

COMMISSION OF INQUIRY INTO STATE CAPTURE
HELD AT
CITY OF JOHANNESBURG OLD COUNCIL CHAMBER
158 CIVIC BOULEVARD, BRAAMFONTEIN

10 JULY 2020

DAY 231



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DATE OF HEARING:

10 JULY 2020

TRANSCRIBERS:

B KLINE; Y KLIEM; V FAASEN; D STANIFORTH



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PROCEEDINGS RESUME ON 10 JULY 2020

CHAIRPERSON: Did you know where that comes from?
[Indistinct 00:00:59] do you know where that comes from?
Because in the media briefings that I have seen with
government ministers they have been sharing the
microphone. The Premier and the MEC's the only difference
has been that after everyone has used the microphone
somebody would come and I think clean or whatever so that
we know where that come from because one must careful
10 about too many advices.

ADV MASUKU SC: Indeed, Mr Chair it was just conveyed to
me I cannot really recall if you were to ask me who the
person was, I will try to recall as trying to find my seating
arrangements at that stage.

CHAIRPERSON: Yes. I think it is fine in the meantime are
you – whoever gave that advice I want to know where they
get it from. Because we cannot just be chopping and
changing because somebody that they ask – so that should
be enough on a certain issue.

20 **ADV MASUKU SC:** Yes.

CHAIRPERSON: I am not a medical doctor, I am not – I rely
on advices but all along there? that might – can be shared
provided somebody comes and cleans up after every
speaker.

ADV MASUKU SC: Yes.

CHAIRPERSON: So – but I am quite happy that for – for now until we know what the source of that advice is, I am quite happy that we – you do what you are comfortable with. So I will allow that we do what we are comfortable with and that therefore if [indistinct 00:02:53] more comfortable to address me from the position where they are I will – I will allow that and arrangements will be made to try and establish this advice that you have been talking about.

ADV MASUKU SC: Thank you Chair.

10 **CHAIRPERSON:** So if you are comfortable there? Ja okay alright.

ADV MASUKU SC: Thank you Mr Chair.

CHAIRPERSON: I was told – I was told that in last week or the week before I cannot remember – last week I think that the advice was that we could take off our masks whilst speaker. Mr Vassan told us that so I wanted to know the source of that advice and he told me and I think you are right from Doctor? that he said it comes from the World Health Organization. So – although I am comfortable with that
20 source. Most of the time I kept my – my mask except when I am speaking. So I am just sharing that information.

ADV MASUKU SC: Thank you Chairperson.

CHAIRPERSON: With you.

ADV MASUKU SC: Thank you Chair. Chair this is the application that was brought by Mr Fuzile to cross-examine

Mr Des Van Rooyen. Just by way of some background Mr Fuzile had in fact had in a witness who had testified and implicated Mr Van Rooyen in respect of Terms of Reference 1.8 of the Commission's Terms of Reference. In response Mr Van Rooyen brought an application for Leave to Cross-examine Mr Fuzile. That application was in fact granted and pursuant to that Mr Van – Mr Fuzile in turn brought an Application for Leave to Cross-examine Mr Van Rooyen. That is the application before you. Mr – we as the
10 commission may you have something to say once we have heard the submissions that have been made on behalf of the – of the applicant Mr Fuzile in this matter but for present purposes we would ask that Mr Van – Mr Fuzile's – Mr Fuzile's representative to address you. Thank you Chair.

CHAIRPERSON: Yes Counsel for Mr Fuzile.

ADV MASUKU SC: And if I could be so bold Mr Chair.

CHAIRPERSON: Yes. Okay.

ADV MASUKU SC: They have prepared a bundle of authorities that has been relied or will be relied upon.

20 **CHAIRPERSON:** Yes.

ADV MASUKU SC: But I think by the Counsel for Mr Fuzile if I could beg leave to hand this up?

CHAIRPERSON: Thank you. Counsel for Mr Fuzile.

ADV HASSIM: May it please the Chair. I appear for Mr Fuzile together with my colleague Ms Raja.

CHAIRPERSON: If I may let me hear who appears for Mr Van Rooyen for the record before you proceed.

ADV MASUKU: Together with Mr Mathipa I appear for Mr Van Rooyen.

CHAIRPERSON: Thank you.

ADV MASUKU: Chair Mr Mathipa will address the commission on the – on Mr Van Rooyen's submissions.

CHAIRPERSON: Thank you – thank you. That is Mr Masuku for the record. Counsel for Mr Fuzile.

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

CHAIRPERSON: Let me just indicate my prima facie view so that you address it head on. On the face of it it does seem to me that Mr Van Rooyen's point that he can only be granted Leave to Appeal if you are an implicated person appears to be good in terms of the rules. And as I – as I see if subject to argument it seems to me that the reference in the rules to an implicated person must be a person implicated in terms of the Terms of Reference of the Commission. So in other words, somebody who is implicated

20 in terms of activities which fall within the Terms of Reference of the Commission. It seems to me that it might not have been intended to mean somebody who – who says you are not being truthful about something that you have said. Now I may have missed something that I did not see anything in Mr Van Rooyen's affidavit which implicates or can be said to

implicate Mr Fuzile in any of the activities that would fall within the Terms of Reference of the Commission. It seems to me that what Mr Fuzile complains about is simply that Mr Van Rooyen denies his version of what happened and from that point of view maybe Mr Fuzile says by implication you saying I am – I was untruthful to the commission. You might be able to alert me to something in the papers that I might not have picked up but that is my prima facie view and – but I am quite happy to hear your submissions.

- 10 **ADV HASSIM:** Thank – thank you Chair. Perhaps let me start by saying that there are three issues. We understand the submissions of Mr Van Rooyen in this regard and as summarised by the Chair a moment ago. We are of the view that the rules and regulations of this commission are in relation to applications such as this are broader than just in relation to an implicated witness. So I would like to address the Chair on two things whether or not Mr Fuzile is an implicated witness which we have indicated in the replying affidavit we longer persist with that leg that he was an
- 20 implicated witness and I will explain how that came about. And the second is that it need not matter for the purposes of our application but he is not an implicated witness. Because the rules and the regulation are broad enough to encompass the discretion of this Chair to grant the application that is sought by Mr Fuzile.

CHAIRPERSON: Yes.

ADV HASSIM: So [indistinct 00:10:01] how I will address the question that you have specifically put to me.

CHAIRPERSON: Yes I see that they did not bring my files with the rules and the regulations here. Yes thank you.

ADV HASSIM: Chair [indistinct 00:10:23] to step back we – you – I ? argument without this address so at service before you I do not intend to go through the list of arguments. What is...

10 **CHAIRPERSON:** Before you do that can I check with you how much time would be enough for your address and I do so because it is important that we – we do not take too long but at the same time we must do justice to each one who wishes to address me. Fifteen minutes?

ADV HASSIM: That will be appropriate Chair.

CHAIRPERSON: Okay alright.

ADV HASSIM: Thank you.

CHAIRPERSON: Thank you.

ADV HASSIM: So Chair propose not to go through the
20 heads of argument.

CHAIRPERSON: Yes no that is fine.

ADV HASSIM: This written submission that – and they are before you.

CHAIRPERSON: Yes.

ADV HASSIM: My proposal was to address you on the

following talks and I managed to change this around if it would suit the Chair.

CHAIRPERSON: Yes.

ADV HASSIM: The first is on the issue of condonation to the extent that you wish to me on that – to get that out of the way.

CHAIRPERSON: No, no I do not wish to hear you on condonation.

ADV HASSIM: Thank you Chair then I will – that will save
10 some time. The second topic then which will now become the first topic is what it is exactly that Mr Fuzile is seeking and not seeking. Quite importantly I think it is necessary for us to change by the narrow requests that is in fact before the commission. The second topic would then be the legal principles upon which Mr Fuzile bases his application. The third is that the request that Mr Fuzile makes is not unprecedented in the commissions of inquiry and the final topic will be that it is in the best interest of the function of the commission to grant the application.

20 On the first topic if I may say the following: When the application was first brought and Chair will recall that was brought on the 2 March 2018⁹ more than a year ago. At that [indistinct 00:12:36] time Mr Fuzile had been [indistinct 00:12:36] read a statement by Mr Van Rooyen. It – it seemed from the understanding of the rules and from the

initial reading of the statement that it may be that Mr Fuzile is implicated and so the application was partly based on the rules as they apply to an implicated witness including that it needed to be filed within a certain period of time if you wish to make representations as an implicated witness. But it was not limited to that basis.

The rules that were cited in the initial application went beyond that to the rights of witnesses to legal representation in regulation 8 and in the rules that provide
10 for legal representation and the rule's discretion that resides within the Chairperson of the commission.

So using that second – that second aspect that we will stop the application it is not on the basis that Mr Fuzile is an implicated witness as understood and as has been the practice of this commission that is why we had learnt even more over the last year exactly how the procedure works and we are not relying on that provision that Mr Fuzile is an implicated witness. We agree that he is not.

So it is better for me to stress then what it is that
20 makes this application and what it is that Mr Fuzile is not seeking to assure the Chair of any concerns you may have with regard to the rules but also procedure and the practicalities.

The first thing is he is not seeking to become an ongoing participant in this proceedings. I am aware that

there have been applications before the Chair in previous months and years in the commission for [indistinct 00:14:32] in the proceedings. That is not what Mr Fuzile seeks.

He has come to the commission and this application is based in terms of paragraph 1.8 of the Terms of Reference of this Commission. That is what brought Mr Fuzile here. He was a willing participant in order to assist the commission. His need to request provide the evidence because he would be Director General of National Treasury
 10 at the time of the heads that are covered in paragraph 1.8 and he had the most interaction with Mr Van Rooyen at the time. He is most familiar also with the procedures and practices of appointments within National Treasury.

So point that one on – of Terms of References a very peculiar and specific and particular part of the Terms of Reference which distinguishes it from the rest of the Terms of Reference.

[indistinct 00:15:27] to submit that he is not seeking an opportunity to cross-examine a witness on any issues that
 20 are not within his own direct personal knowledge. Then incurring to what occurred on those few days in question December 2015 is very serious indeed. As it seems not just because it implicates Mr Van Rooyen but because the evidence that has been led before this important commission and has been to demonstrate that a ? to positions of

influence in [indistinct 00:15:59] were part of the modus of state's capture. So any witnesses on behalf of National Treasury have spoken about Treasury being the last ball walk against the creeping acquisition of the levels of power for corrupt ends.

The statement provided that Mr Fuzile and the testimony before this commission does not involve him personally in the periods – really at the end of period under [indistinct 00:16:28] not personally – not solely in his
10 personal but also it involves National Treasury as an institution.

This Mr Fuzile and the other Treasury officials who have testified have invested heavily in this commission because of the importance of the Terms of Reference particularly paragraph 1.8. And to press upon the commission the significance of those allegations of capture in relation to Treasury and the implications with those – if those attempts had been successful what the implications would have been specifically in relation to Treasury and – or
20 ? if the threats were to arise again.

Mr Fuzile has made a separate statement about broader concerns of the Terms of Reference that are – that make up the Terms of Reference of the Commission but he does not seek to participate in those aspects unless of course he is called upon to do so by the commission.

It is merely in respect of the limited narrow issue of paragraph 1.8 and the events of those four days that he seeks leave to put questions to Mr Van Rooyen and to do so as briefly as possible. And I will explain a bit more on that in a moment.

He is also very importantly not seeking to [indistinct 00:17:49] the real evidence leaders. He is seeking to supplement the role of the evidence leaders. We appreciate the importance of the streamlined approach to this inquiry
10 and the role of the evidence leaders is crucial in facilitating that approach. He is however concerned that there may be aspects even if one or two that may not elicit all the necessary information and nuances that the commission should be allowed to without his ability to put questions.

The only reason for this is that he is the one person with the most adhoc knowledge of what took place. He has not previously consulted at length with the evidence leaders of this commission even before his testimony in November 2018. His only consulted personally with his own legal
20 representatives in the presentation of his evidence.

Fourth Mr Fuzile is also concerned to protect his own integrity. He has referred in his replying affidavit to the allegations of Mr Van Rooyen has made against him including him and other Treasury officials I might add – including referring to him as a “hostile cell”. It is not the

responsibility of the evidence leaders to protect his rights. It is only the responsibility of the evidence leaders to find the truth.

He therefore wishes to be afforded the opportunity for his legal representatives to protect his rights should the need arise. And that is first and it is only if the need arises. If at the end of Mr Van Rooyen's evidence and at the conclusion of the questions by the evidence leaders there is no need to ask a question to correct the record then he will
10 not insert his right to do so.

Which brings me to the final page. Is what it is then that he does seek because he does not wish to delay the commission in its work? All he requests is to have a placeholder if you will in order to address issues of import that were not elicited or to correct issues for the purposes of the record insofar as the [indistinct 00:20:03] or to his knowledge presents – Treasury and Treasury as an institution during that period in time.

In our submission it would be a more efficient manner
20 of conducting the evidence in relation to paragraph 1.8 then either to stand down to be able to consult with the evidence leaders to put information to the evidence leaders in order for the evidence leaders to then convey that to Mr Van Rooyen and to the Chair and to clarify any remaining – any remaining issues that are not covered.

If you think that it is more efficient if his legal representatives go out even if it were fifteen minutes it necessary to put the few questions which remain and to ensure that all the bases are covered.

That is what Mr Fuzile seeks. You get the basis of the following principles. The first in terms of the regulations that govern this commission and in particular Regulation 6 which is an in person appearing before the commission may be assisted by an Advocate or an Attorney. Regulation 8 sub
10 3 provides further that any witness appearing before the commission may be cross-examined by a person only if the Chairperson permits that cross-examination should he deem it necessary and in the best interest of the function of the commission.

It is Mr Fuzile's submission to the Chair today that it would be necessary and it was in the best interest of the function of commission. He does not believe that he has a right to cross-examine he is seeking relief of the Chair to do so on those bases.

20 Regulation 15 of this provides that it is the commission who may determine its own procedures. It is what we refer to as the broad discretion that resides within the Chairperson.

And again in the Rules that an echo of what is provided in the Regulations for example in Rule 3.7 which

provides that in accordance to the Regulation 8 sub 3 there is no to cross-examine a witness before the commission but the Chairperson may permit cross-examine – cross-examination should he deem it necessary and in the best interest of the work of the commission to do so.

Again Rule 7.2 echoes the regulations that a witness may be assisted by a legal representative.

In our heads of argument, we have referred to some case law. We have referred to for example State versus
 10 Staats which sets out the general principles about the function as a commission and procedures before a commission and the fact that it is not bound by rules of evidence and pleadings in the same way that a court of law is. We have referred to the case of Pergamon Press which was cited with approval of SCA and Du Preez about the importance of flexibility of the Commissions of Inquiry when they – well when the commissions deal with procedural aspects.

The first letter we refer to is a [indistinct 00:23:19]
 20 case and that specifically a judgment in the High Court in which the High Court found and it was – this case concerned America of Commission of Inquiry and the right to legal representation in a Commission of Inquiry and in fact there was important feel between [indistinct 00:23:36] and here of course is that that involved the right to legal representation

at the expense of the state.

No it is not at all the issue here. Here it is merely the right to legal representation. And the court found that Section 34 of the Constitution applies to Commissions of Inquiry. Justice Nguka says that in the context of that application it is of more consequence that the commission is not a judicial or part in judicial nature and that in each commission regard should be had to context specific factors. And he set out the factors. I will not take the Chair through
10 the interest of time they are contained in our heads of arguments. The principle really is that the importance of flexibility, that it need not matter, that the commission of inquiry is not of a judicial nature, that there is a right of legal representation and that the factors that may apply are set out in the judgment.

That ? of reports was in due respect Constitutional Court in that matter.

We submit that that right – that Section 34 right in the context of the Commission of Inquiry for it to be
20 meaningful it would require that a witness is able to exercise his rights through his legal representatives where appropriate.

The penultimate topic then I must address...

CHAIRPERSON: The [indistinct 00:25:06] I think you are left with about two minutes of the fifteen minutes.

ADV HASSIM: I am going to...

CHAIRPERSON: Yes.

ADV HASSIM: Going to speed up Chair.

CHAIRPERSON: Yes.

ADV HASSIM: The next topic is that the cross-examination of witnesses by witness by participants in an inquiry is not unprecedented. Again, these are set out in our heads of argument. I made reference to the Marikana Commission of Inquiry. I do not suggest that this commission ought to
10 replicate the procedures that were present in the Marikana Commission of Inquiry but their principles that emerged from the Marikana Report which we have got in the heads of argument they are instructive and how is – in a very supporting way I have already set out in [indistinct 00:25:49] about the fact that there is not a myth between two people in the Commission of Inquiry does not mean that the right is [indistinct 00:26:01] the right to legal representation. I meant to give it – the extracts are in the heads of argument.

We feel that that it should be allowed in this case in
20 the interest of justice and in the interest of the function of the commission. The [indistinct 00:26:20] judgment which is – this is again it is the – in order to guard against any errors and to protect the integrity of this commission we refer to the RSVO Commission Case and that is Corruption Watch versus Arms Procurement and others and then I would like to draw

to the Chair's attention is paragraph 53 in particular which speaks about the real evidence leaders. And I think that that is important because it does become unclear at ? what the role of evidence leaders are in cross-examination and not – there is a risk that evidence should not be seen as biased or favouring one witness over another and that can be guarded against by a [indistinct 00:27:05] in our case we say particularly with regard to paragraph 1.8 of the Terms of Reference Mr Fuzile with his own allowed to cross-examine.

- 10 **CHAIRPERSON:** Well in that regard one must also bear in mind I think it is the Rule 3.2 which says that an evidence leader is entitled to ask questions to a witness that seek to establish the truth – the truthfulness of the version that the witness gives. Obviously, that must be looking at different versions where there is – there are different versions from different witnesses. So one has got to bear that in mind that whatever the line may be between cross-examination and questioning a witness with a view to establishing the truth or the truthfulness of his or her version or the version of
- 20 another witness there is that particular point being made in the Rules. So I am saying one has got to factor that into account. So the evidence leaders should not – seems to me be afraid to ask difficult questions to a witness just because they think the witness or some people out there are going to accuse them of going along with a certain version. Or

because they are against a certain witness or certain categories of witnesses. They must have courage. They must seek the truth and they must do so in the best way that the rules, the regulations and our system permits. So where the line may – it may that it is the same thing as cross-examination I am not sure. But whatever line may be probably is a very thin line.

ADV HASSIM: Indeed.

CHAIRPERSON: So – so I just – I was just saying in the
10 context of all of that one must bear that in mind, I think.

ADV HASSIM: Indeed. Indeed.

CHAIRPERSON: Ja.

ADV HASSIM: Indeed, Chair and I appreciate the guidance that you have just provided on that particular rule. And it is – it is correct that it is the role of the evidence leaders to find the truth and to not – not be afraid to go into lines of questioning that are necessary in order to elicit the truth, over the aspects of evidence that is not within the evidence leader's ambit because it is more about protecting the rights
20 of a particular witness than it is about the practice that are being questioned.

CHAIRPERSON: H'm.

ADV HASSIM: And in this case, what we are also saying is that Mr Fuzile is a peculiar witness on this particular paragraph. He is the man with the most direct knowledge of

what took place that day.

CHAIRPERSON: H'm. H'm.

ADV HASSIM: And he wishes to assist the Commission. It is not merely to protect his rights but he also wishes to assist the Commission in the event that there are... look, no need to leave no stone unturned. That that is what he seeks. Finally, when... in closing, Chair.

CHAIRPERSON: Yes.

ADV HASSIM: I would say that the granting of the
10 application would not affect, without compromising(?) the ...[indistinct] of the Commission's legal team. It is not intended but the application would preclude the Commission's legal team from questioning Mr van Rooyen.

As I submitted early, no intention to supply full responsibilities of the legal team. All that their intention of this application is, is for Mr Fuzile's legal representatives to be provided with an opportunity to supplement the questioning where necessary.

This may not be necessary, if after the Commission's
20 legal team has put questions to Mr van Rooyen then there is no stone that is been left unturned.

And we submit that it is in the interest of fairness that such an opportunity to be afforded even if it may ultimately not be exercised. Those are our submissions Chair.

CHAIRPERSON: Thank you. Mr Mathipa(?).

ADV MATHIPA: Chairperson, this application of Mr Fuzile is made in terms of Rule point 3.3.6. That is much is clear from paragraph 7 of his founding affidavit.

Now, it is now common cause that Mr Fuzile is not an implicated person. So that issue is done and dusted. The only person that remains is, if he is not a legally ...[indistinct] person, then in terms of what rule of the Commission is then making this application?

In the heads of arguments, my learned friends... Fuzile's
10 legal representatives, what they now do is, tell this Commission in paragraph 7 that Mr Fuzile is no longer insisting(?) with his application in terms of Rules 3.3.6 and 3.4.

They say he is coming before this Commission in terms of Rule 8.3. No, Regulation 8.3 of the Regulations of the Commission, read in conjunction with Rule 3.7.

Now, the only problem Chairperson in this issue. The first thing is an application is made ...[indistinct]...[intervenes]

20 **CHAIRPERSON:** I am sorry.

ADV MATHIPA: Sorry.

CHAIRPERSON: Shall we agree that fifteen minutes will be enough for you as well?

ADV MATHIPA: Yes, definitely.

CHAIRPERSON: Thank you.

ADV MATHIPA: It might be shorter.

CHAIRPERSON: Thank you.

ADV MATHIPA: Chairperson, allow me then ...[indistinct] before this Commission in terms of the particular rules of the Commission and then in his reference to Regulation 8.3 and 3.7 merely demonstrate that he has a discretion but now one realises that its application is unattainable(?).

In the heads of argument, they now make a U-turn. They say, “H’n-‘n, we are not making that application
10 anymore in terms of that regulation... those rules. We are now making the application in terms of Regulation 8.3.”

That is not acceptable, I would submit. No evidence, assuming it were acceptable, I suggest we look at Regulation 8.3. My submission, first and foremost, is that Regulation 8.3 is not an application regulation.

It has nothing to do with making an application. It has not ...[indistinct] where the for application for leave to cross-examine, neither does it deal with the requirements which such person must satisfy.

20 There are only three things that that rule... that regulation deals with. The first thing is. It says:

“Any witness appearing before the Commission may be cross-examine”.

The second thing is:

“Cross-examination will only take place if it is

permitted by the Chairperson”.

And the third is:

“The Chairperson may permit cross-examination if he deems it necessary and in the best interest of the function of the Commission”.

Now if we ought to know who can apply, when they must apply, what the requirements the application must meet – one needs to visit the Rules of the Commission.

Now the rules are here to govern and ...[indistinct] say
10 so, rules governing the conduct of the proceedings of the Commission. There are no rules that are there to be ignored and whether you want to and go to the other provisions(?). There are rules to be complied with.

There are information to the public that says to the public this is how to approach the Commission. This is the procedure you need to follow. This is the period in which you must do it, and this is what you must satisfy in your application to be considered.

Now what my learned friends today are suggesting: “No,
20 you can make another(?) application independent with the rules and merely approach the Commission in terms of Regulation 8.3”.

I submit that argument is not attainable. It is attainable if Mr Fuzile sees that he has not been able to make out his application before the Commission in light of the answering

affidavit.

There are only two options available to him. He withdraws the application or he admits(?) for the application to be dismissed.

And they are not doing that today. They want to proceed(?) with the application. The interest(?) is with this application.

Now, if... or the other thing that emerges today for the first time is that now Mr Fuzile ...[indistinct] of the
10 Constitution Rights. He is saying that the ...[indistinct] appears in paragraph 21 of their heads.

They say:

“We submit that the right to a fair hearing in Section 34 of the Constitution, requires the Commission to ...[indistinct] cross-examination of Mr van Rooyen by Mr Fuzile’s legal representatives in the interest of justice and in the best interest of the function of the Commission.”

The terms, therefore, is whether such cross-examination
20 in the best interest of the Commission. So there is a contradiction in that statement in the first place because if it is a requirement of Section 34 of the Constitution that the Commission must be ...[indistinct] cross-examination of Mr van Rooyen by Mr Fuzile then why.... then what is the requirement?

So why are they saying they have got a discretion? It is a contradiction there because for saying the requirement of Section 34 of the Constitution but it must be... it must be proceeded... he must be given permission to cross-examine.

So their requirements of this application are now (un)founded in Section 34. Again, this is different from the founding affidavit and the replying affidavit of Mr Fuzile.

Now there is a... we refer in paragraph 34, we refer to a judgment of the Constitution Court or in the one in *Phumeza*
10 *Mlungwana and Others v the Republic of South Africa*.

[Indistinct] 14 which says:

“Section 34 deals with disputes that can be resolved by means of the law. The Commission’s findings are not necessarily to be created(?) with a resolution of legal disputes by a common(?) law”.

But... and then the first thing Chairperson here is, what is this dispute that Mr Fuzile has with Mr van Rooyen? But he wants to see results even before he only comes to ... he dreaded(?) whether or not Section 24 applies to him.

20 There is no such dispute. He himself says in his own affidavit:

“When I came to the Commission because I was subpoenaed to come and give evidence”.

And he says he read his statement in 2018 and then again, another statement in 2019 but has given oral evidence

before the Commission.

Now during all that, he then says:

"I have right(?) to Section 34 for a fair hearing so that my dispute can be resolved".

I am not aware of any dispute and no case has been made by any of the papers for any dispute that he has. And I will submit that that argument must be dismissed.

That ...[indistinct] the final argument Chairperson and that relates to ...[indistinct] because it seems to me that it was accepted that Mr Fuzile ...[indistinct] requirements of Regulation 3.3.6.

That... I do not want to labour an argument on that aspect because it is clear that it is accepted. The interesting thing is that he has first made the application in terms of Rule 3.7.

Now, Rule 3.7 does not stand alone. It is part as a sub-regulation, a sub-rule of Rule 3. That is being ignored.

Now Rule 3 tells us who can apply, who must render(?) reply(?), what the requirements are, and then ...[indistinct] what kind of leave they can seek from the Commission, to give evidence, to cross-examine and to do all that.

So there is no way ...[indistinct] I can look at Rule 3.7, indicating(?) that Rule 3. There is no way that you can carve is out of the rules and then say it is an invalid in the section in which apply.

In any case, all the ...[indistinct] is what the right to cross-examine... no one has the right to cross-examine if he fails to ask the permission. That is basically the content. And it refers back to the Regulation 3.3.

So Chairperson, I submit that this application which in your ...[indistinct], is an abuse of the process of the Commission. It is a delay ...[indistinct] of the Commission.

How can Mr Fuzile come to this Commission after have been giving a chance twice? After given written statement,
10 oral evidence. How can he then come before the Commission and say, “I no longer apply to cross-examine the implicated person”?

What interest does he has ...[indistinct] that of being a witness ...[indistinct] information. We hear from the legal representative there that they did not have extensive consultations with him.

Therefore, the others... it looks like he reserves information that he does not give the Commission and then ...[indistinct] his legal representatives. No, that cannot be
20 accepted.

If he has any more information to give, he must come to the Commission and give the Commission. So ...[indistinct] made Chairperson that this application is at best to be conceived and at worst an abusive of the process of the Commission.

CHAIRPERSON: Thank you Mr Mathipa. Mr Hulley, you might have something to say. I propose to give you no more than five minutes.

ADV HULLEY SC: Thank you Mr Chairman. Can I first address the question that you asked me about the use of the mic of this podium Mr Chair?

CHAIRPERSON: Yes?

ADV HULLEY SC: I have just been provided with a part of the protocol...[intervenes]

10 **CHAIRPERSON:** Yes.

ADV HULLEY SC: ...of the Commission which has been prepared by the secretary and it says that:

“Provision of a separate mic for the legal representatives of the witnesses/implicated person must be ...[indistinct]”.

So it is in that ...[intervenes]

CHAIRPERSON: That has not been approved by me.

ADV HULLEY SC: I see. That is all...[intervenes]

CHAIRPERSON: That has not been approved by me, yes.

20 **ADV HULLEY SC:** Yes, I think on that basis that I was told(?).

CHAIRPERSON: No.

ADV HULLEY SC: Is...[intervenes]

CHAIRPERSON: It is not approved that... Yes?

ADV HULLEY SC: Mr Chairperson, just very briefly insofar

as this application is concerned that will strengthen the answer. I was trying to listen to see what was the basis of the application or the application has ...[indistinct] ...[intervenes]

CHAIRPERSON: One second. One second, Mr Hulley. The lighting is not as good as it should be. I do not know whether it is because of this light that I ...[indistinct]

ADV HULLEY SC: Ah, Chairperson, I can see myself(?).

CHAIRPERSON: [laughs] Well, I think the technicians will
10 try and improve the lighting if possible. Okay, let us continue.

ADV HULLEY SC: Thank you, Mr Chair. The... at the end of the day, the application, it appears, might have been evolved over the passing of time between the drafting of the... the papers and of course the argument that has now been presented.

We would say that on the basis that the application has been brought and is now presented before you Mr Chairperson, that we would not... we would not support the
20 application.

As I understand it, the application has been divided to really an argument about the protection of Mr Fuzile's integrity, certainly insofar as the evidence leaders are concerned.

Their primary concern must be to ascertain through the

questioning where the truth lies in the versions that have been given.

And one would presume that in that process that it will be included of a particular witness who happens to be telling the truth, would be protected in that process.

And insofar as there has been an argument about whether the application ought to be brought as it was initially, in terms of Rule 3 or alternatively now, as it has been presented to you, Mr Chairperson in terms of rule...
10 sorry, in terms of Regulation 8.3.

We would think that is of no ...[indistinct] as long as a party has not been prejudiced by that and as long as the requirements that have been... the requirements for the particular rule or regulation, as the case may be, had been satisfied.

There would be no reason why an application which has been purport to have been brought in terms of Rule 3 and then later on is brought in terms of Regulation 8.3, should not be heard under 8.3 provided, as I have said, that there
20 has been no unfairness that has been brought to bear upon the other party.

We can see the unfairness in the present circumstances. Having said that, we do not believe that an application brought under Rule 8.3 of the Regulation... sorry, Regulation 8.3, has been properly made out in this case. The integrity

of Mr Fuzile should be amply protected by the evidence leaders.

And we would, if we can, as a matter of... in order to assist you Mr Chair, we would say that the application should be refused. We do not think it is properly made out. As it pleases you.

CHAIRPERSON: Thank you. Maybe before I go, I give counsel for Mr Fuzile the opportunity to respond. Let me ask whether Mr Mathipa has anything to say arising from this so
10 that when counsel from Mr Fuzile say something, she is the last one from counsel to say something.

ADV MASUKU: Chairperson, I was struggling a bit to hear Mr Hulley. Am I correct that he is suggesting that in order for the integrity of Mr Fuzile to be protected, they have no objection that the application] is granted?

CHAIRPERSON: He is saying, as I understand him, he says he does not see any problem if... he does not think that the... if you have got an application in terms of the rules, you have prepared that from bringing it or relying on the
20 regulations in other words.

He will not... if I am interpreting him correctly, he is not nodding. So ...[indistinct] I am not interpreting him incorrectly. But he... apart from that he has submitted that a proper case has not been made out...[intervenes]

ADV MASUKU: Okay.

CHAIRPERSON: ...for the Commission, for me, to grant leave. That I think because I may have misinterpreted him, I am going to allow him to come again ...[indistinct]

ADV MASUKU: Yes, Chair

CHAIRPERSON: And maybe ...[indistinct] ...[intervenes]

ADV MASUKU: [Indistinct]

CHAIRPERSON: ...take off ...[indistinct] ...[intervenes]

ADV MASUKU: [Indistinct]

CHAIRPERSON: Ja, so that they can hear.

10 **ADV HULLEY SC:** Thank you, Mr Chairperson. Sorry. Yes, Chair, you misunderstood what we submit is, that we do not support the application that has been brought by Mr Fuzile. We would say...[intervenes]

CHAIRPERSON: Just raise your voice.

ADV HULLEY SC: We do not support the application that has been brought by Mr Fuzile. We say that Mr Fuzile has not made out an ample case to be admitted to cross-examine Mr van Rooyen.

20 The... his primary concern appears to be about his... the protection of his integrity. We would submit that his integrity would be amply protected by the process that is... that will be ...[indistinct], the questions that we will be asked.

And we would hope that the integrity would be... his integrity or anybody's integrity would be protected by the process of trying to ascertain the truth.

And we as the evidence leaders are under a mandate and a duty to make sure that we ask questions to ascertain the truth.

So that should be ample ...[indistinct] of his integrity should be amply protected in that process.

CHAIRPERSON: Ja, okay. Thank you. I do not think you would have anything to do ...[indistinct] ...[intervenes]

ADV MASUKU: In that regard, Chairperson.

CHAIRPERSON: Yes?

10 **ADV MASUKU:** All I can say, I concur. I have nothing to add.

CHAIRPERSON: Yes. Thank you. Counsel for Mr Fuzile.

ADV HASSIM: Thank you, Chair. I must correct the characterisation by my colleagues that the application is merely to protect Mr Fuzile's integrity. That is part of it, no doubt but I was ...[indistinct] in my earlier submissions to point out that it is also about the ambit of paragraph 1.8 of the Terms of Reference and the peculiarity of Mr Fuzile as a witness before the Commission in that he is the one with
20 direct knowledge of the evidence over those forgery is that are at play and particularly the appointment of the two advisors.

So it is more than that. And the point to just say in order to leave no stone unturned, he would be of assistance.

CHAIRPERSON: Shall we agree, I should give you five

minutes?

ADV HASSIM: I think just two minutes.

CHAIRPERSON: Yes, yes.

ADV HASSIM: One minute would be sufficient. Just in relation to the rules. Of course, the rules govern.... oh, sorry, the proceedings, that the rules are not to be implied inflexible and not undisputed and appreciate that the rules itself, when one has regard to Rule 11 and 12, where there is an open-ended rule which says:

10 “Anything that is not governed by this... any application that is not provided for in any of the rules, may be brought, as long as it for adequate notice”.

So, I just wanted to correct that understanding, that the rules are not as inflexible as might be suggested. And then finally, with regard to the other sections recalled. The whole point of the *Mlungwana* case was to say, “Yes, it is unusual because there is no list”.

But that does not mean that it has no application. It is
20 at paragraph 37 of that judgment is the judgment... is the paragraph I referred the Commission to. Thank you, Chair.

CHAIRPERSON: Thank you very much. I am going to reserve my decision and the parties will be... not the parties, all concerned, will be notified as soon as it is ready to be handed down.

So I think what we will have. I think we will have one short matter where counsel need to say something that is going to be two, three minutes.

So after that I will adjourn to allow counsel to leave who are not involved in the evidence that will be led for the day.

So I think that I am expecting counsel presenting mister... Ms Ranjeni who was supposed to appear before the Commission yesterday and I postponed that today.

So Mr Hulley might have something to say before
10 counsel for Ms Ranjeni say something.

ADV HULLEY SC: Yes, thank you, Mr Chairman. This is the matter where Ms Ranjeni Munusami had been granted leave to cross-examine a certain witness. As I understand it, she has given an indication to the tribunal...[intervenes]

CHAIRPERSON: I am wondering whether... because Mr Masuku complained that he could not hear. I wonder whether from the duration of what you say you might...

ADV HULLEY SC: [Indistinct]

CHAIRPERSON: Yes, okay.

20 **ADV HULLEY SC:** This, Mr Chairman, was an application that you had approved. It was an application brought by Ms Ranjeni Munusami to cross-examine a particular witness who had implicated her and I believe it was a Mr Naidoo who had implicated her.

And she had written to the Commission purportedly to

withdraw her application. We had made contact with her recently to... or through her attorney recently to ascertain whether she was going to come to the Commission anyway because she had not been released as such, having brought that application.

We understand that the attorney has made arrangements with the junior counsel to come and address you Mr Chairman on the issue. I understand that it is Advocate Duncan Wild who will address you.

10 **CHAIRPERSON:** Okay thank you. Counsel for Ms Ranjeni.

ADV WILD: Thank you, Chair.

CHAIRPERSON: Thank you.

ADV WILD: Duncan Wild instructed by Webb Wentzel for Ms Ranjeni Munusami.

CHAIRPERSON: Yes.

ADV WILD: As Mr Hulley said ...[intervenes]

CHAIRPERSON: Just you... you might wish to adjust your mic... your mask a bit so that they can hear you in case they do not hear you.

20 **ADV WILD:** Yes, thank you Chair.

CHAIRPERSON: Yes.

ADV WILD: Also, I cannot see with this mask on because it mists my glasses.

CHAIRPERSON: [laughs] Yes.

ADV WILD: A bit of a problem.

CHAIRPERSON: Yes.

ADV WILD: Yes, Chair. So it concerns three applications that Ms Munusami brought regarding the evidence of Mr Kobus Roelofse and Coronel Dhanajaya Gangulu Naidoo to cross-examine both of those witnesses.

You granted both those applications roundabout the 3rd of December last year and the other the 25th of March this year.

In the exchange of affidavits that happened after
10 3 December, it has become apparent to Ms Munusami that those two witnesses have no direct evidence of her wrongdoing and she has set out her version comprehensively in her own affidavits.

However, she remains willing to testify and she will make arrangements with the evidence leaders but for those reasons and the fact that she has... she does not have the financial resources to involve lawyers in preparing for the cross-examination, she wishes not to persist with those two applications and not to cross-examine anymore but she does
20 remain willing to give evidence if required by the Commission.

CHAIRPERSON: Would it be a correct understanding of her position that, from her point of view, she abandons the right to cross-examine those witnesses insofar as the Chairperson has granted her the right to cross-examine them but if the

Commission would like her to come and testify, she is happy to come and testify.

ADV WILD: That is exactly right, Chair.

CHAIRPERSON: Yes. Okay. No, thank you. Thank you very much. I think she will hear from the Commission once they have reflected on the developments and if there is a wish that she should come and testify, she will be contacted.

ADV WILD: Thank you very much, Chair.

CHAIRPERSON: Thank you. I will then adjourn for a few
10 minutes to enable counsel who need to leave to leave. And then we can resume to continue with the business of the day. I am going to take a ten minutes short adjournment. I will come back at ten to eleven. We adjourn.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Are you ready?

ADV PRETORIUS SC: Yes, thank you, Chair.

CHAIRPERSON: Yes.

ADV PRETORIUS SC: Chair, you will recall that Messrs
20 Shaik and Njenje gave evidence in relation to State Security matters. The third witness in that category of witnesses is Ambassador Maqetuka and he is here to testify. You have a bundle before you which is EXHIBIT PP3 which contains his statement and certain additional documents as set out in the index.

CHAIRPERSON: You have not appeared before the Commission for quite some time.

ADV PRETORIUS SC: Correct.

CHAIRPERSON: Something that has been happening, and it is not cast in stone, and you can make your own contribution it, has been an approach that there is - the actual exhibit is the statement and the annexures to it and that the box, the file, is not the actual exhibit and that it is convenient to call it as bundle so and so but when we refer
10 to the exhibit we actually refer to the statement or affidavit or annexures. That is not finalised but it is something that has been happening.

ADV PRETORIUS SC: Yes, Chair, there is a saying amongst the legal team that everybody who appears for the first time must go through the bundle baptism. It seems that I am going through it too. I will change the word exhibit to bundle.

CHAIRPERSON: Ja, okay, alright. But, of course, we – the bundle would have to have its different – like bundle S
20 or whatever and then the exhibit can remain – the affidavit can remain as EXHIBIT PP3, so ...[intervenes]

ADV PRETORIUS SC: Actually, Chair, it is nothing that should be made light of because when the record is finally prepared it should be consistent, accessible and comprehensive.

CHAIRPERSON: Yes, yes.

ADV PRETORIUS SC: And it is not and it is confused it create big problems down the line.

CHAIRPERSON: Yes. No, no, that is true. So you can later on I think reflect on it but so long I will take EXHIBIT PP3 to refer to the actual affidavit and the annexures.

ADV PRETORIUS SC: Yes, thank you, Chair, we will fix it up and ensure that there is a consistency.

CHAIRPERSON: Ja, okay.

10 **ADV PRETORIUS SC:** May the witness...?

CHAIRPERSON: Yes, please administer the oath or affirmation?

REGISTRAR: Please your full names for the record?

AMBASSADOR MAQUETUKA: I am Mzuvukile Jeff Maquetuka.

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

AMBASSADOR MAQUETUKA: No, I do not.

20 **REGISTRAR:** Do you solemnly affirm that the evidence you will give shall be the truth, the whole truth and nothing else but the truth? If so, please raise your right hand and say I truly affirm.

AMBASSADOR MAQUETUKA: I fully affirm.

MZUVUKILE JEFF MAQUETUKA: (Affirms)

CHAIRPERSON: Thank you very much. The lighting is

worse than it was before. I think there is a light that has been switched off which was on earlier but the witness, I could see when he was standing, and I am sure when he is sitting, it is very dark where he is. I think they are going to switch on that light. I do not know if it disturbs anything or it does not. Mr Pretorius, I think it is taking longer than they thought it would, maybe Stimela is going to tell you something to say whether we need to adjourn or not to get the matter to...

10 **ADV PRETORIUS SC:** I am told, Chair, that the light switches are locked away behind a door and that key needs to be obtained and I am told five minutes will do it.

CHAIRPERSON: Shall we adjourn for five minutes?

ADV PRETORIUS SC: As you please, Chair.

CHAIRPERSON: Or do you think we should continue?

ADV PRETORIUS SC: I am happy to continue.
Ambassador?

AMBASSADOR MAQUETUKA: I am fine, Mr Pretorius.

CHAIRPERSON: Yes, okay, maybe let us continue. Once
20 they are ready to fix they will tell Reverent Stimela we need to adjourn or if they are able to switch it on without us adjourning then we will continue. Okay, let us continue.

ADV PRETORIUS SC: Thank you.

CHAIRPERSON: Before we do so. Ambassador Maquetuka, I just want to thank you for coming forward to

assist the Commission. You would be aware, I am sure, that since 2018 I have been calling upon past and present DGs of different departments and ministers and deputy ministers and other officials in government who know something that this Commission should be told to please come forward and do so. A number of ministers or past ministers and DGs have come forward. I remain concerned that I should have had many more than I have. I hope that there will still be some who will come forward but I really
 10 want to express the Commission's appreciation to you that you have come forward to assist the Commission with what you know. We really appreciate that very much.

AMBASSADOR MAQETUKA: Thank you very much, Chair.

CHAIRPERSON: Thank you. The one thing that you must assist me with is whether it is Ambassador Maqetuka or – because I am not clued up with some of these titles but I know when General Nyanda was here he told me that once a general always a general, so... But I want to use the right title. That is the bottom line.

20 **ADV PRETORIUS SC:** I am told Ambassador, that the title remains.

AMBASSADOR MAQETUKA: It is the same with the generals.

CHAIRPERSON: It is the same as the generals.

AMBASSADOR MAQETUKA: Yes, Chair.

CHAIRPERSON: Okay, thank you, Ambassador. Yes, Mr Pretorius, you may proceed.

ADV PRETORIUS SC: Thank you, Chair. Ambassador, you were formerly employed as the Director General of the State Security Agency, is that correct?

AMBASSADOR MAQETUKA: Correct.

ADV PRETORIUS SC: When were you appointed?

AMBASSADOR MAQETUKA: I was appointed in 2009, October 2009.

10 **ADV PRETORIUS SC:** And you retired from the service when?

AMBASSADOR MAQETUKA: I retired from the service on the 28 January 2012.

ADV PRETORIUS SC: Alright.

CHAIRPERSON: You may keep your mic on, Ambassador, and if you want to move it so that it is closer to you so you do not have to move forward all the time that will be fine. Thank you.

AMBASSADOR MAQETUKA: Thanks, Chair.

20 **ADV PRETORIUS SC:** During December 2018 you signed a statement which we will refer to as your first statement and that is annexed as annexure MM1. Is that your first statement?

AMBASSADOR MAQETUKA: Is that the one after the affidavit?

ADV PRETORIUS SC: Yes, marked MM1.

CHAIRPERSON: The MM! would be those blue dividers that – well, they are blue with mine, I am assuming they are blue with your file as well but they might be a different colour.

AMBASSADOR MAQUETUKA: Unfortunately, I only have one divider here which is marked 2.

CHAIRPERSON: Oh, I am sorry, Ambassador, it is important that you have exactly the same thing as I have
10 and as Mr Pretorius has. Maybe, Mr Pretorius, I should adjourn to get that fixed because it will give us problems throughout.

AMBASSADOR MAQUETUKA: Thank you – no, I have got it, Mr Pretorius.

ADV PRETORIUS SC: You have it?

AMBASSADOR MAQUETUKA: Yes, I have it, Advocate.

ADV PRETORIUS SC: Yes, I will refer to page numbers in due course and during the short adjournment we can put the dividers in, Chair.

20 **CHAIRPERSON:** Okay.

ADV PRETORIUS SC: My apologies, that should have been done.

CHAIRPERSON: Yes, okay.

ADV PRETORIUS SC: In any event you did sign a statement in December 2018, is that correct, Ambassador?

AMBASSADOR MAQETUKA: Yes, yes, sir.

ADV PRETORIUS SC: And if you go to page 24 of the bundle now in front of you – it will be page 24 or 25. Is that your signature?

AMBASSADOR MAQETUKA: Yes, it is.

ADV PRETORIUS SC: And you have confirmed by affirmation that this is your statement. Are you satisfied that its contents are true and correct?

AMBASSADOR MAQETUKA: Fully satisfied, Advocate.

10 **ADV PRETORIUS SC:** If we go to page 2 of your statement ...[intervenes]

CHAIRPERSON: Mr Pretorius, I am just trying to have a look here. Oh okay, now I see what the position is. I think what happened is my staff put the unsigned affidavit that I got much earlier in as well but the signed one is there, but I was looking at the unsigned one and page 24 of it does not have his signature but that is because I have got two 24s but there is a page 24 which has got his signature, so it is fine.

20 **ADV PRETORIUS SC:** Thank you, Chair.

CHAIRPERSON: Ja.

ADV PRETORIUS SC: If we can go to page 2 of your statement, Ambassador.

AMBASSADOR MAQETUKA: Yes, I am there, Advocate.

ADV PRETORIUS SC: You will see there set out the nine

topics that you will cover in your evidence. We do not need to deal with this list in any detail but in summary I understand you will tell the Chair about matters relating generally to national security in its constitutional context and principles attaching to the practice of national security. Do I understand that correctly?

AMBASSADOR MAQETUKA: That is correct.

ADV PRETORIUS SC: You will also deal with certain factual matters that were also dealt with by Messrs Njenje
10 and Shaik in relation to Minister Cwele and the former President in relation in particular to the Gupta investigation.

AMBASSADOR MAQETUKA: Correct.

ADV PRETORIUS SC: And you will also deal with certain other matters and we will explain them in due course, the Principal Agent Network 1 investigation which we colloquially refer to as the PAN1 investigation and certain other matters and ultimately your resignation.

AMBASSADOR MAQETUKA: Correct, sir.

20 **ADV PRETORIUS SC:** Because you are going to tell the Chair of your views and opinions arising out of your own experience in the field of intelligence, perhaps you would tell the Chair very briefly and in summary what your background and experience is in the intelligence field. You deal with that on page 3 of your statement.

AMBASSADOR MAQETUKA: Yes, sir. It is a long story, it is a long journey, Chair.

CHAIRPERSON: Yes.

AMBASSADOR MAQETUKA: But safe to say that I have been a member of the intelligence and security in exile 1979 up until my retirement in 2012 basically. But, of course, there were other functions in between that I did in various years during my tenure. But safe to say that from 1979 I had my military training in both Mozambique, 10 Angola, where I had my full military six months training as a company commander and I graduated at a camp called Bungo. That would be now in 1980, around about July, June, July.

From there with three colleagues we went for a specialised training in the craft of intelligence in the then German Democratic Republic, the GDR, as it was called. We had a four months training, intensive training in intelligence and in the craft of intelligence and counterintelligence.

20 I returned from the GDR around about October, November and went back to Angola, transit to Mozambique. This now is 1980, Chair. And immediately after my training I was then fully incorporated into the structures of what was then called the Department of Intelligence and Security, popularly known amongst as DIS.

ADV PRETORIUS SC: For how long were you working with DIS?

AMBASSADOR MAQETUKA: As I say, I can safely say from 1979 up until amalgamation of the six South African Intelligence Services. You will recall, Chair, as part of the outcome of the negotiations. South Africa, by then, had the six recognised intelligent services. One was the National Intelligence Services of the apartheid regime. Then there was the Department of Intelligence and Security
10 of the African National Congress. Then there was the Bophuthatswana Intelligence Service which was BIS. And then there was the Venda Intelligence Service, VIS. And then there was the Transkei Intelligence Service, TRIS.

Those five services were the services that were recognised as services that would be integrated into a future South African Intelligence dispensation.

I can also safely say that later we were joined also by the PAC because you would recall that the PAC joined the negotiation process slightly later than the rest but
20 ultimately they joined and they were integrated into the process, therefore that is why today we safely say that there were six intelligence services that were integrated in what would be called today your National Intelligence Agency that is NIA and all the others, which I am sure we will deal with it later.

ADV PRETORIUS SC: Yes.

CHAIRPERSON: You have said that you started your training in 1979, did you say in Germany or...?

AMBASSADOR MAQETUKA: The orientation into that training actually started at the beginning January 1979 in Mozambique.

CHAIRPERSON: In Mozambique, yes.

AMBASSADOR MAQETUKA: But that was not your fully-fledged training, it was orientation.

10 **CHAIRPERSON:** Yes.

AMBASSADOR MAQETUKA: The training, the full training started in Angola.

CHAIRPERSON: Yes.

AMBASSADOR MAQETUKA: In January 1980, Chair.

CHAIRPERSON: Yes. Now that was obviously not training ...[intervenes]

AMBASSADOR MAQETUKA: In intelligence.

CHAIRPERSON: Was it not training intelligence?

AMBASSADOR MAQETUKA: No, it was ...[intervenes]

20 **CHAIRPERSON:** In Angola?

AMBASSADOR MAQETUKA: It was a military training.

CHAIRPERSON: Oh, military training?

AMBASSADOR MAQETUKA: Yes.

CHAIRPERSON: Okay. Were you undergoing that training by reason of being a member of any freedom – or

movement or party that was fighting for freedom?

AMBASSADOR MAQUETUKA: When I went to exile in 1979 I joined the African National Congress and the training that I will be talking to and that I am talking to, Chair, would be under the auspices of the African National Congress and the military training within the ANC was under the auspices uMkhonto we Sizwe.

CHAIRPERSON: Yes. No, thank you.

ADV PRETORIUS SC: Yes and the specialised
10 intelligence training you have referred to took place in 1980.

AMBASSADOR MAQUETUKA: 1980, the specialised, around about June, July. Actually, I have just been working over the past few days, I narrow it to have arrived in the GDR at the end of May, beginning of June. And how I managed to narrow that, just as a background, Chair, if you do not mind, was that in 1980, 31 May, that is when a unit of uMkhonto we Sizwe attacked the SASOL and NATREF plant and that was on the 31 May 1980 and
20 because why I remember it so vividly now, it is because at the time of the attack that was the week or the period when we arrived in Berlin and a senior member of the National Executive of the ANC happened to have arrived in Berlin and he came to our camp to come and brief us about the developments inside the country and that SASOL attack.

That is how I managed to remember it. But it is interesting to - if I tell you, Chair, that if you had asked me this question say a year ago, I would not have remembered the dates but I have been thinking about these things all the time and all the time. That is why now I am specific and I am in a position to focus it to a specific date.

CHAIRPERSON: Thank you.

ADV PRETORIUS SC: You spoke a moment ago, Ambassador, of the amalgamation of six intelligent
10 services into a service called the NIA, National Intelligence Agency, and the South African Secret Service as well.

AMBASSADOR MAQUETUKA: Yes, again, as a way of short background, Chair, in 1994, May, I completed my studies in England. I completed my BA in Communications, specialising in photography, film and television studies, and I came back in May 1994 which was the time when the negotiations were almost at the end and subcommittees had already been established.

CHAIRPERSON: So when you talk about negotiation,
20 means in this context that were about to end, you talk about negotiations aimed at integrating the various intelligent services?

AMBASSADOR MAQUETUKA: Not only the intelligence services.

CHAIRPERSON: And not the entire negotiations for a new

constitution?

AMBASSADOR MAQETUKA: It is the entire negotiations but the relevance of this, that I am being asked by the advocate, is in relation to intelligence within that broad negotiations for a new dispensation.

CHAIRPERSON: Well, I was asking that question because the first democratic election was on the 27 April 1994.

AMBASSADOR MAQETUKA: Yes.

CHAIRPERSON: And, as I understood what you were
10 saying, you were talking about towards end of May or 1994 or did I misunderstand something?

AMBASSADOR MAQETUKA: I came back from my studies in May 1994 and by then the negotiations – or let me not say – it is not the negotiations *per se*, the integration of these six intelligence services was behind the schedule, that is why I joined the integration – the negotiations for the integration of these six services in May 1994. But you are correct, Chair, it was after the elections by then.

CHAIRPERSON: Thank you.

20 **ADV PRETORIUS SC:** Yes. I understand, Ambassador, that the six organisations were integrated in January 1995.

AMBASSADOR MAQETUKA: Correct.

ADV PRETORIUS SC: And did you receive an appointment at that stage in the NIA, the National Intelligence Agency?

AMBASSADOR MAQETUKA: Correct. In 1995 I was then appointed as the Deputy Director General of the National Intelligence Agency, the old NIA, correct.

ADV PRETORIUS SC: Alright. And what was the essential difference between the National Intelligence Agency on the one hand and the South African Secret Service on the other?

AMBASSADOR MAQETUKA: Adv Pretorius, ultimately this integration of these six intelligence services were into
10 the NIA, that is the National Intelligence Service which was a domestic intelligence service. The South African Secret Service, which was the foreign intelligence service. Then there was the South Africa National Academy of Intelligence which was the training institution. Then there was the National Intelligence Coordinating Committee called NICOC. That is in a nutshell but I am sure we will come to it.

ADV PRETORIUS SC: We will come to that in due course. The various communications or interception agencies were
20 separate at that stage.

AMBASSADOR MAQETUKA: There were a separate structure but not a department but it was a separate structure.

ADV PRETORIUS SC: Anyway, to the extent necessary, as part of your evidence, we can explain that in due

course.

AMBASSADOR MAQUETUKA: Yes, I will.

ADV PRETORIUS SC: But as Deputy Director General of the NIA in 1995 you then dealt with domestic intelligence?

AMBASSADOR MAQUETUKA: Correct.

ADV PRETORIUS SC: And in that capacity you served until when?

AMBASSADOR MAQUETUKA: I served as the DDG of NIA between 1995 up until 1997.

10 **ADV PRETORIUS SC:** And after that I understand, if I may just lead you on this, I understand that you served in various national government departments and finally as an Ambassador in Algeria.

AMBASSADOR MAQUETUKA: Correct.

ADV PRETORIUS SC: When did you come back to South Africa in order to occupy what position?

AMBASSADOR MAQUETUKA: In 2007 I was appointed South Africa's ambassador to Algeria, that was 2007 until 2009 when I was appointed the Director General of the

20 South African – SSA, State...

CHAIRPERSON: State Security Agency.

AMBASSADOR MAQUETUKA: State Security Agency.

CHAIRPERSON: Yes.

AMBASSADOR MAQUETUKA: Ja. Thanks, Chair.

ADV PRETORIUS SC: It may become relevant later but

the circumstances which gave rise to your re-entry into the intelligence service in 2010, would you tell the Chair briefly how that came about?

AMBASSADOR MAQETUKA: Yes I can. What had happened is that whilst I was on station in Algiers, I received a telephone call from the then Director General of the then Foreign Affairs, which is called DERCO now, to say that I will have to travel back home for consultations. There are matters that I am supposed to be engaged with,
10 with the President and the Minister for Intelligence Service.

ADV PRETORIUS SC: The Minister then was?

AMBASSADOR MAQETUKA: The Minister that was Dr Siyabonga Cwele.

CHAIRPERSON: And the Director General of the then Foreign Affairs was?

AMBASSADOR MAQETUKA: The Director General was Dr Ayanda Ntsaluba.

ADV PRETORIUS SC: Did you then return?

20 **AMBASSADOR MAQETUKA:** Yes, for the consultations and of course nothing was explained over the telephone what it was for and he was just told that when you arrive in Pretoria then you will get the full briefings and indeed I left Algiers, arrived in Pretoria and of course the first place of protocol was my department, which was Foreign Affairs

then. I had a short consultation with DG Ntsaluba who then briefed me that actually you are needed by your former department, that is the Intelligence and that the Minister for Intelligence will brief you because I am not equipped to give you that briefing, what I am involved in is to facilitate because you are still a member of Foreign Affairs, it was in that context.

ADV PRETORIUS SC: Did the Minister Cwele brief you?

AMBASSADOR MAQETUKA: Yes he did. I met with
10 Minister Cwele who welcomed me and then he told me that there is a new agency that is being formed and that there is going to be a reintegration of the two separate agencies that is the National Intelligence Agency and the South African Secret Services and all other structures of intelligence would be integrated into one organisation now which became the State Security Agency.

ADV PRETORIUS SC: That integration is a matter of some controversy in the evidence of Messrs Shaik and Njenje and also in your evidence which you will deal with
20 in due course.

AMBASSADOR MAQETUKA: Yes I will.

ADV PRETORIUS SC: Did you then receive an offer from the sitting President?

AMBASSADOR MAQETUKA: Yes because the Minister then told me that you will have a consultation with the

President where now you will get the final details of what it is that the President wants and indeed I met President Jacob Zuma at his residence in Mashandlovu [?] and the President welcomed me and confirmed what Minister Cwele had said, that he intends appointing me. That is the language that is used Chair when you are appointed at that level. You are first told that it is an intention, because it is always subject to your acceptance or not acceptance.

ADV PRETORIUS SC: So by the time you spoke to the former President you had made the decision to accept the position I understand?

AMBASSADOR MAQETUKA: Not at that stage really to be honest in my mind, because knowing the processes I needed a confirmation that indeed what Minister Cwele had briefed me is in tandem with what the President is saying, and of course we always, and I knew that the President would not expect to get an answer immediately, let alone the fact that I was still an ambassador. I would still need to go back to Algiers to be formally released by the President of Algeria. That is the protocol again, as an Ambassador you don't just leave your station, I mean that is an offence to diplomatic and protocol.

ADV PRETORIUS SC: Ultimately, we know, as you say in your statement, you accepted the appointment.

AMBASSADOR MAQETUKA: Ultimately correct.

ADV PRETORIUS SC: Yes, and at the same time we have heard evidence that Ambassador Sheik accepted a position and Minister Njenje too. What were their positions, would you just describe them for the Chair?

AMBASSADOR MAQETUKA: When we were formally introduced to the media the Minister held a press conference which is again protocol and before the press conference then we were in a holding room, that is when I first met Shaik and Njenje, right because at that time I
10 didn't know who else was going to be in this SAA, then I met Njenje and Shaik and we greeted each other and then it came out that all of us didn't know what we were going to be, you know.

Can I proceed?

ADV PRETORIUS SC: Yes please.

AMBASSADOR MAQETUKA: Until the actual press conference, it was in the actual press conference that Minister Cwele then informed the public about our appointments, that I am being appointed, I have been – I
20 am being appointed as the Director General of the State Security Agency, and I will be deputised by Ambassador Shaik, who will herd the foreign component, the foreign branch, and Mr Njenje who will herd the domestic branch.

I am deliberately using the words "herd" as I will explain later in my evidence Chair.

CHAIRPERSON: Well you say that you heard for the first time at the press conference what your position was going to be, when you met Mr President prior to this before you went back to Algeria when he expressed his intention to appoint you did he not specify the position to which he wanted ...[intervenes]

AMBASSADOR MAQETUKA: No the President, the President did.

CHAIRPERSON: Yes.

10 **AMBASSADOR MAQETUKA:** The President did.

CHAIRPERSON: Was it the same position that was announced in the press release?

AMBASSADOR MAQETUKA: That was the same position that was announced and if my memory even serves me well, if I recall back, as we were going to the press conference all, I think Minister Cwele did whisper to me that the President has decided that you will be the Director General but formally and to all of us it was only at the press conference that our designations were announced.

20 **CHAIRPERSON:** Okay.

ADV PRETORIUS SC: You have touched on it already Ambassador and you explain in your ...[intervenes]

CHAIRPERSON: I see it is half past eleven, we normally have tea at quarter past but we – today's programme is not going the way it normally goes, I think we must just agree

when we will have a tea adjournment or whether we should not have.

ADV PRETORIUS SC: We are in your hands Chair.

CHAIRPERSON: I am quite easy, should we have at twelve or should ...[intervenes]

ADV PRETORIUS SC: I am happy to accommodate any time Chair.

CHAIRPERSON: Ambassador?

AMBASSADOR MAQUETUKA: I will be led by you Chair.

10 **CHAIRPERSON:** Yes.

ADV PRETORIUS SC: Perhaps a comfort break for ten minutes Chair.

CHAIRPERSON: Ja, about ten minutes at twelve o'clock?

ADV PRETORIUS SC: At twelve o'clock.

CHAIRPERSON: Ja, okay, alright, yes.

ADV PRETORIUS SC: Ambassador you have touched on it already and you will speak a little more about it but at the time of your appointment as DG and Accounting Officer of the amalgamated intelligent service your mandate was to
20 arrange and facilitate that amalgamation I understand it, is that correct?

AMBASSADOR MAQUETUKA: The integration yes.

ADV PRETORIUS SC: Yes, now in the course of doing so the mechanics of that are contained in your first statement or annexure C to your first statement and we are not going

to deal with it here, that is an administrative matter largely, but what is important in your statement is the principled work that you did and in particular your reference in paragraph 25 to the white paper on intelligence. We are going to deal with the contents of that white paper in some detail in due course, but what is this white paper on intelligence, when was it written and presented and why is it – if it is – an important document?

AMBASSADOR MAQETUKA: In any government department, but in Intelligence in particular, the white paper was developed in 1994 as part of that basket of negotiations. A white paper sets out the philosophy for intelligence, the structure of intelligence, the code of conduct for intelligence practitioners, or officers as we would say. That is the white paper, and the – we usually see it as the most important document, even more important than the legislation, because the legislation becomes more an operational guide.

After the Constitution, let me also be clear on that because it is important within the South African Democratic dispensation that everything flows from the Constitution, that is why I think, if I am not mistaken, you will pardon me Chair, I am not a legal expert, I know nothing about legal matters, nor do I but I have been educated by your team that there is chapter 198 of the Constitution which really,

really sets out matters of National Security so matters – and it is broad in the Constitution, it does not necessarily zoom into intelligence or military divisions and blah-blah-blah, but those would be contained, one after the constitution those would be contained in the white paper.

The guidelines even in the white paper and that is the relevance and the importance of the white paper.

ADV PRETORIUS SC: You touch on that in paragraph 26.

CHAIRPERSON: And probably, Mr Pretorius, probably
10 they probably didn't say Chapter 198 they probably said Section 198 Ambassador ...[intervenes]

AMBASSADOR MAQUETUKA: It is chapter ...[intervenes]

CHAIRPERSON: I know our Constitution is quite important but I don't think it has got so many chapters.

AMBASSADOR MAQUETUKA: It should be chapter 3.

CHAIRPERSON: I suspect that they didn't say chapter 198 or they may have said Section 198 or Chapter 3.

AMBASSADOR MAQUETUKA: It is Chapter 3 Chairperson.

CHAIRPERSON: Yes, okay, okay.

20 **AMBASSADOR MAQUETUKA:** Yes, 198 or 98 yes.

CHAIRPERSON: Ja, okay, thank you.

ADV PRETORIUS SC: The context in which the white paper was developed Ambassador is important for your evidence later. You touch on that in paragraph 26. What was happening at the time of course is that one was

moving from the old apartheid system to the new democratic structure set out in the Constitution. In that context what was the importance of the white paper and what was the importance of the transformation of Intelligence?

AMBASSADOR MAQETUKA: The salient importance of that white paper Chair is that for the first time in the history of South Africa the white paper made it very clear that the new intelligence dispensation one would be a
10 democratic one, and it went further to say the new Intelligence Dispensation shall not only concentrate on your traditional military security matters, but it will also deal with issues of human security, that is the wellbeing of its people.

Now that is fundamentally important because it was for the first time. That's what the white paper stated Chair.

ADV PRETORIUS SC: Yes, you quote in paragraph 26 a section under the head "Philosophy of Intelligence", perhaps that might be read on the record, paragraph 26,
20 page 7 of your statement.

CHAIRPERSON: That's at page 7 hey?

ADV PRETORIUS SC: The red numbers at the top.

AMBASSADOR MAQETUKA: Is it the red numbers.

CHAIRPERSON: Ja, look at the red numbers ja.

AMBASSADOR MAQETUKA: Page 7 ...[intervenes]

CHAIRPERSON: Is it 6 or 7 Mr Pretorius?

ADV PRETORIUS SC: Seven, well ...

CHAIRPERSON: On mine it is seven.

ADV PRETORIUS SC: Yes it is seven on mine too, thank goodness.

CHAIRPERSON: Ja, okay he won't call 007 he will just say seven, but that's the red numbers on the top right-hand corner.

AMBASSADOR MAQUETUKA: Yes, I am there Chair,
10 pardon me.

CHAIRPERSON: Yes, it may be that a similar lamp should be obtained for the area where the witness is, that might not be something that can maybe obtained today but going forward so that it is much more.

ADV PRETORIUS SC: Yes Chair.

CHAIRPERSON: Lighter ja.

ADV PRETORIUS SC: It is not very helpful there.

CHAIRPERSON: Ja, ja.

ADV PRETORIUS SC: That extract in paragraph 26 would
20 you read it onto the record please.

AMBASSADOR MAQUETUKA: Paragraph 26 of my statement, section 1 of the white paper sets out its objective namely:

“to serve as a framework for the understanding of the philosophy, mission and role on intelligence in a

democratic South Africa. This philosophy on intelligence is dealt with in Section 3 (3)(1) where it is explained that reshaping and transforming intelligence in South Africa is not only a matter of organisational restructuring, it should start with clarifying the philosophy and redefining the mission, focus and priorities of intelligence in order to establish a new culture of intelligence.”

That is what is encapsulated in the white paper.

10 **CHAIRPERSON:** You emphasized a minute ago the importance of the reference in the white paper to the new intelligence structure having to also look after the wellbeing of the people. May I ask whether that is something that accords with the international standards or in some countries that may be a democratic societies or it was just something specific because it came at time when South Africa was being democratised and it was thought that it was important that even the intelligence community must know that the wellbeing of the people is paramount.

20 **AMBASSADOR MAQETUKA:** In my response Chair where I don't think we will and we should claim as South Africa that we were the only ones, it was informed basically by democracies in certain parts of the world, especially recall by then the cold war had stopped and this was informed by experiences from countries like your Canada, your

Australia, your UK who are very, very strong in this field, and in this new mindset for intelligence.

CHAIRPERSON: Thank you.

ADV PRETORIUS SC: You touch on this in paragraph 27 and we will then go to the white paper and look at the principles set out there which you have touched on already ambassador but when and Messrs Shaik and Njenje were appointed was there any clarification in relation to the philosophy, mission or intelligence intended for the new to
10 be formed SSA provided to you?

AMBASSADOR MAQUETUKA: Not at all, there was none whatsoever. That is why if you may allow me advocate, I can read from my statement in paragraph 27 Chair.

CHAIRPERSON: You may do so.

AMBASSADOR MAQUETUKA: And I can reconfirm that when we were appointed there had been no opportunity for us to be re-orientated or to be briefed. What is this new philosophy now that is being ushered in?

Remember we are moving now from a dispensation,
20 from 1994 and by 20 – and at that time you didn't have an integrated intelligence, you had your separate intelligent services. Now you are integrating our – okay before I move to that – that is now, we believe that we would have, they would have had an opportunity to discuss the philosophy for the SSA.

ADV PRETORIUS SC: Right and you say in paragraph 27 that in order to be guided in respect of that philosophy you resorted to the white paper and the principles set out there?

AMBASSADOR MAQUETUKA: Yes.

ADV PRETORIUS SC: Chair would this be a convenient time for a ten minute adjournment? We are going to go to the white paper now which is a new topic.

CHAIRPERSON: Yes, no that's fine.

10 **ADV PRETORIUS SC:** And I want to take this opportunity to put the dividers in their places there.

CHAIRPERSON: Okay so maybe we should make it 15 minutes?

ADV PRETORIUS SC: As you please Chair.

CHAIRPERSON: Okay, we will take the short adjournment, it is quarter to twelve, we will resume at twelve o'clock.

We adjourn.

ADV PRETORIUS SC: Thank you Chair.

20 **REGISTRAR:** All rise.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Okay let us continue.

ADV PRETORIUS SC: Thank you Chair. Ambassador would you please go to Annexure MM2 they have now been marked

in your bundle? And if you would turn to page 90. Is that the intelligence white paper?

AMBASSADOR MAQETUKA: Correct.

ADV PRETORIUS SC: The first paragraph reads:

“This white paper is intended to provide a framework for the understanding of the philosophy, mission and role of intelligence in a democratic South Africa.”

The Chair has asked you the question as to whether this intelligence white paper was guided by or influenced by
10 international democratic practice. Do you have anything to add to your previous comment?

AMBASSADOR MAQETUKA: No, no, I do not. It was informed rather than influenced. It was informed really by – ja.

ADV PRETORIUS SC: Yes. And you also explained to the Chair that this paper was developed against the background of a need for a new democratic dispensation.

AMBASSADOR MAQETUKA: Correct Sir.

ADV PRETORIUS SC: Perhaps because it is reflected in the
20 language of the constitution the distinction between human security on the one hand and state security on the other it is a matter you have raised frequently in the past.

AMBASSADOR MAQETUKA: Sure.

ADV PRETORIUS SC: What is the significance of that?

AMBASSADOR MAQETUKA: To me I do not know whether it

is a matter of interpretation because I learnt that in the legal field it can be an issue but in my interpretation which I can safely say many of my colleagues agree with the interpretation. People like Njenje and – and Shaik that if you look at the pre 2009 new dispensation everything was national. The National Intelligence Agents you know. And we have – we have grown into the believing that this institution called Intelligence it is a national rather than a state instrument. Hence, we had a problem and I am still
 10 having a problem to – to understand or to accept that we have moved from national into state. So the immediate question and we are still asking ourselves these questions. Did the principles that is the policy makers – did they really think through even on those two concepts?

ADV PRETORIUS SC: Yes Ambassador some may say well it is just a name but perhaps you can explain what is behind the distinction?

AMBASSADOR MAQETUKA: I – in my understanding again and again corroborated by my other colleague one of the
 20 challenges that we think happened in 2009 it was part of the problems that the country was ushered in by 2007. The Polokwane conference and the change of regime. And that the new regime wanted to change everything that were – that came from the old. As I say it is a matter of interpretation maybe but they would be the best. What the Americans

called the framers of our dis-intelligence – dispensation that decided that it should be state rather national.

CHAIRPERSON: On your understanding would on the face of it the change from national security to state security in any way on the face of it I accept that there might be arguments to the contrary – on the face of it would it resemble anything compared to what the focus of the intelligence under apartheid was or not really?

AMBASSADOR MAQETUKA: I – I think Chair we will come
10 – we will touch...

CHAIRPERSON: You will deal with that in due course.

AMBASSADOR MAQETUKA: I think we will touch with your question when we deal with the proclamation.

CHAIRPERSON: Yes okay.

AMBASSADOR MAQETUKA: As an example.

CHAIRPERSON: Okay. That is fine. That is fine.

AMBASSADOR MAQETUKA: But if I do not deal with it satisfactorily maybe I could then try and discuss other examples but we can try.

20 **CHAIRPERSON:** Yes. Yes. Yes it is just that you – you do emphasise and you have done so repeatedly and I must assume it is because of the importance of the issue you do emphasise the – the change of the language from national to state.

AMBASSADOR MAQETUKA: To State.

CHAIRPERSON: And therefore, because I am – I have never been in intelligence I want to understand why in your mind this distinction is so important. But I accept that for now you might be able to clarify that later.

AMBASSADOR MAQUETUKA: Yes.

CHAIRPERSON: So I just want you to understand why I was asking that question.

AMBASSADOR MAQUETUKA: I understand Chair.

CHAIRPERSON: Okay.

10 **ADV PRETORIUS SC:** Well perhaps very briefly for the present it will come up later in the detail in the white paper but in developing in the words of the white paper a remodelling of the moral codes and organisational culture governing the intelligence environment. The purpose of the intelligence community and structures who must they serve?

AMBASSADOR MAQUETUKA: The intelligence like any structure of government must serve the interest of the people primarily. The state becomes the conduit and the oversight over its departments – are they doing the right
20 thing? Oversight bodies. And again, later I think Advocate Pretorius we will deal with this issue of oversight bodies.

ADV PRETORIUS SC: Yes we are coming there now yes. The paper continues under the head Philosophy of Intelligence. If you talk about the need to establish and this is in 1994/1995 the need to establish a new culture of

intelligence. And reference is made to the prior intelligence services having been formulated by a minority government and it was the aim of the white paper to redirect the intelligence community and structures to serving the national interest as you say. In paragraph 4 mention is made of institutional checks and balances. That is an important component of this white paper and of your evidence and perhaps evidence to come. What were the institutional checks and balances introduced in the new dispensation and

10 why were they introduced?

AMBASSADOR MAQETUKA:

1. There was the joint standing committee on intelligence which is a parliamentary body comprised of all the political parties represented in parliament. That was one of those institutions.
 2. A new office was created, the office of the Inspector General which became or is supposed to be the ombudsman and a facilitator between aggrieved members of the service but more than anything public and interface on intelligence. Any member of the public, South Africans can report anything that they find wanting to the office of the Inspector General because as the term of reference of that office are clearly spelt out, he has got unfettered access to anything that is happening in a particular – in the intelligence
- 20

structures.

Those – I think those are the two most important oversight bodies for the functioning of intelligence that were created post 1994.

ADV PRETORIUS SC: And Chair I might just place on record that the apparent State Security Service have expressed their willingness to testify and cooperate with the commission and of course what happened in the Intelligence Services in the last period covered by the commission's work
 10 is something that will test whether these principles contained in this white paper were actually carried out. And importantly whether the oversight bodies performed their proper function whether that be the Inspector General's office or the parliamentary committee. But that is beyond your time as I understand it. You will touch on it with Pan 1.

AMBASSADOR MAQETUKA: Yes.

ADV PRETORIUS SC: Yes. The concept of modern intelligence. You discussed it Ambassador briefly this morning. The move away from simply protecting the borders
 20 from foreign invaders and that being the purpose of intent intelligence to a more modern concept of intelligence. It is deal with in the last paragraph on page 92. The forms of intelligence, what areas intelligence must cover? If you would refer please to the last paragraph under paragraph 3.2 on page 92.

AMBASSADOR MAQETUKA: Is that the one starting with Intelligence may be gathered?

ADV PRETORIUS SC: Yes.

AMBASSADOR MAQETUKA: Okay.

CHAIRPERSON: You can read it if that is more convenient?

AMBASSADOR MAQETUKA: Yes, no I would prefer to read it Chair. It says:

“Intelligence might be gathered by covert or overt means from a range of sources human and non-human, open or
10 secret. In addition, there is a wide variety of intelligence forms including political intelligence, economic intelligence, technological and scientific intelligence, military intelligence, criminal intelligence and counter intelligence. Each of these is characterised by its seeking out and processing a certain type of information and may place different emphasis on the methods to be used.”

ADV PRETORIUS SC: And then over the page Ambassador the paper touches on the distinction which I believe is important in your approach between intelligence on the one
20 hand and policy making on the other hand and their need to be some independence in relation to policy making on the part of the intelligence structures. Would you explain that please to the Chair?

AMBASSADOR MAQETUKA: Yes. I can – I will try. The – you cannot separate the two. You cannot separate

intelligence from policy makers because one informs the other. We gather intelligence through various means secret or open. We do analysis independent from policy makers and then we alert the policy makers of the intelligence that we collect. And this is a general norm there is nothing secret about it Chair. It is a global activity. All intelligence do it. And that dynamism between the two is very, very critical and if there is a disjuncture between the two then problems might start for the country. And I think we will

10 come to this ...

ADV PRETORIUS SC: Yes.

AMBASSADOR MAQETUKA: Part.

ADV PRETORIUS SC: You mention at consultation the duty to tell the policy makers what they need to know not what they want to know. Perhaps you could expand on that?

AMBASSADOR MAQETUKA: The principle – there is an inherent acceptable principle that you do not tell policy makers what they want to hear. You tell them what you know not what they want to know because otherwise if you

20 gravitate into that situation then the policy makers are going to be dictating terms to you what to collect and what not to collect which is dangerous.

ADV PRETORIUS SC: Right. We will – we will get to a practical example of that inter-relationship in due course. The purpose of intelligence in the white paper is set out at

paragraph 3.2.3 and the first bullet – we are still on page 93 Ambassador.

AMBASSADOR MAQUETUKA: Yes I am there.

ADV PRETORIUS SC: The first bullet. What does that say?

AMBASSADOR MAQUETUKA: It says:

“One of the purpose of intelligence is to provide the policy makers timeous critical and sometimes unique information to warn them of potential risks and dangers.”

ADV PRETORIUS SC: And are those only military risks and
10 dangers?

AMBASSADOR MAQUETUKA: Not at all they are not. Within the context of the philosophy of this new dispensation that was created you talking of both your traditional that is your security military risks but also your human security risks. Today if I may just cite an example? Covid 19 the Coronavirus will fall under the ambit of your human security. Because it is not your traditional security. In the past intelligence officers would say, no, no, no that is the matter for the Health Department but in the new philosophy that was
20 created in 1994 those risks Advocate they include human security risks. That is why I am making an example of the pandemic that makes us now to wear these masks.

ADV PRETORIUS SC: What about risks to the economic wellbeing of the country – economic risks?

AMBASSADOR MAQUETUKA: That is why we are tasked –

we just read we are tasked to look at political, economic, and technological. Look at again if I make an example of Covid – Covid is not only a health risk but it is also an economic risk. Global economy is going to shatters because of Covid.

CHAIRPERSON: Now that suggests to me what we say in terms of the scope of intelligence. That suggests to me that intelligence or an intelligence structure would need to be populated by personnel with different categories of
10 expertise. Because for example I – I take it that the skills and expertise that may be required for the Intelligence Service to pick up the threat posed by Covid 19 at an early stage and warn government would require certain expertise which might not necessarily be the same as the expertise required to pick up military dangers and so on. Am I correct in thinking that – that is what would be required?

AMBASSADOR MAQUETUKA: No – yes you are correct yes you are absolutely correct Chair but also...

CHAIRPERSON: Hm.

20 **AMBASSADOR MAQUETUKA:** Where those skills are not there within intelligence.

CHAIRPERSON: Hm.

AMBASSADOR MAQUETUKA: There is a scope and again the constitution provides for relationships.

CHAIRPERSON: Hm.

AMBASSADOR MAQETUKA: Actually, I do not know again but I think in the Constitution there is – there is a chapter that deals with the importance of inter-relationship between various spheres of government and various departments.

CHAIRPERSON: Yes. Yes ja there is.

AMBASSADOR MAQETUKA: You see.

CHAIRPERSON: Yes. So you – in other words where you do not have that particular expertise within intelligence such expertise may be accessed from other government
10 departments if necessary?

AMBASSADOR MAQETUKA: Absolutely.

CHAIRPERSON: Yes.

AMBASSADOR MAQETUKA: Because they already have the number 1.

CHAIRPERSON: Yes.

AMBASSADOR MAQETUKA: But also, they have the budget to do that.

CHAIRPERSON: Yes.

AMBASSADOR MAQETUKA: Which intelligence did not
20 have.

CHAIRPERSON: Yes.

AMBASSADOR MAQETUKA: At the time.

CHAIRPERSON: Yes. Okay.

ADV PRETORIUS SC: If we could go over the page Ambassador to the heading Towards a National Security

Doctrine, page 94. Again, we have touched on this earlier this part of the Intelligence White Paper deals with the shift from the traditional and narrow approach to security to a more comprehensive approach to security. Perhaps you could explain or read onto the record the third paragraph onwards. The third, fourth and fifth paragraphs at page 94. Do you have page 94 there?

AMBASSADOR MAQUETUKA: And if I am there – I am there Chair.

10 **ADV PRETORIUS SC:** And the heading Towards a New National Security Doctrine.

AMBASSADOR MAQUETUKA: Yes. It says:

“In recent years there has been a shift away from a narrow and almost exclusive military strategic approach to security. Security in the modern idiom should be understood in more comprehensive terms to correspond with new realities since the end of the bipolar cold war era. These realities include the importance of non-military elements of security. The complex nature of threads to stability and development and
20 the reality of international inter-dependence. This more comprehensive approach to security is also endorsed by organisations like the UN and the OAU. This approach is inter alia reflected in the Kampala document of the OAU of 19 May 1991 where a process was set out in motion known as the conference on security, stability, development and

cooperation in Africa. CSSDEA this purpose – the purpose of this document was providing a comprehensive framework for Africa’s Security and Stability and measures for accelerated continental economic integration or social economic transformation.”

ADV PRETORIUS SC: And the last paragraph please?

AMBASSADOR MAQETUKA:

“The inter-mingling and transnational character of modern day security issues furthermore indicate that solutions to the
 10 problems of insecurity are beyond the direct control of any single country and cannot be rectified by purely military means. The international security agenda is shifting to the full range of political, economic, military, social, religious, technological, ethnic, and ethical factors that shapes security issues around the world. The main threat to the wellbeing of individuals and the interest of the nations across the world do not primarily come from a neighbouring army but from other internal and external challenges such as economic collapse, over-population, mass migration, ethnic
 20 slavery, political oppression, terrorism, crime and disease to mention but a few.”

ADV PRETORIUS SC: Yes that is ethnic rivalry, I think.

AMBASSADOR MAQETUKA: Ethnic rivalry.

ADV PRETORIUS SC: Right. Just to clarify what was said there. And then just the last sentence to over the page

beginning:

“Consequently, security is defined less in military terms and more in the broader sense of freedom from vulnerability of modern society.”

AMBASSADOR MAQETUKA: Yes. In other words – in the words of an American scholar new thinking on security has the following key features which should form an inter – an integral part of the philosophical outlook on intelligence.

- 10 1. Security is conceived as a holistic phenomenon and incorporates political, social, economic and environmental issues.
2. The objectives of security policy go beyond achieving an absence of war to encompass the pursuit of democracy, sustainable economic development and social justice.
3. Regional security policies seek to advance the principles of collective security non-aggression and peaceful settlement of disputes.”

20 **ADV PRETORIUS SC:** Yes. The establishment of the intelligence structures in 1994 and 1995 were they intended to accord with these principles?

AMBASSADOR MAQETUKA: Absolutely. Absolutely they were.

ADV PRETORIUS SC: There on – on page 97 Ambassador a certain basic principles of intelligence which you will touch

on in your evidence and certainly further evidence may touch on these principles are named but not described in any detail they describe later in the middle of that page. What were those principles?

AMBASSADOR MAQETUKA: The first principle is an integrated national intelligence capability. Integrated. It always – that word integrated you will always see and hear it post 1994. The principle of departmental capabilities that is when we were making the example of intelligence and health
10 as an example. Principle of political neutrality. Absolutely – absolutely critical in a democratic country for a democratic intelligence service. Intelligence officers – Intelligence operatives must be political neutrality. I mean politically neutral. I cannot because I am a member of the ANC use that in my day to day function. Because that might be – might be to the detriment of other political parties. That is what that ...

CHAIRPERSON: And of the people of South Africa?

AMBASSADOR MAQETUKA: And of the people of South
20 Africa. The people of South Africa, the citizens.

CHAIRPERSON: Hm.

AMBASSADOR MAQETUKA: Are the main targets for intelligence. That is why Chair it is also important that intelligence has moved – must move away from that cloak and dagger thing where you wear dark glasses and

overcoats. Because it does not work anymore. You are not going to get what you want. Because everything is on your cell phone today. You think you have information only to find out there are people who are far better off than you. There are a number of papers that have been written Chair on this matter. New models for intelligence and I promised ...

CHAIRPERSON: Well it would be good to get some of those.

ADV PRETORIUS SC: Yes we have discussed that Chair
10 and we will attempt to put together a bundle.

CHAIRPERSON: Yes.

ADV PRETORIUS SC: And perhaps we will be assisted by further witnesses.

CHAIRPERSON: Yes.

AMBASSADOR MAQUETUKA: In that regard.

CHAIRPERSON: No that is fine.

ADV PRETORIUS SC: But there certainly is valuable information there

CHAIRPERSON: Hm.

20 **ADV PRETORIUS SC:** Which may inform your findings and recommendations particularly.

CHAIRPERSON: Hm.

ADV PRETORIUS SC: Given the important role of intelligence in the democratic society properly manning.

CHAIRPERSON: Hm. Would it be correct then Ambassador

based on what you said a minute ago to say that the principle of people first also applies to the Intelligence Community?

AMBASSADOR MAQETUKA: Absolutely.

CHAIRPERSON: Yes.

AMBASSADOR MAQETUKA: Absolutely. Absolutely.

CHAIRPERSON: The interest of the people first.

AMBASSADOR MAQETUKA: It has to be.

CHAIRPERSON: Yes.

10 **AMBASSADOR MAQETUKA:** It has to be.

CHAIRPERSON: Yes.

AMBASSADOR MAQETUKA: I will deal with it later Chair to illustrate my own personal preferences.

CHAIRPERSON: Hm.

AMBASSADOR MAQETUKA: And why I decided to come and present myself to this commission.

CHAIRPERSON: Hm.

AMBASSADOR MAQETUKA: I was looking at myself as a South African first.

20 **CHAIRPERSON:** Hm.

AMBASSADOR MAQETUKA: Because you have been mandated to look at these issues of allegations of state capture, corruption, fraud in the public sector including state organs.

CHAIRPERSON: Hm.

AMBASSADOR MAQUETUKA: How could I then say, no this does not affect me because I am in intelligence. Unless you do not understand the philosophical basis that your intelligence has been served up. Hence some of us and I think I will speak on behalf of Njenje and Shaik.

CHAIRPERSON: Hm.

AMBASSADOR MAQUETUKA: We responded to the call.

CHAIRPERSON: Hm.

AMBASSADOR MAQUETUKA: Because we understand our
10 duties. We understand our functions as Intelligence. And we are not apologising to anybody for having being in the Intelligence but it is Intelligence that is concerned with the wellbeing of the people and the country.

CHAIRPERSON: Hm.

AMBASSADOR MAQUETUKA: That is the – that is the ? of it.

CHAIRPERSON: Yes. Thank you. Yes, no thank you. I think so that is very important.

ADV PRETORIUS SC: The next principle, the fourth bullet
20 on that page. It talks about Legislative Sanction, Accountability and Parliamentary Control.

AMBASSADOR MAQUETUKA: And parliamentary control.

ADV PRETORIUS SC: Yes.

AMBASSADOR MAQUETUKA: That is one of those oversight mechanisms that were set up. Legislative sanctions. Hence, we have as a country a Joint Standing

Committee on Intelligence.

Accountability and parliamentary oversight. We can be called as Intelligence at any time by the Joint Standing Committee on Intelligence on anything.

And we are going... I am going illustrate at the same time. When you are confronted with challenges within your own domain, you can resort to them and seek for help. And later we are going to talk of how we try to do that. Well, as to whether it did help.

10 **CHAIRPERSON:** Well...[intervenes]

AMBASSADOR MAQUETUKA: We were saying during our liberations, also with your legal team, what is the use of this beautiful constitution that we have, these strong institutions of oversight that we have, if it does not help the people of South Africa, the people of the region, the people of the continent and the world? What are they of use?

CHAIRPERSON: Well, I am very happy that you are going to deal more with those issues ambassador because, as I have said particularly, part of what I believe this Commission must
20 look at is, when certain things were happening in the country and there are bodies which had been set up to exercise oversight, where were they? What were they doing?

AMBASSADOR MAQUETUKA: Yes.

CHAIRPERSON: Should they not come up?

AMBASSADOR MAQUETUKA: Yes.

CHAIRPERSON: And tell the nation through this Commission that these were our obligations. This is what we did. Or if they did not have enough resources or enough mechanisms, should they not come and tell us?

Or should they not say, “We have examined our own records against what has happened and we are prepared to say to the nation, we have fallen short in the following respect.”

And we say, in order to make sure that in the future this
10 kind of institution or body never falls short in this way, this is what we suggest that you put in place.

Because we have got to be truthful. We have got to be honest, and I am hoping that some of the leaders from different institutions will not just look at coming to the Commission as a place where they must defend this or that or defend themselves.

But where they would say, we believe that we are accountable. We believe that, from time to time, that we must look at how we have performed.

20 And in this case, we have looked at how we have performed over X number of years. We are not going to say we have done everything properly.

Here is where we have gone wrong and we have accepted responsibility but we also want to make a contribution as to what should be done to make sure that this

does not happen again.

So I am very happy that from what you have said, I can see that you will be dealing with this very important issues.

AMBASSADOR MAQUETUKA: Yes.

CHAIRPERSON: Thank you.

AMBASSADOR MAQUETUKA: The other principle is the Principle of Balance Between Secrecy and Transparency. I think it speaks for itself that one.

CHAIRPERSON: Yes.

- 10 **ADV PRETORIUS SC:** Perhaps... well, it is dealt with later but perhaps now is the time to deal with it. The Principle of Classification and Declassification. And why the process of declassification should not serve ulterior motives. Perhaps you could touch on that?

AMBASSADOR MAQUETUKA: [laughs] Yes.

ADV PRETORIUS SC: As you have told us.

AMBASSADOR MAQUETUKA: I thought that Advocate Pretorius would be an expert on this now through experience of his engagement in the Commission.

- 20 **CHAIRPERSON:** [laughs]

AMBASSADOR MAQUETUKA: Yes. The question of classification and declassification. There are standard norms globally. They are not the same, but norms where periodically what was secret must be declassified so that the public can have access.

The same time, and it must be accepted, and the public must accept it, the public cannot get everything that the Intelligence Services have. Otherwise, it will jeopardise the work of people, operatives on the field.

That must be accepted, but there has to be a balance. That is why even in terms of the classification and the declassification...

Presently, I am not in a position to comment as to how effective is this classification and declassification within the
10 Intelligence Services presently.

But perhaps when they come here, they can be in a position – and I do not want to blame people and accuse people of doing or not doing anything, only to find out that there is a lot of work that they are doing.

ADV PRETORIUS SC: Yes. I might just point out that in your statement you mention that you have certain documents which are classified ...[intervenes]

AMBASSADOR MAQUETUKA: Yes.

ADV PRETORIUS SC: ...at various levels, from confidential
20 to secret.

AMBASSADOR MAQUETUKA: Yes.

ADV PRETORIUS SC: Now that has with the cooperation of the department now has been declassified. So we will provide them in due course.

AMBASSADOR MAQUETUKA: Ja, that has to be

appreciated. That has to be appreciated and I am sure key to those people would be the Minister of Intelligence because I would have expected that she would be the one who have had sight of that.

That is encouraging for the work of the Commission but also Chair just to move a little bit just a step back just for one second.

As I am sure Advocate Erasmus will lead me. I was... there was a sense of comfort in me yesterday when I saw the
10 responses of some of the members of the Top 6 of the ruling party. A positive mood where openly they say to you “No, we agree with what... Yes, these colleagues or comrades as we call ourselves, they did meet us”.

And, of course, there is also a document, I think in the package, where the former Comm as in commissars of uMkhonto we Sizwe, constituted themselves and went to the Top 6 to address the very issues that are bedevilling the country.

And the Top 6, members of the Top 6, all... and I have to
20 say, I appreciate that move by them.

CHAIRPERSON: No, I think it is important. There is a need on all of us, there is a need on leaders in society, leaders in the country, leaders of different institutions and organisations to seek to deal with these issues in a very honest manner and in a manner that is constructive and in a

manner that is prepared... that shows preparedness.

That there is no closing of mind to say, “No, we will never accept this or that”. But to engage with you to say, “Let us see what happened. Let us see how it happened. Let us see where there might have... things might not have happened the way they should have happened”.

AMBASSADOR MAQUETUKA: Then... shall I continue advocate?

ADV PRETORIUS SC: Well, the further principles are
10 largely self-explanatory and we will come back to them in due course but perhaps you could just mention them for the sake of completeness.

AMBASSADOR MAQUETUKA: Yes, then there is the Principle of the Separation of Intelligence from Policy Making.

ADV PRETORIUS SC: We have dealt with that, yes.

AMBASSADOR MAQUETUKA: Now this is critical and it is not just words. It still needs to be unpacked this principle. I have got my own interpretation of this principle of what it
20 means and how it should be implemented and how it was supposed to have been implemented.

And we are constantly, as individuals, interacting with this principle informed by one element that we always ask and I think... not I think, in Ambassador Shaik’s evidence he flagged it and he asked: “Does the country need a ministry

for intelligence service? Does it need a minister?"

Otherwise, at certain points in time and life of the government of the country, you are going to find a discord on that principle where a policy maker who would want to interfere into the work that the Intelligence is supposed to be doing independent from him or her. We will come also to that during my...[intervenes]

CHAIRPERSON: Well, I did want to say, at some stage, I do want to hear your interpretation. So... at the right stage, Mr
10 Pretorius, I will leave you to do that.

ADV PRETORIUS SC: Yes.

CHAIRPERSON: But also, and I do not know if you will deal with it in your statement, in your affidavit. Also, I would be happy if you are able to enrich me in terms of internationally.

What is the norm, maybe in democratic societies in regard to this Principle of Separating Intelligence from Policy Making? But you can deal with it at the right time.

AMBASSADOR MAQUETUKA: Thank you. I will Chair.

CHAIRPERSON: Ja.

20 **AMBASSADOR MAQUETUKA:** And then there is the Principle of Effective Management, Organisation and Administration. Effective management, organisation and administration. That spins through now the roles of a DG, who is the third of the department. The role of a minister who is the third of policy and policy making and the

administration.

What systems do you put in place so that there are no wrongdoings that can happen within the organisation? And I think Advocate Pretorius, you are going to be dealing with that matter.

ADV PRETORIUS SC: Yes.

AMBASSADOR MAQUETUKA: Because there would be examples where we show that there were problems with this effective management and administration in the organisation.

10 I am thinking of the example would be PAN 1 that I know you will be dealing with.

Then there is the Principle of Coordination of Intelligence and Liaison with Departmental Intelligence Structure. Earlier on, I talked of the structures that were formed in 1994.

One of them that has got that responsibility of coordination is the National Intelligence Coordinating Committee what is called NICOC which is administered by a coordinator for intelligence but also the coordinator for
20 intelligence chair another structure that is called the NICOC Principles and co-opted departments into the work of Intelligence.

And the principle is a simple one that South Africa's new dispensation, intelligence dispensation, is premised on coordinated intelligence.

One department... it is dangerous for one department to take a product to the president or to cabinet which has not been checked by other departments.

Now as what is called Strategic Intelligence. Now it is that coordinated package but the system also allows, of course, for operational ones which does not need to be coordinated.

Then the Principle of an Ethical Code of Conduct to Govern Performance and Activities of Individual Members of the Intelligence Service. That is command and control which would lead to accountability based on ethics.

So the first question that should be asked: Do we have... are we ethical? Do we understand this? And what does it mean? And not only, what does it mean, but how it is implemented?

And that the oversight bodies are supposed to be the arbitrators over that control because they should be the ones who would say, "No, no, no. There is no control here. These people are law unto themselves. These people are involved in this and this and this and this".

And if you have unethical people, then you will have an unethical intelligence service. If you have an unethical intelligence service, that intelligence service can create a president in the country or can cause mayhem.

So it is absolutely important. I will pause there. Or

should I, advocate?

ADV PRETORIUS SC: Thank you. If we could go to the next page where there are three principles set out that under a democratic government, those agencies entrusted with the task of intelligence work. Should it read “to execute their tasks in the following manner”? What were those three points?

AMBASSADOR MAQUETUKA: The first point as the white paper says Chair, they should except as primary the
10 authority of the democratic institutions of society.

And those constitutional bodies mandated by society to participate in and/or monitor the determination of intelligence priorities. One.

They should accept that no changes will be made to the doctrines, structures and procedures of the National Security framework unless approved of by the people and their representative bodies.

They should bind themselves to be contract entered into with the electorate through a mutually agreed set of norms
20 and code of conduct.

ADV PRETORIUS SC: Pause. Does the fact that the Intelligence Community operates, at least to a degree, in a confidential or secret framework, affect the need for a strict code of conduct?

AMBASSADOR MAQUETUKA: Come again advocate?

ADV PRETORIUS SC: The need for a code of conduct, is that affected by the fact that intelligence operatives operate largely in secret?

AMBASSADOR MAQUETUKA: In partly yes and partly no. I am saying no and I think... I like using the phrase... the jargon of the Americans when they talk about people who drafted these documents. They call them the “framers”, “our framers”.

But the people who drafted these white papers and this
10 legislation, one of the other things that they had in mind in an informed, of course, by the history of the country.

We know that intelligence and security services during apartheid time were a hand unto themselves. That is why the creation of the Vlakplasies, your Koevoet’s, your what, what, what. They were not accountable to anybody.

They had that in mind Chair. And of course,... that is why I am saying yes or no. Because if everything is locked up in vaults, people will not know what is happening and it is not necessary for everything to be secret in Intelligence.
20 No.

CHAIRPERSON: Well, I am not sure whether my and your understanding of Mr Pretorius’ question is the same but I understood him to be asking the question whether the fact that Intelligence who operates largely in secret, justify the proposition that there should be no code of conduct. That

was my understanding. Was that your understanding as well?

AMBASSADOR MAQUETUKA: No, it was not.

CHAIRPERSON: No?

AMBASSADOR MAQUETUKA: Because there is a code of conduct.

CHAIRPERSON: Yes. Okay Mr Pretorius, I misunderstand.

ADV PRETORIUS SC: Oh, perhaps I should put it a little more bluntly.

10 **CHAIRPERSON:** [laugh] Ja.

ADV PRETORIUS SC: If I may?

CHAIRPERSON: H'm.

ADV PRETORIUS SC: That the need for a code of conduct is even greater where people operate under a cover of secrecy. That is the proposition I am putting to you.

AMBASSADOR MAQUETUKA: The need... come again, come again, come again?

ADV PRETORIUS SC: The need for a code of conduct ...[intervenes]

20 **AMBASSADOR MAQUETUKA:** Yes?

ADV PRETORIUS SC: ...and a strict code of conduct which is enforced, is greater where people operate out of the public eye.

AMBASSADOR MAQUETUKA: [No audible reply]

ADV PRETORIUS SC: But...[intervenes]

AMBASSADOR MAQUETUKA: I...[intervenes]

ADV PRETORIUS SC: But that is something we can debate.

CHAIRPERSON: Ja. Well, let him say something because maybe... his answer that he gave you earlier on, was not an answer I expected from him. That is why I am following up.

ADV PRETORIUS SC: Yes.

AMBASSADOR MAQUETUKA: I...[intervenes]

CHAIRPERSON: Let me tell you what I am hearing.

AMBASSADOR MAQUETUKA: Yes.

10 **CHAIRPERSON:** On my understanding of his question as I articulated it, namely, whether the fact that Intelligence operates secretly, justifies that there should be no need for a code of conduct.

So having understood the question in that may, which may have not been correct, but his follow-up seems to suggest that may have been correct.

Your answer to say yes or no, I did not understand correctly because I would have thought that the need for a code of conduct is justified everywhere.

20 But the actual content of the code of conduct may be informed by the nature of the operations involved but that there should be a code of conduct should not be in dispute. That is my thinking.

AMBASSADOR MAQUETUKA: Okay. I agree with the latter part.

CHAIRPERSON: Yes.

AMBASSADOR MAQUETUKA: It should not be in dispute but also number 2. It is not everything that is in the domain of the intelligence in practice, in day-to-day practice that is in secret. It is not.

Let me make... say an example and... of an activity that we got involved roundabout 2003/2004. Then we were developing a National Security Strategy.

That process was... one was an open process. I was
10 leading that process during that time. We collaborated one with business. We collaborated with the Human Rights Committee. He is an advocate now. Kollapen, né?

CHAIRPERSON: H'm. H'm.

AMBASSADOR MAQUETUKA: When he was a chairman of the...[intervenes]

CHAIRPERSON: Ja, he is a judge.

AMBASSADOR MAQUETUKA: He is a judge.

CHAIRPERSON: Ja. H'm.

AMBASSADOR MAQUETUKA: He came to make a
20 presentation. We were... the hearings were not being conducted at the farm but they were at CSIR.

CHAIRPERSON: H'm. H'm.

AMBASSADOR MAQUETUKA: People from the Institute of Security Studies... who is the guy there? He came to make a presentation. NGO's who... because we were convinced that

the development of National Security is not an exclusive domain of us.

We cannot develop a National Security alone. So that is why my yes or no. But it is true that there are those activities that are secret and there I will go into a trench and say it, if there has to be those. I cannot just be open, everything open.

CHAIRPERSON: H'm. H'm.

AMBASSADOR MAQUETUKA: Otherwise, why do we have
10 an Intelligent Organisation?

CHAIRPERSON: H'm. H'm. H'm. H'm. Okay. Yes.

AMBASSADOR MAQUETUKA: But we can still...[intervenes]

CHAIRPERSON: Yes, yes.

AMBASSADOR MAQUETUKA: ...debate this thing outside
beyond the...

CHAIRPERSON: Yes.

AMBASSADOR MAQUETUKA: The... I see Advocate
Pretorius is smiling. [laughs]

CHAIRPERSON: [laughs]

20 **ADV PRETORIUS SC:** If we go to page 99, over the page.
You have told the Chair that in 1994/1995 there were two
major intelligence structures. One domestic and one foreign.
If you could just please look at the second last paragraph on
page 99 which begins with “the most significant departure
from the old dispensation...”

AMBASSADOR MAQUETUKA: Yes, a very important principle and it tends to be forgotten. It says:

“The most significant departure from the old dispensation, that is the apartheid department, the dispensation, is that instead of two centralised civilian intelligence organisations...”

CHAIRPERSON: Well, the document says one instead of one.

AMBASSADOR MAQUETUKA: Instead of one...[intervenes]

10 **CHAIRPERSON:** Yes.

AMBASSADOR MAQUETUKA: ...centralised national intelligence organisation. Remember in the old dispensation, you only had the National Intelligence Service. Now this line says, “a departure” There will be two. Hence, the creation of your National Intelligence Agency and your South African Secret Service, right?

CHAIRPERSON: H’m. H’m.

AMBASSADOR MAQUETUKA:

20 “This arrangement will not only ensure that the new intelligence dispensation in South Africa corresponds with general international trends but will promote greater focussing, effectiveness, professionalism and expertise in the specialised fields of Domestic and Foreign Intelligence.

The services will have distinct intelligence mandates

and line functional responsibilities and will share essential support services to avoid costly and unnecessary duplication.

They will, accordingly, create appropriate liaison mechanisms to deal with areas of national interest.”

ADV PRETORIUS SC: Chair, I see it is one o'clock. I am not sure what your intention is with the lunch adjournment.

CHAIRPERSON: Yes, I will take the lunch adjournment but I just want to find out whether Ambassador Maquetuka has
10 any constraints in case... I do not know if you have a better idea in case we have got to go beyond four o'clock to finish?

ADV PRETORIUS SC: Yes, we have been dealing with that issue and the limitation of flights.

CHAIRPERSON: Yes.

ADV PRETORIUS SC: But may I just ask the ambassador... need to go...[intervenes]

CHAIRPERSON: Ambassador, what is your situation?

AMBASSADOR MAQUETUKA: No, my situation is fine
Chair.

20 **CHAIRPERSON:** It is fine?

AMBASSADOR MAQUETUKA: I do not have any time constraints.

CHAIRPERSON: Oh, I see.

AMBASSADOR MAQUETUKA: Even if we go up to twelve.

CHAIRPERSON: Okay. [laughs] No, thank you. So if we

need to go beyond four o'clock, then we will go
...[intervenes]

ADV PRETORIUS SC: Yes.

CHAIRPERSON: Because I am available and it is important
that if we can, we get all of his evidence today.

ADV PRETORIUS SC: Thank you.

CHAIRPERSON: Okay we will take the lunch adjournment
and we will resume at two o'clock. We adjourn.

INQUIRY ADJOURNS

10 **INQUIRY RESUMES**

CHAIRPERSON: Are you ready, Mr Pretorius?

ADV PRETORIUS SC: Thank you. Ambassador, would
you look at page 99, we were still dealing with the
intelligence white paper and the chapter on composition of
the intelligence community. You have given much of this
evidence already but the second last paragraph on page
99, would you just read that onto the record please or
explain it in your own words, whichever you prefer.

AMBASSADOR MAQETUKA: The second last...?

20 **ADV PRETORIUS SC:** Yes, please.

AMBASSADOR MAQETUKA:

“The most significant departure from the old
dispensation that instead of one centralised
National Civilian Intelligence organisation there will
be two. This arrangement will not only ensure that

the new intelligence dispensation in South Africa corresponds with general international trends but will promote greater focusing, effectiveness, professionalism and expertise in the specialised fields of domestic and foreign intelligence. The services will have distinct intelligence mandates and line functional responsibilities and will share essential support services to avoid costly an unnecessary duplication. They will accordingly
 10 create appropriate liaison mechanisms to deal with areas of mutual interests.”

ADV PRETORIUS SC: I understand from your evidence, Ambassador, that that remains your own view of the appropriate organisation of intelligence services.

AMBASSADOR MAQUETUKA: Yes, I still do but I would still be persuaded to change my view but presently, that is the position that I take.

ADV PRETORIUS SC: But Chair will make his own findings in due course in relation to what happened in the
 20 intelligence community particularly after your departure but let me put a theoretical or notional question to you. If members of the executive wanted to control the intelligence services more tightly, would that be easier or more difficult if they were amalgamated into a single structure?

AMBASSADOR MAQETUKA: I would be easier because they will only have to deal with one Director General instead of having to deal with two Directors General.

ADV PRETORIUS SC: Yes.

AMBASSADOR MAQETUKA: According to the post '94.

ADV PRETORIUS SC: And there would have been two separate structures as opposed to a single structure.

AMBASSADOR MAQETUKA: There has always been two separate structures distinct in terms of their mandate,
10 distinct in terms of their field of expertise. SASS, the foreign intelligence service did not do anything domestically. If there is a domestic intrusion – I mean, a foreign intrusion into the domestic, they will then liaise with the domestic NIA. Hence, they will create liaison mechanism.

ADV PRETORIUS SC: Yes, thank you. But let us go over the page where the white paper deals with the control and coordination of intelligence. Again, you have dealt with some of these matters and the Chair is certainly interested
20 in obtaining as much evidence in this field of your expertise as possible. What this – a portion of the paper refers to is a mechanism for parliamentary oversight, budgetary control and external auditing and, importantly, an independent Inspector General for Intelligence. What was put in place in the legislation that followed 1994/1995?

They are listed there. If you would just tell the Chair please of the control and oversight institutions that the legislation ultimately provided for.

AMBASSADOR MAQETUKA: It is true that a joint standing committee for parliament, which is called the Joint Standing Committee on Intelligence, was created quite early and if my memory serves me quite well, the first Chairperson in 1994 of that was the now Minister Lindiwe Sisulu. Two Inspectors General now. A decision – I know, 10 a decision was subsequently taken that we need not have two Inspectors General because one Inspectors General can do the work for both organisations, you see? That was number one. But also, it became a cost-saving mechanism because we had to be – not me, the policy makers were aware of that cost-saving mechanism. Those two institutions indeed were created right at the beginning.

ADV PRETORIUS SC: Let me ask, to whom does the Joint Standing Committee for Parliament report?

AMBASSADOR MAQETUKA: They, like any other 20 parliamentary committee – okay, let me first say, in its functional design the JSCI is different from the rest of the parliamentary committees in that, number one, all members of the JSCI for issues that the committee sits for, they are not supposed to report to their political parties, the framework forbids them.

Number two, I think they go through a security clearance and the rationale is that they would be privy to classified information. So that is the second one.

Number three, Advocate, media is not allowed in the meetings of the JSCI. It is in closed doors. And no member of parliament, no matter even if he or she is a secretary, can go and sit in meetings of the Joint Standing Committee on Intelligence. So that is the distinction.

ADV PRETORIUS SC: Presumably they would prepare
10 reports like other standing committees?

AMBASSADOR MAQETUKA: Like any other standing committee they prepare annual reports because the intelligence on an annual – on an ongoing basis they can be called at any time on any issue that crops up that might have security intelligence implication. They can be summoned to Cape Town.

Number two, on an annual basis intelligence reports annually to the JSCI. It is a formal process, a formal report on all issues. Let me say that report is supposed to
20 be on all issues that have been taking place during that particular year.

Now the only thing that I am not sure of, I am not certain of, to whom does that report goes to but I will expect – I do not know, but I will expect the Speaker of Parliament will have access to that report. I expect, I do

not know, Chair.

CHAIRPERSON: I would expect also that there should be somebody in parliament to whom such a report should go because the committee, despite the differences that it may have compared to other committees, as you have said, it remains a committee of parliament.

AMBASSADOR MAQETUKA: Yes.

CHAIRPERSON: And if, for argument's sake, it does not do its job properly, that might attract negativity to parliament. So while its report might not necessarily be accessible to all members of parliament, there must be one or a few within parliament who – particularly the leadership to whom it should be should be accessible.

AMBASSADOR MAQETUKA: I would expect so also, Chair.

CHAIRPERSON: Yes.

AMBASSADOR MAQETUKA: As I say, I am no au fait with the nuts and bolts.

CHAIRPERSON: Yes. Thank you.

20 **ADV PRETORIUS SC:** Are you able to comment, Ambassador, on the role of the Inspectors General and how the Inspectors General operates, whether it is an independent office, whether it is part of the intelligence service or what is the position?

AMBASSADOR MAQETUKA: You know, these institutions

again, unfortunately, but I think like any institution in any country, institutions are run by people. The effectiveness of or not depend on that individual, so is that independence. If there is one thing that I can put my neck on the block, the present Inspector General of Intelligence exercises independence and the independence of his office. He carry no favours, he is not influenced by anybody, he – now that is one thing that I can say about that office.

10 **ADV PRETORIUS SC:** What is the function of the office?

AMBASSADOR MAQUETUKA: The function of the office is if Advocate Paul Pretorius has got an issue, he picks up, he suspects that his telephone is being tapped by the Intelligence – I am making a practical example, Chair – Adv Pretorius goes straight to the office of the Inspector General and lodge his complaint formally and the Inspector General would set up a process then to investigate that and interact with Adv Pretorius. That is the way it – it is not only individuals, groups of people can do that, it is an
20 oversight, it is a crosschecking mechanism over Intelligence and a very vital office, I must say. The country will still need it for a foreseeable time.

And by the way, again, we are not the only ones who have such an office since I can safely say it is a global trend, most countries have Inspectors General.

ADV PRETORIUS SC: The white paper refers to the functions as including reviewing the activities of the Intelligence Services and monitoring their compliance with policy guidelines. Does that accord with own understanding and experience?

AMBASSADOR MAQETUKA: Yes, through its annual report and based on the cases that they would have been dealing. There is one thing about that office, I can never say there was any time when they reacted on rumours. It
10 is a very, very professional office. Maybe I do not know, Chair, is it because it has always – not always really, but predominantly it is legal people. I think the present one is an advocate, I think, Adv Dintwe.

ADV PRETORIUS SC: Is it part of the dispensation that the Inspector General should have unhindered access to classified information?

AMBASSADOR MAQETUKA: For a very long time my interpretation of this unfettered access, it was only when I was interacting with the office for the first time after a very
20 long time in 2018 that I discovered that the unfetteredness - I do not know what it means. Perhaps, Chair, you can educate to me on legally what does it mean. I used to think that there is nobody who can stop them from getting any type of information there. That is how I knew it but I was cautioned by some of the *slim* people there that no,

Ambassador, it is not like that, we have got to ask our – I do not know, maybe that is some of the things that we need or the Commission need to be educated in by...

CHAIRPERSON: By the current incumbent and by others who are operate in this environment.

AMBASSADOR MAQETUKA: Yes.

CHAIRPERSON: Intelligence environment.

AMBASSADOR MAQETUKA: Yes, yes, yes.

CHAIRPERSON: And who might understand it better.

10 **AMBASSADOR MAQETUKA:** Yes, yes.

CHAIRPERSON: Okay.

ADV PRETORIUS SC: Well, save for one comment, that you might wish yourself to comment on, Ambassador, if the body being investigated can withhold information from the investigating body, would that not cause a problem?

AMBASSADOR MAQETUKA: Of course it will cause a serious problem and as it has already started in our situation. I think you know better, that both Mo Shaik and Njenje, came to the Commission without certain documents
20 that they wanted declassified. But at least I am told, with me now, the documents have been declassified.

ADV PRETORIUS SC: I am informed some of them have, actually.

AMBASSADOR MAQETUKA: You see? So that in itself is a problem. That in itself is a problem because again I was

assured in no uncertain terms that we have been instructed to cooperate with the Commission and we shall cooperate and we will get the documents.

ADV PRETORIUS SC: Yes. I understand your answer in a different context, Ambassador, but particularly in the context of the Inspector General whose duty it is to review and monitor compliance. Is it not logical to expect at least a high degree of access to documentation?

AMBASSADOR MAQETUKA: As I say, during the whole
10 time of my involvement there since 1995, I thought that he had unfettered access and I was happy with that and I would still be happy with the Inspector General having that access.

ADV PRETORIUS SC: Then finally in relation to control and coordination of intelligence, in paragraph 6.2 on page 100 there is mention made of the National Intelligence Coordinating Committee. Briefly, what is its function and how does it rely to the cabinet Committee on Security and Intelligence and to the Joint Standing Committee?

20 **AMBASSADOR MAQETUKA:** Luckily, Chair, I can answer that question without making any reference to any document. I was appointed the Coordinator for Intelligence and I served my whole four term between 2004, if I am not mistaken – no, no, no, 2002 until 2004 I was the Coordinator for Intelligence. That office is – as I see, it is

divided into two in terms of operation.

One, you have a NICOC staff which used to be plus minus 20, 25, highly effective, highly skilled analysts. Of course, there were administrators for logistics and liaison people. It is responsible, it is the NICOC staff that reports to the coordinator and then there is the NICOC committee which comprises of all the herds of the Intelligence Services from Crime Intelligence, Military Intelligence, Defence Intelligence, as it is called, NIA and SASS, that is
 10 the foreign and the domestic branch. But also, the Director General in the presidency is a co-opted member together with the Director General of Foreign Affairs is there, so that is the composition of the structure. It is to generate the national strategic intelligence product that goes to cabinet and in between there would be other products depending on the situation.

I would expect, for example now, continuously they would or should be briefing cabinet on Covid-19 from an intelligence perspective not from – necessarily from the
 20 Command Council, it is a separate. That is the function of the coordination. As I said – as we are – we said earlier coordination of intelligence is critical in the new dispensation.

ADV PRETORIUS SC: If I may ask you please to then just mention the cabinet Committee on Security and

intelligence. That is something different from NICOC, the National Intelligence Coordinating Committee?

AMBASSADOR MAQETUKA: Yes, it is a cabinet committee, it consists of ministers.

ADV PRETORIUS SC: Right.

AMBASSADOR MAQETUKA: Ministers of the security cluster.

ADV PRETORIUS SC: Right and it receives reports from NICOC, I understand?

10 **AMBASSADOR MAQETUKA:** It receives reports from NICOC.

ADV PRETORIUS SC: If I may take you please to page 102. Various measures are listed there under the heading:

“Transforming Intelligence Methodology”

7.3, what does it say? You have touched on this now in relation to secrecy and declassification.

AMBASSADOR MAQETUKA: It says:

20 “The development of a more open intelligence community will go a long way towards demystifying and building trust in the National Intelligence Community...”

Trust in the National Intelligence Community and this trust, it is from the citizens.

“...where legal limits on secrecy including criteria and timeframes for classification and

declassification are clearly understood and accepted by society, the dangers of intelligence system becoming a self-serving are averted.

ADV PRETORIUS SC: Right. Is there any comment that you have? It seems it appears self-explanatory.

AMBASSADOR MAQETUKA: Safely – and let me recognise and say that the process of declassification has taken a long time to mature and, as I say, I can safely say, without any fear or favour here, Chair, by the time I left in
10 2012 the area of declassification had not then matured. I do not know what the status quo is now as we speak. I do not know but it took a long time.

ADV PRETORIUS SC: Right.

AMBASSADOR MAQETUKA: Was it an oversight on our part? I cannot really give reasons.

ADV PRETORIUS SC: Can I take you to 7.4 please, that is covert action.

AMBASSADOR MAQETUKA: Yes.

ADV PRETORIUS SC: Firstly, what does it say and what
20 is the purpose of...?

AMBASSADOR MAQETUKA: 7.4, covert ...[intervenes]

ADV PRETORIUS SC: That principle.

AMBASSADOR MAQETUKA: Sorry, Advocate.

“Measures designed to deliberately interfere with the normal political processes in other countries, for

example your coups or your destabilization and with the internal workings of parties...”

And this would refer political parties and predominantly it would be opposition parties, for example, by the governing party that is ruling at the time who have got better access to intelligence than members of the opposition parties. I think that is the framework.

“...and organisations engaged in lawful activity within South Africa must be expressly forbidden.
10 Intelligence agencies and those within them guilty of such breaches must be disciplined in the severest term.”

And in terms of – if you look at the Act subsequently, it is illegal for Intelligence Service in South Africa to engage in those activities.

ADV PRETORIUS SC: So, for example, to put a narrative in the public domain which was false but seeks to influence political action, is that within the province – legitimate province of an Intelligence Agency?

20 **AMBASSADOR MAQUETUKA:** Absolutely. Absolutely because ...[intervenes]

ADV PRETORIUS SC: Absolutely?

AMBASSADOR MAQUETUKA: I am saying absolutely.

ADV PRETORIUS SC: Absolutely or absolutely not?

AMBASSADOR MAQUETUKA: I would be treason for them

to do that, interfere with those activities of those political parties, that disinformation that is intended to destabilize another party. That would be treason.

ADV PRETORIUS SC: If you go then – there is a related principle on page 109, paragraph 5.3. Again, that refers expressly to the concept of disinformation. Would you place that on record please and if you have a comment, please make it.

AMBASSADOR MAQETUKA: Is that 5.3?

10 **ADV PRETORIUS SC:** Yes.

AMBASSADOR MAQETUKA:

“A National Intelligence organisation is a national asset.”

See what I was saying earlier on. Not the state asset, it is a national asset and shall therefore be politically non-partisan. Non-partisan, that is the principle.

ADV PRETORIUS SC: And the next paragraph?

AMBASSADOR MAQETUKA:

20 “No Intelligence, Security, Service organisation shall be allowed to carry out any operations or activities that are intended to undermine, promote or influence any South African political party or organisation at the expense of another by means of any acts, e.g. active or covert measures or by means of disinformation.”

CHAIRPERSON: Should it disqualify me or not to be in – to serve in the intelligence service if my plan is that while I am in the intelligence service, I will engage in assisting a political party or individuals within that party to achieve their party political objectives?

AMBASSADOR MAQUETUKA: You can be charged.

CHAIRPERSON: Yes.

AMBASSADOR MAQUETUKA: You can be charged under the various intelligence Acts.

10 **CHAIRPERSON:** Yes, it is a no-go area.

AMBASSADOR MAQUETUKA: No, it is a no-go area Chair and be charged.

CHAIRPERSON: Yes, yes, thank you.

ADV PRETORIUS SC: The remaining pages of the White Paper are largely self explanatory and they set a high ideal of improving the quality of life of ordinary South Africans and that being the goal to which an Intelligence Service should be erected. Perhaps we could just refer to one such paragraph on page 105 it refers there to the RDP, that
20 has since been replaced in policy by other policy documents but the underlying sentiment is the same. The chapter on conclusion, chapter 9 on page 105, perhaps you could place that on record by way of summary.

AMBASSADOR MAQUETUKA: That is the conclusion.

ADV PRETORIUS SC: Yes.

AMBASSADOR MAQETUKA: Thanks Chair. Our country is poised on the brink of tremendous opportunity in which the human potential of our people can be harnessed to make South Africa a beacon of hope and success for the world. Intelligence has a critical world to play in identifying threats, potential threats, as well as opportunities for the democratic dispensation in South Africa. The transformation of the Intelligence community is a process already underway and must be encouraged, so
 10 as to allow the Intelligence community to play its rightful role in meeting our National goals, particularly those set out in the RDP. Ultimately it is through the approach to security outlined in the RDP the meeting of the basic needs of the people through development, sustained economic growth and mass participation in the building of a new South Africa, that the cherished goals of peace and stability will be reached.

ADV PRETORIUS SC: As you said, Ambassador, this White Paper was developed in 1995/1996...[intervenes].

20 **AMBASSADOR MAQETUKA:** 1994.

ADV PRETORIUS SC: 1994, is it still relevant today?

AMBASSADOR MAQETUKA: You know by the day, whenever I read this White Paper, this White Paper is still relevant up till today but like any other policy document, no matter how good it was in 1994 the dynamism that it

operates in our case, Nationally, Regionally, continentally and global, the only thing that I can – again I am going to – I'm not going to apologise to anybody, but state that, unfortunately there had been no other White Paper that I have seen, since 1994 and if you look at the potentials for economic development, the threats that are facing the global world have changed and you can actually categorise, 1) 911, 2) the rise of international terrorism, the emergence of your Bin Laden's and what have you, I

10 mean you can literally, in the development field, President Mbeki ushered in African renaissance which was aimed, basically, at reviving Africa and it was championed by South Africa, joined by Nigeria, joined by Algeria, joined by Senegal and it became a document, a strategy for Africa's development, now that was marvellous. There was a time Chair, when, in any forum in the world, when a South African delegation comes – South African delegation would be a flavour of the day. The foreign policy of South Africa was understood, championed by President Mbeki supported

20 by Minister Zuma – Dlamini Zuma, your Aziz Bahar's at foreign affairs, your Willy Nhlapo...[? 35.32], it was a team that was driving this process and we were beginning to see South African being looked at now, like this beacon of hope that this document talks about and some of us were very excited and say, now we are beginning to reach Denmark.

You know the saying, when shall we reach Denmark, refers to, when will we reach that excellence level as a county. Can you say the same thing now that's another subject, perhaps for another discussion?

CHAIRPERSON: Was it at a time when – or did that environment make you feel that South Africa was taking its rightful place in the family of nations?

AMBASSADOR MAQETUKA: It was in a big way...[intervenes].

10 **CHAIRPERSON:** And I'm sure it felt good to be a South African.

AMBASSADOR MAQETUKA: It was good to be a South African.

CHAIRPERSON: Yes.

AMBASSADOR MAQETUKA: It was good to be a South African.

CHAIRPERSON: H'm okay.

ADV PRETORIUS SC: I detect a view, correct me if I'm wrong Ambassador, but it might be time for a new White
20 Paper embodying democratic principles, such as those set out in the original White Paper?

AMBASSADOR MAQETUKA: I might simply say it needs to be amended but the philosophical base, the thrust of it might not need to be. I'm not saying there should be a new White Paper, you don't have to reinvent the wheel but

it will need to be tweaked, definitely, sure.

CHAIRPERSON: Well are you – and this may be something that you are still going to address and Mr Pretorius might be dealing with it in due course. I sensed from what you were saying when you were saying you have not seen any other White Paper since this one and of course we are 26 years into democracy, so it's more than 25 years old. I sense that you may be suggesting that, if there was to be any departure from, maybe, some of its
10 principles, there ought – such changes, such departure should have been preceded by another White Paper showing how, the thinking, how it had been thought through and why it may have been necessary or deemed necessary to depart from some of the features of this White Paper.

AMBASSADOR MAQETUKA: That's exactly what I'm saying and that is why – that was amongst our concerns in 2009 that we have not defined a new philosophy for this new animal called the State Security Agency. Is it a change, you needed to go through that process, look at the
20 White Paper and we will also deal with another part of it when you look through that, when we deal with, again, your proclamation?

ADV PRETORIUS SC: Yes, I'm going to come to that now Ambassador but I do understand you to say that the principles – well let me not put words in your mouth, what

do you say about the basic underlying principles contained in the White Paper?

AMBASSADOR MAQUETUKA: They are still relevant, I would contend unless I can be proven otherwise.

ADV PRETORIUS SC: If we can go then, to page 7 of your statement please Ambassador. You deal with an issue that was covered...[intervenes].

CHAIRPERSON: I'm sorry what page?

ADV PRETORIUS SC: Page 7 Chair, you deal with an
10 issue there that was covered by Messrs. Njenje & Shaik and you deal with it too and that is the question of whether it was legal or appropriate to restructure the SSA by proclamation as was done. Now we know the proclamation was followed up some years later by an act of Parliament but what was your concern in summary with the fact that, firstly, there was an amalgamation and secondly that it was done through proclamation?

AMBASSADOR MAQUETUKA: Shall I read verbatim what I'm saying in my statement in answering that question?

20 **CHAIRPERSON:** You can read if it's convenient to do so.

AMBASSADOR MAQUETUKA: The same page, paragraph 28, am I correct?

ADV PRETORIUS SC: Yes, yes.

AMBASSADOR MAQUETUKA: It says,

“Ambassador Shaik and I shared a concern about

the amalgamation of the SSA through proclamation rather than National legislation as required by Section 209 (1) of the Constitution of the Republic of South Africa, Act 108 of 1996, that is the Constitution. Indeed, I raise my concern about the proclamation with my colleague, Ambassador Shaik and Mr Njenje, on the day of the announcement of our appointment, during October 2009”.

ADV PRETORIUS SC: Maybe you can go on to paragraph
10 30, you established an Executive Committee, you say, in paragraph 29 and paragraph 30 then.

AMBASSADOR MAQUETUKA: Should I jump to paragraph 30 now?

ADV PRETORIUS SC: Yes please.

AMBASSADOR MAQUETUKA: It goes further to say,

“During the beginning of 2010, remember, Chair, just to remind you, we are appointed in 2010 – I mean 2009, October, the Executive Committee, in consultation with – Executive Committee now will mean the three of us
20 – yes that’s the Executive – in consultation with legal services discussed the proclamation and the, then, draft State Security Bill”.

CHAIRPERSON: Just before you proceed, Ambassador, I’m sure I can find it somewhere else, when was the proclamation gazetted, I don’t need the date, I just want

the month I'm sure it was 2009 or?

AMBASSADOR MAQETUKA: Advocate Pretorius can you because there's a copy of the proclamation...[intervenes].

ADV PRETORIUS SC: The proclamation itself is annexed it was in 2009 I understand.

CHAIRPERSON: If you tell me it's early in 2009...[intervenes].

AMBASSADOR MAQETUKA: Okay it's marked as MM13 according...[intervenes].

10 **ADV PRETORIUS SC:** Yes, the date is 11 September 2009.

CHAIRPERSON: Oh okay, so you appointed the month after it was promulgated?

AMBASSADOR MAQETUKA: Yes.

CHAIRPERSON: Okay I interrupted you while you wanted to comment or to continue.

20 **AMBASSADOR MAQETUKA:** "During 2010 the Executive Committee, in consultation with legal services, discussed the proclamation and the then draft State Security Bill. Our aim was to bring to the attention of the Minister, that is Minister Siyabonga Cwele, issues that could be corrected in, both, the proclamation and the Bill, which we felt fell foul of the Constitution as well as other matters which had been directed by the Minister which were in conflict

with the proclamation and the Bill. These concerns were embodied in a document submitted to the Minister on the 28th of April 2010, entitled, State Security Agency Legislative blah, blah, blah”,

I’m going to pause there because they are going to inform you or us the correct citation of that Bill, am I right?

ADV PRETORIUS SC: Yes, when this was drafted there was uncertainty in everybody’s mind, the legal team, and in your mind, I understand, Ambassador, as to which
10 particular document you were referring to. We have two documents under the tab MM6, the first is at page 131 which is in very small print, MM6, that is Ambassador Shaik’s document as I understand it and then the second one, which is now being declassified is your document, that’s at page 134.1, am I correct, 134.1?

AMBASSADOR MAQETUKA: You confused me now and when I thought I was getting educated by reference to MM and what have you.

ADV PRETORIUS SC: Alright do you have MM6?

20 **AMBASSADOR MAQETUKA:** Yes, I have MM6 sir.

ADV PRETORIUS SC: Now that document – let’s ignore what the text of the affidavit says, we’ll correct that, if you go to MM6, that document there is not your document, that’s the document penned, I understand, and authored by Ambassador Shaik, am I correct?

AMBASSADOR MAQETUKA: That's correct.

ADV PRETORIUS SC: Now if you go on three pages, you'll see the – another document.

AMBASSADOR MAQETUKA: Yebo.

ADV PRETORIUS SC: That's your document, as I understand it, am I correct?

AMBASSADOR MAQETUKA: This is my document I can confirm more so because it's on my signature and that there is no doubt that it is indeed my signature, I can verify
10 it.

ADV PRETORIUS SC: Yes, yes, and that's the document dated April 2010 at page 134.1 in which you set out your concerns in relation to the proclamation and the, then draft State Security Bill, am I correct?

AMBASSADOR MAQETUKA: That's correct and also can I just say – be allowed to say really, really, the declassification of this document has helped me also to be precise as to what are we referring to because number one, I was not clear what this is, I really thought that this
20 one that was drafted by Ambassador Shaik – and I would want to believe now that the document that Ambassador Shaik drafted might have been his input when we were discussing these issues. I suspect but be it as it may, there's no contradiction whatsoever, this is the formal one.

ADV PRETORIUS SC: Right, I don't want to gloss over

this because it is part of your evidence and what you want to say to the Chair, but is it possible for you to, briefly, summarise what your concerns were about. Were they organisational and administrative, did they go further than that? Perhaps you can refer to paragraph 31 of your statement.

AMBASSADOR MAQETUKA: Yes...[intervenes].

CHAIRPERSON: Well one, Mr Pretorius he could begin by – because obviously he has – well I'm saying obviously, 10 maybe I shouldn't say, he has read the contents of this document before now, if he can confirm that they are correct because it's been quite some time and then he can deal with the main features of the document.

AMBASSADOR MAQETUKA: Yes, thank you Chair for helping me on that one because I haven't seen this document since 2010.

CHAIRPERSON: Oh, is that so okay.

AMBASSADOR MAQETUKA: You see that's number one but be it as it may I will try and summarise what were the 20 issues really.

ADV PRETORIUS SC: Thank you.

AMBASSADOR MAQETUKA: And the issues, one, as explained to us by the legal team, the issues amongst others were legal. Our legal team agreed with us that proclamation was not the route that was supposed to have

been taken and they cited issues that we dealt with this morning.

ADV PRETORIUS SC: And we've referred to the White Paper which there should be no changes.

AMBASSADOR MAQUETUKA: No changes and the changes Intelligence, says the White Paper in one paragraph, are not a cut and paste issue you see, that was one. I recall, also the other issue was the question of the mandate that is given to us in the restructuring. Now these are the other
10 issues that I'm referring to in that paragraph and I can remember now, it refers to the role of NICOC, the Minister gives an instruction through that process of the Bill to include NICOC and to make NICOC as part of my performance and I said, no it can't be. You see NICOC is not a division of NEA or SAS. NICOC is not a division of the SSA as it is now. NICOC is created by its own Act of Parliament and its modus operandi is different completely so I cannot, that was my position. That was one of the problems I don't know – I should be dealing with it in this
20 report. The other issue, I remember quite well, I see it here, that was quite a contentious issue...[intervenes].

CHAIRPERSON: I'm sorry Ambassador, you may have left something that – you probably mention in the letter, I haven't read this particular letter as well but you mentioned in your affidavit that, part of the problem with

using the proclamation route was that, as you understand it, the Constitution required National Legislation, so that was another point you made earlier so I don't know whether you may have included that point here but that was part of your issues.

AMBASSADOR MAQUETUKA: You are correct, you are correct Chair and I still maintain even today, unless I can be proven otherwise.

CHAIRPERSON: Yes.

10 **AMBASSADOR MAQUETUKA:** The other problem in relation to that, I can see it flagged here, you see there is a structure that we have in the Intelligence, and again here, this structure is a very critical structure for the functioning of intelligence. It's a structure called the National Communication Centre, a very sensitive structure but I deal with it because nonetheless the document is declassified now. Paragraph 2 of that M6 it is my understand that – okay first let me start from paragraph 1, Advocate are we together?

20 **ADV PRETORIUS SC:** Yes.

AMBASSADOR MAQUETUKA: It says, I would respect – now this is the letter I am addressing to the Minister,

“I would respectfully like to make the Minister aware of certain abnormalities that arise from the present legislative framework governing the State Security

Agency and its components at the present time. In this regard, specific attention will be paid to the transformation of COMSEC, that is now the Communication Security which is a division of the National Communication Centre, into a Government component and the envisaged National Communication Branch. It is the understanding that the NC, that is National Communication, will comprise of COMSEC, the National Communication Centre and the office of the Interception Centre. The fact that COMSEC is currently a Government component, I will explain what this means, and the NC is not accommodated within that legal framework creates various practical problems especially in regard to reporting lines. The current situation also has a very negative effect in the development of the Ministerial Payment Directive, the MPD in terms of the delegation of powers of COMSEC and not the NC has to be dealt with as a component of the same level as NEA and SARS".

ADV PRETORIUS SC: If I could ask you to pause there. The problems raised or the issues raised in your communication to the Minister, Dr Cwele at that time, appeared to be largely, organisational and in a sense deal with the structures that the new dispensation sought to

bring about and whether those structures were appropriate for the efficient functioning of the Intelligence Community, am I correct?

AMBASSADOR MAQETUKA: You're absolutely correct and thank you for assisting me in that.

ADV PRETORIUS SC: Right, as a matter of principle, however, you deal with it from a slightly different perspective in paragraph 31, of course I don't want to stop you, if there's anything in addition to that, that you wish to
10 add you...[intervenes].

AMBASSADOR MAQETUKA: In addition to what is in paragraph 31?

ADV PRETORIUS SC: Yes, of your statement on page 8.

AMBASSADOR MAQETUKA: Well there is nothing else to add to that paragraph and I still stick to it.

ADV PRETORIUS SC: Right.

AMBASSADOR MAQETUKA: The correctness of it.

ADV PRETORIUS SC: That in your mind, the new dispensation in 1994 envisaged a restructuring which
20 involved two separate organisations...[intervenes].

AMBASSADOR MAQETUKA: Yes.

ADV PRETORIUS SC: As opposed to a single centralised Intelligence Organisation?

AMBASSADOR MAQETUKA: Yes, absolutely.

ADV PRETORIUS SC: I don't want to stop your evidence

in that regard but you have said, in paragraph 33 that you've read Ambassador Shaik's evidence in regard to the proposals contained in the proclamation and the Bill and that you agree with his views.

AMBASSADOR MAQUETUKA: Yebo.

CHAIRPERSON: You're back in his affidavit now, Mr Pretorius, Mr Pretorius are you referring to paragraph...[intervenes].

ADV PRETORIUS SC: Paragraph 33 on page
10 9...[intervenes].

CHAIRPERSON: Of his affidavit?

ADV PRETORIUS SC: Yes, of his affidavit.

CHAIRPERSON: Okay, thank you.

ADV PRETORIUS SC: Right and you also raised – and it's a matter of record, certain issues in a letter of resignation which you addressed to the former President and that's MM2A and that's on page 113. I just want to place that on record, as reflecting your views, is that a document authored by yourself dated November 2011.

20 **AMBASSADOR MAQUETUKA:** MM2A, just a second.

ADV PRETORIUS SC: Page 113.

CHAIRPERSON: 1-1-3?

ADV PRETORIUS SC: Yes.

CHAIRPERSON: Okay.

AMBASSADOR MAQUETUKA: Absolutely, it is.

ADV PRETORIUS SC: Yes, you recognise that document.

AMBASSADOR MAQUETUKA: I recognise it.

ADV PRETORIUS SC: It's a document authored by you in which various views are expressed and they are a matter of record and unless there's anything you'd wish to point out, I'd like us to move on if we can.

AMBASSADOR MAQUETUKA: No there's nothing for me to add.

ADV PRETORIUS SC: Fine.

10 **AMBASSADOR MAQUETUKA:** Except to say that I've also worked backwards to establish. Because if you notice on this letter it's not dated, I've established that it was actually written on the 14th of November 2011.

CHAIRPERSON: Hm.

ADV PRETORIUS SC: Thank you.

CHAIRPERSON: Okay. Okay. I think – I think there is something you say in paragraph 34 that you say is Mr Pretorius in paragraph 34 that might be important. You – you had raised a number of difficulties with regard to – to
20 the Minister as I understand it with regard to certain issues in the Department some of which I think are covered in the letter that we have looked at a minute ago. What was your understanding of what the Minister's attitude was generally speaking to – to the concerns that you had raised?

AMBASSADOR MAQUETUKA: I – I can safely say by and

large. I can safely say by and large he became dismissive of a number of issues. You know one person reminds me that amongst his dismissiveness on the proclamation matter for example was but this proclamation has already been gazetted. Why do you want me to change it? That was amongst other things. Then the other one was that ...

CHAIRPERSON: I would have thought that if something was pointed out as being fundamentally wrong including using a proclamation instead of national legislation one
10 would be interested in assessing the soundness of that proposition so that it could be corrected if then there was a need for legislation rather than proclamation could be corrected. He did not seem to – to think along those lines?

AMBASSADOR MAQUETUKA: No. We did not seem to think along those lines. But the question can ever be – can even be further expanded and ask the question – what was the role of the JFCI on this? Because this matter would have been discussed with them. That is number 1. What was their response to it? And – and other structures. We
20 seemed to have been at the time the only people who were concerned about this and mind you by and large on the proclamation theme we were advised by the legal division which had I do not know how many advocates quite experienced people who were running that legal division experience as practising lawyers. They are the ones

actually because I said to them, look the three of us are not legal people, are not experts on these things. Let us be guided by the legal department and this letter – that MM what, what was drafted with the assistance of the legal. Because you can see some of those issues are very legalistic or – for a rough act person like me. You know. But – no, no, no it was – it was dismissed.

CHAIRPERSON: Was one of your – was one of your concerns about this idea of the use of a proclamation as
10 opposed to national legislation in establishing this agency that national legislation would get to be debated openly.

AMBASSADOR MAQUETUKA: In parliament.

CHAIRPERSON: In parliament and even society would be able to make an input whereas maybe and I do not put higher than that maybe if it is proclamation there is no such process? Was that part of your concern?

AMBASSADOR MAQUETUKA: The unfortunately I do not know what the process is for proclamation but my understanding of proclamation that it is like a presidential
20 decree.

CHAIRPERSON: Hm.

AMBASSADOR MAQUETUKA: You know it does not go through parliamentary committees and what have you. Maybe they are informed they do not take part in – it would be interesting to know from experts in that field.

CHAIRPERSON: Hm.

AMBASSADOR MAQETUKA: What is the process?

CHAIRPERSON: Hm.

AMBASSADOR MAQETUKA: That is – that was precisely our problem.

CHAIRPERSON: Hm.

AMBASSADOR MAQETUKA: But what is this rush?

CHAIRPERSON: Hm.

AMBASSADOR MAQETUKA: Now in simple terms and
10 somewhere in my – in my statement Advocate Pretorius I
say maybe one of the problems was the honeymoon of – of
2007. The new regime wanted to change everything. I
mean it is like for example later which is not really much
about this up to today I do not understand why the
Department of Foreign Affairs was changed into the
Department of International Relations and – I mean such
[indistinct 00:06:09]. I remember we used to have
headaches with that name as Ambassadors. Because they
used to call this Foreign Affairs.

20 **CHAIRPERSON:** Hm.

AMBASSADOR MAQETUKA: Now I am not sure whether it
was that – that wave but they would better explain it to the
people who engineered this whole thing.

ADV PRETORIUS SC: Perhaps the history of the
Intelligence Service after your departure might give a clue

to the purpose of the centralisation in relation to issues of control and the like that that evidence is not before the Chair at the moment. I would like to just make one point and then ask a question. You will remember when you went through the white paper Ambassador the point made by the Chair now is dealt with very clearly there that there should be no changes to the doctrine, structures and procedures of the National Security framework unless approved of by the people and their representative bodies. It would seem to
 10 me that that statement is consistent with the notion of a democratised Intelligence Service.

AMBASSADOR MAQUETUKA: And who are those representatives of the people? It is parliament.

ADV PRETORIUS SC: Yes.

AMBASSADOR MAQUETUKA: Exactly presented by ...

ADV PRETORIUS SC: The second question one would expect in this process parliament which has its own responsibilities to have said very clearly this is unacceptable, this is our territory. Did you hear anything of
 20 that?

AMBASSADOR MAQUETUKA: No. No.

CHAIRPERSON: Well maybe to – to link with Mr Pretorius' question. Did you at every time raise the same concern with the parliamentary committee to say, well we operate – we have been established by way of a proclamation we have

concerns about this we continue to operate but we have raised our concerns and we are mentioning them to you for what it is worth or something like that?

AMBASSADOR MAQETUKA: Chair I am going to be very honest on this one.

CHAIRPERSON: Hm.

AMBASSADOR MAQETUKA: I do not remember really me raising it.

CHAIRPERSON: Yes. Yes.

10 **AMBASSADOR MAQETUKA:** Or at least raising.

CHAIRPERSON: Yes.

AMBASSADOR MAQETUKA: Because the other reason is that and I think I mentioned this in my statement Advocate Pretorius. We then took a decision that let us get along with this integration.

CHAIRPERSON: Yes.

AMBASSADOR MAQETUKA: Because we are not being listened to.

CHAIRPERSON: Yes. Yes.

20 **AMBASSADOR MAQETUKA:** You see.

CHAIRPERSON: Yes. But of course there is no way the relevant parliamentary committee would not have been aware that the State Security Agency had been established by way of a proclamation.

AMBASSADOR MAQETUKA: On the contrary Chair I do not

think that they were not aware. How could it have been?

CHAIRPERSON: Yes that is what – that is what I am saying that...

AMBASSADOR MAQETUKA: Yes.

CHAIRPERSON: I cannot – I do not think that they would not have been aware.

AMBASSADOR MAQETUKA: Absolutely I agree to that.

CHAIRPERSON: They must have been aware.

AMBASSADOR MAQETUKA: Yes.

10 **CHAIRPERSON:** And whether they found that unacceptable or not is another matter but they must have been aware and – and of course maybe we will hear from – from somebody form them who will enlighten us as to what the position was and what they did about it. If they also took the view that it was not the – the constitutional way of establishing the agency.

ADV PRETORIUS SC: Yes. If I may just take you to the next section Ambassador of your statement on pages 9 and 10 where you deal with the constitutional role of the
20 President and the Minister in providing director over the Intelligence Services.

AMBASSADOR MAQETUKA: Hm.

ADV PRETORIUS SC: The relevant sections as you have pointed out are sections 198 and 209 they are annexed in this document Chair and they have been dealt with

extensively by Ambassador Shaik. But just one point that you make in paragraphs 38 and 39. You make two points.

1. You raise the issue of whether there should be an executive member of cabinet responsible for Intelligence Services as opposed to the President. That delegation issue and the secondly:

2. You relate that to the need for there to be a separation of intelligence from policy making and a carefully structured relationship between the two.

10 And we will come to that interaction in relation to the facts later. And in paragraphs 38 and 39 you express a view regarding the need for a Minister to deal with Intelligence Services. What was your view?

AMBASSADOR MAQETUKA: Yes paragraph 38 Chairperson – Chairman. I think I would also seek indulgence that I read it verbatim.

CHAIRPERSON: Yes that is fine.

AMBASSADOR MAQETUKA:

“Before the appointment of a designated Minister of
20 Intelligence the President had retained his role to guide the Intelligence Services.”

And I think that is a constitutional prerogative of the President.

ADV PRETORIUS SC: Yes.

AMBASSADOR MAQETUKA: Only – only in this case only

delegating the administration of Intelligence Services to an executant Minister. Traditional the Minister – okay – so sorry I was reading a little bit wrong.

“Before the appointment of a delegated Minister of Intelligence the President had retained his role to guide the Intelligence Services. Only delegating the administration of the Intelligence Services to an executant Minister traditionally the Minister of Justice.”

What I am saying is that pre 1994 and the first part of 1994
10 I think up to 1996 the second constitution – the formal constitution was adopted in 1996 I think.

ADV PRETORIUS SC: Yes.

AMBASSADOR MAQETUKA: There was no Minister for Intelligence Services. There was only a delegated Deputy Minister. No, no sorry. The Minister responsible for administration was the Minister of Justice Dullah Omar. And there was a Deputy Minister for Intelligence Service in the name of Joe Nhlahla who was reporting the factor to Dullah Omar that was the – this is what that paragraph is
20 saying.

CHAIRPERSON: Well I – well you clarify now. I was about to ask you because I thought – I was under the impression that Minister – I was under the impression that Mr Joe Nhlanhla was Minister of Intelligence immediate after 1994.

AMBASSADOR MAQETUKA: No.

CHAIRPERSON: That is not correct?

AMBASSADOR MAQETUKA: No it is not correct.

CHAIRPERSON: He was Deputy Minister of Justice.

AMBASSADOR MAQETUKA: No.

CHAIRPERSON: He was Deputy Chief Minister of Justice but given specific responsibilities that relate to Intelligence but not as Minister.

AMBASSADOR MAQETUKA: No. Not that. He was Deputy Minister for Intelligence.

10 **CHAIRPERSON:** Yes.

AMBASSADOR MAQETUKA: Right from 1994.

CHAIRPERSON: Yes.

AMBASSADOR MAQETUKA: Right. Now as Deputy Minister

CHAIRPERSON: Hm.

AMBASSADOR MAQETUKA: He was reporting administratively to Minister of Justice who was Dullah Omar.

CHAIRPERSON: Hm.

AMBASSADOR MAQETUKA: That is the...

20 **CHAIRPERSON:** Oh so it is a little interesting.

AMBASSADOR MAQETUKA: Joe only became Minister in 1999.

CHAIRPERSON: Yes. But – but when he became Minister did he become Minister of Intelligence or not?

AMBASSADOR MAQETUKA: Yes Minister of Intelligence.

CHAIRPERSON: Oh, I think that is where – so – but before 1999 – so he was Deputy Minister of Intelligence even though there was no Minister of Intelligence?

AMBASSADOR MAQETUKA: Yebo.

CHAIRPERSON: Okay alright.

AMBASSADOR MAQETUKA: Yebo

CHAIRPERSON: Thank you.

AMBASSADOR MAQETUKA: Now I go further to say I am of the view that the constitution did not contemplate that the
10 President would delegate his duties to guide the Intelligence Services to another Minister.

ADV PRETORIUS SC: Now may I just ask you to pause there Ambassador because you make a distinction between the administrative function and the guidance or policy function is that the point you making here – you are making here?

AMBASSADOR MAQETUKA: I will further to say I agree with Ambassador Shaik that there is and there was no need for there to be a Minister for – of Intelligence. Furthermore,
20 it is my view that the concept of having a Minister of Intelligence is a direct conflict with the basic principles of intelligence set out in the white paper.

ADV PRETORIUS SC: Why do you say that?

AMBASSADOR MAQETUKA: I think it is because we had just read the white paper which talks about the separation

between Intelligence and Policy maker. Now when you have this animal called Minister of Intelligence for me it is a contradiction to – to the – what the white paper envisaged that there would be that separation. That was the program. I do not know whether it explains that.

CHAIRPERSON: But go once – I think you need to deal with the matter a little more than that namely what if somebody says what the white paper said in 1994 on that point may have reflected the thinking then but ex number of
10 years later maybe 1999 the thinking changed that is why there was then a Minister of Intelligence and in principle leaving out the white paper what is your objection to the concept of a Minister of Intelligence?

AMBASSADOR MAQETUKA: In my recollection Chair I do not remember an engagement or an explanation from any of the policy makers to the effect that we have considered what is in the white paper. But we are of the opinion now that there is a need for us to shift from that position. Because what we articulating I am – my – my position would
20 have been perhaps different if it had been articulated in the manner in which you are articulating it now. I would have said, oh okay. The policy makers have decided otherwise.

ADV PRETORIUS SC: Well...

CHAIRPERSON: Because of course the – the – a lot of things may have been seen in a certain way in 1994 or in

the years leading to 1994 and certain legislative frameworks were put in place but as our country progressed then they have – there may be certain areas where the experiences suggested that what was thought would work had not worked and new ways had to be considered and maybe that is why in 1999 as you say it might have been thought there should be a Minister of Intelligence just like there is a Minister of every other thing.

AMBASSADOR MAQETUKA: I agree with you Chair and
10 perhaps I do not know whether am I the right person to say perhaps when the governing party comes and makes its presentation perhaps, they should reflect on the manner in which you are articulating. This is because for me – and I know to both myself and Ambassador Shaik it is still an issue to us.

CHAIRPERSON: Yes. So – so it may be that – it may be that your objections are more process related rather than principled, is that right?

AMBASSADOR MAQETUKA: Possible.

20 **CHAIRPERSON:** Possibly okay.

AMBASSADOR MAQETUKA: It is possible I would not disagree with you Chair on that one.

CHAIRPERSON: Yes. Okay. Okay. Thank you.

ADV PRETORIUS SC: Well if I may just take you to your own statement Ambassador in paragraph 39.

AMBASSADOR MAQETUKA: Yes.

ADV PRETORIUS SC: You raise the fundamental question how do you separate the Intelligence Service itself from the executive when the Minister of Intelligence is a member of the Executive? And you say that in the context of the need for separation of intelligence from policy making. Now as I understand what you have said already Ambassador it is the duty of Intelligence to raise red flags to speak to the executive at an arm's length as it were to warn them to tell
10 them what is happening or might happen in the country and abroad which might affect their policy decisions. Do I understand you correctly? And I think the point you raise here in paragraph 39 and please correct me if I am wrong if the very person to whom or very member of the executive to whom you must speak is also the person who is in control in a sense of the Intelligence Service does that not create a problem?

AMBASSADOR MAQETUKA: It – I agree that it does. It does.

20 **ADV PRETORIUS SC:** Perhaps you could expand on that to the Chair?

AMBASSADOR MAQETUKA: It creates a serious problem. Let us take an example. A Minister for Intelligence would be coming from the governing party.

1. Any Minister takes his line of duty command and

control from his or her political party not so? Or it is supposed to be like that. Right

Now if the ruling party says, no, no, no, you cannot do this in Intelligence you have got to follow party line. What is the – what is the poor soul going to do? The poor soul will definitely compromise her or his role as Intelligence and will prefer to follow the party line. That one I am – I will have to be convinced otherwise. Yes I was just – as I am talking I was trying to think of an example of this [indistinct 00:3:59].

10 **ADV PRETORIUS SC:** We have an example to come in your evidence?

AMBASSADOR MAQETUKA: Sorry?

ADV PRETORIUS SC: We have an example to come.

AMBASSADOR MAQETUKA: Let me see that. Ja thanks for assisting me on that. We have got an example to come and [indistinct 00:24:09].

CHAIRPERSON: Okay. Well let me ask this question.

AMBASSADOR MAQETUKA: Yes.

20 **CHAIRPERSON:** The problem you raise which you have just articulated with regard to an arrangement in terms of which there is a Minister of Intelligence where his party or her party may say well this is the line you are supposed to take because we as a party this is what we think is right. Why does the same problem not arise if you do not have a Minister of Intelligence but you must still go and speak to

the President of the country who is a President of the ruling party?

AMBASSADOR MAQETUKA: It is a little bit different now. The question that we should ask Chair is who will be that person? That person will be a non-partisan person in the name of a DG who is just not supposed to take instructions from any politician. That is the principle.

CHAIRPERSON: Yes.

AMBASSADOR MAQETUKA: That is the difference.

- 10 **CHAIRPERSON:** Okay well you must help me understand. I – I thought at least in part what you were saying is we cannot or we should not be reporting to a Minister because he is subject to his party control but we should report to the President or Head of State. So that is the context in which I ask the question. But from your – what you have just said is my understanding misplaced? It has got nothing to do with reporting or does it?

AMBASSADOR MAQETUKA: It has to do with it – it has to do with reporting also Chair.

- 20 **CHAIRPERSON:** Yes because you as the Director General of Intelligence if there is a Minister and the arrangement is that you report to the Minister then the concern which you have articulated about the Minister in a way being subject to the control of the ruling party is there but I was then saying even if the Minister of Intelligence is not there you –

you would still be reporting to somebody and I guess that that would be the President. And why is that concern not there if you are reporting to the President because he too would be subject to the control of the party or would he not be?

AMBASSADOR MAQETUKA: Well it is expected – it is expected that as I was saying earlier Chair when it comes to Intelligence matters it is not what the President wants to hear. It is what the Intelligence is telling him or her which
10 would have – or it will – it should have nothing to do with the politics or the political arrangement. Let me make an example partly. Now I have got an example which of course it is not in my report.

CHAIRPERSON: It is not becoming one it is the present one.

AMBASSADOR MAQETUKA: No, no that is a different one that is in my report.

CHAIRPERSON: Yes.

AMBASSADOR MAQETUKA: But perhaps it will illustrate
20 this much. Because it was in the public domain.

CHAIRPERSON: Yes.

AMBASSADOR MAQETUKA: It went to court and what have you.

CHAIRPERSON: Yes.

AMBASSADOR MAQETUKA: The conflict between Director

General of the National Intelligence Agency Billy Masetlha versus Ronnie Kasrils Minister of Intelligence. Billy Masetlha undertook an operation to survey certain member I think at that time the member was and ANC NEC member I think. Ronnie Kasrils instructed – oh this politician picked up the surveillance something like that and went to report to the Minister for Intelligence Services that your people are surveilling me. Billie Masetlha says, yes we are surveilling him because we had information. Minister said stop this
10 investigation. Masetlha says I am not going to stop it. That was I think when Billie Masetlha was – it was in the courts that thing for years – two years I think I am sure you can get it from the records.

CHAIRPERSON: Ja. Ja there was litigation.

AMBASSADOR MAQUETUKA: It was litigation.

CHAIRPERSON: But I do not know if it emanated to anything between him and Mr Ronnie Kasrils.

AMBASSADOR MAQUETUKA: Yes.

CHAIRPERSON: He was, of course, at some stage
20 dismissed by the president.

AMBASSADOR MAQUETUKA: Yes.

CHAIRPERSON: And the issue of the dismissal, I think, went up to the Constitutional Court.

AMBASSADOR MAQUETUKA: Yes.

CHAIRPERSON: There is a reported judgment on the issue.

What I do not know whether it emanated from what you are talking about or whether it was said ...[intervenes]

AMBASSADOR MAQUETUKA: Partly did.

CHAIRPERSON: H'm.

AMBASSADOR MAQUETUKA: Because there was that conflict. Because remember, the argument Chair, [coughing] said was that: "I have got a mandate. I run the operations. And you cannot interfere in those of..."

Now, that was a conflict. I say it as an example. And I
10 again, without fear of favour, I supported Vusi Mavimbela's position.

Of course, I was out of the Intelligence but I supported Vusi... and I said I would have done the same thing.

CHAIRPERSON: Thank you. I thought I must engage you on the point because I do not know how evidence will unfold but it might be something quite important to look at the issue of the Minister of Intelligence and so on.

AMBASSADOR MAQUETUKA: Yes.

ADV PRETORIUS SC: Yes, Chair. Well, your views
20 ambassador, are on paragraphs 38 and 39. And as I read your view in paragraph 39, it is quite expressly that:

"If the Intelligence Service's duty is to address the executive, it should not be controlled by a member of that executive but rather by the president."

AMBASSADOR MAQUETUKA: H'm.

ADV PRETORIUS SC: And we know it is a crude analysis Chair and we may address you later on that in terms of the constitution the president performs two capacities or exists in two capacities constitutionally.

The one is as Head of State with certain duties and the other is at the Head of the Executive. And perhaps that was the intention underlining the extension.

CHAIRPERSON: Yes. Ja.

ADV PRETORIUS SC: But let us not have a debate about
10 that now. Can I take you through to paragraph 41 where you say that in relation to the issues that you have spoken to the Chair about today and difficulties in communication with your minister, the relationship between yourself and the minister, ultimately, began to deteriorate and finally broke down?

AMBASSADOR MAQUETUKA: [No audible reply]

ADV PRETORIUS SC: In paragraph 42 to paragraph 46, you express an opinion. Now given your experience at the time and given your total emersion in the events of the day and your ability now to look back, but the Chair will decide what
20 weight to place on your opinion.

Of course, he is not bound by this. He would be in relation to factual matters which he accepts that are correct coming from you, but if I may just place on record Chair with your leave, the opinion expressed in paragraphs 44 and 45?

CHAIRPERSON: [No audible reply]

ADV PRETORIUS SC: With the benefit of hindsight, how do you now understand that restructuring process that you have just testified to?

AMBASSADOR MAQUETUKA: Thanks, advocate. Chair, I still stand with my assertion in those paragraphs. I still stand by that. And...

CHAIRPERSON: Will you just articulate them briefly, so somebody who does not have the benefit of your affidavit, like me and Mr Pretorius, who is listening can understand
10 what your opinion was or your view was.

ADV PRETORIUS SC: What do you say, in other words, in paragraphs 44 and 45. What is your opinion?

AMBASSADOR MAQUETUKA: I still stick to this.

CHAIRPERSON: What if you want to read it?

AMBASSADOR MAQUETUKA: I can read it. I can read it.

CHAIRPERSON: Yes.

AMBASSADOR MAQUETUKA: It says... paragraph 44 says:

20 “It was my view that the reason for the restructuring of Intelligence Service was that post Polokwane ANC Elections, the fraction in support of the former president, the Zuma Fraction, wanted to accept their control and make their mark by affecting change to the existing Intelligence Service.
I did not believe that they applied their minds to the rational for doing so”.

That is for the creation of the SSA, as we had discussed.

CHAIRPERSON: H'm.

AMBASSADOR MAQUETUKA:

“However, in retrospect and having regard to the events that followed after our departure from the Intelligence Service and in particular, the parallel covert Intelligence Operations conducted by Arthur Fraser, it may be that more sinister objectives were
10 at play in the restructuring.”

Now, what I... in simple terms...[intervenes]

ADV PRETORIUS SC: Sorry, Mr Ambassador. Would you just add paragraph 46, please?

AMBASSADOR MAQUETUKA: 46.

“It may just be that, why has the former president believed that we would all serve his broader agenda to perhaps capture the Intelligence Service when it was apparent that we were not as compliant as expected? We were replaced so that we could
20 pursue his agenda unhindered.”

Chair, can I explain my ...[intervenes]

CHAIRPERSON: You want to elaborate?

AMBASSADOR MAQUETUKA: Yes.

CHAIRPERSON: Ja.

AMBASSADOR MAQUETUKA: Yes, I want to elaborate on

this. Chair, I am convinced even more now. I am not saying, it is in my statement that our leaving... and I am talking about myself, Njenje and Shaik.

Our leaving the organisation is tantamount to constructive dismissal...

CHAIRPERSON: Dismissal.

AMBASSADOR MAQUETUKA: Dismissal. If you follow the events. And what I am saying here in this paragraph. There must have been a rational for that. Number one... rational
10 number one, I am convinced...[intervenes]

CHAIRPERSON: I am sorry. Please do not forget your point. I just want to say because we are both, Mr Pretorius and I have mentioned to you constructive dismissal because we had the communication that is what you wanted to say but other people might not know what that is.

AMBASSADOR MAQUETUKA: Yes.

CHAIRPERSON: Constructive dismissal in the context of Labour Law is when your employer makes it unbearable for you to continue in your job and you end up resigning and you
20 are leaving.

That is what... I am just mentioning it for the benefit of those who might not know what kind of animal constructive dismissal is.

AMBASSADOR MAQUETUKA: Well, also... it helps me also.

CHAIRPERSON: H'm.

AMBASSADOR MAQUETUKA: It helps me if that the... it comes from, not the Chair of the Commission...[intervenes]

CHAIRPERSON: [laughs]

AMBASSADOR MAQUETUKA: ...but from Deputy Chief Justice. That is how I understood it.

CHAIRPERSON: [laughs] Yes.

AMBASSADOR MAQUETUKA: And when you look at our statements and our appearance in this, it follows the same trend. There was a necessity to push these people. They
10 are a stumbling block these people. "Take them out!"

Now in paragraph 43, I also mentioned some three other individuals who also were dismissed from their senior positions in almost a similar way, a very crude way, from their offices.

At least one individual who is an ambassador now, Vusi Mavimbela, explains it is in his book. I have not read the book but he explains it in his book because he says...

No, let me just go back. At the time 2009, I am ambassador in Algeria when I was recalled. Vuzima Windela
20 was a Senior Executive in Mvelaphanda. He was already out of government. He was brought back into government and be made the Director General in the Presidency.

Ambassador Nhlapo, Welile Nhlapo, the same period he is the ambassador in the US. A very senior post. A very senior embassy. He is brought back and he is made National

Security Advisor, right?

Then Shaik. I think in his affidavit, he was already in business. Also, he is running his family businesses. Njenje was in business. Now all of us are brought into government by President Zuma, right?

Now, then I analyses this development and when I hear Windela and his challenges and his problem in the presidency and ultimately what led him to leave the presidency and join the diplomatic core.

10 Mavimbela's book... no, not in his book. In one of his interviews, on the release of his book, he says: "I asked... I had a meeting with the president and I asked the president, what is it that I have done that I am being treated in this manner?"

The president said to him [speaking vernacular]:

[Translation]:

"There are some of my people that do not want you because they say you are a plant in the president.

You represent interests of Tokyo Sexwale".

20 That is not me. That is Mavimbela who says that. Okay but all of us, Nhlapo, Nhlapo *de facto*. I think he was there about three years. Nhlapo gave up and he says, "No, I am leaving this thing because this thing is not *jelling*. I am not getting any guidance as to what I am supposed to do".

Then you had these three, right? In the Intelligence.

They are appointed. But let me also say to be fair, also to former President Zuma.

There is something in me that says, at the time when he decided to bring us in, he had a genuine...[intervenes]

CHAIRPERSON: He was genuine about it...[intervenes]

AMBASSADOR MAQUETUKA: I...[intervenes]

CHAIRPERSON: ...what he wanted?

AMBASSADOR MAQUETUKA: Because all of us have got a similar background.

10 **CHAIRPERSON:** H'm.

AMBASSADOR MAQUETUKA: All of us have got a similar background in terms of involvement in government since 1994, in terms of age, in terms of the involvement... our involvement in the ANC and we all knew him.

We have... all of us knew President Zuma from exile. Let me also cite one other individual because if you... with also bringing her into this narrative of mine, who came to the Commission. That is Phumla Williams.

I had the opportunity of meeting Phumla, I think three
20 weeks before the... before she appeared in the Commission, in the funeral of Zondeni Veronica Sobukwe in Graaff Reinet. She was representing GCIS.

And we discussed about her coming before the Commission and she resolute that: "Bhuti, I am going to the Commission because I want to tell my story. What I am

going through in that department called GCIS is unbelievable”.

I recall when she appeared in front of you Chair, what she said. “I still want the President Zuma to tell me what it is wrong that I have done?”

We all now know that Phumla was only confirmed DG at GCIS this year.

CHAIRPERSON: After acting for many years?

AMBASSADOR MAQUETUKA: I do not know. I think
10 Phumla would have acted more than six years but I am sure it can be checked.

CHAIRPERSON: H’m. H’m.

AMBASSADOR MAQUETUKA: Unbelievable. But coming back to our situation, I strongly believe that it was constructive dismissal to pave way for pliable people.

CHAIRPERSON: H’m. H’m. So having analysed the events, as you say, your view is that President Zuma would have genuinely brought you back into government but somewhere somehow you were found not to do what he may have
20 expected? Maybe we should take an adjournment, Mr Pretorius.

ADV PRETORIUS SC: Yes, Chair.

CHAIRPERSON: I think let us take an adjournment.

AMBASSADOR MAQUETUKA: I am sorry.

CHAIRPERSON: No, no. It is fine, ambassador. Sometimes

I am ...[intervenes]

ADV PRETORIUS SC: Chair, we have a way to go. I am quite happy to stay as long as necessary.

CHAIRPERSON: Yes.

ADV PRETORIUS SC: But it will take a while and I do not think it is ideal to cut...[intervenes]

CHAIRPERSON: Yes. No, no, no. I...[intervenes]

AMBASSADOR MAQUETUKA: We can continue, Chair.

CHAIRPERSON: Yes. No, I think let us give you about ten
10 minutes and we will continue. We will adjourn for ten minutes. We adjourn.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Okay, let us proceed.

ADV PRETORIUS SC: Thank you, Chair. Ambassador, you were telling the Chair just before the adjournment that, as you say in paragraph 44, at the time you were appointed you had a certain view of what was happening particularly in regard to the restructuring and then in paragraph 45 you
20 were telling the Chair that with the benefit of hindsight and in retrospect you developed a certain opinion which you have given to the Chair that more sinister motives might have been at play in relation to the constructive dismissals or the removal of officials with regard to the restructuring and the like and in paragraph 46 you have placed on

record what views were. In other words that there was an agenda that was required to be pursued in relation to intelligence services and that you were a stumbling block. You and others might have been stumbling blocks in that regard.

Of course, whether your opinion that has been placed on record here is correct or not, may be proved or disproved by what happened in the security services after your departure and you are going to tell the Chair of some
10 factual incidents that you say in paragraph 47 are testimony to this and so, Chair, the further evidence of the Ambassador and hopefully other evidence too, will test that opinion that was formed in retrospect.

CHAIRPERSON: No, that is fine, I was about to say that it is going to be quite important for the Ambassador to at some stage substantiate his opinion and say the basis for this opinion is a, b, c, d in terms of facts.

ADV PRETORIUS SC: Yes.

AMBASSADOR MAQETUKA: Thanks, Chair. Yes, in
20 paragraph 47 to substantiate on my opinion on what the intention was and the broader agenda was, I am saying our experience when raising the national security risk posed by the activities of the Guptas – I think we are still going to deal with that – and the parallel security structure established by Arthur Fraser in PAN1 helped with by me

below are testimony to this.

Now the PAN1 project precedes my being appointed into the intelligence service in the SSA. And number two, the PAN1 project I found it already on when I joined the SSA. Actually, when both myself and Shaik joined the SAA the PAN project was already on. But the findings of the PAN project were towards the end, they were to be concluded, and I participated in executive meetings where the investigators were reporting.

10 So to a very large extent I have got a very clear picture of what happened before. And later in my testimony I am going to link this paragraph 47 to further give examples to show my position in paragraph 7.

CHAIRPERSON: Okay.

AMBASSADOR MAQUETUKA: But I am also aware, Chair, that there would be other people who had dealt with this thing more detailed than me that you are still going to hear their evidence.

CHAIRPERSON: Okay, that is fine but I do not want you,
20 if at all possible – but Mr Pretorius will be in a better position because he may already be in possession of statements or affidavits of other witnesses – I would not like you to not share with me evidence that is relevant to what we are talking about if you have personal knowledge of it on the basis that somebody else will come because

what if they do not come. So I just put that qualification.

AMBASSADOR MAQETUKA: Yes.

CHAIRPERSON: But I must say Mr Pretorius may well, as the head of the legal team, may well be aware of people who have supplied statements and are coming but if you have personal knowledge of matters and they are relevant to what you are talking about, there would be no reason why you cannot share that with me.

AMBASSADOR MAQETUKA: Then I would safely say –
10 thanks, Chair, I would safely say we will come to the relevant information.

ADV PRETORIUS SC: Yes, I think the Chair's invitation goes a little wider than that. There is a question that has arisen, you have given an answer and the Chair needs to test that answer by relation to – or by examining factual incidents that might prove or disprove the validity of your opinion because he sits as an objective inquirer into fact. So the invitation is, you have placed a thesis, an answer to the question what happened in the security services
20 particularly shortly after you left and would this confirm an attempt to manipulate and abuse the state security services for illegitimate gain.

AMBASSADOR MAQETUKA: Ja. No, thank you very much, Advocate, and thanks for leading me into that. Oh yes, I can safely say when we left, by the time we left the

intelligence we could see that it was dying and we were concerned and so are we up till today. That is number one.

But number two, I am record, Chair, at the farm and I am going to use a term which might sound derogatory but in isiXhosa it is used, but pardon me. Once or twice I was addressing the whole membership there, briefing them on the challenges that I am having as a DG.

CHAIRPERSON: Membership being membership of the National Intelligence?

10 **AMBASSADOR MAQETUKA:** Of the SSA.

CHAIRPERSON: SSA, okay.

AMBASSADOR MAQETUKA: Yes. Addressing and briefing them on the challenges that we are having and that we are having problems with this integration because of stumbling blocks and these are some of the issues that I raise in my letter to the President, former President, but I used the term *usenkaki*. Now the same, same term – I am not sure if I capture it in my statement, we had a two day meeting with the Joint Standing Committee on Intelligence

20 – sorry, pardon me, Advocate, if I did not deal with that in my statement but I am sure you would find it in one of the statements even if it is the 2018 one, there was a decision that was taken by the Chairperson of the standing committee because I have been interacting with him on these issues, these challenges and he then said to me I am

going to convene a meeting, we will all fly to Pretoria. And we prepared ourselves for that meeting. My whole team, senior managers, including Ambassador Shaik and Njenje, two day engagement with the Joint Standing Committee on Intelligence.

CHAIRPERSON: Who was the Chair of the committee at the time?

AMBASSADOR MAQETUKA: Cecil Burgess.

CHAIRPERSON: Yes, okay.

10 **AMBASSADOR MAQETUKA:** Two days intensive and I was leading that presentation over those two days. Unfortunately, Chair, I cannot remember the actual dates but it would be in 2011. I repeated to them - and literally all political parties represented, they were in that meeting - and we briefed them in detail. I was doing the talking mostly because we decided okay, no, no, no, no more. They say proceed, you know the issues. But they would add there and there. Two day intensive.

I again used the same term to them and I said
20 Honourable Members, *usenkaki* . One of the members ...[intervenes]

CHAIRPERSON: I think you probably will be able to put it – I think there is an English version for it but I do not know.

AMBASSADOR MAQETUKA: I know there is an Afrikaans

actually but it is even cruder in Afrikaans but if you do not mind, I will use it. Let me ...[intervenes]

CHAIRPERSON: Okay or you might just give an explanation: You are in trouble.

AMBASSADOR MAQUETUKA: Yes, you are in trouble.

CHAIRPERSON: It meant you are in trouble.

AMBASSADOR MAQUETUKA: You are in trouble but, you know...

ADV PRETORIUS SC: I get the point.

10 **AMBASSADOR MAQUETUKA:** But you know, it does not really gel the way it is in Xhosa and in Afrikaans you know?

CHAIRPERSON: Ja.

ADV PRETORIUS SC: Deep trouble.

AMBASSADOR MAQUETUKA: Deep, deep trouble.

CHAIRPERSON: Ja.

AMBASSADOR MAQUETUKA: And one of the MPs then who is a Minister now, Stella Ndabeni, asked me, DG, *hayobani*, that we are in and I said to her, *yethu sonke*, all
20 of us who are here, it is our problem that we are in here. But let me just add and say presently as we speak today, I can share with you in private, Chair, or Adv Pretorius, this morning somebody sent a message saying that we are swimming in a sewerage. This morning somebody sent me an SMS.

So after we left I can safely say – okay, let me again say, as you would know and everybody knows, there was the panel review on intelligence that the previous minister set up to look at the problems confronting intelligence, but nine years after we had already left, eight years after we left – I left in 2012, I am nine years out of that system now as we talk. A review is being made and we all know what the recommendations of the review was because obviously the system was not getting better but
 10 you look then at what happened after we left. Who took over? That is the big question to me. Who took over as a DG after we left?

CHAIRPERSON: I do not want you to forget the points you want to make but I want to conclude that meeting of two days that you had, what was the outcome of that meeting with the Portfolio Committee. You told them all the problems, all the challenges, what was the outcome of that meeting? Were there any undertakings made and if so, were they implemented?

20 **AMBASSADOR MAQETUKA:** The outcome was we will go back to Cape Town where we discuss the issues. That was the closing remarks of the Chairperson, Mr Burgess, and we will get in touch with you, DG, on this situation. That was the – and that was the last.

CHAIRPERSON: That was the ...[intervenes]

AMBASSADOR MAQETUKA: That was the last.

CHAIRPERSON: There was no follow-up?

AMBASSADOR MAQETUKA: There was no follow-up.

CHAIRPERSON: Yes.

AMBASSADOR MAQETUKA: No follow-up to everything.

CHAIRPERSON: Yes. Okay, I interrupted you while you were wanting to look at who followed as DG after you had left.

AMBASSADOR MAQETUKA: Yes. Now we resigned, we
10 decide no, no, no, there is no point in continuing with this thing. We are not wanted here. It is obvious, nobody is listening to us. We left 2012.

In no space of time, I do not know which year it was, guess who is appointed as DG? Of course, there was an Acting DG, the now Ambassador Dlomo. Hennie Sinkose(?), we will deal with him later. He acted for some time and then Arthur Fraser took over. The very same person was heading the PAN project. At the time he was DDG.

20 I asked myself the question, did I know what was going on there because it is just inconceivable with the report – with the report, but again a report as more substantiated in the book of Jacques Pauw, the what, I do not...

CHAIRPERSON: The President's Keepers.

AMBASSADOR MAQETUKA: President's Keepers. Detailed. I read the book from page 1 to zero and spot on to what I knew about then based on the briefings and what have you. Unbelievable. I said no, maybe there is also something bigger that we did not know or I did not know.

How many DGs were there then after us in 2004? There is an Acting one now for the second year now but from what I hear from the grapevine, it is not factual, but what I hear from the grapevine, as this SMS was saying,
10 they are in a sewerage, things are not getting better.

CHAIRPERSON: So the Portfolio Committee had all the challenges you told them about said they would go back and consider the matters and went back but until you left – by the time you left they had not come back to you to say what they were going to do about it?

AMBASSADOR MAQETUKA: Nothing, Chair.

CHAIRPERSON: Yes.

AMBASSADOR MAQETUKA: Since those two day meetings, nothing.

20 **CHAIRPERSON:** Yes.

ADV PRETORIUS SC: Thank you, Chair. Before we get to the factual part of your evidence there is one preliminary issue that we need to deal with and that appears at page 12, paragraph 48 to 51 of your statement. The question is simply this, it may be put to you

particularly in relation to the evidence you are about to give in relation to the Gupta investigation that corruption allegations – and I stress allegations because the Chair has made no findings yet of State Capture. You have heard the evidence given before this Commission, have got nothing to do with national intelligence. It is not a matter of national intelligence. What is your answer to that?

AMBASSADOR MAQETUKA: I would disagree, Chairperson, because as I state in paragraph 48 national
 10 security in the context of the white paper is defined as the maintenance and promotion of peace, stability, development and progress. Development and progress, and this should be the primary objective of any government.

Now what is this development and progress if it is not, amongst others, the economic development of the country that would lead to the wellbeing of its citizens from poverty, from hunger and from want?

Now if you are going to say what the Commission is
 20 looking at corruption, allegations of corruption, and you come to me and say that should not be a matter of concern for intelligence, I will have a problem.

Unless, of course, unless – and I think many a time people still see this intelligence in the old paradigm, military security type intelligence. I think that is where

perhaps people miss the point at times. Well, of course, also I will not discard the detractors of what the Commission intends to do.

CHAIRPERSON: Of course, it must be so that anyone who wants to capture the state would very much want to capture the intelligence community, the intelligence structure as well. I am just thinking, I am not – I have no experience of intelligence, I am just saying if you seek to capture the state it does seem to me that, you know, 10 captors would wish to make sure that they do not – the state does not have an intelligence that would work against them.

AMBASSADOR MAQETUKA: You know, I am pleased, Chair, that that position comes from you and it does not come from me because other people would have said he is blowing his own trumpet because he comes from intelligence.

Of course, when you want to destabilise a country or when you want to destabilise a people, destroy those 20 institutions that might be a stumbling block to your efforts and of course intelligence would be one of those. It would be one of those.

ADV PRETORIUS SC: Particularly, I presume from your evidence, Ambassador, where it is the duty of the intelligence structures to warn against threats to the

economy and the well-being of it.

AMBASSADOR MAQUETUKA: I do not know of any structure of any government that would do that – that would not do that because intelligence would be the primary institution that would warn any government on those threats. I do not know which other. Can Health do it on threats on the security of the country? Can Treasury do it when there is corruption that is starting? That DG Maquetuka has got a relationship with a known criminal.
10 Treasury would not know that. It is the Intelligence that would pick it up first.

It was not accidental as we will come later to show how we were alerted on this relationship between President Zuma and the Gupta family. We will come to that later. I think to illustrate that as an example.

ADV PRETORIUS SC: Right. We are about to come to now, Ambassador. You were going to deal with the outcome of the preliminary investigations initiated by yourself, Messrs Njenje and Shaik in relation to the Gupta
20 family. You deal with that at the bottom of page 12 and on page 13 of your statement. Why was that investigation initiated?

AMBASSADOR MAQUETUKA: In my paragraph 52 and also as both my former colleagues have testified before you, Chair, initially the Gupta family were of interest to the SAA

as they had been flagged by the Americans who were concerned about the Guptas' interest in the Shiva Uranium Mine which the Americans believed was financed by Iran. This was dealt with in the evidence of Ambassador Shaik before this Commission and I recall you engaged with Ambassador Shaik quite in detail and I discovered also you had even more insight into that deal coming from your role as a judge. You had insights into it.

But also, I should say – I should say with honesty
 10 that I had really forgotten even how this thing started. I had really, really forgotten how this thing started, what actually sparked that investigation. But I agree, Advocate, this is how – this is what sparked that investigation.

ADV PRETORIUS SC: And then there was the incident referred to in paragraph 53 involving Minister Mbalula.

AMBASSADOR MAQETUKA: Yes, 2011, Mbalula. And also, let us recall also by then the media was starting to send red flags about this family. This family, this family.

But also let me share with you, Chair, up till today,
 20 if you can bring the two brothers in here, I will not be in a position to tell you that this is Abdul, this is AJ. I just do not – because, number one, I have never met them. No, I have never and I had no interest in meeting them whatsoever.

So when you are talking about the Gupta family and you

ask me, by the way, which one was it who was implicated, I will not be in a position to tell you, but to me same difference ...[indistinct]. Yes the incident of Mbalula in the ANC but we will deal with another part that for the first time came to my attention yesterday when we received the DA, the affidavit. Something else popped up when I was reading those affidavits, and I say oh even this one but we will come with it when we deal with the affidavits which are part of the agenda.

10 **ADV PRETORIUS SC:** Yes, the responses to your statement.

AMBASSADOR MAQETUKA: Yebo.

ADV PRETORIUS SC: That we have in your file that we will deal with in due course, from the ANC leadership, but for the present you say in paragraph 54, and perhaps we can cut this short by way of introduction, that yourself, Ambassador Shaik and Mr Njenje discussed the matter of the Guptas in two contexts; one, the fact that Minister Mbalula informed the NEC that he had been informed by
20 one of the Gupta Brothers that he was about to be appointed as a Minister, the other, the interest in the Uranium Mine which concerned the Americans and that you came to an agreement in that regard, and you have heard the evidence of Messrs Shaik and Njenje and generally do you agree with that evidence.

AMBASSADOR MAQETUKA: Sorry Chair I agree with it
Chair and it is important also, it is also important
...[intervenes]

CHAIRPERSON: Well maybe just that agreement, the
agreement was to do what?

AMBASSADOR MAQETUKA: The agreement was to – it
was actually instructions from Njenje.

CHAIRPERSON: Yes.

AMBASSADOR MAQETUKA: Based on what he had
10 verbally told us, reported to ask that we put it that way.
We then say Njenje the domestic branch must deal with
this matter. Dealing with this matter meant do a further
investigation on this matter, because of those two reasons,
why – one, the issue of Mbalula we considered it a very
serious national security risk.

CHAIRPERSON: Namely that he had said he was told in
advance ...[intervenes]

AMBASSADOR MAQETUKA: He was told by an outsider
that he was going to be appointed.

20 **CHAIRPERSON:** As Minister.

AMBASSADOR MAQETUKA: We said no, the second one
which at times is not being emphasized was to protect
President Zuma, because when we said it will tarnish his
relationship with his people, it will tarnish his name, and
mind you at that time we didn't have the gaps of this

relationship and these activities, but today, 2020, we can look back and say we were right, that is why I am saying we were right in having alerted him, and we were right to have said that it will tarnish his name.

CHAIRPERSON: Yes.

ADV PRETORIUS SC: You deal with that in paragraph 54 of your statement, that what you have just related to the Chair. Paragraph 55 you talk of the agreement or instruction that Mr Njenje should investigate the matter
10 further, where was this discussed?

AMBASSADOR MAQUETUKA: It was discussed at the headquarters of the intelligence at what is called the farm in Pretoria, Delmas Estate.

ADV PRETORIUS SC: Right.

AMBASSADOR MAQUETUKA: In my office.

ADV PRETORIUS SC: Was it discussed at any routine meeting?

AMBASSADOR MAQUETUKA: Yes we had Monday meetings, first thing on Monday meeting the top three, that
20 is myself, Mr Njenje and Shaik, we would meet and then they would report to me new developments as a procedure and highlight that there is this and this and this, there is this and this. It was in this context and through that mechanism because then from there we would go then to a broader senior management meeting. I think it used to

start immediately after hours, that is the top three, then we would meet where the various branches now fall under Mr Njenje and Mr Shaik would then give their reports, their situational, most situational reports, development, and what have you, happening in the foreign sphere and happening in the domestic, that's what would happen in those meetings, and that's what happened in that meeting that I am referring, the routine Monday meeting Chair.

ADV PRETORIUS SC: Having decided Ambassador that
 10 the investigation should be dealt with by Mr Njenje the next development in your statement is that you received a summons to attend a meeting in Cape Town.

AMBASSADOR MAQETUKA: Yes.

ADV PRETORIUS SC: Would you tell the Chair about that please.

AMBASSADOR MAQETUKA: At paragraph 56 whilst we were waiting on Njenje to give a feedback, of course there was no time, it was going to be an investigation then he would see it himself based on what he would have scoped.
 20 I received in my office a message through my secretary that the Minister, who was on that particular day in Cape Town, I remember it was on a Wednesday, but I would not remember that date, I almost said even the year, it would have been 2010 – no I think these things, most of these things happened during 2011, but the point is we were

summoned to a meeting by the Minister and we did not know what the meeting was all about.

CHAIRPERSON: That is now the three of you?

AMBASSADOR MAQETUKA: Yes.

CHAIRPERSON: Yourself, Mo Shaik ...[intervenes]

AMBASSADOR MAQETUKA: Myself, Shaik and Njenje.

CHAIRPERSON: Ja.

AMBASSADOR MAQETUKA: The top three. So – shall I proceed?

10 **ADV PRETORIUS SC:** Yes please.

AMBASSADOR MAQETUKA: We proceeded to Cape Town in the office of the Minister holding room had snags like the Minister was busy with other matters. Later we then went into the boardroom of the Minister.

ADV PRETORIUS SC: Who was there?

AMBASSADOR MAQETUKA: Now at the boardroom first it was the three of us, we are waiting *mos* for the Minister and his delegation. The Minister arrived with his staff, that is Mr Kaho Mabungu, he is actually Doctor, who was then
20 the herd of Ministerial services, together with Mr Dennis Nkozi.

ADV PRETORIUS SC: But we now have another name.

AMBASSADOR MAQETUKA: Who is now Ambassador Dennis Ndlomo, he changed the surname. At that time, he was using the name, the surname Nkozi.

CHAIRPERSON: You say he is now ...[intervenes]

AMBASSADOR MAQETUKA: Ambassador Dennis Ndlomo.

CHAIRPERSON: Ndlomo.

AMBASSADOR MAQETUKA: Ndlomo.

CHAIRPERSON: Ja, okay.

AMBASSADOR MAQETUKA: He is from – okay that's not here, who had – he had just returned from a posting in Addis Ababa where he had been the head of the committee
10 for intelligence and security services of Africa, which is an African Union structure.

Earlier our dispensation talked of the intelligence in the country, the intelligence in the region and the intelligence in the Continent and we spoke earlier about the African relations and the thrust thereof. Now within the intelligence there were also these developments and by the way South African Intelligent Services were one of the prime movers for the creation of this SESA and one of the strongest supporters of this initiative. That is why we
20 seconded Dennis to be – I don't know what designation there, but he was – he is the head, I think he is the Director of that Continental body, and subsequently later, I don't know whether I was still there or after I had left, a lady, Dr Phinla Udit, also a South African, became the head.

So South Africa had chaired that structure, so the type of influence that we had also in a small way within the Intelligence.

Then the Minister comes into the Boardroom with these two gentlemen and then Minister opened the meeting and then he called us that he had called this meeting because he had been told that Mr Njenje is conducting an investigation into the relationship between the Gupta Family and President Zuma. That was the brief, which he
10 believed it was irregular, investigating is irregular.

He paused there and looked around at us to I believe gauge our reaction. At that stage I came in and when I was granted, first I objected on two things, the primary work I objected to the presence of Mr Mabungu in that meeting. He is an administrator, he is not supposed to be involved in operational things and if the Minister had called this meeting of an investigation, which we knew that it was an operational thing, he has no room, and there was a to and fro, to and fro, to and fro, I think basically we
20 were sparring [speaking in vernacular] and the – after much debate it was finally agreed the Minister conceded that Kaho Mabungu should – then – but we agreed on Dennis that he could stay you know, and my rationale for agreeing with Dennis it was because I knew that he would be the one taking notes, can inform the Minister or in case

the Minister you know – so we compromised on that one, that he should participate.

So then paragraph 60, yes paragraph 60, Minister Cwele started, stated that he objected to the Gupta investigation because in his view it was not being pursued *bona fide*, but was rather being pursued by Mr Njenje in order to protect his own business interest.

ADV PRETORIUS SC: Can we just stop there for a moment, because the circumstance might illustrate a point
10 you were making earlier. When the Intelligence structure or Intelligence personnel, senior Intelligence personnel, alert the Executive to a circumstance which they believe is significant, a red flag in other words, what in your view should the executive do?

AMBASSADOR MAQETUKA: The executive should listen to what his officers is going to report, that is number one. And normally, that is why I said earlier, even in the case of Billy Masetla versus Ronnie Kasrils, there is no Minister, he does not determine what the operations should be.
20 The operations start as a result of information and intelligence that we collect, that alone in this case there was this intelligence or info – intelligence that was liaised to us because we have got agreements globally.

So it was not accidental that the Americans came to us, we co collaborate.

ADV PRETORIUS SC: In any event I interrupted you, I am sorry Ambassador you were saying, or telling the Chair about Minister Cwele's interjection or objection.

AMBASSADOR MAQUETUKA: Yes.

ADV PRETORIUS SC: What was he saying?

AMBASSADOR MAQUETUKA: He was saying – where were we, this paragraph?

ADV PRETORIUS SC: Paragraph 60.

AMBASSADOR MAQUETUKA: Oh paragraph 60, Minister
10 Cwele stated that he objected to the Gupta investigation because in his view, that is his view, it was not being pursued *bona fide* but was rather being pursued by Mr Njenje in order to protect his own business interests, which were in conflict with those of the Guptas.

I objected to this accusation against Mr Njenje, making it plain that the investigation had not been initiated by Mr Njenje, but that he had been tasked with the investigation by us, as it was the domestic investigation and he was the head of the domestic branch. I further
20 challenged the Minister then to substantiate on his allegation about Mr Njenje's motives for pressing the investigation but he failed to do so.

I told the Minister that if he could provide me with evidence in substantiating of his allegations then Mr Njenje could be – I will take Mr Njenje off the investigation. This

however I explained was not a reason to stop the investigation which I insisted was a legitimate and perfectly justified official SSA investigation.

ADV PRETORIUS SC: Just as a matter of practice if one of the operatives in an intelligence operation has conflicted interest or even if there is an alleged conflict of interest what is the solution, is the solution to stop the investigation.

AMBASSADOR MAQETUKA: No, no, not only an
10 operative, if there is information that shows that the DG has a misdemeanour, number one, the Intelligence people will not bring that information to me immediately, but they will continue investigating. At times at a correct time then I would be informed that there is this going on and we have not been informing you because you are implicated, that is number one. Number two what happens also is that as I have said in this case Minister give me the information on Njenje, I will take him off this investigation. It is normal you see, but up till today he did not do it, he continued
20 with this view and I believe and I said I am not going to – we are not going to, I am not going to stop this investigation based on your views and what have you.

That alone is not telling me that I have got information.

CHAIRPERSON: Well before the Minister told you at this

meeting that he was objecting to this investigation had he spoken to either you or Mr Njenje or Ambassador Shaik to find out more officially what the investigation, what had given rise to the investigation and so on or had he in the meeting started by asking the question I hear that there is an investigation that you are conducting relating to the relationship between the President and the Guptas, tell me more about this because I have some concerns but I want to know what is it about, what is going on, and then after
10 that indicate that he has an objection. Had he done that or ...[intervenes]

AMBASSADOR MAQUETUKA: No he didn't do that.

CHAIRPERSON: He didn't do that.

AMBASSADOR MAQUETUKA: And had he perhaps done that, perhaps he would have gotten more – he would have been more rational in his approach had he done that, because I would have explained to him that no you are wrong, this is the sequence of this, but I thought the Chair was going to ask me as to how did he know about the
20 investigation.

ADV PRETORIUS SC: I am going to ask you that in a moment.

AMBASSADOR MAQUETUKA: Oh, you are going to, I am sorry.

CHAIRPERSON: Well somehow it is connected because I

am – he comes, there's a meeting.

AMBASSADOR MAQETUKA: Yes.

CHAIRPERSON: And he says he is objecting to an investigation.

AMBASSADOR MAQETUKA: Yes.

CHAIRPERSON: But he has not asked you to confirm whether there is an investigation, what motivated it and other information about it, Mr Pretorius?

ADV PRETORIUS SC: Yes, well let's just follow up on the
10 question that the Chair raised. At the meeting the Minister as I understand your evidence Ambassador expressed certain views, whether preliminary or otherwise in regard to the subject matter of the investigation. Prior to expressing those views did he seek to get an understanding of your reasons for the investigation?

AMBASSADOR MAQETUKA: No he didn't.

ADV PRETORIUS SC: Did he at any stage during that meeting seek to do so?

AMBASSADOR MAQETUKA: No he didn't.

20 **ADV PRETORIUS SC:** Right. And then the other question that has arisen, do you know where the Minister would have received his information firstly that there was an inquiry and secondly that there was an allegation about the conflict of interest at the hands of Mr Njenje? Do you know where he got this information from?

AMBASSADOR MAQUETUKA: Interesting enough Chair since 2011 I have heard rumours where the Minister could have gotten the – this information about this investigation, but it was only this year during the appearance of Mr Njenje. In Mr Njenje's transcripts Mr Njenje says a member of my team is the one who told the Minister about this investigation.

Now I said wow, but I was expecting that the Commission is going to ask Mr Njenje who is that member
10 of your team, but unfortunately as far as I can recall neither did Advocate Pretorius nor the Chair of the Commission ask that question.

CHAIRPERSON: I can tell you the investigations of the Commission are ongoing.

AMBASSADOR MAQUETUKA: But Mr Njenje said it in confidence, he knows who the person is and knowing Njenje, the person he is, I am sure a letter that can be sent to him for clarifying that accompanied by an affidavit, I don't think it would be a problem for Njenje. Now I am
20 also cognisant of the fact that you are pressurised with time as a Commission, resources I don't want, I don't know, but I am sure it can be done in a letter form or will it be an affidavit for him to say who that – but Njenje knows, because if I tell you who that person is it would be hearsay to me, that is the caveat Chair.

ADV PRETORIUS SC: Well let me put it this way to you, because I think this is the point really Ambassador, the ordinary channel of communication to the Minister, given your position at the time what would that be, who would it be that would ordinarily inform the Minister at an appropriate time of investigations?

AMBASSADOR MAQETUKA: You know on this matter it would only have been me.

ADV PRETORIUS SC: Yes, and did you inform him prior
10 to that?

AMBASSADOR MAQETUKA: No I did not, because remember at this stage we had not even received a scrap of paper from Njenje to say since that Monday meeting there are developments, no we had not.

ADV PRETORIUS SC: So ...[intervenes]

AMBASSADOR MAQETUKA: And the protocol is no one could have reported that thing to the Minister, otherwise that would be a violation of the rules of engagement.

ADV PRETORIUS SC: Yes, I think that might be the point
20 because the implication – well not the implication but consequence of that is that the Minister had spoken to someone in your team without speaking to you.

AMBASSADOR MAQETUKA: Yes, and you see the damage that it has done, the Minister as the Chair was asking, had the Minister asked for clarification first from

me I would have given him a full briefing on what we already know, even in that meeting had he asked for clarification. No he doesn't.

ADV PRETORIUS SC: How long did that meeting last, can you recall, including the ...[intervenes]

AMBASSADOR MAQETUKA: Including the snag and what have you. In my recollection we would have a night in Cape Town, five o'clock, half past four, five o'clock, six o'clock flight and from the airport we went straight to the
10 18th floor, that is where the offices of the Minister are. My recollection is this meeting started late afternoon, my recollection, because it was not dark when the meeting started, but of course offices being offices lights would have been on.

I estimate that that meeting would have started roundabout half past six, seven and it went on close to about three hours. I know I was listening to both the colleagues because the same question was asked to them. None of us could be spot on and say it started from this
20 and ended on this time. Unfortunately, I cannot.

ADV PRETORIUS SC: What is important in relation to that meeting is what you concluded about the Minister's attitude to the investigation.

CHAIRPERSON: Maybe before that Mr Pretorius I don't remember him covering this particular aspect. In that

meeting I would assume that you did have the opportunity to explain to the Minister what gave rise to the investigation and what relevant information about the investigation in the three hours or so before you concluded. Did you get that opportunity?

AMBASSADOR MAQETUKA: Fruit of the matter Chair is that there was no opportunity for that. We were wrangling for a very long time about this so called conflict of interest. That was number 1. It took hours and hours. Then it would
10 be him coming in on why is this investigation must stop. He even went further to say this investigation – the other problem that he is having this investigation is about the investigation on President Zuma. That was another thing but there was no opportunity to actually – to go into the – into the meat of the problem that he wants no. That is why in paragraph I said I realise that we are going nowhere with this meeting.

CHAIRPERSON: Okay Mr Pretorius had just asked you how that meeting was concluded. Do you want to tell me how
20 the meeting concluded?

AMBASSADOR MAQETUKA: When I saw that we are not being civil about this matter.

CHAIRPERSON: Making progress.

AMBASSADOR MAQETUKA: Then I said to the Minister, we will discuss this matter with the President.

CHAIRPERSON: Hm.

AMBASSADOR MAQUETUKA: You see. So now we are appealing now – we are going to appeal now to a higher authority.

CHAIRPERSON: Hm.

AMBASSADOR MAQUETUKA: You know. And at that time and as I am saying in my report, I was very clear that I am not going to get instructions from the Minister on this.

CHAIRPERSON: Hm.

10 **AMBASSADOR MAQUETUKA:** On this investigation.

CHAIRPERSON: Hm.

AMBASSADOR MAQUETUKA: We will deal with it with the President.

CHAIRPERSON: Hm.

AMBASSADOR MAQUETUKA: We will report this matter to the President.

ADV PRETORIUS SC: Was any direct instruction given to you by the Minister to stop the investigation? Did he say so in so many words?

20 **AMBASSADOR MAQUETUKA:** You know I have always maintained since 2018 I do not recall him saying stop it but his utterance, his challenges, his interaction was that this thing must stop. And I think okay let me not talk about what the other colleagues said. I really do not recall concretely him saying it must stop. But I go further to say even if he

had said so I would not have stopped the investigation. Because nonetheless at that time we had not even gotten something tangible from Njenje except for that indication in that first meeting.

CHAIRPERSON: You are not able to say he said the investigation must be stopped because you do not recall him saying that. But you say something about what he said – what you made of it and as I understand it and I just want you to confirm whether I understand your evidence
10 correctly. Namely that in your mind it was clear that he was opposed to the investigation. In your mind was that the position?

AMBASSADOR MAQETUKA: Yes that is my position.

CHAIRPERSON: Yes.

AMBASSADOR MAQETUKA: But he stated – but he stated categorically that...

CHAIRPERSON: Yes.

AMBASSADOR MAQETUKA: This investigation is an agenda of Njenje safeguarding his business interest.

20 **CHAIRPERSON:** Hm.

AMBASSADOR MAQETUKA: Against the Gupta's.

CHAIRPERSON: Hm.

AMBASSADOR MAQETUKA: That is what I am – that is what I ...

CHAIRPERSON: Yes that is what you are saying ja.

AMBASSADOR MAQETUKA: He made it very clear.

CHAIRPERSON: Hm.

AMBASSADOR MAQETUKA: He made it very clear. But to say stop this investigation.

CHAIRPERSON: You do not recall that?

AMBASSADOR MAQETUKA: No I do not recall it.

CHAIRPERSON: Now over this long period of the meeting did he never articulate what business interests of Mr Njenje he was talking about?

10 **AMBASSADOR MAQETUKA:** I am still curious to hear what this business interest up until today. Up until today as I have asked Njenje what are these business interests? Njenje says, I really do not know what this guy is talking about. And up until Njenje resigned and I retired and I think also Moshepe I do not think we ever knew. That is why I thought maybe it is when the day the Minister come here maybe he would be in a position to explain himself on this.

CHAIRPERSON: Thank you.

ADV PRETORIUS SC: The statement continues to talk of a
20 subsequent meeting with the former President. How did that arise?

AMBASSADOR MAQETUKA: Ambassador Shaik through his office was instructed to communicate and to arrange a meeting that we need a meeting with the President to discuss a burning issue. And we did get a response through

my office that the President will be meeting us. Now paragraph 64 I am saying there the only difference between myself and Mo – Mo strongly believes that the meeting with the President took place in Cape Town. I still maintain up until today that the meeting took place in Mahlamba Ndlopfu in Pretoria.

CHAIRPERSON: What about Mr Njenje? What does he say? Mr Pretorius do you remember what he – what he has to say?

10 **ADV PRETORIUS SC:** Mr Njenje?

CHAIRPERSON: In terms of ...

ADV PRETORIUS SC: I have a note I do not think he was pressed on that issue.

CHAIRPERSON: Where the meeting with the President took place. Or maybe he was not asked. But in the end, it would not make any difference whether it took place in Cape Town or Pretoria what is more important is the content.

AMBASSADOR MAQETUKA: The content of it.

20 **CHAIRPERSON:** Of the discussion.

ADV PRETORIUS SC: Yes.

CHAIRPERSON: Yes.

ADV PRETORIUS SC: Your statement in paragraph 64 again I do not want to put words in your mouth gives a place in relation to the meeting with the former President.

CHAIRPERSON: Yes. Yes. He has said that but...

ADV PRETORIUS SC: Well not the residence though.

CHAIRPERSON: Oh.

AMBASSADOR MAQETUKA: I say here I firmly believe that it took place the day after our meeting with Minister Cwele on a Thursday. On the 18th Floor. Now it is a matter of construction here Chair it might confuse this sentence.

CHAIRPERSON: Hm.

AMBASSADOR MAQETUKA: Which meeting are you – am I
10 talking about? Am I talking about the meeting with the Minister or am I talking the meeting with the President? And I thought that here in this paragraph I am dealing with the meeting with the President.

CHAIRPERSON: Oh – ja probably – probably you are – well the office is on the 18th Floor I am sure are offices of the Minister not the President.

AMBASSADOR MAQETUKA: No not the President.

CHAIRPERSON: Yes.

AMBASSADOR MAQETUKA: But because the offices at the
20 18th Floor are the offices of the Intelligence and of the Minister.

CHAIRPERSON: Yes. Yes.

ADV PRETORIUS SC: In Pretoria?

AMBASSADOR MAQETUKA: In Cape Town.

ADV PRETORIUS SC: Well on this page...

CHAIRPERSON: So the sentence might...

ADV PRETORIUS SC: Is a confusing drafting error.

AMBASSADOR MAQUETUKA: It is a drafting error where I will put it really.

CHAIRPERSON: Ja so – but that can be corrected by a supplementary affidavit. We – what is more important is the content of that discussion at that meeting with the President. Do you want to tell us about that?

AMBASSADOR MAQUETUKA: Then the meeting started with
10 the President and as protocol is expected I would lead this. Then I would do the introduction and in this case, I gave the President highlights on why we asked for this meeting. I briefed the President about our meeting with the Minister what had taken place in Cape Town. How the meeting ended hence we are coming to explain ourselves to him. Right? And I went on to say to the President the details of this that we are going to be telling you about Mr President would be done by Mr Njenje. Because he is the one heading the operation you see. But again my – by that time
20 he had not given us a feedback but I know that they were continuing developing that scoping into the report. And Mr Njenje took the President through this investigation and the – the Americans and the Mbalula thing and all those things our meetings and – but we decided why we decided to undertake this investigation. Twofold 1. Based on the

intelligence that was liaised to us by the Americans but number 2 our concern about his relationship – his – his image being tarnished by this relationship. Then as Mo – no let me say then the President went into detail about this relationship. How it started. It was a long, long, long – but I was not – I must say that part was only pricked to me in the evidence of Mo Shaik. Because what you might not know Chair and I was telling the investigator – your legal team up until the day when they came to make their – when

10 they appeared in the commission, we have never communicated on what the reports are all about. Perhaps that is also the reason why you see these seemingly. We never communicated but Mo explained in more detail how the President explain this relationship with the – with the Gupta family. And I agreed because it said oh ja Mo is right I remember. But as I say as Njenje was making the presentation briefing the President and as I say I have worked with the President Zuma for a very long time. I know him. I know his body language. When he does not

20 like something you can see. The President was quiet. Not listening – was listening. I remember the President asking me DG can I get a copy of that report. I am not sure if I capture that part here.

ADV PRETORIUS SC: You do say that in paragraph 66.

AMBASSADOR MAQETUKA: And I said Mr President

unfortunately not – you cannot. And he did not argue with me. And the reasons why I said that it was not out of disrespect. He is implicated in the report. Now how can I give him the report? But perhaps through you advocate this is another area that might have to be looked in your report if you might allow me? It is that as this part of our report shows when we did not find joy with the President where else could we have appealed to?

1. Our laws I tried to check, look at the Intelligence –
 10 Intelligence Legislations it is quiet. Now is that not dangerous?

There has to be – there has to be a guideline because conflicts amongst human beings will always arise and you would need an arbitrator but in this case, there was no arbitrator that we could re – appeal to. It went on and on amongst ourselves. Now after this meeting discussing whether to.

CHAIRPERSON: Before – before you discuss you tell me about what happened after – after the meeting. Having you
 20 exhausted what you want to tell me about the discussion during the meeting with the President? He told you – you said he told you about the history of the relationship between himself and the Gupta family. You told me that he asked whether he could get the report that was being used and you said no and you did not mean any disrespect and

he did not argue with you when you said no.

AMBASSADOR MAQETUKA: No he did not.

CHAIRPERSON: Other than that, what was discussed and what is your recollection of how long this meeting took place? Again, that is just for the completeness otherwise...

AMBASSADOR MAQETUKA: That meeting would have taken more than two hours to be honest. It would have taken – the President was very relaxed and whenever we are going to make a presentation to him, he would always
10 be – he would always be kind.

CHAIRPERSON: He will give you time. He will give you time.

AMBASSADOR MAQETUKA: No, no, no I would never blame the President when he comes with us.

CHAIRPERSON: He would not rush you.

AMBASSADOR MAQETUKA: He would not rush us, he would not shout.

CHAIRPERSON: Ja.

AMBASSADOR MAQETUKA: No, no. It would have gone
20 more than two hours that meeting.

ADV PRETORIUS SC: Well have a look at your statement you give a different version there. Paragraph 66.

AMBASSADOR MAQETUKA: 66. Although the meeting was a long one and lasted between one to two hours the President said virtually nothing during our briefing. After the

briefing the former President was very defensive.

ADV PRETORIUS SC: Alright you have – you do not need to go on. It is just in relation to the duration.

AMBASSADOR MAQETUKA: Yes.

ADV PRETORIUS SC: And who spoke in the meeting.

AMBASSADOR MAQETUKA: Okay.

ADV PRETORIUS SC: Is that correct?

AMBASSADOR MAQETUKA: It is correct.

ADV PRETORIUS SC: Did the President during the meeting
10 mention the alleged conflict of interest?

AMBASSADOR MAQETUKA: No.

ADV PRETORIUS SC: At the hands of Nhlanhla?

AMBASSADOR MAQETUKA: No. The President raised that.

CHAIRPERSON: I take it that when you were briefing him about how your meeting with the Minister had gone the previous day you told him that the Minister had said there was a conflict in terms of business?

AMBASSADOR MAQETUKA: Absolutely.

20 **CHAIRPERSON:** Yes but he did not say anything about that?

AMBASSADOR MAQETUKA: No.

CHAIRPERSON: Okay.

AMBASSADOR MAQETUKA: He did not and to respond to you Advocate the President did not raise the matter of the

conflict of interest by Njenje.

ADV PRETORIUS SC: The Chair asked you about the content of the meeting. Is there anything that you wish to add about what was said or what was not said at the meeting?

AMBASSADOR MAQETUKA: No there would not be anything Advocate.

CHAIRPERSON: Did the President express a view either way on whether – on whether the investigation should stop
10 or should be pursued or did he express a view either way?

AMBASSADOR MAQETUKA: No he did not.

CHAIRPERSON: He did not express a view.

AMBASSADOR MAQETUKA: Except from just explaining this long explanation about the relationship how it started and bla, bla, bla all those things. No he did not.

ADV PRETORIUS SC: Right.

CHAIRPERSON: Okay.

ADV PRETORIUS SC: That report that Mr Njenje referred to during the course of that meeting what was the nature of
20 the report? Was it a final report or was it an intelligence report?

AMBASSADOR MAQETUKA: No.

ADV PRETORIUS SC: What was it?

AMBASSADOR MAQETUKA: No. And as I – as I keep on saying if I recall quite well it was even notes. It was not our

standard high reports. He was reading from notes that we had – he had.

ADV PRETORIUS SC: Did you ever see a report?

AMBASSADOR MAQETUKA: No I have never seen this – these scoping reports up until the time I left in 2012.

ADV PRETORIUS SC: What was a scoping report?

AMBASSADOR MAQETUKA: A scoping report is a process where investigators they would scan a particular environment based on a number of factors. Factor number 10 1 might be it is based on intelligence that we have from sources. 2 it is information or intelligence that we have – that has been liaised with us by other services. 3 it is what we call open source right. Hence, I was saying earlier the intelligence that we collect is not necessarily all secret. Open source we would scan an environment and they would come up with a scoping report that would say based on this information that we have here we believe that there might be danger. And it goes stages by stages – stages by stages and this one is a similar one Advocate.

20 **ADV PRETORIUS SC:** Right. Did you draw any conclusion at the end of that meeting as to the former President's attitude to the investigation?

AMBASSADOR MAQETUKA: Ja. The conclusion that I draw – that I drew there it is my opinion again it is not factual was that:

1. The President had already been briefed by Minister Cwele and

2. The President had bought the story coming from Cwele but and again there and I must respect him for that, his smartness he did not say, stop this. No he did not.

CHAIRPERSON: Why do you say – why did you conclude that – and the President bought the story from Minister Cwele because you said the President did not say anything about the conflict of interest relating to Mr Njenje?

10 **AMBASSADOR MAQETUKA:** Reason is that after that meeting it became very difficult for us to get an appointment with the President. That is number 1. Number 2 the issue of that report not for once did the President ask me or ask us as to whether how far have, we gone with that report?

CHAIRPERSON: Well let us start with when you say you concluded that he had bought this story from Minister Cwele. What are you talking about? And I am asking that because my question was based on thinking that you were saying that he had bought the story about conflict of
20 interest but not.

AMBASSADOR MAQETUKA: No, no.

CHAIRPERSON: That – it looks like that is not what you talk about?

AMBASSADOR MAQETUKA: No, no I am not talking about it.

CHAIRPERSON: What is the story that you say he – you thought he bought from Mr Cwele?

AMBASSADOR MAQETUKA: From Mr Cwele. The story that this investigation is irregular. That number 2 the inference by Mr Cwele that this investigation must stop. And the President not asking us of course he did not have to ask us are you continuing or are you not continuing with this investigation? [African language] which actually when you think of it based on your question Chair it actually
10 served exactly what Minister Cwele wanted.

ADV PRETORIUS SC: Well certainly...

CHAIRPERSON: Well you put in a little bit of Isi-Xhosa there. Do you want to just say the gist of the Isi-Xhosa part that you – that you put in Ambassador?

AMBASSADOR MAQETUKA: Did I use Ambassador?

CHAIRPERSON: Yes.

AMBASSADOR MAQETUKA: Did I use President?

CHAIRPERSON: You said [African language]

AMBASSADOR MAQETUKA: Oh I am sorry, I am sorry. Oh
20 gosh. It ended there. Between us and the President on that investigation. And actually, Chair I can safely say that investigation ended there in terms of its formality whether should we continue or what? Because after that meeting with the President then that we started engaging ourselves as individuals and that this thing of us being here is not

working. And by the way the first person to indicate clearly that no you know I am tired of this thing I cannot stand it anymore, I am going to leave this institution is Gibson Njenje. Now what – I do not know whether I deal with it in my report.

CHAIRPERSON: Well I am sorry again. I know you want to deal with a certain point but I would like us to finish with the meeting. Now we have finished with the meeting but I am looking at the conclusion that you drew from the meeting.

10 Now just to make sure I understand your evidence correctly. So when you say the President or you concluded that the President had bought Minister Cwele's story you – did you say you meant that the President was going along with the idea that the investigation was irregular? You will have to say yes, ja so that is it ja.

AMBASSADOR MAQETUKA: Yes, yes Chair. Yes Chair.

CHAIRPERSON: Now – now my difficulty with that with you making that conclusion is that you say he did not ask you anything about the conflict of interest whereas as I
20 understand what you – your evidence the basis or Minister Cwele to say the investigation was irregular was that in his view Minister Njenje was pursuing his business interest, there was a conflict of interest?

AMBASSADOR MAQETUKA: Yes.

CHAIRPERSON: So if the President did not ask anything

about this conflict of interest how do you say he bought this story that this investigation was irregular?

AMBASSADOR MAQETUKA: Did not want – he did not want to implicate himself lest he be accused later that he interfered with an investigation. He was smart in doing that. Not to ask for it.

CHAIRPERSON: Well it may – maybe your use of the – your reference to him having bought the story is what is confusing me.

10 **AMBASSADOR MAQETUKA:** Yes.

CHAIRPERSON: What you said quite clearly was that Minister Cwele was opposed to this investigation.

AMBASSADOR MAQETUKA: Yes.

CHAIRPERSON: Are you able to say the same thing about the President or are not able to say the same thing?

AMBASSADOR MAQETUKA: No it is the same that one. I can say that the President was opposed to that investigation.

CHAIRPERSON: Did he ever say it at that meeting?

20 **AMBASSADOR MAQETUKA:** No he did not.

CHAIRPERSON: I do not want this investigation.

AMBASSADOR MAQETUKA: No he did not say.

CHAIRPERSON: So what is your basis for saying he was opposed?

AMBASSADOR MAQETUKA: My basis Chair that he never

had interest to even ask us or ask me about that – that investigation anymore. It ended up there.

CHAIRPERSON: Well what would you say to the proposition or the possibility that he might not have wanted to ask you after the meeting anything about the investigation because he was being investigated? He was – he was the subject of the investigation insofar as what was being investigated was the relationship between himself and the Gupta – the Gupta's?

10 **AMBASSADOR MAQUETUKA:** Correctly I would agree with you on that one also.

CHAIRPERSON: Yes.

AMBASSADOR MAQUETUKA: I would agree also with you on that one.

CHAIRPERSON: Yes. But if you agree with that then you – it seems to me you cannot, at the same time, say the fact that he did not ask you is a basis to say he did not want this investigation. It seems to me that you cannot have both...have both.

20 **AMBASSADOR MAQUETUKA:** Well, Chair. I am not going to debate that or say I disagree with you and that or anything. No, no...[intervenes]

CHAIRPERSON: Just probably guess, yes.

AMBASSADOR MAQUETUKA: No, I understand fully.

CHAIRPERSON: Yes.

AMBASSADOR MAQUETUKA: I understand your point fully, fully Chair.

CHAIRPERSON: Yes, yes.

AMBASSADOR MAQUETUKA: I will not disagree with you on that one because he is implicated. He might have also taken a decision that: “No, because I am implicated on this thing, let me not ask these fellows...”

CHAIRPERSON: H’m. H’m. Yes.

AMBASSADOR MAQUETUKA: No, I am not going to
10 disagree with you.

CHAIRPERSON: Yes. Okay.

ADV PRETORIUS SC: Ambassador, you clearly, according to your statement at least, drew certain conclusions. The question is whether the Chair is in the same position to draw the same conclusion.

And that is why he asked you on what grounds did you draw the conclusion that you did about the former president’s attitude towards the investigation into the Gupta relationship, right?

20 **AMBASSADOR MAQUETUKA:** [No audible reply]

ADV PRETORIUS SC: And it seems that all you can say is, you drew that conclusion by what happened after that meeting. In other words, he never spoke to you about it again. And that has been clarified to you that that is perhaps not a solid ground for that conclusion.

AMBASSADOR MAQUETUKA: Well, I would concede to that. I will not challenge that position.

ADV PRETORIUS SC: Right. The question remains, was there anything that happened in the meeting that allowed you to draw that conclusion?

AMBASSADOR MAQUETUKA: Not that I can recall.

ADV PRETORIUS SC: What happened to the investigation?

AMBASSADOR MAQUETUKA: This now...[intervenes]

CHAIRPERSON: Oh, I am sorry Mr Pretorius. I interrupted
10 you at the time when you were saying, after the meeting the three of you started talking to one another about... I think you were saying you were being wanted or whatever or whatever.

I just want to make sure that Mr Pretorius remembers that you were... you had a point that you wanted to make there. Either he can let you deal with it now or later.

AMBASSADOR MAQUETUKA: It would actually be a continuation ...[intervenes]

CHAIRPERSON: Of the answer to that? Okay.

20 **AMBASSADOR MAQUETUKA:** Of the answer that was posed by the Advocate Pretorius.

CHAIRPERSON: Okay, that is fine. Yes, okay. Continue with your answer to his question.

AMBASSADOR MAQUETUKA: Can you just please repeat the question, advocate?

ADV PRETORIUS SC: What happened to the investigation after this meeting?

AMBASSADOR MAQUETUKA: After this meeting?

ADV PRETORIUS SC: [No audible reply]

AMBASSADOR MAQUETUKA: No, after this meeting, as far as I recall, this investigation was never discussed even amongst ourselves. Why not? One, we agreed, the three of us, we concluded that it looks like we are not wanted in this institution.

10 If a president, who is the prime target of our product, does not help us in relation to this investigation, there is no way we will go with this investigation. That is...

 We discussed that amongst ourselves, me and Njenje. Njenje and Shaik. Shaik... the three of us, and it was then it became clear to us that "No, we are not wanted in this organisation". Now... and then... if I may proceed?

ADV PRETORIUS SC: [No audible reply]

AMBASSADOR MAQUETUKA: During this period now, everything was in the media about the relationship between
20 the minister and his Top 3. That is all over. And it was during that time that both two colleagues, Njenje first, is offered an outside posting as an ambassador.

 Now Njenje reports to me about this but I was called by the minister and the minister wants to post me as an ambassador.

And I said to the minister: “No, I am not an ambassador type”. And I think he repeated it in his... Mo Shaik, the same thing and more dealt in detail with his situation, where he was even called by the president and offered the post of going...

So we are briefing one another about these developments. Until now it was... it was October 2011 when Njenje decided: “No, I am residing now”. And Njenje then left, 2011, October if I am correct in terms of the date.

10 But... now this is a problem now. So we discuss the... and we agree amongst ourselves that: “Gentleman...” I said to them: “Gentlemen, really, really if Njenje wants to leave, I cannot stop him. If Mo wants to leave, I cannot stop him”.

That is the position that we took amongst ourselves, that each and every individual see how he resolved his own position.

Now on my part Chair, we are talking of 2011, October. Now this is the period where I also said to myself: “No, this thing is not working for me”.

20 That is when... in November, I started to say no... Okay, let me say two things. One, January 2012, I was going to reach retirement age because I was turning 60. That is one.

The contract that I had as a DG was going to expire in October... no, no. It would have been in September, the month in which I was appointed, right.

CHAIRPERSON: September 2012?

AMBASSADOR MAQUETUKA: September 2012.

CHAIRPERSON: Okay.

AMBASSADOR MAQUETUKA: January would be my retirement age and I said I am not proceeding with this thing beyond my retirement age. I will be leaving government. That is number one.

But what I am going to do, I am going to write... I am going to be fair to the system. I am going to write a report
10 that would go to the president and explain myself the reasons why I intend to resign.

That was the culmination of this report that is in the pack. And now I gave the president 14-days. Now again, you might ask myself... ask me, why 14-days?

It is practice Chair in the public service for DG's and senior people with responsibilities to give the policy makers time to consider. That is why, if you read my letter to the president in that report, it is an intention to resign and I am asking the president to look at the issues that I am raising.

20 But after 14-days if I am not getting any response, I will be resigning. That is what I said in the letter. But it went further. It went further. In an engagement with the minister... I cannot recall now... no, no, no.

He received a copy of that report. I copied him a copy of that report. Now whether he discussed it with the

president or blah-blah-blah, I do not know.

But the response now, I remember now, it came from the minister to say, “I got into discussions with the president about your resignation and the president is willing to release you”.

And then we agreed with the minister. And I said to him I still want to be fair on the process. I would still want to continue up to my retirement time which is January. And I am prepared to take a December leave whilst you are
10 deciding on replacement and what have you, because I do not want to be seen to be abandoning the ship.

I could have done. And it was agreed, right? But it is interesting if you look media cuttings, how the media by then was reporting on this thing, that Njenje has resigned.

The next person is going to be Mo Shaik and then ultimately it is going to be the DG. There is a cutting here that actually says that he will be allowed to leave, to take a long-term leave, so that by the time his retirement age time, he is not back into the system.

20 Now where could that information have come from? Where would the media have gotten that? It is just that I do not want to waste your time and go into that particularly. There is a big picture. I think it was the...[intervenes]

CHAIRPERSON: City Press?

AMBASSADOR MAQUETUKA: City Press.

CHAIRPERSON: H'm?

AMBASSADOR MAQUETUKA: And I was wearing the same tie, by the way...[intervenes]

CHAIRPERSON: [laughs]

AMBASSADOR MAQUETUKA: ... in that picture. I am not sure about the shirt. It is possible it was the same shirt. It is possible it was the same suit.

CHAIRPERSON: H'm. H'm.

AMBASSADOR MAQUETUKA: Front picture.

10 **CHAIRPERSON:** H'm. H'm.

AMBASSADOR MAQUETUKA: But of course, by then I got... it was agreed, I am on leave and whatever. I knew come January, I will just go there to pack my things and to say goodbye to the Intelligence Service.

ADV PRETORIUS SC: Ambassador, can I take you through a sequence, please of propositions?

AMBASSADOR MAQUETUKA: [No audible reply]

ADV PRETORIUS SC: The evidence of Messrs Njenje and Shaik and indeed what you say in your statement, it certainly
20 creates the impression that it was your view that there was interference either from the former president in the investigation. And I think in fairness to the president, former president, it needs to be tested.

The first point is that you said in your evidence in relation to the meeting with the minister that regardless of

his view in relation to the conflict of interest, that you had been ordered to stop the investigation, you would have disregarded that and continue with the investigation.

AMBASSADOR MAQUETUKA: No, no. No, not as a result of the conflict of... on the conflict of interest, I made it categorically clear and I say it in the report. I said to the minister he needs the information.

ADV PRETORIUS SC: Yes, but there was nothing in that meeting that would have persuaded you to stop the
10 investigation?

AMBASSADOR MAQUETUKA: No.

ADV PRETORIUS SC: For whatever reason.

AMBASSADOR MAQUETUKA: No.

ADV PRETORIUS SC: The meeting with the president, as we know understand, nothing was said during that meeting that led you to conclude that he was opposed, that is the former president, to the investigation?

AMBASSADOR MAQUETUKA: [No audible reply]

ADV PRETORIUS SC: The fact that the former president did
20 not speak to you afterwards, we have seem to have agreed that that is not a relevant consideration to conclude that the former president wanted the investigation to stop or had any particular attitude towards the investigation.

So the question that then arises is, why after the invention of Minister Cele, the investigation appear not to

have continued.

Is the reason for that not really that your relationship and the relationship of Mr Njenje and Shaik had broken down with the minister, you left and there was no one to continue the investigation or had any interest in the investigation?

Is that not the real explanation for the investigation having come to a halt?

AMBASSADOR MAQUETUKA: The... as I say, after that meeting with the president, we all realised and concluded
10 that this thing of us being there is not working.

And you are correct advocate, the relationship and trust with the minister had broken, completely broken, but our concern outside the investigation now...

Because remember, the reasons for my resignation, as I put it very clear and in detail in this report Chair, was not only because of that investigation. I have categorised issues.

For example, there was no common understanding between myself and the minister in terms of how we should
20 proceed with the integration of the service.

And I have given number of correspondence, emails, letters that I am writing to the minister on this and this, this and this.

ADV PRETORIUS SC: But I will certainly be correct by the team behind me, ambassador that as I read the letter of

resignation, that November letter, it said nothing about any alleged interference with any investigation.

AMBASSADOR MAQUETUKA: As I say... no, no. That is correct.

ADV PRETORIUS SC: And that the reasons for your resignation...[intervenes]

AMBASSADOR MAQUETUKA: No, that is correct. That is correct advocate.

ADV PRETORIUS SC: Yes.

10 **AMBASSADOR MAQUETUKA:** That is why I am saying, the reason... the investigation was not the only issue ...[intervenes]

ADV PRETORIUS SC: But it was not mentioned in your resignation letter at all. One might have expected that had a certain president told you to stop an investigation by implication, that would have been mentioned in your letter.

AMBASSADOR MAQUETUKA: We had... it would have been a waste of time for me to have mentioned it in that letter because, number one, the president knew the facts about
20 that and my position on it. I was dealing with the broader issues that he may not have understood.

CHAIRPERSON: Yes.

AMBASSADOR MAQUETUKA: That is why I would find... Look, but that is really saying that the matter of interpretation now as to whether is it really, really important

that I should have mentioned it in the email?

ADV PRETORIUS SC: No, I am not saying what you should have done. Certainly, ambassador, I would not do that. I am just saying it was not said. That is all.

AMBASSADOR MAQUETUKA: Yes, yes.

ADV PRETORIUS SC: But the proposition I am putting to you is somewhat different. The reason for the investigation and it appears from our investigations, at least, that the investigation did not continue into the Guptas and the
10 Guptas' relationship with the former president.

The reason for that may well have been that the relationship between yourself and Mr Njenje and Shaik had broken down. There was a constructive dismissal.

You were moved out and others were put in and the investigation did not continue for whatever reason, and inferences can be drawn in relation to that from other evidence. So what do you say about that ambassador?

AMBASSADOR MAQUETUKA: I agree fully with you advocate on that one.

20 **ADV PRETORIUS SC:** I am not saying that the evidence of Mr Njenje and Shaik, which now differs from yours substantially, is incorrect. That is for the Chair to make up his mind.

CHAIRPERSON: Yes, you... are the matters that broke the trust between yourselves and the minister, are those matters

covered in your letter to the president?

AMBASSADOR MAQUETUKA: They are fully covered.

CHAIRPERSON: Yes.

AMBASSADOR MAQUETUKA: They are.

CHAIRPERSON: It looks like Mr Pretorius wants to say something.

ADV PRETORIUS SC: H'm. [laughs]

CHAIRPERSON: Oh, not really.

ADV PRETORIUS SC: No, I think to say afterwards.

10 **CHAIRPERSON:** Oh.

ADV PRETORIUS SC: Chair, I was just wondering about the... our plans.

CHAIRPERSON: Yes?

ADV PRETORIUS SC: And...

CHAIRPERSON: Well, if... I certainly would like to finish him. Are there challenges? And you know better how far we are.

ADV PRETORIUS SC: No, no. All I am saying Chair is that if it was just a matter of the statement, we could finish at a
20 reasonable hour.

CHAIRPERSON: Ja.

ADV PRETORIUS SC: But what is necessary after that, is to put to the ambassador the various affidavits that have been received in response to his statement from implicated parties, principle and officials.

CHAIRPERSON: Yes.

ADV PRETORIUS SC: And to allow him to respond to that.

CHAIRPERSON: Yes.

ADV PRETORIUS SC: And that will take some time as well.

CHAIRPERSON: Yes.

ADV PRETORIUS SC: So if we were to continue now, I would say at least another three hours.

CHAIRPERSON: H'm.

ADV PRETORIUS SC: Two to three hours.

10 **AMBASSADOR MAQUETUKA:** Chair, may...[intervenes]

CHAIRPERSON: Yes, I am listening.

AMBASSADOR MAQUETUKA: Ask for your indulgence?

CHAIRPERSON: Yes.

AMBASSADOR MAQUETUKA: I want to go to the gents, please.

CHAIRPERSON: Oh, okay. Okay. Shall we take that adjournment and talk afterwards or do you... should we ...[intervenes]

ADV PRETORIUS SC: No, I am happy to continue Chair.

20 **CHAIRPERSON:** Well, let us take the adjournment for a couple of minutes and when we come back we can talk about the way forward.

ADV PRETORIUS SC: Yes.

CHAIRPERSON: We adjourn for ten minutes. We adjourn.

INQUIRY ADJOURNS:

INQUIRY RESUMES

CHAIRPERSON: Mr Pretorius, the Ambassador said he is having no time constraints, we can move on he said earlier on. I certainly can continue as well. I think just before we adjourned you were saying from your side you can continue as well?

ADV PRETORIUS SC: Yes.

CHAIRPERSON: Yes, let us continue and see how far we are at about eight.

10 **ADV PRETORIUS SC:** Fine.

CHAIRPERSON: And then take it from there.

ADV PRETORIUS SC: Good.

CHAIRPERSON: Okay, alright.

ADV PRETORIUS SC: Ambassador, can we go to your statement at paragraph 70?

AMBASSADOR MAQETUKA: Yes.

ADV PRETORIUS SC: Now that reads:

20 “I was not aware that the investigation into the Guptas was pursued thereafter. Notwithstanding the clear indications that both the Minister and the former President had given that they wished us not to pursue our investigations, a final report was ultimately prepared.”

Now there are number of issues that arise. I think you have given evidence or you have given evidence that as far

as you were concerned the investigation did not continue.

Do I understand your evidence correctly?

AMBASSADOR MAQUETUKA: Yes, that is correct.

ADV PRETORIUS SC: Right. I may be that the consultations and drafting created the wrong impression but as far as the investigators are concerned, we had no evidence of any report into the Gupta's relationship with the former President ever having been prepared or finalised after this meeting. Is that in accordance with

10 your evidence?

AMBASSADOR MAQUETUKA: In our consultation that is what I think ultimately yesterday we agreed on.

ADV PRETORIUS SC: So insofar as this paragraph needs to be recast, it is another correction that must be brought to this affidavit, do I understand correctly?

AMBASSADOR MAQUETUKA: Yes, I understand that.

ADV PRETORIUS SC: But it is clear that as far as you are concerned, at least your evidence, is that you had no knowledge of any report having been prepared or finalised after the meeting with the former President.

20

AMBASSADOR MAQUETUKA: No, I do not.

ADV PRETORIUS SC: And we have explored the other statement that you make here that you concluded as far as paragraph 70 is concerned that the former President gave you the impression that he, together with the Minister, did

not wish you to pursue your investigation. That must now be qualified by your later evidence. Do I understand correctly?

AMBASSADOR MAQUETUKA: Yes.

ADV PRETORIUS SC: When you saw ...[intervenes]

CHAIRPERSON: Before you leave that paragraph, Mr Pretorius, because I think I see you are leaving it.

ADV PRETORIUS SC: Yes.

CHAIRPERSON: In that paragraph, Ambassador, it seems
10 to me that one of the things you are saying is that the President and the Minister had given indications that they wished that you should not pursue the investigation. Now, as far as the Minister is concerned, I am clear that that is what you have said. I am not sure that in your response to some of my questions that is what you said about the President but I may have I misunderstood. I just want to make sure I am not confused about what you say.

The paragraph, as I understand it, includes the President in saying he had given clear indications that he
20 did not wish the investigation to be pursued. Is that what you are saying or you had an error with that?

AMBASSADOR MAQUETUKA: Thanks, Chair. I think it would be fair of me to say, now that you are posing this question, this line. in relation to the President, former President, might not apply but also the word “clear

indication” even on the part of the Minister, might be problematic.

CHAIRPERSON: Yes, you might want to say indications without saying clear.

AMBASSADOR MAQUETUKA: Yes, you can say “indications” but not “clear” because, as I was saying, I still do not recall him saying stop this but there were indications in our – in his interaction with us on that report he wants us to stop.

10 **CHAIRPERSON:** Yes.

AMBASSADOR MAQUETUKA: I do not know whether I am answering you, Chair.

CHAIRPERSON: No, no, you are. So if that is the position it might be necessary for a supplementary affidavit to ...[intervenes]

ADV PRETORIUS SC: Yes, you would also have to clarify your statement in paragraph 68 about the body language and the demeanour of the former President. But that is a clarificatory affidavit that you can give some thought to
20 because you did say that the former President was deliberately silent as well in your evidence.

AMBASSADOR MAQUETUKA: Yes I agree also on that one, yes.

ADV PRETORIUS SC: Alright.

CHAIRPERSON: Okay, I just want to follow that

paragraph 68. Is your position that there was anything in the body language and demeanour of the former President in that meeting that suggested to you whether he did not want you to continue with the investigation? Was there anything in his body language and demeanour that made you or makes you think along those lines or not?

AMBASSADOR MAQETUKA: Except to say that his muteness, his quiet, it is unlike him when you interact. He smiles, he laughs and he would joke but he was just stern
10 on this. I think this is what I wanted to convey by demeanour and body language, it was unlike him.

Now as to whether it would be acceptable or correct therefore to say it made it abundantly clear to us...

CHAIRPERSON: Ja. So maybe to put it differently. Are you able to say, as you sit there, that his body language and demeanour gave you an indication that he did not want the investigation to be pursued?

AMBASSADOR MAQETUKA: Without using precise words, that would be correct.

20 **CHAIRPERSON:** Ja.

AMBASSADOR MAQETUKA: But the impression when I looked at his body language, you know?

CHAIRPERSON: Yes.

AMBASSADOR MAQETUKA: It was that of not a happy person in relation to what we were discussing with him.

CHAIRPERSON: Yes, okay.

AMBASSADOR MAQETUKA: How, I do not know, a draft does not show with the...

CHAIRPERSON: No, no, I understand. You say that is the impression you got.

AMBASSADOR MAQETUKA: It is the impression.

CHAIRPERSON: But you say you cannot put it higher than that.

AMBASSADOR MAQETUKA: No, I cannot.

10 **CHAIRPERSON:** Yes but with the Minister it is a different story.

AMBASSADOR MAQETUKA: No, we know with the Minister it is a different one.

CHAIRPERSON: Yes. Okay, alright.

ADV PRETORIUS SC: What is clear from your evidence, however, is the statement in paragraph 66 that the former President sought to explain his relationship with the Gupta family.

AMBASSADOR MAQETUKA: Yes.

20 **ADV PRETORIUS SC:** Did you conclude that he was seeking to justify it?

AMBASSADOR MAQETUKA: You see, on that one, the way he explained it, the time that he took in explaining this, it was like he is conditioning us, you know, how they helped his son, Duduzane who, although he had these

skills, he could not be employed. And I think – not I think, in the Commission, when he appeared, he raised this issue of that ...[intervenes]

CHAIRPERSON: Ja, he did, ja.

AMBASSADOR MAQETUKA: He did, quite in detail.

CHAIRPERSON: Ja.

AMBASSADOR MAQETUKA: That is when he said I decided that he should go to Ethekeeni where he will get employment, you know? So but in relation to this one, he
10 was quite detailed on that one and really, really serious about it and – I do not know whether I have answered that.

CHAIRPERSON: Okay.

ADV PRETORIUS SC: Well, that at least is concrete evidence that you have given as to what was actually said at the meeting rather than inference from body language and the like and inference from what was not said or what did not happen thereafter. So let us just go to that evidence in relation to what the President said at the meeting and then we will move on.

20 The statements made to you about his relationship with the Gupta family – and I am trying to find a way of not putting words in your mouth, so bear with me, Ambassador.

AMBASSADOR MAQETUKA: Sure, sure, sure.

ADV PRETORIUS SC: Did they seek to look at the relationship objectively from an investigative point of view

and ask questions about the relationship or were they definitive statements about the fact that this was a defensible and justifiable relationship? Do you understand what I am saying?

AMBASSADOR MAQUETUKA: That is the former President now?

ADV PRETORIUS SC: The former President, yes.

AMBASSADOR MAQUETUKA: No, no, he was very clear and that there was nothing wrong with his relationship with
10 the people.

ADV PRETORIUS SC: Right. Let us go on then to paragraph 71. We have dealt with the fact that as far as you are concerned, no further action was taken, certainly in the intelligence structures in relation to the relationship between the former President and the Gupta family but you do say in paragraph 71 that had proper action been taken in investigations there might have been a particular outcome. Would you explain what you are saying please in paragraph 71? Because this is dealt with by Ms Duarte in
20 her statement but we will come to that later. You draw a conclusion in paragraph 71. Why do you draw that conclusion?

AMBASSADOR MAQUETUKA: What I am saying is that had that investigation or had the President have listened to that investigation perhaps it would have helped him if he

had stopped his relationship with the Guptas. And I can further go on to say when you look at it now in retrospect after that 2011 report, would he have been in the situation that he is in now? Because he is dead into the mud because of that relationship. I think in essence that is what I am saying in that paragraph, Chair.

CHAIRPERSON: Yes. You see, Ambassador, that meeting with the President and that meeting with the Minister and, of course, events that may have happened after these
10 meetings - and it may well be that there were events that happened before these meetings, insofar as the investigation is concerned, it may be quite important for the point that you just articulated.

If this Commission ultimately – if it were to ultimately find that to a certain extent the relationship that the former President had with the Gupta family is responsible for maybe some of the things that are alleged to have happened in the country, the question of whether people who tried to draw attention to him or other people
20 who might have had influence, like the NEC of the ruling party, to say something is not right here, there must be an intervention. Or in the case of that investigation that Mr Njenje, Mr Njenje's branch was conducting, if the investigation had continued, it may – we do not know what outcome it would have reached but assume that it may

have reached the outcome that said this is danger, this is going to cause problems. It may be that if one looks at that where one may say well, the President was - should have allowed the investigation to happen and so on, but he is going to say to you – and this is what I want you to address, what if he says to you but I never interfered with your investigation, you yourself have said I did not say stop the investigation, you were the DG, you were all senior officials, you knew your obligations, you knew your
 10 job, I did not say you must stop it. I did not say anything to discourage you from proceeding, so how do you blame me for the fact that you did not continue with the investigation? What do you say to that?

AMBASSADOR MAQETUKA: Good question, Chair. Again, am going to answer that question honestly now that you have posed that question to me. I never thought of it that far, I admit, Advocate, I never thought of it that far. No, let me not cloud the question with other events, I think it would be wrong. Let me just respond to it in relation to
 20 the investigation. I would have no leg to stand if he responds, if he asks that question.

CHAIRPERSON: Okay, alright, thank you. Mr Pretorius?

ADV PRETORIUS SC: On the 18 March 2016 a memorandum was prepared and ultimately presented to the representatives, as you put it, of the top six. Who

prepared the memorandum?

AMBASSADOR MAQETUKA: The ...[intervenes]

CHAIRPERSON: I am sorry, Mr Pretorius, it looks like – it appears to me that that topic has been located wrongly because that is a 2016 matter and yet later on, we must talk about his resignation, which was in 2012.

ADV PRETORIUS SC: Well, I do not think it is wrong, it is just not in chronological order, Chair.

CHAIRPERSON: No, no, I am saying it is located in a
10 wrong place because that happened in 2016.

ADV PRETORIUS SC: Yes.

CHAIRPERSON: But we must still hear about what happened in 2012 when he left, is it not?

ADV PRETORIUS SC: Well, that ...[intervenes]

CHAIRPERSON: In terms of the affidavit.

ADV PRETORIUS SC: Yes.

CHAIRPERSON: It says at page 23:

“My resignation as the head of the Intelligence
Services.”

20 And this topic is at page 17.

ADV PRETORIUS SC: Yes. What he deals with now is a number of particular incidents and then at the end of his affidavit he deals with his resignation.

CHAIRPERSON: I prefer that to be – let us finish
...[intervenes]

ADV PRETORIUS SC: If you prefer to change the order, I am happy that that be done.

CHAIRPERSON: If it is fine with you.

ADV PRETORIUS SC: No, no problem, Chair.

CHAIRPERSON: I will prefer that we finish with what happened in the years before.

ADV PRETORIUS SC: Yes, all I am saying in defence of the drafter here is that there is a logic, perhaps not a time sequence.

10 **CHAIRPERSON:** Yes.

ADV PRETORIUS SC: But let us not argue that, Chair.

CHAIRPERSON: Yes.

ADV PRETORIUS SC: Go to paragraph 95, page 23. In this section of your statement you talk about your resignation as the head of the Intelligence Services, is that correct?

AMBASSADOR MAQETUKA: Yes.

ADV PRETORIUS SC: Why – well, secondly, MM2A is a document authored by yourself dated November 2011
20 addressed to the former President. Do you see that?

AMBASSADOR MAQETUKA: Yes.

ADV PRETORIUS SC: That is not in its terms a letter of resignation, it was merely an address to the former President setting out a number of issues that you required or wanted to be addressed and you said at the end of that

letter please address these within 14 days. Do you recall that?

AMBASSADOR MAQETUKA: Come again, Advocate?

ADV PRETORIUS SC: Alright. Go to page 113.8 please. This is what you term a resignation letter but it is not actually a letter announcing your resignation, it is a letter addressed to the former President setting out a number of concerns you have in relation to State Security and its structures.

10 **AMBASSADOR MAQETUKA:** Yes.

ADV PRETORIUS SC: Are you at page 113?

AMBASSADOR MAQETUKA: Yes, I am there.

ADV PRETORIUS SC: If you go to page 113.8, the end of the letter, there is your signature.

AMBASSADOR MAQETUKA: Yes.

ADV PRETORIUS SC: The conclusion of this letter is not a statement saying you are going to resign, it is a statement which reads:

20 “Mr President, some of the issues raised herein might not be new to you because I have raised them with your personally. I humbly request that within a reasonable time of 14 days of receipt of this document you respond on how you wish to address them.”

Do you see that?

AMBASSADOR MAQETUKA: Yes.

ADV PRETORIUS SC: So this letter, did it precede your resignation?

AMBASSADOR MAQETUKA: Yes, it preceded my resignation because my resignation came into effect on the 28 January 2012.

ADV PRETORIUS SC: Okay.

AMBASSADOR MAQETUKA: When I turned 60.

ADV PRETORIUS SC: Okay, so was it the sequence of
10 events that you raised certain concerns with the former President, they are set out in this letter, they are organisational concerns in the main in the manner in which the Intelligence Service is organised and run. I am not sure that we need to go through them all, it is a matter of record there. But what gave rise to your resignation in January 2012?

AMBASSADOR MAQETUKA: It is a situation that we found ourselves in. As I explained before the short break, amongst other things Njenje, by the time I wrote this letter,
20 Njenje had already left. Right? And there was this whole flurry of reports which some of them one would not know whether was this information deliberately leaked from inside.

For example, I made the example earlier, on the arrangement that we had with the Minister for me to take

this long leave in December during holiday which we agreed on. That appeared in the City Press, you know, because between the two of us, we knew about that arrangement. Okay, it might be that somebody – he discussed it with somebody else within his office, somebody else leaked it, but it is not up to me to say that. But the point is, when I read that City Press article – there are others in this – in some of these paper clippings but at that time it was already clear that as we – as I had indicated there, Advocate, that the relationships were broken.

ADV PRETORIUS SC: Alright. Would you go to paragraph 96 and there you set it out.

AMBASSADOR MAQETUKA: Paragraph?

ADV PRETORIUS SC: Reasonably clearly. You refer to one particular incident that disturbed you.

AMBASSADOR MAQETUKA: Paragraph 96 of my statement?

ADV PRETORIUS SC: Yes, page 23. And you refer to a general course of events that influenced your decision.

AMBASSADOR MAQETUKA: Yes. Can I read it?

ADV PRETORIUS SC: Please do.

AMBASSADOR MAQETUKA:

“One of the reasons for the breakdown in our relationship with Minister Cwele arose after I took

the Minister to task about is abuse of the resources of the SSA to provide protection services for his wife when attending court on charges that she had been involved in drug smuggling. Soon after this Minister Cwele began undermining my role and duties as head of the Intelligence Services. He gave direct instructions to members below me and excluded me from properly performing my duties under my performance agreement. This is set out
 10 fully in my letter of resignation but again we have agreed on the letter addressed to the former President annexed hereto as MM2A.”

ADV PRETORIUS SC: Alright, now there are a number of annexures to that letter. Most of which are classified in one form or another. Some of them have been declassified but they deal with performance agreements and the like and unless you wish to refer to them, it is not necessary from our point of view that you deal with them, they deal with performance matters and the point about your
 20 evidence in relation to what concerns the legal team is that there was a breakdown in the relationship.

AMBASSADOR MAQUETUKA: I agree with that.

CHAIRPERSON: Mr Pretorius, you will have to raise your voice a bit, it was going down.

ADV PRETORIUS SC: Yes, I apologise.

CHAIRPERSON: Ja, ja. But let me say this. You see, the investigation that you conducted or that was conducted under Mr Njenje, that we have talked about, and other matters that you may be saying drove you to resign or leave the Intelligence are quite important if the idea is to say here was a very important investigation that we had good grounds to pursue, we wanted to pursue and had we been allowed to pursue, certain things might not have happened. So it becomes important to articulate quite
 10 clearly what those things are. You remember earlier on in your evidence you talked about constructive dismissal and I gave an explanation on my own understanding of what that is.

So if there is any way of saying is the minister's conduct in this and that and that that brought about the decision to stop the investigation or the decision to leave the service or it is the President's conduct in this and that and that – all of that must be articulated quite clearly so that also the basis for saying so can be looked at properly,
 20 so I am just saying that although it that it is quite important that it be articulate, these things be articulated properly if that is the position.

AMBASSADOR MAQETUKA: Let's put...[intervenes].

ADV PRETORIUS SC: If I may, what is the necessary content of a relationship between a DG as you were and

the Minister, is it necessary for that to be a good, supportive relationship for it to work?

AMBASSADOR MAQETUKA: It's absolutely critical and absolutely important. If you read those Annexures and the reasons why I put those performance agreements, those performance agreements, basically, it's a contract between me and the Minister in relation to my performance, that's number one and when you read all of them, all of them, they were signed by both of us, the Minister – for example
 10 let me give the first one, one of my first KPA's, Key Performance Area was to marshal the integration of these two services, we agreed on that one. Now, then you would see that there are certain things that I needed to do and there are certain things that the Minister needed to do. One of them is, the Minister will create a conducive environment within the agency for me to fulfil my duties, right. Which is, if you look at – that was the significance of me bringing those performance agreements, that's number one but now with the Performance Management
 20 System, that we have, it's right across Government, there are annual performance evaluations, right, where now we look at, have I done this and this and this, this KPA this, this and this and I am 100%, completely, I can stand on top of the mountain and say, I did what I was asked to do and the evidence is in the performance agreements, because

the Minister signed them off during times of evaluation, he signed them off, all of them and I think these performance agreements, they should be, what, three/four but I can share with the Commission, I can share with – the bitterness that I have with Cwele is that up till today, my last performance evaluation, which I passed it is here, up to today, Chair, the State Security Agency has not paid me for that up to today but...[intervenes].

CHAIRPERSON: You say they have not paid you?

10 **AMBASSADOR MAQETUKA:** They never paid me, I have been discussing this thing, even with the present Minister and first the former Inspector General, I think it must have been around about 2015/2016 I lodged a complaint and she investigated it and she came with the conclusion that the Agency must pay me, it hasn't happened, up till today.

CHAIRPERSON: How much are we talking about here, if you are able to say?

AMBASSADOR MAQETUKA: Look I cannot quantify it because they do the calculations.

20 **CHAIRPERSON:** Ja, okay.

AMBASSADOR MAQETUKA: You know.

CHAIRPERSON: Yes.

AMBASSADOR MAQETUKA: But ...[intervenes].

CHAIRPERSON: But whatever amount it is...[intervenes].

AMBASSADOR MAQETUKA: Look between the two of us

it won't be less than R20 000.

CHAIRPERSON: Hmm, now, am I right to assume that, that payment that you would have got or that you would be entitled to, if your performance – if the assessment of your performance indicated that you had performed very well, is that correct?

AMBASSADOR MAQUETUKA: You're correct.

CHAIRPERSON: So, your last performance indicated that you were doing well in your job?

10 **AMBASSADOR MAQUETUKA:** Absolutely.

CHAIRPERSON: And the previous ones, did they indicate the same thing?

AMBASSADOR MAQUETUKA: All of them and all of the, they were signed between the Minister and myself but what I was trying to stress, that relationship is very, very important between the two DG's, I mean between the Minister and – this one of the monies is just by way of example which is one of the things that made this break in relationship.

20 **CHAIRPERSON:** So, are you saying to me that your performance as DG was assessed and, on each occasion, you were found to have performed very well?

AMBASSADOR MAQUETUKA: That's what I'm saying Chair.

CHAIRPERSON: That's what you are saying?

AMBASSADOR MAQETUKA: And there's evidence here, it's not hearsay, there's evidence here.

CHAIRPERSON: Yes, yes, thank you.

ADV PRETORIUS SC: Then the question arises as to why the relationship between yourself and the Minister did not meet the standards of trust and confidence that you said it should meet, why did the relationship break down? You deal with this in paragraph 96.

AMBASSADOR MAQETUKA: Yes, I was waiting for the
10 reference to that paragraph, to explain. One of the problems amongst the multitude of other problems. You will recall, Chair, the case of the wife of the Minister, former Minister, I think she's serving 15 years now, ja, it's 15 years for drug trafficking. Now, during that period of the trial what had happened, there was a payment – huge payment, I don't recall the amount that had to be signed by Njenje because it was an expenditure that was done under the Domestic Intelligence, basically what had happened, members of the Intelligence Service using cars of the
20 service were transporting the Minister's wife from home to the Court, right. Now, for accountability, the unit that was responsible for that needed a signature for their expenditure. Now, a string of Managers in this unit up to Njenje, when those payments came from Njenje, Njenje refused to sign them, he said, no, no, no this activities is

not an SSA activity, that's when it was brought to my attention by Njenje. So, I asked Njenje, Njenje says, no I'm not going to – it's irregular I'm not going to sign it. Now, the Minister got to know about that right, how, because the service now for the transportation of the wife had to be stopped because Njenje instructed the unit there in KZN that it cut this thing, it's irregular that's when it was brought to the attention of the Minister and we dealt with it with the Minister and I said to the Minister, look, this thing
 10 really, to be honest, I mean it's not even come to me, but now that Njenje has reported it to me, it's under the mandate, this expenditure in terms of authorisation falls within the authorisation of Njenje it doesn't need to come to me but I am aware of it and I agree with Njenje, that it is irregular, this activity. You know, that is another reason for this break of relationship under paragraph 96.

ADV PRETORIUS SC: You go on to say that soon after this, that is the incident...[intervenes].

CHAIRPERSON: Before – after when you raised this
 20 issue with Minister Cwele, what was his reaction, did he dispute your view that it was irregular expenditure, was there a disagreement between the two of you on the issue or did he concede that, yes it was, what happened I want to hear about that?

AMBASSADOR MAQUETUKA: Let me first say, Minister

Cwele is a very funny person.

CHAIRPERSON: Just repeat that?

AMBASSADOR MAQETUKA: He's a very funny person and some of us have categorised – characterised him as a narcissist, he's got narcissistic tendencies. One, he can be dismissive, he can laugh for the most serious thing. For example, on this one, he says no but DG this is nothing I don't understand what your problem is here, that was his response. Now, on many occasions- I'm just trying to give
10 you the character of the person not just one and secondly, look, quite a number of Ministers are not aware of the operational matters in terms of expenditures and the details and of course, it is understandable because it's far from them. So, he might have thought that, but it's up to him to say, he might have thought that, that activity there was nothing wrong with it. That was his response and I said to him, Minister I am out of this thing because nonetheless I was just informing you so that you know I am aware of this activity and Njenje is going to stop it.

20 **CHAIRPERSON:** So, you say he might have thought there was nothing wrong with it, in which case I take it he might have thought that you people were wrong to stop it?

AMBASSADOR MAQETUKA: Of course, I agree with you on that, he might it's only him really who can explain himself Chair.

CHAIRPERSON: Yes okay.

ADV PRETORIUS SC: Are you saying that the Minister – a Minister who uses State resources for private purposes, might have thought it was legitimate, is that what you're saying?

AMBASSADOR MAQUETUKA: Yes, there's...[intervenes].

ADV PRETORIUS SC: It's very generous, I must say...[intervenes].

CHAIRPERSON: Well he might have thought so but are
10 you quite clear that he would have been wrong to think so or...[intervenes].

AMBASSADOR MAQUETUKA: Not even wrong.

CHAIRPERSON: Yes.

AMBASSADOR MAQUETUKA: Not even wrong it would have been as it was, it was irregular and if he could have been taken to Court by the Agency he would have, even to have been found to have agreed on an illegal activity, that's how serious – in terms of the PFMA.

CHAIRPERSON: Hmm, one would have thought that if the
20 DG came to the Minister – to a Minister and said, you know that activity is actually going to land us in trouble it's going to be irregular expenditure, one would think that the Minister would take that issue seriously and if he thought the DG was wrong he would ask the question, why do you say this, show me where it says it's not allowed, isn't it?

AMBASSADOR MAQETUKA: Absolutely you are right but unfortunately, again, we are not living in a vacuum we are not living in wonderland. The reality of the matter, these are some of the things that happen in Government.

CHAIRPERSON: I'm going back to the issue of whether he may have legitimately thought there was nothing wrong with this because if the DG – one, the evidence makes it clear that you told him that Mr Njenje had already refused to sign. That on its own should have told him Mr Njenje
10 used this matter in a serious light. You said you agreed with Mr Njenje, you were the DG of the Department. Now, he ought to have thought – one would expect that he would think, no this is serious if I have a different view let's sit down, let me see, let them show me why it's wrong but if he doesn't do that but is dismissive would that be an indication of somebody who genuinely thinks it's right to do this?

AMBASSADOR MAQETUKA: Maybe it's an understatement, I'm downplaying it to say that he might
20 have thought because really, really, I mean a reasonable man would not have thought like that, not at all. Let alone at the level of the Minister, wouldn't.

CHAIRPERSON: Yes, so you know of no grounds on which he would have thought both you and Mr Njenje were mistaken about thinking this would be de-

regularised...[intervenes].

AMBASSADOR MAQETUKA: He would never have had a leg to stand

CHAIRPERSON: Yes, but you made it clear to him that it was irregular?

AMBASSADOR MAQETUKA: I – it's irregular and I also told him that it is going to be stopped or it has been stopped and Njenje has told me that he is going to stop it and I agree with him.

10 **CHAIRPERSON:** Okay.

ADV PRETORIUS SC: You go on in paragraph 96 to say what happened after this incident. You've already told the Chair that, in relation to the Gupta investigation in all probability he'd received information from one of your subordinates and that, that was not in accordance with the protocol of reporting lines, do you recall that evidence?

AMBASSADOR MAQETUKA: Yes.

ADV PRETORIUS SC: You say then in paragraph 96, soon after this, and would you carry on from there please.

20 **AMBASSADOR MAQETUKA:** "Soon after this, Minister

Cwele began undermining my role and duties as head of the Intelligence Service. He gave direct instructions to members below me and excluded, not precluded, excluded me from properly performing my duties under my performance

agreement. This is set out fully in my letter of resignation addressed to the former President”, that is Annexure MM2A, this is the Annexure that contains the performance agreements.

ADV PRETORIUS SC: Yes.

CHAIRPERSON: Well for what it’s worth Ambassador it appears to me that your choice of precluded may have been the more accurate one as opposed to excluded it sounds quite appropriate to me because it means
10 prevented you from properly performing your duties, that’s what that sentence means.

AMBASSADOR MAQETUKA: Okay Chair I’m not going to argue with you on that, I was still sharp in 2011, nine years down the line.

ADV PRETORIUS SC: Ambassador apart from examples that you might give of him liaising with your subordinates and undermining your rule as head and duties as head of Intelligence Service are there any other reasons for the breakdown in the relationship?

20 **AMBASSADOR MAQETUKA:** If we can continue – I think I continue with this in paragraph 97.

ADV PRETORIUS SC: 97 deals with declassification and the like, I don’t think we need go there, go to 98.

AMBASSADOR MAQETUKA: It deals with the declassification?

ADV PRETORIUS SC: Well if you want to deal with it you can but this deals with matters that occurred recently, last year, in relation to classification or declassification of documents and it can't have been relevant to your resignation at the time.

AMBASSADOR MAQUETUKA: Oh okay.

ADV PRETORIUS SC: In other words, 97 is an explanation of why the attachments to the letter of resignation are not attached, and I don't think it's relevant
10 to go to that.

AMBASSADOR MAQUETUKA: No, it's not.

ADV PRETORIUS SC: The documents have been declassified but not all of them but only recently.

AMBASSADOR MAQUETUKA: Yes.

ADV PRETORIUS SC: Let's go to paragraph 98 if we could.

AMBASSADOR MAQUETUKA: "Ambassador Shaik felt very
strongly that we should fight to the end against
what he perceived as our constructive dismissal by
20 the Minister. I felt that the Minister had the backing
of the former President and told Ambassador Shaik
that we could not win the war as the former
President would ultimately get rid of us".

Now, partly we have dealt with some of the issues
about the former President but this paragraph also

highlights that we continued discussing our situation and Ambassador Shaik was the one who was very, very strong to say, let us continue fighting this thing, let us not cave in because it's intentional this thing, it's going to lead to a constructive dismissal but as I said earlier, Chair, we concluded that – I'd said to them that, look you're not going to win this fight, tell me of a DG, tell me of a Minister who has been reprimanded since 1994 and a DG is said to have been in the right, that's not happening in this
 10 post 1994 I would still want to know of a case where a President reprimands a Minister or sacrifices a Minister. No, at the end of the day the scapegoat will be the officials, either a DG or what, that's why I felt that, continuing with what more was saying we should do was unsustainable, he actually proved it when he, ultimately, resigned.

ADV PRETORIUS SC: When who asked you to resign?

AMBASSADOR MAQETUKA: No, I was not asked to resign.

20 **ADV PRETORIUS SC:** Sorry then I misheard you.

CHAIRPERSON: I think you might have to repeat what the last statement you said about, it was proved when what – you were following up on the point that you say, on the position that you say you conveyed to...[intervenes].

AMBASSADOR MAQETUKA: To Mo and Njenje.

CHAIRPERSON: Yes, that you – the three of you would not win the war, this war if you continued to fight and you said to them, show me a DG who has won against a Minister. Show me a Minister who has been sacrificed by the President when there's an issue with the DG. Then you made a statement about resigning, I thought that's what I heard as well, you said this was proved when?

AMBASSADOR MAQETUKA: I was saying, I agree, I resigned but I was not told to resign. I resigned because I
10 couldn't stand – it was strenuous, it was strenuous to say the least and everybody in that farm was aggrieved by what was happening, you see and the situation was not being resolved, you see.

ADV PRETORIUS SC: In summary then, in your view, did you receive the support from the Minister that you expected as DG?

AMBASSADOR MAQETUKA: No, I didn't.

ADV PRETORIUS SC: Right, and was there any act on behalf of the Minister that served, in your view at least, to
20 undermine the relationship between yourself and the Minister?

AMBASSADOR MAQETUKA:

ADV PRETORIUS SC:

AMBASSADOR MAQETUKA: One, the direct instructions into the Department by passing me, is one clear example. I

think somewhere in my report...[intervenes].

CHAIRPERSON: When you say report, you mean your statement, your affidavit?

AMBASSADOR MAQETUKA: I was just trying to be careful as to look at whether I deal with it. There is a point in time when people were reshuffled out of the Department into the Minister, Nkosi is one example. When he came back from Ethiopia, he was working under Ambassador Shaik, right. Now, protocol regulations states very clear if
10 Njenje wants somebody from the Secret Service it has to be mutually agreed and it has to be authorised by the DG and of course the Minister will be notified about the changes. Now, in the case of Dlomo, that never happened. I heard on the grapevine, no I happened to have gone to the Minister and Dlomo was in the Ministry and then I remember asking him, what is it, he says, no DG I've been transferred that was all. I think Kaho Mbunga, Dr Kaho that I mentioned earlier on, he was also from the foreign branch and he was taken out of the foreign branch without any
20 consultations. One, with Mo Shaik as the head of the branch, two, with the DG. So that is another clear example Advocate.

ADV PRETORIUS SC: Alright, let's move on if we may, you decided then to terminate the relationship is that correct?

AMBASSADOR MAQETUKA: I was not terminating the relationships with him, I was resigning from the organisation...[intervenes].

ADV PRETORIUS SC: Right I'm talking about the employment relationship, you decided to resign.

AMBASSADOR MAQETUKA: You see there is another dichotomy within the structure that might, perhaps be also relevant to the Commission. Who appoints DG's, the President, who dismisses, who terminates a contract of the
10 DG, many cases, many cases you will not see the signature of the President? You will a letter signed by a Minister, it's not only in the intelligence, also in the other structures and it's not only under former President Zuma, that has been the trend in the end, you never know, actually what protocol. And I know even up until today that thing is still an issue amongst former DG's. It is still an issue because it has never been resolved.

ADV PRETORIUS SC: Yes. Well I am not sure that that particular topic should take us much longer. The fact is that
20 the relationship broke down. You have given some of the reasons for the relationship breaking down including the undermining of your position.

AMBASSADOR MAQETUKA: Yes.

ADV PRETORIUS SC: By the Minister.

AMBASSADOR MAQETUKA: The Minister.

ADV PRETORIUS SC: And ultimately your decision to resign which you have described as a constructive dismissal. You said your employment had become intolerable.

AMBASSADOR MAQETUKA: Hm.

ADV PRETORIUS SC: Right. With that DC – the Chair can we go to paragraph 74?

AMBASSADOR MAQETUKA: Paragraph?

ADV PRETORIUS SC: 74 on page 17.

10 **CHAIRPERSON:** Yes we can but before we do so let me ask this question and I think we may have touched on [indistinct 00:01:12]. I want to be quite clear what your evidence is about it. You said that after the two meetings one with the Minister the other with the President the investigation was not pursued further, is that correct?

AMBASSADOR MAQETUKA: Yes that is correct.

CHAIRPERSON: Who made the decision that it should not be pursued further?

AMBASSADOR MAQETUKA: You to be honestly answering
20 that question Chair it never came from me.

CHAIRPERSON: Ys.

AMBASSADOR MAQETUKA: I am not even sure if – I do not know if Njenje knows.

CHAIRPERSON: Well – well you were the DG you should know. Njenje was the Head of the Branch that was...

AMBASSADOR MAQETUKA: Of the Branch.

CHAIRPERSON: That was that was at that stage.

AMBASSADOR MAQETUKA: Yes.

CHAIRPERSON: And he should know but the reason why you should know is I think it was such an important investigation you would have wanted to know where is the outcome or anything like that?

AMBASSADOR MAQETUKA: I can unequivocally say I never gave the instruction for that investigation to stop.

10 **CHAIRPERSON:** Yes.

AMBASSADOR MAQETUKA: I never.

CHAIRPERSON: You never.

AMBASSADOR MAQETUKA: No.

CHAIRPERSON: Do you – do you know whether anybody took the decision to stop it or whether it just fizzled out – fizzled out?

AMBASSADOR MAQETUKA: I really do not know Chair.

CHAIRPERSON: Yes. Yes.

AMBASSADOR MAQETUKA: I really do not know.

20 **CHAIRPERSON:** Yes.

AMBASSADOR MAQETUKA: I cannot even say it fizzled out.

CHAIRPERSON: Yes.

AMBASSADOR MAQETUKA: I do not know.

CHAIRPERSON: Yes. But after the two meetings did the

three of you talk about whether the investigation would be pursued or not? Because the Minister you did say made it – it was clear that the Minister was opposed to the investigation being pursued. The President did not say anything according to you to indicate that he did not want the investigation to be pursued. After the meeting or at some stage after those events did the three of you have a discussion to say, do we pursue the investigation or do we not pursue it?

10 **AMBASSADOR MAQETUKA:** No there has been – there was no discussion around that Chair.

CHAIRPERSON: Yes.

AMBASSADOR MAQETUKA: No.

CHAIRPERSON: Okay alright. Now Mr Pretorius I do not know whether you have had – you have refreshed your memory of Mr Shaik’s statement and evidence and Mr Njenje’s one. I seem to have the impression that one or both of them that what they said in terms of their understanding of where the President stood on whether the
20 investigation should have – not continue. I seem to have the impression that they are – their evidence either was that the impression was that the President did not want the investigation to be pursued or that he did not want it to be pursued but I seem to think that at least one of them said he did not say it must be stopped or both might have said

yes he did not say it must be stopped but – what is your recollection?

ADV PRETORIUS SC: The evidence was to the effect that and it was consistent that no direct instruction to stop the investigation was given but they were left under the clear impression that the former President did not favour the investigation.

CHAIRPERSON: Okay.

ADV PRETORIUS SC: I would like to qualify an answer that
10 the witness gave Chair. You said that the former President said nothing in the meeting with you in relation to the Gupta investigation to indicate that he did not want the investigation to continue. Do you recall that?

AMBASSADOR MAQETUKA: Yes.

ADV PRETORIUS SC: He did however on your evidence expressly defend his relationship with the Gupta's, is that correct?

AMBASSADOR MAQETUKA: Yes.

ADV PRETORIUS SC: I think we have dealt with that. So
20 subject to that nothing else was said.

AMBASSADOR MAQETUKA: No.

CHAIRPERSON: Okay thank you.

ADV PRETORIUS SC: Secondly the timeline might be significant in assessing what happened here or what did not happen. The meetings with the Minister and the former

President when did they take place? Can you recall?

AMBASSADOR MAQETUKA: Ja.

ADV PRETORIUS SC: 2011 that being said.

AMBASSADOR MAQETUKA: The year 2011 no doubt about it. What would be extremely difficult for me is to pin down the actual month and date.

CHAIRPERSON: Yes. Okay. Okay.

AMBASSADOR MAQETUKA: I can – I seem to think it would have been June/July.

10 **CHAIRPERSON:** Somewhere mid-year?

AMBASSADOR MAQETUKA: Sorry?

CHAIRPERSON: Somewhere mid-year?

AMBASSADOR MAQETUKA: Yes somewhere mid-year.

CHAIRPERSON: Okay.

AMBASSADOR MAQETUKA: Because number 1 it was not a hot day. It was not a warm day in Cape Town it was cold.

CHAIRPERSON: Yes okay.

ADV PRETORIUS SC: Alright so if it was around mid-2011 there was a lapse of six or so months [indistinct 00:07:17]

20 yes. Mr Shaik – Mr Shaik's evidence was in the later months of 2011.

AMBASSADOR MAQETUKA: Later months.

ADV PRETORIUS SC: Does that help you at all?

AMBASSADOR MAQETUKA: It could not have been. Okay depending again latter month of 2011 what does that mean?

ADV PRETORIUS SC: In any event I do not want to quibble with you.

AMBASSADOR MAQETUKA: No, no I am saying because advocate Njenje left in October 2011.

ADV PRETORIUS SC: Yes.

AMBASSADOR MAQETUKA: Njenje was part of that meeting.

ADV PRETORIUS SC: Yes.

AMBASSADOR MAQETUKA: So I will argue that it was
10 before October 2011.

ADV PRETORIUS SC: But I think the point here is that the time lapse between those meetings and the departure of the first and later the other of the top 3 yourself, Njenje and Shaik was a matter of months. In other words in assessing the continuation of the investigation all I want to establish is that the time lapse and we can discuss this later but the time lapse between the meetings with the former – with the Minister and the former President and the departure from the organisation – State Security Organisation was a matter
20 of months.

AMBASSADOR MAQETUKA: Yes. Yes that is correct.

ADV PRETORIUS SC: Thank you. Alright. In your hands Chair but barring any other questions.

AMBASSADOR MAQETUKA: No, no I do not have other questions but I do know that you do have that topic of

politicisation of state security. It may or may not be that it can come after the one on page 17. I leave that to you.

ADV PRETORIUS SC: Well no, no the – the Chair the memorandum addressed to the Top 6 is the next.

CHAIRPERSON: That is fine.

ADV PRETORIUS SC: In the sequence of events. That must be dealt with.

CHAIRPERSON: That is fine.

ADV PRETORIUS SC: And after the statement is concluded
10 we can then deal with the responses of the Top 6 but there is also the heading – the matter involving General Mdluli and then there is also the Pan 1 investigation to be dealt with. So those three issues need to be dealt with before dealing with the responses.

CHAIRPERSON: That is fine.

ADV PRETORIUS SC: Okay. And we can deal with it briefly because we will deal with it in more detail when we deal with the statement of Duarte – Ms Duarte.

AMBASSADOR MAQETUKA: Yes.

20 **ADV PRETORIUS SC:** But – and there has been evidence quite a detailed nature in this regard but in summary on the 18 March 2016 the – certainly that is the date of the memorandum addressed to the Top 6 of the African National Congress, is that correct?

AMBASSADOR MAQETUKA: That is correct.

ADV PRETORIUS SC: That memorandum is attached and the purpose of that memorandum and the approach to the Top 6 was what in your view and summary?

AMBASSADOR MAQETUKA: The purpose of that memorandum was to bring to the attention of the ANC as an organisation by former members of Mkhonto we Sizwe. We were concerned about developments one in the country but also, we were concerned about developments within the party. Remember now this is 2016 we are no more civil
10 servants. We then felt that it – okay.

1. A memorandum was drafted and by 101 members of the structure.

Okay not that I will come to who drafted it. Right. Now on behalf of the 101 members generated was this memorandum. That is a task as MM what?

ADV PRETORIUS SC: MM3 on page 115 but there are extracts in paragraph 77 so we need not go to the memorandum.

AMBASSADOR MAQETUKA: Okay. The memorandum
20 states or you say I might jump to 77.

ADV PRETORIUS SC: Yes.

AMBASSADOR MAQETUKA: Yes the memorandum states amongst other things:

“That in light of these revelations that is around the Gupta’s now – that is paragraph 8 of that memorandum. In light of

these revelations we demand to know what role if any the Gupta family play in influencing the appointment of Ministers and to what end? Which other Ministers have been approached by them in this manner? What private arrangements if any have been made with the Gupta family? What is their role in the appointment of board members of state owned enterprises? Is the leadership of the ANC aware of these arrangements? And on whose authority does the Gupta family act?”

- 10 **ADV PRETORIUS SC:** The further questions raised in paragraph 9 and 10.

AMBASSADOR MAQETUKA:

“In the absence of any coherent explanation of all of the above we are forced to speculate that important decisions of state are subject to outside influence and unilateralism without any regard to the wellbeing of the country or our people.”

ADV PRETORIUS SC: Paragraph 13.

AMBASSADOR MAQETUKA: Paragraphs 13 reads:

- 20 “Whilst the challenges that face the ANC are many and complex, we are most concerned about the increasing tendency of state capture. We can no longer remain silent in the face of this most undemocratic and dangerous development.”

ADV PRETORIUS SC: And paragraph 14.

AMBASSADOR MAQETUKA:

“There are many, many accounts of undue influence on the decisions of the state. We need to establish the veracity and the validity of all these claims.”

ADV PRETORIUS SC: Now at this stage the evidence in the public domain particularly in the media around these issues what was the position?

AMBASSADOR MAQETUKA: Well the media had a field around this business there is no doubt about it. This was
10 not any secret information that we got. We did not have any access to secret information of state. It was in the public domain.

ADV PRETORIUS SC: Right. And paragraph 16 is a call on the leadership of the ANC to establish independent commission of inquiry. Now this call is made in March 2016 and we will come to the timeline when we deal with the affidavit of Ms Duarte in due course as to whether this was acted upon and let me not pass any judgment at this stage but to ask you whether in your view this approach to the
20 leadership was acted on sufficiently or promptly enough?

AMBASSADOR MAQETUKA: I can safely say no.

ADV PRETORIUS SC: And why do you say that?

AMBASSADOR MAQETUKA: It was not. Why I am saying this. First let me also indicate that in that meeting what is not captured here. In that meeting I must say it was a very

friendly meeting from a number of the Top 6 members but one. It is the then Secretary General of the ANC Qwede Mantashe. He was arrogant. Remember there was an altercation in that meeting between him and Jabu Molukete. And this altercation comes about he tried to politicise us and Jabu was – Jabu said to him please do not preach Catholicism to the Pope. Temperatures rose. The person who saved that day was Jessie Duarte who called calm and said Comrade this is not what we came here for. There is a
 10 memorandum that should be discussed and these Comrades are expected responses from us. And I must say after that then there was calm. That is when I think it is important because we will come to that.

ADV PRETORIUS SC: Yes.

AMBASSADOR MAQETUKA: Later.

ADV PRETORIUS SC: Yes. And we will come to the sequence of events between March and the end of 2016 and in 2017. But let us not forestall that at the moment.

AMBASSADOR MAQETUKA: Okay.

20 **ADV PRETORIUS SC:** Let us deal with the issue in paragraph 79 and following if we may Ambassador. Again, apologies Chair we are going out of time sequence but during your stint with the Crime Intelligence – with – not Crime Intelligence with the Intelligence structures SSA did you have occasion to deal with a report commissioned by

General Mdluli?

AMBASSADOR MAQETUKA: Yes.

ADV PRETORIUS SC: Tell the Chair what happened.

AMBASSADOR MAQETUKA: Yes. I had. And also let me say that again thanks to Ambassador Shaik – Shaik's memory. By the way he is youngest within the three of us so his memory is still sharp. Yes I interacted with this and I recalled and he did not actually give that background that this report from Crime Intelligence that is called the Mdluli
10 Report was given to me by Minister Cwele. He say there is a report here that is very worrisome. And I want you guys to look at this report.

ADV PRETORIUS SC: Just very briefly what did the report say? You say it was a report prepared by Crime Intelligence.

AMBASSADOR MAQETUKA: To be exact now do I determine refer me to the...

ADV PRETORIUS SC: Paragraph 79.

AMBASSADOR MAQETUKA: Paragraph 79. Okay let me
20 read it. Let me read it.

ADV PRETORIUS SC: Please do.

AMBASSADOR MAQETUKA:

“Minister Cwele provided me with a report commissioned by General Mdluli and prepared by Crime Intelligence. Averring that there was a conspiracy waged by senior

generals in SAPS to secure the removal from Crime Intelligence.”

ADV PRETORIUS SC: The removal of General Mdluli surely?

CHAIRPERSON: Or his removal.

AMBASSADOR MAQETUKA: His removal – his removal – sorry Chair.

“His removal from Crime Intelligence which he indicated the former President wished the SSA to analyse and report on.”

10 **ADV PRETORIUS SC:** Now we discussed in consultation more or less when this occurred. Do you recall?

AMBASSADOR MAQETUKA: I really do not recall. As I said in my introduction I have completely forgotten about this report.

ADV PRETORIUS SC: It was whilst you were still DG.

AMBASSADOR MAQETUKA: No, no it was welcoming. The SSA.

ADV PRETORIUS SC: Yes.

20 **AMBASSADOR MAQETUKA:** And as I said most of these things happened during 2011, early 2011.

ADV PRETORIUS SC: Right. Now should a Crime Report of this nature have been given to you directly?

AMBASSADOR MAQETUKA: Now again in the spirit of that coordination here is Crime Intelligence having a report. Let alone the report another thing which I have not – we have

not – I never discussed with you. This report alleges that there were general who wanted to remove me as Mdluli. That was one of the things that we said no, no there is something wrong with this report. But as to whether the SSA would have been the correct structure it is questionable for me.

ADV PRETORIUS SC: Alright.

AMBASSADOR MAQETUKA: Because...

ADV PRETORIUS SC: Let us leave that protocol aside if
10 we may. You do state it in paragraph 80.

AMBASSADOR MAQETUKA: Okay.

ADV PRETORIUS SC: As a result of that intervention did you investigate?

AMBASSADOR MAQETUKA: Yes we analysed the report.

ADV PRETORIUS SC: And what was your finding?

AMBASSADOR MAQETUKA: Our finding was that there is no substance in these allegations. There is just no substance.

1. I remember we raised the issue of the process that
20 this report should be taken by the very person who is being accused.

At least he should have had the wisdom to have left that report to be done by one his deputies because he is implicated. Now how could we believe that the truthfulness of his report? That was amongst the – but our conclusion

and again let me state it was done predominantly by the – by the Domestic Branch because it is a domestic issue. It falls within. You see. And then they advised me then – by me I mean the three of us on this report. And we dismissed the report as having no basis.

ADV PRETORIUS SC: So just to summarise. General Mdluli to your knowledge commissioned a report to be produced by Crime Intelligence. The substance of that report was that he General Mdluli was the victim of a
10 conspiracy waged by senior generals in the South African Police Service to secure his removal from Crime Intelligence.

AMBASSADOR MAQETUKA: Yes.

ADV PRETORIUS SC: That report was then given to you for investigation.

AMBASSADOR MAQETUKA: Yes.

ADV PRETORIUS SC: Or to the SSA for investigation.

AMBASSADOR MAQETUKA: Yes.

ADV PRETORIUS SC: It was investigated by Mr Njenje.

20 **AMBASSADOR MAQETUKA:** Yes.

ADV PRETORIUS SC: And found that there was no substance to the allegations. Do I understand you correctly?

AMBASSADOR MAQETUKA: Correct Advocate.

ADV PRETORIUS SC: What happened then?

CHAIRPERSON: I am sorry. Would there have been a document reflecting your analysis of the reports?

AMBASSADOR MAQETUKA: Yes.

CHAIRPERSON: And your conclusions and reasons?

AMBASSADOR MAQETUKA: No that one would have been a formal document.

CHAIRPERSON: Yes. Yes.

AMBASSADOR MAQETUKA: That was responding to a formal document.

10 **CHAIRPERSON:** Yes.

AMBASSADOR MAQETUKA: That came through the Minister.

CHAIRPERSON: Okay and that should exist somewhere?

AMBASSADOR MAQETUKA: No it should have...

ADV PRETORIUS SC: I have a note Chair to try and obtain it.

CHAIRPERSON: Okay. Okay. But if you are able to I would like you to just highlight two or three things on the basis of which it was said this report had no merit. If you
20 are able to remember. But if you are not able to remember.

AMBASSADOR MAQETUKA: You will pardon me again there. Lapse of memory.

CHAIRPERSON: No that is fine.

AMBASSADOR MAQETUKA: And also, it looks like a person who still remembers these details of that report.

CHAIRPERSON: No, no that is alright.

AMBASSADOR MAQETUKA: Yes. But no, I am sorry Chair.

CHAIRPERSON: Hopefully we get the report. Okay you may proceed. I think Mr Pretorius the question was, what happened after you had concluded that there was no merit in the Mdluli Report? He was expecting you to answer that question. What happened after you had concluded yes?

AMBASSADOR MAQETUKA: Oh, when we finished – when
10 I received the report from Domestic, we discussed it as the Top 3 and it was cleared and it was given back to the Minister as our response.

ADV PRETORIUS SC: Do you know whether it was given to the former President?

AMBASSADOR MAQETUKA: I do not know that would have been the Minister who would have done that normally.

ADV PRETORIUS SC: Just have a look at your own statement in paragraph 81 please. Again, if you disagree with what is said here please say – say that to the Chair.

20 **AMBASSADOR MAQETUKA:** This would – this would have been twofold.

1. It is possible that I would have been briefed by the – by the Minister on this response because personally I do not remember detailing with the President.

ADV PRETORIUS SC: Yes.

AMBASSADOR MAQETUKA: On this.

ADV PRETORIUS SC: No you do not say that here. What you do say is that your report was not accepted by the former President.

AMBASSADOR MAQETUKA: I can – I can really...

ADV PRETORIUS SC: Please look at paragraph 81 and just tell me – oh sorry do not tell me tell the Chair whether what you say there is accurate or not?

AMBASSADOR MAQETUKA: Okay.

10 **CHAIRPERSON:** Well you may read it aloud for us and then comment on it.

AMBASSADOR MAQETUKA:

“But be it as it may I nevertheless referred the report to Mr Njenje to the Domestic Branch to investigate. This was done and when completed the Domestic Branch found that the report had no substance and was full of unverified information. However, our SSA report that is the response despite careful analysis was not accepted by the former President who chose rather to believe the commissioned
20 report by Richard Mdluli. This had the effect of stifling the murder/rape and kidnapping investigations against Mdluli as well as the investigation into his involvement in the irregular appointment of members to Crime Intelligence and his abuse of Secret Service accounts, vehicles and safe houses for his own purposes.”

Now that latter part I suspect must have been the content of that report that they were analysing. But going back to your question about not accepted by the former President I cannot really say with absolute surety that it is a correct reflection. I cannot. Because I never communicated with the President on that. I do not know if he communicated with Njenje. It is also possible.

ADV PRETORIUS SC: Right well it may not necessarily flow from your evidence but the fate of the charges or
10 investigation into General Mdluli and its partial finalisation more recently approximately ten years later is a matter of other evidence and we need not deal with it here. But it does not seem to me you have personal knowledge of this.

AMBASSADOR MAQUETUKA: No. No, advocate.

CHAIRPERSON: Well, if there may have been an error in signing the affidavit, which says this, when actually that is not your recollection, it may be necessary to do a supplementary affidavit, explaining that it is not like this.

AMBASSADOR MAQUETUKA: That is correct.

20 **CHAIRPERSON:** Ja, okay.

ADV PRETORIUS SC: There are a few corrections that must be made.

CHAIRPERSON: Ja, okay.

ADV PRETORIUS SC: Let us deal with the PAN 1 Investigation. Yes, you do have personal knowledge of this.

Is that correct?

AMBASSADOR MAQUETUKA: Yes, Chair.

ADV PRETORIUS SC: Sorry, I just need to put something to...

CHAIRPERSON: Yes, okay.

ADV PRETORIUS SC: Do you recall... I must put to you for your own evidence, ambassador. Mr Shaik gave evidence as to the meeting with the president, right?

AMBASSADOR MAQUETUKA: Yes.

10 **ADV PRETORIUS SC:** He said:

“The president welcomed us. We were all seated. I did get a sense that he was briefed about why we were here...”

You confirm that?

AMBASSADOR MAQUETUKA: H’m.

ADV PRETORIUS SC:

“And obviously he knew that it was about the matter of the Gupta Investigation...”

AMBASSADOR MAQUETUKA: H’m?

20 **ADV PRETORIUS SC:** That coincides with your evidence?

AMBASSADOR MAQUETUKA: H’m.

ADV PRETORIUS SC: He then goes on to say:

“But the president started off with a discussion on essentially what is called the...”

I have got to get this pronunciation right. “The Richard

Mdluli report”.

AMBASSADOR MAQUETUKA: H’m.

ADV PRETORIUS SC: Do you recall that being discussed in the meeting with the president?

AMBASSADOR MAQUETUKA: That statement is correct because that is what Shaik reports... I mean, said in his evidence.

ADV PRETORIUS SC: No, the question is, do you recall it?

AMBASSADOR MAQUETUKA: I do not recall that.

10 **ADV PRETORIUS SC:** Oh.

AMBASSADOR MAQUETUKA: To be honest. I do not recall that having been raised in that meeting but I recall how that report was brought to our attention. I do not recall it earlier.

ADV PRETORIUS SC: No, it is only fair that we speak to you once more and get an accurate version of your evidence in this regard because I understand that you do not recall this and you have no personal knowledge of what is stated here. Is that correct?

AMBASSADOR MAQUETUKA: No, no. What I am saying. I
20 do not have... the place where it was raised, I do not recall it being raised in that meeting with the president.

ADV PRETORIUS SC: Oh, no. Leave it aside or... you have said it that you do not recall it being said in that meeting.

AMBASSADOR MAQUETUKA: H’m.

ADV PRETORIUS SC: We have established that.

AMBASSADOR MAQUETUKA: H'm.

ADV PRETORIUS SC: But what you say here is that the report that the SSA prepared under the hands of Mr Njenje was not accepted by the former president, right?

AMBASSADOR MAQUETUKA: H'm.

ADV PRETORIUS SC: Who choice rather to believe that report commissioned by Richard Mdluli...[intervenes]

AMBASSADOR MAQUETUKA: Mdluli.

ADV PRETORIUS SC: Now as I understand what you are
10 saying now, you have no direct knowledge of that.

AMBASSADOR MAQUETUKA: Yes.

ADV PRETORIUS SC: Is that correct?

AMBASSADOR MAQUETUKA: No, that is correct.

ADV PRETORIUS SC: Well, we must rectify your statement then. If we can go on to the PAN 1 Investigation. We... the time that you spent at SSA and you have told the Chair this, prior to your arrival, the investigation into PAN 1, the PAN 1 Project, was ongoing. Is that correct?

AMBASSADOR MAQUETUKA: That is correct.

ADV PRETORIUS SC: But the incidents that gave rise to the
20 report had already occurred before you arrived.

AMBASSADOR MAQUETUKA: That is correct.

ADV PRETORIUS SC: Do I understand your evidence correctly?

AMBASSADOR MAQUETUKA: Yes.

ADV PRETORIUS SC: Right. What was the position when you arrived then in relation to the expenditure, the report and related matters?

AMBASSADOR MAQUETUKA: The position of the recipients of the report who was the minister, because the investigation team was reporting in meetings that were chaired by the minister.

And I have again to state here that with all the differences that I had with him, when it came to this PAN 1
10 Report, there were no contradictions, there were no problems, there were no challenges amongst us.

We were listening to the investigators. Well, I had the privilege of being sensitised and briefed by Njenje whenever there is going to be a meeting with the minister, with the investigation team but there were no differences, there were no contradictions amongst us on the PAN in particular.

ADV PRETORIUS SC: Right. PAN is the Principle Agent Network?

AMBASSADOR MAQUETUKA: Network

20 **ADV PRETORIUS SC:** And you will speak about that in a moment. But just briefly, if you could summarise the contents of this report? What allegations were contained in the report? What information found its way into the report?

AMBASSADOR MAQUETUKA: Shu!

CHAIRPERSON: Sorry. I am sorry, Mr Pretorius. You are

now referring to a report or the report? Which report are you referring to?

ADV PRETORIUS SC: Well, perhaps that is the... it is better phrased as the information that ultimately founds its way into the report. Let us take it step-by-step.

CHAIRPERSON: Into the report about PAN 1?

ADV PRETORIUS SC: Yes.

CHAIRPERSON: Oh, okay.

ADV PRETORIUS SC: Collaterally referred to as the PAN 1
10 Investigation and the PAN 1 Report.

CHAIRPERSON: H'm.

ADV PRETORIUS SC: But let us not get too far ahead and that is my fault. I apologise. In paragraph 82, you say you participated in briefings that took place at the ministry about the project, the PAN 1 Project. Correct?

AMBASSADOR MAQUETUKA: Yes.

ADV PRETORIUS SC: Mr Njenje was also present at the meetings. I would understand that because he was Head of the Domestic Branch of Intelligence, he would have been
20 dealing with it more directly.

AMBASSADOR MAQUETUKA: Correct.

ADV PRETORIUS SC: Right. What sort of information was discussed at these briefings?

AMBASSADOR MAQUETUKA: The Investigating Team, which was a big team, also represented by the Legal Division

of the SSA, the issues were a project by the SSA under the direction of Arthur Fraser, who was the Deputy Director General in charge of Operations.

This principle network... this Principle Agent Network Project, number one it is important for me and I think you will agree, to state that it was a properly constituted and developed project in that one, it was authorised by then Minister Ronnie Kasrils. That is number one.

10 And number two. It was then rolled out. It is the covert operation which normally intelligence organisations would have. I want to be very clear on that. There was nothing illegal about the setting up of that project.

CHAIRPERSON: The concept was a legit concept?

AMBASSADOR MAQUETUKA: It was a legitimate concept.

CHAIRPERSON: Yes.

AMBASSADOR MAQUETUKA: And... but the problem... what went wrong, there was no Command and Control. There was no oversight.

20 Command and Control, number one, from the DG who was then Manala Manzini, right. Because after Fraser reported to him, it is very important, as Njenje was reporting to me, Njenje would never have read a project like this without reporting to me.

He might not have been given to me day-to-day, minute-to-minute activities but I would have an interest as an

accounting officer. That is why I am saying, where it went wrong, there was no control. Number one. And I think it was just left to us, right.

CHAIRPERSON: Was there anything wrong with its objectives?

AMBASSADOR MAQUETUKA: I would say there would have been nothing wrong with its objectives.

CHAIRPERSON: Yes. Was there anything wrong with the manner in which it carried out its functions?

10 **AMBASSADOR MAQUETUKA:** That is where the problem was. Problem number one in relation to that question, was one of the problems with that project, number one was, that project was not linked to headquarters.

The Secure Communication Systems that receive reports from their various agents was not going to headquarters. The database, the engine room for that system was housed where? In Arthur Fraser's house.

ADV PRETORIUS SC: Sorry. Perhaps in order to understand the significance of that point, it is necessary to
20 explain. Reports from operatives in any project of the SSA, where do they go?

AMBASSADOR MAQUETUKA: Reports would go to operational units through secure communication, the nerve centre of which is located at the farm. And the reasons for those are multifaceted but the most important one is the

security of that infrastructure.

ADV PRETORIUS SC: Now is that a necessary part of the operations that the state security has?

AMBASSADOR MAQUETUKA: Absolutely very necessary and critical.

ADV PRETORIUS SC: Right.

AMBASSADOR MAQUETUKA: And any violation of that would border around violation, serious violation of security protocol.

10 **ADV PRETORIUS SC:** Right. Now, was that process followed in relation to PAN 1, according to the information that you were learning?

AMBASSADOR MAQUETUKA: I ...[intervenes]

CHAIRPERSON: I am sorry?

ADV PRETORIUS SC: According to the information you were getting in this process.

AMBASSADOR MAQUETUKA: In these briefings and according to the information as reported by the investigators... what was the question, sorry? I lost the...

20 **ADV PRETORIUS SC:** You described a process to the Chair ...[intervenes]

AMBASSADOR MAQUETUKA: Yes.

ADV PRETORIUS SC: ...off reports from operatives in a project that go through a certain process and are centralised...[intervenes]

AMBASSADOR MAQUETUKA: Yes.

ADV PRETORIUS SC: ...within the SSA's...[intervenes]

AMBASSADOR MAQUETUKA: Right.

ADV PRETORIUS SC: ...records.

AMBASSADOR MAQUETUKA: Yes.

ADV PRETORIUS SC: Is that correct?

AMBASSADOR MAQUETUKA: Yes.

ADV PRETORIUS SC: Now the question is, was that process followed ...[intervenes]

10 **AMBASSADOR MAQUETUKA:** No, it was not.

ADV PRETORIUS SC: ...according to the information you received in relation to PAN 1?

AMBASSADOR MAQUETUKA: No, no. No, it was not.

ADV PRETORIUS SC: What was...[intervenes]

AMBASSADOR MAQUETUKA: Because number one, the nerve centre of that... that received that information was not linked to SSA Headquarters.

ADV PRETORIUS SC: Yes. Where was it located?

20 **AMBASSADOR MAQUETUKA:** It was located at Arthur Fraser's house.

ADV PRETORIUS SC: What did it mean for the security of your information?

AMBASSADOR MAQUETUKA: Wow, it is serious! Not only for the security of the information but also for the security of those people who give you that information because sources,

your assets in Intelligence are very critical.

ADV PRETORIUS SC: Right.

AMBASSADOR MAQUETUKA: You can never compromise because remember, they become... they are recruited on the basis of trust.

Now when they are not going to know or when they get to know that actually these reports that I am sending, they are not going to where I think they were getting to. Then there is a problem there. There is a problem there.

10 In other countries, it can go to treason. You can be charged for treason for that.

ADV PRETORIUS SC: Let us go to paragraph 86.3. What was the further...?

AMBASSADOR MAQUETUKA: 86.3?

ADV PRETORIUS SC: Point...

AMBASSADOR MAQUETUKA: Yes.

ADV PRETORIUS SC: In relation ...[indistinct] ...[intervenes]

AMBASSADOR MAQUETUKA:

20 "There were no reporting lines to head office which gave Mr Fraser a dangerous amount of unbridled power..."

ADV PRETORIUS SC: 86.4.

AMBASSADOR MAQUETUKA:

"There was no oversight or accountability for the

projects pursued or expenditure incurred.”

Chair, can we just...?

ADV PRETORIUS SC: No, I am listening.

AMBASSADOR MAQUETUKA: I just wanted to expand a little bit on that ...[intervenes]

ADV PRETORIUS SC: Yes, please.

AMBASSADOR MAQUETUKA: The estimate for the mess that happened out of that, I think if I am still correct and Njenje mentioned it, I think it ran to about R 4 billion or
10 more.

And how did it happen? The number of houses, safe houses that were bought and Njenje gave account of the number of cars that were bought which ran in their hundreds. Some of them were never used.

Now all these things come out as a result of the investigation but I can safely say Chair, one of the most beautiful things what the investigators did was to secure the database. The target was “get that database out of that house”.

20 **ADV PRETORIUS SC:** Out of Fraser’s house?

AMBASSADOR MAQUETUKA: By hook or crook, because nonetheless, it is not his... get it out by hook or crook. And they did get it.

Now, that is how the beans were spilt because now the clever guys would be in a position... were in a position now

to download, to analyse, and it was discovered that: “Wow, there is a big, big problem!” That the agency was not aware of.

ADV PRETORIUS SC: Right. What happened in relation... or perhaps before I ask you that question. In paragraph 87, you summarise what you referred to as the three main problems with the PAN 1 Project.

AMBASSADOR MAQUETUKA: The three main problems with the PAN Project as I recall were, in my view, therefore,
10 the centralisation of power, the ability to draw large amounts of money and the absence of accountability.

Centralisation of power. Arthur Fraser in regard to this project. Here he acted like he is the DG. That is one. And because there was no accountability, there was no control by the DG. It became a free for all. He was a law unto himself.

And I think there was a consensus amongst the recipients when the investigators raised these issues because questions would be asked, the lawyers would respond.

20 Now in terms of the act that was irregular, that was illegal. It was not supposed to have happened but it happened. That was the reality of the matter.

ADV PRETORIUS SC: What happened to the investigation? It seems apparent from your statement in paragraph 88 that at a stage all expenditure relating to all PAN 1 Projects were

stopped.

AMBASSADOR MAQUETUKA: Yes.

ADV PRETORIUS SC: Is that correct?

AMBASSADOR MAQUETUKA: I... what happened. When this thing was leaked, I do not know how it was leaked, this project. And then when investigating... remember, this is the time I am still not there when this project started.

I am still not even there when the project was stopped but what I recall was, when the project was stopped it was
10 when it was realised that damage has been done.

The minister instructed that the project immediately stop. Now, I have to say, under those conditions the minister would have been justified because his department is not accountable for anybody.

Under those conditions the minister, it would have been a legit... because he is the only one then in that case because Cele who... could he have... would he have done that when he was not adjudicating, monitoring the implementation of the project? The answer is no.

20 So in that case it was genuine that the minister should come in. I agree fully with Cele on that decision.

ADV PRETORIUS SC: The investigation or the fruits of the investigation, were they referred to any law enforcement agency?

AMBASSADOR MAQUETUKA: Ultimately, the investigation

was completed and this would have been now 2011, one...
before Njenje resigned. What was the question advocate?

ADV PRETORIUS SC: Well, let us take it step-by-step. Was
the investigation complete?

AMBASSADOR MAQUETUKA: Yes ...[indistinct]

ADV PRETORIUS SC: Was it then referred?

AMBASSADOR MAQUETUKA: It was completed... it was
winded up at the level of the minister and his senior
management in concurrence with the investigators. The
10 recommendations of the... no, let me not go further with that.

ADV PRETORIUS SC: Well, go to paragraph 90 and tell the
Chair what happened.

AMBASSADOR MAQUETUKA:

“In fact, Minister Cele had himself taken the view that
the investigators and the legal team, headed by
Advocate Willem Hanekom, had exhausted all
avenues of investigation and that it was now up to
the law enforcement agencies to act against those
20 implicated.”

ADV PRETORIUS SC: Therein lies the question that I
wanted to ask. The matter was then referred to the law
enforcement agencies, was it not?

AMBASSADOR MAQUETUKA: That was the
recommendation now of the collective as headed by the

minister.

It is also important advocate to indicate that when we talk of exhausting all internal processes... remember, our investigators in terms of their mandate, they can only investigate matters within the organisation.

If those matters are then, they have got implications of criminality or what have you, then it goes to the law enforcement agencies.

ADV PRETORIUS SC: Right.

10 **AMBASSADOR MAQUETUKA:** And that was or this is what this paragraph is explaining.

ADV PRETORIUS SC: Yes. Well, in paragraph 89 in the last sentence you say:

“The matter was then referred by Minister Njenje to Peter Bishop at the Special Investigating Unit...”

AMBASSADOR MAQUETUKA: Yes, Mr Njenje then, as the custodian of that investigation, had to be the one who now finalise that handover over of the dossier to the law enforcement agencies.

20 **ADV PRETORIUS SC:** Right. Two things then happened, and we can refer here, to your understanding of Mr Njenje’s evidence, who deal with in paragraph 90. What did you learn?

AMBASSADOR MAQUETUKA:

“I was unaware until I heard Mr Njenje’s evidence

before the Commission that after my departure from the SSA, he was instructed by Minister Cele to withdraw the PAN 1 Report from SSA and was given an instruction to stop the PAN 1 Investigation.”

Let me just correct here again. I was unaware until I heard Mr Njenje’s evidence before the Commission. That is correct what the issue is here.

And that after my departure from the SSA, which is again also wrong...[intervenes]

10 **CHAIRPERSON:** Because he left before you.

AMBASSADOR MAQUETUKA: He left before me.

CHAIRPERSON: Yes.

AMBASSADOR MAQUETUKA: He left before me.

CHAIRPERSON: H’m.

AMBASSADOR MAQUETUKA: He was instructed by Minister Cele. Now I suspect the correct version here would have been: “he was instructed by Mr Cele to withdraw that report from the law enforcement agencies whilst we were still there but I was never informed”.

20 **CHAIRPERSON:** H’m.

AMBASSADOR MAQUETUKA: I was never informed. As I say, I first heard about that in his evidence this year.

CHAIRPERSON: Yes, so what you were unaware of was that he was instructed to withdraw the report from the law enforcement because ...[indistinct]

AMBASSADOR MAQUETUKA: Instructed.... because he never reported to me about that.

CHAIRPERSON: H'm.

ADV PRETORIUS SC: So SSA should read SIU?

AMBASSADOR MAQUETUKA: "He was instructed to withdraw the PAN 1 Report from the SIU". You are correct there again.

ADV PRETORIUS SC: Yes. In any event, what we know ...

BREAK IN AUDIO RECORDING 01.52.38 to 01.56.57 –

10 **microphones switched off from this point onwards]**

CHAIRPERSON: Yes.

ADV PRETORIUS SC: In regard to her own observation but I don't think that that matters will concern ...[indistinct]

CHAIRPERSON: Yes.

ADV PRETORIUS SC: Purview of what transpired.

CHAIRPERSON: Yes.

ADV PRETORIUS SC: And who was right or wrong or ...

CHAIRPERSON: Ja.

20 **ADV PRETORIUS SC:** It's surely a matter between the Commission and her.

CHAIRPERSON: Yes. Is there something we ...[indistinct].

ADV PRETORIUS SC: Only in part ...[indistinct] I am told Chair so it is important that we have a record, particularly of the procedural steps that we take to accommodate the versions of the implicated parties.

CHAIRPERSON: Yes.

ADV PRETORIUS SC: I know that we should be able to finish within an hour and we can arrange another time.

CHAIRPERSON: Yes.

ADV PRETORIUS SC: I canvassed this possibility with the investigator who says provided as we thought ...[indistinct] is quite ...[indistinct]

CHAIRPERSON: Yes, and ...[intervenes]

ADV PRETORIUS SC: ...[Indistinct]

10 **CHAIRPERSON:** It is just a pity that when we have gone as far as we had to try and finish and then we can't finish.

ADV PRETORIUS SC: Great pity yes.

CHAIRPERSON: Well I will also tell you, you saw what happened, we were all trying to finish up and obviously with your cooperation we finished today or this evening. I think that one can – I think that one should be done, Mr Pretorius I think what should be done is one of two things, one, we are going to have to adjourn, but the one option is of course that the Ambassador can be called back on a date to be arranged
20 to finish, but also it may well be that if what he has not covered, what was left is very limited my own thinking is it could be covered by way of an affidavit so he could be asked to deal with A, B, C, D issues in an affidavit and the response in an affidavit and then next time or at a certain stage somebody can go on record to say on this day the

electricity forced us to stop before he could finish and to complete his evidence this is what is happening. If it is an affidavit, he can say that here is an affidavit that covers what he did not cover and it could be marked exhibit whatever.

ADV PRETORIUS SC: We could deal with the response to the top six affidavits in that way

CHAIRPERSON: Ja.

ADV PRETORIUS SC: I am also told though I am very
10 reluctant to hear what was told to me, is that the venue is available tomorrow.

CHAIRPERSON: Ja, well tomorrow in the morning I have a teleconference commitment.

ADV PRETORIUS SC: And then he has to fly, so I am relieved to hear that Chair.

ADV PRETORIUS SC: He has to fly tomorrow?

ADV PRETORIUS SC: Sunday.

CHAIRPERSON: Sunday, what could be explored maybe either tomorrow afternoon, I am not sure whether we should
20 just leave it to one of those two options, I am not sure, but tomorrow afternoon could be explored, I am not sure.

ADV PRETORIUS SC: No Chair if I may say we have to correct this affidavit in many parts. As I understand the Ambassador's response to the affidavits, he doesn't really take issue with them ...[indistinct]. Any alterations that

might concern your findings ultimately Chair are observations that arise after that response, which don't really concern the factual evidence, they are an independent record in relation to which he has no quarrel, so it would be a fairly straightforward exercise to ...[indistinct] the Ambassador's response. What is important though is that that response finds its way onto a record of sorts and we have to find somewhere of doing that, so those affidavits are heard. They don't ...[indistinct] version ...[indistinct] they

10 merely would respond and then any consideration of dealing with the issues raised there can be dealt with directly with those persons if necessary by way of an ...[indistinct], so it doesn't seem to me to be too much of a challenge ...[indistinct], in fact we finished the salient part of one or two paragraphs, so it is only that that needs to be dealt with as in a corrected affidavit.

CHAIRPERSON: Yes, no right, I think you are right, probably I think what we should do is you will reflect on possible going that route by way of an affidavit and that

20 seems to both of us to be the right way to go. That is one, two I think that because we are not being recorded now when next the Commission is sitting before the next witness starts, I think you should be there so that we can just place on record the way forward.

ADV PRETORIUS SC: That is on Monday morning?

CHAIRPERSON: Well on Monday we are meant to hear the evidence of a certain witness and Tuesday I have been told that that witness is not going to be able to come. So it is either going to be Wednesday or Thursday. Ms Hofmeyr will know internally.

ADV PRETORIUS SC: I will be here, it will be a short finding.

CHAIRPERSON: Ja, it could be two minutes/three minutes ja, so we can start, you can be here when we start or
10 whatever.

ADV PRETORIUS SC: Thank you.

CHAIRPERSON: So but for also the media if they are still here there will be no hearing on Monday and Tuesday because the witness who was going to come I have been told he is not available to come and so we may be sitting on Wednesday but if that doesn't happen we certainly will be sitting on Thursday, so the media will be informed about Wednesday once that is settled.

Okay I think that it remains for me to once again thank
20 you Ambassador for making yourself available to come to the assistance of the Commission. We appreciate it very much. I am sorry that we could not wrap up your evidence, we may be at fault to – but ...[indistinct] will be found to if possible without you having to travel here but Mr Pretorius will reflect on the way to do it, but we appreciate it very much that you

took the trouble and came, I am sorry we had to sit so late, but I am hoping that we will still have more past and present Directors General and Ministers and Deputy Ministers come forward and share with the Commission what they know.

Thank you very much.

AMBASSADOR MAQETUKA: Thank you Mr Chair.

CHAIRPERSON: Thank you. Okay we are therefore going to adjourn, I think we have never sat till so late.

We adjourn.

10 **REGISTRAR:** All rise.

INQUIRY ADJOURNS TO 15 JULY 2020