any state institution;
- unlawful appropriation or expenditure of public money or property;
- unlawful, irregular or unapproved acquisitive act, transaction, measure or practice having a bearing upon state property;
- intentional or negligent loss of public money or damage to public property;
- offence referred to in part 1 to 4, or section 17, 20 or 21 (in so far as it relates to the aforementioned offences) of chapter 2 of the Prevention and Combating of Corrupt Activities Act, 2004, and which offences was committed in connection with the affairs of any state institution; or
- unlawful or improper conduct by any person which has caused or may cause serious harm to the interests of the public or any category thereof.

Given that which is set out in paragraph 1 above, and without going into further detail, NIA is a state institution and thus falls within the jurisdictional realm of the SIU. In addition, and based on our discussions at the meetings, public money is involved.

The SIU requires a mandate from the President in the form of a Proclamation, before it may utilise its powers as provided for in the SIU Act. The SIU's functions, duties and powers are regulated by the SIU Act as read with the applicable enabling Proclamation.

The Acting Projects Director, in consultation with the Head of the SIU, has authorised the pre-proclamation activities with a view to –

- assessing whether sufficient information exists to justify the issuing of a Proclamation and, if so
- preparing an application for a Proclamation.



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Should the SIU detect any allegations of criminality whilst undertaking the pre-proclamation activities, the matter will be handed over to the South African Police Service (SAPS) for further investigation.

The SIU will endeavour to take all reasonable steps to try to secure the publication of a Proclamation within a reasonable time. In this regard, the parties acknowledge that the SIU's ability to obtain Proclamation is not absolute, as both the Department of Justice and Constitutional Development and the President must approve any request for a Proclamation.

4 THE SIU'S APPROACH

The SIU operates on two levels to make an impact in addressing the challenges of institutional maladministration, fraud and corruption.

Firstly, we ensure the recovery of financial losses suffered by the state as a result of fraud, corruption and maladministration.

The SIU also seeks to ensure that deterrent strategies, such as prosecutions and disciplinary proceedings, are implemented. In this regard, the SIU implements a collaborative inter-agency investigation model where the SIU assists with providing an integrated forensic solution to the State.

The relationship between the SIU and inter alia, SAPS, the National Prosecuting Authority (NPA), National Treasury (NT), the Asset Forfeiture Unit (AFU), the South African Revenue Service (SARS), the Auditor-General of South Africa (AGSA), the Directorate for Priority Crime Investigations (DPCI or Hawks) and the Department of Public Service and Administration (DPSA) is therefore integral to this approach.

Secondly, we provide systemic recommendations that seek to close systemic gaps through interventions that safeguard systems from possible future abuse. The impact of this is long term savings to the State and protecting the integrity of the State's systems to deliver key services.

5 THE OBJECTIVES FOR THE PRE-PROCLAMATION ACTIVITIES

We have structured the pre-proclamation activities with a view to gathering and analysing information relating to the following:



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- Any alleged non-compliance with the relevant policies, directives and legislation in relation to the allegations referred to above;
- Any alleged irregular/illegal conduct on the part of NIA officials or third parties in relation to the allegations referred to above;
- Any losses suffered by NIA as a result of such irregular/illegal conduct;

and to assess whether such information is sufficient to justify the issuing of a Proclamation and, if so, preparing an application for a Proclamation.

6 THE OBJECTIVES FOR THE PROCLAIMED INVESTIGATION

Subject to the securing the publication of a Proclamation, the proposed (proclaimed) investigation will be structured aimed at achieving the following objectives:

- to facilitate the recovery of losses suffered by NIA due to financial mismanagement and/or maladministration and/or irregular, fraudulent and/or corrupt transactions in relation to the allegations referred to the SIU;
- to lawfully collect evidence with a view to facilitating the institution of disciplinary/criminal proceedings against complicit parties in partnership with NIA, SAPS and the NPA;
- to provide recommendations for disciplinary and/or criminal action against implicated parties;
- to facilitate the institution of disciplinary proceedings in appropriate cases;
- to facilitate the registration of criminal cases with the SAPS and to provide the SAPS with assistance in the preparation of case dockets;
- to render the necessary assistance to the Directorate of Public Prosecutions (DPP) and SAPS and to provide ongoing support in respect of the criminal matters reported;
- to identify systemic weaknesses that resulted in the failure to prevent/detect the irregularities perpetrated and to provide recommendations aimed at preventing a recurrence.



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7 FOCUS AREAS

As a result of the allegations received to date, a number of priority areas have already been identified for the pre-proclamation activities.

Our understanding is that NIA requires the SIU to **assess** and subsequently (upon securing a Proclamation) investigate the following, with reference to, *inter alia*, NIA's Operational Directive 05 (**OD-05**) and Operational Directive 09 (**OD-09**):

- The establishment of the PAN programme;
 - Correlation of the entire CSU's PAN programme with the NIA's intelligence requirements
- The implementation of the PAN programme;
 - A number of projects duplicated by the PAN projects already underway in NIA
 - Projects that were not individually authorised (non-compliance with OD-09)
 - No submission and/or authorisation of individual operational plans or budgets (non-compliance with OD-09)
 - CFO not consulted about financial implications (non-compliance with OD-09 and the Ministerial Payment Directive (**MPD**))
- Employment and deployment of members in the PAN programme;
 - Irregular recruitment and subsequent appointment (non-compliance with OD-09 and MPD)
 - PAN members not appointed in terms of post establishment
 - Nepotism
 - Irregular remuneration of PAN members
 - PAN members were paid official vehicle allowances in addition to receiving operational vehicles



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- o Unauthorised disposal of issued **assets** by PAN members such as vehicles, cell phones, laptops etc.
 - o No proper or consistent performance appraisal reviews of PAN members
- Conducting of irregular covert operations;
 - o Projects not properly initiated
 - o Many PAN members engaged in environmental scanning (which is impermissible as a reason for establishing a covert project)
 - o Verbal authorisation to conduct covert operations not followed/supported by written authorisation
- The reporting of information collected by the PAN programme;
 - o Exorbitant cost of communication system
 - o Server situated at former NIA Deputy Director-General Fraser's home contrary to NIA prescripts
 - o Information collected was not disseminated or integrated into NIA's information management system (DMS) or forwarded for analysis to the relevant division/unit (non-compliance with OD-09)
- Pre-payment of rentals for safe houses;
 - o Irregular letting of safe houses (at exorbitant cost) *inter alia*:
 - Properties leased by CSU from Umvuzo Letting
- Procurement
 - o Services were procured without following the applicable supply chain management policy and procedures *inter alia*:
 - Services rendered by PJG Integrated Security and Safety Consultants CC t/a G-Tech Integrated Security Consultants (**G-Tech**). In this regard, it is noted that members of CSU generated (created) invoices



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for G-Tech by using CSU IT hardware and software and then submitted these invoices for payment to CSU.

- o Assets were procured without following the applicable supply chain management policy and procedures *inter alia*:
 - Purchase of a Cell C franchise
 - o Assets were procured simply to utilise funds and/or unspent funds within a financial year with the result that the assets were not utilised
 - o Inadequate control of assets procured with the result that assets cannot be reconciled to asset registers
 - o Funds used to procure assets for NIA rather than only procuring covert assets for the CSU
- Ad-hoc matters
 - o Ad hoc matters incidental to the focus areas listed above will be referred to the SIU for further investigation during the term of the SIU's engagement. These ad hoc referrals will be assessed and costed separately.

8 ESTABLISHMENT OF A RAPID RESPONSE CAPACITY

In allocating suitable resources for the project, the SIU will also provide for a rapid response capacity. Appropriately skilled capacity will be sourced from the resources reflected in Table 2 below to deal with urgent matters arising during the course of the pre - proclamation activities and proclaimed investigation.

It is envisaged that, once an urgent matter has been identified or brought to the attention of the SIU, and the need for immediate assessment determined, a rapid response team, where possible, will be deployed in order to conduct an assessment of the nature and extent of the matter.

Upon assessing the matter, the rapid response team will advise the SIU Programme Manager on the severity of the problem, the impact thereof on the project and any other relevant aspects.



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It is further envisaged that, once the rapid response team has assessed an urgent matter, the SIU Programme Manager will report the SIU's findings and recommendations to the project Steering Committee (the establishment of the Steering Committee is dealt with in paragraph 12 below).

NIA has identified the following as matters to be dealt with immediately as rapid response matters:

- G-Tech
- Lifestyle audits in respect of the following individuals:
 - Arthur Fraser
 - Graham Engel
 - Martie Wallace
 - Prince Makhwatana

9 PROPOSED INTERVENTION

We propose that our intervention be structured as follows:

Phase 1 (pre-proclamation activities):

During Phase 1 the investigation team will focus on:

- gaining an understanding of the operating environment and legislative/regulatory framework;
- assessing the identified priority areas and rapid response matters referred to above;
- obtaining and analysing relevant databases in order to identify further priority areas to include in a motivation for a Proclamation;
- referring information relevant to the institution of appropriate legal action, including the recovery of losses, where applicable to the relevant authority or institution;
- assessing our findings to establish whether sufficient information exists to justify the issuing of a proclamation;



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- drafting a motivation for a Proclamation and taking all reasonable steps to secure the publication of such a Proclamation;
- preparing a report on our findings and recommendations.

Phase 2 (proclaimed investigation):

During this phase the investigation team will focus on:

- the detailed investigation of the identified priority areas as well as priority areas identified for further investigation through the data analyses process that will be initiated during Phase 1;
- determining the appropriate remedial action;
- reporting on findings and recommendations to NIA.

Phase 3 (remedial action and project close - out):

During this phase the team will focus on:

- facilitating the institution of appropriate legal action, including the recovery of losses, in appropriate instances;
- preparing a final report on our findings and recommendations for presentation to the President;
- preparing a close - out report for submission to NIA (subject to directions from the President).

10 OVERVIEW OF THE SIU'S PHASED APPROACH AND METHODOLOGY

The SIU will apply a phased approach geared to achieving the objectives for the pre-proclamation activities and proclaimed investigation.

Table 1 below provides a high level overview of the activities to be performed during each phase:



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Table 1			
Phases	Phase 1 (pre-proclamation activities - 2 months)	Phase 2 (proclaimed investigation - 12 months)	Phase 3 (1 month)
	Scope and plan	Detailed investigation	Remedial action and close out
Processes	<ul style="list-style-type: none">Finalise Service Level Agreement (SLA) with NIA and obtain signaturesConduct a high level walk - through of relevant functional areas to gain an understanding of the operational environment and relevant prescriptsGather and review applicable legislation, policies, procedures and prescripts applicable to NIAGather and review available reports and informationObtain relevant databases for analyses purposesAnalyse available databases to identify red flag anomaliesAssess the identified priority areas and rapid response matters	<ul style="list-style-type: none">Investigate irregularities/unlawful practices and red flags as identified in phase 1Identify key individuals who participated in relevant processesInterview key individuals identified through the above assessment, conduct interviews and obtain affidavitsDocument findings and evidenceReview effectiveness of systems and controlsIdentify systemic weaknesses and provide recommendations on improvementsDetermine appropriate remedial actionPrepare disciplinary case filesPrepare criminal case files for referral to SAPSReport findings to NIA	<ul style="list-style-type: none">Facilitate the recovery of losses and/or the institution of proceedings for the recovery of lossesFacilitate the institution of criminal and/or disciplinary proceedings, where applicable



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Process	referred to above		
	<ul style="list-style-type: none">Assess our findings to establish whether sufficient information exists to justify the issuing of a Proclamation		
Process	<ul style="list-style-type: none">Identify further priority areas for inclusion in a motivation for a Proclamation		
	<ul style="list-style-type: none">Document all findings		
	<ul style="list-style-type: none">Prioritise focus areas for detailed investigation		
	<ul style="list-style-type: none">Finalise draft motivation for a Proclamation and take all reasonable steps to secure the publication of such a Proclamation		
	<ul style="list-style-type: none">Submit Motivation for proclamation to DOJ		
	<ul style="list-style-type: none">Formulate a detailed investigation plan		
	<ul style="list-style-type: none">Report to NIA on findings		



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Deliverables	<ul style="list-style-type: none">• SLA signed• Report and supporting documents setting out findings of pre-proclamation activities• Submission of Motivation for Proclamation to DOJ• Project plan and Work Breakdown Schedule finalised and approved	<ul style="list-style-type: none">• Publication of the Proclamation• A final report (subject to directions from the President) setting out:<ul style="list-style-type: none">• the factual findings (including quantification of losses incurred) supported by evidence collected• recommendations for remedial action (civil, criminal and disciplinary action)• systemic weaknesses recommended for correction• Criminal and disciplinary case files finalised and submitted for appropriate action	<ul style="list-style-type: none">• Criminal case files referred to the relevant prosecuting authority• Disciplinary case files referred to NIA• Evidence and recommendations in relation to civil claims referred to the State Attorney for the institution of civil action to recover losses• Submission of a Final Report to the President containing the findings and recommendations in respect of the proclaimed investigation• Submission of final close – out report to NIA (subject to directions from the President)
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11 KEY DELIVERABLES

We will, throughout the course of this engagement, endeavour to provide NIA with:

- Recommendations for possible disciplinary and/or criminal action against implicated parties;
- Assistance with the referral of information relevant to the institution of appropriate legal action, including the recovery of losses, in appropriate instances to the relevant authority or institution;
- Recommendations on improvements to systemic weaknesses identified, which resulted in a failure to prevent/detect the irregularities.



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The extent to which we will be able to provide NIA with civil, disciplinary or criminal recourse is largely dependent on the evidence obtained during the investigation.

12 GOVERNANCE

It is recommended that a Steering Committee be established comprising members of NIA and the SIU to act jointly and co-operatively in:

- deciding on its proceedings, agenda and frequency of meetings;
- the format and frequency of any progress reports from the SIU to NIA;
- ensuring project progress and required future action;
- removing any obstacles that could hamper or limit project progress.

It is recommended that the Steering Committee comprise duly authorised and delegated officials from both the SIU and NIA. Such officials would typically include the SIU Acting Projects Director and/or his/her designates, the Head of NIA and/or his or her designate and the NIA CFO. However, additional members from either party can be drafted onto the Steering Committee by agreement of the parties or as the needs of the project dictates.

The establishment of the Steering Committee will be dealt with comprehensively in the SLA to be concluded between the SIU and NIA upon acceptance of this business proposal.

13 REPORTING

We will (upon securing a Proclamation and subject to directions from the President) provide NIA with monthly progress updates. We can align our reporting format and timeframes to NIA's internal reporting arrangements, if necessary.

We will provide NIA with a report outlining our findings on completion of our pre-proclamation activities (phase 1). This report will include our findings as well as recommendations regarding the legal and other action(s) available to NIA. The report will also include recommendations regarding systemic improvements that may require immediate intervention.

In the case of a proclaimed investigation (phases 2 and 3), we are obliged to document our findings in a Final Report to the President. The SIU will endeavour to take all reasonable

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steps to obtain directions from the President vis-à-vis providing a copy of the Final Report to NIA.

14 GENERAL SIU PRE-PROCLAMATION AND PROCLAIMED INVESTIGATION METHODOLOGY

The SIU applies a project-based approach to pre-proclamation activities and proclaimed investigations, providing the client with a project plan outlining key milestones and timelines.

On acceptance of this business proposal, NIA will receive the project plan outlining the specific deliverables and timelines attached to the various milestones during this project.

15 PROJECT TEAM

As a result of what the SIU considers to be an effective pre-proclamation assessment and subsequent investigation strategy, coupled with experienced staff, we believe that a period of 15 months is required to allow the SIU to make a noticeable and sustainable impact on NIA's ability to prevent and/or detect abuses, misconduct and irregularities in the CSU PAN programme.

Much work has already been done by NIA.

During this time the SIU will assist NIA to identify and close system gaps by, *inter alia*, using data analysis to detect further anomalies/trends and/or fraud/corruption typologies.

Systems are in place. It was a matter of flagrant disregard by those in authority.

We will form a specialised multi-disciplinary forensic team for this engagement, on the basis of our understanding of the complexity, volume and required timelines of this project. The composition and profile of the project team, which includes specialists from the legal, forensic data analysis, cyber-forensic and accounting fields is outlined in table 2 below:



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TABLE 2: PROJECT TEAM		
Member	Role on the project	Total hours per role
Acting Projects Director	Overall oversight and client liaison	880
1 x Project Manager	Overall oversight of the project, client liaison, day to day management and oversight of project operations and quality review	2 200
5 x Specialist Forensic Consultants	Assessment of allegations, including engaging with relevant role players and gathering and auditing of relevant documentation, investigation of allegations upon the investigation being proclaimed	11 000
1 x Senior Forensic Lawyer	Oversight and provision of legal guidance to the team	880
1 x Forensic Accountant	Provision of forensic accounting support to the team	880
1x Forensic Data Analyst	Analysing data and merging of information	880
1 x Cyber - forensic Analyst/Technician	Acquiring, examining and analysing digital information	880
1 x Admin Officer	Administrative assistance to the team	2 200

Notwithstanding anything to the contrary in this business proposal, the SIU reserves the right to decide upon or vary, from time to time, the resources, the number and job level of assigned members, their specific functions, job/skills profile and/or the specific resources and staff members which are to be so assigned to the capacity, to ensure the most productive use of resources, to source-in specific skills required by any particular investigation and/or to ensure that the value of the capacity remains in line with the SIU's expenses.



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16 VETTING

The SIU acknowledges that members of the project team will have to be vetted for security clearance by NIA. The SIU will furnish NIA with the allocated members' details upon acceptance of this business proposal in order that NIA may commence with the process forthwith.

17 TIMEFRAME

We estimate that this project will take approximately 15 months to complete. On approval of this proposal by NIA, the dates for completion of the project will be provided to NIA.

Although we have tried to accurately estimate the duration of the project, it is possible that, given the dynamic nature of the pre-proclamation process, the duration of specific activities may alter.

We will however consult NIA prior to performing work outside of the approved budget and associated timelines.

18 COST

The cost estimate for this project is R15 063 899.00.

This amount is payable in advance within a period to be determined by the parties.

19 LIMITATIONS

Our ability to deliver in terms of this business proposal (and the associated timelines and costing structure) is dependent on:

- NIA's vetting of the members of the project team;
- The extent to which relevant documentation and data is available and timeously provided to us by NIA;
- NIA's ability to ensure that all role players are available as and when needed by the SIU during the course of the pre-proclamation activities and subsequent proclaimed investigation, in particular for purposes of engaging with relevant role players and obtaining supporting documentation;



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- The timeous execution of certain of the pre-proclamation and subsequent investigation tasks planned;
- The willingness of the relevant role players, including the SAPS and the NPA, to co-operate with the SIU in conducting the pre-proclamation activities and subsequent proclaimed investigation;

In the event of the SIU not receiving the information or co-operation required, the SIU will advise NIA thereof and provide an assessment of the impact of this factor.


Any possible legal action referred to in this business proposal is dependent on available evidence and relevant legal considerations.

This proposal is subject to our standard terms and conditions, which will be set out in an SLA to be concluded with NIA.

20 CONCLUSION

We believe that our intended approach will allow us to assist NIA in an effective manner. Should you have any queries or require further information please do not hesitate to contact me on 012 843 0267 alternatively 083 443 2406.

Yours sincerely



PETER BISHOP
PROJECTS DIRECTOR (ACTING)
SPECIAL INVESTIGATING UNIT

