

COMMISSION OF INQUIRY INTO STATE CAPTURE

HELD AT

PARKTOWN, JOHANNESBURG

10

03 DECEMBER 2019

DAY 195

20

PROCEEDINGS RESUME ON 3 DECEMBER 2019

CHAIRPERSON: Good morning Ms Norman.

ADV THANDI NORMAN SC: Good morning.

CHAIRPERSON: Good morning everybody.

ADV THANDI NORMAN SC: Good morning Mr Chairman.

CHAIRPERSON: Yes. We are going to start with ...

ADV THANDI NORMAN SC: With the applications Chair.

CHAIRPERSON: Applications for Leave to Cross-examine.

ADV THANDI NORMAN SC: Yes Chair. Thank you.

10 **CHAIRPERSON:** Yes. I am going to take each one of these here I think there are about six of them.

ADV THANDI NORMAN SC: Yes.

CHAIRPERSON: And announce my decision in regard to each one of them.

ADV THANDI NORMAN SC: Yes Chair.

CHAIRPERSON: I – are – do you know whether there are any lawyers representing any of ...

ADV THANDI NORMAN SC: There are for Mr Agrizzi.

CHAIRPERSON: Oh let us get them.

20 **ADV THANDI NORMAN SC:** Yes thank you.

CHAIRPERSON: Or maybe what we will do is as I call the matter if there are lawyers representing anyone they will come forward, place themselves on record.

ADV THANDI NORMAN SC: Yes.

CHAIRPERSON: Before I announce the decision.

ADV THANDI NORMAN SC: Yes Chair. Thank you.

CHAIRPERSON: Yes. Okay. I am going to start with the application of Mr Mbulelo Babalo Gingcana who seeks Leave to Cross-examine Mr Richard Le Roux.

ADV THANDI NORMAN SC: Yes thank you.

CHAIRPERSON: There is nobody.

ADV THANDI NORMAN SC: There is no representation here but I can confirm that Mr Gingcana and everyone else who is involved in the matter they were all notified.

10 **CHAIRPERSON:** They were all notified?

ADV THANDI NORMAN SC: Yes. Yes thank you. In fact that applies to all the applications Chair.

CHAIRPERSON: Yes okay alright.

ADV THANDI NORMAN SC: Yes thank you.

CHAIRPERSON:

1. In regard to this matter Mr Mbulelo Babalo Gingcana is hereby granted Leave to Cross-examine Mr Richard Le Roux. That is one.

20 2. The amount of time that will be allowed for the cross-examine of Mr Richard Le Roux by Mr Gingcana or his counsel will be determined at a later date.

ADV THANDI NORMAN SC: As Chair pleases.

CHAIRPERSON: Okay. The next one is – this is an Application by Brigadier Nyameko Xaba.

ADV THANDI NORMAN SC: Yes.

CHAIRPERSON: Who has applied for Leave to Adduce Evidence in response to the evidence of Mr Innocent Khuba. He has not applied for Leave to Cross-examine Mr Khuba.

ADV THANDI NORMAN SC: Yes.

CHAIRPERSON: The decision is that Brigadier Nyameko Xaba is hereby granted Leave to give evidence.

ADV THANDI NORMAN SC: As Chair pleases.

CHAIRPERSON: Hm.

10 1. This is an application by Ms Navaranjeni Munusamy for Leave to give evidence and to cross-examine Colonel Naidoo. The decision is that Ms Munusamy is granted leave to give evidence and to cross-examine Colonel Naidoo.

2. The time to be allowed for the cross-examination of Mr Naidoo will be determined at a later date.

ADV THANDI NORMAN SC: As Chair pleases.

CHAIRPERSON: The next application is an application by Mr Sedrick Thomas Frolick for Leave to give evidence to deal with Mr Agrizzi's evidence but he does not seek Leave to Cross-examine Mr Agrizzi.

ADV THANDI NORMAN SC: Mr Agrizzi is represented Chair.

20 **CHAIRPERSON:** Hm.

ADV THANDI NORMAN SC: Mr Agrizzi is represented.

CHAIRPERSON: Is he? Yes.

ADV DANIEL WITZ: Morning Chair Advocate Witz.

CHAIRPERSON: Yes.

ADV DANIEL WITZ: Instructed by Witz Incorporated. I am on behalf

of Mr Agrizzi.

CHAIRPERSON: Yes.

ADV DANIEL WITZ: And we are here to get the judgment. Thank you Chair.

CHAIRPERSON: Thank you. Thank you.

ADV THANDI NORMAN SC: Thank you Chair.

CHAIRPERSON: Mr Sedrick Frolick is hereby granted Leave to give evidence in reaction to Mr Agrizzi's evidence.

ADV THANDI NORMAN SC: As Chair pleases.

10 **ADV DANIEL WITZ:** As the Chair pleases.

CHAIRPERSON: Thank you. The next one is an application by Mr Gwede Samson Mantashe for Leave to give evidence, call witnesses and to cross-examine Mr Agrizzi.

1. The decision is that Mr Gwede Samson Mantashe is hereby granted leave to give evidence, to call witnesses and to cross-examine Mr Agrizzi.

2. The time to be allowed for the cross-examination of Mr Agrizzi will be determined at a later date.

ADV THANDI NORMAN SC: As Chair pleases.

20 **ADV DANIEL WITZ:** As the Chair pleases. Thank you.

CHAIRPERSON: Thank you. The next one is an application by – also by Mr Gwede Samson Mantashe for Leave to give evidence, to call witnesses and to cross-examine Mr Richard Le Roux. The decision is that Mr Gwede Samson Mantashe is hereby granted leave to give evidence, call witnesses and to cross-examine Mr Richard Le Roux.

ADV THANDI NORMAN SC: As Chair pleases.

ADV DANIEL WITZ: As the Chair pleases. I confirm I also appear on behalf on Mr Le Roux.

CHAIRPERSON: Yes.

ADV DANIEL WITZ: Same attorney and I accept it and we have noted the judgment.

CHAIRPERSON: Thank you.

ADV DANIEL WITZ: Thank you Chair.

CHAIRPERSON: Thank you. I have got two other files here Ms
10 Norman.

ADV THANDI NORMAN SC: Yes Chair.

CHAIRPERSON: And I am not sure whether they – notices were issued in regard to them. One is for Brigadier

ADV THANDI NORMAN SC: Ramela.

CHAIRPERSON: Ramela.

ADV THANDI NORMAN SC: Yes Chair.

CHAIRPERSON: I did not deal with that one ne?

ADV THANDI NORMAN SC: We did not Chair.

CHAIRPERSON: I did not deal with that one a few minutes ago?

20 **ADV THANDI NORMAN SC:** No you have not, no. No Chair.

CHAIRPERSON: Yes.

ADV THANDI NORMAN SC: You have not dealt with that one.

CHAIRPERSON: There is – there is that one.

ADV THANDI NORMAN SC: Yes.

CHAIRPERSON: Hm.

ADV THANDI NORMAN SC: He is simply placing his version Chair.

CHAIRPERSON: He just wants to place.

ADV THANDI NORMAN SC: Ja.

CHAIRPERSON: His version.

ADV THANDI NORMAN SC: He is not asking to lead evidence.

CHAIRPERSON: He is not – yes.

ADV THANDI NORMAN SC: He is not even asking to cross-examine.

CHAIRPERSON: Yes.

ADV THANDI NORMAN SC: Yes thank you Chair.

- 10 **CHAIRPERSON:** Yes. In regard to Mr – or Brigadier Thabo Ramela who applied for leave to simply place his version before the commission the order I make – the decision I make is that his affidavit is admitted and should the Chairperson or the commission's legal team consider it necessary to have him called to give evidence he will be called.

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

CHAIRPERSON: And then I have the application of Lieutenant General Yolisa Matakata..

ADV THANDI NORMAN SC: Yes Chair.

CHAIRPERSON: Who seeks leave to give evidence.

- 20 **ADV THANDI NORMAN SC:** Yes.

CHAIRPERSON: But not to cross-examine.

ADV THANDI NORMAN SC: No to cross-examine. That is correct Chair.

CHAIRPERSON: At least provisionally he says.

ADV THANDI NORMAN SC: Yes, yes Chair.

CHAIRPERSON: She wants to be given a chance to reconsider her election at a later stage.

ADV THANDI NORMAN SC: Yes.

CHAIRPERSON: And she is – she seeks to give evidence in regard to General Johan Booysens' evidence.

ADV THANDI NORMAN SC: Thank you Chair. And she also sought condonation Chair for the late filing of her affidavit.

CHAIRPERSON: Yes. I think I am going to postpone this one.

ADV THANDI NORMAN SC: Yes Chair.

10 **CHAIRPERSON:** Because it is not very clear to me that there is any material – serious material dispute.

ADV THANDI NORMAN SC: Yes.

CHAIRPERSON: Of – of fact in their versions. But I may have missed something.

ADV THANDI NORMAN SC: In fact Chair.

CHAIRPERSON: I was under the impression that I had asked somebody to read it.

ADV THANDI NORMAN SC: Yes.

20 **CHAIRPERSON:** And – before we could deal with it but I am – I am not sure.

ADV THANDI NORMAN SC: Yes.

CHAIRPERSON: What is your recollection?

ADV THANDI NORMAN SC: Chair – Chair my recollection – we – in respect of this one we are going to apply for that order Chair – for the reasons that General Matakata Chair would recall she makes reference

to a particular affidavit that was given to her by General Booysen but that affidavit is not attached. And for those reasons we were of the view that you did not have all the information and would have asked – we were going to ask that you – this one be postponed. Yes thank you.

CHAIRPERSON: Okay so this one will be postponed.

ADV THANDI NORMAN SC: Yes.

CHAIRPERSON: And –and sometime not later than end of this week I would like to have it back.

ADV THANDI NORMAN SC: To deal with it.

10 **CHAIRPERSON**: Have it back so that one can look at the issues. Maybe somebody in the legal team could.

ADV THANDI NORMAN SC: Yes.

CHAIRPERSON: Make short submissions on what should happen to it.

ADV THANDI NORMAN SC: We will go so Chair.

CHAIRPERSON: Ja.

ADV THANDI NORMAN SC: Thank you. Yes.

CHAIRPERSON: Ja.

ADV THANDI NORMAN SC: Thank you.

20 **CHAIRPERSON**: There is also an – an application by Ms Redi Tlhabi for leave to give evidence and to cross-examine the former President Mr Jacob Zuma.

ADV THANDI NORMAN SC: Chair just to...

CHAIRPERSON: Yes.

ADV THANDI NORMAN SC: For the record I have just – the secretariat is seated behind me. That – that particular matter did not form part of

the list of the matters that were furnished for decision today and for that reason I believe that she had notified the parties – yes.

CHAIRPERSON: Yes, no, no, no, that is fine. I am aware it was not – I am not going to give an outcome but I want to issue directions.

ADV THANDI NORMAN SC: Yes. Thank you Chair.

CHAIRPERSON: In this matter the former President did not file any affidavit to oppose the application but simply filed a notice to oppose. I do not see it here but I think I have seen – seen it. The directions I am going to issue are as follows:

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

CHAIRPERSON:

1. If the former President Mr Jacob Zuma has anything to say in opposition to Ms Redi Tlhabi's application for leave go give evidence and to cross-examine him he must deliver written submissions on or before Monday the 9th December and thereafter I will deal with the matter in a manner that I will decide after seeing whether he has filed written submissions and depending on the contents of the submissions. So I think I am going to rephrase the direction so that...

20 **ADV THANDI NORMAN SC:** Yes Chair – it is clear.

CHAIRPERSON: Okay.

ADV THANDI NORMAN SC: Yes Chair.

CHAIRPERSON:

1. If the former President Mr Jacob Zuma wishes to say anything in opposition to Ms Redi Tlhabi's application for leave to give

evidence and to cross-examine him he must deliver written submissions to the secretary on or before Monday 9 December 2019.

2. Once or rather if no written submissions are delivered to the acting secretary of the commission on or before Monday the 9th, 2019 the Chairperson will deal with the application in the manner he will deem appropriate including making a decision thereon.

3. If the former President Mr Jacob Zuma does deliver within the timeframe indicated written submissions in opposition of Ms
10 Tlhabi's application the Chairperson will take account of the written submissions and either announce the outcome thereof as soon as possible thereafter or invite Mr Tlhabi if necessary to respond to those written submissions in which case the matter will be decided at a later date.

ADV THANDI NORMAN SC: As Chair pleases.

CHAIRPERSON: Thank you.

ADV THANDI NORMAN SC: Yes thank you Chair.

CHAIRPERSON: I would like you to make sure that the directions in regard to this matter of Ms Redi Tlhabi.

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

CHAIRPERSON: Are sent out today.

ADV THANDI NORMAN SC: Yes Chair we will...

CHAIRPERSON: Because – ja – ja.

ADV THANDI NORMAN SC: May we just approach you around teatime?

CHAIRPERSON: Yes.

ADV THANDI NORMAN SC: So that Chair would have [indistinct].

CHAIRPERSON: That is – that is fine.

ADV THANDI NORMAN SC: Thank you Chair.

CHAIRPERSON: That is fine.

ADV THANDI NORMAN SC: Yes thank you. Chair may I then...

CHAIRPERSON: Ja.

ADV THANDI NORMAN SC: If that is the end of the applications may we then be excused and ...

CHAIRPERSON: Yes, no before that I think I must just say.

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

CHAIRPERSON: That with regard to applications for leave to cross-examine I just want to say because there will be representatives of parties who are in – in the hearing or there may be others watching or listening that it is possible that in all of them or in some of them I may direct that the implicated person who has applied for leave to cross-examine.

ADV THANDI NORMAN SC: Yes.

CHAIRPERSON: A witness should give evidence first.

ADV THANDI NORMAN SC: Yes.

20 **CHAIRPERSON:** And subject himself or herself to questioning by the commission's legal team before embarking on cross-examination.

ADV THANDI NORMAN SC: Yes.

CHAIRPERSON: And if anyone of the persons who have been granted leave to cross-examine today has any objection or difficulty with such a procedure they must indicate that they have such an objection by no

later than Friday next week. In which case their objections would receive due consideration. But if there are no objections it will be taken that they have no difficulty with that approach.

ADV THANDI NORMAN SC: Yes.

CHAIRPERSON: The approach simply would seek to make sure that as far as possible the legal team is and the Chairperson are aware of how wide the disputes of fact between the versions of the witness and the implicated persons are before the implicated person cross-examines the witness. It is hoped that that could help shorten the cross-
10 examination if both the witness and the implicated person have given evidence and subjected themselves to questioning.

ADV THANDI NORMAN SC: Yes.

CHAIRPERSON: By the legal team.

ADV THANDI NORMAN SC: Yes Chair.

CHAIRPERSON: So it is not final but that is what is envisaged could happen in some of the applications or in all of them.

ADV THANDI NORMAN SC: Yes.

CHAIRPERSON: But anyone who may have difficulty must give notice as indicated.

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

CHAIRPERSON: Thank you. You are excused.

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

CHAIRPERSON: Yes thank you.

ADV DANIEL WITZ: Thank you Chair may I also be excused at this [indistinct]?

CHAIRPERSON: Yes you are excused.

ADV DANIEL WITZ: Thank you.

CHAIRPERSON: Thank you. Will you manage without any adjournment?

ADV KATE HOFMEYR: I think we will Chair.

CHAIRPERSON: Okay.

ADV KATE HOFMEYR: We are pretty prepared.

CHAIRPERSON: Okay.

ADV KATE HOFMEYR: Ms Oliphant is going to be our first witness
10 today.

CHAIRPERSON: Yes.

ADV KATE HOFMEYR: She is just getting herself set up at the...

CHAIRPERSON: Yes.

ADV KATE HOFMEYR: Witness table.

CHAIRPERSON: Okay thank you.

ADV KATE HOFMEYR: Chair if I may just in the interim deal with one
or two procedural aspects?

CHAIRPERSON: Hm.

ADV KATE HOFMEYR: Ms Oliphant's affidavit you will find in the file
20 before...

CHAIRPERSON: Just one second.

ADV KATE HOFMEYR: Certainly Chair.

CHAIRPERSON: I do not know whether it is the – something technical
but you not as audible as you ought to be. I do not know if it is the air
conditioner also. So let us continue I think they will – they will check

what it is.

ADV KATE HOFMEYR: Thank you Chair.

CHAIRPERSON: Yes.

ADV KATE HOFMEYR: Chair our first witness today is Ms Oliphant. Her affidavit is contained in the file before you under the third tab. May I request that we enter it into the record as Exhibit NN3?

CHAIRPERSON: The – the affidavit of Ms Nelisiwe Mildred Oliphant will be admitted as NN3 together with the annexures attached to it.

ADV KATE HOFMEYR: Thank you Chair. If I may then request that Ms
10 Oliphant be sworn in?

CHAIRPERSON: Please administer the oath or affirmation?

REGISTRAR: Please state your full names for the record.

MS OLIPHANT: Mildred Nelisiwe Oliphant.

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

MS OLIPHANT: No.

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

MS OLIPHANT: Yes.

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

MS OLIPHANT: Nkosi Ngisize.

CHAIRPERSON: Thank you. Ms Oliphant I heard that you said Nkosi Ngisize. Are you going to give evidence in Isi-Zulu or in English?

MS OLIPHANT: I can – I can mix Chairperson.

CHAIRPERSON: Okay alright.

MS OLIPHANT: Thank you.

ADV KATE HOFMEYR: Thank you Chair. Ms Oliphant just to orientate you. In front of you should be a file containing your affidavit, have you located that?

MS OLIPHANT: Yes.

ADV KATE HOFMEYR: Thank you. We will be focusing in the main on that affidavit today but we will also be dealing with another file which
10 should be in front of you and on the spine it is marked NN5. Do you have that readily to hand?

MS OLIPHANT: Yes I do.

ADV KATE HOFMEYR: Thank you. Ms Oliphant in advance of today towards the end of last week you were sent some of the documents to which I propose to make reference today from NN5. Can you confirm receiving those documents?

MS OLIPHANT: Yes I did.

ADV KATE HOFMEYR: Thank you. Ms Oliphant if you could then please go to Exhibit NN3 which contains your affidavit?

20 **MS OLIPHANT:** Yes.

ADV KATE HOFMEYR: And can you confirm that this is an affidavit you provided to the commission? If you go to page 9 it indicates that it was signed on the 7 October 2019, is that correct?

MS OLIPHANT: Yes that is correct.

ADV KATE HOFMEYR: And why did you provide the affidavit to the

commission?

MS OLIPHANT: It is because I received a letter from the Chairperson saying I must come and give the evidence on the matter.

ADV KATE HOFMEYR: Thank you. I would like to pick it up at paragraph 3 on page 1 of Exhibit NN3. Because there you start to give the background of your time in public service. Can you please tell the Chair about that?

MS OLIPHANT: Yes. I was elected as a member of the Legislature in 1994 to 1999 and from 1999 I was elected as the member of the
10 National Assembly up until 2004. And from 2004 to 2009 I was elected as a member in the National Council of Provinces. And from 2009 up until 2014 I was a member of the National Assembly. And while I was in the National Assembly in 2009 I was elected as – or I was appointed as the House Chair on International Relations up until the 1 November 2010 when I was deployed as the Minister of Labour.

ADV KATE HOFMEYR: And for how long did you hold the position of Minister of Labour?

MS OLIPHANT: Since 2010 until 2019.

ADV KATE HOFMEYR: Thank you. I think in paragraph you say until
20 May of 2019, is that correct?

MS OLIPHANT: Yes May 2019.

ADV KATE HOFMEYR: Thank you. I would then like to move over the page to page 2 of Exhibit NN3 because at paragraph 4 there you start to recount your appointment as Minister of Labour.

MS OLIPHANT: Yes.

ADV KATE HOFMEYR: There is one point of clarification I just need to ask you. Your paragraph 4 there begins:

“On Saturday 29 October 2010.”

Do you see that?

MS OLIPHANT: Yes.

ADV KATE HOFMEYR: I have gone back and looked at a diary from 2010 and Saturday was actually the 30 October. So can you just clarify for us is what occurred at paragraph 4, something that occurred on the Saturday in which case we would need to make a correction to the date
10 to bear 30 October or was it something that happened on the preceding Friday which would have been the 29 October?

MS OLIPHANT: Maybe we have to change the dates to the 30 October because I arrived on Saturday from China where there was a delegation of Parliament led by the speaker of Parliament then Mr Sisulu.

ADV KATE HOFMEYR: Thank you. Chair if I may then make the suggestion that we simply change the date on paragraph 4 to be the 30 October and then Ms Oliphant there would be a consequent change it seems to me also at paragraph 5.

MS OLIPHANT: Yes.

20 **ADV KATE HOFMEYR:** Because at paragraph 5 you talk about Sunday and we would need to change that date to the 31 October.

MS OLIPHANT: Yes.

ADV KATE HOFMEYR: Do you confirm that as correct?

MS OLIPHANT: Yes.

CHAIRPERSON: Okay. That is fine.

ADV KATE HOFMEYR: Thank you Chair.

CHAIRPERSON: Of course we not change it on the thing but I am just making a note.

ADV KATE HOFMEYR: Indeed. Indeed.

CHAIRPERSON: So we can have a supplementary later.

ADV KATE HOFMEYR: Certainly. We will attend to that.

CHAIRPERSON: Okay.

ADV KATE HOFMEYR: But for the purposes of today's evidence we can take it Ms Oliphant that the story about your appointment as
10 Minister of Labour starts on the Saturday?

MS OLIPHANT: Yes.

ADV KATE HOFMEYR: The 30 October. Can you tell us what happened then and the following day?

MS OLIPHANT: On Sunday I was called by President Zuma to say as the President of the African National Congress saying the officials of the ANC have decided to deploy me as the Minister of Labour and then he said I must come on a Monday for swearing in. After that I was phoned by Ms Lakela Kaunda to make the arrangements to come to Presidential Guesthouse - that was known as Presidential Guesthouse
20 then.

So when I arrived on Monday morning I was picked up by the - by the office - I must say by the Office of the Presidency, because they were the ones who arranged all the logistics for travelling and then when I arrived at the guesthouse there were officials from the Presidency where I was asked to look at my name in the attendance

register and then sign next to my name.

That is what I did on that day and then I was taken to the hall where we were - we were going to be sworn in as Ministers.

ADV KATE HOFMEYR: Thank you. I - I would like to go into some more detail about those events in a moment, but if I may just ask one or two things in background. In advance of today's evidence Ms Oliphant have you had an occasion to look at the transcript of or watch the evidence of Mr Manyi or Mr Maseko that has previously been received by the Commission?

10 **MS OLIPHANT:** No. I have not seen their - their evidence.

ADV KATE HOFMEYR: Thank you and just in terms of background again can you assist us with your understanding of how heads of departments are appointed under the - in the Public Service? What is your understanding of how that takes place?

MS OLIPHANT: My understanding is that when particularly the Director-General when is he going to be appointed. There will be an advertisement and then - but that will happen in consultation with the Minister for Public Service and Administration. I am raising that based on what I did when I was supposed to employ the Director-General - not
20 to employ, because it is the President that employs, but the Minister of that department will constitute the panel of Ministers that will interview those - those candidates and then after the interviews then we will recommend to the Minister for Public Service and Administration, because he is the custodian - he or she is the custodian of Public Service Act and then after that he - he will submit that proposal to the

Cabinet and then the approval will be done by Cabinet based on the recommendations by the Minister for Public Service.

ADV KATE HOFMEYR: And the transfer of a DG how does that take place on your understanding?

MS OLIPHANT: Also in my understanding is that based on the delegated powers to the Minister for Public Service and Administration. He is the one who will be - he or she will be the one who will be responsible for that process.

ADV KATE HOFMEYR: And 2 February 2011 was a Wednesday of the
10 week and it was - there was a Cabinet meeting on that day. It was the day on which the announcements of the transfers of Mr Maseko and Mr Manyi took place. Do you recall that?

MS OLIPHANT: Even if I cannot say exactly say this is what has happened, but because it is the process I do believe so and also because the announcement was made by the Spokesperson of the Cabinet. Of course that issue should be decided by Cabinet on that particular day.

ADV KATE HOFMEYR: Do you recall whether you were actually in attendance at that meeting? The Wednesday, 2 February 2011.

20 **MS OLIPHANT:** I cannot exactly recall that. That is why I said it is either I was there or not and the only way that I can find out if the Commission can request the attendance of the - the Cabinet Members ...

ADV KATE HOFMEYR: Yes.

MS OLIPHANT: From the Cabinet Secretariat. That is when it will

prove whether I was there or not, because it is - it was happen - it happened in 2010 and it is a long time ago.

ADV KATE HOFMEYR: Well in 2011.

MS OLIPHANT: I mean in 2011.

ADV KATE HOFMEYR: Thank you.

MS OLIPHANT: Yes.

ADV KATE HOFMEYR: Now I fully understand that, but for the purposes of today's evidence. Can I take it that you do not have a clear recollection of being present at that meeting?

10 **MS OLIPHANT:** For now I really do not recollect that.

ADV KATE HOFMEYR: Thank you. We spoke a moment ago about transfers of DGs. Do you understand - what - what is your understanding of any other requirements for a transfer of a DG? Are you aware of any other requirements that have to be met?

MS OLIPHANT: As I have said the - the person who should be responsible is the Minister for Public Service and Administration and that Minister can be able to give you the details on how the processes are done, because he or she is the one who leads that process.

ADV KATE HOFMEYR: And what if the particular Director-General is
20 moving from a particular department to another department. Does the Minister of either of those departments play a role in the transfer on your understanding?

MS OLIPHANT: It - it depends, because the Minister for Public Service and Administration particularly if that Minister has requested for the transfer of that particular person and also probably the receiving

Minister they will - the Minister for Public Service will be able to say what is it that has happened and what were the reasons for that. He is the one who can outline the details of that particular process.

ADV KATE HOFMEYR: Certainly. We understand that. We thankfully have Mr Baloyi who was the former Minister holding that position also giving evidence today. So we will ask about that process in due course. What we will come to in your evidence is your particular involvement insofar as the transfer of Mr Manyi is concerned, because he was - that was a transfer from your ministry to the Government
10 Communication and Information Service. You are aware of that are you?

MS OLIPHANT: Yes. I was the Minister then who was just appointed, but when I arrived in the department Mr Manyi was not there. I found the Acting Director-General which was Minister Sam Morotoba and then I was not even aware during the briefings by the department that the - the DG was dismissed. When I was trying to approach - when I was thinking of approaching the Director-General of - in the Cabinet then I received a call from Mr Jimmy Manyi, because I just received a call from a number.

20 So I asked who this is and he said he is Jimmy Manyi and he said he is intending to appeal or taking the Department of Labour to court and then I asked what the reasons are for that. He said it is because he was dismissed unfairly and then I said well unfortunately I am still new in the department. I am still getting briefing - briefings by the senior officials.

Can he wait up until I - I get the full briefing, because in that particular time Parliament was also dealing with the MTEB - I think - S no R. It is Mid-Term Budget Review - Estimate Budget Review. So I had to get that briefing, because I was supposed at a later stage to respond to those issues in Parliament and immediately after getting that call I approached for Minister Baloyi to say I have received this call and I am new in the department particularly when it comes to the Minister.

Can he assist me on the matter? Since he is the Minister for
10 Public Service and Administration and I - I did that informally, because we were just having - we part of the meeting of the Cabinet. So I informally asked him if he can look at the matter and he said he was going to look at the matter and then after getting the briefings from the officials.

Then at a later stage I decided after having the discussions with Minister Baloyi. He advised that probably I may get some information from Mr Manyi. That is when I called him to say can we have a meeting. So that I can have a full understanding on what exactly has happened. We had a meeting and then he said he was
20 dismissed unfairly and he briefly said these are the reasons for that, but even ...

ADV KATE HOFMEYR: Ms Oliphant ...

MS OLIPHANT: Yes.

ADV KATE HOFMEYR: I am - I am so sorry to interrupt you. Do you mind if I - I would like to take this a little bit slower if I may?

MS OLIPHANT: Okay.

ADV KATE HOFMEYR: Because there are aspects of the evidence that we have already received from Mr Manyi.

MS OLIPHANT: Huh-uh.

ADV KATE HOFMEYR: That occurs in the timeline that you are describing. So if I may just ask we were in ...

CHAIRPERSON: Maybe - maybe before you do that ...

ADV KATE HOFMEYR: Indeed.

CHAIRPERSON: Ms Hofmeyr. Ms Oliphant you referred to - when you
10 referred to Minister a few seconds ago with your hands you seemed to
put that in quotation marks. I just want that to be on record. Do you
want to explain that so that we know exactly why you are saying that or
are you simply referring to doing that because he was Minister then,
but is not Minister now?

MS OLIPHANT: I was referring to him as the - that is what I believe.
Yes but, because he was no longer the Minister and he was now the
Ambassador. Maybe I have to refer to him now as an Ambassador, but
then he was the Minister.

CHAIRPERSON: You - you are referring to?

20 **MS OLIPHANT:** To Minister Baloyi.

CHAIRPERSON: Okay. Alright.

MS OLIPHANT: Yes.

CHAIRPERSON: Okay. No. No. I just wanted to make sure, because
when you do that with your hands that does not go into the record.
That does not and yet you maybe attaching a certain meaning to it.

MS OLIPHANT: Okay.

CHAIRPERSON: So that - that is reason. So - so he - he was Minister at a certain time. Then later he became Ambassador ...

MS OLIPHANT: Yes.

CHAIRPERSON: And you just wanted to clarify that?

MS OLIPHANT: Maybe I must withdraw that what I was - I was doing with my hands.

CHAIRPERSON: No. As long as we understand.

MS OLIPHANT: Yes. He was the Minister then ...

10 **CHAIRPERSON:** *Ja*. Okay. No that is fine.

MS OLIPHANT: For Public Service and Administration.

CHAIRPERSON: That is fine.

ADV KATE HOFMEYR: Thank you Chair. I would like to just take you back in time ...

MS OLIPHANT: Hm.

ADV KATE HOFMEYR: Ms Oliphant, because your evidence as I have it thus far was. You were contacted on the Sunday 31 October by former President Zuma and you notified about your deployment as Minister of Labour.

20 **MS OLIPHANT:** Yes.

ADV KATE HOFMEYR: And then your evidence moved to the travel arrangements that were made. I understand you to say that happened on the Monday 1 November ...

MS OLIPHANT: Huh-uh.

ADV KATE HOFMEYR: 2010. Is that correct?

MS OLIPHANT: Yes.

ADV KATE HOFMEYR: And that is where I need to pick it up, because we have had evidence in the Commission from Mr Manyi that he in fact met you at the airport when you touched down in Johannesburg on 1 November 2010. Do you recall that?

MS OLIPHANT: No. I did not meet with him. I did not - I did not meet with Mr Manyi at the airport.

ADV KATE HOFMEYR: So when he said he met with you at the airport and he had a conversation with you at the airport and he was waiting
10 around for you. Do you say that that was false?

MS OLIPHANT: No. I - yes. I can say it is false, because I did not meet with him at the airport.

CHAIRPERSON: There was a reference to him congratulating you. I just cannot remember whether he said he did that - excuse me. Whether he said he did that at that - when ye met you at the airport or whether he said he did that on a - in a telephone conversation. Do you have any recollection about ...

MS OLIPHANT: If ...

CHAIRPERSON: Maybe him doing that in a telephone conversation?

20 **MS OLIPHANT:** If I recall Chair he - he congratulated me when he was saying to me he is intending to appeal or to take us to court in terms of his dismissal.

CHAIRPERSON: And that was on the Monday or much later?

MS OLIPHANT: No. It was not on a Monday.

CHAIRPERSON: Yes.

MS OLIPHANT: I think it was - it is either two or three weeks after the appointment. He only person who phoned me when I was just arriving at the airport was the Acting DG Mr Sam Morotoba who congratulated me and also indicated that if I need any help particularly about the transport I must just call him.

CHAIRPERSON: Yes.

MS OLIPHANT: Yes.

CHAIRPERSON: Okay.

ADV KATE HOFMEYR: Ms Oliphant that call that you received from
10 Mr Manyi you deal with in your affidavit and I will not take you there immediately, but certainly your affidavit's chronology suggests it was about two or three weeks later.

MS OLIPHANT: Yes.

ADV KATE HOFMEYR: Is that your recollection?

MS OLIPHANT: Yes.

ADV KATE HOFMEYR: Because there is a letter which you were sent at the end of last week which I will take you to now. It is a letter that was written by Mr Manyi's attorneys on 3 November and it was sent to yourself and to Mr Baloyi and that letter refers to the fact that Mr Manyi
20 had already met with you by 3 November.

Now 3 November was a few days later. It would have been the Wednesday of the week that you came up on the Monday and you went to the Presidential Guesthouse to be sworn in. Was that also false?

MS OLIPHANT: I think they - they - it is either he - he misled his

attorneys, because I did not meet with him, because after swearing in I went back to KwaZulu-Natal. I have seen that letter from his attorneys and also is that Minister Baloyi received that letter. While I was getting the briefing in the department firstly I did not immediately deal with the correspondence, because I said they must take me through on all things that are being happening in the department.

ADV KATE HOFMEYR: Did you ever come to see this letter?

MS OLIPHANT: It was for the first time for me to see it in this evidence.

- 10 **ADV KATE HOFMEYR**: Let us go there if we may? Chair it is - and Ms Oliphant it is in EXHIBIT NN5 and you will find it at page 2-9-7.

CHAIRPERSON: That is the letter dated 3 November 2010 from Lana Attorneys?

ADV KATE HOFMEYR: Indeed Chair.

CHAIRPERSON: Addressed to the Honourable Ms Mildred Oliphant Minister of Labour as well as Honourable Mr Richard Baloyi Minister of Public Service. That is the letter?

ADV KATE HOFMEYR: Indeed Chair.

CHAIRPERSON: Yes. Okay.

- 20 **ADV KATE HOFMEYR**: Ms Oliphant is it your evidence that until you received this last week from the Commission you have no recollection of receiving this letter?

MS OLIPHANT: I received this - this copy yesterday.

ADV KATE HOFMEYR: Yesterday?

MS OLIPHANT: Yes.

ADV KATE HOFMEYR: And you do not recall seeing it in 2010?

MS OLIPHANT: No. I do not recall seeing it in 2010.

ADV KATE HOFMEYR: If I can just direct you to where this point is made ...

MS OLIPHANT: Huh-uh.

ADV KATE HOFMEYR: In the letter. You will find it at page 3-0-1. It is the last page of the letter.

MS OLIPHANT: Yes.

ADV KATE HOFMEYR: You will see there is a heading
10 “Reinstatement”.

MS OLIPHANT: Yes.

ADV KATE HOFMEYR: Do you see that?

MS OLIPHANT: Yes.

ADV KATE HOFMEYR: The lawyers for Mr Manyi record there:

“Mr Manyi has advised us that he met with the new
Minister of Labour and they had a cordial
interaction and Mr Manyi is excited at the prospect
of working under the guidance and instruction of
Minister Oliphant.”

20 **MS OLIPHANT:** As I have said it is either Mr Manyi misled his
attorneys, because I did not ...

ADV KATE HOFMEYR: You had had no interaction?

MS OLIPHANT: I did not meet Mr Manyi on the 3rd.

CHAIRPERSON: Is ...?

ADV KATE HOFMEYR: Or - or prior to the 3rd?

MS OLIPHANT: Or prior to the 3rd.

ADV KATE HOFMEYR: Because his evidence was on the Monday when you flew up to O R Tambo he met you at the airport. You say that is false?

MS OLIPHANT: No. I did not.

CHAIRPERSON: Well it is - it is a long time ago. Just make sure you - your recollection is fine.

MS OLIPHANT: My recollection is that I met Mr Manyi after having discussions with Minister Baloyi and we met at Sheraton where I was
10 booked for accommodation.

CHAIRPERSON: Yes.

MS OLIPHANT: Yes.

CHAIRPERSON: But is - is your recollection so clear that you - you are certain it did not happen or is there a room that it might have happened? I am just thinking - wondering whether he might have - you know this letter was written it would appear on 3 November. He would have met you - would it have been the previous day if - if that had happened - on Sunday? You arrived on Sunday or ...?

MS OLIPHANT: I arrived on Monday morning at the airport.

20 **CHAIRPERSON:** Was the 3rd Monday?

ADV KATE HOFMEYR: No, the - the ...

MS OLIPHANT: It was no the 1st.

ADV KATE HOFMEYR: Flight up was the 1st. Monday.

MS OLIPHANT: (Intervenes) was on the 1st.

CHAIRPERSON: Yes.

ADV KATE HOFMEYR: 1 November.

CHAIRPERSON: Yes. Yes.

ADV KATE HOFMEYR: That is when Mr Manyi's evidence indicated he met with Ms Oliphant ...

CHAIRPERSON: Yes.

ADV KATE HOFMEYR: At the airport.

CHAIRPERSON: Yes. Yes.

ADV KATE HOFMEYR: This letter dated 3 November ...

CHAIRPERSON: Ja. Two days later.

10 **ADV KATE HOFMEYR:** Is two days letter the Wednesday of that week.

CHAIRPERSON: Yes. Yes. The reason why I am just asking that you try and make sure that you - you are certain whether you are saying no such encounter happened at all or you say it may have occurred. It is simply that maybe it might be difficult to think why he would make that story up that he met you at the airport and two, the letter is written two days after.

20 So maybe his memory would have been much fresher when he spoke to his attorneys, but I just wants to make sure that you - you are able to say maybe it did happen. I cannot remember because it has been a long time or you say no, no, no. I know it did not happen. If that is the position.

MS OLIPHANT: Thank you Chair. Chair, I - I do not really remember meeting him on that day, because when I arrived we find people with the boards with our names and we just whisked to the cars. So I do not know when I can meet Mr Manyi that particular period. If I recall very

well I did not meet with him, but may ...

CHAIRPERSON: He might not have - he not be talking about a formal meeting. He might be talking about seeing you coming through and then going to you. Greeting you, shaking hands and walking with you and talking a bit while you are on your way to your transport or whatever.

MS OLIPHANT: I do not recollect that Chairperson.

CHAIRPERSON: Yes. Yes.

MS OLIPHANT: I do not recall.

10 **CHAIRPERSON**: You - you do not recall?

MS OLIPHANT: No.

CHAIRPERSON: Okay. Thank you.

ADV KATE HOFMEYR: Ms Oliphant is your evidence that the first time you spoke to Mr Manyi after becoming Minister of Labour when he called you?

MS OLIPHANT: Yes. That - that is what I recall, because that is when he told me about intending to take us to court based on his dismissals.

ADV KATE HOFMEYR: Was there any debate in your mind when you had that conversation with him that he understood that he had been
20 dismissed as the DG of Labour?

MS OLIPHANT: That is what he said to me and that is why he was intending to take us to court or make an appeal.

ADV KATE HOFMEYR: And your evidence as I understand it is that that occurred about two to three weeks ...

MS OLIPHANT: Yes.

ADV KATE HOFMEYR: After you became Minister. Is that correct?

MS OLIPHANT: Yes.

ADV KATE HOFMEYR: You became Minister and replaced former Minister Mdladlana. Is that correct?

MS OLIPHANT: Yes.

ADV KATE HOFMEYR: do you ...?

CHAIRPERSON: Just - just before you ...

ADV KATE HOFMEYR: Yes.

CHAIRPERSON: Ms Hofmeyr. That discussion that you have given
10 evidence about between yourself and Mr Manyi about two/three weeks
after your appointment. I think you said first it was in a telephone
conversation. He called you and then later there was a meeting at the
Sheraton Hotel. Is that correct?

MS OLIPHANT: Yes Chairperson.

CHAIRPERSON: Now you - you have said that he said he had been
dismissed and he was going to take the department to court or - or was
there some - somewhere else also there which he talked about? Was
going to take you to court or where?

ADV KATE HOFMEYR:

20 **MS OLIPHANT:** He said it is either he was going to make an appeal or
take ...

CHAIRPERSON: Oh yes.

MS OLIPHANT: The department to court.

CHAIRPERSON: Yes.

MS OLIPHANT: Yes and that is why I immediately after that discussed

the matter with Minister Baloyi ...

CHAIRPERSON: Yes.

MS OLIPHANT: To advise me on the matter, because I was just new in the department.

CHAIRPERSON: Yes. Mr - Mr Manyi gave evidence and said that he did not know that he had been dismissed. I think until he got correspondence from the Commission?

ADV KATE HOFMEYR: Correct Chair.

CHAIRPERSON: So in other words until this year. Are - are you - are
10 you certain that that is what he said to you? That he had been dismissed unfairly. I think that is what you said earlier on. That he said he had been dismissed unfairly and that he was going to take the department either to court or he was going to appeal. Are you certain that that is what he said?

MS OLIPHANT: Yes Chairperson. That is what he said.

CHAIRPERSON: Yes.

MS OLIPHANT: And then also after that I asked the Acting DG ...

CHAIRPERSON: Hm.

MS OLIPHANT: To tell me what exactly has happened ...

20 **CHAIRPERSON:** Hm.

MS OLIPHANT: And he said the best people to - to brief me ...

CHAIRPERSON: Hm.

MS OLIPHANT: Was the Legal Services Team ...

CHAIRPERSON: Hm.

MS OLIPHANT: From the department ...

CHAIRPERSON: Hm.

MS OLIPHANT: And he said he - he was going to arrange a meeting ...

CHAIRPERSON: Hm.

MS OLIPHANT: For me with the Legal Services Team ...

CHAIRPERSON: Hm.

MS OLIPHANT: And I met with the Legal Services Team three - two or three days after ...

CHAIRPERSON: Hm.

MS OLIPHANT: Meeting with the Acting DG then ...

10 **CHAIRPERSON:** Hm.

MS OLIPHANT: And the - the Legal Services Team was led by Advocate Baja (?) - Pascha (?).

CHAIRPERSON: Hm.

MS OLIPHANT: Who was the - who was the - the Head of the Legal Services ...

CHAIRPERSON: Hm.

MS OLIPHANT: But there was also the - I think it was also Advocate Tokota who was part of - he was a legal counsel ...

CHAIRPERSON: Hm.

20 **MS OLIPHANT:** And - and then they briefed me on what has happened, but also they did not give me the full briefing. That is why I had to go back to Minister Baloyi as well.

CHAIRPERSON: I think Mr Tokota was senior counsel already. So ...

ADV KATE HOFMEYR: Indeed. Yes.

CHAIRPERSON: It is - it is likely that Mr Pascha led the Legal Team.

MS OLIPHANT: Mr Pascha was leading the ...

CHAIRPERSON: *Ja*, but ...

MS OLIPHANT: The Legal Team based on ...

CHAIRPERSON: Yes.

MS OLIPHANT: The - the legal services of the department.

CHAIRPERSON: No. No. No. That is fine. I know you are not a lawyer. So I am just mentioning.

MS OLIPHANT: Okay.

CHAIRPERSON: Yes.

10 **MS OLIPHANT:** Thank you.

CHAIRPERSON: *Ja*. At least that was your understanding of the situation?

MS OLIPHANT: Yes.

CHAIRPERSON: *Ja*. You - you may proceed Ms Hofmeyr.

ADV KATE HOFMEYR: Thank you Chair. If I can just go backwards a bit to Minister Mdladlana and your replacement of him. Were you given any explanation for why he was removed as Minister of Labour and you were to replace him?

20 **MS OLIPHANT:** No. It was not my call, because my understanding is that it is the ANC that deploys and redeploys. So I was under that principle in terms of understanding.

ADV KATE HOFMEYR: Indeed. Just to be clear though. Did anyone ever tell you - give you a reason why he might have removed as Minister ...

MS OLIPHANT: No.

ADV KATE HOFMEYR: Of Labour?

MS OLIPHANT: No.

ADV KATE HOFMEYR: Ms Oliphant I - I understand your evidence to be that letter dated 3 November 2010 did not come to you at the time and you saw it for the first time when you were given it by the Commission.

MS OLIPHANT: Yes.

ADV KATE HOFMEYR: Is that correct?

MS OLIPHANT: Yes. It is correct.

10 **ADV KATE HOFMEYR:** There is another recordal in that letter ...

MS OLIPHANT: Huh-uh.

ADV KATE HOFMEYR: About Mr Manyi's understanding of why Mr - Minister Mdladlana was removed. You will find that at page 2-9-9 in EXHIBIT NN5.

CHAIRPERSON: Did say why Mr - Minister Mdladlana was removed?

ADV KATE HOFMEYR: Yes and replaced by ...

CHAIRPERSON: Oh. Oh.

ADV KATE HOFMEYR: Minister Oliphant.

20 **CHAIRPERSON:** Okay. No. I thought you - it - I thought it was a mistake.

ADV KATE HOFMEYR: Oh.

CHAIRPERSON: You are linking it to ...

ADV KATE HOFMEYR: A reference to ...

CHAIRPERSON: A dismissal of Mr Manyi?

ADV KATE HOFMEYR: No.

CHAIRPERSON: Okay. Alright.

ADV KATE HOFMEYR: We are now at - what I would like to understand

...

CHAIRPERSON: What - what page did you say?

ADV KATE HOFMEYR: 2-9-9 Chair.

CHAIRPERSON: Okay.

ADV KATE HOFMEYR: It is the same letter we were looking at previously and Ms Oliphant just to be clear. I am - I am probing now what if anything you knew about the reasons for Mr Mdladlana being
10 removed as Minister of Labour and I understand your evidence to be you were not given a reason at the time.

MS OLIPHANT: No. I did not know anything about that.

ADV KATE HOFMEYR: There is a recordal here that I would just like your comment on then as to whether you have any knowledge about it at all. You will see in paragraph 5.1 on page 2-9-9 what the lawyers for Mr Manyi there record is that - let me read it for the record:

“Honourable Ministers, on 28 October 2010 ...”

Being the date of the hearing. Ms Oliphant that is a reference to the disciplinary hearing that Mr Manyi was involved at the
20 time. Just for context. The letter goes on and reads.

“The former Minister instructed the Department’s lawyers and the State Attorney to withdraw and abandon the charges against the DG as he had decided to terminate Mr Manyi’s employment with the department with effect from 30 November 2010.”

And then it goes on – and this is the relevant sentence:

“Simply put the former Minister should have known that he was going to be axed as there was no other plausible reason for find in his favour for uncharacteristically withdrawing and abandoning charges against the DG only to accelerate his premature determination of the probation period which was only due for review 44 days later.”

Do you see that?

MS OLIPHANT: Yes.

10 **ADV KATE HOFMEYR:** Did Mr Manyi every discuss with you that he thought Minister Mdladlana had been axed because of his conduct in firing Mr Manyi?

MS OLIPHANT: No we did not discuss that.

ADV KATE HOFMEYR: Would it be unusual to you to learn that a Minister would be removed because he had taken a decision to remove a DG?

MS OLIPHANT: No I do not know that.

ADV KATE HOFMEYR: But your understanding I have from your evidence previously is that the ANC as an organisation makes decisions
20 about deployments of Ministers, is that correct?

MS OLIPHANT: Yes.

ADV KATE HOFMEYR: Have you known the ANC ever to take a decision to remove a Minister and replace him because of the decision the former Minister took to fire a DG?

MS OLIPHANT: That is the responsibility of the President.

ADV KATE HOFMEYR: Thank you.

MS OLIPHANT: To discuss that matter with the ANC officials, because he is also the ANC official.

ADV KATE HOFMEYR: Thank you. Ms Oliphant let's then move to the place that you were when the Chair was asking you questions, because that was when you started finding out what had happened with Mr Manyi when he was in the Department. So can we just go back to get the chronology right. You first get a call from Mr Manyi, is that correct, and that is two or three weeks after you have taken up the
10 position of Minister of Labour?

MS OLIPHANT: Yes.

ADV KATE HOFMEYR: Until that point who is occupying the position of Director General?

MS OLIPHANT: It was the Acting DG Mr Sam Morotoba.

ADV KATE HOFMEYR: And then please tell us what you did after you received that call from Mr Manyi.

MS OLIPHANT: I asked Mr Sam Morotoba to brief me on the letter, as the Acting DG, and he said the best people to give me the briefing is the Legal Service Team from the Department.

20 **ADV KATE HOFMEYR:** Thank you, and then I understand we can pick it up in your affidavit at page 4, paragraph 11, you say at the end of that paragraph 11 you say at the end of that paragraph precisely what you have indicated in the evidence, you called Mr Morotoba, and he said he would arrange a meeting with the Department's Legal Services who were familiar with the issues.

MS OLIPHANT: Hmm.

ADV KATE HOFMEYR: And then you go on at paragraph 12 to indicate that two or three days later you met with that Legal Services Team, correct?

MS OLIPHANT: Yes.

ADV KATE HOFMEYR: And just to go back for us if you will and tell us what was conveyed to you at that meeting?

MS OLIPHANT: In that meeting they did not – the Legal Team did not give me the full information, except that they said Mr Manyi was
10 dismissed, and one of the reasons was that he didn't respect the Minister.

ADV KATE HOFMEYR: And at that point did you ask to see any files relating to Mr Manyi, did you ask for a disciplinary file to be provided to you?

MS OLIPHANT: Advocate Pascha said all the files are with the Department for Public Service and Administration.

ADV KATE HOFMEYR: Did you have occasion to obtain those files at any point?

MS OLIPHANT: No I did not precisely because when he was saying he
20 is intending to appeal or go to court, of course he was not going to appeal to the Minister of Labour then because he was dismissed by the Minister of Labour so he had to appeal, his appeal was supposed to go to the Public Service and Administration.

ADV KATE HOFMEYR: How do you come to that view, that the appeal had to go to the Department of Public Service and Administration?

MS OLIPHANT: It is because you cannot appeal to the very same Department that has dismissed you and the Public Service and Administration they do have Public Service Commission, ja that was my view and that is why I had to approach Minister Baloyi on the matter.

ADV KATE HOFMEYR: Thank you. In your course of dealing with Mr Manyi and receiving this information from the Legal Services Department did you ever have occasion to consider the charges that Mr Manyi faced in his disciplinary proceedings?

MS OLIPHANT: No I did not because Mr Manyi – when we met with Mr
10 Manyi at Sheraton he brought three big files and I said no since he wants to appeal the only way that he has to do is to appeal to the Minister for Public Service and Administration and because I had the information on how the processes are done, then I further requested Minister Baloyi to say can you look at the procedures whether they were done properly or not, because he is the custodian of Public Services Act.

ADV KATE HOFMEYR: Thank you. So just to be clear, you did not ever obtain his disciplinary file and look at it yourself?

MS OLIPHANT: No.

20 **ADV KATE HOFMEYR:** You did not ever obtain information about the charges that he faced, correct?

MS OLIPHANT: Yes.

ADV KATE HOFMEYR: And you didn't obtain information about his responses to those charges correct?

MS OLIPHANT: No.

ADV KATE HOFMEYR: No you didn't obtain information of his responses?

MS OLIPHANT: Yes because when I met with him he indicated that there are issues that he is concerned with, particularly because, one, in terms of any decision that he was supposed to take the approval was done through submissions and then that's why he was saying he was going to take us to court or appeal the decision because everybody was involved in that and I said therefore if he appeals then they have to deal with all those issues through the Minister for Public Service and
10 Administration.

ADV KATE HOFMEYR: And when he brought the three files to your meeting you did not take them from him?

MS OLIPHANT: No I did not take any file from him.

ADV KATE HOFMEYR: Thank you. I would then like to move a little bit further on in the chronology, because there was a letter that Mr Baloyi wrote to you at the end of November 2010, it is a letter that you have also been provided by the Commission, you will find it in EXHIBIT NN5 at page 216.

MS OLIPHANT: Yes I see the letter.

20 **ADV KATE HOFMEYR:** Do you recall receiving this letter in November of 2010?

MS OLIPHANT: Even if I can't recall but what I can recall is that I discussed the matter informally as well, I think we were in the National Assembly with Minister Baloyi before the letter came, because he told me that he has written a letter but I said there is no letter that I have

received and then he briefed me that well based on what I briefed him about and also to look at whether the procedures were followed properly then he has decided and also he wants to advise me that I must write a letter for withdrawal and then put him on a special leave and that's what I did, but I did that after also further discussion those issues with the Legal Team of the Department.

ADV KATE HOFMEYR: Right so let's just go to this letter itself if we may, you say you are not certain that you received this letter is that correct?

10 **MS OLIPHANT:** Probably I may receive it but I think I received it, it is either at a later stage not before we further discussed the matter because Minister Baloyi told me in the National Assembly before it rises that, one, he has written a letter, of which I said I have not yet received the letter, but he briefed me on what is it that we have to do in terms of the procedures, so that is why at a later stage I wrote that letter that was withdrawing the dismissal and the I said I am putting Mr Manyi on a special leave until further notice.

ADV KATE HOFMEYR: Well let us look at what is contained as Mr Baloyi's advice in this letter, you will find that in the concluding, well
20 the penultimate paragraph on page 217.

MS OLIPHANT: Hmm.

ADV KATE HOFMEYR: And page 217 in paragraph 3 he says:

“In light of my observations in paragraph 2 above you are advised to ...”

And then there are four things set out there. Ms Oliphant did you have

occasion to read this letter when you received it from the Commission?

MS OLIPHANT: Yes I did.

ADV KATE HOFMEYR: What did you understand the advice to be that was reflected in the previous paragraphs of the letter?

MS OLIPHANT: Firstly was to give enough time for Minister Baloyi to look whether the matter was done procedurally and secondly to give him enough time to deal and finalise the matter, so that's why as well because if you look at C under paragraph 3 it says I must place him on two weeks special leave to allow us space to find a suitable solution to
10 this matter. I decided not to give him only two weeks based on my experience as a shop steward, as a former shop steward because when you deal with the cases when it comes to disciplinary hearings in the work place it does not take two weeks, so I decided to say this is special leave until further notice.

ADV KATE HOFMEYR: Let's just go back a moment because my question might not have been entirely clear and I apologise for that, what – in paragraph 2 of the letter which starts on the previous page. Minister Baloyi sets out there certain observations that he makes, as I understand your evidence because he has been looking into this for
20 you, is that correct?

MS OLIPHANT: Yes.

ADV KATE HOFMEYR: And what did you understand him to have determined in relation to the dismissal of Mr Manyi?

MS OLIPHANT: To me it was saying firstly the proper procedures were not followed, precisely because if you recall or if I recall, but I believe

all of us we can recall that, around 2000 there was a court case between the Minister and the DG, I was still a member of Parliament at that particular time, and everybody knew about it, where the Court made a ruling to say the Minister does not have powers, one, to discipline or to dismiss, without the authority from the President, and everybody knew about that particular issue at that particular time.

ADV KATE HOFMEYR: What time was that Ms Oliphant?

MS OLIPHANT: I think it was around 2000, if I am not mistaken.

ADV KATE HOFMEYR: Oh, is it not the decision involving the Director

10 General of Home Affairs?

CHAIRPERSON: Mr Apleni

ADV KATE HOFMEYR: Mr Apleni.

MS OLIPHANT: No, it was the decision dealing with the issue of the Minister for – it was for Intelligence then.

ADV KATE HOFMEYR: Oh, the Mr Masetla's decision.

MS OLIPHANT: Masetla, yes, yes.

ADV KATE HOFMEYR: Right, no indeed, that is a particular provision governed by its own legislation but is that the one of which you were aware?

20 **MS OLIPHANT:** Yes.

ADV KATE HOFMEYR: Thank you. So you understood his observations to be that proper process had not been followed, is that correct?

MS OLIPHANT: Yes.

ADV KATE HOFMEYR: And part of that related to the issue of who

has the power to appoint or dismiss, is that correct?

MS OLIPHANT: Yes.

ADV KATE HOFMEYR: Do you accept that Mr Masetla as the Head of the National Intelligence Agency is not necessarily in the same position as a Director General in the Ministry of Labour or was that not something you considered?

MS OLIPHANT: The reason why I left it and also take the advice or took the advice from Minister Baloyi is precisely because he understand very clearly the Public Service Management Act.

10 **ADV KATE HOFMEYR:** Indeed. Chair I see we are just at quarter past eleven, it may be a convenient time to take the break.

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

We adjourn.

REGISTRAR: All rise.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Okay let us proceed.

20 **ADV KATE HOFMEYR:** Thank you Chair. Ms Oliphant I would still like us to spend a bit more time on that letter that we were looking at before the break. But before we go back there can I just ask what at this stage was your attitude to having Mr Manye come back into the Department of Labour as Director General?

MS OLIPHANT: I must say based on – I did not have a negative attitude but based on the – the letter that I received immediately from

the Rep of NEHAWU immediately there was a – a red light reflection that says - it means the officials are divided in the department. So there was instability and also based on what Advocate Dakota said that particular time so I just requested that I will be very happy if he can be transferred to any other department wherever there are positions in – in any other department so that I create the stability in the department.

ADV KATE HOFMEYR: In your affidavit...

CHAIRPERSON: Just one second Ms Hofmeyr.

ADV KATE HOFMEYR: Apologies Chair.

- 10 **CHAIRPERSON:** Maybe the air conditioner can be either switched off for now or I will – it can be lowered a bit. I think it may be interfering with me hearing what the witness is saying. But if it becomes hot we will – we will put it on again. Yes thank you.

ADV KATE HOFMEYR: Thank you Chair. Ms Oliphant in your affidavit and you will find that in Exhibit NN3 at page 6 paragraph 17. You deal there with your attitude to having Mr Manyi return to the Department of Labour. If you pick it up midway down that paragraph you say:

“I then requested Mr Baloyi to please transfer Mr Manyi to another department for the following two reasons.

- 20 a. The fact that he was dismissed by the Department of Labour and
- b. Because I wanted to create stability within the department.”

I would like to focus on a there. What do you mean when you say, one of the reasons you wanted him transferred out of the Department of

Labour was that he had been dismissed by the Department of Labour?

MS OLIPHANT: I think that was not the permanent attitude because Minister Baloyi indicated after having discussed with him if he can be transferred to another department. He said, if he is able to get any other Minister who will allow Mr Manyi to be transferred to that particular department then it will be fine but if he does not get any positive results then he will be forced to transfer Mr Manyi back to the department. So I was not going to have any choice if that is what happened.

10 **ADV KATE HOFMEYR:** Ms Oliphant just help me there. He would not have been transferred back to the department. If you withdrew his termination he would have been reinstated as the Director General of the Department of Labour, is that correct?

MS OLIPHANT: Yes but that is why I put him on a special leave so that the processes by Minister Baloyi should be finalised before.

ADV KATE HOFMEYR: What were those processes?

MS OLIPHANT: In terms of whether the dismissal was done procedurally or not. As I have indicated that I requested Minister Baloyi to look at the procedures whether they were implemented
20 correctly or not.

ADV KATE HOFMEYR: But Ms Oliphant as I understand your previous evidence Mr Baloyi had already done that exercise. He determined that the procedures were not followed and that is why he recommended that you consider withdrawing the termination, is that correct?

MS OLIPHANT: Yes. But I discussed the issue of transfer at an early

stage not only after the – the process was finalised.

ADV KATE HOFMEYR: Well that is inconsistent with what you say at paragraph 17 on page 6. You see at paragraph 17 on page 6 you say:

“In or around January 2011 Mr Baloyi informed me that he had finalised the process regarding Mr Manyi. He further informed me that in accordance with procedures Mr Manyi would either have to return to the Department of Labour or be transferred to another department. You say Mr Baloyi did not
10 inform me of what procedures were followed nor of their outcomes.”

And then you say:

“I requested Mr Baloyi to transfer Mr Manyi to another department.”

And the first reason you give for that is the fact that he was dismissed by the Department of Labour. So what did you mean when you said here you wanted him transferred out of the Department of Labour because he had been dismissed by that department?

MS OLIPHANT: It is based on – or based on the information that was
20 given to me by Advocate Dakota to say he did not respect the Minister then and therefore also based on the – the demand by NEHAWU so I saw that if he will be returned to the department then there is going to be instability.

ADV KATE HOFMEYR: Hm.

MS OLIPHANT: And in fact when I was given this evidence initially we

started with that statement that says I have requested even Minister Baloyi to consider transferring him to another department.

ADV KATE HOFMEYR: Do you accept that if that transfer had not taken place though you would have had him back as your DG?

MS OLIPHANT: Of course I was not going to have any choice.

ADV KATE HOFMEYR: Hm. And would your concerns about stability have remained?

MS OLIPHANT: I was going to get for example the advice also from Minister Baloyi through the Public Service Commission because that is
10 what – I have learnt that that is what the Public Service Commission also do to assist to create the stability within different departments.

ADV KATE HOFMEYR: Right so if we go back to that letter which Mr Balyoi wrote at the end of November you will find that in Exhibit NN5. We were looking at it before the break.

MS OLIPHANT: Hm.

ADV KATE HOFMEYR: And at page 217 of that Exhibit.

MS OLIPHANT: Yes.

ADV KATE HOFMEYR: Mr Baloyi sets out in paragraph 3 there his advice based on his observations.

20 **MS OLIPHANT:** Yes.

ADV KATE HOFMEYR: We have dealt with a the withdrawal of the Minister – the former Minister's letter which terminated the DG's services. I will come back to that in a moment. I would like to look at b. He advises you to extend the DG's probation for another four months. Did you do that?

MS OLIPHANT: When I put him on a special leave it also covered that particular four months.

ADV KATE HOFMEYR: How did it cover that?

MS OLIPHANT: Because the withdrawal of the dismissal was effective as from the 1 December of which the – the dismissal was supposed to start on the 1 December.

ADV KATE HOFMEYR: So were you aware that Mr Manyi was on probation before he was dismissed?

MS OLIPHANT: I think – I cannot recall but I think I did not have the
10 full information about that because it was said he was the Director General.

ADV KATE HOFMEYR: You see – because the difficulty I have with your answer is the probation that Mr Manyi was on ceased on the 30 November 2010. That is why Mr Baloyi and we will query him on this when he comes to give evidence later. But if he had looked into this he would have established that Mr Manyi's probation ended on the 20 November 2010 and that is why he is saying to you, you need to extend that probation for another four months. Do you see that?

MS OLIPHANT: Yes.

20 **ADV KATE HOFMEYR:** So what action did you take to extend his probation?

MS OLIPHANT: The letter that was written by Minister Baloyi he wrote it on the 29th November.

ADV KATE HOFMEYR: Hm.

MS OLIPHANT: And then according to the dismissal Mr Manyi was

supposed to leave the department as from the 1 December and therefore based on that advice that is why I said I withdrew the dismissal and automatically it reinstated Mr Manyi and that is why I had to put him on a special leave.

ADV KATE HOFMEYR: Ms Oliphant special leave is something different to probation, do you agree with that?

MS OLIPHANT: No it is not different from probation because he was part of the – the institution as the Director General. So even the probation my understanding was that when I give him this special leave
10 automatically even the probation was going to be included in that.

ADV KATE HOFMEYR: But why then does Mr Baloyi deal with probation and special leave as two separate aspects in paragraph 3?

MS OLIPHANT: Unfortunately I cannot respond on behalf of Mr Baloyi. I think it will be better of – for Minister Baloyi to respond on but not me.

ADV KATE HOFMEYR: So what did you understand the difference to be between probation of four months and special leave of two weeks?

MS OLIPHANT: The reason I have indicated that – the reason why I said I put him on the probation until – I mean on the special leave until
20 further notice it was because I was of the view and also after discussing the matter with the legal services in the department that will give enough time for Minister Baloyi to deal with the procedural issues and then to have enough time to deal with those particular issues. Rather than to say it is going to be just for two weeks and in fact I even indicated to him to say, if we give him two weeks is it not going to be a

shorter period of time?

ADV KATE HOFMEYR: What is the – your understanding of the reason that DG's are put on probation?

MS OLIPHANT: The reasons for DG's to be put on probation is in terms of the Public Service Management Act because one in that particular time the DG must perform according to the government programs and then the – while they are doing probation if there are weaknesses then the Minister must also guide the Director General on how he or she has to perform in terms of the role of that particular
10 department.

ADV KATE HOFMEYR: So would it be fair to say that probation is there to enable the employer to test the performance of the DG?

MS OLIPHANT: Yes in terms of the Labour Relations Act that is what happens even beyond the Public Service even in the private sector.

ADV KATE HOFMEYR: Hm.

MS OLIPHANT: When you put a – when you employ a person you put that person in a probation period of time and then while that person is on probation it is the responsibility of for example when it comes to the DG's of the executing authority to make sure that he or she performs
20 according to the – the strategic plan or the – the role of the department including the – the performance agreement that the Director General has signed.

ADV KATE HOFMEYR: How can you test or monitor the performance of a DG who is on special leave?

MS OLIPHANT: You cannot test that because if he has been put on a

special leave it is because there is something that is happening for example on this one there was an investigation of whether the processes were done correctly or not.

ADV KATE HOFMEYR: Ms Oliphant you see my difficulty is I understand your evidence to be you did not put him on probation because you thought this special of an indefinite nature would take care of the need for probation, is that your evidence?

MS OLIPHANT: I cannot say that per se but I must say my understanding is that when I withdrew the dismissal immediately
10 whatever it was supposed to be happening it was part of that. So even the issue of probation. So what was going to happen was that:

1. When he comes back because I was not there for a long time in the department I was just new. So I was even going to request Minister Baloyi to further deal with that particular issue particularly because that was going – in fact when it comes to the interviews whether it is under the – the performance when it comes to monitoring Public Service Commission assists the various departments. So even if I was going to have that then we were going to have the interview of him assisted by the Public
20 Service Commission.

ADV KATE HOFMEYR: But you need to extend the probation in order for there still to be a need for Mr Manyi to pass his probation period, do you not?

MS OLIPHANT: Then Minister Baloyi was going to advise me on the matter.

ADV KATE HOFMEYR: Well his advice...

MS OLIPHANT: That is why I am saying when I put him on a special leave it was based on the advice and also based on the issues that were being investigated whether the – his dismissal was done procedurally or not.

ADV KATE HOFMEYR: Ms Oliphant this letter as we have read it summarises as I understand it and you can tell me if your understanding is different those investigations that Mr Baloyi made and his determination that Mr Manyi had been unfairly dismissed, is that
10 your understanding of this letter?

MS OLIPHANT: Well I think Minister Baloyi can explain that because he did not give me the full details on what exactly has happened but accordingly based on the advice it was clear that the proper procedures were not followed.

ADV KATE HOFMEYR: Yes. So I am interested in your understanding. I am not interested in what Mr Baloyi thought when he was writing this. Because I am interested in the decisions that you took after you got this letter.

MS OLIPHANT: Yes.

20 **ADV KATE HOFMEYR:** So the first thing he advises you to do is to withdraw the former Minister's letter which terminated the DG's services, correct?

MS OLIPHANT: Yes it is correct.

ADV KATE HOFMEYR: The second thing he advises you to do is to extend the Director General's probation for another four months.

MS OLIPHANT: Hm.

ADV KATE HOFMEYR: What was your response to that advice?

MS OLIPHANT: During our discussions with Minister Baloyi we talked – because as I have said we – we discussed the matter informally before I received the letter.

1. Was to withdraw the letter that terminated the DG and also to put him on a special leave and that is what was the main discussions with the two of us. And then later – I mean the letter probably came later after we have finalised everything.

10 **ADV KATE HOFMEYR:** So did you never take a decision not to extend his probation?

MS OLIPHANT: No I did not because I was not going to do that precisely because I – I had not worked with him.

CHAIRPERSON: Ms Hofmeyr you must remember that from my point of view Ms Oliphant's evidence in relation to – actually any witness' evidence with regard to Mr Manyi is only important as I see it insofar as it may throw light on the reasons for the transfer of Mr Maseko or the particular decision to replace him with Mr Manyi. If there is something else that you have picked up you can let – let – you can tell me. But
20 whatever – whatever irregularities may have been there in how – whether it is Mr Baloyi or Ms Oliphant dealt with Mr Manyi if it does not throw – if they do not throw light on those issues there – there might be difficulty. But if you have in mind certain issues that might have escaped me you can mention them. So I – I would not like us to take too long with her unless it becomes clear that her evidence does throw

light on – on why Mr Maseko was transferred or why the replacement was Mr Manyi. Ja.

ADV KATE HOFMEYR: Chair if I may just take a moment in relation to that concern of yours?

CHAIRPERSON: Yes.

ADV KATE HOFMEYR: What I propose to pursue with Ms Oliphant is not only the selection of Mr Manyi as the replacement but the terms on which he joined GCIS. Because Chair you will recall he was in a probation period.

10 **CHAIRPERSON:** Yes, yes.

ADV KATE HOFMEYR: When the dismissal decision was taken.

CHAIRPERSON: Yes.

ADV KATE HOFMEYR: Which means that there had not yet been a determination as to whether he met the standards of performance.

CHAIRPERSON: Whether he was suitable. Yes, yes.

ADV KATE HOFMEYR: It is relevant as the facts developed.

CHAIRPERSON: Yes.

ADV KATE HOFMEYR: It is my submission.

CHAIRPERSON: Yes.

20 **MS OLIPHANT:** That when he is moved on the 2 February to GCIS.

CHAIRPERSON: Yes.

ADV KATE HOFMEYR: He goes there without any probation period.

CHAIRPERSON: Yes.

ADV KATE HOFMEYR: Applicable.

CHAIRPERSON: Yes.

ADV KATE HOFMEYR: He goes there without any charges which have not previously been – been withdrawn.

CHAIRPERSON: Yes.

ADV KATE HOFMEYR: But are extant.

CHAIRPERSON: Yes, yes.

ADV KATE HOFMEYR: In essence he goes there with absolutely clean bill of health.

CHAIRPERSON: Yes, yes.

ADV KATE HOFMEYR: To serve out the remaining year and a bit of his
10 contract of employment.

CHAIRPERSON: Hm.

ADV KATE HOFMEYR: And so it will be our submission in due course not only that the selection may be relevant.

CHAIRPERSON: Hm.

MS OLIPHANT: To the evidence.

CHAIRPERSON: Hm.

ADV KATE HOFMEYR: But the terms on which he went there.

CHAIRPERSON: Hm.

ADV KATE HOFMEYR: And it was as I understand the legal position
20 Mr Oliphant's role to determine whether to extend the probation.

CHAIRPERSON: Hm.

ADV KATE HOFMEYR: As I understand her evidence she did not take a decision in that regard.

CHAIRPERSON: Hm.

ADV KATE HOFMEYR: Which means as a consequence of these

events.

CHAIRPERSON: Hm.

ADV KATE HOFMEYR: Ms Manyi moves to GCIS on the 2 February.

CHAIRPERSON: Hm.

ADV KATE HOFMEYR: With no probation in terms of which his performance will be assessed.

CHAIRPERSON: Hm.

ADV KATE HOFMEYR: And furthermore with no charges against him.

CHAIRPERSON: Hm.

10 **ADV KATE HOFMEYR:** So that is the background for why to probe this at all.

CHAIRPERSON: Ja.

ADV KATE HOFMEYR: Chair.

CHAIRPERSON: Ja.

ADV KATE HOFMEYR: It is the full context which in due course our submissions will be of whether there was irregularity in this appointment.

20 **CHAIRPERSON:** Hm. I take what you say to mean that you are saying that whatever irregularities there may have been in the withdrawal of his dismissal and his transfer you want to say in the end they transferred into Mr Maseko's position somebody who was irregularly transferred or somebody who was unsuitable to put in there. Now that may be – that may be so I think the question would still arise that appointment that transfer and so what in relation to the transfer of Mr Maseko? A wrong decision and so on. You see it is one thing if – if

what would emerge is a concerted effort – maybe that is not the correct term. Maybe a concerted effort to put into Mr Maseko or to GCIS a particular individual as opposed to just somebody who may be needing to be transferred to some other department and GCIS happens to be – to have a vacancy. Of course there might be a lot of things that you and other members of the legal team might have to say later on about that. I just want you to be alert that I am trying to keep an eye that we – we remain focused on – on the important aspects. So I think continue but I would like us not to take too long before we finish if possible.

10 **ADV KATE HOFMEYR**: Indeed Chair.

CHAIRPERSON: To finish with her. Ja.

ADV KATE HOFMEYR: Indeed. It will in due course be our submission.

CHAIRPERSON: Hm.

ADV KATE HOFMEYR: That there are various – there is conduct that needs to take place in order for state capture to occur within a society.

CHAIRPERSON: Hm.

ADV KATE HOFMEYR: And irregular removals and irregular appointments.

20 **CHAIRPERSON**: Hm.

ADV KATE HOFMEYR: May be part of that project.

CHAIRPERSON: Hm.

ADV KATE HOFMEYR: Chair we fully accept.

CHAIRPERSON: I think that – that may be so. Ja.

ADV KATE HOFMEYR: That you would need in addition.

CHAIRPERSON: Hm.

ADV KATE HOFMEYR: Certain further facts.

CHAIRPERSON: Hm.

ADV KATE HOFMEYR: But those are the facts that we are seeking to probe.

CHAIRPERSON: Yes. Okay.

ADV KATE HOFMEYR: And we addressed with Mr Manyi precisely the role that he played in relation to spend with TNA.

CHAIRPERSON: Hm.

10 **ADV KATE HOFMEYR:** After he joined GCIS.

CHAIRPERSON: Yes.

ADV KATE HOFMEYR: I – but Chair.

CHAIRPERSON: Yes.

ADV KATE HOFMEYR: But mindful of that concern Ms Oliphant if I may then go to D – 3D on page 217 because you have dealt with C which was the special leave and you have explained why you placed him on indefinite special leave and not two weeks. But D says during that two weeks that he is on special leave you should decide whether or not to pursue misconduct charges against Mr Manyi. What decision did
20 you take in that regard?

CHAIRPERSON: Wait I am sorry. I am sorry Ms Hofmeyr. I may have missed this but you did deal earlier on with the question of probation. Did you – did you know or appreciate at the time of deciding to withdraw Mr Manyi's dismissal that when he was dismissed he was still on probation?

MS OLIPHANT: I must say Chairperson I – I think I did not look at the issue of – of Mr Manyi being on probation on that particular time. Because I – I was just relying on the advice of Minister Baloyi precisely because he was dealing with the whole issues as I have requested him to do so.

CHAIRPERSON: Well you – you – you said earlier on in response to a question by Ms Hofmeyr that you did not ask for Mr Manyi's disciplinary file and you understood that either the file or certain files relating to Mr Manyi were in Mr Baloyi's department, is that right?

10 **MS OLIPHANT:** Yes that is what the legal services team Chairperson told me.

CHAIRPERSON: Yes.

MS OLIPHANT: That already the files.

CHAIRPERSON: Yes.

MS OLIPHANT: Are with the office of Minister Baloyi in the Public Service.

CHAIRPERSON: Yes.

MS OLIPHANT: And Administration.

20 **CHAIRPERSON:** Well I must just say that I am concerned by the fact that you come into the department – into a department, you are a new Minister, you understand that the DG has been dismissed but you do not seem to want to fully inform yourself of the reasons why he was dismissed. Particularly when

1. He has said to you the same DG he is going to take the department to court. He is going to lodge an appeal because

that means it is somebody who still wants to come back to your department and I would have thought that you would want to fully inform yourself so that you can take a view whether what to do with him. Even if you are going to get advice from somebody else because you are the Minister of the department he wants to be back in this department as DG.

MS OLIPHANT: Thank you Chair. Chair as I indicated earlier that I was just new in this deployment. I have not been appointed as the Minister before and that is the reason why I have requested Minister
 10 Baloyi to act on the matter so that he can be able to advise me on what has happened whether everything was done procedurally. So if he was going to be redeployed to the department or reinstated to the department of course that is when I was going to take through the issues on why firstly he was dismissed to have the full reasons. Now as part of understanding that he has already lodged the appeal no was going to take us to court my understanding was that since the files were with the Public Service and Administration so there was no need for me to get the full details. Probably that was my mistake.

CHAIRPERSON: Yes I think – I think it – it was because I think what
 20 he is expected of a Minister who comes into a department and he or she understands that the DG of the department has been dismissed. There is an acting DG but that DG wants to come back. What is expected is that the Minister would say I want his file. I want to read the documentation. I want to find out exactly what did he do. Because you might need to take a view.

If he says he is going to take you to court - you might need to take a view to say as the new Minister of Labour I fully endorse the decision that was taken by my predecessor. It was correct. It was justified. So I will defend it or you might say I have studied the file. I have looked at all the documentation. I know what he - why - why he was dismissed, but I take a different view.

So if he wants to take us to court. My approach would be maybe to negotiate and reach a settlement, because I think we are going to be - we will have challenges in court defending this decision.

10 Even if somebody else is going to advise you, because in the end that other person cannot impose their advice on you. They cannot make the decisions for you.

You are the Minister of Labour. You must decide whether your attitude is we will defend this decision or we will take him back. So - so I think that is what would be expected. So I think to the extent that you might not have thought it necessary to fully inform yourself of that. That might have been a mistake.

MS OLIPHANT: I do understand that Chair ...

CHAIRPERSON: Hm.

20 **MS OLIPHANT:** But since I requested the Minister for Public Services and Administration as the custodian of Public Service Management Act. I thought I have to wait for the investigation on whether the procedures were followed correctly and then after that that is when I was going too based on also the advice of both Minister Baloyi and the Legal Team in the department.

I was going to then start to look at the matter. For example if he was reinstated to the department. That is when I was going to make sure that I get the full information and then also if there were decisions to - to - it is either to charge him. I was going to also work together with the Minister for Public Service and Administration in terms of the delegated power to the Minister for Public Service and Administration.

CHAIRPERSON: *Ja.* No. I understand what you are saying, but I - I think you must put - you should have put yourself in the position where you could say to Minister Baloyi when he gives you advice. I actually
10 do not agree with you - this advice and you cannot say that unless you are fully informed. Let us assume that he was dismissed for fraud and Minister Baloyi says withdraw his dismissal.

If you are fully informed yourself you would say how can we do that. This man was dismissed for fraud, but if you have not fully informed yourself you might end up withdrawing the dismissal and everybody else says how she could do that. This person was dismissed for fraud, but we - we can move on.

I understand your - your explanation, but you understand what I - what I am saying as well. Is that right?

20 **MS OLIPHANT:** I do understand Chair, but also based on the briefing by the Legal Services Team when they said he was dismissed because he did not respect the Minister without giving me other full details. So that is why I had to wait up until Minister Baloyi finalises due processes.

CHAIRPERSON: Yes, but what if your officials were not telling you

something else in the documentation that you would regard as important which they did not as important? You see. So there - there is wisdom in saying I hear you what you say, but I want to be fully informed, but I think you have - you have put your - your side of how you saw it.

MS OLIPHANT: Yes Chair. Thank you very much and also Chairperson I think I relied on the information, because it was led by the Senior Counsel Advocate Tokota.

CHAIRPERSON: Yes.

10 **MS OLIPHANT:** So I thought that that is the information that I have to work on.

CHAIRPERSON: Yes.

MS OLIPHANT: Yes.

CHAIRPERSON: Okay. Thank you. Ms Hofmeyr.

ADV KATE HOFMEYR: Ms Oliphant you received that briefing prior to receiving this letter from Mr Baloyi. Did you not?

MS OLIPHANT: Yes.

ADV KATE HOFMEYR: And at paragraph 3D on page 2-1-7 Mr Baloyi to whom you have gone to for advice says at D3:

20 “During the two week period of special leave you
 need to decide whether or not to pursue the
 misconduct charges against the Director-General.”

Did you take that decision?

MS OLIPHANT: No, because my understanding is that when you advice
- when you are advised you have to look at the advice and further get

the clarity. So since Minister Baloyi was dealing with those issues I said he must finalise everything before I deal with the matters. So ...

ADV KATE HOFMEYR: When ...

MS OLIPHANT: If he was reinstated to the department of course I was going to probably consider that also based on the outcome of that investigation.

ADV KATE HOFMEYR: Ms Oliphant what is your understanding of a decision to withdraw the termination of a Director-General?

MS OLIPHANT: The withdrawal was based on - on that the proper
10 procedures were not followed. Firstly that the Minister was not supposed to dismiss him, because that role is - is for the President to do. Not the Minister.

ADV KATE HOFMEYR: And what is the effect of withdrawing a termination of a DG's dismissal?

MS OLIPHANT: Well what - what - the reason why I withdrew is because I was correcting the situation where it was not done procedurally and that is why I - I requested Minister Baloyi to further deal with the issues. So that is why everything was that, because he is the leader. In terms of the implementation of the Public Service
20 Management Act is clear on how to deal with the issues.

ADV KATE HOFMEYR: But Ms Oliphant the question whether to pursue the misconduct charges against the Director-General was your decision to take. Correct?

MS OLIPHANT: Can you repeat the question?

ADV KATE HOFMEYR: Whether to pursue misconduct charges against

Mr Manyi. That was your decision to take. Correct?

MS OLIPHANT: Even that I cannot just take a - a decision as an individual. I have to report that to the Minister for Public Service and Administration and - and guide me in terms of the Public Service Management Act.

ADV KATE HOFMEYR: But Ms Oliphant Mr Baloyi was telling you here that you needed to make that decision. Did you understand what he was saying there differently?

MS OLIPHANT: As I said it is either this letter came at a later stage
10 after we have discussed on how we have to deal with the procedures.

ADV KATE HOFMEYR: Is your evidence that you never considered whether to pursue misconduct charges against Mr Manyi?

MS OLIPHANT: Because he was on special leave. If - if the whole process was finalised probably that is when I was going to consider depending on the outcome of that investigation.

ADV KATE HOFMEYR: So between November 2010 and February 2011 did you at no stage in that period try to understand what charges were levelled at him and whether you should pursue those charges?

MS OLIPHANT: No. I did not take that, because I was saying
20 Minister Baloyi is still investigating the matters whether everything was done procedurally.

ADV KATE HOFMEYR: Ms Oliphant I - I do not want to belabour the point, but do you accept that when he wrote that letter. He had concluded those procedures and he had determined that he had not been fairly dismissed.

MS OLIPHANT: What has happened he sent the letter on 29 November of which I am not sure when it landed to - to my office, because as I have said we discussed the issues informally in a session in Parliament. So the date of the letter ...

ADV KATE HOFMEYR: Hm.

MS OLIPHANT: Does not mean that that letter immediately come to my office.

ADV KATE HOFMEYR: No. I accept that, but you had that conversation before the rising of Parliament in December. So at worse
10 for us you got this information in December 2010. Did you not?

MS OLIPHANT: Well during that - that briefing session of which - of which we - we had the discussion on how we should deal with the issues procedurally particularly in terms of writing a letter of withdrawal and putting him on special leave. We discussed that informally in a parliamentary session before the Parliament - the Parliament rise and immediately when the Parliament rises in most cases even the Cabinet does not take time and we all - we will all go to leave.

That is what has happened and I - I think that is why even the letter that I - I wrote for the withdrawal was around January. I think at
20 the end of January.

ADV KATE HOFMEYR: Do you remember having a meeting with Mr Baloyi on 11 January 2011 at which these issues were discussed?

MS OLIPHANT: I cannot clearly recall that. I must say.

ADV KATE HOFMEYR: I - I will take you to that in a moment. Let us go to - back to your affidavit. NN3 at page 7.

MS OLIPHANT: Okay.

ADV KATE HOFMEYR: You say there at paragraph 18 that:

“Mr Baloyi advised you according to the procedures that ought to be followed in the transfer of Mr Manyi. You must write a letter withdrawing Mr Manyi’s dismissal in terms of Section 5-7 of the Public Services Act and place him on special leave.”

Do you see that?

10 **MS OLIPHANT:** Yes.

ADV KATE HOFMEYR: What does Section 5-7 of the Public Services Act empower you to do?

MS OLIPHANT: It empowers the Minister to correct the situation where there is something that was done wrongfully and that is why I had to consider that based on also the advice by Minister Baloyi that certain procedures were not followed properly.

ADV KATE HOFMEYR: Did you have - did you look at the section in the Act before you took the decision?

20 **MS OLIPHANT:** We discussed with the Legal Services Team in the department.

ADV KATE HOFMEYR: So did they ...?

CHAIRPERSON: Yes, but the question is whether you looked at the section yourself?

MS OLIPHANT: I think yes.

ADV KATE HOFMEYR: Let us go to it then. It is a file also available

to you. Called the NN6 Legislation bundle and if you open it up at page 35.

CHAIRPERSON: Bring it to me.

ADV KATE HOFMEYR: At page 35.

MS OLIPHANT: Yes.

ADV KATE HOFMEYR: You will find Section 5-7.

MS OLIPHANT: Huh-uh.

ADV KATE HOFMEYR: It reads there:

10 “A functionary shall correct any action or omission
purportedly made in terms of this Act by that
functionary if the Act or omission was based on an
error of fact or law or fraud and it is in the public
interest to correct the action or omission.”

Do you recall looking at this section at the time?

MS OLIPHANT: I think so, because if I am not mistaken the - the Advocate Pascha even further explained on this particular clause and that is why we ended up drafting a letter based on 5-7.

ADV KATE HOFMEYR: Which part of 5-7 did rely on?

MS OLIPHANT: Is that if the action was based on an error.

20 **ADV KATE HOFMEYR:** Which of them, because it is an either an act of fact or law or fraud. Which was the one you relied on?

MS OLIPHANT: Is the - is an error of fact, because as I have said previously the Minister does not have powers to dismiss the Director-General.

ADV KATE HOFMEYR: And what determination did you make about the

public interest?

MS OLIPHANT: The public interest was that a - the Public Service and Administration Minister was going to investigate. No, no, no. Based on the facts that were given to me. That the former Minister did not act in terms of the - of the Public Service Act and therefore I was correcting that mistake and I believe that it was based on the public interest.

ADV KATE HOFMEYR: Those are two different things Ms Oliphant. I fully understand your evidence to be you understood that you were correcting something ...

10 **MS OLIPHANT:** Huh-uh.

ADV KATE HOFMEYR: But there is a second requirement in this section. It is that there be a public interest in correcting the decision. So what was your understanding of the public interest that was going to be pursued?

MS OLIPHANT: The public interest was that we were going to save one, the - the money from the department rather than to allow a situation where the matter should - will be taken to court and at the end of the day it was going to be the public that will be footing that bill in terms of the budget of the department that has been allocated to the
20 department. That was my understanding.

ADV KATE HOFMEYR: When you took the decision to withdraw the termination you also placed Mr Manyi on indefinite special leave. Is that correct?

MS OLIPHANT: Yes. I said special leave until further notice.

ADV KATE HOFMEYR: Indeed. So no end point to the special leave

was stipulated. Correct?

MS OLIPHANT: Can you repeat the question?

ADV KATE HOFMEYR: There was no end to the special leave. You said until further notice. Correct?

MS OLIPHANT: Yes. I said until further notice.

ADV KATE HOFMEYR: When a person is on special leave are they paid a salary?

MS OLIPHANT: Yes.

ADV KATE HOFMEYR: But they are not rendering any services to the
10 department. Are they?

MS OLIPHANT: Yes, because they are on special leave.

ADV KATE HOFMEYR: So would it have been in the public interest to reverse the decision on the termination of Mr Manyi, continue to pay him a salary for an indefinite period and not have him render any services to the Department of Labour?

MS OLIPHANT: Yes, because wanted to finalise the investigation and all processes precisely because if we did not do that then we were going to be taken to court and what was going to happen if Mr Manyi win that court case.

20 **ADV KATE HOFMEYR:** Ms Oliphant withdrawing the termination put the prospect of the court case aside. Do you accept that?

MS OLIPHANT: What was going to happen is that when - when we spoke Minister Baloyi was that he wants to finalise these issues within three months. So that is when probably I was going to consult him if that matter was not yet finalised.

ADV KATE HOFMEYR: But it was not about a risk of going to court. Was it?

MS OLIPHANT: If - if we went to court - if we went to court it is either that process was going to be delayed and then it is either - say for example if we take the case that happened between the Minister for - for Intelligence then. The - the Director-General won the case and then the department had to foot that particular bill.

ADV KATE HOFMEYR: Ms Oliphant when you decided to withdraw the termination of Mr Manyi's dismissal he was then reinstated in the public
10 service. Correct?

MS OLIPHANT: Huh-uh. Yes.

ADV KATE HOFMEYR: He could not have gone to court to fight about anything then. Could you?

MS OLIPHANT: No. He was not going to fight.

ADV KATE HOFMEYR: Right. So my question to you was. Is it in the public interest to bring someone back into the public service, to place them indefinite special leave, to pay them a salary and not have them render any services to the department and I understood your answer to be yes it is, because we needed time to investigate and to ensure that
20 there was an approach to the courts. Did I understand your evidence correctly?

MS OLIPHANT: Yes.

ADV KATE HOFMEYR: But my point to you Ms Oliphant on which I would like your response is once you have withdrawn the termination there is no risk at all that Mr Manyi was going to go to court. Was

there?

MS OLIPHANT: No. There was no risk.

ADV KATE HOFMEYR: So do you maintain that it was still in the public interest to bring him back, pay him a salary and have him sit at home?

MS OLIPHANT: Because we are going to finalise ...

CHAIRPERSON: Oh maybe - maybe you need to leave out the bringing back part, because that is the part that takes away the risk of litigation. So once you had brought him back by way of withdrawing, the dismissal there was no risk of him taking you to court. Is that right?

10 **MS OLIPHANT:** Yes Chair.

CHAIRPERSON: If you then - and I am probably going ahead of you Ms Hofmeyr. If you then decided to pursue charges or to act on the understanding that by the way he still needed to complete his probationary period then that would be a different issue. There would be no litigation that ought to arise at that stage in regard to that. At least until you had made a decision whether charges should be pursued and the outcome thereof.

MS OLIPHANT: Yes Chairperson.

CHAIRPERSON: Yes. Ms Hofmeyr.

20 **ADV KATE HOFMEYR:** Thank you Chair. You indicated that you spoke to Mr Baloyi about the prospect of transferring Mr Manyi out of the Department of Labour. Is that correct?

MS OLIPHANT: Yes.

ADV KATE HOFMEYR: Why did you have those discussions with him?

MS OLIPHANT: With Minister Baloyi?

ADV KATE HOFMEYR: Hm.

MS OLIPHANT: As I have - as I have indicated that based on the report by the Legal Services Team and also based on the demand to reinstate him by NEHAWU. So it - it shows that there was going to be an instability in the department. So I was trying to make sure that there is stability in the department.

ADV KATE HOFMEYR: What is your understanding of who has the power to transfer a Director-General?

MS OLIPHANT: My understanding is that the Minister for Public
10 Service and Administration has to make recommendations, because he has powers delegated to him by the President and then probably that issue will be further submitted to the Cabinet. If I am not mistaken.

ADV KATE HOFMEYR: So do you - is your understanding that Mr Baloyi does not have the final decision to make. It is either Cabinet or the President who makes that decision?

MS OLIPHANT: In terms of the Public Service Act the President employs the Director-Generals. So since there is that delegated power through the Minister for Public Service and Administration and Minister Baloyi knew how to deal with those issues, but he cannot take
20 a decision as an individual. In most cases whatever relates to the Director-Generals he will present that to Cabinet for the Cabinet to take a decision, because even when the - the employment of the Director-General by the President. He employs them through the Cabinet.

ADV KATE HOFMEYR: You took the decision finally to withdraw

Mr Manyi's termination on 31 January 2011. Is that correct?

MS OLIPHANT: Yes.

ADV KATE HOFMEYR: Who did you communicate that decision to?

MS OLIPHANT: We had a discussion with Minister Baloyi and Minister Baloyi is the one that has to lead the processes on what processes are related to that. It is his call to do. Not me.

ADV KATE HOFMEYR: Do you recall when you communicated that decision to him?

MS OLIPHANT: Which decision?

10 **ADV KATE HOFMEYR:** The decision to withdraw the termination of Mr Manyi's dismissal?

MS OLIPHANT: It ...

ADV KATE HOFMEYR: Withdraw his dismissal. Apologies.

MS OLIPHANT: It was based on his advice. So that is why we had to discuss that and that is why I entered up withdrawing that and I copied Minister Baloyi in that letter.

ADV KATE HOFMEYR: And did you have any conversations with him after that Monday 31 January about your decision to withdraw it?

20 **MS OLIPHANT:** Immediately after I have written that letter I submitted a copy to him and then he - after that he said he was going to finalise the matter. I think - I cannot remember when exactly did we have that discussion.

ADV KATE HOFMEYR: And did you communicate your decision to former President Zuma?

MS OLIPHANT: No. I did not, because it is not my responsibility. It is

the Minister for Public Service and Administration who has delegated powers by the President.

ADV KATE HOFMEYR: Did you consent to the transfer of Mr Manyi to GCIS?

MS OLIPHANT: I was not informed to which department he was going to be transferred to, but Minister Baloyi just said he is going to be transferred to another department.

ADV KATE HOFMEYR: So when he was transferred on Wednesday of that week 2 February. You had not consented to his transfer to GCIS at
10 that stage?

MS OLIPHANT: No. I did not have those powers.

ADV KATE HOFMEYR: No. I am asking a question of fact. Did you as a fact consent to his transfer to GCIS between Monday and Wednesday?

MS OLIPHANT: I must say I do not have those powers precisely, because the processes are led by Minister for Public Service and Administration and he is the one who made the recommendations to the Cabinet, because my understanding was that that issue was reported to the Cabinet, but I cannot exactly say whether it was reported or not.

20 That is why I even said to the Secretariat previously the best person to respond on that matter is Minister Baloyi and also probably the Cabinet Secretariat can assist the Commission through your request as the Commission, because Cabinet matters are confidential.

ADV KATE HOFMEYR: Hm.

CHAIRPERSON: Well you say you had not powers to consent, but is

the position not that you had made it clear to Minister Baloyi prior to that date that you wanted Mr Manyi to be transferred to another department? Not to come back to your department.

MS OLIPHANT: Chairperson, maybe if you can further clarify for me the consent, because my understanding when I was supposed to ...

CHAIRPERSON: Yes. No, no, no.

MS OLIPHANT: To give that. I was supposed to ...

CHAIRPERSON: Forget about the consent.

MS OLIPHANT: Okay.

10 **CHAIRPERSON:** No, no.

MS OLIPHANT: Okay.

CHAIRPERSON: Forget for now about the consent. That was as prior question by Ms Hofmeyr.

MS OLIPHANT: Yes.

CHAIRPERSON: Just focus on mine. Mine is - is the position not that prior to the transfer of Mr Manyi into - to the Department of GCIS. You had made it clear to Minister Baloyi that wanted Mr Manyi to be transferred to another department. You did not - you did not want him in your department or you would prefer not to have him back in your
20 department.

MS OLIPHANT: I have preferred Chairperson that if Minister Baloyi can transfer him to another department.

CHAIRPERSON: Yes.

MS OLIPHANT: Yes.

CHAIRPERSON: Yes. You had communicated that to Minister Baloyi

prior to Mr Manyi's transfer to GCIS?

MS OLIPHANT: When I had the discussion before anything started. I said if probably there are issues particularly when it comes to the implementation of the procedures I will be happy if he can be transferred to another department.

CHAIRPERSON: Yes. Okay.

MS OLIPHANT: Yes.

CHAIRPERSON: So Mr Baloyi knew that?

MS OLIPHANT: Yes. He knew it.

10 **CHAIRPERSON:** Yes, but did you sign any documents at any stage to say you are consenting or you support the transfer of Mr Manyi from the position of DG in the Department of Labour to the Department of GCIS?

MS OLIPHANT: No. I did not sign any letter.

CHAIRPERSON: Did anybody ever ask you to indicate your position in writing in anyway about that transfer?

MS OLIPHANT: No. I do not know, but I think Minister Baloyi will be able to respond on that one, because I informally discussed that with him.

CHAIRPERSON: Yes, but no. We are not asking what he said. We are
20 asking whether anybody ever said to you - you would have to ...?

MS OLIPHANT: No. There is no one ... (intervenes).

CHAIRPERSON: Give us a document indicating that you agree or release Mr Manyi to be transferred somewhere else?

MS OLIPHANT: No Chairperson.

CHAIRPERSON: You do not. Okay.

MS OLIPHANT: No.

ADV KATE HOFMEYR: I understand you to say that you did not know that Mr Manyi was going to GCIS until the announcement by the Cabinet Spokesperson. Is that correct?

MS OLIPHANT: Yes, because when Minister Baloyi briefed me he said he is going to be transferred to another department, but he - he was not specific to which department.

ADV KATE HOFMEYR: And that notice by the Government Spokesperson as we have the evidence before the Commission came
10 out on 3 February which was the Thursday of the week after the Cabinet meeting on the Wednesday. Does that accord with your recollection?

MS OLIPHANT: Even if I cannot remember the exact date, but all the announcements are made immediately after the sitting of the Cabinet.

ADV KATE HOFMEYR: So you withdrew the termination on the Monday and then there was a Cabinet meeting on the Wednesday where Mr Manyi was transferred to GCIS, but in that period you were not alerted to the fact that he was going to GCIS. Is that correct?

MS OLIPHANT: Yes. I was not aware that he was going to GCIS.

20 **ADV KATE HOFMEYR:** When you learnt that he was going to GCIS were you concerned that some of those decisions that you still needed to make based on Mr Baloyi's advice about the misconduct charges and probation had not yet been taken?

MS OLIPHANT: I - I took that Minister Baloyi will be able to deal with all the issues that are relevant in terms of the Act. So when he was

transferred I was not even consulted at that particular time that now we are transferring him.

ADV KATE HOFMEYR: Did you ever make inquiries as to the nature of the charges that Mr Manyi faced while he was at the Department of Labour?

MS OLIPHANT: No.

ADV KATE HOFMEYR: Were you aware that around the time of his dismissal those charges were leaked to the Sunday Times?

MS OLIPHANT: Sometimes I do not read newspapers.

10 **ADV KATE HOFMEYR:** So did you not know that one of the charges that he faced was that he had pursued private interests in a meeting that he had had with the Norwegian Ambassador?

MS OLIPHANT: No. I did not have that information.

ADV KATE HOFMEYR: And were you also not aware that one of the charges he faced was having instructed officials to write off a debt in the department?

MS OLIPHANT: No.

ADV KATE HOFMEYR: But I understand your evidence to be you thought that those matters would be taken up by Mr Baloyi. Is that
20 right?

MS OLIPHANT: Yes.

ADV KATE HOFMEYR: Is that despite the fact that he indicated to you in that letter or maybe in December that you needed to make a decision on the charges?

MS OLIPHANT: Well I - I cannot really say yes I knew, because I

cannot recall getting this letter prior our meeting with Minister Baloyi which was an informal meeting of which he informed me that the letter - he has written a letter. Probably I am going to receive that letter, but we discussed the - the matters informally as I have said.

ADV KATE HOFMEYR: Just some clear in your evidence. Did you then have an informal discussion at which Mr Baloyi conveyed to you that you will need to make a decision about whether to pursue misconduct charges against Mr Manyi?

MS OLIPHANT: No. We talked about only two. That was the
10 withdrawal and also the special leave.

ADV KATE HOFMEYR: Thank you and can I also just get clarity. Between that Monday when you withdrew the termination and the Wednesday when the transfer was announced in Cabinet you had no interactions with former President Zuma?

MS OLIPHANT: No. I did not have.

ADV KATE HOFMEYR: Thank you. Chair those are our questions.

CHAIRPERSON: Thank you very much. I think other questions may wait for Mr Baloyi. Thank you very much Ms Oliphant. If we need you to come back we will ask you to come back, but for now you are
20 excused.

MS OLIPHANT: Thank you very much Chairperson.

CHAIRPERSON: Thank you.

MS OLIPHANT: Am I also excused to leave, because I have the flight to catch?

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

MS OLIPHANT: And that also as a Christmas present.

CHAIRPERSON: Hm.

MS OLIPHANT: During Christmas Day can you please read Johan 27.

CHAIRPERSON: Huh-uh.

MS OLIPHANT: From verse 11 ...

CHAIRPERSON: Huh-uh.

MS OLIPHANT: And also Exodus Chapter 1 from verse 13.

CHAIRPERSON: Oh.

MS OLIPHANT: That is your Christmas present.

10 **CHAIRPERSON:** Is that my Christmas present?

MS OLIPHANT: Yes.

CHAIRPERSON: Oh okay. Well has somebody written down those versus?

MS OLIPHANT: Thank you Chair.

CHAIRPERSON: Just repeat the verses.

MS OLIPHANT: It is Johan 29 verse 11 - from verse 11 and then Exodus Chapter 1 ...

CHAIRPERSON: Huh-uh.

MS OLIPHANT: From verse 13.

20 **CHAIRPERSON:** Up to - up to the end?

MS OLIPHANT: Up - up until the end.

CHAIRPERSON: Oh, okay. Thank you.

MS OLIPHANT: Thank you very much.

CHAIRPERSON: Thank you. Yes.

ADV KATE HOFMEYR: Thank you Chair.

CHAIRPERSON: Yes.

ADV KATE HOFMEYR: Our next witness is Mr Baloyi.

CHAIRPERSON: Yes.

ADV KATE HOFMEYR: Is it convenient for us to use the time before they lunch adjournment?

CHAIRPERSON: Well I was thinking if we - maybe if you need about five minutes.

ADV KATE HOFMEYR: Hm.

CHAIRPERSON: We could take five minutes and then start with him.

10 **ADV KATE HOFMEYR:** Certainly.

CHAIRPERSON: So that maybe by 1 o' clock we will have got rid of ...

ADV KATE HOFMEYR: Indeed.

CHAIRPERSON: Preliminary issues. So that after lunch we can go into the meet of his evidence.

ADV KATE HOFMEYR: Indeed Chair.

CHAIRPERSON: Yes.

ADV KATE HOFMEYR: We will indebted for a five minute break.

MS OLIPHANT:

20 **CHAIRPERSON:** Yes. So we will take a five minutes adjournment. We adjourn.

REGISTRAR: All rise.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Yes, are you ready?

ADV KATE HOFMEYR: Indeed, thank you Chair. Chair Mr Baloyi who

will be our next witness is legally represented, may I ask that that his lawyers place themselves on record?

CHAIRPERSON: Ja, thank you.

ADV PETER MAKE: As the Chairperson pleases, I am Peter Make, I am instructed by Correia de Ramoda Incorporated.

CHAIRPERSON: Yes thank you.

ADV KATE HOFMEYR: Thank you Chair, and then just in terms of the exhibit containing Mr Baloyi's statements, you will find them in the main file before you under under Tab 4, and if I could ask that, those
10 statements, I'll identify them shortly, be introduced as Exhibit NN4. Chair just to take you through what is contained in NN4, Mr Baloyi has given a series of statements to the Commission. The first of those commences on page one it concludes on page 102 and it was – it is actually an affidavit deposed to on the 11th of October 2019. It I may just be permitted to list all of them for the purposes of the record and then we can enter it as an Exhibit with your leave. The second statement begins at page 107 it itself is undated but it appears with the Commissioner's stamp of the 7th of November 2019 and that concludes at page 124. There is then a set of Annexures which are required to be
20 read with that second statement they commence at page 125 and they run to page 149 and then there is a document entitled, supplement which commences at page 105 and concludes at page 151 that bears a stamp of a Commissioner of Oaths of the 11th of November 2019 and thereafter there is a letter and an Annexure all of which conclude at page 159.

CHAIRPERSON: And what is at 160 or is that part of 159?

ADV KATE HOFMEYR: Yes sorry the final Annexure which is an Annexure to the letter is an Annexure which commences at 159 and concludes at 162.

CHAIRPERSON: Mmm the documents which appear under divider four will be admitted as Annexure NN4 they include two statements by Mr Baloyi and various other documents, that's from page one up to page 162, is that right?

ADV KATE HOFMEYR: Thank you Chair, indeed.

10 **ADV KATE HOFMEYR:** Thank you, Mr Baloyi in addition to providing these statements to the Commission there were a set of documents that were made available to you a few ago in advance of today's evidence, is that correct?

CHAIRPERSON: Remember we haven't – he must still be...[intervenes].

ADV KATE HOFMEYR: Apologies Chair we have not sworn the witness in, please can we do so.

CHAIRPERSON: Please administer the oath or affirmation.

REGISTRAR: Please state your full names for the record.

20 **MR BALOYI:** Makareng Richard Baloyi.

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

MR BALOYI: No.

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

MR BALOYI: Yes.

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

MR BALOYI: So help me God.

MR MAKARENGE RICHARD BALOYI: (duly sworn, states)

CHAIRPERSON: Thank you, Mr Baloyi before Ms Hofmeyr puts any questions to you I just want to say that I am aware that your affidavits deal with various matters in quite some detail and there may be – some
10 of the matters may be quite important to you to be placed before the Commission but I just want to say that the areas in which I'm interested are very narrow so, we'll allow you to say something about your background and your commencement in Parliament and highlight here and there but it won't be a long time, I don't want it to take more than five minutes. The areas which I'm interested in are very narrow but they are very important. So I just don't want you to feel bad if we don't deal with a lot of things which you have put on the affidavit, they are there it's just that we want to use our time as fruitfully as possible. So you'll find that the questions will be directed really to very limited
20 areas. Certainly from my side it's very much on the issue of what you know and what your role may have been in regard to the transfer of Mr Maseko from GCIS to your department and ultimately how he left your department and then with regard to Mr Manyi what you know and what your role was in having him transferred to or him being transferred to GCIS but as you may have heard earlier on even with regard to that it's

not necessarily the full scope that we are looking at, you understand?

MR BALOYI: I understand, thank you very much.

CHAIRPERSON: Yes you can keep your mic on throughout, yes just –
ja thank you, Ms Hofmeyr?

ADV KATE HOFMEYR: Than you Chair. Mr Baloyi I do apologise for commencing my questions before you were under oath. The question just related to a set of documents that you were sent, if I recall it, in the middle of November by the Commission in preparation for today's evidence, can you confirm having received those documents?

10 **MR BALOYI:** Thank you very much, I'd received them only on Tuesday.

ADV KATE HOFMEYR: Tuesday this last week?

MR BALOYI: Last week.

ADV KATE HOFMEYR: Have you had an opportunity to consider them?

MR BALOYI: I glanced through, luckily some of them are documents I know the contents of it's not initial.

ADV KATE HOFMEYR: Indeed, if at any point in the evidence you'd like a bit more time, please let us know and we can make arrangements
20 for you to be able properly to consider them.

MR BALOYI: I will.

ADV KATE HOFMEYR: Mr Baloyi I went through in the introduction, the set of statements that are contained in Exhibit NN4, as I mentioned, sometimes they are stamped by a Commissioner of Oaths but not dated where you have signed them. Can I ask you whether you are

comfortable as you sit there to confirm the contents of all of those statements that I referred to as being true and correct?

MR BALOYI: I confirm.

ADV KATE HOFMEYR: Thank you. Chair in the course of this morning I was given a further statement from Mr Baloyi, it was really a repetition of many of the statements he's already given and my arrangement with his legal representatives is that I will simply ask him questions based on the statements that we've seen there's nothing new in what was handed up this morning but certainly I indicated to Mr
10 Baloyi's lawyers that at the conclusion of my questions, if there's something that's been omitted that he regards as pertinent I will certainly indicate to him if he would like to make mention of those aspects with your leave.

CHAIRPERSON: Ja that's fine.

ADV KATE HOFMEYR: Than you. Mr Baloyi if we can then start with the Cabinet meeting of the 2nd of February 2011, the Commission has received evidence previously that you did not attend that meeting, is that correct?

CHAIRPERSON: Well Ms Hofmeyr I know I've just said a few minutes
20 ago that probably Mr Baloyi would like to say a little bit about his background.

ADV KATE HOFMEYR: Of course.

CHAIRPERSON: So let's give him that chance.

ADV KATE HOFMEYR: Certainly.

CHAIRPERSON: But I like the idea of going straight to the issues.

ADV KATE HOFMEYR: Of course.

CHAIRPERSON: But I promised him a few minutes for him to say the background to give us his background that he considers to be important.

MR BALOYI: Okay thank you very much Chairperson. I'm Makareng Richard Baloyi [indistinct] documents referring to me before I'll be referred to as Masiyane Richard Baloyi it's still me, I changed my name in the process. I joined the National Assembly because I want to talk about things that are related to the subject matter, I joined the National
10 Assembly when I was elected to be a member of Parliament on the ANC Province Tour National List in June 1999 and then I became involved in activities in Parliament having been a whip serving in various portfolios I became a whip both the portfolio committee on Public Service and Administration, I became it's Chairperson, I served in parliaments adhoc committees, quite a few of them including the adhoc committee that was dealing with looking at, one the Public Protector and the other that was looking the African Peer Review Mechanism that's when the country, South Africa was going through a peer review process for the first time. Dealing with issues of good governance, I was a Chair of that
20 sub-committee. So I then became a Minister, appointed as a Minister for Public Service and Administration in 2008. I served in that position from 2008 till October 2011, I was appointed then as a Minister for Corporate Governance in Traditional Affairs and then after that I was posted as a Diplomat representing South Africa in the central African state of Congo Brazzaville as an Ambassador.

I have to indicate my background academically is that I hold a degree in Political and Administrative Sciences specialising in Public Administration and Political Science. I was one of the team members that were sent just after we as a ruling party, the ANC, after adopting the document in 1992 ready to govern. Sent for training in as far as issues of a Senior Management Leadership. So that's what I can actually indicate except that in related to the subject matter of the Commission, in my position even before I became Minister I got involved in dealing with quite a number of issues that have to do with

10 us upholding the constitution in as far as Chapter 10 is concerned which deals with Public Administration making sure that the three main aspects of that chapter are actually respected, which one is in terms of Section 195, the values and principles of our Public Administration and Section 196 the issues around the role of the Public Service Commission and then 197 the Public Service which is the implementation mechanism for whatever we'll see is Government functions. So I developed an interest in those and I want to thank the Commission, what Chairperson, I would have said, in my statement as I requested is firstly to place on record thanking the Commission for the

20 assistance given to me because you see it is about 11 years since I was a Minister for Public Service and Administration I moved on after that, dealing with quite a number of things and having to be expected to respond based on recall is a difficult task. It was made easier, on the first day I had with investigators, Chairperson it was a very interesting issue, I even said to them, but look I said I need some

documents, I'm coming in here and now you ask me quite a lot of things but that was basically – it was not to be like un-cooperative but was basically to say, you know, in the cracks of oblivion over a period exceeding ten years, and when a person has not been static, you've moved on to other things and you are not actually idling at the moment, you are busy with other things as well, it is just – you meant to actually not recall some of the things. We battled with investigators more specially when it came to dates, when did this happen, I said, oh no that's a serious issue but then having said this, I'm saying thank you
10 but if I were to raise, and I'll come specifically to those things, if the questions will direct to some of the issues where I may request is a situation where I then said, having noted that the Commission assisted me to get documents, the question may be asked, have I got all the documents because I know which documents to look for but those documents are there in government they are in files they are in Cabinet, you know, I know where to look for but the issue is being outside of that you may appear like you're not giving full support to the Inquiry, simply because you don't have those.

So we relied on the Commission, the question is, my two
20 statements and the addendum if I got some of these documents, some of which I got last week on Wednesday, if I got the earlier would there have been a difference in context in terms of what I actually submitted under oath, the answer I will give is there could be some adjustments, like I wouldn't like to ask a question – to answer a question, the Commission asks me a question and they then say, I assume, I

presume, may be, for me that's not enough. I will then say, I factually dealt with this issue but if you don't have information there is nothing that you can do. I even had to say Chairperson, so that when you pick this up, it wouldn't appear like I'm being contemptuous I know that the – I don't have to refer to my communication with the Commission to any other person, I have to deal directly – but in certain areas I had to say to my employer at the time, the ANC, I mean look, I was a government representative in all what I did, what is going to be asked here is not asked in my personal capacity it's asked to me because I was a

10 Minister and these records are there, is it possible that some of these issues you can facilitate me to have access so that's the situation that [indistinct] but I have to place on record the Commission did indeed assist me, so to the extent that the Commission assisted, I'm here ready to respond to the questions.

CHAIRPERSON: No that's fine, thank you Mr Baloyi if, I mean one, as with all witnesses as you give your evidence we will be mindful of the fact that a lot of time has lapsed since the events to which you will be – on which you will be giving evidence and - number one, number two we will bear in mind that you no longer have the kind of access to

20 documents that you would have had if you were still Minister and number three to the extent that there might be documents that are, to you knowledge, not within the Commission that would have assisted you on giving evidence – in giving evidence and assisting the Commission on certain issues, do feel free as we go along and you are asked questions, do feel free to specify that there is a particular

document which might assist and – so that to the extent that the Commission might not have received that or might not have been aware of it then attempts can be made to get it.

MR BALOYI: Thank you Chairperson, thank you very much.

CHAIRPERSON: Maybe Ms Hofmeyr let's go to quarter past and take the lunch break.

ADV KATE HOFMEYR: Thank you Chair if I may then move immediately to that Cabinet meeting on the 2nd of February I indicate, Mr Baloyi that there's been evidence before the Commission previously
10 that you weren't in attendance at that meeting, is that correct?

MR BALOYI: I'm not sure but that can be verified through Cabinet minutes.

ADV KATE HOFMEYR: So as you sit here today you're not sure whether you were or weren't there?

MR BALOYI: I'm not sure whether I was there or not.

ADV KATE HOFMEYR: Thank you, can I ask, just in terms of background Mr Manyi and Mr Maseko gave evidence before this Commission in the first week of November of this year, did you either watch their evidence or have you read the transcripts of their evidence?

20 **MR BALOYI:** No I didn't watch that I – when I got a directive from the Commission to say I need to respond in particular to what Mr Maseko said to me, I approached the Commission, and I said, give me that statement I want to read it and I got that statement, I only got it the time the Commission gave it to me and I had received feedback from other colleagues, there's one senior comrade who called me to say,

Maseko was speaking and he was saying something and luckily there is nothing bad about you that was the end of it but when I saw his affidavit that I got from the Commission it became clear that the – there is something that really I have to have interest in. So in as far as Mr Manyi is concerned also I never watched that. The only time I watched Mr Manyi is the latest, I think he was appearing for the second time.

ADV KATE HOFMEYR: Yes.

MR BALOYI: Ja that's when I watched that but if you – I mean his appearance before, I didn't and I had no record what he told the
10 Commission.

ADV KATE HOFMEYR: So my question related to the evidence that they gave in November of this year, did you watch that evidence of Mr Manyi?

MR BALOYI: In November of this year?

ADV KATE HOFMEYR: Yes.

MR BALOYI: Ja...[intervenes].

ADV KATE HOFMEYR: A few weeks ago.

MR BALOYI: Ja part of it and with Mr Maseko I watched when he was – but it was not on the Commission thing, although they would bring
20 clips of what happened in the Commission when he was talking, I think is Frank Talk one programme of TV about that so that's exactly that.

ADV KATE HOFMEYR: Thank you, it's just helpful for me to know what extent of knowledge you may have of their testimony so I appreciate that. Where it's relevant I will make reference to what they said and I will ask for your comment on it.

MR BALOYI: No problem.

ADV KATE HOFMEYR: Thank you. Mr Baloyi can you assist us with your understanding of who takes the decision to transfer a Director General?

MR BALOYI: If I were to sing a song about answering that question I'll say consent, concur, concur, approve, meaning that when there has to be a transfer of a Director General there must be an initiator and there must be the – and the initiator meaning that concurs that I'd like to see this Director General transferred. Either it's the receiving or the
10 releasing then the Director General himself has to give consent and that Cabinet has to concur and that the President has to transfer. So that's why I'm saying is consent, concur, concur, concur, approve or transfer.

ADV KATE HOFMEYR: That's helpful thank you. We will use that as a guide to your evidence today. Can I ask you to pick up your first statement to the Commission it is in Exhibit NN4 and I'd like to...[intervenes].

CHAIRPERSON: I'm sorry, I'm sorry Ms Hofmeyr, you said there has to be an initiator?

20 **MR BALOYI:** Yes.

CHAIRPERSON: Before there can be a transfer of a Director General maybe of any officer or employee but a Director General.

MR BALOYI: Yes.

CHAIRPERSON: Who could qualify as an initiator of a transfer?

MR BALOYI: The Director General...[intervenes].

CHAIRPERSON: Or in other words who may initiate, who may be an initiator?

MR BALOYI: Thanks Chairperson, the Director General himself/herself may initiate if he or she initiates his or her Minister need to concur. The Minister where this person is being transferred to has to concur. Cabinet has to concur then the President signs a Presidential minute which is co-signed by the Minister of Public Service and Administration to effect the transfer but the Minister, one Minister can also initiate a transfer. So if that Minister initiates a transfer he or
10 she must get the consent of the official to be transferred and he or she must have actually have found an alternative as to where this person is being transferred to and he or she must actually make sure that when this person gets transferred there he's not going to be worse off. So it's either at the same level just like that, so those are the people who initiate but there are certain circumstances where the Minister of Public Service and Administration may initiate. So if – Chair we have in as far as Executive Authorities we have what we call Line Function Ministers and a Line Function Minister is a Minister for a particular Ministry. So a one Line Function Minister may initiate a – or the Executive Authority
20 of DPSA may initiate but that is under certain circumstances that I may refer to.

CHAIRPERSON: So if I'm a DG I can initiate my transfer and then I need the consents, concurrences and approval that you talked about. If I am the Minister, if I'm a Minister and I want to have my DG transferred I can initiate that transfer and similarly I would need the

consents and concurrences and approval that you talked about?

MR BALOYI: Yes sir.

CHAIRPERSON: And under certain special circumstances the Minister of Public Service and Administration may initiate the transfer of the DG of another Minister not necessarily his or her own, is that right?

MR BALOYI: It's right Chair.

CHAIRPERSON: That's what you're saying?

MR BALOYI: That's what I'm saying.

CHAIRPERSON: Apart from being able to initiate the transfer of his or
10 her own DG he or she can also initiate the transfer of the DG of another Minister?

MR BALOYI: Yes Chairperson.

CHAIRPERSON: Every initiator of a transfer needs the various consents and concurrences and approvals that you talked about?

MR BALOYI: Exactly Chairperson.

CHAIRPERSON: Yes okay thank you.

ADV KATE HOFMEYR: Thank you Chair, just before the break there's one aspect of Mr Baloyi's affidavit I'd like to go to and then hand up two documents because I think it will be useful for Mr Baloyi to look at
20 them over lunch, if we may.

CHAIRPERSON: Yes okay.

ADV KATE HOFMEYR: So if we could just conclude those two aspects before we adjourn. Mr Baloyi I ask you to turn to page 12 of Exhibit NN4.

MR BALOYI: I'm there.

ADV KATE HOFMEYR: Thank you and this is in relation to this broad question about your guidance on the process that is followed to transfer DG's because if you pick it up at paragraph FF on that page, you say,

“Because my offer was agreed to”,

I'm going to come back to that in a moment but you there describe a process, you say,

“I manage the transfer process and I think it should be in the records of DPSA and/or GCIS that due process was managed through, namely”,

And then I'm interested in this list right, can you tell us what these documents are that are required in the process?

MR BALOYI: The first one madam mentioned there is a written consent of the releasing of the Executive Authority because FF talks about a situation where I as Minister for Public Service and Administration then initiated and then I then said,

“having initiated this then the due process was managed”,

And what I'm saying in terms of that document is that if this due document is managed if I was keeping record of all these files I will then say, this is one, the consent letter, this is two, the Cabinet memorandum, this is three the President's minute co-signed and I've listed those document there.

ADV KATE HOFMEYR: Thank you.

MR BALOYI: In the process those documents are very important.

ADV KATE HOFMEYR: Thank you in preparation for today's evidence

we were able to download off the internet, this morning actually a – what appears to be a standard form Cabinet memorandum which is the memorandum which must be filled in whenever appointments of DG's are made in the Public Service and Mr Baloyi, given your extensive knowledge of the Public Service, I wonder if I could, make available to you that form, it is together with an Annexure which is a protocol document on the principles and procedures to be followed for the recruitment and filling of posts of Heads of Department and Deputy Director Generals at National level, are you aware of those documents
10 as you sit here?

MR BALOYI: Madam you can make that document available or you can ask a question on that document I can actually respond.

ADV KATE HOFMEYR: Thank you, my suggestion Chair is that I make it available to Mr Baloyi now and to yourself and then we take the lunch adjournment and then I can traverse questions with him afterwards.

CHAIRPERSON: Yes, no that's fine let's do it that way.

ADV KATE HOFMEYR: Thank you.

CHAIRPERSON: Do you have a copy he can give the witness, you can give this to Mr Baloyi.

20 **MR BALOYI:** Thank you very much.

CHAIRPERSON: No that's fine, then we'll take the lunch adjournment, we are going to take the lunch adjournment and we will resume at quarter past two, we adjourn.

ADV KATE HOFMEYR: Thank you Chair.

REGISTRAR: All rise.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Okay let us proceed.

ADV KATE HOFMEYR: Thank you Chair. Mr Baloyi before the break we were at page 12 of Exhibit NN4 and you had provided us with the list thereof the documents that comprise the process for a transfer of a DG. I would just like to pick up on the first one listed there. You list there the written consent of the releasing executive authority. Is that something that will be placed before cabinet?

10 **MR BALOYI:** No it is not placed before cabinet. It is placed with the Minister for Public Service and Administration.

CHAIRPERSON: I am sorry I missed that what is not placed before cabinet?

ADV KATE HOFMEYR: The written consent of the releasing executive authority.

CHAIRPERSON: Oh okay.

ADV KATE HOFMEYR: But there is a cabinet memorandum.

MR BALOYI: But I – can I – can I continue there?

ADV KATE HOFMEYR: Certainly.

20 **MR BALOYI:** But the cabinet memorandum when it is written to cabinet it will indicate that Minister so and so has given consent to.

ADV KATE HOFMEYR: Right but the actual written consent itself will not be attached to that memorandum?

MR BALOYI: No.

ADV KATE HOFMEYR: And you list then the cabinet memorandum

itself requesting cabinet to approve the transfer and then the third document is the co-signed cabinet Minister of the Minute of the Minister of DPSA and the President. Can I just stop there? You refer to it here as a cabinet minute but in your evidence earlier you referred to it as a Presidential Minute and you later in your statements refer to it as a Presidential Minute?

MR BALOYI: It is a Presidential Minute.

ADV KATE HOFMEYR: Okay so there is a correction that is required at the top of page 13.

10 **MR BALOYI:** That is fine.

ADV KATE HOFMEYR: It is a Presidential Minute. And the Minister of DPSA you were that Minister at the time of Mr Manyi and Mr Maseko's transfers, is that correct?

MR BALOYI: Yes it is correct.

ADV KATE HOFMEYR: And why is it co-signed by that Minister?

MR BALOYI: Come again?

ADV KATE HOFMEYR: Why is the Presidential Minute co-signed by the Minister of DPSA?

MR BALOYI: Is the initiating Minister – if you look at it it is then
20 Cabinet Minister – it is a requirement.

ADV KATE HOFMEYR: Right.

MR BALOYI: It is a requirement to be like that.

CHAIRPERSON: It might be something in the Constitution. I am not sure certain things when the President signs if they concern the department of another – if a Minister is required.

MR BALOYI: Chair.

CHAIRPERSON: The Minister to sign. It might be or it might not be.

But there is a requirement like that in regard to certain decisions taken by the President that may affect a department where there is a Minister.

MR BALOYI: Certainly Chairperson it is Chapter 5 of the Constitution.

CHAIRPERSON: Hm.

ADV KATE HOFMEYR: Thank you. I – I do have a copy of it available

I will get it in a moment just so that we can check that up. Thank you.

So those are the relevant documents and then before the break I – I

10 handed to you what appears to be a – a template. I called it a sort of proforma for the type of Cabinet Memorandum that will serve before cabinet when there is an appointment of a Director General. Have I understood the document in accordance with your understanding Mr Baloyi.

MR BALOYI: Yes it is a proforma Cabinet Memorandum.

ADV KATE HOFMEYR: Right. And then there is also annexure B which I handed to you which is a protocol about the principles and procedures to be followed for the recruitment and filling of posts of heads of department. Do you see that?

20 **MR BALOYI:** I see that.

ADV KATE HOFMEYR: Was that operative at the time that Mr Maseko and Mr Manyi were being transferred?

MR BALOYI: The document – I think it is...

CHAIRPERSON: I think the question is whether at the time of Mr Maseko's transfer and Mr Manyi's transfer this type of proforma

memorandum would have been what was used normally in such a case?

MR BALOYI: Exactly Chairperson.

CHAIRPERSON: Okay.

ADV KATE HOFMEYR: Thank you. If we look at annexure B it sets out in the first line of the table that the purpose of the document is to confirm the principles or procedures that apply in appointing HOD's and DDG's at national level and at point 2 it indicates that although HOD's and DDG's are appointed by the Executive Authorities Cabinet also plays a role in their appointment. And then there is a reference to
10 cabinet having adopted a protocol document. Are you aware of that document?

MR BALOYI: Yes I am aware.

ADV KATE HOFMEYR: Right. And then if we go over to what is the second from last page of that document under item 17. 17 records...

CHAIRPERSON: I am sorry Ms Hofmeyr. We have not – I have not admitted these.

ADV KATE HOFMEYR: Indeed.

CHAIRPERSON: And I realised when you referred to them that it is awkward because...

20 **ADV KATE HOFMEYR:** We must – indeed.

CHAIRPERSON: Do you want to attach them to the end of Exhibit NN4?

ADV KATE HOFMEYR: Chair I think that makes sense. I will ask...

CHAIRPERSON: Yes then the numbering can – the pagination can continue.

ADV KATE HOFMEYR: Can be paginated accordingly.

CHAIRPERSON: Yes. Yes.

ADV KATE HOFMEYR: So if we can start it just for the record?

CHAIRPERSON: Then maybe we do not – we do not make them separate exhibits.

ADV KATE HOFMEYR: No. Indeed.

CHAIRPERSON: Ja. Even though also making them separate exhibits would be no problem.

ADV KATE HOFMEYR: Hm.

10 **CHAIRPERSON:** We can either do that or just attach them at the end as part of Exhibit NN4.

ADV KATE HOFMEYR: I think it useful just for future purposes to keep them in NN4.

CHAIRPERSON: Yes.

ADV KATE HOFMEYR: If I may make that suggestion?

CHAIRPERSON: Ja.

ADV KATE HOFMEYR: And then if I can suggest we start with annexure B.

CHAIRPERSON: Yes.

20 **ADV KATE HOFMEYR:** And it would be paginated from page 163 then because that was our last existing page of Exhibit NN4?

CHAIRPERSON: Yes. Will somebody do the same for the witness there?

ADV KATE HOFMEYR: We will indeed. If I may beg leave to have my learned friend.

CHAIRPERSON: Yes.

ADV KATE HOFMEYR: Just approach the witness for that purpose?

CHAIRPERSON: Yes to assist him ja. Okay.

ADV KATE HOFMEYR: On my calculation Chair then annexure D which is the second document.

CHAIRPERSON: Ja.

ADV KATE HOFMEYR: Will commence at page 168.

CHAIRPERSON: The first one goes up to 167.

ADV KATE HOFMEYR: Correct.

10 **CHAIRPERSON:** That is fine. Is the last page 174?

ADV KATE HOFMEYR: Indeed.

CHAIRPERSON: So I will just place on record that with the addition of two documents one being annexure B another one being annexure D or rather one marked annexure B the other one being marked annexure D Exhibit NN4 now goes up to page 17 – 174. So 163 to 167 is a document marked annexure B and written Protocol Document on the Principles and Procedures to be followed for the recruitment and filling of posts of Head of Department and so on. And then the next one is marked annexure D and it is written Ministry for the Public Service and
20 Administration. Ja.

ADV KATE HOFMEYR: Thank you Chair we are indebted. I was able to just look at the Constitution in the break while we were doing that exercise. And I think the section you had in mind is Section 1012 of The Constitution. It provides that a written decision by the President must be countersigned by another cabinet member if that decision

concerns a function assigned to that other cabinet member. Is that the section that you were referring to in Chapter 5 Mr Baloyi?

MR BALOYI: Yes.

ADV KATE HOFMEYR: Thank you. Then we were concerned with the document commencing at page 163 of Exhibit NN4 which is entitled annexure B and I had asked us to look at item 17 which you will find on paginated 166. And at paragraph 17 there or item 17 it is recorded that: “In order to allow the MPSA” – what is that Mr Baloyi?

MR BALOYI: Minister for Public Service and Administration.

- 10 **ADV KATE HOFMEYR:** Thank you. “To add value and to facilitate the appointment of nominated candidates to posts of HOD and DDG in national departments National EA's” – what are those?

MR BALOYI: Executive Authorities.

ADV KATE HOFMEYR: “Are required to forward information on these candidates to MPSA which I understand to be the Minister of Public Service and Administration.” And then it says “for this purpose a proforma letter and a Cabinet Memorandum containing all relevant information should be forwarded to the MPSA at least four weeks before the Cabinet Meeting.” Do you see that?

- 20 **MR BALOYI:** I see that.

ADV KATE HOFMEYR: For practical reasons departments must deal with only one appointment per Cabinet Memorandum.

MR BALOYI: Yes.

ADV KATE HOFMEYR: And then there is a note that certain things must be attached and that includes a Curriculum Vitae, is that correct?

MR BALOYI: It is correct Ma'am.

ADV KATE HOFMEYR: And then at 19 it is recorded that after Cabinet's concurrence has been obtained the relevant EA which you have indicated is Executive Authority will issue an appointment letter to the successful candidate. Is that in accordance with your understanding of the procedure?

MR BALOYI: Yes Ma'am.

ADV KATE HOFMEYR: Now Mr Baloyi I am mindful of the fact that this a protocol about the appointments of Head of Departments and we are
10 not dealing with appointments at the moment. We are dealing with transfers from one department to another.

CHAIRPERSON: It is right.

ADV KATE HOFMEYR: Is it your understanding that the same procedure is followed?

MR BALOYI: Ma'am even when it comes to appointments practical I am not talking about theoretical I am talking about in practice what I experienced. Depending on the situation you will find documentation referred to the Minister for Public Service and Administration giving a time that is sometimes far less than the four weeks. It depends on the
20 situation. That is exactly. And if you can go and dig into Cabinet Memorandums the documents referred to Ministers of Public Service and Administration you will find that.

ADV KATE HOFMEYR: Hm.

CHAIRPERSON: So you – the material condition prevalent dictate what happens.

ADV KATE HOFMEYR: But can I establish what are not negotiable elements of the process? Must there be a Cabinet Memorandum?

MR BALOYI: There must be a Cabinet Memorandum yes Ma'am I agree.

ADV KATE HOFMEYR: Must the consent of the releasing authority have been obtained?

MR BALOYI: In as far as transfers okay.

ADV KATE HOFMEYR: Is the answer yes?

MR BALOYI: Yes.

10 **ADV KATE HOFMEYR:** And must Cabinet make a decision about that transfer?

MR BALOYI: Okay – it is correct.

ADV KATE HOFMEYR: Thank you.

CHAIRPERSON: Well you probably do understand that when Ms Hofmeyr ask these questions starting with must.

MR BALOYI: Yes.

CHAIRPERSON: She means that she expects you to make a distinction between situations where a certain requirement is a must, is obligatory and circumstances where there may be departures and that particular
20 requirement is not met. You appreciate that?

MR BALOYI: Ja with that clarification Chairperson I indicated that the material condition prevalent dictate what happens and I have indicate that practically that there will be situations where you will get documents calling on you to act and that comes outside the prescribed timeline.

ADV KATE HOFMEYR: Yes. Yes. But just to follow up from the Chair's question. I understood that evidence and for example I think you gave that four weeks that we saw referred to in the protocol may be shorter in a given situation. Is that correct?

MR BALOYI: Yes.

ADV KATE HOFMEYR: But what I understand...

CHAIRPERSON: I am sorry. Just articulate your response clearly so that it will be captured by the records. You did say yes but I think it might not have been captured. Did you say yes?

10 **MR BALOYI:** Ja I said yes. I said yes Chairperson because when I say material condition I am saying it depends on factors at play when a consideration is done for the appointment.

ADV KATE HOFMEYR: Indeed.

MR BALOYI: So you do not – you do not necessarily have to say on technicality you are sending this back. For as long as – because the issue here it is in order to give enough time for the MPSA to do the necessary check check. So it is possible to do that within a short period of time so – so it should be.

ADV KATE HOFMEYR: Yes. But then just to be clear on your
20 evidence. I then moved on to what has to be the case? What must be the case? In any circumstance and I understand your evidence to be what must be the case on your understanding of transfers? Is that there is the consent from the releasing authority. There is a Cabinet Memorandum and there is a Cabinet decision on the transfers. Are those three things required for a transfer?

MR BALOYI: They are required.

ADV KATE HOFMEYR: Thank you.

MR BALOYI: And the fourth one a Presidential Minute.

ADV KATE HOFMEYR: Thank you. I did omit that. So those are the four requirements. They must be there.

MR BALOYI: Yes.

ADV KATE HOFMEYR: In order for the transfer to be lawful. Is that correct on your understanding?

MR BALOYI: That is correct Ma'am.

10 **ADV KATE HOFMEYR:** Thank you. I would then like to go to the transfer of Mr Maseko himself. You deal with that in some detail in your affidavits. And if I can pick that up in Exhibit NN4 at page 6?

MR BALOYI: I am there.

ADV KATE HOFMEYR: And I would like to start for now at paragraph D.

CHAIRPERSON: Maybe before you start Ms Hofmeyr. Mr Baloyi I just want to say to you before you – we get into this part of your evidence.

MR BALOYI: Yes Chairperson.

CHAIRPERSON: That this is a very important part of your evidence.

20 **MR BALOYI:** Okay.

CHAIRPERSON: I know that you did say at the beginning of your evidence that it has been a long time.

MR BALOYI: Yes.

CHAIRPERSON: And without having access to documents within government it makes it difficult to remember certain things. So I just

want you to know that when it comes to this it is quite important and it is quite important that we know if what you are telling us is something that you have a clear recollection of and we must know if you are not sure and so on. Okay?

MR BALOYI: Thank – thanks Chairperson.

CHAIRPERSON: Alright.

ADV KATE HOFMEYR: Thank you Chair. At paragraph D you talk about being approached. Can you tell us who approached you and what was said when that approach was made?

10 **MR BALOYI:** Come again?

ADV KATE HOFMEYR: At paragraph D on page 6.

MR BALOYI: Yes.

ADV KATE HOFMEYR: You talk about being approached on the matter concerning Mr Maseko. Do you see that?

MR BALOYI: Yes, yes.

ADV KATE HOFMEYR: Can you please tell the Chairperson who approached you about Mr Maseko and what was said when that approach was made?

20 **MR BALOYI:** The – the Executive Authority of GCIS who was the Minister in the Presidency responsible for performance monitoring and evaluation at the time is the one who approached me.

ADV KATE HOFMEYR: Thank you. And just to be clear the person who occupied that position at the time was the late Minister Chabane. Is that correct?

MR BALOYI: Well you mentioning it.

ADV KATE HOFMEYR: Yes I want to know if my understanding of the facts is correct.

MR BALOYI: Yes.

CHAIRPERSON: Was it Mr Chabane – Minister Chabane?

MR BALOYI: It was – it was Chairperson.

CHAIRPERSON: It was?

MR BALOYI: It was Chairperson. It is just that one if not comfortably in a habit of singing names but it was.

CHAIRPERSON: Oh ja. It is quite important in this case at least.

10 **MR BALOYI:** Ja.

CHAIRPERSON: Ja.

ADV KATE HOFMEYR: Yes and it may be important for the record in due course Chair.

CHAIRPERSON: Yes.

ADV KATE HOFMEYR: So I will ask for that clarification.

CHAIRPERSON: Yes.

ADV KATE HOFMEYR: Where it is required.

CHAIRPERSON: Yes, yes.

20 **ADV KATE HOFMEYR:** So the late Minister Chabane approached you and what did he say?

MR BALOYI: What he said I think I wrote it in – it is there is the – in the affidavit.

ADV KATE HOFMEYR: Indeed.

MR BALOYI: That a decision has been taken that Mr Maseko should exit.

ADV KATE HOFMEYR: Thank you. I would like to probe that further in a moment but can I just ask you do you have a recollection of when late Minister Chabane approached you for this conversation?

MR BALOYI: No it is around the time that is what I have indicated that I cannot remember exactly when that was.

ADV KATE HOFMEYR: Well can I – can I raise this with you? There has been evidence before the commission that former President Zuma was overseas between the 25 January 2011 ...

CHAIRPERSON: Oh do you want to say – I do not know if it is
10 overseas or out of the country?

ADV KATE HOFMEYR: Out of the country indeed.

CHAIRPERSON: Maybe out of the country is neutral.

ADV KATE HOFMEYR: Is more accurate.

ADV KATE HOFMEYR: Neutral enough ja.

ADV KATE HOFMEYR: Indeed. Indeed. He was out of the country.

MR BALOYI: Ja.

ADV KATE HOFMEYR: From the 25 January 2011 until the 1 February 2011. And there is also been evidence from a number of witnesses before the commission that there were interactions between former
20 President Zuma and Minister Chabane about Mr Maseko's exit from GCIS when he was out of the country. So can I ask do you have any certainty as to whether these interactions you had with late Minister Chabane occurred in that window period between the 25 January 2011 and the 1 February 2011?

MR BALOYI: I am definitely not sure exactly. I cannot remember

exactly the date and – and I am not privy to the information of the President – former President's movements. So I will – did not really be factually correct in terms of that.

ADV KATE HOFMEYR: Hm. But could it have occurred in that week?

MR BALOYI: It is the same question Ma'am. I have indicated that I – I cannot remember exactly when that happened.

CHAIRPERSON: Well maybe let us put it this way. You will remember that I have just – I just said this is a very important part of the evidence you are going to give. So it is important that we understand.

10 **MR BALOYI:** Exactly.

CHAIRPERSON: What you recall and what you know and what you do not know. You – you have of course been applying your mind to the issue of the – to the circumstances surrounding the transfer of Mr Maseko.

MR BALOYI: Yes Chairperson.

CHAIRPERSON: From GCIS to your department.

CHAIRPERSON: Yes Chair.

CHAIRPERSON: And the transfer of Mr Manyi from the Department of Labour to GCIS.

20 **MR BALOYI:** Yes.

CHAIRPERSON: So you – you – you have an idea of some of the – of those events maybe not everything because you did not have certain documents.

MR BALOYI: Yes.

CHAIRPERSON: So – and you would know – you do know that that

transfer occurred of both on the 2 February – February 2011. You remember that? You remember that from the documents you have been looking, is that right?

MR BALOYI: Ja it has been made clear to me by the commission.

CHAIRPERSON: Yes.

MR BALOYI: Referring to a Cabinet meeting.

CHAIRPERSON: Yes.

MR BALOYI: Around there.

CHAIRPERSON: Yes.

10 **MR BALOYI**: So in as far as that is concerned.

CHAIRPERSON: Yes.

MR BALOYI: I am aware.

CHAIRPERSON: You are aware.

MR BALOYI: But through my recollection.

CHAIRPERSON: Yes.

MR BALOYI: I cannot attest to that.

CHAIRPERSON: You would not remember.

MR BALOYI: Yes.

CHAIRPERSON: Yes.

20 **MR BALOYI**: Yes.

CHAIRPERSON: Okay now would you be able to say that even though you might not remember exactly on what date Minister Chabane approached you but it was before this – the date on which Mr Maseko was transferred or would you not be able to say that?

MR BALOYI: I would be able to say Chairperson. It was before.

CHAIRPERSON: It was before?

MR BALOYI: It was before because it was that discussion I had with Mr – with the Minister concerned where I initiated his transfer.

CHAIRPERSON: Yes.

MR BALOYI: I did not get – become aware.

CHAIRPERSON: Yes.

MR BALOYI: I initiated it.

CHAIRPERSON: Yes.

MR BALOYI: The advice that was required of me.

10 **CHAIRPERSON:** Hm.

MR BALOYI: Was to then say how do we deal with exit management?

CHAIRPERSON: Yes.

MR BALOYI: Then I advised on two options.

CHAIRPERSON: Yes.

MR BALOYI: And I – and out of those options I recommended one.

CHAIRPERSON: Yes.

MR BALOYI: So it was definitely before.

20 **CHAIRPERSON:** It was before. Now I think on Mr Maseko's evidence before this commission the announcement to cabinet that he was to be transferred from GCIS as to your department was made during the meeting of the cabinet or at the end of the meeting of the cabinet on Wednesday the 2nd February 2011.

MR BALOYI: Hm.

CHAIRPERSON: So – but the Presidential Minute might have been signed I think the following day I am not sure or the transfer in terms of

the Presidential Minute might have been to the effect that the transfer would take effect one day after the signing of the Presidential Minute. So when you say – when you say before it was before would you say before the – the 2nd the day of the meeting of that cabinet or you are saying before the 3rd? Or could it have been on the 2nd on the day of the announcement to cabinet? Or is it difficult to say?

MR BALOYI: No it is not difficult Chairperson.

CHAIRPERSON: Ja okay.

MR BALOYI: The Presidential Minute normally is signed after cabinet.

10 **CHAIRPERSON:** After cabinet yes.

MR BALOYI: Because the President exercises his executive responsibility as the Executive Authority of the National Executive in consultation with a Minister. And Ministers in a collective body called cabinet. So cabinet has to concur first. After cabinet concurrence then the President signs the...

CHAIRPERSON: Presidential Minute.

MR BALOYI: The Presidential Minute.

CHAIRPERSON: Hm.

MR BALOYI: So the announcement.

20 **CHAIRPERSON:** Hm.

MR BALOYI: In a statement by the GCIS is a statement that get issued immediately after cabinet.

CHAIRPERSON: Hm.

MR BALOYI: After the cabinet that took that decision.

CHAIRPERSON: Hm.

MR BALOYI: So it is either on the same day or the following day.

CHAIRPERSON: Hm.

MR BALOYI: And then before the cabinet take a decision there has to be a Cabinet Memorandum that serve in cabinet. And then that is the Cabinet Memorandum that recommend the transfer. And that is the Cabinet Memorandum that ignite a discussion in cabinet that decide to concur.

CHAIRPERSON: Yes.

MR BALOYI: And it is that concurrence that then gives the President
10 the authority to sign the President Minute. I think in that sequence.

CHAIRPERSON: Yes.

MR BALOYI: But before Minister Chabane – because when I had a discussion and I have indicated it there. When we had a discussion and I proposed that Mr Maseko should be – we should consider two options. Either to re-determine his contract and allow him to go and I was not for that. It was actually my – not my liking that at the slightest situation or slightest moment or caring we should kick a DG out of place. I then said, let us look at if we have the only route is re-determination. If we can we can – we can transfer him. And when we
20 discussed that we agreed with Minister Chabane that that will only happen if there is consent – if he agrees himself which is what I advised. And we agreed that both of us should consult him individually. So I can imagine that when the decision – if the decision of cabinet was on the 2nd it is a decision that should have preceded having preceded by this interactions.

CHAIRPERSON: The consultation?

MR BALOYI: The consultations.

CHAIRPERSON: Now are you able to say the approach to you by Minister Chabane was or would have been a few days before the cabinet meeting where the announcement was made? Or would you say it may have been weeks before? It may have been months before. What are you able to say in that regard?

MR BALOYI: I cannot remember Chairperson exactly as to when.

CHAIRPERSON: Yes.

10 **MR BALOYI:** I cannot – I cannot recall as to exactly when.

CHAIRPERSON: Yes, yes.

MR BALOYI: That actually happened.

CHAIRPERSON: Yes. But ...

MR BALOYI: There is a letter that Minister Chabane wrote.

CHAIRPERSON: Yes.

MR BALOYI: And which letter I got from – from the commission and which letter will be helpful to deal with such issues.

CHAIRPERSON: I think Ms Hofmeyr will take you to that letter at the right – at the right time.

20 **MR BALOYI:** Okay.

CHAIRPERSON: Are you able - would the date of that letter assist you to - to say maybe it was a few days before or - when we get to it we ...

MR BALOYI: Yes.

CHAIRPERSON: We might not have to get - go - get to it, but Ms Hofmeyr might decide let us go to it immediately if that is going to

help. Would you think it might help you in terms of estimating?

MR BALOYI: I - I think so Chairperson.

CHAIRPERSON: It may. Okay. Ms Hofmeyr.

ADV KATE HOFMEYR: Chair and Mr Baloyi you will find it in EXHIBIT NN5 ...

MR BALOYI: NN5.

ADV KATE HOFMEYR: And you will find it at page 43 - 4-3.

CHAIRPERSON: Did you say 4-6?

ADV KATE HOFMEYR: 4-3.

10 **CHAIRPERSON**: 4-3.

MR BALOYI: NN5 you say.

CHAIRPERSON: Have you got NN5?

MR BALOYI: I am - I am ...

CHAIRPERSON: Have you got NN5? Just go and assist ...

ADV KATE HOFMEYR: And it is page 43.

CHAIRPERSON: Assist him to ...

MR BALOYI: Hm.

CHAIRPERSON: You - you need to look at the spine of the file to see whether it is NN5 or not and then ...

20 **ADV KATE HOFMEYR**: Mr Baloyi I think you might be ibn NN1 to four. The other file - the large file in front of you ...

MR BALOYI: This one? Oh. Yes.

ADV KATE HOFMEYR: Is probably NN5.

MR BALOYI: Five.

ADV KATE HOFMEYR: Thank you.

MR BALOYI: Yes. Okay.

ADV KATE HOFMEYR: And then if you go to page ...

MR BALOYI: Sorry.

ADV KATE HOFMEYR: 43 - 4-3.

MR BALOYI: Page 43?

ADV KATE HOFMEYR: Yes. That is the letter I think you are referring to, but you can tell me if I am in correct.

MR BALOYI: You say it is page?

ADV KATE HOFMEYR: 4-3 - 43.

10 **CHAIRPERSON**: Page 43. Page 43. You look at the - for page numbers you look at the red numbers at the right hand corner at the top.

MR BALOYI: Oh. The red numbers?

CHAIRPERSON: Ja. The red numbers at the top.

MR BALOYI: Oh, okay.

CHAIRPERSON: Look for - when you say - when you say 43. It is 0-4-3 but we ...

MR BALOYI: Oh, okay.

CHAIRPERSON: But we do not - we do not say zero.

20 **MR BALOYI**: I am there.

CHAIRPERSON: You are there. Okay. Ms Hofmeyr do you want to take it from there?

ADV KATE HOFMEYR: Mr Baloyi is that the letter you were referring to?

MR BALOYI: That is the letter I am referring to.

CHAIRPERSON: That letter is dated 2 February 2011 which would be the Wednesday of the Cabinet Meeting. Can you see that?

MR BALOYI: I - I see that Chairperson.

CHAIRPERSON: Yes and it is addressed to you.

MR BALOYI: It is addressed to me.

CHAIRPERSON: By Minister Chabane?

MR BALOYI: Yes.

CHAIRPERSON: It says:

10 “I concur subject to the President’s approval with
the transfer of Mr T J Maseko the Director-General
of the Government Communication and Information
System - GCIS - in terms of Section 12(3)(a) to the
post of Director-General of the Department of
Public Service and Administration - DPSA.”

MR BALOYI: Hm.

CHAIRPERSON: “The proposed effective date of the transfer
namely the date following the date that the
President signs the President Minute is also
supported.”

20 **MR BALOYI:** Okay.

CHAIRPERSON: It is - it is - he - he signed it on 2 February.

MR BALOYI: Yes.

CHAIRPERSON: The same date of the Cabinet Meeting.

MR BALOYI: Ja.

CHAIRPERSON: When then do you think he approached you?

MR BALOYI: I think it - it could be that week before ...

CHAIRPERSON: During that week?

MR BALOYI: Before - *ja*. Before the 2nd.

CHAIRPERSON: Yes.

MR BALOYI: *Ja*.

CHAIRPERSON: And - and you are fairly confident that it must be during that week?

MR BALOYI: Hm.

CHAIRPERSON: I am not saying you are certain.

10 **MR BALOYI:** Oh. Yes. I am - I am ...

CHAIRPERSON: *Ja*. I am just saying you are fairly confident.

MR BALOYI: I am - I am fairly confident Chairperson.

CHAIRPERSON: Yes. Yes.

MR BALOYI: Yes.

CHAIRPERSON: Okay. Alright. Thank you. Ms Hofmeyr.

ADV KATE HOFMEYR: Thank you Chair. Mr Baloyi if I can then ask you to go back to your affidavit which is in NN4 which is the other file you had in front of you a moment ago.

MR BALOYI: The other file. Okay.

20 **CHAIRPERSON:** We are going to NN4?

ADV KATE HOFMEYR: Indeed.

CHAIRPERSON: Oh.

ADV KATE HOFMEYR: Chair and if you - if I can suggest Mr Baloyi just to keep NN4 available to you, because we will keep going back into it.

CHAIRPERSON: NN5?

ADV KATE HOFMEYR: NN4.

CHAIRPERSON: *Ja.*

ADV KATE HOFMEYR: For the moment, because Mr Baloyi put that away when he moved to NN5.

CHAIRPERSON: Oh. Okay.

ADV KATE HOFMEYR: So my suggestion is just to keep it available ...

CHAIRPERSON: *Ja.*

ADV KATE HOFMEYR: Because we will be working with your
10 statements and then on occasion we will have to go to NN5 ...

MR BALOYI: No problem.

ADV KATE HOFMEYR: For a document.

MR BALOYI: No problem.

CHAIRPERSON: Okay.

ADV KATE HOFMEYR: So I asked you to go back to NN4 and then if we could pick it up at page 14 - 1-4, because here you start to give more details about that interaction that you had with Minister Chabane.

MR BALOYI: *Ja.* I am there.

ADV KATE HOFMEYR: And you have given evidence on this a moment
20 ago in your testimony. If you could pick it up at paragraph B on that page.

MR BALOYI: B, yes.

ADV KATE HOFMEYR: You say there:

“It was in that discussion ...”

And you are describing a discussion between yourself and

Minister Chabane.

“...where I made a proposal for Mr Maseko’s transfer to the Department of Public Service and Administration after it came to light that there was a decision for his exit.”

MR BALOYI: Yes.

ADV KATE HOFMEYR: What - what does that mean Mr Baloyi? What was communicated to you about Mr - from Minister Chabane?

MR BALOYI: It communicates that there was an Executive Authority’s position that a - a - Mr Maseko’s exit shall be managed and that is the advice he was coming to me for.

ADV KATE HOFMEYR: And can I just be...

MR BALOYI: (Intervenes) Chair.

CHAIRPERSON: Before we go further was this discussion over the phone or in a meeting between the two of you?

MR BALOYI: It - it was not over the phone.

CHAIRPERSON: You were - you ...

MR BALOYI: But I - I - I mean I cannot remember exactly where we were. So ...

20 **CHAIRPERSON:** But - but it was not over the phone?

MR BALOYI: No. It was not.

CHAIRPERSON: You see together?

MR BALOYI: We were together.

CHAIRPERSON: Ja. Okay. Alright. Thank you.

ADV KATE HOFMEYR: And as I have your testimony he said it is a

decision of the Executive Authority. Is that correct?

MR BALOYI: Yes.

ADV KATE HOFMEYR: And what did you understand that to mean? Did you understand it to mean it is a decision of Minister Chabane or it is a decision of the Presidency?

MR BALOYI: No. The Executive Authority who is a line function Minister and Principal of Mr Maseko is Mr Chabane - was Minister Chabane.

ADV KATE HOFMEYR: So he conveyed to you it was his decision?

10 **MR BALOYI:** No, no, no. He - what he said there - there is a decision. As to with who he consulted because remember madam their - their responsibility to appoint and to decide - to appoint and to transfer and to facilitate - to - to initiate exit has to be supported by the President. So - so I did not ask details as to whether you as Minister did you approach the - the President.

He then said there is a definite decision that Mr Maseko has to - to leave and as Minister of Public Service can you assist us with exit management. That is when then I came in.

CHAIRPERSON: Before you proceed Ms Hofmeyr. I wonder whether
20 Mr Baloyi as far as you can. You can just tell me that conversation between the two of you as you remember it. This is what Mr Chabane said. This is what you said until you finalised the issue in that discussion.

MR BALOYI: Thanks Chairperson. The - the initial point was that I am being informed there is a decision. Mr Maseko - he has to leave and

then ...

CHAIRPERSON: Huh-uh.

MR BALOYI: The advice we need from is on the exit management and then we discussed about that, because my input in the discussion was that who took - is it him who initiated the decision and the answer was no. It is not Mr Maseko. When I say him Chair I mean ...

CHAIRPERSON: Yes, yes. *Ja*. You mean Mr Maseko?

MR BALOYI: *Ja*. It was not Mr Maseko who initiated the move. So - and I understood what that means and then I gave an advice in our
10 discussion and what - what transpired in that discussion was when I indicated that I - I personally have a problem, because it is a bad reflection of our - our - for our Public Service to have DGs kicked out at - at any opportunity that we feel like doing that.

Does not augur well for stability in the Public Service and - and then the - the route that we can do, but if we have - there was nothing that we can do, because if - if you get to understand there is - there is what is referred to as irretrievable breakdown of - of trust and which is a common thing. You have to then manage that - that one, because I asked is there anything wrong that he did and the - and the
20 issue was no.

There is nothing wrong that has been done, but the time is - the decision is that he needs to - to exit and then that is the discussion Chairperson.

CHAIRPERSON: So is my understanding correct that what you are saying is that he approached you. That is Minister Chabane and said

that a decision has been taken that Mr Maseko should leave GCIS. Is that right?

MR BALOYI: That is correct Chairperson.

CHAIRPERSON: Yes and that he was seeking from you an advice on how to manage that exit.

MR BALOYI: Correct Chairperson.

CHAIRPERSON: Is that right and that you asked him the question whether it was Mr Maseko who had initiated the - the - his departure from GCIS.

10 **MR BALOYI**: Yes Chairperson.

CHAIRPERSON: Is that right and the answer was no?

MR BALOYI: Yes Chairperson.

CHAIRPERSON: Yes and - and you - you then say you understood that.

MR BALOYI: Huh-uh.

CHAIRPERSON: Is that right?

MR BALOYI: Yes Chairperson.

CHAIRPERSON: So then from then you began to give advice. Is that right?

20 **MR BALOYI**: Yes. Correct Chairperson.

CHAIRPERSON: Okay. Ms Hofmeyr.

ADV KATE HOFMEYR: Thank you Chair. If we can then go to page 7 of EXHIBIT NN4. That is still in your affidavit.

MR BALOYI: I am there.

ADV KATE HOFMEYR: At "g" on that page you say:

“I discussed with is Principal ...”

That is a reference to Mr Maseko’s Principal.

“...and obtained concurrence.”

Do you see that?

MR BALOYI: That is correct.

ADV KATE HOFMEYR: Who is the Principal you are referring to there?

MR BALOYI: Minister in the Presidency.

ADV KATE HOFMEYR: That would be Minister Chabane at the time?

MR BALOYI: Yes. Yes.

10 **ADV KATE HOFMEYR**: And then at “h” you say:

“I discussed with Mr Maseko and got his consent.”

Do you see that?

MR BALOYI: That is correct.

ADV KATE HOFMEYR: Mr Baloyi, Mr Maseko’s evidence before the Commission is that you did not obtain his consent prior to the announcement of the transfer in the Cabinet Meeting on 2 February 2011. Are you aware that that is his evidence?

CHAIRPERSON: In fact he says he had no discussion with you on his transfer before the transfer - before the announcement of the transfer -
20 of his transfer in Cabinet.

MR BALOYI: Yes. Thanks Chairperson. Thanks Madam. I - I became aware of that version when I received the - the affidavit from the Commission and as I have indicated there. I became so surprised to - to get to understand that, because as far as I am concerned from my recollection I had a discussion with him.

ADV KATE HOFMEYR: Well Mr Maseko in - in answer to some of the Chair's questions when he gave evidence last month - in November - said that he thought you might have been confusing two different discussions. He said that he recalls a discussion with you when he was in DPSA after he had been transferred and he was coming to talk to you about exit and he said in the course of that meeting he discussed the fact that he wanted to leave Public Service and he says his assumption is that you may have concluded that - confused that later conversation with a conversation that occurred prior to his transfer.

10 **CHAIRPERSON:** Or - or ...

ADV KATE HOFMEYR: Do you have a comment on that?

MR BALOYI: I will - I will ...

CHAIRPERSON: Or maybe that did not occur.

ADV KATE HOFMEYR: That did not occur indeed.

CHAIRPERSON: Ja. Ja. He - he said - he said he never had a discussion with you about his transfer from GCIS to DPSA prior to the day when he called you to tell you he was your new DG. He says prior to that he had had no discussion with you whatsoever, but he says after spending some time in your department as DG. He did have some
20 discussion with you around the possibility of him leaving the - your department ...

MR BALOYI: Hm.

CHAIRPERSON: And he says some of the things that you say in your affidavit - maybe it is one. I am saying some of the things.

MR BALOYI: Hm. Hm.

CHAIRPERSON: Maybe it is one thing. He says no, no, no. That is something we discussed at the meeting when I was about to leave DPSA. It is not something I discussed with Minister Baloyi before my transfer from GCIS. He said I think the former Minister may have been genuinely confused about which discussion happened when.

MR BALOYI: Thanks - thanks Chair and ma'am, because you raised it that you said I could be confusing these things. I - I would not use that strong word ... (intervenes).

CHAIRPERSON: Well maybe we must - maybe we must - my
10 understanding of - of his use of that word was - was that he did not mean anything bad. He was simply saying it has been a long time ...

MR BALOYI: I see.

CHAIRPERSON: And I think that - that is what he - he meant. That is my understanding.

MR BALOYI: In - in that context Chairperson, because I thought I would use the very same word, but it was so strong to me. I cannot refer, but in that context I can actually say most probably - because that is his version. Most probably if there was any confusion it could be honest, but I am quite clear Chairperson that I had a discussion with
20 him and - and our discussion went very far.

We talked about quite a number of things. He indicated to me, because there was not a lot of time remaining for the expiry of the contract and this where I committed that on chief. If - if we - we look at this and if it may so happen that the time of your contract come to expire and you are still here and I am still here. I am even ready to -

to extend that.

We discussed that about a lot of things. So I did had a discussion with him. I am not confused about that.

CHAIRPERSON: Well would there be other aspects of that discussion that you recall that you can tell me about? Obviously ...

MR BALOYI: Yes.

CHAIRPERSON: Something that is - that you - you may say. Just to - to - to indicate you - you recall that discussion with him quite well.

MR BALOYI: In our discussion Chairperson we even went to a point
10 where I then said if you think maybe as a - as a DG you know at - at a slightest opportunity that the Minister decides to then say go. You - you are actually vulnerable and stuff like that. I mean we discussed even about the possibility of him becoming my advisor. I raised this thing with him and the other thing Chairperson was that he then said no look.

Even if I come and work with you I have made up my mind I am not going to - to be long in the Public Service. I have got other options to pursue. That was part of the discussions that we had, because - because I was trying to prevent a situation where under a
20 cloud he then leaves, because if - if you - you redetermine the contract.

I mean - in - in public eyes there is nothing else other than that that DG has been fired and it does not augur well for stability in our Public Service. Those are the things that we - we offered to. So honestly speaking I am not confuse Chairperson about - about this thing. These are discussions that took place between us - the two of

us and it was part of the agreement I had with Minister Chabane.

To then say let us consult him individually and when Minister Chabane wrote this letter it - it was - it was I having given him feedback of the consent that was there. So well it is upstream. That is his nature.

CHAIRPERSON: You are quite clear?

MR BALOYI: Come again.

CHAIRPERSON: You are quite clear?

MR BALOYI: I am quite clear Chairperson.

10 **CHAIRPERSON**: Yes and was this discussion with him over the phone or you had a meeting with him?

MR BALOYI: No Chair. It - it was not over the phone. I - I ...

CHAIRPERSON: You had a - a meeting with him?

MR BALOYI: I had a meeting with him.

CHAIRPERSON: Yes and would you recall whether that meeting may have been the day before the Cabinet Meeting?

MR BALOYI: That was the day before I gave feedback to Minister Chabane.

CHAIRPERSON: Yes.

20 **MR BALOYI**: He ...

CHAIRPERSON: Yes.

MR BALOYI: And - and he ...

CHAIRPERSON: So - so ...

MR BALOYI: I am not sure. Sorry Chair.

CHAIRPERSON: So it - it would have been before the Wednesday

when the announcement of his transfer was made to Cabinet?

MR BALOYI: What ...

CHAIRPERSON: Your meeting with him.

MR BALOYI: What can also help is access to the Cabinet Memorandum ...

CHAIRPERSON: Yes.

MR BALOYI: Because the Cabinet Memorandum as the *pro forma* indicates ...

CHAIRPERSON: Yes.

10 **MR BALOYI:** Has a date.

CHAIRPERSON: Yes. Yes.

MR BALOYI: And - and the Cabinet Memorandum can be only developed when you have satisfied this ...

CHAIRPERSON: Yes.

MR BALOYI: This requirement. *Ja*.

CHAIRPERSON: Yes and you think in that memorandum you may have referred to the fact that you had a discussion with him or something like that or not necessarily?

MR BALOYI: *Ja* Chair. In - in the transfer ...

20 **CHAIRPERSON:** Hm.

MR BALOYI: If it is a transfer in the Cabinet Memorandum Cabinet will like to see if there is consent from the releasing Minister. If there is consent from the receiving Minister and actually if there is concurrence from the two Ministers and if it is consent from - from the official to be transferred. It - it has to be indicated in the Cabinet Memorandum. So

if we can have to access to that.

CHAIRPERSON: Yes, but ...

MR BALOYI: It might be actually clarify that thing.

CHAIRPERSON: But I - I am not sure whether anything in such a memorandum if we find it saying that there was consent from his side would help, because I think that my understanding of his evidence is that ultimately the transfer did happen with his consent, but the point is what gave rise to the need for his transfer.

Who initiated? Where did this idea that he should be
10 transferred come from? Who did it come from and why? So - so if - if -
if your memorandum would reflect that he has consented without saying
that the consent - without saying that there was a discussion between
the two of you. It might not help on this particular issue ...

MR BALOYI: Hm.

CHAIRPERSON: But if it were to say that you had a meeting with him
or you had a discussion with him maybe that might help, but you - you
might not be able to remember whether it would say anything like that.

MR BALOYI: Ja. No Chair. Yes. Thanks.

CHAIRPERSON: Yes.

20 **MR BALOYI:** I - I maybe not be able to ...

CHAIRPERSON: Yes.

MR BALOYI: To recall and on the - on the decision which is the reason
for the exit like I have indicated. That is surely outside the position the
mandate of the Minister ...

CHAIRPERSON: Yes. Yes.

MR BALOYI: For Public Service and Administration.

CHAIRPERSON: Yes. Yes. Yes.

MR BALOYI: All what the Minister for Public Service and Administration was to do ...

CHAIRPERSON: Hm.

MR BALOYI: Was to advice or facilitate the exit.

CHAIRPERSON: The exit.

MR BALOYI: And - and I had to find a comfortable exit ...

CHAIRPERSON: Yes.

10 **MR BALOYI:** And - and for me at the time the comfortable exit was exactly around ...

CHAIRPERSON: Yes.

MR BALOYI: Not taking him out of the - of the Public Service. Keeping him within.

CHAIRPERSON: Hm. Ms Hofmeyr.

ADV KATE HOFMEYR: Thank you Chair. There are a few aspects of your recent answer I would like to pick up on ...

MR BALOYI: Yes.

ADV KATE HOFMEYR: Mr Baloyi.

20 **MR BALOYI:** Yes ma'am.

ADV KATE HOFMEYR: As I understood your testimony you said when you were recounting for the Chair what occurred in this discussion with Mr Maseko.

MR BALOYI: Huh-uh.

ADV KATE HOFMEYR: You said you were discussing how there was

not much longer left on his contract. Do you recall that?

MR BALOYI: How the what?

ADV KATE HOFMEYR: There was not much time left on his contract. Do you recall saying that? That is contract was coming to an end fairly shortly when you had the discussion.

MR BALOYI: I think I mentioned that when I - I talked about my offer.

ADV KATE HOFMEYR: Yes.

MR BALOYI: To then say even if it was to be - because his concern was that no it is the same. I take you in - you take me in. In no time
10 my contract expires or at no time you also decided I - I leave. So what is the use? That is when i then said no, no. We can - we can look at this thing. It was a decision I took to have him was looking at the value that he can actually add in the department.

ADV KATE HOFMEYR: Yes and as I understand your testimony that is part of what you recall about the discussion that you recall occurring before his transfer.

MR BALOYI: Yes.

ADV KATE HOFMEYR: Is that correct?

MR BALOYI: Yes.

20 **ADV KATE HOFMEYR:** Now what would have had to have been - that conversation - towards the end of January 2011? Do you accept that based on the time that we have worked out with you in your evidence?

MR BALOYI: You are saying it will be?

ADV KATE HOFMEYR: The conversation prior to Mr Maseko being transferred on 2 February. Your evidence previously was it could have

happened in that week before. Do you recall saying that?

MR BALOYI: Madam I have responded to that and - and keeping and harping on the same issue.

ADV KATE HOFMEYR: Yes.

MR BALOYI: Is to push me to a point where I will have to - to - to then say look yes or - I have responded to that question.

CHAIRPERSON: No. No. Mr Baloyi she is not pushing you to anything. She is just wanting to make sure. She has a question that she wants to ask you, but before she asks you she wants to make sure
10 that she understood you correctly. She just wants you to confirm that you said that the consultation between you and Minister Chabane happened during that week.

MR BALOYI: Yes.

CHAIRPERSON: Which is what you said. All you need to say is yes. It had during that week.

MR BALOYI: Exactly.

CHAIRPERSON: And then she asks the next question.

MR BALOYI: Exactly madam.

ADV KATE HOFMEYR: In January 2011 there was still 18 months left
20 on Mr Maseko's contract. Are you aware of that?

MR BALOYI: Yes.

ADV KATE HOFMEYR: So why would he be saying in that context that there is a very little bit of time left?

MR BALOYI: 18 months is a short period of time compared to three years, compared to four years, compared to five years.

ADV KATE HOFMEYR: So in that context you understood 18 months to be a short period of time?

MR BALOYI: No. No. I - I did not raise it myself. It was in our discussion. Yes.

ADV KATE HOFMEYR: Is it not possibly more likely that when he was discussing with you his exit from DPSA which was later in 2011 around July.

MR BALOYI: July. Yes.

ADV KATE HOFMEYR: As I understand his evidence.

10 **MR BALOYI:** Yes.

ADV KATE HOFMEYR: When there was less than a year left on his contract.

MR BALOYI: Hm.

ADV KATE HOFMEYR: That that is when you might have had the discussion about there not being much more time left on the contract?

MR BALOYI: No. No. That is not. I mean that - that is exactly not.

CHAIRPERSON: Can I ask you? As I did with regard to your discussion or conversation with Minister Chabane. Can I ask you to just take me through your conversation with Mr Maseko as it happened?

20 You - you - the two of you met. Can you just take me through ...

MR BALOYI: Okay.

CHAIRPERSON: That conversation as far as you are able to in the light of the lapse of time? This is how the subject was introduced. You - you must have introduced the subject yourself ...

MR BALOYI: Oh, yes.

CHAIRPERSON: And then the discussion up to the end as you remember the discussion.

MR BALOYI: Yes. Thanks Chairperson. As I remember is I indicated to him that your Principal has indicated to me that when we need to manage your exit and I then introduced the option. I then indicate that in our discussion I proposed to him that there - there are two routes to deal with that. Either we take the route of redetermination. In which case I will get officials from the department to calculate as to what the - the separation package is going to be.

10 Is a fair mechanism of exit if that has to be, but I indicated that - but I also identified that we can also look at the other - the other option. That of retaining you within the broader Public Service through - through transfers. That is - that is how I introduced the matter and that is when we discussed up to and ...

CHAIRPERSON: And what was his response?

MR BALOYI: His response was I indicated to him that if I would prefer the one of – I recommended to him the one of transfer and he gave consent, he said it's okay let's work on it but do know that the – I have got other options, my stay in the public service I have been around and
20 of course it is true, I have been around, I was a member of Parliament, so I have been around, I don't think I still have more time in here and I have got options that I am considering. So that is the discussion but ultimately I got his consent.

CHAIRPERSON: Did he raise any questions with you as to why he was required to leave GCIS, did he say anything, did he raise any question

or did he express any unhappiness to you about him having to leave GCIS and so on, I just want to get as full a picture of that discussion between the two of you as possible.

MR BALOYI: Chair he did not indicate to me why or what he was told as the reasons for his exit, because he was aware also because when I indicated to him I said no my Minister has informed me about that, so he didn't go in and I didn't enquire more than that. In as far as whether he was happy about that or he was worried about that normally I mean for a contract employee to have his contract having to come to the end
10 not initiated by him for obvious reasons, I mean it can be expected that – it is a cause for concern.

CHAIRPERSON: Yes Ms Hofmeyr.

ADV KATE HOFMEYR: Chair if I may pick up on that Mr Maseko's evidence was that he was informed that he would need to move from GCIS by Minister Chabane over the weekend prior to the meeting of cabinet on the 2nd of February. I understand your evidence to be when you had this conversation with him he had already been told by Minister Chabane that he needed to move, is that correct?

MR BALOYI: Ja, he said he was already told and ...[intervenes]

20 **ADV KATE HOFMEYR:** Do you recall if you met him on a weekend or a weekday?

MR BALOYI: No.

ADV KATE HOFMEYR: You don't recall.

MR BALOYI: No.

ADV KATE HOFMEYR: Okay but if Mr Maseko's evidence is correct

and he got informed on that weekend I think his evidence might have been the the Sunday but we can confirm that it was definitely at some point of the weekend, that would have left the Monday and the Tuesday before the cabinet meeting on the Wednesday to have had this meeting with him, do you accept that?

MR BALOYI: If he?

ADV KATE HOFMEYR: If he had only been informed that he was going to be moved from GCIS on the weekend prior to the meeting on Wednesday then the weekdays left during which you could have met
10 with him to have this discussion were either Monday the 31st of January or Tuesday the 1st of February, do you accept that?

MR BALOYI: Well I have no comment on that, it is his version, it is not my version that he was told on the Saturday and stuff like that.

ADV KATE HOFMEYR: Indeed but you don't dispute that it might have been that the meeting you recall happened on the Monday or the Tuesday?

MR BALOYI: I cannot dispute or confirm that.

ADV KATE HOFMEYR: Thank you. Mr Maseko's evidence was that during those two days of the week prior to a cabinet meeting he – I
20 forget what he said, he said he sort of goes underground because he needs to prepare for that cabinet meeting being the cabinet spokesperson and so he goes through all the memoranda that are before cabinet etcetera, and he said it was for that reason again highly unlikely that he would have had a meeting with you in those two days. Do you still say that that evidence before the Commission of Mr Maseko

was false?

MR BALOYI: I never said Mr Maseko's evidence was false, I never said, I said I respect his version, in as much as he to respect mine. So I can't respond there madam and say I am saying it was false, I am not saying that, I never said that, I will not say it, because for me you can only say false if you know that this person is saying something deliberately knowing that that is not the truth, so I am not at that space, and it is not my version, it is his.

ADV KATE HOFMEYR: Mr Baloyi I am not asking that you take a view
10 on whether what Mr Maseko said was deliberately false, as I understand your evidence it is that you are certain that you had to discuss a meeting with him prior to the 2nd of February at which you discussed his move to DPSA and in which he gave you consent to being transferred to DPSA, is that your evidence?

MR BALOYI: The point I said is that in my discussion with Minister Chabane we agreed that both of us should consult him individually and then you say it was on a Saturday that he was informed and I am saying I cannot remember when was it that I actually had a discussion with him.

20 **ADV KATE HOFMEYR:** And Mr Baloyi that is why when I asked the most recent question I didn't put a time on it, because it's very important for this Commission to get your evidence absolutely clear on this because Mr Maseko's evidence is absolutely clear on this, so ...[intervenes]

MR BALOYI: And I think mine also, sorry to interrupt, I think mine

also is clear, the decision may be yours to decide, not ...[intervenes]

ADV KATE HOFMEYR: Indeed, not mine sir.

MR BALOYI: Not to accept it as clear, in as far as I am concerned my evidence is clear.

ADV KATE HOFMEYR: And that is to be ...[intervenes]

CHAIRPERSON: Maybe do you think Mr Maseko must be mistaken in saying or in saying that he had no discussion with you about his transfer before the announcement to cabinet?

MR BALOYI: What I am stating clearly Chairperson is that I had a
10 discussion with him

CHAIRPERSON: Yes.

MR BALOYI: So you have two versions here.

CHAIRPERSON: Yes.

MR BALOYI: Richard Baloyi's version.

CHAIRPERSON: Yes.

MR BALOYI: And Themba Maseko's version.

CHAIRPERSON: Yes,.

MR BALOYI: They are not aligned.

CHAIRPERSON: Yes.

20 **MR BALOYI:** But if they are not aligned there is no suggestion that this one is more correct than the other one, I am speaking about what I know Chairperson and I never lied.

CHAIRPERSON: Yes, you can say no more, you say this is what you know to be the truth.

MR BALOYI: That's what I know Chairperson, exactly.

CHAIRPERSON: But you – I think the question that Ms Hofmeyr was asking and also the one I was asking is just to see whether you have any reason to think he has a different version because of anything other than maybe a *bona fide* mistake of what happened because of the lapse of time, memory, or is it possible that you think there might be some other reason why – whether you might be thinking that he knows what the truth is, he knows that the truth is what I am saying but maybe he has another reason for not saying the same thing as I – which I am putting forward because it is the truth, or you say look I believe that if

10 he says he had no discussion with me before the announcement to to Cabinet I have no reason to believe he is deliberately misleading the Commission. It must be that in good faith he thinks there was no discussion but from my side I am saying there was a discussion and that's what you are able to say.

MR BALOYI: Exactly Chairperson, that is what I am saying.

CHAIRPERSON: That's what you are saying.

MR BALOYI: I mean me and Maseko are coming to talk about these things now, some period lapsed, I never – in fact there was never any bad blood anything between us.

20 **CHAIRPERSON:** Ja, I think he says the same thing if I am not mistaken.

MR BALOYI: He says the same thing, I think it is right, I mean I never – that is why I was surprised about other things I'm sure we will come to those questions, so it could be the fact is and I want the Commission to accept that I am not fabricating this position that I had a discussion

with him. So that is the thing, and that is why I am sure the investigators may have indicated on the first day when I came to me the investigators I said but is it possible that we can meet and really, I was so surprised and I am as surprised as it is now, but as you said Chairperson the possibility is the cracks of oblivion that I spoke about earlier on may not only be affecting one person, it may be affecting both of us so if there is a way of establishing, you might find that or maybe the truth is more or the reality is more on his side, or the reality is more on my side, so there is no malice, there is no malicious intent,
 10 it is the question of recall and when you deal with a call over a period of time your ...[intervenes]

CHAIRPERSON: Yes, yes, different people might have different recollections.

MR BALOYI: Different, unfortunately there is no file you can go and look at because we are not taking minutes of our discussions, so that is the issue. So you are right Chairperson that is exactly, I am not saying he is lying, that is why I even said I did not use a strong word to him. I can use a strong word to any other person, but I must have a reason, and there is no reason that I can use to him because there was really
 20 no bad blood.

CHAIRPERSON: Okay, Ms Hofmeyr?

ADV KATE HOFMEYR: Thank you Chair. I would like to go to the process again for transfers which you have outlined for us. Mr Baloyi there have been engagements between the Commission and the Office of the Presidency in relation to that 2 February 2011 cabinet meeting

MR BALOYI: Mmm.

ADV KATE HOFMEYR: This was made known at the evidence of Mr Maseko but at that stage we had not yet obtained an affidavit from the office of the Presidency, we have subsequently obtained that, and it has been added to NN5, I will take us there in a moment if I may, but the evidence of the Presidency is that they have gone back and checked the minutes of the Cabinet meeting of the 2nd of February.

MR BALOYI: Okay.

ADV KATE HOFMEYR: And there was no Cabinet Memorandum that
10 served before Cabinet on that day about the transfers of Mr Manyi or Mr Maseko, are you aware of that?

MR BALOYI: No, no I am not aware, you remember I requested that some of the documents they are with the investigators, some of the documents that I requested was please let me have a copy of the Cabinet Memorandum, I didn't remember that and if that is what the Presidency is saying let us leave it as the testimony of the Presidency, it is not mine.

ADV KATE HOFMEYR: Right, but I understood your evidence earlier was that you can't recall whether you were in fact present at that
20 meeting of cabinet on the 2nd of February is that right?

MR BALOYI: Ja, maybe – yes I answered that question, I said it is right, maybe because you see the Presidency has indicated referring to the minutes have they indicated I was present?

ADV KATE HOFMEYR: That we are following up with them over the break, because I had understood that it would likely be common cause

that you weren't at that meeting. When you raised it in your evidence earlier we have been making efforts – can I just explain we have never received the minutes of the 2nd of February because the way, if we had we would quickly be able to check the attendance, right, but the processes of the Commission are such that Cabinet minutes are generally classified, so we have to engage a process to request declassification and in order to do that we need to identify the items in the minutes in respect of which we require declassification.

MR BALOYI: Okay.

10 **ADV KATE HOFMEYR:** So what happened is we engaged with the Presidency, we said go to the minutes of the 2nd of February 2011 and declassify so that we can receive the minutes anything dealing with the transfers of Mr Manyi and Mr Maseko. The consequence of that is that they went and checked, I will take you to the affidavit now, there is no recordal of any discussion whatsoever in Cabinet on that day nor the decision taken by Cabinet on that day relating to the transfers of the Mr Manyi and Mr Maseko, nor any Cabinet memorandum in relation to those transfers.

The consequence of that is we don't get the minute, because
20 what we identified for declassification doesn't exist, I just want you to understand the process.

MR BALOYI: I see, I see.

ADV KATE HOFMEYR: Right, so the evidence of the Presidency ...[intervenes]

MR BALOYI: Maybe I should comment there, if the evidence you have

is that there was not Cabinet but there was an announcement then that's a question that the Chair of Cabinet definitely he can talk, it is something that falls outside, even if I am there if things happen like that it means it would have happened like that but like I said I don't recall, but I think the Chair of Cabinet will then do, because it will be something that I am not sure is unheard of, that appointments are done through announcements and not done through the necessary processes.

CHAIRPERSON: Well you see Mr Baloyi I was very keen from the beginning to hear what you had to say about this transfer and originally
10 what I was interested in is what Mr Maseko had testified about because in effect said my transfer to – from GCIS to DPSA was ultimately rushed so much that Minister Baloyi, who was not at the Cabinet Meeting, had to hear from me for the first time that I was his new DG, because on the day of the Cabinet Meeting, which was the 2nd of February, he says it came to his and Minister Chabane's attention that E-News or ENCA was running the story that he was being replaced by Mr Manyi as CEO of GCIS and he alerted Mr Chabane about this and they realised that a decision about where he was going needed to be done immediately because otherwise if there is a delay about that the
20 impression out there to the public would be like he has been fired, because if it simply says he has been replaced by Mr Manyi and there is no, nothing about he has gone to another department and then apparently Minister Chabane then approached the President and had a discussion during the – with him – or whispered something into his ear while the meeting was on and then before the end of the Cabinet

Meeting the announcement was made, so he was – he then says, he says Minister Baloyi was not at that meeting of Cabinet on that day but now we had to – this whole thing had to be rushed and when I phoned him he was surprised and he said he was not aware of the transfer or something to that effect so I wanted to know that's why initially I wanted to hear your evidence how did this come about that you are the Minister of Department, you're getting a DG, you don't know, is that something normal, is that how it happened blah-blah-blah-blah so when you say if there was an appointment or a transfer that happened by
 10 announcement and there was no memo, Cabinet Memo and so on, it would be very strange.

I am just saying part of what I found strange was that a Minister on Mr Maseko's version a Minister would have a DG imposed on him like that, what was so urgent about that.

So I am just giving you the background because you hinted on this being strange if the Cabinet would not have had any discussion, would not have made any decision but just an announcement would have been made, so you can understand, ja.

MR BALOYI: I do understand Chairperson and that is why I am saying
 20 if the due process was not followed, because a Presidential Minute is there, I got it from the Commission, a Presidential Minute is signed and co-signed. What needs to be established is whether there was a Cabinet Memorandum and what I am getting now is that it is like there was no Cabinet Memorandum to that effect, it was just an announcement, because it does happen, it happened a lot that due to

commitments I will not be in Cabinet when appointments have to be done but always there will be a Minister who on my behalf will deal with that, so it never arose I mean if it was because of the urgency, I think it was an extraordinary urgent occurrence not in keeping with ...[intervenes]

CHAIRPERSON: How things normally happened.

MR BALOYI: How things normally happened because I will be duty bound sometimes to not be in Cabinet and then, but if I am out of the country there will be a Minister acting.

10 **CHAIRPERSON:** Who would be acting?

MR BALOYI: And that Minister was acting as the one who is going to present the Cabinet Memorandum. If I am in the country but not in cabinet there will be a minister who will do the same, so honestly speaking it is just that we need – these are some of the things Chairperson that raised my frustrations when I indicated to then say this is a State process, and as a State process that has a government, and it is not a new government, it is the same government.

Now if we have to have access to records and there has to be a merry-go-round I mean really we are not helpful to the public and I
20 think something needs to be established. If there is no Cabinet Memo recommending an appointment and there is an appointment it is something that maybe we may need to search further. Like I indicated in my opening statement that I approached my employer all the time to then say they may be in a position to facilitate.

I mean the records of DPSA you will find there's documents

there, it will be simple to do that.

CHAIRPERSON: Mmm, well Ms Hofmeyr you can take forward, I do know as you know that some documents that you have been given come from DPSA, the Commission's Legal Team and investigators were in touch with the DPSA and certain documents were obtained, but Ms Hofmeyr can deal with that.

MR BALOYI: Okay.

CHAIRPERSON: Much better.

ADV KATE HOFMEYR: Thank you Chair. Mr Baloyi if we can go to
10 page 18 of EXHIBIT NN4, that's page 18, I would like to pick up on what you say there about what transpired at the Cabinet Meeting on the 2nd of February but before we go there we have as we have been speaking Chair and Mr Baloyi had a response from the Office of the Presidency, they have checked the minutes for us and it is confirmed that Mr Baloyi was not present on the 2nd of February, they very kindly come back to us under great urgency.

CHAIRPERSON: Yes.

ADV KATE HOFMEYR: We will ask for an affidavit confirming that

CHAIRPERSON: Yes, okay.

20 **ADV KATE HOFMEYR:** And just also in relation to Ms Oliphant they did confirm that she was present, so those were the two items from this morning's evidence we wanted to follow up on.

CHAIRPERSON: Yes, okay.

ADV KATE HOFMEYR: But Mr Baloyi at paragraph F on page 18 you state there:

“For me everything was above Board and it was confirmed when the transfer memorandum served before Cabinet as there was no issue raised about the transfer.”

Where did you obtain that information from?

MR BALOYI: I co-signed the Presidential Minute with the President. That comes after a Cabinet Meeting and ought to come after the Cabinet Memorandum. That statement I wrote there is cut off those that are then supposedly, I think the process, the due process was followed. This is what because you may not have a President’s Minute
10 signed without the processes that are to come, if that was the case so to answer your question I am getting this from them, because it is my signature that is on the President’s Minute as co-signing the President’s Minute.

ADV KATE HOFMEYR: So did you ...[intervenes]

CHAIRPERSON: I’m sorry, do you have an independent recollection that there was a Cabinet Memorandum or are you saying you think that there was a cabinet memorandum because you can’t think of how there can be a presidential minute signed without there being a cabinet memorandum on the matter.

20 **MR BALOYI:** Exactly Chairperson, the latter part.

CHAIRPERSON: The latter, yes, so you don’t have in independent recollection that you did see the memorandum?

MR BALOYI: I don’t have.

CHAIRPERSON: You don’t have yes.

MR BALOYI: Even the President’s minute I got it from the

Commission.

CHAIRPERSON: Yes, yes okay.

MR BALOYI: And I then said can we get the Cabinet Memorandum

CHAIRPERSON: Yes.

MR BALOYI: Because that cabinet memorandum will assist a lot.

CHAIRPERSON: Yes, and ordinarily the kind of Cabinet Memorandum we are talking about here if it does exist or did exist, would have been prepared by your Department for you?

MR BALOYI: Exactly Chairperson.

10 **CHAIRPERSON**: Yes, okay but as things stand you don't have an independent recollection that there was such a memorandum, you just think it – you think it probably was there because all the time whenever there's a Presidential Minute there there would have been a Cabinet memorandum before.

MR BALOYI: Ja, there would have been concurrence by Cabinet.

CHAIRPERSON: Yes.

MR BALOYI: And Cabinet during my turn has never given concurrence to a verbal announcement.

CHAIRPERSON: Yes, yes.

20 **MR BALOYI**: So that is exactly what I – I mean I can't base on what one official in GCIS indicated that no I saw a Cabinet Memorandum but I am saying it can't be but ...[indistinct] I am basing on the due process so I cannot imagine that something like that would happen that cabinet takes a decision based on an announcement and or no submission of the Cabinet Memorandum, it's something that we would need to actually

maybe Chairperson to agree that the Commission continue to get the information because that is where I get it from them, or my former employer, because I was an employee by that time, that is why as you said Chair in the opening remarks that I wrote quite a lot of things, some of them articulate to what normally occur.

CHAIRPERSON: Yes, yes.

MR BALOYI: So I would also use my own ...[intervenes]

CHAIRPERSON: Contacts.

MR BALOYI: Contacts formally to actually look at that.

10 **CHAIRPERSON:** Yes.

MR BALOYI: Because the – the government I was working for.

CHAIRPERSON: Hm.

MR BALOYI: Is still there. It exists.

CHAIRPERSON: Hm.

MR BALOYI: And there is no way that I have to be left – it has to be left on my own to keep records.

CHAIRPERSON: Hm.

MR BALOYI: Because when Ministers leave you do not take a briefcase of documents. You leave them there.

20 **CHAIRPERSON:** Hm

MR BALOYI: I am convinced if something is like that there was no Cabinet Memorandum I will be so surprised. I will be so surprised Chairperson.

CHAIRPERSON: Hm.

MR BALOYI: Actually worryingly surprised as to how does Cabinet.

CHAIRPERSON: Hm.

MR BALOYI: Concurs to a non-existing issue.

CHAIRPERSON: But remember I think Ms Hofmeyr told you earlier on that I think Mr Maseko said what happened was that there was no discussion of the issue of his transfer by cabinet. And there was no decision taken by cabinet.

MR BALOYI: Oh.

CHAIRPERSON: There was simply an announcement to the cabinet that Mr Maseko was being transferred from GCIS to DPSA and Mr
10 Manye was being transferred from Department of Labour to GCIS or simply that Mr Manye would replace him. That is my recollection of what his evidence was. So – so on – on his version and he was there according to him.

MR BALOYI: Hm.

CHAIRPERSON: Cabinet was simply told that this is what is going to happen. They were not required to make any decisions. So if that – if that – if those facts are correct.

MR BALOYI: Ja.

CHAIRPERSON: Would you not therefore understand why there would
20 be no Cabinet Memorandum?

MR BALOYI: Ja if those facts are correct really I will – I will – I will then understand why – why no but I definitely I am not sure how it will then be possible for a President Minute to be addressed. That is why Chair my submission if – if it so pleases – my submission is that we – we – we would do a lot more search on this to establish as to whether...

CHAIRPERSON: Yes.

MR BALOYI: We may not come with something like that.

CHAIRPERSON: Yes.

MR BALOYI: It will be surprising if such a situation happened.

CHAIRPERSON: Would – would you – would you remember whether officials within your department who may have helped to prepare such a memorandum? Who they would have been and whether maybe they might remember that no we definitely prepared a memorandum or maybe they might also not know with the passage of time. Would you
10 remember or – who they may have been or that is too difficult to say after so many years?

MR BALOYI: Ja so difficult after so many years and – and I will then say if now I approach my employer about that.

CHAIRPERSON: Ja.

MR BALOYI: It has to be a formal thing.

CHAIRPERSON: Yes.

MR BALOYI: I will not do behind.

CHAIRPERSON: Ja.

MR BALOYI: The door.

20 **CHAIRPERSON:** Okay.

MR BALOYI: The front doors.

CHAIRPERSON: Yes.

MR BALOYI: Just to look at – let us see as to whether this is what happened.

CHAIRPERSON: Yes. Okay.

MR BALOYI: Because if really that is what has happened there was no Cabinet decision.

CHAIRPERSON: Hm.

MR BALOYI: There was no submission in cabinet. There was an announcement it will definitely have been too strange an issue to think about.

CHAIRPERSON: Yes. Okay.

ADV KATE HOFMEYR: Mr Baloyi can we go back to your co-signing of the Presidential Minute?

10 **MR BALOYI:** Yes.

ADV KATE HOFMEYR: Because you – your evidence is as I have it is that you did so on the 3 February, is that correct?

MR BALOYI: It is correct Ma'am.

ADV KATE HOFMEYR: So before you signed that what enquiries did you make about what had happened at the previous days' cabinet meeting?

MR BALOYI: Ma'am I think if – if – we can agree that my proposal that will get more – more information on this matter will deal with that question.

20 **ADV KATE HOFMEYR:** Mr Baloyi you see the only place that holds the records of cabinet are the – is the Presidency and we have engaged the Presidency on the records of cabinet. And I mentioned to you previously we obtained the affidavit of the Director General in the Presidency Doctor Lubisi. He has looked at those – the minutes of the 2 February. He has confirmed that there was no Cabinet Memorandum

serving before Cabinet. He has confirmed that there was no discussion reflected and he has confirmed that there was no decision taken about the transfers of Mr Manyi and Mr Maseko. So that is where the evidence would lie and those are investigations that the commission has undertaken. My question to you was a different one. Before you signed on the 3 February do you have a recollection of what you had before you or what questions you asked before signing it?

MR BALOYI: But Ma'am let me put it clear that the department the employing department will have records.

10 **ADV KATE HOFMEYR:** But not if there was not a Cabinet Memorandum that served before Cabinet on the 2 February?

MR BALOYI: I am not convinced that there was no Cabinet Memorandum. I want to be convinced that there was no Cabinet Memorandum.

ADV KATE HOFMEYR: But how would a record of DPISA convince you if the people who have looked at the minutes say it does not reflect there being a memorandum?

MR BALOYI: Well people are people I mean I do not think – unless if – if we then say that in an inquiry like this the evidence of a witness is
20 not taken so serious to warrant that we actually look at that because I am saying as far as I am concerned. But – but is it possible that we can actually look at that?

CHAIRPERSON: Well...

MR BALOYI: Well then if we come back here and there was really no – no – no Cabinet Memorandum, there was no Cabinet discussion then on

the basis of what was the transfer effected?

CHAIRPERSON: Am I right Mr Baloyi to think that if in fact after all the checking and the investigation that you think may still be done. If in fact after all that you were to find that what Doctor Lubisi says in the affidavit that there was no Cabinet Memorandum and there were no – no minutes?

MR BALOYI: Hm;

CHAIRPERSON: That there were – that there was no discussion or decision taken by cabinet about these two transfers.

10 **MR BALOYI**: Hm.

CHAIRPERSON: Of Mr Maseko and Mr Manyi am I right to think that that would shock you?

MR BALOYI: That will shock me Chairperson.

CHAIRPERSON: That would shock you?

MR BALOYI: That will shock me.

CHAIRPERSON: It should not be like that?

MR BALOYI: Come again?

CHAIRPERSON: It should not be like that?

MR BALOYI: It should not be like that.

20 **CHAIRPERSON**: Hm.

MR BALOYI: It should definitely not be like that.

CHAIRPERSON: Hm. Hm. Yes. Okay. Well I – I – I think it is – it is open to the commission to reflect on what else it can still do.

MR BALOYI: Hm.

CHAIRPERSON: To go beyond what we have. I am not sure. But I do

not want you to get the impression that we are saying nothing further can be done.

MR BALOYI: Hm.

CHAIRPERSON: It is possible that we can apply our minds and – and do – and do further but on – on the face of it and thinking that bearing in mind that this is quite a senior official the Director General in the Presidency.

MR BALOYI: Hm.

CHAIRPERSON: Deposing to an affidavit to submit to a commission
10 such as this having been asked to check one would think that he would have taken trouble to check properly.

MR BALOYI: Hm.

CHAIRPERSON: So – but I am not saying that nothing further can be done to try and check that. So certainly we can reflect and take it from there and – and from your side you might – you might also have suggestions or having been Minister you might have Minister of DPSA having dealt with these things you might have ideas of what else could – could be done.

MR BALOYI: Hm.

20 **CHAIRPERSON:** We are not closing the door. Ja. Ms Hofmeyr.

ADV KATE HOFMEYR: Thank you. Mr Baloyi I understand your evidence to be that former President Zuma did not consult you before the transfer of Mr Maseko and Mr Manyi took place, is that correct?

MR BALOYI: It is correct Ma'am.

ADV KATE HOFMEYR: Thank you. And if the evidence as the Chair

has indicated establishes that there was no Cabinet Memorandum that served before cabinet about those transfers on the 2 February and no decision of cabinet in relation to that. How then would the President have known whether Mr Maseko's consent to the transfer had been obtained?

MR BALOYI: The letter that was written on – on consent by Minister Chabane was written addressed to me.

ADV KATE HOFMEYR: Yes.

MR BALOYI: So – so but then the issue is if the question is how would
10 if there has been no cabinet how will the President have known? I think these are things that the – what we are going to establish with the further work that has to be done here will actually inform that. Because the question will not only be how he would know – how will he have known but then the issue would be how he will have got his signature on the – on the Presidents Minute.

ADV KATE HOFMEYR: Yes he might have put his signature there without knowing whether Mr Maseko had consented or not. Is that not a possibility?

MR BALOYI: He – I take it as – as the – the Executive Authority of the
20 National Executive he knew what had to happen. So – and again I also co-signed that President Minute. So I think it is something that when we look at why his signature there what will have informed his – same question that then say, what would have informed my signature to be there? And I think it is through what we are going to establish when we do further research on the matter.

ADV KATE HOFMEYR: I understand..

CHAIRPERSON: Is it – I am sorry. Is it possible that you could have co-signed the Presidential Minute even though there was no Cabinet Memorandum simply because on what you have told me to have been your role in this transfer.

MR BALOYI: Hm.

CHAIRPERSON: Simply because

1. You knew that a decision had been taken that Mr Maseko should leave GCIS. Minister Chabane told you as much.
- 10 2. You knew that you were asked to advice on managing the exit.
3. You had on your version you had had a discussion with Mr Maseko and verbally he had consented to a transfer and
4. You may have been told that look we have got the concurrence of Minister Chabane. We have got the consent of the Director General Mr Maseko. We have got your consent as Minister of DPSA if you need to give consent. The President has no problem with the transfer to say the least. He has no problem. Now ENews has got this – is running the story and let us – let us sign and the paperwork will be fixed later.

20 **MR BALOYI:** No Chairperson if – if there was such a move to then say let us sign paperwork will be fixed later. We will be tracing that indeed paperwork was – was done but for me Chairperson it is just unthinkable that such a thing can happen.

CHAIRPERSON: Yes but my question is a different one. It is whether what I have just tabulated now if this was told to you or being aware of

these things whether that would have persuaded you to say, okay even if there is – the paperwork is not there because we know this to be the position nobody is objecting to this thing and we do not want the impression to be created out there that Mr Maseko has been fired – let – I will sign. I am asking whether knowing all of those things may have been enough to persuade you to co-sign the Presidential Minute even though the paperwork was not there.

MR BALOYI: No Chairperson. What will then – what I would have done was to expedite. I mean – but make sure that they due processes
10 is followed. That is why I – that is why I responded earlier to say, I will be shocked if there is no Cabinet Memorandum to that effect.

CHAIRPERSON: So – but in this case when you – okay when you say you would have wanted to make sure that due process was followed. Do you include in terms of due process cabinet discussing the issue and making a decision?

MR BALOYI: Yes Chairperson.

CHAIRPERSON: You – you – are you saying therefore you would not – you would have been opposed to co-signing the Presidential Minute if there had been no due process including a discussion of the transfer
20 and decision by cabinet.

MR BALOYI: Exactly Chairperson. Because the signing of a Presidential Minute.

CHAIRPERSON: Hm.

MR BALOYI: Is – is the last step.

CHAIRPERSON: Hm.

MR BALOYI: Is the approval of the action.

CHAIRPERSON: Hm.

MR BALOYI: But before that cabinet concurrence has to be in place.

CHAIRPERSON: Hm.

MR BALOYI: And that is my – that is the process – that is the due process that I will – I will insist that it happens.

CHAIRPERSON: Hm.

MR BALOYI: That is why I am saying.

CHAIRPERSON: Hm.

10 **MR BALOYI:** I will really be shocked.

CHAIRPERSON: Hm.

MR BALOYI: If we sitting in a situation where the appointment – I mean the transfer is affected.

CHAIRPERSON: Hm.

MR BALOYI: But the transfer is not facilitated.

CHAIRPERSON: Hm.

MR BALOYI: It – because that is exactly what it will mean.

CHAIRPERSON: What if your understanding I am not saying it was so but what if your understanding was that the President was happy that
20 the Presidential Minute be signed and paperwork would be deal with later because there was some urgency as he saw it? Would you still have been opposed to signing without the paperwork?

MR BALOYI: I would be disappointed with myself Chairperson if that was the case.

CHAIRPERSON: Hm;

MR BALOYI: Because I am not the type of a person who because somebody decide this has to be done even if it is not correct it must be done.

CHAIRPERSON: Hm.

MR BALOYI: I – it is quite a lot of things that I – I...

CHAIRPERSON: Ja you do not operate like that.

MR BALOYI: Ja I do not operate like that. That is why I am saying I will not only be shocked about what cabinet would have done I will also be shocked by my own actions.

10 **CHAIRPERSON:** Hm. Hm.

MR BALOYI: So that is the position Chairperson. For me that is why if I were to say I mean in our discussion with Minister Chabane that is what I indicated there when I then say transfer to another – you are then saying are you sure that – does it say, no that is what I need to do and I started in the beginning right on the day. The date was announced that I was to be a Minister even before I was sworn in. Immediately after the adjournment of Parliament where it was announced the one Minister approached me to then say, oh now I see you there we are going to deal with these issues. And I then said,

20 because we have as a Portfolio Committee been opposed to this arbitrary exist of Heads of Department. That was my conviction. So I will not only be dis – be shocked and disappointed by that disappoint by – by the decision for the transfer to have been effected without a Cabinet Memorandum. I will also be disappointed by myself having appended my signature on the President's Minute because for me it is

not who says what but for me it is what is right.

CHAIRPERSON: And you think it would – it would have been wrong to have a transfer without that due process and without cabinet discussing and making a decision on it?

MR BALOYI: It would have been wrong.

CHAIRPERSON: Hm.

MR BALOYI: I mean even the Department would have then said but where is the due process. I mean what – really.

CHAIRPERSON: Yes.

10 **MR BALOYI**: Really I – it will be something very wrong.

CHAIRPERSON: Yes. Okay.

ADV KATE HOFMEYR: Chair I note.

CHAIRPERSON: Yes.

ADV KATE HOFMEYR: That we have just passed four o'clock.

CHAIRPERSON: Yes.

ADV KATE HOFMEYR: I do not have a great deal more but there are a few aspects just to conclude on Mr Maseko's transfer and then a few on Mr Manyi but we have traversed a lot.

CHAIRPERSON: Yes, yes.

20 **ADV KATE HOFMEYR**: Of what has happened on the 2 February so that will not be long.

CHAIRPERSON: No I am...

ADV KATE HOFMEYR: Would it possible to sit a bit later?

CHAIRPERSON: Ja we can continue because I would like us to finish with him.

ADV KATE HOFMEYR: Indeed.

CHAIRPERSON: Because tomorrow I think I am starting early.

ADV KATE HOFMEYR: Certainly.

CHAIRPERSON: Ja so...

ADV KATE HOFMEYR: Thank you.

CHAIRPERSON: Is it fine if we continue a bit?

MR BALOYI: I am available Chairperson.

CHAIRPERSON: Okay alright thank you.

ADV KATE HOFMEYR: Thank you Mr Baloyi. I would like to take you
10 to the affidavit that we received from the Presidency. You will find it in
Exhibit NN5 and it starts at page 319.

MR BALOYI: 11?

ADV KATE HOFMEYR: 319.

MR BALOYI: 319 okay.

ADV KATE HOFMEYR: Right at the end of that file.

CHAIRPERSON: Did you say 219?

ADV KATE HOFMEYR: Indeed Chair.

MR BALOYI: Thank you.

ADV KATE HOFMEYR: Yes Ma'am I am there.

20 **ADV KATE HOFMEYR:** Thank you. So at 319 is the first page of the
affidavit and it is an affidavit deposed to by Doctor Lubisi who is
currently the Director General in the Presidency and who is also the
secretary of Cabinet. Mr Baloyi I would like you to have the benefit of
what he says about his personal studying.

MR BALOYI: Okay.

ADV KATE HOFMEYR: Of the minutes of the 2 February because I want to understand from you what possible further investigations could be done in the light of what is contained here?

MR BALOYI: Okay.

ADV KATE HOFMEYR: So if I can just take you through the affidavit. If you go over the page to page 320.

MR BALOYI: Okay.

ADV KATE HOFMEYR: You will see there that Doctor Lubisi talks about – well itemises there what specific requests were made by the
10 commission in relation to the 2 February 2011 Cabinet Minutes. And he records there that the commission responded. This was to a request for particularity as to what we were looking for in the minutes. And he says:

“The commission responded seeking those parts of
the 2 February 2011 minutes that reflected.”

And then there are four items there at 5.1 to 5.4.

20 “The commission requested any and all noting by cabinet of the decision to transfer Mr Maseko from GCIS to the DPSA. Any and all noting by cabinet of the decision to transfer Mr Manyi to GCIS. Any and all decisions of cabinet relating to the transfers of Mr Manyi and Mr Maseko and any recordal of any memoranda that were placed before cabinet at its meeting of 2 February 2011 in relation to the transfer of Mr Manyi and Mr Maseko.”

If you go over the page you will find what Mr Lubisi says after he personally studied the minutes and you will find that at paragraph 9. Doctor Lubisi there says?

“I have personally studied the Minutes of the Cabinet meeting of 2 February 2011 and can confirm that the minutes do not record any Cabinet Memorandum dealing with the transfers of Mr Maseko and Mr Manyi or indeed transfers of the Directors General of GCIS, DPSA or Labour having served before cabinet
10 at the meeting of 2 February 2011.”

He says:

“I can also confirm that the minutes do not reflect any discussion of or decision taken in relation to these transfers.”

So Mr Baloyi what other possible investigations could be done other than asking the secretary of cabinet to look at those minutes and tell us what they contain?

CHAIRPERSON: Maybe I could just say before Mr Baloyi responds. As I was reading through this affidavit while she was also looking I noted
20 that for the best part the Director General in the Presidency seemed to talk about other officials having perused the minutes but when I came to the last paragraph, paragraph 9 where he says he personally studied the minutes then I thought okay well if he – if he personally studied that makes a big difference. I thought he was giving us an affidavit based on what other people – other people’s observations. I thought

he had not studied the minutes himself. I thought I must – I must just give you what I was thinking.

MR BALOYI: Yes.

CHAIRPERSON: To what I was looking for to say but it is not enough if he just tells us that officials in his office have looked at the documents. This is what they have told him. But then I came to this paragraph where he says he personally studied the minutes. But you – you may – you may respond. I think the import of the question is, what were – what I – what were you thinking of, what do you have in mind of – that
10 could go beyond this to try and – and establish whether indeed what he is saying here is true?

MR BALOYI: Chair what – what I had in mind and it is what I have in mind still making a submission is that the receiving department which is...

CHAIRPERSON: Your department?

MR BALOYI: Which is DPSA.

CHAIRPERSON: Hm.

MR BALOYI: Definitely should be having records in this – in this regard. Because even the Presidential Minute – the Presidential
20 Minute when it has to be done it is initiated in the department. And the Minister signs and then refers that to – to the Presidency. So I will be surprised and to have these things in – that is why I am saying suppose what Doctor Lubisi has indicated here that is the final position and DPSA has no – no record about that, that is where I have indicated what my position will be. That of serious disappointment. I cannot

imagine what would have happened to actually get to a situation like this.

CHAIRPERSON: I think I can – I think I do get the sense Mr Baloyi that really when you look at the situation of a trans – such a transfer happening without discussion of cabinet the paperwork being before cabinet and a decision being taken by cabinet you – you really cannot imagine how that could happen?

MR BALOYI: I cannot imagine Chairperson.

CHAIRPERSON: Yes.

10 **MR BALOYI:** I cannot imagine how that can happen. It would be – that is why I am saying I will – I would be so disappointed about the process and also about my own signature in that piece of paper.

CHAIRPERSON: Hm.

MR BALOYI: Because really the requirement is.

CHAIRPERSON: Hm.

MR BALOYI: That there has to be a Cabinet Memorandum.

CHAIRPERSON: Well you see in the end after hearing everybody including what the former President has to say although he has already started giving evidence and has said put has given his version in
20 regard to this transfer. In the end being the person who must make decisions and findings I have to ask myself various questions. Now even with this ENCA – with the ENCA or ENews having got wind that – of the news that Mr Maseko was to be replaced by Mr Manyi.

MR BALOYI: Hm.

CHAIRPERSON: I do not know whether that would be a sufficient

justification for things not to be dealt with in the normal course. Why could not - why - why could not - why could a media statement not be issued which would indicate something without having to rush anything? I am - I am not sure that the mere fact that a news channel got wind of part of the news would - would be enough, but the - Mr Maseko's evidence included this Mr Baloyi which you may have picked up from his statements and his transcript.

He says he was told by Mr - Minister Chabane - he was called by Minister Chabane who said to him that he had received a call from
10 the former President.

MR BALOYI: Huh-uh.

CHAIRPERSON: While the former President was out of the country.

MR BALOYI: Hm.

CHAIRPERSON: Who said that he needed to in effect get Mr Maseko out of G - GCIS. I think he put it as - he put it on the basis that Mr Maseko had to be removed or fired from GCIS or transferred or put somewhere, but that he - that is the former President according to Mr Maseko relaying what Minister Chabane relayed to him. The former President had said that by the time he arrived back in the country
20 Mr Maseko should no longer be in GCIS.

MR BALOYI: Hm.

CHAIRPERSON: Now the information that - that is my recollection. I hope I am right. Ja. I think Ms Hofmeyr nods. So I think that is her recollection too. So Mr Maseko said Minister Chabane said you know the President said by the time he arrives back he must not be in GCIS,

but that he went on to say to him, because I know you are a good civil servant or public servant I will not throw you into the street.

I will try and find a place for you. That is - that is what he said and I think the information the Commission has suggests that the President arrived back into the country. He was out of the country on some State business. I think he had gone to a BRICS meeting if I am not mistaken and then to an AU meeting. If I am not mistaken. When he arrive - he arrived back on 1 February. I think that is - that is - that is my recollection. I do not know if it is the 31st.

10 **ADV KATE HOFMEYR**: Chair it was on the 1st actually.

CHAIRPERSON: On the 1st. Yes.

ADV KATE HOFMEYR: So it is the Tuesday of the week before

CHAIRPERSON: Yes.

ADV KATE HOFMEYR: Before the Cabinet Meeting ...

CHAIRPERSON: Before the meeting. Yes.

ADV KATE HOFMEYR: On the 2nd.

CHAIRPERSON: So he arrived on the - on - on the 1st. The Cabinet Meeting was to be on the 2nd.

MR BALOYI: The 2nd.

20 **CHAIRPERSON**: So obviously arrived while Mr Maseko was still at GCIS and then we - we - we have been told what happened on the 2nd. So a question that one cannot avoid is to say if what Mr Maseko says he was told by Mr Chabane is true.

MR BALOYI: Hm.

CHAIRPERSON: Then maybe the E! News factor added to some

urgency that was there anyway. I am not sure, but that is - that is the background ...

MR BALOYI: Hm.

CHAIRPERSON: That Mr Maseko gave - gave.

MR BALOYI: Ja.

CHAIRPERSON: Is that something that you - you heard of at any stage while you were still Minister or is that something you - you heard for the first time after Mr Maseko had gone public about ...?

MR BALOYI: Ja. I - I heard about it after Mr Maseko had said
10 something about - about this and I - I agree with you Chairperson that ...

CHAIRPERSON: Hm.

MR BALOYI: In - in - in the procedure that obtains which I was presiding over as in - in DPSA. There will be no - the ENCA announcement will not have actually necessitated a departure from the normal practice, because a statement could easily be issues to - to clarify that and then we - we deal with the issues accordingly. So that is why I am saying if - if the Commission would I know because from the Presidency will already have an affidavit.

20 I - I can see that it - it might be difficult to go the route or trying to establish, but I will submit - I will submit that my - my request be accepted. I want to satisfy myself ...

CHAIRPERSON: Yes.

MR BALOYI: Chairperson.

CHAIRPERSON: Yes.

MR BALOYI: That something amiss went on in our judgment or - or - or something. It is - it is a - it is a ...

CHAIRPERSON: *Ja*.

MR BALOYI: I will not be surprised.

CHAIRPERSON: You just cannot understand how you ...

MR BALOYI: I - I just ...

CHAIRPERSON: You do anything like this ...

MR BALOYI: Just ...

CHAIRPERSON: Without process - due process.

10 **MR BALOYI**: *Ja*. I just cannot understand.

CHAIRPERSON: Well if - you - you said that your - your department one would expect it to have documents including such a memorandum if it does exist. Is that right?

MR BALOYI: Yes Chairperson. I - I said that.

CHAIRPERSON: Yes. Would - do you think it might help if arrangements were to be made with the Director-General of the Department of Public Service and Administration maybe for you in the company of maybe an investigator or a member of the legal team from the Commission to - to be allowed to go to the department and see
20 whether that visit can help in anyway in terms of trying to look where there could be information? Do you think that is something that can help or is it something that you - you would like to do on your own?

MR BALOYI: We can combine both Chairperson.

CHAIRPERSON: *Ja*, but - but that is one of the things you - you are thinking of?

MR BALOYI: Yes.

CHAIRPERSON: *Ja.* To try and establish really what ... (intervenes).

MR BALOYI: Try and establish, because really I - I cannot establish as to - I mean I cannot - I cannot ...

CHAIRPERSON: Imagine that.

MR BALOYI: Imagine how things like those could have happened.

CHAIRPERSON: Could have happened. Yes.

MR BALOYI: *Ja.*

CHAIRPERSON: Yes. Okay. Ms - Ms Hofmeyr.

10 **ADV KATE HOFMEYR:** Chair there have been engagements with DPSA.

CHAIRPERSON: Yes.

ADV KATE HOFMEYR: Precisely in relation to any records they had ...

CHAIRPERSON: Hm.

ADV KATE HOFMEYR: On this topic ...

CHAIRPERSON: Yes.

ADV KATE HOFMEYR: And amongst the records we did receive ...

CHAIRPERSON: Yes.

20 **ADV KATE HOFMEYR:** Is a document entitled an explanatory memorandum ...

CHAIRPERSON: Yes.

ADV KATE HOFMEYR: And I would like to take Mr Baloyi there in fairness.

CHAIRPERSON: Yes.

ADV KATE HOFMEYR: Mr Baloyi it is in EXHIBIT NN5 and it is at page

42 - 4-2. Chair while Mr Baloyi is finding that page - NN5 page 42. Certainly it will be our submission that whatever might exist in the records of DPSA unless there is a basis to go behind what Dr Lebasi has said on affidavit. It did not find its way to Cabinet.

CHAIRPERSON: *Ja.*

ADV KATE HOFMEYR: The records of that meeting indicate no Cabinet Memorandum before, no discussion of and no decision on, but there is this document. We have traversed both Department of Labour, DPSA and GCIS for all possible documents related to these transfers and
10 Mr Baloyi will tell us afterwards if he thinks there is still further investigations that need to take place, but Mr Baloyi amongst ...

CHAIRPERSON: Have you found that document Mr Baloyi?

MR BALOYI: Yes Chairperson. I have found it.

CHAIRPERSON: Yes.

ADV KATE HOFMEYR: Now that is a document entitled explanatory memorandum. Before we go there Mr Baloyi the usual process for Cabinet Memorandum placed before Cabinet. We understood from Mr Maseko there is a whole process involved. It is prepared. It then goes to the relevant subcommittee and then it is served before Cabinet
20 at a particular meeting. Are you aware of that process?

MR BALOYI: Chair if - if I can talk to this document. It is one of the documents that was given to me.

CHAIRPERSON: Yes.

MR BALOYI: On Wednesday.

CHAIRPERSON: Yes. Have you had a chance to - I assume you ...

(intervenes).

MR BALOYI: Clearly I had no chance to - to actually look at - at this and it comes in as an ...

CHAIRPERSON: If course if you got it on Wednesday last week you should have read it. You did have a chance. You might not have read it, but you did have a chance.

MR BALOYI: Chairperson, I - it was sent to me electronically ...

CHAIRPERSON: Yes.

MR BALOYI: And I - I actually read it on ...

10 **CHAIRPERSON**: On the screen.

MR BALOYI: On - on Thursday and I sent a message to the Commission through a - an email.

CHAIRPERSON: Yes.

MR BALOYI: Requesting for some more document ...

CHAIRPERSON: Yes.

MR BALOYI: About - about that ...

CHAIRPERSON: Yes.

MR BALOYI: And of course this having not been introduced exactly as to what it is all about.

20 **CHAIRPERSON**: Yes.

MR BALOYI: One did not include, but it is the part of the things that if - if I am given a chance we - we could actually look at - at these things. I even requested Chairperson ...

CHAIRPERSON: Hm.

MR BALOYI: To - to have documents assisting me to work on this

thing. It is - it is really a problem to look at that. So I am hearing that this document is - was obtained in DPSA, but there was no - it was never referred to Cabinet.

CHAIRPERSON: Well maybe let us take it step by step. I think Ms Hofmeyr wants to ask you some questions ...

MR BALOYI: Okay.

CHAIRPERSON: And maybe Ms Hofmeyr I know there is an affidavit by the DG of DPSA somewhere. Maybe we - we should start there, because I do not know whether in that affidavit he may be saying the
10 documents he is sending you are all the documents that have something to do with the transfer or not, but you - you would - you would be more familiar with that.

ADV KATE HOFMEYR: Indeed Chair. I will go there in a moment if I may.

CHAIRPERSON: Yes. Okay.

ADV KATE HOFMEYR: Whether this is everything or not is not pertinent for my present questions. My present questions are just dealing with this document.

MR BALOYI: Yes.

20 **ADV KATE HOFMEYR:** So if we could focus on 42. There is a signature on that page. Is that your signature Mr Baloyi?

MR BALOYI: Yes madam.

ADV KATE HOFMEYR: And do you recall this document?

MR BALOYI: Come again?

ADV KATE HOFMEYR: Do you remember this document?

MR BALOYI: I - I saw it as it came.

ADV KATE HOFMEYR: Yes.

MR BALOYI: As you sent - as - as I got it on - but - but I - I do not remember like to then say verbatim this is what we were discussing, where and stuff like that.

ADV KATE HOFMEYR: Well do you remember drafting this memorandum?

MR BALOYI: The - the drafting of documents in a Government department is done by officials and - and he referred to - to Ministers

10 ...

ADV KATE HOFMEYR: Thank you.

MR BALOYI: And - and a document like this coming as one page. Definitely should be part of a - a submission or a file I referred to earlier on that some of these documents that we were supposed to comment on. The information is readily available in the - in the Government department. So to - to really then single out this document to then say 10/11 years ago this is the document sent. Do you remember it? Really. It is a problem.

ADV KATE HOFMEYR: No. I fully understand that and I - I am grateful
20 or your evidence that drafting takes place by officials. May I then just ask as you sit here today do you remember receiving this document around the time of the transfers and feel free to say you do not remember? I just want to be clear on what your recollection is.

CHAIRPERSON: In other words does it ring a bell. Do you say no I - I remember this document?

MR BALOYI: It - it rings a bell Chairperson ...

CHAIRPERSON: Yes.

MR BALOYI: And my signature is there ...

CHAIRPERSON: Yes.

MR BALOYI: But it is part of what?

CHAIRPERSON: Yes.

MR BALOYI: That is the issue.

CHAIRPERSON: What would that signature - what would your signature there on the document signify? When you signed it - what -
10 would it have signified approval of the document? Would it have signified that you have had had sight of the document or what would it signify?

MR BALOYI: Normally the signatures come at the bottom of a document.

CHAIRPERSON: Yes.

MR BALOYI: It means that the - the totality of the document.

CHAIRPERSON: Yes. Yes.

MR BALOYI: You concur with and then here my signature comes on the side of ...

20 **CHAIRPERSON:** *Ja*.

MR BALOYI: Paragraph 2.

CHAIRPERSON: That is what I do not understand.

MR BALOYI: I do not understand.

CHAIRPERSON: Yes.

MR BALOYI: As to what was - maybe I was then saying okay. I note

that they say the President's Minute proposes a transfer of Mr T J Maseko the Director-General, but then all what - what it means. It means the paragraph 2 it - it then clarifies what I said earlier on. To say the President's Minute was - was drafted according to paragraph 2.

Was drafted at the Presidency. Proposing the transfer of Mr Maseko to DPSA and then talking about the post in DPSA is vacant and then all that like that. So my signature there is on the side. It - it could mean that this is an explanatory memorandum to which the Cabinet - I mean the President's Minute was attached. It could - it
10 could be that. It - it - when I read it like that. It - it could mean - that that is exactly.

ADV KATE HOFMEYR: Mr Baloyi you might be happy to - to learn that when I read this I had the similar view about it.

MR BALOYI: Hm.

ADV KATE HOFMEYR: That it may have been an explanatory memorandum attached to the Presidential Minute ...

MR BALOYI: Yes.

ADV KATE HOFMEYR: Because it reads as though it talks about the Presidential Minute. It talks about what it proposes, but what I am
20 really interested in today is whether this is a Cabinet Memorandum.

MR BALOYI: No. This is not a Cabinet Memorandum. I have indicated that a - I - I have not applied my mind fully on this document. It comes in as a lose piece of paper. For sure in the file in DPSA this document is not standing alone idly there. It is a - it is - it is a document that is attached to some other documents that will be key for us considering

that ...

ADV KATE HOFMEYR: Hm.

MR BALOYI: Because when - when you look at paragraph 2 which is what I am - I am actually picking up. Is that it talks about the - the President's Minute having been drafted.

ADV KATE HOFMEYR: Hm.

MR BALOYI: So - and then calling for - for DPSA to then - to then work on it.

ADV KATE HOFMEYR: What I would like to follow up on though is one
10 other point in this memorandum at paragraph 3, because we have been trying to locate it in time. I should be fair and say the documents we have received from both DPSA and Department of Labour are in a state of disarray. Certainly maybe at your time Mr Baloyi things were kept in an orderly fashion, but we - we have not been fortunate enough to find that in our investigations, but nonetheless at paragraph 3 you will see there it is recorded:

“The responsible Executive Authority for GCIS the
Minister of Performance Monitoring Evaluation and
Administration in the Presidency concurs with the
20 proposed transfer of Mr Maseko.”

And then it says:

“See herewith a copy of his letter to the Minister for
Public Service and Administration in this regard.”

Do you see that?

MR BALOYI: I see it.

ADV KATE HOFMEYR: And you will recall that previously we looked at a letter from Mr Chabane addressed to you.

MR BALOYI: Yes.

ADV KATE HOFMEYR: Dated 2 February 2011.

MR BALOYI: Hm.

ADV KATE HOFMEYR: Do you accept that this memorandum therefore must have been produced after receipt of that letter from Minister Chabane on 2 February?

MR BALOYI: I mean from what - what the document is saying.

10 **ADV KATE HOFMEYR:** Indeed.

MR BALOYI: We - we can conclude that.

ADV KATE HOFMEYR: Indeed. I think that is fair.

CHAIRPERSON: Well there is something else in this memorandum that is interesting. If you look at the last sentence of paragraph 4. It says:

“The proposed transfer was discussed with
Mr Maseko and he is in agreement.”

You remember you and I had a discussion and I was saying that if such a memorandum - if a Cabinet Memorandum exist or existed and it said Mr Maseko had consented to the transfer. That might not be
20 helpful enough.

MR BALOYI: Hm.

CHAIRPERSON: Where it might be helpful is if it indicates that you had a discussion with him ...

MR BALOYI: Hm.

CHAIRPERSON: Because you say there was a discussion. You had a

discussion with him. He says there was no discussion between the two of you about his transfer before the announcement to Cabinet. You remember that? You remember that discussion between the two of us?

MR BALOYI: I - I remember - I remember Chairperson.

CHAIRPERSON: The - this last sentence there do you know whether that is a sentence that you might have had something to do with or you do not remember?

MR BALOYI: I - I do not remember. The - paragraph 4 I say the proposed effective date of the transfer is a date following the - the date
10 ... (intervenes).

CHAIRPERSON: No. It is the last sentence that I am looking at.

MR BALOYI: The last - *ja*. The last sentence.

CHAIRPERSON: Yes.

MR BALOYI: Hm.

CHAIRPERSON: You do not remember?

MR BALOYI: Is the date - no - no I do not remember.

CHAIRPERSON: Yes. Okay. Alright. Let me just ask something else before I forget. Ms Hofmeyr referred you to the letter from Mr Chabane to you that we looked at earlier ...

20 **MR BALOYI**: Yes.

CHAIRPERSON: And at the beginning of that letter Mr Chabane says he concurs to the transfer. If I recall correctly. What page is it again?

ADV KATE HOFMEYR: It is the next page Chair. Well ...

CHAIRPERSON: Oh.

ADV KATE HOFMEYR: Yes. Next page - 43.

CHAIRPERSON: Yes. Yes. He - he says:

“I concur subject to the President’s approval with
the transfer of Mr T J Maseko.”

You know there is this question of where this - who initiated
the transfer? Where did the idea come from? One way of looking at I
concur maybe that somebody else has made a suggestion or proposal
and you then concur. Okay and I am wondering whether there is any
significance to be attached to him saying that. Is there any - have you
got any comment?

10 **MR BALOYI:** To ...

CHAIRPERSON: To him saying I concur.

MR BALOYI: I concur.

CHAIRPERSON: He is writing to you.

MR BALOYI: Yes.

CHAIRPERSON: He says I concur.

MR BALOYI: Hm.

CHAIRPERSON: And I am saying one - one interpretation might be as
if you had suggested something and he is concurring to it.

MR BALOYI: Exactly Chairperson. I suggested to him the transfer of
20 Mr Maseko in the meeting I referred to.

CHAIRPERSON: Hm.

MR BALOYI: He approached me about exit management ...

CHAIRPERSON: Hm.

MR BALOYI: And I - I introduced two proposals to him - two options ...

CHAIRPERSON: Hm.

MR BALOYI: Redetermination and transfer ...

CHAIRPERSON: Huh-uh.

MR BALOYI: And I - I suggested the best one is that of transfer ...

CHAIRPERSON: Hm.

MR BALOYI: And we agreed that we need to approach him both of us ...

CHAIRPERSON: Hm.

MR BALOYI: Individually. If he gives consent then we should the matter further, but of course that will still be subject to concurrence by
10 Cabinet and approval by the President.

CHAIRPERSON: Now you had a discussion with Minister Chabane about this transfer and you have already said that he made it clear that a decision had been taken that Mr Maseko should in effect leave GCIS. Is - is that how he put it? I am not saying word for word, but did he put it in that way that a decision had been taken. Is that how he put it?

MR BALOYI: That - that is how he put it Chairperson and that is why even in my affidavit I indicated that I - I then said - when he said exit management. I said in a situation where the initiator is - is not the DG. We will need to - to get the DG concerned, because I - I - the exit for
20 him was exit from GCIS, but the issue of transfer came with me. The issue of redetermination came with me.

CHAIRPERSON: You see it does not strike me as a normal way of speaking if I have made the decision and - and I am asking you for advice and I say a decision has been taken instead of saying. You know, because you were his colleague ...

MR BALOYI: *Ja.*

CHAIRPERSON: And he was asking for advice from you on the management of the exit. Does it strike me as normal - a normal way of speaking for me to say a decision has been taken. Instead of me saying. You know I have taken a decision that I cannot work with Mr Maseko anymore. He needs to leave.

MR BALOYI: Hm.

CHAIRPERSON: Can you help me with how to manage his departure.

MR BALOYI: Hm.

- 10 **CHAIRPERSON:** Have you got any comment on - on what I am saying in terms of how it came across to you? Did you have the same feeling as I do? That I would expect you to say to me as your colleague if you want advice. Say I cannot work - continue working with my DG anymore. I have made the decision that he needs to go, but I need your advice.

In other words I will disclose that I am the one who has made the decision. Is - is - have you got anything you are able to say about what you thought of this way of putting things to you on his part?

- MR BALOYI:** Chair, I - thank you very much. I - I consider that in the
20 context of a report that speech.

CHAIRPERSON: Hm.

MR BALOYI: Where it may not be ordinary straightforward communication language ...

CHAIRPERSON: Huh-uh.

MR BALOYI: But it is not - it is not unheard of in - in reported ...

CHAIRPERSON: Hm.

MR BALOYI: Situations.

CHAIRPERSON: Hm.

MR BALOYI: That a person may say a decision has been taken.

CHAIRPERSON: Hm.

MR BALOYI: Even referring to that decision having been taken by that person. That was my understanding Chairperson.

CHAIRPERSON: Hm. Hm. Hm.

MR BALOYI: It - it may - it may differ with a general norm in terms of

10 ...

CHAIRPERSON: Hm.

MR BALOYI: Understanding communications ...

CHAIRPERSON: Hm.

MR BALOYI: But in a reported form.

CHAIRPERSON: Hm.

MR BALOYI: I - I took it like that.

CHAIRPERSON: Hm.

MR BALOYI: That is why in my statement.

CHAIRPERSON: Hm.

20 **MR BALOYI:** I said I understood what it means, but of course I understood that he cannot take a decision like that even if it is him without consulting his Principal, because the - the responsibility ...

CHAIRPERSON: Hm.

MR BALOYI: To the - to transfer ...

CHAIRPERSON: Hm.

MR BALOYI: Or the authority ...

CHAIRPERSON: Hm.

MR BALOYI: First with the - the President.

CHAIRPERSON: Yes.

MR BALOYI: So - so him working in that establishment.

CHAIRPERSON: Hm.

MR BALOYI: It was then - you would say the Presidency has taken a decision.

CHAIRPERSON: Hm. Hm.

10 **MR BALOYI:** And - and the Presidency as an establishment ...

CHAIRPERSON: Hm.

MR BALOYI: Has a got a Minister in the President ...

CHAIRPERSON: Hm.

MR BALOYI: Or Ministers in the President.

CHAIRPERSON: Hm. Hm.

MR BALOYI: Then - and then and then the President.

CHAIRPERSON: Hm.

MR BALOYI: So that is my understanding ...

CHAIRPERSON: Hm.

20 **MR BALOYI:** And - and I did not - I did - it did not come to me.

CHAIRPERSON: Hm.

MR BALOYI: My - my only interest Chairperson was who initiated that ...

CHAIRPERSON: Yes.

MR BALOYI: And it was clear that it was not initiated by Maseko ...

CHAIRPERSON: Yes. Yes.

MR BALOYI: And - and having not been initiated by - by Maseko that is when then it - it came to me that ...

CHAIRPERSON: Yes.

MR BALOYI: We need to manage it in a particular way.

CHAIRPERSON: Yes. So - so your - your understanding was that in saying a decision has been taken he was not necessarily excluding himself ...

MR BALOYI: Exactly Chairperson.

10 **CHAIRPERSON:** From the decision?

ADV KATE HOFMEYR:

MR BALOYI: Exactly Chairperson.

CHAIRPERSON: But your understanding was that what he meant was that the President had been consulted because your understanding was that such a decision can't be finalised without the President, that was your understanding?

MR BALOYI: That was my understanding Chairperson.

CHAIRPERSON: Mmm.

20 **MR BALOYI:** That was my understanding because I mean even when, in the point madam referred to earlier on, referral of document for appointment purposes, even when Ministers will short-list and come with three possible candidates, before referring that to the Minister of Public Service and Administration they will have to touch base with the Authority that is the President to then say – then it means any of these candidates are employable and then they come to me, you'd then would

deal with the rest, the necessary checks in terms of the requirements.
So the move taken is always taken in consultation.

CHAIRPERSON: Yes, yes okay.

ADV KATE HOFMEYR: Chair if may, because I think this is quite an important part of Mr Baloyi's evidence, I took very careful note Mr Baloyi when the Chairperson asked you earlier to take your mind back and actually try and tell us what was said in the conversation between you and Minister Chabane. As I wrote it down, you said that Minister Chabane had said to you,

10 "I have been informed there is a decision that Mr Maseko must leave",

Do you remember recounting that earlier?

MR BALOYI: I think that Minister Chabane said I had been informed.

ADV KATE HOFMEYR: Yes when the Chair asked you, take yourself back to that conversation and you were answering the Chair's question when you gave what Mr Chabane said as I wrote it down at the time you said Mr Chabane said,

"I've been informed that there is a decision that Mr Maseko must leave",

20 **MR BALOYI:** No, no, no that really – that is what I said, what I said is that I was informed by the Minister that a decision has been taken, not that the Minister was informed.

ADV KATE HOFMEYR: I understand thank you for the clarification. Mr Baloyi if we may then go to ...[intervenes].

CHAIRPERSON: Maybe just to finalise an aspect, so going back to

initiating, once you knew that Mr Maseko had not initiated the transfer or his move departure from GCIS, on your understanding was there only one other person who could initiate that, namely Minister Chabane or could it have been initiated by anybody else, leaving you aside because you said that in certain circumstances you could as well but I think you are not including yourself here?

MR BALOYI: Yes Chairperson exactly like I said, the Minister could have initiated that or the DG could have initiated that, that's exactly – if you say could there be any other person, the answer is yes the
10 Minister could initiate the transfer or the exit if we put it that way.

CHAIRPERSON: Ja because initially it was just the exit.

MR BALOYI: It was just an exit.

CHAIRPERSON: An idea of a transfer came...[intervenes].

MR BALOYI: The transfer came with me.

CHAIRPERSON: Ja okay.

ADV KATE HOFMEYR: Thank you Chair. Mr Baloyi I'd like now to move to Mr Manyi very briefly both his dismissal and his transfer. The evidence before the Commission of Mr Manyi and some of the documents we've been able to source indicates that Mr Manyi engaged
20 you very shortly after his position was terminated by former Minister Mdladlana, does that accord with your recollection?

MR BALOYI: In the documents I received on Wednesday there is reference to written exchange of communications between me and him, after Minister Oliphant requested my intervention, so the answer is yes.

ADV KATE HOFMEYR: Thank you there was also, amongst the

documents sent to you, what appears to be every alternate page of a type of memorandum that you may have written at the time. I'd like to take you to it so you can assist us with it, it's in Exhibit NN5 and it's at page 208.

MR BALOYI: I'm there.

ADV KATE HOFMEYR: Thank you. Mr Baloyi this is a document that appears to comprise, at least here, three pages it runs from 208 to 210 do you see that?

MR BALOYI: Yes I see that.

10 **ADV KATE HOFMEYR:** It does seem to indicate at page 210 that you had some involvement in this document, do you recall this document?

MR BALOYI: Yes although it has my name and it is not signed but the content sounds familiar to me.

ADV KATE HOFMEYR: Okay as I understand the content, in paragraph 1.1 on page 208 it records a request for intervention that had been received. Can you tell us what you recollect about that request for intervention?

MR BALOYI: I was refreshed to this issue when I received this document on Wednesday and clearly approached in that fashion would
20 be in writing and clearly these are some of the documents that, had I received them earlier, I would have researched more in terms of what is it that's in there but having come on Wednesday, honestly speaking it's a – I didn't do a lot in terms of establishing what is going on there.

ADV KATE HOFMEYR: As you sit here today do you have any memory of receiving a request from the office of the President of the Republic

of South Africa to intervene in the matter involving Mr Manyi's dismissal?

MR BALOYI: I'm not challenging what is contained in the document, the issues I'm raising is that if received in time, I would have done further research to establish this matter.

ADV KATE HOFMEYR: And what would that research have involved?

MR BALOYI: You know when I deal with these issues I establish – well these things happened a long time ago it involved thinking about it, it involved trying to engage with some of the people I was working
10 with just to try to have that recollection and it also involves something that I've indicated, it also involved, like I said, I was not doing these things at a personal level that's why I wrote to principals of my employment at the time to assist me to get to this thing because surely if there was a request to intervene and it's in writing it should be there in the records and to expect me to run around look for these documents where will I find it.

ADV KATE HOFMEYR: Indeed, Chair this is the appropriate point – I don't suggest we go there but you asked earlier about the affidavit from the Director General of DPSA.

20 **CHAIRPERSON:** Oh yes, yes.

ADV KATE HOFMEYR: Because this is amongst the documents that we obtained from DPSA. Mr Baloyi just to satisfy you in relation to any further investigations which you may wish to make, what this document as contained here is the only version of it that we have managed to obtain from DPSA, they provided us with a full file of everything they

had relating to Mr Manyi's dismissal that's set out in an affidavit that appears at page 162 and so certainly the Commission's efforts suggests that there are no further documents but I understand your evidence to be you don't dispute that you may have received such a request.

MR BALOYI: Exactly, but I may not go into details whether it came telephonically or it came in writing.

ADV KATE HOFMEYR: Understood, you indicate in – over the page in that memo at page 209 that you'd looked into the question of Mr
10 Manyi's dismissal and that you had made some recommendations to Minister Oliphant, you'll see that at 4.5. Mr Baloyi were you present for the evidence of Ms Oliphant, today?

MR BALOYI: Come again?

ADV KATE HOFMEYR: Were you present when Ms Oliphant was testifying?

MR BALOYI: Yes I was present yes.

ADV KATE HOFMEYR: Then you would have seen that I took her to a letter that appears to have been written by you to her on the 29th of November 2010, do you recall sending that letter to her?

20 **MR BALOYI:** Ja I thought that letter was – I also received in on Wednesday, that's my signature no doubt about it, it is my letter.

ADV KATE HOFMEYR: Thank you and you gave her four pieces of advice if you'll recall in that letter, you'll find it at page 217.

MR BALOYI: Yes.

ADV KATE HOFMEYR: We went through it earlier I won't take a lot of

time with it but I do want to just get your comment on Ms Oliphant's evidence. You'll see at page 217 you advised her of four things.

MR BALOYI: Yes.

ADV KATE HOFMEYR: You advised her under 3A to withdraw the former Minister's letter which terminated the DG's services, you advised her to extend the DG's probation for another four months, C) to place him on special leave to allow space to find a suitable solution and D) during this two-week period to decide whether or not to pursue the misconduct charges against the DG, do you see that?

10 **MR BALOYI:** Yes I see that.

ADV KATE HOFMEYR: Can you confirm that's the advice you gave at the time?

MR BALOYI: Yes.

ADV KATE HOFMEYR: Now Ms Oliphant's evidence is that she didn't ever actually consider whether to pursue the misconduct charges, did you hear her give that testimony?

MR BALOYI: I heart that and of course it's on the same NN5 page 211, a handwritten note of a discussion between the two of us.

ADV KATE HOFMEYR: Well help us with that is 211 – Chair if you'll
20 go to Annexure – sorry Exhibit NN5 page 211 is that a note you took?

MR BALOYI: No, no, no this was written by officials in the department reporting about a meeting we had and informing about the decision, it was my advice was exactly as indicated there and it was an advice a decision was to be taken by the Minister.

ADV KATE HOFMEYR: Yes and – so are you, when you look at page –

the note that appears at 211, is that a note of a meeting you held with Minister Oliphant?

MR BALOYI: The contents reflected there, according to my recollection is the content of our discussion.

ADV KATE HOFMEYR: Right because what is reflected there at the handwritten note 1.2 is that disciplinary action against Mr Manyi will not be pursued, do you see that?

MR BALOYI: I see that.

ADV KATE HOFMEYR: Is that your recollection of what Ms Oliphant
10 communicated to you?

MR BALOYI: Yes.

ADV KATE HOFMEYR: Because Ms Oliphant's evidence today before the Commission was that she didn't make a decision on the charges and whether to pursue them because she'd never seen them, she didn't know what they were?

MR BALOYI: Well I heard that madam, I heard her say that but you'll recall that the charges were dropped at the hearing, I'm sure there's one document that talks to that, when one official said, no lets not continue with the hearing because in any case the probation period is
20 coming to an end. So – but then the advice I got, I think there's another document I think comes from DPSA that the advice that we got from the legal team, which I agreed with is that, that decision does not necessarily – does not necessarily say the charges were withdrawn, hence my letter.

ADV KATE HOFMEYR: Indeed, so your understanding was that a

decision still had to be taken whether to pursue those charges, is that right?

MR BALOYI: In the interest of the Ministry.

ADV KATE HOFMEYR: Indeed and your evidence is that it was communicated to you by Ms Oliphant that she was not going to pursue charges, is that correct?

MR BALOYI: That's correct.

ADV KATE HOFMEYR: If she hadn't communicated that to you would you have been concerned about the transfer of Mr Many on the 2nd of
10 February when that question was still left open?

MR BALOYI: The – in running a professional Public Service if you have allegations towards somebody you run the allegation to the end it's not – an allegation is not enough to suggest that a person is guilty of what you suggest, you have to put a person through a process.

ADV KATE HOFMEYR: Indeed.

MR BALOYI: In this case you have a situation where, in this case somebody indicate both to the left and both – and to the right, firstly to say that we have cases of misconduct proffered against you and then some say then no but then we are taking a decision no longer to
20 proceed because the probation period has come to an end, it's really problematic.

ADV KATE HOFMEYR: Indeed if I can then move fairly swiftly to Mr Manyi's transfer. You dealt with it fairly briefly in your statement I fully understand your difficulty with remembering back so many years and not having all that many documents available to you but Mr Baloyi what

you have learnt today in the course of the questions is what is contained in Dr Lebese's affidavit that there was no Cabinet memorandum in relation to either of these transfers, there was no decision taken by Cabinet on the 2nd of February and there was no discussion by Cabinet at that meeting. If those are the facts, Mr Baloyi would you accept that the transfer of Mr Manyi also did not follow regular process?

MR BALOYI: The shock that I initiated I will express serious shock will apply to both cases because the procedure is the same, there is no
10 procedure for one person which does not apply to the other person.

ADV KATE HOFMEYR: Indeed, and then Mr Baloyi I'd like your comment on the following. Do you accept that State Capture can occur within a society by removing people from positions who aren't willing to do the work of the captures, is that something you've given consideration to?

MR BALOYI: It's a hypothetical case.

ADV KATE HOFMEYR: It is and I'm not asking – I will ask in due course whether you think that occurred here, based on what you know today, but I'm saying hypothetically what is your understanding of State
20 Capture?

MR BALOYI: Well my understanding of State Capture is a situation where the organs of State – we're talking of organs of State as to the rule of the separation of powers coming to the Judiciary, the Executive, the Legislature and also the structures of Government. Don't avoid taking certain decisions or take certain decisions clearly informed by

the intention to [indistinct], I mean that's the general definition I can give.

ADV KATE HOFMEYR: And it's Mr Maseko's evidence before this Commission that he was removed from the position of GCIS because he was unwilling to direct certain spend within GCIS to the New Age newspaper of which the owners were the Gupta's and I think the evidence today, and I'd like your comment on this, has established that if the facts deposed to by Mr Lebesa are correct, both the transfer of Mr Maseko to DPSA and the transfer of Mr Manyi into GCIS were
10 irregular, do you accept that?

MR BALOYI: Well I can't second-guess the decision of Executive Authorities, never in my involvement was the issue of the Gupta's or any other thing raised with me when I interacted with all those. So I can't, then say the move by Minister Chabane the move by the President was informed by anything. Mine was to assist the process as far as procedure is concerned and even it will be established that the documents that we don't have now, even if it would be established that they are not there, it will not be, for me because of anything that has to do with State Capture. There has been never any person who
20 mentioned my name as having been suspected of involvement in either benefitting or promoting this triple challenges of State Capture, corruption and fraud as a manifestation of corruption. So I was dealing with this as a process of transferring officials at the instance or at the request of the Ministers I provided support to.

ADV KATE HOFMEYR: Chair just one follow-up question if I may

before our questions are concluded.

CHAIRPERSON: Ja.

ADV KATE HOFMEYR: Mr Baloyi, do you accept, given what your understanding of State Capture is though, that irregular removals of persons and irregular transfers of persons may be a way in which it is facilitated?

MR BALOYI: But firstly we need to prove that there has been irregular transfers, it's not in general terms so the issues – and we have to prove, I mean or to establish beyond reasonable doubt that this is
10 irregular transfers they're not errors in administration, so I think dealing with applying hypothetical questions on particular issues may not be very helpful.

ADV KATE HOFMEYR: Mr Baloyi I wanted to give you an opportunity to make comment on that because we will make submissions in due course about how to put all of these events together. For the record no part of the Commission's processes requires things to be established beyond a reasonable a doubt.

MR BALOYI: Come again?

ADV KATE HOFMEYR: We don't have to establish things beyond a
20 reasonable doubt in this Commission we need to probe and it is my comment to you for your comment that in the course of today we have established that the transfers of Mr Manyi and Mr Maseko were irregular, do you have a comment on that?

MR BALOYI: I have requested that we will look at certain documents that may lead us to come to even inform a decision on a balance of

probabilities because the issue is – I raised those things, I've expressed my surprise on what appeared to have been and I've submitted that we'll look at these things and had I received this document earlier I would have definitely within my means tried to establish what's going on. So to then say based on what we have conclusively we can then say we have sufficient grounds to decide on the balance of probabilities that these things are – well I can't say that the Commission should not reach that stage but the Commission should understand that it's written that states I haven't raised a request.

10 **ADV KATE HOFMEYR:** Thank you, those are our questions Chair.

CHAIRPERSON: Those are your questions okay thank you. Mr Baloyi I don't remember that you gave a version with regard to Mr Maseko's evidence that he called you after his transfer had been announced to Cabinet, he called you, I don't know whether he said the same day or the following day but I think he said that was before he went to start or assume his duties at DPSA. Do you remember receiving a call from him where he was telling you that he was your new DG at all?

MR BALOYI: Chair I don't remember that and in my earlier evidence I indicated that to the extent of my recollection I initiated the transfer.

20 **CHAIRPERSON:** Do you – so you have no recollection of the call, you are not saying it did not happen but you say you have no recollection of receiving a call from him where he said that he told you that he was your new DG?

MR BALOYI: I have no recollection of that Chairperson.

CHAIRPERSON: Yes and you would say in terms of what you recall

it's not in line with your recollection of how things had happened, is that what you would say?

MR BALOYI: Yes that is what I said, when I indicated that I initiated when I got the message from his principal I advised on what needed to be done.

CHAIRPERSON: Yes I just can't remember whether he said he made the call on the afternoon – in the afternoon of the day of the Cabinet meeting because if he made the call after the 3rd you probably wouldn't have been surprised because you had signed the Presidential minute by
10 that time therefore you would definitely know that he was – he had been transferred to your department, is that right?

MR BALOYI: It's right Chairperson because for me it's – prior to me signing the Presidential minute would be a consideration by Cabinet of that move, something that I then said, I thought in the records of government we do have such information, something that is being reported to me, such information was not there.

CHAIRPERSON: Yes and he's package that he got when he left DPSA, my recollection is that there was some portion of that – of the package which might have been considered to be more than what he would
20 ordinarily be entitled to but that when he gave evidence in November the second time he appeared here, he seemed to suggest that there was a portion that was included in his package on the basis that it was being recognised that he – the manner in which he had been transferred from GCIS there was something not good about it. I'm putting it in my own words, or some unfairness so as a way of giving

recognition to that there was some amount there. I may not be putting as accurately as he himself put it, but you recall anything along the lines that in that package he got, there was something that was meant to convey the message to him that we know that in the way in which you left JCIS might not have been the best way or might not have been fair and therefor we are adding something on your package that you taking home.

MR BALOYI: Yes, in fact, when he exited DPSA, it was initiated by him. It was not initiated by the Executive Authorite.

10 **CHAIRPERSON**: Yes.

MR BALOYI: And in a situation like that, the exit management is done that this person is resigning. Now the pay out who is resigning and the pay out to a person who is contract is re-determined is not the same. So, I have indicated that I, I took the decision to then say, look I did not initiate his departure. The fact that his departing was, it was six or seven months after coming into the DPSA, I took a decision to then say for him not to do worse off, let us consider that whatever motivates his departure could be part of the package of where he is coming from. And I agreed that we will work on the determination and that is what he

20 actually welcome to say that is a fair way, a fair way of, I mean exit mechanism from Public Service. So, it is in the manner, the quantum is informed by the manner of exit. You resign, you get a less payment. Because it is your decision to do that. But if you have your contract pre-determined, it is not your decision to do that, then there is a formula that is actually used to take care of that. So I took that

decision to then say, really if we remove the package of where it is coming from, there is really nothing that explains why he had to leave. If he then says I had to leave like that, I will then say to him okay it is a resignation we will pay you at this level. So that is what explains the difference. It is in the exit mechanism Chairperson.

CHAIRPERSON: But from what you are saying as I understand you, you are saying that there was something, but it was based on the fact that he was departing from DPSA, not from JCIS.

MR BALOYI: Hmmm.

10 **CHAIRPERSON**: As a result of a redetermination of his contract. So first are you saying that the package that he got when he left DPSA had nothing to do with how he left JCIS, or was there that consideration as well?

MR BALOYI: The, by inference to manage a fair exit on his part, I took that decision to then say, look I have not taken a decision to then say you need to go, you are taking a decision that you are going. I think lwt us work on this, to then say it is part of the package of your disappointment, where you left before the end of the contract. So, we calculated it. And use a redetermination route, and not a resignation
20 route. Just to make it, to address his exit, Chairperson.

CHAIRPERSON: So are you therefor saying that in part, how his package, how his package was formed was also influenced by how he had left JCIS in part.

MR BALOYI: Ja chairperson I am saying the, my decision was that here is the Director General I am leaving, and he is leaving. He is

resigning. He is definitely going on a lessor package, and it happens, it would not have been like this, it would not have landed with me, it would not have landed with the DPSA if it was not manner of exit from his previous position. So I took a decision to then say, let us work on this, that we treat it not as a resignation but we will treat it as redetermination.

CHAIRPERSON: So that decision on your part was influenced by, in part how he left JCIS.

MR BALOYI: Yes Chairperson.

10 **CHAIRPERSON**: That is right.

MR BALOYI: Yes Chairperson.

CHAIRPERSON: And the fact that he was now leaving DPSA as well, but he had said he was resigning and you conceded a number of factors including how he had left JCIS, and said let us do this as a redetermination so that he would not get a lessor amount. Is that right?

MR BALOYI: That is right, Chairperson.

CHAIRPERSON: Yes. Now he has said, as I understand his evidence, he has also said after he came to DPSA, his relationship with you really
20 did not take off. Those are my words. Did not take off, and he says he was not even introduced to staff. I do not know whether he puts it as he was not introduced at all, or he was not introduced properly to staff, and some staff members would say that they have just heard from the media about his, that he was now the new Director General, and he says what drove him to decide to leave, to talk to you and say, you

know he would like to leave, was that, he felt unwelcome. And he says you as Minister were having meetings with members of his team, and decisions were being made without him being part of those decisions and yet he was the accounting officer and he says he thinks this was happening because of the manner in which he came to the Department namely as he puts because he was imposed on you. On the day of a Cabinet meeting which you did not attend and because of how he came to the Department you never warmed up to him. The relationship between the two of you never warmed up and ultimately, he decided

10 look he should go. Now you put a version that says, actually you are the one who came with the idea that he should be transferred to your department.

MR BALOYI: Exactly.

CHAIRPERSON: Now let me ask the question. What do you say about his concern, or his evidence that in effect the relationship between the two of you never took off. What do you say about his evidence you would meet with members of his team and decisions would be taken in meetings where he was not included and yet he was the accounting officer. Did that happen, did that not happen?

20 **MR BALOYI**: Mr Chairperson I would not have initiated that he be transferred to DPSA if I did not like him. I would not have talked with him and then say if he is worried in his hesitation, if he is worried that maybe at some stage he may have to leave or the contract may, I mean the period maybe short, I would not have said Director General I am even prepared to extent the contract. I would not have said that

Chairperson.

CHAIRPERSON: Because he says you never said any of those things.

MR BALOYI: Yes at ...[intervenes].

CHAIRPERSON: At least prior to him coming to DPSA.

MR BALOYI: I agree Chairperson. I have seen that, and that surprised me. He is saying that, and I am saying this.

CHAIRPERSON: I interrupted you. Please feel free to continue to make your point.

MR BALOYI: Yes I was saying we did not have done those things, I
10 would not have even then said when he was insisting to leave, I would
not, because in my discretion Chair, I indicated in the beginning that
when I was talking to him, he indicated that he might not be long in the
public service. And then when he decided like that, it was just, I would
of own decision to then say but fine, he cannot leave worse off in a
situation like that. I took that decision. There was no stage
Chairperson where I sidelined him in the Department. I do not know of
such. And to my re-collection I never like deliberately took a decision.
I treated him like any other Director General. By the time I was
working with him, there were other Director General's. I think four to
20 five of the other sections of the DPSA. And my treatment to all of them
were the same. So, I never did that.

CHAIRPERSON: Are you saying you never had meetings with
members of his team where important decisions were taken without
him, for which he would be required to account as an accounting
officer.

MR BALOYI: I cannot remember that, and I cannot imagine that such could happen. I am not that bad a person who can do that Chairperson. I would not have done that. So that is why I was so surprised when I saw what he indicated in the submission. So honestly speaking Chairperson, the relation between me, and him were a normal relationship.

CHAIRPERSON: Well let me make this point. My understanding of his evidence is not that the says you had anything personal against him. That is not my understanding of his evidence. My understanding of his
10 evidence is that he says you may have done things the way you did them, and your relationship between the two of you might not have taken off simply because of how he was imposed on you. So we go back to that version about whether he came to DPSA because you wanted him to come to DPSA, you came with the idea that he must be transferred to your department, or whether he was imposed in circumstances where a decision was taken hastily that your department is the one to which he should go, because the ENCA had got wind of his move from JCIS.

MR BALOYI: Chair, I initiated Mr Maseko's transfer to the department.
20 He was imposed on me. ...[Indistinct] would be imposing, would be a person which I talk to, and that is when I agreed on the approach to do all those things. He was not imposed on me. So, and I initiated that, those things would happen. So Chair I am stating that the Commission should consider that my version, as far as I am concerned is my version reflect what happened at the time. I have indicated that in the crux of

your past, you might find that when I objected to the use of a strong word of being confused and stuff like that, but with your clarification that in a positive light that may mean that. It actually affect both of us. And it might polluting our judgment. Including his. That is why he is saying what he is saying and I am saying what I am saying. Think at it as way of, a proving what I am saying, that will be something that will come out clear. That is why even in the letter of Minister Chabane, he would not have said, I concur if somebody has not traced it. So, that is the whole situation.

- 10 **CHAIRPERSON**: Yes. Just the last question. So on your version what is it that made Mr Maseko to stay so short a period at DPSA if otherwise the relationship between the two of you was normal, was fine. Because he was there for a very short time. I think from February to July of the same year if I am not mistaken. Am I right about the short period?

MR BALOYI: You are right Chairperson.

CHAIRPERSON: Hmmm.

MR BALOYI: And I have indicated in my statement that that was an issue and I have sketched out ...[intervenes].

- 20 **CHAIRPERSON**: Yes.

MR BALOYI: A possible, possibilities or scenarios about that.

CHAIRPERSON: Yes. Yes.

MR BALOYI: In my, in my statement.

CHAIRPERSON: Yes, yes.

MR BALOYI: Trying to articulate myself on, on the surprise of his

early exit.

CHAIRPERSON: Hmm.

MR BALOYI: Included in what I said was that when I discussed with him about that he, about the transfer to the department, he hinted on his decision to not stay long.

CHAIRPERSON: Yes.

MR BALOYI: So when it came out that he then says he is leaving ...[intervenes].

CHAIRPERSON: Maybe it is part of what he said.

10 **MR BALOYI**: Okay. And I could not stand on his way ...[intervenes].

CHAIRPERSON: Yes.

MR BALOYI: And, and if was to be proven it would actually be established that I said, if that if he is not interested in being a Director General, line function thing, we could even work together. You would be an advisor. This are Chairperson that I have said. And I could not do all this things, if there was anything. But the issue is, he was not deposed on DPSA. I initiated it.

CHAIRPERSON: Hmmm. Thank you. Anything arising.

ADV KATE HOFMEYR: No Chair.

20 **CHAIRPERSON**: Thank you. Mr Baloyi thank you very much. it has been a long day. But we have come to the end. If we do need you come back, we will ask you to come back. I would say that in so far as you believe some further investigation may be required to try and see whether there further documents that may be obtained from the Department of Public Service and Administration or from the Cabinet

Secretary, please feel free with your legal advisors to do the necessary. The legal team will reflect on your, on your request that the commission should consider doing something further. They will reflect and they will let me know after they have reflected. But from your side, do not wait for the Commission if you believe if there is something that you can do to try and get the information, so that should the commission that what it has done is more than enough. If you find something, certainly come and share it with the Commission. But they will reflect, and I think they probably would need give you an indication of where they stand on the
10 issue. Is that all right?

MR BALOYI: Thank is fine thank you. Thank you very much.

CHAIRPERSON: Thank you very much you are excused. Ms Hofmeyr.

CHAIRPERSON: You have been standing there.

ADV KATE HOFMEYR: No that is fine, I am getting used to it.

CHAIRPERSON: Thank you very much and we are going to adjourn. I think tomorrow we are starting at nine o' clock with the evidence of Mr Chabi. Okay we are going to adjourn for the day. We adjourn.

INQUIRY ADJOURNS TO 4 DECEMBER 2019