

COMMISSION OF INQUIRY INTO STATE CAPTURE

HELD AT

PARKTOWN, JOHANNESBURG

10

02 SEPTEMBER 2019

DAY 154

20

PROCEEDINGS COMMENCE ON 2 SEPTEMBER 2019

CHAIRPERSON: Good morning Mr Pretorius, good morning everybody.

ADV PAUL JOSEPH PRETORIUS SC: Morning DCJ.

CHAIRPERSON: Good morning Mr Nxasana. Yes are we ready?

ADV PAUL JOSEPH PRETORIUS SC: Yes Chair. Chair today we are going to continue with and hopefully conclude within two hours the evidence of Mr Nxasana.

CHAIRPERSON: Yes.

ADV PAUL JOSEPH PRETORIUS SC: May I hand up Exhibit EE6? It
10 contains submissions made by Mr Nxasana in relation to his suspension requested at the last hearing.

CHAIRPERSON: Hm.

ADV PAUL JOSEPH PRETORIUS SC: It contains certain judgments just to complete the range of judgments that will be referred to and it contains certain correspondence that you refer to or requested at the last hearing between the witness Mr Nxasana and the Minister, Minister Radebe.

CHAIRPERSON: Yes maybe let us immediately say the file that contains a letter from Mr Nxasana.

20 **ADV PAUL JOSEPH PRETORIUS SC**: It is at page 330 the correspondence.

CHAIRPERSON: Date 1.08.2014 addressed to President Zuma on the letterheads of the National Director of Public Prosecutions will be marked Exhibit EE6.

ADV PAUL JOSEPH PRETORIUS SC: Thank you Chair.

CHAIRPERSON: Ja. I think because of the lapse of time let us redo the oath.

REGISTRAR: Please state your full names for the record?

MR MXOLISI SANDILE OLIVER NXASANA: Mxolisi Sandile Oliver Nxasana.

REGISTRAR: Do you have any objection in getting the prescribed affirmation?

MR MXOLISI SANDILE OLIVER NXASANA: No I do not.

REGISTRAR: Do you solemnly swear that the evidence that you will
10 give shall be the truth; the whole truth and nothing but the truth, if so
please raise your right hand and say, I truly affirm?

MR MXOLISI SANDILE OLIVER NXASANA: I truly affirm.

CHAIRPERSON: Hang on, hang on, hang on. You talk about – talked
about affirmation and then you talked about swearing? Is that accurate
– just redo it, start afresh.

REGISTRAR: Yes [indistinct]. Please state your full names for the
record?

MR MXOLISI SANDILE OLIVER NXASANA: Mxolisi Sandile Oliver
Nxasana.

20 **REGISTRAR:** Do you have any objection in making the prescribed
affirmation?

MR MXOLISI SANDILE OLIVER NXASANA: No I do not.

REGISTRAR: Do you solemnly affirm that the evidence you will be
shall be the truth; the whole truth and nothing but the truth, is so
please raise your right hand and say, I truly affirm?

MR MXOLISI SANDILE OLIVER NXASANA: I truly affirm.

CHAIRPERSON: You see where you were supposed to say – to ask him whether he affirms you asked him whether he swears and that was the problem. Okay thank you Mr Pretorius you may proceed.

ADV PAUL JOSEPH PRETORIUS SC: Mr Nxasana your statement in the bundle before you would you please go to page 14?

MR MXOLISI SANDILE OLIVER NXASANA: Yes Chair I have got it.

ADV PAUL JOSEPH PRETORIUS SC: There you deal with the terms of reference which were published in the Government Gazette referred to
10 in paragraph 60 of the Cassim Inquiry which was established to investigate and report on your fitness to hold office as National Director of Public Prosecutions. You recall that evidence

MR MXOLISI SANDILE OLIVER NXASANA: Yes I do recall Chair.

ADV PAUL JOSEPH PRETORIUS SC: The terms of reference are dealt with in paragraph 61.

MR MXOLISI SANDILE OLIVER NXASANA: Yes Chair.

ADV PAUL JOSEPH PRETORIUS SC: Would you must place those on record please?

MR MXOLISI SANDILE OLIVER NXASANA: Thank you. Yes Chair in
20 the terms of reference directed to the Chairperson Advocate Cassim.

“The Chairperson had to inquire into whether it was fit and proper of me to hold the office of the NDPP in the light of the following:

1. My two previous separate convictions on charges of assault.

2. The complaints of professional misconduct laid against me with the Kwazulu Natal Law Society.
3. My having faced criminal charges for acts of violence.
4. My arrest and detention on criminal charges.
5. Media statements issued – either issued by me or any instruction that undermined or brought the office of the NDPP or the NPA into disrepute and lastly any other matter as might be relevant to the abovementioned issues and my fitness and propriety to hold the office of the NDPP as contemplated in Section 9[1b] of the NDPP Act.”

ADV PAUL JOSEPH PRETORIUS SC: Then in paragraph 63.

CHAIRPERSON: I am sorry Mr Pretorius.

ADV PAUL JOSEPH PRETORIUS SC: You raise the issue in your statement.

CHAIRPERSON: I am sorry Mr Pretorius. Mr Pretorius. I am sorry. Mr Nxasana the term of reference before the last one that you mentioned I think you did not read correctly. It says:

20 “Media statements either issued by you or on your instructions. I understood you to say or any instruction.”

Do you want to confirm the correct position?

MR MXOLISI SANDILE OLIVER NXASANA: Chair I said Media statements either issued by me or on my instruction.

CHAIRPERSON: Ja.

MR MXOLISI SANDILE OLIVER NXASANA: That undermined or brought the office of the NDPP or the NPA into disrepute.

CHAIRPERSON: Ja. Thank you.

ADV PAUL JOSEPH PRETORIUS SC: Thank you Chair. The President then proceeded to file submissions in relation to the inquiry.

MR MXOLISI SANDILE OLIVER NXASANA: Yes.

ADV PAUL JOSEPH PRETORIUS SC: And you say in paragraph 63.

10 “The complaints and the submissions were different
to the complaints in the terms of reference.”

And you deal with that in paragraph 64 as well. But let us just deal with the complaints and the submissions. You deal with those in paragraph 63.1.1 before we go to paragraph 64. What were the complaints and the submissions?

20 **MR MXOLISI SANDILE OLIVER NXASANA:** The complaints Chair and the submissions were that before my appointment I had failed to disclose to the President or his advisors that I had two previous convictions for assault. The second one was that I had failed to take steps to expedite the finalisation of a complaint to the Law Society by Mr Jabulani Mjola [?] against me in 2008. The third was that in my security clearance application questionnaire in answer to the question “Have you ever been convicted or are there any pending cases for a criminal or departmental offence?” The complaint is that I failed to disclose that during 1985 I had been acquitted on a charge of murder and that during October 2012 I had been arrested but not charged for

inconsiderate driving. The other complaint was that I had failed to disclose whether I had taken any steps to resolve my complaint against the two officers – police officers who arrested me unlawfully during October 2012 for inconsiderate driving. And the last complaint was that I had made statements to the Media that were in the public interest. Statements which fuelled media speculation negatively affected the public's confidence in the NPA and breeched the code of conduct.

ADV PAUL JOSEPH PRETORIUS SC: And so you conclude given the difference between the terms of reference on the one hand and the
10 complaints and the submissions on the other that certain complaints in your view did not fall within the terms of reference. You deal with that in paragraph 64.

MR MXOLISI SANDILE OLIVER NXASANA: That is correct Chair.

ADV PAUL JOSEPH PRETORIUS SC: Would you deal with those briefly please?

MR MXOLISI SANDILE OLIVER NXASANA: Yes Chair. The – Chair you will note then from what I have read that the following complaints do not fall within the terms of reference. The complaint identified in paragraph 63.1 that I have read earlier on.

20 **CHAIRPERSON:** Is it 63.1.1?

MR MXOLISI SANDILE OLIVER NXASANA: 63.1.1.

CHAIRPERSON: Yes.

MR MXOLISI SANDILE OLIVER NXASANA: Yes. The complaint in the first terms of reference was that my two previous convictions of assault meant that I was not fit and proper to hold the office of the NDPP.

Then the complaint identified in paragraph 63.1.2 above that complaint in – the complaint in the second terms of reference is that I am not fit and proper because of complaints of professional misconduct made against me with the Kwazulu Natal Law Society. The complaint identified in paragraph 63.1.3 the complaint in the third terms of reference is that I am not fit and proper because I faced criminal charges for acts of violence. The complaints identified in paragraph 63.1.3 bullet 2 the complaint in the fourth terms of reference was that I was not fit and proper because of my arrest and detention on criminal charges. The complaint identified in paragraph 63.1.4 Chair you will notice that none of the terms of reference referred to a failure to disclose what steps I took to finalise my complaint against the South African Police Services. I further submitted that the only complaint contained in this submissions that should be adjudicated at the inquiry was the complaint identified in paragraph 63.1.5 but despite this I responded to all the allegations – all of the allegations contained in the President's submissions.

CHAIRPERSON: Well let us just go back if we may to the terms of reference of the inquiry. I just want some clarification. We will go back to paragraph 61. 61.1.1 was the question of your two previous separate convictions on charges of assault.

MR MXOLISI SANDILE OLIVER NXASANA: Yes.

CHAIRPERSON: I just want to confirm. I do have a clear recollection of a conviction regard to one assault. I am not sure that there were two. Were there two convictions that you had?

MR MXOLISI SANDILE OLIVER NXASANA: Yes Chair.

CHAIRPERSON: Of assault.

MR MXOLISI SANDILE OLIVER NXASANA: Yes Chair in my previous evidence I said that when I completed the security clearance form I did not know of the other – of the other assault charge but it came from my – my criminal that I had another assault charge and I disclosed that in the form as well.

CHAIRPERSON: Okay I just want to – to understand as a matter of fact whether as we speak now the position is that you did have at the time
10 two previous convictions of assault?

MR MXOLISI SANDILE OLIVER NXASANA: Yes Chair.

CHAIRPERSON: Yes. I know the one you had said related to somebody was your girlfriend in the '80's.

MR MXOLISI SANDILE OLIVER NXASANA: That is correct Chair.

CHAIRPERSON: Is that right.

MR MXOLISI SANDILE OLIVER NXASANA: Yes.

CHAIRPERSON: The other one related to what if you may remind me?

MR MXOLISI SANDILE OLIVER NXASANA: That is what I said Chair.
I said I cannot recall it.

20 **CHAIRPERSON:** Yes.

MR MXOLISI SANDILE OLIVER NXASANA: And it was with the help of the lady who was – who – who assisted me because I would not have disclosed it.

CHAIRPERSON: Yes.

MR MXOLISI SANDILE OLIVER NXASANA: Because I – I have

forgotten about it. I cannot recall.

CHAIRPERSON: But when you did get whatever documentation that referred to it were there enough particulars to remind you what it was about?

MR MXOLISI SANDILE OLIVER NXASANA: No Chair.

CHAIRPERSON: So even as you speak you do not know what it was about?

MR MXOLISI SANDILE OLIVER NXASANA: No I cannot remember. I think the only detail was that it was a 1985 assault common.

10 **CHAIRPERSON**: Assault conviction.

MR MXOLISI SANDILE OLIVER NXASANA: Assault common – assault common conviction where I was cautioned and discharged.

CHAIRPERSON: And you had no recollection when you got this and you have no recollection up to now?

MR MXOLISI SANDILE OLIVER NXASANA: That is – that is so Chair.

CHAIRPERSON: All you can say is the records do show that there is a conviction for assault but you do not know what it is about?

MR MXOLISI SANDILE OLIVER NXASANA: That is – that is so Chair.

20 And that is what I said also when I completed the security clearance form.

CHAIRPERSON: Yes.

MR MXOLISI SANDILE OLIVER NXASANA: Yes.

CHAIRPERSON: And – and which may well – which I assume might well leave room for the possibility that maybe that information is not correct on the records?

MR MXOLISI SANDILE OLIVER NXASANA: It is possibility.

CHAIRPERSON: You do not know – you just cannot remember.

MR MXOLISI SANDILE OLIVER NXASANA: It is a possibility because I cannot recall. I tried to recall it I cannot recall it because for all intents and purposes I only knew about this.

CHAIRPERSON: About one conviction of assault?

MR MXOLISI SANDILE OLIVER NXASANA: Yes.

CHAIRPERSON: Yes. Okay I just wanted that clarification. So – so to the extent that you may have accepted that there were two you were
10 doing so simply on the assumption that the system of these records is correct but you have no recollection whatsoever about the second one?

MR MXOLISI SANDILE OLIVER NXASANA: That is correct Sir.

CHAIRPERSON: Ja. And 61.1.3 my having faced criminal charges for acts of violence was that separate from the as you understood it from the two convictions and I think maybe it also referred to – it may have referred to the murder charge where you were acquitted I do not know. What was your understanding of what this about – this complaint that you had faced criminal charges of acts of assault?

MR MXOLISI SANDILE OLIVER NXASANA: Chair that was the whole
20 point of my confusion because I did not understand what the complaint is about which then culminated in me asking the President to give me the particularities of what he means about it.

CHAIRPERSON: Which you never received?

MR MXOLISI SANDILE OLIVER NXASANA: Which I never received
Chair.

CHAIRPERSON: To – up to the time of the settlement?

MR MXOLISI SANDILE OLIVER NXASANA: That is correct.

CHAIRPERSON: Even in discussions you were never told?

MR MXOLISI SANDILE OLIVER NXASANA: Never – I was never told.

CHAIRPERSON: Yes.

MR MXOLISI SANDILE OLIVER NXASANA: Because in the terms of reference as you have correctly pointed out he made mentions of the previous – of the separate previous ...

CHAIRPERSON: Convictions.

10 **MR MXOLISI SANDILE OLIVER NXASANA**: Convictions.

CHAIRPERSON: Yes.

MR MXOLISI SANDILE OLIVER NXASANA: He also made mention of the murder charge that I faced – the murder charge.

CHAIRPERSON: Yes.

MR MXOLISI SANDILE OLIVER NXASANA: But then he went on to talk about the previous...

CHAIRPERSON: Charges of criminal...

MR MXOLISI SANDILE OLIVER NXASANA: Charges of violence.

CHAIRPERSON: YEs.

20 **MR MXOLISI SANDILE OLIVER NXASANA**: Of violence – conduct then I wanted to know what he meant about it.

CHAIRPERSON: Yes. Yes.

MR MXOLISI SANDILE OLIVER NXASANA: But then I tried notwithstanding to deal with what I had to speculate.

CHAIRPERSON: Yes. But the only criminal charges that you ever

faced involving violence if one may call it that would be that you know of would be the murder charge of which you were acquitted.

MR MXOLISI SANDILE OLIVER NXASANA: That is correct.

CHAIRPERSON: And the one common assault conviction that you disclosed?

MR MXOLISI SANDILE OLIVER NXASANA: That is correct.

CHAIRPERSON: And to the extent that there may be another common assault conviction that you know nothing about may be that is that but you do not know anything about it?

10 **MR MXOLISI SANDILE OLIVER NXASANA:** That is correct Chair.

CHAIRPERSON: Okay. And 61.1.4 my arrest and detention on criminal charges. What did you understand that – did you understand that to be separate from the – the arrest and detention if any that may have been connected with the assault conviction and the murder charge?

MR MXOLISI SANDILE OLIVER NXASANA: Again Chair it was confusing because...

CHAIRPERSON: It was confusing.

MR MXOLISI SANDILE OLIVER NXASANA: I speculated and understood it to mean my arrest for inconsiderate driving.

20 **CHAIRPERSON:** Yes.

MR MXOLISI SANDILE OLIVER NXASANA: Where I was released on a R1 000,00 bail and the matter was not even placed on the roll the – because of insufficient evidence.

CHAIRPERSON: Hm. Okay.

MR MXOLISI SANDILE OLIVER NXASANA: But again it was a matter

of having to speculate on my side because it was not...

CHAIRPERSON: Yes. Okay thank you.

MR MXOLISI SANDILE OLIVER NXASANA: Thank you.

ADV PAUL JOSEPH PRETORIUS SC: In any event your explanation in respect of these allegations is concluded in – or is included in the draft submissions to the Cassim Inquiry at page 51 and following.

MR MXOLISI SANDILE OLIVER NXASANA: That is correct Chair.

ADV PAUL JOSEPH PRETORIUS SC: Can you just confirm it? Is that correct?

10 **MR MXOLISI SANDILE OLIVER NXASANA**: That is correct Chair but that was the draft which I ended up not presenting at the Cassim Inquiry.

ADV PAUL JOSEPH PRETORIUS SC: This was never handed to the Cassim Inquiry?

MR MXOLISI SANDILE OLIVER NXASANA: That is correct.

CHAIRPERSON: Yes.

ADV PAUL JOSEPH PRETORIUS SC: But what we can deal with is the allegations largely in the submissions to the Cassim Inquiry on behalf of the President or by the President in relation to the failure to disclose
20 various matters?

MR MXOLISI SANDILE OLIVER NXASANA: That is correct.

ADV PAUL JOSEPH PRETORIUS SC: Prior to your appointment which you have described or the process in relation to which you described already to the Chair was there any formal engagement or requirement to provide documentation to make disclosures to provide written

statements?

MR MXOLISI SANDILE OLIVER NXASANA: No Chair there was no.

ADV PAUL JOSEPH PRETORIUS SC: There was as you described and I can put it to you by leading I presume because you have given this evidence already. There was merely the informal engagements between you and Mr Hulley?

MR MXOLISI SANDILE OLIVER NXASANA: Yes Chair it was an informal engagement and Mr Hulley had made it very clear to me that it was not going to be an interview but it was going to be an interaction
10 between me and President which is what happened.

ADV PAUL JOSEPH PRETORIUS SC: After your appointment were you required to undergo a security clearance process?

MR MXOLISI SANDILE OLIVER NXASANA: I was not required – I think at the NPA we took it upon ourselves.

ADV PAUL JOSEPH PRETORIUS SC: Alright and you did undergo a security clearance process?

MR MXOLISI SANDILE OLIVER NXASANA: That is correct Chair.

ADV PAUL JOSEPH PRETORIUS SC: When was that?

MR MXOLISI SANDILE OLIVER NXASANA: I think it was on the – I
20 think it was in – early in March. I think 4th March if I am not mistaken 2014.

ADV PAUL JOSEPH PRETORIUS SC: March 2014 or – not December 2013.

MR MXOLISI SANDILE OLIVER NXASANA: Oh December.

ADV PAUL JOSEPH PRETORIUS SC: Does that ring a bell for you?

MR MXOLISI SANDILE OLIVER NXASANA: I think it was very early. It was very early I have – immediately after I was appointed because I assumed the position on the 1st October. I think in December yes.

ADV PAUL JOSEPH PRETORIUS SC: Okay.

MR MXOLISI SANDILE OLIVER NXASANA: Yes.

ADV PAUL JOSEPH PRETORIUS SC: Now in relation to that application for security clearance did you make certain disclosures?

MR MXOLISI SANDILE OLIVER NXASANA: Yes I did Chair.

ADV PAUL JOSEPH PRETORIUS SC: Chair this document is
10 confidential it has not been declassified but there is evidence on the record and in the public domain concerning its contents so if I may I am going to lead him on that?

CHAIRPERSON: Okay.

ADV PAUL JOSEPH PRETORIUS SC: Do you recall the questions in paragraph 11 of that security clearance application?

MR MXOLISI SANDILE OLIVER NXASANA: That is correct Chair.

ADV PAUL JOSEPH PRETORIUS SC: What was that question?

MR MXOLISI SANDILE OLIVER NXASANA: The question was “have you even been convicted of a criminal offence/have you ever been
20 found guilty in a departmental inquiry?” Something like that.

ADV PAUL JOSEPH PRETORIUS SC: Yes.

MR MXOLISI SANDILE OLIVER NXASANA: And my answer to that was yes. Then I disclosed the – the assault common charge. I went on to disclose the other charges and I explained that I was not even aware of it and it was brought – it appears on the records of the SAPS. On a

separate – because it provides for a separate – you can put up a separate explanation. There is an explanatory note on that form.

ADV PAUL JOSEPH PRETORIUS SC: It is several pages which allow you to provide additional information.

MR MXOLISI SANDILE OLIVER NXASANA: That is correct Chair.

ADV PAUL JOSEPH PRETORIUS SC: Did you make certain additional disclosures to that required by paragraph 11?

MR MXOLISI SANDILE OLIVER NXASANA: That is correct Chair.

ADV PAUL JOSEPH PRETORIUS SC: What were those disclosures?

10 **MR MXOLISI SANDILE OLIVER NXASANA:** I disclosed the – the – even – because it – the form asked me even of the – have I ever received summonses and the like I disclosed that.

ADV PAUL JOSEPH PRETORIUS SC: And that was a reference to civil summonses?

MR MXOLISI SANDILE OLIVER NXASANA: Civil summonses yes. I went on to – to even disclose that yes I had received like traffic fines and I may have received summonses and civil summonses and – and I – I may have received them but I have never been sequestered. I also disclosed the – the – the complaints against me that were lodged at the
20 Law Society, all of them, all of that Chair.

ADV PAUL JOSEPH PRETORIUS SC: So in relation to the issues raised either in the terms of reference or in relation to the submissions by or on behalf of the President to the Cassim Inquiry was there anything that you did not disclose?

MR MXOLISI SANDILE OLIVER NXASANA: No.

ADV PAUL JOSEPH PRETORIUS SC: In fact as I understand it you went further in your security clearance application than the strict letter of the questions in paragraph 11 and following?

MR MXOLISI SANDILE OLIVER NXASANA: That is correct Chair.

ADV PAUL JOSEPH PRETORIUS SC: Alright.

CHAIRPERSON: I think you wanted to add something?

MR MXOLISI SANDILE OLIVER NXASANA: No I – in fact Chair the – the security – that paragraph required of me to disclose criminal convictions and pending cases but I nevertheless even disclosed like
10 the murder charge and explained how it happened even though I was acquitted and I did not have any pending criminal charge at the time. In short I disclosed more than what was expected of me.

CHAIRPERSON: More than what you were required to?

MR MXOLISI SANDILE OLIVER NXASANA: Yes. Yes.

ADV PAUL JOSEPH PRETORIUS SC: If we could go then to page 18 of your statement where you deal with matters that confronted you when you took office at the NPA.

CHAIRPERSON: Well maybe before – before we go there Mr Pretorius I do want to ask a few questions in relation to the President's
20 complaints or submissions. If I may go back to paragraph – to page 15. At 63.1.1 you say “before my appointment I had failed to disclose to the President or his advisors that I had two previous convictions for assault.” You – that was one of the complaints and you have said that complaint had no basis because you had disclosed, is that right or am I – am I misunderstanding that?

MR MXOLISI SANDILE OLIVER NXASANA: Chair he talks about before.

CHAIRPERSON: Before?

MR MXOLISI SANDILE OLIVER NXASANA: Before my appointment.

CHAIRPERSON: Yes so you disclosed when you were doing the security clearance?

MR MXOLISI SANDILE OLIVER NXASANA: Yes Chair. That was after my appointment.

CHAIRPERSON: Yes. Before appointment you had never filled in any
10 application for a job?

MR MXOLISI SANDILE OLIVER NXASANA: Yes Chair.

CHAIRPERSON: For the job of NDPP?

MR MXOLISI SANDILE OLIVER NXASANA: I think Chair this whole – my appointment should be understood in the context of my evidence of the 12th June.

CHAIRPERSON: Yes.

MR MXOLISI SANDILE OLIVER NXASANA: Before this commission.

CHAIRPERSON: YEs.

MR MXOLISI SANDILE OLIVER NXASANA: That I was approached.

20 **CHAIRPERSON:** Without having asked for any job.

MR MXOLISI SANDILE OLIVER NXASANA: Yes happily practising in Durban. I never applied for the job.

CHAIRPERSON: Yes.

MR MXOLISI SANDILE OLIVER NXASANA: And I was approached to serve.

CHAIRPERSON: Yes.

MR MXOLISI SANDILE OLIVER NXASANA: And I did not make – fill any application form.

CHAIRPERSON: Yes.

MR MXOLISI SANDILE OLIVER NXASANA: I did not apply for the job.

CHAIRPERSON: Yes.

MR MXOLISI SANDILE OLIVER NXASANA: Then I – I was never asked to disclose anything.

CHAIRPERSON: Yes.

10 **MR MXOLISI SANDILE OLIVER NXASANA:** Except for my CV that was asked.

CHAIRPERSON: Yes.

MR MXOLISI SANDILE OLIVER NXASANA: And later on after my appointment I was then at the NPA I then underwent the security clearance, the vetting system.

CHAIRPERSON: Which you say you were not required to do but you took upon yourself to do it.

MR MXOLISI SANDILE OLIVER NXASANA: We took it upon ourselves at NPA.

20 **CHAIRPERSON:** Yes.

MR MXOLISI SANDILE OLIVER NXASANA: Yes.

CHAIRPERSON: Yes. So you were not asked.

MR MXOLISI SANDILE OLIVER NXASANA: Yes.

CHAIRPERSON: For this information. You were not asked to fill any application form. You were simply approached and it appeared that you

were being approached after some homework had been done to indicate that you were the right person?

MR MXOLISI SANDILE OLIVER NXASANA: That – that is what – that is how I understood it Chair.

CHAIRPERSON: Yes. Okay. And then 63.1.2 says that you failed to take steps to expedite the finalisation of a complaint to the Law Society by Mr Jabulani Ngala [?] against you in 2008. In other words part of the submissions by the President was that you had failed to take steps to expedite the finalisation of a complaint against you that had been
10 lodged in the Law Society in 2008. Now this was in 2015 is it not?

MR MXOLISI SANDILE OLIVER NXASANA: Yes

CHAIRPERSON: So this was now about what seven years after that complaint was lodged?

MR MXOLISI SANDILE OLIVER NXASANA: After the complaint was lodged.

CHAIRPERSON: Yes.

MR MXOLISI SANDILE OLIVER NXASANA: Whilst I was still practicing.

CHAIRPERSON: Where – did you understand what this complaint
20 meant really because you did not file a complaint and you were not supposed to decide the complaint it was the Law Society which was supposed to decide the complaint. What was your understanding of what the real complaint of the President was on this against you?

MR MXOLISI SANDILE OLIVER NXASANA: And Chair the reason – the reason why this found itself – why the President raised it it is because I

am the one who disclosed.

CHAIRPERSON: Yes.

MR MXOLISI SANDILE OLIVER NXASANA: This in the vetting form.

CHAIRPERSON: Yes.

MR MXOLISI SANDILE OLIVER NXASANA: And I explained there.

CHAIRPERSON: Ja.

MR MXOLISI SANDILE OLIVER NXASANA: And may I repeat here that in practice generally as attorneys' clients they report us to our respective legal bodies. There was nothing strange about it. If a client
10 is under the impression that his – it was an estate matter and he felt that the matter was taking too long to...

CHAIRPERSON: And estate matters take long.

MR MXOLISI SANDILE OLIVER NXASANA: They take long ...

CHAIRPERSON: Hm.

MR MXOLISI SANDILE OLIVER NXASANA: And I was ultimately exonerated by the - by the Law Society.

CHAIRPERSON: By the Law Society. Yes and you - you explained that in the clearance documents?

MR MXOLISI SANDILE OLIVER NXASANA: At the time I had not ...

20 **CHAIRPERSON:** Hm.

MR MXOLISI SANDILE OLIVER NXASANA: The - the Law Society had not taken a decision.

CHAIRPERSON: Had not taken a decision. Yes.

MR MXOLISI SANDILE OLIVER NXASANA: Yes but it was a matter where I even put up in the vetting form that there is no way that I will

be found guilty.

CHAIRPERSON: Yes.

MR MXOLISI SANDILE OLIVER NXASANA: I was appointed the executor in the estate ...

CHAIRPERSON: Yes.

MR MXOLISI SANDILE OLIVER NXASANA: And everything was above board ...

CHAIRPERSON: Yes.

MR MXOLISI SANDILE OLIVER NXASANA: And the complaint was
10 going to be dismissed in any event.

CHAIRPERSON: Yes.

MR MXOLISI SANDILE OLIVER NXASANA: Which ultimately - which is what ultimately happened.

CHAIRPERSON: Yes.

MR MXOLISI SANDILE OLIVER NXASANA: I knew this based on my experience I served at the Law Society as a council member for more than 10 years.

CHAIRPERSON: Hm.

MR MXOLISI SANDILE OLIVER NXASANA: I also became the
20 President of the Law Society of KZN ...

CHAIRPERSON: Hm, hm.

MR MXOLISI SANDILE OLIVER NXASANA: And I know the nature of these complaints.

CHAIRPERSON: Hm. So - so you say he must have got - this must have been taken from the information you provided yourself?

MR MXOLISI SANDILE OLIVER NXASANA: That - that is so Chair.

CHAIRPERSON: But what was your understanding of what his complaint was when he says you failed to take steps to expedite the finalisation? I mean what were you supposed to do? You - you are the person against whom complaints were made and the Law Society was the - was the body that was supposed to deal with the complaint.

ADV PAUL JOSEPH PRETORIUS SC:

MR MXOLISI SANDILE OLIVER NXASANA: To deal with the complaint.

CHAIRPERSON: What - what was the complaint about?

10 **MR MXOLISI SANDILE OLIVER NXASANA:** Chair, I ...

CHAIRPERSON: As you understood it.

MR MXOLISI SANDILE OLIVER NXASANA: I did not understand because I tried to explain. I really do not know but my view was that the President was just on a fishing expedition trying to get something against me or to justify the reasons for him establishing the commission of inquiry ...

CHAIRPERSON: Hm.

MR MXOLISI SANDILE OLIVER NXASANA: Into my fitness to hold office.

20 **CHAIRPERSON:** Yes and then 63.1.3. It refers to the fact that in your - in answer to a certain question or in the clearance - in your security clearance application there was a question. Have you ever been convicted or are there any pending cases for a criminal departmental offence and it said you - the complaint of - the President's complaint was that you had failed to disclose that during 1985 you had been

acquitted on a charge of murder and that during October 2012 you had been arrested but not charged for inconsiderate driving.

Let us talk about the complaint that you - you failed to disclose that during 1985 you had been acquitted on a charge of murder. Did you understand why it would have been relevant for - why it would have been problematic that you did not disclose that you were acquitted of - of a charge of murder?

MR MXOLISI SANDILE OLIVER NXASANA: Chair my - my view as a lawyer even to date even at the - in the very first correspondence to
10 the President I made it very clear that I am under no obligation to disclose an acquittal ...

CHAIRPERSON: Yes.

MR MXOLISI SANDILE OLIVER NXASANA: Because if you are acquitted ...

CHAIRPERSON: Hm.

MR MXOLISI SANDILE OLIVER NXASANA: The presumption of innocence it is guaranteed in the Constitution that any accused person is presumed innocent until proven guilty. In this case I was charged and I went through the process. I was cleared by the court and I was
20 acquitted. There - there should be no qualms about that.

CHAIRPERSON: Have you ever been told either by him or his advisors why you - there was an obligation for you to disclose an acquittal?

MR MXOLISI SANDILE OLIVER NXASANA: No Chair but despite that ...

CHAIRPERSON: Hm.

MR MXOLISI SANDILE OLIVER NXASANA: It is even incorrect to suggest that I did not disclose it ...

CHAIRPERSON: Hm.

MR MXOLISI SANDILE OLIVER NXASANA: Because it is there in the security clearance form.

CHAIRPERSON: In the security clearance?

MR MXOLISI SANDILE OLIVER NXASANA: Yes.

CHAIRPERSON: And then he also complained that during October 2012 you had been arrested but not charged for inconsiderate
10 driving. What - what do you say about that? I think you have said something. Just remind me what you - what your attitude was about this.

MR MXOLISI SANDILE OLIVER NXASANA: Chair again it will be a sad day if the ordinary citizens of a country were to be expected to disclose that the police had unlawfully arrested me and when there was no evidence and I was then subsequently not even yet discharged. The matter was not even placed on the roll. On the first day at court I do not even appear but ...

CHAIRPERSON: Which - which suggests that the - either the police
20 themselves or the prosecutor did not believe that there was a case for you to face?

MR MXOLISI SANDILE OLIVER NXASANA: That is correct Chair and in - in the security clearance form I dealt extensively with it. I explained even I think in the correspondence that how it happened and that these pleas - I even laid a counter charge against them and just

because I was then subsequently appointed at the NPA I did not pursue it because I did not want to get myself as the National Director of Public Prosecutions involved in - in litigation because I had - I had a big job to - to attend to.

CHAIRPERSON: Yes and then 63.1.4. His other complaint was that you had failed to disclosure whether you had taken any steps to resolve your complaint against the two police officers who had arrested you unlawfully for inconsiderate driving. Did you understand what the basis - why that could be a complaint by the President against you?

10 **MR MXOLISI SANDILE OLIVER NXASANA:** Chair from - from the reading of that complaint it cannot be a complaint. It - it does not make sense at all. You cannot force me to pursue civil litigation against anyone.

CHAIRPERSON: And - and what is wrong with that if you decide not to pursue ...

MR MXOLISI SANDILE OLIVER NXASANA: If I decided ...

CHAIRPERSON: Any steps against people who have - police officers who arrest you unlawfully?

20 **MR MXOLISI SANDILE OLIVER NXASANA:** There - there is nothing wrong Chair.

CHAIRPERSON: Were you ever given any explanation what the basis was of all this?

MR MXOLISI SANDILE OLIVER NXASANA: Not at all Chair; but again Chair to me I got the impression that the President was really on the back foot and he did not have the solid ground to have established that

Commission of Inquiry to look into my fitness to hold office. He did not have reasons.

CHAIRPERSON: I ask you these questions Mr Nxasana because some of these complaints I have difficulty in understanding them and I am asking because maybe you might understand them as the person who was involved and there is a person who did have discussions with the President and his advisors that maybe you might be able to tell me something that makes me understand them.

MR MXOLISI SANDILE OLIVER NXASANA: Unfortunately not Chair.

10 Save to say that these complaints most of them Chair they had unintended consequences because I am a family man. I have kids and my kids came to know about my brushes with the law. Things that they did not know. My family, extended family it was humiliation more than everything for me.

CHAIRPERSON: Yes, thank you. You may proceed Mr Pretorius.

ADV PAUL JOSEPH PRETORIUS SC: In summary in relation to the complaints raised by the President or on behalf of the former President and the Cassim Inquiry the security clearance application did not require you to answer the questions dealt with in paragraph 63?

20 **MR MXOLISI SANDILE OLIVER NXASANA:** That is correct Chair.

ADV PAUL JOSEPH PRETORIUS SC: In any event a proper reading of the additional information in the security clearance form would disclose that you did in fact deal with all these issues?

MR MXOLISI SANDILE OLIVER NXASANA: That is correct Chair.

ADV PAUL JOSEPH PRETORIUS SC: If we may go to the next section

on page 18. Chair the purpose of the evidence now would be to contrast the complaints relating to Mr Nxasana with the complaints that existed in relation to Advocates Jiba and Mrwebi and the failure immediately to take action in relation to them.

CHAIRPERSON: Yes. No, no that is fine. I just want to confirm with you that insofar as his - Mr Nxasana's - submissions to the Cassim Inquiry which he says he ended up not - I think - submitting. Insofar as they are concerned the questions that he has been asked have basically elicited the answers that are in the submissions or not really?

10 **ADV PAUL JOSEPH PRETORIUS SC:** Not in the detail contained ...

CHAIRPERSON: Or you will - you will come back to that.

ADV PAUL JOSEPH PRETORIUS SC: In the submissions ...

CHAIRPERSON: *Ja.*

ADV PAUL JOSEPH PRETORIUS SC: But because the submissions were never given to anybody.

CHAIRPERSON: Yes

ADV PAUL JOSEPH PRETORIUS SC: They - the - the factual circumstances that you speak of in the submissions are they correct?

MR MXOLISI SANDILE OLIVER NXASANA: That is correct Chair.

20 **ADV PAUL JOSEPH PRETORIUS SC:** And there you deal in detail with many of the allegations contained in the terms of reference and in the President's complaints. You deal with both?

MR MXOLISI SANDILE OLIVER NXASANA: With both.

ADV PAUL JOSEPH PRETORIUS SC: Despite the difference?

MR MXOLISI SANDILE OLIVER NXASANA: That is correct Chair.

ADV PAUL JOSEPH PRETORIUS SC: So are you happy to tell the Chair that if he reads the facts set out there he can rely on them as being correct?

MR MXOLISI SANDILE OLIVER NXASANA: That is - that is so Chair and those ...

CHAIRPERSON: But - but is it ...

MR MXOLISI SANDILE OLIVER NXASANA: Those are the submissions I was going - I was going to ...

CHAIRPERSON: Yes.

10 **MR MXOLISI SANDILE OLIVER NXASANA:** To make - to present at the Cassim Inquiry had ...

CHAIRPERSON: Yes.

MR MXOLISI SANDILE OLIVER NXASANA: It not been for the settlement that was reached.

CHAIRPERSON: Yes, but or maybe the - the one part that you - I might not have asked you might be relating to the media statements that were alleged to have been put to you.

ADV PAUL JOSEPH PRETORIUS SC: I am going to deal with those now Chair.

20 **CHAIRPERSON:** Yes. Let us deal with them now.

ADV PAUL JOSEPH PRETORIUS SC: If you go to paragraph 69.

MR MXOLISI SANDILE OLIVER NXASANA: Yes.

ADV PAUL JOSEPH PRETORIUS SC: You say that in your submission to the Cassim Inquiry you did deal with the issue of the several media reports ...

MR MXOLISI SANDILE OLIVER NXASANA: That is correct Chair.

ADV PAUL JOSEPH PRETORIUS SC: Of which the President complained?

MR MXOLISI SANDILE OLIVER NXASANA: Yes.

ADV PAUL JOSEPH PRETORIUS SC: Right. Would you tell the Chair in the media did you go out to the media to make any public statements at your own initiative?

MR MXOLISI SANDILE OLIVER NXASANA: No Chair. What used to happen is I would respond to media queries and I think that is one of
10 the reasons why part of the work or part of the mandate for the fact finding committee headed by retired Justice Yacoob which we will later deal with it here was to investigate the leakage of information to the media by senior management.

Then I would find myself being confronted with issues and I would have to respond but Chair my position even in the Code of Conduct of NPA allows me to - to deal with the media. There is nothing wrong with it.

CHAIRPERSON: But to the extent that part of the - part of what the former President may have complained about you was that you made
20 certain media statements that may have brought the NPA into disrepute or something like that.

MR MXOLISI SANDILE OLIVER NXASANA: Yes Chair.

CHAIRPERSON: You did indicate last time when you were here that you did not know the particulars of those media statements that he was referring to but at some stage I think I said there is somewhere where

you seem to have said certain statements that were in the media were actually correct and I think that was in the submissions that you made to the - in the representations that you made to the President as to why he should not suspend you. I think that is where ...

MR MXOLISI SANDILE OLIVER NXASANA: Yes Chair.

CHAIRPERSON: There - there was ...

MR MXOLISI SANDILE OLIVER NXASANA: Yes.

CHAIRPERSON: Is the position there that you were simply trying to think of statements that you may have made but you were not sure what

10 - which ones he was complaining about?

MR MXOLISI SANDILE OLIVER NXASANA: That is correct Chair. I - I ended up - because I was pressed to respond to the President's complaints and notwithstanding having requested the President to give me particularities of the complaint. He failed to do so. Then he left me with no choice but to speculate what he was talking about and that is the unfortunate part of it.

He - he talked about media statements and - and I denied even when I responded to the President I still denied that there were media statements made by me which had the effect of bringing the NPA
20 to disrepute.

CHAIRPERSON: And until the settlement agreement was made and until today you have never been given any clarity as to what media statements were being referred to?

MR MXOLISI SANDILE OLIVER NXASANA: That is correct Chair.

CHAIRPERSON: Okay.

ADV PAUL JOSEPH PRETORIUS SC: If you go to the supplementary bundle - Bundle EE6 - in front of you.

MR MXOLISI SANDILE OLIVER NXASANA: Yes.

ADV PAUL JOSEPH PRETORIUS SC: The document at page MSON 2-0-9 what is that document? The first document in that bundle.

MR MXOLISI SANDILE OLIVER NXASANA: This is the letter I prepared.

ADV PAUL JOSEPH PRETORIUS SC: If you look at the heading on page 2-0-9 you will see the ...

10 **MR MXOLISI SANDILE OLIVER NXASANA:** Yes. I - I ...

ADV PAUL JOSEPH PRETORIUS SC: Purpose of the document.

MR MXOLISI SANDILE OLIVER NXASANA: This is the letter that I prepared. I wrote to the President - President Zuma. I want to get the date.

ADV PAUL JOSEPH PRETORIUS SC: Was this in - it is clear from the heading in relation to the Notice of Intention to Suspend.

MR MXOLISI SANDILE OLIVER NXASANA: To suspend. *Ja*, in terms of Section 12(6)(a) of the National Prosecuting Authority Act.

20 **ADV PAUL JOSEPH PRETORIUS SC:** Alright. So this was the document prepared by yourself ...

MR MXOLISI SANDILE OLIVER NXASANA: Yes.

ADV PAUL JOSEPH PRETORIUS SC: Addressed to the former President dealing with the submissions or representations you were asked to make consequent upon the issue of the notice to consider your suspension?

MR MXOLISI SANDILE OLIVER NXASANA: That is correct Chair.

ADV PAUL JOSEPH PRETORIUS SC: If you go to page 2-1-3. You will see there that you deal with reported comments in the media ...

MR MXOLISI SANDILE OLIVER NXASANA: Yes.

ADV PAUL JOSEPH PRETORIUS SC: And there you say in paragraph 18:

10 “I have requested details about what comments I
 allegedly made when I made them and in what
 media they were reported. At the time of making
 these submissions I was not provided with this
 information.”

MR MXOLISI SANDILE OLIVER NXASANA: That is correct.

ADV PAUL JOSEPH PRETORIUS SC: Were you ever after that provided with that information?

MR MXOLISI SANDILE OLIVER NXASANA: No Chair.

ADV PAUL JOSEPH PRETORIUS SC: No and then you made an assumption about what reports could have been referred to ...

MR MXOLISI SANDILE OLIVER NXASANA: Yes.

ADV PAUL JOSEPH PRETORIUS SC: And you dealt with them?

20 **MR MXOLISI SANDILE OLIVER NXASANA:** I dealt with it.

ADV PAUL JOSEPH PRETORIUS SC: And you give a full explanation in the following paragraphs?

MR MXOLISI SANDILE OLIVER NXASANA: That is correct.

ADV PAUL JOSEPH PRETORIUS SC: I do not know if ...

CHAIRPERSON: Yes. No.

ADV PAUL JOSEPH PRETORIUS SC: I need to place that all on record. It is on record.

CHAIRPERSON: It is on record.

ADV PAUL JOSEPH PRETORIUS SC: Thank you.

CHAIRPERSON: Maybe just one more thing which I think you did deal with last time but for the sake of completeness now. To the extent that one of the President's complaints was that the fact that you had been convicted of assault rendered you unfit to occupy the position of NDPP. What did you say in your submissions in response to that?

10 **MR MXOLISI SANDILE OLIVER NXASANA:** Chair I think if I remember well I explained in detail - in detail how it came about that I was - how it came about that the offence was committed.

CHAIRPERSON: That is in respect of the assault conviction ...

MR MXOLISI SANDILE OLIVER NXASANA: The assault conviction.

CHAIRPERSON: That you know - you knew about?

MR MXOLISI SANDILE OLIVER NXASANA: That is correct Chair.

CHAIRPERSON: Yes.

20 **MR MXOLISI SANDILE OLIVER NXASANA:** *Ja* and I gave the account of the - of the offence and Chair without downplaying the seriousness of the offence but I said the - even though I did not say it in so many words that any - any offence is serious. The offence of assault especially against a - anyone or even worse against a - a female is - is serious but Chair the assault varies from - the crime of assault varies from common assault to assault with intent to do grievous bodily harm.

I was convicted of assault common and I explained that it was

the slapping with an open hand and I said the - the sanction surely it clearly indicates that the - the court did not view it as serious to render me unfit to hold the office of the National Director of Public Prosecutions.

I had been - I made then a distinction also with the - the requisite integrity and conscientiousness required by the - the Act ...

CHAIRPERSON: The NPA Act?

MR MXOLISI SANDILE OLIVER NXASANA: The NPA Act and the Constitution and I said that the requisite integrity and
10 conscientiousness is in no way different to the requisite integrity and conscientiousness required of a person for admission as an attorney and as an advocate for which I am an attorney ...

CHAIRPERSON: Hm.

MR MXOLISI SANDILE OLIVER NXASANA: And I disclosed that when I was admitted as an attorney ...

CHAIRPERSON: Hm.

MR MXOLISI SANDILE OLIVER NXASANA: And there should not be a - an impediment - that previous conviction should not be an impediment to my fitness to hold the office of the NDPP.

20 **CHAIRPERSON:** So you said you had disclosed to the High Court in your application for admission as an attorney ...

MR MXOLISI SANDILE OLIVER NXASANA: That is right.

CHAIRPERSON: That you had previously been convicted of common assault ...

MR MXOLISI SANDILE OLIVER NXASANA: That is ...

CHAIRPERSON: And the court had seen - had come to the conclusion that you were fit and proper to be admitted to as an attorney ...

MR MXOLISI SANDILE OLIVER NXASANA: That is correct.

CHAIRPERSON: And that there is no basis to think that the same court would think that you are - you are fit and proper to be admitted as an attorney when you have a previous conviction of common assault but you are not fit and proper to be - to occupy the position of NDPP because of the same conviction?

MR MXOLISI SANDILE OLIVER NXASANA: That is correct.

10 **CHAIRPERSON:** That is - that is part of the point that you made?

MR MXOLISI SANDILE OLIVER NXASANA: That is the point that I - that is part - part of the point that I - I was making.

CHAIRPERSON: Yes, okay.

MR MXOLISI SANDILE OLIVER NXASANA: Especially Chair in KZN. I do not know in other divisions.

CHAIRPERSON: Hm.

MR MXOLISI SANDILE OLIVER NXASANA: That the - the admission applications in KZN Chair - you may know that there are - you have two Judges sitting for the admissions.

20 **CHAIRPERSON:** Yes, yes. *Ja*, I think everywhere it is two Judges ...

MR MXOLISI SANDILE OLIVER NXASANA: In the Eastern Cape ...

CHAIRPERSON: If I am not mistaken.

MR MXOLISI SANDILE OLIVER NXASANA: In the Eastern Cape it was one.

CHAIRPERSON: Oh is that so?

MR MXOLISI SANDILE OLIVER NXASANA: Yes.

CHAIRPERSON: Well on - in Pretoria when I sat there it was always two but so that - that is part of the point you made?

MR MXOLISI SANDILE OLIVER NXASANA: That is correct Chair.

CHAIRPERSON: And did anybody - the President or anybody ever present any argument against that ...

MR MXOLISI SANDILE OLIVER NXASANA: Hm.

CHAIRPERSON: That argument to say ...

MR MXOLISI SANDILE OLIVER NXASANA: Not ...

10 **CHAIRPERSON:** The court is not - there is no chance that the court can say this previous conviction renders me unfit to be NDPP?

MR MXOLISI SANDILE OLIVER NXASANA: I think Chair if - if I recall the President's submission he - he was trying to argue that the requisite integrity and conscientiousness required of the person holding the office of the NDPP is higher ...

CHAIRPERSON: Is higher.

MR MXOLISI SANDILE OLIVER NXASANA: Than the - and our argument was that it cannot be.

CHAIRPERSON: Okay, alright.

20 **MR MXOLISI SANDILE OLIVER NXASANA:** Yes.

CHAIRPERSON: Thank you.

ADV PAUL JOSEPH PRETORIUS SC: In summary Mr Nxasana if you look at page 2-1-2 of the supplementary bundle. The evidence that you have just given is it summarised on that page and the page following - page 212?

MR MXOLISI SANDILE OLIVER NXASANA: Paragraph?

ADV PAUL JOSEPH PRETORIUS SC: From paragraph 12 ...

MR MXOLISI SANDILE OLIVER NXASANA: 12, yes.

ADV PAUL JOSEPH PRETORIUS SC: Through to paragraph 17 on the next page.

MR MXOLISI SANDILE OLIVER NXASANA: Yes Chair.

ADV PAUL JOSEPH PRETORIUS SC: Thank you. Would you just place on record what you say in the second sentence of paragraph 69 of the main statement please?

- 10 **MR MXOLISI SANDILE OLIVER NXASANA:** “The President
later complained that my statements to the media
damaged the public’s perception of the NPA. While
I agreed that public confidence in the NPA had been
shaken I disputed that it was because of anything
that I had done.”

ADV PAUL JOSEPH PRETORIUS SC: Right. The attention of the media on what issues did it focus?

MR MXOLISI SANDILE OLIVER NXASANA: Chair ...

- 20 **ADV PAUL JOSEPH PRETORIUS SC:** At the time. You deal with that
in paragraph 70.

MR MXOLISI SANDILE OLIVER NXASANA: Chair at the time the media’s focus was on the unlawful conduct of Advocates Jiba and Mrwebi who were seen to be abusing their positions in the NPA and had acted unlawfully.

ADV PAUL JOSEPH PRETORIUS SC: Would you give some examples.

MR MXOLISI SANDILE OLIVER NXASANA: These included the - the - their involvement in withdrawing charges of fraud and corruption against former Head of Crime Intelligence Major General Richard Mdluli.

ADV PAUL JOSEPH PRETORIUS SC: You are aware of the decisions of the High Court and the Supreme Court of Appeal in this regard?

MR MXOLISI SANDILE OLIVER NXASANA: That is correct Chair.

ADV PAUL JOSEPH PRETORIUS SC: What did they decide on these issues?

10 **MR MXOLISI SANDILE OLIVER NXASANA:** Chair after Advocate Jiba and Advocate Mrwebi had decided not to prosecute Major General Mdluli of fraud and corruption the High Court per Judge Murphy criticised them.

In fact firstly criticised the manner in which they handled the - the matter or in - in which they came to the - to the decision that there was no - there was insufficient evidence and he set aside their decision not to prosecute - reviewed and set it aside and the matter was taken on appeal to the SCA and per Judge Brand in the SCA - Judge Murphy's decision was confirmed and again it criticised the
20 manner in which they handled the matter.

ADV PAUL JOSEPH PRETORIUS SC: In paragraph 70.3 you quote an extract from the judgment of Judge Murphy.

MR MXOLISI SANDILE OLIVER NXASANA: Yes Chair.

ADV PAUL JOSEPH PRETORIUS SC: Would you read that extract onto the record please but before you do so the respondents referred to

there who were they?

MR MXOLISI SANDILE OLIVER NXASANA: Chair for - for the - my understanding here was referring to the NPA, Advocate Jiba and Advocate Mrwebi.

ADV PAUL JOSEPH PRETORIUS SC: Yes. What did Judge Murphy say?

MR MXOLISI SANDILE OLIVER NXASANA: The - the excerpt here from this judgment the Judge said:

10 “Suffice it to say that the conduct of the respondents is unbecoming of persons of such high rank in the public service and especially worrying in the case of the NDPP. A senior officer of this court with weighty responsibility in the proper administration of justice. The attitude of the respondents signals a troubling lack of appreciation of the Constitutional ethos and principles underpinning the offices they hold.”

20 **ADV PAUL JOSEPH PRETORIUS SC:** Then in paragraph 70.4 you record that Judge Murphy dealt with a failure to disclose but now this failure to disclose is particularised in paragraph 70.4. What was that failure to disclose?

MR MXOLISI SANDILE OLIVER NXASANA: Judge Murphy found that Advocate Jiba had failed to disclose Advocate Glynnis Breytenbach’s representations in the NPA’s record of the decision.

ADV PAUL JOSEPH PRETORIUS SC: What representations had she

made?

MR MXOLISI SANDILE OLIVER NXASANA: Advocate Jiba had made no mention of the representations made by Ms Glynnis Breytenbach urging her to review the decision to - to pursue charges against Major General Mdluli.

ADV PAUL JOSEPH PRETORIUS SC: Right. Then in paragraph ...

CHAIRPERSON: I think the - I am - I am sorry Mr Pretorius. I may have missed - I may - I might not have heard correctly but I think Mr Pretorius wanted you to say what Ms Breytenbach's representations
10 said that Ms Jiba did not disclose.

MR MXOLISI SANDILE OLIVER NXASANA: That is - that is what I am - I am saying in this next line Chair.

CHAIRPERSON: Huh-uh.

MR MXOLISI SANDILE OLIVER NXASANA: Apparently Advocate Breytenbach had made representations to Advocate Jiba that it was wrong, there was sufficient evidence to prosecute and she was pleading with Advocate Jiba to review her decision to not prosecute and Advocate Jiba deliberately did not disclose that in the NPA's record in the High Court.

20 **CHAIRPERSON:** So in other words when there was a review application that had been lodged in the High Court against her decision not to prosecute Mr Mdluli, in disclosing the record that she was obliged in terms of Rule 53, I think of the High Court rules to file in the High Court. She did not include the representations that had been made to her by Miss Breytenbach saying, but there is enough evidence

to prosecute, please review your decision, that is what she did not disclose to the Court?

MR MXOLISI SANDILE OLIVER NXASANA: That is what she did not disclose Chair and to the contrary she maintained that there was not sufficient evidence to prosecute Mdluli and withheld and failed to disclose that in fact, she had been told, she had been advised that there was evidence.

CHAIRPERSON: Yes, thank you.

ADV PAUL JOSEPH PRETORIUS SC: You make reference in
10 paragraph 70.6 to a judgement of Gorvin J- Judge Gorvin.

MR MXOLISI SANDILE OLIVER NXASANA: Yes Chair.

ADV PAUL JOSEPH PRETORIUS SC: In the case of Major General Booyesen versus the Acting Director of Public Prosecutions. In essence – or let me ask you, did Judge Gorvin make any adverse finding against Advocate Jiba in that judgement?

MR MXOLISI SANDILE OLIVER NXASANA: That is correct Chair.

ADV PAUL JOSEPH PRETORIUS SC: What was that?

MR MXOLISI SANDILE OLIVER NXASANA: I think Chair, basically
20 Judge Gorvin again, criticised Advocate Jiba's decision to sign, if I remember correctly to prosecute General Booyesen because she signed the racketeering certificate. Judge Gorvin did not have – there was no evidence that was presented before him that there was evidence justifying the charges that were preferred against General Booyesen, especially the racketeering charges.

ADV PAUL JOSEPH PRETORIUS SC: Again I'm...[intervenes].

MR MXOLISI SANDILE OLIVER NXASANA: In other words when she did that Judge Gorvin found that she misled the Court.

ADV PAUL JOSEPH PRETORIUS SC: In paragraph 71 you deal with issues related to Advocate Magwebu and again you refer to the judgement of Judge Murphy, Chair all these judgements have been placed in the supplementary bundle.

CHAIRPERSON: Yes.

ADV PAUL JOSEPH PRETORIUS SC: What did Judge Murphy find in relation to Advocate Magwebe?

10 **MR MXOLISI SANDILE OLIVER NXASANA:** Chair Judge Murphy found that Advocate Magwebe's evidence lacked credibility particularly in relation to his contention that he consulted with Advocate Sibongile Mzinyathi who is the DPP in Pretoria that is in relation – that he consulted with him before he decided to discontinue the prosecution against Major General Mdluli.

ADV PAUL JOSEPH PRETORIUS SC: Paragraph 71.2 you deal with a further finding?

MR MXOLISI SANDILE OLIVER NXASANA: Yes that Advocate Magwebe had failed to disclose relevant documents that formed part of
20 the record of his decision to withdraw charges against Major General Mdluli.

ADV PAUL JOSEPH PRETORIUS SC: And in paragraph 71.3 another finding you refer to?

MR MXOLISI SANDILE OLIVER NXASANA: Here Judge Murphy also rejected Advocate Magwebe's contention that the decision to withdraw

charges against Major General Mdluli had been made in consultation with Advocate Sibongile Mzinyathi. He also rejected Advocate Magwebe's contention that investigations into the charges against Major General Mdluli were defective and that his evidence that Miss Breytenbach had believed that the charges were defective as improbable, he found his evidence unreliable.

ADV PAUL JOSEPH PRETORIUS SC: These findings what did the Supreme Court of Appeal say about them?

MR MXOLISI SANDILE OLIVER NXASANA: The Supreme Court of
10 Appeal confirmed Judge Murphy's findings.

ADV PAUL JOSEPH PRETORIUS SC: What recommendation did you make to the Minister of Justice in July 2014?

MR MXOLISI SANDILE OLIVER NXASANA: I – on 18 July 2014 I asked Advocate Gerhard Nel to prepare a memorandum that we referred to previously here in the Commission. In that memorandum, that was the memorandum that was signed off by Mr Hofmeyr, where I approved of it and we – I made recommendations to the Minister to request the President to consider instituting disciplinary action against Advocate Jiba and Magwebe and to place them on suspension pending the
20 hearing, I also asked the inquiry should be – I recommended that the inquiry should be chaired by a retired Judge.

ADV PAUL JOSEPH PRETORIUS SC: Chair just for the record and assist any reader of the transcript the memorandum already referred to in evidence appears at page 184.24. We've dealt with that memorandum, if we could go to ...[intervenes].

CHAIRPERSON: I'm sorry Mr Pretorius so just to put these issues in their correct context and perspective the criticisms and the findings – adverse findings that had been made by the Court against Jiba and Advocate Magwebe to which you have just referred, they all happened before July 2014, is that right?

MR MXOLISI SANDILE OLIVER NXASANA: That is correct Chair.

CHAIRPERSON: Would that include the Supreme Court of Appeal decision or that may have come later, which confirmed those findings?

MR MXOLISI SANDILE OLIVER NXASANA: It also
10 included...[intervenes].

CHAIRPERSON: It was also before?

MR MXOLISI SANDILE OLIVER NXASANA: Yes.

CHAIRPERSON: And so, I think I remember from last time when you gave evidence that the – you approached Advocate Els SC for an opinion in June is that right?

MR MXOLISI SANDILE OLIVER NXASANA: That is correct Chair.

CHAIRPERSON: In June of 2014.

MR MXOLISI SANDILE OLIVER NXASANA: Advocate Elles.

CHAIRPERSON: Elles, okay I said Els okay, alright so this is all
20 before you received the letter from the President saying that he had decided to institute an inquiry against you, is that right or did it happen more or less the same time?

MR MXOLISI SANDILE OLIVER NXASANA: I think Chair, when you check the records, I think the letter advising me of the President's decision was dated the 4th of July if I'm not mistaken.

CHAIRPERSON: Oh I think you probably are right, ja 4th of July but you had already asked for...[intervenes].

MR MXOLISI SANDILE OLIVER NXASANA: I had already started the process.

CHAIRPERSON: You had already started and I think last time I asked you the question and you said there were a number of people who were aware that this is what you were doing.

MR MXOLISI SANDILE OLIVER NXASANA: Yes.

CHAIRPERSON: Yes, okay alright.

10 **ADV PAUL JOSEPH PRETORIUS SC:** So I understand it the memorandum signed by Advocate Hofmeyr is dated the 18th of July 2014 but that was prepared before that?

MR MXOLISI SANDILE OLIVER NXASANA: That is correct Chair. Just for the record he's Mr Hofmeyr.

ADV PAUL JOSEPH PRETORIUS SC: You say in paragraph 74 that at the time you wrote – or that memorandum was written, let's deal with that first, paragraph 74 you didn't write that memorandum if I understand your evidence?

MR MXOLISI SANDILE OLIVER NXASANA: No Chair.

20 **ADV PAUL JOSEPH PRETORIUS SC:** So that paragraph would need to be corrected, I think you – it would be more correct to say that at the time that memorandum was written [indistinct] approved by you.

MR MXOLISI SANDILE OLIVER NXASANA: That is correct Chair.

ADV PAUL JOSEPH PRETORIUS SC: You were considering appointing a fact finding inquiry is that the Justice Yacoob inquiry.

MR MXOLISI SANDILE OLIVER NXASANA: That is correct.

ADV PAUL JOSEPH PRETORIUS SC: Was he indeed appointed?

MR MXOLISI SANDILE OLIVER NXASANA: He was Chair.

ADV PAUL JOSEPH PRETORIUS SC: Can you recall the date of his appointment?

MR MXOLISI SANDILE OLIVER NXASANA: It was on the 31st of July 2014.

ADV PAUL JOSEPH PRETORIUS SC: And for what purpose was he appointed to Chair an inquiry?

10 **MR MXOLISI SANDILE OLIVER NXASANA:** Chair amongst other things was to investigate, establish and determine the alleged involvement of the NPA's employees including senior officials and the leaking of information to the media and other interested parties. The alleged unethical and unprofessional conduct on the part of the NPA's employees, whether any member of the NPA committed an unlawful act.

ADV PAUL JOSEPH PRETORIUS SC: And you've already told the Chair that you instructed Advocates Jiba and Magwebe to cooperate with that inquiry.

MR MXOLISI SANDILE OLIVER NXASANA: That is correct Chair.

20 **ADV PAUL JOSEPH PRETORIUS SC:** Did they?

MR MXOLISI SANDILE OLIVER NXASANA: They refused Chair.

ADV PAUL JOSEPH PRETORIUS SC: Right did Justice Yacoob complete a report?

MR MXOLISI SANDILE OLIVER NXASANA: Yes he did Chair.

ADV PAUL JOSEPH PRETORIUS SC: Do you recall at least two of

the recommendations he made?

MR MXOLISI SANDILE OLIVER NXASANA: Yes Chair, one of the recommendations was that criminal charges should be instituted against certain members of the NPA and that the NPA should appoint a judicial Commission of inquiry with powers of [indistinct] to investigate allegations of impropriety in the NPA.

ADV PAUL JOSEPH PRETORIUS SC: Right, now that recommendation that criminal charges should be instituted or conducted did they include Advocates Jiba and Magwebe or not?

10 **MR MXOLISI SANDILE OLIVER NXASANA:** They included them Chair

ADV PAUL JOSEPH PRETORIUS SC: What did you do with the recommendations?

MR MXOLISI SANDILE OLIVER NXASANA: I forwarded the recommendation to the Minister of Justice, then it was Minister Masutha and I gave the same recommendation to the President, President Zuma when I gave him the bundle of all information that I felt was necessary for him to know.

ADV PAUL JOSEPH PRETORIUS SC: Right now at the time you gave the copy of Justice Yacoob's recommendations to the Minister of
20 Justice and the President, apart from that, did the President have – former President have any other information emanating from you or anywhere else in relation to the conduct of Advocates Jiba and Magwebe?

MR MXOLISI SANDILE OLIVER NXASANA: Chair I do not recall.

ADV PAUL JOSEPH PRETORIUS SC: The memorandum, the Court

Judgements, they would have been published.

MR MXOLISI SANDILE OLIVER NXASANA: Because I cannot recall in the order of sequence because we had previously prepared the memorandum to the Minister, there was that to and fro communication between the Minister and my office and Mr Hofmeyr where Minister Masutha was basically asking why it was Mr Hofmeyr who signed the memorandum and in that memorandum it contained all of this, and what steps did I take and we then explained that and I remember, Chair, that in the – I think when I subsequently handed the memorandum to the
10 Minister I pointed out to him that I – my view is that he's delaying conveying this to the President and I have decided to do it myself, I remember that I did that but the order of sequence I cannot recall.

ADV PAUL JOSEPH PRETORIUS SC: Alright is it correct then at some stage the memorandum was given to the former President?

MR MXOLISI SANDILE OLIVER NXASANA: That is correct.

ADV PAUL JOSEPH PRETORIUS SC: Was that by yourself?

MR MXOLISI SANDILE OLIVER NXASANA: By myself yes.

CHAIRPERSON: Is the sequence that you can't remember whether the memorandum preceded the handing the submission of the
20 memorandum to the Minister and subsequent to the President preceded the submission of the report of Justice Yacoob or it was the other, is that what you can't remember which one was done first?

MR MXOLISI SANDILE OLIVER NXASANA: Yes that is what I can't remember, yes.

CHAIRPERSON: Okay not that's fine.

ADV PAUL JOSEPH PRETORIUS SC: Be that as it may you do know that the former President did receive a copy of Justice Yacoob's recommendations?

MR MXOLISI SANDILE OLIVER NXASANA: That is correct Chair he even thanked me for bringing that to his attention.

ADV PAUL JOSEPH PRETORIUS SC: And those recommendations dealt with the issues to which you've now testified?

MR MXOLISI SANDILE OLIVER NXASANA: That is correct Chair.

ADV PAUL JOSEPH PRETORIUS SC: Did the former President act on
10 those recommendations?

MR MXOLISI SANDILE OLIVER NXASANA: Unfortunately not Chair.

CHAIRPERSON: Did he ever tell you why he was not acting on them?

MR MXOLISI SANDILE OLIVER NXASANA: No he did not Chair the unfortunate situation is that he acted against me instead of acting against them.

CHAIRPERSON: Yes.

MR MXOLISI SANDILE OLIVER NXASANA: And the unfortunate part Chair, is that Advocate Jiba and Magwebe – well I heard it from corridor talks they were bragging that nothing was going to happen to them and
20 then when it didn't happen – when the President didn't take any action against them, it came as no surprise and it just confirmed what they – the rumour that I was hearing.

CHAIRPERSON: The bragging that you referred to was that bragging that they did within your presence or is it reports that you received from other people that they were bragging that nothing would happen to

them?

MR MXOLISI SANDILE OLIVER NXASANA: No it was the reports I was receiving from other people Chair.

CHAIRPERSON: Okay.

MR MXOLISI SANDILE OLIVER NXASANA: That's why I say it's the rumour but ultimately it's a fact that the President didn't take any action. I will hear the rumour Chair – one rumour was that I was told by someone that the President said to him, the problem with the boy, referring to me, is that he doesn't see eye-to-eye with the girl, referring
10 to Jiba and that's – those are all part of the rumours...[intervenes].

CHAIRPERSON: But that's something that wasn't said to you in your presence?

MR MXOLISI SANDILE OLIVER NXASANA: Yes

CHAIRPERSON: Okay.

ADV PAUL JOSEPH PRETORIUS SC: Chair I've been given a helpful note if I may just place on record.

CHAIRPERSON: Yes.

ADV PAUL JOSEPH PRETORIUS SC: This is matters emanating from the documentation. The Judgement of Judge Murphy was dated the
20 23rd of September 2013.

CHAIRPERSON: Yes.

ADV PAUL JOSEPH PRETORIUS SC: Supreme Court of Appeal judgment was dated the 17th of April 2014 and the judgment of Judge Gorvin in relation to General Booysen was dated the 26th of February 2014.

CHAIRPERSON: Okay.

ADV PAUL JOSEPH PRETORIUS SC: Justice Yacoob was appointed on the 31st of July 2014.

CHAIRPERSON: Okay thank you.

ADV PAUL JOSEPH PRETORIUS SC: Let's move on to another topic please and that is the affidavit of the former President in relation to the circumstances preceding the settlement agreement which he referred to on page 22.

MR MXOLISI SANDILE OLIVER NXASANA: Yes Chair.

10 **ADV PAUL JOSEPH PRETORIUS SC:** Just to recap Chair, in the bundle that should be before you of day 111 on the 12th of June 2019, the evidence before you, Chair if we can, in accordance with your direction refer to, not any bundle page, rather the actual page for the transcript for the record for the sake of consistency, do you have that in front of you Mr Nxasana?

MR MXOLISI SANDILE OLIVER NXASANA: I do.

ADV PAUL JOSEPH PRETORIUS SC: Would you go to page 121 that's the pages are set out at the bottom of the page.

MR MXOLISI SANDILE OLIVER NXASANA: Yes Chair.

20 **ADV PAUL JOSEPH PRETORIUS SC:** You'll recall that on the 12th of June we were dealing with the judgment of the Constitutional Court.

MR MXOLISI SANDILE OLIVER NXASANA: That is correct Chair.

ADV PAUL JOSEPH PRETORIUS SC: And that judgement is quoted on page 120 at line 10.

MR MXOLISI SANDILE OLIVER NXASANA: Yes Chair.

ADV PAUL JOSEPH PRETORIUS SC: The judgment reads,

“It appears from a letter written on 10 December 2014 by attorneys acting for Mr Nxasana that former President had engaged Mr Nxasana to get him to agree to vacate office. In the letter Mr Nxasana made it plain that he did not want to vacate office as there was no basis for him to do so. He stated that he would, however, consider stepping down only if he was fully compensated for the remainder of the contract period”,

10 And you confirmed in your evidence on that day, that, that was the correct record of the facts insofar as you were concerned.

MR MXOLISI SANDILE OLIVER NXASANA: That is correct Chair.

ADV PAUL JOSEPH PRETORIUS SC: If one goes to page 121 your evidence reads at line five,

“Okay thank you Chair I at no stage, did I make a request to vacate the office to the former President Mr Jacob Zuma and that letter of the 10th that is referred to here I was also involved in drafting that letter and you say at the end of that paragraph the Court found correctly that I did not make any request I never made that request”,

20

Do you recall that evidence?

MR MXOLISI SANDILE OLIVER NXASANA: That is correct Chair.

ADV PAUL JOSEPH PRETORIUS SC: You still confirm that, that evidence is correct do you?

MR MXOLISI SANDILE OLIVER NXASANA: Yes I do confirm Chair.

ADV PAUL JOSEPH PRETORIUS SC: And then the judgment goes further to say – and this is at the second part of page 121,

“It must be noted right from the onset and throughout the entire negotiation process that culminated in the settlement agreement Mr Nxasana unequivocally stated that he did not wish to resign and that he considered himself to be fit for office. Instead his preference was for former President Zuma’s allegation that he was no longer fit for office, to be tested in a formal inquiry as proposed by the former President and then
10 over the page the judgment continues, throughout he protested the existence of a factual or legal basis for him to vacate office, also he disavowed any indication by him Section 12 (8) of the Act to voluntarily vacate office. It is so of course, that he did indicate that he would resign only if he was paid the full salary for the remainder of his term of office”,

Then I asked you the question does that fairly summarise the position as far as you are aware and you say,

“That is correct it fairly summarises the position”,

So in that part of your evidence you placed on record your
20 view of the facts and your recordal of the facts relating to the settlement agreement consistent with the judgment of the Constitutional Court.

MR MXOLISI SANDILE OLIVER NXASANA: That is correct Chair.

ADV PAUL JOSEPH PRETORIUS SC: Then what I need to put to you is what the former President himself said in relation to that matter. If

you go to divider EE3, in the file in front of you, that's Exhibit EE3 at pages 146 to 147 you will see there the version of the former President. Now this time we referring to the pages marked MSON on the top right-hand corner.

MR MXOLISI SANDILE OLIVER NXASANA: Yes Chair.

CHAIRPERSON: What page?

ADV PAUL JOSEPH PRETORIUS SC: Page 146 Chair.

CHAIRPERSON: Yes.

ADV PAUL JOSEPH PRETORIUS SC: If you look at paragraph 5.5
10 please Mr Nxasana.

MR MXOLISI SANDILE OLIVER NXASANA: Yes I see.

ADV PAUL JOSEPH PRETORIUS SC: You see there that the former President says, - perhaps I should just place on record Chair that this is the answering affidavit of the former President in the High Court Gauteng Local Division that appears as the title page of Exhibit EE3.

CHAIRPERSON: And I think you may also have to say that it is his answering affidavit...[intervenes].

ADV PAUL JOSEPH PRETORIUS SC: In the corruption watch case.

CHAIRPERSON: Yes.

20 **ADV PAUL JOSEPH PRETORIUS SC:** Chair that appears on page 142.

CHAIRPERSON: Yes to the affidavit of David Lewis and - Mr David Lewis and Miss Nicole Fritz because there is another answering affidavit by him in relation to, I think CASAC in this ...[intervenes].

ADV PAUL JOSEPH PRETORIUS SC: Yes Chair.

CHAIRPERSON: Okay.

ADV PAUL JOSEPH PRETORIUS SC: So if we may go back then to page 146 paragraph 5.5 there the former President says,

“During the period August 2013 to 9 May 2015 Nxasana and I had various one-on-one verbal discussions regarding the discord that existed in the National Prosecuting Authority especially as between Nxasana and the senior management”,

Do you have any comment on that statement?

MR MXOLISI SANDILE OLIVER NXASANA: Yes Chair, Chair firstly
10 this cannot be correct Chair for the simple reason that in August 2013 I was not at the NPA, my appointed – I was only appointed at the end of August 2013 but with effect from 1 October 2013, then that August 2013 is wrong...[intervenes].

CHAIRPERSON: It must be –maybe it was – maybe it’s an error in terms of the year maybe it should have been 2014?

MR MXOLISI SANDILE OLIVER NXASANA: Maybe it’s an error in terms of the year yes, but Chair we didn’t have these discussions regarding the discord that existed in the Natation Prosecuting Authority, specially between myself and the senior management. There was no
20 discord between me and the senior management, the problem that I had was with two persons, that was Advocate Jiba and Advocate Magwebe.

CHAIRPERSON: Yes I - now you, are you dealing with that on the assumption that the former President, in that paragraph was – may have been referring to the period between August 2014 to May 2015, you are saying if that’s the period you’re referring to this is what you

can say?

MR MXOLISI SANDILE OLIVER NXASANA: Yes Chair.

CHAIRPERSON: **CHAIRPERSON:** Yes. So you saying there were no – you had no problems with anybody in the NPA including senior management other than two people only that you have mentioned?

MR MXOLISI SANDILE OLIVER NXASANA: Yes but to put it correctly they – these two had the problem.

CHAIRPERSON: With you?

MR MXOLISI SANDILE OLIVER NXASANA: With me.

10 **CHAIRPERSON:** Yes.

MR MXOLISI SANDILE OLIVER NXASANA: Because they undermined my authority.

CHAIRPERSON: Yes, yes, yes.

ADV PAUL JOSEPH PRETORIUS SC: Paragraph 5 – may I continue Chair?

CHAIRPERSON: Yes you may.

ADV PAUL JOSEPH PRETORIUS SC: Paragraph 5.6 reads:

20 “The discord was so pronounced that the senior management was divided, the National Prosecuting Authority was destabilised and haemorrhaging. The illuming inquiry into the fitness to hold office of Nxasana also contributed to this discord. This – the inquiry offered some of the senior management as additional platform to question the authority of Mr Nxasana.”

Is that a fair reflection of what was occurring under your watch at the time?

MR MXOLISI SANDILE OLIVER NXASANA: Again Chair it is not a fair reflection of what was occurring.

ADV PAUL JOSEPH PRETORIUS SC: What do you say?

MR MXOLISI SANDILE OLIVER NXASANA: Chair everything was well with the senior management and I except for – except for these – for Advocate Jiba and Mwrebi who were pulling in the wrong direction and I – we did not discuss all these – what the President is saying here in
10 paragraph 5.5. Because every time I – I raised the issue that I know that it is these two who are running the campaign of discrediting me and doing all of this that is all that I would – but the NPA senior management at no stage was under my watch was – at no stage was it divided.

CHAIRPERSON: So is your evidence that you never had any discussions with the former President relating to what he calls the discord that existed in the NPA especially between Nxasana and the senior management and what you say is that whatever discussions there were between the two of you that is yourself and the former
20 President related to your complaints that Advocate Jiba and Advocate Mwrebi were had a problem with you and were doing certain things?

MR MXOLISI SANDILE OLIVER NXASANA: That is correct Chair.

CHAIRPERSON: Ja.

MR MXOLISI SANDILE OLIVER NXASANA: Our discussion with the President was always around the issue of me having to vacate office

and I would always insist that there is no reason for me to vacate office and I would then tell him that I mean the only people – the thing that I was supposed to do was to institute a – I furnished him with the information evidence about Jiba and Mwrebi and he has to institute disciplinary hearing against them. That is all.

CHAIRPERSON: I am just going to ask a question that is not really about this but I do not want to forget it and I may have asked it previously. You know the former President said you made a request to him that you be allowed to vacate the office and you have said you
10 never made such a request.

MR MXOLISI SANDILE OLIVER NXASANA: Yes.

CHAIRPERSON: Okay. Now if you have never made such a request who was the first person who brought the idea that you – who mentioned the idea that you must vacate office as far as you recall? Who did that come from?

MR MXOLISI SANDILE OLIVER NXASANA: The first person Chair was former Minister of Justice and Constitutional Development. It was Mr Radebe.

CHAIRPERSON: Yes.

20 **MR MXOLISI SANDILE OLIVER NXASANA:** Mr Radebe.

CHAIRPERSON: Yes.

MR MXOLISI SANDILE OLIVER NXASANA: And I have – I have been able to locate the letter.

CHAIRPERSON: The letter?

MR MXOLISI SANDILE OLIVER NXASANA: The letter that I – I wrote

him. That was on the evening on the 21st May 2014.

CHAIRPERSON: Yes.

MR MXOLISI SANDILE OLIVER NXASANA: When I met with him at his offices in Pretoria.

CHAIRPERSON: Yes.

MR MXOLISI SANDILE OLIVER NXASANA: And together with the then Director General of Justice Ms Sindane.

CHAIRPERSON: Yes.

MR MXOLISI SANDILE OLIVER NXASANA: Then the next day the 22nd
10 May I then recorded the discussions that we had.

CHAIRPERSON: Yes.

MR MXOLISI SANDILE OLIVER NXASANA: At that meeting and I emailed – I have proof of email.

CHAIRPERSON: Yes.

MR MXOLISI SANDILE OLIVER NXASANA: And he never responded.

CHAIRPERSON: Yes.

MR MXOLISI SANDILE OLIVER NXASANA: But – ja.

CHAIRPERSON: Is that something that you have given to Mr Pretorius that we will go to in due course?

20 **MR MXOLISI SANDILE OLIVER NXASANA**: Yes.

ADV PAUL JOSEPH PRETORIUS SC: I was going to deal with it Chair

CHAIRPERSON: We can deal with it later.

ADV PAUL JOSEPH PRETORIUS SC: But perhaps now is convenient.

CHAIRPERSON: If you...

ADV PAUL JOSEPH PRETORIUS SC: If you would go to page 330.

CHAIRPERSON: If it is convenient it is okay.

ADV PAUL JOSEPH PRETORIUS SC: Of the supplementary bundle handed up this morning, Bundle EE6.

MR MXOLISI SANDILE OLIVER NXASANA: It is page?

CHAIRPERSON: Page number Mr Pretorius? Page Number?

ADV PAUL JOSEPH PRETORIUS SC: 330.

CHAIRPERSON: 330.

MR MXOLISI SANDILE OLIVER NXASANA: Ja.

ADV PAUL JOSEPH PRETORIUS SC: Do you have it?

10 **MR MXOLISI SANDILE OLIVER NXASANA**: I have got it ja.

ADV PAUL JOSEPH PRETORIUS SC: That is a covering email message.

MR MXOLISI SANDILE OLIVER NXASANA: Yes.

ADV PAUL JOSEPH PRETORIUS SC: What is the document that appears on page 331?

MR MXOLISI SANDILE OLIVER NXASANA: It is a – dated 22 May 2014 on the letterhead of the office of the National Director of Public Prosecutions. A letter addressed to Minister Radebe.

20 **ADV PAUL JOSEPH PRETORIUS SC**: Is that the letter you have just referred to in your evidence?

MR MXOLISI SANDILE OLIVER NXASANA: That is correct Chair.

ADV PAUL JOSEPH PRETORIUS SC: Yes. It refers to a meeting between yourself and the Minister.

MR MXOLISI SANDILE OLIVER NXASANA: That is correct Chair.

ADV PAUL JOSEPH PRETORIUS SC: That reference is in paragraph 3.

MR MXOLISI SANDILE OLIVER NXASANA: Yes.

ADV PAUL JOSEPH PRETORIUS SC: And certain discussions took place in relation to your security clearance application?

MR MXOLISI SANDILE OLIVER NXASANA: That is correct Chair.

ADV PAUL JOSEPH PRETORIUS SC: And you place certain matters on record in paragraph 6 relating to what you told the Minister?

MR MXOLISI SANDILE OLIVER NXASANA: That is correct Chair.

ADV PAUL JOSEPH PRETORIUS SC: And then in paragraph 7 what did you tell the Minister there that you recorded in this letter?

10 Paragraph 7 on page 332.

MR MXOLISI SANDILE OLIVER NXASANA: I say I – Chair I said here.

“I did point out that I know the people who are behind this smear campaign who go about bragging and boasting that they will do everything in their power to bring me down. I also pointed out that these people make sure that they drop your name and I am told that they have a direct access to you and they communicate with you behind my back. I know they have been peddling lies about me which I mentioned to you last night.”

20

ADV PAUL JOSEPH PRETORIUS SC: Is that what you told the Minister?

MR MXOLISI SANDILE OLIVER NXASANA: That is correct.

ADV PAUL JOSEPH PRETORIUS SC: Would you then go to paragraph 9 please on page 333.

MR MXOLISI SANDILE OLIVER NXASANA: Yes Chair.

ADV PAUL JOSEPH PRETORIUS SC: What occurred in the conversation between yourself and the Minister as recorded here?

MR MXOLISI SANDILE OLIVER NXASANA: Chair I said here.

“I confirm that there was some misunderstanding when I said I cannot resist when you suggested to me that I should consider stepping down from my position until I explained that I meant that as you were telling me I have nothing to say if I am fired since I did not apply for the job but I was approached whilst I was practicing in Durban.”

ADV PAUL JOSEPH PRETORIUS SC: Who first raised the issue as you put it here of stepping down?

MR MXOLISI SANDILE OLIVER NXASANA: That was Minister Radebe.

ADV PAUL JOSEPH PRETORIUS SC: Right.

MR MXOLISI SANDILE OLIVER NXASANA: And the...

ADV PAUL JOSEPH PRETORIUS SC: And what was...

MR MXOLISI SANDILE OLIVER NXASANA: And the – and the DG.

20 **ADV PAUL JOSEPH PRETORIUS SC:** And what was your response to that statement by Minister Radebe that you should consider stepping down?

MR MXOLISI SANDILE OLIVER NXASANA: Chair I think I said I cannot resist and then I explained to him that when – if that is the case I will have to be fired because I will not step down.

ADV PAUL JOSEPH PRETORIUS SC: Right. And then in paragraph 10

would you just tell the Chair what transpired at the meeting?

MR MXOLISI SANDILE OLIVER NXASANA: Then the Minister Radebe then told me that he – that it going to be a process since the President will have to appoint a commission of inquiry and he asked me if I wanted to see that happening. My response – my response to him was that if that is the procedure then it means it would have to be followed as I believe that I am a fit and proper person to hold this position. I made it very clear which I reiterate – I said I reiterate then the next day when I wrote him the letter. That I am not going to resign because of
10 these false allegations against me.

ADV PAUL JOSEPH PRETORIUS SC: So both at the meeting an in this letter dated the 22nd May 2014 you stated that you would not resign

MR MXOLISI SANDILE OLIVER NXASANA: That is correct Chair.

CHAIRPERSON: Did the Minister ever respond to this letter and disputed your recordal of what had happened in the meeting between you, him and the then DG?

MR MXOLISI SANDILE OLIVER NXASANA: He did not Chair. He did not respond even to this day. But I think in the first correspondence from the President where he was asking me to respond to certain
20 questions or allegations levelled against me I think his first – the first paragraph of his letter where he referred to the – to – I had written a letter to him if I am not mistaken asking to see him and advising him that I had to resort to instituting to a plan – to instituting legal action interdicting him from suspending me. And I pointed out to him that the matter was in court the next day but I am still open to discussion. And

I think in his response he made reference to the utterances that I had made about the Minister these are the utterances I think that he referred to but not the Minister. It came – the response came from the President that he reserved his rights and he will deal with all of that at a proper stage.

CHAIRPERSON: Hm. Okay. I know Mr Pretorius I asked a question that took us on a detour while you were on a certain path. Feel free to go back to the path.

ADV PAUL JOSEPH PRETORIUS SC: Thank you Chair.

10 **CHAIRPERSON**: Yes.

ADV PAUL JOSEPH PRETORIUS SC: Let us go back then to page 146 paragraph 5.7 we are back at the affidavit.

MR MXOLISI SANDILE OLIVER NXASANA: Yes.

ADV PAUL JOSEPH PRETORIUS SC: Of the former President.

CHAIRPERSON: Or maybe before you do so Mr Pretorius I am sorry again. Mr Nxasana you have said that the first person to talk to you about vacating office was the former Minister, Minister Radabe.

MR MXOLISI SANDILE OLIVER NXASANA: That is correct Chair.

20 **CHAIRPERSON**: Did any – did any of the President's advisors that you were dealing with in regard to this matter talk on the basis of you vacating the office during the discussion that happened in the latter part of 2014 and the first half of 2015?

MR MXOLISI SANDILE OLIVER NXASANA: If we may come back Chair?

CHAIRPERSON: You cannot remember?

MR MXOLISI SANDILE OLIVER NXASANA: No, no if you can ask the question again?

CHAIRPERSON: Oh I am asking you. You have already told me who came up with the idea of you vacating office for the first time.

MR MXOLISI SANDILE OLIVER NXASANA: Yes

CHAIRPERSON: Who next talked about you vacating office in – in regard to what culminated in the settlement?

MR MXOLISI SANDILE OLIVER NXASANA: Oh.

CHAIRPERSON: Because you said you never – you never requested to
10 vacate office.

MR MXOLISI SANDILE OLIVER NXASANA: Yes. It was the President because – it was the President when he sent me those – that correspondence Chair. And...

CHAIRPERSON: Yes.

MR MXOLISI SANDILE OLIVER NXASANA: And before him I think I had testified previously that I had a very short meeting with Mr Hulley here in Sandton.

CHAIRPERSON: Yes.

MR MXOLISI SANDILE OLIVER NXASANA: Who is the one who then
20 broke the news to me that the President has taken a decision to institute a commission of inquiry?

CHAIRPERSON: Yes. I understand the idea of you being told that the President had decided to institute an inquiry and I understand the letter from the President advising you that he had decided to institute an inquiry. Of course an inquiry could – would not necessarily lead to you

vacating the office as such. You could be – he could have found that you were fit to hold office and it would not in that event recommend that you should vacate the office as I understand the position. All I am looking at at this stage is whether anybody else other than Minister Radebe spoke about you vacating office and who really started speaking to you about you vacating office?

MR MXOLISI SANDILE OLIVER NXASANA: No then it was – it was Minister Radebe who started that.

CHAIRPERSON: Ja and nobody else talked about that until when?

10 **MR MXOLISI SANDILE OLIVER NXASANA:** The President.

CHAIRPERSON: Until the negotiations started?

MR MXOLISI SANDILE OLIVER NXASANA: That is correct Chair.

CHAIRPERSON: But when the negotiation started who introduced the idea of you vacating office or was the discussion based on the fact that you through your attorneys had indicated that the only time you could consider stepping down would be if you were to be paid for the rest of your period of appointment.

MR MXOLISI SANDILE OLIVER NXASANA: Oh now I understand you Chair. No Chair it was always the President's insistence that I should
20 step down and I had always refused to step down. And to a point then during those discussions – to a point that I – I then said to him the only time – because I have done nothing wrong if you want me to resign as then you must be prepared to pay me for the remainder of my contract.

CHAIRPERSON: Do you recall around about when it was that the President brought up the issue of you having to vacate office or is that

difficult to remember?

MR MXOLISI SANDILE OLIVER NXASANA: It is difficult Chair but I think my recollection I remember that year because I had to think about this matter. I think he also had a meeting with the President. I think was it in – no I cannot remember – I [indistinct].

CHAIRPERSON: Still in 2014 or only in 2015?

MR MXOLISI SANDILE OLIVER NXASANA: Ja 2014 I think 2014 Chair.

CHAIRPERSON: Yes.

MR MXOLISI SANDILE OLIVER NXASANA: I do not know when. Early
10 2014 if I am not mistaken.

CHAIRPERSON: Ja. Yes.

MR MXOLISI SANDILE OLIVER NXASANA: Ja.

CHAIRPERSON: Is that...

MR MXOLISI SANDILE OLIVER NXASANA: I think that was the – I think that was the only time but I think what will assist me is the time when I brought an application because I only – I was only – I only managed to – to meet with the President after I had brought the application to interdict him from [indistinct].

CHAIRPERSON: Yes because I think you did testify that before that
20 you had tried for a number of ...

MR MXOLISI SANDILE OLIVER NXASANA: Exactly.

CHAIRPERSON: On a number of occasions to seek an appointment with him but you – you were not getting an appointment.

MR MXOLISI SANDILE OLIVER NXASANA: That is correct Chair.

CHAIRPERSON: And then you brought an application for an order in

the high court for an order compelling him to give you further particulars in relation to the complaints and – then there was a meeting – then a meeting took place after that.

MR MXOLISI SANDILE OLIVER NXASANA: Yes.

CHAIRPERSON: Between the two of you.

MR MXOLISI SANDILE OLIVER NXASANA: Yes.

CHAIRPERSON: Yes. But you cannot remember whether it was at that first meeting after you brought that application or subsequently that he brought up the issue of you vacating office.

10 **MR MXOLISI SANDILE OLIVER NXASANA:** Yes Chair. I cannot remember but Chair I – what I could recall – I can recall is after I had finally got the chance to meet with him I explained to him my views about all of the allegations and all what – all of what was happening. I explained to him that this was just a smear campaign against me and I brought it to his attention that I had information about what Jiba had instructed people – Jiba and Mwrebi had instructed people to do in my hometown to try and find that against me. But what I cannot recall is whether the first meeting he then raised that issue. But if the Chairperson recalls in my previous testimony I said that to me it
20 appeared – it appeared that the President understood or was satisfied...

CHAIRPERSON: Your explanation.

MR MXOLISI SANDILE OLIVER NXASANA: With my explanations.

CHAIRPERSON: Yes.

MR MXOLISI SANDILE OLIVER NXASANA: And I was under the

impression that he was going to – to announce that he is no longer proceeding with the ...

CHAIRPERSON: Inquiry.

MR MXOLISI SANDILE OLIVER NXASANA: With the inquiry after I had given him all the information and the explanation.

CHAIRPERSON: Yes.

MR MXOLISI SANDILE OLIVER NXASANA: But then to my surprise then he then insisted that no [indistinct] you have to – you have to leave let us talk about the settlement.

10 **CHAIRPERSON**: Yes I think you said that – you said something to the effect that whenever – when you met with him I do not know whether on the one occasion or subsequently but when you explained everything to him he seemed to have no problem with the explanation you gave him.

MR MXOLISI SANDILE OLIVER NXASANA: Yes.

CHAIRPERSON: But you said that he seemed to be under some other pressure.

MR MXOLISI SANDILE OLIVER NXASANA: Pressure yes.

CHAIRPERSON: Because then subsequently he would act in a manner that was not in accordance with how you understood him to receive
20 your explanation before.

MR MXOLISI SANDILE OLIVER NXASANA: That is correct Chair.

CHAIRPERSON: That is what – that is what you said.

MR MXOLISI SANDILE OLIVER NXASANA: Yes Chair.

CHAIRPERSON: But you – you – is your evidence that it was during 2014 that he raised the issue of you vacating the office?

MR MXOLISI SANDILE OLIVER NXASANA: That is correct Chair.

CHAIRPERSON: Okay thank you.

ADV PAUL JOSEPH PRETORIUS SC: Just to assist in that regard. At page 218 of the supplementary bundle EE6 it appears that your representations in regard to the suspension issue are dated the 1st August 2014. Page 218.

MR MXOLISI SANDILE OLIVER NXASANA: Yes Chair.

ADV PAUL JOSEPH PRETORIUS SC: Does that help you in relation to the timing of the discussions? Your application...

10 **MR MXOLISI SANDILE OLIVER NXASANA:** Yes.

ADV PAUL JOSEPH PRETORIUS SC: Would have been more or less around this time.

MR MXOLISI SANDILE OLIVER NXASANA: Around this time yes Chair.

ADV PAUL JOSEPH PRETORIUS SC: Yes. Then if we can go back to page 146 please.

MR MXOLISI SANDILE OLIVER NXASANA: Yes Chair.

ADV PAUL JOSEPH PRETORIUS SC: Paragraph 5.7. This is once again the former President's affidavit. He says:

20 "Section 12.8 of the NPA Act provides that the NDPP
 may request to vacate his or her office for any
 reason which the President deems sufficient."

He then says in the next sentence.

 "Nxasana made the request to me to vacate his
 office."

Is that correct?

MR MXOLISI SANDILE OLIVER NXASANA: It is not correct Chair. I did not have – never made any request.

ADV PAUL JOSEPH PRETORIUS SC: He goes on to say:

“Nxasana made it plain that the discord in the NPA largely rested on the senior management not sharing his strategic views and the disciplinary steps or criminal charges which he intended taking against certain of the senior managers. This posited intractable disputes paralysing the proper functioning of the NPA.”

10

Do you have any comment on the accuracy of those statements?

MR MXOLISI SANDILE OLIVER NXASANA: Chair these – these statements are not correct and I repeat Chair that I at no stage and the President his advisors, the Ministers of Justice both Radebe and Masutha if they still have conscience they know very well that at no stage did I make a request to vacate office.

ADV PAUL JOSEPH PRETORIUS SC: The issue of taking action against certain senior managers and you have referred to the conduct of Messrs Jiba and Mwrebi how could that have been resolved other than through your resignation?

20

MR MXOLISI SANDILE OLIVER NXASANA: Chair that issue could have been resolved by the President himself instituting an inquiry into their fitness to hold office not my resignation because we know that even after I had left I mean there was a Mokgoro Inquiry. I mean it did not resolve the issue. I left but still there was a need to hold that

inquiry.

CHAIRPERSON: Well...

MR MXOLISI SANDILE OLIVER NXASANA: Which was the Mokgoro Commission which was appointed by President – the current President Ramaphosa and not the – and not President Zuma himself.

CHAIRPERSON: In paragraph 5.7 in the second sentence the former President said:

“Nxasana made the request to me to vacate his office.”

10 We have dealt with that. You said you never made such a request but then he says in the next sentence:

“Nxasana made it plain that the discord in the NPA largely rested on the senior management not sharing his strategic views and the disciplinary steps or criminal charges which he intended taking against certain of the senior managers.”

Do you want to deal specifically with the statement that you made it plain to him that the discord in the NPA largely rested on the senior management not sharing your strategic views?

20 **MR MXOLISI SANDILE OLIVER NXASANA:** Chair I never said that.

CHAIRPERSON: You never said that?

MR MXOLISI SANDILE OLIVER NXASANA: No. I do not even know what strategic views the President is referring to.

CHAIRPERSON: Yes. Yes. And then he says:

“And the disciplinary steps or criminal charges which

he intended taking against certain of the senior managers.”

Do you want to say anything about that?

MR MXOLISI SANDILE OLIVER NXASANA: Chair except for the fact that I had brought it to the attention of the President that the – the legal opinion that I had received from Mr Elias was that here criminal charges had to be instituted. Other than that I – there is nothing that I said that may have been – that may have precipitated me asking him to vacate office. I do not understand how that could have resolved the
10 issue.

CHAIRPERSON: In regard to the last sentence of paragraph 5.7 did you say to the President anything along the lines that the disputes – that these were intractable disputes that were paralysing the proper functioning of the NPA?

MR MXOLISI SANDILE OLIVER NXASANA: No Chair I did not say that.

CHAIRPERSON: Thank you.

ADV PAUL JOSEPH PRETORIUS SC: And you have gone a little further to say as I understand it Mr Nxasana that the disputes about which the President was talking there the former President was talking
20 there were they intractable? Was there a solution? In relation to Messrs Jiba and Mwrebi.

MR MXOLISI SANDILE OLIVER NXASANA: There was no solution Chair. There were no solutions. I think the only solution to the problems that I had brought to the attention of the President I had requested him to institute disciplinary actions against them. That was

going to be the solution and consider suspending them pending that. And Chair will recall that at the time I think there were – if my memory serves me well Advocate Mwrebi was facing criminal charges of defeating the ends of justice and intimidation. I think and there were going to be criminal charges added against him. At some point Advocate Jiba herself was also facing criminal charges. That is in the public domain. But despite all of that they remained in the office.

ADV PAUL JOSEPH PRETORIUS SC: Alright. One goes to paragraph 5.8 the former President says in that paragraph:

10 “I therefore deemed the reasons provided by
Nxasana together with the possibility of a protracted
litigation and the holding of the inquiry not to be in
the best interests of the National Prosecuting
Authority Nxasana and the Republic of South Africa
to be sufficient to allow Nxasana to vacate office.”

Do you have a comment on that?

MR MXOLISI SANDILE OLIVER NXASANA: Chair I see that when we finally reach settlement we were quoted part of this paragraph “the protracted litigation” save for that Chair I deny that the – the reasons
20 that he relies on are the reasons that I furnished him that I made a request to vacate office.

ADV PAUL JOSEPH PRETORIUS SC: Well are you implying that you did make such a request?

MR MXOLISI SANDILE OLIVER NXASANA: I deny that I made a request to vacate office.

ADV PAUL JOSEPH PRETORIUS SC: Yes. And then in paragraph 5.9 the former President says:

“It was plain to me that Nxasana was no longer willing to continue as the NDPP and the only outstanding issue remained the financial aspects relating to his vacating his office.”

Now let me just ask you two questions there if I may and then you can make a general comment. If you had wanted to vacate your office through resignation how would you have made such a request?

10 **MR MXOLISI SANDILE OLIVER NXASANA:** Chair I would have made the request in writing firstly and secondly I would have insisted - I would not have insisted in being paid the remainder of my contract bill because it does not make sense that I am the one who wants to resign and on the other hand I am making the demand to be paid. Why should I be paid?

CHAIRPERSON: To be paid the whole amount for ...

MR MXOLISI SANDILE OLIVER NXASANA: The whole amount for ...

CHAIRPERSON: The balance of your contract, yes.

MR MXOLISI SANDILE OLIVER NXASANA: I will not do that Chair and
20 I do not even think the President would have agreed to that himself. Not even him with the - with his legal advisors I do not think they would have agreed to that.

ADV PAUL JOSEPH PRETORIUS SC: What was your justification in your own mind for saying that you would vacate office only if you were paid for the full term of - full term of your office? What was your

reason for doing so?

MR MXOLISI SANDILE OLIVER NXASANA: My - my reason Chair was that I was of the view that I was - since the President was the appointing authority to me it was a question of an employer who is breaching the contract and if he is breaching the contract and he wants me out of my job without me having done anything.

Then the consequences must - that he must pay for that. It is consequential. That was my basis for ...

CHAIRPERSON: So - in other words was your understanding - was that
10 request based on your understanding that if you are - if an employee is employed for a fixed term contract ...

MR MXOLISI SANDILE OLIVER NXASANA: Yes.

CHAIRPERSON: In your case it was 10 years as I understand the position ...

MR MXOLISI SANDILE OLIVER NXASANA: That is correct Chair.

CHAIRPERSON: And the employee is asked to leave the employ of the employer before the end of that period - fixed term and there is no fault on the part of the employee. The employee is entitled to be paid for the balance of the contract period.

20 **MR MXOLISI SANDILE OLIVER NXASANA:** That - that was - that ...

CHAIRPERSON: That was your - that was based on that understanding of the law on your part?

MR MXOLISI SANDILE OLIVER NXASANA: That is correct Chair.

CHAIRPERSON: And of course you are an attorney?

MR MXOLISI SANDILE OLIVER NXASANA: Yes Chair.

CHAIRPERSON: You had practiced for a long time?

MR MXOLISI SANDILE OLIVER NXASANA: Yes Chair.

CHAIRPERSON: Thank you.

MR MXOLISI SANDILE OLIVER NXASANA: And just to add Chair - perhaps Chair just to add because I see - I have seen in the media it is categorised as golden handshake. I mean there are many names given to it. In the Constitutional Court Justice Madlanga referred to the fact that I was given a stick and a carrot - a stick and a carrot - but Chair for me it boils down to one thing.

10 The President when we are negotiating that settlement the - I am vindicated by the correspondence that the court used in coming to the conclusion that I - at no stage did I make a request. Again I did not put any barrel of a gun at anyone to - to pay me that - that money. There was litigation going on and based on the litigation as well and the fact that I was literally fired before with no - no fault on my part.

Chair I - it is my view that I - I felt that I was - I was entitled to defend my - my rights and my interests as well as a - as a human being.

CHAIRPERSON: Maybe I must just mention this for what it is worth. I
20 - for quite some time I did not understand the judgment of the Constitutional Court to have decided - to have made any finding or reached any conclusion as to whether you made the request that the President said you had made to him to vacate office.

That is the one point. The second point is there is a - a passage to which Mr Pretorius did refer you to - a passage to which

Mr Pretorius referred you in the judgment of the Constitutional Court which may be construed - and I put no higher than maybe - maybe construed as implying that it was saying that you may never make that request.

That is the passage where the court said that you had throughout the negotiations made it clear that you were not prepared to - you were only prepared to resign if you paid the whole - for the balance of the - of the period of appointment. If I recall it correctly. That is the passage that was referred to earlier ...

10 **MR MXOLISI SANDILE OLIVER NXASANA:** Yes Chair.

CHAIRPERSON: But having said that I think also I have noticed that when you look at the judgment it does say that the matter was argued before the Constitutional Court on the basis of an acceptance by everybody concerned. That it was - it was argued on the basis or if it was not argued on the basis of a request to vacate office in terms of Section 12. If I recall correctly.

MR MXOLISI SANDILE OLIVER NXASANA: Yes.

CHAIRPERSON: So I just mention these things because I am not necessarily sure that it is correct to say the Constitutional Court made
20 a finding that you never made the request but the judgment is there. One can look at it and - and so on. I - I leave it at that but if you do want to say something in terms of your own understanding. Feel free to do so.

MR MXOLISI SANDILE OLIVER NXASANA: Thank you Chair.

CHAIRPERSON: You - you do want to say something or not really?

MR MXOLISI SANDILE OLIVER NXASANA: Oh Chair when my understanding of the judgment is that the - both the majority as well as well as the minority judgment found that I did not make a request. That is my understanding of the judgment ...

CHAIRPERSON: Yes.

MR MXOLISI SANDILE OLIVER NXASANA: Or reading of the judgment.

CHAIRPERSON: Yes.

MR MXOLISI SANDILE OLIVER NXASANA: The majority judgment -
10 that is why Chair instead of coming to the conclusion that I - instead of reinstating me because remember that they reviewed and set aside the - the decision - my - the decision of vacating office. It was reviewed and set aside and the appointment of Advocate Abrahams was reviewed and set aside.

The decision to pay me was also reviewed and set aside but then the court - the majority decision faced now with the - a - a decision to order my reinstatement decided to invoke the provisions of the Constitution the just and equitableness provisions. Then they said that it is not just and equitable that I be reinstated in the position.

20 That being influenced by the fact that if I remember well they said I was not entirely wholly in the whole event because I - I was also part of an unlawful settlement - so to say- settlement agreement. Then they criticised me for being part of that simply because I am an attorney of longstanding but I was represented also and the President was also represented.

There were legal advisors but I also do not want to say much about the - their judgment. Save to say that I disagree with it but I - I respect it.

CHAIRPERSON: Yes. I was just - as you were talking I was listening but I was just looking for the part where I understood the court to be saying that the matter was being argued - was not being argued on the basis of the - the section that required the request but it is fine. One can always find it some other time but you - you have had a chance to put on record your understanding of what it says?

10 **MR MXOLISI SANDILE OLIVER NXASANA:** That is correct Chair.

CHAIRPERSON: Thank you. Yes Mr Pretorius.

MR MXOLISI SANDILE OLIVER NXASANA: But Chair perhaps to say one thing I think it is also very important Chair to remember I heard Chair - the Chair saying that at the inquiry the fact that the inquiry was established. If I was exonerated as I strongly believed and felt that I was going to be exonerated at the Commission of Inquiry that at the time one cannot say with all certainty that if I was exonerated at the inquiry then I would have been reinstated with my position.

I say that because of what had happened to
20 Advocate Vusi Pikoli.

CHAIRPERSON: Yes.

MR MXOLISI SANDILE OLIVER NXASANA: It is public knowledge. We know that he was subjected to the Commission of Inquiry.

CHAIRPERSON: Yes.

MR MXOLISI SANDILE OLIVER NXASANA: He was exonerated ...

CHAIRPERSON: Yes.

MR MXOLISI SANDILE OLIVER NXASANA: But what happened to him?

CHAIRPERSON: Yes.

MR MXOLISI SANDILE OLIVER NXASANA: I found myself having to fight that because they wanted him out and ...

CHAIRPERSON: Yes.

MR MXOLISI SANDILE OLIVER NXASANA: Ultimately ...

CHAIRPERSON: Yes.

10 **MR MXOLISI SANDILE OLIVER NXASANA:** He - he was out of the office.

CHAIRPERSON: Yes.

MR MXOLISI SANDILE OLIVER NXASANA: I mean the powers that be if they wield political power ...

CHAIRPERSON: Hm.

MR MXOLISI SANDILE OLIVER NXASANA: And financial muscle ...

CHAIRPERSON: Hm.

MR MXOLISI SANDILE OLIVER NXASANA: They do everything within their power ...

CHAIRPERSON: Hm.

20 **MR MXOLISI SANDILE OLIVER NXASANA:** To drain you up to the last energy then ...

CHAIRPERSON: Hm.

MR MXOLISI SANDILE OLIVER NXASANA: And I expected the courts to take that into consideration as well ...

CHAIRPERSON: Hm.

MR MXOLISI SANDILE OLIVER NXASANA: But unfortunately they did not. That is my comment.

CHAIRPERSON: So - so - well what I said was that the fact that there was an inquiry instituted was not a basis for anybody to think that necessarily the inquiry would reach a conclusion that would require you to vacate office ...

MR MXOLISI SANDILE OLIVER NXASANA: *Ja.*

CHAIRPERSON: But the point you are making is there was a precedent ...

10 **MR MXOLISI SANDILE OLIVER NXASANA:** Yes.

CHAIRPERSON: In terms of which an NDPP who had been exonerated by an inquiry similar to yours ...

MR MXOLISI SANDILE OLIVER NXASANA: Yes.

CHAIRPERSON: Was nevertheless dismissed ...

MR MXOLISI SANDILE OLIVER NXASANA: Removed from office.

CHAIRPERSON: Removed from office ...

MR MXOLISI SANDILE OLIVER NXASANA: Yes.

20 **CHAIRPERSON:** And therefore when we look at the inquiry that you were facing we must remember that there was this precedent of which you were aware.

MR MXOLISI SANDILE OLIVER NXASANA: That is correct Chair which I also raised ...

CHAIRPERSON: Yes.

MR MXOLISI SANDILE OLIVER NXASANA: In my papers.

CHAIRPERSON: Yes.

MR MXOLISI SANDILE OLIVER NXASANA: Yes.

CHAIRPERSON: Okay, thank you.

ADV PAUL JOSEPH PRETORIUS SC: Chair in relation to the issue you have just raised may I refer you to paragraph 24 of the judgment on page 100 but that statement of Justice Madlanga should be read in the context of what is said at paragraph 12 on page 95 and paragraph 25 on page 100.

CHAIRPERSON: I am sorry the statement is in paragraph?

ADV PAUL JOSEPH PRETORIUS SC: 24 ...

10 **CHAIRPERSON:** 24.

ADV PAUL JOSEPH PRETORIUS SC: On page 100.

CHAIRPERSON: Yes. I think that is the statement I was looking for.

ADV PAUL JOSEPH PRETORIUS SC: Yes.

CHAIRPERSON: Crucially he says at paragraph 24:

“The hearing before us - at the hearing before us it was no longer in dispute that Mr Nxasana had vacated office ...”

ADV PAUL JOSEPH PRETORIUS SC: Had not vacated.

20 **CHAIRPERSON:** “...had not vacated office in terms of Section 12(8). The contest concerned the question whether the manner in which he vacated office was lawful. The applicants argued that Mr Nxasana vacated office in a manner that was at odds with the Constitution and the law. Advocate Abrahams and the NPA argued that an NDPP is not precluded from

vacating office voluntarily otherwise than under Section 12(8). Mr Nxasana on the other hand accepted that his vacation of office was not constitutionally compliant.”

Ja. I think it - it would have - whatever he says will have to be read in the context of the whole judgment ...

ADV PAUL JOSEPH PRETORIUS SC: Yes Chair.

CHAIRPERSON: But I think I also do recall that he specifically says - you see the - he specifically says that:

10 “They do not decide whether an NDPP may lawfully vacate office outside of the provisions of 12(8).”

But I think we will look at it at the right time, yes.

ADV PAUL JOSEPH PRETORIUS SC: In relation to the factual finding as to whether ...

CHAIRPERSON: Hm.

ADV PAUL JOSEPH PRETORIUS SC: Mr Nxasana made such a request. There are factual findings in paragraphs 12 and 25 by way of an example and in fact throughout the judgment ...

CHAIRPERSON: Yes.

20 **ADV PAUL JOSEPH PRETORIUS SC:** But I suppose had the Constitutional Court been subject to a further appeal to the House of Lords or wherever.

CHAIRPERSON: *Ja.*

ADV PAUL JOSEPH PRETORIUS SC: Chair then one might argue whether those statements were arbiter or otherwise ...

CHAIRPERSON: Yes, yes.

ADV PAUL JOSEPH PRETORIUS SC: And I think that is the issue.

CHAIRPERSON: *Ja, ja.*

ADV PAUL JOSEPH PRETORIUS SC: Were they central to the judgment?

CHAIRPERSON: Yes.

ADV PAUL JOSEPH PRETORIUS SC: Were they collateral to the judgment?

CHAIRPERSON: *Ja.*

10 **ADV PAUL JOSEPH PRETORIUS SC:** Chair it is now quarter past 11. We have exceeded the two hours. I do have two topics still to deal with which should not take longer than 20 minutes.

CHAIRPERSON: Maybe let us deal with - with them and finish ...

ADV PAUL JOSEPH PRETORIUS SC: Thank you.

CHAIRPERSON: And then take the tea break after that.

ADV PAUL JOSEPH PRETORIUS SC: Thank you Chair.

CHAIRPERSON: *Ja, okay.*

ADV PAUL JOSEPH PRETORIUS SC: Just two further issues Mr Nxasana. If we can go please to paragraph 8 of your main
20 statement. Sorry it is paragraph 81. Just to summarise what your own allegations are after having dealt with all the correspondence evidence, the statements of the former President.

In paragraph 81 you explain - and I think you have done this in evidence before - why you negotiated a settlement agreement. In paragraph 82.1 on page 22 of your affidavit in the first sentence you

make a statement about the source of the dispute giving rise to the settlement. What was that dispute as you - as you describe it in any event?

MR MXOLISI SANDILE OLIVER NXASANA: Thank you Chair. The source of the dispute was that the President wanted me to vacate the office of the NDPP and I did not want to leave.

ADV PAUL JOSEPH PRETORIUS SC: Right and then in ...

CHAIRPERSON: Well I am sorry. The - the understanding of what the dispute was that was being settled is quite important. So - so that -
10 that is the dispute as you understood it ...

MR MXOLISI SANDILE OLIVER NXASANA: That is ...

CHAIRPERSON: That was being settled. Is that right?

MR MXOLISI SANDILE OLIVER NXASANA: That is correct Chair.

CHAIRPERSON: Okay.

ADV PAUL JOSEPH PRETORIUS SC: And then in 82.6 you make a further statement. What is that statement?

MR MXOLISI SANDILE OLIVER NXASANA: I - I said Chair after all the negotiations - the settlement negotiations - I ultimately came to resign to - but then say here that:

20 “All of this did not change the simple fact that the settlement agreement was not and was never intended to be concluded - to constitute a request on my part to vacate office in terms of Section 12(8) of the NPA Act.”

ADV PAUL JOSEPH PRETORIUS SC: Alright that is your conclusion?

MR MXOLISI SANDILE OLIVER NXASANA: That is my conclusion Chair.

ADV PAUL JOSEPH PRETORIUS SC: If we can go then to paragraph 85 and following. After the conclusion of the settlement agreement the litigation to which we have been referring throughout your testimony took place. Is that correct?

MR MXOLISI SANDILE OLIVER NXASANA: That is correct Chair.

ADV PAUL JOSEPH PRETORIUS SC: And in paragraph 86 you say that you were served with papers in the application **Corruption Watch,**

10 **Freedom Under Law vs the President and Various Other Parties.**

MR MXOLISI SANDILE OLIVER NXASANA: That is correct Chair.

ADV PAUL JOSEPH PRETORIUS SC: Right. Did you have a meeting with the then Minister of State Security Minister Mahlobo on 22 October 2015?

MR MXOLISI SANDILE OLIVER NXASANA: Yes. Yes Chair.

ADV PAUL JOSEPH PRETORIUS SC: What happened at this meeting?

MR MXOLISI SANDILE OLIVER NXASANA: Let us just Chair for the sake of the record these papers that I was served with they are basically the application to review and set aside the settlement
20 agreement. Just for the purpose of the record.

ADV PAUL JOSEPH PRETORIUS SC: Yes.

MR MXOLISI SANDILE OLIVER NXASANA: Then I received the papers and I did not do anything about them. I think the - was it Freedom Under Law and Corruption Watch. Then subsequently I received a call from the then Minister of State Security Minister Mahlobo who

requested to see - to see me.

He was in Durban. I met with him in Durban at the Beverly Hills Hotel and I remember on the day ...

CHAIRPERSON: When he called you did he ask to have a meeting with you?

MR MXOLISI SANDILE OLIVER NXASANA: Yes.

CHAIRPERSON: Okay. Did he say what it was going to be about at the time of the call?

MR MXOLISI SANDILE OLIVER NXASANA: No he did not ...

10 **CHAIRPERSON:** Okay.

MR MXOLISI SANDILE OLIVER NXASANA: Explain. Chair ...

CHAIRPERSON: You knew each other?

MR MXOLISI SANDILE OLIVER NXASANA: Chair yes.
Minister Mahlobo and I actually knew each other from our days at the University of Zululand.

CHAIRPERSON: You were students at the same time at the University ...

MR MXOLISI SANDILE OLIVER NXASANA: Yes.

CHAIRPERSON: Of Zululand?

20 **MR MXOLISI SANDILE OLIVER NXASANA:** Yes.

CHAIRPERSON: Okay.

MR MXOLISI SANDILE OLIVER NXASANA: Yes. We were students, *ja* and I went to meet him. I remember that he even drove with me in my car to eBandla Hotel which is in Ballito. I remember on that day there was going to be a - he was going to be a speaker in a workshop that

was organised by then Premier of KZN the Honourable Mr Senzo Mchunu.

We discussed some issues and then he asked me to meet with - he arranged with his Chief of Staff who I also know him very well Mr Maduna - to arrange that I meet with Mr Hulley on the next day. He knew that I did not want to see Mr Hulley anymore because he had let me down.

Then I met with Mr Hulley and Mr Maduna at the Beverly Hills the next day over breakfast and at that meeting Mr Hulley then
10 suggested to me that - he asked me if I was aware of the - of the litigation by - brought by Freedom Under Law and Corruption Watch and what is it that I was doing about it. Then I made it clear to him that I have seen the papers but you know I do not have energy anymore to deal with all these issues.

I have not done anything. I do not have money. I do not have time to get involved in all of this. Then he suggested to me that I should work together with the President Zuma and he even offered to pay my legal costs including costs of senior counsel but then - I then made it very clear to him that you see I do not know to what extent you
20 want me to work with Mr Zuma - President Zuma - because I will just - I will adopt a position where I will sit and wait to see what he has - he has to say in answering this because he is the one who must answer.

That was my view. He is the one who must answer this because he knows that I never made the request and I said to the extent that perhaps I will have a look. He then assured me that there

is a draft response or answering affidavit. They have drafted it but they have not yet served and filed and he assured me that in that draft affidavit there is - there is nowhere where President Zuma alleges that I made a request to vacate office.

Then I said well we concluded the meeting by agreeing that he was going to share the draft with me - President Zuma's draft. I will have to go to - to read it and see to what extent then I would consider taking that offer of working together. So where I will be - where my legal costs would be contributed but Chair I pointed out to him that you
10 see the problem is the way I look at the application - because I had read it.

I said the problem is because I gathered that he wanted me to - to confirm or to help President Zuma saying that I made a request to vacate office but then I made it clear at that meeting that that I will not say. I cannot say that because I cannot mislead if I remember what I said. I said I am an officer of the court and I cannot mislead the court and you know very well that that is not what happened and I am not going to put - that - that is when he then assured me that there was nothing in the draft affidavit. Chair ...

20 **CHAIRPERSON:** There was nothing along those lines?

MR MXOLISI SANDILE OLIVER NXASANA: Along those lines ...

CHAIRPERSON: In the draft affidavit?

MR MXOLISI SANDILE OLIVER NXASANA: In the draft affidavit.

CHAIRPERSON: Yes.

ADV PAUL JOSEPH PRETORIUS SC: Did you make any reference to

correspondence in that conversation?

MR MXOLISI SANDILE OLIVER NXASANA: Yes I made - I made reference to correspondence. Chair remember that most of the correspondence from - that emanated from my attorneys.

CHAIRPERSON: Hm.

MR MXOLISI SANDILE OLIVER NXASANA: I was also involved in ...

CHAIRPERSON: In drafting it.

MR MXOLISI SANDILE OLIVER NXASANA: In drafting those letters.

CHAIRPERSON: Yes.

10 **MR MXOLISI SANDILE OLIVER NXASANA:** I knew very well ...

CHAIRPERSON: Hm.

MR MXOLISI SANDILE OLIVER NXASANA: What was in the letters. Then I pointed out to him that there are - there is correspondence where it is clearly - it clearly proves that I did not make any request to the President. It is - it is there in black and white and we - we had filed it.

He assured me nevertheless but then Chair later on fast forward I then - I waited for that - for that draft affidavit. I did not follow it up. I mean it was up to them but then I later received a call. I
20 remember I was driving along M13 in Durban joining - about to join N3. I think I was driving to the office in Durban.

I received a call from a - a journalist who then asked me if I was aware that the President has served and filed the affidavit - his answering affidavit. I said no I am not aware. Then he said to me it is very interesting that in his affidavit he then says that you make a

request to - to vacate office.

Chair I immediately phoned my wife at work, I couldn't wait to get to the office, I phoned my wife at work and I then told her about – this news, I then asked her to download that affidavit and email it to me immediately and she read it, she's a lawyer herself, she's an Attorney, I also read it and we were very disappointed and our disappointment, Chair, was purely based on the fact that – I was so disappointed and I was angry that despite what they had done to me and now I am back in my hometown and they're still doing all these things and the one thing
10 – they called me to this meeting they made this undertaking again, they're being dishonest. I then decided to approach Minister Mahlobo, I came – I went to see him at his residence in Waterkloof then I told him about...[intervenes].

CHAIRPERSON: You came to Pretoria?

MR MXOLISI SANDILE OLIVER NXASANA: Yes, I also – my family is here in Midrand as well.

CHAIRPERSON: Oh okay.

ADV PAUL JOSEPH PRETORIUS SC: What was the purpose of you contacting Minister Mahlobo?

20 **MR MXOLISI SANDILE OLIVER NXASANA:** I raised the issue of my disappointment of what I had discovered that despite Mr Hulley having assured me that there was nothing along the lines in the draft affidavit, firstly that he was going to share the draft affidavit and he failed to do that and secondly that the averments about me in the affidavit, which they know very well, including him, Mahlobo that it is not correct.

Immediately Chair, whilst I was there he then called Minister Masutha and he raised the issue with him and said, hey you have – I'm with Nxasana here and he's complaining about what has happened why did you put this in the affidavit. I got the sense that the answer from Minister Masutha was that he was advised that I had accepted that version, which was not correct. I said to him – you see now I have to put up my affidavit, I know I am late I did not file I only filed the notice to oppose and I did not file my answering affidavit, then I said, I have to consult my lawyers so that we set the record straight which then
10 culminated in me filing what we termed the explanatory affidavit that we filed in the High Court setting the record straight that I did not make that request.

CHAIRPERSON: You go first.

ADV PAUL JOSEPH PRETORIUS SC: Thank you Chair.

CHAIRPERSON: You might be asking what I want to ask.

ADV PAUL JOSEPH PRETORIUS SC: After the telephone call between Minister Mahlobo and the then Minister Masutha, did Minister Mahlobo tell you what Minister Masutha had said?

MR MXOLISI SANDILE OLIVER NXASANA: Yes Chair.

20 **ADV PAUL JOSEPH PRETORIUS SC:** What was that?

MR MXOLISI SANDILE OLIVER NXASANA: He said – Minister Mahlobo said to me that Minister Masutha that is what he was told, he was told that they had engaged me and I agreed to that version, I confirmed that this is what happened and...[intervenes].

ADV PAUL JOSEPH PRETORIUS SC: What version?

MR MXOLISI SANDILE OLIVER NXASANA: The version that I made a request to vacate office which I then denied.

CHAIRPERSON: And how did your meeting with Minister Mahlobo end in terms of this issue?

MR MXOLISI SANDILE OLIVER NXASANA: Chair it ended – I pointed out to him that I have to file my affidavit now because this has – I told him that this will tarnish my image because it is wrong and I am now going to make sure that I consult my legal representatives to assist me in drawing the affidavit and set the record straight, which we, ultimately
10 did and unfortunately our affidavit was rejected in the High Court.

CHAIRPERSON: In the High Court?

MR MXOLISI SANDILE OLIVER NXASANA: Yes.

CHAIRPERSON: Yes well, you will remember that last time we did have a look – I hope my recollection is correct, we did have a look at the correspondence that was exchanged between your attorneys and either the President or his advisors, Miss Makhene and Mr Hulley between the end – towards the end of November/December 2014, January/February and so on in 2015 and that in your attorney's letter of the 3rd of November 2014, I think it was quite made clear that you
20 thought that there was no basis for you to vacate office and you did not want to do that. That was repeated in their letter of 10 December 2014 which they sent to, I think Miss Makhene and I think Miss Makhene – I don't know whether she replied on the 12th of December or in January, I think we looked at the question whether there was any reference to you having made a request from Miss Makhene's

correspondence to your attorneys and from Mr Hulley's correspondence to you or your attorneys and we couldn't find anything. So the question I want to ask is, when did you hear for the first time that the President's version or that the President was saying that you had requested – you had made a request to him to vacate office, when did you hear that for the first time and from whom?

MR MXOLISI SANDILE OLIVER NXASANA: Chair I heard for the first time from the journalist who called me.

CHAIRPERSON: Yes, now you said you, in your meeting I thought
10 you said in your meeting with Mr Hulley there was a discussion between the two of you about the request and Mr Hulley assured you that the draft affidavit of the President that he said was already there, did not have such an allegation?

MR MXOLISI SANDILE OLIVER NXASANA: Yes Chair, I was concerned when he made that approach to me to work with the President and my inclination, I mean it was clear to me, I point it out because I was concerned that the only thing – the only way out for the President in this whole thing was to say I made a request to vacate office.

20 **CHAIRPERSON:** I'm sorry, just repeat that sentence?

MR MXOLISI SANDILE OLIVER NXASANA: Chair after reading the papers, as a lawyer, for the President to defend himself, the only plausible explanation was to say Mr Nxasana – I spoke to Mr Nxasana and he made a request to vacate office in terms of Section 12 (8). That could have been the plausible explanation. Then when Hulley

approached me with a request to work with the President in this matter I had concerns that the President was stuck at the time because time to file, to respond had gone and passed and he was unable to file his answering affidavit. Hence there was this request and I then sensed that this what they want from me. I raised it with Mr Hulley that, Mr Hulley, know what you want from me. You want me to say – to work with the President and say that I made a request because that's the only way to defend – that's the only way for the President to oppose this application. Then I pointed out to him that he did not deny it
 10 neither did he agree to it but he did not deny he did not agree to that either because I was telling him. Then I said to him, I cannot say I made a request because there is correspondence in my attorney's files which suggest that we have been on record saying that it has never been my intention to resign and it's there, therefore I'm not going to say anything that may amount to misleading the Court as an Officer of the Court. That is when he assured me that there is nothing along those lines in the draft affidavit which he then undertook to share it with me before they filed.

CHAIRPERSON: So you are saying that it was not Mr Hulley who said
 20 to you that the President was going to say you had made a request, he did not say that?

MR MXOLISI SANDILE OLIVER NXASANA: No Chair, he did not.

CHAIRPERSON: Yes and you say actually he did not talk about a request before you raised the issue of the request yourself?

MR MXOLISI SANDILE OLIVER NXASANA: Yes he did not.

CHAIRPERSON: And you say you are the one who raised the issue of a request and you did so because you understood that the only defence that the President could have was one that would be based on saying you had made a request?

MR MXOLISI SANDILE OLIVER NXASANA: Yes Chair.

CHAIRPERSON: And then he assured you, this is Mr Hulley, that the draft affidavit he was talking about did not make such an averment?

MR MXOLISI SANDILE OLIVER NXASANA: That is correct which later on proved to be not true.

10 **CHAIRPERSON:** So – but the meeting with Mr Hulley preceded the telephone call from the journalist?

MR MXOLISI SANDILE OLIVER NXASANA: That is correct.

CHAIRPERSON: Okay thank you.

ADV PAUL JOSEPH PRETORIUS SC: Just briefly after the meeting with Mr Hulley and during that meeting you've told the Chair that you referred to correspondence.

MR MXOLISI SANDILE OLIVER NXASANA: Yes.

ADV PAUL JOSEPH PRETORIUS SC: In the possession of your attorney.

20 **MR MXOLISI SANDILE OLIVER NXASANA:** Yes Chair.

ADV PAUL JOSEPH PRETORIUS SC: Did you take any steps to obtain that correspondence?

MR MXOLISI SANDILE OLIVER NXASANA: Yes Chair, I then, faced with this problem now where my name has been dragged into this where allegations were made by the President in an affidavit that I made a

request, then I contacted my attorneys Mr Mabunda requesting the – I told him about what had happened and I requested my file because I wanted to prepare the affidavit and set the record straight. Chair to my surprise Mr Mabunda searched for my files everywhere, he said he searched for my files at his home, in his office, in the boot of his car and my files were not found but then Chair, as I pointed out previously, that would have been the first point of call – first thing to do, to go to my lawyers but I had made precautions, I had kept – like I don't have only – yesterday I was consulting with the evidence leader, I brought
 10 my own file, I do have these things, I put them at different places for safe keeping. Then I had to retrieve my files from where I had kept them, other files and I got the impression that, Chair, I can say that is my view, that the reason why the President felt it necessary to put this averment about me in the affidavit and say that I made a request and for him and Mr Hulley not to share the draft affidavit after having made an undertaking to do that, I think it cannot be a coincidence that my file went missing. He was confident when he deposed to that affidavit that there would not be this correspondence to prove that I had not made the request, unfortunately I had taken precautions, I had.

20 **ADV PAUL JOSEPH PRETORIUS SC:** Finally Mr Nxasana in paragraphs 93 to 95 you make certain brief conclusions, is there anything you wish to tell the Chair about what happened under your watch and its effect on the NPA as a whole?

MR MXOLISI SANDILE OLIVER NXASANA: Yes Chair, briefly my conclusions are briefly that, political and external interference in

decision making at the NPA undermined its integrity and effectiveness and served to erode public confidence in the organisation and also the failure to act decisively against Advocates Jiba and Magwebe in particular harmed the organisation and in my view the Parliamentary Committee on Justice did little or nothing to exercise appropriate oversight or intervene in the issues and Chair, I stress, in the issues concerning Advocates Jiba and Magwebe at least while I was in the office.

CHAIRPERSON: Did you bring these issues concerning Mrs Jiba and
10 Mr Magwebe to the attention of the Portfolio Committee on Justice?

MR MXOLISI SANDILE OLIVER NXASANA: Chair the Portfolio Committee on Justice were very much aware of the issues and what would usually happen there, when the members, especially the members of the Committee who happened to be members of the opposition parties wanted to raise these issues, then they would be brushed aside and they would not be entertained, that was my observation Chair and the issues were in the public domain.

CHAIRPERSON: Ja know the issue were in the public domain...[intervenes].

20 **MR MXOLISI SANDILE OLIVER NXASANA:** The Portfolio Committee have a – inherent powers, had inherent powers to intervene and deal with issues that are in the public domain which affects the operation of the NPA, that is their role.

CHAIRPERSON: So are you saying that you did not raise these issues with the Portfolio Committee on Justice but nevertheless you say

they would have been aware of these issues because the issues were in the public domain and they should have dealt with them, that's the one point, is that the one point you're making and the other one being that you are aware that even though you didn't refer these issues to the Portfolio Committee you are aware that members of opposition parties did raise these issues but they were brushed aside in that committee, are those the two points you are making?

MR MXOLISI SANDILE OLIVER NXASANA: That is correct Chair.

CHAIRPERSON: Well I...[intervenes].

- 10 **MR MXOLISI SANDILE OLIVER NXASANA:** Chair and over and above that Chair, and when I left Chair, I signed off the annual report and in the annual report that I signed off which I saw in his response to the – when Advocate Shaun Abrahams filed, I think he's answering affidavit in the, was it the High Court either in the High Court or in the Constitutional Court he decided to choose to call – to refer to the annual report because we also made mention – referred to the annual report because in the annual report I dealt also with the conduct of Advocates Jiba and Magwebe but then I remember seeing something in the answering affidavit of Advocate Shaun Abrahams referring to that
- 20 thing as nothing more than my – something like my statement and that it would not have been in the annual report but basically he was attacking me for having included my observations, my overview of what happened at the NPA because I felt it was necessary that it should form part of the report under my leadership.

CHAIRPERSON: Well the point you have made about what the

Portfolio Committee on Justice may or may not have done is quite important because I have publically said that I believe that, if at the end of the work of the Commission, I come to the conclusion for example with regard to State Capture, your situation might or might not have anything to do with State Capture, to the extent that I might conclude that there was State Capture. One of the issues I would have to look at is, what were various bodies doing which may have had an obligation to do certain things and that would include Parliament to the extent that Parliament has got a constitutional obligation of oversight, 10 was it playing its oversight obligations properly. Obviously it's not just a question of State Capture the levels of corruption in the country and how certain things were done if they have an obligation of oversight, when did they become aware, what did they do and whether there was a failure to perform their constitutional obligations properly on the part of members of Parliament or some members of Parliament because of other considerations and if so, what are those considerations and what should this Commission recommend should be done to fix that so that, should we have similar situations in the future, Parliament would be able to perform its duties properly. So what you say whether the 20 Justice Portfolio Committee played its role properly is quite important from that perspective.

MR MXOLISI SANDILE OLIVER NXASANA: I understand Chair.

CHAIRPERSON: Yes Mr Pretorius.

ADV PAUL JOSEPH PRETORIUS SC: That's the evidence Chair.

CHAIRPERSON: Yes I think I've got just a few questions to wrap up

Mr Nxasana. Now you have told me that you never made any request to the President that he should allow you to vacate office but after the settlement agreement had been concluded did you submit a letter of resignation as NDPP or anything? I think the settlement agreement had a clause to the effect that you were going to relinquish the position of NDPP so I want to know how that – what that form that took, the relinquishing of that position?

MR MXOLISI SANDILE OLIVER NXASANA: That was the only document I signed Chair.

10 **CHAIRPERSON:** You did not put in any resignation letter?

MR MXOLISI SANDILE OLIVER NXASANA: No resignation letter where I put up my reasons for resignation as required by the NPA Act.

CHAIRPERSON: You simply vacated the office in terms of that settlement?

MR MXOLISI SANDILE OLIVER NXASANA: Yes Chair, in fact, I remember even when I – on the day when I signed that settlement agreement Chair, there was a lot of pressure and I signed it as I pointed out previously, I signed that settlement agreement at Mr Hulley's office at Umhlanga.

20 **CHAIRPERSON:** Yes.

MR MXOLISI SANDILE OLIVER NXASANA: And strangely at the time, when I signed it, Mr Hulley even suggested that, why do I not leave immediately and not wait until the end of May and I refused. Chair I tell you why I refused that, because during the time, I got the sense that, I may be wrong, but I strongly believe that the reason why he

raised that was because at the time I was busy with a review notwithstanding the fact that we had reached the settlement agreement in terms of which I had to leave office by the end of May 2015 but I was busy, I had appointed Advocate Gerrie Nel to review the matter one, Mr Panday.

CHAIRPERSON: Yes.

MR MXOLISI SANDILE OLIVER NXASANA: Yes and I found it very strange and odd that I am now being requested to leave immediately when I'm still busy with a matter – as sensitive as that one.

10 **CHAIRPERSON:** Yes.

MR MXOLISI SANDILE OLIVER NXASANA: Yes.

CHAIRPERSON: And the settlement agreement contemplated that you would leave at the end of May?

MR MXOLISI SANDILE OLIVER NXASANA: At the end of May.

CHAIRPERSON: Yes.

MR MXOLISI SANDILE OLIVER NXASANA: I then ignored it and I left at the end of May, unfortunately at the time when I left I had not taken the decision to reinstate charges against Mr Panday.

20 **CHAIRPERSON:** Yes, you said that at the time that Mr Hulley suggested or asked – suggested that you leave immediately after signing the settlement agreement you were busy – you were in the process of reviewing the matter of Mr Panday, what had happened in that matter, what were you reviewing, I'm not talking about the facts had there been charges against him that were withdrawn or he had been charged and you were reviewing whether he should have been

charged?

MR MXOLISI SANDILE OLIVER NXASANA: Yes Chair that is the matter which, I think, General Booysen testified about.

CHAIRPERSON: Yes.

MR MXOLISI SANDILE OLIVER NXASANA: It's a matter involving Mr Panday it's fraud and corruption charges and that matter also in a way some connection with the former Commissioner of Police in KZN and it also involved her husband and that at the centre of it was this Mr Pillay and a decision...[intervenes].

10 **CHAIRPERSON:** Mr Panday.

MR MXOLISI SANDILE OLIVER NXASANA: Sorry Mr Panday, a decision was taken not to prosecute Mr Panday or to withdraw charges against Mr Panday and I then received a request to review the decision of the DPP KZN from, amongst others, I remember I received from General Booysen and also the then head of the Priority – the Hawks which was General Dramat at the time and Chair we – I then decided to rope in Advocate Gerhard Nel. Our preparations were at a very advanced stage at the time, such that indications were that we were going to reinstate charges but then we had to allow the process to give
20 the other side to make representations and just before I left, Mr Panday's advocate had [indistinct] us with voluminous representations that we had to go through and unfortunately my time came that I had to leave.

CHAIRPERSON: Okay now when you accepted the appointment as NDPP, were you a sole practitioner at the time, I know that you have

told us that you are a sole practitioner now.

MR MXOLISI SANDILE OLIVER NXASANA: That is correct Chair, I have always been a sole practitioner.

CHAIRPERSON: Now what happened to your practice when you had to – when you accepted the appointment?

MR MXOLISI SANDILE OLIVER NXASANA: Chair because I didn't know that I was going to be appointed and it all happened very quickly I had to resort in abandoning my practice by abandoning in inverted commas because there is some processes of closing down the practice
10 and I couldn't close the practice down and I couldn't sell it, I then asked a – I gave it to a colleague with all my clients and everything.

CHAIRPERSON: Yes basically you donated?

MR MXOLISI SANDILE OLIVER NXASANA: I gave away and when I came back from the NPA ...[intervenes].

CHAIRPERSON: Yes that's what I also want to know how – when you came back what was the position, in other words you gave your practice to another attorney?

MR MXOLISI SANDILE OLIVER NXASANA: Yes Chair.

CHAIRPERSON: While you – after you had accepted appointment as
20 NDPP.

MR MXOLISI SANDILE OLIVER NXASANA: That is correct Chair.

CHAIRPERSON: So you no longer, as you continued at the NPA you no longer had a practice of your own?

MR MXOLISI SANDILE OLIVER NXASANA: That is correct Chair.

CHAIRPERSON: Yes.

MR MXOLISI SANDILE OLIVER NXASANA: And Chair the problem with the clientele is once they get to know a new legal practitioner they stick...[intervenes].

CHAIRPERSON: They get attached to that one.

MR MXOLISI SANDILE OLIVER NXASANA: They get attached to them, I lost, in the process lots of clients and I am starting afresh but that was not the only problem because even when, after I had left NPA because of the applications that were brought by Freedom under Law and Corruption Watch I found myself in a predicament of going back to
10 practice, I couldn't take a decision to re-open at the time because I didn't know my fate whether I would be reinstated, as I pointed out I'm still willing to go back to the NPA.

CHAIRPERSON: Yes.

MR MXOLISI SANDILE OLIVER NXASANA: Then I had to wait until the whole process of this litigation had completed then it was – only then that I made a decision that the only way of earning a living for me that I know is to practice as an attorney and things are very tough in Durban, it's not easy, you ask anyone who practices in Durban it's – when I got back I found that things have changed.

20 **CHAIRPERSON:** Now you were appointed in August 2013 as NDPP but the appointment was to be effect from 1 September 2013, is that right?

MR MXOLISI SANDILE OLIVER NXASANA: 1 October.

CHAIRPERSON: 1 October?

MR MXOLISI SANDILE OLIVER NXASANA: Yes.

CHAIRPERSON: But the appointment was in August?

MR MXOLISI SANDILE OLIVER NXASANA: That is correct Chair.

CHAIRPERSON: Yes, 1 October then 2014 and you only left the position of NDPP in 2015.

MR MXOLISI SANDILE OLIVER NXASANA: End of May 2015.

CHAIRPERSON: End of May 2015, so you spent about what, two and a half years at the NPA?

MR MXOLISI SANDILE OLIVER NXASANA: Less than two years.

CHAIRPERSON: Less than two years?

10 **MR MXOLISI SANDILE OLIVER NXASANA:** Yes.

CHAIRPERSON: Okay my arithmetic is not good okay so then when you left you were going to be paid a certain amount of money, you were paid that amount of money?

MR MXOLISI SANDILE OLIVER NXASANA: Yes Chair.

CHAIRPERSON: How did you earn a living after you had left the NPA?

MR MXOLISI SANDILE OLIVER NXASANA: I had to live on the money that I was paid Chair.

CHAIRPERSON: You used that money to...[intervenes].

20 **MR MXOLISI SANDILE OLIVER NXASANA:** Earn a living.

CHAIRPERSON: Yes, so you did not – you had no practice to go back to?

MR MXOLISI SANDILE OLIVER NXASANA: Not at that stage Chair.

CHAIRPERSON: At that stage?

MR MXOLISI SANDILE OLIVER NXASANA: Ja at that stage Chair

what I then ultimately did, I then went back to the colleague that I had given my practice to.

CHAIRPERSON: Yes.

MR MXOLISI SANDILE OLIVER NXASANA: And I asked to serve under him as a professional assistant.

CHAIRPERSON: Yes.

MR MXOLISI SANDILE OLIVER NXASANA: And he would then send me wherever he wanted...[intervenes].

CHAIRPERSON: And he agreed?

10 **MR MXOLISI SANDILE OLIVER NXASANA:** Yes.

CHAIRPERSON: So you moved from a position where, before you were approached and offered the position of being NDPP, and where you had not applied to anybody for the position of NDPP, you were approached, you had a practice that you were running, you accepted this appointment because you wanted to serve, you couldn't sell your practice but you effectively gave it to somebody, to another attorney so that the clients could be taken care for a certain period close to- or about one and a half years or under two years you were at the NDPP and then you came back, you had not practice anymore because you
20 had given your practice to somebody else, and you then had to go to him and ask him if he could employ you as a assistant?

MR MXOLISI SANDILE OLIVER NXASANA: That is correct Chair.

CHAIRPERSON: And then he agreed.

MR MXOLISI SANDILE OLIVER NXASANA: He agreed.

CHAIRPERSON: Just so that you could earn something?

MR MXOLISI SANDILE OLIVER NXASANA: Yes and also just to keep me going Chair.

CHAIRPERSON: Yes and that position continued until when?

MR MXOLISI SANDILE OLIVER NXASANA: Unfortunately Chair he also decided to leave Durban, I think it was August 2018 he went to practice in Pinetown and I decided to remain in Durban because the set up in Durban, I'm originally from Umlasi Township which is the biggest township in KZN and most of my clients is based in that area and the nearest city is Durban and it's easy to get to Durban from all townships and areas around Durban. It's a big city I prefer – then I remained there then I decided then to negotiate with another colleague who I had worked with at NPA as one of my advisors also, Mr Duma who also then subsequently resigned at NPA after I'd left and went back to private practice, I then approached him and asked the same favour with him and it continued until the Constitutional Court passed the – this judgment. Thereafter I then decided to – I only opened last year I think it was around September.

CHAIRPERSON: Yes was this now like opening a new practice?

MR MXOLISI SANDILE OLIVER NXASANA: I'm opening a new practice altogether.

CHAIRPERSON: Altogether?

MR MXOLISI SANDILE OLIVER NXASANA: Yes under a different name.

CHAIRPERSON: Is there any significance to different name, not really?

MR MXOLISI SANDILE OLIVER NXASANA: No I'm saying – not really because it's the same person who is there.

CHAIRPERSON: Okay so how did – and then of course the Constitutional Court decided that you should pay back the money.

MR MXOLISI SANDILE OLIVER NXASANA: Yes Chair.

CHAIRPERSON: And as I recall the judgment it contemplated that you would pay back the whole amount that had been given to you, is that right?

MR MXOLISI SANDILE OLIVER NXASANA: That is right Chair.

10 **CHAIRPERSON:** But in the meantime you had used some of the money to earn a living?

MR MXOLISI SANDILE OLIVER NXASANA: I had used it yes.

CHAIRPERSON: Have you paid back that money?

MR MXOLISI SANDILE OLIVER NXASANA: No Chair.

CHAIRPERSON: No you – why is that?

MR MXOLISI SANDILE OLIVER NXASANA: Because I don't have it Chair.

CHAIRPERSON: You don't have the money?

MR MXOLISI SANDILE OLIVER NXASANA: Yes.

20 **CHAIRPERSON:** Yes okay no that's fine, I just wanted to understand what impact this may have had on your life, thank you very much. Anything arising Mr Pretorius.

ADV PAUL JOSEPH PRETORIUS SC: No Chair.

CHAIRPERSON: Yes thank you very much Mr Nxasana we appreciate that you have quite a few times to give evidence and share with the

Commission what happened, thank you very much.

MR MXOLISI SANDILE OLIVER NXASANA: Thanks Chair

CHAIRPERSON: You are excused thank you. We are going to take the tea adjournment now but I think we'll take a little more than fifteen minutes to also allow for whatever logistical arrangements may be made or do you think fifteen minutes will be enough?

ADV PAUL JOSEPH PRETORIUS SC: I can't say Chair [indistinct mic switched off].

CHAIRPERSON: Yes.

10 **ADV PAUL JOSEPH PRETORIUS SC:** Next trance of evidence which will be the SABC evidence.

CHAIRPERSON: Okay we will adjourn it's now five past twelve and resume at twenty five past twelve.

ADV PAUL JOSEPH PRETORIUS SC: Thank you Chair.

CHAIRPERSON: We adjourn.

REGISTRAR: All rise.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Yes Ms Norman are you ready?

20 **ADV THANDI NORMAN SC:** Good afternoon Mr Chairman.

CHAIRPERSON: Yes good afternoon.

ADV THANDI NORMAN SC: Yes thank you. Yes thank you. I am ready thank you.

CHAIRPERSON: Yes.

ADV THANDI NORMAN SC: Mr Chairman today we continue with the

evidence of the SABC the Chair would recall that initially we called the – we led the evidence of Mr Sundaram and that of Mr Scott. So we continue from that evidence. But Chair has in front of him quite a number of documents which I may with your leave Chair just identify quickly? Chair you – the continuation for the SABC is CC Chair had what had placed before Chair Chair will see that CC5 was once placed before Chair at the time when Mr Sundaram and Mr Scott were testifying but then we continue from there Chair. We have CC6 which continues up to 16 – Volume 16 the volumes are in the...

10 **CHAIRPERSON**: Did you say that the Exhibits relating to SABC come under Exhibit CC.

ADV THANDI NORMAN SC: Of them yes Chair.

CHAIRPERSON: All of them?

ADV THANDI NORMAN SC: All of them Chair yes.

CHAIRPERSON: And we have Exhibit CC1 up to?

ADV THANDI NORMAN SC: Up to 24 as of today Chair.

CHAIRPERSON: Yes. But those that have been handed in.

ADV THANDI NORMAN SC: Yes.

CHAIRPERSON: Already are...

20 **ADV THANDI NORMAN SC**: Up to 5.

CHAIRPERSON: Up to Exhibit CC5?

ADV THANDI NORMAN SC: That is correct Chair yes.

CHAIRPERSON: Okay.

ADV THANDI NORMAN SC: If Chair could admit those and we will identify them as and when the witnesses testify and they are before the

Registrar most of them. Chair might I just indicate that...

CHAIRPERSON: Are they going to be out of sequence? I see Exhibit CC23 here but also the files that I have got here.

ADV THANDI NORMAN SC: Yes Chair.

CHAIRPERSON: Two of them do not indicate on the spine what exhibit other than they are – what exhibits they are other than that they are exhibits CC and then this one reflects that it is Exhibit CC20 and...

ADV THANDI NORMAN SC: To 24.

CHAIRPERSON: It goes up to Exhibit CC24.

10 **ADV THANDI NORMAN SC**: Yes Chair. I had opened for Chair – I asked Registrar to open for Chair CC24 is the statement of the witness that we are going to lead first. The Chairperson Mr Makhathini that is – his statement is CC24. And the one...

CHAIRPERSON: Yes but we – but we have not been marking the state wit – witness statements as Exhibit in themselves is it not?

ADV THANDI NORMAN SC: No.

CHAIRPERSON: We have been – have we not been marking the whole file that contains the statement and the annexures?

20 **ADV THANDI NORMAN SC**: Chair the same team that bundles is the same that did this but what they do they would start with the first statement. It would be CC20 and then up to 24 as in this case there is a divider in between and that divider highlights that this is 20, this is 21, this is 22 to 24 so that...

CHAIRPERSON: Ja no, no that – that – the fact that they have done that on the spine is helpful.

ADV THANDI NORMAN SC: Yes.

CHAIRPERSON: In the sense that one can see from the spine of the file that it contains Exhibit CC20 up to Exhibit CC24.

ADV THANDI NORMAN SC: Yes Chair.

CHAIRPERSON: But I was just saying that the way we have done them before as I recall.

ADV THANDI NORMAN SC: Yes.

CHAIRPERSON: Is for all intents and purposes anything that is in a particular file would be under one exhibit number.

10 **ADV THANDI NORMAN SC:** Yes Chair.

CHAIRPERSON: But we can make do with this arrangement.

ADV THANDI NORMAN SC: Thank you.

CHAIRPERSON: At least because it does show that even though there are many exhibits...

ADV THANDI NORMAN SC: Various.

CHAIRPERSON: In one file.

ADV THANDI NORMAN SC: Yes.

CHAIRPERSON: But it does indicate which ones they are and where they are to be found.

20 **ADV THANDI NORMAN SC:** Thank you Chair.

CHAIRPERSON: Ja.

ADV THANDI NORMAN SC: Thank you very much Chair.

CHAIRPERSON: Okay alright.

ADV THANDI NORMAN SC: Then the Chair they con – yes.

CHAIRPERSON: So we – but now the only thing is that you said that

the ones that have been admitted under Exhibit CC go up to CC5.

ADV THANDI NORMAN SC: Yes Chair.

CHAIRPERSON: And now if we immediately move to Mr Makhathini's evidence.

ADV THANDI NORMAN SC: Yes.

CHAIRPERSON: We will be jumping to Exhibit CC20.

ADV THANDI NORMAN SC: That is correct Chair.

CHAIRPERSON: That will not look very good to anybody reading the transcript and trying to follow when you jump from Exhibit CC5 to
10 Exhibit 20.

ADV THANDI NORMAN SC: 20 yes. Chair the – the only explanation I have is that the statements are packaged as they are received by the team that packages them. Because you will find that for instance CC5 Ms Van Biljon's statement that was received a while ago and then if you go to CC6 and you continue with those you will find that those statements some of them came quite early but in terms of the programming of the witnesses and the way you want to present their evidence you find that the one that is supposed to start as all the entities have done the Chairperson of the board you will find then his
20 statement in 20. Yes.

CHAIRPERSON: Ja you see.

ADV THANDI NORMAN SC: Yes.

CHAIRPERSON: It is not the – the fault of the team that is preparing it because they do not know how the evidence leaders are going to – what their plan is if they are not told.

ADV THANDI NORMAN SC: Yes.

CHAIRPERSON: To say this will be the sequence of the witnesses so that then they make it the exhibits to follow that sequence. We can deal with it in this way because trying to redo it would take too much time but I think it is going to be important that the evidence leaders give them the sequence so that we could start nicely with Exhibit CC6,7,8.

ADV THANDI NORMAN SC: Yes.

CHAIRPERSON: So in other words if Mr Makhathini was planned to be
10 the first witness today it would have been much more convenient for his exhibit to be Exhibit CC6 then we continue rather than start with Exhibit 20.

ADV THANDI NORMAN SC: Yes.

CHAIRPERSON: And go up to 24 maybe the next one would be Exhibit 6, 7, 8 and then it becomes mixed up.

ADV THANDI NORMAN SC: Yes Chair.

CHAIRPERSON: So that is fine. Let us do it this way.

ADV THANDI NORMAN SC: Yes.

CHAIRPERSON: But going forward will the legal team please make
20 sure that we follow the sequence that will be followed in actual hearing.

ADV THANDI NORMAN SC: Yes thank you Chair.

CHAIRPERSON: Hm.

ADV THANDI NORMAN SC: Yes then Chair you will have the – if I may just highlight to Chair the one bundle – the bundles CC24 which is a very large exhibit that is the statement of Mr Zikode which has ten

lever arch files. That will not be dealt with this week Chair but it is not in front of Chair now it is before the Registrar. These are the many files that are there. And Chair will observe that the – the other bundle that has the legislation it is simply Exhibit CC and then it says legislation bundle. And the reports and other documents also Exhibit CC and without the exhibit number because we reserving those numbers for the witnesses but now that we could perhaps give them Exhibit legislation bundle make it Exhibit 25 and then the Exhibit CC Reports we can make it Exhibit 26. The other reports and documents.

10 **CHAIRPERSON**: You are – you are requesting that the one for legislation.

ADV THANDI NORMAN SC: Yes.

CHAIRPERSON: Be Exhibit CC?

ADV THANDI NORMAN SC: 25 Chair.

CHAIRPERSON: 25.

ADV THANDI NORMAN SC: 25.

CHAIRPERSON: And the one for Reports and other documents to be Exhibit CC26.

20 **ADV THANDI NORMAN SC**: Chair I beg your pardon, I beg your pardon. Could you make this – Exhibit CC Legislation 26. I beg your pardon. There is a document I am going to hand up to you which is already marked 25.

CHAIRPERSON: So the one for legislation would be Exhibit 26.

ADV THANDI NORMAN SC: 26 Chair.

CHAIRPERSON: CC26.

ADV THANDI NORMAN SC: And the other one 27. Yes thank you Chair.

CHAIRPERSON: Okay then the one for reports and other documents will be Exhibit CC27.

ADV THANDI NORMAN SC: As Chair pleases. Thank you.

CHAIRPERSON: Just arrange for these to be marked accordingly during the lunch break.

ADV THANDI NORMAN SC: They be marked. Yes thank you Chair.

CHAIRPERSON: Just share the information with other members of the
10 legal team. It – so that the issue of making sure that the exhibit numbers are in line with the sequence of witnesses called.

ADV THANDI NORMAN SC: Yes thank you Chair. I will do that Chair.

CHAIRPERSON: Okay.

ADV THANDI NORMAN SC: Chair the – there are just two other exhibits that I would like to hand up to you Chair which emanate from the events of this weekend. There is for instance one of the implicated persons who has responded I beg leave to hand it up that is CC25. I will just check yes thank you Chair. He is responding to the evidence of some of the witnesses. There are about three witnesses that he
20 responds to. We decided to make his response separate bundle.

CHAIRPERSON: Yes.

ADV THANDI NORMAN SC: Yes.

CHAIRPERSON: So this file will be marked Exhibit CC25. It contains the statement or is it statements?

ADV THANDI NORMAN SC: Yes Chair.

CHAIRPERSON: Statements of ...

ADV THANDI NORMAN SC: No it is one statement but responding to various 3.3 Notices.

CHAIRPERSON: Yes well it says statements but it is the statement of Mr James Bradford Matthews that file will be marked Exhibit CC25.

ADV THANDI NORMAN SC: Chair I am – sorry. There are two statements from one person. I think when you asked is two statements – there is two statements if Chair has a look at the index there is one where he responds to one person and the other one where he responds
10 to another person. So it is two statements.

CHAIRPERSON: Okay.

ADV THANDI NORMAN SC: By the same person.

CHAIRPERSON: Okay.

ADV THANDI NORMAN SC: Thank you. Thank you Chair. And then I am – I would like to hand up as well these documents Chair they have been – we have requested them as a result of the events of the weekend which the witness is going talk to. They are Exhibit – we have marked them Exhibit CC23A and Exhibit CC23B and also Exhibit CC23C. Thank you Chair.

20 **CHAIRPERSON**: What are they?

ADV THANDI NORMAN SC: They are the media statements and the responses that the SABC has also filed and they also contain some of the resignation letters of some of the board members. The witness is going to talk to that. But they will be properly placed in the bundles once he has finished testifying.

CHAIRPERSON: Yes okay.

ADV THANDI NORMAN SC: Yes thank you.

CHAIRPERSON: Thank you.

ADV THANDI NORMAN SC: Could you place the bundle for the witness in front the witness. Thank you.

CHAIRPERSON: The witness will know which – which bundle you referring to when you refer to them?

ADV THANDI NORMAN SC: When – yes, yes.

CHAIRPERSON: Okay.

10 **ADV THANDI NORMAN SC:** Yes Chair we will assist him.

CHAIRPERSON: That is fine.

ADV THANDI NORMAN SC: Thank you. Thank you Chair. The witness is Mr Bongumusa Emmanuel Makhathini he is the Chairperson of the SABC board.

CHAIRPERSON: Yes.

ADV THANDI NORMAN SC: Can he be sworn in Mr Chairman?

CHAIRPERSON: Yes please administer the oath or affirmation?

REGISTRAR: Please state your full names for the record?

20 **MR BONGUMUSA EMMANUEL MAKHATHINI:** My name is Bongumusa Emmanuel Makhathini.

REGISTRAR: Do you have any objection to taking the prescribed oath?

MR BONGUMUSA EMMANUEL MAKHATHINI: No.

REGISTRAR: Do you consider the oath to be binding on your conscience?

MR BONGUMUSA EMMANUEL MAKHATHINI: Yes.

REGISTRAR: Do you swear that the evidence you will give will be the truth; the whole truth and nothing but the truth; if so please raise your right hand and say, so help me God.

MR BONGUMUSA EMMANUEL MAKHATHINI: So help me God.

ADV THANDI NORMAN SC: Thank you.

CHAIRPERSON: Thank you. You may be seated Mr Makhathini. You may proceed then Ms Norman?

ADV THANDI NORMAN SC: Thank you. Thank you Mr Chairman. Mr Makhathini is it correct that you are the chairperson of the SABC
10 board?

MR BONGUMUSA EMMANUEL MAKHATHINI: Yes it is correct.

ADV THANDI NORMAN SC: Yes when were you appointed?

MR BONGUMUSA EMMANUEL MAKHATHINI: I was appointed on the
17th October 2017.

ADV THANDI NORMAN SC: How many members of the board are there now currently as you speak?

MR BONGUMUSA EMMANUEL MAKHATHINI: There is twelve known executive directors and three executive directors.

ADV THANDI NORMAN SC: Yes. Now could just briefly just give the
20 Chairperson your qualifications and whether you have ever served on any other boards before you joined the SABC?

MR BONGUMUSA EMMANUEL MAKHATHINI: Thank you. My – Chairperson my qualifications I hold a General Management Program from Harvard University. I have a Master's Degree in Business Management from University of Johannesburg. I hold a BA Degree

specialising in Business Management and Geography. I also have a Diploma in HR from the University of Zululand. I have a Diploma in – Certificate sorry in Finance and Economics. I matriculated in 1995 from Dlamvuso Senior Secondary School KwaZulu Natal.

ADV THANDI NORMAN SC: Yes thank you. And in your statement which is before you we have already opened it for you is under 23 – CC23 you have seen your statements.

MR BONGUMUSA EMMANUEL MAKHATHINI: Yes.

ADV THANDI NORMAN SC: This is the one that is in front of you. And
10 then next to you there is two bundles which I will take you from time to time refer you to those which is Exhibit 26 and 27 and you will have next to you also Exhibit 23A to C. You have those?

MR BONGUMUSA EMMANUEL MAKHATHINI: Okay.

ADV THANDI NORMAN SC: Thank you. Now let us go back then to your statement. You have prepared this statement and it signed – appears – there is a page 8.

MR BONGUMUSA EMMANUEL MAKHATHINI: Yes.

ADV THANDI NORMAN SC: Is that signature that appears there?

MR BONGUMUSA EMMANUEL MAKHATHINI: Yes it is.

20 **ADV THANDI NORMAN SC:** Is that your statement?

MR BONGUMUSA EMMANUEL MAKHATHINI: It is my statement
Chairperson.

ADV THANDI NORMAN SC: When did you sign it?

MR BONGUMUSA EMMANUEL MAKHATHINI: I signed it on Friday let me just go through the...

ADV THANDI NORMAN SC: Page 8.

MR BONGUMUSA EMMANUEL MAKHATHINI: On the 29th August.

ADV THANDI NORMAN SC: Yes. And this statement that you signed did you sign it voluntarily?

MR BONGUMUSA EMMANUEL MAKHATHINI: Yes I did.

ADV THANDI NORMAN SC: Yes. And are the contents of your statement true and correct?

MR BONGUMUSA EMMANUEL MAKHATHINI: Yes it is true.

ADV THANDI NORMAN SC: Yes. Thank you. Let us then – let us deal
10 with your statement. I will take you because you have already given us your experience and you have given us your qualifications. Could you just give the Chair your experience where – the boards that you served on?

MR BONGUMUSA EMMANUEL MAKHATHINI: Okay.

CHAIRPERSON: Well before that I may have missed it but maybe Mr Makhathini out of humility did not mention all his qualifications he has. I see he has got also B Paed Degree.

MR BONGUMUSA EMMANUEL MAKHATHINI: Yes Chairperson.

ADV THANDI NORMAN SC: I think I missed it. Thank you Chair.

20 **CHAIRPERSON:** No he has got very good qualifications. He is a teacher. He has got Master's in Commerce and he has got – but I think he was – he was humble.

ADV THANDI NORMAN SC: Yes.

CHAIRPERSON: Yes.

ADV THANDI NORMAN SC: Yes thank you Chair. Yes could you then

just explain to Chair where – I see you have served as Executive Board member in various companies could you just highlight those please?

MR BONGUMUSA EMMANUEL MAKHATHINI: Yes I was an Executive board member for a British American Tobacco for Southern Africa. I also serve as Executive board member for South African Breweries. I was a board member for SAB Tri Fund. Board member for Ekoleni Outreach World Outreach Centre advisory board. I also serve in the Sport Trust as a board member. I was also a board member for Industry for Responsible Use of Alcohol. I also serve as the President
10 for Convocation for University of Zululand and the same I was a council member for the University of Zululand. During my days as a student I was part of the student representative council for University of Zululand. Those are the positions that I have served in.

ADV THANDI NORMAN SC: Yes. And there is one position that we spoke about this morning where you served in one organisation that involved one of President Zuma's wives. Could you just tell the Chair about that?

MR BONGUMUSA EMMANUEL MAKHATHINI: Yes. I was also the Chairperson of the Bongi Ngema Zuma Foundation which is the
20 foundation that deals with diabetes. I serve in that foundation as an NGO.

ADV THANDI NORMAN SC: In what capacity were you serving?

MR BONGUMUSA EMMANUEL MAKHATHINI: I was the Chairperson.

ADV THANDI NORMAN SC: The Chairperson. Are you still serving?

MR BONGUMUSA EMMANUEL MAKHATHINI: I got appointed on the

17th October 2017 I resigned on the 18th October 2017.

ADV THANDI NORMAN SC: Yes. Thank you. Then in paragraphs 3 and 4 you deal with the approach that was made to you by the members of the commission that is the investigators of the commission and you articulate in paragraph 3 the mandate of the SABC. Could you just roughly tell the Chairperson what is your – the mandate of the SABC and what is the function of the board in making sure that that mandate is carried out?

MR BONGUMUSA EMMANUEL MAKHATHINI: The South African
10 Broadcasting Corporation is one of the key critical pillars of our
democracy delivering content to millions of South Africans on a daily
basis and they do that basically in fourteen languages and making sure
that every South African has an opportunity to air their views and be
covered in one way or the other. And it is one of the treasures of this
country that needs to be defended and protected at all costs. So the
role of the board really is to provide that strategic direction and
guidance to the entity. But also make sure that our – the independence
of the institution and impartiality is protected at all costs. But also
support the executives in executing what has been approved by the
20 board.

ADV THANDI NORMAN SC: Yes. So – and in terms of accountability
who is the board – who does the board report to?

MR BONGUMUSA EMMANUEL MAKHATHINI: In terms of you would
have seen in the pack that there was a Matugana judgment which was
delivered in 2017. It clearly states that the board of the SABC is in

charge of the affairs and the running of the business of the SABC. So that is basically where it is and then the executives of course run the day to day operational responsibilities sits with the executive team.

ADV THANDI NORMAN SC: Yes.

MR BONGUMUSA EMMANUEL MAKHATHINI: But the board is accountable to the Minister in terms of meeting what has been agreed as the goals that are contained in the shareholder compact. We then report and accountable to the Portfolio Committee in Parliament.

ADV THANDI NORMAN SC: Yes. And the executives of the SABC who
10 do they report to?

MR BONGUMUSA EMMANUEL MAKHATHINI: The executives of the SABC which is the Group CEO, CFO and the COO reports into the board.

ADV THANDI NORMAN SC: Yes thank you. Now then I paragraph 5 you sketch out the circumstances under which are appointed and what the position was at the SABC at that time. Could you just briefly just advise the Chair what reports were there when you were appointed which you deal with in that paragraph?

MR BONGUMUSA EMMANUEL MAKHATHINI: I got appointed into the
20 board in October 2017 as part of the new board appointed for a period of five years. And the new board basically was handed over the baton by the interim board which had had – was running for about six months and the interim board came in after the Parliament had adopted the final report that was done by the Addo committee. And that report basically looked at the fitness of the board at the time. And out of that

inquiry then the interim board was put in place in February 2017.

ADV THANDI NORMAN SC: And you also allude in that paragraph to the Public Protector's Report.

MR BONGUMUSA EMMANUEL MAKHATHINI: Yes. The Addo Committee Inquiry came after the Public Protector's Report of 2014 and basically that report indicated things that were not going well at the SABC so the – Parliament then sent in the Addo Committee to assist in doing an inquiry into the fitness of the board at the time.

ADV THANDI NORMAN SC: Thank you. On your left hand side Mr
10 Makhathini there is – you will find there is a bundle which is marked Exhibit 27 which is the – ja. If you have a look at that...

CHAIRPERSON: Because mine are not marked yet.

ADV THANDI NORMAN SC: Yes Chair.

CHAIRPERSON: Ms Norman you will have to say whether it is the reports and other documents one is the legislation one?

ADV THANDI NORMAN SC: it is the – I beg your pardon Chair it is reports and other documents.

CHAIRPERSON: Okay.

ADV THANDI NORMAN SC: Thank you. They will be marked by lunch
20 time on the spine.

CHAIRPERSON: Yes.

ADV THANDI NORMAN SC: Thank you. Thank you. If you turn to page 1 of that you will see it is a letter dated the 24th June 2019 addressed to Doctor Puwe [?] of the commission which is submitting these reports to the commission from Parliament, do you see that?

MR BONGUMUSA EMMANUEL MAKHATHINI: I see it.

ADV THANDI NORMAN SC: And that letter is dated 24 June from the acting secretary Mr P M Chauwe [?] Are you there?

MR BONGUMUSA EMMANUEL MAKHATHINI: Yes I am there.

ADV THANDI NORMAN SC: Thank you. And then once you page through you will see there is a divider marked 2.

MR BONGUMUSA EMMANUEL MAKHATHINI: Yes got it.

ADV THANDI NORMAN SC: Thank you. Has the Chair found it? Thank you. On there you will see there is SABC – if you look right on
10 the right hand side corner it is marked in red it is written SABC Report other information 002, do you see that?

MR BONGUMUSA EMMANUEL MAKHATHINI: Yes.

ADV THANDI NORMAN SC: Thank you. And that document comes from Parliament and on the left hand corner it is dated 27 February 2017.

MR BONGUMUSA EMMANUEL MAKHATHINI: Okay got it.

ADV THANDI NORMAN SC: You must not nod you must say yes.

MR BONGUMUSA EMMANUEL MAKHATHINI: Yes I have got it.

ADV THANDI NORMAN SC: It must go on record. Oh you have it
20 thank you very much.

MR BONGUMUSA EMMANUEL MAKHATHINI: Ja I got it.

ADV THANDI NORMAN SC: And you will see right at the – just at the bottom you will see it says National Assembly and it says Committee Reports National Assembly and then it is written Ad-Hoc Committee on the SABC board Inquiry into the fitness of the SABC board.

MR BONGUMUSA EMMANUEL MAKHATHINI: Yes I have got it.

ADV THANDI NORMAN SC: Is that correct? And then – so is this report that you were talking to just now?

MR BONGUMUSA EMMANUEL MAKHATHINI: It is the report I was referring to yes indeed.

ADV THANDI NORMAN SC: Thank you. Then if you page through there is another divider which I am going to take you to sorry. That divider will take you to the Public Protector's Report and I am going to just identify it. It will be a divider marked number 10.

10 **MR BONGUMUSA EMMANUEL MAKHATHINI:** I have got it.

ADV THANDI NORMAN SC: Thank you. And that report is the Public Protector's Report entitled "When governance and ethics fail."

MR BONGUMUSA EMMANUEL MAKHATHINI: That is correct got it.

ADV THANDI NORMAN SC: Yes is that the report that you are referring to?

MR BONGUMUSA EMMANUEL MAKHATHINI: That is the report I was referring to.

20 **ADV THANDI NORMAN SC:** Yes thank you. Thank you. Could you please put that aside. We are going to continue now with your statement and we will get back to the reports some other time. Thank you. Thank you; you have also referred to the judgment of Judge Matojane which also dealt with the powers of the board and those of the Minister.

MR BONGUMUSA EMMANUEL MAKHATHINI: Yes I did touch on that.

ADV THANDI NORMAN SC: Yes.

MR BONGUMUSA EMMANUEL MAKHATHINI: Which provided guidance in terms of who is in charge of the SABC business.

ADV THANDI NORMAN SC: Yes. Now then the board then had received before your time I would imagine these two documents and you would have decided that look you have these document what did you then do as a board in order to make sure that whatever remedial actions are proposed by the Public Protector are implemented or whatever recommendations are made by the Ad-Hoc Committee of Parliament are also dealt with.

- 10 **MR BONGUMUSA EMMANUEL MAKHATHINI:** So when we came in in 2017 October like I indicated that the interim board was there for about six months so they had started some of the work. For example the SIU was already brought in to do further investigation. But the focus of the board was then to make sure that we implement the remedial action coming out of the Public Protector's Report.

ADV THANDI NORMAN SC: Yes.

- MR BONGUMUSA EMMANUEL MAKHATHINI:** As well as ensuring that what came out of the Ad-Hoc Committee Report those twenty-four recommendations were also implemented. So as a board we made sure
20 that those are implemented decisively.

ADV THANDI NORMAN SC: Yes. Thank you. And I am going to just take you roughly so that we incorporate those – in fact we – you deal with the recommendations at this stage we do not have to deal with them later because we have already opened these two exhibits. Exhibit 27 Chair Reports and other documents. If I may just take you to

paragraph – to page 5 of that exhibit?

CHAIRPERSON: Which divider should we look at?

ADV THANDI NORMAN SC: I beg your pardon Chair it will be divider number 2.

CHAIRPERSON: And that is page 25?

ADV THANDI NORMAN SC: That is page 5 Chair.

CHAIRPERSON: Page 5?

ADV THANDI NORMAN SC: Yes.

CHAIRPERSON: Okay.

10 **ADV THANDI NORMAN SC**: Thank you. I am just waiting for the Chair to –

MR BONGUMUSA EMMANUEL MAKHATHINI: On the same bundle?

ADV THANDI NORMAN SC: Same – yes, yes on the same bundle page 5. We just have to – no start from the beginning. No, no, no from the beginning of the bundle.

MR BONGUMUSA EMMANUEL MAKHATHINI: Yes.

ADV THANDI NORMAN SC: And then you go to the divider that is marked number 2.

MR BONGUMUSA EMMANUEL MAKHATHINI: I have got 20, 21.

20 **ADV THANDI NORMAN SC**: Oh I am so sorry. Oh no, no the one on the Reports I beg your pardon I thought I had Reports and other documents Exhibit 27. I beg your pardon I think you were looking at the – not on your sleeve.

CHAIRPERSON: Ja page 5.

ADV THANDI NORMAN SC: Page 5 of that.

MR BONGUMUSA EMMANUEL MAKHATHINI: Got it.

ADV THANDI NORMAN SC: You have it thank you. Now if you turn to that page you will find that in part A which begins from page 4. The committee reports on why that Ad-Hoc Committee was set up and then – but in 1.2 they – could you just read what they say in 1.2?

MR BONGUMUSA EMMANUEL MAKHATHINI: It is page?

ADV THANDI NORMAN SC: Page 5.

MR BONGUMUSA EMMANUEL MAKHATHINI: Page 5.

ADV THANDI NORMAN SC: In red 005 on the right hand corner.

10 **MR BONGUMUSA EMMANUEL MAKHATHINI:** 105?

ADV THANDI NORMAN SC: 005. 005 on the corner – in the – page 5.

CHAIRPERSON: Ja when she...

ADV THANDI NORMAN SC: Sorry, sorry.

CHAIRPERSON: The red numbers on the top those are – when she mentions page numbers she will be mentioning those red numbers. You will see that they will have 00 and something else before 00 but she will only say page 5. For example so she will not say 005 she will just say page 5 throughout when she asks you questions, when she says page so and so do not bother to look at the 00's before. Okay.

20 **MR BONGUMUSA EMMANUEL MAKHATHINI:** Thank you Chair.

CHAIRPERSON: Okay so on this one it is page 5 have you found it?

MR BONGUMUSA EMMANUEL MAKHATHINI: That is under bundle – divider 5?

ADV THANDI NORMAN SC: No divider 2.

CHAIRPERSON: I am under divider 2.

MR BONGUMUSA EMMANUEL MAKHATHINI: Divider 2.

ADV THANDI NORMAN SC: I beg your pardon.

CHAIRPERSON: But even if you disregarded any reference to the divider you just say page 5.

MR BONGUMUSA EMMANUEL MAKHATHINI: Yes okay.

CHAIRPERSON: Then you should be able to find it starting from the beginning of the document – of the bundle.

ADV THANDI NORMAN SC: Yes.

MR BONGUMUSA EMMANUEL MAKHATHINI: I am now on page 5.

10 **CHAIRPERSON:** Ja you are there okay.

ADV THANDI NORMAN SC: Thank you. Thank you very much Chair. Thank you. Could you then just read from – in paragraph 1.2 what is it that the committee had recorded there? In fact you must start from page 4 for it to make sense. 1.1.

MR BONGUMUSA EMMANUEL MAKHATHINI: 1.1 page 4.

20 “The Introduction. The National Assembly established the Ad-Hoc Committee on the SABC board Inquiry to inquire inter alia into the fitness of the SABC board to discharge its duties as prescribed in the Broadcasting Act Number 4 of 1999 and any other applicable legislation.

1.2 This followed after widespread concerns from the public about the SABC ability to exercise its mandate as a public broadcaster. In addition the board could no longer convene correct meetings as several non-

executive board members had been removed or had resigned.”

ADV THANDI NORMAN SC: Yes. And then in 1.4 just so that we can move to the next question. 1.4.

MR BONGUMUSA EMMANUEL MAKHATHINI:

10 “1.3 The SABC has consequently deviated from its mandate as the public broadcaster and from providing a platform and a voice to all South Africans to participate in the democratic dispensation of the Republic. The SABC has also failed to provide an important platform for community involvement, education and entertainment reflecting the rich and diverse cultural heritage of South Africa.”

ADV THANDI NORMAN SC: Yes 1.3 is equally important not that where those I do not say you must read are not important but I think because it will relate to most of the aspects that you are going to dealing with. I am sorry I jumped could you just go back to 1.3 as well.

MR BONGUMUSA EMMANUEL MAKHATHINI: 1.3.

ADV THANDI NORMAN SC: Yes.

20 “1.3 There is prima facie evidence that the SABC primary mandate as a National Public Broadcaster has been compromised by the lapse of governance and management within the SABC which ultimately contributed to the SABC – to the board’s inability to discharge its fiduciary responsibilities.”

ADV THANDI NORMAN SC: Yes now then you get into the SABC and as a new board and how did these matters that have been identified here by Parliament – how did they affect you as the new board if they did?

MR BONGUMUSA EMMANUEL MAKHATHINI: The reality is the situation the SABC finds itself today it is a result of all of these lapses that happened over previous years as a result of failure by previous boards and management to do what was responsible and what in line with the mandate of the SABC. In terms of adherence to our own
10 policies, in terms of making sure that there is prudence in the manner in which resources of the SABC were used it was all compromised and that is why we find ourselves where we are. But as a board what we had then to do was to make sure that we implement these remedial action and take corrective measures to address the issues.

ADV THANDI NORMAN SC: Yes.

CHAIRPERSON: Did – Ms Norman.

ADV THANDI NORMAN SC: Yes Chair.

CHAIRPERSON: Did you deliberately leave out 1.5? It appears to be quite important.

20 **ADV THANDI NORMAN SC:** It is also important yes Chair.

CHAIRPERSON: For him to read.

ADV THANDI NORMAN SC: Yes Chair. Could you please just – because...

CHAIRPERSON: 1.5 at page 5.

ADV THANDI NORMAN SC: Yes Chair. Could you read 1.5 Chair is

asking you to read 1.5. Thank you Chair.

MR BONGUMUSA EMMANUEL MAKHATHINI: 1.5.

“1.5 Instead there appears to have been flouting of governance rules, laws, codes and conventions including disregard for decisions of the courts and the Independent Communications Authority of South Africa ICASA as well as the findings of the Public Protector of South Africa. This collective conduct.

10 1. Rendered the SABC potentially financially unsustainable due to mismanagement as a result of non-compliance with the existing policies and irregular procurements. Interference in as far as editorial independence which is indirect conflict with journalistic ethics and saw the purging of highly qualified experienced and skilled senior staff members in violation of recruitment, human resources policies and procedures purging staff have in many instances been replaced – purged staff – pardon me – purged staff have in many instances been replaced without due consideration for or compliance with established recruitment policies.”

20 **ADV THANDI NORMAN SC:** Yes. The purging of staff one of your executives is going to talk to that.

CHAIRPERSON: Ms Norman.

ADV THANDI NORMAN SC: Chair.

CHAIRPERSON: Let us decide whether lunch – we should take lunch now or later? It is about five past?

ADV THANDI NORMAN SC: Oh okay yes Chair.

CHAIRPERSON: One so I think we should take lunch.

ADV THANDI NORMAN SC: Yes Chair.

CHAIRPERSON: And then continue.

ADV THANDI NORMAN SC: After.

CHAIRPERSON: In the afternoon – after lunch.

ADV THANDI NORMAN SC: What time is Chair is giving us for lunch?

CHAIRPERSON: Well let us take one hour as usual so we could resume at five past two.

ADV THANDI NORMAN SC: At five past two thank you Chair.

10 **CHAIRPERSON**: Ja but what we may need to talk about is how far we may need to go this afternoon. Maybe I should leave that idea for everybody concerned to think about so when we come back at five past two we can talk about.

ADV THANDI NORMAN SC: Yes Chair.

CHAIRPERSON: How far we can go. We will normally go up to four but sometimes when there is a need we go beyond four o'clock.

ADV THANDI NORMAN SC: Yes Chair.

CHAIRPERSON: So when I come back we can hear if it would be convenient for all concerned if we go beyond four o'clock.

20 **ADV THANDI NORMAN SC**: Yes we will do that.

CHAIRPERSON: Okay.

ADV THANDI NORMAN SC: Thank you Chair.

CHAIRPERSON: We will adjourn and we will resume at five past two.

ADV THANDI NORMAN SC: Thank you Chair.

CHAIRPERSON: We adjourn.

REGISTRAR: All rise.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Let us proceed but maybe the issue of whether we will - we will go beyond 4 o' clock we could discuss around 4 o' clock when we see how the situation looks like. *Ja*, okay.

ADV THANDI NORMAN SC: Could I just take you back to your evidence about to - I take you back to your - my mic is off. Sorry. Could I just take you back to your evidence before lunch? I got two
10 messages from my senior colleagues who understood your evidence when you said you were with Mr Zuma's foundation to be that you were with the foundation for one day.

Could you just clarify that evidence? When did you become the Chairperson of the - Mr Zuma's foundation?

MR BONGUMUSA EMMANUEL MAKHATHINI: I - I was in the foundation I think for more than three years ...

ADV THANDI NORMAN SC: Yes.

MR BONGUMUSA EMMANUEL MAKHATHINI: But I realised on 18 October 2017.

20 **ADV THANDI NORMAN SC:** So your resignation followed a - a day after you were appointed to the SABC Board?

MR BONGUMUSA EMMANUEL MAKHATHINI: Correct.

ADV THANDI NORMAN SC: Was that your evidence?

MR BONGUMUSA EMMANUEL MAKHATHINI: That is my evidence.

ADV THANDI NORMAN SC: Thank you, thank you. I think out there it

looked like as you were with the foundation for one day. Thank you.
Thank you for correcting that. Could you please go back to EXHIBIT -
to - to - sorry? I beg your pardon, to your statement. Thank you.
Could I direct you to page 4 of your statement?

MR BONGUMUSA EMMANUEL MAKHATHINI: I am there.

ADV THANDI NORMAN SC: Thank you. There you highlight some of
the findings of both the Public Protector and the *Ad Hoc* Committee. Is
that correct?

MR BONGUMUSA EMMANUEL MAKHATHINI: Correct.

10 **ADV THANDI NORMAN SC:** Yes. Could I just take you briefly to page
74 of EXHIBIT 27 which is written reports and other documents?

MR BONGUMUSA EMMANUEL MAKHATHINI: Okay.

ADV THANDI NORMAN SC: That is the big one. Yes, thank you.
Could you turn to page 74?

MR BONGUMUSA EMMANUEL MAKHATHINI: I am on page 74.

ADV THANDI NORMAN SC: Yes, thank you or maybe ...

CHAIRPERSON: I am sorry that Ms Norman.

ADV THANDI NORMAN SC: I beg your pardon Chair.

CHAIRPERSON: Are we back to the bundle?

20 **ADV THANDI NORMAN SC:** To - to EXHIBIT 27 Chair the reports and
other documents.

CHAIRPERSON: Yes.

ADV THANDI NORMAN SC: Thank you.

CHAIRPERSON: Under page - at page 74?

ADV THANDI NORMAN SC: Page 74. Yes, Chair.

CHAIRPERSON: Okay.

ADV THANDI NORMAN SC: This report as you can - as you know Mr Makhathini deals with various matters that were investigated insofar as the terms of reference were concerned but if you - maybe I take you back to page 73. You will see that they deal largely there with the role of the shareholder representative and there is political interference. Do you see that?

MR BONGUMUSA EMMANUEL MAKHATHINI: I can see it.

ADV THANDI NORMAN SC: Yes and then ...

10 **CHAIRPERSON:** I am sorry. Is this the Parliamentary *Ad Hoc* Committee Report?

ADV THANDI NORMAN SC: That is correct Chair.

CHAIRPERSON: Okay.

ADV THANDI NORMAN SC: And I have asked the witness Chair ...

CHAIRPERSON: Yes you may proceed.

ADV THANDI NORMAN SC: Is Chair at page 73?

CHAIRPERSON: 73, yes.

ADV THANDI NORMAN SC: Yes, thank you. You see that they deal with the role of the shareholder representative and then there is
20 political interference. Do you see that?

MR BONGUMUSA EMMANUEL MAKHATHINI: Yes I can see that.

ADV THANDI NORMAN SC: Okay and then they have also identified in the next page the remedies and then could you just read into the record what remedies are they saying so far dealing with the issue of political interference?

MR BONGUMUSA EMMANUEL MAKHATHINI: Remedies - 39.2.1:

“The shareholder representative should assume a more proactive role in ensuring good governance and compliance with all relevant policies and legislation specific to the SABC.”

ADV THANDI NORMAN SC: And ...

MR BONGUMUSA EMMANUEL MAKHATHINI: 39.2.2:

10 “The shareholder representative’s involvement must be regulated so as to ensure that there is no undue encroachment in matters normally reserved for the SABC Board. The role of the - of the board the shareholder representative, the executive and Parliament should clearly under - should be clearly understood at all times. This relationship should at all times be regulated in accordance with Code of Good Governance and Broadcasting Act and where applicable the Companies Act.”

20 **ADV THANDI NORMAN SC:** Yes and then in paragraph 40 they deal with journalistic ethics and related matters. What do they say about editorial independence in 40.1?

MR BONGUMUSA EMMANUEL MAKHATHINI: 40.1.1:

“As the public broadcaster establishes in - established in terms of the Broadcasting Act the SABC must in terms of the Broadcasting Charter at all times adhere to the high standard of journalism

with editorial independence being of utmost importance.”

ADV THANDI NORMAN SC: Yes.

MR BONGUMUSA EMMANUEL MAKHATHINI: “...uppermost importance.”

ADV THANDI NORMAN SC: And if - following that at page 75 electoral coverage. They deal with that at page 75. What do they say there?

MR BONGUMUSA EMMANUEL MAKHATHINI: 40.1.4.1:

10 “The Electoral Commission and the SABC Board should ensure equitable coverage during election periods as well as compliance with Editorial Act and ICASA Regulations.”

ADV THANDI NORMAN SC: Yes. So your understanding of this equitable coverage what - what do they mean by that?

MR BONGUMUSA EMMANUEL MAKHATHINI: The equatorial - equitable coverage basically means based on the guidelines coming from the IEC and the representative percentage of political parties that is how we should cover them in an equitable manner.

20 **ADV THANDI NORMAN SC:** Manner, yes. If I may just take you - so that we finish with the bundle - to the - the Public Protector directed or at least what - what her remedial action and findings were proposed remedial steps to be taken. We will not read all of them into the record but I will simply read those that I believe are going to be relevant to most of the evidence that you are going to give and I would like to direct you to page - I beg your pardon.

Just a minute. I think governance is what is relevant. Is it not to - to the board?

MR BONGUMUSA EMMANUEL MAKHATHINI: Governance, yes.

ADV THANDI NORMAN SC: Governance matters and I would like to refer you to page 387. That is the Public Protector's Report and it appears under the folder number 10 - divider number 10. Page 387.

MR BONGUMUSA EMMANUEL MAKHATHINI: I am there.

ADV THANDI NORMAN SC: Thank you. I would like to direct your attention to paragraph 10.7.

10 **MR BONGUMUSA EMMANUEL MAKHATHINI:** I can see it.

ADV THANDI NORMAN SC: Yes. What does the Public Protector deal with there?

MR BONGUMUSA EMMANUEL MAKHATHINI: 10.7.1: the heading is regarding:

“The Alleged Systemic Corporate Governance Failures at the SABC and the Cause thereof: I find that ...”

10.7.1:

20 “All the above findings are symptomatic of pathological corporate governance deficiencies at the SABC including failure by the SABC Board to provide strategic oversight to the National Broadcaster as provided for in the SABC Board Charter and King III Report.”

10.7.2:

“The Executive Directors principally the Group CEO, COO and CFO failed to provide the necessary support, information and governance to help the board discharge its fiduciary responsibility effectively and that by his own admission Mr Motsoeneng caused the board to make irregular and unlawful decisions.”

10.7.3:

10 “The board was dysfunctional and on its watch allowed Dr Ngubane to effectively perform the functions of the Executive Chairperson by authorising numerous salary increments for Mr Motsoeneng.”

10.7.4:

20 “Mr Motsoeneng has been allowed to successively - by successive boards to operate above the law undermining the Group CEO amongst others and cause the staff particularly the Human Resources and financial - Financial Department to engage in unlawful conduct.”

ADV THANDI NORMAN SC: Thank you. Thank you and then the Public Protector in paragraph 10.8 deals with something that you have already - which is mentioned in the report - Parliamentary Report that I have referred you to about political interference. She deals with it in paragraph 10.8.

MR BONGUMUSA EMMANUEL MAKHATHINI: 10.8.1:

“The allegation of - the allegation that the department and Minister of Communication unduly interfered in the affairs of the SABC is substantiated.”

10.8.2:

“Former Minister Pule acted improperly and in handling of her role as a shareholder representative in the SABC as an executing authority.”

10 10.8.3:

“Amongst her most glaring transgressions was the manner in which she rejected the recommendation made by the board for the appointment of the CFO and the orchestrated inclusion of Ms Duda’s CV. Her withdrawal of the certain powers from the board was also not in line with the principles of corporate governance.”

10.8.4:

20 “Her conduct accordingly constituted a violation of Executives Ethics Code and amount to an abuse of power.”

ADV THANDI NORMAN SC: Yes. Thank you and then at page 399 - 3-9-0 - what is relevant for your purpose is - is what is stated in paragraph 11.3. What is it that the board was supposed to do but I would like you too simply - because your - one of your executives is

going to talk to all the other matters that follow but I would like you to read 11.3.1.

MR BONGUMUSA EMMANUEL MAKHATHINI: 11.3.1:

“All monies are recovered which were irregularly spent through unlawful and improper ...”

ADV THANDI NORMAN SC: Sorry.

CHAIRPERSON: I think you start at the heading Mr Makhathini.

ADV THANDI NORMAN SC: Yes.

MR BONGUMUSA EMMANUEL MAKHATHINI: 11 - the heading - 11.3.

10 **CHAIRPERSON:** The SABC Board ...

ADV THANDI NORMAN SC: Yes.

CHAIRPERSON: To ensure that ...

MR BONGUMUSA EMMANUEL MAKHATHINI: “The SABC Board to ensure that: all monies are recovered which were irregularly spent through unlawful and improper actions from the appropriate persons.”

ADV THANDI NORMAN SC: Thank you and then lastly at page 392 paragraph 11.3.2-7.

MR BONGUMUSA EMMANUEL MAKHATHINI: 392?

20 **ADV THANDI NORMAN SC:** Yes.

MR BONGUMUSA EMMANUEL MAKHATHINI: Paragraph 11?

ADV THANDI NORMAN SC: 11.3.2-7, page 392.

MR BONGUMUSA EMMANUEL MAKHATHINI: Ja.

CHAIRPERSON: I assume you are deliberately skipping the other ones Ms Norman?

ADV THANDI NORMAN SC: Yes Chair because the one witness is going to talk to them. Thank you.

CHAIRPERSON: Okay.

ADV THANDI NORMAN SC: Yes.

MR BONGUMUSA EMMANUEL MAKHATHINI: Still under the heading that says:

10 “The SABC Board to ensure that: the roles and the relationship of the SABC Board and the COO are defined particularly in relation to the role of a relationship with the Group CEO to avoid the paralysis and premature exist of Group CEO while adhering to establish principles of corporate governance.”

ADV THANDI NORMAN SC: Thank you and then she also dealt with monitoring at paragraph - at page 3-9-3 at 12.2 something that was directed at the board.

20 **MR BONGUMUSA EMMANUEL MAKHATHINI:** “Monitoring - 12.2: the SABC Board is to submit an implementation plan indicating how the remedial action referred to in paragraph 11.1.3 above will be implemented within 30 days from the date of my final report.”

ADV THANDI NORMAN SC: Yes. So we all know that that report was dated as you have already indicated 17 February 2014. When you then became the Chairperson of the SABC Board did you find any plan that

had been prepared in compliance with that paragraph which you just read of the Public Protector's remedial action?

MR BONGUMUSA EMMANUEL MAKHATHINI: Chairperson yes we did find the - the report and the handover report in terms of where they were, how far they had gone in, in implementing the remedial action which was driven by the Interim Board that was there for six months prior to us joining.

ADV THANDI NORMAN SC: Yes. Thank you and then if you may now Mr Makhathini go back to your statement ...

10 **CHAIRPERSON:** Maybe before that.

ADV THANDI NORMAN SC: Sorry.

CHAIRPERSON: Does that mean Mr Makhathini that on your understanding there had been no plan put in place before the appointment of the Interim Board? The previous board had not put any plan in place to implement?

MR BONGUMUSA EMMANUEL MAKHATHINI: Chairperson that is correct. There was no plan that was put before the Interim Board came in.

CHAIRPERSON: Okay. Thank you.

20 **ADV THANDI NORMAN SC:** Thank - thank you Chair. Then because you got there and there was a plan that the Interim Board had prepared is that the plan that you are continuing on as this current board or did you yourselves prepare another plan?

MR BONGUMUSA EMMANUEL MAKHATHINI: We - in particular when - with regard to the Public Protector we continued with the work that was

started by the Interim Board to ensure that there is similar handover and there is nothing drops through the cracks but of course there is further investigation that were done during our time as the board. Done by the Internal Forensic which has produced further evidence of wrongdoings at the SABC.

ADV THANDI NORMAN SC: Yes. Thank you and how - if you were to measure insofar as compliance or at least implementation of the Public Protector's remedial action and also the *Ad Hoc* Committee's recommendations. How far would you say - are you now at 50 percent
10 of implementation of all those recommendations or are you still sitting at maybe 10 percent? Well how far would you say you have gone?

MR BONGUMUSA EMMANUEL MAKHATHINI: I - I will put it at about 80/90 percent. The challenges that - the main reason why these needed to be done was for us to recover monies that were lost (indistinct). That process is a long litigation process but everything that was highlighted in the Public Protector's Report we are implementing and the 24 recommendation coming out of the *Ad Hoc* Committee we have also implemented almost all of those recommendations.

20 **ADV THANDI NORMAN SC:** Yes. Thank you. Then we go back then to your statement. If I may just direct you. You have already dealt with no paragraphs 9 and 10. You have taken those paragraphs. Then something happened in December 2018. What was it and how did it affect the functioning of the board?

MR BONGUMUSA EMMANUEL MAKHATHINI: In December 2018 four

board members from the previous Interim Board resigned with immediate effect. Basically making the board to - not to be able to continue with the work that was required by the law. So we became incorrect and - and these board members who resigned cited a number of reasons.

Others cited personal reasons in terms of their workload. Others cited the - the issues around the misalignment with what the rest of the board members felt was the independence and what independence of the board meant and other board members another
10 one cited the reason of lack of support - financial support - from Government.

Indicating that when he took the job to be part of the board the expectation was that there was going to be funding that would go with the - the job ...

ADV THANDI NORMAN SC: Yes.

MR BONGUMUSA EMMANUEL MAKHATHINI: Which had not come forth.

ADV THANDI NORMAN SC: Thank you. Chair at this stage I would like to refer the witness to EXHIBIT CC23B. This - if you recall Chair -
20 this is what I had referred to as developments over the weekend but we had decided just to put all of this in context to put in the letters of resignation of the various members. That would be in EXHIBIT CC23B.

CHAIRPERSON: Yes.

MR BONGUMUSA EMMANUEL MAKHATHINI: I have got it.

ADV THANDI NORMAN SC: Thank you Chair. Have you found it?

Thank you. Can you just go through - we will go through all those letters because there is something - there are some of the matters that these board members are mentioning which are going to become relevant to your evidence and to what has happened recently. Could you just deal - let us deal with the first page. That is a letter from the Minister of Communications dated 2 December 2018 addressed to the President. Is that correct?

MR BONGUMUSA EMMANUEL MAKHATHINI: Correct.

ADV THANDI NORMAN SC: And then what does she deal with in that
10 letter?

MR BONGUMUSA EMMANUEL MAKHATHINI: Subject of the letter:

“Resignation of SABC Board Member -
Ms Khanyisile Kweyama.”

Point 1:

“The correspondence serves to advise His
Excellence that Ms Khanyisile Tandiwe Kweyama
has resigned as a member of the SABC Board with
immediate effect. Thus resulting in another
vacancy in the SABC Board.”

20 Point 2:

“The reason for resignation is the appointment of
Ms Kweyama as PRASA Chairperson.”

Third:

“The resignation is hereto attached. Yours
sincerely.”

ADV THANDI NORMAN SC: Thank you and then - this morning then you have not provided us with that letter of resignation when you gave - when you got these from you?

MR BONGUMUSA EMMANUEL MAKHATHINI: Yes. We have not supplied it.

ADV THANDI NORMAN SC: Thank you but you will make it available?

MR BONGUMUSA EMMANUEL MAKHATHINI: Yes. We will source it.

ADV THANDI NORMAN SC: Yes. Thank you and then in the - the second page deals with the resignation of another member of the board
10 Mr John Mattison also addressed to the President dated December, the 3rd 2018. Could you just highlight what the reason were for his resignation there?

MR BONGUMUSA EMMANUEL MAKHATHINI: The reason given here:

“The dissatisfaction with the Oversight Committee was apparent in the three successive hearings and reached across all political parties. My endeavours to persuade the board to change course including the suspension of retrenchment have not been accepted.”

20 **ADV THANDI NORMAN SC:** Yes. I am sorry. I should not have done this. I think I should have just directed you to start from the - from that paragraph - the second paragraph. Sorry, because you have left out something there. Could you just start from that paragraph?

MR BONGUMUSA EMMANUEL MAKHATHINI: “I apologise for not completing my full tenure of five years in this

position. I remain passionate about building the public broadcaster into an institution South Africans and indeed Africans across the continent can be proud of. However I find I am - I find I am unable to agree with the current board - board's direction and in particular its failure to appreciate the oversight role of Parliament and its committees. The dissatisfaction of the oversight - Oversight Committees was apparent in the three successive hearings and reached across all political parties. My endeavour to persuade the board to change course including the suspension of retrenchment have not been accepted."

ADV THANDI NORMAN SC: Yes and then he asked to be released from (intervenes).

MR BONGUMUSA EMMANUEL MAKHATHINI: "I humbly request that I be released from my fiduciary duty as a board member with immediate effect and that is the three months' notice period required by the Act be waived and remain willing to serve South Africa as ever."

ADV THANDI NORMAN SC: Thank you. We are going to deal with your understanding of these reasons that are advanced but for now for consistency sake let us deal with the resignations and the reasons and then you have another letter dated 5 December 2018 and from

Mr Mathatha Tsedu.

MR BONGUMUSA EMMANUEL MAKHATHINI: That is correct.

ADV THANDI NORMAN SC: Thank you. Could you also - he was also resigning and asking also for the waiver of the three month period in the first paragraph. Could you just read from paragraph 2 the second paragraph?

MR BONGUMUSA EMMANUEL MAKHATHINI: “I wish to also express my gratitude to Parliament, the Government of our Republic and the people of this country for having giving me an opportunity to serve our nation through the work of the SABC. Both as Deputy Chairperson of the Interim Board and later as a member of a - of the Permanent Board. I have tried at all times to live up to the highest possible ideals of commitment to serve our - our people in line with the mandate of the SABC as a Public Broadcaster. The work of both the Interim Board and the Permanent Board in rooting out corruption - corrupt practice and reversing fraudulent activities speaks for itself and I am proud that I played my little role in that ongoing exercise. I accepted the appointment on the understanding that resources will be available to fulfil the responsibilities. However the financial crunch facing the SABC is getting worse by the day and all efforts by the

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board to ensure a Government guarantee have yielded nothing in over 18 months of pleadings.”

ADV THANDI NORMAN SC: Okay. So ...

MR BONGUMUSA EMMANUEL MAKHATHINI: “I therefore no longer - it is therefore no longer possible for me to continue in this role and beg your understanding for my action to terminate my membership of the board.”

ADV THANDI NORMAN SC: Sorry just one error there. The last
10 sentence before it is therefore says:

“However the financial crunch facing the SABC is getting worse by the day and all efforts by the board to source a Government guarantee ...”

Yes. So it is - it is to source a Government guarantee have yielded noting over the 18 months period. Thank you and then last letter dated 4 December 2018 it is written by Mr Krish Naidoo addressed to the President of the country. Could you then - he was also asking - he was tendering his resignation. Could you start from paragraph 2 of his letter please?

20 **MR BONGUMUSA EMMANUEL MAKHATHINI:** “I apologise for not having served my full tenure of five years. However the inability of some of the board members to understand the difference between corporate independence, accountability and political interference has led to a breakdown in the

relationship with the Minister. The SABC has a pressing issue of lack of funds which requires immediate attention. For that reason I do not wish to delay the Government - the governance process with appointing an interim structure to manage the affairs of the corporation. As such I humbly request that I be released from my fiduciary duties as a board member with immediate effect and that the three months period required in the Act by - be

10 waived. The basis for my request is that my immediate withdrawal from the affairs of the SABC Board will not cause any prejudice to the Board.”

ADV THANDI NORMAN SC: Yes. Thank you. Let us start with that letter and then we will go backwards. What - what do you understand to - Mr Naidoo to - to mean when he was saying that the board that is the members of the board were failing to understand between the different - the difference between corporate independence, accountability and political interference and that - that lack of understanding had then led to a breakdown in the relationship with the

20 Minister? What was your - what was happening at this point?

MR BONGUMUSA EMMANUEL MAKHATHINI: To put it into context in 2017 there was a judgment by Judge Matojane that basically clarified what is the role of the board and what is the role of the Minister. So the board runs the affairs of the SABC and in that instance they - the Minister has no right to interfere with the operations of the SABC and I

think to some people it - it could a bit of time for them to - to understand what that meant.

It basically meant that we cannot take directive from politicians. We cannot allow any politician to interfere with the work that the SABC has to do and that is established in law because that judgment was never challenged and the issue around for an example us resisting oversight by Parliament. It is not correct.

You will recall that at that time the board had approved a turnaround strategy in about September and that turnaround strategy
10 had been presented in - in Parliament and that turnaround strategy covered a number of elements. One of those was cost cutting initiatives and part of that was a Section 189 which made a lot of political parties uncomfortable with because it was an election year and so forth but ...

ADV THANDI NORMAN SC: Sorry. You are going too fast. So the Section 189 that is Section 189 in terms of the Labour Relations Act?

MR BONGUMUSA EMMANUEL MAKHATHINI: That is correct.

ADV THANDI NORMAN SC: Yes. So it deals with retrenchments. Am I right?

20 **MR BONGUMUSA EMMANUEL MAKHATHINI:** It deals with retrenchments.

ADV THANDI NORMAN SC: Okay. So you went to Parliament and you presented that to Parliament ...

MR BONGUMUSA EMMANUEL MAKHATHINI: We presented ...

ADV THANDI NORMAN SC: As part of the strategy that the board -

turnaround strategy that the board had approved?

MR BONGUMUSA EMMANUEL MAKHATHINI: That is correct.

ADV THANDI NORMAN SC: Okay. So yes you may continue from there and you say most political parties then were not happy with that?

MR BONGUMUSA EMMANUEL MAKHATHINI: Were not happy with that because it was an election year. We were talking about retrenchment but also the country is facing high levels of unemployment but the truth of the matter is if you look at what is expected of board members they have to do what is best for the entity that they are Directors of.

10 Yes issues of employment/unemployment is big for our country but we have to make sure that the SABC is viable and that turnaround strategy included cost cutting and this is what caused a lot of tension. If you follow through a lot of the hearings we had in Parliament all they were banging on was you cannot retrench, you cannot retrench but at the same time we were not offered any alternative to ask - for us to be able to turnaround the situation.

ADV THANDI NORMAN SC: How much would you say the salary - let us - salaries and all employee benefits - how much would you say they take out of the budget that the SABC has?

20 **MR BONGUMUSA EMMANUEL MAKHATHINI:** Hm.

ADV THANDI NORMAN SC: In terms of percentages?

MR BONGUMUSA EMMANUEL MAKHATHINI: It is about - it is over 45 percent of our expenses - expenditure goes to salaries.

ADV THANDI NORMAN SC: Yes.

MR BONGUMUSA EMMANUEL MAKHATHINI: Which is out of the norm.

ADV THANDI NORMAN SC: No. So then you presented then the strategy to the board and the board raised these concern - I am sorry. The - then Parliament. They raised these concerns that look you cannot retrench. So then what was your Plan B?

CHAIRPERSON: Maybe before that just tell me the important features of your turnaround strategy that you presented to Parliament to the relevant portfolio committee. I understand that you say it included cost cutting measures which I take could lead to retrenchment but I just want you to tabulate just what you consider to be the important features
10 of that turnaround strategy.

MR BONGUMUSA EMMANUEL MAKHATHINI: Thank you Chairperson. The turnaround strategy was underpinned by three key elements. The first one is what are referred to as legacy and governance element. That element deals with all the things that went wrong in the past and the work that is being done to deal with the legacy and governance issues is informed by the Public Protector's Report.

The Public Protector's Report came up with a number of remedial actions that talks to what went wrong in the past. So as a board we took a resolution and it was part of the - it is still part of
20 strategy to deal with those decisively. The second one is coming out of the Parliament *Ad Hoc* Committee Report which also came with a number of recommendations and we are - as we implement those we are then driving the legacy and governance issues.

The third will talk to SIU Investigations. SIU has been with us now for - since the time of the Interim Board. They have done the

investigation under two proclamations that they have been given. Out of that work they have dealt with about 38 matters. Out of those 38 about 23 of those were DC matters.

About six of them were criminal matters. About seven were litigation matters and the work that is being done there as a result of the outcome of the SIU talks to the first element of our strategy. The fourth talks to Auditor-General. Auditor-General now and again will come and audit the SABC and they will come with audit issues that needs to be addressed.

10 There is a plan to address those audit queries and the team has done a sterling job in addressing those. That is - that is the fourth one.

 The fifth element talks to about 180 forensic reports that have been done by our own internal forensic, and those 180 forensic reports give us an extent of the rot at the SABC and what needed to be done to address what may have gone wrong, so that's the first element of our strategy, to say to ensure justice and to make sure that the wrongs are corrected and to make sure that we correct what was done wrong, but also create a sense that being held accountable and there's
20 consequence management at the SABC. We are driving that under that pillar of legacy and governance.

 The second element of our strategy talks to what I refer to as policy and regulatory issues. There's quite a number of regulations and policies that have put SABC in a financial dire situation. One of those is the master care regulations, the master care regulation

basically says our competitors can carry SABC 1, 2 and 3 at no cost to them, but at millions of costs for the SABC. If you look at the programs on SABC 1, 2 and 3 they are the most popular programs, they are the most watched programs, so to have other players making money at the expense of SABC isn't fair. So that regulation that talks to master care is unfair to SABC, that's the first one.

The second one talks to the whole issue of digital migration, the choices that have been made by government as to which option to go for whether DTH or DTT you find that some of these options are very
 10 costly to the SABC, there may be other avenues that are cheaper, efficient and more reasonable for the SABC, for an example if we were to go for DTH which in this case it's satellite kind of a system will give us more challenge, efficient and more cheaper, but because of the government policy we have to follow a particular route which is financially dire for the SABC, that's the second one.

The third one talks to issues of sports rights. The sports rights – sport regulations talks about all free to air players having to carry sports of national importance, but strangely enough other players don't even bother bidding for these rights because from a price
 20 perspective it is too high, and it is not commercially possible to commercialise these rights, so the sports rights put the burden on SABC that nobody is prepared to fund. When you look at our losses I mean the CEO and CFO will talk about our losses, the unaudited financials for this – for last financial year is sitting at about 483million. About 410 of that 483million is as a result of sports rights.

So this talks to a policy and a regulation that is making it impossible for the SABC to be financially viable.

The last component I want to touch on is TV licenses. I mean for South Africans to be paying 72 cents a day for 19 radio stations, five TV channels it is understandable, what can you buy for 72 cents these days, considering that we are giving the 19 radio stations, 14 official languages, all covered, three TV channels, five TV channels, of course the SABC 404 which is 24 hour news channel on DSTV as well as the Enca channel, so when you look at those regulations and
 10 policies they have contributed significantly in getting SABC in a financially untenable situation. That's the second element of our strategy.

The third element of our strategy talked to what I call commercial and operational elements. This is about what are we going to do as the SABC to deal with revenue, so the executive have come up with about 15 initiatives to drive revenue growth but at the same time as you drive your revenue growth you have to drive down your cost, so in the last financial year we've saved almost a billion rand in cost. This talks to what we've been able to drive under that element, and that
 20 element really talks about commercially what you're going to do to turnaround this business and I've said there's 15 elements or initiatives, so for an example retrenchment was just one of the elements, it is not the only one.

I mean if you look at we haven't been able to retrench because we were stopped from retrenching. Last year when the Board had

resolved to retrench we were stopped from retrenching, and up until now we have not also received any money but we are not allowed to do what we thought as a board was a sound and reasonable thing to do.

So in a nutshell that was our strategy, it covers those three, legacy and governance issues, policy and regulations, it also covers commercial and operational elements which really looks how do you make SABC efficient and able to compete in the space within which we operate.

That's what our strategy covers at a high level, but of course
10 when the CEO comes he will also touch on the sixth element of our strategy which is about for example just to give you a sense of it, it's about financial sustainability, the second one talks to content and platforms that we need to have compelling content, that is available to all South Africans in different platforms, it talks to governance, it talks to partnerships, that we've got to leverage different partnerships for us to be able to deliver to South Africans, it also talks to HR issues, attracting the best talent, competent people who have the prerequisite skills and experience to help us with what we need to do, but the other
20 other key element talks to digital element of SABC because the future of broadcasting will require us to be leveraging or innovating in terms of technology and digital elements.

So in a nutshell those are the elements that sits in our strategy.

CHAIRPERSON: I do want to ask you some questions further on some of those aspects but it may be that Ms Norman is going to be asking

you the questions I am thinking of so I will allow her to proceed but if she is going outside of those, then I will ask.

ADV THANDI NORMAN SC: Yes thank you Chair. So then you have already said that the Board had approved this strategy.

MR BONGUMUSA EMMANUEL MAKHATHINI: Yes.

ADV THANDI NORMAN SC: Now what I would like to know is you have four Board members resigning at the same time with immediate effect. How did that effect the functioning of the Board?

MR BONGUMUSA EMMANUEL MAKHATHINI: It was devastating and
10 in a way the impact of that it had a very harmful impact, in terms of the ability of the Board to continue with the business of the day, because all of a sudden we were incorrect, we couldn't have meetings, the work that we had started that was aimed at dealing with all these remedial action had to stop because certain things could not be done without a Board that could take decisions that are proper and binding.

There was a five months gap where SABC did not really have a functioning board.

CHAIRPERSON: Well before you the board members who resigned let's go back to your board being stopped to do what it believed had to
20 be done in order to execute its mandate and perform its duties. You have mentioned that you went to the Portfolio Committee and presented your turnaround strategy, which included cost cutting measures and which could lead to retrenchment and you were stopped without an alternative being put on the table to say if going that route is wrong here is an alternative, did I understand you correctly?

ADV THANDI NORMAN SC: Correct Chairperson.

MR BONGUMUSA EMMANUEL MAKHATHINI: And when you said that you were saying that in regard to the portfolio committee, is that right? That the portfolio committee was not able to give you an alternative and yet it was against the cost cutting measures that could include retrenchment or are simply saying the stopping came from somewhere else, not the portfolio committee?

MR BONGUMUSA EMMANUEL MAKHATHINI: Chairperson the stopping of the tenure of the retrenchment was done by the current
10 Minister, who basically had taken over as the new Minister, we had a meeting with her as a Board and in that meeting she basically said the retrenchments should not continue. What she said at the time was that she needed more time to familiarise herself with the portfolio and the response of the Board was that we would be willing to look at the pace and the quantum of retrenchment but until there is money we can't stop because from where we are sitting we would be held liable as Board directors, we have fiduciary duties to do what is responsible and right, to prove the point and that the Board was right in taking that stance, almost 23 months later we still had not received any funding.

20 The Portfolio Committee ...(intervention)

CHAIRPERSON: But how are you supposed to operate?

MR BONGUMUSA EMMANUEL MAKHATHINI: It becomes very hard, you know even for us as a Board and the Executives that we have been able to attract to come and work for the SABC if the support that is necessary for them to implement their turnaround strategy is not given.

You would have seen from the letter that one of the Board members, Mr Mathatha Tsedu, resigned specifically because of that, that there is no resources that are being given for us to be able to fund what needs to be done, so it becomes impossible and really demoralising for us as the Board and the Executive.

ADV THANDI NORMAN SC: Thank you Chair – oh sorry.

CHAIRPERSON: Well it's – I guess I will hear more about various aspects but it's a matter that I am quite interested in because as you may be aware in connection with the evidence that has been given in
10 this Commission in relation to what has happened in various SoE's over a certain period there has been a view that certain Board members or certain Boards didn't do their job the way they should have done it and that they may have acted corruptly, that they may have – or some of the members of certain boards may have been for lack of a better word, may have been captured, may have been advancing agendas other than the agenda of the best interest of the SoE concerned, and there has been evidence by some witnesses who have said part of what has happened over the past few years has been that if in a particular SoE you have executive managers or Board members who want to do the
20 right thing they are victimised, they are suspended, they are transferred, all steps are taken to drive them out of the SoE or the Board and other people are put in who later on turn out to have all kinds of allegations of corruption against them and interference.

That's just speaking generally part of the evidence that I have heard, so the question that may arise in relation to what you have told

me is whether we may have a situation where at SABC – SABC had found a Board that wanted to do the right thing, and look after the interest of the SABC and may have taken – may have done a lot of work in good faith to try and make sure that they make a difference in an institution that was going down, but when they put on the table solutions that politicians might not have liked, maybe because there were elections coming those politicians stopped them.

Was it – was that improper interference in the performance of the duties of a Board that was trying to solve a problem, trying to do
 10 their job, or was that not an improper interference, was it a legitimate intervention, so there is that question that I think I will have to look at, but it becomes more important because you may not in a number of cases that I have had relating to SoE's the criticism would be levelled maybe at the government and maybe at people who are members of the ruling party, but from what we have said I think you have said that opposition parties were also saying no, no, no, no, you cannot retrench, don't retrench.

So that may raise the question whether part of the problem we have in South Africa is that people that occupy certain positions, who
 20 are supposed to stand for what is right, will not stand for what is right, for political reasons, for expedience, or what was the position. To what extent in other words was the SABC Board stopped from doing what was commercially correct, just because of considerations maybe that should not have been – should not have come into the picture. Maybe they should have, maybe they shouldn't have, I don't know but that's

one of the things that I think is important for me to understand and maybe you might be able to speak on it up to a certain point, but other witnesses will take it further but I thought I must just mention that because I am interested in knowing whether that wasn't an improper interference with the Board performing its duties.

MR BONGUMUSA EMMANUEL MAKHATHINI: Thank you Chairperson.

I must say that my understanding of how a capture has materialised or happened in most of these SoE's, certainly credible, competent, experienced people of integrity gets victimised, they get pushed out
 10 and frustrated, and they get frustrated in a number of ways to a point where you have to ask yourself why must I continue doing this if one I am not getting the support that I think I should be getting but also getting to a point where they attack you personally and put your life at risk, just for trying to do what is right.

So I can say that what resulted to this Commission being – doing the work that it is doing it is still a reality for us, you know we are still living under those circumstances where you worry about your safety, for just trying to do what is right, and what is the most frustrating things at times they will cover some of these things as
 20 transformation, they will label you as somebody who is against transformation when they are hiding corruption under transformation, or they will label as somebody who is gender insensitive, just because they want to cover certain things using gender and transformation, and when you look at what the Public Protector found about pressure of competent experienced people and those people being replaced by

people who were not that qualified and without necessarily following processes what happened in that 2014 is still happening today.

So that interference wasn't proper, in a sense that the strategy of the organisation, SABC, in this case, is drafted by the executive team, approved by the Board, only the Board can approve the strategy and the executive then must implement that strategy, nobody else, not the Minister, not Parliament can come and say this strategy is not right.

We will take input as we have always said, but the approval sits with the Board, so stopping the implementation of the strategy without providing sound alternatives its improper and why I say there's no alternative given we are at 24 months down the line, our financial situation has worsened, we have had instances where we had diesel spillage, our employees ended up in hospital because we hadn't been able to maintain our buildings, we haven't been able to invest in content, we haven't been able to pay people who supply us with content, we owe almost R2billion and that talks to the content providers, signal distribution costs and so forth, so it is okay to give input, an alternative but you can't just stop something without providing an alternative.

20 **CHAIRPERSON:** Well maybe I could just mention this in this context, I heard evidence earlier this year relating to Denel, in terms of what happened to Denel, the evidence hasn't been completed and there will be another phase but one of the witnesses I think was Chairperson of a certain Board of Denel and the evidence seem to suggest that that Board had done a very good job but she said it was replaced and after

it was replaced certain things happened, and I will hear the rest of the evidence, so I am just linking what I am talking about to say here is an example where a Board was said to have been doing quite well, I think the Minister who was responsible for Denel I think there was correspondence which suggested that the Minister was also - had indicated that the Board had done very well, and so on, so it is important to examine how the boards operate but also to see whether they try to do their job there is improper interference, whether that happened many years ago under another President and whether it happens now under a new President I have got to look at everything, I am not going to look at one and not the other, we must look at everything because in the end we must be able to say yes the following things are improper interference they should not happen in order for the Board to operate properly these are the things that must happen, because in the meantime I am sure that a lot of criticism is directed at the Board in the public domain.

Yes, thank you. You might or might not wish to add anything, ja okay, continue Ms Norman.

ADV THANDI NORMAN SC: Yes thank you Chair. Maybe let's skip then and deal with the matters that the Chair has just raised with you, and those are the matters that we were going to deal with later, but let's deal with them. The issue of funding, in paragraph 16, 17 you deal with the fact that the SABC applied for government funding, so then there's a distinction, am I correct between paragraph 17 and what you deal with in paragraph 20, where you deal with the bail-out,

government guarantee, and also you deal in paragraph 17 with government funding.

Let's talk about the government funding that you applied for, that is the SABC applied for in 2017. Alright.

CHAIRPERSON: I'm sorry Ms Norman, I may have interrupted your plan, at a certain stage you were dealing with the reasons given by the last – given in the last letter of resignation and you had said you would go backwards, so I don't know whether you still want to finish that or whether you ...(intervention)

10 **ADV THANDI NORMAN SC:** Or maybe ...(intervention)

CHAIRPERSON: I'm just feeling guilty that I have may interrupted you or your plan.

ADV THANDI NORMAN SC: No not at all Chair, we go back to them, but this ...(intervention)

CHAIRPERSON: Okay, alright.

ADV THANDI NORMAN SC: But this will link in nicely with what you have just raised yes thank you.

CHAIRPERSON: Yes, okay, okay.

ADV THANDI NORMAN SC: Okay could you then tell the Chair about
20 this application that you made – that was made by the SABC to government in 2017, what was this for?

MR BONGUMUSA EMMANUEL MAKHATHINI: Thank you Chairperson. After the work that was done by the Parliament ad hoc committee following up on the 2014 report that was done, or issued by the Public Protector, it became clear that SABC was in dire financial need, and

what then happened at the time the interim board came in February 2017 and roundabout June they put their first government guarantee application. It was a government guarantee application to government, and that basically didn't materialise and in 2017 November another application went in by the permanent board, that I am still part of, and that was really to help SABC out of the situation that we were faced with. I have already touched on the inability of the SABC to honour their monthly obligation to the suppliers, I have touched on lack of funds to maintain our broadcasting infrastructure.

10 I have also touched on the SABC inability to invest in content. In broadcasting you need to invest between 24 months to 36 months in advance, for you to be able to recoup or get some revenue coming out of the advertising, so that application went specifically for that, but I must also distinguish that in terms of what we get from government SABC has got a number of strings in terms of revenue, 85% of our revenue it's commercial revenues so which means we have to go out there, compete with other players for advertising revenues, like any other broadcasting, that's what we have to do, 85%.

20 About 13/14% of our revenue comes from TV licenses, that's why I touched on the importance of relooking at the amount people pay towards TV licenses, but government give us 3%, so if you look in the last financial year 3% maybe amounts to about 200million but if you look at the mandate the public mandate that SABC has to carry it runs over 3billion, that's the situation we're faced with.

And in paragraph 20 I am referring to that funding that has not

yet come, it is the reason why Mathatha Tsedu resigned at the time when he resigned in December, it is the same reason we're sitting here today we still don't have the funding.

CHAIRPERSON: Well Mr Makhathini you placed before Parliament, and therefore before the Nation, the Board's turnaround strategy, by which you were saying this is how we think the situation at the SABC can be turned around, alright.

And with regard to your cost cutting measures, in particular retrenchment, you were stopped. You have not been given funding that
 10 you have just talked about. Has anybody, has government or anybody put before you an alternative plan, what is it two years after you put your turnaround strategy before Parliament, has anybody said we don't agree with your turnaround strategy, here is a better one?

MR BONGUMUSA EMMANUEL MAKHATHINI: Chairperson what has happened the shareholder, the Minister, basically offered services of an entity called GTech which is a government entity that assists with strategy projects. So that entity was meant to come in and help us enhance our strategy, which we welcomed. I mean any input can be of – can help, so that team came in and they are due to present their final
 20 version of their strategy I think next week to the Executive Team, but when you look at what they have come up with, they haven't come up with anything new, they have actually to a certain extent, a great extent endorsed what the Board had put in place.

To prove to you that that strategy that was put by the Executive Team at the time the reason why we have kept SABC going,

afloat, for almost two years without any funding it is because of that turnaround strategy that we put together. It is because of the calibre of the executives that we have been able to attract. It is because of the commitment of some of our clients who continue to invest with SABC, run their ads on SABC platform.

It is also because of our employees, who in spite of the danger they face when they go to our buildings, that are falling apart, continue to come to work, and deliver on their mandate and what is expected of them, in spite of the situation we're faced with, so in essence we have
10 not been given anything other than the support we got from GTech but of course there are engagements, but at some point engagement you know ...

CHAIRPERSON: They must produce.

MR BONGUMUSA EMMANUEL MAKHATHINI: They must produce something.

CHAIRPERSON: Results, ja, and they haven't.

MR BONGUMUSA EMMANUEL MAKHATHINI: And they haven't.

ADV THANDI NORMAN SC: Thank you Chair. The Minister of Finance recently was on television announcing the bail-outs to the
20 various SoE's, Eskom and to the SABC, and my recollection is that a R3.2billion was going to be offered to the SABC – was offered to the SABC, but the Minister made it very clear that that was going to come with conditions. Now the question is you may not be getting the funding because you have not met the conditions that the Minister, or National Treasury, has put up. What is your response to that?

MR BONGUMUSA EMMANUEL MAKHATHINI: We actually agree with the Minister that any funding must come with conditions. It is the right thing to do, because people must be held accountable, you can't just give money and not hold people accountable. So that bail-out of R3.2billion came with eleven conditions and as the SABC we have met those conditions, or substantially met, completely met those conditions, because it is about eleven of them, and some of those conditions are very interesting. One of the conditions for example says what is the reason why the previous turnaround strategy was not successful, before
 10 our time. That was before this Board, this was before the Executives that we have, because we have inherited a broken organisation.

I mean we were not there. Government was there to put that as a condition to release the 3.2 billion to an organisation and to a team that is prepared to do the right work leaves a lot you know to question. But in essence we have met all the conditions. In areas where there is maybe issues I am sure it is because it is not possible to fully meet some of the things now. To give an example if somebody says give me a sense of your non-core assets? Alright. Now before you say that radio station is not profitable as a public broadcaster you
 20 cannot just decommission or sell that or put it as noncore without understanding what will be the impact of that decision on you fulfilling your public mandate? Because it may not be making money but it may be helping us meet our public mandate.

So you have got to evaluate these assets and evaluate the impact of selling them if you want to sell them. But you cannot just

wake up and sell things without assessing the impact. Part of the problem SABC finds itself in they went into deals without evaluating their assets to know what to demand when they get to negotiating tables. We are not going to do that. We will do what is necessary and we will adhere to the Public Management Finance Act and we will adhere to that. And anybody who expect us to do stuff without complying with the prescript of the law we are not going to do it.

ADV THANDI NORMAN SC: And now these – these conditions I would imagine how are you – are you supposed to update National Treasury
 10 as you meet you or were you just simply going to report to National Treasury that you asked – you put up eleven conditions and we have complied with six or we are still complying with seven. How are you supposed to respond to – to you – your compliance in terms of those conditions?

MR BONGUMUSA EMMANUEL MAKHATHINI: So basically they put the conditions to us we then in formal we wrote to them presenting what they needed for us to comply. But also we have had meetings between the executive and National Treasury to align on it. Even on the letter that was sent to us we have respectfully responded to that letter and
 20 said maybe the Ministers were not given the information that we shared with them? Because the truth of the matter is we have fully complied. In areas where we have not – we 90% there. So we have formally communicated and not yesterday months ago. I will say four to six month ago we started sort of like adhering and responding to those conditions.

ADV THANDI NORMAN SC: Yes.

MR BONGUMUSA EMMANUEL MAKHATHINI: And maybe the last point that I need to mention just to clarify things. The G-Tech which is an entity that is helping to boost our strategy was actually brought in to help us but if you look at some of the comments about where they are saying we have not complied they relied on the original version of the G-Tech Report which has been improved. Because when you come into an organisation you will do observations until you engage with people who work there you may get certain things wrong but once they sat with
10 the team, they sat with the board where we gave input. So to rely on the original version which was not checked and validated with the executive and the board is wrong.

ADV THANDI NORMAN SC: Yes. Maybe whilst we are still dealing with the finances maybe it is important for me to take you back to paragraph 15 of your statement at page 6 of your statement. You deal with the dire situation 2018/2019 financial year. And you say the corporation ended March 2019 with a cash balance of only R72 million. Now what I would like to know one would have expected now because part of – or if not most of the Public Protector's Remedial action had
20 been put in place you would have put in place the Ad-Hoc Committee proposals or recommendations. What is it that really put the SABC in this situation now in this financial year? Leave the fact that you were asking for a guarantee I am just talking about the operations and the financial status at this point?

MR BONGUMUSA EMMANUEL MAKHATHINI: I indicated that in

broadcasting you need to invest 24 to 36 months in advance for you to be able to get the benefit of that investment. To put together a soapie take months a good one that can end up performing like Uzalo for an example. It takes months. So why we have not been able to achieve much is because though we have a solid turnaround strategy but that turnaround needed financial injection. But I have also touched on the regulatory and policy issues that has crippled the SABC. Those regulations and policies have not been changed. Yes ICASA has started a process to review those but as we stand today the status quo

10 still stands.

So it basically means that we are still affected heavily by those things. But the efforts around the Public Protector in terms of trying to recover the monies have not healed that much because we have not recovered anything. Yes we are in court. There are seven cases that already in litigating in court but that process can take years before we can see money flowing back to the SABC. So where we are we are suffering because of the poor decisions that were made at the time the landscape that has not really changed with technology, innovation and how our audiences consume our contents. So that is

20 why we are where we are.

But in spite of that the fact that we have kept the organisation going it tells you that the turnaround strategy has got potential to fix the SABC.

ADV THANDI NORMAN SC: Is that where you talk about the 33 improvement in paragraph 16 of your statement?

MR BONGUMUSA EMMANUEL MAKHATHINI: Yes Chairperson.

ADV THANDI NORMAN SC: 33%.

MR BONGUMUSA EMMANUEL MAKHATHINI: Yes.

ADV THANDI NORMAN SC: And you deal with the figures there.

Would you mind just putting those on record?

MR BONGUMUSA EMMANUEL MAKHATHINI: Okay I mean in me trying to ensure, explain and justify why we said a comprehensive turnaround strategy works. If you look at the numbers the year 2018/2019 unaudited loss for the SABC sitting at about 483million. Losses have
10 decreased over the past number of years from R1 billion in 2016/2017 down to R622million in 2017/2018 and an unaudited loss of R483 million in 2018/2019 so that is an improvement of about 33%. It shows that if we had been given the money at the time we requested it we could have got SABC to break even in 24 months.

ADV THANDI NORMAN SC: Yes.

CHAIRPERSON: Actually the figures that you have just read do – do show that each year since – since the first year – financial year that you mentioned the losses have been going down. There has been an improvement in the losses. Is that right?

20 **MR BONGUMUSA EMMANUEL MAKHATHINI:** It is right Chairperson yes.

CHAIRPERSON: Yes.

ADV THANDI NORMAN SC: Yes. Thank you.

CHAIRPERSON: Actually significant improvements.

MR BONGUMUSA EMMANUEL MAKHATHINI: That is correct

Chairperson.

CHAIRPERSON: Ja.

ADV THANDI NORMAN SC: Thank you. In paragraph 19 you touch on something that the Chairperson already asked you about when he was giving you the scenarios about whether certain executives or the certain boards do not do things according to certain wishes of maybe your political heads or something but you deal with it and you say the depoliticising of the SABC is of paramount importance. Could you just explain to the Chair what you mean by that? Now we talking not – we
10 talking if you have examples of what you mean by that you could just give those examples but you want to understand why you believe that the SABC needs this most.

MR BONGUMUSA EMMANUEL MAKHATHINI: Thank you Chairperson. If you look at what was [indistinct] as the outcome of the Public Protector Report – Investigations and the Addo Committee it talks to a leadership that was not doing what was expected of them from a judiciary duty perspective. It also talked to people who were not prepared to defend the independence of the SABC. Now that comes from in other instances when you going to give – going to give jobs and
20 position to people who are not suited for those roles those people get desperate to please. So to depoliticise SABC meant one of the key things we had to do was to get the executive team that was competent, experienced and at the same time having high levels of integrity so that they can do what is expected regardless of the push back or the challenges that they face. So doing that it actually restored order –

restores order and help us drive this rehabilitation and the renewal of the SABC. It is very important because the independence of the SABC needs to be protected and if you have wrong people in wrong jobs you not going to be able to do that. But secondly part of the contracts that were – are in question did not make commercial sense for the SABC. Now if as an executive you sign a contract that is not benefitting your entity, benefitting somebody else elsewhere it raises a lot of questions. So we had to bring people who have got commercial and business acumen to make sure that they help the SABC get back on track.

- 10 **ADV THANDI NORMAN SC:** So how do you balance the public mandate that the SABC has and the commercial interests because it also operates within that space as a commercial entity? So how do you balance the two because government is going to say, look we want you to educate people and you say, I want to educate people but I want to make money, so how do you draw the line – where do you draw the line when you have to discharge your mandate as a board?

- MR BONGUMUSA EMMANUEL MAKHATHINI:** There is an editorial policy currently it is being reviewed that really guides the decisions at the SABC and when it comes to news and editorial decisions that has
20 got – it is somehow protected from the commercial interest. It is important for the SABC to make money like I indicated that 85% of our revenue comes from commercial activities but that does not mean that we then compromise our independence because we are getting the support from private or from commercial activities.

ADV THANDI NORMAN SC: Yes thank you. Chair if you...

CHAIRPERSON: Sorry.

ADV THANDI NORMAN SC: Oh sorry – oh I beg your pardon.

CHAIRPERSON: Can I go back to what we were talking about under paragraph 16. The decrease in the losses made by the SABC or the improvement in the losses that were made by the SABC as testified to by you a few minutes ago in relation to paragraph 16 were those improvements in the losses as a result of the implementation of the turnaround strategy that you have talked about?

MR BONGUMUSA EMMANUEL MAKHATHINI: Thank you Chairperson
10 certainly it is the outcome or the result of the turnaround strategy. Because before the turnaround strategy was in place it was downhill for the SABC.

CHAIRPERSON: Yes. So the strategy – turnaround strategy that you put in place is already has been – and has been showing positive results?

MR BONGUMUSA EMMANUEL MAKHATHINI: Certainly. We have saved almost R1 billion.

CHAIRPERSON: Yes.

MR BONGUMUSA EMMANUEL MAKHATHINI: As a result of that
20 turnaround strategy.

CHAIRPERSON: Yes.

MR BONGUMUSA EMMANUEL MAKHATHINI: We have been able to attract top talent.

CHAIRPERSON: Yes.

MR BONGUMUSA EMMANUEL MAKHATHINI: To come work for the

SABC.

CHAIRPERSON: Yes.

MR BONGUMUSA EMMANUEL MAKHATHINI: Because they feel that SABC [indistinct].

CHAIRPERSON: Yes.

MR BONGUMUSA EMMANUEL MAKHATHINI: I mean if you look at the calibre of the executives that we have been able to attract.

CHAIRPERSON: Yes.

[MR BONGUMUSA EMMANUEL MAKHATHINI]: It is testimony that the
10 turnaround strategy is working. But the fact that we delivered the
election in this dire financial situation that was rated the best coverage
ever should give South Africans confidence that we are turning around
the SABC.

CHAIRPERSON: Hm, Hm thank you.

ADV THANDI NORMAN SC: Thank you Chair. And then maybe Chair I
might just finish up with the letters before I forget?

CHAIRPERSON: Yes do that.

ADV THANDI NORMAN SC: Sorry so can you just go back. We were
still dealing with the – and I had asked you and you explained what you
20 think Mr Naidoo meant in his letter about the failure to understand the
difference between corporate independence and accountability. Now he
also identifies the fact that the SABC does – ag it does need funding,
does he not? He does that sorry – I will tell you now. Yes in the third
paragraph. He also alludes to the fact that the SABC also needed
funds. He says:

“The SABC has a pressing issue of lack of funds
which requires immediate attention.”

Do you see that?

MR BONGUMUSA EMMANUEL MAKHATHINI: Yes he did.

ADV THANDI NORMAN SC: He did?

CHAIRPERSON: Yes.

ADV THANDI NORMAN SC: So you would find that then that also talks to what Mr Mathatha Tsedu had referred to in his letter. Then let us just deal with the letter of Mr John Mattison okay.

- 10 **CHAIRPERSON:** I am sorry before you go to that one. On this one from Mr Krish Naidoo I get the impression and you must tell me if I am wrong that he had a difference of opinion with the majority of the board on certain issues and he talks about – he says:

“The difference between corporate independence,
accountability and political interference”

He seems to have taken a certain view and maybe the majority of the board took a different view. Are you able to speak on this in terms of practical examples and are they connected in any way for example with the issue of cost cutting measures or not really?

- 20 **MR BONGUMUSA EMMANUEL MAKHATHINI:** Thank you Chairperson. I must indicate that all these resonations came immediately after the meeting we had with the Minister where we disagreed on the retrenchment element. So the majority of the board was of the view that the strategy has been approved by the board, has been shared and presented in Parliament and the Minister at that time actually gave

input and her input was incorporated. So all we needed to do now was to hold the executives you know to implement the turnaround strategy. So some people felt that we were supposed to stop the retrenchment without necessarily having anything tangible so that is where the difference of opinion is. But also the issue around – if you look at the Matojane judgment it clearly outlines what is the role of the board and what is the role of Minister and people seem to struggle to get to terms and to accept that SABC is independent and the board of the SABC is in charge of the affairs of the SABC not the Minister. The Minister yes

10 through a shareholder compact will hold us accountable on certain things, are we meeting our targets and so forth? She had got enough in the shareholder compact to hold us accountable in terms of the performance of the board and the entity but in terms of the decisions that must be left with the board.

CHAIRPERSON: Is the position that Mr Naidoo felt that there was no political interference that – because he refers to political interference he seems to say some members of the board do not understand political interference, accountability and independence – corporate independence. I am trying to understand what the difficulty was. Was

20 he thinking that the board was allowing the Minister to interfere improperly? Was he thinking – was his view that the board maybe was thinking the Minister is interfering improperly when actually she was not interfering improperly? Are you able to recall exactly where the differences were between him and the board?

MR BONGUMUSA EMMANUEL MAKHATHINI: Chairperson it – beyond

what is on the letter it gets harder for me to speculate what he was thinking.

CHAIRPERSON: Yes. Okay

MR BONGUMUSA EMMANUEL MAKHATHINI: But if I was to look at what was happening at the time.

CHAIRPERSON: Yes.

MR BONGUMUSA EMMANUEL MAKHATHINI: The board had taken a resolution.

CHAIRPERSON: Yes.

10 **MR BONGUMUSA EMMANUEL MAKHATHINI:** And – which was supported by the majority of the board.

CHAIRPERSON: Yes.

MR BONGUMUSA EMMANUEL MAKHATHINI: And a minority within the board.

CHAIRPERSON: Yes.

MR BONGUMUSA EMMANUEL MAKHATHINI: Felt that we should just fall over.

CHAIRPERSON: Yes.

20 **MR BONGUMUSA EMMANUEL MAKHATHINI:** And do whatever that was required of us.

CHAIRPERSON: Okay.

MR BONGUMUSA EMMANUEL MAKHATHINI: So that is the only way where I could basically frame

CHAIRPERSON: Yes.

MR BONGUMUSA EMMANUEL MAKHATHINI: My understanding of the

letter but as to what was going on in his mind.

CHAIRPERSON: Yes, yes.

MR BONGUMUSA EMMANUEL MAKHATHINI: I would not be able to speculate on that.

CHAIRPERSON: Yes and maybe because after he resigned there was no interaction?

MR BONGUMUSA EMMANUEL MAKHATHINI: There was no interaction.

CHAIRPERSON: Yes.

10 **MR BONGUMUSA EMMANUEL MAKHATHINI**: But again when you look at – at his letter he talks about an interim structure.

CHAIRPERSON: Hm.

MR BONGUMUSA EMMANUEL MAKHATHINI: Which meant that there was a view that maybe the board that is in place was meant to vacate office and then an interim structure should come in because that is what is in his letter. When he says he does not want to – to delay the installation of an interim structure that can deal with the affairs. Now when the four members resigned it put a mammoth pressure on the four that remained because if we had resigned that was going to make way
20 for the interim board.

CHAIRPERSON: Yes.

MR BONGUMUSA EMMANUEL MAKHATHINI: But we felt that we had done nothing wrong.

CHAIRPERSON: Yes.

MR BONGUMUSA EMMANUEL MAKHATHINI: We had delivered on

what is expected of us.

CHAIRPERSON: Yes.

MR BONGUMUSA EMMANUEL MAKHATHINI: And we were prepared to stand and fight and defend the independence of the SABC.

CHAIRPERSON: Yes.

MR BONGUMUSA EMMANUEL MAKHATHINI: Which then made it impossible to bring an interim board because you cannot bring an interim board without doing an enquiry.

CHAIRPERSON: Yes.

10 **MR BONGUMUSA EMMANUEL MAKHATHINI:** Which is what was done by the Addo Committee.

CHAIRPERSON: Yes, yes. But you see all of these things become quite important for this commission because certainly in regard to other SOE's or government institutions there certainly has been complaints that sometimes certain structures were weakened to such an extent were weakened in a way that sought to push them out so that other people would be put in who would then behave in a different way. So it becomes very important to understand all of those things because also some people might feel hey if I am not wanted I must just leave. But by
20 doing that you might be allowing somebody who might have improper motives and objectives to then bring in somebody who is going to put up no resistance when they should put up resistance. So it becomes very important to understand all of those things and sometimes you – you think that corporate governance requires that when people believe they have done nothing wrong they should stand their ground and say

we see that we are being pushed here and people think we are going to resign so that other people can be put in if we think we have done nothing wrong we are not going anywhere. And if somebody has power to fire us let them fire us. Okay.

ADV THANDI NORMAN SC: Thank you. Thank you Chair. Maybe just one other aspect linked to what the Chair has asked about what Mr Naidoo was saying. Was there in fact a despond – a breakdown in the relationship between the board and the Minister?

MR BONGUMUSA EMMANUEL MAKHATHINI: It was a very strange
10 point for – to put in the letter because the Minister had just come in. She was just – she had just been appointed.

ADV THANDI NORMAN SC: Yes.

MR BONGUMUSA EMMANUEL MAKHATHINI: And this was the first – very first meeting with the board. So it is just that there was this contentious issue around Section 189 but I am not of the view that the relationship was broken but it was the very first meeting that we had with her.

ADV THANDI NORMAN SC: Okay. Alright thank you. And then let us then go to Mr Mathatha Tsedu's letter. Each one follows Mr Naidoo yes
20 it is Mr Mathatha Tsedu is at page 3. I think it is important linked to the matters that the Chair had put to you that you have somebody who was part of the interim board and now he also became part of the permanent board but what he says there about rooting out corrupt practices and reversing fraudulent activities and he then commends both the interim and the permanent board. Are these matters that Mr

Mathatha Tsedu speaks to here? Are these some of the matters that when you are asking for a bail out from National Treasury, the Minister of Finance would consider? That is what you have done about the corporation whether because you are there now corruption has simply escalated or you have actually tried to root out corruption. Are these some of the considerations?

MR BONGUMUSA EMMANUEL MAKHATHINI: Chairperson that is correct. One of the conditions is how far have you gone in implementing the corrective measures coming out of the Public
 10 Protector? And we have met that condition. I mean you would have seen that we are tackling the irregular appointments. We are hold people accountable. There has been people that have been put through an independent disciplinary processes. We are hard at work and we are actually doing very well. Even the government both Ministers agrees that in that area we have done exceptionally well.

ADV THANDI NORMAN SC: Yes. Thank you. And then we have then the last letter because we do not have the one of Ms Kweyama. Then we have at page 2 that one of Mr John Mattison. One of the things that he raises is that he does not agree with the current board's direction
 20 and in particular its failure to appreciate the oversight role of Parliament and its committees, the dissatisfaction of oversight committees was apparent in three successive hearings and reached across all political parties. So what he was he talking about here? Was he still referring to the issue of retrenchments or were there other areas that he felt that the board's direction was not consistent with

what he believed in?

MR BONGUMUSA EMMANUEL MAKHATHINI: Thank you Chairperson.

The truth of the matter is if you look at how our engagement with the Portfolio Committee and [indistinct] the only issue that they were always picking on was retrenchment. Why are you retrenching? There has never been a substantial input or alternative that was ever given other than them expressing concern about retrenchments while South Africa has got high levels of unemployment. So him talking about us having challenges it was specifically about that and he was of the view
10 rather also that we should suspend retrenchment. And the position of the board was until we are given money we are prepared to review the pace and the quantum of retrenchment. But to just say you cannot retrench and no money given, no alternative given it would have been irresponsible for the board to accept that.

CHAIRPERSON: I may have misunderstood you but I think you must have intended to say the board's position was as long as we do not have money unfortunately this is one of the cost cutting measures that we will have to do namely retrenchment but if we are given money then we can look at the situation. Am I right?

20 **MR BONGUMUSA EMMANUEL MAKHATHINI:** Thank you Chairperson. Cost cutting – the position of the board was exactly but was that we were going to review the pace and the quantum.

CHAIRPERSON: Yes.

MR BONGUMUSA EMMANUEL MAKHATHINI: You may have maybe in your initial projections put about let us say 900 employees.

CHAIRPERSON: Yes.

MR BONGUMUSA EMMANUEL MAKHATHINI: But when there is money given and you can drive efficiency in other areas you can then maybe reduce that to like maybe 700. But to just take it off the table completely when it is about 45% of your expenditure and you are not able to identify another lever where you going to reduce costs. Because our main cost drivers is staff, payroll. It is signal distribution or connectivity cost. It is also sport rights which falls under content. So you can never around the finances of the SABC without tackling
10 those three areas.

CHAIRPERSON: So – so every month as you paid salaries there will be this 45% that goes to salaries and your turnaround strategy contemplated that the numbers of staff had to be reduced if there was – they had to be reduced I think that is what you say and by how much they would have to be reduced could be affected by whether or not you were getting – you are going to get funding and how much funding you were going to get. But there was no doubt in the minds of the board that retrenchments had to happen.

MR BONGUMUSA EMMANUEL MAKHATHINI: I may not have the
20 numbers details here.

CHAIRPERSON: Yes.

MR BONGUMUSA EMMANUEL MAKHATHINI: But there is a number of things that needed to be done around our staff mix.

CHAIRPERSON: Yes.

MR BONGUMUSA EMMANUEL MAKHATHINI: In terms of for example

freelances versus permanent staff but also looking at where we going as the SABC? What skills do we need? You know but there were a number of irregular appointments and a lot of things that needed to be looked at and reviewed. Even our operational model as the SABC needed to be relooked because we operating in a digital space where things have changed and competition also has intensified. And like I indicated that if you look how people consume content it has changed. So do we still need everything that we have now in its current form or shape? All those things were being reviewed and it is what the executive team was looking at. But certainly without reducing your cost you can never turn around SABC because you are not going to be able to grow your revenue in this competitive space without tackling your cost elements.

CHAIRPERSON: Thank you.

ADV THANDI NORMAN SC: Thank you Chair. And then he says in the last sentence which you have already read into the record that his endeavours to persuade the board to change its course including the suspension of retrenchments have not been accepted. So I would take it that you have one person who is not happy with the strategy or with the way you going but the majority of the board would have approved it and then he decided that look if it cannot be done as he is suggesting then he would rather leave. Was that the impression you got?

MR BONGUMUSA EMMANUEL MAKHATHINI: Certainly. I mean a board of about fifteen people if you have fourteen people agreeing and one person disagreeing the majority of the board agrees with the

strategy and we move forward.

ADV THANDI NORMAN SC: Hm yes thank you. Then before we go to the some paragraphs of your statement I would like us to just finish with all the media documents which we have placed before the Chair. Shall we now got to Exhibit CC23 I beg your pardon I have not dealt with Exhibit CC23A? May I refer you – do you have that?

MR BONGUMUSA EMMANUEL MAKHATHINI: Exhibit 23?

ADV THANDI NORMAN SC: 23A.

MR BONGUMUSA EMMANUEL MAKHATHINI: I have got it.

10 **CHAIRPERSON:** You have it okay thank you. Then the first item on the index which goes to page 2 of that document deals with sports broadcasting rights role still unresolved. We are not going to read these letters but you can just – because I know that the CEO is going to talk to them. He has dealt with it in his supplementary statement. But just roughly you have already indicated to the Chair that sport rights are expensive but this role that they referring to here what are they talking about?

MR BONGUMUSA EMMANUEL MAKHATHINI: So...

ADV THANDI NORMAN SC: Just high level overview of what this was
20 all about. Mr Mxalwe is going to deal with in detail.

MR BONGUMUSA EMMANUEL MAKHATHINI: Ja. Maybe just high level thank you Chairperson. One of the key things there were a number of contracts that SABC had entered into that were not financially or commercially making sense for the SABC. Sports rights for an example sports rights prices had become so high and our ability

to commercialise those rights was not in line with what we were paying for these rights. So we as a board took a position as the majority of the board let me emphasise that that will no longer sign any contract that does not make commercial sense for the SABC regardless of what that contract is about and sports fell into that basket and we - we have had a number of engagements and - and we have agreed now for an example SuperSport and PSL on the rights.

Where they manage to understand our position and we had to understand also their position and go to a form of an agreement that
10 will result to SABC making some money from it because if you look at the sports rights alone in the last five years SABC has lost about R2.3 billion as a result of sports rights.

I spoke to you about the financials for the last financial year of about 483. About 410 million of that 483 loss is due to sports.

ADV THANDI NORMAN SC: Yes and then I would like to just highlight ...

CHAIRPERSON: I am sorry.

ADV THANDI NORMAN SC: Okay.

CHAIRPERSON: Is that because - I mean you referred earlier on to
20 some contracts in which - concluded by SABC and other entities that did not make commercial sense. Did you - is this one, one of them where there is such a loss that happened over that period? Is it because it did not - the agreements that SABC had got into did not make commercial sense in your view?

MR BONGUMUSA EMMANUEL MAKHATHINI: Certainly Chairperson.

Some of these are part of those contracts that needed to be reviewed because if you paying let us say R20 million for something and you only making R5 million ...

CHAIRPERSON: Yes.

MR BONGUMUSA EMMANUEL MAKHATHINI: It will be irresponsible for any Board Director ...

CHAIRPERSON: Hm.

MR BONGUMUSA EMMANUEL MAKHATHINI: To go in knowing that they are going to have such a significant loss ...

10 **CHAIRPERSON:** Hm.

MR BONGUMUSA EMMANUEL MAKHATHINI: But also to expect the SABC to carry this alone without a financial injection. It also becomes a - unsustainable for us.

ADV THANDI NORMAN SC: Thank you. Thank you Chair and then if I may just take you to page 6 of that bundle which is EXHIBIT CC23A. So this is some of the correspondence that happened over the weekend. It talks to the bail out. Am I right?

MR BONGUMUSA EMMANUEL MAKHATHINI: Yes Chairperson, yes.

ADV THANDI NORMAN SC: Yes and then it says:

20 "SABC top brass threatened to quit over board meddling."

Could you just explain to the Chair who is the top brass and why was there a threat to quit because your board is meddling into the affairs of the executives?

MR BONGUMUSA EMMANUEL MAKHATHINI: The top brass in this

case refers to the Group CEO, CFO and the COO and - and the challenge there - there has been some issues that the executive raised with the board in terms of minority of the board doing things that makes it impossible for the executive team to do their work which when you look at the incidents given it - it talks to some level of interference second guessing the executives and creating an environment that is not conducive for the executives to do their work but as a board we are dealing with that matter.

10 It has been brought to the attention of the board and as a board we are tackling that issue.

ADV THANDI NORMAN SC: Yes. When you say minority members of the board how many members are we talking about?

MR BONGUMUSA EMMANUEL MAKHATHINI: The board is made of 12 non-execs and then three Executive Directors. So when the three executives are complaining about the board they will be referring to the non-exec which is the 12. So out of the 12, you will have a minority. A minority for me will be any number less than three when or three going down if you have a total of 12 people.

ADV THANDI NORMAN SC: Huh-uh, yes.

20 **MR BONGUMUSA EMMANUEL MAKHATHINI:** So which means where we are the board is fully functional and still able to do its work but of course because boards are made up of people from different backgrounds and who approach things differently and for every new team or group of people when they meet for the first time there will be teething issues.

What I normally say is that as long as everybody's guided by the prescripts of the law one but secondly guided by what is at the best interest of the entity that they are part of. Not being pushing their personal interest that have got nothing to do with the SABC but also allowing the executives space to do their work.

Nobody should block the executives from driving consequence management from implementing the turnaround strategy and so forth. So that is the stance.

ADV THANDI NORMAN SC: Yes and then there you quoted. I am not
10 sure that it is you who is quoted. You will tell me. It is paragraph -
paragraph 8. It starts with:

“It is the SABC Board’s understanding ...”

Could you just read that into the record?

MR BONGUMUSA EMMANUEL MAKHATHINI: This pertains to the
bailout. Our response goes like this:

“It is the SABC Board’s understanding that the
Public Broadcaster has either complied or
substantially complied with each precondition as
demonstrated by the substantive documentation
20 supplied over a period of eight months. In the
letter to the Ministers the board attached detail on
the SABC’s compliance with each - with each
condition and has asked for an urgent engagement
to discuss the matter.”

ADV THANDI NORMAN SC: Yes.

MR BONGUMUSA EMMANUEL MAKHATHINI: “The board has

- had informed the Minister that as a result of the current status of the SABC funding request the board was left with no option but to implement the requirement of the Companies Act taking into account the severe implications on the Directors liabilities.”

ADV THANDI NORMAN SC: And the last one.

MR BONGUMUSA EMMANUEL MAKHATHINI: “The board has

10 assured the Minister of its commitment to serving the corporation in the public interest. To this end the board will continue to work with the Department of Communications and Digital Technologies and the National Treasury.”

ADV THANDI NORMAN SC: Yes and then if I may just take you - I just what to highlight those particular articles which are relevant to your evidence. You have already spoken or testified to the issue of TV licences and you - this is dealt with in - at page 17 of this - of this pack and then there is - the - in fact how it is captured in the index. It says:

20 “SABC wants to increase TV licences but DA says no way. The opposition says the Public Broadcaster needs to find another way to turn around.”

So that is - that was part - this issue of increasing TV licences did it also form part of your turnaround strategy?

MR BONGUMUSA EMMANUEL MAKHATHINI: Yes it is one of the things that we - we had highlighted.

ADV THANDI NORMAN SC: Yes. So this is one of the things that would have been opposed to by some political parties or all?

MR BONGUMUSA EMMANUEL MAKHATHINI: That is correct Chairperson.

ADV THANDI NORMAN SC: Yes and then at page - sorry. Then you - this was linked to the first one. At page 22:

10 “MultiChoice signs deal with SABC for premier
 soccer league rights.”

 And this is what you have already testified to that you had reached agreement. Is that what you are talking about there?

MR BONGUMUSA EMMANUEL MAKHATHINI: That is correct Chairperson.

ADV THANDI NORMAN SC: Yes, thank you. That is at page 22 and there is an article that says:

 “SABC lets down the poor.”

20 At page 23. Could you just read what this - this is a Mr Vukile Maki from Mdantsane. What his complaint was about there because he talks to the issue of sports rights and how the public views it or at least one member of the public who has actually documented it, yes.

MR BONGUMUSA EMMANUEL MAKHATHINI: Okay. It - it says:

 “I was totally flabbergasted at the way SAFA, the PSL and the SABC have taken people for granted.

League games started a few weeks back yet there was no agreement about this - about - there was no agreement about which matches would be publically screened. The blackout of soccer matches was a terrible blow for the football lovers and a shameful way to treat the beautiful game. Not showing the game was like showing the middle finger to the public and soccer fans. This shows how greedy the leaders of these organisations are. They prefer to show lots of matches on the pay channel rather than letting their have nots watch. Rugby fans also have to wait until matches are finished on the pay channel. SABC shows them by the time you already know the score, Vukile Maki.”

ADV THANDI NORMAN SC: Yes.

MR BONGUMUSA EMMANUEL MAKHATHINI: Mdantsane.

ADV THANDI NORMAN SC: So to the members of the public how do you explain this? How would you explain this because people they have SABC1, two, three? You have mentioned the sports rights that SABC does not have but to a layperson how would you then explain why is it that you are not able to show these important games to the public?

MR BONGUMUSA EMMANUEL MAKHATHINI: Thank you Chairperson.

When it gets to sports regulations it says the free to air players must carry sports of national importance but what is interesting is that other

players like your eMedia do not even bother to bid for these sports rights because they know the pricing is not making commercial sense and then the SABC because we are a Public Broadcaster we are then expected to carry these games at huge costs for us.

It would have been ideal if we were getting some support funding that actually makes it possible for us to carry these games while at the same time being financially viable because we have to pay millions and millions of Rands and run at huge losses which the very same South Africans are going to complain and say why is this SABC
10 not turning around.

Why are the losses at SABC so high? Part of the things that drive those losses is because of the very same issues around content that is very, very expensive for us but also the content that becomes harder for us to commercialise. When I talk about commercialisation of content it is okay if I am going to pay 20 million and then sell advertising space to advertisers and make - let us say - 30 million.

So then I have a R10 million profit but from where we are we have to incur huge costs acquiring the rights. We have to incur costs of production. Costs of on air talent and when you add all of those
20 together it makes SABC impossible for the SABC to be financially viable. So South Africans need to understand that inasmuch as we are committed to fulfilling our public mandate it comes at a cost and we need all players to play their part.

The Department of Sports must play their part and other players must play their part. It cannot be the SABC's only burden to

carry these.

ADV THANDI NORMAN SC: Yes and maybe lastly I would like to take you to page 8 which is headed - oh sorry this is the - I will take it up with your Head of News. Your Head of News is going to testify - this deals with Head of News. Sorry. Sorry Chair. I think we have dealt with most of the things that would warrant your attention from that report and then lastly - lastly Chair if I may just refer the witness to EXHIBIT CC23C. You have already dealt with that.

CHAIRPERSON: Yes.

- 10 **ADV THANDI NORMAN SC:** Yes. It deals with the SABC threatening to quit over board meddling. Remember that?

MR BONGUMUSA EMMANUEL MAKHATHINI: (No audible reply).

ADV THANDI NORMAN SC: You have already touched upon that and then the next page at page - sorry. This is not numbered. It will be page 4. I am sorry. It is not numbered. It will be (indistinct). Mine is not numbered. Page 4 it says:

“SABC Board response to Sunday Times story.”

That is your response then to that - to that article. Is that correct?

MR BONGUMUSA EMMANUEL MAKHATHINI: It is correct Chairperson.

- 20 **ADV THANDI NORMAN SC:** Yes and I think it is important this is something that you said you wanted to place on record. You have - you have already mentioned how skilled your executives are. Maybe you want to just read into the record what your response to that statement was.

MR BONGUMUSA EMMANUEL MAKHATHINI: Thank you Chairperson.

As the SABC Board we decided to respond to the Sunday Times story.

10 “SABC top brass threaten to quit over board
 meddling. The SABC Board reaffirmed its utmost
 support and respect for the SABC Executive
 Directors who have done a sterling job thus far in
 very difficult circumstances. The board will not be
 drawn into discussing internal board matters and
 alleged differences between board members. The
 board comprises of persons chosen through a public
 process who have a range of skills and experience
 and who will continue to be critical - critically
 engaged in their duties and responsibilities. It is
 well known that the SABC faces huge historical
 challenges which the board is committed to turning
 around. This was reported in Parliament last week
 Wednesday. The SABC Board denies that there is a
 disagreement among Board Directors about meeting
 the preconditions set by the - by Government for
 providing the 3.2 billion bailout. At a meeting of the
20 SABC Board on 30 August 2019 it was unanimously
 agreed to write to the Minister of Finance and the
 Minister of Communication and Digital Technologies
 respectfully disagreeing with the view that the
 SABC had not met the Treasury pre conditions for
 funding. In the letter to the Ministers the Board

expressed its concerns with the content of a letter from the two Ministers received on 27 August 2019 and believe that the Ministers have not been fully briefed on the information provided by the SABC thus far. It is the SABC Board's understanding that the Public Broadcaster has either complied or substantially complied with each precondition as demonstrated by the substantive documentation supplied over a period of eight months. In the

10 letter to the Ministers the board attached details on the SABC's compliance with each condition and has asked for an urgent engagement to discuss the matter. The SABC - the board has informed the Minister that as a result of the current status of the SABC's funding request the board is left with no option but to implement the requirement of the Companies Act taking into account the severe implications on Directors liability. The board has assured the Ministers of its commitment to serving

20 the corporation in the public interest. To this end the board will continue to work with the Department of Communications and Digital Technologies and the National Treasury. Issued by the Chairperson of the Board on behalf of the Board."

ADV THANDI NORMAN SC: Yes. Thank you. There are two reports

which you - we have not mentioned which you testify - I beg your pardon - you have not testified to just yet. Those are dealt with at page 22 - at paragraph 22. I beg your pardon. At page 7 of your statement where then as part of the cleaning up of the SABC ...

CHAIRPERSON: I am sorry. Page?

ADV THANDI NORMAN SC: Page 7 Chair.

CHAIRPERSON: Seven.

ADV THANDI NORMAN SC: Paragraph 22, yes.

CHAIRPERSON: Okay.

10 **ADV THANDI NORMAN SC:** The - the - you - the SABC commissioned two other inquiries. Could you just talk to those inquiries please?

MR BONGUMUSA EMMANUEL MAKHATHINI: Coming out of the work that was done by the Public Protector and the *Ad Hoc* Committee specifically there were a number of complaints that were raised around the issues of harassment and political interference with the editorial decisions of the SABC.

So in our effort in implementing these remedial actions like I have said that we are committed in doing that. We commissioned two Commissions one to look into the harassment issues and the other one
20 to look at political interference. Both Commissions have concluded. We are almost done with Phase 1 of implementing the recommendation of the harassment one.

The one on political interference was just released a few weeks ago. The recommendations coming out of that will be incorporated or considered as we update our editorial policy and then

we will be able to make sure that we strengthen our governance to ensure our editorial independence and protecting the editorial decisions.

ADV THANDI NORMAN SC: Yes. When you are talking harassment you mean sexual harassment?

MR BONGUMUSA EMMANUEL MAKHATHINI: I mean sexual harassment yes.

ADV THANDI NORMAN SC: Yes and then the other report that dealt with interference editorial independence. That is the one that by
10 Mr (indistinct). Is that correct?

MR BONGUMUSA EMMANUEL MAKHATHINI: That is correct
Chairperson.

ADV THANDI NORMAN SC: Yes. Chair that report is contained in EXHIBIT CC19 and it has four volumes. CC19A to D but Mr (indistinct) is going to testify to it.

CHAIRPERSON: Okay.

ADV THANDI NORMAN SC: Yes, thank you and then - you then in paragraph 23 say that most of the matters - the details you leave them up to the executives which are lined up to testify after your - after you?

20 **MR BONGUMUSA EMMANUEL MAKHATHINI:** That is correct
Chairperson.

ADV THANDI NORMAN SC: Yes, thank you and then lastly - then if - then according to the correspondence that you have given to the media houses like the statement that you have just read out about either the SABC complying fully or substantially with the conditions. What could

be the reason for this bailout not forthcoming? It has been how many -
you said 18 months now?

MR BONGUMUSA EMMANUEL MAKHATHINI: It is almost 24 months.

ADV THANDI NORMAN SC: Yes.

MR BONGUMUSA EMMANUEL MAKHATHINI: If you consider the
period under the Interim Board because the Interim Board put the first
application in 2017, June.

ADV THANDI NORMAN SC: Yes. So - so what could be the reason?
Do you - I do not want you to speculate but do you - is it something
10 that you can talk to or you feel that you do not want to even speculate?

MR BONGUMUSA EMMANUEL MAKHATHINI: To be honest because we
were given 11 conditions and we have complied with all of them and the
results are showing that the business is turning around. You could see
that even our losses are decreasing. We have reduced it by 33
percent. I am not sure what will be any other reasonable reason for not
assisting the SABC considering what the team has been able to deliver.

ADV THANDI NORMAN SC: Yes.

CHAIRPERSON: Have you - did - did you have to communicate with
the Minister of Communications and she in turn has to communicate
20 with the Minister of Finance or does SABC or is SABC able to approach
National Treasury directly and find out what is holding things back?

MR BONGUMUSA EMMANUEL MAKHATHINI: Thank you Chairperson.
The protocols for communication is that SABC submits anything that
they need to submit to the Department of Communication and then the
Communication Department then engages with the Minister of Finance

and I think that is why in our response we are respectfully saying maybe the Ministers have not been appraised or given sight of what we have submitted because in the last 18 months - sorry - eight months we have submitted substantive documentation to comply with those conditions.

CHAIRPERSON: Hm and you have not been told by the Minister of Communications why there is a delay in the decision being taken with regard to granting SABC what is referred to as the bailout or either the funding that it requires or the portion that falls within the budget of
10 Government? In other words if you have asked for 100 percent.

They must be able to say we cannot give you anything for reason A, B, C, D or we can only give you 50 percent and these are the reasons why we cannot give you the other 50 percent. Have they not come back to you - the Minister of Communications - to tell you whether a decision has been taken one way or another as to what if anything SABC would be given?

MR BONGUMUSA EMMANUEL MAKHATHINI: Thank you Chairperson for asking the question. Reasonable - logically that is what you would expect. That if I was given 11 conditions and let us say for argument
20 sake I have met 50 percent of those. I should then be given 50 percent of the funding. Now there are 11 conditions.

We are of the view like I have read the statement that we have substantially all met these conditions. We have not been given a cent of the R3.2 billion but there are even instances where they themselves admit that we have met the condition around for an example

consequence management. So where is the money that talks to that?

So to hold back the entire amount when you know that the organisation is planning. People's lives are at risk. Business are being shut because the fact that we cannot pay those suppliers it means some of these businesses are shutting down. Our employees are in and out of hospital because of us not being able to maintain and comply with health and safety standards. It leaves a lot of confusion.

CHAIRPERSON: I mean you talk about businesses that you are - are being shut. I mean - I think for some years now I think Government
10 was - has been talking the language that small businesses must be paid within 30 days and all of that. In your situation there must be a lot of small businesses that you are not able to pay for quite some time because there is simply no money.

MR BONGUMUSA EMMANUEL MAKHATHINI: That is correct Chairperson. Thank you. The only thing we are able to pay religiously every month is our staff.

CHAIRPERSON: Yes.

MR BONGUMUSA EMMANUEL MAKHATHINI: Our salary bill is sitting at about R260 million.

20 **CHAIRPERSON:** Yes.

MR BONGUMUSA EMMANUEL MAKHATHINI: After paying that there is nothing left.

CHAIRPERSON: But what - what it means it goes back to the point you - part of the point you have just made. What it means is that if there lots of for example small businesses suppliers that the SABC relies on.

They are not being paid and those business people who are supposed to help the economy grow. They have to close down their businesses because they are not being paid for months and months and months on end.

MR BONGUMUSA EMMANUEL MAKHATHINI: Yes.

CHAIRPERSON: That is what it means. Is that right?

MR BONGUMUSA EMMANUEL MAKHATHINI: That is what it means Chairperson. SABC plays a critical role in the entire broadcasting industry.

10 **CHAIRPERSON:** Yes.

MR BONGUMUSA EMMANUEL MAKHATHINI: If SABC goes down it has got a ripple effect in the entire industry.

CHAIRPERSON: You see part of the - sometimes what - what is difficult to understand is when people do not - people who are appointed to make decisions - whose job is to make decisions do not make decisions for a long time. I mean you have got to make a decision whether people criticise you and say it is a wrong decision or not.

If your job is to make a decision you must make the decision.

20 One way or another people must know where they stand and you must provide your reasons. There is a time to gather information that you need in order to make your decision one way or another but for - for a situation to be allowed to develop where you know an important public institution waits for a long, long time without decisions being made and in the meantime you know small businesses get really affected in a very

bad way.

It is - it is something that should be avoided and - and all one would expect is that at least decisions must be taken. If the decision is that look we cannot give you the money or we can only give you so much let the decision be taken so that everybody knows okay that is the decision. How do we live with it? How do we plan our - our operations appropriately? So - so hopefully those decisions will be taken soon. Yes.

ADV THANDI NORMAN SC: Thank you.

10 **CHAIRPERSON:** Do you - do you have any or did you want to say something ...

ADV THANDI NORMAN SC: Sorry.

CHAIRPERSON: Or not really?

MR BONGUMUSA EMMANUEL MAKHATHINI: I fully agree with you Chairperson that leadership is about making decisions.

CHAIRPERSON: Yes, yes. I mean you know sometimes it is just worse that you are putting in a leadership position but you cannot make decisions. It is - sometimes you feel it is better to have somebody who will make a bad decision. Then everybody knows where they stand.

20 Okay. Ms Norman.

ADV THANDI NORMAN SC: Thank you Chair. Thank you. Chair that is the evidence ...

CHAIRPERSON: Yes.

ADV THANDI NORMAN SC: From this witness. Thank you.

CHAIRPERSON: Thank you very much Mr Makhathini for coming to

share with the Commission what you know is happening in regard to the SABC. If a need arises we will ask you to come back but for now you are excused.

MR BONGUMUSA EMMANUEL MAKHATHINI: Thank you for the opportunity Chairperson.

CHAIRPERSON: Thank you.

ADV THANDI NORMAN SC: Thank you. Thank you Chair. Chair I was going to suggest that we adjourn today.

CHAIRPERSON: Yes.

- 10 **ADV THANDI NORMAN SC:** Maybe we could start early tomorrow but - but we are not particularly worried Chair. I think we have spaced ...

CHAIRPERSON: Oh the spacing of - yes.

ADV THANDI NORMAN SC: Our witnesses quite, quite fairly. I think we will be able at least those ...

CHAIRPERSON: Yes.

ADV THANDI NORMAN SC: That are lined up for the week. They will definitely finish this week.

CHAIRPERSON: Well we can start at 10 tomorrow if you ...

ADV THANDI NORMAN SC: Yes.

- 20 **CHAIRPERSON:** Feel that ...

ADV THANDI NORMAN SC: Yes.

CHAIRPERSON: When you look at the whole week.

ADV THANDI NORMAN SC: Yes.

CHAIRPERSON: Everything should be fine and we start early only if we need to make sure.

ADV THANDI NORMAN SC: If you need to, yes. 10 o' clock then Chair.

CHAIRPERSON: So 10 o' clock is going to be fine tomorrow?

ADV THANDI NORMAN SC: 10 o' clock. Thank you Chair.

CHAIRPERSON: Okay, alright.

ADV THANDI NORMAN SC: I will appreciate that. Thank you.

CHAIRPERSON: We are then going to adjourn for the day and tomorrow we will start at 10 o' clock.

ADV THANDI NORMAN SC: Thank you.

10 **CHAIRPERSON:** We adjourn.

ADV THANDI NORMAN SC: Thank you Mr Chair.

REGISTRAR: All rise.

INQUIRY ADJOURNS