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DAY 158

20

PROCEEDINGS RESUME ON 6 SEPTEMBER 2019

CHAIRPERSON: Good morning Ms Norman. Good morning everybody.

ADV THANDI NORMAN SC: Good morning Mr Chairman.

CHAIRPERSON: Yes.

ADV THANDI NORMAN SC: Yes, thank you.

CHAIRPERSON: Yes are you ready?

ADV THANDI NORMAN SC: Yes I am ready. Thank you Mr Chairman.

Mr Chairman we have placed before you the files marked CC20 and
CC24 and this morning we would turn to EXHIBIT CC24 and I have
10 asked the Registrar to place before you Chair the statement of
Dr Fhatuwani Lastborn Mutuvhi.

CHAIRPERSON: Doctor?

ADV THANDI NORMAN SC: Dr Fhatuwani Lastborn Mutuvhi.

CHAIRPERSON: Oh, okay. Okay. No I did not hear you say the
surname. So ...

ADV THANDI NORMAN SC: The surname. Oh, I beg your pardon yes.

CHAIRPERSON: And I was wondering whether ...

ADV THANDI NORMAN SC: Lastborn is the surname.

CHAIRPERSON: Fhatuwani is the surname.

20 **ADV THANDI NORMAN SC:** Oh yes.

CHAIRPERSON: You know sometimes people start with the surname
when they write ...

ADV THANDI NORMAN SC: Yes.

CHAIRPERSON: People's names.

ADV THANDI NORMAN SC: Yes Chair.

CHAIRPERSON: Okay.

ADV THANDI NORMAN SC: Than you.

CHAIRPERSON: Yes.

ADV THANDI NORMAN SC: Mr Chairman this witness - may I just bring to your attention that this witness is going to come back again for ...

CHAIRPERSON: Hm.

ADV THANDI NORMAN SC: For this reason.

CHAIRPERSON: Huh-uh.

10 **ADV THANDI NORMAN SC:** Today what he is going to do he is going to simply lay out the project as that DDT Project that Ms Mokhobo mentioned when she testified. Then we will interpose witnesses that are going to deal partly with the implementation of that program and what exactly was done on the ground in that program and then this witness is going to come back because then there was an - an investigation done by Treasury and he is going to be talking - although he was not part of the investigation but he represents the department.

He will talk to that and that - those are the big files that I mentioned to you Chair last night which have not come to hand. They
20 are with us as - as - they have not brought - been brought to - to you yet ...

CHAIRPERSON: Yes.

ADV THANDI NORMAN SC: Because of the magnitude ...

CHAIRPERSON: Yes.

ADV THANDI NORMAN SC: Of documentation that is involved in there.

CHAIRPERSON: Okay.

ADV THANDI NORMAN SC: For that reason then we decided that for now he must come and introduce the project because he as the Project Manager ...

CHAIRPERSON: Hm.

ADV THANDI NORMAN SC: And tell the Chairperson how many phases was it supposed to go ...

CHAIRPERSON: Hm.

ADV THANDI NORMAN SC: And what were the critical areas that were
10 going to be focused on.

CHAIRPERSON: Hm, hm.

ADV THANDI NORMAN SC: Yes. Thank you Mr Chairman.

CHAIRPERSON: Okay. No that is fine. Before we proceed I - I was looking at the list of witnesses in regard to the SABC eight.

ADV THANDI NORMAN SC: Yes Mr Chair.

CHAIRPERSON: Well in - I was looking at the whole list ...

ADV THANDI NORMAN SC: Yes, yes.

CHAIRPERSON: But I was more interested in terms of the SABC eight.

ADV THANDI NORMAN SC: Yes Chair.

20 **CHAIRPERSON:** Now of course I do not remember each and every member of the SABC eight ...

ADV THANDI NORMAN SC: Yes.

CHAIRPERSON: From the media ...

ADV THANDI NORMAN SC: Yes.

CHAIRPERSON: At the time of the incidents but you have already

called I think three (intervenes).

ADV THANDI NORMAN SC: Three for now, yes Mr Chair.

CHAIRPERSON: Yes. I - there might be no need obviously to call each and every one of them ...

ADV THANDI NORMAN SC: Yes Chair.

CHAIRPERSON: If they are covering the same thing ...

ADV THANDI NORMAN SC: Yes.

CHAIRPERSON: But I do not remember seeing Mr Vuyo Mvoko's name.

ADV THANDI NORMAN SC: Yes.

10 **CHAIRPERSON:** Did I miss it? Is it there?

ADV THANDI NORMAN SC: No it is not there yet Chair ...

CHAIRPERSON: It is not there.

ADV THANDI NORMAN SC: But we could ...

CHAIRPERSON: Hm.

ADV THANDI NORMAN SC: The investigators they had updated us on

CHAIRPERSON: Yes.

ADV THANDI NORMAN SC: On the coordination of their ...

CHAIRPERSON: Yes.

ADV THANDI NORMAN SC: Evidence but ...

20 **CHAIRPERSON:** Yes.

ADV THANDI NORMAN SC: To the extent that Chair feels you would like him specifically ...

CHAIRPERSON: Yes.

ADV THANDI NORMAN SC: That - that is something that they would be attending to, yes.

CHAIRPERSON: Yes. No I think it would - I think it would be good because from what I think Ms Thandeka Gqubule-Mbeki said ...

ADV THANDI NORMAN SC: Yes, yes.

CHAIRPERSON: His case seems to have ended up being different from ...

ADV THANDI NORMAN SC: Yes.

CHAIRPERSON: Others in the sense that the others were reinstated ...

ADV THANDI NORMAN SC: Yes.

CHAIRPERSON: When they were all dismissed at the same time.

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

CHAIRPERSON: As I understand the position for ...

ADV THANDI NORMAN SC: Yes.

CHAIRPERSON: The same reasons.

ADV THANDI NORMAN SC: Yes Chair.

CHAIRPERSON: They were reinstated but he was not ...

ADV THANDI NORMAN SC: Yes.

CHAIRPERSON: For certain reasons and Ms Gqubule-Mbeki was saying that you know he suffered ...

ADV THANDI NORMAN SC: The most, yes.

20 **CHAIRPERSON:** Quite a lot for two years without a job.

ADV THANDI NORMAN SC: Yes.

CHAIRPERSON: Now that - that maybe important. I am interested in hearing how ...

ADV THANDI NORMAN SC: How that affected him.

CHAIRPERSON: Because that is - that is very different from the other

seven.

ADV THANDI NORMAN SC: That is true Chair.

CHAIRPERSON: You know. So ...

ADV THANDI NORMAN SC: Yes.

CHAIRPERSON: So I would like to - I would like that he be approached to see whether he could want to share with the Commission ...

ADV THANDI NORMAN SC: Thank you.

CHAIRPERSON: His perspectives and how the dismissal affected him.

ADV THANDI NORMAN SC: Affected him?

10 **CHAIRPERSON:** Yes.

ADV THANDI NORMAN SC: Thank you Chair.

CHAIRPERSON: Yes.

ADV THANDI NORMAN SC: That - that will be done. Thank you Chair.

CHAIRPERSON: Yes and it would be interesting also to see whether to the extent that there may have been any cost orders that were granted in favour of the SABC again him.

ADV THANDI NORMAN SC: Yes.

CHAIRPERSON: Whether the SABC enforced those cost orders ...

ADV THANDI NORMAN SC: Yes.

20 **CHAIRPERSON:** And so on.

ADV THANDI NORMAN SC: We will do that.

CHAIRPERSON: So that kind of thing.

ADV THANDI NORMAN SC: Thank you Chair. We will look into ...

CHAIRPERSON: *Ja.*

ADV THANDI NORMAN SC: That, yes.

CHAIRPERSON: The other part which I thought of was also that we - we did not deal with the - what version was put up by the SABC before the Labour Court in opposing the challenge by the SABC eight of their dismissal. What version did they put up about the reasons for dismissals and obviously the court judgment is there ...

ADV THANDI NORMAN SC: Yes.

CHAIRPERSON: And one can read it but it would be good even for the public if we could connect ...

ADV THANDI NORMAN SC: That - that version.

10 **CHAIRPERSON:** That by saying this is what the court ultimately find ...

ADV THANDI NORMAN SC: Yes.

CHAIRPERSON: If for example it rejected their version ...

ADV THANDI NORMAN SC: Yes.

CHAIRPERSON: Or it said that is not a constitutionally acceptable you know reason ...

ADV THANDI NORMAN SC: Yes.

CHAIRPERSON: For dismissing people. It would be good to connect all of that.

ADV THANDI NORMAN SC: Yes, yes Chair.

20 **CHAIRPERSON:** *Ja*.

ADV THANDI NORMAN SC: Yes thank you.

CHAIRPERSON: *Ja*.

ADV THANDI NORMAN SC: Yes thank you.

CHAIRPERSON: Okay. Thank you.

ADV THANDI NORMAN SC: Thank you Chair. Chair may then EXHIBIT

CC24 be - be admitted as an exhibit and that then if the Chair is satisfied that the witness be sworn in. Oh, I beg your pardon.

CHAIRPERSON: Did we ...?

ADV THANDI NORMAN SC: We did - we did Chair. I beg your pardon.

CHAIRPERSON: *Ja*, then that is what I was thinking.

ADV THANDI NORMAN SC: Ms - I have just been reminded that we did admit it. I beg your pardon ...

CHAIRPERSON: Yes.

ADV THANDI NORMAN SC: Because it contains the statements of the
10 previous witnesses. Thank you.

CHAIRPERSON: Yes, but what - what I was thinking is whether we did not decide that it would be the lever arch file that would be exhibit so and so and in that file there would be ...

ADV THANDI NORMAN SC: Numerous ...

CHAIRPERSON: So many statements ...

ADV THANDI NORMAN SC: Yes.

CHAIRPERSON: But they would not have their own ...

ADV THANDI NORMAN SC: Exhibits?

CHAIRPERSON: Separate exhibit numbers.

20 **ADV THANDI NORMAN SC**: Yes. Chair but we - when - well what we did I think some of those statements were identified and put in as individual exhibit numbers like yesterday ...

CHAIRPERSON: Yes.

ADV THANDI NORMAN SC: But I think it is - it is simply the question of packaging because these are in one lever arch file ...

CHAIRPERSON: Yes.

ADV THANDI NORMAN SC: But if they are packaged separately in the - in the presentation files then they get admitted separately as those exhibits.

CHAIRPERSON: Ja. We ...

ADV THANDI NORMAN SC: Yes.

CHAIRPERSON: We did discuss it. What I am not sure is what we agreed upon. I think at some stage I may have said something like okay it is fine ...

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

CHAIRPERSON: But I do not - I cannot remember because you know on the outside you have got EXHIBIT Cc20?

ADV THANDI NORMAN SC: Yes.

CHAIRPERSON: So unless - unless I did say EXHIBIT CC20 ...

ADV THANDI NORMAN SC: To 24. I think that ...

CHAIRPERSON: You see if ...

ADV THANDI NORMAN SC: That is how I remember it.

CHAIRPERSON: If one says EXHIBIT CC20 to EXHIBIT CC24. It is not - it is not the file.

20 **ADV THANDI NORMAN SC:** The - the file itself, yes.

CHAIRPERSON: It is the individual statements ...

ADV THANDI NORMAN SC: Statements. That is correct.

CHAIRPERSON: Inside.

ADV THANDI NORMAN SC: Yes. Maybe - maybe it is safer Chair to just identify the statement and admit that statement as exhibit for

consistency sake ...

CHAIRPERSON: Yes. I just want us not to get confused or anybody later on who has to go through this ...

ADV THANDI NORMAN SC: Which one was 24.

CHAIRPERSON: Getting confused.

ADV THANDI NORMAN SC: Yes.

CHAIRPERSON: I mean what is clear is that on the spine of the lever arch file it is clear that - well maybe it should say exhibits.

ADV THANDI NORMAN SC: EXHIBIT CC20 to ...

10 **CHAIRPERSON**: Or maybe - *ja* - or should we leave it as it is and if we decide to change it we will do that later?

ADV THANDI NORMAN SC: Yes Chair. If - if this is

CHAIRPERSON: Because the others we have gone ...

ADV THANDI NORMAN SC: We have indeed.

CHAIRPERSON: In a certain way.

ADV THANDI NORMAN SC: Included the file itself, yes.

CHAIRPERSON: Yes.

ADV THANDI NORMAN SC: Thank you.

CHAIRPERSON: Okay and we have admitted it anyway.

20 **ADV THANDI NORMAN SC**: Yes, yes thank you Chair.

CHAIRPERSON: *Ja*, okay. It is just that as you ask questions if you talk about - if you refer to EXHIBIT 24 that anyone who has been following or reads the transcript might think if they go to look at the file - lever arch files they will find ...

ADV THANDI NORMAN SC: It would only have 24 and you will not

have 20.

CHAIRPERSON: (Intervenes) inside.

ADV THANDI NORMAN SC: No true Chair.

CHAIRPERSON: Yes, yes.

ADV THANDI NORMAN SC: Yes, yes thank you.

CHAIRPERSON: But maybe let us proceed then. We must just think about how to make sure there is no confusion.

ADV THANDI NORMAN SC: Yes, Thank you.

CHAIRPERSON: *Ja*, okay.

10 **ADV THANDI NORMAN SC:** Thank you Chair. May the witness then be - be sworn in?

CHAIRPERSON: Please administer the oath or affirmation.

REGISTRAR: Please state your full names for the record.

DR FHATUWANI LASTBORN MUTUVHI: Fhatuwani Lastborn Mutuvhi.

REGISTRAR: Do you have any objection with taking the prescribed oath?

DR FHATUWANI LASTBORN MUTUVHI: No I do not.

REGISTRAR: Do you consider the oath to be binding on your conscience?

20 **DR FHATUWANI LASTBORN MUTUVHI:** 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.

DR FHATUWANI LASTBORN MUTUVHI: So help me God.

DR FHATUWANI LASTBORN MUTUVHI: (duly sworn, states)

ADV THANDI NORMAN SC: Thank you.

CHAIRPERSON: Thank you. You may proceed.

ADV THANDI NORMAN SC: Thank you Mr Chair. Thank you. Dr Mutuvhi there is a document in front of you which has been opened and it is under divider number 24 and it is marked at page 1 of that document. Is it in front of you?

DR FHATUWANI LASTBORN MUTUVHI: (No audible reply).

ADV THANDI NORMAN SC: It is marked statement.

DR FHATUWANI LASTBORN MUTUVHI: (Inaudible).

10 **ADV THANDI NORMAN SC:** Could you please go to page 23 of that document?

DR FHATUWANI LASTBORN MUTUVHI: 20?

ADV THANDI NORMAN SC: 2-3 - 23. Oh, your mic is off. I beg your pardon. Sorry. You will have to start afresh, sorry. Thank you.

DR FHATUWANI LASTBORN MUTUVHI: Page 23?

ADV THANDI NORMAN SC: Yes. Page 1 - let us start with page 1 because that was not recorded.

DR FHATUWANI LASTBORN MUTUVHI: Yes.

20 **ADV THANDI NORMAN SC:** There is a document that is marked statement on page 1. Is that correct?

DR FHATUWANI LASTBORN MUTUVHI: Yes, correct.

ADV THANDI NORMAN SC: And at page 23 of that document there is a signature and is that your signature and are those your names?

DR FHATUWANI LASTBORN MUTUVHI: That is my signature yes.

ADV THANDI NORMAN SC: Yes and you signed that statement on

30 August 2019?

DR FHATUWANI LASTBORN MUTUVHI: Yes I did.

ADV THANDI NORMAN SC: Yes and are the contents of the statement true and correct?

DR FHATUWANI LASTBORN MUTUVHI: Yes.

ADV THANDI NORMAN SC: And did you depose to it freely and voluntarily?

DR FHATUWANI LASTBORN MUTUVHI: Yes.

ADV THANDI NORMAN SC: Yes, thank you. Could you please tell the
10 Chairperson where you are currently employed?

DR FHATUWANI LASTBORN MUTUVHI: I am currently employed at the Department of Communications.

ADV THANDI NORMAN SC: Yes. Please face the Chair. Yes, thank you. The - as what - what is the position that you hold within the department?

DR FHATUWANI LASTBORN MUTUVHI: I hold the position of the Chief Director responsible for the Digital Migration Program.

ADV THANDI NORMAN SC: Yes. Could you just place your qualifications briefly on record?

20 **DR FHATUWANI LASTBORN MUTUVHI:** I hold a Master's Degree in - of Commerce in Project Management, Master's Degree in Public Administration. Sorry. Master's - Master's Degree in Business Administration and a Doctorate Degree in Public Administration.

ADV THANDI NORMAN SC: Yes, thank you and how long have you been with the department?

CHAIRPERSON: I think - I think this one strikes a (intervenes).

ADV THANDI NORMAN SC: A (intervenes). Not mentioning Matric.

CHAIRPERSON: Starting at the bottom and going up ...

ADV THANDI NORMAN SC: Yes.

CHAIRPERSON: And start - or starting up going down.

ADV THANDI NORMAN SC: Yes Chair.

CHAIRPERSON: Okay.

ADV THANDI NORMAN SC: Thank you and - and how many years have you been with the department?

10 **DR FHATUWANI LASTBORN MUTUVHI:** I joined the department in October 2014.

ADV THANDI NORMAN SC: 2014?

DR FHATUWANI LASTBORN MUTUVHI: Yes.

ADV THANDI NORMAN SC: Okay and before that have you had any experience at all in Project Management?

DR FHATUWANI LASTBORN MUTUVHI: Yes. My whole life I have been - I have been in the Project Management environment.

ADV THANDI NORMAN SC: Yes and where - did you - with - operate within the Project management Space within any of the SOEs of
20 Government or outside or in the private sector?

DR FHATUWANI LASTBORN MUTUVHI: Yes. I worked for Telkom at middle management and senior management level responsible for strategic projects in the - in the company.

ADV THANDI NORMAN SC: Yes. In paragraph 4 you deal with your appointment as a Project Manager. What were you appointed to

manage at that point?

DR FHATUWANI LASTBORN MUTUVHI: I was appointed to manage the - the Digital Migration Project.

ADV THANDI NORMAN SC: Yes.

DR FHATUWANI LASTBORN MUTUVHI: The project I am still responsible for at the moment.

ADV THANDI NORMAN SC: Yes. Could you just explain to the Chairperson what this project was - was about?

DR FHATUWANI LASTBORN MUTUVHI: The - the main objective of the
10 project is to release the spectrum through migration of television
owning households that are currently viewing on analogue platform.
That is the - the main objective of the - of the project.

ADV THANDI NORMAN SC: Okay. In simple terms what does that mean?

DR FHATUWANI LASTBORN MUTUVHI: That current - the - the current
broadcast on analogue platform it is more costly in terms of the - the
bandwidth. It utilises more bandwidth. So migrating from analogue to
digital platform will enable the broadcaster to - broadcasters to have an
opportunity to launch more channels. For an example Chair where
20 SABC's current - SABC 1 is currently broadcasting.

Post migration when the spectrum is released SABC 1
Channel can have opportunity to broadcast between eight and 14
channels.

ADV THANDI NORMAN SC: Yes. So - and then how does that benefit
the public or the various households?

DR FHATUWANI LASTBORN MUTUVHI: The - the households benefits as - as demonstrated in what has happened so far Chair is that the - in - in a digital platform we - we currently even have more channels. We have SABC 1, two, three, SABC News, SABC Sport and parliamentary channel on the digital platform. Whereas on the analogue platform those - those channels are not there.

It is because of the indication I have made earlier that in a digital bandwidth it is low and it accommodates more channels to be broadcasted on.

10 **ADV THANDI NORMAN SC:** Hm.

DR FHATUWANI LASTBORN MUTUVHI: So communities and public will have more channels on digital platform that will also enable the - the - again Chair it is the quality that we have on the analogue - on the digital platform than the one that we have on the - on the digital - digital platform.

If you take the - the analogue television set now and - and compare with the one that we are viewing on the digital platform we - it - it looks - the digital platform looks like the one that I am face - I am facing now but on the analogue platform it has those invisible - some
20 other times you will have a demonstration of somebody coming with an aerial - a bunny aerial you know.

You can stand there. So those are some of the - of the benefits that communities who have already migrated are benefitting at the moment.

ADV THANDI NORMAN SC: Yes.

CHAIRPERSON: Okay. I think you assume that some of us are not familiar with what you are talking about. I do not know that when one of the cases came before court one read quite a lot in the papers about this whole project but that was sometime back but it seems that the project had to do with analogue and digital, okay. I think you must take us from the beginning to say analogue refers to this.

Digital refers to this. The disadvantages about analogue are the following. The advantages of digital are the following and I am saying that because I know that down the line ...

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

CHAIRPERSON: We will be needing to look at that but it will just be helpful to me. You might not need to go into great detail at this stage but it would be helpful if you are able to just give me those features as we - so that as we go - go along one keeps that in mind.

DR FHATUWANI LASTBORN MUTUVHI: Thank you Chair. Just in - in short and at high level the analogue - both analogue and digital broadcast utilises the transmitters which are known as aerials.

CHAIRPERSON: Aerials?

ADV THANDI NORMAN SC: Aerials.

20 **DR FHATUWANI LASTBORN MUTUVHI:** Aerial.

CHAIRPERSON: Yes.

DR FHATUWANI LASTBORN MUTUVHI: Yes.

CHAIRPERSON: Yes.

DR FHATUWANI LASTBORN MUTUVHI: The - the - not necessary aerials. Transmitters I wanted to say.

CHAIRPERSON: Oh transmitters, *ja*.

DR FHATUWANI LASTBORN MUTUVHI: The - the transmitters at the towers. They are known - well known as towers. However the - the analogue platform as I have indicated earlier consumes more bandwidth because of the technology it - it utilises. The digital - on the digital the very same transmitted are configured with a technology that is digital.

That is converted to a television broadcast through a decoder. Although the technology is advanced to make use of the integrated decoder that is built inside a television set. So the - the
10 disadvantage of analogue broadcast is the making use of more bandwidth but on digital the - the advantage of digital platform it is low bandwidth that enables more channels to be broadcasted in the - in the same chunk of - of spectrum.

CHAIRPERSON: In lay terms what is - what is bandwidth that digital - analogue consumes more of and digital less of?

DR FHATUWANI LASTBORN MUTUVHI: Chair I might not be able to - to give the - the quantity of - of bandwidth that - that analogue ...

CHAIRPERSON: No, no.

DR FHATUWANI LASTBORN MUTUVHI: And ...

20 **CHAIRPERSON:** No, I am just talking about what it is. It is something that does what or ...?

DR FHATUWANI LASTBORN MUTUVHI: The bandwidth refers to the airwaves ...

CHAIRPERSON: Oh.

DR FHATUWANI LASTBORN MUTUVHI: That communicate to the ...

CHAIRPERSON: That are - that are needed in order to broadcast.

DR FHATUWANI LASTBORN MUTUVHI: In order to broadcast the ...

CHAIRPERSON: Okay, okay.

DR FHATUWANI LASTBORN MUTUVHI: Yes.

ADV THANDI NORMAN SC: Yes, thank you.

CHAIRPERSON: Analogue - the analogue platform as you call it ...

DR FHATUWANI LASTBORN MUTUVHI: (Intervenues) more.

CHAIRPERSON: Consumes a lot of that?

DR FHATUWANI LASTBORN MUTUVHI: Yes.

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

CHAIRPERSON: And the digital consumes less?

DR FHATUWANI LASTBORN MUTUVHI: Digital consumes less, yes.

ADV THANDI NORMAN SC: Yes.

CHAIRPERSON: Okay and that - that affects the issue of costs?

DR FHATUWANI LASTBORN MUTUVHI: Yes.

CHAIRPERSON: Okay.

ADV THANDI NORMAN SC: Yes.

CHAIRPERSON: Alright, thank you.

20 **ADV THANDI NORMAN SC:** Thank you Mr Chairman. Thank you. So, then as you - then you deal with what is it that you were suppose - you deal with your team and you deal with how you were going to set up this project as a Project Manager. You could just roughly at the time and as you were appointed to project manager the - the program just highlight to the Chairperson what were the immediate challenges that you were facing roughly as you deal with them.

I see you mention the officials that you worked with. They are contained in your statement and your team as a whole but basically then where are the challenges that you had to - to contend with at that point?

DR FHATUWANI LASTBORN MUTUVHI: Chair at the time of my appointment in - in 2014 I was briefed that the - the project is behind schedule given the imminent international telecommunications deadline - union deadline of 17 June 2015 and by that time I was briefed that I needed to initial proper coordination of role playing entities to ensure
10 that we - we try to meet the deadlines and the - the entities are presented - that are playing a role are on the - on the document that was not submitted on there ...

ADV THANDI NORMAN SC: Yes.

DR FHATUWANI LASTBORN MUTUVHI: But I have made it - made it available this morning.

ADV THANDI NORMAN SC: Yes. Thank you Chair. Might I just beg leave to just hand up this ...

CHAIRPERSON: Yes.

ADV THANDI NORMAN SC: For administration purposes.

20 **CHAIRPERSON:** Thank you.

ADV THANDI NORMAN SC: Thank you.

DR FHATUWANI LASTBORN MUTUVHI: So mainly it was ensure that the - the roles that the different entities are playing are well coordinated to ensure a smooth delivery of - of the - of the project.

ADV THANDI NORMAN SC: So you do have - doctor?

DR FHATUWANI LASTBORN MUTUVHI: Yes, I do.

ADV THANDI NORMAN SC: Oh you do. Yes, thank you. Could you just take the Chairperson through this diagram that you have given us? What - what is this document?

DR FHATUWANI LASTBORN MUTUVHI: This is a - Chair this is a - an ecosystem that we - we developed to guide the implementation process of the program identifying individual roles and responsibilities for different entities. This includes the department, Independent Communication of Authority, South African Bureau of Standards,
10 SENTECH as signal distributor.

The role of department that we - we engaged on to harmonise frequency spectrum potential interference. The procurement of - of the decoders I spoke about earlier - the - which was done by USAASA. The role of department to raise - to ensure raising awareness and education to the public so that it can entice people to take up the - the digital decoders. The role of SAPO to distribute and - and register indigence who qualify for Government subsidy to - to be migrated and the broadcasters to provide content.

As I have indicated in the digital platform Chair we have more
20 channels than the ones that are on the analogue platform including other broadcasters. ETV, SABC and community television and to ensure that there is a process of switching off those analogue transmitters that are currently operational.

I - I will speak later Chair that we have demonstrated that in area where we have switched off we have migrated all - all people - we

have switched off those analogue transmission services and once we - we are done with the roll out of this program all analogue transmission services have been switched off there is going to be a frequency risk taking - risk taking and then the release of the digital dividend which is the spectrum. Much needed for the - for the telecommunication services.

ADV THANDI NORMAN SC: Thank you and then you have just highlighted the role players in that whole process ...

DR FHATUWANI LASTBORN MUTUVHI: Yes.

- 10 **ADV THANDI NORMAN SC:** And who was going to deal - you were the Project Manager but you were not going to deal with procurement matters. Am I correct?

DR FHATUWANI LASTBORN MUTUVHI: Yes, correct.

A0DV THANDI NORMAN SC: Yes. Who - which entity was designed or was allocated that - that mandate to actually procure the implementation of the - of - of - the stakeholders of the implementation of that program?

DR FHATUWANI LASTBORN MUTUVHI: It is the Universal Service and Agency of South Africa, USAASA.

- 20 **ADV THANDI NORMAN SC:** Yes and you deal with that at page 6 of your statement. Am I right?

DR FHATUWANI LASTBORN MUTUVHI: Yes.

ADV THANDI NORMAN SC: You have already spoken about the post office and its role ...

DR FHATUWANI LASTBORN MUTUVHI: Yes.

ADV THANDI NORMAN SC: And - and is it also correct that when you say the post office was going to attend to warehousing so what it means is that they were going to be responsible for the warehousing of these decoders?

DR FHATUWANI LASTBORN MUTUVHI: The ideal situation Chair is that the - the decoders were going to be made available to SAPO for distribution immediately ...

ADV THANDI NORMAN SC: Yes.

DR FHATUWANI LASTBORN MUTUVHI: A - and not to be warehoused
10 because obviously that would - would incur costs.

ADV THANDI NORMAN SC: Yes.

DR FHATUWANI LASTBORN MUTUVHI: Yes. So the critical role of SAPO was to ensure that the - the decoders ordered are taken to post office branches where indigence will be able to either collect or they will be distributed in those - in those (intervenes).

ADV THANDI NORMAN SC: In those (intervenes), yes. The one thing that you have not mentioned highlighted there is the South African Bureau of Standards. That it is something that you also had to look into. You deal with that at page 5 just paragraphs 27 to 29. Could you
20 just explain to the Chair why that was important?

DR FHATUWANI LASTBORN MUTUVHI: Chair I should indicate that by the time of my appointment the standards were - were already done in 2012. Mine was to confirm in April which - which was done in April that the standards are - are still relevant.

ADV THANDI NORMAN SC: Yes.

DR FHATUWANI LASTBORN MUTUVHI: In compliance with the policy directive.

ADV THANDI NORMAN SC: To make sure that the decoders that people are given are ...

DR FHATUWANI LASTBORN MUTUVHI: Are complying with (intervenes).

ADV THANDI NORMAN SC: Are complaint?

DR FHATUWANI LASTBORN MUTUVHI: Standards public, yes.

ADV THANDI NORMAN SC: Yes, thank you and then - now you are the
10 Project Manager. You had to come up with your plan and according to your statement you had a three phase plan.

DR FHATUWANI LASTBORN MUTUVHI: Yes.

ADV THANDI NORMAN SC: Is that correct?

DR FHATUWANI LASTBORN MUTUVHI: Yes.

ADV THANDI NORMAN SC: Yes. Could you just take the Chair to the first plan - first phase of your plan?

DR FHATUWANI LASTBORN MUTUVHI: Thank you Chair. The - given the - the challenge - the challenge at the time the imminent 20 - June 2015. There - there were risks that if we do not complete the
20 project at that part - at - on - on the date of - of June there were potential - there was going to be a potential interference of spectrum with the neighbouring countries and we - we embarked on bilateral engagements.

Something I will talk to in this - in this discussion but the first one for the program was to ensure that we address the requirements of

Astronomy Geographic Advantage Act of 2007 relating to the km² area. That is the area Chair that I have indicated that due to - to the implementation of this plan we managed to relief those areas by connecting all individuals or telephone owning households in the area and we have managed to switch off about 17 transmitters.

So everybody who is within the km² in the Northern Cape are viewing television broadcasts on digital platform. The Phase 2 ...

ADV THANDI NORMAN SC: Sorry. Before you move on. Does that mean that they do not need DSTV or they still need DSTV to access
10 certain channels?

DR FHATUWANI LASTBORN MUTUVHI: Maybe I shall indicate that the - we have two different types of - of decoders.

ADV THANDI NORMAN SC: Hm.

DR FHATUWANI LASTBORN MUTUVHI: The one that connects through towers or transmitters that we have - that - that have been configured by SENTECH across the country and we have the digital platform which connects via satellite.

ADV THANDI NORMAN SC: Yes.

DR FHATUWANI LASTBORN MUTUVHI: So in - in that - in that area
20 because of the potential and interference we connected them via satellite decoders.

ADV THANDI NORMAN SC: Yes.

DR FHATUWANI LASTBORN MUTUVHI: Yes.

ADV THANDI NORMAN SC: Okay and then ...

DR PHATUWANI LASTBORN MUTUVHI: The second phase was to

address borderline areas. Due to the potential interference we found it important to concentrate on the borderline areas. So, that if for an example Lesotho want to launch their telecommunication services, they don't interfere with borders of Ladybrand and those towns that are. Because if that happens post June 2017 we were not protected. Countries like Lesotho can tell us to switch off those broadcasting services which will have disadvantage or which had potential to disadvantage or community in broadcasting. So, the second phase was to target those towns or provinces along the towns that are situated
10 along the borders. And the third phase was to concentrate on Gauteng and Western Cape where there are no potential interference. That was the rationale behind the planning of this program.

ADV THANDI NORMAN SC: Yes. In the following paragraphs you deal with various challenges where ETV had launched a legal challenge dealing with the septal boxes' encryption. And you deal also with the Constitutional Court decision at paragraph 41. But I would like to take you to what you say in paragraph 42.3 at page 9 because it relates to progress. Am I correct? The progress in terms of the planning and coordination that you embarked upon and execution.

20 **DR PHATUWANI LASTBORN MUTUVHI:** Yes.

ADV THANDI NORMAN SC: Yes. Could you just tell the Chairperson what you want to convey there? I know that you've mentioned that certain areas have already migrated but can you just tell the Chair and what do you want to convey in that paragraph?

DR PHATUWANI LASTBORN MUTUVHI: Chair, due to the Court

challenges highlighted in the statement there were some delays that we experienced until the Constitutional Court ruled in favour of the Minister in that regard to be the right, to have followed the right process in the development of the policy. Then by the time we already had a challenge of having decoders stored in the SAPO warehouse and we had to re-plan the process. Maybe the other issue that also contributed to that not only the policy was that there were shortages of the direct to home. Direct to home, Chair I refer to the satellite-oriented decoders. There were shortages of those. To give a typical
10 example, in Johannesburg... (indistinct) it could be one area served by one tower. In areas where the household is sitting below a mountain or an escapement, they cannot receive terrestrial network services from the tower. So, those ones require direct to home decoder. At that time, we had shortages of those decoders and we could not efficiently continue. A typical example here Chair is that if I connect, if we connect a household along one street and the other one could not receive it could cause a social challenge. And consequently, we had to now re-plan to look into areas or provinces which are flat terrain where we can be able to distribute these terrestrial decoders and we
20 identified Free State as one. So, the first phase on the re-planning was to look at in the short term to deploy those decoders that are sitting so that we can free the cost at SAPO warehouse while benefiting the communities. The second phase was to look into the procurement or the supply of the direct to home decoders so that we can connect those pockets of those areas where people have registered and we could not.

And the third phase was to look at the procurement of the remainder of the households to benefit from the government subsidy.

ADV THANDI NORMAN SC: Yes. So, then that the procurement is the aspect that you've already spoken about that USAASA was tasked to do that?

DR PHATUWANI LASTBORN MUTUVHI: Yes Chair, USAASA is responsible for the procurement and I think their best place to do with issues of procurement in this regard.

ADV THANDI NORMAN SC: Yes, but in paragraph 56 page 13 you deal
10 with lack of transparency in that process, the procurement process in paragraph 56 of your statement.

DR PHATUWANI LASTBORN MUTUVHI: Yes Chair, as the department responsible for the coordination of this programs, this program all entities should be reporting to the department in order for us to properly plan and ensure smooth coordination and execution of the program. So, in this regard there were areas of lack of transparency with regard to the issues of procurement which are very key, which were very key to the program. Because I should, as the department we should be able to know when are we expecting devices to be and what
20 numbers so that when we plan, we target specific areas knowing that we will have sufficient number of decoders and stock to deploy.

ADV THANDI NORMAN SC: Yes.

DR PHATUWANI LASTBORN MUTUVHI: Yes.

ADV THANDI NORMAN SC: So, which is a question that in consultation I asked whether if I were to ask you now as a department,

how far is implementation? And it's a question that you are not able to answer because you said they were not reporting directly to the department. Is that correct?

DR PHATUWANI LASTBORN MUTUVHI: Yes Chair, with respect to the procurement won't be able to give details. I think USAASA can provide much details but the impact on the delivery of decoders is on the rollout of the program. Due to the lack of those decoders we are unable to continue with the rollout of those decoders to the deserving indigence from the government point of view.

10 **ADV THANDI NORMAN SC:** And that is what you demonstrate under paragraph 78. Am I correct? The table that you've put up there.

DR PHATUWANI LASTBORN MUTUVHI: Yes, those are some of the challenges but this table 78 deals with a number of challenges.

ADV THANDI NORMAN SC: Yes.

DR PHATUWANI LASTBORN MUTUVHI: Yes.

ADV THANDI NORMAN SC: And then, can you just highlight them for the Chairperson?

DR PHATUWANI LASTBORN MUTUVHI: The first challenge talk to the issues of funding. The project is not sufficiently funded. I should
20 indicate that and I have indicated on this statement that by the time of the handover of this project the department only had R1 million appropriated to deliver this project. And as the department we are responsible for ensuring that there's awareness campaign and communication to inform the public and raise awareness. So, that R1 million was a very limited budget.

ADV THANDI NORMAN SC: Yes.

DR PHATUWANI LASTBORN MUTUVHI: However, Chair...
(intervention).

CHAIRPERSON: Was the R1 million just for the awareness campaign?

DR PHATUWANI LASTBORN MUTUVHI: It was mainly to run the project of, the project management office and awareness campaign and all other goods and services for the program. So, I want to demonstrate that the project is not sufficiently funded to take care of all the aspects of the program. In this regard I indicate the issues of the decoders
10 because the decoders procured as per the information from the entity responsible is 1.5 million and at the time, we projected 5 million or estimated 5 million indigent households to be serviced by government. The issues of distribution impacted. I speak about issues of public awareness and education campaign. There is a need for a call centre so that people in every corner of the country when they have problem with this decoder or want to understand something about the program, they are able to call. I have this technical challenge, I have this, I want to understand what this whole program is all about. There is dual illumination cost. Currently, Sentec is running a dual network which is
20 the digital and analogue which is costly for the government. And I speak about content which is what SABC is currently providing in terms of additional channels like I've spoken about. The second issue but however, maybe I should indicate that those are the impacts. The impact of the lack of funding relates to the delays in the rollout of the program.

ADV THANDI NORMAN SC: Yes.

DR PHATUWANI LASTBORN MUTUVHI: And therefore, we cannot switch off analogue transmission services leading to Sentec continue running to network. The registration uptake due to the lack of awareness campaign it's low. Inadequate reach of messaging to the public, lack of availability of septal boxes to the retail market.

ADV THANDI NORMAN SC: Yes. Can I just take you before you move on, on that to page 21 of your statement where you give the figures throughout the country? You give, you highlight the summary of
10 registrations and installation statistics.

DR PHATUWANI LASTBORN MUTUVHI: Yes.

ADV THANDI NORMAN SC: Could you just take the Chair through that? Because he talks to the slow pace of rollout, yes.

DR PHATUWANI LASTBORN MUTUVHI: Yes, Chair since we started with the registration process in October 2015, we have so far from the estimation of 5 million indigent household registered only 1.06 million as demonstrated on the table there.

ADV THANDI NORMAN SC: Yes.

DR PHATUWANI LASTBORN MUTUVHI: Out of the ones that we have
20 registered we have only connected 511,000. So, half of the and this is due to the lack of direct to home decoders as I've indicated. However, the document or this statement talks about the current absence of installers who should be installing these decoders because of the expiry of the contract in January 2019.

ADV THANDI NORMAN SC: Yes, and then lastly then because of these

matters that you had raised around procurement there was an investigation. Is that correct? By Price Water House.

DR PHATUWANI LASTBORN MUTUVHI: Yes Chair, in the paragraph... (intervention).

ADV THANDI NORMAN SC: I think it's paragraph 56 that you've already spoken to.

DR PHATUWANI LASTBORN MUTUVHI: Yes, there was investigation of which because of not being involved there was an investigation which was requested by the office of the acting director general then.

10 **ADV THANDI NORMAN SC:** Yes, and National Treasury was involved in that?

DR PHATUWANI LASTBORN MUTUVHI: Yes, it was requested in the office of the National Treasury.

ADV THANDI NORMAN SC: Yes, these are matters that related to how procurement was sourced and who benefited but those are matters that are beyond your knowledge.

DR PHATUWANI LASTBORN MUTUVHI: Yes.

ADV THANDI NORMAN SC: We will deal with them next week.

20 **DR PHATUWANI LASTBORN MUTUVHI:** Yes, Chair. Those are matters that I think require USAASA to outline.

ADV THANDI NORMAN SC: Thank you. And then lastly, if you just in your conclusion you reemphasize the point of lack of resources as being a challenge.

DR PHATUWANI LASTBORN MUTUVHI: Yes, Chair. The project of this magnitude requires resources; financial and human resources. And

even now as we speak, we are not sufficiently funded to deliver the program; the awareness campaign I'm talking about. Although, this year we have a budget better than other years but we need to raise awareness campaigns across the country so that we fast-track this process of migration. By enticing the community to take up the services. Human element as well. We are currently, if not mistaken I think we are because we have requested some officials from other divisions within the department. We might be having a team of about 11 people who are expected to roll out this program across the country.

10 So, that is one of the challenges that we currently have. The second issue in conclusion, in the conclusion statement is that much as we are the responsible department for the rollout of this process, we do not have control over or we cannot play an effective and efficient oversight to the entities that are playing role in the process. And it will be ideal, it is ideal to have these entities reporting and accounting fully to the department so that even the department is able to take decisions that assist the process of the program. And I think those are some of the issues that I have raised in the conclusion of this but we require resources and there is a need for full control of the department to the
20 rollout process.

ADV THANDI NORMAN SC: Yes, thank you. And then when you come back then we are going to deal with the nitty-gritty's that relates to the procurement processes according to the report that you are going to be presenting when you come back to the Commission.

DR PHATUWANI LASTBORN MUTUVHI: Yes, Chair. As I've indicated

on this discussion now is that and reported, the procurement matters can be well-placed and responded to by the responsible entity because the department was not necessarily involved in the procurement process.

ADV THANDI NORMAN SC: Yes, thank you. Yes, thank you Chair. That is the evidence from the witness.

CHAIRPERSON: Yes, no thank you. You complain that there is no sufficient funding for this project. Is there a commitment on the part of your, a sufficient commitment on the part of your department and the
10 government to this project given how long it's been on the table? My recollection from the affidavits that I read when the matter relating to this project came to the Constitutional Court is that it had started. Are you looking for a pen?

DR PHATUWANI LASTBORN MUTUVHI: Yes.

CHAIRPERSON: Will somebody help him with a pen?

ADV THANDI NORMAN SC: Yes, with a pen.

DR PHATUWANI LASTBORN MUTUVHI: I got it thanks.

CHAIRPERSON: Oh, you have got it?

ADV THANDI NORMAN SC: Yes, yes. Thank you, Chair.

20 **CHAIRPERSON**: My recollection which might not be accurate. My recollection is that the, this project started not later than 2008. I may be mistaken, maybe much earlier I can't remember. But assuming that started in 2008 that means it's been what now, about 11 years. And as I understand the position and I think there was something in the newspapers a few months ago to the effect that I think set boxes had

been stored in some warehouse. I don't know for how many years and I think there was a suggestion in that article in the newspaper that a lot of money had been wasted because there was no action. My recollection of what the article said might be faulty. And one is bound to ask the question, why something like this could take so long? And I know that even from the Court papers that I'm talking about one got information to the effect that you would have this Minister of Communications and he or she would come and say, this is what we want to do about this project. And then when there is another Minister,

10 he or she would come and say something else as if these were Ministers from different governments. And partly, that is why there was a Court case to Court because there were fights about exactly what it is that should be followed. And maybe the reason why there might not be adequate funding now is because in the past a lot of funding was given but it's been wasted. And of course, whatever was thought would be the course of implementing this project 10 years ago would be much more now. And if it had been implemented timeously a lot of cost would have been saved. You might not be able to deal with all of these things and maybe other people that will come will deal with them and answer them.

20 But if you are able to enlighten me, I would welcome that.

DR PHATUWANI LASTBORN MUTUVHI: Thank you, Chair. The question around the commitment of government to deliver this program. I will speak about since I've joined the department, Chair that being responsible for the coordination of the program we identified different milestones. The first one was to service the market that is to be

subsidized by government. And in that regard, we through the data that was there dating back to 2012 we identified through... (intervention).

CHAIRPERSON: Am I correct about how long the project has been on the agenda or am I mistaken in terms of around 2008?

DR PHATUWANI LASTBORN MUTUVHI: You are correct, Chair but the activities started way back around 2002/2003 towards the finalization of the policy that was done in 2008, yes.

CHAIRPERSON: So, it's if it makes it even worse.

DR PHATUWANI LASTBORN MUTUVHI: Ja.

10 **CHAIRPERSON**: Yes.

DR PHATUWANI LASTBORN MUTUVHI: From the implementation point of view, Chair is that... (intervention).

CHAIRPERSON: Everything takes too long.

DR PHATUWANI LASTBORN MUTUVHI: Ours is to implement policy. So, the activities prior 2007 could perhaps be pre-post, pre-policy activities. But you are correct to say 11 years from 2008.

CHAIRPERSON: Yes, I'm just saying everything seems to take ages about this program about this project. I mean if they started to put together policy around 2002, I mean it's close to two decades now. And
20 from what you are saying and from what one sees in the media we are very far from really the completion of the project. Yes, okay. You can enlighten me on what you are able to enlighten me on. I accept that maybe some things are things that you might not be able to deal with.

DR PHATUWANI LASTBORN MUTUVHI: Thank you, Chair. In terms of the commitment of government to realize the successful migration of

television broadcasting in the country, I should indicate that from when we started in, when I started in 2014 towards 2015, we identified key milestones. Which the first one was to ensure that we start identifying those households that qualify to be registered. And within a short space of time, although the date of 17 June had passed but we started with the registration process in October. After which in three months period we started with the rollout of those decoders. Within a period of 10 months we started switching off the analogue transmission services in the SKA. So, those are the milestones we were chasing so that we can

10 demonstrate the realization; the potential realization of the migration process. However, as demonstrated in the statement, there are those challenges that makes us unable to complete; the issues of lack of resources and so forth. But where in areas where people have been migrated, although every project might have its own challenges people are benefiting and are beginning to realize the benefit of what the program is bringing to them. Because if somebody visits a household that has analogue service and the other one that is digital, they can see the difference. So, I can say from where we are sitting and the support, we have been receiving from our accounting officers and

20 executive authority, there is a will for governments to realize the program rollout. The issue of where the decoders, Chair stored in the warehouses it is correct and is as a result of the challenge that I spoke about earlier. The absence of other type of decoders that can, that have impact on the rollout in a particular area. And the question, why so long? If I were to respond to a question why so long, I can only

10 speak to the time at which I started with the program. That is the challenges I have highlighted in the statement talks to the issues of lack of resources and it makes it difficult. But Chair, to demonstrate our commitment realizing all these challenges we did not sit and fold our arms and say we don't have resources. In the past week we've formalized forging the partnership with the Department of Corporate governance so that we can make use of the community worker's program. Because they are based in the communities to identify people or households that are in analogue platform so that we can register them while waiting for issues of the installers that we do not have. We could not also complete the Free State. We targeted it to complete in March. We could not finish because there are no installers. But we want to, we are saying, while these are happening, we want to ensure that the registration process continues. By the time we have installers, by the time we have decoders we will only be left with the process of rolling out or distributing and connecting decoders. So, we have forged that partnership with CoGTA. We are engaging and we have engaged the different provincial governments, district and local. Free State is a case, Northern Cape is a case. We are now this week in the Eastern
20 Cape to try and engage with these institutions so that they can assist us in getting people registered while raising awareness. Because of the lack of resources now we also piggyback on other activities if a district municipality is having events, we go exhibit do that but we are a very limited number in terms of resources; human resources. I think that is all I can say for now, Chair.

CHAIRPERSON: On your estimation as we speak now, how long do you think it would take for the program to be finalized?

DR PHATUWANI LASTBORN MUTUVHI: Chair, the key ingredient of finalization is the availability of decoders. Not only for government subsidy.

CHAIRPERSON: Yes.

DR PHATUWANI LASTBORN MUTUVHI: But also, the ones that are on the retail market. Although, there are some free to air decoders in the market but in most instances the people will be asking about the ones
10 that we are as government we are providing. Where do I get in the retail market and they are not there? So, that's the activities we are trying to engage with the retail. To say, we have this number of estimated number of people that could benefit from, that could benefit from introducing these type of decoders. So, the question of how long
Chair. We are determined as department to ensure that we on our part would register all households. Due to resource constraints maybe, we might not make the end of the financial year but that is what we are thinking. That if we can achieve registering those indigent households by the end of the financial year, we can therefore be able to focus on
20 the rollout of decoders when they become available and that will be easy. We have demonstrated in the Free State Chair when the installers were there between October and January, October 2018 and January 2019. That through focused approach where we go to focus in an area, get to the installers, load the decoders in the bakkies, install, the following day they collect. We have covered those areas and we

managed to switch off one transmitter in the Free State. If it was not to the issue of the installers, absence of installers perhaps we could have switched off Free State and remain with a Metro.

ADV THANDI NORMAN SC: Okay.

DR PHATUWANI LASTBORN MUTUVHI: But in terms of determination, how long. It is our wish that we complete this process within a shortest period of time. We are unable to say tomorrow because of the challenges that we have but if resources are available this is a process, we can complete within a period of two years.

10 **CHAIRPERSON**: Yes, okay. No, thank you very much.

ADV THANDI NORMAN SC: Thank you. Thank you, Chair.

CHAIRPERSON: Thank you very much for Doctor Mutuvhi for coming to share your evidence with us. You will come back and deal with the balance of the matters that need to be dealt with in regard to the project. Thank you very much. You are excused.

DR PHATUWANI LASTBORN MUTUVHI: Thank you very much, Chair.

ADV THANDI NORMAN SC: Thank you, Chair. Chair, there's another witness for today.

CHAIRPERSON: Yes.

20 **ADV THANDI NORMAN SC**: I'm not sure.

CHAIRPERSON: You need some time to?

ADV THANDI NORMAN SC: Just to change places and my learned friend is going to deal with that witness.

CHAIRPERSON: Yes, should we combine that with the tea break?

ADV THANDI NORMAN SC: I would prefer that, Chair. Yes, thank you.

CHAIRPERSON: Okay. Let's combine that with the tea break. Let's resume, let's go for the tea break and resume at 11h25. That will give us time for the tea break plus your.

ADV THANDI NORMAN SC: Plus, the setting up, thank you.

CHAIRPERSON: Time to rearrange things.

ADV THANDI NORMAN SC: Thank you, Chair.

CHAIRPERSON: We adjourn.

ADV THANDI NORMAN SC: Thank you.

INQUIRY ADJOURNS

10 **INQUIRY RESUMES**

CHAIRPERSON: Are you ready?

ADV MPHONG RASIVHETSHELE: We are indeed ready Chair.

CHAIRPERSON: Yes?

ADV MPHONG RASIVHETSHELE: Chair the next witness is Mr Joseph Nong Thloloe, may the witness please be sworn in.

CHAIRPERSON: Yes please administer the oath or affirmation.

REGISTRAR: Please state your full names for the record.

MR JOSEPH NONG THLOLOE: Joseph Nong Thloloe.

REGISTRAR: Do you have any objection to taking the prescribed oath?

20 **MR JOSEPH NONG THLOLOE**: No, I don't have.

REGISTRAR: Do you consider the oath to be binding on your conscience?

MR JOSEPH NONG THLOLOE: Yes I do.

REGISTRAR: Do you swear that the evidence you 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 JOSEPH NONG THLOLOE: So help me God.

CHAIRPERSON: Thank you very much.

MR JOSEPH NONG THLOLOE: (duly sworn, states)

ADV MPHONG RASIVHETSHELE: Thank you Chair.

CHAIRPERSON: You may proceed.

ADV MPHONG RASIVHETSHELE: Chair in front of you, you will find four arch lever files containing the statement and Annexures of the witness's statement and Annexures these are labelled CC19A to D.

10 **CHAIRPERSON**: Yes.

ADV MPHONG RASIVHETSHELE: May we please admit those files into evidence?

CHAIRPERSON: What is under A, it's his statement and Annexures.

ADV MPHONG RASIVHETSHELE: It's Annexures, B contains Annexures as well, C contains Annexures as well and finally D contains the Annexures as well...[intervenes].

CHAIRPERSON: The Annexures is the report isn't it?

ADV MPHONG RASIVHETSHELE: Chair the report is underneath file A and then thereafter there are transcripts until File D.

20 **CHAIRPERSON**: Oh okay alright.

ADV MPHONG RASIVHETSHELE: We're going to be starting off with file A Chair.

CHAIRPERSON: The lever arch file containing the statement of Mr Joseph Nong Thloloe and certain Annexures will be marked Exhibit CC19A and the three other files that have got Annexures to that

statement will be, respectively – will be Exhibits CC19B, CC19C and CC19D.

ADV MPHO RASIVHETSHELE: Thank you Chair. Mr Thloloe the first page in front of you, page one can you identify that document?

MR JOSEPH NONG THLOLOE: Yes it's a statement I made and signed.

ADV MPHO RASIVHETSHELE: And if you page – turn to page seven of that same statement.

MR JOSEPH NONG THLOLOE: Yes I see that.

10 **ADV MPHO RASIVHETSHELE:** Is that our signature at the bottom?

MR JOSEPH NONG THLOLOE: It's my signature.

ADV MPHO RASIVHETSHELE: And it's dated the 12th of August 2019?

MR JOSEPH NONG THLOLOE: That's correct.

ADV MPHO RASIVHETSHELE: And all the contents of the statement is true and correct?

MR JOSEPH NONG THLOLOE: Yes it is correct.

20 **ADV MPHO RASIVHETSHELE:** Mr Thloloe if you just, on the first page, paragraph three it states that you were approached by the investigators of the Commission, particularly to provide a statement detailing – with the details of the SABC particular to a report identified as a report of Commission of inquiry into the interference in the decision making in the newsroom of South African Broadcasting Corporation, dated the 25th of February 2019, is that correct?

MR JOSEPH NONG THLOLOE: That is correct.

ADV MPHO RASIVHETSHELE: Chair the report can be found on page eight in the same arch lever file.

CHAIRPERSON: What page?

ADV MPHO RASIVHETSHELE: Page eight Chair.

CHAIRPERSON: Yes thank you.

ADV MPHO RASIVHETSHELE: Mr Thloloe that is the report that you want to talk to...[intervenes].

MR JOSEPH NONG THLOLOE: Yes that is a report that we compiled.

ADV MPHO RASIVHETSHELE: Thank you, Mr Thloloe if we turn to
10 page two of your statement on paragraphs five, you've highlighted the mandate in which this report was compiled. Can you just highlight the term of reference that you were given in compiling this report starting...[intervenes].

CHAIRPERSON: Before that could he just tell us more about himself, I think he has been [indistinct] media for long time?

ADV MPHO RASIVHETSHELE: Yes Chair, apologies – apologise for that.

CHAIRPERSON: If he can tell us about himself he has been around
20 for a very long time and I see that the statements that's at paragraph five by talking about the term of reference of a certain Commission but it hasn't, I think, told us which Commission that is and how he related to it, I think he was the Chairperson.

ADV MPHO RASIVHETSHELE: Yes Chair, apologies.

CHAIRPERSON: Yes.

ADV MPHO RASIVHETSHELE: Apologies, Mr Thloloe can you just

tell us where are you currently employed?

MR JOSEPH NONG THLOLOE: I am retired, if one does ever retire, I retired from the Press Council of South Africa where I was Executive Director but before then I've been a journalist for the last 58 years starting in 1961 and I have worked for most of the publications in this country [indistinct], Rand Daily Mail, Drum Magazine, Post newspapers, Post Transvaal, the list is endless. I was also at one-time Editor in Chief of the SABC's television news and at another time I was Editor in Chief of E-TV News. As I've said I've had wide experience in the media
10 in the last 58 years, 59 years.

ADV MPHONG RASIVHETSHELE: Thank you Mr Thloloe, in terms of this report how did you come about, in what capacity were you mandated in this report and how did it come about that you became involved in this report?

MR JOSEPH NONG THLOLOE: I was invited by the acting Group Executive of the SABC at the time Miss Nomsa Philiso and she asked me if I could Chair this Commission because of my wide experience in journalism and ethical issues. I agreed to do that and I was then subsequently told that I would be joined by Mr Tawana who is an
20 Attorney from MMM Attorneys.

ADV MPHONG RASIVHETSHELE: And in paragraph five on page two of your statement, you've highlighted the mandate of this Commission, the terms of reference in particular, can you just highlight the – starting as from paragraph 5.1...[intervenes].

CHAIRPERSON: Maybe before that, I see that it's referred to as a

Commission of inquiry, do you know if it was established in terms of any legislation or was that term just used because it was convenient. I know the – legally termed Commissions of inquiry are established in terms of the Constitution and the Commissions Act but sometimes people speak just informally, so but I don't know whether – I just want to know if it was established in terms of some legislation or not?

MR JOSEPH NONG THLOLOE: No it wasn't in terms of any legislation, I think the term was used quite loosely.

CHAIRPERSON: Yes thank you.

10 **ADV MPHONG RASIVHETSHELE:** Thank you Chair, Mr Thloloe can you just please highlight the terms of reference of this inquiry?

MR JOSEPH NONG THLOLOE: We had to investigate the nature, the prevalence and the merits and veracity of all the allegations and/or grievances and/or complaints of editorial, political, business and commercial interference in the newsroom if the SABC. We were to establish the factors and/or mechanisms that enabled the Editorial Political Business and Commercial interference and/or transgressions. We were to establish whether there was evidence to substantiate the allegations made. We were to evaluate the substance of all the
20 allegations and/or grievances and/or complaints. We were to review and any or all submissions made before, by any person or persons in respect to the allegations and/or grievances and/or complaints lodged by the employees.

We were to make factual findings and conclusions based on the evidence, and the testimony that was presented. We were to do

interviews, review all submissions and review applicable supporting documents. We were to interview all SABC employees and/or any other persons that are mentioned in the allegations and/or grievances and/or complaints lodged by the employees. We were to make recommendations on the appropriate corrective institutional or structural measures to be considered and to be instituted and to address control deficiencies. We were to advise the SABC Board on what steps need to be undertaken, we were to recommend appropriate corrective action which could include disciplinary action where there is

10 misconduct and we were to prepare a written report setting out, in detail, the methodology adopted, the findings, the conclusions and the recommendations. As I had said earlier we were given these terms by the then acting Group Chief Executive of the SABC.

ADV MPHO RASIVHETSHELE: Thank you Mr Thloloe and can you shed light on the methodology that incorporated your mandate and also the evidence gathered that would also be highlighted from paragraph seven onwards?

MR JOSEPH NONG THLOLOE: First we got written submissions after invitations were sent out to all staff members and to members of the

20 public to make written submissions to the Commission and from the written submission we then had formal interviews with the people who had made written submissions. We also had face-to-face interviews via things like Skype, teleconferencing when we couldn't reach the people directly but most of them came – I mean were in Johannesburg or came to Johannesburg to come and give evidence at the venue where we

were gathering the evidence.

ADV MPHO RASIVHETSHELE: And Mr Thloloe, in paragraph 11 you've also highlighted elsewhere in your affidavit that you had all evidence, 58 sessions of all evidence that was conducted, is that correct?

MR JOSEPH NONG THLOLOE: It's correct, we had 58 tribunals, political parties, media freedom activists as well as staff members coming to talk to us and general members of the public coming to talk to us, but all together we had 58 submissions.

10 **ADV MPHO RASIVHETSHELE:** Mr Thloloe you state that you've also included political parties, what was, you know – I know that invitations were sent out to the public but what was the purpose to receive submissions from various political parties?

MR JOSEPH NONG THLOLOE: I would imagine that political parties are members of the South African public, they took up the invitation to come and – I mean to return written submissions as well as to come and make oral submissions. So there was no specific reason why we selected political parties

20 **ADV MPHO RASIVHETSHELE:** Okay and the report was accompanied by, also in the arch lever files, by various transcripts, which was labelled evidence 1 to 12, it stated here that the 8th transcript is outstanding due to Mr Tawana's laptop having been crashed who co-authored the report with you. Is there an update, you know, if this report will be submitted, this transcript in particular will be submitted to the Commission when he found this transcript?

MR JOSEPH NONG THLOLOE: As soon as he sends it to me I will forward it to the Commission.

ADV MPHO RASIVHETSHELE: Thank you, of the interviews they were largely confined to voluntary submissions, is that correct?

MR JOSEPH NONG THLOLOE: All of them were voluntary.

ADV MPHO RASIVHETSHELE: As you guys did not have any investigative capacity and could not subpoena witnesses, is that correct?

MR JOSEPH NONG THLOLOE: That's correct Chair.

10 **ADV MPHO RASIVHETSHELE:** In paragraphs 14 onwards, Mr Thloloe you speak about the summary of findings that would be on page five of your statement starting at the bottom.

MR JOSEPH NONG THLOLOE: Yes.

MR JOSEPH NONG THLOLOE: Can you just in detail, highlight, per finding and give commentary as to how you came onto that finding and so forth?

20 **ADV MPHO RASIVHETSHELE:** I think the first major finding was that in the five years that you were investigating, the SABC suffered from capricious use of authority and power to terrorise staff and to deflect the corporation from each mandate and its editorial policies. The evidence we got, in fact, didn't show a pattern, I mean it was just somebody who was in power who just use it because I say so and because you should do it. It was a very frightening [indistinct] essentially where people were bullied, you were thrown around and they were pushed around and it emerges in the transcripts that you can

read and I was delighted in fact some of the people that have given evidence for the SABC have in fact confirmed this. I mean here in this Commission...[intervenes].

CHAIRPERSON: I mean as you deal with the findings that you made it would help in regard to either each or in regard to some, depending on their importance as you see it, if you could elaborate a little bit in terms of the evidence that was placed before you which led to that finding. You don't have to do that in regard to each one of them if that's difficult, you can choose those that you regard as important or
10 there might be some that you regard as important but you don't remember the part of the evidence and it doesn't have to be exhaustive just some features that you would like to draw – to highlight.

MR JOSEPH NONG THLOLOE: For example as far as the first finding is concerned, in the report if you go to paragraph 70 right up to paragraph 73, staff members describe what it was like [indistinct] Mbeki for example who gave evidence to this Commission here said it was a egregious abuse of power and she described her state. You know I'm on automatic like I'm a robot, I'm just going through the motions. I get up at 4h30 everyday, go to the gym, go to work, do everything that I'm
20 supposed to but there's no more – no me anymore, there's just this automated, this person you can call it a robot [indistinct] but this is what I have become. Nyana Molete describes it, when you are dealing with individuals like Jimi Matthews, Hlaudi Motsoeneng, individuals who are all powerful and individuals who at any turn would threaten to fire people, you do get demoralised you just feel you come to work to

basically earn your keep. Apart from just the bullying and that kind of thing there was also a decline in the quality of the work we were doing. That is the type of evidence we were picking up.

CHAIRPERSON: Yes thank you.

ADV MPHO RASIVHETSHELE: Thank you and your second findings Mr Thloloe?

MR JOSEPH NONG THLOLOE: As I say, we found an organisation crippled by pain, anger, fear by frustration, anxiety and apathy by inattentiveness, detachment and helplessness. If you read through the
10 whole report you will see that it tries to give a texture of live at the SABC at the time. So it is not a detailed analysis of line by line of the evidence it just gives a texture as people who were talking to us.

CHAIRPERSON: Yes okay.

MR JOSEPH NONG THLOLOE: Now one of the main [indistinct] we call it, the main thrust of the inquiry, people were saying the enforcers must go. Now the enforcers are people who were supposed to have been enforcing the policies of the SABC at the time, these are senior level management and there was a clamour that these must go and this must be one of our recommendations and our feeling after talking very
20 deeply with Mr Tawana was that a witch hunt for enforcers wouldn't heal the corporation, the wounds are very deep. In fact what it would do is it would just divide an already fractured institution. There was some evidence that- there was the word suggestions that the ANC had captured the SABC but we found nobody who could come and say, I got instructions from Luthuli House so we found no evidence of direct - of a

direct line between the decisions that the ANC had got us and decisions in the newsrooms but you have the spectre of the ANC hovering very largely over the newsroom.

CHAIRPERSON: Let me take you back to the finding immediately before this one that you have just dealt with the one about the enforcers, I guess that in regard to the call by some that the enforcers must go and that your report must contain a recommendation to that effect, I suspect that what you may have had to deal with is to look at the issue of maybe avoiding any division in the corporation in terms of
10 staff but also at the same time you must have been alive to considerations of accountability because, to the extent, that whatever it is that they may be alleged to have done, that is the enforcers, if it was a breach of the law, if it was misconduct there may be a need for accountability, so my question is whether that indeed was one of the things you considered and having considered issues of accountability and maybe the need for peace in inverted commas and stability in the SABC you made a judgement call that you would rather say, let's rather have, recommend stability and maybe you might or might not have thought that accountability and stability would sit together nicely. If
20 you could just indicate whether those are matters that you considered and so on?

MR JOSEPH NONG THLOLOE: We did consider the question of the enforcers rather ...[intervenes].

CHAIRPERSON: If you are able to – if you are comfortable to deal with it without referring to a particular page in the report, feel free to

do so as long as you know that whatever you say is consistent with the report says but if you feel that it's important to refer to the particular page, that's fine.

ADV MPHONG RASIVHETSHELE: If I may just assist the witness, there's a topic about – particularly and enforcer on page 44 of the report.

CHAIRPERSON: What are the paginated page number, is it 44?

ADV MPHONG RASIVHETSHELE: 44.

CHAIRPERSON: Oh okay.

10 **MR JOSEPH NONG THLOLOE:** It starts on page 43 where we deal with enforcers and it is a – as I say we looked quite deeply at that, we spoke to the people who were alleged to be enforcers and of course the reason was, they were under duress because they would get fired, that's what most of them said, they were being threatened.

CHAIRPERSON: Yes, so they mostly admitted having done certain things that might be viewed as wrong but they said we were also in fear?

MR JOSEPH NONG THLOLOE: They were also victims of what was happening at the time and each one of them had a story to tell about
20 why they were doing what they were doing.

CHAIRPERSON: Yes.

CHAIRPERSON: Yes.

MR JOSEPH NONG THLOLOE: For example one person said I ended up in hospital in a - in a mental hospital ...

CHAIRPERSON: Hm.

MR JOSEPH NONG THLOLOE: Because of depression as a result what was happening the threats I was receiving from my bosses inside the SABC ...

CHAIRPERSON: Hm, hm.

MR JOSEPH NONG THLOLOE: And another one would say I am the only breadwinner at - at - in my house and I was - I was forced to do whatever I was being told to do. So they were passing the buck to their seniors.

CHAIRPERSON: Yes.

10 **MR JOSEPH NONG THLOLOE:** Now in the end we said we need to draw a line at what point of seniority do we say this is an enforcer. This one is a victim of the enforcers. Is everybody down the chain who actually carried out that instruction would you say this person was an enforcer. So it is a very dubious area and in the end we said Parliament was there to oversee what was happening - oversee what was happening at the SABC. The Portfolio Committee on - on ...

CHAIRPERSON: Communications.

MR JOSEPH NONG THLOLOE: Communications was there. The board was there. The public who were paying for the SABC were there and
20 they did not do anything until things got to this very bad situation. Now to single out some people along the way would not be fair because we are all guilty of having allowed the SABC to deteriorate to this condition.

CHAIRPERSON: I certainly would not at this stage criticise the approach you took. Later on one will hear everything and take it from

there but I can understand where you were coming from but of course the point you make about who was there, who was supposed to have carried out oversight is a very important point. The board was there.

The Portfolio Committee in Parliament on communications was there. What was it told? What did it know? What did it want to know and when was it told what it wanted to know? Did it want to know the - the true position and if it was told what did it do? Those are very legitimate and important issues to look at also for this Commission but of course it may well be - I do not know - it may well be that you go to
10 executive management people who are in high positions who may have been alleged to be enforcers.

They say no. I was forced. I was threatened. I feared. Maybe they say I feared Mr Motsoeneng. I do not know who they will say they feared and then you - you do not do anything. You might get to Mr Motsoeneng. I do not know what he may or may not have said before you and I cannot remember whether he gave evidence. I seem to have read something suggesting he did not.

He might also say something else. He was also scared or one might get to people in Parliament and maybe they might say - I do
20 not know- they might say well the leaders - my leaders in Parliament said I must not ask too many questions. You know. The Minister involved is our Minister. I mean Mr Bloom testified here earlier this year and said when he was still in the ANC - when he was an ANC MP serving in the Correctional Services Portfolio Committee when he asked certain questions on - to the Minister trying to exercise his oversight

obligation.

The - the Chief Whip at the time and I do not know who the Chief Whip was called him and said something to the effect you - that you must not be too hard. This is our Minister or something to - like that. So we do not know whether we - there might be a lot of those types of situations even for MPs who might have been in certain Portfolio Committees.

If they say that are we going to say okay you know and as we go up everybody pushes responsibility up. Are we evert going to get to
10 anybody except maybe the very top? I do not know but I raise these things as I say not to say I would not have reached the same conclusion that you have reached but just to say these are some of the things that this Commission must also look at but as it looks at it these are some of the questions that will arise to say where will - where must be the line be drawn in order to on the one hand ensure that there is accountability but maybe on the other hand give recognition to certain challenges that people might have had.

MR JOSEPH NONG THLOLOE: The - the painful part with abuse is that the abused themselves turn against each other ...

20 **CHAIRPERSON**: Yes.

MR JOSEPH NONG THLOLOE: And it becomes much more vicious at that level.

CHAIRPERSON: Yes.

MR JOSEPH NONG THLOLOE: So what we found as we were talking to people here was that the one person would point at another and say

that one is an enforcer. That one is an enforcer ...

CHAIRPERSON: Hm.

MR JOSEPH NONG THLOLOE: And fingers were pointed in all directions.

CHAIRPERSON: Hm.

MR JOSEPH NONG THLOLOE: That was a target (?) we found at the SABC.

CHAIRPERSON: Hm, hm, hm. Yes, no I understand. Thank - thank you. Yes.

10 **ADV MPHO RASIVHETSHELE:** Thank you. Thank you Mr Thloloe. Paragraph 17 you had highlighted - that is on page 6 of the main statement - that there was no evidence of a direct line between the decisions of the - at ANC Headquarters Luthuli House and decisions in the newsroom but the spectre of the ANC hovered over the newsroom.

Can you just explain what you mean by the spectre of the ANC hovering over the newsroom?

MR JOSEPH NONG THLOLOE: There were several examples of this. For example when the Minister of Communications did constituency work in KZN - ANC constituency work. Journalists were forced to cover
20 her every time she was out there. Now the ANC might say we never asked her to that but the fact that she is an ANC member is as I say a spectre over - over what she was told.

The Chairperson of the board goes to an A - the SABC function where the SABC was donating a house to some family or - or another and she went to that function wearing ANC regalia. I mean it

says a lot about what role the ANC was supposed to be playing ...

CHAIRPERSON: Yes.

MR JOSEPH NONG THLOLOE: But there was - as I say - no direct line that says this is what the ANC has said.

CHAIRPERSON: Hm.

MR JOSEPH NONG THLOLOE: When - when the ANC came to give evidence - we have got the evidence of Mr Zizi Kodwa. Where he says:

10 “Unqualified people at the SABC are responsible for the “myth” that the ANC is running the SABC newsroom. These unqualified people are name droppers. They lie about who gave them instructions.”

 And he considered that that might be happening at the SABC that is why over the years they have - there has always this story that the ANC is running the SABC newsroom. So that spectre just hangs over the SABC. Although there was no letter that we got that said the SABC wants you to do this. No memo. Nothing like that.

20 **CHAIRPERSON:** As you - as you deal with that my mind goes back to the 1980's. I guess one can go even before that. You know under apartheid. There was certainly among I would imagine very many people - Black people and people who were opposed to the apartheid Government - a very strong belief that the apartheid Government - Nationalist Party - the Nationalist Party were running newsroom at the SABC at the time.

 So as you say that my mind goes back to the question

whether that is what may have happened even then or whether what may have happened then is something much - was whether at that time if there was a - an inquiry such as yours one would have been able to find a directly leak or whether even then one might have not found a direct link and therefore not be able to say the National Party was running the newsroom at SABC and here - but it was hovering over the - that is - that is - I am just sharing with you what is going on in my mind as you speak.

MR JOSEPH NONG THLOLOE: In - in fact I remember those days.

10 Any time an SABC journalist tried to interview me I would tell them I am not talking to you ...

CHAIRPERSON: Hm.

MR JOSEPH NONG THLOLOE: Because you are a Government spokesperson.

CHAIRPERSON: Yes.

MR JOSEPH NONG THLOLOE: Now at that time the control was very obvious.

CHAIRPERSON: Hm.

MR JOSEPH NONG THLOLOE: You had a *broederbonde* ...

20 **CHAIRPERSON:** Hm.

MR JOSEPH NONG THLOLOE: Running the SABC as - as Chief Executive Officer. You had telephone calls from the Union Buildings to the newsroom and there is lots of evidence of that. In fact some of the people who were involved ...

CHAIRPERSON: Hm.

MR JOSEPH NONG THLOLOE: Have written about that.

CHAIRPERSON: Hm.

MR JOSEPH NONG THLOLOE: I think there is a book out recently talking about the television newsroom at the time. So there was direct ...

CHAIRPERSON: Yes.

MR JOSEPH NONG THLOLOE: Evidence of that.

CHAIRPERSON: In regard to that. Of course you would know much more in that sector than I would know but I was just trying to compare
10 because always one wants to make sure that whatever findings are made are findings that relate to facts. Thanks.

ADV MPHO RASIVHETSHELE: Thank you Chair. Mr Thloloe in paragraph 17 you have mentioned there was no direct link from Luthuli House. There have been three people that have had - who have made submissions in the transcripts about - concerning Luthuli House. Two of those people however it was just - you know - they have heard and so forth who were journalists in the newsroom and so forth.

However there is a particular who - Chair I am not particularly sure. There was a concern yesterday by Ms Pillay about disclosing
20 names and so forth and we have not notified these particular individuals. So I am not quite sure if we should mention their names.

CHAIRPERSON: Well maybe if it is something that must still be further investigated. Maybe you - you do not need to deal with it. The witness can come back at any time in - in the future to - to deal with whatever might come out after there has been further investigation and they have

been notified.

ADV MPHO RASIVHETSHELE: Yes indeed so Chair.

CHAIRPERSON: Hm. *Ja*, I think that is safer.

ADV MPHO RASIVHETSHELE: Yes Chair.

CHAIRPERSON: Hm.

MR JOSEPH NONG THLOLOE: What - what I can say about that is that there were people who came to our Commission and said they believe that it was an instruction from Luthuli House but they just heard. It was not anything that they themselves were involved in.

10 **CHAIRPERSON:** They had no personal knowledge?

MR JOSEPH NONG THLOLOE: No personal knowledge Chair.

CHAIRPERSON: Hm. Okay.

ADV MPHO RASIVHETSHELE: Chair if I may just - just elaborating of what you said Ms - Mr Thloloe - people who did not have direct knowledge but how was it - I am mindful of the fact that there was no investigative capacity. However how did you then take in consideration the specific individual who stated that she had received a call and she says this person was lying saying that they were from Luthuli House?

MR JOSEPH NONG THLOLOE: I - I do not remember that one.

20 **CHAIRPERSON:** So you might have to deal with it later when you have - if it is the one that requires 3.3 Notices to be issued. You might wish to ...

ADV MPHO RASIVHETSHELE: Indeed so Chair.

CHAIRPERSON: *Ja*. You might want to deal with it at a later stage when you might be able direct the witness to the particular evidence

and then - and that person or the relevant persons would have been notified and then we can deal with it.

ADV MPHO RASIVHETSHELE: Indeed so Chair. Thank you Chair.

CHAIRPERSON: Hm, hm.

ADV MPHO RASIVHETSHELE: Mr Thloloe I am going to just specifically deal with the submissions made by the various political parties. There were three parties that were - had made submissions. Namely the ANC, the PAC and the EFF. Is that correct?

10 **MR JOSEPH NONG THLOLOE:** And the DA - the DA also gave evidence.

ADV MPHO RASIVHETSHELE: The - the DA transcripts would that be contained in the evidence eight?

MR JOSEPH NONG THLOLOE: Hm.

ADV MPHO RASIVHETSHELE: The eight that is not - that is not -0 because there is a particular volume of transcript that is still missing.

MR JOSEPH NONG THLOLOE: No. It should have been earlier than that.

20 **ADV MPHO RASIVHETSHELE:** Well we will take - we will take a look. It might just be missing from the folders. In the meantime I am just going to be dealing with the submissions these political parties. Just going to - just start off with the ANC and then deal with the PAC then the EFF. Highlight the recommendations that they gave to you and if you could just comment on that. Chair the - the first transcript begins at the second Folder B on page 433.

CHAIRPERSON: You say second folder.

ADV MPHO RASIVHETSHELE: Second folder - I mean - apologies sir.

CHAIRPERSON: I do not see any ...

ADV MPHO RASIVHETSHELE: The second file.

CHAIRPERSON: Hm.

ADV MPHO RASIVHETSHELE: The second file. That would be ...

CHAIRPERSON: *Ja*, but ...

ADV MPHO RASIVHETSHELE: CC19B.

CHAIRPERSON: *Ja*, do not say second file. Say CC19B. Then I ...

ADV MPHO RASIVHETSHELE: Yes Chair. These folders we have had
10 a lot of them.

CHAIRPERSON: Okay, alright. What page?

ADV MPHO RASIVHETSHELE: Page 4-3-3.

CHAIRPERSON: Okay.

MR JOSEPH NONG THLOLOE: Four?

ADV MPHO RASIVHETSHELE: 4-3-3 Mr Thloloe.

MR JOSEPH NONG THLOLOE: 4-3-3?

ADV MPHO RASIVHETSHELE: Yes.

CHAIRPERSON: Yes. 433 and the page numbers she is referring to
are the red ones at the right - top right hand corner of each page.

20 **MR JOSEPH NONG THLOLOE**: Yes.

ADV MPHO RASIVHETSHELE: Are you there Mr Thloloe?

MR JOSEPH NONG THLOLOE: *Ja*.

ADV MPHO RASIVHETSHELE: The ANC had made submissions upon
invitation. That is correct?

MR JOSEPH NONG THLOLOE: As I say they responded to the general

...

ADV MPHO RASIVHETSHELE: Invitation?

MR JOSEPH NONG THLOLOE: Invitation, *ja*.

ADV MPHO RASIVHETSHELE: Alright and there were about five people from the ANC that attended that ...

MR JOSEPH NONG THLOLOE: Yes there were.

ADV MPHO RASIVHETSHELE: That hearing ...

MR JOSEPH NONG THLOLOE: Yes there were.

ADV MPHO RASIVHETSHELE: And in attendance was Mr Zizi Kodwa
10 identifying himself as a Member of the National Executive Committee of
the ANC. A National Member of the National Working Committee. Also
with Mr Kodwa was Mr Pule Mabe. Identifying himself as a Member of
the ANC, National Executive Committee, a National Spokesperson and
Head of Communications and then with the two of them there were
three other ANC employees identified as Amati (?), Lerato and Refilwe
who were in charge of the digital media, media liaison and photograph
services of the ANC.

MR JOSEPH NONG THLOLOE: Correct.

ADV MPHO RASIVHETSHELE: Now if we could just please turn to
20 page 440.

CHAIRPERSON: You said if we go to what page?

ADV MPHO RASIVHETSHELE: 4-4-0 Chair.

CHAIRPERSON: 4-4-0, thank you.

ADV MPHO RASIVHETSHELE: Are you there?

MR JOSEPH NONG THLOLOE: Yes I am.

ADV MPHO RASIVHETSHELE: This was - we are just starting off with the - at the tail end. The recommendations that were given by the ANC. In particular this was highlighted by Mr Kodwa. We are going to start at the bottom of the page Chair where it says - that would be line 24. Where ...

CHAIRPERSON: Yes.

ADV MPHO RASIVHETSHELE: Where he states:

10 “I think that it is a fundamental basis and departure
 point not all parties have equal speaking time in
 Parliament. The African National Congress in most
 ...”

CHAIRPERSON: Should we not start a little earlier than that because he talks about it being a fundamental basis and we - I do not know what it is. Is it not stated earlier on what he is talking about? That he says is a fundamental basis and departure point. He says:

ADV MPHO RASIVHETSHELE: Okay.

CHAIRPERSON: “The second issue in relation to ...”

ADV MPHO RASIVHETSHELE: Yes Chair.

CHAIRPERSON: Huh-uh.

20 **ADV MPHO RASIVHETSHELE:** We will start from there. That - Mr Thloloe that will be the line - line 14. On the same page on 4-4-0. Are you there?

MR JOSEPH NONG THLOLOE: Yes. I am there.

ADV MPHO RASIVHETSHELE: Thank you. It reads:

 “The second issue in relation to that is in regard to

the African National Congress what should be covered in detail without repeating what is there. As a majority party the concept of equity does not mean equal. I know it is a debate but in terms of editorial decision the fact that even in Parliament in terms of speaking in terms of the program of Parliament it is based on the fact that our constitutional democracy recognises the majority and I think that is the fundamental basis and departure point. Not all parties have equal speaking time in Parliament. The African National Congress in most instances has the largest or biggest time slot in terms of speaking. 20 minutes, five minutes and so on and it is deliberate. It recognises the fact that we are not equal. Therefore there are times where as the largest political party we think that regardless of respective levels of influence how people have spoken in terms of outcomes electorally and the SABC as a broadcaster tries to give all political parties equal time of issues of public interest. At the largest - as the largest political party politically speaking we find it quite unfair to the African National Congress.”

When we turn over to page 4-4-2 I think just for - for context

Chair - apologies. That I should carry on from where I left off in the middle of - at paragraph - at line 16 on page 4-4-1 to be able to connect the dots ...

CHAIRPERSON: That is fine.

ADV MPHO RASIVHETSHELE: In the next page.

CHAIRPERSON: That is fine.

ADV MPHO RASIVHETSHELE: “Because the electorate in this country have spoken since 1994 and have not given the African National Congress anything national and provincial and have not given anything less than 62 percent the reflection that obviously cannot be undermined in the reflections of the editorial in terms of both news and particularly the public broadcaster. Therefore we think that it disadvantages not only the African National Congress but it also undermines the editorial view which would have been expressed by the majority of this country because we cannot be equal under the pretext of equity. Equity does not mean equal.”

10

20 Then if we go to line 14 on the same page.

“We therefore make fundamental recommendations. We say fundamental because they are not just important. They are fundamental. The first recommendation we make which I think is also very fundamental is that the SABC should try very hard

in case of the African National Congress to separate between party and the State. We say that selfishly - selfishly to the ANC but we also - but also will defend in areas we are not the majority party in the case of the Western Cape. We will not argue the same that the African National Congress must be given the biggest slice in terms of media above the Democratic Alliance because the Democratic Alliance is the biggest party in the Western Cape. So we will expect the same principle. We will argue - we will argue nationally or where African National Congress dominant. We will argue the same principle as the Democratic Alliance or we will go to elections now. That - that principle must apply.”

10

If we go to line 13 of that same page. It says:

“The second recommendation we will make is that I think the SABC on a continuous basis must strive to consider the objective tool of content analysis. In other words the SABC in terms of how it provides disbalance reporting. Sometimes you cannot rely on individuals. There has to be a too that guides those individuals editorially, those - those who report, those who write from a newsroom point of view.”

20

And if we turn to page 4-4-6. That would be on page - on line eight. It holds:

“As a concluding point the African National Congress does not want a public broadcaster that is a mouthpiece for the African National Congress.”

Mr Thloloe with all that was submitted by the ANC can you give commentary to that effect?

MR JOSEPH NONG THLOLOE: A, it was pretty obvious to us that the ANC had a particular agenda when they came to make their submission. 10 They were in fact asking for bigger - a bigger share than they were getting and yet since 1994 the concept of equitable representation on news broadcast and on other news media has been accepted by the country and their argument was that if we cover a Minister for example saying something we should also go to the ANC and get their comment on what the Minister said because the Minister was speaking as a Government person and the ANC as a party also has a view on the same matter.

As I say we did not take that into account in our recommendations. We believed that - we believed that our 20 responsibility was to find out if there was in fact pressure on the - on the SABC - undue pressure on the SABC and if this can be kept in one way or another.

ADV MPHO RASIVHETSHELE: Thank you.

CHAIRPERSON: Did - did the issue of separation between party and State or Government arise in that context? You know sometimes it will

be said even by the ANC - I think - sometimes one gets the impression that when it suits the ANC they will say what Government has done that is what the party has done because it is the party that is the ruling party but sometimes one gets the impression that they do want to distance themselves from Government to say well that is Government.

That is the Government position. This is the party's position. Now I say that without necessarily thinking of a particular issue on which that has happened but I - I have the impression that sometimes that - that happens. It is like when a particular prominent member of
10 the ANC has done something - maybe something wrong.

It may be that it is a personal thing and therefore it should not be associated with the party but sometimes we would all know that if it is somebody particularly who is a senior - a senior leader it could be seen as look at what - you know - some of the senior leaders of the party are doing. Sometimes not so easy to make that distinction but I - I think sometimes it is made. Sometimes it is not made. So I wonder whether when you were looking at that you had any challenges looking at that dividing line.

MR JOSEPH NONG TLHOLOE: At this point we just dismissed it as the
20 ANC trying to get out some mileage out of it.

CHAIRPERSON: Yes, okay.

MR JOSEPH NONG TLHOLOE: But as a newsman if the government does something and to the ANC takes a different position it becomes news.

CHAIRPERSON: Yes, okay.

MR JOSEPH NONG TLHOLOE: Otherwise there's no point. It's trying to get two bites at the cherry.

CHAIRPERSON: Yes, yes okay. So, your inclination would be unless there is an indication that the ANC is taking a different position. There is no need to, there would be no need to give the ANC a chance to say something when a Minister has already dealt with that from the point of view of government?

MR JOSEPH NONG TLHOLOE: That's the line we took Mr Chairman.

CHAIRPERSON: Yes, okay. Thank you.

10 **ADV MPHONG RASIVHETSHELE**: Thank you. The second political party was the EFF. Chair, that would be CC19C.

MR JOSEPH NONG TLHOLOE: C?

ADV MPHONG RASIVHETSHELE: C, yes.

CHAIRPERSON: And what page?

ADV MPHONG RASIVHETSHELE: 912.

CHAIRPERSON: 912?

ADV MPHONG RASIVHETSHELE: Yes.

CHAIRPERSON: Okay.

MR JOSEPH NONG TLHOLOE: I'm on it.

20 **ADV MPHONG RASIVHETSHELE**: Thank you. Now these were, this is a start of the submissions by the EFF. In attendance was Mr Mbuyeseni Ndlozi identifying himself as the head of communications and national spokesperson of the EFF and Ms Mandisa Sibongile Mashego identifying herself as the Chairperson of the EFF in Gauteng. Also, as a party leader for the EFF caucus in Gauteng Provincial Legislature. Just

to quickly skip to the recommendations that were made by Ms Mashego that can be found on page 941, Chair.

CHAIRPERSON: I'm sorry. I think I missed that. I'm at 914. Have we moved beyond that?

ADV MPHO RASIVHETSHELE: 941.

CHAIRPERSON: Oh? Did I get mixed? 941 not.

ADV MPHO RASIVHETSHELE: Yes. Sorry, I mixed it. I don't know.

UNKNOWN: It sounded like line.

ADV MPHO RASIVHETSHELE: It sounded?

10 **UNKNOWN**: Like line.

ADV MPHO RASIVHETSHELE: Like line? Oh, sorry.

CHAIRPERSON: Okay.

ADV MPHO RASIVHETSHELE: That's what I heard. It sounded like nine.

CHAIRPERSON: I'm at the bottom lines. I'm at a wrong page.

ADV MPHO RASIVHETSHELE: Yes. So, the page where the recommendation start Chair are on page 941.

CHAIRPERSON: Okay.

ADV MPHO RASIVHETSHELE: Apologies for that.

20 **CHAIRPERSON**: Okay, right. Yes, we are ready.

ADV MPHO RASIVHETSHELE: Yes. So, highlighting the recommendations by the EFF. I'm going to start on where on number one where it's written number one, the recommendations that are submitted by Ms Mashego.

Content has to be of interest in the interest of the

public whether it's political content or whatever. Even more importantly political content obviously. I want to raise the issue of separation of party and the State. The proposal from the ANC on actual corrupting, sorry. The proposal from the ANC borders on actually corrupting that principle of party in fact is not a principle. I think in the Constitution there must be a separation between party and State.

In addition, page 948 line 23 Mr Ndlozi makes the submission starting.

CHAIRPERSON: What's that page now?

10 **ADV MPHONG RASIVHETSHELE**: 948, Chair

MR JOSEPH NONG TLHOLOE: 948?

ADV MPHONG RASIVHETSHELE: Yes, Chair.

CHAIRPERSON: Okay, yes.

ADV MPHONG RASIVHETSHELE: That would be at the bottom of that page starting at line 23. Mr Ndlozi makes a submission that starting from.

20 The COO is at the centre of programs and resources in the SABC. From time to time when one is mistreated by political editor or producer in a political show in the SABC, you pick up a phone and you complain or you write to them directly and say to the COO that this has happened in the SABC and so on and so forth. There are countless reasons why you should pick up a phone to interact with senior management including members of the board. A panel member responds, don't you think it's an aspect that contributes towards

interference news? Mr Ndlozi replies, no. The majority of the people believe that if anyone gets interactive let's take something else outside the public broadcaster which is a news institution the City Press or Power FM or 702. Surely, the political editor or the senior editors of these institutions can be interacted with without it happening in the institution; sorry, interacted with about what is happening in the institution. The point is that they ought to have known that they don't owe us anything. Panel member responds, okay. Mr Ndlozi further on
10 and goes that they must stick to the rules, they must be impartial, they must be fair, they must not be biased. Because the implication is that you must tell politicians not to call senior members of the SABC. No, we don't care. The question shouldn't even arise. You take a commitment, you sign a contract when you take that job in the SABC. Stick to that commitment, stick to the oath.

And that would be the end of the recommendation and the finality of the submission by the EFF. Can you comment on that?

MR JOSEPH NONG TLHOLOE: The essence of what the EFF was
20 proposing was that at the end of every lateral cycle when a new election date is announced everybody goes to zero. So, you don't have the equity based on the results of the previous years' elections. Again, for us this was another way of trying to get mileage out of the SABC. They were saying the concept of equity is not fair to other political parties. Everybody must start from scratch. They are all equal. So, they

all need to get equal time from the SABC. But again, the SABC editorial policies are very clear about what should be happening. The ICASA regulations are very clear about how you cover elections and the IEC also has regulations during elections. And one of the principles of all these organizations is that there is equity and that equity is calculated on the basis of the previous years' elections or the previous elections that they were. So, again we didn't take this argument very seriously. It was another game of politics that they were playing with us. They were not saying to us there is political interference at the SABC and this is
10 the evidence we have for it.

CHAIRPERSON: Well, you may have had; you probably have had much more exposure than I have had in regard to those debates. So, whatever I might say now is not necessarily as well informed by the debates for and against on some of these issues. But I do, I kind of see where the EFF's suggestion where the EFF comes from when they make that suggestion. I ask myself the question, in Parliament the majority party is already allocated a lot of time. So, to the extent that they might argue that they are entitled to have more time in order to tell the populace what they are doing about because they have been given the
20 power to govern. They have a lot of time to do that when they speak in Parliament. They have been given more time. Apart from that, they have maybe as government now we go back to the question of separating between party and government you know. They have a lot of resources and time outside of Parliament to go to the people over the five-year cycle of elections and tell the people what they have been

doing and they have much more resources than the opposition parties. Again, I just emphasize I'm not talking where one is not separating between party and government but they would be talking about the same achievements whether it's government or the ruling party over the five-year period. So, my question is, why when they are all contesting elections must the ruling party still get more time than the other parties? What is wrong with saying, equity dictates that there must come a time when all the parties if it comes to for example the public broadcaster, they must be given enough time, equal time and they must

10 make use of it? Because it may well be that if you're going to keep on giving the opposition party, smaller parties little time and giving the majority party the ruling party more time that might be working against democracy. Because you are suppressing or making it difficult for the smaller parties to rise and compete properly with the ruling party. And so, as I sit here and I don't know if I might change my mind. I'm just sharing with you what's going on in my mind now. I have a feeling that I don't see why there is a justification for talking particularly about the time when there are elections coming and they start campaigning. Maybe let's leave out during other times, just that time that I don't see

20 why they shouldn't be put on an equal footing in order to ensure that the citizens as much as about each of them as possible without giving anyone an advantage. Because the broadcaster and any objective by stand I should be saying, we just want democracy to work and we want it to be strengthened. Whoever wins must win on the basis of equal chances. Now, there might be argument about equal chances but it just

seems that if you give the ruling party more time even then outside of Parliament you are unfairly disadvantaging the other parties.

MR JOSEPH NONG TLHOLOE: Unfortunately, Mr Chairman democracy is extremely... (indistinct).

CHAIRPERSON: Yes, yes. No, I agree and but I would like to hear what you might have to say about some of these thoughts that come to my mind without me having been exposed to many views on this subject. But you have had, you probably have had a lot of exposure in the media and through the inquiry to look at that and then therefore,
10 you might be able to say, well we considered all of those. Or those arguments have been considered in literature and there are different answers. One of the answers is this, one of the answers is that. And when you look at everything the majority, most people think this is the way to go.

MR JOSEPH NONG TLHOLOE: I think the reason in 94 South Africans settled for this system of equity is because I mean in 94 elections it was equal for everybody. And then after the elections then you said the majority of South Africans think this way. So, if at one stage you start diminishing what they have achieved as a party you are now playing
20 God over what they do or don't do. So, the measure that you can use that is fair is, this is how you performed. Therefore, we will allocate you time equivalent to what you have achieved. Now, if a new party comes online and it is bringing fresh things it's news, it's exciting then they will get the support that they need from the media generally. But if it's another run-of-the-mill party that says we think we should get a bigger

share we are suppressing the views of the majority of the country.
That's the problem.

CHAIRPERSON: Well, except that for if we talk about the general election that we had in May this year. If you said, well with effect from maybe March, the last two months before the election we will give equal time to all the political parties. The fact of the matter may well be that over the past four years 10 months you have given the majority party that more time than others but you are seeking now to at least try to strike some balance. You think even then there would still be a
10 legitimate complaint to say, notwithstanding the fact that for the past four and a half years they had all this time there'll still be a legitimate concern to say no, even that month that last two months they must still have?

MR JOSEPH NONG TLHOLOE: As I say, that's the solution we found in 1994 and as I say, the IEC in its regulations every time there is an election they insist on.

CHAIRPERSON: Yes.

MR JOSEPH NONG TLHOLOE: Equity coverage.

CHAIRPERSON: Yes. It may well be that it is equitable but I just have
20 those questions in my mind but I understand what you're saying. Thank you.

ADV MPHO RASIVHETSHELE: Thank you. The next party would be the PAC. That would be found on page 1071. Are you there Mr Tlholoe?

MR JOSEPH NONG TLHOLOE: Ja, I've got it.

ADV MPHO RASIVHETSHELE: Thank you.

CHAIRPERSON: I'm tempted to ask Mr Tlholoe whether there was no problem whether you were receiving submissions from the true PAC from the genuine legitimate PAC.

MR JOSEPH NONG TLHOLOE: The question is, which PAC?

CHAIRPERSON: Ja, anyway thanks.

ADV MPHONG RASIVHETSHELE: In attendance to this inquiry was Mr Luthando Mabinda who identified himself as a leader of the PAC and member of Parliament. Also, with Mr Mabinda was Mr Vusi Ntsetseti identified as a member of the national executive committee of the PAC
10 and Comrade Gancho identified as a member of the national executive committee of the PAC as well. At a later stage, there was also a Mr Puwe whose position is not clearly identified in the transcript but it seems like he was assumed that he was a member of the PAC as well. On page, if I could just direct the Chair to page 1081.

CHAIRPERSON: Yes.

ADV MPHONG RASIVHETSHELE: Just a short recommendation what was encapsulated in these submissions. On line 20 it states that,

The last point that we are raising as a way forward is
that once there's an election date that has been pronounced
20 and a political party has been registered, all parties should be
covered equally.

MR JOSEPH NONG TLHOLOE: That's the same argument that the EFF had raised and for the same reason we didn't take the EFF's position. It quite fell outside our mandate. We were supposed to check if there is in fact political interference in the decision-making at the SABC.

CHAIRPERSON: Oh, you were not there to make any recommendations to change existing policies and so on and regulations?

MR JOSEPH NONG TLHOLOE: We did make recommendations on that one.

CHAIRPERSON: Yes, okay.

MR JOSEPH NONG TLHOLOE: If you go to the report, Mr Chairman.

CHAIRPERSON: Yes.

MR JOSEPH NONG TLHOLOE: I'm almost there Mr Chairman. If you go to two paragraph 220 in the A bundle.

10 **CHAIRPERSON**: And what page is that?

MR JOSEPH NONG TLHOLOE: Page 59.

CHAIRPERSON: Page 59? Yes.

MR JOSEPH NONG TLHOLOE: It says,
The Commission accepts that any person, organization or institution in the country has a right to influence coverage by the SABC. But the decision on what to cover and how to cover it rests with the editorial staff.

CHAIRPERSON: Yes.

MR JOSEPH NONG TLHOLOE: And could I be excused Mr Chairman?

20 **CHAIRPERSON**: Yes. Do you need us to take an adjournment? No, okay. Thank you.

MR JOSEPH NONG TLHOLOE: There are too many documents in front of me.

CHAIRPERSON: Oh okay.

ADV MPH O RASIVHETSHELE: Mr Tlholoe, can I assist? What perhaps

are you looking for?

CHAIRPERSON: If you indicate to her what you're looking for.

MR JOSEPH NONG TLHOLOE: The... (indistinct) that says the newsroom.

ADV MPHONG RASIVHETSHELE: In the report?

MR JOSEPH NONG TLHOLOE: If you look at in the index.

ADV MPHONG RASIVHETSHELE: Yes.

MR JOSEPH NONG TLHOLOE: Page?

CHAIRPERSON: It's a section that deals with the newsroom?

10 **MR JOSEPH NONG TLHOLOE**: Ja, it's headlined newsroom.

ADV MPHONG RASIVHETSHELE: That starts on page, it's 24 of the report but I will tell you the page number itself the paginated number. That would be page 31.

MR JOSEPH NONG TLHOLOE: 31.

CHAIRPERSON: Okay. Yes, the newsroom.

MR JOSEPH NONG TLHOLOE: Now, if you go to 77, paragraph 77.

CHAIRPERSON: Yes.

20 **MR JOSEPH NONG TLHOLOE**: The participants are guided by the corporation's editorial policies which are intended to help the editorial staff negotiate difficult editorial issues and decisions so that distinctive and compelling and sometimes controversial programs can be made while maintaining the highest ethical and editorial standards. That already exists in the SABC's editorial policies.

CHAIRPERSON: Yes.

MR JOSEPH NONG TLHOLOE: It also goes on to say,

Through this policy, the SABC is well-positioned and unmatched in the market to meet the challenge of telling the South African story with compassion, determination and resolution while creating forums where South Africans from every walk of life can communicate ideas about their common future.

So, the values that the SABC should be upholding are already in place.

CHAIRPERSON: Yes, yes. Well, I mean I raised, I shared with you what was going on in my mind in relation to this issue of equity. But
10 probably it's something that the Commission has no business dealing with whether during elections what parties are given in terms of airtime and so on and so on. But and we have to recognize our boundaries. The Commission must recognize its boundaries and leave issues that must be dealt with by other institutions and other bodies for those institutions to deal with. But it's something that occurred in my mind as you were talking. Thank you.

ADV MPHO RASIVHETSHELE: Thank you Chair. We ended off on paragraph 17 and then we went to the transcripts, so just to get back
20 onto track onto your main statement so we're going to go to the statement, that would be in file A on page six, paragraph 18.

CHAIRPERSON: So that's going back to CC19A.

ADV MPHO RASIVHETSHELE: Have you got the correct file?

CHAIRPERSON: CC19A page six.

ADV MPHO RASIVHETSHELE: Paragraph 18, we're continuing with your findings.

CHAIRPERSON: Page six of your statement, the red figure, the red number at the top.

MR JOSEPH NONG THLOLOE: Page?

ADV MPHO RASIVHETSHELE: Six.

MR JOSEPH NONG THLOLOE: Page six okay.

CHAIRPERSON: And paragraph 18.

ADV MPHO RASIVHETSHELE: Are you there?

MR JOSEPH NONG THLOLOE: Yes.

ADV MPHO RASIVHETSHELE: Can you just read out the following
10 finding that was concluded in the report?

MR JOSEPH NONG THLOLOE: Line 18 or paragraph 18?

ADV MPHO RASIVHETSHELE: Paragraph 18.

MR JOSEPH NONG THLOLOE: “The evidence shows that from the
year 2012 up until the year 2017 SABC executives took
instructions from people with no authority in the newsroom,
for example we quote, the Chairperson of the SABC Board or the
Communications Minister. The executives thus failed to
execute their duties in terms of the editorial policies which I
just quoted now. The Commission further found that
20 Nonthando Maseko Sebolelo Ditlhakanyane and Nyana Molete
were pivotal to the execution of instructions from Hlaudi
Motsoeneng, Jimi Matthews and Simon Ndebele. They
succumbed because of threats of dismissal from the
immediate superiors that’s the enforcers we were talking about
earlier”.

CHAIRPERSON: Yes, do you want him to read the rest of the paragraphs?

ADV MPHONG RASIVHETSHELE: Just paragraph 19 Chair.

CHAIRPERSON: Okay.

MR JOSEPH NONG THLOLOE: “Our last recommendation which we think is very key to the independence of the SABC is that the Group Chief Executive should not be designated as an Editor in Chief, that system which we inherited from the BBC is inappropriate for our circumstances”.

10 Now what happens is that the BBC Director’s General are people who have come up the ranks from producing programmes etcetera right up to the point where they now become Director General, so they are [indistinct] in the production...[intervenes].

CHAIRPERSON: They are journalists?

MR JOSEPH NONG THLOLOE: Yes.

MR JOSEPH NONG THLOLOE: Now what we have in South Africa is that we get a business man to come and run the SABC who is not familiar with the world of journalism, so it’s unfair to make him the Editor in Chief.

20 **CHAIRPERSON:** Yes.

MR JOSEPH NONG THLOLOE: So we recommended that the Group Executive news should become the pinnacle of the upward [indistinct] system.

ADV MPHONG RASIVHETSHELE: Thank you, Mr Thloloe yesterday we heard the evidence of Ms Pillay and Ms Mbeki both [indistinct] for their

dissatisfaction with the outcome of the report. We'll start with Ms Pillay, Ms Pillay highlighted the fact that people made submissions under the impression that their names would remain anonymous and this was not proof after they have testified, can you just comment on that?

MR JOSEPH NONG THLOLOE: At the end of our inquiry Mr Tawana and myself debated this issues, do we now send each transcript to each of the participants to say can we publish this or not and we felt that, a) it would delay the process and b) almost all the information we received
10 is already in the public domain, it wasn't as if we're digging up new things. So we decided we are going ahead and publishing the names and the people where there was no – we didn't anticipate any threat to the people who gave evidence to us. Now there were two Commissions appointed at the same time, the one was a sexual harassment Commission and the other the Editorial interference...[intervenes].

CHAIRPERSON: When you put it like that it's sounds inappropriate when you say it was a sexual harassment Commission, it was a Commission to look into allegations of sexual harassments, yes.

MR JOSEPH NONG THLOLOE: Now the confidentiality there is
20 understandable...[intervenes].

CHAIRPERSON: It's like its job was like to carry out sexual harassment, so that's why I'm saying it sounds inappropriate.

MR JOSEPH NONG THLOLOE: Now there the confidentiality was appropriate because of the nature of the subject we were dealing with and we thought we could publish without any fear of risking anybody's

life or income or whatever so we decided in the end, let us publish these names. The evidence they gave us is in the public domain and I must confess that up to this point, not one person has threatened to us to say, you published my name against my wishes even Ms Pillay, yesterday didn't say she was opposed to her name being used but she was quoting other people, unknown people who are saying they were publicised without their consent.

CHAIRPERSON: So but – from what you are saying it seem that you are not disputing that the earlier arrangement was that their names
10 would not be disclosed, you are simply saying that, that may have been so or that was so initially but when we were supposed to issue the report here are circumstances that made us feel that there should be no problem if we disclose the names, is that right?

MR JOSEPH NONG THLOLOE: That's correct Chair.

CHAIRPERSON: Okay.

ADV MPHO RASIVHETSHELE: Thank you Mr Thloloe, the – Ms Gqubule Mbeki also had concerns about the report. She particularly highlighted the fact that there were minor inconsistencies, things that actually did not occur, she highlighted the fact in her evidence that
20 there was a particular meeting where it was stated in the report that Mr Matthews and Ms Ditlhakanyane attended a meeting but this was not the case, can you comment on that?

MR JOSEPH NONG THLOLOE: Yes Ms Gqubule has brought that to my attention and I checked it and I found that she was right. Sibolelo was placed in a meeting where I was trying to say, Sekonyela who is a

communications person for Brian Molefe at the time. So instead of typing Sekonyela I typed Sebolelo, so it was an error on my part. The second one was Jimi Matthews at a meeting with Alan Tshabalala. The sequence of events there is that Jimi Matthews was not in that meeting but the following day he went to the newsroom and dictated an apology to Brian Molefe. So I think in the hurry to finish the report I just [indistinct] from the meeting to the next day where he dictated a letter of apology to Brian Molefe. The two mistakes do not – the two errors I committed, in fact there were three errors I committed where do not in
10 any way affect the outcome of that finding. The point is the point is Jimi Matthews succumbed to a demand from outside the newsroom for an apology, when in fact he shouldn't have, he should have stood by his staff and said we will not apologise. Whether he did it the day before or the day after doesn't materially affect the truth of the finding.

ADV MPH O RASIVHETSHELE: Mr Thloloe you just highlighted, just not to lose track that you wanted to finish the report in time you were in a hurry process trying to finish this report. Now this report is dated the 25th of February 2019, was this the date in which the report was submitted?

20 **MR JOSEPH NONG THLOLOE:** Yes that's the day we submitted the report.

ADV MPH O RASIVHETSHELE: Who did you submit the report to?

MR JOSEPH NONG THLOLOE: It was delivered to the Group Chief Executive but he in turn told us that this is in fact a Board document and therefore needs to be submitted to the Board management couldn't

handle that report and the report – I handed the report over to the Board on the – in July on the 23rd of July because there was – the Board wasn't [indistinct] for the months that we were working on this thing.

ADV MPHO RASIVHETSHELE: So just to clarify you handed the report to the Board on the – in July 2019?

MR JOSEPH NONG THLOLOE: Ja July this year and it was made public in August this year, on the 5th of August.

ADV MPHO RASIVHETSHELE: And just going back to your
10 statement, in paragraph 12 on page five...[intervenes].

CHAIRPERSON: We have gone beyond 1 o'clock.

ADV MPHO RASIVHETSHELE: Oh sorry apologies Chair, we have gone – I was not *au fait* with the time, however upon the Chair's approval I do not feel that this witness will be any longer, I think at most we would be ten minutes.

CHAIRPERSON: Well I was hoping less than ten minutes from what I see you have covered...[intervenes]

ADV MPHO RASIVHETSHELE: Yes Chair I was just exaggerating so just two things

20 **CHAIRPERSON:** Okay don't exaggerate just ask two or three questions that probably are – you still want to ask and I'm sure we will be done.

ADV MPHO RASIVHETSHELE: No actually this is the final question so we should done.

CHAIRPERSON: Okay then next one is the final one or you mean the

last one you did is the final one?

ADV MPHONG RASIVHETSHELE: No this one is the final one?

CHAIRPERSON: Which one is the final one, the...[intervenes].

ADV MPHONG RASIVHETSHELE: The last one.

CHAIRPERSON: Okay alright, thank you very much Mr Thloloe for having come forward to assist the Commission, we appreciate it very much, should the need arise we will ask you to come back but there might not be a need but if the need arises we will ask you to come back.

10 **MR JOSEPH NONG THLOLOE:** Mr Chair I thought she was asking if we should accept this report.

CHAIRPERSON: Well you heard me ask a few times whether the last question was the previous one or the one that she was still coming, she ultimately said it was the previous one but I see that the way that she is looking at me now is like she wants to change her mind, do you want to ask one last question?

ADV MPHONG RASIVHETSHELE: Yes Chair, I blame sleep deprivation, apologies.

CHAIRPERSON: Okay alright.

20 **ADV MPHONG RASIVHETSHELE:** In paragraph 12 Mr Thloloe you highlight that the report and the findings should be adopted by the Commission being mindful of the fact that there's a transcript missing, would you rather make a submission that this report be provisionally adopted by the Commission, can you elaborate on this paragraph?

MR JOSEPH NONG THLOLOE: The typographical errors I've already

mentioned, the transcript is still outstanding but as soon as I have it available I can submit it, I don't know what else happens after I submit that transcript but I would ask that this report be provisionally accepted.

CHAIRPERSON: No I think what will happen is we – I probably will find a lot of help from the report we'll look at it, maybe adopting might be a formal term that one can look at but certainly one assumes that there will be a lot of help that one can gain from this report and that in the end the assistance that the Commission would have derived from it
10 would be acknowledged in one way or another, yes, okay thank you but I think it will be important that whatever is remaining in terms of the transcript that is not before the Commission yes should be made available as soon as possible and to the extent that there may be certain errors to which you have spoken it would be important that there is a clear document that makes it clear where those errors are and so that when one goes through it, one bears in mind those errors that have been admitted, okay.

ADV MPH O RASIVHETSHELE: Thank you Chair we will facilitate that.

20 **CHAIRPERSON:** Thank you. Thank you very much we appreciate your coming to assist the Commission, thank you very much you are excused. Ms Mpho that is the end for today, on Monday we start at ten.

ADV MPH O RASIVHETSHELE: Yes thank you Mr Chair.

CHAIRPERSON: Who do we have on Monday again?

ADV MPH O RASIVHETSHELE: We have...[intervenes].

CHAIRPERSON: Is it Dr Ngubane?

ADV MPHO RASIVHETSHELE: It's Dr Ngubane, it's Mr van Vuuren and Mr Leonard Degato, sorry Chair we usually write them down, but we will send them to the registrar the written names down and we'll make sure the files are aligned in that fashion for Monday.

CHAIRPERSON: Okay that's fine, we are going to adjourn at this stage for the day and on Monday we'll start at 10 o'clock, we adjourn.

REGISTRAR: All rise.

COMMISSION ADJOURNS TO 9 SEPTEMBER 2019