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20

PROCEEDINGS RESUME ON 26 NOVEMBER 2019

CHAIRPERSON: Good morning Mr Pretorius, good morning everybody.

ADV PAUL PRETORIUS SC: Good morning Chair.

CHAIRPERSON: Thank you. We are ready. Good morning Mr Shaik.
Are we ready?

ADV PAUL PRETORIUS SC: Yes we are.

CHAIRPERSON: Okay.

ADV PAUL PRETORIUS SC: Chair just as homework we looked at the interim Constitution. There are a few more references other than the
10 ones to which we alluded yesterday. They are not material but we will prepare a memorandum which we can simply submit to as a matter of law. Morning Mr Shaik.

MR SHAIK: Morning.

ADV PAUL PRETORIUS SC: You will recall that yesterday we ended at the point where you had described to the Chair the contents of your meeting with the former President.

MR SHAIK: Yes.

ADV PAUL PRETORIUS SC: After that meeting what did you learn about the incident involving Minister Mbalula and the information given
20 to him or allegedly given to him by the Gupta's regarding his imminent appointment as Minister?

MR SHAIK: The – I have learnt that the information alleged in the newspapers was indeed correct. That Minister Mbalula in the NEC meeting raised the issue of his appointment or the notification of his appointment by the Gupta's before he was appointed. So that matter

was confirmed.

CHAIRPERSON: Did that confirmation come immediately after your meeting with the former President?

MR SHAIK: It came – it came – it came after the meeting with the former President.

CHAIRPERSON: It came out.

MR SHAIK: Yes.

CHAIRPERSON: It came out of that meeting?

MR SHAIK: No it came – no came – no came after the ...

10 **CHAIRPERSON:** Oh after?

MR SHAIK: Yes.

CHAIRPERSON: Yes okay.

MR SHAIK: And the – I have consulted with the person who gave me that information.

CHAIRPERSON: Yes.

MR SHAIK: And he in fact did appear before the commission.

CHAIRPERSON: Yes.

MR SHAIK: And it is former Minister Sphiwe Nyanda.

CHAIRPERSON: Yes. Thank you. So...

20 **ADV PAUL PRETORIUS SC:** You have described to the Chair.

CHAIRPERSON: So – I am sorry Mr Pretorius. You have moved away from the meeting with the President?

ADV PAUL PRETORIUS SC: Yes.

CHAIRPERSON: Just to...

ADV PAUL PRETORIUS SC: Well save for one question but in effect

yes Chair.

CHAIRPERSON: Oh okay let – well let me wait until you have asked that one question because it might be the one I am thinking of. So I will let you.

ADV PAUL PRETORIUS SC: Your interaction with Minister Cwele and your meeting with the President. You have alluded to the effect that those interactions had on your working relationship both with the Minister and with the President, the former President.

MR SHAIK: That is correct.

10 **ADV PAUL PRETORIUS SC:** Just sum up the...

MR SHAIK: Well in my opinion.

ADV PAUL PRETORIUS SC: The outcome please.

MR SHAIK: In my opinion it was quite clear that I have lost the confidence of the President. And secondly my relationship with Minister Cwele was set on an irrecoverable breakdown trajectory. And this was and I must say one of the many issues in which I did not see eye to eye with Minister Cwele.

ADV PAUL PRETORIUS SC: When you say there had been a loss of confidence in your view was the loss of confidence by the President
20 justifiable?

MR SHAIK: No it was not.

CHAIRPERSON: Were you able to tell during the meeting with the President whether in expressing the views that he expressed he in good faith did not see your point of view about the investigation or would you say he saw our point of view but maybe there were other reasons why

he continued to take the position that he took? Is that something you are able to – to – to assess or is that something that you were not able to assess? And you do not whether it was a case of him genuinely believing that you were wrong to want to do this as opposed to say – to knowing that you are right but not wanting it done for whatever reason?

MR SHAIK: Sir I would answer that question in two ways and using two frames of reference. The first in – is my capacity as an Intelligence Officer. I do think the President in his capacity as a President understood what we were saying and the enormous consequences of what we were saying and it is for that reason he went into a very elaborate explanation of his relationships. If he was not concerned about what we were saying he would have simply dismissed our concerns. So when I – it is my experience that when someone goes into an elaborate explanation of relationships it is because they are seeking to clarify that relationship and the basis of it. So that is my – wearing my intelligence hat. As someone who has known the President for an incredibly long period of time I do know that President Zuma when – I will not say he is stubborn but when – when he does make up his mind on a matter it is often difficult to shift that mind-set. So I think there was an element of that. But I think thirdly and I have had this experience in relation to my own family member and his relationship. He – I think he was being very loyal to the friendship that he was having with the Gupta family and often that loyalty even though was causing him some embarrassment in respect of his public office the mind-set in his mind that he could defend that friendship and he could

do so justifiably was made easier in his mind-set by embracing – embracing the victimhood state of mind. And I think he was as a consequence in a state of mind that says, he can see nothing wrong, there is nothing wrong here and that we should accept that there is nothing wrong. So the facts did not matter at that point.

CHAIRPERSON: Well it is quite important for – for me to try and understand various perspectives and also to try and understand exactly what his thinking was in regard to this issue as well as in regard to other allegations and evidence that has been given in regard to other

10 incidences relating to the Gupta's about him. Mr Mbalula gave evidence here that on the – at the meeting of the NEC where he raised the issue that Mr Ajay Gupta I think it was – Mr Ajay Gupta had called him ahead of the official announcement of his appointment as Minister. I think it was – I cannot remember whether it was of Police or of Sports and Recreation when he raised that issue at the NEC. If I recall correctly he testified – it might not have been at that meeting but he testified if I remember correctly that whenever the issue of Mr Zuma's friendship with the Gupta family was raised but maybe this was Mr Ramatlhodi maybe I am getting mixed up. But one of them said

20 whenever this issue was raised with – with him to say, this friendship, your friendship with the Gupta family is damaging to the organisation and to government whoever of the two that is Mr Mbalula or Mr Ramatlhodi whoever gave the evidence that his response was of that something like there was nothing wrong with the friendship. The Gupta family had helped I think he meant his children when nobody could help

them. So one of the questions that arises in my mind is whether if these things are true because he still will come and deal with them and give his side of the story but if they are true whether this may have been a situation where it can be said that he was beholden to the family and whatever would harm them he would try and protect them. Or whatever they wanted they would get. Maybe that is to why it may be most of the things that they might want they would get. There is also the evidence which he has disputed by Mr Themba Maseko who says he was told by the late Minister Chabane in I think late January of

10 2011 that he had received a call from President Zuma who at the time was out of the country to say he should remove Mr Maseko from the position of CEO of GCIS and – or dismiss him or remove him and by the time he arrived back in the country Mr Maseko should no longer be in that position. As I see – as I say he has denied that evidence but if that evidence were true it may be linked to the fact that according to Mr Maseko a few months earlier he had refused to cooperate with the Gupta's. He had a meeting with Mr Ajay Gupta and a telephone conversation which ended on the basis that Mr Ajay Gupta said according to Mr Maseko "I see that you do not want to cooperate I will

20 report you to your seniors and they will sort you out or you will be sorted out." So it may be linked to that. Now if it is true and then you have a situation where three senior officials of the intelligence come to him, they are clear that there should be an investigation involving the Gupta's and he is clear that the investigation is a bad idea.

MR SHAIK: Yes.

CHAIRPERSON: And the – the three senior officials end up not having to proceed. And – and you say as you understand the position he appreciated the threat to National Security it is not as if he did not appreciate it.

MR SHAIK: Hm.

CHAIRPERSON: So I do not know whether given that – all this that I have just mentioned you – you are able to say anything about what impact this friendship may have had on him in regard to making any decisions that connect – that were connected with the them or their
10 businesses.

MR SHAIK: Chair I do not – I do not have specific knowledge about that relationship and I like – like most others were reading the newspapers, picking up what we were picking up about what – what would appear to be an inappropriate association and of course the appropriateness of the association may not lie in the friendship itself. But it was quite evident that some kind of influence peddling was taking place by the Gupta brothers and in particular one of them that has been mentioned. And the President needed to be alive to that information peddling. And the fact that he was dismissive of it will forever remain a
20 mystery to me and whether it was – whether he was dismissive of it because he was beholden I have no particular knowledge of that. But the inappropriateness of the behaviour of the Gupta family I think that is not in doubt anymore. And I must say that I was present with Mr Maseko at the time that he did get that call.

CHAIRPERSON: Hm.

MR SHAIK: I recall we were having lunch together and he was on his way to Sun City and he was going to Sun City when he was sitting across me when his phone rang.

CHAIRPERSON: Hm.

MR SHAIK: And I could hear it was a difficult phone call that was taking place. So when he put the phone down he mentioned to me, can you believe I just got a call from Ajay Gupta who I do not know who is telling me that his – I must take adverts out in the New Age newspaper etcetera. And Mr Maseko was quite rattled by that phone call. And it is
10 one of the instances that I had even though indirect but somewhat direct experience of the kind of abuses or the kind of approaches that the Gupta family was taking with government officials.

CHAIRPERSON: Thank you.

MR SHAIK: But like I said Sir it remains a mystery and I think the country awaits President Zuma's explanation for what was the nature of that relationship and why – why in the light of so many people raising the issue he still felt it necessary to defend it. And if not defend it not put the kind of appropriate checks and balances in place. And this is – this goes to why the office of the President is so important to be staffed
20 by the appropriate people to be managed in a particular way. It is to avoid you know in a sense undue influence on the office for whatever reason and the intelligence services are there in fact to protect the President from such undue influences.

CHAIRPERSON: No thank you. So – and you said that after the meeting the three of you accepted or decided that there was not going

to be an investigation, is that right?

MR SHAIK: That was my understanding Sir.

CHAIRPERSON: That was your understanding/

MR SHAIK: That was my understanding.

CHAIRPERSON: And certainly as far as you know the investigation did not proceed?

MR SHAIK: The investigation – well there was subsequently no report.

CHAIRPERSON: Yes.

MR SHAIK: That was given to me.

10 **CHAIRPERSON:** Yes.

MR SHAIK: On the progress of the –

CHAIRPERSON: Yes, yes.

MR SHAIK: Of the investigations so I can only but assume.

CHAIRPERSON: Ja.

MR SHAIK: That the investigation did not continue.

CHAIRPERSON: Yes.

MR SHAIK: But events soon caught up with all of us.

CHAIRPERSON: Yes.

MR SHAIK: In respect of this matter.

20 **CHAIRPERSON:** Yes. You said something yesterday and I just want to make sure I understand it. I thought expressed some kind of disappointment that you found yourself in a situation where you had to accept that whereas you thought an investigation was called for but none was going to happen.

MR SHAIK: Yes.

CHAIRPERSON: Yes, yes. I just want you to deal with that a little to make sure I understood.

MR SHAIK: Yes.

CHAIRPERSON: What the basis of your disappointment was. I do not know if you put it as a disappointment but...

MR SHAIK: It was – it is a – a bit of an internal reflection and I have debated often myself.

ADV PAUL PRETORIUS SC: Hm.

MR SHAIK: And amongst our colleagues whether we should have
10 continued.

CHAIRPERSON: Hm.

MR SHAIK: With the investigation.

CHAIRPERSON: Hm.

MR SHAIK: Whether we should have said, this is it and draw the line
in the sand.

CHAIRPERSON: Hm.

MR SHAIK: And conducted that investigation.

CHAIRPERSON: Hm. Hm.

MR SHAIK: Yes it would have led to enormous troubles.

20 **CHAIRPERSON:** Hm.

MR SHAIK: It would have meant going through labour courts.

CHAIRPERSON: Hm.

MR SHAIK: Because the moves to get us.

CHAIRPERSON: Hm.

MR SHAIK: Removed from the Intelligence Services have done.

CHAIRPERSON: Hm.

MR SHAIK: And I think it required a – a – it required an extraordinary amount of courage and foresight.

CHAIRPERSON: Hm.

MR SHAIK: To be able to say, despite the fact that you have lost the – the confidence of the President.

CHAIRPERSON: Hm.

MR SHAIK: To continue with something.

CHAIRPERSON: Hm.

10 **MR SHAIK:** Because there was a Constitutional Court.

CHAIRPERSON: Hm.

MR SHAIK: Ruling on this matter.

CHAIRPERSON: Hm

MR SHAIK: It is the matter of Billie Masetla versus the Presidency where implied in the power to appoint.

CHAIRPERSON: Hm.

MR SHAIK: Is the power to remove.

CHAIRPERSON: Hm.

20 **MR SHAIK:** So yes it was clear that the – the power to remove us did reside with the President.

CHAIRPERSON: Hm.

MR SHAIK: And if we did continue with the investigation.

CHAIRPERSON: Hm.

MR SHAIK: I think that removal would have been forthcoming.

CHAIRPERSON: Hm.

MR SHAIK: And of course then it meant us contesting.

CHAIRPERSON: Hm.

MR SHAIK: The removal on the basis of constructive dismissal.

CHAIRPERSON: Hm.

MR SHAIK: Or – and find the labour law hook to find – to get back to your job.

CHAIRPERSON: Hm.

MR SHAIK: But it was a mountain too high to climb.

CHAIRPERSON: Hm.

10 **MR SHAIK:** But I – I often think and that is why I said it reflected a shame partly because it was a battle that we found ourselves fighting. The – but we come from organisations. We used to come from the ANC. We have history. They – they are people who know us. There was organisational meetings. There is different cabinet Ministers at the time. There was the Deputy President. There were others but there was a silence. And in the light of the silence is an acceptance of defeat so to speak. So I think – and I am not – I am not blaming anyone for their silence. I am not holding them responsible for their silence but silence became a feature of the way governance was
20 occurring and accepting your dismissal or accepting your removal became to be a very weird definition of dignity. But there was a silence.

CHAIRPERSON: Well you refer to the judgment of the Constitutional Court in the Billie Masetla matter. As I recall that judgment it would not have provided you with any comfort because for the situation you were

faced – you were contemplating.

MR SHAIK: Yes.

CHAIRPERSON: Because in that matter although it was found that I think – I hope I am not misrepresenting the judgment. It was found that I think Mr Masetla had been unlawfully dismissed or unconstitutionally dismissed. The Constitutional Court said he should not be reinstated.

MR SHAIK: Yes.

CHAIRPERSON: And therefore you were very much in the same position as if the President decided to remove you and you believed
10 you he was doing so unlawfully chances that if you went to court you could get your job back might have been very diminished if there at all.

MR SHAIK: Yes.

CHAIRPERSON: So – so you – if you were aware of all of those things you – all of that would have been something that would not have given you much courage.

MR SHAIK: Yes.

CHAIRPERSON: I would imagine to – to follow that possible approach of saying we will pursue the investigation if we get fired we will approach the courts.

20 **MR SHAIK:** Yes. The – yes – I mean that would – that would have been a – a demonstration of the breakdown of trust between ourselves and the President.

CHAIRPERSON: Hm.

MR SHAIK: And of course the Minister. Which – which would have worked against us because the courts would have in my view have

argued knowing that it was breakdown in – in trust you still continued with an operation for which it was preferred that you did not do and we would have entered into the realm of insubordination. So I think we wanted to avoid that. But we did use – in fact I did use the benefit of that Constitutional judgment because the Constitutional Court as you correctly said ruled that the dismissal was unlawful but he cannot get his job back because of the irretrievable breakdown of trust. But the relief the court gave him was that his contract and all the perks and all the things that was due to him had to be made payable to him. And I
10 think that was a – a judgment that gave me much relief because in the subsequent matters that occurred between the Minister and I I relied on that judgment to ensure my rights.

CHAIRPERSON: Ja. I think it could have provided the relief in terms of making sure that even if you did not get the job back you would be paid the remuneration that you would have received if you had continued with your...

MR SHAIK: Contract.

CHAIRPERSON: Term – your contract up to the end.

MR SHAIK: Yes.

20 **CHAIRPERSON:** The only thing of course is that if your focus was to get the investigation done it would mean that you would not get it done because if you are removed and you cannot come back you will get your money but that very investigation that you really wanted to be done then will not done. And I think it is unlikely anyone who gets appointed to – in your place would pursue it knowing that you had been

removed for wanting to pursue it.

CHAIRPERSON: Hm.

CHAIRPERSON: So – so the judgment might have taken care of your financial situation and the family which is an important thing but to the extent that you may have thought this which we want to investigate relates to National Security and it is important for the nation that would probably have come to an end.

MR SHAIK: Yes.

CHAIRPERSON: Ja.

10 **MR SHAIK:** The – and I think that – that unfortunately is the case. However I think and I am just speculating again that given the issues that are there all law enforcement agencies, all law enforcement agencies would have to apply their minds to the question of an investigation into the Gupta's in regard to any criminal matter. If I could offer some advice Sir I would suggest that the commission makes such an inquiry of all law enforcement agencies including the South African Revenue Services whether in the light of speculations or issues that were publicly reported whether they conducted any investigations and would they avail those investigations to the commission.

20 **CHAIRPERSON:** Well it is interesting you make that suggestion because your evidence as – actually triggered that thought in my mind. Because if the intelligence wanted to do an investigation and this is what happened what other security related agencies may have had to – may have had cause to investigate one or other thing relating to the Gupta Families. Did they make decisions to investigate? Or did they

not make the decisions to investigate even though there were grounds to do so? And if they did make the decision to investigate where did those investigations end? And did they get the support that they were supposed to get from whoever? Were there any people who interfered with those investigations? So I think your suggestion is a - is a good one. It is important to have a - a view as part of trying to see to what extent various - you know - security agencies may have had opportunities of doing something and maybe they did not do anything themselves or tried, but were not - were prevented or were not assisted
10 to - to continue.

MR SHAIK: Or persuaded otherwise.

CHAIRPERSON: *Ja.* Thank you. Mr - Mr Pretorius. You can proceed.

ADV PAUL PRETORIUS SC: Thank you. Rising out of your evidence this morning Mr Shaik you have dealt with the meeting between you and the President and tried to understand from a subjective point of view his motivations, reasoning, good faith stance and the like. I would like to put it to you from a different perspective please.

MR SHAIK: Hm.

ADV PAUL PRETORIUS SC: At that meeting the President was being
20 approached in his capacity as Head of Intelligence?

MR SHAIK: As the Head of the Executive responsible for Intelligence.

ADV PAUL PRETORIUS SC: Intelligence. Yes. We have used the term ...

MR SHAIK: Correct.

ADV PAUL PRETORIUS SC: Loosely I understand and you have

referred to his constitutional responsibilities in relation to the control and direction of services in 2-0-9 of the Constitution?

MR SHAIK: Correct.

ADV PAUL PRETORIUS SC: At that meeting the issue of his relationship with the Gupta family arose?

MR SHAIK: That is correct.

ADV PAUL PRETORIUS SC: And he sought to explain at the very least let or even defend his relationship with the Gupta family?

MR SHAIK: That is correct.

10 **ADV PAUL PRETORIUS SC:** Now clearly and you have used the word there is a conflict?

MR SHAIK: Yes.

ADV PAUL PRETORIUS SC: Objectively speaking your opinion and it is an opinion and the Chair will be aware of that obviously, but he is interested in opinions. Given your knowledge and experience of the constitutional responsibility of the President in his capacity as the Executive personal accountable for Intelligence. Was this a justifiable approach?

20 **MR SHAIK:** In my opinion sir it - it was not a justifiable approach. The President in his capacity as President could not separate his personal relationship from his responsible as a Head of State. In particular to the advice that was given by his Chiefs of Intelligence and I think in - in that sense he was not fully cognisant of his responsibility and the constitutional responsibility that he had in the direction of the Intelligence Services in either what the Intelligence Services do or do

not do.

ADV PAUL PRETORIUS SC: Let us move to paragraph 29 of your statement. If we may.

CHAIRPERSON: Is that moving away from the meeting?

ADV PAUL PRETORIUS SC: Yes.

CHAIRPERSON: Okay. Just one last question. Maybe two. In terms of what the President said to you at that meeting after you and your colleagues outlined why you believe it was necessary to conduct an investigation. You did say that he gave a long history of the Gupta
10 family and maybe his relationship with them as well, but he went to town explaining various things.

My question is this in whatever he said was he addressing the pertinent issues or the pertinent grounds which made you or the three of you believe that there should be an investigation?

MR SHAIK: No. He was not. The - he was not in - in everything he was saying. Yes. It would have explained the close personal relationship that he had which maybe justifiable which may be understandable, but he was not applying his mind to the National Security issue that information was peddled which implicates his office
20 and therefore needed to be investigated objectively and I think the one - the one issue that I must raise is that the difficulty the three of us had in speaking to - to former President Zuma about the matter is that in many ways he was once upon a time our Head of ANC Intelligence and the relationship was making the assumption and we were making the assumption that the - the fact that we were raising it and the way we

were raising it.

That the President would rely on his previous knowledge about Intelligence and no that this is a serious matter that needs to be looked at. Irrespective of his personal relationships an approach could have been designed to have managed that and insure that you know the personal relationship is - is taken into consideration in the finding of - of the investigation itself. So I just got the sense that his state of mind had involved to a point where he could not make that separation.

CHAIRPERSON: I think you - you understood my question correctly,
10 but I am going to say this just to make sure it is clear. You could have a situation where you get evidence that so and so was - has committed the crime of theft at such and such a location. Blah, blah, blah and you have information that he was seen in that vicinity maybe carrying something that looked like what has been stolen. So you say I want to investigate this, but somebody who is a friend to that person might say to you no, no, no. You are wasting your time.

MR SHAIK: Hm.

CHAIRPERSON: That man is a good man ...

MR SHAIK: Hm.

20 **CHAIRPERSON:** And he might start telling you about let us say his struggle credentials and so on ...

MR SHAIK: Hm.

CHAIRPERSON: And so on and so on, but not answering the question whether there is not a need to investigate, because there is information that he was seen ...

MR SHAIK: Hm.

CHAIRPERSON: In the vicinity of where something was stolen and carrying something that looked like what was stolen.

MR SHAIK: Hm.

CHAIRPERSON: So - so that is what I am looking - I am looking at.

MR SHAIK: Sure.

CHAIRPERSON: Whether within the context of that example he was dealing with the facts.

MR SHAIK: Hm.

10 **CHAIRPERSON:** That give rise to the - to the conclusion we should have an investigation or whether it was a question of saying, no. So and so is a very good person.

MR SHAIK: Hm.

CHAIRPERSON: Look what he has done for the community. You know. Maybe the Gupta family are employing a lot of South Africans and what, what, what, but not going to the issues.

MR SHAIK: Sure. Sir and - and I think we should also be mindful that at that point in time the - President Zuma himself has come through a decade or possibly more than a decade of investigations in the
20 unfortunate way this has happened. So investigations into his friends. I am sorry. I just have to ...

CHAIRPERSON: Okay.

MR SHAIK: A moment.

CHAIRPERSON: Okay.

MR SHAIK: A smile on this, but investigations into his friends.

ADV PAUL PRETORIUS SC:

CHAIRPERSON: Yes.

MR SHAIK: One of them having been Schabir Shaik.

CHAIRPERSON: Yes.

MR SHAIK: Led - led to prosecution ...

CHAIRPERSON: Yes.

MR SHAIK: And successful prosecution as well.

CHAIRPERSON: Yes. Yes.

MR SHAIK: So I could understand sitting ...

10 **CHAIRPERSON:** Yes.

MR SHAIK: Outside of this.

CHAIRPERSON: Yes.

MR SHAIK: His state of mind ...

CHAIRPERSON: Yes.

MR SHAIK: When he hears his friends ...

CHAIRPERSON: Hm.

MR SHAIK: Are getting investigated.

CHAIRPERSON: Yes.

MR SHAIK: It is so easy in his state of mind to move from is this

20 another attempt to come towards prosecuting me.

CHAIRPERSON: Hm.

MR SHAIK: Etcetera.

CHAIRPERSON: Hm. Hm.

MR SHAIK: but that would be the very me trying to be incredibly ...

CHAIRPERSON: To understand?

MR SHAIK: To understand the state of mind.

CHAIRPERSON: Ja. To put yourself in your - his position?

MR SHAIK: Correct. Correct.

CHAIRPERSON: Yes.

MR SHAIK: In his. Correct.

CHAIRPERSON: Yes.

MR SHAIK: But notwithstanding that and that is why I am saying that there came a point in his administration where he could not separate even in his state of mind the personal relationship with the Guptas from
10 his responsibility as the Head of the National Executive with certain constitutional obligations and requirements. All things started to be seen through the same prism and created enormous complications.

CHAIRPERSON: Well I think it is - it is good you make the point that maybe if one puts oneself in his shoes. It is to be expected that somebody in that position would think about the past. What has happened to one of his friends and the fact that although charges against him had been withdrawn.

There - there were still attempts in the courts to make sure that decision is reversed. I would imagine that it is legitimate to think
20 maybe all of those could be things that he could think - could have thought about.

MR SHAIK: Ja.

CHAIRPERSON: Yes.

MR SHAIK: Yes. The ...

CHAIRPERSON: Well I - I have heard evidence from Mr Nxasana - who

was NDPP at a certain stage - talking about how he or his departure from the Office of NDPP. One of the things he said was that he had been told that some people had told President Zuma that he was contemplating reinstating the charges against him that had been withdrawn and one of the things that the Commission is looking at is why was he removed, because the settlement agreement made it clear as I recall.

That he was fine for - for the job and there are all kinds of things. So I just mention these things, because one has got to try and
10 have a - a globular picture. Thank you. Mr Pretorius. You may proceed.

ADV PAUL PRETORIUS SC: Well from legal team's point of view I would like to comeback to a particular point ...

CHAIRPERSON: Yes.

ADV PAUL PRETORIUS SC: In relation to this ...

CHAIRPERSON: Hm.

ADV PAUL PRETORIUS SC: Exchange. You have had a discussion about the President's apprehensions. His friendships. His history. What he feared might happened to him in relation to his own pending
20 prosecution or perhaps it was pending at that time, but those go to motivation and understanding his state of mind.

If we may return to an objective assessment of the position. Whilst there may be explanations for why the former President acted in that meeting and subsequent thereto in the way that he did. Objectively speaking did he carry out his duties as Head - Executive

Head accountable constitutionally for Intelligence?

MR SHAIK: Regrettably not.

ADV PAUL PRETORIUS SC: After that meeting did you continue working for the State Security Agency?

MR SHAIK: I did. I did for a few more months.

ADV PAUL PRETORIUS SC: And during the remaining period of your employment as SSA what happened to the developing or the not developing relationship?

MR SHAIK: Well the - my relationship in particular with Minister Cwele
10 broke down completely. He took to micromanaging the - the organisation. The - the foreign branch and he would have people in the organisation report directly to him. If he wanted things to be done he will do it via them. I was required to just sign off on - on matters.

He put everyone in a very difficult position. He put - there were some individuals who gloated in this, but there were others very capable people who felt that they were put in a very compromising position, because they respected me as the - the Head of the Service, but yet they were receiving instructions from the Minister's Office to do certain things which required my signature and just my signature not -
20 not an explanation.

Not the - a report to etcetera and this became a - an untenable situation for me and - and there were on - on different occasions the - the Minister took to let us say - let us say a - a particular feature that I have since discovered so in my other job. Took to me having to write explanations on almost everything.

I needed to write explanations in relation to a friendship I had. The person had died. I had to explain that friendship. I had to explain you know different things I did and he wanted this in writing and I would - I would duly oblige my - him and - and give such things in writing, but I think we were both coming to an understanding that the relationship - something needs to happen, because the relationship is - is not working.

I appealed to and I do not know whether it was in this period or before. I appealed to President Zuma to intervene in this - in this
10 matter, but at some point I - I received a phone call to meet with the Minister and ...

ADV PAUL PRETORIUS SC: Was this around June 2011?

MR SHAIK: Yes.

ADV PAUL PRETORIUS SC: Okay.

MR SHAIK: And - and he asked - he expressed his unhappiness and asked whether I would consider a resignation from - from the department and get transferred to another department. I said I would give serious consideration to this. I would think about it and - and come back to him on - on the matter.

20 However before - and I really did think of resigning. I thought that was the most elegant way out of the situation. I must say by then and - and this - by then I was - I was thinking that the relationship it just - you know. It is just not worth the energy anymore. The job is not worth the energy.

It is a great passionate wonderful futuristic job, but in the

hands of this Minister it is only going to lead to frustration for me, but before I could tender my resignation he called me to meet him and I went to the meeting and I - I was really thinking that at this meeting I would be served my notice of termination, but to my surprise he made an offer to me.

That was not for him to make, but nevertheless he made the offer and that offer was that he was going to appoint me as the South African Ambassador to Japan.

ADV PAUL PRETORIUS SC: Pause there for a moment. Your
10 knowledge of where the power lay in relation to appointments of Ambassadors. What was it?

MR SHAIK: Yes. At that point and again I do not want to be disrespectful to Minister Maita, but at that point I did get the sense that Minister Cwele was acting as the Shadow Foreign Minister, but even if he was acting as a Shadow Foreign Minister he had no power no constitutional authority to make the offer nor did he have the authority to make such appointment.

The appointment of Ambassadors is a constitutional responsibility of the President and the fact that he could make this offer
20 to me was engaging me in a discussion of - which I considered to be unconstitutional and I did not want to be part of that discussion with him and - and I - I informed him accordingly that Ambassadorships is not for Ministers to - to appoint and please do not discuss this matter with me. If he wants he could ask the President to discuss it with me who has the authority to appoint Ambassadors.

CHAIRPERSON: Are you certain that he put it to you in terms of him appointing you or it could be that he offered to make a recommendation to the President that you be appointed Ambassador of Japan?

MR SHAIK: Sir, I have - I have - in that meeting and I remember it very well, because it was a very - a meeting that was - I call my subsequent meeting with Mr Cwele very tense. He said I want to appoint you as Ambassador and I think the use of the word "I" really sparked a - a flare in my - in my limbic brain and I really got angry, because I could not accept the level of unconstitutionality that Minister Cwele was now
10 going through.

He did not say I will recommend. In fact I said to him that he does not have this authority to appoint people as Ambassadors and then he said, but you know this is the way we speak in the ANC and I had to remind him even on the matters of the ANC I may have a little bit more knowledge than he has, but I did not want to push that matter further, because I was not there in my capacity as an ANC Member.

I was there as the Head of the South African Secret Service and I then - then thanked him for his offer, but said it is not for him to offer and if the President wants to - to appoint me as an Ambassador
20 the President is free to have that discussion with me and I think I - I did say to him categorically that you and I both need to now agree that the relationship is irreversibly broken down between us and that I would want to discuss this matter now with the President and I sought his permission to - to go and see the President. To discuss my exit from or my exit from the department.

ADV PAUL PRETORIUS SC: You mention in - you mention in your - may I Chair?

CHAIRPERSON: (No audible reply).

ADV PAUL PRETORIUS SC: You mention in your statement that your reaction to the offer for want of a better word for the moment was not an attractive one in any event. The offer to go to Japan.

MR SHAIK: Yes, because at - at that time unfortunately there was the - the nuclear - there was an earthquake in Japan and the - there was a nuclear meltdown in terms of the - the reactors and there was a bit of
10 panic. Even though that was a bit far from Tokyo. There was a bit of panic about what are the consequences, but - so Japan did not appear to me in that time to be a - an attractable offer.

I knew its importance. It is - it is a country in the G7. Their - their relationships with Africa. The relationship with South Africa. So I knew it was an important posting, but it was not a - an attractive one for me at that time.

CHAIRPERSON: And then you said something about Minister Cwele being Shadow Minister of Foreign Affairs. Tell me more about what - what does that mean?

20 **MR SHAIK:** Well during my time as Head of the Secret Service and you will understand sir that we are almost very parallel to - to the Department of Foreign Affairs or it is now called the Department of International Relations and ...

CHAIRPERSON: Yes.

MR SHAIK: Corporation, but I did find the propensity of Minister Cwele

travelling abroad to various countries often in - in the company of the President and often in the company of the Minister of International Relationships - International Relations. I found that to be odd. Odd in the sense that that is not the task of a Minister of Intelligence and again it - it was raising this concern in my own mind about what does a Minister of Intelligence do and - because at the time he was acting as a Special Envoy.

As time he was involved in multilateral issues etcetera. I am not - so I am not saying that he does - should not have done that. I am
10 just saying that the level and the amount of trips that were - were being conducted and the engagements. It came across to me as a Shadow Foreign Affairs Minister ...

CHAIRPERSON: Yes.

MR SHAIK: And it maybe. So it is not ...

CHAIRPERSON: Hm.

MR SHAIK: It is not - not a good thing or a bad thing. I am not going putting it like that. I am just saying ...

CHAIRPERSON: Hm.

MR SHAIK: It maybe so.

20 **CHAIRPERSON:** Yes. No. No. That - that is - that is fine. I am just thinking that the notion of a Shadow Minister ...

MR SHAIK: Is that you are not ...

CHAIRPERSON: Is it not - is it not always attached to the opposition party? Okay. Alright. Mr Pretorius.

ADV PAUL PRETORIUS SC: Did you subsequently meet with the

President -b former President?

MR SHAIK: I - I did. I - I met with former President Zuma.

ADV PAUL PRETORIUS SC: And briefly what occurred at that meeting?

MR SHAIK: And I put - I put to Mr - I put to the President and I - and I must say that I put it in a way that did not open a discussion. I put to the President that my relationship with Minister Cwele is - is done and dusted. I am not willing to go back and the question and I then said to him in a jovial kind of way that you know and of all things he posted me
10 - he wants to post to me to Japan. You know.

The - so the President laughed on that and I said to the President you know. He now wants to take your job you know. So we had a light exchange about the matter and then said to the President that if there was another offer - if there was New York or Canada you know I would give serious consideration to it.

ADV PAUL PRETORIUS SC: Why Canada?

MR SHAIK: Canada because my wonderful, beautiful soulmate my wife is Canadian and I thought that she has spent an enormous amount of time in South Africa and through all my trials and tribulations. So the
20 one good thing I could do for her is to take her and the kids to Canada where at least the children could spend much more time with the grandparents. So Canada was attractive in - in that regard.

CHAIRPERSON: So you - you came up with that idea?

MR SHAIK: I came up with that idea.

CHAIRPERSON: Yes.

MR SHAIK: Yes.

CHAIRPERSON: Okay and what was the President's reaction to that part?

MR SHAIK: The President smiled and in his very jovial way says leave it to me my brother. I will see what I can do. I will come back to you.

CHAIRPERSON: Okay.

ADV PAUL PRETORIUS SC: What happened then? Let us continue the storyline.

MR SHAIK: So about three hours later I remember I was just about to
10 go to bed and I got a phone call from the Director-General of DIRCO.
Ambassador Jerry Matjila who is now the Ambassador in United
Nations.

ADV PAUL PRETORIUS SC: Just for record purposes. DIRCO being?

MR SHAIK: Oh. DIRCO being the Department of International
Relations and Cooperation ...

ADV PAUL PRETORIUS SC: Right.

MR SHAIK: And the DG said to me and we shall refer to each other as
Ambassadors. So he was very polite. He says Ambassador Shaik I
would like to inform you that we have - we will be moving the
20 Ambassador from Canada to Japan. The Canadian post is now
available. Would you give us your acceptance of the post?

I - I put the phone down and - and I was in a state of shock
and then I will tell you why, because it is now -this is the first direct
indication to me that it is President Zuma who really wants me to leave
the Intelligence Services. I had that discussion with no one else, but

President Zuma about either New York or - or Canada and within hours of that phone call things were put in place ...

CHAIRPERSON: Hm.

MR SHAIK: For - for my leaving. So I said I would come back to him the - my wife was very excited about it. So we had a family discussion with the - with my wife's parents. So we could discuss whether we should take this offer up or not and after due consideration - after due consideration I declined.

ADV PAUL PRETORIUS SC: When the DG, Mr Jerry Matjila, spoke to
10 you did he make any reference to the President, you have made the point that the President was the only person to whom you had expressed this preference that if the offer was in relation to New York or Canada you could consider it and it seems that he – what he said to you seemed to be based on somebody telling him of part of your discussion with the President, whether it was the President or somebody else who got information from the President we don't know, but did he in his conversation with you say I have been asked by the President to approach you following the discussion you have had with him or anything like that?

20 **MR SHAIK:** No he did not, Director General, DG Matjila at the time did not make reference to any discussion with the President or in fact the Minister, but he did say to me he said Mo man you've got a lot of pull so ...[intervenes]

CHAIRPERSON: You have a lot of?

MR SHAIK: Pull, you know, so we joked about that, but no he didn't

mention it.

CHAIRPERSON: But what he said to you if you didn't think it was linked to the discussion you had with the President would have been coming out of the blue?

MR SHAIK: Yes it would have, ja, but I knew I had that so it was you know I was taken aback by the fact that this happened so soon, I would have expected a – the President to call me to say listen I've given it consideration etcetera, but it was now put in motion so to speak.

CHAIRPERSON: Hmm, hmm, but you say after due consideration you
10 declined?

MR SHAIK: Yes. And the consideration was very simple that at the time, the time it was an age thing, I think I must have been 52 or 53 and if I took the posting I would have returned at the age of about 57. At the age of 57 to start a new career would be quite challenging, I am not saying is impossible. So I then we evaluated it as a family from yes and we appreciated the benefit of it would have been in Canada but I for one wanted to move out of government now, or wanted to move out of the situation of insufferable ministers and to be put back in a position where you now as an ambassador will have to report to a
20 minister and I did not have a good relationship with Minister Mashabane, and I did not want to be in a situation where I would just be you know having to accept whatever is coming to me and not having options.

So I evaluated it together with my wife and she was very gracious in accepting that okay we turn down the offer and we will start

a new life.

CHAIRPERSON: Thank you.

ADV PAUL PRETORIUS SC: And I understand, it is not controversial, I can lead you on it I presume, that you resigned in February 2012?

MR SHAIK: Yes I did resign in February 2012 but let me just say on the resignation, because it was a negotiated matter, I felt the moment we took the decision to not accept the posting to Canada I had to inform President Zuma that I am declining the offer, I did not want to go through the back channels and so I did have a meeting with President
10 Zuma and told him that I thank him very much for the offer but I will not be taking it up and again gave him the reason that you know I want to go back into the private sector and build a career in the private sector.

As luck would have it, and as the Universe would have it, an opportunity arose where I could play a role in the Development Bank. A new bank was being established and I was asked to consider playing a role in that bank, but one of the requirements was that I would have to upgrade my skills in management etcetera and it was suggested to me that I consider various institutions where I would be able to spend a short period and after consultation with Nick Binedell from Gordon
20 Institute of Business it was decided that, he recommended that I should go to Harvard for the Advance Management Program, which – but that was a very expensive affair and it then turned on the issue of how the length of the contract between that we signed when we first joined in 2009.

At that time Cabinet has taken a decision that all Director

Generals serve for a period of five years, rather than a period of two or three years, and in light of the Constitution ruling I then approached President Zuma to say my understanding is that this contract is for five years rather than three years which is what Minister Cwele was insisting upon. President Zuma was gracious, he agreed it is a five year contract, and then this allowed me to negotiate with Minister Cwele a settlement agreement in which I settled on a particular amount between three and the five year but that will allow monies to be paid to Harvard for my studies there. I harboured under the illusion that if I

10 applied as an individual to Harvard Business School that I may not get accepted, subsequently I found that you could do that, so this is why the SSA paid, and it was incorrectly reported in the newspapers that – it was stated it was monies due to me which were administered by the SSA in respect of payment to Harvard Business School and on return from Harvard I applied for a job in the Development Bank of Southern Africa and I was successful in getting that job.

ADV PAUL PRETORIUS SC: Before we go on in time Mr Shaik to complete the picture there will be direct evidence shortly in relation to Mr Njenje, did any similar offer emanate from the authorities in regard

20 to an ambassador post for him?

MR SHAIK: Yes, roundabout the same time, and I remember quite clearly that director Njenje was made a similar offer to a post in Africa as Ambassador to the post and Njenje, and I must say this because often it is considered that the three of us are in dynamic consultation with each other, a remarkable feature of the relationship between the

three of us is how little we consult on decisions that we arrive at but yet we all seem to arrive at the same decision sir. None of them have ever told me to accept or not accept the position and neither did I ever mention to – or discuss with Mr Njenje that he should not accept the post. He arrived at his decision independent of me as independent of our DG Maqetuka as well.

ADV PAUL PRETORIUS SC: He refused the post?

MR SHAIK: He refused the post.

ADV PAUL PRETORIUS SC: Before moving on there's just one matter

10 I need to deal with but this may eat into the short adjournment time.

CHAIRPERSON: Maybe you are reacting to the fact that I was looking like I wanted to say something and you thought maybe I am about to say is it not teatime. No, I think I wanted to ask something in relation to that last point.

As far as you know – or let me put it this way, your departure from Intelligence in 2012, was it a consequence of your conclusion that you had lost or that your relationship with Minister Cwele had irretrievably broken down and that you had lost the confidence of the President or was it just the fact that your relationship with Minister

20 Cwele had irretrievably broken down?

MR SHAIK: I think it was both sir.

CHAIRPERSON: It was both?

MR SHAIK: It was both, and I understand it, it is the nature of life in the Intelligence World, but it was both.

CHAIRPERSON: Yes, yes, okay. Thank you.

ADV PAUL PRETORIUS SC: Is this a convenient time?

CHAIRPERSON: Yes let us take the tea adjournment, we will resume at half past eleven.

We adjourn.

REGISTRAR: All rise.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Okay let us proceed.

ADV PAUL PRETORIUS SC: Thank you Chair. You have described this
10 morning Mr Shaik how your services came to an end. I hesitate to put
a legal label on how the law would regard the termination of your
services. It is not to the purpose of your evidence now. But...

CHAIRPERSON: I do not know whether you should pull the microphone
closer to you or you should raise your voice but ...

ADV PAUL PRETORIUS SC: My apologies Chair.

CHAIRPERSON: Ja okay.

ADV PAUL PRETORIUS SC: I hesitate to put a legal label on the
termination of your services but I do wish to ask you in your own mind
what was the cause of your dismissal or your resignation whatever
20 label one wants to put on it?

MR SHAIK: The – the – the – I think the correct label to put to my
departure from the Intelligence Services was an irretrievable
breakdown between Minister Cwele and myself.

ADV PAUL PRETORIUS SC: Right.

MR SHAIK: The origins of which lies in me being part of a decision to

investigate the Gupta's and for that I have no doubt. The – and of course the exit was an elegant exit in terms of a negotiated settlement in respect of my rights in the contract and my insistence that the contract was for five years and not for three years.

ADV PAUL PRETORIUS SC: Right. And it is correct is it not that the three senior executives in the Intelligence Service at the time ended their employment around the same time?

MR SHAIK: That is correct Sir.

CHAIRPERSON: Going back to your own departure from Intelligence in
10 2012 you say the cause was the irretrievable breakdown of your relationship with Minister Cwele and you say the origins of which were related to your having been part of the decision to investigate the Gupta's?

MR SHAIK: That is correct.

CHAIRPERSON: Is that right? Are you able to say what else the two of you could not agree upon that characterised this breakdown or that contributed to this breakdown or is it really that difference of opinion on the – on the investigation of the Gupta's and whatever else came happened after that really was attached to that?

20 **MR SHAIK:** I think the – the investigation on the Gupta's was a significant matter. There was a – a – a – a huge turning point in the relationship. Because up until that point there was still a possibility of appeal to the President that Minister Cwele is not totally understanding of the – his portfolio and – but after the – the Gupta issue so to speak the – clearly it is Minister Cwele who had the confidence of the

President and we and as consequence me did not have the confidence of the President. So that was a significant turning point. But there were other issues as well and I would give a few of those. One is there was an election in regard to Cote d'Ivoire in which the election was contested between Gbagbo the incumbent President at the time and Quattara who was a President coming from the North.

ADV PAUL PRETORIUS SC: Could you spell those names for the record please? Can you?

CHAIRPERSON: I know Gbagbo is quite difficult to spell.

10 **MR SHAIK:** Gbagbo is difficult given the language there and I think Quattara is Quattara.

CHAIRPERSON: Hm. Hm.

MR SHAIK: So the first round of the elections.

CHAIRPERSON: I think Gbagbo was I think it starts with a G.

MR SHAIK: It starts with a G

CHAIRPERSON: And a B.

MR SHAIK: Gbagbo.

CHAIRPERSON: Ja okay.

MR SHAIK: So the first ...

20 **CHAIRPERSON:** Yes.

MR SHAIK: Was that a test? So the first

ADV PAUL PRETORIUS SC: You passed.

MR SHAIK: Ja the – the first round of the elections Gbagbo lost – won the first round and Quattara lost and it was a – quite a close margin and then the second round of the elections were held in which Quattara

won. The information I received in my capacity as Head of the Secret Service was that notwithstanding the issues around the free and fairness of the election that the – the results generally is that Quattara won the election. The UN came out in support of Quattara Equ Awas which is the – the West African

CHAIRPERSON: The regional.

MR SHAIK: The regional – regional body came out in support of Quattara and the question is what was South Africa's position going to be? The Minister was of the view together with others that Gbagbo won
 10 the election and not Quattara and I was of the view that together with others that irrespective who won the election that the fact of the United Nations has expressed a view on it it is in our multilateral interest to go with the outcome of the – the Quattara election. So that was one of the major – one of the disagreements. The other concerns the – the appointment or the lobby for Nkosazana Dlamini Zuma to assume the chair or the African Union. I and again with others were of the view that it may not be in South Africa's medium to long term interest for us to – to lobby for that position given the kind of protocol that exists that we do consider ourselves as a significant power on the continent and it
 20 is not necessary for us to go for the position. It will cause a – a kind of divide along Francophonie and other lines. And I was of the view that we should avoid that conflict. The Minister and others were of the view that we should lobby for that position and that we should go for that position. So that was another example where we disagreed on policy issues. And there are a few others like that where we had significant

disagreements and of course it just became clear to me that my views or my actions were increasingly brought under the microscope. There is one issue that broke the camel's back. It is an allegation that the Minister made in respect of my own loyalty to the country. He was spreading a rumour or disinformation about – that I work for another government secret services which is not true. I am – and the reason why I am being a bit vague about it Sir and I am going to take the punt. I have written a book where most of this is there. But for the purposes of this commission I would say that yes he – he also brought my loyalty

10 to the country in question. But I took comfort from the fact that the people close to me and in particular my two colleagues were dismissive of that allegation and nothing – nothing came of it.

CHAIRPERSON: The reason why I asked that question was just to see whether this was simply a situation where maybe it could be argued that you were pushing for something to be done or things to be done that were lawful and that maybe his approach was different in regard to that. Or whether it is a situation where maybe some things might fit into one person pushing for something that is lawful another one pushing for a different thing. And other things which have got nothing

20 to do with what is legal what is not legal but simply operational issues and policy issues that might have divided the two of you.

MR SHAIK: Sure.

CHAIRPERSON: No but from what you are saying it looks like there were – there may have been a number of issues relating to policy where you – the two of you might not have agreed. Or maybe some

operational issues as well, is that correct?

MR SHAIK: The – that is – that is correct. On the policy issues policy dissonance or police contestation is an incredibly good thing in policy formulation. So having different perspectives but of course given the – the very unique position of intelligence your policy posture must take into account all considerations and you have got to not only seek the short term benefit, you got to see the medium and long term consequences and I – I was increasingly getting a sense that Minister Cwele and then later on President Zuma was applying short termism and taking short term benefits without due consideration to the medium and long term consequences of those benefits. Because there is no free lunch as we have discovered from Saxonwold. But the important thing is in intelligence you welcome disagreement, you welcome contestation, you welcome different perspectives because you are enriched by that process. And this is why I say that Minister Cwele lack of experience in the intelligence world started to show and it started to have an effect because of the role he was playing so close to the President, so close to the foreign Ministry. It started to have an effect on the choices we were making in the National Interest. And of course that did not sit very well with me.

CHAIRPERSON: Would you categorise your departure from intelligence in 2012 in the terms of you having been pushed out or in the terms of you having decided to withdraw in the light of the situation that you have described?

MR SHAIK: I was pushed out.

CHAIRPERSON: You were pushed out?

MR SHAIK: But – I was pushed out but they – there is a wonderful – there is a wonderful saying the – I think Minister – Minister Cwele thought he could bury me. He just did not understand that I am a seed, I grow. I do not you know – so I grew and I grew out of that situation. I found an elegant exit and ja the – I am better off in the position that I am today than I was then.

CHAIRPERSON: Okay thank you. Mr Pretorius.

ADV PAUL PRETORIUS SC: Of course the manner in which you
10 testified you were treated particularly by Minister Cwele may have been a result of the breakdown rather than the cause of it, do you have any comment that possibility?

MR SHAIK: Yes again I would go back if I look at all the possible significant causes I would have to conclude that the – being party to the decision to investigate the Gupta's was the significant cause. Everything that resulted from that moment was as a consequence of that because I think the trust levels were invariably broken on that level.

ADV PAUL PRETORIUS SC: At the time of you leaving the service,
20 Intelligence Service did you have any communication with any of the Gupta brothers?

MR SHAIK: Yes. I did have a communication. When the – I think it was just the media and I think it was the Mail and Guardian was going to write a story that the Gupta's were behind my firing or our firing from the Intelligence Services. I received a phone call from Mr Ajay Gupta.

He identified himself as Mr Ajay Gupta and said to me that the Mail and Guardian is going to be writing a story about – that he – or they were behind my firing and that he would like me – and of course he then said – and my brother you know we are family. So I had to correct Mr Gupta and say, I am sorry we are family. He then said yes but you know what I mean. I had to correct him again says I really do not know what you mean. And then he said, well you know I should tell the media that this is not true. And I said Mr Gupta the difficulty I have with that is that I do not know whether it is not true and I do not know whether it is true.

10 So all I am prepared to say to the media and which is what I did say was no comment that I have no comment to make on the matter. And that was it. But he attempted to get me to agree or get me to say that he was not behind my firing. Of course what he did not know at the time is that he had on various occasions to at least one person that I know alluded to the fact that you know they would really wanted to get me out of the Intelligence Services.

CHAIRPERSON: He had?

MR SHAIK: He had mentioned to a – a person in the Intelligence Services.

20 **CHAIRPERSON:** Hm.

MR SHAIK: That I am part of a group of people who is planning to remove Zuma.

CHAIRPERSON: Hm.

MR SHAIK: And they have got to remove me from the services.

CHAIRPERSON: Hm.

MR SHAIK: Of course at the time I did not pay much attention to it. I was dismissive of it because I did not believe and I must – I must be quite honest I did not – I did not really believe at that time that the Gupta's had that much influence on state of affairs.

CHAIRPERSON: Hm.

MR SHAIK: I always considered them not to be quite open about it. I considered them to be hangers on.

CHAIRPERSON: Hm.

MR SHAIK: That you normally get in – you know in the political
10 processes etcetera.

CHAIRPERSON: Hm.

MR SHAIK: But I – I did not know of the enormous influence that they wielded.

CHAIRPERSON: Hm. Hm. Do you know whether the person to whom that was said may be prepared to testify?

MR SHAIK: I will consult accordingly.

CHAIRPERSON: You will consult. Yes please thank you and then be in touch with the legal team of the commission.

MR SHAIK: Will do.

20 **CHAIRPERSON:** Thank you.

ADV PAUL PRETORIUS SC: After your return from Harvard I understand that you were appointed as the Group Executive of the International Unit of the Development Bank of Southern Africa, is that correct?

MR SHAIK: That is correct.

ADV PAUL PRETORIUS SC: You occupied that post from August 2012 until your early retirement in August 2017?

MR SHAIK: That is correct.

ADV PAUL PRETORIUS SC: In March 2016 were you aware of a memorandum that was submitted to the Secretary General of the ANC Mr Gwede Mantashe addressed to him and the ANC by senior commanders and commissars of the former Military wing of the ANC Nkonto Isizwe?

MR SHAIK: Yes I am aware of that.

10 **ADV PAUL PRETORIUS SC:** What was your involvement in relation to that memorandum?

MR SHAIK: The – I was asked by General Sphiwe Nyanda to – to draft that memorandum and he provided the input and my task was to draft it up and send it to him for approval which – which I did.

ADV PAUL PRETORIUS SC: Right. Chair that memorandum has been dealt with in evidence at some length. I am not sure that it is necessary unless you wish to go into any more detail in that regard?

CHAIRPERSON: No I do not think there is any – it is necessary unless the witness has anything he wants to highlight in [indistinct] but
20 otherwise we have – I have heard evidence on it.

MR SHAIK: No, no Sir.

ADV PAUL PRETORIUS SC: I presume as the drafter or one of the drafters of the memorandum you stand by its contents?

MR SHAIK: Yes I do.

ADV PAUL PRETORIUS SC: The memorandum made reference

amongst other things to the removal of Minister Nene from his post of Finance Minister in December 2015 and his proposed redeployment to the BRICS New Development Bank.

MR SHAIK: That is correct.

ADV PAUL PRETORIUS SC: What do you know from your involvement in the banking sector of the so called offer that was made to Minister Nene of a position in the BRICS bank?

MR SHAIK: Yes. Chair just as a way of background. In my capacity as a Group Executive of the Development Bank of Southern Africa I had
10 reason to be made aware of the discussions in regard to the formation of the New Development Bank. It has a long history and the DBSA had played an instrumental role in all of the discussions and the construction and the debates about the bank itself, the New Development Bank. So the New Development Bank has shareholders which sits at the level of the Presidents of the country and they are the shareholders of effect of the bank. Then it is – its next governing body is the Board of Governance and in the Board of Governance is where the Ministers of Finance sit. And below that then is the President of the bank and his management team. So I wanted just to explain those
20 three levels of governance to see where this is leading to. So Minister...

CHAIRPERSON: I am sorry I must just make sure I understand. I sometimes get confused between what I believe is a bank that we have in South Africa that has got development as well and then the – what I refer to as the BRICS Bank.

MR SHAIK: Yes.

CHAIRPERSON: Are we talking about the BRICS Bank now?

MR SHAIK: We talking about the same bank.

CHAIRPERSON: Oh it is the same.

MR SHAIK: It is called the New Development Bank or otherwise known as the BRICS Bank.

CHAIRPERSON: Okay alright. Okay.

MR SHAIK: So – for just to keep it on the same language we will refer it to as the BRICS Bank.

10 **CHAIRPERSON:** Yes.

MR SHAIK: So the BRICS Bank has the shareholders, the first level. The second level is the Board of Governance which is constituted by the Ministers of Finance of the four – or the five countries. Below that then is the President of the bank itself who is effectively the CEO of the bank and with his or her management team. So this is how the bank was envisaged. Its headquarters was going to be in Shanghai China. And during this negotiations about the BRICS Bank the question of a regional office – a regional office of the BRICS Bank to be established in Africa as a starting point. And it took a lot of lobbying and
20 eventually it was agreed that the Regional Bank will be set up in South Africa. Now the Regional Bank is precisely that. It is a regional bank. It is a branch of the New Development Bank or of the BRICS Bank. And the decision of who would be the person who heads that regional bank is a decision of the management of the bank itself. Not even the governance. It will of course all – all decisions of importance will go to

the governance for ratification but the interviews, the choice etcetera will done by the management of the New Development Bank or the BRICS Bank. And it is not a separate bank. It is not a separate bank. It is not a separate entity from the New Development Bank it is an office of the regional bank. And as such the – the position was advertised and people – there is a process that the management of the New Development Bank appointed a head hunting team. They head hunted and people had to apply etcetera, etcetera. The – there was no way a shareholder could impose on the management of the bank a

10 nominee for regional officer without violating the corporate governance issues of the bank itself. The – it is just not done and it is not good in terms of banking and it is not good in terms of the governance issues and that will affect – it would have affected the rating of the bank itself. If shareholders are making decisions about who the employees of the bank so to be quite clear the regional branch of the New Development Bank is an employee of the New Development Bank.

ADV PAUL PRETORIUS SC: The memorandum to which we have just referred the memorandum of March 2016 also made reference to the conduct of the Hawks and their investigation of the so called Rogue

20 Unit and SARS. Now again we do not need to go into that category of issue but it does raise an issue with which the commission may be concerned at the end of the day to assess. And that is the use of Intelligence Services or Quasi-Intelligence Services and disinformation. Do you have any comments on that? You have mentioned it briefly before but ...

MR SHAIK: Yes.

ADV PAUL PRETORIUS SC: If you have anything to add please do?

CHAIRPERSON: Before you do so please do not forget the question.

Do not forget this question.

MR SHAIK: Yes [indistinct].

CHAIRPERSON: But before you deal with it I want to go back to the question of Mr Nene and the post that he was said to be deployed to in the BRICS Bank because that is what you were talking about.

MR SHAIK: Yes.

10 **CHAIRPERSON:** A few minutes ago, is it not? Yes. By the way do you recall what the position was being called? Was there a title of what the position was that he was said to?

MR SHAIK: I think it was the Head of Regional.

CHAIRPERSON: Oh just Head of

MR SHAIK: Yes.

CHAIRPERSON: Yes okay. Now when you speak as you have done explaining the structure of the bank and the – who sits where you doing so now from certainly your knowledge as somebody from within?

MR SHAIK: Yes.

20 **CHAIRPERSON:** The bank, is that right.

MR SHAIK: Correct.

CHAIRPERSON: You know the – that those are the structures.

MR SHAIK: Correct.

CHAIRPERSON: And so on and so on. And you are familiar with the – with the regulations with whatever instruments must be followed in....

MR SHAIK: Correct.

CHAIRPERSON: The filling of positions including such a position. So you are saying that the relevant instruments governing the appointment of personnel including somebody who would occupy that position of Head of the Regional Bank did not permit that a shareholder could say here is somebody who must be appointed without – and the bank agreeing to do that without being in breach of its own regulations or instruments. Is that right?

MR SHAIK: Correct.

- 10 **CHAIRPERSON:** Yes. So – so with your knowledge of the instruments that govern appointments in the bank are you able to make sense of the announcement at the time that Minister Nene was not going to continue as Minister of Finance because he was going to be deployed in that position. Or is it something that you are not able to understand how it would happen?

- MR SHAIK:** Ja. It did not make sense to me in my experience now no longer as Intelligence but as a banker. It did not make sense to me at all that would – could firstly happen. But secondly it did not make sense to me that Minister Nene would accept that. Because he served
20 as the – the – as a Governor on...

CHAIRPERSON: On a higher position.

MR SHAIK: On the higher position and now he was going to be taking a considerably lower position.

CHAIRPERSON: Hm.

MR SHAIK: And that would not make - would not have made sense to

me ...

CHAIRPERSON: Hm.

MR SHAIK: If I was in that position ...

CHAIRPERSON: Hm.

MR SHAIK: And I - I did not see how Minister Nene would have taken up that position in any event.

CHAIRPERSON: Well he says in his statement which is submitted to the Commission. I think also in your evidence. He makes the same point that he was already serving in a higher position ...

10 **MR SHAIK:** That is correct.

CHAIRPERSON: And this would - this was a lower position, but if I recall correctly. Either at the time of that announcement or subsequently when the former President was answering questions in the National Assembly on the decision. I seem to recall that the idea as he articulated it was - we need in that bank or in that position. We need somebody. One of our own and we need a good performer and that is why we are sending him there.

MR SHAIK: Hm.

CHAIRPERSON: So - so you say, but in terms of the instruments of the
20 bank you cannot see how it would happen quite apart from the fact that it was a lower position for him?

MR SHAIK: That is my evidence, sir.

CHAIRPERSON: Hm.

MR SHAIK: And - and just by the way we have - South Africa has the position for now of the Chief Financial Officer of the New Development

Bank. Who is also I think considered as a Vice President to the Bank who was nominated by Minister Nene. His name is Mr Leslie Maasdorp and it is when in the formation of the bank Mr Maasdorp was appointed to that position through the proper processes and so forth.

So it would have been incredibly odd for Minister Nene who in his capacity appointed through the regular process and an appropriate process a - an individual to the Chief Financial Officer post. Then only to eventually report much lower down the line to that office. It just did not make sense. It did not make sense at all.

10 **CHAIRPERSON:** You may not be able to answer this and I would understand. Do you - would you know whether the shareholders would appreciate or would have knowledge and appreciation of all of these things or is it possible that some of the shareholders thought you could just say here is our nominee and then the nominee would be appointed?

MR SHAIK: On a generous interpretation I have to conclude that our shareholders in particular did not have a thorough understanding of how this bank would work. How it would be set up. What are the instruments and how do you ensure that in the banking environment that there is separation between policy and management and
20 implementation.

Especially because these banks get international ratings and the ratings determine the - the kind or the cost of money that you would be able to raise and if there is interference in - in the banking in governance issues. It affects the ratings very badly. The - so I think on the generous side on the interpretation I think our shareholders did

not have a proper and due understanding of how the mechanism of the bank would actually work.

CHAIRPERSON: When you say our shareholders. You mean our as South Africa's?

MR SHAIK: South Africa, yes.

CHAIRPERSON: Yes. Now at the time when Mr Nene was dropped from Cabinet which was 9 December 2015 were you already in the bank - working in the bank?

MR SHAIK: In - the - the year was 2015.

10 **CHAIRPERSON:** 2015.

MR SHAIK: Yes. I was - I was in the bank. I was in the DBSA from 2012.

CHAIRPERSON: Yes.

MR SHAIK: August 2012.

CHAIRPERSON: Yes. Okay. Thank you.

ADV PAUL PRETORIUS SC: You were going to deal Mr Shaik with the issue of disinformation ...

MR SHAIK: Yes.

20 **ADV PAUL PRETORIUS SC:** And the use of disinformation by the possible use of disinformation by Intelligence Agencies.

MR SHAIK: The - very briefly sir that we - our country does have a history of what is called disinformation and disinformation is the manufacturing of false intelligence for purposes of influencing the target. The - and - and the country has a long history of this starting from the days of - of President Nelson Mandela all the way to

President Zuma and I am sure even now President Ramaphosa may be the target of such disinformation campaigns and they take - they take a very unique form.

Where you put pieces of information together that may appear to be true, but when you really go into the detail you will find that this is not the case and these disinformation campaigns you will recall way back in 1994 the Head of the then SANDF General Meiring presented a report to Nelson Mandela in which - to President Nelson Mandela in which it was alleged that there was a possible coup being planned
10 against President Mandela.

That involved amongst others some other South African names and including the name of Michael Jackson and this report and I - I would understand that General Meiring may not know what to have done with it. So he did pass it onto - to President Mandela who rejected the report, but like that report we have had many other reports.

They are called browse mole. They called spider web. They are called a whole range of things where these reports emanate from - from sources that you quite cannot locate and brought together and the
20 first tell-tale sign of that is - and just an example for you. If someone calls you and says I cannot discuss this over the phone with you.

I need to meet you in person. Just let an alarm bell ring in your head. I mean if the person cannot discuss it over the phone with you. He will not be able to discuss it in person as well. So the - we were deeply concerned by this phenomena - deeply concerned. So

again under the leadership Ambassador Maqetuka in - in 2010 we invited a - a specialist in this matter and it happened to a Ghanaian by the name of Kofi Bentum Quantson. He is an ex ...

CHAIRPERSON: It might be helpful if you are able to spell that for the transcriber.

MR SHAIK: Okay.

CHAIRPERSON: If you are able to if you just ...

MR SHAIK: Kofi.

CHAIRPERSON: *Ja.*

10 **MR SHAIK:** K-O-F-I. Bentum - B-E-N-T-U-M. Quantson - Q-U-A-N-T-S-O-N. So ...

CHAIRPERSON: Thank you.

MR SHAIK: So Kofi is a specialist on the matter and he has written books, because his country too was affected by - by this phenomenon of bogus informants, bogus reports etcetera. So we invited him over and had an all-day seminar on - on our facilities. Where we tried to grapple with this phenomenon of disinformation and how to - to be able to - to manage this information and to neutralise its very destructive effects, but often and it is something that I will spend my days really
20 reflecting on.

Is what is it in our society that we lend ready ears to conspiracies etcetera and - and it just seems that we do have a society in which we reject modernity. Where we do not embrace the proper signs of like is this possibly true or not true and subjected to the rigours of analysis and come to the conclusion that this is not true and

therefore reject it and do not act on and if thereby minimising its destructive effects.

I found that there is and this goes across administrations. That there has been a tendency to lend a ready ear to these disinformation campaigns and it has been a - a source of destabilisation of our Government through various epochs. So again many of the examples browse mole, spider web.

I just forget all the names now and they all come up with very interesting names. Just - you know - it just - that happens when you do
10 not rely on your Intelligence Services as your fact checking entity. If you have an Intelligence Service equip it, guide it, allow it to go through all the information and be able to tell you that this is not true.

This is maybe reasonably true and reject it, but and you will notice that these reports emanate from out of the blue. They - they just find their way in and make themselves - they appear in the media and go forward. Now on the matter of disinformation sir I must also put on record that it is said - suggested and it has been suggested in - as a result of an allegation I made in respect of the previous National Director of Public Prosecutions in which and as a result of the
20 allegations I made.

People have - have accused me of being a - a disinformation specialist etcetera. So I want to put it on record that that is not the case. The allegation which was dealt with in the Hefer Commission was not a whispering campaign I started or a

CHAIRPERSON: Is this a reference to the first National Director of

Public Prosecutions?

MR SHAIK: It is correct, sir.

CHAIRPERSON: Yes. Okay.

MR SHAIK: And I went through that process. I openly said what I had to say. I did not write funny reports etcetera. I openly said the - Judge Hefer dealt with the matter. He rejected the allegations that I made and I accepted the outcome of that report and I accordingly went to apologise to - to

CHAIRPERSON: The first Director of ...

10 **MR SHAIK:** Advocate Bulelani Ngcuka ...

CHAIRPERSON: Yes.

MR SHAIK: And his wife ...

CHAIRPERSON: Hm.

MR SHAIK: And I think the matter between us is - is settled, because what I believed I did at the time. I would rather classify it as whistleblowing. I knew of certain information and I was of the view that the Office of the National Director of Public Prosecution was being used for political purposes and that in my mind represented an abuse of State power, but the media had a field day.

20 It is - if you want to Google it. I am still trying to get it removed from Google. It is all there and I have learnt with - with the passage of time the wisdom and the resilience to - to bear that and accept that it a cross that I - I would have to bear, but I am not involved in the game of disinformation and I am not and I never was part of dirty tricks so to speak.

ADV PAUL PRETORIUS SC: Yes. That allegation to which you have referred is reported in the publication by Jacques Pauw The President's Keepers. You are aware of that?

MR SHAIK: I am aware of this and I must say that I have a lot of respect for - for Jacques and I think in - in - the way he wrote what he wrote there. He was taking what we call liberties so to speak, but there are elements in what he wrote there is true. That I did in fact - I did in fact have a meeting with Arthur Fraser at the time and I did in fact mention to Arthur Fraser that I heard that he has these so called tapes
10 and here is the important thing.

That I asked him to do the right thing and he asked me what is the right thing and said you have information in your possession that affects the innocence or otherwise of another person. Take this information to the National Prosecuting Authority and he did. He did. He did not take it anywhere else. He took it the National Prosecuting Authority and that is what Jacques Pauw refers to and I accepted that that is correct.

ADV PAUL PRETORIUS SC: If I may just put a brief excerpt from the book to you. So that the air can be properly cleared and the matter is
20 ...

MR SHAIK: Yes.

ADV PAUL PRETORIUS SC: Thoroughly dealt with. He says at page 39 of his publication:

"Mo Shaik was involved in the Zuma camps own
dirty tricks campaign two weeks after the State had

announced that the NPA was about to hurl Schabir Shaik before a Judge. Mo Shaik identified prosecutions boss Bulelani Ngcuka as apartheid spy RS452. He later said he had made the allegations in order to defend the honour of the Deputy President of this country Jacob Zuma."

Do you have any comment on that?

MR SHAIK: Well the - a, the - in my capacity as an Intelligence Officer way back in the 1980's I had come across information that gave me
 10 reason to investigate Bulelani Ngcuka for possible association with the apartheid Government. That was communicated to Head Office and communicated to - to Lusaka and the matter for me rested there until much later when I received other information and then in light of - in light of the abuses that were taking place or the abuse of office of - of the Deputy President not necessarily Schabir, but the Deputy President in particular.

Mac Maharaj the second. I was of the view that - that there may be a link between the investigation that we did way back in the 1980's to what is happening now and I went public with that and then
 20 as a result the Hefer Commission resulted. I did not consider that to be dirty tricks. I did not consider that to be part of a smear campaign.

It was a very public, very open Commission and I willingly participated in it. Subjected myself to the interrogation. Made it clear that I would accept the outcome of the - the Judge's report and which I did. So I - I did not see that as - as dirty tricks. However I must say

that I know Jacques and when I read that I smiled and - and said this is the liberty he is taking as - as a novelist or a journalist and I am not going to make an issue of it.

ADV PAUL PRETORIUS SC: Alright. The agent code name RS452 was apparently later identified as a Vanessa Brereton. Is that correct?

MR SHAIK: That is correct. That is correct.

ADV PAUL PRETORIUS SC: We may move on then just to close off on the memorandum that we have spoken about just for completeness sake in that regard. You were part of a delegation of signatories to that
10 memorandum to the Office of the Secretary-General of the ANC
Mr Mantashe.

MR SHAIK: That is correct.

ADV PAUL PRETORIUS SC: How were you received?

MR SHAIK: We were received very well. Very well. I could not remember all the names of the officials that were there, but it was - but we were received very well by the Secretary-General. By Jesse Duarte and I think Jeff Radebe was also there. So it was a - a good delegation.

ADV PAUL PRETORIUS SC: In relation to Intelligence documentation
20 and access to Intelligence documentation in relation to the issue of State Capture raised in that memorandum. Did you make any suggestions to the ruling party at the time?

MR SHAIK: Yes. We - we suggested that the Office of the Inspector-General be approached. In which and knowing the - the laws and the regulations that govern the Inspector-General that the political

party could approach the Inspector-General for access to documentation or information as maybe classified or declassified by the Inspector-General's Office himself.

I was not willing and I know that Ambassador Maqetuka was not willing to provide that documentation to the ANC, because then it would have been in violation of the very Constitution that we are furthering the aims of a political party and we did not want to get involved in that. So we raised the issue and showed them the mechanism by which they could obtain the information.

- 10 **ADV PAUL PRETORIUS SC:** You have mentioned in paragraph 48 of your statement or affidavit a disclosure that you thought prudent.

MR SHAIK: Yes.

ADV PAUL PRETORIUS SC: To bring to the attention of the Chair. Would you do so please?

- MR SHAIK:** Chair, the - since leaving - since leaving - taking early retirement from the Development Bank. My wife and I have opened our own consultancy and we in fact do provide and I in particular do provide services to one organisation that maybe or is implicated in the terms of your reference and I thought it prudent that I disclose that
- 20 conflict to the extent that it is a conflict.

Although the matters are very separate and I have provided the name of that company to the evidence leader and my preference would be that that matter be discussed in chamber.

ADV PAUL PRETORIUS SC: It is not a conflict Chair.

CHAIRPERSON: Thank you. Okay. Thank you. Thank you.

ADV PAUL PRETORIUS SC: One last topic please. The former President has given evidence in relation to Intelligence matters before the Commission and this matter has been raised with you - been able to assist in some regard to understand that evidence. Firstly, you have said you had a relationship with the former President in the context of Intelligence or Security matters?

MR SHAIK: That is correct.

ADV PAUL PRETORIUS SC: Did he ever mention to you any conspiracy or plan on the behalf - on the part of Foreign Intelligence
10 Agencies?

MR SHAIK: In roundabout 1991 and I recall after he no longer occupied the position of Head of Intelligence in the ANC. He did mention to me that he had been given information that there are two foreign agencies who want to stop him from assuming power in - in the country.

I assumed at that point in time that what he was referring to, because in 1994 power was a bit vague in terms of what particular power are we talking about and I thought that he was referring to perhaps they do not want him to be the Head of the Intelligence
20 Services or rise within the political ranks assuming a Ministerial post etcetera, but he did mention that to me, but he did not - he did not give me the details of exactly that conversation.

Who had said this to him etcetera, but he mentioned it to me and - and I on the other hand did not push to ask where is it coming from etcetera. It is something that you do not do in - in the Intelligence

game.

ADV PAUL PRETORIUS SC: The information that was given to you was it that he should not be Head of an Intelligence Agency or was it that there was a conspiracy that he should be prevented from assuming power in any capacity whatsoever?

MR SHAIK: I - I saw all of that in one - one package. The - but I - I would - when I really think about it now I would assume that he was referring to political power in - in Government. So to speak.

CHAIRPERSON: And maybe within the ANC as well.

10 **ADV PAUL PRETORIUS SC:** Would there be any explanation why?

CHAIRPERSON: I am sorry Mr Pretorius. Sorry. Maybe within the ANC as a ...

MR SHAIK: Yes. It may ...

CHAIRPERSON: Political party itself as well?

MR SHAIK: Yes. It may be within the ANC as - as the political party as well.

CHAIRPERSON: Yes, because they could - the two could go together.

MR SHAIK: Hand in ... (intervenes).

CHAIRPERSON: The higher you rise in the political party - the ruling
20 party - the higher you may rise in terms of Government positions.

MR SHAIK: That is correct.

CHAIRPERSON: Okay.

ADV PAUL PRETORIUS SC: Right. What interest would a Foreign Intelligence Agency have in - let us just deal with the one aspect which I understood to be what you told us. The interest in someone not

assuming an intelligence position. Someone of the background of the former President.

MR SHAIK: Well the - the possible reasons for that is we did - we did and remember the world at that time was just emerging out of essentially the Cold War era in which Intelligence Services were the front line of the war that existed between the various Intelligence Services and it is a possibility that these Intelligence Services may not want someone who has been trained in the East or trained in - in - by either the East Germans or the - the Russians to be the Head of the
10 Intelligence Service here.

On the basis that ones in position of power the - the natural leaning will be towards the services from which they were trained and I think the possibilities that the Western Intelligence Services were trying to avoid that which is more a reflection on the thinking of Western Intelligence Services.

ADV PAUL PRETORIUS SC: Apart from what you were told by the former President. Do you have any of your own knowledge in this regard? I do not want to cross the line into Intelligence matters unnecessarily.

20 **MR SHAIK:** Well I do not know that there is various training that does occur by Intelligence Services across the world of each other and those relationships are - do in fact carry a degree of - of persuasion, but not necessarily to the extent they think it does, but we - we as a country has benefitted from that, because previous apartheid Intelligence Services were trained by Mossad and others.

So Western Intelligence Services in the main. The liberatory forces were trained by the Eastern Intelligence Services in the main and when we all came together we had the benefit of all that training. So yes it is - training does have a level of influence on trainees subsequently.

ADV PAUL PRETORIUS SC: At the time this conversation between yourself and the former President took place or indeed at any other time. Did the former President tell you that the reason that he - the former President - should not rise either in the Intelligence or in the governing party ranks was that he would somehow be able to reveal -
10 no reveal and block assumption of power by infiltrators?

MR SHAIK: No. We did not - we did not have that kind of discussion ...

ADV PAUL PRETORIUS SC: Yes.

MR SHAIK: But I must say that in the - in discussions of intelligence often those things are assumed and - and applied, but we did not have a direct discussion on it.

ADV PAUL PRETORIUS SC: Well given your knowledge of the Intelligence structures at the time and your participation in those
20 Intelligence structures and given your knowledge of the position held by yourself and others and the former President would he have had exclusive knowledge of the identity of infiltrators?

MR SHAIK: No. I think he would have had a privileged access to that knowledge, but as a - in his capacity of the Head of the Intelligence Service he would not have the only access. There were others like

Sizakele Sigxashe, Joe Nhlanhla who - and of course ...

ADV PAUL PRETORIUS SC: Yourself?

MR SHAIK: To the sense I would - would have from - from the parts that I worked with. Others who worked with it would have that knowledge. So the knowledge would not be the purview of one person. So to speak and of course the - the Intelligence Services did not - the ANC Intelligence Service did not exist in isolation from the leadership of the ANC itself and there were reporting lines to the leadership and I think the leadership would also have been taken into confidence about
10 suspicions or whatever.

ADV PAUL PRETORIUS SC: The former President also alluded to the fact that this plot or conspiracy continued to the very president - present. Do you have any comment in that regard and in fact he went so far as to say that this Commission itself was the culmination of such a conspiracy. Do you have any comment on the continuation nature of this conspiracy?

MR SHAIK: I have no knowledge of a - a - of a conspiracy to have toppled the previous President. There was - not that I was aware of and the - if - if anything if our memorandum which was I think the first
20 that called for a Commission was a desperate plea to the President to hear the cries of South Africans who are saying all is not well in this land and that is not a conspiracy.

That was a simply a plea for him to listen to rationale voices talking about things that are not going right in the country and it is unfortunate that he would have considered that to be a - a conspiracy.

ADV PAUL PRETORIUS SC: Thank you Mr Shaik.

MR SHAIK: Thank you.

ADV PAUL PRETORIUS SC: Chair I have no further questions.

CHAIRPERSON: No. Thank you very much Mr Shaik for your evidence. We have taken much longer than we may all have thought we would, but I think it was all very important. The evidence touched on very important issues which the Commission wanted to hear evidence on.

Thank you very much for coming forward and I just hope that
10 your coming forward and the fact that your colleagues - two other
colleagues are also - have made themselves available will encourage a
lot of other former and current DGs and Deputy DGs nationally and in
various provinces who know a lot of things that should be shared with
the Commission in order to enable the Commission to have a full
picture of what the situation is in our country that it has gone through
and to enable the Commission to make recommendations that hopefully
can help to make sure that the future of the country is better than the
past.

So I hope that your having come to the Commission will
20 assist and encourage and inspire others, but thank you very much for
coming forward and if a need arises that we ask you to come back I
have no doubt that you will be agreeable to coming back. Thank you
very much.

MR SHAIK: Thank you, sir.

CHAIRPERSON: Thank you.

MR SHAIK: Thank you.

CHAIRPERSON: And you are excused.

MR SHAIK: Thank you.

CHAIRPERSON: Thank you.

ADV PAUL PRETORIUS SC: Thank you Chair. The next witness is Mr Njenje.

CHAIRPERSON: Yes.

ADV PAUL PRETORIUS SC: I see we would need five or so minutes to ...

10 **CHAIRPERSON:** To start to ...

ADV PAUL PRETORIUS SC: Facilitate the turnover ...

CHAIRPERSON: Yes.

ADV PAUL PRETORIUS SC: But I wonder whether an early break ... (intervenes).

CHAIRPERSON: Hm.

ADV PAUL PRETORIUS SC: So that we do not break twice.

CHAIRPERSON: We could take the lunch break now and then maybe resume at quarter to two.

20 **ADV PAUL PRETORIUS SC:** That would avoid two breaks. Break once.

CHAIRPERSON: Yes, but of course if we took just five minutes if that is all you would need. We could cover the preliminary issues before 1 o' clock and when we come back at 2 o' clock maybe we are going to the meat of the evidence. If you know what I mean. So your preference is - would be that we take the break now? It is just that if

we kept to the 1 o' clock/2 o' clock arrangement for lunch. It might help with certain things and so.

ADV PAUL PRETORIUS SC: Happy that we take five minutes.

CHAIRPERSON: Five minutes and then ...

ADV PAUL PRETORIUS SC: And we will go for

CHAIRPERSON: You - you will use the 15 minutes before 1 o' clock to take care of preliminary issues or whatever introductory parts and then we come back at 2 o' clock we go into the real issues.

ADV PAUL PRETORIUS SC: Yes. Thank you.

10 **CHAIRPERSON:** Okay. We will take - it is 20 to. We will resume at five - at quarter to one.

MR SHAIK:

ADV PAUL PRETORIUS SC: Thank you.

CHAIRPERSON: We adjourn.

REGISTRAR: All rise.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Yes Mr Pretorius?

ADV PAUL PRETORIUS SC: [Inaudible mic off].

20 **CHAIRPERSON:** Yes please administer the oath.

REGISTRAR: Please state your full names for the record.

WITNESS: Lizo Njenje.

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

WITNESS: No.

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

WITNESS: Yes.

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

WITNESS: So help me God.

LIZO NJENJE: (duly sworn, states)

CHAIRPERSON: Thank you very much, is it, General Njenje or what is
10 the correct...[intervenes].

DIRECTOR NJENJE: The designation Chair is Director.

CHAIRPERSON: Director oh okay alright thank you. Before Mr Pretorius begins to ask you questions, I just want to thank you for coming forward to assist the Commission we appreciate it, the same sentiments I've expressed to Mr Shaik apply to you. We appreciate that people who occupied senior positions in various government departments who have something to share with the Commission and with the nation in an attempt to assist the Commission to assist the nation come forward and share that information with us, thank you very
20 much.

DIRECTOR NJENJE: Thank you Chair.

CHAIRPERSON: Thank you, yes Mr Pretorius.

ADV PAUL PRETORIUS SC: Director Njenje you have before you Exhibit PP2.

DIRECTOR NJENJE: That is correct.

ADV PAUL PRETORIUS SC: Perhaps we should admit that then.

CHAIRPERSON: We already did for all of them including the next witness, yesterday. Well I don't know Director Njenje where I got the General part from but ja, okay thank you.

ADV PAUL PRETORIUS SC: You signed your statement...[intervenes].

CHAIRPERSON: I'm sorry Mr Pretorius, it's hot, I feel hot maybe the aircon a little bit, I know that I keep on confusing you, sometimes I say switch it off, sometimes I say put it on but maybe it shouldn't be too much because sometimes it affects the hearing but Mr Pretorius looks
10 at me as if he doesn't know what I'm talking about, he's not feeling hot.

ADV PAUL PRETORIUS SC: No I'm not.

CHAIRPERSON: So maybe it's just me but...[intervenes].

ADV PAUL PRETORIUS SC: Chair I take no responsibility for the air-conditioning, I'm prepared to assist.

CHAIRPERSON: Okay, alright let's continue.

ADV PAUL PRETORIUS SC: Mr Njenje it appears from page eight of Exhibit PP2 that you signed a statement on the 26th of November 2018, is that correct?

DIRECTOR NJENJE: That is correct.

20 **ADV PAUL PRETORIUS SC:** Did you then attest to this statement before a Commissioner of oaths?

DIRECTOR NJENJE: That is correct.

ADV PAUL PRETORIUS SC: Was that on the 20th of August 2019?

DIRECTOR NJENJE: That is correct.

ADV PAUL PRETORIUS SC: The...[intervenes].

CHAIRPERSON: Well it's a – this may have nothing to do with you, it's rather unusual in the sense that it doesn't have what we call the Commission of Oath certificate at the end or at least I don't see it, I don't know whether the fine print on the stamp is – reads like a certificate of the Commissioner of Oaths but also because at the beginning I don't think it does what normally an affidavit does namely, I do hereby swear or make an oath...[intervenes].

ADV PAUL PRETORIUS SC: Yes it doesn't, the introduction doesn't do that and we can fix it up but the fine print at the stamp on page 10 eight does contain the requisite wording for...[intervenes].

CHAIRPERSON: For the certificate?

ADV PAUL PRETORIUS SC: Yes.

CHAIRPERSON: Okay.

ADV PAUL PRETORIUS SC: Mr Njenje or Director Njenje tell the Court please as you do in paragraph two and three of your statement or affidavit of your background.

DIRECTOR NJENJE: Can you repeat please?

ADV PAUL PRETORIUS SC: In paragraph two and three of your statement – I'll refer to it for the moment as a statement you record 20 some of your own personal background would you tell that to the Commissioner please?

DIRECTOR NJENJE: I left the country 1977 and joined the ANC I joined the military wing Umkhonto we Sizwe and I went to military training and a few years later I went to specialise in Intelligence in Russia or Soviet Union at the time and after completing training I

returned to Africa and applied the Intelligence trade for Umkhonto we Sizwe in the department of Intelligence and Security of the ANC.

ADV PAUL PRETORIUS SC: Did you do so from 1979 until 1994?

DIRECTOR NJENJE: That is correct.

ADV PAUL PRETORIUS SC: What was your role in the Department of Intelligence and Security of the ANC party?

DIRECTOR NJENJE: I played various roles and responsibilities in the Department of Intelligence and Security starting off with the vetting of people who were coming through Mozambique, joining the ANC and
10 those would be [indistinct] of the ANC, whether they were going to join Umkhonto we Sizwe or they were going to school they had to go through the process of vetting – security vetting and I did that until 1980/1981 where I was then the administrator for the office in Maputo, the office – the DIS office in Maputo and that meant now working on intelligence information including all the biographies that would have been collected by the field workers where I had been before and receiving reports from Swaziland, from Lesotho and from South Africa and those would include very sensitive intelligence reports. Those reports I would compile and consolidate and send to Lusaka every
20 week.

ADV PAUL PRETORIUS SC: Director Njenje in the course of your work as an official of the Department of Intelligence Security of the ANC between 1979 and 1994, would you have come to know of threats of infiltration into the ANC?

DIRECTOR NJENJE: That is correct.

ADV PAUL PRETORIUS SC: Was it part of your duty to know the identity of such persons?

DIRECTOR NJENJE: That is correct.

ADV PAUL PRETORIUS SC: And from whom would you receive such information and to whom would you give such information?

DIRECTOR NJENJE: That information would be – from where I was sitting at the time I would provide that to the leadership of the Department who I knew would then pass on to the leadership of the ANC specifically the President of the ANC.

10 **CHAIRPERSON:** So the information that you say you would receive, you receive weekly from Mozambique would be information about individuals who were joining the ANC as well as simply reports about the situation in the country, in other words just intelligence information about, maybe certain parts of the country or the country quite apart from intelligence information about individuals?

DIRECTOR NJENJE: That is correct Chair it would be information that we would have received from the interviews that were conducted on individuals who were joining. It would be information that we would have received from open source newspapers, the media. It would be
20 information that would be received from agents of the department and the ANC as well as a membership or underground people who were working for the ANC providing information as well as information that would be coming from – within the former enemy ranks people would be working for the ANC and the Department of Intelligence and Security.

CHAIRPERSON: Ja but what I want to establish is whether you were

focusing or specialising on intelligence information relating to people who were joining the ANC, in other words, focusing on people as such getting information about those people or whether it was also getting intelligence information generally about the country or certain parts of the country apart from the individuals who were joining?

DIRECTOR NJENJE: It is both the people as well as general information and across the country.

CHAIRPERSON: Okay thank you.

ADV PAUL PRETORIUS SC: Is it a convenient time Chair?

10 **CHAIRPERSON:** Yes let's take the lunch adjournment and we'll resume at 2 o'clock, we adjourn.

INQUIRY ADJOURNED

INQUIRY RESUMES

CHAIRPERSON: Are you ready Mr Pretorius?

ADV PAUL PRETORIUS SC: Thank you Chair.

CHAIRPERSON: Thank you. You may proceed.

ADV PAUL PRETORIUS SC: Thank you. Director Njenje I understand that you played some role. You describe it as a major role in the Codesa negotiations in the early 90's. What was your function then?

20 What role did you play?

CHAIRPERSON: I think that answer should be articulated the nodding of the head will not be captured by the recording.

DIRECTOR NJENJE: Excuse me I cannot hear Chair.

CHAIRPERSON: Sorry?

DIRECTOR NJENJE: I cannot hear Chair sorry.

CHAIRPERSON: Oh you cannot hear.

DIRECTOR NJENJE: Ja.

CHAIRPERSON: I am saying that it is better if you articulate your answer rather than nod because when you nod that will not be in the transcript. You understand?

DIRECTOR NJENJE: I do understand okay.

CHAIRPERSON: Okay.

DIRECTOR NJENJE: I was still listening.

CHAIRPERSON: Hey?

10 **DIRECTOR NJENJE:** I was still listening to the question.

CHAIRPERSON: Oh okay. Alright. Okay what is your answer? He – I think Mr Pretorius said he understands that you played a role in Codesa negotiations. He referred to a major role.

DIRECTOR NJENJE: That is correct Chair. Some of the – the duties we were performing includes what a director – Ambassador Shaik described here. Issues of looking at the laws that were to govern the new dispensation. A – Issues of the security of the leadership especially of the ANC including President Mandela and a – the issues of the setting up of the working committees of intelligence.

20 **ADV PAUL PRETORIUS SC:** Alright. Did you play any role in the creation of a new intelligence dispensation?

DIRECTOR NJENJE: That is correct.

ADV PAUL PRETORIUS SC: And in the negotiations producing the constitutional provisions?

DIRECTOR NJENJE: We were inputting into – into the people who

were working on the constitutional arrangement.

ADV PAUL PRETORIUS SC: In 1995 then did you join the new intelligence structures or did you go elsewhere?

DIRECTOR NJENJE: In December 1994 I tendered my resignation from the DIS because it was anticipated at the time that the amalgamation of the forces would start happening around January of 1995. I chose not to join the government I chose to go private.

ADV PAUL PRETORIUS SC: And what happened then in 2002?

DIRECTOR NJENJE: In about 2002 I was head hunted and was asked
10 to serve as the Deputy Director General for the South African Secret Service in the Operations Section.

CHAIRPERSON: You referred to DIS was that the Department of – was that a department in the ANC?

DIRECTOR NJENJE: That is correct Chair Department of Intelligence and Security.

CHAIRPERSON: Oh Department of Intelligence and Security okay.

ADV PAUL PRETORIUS SC: And that was between the years 1979 and 1994?

DIRECTOR NJENJE: Correct.

20 **ADV PAUL PRETORIUS SC:** And in 2003 did you transfer once again?

DIRECTOR NJENJE: Yes I was transferred from the South African Secret Service to become the Deputy Director General Operations of the National Intelligence Agency.

ADV PAUL PRETORIUS SC: Did you resign from the NIA late in 2005?

DIRECTOR NJENJE: That is correct.

ADV PAUL PRETORIUS SC: Right. You say in your statement because of certain developments which had political implications. Is there anything relevant to our terms of reference there? You know what matters we are dealing with.

DIRECTOR NJENJE: I do not think there is a direct reference to the terms but in the main it is also what Director Shaik said here with the commission the problem that arose between President Thabo Mbeki and the Director General at the time Billie Masetla – Director General of National Intelligence Agency.

10 **CHAIRPERSON:** Were you Mr Masetla's deputy at the time?

DIRECTOR NJENJE: Excuse me.

CHAIRPERSON: Were you Mr Masetla's deputy at the time?

DIRECTOR NJENJE: That is correct Chair.

CHAIRPERSON: Yes okay.

ADV PAUL PRETORIUS SC: I understand that between 2006 and 2009 you returned to the private sector?

DIRECTOR NJENJE: That is correct.

ADV PAUL PRETORIUS SC: What happened in 2009?

20 **DIRECTOR NJENJE:** In 2009 I was approach by Doctor Cwele who informed me as Minister of State Security at the time that he had been asked by the President to – to talk to me among others to join the government as Heads of the Intelligence Services.

ADV PAUL PRETORIUS SC: And what decision did you make when that approach was made to you?

DIRECTOR NJENJE: When the approach was made I agreed that I

would join the South African – the State Security Agency.

ADV PAUL PRETORIUS SC: And to which position were you appointed?

DIRECTOR NJENJE: I was appointed the Director for Domestic Branch which is the National Intelligence Agency.

ADV PAUL PRETORIUS SC: Yes we know that Mr Shaik was appointed Head of the Foreign Branch formerly the SASS and Ambassador Maqetuka was he known as the Super DG?

DIRECTOR NJENJE: That is correct.

10 **ADV PAUL PRETORIUS SC:** To whom you would have reported?

DIRECTOR NJENJE: That is correct.

ADV PAUL PRETORIUS SC: What were your duties as Head of the Domestic Branch?

DIRECTOR NJENJE: As Head of the Domestic Branch my responsibilities included counter – performing counterintelligence services and generally looking after the security of the country in terms of intelligence.

ADV PAUL PRETORIUS SC: Right. For those of us not steeped in your world Director what is counterintelligence?

20 **DIRECTOR NJENJE:** Counterintelligence are measures that are employed to prevent threats from happening. To be able to predict and to be able to mitigate.

ADV PAUL PRETORIUS SC: Right. Did you receive any instruction from Minister Cwele on your appointment as to the matter that you should investigate?

DIRECTOR NJENJE: Yes I did.

ADV PAUL PRETORIUS SC: What was that matter?

DIRECTOR NJENJE: The first issue that Doctor Cwele raised with me when he came to brief me after my appointment was an interest in what he called the – the PAN program which was supposed to be a Principle Agent Network that was established within the agency.

ADV PAUL PRETORIUS SC: Right. Director I wonder if you would just speak up a little.

DIRECTOR NJENJE: Okay.

10 **ADV PAUL PRETORIUS SC:** You speak very softly sometimes. What was the Principle Agent Network?

DIRECTOR NJENJE: The Principle Agent Network was described to us as a Corvette Collection Structure which was supposed to be established outside the agency and composing of people and infrastructure that was not linked to the agency.

ADV PAUL PRETORIUS SC: Right. You were present when we were taken at some length and in some detail through the Constitutional Provisions governing Intelligence Agencies.

DIRECTOR NJENJE: That is correct.

20 **ADV PAUL PRETORIUS SC:** Are you able to comment on whether an Intelligence Agency may be established outside of the Provisions of Legislation and the Constitution?

DIRECTOR NJENJE: This was not an agency per se. It was supposed to be an extension of what is – what is happening and under the control of – of the DDG then. The Director General Operations.

ADV PAUL PRETORIUS SC: Well following your investigations was the Principle Agent Network indeed under the control of the officials in the Intelligence Department?

DIRECTOR NJENJE: It was not.

ADV PAUL PRETORIUS SC: Who...

CHAIRPERSON: So – so it – so did you find that it was outside of the – of the official agency?

DIRECTOR NJENJE: That was the purpose of the investigation in the first place that Mr Cwele explained to me that the suspicion is that this
10 structure has been established outside the legal framework.

CHAIRPERSON: Yes but I thought you just gave an answer to a question as to what your finding was and I am just wanting to establish whether your finding was that indeed it was outside of the official agency?

DIRECTOR NJENJE: I thought he would get to that point but yes.

CHAIRPERSON: Oh that was not the ques – Mr Pretorius I thought is the question he had asked you. So I must have – okay.

DIRECTOR NJENJE: Yes it was indeed Chair.

ADV PAUL PRETORIUS SC: Oh you were correct Chair.

20 **CHAIRPERSON:** I will wait. Oh okay was that the – was that the question Mr Pretorius?

ADV PAUL PRETORIUS SC: Yes it was.

CHAIRPERSON: Oh okay. Alright.

ADV PAUL PRETORIUS SC: But perhaps I am going ahead.

CHAIRPERSON: No that is fine.

ADV PAUL PRETORIUS SC: Under whose auspices was the Principle Agent Network established?

DIRECTOR NJENJE: It was established under Deputy Director General Operations Mr Arthur Fraser.

ADV PAUL PRETORIUS SC: Right. And so as I understand it you were directed by Minister Cwele to investigate the establishment of this network?

DIRECTOR NJENJE: That is correct.

ADV PAUL PRETORIUS SC: Did you then setup an investigation?

10 **DIRECTOR NJENJE:** Yes I did.

ADV PAUL PRETORIUS SC: And did those investigators report to you from time to time?

DIRECTOR NJENJE: That is correct.

ADV PAUL PRETORIUS SC: Did you then report to the Minister?

DIRECTOR NJENJE: Yes I did.

ADV PAUL PRETORIUS SC: While the investigation into let us refer to it as PAN – P-A-N, was ongoing were any members of the Intelligence Services suspended?

DIRECTOR NJENJE: That is correct.

20 **ADV PAUL PRETORIUS SC:** You do not need to name them all but who was suspended in the main?

DIRECTOR NJENJE: In the main it was Mr Arthur Fraser and a gentleman who was responsible for what was called the Corvette Support Unit.

ADV PAUL PRETORIUS SC: Right. Did Arthur Fraser later resign?

DIRECTOR NJENJE: Yes he did.

ADV PAUL PRETORIUS SC: What were the allegations against Mr Fraser and the others who were suspended generally speaking?

DIRECTOR NJENJE: Generally speaking what was being investigated was the acquisition of properties, of vehicles, employment of people who were either members or non-members but employed as part of this PAN Program.

ADV PAUL PRETORIUS SC: Is it fair to summarise the allegations as an abuse of funding?

10 **DIRECTOR NJENJE:** That is correct.

ADV PAUL PRETORIUS SC: If you would bear with me a moment. We will come back to that investigation and the fate of that investigation later on in your statement. Let us just go if we may to paragraph 13 to keep the timeline. During 2009 we understand from Mr Shaik's evidence there were certain structural changes in the structure of the Intelligence Services?

DIRECTOR NJENJE: Correct.

ADV PAUL PRETORIUS SC: What was your role and the role of you two colleagues in that?

20 **DIRECTOR NJENJE:** My role was to primarily look at how we were restructuring the domestic branch from what was then known as NIA. And as well we had to synchronise and together – sit together as the three of us to see that – to see to it that all structures were talking to – to one another including that of foreign and domestic, the academy and all of those.

ADV PAUL PRETORIUS SC: Did you have the support of Minister Cwele in your efforts of restructuring?

DIRECTOR NJENJE: At the beginning yes.

ADV PAUL PRETORIUS SC: And after the beginning?

DIRECTOR NJENJE: After the beginning some problems developed.

ADV PAUL PRETORIUS SC: Did those relate to the work that you were doing in the restructuring or were there other reasons?

DIRECTOR NJENJE: They related to the work that we were doing.

ADV PAUL PRETORIUS SC: In the restructuring process?

10 **DIRECTOR NJENJE:** In the restructuring process.

ADV PAUL PRETORIUS SC: Did you discuss these issues or problems as you refer to them with Minister Cwele?

DIRECTOR NJENJE: Yes indeed we did discuss the issues.

ADV PAUL PRETORIUS SC: And what was the outcome of those discussions?

DIRECTOR NJENJE: I think the outcome of the discussions was that the Minister promised that he would lift his tempo – he would raise his tempo a bit in terms of delivery. Because we would make submissions because we could not implement structures without his authorisation.

20 So we needed that authority for us to – to continue to do the work that we were supposed to.

ADV PAUL PRETORIUS SC: And were there delays in his responses to your proposals?

DIRECTOR NJENJE: That is to our submissions, correct.

ADV PAUL PRETORIUS SC: Right. And did this assist or hamper your

work?

DIRECTOR NJENJE: It did hamper our work.

ADV PAUL PRETORIUS SC: Was there a decision then to approach the President?

DIRECTOR NJENJE: Excuse me.

ADV PAUL PRETORIUS SC: Was there a decision at that stage to approach the President about the problems you were facing in the Intelligence Services?

DIRECTOR NJENJE: At a point yes a decision was made that we
10 should meet – we should see the President.

CHAIRPERSON: The issues which gave rise to the problems are they issues that you may be able to tell me about or are they the types of issues that preferably you should not tell me about because of intelligence?

DIRECTOR NJENJE: I think it is issues that I can declare.

CHAIRPERSON: Yes. Ja. Can you please tell me – give me an idea what those issues were?

DIRECTOR NJENJE: I think basically it were administrative issues where the Minister will sit on submissions for long periods of time.
20 Issues of personal relations I think we were starting to develop as well. And I think the issues of him wanting to take part in the work that we were supposed to be doing.

CHAIRPERSON: They related to administrative and operational issues?

DIRECTOR NJENJE: That is correct.

CHAIRPERSON: And in part they related to him wanting to get involved in operational issues which you believed should be left to you?

DIRECTOR NJENJE: That is correct Chair.

CHAIRPERSON: Is that right? And that caused some tension?

DIRECTOR NJENJE: It did cause frictions and tension Chair.

CHAIRPERSON: Okay thank you.

ADV PAUL PRETORIUS SC: Right. Did you come to know during 2010 of an investigation or proposed investigation into the activities of the Gupta family?

10 **DIRECTOR NJENJE:** That is correct.

ADV PAUL PRETORIUS SC: How did you come to know of that? Was it something that was happening within your department as it were?

DIRECTOR NJENJE: It was happening in my department and it was also happening here from the foreign branch point of view.

ADV PAUL PRETORIUS SC: Right. And did you receive information from your operatives in relation to this investigation?

DIRECTOR NJENJE: That is correct.

20 **CHAIRPERSON:** Well do you want to tell me what information precisely you were informed of that gave rise to the idea that there should be an investigation?

DIRECTOR NJENJE: Yes Chair.

CHAIRPERSON: Hm.

DIRECTOR NJENJE: There had been a what is called an information exchange between our service and foreign services where they were enquiring and asking for assistance from us with regards to – to certain

issues that – that gave rise for concern to them.

ADV PAUL PRETORIUS SC: Is that Uranium Mine – the Uranium Mine?

DIRECTOR NJENJE: That is one of them yes. And of course our protocol allows that we do those exchanges and that – that was going on. When I – when I arrived in 2009 there were already some – those investigations were – were going on. So at the point where Advocate Pretorius is enquiring it was a report back from structures about work that they were doing in regards with – with regards to those investigations.

- 10 **CHAIRPERSON:** Oh so – so the investigation – when you arrived in the department the invest – there was already an investigation that was ongoing.

DIRECTOR NJENJE: Correct Chair.

CHAIRPERSON: But as far as you know at that time the Minister was unaware of the investigation at that time when you arrived? When you got to know about it were you told that he – he was not aware?

DIRECTOR NJENJE: I do not think that he was aware Chair.

CHAIRPERSON: You do not think he was aware?

DIRECTOR NJENJE: I do not think so Chair.

- 20 **CHAIRPERSON:** Yes. And at a certain stage you thought it should be – it was necessary that – oh no I think from what Mr Shaik said it was not your decision that he should know. He – he called – he called you but that comes later.

DIRECTOR NJENJE: Chair the fact of the matter is the Minister heard from somebody who was at the meeting that the issue was raised and

discussed.

CHAIRPERSON: Yes, yes no. It is just that earlier on I was thinking whether having arrived in the department and found this investigation going on and being of the view that he had not – he was unaware. I was thinking whether you might have decided that he should know but then I remembered that in terms of Mr Shaik's evidence it does not look like you decided that he should know but he got wind of it and then called you.

10 **DIRECTOR NJENJE:** Chair remember these are two independent structures.

CHAIRPERSON: Hm.

DIRECTOR NJENJE: I have – I run my management and Ambassador Chair was running his management.

CHAIRPERSON: The foreign?

DIRECTOR NJENJE: The foreign – the foreign branch.

CHAIRPERSON: The foreign branch.

DIRECTOR NJENJE: I am running.

CHAIRPERSON: Yes.

DIRECTOR NJENJE: I am running the Domestic.

20 **CHAIRPERSON:** Domestic yes.

DIRECTOR NJENJE: So we – we – although we did exchange information at the top.

CHAIRPERSON: Yes.

DIRECTOR NJENJE: At the level of operations we were running independent operation.

CHAIRPERSON: Oh okay. Okay. Alright. Mr Pretorius I interrupted.

ADV PAUL PRETORIUS SC: Yes as I understand your evidence and that of Mr Shaik there was a meeting to discuss this investigation?

DIRECTOR NJENJE: That is correct. After...

ADV PAUL PRETORIUS SC: And Mr Maqetuka was there, you were there and Shaik was there amongst others?

DIRECTOR NJENJE: That is correct.

ADV PAUL PRETORIUS SC: And as – do I understand your evidence correctly that someone from that meeting informed the Minister of the
10 investigation? That is your supposition?

DIRECTOR NJENJE: From our – from our meeting the one that I am saying the Domestic Branch had the management meeting there was a report that we received that the investigation is at this point and it is going on. From my own team somebody went to talk to the Minister to say that there is an investigation of this nature.

ADV PAUL PRETORIUS SC: And then ...

DIRECTOR NJENJE: It gave rise then to the meeting that we had with the Minister.

ADV PAUL PRETORIUS SC: With the three colleagues?

20 **DIRECTOR NJENJE:** That is correct.

ADV PAUL PRETORIUS SC: And that is the meeting to which Mr Shaik referred? You were here when he did that, is that correct?

DIRECTOR NJENJE: That is correct Sir.

ADV PAUL PRETORIUS SC: And subsequent to that I understand there was a meeting with Minister Cwele at the Minister's instance?

DIRECTOR NJENJE: That is correct Sir.

ADV PAUL PRETORIUS SC: Right. Before we get there did you received reports or did you hear what Minister Cwele was saying about your involvement in this investigation and why the investigation was allegedly taking place under your command?

DIRECTOR NJENJE: Yes I did hear.

ADV PAUL PRETORIUS SC: What was he saying?

DIRECTOR NJENJE: I heard he was saying that I have got personal interests that are conflicting to those of the Gupta family. And these
10 were business related. I think at the meeting that we had I tried to establish from him where he got this and what evidence he had. If he could provide me with that because he was making my work to be difficult. Especially because he started off by talking not directly to me. He never came to me. He never called me in and said, but I understand there is this – is this situation you have – you are conflicted and therefore that whatever maybe you should be doing whether you recuse or whatever. Nothing of the sort happened.

ADV PAUL PRETORIUS SC: Well that is quite important. It appears that from what you say prior to the meeting to which Mr Shaik has
20 testified and you will testify in a moment. You say that the Minister never approach you to raise any issue about conflicting business interests in relation to the Gupta investigation?

DIRECTOR NJENJE: No Chair.

ADV PAUL PRETORIUS SC: Did anyone else raise the issue with you?

DIRECTOR NJENJE: No Chair other than just the rumour that was just

taking rounds.

ADV PAUL PRETORIUS SC: What was the true position? Were there business interests you held in competition or in conflict with the Gupta business interests?

DIRECTOR NJENJE: I have got no – no clue. I do not know. I do not know what other business interests they were doing. I mean what other businesses they were involved in. But I – I was not involved in any business when I was – I was working for the state. All my business interests I had to – to cease operating and therefore that I did not have
10 anything that was active. I was not actively involved in business.

ADV PAUL PRETORIUS SC: Yes. Well it is – I understand it would be difficult for you to speculate but has anyone since then ever pointed out to you that this business interest or that business interest might be what was termed as the conflicting business interest?

DIRECTOR NJENJE: No. Not even the President raised that at the meeting that Mr Shaik referred to.

ADV PAUL PRETORIUS SC: From your point of view Director what was the reason for the Intelligence Service to investigate the Gupta family?

DIRECTOR NJENJE: There were many disturbing things that – that
20 were happening at the time. Especially in the year – in the circles – in political circles where people were talking about the influence of the family on our President. And that concerned us greatly. The association of the President's children with the family was also a matter of grave concern to Intelligence.

ADV PAUL PRETORIUS SC: Any other reason?

DIRECTOR NJENJE: The other reasons were that they should not be – they should not put our country at jeopardy in terms of dealing with the rogue elements in terms of businesses that they were running, using natural resources of the country.

ADV PAUL PRETORIUS SC: Alright. You have heard the evidence of Mr Shaik in relation to two meetings. In your statement you deal in some detail with the latter meeting with the former President. But in relation to the meeting with Mr Cwele do you agree with the recollections of Mr Shaik? Do you have any other recollections or any
10 different recollections?

DIRECTOR NJENJE: I do recall Chair that it was the first time that he was raising the issue of my - my personal interests directly in my - in my presence directly with me. Of course talking to all of us at the same time. I think that did not sound good to me and I - I reacted to that. I said, but I mean if you - you are a Minister.

I think you - you should - you should be doing better than this. You are the Minister. You are responsible here. If you have got issues why do you not - why do you not raise them properly. We have got regulations. We have got policies. We have got everything in
20 place which you can use as your instruments for your oversight on us. Why is it that you are - you are deciding with the mater in the manner? So I - I was not happy personally.

CHAIRPERSON: Well I do not if my recollection is correct, but I think Mr Shaik may have said something along the lines that you were - he had never seen you so unhappy or angry. I am not sure what the - I

cannot remember, but I got the impression that he felt that you - you were - you were very extremely unhappy to say the least, but maybe even angry. I am not sure at hearing this accusation being levelled against you. Would - would that be a fair reflection?

DIRECTOR NJENJE: I - I think so Chair, because ...

CHAIRPERSON: Hm.

DIRECTOR NJENJE: I felt like being personally assaulted at the time that this was happening and - and the fact that he could not show me any piece of thing to say this is what I am talking about.

10 **CHAIRPERSON:** And did he give details such as you are involved in this business or this business. You have an interest in this company or this company. This is what this company does. The Guptas have got this company which does the same. These two or whatever companies are competing. That is the conflict of interest I am talking about. Did he give details such as those?

DIRECTOR NJENJE: There was nothing of that nature Chair. There was no illustration of - of any sort to say this is - this is why I am saying you have got this and you see I had not even applied for the job of coming through in 2009. He - he approached me to say that I must
20 join and he knew what I was doing.

That I was in business and he - and as I came in I declared those interests to say this is what I am involved in and - and resigned in all of those interests that - that would - that would cause anyone to say there is a conflict of interest.

CHAIRPERSON: Yes.

ADV PAUL PRETORIUS SC: We will come back to that sequence of events. Your statement is constructed on the basis of a timeline and I would like to deal with the incident that you referred to in paragraph 17. You received a call from a long-time friend of yours. Is that correct?

DIRECTOR NJENJE: That is correct.

ADV PAUL PRETORIUS SC: Who was that?

DIRECTOR NJENJE: It is Mr ... (intervenes).

CHAIRPERSON: I am sorry Mr Pretorius. Were you saying you will
10 come back to the issue of that meeting or are you done with that meeting?

ADV PAUL PRETORIUS SC: The meeting with the President ...

CHAIRPERSON: No. No. With - with the Minister.

ADV PAUL PRETORIUS SC: I will come back, but I have done with the
- the meeting.

CHAIRPERSON: With - with the meeting. Okay. Now did
Minister Cwele say that the investigation must be stopped in express -
in - in expressed terms?

DIRECTOR NJENJE: I think what was coming out of the meeting here
20 with Minister Cwele was that in effect we will be investigating the
President if we continue with this investigation and therefore that he
did not think that it was proper that we should be investigating the
President. Our point was simple that no. We are not investigating the
President.

We are trying to help the President from this relationship

here and the more we know about what is going on the better we are to advise the Executives as to what they should be doing with this - with this family.

CHAIRPERSON: As I understand the position from Mr Shaik's evidence there was a concern expressed that it could be that the - the funding - if I am not mistaken - for the Shiva Uranium was obtained from (indistinct)?

ADV PAUL PRETORIUS SC: Yes.

CHAIRPERSON: (Indistinct) and you - what was sought to be
10 investigated was whether there was truth to that. There might have been much more to be investigated than just that, but that was part of. Is that right?

DIRECTOR NJENJE: That is correct Chair.

CHAIRPERSON: Yes. Are you able to say whether there was something else other than that that you wanted to - that was being investigated?

DIRECTOR NJENJE: Chair what I can say in addition is that it was not only the Guptas that were falling in that for - in that type of investigation.

20 **CHAIRPERSON:** Yes.

DIRECTOR NJENJE: There were other investigations that were - that were being carried out ...

CHAIRPERSON: Yes.

DIRECTOR NJENJE: And they also affected people like from India and Pakistan ...

CHAIRPERSON: Yes. Yes.

DIRECTOR NJENJE: And - and there were - there were court cases that followed ...

CHAIRPERSON: Yes.

DIRECTOR NJENJE: Those investigations.

CHAIRPERSON: Yes.

DIRECTOR NJENJE: Where some of South Africa's technology was being sold illegally to - to some of those countries.

CHAIRPERSON: But as far as the Guptas were concerned particularly
10 with regard to Shiva Uranium was that the main thing that was to be investigated?

DIRECTOR NJENJE: No. More than that Chair.

CHAIRPERSON: There - it was more than that?

DIRECTOR NJENJE: Yes.

CHAIRPERSON: Did - did it include the question of what influenced the Guptas had ...

DIRECTOR NJENJE: That is ...

CHAIRPERSON: On the family.

DIRECTOR NJENJE: That is correct Chair.

20 **CHAIRPERSON:** That is correct.

DIRECTOR NJENJE: That included that.

CHAIRPERSON: Is that what Minister Cwele was talking about when he said you would be investigating the President if you continue with this investigation? In - in other words because the investigation included what influence the Guptas had on him. As you understood ...

DIRECTOR NJENJE: At the time ...

CHAIRPERSON: What was your understanding of what he was saying?

DIRECTOR NJENJE: At the time - at the time Chair I - I think I took it at face value that he meant if we did more into these people I will find - we may find something on the President, but I did not link it to issues of the people trying to unseat the President and all of those.

CHAIRPERSON: Yes. Yes.

DIRECTOR NJENJE: Yes.

CHAIRPERSON: But - well you have confirmed that part of what the
10 investigation was to look at was what influence or what level of influence the Gupta family had on the President. Is that right?

DIRECTOR NJENJE: That is correct Chair.

CHAIRPERSON: Yes.

DIRECTOR NJENJE: I may add that.

CHAIRPERSON: Yes.

DIRECTOR NJENJE: It was an assumption on our part as well that it is possible that they are just employees of another Intelligence Agency and the aim of course is to influence the President.

CHAIRPERSON: Okay. Yes. So that - that was the angle from which
20 you were coming?

DIRECTOR NJENJE: We were looking at all angles.

CHAIRPERSON: At all angles, but that was one?

DIRECTOR NJENJE: Including that. Yes.

CHAIRPERSON: Yes. Okay, but you say that when Minister Cwele said if you continue with this investigation in effect you would be

investigating the President or it will be like you are investigating the President.

DIRECTOR NJENJE: That is correct.

CHAIRPERSON: You say your understanding was that he was saying if you investigate you might come across things that relate to the President. Maybe that you should not - as far as the President is or as far as he was concerned he thought you should not go to.

DIRECTOR NJENJE: That is correct Chair.

CHAIRPERSON: Yes. Did he - and he expressed a view that was
10 against continuing with the investigation?

DIRECTOR NJENJE: He did.

CHAIRPERSON: Yes.

DIRECTOR NJENJE: He did Chair.

CHAIRPERSON: Are you able to tell me how he expressed his view in this regard? Was he quite forceful? Was he quite adamant? Was he - was he just expressing them in a very calm manner?

DIRECTOR NJENJE: Chair he was forceful.

CHAIRPERSON: He was forceful?

DIRECTOR NJENJE: He was forceful that you know that is issue of
20 private interests come into plan and - and then - and that you - you are - it is like ganging up and that is the - the colleagues ganging up with me ...

CHAIRPERSON: Hm.

DIRECTOR NJENJE: To achieve personal interests.

CHAIRPERSON: Huh-uh. Huh-uh.

DIRECTOR NJENJE: He was forceful on that and - but of course he could not lay on the table to us and say these are the reasons why I am saying this.

CHAIRPERSON: Hm. Did - did you get the impression that he had an understanding and an appreciation of the National Security Risk that you were concerned about?

DIRECTOR NJENJE: I think I am going to say something in the course of my - my statement ...

CHAIRPERSON: Yes.

10 **DIRECTOR NJENJE:** But he seems to have other interests other than ...

CHAIRPERSON: Yes.

DIRECTOR NJENJE: Other than national interest.

CHAIRPERSON: Oh. Okay and did he deal with - did he deal pertinently with your reasons that you articulated as to why the three of you believed that the investigation should continue? Did he deal pertinently with your reasons in terms of why you thought it was necessary that the investigation should continue?

DIRECTOR NJENJE: He did not Chairman.

20 **CHAIRPERSON:** He did not?

DIRECTOR NJENJE: No.

CHAIRPERSON: Was his main point simply that in effect you people cannot investigate the President? This will amount to investigating the President.

DIRECTOR NJENJE: That is correct Chair.

CHAIRPERSON: Yes. Are you able to remember other points that he put forward to try and say in going on with this investigation? It is not a good idea or ... (intervenes).

DIRECTOR NJENJE: Chair he did not - he did not have - he did not have something like a rationale ...

CHAIRPERSON: *Ja.*

DIRECTOR NJENJE: Argument and ...

CHAIRPERSON: Yes.

DIRECTOR NJENJE: We sat and spoke around that.

10 **CHAIRPERSON:** Yes.

DIRECTOR NJENJE: He - he did - it was just that you guys all that you are doing now is to investigate the President effectively.

CHAIRPERSON: Yes. Okay. Thank you.

ADV PAUL PRETORIUS SC: As I understand the position and summary then Director. The three colleagues Maqetuka, yourself and Mr Shaik were called into a meeting by the Minister - Minister Cwele?

DIRECTOR NJENJE: That is correct.

ADV PAUL PRETORIUS SC: At that meeting the topic of discussion was the investigation into at least the Gupta family?

20 **DIRECTOR NJENJE:** That is correct.

ADV PAUL PRETORIUS SC: It was motivated by you in the terms that you have outlined and do you recall Mr Shaik's evidence? Was he correct in relation to his motivation?

DIRECTOR NJENJE: It is correct Chair. This was an ongoing matter that we were looking at and the manner in which the Minister

approached us was also a little - a little shocking in - in the manner that he - he expressed himself and - and on top of that him not having anything that he could put on the table and say you people for these reasons I want you to stop this. Other than you know effectively you - you are - you are investigating the President.

ADV PAUL PRETORIUS SC: And for ...

CHAIRPERSON: And - and that you in particular are pursuing your business interests?

DIRECTOR NJENJE: That was - well that - that may have been another
10 additional thing that he had to say.

CHAIRPERSON: Yes. *Ja.*

DIRECTOR NJENJE: Yes.

CHAIRPERSON: Okay.

ADV PAUL PRETORIUS SC: The meeting then involved Minister Cwele raising the issue of the investigation into the Gupta family. Your own and your colleagues own motivation for the investigation. The matters raised in opposition to the investigation by Minister Cwele. Is that a fair summary?

DIRECTOR NJENJE: That is - that is correct.

20 **ADV PAUL PRETORIUS SC:** The two matters you refer to are the affective investigation into the conduct of the President - former President and your alleged conflict of interest?

DIRECTOR NJENJE: That is correct.

ADV PAUL PRETORIUS SC: What was the outcome of the meeting? Did either side budge?

DIRECTOR NJENJE: What happened is that we - we categorically stated to Minister Cwele that we were not convinced that we should stop the investigation and that we would go on with the investigation.

ADV PAUL PRETORIUS SC: Did he change his mind? Was he persuaded by your representations?

DIRECTOR NJENJE: No. He was not.

ADV PAUL PRETORIUS SC: And we know that subsequent to that there was a meeting with the former President.

DIRECTOR NJENJE: That is correct Chair.

10 **ADV PAUL PRETORIUS SC:** Right. We will come to that in a moment, but if we may go back to the timeline.

CHAIRPERSON: Before that I think I asked this question earlier on, but I am not sure that I got a clear answer. Are you able to say Minister Cwele instructed you to stop the investigation - the three of you or is the position that you are not able to say he instructed you to do so to stop, but he simply made his position very clear.

That he thought the investigation should be stopped. He was against it, but you would stop at that and not say he gave an instruction.

20 **DIRECTOR NJENJE:** I think the effect had we - had we yielded in effect he would have been telling us to stop. We did, but we did not yield, but yes the effect of what he was saying is that stop the investigation.

CHAIRPERSON: So you say he might not have put it in so many words, but as far as you are concerned that was the effect of what he

was saying?

DIRECTOR NJENJE: That is correct Chair.

CHAIRPERSON: Okay.

ADV PAUL PRETORIUS SC: In paragraph 17 you deal with a different set of facts in the timeline that you have set out in your statement. You say you received a call from a long-time friend and comrade and this was during 2010.

DIRECTOR NJENJE: That is correct.

ADV PAUL PRETORIUS SC: Who was that?

10 **DIRECTOR NJENJE:** It was Mr Archie Luhlabo.

ADV PAUL PRETORIUS SC: Is that L-U-H-L-A-B-O?

DIRECTOR NJENJE: That is correct Chair.

ADV PAUL PRETORIUS SC: What did he say to you?

DIRECTOR NJENJE: He asked that a - I was driving from the airport Chair. Just arriving on a Sunday - afternoon from outside Johannesburg and he asked that I urgently see him. He was in - in Saxon ... (intervenes).

CHAIRPERSON: Saxonwold.

DIRECTOR NJENJE: In Sandton.

20 **CHAIRPERSON:** In Sandton?

DIRECTOR NJENJE: Yes.

CHAIRPERSON: Hm.

DIRECTOR NJENJE: He was a together with Ms Gugu Mtshali. Mtshali then, but now she is Gugu Motlanthe. Ms Motlanthe and that we needed to consult urgently.

ADV PAUL PRETORIUS SC: Where was this consultation to take place?

DIRECTOR NJENJE: It - it took place as a - at the - at the former - former Deputy - former President's place Motlanthe - residence - private residence.

CHAIRPERSON: Roundabout when was this? What - 2010? Was it 2010?

DIRECTOR NJENJE: That is correct Chair.

CHAIRPERSON: Okay and you are unable to give an indication in
10 terms of month? Whereabouts.

DIRECTOR NJENJE: I - I am unable to do now.

CHAIRPERSON: Yes, but somewhere during 2010.

DIRECTOR NJENJE: That is ... (intervenes).

CHAIRPERSON: Maybe during the first half of 2010, second half?

DIRECTOR NJENJE: Maybe first half.

CHAIRPERSON: Maybe first half, but you are not sure?

DIRECTOR NJENJE: I am not sure.

CHAIRPERSON: Ja. Okay.

ADV PAUL PRETORIUS SC: When you arrived there who did you find?

20 **DIRECTOR NJENJE:** I found Ms Gugu Mtshali and Mr Luhlabo.

CHAIRPERSON: Did you therefor after getting this call did you drive straightaway to where he wanted to meet you - Mr Luhlabo?

DIRECTOR NJENJE: Yes Chair. I did. I - I drove from the airport to Sandton.

CHAIRPERSON: Yes. Okay. Did you say you or you said Mr Luhlabo

was a long-time friend of yours?

DIRECTOR NJENJE: That is correct.

CHAIRPERSON: Okay. Alright.

ADV PAUL PRETORIUS SC: Who else was there - if anybody?

DIRECTOR NJENJE: It was just the - the three of us finally.

ADV PAUL PRETORIUS SC: Right. What was the topic of the meeting that ensued?

DIRECTOR NJENJE: When I arrived there they were fuming.

CHAIRPERSON: They were?

10 **DIRECTOR NJENJE:** They were very angry. They were fuming.

CHAIRPERSON: Huh-uh.

DIRECTOR NJENJE: And ...

CHAIRPERSON: The two of them?

DIRECTOR NJENJE: The two of them. Yes.

CHAIRPERSON: Huh-uh.

DIRECTOR NJENJE: They - they informed me that they has just been to a meeting and I think after - after the meeting they phoned Advocate Nongxina who then said they must call me and talk to me.

CHAIRPERSON: Who was he at the - at the time? Is he a DG?

20 **DIRECTOR NJENJE:** He was DG at DME.

CHAIRPERSON: At the Department of Mineral Resources?

DIRECTOR NJENJE: Yes. DMR.

CHAIRPERSON: Okay. They had been to a certain meeting. After that meeting they called Mr Nongxina?

DIRECTOR NJENJE: Yes.

CHAIRPERSON: Okay. They were now telling you this?

DIRECTOR NJENJE: Yes.

CHAIRPERSON: Okay. Continue.

DIRECTOR NJENJE: I called Mr Nongxina and checked with him as to what is this and he said please do whatever you can to - to calm the situation.

CHAIRPERSON: Well maybe take us through the conversation. You come there. You find that there are two people. Mr Luhlabo and Ms Mtshali at the time.

10 **DIRECTOR NJENJE**: Right.

CHAIRPERSON: You greet obviously. I am - or maybe you did not greet if people were too angry, but anyway you talked. Tell us the conversation leading to your calling Mr Nongxina. Put me in the picture as to ...

DIRECTOR NJENJE: Alright.

CHAIRPERSON: What the issues were? Why were they angry and all of that?

DIRECTOR NJENJE: The ...

ADV PAUL PRETORIUS SC: Chair ...

20 **CHAIRPERSON**: Huh-uh.

ADV PAUL PRETORIUS SC: If I may there is certain background facts ...

CHAIRPERSON: Yes.

ADV PAUL PRETORIUS SC: That are necessary.

CHAIRPERSON: Yes.

ADV PAUL PRETORIUS SC: Of which the witness has knowledge ...

CHAIRPERSON: Yes.

ADV PAUL PRETORIUS SC: But unless we put those backgrounds before you nobody will understand what ... (intervenes).

CHAIRPERSON: Yes. I - I need to otherwise the story sounds very incomplete and incoherent. I read the statement and I was saying there is a lot that I am not hearing. You know. It is like it jumps from one to another and I thought well maybe it is because of Intelligence issues. So, but I - I do want to hear the story as it happens if another witness
10 will come and confirm what he has said. I think that should be fine.

ADV PAUL PRETORIUS SC: Yes. The Director will tell you the story Chair, but ...

CHAIRPERSON: Yes.

ADV PAUL PRETORIUS SC: The story cannot be understood without reference to some background facts which I need to put to him.

CHAIRPERSON: No, no, no. Those background facts I am fine. Unless you say those background facts are matters that should not be told here, because of Intelligence.

ADV PAUL PRETORIUS SC: No, they - they commercial dealings.

20 **CHAIRPERSON:** *Ja*.

ADV PAUL PRETORIUS SC: Which are the back - form the background to what this conversation was all about.

CHAIRPERSON: Yes.

ADV PAUL PRETORIUS SC: So it is necessary to know them and ...

CHAIRPERSON: Yes. No. I want to know them. *Ja*.

ADV PAUL PRETORIUS SC: Yes.

CHAIRPERSON: I definitely want to know them.

ADV PAUL PRETORIUS SC: Okay.

CHAIRPERSON: Yes. Director tell us.

ADV PAUL PRETORIUS SC: The - well if I may just - may I just lead the witness in respect of them. Otherwise we are going to ...

CHAIRPERSON: Yes. No. No. That is fine.

ADV PAUL PRETORIUS SC: Confuse everybody.

CHAIRPERSON: You can lead him. *Ja*.

10 **ADV PAUL PRETORIUS SC:** I can assure you of that Chair.

CHAIRPERSON: Hm.

ADV PAUL PRETORIUS SC: Arcelor Mittal the mining company.

DIRECTOR NJENJE: That is correct.

ADV PAUL PRETORIUS SC: Had a 21 percent state in Sishen Mine. Is that correct?

DIRECTOR NJENJE: That is correct.

ADV PAUL PRETORIUS SC: And its mining rights expired on 30 April 2009. Is that correct?

DIRECTOR NJENJE: That is correct.

20 **ADV PAUL PRETORIUS SC:** When they expired two other companies applied for the rights of Arcelor Mittal?

DIRECTOR NJENJE: That is correct.

ADV PAUL PRETORIUS SC: The one was the Sishen Iron Ore Company a subsidiary of Kumba?

DIRECTOR NJENJE: Right.

ADV PAUL PRETORIUS SC: And the other was Imperial Crown Trading?

DIRECTOR NJENJE: That is correct.

ADV PAUL PRETORIUS SC: ICT.

DIRECTOR NJENJE: ICT.

ADV PAUL PRETORIUS SC: The Director and/or a Director and Shareholder in ICT was the very Ms Gugu Mtshali to whom you have just referred?

DIRECTOR NJENJE: And Archie Luhlabo. Correct.

10 **ADV PAUL PRETORIUS SC:** Yes and Mr Luhlabo.

DIRECTOR NJENJE: Luhlabo. Yes.

ADV PAUL PRETORIUS SC: Right.

CHAIRPERSON: I am sorry. The two were Directors in ICT. Is that what you are saying?

DIRECTOR NJENJE: That is what I am saying Chair. Correct.

CHAIRPERSON: Oh. Okay.

ADV PAUL PRETORIUS SC: And ICT were obviously seeking to obtain the grant of mining rights that had expired in the hands of Arcelor Mittal on 30 April 2009?

20 **DIRECTOR NJENJE:** That is correct.

ADV PAUL PRETORIUS SC: But in this venture they were competing with Sishen Iron Ore?

DIRECTOR NJENJE: That is correct Chair.

ADV PAUL PRETORIUS SC: Is it correct that in November 2009 ICT was awarded these mining rights?

DIRECTOR NJENJE: So I was told.

ADV PAUL PRETORIUS SC: Yes. Now we know - well perhaps we do not know, but there was in fact a dispute about the legalities of the award of mining rights to ICT?

DIRECTOR NJENJE: That is correct.

ADV PAUL PRETORIUS SC: And there was litigation between Sishen on the one hand - Kumba?

DIRECTOR NJENJE: Right. Correct.

ADV PAUL PRETORIUS SC: And ICT and the Department of Mineral
10 Resources on the other hand?

DIRECTOR NJENJE: That is correct.

ADV PAUL PRETORIUS SC: That litigation took up some time in the courts. Correct?

DIRECTOR NJENJE: That is correct Chair.

ADV PAUL PRETORIUS SC: Now we know that in March 2010 and please confirm if this in accordance with your own knowledge. ICT sold a 50 percent stake to an entity related to the Guptas and to Duduzane Zuma?

DIRECTOR NJENJE: That is correct Chair.

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

DIRECTOR NJENJE: I do not think I - I have got the ...

ADV PAUL PRETORIUS SC: Can I remind you was it DIC? This - all this evidence can be given separately Chair. It is background.

CHAIRPERSON: Yes, but just so that we understand.

ADV PAUL PRETORIUS SC: Yes. Was that JIC Mining Services?

DIRECTOR NJENJE: I think so. That is correct. Yes.

ADV PAUL PRETORIUS SC: Yes. An entity in which the Guptas and Duduzane Zuma had an interest?

DIRECTOR NJENJE: That is correct. Yes.

ADV PAUL PRETORIUS SC: And ICT having acquired the rights that had expired in the hands of Arcelor Mittal now sold a 50% stake in ICT to an entity related to the Guptas and Duduzane Zuma. Correct?

DIRECTOR NJENJE: Correct.

ADV PAUL PRETORIUS SC: Subsequent to that the litigation resulted
10 in Sishen and Kumba affectively securing those mining rights, but we need not go into that for the moment.

DIRECTOR NJENJE: That is correct.

ADV PAUL PRETORIUS SC: But your evidence now deals with the surrender by ICT of a 50 percent stake to the Guptas and Duduzane Zuma. Am I correct?

DIRECTOR NJENJE: That is correct Chair.

ADV PAUL PRETORIUS SC: That was the dispute that was raised at that meeting in 2010?

DIRECTOR NJENJE: That is correct.

20 **ADV PAUL PRETORIUS SC:** Alright. You can take it from there then.

CHAIRPERSON: Okay. Let me understand the dispute. It is ICT. There is Kumba/Sishen. There was - I know there was Arcelor Mittal as well and then there is another company/entity DI - that you mentioned.

ADV PAUL PRETORIUS SC: JIC ...

CHAIRPERSON: JIC.

ADV PAUL PRETORIUS SC: Mining Services.

CHAIRPERSON: Yes. So just tell me what you were told at this meeting then in connection with these issues that seem to have ...

DIRECTOR NJENJE: Okay. Thank you Chair.

CHAIRPERSON: To have been connected with this anger that you saw.

DIRECTOR NJENJE: Yes. So they - they are angry. They are very angry and they say that they - they were called to Saxonwold by Ajay Gupta and Ajay Gupta told them that he wants 90 percent of that - of ICT ...

10 **CHAIRPERSON:** Of ICT?

DIRECTOR NJENJE: Yes.

CHAIRPERSON: Yes.

DIRECTOR NJENJE: We must give him 90 percent of ICT, because he is the only person who has the financial muscle and the political backing to get that award granted.

CHAIRPERSON: I think it was a prospecting right?

DIRECTOR NJENJE: Yes. That is correct.

CHAIRPERSON: Ja. Well I happen to - to know because I

DIRECTOR NJENJE: You presided.

20 **CHAIRPERSON:** Sat in the High Court.

DIRECTOR NJENJE: You presided. Yes.

CHAIRPERSON: Ja. Yes.

DIRECTOR NJENJE: So they wanted 90 percent of the company. That was the discussion they had - they had had earlier with Ajay at - at his residence ...

CHAIRPERSON: Yes.

DIRECTOR NJENJE: And they phoned Advocate Nongxina ...

CHAIRPERSON: Hm.

DIRECTOR NJENJE: And Advocate Nongxina I think was in London at the time ...

CHAIRPERSON: Hm.

DIRECTOR NJENJE: Because there was a trip by President Zuma - an official trip to the UK by President Zuma ...

CHAIRPERSON: Yes.

10 **DIRECTOR NJENJE:** And Ms Nongxina was in the company of the President ...

CHAIRPERSON: Yes.

DIRECTOR NJENJE: On that trip.

CHAIRPERSON: Hm.

DIRECTOR NJENJE: So they said - Ms Nongxina said that they must - they must call me so that I can assist to - to talk about this thing.

ADV PAUL PRETORIUS SC: What role were you to play?

DIRECTOR NJENJE: When I asked - I had to ask him as to what is it that - because I do not work at DMR. I have got - I have got no - I
20 have got no clue of this. Of what is going on here.

CHAIRPERSON: Okay. Okay. Mr - I am trying to follow this quite properly, because the facts can be quite complicated.

DIRECTOR NJENJE: Okay.

CHAIRPERSON: So what made Ms Mtshali and Mr Luhlabo angry was that Mr Ajay Gupta had demanded that they should give him or his

entity 90 percent shares in I - in ICT?

DIRECTOR NJENJE: Correct Chair.

CHAIRPERSON: Which means they would have had to share the remaining 10% and they were unhappy about that, but more than that he had said to them according to what they told you he had said he was the only one with the financial muster necessary for this prospecting right and he was the only one who had the right political backing, am I putting it correctly?

DIRECTOR NJENJE: That's correct Chair.

- 10 **CHAIRPERSON:** And they had then called Mr Nogxina who was Director General of the Department of Mineral Resources at the time.

DIRECTOR NJENJE: Correct.

CHAIRPERSON: Who happened to be on an overseas trip with former President Zuma.

DIRECTOR NJENJE: That is correct, one of the people on that trip.

CHAIRPERSON: And he had suggested that they should talk to you to discuss the matter?

DIRECTOR NJENJE: I am not sure what he said to them, but ultimately he asked that they must call me and ...[intervenes]

- 20 **CHAIRPERSON:** Yes, *ja*, okay, but at this stage you heard this did you have an idea how you would come in, why anybody would want you to be called to have – to take part in that discussion?

DIRECTOR NJENJE: I asked him, I asked, when I phoned I said but what do you expect me to do.

CHAIRPERSON: Yes, yes.

DIRECTOR NJENJE: And he said come on man, I think you are the guy who can assist here, because at that time I was working for State Security Agency.

CHAIRPERSON: Yes.

DIRECTOR NJENJE: He said I think these guys will listen when you move in the Gupta's.

CHAIRPERSON: Mmm.

DIRECTOR NJENJE: Because the problem was not with these people the problem was the pressure he said he was getting to get these
10 people agree that they must surrender their shares to the Gupta's.

CHAIRPERSON: So as you understood the position from Mr Nogxina he himself was getting pressure from the Gupta family, is that what you are saying?

DIRECTOR NJENJE: That is correct Chair.

CHAIRPERSON: He himself was getting pressure?

DIRECTOR NJENJE: He said he was getting pressure and Chair he was in London as well with the President at that time.

CHAIRPERSON: Yes.

DIRECTOR NJENJE: When these people were phoning. So I'm not – I
20 didn't ask if the pressure was not from the President.

CHAIRPERSON: You didn't ask where the pressure was coming from?

DIRECTOR NJENJE: No I did not.

CHAIRPERSON: But he said he was under pressure?

DIRECTOR NJENJE: Yes.

CHAIRPERSON: Yes to attend to the issue of – to the demand or

request made by the Gupta family?

DIRECTOR NJENJE: That is correct.

CHAIRPERSON: Okay alright, I think continue then, you had had this discussion with Mr Nogxina and how did it end?

DIRECTOR NJENJE: I agreed that – I sat down with them and I asked them so what is your position, they said no, this is now Mtshali and Luhlabo, they said no we are not going to do that but I said, guys Sandile is telling me that he is under pressure what can we do, what can be done because I'm here now. So finally we agreed that we would
10 go to Saxonwold...[intervenes].

ADV PAUL PRETORIUS SC: Before you go to Saxonwold let's just summarise, there is a factual background which may be put before you in due course Chair but the essential fact is that ICT had or had a prospective interest in mining rights.

DIRECTOR NJENJE: At cession Correct.

ADV PAUL PRETORIUS SC: Yes and that was in cession.

DIRECTOR NJENJE: Ja.

ADV PAUL PRETORIUS SC: Right so they have this, let's call it for want of a better word, asset or prospective asset in their company.

20 **DIRECTOR NJENJE:** Correct.

ADV PAUL PRETORIUS SC: From what you say is the Gupta's wanted 90% of that company now, of ICT?

DIRECTOR NJENJE: That is correct.

ADV PAUL PRETORIUS SC: And Ms Mtshali and Mr Luhlabo were angered by this claim?

DIRECTOR NJENJE: Correct Chair.

ADV PAUL PRETORIUS SC: And there was a dispute therefore between the Gupta's on the one hand who wanted a large slice of the ICT cake and the owners of that cake Ms Mtshali on the one hand and Luhlabo on the other.

DIRECTOR NJENJE: Correct Chair.

ADV PAUL PRETORIUS SC: Right so there's a dispute and you are asked to assist.

DIRECTOR NJENJE: That is correct.

- 10 **ADV PAUL PRETORIUS SC:** So what did you do pursuant to your – well it wasn't a mandate, pursuant to the request made to you?

DIRECTOR NJENJE: We then agreed that we would go to the Gupta's but the lady Ms Mtshali called Ajay on his cell to say that I am coming with Gibson Njenje, Sandile suggested that we come and talk to you – Sandile Nogxina.

CHAIRPERSON: So at this stage did you see your role as mediating between the parties?

DIRECTOR NJENJE: That is correct Chair that is how I saw my role.

CHAIRPERSON: Okay.

- 20 **ADV PAUL PRETORIUS SC:** Just one thing if I may, it's perhaps not too relevant given the facts that you've outlined but in your statement you say that when you got to the house of former President Motlanthe in Sandton, Mr Nogxina was there?

DIRECTOR NJENJE: No.

ADV PAUL PRETORIUS SC: He wasn't?

DIRECTOR NJENJE: No he was not, he was...[intervenes].

ADV PAUL PRETORIUS SC: [Indistinct] your statement insofar as it says here.

DIRECTOR NJENJE: That's incorrect, he was in London when...[intervenes].

ADV PAUL PRETORIUS SC: Okay he telephoned?

DIRECTOR NJENJE: Yes.

ADV PAUL PRETORIUS SC: Alright, now we're off to Saxonwold as I understand it?

10 **DIRECTOR NJENJE:** Correct.

ADV PAUL PRETORIUS SC: Take up the story from there please?

DIRECTOR NJENJE: Before going to Saxonwold Ms Mtshali called Ajay Gupta and told him that they were coming with me to discuss the issue...[intervenes].

CHAIRPERSON: Before you go there let's go back to Mr Nogxina's suggestion that you should be involved. Do you know why Mr Nogxina would have picked you out of all people to say you should be involved and mediate, if mediate is the right word?

DIRECTOR NJENJE: We are friends Chair.

20 **CHAIRPERSON:** Yes.

DIRECTOR NJENJE: We are close friends.

CHAIRPERSON: Yes.

DIRECTOR NJENJE: And I don't know what made him to think of me when he was in that position.

CHAIRPERSON: Yes.

DIRECTOR NJENJE: But of course as I say, he knew that I am working for State Security at the time.

CHAIRPERSON: Yes.

DIRECTOR NJENJE: Yes.

CHAIRPERSON: Okay so maybe for whatever reason he might have thought that, that background might assist?

DIRECTOR NJENJE: I think so Chair.

CHAIRPERSON: Ja yes.

DIRECTOR NJENJE: I think that was his rationale.

10 **CHAIRPERSON:** Okay so maybe he just knew that you have some skills in mediation do you have any experience of mediation?

DIRECTOR NJENJE: Well I can make people talk – I can make people get together and talk.

CHAIRPERSON: Mmm.

DIRECTOR NJENJE: Yes.

ADV PAUL PRETORIUS SC: Yes Mr Shaik was polite you are modest it seems.

20 **CHAIRPERSON:** Okay alright yes so as you understood the position when Ms Mtshali and Mr Luhlabo explained to you at the meeting why did Mr Ajay Gupta make this demand to them and why did he make a demand for such a high percentage of their company or did that not transpire in the discussion, even before you met Mr Ajay Gupta because obviously to go and mediate you need to understand the actual dispute and the basis for the dispute or the grounds for the various positions of the parties?

DIRECTOR NJENJE: Chair I thought it was a very unfair situation in the first place and I mean, after they explained to me that this is – how far we are coming with this situation, their project, this is how far we are coming they were nowhere we didn't have anything to do with them, we have nothing to do with them even now but when they come they establish from wherever that they are the holders of this 21% and they were just king of bullying, I think.

CHAIRPERSON: As you understood the position, now that you mention 21% I think I seem to recall that, that whole litigation was
10 about 21% of the prospecting right. At that time of your being involved in the discussions ICT had already been granted the prospecting right?

DIRECTOR NJENJE: That is correct.

CHAIRPERSON: Oh so they had been doing a lot of work and then after they got this then Mr Ajay Gupta was saying I want 90% of that?

DIRECTOR NJENJE: That is correct Chair.

CHAIRPERSON: Oh okay alright.

ADV PAUL PRETORIUS SC: As we know from the litigation and the outcome of the litigation, ICT lost those prospecting rights but that was later.

20 **ADV PAUL PRETORIUS SC:** That was later yes.

DIRECTOR NJENJE: At the time the approach was made by Mr Gupta, those rights were held by ICT subject to the claim that was made against them.

ADV PAUL PRETORIUS SC: That is correct.

CHAIRPERSON: And as you understood the position at the time of

that meeting were Ms Mtshali and Mr Luhlabo the only Directors of – in ICT?

DIRECTOR NJENJE: They said they were not the only Directors.

CHAIRPERSON: They said they were not the only...[intervenes].

DIRECTOR NJENJE: They were the Directors who were in town, I think the other Director was in the Northern Cape.

CHAIRPERSON: Oh okay alright, thank you.

ADV PAUL PRETORIUS SC: So did you then take up your mission as mediator or?

10 **DIRECTOR NJENJE:** I did Chair.

ADV PAUL PRETORIUS SC: And what did you do?

DIRECTOR NJENJE: Ms Mtshali told me that she called him on the phone and he said, no it's fine they can bring me along so we went and they opened the doors and greeted and we sat there. He was like, sizing me up as we were chatting and making jokes – he was making jokes...[intervenes].

CHAIRPERSON: Sizing you up like what?

DIRECTOR NJENJE: Like looking me up and down.

CHAIRPERSON: You mean he was looking at you?

20 **DIRECTOR NJENJE:** Yes I felt like that.

CHAIRPERSON: Okay, so it was now the three of you plus him.

DIRECTOR NJENJE: Plus him, correct Chair.

CHAIRPERSON: Okay.

DIRECTOR NJENJE: So I introduced myself, I told him that I'm Gibson Njenje...[intervenes].

CHAIRPERSON: Were you meeting him for the first time?

DIRECTOR NJENJE: That's the very first time Chair.

CHAIRPERSON: Okay.

DIRECTOR NJENJE: Yes, and he said no, I know your name I know where you are working, I say, ja okay and then we started the discussion. I wanted to know but these guys are complaining that you are taking their company, he said, no I'm not taking the company, we are going to help them otherwise as they are they will walk away with nothing, so 10% is better than nothing and that they are not greedy, the
10 point is there are just too many on their side who are going to share from that 90%.

CHAIRPERSON: Just repeat that.

DIRECTOR NJENJE: I say Chair, he explained to me that the reason why they wanted 90% is not because they are greedy, he is not greedy he has got many people that he has got to look after in that 90%.

CHAIRPERSON: Is that what he said?

DIRECTOR NJENJE: That is what he said Chair.

CHAIRPERSON: Mmm.

ADV PAUL PRETORIUS SC: Before you go on when he said to you
20 that – this is Mr Gupta, when he said to you I know who you are and I know where you work, what did you gather from that, why did he say that, do you think?

DIRECTOR NJENJE: I think – I couldn't make out why he was saying so at the time but at a subsequent meeting he then told me why he knows about me.

ADV PAUL PRETORIUS SC: In any event what was the outcome of that meeting?

CHAIRPERSON: Well maybe before the outcome I do want to hear the content of the discussion up to the outcome.

DIRECTOR NJENJE: Well Chair the other two – the other party, Ms Mtshali and Luhlabo they were very adamant that no, this is not going to happen you can't – I mean they were raising even political issues, that you guys, you are just foreigners here and you just want to bully us like this it's not going to happen. So I had to calm them down and
10 say, guys remember I was talking to the DG and I don't know what the DG knows, let's just see what it is that we can come out with here.

CHAIRPERSON: But was the position simply that Mr Ajay Gupta was simply demanding something from them for which he had no basis really?

DIRECTOR NJENJE: Chair as I said...[intervenes].

CHAIRPERSON: Was that the position?

DIRECTOR NJENJE: That is the position Chair, that was the position.

CHAIRPERSON: The only – was the only basis that he said he has got the financial muscle and he has got political backing?

20 **DIRECTOR NJENJE:** That is correct Chair and as I'm saying I knew at that time that Sandile is in London and he is with the President.

CHAIRPERSON: Yes.

DIRECTOR NJENJE: So I wasn't sure whether he is – the pressure is not from that side.

CHAIRPERSON: Yes, yes. So you have the situation here where

somebody just decides to say, I know your company has got some prospecting rights or mining rights I want 90% of it and that's what I want and there is no basis, it's not like I made any contribution or anything?

DIRECTOR NJENJE: I think the other thing Chair, he was adding was...[intervenes].

CHAIRPERSON: He was?

DIRECTOR NJENJE: He was adding to his argument was that he is in touch with Isometal, I think the Chairman of Isometal and they were
10 going to work out some mechanisms, some structure that would not make Isometal to compete again to go to Court and litigate that would be handled by him and his team, I think that was an additional issue that he was putting in as what they are offering in the matter.

CHAIRPERSON: Yes continue with the discussion, anything else important in the discussion that was said?

DIRECTOR NJENJE: So the discussion went on to say, no, no I think the two fellows were also now starting to concede that, you know, this is going to be difficult. Then I said guys, what are you offering, I asked them what are you offering to this person and he said, no if anything
20 they must buy, I said yes you're right they must buy their share and the risk and follow whatever it is that they say they can do but if they want to participate they must buy. So Ajay said, no, no, no we're not going to do that.

CHAIRPERSON: I mean is the position that Mr Ajay Gupta was demanding to be given this 90% for free?

DIRECTOR NJENJE: No he said it was not for free Chair. He said – the input that they were going to make was more than that 90%.

CHAIRPERSON: But he was not going to pay any cash?

DIRECTOR NJENJE: He was not going to put in any money no.

CHAIRPERSON: So he said he will make an input into how the company would run, the business and so on and negotiations with Isometal whatever...[intervenes].

DIRECTOR NJENJE: He would make...[intervenes].

CHAIRPERSON: He was not going to buy these shares?

10 **DIRECTOR NJENJE:** No he was not going to buy the shares but he was going to make all manner of problems go away because of his influence and because he's got the money, yes.

CHAIRPERSON: Ja.

ADV PAUL PRETORIUS SC: So as I understand it, Mr Gupta in effect demanded 90% of ICT?

DIRECTOR NJENJE: That's correct Chair.

ADV PAUL PRETORIUS SC: He said that although he would not pay for the shares he would, through his own influence and financial backing assist ICT to overcome its problems in amongst other things,
20 the litigation that was current?

DIRECTOR NJENJE: That is correct.

CHAIRPERSON: Was the litigation pending at that time as you understood the position or was it not there yet or was it still coming, what was your understanding as at that time?

DIRECTOR NJENJE: I don't think the litigation was pending at the

time, I'm not sure.

CHAIRPERSON: Yes, okay.

ADV PAUL PRETORIUS SC: Well that can be established.

CHAIRPERSON: Yes.

ADV PAUL PRETORIUS SC: But we know that at the time ICT enjoyed the 21,4% share or in the prospecting rights that claim was challenged.

DIRECTOR NJENJE: Can you repeat please?

ADV PAUL PRETORIUS SC: At the time those prospecting rights were held to the extent of 21% by ICT that claim or interest was under
10 challenge?

DIRECTOR NJENJE: Yes.

CHAIRPERSON: Now did Ms Mtshali and Mr Luhlabo ask Mr Gupta on what basis he thought he could just get 90% from them or maybe that's something they may have asked in the previous meeting but didn't ask when you were there?

DIRECTOR NJENJE: Chair they did and they were not just asking they were also shouting at him.

CHAIRPERSON: They were shouting at him?

DIRECTOR NJENJE: Yes what right do you have, you are just a
20 foreigner you come in here you're coming to grab and you know, yes that was the type of language that was employed at the time.

CHAIRPERSON: Yes but you say at a certain stage of the meeting they began to warm up to concede in something?

DIRECTOR NJENJE: They did Chair.

CHAIRPERSON: Maybe warm up is the wrong word but they seemed

to be prepared to make some concessions?

DIRECTOR NJENJE: They did make concessions Chair.

CHAIRPERSON: Ultimately what concession did they make?

DIRECTOR NJENJE: The final concession was a 50/50.

CHAIRPERSON: 50/50?

DIRECTOR NJENJE: Correct Chair.

CHAIRPERSON: And was he still not going to pay anything for the 50%?

DIRECTOR NJENJE: No.

10 **CHAIRPERSON:** No?

DIRECTOR NJENJE: No.

CHAIRPERSON: It must be quite tough to work for – your company work hard and then have, to just give 50% away. On your understanding what is it that was making them decide that it was fine – maybe fine is the wrong word that they should nevertheless give him this 50% share?

DIRECTOR NJENJE: I'll have to move then forward into my statement to answer the question.

CHAIRPERSON: Oh okay well if you are able to answer it now, answer
20 it now, later on you can...[intervenes].

DIRECTOR NJENJE: Yes, I met Ajay Gupta subsequent to this meeting.

CHAIRPERSON: Yes.

DIRECTOR NJENJE: I met him at my request, I said I wanted to see him, I wanted to talk to him.

CHAIRPERSON: Yes.

DIRECTOR NJENJE: And when we sat he told me that – well he agreed that I should come to that mediating meeting – to that meeting that I mediated in. He agreed that I should be the one to come in because after Gugu called him, when we were still at Gugu Mtshali's house he checked with the President whether or not I'm the right person and the President said to him, that's a good old friend, he'll sort things out, don't worry.

CHAIRPERSON: Mmm, so effectively he checked with the President
10 whether you would be the right person to mediate so to speak in this dispute?

DIRECTOR NJENJE: Correct Chair.

CHAIRPERSON: Yes but from the point of view of Ms Mtshali and Mr Luhlabo as at that meeting what was your understanding of what they thought they would lose if they didn't agree to give this man 50% share for free?

DIRECTOR NJENJE: Chair I think at that time people knew that these were friends of the President.

CHAIRPERSON: These were friends of the President?

20 **DIRECTOR NJENJE:** That is correct Chair.

CHAIRPERSON: Yes, so they – your understanding would be that they must have thought about what appeared to be closeness to the President that he had?

DIRECTOR NJENJE: That is correct Chair.

CHAIRPERSON: And that the way he was insisting they might end up

getting nothing, maybe they should concede something, would that be the kind of thinking that you had, I'm just looking at what you thought?

DIRECTOR NJENJE: Even the mere mention Chair that they have got more people it was suggestive.

CHAIRPERSON: Ja, yes.

DIRECTOR NJENJE: Yes.

CHAIRPERSON: Thank you Mr Pretorius.

ADV PAUL PRETORIUS SC: During the meeting at Saxonwold where the demand of Mr Gupta for an interest in ICT was discussed and dealt
10 with as you have told the Chair it was dealt with, did the name of the former President come up?

DIRECTOR NJENJE: Not at the meeting, not when I was there with Archie and Gugu.

ADV PAUL PRETORIUS SC: So in that respect if you look at the last sentence of paragraph 19, your statement would need to be corrected, am I correct?

DIRECTOR NJENJE: I think that is correct.

ADV PAUL PRETORIUS SC: The statement?

DIRECTOR NJENJE: Yes, the statement as it is reflecting here.

20 **ADV PAUL PRETORIUS SC:** Right can you recall now the context in which the name of the President was mentioned?

DIRECTOR NJENJE: Yes I can.

ADV PAUL PRETORIUS SC: Tell the Chair please?

DIRECTOR NJENJE: Chair as I said here, he mentioned that they have got the money to do the deal because the deal is going to be very

expensive for anyone who comes in for that 21%, to finance that 21%, secondly that they were talking to Khumba and Khumba knew that they have got this interest. Isometal they were in control of because Isometal had lost their right and then that with the support of the President they were going to get the deal.

CHAIRPERSON: He said this – Mr Ajay Gupta said this at the meeting which you attended together with Ms Mtshali and Mr Luhlabo?

DIRECTOR NJENJE: That is correct.

CHAIRPERSON: Yes okay.

10 **ADV PAUL PRETORIUS SC:** You referred, a moment ago, Director to a further meeting with Mr Ajay Gupta.

DIRECTOR NJENJE: Yes.

ADV PAUL PRETORIUS SC: Was that in 2010?

DIRECTOR NJENJE: That's still in 2010 correct.

ADV PAUL PRETORIUS SC: At whose instance was this meeting arranged?

DIRECTOR NJENJE: At my instance.

ADV PAUL PRETORIUS SC: Why did you do so?

DIRECTOR NJENJE: Chair the issue of the family as we have testified
20 here was getting the better of us and...[intervenes].

CHAIRPERSON: Us being?

DIRECTOR NJENJE: State Security Agency.

CHAIRPERSON: Yes okay.

DIRECTOR NJENJE: And myself as the head of Counter Intelligence in the country. I ...[intervenes].

CHAIRPERSON: This meeting now which you requested this would have been round about when, I just want to have a sense of time and year?

DIRECTOR NJENJE: Maybe a few weeks after.

CHAIRPERSON: Oh it was still 2010?

DIRECTOR NJENJE: Correct Chair.

CHAIRPERSON: Okay, alright.

DIRECTOR NJENJE: A few weeks after the first, the initial meeting.

CHAIRPERSON: Yes but just to round off that meeting, so the – an
10 agreement was reached in that meeting in terms of which Ms Mtshali and Mr Luhlabo agreed to give Ajay Gupta or whatever entity he might have used 50% shares of ICT?

DIRECTOR NJENJE: That's correct.

CHAIRPERSON: Is that right?

DIRECTOR NJENJE: That's correct Chair.

CHAIRPERSON: Yes do you remember what entity was going to be used or that was left for later to be sorted out, that will come later?

DIRECTOR NJENJE: He has reminded me it was called JIC I think.

CHAIRPERSON: JYC or JIC?

20 **DIRECTOR NJENJE:** JIC.

CHAIRPERSON: JIC okay, alright that was the one to be used by Ajay Gupta?

DIRECTOR NJENJE: Correct Chair.

CHAIRPERSON: Okay and the meeting ended on that basis and that was it for that time?

DIRECTOR NJENJE: Yes they were still very angry and...[intervenes].

CHAIRPERSON: They were still very angry?

DIRECTOR NJENJE: Yes.

CHAIRPERSON: Ja and I assume – did you report back to Mr Nogxina?

DIRECTOR NJENJE: I did.

CHAIRPERSON: Yes.

DIRECTOR NJENJE: I told him, I said, hey you put me on the spot here and – but this is what came out finally.

10 **CHAIRPERSON:** Yes I guess you eased the pressure on him?

DIRECTOR NJENJE: Excuse me?

CHAIRPERSON: I guess you eased the pressure on him?

DIRECTOR NJENJE: Well he thanked me, he did.

CHAIRPERSON: Yes okay alright, so let's go back to this meeting that you requested with Mr Ajay Gupta a few weeks later.

DIRECTOR NJENJE: Yes.

ADV PAUL PRETORIUS SC: Did you meet?

DIRECTOR NJENJE: Correct we did meet.

ADV PAUL PRETORIUS SC: Where?

20 **DIRECTOR NJENJE:** We met at Saxonwold.

CHAIRPERSON: At the Gupta residence?

DIRECTOR NJENJE: At the Gupta residence yes.

CHAIRPERSON: Yes okay.

ADV PAUL PRETORIUS SC: And your purpose in requesting the meeting?

DIRECTOR NJENJE: Chair as I say we were – I was worried as well about the influence of these people on the President of the country. And that was the sole purpose of the meeting. It was to address – I addressed to him our concerns as State Security Agency. Basically I – when he said to me he held me as well when he said to me that he agreed to meet at the initial meeting because the President said I am a good old friend. I said now you say you hear the President say I am a good old friend and indeed I am a good old friend. What is your role in this? Because you guys are putting the President and the governing
10 party in problems. Every day there is bad publicity. There is Duduzane Zuma mentioned all day long why are you not protecting? If you say he is your friend why are you not protecting your friend? He said Mr Gibson you – you are right. I have got no issue. I do not go about talking about the President. He is – he is a family friend. He is my friend. I will have to talk to my brother because he is the one who is – who goes about harassing people and this and that. But I will do that. I am so happy that you came and spoke to us.

ADV PAUL PRETORIUS SC: Do you know which brother he was referring to?

20 **DIRECTOR NJENJE:** I – I assumed. I assumed Chair that he was – because I have not – I have never met him but I have heard that is a rough character who can use colourful language with people.

ADV PAUL PRETORIUS SC: Who is that?

DIRECTOR NJENJE: This is Atul.

ADV PAUL PRETORIUS SC: Atul? Was anything further discussed? I

am sure lots was discussed but on the theme that you talking about was anything further discussed?

DIRECTOR NJENJE: Chair we did not discuss for a long time. I wanted to convey a message and to say that we are worried as State Security Agency. And he agreed. He readily agreed he said, no I understand what you mean.

CHAIRPERSON: So you were – you were meeting him in an official capacity as part of your – what you believed was your job to do?

DIRECTOR NJENJE: Yes.

10 **CHAIRPERSON:** ja.

DIRECTOR NJENJE: Yes Chair. Insofar as I was concerned I was doing that and I reported back to my colleagues.

CHAIRPERSON: Yes.

DIRECTOR NJENJE: At the top three that had made the meeting and I made the points to Mr Ajay Gupta.

CHAIRPERSON: Yes. And what you got from him was that he said he agreed you were right there should – they should protect the President?

DIRECTOR NJENJE: He said so Chair.

CHAIRPERSON: That is what he said?

20 **DIRECTOR NJENJE:** He agreed.

CHAIRPERSON: Ja.

DIRECTOR NJENJE: He agreed that it is not good for the President to be receiving bad publicity and all of this.

CHAIRPERSON: Hm. Okay.

ADV PAUL PRETORIUS SC: Did he at any stage attempt to justify or

explain his family's relationship with the President, the former President?

DIRECTOR NJENJE: Similar to what the President says. He says we have met my brother has met – the brother who came in first met Mandela and he met Mbeki and so they are also meeting Zuma. They met Zuma even when he was in trouble where he did not have any position in government. They still continued to meet. They still continued to look after Duduzane. That was the end of that he was taken.

10 **ADV PAUL PRETORIUS SC:** Right. Did Minister Cwele's name crop up in the conversation?

DIRECTOR NJENJE: It did indeed.

ADV PAUL PRETORIUS SC: Please tell the Chair about that?

DIRECTOR NJENJE: Chair Ajay Gupta then turned and looked at me and said, can you tell me what is the interest of Mr Cwele or Doctor Cwele in the family – in his family?

CHAIRPERSON: In the Gupta family?

DIRECTOR NJENJE: Correct.

CHAIRPERSON: Oh. But he was asking you?

20 **DIRECTOR NJENJE:** He was asking me.

CHAIRPERSON: Hm.

DIRECTOR NJENJE: And I said I have got no idea what do you mean he has got an interest in your family? He then related a story to say that there had been an ANC – a fund raiser in Durban which was held at the Hilton Hotel. I could faintly remember. I could vaguely remember

that. And I said, oh okay. He said at that fund raising dinner his family they bought a table and Ministers were deployed – different Ministers were deployed at different tables. And another Minister was deployed at their table. But Cwele came to removed – to remove that Minister and ask him to go and sit where he was supposed to sit and him joining the Gupta family. I said to him, no I do not know. And frankly I did not know what it is – what the Minister Cwele was interested in.

ADV PAUL PRETORIUS SC: You then in paragraph 21 refer to a meeting between what you refer to as the top three. I take it that is
10 yourself, Mr Shaik and Ambassador Maqetuka?

DIRECTOR NJENJE: That is how we were called at the farm.

ADV PAUL PRETORIUS SC: What was the purpose of this meeting?

DIRECTOR NJENJE: The purpose of the meeting was to - to raise our concerns about Minister Cwele with President Zuma.

ADV PAUL PRETORIUS SC: Was – was this the meeting to which Mr Shaik referred as having occurred immediately after the meeting with Minister Cwele where he raised his views on the investigation and to the Gupta family?

DIRECTOR NJENJE: That is correct.

20 **ADV PAUL PRETORIUS SC:** Same meeting?

DIRECTOR NJENJE: That is correct.

ADV PAUL PRETORIUS SC: What do you recollect of that meeting then?

DIRECTOR NJENJE: I can remember that President Zuma addressed us on the issue of the relationship between himself and the Gupta

family. It was a long narration that he gave of the relationship. But the main characteristics being the same as what Gupta was saying that they are coming from a good family in India. Brought up by the – by a good father. How they took Duduzane and Duduzile into their company and how they helped them through. And especially at the time that President Zuma – at the time Deputy President was removed. And how the children were growing out without a mother and all of those issues. Basically he was explaining that it was a clean relationship that he was having.

10 **CHAIRPERSON:** Including how good the Gupta family had been to – had been to...

DIRECTOR NJENJE: To his children.

CHAIRPERSON: To his children ja.

DIRECTOR NJENJE: Correct.

CHAIRPERSON: Okay.

DIRECTOR NJENJE: Correct Chair.

CHAIRPERSON: Hm.

ADV PAUL PRETORIUS SC: As I understand the evidence of Mr Shaik one of the purposes this meeting was to raise with the President issues
20 around the investigation into the Gupta family?

DIRECTOR NJENJE: That is correct.

ADV PAUL PRETORIUS SC: Am I correct?

DIRECTOR NJENJE: That is correct.

ADV PAUL PRETORIUS SC: And Mr Shaik gave lengthy evidence in that regard. Did you at the meeting raise your concerns as the top

three in relation to whether or not the investigation into the Gupta family should continue?

DIRECTOR NJENJE: I think we started by making our presentation to the President to say that we are coming to raise our concerns as well about that – about that issue.

ADV PAUL PRETORIUS SC: Right. And what was the – besides speaking about his relationship with the Gupta family, explaining it and seems justifying it, what was the President's response to the investigation in particular?

10 **DIRECTOR NJENJE:** I do not think he – he reacted to the issue of the investigation.

ADV PAUL PRETORIUS SC: What was your conclusion in relation to whether or not you should continue the investigation after that meeting?

DIRECTOR NJENJE: I think he was telling us that these are good people and therefore that maybe we should just leave them.

ADV PAUL PRETORIUS SC: Was that your conclusion?

DIRECTOR NJENJE: That was my conclusion yes.

20 **ADV PAUL PRETORIUS SC:** And in relation to your relationship and I am talking about the top three – relationship with Minister Cwele? What was the conclusion there as far as the former President was concerned?

DIRECTOR NJENJE: I think I had more than one meeting on the issue of the relationship of the – with Doctor Cwele with the President. And I can recall this one meeting where – I thought – I thought he was – he

was not happy with us raising this thing. And...

CHAIRPERSON: Sorry you thought he was?

DIRECTOR NJENJE: He was not happy with us raising the matter.

CHAIRPERSON: That is the President?

DIRECTOR NJENJE: The President yes.

CHAIRPERSON: Okay.

DIRECTOR NJENJE: And that is why I suspect that it may not – it may have not been the first time we are raising the matter with him. Because at the end of that meeting the President said, you are all
10 senior people why can you not just sit down and resolve issues?

ADV PAUL PRETORIUS SC: Let us move on then back into the timeline.

CHAIRPERSON: I am sorry Mr Pretorius. You did say when we were talking about your meeting with Minister Cwele that the investigation into the Gupta's or the Shiva Uranimum to the Gupta's included the question of their influence on the President – on the President. Their influence. Was Minister Cwele aware that that was part of what you wanted to investigate? What the investigation sought to do?

DIRECTOR NJENJE: Yes he was.

20 **CHAIRPERSON:** He was?

DIRECTOR NJENJE: He was Chair.

CHAIRPERSON: What about the President when you met – met him? Was he aware of that part as well or not really?

DIRECTOR NJENJE: We made him aware Chair.

CHAIRPERSON: You made him aware?

DIRECTOR NJENJE: We did make him aware ...

CHAIRPERSON: That part of what you.

DIRECTOR NJENJE: That is our concerns.

CHAIRPERSON: Part of the investigation is to look at the influence of the family on him?

DIRECTOR NJENJE: That is correct Chair.

CHAIRPERSON: Okay alright. And his attitude was there is nothing wrong with the family they are good people?

DIRECTOR NJENJE: That is correct Chair.

10 **CHAIRPERSON:** Okay thank you.

ADV PAUL PRETORIUS SC: And as I understand finally your conclusion at least the other two of the top three can testify to their conclusion but your conclusion was that you should desist with the investigation?

DIRECTOR NJENJE: That is correct and I must mention that – that really had a negative effect on our – on our – on my moral especially and interest in the work.

CHAIRPERSON: You were quite clear that in terms of the National Security there was a risk and an investigation was necessary in order
20 to deal with that risk, that potential risk? Is that right?

DIRECTOR NJENJE: That is correct Chair.

CHAIRPERSON: Yes.

DIRECTOR NJENJE: And it was not the first time that we would go or in my experience that I would go to a President and say, President there are these things that Intelligence is – is observing on these

issues.

CHAIRPERSON: Yes.

DIRECTOR NJENJE: And President would say, bring me a report. Go investigate and bring me a report.

CHAIRPERSON: Yes.

DIRECTOR NJENJE: That is – that would be the normal thing.

CHAIRPERSON: Yes.

DIRECTOR NJENJE: The normal interaction between Intelligence and the President.

10 **CHAIRPERSON:** Who would ask for a report?

DIRECTOR NJENJE: He would say, please go and do your work and bring me a report.

CHAIRPERSON: Ja. Yes.

DIRECTOR NJENJE: On your investigations.

CHAIRPERSON: Yes. And on other occasions he would read the report and say it is fine?

DIRECTOR NJENJE: On many occasions the President would say thank you.

CHAIRPERSON: Yes, ja okay. But on this occasion.

20 **DIRECTOR NJENJE:** The President. President had a long explanation to give to us.

CHAIRPERSON: Yes, yes.

DIRECTOR NJENJE: And clearly he was not interested in us continuing with the investigation.

CHAIRPERSON: Yes. I asked you earlier on when we were dealing

with the meeting between yourselves and the Minister whether the Minister was addressing himself to the pertinent reasons which you gave for saying the investigation should continue. When it comes to the President did he address himself to the pertinent reasons you advanced for saying the investigation should continue or should – or did he also not address those?

DIRECTOR NJENJE: He acknowledging that – I know that this – I know that this is your job but this is the real story.

CHAIRPERSON: Yes.

- 10 **DIRECTOR NJENJE:** He acknowledged but he – he did not say, oh guys please go ahead and continue with the investigation.

CHAIRPERSON: Hm. And he did not say anything like you are wrong on your assessment of the security aspects that influence your decision. It was simply – there is nothing wrong with this family.

DIRECTOR NJENJE: It was simply that Chair.

CHAIRPERSON: Yes.

DIRECTOR NJENJE: That there is nothing wrong with the family, they are good people.

CHAIRPERSON: Yes.

- 20 **DIRECTOR NJENJE:** He did not say.

CHAIRPERSON: Okay.

DIRECTOR NJENJE: Ja.

CHAIRPERSON: Thank you.

ADV PAUL PRETORIUS SC: The fact of the matter is however as I understand your evidence that you did desist from the investigation?

DIRECTOR NJENJE: Yes we did Chair.

ADV PAUL PRETORIUS SC: If we may go back to the...

CHAIRPERSON: Before that you were explaining earlier on and I do not know whether I interrupted you what the effect was of this reality that you were facing that the investigation had to stop on your morale and everything – and whatever else. Had you finished addressing that or was there something else?

DIRECTOR NJENJE: No I did not finish Chair.

CHAIRPERSON: How did you view this situation – this development?

- 10 **DIRECTOR NJENJE:** Chair it was – it was draining on us. We had a difficult situation of having to run a new organisation – try and run to a better thing than it was – that what we inherited. Try and get people to do the right things and all of that. But then – you know – especially as a result of the relationship with the Minister – you know – I think you would feel like dragging your feet when you are going to work and I think the last straw was when the President was – was also not siding or at least addressing issues with us and say, guys these are the things and this is how we are going to deal with them. He says you are senior people, all of you, why can you not just go sit down and resolve. So
- 20 that really had a negative impact on us and especially myself.

CHAIRPERSON: What did you understand to have been your options faced with this situation if there were any options for you to deal with this situation? Was there an option of pursuing the investigation despite what the President said? Was that not an option? Or what was the position?

DIRECTOR NJENJE: The position Chair was that we were being blocked from doing our work and – and indeed one being not sure whether to get – come back to work or not. I was – I was one of the – the guys that – and I was thinking that I was reading the situation well. I think I was reading the Minister well that you know. When – when a Minister starts behaving in this way I suspect that our welcome may just be over here and – we kept trying to get through to the President and I was like I do not think the President wants to see us guys. And finally the President really did not want to see us.

10 **CHAIRPERSON:** Well you the last sentence you say as if something happened that makes you feel sure that he did not want to see you?

DIRECTOR NJENJE: We are not getting appointments Chair.

CHAIRPERSON: Oh you asked for appointments and you were not getting them.

DIRECTOR NJENJE: We are not getting appointments.

CHAIRPERSON: Yes.

DIRECTOR NJENJE: That is correct.

CHAIRPERSON: Yes. Thank you.

ADV PAUL PRETORIUS SC: In his position as the Executive Officer
20 accountable for Intelligence would you expect to have general access to the former President?

DIRECTOR NJENJE: That is correct Chair.

ADV PAUL PRETORIUS SC: And if he does not meet with you what does that mean for the working relationship?

DIRECTOR NJENJE: I think in general in Intelligence when that

happens it means the relationship is not good or it is not there.

CHAIRPERSON: Were there – were there proper grounds for the President to say, do not continue with the investigation as far as you were concerned?

DIRECTOR NJENJE: There were no proper grounds Chair insofar we were concerned.

CHAIRPERSON: Yes. You have had time to reflect on the events of that day and you may have the benefit of hindsight. Are you able to say what your analysis suggests was why the President said continuing the
10 investigation was a bad idea, was not a good idea?

DIRECTOR NJENJE: Chair I have had a lot of time to – to ponder and worry about these issues and especially about the President. I have even tried – even when I was out tried to make contact so we can meet and I get to get a better understanding as to what – what is going on. I mean even when I was out and he knew that I was out of the system he has never – he has never granted me that opportunity to go and – and sit and talk to him. Other than that there were better influences than us. I cannot – I cannot call – I cannot make any further call.

CHAIRPERSON: If you had been allowed to continue with the
20 investigation including the investigation on the influence that the Gupta family had on him and assumed that you – the investigation had revealed that the Gupta family had a very strong but bad influence on him what are the kinds of recommendations of steps that could possibly have been recommended by yourself or taken by yourselves which might have dealt with the situation?

DIRECTOR NJENJE: Chair we – we did look at those issues and said, but what else can we do if the President does not listen to us? Where else can we go? I can tell you that we have been to your standing committee on Intelligence – Joint Standing Committee on Intelligence. Made presentations and said these are the issues. Beyond that – and of course we knew of the limitations that they also had because they are back benchers in the main. But ja – we could not think of anything else but as Ambassador Shaik was saying maybe the – which is not our – which we did not want to do is to whistle blow and we did not want to
10 do that.

CHAIRPERSON: So – so you have been to the standing committee on Intelligence and – and brought issues that were of concern to you before them that related to the Gupta's and their influence on the President, is that right?

DIRECTOR NJENJE: That is correct Chair.

CHAIRPERSON: Yes. But other than that you are not sure what you might have done if you had continued with the investigation and found that the Gupta family had a very strong but bad influence on the President, is that what you are saying?

20 **DIRECTOR NJENJE:** I am saying so Chair.

CHAIRPERSON: Yes. But you – I guess you would have prepared a report that would probably have been given to the President himself and maybe the standing committee on Intelligence as well?

DIRECTOR NJENJE: I do not think we would have been able to continue.

CHAIRPERSON: Sorry?

DIRECTOR NJENJE: I do not think that we would have been able to continue with the investigation Chair because all the work that we do we – we are regulated that all our operations must be reportable operations.

CHAIRPERSON: Hm.

DIRECTOR NJENJE: And if the President has indicated – discouraged from continuing with the investigation.

CHAIRPERSON: Hm.

10 **DIRECTOR NJENJE:** We – we did not have – we did have any – any – any ground to stand on.

CHAIRPERSON: Hm. Well let us assume the President had allowed you to proceed – to continue the – with the investigation that is what I am talking about?

DIRECTOR NJENJE: Oh okay.

CHAIRPERSON: Ja if he had – if he had said, no that is fine continue investigate.

DIRECTOR NJENJE: Okay.

20 **CHAIRPERSON:** And the investigation had revealed that the Gupta family had a very strong influence of him – on him but that influence was for him and for the country and maybe for the ruling party. What would you have done with that outcome?

DIRECTOR NJENJE: We would have presented it to the President.

CHAIRPERSON: Yes. And to the standing committee maybe as well on Intelligence, Parliamentary Committee or not?

DIRECTOR NJENJE: I think it would depend.

CHAIRPERSON: It would have depended.

DIRECTOR NJENJE: Yes.

CHAIRPERSON: Yes okay.

DIRECTOR NJENJE: But the President would be our ultimate client.

CHAIRPERSON: Yes. Yes. Hm. Okay thank you.

ADV PAUL PRETORIUS SC: Chair I see it is four o'clock. I have an important meeting at 4:30 I could perhaps go to quarter past four. I could attempt to postpone the meeting to five o'clock because we are
10 almost finished but I do have somewhere to go.

CHAIRPERSON: I am quite happy that we try and finish from my side. If you can postpone the meeting ja then Diretor Njenje would that be fine with you if we continue and try and finish?

DIRECTOR NJENJE: That is fine. That is fine Chair.

CHAIRPERSON: Yes okay.

ADV PAUL PRETORIUS SC: One the matters that is of interest perhaps more than interest to the commission Director is the question of Parliamentary Oversight over various bodies in our body politic. What role does the Joint Standing Committee on Intelligence play in
20 respect of the operations of intelligence? You say you took the matter to the Joint Standing Committee. What was its role? What is its role?

DIRECTOR NJENJE: Maybe the caucus in the GSCI are the people we went to see.

ADV PAUL PRETORIUS SC: Oh I see.

DIRECTOR NJENJE: Ja.

ADV PAUL PRETORIUS SC: The caucus is?

DIRECTOR NJENJE: The ruling party's caucus.

ADV PAUL PRETORIUS SC: The ruling party's caucus.

DIRECTOR NJENJE: Yes.

ADV PAUL PRETORIUS SC: In Parliament?

DIRECTOR NJENJE: That is correct.

ADV PAUL PRETORIUS SC: Not the ...

DIRECTOR NJENJE: Not the standing..

ADV PAUL PRETORIUS SC: Multiparty.

10 **DIRECTOR NJENJE:** Not the joint – not the joint.

ADV PAUL PRETORIUS SC: I understand and that is the body to which you referred this matter?

DIRECTOR NJENJE: That is the body that we referred the matter to – for them to try and exert their own pressure.

ADV PAUL PRETORIUS SC: But no change resulted?

DIRECTOR NJENJE: Nothing happened.

CHAIRPERSON: Let me try and understand that. I thought – I thought you said you took your issues of concern to the Standing Parliamentary Committee on Intelligence. Did I misunderstand that?

20 **DIRECTOR NJENJE:** Chair, I - I miss - I misrepresented the - the fact.

CHAIRPERSON: Okay.

DIRECTOR NJENJE: The fact is we took it to the Chairperson who - who is a member of the ruling party - who is the Chair of the Joint Standing Committee.

CHAIRPERSON: Oh. You took it to him.

DIRECTOR NJENJE: To - to the Chair specifically.

CHAIRPERSON: Yes.

DIRECTOR NJENJE: Yes.

CHAIRPERSON: But what was the idea? Was the idea that you were approaching him as Chairperson of that Committee - the Standing Committee so that could then see whether to place the issues before the Standing Committee or were you approaching him on the basis of his other capacity maybe within - within the ruling party?

DIRECTOR NJENJE: As Chair of the Standing Committee we are
10 approaching him to say ...

CHAIRPERSON: You were approaching him as ...

DIRECTOR NJENJE: As Chair. As Chairperson.

CHAIRPERSON: As Chairperson of the Standing Committee?

DIRECTOR NJENJE: Yes. To say that we have got these issues ...

CHAIRPERSON: Yes. Yes.

DIRECTOR NJENJE: And of course ...

CHAIRPERSON: Yes.

DIRECTOR NJENJE: If he could take them and our - our interest was more for him to represent us ...

20 **CHAIRPERSON:** Yes.

DIRECTOR NJENJE: To Minister and the President.

CHAIRPERSON: Yes. Oh. At - at that level what you had in mind is not necessarily that ...

DIRECTOR NJENJE: The Committee.

CHAIRPERSON: You would take it to the Committee ...

DIRECTOR NJENJE: No.

CHAIRPERSON: But that you could talk to the Minister - Minister Cwele and talk to the President.

DIRECTOR NJENJE: Correct. That is called ...

CHAIRPERSON: And who - yes.

DIRECTOR NJENJE: It was a - Dr Burgess.

CHAIRPERSON: Burgess?

DIRECTOR NJENJE: Correct.

CHAIRPERSON: Okay. Okay. Thank you, but you - maybe let us
10 finalise. You put these issues to him. Did he promise anything to do
anything about them or did he tell you there is nothing I can do or what
- what happened?

DIRECTOR NJENJE: No. No. He took - he took Chair - he took the
matters and said he was going to - he would see how to handle them.

CHAIRPERSON: Yes.

DIRECTOR NJENJE: That is correct.

CHAIRPERSON: But did he come back to you to tell you how far he
had been able go with the issues?

DIRECTOR NJENJE: I do not think so Chair.

20 **CHAIRPERSON:** You do not think so?

DIRECTOR NJENJE: No.

CHAIRPERSON: Okay.

ADV PAUL PRETORIUS SC: Director let us move on then to paragraph
22 of your statement and go back to the issue of the Principle Agency
Network Investigation - Principle Agents Network Investigation. You

said that that investigation involved Mr Arthur Fraser. You spoke about certain suspensions, but that investigation I understand was ongoing.

DIRECTOR NJENJE: That is correct Chair.

ADV PAUL PRETORIUS SC: And by 2011 what progress had been made?

DIRECTOR NJENJE: Significant project - progress had been made. I think we covered almost everything that had - that needed to be done.

ADV PAUL PRETORIUS SC: And as a result of that stage being reached did you approach Law Enforcement Agencies?

10 **DIRECTOR NJENJE:** That is correct.

ADV PAUL PRETORIUS SC: What did you do?

DIRECTOR NJENJE: We approached the SIU and - and the NPA and we sat had a consultation over the information that was here that we had prepared and a - they were happy to receive it and - and we agreed that we - we were then handing over the investigation and - and they were going to prepare for prosecution.

ADV PAUL PRETORIUS SC: Was the documentation pertaining to your investigation then handed over or not?

DIRECTOR NJENJE: It was handed over. Correct.

20 **ADV PAUL PRETORIUS SC:** To whom?

DIRECTOR NJENJE: It was handed over to the SIU.

ADV PAUL PRETORIUS SC: And what was the state of play as far as you were concerned in regard to whether a prosecution could proceed or not?

DIRECTOR NJENJE: It was clear Chair that prosecution was - was now

possible.

CHAIRPERSON: Was ...

DIRECTOR NJENJE: There were ...

CHAIRPERSON: Was going to proceed?

DIRECTOR NJENJE: They were going to proceed.

CHAIRPERSON: Yes.

DIRECTOR NJENJE: They were - they were just going to fill up ...

CHAIRPERSON: *Ja*.

DIRECTOR NJENJE: Some gaps ...

10 **CHAIRPERSON**: Hm.

DIRECTOR NJENJE: And then we were going to proceed.

CHAIRPERSON: Okay.

ADV PAUL PRETORIUS SC: Did you then receive a call at around this time from Minister Cwele?

CHAIRPERSON: Maybe before that - that - that was the PAN Programme Investigation. Is that right?

DIRECTOR NJENJE: That is correct Chair.

20 **CHAIRPERSON**: Are you able to say what types of crimes the investigation had revealed may have been committed or are you not able to - to say?

DIRECTOR NJENJE: There were various - there were various ...

CHAIRPERSON: Fraud?

DIRECTOR NJENJE: Fraud included.

CHAIRPERSON: *Ja*. Corruption?

DIRECTOR NJENJE: And corruption.

CHAIRPERSON: Yes.

DIRECTOR NJENJE: Yes.

CHAIRPERSON: Those were some of the crimes that is ...

DIRECTOR NJENJE: That is correct.

CHAIRPERSON: Were unearthed by the investigation?

DIRECTOR NJENJE: That is correct.

CHAIRPERSON: Okay. Alright.

ADV PAUL PRETORIUS SC: And if you could give the Chair some idea of the gravity of the offences that had been alleged.

10 **DIRECTOR NJENJE:** There were houses that were bought - properties and bought with ulterior motives and the properties ending up with individuals. There were people who were employed without any security clearances. Hundreds of cars that were bought and parked. There were 300 cars. Computers, laptops and - that were just bought and stacked away.

CHAIRPERSON: And maybe I missed this earlier on. On your understanding what was that PAN Programme about? What was its objective? What was sought to be achieved through it?

DIRECTOR NJENJE: As I was trying to understand Chair this structure
20 was supposed to be an extension of the official structures.

CHAIRPERSON: Of Intelligence?

DIRECTOR NJENJE: Of Intelligence.

CHAIRPERSON: Yes.

DIRECTOR NJENJE: Especially National Intelligence Agency. The domestic branch.

CHAIRPERSON: Yes. Yes.

DIRECTOR NJENJE: Yes.

CHAIRPERSON: And the cars that you say were - had been bought who would have been - parked some - where some were or were they just given to people?

DIRECTOR NJENJE: They were parked in a - warehouses Chair.

CHAIRPERSON: They were in warehouses?

DIRECTOR NJENJE: There were different - different warehouses ...

CHAIRPERSON: Yes.

10 **DIRECTOR NJENJE:** Around Gauteng.

CHAIRPERSON: Yes and this was - the funds used were from the Official Intelligence structures?

DIRECTOR NJENJE: That is correct Chair. They were - they were funds that were taken from operating structures ...

CHAIRPERSON: Yes.

DIRECTOR NJENJE: And - and therefore starving those operation - operating structures ...

CHAIRPERSON: Yes.

DIRECTOR NJENJE: With funds ...

20 **CHAIRPERSON:** Yes.

DIRECTOR NJENJE: And - and spending out there for - for this ...

CHAIRPERSON: Yes.

DIRECTOR NJENJE: Yes sir.

ADV PAUL PRETORIUS SC: I understand that here were an excess of 700 cars that were so bought. Is that correct?

DIRECTOR NJENJE: There were 300.

ADV PAUL PRETORIUS SC: 300?

DIRECTOR NJENJE: Yes. From the PAN - from the PAN Programme.

CHAIRPERSON: At - at the time of the conclusion of that investigation was your understanding that there were a lot of people who were using some of those cars?

DIRECTOR NJENJE: Not a lot Chair ...

CHAIRPERSON: *Ja.*

DIRECTOR NJENJE: But there were some people who were using
10 some of the cars and - and properties.

CHAIRPERSON: And properties?

DIRECTOR NJENJE: Yes.

CHAIRPERSON: You mentioned earlier on I think the figure of 300 cars. Mr Pretorius mentioned 700 cars. What kind of numbers do you recall?

DIRECTOR NJENJE: 300 Chair.

CHAIRPERSON: 300?

DIRECTOR NJENJE: Yes.

CHAIRPERSON: And in terms of houses are you able to recall any
20 number or properties?

DIRECTOR NJENJE: I - I cannot recall off hand Chair, but it was quite a number of properties.

CHAIRPERSON: A substantial number?

DIRECTOR NJENJE: A substantial number. Yes.

CHAIRPERSON: *Ja.* Around Gauteng or all over the country?

DIRECTOR NJENJE: Around Gauteng.

CHAIRPERSON: Hm.

DIRECTOR NJENJE: Especially.

CHAIRPERSON: Ja.

DIRECTOR NJENJE: Yes.

CHAIRPERSON: Okay and - and these - these would have been registered under the name of - under whose name?

DIRECTOR NJENJE: Some people's names.

CHAIRPERSON: Oh. Oh.

10 **DIRECTOR NJENJE:** Some people were used. Others are children.

CHAIRPERSON: Oh people as opposed to legal entities. So it would be individuals or not particular - not the official structure and not PAN ... (intervenes).

DIRECTOR NJENJE: Not the official structure Chair, because what he was called the Covet Support Unit.

CHAIRPERSON: Yes.

DIRECTOR NJENJE: Which was used some - with some ...

CHAIRPERSON: Yes.

DIRECTOR NJENJE: In some cases they were used.

20 **CHAIRPERSON:** Yes.

DIRECTOR NJENJE: In some cases private individuals were used.

DIRECTOR NJENJE: Yes.

CHAIRPERSON: Okay. Alright. Thank you. So - so a lot of money had into the buying of those cars and houses. Are you able to give an estimate of how much money - taxpayers money had been used ...

DIRECTOR NJENJE: We ...

CHAIRPERSON: Or this program ...

DIRECTOR NJENJE: We ...

CHAIRPERSON: By the time you handed over the files to the NPA to prosecute?

DIRECTOR NJENJE: We had estimate 600.

CHAIRPERSON: Six ...

DIRECTOR NJENJE: R600 million.

CHAIRPERSON: 600 - about R600 million.

10 **DIRECTOR NJENJE:** Yes. Correct.

CHAIRPERSON: That was the estimate?

DIRECTOR NJENJE: That is correct.

CHAIRPERSON: Okay. Thank you.

ADV PAUL PRETORIUS SC: There will be further evidence on the detail Chair ...

CHAIRPERSON: Yes.

ADV PAUL PRETORIUS SC: But the point of this evidence is what is to come now.

CHAIRPERSON: Yes. Okay.

20 **ADV PAUL PRETORIUS SC:** You - did you get a call from Minister Cwele at around this time - at the time of the conclusion of the investigation?

DIRECTOR NJENJE: That is correct.

ADV PAUL PRETORIUS SC: Tell the Chair about that please.

DIRECTOR NJENJE: I received a call that - from Dr Cwele that I need

to meet with him at Oliver Tambo International Airport.

CHAIRPERSON: Was this after you had handed over the files to the NPA for prosecution or before?

DIRECTOR NJENJE: Correct Chair.

CHAIRPERSON: After?

DIRECTOR NJENJE: After.

CHAIRPERSON: Okay. Alright.

DIRECTOR NJENJE: And I went up - I went up to Oliver Tambo and met the Minister at the Government lounges there and he told me that
10 we needed to stop the investigation - the investigation and prosecution of Mr Fraser and others of the PAN - PAN Programme. I wanted to know why.

He said no it is like we need to stop it and this and that, but I said Minister - I was shocked. I said, but after - we started this thing in 2009. Now it is in 2011 and you - we are saying and we spent so much of our time, our energy and - and of course your Government money. Ja. No. We cannot continue with the project.

CHAIRPERSON: That is what he said?

DIRECTOR NJENJE: That is what he said and I said, but you need to
20 tell me why you cannot.

CHAIRPERSON: Hm.

DIRECTOR NJENJE: He said no. It is the President. The President's decision.

CHAIRPERSON: He said - he said it was the President's decision?

DIRECTOR NJENJE: It is the President's decision.

CHAIRPERSON: That it should not be continued?

DIRECTOR NJENJE: That we stop. Correct Chair.

CHAIRPERSON: Hm.

DIRECTOR NJENJE: I said, but why. He said the President thinks that this is going to compromise National Security if we go ahead and prosecute. This is going to compromise National Security. I said no. Minister we are dealing with criminality here not National Security.

CHAIRPERSON: I am sorry. Okay. Okay. Alright. Yes continue. He said the President had said that pursuing the investigation would
10 compromise National Security?

DIRECTOR NJENJE: That is correct.

CHAIRPERSON: Yes and what did you say in response?

DIRECTOR NJENJE: I said no, but these are - we are dealing with straight criminality. There is no National Security issue here. He - he was adamant that it is the President's decision. I should just see to it that SIU and - and everyone else do not proceed with - with their actions.

CHAIRPERSON: So, but you - you say by the time he spoke to you. You had handed over the files to the NPA?

20 **DIRECTOR NJENJE:** That is correct.

CHAIRPERSON: Yes and did you tell him it is out - it was out of your hands by then or something ...

DIRECTOR NJENJE: No. He knew.

CHAIRPERSON: To that effect?

DIRECTOR NJENJE: He knew Chairman.

CHAIRPERSON: He knew that you handed this over?

DIRECTOR NJENJE: That is correct. We briefed - we were briefing him about all the steps.

CHAIRPERSON: Yes. Yes.

DIRECTOR NJENJE: Up to the point when we handed over we said. The thing is now out of our hands.

CHAIRPERSON: After all he was the one who had asked you to investigate this program. Is it not?

DIRECTOR NJENJE: That is true. That is true Chair.

10 **CHAIRPERSON**: And therefore well quite apart from the fact that he had made it - he had asked you to investigate it. You kept him informed throughout the investigation.

DIRECTOR NJENJE: That is correct.

CHAIRPERSON: How far the investigation was going?

DIRECTOR NJENJE: That is correct.

CHAIRPERSON: And you told him you were about to hand over to the NPA and did you - and then you handed over and ...

DIRECTOR NJENJE: Correct.

CHAIRPERSON: And then he came and said stop?

20 **DIRECTOR NJENJE**: That is correct Chair.

CHAIRPERSON: So - so did you think that the decision that it must - did you think that what he told you namely that the President had made the decision that this investigation must not continue. Must have been right, because all along he wanted the investigation to happen himself?

DIRECTOR NJENJE: That is correct.

CHAIRPERSON: That is what you -you thought? That is what you thought that he must have been right that it was somebody else who made the decision. Not him, because along he wanted you to investigate?

DIRECTOR NJENJE: That is correct Chair.

CHAIRPERSON: Yes. Okay.

ADV PAUL PRETORIUS SC: Did you then report back to your investigators how had been involved in this investigation?

DIRECTOR NJENJE: Yes. I did. I - I went back to the team. I called
10 them in and I told them that fellows we have an instruction to cease this - and - and call this thing off. We have got to go and - and inform whoever our - our partners are at SIU and - and NPA. That we have an instruction.

ADV PAUL PRETORIUS SC: Was this an easy task?

DIRECTOR NJENJE: Certainly not. It was not an easy task. Chair people had worked for months. Long hours. Painstakingly and at times there was even risk to their lives when they were busy performing.

ADV PAUL PRETORIUS SC: In paragraph 24 of your statement
20 Director you talk of an Intelligence Operation involving relations between Pretoria and Kigali and the Caribbean's. It is not necessary to go into the details there, but at a stage were you summonsed to Cape Town to report on this matter or matters related to this?

CHAIRPERSON: Let me just finish on the other one Mr Pretorius before we move onto that one. So, but did you not tell Minister Cwele in regard to the PAN Programme investigation that well Minister maybe

if you had told me before we handed the files over to the NPA I would stop - would stop the investigation, but it is with the NPA now.

The files are with the NPA the dockets. Only the NPA can decide whether to prosecute or not to prosecute. We are done with the investigation. We have handed over everything. There is nothing we can do. Did you not tell them?

DIRECTOR NJENJE: Maybe I did not use the same words Chair, but I - I said that so much has gone into this here and - and we have submitted. It is now with the NPA. He said well it is the President's
10 instruction. It is not my instruction. It is the President who says that this is going to cause problems for National Security if this goes on.

CHAIRPERSON: But what I am looking at is whether your answer should not been. I have no power to tell the NPA not to prosecute if they believe that the material we have handed over to them is enough for them to prosecute.

DIRECTOR NJENJE: I am not sure what he was going to say Chair. If he was not going to say you gave those people the documents. Go get them.

CHAIRPERSON: No, but I am just thinking you are not going to - you
20 are not going to agree to do something. You have got no power to do. Is it not?

DIRECTOR NJENJE: That is correct.

CHAIRPERSON: So all you would be telling him is the reality or the fact that you have power on the investigation while the investigation is not complete.

DIRECTOR NJENJE: Right.

CHAIRPERSON: Once you have handed over the - the files it is up to the NPA to decide or am I mistaken on - on your power?

DIRECTOR NJENJE: Well Chair as I say I - I had these advocates as well advising me those investigators. When I told them that this is the situation and that the President has decided that we call this thing off. Everyone was gobsmacked, but they went out and - and got the documentation back from the NPA and they brought it back.

CHAIRPERSON: And the NPA then did not prosecute?

10 **DIRECTOR NJENJE:** No prosecution.

CHAIRPERSON: Yes and they too were told that it is because the President has decided that there should be no further investigation or prosecution in this matter?

DIRECTOR NJENJE: I - I told my team. I am not sure what they said when they went to ...

CHAIRPERSON: Yes. Yes. Yes.

DIRECTOR NJENJE: To interact.

CHAIRPERSON: But that is what you told your team?

DIRECTOR NJENJE: I told them.

20 **CHAIRPERSON:** Okay.

DIRECTOR NJENJE: Yes.

CHAIRPERSON: So you were not the one who would interact with the NPA.

DIRECTOR NJENJE: No.

CHAIRPERSON: It was somebody within your team?

DIRECTOR NJENJE: It was somebody in the team.

CHAIRPERSON: Yes.

DIRECTOR NJENJE: That is correct.

CHAIRPERSON: Okay, but your understanding would be that he probably would have relayed what you relayed to him and others.

DIRECTOR NJENJE: That is correct.

CHAIRPERSON: Yes. Okay.

ADV PAUL PRETORIUS SC: The ...

CHAIRPERSON: Well maybe I should just say it would be good if we
10 were to get the case numbers and whatever relating to this particular ...

ADV PAUL PRETORIUS SC: Yes. We will deal with it.

CHAIRPERSON: Matter. *Ja*.

ADV PAUL PRETORIUS SC: You did say that the documentation was
handled - handed to the SIU?

DIRECTOR NJENJE: Correct. I did say Chair.

ADV PAUL PRETORIUS SC: And to - you said to whom was the
documentation handed?

DIRECTOR NJENJE: To the SIU.

ADV PAUL PRETORIUS SC: To the SIU?

20 **DIRECTOR NJENJE:** Correct.

CHAIRPERSON: And the NPA or only the SIU?

DIRECTOR NJENJE: The SIU ...

CHAIRPERSON: The SIU.

DIRECTOR NJENJE: The SIU was going to ...

CHAIRPERSON: Being part of ...

DIRECTOR NJENJE: Yes.

CHAIRPERSON: Okay. Alright.

DIRECTOR NJENJE: Because Chair at that time they were looking at seizures.

CHAIRPERSON: Okay.

ADV PAUL PRETORIUS SC: It is not necessary to go into the detail of our investigations into the relationship with Kigali - between Pretoria and the Caribbean. Those issues, but as I understand it you were summoned to Cape Town by the Minister to report on related matters in
10 a meeting with the President?

DIRECTOR NJENJE: That is correct.

ADV PAUL PRETORIUS SC: Did that meeting ever happen?

DIRECTOR NJENJE: It never happened.

ADV PAUL PRETORIUS SC: What did you conclude from the fact that you were summoned to report on a matter, but the meeting never happened?

DIRECTOR NJENJE: I thought - I just need to refresh my memory.

ADV PAUL PRETORIUS SC: Sure. Well it is in paragraph 24.

DIRECTOR NJENJE: 24.

20 **ADV PAUL PRETORIUS SC:** Middle of the page.

DIRECTOR NJENJE: Yes. When we - when the meeting with the President was not materialising. I said to the Minister that maybe I should - I should return to Pretoria, because I had stayed there for about two days and I was - I was the -the DG for domestic branch. I have got work to do. He then told me here in a meeting - we are sitting

there. He says that ...

CHAIRPERSON: Your mic.

DIRECTOR NJENJE: Sorry. He told me that he had recommended to the President that he appoints me as Ambassador for South Africa in Rwanda. I - I responded to - to the Minister. I said to the Minister that - that I never came here to become a - to be - to be told that I should be an Ambassador.

I said I came here, because I - I was asked to - to come in here and now you are telling me that you - you have recommended. I -
10 I cannot understand that and then I left. I - I returned to Pretoria after that short meeting.

ADV PAUL PRETORIUS SC: Were you then called to the Office of the Minister a few days later?

DIRECTOR NJENJE: That is correct.

ADV PAUL PRETORIUS SC: And what happened at that meeting?

DIRECTOR NJENJE: At the meeting the Minister asked if I had considered his - his recommend - the recommendation that he was going to make to the President. By that time I had already prepared my resignation letter when I went to see him.

20 **CHAIRPERSON:** Roundabout when was this? 2012?

DIRECTOR NJENJE: This is about September or so in 2011.

CHAIRPERSON: 2011?

DIRECTOR NJENJE: That is correct.

CHAIRPERSON: Yes.

DIRECTOR NJENJE: So - this was in November 2011. I told him that

he is no Minister of Foreign Affairs and in any event those appointments are Presidential ...

CHAIRPERSON: Appointments?

DIRECTOR NJENJE: Appointments. It is not - it is not his - it is not his job. His job is Intelligence. He should be focused on building Intelligence. I - I gave him the - the resignation letter to say that I had not come here to ask for a job. He - he approached me. Did not approach me to become an Ambassador. Approached me to become Head of Intelligence for domestic branch.

10 **CHAIRPERSON:** Well before Mr Pretorius moves on. I just do not want to forget this part. I am taking you back to what the Minister told you I think you said at the airport about the PAN Programme Investigation. He said it was the President decision that the investigation should not be pursued, because something along the lines that it was a threat to National Security or because of National Security. Is that right?

DIRECTOR NJENJE: That is what he said. Yes.

CHAIRPERSON: Now did he disclose to you any details on National Security bearing in mind that from your very position as I understand it. You deal with issues of National Security and I therefore I would expect
20 that he could feel free to tell you what that was about.

DIRECTOR NJENJE: He did not and I think he could not, because he knew that I would know what is National Security.

CHAIRPERSON: Yes.

DIRECTOR NJENJE: Actually the very breach itself that we - we were in ...

CHAIRPERSON: Hm.

DIRECTOR NJENJE: Was - was National Security compromised ...

CHAIRPERSON: Yes.

DIRECTOR NJENJE: And the people just spent money as they were doing.

CHAIRPERSON: Yes. So in your job in Intelligence you dealt with issues of National Security. If there was anything in the investigation that you were doing which could pose a threat to National Security. You would have picked it up or your team would have picked it up?

10 **DIRECTOR NJENJE:** That is correct, sir.

CHAIRPERSON: Yes.

DIRECTOR NJENJE: That is correct Chair.

CHAIRPERSON: Okay. So you - you are able to say as far as you are concerned it is highly unlikely that there was any issue of National Security that was raised by the investigation or are you not able to say? Okay. Let me rephrase that.

DIRECTOR NJENJE: There was - there was no - there was no issue of National Security.

CHAIRPERSON: Yes.

20 **DIRECTOR NJENJE:** There was no such consideration.

CHAIRPERSON: And is there - is there no possibility that the President being President he might know that there some National Security issues that even the Intelligence will not know about?

DIRECTOR NJENJE: He is advised by us ...

CHAIRPERSON: Yes.

DIRECTOR NJENJE: On National Security issues.

CHAIRPERSON: Yes.

DIRECTOR NJENJE: The President gets - gets his advice from us. We are - we are his experts on National Security.

CHAIRPERSON: You are the ones who look what is threatening National Security and then you advise him?

DIRECTOR NJENJE: That is correct.

CHAIRPERSON: And here you are able to say there was no issue of National Security?

10 **DIRECTOR NJENJE:** None whatsoever Chair. Maybe I - I can just add here to say that about three years thereafter Mr Fraser was reappoint - was appointed now the DG of SSA as - by President Zuma.

CHAIRPERSON: I am sorry. Who was appointed?

DIRECTOR NJENJE: Mr Arthur Fraser the one that ...

CHAIRPERSON: Yes.

DIRECTOR NJENJE: He was appointed some three years later.

CHAIRPERSON: Yes. Yes.

DIRECTOR NJENJE: Yes. By - by President Zuma.

CHAIRPERSON: Yes and - okay. Alright. Thank you.

20 **ADV PAUL PRETORIUS SC:** Two matters Chair and very close to the line, but if I may deal with them before we adjourn. In paragraph 26 you ...

CHAIRPERSON: Well - well we said 5 o' clock. We are half past four or has something changed?

ADV PAUL PRETORIUS SC: No. I hope that in the next 20 minutes ...

CHAIRPERSON: Oh. Okay. No. That is fine.

ADV PAUL PRETORIUS SC: Yes. Otherwise I am ... (intervenes).

CHAIRPERSON: No. I - I was thinking maybe we are not on the same page. I was thinking maybe you are thinking about finishing at half past four.

ADV PAUL PRETORIUS SC: Yes. So what I am saying is. I hope that in the next 20 minutes.

CHAIRPERSON: Ja. Okay.

ADV PAUL PRETORIUS SC: I can finish the next two issues ...

10 **CHAIRPERSON:** Ja.

ADV PAUL PRETORIUS SC: And I will try my best Chair. In paragraph 26 you relate an incident that occurred in 2011 which incident began at the Cabinet Lekgotla. What happened?

DIRECTOR NJENJE: Before lunch at Cabinet Lekgotla which was held at Bryntirion Estate, Advocate Nogxina walked up to me, or we were walking out together to – for lunch.

ADV PAUL PRETORIUS SC: That is N-o-g-x-i-n-a?

DIRECTOR NJENJE: That's correct. He told me that the Minister, his Minister, Miss, Minister Shabangu, Susan Shabangu, was going to meet
20 with the Gupta's and both were feeling uncomfortable but they were going to meet Ajay Gupta and they were going to meet him at the Sheraton Hotel, which is not far from where we were. He asked if I would want to join, I said I have got no problem, he said because we want you to kind of come and block us, to block these guys off us.

CHAIRPERSON: I'm sorry, just repeat that.

DIRECTOR NJENJE: I said he asked me to accompany, he asked if I had a problem to accompany him and her and his Minister so that I could provide some security.

CHAIRPERSON: To the meeting with Ajay Gupta?

DIRECTOR NJENJE: Ajay Gupta correct.

CHAIRPERSON: Yes, at the Sheraton Hotel?

DIRECTOR NJENJE: At the Sheraton Hotel.

CHAIRPERSON: Ja, and what was your response?

DIRECTOR NJENJE: I said I have got no issue, if your Minister
10 agrees I will come along.

CHAIRPERSON: But did you say something about what Mr Nogxina said, what role you would play?

DIRECTOR NJENJE: Yes they had been under some pressure, him and the Minister from the Gupta's, and he wanted me to come in so that I could minimise that bullying.

CHAIRPERSON: Oh, so other people were under pressure again, ja, right. So you agreed you said if the Minister agrees?

DIRECTOR NJENJE: I said if his Minister agrees I will accompany them. So after we – after eating we saw the Minister walk, the
20 Minister agreed, when we were dishing up we spoke to her, she said no, no, she is happy that I must come.

ADV PAUL PRETORIUS SC: Sorry just before you go on Director I don't know, I might have missed it, but did Mr Nogxina tell you what the concerns of Minister Shabangu were?

DIRECTOR NJENJE: Yes he said something like these guys are

pressuring, they are pushing, they are pushing for something, I think it was some rights that they wanted.

CHAIRPERSON: Some rights?

DIRECTOR NJENJE: Mineral rights.

CHAIRPERSON: Mineral rights?

DIRECTOR NJENJE: Correct sir.

CHAIRPERSON: Okay, right.

ADV PAUL PRETORIUS SC: These guys being?

DIRECTOR NJENJE: This Ajay Gupta.

10 **CHAIRPERSON**: Yes, okay. So you then – oh you were saying you saw the Minister ...[intervenes]

DIRECTOR NJENJE: We saw the Minister talk here, whispering something in the President's ear, he was still sitting at the table and he spoke for a short while and she came over, and when she came over she said you guys don't know, we are not meeting at Sheraton, so Nogxina asked so where are we meeting, oh we are meeting at the President's place at Mahlamba Ndlopfu, the President knows that guy is waiting for us, Ajay Gupta is waiting for her there at Mahlamba Ndlopfu.

CHAIRPERSON: Oh, hmm. So she said the meeting was going to take
20 place at the President's official residence, Mahlamba Ndlopfu?

DIRECTOR NJENJE: That is what the President told her. When she went to inform the President that she has got a meeting, she was requesting for leave to attend a meeting the President said I know about the meeting and then he further told her that actually the meeting is Mahlamba Ndlopfu.

CHAIRPERSON: Oh so she heard from the President that the venue is Mahlamba Ndlopfu.

DIRECTOR NJENJE: Correct.

CHAIRPERSON: And not the Sheraton Hotel?

DIRECTOR NJENJE: That's correct.

CHAIRPERSON: Okay so she was telling, the Minister was telling you and Mr Nogxina.

DIRECTOR NJENJE: That is correct.

CHAIRPERSON: Yes, okay.

10 **DIRECTOR NJENJE:** So we walked, there was no need for us to get a car now to Sheraton, we walked to Mahlamba Ndlopfu which is just around the corner.

CHAIRPERSON: Yes.

DIRECTOR NJENJE: When we got there the door was opened and here came Ajay here in the passage to ...[intervenes]

CHAIRPERSON: So you were received by Mr Ajay Gupta?

DIRECTOR NJENJE: Correct.

CHAIRPERSON: At the official residence of the President.

DIRECTOR NJENJE: That is correct.

20 **CHAIRPERSON:** Hmm.

DIRECTOR NJENJE: And he led us to the President's study.

CHAIRPERSON: To the President's study?

DIRECTOR NJENJE: That is correct.

CHAIRPERSON: Hmm.

DIRECTOR NJENJE: And that is where the meeting was held.

ADV PAUL PRETORIUS SC: Before we go on was there any representative of the President that ushered you into the study who ushered you into the study?

DIRECTOR NJENJE: It was Mr Ajay Gupta.

CHAIRPERSON: Was he with anybody – was he in the company of anybody as he received you at the President's official residence and took you to the study or was he all by himself?

DIRECTOR NJENJE: The person who opened the door is the ...[intervenes]

10 **CHAIRPERSON:** Was Mr Ajay Gupta?

DIRECTOR NJENJE: No it is the butler, it is somebody who is staying at the Presidency.

CHAIRPERSON: Oh okay, yes.

DIRECTOR NJENJE: Ajay came and fetched us to the study.

CHAIRPERSON: Yes.

DIRECTOR NJENJE: There was nobody else in the study.

CHAIRPERSON: There was nobody else.

DIRECTOR NJENJE: No.

CHAIRPERSON: Okay, yes?

20 **ADV PAUL PRETORIUS SC:** What happened at the meeting in the study?

DIRECTOR NJENJE: The meeting started and Ajay started to make these demands that Minister I have been waiting on these things and you know – and he was changing his voice was like talking – talking down on the Minister, this is what I said I need and I don't know why

things are taking so long for you guys to do this. So I felt like no man
...[intervenes]

CHAIRPERSON: What was the seating arrangement in – this was the
President's study?

DIRECTOR NJENJE: That's correct.

CHAIRPERSON: Were you sitting on couches?

DIRECTOR NJENJE: We sat on the couches, at least no one sat on
the President's chair.

CHAIRPERSON: Mmm?

10 **DIRECTOR NJENJE**: I say Chair at least no one sat on the
President's Chair.

CHAIRPERSON: No one sat on the President's Chair?

DIRECTOR NJENJE: No we sat on the couches.

CHAIRPERSON: Okay, yes. Okay so he started speaking and you say
he was speaking down on the Minister

DIRECTOR NJENJE: He was, he was and I interjected I said Ajay
...[intervenes]

CHAIRPERSON: Ja. Did you understand the subject of the discussion,
was it the mineral rights, what mineral rights were it and so on?

20 **DIRECTOR NJENJE**: I did not follow the subject of discussion Chair I
was just watching what was going to go on and of course when he was
talking down on the Minister I interjected I said Ajay this is a
government minister, she represents the people of South Africa, I think
you should have a way of addressing yourself. He said sorry sir, sorry
sir, but he then continued to nag and nag and nag and Nogxina said we

have got to rush back to the Legotla we will get back to you.

CHAIRPERSON: So the meeting did not last long?

DIRECTOR NJENJE: It did not last long Chair.

CHAIRPERSON: And what was the response of the Minister and/or Mr Nogxina to whatever he had to say?

DIRECTOR NJENJE: Nogxina said there are processes and Minister cannot take short cuts and Minister said we will get back to you when we have done our work properly.

CHAIRPERSON: But he was saying he did not understand why
10 whatever he wanted was taking long.

DIRECTOR NJENJE: He felt like things were taking long and he wanted them to be done immediately.

CHAIRPERSON: Yes.

DIRECTOR NJENJE: Yes.

CHAIRPERSON: So but it looks like Mr Nogxina knew that you would be needed at that meeting. Yes Mr Pretorius?

ADV PAUL PRETORIUS SC: In summary it appears that in the President's study and with the knowledge of the President according to our evidence, at least with the knowledge of the President that you
20 were at his residence Mr Gupta was demanding certain concessions at least from Minister Shabangu?

DIRECTOR NJENJE: That's correct.

CHAIRPERSON: Relating to mineral rights.

DIRECTOR NJENJE: That is correct Chair.

CHAIRPERSON: Hmm. Did you get to understand why the meeting

was held at the President's residence when the President was not there and well I don't know whether there was something special about holding it in the study as well. I'm sure the President has got some meeting rooms and so on.

DIRECTOR NJENJE: I think Chair it was a manner of showing how powerful they are.

CHAIRPERSON: Hmm, hmm.

DIRECTOR NJENJE: Showing to a Minister of Government that she can be called to the President's study without, in the absence of the
10 President.

CHAIRPERSON: Hmm, hmm.

ADV PAUL PRETORIUS SC: Thank you Chair. We should just place on record that the planned investigation was later resuscitated.

DIRECTOR NJENJE: That is correct.

ADV PAUL PRETORIUS SC: And you were involved to an extent in that?

DIRECTOR NJENJE: That is correct Chair.

ADV PAUL PRETORIUS SC: Yes, I don't want to go into any detail at the moment because that must be the subject matter of a
20 supplementary statement because it implicates others to whom notices have not been issued, but I take it you will assist us in the future if necessary.

DIRECTOR NJENJE: That is correct.

ADV PAUL PRETORIUS SC: One more topic please ...[intervenes]

CHAIRPERSON: Well what I can ask is when was it resuscitated?

DIRECTOR NJENJE: In 2018.

CHAIRPERSON: In 2018?

DIRECTOR NJENJE: Correct.

CHAIRPERSON: Midyear, towards the end of the year, are you able to say?

DIRECTOR NJENJE: It was – it started I think mid-year, actually it was also part of the high level panel review, high level review panel that was led by Dr Mofamate, but State Security also did a – they resuscitated that which was closed.

10 **CHAIRPERSON:** Okay, okay, thank you.

ADV PAUL PRETORIUS SC: Just briefly Mr Njenje can we deal with another topic, from 1979 to 1994 you say that you worked for the ANC Intelligence Operation.

DIRECTOR NJENJE: That is correct Chair.

ADV PAUL PRETORIUS SC: Information relevant to the work of Intelligence in the ANC in your capacity as an operative would that have come to your knowledge?

DIRECTOR NJENJE: Please repeat the question.

20 **ADV PAUL PRETORIUS SC:** Information relating to the operations of the ANC would you have received knowledge of that? In your capacity as an operative during that period?

DIRECTOR NJENJE: Yes especially Chair when I became the Deputy of Dr Sizakele Siglashe who was the Head of Information and Processing of the ANC.

ADV PAUL PRETORIUS SC: Information regarding threats to the ANC

Intelligence Operation and in particular infiltrators or enemy agents for want of a better phrase would that have been within your scope of knowledge?

DIRECTOR NJENJE: That is correct Chair.

ADV PAUL PRETORIUS SC: Knowledge of these threats both to personnel in the ANC, as a result of infiltration, and knowledge of infiltrators and information about infiltrators would that knowledge have been confined to the former President.

DIRECTOR NJENJE: No.

- 10 **ADV PAUL PRETORIUS SC:** Did you ever come to learn of a plot or conspiracy by three intelligence agencies, including a South African one, and this is prior to 1995, that targeted the former President?

DIRECTOR NJENJE: No.

ADV PAUL PRETORIUS SC: Had such a operational plot existed would you in the course of your duties have expected to come to learn of it?

DIRECTOR NJENJE: I think so yes.

- ADV PAUL PRETORIUS SC:** Your relationship with the former President at the time personnel returned from exile and took up
20 activities in South Africa what was our relationship with the former President?

DIRECTOR NJENJE: It was a good relationship Chair, I started to know the President closely from about 1980, and in 1990 when the ANC decided on a team to come and check if there was good chances for a negotiated settlement I was part of the three that the ANC sent to the

country, we were led by Jacob Zuma and the two accessories was myself and Penno Maduna.

ADV PAUL PRETORIUS SC: Did your work, I think you mentioned it, involve the provision of security to the ANC leadership, including former President Zuma?

DIRECTOR NJENJE: That is correct.

ADV PAUL PRETORIUS SC: Knowledge of any threats to the leadership was that essential to your work?

DIRECTOR NJENJE: It was.

10 **ADV PAUL PRETORIUS SC:** Had President Zuma received information about threats what was his duty in relation to you and your tasks?

DIRECTOR NJENJE: He would have had to inform us that there was a threat to his life and we would then take counter measures to assist.

ADV PAUL PRETORIUS SC: Did he ever inform you of that?

DIRECTOR NJENJE: No, not that I can remember.

ADV PAUL PRETORIUS SC: Is there any reason at the time that he would not have told you of any threats?

DIRECTOR NJENJE: There is no reason.

ADV PAUL PRETORIUS SC: Thank you Chair, that is all.

20 **CHAIRPERSON:** Thank you very much Director Njenje we appreciate the fact that you came to give evidence to share what you know with the Commission, we appreciate it very much.

DIRECTOR NJENJE: Thank you.

CHAIRPERSON: As I said in regard to – as I said to Mr Shaik I hope that your decision to come forward to help the Commission and share

what you know with the Nation will inspire other current and former Directors General, Deputy Directors, Generals and other senior officials and Ministers to come forward who have knowledge of various matters that may be important to be placed before the Commission.

I appreciate that you came, thank you very much.

DIRECTOR NJENJE: Thank you Chair.

CHAIRPERSON: You are excused.

DIRECTOR NJENJE: Thank you.

CHAIRPERSON: Yes Mr Pretorius, you had a third witness lined up

10 **ADV PAUL PRETORIUS SC:** Yes, as discussed in chambers Chair he will not be giving evidence, at least this week, but I will discuss it with you perhaps tomorrow or the following day, and certain administrative matters that must be attended to.

CHAIRPERSON: Okay, but he will be testifying in due course?

ADV PAUL PRETORIUS SC: In due course he will testify certainly Chair.

CHAIRPERSON: *Ja*, okay.

ADV PAUL PRETORIUS SC: The only question is when these for want of a better word, I'm using Euphemism, the administrative matters can
20 be attended to, but I will talk to you a bit later.

CHAIRPERSON: Okay, now that's fine. Alright, we are going to adjourn then for the day, tomorrow I will hear evidence from an expert who will give evidence ...[intervenes]

ADV PAUL PRETORIUS SC: Mr Chabi.

CHAIRPERSON: Mr Chabi concerning certain actuarial and financial

matters relating to Transnet about transactions that happened at Transnet about which I have been told, so he will give evidence tomorrow.

As for today we will adjourn now. We adjourn.

ADV PAUL PRETORIUS SC: Thank you Chair.

REGISTRAR: All rise.

INQUIRY ADJOURNS TO 27 NOVEMBER 2019