

**COMMISSION OF INQUIRY INTO STATE CAPTURE**

**HELD AT**

**BRAAMFONTEIN, JOHANNESBURG**

10

**06 NOVEMBER 2019**

**DAY 187**

20

**PROCEEDINGS RESUME ON 6 NOVEMBER 2019**

**CHAIRPERSON:** As the commission to have hearings this week when our normal venue is not available we really appreciate that this is what they have done for us and have made available to us free of charge. There are not too many things that are free so we really appreciate especially with our financial constraints as the commission. So I would like to thank them very much for making the facility available. We will sit here today and tomorrow and thereafter we will go back to our normal venue. Thank you. Ms Hofmeyr are you ready?

10 **ADV HOFMEYR:** Yes indeed Chair. If I may re –

**CHAIRPERSON:** Oh I touched – you can hear me but I need to see – to hear whether I can hear you?

**ADV HOFMEYR:** Can you hear me now?

**CHAIRPERSON:** Now I can hear you.

**ADV HOFMEYR:** Okay.

**CHAIRPERSON:** Okay alright.

**ADV HOFMEYR:** Chair just as a matter of logistics. I understand that we are going to have to be careful today to ensure that only two microphones are on at any point in time. I have been told that  
20 otherwise the transcription service is affected.

**CHAIRPERSON:** Hm.

**ADV HOFMEYR:** So my suggestion is that on our side we will try to navigate to ensure that there are not three microphones on at any point. But just so that we understand that that does have an implication

**CHAIRPERSON:** Hm.

**ADV HOFMEYR:** For the transcription and no doubt we will be sent a message if there is an issue.

**CHAIRPERSON:** Hm.

**ADV HOFMEYR:** But it seems to be that you and I can at the same time have our microphones on and be audible.

**CHAIRPERSON:** Yes. Now I do not know whether because most of the time I will not be talking.

**ADV HOFMEYR:** Hm.

10 **CHAIRPERSON:** Whether – I probably should switch off mine while you are asking a witness questions.

**ADV HOFMEYR:** I suspect that will be ideal.

**CHAIRPERSON:** But let me see how you do that. Nobody has explained to me and I cannot see any writing here.

**ADV HOFMEYR:** That seems to have taken it off yes.

**CHAIRPERSON:** Okay now I know how to switch it off.

**ADV HOFMEYR:** Excellent. Excellent. Thank you Chair.

**CHAIRPERSON:** Thank – thank you very much. Yes we may continue.

**ADV HOFMEYR:** Thank you. If we could then swear in the witness?

20 **CHAIRPERSON:** Yes. Mr – [indistinct] you must just swear in Mr Maseko.

**REGISTRAR:** Please state your full names for the record?

**MR MASEKO:** Themba Mvell James Maseko.

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

**MR MASEKO:** I do not.

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

**MR MASEKO:** I do.

**REGISTRAR:** Do you swear that the evidence you will give will be the truth; the whole truth and nothing but the truth, if so please raise your right hand and say, so help me God?

**MR MASEKO:** So help me God.

**CHAIRPERSON:** Okay thank you. Thank you for coming back to give evidence Mr Maseko.

10 **ADV HOFMEYR:** Thank you Chair.

**MR MASEKO:** Thank you Chairperson.

**CHAIRPERSON:** Yes. You may proceed Ms Hofmeyr.

**ADV HOFMEYR:** Thank you Chair. Mr Maseko as the Chair has indicated this is your return to give evidence at the commission. You last gave evidence at the end of August last year. And just to orientate you I know you are an old hand at this but what you have next to you is a box set of files containing some of the documents that may be referred to today and over the course of the next two days as well as a copy of your bundle of evidence for today. Chair if I may request that

20 we enter Mr Maseko's bundle into evidence as Exhibit NN1?

**CHAIRPERSON:** The lever arch file containing – okay it is – the lever arch file contains a number of statements and annexures, is that right?

**ADV HOFMEYR:** It does indeed. We have put – actually all four witnesses in one file.

**CHAIRPERSON:** And you would like to – yes. Mr Maseko's statement

– what is it dated?

**ADV HOFMEYR**: Well the first...

**CHAIRPERSON**: Affidavit?

**ADV HOFMEYR**: There are two affidavits Chair.

**CHAIRPERSON**: Yes.

**ADV HOFMEYR**: The first one you will find from page 1.

**CHAIRPERSON**: Yes.

**ADV HOFMEYR**: To page I think it was 8. Yes and it is dated the 4 September 2009.

10 **CHAIRPERSON**: Yes.

**ADV HOFMEYR**: And it is followed by a second document titled Statement but is actually an affidavit.

**CHAIRPERSON**: Yes.

**ADV HOFMEYR**: Which was deposed to on the 28 October of this year.

**CHAIRPERSON**: Yes. Mr Maseko's supplementary affidavit dated the 4 September 2019 as well as his other affidavit and whatever annexures are attached thereto will be marked NN1.

**ADV HOFMEYR**: Thank you Chair.

20 **CHAIRPERSON**: Before you proceed Ms Hofmeyr I think there probably is something I should – I should sort out here. I hear you when you speak the way I should hear you but I also have some I do not know if I should switch something off here. I hear you through something else.

**ADV HOFMEYR**: Oh. Chair possibly some assistance can be given.

**CHAIRPERSON**: Yes.

**ADV HOFMEYR**: Should we maybe adjourn for a few minutes to sort it

out for you.

**CHAIRPERSON**: Well maybe the assistance will be quick.

**ADV HOFMEYR**: Let us hope.

**CHAIRPERSON**: Just speak again so he will hear what is happening.

**ADV HOFMEYR**: Yes. Today we have the evidence of Mr Maseko.

**CHAIRPERSON**: Or maybe this should be taken off.

**ADV HOFMEYR**: Who is returning to give evidence for a second time?

**CHAIRPERSON**: Ja that is fine. Ja. The assistance was quick and effective.

10 **ADV HOFMEYR**: Excellent.

**CHAIRPERSON**: Yes. Thank you.

**ADV HOFMEYR**: Thank you. Chair if we may the proceed and Mr Maseko I was covering the fact that you had previously been a witness before the commission in August of last year. And since that evidence the commission has undertaken further investigations. There have also been further witnesses who have provided affidavits and who will be testifying before the commission. And some of the subject matter that those witnesses cover relate to the evidence that you gave in August of last year. And so we have sought your return to the commission in  
20 order to close off certain aspects of the evidence that you gave based on further investigations that the commission has done as well as to have your response in relation to certain witnesses who have either given affidavits and or will be giving oral evidence in due course. So that is just to frame the background to your evidence today. If I may then commence with the first topic and it is a topic that you were asked

to address in one of the affidavit that you have placed before the commission. I would like to take you to both of those and just have your confirmation of a point I made earlier because your first affidavit you will find at page 1 of Exhibit NN1, do you see that?

**MR MASEKO:** I see it Ma'am.

**ADV HOFMEYR:** And you will see that your signature appears – well a signature appears at page 8, can you confirm that that is your signature?

**MR MASEKO:** That is indeed my signature.

10 **ADV HOFMEYR:** And this was an affidavit you deposed to, is that correct?

**MR MASEKO:** That is correct.

**ADV HOFMEYR:** Now if you go over to page 12 – oh sorry 13 of the same Exhibit NN1.

**MR MASEKO:** Yes.

**ADV HOFMEYR:** You will see a document there can you read for us what the title is of that document?

**MR MASEKO:** Well the title says Statement by Themba Mvell James Maseko in response to the statement made by Mr Makaringe Richard  
20 Baloyi.

**ADV HOFMEYR:** Indeed and then if you go over to page 23 which I take to be the last page of that document, is that correct?

**MR MASEKO:** Yes I got it here.

**ADV HOFMEYR:** Is that your signature?

**MR MASEKO:** That is indeed my signature.

**ADV HOFMEYR:** And it appears to have been deposed to before a Commissioner of Oaths, is that correct?

**MR MASEKO:** That is correct.

**ADV HOFMEYR:** So it is in fact also an affidavit?

**MR MASEKO:** It is an affidavit.

**ADV HOFMEYR:** You do not have any difficulty with that?

**MR MASEKO:** It is an affidavit.

**ADV HOFMEYR:** Can I just confirm then for the record the facts set out in both of these documents the one appearing and commencing at page  
10 1 and the one appearing and commencing at page 13 are those facts true and correct to the best of your knowledge?

**MR MASEKO:** To the best of my knowledge they are true and correct yes.

**ADV HOFMEYR:** Thank you. Since the evidence you gave in August of last year Mr Maseko former President Zuma has testified before the commission. He did so in the week of the 15 July of this year and one of things that you were asked to provide to the commission in your second affidavit is a response to Mr Zuma's evidence. Do you recall that?

20 **MR MASEKO:** I recall that yes.

**ADV HOFMEYR:** And it actually commences at page 5 of NN1.

**MR MASEKO:** I got it.

**ADV HOFMEYR:** Do you see at paragraph 8 there.

**MR MASEKO:** Yes.

**ADV HOFMEYR:** You have a heading Comment on Former President J

G Zuma's evidence at the commission?

**MR MASEKO**: I see that yes.

**ADV HOFMEYR**: What I would like to do this morning is take you through some of the important aspects of his evidence insofar as your former evidence is concerned in order to have your response to it and also to have your assistance in relation to certain matters that have been uncovered in the further investigations of the commission. So if we can start with Mr Zuma's testimony. Mr Zuma's testimony before the commission included that he denied that he had had instructed Minister  
10 Chabane to remove you from GCIS. Chair I do not suggest we go to the transcript all the time but in the course of the questions I am going to make reference to the transcript and where that testimony can be found just for the purposes of the record.

**CHAIRPERSON**: That is fine.

**ADV HOFMEYR**: Where it is pertinent for us to look at particular wording I may well then go to the transcript but this is not such a case.

**CHAIRPERSON**: Yes that is fine.

**ADV HOFMEYR**: Unless Mr Maseko you feel the need to do so. But for the record that is in the transcript of the 16 July 2019 at page 25. Now  
20 you do take that up in the course of your response. Can you tell us today what your response to that evidence of Mr Zuma is?

**MR MASEKO**: The question was whether the deployment of Directors General is discussed with the President in this covered in paragraph 10 of page 23 of the transcript. And in my response I say that I do agree with the former President that the deployment of Director Generals is

discussed with the President with a view to seek his approval and I would like to underline the word discussed. However as far as I am aware cabinet did not get involved in deployment and transfer of serving directors generals. And that is – because my understanding is that there is a discussion between the two ministers releasing and receiving Minister and the DG concerned. If there is agreement then there is consultation of the – with the President and the matter is discussed to seek the President's approval and if there is agreement all those parties then the transfer is affected.

- 10 **ADV HOFMEYR**: Thank you. And if we go over the page to page 6 at paragraph 8.3 you deal with the particular testimony of former President Zuma about whether he had instructed Minister Chabane to terminate your contract. Your record there that the former President's evidence was that he had never instructed Minister Chabane to remove you from GCIS and it was in fact Minister Chabane who had asked that he be transferred from GCIS because – and then you were quoting there from the transcript

“This is the evidence of Mr Zuma. I think there was an issue between them.”

- 20 Can you give us your response to that evidence?

**MR MASEKO**: My response is very clear. I think what the former President says in his oral evidence is untrue. There was never an issue between myself and Minister Chabane. We had a very solid relationship. And the way Minister Chabane conveyed the message to me demonstrated that in fact he himself was shocked by the turn of

events. So the suggestion by the former President that there might have been an issue between me and Minister Chabane I dispute it Chairperson.

**ADV HOFMEYR:** Thank you. Chair you might recall in the course of Mr Maseko's evidence in August of last the issue – you raised an issue about the nature of the working relationship and whether there had been any performance assessments of Mr Maseko. At the time we undertook to investigate that further and we do have a relevant document. Mr Maseko for this purpose I am going to ask you to go to  
10 the bundle that should be in front of you NN5.

**MR MASEKO:** I got it.

**ADV HOFMEYR:** Chair if – if I may explain the origins of NN5? There are a series of witnesses who will present evidence over the – today and tomorrow. NN5 comprises a series of documents that have been put together in preparation for today's evidence. It – as matters currently stand it is in fact not a complete file. There have been engagements over the course of the end of last week and the beginning of this week in order to obtain the final documents that are required to complete the file. As matters currently stand it is still incomplete  
20 because there is an important affidavit that we are awaiting for from the Director General Of the Department of Public Service and Administration. So this file is not complete until that is added to it.

**CHAIRPERSON:** Yes.

**ADV HOFMEYR:** Chair I will update you in the course of the day about the efforts that are being made to obtain that affidavit and have it

available to us for the hearing today.

**CHAIRPERSON:** Yes.

**ADV HOFMEYR:** But nonetheless there are certain documents already contained in this file that I propose to take various witnesses to.

**CHAIRPERSON:** Hm.

**ADV HOFMEYR:** There may be occasions where the witnesses have not seen these documents before or recently.

**CHAIRPERSON:** Hm.

**ADV HOFMEYR:** And where that is the case it is my suggestion that we  
10 give the witness the full opportunity to consider it. If it is a lengthy document and there is a need for a few moments to do so my suggestion would be that we enable that to take place.

**CHAIRPERSON:** Hm.

**ADV HOFMEYR:** But for present purposes if we could enter this as Exhibit NN5 into the record because I will make reference to it throughout today's evidence.

**CHAIRPERSON:** The lever arch file containing various documents starting with a letter signed on 31 August 2009 by Minister of Labour Mr M M S Mdladlana will be marked as Exhibit NN. Yes.

20 **ADV HOFMEYR:** Thank you.

**CHAIRPERSON:** Thank you.

**ADV HOFMEYR:** Mr Maseko if I could ask you to turn up page 156 in Exhibit NN5?

**MR MASEKO:** I got it.

**ADV HOFMEYR:** Is that a document...

**CHAIRPERSON:** Did you say 16?

**ADV HOFMEYR:** 156 Chair.

**CHAIRPERSON:** 156. Thank you.

**ADV HOFMEYR:** Ms Maseko have you seen this letter before?

**MR MASEKO:** Chairperson I have not seen this letter before.

**ADV HOFMEYR:** Can you tell us who it is from and it is to and what its date is?

**MR MASEKO:** The letter is dated the 6 December 2010 and it is directed to the Deputy Chief Executive Officer Corporate Services of  
10 GCIS Ms Phumela Williams and it is a Performance Assessment of Mr Themba Maseko. Do you want me to read what the letter says?

**ADV HOFMEYR:** Yes just...

**MR MASEKO:** It is just one sentence.

**ADV HOFMEYR:** Just – just I – if you will do that in a moment. Just to confirm who wrote the letter?

**MR MASEKO:** The letter is from Minister Collins Chabana – was Minister in the Presidency at the time.

**ADV HOFMEYR:** And then just before you get to the content of the letter I want to locate this letter in time. It is dated the 6 December  
20 2011. When were you removed as Director General of GCIS?

**MR MASEKO:** It was in February 2011.

**ADV HOFMEYR:** Thank you. If you can then tell us what the letter records?

**CHAIRPERSON:** I am sorry Ms Hofmeyr I think you said 6 December 2011?

**ADV HOFMEYR:** Apologies.

**CHAIRPERSON:** It is 6 December 2010.

**MR MASEKO:** 2010.

**ADV HOFMEYR:** All of my colleagues have alerted me to the fact of that error I am indebted to you as well Chair. So it is dated 6 December 2010. I have your evidence that you left GCIS in February 2011 so correct me if I am wrong it is the December preceding your departure from GCIS?

**MR MASEKO:** That is correct yes.

10 **ADV HOFMEYR:** Thank you. If you will tell us what the letter records?

**MR MASEKO:** It starts of by saying:

“Your letter meaning Ms William’s letter, dated 26 October refers. After consultation I have taken the decision to take into consideration the panel’s decision and analysis of Mr Maseko’s Performance Assessment for the period 2008/2009 and agree with the panel score of 114%. I recommend a pay progression for Mr Maseko’s overall performance.”

**ADV HOFMEYR:** Can you assist us with the score of 114%? Is that a good or bad score?

**MR MASEKO:** I am happy with it.

20 **ADV HOFMEYR:** You happy with it? Good. Can you confirm whether you got the pay progression after that letter?

**MR MASEKO:** I am sure I did but I cannot recall if the payment was made.

**ADV HOFMEYR:** Thank you. I would then like to return to the next aspect of President – former President Zuma’s evidence?

**CHAIRPERSON**: Maybe before you do so.

**ADV HOFMEYR**: Certainly Chair.

**ADV HOFMEYR**: Ms Hofmeyr and once again to tie up with whatever I may have asked about performance last time. Now you said you had not seen this letter before, is that right

**MR MASEKO**: I may have.

**CHAIRPERSON**: You may have?

**MR MASEKO**: Chairperson but I do not recall.

**CHAIRPERSON**: But you cannot remember.

10 **MR MASEKO**: I cannot remember this.

**CHAIRPERSON**: Yes. Now was the practice that you would get to know how a panel assessed your performance in any particular year? In other words would you get to know this is the score they gave to my performance?

**MR MASEKO**: Yes Chairperson normally the panel sits, does a Performance Evaluation. You get interviewed. They look at whatever documents you present. Then the – the Head of HR would then communicate to you in writing to say, this was your score and this will be the bonus that you are entitled to. But the communication will be  
20 from the Head of HR or Corporate Services that communicates.

**CHAIRPERSON**: Hm..

**MR MASEKO**: So the Minister reports the findings of the panel to HR. HR reports to the employee.

**CHAIRPERSON**: Yes. So – so before – before the issue of a Performance Assessment is finalised does the Minister have to indicate

whether he accepts or she accepts the score given by the panel or is the position that once the panel has given the score that is the score and whatever the Minister says. So what is the role of the Minister or what is the status of the Minister's response? What is the status of the score given by the panel?

**MR MASEKO:** Well the Minister is the supervisor of the Director General.

**CHAIRPERSON:** Hm.

**MR MASEKO:** So the Minister sits and is part of the panel.

10 **CHAIRPERSON:** Oh.

**MR MASEKO:** So he is part of the decision. Once there is agreement.

**CHAIRPERSON:** Hm.

**MR MASEKO:** Among panel members over the performance.

**CHAIRPERSON:** Hm.

**MR MASEKO:** Then the Minister signs off and agrees and says, this is our recommendation.

**CHAIRPERSON:** Yes. Okay.

**MR MASEKO:** So he is part of the decision

**CHAIRPERSON:** Okay so the Minister would be part of the panel that  
20 assessed your – that would assess a Director General's performance?

**MR MASEKO:** That is correct Chairperson.

**CHAIRPERSON:** Yes. Now this particular score relates to a Performance Assessment for 2008/2009. Would the Performance Assessment relate to a financial year?

**MR MASEKO:** It relates to a financial year yes.

**CHAIRPERSON:** It relates to a financial year. So this would have been for the period March 2008 to February – end of February 2009 more or less?

**MR MASEKO:** More or less yes Chairperson.

**CHAIRPERSON:** Yes okay. And by the time you – would this be the last performance assessment that as far as you remember was conducted in regard to your performance before you left?

**MR MASEKO:** That is correct.

**CHAIRPERSON:** GCIS?

10 **MR MASEKO:** That is correct Chairperson Yes.

**CHAIRPERSON:** Hm. Now the score that was given in regard to this one is 114% that seems to be quite a very high score. Now we might not be having letters relating to other years but you might be able to remember how other years the scores you got in maybe the previous two or so years how that may have compared with this score? So if you are able to remember even if it is an estimate that would be helpful?

**MR MASEKO:** Chairperson unfortunately I am sure we can get the records from GCIS.

**CHAIRPERSON:** Yes.

20 **MR MASEKO:** I cannot recall since this was quite a number of years ago.

**CHAIRPERSON:** Yes.

**MR MASEKO:** But all I can confirm is that there has never been a year where I got a negative allocation of marks – of points.

**CHAIRPERSON:** Yes. A negative would start from when? Below 50 or

what?

**MR MASEKO**: Well it would be 100% so...

**CHAIRPERSON**: Oh.

**MR MASEKO**: So if you – if I am performing according to standard it will be your normal 100% but ...

**CHAIRPERSON**: Oh okay. Well maybe you must explain something. When the score here reads 114% that says to me and I would imagine it says to other people who might not be familiar with public service Performance Assessments. It says to me this person did beyond 100%,  
10 is that correct – a correct understanding of it?

**MR MASEKO**: Ja. There is a formula, a calculation of points. So you – there are objectives that are set.

**CHAIRPERSON**: Ja.

**MR MASEKO**: And numbers are allocated to that formula. So let us say Human Resource Management or Ability to manage a budget effectively so the number of points will be allocated to that.

**CHAIRPERSON**: Hm.

**MR MASEKO**: And then there will be goals for the year in question.

**CHAIRPERSON**: Hm.

20 **MR MASEKO**: And those are things agreed to with your Minister as your supervisor.

**CHAIRPERSON**: Hm.

**MR MASEKO**: So at the end of the period we then go through that Performance Agreement.

**CHAIRPERSON**: Hm.

**MR MASEKO:** And then points are allocated. So if you – let us say for management of the budget.

**CHAIRPERSON:** Hm.

**MR MASEKO:** There is a point of 60 and you get 59 points out of that.

**CHAIRPERSON:** Hm.

**MR MASEKO:** So then they add all the numbers and then you – at the end of the calculation you are given a score.

**CHAIRPERSON:** Hm.

**MR MASEKO:** So if the allocation here says the performance is 100  
10 and what is it?

**CHAIRPERSON:** 114.

**MR MASEKO:** 114%.

**CHAIRPERSON:** Hm;

**MR MASEKO:** It clearly indicates that you have exceeded.

**CHAIRPERSON:** Yes.

**MR MASEKO:** The standard that you had agreed to with your Minister.  
So it is...

**CHAIRPERSON:** Yes. But...

**MR MASEKO:** It would – I think they allocate excellence 100%, Good  
20 beyond 100% it will be excellent or whatever. I cannot remember  
[indistinct].

**CHAIRPERSON:** Yes but – but can I just confirm this? When I look at  
114% I am kind of thinking of a student who is doing an exam and the  
highest they can get is 100%.

**MR MASEKO:** Okay.

**CHAIRPERSON:** So if it is 114% it seems to me to be I do not know what it is so maybe whoever is doing the score says you know this student it is not enough to give him 100% because he is actually more than that. So – but I want to check whether I am correct in understanding it that way or whether there is something that I do not understand?

**MR MASEKO:** I think the message we could get out of that number is that performance was exceptional.

**CHAIRPERSON:** Exceptional?

10 **MR MASEKO:** It exceeded all expectations.

**CHAIRPERSON:** All expectations.

**MR MASEKO:** Yes and that is where then it raises issues about the possibility or likelihood of your supervisor saying I am happy with you.

**CHAIRPERSON:** Yes.

**MR MASEKO:** And when the contract comes to an end.

**CHAIRPERSON:** Yes.

**MR MASEKO:** These would have been factors taken into account to determine whether ...

**CHAIRPERSON:** To exchange or not to exchange.

20 **MR MASEKO:** The contract is extended or not extended.

**CHAIRPERSON:** Yes.

**MR MASEKO:** But 114%.

**CHAIRPERSON:** Yes.

**MR MASEKO:** Exceptional.

**CHAIRPERSON:** Okay so – but what you also said earlier on as I

understand it is you never – you never had an occasion when you got less than 100%? Is that right?

**MR MASEKO**: That is correct. That is correct Chairperson.

**CHAIRPERSON**: Yes. At GCIS?

**MR MASEKO**: At GCIS yes.

**CHAIRPERSON**: Thank you.

**ADV HOFMEYR**: Thank you Chair. Mr Maseko if we can then go to a second aspect of Mr Zuma's testimony? His testimony on the 16 July and this can be picked up in the transcripts at pages 23 to 25 and then  
10 again at page 28. His evidence was that it was a decision of cabinet to transfer you from the position as DG of GCIS to the position of DG at DP  
SA. And I would like if we may to explore that a bit? But before we get to it I would like your assistance on some background about cabinet decisions and what the minutes of a cabinet meeting will record in relation to those meetings? Could you first for background explain to us what experience you have of cabinet meetings?

**MR MASEKO**: The decision making in cabinet is as follows: A department or a Minister that wants a decision to be taken by cabinet on a particular matter they generate what is known as Cabinet  
20 Memorandum and the Cabinet Memorandum will summarise the issue – the reasons for that decision to be made. It will also make recommendations about what exact decision cabinet needs to take. Such a Cabinet Memorandum is then tabled ordinarily in front of a cabinet sub-committee which is a cabinet sub-committee that sits before a formal cabinet meeting. The cabinet sub-committee and

government is divided into - into different clusters. I think that the - if I recall about five or six such Cabinet Committees. So the Cabinet memo is then debated and discussed at the level of the Cabinet Subcommittee and then when there is an agreement in the Cabinet Subcommittee the matter is then put on the agenda of a formal Cabinet meeting and the Cabinet will then go through the contents of the Cabinet memorandum and then look at the recommendations specifically and then Cabinet then approves those recommendations.

So that constitutes a - a Cabinet decision. The minutes will  
10 then indicate that Cabinet has approved the following recommendations. So there will be noted on that matter. There would be however emergency matters that do not necessarily go through Cabinet Committee/Subcommittees.

So those matters will be taken directly to a Cabinet meeting. Obviously the President has to give approval for - for those matters to come directly to Cabinet and not via Cabinet Subcommittees, but the decisions will then follow the same format. There will have to be a proper Cabinet memorandum that states the recommendations and then Cabinet approves those recommendations and the Cabinet minutes will  
20 then indicate that the following decisions which are recommendations have been approved by Cabinet.

**ADV HOFMEYR:** Thank you and then just back to your experience of Cabinet meetings. What is the source of that experience and how long did it last for?

**MR MASEKO:** Well my experience in - in - you - you assume the role

of CEO GCIS and automatically you become Cabinet Spokesperson and then you - you sit in - in those Cabinet meetings but because you need to be informed in great detail about the contents of Cabinet decisions. I made it my duty to also attend as many of the Cabinet Subcommittee meetings as possible, because in - in many of those policy issues Cabinet does not have time to go through detailed discussions on each and every issue.

So the debates actually take place in the Cabinet Subcommittee meetings. So I sat in those Cabinet Subcommittee meetings so that by the time a decision is taken at Cabinet and I am expected to announce and tell the public what Cabinet has decided. I would have had insight into the real reason why such a decision would have - would have been taken.

So I received files of all meetings - Cabinet Subcommittee meetings in advance and I would receive files of all Cabinet meetings in advance so that I - I get ready for - for those particular meetings. So that is how the process worked.

**ADV HOFMEYR:** Mr Maseko in the last moments of your testimony you said you had received all files of Cabinet meetings. I suspect you might have meant to say memoranda. Is that right?

**MR MASEKO:** Well by files I mean - yes. All the Cabinet memorandum that would have been submitted to Cabinet.

**ADV HOFMEYR:** And would you receive those memoranda ...

**CHAIRPERSON:** Sorry.

**ADV HOFMEYR:** Apologies.

**CHAIRPERSON:** Try as far as possible Mr Maseko to face this side as you answer the questions.

**MR MASEKO:** Oh. Apologies.

**CHAIRPERSON:** I know that the - the tendency is to look at the person who is asking you questions.

**MR MASEKO:** My apologies sir.

**CHAIRPERSON:** *Ja.* Okay. Thank you.

**ADV HOFMEYR:** Thank you Chair. Mr Maseko would you as spokesperson for Cabinet in your role as DG of GCIS be provided with  
10 the Cabinet memoranda prior to a Cabinet meeting?

**MR MASEKO:** As Cabinet Spokesperson Chairperson I received the files the same time as all Ministers receive. So all the Cabinet memoranda that would be appearing at the Cabinet meeting I will receive them and usually if the Cabinet meeting is on a Wednesday the files are distributed by Monday afternoon so that we all have a full day to engage with all the matters.

So short answer to your question. That is correct. I do receive the files in advance.

**ADV HOFMEYR:** Thank you. Chair I will move in a moment to the  
20 evidence that the Commission has managed to obtain in relation to the particular meeting on 2 February 2011 when the transfers of Mr Maseko and Mr Manyi were discussed, but in advance of doing that and just to get the benefit of Mr Maseko's experience on this matter.

I beg leave to hand up a pre-declassified Cabinet minute that has come before the Commission in other evidence. It was in fact the

evidence of Minister Gordhan.

**CHAIRPERSON:** Yes.

**ADV HOFMEYR:** It comes from his supplementary bundle which was EXHIBIT M2. We have not included it in these bundles because it actually lives elsewhere in the records of the Commission ...

**CHAIRPERSON:** Yes.

**ADV HOFMEYR:** But it is an example of a declassified Cabinet minute that I would like to ask Mr Maseko's assistance on, because his testimony until this point has indicated to us a particular procedure for  
10 what is then noted in the minutes and I would like to ask him to comment on this particular minute with that background.

**CHAIRPERSON:** Yes.

**ADV HOFMEYR:** So if I may hand that up.

**CHAIRPERSON:** That is fine.

**ADV HOFMEYR:** We will also make one available to the witness.

**MR MASEKO:** Thank you. I have got it.

**ADV HOFMEYR:** Thank you.

**CHAIRPERSON:** Yes. Thank you Ms Hofmeyr.

**ADV HOFMEYR:** Thank you Chair. So just for the record purposes this  
20 is an extract of pages 59 and 60 of EXHIBIT M for mother two which was Minister Gordhan's supplementary bundle and it is as I understand from his evidence a declassified Cabinet minute of the meeting of 31 August 2016. Mr Maseko is this type of document familiar to you?

**MR MASEKO:** This - this is the format. Yes. That was used when I was there.



used is either approved or resolved, but that is where it says these matters were decided upon.

**ADV HOFMEYR:** Thank you. So if you could read into the record what Cabinet approved under 5.3 as it is recorded there?

**MR MASEKO:** Well this minute says:

“Cabinet approved the appointment of a permanent Board comprising of the - of the following people.”

This is appointment of the Board of the South African Airways. Do I need to read the names or not necessary?

10 **ADV HOFMEYR:** No. That is not necessary. Just the essence of the decision.

**MR MASEKO:** *Ja.* So we can also move on. It approved that the person by the name of Ms D Myeni be reappointed as Chairperson of the Board for the following period. It then approved that a - a certain Ms Ramasia be appointed as Deputy Chairman - Chairperson and then it says:

20 “Noted that the new Board will be tasked to work on measures to be implemented with a view to placing SAA in a stronger position in terms of governance and improving the likelihood of possible financial recovery and approve that Cabinet be briefed in due course.”

**ADV HOFMEYR:** Thank you and if you will return to paginated page 59. That is the first page of the document handed up to you. Can you please tell us about what appears as a heading at paragraph 5.3 and

then what is indicated below that heading?

**MR MASEKO**: Okay. Are we back to annexure ...?

**ADV HOFMEYR**: We back to the document you were working on. Just the first page of it. Sorry. The one that was handed up.

**CHAIRPERSON**: The Cabinet document.

**ADV HOFMEYR**: The Cabinet memorandum.

**MR MASEKO**: Oh. *Ja*, the very same. Okay. Thank you.

**ADV HOFMEYR**: Indeed. I have taken you back a page.

**MR MASEKO**: Okay.

10 **ADV HOFMEYR**: What I am interested in now is your assistance with the heading that appears at paragraph 5.3 ...

**MR MASEKO**: *Ja*.

**ADV HOFMEYR**: And then your assistance in understanding what is reflected in brackets after that heading immediately below it.

**MR MASEKO**: Okay. The heading say "Appointment and Reappointment of Directors to the Board of SAA."

**ADV HOFMEYR**: And then the small text beneath that in brackets.

**MR MASEKO**: Right at the bottom?

**ADV HOFMEYR**: No. Just under the heading.

20 **MR MASEKO**: Oh. It says:

"Cabinet memorandum number five of 2016. Dated 24 August 2016. File number M2135. Minister of Finance referred to item of minutes dated 22 October 2014."

**ADV HOFMEYR**: And assist us with what that means please.

**MR MASEKO:** This basically is an attempt to make sure that there is proper cross-referencing. So if a decision is taken today whoever is reading these minutes must know that there is relevant information that is contained in - in a different - minutes of a different meeting.

**CHAIRPERSON:** So would it be correct to say that the - the fine print under the heading is simply to tell the reader where to find more information about this issue?

**MR MASEKO:** That is correct Chair.

**CHAIRPERSON:** Okay.

10 **ADV HOFMEYR:** And is the reference to Cabinet memorandum there is that related to your earlier testimony. The memorandum that would have preceded the decision that was being sought from Cabinet?

**MR MASEKO:** I think so Chair. That would be the relevant and if I am looking at the dates 24 August and this minute is referring to 31 August. So what that would mean is that the Cabinet memoranda was tabled at a Cabinet Subcommittee which took place on the 24<sup>th</sup> and the matter is now coming to Cabinet for a decision on 31 August 2016.

**ADV HOFMEYR:** And then that reference to the previous minutes as I understand it is so that the reader can locate a relevant other meeting -  
20 minutes of meeting that related to this topic. Is that correct?

**MR MASEKO:** That is correct Chair. So my reading of this is that matter would have served at a Cabinet meeting - again at a Cabinet meeting. August, October. *Ja. Ja.* So it had referred to another discussion that took place at the meeting of 22 October 2014.

**ADV HOFMEYR:** Thank you.

**CHAIRPERSON:** The date of the 31<sup>st</sup> - I see we have three mics  
Ms Hofmeyr.

**ADV HOFMEYR:** Apologies.

**CHAIRPERSON:** The date of 31 August 2016 which appears at the top  
would that represent the date of the meeting to which these minutes  
relate?

**MR MASEKO:** Yes Chair. I am seeing this for the first time, but I think  
that is how ...

**CHAIRPERSON:** Yes.

10 **MR MASEKO:** Remembering the format then.

**CHAIRPERSON:** Yes. The format. *Ja*.

**MR MASEKO:** I think the date at the top would be date of a Cabinet  
meeting.

**CHAIRPERSON:** Yes.

**MR MASEKO:** The 24<sup>th</sup> would have referred to the date of a Cabinet  
Subcommittee meeting where this matter was served ...

**CHAIRPERSON:** Yes.

**MR MASEKO:** Before it appeared on the agenda of the meeting of the -  
of the 31<sup>st</sup>.

20 **CHAIRPERSON:** Yes.

**MR MASEKO:** Then in that paragraph with the small letters ...

**CHAIRPERSON:** Hm.

**MR MASEKO:** Referring to a meeting of 22 October 2014 that means  
that the matter would have served at a Cabinet meeting almost two  
years prior to this particular meeting and that that meeting would have

taken decisions and given instructions to Minister of Finance to do what is contained in this memorandum.

**CHAIRPERSON:** Yes. No. Thank you.

**ADV HOFMEYR:** And then one final follow up in relation to that small text. It appears that the memorandum is given a number. Is that something you can assist us with?

**MR MASEKO:** That is correct Chairperson. Every Cabinet memorandum is given a - a number and a date and - so that there's proper reference in the future.

10 **ADV HOFMEYR:** Mr Maseko if we can ask you to cast your mind back to the meeting of 2 February 2011 at which the announcement was made of your transfer. Were you provided with a Cabinet memorandum in relation to your transfer or the transfer of Mr Manyi in advance of that meeting?

**MR MASEKO:** No sir and I - I never saw any of those Cabinet memos.

**ADV HOFMEYR:** Chair the Commission has undertaken various investigations in the light of Mr Maseko and Mr Zuma's evidence about the decision to transfer Mr Maseko and Mr Manyi. It culminated in confirmation last evening from the Office of the Presidency that the  
20 Cabinet minutes for 2 February 2011 have been considered and there is no reference anywhere in those minutes to the transfers of Mr Maseko or Mr Manyi.

Chair it is in a slightly different category to the documents we are waiting for from the DPSA, because if I can just give a little bit of background to the process. As you would have seen and Mr Maseko

you can see on the page that I have handed up. In order for Cabinet minutes to be provided to the Commission they must be declassified.

You will see that there is a stamp on page 59 in front of us which bears a stamp indicating declassified. So there is a process that the Commission engages in - in order to have Cabinet minutes declassified and part of that process is to identify the particular aspect of the minute in respect of which declassification is sought.

So those were the extent of the engagements with the Office of the Presidency and as recently as last night the upshot of their  
10 inquiries into this matter is that there is no document to declassify because the minutes of 2 February 2011 do not contain any item recording a decision of Cabinet about the transfers of Mr Maseko and Mr Manyi. Now it happened as recently as last night.

The Office of the Presidency was informed last night that I would make this indication today publically in the hearing and they have been requested to provide an affidavit to the Commission confirming these facts, but given their relevance to the evidence of Mr Maseko we indicated to the Office that we would disclose today what their investigations had revealed about those minutes and so I do so  
20 for the purposes of the record and also to be able now to ask Mr Maseko certain further questions about that meeting.

**CHAIRPERSON:** So what you have been told by the Presidency is that they have looked at the minutes or documents which would contain any Cabinet decision if there was any relating to Mr Maseko's transfer from GCIS to DPSSA on or about 3 February 2011 and ...

**ADV HOFMEYR:** Yes Chair. 2 February was the date of the meeting.

**CHAIRPERSON:** 2 February?

**ADV HOFMEYR:** Yes.

**CHAIRPERSON:** And they have found nothing reflecting such a decision?

**ADV HOFMEYR:** Indeed.

**CHAIRPERSON:** Yes. Okay.

**ADV HOFMEYR:** Indeed and such to be absolutely clear it was a request that they source the minutes ...

10 **CHAIRPERSON:** Yes.

**ADV HOFMEYR:** Of the 2<sup>nd</sup> - the document akin to the document we are looking at.

**CHAIRPERSON:** Yes.

**ADV HOFMEYR:** For the Cabinet meeting on 2 February ...

**CHAIRPERSON:** Yes.

**ADV HOFMEYR:** And to declassify any aspect of those minutes which disclosed a decision of Cabinet ...

**CHAIRPERSON:** Yes.

**ADV HOFMEYR:** And indeed we went broader any reference at all ...

20 **CHAIRPERSON:** Yes.

**ADV HOFMEYR:** To the transfers of Mr Maseko and Mr Manyi ...

**CHAIRPERSON:** Yes.

**ADV HOFMEYR:** And the information we have been given is that that does not appear ...

**CHAIRPERSON:** Yes.

**ADV HOFMEYR:** On the minutes of 2 February 2011 ...

**CHAIRPERSON:** Yes.

**ADV HOFMEYR:** And there will be an affidavit provided to the Commission to that effect.

**CHAIRPERSON:** Okay.

**ADV HOFMEYR:** Hopefully in the course of today.

**CHAIRPERSON:** Okay.

**ADV HOFMEYR:** So if I may just come back then Mr Maseko to Mr Zuma's evidence, because Mr Zuma's evidence was that Cabinet  
10 takes the decision to transfer DGs and in particular in relation to you his evidence was we take the decision. Chair it - it may just be pertinent. It - I referenced it earlier.

It is at page 28 of the transcript of Mr Zuma's evidence on 16 July and it is there that Mr Zuma on the transcript is reflected to have said in the context of a series of discussions from my learned friend - Mr Pretorius - about this very transfer of Mr Maseko from GCIS to DPSA and Mr Zuma about line eight on that page says:

“...and then the Cabinet will - we take the decision.”

Mr Maseko ...

20 **CHAIRPERSON:** Yes.

**ADV HOFMEYR:** In relation to 2 July - 2 February 2011 Cabinet meeting were you in attendance for that meeting?

**MR MASEKO:** Yes Chairperson. I was - I was present in the meeting.

**ADV HOFMEYR:** Do you record - recall Cabinet taking any decision in relation to your transfer or Mr Manyi's transfer on that day?

**MR MASEKO:** Chairperson what transpired on that day is that an announcement was made at the Cabinet meeting by Minister Chabane. There was no discussion or decision and it was done right at the end of the meeting. As - as one of the announcements. That is when President Zuma request - informed Cabinet and request Minister Chabane to make an announcement, but I was at the meeting. There was no discussion. It was simply an announcement.

**CHAIRPERSON:** Okay.

**ADV HOFMEYR:** Thank you.

10 **CHAIRPERSON:** Just to go back to a question that I think Ms Hofmeyr asked you but I want to make sure I understand. You will - you said that you would receive the memoranda or documentation that Ministers would receive ahead of a particular Cabinet meeting being documents that they must consider in preparation for the meeting ...

**MR MASEKO:** That is correct sir.

**CHAIRPERSON:** And in regard to the meeting of 2 February 2011 did you receive any documents at all ahead of that Cabinet meeting that related to issues that would be discussed at that meeting?

**MR MASEKO:** That is correct sir.

20 **CHAIRPERSON:** Was there any document among the documents that you received ahead of that meeting that related to your transfer or Mr Manyi's transfer?

**MR MASEKO:** There was no such document.

**CHAIRPERSON:** Okay. Thank you.

**ADV HOFMEYR:** Mr Maseko if we can then go to the next aspect of

Mr Zuma's evidence on which I would like your comment. Mr Zuma said in the transcript of 16 July 2019 and for the record the references are at pages 26, 50, 51 and 52. He said that there was shifting around of Director-Generals at the time of the meeting of 2 February 2011.

Can you assist us on that at all? Are you aware of Director-Generals generally have been shifted around at that period in time?

**MR MASEKO**: There may have been cases of Director-Generals being moved around, but I am not aware of a general situation where people were moved from one department to - to another, but as I say I cannot  
10 give a definitive answer to say there were no movements around at the time, but *ja*.

**ADV HOFMEYR**: On 2 February is it correct that there were at least two moves of Director-Generals?

**MR MASEKO**: I subsequently became aware that there were two moves of Director-Generals. Yes.

**ADV HOFMEYR**: And that was who?

**MR MASEKO**: That was my - myself and Mr Manyi.

**ADV HOFMEYR**: Thank you. Mr Maseko are you aware of the evidence that has been presented to the Commission since the evidence of  
20 Mr Zuma of Mr Simons and Mr Hlongwane?

**MR MASEKO**: Chairperson I am aware that there were subsequent - *ja* - submissions by those two gentlemen.

**ADV HOFMEYR**: Thank you. That related to the question of whether Mr Zuma had according to your original evidence contacted Mr - Minister Chabane when he was abroad. Can you take us through what

the source of your information is in relation to the contact between Mr Zuma and Minister Chabane?

**MR MASEKO:** Well my information came directly from Minister Chabane who was my supervisor at the time and that is via a call that I mention in my affidavit. When he requested a meeting - an urgent meeting. It was on - on the Sunday. He said we need to meet urgently on the Monday morning.

He did not divulge the purpose of the - of the meeting, but we agreed to meet and we did meet the following Monday 8 o' clock was  
10 the time and in that meeting that is when he told me that he had received a call from President Zuma who told him that I needed to be moved from GCIS. He - he was quite specific.

He says he had received a call from the President and the message from the call was that by the time the President comes back into the country I should not be the CO of GCIS. So that is why the matter needed to be resolved as speedily as possible. So I can end there just to answer your question how did I know.

**ADV HOFMEYR:** Thank you for that. Mr ...

**CHAIRPERSON:** Did you - I am sorry. Did - did you remember whether  
20 he - that is Mr Chabane - said to you that when the former President called to talk to him about this issue. He was furious. I - I seem to have picked that up from somewhere, but I want to clear that. Is - is that something that ...?

**MR MASEKO:** Chairperson, can I ask you a question? Who was furious? Mr Chabane or the President.

**CHAIRPERSON**: The former President.

**MR MASEKO**: Oh, the former President.

**CHAIRPERSON**: Hm. I sort of ...

**MR MASEKO**: I - I got a sense from Minister Chabane that the - the President had not given him - him an option. He needed to implement the decision to - to move me from GCIS.

**CHAIRPERSON**: Yes.

**MR MASEKO**: The only emotion I could relate to was on Mr Chabane's part that he seemed to be disappoint - disappointed ...

10 **CHAIRPERSON**: Yes.

**MR MASEKO**: by the instruction that he had ...

**CHAIRPERSON**: Yes.

**MR MASEKO**: Received, but nonetheless he had to implement it.

**CHAIRPERSON**: Yes. So - so it would have - I would not have seen it in your evidence if I saw anything along those lines?

**MR MASEKO**: No Chairperson. It would not be.

**CHAIRPERSON**: Oh, okay.

**MR MASEKO**: No.

20 **CHAIRPERSON**: So - so the only emotion as you say was that you - you could tell that Mr Chabane was disappointed about that turn of events?

**MR MASEKO**: That is correct Chair.

**CHAIRPERSON**: Okay. Alright. Thank you.

**ADV HOFMEYR**: Just as you have been engaging with Mr Maseko. I have cast my eye over Mr Maseko's previous affidavit. I do not an

indication there.

**CHAIRPERSON:** Yes.

**ADV HOFMEYR:** Just so that we know.

**CHAIRPERSON:** I must - yes. I must just check where I may have ...

**ADV HOFMEYR:** Where it comes from?

**CHAIRPERSON:** I may have misunderstood some evidence ...

**ADV HOFMEYR:** Indeed.

**CHAIRPERSON:** But it is important that it be cleared.

**ADV HOFMEYR:** Thank you. Mr Maseko if we can then deal just a  
10 little bit more with dates, because over the course of the next two days  
it is going to become clear how important accuracy about dates around  
this time is. I understand your testimony a moment or so ago to be that  
you received a call from Minister Chabane to schedule a meeting and I  
understand your evidence to be you met the next date at 08:00 am on  
the Monday. Is that correct?

**MR MASEKO:** That is correct.

**ADV HOFMEYR:** When then did you receive the call?

**MR MASEKO:** I - the call from - I received the call from  
Minister Chabane the Sunday afternoon prior to the Monday.

20 **ADV HOFMEYR:** Thank you and just so that we can the dates right.  
The Sunday that preceded the Cabinet meeting on 2 February was  
Sunday 30 January. Is that the date you are saying on which you were  
called?

**MR MASEKO:** That is correct Chairperson.

**ADV HOFMEYR:** Then you met on Monday. That would be 31 January.

Is that correct?

**MR MASEKO**: That is correct.

**ADV HOFMEYR**: And the Cabinet meeting that we have been discussing was the Wednesday - 2 February. Is that correct?

**MR MASEKO**: That is correct Chairperson.

**ADV HOFMEYR**: Thank you.

**CHAIRPERSON**: Did you get an understanding from Mr Chabane as to when he had received the call for - from the former President? Whether he had received it the same day or the day before or is that  
10 something that you did not gather?

**MR MASEKO**: Chair, I - I tried to remember the conversation. We - we did not seem to have discussed when exactly he received the call ...

**CHAIRPERSON**: Yes.

**MR MASEKO**: From President Zuma, but ...

**CHAIRPERSON**: Yes.

**MR MASEKO**: When we were having the discussion it became clear that the call had been made recently, it had been the Saturday, the Friday, it was Sunday ...[intervenes]

**CHAIRPERSON**: *Ja*, it was some day before.

20 **MR MASEKO**: But it was new information. And I am saying that because I don't think the Minister would have sat with such information, if he had the information for longer than a week.

**CHAIRPERSON**: Yes, I guess especially if the instruction was act urgently.

**MR MASEKO**: Yes.

**CHAIRPERSON:** On this matter.

**MR MASEKO:** That is correct.

**CHAIRPERSON:** Okay, thank you.

**ADV HOFMEYR:** Chair it is relevant at this point to again alert you to further investigations that have been done on related matters and that is insofar as Mr Zuma's travel around this period is concerned, but before I go there Mr Maseko just remind us again if you will, what was said by Minister Chabane about the whereabouts of Mr Zuma as he relayed his conversation with Mr Zuma to you?

10 **MR MASEKO:** He informed me that the former President was at a summit, an African Union Heads of State Summit in Addis Ababa and he was coming back I think the Monday the 31<sup>st</sup> or the 1<sup>st</sup> but he was on his way back from the Summit.

**ADV HOFMEYR:** And that Cabinet meeting of the 2<sup>nd</sup> of February had that been scheduled for some time.

**MR MASEKO:** That was a normal cabinet meeting scheduled yes.

**ADV HOFMEYR:** Thank you.

**CHAIRPERSON:** There would normally be a cabinet meeting every Wednesday, is that right?

20 **MR MASEKO:** No, no cabinet meetings are taking place fortnightly, but there's a schedule of cabinet meetings or a full year, so there's a calendar.

**CHAIRPERSON:** And when they do take place it's normally on a Wednesday.

**MR MASEKO:** It's normally on a Wednesday yes.

**CHAIRPERSON:** Okay, alright.

**ADV HOFMEYR:** There is an affidavit that has been obtained from an official within the employ of the Department of Home Affairs about the travel of Mr Zuma over this period. You will find it in EXHIBIT NN5 and it commences at page 158. Chair this is an affidavit that we submit should be provisionally received as evidence in the Commission, we're not aware of anything contentious in it, of course that decision can be revisited in due course, but it is an affidavit that has been produced pursuant to the Commission seeking to establish the travel  
10 movements of Mr Zuma and others who may have been travelling with him.

Chair I don't think it is necessary to go to the detail of the affidavit except to indicate that there appears to have been an error in the departmental records. The error is as follows, it shows, the records show that Mr Zuma arrived at Waterkloof Airbase on the 25<sup>th</sup> of January 2011 and then arrived again at the Waterkloof Airbase on the 1<sup>st</sup> of February 2011, that was further interrogated and the upshot of Mr Gelderblom's affidavit which commences at page 58 is that that does appear to have been an error in the records and what he confirms is  
20 that it appears that there was a flight out on the 25<sup>th</sup> of January 2011, it was a flight departing from South Africa headed to Switzerland and then the next record in the department of Home Affairs records is a return flight on the 1<sup>st</sup> of February 2011 which as we have Mr Maseko's evidence is the day before the scheduled cabinet meeting.

So that gives us some guidance as to timeframes, at least

insofar as Mr Maseko's evidence is concerned as well as the evidence of Mr Simons and Mr Shlongwane.

**CHAIRPERSON:** No that affidavit will be admitted and obviously if anybody including the former President wishes to challenge it they may do so, but I think it is highly unlikely that there will be a dispute about when he may have left South Africa and when he may have come back around that time.

**ADV HOFMEYR:** Thank you Chair. Mr Maseko I would then like to move to the next topic which is your exit from DPSA where you had  
10 been moved on the 2<sup>nd</sup> of February 2011. I am going to pick up a series of details about that insofar as you have been asked for your comment in response to the affidavit that was received from former Minister Baloyi, so please know I am going to come to all of that in due course but what I would like to focus on at the moment is what you were paid when you left DPSA, because it is a matter that comes up actually in your transcript with the Public Protector, you will see that that transcript has been included in EXHIBIT NN1, which is the exhibit containing your ...[intervenes]

**CHAIRPERSON:** Ms Hofmeyr I am sorry to interrupt you, please don't  
20 forget what you were dealing with, because you are moving to I think Mr Maseko's tenure at DPSA I just want to ...[intervenes]

**ADV HOFMEYR:** Indeed.

**CHAIRPERSON:** ...something of that which is ...[intervenes]

**ADV HOFMEYR:** Of course.

**CHAIRPERSON:** ...of that which is ...[indistinct] his transfer, I did

already ask you previous Mr Maseko about your performance and so on at the GCIS, transfers of Director General do you know under what circumstances they normally happened in terms of prescripts, legislation as the position was when you were CEO of GCIS?

**MR MASEKO:** Chairperson a number of reasons could exist for the transfer, and this could either be differences between an accounting officer and a minister, so DG and a Minister where they can't work together or secondly a preference by the Director General to request the transfer to another Department or a request from another Minister saying I need the skills in this particular Department and can the person be transferred, because if it's questions of poor performance that doesn't lead to a transfer, it should lead to a dismissal of a Director General so in the majority of cases that I am aware of in our government transfers normally happen when there is a dispute between the DG and the Minister, and Government – or there could be an agreement that in fact the Minister says that I can't work with this person, the Minister goes to the President, and then they reach agreement that okay you can't work with the person but the skill is still required in Government so the person doesn't need to be fired, so they find alternative placement, and I think there are quite a number of examples where that actually has happened.

**CHAIRPERSON:** So your understanding is that if a Minister is not happy with the performance of his or her Director General that is not – or at least during your time that was not treated as a ground for a transfer, there was a separate process in regard to that?

**MR MASEKO:** That's correct, that's my understanding.

**CHAIRPERSON:** And your experience was that transfers of Directors General from one department to another occurred when the Minister concerned and his or her Director General could not work together according to at least one of them and – or there was some dispute and then arrangements were made for the transfer of the Director General from that department to another department?

**MR MASEKO:** That's correct Chair and in my reading, if I can just beg indulgence here, in my reading of the topic some research has been  
10 done on this, a lot of those kinds of transfers tended to happen when there is a change of government in the sense there's a reshuffle or there's been new elections. In most of the cases we find a new Minister coming into a department and finding that they don't want to work with this Director General or they prefer another person to work in that particular department so a lot of the transfers would be linked very closely to changes in the administration on the part of the Ministers, where Ministers feel they want their own Director General to be appointed.

**CHAIRPERSON:** Yes now in the case of any allegations of misconduct  
20 could that be a ground for the transfer of a Director General as far as you know in terms of practices at the time.

**MR MASEKO:** If there is a case of misconduct there would have to be a process where there is an investigation of the matter, which could lead to either a suspension of a Director General but ordinarily it would not be a cause or a reason to transfer, because then that could be –

the misconduct could be so serious that it is a reason to dismiss, not to transfer to another department.

**CHAIRPERSON:** Yes, you see I ask these questions because as you will appreciate and Ms Hofmeyr knows we have to see exactly what the reason was for your transfer, you know we're trying to establish that, so you say in this case between yourself and Minister Chabane there was no dispute of any kind and the working relationship was find, is that your evidence?

**MR MASEKO:** My evidence Chairperson is that without any shed of a  
10 doubt there was no dispute between myself and Minister Chabane and that's why when I asked him the question why am I being moved from GCIS he could not give a reason except to say that it is the President's decision and his job as Minister is to implement the decision, so there is no written letter, no conversation between me and Mr Chabane to indicate his unhappiness about my role in the department.

**CHAIRPERSON:** Yes, and of course we now know based on the letter that – to which Ms Hofmeyr referred you that this would be the same Minister who a few months before your transfer had scored you 114% in terms of your performance assessments.

20 **MR MASEKO:** That's correct Chair.

**CHAIRPERSON:** So a few months before he was actually very happy with your performance.

**MR MASEKO:** That's correct Chairperson.

**CHAIRPERSON:** So based on what you know and what your relationship was with him could there be any basis why he may have

wanted you to be transferred from his department to another department.

**MR MASEKO:** As far as I am aware Chairperson Minister Chabane had no basis, had no reason or there was no incident that could have prompted him to decide that I should move and that is why he then, I think it is in my original affidavit where he made the point that instead of throwing me into the streets he would rather find an alternative post for me in government, because he knew that I had not done anything wrong, so it is an indication to me that there was no issue at all  
10 between the two of us.

**CHAIRPERSON:** Yes thank you. Ms Hofmeyr?

**ADV HOFMEYR:** Thank you Chair. I note that we are at the usual time for the scheduled break and I was moving to another topic so if it is convenient to take the tea adjournment now.

**CHAIRPERSON:** Yes, let's take the tea adjournment now, it's about 19 minutes past, twenty past, we will resume at twenty to twelve.

We adjourn.

**REGISTRAR:** All rise.

**INQUIRY ADJOURNS**

20 **INQUIRY RESUMES**

**CHAIRPERSON:** Yes Ms Hofmeyr?

**ADV HOFMEYR:** Thank you Chair. Mr Maseko before the break I indicated that I was going to move to the new topic of your exit from the Department of Public Service and Administration. Can you just refresh our memories about when you moved to the Department, when

was that?

**MR MASEKO:** That was in February of 2011.

**ADV HOFMEYR:** And for how long did you remain in the department.

**MR MASEKO:** I think it's five months.

**ADV HOFMEYR:** So when did you exit?

**MR MASEKO:** July 2011.

**ADV HOFMEYR:** Thank you. I referred before the break to a transcript of a meeting that was held between yourself and the Public Protector and I indicated that that had been included in your bundle. I  
10 would like to pick up that transcript at page 53, 53, that's of the paginated pages that appear in the top right hand corner, and that's of EXHIBIT NN1.

**MR MASEKO:** Okay.

**ADV HOFMEYR:** And perhaps in fact if we can go back one page to page 52, because Chair over the break Mr Maseko's legal representative drew my attention to something that may well have been what you were thinking about earlier when you made reference to somebody being extremely angry.

**CHAIRPERSON:** Furious.

20 **ADV HOFMEYR:** Furious, indeed, well it may be that it was the reference in this transcript to what Mr Maseko had said at page 52, Mr Maseko can you confirm what this document is that we are looking at?

**MR MASEKO:** So we're talking about NN152.

**ADV HOFMEYR:** Indeed and it comments, if you would like to just go there at page 33, of EXHIBIT NN1.

**MR MASEKO:** Chairperson that is the transcript of the interview I had with the Public Protector on the 17<sup>th</sup> of August 2016.

**ADV HOFMEYR:** And then if you go to page 52.

**MR MASEKO:** I've got it.

**ADV HOFMEYR:** There's a question there about four lines down, that reads:

“Okay and then you became DG of public ...”

And then the transcript reflects you add:

“...of Public Service and Administration.”

10 You are asked for how long and then if you can read into the record what you are reflected as having said then.

**MR MASEKO:** In the record it says for three months.

**ADV HOFMEYR:** Based on your evidence is that accurate?

**MR MASEKO:** That's not accurate Chairperson, I think I meant five months it should be.

**ADV HOFMEYR:** Thank you and then what do you go on to say?

**MR MASEKO:** I go on to say now there it was impossible to stay because Minister Baloyi was extremely angry that I was imposed on him, and that nobody spoke to him, nobody conferred with him, weren't  
20 included in the statement, in the cabinet statement that is, that I issued that day to say I am no longer CO of GCIS, I am now DG of DPSA so he heard it from me for the first time.

**CHAIRPERSON:** Oh, so that might well be ...[intervenes]

**ADV HOFMEYR:** That might have been indeed.

**CHAIRPERSON:** Okay thank you very much for that.

**ADV HOFMEYR:** Chair we may, and Mr Maseko we will go to your interactions with Mr Baloyi in a moment but the point I am focusing on now you will find over the page at page 53, that's where you engage, as I read this transcript, in a discussion about what you were paid when you left DPSA. Can you please tell us first of all what is reflected in the transcript about what you said?

**MR MASEKO:** The transcripts reflects that I was paid – it came to R1.7million before tax.

**ADV HOFMEYR:** Is that at line 13.

10 **MR MASEKO:** That's at line 13, that's correct.

**ADV HOFMEYR:** And is that correct that you were paid R1.7million?

**MR MASEKO:** That's not correct Chairperson, the correct amount is what is reflected in what was actually paid by DPSA records.

**ADV HOFMEYR:** And why do you think you made that error?

**MR MASEKO:** Chairperson it was a bit complex, I got a call from the Public Protector's office to say that seeing what I said in the media about the Gupta Family and they wanted to talk to me about it, I asked for more details and I asked them if I needed to bring a lawyer, they said no you don't need a lawyer, we want to just come and interview  
20 you, so it was very stressful, so when they asked me a question about how much was the package I mentioned the R1.7million, that is the amount that when I was removed from GCIS I consulted with a labour consultant who informed and agreed with me that in fact the way I was removed from GCIS amounted to gross unfair labour practice, and that I could sue the State for unfair dismissal and also include damages

because of the way t he matter had actually unfolded and we were in agreement that my claim would be somewhere around this amount of R1.7million, so when the question came during the interview the Public Protector that's the figure that came to mind but the amount we eventually settled was somewhere around R1.1million when I exited in July, but I just want to draw the Commission's attention to the fact that that amount was referring to the period if I had left the Public Service in February, this is the amount we could have claimed, but for the record yes I submit that in fact the correct is what is reflected in the

10 DPISA numbers.

**ADV HOFMEYR:** If we can then take you to your affidavit in response to questions from the Commission about this aspect, and you will find that in MN1 at page 2.

**MR MASEKO:** Okay.

**ADV HOFMEYR:** I would like to pick it up at paragraph 1.3 because there you talk about a meeting between – that was held on the 15<sup>th</sup> of June 2011, who was that meeting between?

**MR MASEKO:** That was a meeting I had with Minister Baloyi who was Minister of DPISA at that time.

20 **ADV HOFMEYR:** And what was the subject matter of the meeting?

**MR MASEKO:** The purpose of the meeting was basically to discuss my exit, my departure from DPISA. The subject of the meeting was that look I had come to the conclusion that things were not working out at DPISA and the Minister and I were in agreement that in fact the situation was less than desirable and it was the right thing to discuss

options to exit the Public Service.

**ADV HOFMEYR:** Mr Maseko when the Commission received this affidavit it engaged in correspondence with you because it appeared that some of the annexures to the affidavit had been incorrectly named, can you confirm that that is correct?

**MR MASEKO:** That is correct Chairperson.

**ADV HOFMEYR:** I would then like you to move to page 8.1 of EXHIBIT NN1.

**CHAIRPERSON:** What page again?

10 **ADV HOFMEYR:** 8.1 Chair, it's the first page after the affidavit actually concludes.

**CHAIRPERSON:** Okay, thank you.

**ADV HOFMEYR:** What is that document?

**MR MASEKO:** This – okay 8.1?

**ADV HOFMEYR:** Yes.

**MR MASEKO:** That is the letter I wrote to Minister Baloyi basically confirming the proposal or the agreement we had reached that my contract should be re-determined.

20 **ADV HOFMEYR:** Can you just explain to us what redetermination of a contract means?

**MR MASEKO:** It's a should I say a typical term used in government, if a DG departs from their position ahead of the end of their contract, it's a term we use to refer to early termination of a contract, so at the meeting on the 15<sup>th</sup> we had agreed that in fact I would be leaving the Public Service.

**CHAIRPERSON:** So it's basically a fresh determination of the period of the contract?

**MR MASEKO:** Well it amounts to that yes.

**CHAIRPERSON:** It amounts to that. Initially when the contract was concluded the period may have been three years or five years, when you talk about re-determining the contract you are actually looking at saying let's change the period of that contract.

**MR MASEKO:** *Ja.*

**CHAIRPERSON:** *Ja,okay*

10 **MR MASEKO:** That's correct.

**ADV HOFMEYR:** And if you then go over two pages to page 9, can you please identify what that document is?

**MR MASEKO:** This is a document which was prepared by the Department of Public Service and Administration. It is a document addressed to me, which basically outlines the terms under which I would be exiting the Public Service. Its heading says re-determination of term of office of Director General, and it is directed to me so it outlines the process, the details of the settlement, termination date. It was signed by the Minister and I co-signed it to basically confirm that I  
20 am accepting this agreement to exit the Public Service.

**ADV HOFMEYR:** And can you please help us with paragraph 2, because paragraph 2 seems to talk about a calculation, what is that?

**MR MASEKO:** Well this paragraph basically is an extraction from the Public Service Act which talks about special service benefits that will be payable to me, that is a lump sum amount and this is – and then it

says how it will be calculated, it says for the first three months it will be 100% of your gross monthly remuneration and then the remainder which is nine months or part thereof it will be 80% of your gross monthly income, so this is extracted from the Public Service Act.

**ADV HOFMEYR:** Thank you and is that a standard calculation that is applied?

**MR MASEKO:** That is a standard calculation, when matters of re-determination are being considered.

**ADV HOFMEYR:** Thank you. You mentioned earlier in your testimony  
10 that your reference to 1.7million was in error, it was not the amount you were in fact paid, as I understand your testimony that was a reference to a figure you had in your mind because of discussion you'd had at the time of your move from GCIS and the possible claim you may have against the Department, is that correct Mr Maseko?

**MR MASEKO:** That is correct Chairperson.

**ADV HOFMEYR:** Your testimony was also that the final amount that was paid would be evidenced in the records of the Department, and so the Commission has taken steps to seek to acquire those. I would like you to turn to page 27, 27 of NN1.

20 **MR MASEKO:** Okay I'm there Chairperson.

**ADV HOFMEYR:** Have you seen this document before?

**MR MASEKO:** Yes I saw it.

**ADV HOFMEYR:** And what does this document reflect?

**MR MASEKO:** This document basically is a document originating from the personnel administration section of DPSA, it then outlines how the

payment will be made, it mentions my period of employment, and then it says the settlement will be as follows, for three months I will be paid 100% of my gross remuneration, which amount to R390 974 and for the eight months it will be 80% of my gross monthly remuneration which amount to R834 078 and translated as follows; All-inclusive salary package per annum was R1.4. 10% non-pensionable allowance for heads of departments R142 172.00. It then gives an instruction presumable this was to HR.

10                   “Please pay the lump sum minus the 9 days of  
                          overpayment before 31 August 2011.”

And the amount was R1.1 million.

**ADV HOFMEYR:** That is gross amount is it?

**MR MASEKO:** That is the gross amount before tax.

**ADV HOFMEYR:** And then if you go over the page do you – have you seen that document before?

**MR MASEKO:** Yes I have seen it Chairperson. So having received the instruction from HR the salary division then produces a payment slip and it shows the following figures, pay date. I do not need to go through all the details but essentially it says the net amount paid was  
20   R710 163.00. This was also after deductions. And it details what those deductions were.

**ADV HOFMEYR:** And Mr Maseko we understand your evidence that is a calculation based on a redetermination for the remaining period of your contract. When was your existing contract due to expire?

**MR MASEKO:** Okay. I have looked at too many numbers now. The – it

was meant to expire in 2012. Yes.

**ADV HOFMEYR:** Yes I do not think it is contentious as I have the date it is the 30 June 2012.

**MR MASEKO:** 2012 Yes.

**ADV HOFMEYR:** Does that accord with your recollection?

**MR MASEKO:** Ja.

**ADV HOFMEYR:** And so this calculation that was done was there anything unusual about it insofar as the amount that was paid to you?

**MR MASEKO:** Nothing unusual. The amount determined by the  
10 department and they had no say presumably over what the taxman  
decides to deduct. I still think the taxman over deducted. But I think  
what it shows is that in total the consolidated after all the deductions it  
came to R853 034.00.

**ADV HOFMEYR:** Thank you.

**MR MASEKO:** But those figures are not in dispute. They are correct.

**ADV HOFMEYR:** Thank you.

**CHAIRPERSON:** When you – when you say that payment of that  
amount was unusual as I understand your evidence do you mean that it  
was normal within the public service that when the contract of a  
20 Director General was being re-determined and he or she had to leave  
she would be paid in accordance with a certain formula and the  
payment would be taking into account among other things maybe that  
there was a period of her contract that she would ordinarily have been  
expected to work which she did not work and had to leave?

**MR MASEKO:** The – the formula is prescribed by the Public Service

Act and Regulations. So I would say the Minister of Public Service and Administration does not have much discretion especially in cases where there is an admission that in fact the procedures that were used to move you from one place to another were not proper – were not complied with. The fact that when I moved from GCIS to DPSA there was no formal contract that confirmed that I was now actually a DG at Public Service and Administration. So in fact as far as I am – I was aware the only document that was proof that I was DG of DPSA was the statement that I issued. But there was no formal contract that I signed  
10 with the Minister of Public Service and Administration.

**CHAIRPERSON:** I guess there would probably also have been a Presidential Minute or you are not sure about that?

**MR MASEKO:** I was not aware of a Presidential Minute.

**CHAIRPERSON:** Yes.

**MR MASEKO:** Until I have – I read the affidavit.

**CHAIRPERSON:** Yes.

**MR MASEKO:** By Minister Baloyi but at the time I was not aware of such.

**CHAIRPERSON:** Yes. Oh okay. Okay. So you – you were a DG with  
20 really no proof of being DG of the department?

**MR MASEKO:** That is why I think somewhere in one of the affidavits I do – in fact it was in the Public Service no – Public Protector's documents where I even used strong language to say even this payment was illegal because my move was not regularised. But when I look at the affidavit of Minister Baloyi or Mr Baloyi it does appear that

there was some regularisation of the process somewhere which was not brought to my attention.

**CHAIRPERSON:** But effectively at DPSA if any – if you said you were DG and somebody says prove it you would not know what to do – what to put up except the media statement?

**MR MASEKO:** I would have to produce my media statement.

**CHAIRPERSON:** Yes okay.

**ADV HOFMEYR:** Thank you. Mr Maseko I would then like to move to your responses to Mr Baloyi's affidavit if we may? Now you provided  
10 an affidavit to the commission with your responses and that you will find in Exhibit NN1 from page 13.

**MR MASEKO:** I got it.

**ADV HOFMEYR:** What I propose to do Mr Maseko is again as I did with Mr Zuma's evidence to take you to the – the nub of what appears to be the contention between Mr Baloyi and yourself insofar as your further evidence was concerned and then for us to ask you to assist us with your response? Mr Baloyi's evidence which is an affidavit which has been provided to you and on – in respect of which he will be giving oral  
20 evidence at the commission in due course says that before you were transferred out of GCIS and to DPSA he discussed that transfer with you and he obtained your consent. What is your response to that?

**MR MASEKO:** It – Chairperson my – beg for indulgence for two seconds just to go to ...

**CHAIRPERSON:** Yes.

**MR MASEKO:** Point 4 on page 14 of my affidavit.

**CHAIRPERSON**: Yes okay.

**MR MASEKO**: To just clarify one important point and that is ...

**CHAIRPERSON**: Yes.

**MR MASEKO**: That at no stage in my affidavits to the commission nor in my oral submission to yourself did I ever suggest that Mr Baloyi was involved in any instances of state capture or corruption. Because my reading of his affidavit there is suggesting or he got an impression that in fact I made such an accusation so I just wanted to bring that to your attention. But in response to your...

10 **CHAIRPERSON**: Well before that when I read that part of your affidavit I did not understand where it came from because I – I thought I did not see anything that may have given any impression that the commission was saying that is what you said about him. So I – but you are saying you got the impression from his affidavit?

**MR MASEKO**: From his affidavit.

**CHAIRPERSON**: That he seems to have got – that is what you said?

**MR MASEKO**: Yes that is correct.

**CHAIRPERSON**: And you wanted to clarify that you never said that?

**MR MASEKO**: Okay.

20 **CHAIRPERSON**: Okay.

**MR MASEKO**: Thank you. To respond – apologies for diversion. To – to respond to your question my answer is an emphatic no. That he – what Mr Baloyi says is not correct. Again it is important for me to recount how the process unfolded. We are sitting in a cabinet meeting. There is a news report that I have been fired. I check with my Minister.

The Minister checks with the President. The President confirms the move. Then the Minister then is asked to make an announcement that I am leaving GC – DP – GCIS and I am moving to DPSA. Unfortunately Minister Baloyi is not at the cabinet meeting and I am required to prepare a cabinet statement immediately after that meeting. So I call Mr Baloyi to say this is what has transpired and unfortunately I am your – fortunately or unfortunately I am your new DG and in that conversation he was surprised. So at no stage did I have a conversation with Minister Baloyi about my move from GCIS to DPSA  
10 until after that cabinet meeting.

**ADV HOFMEYR:** Thank you Mr Maseko. If I can just remind you to direct your answers to the Chair if I may?

**MR MASEKO:** My apologies Chairperson.

**ADV HOFMEYR:** But if I can just probe that a little bit further. I mentioned earlier that dates and timing are quite important. As I understand your evidence you were first contacted by Minister Chabane about the need to meet on Sunday the 30<sup>th</sup>, is that correct?

**MR MASEKO:** That is correct.

**ADV HOFMEYR:** And that was where he was relaying to you the – as  
20 our evidence has it the instruction from President Zuma that you must be removed, is that correct?

**MR MASEKO:** That is correct.

**ADV HOFMEYR:** Had you had any indication from Minister Chabane prior to that date that you would be removed?

**MR MASEKO:** Not prior to our meeting. When I had the meeting with

Minister Chabane on the 31<sup>st</sup> January he informed me about the call he had received from President Zuma. Then how we concluded that meeting Minister Chabane and I was that he was going to explore options for me to be appointed or transferred to as a DG because he was convinced that in fact I had not done anything wrong. In fact his words which are included in the transcript in the Public Protector and in my affidavit. He said he is not going to throw me into the streets because he knew that I had not done anything wrong. So he was going to find an alternative place. So between the 31<sup>st</sup> and the 2<sup>nd</sup> my – I had  
10 hoped that he was thinking about where to – to transfer me to and I had in principle you know considered that he was going to come back to me. So that is why when the news broke on Wednesday it was a bit of shock to both of us.

**ADV HOFMEYR:** Now Mr Baloyi's affidavit indicates that he met with you which I understand you to say did not take place. And furthermore to say that in that interaction you gave your consent to the transfer. What is your evidence on that?

**MR MASEKO:** My – my evidence Chairperson without any doubt is that there was no such a discussion. When – at the end of that cabinet  
20 meeting when the announcement was made when I called Minister Chabane – or Minister Baloyi or Mr Baloyi to inform him that in fact this is the outcome I will be announcing that I will – I was his new DG. He did express surprising shock because he says but nobody had consulted him, nobody had informed him about this but I said he should speak to Minister Chabane because I unfortunately have to make the

announcement and it would not be – well Minister Chabane did not want an announcement that says I have left GCIS but did not know what – where I was going. So – because it would have meant that announcement in cabinet would have amounted to a dismissal. So he did not want that to happen. So the announcement was made – there was not time. I mean the fact of the matter is that the reason why Mr Baloyi was not at the cabinet meeting was because he had other commitments. He may have been out of town I do not know. So there was no opportunity to have a meeting with Mr Baloyi before the cabinet  
10 statement was issued. So it – we are talking about a matter of hours here.

**CHAIRPERSON:** So – so you – you say

1. He was surprised that you are telling him that you were his new  
DG?

**MR MASEKO:** Yes he was, he was.

**CHAIRPERSON:** And he said nobody had consulted him about the issue of your transfer?

**MR MASEKO:** He said he was not consulted.

**CHAIRPERSON:** Now that is quite important and I just want you to be  
20 sure that your recollection is quite clear because in his evidence – in his affidavit and I am sure Ms Hofmeyr was going to deal with it. In his affidavit he says he had discussions with Minister Chabane before you were transferred. You – are you quite clear that he said he – nobody had consulted him?

**MR MASEKO:** Chair in my affidavit I do say that I cannot confirm

whether Mr Balyoi had a conversation with Mr Chabane.

**CHAIRPERSON:** Yes.

**MR MASEKO:** Because I was not privy to that, I was not aware.

**CHAIRPERSON:** Yes.

**MR MASEKO:** All I am aware of is that when Minister Chabane made the announcement at the cabinet meeting that I was going to be transferred to DPSA.

**CHAIRPERSON:** Hm.

**MR MASEKO:** The time was so tight that he had not even had the  
10 chance to come back to me and say, actually I am moving you to DPSA.

**CHAIRPERSON:** Hm.

**MR MASEKO:** That is how tight the time frames were.

**CHAIRPERSON:** Hm.

**MR MASEKO:** So it is possible that they might have had discussions.

**CHAIRPERSON:** Hm.

**MR MASEKO:** The three – as three Ministers it is possible that maybe  
Minister Baloyi expected further discussions. But if we had been – we  
had discussed the matter if we had consulted, if I had agreed to it as  
DG there would not be a need why a cabinet memorandum was not  
20 produced. So that the matter is formalised in the cabinet meeting.

**CHAIRPERSON:** Hm.

**MR MASEKO:** So the reason why there was no cabinet memorandum is  
because Minister – Mr Chabane was trying to manage a very complex  
situation which was announcing that somebody is moving from this post  
but not knowing where to take them to. So DPSA became the option

that he – he thought would work the best.

**CHAIRPERSON:** Hm.

**MR MASEKO:** So whether they had had discussions prior to the cabinet meeting I cannot confirm.

**CHAIRPERSON:** Hm. So you – you do not know whether Mr Baloyi had had a meeting – had had a discussion with Mr Chabane about your transfer but what you do know is that he seemed surprised when you told him you were his new DG and you say he did say to you nobody had consulted him?

10 **MR MASEKO:** Yes.

**CHAIRPERSON:** Yes.

**MR MASEKO:** I am absolutely certain about that.

**CHAIRPERSON:** Yes. Okay. Thank you.

**ADV HOFMEYR:** Thank you. If we can then go back to what I understand your evidence to be about the first time you were alerted to the need to remove you from GCIS. Just to be clear that was in the meeting on the morning of Monday the 31<sup>st</sup> January, is that right?

**MR MASEKO:** That is correct.

20 **ADV HOFMEYR:** The cabinet meeting is Wednesday of that week, the 2<sup>nd</sup> February, correct?

**MR MASEKO:** That is correct.

**ADV HOFMEYR:** Can you tell us about your movements over those days because I am trying to establish whether there was space for meetings or otherwise with Mr Baloyi in that period?

**MR MASEKO:** I tried to Chairperson tried to retrieve my – my diary

from GCIS but it was – it was a – no longer available because of the passage of time. But I can assure you that the period between a Monday and a Wednesday of a cabinet meeting those are generally times that I would clear my diary because you receive arch lever files of all these cabinet memorandums and I spent a lot of time going through all of those memorandums. So between a cabinet meeting – if it is in Pretoria then I spend time in the office. But if a cabinet meeting happens to be in Cape Town so Monday becomes a travel day. You got to Cape Town. You spend the whole of Tuesday preparing, reading all  
10 the documents. So a typical two day period before a cabinet meeting is essentially reading time. Not – no meetings just preparing for the cabinet meeting.

**ADV HOFMEYR:** And again just for clarification purposes Mr Maseko is it your evidence that no meeting whatever took place between you and Mr Baloyi prior to the 2<sup>nd</sup> February 2011 on this topic?

**MR MASEKO:** Prior to the 2<sup>nd</sup> February I never had a meeting with Minister – Mr Baloyi.

**CHAIRPERSON:** What is interesting is why he would say he did have – I do not know whether he said a meeting or just a discussion which may  
20 be have – was telephonic I am not sure. Why he would say he had a discussion with you on – with regard to this issue of the transfer if there was not such a discussion? Now of course you might not be able to say anything about that all you might know is there was no such discussion but I am just sharing that with you as something that is going on in my mind. I do not know if you want to say anything?

**MR MASEKO**: Chair the area of speculation is a very dangerous area but my reading of Mr Baloyi's affidavit.

**CHAIRPERSON**: Hm.

**MR MASEKO**: I think that is actually remembering a meeting when we were discussing options.

**CHAIRPERSON**: Yes.

**MR MASEKO**: About me leaving the Public Service.

**CHAIRPERSON**: Yes.

**MR MASEKO**: So that meeting did happen.

10 **CHAIRPERSON**: Yes.

**MR MASEKO**: But it was not in relation to ...

**CHAIRPERSON**: To your move from GCIS?

**MR MASEKO**: My move from CGIS to DPSA. My move from CGIS to DPSA I will say without any hesitation was not planned.

**CHAIRPERSON**: Ja

**MR MASEKO**: Was abrupt.

**CHAIRPERSON**: Yes.

**MR MASEKO**: And it caught a lot of people by surprise including the cabinet meeting itself.

20 **CHAIRPERSON**: Yes.

**MR MASEKO**: When the announcement was made all the President did was – oh before the meeting ends Mr Chabane has an important announcement to make. He makes the announcement.

**CHAIRPERSON**: Hm.

**MR MASEKO**: And because I had spoken to Mr Chabane to say, listen I

am doing this statement I am going to be announcing my departure what do you want me to say? To say I am leaving government. He says no, no I will make a plan. I will find – I will speak to somebody – to one of the Ministers.

**CHAIRPERSON**: Hm.

**MR MASEKO**: To make sure that you get a placement. So when he made an announcement yes I was surprised but – or surprised about which department I was going to but I did know that he had made a commitment that by the time I prepare the statement there will be a  
10 department that I will be going to.

**CHAIRPERSON**: Hm.

**MR MASEKO**: And that was achieved. Unfort – the only unfortunately thing is that Mr Baloyi was not at the meeting.

**CHAIRPERSON**: Yes. So – so you – your – the only thing you can think of is that Mr Baloyi might be confusing – might be having in mind the meeting when you were about to leave DPSA and thinking that it is a meeting that took place before you came to DPSA?

**MR MASEKO**: That is correct – that is my ...

**CHAIRPERSON**: That is the only thing you can think of?

20 **MR MASEKO**: The best answer I can give to that Chairperson.

**CHAIRPERSON**: Yes. Okay. Thank you.

**ADV HOFMEYR**: Mr Maseko I would like to move to that conversation in a moment. But before that just to pick up on a point you have made a few times this morning which is that Mr Baloyi was not present at the cabinet meeting on the 2<sup>nd</sup> February 2011. Can I ask related to that?

Your evidence has already been that you received no cabinet memorandum in advance of that meeting relating to your transfer or Mr Manyi's transfer, is that correct?

**MR MASEKO**: That is correct.

**ADV HOFMEYR**: Can you just tell us about ordinary practice, if there were a cabinet memorandum to serve before cabinet had a meeting would it usually be the case that the responsible Minister would attend that meeting?

**MR MASEKO**: The expectation is that if – if a Minister has a cabinet memorandum serving before a cabinet meeting the Minister attends. But if a Minister is not able to attend because all cab – or most of the cabinet memoranda go through cabinet sub-committee the Chair of that sub-committee of the cluster would be mandated by the Minister to say please speak to this I am not able to attend. And normally the Minister would also speak to the President to say, my item is on the agenda I am not available for the following reasons Minister Y will actually present the memorandum on my behalf. So that would be practice.

**ADV HOFMEYR**: Thank you. But on the 2<sup>nd</sup> February 2011 did any of that take place in relation to your transfer?

20 **MR MASEKO**: In relation to my transfer the only person who made the announcement was Minister Chabane.

**ADV HOFMEYR**: Thank you.

**CHAIRPERSON**: And I think you have said that you only got to know to which department you were being transferred when Minister Chabane made the announcement to the cabinet. Did I understand you

correctly?

**MR MASEKO**: That is correct yes.

**CHAIRPERSON**: Before that you – he had – before that you did not know all you knew was that he had made a commitment to you that he would try and place you somewhere?

**MR MASEKO**: Minister Chabane after our conversation and his conversation with the President was in and out of the cabinet meeting.

**CHAIRPERSON**: Yes.

**MR MASEKO**: And I knew that in fact he was trying to find...

10 **CHAIRPERSON**: Yes.

**MR MASEKO**: A Minister that he could talk to so that an announcement could be made.

**CHAIRPERSON**: Yes.

**MR MASEKO**: So yes that is correct Chair.

**CHAIRPERSON**: Yes. Yes. Which ordinarily I would imagine may have given him an opportunity to speak to Mr Baloyi if he worked on the basis that he would need to speak to the relevant Minister before anything is concluded.

**MR MASEKO**: That is correct Chairperson.

20 **CHAIRPERSON**: Yes. Okay. Thank you.

**ADV HOFMEYR**: Mr Maseko if we can then move to the meeting that you did have with Mr Baloyi. I understand your effort at some speculation about why he said he had discussions with you before the transfer might be the product of confusing a later meeting you had with him. Is that correct?

**MR MASEKO**: That is correct.

**ADV HOFMEYR**: Okay so let us go to what Mr Baloyi says about the conversation. Chair you referred to discussion I have just checked it again Mr Baloyi does say discussion.

**CHAIRPERSON**: Oh okay.

**ADV HOFMEYR**: So it is a discussion that he alleges he had with you before the transfer and he says that in that discussion you communicated to him that you had decided not to stay long in the Public Service.

10 **MR MASEKO**: Okay.

**ADV HOFMEYR**: What is your response to that?

**MR MASEKO**: I think I answered that question specifically in my affidavit.

**ADV HOFMEYR**: You do indeed.

**CHAIRPERSON**: It is...

**ADV HOFMEYR**: I can take you there. You pick it up at ...

**MR MASEKO**: Page 17.

**ADV HOFMEYR**: Page 17.

**MR MASEKO**: Yes.

20 **ADV HOFMEYR**: At paragraph 6.7.

**MR MASEKO**: That is correct Chair. My – my submission as far as Mr Baloyi's affidavit is concerned what he says in the affidavit I think it is – I do not think it is not accurate. The conversation I had with him about no longer wanting to stay in the Public Service and pursuing other interests that was a conversation that took place in July of 2011

when we were basically discussing my exit from the Public Service and basically leaving DPSA. So it was not about leaving GCIS moving to DPSA. So these are two different matters. Leaving GCIS had nothing to do with me no longer wanting to stay in the Public Service it was about being forcefully moved from GCIS. So I – it would not even make sense to make such a statement. If I am being shown the door at GCIS and I say I no longer want to stay in GCIS I want to pursue other interests.

**ADV HOFMEYR:** I would like us to go if we may just to the precise  
10 words that Mr Baloyi uses in his affidavit. You will find it in the same file under Tab 4.

**MR MASEKO:** Okay.

**ADV HOFMEYR:** And you will find it at page 12 of Mr Baloyi's affidavit.

**MR MASEKO:** I have got it.

**ADV HOFMEYR:** And if we can pick it up at paragraph DD there? What Mr Baloyi records there in his affidavit is the following.

20 "I recall that Mr Maseko was very clear with me about his decision no longer to stay in Public Service as he had other options to pursue. As he said so in response to my offer to extend his contract at the expiry of his term."

And then if we move to paragraph EE:

"So I knew his position about Public Service by the time the transfer was implemented and I went ahead with the transfer anticipating a possibility where he

could change his mind but also appreciating that he would have made a valuable contribution by the time he decided to leave.”

Mr Maseko confirm with me if you read that to indicate that this conversation with you at which you made it clear you did not want to stay long in the Public Service was according to Mr Baloyi prior to the transfer to his department?

**MR MASEKO:** This – these two paragraphs are incorrect insofar as they refer to my transfer from GCIS to DPSA.

10 **ADV HOFMEYR:** Thank you.

**CHAIRPERSON:** So is the position that he as far as you are concerned he is taking a conversation that happened on the occasion of your meeting with him just before you left DPSA and saying it is a conversation that took place before you were transferred from GCIS to DPSA?

**MR MASEKO:** That is exactly what I am saying Chair and I ...

**CHAIRPERSON:** Yes.

**MR MASEKO:** And I do not think he is doing this deliberately. It is simply because these things happened a long time ago.

20 **CHAIRPERSON:** Yes.

**MR MASEKO:** It could simply be that he is remembering a conversation.

**CHAIRPERSON:** Yes.

**MR MASEKO:** And thinking that it applies to one instance when in fact...

**CHAIRPERSON:** Yes.

**MR MASEKO:** It applies to the other. But it is incorrect to suggest – for him to suggest that when I left GCIS it was my plan not to stay in the Public Service it is – that discussion refers to my plan to leave DPSA.

**CHAIRPERSON:** Well it may be that what he says in paragraph 1.1.6 of his affidavit at page 2 of the same affidavit it may be that that is consistent with your analysis because there he says:

10            “That being the information contained in my  
statement herein is largely if not exclusively based in  
my memory. In circumstances where I no longer  
have access to such information that is located in the  
department wherein I served in various capacities as  
referred to in the background information in the  
statement.”

So with the loss of time it may well be but he will come here at some stage and he will indicate but the point you make is to the extent that as far as you are concerned he is saying what you said when you were about to leave DPSA is what you said when you were about to be  
20 transferred from GCIS to the extent that that is what he is doing.

You are saying you do not think he is doing so deliberately.  
You think he is just mistaken?

**MR MASEKO:** Yes.

**CHAIRPERSON:** Because of the lapse of time?

**MR MASEKO:** That is correct Chairperson.

**CHAIRPERSON:** Okay. Yes Ms ...

**ADV HOFMEYR:** Mr Maseko there is another ...[intervenes]

**CHAIRPERSON:** Ms Hofmeyr.

**ADV HOFMEYR:** Apologies. There is another important aspect of what he says in his affidavit that discussion - that alleged discussion - with you prior to your move to DPSA involved, because the other important point is that he says he obtained your consent to move from GCIS to DPSA. Is that correct?

**MR MASEKO:** That is incorrect. Again for the simple reason that the -  
10 the story leaked to the media and announcement is made in Cabinet which includes my transfer to DPSA. There was no - and my understanding or my agreement with Minister Chabane at the time was that he will make a plan for me.

**ADV HOFMEYR:** Hm.

**MR MASEKO:** So - so there is no negotiation. No discussion. I was just happy that Minister Chabane was making a plan and I - I went along with the plan.

**ADV HOFMEYR:** Mr Maseko I know that you are not a lawyer ...

**MR MASEKO:** Hm.

20 **ADV HOFMEYR:** But do you have any understanding of the requirement of consent before a DG is transferred?

**MR MASEKO:** Chair, I - I can accuse myself of being a lawyer. I studied law. Never practiced.

**CHAIRPERSON:** Actually.

**ADV HOFMEYR:** Apologies Mr Maseko.

**CHAIRPERSON:** I - I was thinking you - I seem to remember you have got BA LLB and LM or something like that. So you - you are a lawyer.

**MR MASEKO:** *Ja*, but consent is that you must do so consciously. It cannot be assumed that you consent - you are consenting but anyway. The - the point I am making is that Minister Chabane says I will make a plan for you and I agree to - to the plan. I did not know the details of the plan. Minister Chabane then makes an announcement in Cabinet.

Minister Baloyi is then informed of that and we just have to implement the Cabinet announcement, but there was no - I can say  
10 emphatically Chair there was no discussion about whether I consent or approve or agree. I just informed him that in fact this is what is going to happen. I am new his DG.

That is - that is what I informed him. As stated in the transcript from the Public Protector.

**ADV HOFMEYR:** Mr Maseko just - Chair if we may just complete this point, because ...

**CHAIRPERSON:** Yes.

**ADV HOFMEYR:** It may be useful just to go to the relevant legislative provision so we have it in mind.

20 **CHAIRPERSON:** Yes.

**ADV HOFMEYR:** Chair you will find it in the bundle before you entitled legislation bundle. Mr Maseko you will also have a copy of it ...

**MR MASEKO:** *Ja*.

**ADV HOFMEYR:** And if you turn to page 41 - 4-1 - in that bundle you will find yourself in a section of the Public Service and Administration

Act.

**MR MASEKO**: I have got it.

**ADV HOFMEYR**: Chair is the Act that was in place at the time of the transfers of Mr Maseko and Mr ...

**CHAIRPERSON**: Yes.

**ADV HOFMEYR**: Manyi.

**CHAIRPERSON**: Hm.**ADV HOFMEYR**: And if you pick it up at page 41 at Section 12 the section that we are dealing with is Section 12(3) on that page. You will see there that the section reads:

10                    “The President may transfer the head of a National Department or National Government Component before or at the expiry of his or her term or extended term to perform functions in a similar or any other capacity in a National Department or National Government Component in a post of equal, higher or lower grading or additional to the establishment as the President considers appropriate.”

20                    And then if we go over the page the point about consent you will find at Section 3D because 3D now puts certain requirements on that transfer. D says:

                         “A transfer in terms of this subsection may only occur if a, the relevant head of department consents to the transfer or after due consideration of any representations by the head the transfer is in

the public interest.”

Is that in accordance with your understanding of the position as it plays out in practice?

**MR MASEKO**: That is - that is correct Chairperson.

**ADV HOFMEYR**: Now I would like to go through each of those two Roman numerals. I understand your evidence to be you did not give prior consent to this transfer. Is that correct?

**MR MASEKO**: Not specially no to this. Not to the transfer to DPSA.

**ADV HOFMEYR**: Thank you.

10 **MR MASEKO**: Before it - it was a no. Let me say that.

**ADV HOFMEYR**: Sorry. Say that again. I did not catch that last part.

**MR MASEKO**: I did not give consent to the transfer when it - until it was announced because I did not know about, but I had given consent to the principle of being moved to a different department.

**ADV HOFMEYR**: Thank you. That is - that is helpful and then just in relation to Roman II. Did you make any representations about this transfer to President Zuma prior to - former President Zuma - prior to the move to DPSA?

**MR MASEKO**: No. I did not.

20 **ADV HOFMEYR**: Thank you.

**CHAIRPERSON**: Well let us go back to the consent in principle that you gave. Well you must just tell me if my understanding is correct. It seems to me that after the announcement to the Cabinet of your transfer or at least after the issuing of the media statement about your transfer from GCIS to DPSA.

It could be said justifiably that your transfer from GCIS to DPSA was with your consent. Am I correct?

**MR MASEKO**: That is correct.

**CHAIRPERSON**: Yes. What becomes important is how did it come about that the transfer had to be considered and had to happen and then - and you have a version on that? How that came about. So from what you have said it seems to me that you are saying you certainly did not initiate your transfer. Is that correct?

**MR MASEKO**: That is correct. That is correct Chair.

10 **CHAIRPERSON**: You - you did not ask for a transfer?

**MR MASEKO**: I did not ask for a transfer.

**CHAIRPERSON**: Yes and as far as you are aware Minister Chabane did not ask or did not initiate that you be transferred?

**MR MASEKO**: That is correct Chair.

**CHAIRPERSON**: That is correct?

**MR MASEKO**: That is my understanding. *Ja*.

**CHAIRPERSON**: According to Minister Chabane it was the former President who came with the idea that you should be transfer - you should be moved from GCIS?

20 **MR MASEKO**: That is correct Chair.

**CHAIRPERSON**: Okay. Thank you.

**ADV HOFMEYR**: Ms Maseko I would then like to explore with you when you did decide to leave DPSA. When was that?

**MR MASEKO**: I think - well I do not - *ja*. I think it was three months into - into the job. That is when I decided maybe it is time for me to

move on.

**ADV HOFMEYR**: And why?

**MR MASEKO**: The reason as stated in - in the affidavit was in short basically because I had found the situation in the department untenable. I think that although I state in the affidavit that I did not have a - a dispute with Minister - Mr Baloyi, but the relationship just did not gel.

Did not - things did not work well and I attribute that to the fact that he had felt I was imposing on him as - as a DG. So my arrival  
10 at DPSA as far as I am aware was not formally announced. Many of the people I found at DPSA told me that they got to know about my arrival - that I was coming or that I was there from the media - based on the media statement that I had issued.

So the transition from or transfer from GCIS to DPSA was not smooth. So when I arrived there and I just felt here the - the Minister was not as welcome. I do not think that he had anything personal against me and the I found that the - there were governance issues that I was concerned about and by governance issues I am - I mean there were a lot of meeting which happened without my involvement.

20 I was not in - invited to a lot of those meetings. There was not a formal meeting to formally introduce me to the management to say this is your new boss. So I just arrived. I had to fit into what was happened there and I felt that a lot of the decisions that were taken were being taken by the Minister with my team in my absence.

Had implications for me as the Accounting Officer. So if

decisions are made to do certain things and as Accounting Officer I am not informed or not part of those meetings. At the end of the day I am the one who is supposed to go to Parliament and account for those decisions. So I just felt the atmosphere was just not conducive to staying on.

You know I just I was not able to play the leadership role that I am - I am expected to as Accounting Officer and that is when I decided I should move on.

**ADV HOFMEYR:** And tell us about your interactions with Mr Baloyi  
10 about that move.

**MR MASEKO:** I then approached him and just did indicate to him that I am - and I think that is where his wording becomes relevant. Where he said I told him that I was now thinking of exiting to pursue other interests outside of the Public Service and I must say it was a - a very cordial conversation.

There was not a fight or argument about it and I think that it took two meetings to agree that in fact this is the best way forward and - and those meetings happened. I think the dates I gave. It is the ...

**ADV HOFMEYR:** 15 June.

20 **CHAIRPERSON:** The 10<sup>th</sup> and the 15<sup>th</sup>.

**ADV HOFMEYR:** As I recall it.

**MR MASEKO:** *Ja.*

**CHAIRPERSON:** The 10<sup>th</sup> and 15 June.

**MR MASEKO:** Of - of July.

**CHAIRPERSON:** Or July.

**ADV HOFMEYR:** Of June I think.

**MR MASEKO:** I mean ...

**CHAIRPERSON:** Ja. I think June.

**ADV HOFMEYR:** Indeed.

**MR MASEKO:** It is written somewhere here.

**CHAIRPERSON:** 2011.

**MR MASEKO:** And then he undertook to have a conversation with the President to get approval, because it cannot just be a conversation between the two of us. He then undertook to speak to the President to  
10 get approval. He came back and said the President has agreed and so they will do the paperwork and the HR Department will come back and discuss the detail, but that was how the matter was concluded.

We even agreed that during that period while he was sorting these things I did not have to report to work. I can stay at home and wait for the payment to be made. So that is how it unfolded.

**ADV HOFMEYR:** Thank you. Mr Maseko the Chair mentioned a bit earlier a Presidential minute relating to your transfer. Did I understand your testimony correctly to be that you had not seen that Presidential minute?

20 **MR MASEKO:** Chair I had not only not seen it. I was not aware that it existed. However I think it is important to say that in my years in the Public Service I have not seen too many of those minutes, because these are essentially Presidential decisions.

**CHAIRPERSON:** Yes.

**MR MASEKO:** They not - they do not even serve in Cabinet.

**CHAIRPERSON:** Hm. **MR MASEKO:** So - *ja*, but I had not seen the - I was not aware there was a Cabinet minute.

**CHAIRPERSON:** *Ja*.

**MR MASEKO:** The Presidential minute.

**ADV HOFMEYR:** I would like you just for the record to take you to the Presidential minute that the Commission has managed to obtain. You will find it in EXHIBIT NN5 and you will find it at page 50 - 5-0.

**MR MASEKO:** Got it. I got it Chairperson.

**ADV HOFMEYR:** You - do I take it that you have not seen this  
10 document before?

**MR MASEKO:** Chair, can I just read it briefly?

**ADV HOFMEYR:** Please read it first indeed.

**MR MASEKO:** Chairperson, it is - it is the first time that I see this document. I had not seen it.

**ADV HOFMEYR:** Can you assist us with what it records?

**MR MASEKO:** Okay. The document is dated 3 February 2011.

**ADV HOFMEYR:** Mr Maseko sorry to interrupt you there. What is that date in relation to the Cabinet meeting?

**MR MASEKO:** So this is - the 3<sup>rd</sup> would be the day after the Cabinet  
20 meeting. The Cabinet meeting was on 2 February. So this sir is dated 3 February. So it would be after the ...

**ADV HOFMEYR:** Thank you.

**MR MASEKO:** The Cabinet meeting.

**ADV HOFMEYR:** And what does it record?

**MR MASEKO:** It says:

“I hereby in terms of ...”

Well it says:

“President’s minute number 32. I hereby in terms of  
Section 12(3)(A) read with Section 12(3)(D) of the  
Public Service Act promulgated under Proclamation  
number 103 of 1994. I hereby transfer  
Mr T J Maseko from the post of DG of GCIS to the  
post of DG Department of Public Service and  
Administration with effect from the date following  
10 the date on which this Presidential minute is signed  
by the President until 30 June 2012.”

**ADV HOFMEYR**: We referred to 30 June earlier.

**CHAIRPERSON**: Maybe he should complete the - the given under ...

**MR MASEKO**: Oh.

**CHAIRPERSON**: Under because there is the significance to the date.

**MR MASEKO**: Okay.

**ADV HOFMEYR**: Indeed.

**CHAIRPERSON**: *Ja*.

**MR MASEKO**: “Given under my hand and the seal of the  
20 Republic of South Africa at Pretoria on  
3 February 2011 signed by ...”

I - I do not - I think that is the President’s signature, but it  
says President there. I cannot recognise that.

**CHAIRPERSON**: Yes.

**MR MASEKO**: And then also signed by the Minister of Cabinet

presumably ...

**CHAIRPERSON**: Do you know that signature?

**MR MASEKO**: It looks like - oh my God. This looks like Baloyi's signature, but ...

**CHAIRPERSON**: Yes.

**MR MASEKO**: Mr Baloyi's signature but I am not sure Chair.

**CHAIRPERSON**: Yes. You would have - you would have known Mr Chabane's signature quite well? I would imagine.

**MR MASEKO**: Yes. I would - I would know. I would have known.

10 **CHAIRPERSON**: It is not his?

**MR MASEKO**: I do not think this is his signature Chair.

**CHAIRPERSON**: Yes. Okay.

**ADV HOFMEYR**: We will be able to clarify with Mr Baloyi, but I understand his evidence to be that he co-signed this minute insofar as his affidavit is concerned.

**CHAIRPERSON**: Yes. I think that is what his affidavit says.

**ADV HOFMEYR**: Yes. Mr Maseko if I can then just take you back a page in that same file. Well let us - let us start at the beginning of the document at page 44 - 4-4.

20 **MR MASEKO**: Okay.

**CHAIRPERSON**: But before you do so Ms Hofmeyr.

**ADV HOFMEYR**: Yes Chair.

**CHAIRPERSON**: Two things. This Presidential minute on the face of it was signed on 3 February 2011. That would be the day after the day that you were - on which you were transferred to DPSA. Is that right?

**MR MASEKO**: That is correct sir.

**CHAIRPERSON**: But it also says if I understand it correctly that the transfer would take place - your transfer would take place a day after the day on which it was signed. So which would mean the transfer would take effect on 4 February 2011? Is that your understanding of what it says as well?

**MR MASEKO**: Let me just read it again Chair.

**CHAIRPERSON**: *Ja*.

**MR MASEKO**: Yes. That is what it means. It means from the 4<sup>th</sup>.

10 **CHAIRPERSON**: Is what it means?

**MR MASEKO**: *Ja*.

**CHAIRPERSON**: But you did as a matter of fact move from GCIS to DPSA on 2 February 2011?

**MR MASEKO**: Effectively on 2 February ...

**CHAIRPERSON**: Hm.

**MR MASEKO**: 2011. I was no longer the CO of GCIS. So you could say that from the 2<sup>nd</sup> to the 3<sup>rd</sup> I was in transit to DP - DPSA. So I did not go back to my office after this Cabinet meeting. So I had to prepare the statement and manage the media people. Making sure  
20 there is proper distribution of statements, interviews and all of that ...

**CHAIRPERSON**: Yes. No. I understand.

**MR MASEKO**: But that was essentially my last function ...

**CHAIRPERSON**: Yes.

**MR MASEKO**: But I could - I think that on 3 February you could say I was already the DG of DPSA.

**CHAIRPERSON:** Yes. No.

**MR MASEKO:** On - on the 4<sup>th</sup> according to this.

**CHAIRPERSON:** Yes. Now I am - I am not talking about the legal position.

**MR MASEKO:** Hm.

**CHAIRPERSON:** I am just talking practically.

**MR MASEKO:** Hm.

**CHAIRPERSON:** My understanding of your evidence last time was that you actually moved to DPSA on the same day that you left GCIS. Did I  
10 misunderstand that? Practically.

**MR MASEKO:** Practically Chair I had to - after the Cabinet meeting had to sit and prepare the statements. So I was still doing GCIS duties.

**CHAIRPERSON:** GCIS work. *Ja*.

**MR MASEKO:** *Ja*. Statements (intervenes).

**CHAIRPERSON:** Did you complete the day, because I understood your ...

**MR MASEKO:** Hm.

**CHAIRPERSON:** Your evidence to be that you did not spend the whole  
20 day at GCIS on the day ...

**MR MASEKO:** On the 2<sup>nd</sup>, yes.

**CHAIRPERSON:** On the 2<sup>nd</sup> you - you left.

**MR MASEKO:** So I continued doing ...

**CHAIRPERSON:** My understanding was that you left - practically you left and you went to DPSA, but I may have misunderstood that part.

**MR MASEKO**: Yes. Chair. The correct position is that the Cabinet meeting happens (intervenes).

**CHAIRPERSON**: On the 2<sup>nd</sup>. Ja.

**MR MASEKO**: On the 2<sup>nd</sup>. So the afternoon I stayed on at the Union Buildings ...

**CHAIRPERSON**: Yes, yes.

**MR MASEKO**: And managed most of my operations ...

**CHAIRPERSON**: Yes.

**MR MASEKO**: There and if I remember well the earliest because I  
10 could not just rock up DPSA.

**CHAIRPERSON**: Oh, okay.

**MR MASEKO**: So I had to ...

**CHAIRPERSON**: (Intervenes).

**MR MASEKO**: Try and get hold of Minister ...

**CHAIRPERSON**: Yes.

**MR MASEKO**: Baloyi.

**CHAIRPERSON**: Yes.

**MR MASEKO**: To schedule a first meeting.

**CHAIRPERSON**: Oh.

20 **MR MASEKO**: So that we can ...

**CHAIRPERSON**: Okay.

**MR MASEKO**: Discuss and I think the meeting could have taken place on the 4<sup>th</sup>, but I know it was not immediate because he was out of town.

**CHAIRPERSON**: Okay and - and in terms of your actual physical presence at DPSA would that have happened from the 3<sup>rd</sup> or the 4<sup>th</sup> or

you cannot remember?

**MR MASEKO**: I cannot recall exactly Chair ...

**CHAIRPERSON**: Yes.

**MR MASEKO**: But it - I - I was very clear in my head that I will only go to DPSA ...

**CHAIRPERSON**: Yes.

**MR MASEKO**: After I have had a meeting with - with the Minister.

**CHAIRPERSON**: With the Minister?

**MR MASEKO**: Yes.

10 **CHAIRPERSON**: With Minister Baloyi?

**MR MASEKO**: With Mr Baloyi, sir.

**CHAIRPERSON**: Yes. Okay. No. That is fine. Let us go back to the time you spent at DPSA. You said that most of the time but maybe you said all the time meetings were being held and decisions were being taken where you were not involved or invited to the meetings. Is that correct?

**MR MASEKO**: Yes. That is correct Chair.

**CHAIRPERSON**: Must I say all - all the time ...

**MR MASEKO**: Well ...

20 **CHAIRPERSON**: Or most of the time or sometimes?

**MR MASEKO**: Most - most of the - most of the time Chair.

**CHAIRPERSON**: Most of the time. Okay. Alright. Now - I take it that ordinarily when you are a DG there would be - you would know what you need to do as Director-General of your department and therefore to that extent maybe you do not need to be told by the Minister what to

do. You know what to do.

Things that need to be done, but I would take it that there would be some things that he would say please take care of that. Take care of that or ask do that. Please make sure that that is done and so on. Am I right?

**MR MASEKO**: That is correct Chair.

**CHAIRPERSON**: Yes. During the time that you spent at DPSA were there occasions when Minister Baloyi asked you or asked you to deal with certain tasks or certain issues or assignments as DG?

10 **MR MASEKO**: That - that was very, very rare Chair ...

**CHAIRPERSON**: Yes.

**MR MASEKO**: And that - when I talk about governance issues it is essentially what the management culture was in the department.

**CHAIRPERSON**: Hm.

**MR MASEKO**: That - and I think the Minister does make the same point in his affidavit. That he - his style was about getting managers to report to him and - and all of that and - and in my reply to what he says. I say it was not my view that the Minister must not have any contact with managers, but that we needed to have a - a management  
20 process - proper management process so that if he meets a manager to discuss certain matters.

If something goes wrong he can come to me and say, but I asked this person to do this because I would not have been in the loop, but I found that it was a culture in the department. That the Minister meets with all of the senior managers. Some of the examples would be

that when I seek a meeting with him, when I arrive at his office he will be sitting in minute - in meetings with one or two of my officials.

They will be discussing operational issues and I - part of me said I must just accept this is how things happened, but another part of me said ultimately everything that happens in this department I am accountable for as Accounting Officer and I just felt it was not sustainable, but in my affidavit I also make the point that it was never and still is not my view that the Minister must not have any contact at all, but there needs to be parameters.

10 **CHAIRPERSON**: Some understanding of how it should (intervenes).

**MR MASEKO**: Some policy to say this is how things happen ...

**CHAIRPERSON**: Hm.

**MR MASEKO**: Because - *ja*.

**CHAIRPERSON**: Hm.

**MR MASEKO**: I can really therefore now Chair.

**CHAIRPERSON**: Hm. So you say it was very rare during that - your stay at DPSA or it would have been very rare that he asked you to deal with any particular issues?

**MR MASEKO**: It - it may have happened ...

20 **CHAIRPERSON**: But ...

**MR MASEKO**: But it was very rare.

**CHAIRPERSON**: Yes.

**MR MASEKO**: It was very rare Chair.

**CHAIRPERSON**: Now in the absence of that how much work were you able to do on your own as DG of - of DPSA during that time? Were you

- were you able to call meetings of your - your staff and do what needs to be done or that was difficult for - for some reasons?

**MR MASEKO**: Well there were normal management meetings that took place. I think they happened weekly or fortnightly. I cannot recall. So one was able to do all of those kinds of things and what I tried to do was to make sure that those become reporting loops. So if somebody has had a meeting with the Minister they come and tell the team what they are engaged in and do they need support direction and of those kinds of things.

10                   So we tried to introduce some process, but it was very clear in my head that it is not a sustainable way of - of managing an organisation like that and I thought - I thought I was going to be at risk as Accounting Officer, because if things happen or do not happen.

**CHAIRPERSON**: Hm.

**MR MASEKO**: I cannot say as the DG but I was not involved or I did not know. *Ja*. I will - it will look very bad on me as a person.

**CHAIRPERSON**: Was the essence of the challenge - was the source of the challenge the Minister - Mr Baloyi or was the source of the challenge him plus your - your team - your staff maybe when they were  
20                   not accepting you easily because of how you came to the department or - or where was the challenge?

**MR MASEKO**: Chair, I would - I would not want to attribute all of it to the Minister. All I can say is that my analysis of the situation was that it was a - a management culture in that place. That there was not clarity about where does the Minister's role start and end. Where does

the DG's role start and end and who takes accountability for what?

To just give an example. I mean when I was there one of the major developments was negotiations with the unions about salary increments at the time. Meetings were held with unions and National Treasury to agree on what should be the increment amount for public servants and there I was as DG not being part of any of those discussions and getting to know that an agreement is being reached or negotiations are taking place led by DPSA with the unions and I was reading about a lot of those things in the media myself.

10           It is just one example, but I would say it is a culture that emerged. That I found in the department and it may very well be that it was a culture that existed in other department. I - I do not know.

**CHAIRPERSON:** Yes. Okay. Alright. So - so one you say you - you do not think Minister Baloyi had anything personal against you. That is one point you make. The other point you I think made was that maybe he was not so welcoming because of how you came to his department on your analysis.

20           Three, you say well you had no problem in principle with him interacting with people un - under you. You just wanted that that should be managed in a particular manner ...

**MR MASEKO:** That is correct Chair.

**CHAIRPERSON:** And - and you were not just - you were simply not as involved as you expected to be involved as DG in matters of the department - operational matters of the department.

**MR MASEKO:** That - that is correct Chair. The only additional matter

to your summary is that ...

**CHAIRPERSON:** Hm.

**MR MASEKO:** If anything goes wrong ...

**CHAIRPERSON:** Yes.

**MR MASEKO:** I was going to be held accountable as DG.

**CHAIRPERSON:** You would be - *ja*. Yes. Okay. Thank you.

Ms Hofmeyr.

**ADV HOFMEYR:** Thank you Chair. Just to conclude on this aspect of your time at DPSA. I understood your evidence earlier to be that you  
10 did not conclude a contract of employment for your time as DG of DPSA. Is that correct?

**MR MASEKO:** That is correct.

**ADV HOFMEYR:** And there are things called performance agreements that seem from what we have seen of these various matters to be concluded between heads of department which you were both at GCIS and DPSA and the responsible Minister, did you conclude any such agreement insofar as your time at DPSA was concerned?

**MR MASEKO:** No I did not have a performance agreement.

**ADV HOFMEYR:** Thank you, then if we could go back to NN5 I was  
20 going to take you to a document there that commences at page 44.

**CHAIRPERSON:** Well just one sec again Ms Hofmeyr. Did you or Minister Baloyi try to reach – conclude a performance agreement or not really?

**MR MASEKO:** Not really Chair, we did have a conversation about the need for such but we just never got to it.

**CHAIRPERSON:** Okay.

**ADV HOFMEYR:** Then we're in NN5, Exhibit NN5 at page 44.

**MR MASEKO:** I've got it.

**ADV HOFMEYR:** Do you recognise that document Mr Maseko?

**MR MASEKO:** Yes I do Chairperson.

**ADV HOFMEYR:** What is it?

**MR MASEKO:** This is a statement – a media statement that I prepared following the Cabinet meeting that took place on the 2<sup>nd</sup> of February 2011. It announces all the decisions that were taken at that Cabinet meeting, importantly the last one is the announcement of my departure  
10 from GCIS and if I may read it,

“Cabinet noted that Mr Maseko ...[intervenes].

**ADV HOFMEYR:** Mr Maseko, sorry to interrupt, just to give the Chair a reference, this is at page 48, is that correct?

**MR MASEKO:** That's on page 48 yes.

**ADV HOFMEYR:** Thank you.

**CHAIRPERSON:** Thank you.

**MR MASEKO:** That paragraph reads,

“Cabinet noted that Mr Themba Maseko was to be redeployed  
20 to the Department of Public Service and Administration with immediate effect. Mr Maseko will be replaced by Mr Jimmy Manyi as the new GCIS CO and Government spokesperson”,  
And it is dated –so it will be, I don't see the date here it was issued on the 3<sup>rd</sup> of February.

**ADV HOFMEYR:** If you go to page 44 the first line there seems to

confirm that, can you read us the first line?

**MR MASEKO**: So it says,

“Cabinet held it’s – the very first line says, statement of the Cabinet meeting 2<sup>nd</sup> February 2011 and then, first line says Cabinet held it’s [indistinct] meeting in Pretoria yesterday on the 2<sup>nd</sup> of February”,

So the date of the statement will be 3<sup>rd</sup> of February 2011.

**ADV HOFMEYR**: Thank you, and Mr Maseko you gave evidence a moment ago that after the Cabinet meeting you returned to the office in  
10 the afternoon to start preparing this statement, did I have that correct?

**MR MASEKO**: That’s correct.

**ADV HOFMEYR**: Your first affidavit before the Commission referenced something else that happened in that – during that afternoon of the Cabinet meeting, do you recall that?

**MR MASEKO**: Yes I do.

**ADV HOFMEYR**: What was that?

**MR MASEKO**: Okay do you have it, which file...[intervenes].

**ADV HOFMEYR**: Your previous affidavit actually has not been placed in your file because it’s already an exhibit for...[intervenes].

20 **MR MASEKO**: But I can tell you what...[intervenes].

**ADV HOFMEYR**: Indeed so if you can just tell us what happened as well in the afternoon of the 2<sup>nd</sup> of February Cabinet meeting.

**MR MASEKO**: Well after the meeting I had a meeting with Mr Chabane just to confirm that this is the decision taken and that I can still proceed and issue the statement and handle interviews. The next step

was to interact with Minister – or Mr Baloyi my new Minister at the time to agree on a time to meet seeing that I would be his DG. Then the next task was to prepare the statement and make sure that it's done properly and I had to find working space at the Union Building it was allocated space and I did steal a few moments with the, then, Deputy President to just share some of these experiences with him, ahead of finalising the statement and the statement was issued the following day in the morning.

**ADV HOFMEYR:** Did you receive any call during the course of that  
10 afternoon?

**MR MASEKO:** Yes I did Chair, other than the usual calls from the media to get confirmation before the statement and I had to tell them what was going on. Then my office also called to say they are in a situation where they have to – they have had calls from Mr Manyi to say he was coming over and they needed to know do they give him access to the building and all of that because remember this is just immediately after the Cabinet meeting and the matter is already in the media. So my office needed some direction about what needed to happen. So I just said – confirmed what was leaked in the media that I  
20 was no longer spokesperson and I asked them to start packing my things because I was not going to come back – I never had the opportunity to sit down and tell my staff properly or even to have a staff meeting to explain to – or not to explain anything but just to say goodbye to the staff and that's how quickly the events unfolded on that day.

**CHAIRPERSON:** I think in your, either statement or oral evidence, I'm under the impression that you did say that you had a meeting with a few members of your team after the Cabinet meeting, where you just told them that you were leaving or you had been transferred now – but I don't know whether I'm saying you said that in circumstances where it may have been Ms Phumla Williams who said you called a meeting in a boardroom that I think was next to your office or something at GCIS and it was a few of them, you told them that you were being transferred or you're leaving. They asked you what the reason was, you didn't tell  
10 them and she says it was a short meeting and after the meeting she followed you to your office hoping to try and get more information, as I recall her evidence, she found you in your office at your desk with your head down, I think she said, which I think gave the impression that you were emotionally unhappy, you were unhappy but she, I think said, she didn't get – you didn't tell her the reasons and so on. Is that something that you didn't say and maybe it was said by somebody else?

**MR MASEKO:** I'll have to check the records Chair, I know that in the afternoon of these events which was immediately after the Cabinet meeting there was no time, there was no opportunity to talk to my staff  
20 and as I say, I needed to give direction to my staff about what needed to happen in the light of what was unfolding and the events were unfolding very fast so the priority for me was the Cabinet statement, the Deputy President, meeting with the – ja meeting with my new Minister who was coming so on that particular day the events were just too quick. I never had the time to go back to my staff to say a proper

goodbye, I never had a chance to pack, I left my things, my staff did that. It is possible that, in fact, in – definitely not on the same afternoon but maybe the following day, I might have gone back to my office but I never – I had a very close relationship with my staff I would have loved to have a staff meeting and say a proper goodbye. It is possible that I might have called a few of my Exco people subsequently but there was never a proper, formal goodbye to my staff.

**CHAIRPERSON:** Okay I certainly got the impression from whoever gave the evidence that it was just a few people that you were able to  
10 call very quickly but you might refresh your memory at some stage ja.

**MR MASEKO:** I can check on that Chair.

**CHAIRPERSON:** Ja okay.

**ADV HOFMEYR:** Chair just to confirm as I have it that was the evidence of Ms Williams before the Commission. Mr Maseko we are at, and Chair, we are at the ordinary time of the lunch adjournment I have very few remaining matters to deal with but I'm in your hands whether we complete that now or return?

**CHAIRPERSON:** Well it would be preferable that we complete that now if we can so that we can release Mr Maseko and when we come  
20 back then we can – I can hear the evidence of the next witness. How long do you think your few questions might be?

**ADV HOFMEYR:** Well I'm anticipating my questions will not take very long but I'm being signalled by my colleagues on the right to indicate that they may want to raise one or two matters. In the light of that it may make sense to adjourn and then return.

**CHAIRPERSON:** I would prefer to avoid that if it's possible, I would imagine that they may have written questions on pieces of paper maybe they might just pass that on to you. I think Mr Pretorius indicates that might be possible so that we can finish with him if possible, let him go and then when we come back we start with the new witness.

**ADV HOFMEYR:** Certainly Chair it appears that I'm going to be handed a computer which may not be the easiest method. I wonder if we could possibly take a five-minute adjournment so that I can establish what the issue is and then conclude Mr Maseko's evidence  
10 swiftly, I'm not sure if that will be suitable?

**CHAIRPERSON:** Yes I'm just wondering if we're going to take five minutes or whether we shouldn't then just take the lunch break because you might find that they have maybe a few questions that they would like to suggest or Mr Pretorius says it's two or three. So let's take five minutes break and then come back and try and finish with Mr Maseko.

**ADV HOFMEYR:** We're indebted Chair, thank you.

**CHAIRPERSON:** It will be five minutes, we'll adjourn for five minutes, we adjourn.

**INQUIRY ADJOURNS**

20 **INQUIRY RESUMES**

**REGISTRAR:** All rise.

**CHAIRPERSON:** Yes Ms Hofmeyr.

**ADV HOFMEYR:** Thank you Chair we are indebted for the indulgence. Mr Maseko the last document I would like to take you to is in Exhibit NN5 and it is the document that precedes the media statement we were

looking at. It is at page 43.

**MR MASEKO:** I got it.

**ADV HOFMEYR:** Thank you. Just take a moment if you will to consider that document and indicate to us whether you have seen it before?

**MR MASEKO:** Chairperson I have not seen that document before.

**ADV HOFMEYR:** Can you tell us what on its face the document appears to be?

**MR MASEKO:** The document purports to be a letter written by Mr  
10 Chabane Minister of GCIS at the time addressed to Mr Baloyi Minister  
of DPISA. Should I proceed and read it?

**ADV HOFMEYR:** Yes please. First of all could you tell us the date of the letter?

**MR MASEKO:** It is dated the 2<sup>nd</sup> February 2011. My sunglasses tell me that it – there was a bit of tippex involved there. But that is neither here nor there. But it is dated 2<sup>nd</sup> February 2011. It says:

Dear colleague this from Mr Chabane – Minister Chabane to Minister Baloyi. It says:

20 “Dear colleague transfer of Mr Maseko to the Department of Public Service and Administration. It reads as follows:

I concur subject to the President’s approval with the transfer of Mr T J Maseko the Director General of GCIS in terms of Section 12.3A to the post of Director General of the Department of Public Service

and Administration – DPSA the proposed effective date of the transfer namely the following – the date following the date that the President signs the President’s minutes is also supported. Yours sincerely Minister Chabane.”

**ADV HOFMEYR:** Thank you Mr Maseko. I understand your evidence to be you had not seen this letter until today, is that correct?

**MR MASEKO:** Chair I was not aware of its existence and I did – it is the first time I see the document.

10 **ADV HOFMEYR:** Thank you. I note that it refers to being subject to the President’s approval, do you see that?

**MR MASEKO:** Yes it does.

**ADV HOFMEYR:** And we have traversed with you the Presidential Minute which was dated the following day the 3<sup>rd</sup> February. Do you recall that?

**MR MASEKO:** That – I recall that.

**ADV HOFMEYR:** Thank you. Then Mr Maseko in relation to your – the afternoon after the meeting – apologies Chair.

20 **CHAIRPERSON:** Before – I am sorry yes. You see Mr Maseko that letter is quite interesting. It starts with “I concur” and it is addressed to Mr Baloyi. That gives me the impression that there may have been some prior discussion between Minister Chabane and Minister Baloyi that is why he starts the letter with “I concur”. Now that may or may not be true but that is the impression that I am getting.

2. The last sentence says – or let me finish this. The first sentence

says “I concur with the transfer of Mr T J Maseko blah, blah, blah. Then the second sentence which is the last sentence of the letter says: “The proposed effective date of the transfer namely the date following the date that the President signs the President’s Minute is also supported.” It raises the question who would have proposed that date that he is talking about? And it also is another fissure that seems to give me the impression that prior to writing this letter maybe and I put it no higher than that there may have been a discussion between Minister Chabane and Minister Baloyi. I do not know if you want to

10 make any comment whether that is the impression you also get or not necessarily?

**MR MASEKO:** Chair that is – I am reading this letter and as I say I am seeing it for the first time. I would share your interpretation of this letter that you could assume that there had been a discussion and that Mr Baloyi would have written to Minister Chabane proposing a transfer.

**CHAIRPERSON:** A transfer date.

**MR MASEKO:** Yes but – and a transfer date which would refer to the Presidential Minute which was signed the following day.

**CHAIRPERSON:** Hm.

20 **MR MASEKO:** But my interpretation of all of this is that because a decision had been made and they were trying to regularise or legalise the process. So signing letters to make sure that the transfer happens. So it was in a sense an attempt to make sure that the decision complies with what the law requires. That there needs to be agreement, there needs to be written correspondence.

**CHAIRPERSON:** Well...

**MR MASEKO:** There needs to be consent.

**CHAIRPERSON:** Yes. We do not know what time of the day on the 2<sup>nd</sup> February the letter was written. If it was written – it may have been written after the announcement and after the media statement. Maybe you might say the probabilities are that it was not – it could not have been written before the announcement to cabinet? So maybe the – realistically you having been there knowing what happened on that day there was a cabinet meeting. At what stage you got to know that you  
10 were going to – you were going to be transferred to DPSA. Maybe you are able to say the probabilities are that it could – could only have been written or it was only written after the cabinet meeting which would have been after the announcement to cabinet?

**MR MASEKO:** Chair.

**CHAIRPERSON:** Is what I am saying more or less what you are thinking as well or not really?

**MR MASEKO:** Yes that is correct Chair. What triggered the events of the 2<sup>nd</sup> February was the media leak to the – the leak to the media that I was fired from GCIS.

20 **CHAIRPERSON:** Hm.

**MR MASEKO:** And that – based on the events – sequence of events.

**CHAIRPERSON:** Hm.

**MR MASEKO:** That caught Minister Chabane by surprise.

**CHAIRPERSON:** Hm, Hm.

**MR MASEKO:** It caught Minister Baloyi by surprise.

**CHAIRPERSON:** Hm.

**MR MASEKO:** So the fact that an announcement had to be made at cabinet so that – because Minister Chabane and I were aware that we were potentially facing a PR disaster for government so we needed to manage this whole thing.

**CHAIRPERSON:** Hm.

**MR MASEKO:** So Minister had to make an announcement to cabinet so that when we speak cabinet cannot complain that you know how did you know such a big story was happening?

10 **CHAIRPERSON:** Hm.

**MR MASEKO:** And yet there was a cabinet meeting and you did not tell us about it. So that is why an announcement had to be made in cabinet.

**CHAIRPERSON:** Hm.

**MR MASEKO:** But the announcement could not be that I am leaving GCIS. There has to be leaving GCIS to somewhere else because if it was just leaving GCIS it would have meant I was dismissed on the day.

**CHAIRPERSON:** Hm.

20 **MR MASEKO:** And that clearly would have been an unlawful act and on the part of government. So they were trying to manage the situation. So to answer your question directly Chairperson. My assertion would be that such a letter was generated after the cabinet meeting.

**CHAIRPERSON:** Hm.

**MR MASEKO:** After the cabinet statement.

**CHAIRPERSON:** Hm.

**MR MASEKO**: And the cabinet.

**CHAIRPERSON**: And which...

**MR MASEKO**: And the Presidential minute was also done after the cabinet meeting.

**CHAIRPERSON**: Hm.

**MR MASEKO**: When in fact the law required that all of these things must happen the other way around.

**CHAIRPERSON**: Hm. And your – your thinking – would your thinking be that to the extent that the letter may reflect that there was a  
10 discussion between Minister Chabane and Minister Baloyi about your transfer on the 2<sup>nd</sup> or – ja let us say on the 2<sup>nd</sup>. It probably was after you had spoken to Minister Baloyi?

**MR MASEKO**: Chair it is difficult to...

**CHAIRPERSON**: It is very difficult to say.

**MR MASEKO**: To say because in – I was not privy to the conversations that...

**CHAIRPERSON**: Yes.

**MR MASEKO**: Took place between the two Ministers.

**CHAIRPERSON**: Yes.

20 **MR MASEKO**: I cannot even confirm whether those conversations did take place.

**CHAIRPERSON**: Yes.

**MR MASEKO**: All I am certain of is that when Minister Chabane spoke to me he did not indicate that he was speaking to Minister Baloyi.

**CHAIRPERSON**: Yes.

**MR MASEKO:** When I spoke to Minister – Mr Baloyi he was not aware that an announcement.

**CHAIRPERSON:** Yes.

**MR MASEKO:** Or this decision was made.

**CHAIRPERSON:** Yes.

**MR MASEKO:** So it is difficult for me to confirm if there were conversations.

**CHAIRPERSON:** Yes.

**MR MASEKO:** Between the two of them.

10 **CHAIRPERSON:** Yes. The reason why I was referring to these two features of this letter is simply Mr Baloyi's version in his affidavit.

**MR MASEKO:** Yes.

**CHAIRPERSON:** That he had interacted with Minister Chabane and with you. Of course you have indicated your position that as far as your transfer from GCIS to DPSS is concerned there was no discussion between yourself and Minister Baloyi prior to the announcement to cabinet. But insofar as he may be saying he did have discussions with Minister Chabane you do not know. All you know is that when you spoke to him he was surprised that you were his new DG and he said  
20 he was – he had not been consulted.

**MR MASEKO:** That is correct.

**CHAIRPERSON:** Okay.

**ADV HOFMEYR:** Mr Maseko if I can then just take you to one earlier page than page 42 – 3 in NN5 and that is page 42. Mr Maseko I am mindful of the fact that if there is a document you have not seen before

and you were not involved in the production or receipt of your assistance may be limited. But I would like to ask in respect of the document at page 42 which is headed Explanatory Memorandum whether you have seen that document before?

**MR MASEKO**: Chairperson I have not seen this document before.

**ADV HOFMEYR**: Your evidence previously was that you had received no cabinet memorandum relating to the transfers prior to the meeting of 2 February 2011, is that correct?

**MR MASEKO**: Yes it is correct.

10 **ADV HOFMEYR**: Could this be the cabinet memorandum?

**MR MASEKO**: This is not done in...

**CHAIRPERSON**: In other words could – would – would a cabinet memoranda such as the ones you were talking about which would be received by Ministers and yourself ahead of cabinet meetings would they be like this?

**MR MASEKO**: This...

**CHAIRPERSON**: Does this look like – does it conform to how they would like?

**MR MASEKO**: This does not conform to any of the cabinet memoranda  
20 that I am aware of Chair.

**CHAIRPERSON**: Hm.

**MR MASEKO**: If somebody were to produce this to me I would not know what this document is.

**CHAIRPERSON**: Yes.

**MR MASEKO**: I cannot explain it.

**CHAIRPERSON:** Hm.

**ADV HOFMEYR:** Thank you Chair. It is a matter that we intend to take up with Mr Baloyi.

**CHAIRPERSON:** Yes.

**ADV HOFMEYR:** In due course in his evidence.

**CHAIRPERSON:** Yes.

**ADV HOFMEYR:** Mr Maseko then in relation to my last question subject to messages from my colleagues or indeed Chair further questions you may have. Mr Maseko that afternoon of the cabinet meeting on the 2<sup>nd</sup> February did you receive any communication from Mr Gupta?

**MR MASEKO:** Chair I did – at the time I did have his number on my phone.

**ADV HOFMEYR:** Oh sorry and just to be clear which of the Gupta family members was that?

**MR MASEKO:** The other one. It is Ajay Gupta.

**ADV HOFMEYR:** Thank you.

**MR MASEKO:** Ja I saw the number the call reflecting but because of the state of mind I was in I just ignored the call.

20 **ADV HOFMEYR:** Thank you. Chair those are our questions.

**CHAIRPERSON:** Okay alright. Let us go back to the memoranda explanatory memoranda – I am at page 42 Mr Maseko. You have said that this memorandum does not look like the kind of memorandum that used to be given to Ministers and yourself ahead of cabinet meetings. Are you able to tell me some of the features that such memoranda

would have that make them different from this one? Would they be signed by a particular Minister for example? What else would they have? Would they have the letterheads of the department concerned or not – maybe not letterheads? What – what features would you remember as some of the features that would be in such a memorandum?

**MR MASEKO**: The cabinet memoranda is prescribed in government. So the logo is not a requirement. It will have the whole – the covering letter obviously. But there will be introduction which explains the  
10 policy issue that is being discussed. It will have a background. It will be – it will outline the process that was followed. It has topics such as have all...

**CHAIRPERSON**: Oh the way the memorandum...[intervenes]

**MR MASEKO**: So it is a formatting.

**CHAIRPERSON**: The memorandum would be structured.

**MR MASEKO**: It is – there is a....

**CHAIRPERSON**: Is different from this one.

**MR MASEKO**: It is way different from this.

**CHAIRPERSON**: Way different.

20 **MR MASEKO**: So it will – it will have to indicate whether there has been sufficient...

**CHAIRPERSON**: What the purpose of the memorandum is maybe.

**MR MASEKO**: Consultation. Ja purpose – have you consulted – who have you consulted?

**CHAIRPERSON**: Yes

**MR MASEKO**: Financial implications.

**CHAIRPERSON**: Yes.

**MR MASEKO**: And all of those kinds of things.

**CHAIRPERSON**: Yes.

**MR MASEKO**: So Chair having not seen this document before.

**CHAIRPERSON**: Hm.

**MR MASEKO**: My only reasoning could be that it is a memorandum that was prepared to the President which may have been attached to the Presidential minute which gives – because the President normally  
10 does not sign a one pager cabinet or Presidential minute. There needs to be a note explaining what this is about – what seeks to achieve. But again speculating I do not know what this document is.

**CHAIRPERSON**: Okay. No thank you very. Thank you very much for having come back to...

**ADV HOFMEYR**: Chair apologies. If I may just – there is a follow up question.

**CHAIRPERSON**: Oh okay.

**ADV HOFMEYR**: Just arising from your question because when we looked at Exhibit M2 which was the example of the cabinet minute that I  
20 handed up from Minister Gordhan's evidence. We were looking at the small text under paragraph 5.3. And I asked for your comment earlier on the fact that there seemed to be numbers applied to cabinet memoranda because this reads: Cabinet Memorandum 5 of 2016. Chair just as a follow up to your question as to what are the normal features of cabinet memoranda would you expect to see an allocated number on

a memorandum?

**MR MASEKO:** It would have – it would have an allocated number. It will be signed by the Minister stating the process that was followed. So without any shade of a doubt Chairperson this is – that page that we have just looked at is not a cabinet memorandum without a doubt.

**CHAIRPERSON:** Okay. Thank you.

**ADV HOFMEYR:** Thank you Chair.

**CHAIRPERSON:** Thank you very much Mr Maseko.

**MR MASEKO:** Thank you.

10 **CHAIRPERSON:** For having come back to give evidence and clarify certain matters. You are excused and if another need arises for us to ask you to come back we will ask you. We hope that maybe it might not be necessary now that you have come back. I think it is the second or third time? But thank you very much. You are excused.

**MR MASEKO:** Thank you Chairperson.

**CHAIRPERSON:** We are going to take the lunch adjournment. It is now about twenty eight minutes, twenty nine minutes past one. We will resume at half past two. We adjourn.

**ADV HOFMEYR:** Thank you Chair.

20 **REGISTRAR:** All rise.

**INQUIRY ADJOURNS**

**INQUIRY RESUMES**

**CHAIRPERSON:** Ms Hofmeyr I seem to be without a pen this afternoon. They will try and get one for me, but I think we can - we can proceed.

**ADV HOFMEYR:** Thank you Chair.

**CHAIRPERSON:** Yes. Thank you.

**ADV HOFMEYR:** Chair we next have the evidence of Mr Manyi who is also a returning witness.

**CHAIRPERSON:** Yes.

**ADV HOFMEYR:** If I may request that he be sworn in.

**CHAIRPERSON:** Yes. Good afternoon Mr Manyi. Thank you. Please ...

**MR MANYI:** Good afternoon Chair.

10 **CHAIRPERSON:** Thank you. Please swear him in.

**REGISTRAR:** Please state your full names for the record.

**MR MANYI:** Mzwanele Manyi.

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

**MR MANYI:** No. I do not.

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

**MR MANYI:** Yes. I do.

20 **REGISTRAR:** Do you swear that the evidence you will give will be the truth, the whole truth and nothing but the truth if so please raise your right hand and say so help me God.

**MR MANYI:** So help me God.

**MR MANYI:** (duly sworn, states)

**CHAIRPERSON:** Thank you. You may proceed Ms Hofmeyr.

**ADV HOFMEYR:** Thank you Chair. Chair Mr Manyi's affidavit before the Commission is in the file containing all of the affidavits for the

evidence over the course of this week. I propose that his affidavit be entered as EXHIBIT NN2 and Mr Manyi you will find it in the file in front of you under the second tab.

**CHAIRPERSON:** Mr Mzwanele - Mzwanele Manyi's affidavit contained in the lever arch file marked NN will be marked NN2.

**ADV HOFMEYR:** Thank you Chair.

**CHAIRPERSON:** What page is it?

**ADV HOFMEYR:** It commences on page 1.

**CHAIRPERSON:** Oh I found it.

10 **ADV HOFMEYR:** Indeed. I - we will be under two predominantly ...

**CHAIRPERSON:** Yes.

**ADV HOFMEYR:** And then we may move to one or other of the affidavits as we did with Mr Maseko earlier.

**CHAIRPERSON:** Okay.

**ADV HOFMEYR:** Mr Manyi you gave evidence at the Commission in November of last year as I have it on the 14<sup>th</sup>, the 26<sup>th</sup> and 27 November. Can you confirm that?

**MR MANYI:** Chairperson just before we proceed ...

**CHAIRPERSON:** Yes.

20 **MR MANYI:** Just - just before we proceed Chair.

**CHAIRPERSON:** Yes.

**MR MANYI:** This jacket is making me hot. Is it okay if I take off my jacket Chair?

**CHAIRPERSON:** If you are feeling too hot.

**MR MANYI:** Yes.

**CHAIRPERSON**: That is okay.

**MR MANYI**: Thank you. I just wanted to address the Chair ...

**CHAIRPERSON**: Yes.

**MR MANYI**: On the issue - issue of procedural fairness ...

**CHAIRPERSON**: Yes.

**MR MANYI**: Which I do not think I am receiving Chair and I want to state why.

**CHAIRPERSON**: Yes, yes. Proceed.

**MR MANYI**: On - on 25 October ...

10 **CHAIRPERSON**: Hm.

**MR MANYI**: I received correspondence from the Commission.

**CHAIRPERSON**: Hm.

**MR MANYI**: Asking me to come and appear here to give oral evidence.

**CHAIRPERSON**: Hm.

**MR MANYI**: Part of what is said in the memorandum is that I must come and give evidence and be asked questions on the withdrawal of your dismissal from the Department of Labour by Minister Oliphant on your transfer from your position of DG of the Department of Labour to - to GCIS and then - and matters related incidental to that.

20 I then responded to this Chairperson. I said to - to the Secretariat that I am confused as to what has this got to do with the State Capture mandate because from where I sit this is a pure Human Resources matter - LRA matter - CCMA and stuff. What has that got to do with - with this - with the State Capture mandate?

I go further. I say that in any event people that were actors

in this space were actually Ministers. It is a Minister matter that would have suspended me. It is a Minister that would have purported to have dismissed me. It is a Minister that would have reinstated me. It is a Minister that would have transferred me. So where do I come in?

If anybody has to give any clarity here. It is people at Executive Authority level. Not me. I was a subject of - of these decisions. So what I am coming to do here and I said I do not want to be coming here and waste the Commission's time saying I do not know. I do not know, because these were decisions that were taken by the  
10 Executive Authorities over me.

So what has that got to do with me? So I write back to them and I say if - unless there was perhaps a - I said unless if there was perhaps a contradiction in my earlier testimony and I - and I do not become general Chair. I also become specific in the letter. I say namely the issue of my transfer.

Now part of the documents that I was given is the - is the affidavit of former Minister Oliphant. Now Ms Oliphant explains a lot of things, but at the end she then explains that she therefore reinstated me. She therefore agreed to the transfer. She wanted me transferred  
20 etcetera.

So I then say to - to the Commission if anything what I had said when I was here last is that I was transferred. So what Minister Oliphant has said is not a deviation from that. She is still saying I got transferred. So - so there - so from where I sit there is no contradiction.

They pick up a contradiction because I said I was suspended and she said was I dismissed or I said - so I am saying Chair here that whether and we can go into that at the right time, but whether it is suspension or dismissal or whatever - bottom line is that - bottom line is that that whole thing was rescinded and bottom line is that I was then transferred which was my original testimony.

So what exactly am I doing here? Then I get subpoenaed to come here. So I am - I am coming here. I am coerced to come here. So I come here under a subpoena. Now the subpoena comes and the  
10 subpoena notwithstanding that it also was at a wrong address and I am even worried about that Chair, because if they had the wrong address, because just before you know then they say they cannot find you.

Then before you know there is a warrant of arrest and all of these things. Now I do not know how the Commission cannot know my address. They come up with some address in Cape Town, Claremont. Now I have never even set foot in Claremont, but somehow I have an address there, but that is a side issue. The issue Chair is that - then the - then the summons come and the summons raises three broad areas.

20 It says you are subpoenaed to come and do one, two, three. The first one your tenure at the Department of Labour. Your tenure at GCIS and any other matter. Now Chair, how do you prepare to the Commission with such a broad canvas. I mean Department of Labour on its own is a huge department.

When somebody says your tenure at the Department of

Labour I immediately think of what could it be. I had Compensation Fund. I had UIF. I had the entire department of 7 500 people. So what exactly is the issue and then GCIS as well is a huge department had subsidiaries and all that.

What is it - when - when a - a subpoena says your tenure in those places. It is a - it is open ended. It is a blank cheque and then over and above that blank cheque then it says any other matter that is in the brief of the Commission. So Chair I am here saying I do not think that is fair. I am not adequately prepared to come here.

10           Lunch time today Advocate Hoffman (sic) said says to me can I give you a bundle from DPSA. I mean this is like today lunch time. Can I give you a bundle from DPSA? Then I say okay. How thick is this thing? She says something like this. I stated to her how can you expect me between 2 o' clock and half past two to internalise whatever is being said in that bundle and all that.

So Chair I am here saying I think first of all even the Commission I do not think they are ready for me, but I am certainly am not ready. I think I should - there - there should have been a bit more transparency. There should have been a bit more fairness and I should  
20   have been given ample opportunity to prepare.

I think the purpose of the Commission is to assist the Commission to get to the truth. It is not to be tricked. Right now Chair I must tell you I feel like I am here for an ambush. This is how I feel, because memorandums will be popping up left, right and centre. Do you recognise this?

Then I will be looking with cameras all on me and looking stupid. I do not want to look stupid Chairperson. I want to come here fully prepared and then I can deal with matters, but I do not think I should allow myself to go into an ambush like this, because for me I think it is an ambush and in conclusion Chair I am asking for an adjournment up until the Commission can give me all the things I need to consider and - and if there are areas that they want to traverse with me.

10 They do not have to give me specific questions. Even if they give me areas to traverse. They must give me that so at least I prepare. Just now - I mean it is not fair Chair that I come here based on memory of what happened in 2012 and then I am sitting here with advocates that are sitting with bundles which they have studied these bundles.

They know them backwards and then I must sit here and rely on memory of 2012. This is grossly unfair Chair.

**CHAIRPERSON:** Thank you Mr Manyi and it is good that if you feel that you are not being treated fairly that you have been able to articulate how you feel about the matter. I am going to allow  
20 Ms Hofmeyr to say something in response.

**ADV HOFMEYR:** Thank you Chair. Chair there has been no ambush of Mr Manyi today and I make that submission off the back of the engagements that have taken place with Mr Manyi preceding today and I would like to begin that because there is record of it. In NN2 which is the exhibit of Mr Manyi's evidence and it commences at page 1-1-7.

Chair it is not necessary to go to all of these documents, but I just want the record to reflect that they exist there. The interactions with Mr Manyi commenced in a letter dated 16 October of this year. I do understand that it was only received by Mr Manyi I think on 18 October, but it was a letter that identified for Mr Manyi that since his last evidence there had been further investigations of the Commission.

There had also been a further affidavit that had been received from Ms Williams in respect of which his comment and response was sought and then the letter identified certain further areas  
10 of investigation in respect of which Mr Manyi specific answer to a detailed set of questions was set out.

All of that related to his tenure at the Department of Labour. Disciplinary processes that were embarked upon in relation to him while he was there. The charges that he faced. The outcome of that process. Whether indeed he was terminated as a consequence or during that process.

Whether there had been any appeal against the decision to terminate him. He was provided with a copy of the letter of termination. That is signed by former Minister Mdladlana dated  
20 29 October 2010 and so it sets out all the areas of particular inquiry of the Commission as at the middle of October.

That was then followed by a meeting with Mr Manyi that took place on - I think it was Monday 21 October. My learned friend will correct me if I am wrong. Mr Manyi was brought up from Cape Town for the purposes of that meeting. He sat with the investigators and the

legal team of the Commission to go through his response to the questions that had been posed.

In an effort for him then to be able to provide an affidavit to the Commission. That was followed with an affidavit from Mr Manyi for which we are indebted. It is quite a comprehensive affidavit. Certainly in relation to its responses to Ms Williams. In relation to the further areas of inquiry it is much briefer and pursuant to that he was engaged to be asked to come and give evidence today.

That is the letter I understand that he refers to. Subsequent  
10 to that indeed there are further records in the bundle. He raised concern as to why he was being asked to come and give oral evidence for what he termed is a pure Human Resources/Labour Relations of CCMA matter.

You will find that correspondence in NN2 from page 1-2-8. In that correspondence he himself says and I quote:

“What would have been of concern to both me and the Commission in my humble view is if the new information ...”

This is the information he has referred to previously pursuant  
20 to the Commission’s investigations.

“...somehow contradicts what I had already stated under oath. Namely that I was transferred.”

In response to that indication that he declined the invitation to attend. A further letter was sent to him from the Commission. That you will find again in the same EXHIBIT NN2 at page 1-3-0. There it

was explained to Mr Manyi that the Commission had received an affidavit deposed to by Minister Oliphant in which she says that after she was appointed as the Minister of Labour Mr Manyi had phoned her and indicated to her that he intended to appeal the decision to dismiss him or to take the Department of Labour to court over his dismissal and she further said that there was a further meeting between the two of them at which he had again indicated that he wanted to take the Department of Labour to court over Minister Mdladlana's decision to dismiss him.

10                    Now that - and then he was afforded a copy of that affidavit. Now that evidence must be read in context with the response that Mr Manyi provided to the questions of the Commission, because Chair you will recall one of the pertinent questions Mr Manyi was asked was well were you terminated.

                         If you were your position as DG what steps did you take? Did you appeal? Did you not and you will recall I made reference to the letter of former Minister Baloyi dated 29 October 2010 which was provided to Mr Manyi as the backdrop for those questions. Now Mr Manyi's response to all of that in his response to the Commission  
20 which again is at NN2 at page 38 says that he received the letter from Mr Mdladlana relating to his termination from the Commission.

                         He says the first time he was seeing it was on Friday 18 October 2019. He then indicates that he had asked the Commission to obtain proof that the letter was sent to him and he goes on to say:

                         "...but I know there is such proof in essence."

Because Mr Manyi's version is he never received that at all. It is in the context of that indication to the Commission that Minister Oliphant's affidavit then raises a serious matter for further investigation, because Minister - former Minister Oliphant's affidavit as we understand it is saying but there were engagements between me and Mr Manyi about an appeal against the decision to terminate him.

She also indicates in her affidavit that she took steps in January 2011 to withdraw that very termination, but what at this point Mr Manyi has told the Commission is that he never received the letter  
10 terminating him and so that was explained to Mr Manyi in the correspondence that I referred to at page 130 and it was indicated to him that there certainly was a contradiction then between what Ms Oliphant had said and what Mr Manyi had said to the Commission and it was off the back of that and the other matters that require investigation that the summons was issued and I understand successfully served on the Johannesburg residence of Mr Manyi yesterday evening.

Nonetheless I understand Mr Manyi received that correspondence. Indicated that he would come up to be present today  
20 and so travel arrangements were made for that purpose. Chair it is against that backdrop of the facts that it will be our submission before you today that there has been no ambush of Mr Manyi. Mr Manyi also I should record requested a copy of the bundle of his affidavit.

That was provided to him in its paginated form. I think either Friday or Monday this week. Mr Manyi can confirm that. What was

also made clear to Mr Manyi in that correspondence is that there were further documents that were being sought and obtained by the Commission. That those had not yet been completed.

That efforts were afoot to do so as expeditiously as possible, but it - he was indicated that if there is any document in the course of the proceedings today that he is - his attention is drawn to that he has not seen recently, does not remember, wants time consider it would be the position of the legal team that he should be afforded that time.

Even with the possibility of a short adjournment if that was  
10 necessary. All of that was made clear to Mr Manyi in correspondence. The final point on this Chair just to conclude is that I mention this - this morning that there was still an affidavit from DPSA that was outstanding.

We successfully did receive it in the course of the morning and it was for that reason that I - as Mr Manyi has correctly pointed out - approached him over the course of the lunch break when it had been added to the files and paginated to afford him an opportunity to consider those documents. It is against that backdrop Chair that it is our submission to you today that we continue with Mr Manyi's evidence.

20 **CHAIRPERSON:** Mr Manyi would you like to reply?

**MR MANYI:** Yes Chair. A couple of things. Firstly - firstly it is important that we - we are very clear about the contradiction between and what I - the contradiction between what I have said about my suspension versus dismissal that seems to be what Advocate Hoffman (sic) is saying that - and we can deal with that at the right time but the

issue of me Chair is that that discussion whichever way it goes it is still an HR matter.

It is still an LRA matter. I am still trying to understand why is it in this Commission that matter, because it is a Human Resources matter and all that and in any event the fullness of that thing is that what - whether it was suspension whether it was dismissal it was rescinded.

So what is the materiality of discussing something that was actually rescinded? Whichever way it was it was rescinded. That  
10 thing. So what is it that we - we are dealing with. Are we going to open that LRA matter through backdoor or what are we doing and the issue also then Chair in terms of fairness that I am - I am dealing with here.

I then ask for the - for the bundle and - and advocate here when she says the bundle was given an impression will be created that I have all the information which is not true. When I asked for the bundle I wanted all the information that I need to consider to come here. All they gave me for the bundle is what I gave to them.

It is my affidavit which I know backwards. It is the - it is the -  
20 what do you call it? The annexures which I gave to them. They just played those back to me and then also just the correspondence going backwards and forwards, but the rest of the other things were not part of this bundle. For instance they say any other matter.

What - in the subpoena it says any other matter. I do not know what any other matter is. Now if in the absence in the bundle - in

the absence of anything relating to the Department of Labour in the bundle. I am not even sure whether the responses I gave earlier on were enough to stop the matter or not.

So in the absence of them there I think okay maybe then they have been dealt with. So - so this is why Chair I am sitting here. There are three areas that the - there are three areas that a subpoena is - is reflecting on. The subpoena talks about my tenure. It is not even specific. Now the subpoena is broad. This is my problem Chair.

The subpoena is broad and I have - it is a legal document. I  
10 have got to consider what the subpoena says. The subpoena wants to talk to me about my tenure at the Department of Labour. That is far broader than what advocate is saying. The subpoena talks about my tenure at the GCIS. That is far broader than whatever she could have said now.

Over and above that it says any other matter. Now Chair that cannot be fair. I cannot come here and pretend to be a spokesperson of GCIS and speak in my tenure that I do not even have the mandate of GCIS. I do not even have the mandate of the Department of Labour. How can I come here and then come and then come and talk about my  
20 tenure when I was there.

If there are specific questions that relate to me. It is not like Chairperson when I was there I was a consultant that was just doing work. Therefore come and explain what you did there. I was a full time employee and I was executing Government mandate. So if anybody wants to know what happened there, they must ask GCIS.

They must ask Labour, but if there is something personally dealing with me then I must be confronted upfront and be asked questions. I mean there are other questions that they had asked me earlier that she is referring to. I responded to those questions. If maybe it is a follow up to those questions.

Why I am I not getting told that your answer here was inadequate or whatever. You know. So I come here. I am drawing a blank as to which way things are going to come and all of that. I do not think that is fair Chair. I think the - the summons or the subpoena must  
10 have a full particulars.

So that a person knows what a person is in for and finally Chair I say this because it is my opinion that people that sit on this chair are not treated the same. There are those who - whose evidence is properly led and they are even reminded about things that they need to say in their own affidavits.

There are people that are treated nicely like that here. There are some of us who come here to be crucified and all that and we are ready to deal with it, but the only thing we asking for is fairness. We must be given proper documentation so that the person can prepare  
20 and make a proper submission.

**CHAIRPERSON:** Thank you Mr Manyi. Certainly from my side I would like to try and make sure that everybody is treated fairly. All the witnesses are treated fairly. Even if it is an implicated person when they give evidence. They must be treated fairly, but I accept that there may be cases where I think somebody is being treated fairly and they

have a different view and that is - that is normal.

I accept that there may be other people who may take a different view about whether we are being fair or not and we accept that they are entitled to take a view on how we deal with things, but we will continue to do the best that we can. We do not guarantee that we will satisfy everybody, but certainly from my point as Chairperson I want us to continue - all of us including the legal team - to continue to do the best we can to try and make sure that there are no complaints of unfairness.

10 As I have said before there will be times when somebody thinks they are treated unfairly and I take a different view and I make a ruling and I make a ruling in accordance with my own judgment of what is fair and what is not fair, but we will always try and do the best we can.

Certainly from my side to make sure that there are no concerns of unfairness and where there are concerns to try and see how they can be met to try and make sure that everybody feels that they are treated fairly, but I think Ms Hofmeyr the point that you did not address in your response is the one about the - the scope of what  
20 Mr Manyi is to be asked about today. So I think you must address that.**ADV HOFMEYR:** Certainly Chair. I would like to pick that up in relation to a point Mr Manyi made in his reply a moment ago which is that there - there was not clarity for him as to where the contradiction between Ms Oliphant's affidavit and his responses to the Commission lay and I would like for that purpose - because it is the backdrop to the

engagements and the subsequent summons just to draw that to your and Mr Manyi's attention.

That again is in EXHIBIT NN2 at page 130. There the Commission through the Secretariat made it clear to Mr Manyi in response to his concern that this was a mere Labour matter and did not merit his giving oral evidence, but his acceptance that if there was a contradiction between his versions and those of others that would warrant the attention of the Commission.

What happens at page 130 in the correspondence with Mr Manyi is  
10 those aspects of Ms Oliphant's affidavit are highlighted and then the following is said, Ms Oliphant's – I see it says email but it should say affidavit, directly contradicts your response to the Commission that you had no knowledge of Minister Mdladlana's decision to terminate your appointment as Director General of the Department of Labour, so it is my submission that there could be no doubt in Mr Manyi's mind what  
20 precisely had been identified as the contradiction.

That occurred, that correspondence was sent to Mr Manyi last Friday and it was in addition to it was a copy of the summons that was being served on him, so he received a copy last Friday, and let me just  
20 give the actual language of the summons to you Chair, if I may, he's asked to attend today for the purposes of evidence and being questioned about the following matters being investigated,

“matters relating to the period of Mr Manyi's tenure as Director General in the Department of Labour and in the Department of Communication and Information Systems and

any other matters arising which are within the Commission's mandate to investigate allegations of State Capture, corruption and fraud in the public sector",

Chair it is not the case that it is any matter arising it's a matter that falls squarely within the mandate of the Commission and it's my submission that the summons makes it clear that the matters which he will be questioned on relate to his period as DG of Labour and Chair what will become clear in the course of the evidence is that it will span that period because it will start with his appointment, it will move to his  
10 suspension, it will move to the matters that he's already been alerted to, the Commission wants to investigate further which is his suspension the process of the disciplinary committee, what was its conclusion, what steps he took after and the it is his arrival at GCIS and related – and the period there. Chair that has been clearly identified to Mr Manyi because he was given the affidavit of Ms Williams, he was asked to comment on it. Ms Williams' affidavit traverses the period of time that he held the position of DG of the Department of Communications and Information Services. So it's to span the period during which the questions will relate to and it's my  
20 submission, comes off the back of the repeated engagements and clarity that was given to Mr Manyi as to the particular focus.

The last point I wish to make in this regard is Mr Manyi was aware of the scope of the summons as of Friday last week. There has been no indication from him since then that there's any lack of clarity on his part as to what would be traversed today with him in evidence.

It is also the case, it is our submission that it is not appropriate for Mr Manyi, at this stage of the proceedings to objecting to giving evidence at all. The – Mr Manyi is here under summons today to give evidence, if there is any question that is put to him at a point in the course of these proceedings in respect of which he has an objection, because it lies outside the scope of the summons or because he needs more time to consider we can deal with it as the evidence unfolds in the course of the afternoon. So those are our submissions, both on the scope of the summons, what preceded it and what the approach should be going  
10 forward in our submission.

**CHAIRPERSON:** Just deal with the question that he has articulated two times, mainly this is a HR/LR CCMA matter, what does it have to do with the Commission in terms of reference of the Commission, I think just deal with that as well.

**ADV HOFMEYR:** Of course but Chair it is our submission that this is not a HR or merely a HR, Labour Relations or CCMA matter and I make that submission for two reasons. The first is that any evidence that is given to this Commission in its course of its proceedings that may be false is of grave concern to this Commission and Mr Manyi testified in  
20 November of last year about his tenure at the Department of Labour about the circumstances in which he was disciplined there and about his move from there to GCIS. It is the intention today in the course of the questions to probe that evidence with Mr Manyi because if that evidence is false that should immediately be brought to the attention of this Commission and those matters relate to the subject matter of

Human Resources, CCMA proceedings but if what Mr Manyi said about those proceedings in his last evidence before this Commission are not correct, it is my submission that it is our duty, first as the legal team of this Commission to place that before you and furthermore to probe it. We are required under the rules to ask any questions that will assist the Commission in establishing the truth about the matters before it.

The second significance Chair, is the following. In the greater mandate of the Commission precisely what happened prior to Mr Manyi being appointed as the DG, well transferred to the position of DG at GCIS is materially important. I've transversed it in the evidence this morning of Mr Maseko. It happened in the space of a week, a series of events took place between the 25<sup>th</sup> of January 2010 – sorry 2011 and the 2<sup>nd</sup> of February 2011. It involved, amongst other things, removing Mr Maseko from his position at GCIS where there had been no prior indication of dissatisfaction of his position. It involved on the Monday of the very same week, that Mr Manyi was transferred to GCIS, the withdrawal of the termination of Mr Manyi's employment in the public sector. Precisely how those events unfolded against the backdrop of Mr Maseko's evidence that they were a consequence of him being unwilling to engage in the instruction that Mr Gupta had given him to direct advertising spend to TNA we submit is squarely within the State Capture mandate of this Commission, merits further probing and it for that reason that we submit this is not a mere HR/CCMA matter. It's about what decisions were taken and by whom over the period of a week to ensure that Mr Maseko left GCIS and Mr Manyi took his place,

thank you Chair.

**CHAIRPERSON:** Mr Manyi you haven't had a chance to deal with the reasons you've been given by Ms Hofmeyr as to why this matter is relevant to the business of the Commission, so I think I should let you deal with that.

**MR MANYI:** Ja thank you Chair. Firstly, I think I must deal with how Ms Hofmeyr is dishonestly interpreting what I had written on the memo written to the Commission on page 128 on the 31<sup>st</sup> of October, it's point four on that memo where I say,

10            "What would have been of concern to both me and the Commission, in my humble view is if the new information somehow contradicts what I had already stated under oath",

              And then I say namely, so I don't leave it broad, I specifically say what is it that I'm dealing with,

              "Stated under oath, namely that I was transferred. Then I say, if anything your own investigation that has brought up the former Minister Oliphant's name actually confirmed that Minister Chabane departed from a legitimate platform to effect my transfer".

20            So this is the point Chair, now she takes the fact that I spoke about the contradictions and then just uses it as she pleases, it's not right and that was – I never – she takes that to her own expediency whereas I was quite specific that the issue for me about the alignment between what I'm saying and what Ms Oliphant is saying is purely on the transfer, it was on the narrow issue of the transfer. I said I was

transferred up to as we speak right now there is no evidence to suggest otherwise. I was transferred, even Ms Oliphant in her own affidavit, she says I was transferred and so on. She explains how that transfer happens and all that. So that's the contradiction that I was talking about that there's no contradiction, in fact, they have found evidence if maybe – I mean at this point all we had was a letter from Minister Chabane that was talking about a transfer which in fact, one of the questions, when I was asked why I say I was transferred and I took actual exception to this. I said to the secretariat here that this letter  
10 was given to you, the word transfer appear four times in this letter but you're still asking me why am I saying I was transferred and yet I've got a letter that says I was transferred and the word transfer appears four times, what do you want me to say, and then now they bring up new evidence of Ms Oliphant and Ms Oliphant again, says reinstated and what have you and then she then says in her letter, she says, she decided that the option she was give – she was given two options by Minister Baloyi apparently, she says in her affidavit. She says either I be reinstated into the Department or I get transferred. She makes the election herself, she says I decided to transfer, in fact she mentions  
20 two reasons for her decision she says, A) because she understands me to have been dismissed there so she didn't want me in the department, that's what she says.

She says B) she also wanted peace and stability because also she had received a memo from NUMSA – not NUMSA sorry from NEHAWU that was calling for her for my reinstatement. So I think she

just foresaw some part that I make of sorts and she decided that it's best that I get transferred. So this is why, for me, I think the importation of corruption and capture by Advocate is totally misplaced this was a decision by Minister Oliphant, she had a choice of keeping me in the department or not keeping me. She made the election of transferring me and all that and again, I then say as well, people that were making all these decisions is not even me, it's people outside me that were making these decisions, why am I the person that is responding to decisions and all kinds of things that were done that impacted on me and it was not my – I was not exercising any power, I was a pawn in the process. Why you calling a pawn, why don't you go to the people that were playing the chess and ask them why did they move this pawn from here to here and I insist, Chair, that - I mean even if you look at the genesis of this matter, the person that started this matter is Minister Mdladlana by suspending me. So this is where the genesis of this matter comes and ends up where it has ended up and to then, all of a sudden try to find State Capture on this matter then it means then you must first call Mr Mdladlana to explain what was his original motive for suspending me and I know that and I can assure you it's got nothing to do with – well if there's anything to do with State Capture, I'd like to see the evidence of this but as far as I'm concerned this matter is a pure HR matter, in fact you can even look at the recommendations.

The recommendation of Mr Mdladlana in the letter that Ms Hofmeyr erroneously calls a termination letter, it's not even a

termination letter that letter must be read for the record Chair. That letter is a probation letter of sorts, we can deal with that but it's actually factually incorrect to call that letter a termination letter. So it's another discussion but at the end he recommends that if I'm not happy with his decision I must go to PCSBC the Bargaining Council. Minister Oliphant, after our discussion, she had recommended that I go to DPSA and all that, clearly these are all labour related issues and all that. So as to why Advocate Hofmeyr is seeing State Capture in a pure Labour Relations – sees State Capture in pure Labour Relations Act, 10 CCMA, Human Resource matter is just beyond me.

**CHAIRPERSON:** Yes okay, two matters Mr Manyi, I think that the – I'm not looking at the summons here I have not looked at it but based on what Ms Hofmeyr has read to me, reading the summons I think that you may well have – it may well be that the summons could have been formulated in a more precise way than it was because it might look quite wide whereas I think, listening to what Ms Hofmeyr has said, it might be specific matters during your tenure that they are looking at, so that's the one point. The second point is that to the extent that you may be asked questions that relate to matters where you need more 20 time to recollect or to look at documents to refresh your memory that might be something that might be looked at as part of trying to make sure that there is fairness but it may be that there may be questions in regard to which you would not need more time you would be in a position to deal with. So that's what I want to say about that aspect.

With regard to the issue of what your transfer and dismissal or

purported dismissal may have to do with the terms of reference of the Commission, I will share with you what I'm interested in, in finding out. We heard evidence last year which was confirmed this morning by Mr Maseko that he was the CEO of GCIS, that he had a meeting with Mr Ajay Gupta and that on his version Mr Ajay Gupta made certain demands on him for the media budget of Government to be effectively transferred to their entity or entities and that he refused to cooperate and that on a certain Saturday in October 2010 while he and his wife were driving to North West where he was going to participate in a golf tournament, he got calls from people from within the Gupta entities, one of which was Mr Ajay Gupta and they had a conversation, which according to Mr Maseko was not pleasant, at least it did not end pleasantly, he said he even used a explanative in the course of that but one of the things that he said is that Mr Gupta, if I recall correctly and I hope I do recall correctly this time. One of the things that Mr Maseko says, Mr Gupta said to him was something to the effect that Mr Maseko was not cooperating or was not prepared to cooperate he would report him to his seniors and he would be, I think he used the term, sorted out or something to that effect.

20 That was, if I recall correctly, it was the end of October and then there's November/December according to Mr Maseko end of January he says Minister Chabane called him and said the former President had instructed Minister Chabane to remove him from GCIS and Minister Chabane said to Mr Maseko well, I won't throw you into the streets because I know you are a good civil servant, I'll try and see

where you can be transferred or something to that effect. So Mr – last year and this morning I asked Mr Maseko how his relationship was with Minister Chabane and he says, in effect very well, they worked very well together and that there are no issues. The former President came and gave evidence and if I recall correctly, his evidence was that he didn't instruct Minister Chabane to remove Mr Maseko from GCIS and he said something to the effect that the transfer of Mr Maseko must have happened because maybe his Minister didn't want to continue working with him, I'm paraphrasing because he said it did happen that

10 sometimes Ministers are not happy with their DG's and then they would approach him. Actually at some stage if I'm not mistaken the former President said something along the lines that sometimes the Ministers used his name, I can't remember, used his name to get DG's transferred.

So one of the things I'm interested in is whether Mr Maseko's transfer was connected with the – with what Mr Ajay Gupta said to him according to Mr Maseko. Now we have a situation where Mr Maseko, effectively says, I was a very good employee of GCIS and this morning we saw that the last performance assessment that he was given was

20 given a score of 114%, he says I was performing very well I never got anything below 100% and I never committed any misconduct I was never alleged to have committed any misconduct but I was removed. I didn't initiate my transfer. So now you replaced him, you were transferred from the Department of Labour to GCIS so it becomes necessary to understand your own transfer. Now the investigation that

has been done by the Commission has revealed a letter written by Minister Oliphant who was the Minister of Labour at the time of this transfer where she says she was withdrawing your dismissal and then put in a special leave. If I recall correctly the letter is dated either the 1<sup>st</sup> or the 2<sup>nd</sup> of February 2011. So one day or two days before...[intervenes].

**MR MANYI:** 31 January.

**CHAIRPERSON:** Oh 31 January okay, so it happens around this time of this transfer this issue of the transfer or Mr Maseko and I may be  
10 mistaken in her affidavit I understood her to say she withdrew your dismissal because that's what Minister Baloyi said. So one needs to understand how did it come about if you had been dismissed, you know, why was the dismissal withdrawn was that to facilitate your transfer, what was happening and you are right in saying that maybe a lot of those things need to be explained by other people and not you, you know on that you may be right but certainly Minister Baloyi will be coming he has put up an affidavit he will be coming. Former Minister Mdladlana has been interviewed by the lawyers from the Commission, he may or may not be called but he certainly has been interviewed. Ms  
20 Oliphant is coming tomorrow so those who will be called will be asked but from my side, it's important that, that which one can hear from you as to what do you know about this, I mean there's the issue whether you knew about the dismissal that's one thing because Ms Oliphant says something about a meeting that she had with you.

So the whole idea is to try and understand, what were the

reasons for Mr Maseko's transfer from GCIS to DPSA and is there anything in regard to your own transfer and withdrawal of dismissal that could throw light on the transfer of Mr Maseko so that's what I - in regard to your transfer that's what I'm very interested in. so having said that if I can, I don't want to make a ruling, I'd like to see how we can accommodate your concerns and still be able to move forward, partly because the Commission doesn't have a lot of time left before it finishes its work, partly because the Commission may have paid for you to come here and we would like to make use of that but we must  
10 balance that against trying to be fair to you. So what I had in mind, and I'd like to hear what you have to say, what I have in mind is whether you don't think it will be fine to say, let's get going and those questions with which you don't have a problem because you can deal with them, you don't need more time, you deal with them. If we come to those where you might need more time because you need to refresh your memory on documents or whatever let's deal with them, maybe as and when they occur or later but we try and cover what we can, what do you think about that?

**MR MANYI:** Yes thank you Chair. We are sitting here Chair with  
20 benefit of hindsight and if I understand the essence of your issue is whether the corrupt intentions were fulfilled, I'm putting words in your mouth Chair, if you'll just bear with me, if the corrupt intentions were fulfilled by me taking over Mr Maseko. Now there is a very clear history or tragedy of what happened when I took over after Mr Maseko for instance, just by way of example, Mr Maseko mentions, I think a

figure of R600million that he was meant to have enabled as it were. We have information here that was given by National Treasury to say that from January – I think from 2011 to 2018 money that was paid to TNA's table amounts to something like R250million around that number, this is up to 2018 it's not even the R600million but that was not just from GCIS, this was from National, Provincial, local total money paid. Now the money that, for instance GCIS paid in my tenure, first year in 2011 was something like eight point something million, 2012 seven point something million, those are the kinds of numbers. Now – which I

10 think to any reasonable person is a far cry from R600million and of that R8million or R7million of this next year, not one of those transactions there's an issue of irregularity on, they were all done above board and all of that as it were and all the decisions were done without my personal intervention. There is no record of anybody in GCIS saying I coerced them to do 1, 2, 3 which was the reason I even had to do that SMS mistake because the bullying that Ms Williams was talking about happened in 2013 or somewhere when I was long gone and I see even media or seeing it Chair, even yesterday in the Citizen when they were talking about me coming here, part of the narrative is that I was

20 involved in bullying the Department to go into breakfast, something I never did, this is why for me, it was so pressing that I deal with that matter that, that issue of breakfast has got nothing to do with me and all of that. So Chair I'm sitting here, I'm saying why am I actually here because if anybody in my tenure has got a specific irregularity that you can point at, we can deal with that if there's any and I can tell you now

Chair, there's no irregularity during my tenure. The other things about how I came here, Minister Baloyi is coming tomorrow or any other day, Minister Oliphant, the [indistinct] those were the people those are the players, I was a pawn...[intervenes].

**CHAIRPERSON:** We also need to know what you knew, you see that is part of – they may say whatever and maybe some of the things they say you might not agree with, you know I don't know whether – when for example Ms Oliphant says in her affidavit she had a meeting with you where, as I recall her evidence in the affidavit you said you were going  
10 to appeal against the dismissal. I don't know whether you agree with that version or not so that's part of what, for me is important but I think to strike a balance it might be preferable to say, let's proceed, those questions that you are able to answer without any difficulty do so. Those where you need more time, you know articulate your request and then let's take it from there, will that be alright?

**MR MANYI:** Okay Chair.

**CHAIRPERSON:** Okay thank you very much, yes Ms Hofmeyr?

**ADV HOFMEYR:** Thank you Chair. Mr Manyi I was beginning with your evidence in November of last year that occurred on the 14<sup>th</sup>, the  
20 26<sup>th</sup> and the 27<sup>th</sup> of November. Mr Manyi I understand that you raise an issue with the Secretariat about an incorrect recordal in the transcript of the 26<sup>th</sup> of November when you took the oath. The question that was put to Mr Manyi was, do you object to taking the oath, he said no but the transcript records yes. Mr Manyi did you raise that concern with the Secretariat?

**MR MANYI:** Yes Chair I raised a concern and I've already been given feedback that it's been sorted out, so it's sorted out so that's why I'm not raising it here.

**CHAIRPERSON:** Oh okay thank you.

**ADV HOFMEYR:** Super, right if we can then go to the questions that you received from the Commission in the letter dated the 16<sup>th</sup> of October 2019 that you will find in NN2 commencing on page 117. Chair I don't suggest we have to go to it immediately but there were a – I would suggest Mr Manyi two sections to that request, the one was to  
10 ask you for responses to Ms Williams' evidence and the other was to ask you about the matters we've been focusing on recently and that occur under a heading, Disciplinary Process when you were at the Department of Labour. Do you recall receiving that request, the letter concludes...[intervenes]?

**CHAIRPERSON:** Hang on, hang on he hasn't been here for a long time, he has forgotten that if he nods that's not captured in the record.

**MR MANYI:** Yes Chair.

**CHAIRPERSON:** Yes the answer is yes?

**ADV HOFMEYR:** That letter concluded requesting you  
20 to...[intervenes].

**CHAIRPERSON:** I think you can keep your mic on Mr Manyi I'll keep mine off unless I have to say something.

**MR MANYI:** Okay.

**ADV HOFMEYR:** And I'll take care of turning mine off at that point Mr Manyi so you won't need to worry about your microphone. That letter

concluded asking you to provide an affidavit addressing the issues in the letter, what then came were two documents Mr Manyi, the first was an affidavit and that you'll find in NN2 from page one and that concludes at page 24 as I have it.

**MR MANYI:** Ja.

**ADV HOFMEYR:** And that was deposed to as an affidavit is that correct?

**MR MANYI:** Ja that is correct that is an affidavit.

**ADV HOFMEYR:** It is then followed at page 25 with what appears to  
10 be a letter not deposed to before a Commissioner of Oath, is my understanding correct?

**MR MANYI:** That is correct ja.

**ADV HOFMEYR:** Your answers to the questions about the disciplinary process appear only in the letter and not in the affidavit so I would like to give you an opportunity now to go to page 38 of NN2.

**MR MANYI:** Ja.

**ADV HOFMEYR:** On that page, from paragraph 7 you are responding to questions about your disciplinary process and you set out your answers to the questions there, is that correct?

20 **MR MANYI:** Yes.

**ADV HOFMEYR:** Given that this wasn't deposed to under oath can you now confirm under oath that the answers you give here in this section of the letter are true and correct?

**MR MANYI:** Ja they are correct yes.

**ADV HOFMEYR:** Thank you, I'd then like to go to your transcript, you

indicate that some of the evidence about which you were asked questions occurred on the 26<sup>th</sup> of November I think they actually began on the 14<sup>th</sup> of November and so I'd like to take you to that transcript. Chair we've prepared a bundle of the transcripts of Mr Manyi's testimony because it is important that we go to the specific pages of those transcripts. So if I could beg leave to hand that up to you and Mr Manyi you should have a copy available on your right.

**CHAIRPERSON:** Yes maybe somebody could approach him to indicate which one it is unless it's clear from what's written, which one it is.

10 **ADV HOFMEYR:** It is written on the side Exhibit NN Transcripts bundle, do you see that Mr Manyi?

**MR MANYI:** Yes.

**ADV HOFMEYR:** Sorry just for the record?

**MR MANYI:** Yes I've got it.

**ADV HOFMEYR:** And if I may beg leave to hand up a copy for the Chair.

**CHAIRPERSON:** Yes, I've got it.

**ADV HOFMEYR:** Thank you Chair, the file comprises the three relevant transcripts of the 14<sup>th</sup> of November, the 26<sup>th</sup> of November and  
20 the 27<sup>th</sup> of November and I'd like to start, if I may, in the relevant part of the transcript of the 14<sup>th</sup> of November. Mr Manyi you'll pick that up at page 89 of the 14<sup>th</sup> of November transcript, unlike in other cases...[intervenes].

**CHAIRPERSON:** That's under tag what?

**ADV HOFMEYR:** Under tag one apologies Chair, that's the first tag

which contains the 14 November transcript and unusually you now need to look at the bottom of the page for the relevant page of the transcript, usually we look in the top right-hand corner for the pagination but now we are in the bottom of the page because that's how the transcripts are produced for the Commission.

**CHAIRPERSON:** What's the page number?

**ADV HOFMEYR:** 89.

**CHAIRPERSON:** Thank you.

**ADV HOFMEYR:** I'd like to pick it up towards the bottom of the page,  
10 because prior to this in your evidence you've been talking about the approach that Minister Chabane made to you and you'll see the Chairperson is recorded in about the sixth line from the bottom as having asked you,

"In other words, his approach, that's reference to Mr Chabane's approach to you, was it in response to any request made by you or wish to be moved from the position of DG of Department of Labour",

And then can you give us your response as it's reflected there?

20 **MR MANYI:** I said no.

**ADV HOFMEYR:** Continue to read it till the end of the page please?

**MR MANYI:** I said,

"No Chairperson it was not, I had not requested to be moved to that position but there was a situation that I thing Government was dealing with because at that time at the

Department of Labour we had some kind of a fall-out with the Minister at the time”.

**ADV HOFMEYR:** Thank you and then if you go over the page, please indicate what you continued to say?

**MR MANYI:** I said,

“In fact I was on precautionary special leave”.

That is what I say here.

**ADV HOFMEYR:** And then the Chairperson interjected and questioned, were you looking for the word, suspension and then what did you say in  
10 response?

**MR MANYI:** I said,

“No special leave, it started as precautionary leave then it graded into a special leave and all of that”.

**ADV HOFMEYR:** Right and then further down that page, you were asked about the approach again and the Chairperson asked for clarification, alright and then this approach from you saw as an approach to try and deal with that situation because previously you had spoken about the fall-out between yourself and the minister and your response there from yes, what did you say in your evidence previously?

20 **MR MANYI:** I don't know what...[intervenes].

**ADV HOFMEYR:** Apologies middle of the way down, after the Chairperson's question,

“Okay, alright and then this approach from him you saw as an approach to try and deal with that situation”.

And what was your evidence?

**MR MANYI:** Ja I said,

“Yes I thought it was a resolution because I had been at home for a couple of months actually so when this came I said, oh well because...”

I think there’s some grammatical error in this transcription here Chair, so I wrote something which I feel is even wrong as I’m reading it.

**CHAIRPERSON:** Yes not that’s fine.

**MR MANYI:** I said,

10 “Well because even for that without going to that[indistinct] I never got really charged into a disciplinary process and whatever and so when it was something that was about to happen or going to happen months rolled by”.

**ADV HOFMEYR:** Thank you, you can continue.

**MR MANYI:** “I was sitting and preparations were being made to do all kinds of charges but bottom line is that I do not sit with a guilty verdict or having said and being dealt with by the DC. So while that process was busy rolling and so on, I think sanity prevailed from where I sit and then I had to move on”.

20 **ADV HOFMEYR:** Thank you, Mr Manyi I’d like your comment on what I understand the gist of that evidence to be. I understand your evidence to be there had been a fall-out between you and the Minister of Labour, Minister Mdladlana, is that correct?

**MR MANYI:** Yes correct.

**ADV HOFMEYR:** That you had never been charged in relation to a

disciplinary process, is that correct?

**MR MANYI:** I think elsewhere –that’s not correct, I think elsewhere I do mention, I don’t know whether it’s here or where that there was a sitting Chair where there was all the lawyers and the Chair of the DC and I think about half an hour or something into that process, the Chairperson got a call and from then onwards, the proceedings stopped and the meeting was adjourned – this is just my recollection and that was it. That was the end of the process and all of that and then I went back sitting home again, this is my recollection.

10 **ADV HOFMEYR:** Mr Manyi that evidence does not appear in any of these three transcripts, there was no reference to 30 minutes into a disciplinary hearing. You may be recalling what you have said subsequent to the engagement with the Commission but what I’m interested in, is what you said here...[intervenes].

**CHAIRPERSON:** No I think you have got that, I thought I wanted to explain Mr Manyi that in regard to questions that Ms Hofmeyr may ask and refer you to the transcript you may have a situation where, what she’s wanting you to do is to confirm what answer you gave at the time you gave evidence which might be different from what you might say  
20 now. For example, if when you gave evidence you might have said this is the answer because that was your recollection at the time but since then you have maybe have seen some documents that have indicated to you that actually your recollection was incorrect. So if you were to be asked the same question now you’d say no that’s not the answer I would give but that’s because I’ve had time to recollect or I’ve seen

some documents. So I just want to make sure that as she asks questions remember that sometimes she may be asking you to just confirm what you said then which might or might not necessarily be the answer you'd give now if in the meantime something has refreshed your memory.

**MR MANYI:** Okay.

**CHAIRPERSON:** Ja okay.

**ADV HOFMEYR:** Thank you Chair. So let me get clear, when you said previously, I never got really charged, are you saying that was not  
10 correct?

**CHAIRPERSON:** I think following my clarification Mr Manyi, I think when she puts the question like that it might be vague to you because she could be saying are you saying that's not what you said here or she might be saying are you saying now you were not charged? Now I don't want to paraphrase the question for her but maybe with that in mind Ms Hofmeyr you could just then either put it again or clarify whether you want him to say what he said previously here or whether you want him to say what he may be saying now if it might be different.

**ADV HOFMEYR:** Thank you Chair, I'm indebted. Mr Manyi in your  
20 evidence on the 14<sup>th</sup> of November 2018 did you testify that you had not been charged?

**MR MANYI:** Ja Chairperson – yes.

**ADV HOFMEYR:** And do you maintain that today as you sit here giving evidence that you were not charged?

**MR MANYI:** Can I just say this Chair so that we don't speak

semantics.

**CHAIRPERSON:** Yes.

**MR MANYI:** There was a bundle – there is a State Attorney bundle where the list of allegations/charges are listed as it were. There's a whole pack of that, then there was a process that we needed to go through to deal with that where I defend myself. I had already made submissions to all the allegations. Now – so that process happened, part of the questions here to say what were the details of your charges, I responded to say State Attorney has got all the files. So I've got even  
10 in my – a mental picture of a very thick file that has got a list of allegations/charges and I know that we've responded to them, now we needed to sit on a DC to deal with those things orally as it were. Now it's a technical question whether you were charged or not so if...[intervenes].

**CHAIRPERSON:** I understand you...[intervenes].

**MR MANYI:** Yes is why I have a dilemma.

**CHAIRPERSON:** No, no I understand. Maybe let's put it this way Ms Hofmeyr. Did you, in terms of what you said before the Commission previously, are you able to say whether your evidence reflected that  
20 you had received allegations of misconduct from the Department or are you – do you not recall whether your evidence was to that effect?

**MR MANYI:** I don't think that question arose but the fact of the matter I did.

**CHAIRPERSON:** The fact of the matter is you did receive allegations and you say there was a meeting at which your understanding was that

those allegations were dealt with and you were supposed to defend yourself.

**MR MANYI:** Yes.

**CHAIRPERSON:** But it was not take to finality?

**MR MANYI:** Yes Chair.

**CHAIRPERSON:** Okay Ms Hofmeyr.

**ADV HOFMEYR:** Why did you say in your evidence on the 14<sup>th</sup> of November then that you did not get charged?

**MR MANYI:** It's because I thought, okay maybe it's a technicality  
10 Chair, my meaning for that is that if you go through a DC then allegations get tabled or whatever then we have that discussion with DC and some ruling is made one by one on some of the allegations/charges that are made. The issue I was trying to talk to is that, that didn't happen.

**CHAIRPERSON:** Are you saying your understanding of being charged would be that at a session such as the one you are talking about, somebody would then say to you, Mr Manyi you are charged with A, B, C, D is that what you are saying?

**MR MANYI:** Yes.

20 **CHAIRPERSON:** That's what you would call being charged?

**MR MANYI:** Correct Chair because – or put differently if there was – ja that's what I'm saying Chair yes.

**CHAIRPERSON:** Okay thank you, Ms Hofmeyr.

**ADV HOFMEYR:** Just to clarify for my purposes Mr Manyi you don't understand it to be the case that if you receive a list of charges from

your former employer identifying those aspects which you must go to a disciplinary to answer that isn't yet being charged, is that your evidence?

**MR MANYI:** I suppose Chair that could be charges but I thought charges were a step above allegations. I have a list of allegations that I had to respond to, so I thought there would come a time when allegations get taken to the next level that you've responded to this, with your response we have not successfully addressed allegations therefore you are charged with whatever. So that is for me the process  
10 in my mind about a person being given a whole list of allegations that still must be processed to be charges because we failed to respond to them. So I was given a list of those allegations.

**ADV HOFMEYR:** And if the document were given referred to them as charges would you still only regard them as allegations?

**MR MANYI:** Correct Chair, I would still regard them as allegations because a charge is something that is a bit more objective that would say, in terms of this, this, this let's say whatever, and it proven to be like that, then that charge sticks as it were but any allegation cannot be elevated into a charge even if you call it a charge. It becomes a  
20 charge once it has been fortified but if it has not been properly fortified it's an allegation even if you call it a charge.

**ADV HOFMEYR:** Mr Manyi just to go back to your evidence of the 14<sup>th</sup> of November and bearing in mind the Chair's direction as to be clear as to whether I'm asking you about what you said then or what you say now, do you accept that your evidence before the Commission on the

14<sup>th</sup> of November was that you remained on leave from the period you were put on precautionary suspension through to special leave until the time that you were transferred to GCIS?

**MR MANYI:** Yes correct, correct Chair.

**ADV HOFMEYR:** And the other aspect of your evidence was that there was no guilty verdict from the disciplinary process, is that correct?

**MR MANYI:** That's correct Chair, I don't even have the report of the session even as we speak.

**CHAIRPERSON:** Okay.

10 **ADV HOFMEYR:** So let's just talk about that disciplinary process if we may for a moment, as you sit here today, do you maintain that from the period you were placed on suspension till the time you were transferred to GCIS you were always in the employ of the Department of Labour?

**MR MANYI:** That is my understanding Chair, it was called precautionary suspension. I think there are two different things there is suspension which is a punitive suspension then there's precautionary suspension. I was on precautionary suspension whereby I was getting paid in that process.

**ADV HOFMEYR:** Were you paid throughout the process?

20 **MR MANYI:** That's my understanding yes.

**ADV HOFMEYR:** Were you paid in December of 2010 and in January of 2011.

**MR MANYI:** I was paid in December 2010 yes, 2011 payment January came late it came in February.

**ADV HOFMEYR:** So no issues with your receipt of a salary alerted you

to the fact that you weren't still in the employ of the Department of Labour.

**MR MANYI:** In fact the December one was a clearer sign because I think the Department Chair were getting paid around the 15<sup>th</sup> unless if the 15<sup>th</sup> is maybe in the weekend then you get paid on the 13<sup>th</sup>. So around mid-month in December 2010 which in fact is another issue for me that if I'm told that from the 1<sup>st</sup> of December basically out of the system, so how come in my bank statements in December I've got – you know in the Department of Labour Chair the payroll is called – on the  
10 bank statement it appears as Mannekrag, so I've got Mannekrag transactions that have come through for me in December. So I had a happy December in 2010 so I didn't understand myself to be dismissed.

**CHAIRPERSON:** My Afrikaans is not very good but I wonder whether Mannekrag is anything like Man Power?

**MR MANYI:** Yes must be Chair, must be Man Power.

**CHAIRPERSON:** Okay.

**MR MANYI:** But that's how the Department of Labour...[intervenes].

**CHAIRPERSON:** Okay.

**ADV HOFMEYR:** So as at December 2010 you had no knowledge that  
20 you had been dismissed from the Department of Labour?

**MR MANYI:** Like I explained Chair – by the way when I was preparing for this I actually went to Nedbank and said, can you give my statement for December, I just want to see if I've been paid and if the Chair wants to see I can show you the statement here now that I got paid in December. So there's no evidence that I was not in the Department,

Mannekrag, the same payroll system that has been paying me throughout paid me in December.

**CHAIRPERSON:** I think that would be important if you have got that.

**MR MANYI:** I can show you Chair, right here.

**ADV HOFMEYR:** Thank you Mr Manyi my question was in fact whether, in December 2010 you had no knowledge that your position at the Department of Labour had been terminated?

**MR MANYI:** Not at all, not only in December throughout. This notion about termination Chairperson I hear it from this Commission to be  
10 honest. My understanding throughout has been precautionary suspension and I have no evidence to the contrary. As I say the [indistinct] was the payment so December I got my money, November I got my money and December I got my money and all that and January one got paid late but got paid, so there is no one month where I did not get a salary.

**ADV HOFMEYR:** Mr Manyi your evidence in relation to the letter that you've seen by Minister – former Minister Mdladlana dated the 29<sup>th</sup> of October 2010, can you give us your evidence on that, did you ever receive that letter?

20 **MR MANYI:** No I saw it for the first time, like I said in that thing, whatever I've said in that response I stick with it. I saw it from the Commission.

**ADV HOFMEYR:** Mr Manyi did you employ the services of lawyers in your disciplinary process?

**MR MANYI:** Yes.

**ADV HOFMEYR:** Who were they?

**MR MANYI:** I think, Thembelana and Advocate Vuyani Genwana.

**ADV HOFMEYR:** Thank you, I'd like to then take you to a document it is in NN5 and it commences at page 290, you'll see NN5 on your right.

**CHAIRPERSON:** Ms Hofmeyr I see that we are at half a minute to 4 o'clock, I'm quite happy to sit longer if that suits everybody.

**ADV HOFMEYR:** Indeed.

**CHAIRPERSON:** Mr Manyi would it be fine with you if we sit beyond 4 o'clock?

10 **MR MANYI:** Ja I'm easy.

**CHAIRPERSON:** You have no problem okay so let's continue and see how far we can go.

**ADV HOFMEYR:** Thank you Chair, Mr Manyi at page 290 appears to be a letter that comprises four pages to 293 and appears to be a letter bearing your signature dated the 15<sup>th</sup> of November 2010 written to Mr Baloyi, have you – do you recall this letter?

**MR MANYI:** I don't recall this letter but I can see my signature, this is why Chair it's important to get documents beforehand so that surprises like these are not sprung on a person.

20 **CHAIRPERSON:** Yes.

**ADV HOFMEYR:** You confirm that it's your signature at page 293?

**CHAIRPERSON:** Well he might need to read it to refresh his memory.

**ADV HOFMEYR:** Indeed.

**CHAIRPERSON:** We can do one of two things, I don't know whether we would finish anyway with his evidence today but if we wouldn't finish

and it's within his plan to be available tomorrow he could get chance overnight to reflect on it and we take it from there. Mr Manyi how is your situation in terms of if we don't finish today?

**MR MANYI:** No that's fine Chair I can come tomorrow.

**CHAIRPERSON:** You could come back, okay no that's fine. If you need more time to look at this letter before you give an answer we could skip it for now and then later on or tomorrow morning we could deal with it, but if you able to deal with it that - that would be fine.

**MR MANYI:** Ja, Chair. I - I need to read it Chair. So ...

10 **CHAIRPERSON:** You need to read it.

**MR MANYI:** So I think tomorrow will be fine to respond to it.

**CHAIRPERSON:** Yes. Okay. Ms Hofmeyr is that fine with you?

**ADV HOFMEYR:** Yes. Certainly Chair.

**CHAIRPERSON:** Yes. Okay.

**ADV HOFMEYR:** Then let us move - if we may to a further aspect in relation to the charges that you understood to be allegations at the time. When you responded to the Commission's questions about charges your response is contained at page 38 of NN2. Can you please call that up in front of you?

20 **CHAIRPERSON:** I am sorry. What page did you say?

**ADV HOFMEYR:** Apologies Chair. It is NN2 and it is page 38 - 3-8.

**CHAIRPERSON:** Okay. Thank you. Is - is there no air con in this venue?

**ADV HOFMEYR:** I am sure we will be assisted.

**CHAIRPERSON:** There must be - there must be an air con. I think

somebody will attend to it. Okay. Thank you. You said 3-8?

**ADV HOFMEYR:** 3-8 - 3-8 Chair.

**CHAIRPERSON:** Thank you.

**ADV HOFMEYR:** And just to give you the benefit of the questions that the Commission asked to which your paragraph 7.2 is an answer. Chair just for the record this appears at page 120. I do not suggest that you and Mr Manyi need to go there, but at NN2 page 121 is the question 7.2 to which you are responding. The question was:

“What were the charges against you?”

10 And Mr Manyi can you please indicate the answer that you give?

**MR MANYI:** On 7.2?

**ADV HOFMEYR:** Correct.

**MR MANYI:** *Ja.* I said it is a litany of frivolous trumped up operational issues. Details available at the State Attorney.

**ADV HOFMEYR:** So you indicated the State Attorney might be able to assist in relation to those charges. The - the Commission has further investigated as we do in relation to all information that we obtain from witnesses and persons interviewed and so what I would like to take you to if I may is a document in NN5.

20 I want to start prior to the document relating specifically to the charges to a document ...

**CHAIRPERSON:** I am sorry Ms Hofmeyr.

**ADV HOFMEYR:** That you will find at page 2 ...

**CHAIRPERSON:** I am sorry.

**ADV HOFMEYR:** Of EXHIBIT NN5 Chair.

**CHAIRPERSON:** I am sorry Ms Hofmeyr. NN5. Okay. I have got it now. What page?

**ADV HOFMEYR:** Page 2.

**CHAIRPERSON:** Thank you.

**ADV HOFMEYR:** This is a letter on its face between the Royal Norwegian Embassy and Ambassador Makhubela. Do you see that?

**MR MANYI:** Yes.

**ADV HOFMEYR:** Please indicate the date of the letter for the record?

**MR MANYI:** 12 March 2010.

10 **ADV HOFMEYR:** Is this a letter that you have seen before Mr Manyi?

**MR MANYI:** Yes. I think I have seen this letter.

**ADV HOFMEYR:** Thank you. The letter indicates in the first paragraph that Christian-Hilden of the Norwegian Embassy is writing to Ambassador Makhubela. He writes in the first paragraph:

“I feel that I should write to you as head of protocol in South Africa and thereby responsible for relations with embassies on a matter that is sensitive. This issue is contrary to Norwegian ethic and our cooperation with South Africa.”

20 Mr Manyi you indicated that you had seen this letter before. What is the sensitive issue that is raised in this letter?

**MR MANYI:** *Ja.* Chair if I just go on memory - if I just go on memory at one point I was sitting in my office - the Department of Labour and then I get a call from Vic Van Vuuren who I worked a lot within the Busa space business unit in South Africa. At that time Vic was working for

ILO. So Vic calls me and he says do me a favour man.

There is this ambassador that is here. Can you accommodate him? He wants to talk to the Nedlac people - department - the Nedlac partners. They were one of them. They about decent worker. So can you accommodate you? Then I said okay. No - no problem. He can come. So then the - this Norwegian Ambassador then comes.

Then I go and attend to him and then we have a discussion about decent work and all of that and then he then raises an issue. He says - he says Norwegian companies have got a problem with BEE. So  
10 then I said to him oh, okay. I can assist with that. With those - with - with BEE.

It is a subject I understand very well as it were and at the back of that Chair there was in the country - it is still there I think even today - something called BEE Advisory Council which advises the President. Now the Minister of Labour was a member of this - of this council. As the DG I was his alternate in this council.

So from where I am sitting even while I was a DG of Labour but because of that BEE Advisory Council I saw it as part of my responsibility as well and also being a South African to - to be involved  
20 in BEE and if I can help anybody to understand BEE I would do that and turns out at the end of all - of it all that this ambassador took the wrong end of that offer to assist him and he tried to conjure it as some kind of a commercial activity of sorts that I was trying to solicit from him and so on and then there were all these letters written to a whole range of people.

I think even Minister Mdladlana was involved. Even the Public Protector was involved and I think there was an investigation by the way into this matter and - and this ambassador was then asked to provide more information and I think this concluded through the Public Protector not having to go any further, because there was - there was no more information.

There could not have been any more information Chair because it was a meeting that it - it is something that had started and finished in a meeting and there were good intentions on my part to  
10 assist these companies. It is something I do not apologise for even today. That if anybody was to come I - I would do that if - even in hindsight if one was to say in hindsight should he have made that offer it is definite yes.

I would have done that even today. So I have got nothing to look back and be ashamed of and I keep saying to people if anyone can say to me I have been to any Norwegian company. Let that company stand up. I have never been to any Norwegian company. So there was no - there was no shenanigan involved. Although that was the take of the ambassador.

20 So the ambassador was totally wrong in her (sic) summary of what he thought was happening and indeed if there was any semblance of truth in his contention he should have come back with a bit more evidence, but he failed to do that. Even today I challenge whoever to bring more evidence to try and revive that story. They are not going to come up with anything because there is nothing.

**ADV HOFMEYR:** Thank you Mr Manyi for that explanation. You describe - let me just ask first. Did this issue form part of the charges that you faced in the disciplinary process?

**MR MANYI:** I think so. *Ja*.

**ADV HOFMEYR:** You describe those charges as frivolous, operational issues. Why was this a frivolous, operational issue?

**MR MANYI:** It is a frivolous, operational issue Chair, because if you have - there is no substance to this. It is somebody whose English is not even up to scratch. Somebody that might have misunderstood the  
10 whole thing and all that. So to be charged for trying to do - to be a good citizen of the country is frivolous. It is actually malicious.

Maybe frivolous is a soft term. It is a malicious charge for a - a DG that is trying to help an outsider in the country to say this is how I can assist you under the laws of this country and then somebody charges you for that. That is quite malicious. I - I hold that contention even today.

**ADV HOFMEYR:** You focused on the aspect of frivolous. Why is it an operational issue?

**MR MANYI:** It is an operational - it is a day to day thing that  
20 happened. An operational issue for me are day to day things. It is not like part of the strategy was to do - we thought of the strategic issues. That is a day to day thing that happened in the run of the mill. When you operate as a - as a DG you get approached by different people. So it was in a day's work. That is what operational (indistinct) for me.

**ADV HOFMEYR:** The letter from the Norwegian Ambassador alleges

that - you will find this at page 3 Chair and Mr Manyi - that - and this is at the second paragraph of the page. They have introduced the meeting that they had with you and the fact that the topic would be the decent work agenda and then record in the letter:

10                    “It was therefore totally unexpected that Mr Manyi used this meeting to further interest that are not those of his department or applicable to the decent work agenda. He did this by offering his own expertise on BEE as a consultant service to Norwegian businesses. We felt that he was furthering interests that were not related to his position as Director-General. For this reason it is now unclear how our future relation should be handled, because we do see cooperation with the Department of Labour as imperative.”

That does not read to me as a description of an operation issue Mr Manyi.

**MR MANYI:** Of what?

20                    **ADV HOFMEYR:** Do you accept that from the point of view of the Norwegian Embassy it was not an operational issue?

**MR MANYI:** Chair this is just an operational issue and by the way I think having - if - if you read what - if - if you take what has just been read out for somebody when you are offering to help to then turn you around and make you a consultant and all of that and want you to - it is actually absurd Chairperson.

Actually it is quite absurd that here you are trying to help and somebody says you are a consultant and it is - I am - I mean did I even give an invoice. Did I even say this is how much it is going to cost you for me to do this? Why is he making this a consultancy issue? I did not even talk money with this - with this ambassador. This is totally preposterous for them to make this kind of conclusion.

**CHAIRPERSON:** Well maybe what you - you should do Mr Manyi is to try and capture what the ambassador said the problem was or what assistance if any he was asking you to provide. Whether - whether  
10 yourself or Government or the Department of Labour what he was - what he actually wanted and what your response was in terms of what is the offer.

I think you made reference to offer. What was the offer in concrete terms that you told him? So that we can understand what the exchange between the two of you were. I know it has been a number of years ...

**MR MANYI:** *Ja.*

**CHAIRPERSON:** But you - you do the best.

**MR MANYI:** No. It is quite an alive issue. This media reminds me  
20 about this all the time.

**CHAIRPERSON:** Yes.

**MR MANYI:** So I am quite alive to the issues. You see Chair this is why I was also explaining the broad based council thing, because this ambassador did not even understand that - did not understand that although I was a DG of Labour. I was an alternate to a big advisory

council by virtue of being a DG.

At that time there was no Deputy Minister at the Department of Labour. So - so therefore from where I sit it was within my brief as - by the way even if Chairperson - even if it was not within my brief there was absolutely nothing wrong with me as a person saying I am going to assist you. If I had said to him this is what it is going to cost you.

Then you are taking. This is a kind of thing - by the way during those times Chairperson I was actually on my prime on these issues of transformation. I was doing these talks freely. If one can  
10 Google my profile around those times this - this was my space. It was either employment equity. I would give talks. If it was BEE.

I would be giving talks. So if you have a - a company here that does not understand this thing. I mean I participated in the development of some of these quotes. I have participated in these amendments of the BEE Act. It is something I understand extremely well.

So here I am offering a service to this - this person and somehow he conjures that up to something negative. I think it is a - it is quite a shame.

20 **CHAIRPERSON:** But just go back to articulating what he - he said his problem was or what the problem of Norwegian ...

**MR MANYI:** His ...

**CHAIRPERSON:** Companies was and what was he asking you to do about it?

**MR MANYI:** No. No. He ...

**CHAIRPERSON:** If he was asking you to do anything about it.

**MR MANYI:** Okay. He - he was saying the problem of the Norwegian people is - of the Norwegian companies is broad based BEE. That was - that is how he (intervenes).

**CHAIRPERSON:** He was saying they have a problem with BEE?

**MR MANYI:** Yes.

**CHAIRPERSON:** Yes.

**MR MANYI:** They have a problem with BEE.

**CHAIRPERSON:** *Ja.*

10 **MR MANYI:** Implementing BEE.

**CHAIRPERSON:** Oh.

**MR MANYI:** *Ja.*

**CHAIRPERSON:** Did he need an explanation of how it works and so on or as you understood what or they did understand what - what it means, but they were opposed to it. The - the Norwegian companies as you understood what he said to you.

**MR MANYI:** My understanding Chairperson of most companies that are international that come to the country. They do not even understand some of these concepts that are within BEE. At the time BEE had  
20 seven elements. As to what is it that the company needed to do. So that when it gets rated it can get a proper score.

What are the things that it needed to do? So that is called implementation of BEE. So what I - what I would have done for instance is to have gone to them to explain to them that in your procurement make sure that when you procure you also procure from

Black people. Make sure that you have got an enterprise development program.

Make sure that - you know all of those things. All of those elements that are there and so on. So that is what I would have explained to them. To say this is how this thing works. It is meant to ensure that there is more inclusion of Black people into the economy which was not actually too distant from what are the objectives of decent work as it were.

So it was not even too distant from it. So I still do not  
10 understand why he had an issue with my input.

**CHAIRPERSON:** Thank you and - and your offer was it an offer to explain to these companies what BEE means? What its elements are and how it should be implemented?

**MR MANYI:** Correct Chair.

**CHAIRPERSON:** HM.

**MR MANYI:** Remember Chair at the time I was a full time employee of Government. Even if I had an interest of doing consultancy anything on the side I would have had to declare that. I would have to get permission from that. There is a whole process around that and I have  
20 not been found to be doing private business during that - that time.

So it is not something that I would have done, but given a chance I would have gone to those companies to educate them about how this thing works and as I say Chair even today I make no apologies about that.

**CHAIRPERSON:** Thank you. Ms Hofmeyr.

**ADV HOFMEYR:** Mr Manyi thank you for your explanation of what you understood to be said to you in that meeting and what you were offering in the course of that meeting. I would like to focus on what is reflected in this letter as being the Norwegian representative's understanding, because they seem to have taken this issue very seriously. Do you agree with that?

**MR MANYI:** I note that.

**ADV HOFMEYR:** They understood the conduct in that meeting to be an offer from you to utilise your own expertise on a consultant basis, but  
10 to further your own interests and not those related to your position as Director-General. Do you accept that that was their understanding of what happened?

**MR MANYI:** I accept that that was their incorrect understanding.

**ADV HOFMEYR:** You indicated that this was a frivolous matter. That was the answer you gave to the question about this being of the charges.

**MR MANYI:** Say again. Sorry. Some (indistinct). Can you repeat that?

**ADV HOFMEYR:** Apologies. You described this as a frivolous issue.  
20 Is that correct?

**MR MANYI:** Yes. Correct.

**ADV HOFMEYR:** Are you aware how this issue was perceived by other arms of Government and whether they saw it as frivolous or serious?

**MR MANYI:** Look I think by definition other Government people that are seeing it from a distance purely because of who raises it. They

might see it as a serious issue - a diplomatic issue and all of that. So for them it might be serious, but for me who is directly involved you can see the frivolity in it and so on.

So the fact that from other people that are looking outside in they see it as something else versus a person that was directly facing this thing. We have got two different perspectives.

**ADV HOFMEYR:** Thank you. The - the fact that others took it as serious is certainly borne out by the next letter in EXHIBIT NN5. You will find that at page 4. That is a letter between the Chairperson of the  
10 Public Service Commission of South Africa and Minister Mdladlana dated 28 May 2010. Is this a letter you have seen before?

**MR MANYI:** I cannot recall it.

**ADV HOFMEYR:** Certainly and please feel free to indicate if you would like any further time to consider it, but I understand your answer to be you do not recall it. I would just like to pick up at the second or the third paragraph of the letter there in relation to the characterisation of this issue as frivolous or serious.

The Chairperson there on the face of this letter writes to Minister Mdladlana and says:

20 “Given the seriousness of the allegations made by the Norwegian Embassy the PFC is of the view that you should elicit statements from the parties in attendance at the meeting between the Norwegian Embassy and Mr Manyi. Where after Mr Manyi should be given an opportunity to respond in writing

to the allegations (application of the *audi alteram partem* rule).”

Mr Manyi just to be clear on your earlier testimony. You did indicate that this particular allegation formed one of the charges that you faced in the disciplinary process. Is that correct?

**MR MANYI:** Yes. One of the allegations. Yes.

**ADV HOFMEYR:** And that process was never completed?

**MR MANYI:** No.

**ADV HOFMEYR:** So there was no finding one way or another in  
10 relation to this allegation?

**MR MANYI:** I think there was - this particular one. I think it went to the Public Protector’s realm. That is why - that is where it was dealt with. So when the Public Protector I think on the - it is actually all in the media as to if one Googles this will find that on the final analysis the Public Protector was not given all the evidence that she required to make a - a finding. So that is my understanding of where it got left.

**ADV HOFMEYR:** Mr Manyi the Public Protector’s Report in relation to the complaint against you was dated September 2011. Are you aware of that?

20 **MR MANYI:** I know about that one. *Ja*, but it was on something else. Was it not?

**ADV HOFMEYR:** That one related to complaints of Advocate Hoffman. They included an alleged conflict of interest between - well given your position at BFM and your appointment as DG of Labour, but within that there is at least a reference to the complaint of the Norwegian

Embassy. Is that the one you were referring to?

**MR MANYI:** Yes. That is correct Chair.

**ADV HOFMEYR:** Okay. When you go away this evening that full report has been included in NN5. So you can refresh your memory about it. I do not think it is disputed that that report was issued in September 2011. So I just want to get us clear in time. That is after you have moved to GCIS. Is that correct?

**MR MANYI:** Ja. That is correct. Yes.

**ADV HOFMEYR:** And the disciplinary process did not resolve this  
10 allegation for or against you. Correct?

**MR MANYI:** Can you just repeat that? There is an echo.

**ADV HOFMEYR:** Apologies. The disciplinary process that you were engaged in while you were at the Department of Labour did not make a finding for or against you in relation to this allegation?

**MR MANYI:** Not on anything.

**ADV HOFMEYR:** Thank you.

**MR MANYI:** It was even the whole - the whole - in fact ...

**CHAIRPERSON:** On any of the charges?

**MR MANYI:** On any of the charges Chair.

20 **CHAIRPERSON:** Hm.

**MR MANYI:** There was no finding on any - there was no - in fact on that letter - on that probation letter which everybody seems to think is a termination letter and you can deal with that when we get to it former Minister Mdladlana also makes reference to the fact that there are allegations that have not been - there is a - there is a wording that he

is using.

If I can just - oh. He says - if you go to that letter. I do not know where it is on your files there. Second page, paragraph 4 somewhere in the middle. He says:

“Although no decision has been made in regard to these charges it is clear from your response that they are not unfounded charges.”

But then he concludes:

“They remain allegations of a serious nature.”

10 So that is the thing you see. Even - even he is interchangeable using charges and allegations. It is exactly where I am.

**ADV HOFMEYR:** So as at the date of 2 February 2011 when you moved into the position of DG of GCIS. This issue of the allegation of the Norwegian Ambassador had not been resolved?

**MR MANYI:** I do not remember the dates, but I just - and the times and stuff, but I just know that at one point there was some pronouncement about - that sort of concludes the matter on the basis that there is no further evidence that was given to the Public Protector.

20 **ADV HOFMEYR:** Yes.

**MR MANYI:** As to when that happened I am not so sure now.

**ADV HOFMEYR:** Well the Public Protector’s Report you can find it in the same bundle - NN5 at page 1-1-1.

**MR MANYI:** Okay. I will read it tonight.

**ADV HOFMEYR:** It is dated 27 September 2011. Correct?

**MR MANYI:** Okay.

**ADV HOFMEYR:** So that is a number of months after you had moved into GCIS. Correct?

**MR MANYI:** Ja. That is correct.

**ADV HOFMEYR:** Thank you.

**MR MANYI:** On - on those findings, because I am just seeing this only now I do not see anything that makes a finding on the Norwegian. Do you see it?

**ADV HOFMEYR:** No. I have not seen it. So I was going to ask for  
10 your assistance on that, because your reference to this being a matter dealt with and disposed of by the Public Protector. On my reading of this report there is a reference to the fact of the allegation, but I have not seen actual findings on it.

So maybe you can assist us in that regard. It may be that there was another report of which we are not aware. You did make reference to this Public Protector Report at your meeting with the Commission on 21 October and so efforts were made to seek to establish which report had been produced by the Public Protector, but it could be that we missed a report. So we would be interested in your  
20 assistance on that.

**CHAIRPERSON:** That finding that is at 8.1.1 that refers to a conflict of interest, but it says between his personal interest and the BMF.

**ADV HOFMEYR:** Yes. Chair ...

**CHAIRPERSON:** Is that something different?

**ADV HOFMEYR:** It is different.

**CHAIRPERSON:** Oh. Okay.

**ADV HOFMEYR:** You see that is - that is my challenge with this report and I really will ask for Mr Manyi's assistance of it. I have found one reference to the fact that the allegation was made. That comes from Minister Mdladlana's response to the Public Protector as she was investigating this complaint. I - I have struggled to find any other finding in relation to that particular issue. The focus of the report then becomes the alleged conflict of interest between your position at BMF and your role as DG.

10 **MR MANYI:** *Ja.*

**ADV HOFMEYR:** It is possible that I have missed it. It is also possible that there is another report. So we are just going to ask Mr Manyi to assist us on that.

**MR MANYI:** No. Chair, I - I think - I think the Public Protector could not process this any further. I think she makes findings on things that have been properly investigated and then she says with her investigation and everything this is the finding, but if she calls for evidence for her to do the investigation and nothing comes up.

We are cutting her - her hands. I do not think she was able  
20 to take it any further. That is why I do not find it.

**ADV HOFMEYR:** No. That is help ...

**CHAIRPERSON:** I think what you - I think what - what you could do overnight and obviously Ms Hofmeyr to the extent that he might need more time we will do the same. Is just to look at the report to see whether in terms of issues that the Public Protector would say

somewhere at the beginning of the report are the issues that she is dealing with.

Whether there is a reference to that particular issue and if there is whether she says anything further, because normally you would expect that if a complaint is referred to the Public Protector or any particular body for investigation and that body makes findings. You would expect that if it has been unable to me to find evidence to justify a finding one way or another that it would say so expressly to say.

We were - this complaint was referred to us. We have looked  
10 into it. We asked for evidence. This is the finding. Whether this way or that way. Rather than leave it hanging. So - so it necessary to check whether this is a report that relates to among others that issue or not and if it is whether she made a finding and in regard to that, because also if she says that was one of the issues she was investigating, but does not make findings on it.

That might be something else as well, but it is important to look at it properly. Okay.

**MR MANYI:** Chair, you see this is another - from where I sit - if it was a strategic as Ms Hoffman purports it to be surely it would have - it -  
20 because it was in the realm of things that Advocate Hoffman - the other one - that was - was complaining about my conflict of interest.

**CHAIRPERSON:** The only one.

**MR MANYI:** Ja.

**CHAIRPERSON:** This one is Hofmeyr.

**MR MANYI:** Oh. This is Hofmeyr. Sorry.

**CHAIRPERSON**: Hofmeyr. Yes.

**MR MANYI**: I always call you Hoffman. Sorry.

**CHAIRPERSON**: Yes.

**MR MANYI**: Apologies. Apologies, yes.

**CHAIRPERSON**: Yes.

**MR MANYI**: Advocate Hoffman, it was in that realm of things that she was - he was raising and all that. So - but is it fine. Let us see if there is any where it is mentioned, but I am almost sure.

**CHAIRPERSON**: Yes. Okay.

10 **MR MANYI**: It is - it is a non-issue.

**CHAIRPERSON**: Well - thanks. Ms Hofmeyr since Mr Manyi is prepared to come back tomorrow. I wonder whether there is much purpose that would be served in continuing until 5 o' clock or whether we should stop. So that he can get a chance to look at all the documents that he might need to and then the - everything could be quicker tomorrow morning when he has had a chance to look at everything.

**ADV HOFMEYR**: Chair, I was going to move to another topic at this point anyway. So it seems convenient to adjourn ...

20 **CHAIRPERSON**: Yes, yes.

**ADV HOFMEYR**: To give Mr Manyi that opportunity and then ...

**CHAIRPERSON**: Yes.

**ADV HOFMEYR**: What time would you like us to commence tomorrow?

**CHAIRPERSON**: What is your assessment of how much time you might need with Mr Manyi tomorrow and what - how much time you might need

with Ms Oliphant ...

**ADV HOFMEYR**: Chair ...

**CHAIRPERSON**: Afterwards?

**ADV HOFMEYR**: I am fairly optimistic we would finish both of them in the ordinary period of the day between 10 and four.

**CHAIRPERSON**: Huh-uh.

**ADV HOFMEYR**: There are quite a number of issues to traverse with Mr Manyi. It has gone slower this afternoon, but that was because we took quite a while ...

10 **CHAIRPERSON**: *Ja*.

**ADV HOFMEYR**: Initially to resolve issues.

**CHAIRPERSON**: Yes.

**ADV HOFMEYR**: So as I stand at the moment I think I am optimistic that we will finish both witnesses without an early start ...

**CHAIRPERSON**: Yes. Alright.

**ADV HOFMEYR**: But having said that ...

**CHAIRPERSON**: Hm.

**ADV HOFMEYR**: Would it be appropriate if we do need a bit beyond four to sit later rather tomorrow than start early?

20 **CHAIRPERSON**: From my side that should be fine. I cannot remember that there is something after the hearing. A meeting that I have or anything like that. So that - that would be fine from my side, but we - will - will Ms Oliphant be in a position to be beyond 4 o' clock? Will she be needing to take a flight?

**ADV HOFMEYR**: We can check with her

**CHAIRPERSON:** Take a flight to Johannesburg?

**ADV HOFMEYR:** My understanding of the Secretariat is they tried to schedule the flights at least the day after, because of the risk that there is a follow over ...

**CHAIRPERSON:** Yes.

**ADV HOFMEYR:** But I - I do not have accurate ...

**CHAIRPERSON:** Yes.

**ADV HOFMEYR:** Information on that. We can make inquiries.

**CHAIRPERSON:** Yes. No. That is fine. Then maybe what we should  
10 do is adjourn and start normal time at 10 tomorrow.

**ADV HOFMEYR:** Certainly.

**CHAIRPERSON:** And - but I - I take that with Mr Manyi you probably would not need more than two hours?

**ADV HOFMEYR:** I would expect so Chair.

**CHAIRPERSON:** *Ja.*

**ADV HOFMEYR:** Particularly if we move faster.

**CHAIRPERSON:** Yes, yes, yes.

**ADV HOFMEYR:** Given the time that Mr Manyi will have overnight.

**CHAIRPERSON:** *Ja.*

20 **ADV HOFMEYR:** Something of that order.

**CHAIRPERSON:** *Ja, ja.* Okay. Mr Manyi I do not know if you want to say anything.

**MR MANYI:** No Chair. That will be fine, because I have got a flight back to catch in the afternoon tomorrow.

**CHAIRPERSON:** Tomorrow?

**MR MANYI:** Yes.

**CHAIRPERSON:** Okay. Okay. No. That is fine. Thank you very much for your cooperation Mr Manyi. We are going to adjourn now and then tomorrow we will resume at 10 o' clock in the morning. We adjourn.

**REGISTRAR:** All rise.

**INQUIRY ADJOURNS TO 7 NOVEMBER 2019**