

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

**04 NOVEMBER 2020**

**DAY 298**



**Gauteng Transcribers**  
**Recording & Transcriptions**

22 Woodlands Drive  
Irene Woods, Centurion  
TEL: 012 941 0587 FAX: 086 742 7088  
MOBILE: 066 513 1757  
[info@gautengtranscribers.co.za](mailto:info@gautengtranscribers.co.za)

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TRANSCRIBERS:

B KLINE; Y KLIEM; V FAASEN; D STANIFORTH



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**PROCEEDINGS RESUME ON 04 NOVEMBER 2020**

**CHAIRPERSON:** Maybe they can see whether they can move it to a place where it will not be a problem for you. Maybe if – I just want it to light somewhere.

**ADV HOFMEYR:** Yes, no.

**CHAIRPERSON:** There.

**ADV HOFMEYR:** Chair can I say if – if it is useful to have it I will just make sure I use that screen so then I will be – I just will not look that way. It will – it will not be an issue.

10 **CHAIRPERSON:** No, no, no I want you to look where you are comfortable to look. They have just moved it a bit now. How is it?

**ADV HOFMEYR:** Oh that is better.

**CHAIRPERSON:** Is that better?

**ADV HOFMEYR:** Much better thank you.

**CHAIRPERSON:** Okay alright. Okay. Thank you.

**ADV HOFMEYR:** Thank you Chair. Chair today we receive the evidence of Ms Duduzile Myeni. She is legally represented and so if we could take a moment for her legal  
20 representatives to place themselves on record.

**CHAIRPERSON:** Yes. Yes. Okay that is – that I think you will come over – you could do it from where you are Mr Masuku if that is fine because it will save us some time.

**ADV MASUKU SC:** [Inaudible]. To stand talking to Deputy Justice. I will just sit and speak to you. But now that you

have you permitted me to have a seat.

**CHAIRPERSON:** No I am permitting you, yes, yes.

**ADV MASUKU SC:** Yes together with Mr Buthelezi we appear for Ms Myeni.

**CHAIRPERSON:** Yes.

**ADV MASUKU SC:** And Chair you will notice that we were not exactly – where she is we will be giving her advice.

**CHAIRPERSON:** Yes.

10 **ADV MASUKU SC:** So if we do not intend to interrupt you.

**CHAIRPERSON:** Yes.

**ADV MASUKU SC:** Or interrupt the flow of the evidence.

**CHAIRPERSON:** Yes.

**ADV MASUKU SC:** But if there is something that really crops up.

**CHAIRPERSON:** Yes.

**ADV MASUKU SC:** We will politely indicate that we need to speak and obviously if she needs to speak to us.

20 **CHAIRPERSON:** Yes.

**ADV MASUKU SC:** She should be free to indicate as well.

**CHAIRPERSON:** Yes Okay.

**ADV MASUKU SC:** And with your leave.

**CHAIRPERSON:** Yes.

**ADV MASUKU SC:** Which perhaps phone her and hear what she says.

**CHAIRPERSON:** Yes. No, no that is alright. Well you talk about interrupting the proceedings Mr Masuku I can say that if your last appearance here was – is anything to go by these proceedings will be very smooth. I think you only interrupt when it is really necessary.

**ADV MASUKU SC:** Yes.

**CHAIRPERSON:** You do not just interrupt. So I think if  
10 your last appearance is anything to go by that is when you appeared for Mr ...

**ADV MASUKU SC:** Van Rooyen.

**CHAIRPERSON:** Van Rooyen I think ja. Everything went very smoothly.

**ADV MASUKU SC:** I am glad you say that Chair.

**CHAIRPERSON:** So I appreciate that very much.

**ADV MASUKU SC:** Thank you.

**CHAIRPERSON:** Ja. Okay alright. I do not see Ms Myeni  
20 now so there may have been some technical problem that has arisen.

**ADV HOFMEYR:** Chair I...

**ADV MASUKU SC:** Chair just – sorry just one last thing. I am not here from tomorrow and Friday.

**CHAIRPERSON:** And on Friday.

**ADV MASUKU SC:** Mr Buthelezi will be here.

**CHAIRPERSON:** Will be here. Okay no that is fine. That is fine.

**ADV MASUKU SC:** Thank you.

**ADV HOFMEYR:** Chair I have been informed that there has been a connection problem. It seems that Ms Myeni has lost bandwidth.

**CHAIRPERSON:** Yes.

**ADV HOFMEYR:** So we are going to need to have to establish ...

10 **CHAIRPERSON:** What the problem is.

**ADV HOFMEYR:** What the problem is and endeavour to reconnect.

**CHAIRPERSON:** Yes. Okay I think let - let me adjourn then and hopefully it will not take long and then hopefully when we start everything will be smooth.

**ADV HOFMEYR:** Yes thank you.

**CHAIRPERSON:** Okay. We adjourn.

**REGISTRAR:** All rise.

### **PROCEEDINGS RESUME**

20 **CHAIRPERSON:** Okay it looks like the technical problem has been sorted out.

**ADV HOFMEYR:** Indeed Chair

**CHAIRPERSON:** Okay.

**ADV HOFMEYR:** As I understand it Ms Myeni has now been provided with a laptop by her legal team and we hope

that that will greatly assist today's proceedings. So we are indebted thank you for making those arrangements.

**CHAIRPERSON:** Yes well her picture is also much more clearer now.

**ADV HOFMEYR:** Indeed.

**CHAIRPERSON:** That it was before.

**ADV HOFMEYR:** Indeed.

**CHAIRPERSON:** Yes. Ms Myeni can you hear me?

**MS MYENI:** Yes Chairperson I can hear you.

10 **CHAIRPERSON:** Okay thank you. We can hear you well as well. Thank you. Okay let us start. Do you – let us do the oath – please administer the oath or affirmation. Ms Myeni you might have to – you might have to come in at some stage when your health situation permits to confirm everything under oath in the commission but for now we will do the oath via video link. Okay. Please go ahead.

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

**MS MYENI:** Duduzile Cynthia Myeni.

20 **REGISTRAR:** Do you have any objections into taking the prescribed affirmation?

**MS MYENI:** I do not have any objection.

**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.

**MS MYENI:** I solely affirm.

**CHAIRPERSON:** Thank you very much. It seems that there is a delay. Is it supposed to be like that?

**ADV HOFMEYR:** Chair as I understand it it is a product of the relevant quality of Ms Myeni's bandwidth. So what we have been asked to do today is just try and ensure that we work with the delay. So we ask questions and we anticipate that there will be a delay in the relay for her answer and then we also wait after the answer to ask the  
10 next question. I understand that is going to be the best way to facilitate the proceedings.

**CHAIRPERSON:** Okay no that is fine. Okay. You may proceed then.

**ADV HOFMEYR:** Thank you Chair. Ms Myeni I would just like to ask a few questions about your set up today because it is important that we just get certain things on record. Can you confirm that you are alone in the room that you are currently present in?

**MS MYENI:** I am in self-isolation Ma'am. I am being  
20 assisted by my representative from the Mabuza Attorneys. There is always a day helper in the place I stay. But what happened to me was the – the notification about Covid-19 exposure happened while the day helper was in the house. So she is here with me and the representative from Mabuza Attorneys.



**ADV HOFMEYR:** Thank you.

**MS MYENI:** So that is why today I have not been able to come before the commission because at the moment I am just observing progress on my side. I am also ensuring that I am taking necessary precautions because I have not felt anything as yet but the person – the other person is confirmed to be positive.

**ADV HOFMEYR:** Thank you Ms Myeni we – we really appreciate the efforts that you are taking to be available  
10 today. Then the other thing I need to just confirm with you is that you will not receive any messages during the evidence that you give and if you do receive messages or communications you will alert the Chairperson to that fact.

**ADV MASUKU SC:** I apologise Chair.

**CHAIRPERSON:** Sorry one second.

**ADV MASUKU SC:** I apologise Chair I cannot understand that – that she would be asking to make that condition because we are here. We communicate with her on sms. I do not understand why she would be required to tell you  
20 what our communication with her is. If the idea is that we should not communicate with her unless we tell you what we are communicating with her I do not understand that condition.

**CHAIRPERSON:** What do you – what do you want to say Ms Hofmeyr.

**ADV HOFMEYR:** Chair I was just wanting to explain the background to the question. You see if there is a witness present in the room with us they do not communicate with their lawyers while they are in the room.

If there is a need for the lawyers to communicate with the witness there can be a request for an adjournment or any such thing. The question was not intended to limit in any way those types of communications.

10 But as we have done with at least one other previous witness whom we have addressed in evidence on Zoom we always ask these questions because there is a level at which because of the remoteness we need an undertaking from the witness that during her evidence she will not be receiving messages from anyone else because that would diminish the quality of her evidence if she was receiving communications during this. So that is the basis for the questions.

**CHAIRPERSON:** Mr Masuku.

**ADV MASUKU SC:** No I am – appreciate the answer.

20 **CHAIRPERSON:** Yes.

**ADV MASUKU SC:** But I do want to make it clear that as legal representatives we are entitled to have – we interject when we need to speak to her or she is entitled to also raise the fact that she would like to consult with us. And that we should not be restricted as far as that is

concerned.

**CHAIRPERSON:** Yes, no I think based on what both of you have said I think Ms Hofmeyr's concern is that there should be no assistance to the witness in regard to the evidence. Obviously there would no such assistance from the legal team side. But maybe the idea – should the idea not – the arrangement not be that when you have a need to talk to her we can adjourn and then you can talk to her. Would that be fine?

10 **ADV MASUKU SC:** That will be fine.

**CHAIRPERSON:** Yes.

**ADV MASUKU SC:** And I can assure you Chair it will not be a you know a frequent issue.

**CHAIRPERSON:** No, no, no you – that I accept without any problems ja.

**ADV MASUKU SC:** Yes. Thanks Chair.

**CHAIRPERSON:** Okay alright. Okay. Thank you. Ms Hofmeyr.

**ADV HOFMEYR:** Thank you.

20 **CHAIRPERSON:** I think Ms Myeni was in the process of – or was about to respond when Mr Masuku wanted to say something. Do you want to remind her of your question is case she has forgotten?

**ADV HOFMEYR:** Yes. It was just to give her confirmation that she will not receive communications while she is

giving evidence and if she does that she will simply alert us to that fact. Because we have catered for communications between Ms Myeni and her lawyers which we will manage in the way that we have discussed.

**MS MYENI:** That is noted and thank you for that. But Chair I must also thank you very much for allowing me to appear before you through this process and there is an appreciation on my side that I had to ensure that I appear as per the subpoena that I received and I think you for  
10 allowing me to appear through the Zoom. Let me assure you Chairperson that my phone is off.

**CHAIRPERSON:** Ja.

**MS MYENI:** So I do not think I will be receiving any messages from anyone.

**CHAIRPERSON:** Yes.

**MS MYENI:** And I think the representative from the office of the Mabuza Attorneys is not here where I am sitting.

**CHAIRPERSON:** Yes.

**MS MYENI:** Also I think to ensure that he is also safe.

20 **CHAIRPERSON:** Yes.

**MS MYENI:** In case I am

**CHAIRPERSON:** Positive.

**MS MYENI:** Positive.

**CHAIRPERSON:** Yes. No thank you very much Ms Myeni. Thank you for taking – making all the efforts you have

made to ensure that the fact that you may have been exposed to somebody who has tested positive did not result in the commission not sitting. So I understood your request and had no hesitation in granting the request that you give your evidence via video link so that is appreciated.

**MS MYENI:** Thank you Chairperson.

**CHAIRPERSON:** Thank you.

**ADV HOFMEYR:** Thank you and then Ms Myeni the one  
10 other thing I would like to do is just from a logistics point of view confirm that you have the files that were delivered for you this morning once we were notified yesterday about your situation. Do you have those files available to you?

**MS MYENI:** Yes I do.

**ADV HOFMEYR:** What we are going to deal with mainly today is a file that on the spine of it there will be two of them marked DD34 and they bear your name. So I suggest that you have those readily available to you. And then I will ask the Chair to enter that into the record as Exhibit  
20 DD34.

**MS MYENI:** I do have it in front of me.

**CHAIRPERSON:** I have got Ms Hofmeyr a file written DD34[a]. It is written Exhibit DD34[a] I guess it should Bundle DD34[a]?

**ADV HOFMEYR:** Correct Chair.

**CHAIRPERSON:** Yes. Let us start with that just so that we will speak from the same page. On the spine of that file I am changing Exhibit to Bundle – Bundle Dd34[a] so that is it. When we say Bundle DD34[a] that is the file we will be referring to. Maybe we should for the sake of completeness do the other one as well?

**ADV HOFMEYR:** Yes indeed.

**CHAIRPERSON:** Will it be 34[b]?

**ADV HOFMEYR:** Correct Chair.

10 **CHAIRPERSON:** Okay. So the other file which is written Exhibit DD34[b] on the spine will now be Bundle DD34[b]. Okay.

**ADV HOFMEYR:** Thank you Chair and then...

**CHAIRPERSON:** Alright thank you.

**ADV HOFMEYR:** When we come to specific documents within it as we have been doing we will identify them as DD34.1, 2, 3 or

**CHAIRPERSON:** Yes.

**ADV HOFMEYR:** As we follow the index.

20 **CHAIRPERSON:** Ja they will be Exhibit DD34[a.] whatever.

**ADV HOFMEYR:** Correct.

**CHAIRPERSON:** DD34[b.] whatever.

**ADV HOFMEYR:** Thank you Chair we are indebted.

**CHAIRPERSON:** Okay alright.

**ADV HOFMEYR:** So then I would like to start if we can in Bundle DD34[a] because Ms Myeni that commences with the affidavit that you provided to the commission in response to the Chairperson's directive requiring you to provide an affidavit. When I direct you to page numbers they are going to be the page numbers in the top right hand corner of a page. So could you please go to page 1 and Chair that will be Exhibit DD34.1 it is the affidavit of Ms Myeni in response to your 10.6 Directive.

10 **CHAIRPERSON:** Yes after you have got her to make the necessary confirmations you will ask me to admit it as an Exhibit?

**ADV HOFMEYR:** Indeed.

**CHAIRPERSON:** Okay.

**ADV HOFMEYR:** Ms Myeni if you will then – have you got page number 1 in front of you?

**MS MYENI:** 001.

**ADV HOFMEYR:** Correct.

**MS MYENI:** It is DD34 DCM 001.

20 **ADV HOFMEYR:** indeed. Thank you Ms Myeni. I tend to leave off the full DD3 DCM I will just identify the number of the page when we go through today's proceedings. But do you have that in front of you? If you will say yes.

**MS MYENI:** I have it in front of me.

**ADV HOFMEYR:** Thank you yes.

**CHAIRPERSON:** What she will do Ms Myeni is that for example where your affidavit starts which is written 002 she will not even say 002 she will just say page 2. Where it says 003 she will just page 3. So whenever she says...

**MS MYENI:** Thank you Chair.

**CHAIRPERSON:** She will mention the number without the 00 before. You understand?

**MS MYENI:** Thank you Chairperson I do understand.

**CHAIRPERSON:** Okay alright.

10 **ADV HOFMEYR:** And then Ms Myeni if you could turn to page 11 and could you confirm whether that is your signature on that page?

**MS MYENI:** Yes it is my signature.

**ADV HOFMEYR:** And then can you confirm that this is the affidavit that you deposed to and that its contents are true and correct?

**MS MYENI:** Yes it is my affidavit and the contents are correct.

20 **ADV HOFMEYR:** Thank you. Chair if we could then enter it as Exhibit DD34.1?

**CHAIRPERSON:** Taking off the [a] now?

**ADV HOFMEYR:** Oh apologies Chair yes because on the numbering there is no [a] but let us do DD?

**CHAIRPERSON:** Ja let us keep the [a].

**ADV HOFMEYR:** DD34[a].1.



**CHAIRPERSON:** Point 1 ja.

**ADV HOFMEYR:** Thank you Chair.

**CHAIRPERSON:** The affidavit of Ms Duduzile Cynthia Myeni starting at page 2 is admitted as Exhibit DD34[a].1.

**ADV HOFMEYR:** Thank you Chair. Now Ms Myeni in this affidavit that you provided in response to the Chair's directive you indicated that you were going to invoke your right to silence at todays' proceedings. And you also made certain claims regarding pending appeals etcetera. What I  
10 would like to know from you to begin with is whether you are persisting in claiming on a basis of a right to silence that you do not want to answer the questions that are put to you today?

**MS MYENI:** Please repeat your question?

**ADV HOFMEYR:** In the affidavit that you prepared and that we are looking at at the moment in response to the Chairperson's 10.6 Directive you indicated that you intended to invoke your right to silence when you came before the commission and you would do so in order not to  
20 answer any of the questions put to you today. And I am seeking clarity whether you persist in that position?

**MS MYENI:** Chairperson I came before this commission in terms of its rules. I filed the affidavit indicated – indicating that while I respect the commission and wish to assist the commission I am in a very difficult position. Because

before me there is a court order directing that I be charged in this regard.

I think I am anxious that I am compelled to forego my constitutional rights not to incriminate myself. So in my affidavit I have referred the commission to the documents relevant to the issues that were raised by the commission. I did that Chairperson because I highly respect this commission.

I always act responsibly and I am willing and I have  
10 – I committed to present myself to this commission so that we deal once and for all with everything that has been said and all the false accusations and insinuations about me that have been made in my absence.

But now the problem I have is that the court judgment which I have been advised to appeal is before the commission and it is known. It is public and therefore I would like to exercise my rights and answer where I can and be silent where I can. Thank you Chair.

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

20 **ADV HOFMEYR:** Thank you Chair. If I could suggest at this point that it might be appropriate to just delineate what we as the legal team of the commission understand the legal position to be in relation to Ms Myeni's invocation of the right to silence.

But which I understand her just to have said is

actually coupled a willingness to answer some but not all questions. And so I would just with your leave like to navigate that issue momentarily. It will not be a question to Ms Myeni it will be to address you Chair on the issues so that we can have direction for the way forward.

**CHAIRPERSON:** Yes, no before we do that I just want to say to you Ms Myeni that the commission would not seek to deliberately and intentionally infringe any of your constitutional rights.

10           Where any of the rights you wish to rely on are applicable the commission would seek to respect those rights. We have had occasions where some witnesses have taken more or less the same attitude you have taken. One was I think Mr Vincent Smith.

I think another one was Mr Mokhetsi and they were represented by counsel. With regard to both of them with the advice of their counsel I think Mr Mokhetsi was represented by Mr Mpofo. In the end I think there was only one or two questions that they – they refused to answer  
20           with the advice of their counsel for the rest they were able to answer I think partly because they wanted to just tell their side of the story which they might not have had a chance to tell. So we – you know where it is a right that is applicable the commission would seek to respect that right.

But as I say you know in the past there have been

instances where people want to use that right but also want to be helpful – as helpful to the commission as possible. And as I say in both cases we ended up with a situation where you know there may be – there may have been one or two or three questions that they were not comfortable to ask and there was no issue from the commission but they gave the answer to all other questions.

My own understanding of what you are saying is that:

- 10      1. You want to assist the commission as much as possible but
2. You would like to try and strike a balance and protect your rights in regard to certain questions. You certainly are not saying you do not want to answer any question at all. That is my understanding.

So having said that I need to say well maybe if Ms Hofmeyr you and Mr Masuku have not had a chance to discuss this issue it might be better if there is a discussion between the two teams. Because if there is agreement

20      that that might make things smooth obviously there is no agreement then if there is going to be argument then it might be on a very narrow, narrow point or issue. So my suggestion is that maybe I should adjourn so that you have that discussion.

**ADV HOFMEYR:** Certainly.

**CHAIRPERSON:** And then you can approach me in chambers to indicate the outcome. Is that alright?

**ADV HOFMEYR:** Thank you Chair.

**CHAIRPERSON:** Ms Myeni we are going to adjourn to allow Ms Hofmeyr and your legal team to have a discussion about how we are going to proceed with a view to respecting your rights where they are applicable in these proceedings but nevertheless being able to get as much assistance from you as possible.

10           So they will discuss and they will come to me in chambers and talk to me and then when we resume you will be told what the situation is. Okay?

**MS MYENI:** Thank you Chairperson. Thank you Chair.

**CHAIRPERSON:** We adjourn.

**INQUIRY ADJOURNS**

**INQUIRY RESUMES:**

**CHAIRPERSON:** Yes, Ms Hofmeyr.

**ADV HOFMEYR:** Thank you, Chair. We are ready to proceed.

20   **CHAIRPERSON:** I understand that the discussions between yourself and Ms Myeni's legal team resulted in an agreement ...[intervenes]

**ADV HOFMEYR:** Indeed Chair.

**CHAIRPERSON:** ...on the way forward.

**ADV HOFMEYR:** Indeed it did.

**CHAIRPERSON:** Yes-no, thank you very much. I appreciate and thank all parties for reaching an agreement on that. And I understand that Ms Myeni has been briefed on the way forward.

**COUNSEL:** [No audible reply]

**CHAIRPERSON:** Yes, okay. Thank you.

**ADV HOFMEYR:** Thank you. Ms Myeni, when did you become chairperson of South African Airways?

**MS MYENI:** In 2013.

10 **ADV HOFMEYR:** And ...[intervenes]

**MS MYENI:** 2013.

**ADV HOFMEYR:** And prior to that, did you hold the position of acting chairperson?

**MS MYENI:** In December 2012, indeed.

**ADV HOFMEYR:** And when you were appointed, you gave an undertaking to the Department of Public Enterprises. Do you recall that?

20 **MS MYENI:** Chairperson, matters pertaining to SAA. I would really prefer to invoke my right to silence on any matter pertaining to SAA. May I qualify why I am saying this Chairperson?

**CHAIRPERSON:** [No audible reply]

**MS MYENI:** You will recall, let me tell you that... Sorry, you will recall Chairperson that OUTA, the private organisation that took me to court together with the Pilots' association.

They for... Or they opened a case, I think it was in 2017, early 2017. It was before the start of the – this Commission, Chair.

For some reason, which we did write to the Commission, to enquire about the documents that would be used by a private organisation with the letterheads and the logos of the Commission of Inquiry. The majority of documents...

In fact, almost every file from OUTA were files coming from the Commission. My legal representatives wrote a  
10 letter to enquire if the Commission or the Chairperson has given permission to use the documents being a private organisation as evidence in the case against me.

Almost every question pertaining to South African Airways was contained in those documents. Therefore, I prefer, Chairperson with your permission, to invoke the right to be silent on the matters pertaining to South African Airways.

There is a standing judgment which was handed on the 27<sup>th</sup> of May by Judge Tolmay wherein OUTA and the Pilots'  
20 Association wanted me to be declared a delinquent director for the decisions of a collective board of South African Airways which were then put on my shoulders as one person.

Therefore, Chair, may I not answer any question pertaining to South African Airways? Especially those questions that OUTA as the private organisation, not a state

organ, that had access to the Commission's documents. With your permission Chairperson, I would like not to answer.

But I am prepared Chairperson to continue question-by-question to say I invoke my right to silence. I think Chairperson that is what I would like to do.

And I also want to emphasise Chairperson that I came before you because I have respect for you. I have respect for the Commission. I have respect of the work you are  
10 doing. I also, Chairperson want to ensure you that I am a law abiding citizen.

Therefore, I really do not want to incriminate myself and answer to questions which the judge, NPA to investigate. Whether the judge found against me or not but she referred all matters pertaining to collective decisions by the Board of South African Airways to be laid over me or to be given as my responsibility alone.

Therefore, Chairperson with your permission, may I invoke the right not to answer the questions with your – with  
20 respect Chairperson?

**CHAIRPERSON:** Thanks, Ms Myeni.

**MS MYENI:** H'm.

**CHAIRPERSON:** My understanding is that both the evidence leader, Ms Hofmeyr and your legal team, after discussing the matter of how we would proceed with a view



to striking a balance between you assisting the Commission but the Commission also respecting those of your rights that may be applicable to these proceedings.

My understanding is that they reached an agreement that you would invoke your right not to incriminate yourself in regard to specific questions as opposed to seeking to invoke to refuse to answer all questions that might relate to SAA.

My understanding is that, the expectation is that you can be asked question that relates to SAA. Some of those  
10 questions, it may be that you maybe you may invoke that right but others, it might not be applicable because they might not be incriminating.

So that is my understanding but I see Mr Masuku is ready to indicate to me what their position is. Mr Masuku.

**ADV MASUKU SC:** Sorry, Chair. I think that understanding of you may be overstated.

**CHAIRPERSON:** Yes, okay.

**ADV MASUKU SC:** We specifically... Our agreement is that she would assert her right, the questions and topics she  
20 believes are topics or questions that might be a subject of interest by the law enforcement agencies right now.

The explanation of the SAA matter is quite... it falls exactly within the agreement. She has invoked her right to silence in totality.

**CHAIRPERSON:** Oh, okay.

**ADV MASUKU SC:** We do not understand that to be outside the ambit of our agreement as far... Maybe we will take it... We will put it that.

**CHAIRPERSON:** Yes.

**ADV MASUKU SC:** Because my understanding of what Ms Hofmeyr says, was that she... that does not stop her from asking questions about SAA. If she wants to ask questions about SAA ...[intervenes]

**CHAIRPERSON:** Yes.

10 **ADV MASUKU SC:** ...she can ask questions about SAA but then the response is perfect in the sense that it says about SAA.

**CHAIRPERSON:** H'm.

**ADV MASUKU SC:** The documents coming from this Commission ...[intervenes]

**CHAIRPERSON:** Ja.

**ADV MASUKU SC:** ...to be used in the court application that has now resulted in her being a subject of investigation by a court order.

20 **CHAIRPERSON:** Yes.

**ADV MASUKU SC:** By... which is sanctioned by a court order.

**CHAIRPERSON:** Yes.

**ADV MASUKU SC:** Now, the scope of it is not know because if you look at the order that was made by

Judge Tolmay.

**CHAIRPERSON**: H'm.

**ADV MASUKU SC**: It says everything about SAA that was covered in that application. Must be send for the – must be referred to the NPA for the NPA to investigate.

**CHAIRPERSON**: H'm.

**ADV MASUKU SC**: So I do not believe that her answer is inconsistent with the agreement.

**CHAIRPERSON**: Yes.

10 **ADV MASUKU SC**: Because the agreement was that she would in fact invoke her right even though that does not stop the Commission from asking questions that they want to ask.

**CHAIRPERSON**: Okay. No, that... I certainly did not understand the agreement that way. Subject to argument, my inclination would be that she could invoke the right not to provide an answer to specific questions.

But not to say: I am not going to answer any question on any SAA issue at all. So subject to hearing argument, my inclination would be.

20 There would be questions that she could answer without incriminating herself in respect of which she could not invoke such a right but there would be questions where she will be entitled to invoke her right and her right would be respected by the Commission. It is a question of which ones, which questions fall under which category.

So let me clarify this. Ms Myeni, is the position that, at least in terms of what you wish to put it as what you prefer in terms of what you would wish is that, you not be asked questions on SAA or if you are asked questions, you would be allowed not to answer them.

But in regard to any other matters such as matters that might relate to Eskom or BOSASA or any other matters that are not SAA, you do not have a problem. You can answer questions on those. Is that correct?

10 **MS MYENI**: Perhaps for the record Chair, I can repeat what I have said. OUTA collaborated with the Commission and got all the documents and the questions that are contained in all the letters that I received from the Commission.

OUTA is a private organisation and OUTA was able to use all what is contained on the documents that I am expected to answer today.

And they relied on the information that they got with the watermark of the Commission. All their documents, it was not a hidden thing.

20 Therefore, Chairperson as – I think... I listened to Masuku SC and I listened to you Chairperson. It is accurate that I would like to invoke my rights on matters pertaining to South African Airways for the reasons stated that there is a judgment before me for collective decisions that were took as the Board of South African Airways.

There is a judgment that was handed down that says there must be further investigation and NPA could possible charge me for those decisions.

Therefore, I would prefer not to answer anything pertaining to South African Airways, Chair. And you are indeed correct to say I do not prefer to say anything pertaining to SAA.

**CHAIRPERSON:** Yes, but my question went further than that. It seems obvious but I want to have clarity to have  
10 certainty. It seems obvious that you are not seeking to invoke the same right in relation to matters that do not relate to SAA such as, maybe BOSASA and Eskom. I just want to have certainty that that is the position.

**MS MYENI:** Chairperson, the rest of the questions, we will deal with them as we go. With your permission Chairperson, we will deal with each question as we go that has nothing to do with South African Airways. Thank  
you, Chair.

**CHAIRPERSON:** Okay alright. Ms Hofmeyr, do you want to  
20 say something?

**ADV HOFMEYR:** Yes, indeed Chair. There does seem to be a misunderstanding about the agreement. So I think it is preferable just to state what our understanding of the legal position is.

And then I do want to address personally Ms Myeni's

allegation or suggestion that there has been some sort of collaboration between the Commission and OUTA *visa vie* her trial because there was correspondence about it.

**CHAIRPERSON:** Yes. Maybe before you do that, let me say this. Ms Myeni, I saw in the – I think in your affidavit a reference or a concern or a complaint about the fact that OUTA used documents that it seems to have obtained from the Commission. I was hearing about that, I think, for the first time.

10 But I do not know when they obtained the documents and I do not know what process they would have followed. I assume they would have followed some process.

But generally speaking, once the documents... a witness has given evidence in the hearing, the documents become public documents.

It is only before that that they are not public documents. So but once witnesses have given evidence about those documents they become public documents. So but I think Ms Hofmeyr will say something about that as well.

20 **ADV HOFMEYR:** Chair, I see my learned friend ...[intervenes]

**CHAIRPERSON:** Oh, Mr Buthelezi.

**ADV BUTHELEZI:** Thank you, Chair. Sorry, Chair. I would like to expand on this point regarding these documents used by OUTA.

**CHAIRPERSON:** Yes?

**ADV BUTHELEZI:** Because I was the one who actually picked it up.

**CHAIRPERSON:** Yes.

**ADV BUTHELEZI:** The rules of the Commission, Chair. Rule 11(3) says the following:

“No person may disseminate or use documents of the Commission without the Chairperson’s permission.”

10 And after we sent correspondence, inquiring as to how it is that OUTA came to be in possession of the Commission’s documents to the extent that they were able to use them. We accept Chair that documents are public documents. We can pick them up on the website.

However, if somebody would then to discover them in a discovery bundle it would imply, in our view, that this has been done with your consent.

And after the response was not forthcoming as to say: Can you guys give us a confirmation as to whether these  
20 documents were indeed documents provided by the Commission.

We then assumed that OUTA would not break the law and use the Commission’s documents without the permission of the Chair.

And this is now the apprehension that arises from

Ms Myeni to say, if this Commission then participated in the process of her being declared a delinquent director, it the creates this apprehension to say then that this Commission is participating in other processes outside the law. Not to say outside the law but OUTA is not a law enforcement agency. That is the first point.

Now it present you Chairperson with the bad dilemma to say, if you now say today you are not aware that these documents are used in this sense but the correspondence is  
10 there to the Commission.

This means that then, people in the Commission may not have declared to the Chair that there has been such an inquiry.

Well and that is the essence of why Ms Myeni now has this issue with regards to answering questions as well with regards to this particular point of SAA.

And just to expand on another point here. The judgment of the Pretoria High Court with regards to Ms Tolmay... Ms Myeni, of the delinquent application. It is a very open-  
20 ended judgment and it is all encompassing on all things SAA.

Because the referral to the NPA for investigation and prosecution says this matter is referred and all things thereto, one can assume.

So our advice then to Ms Myeni is the following that: Look, we are holistically exposed on all points. And she



being a lay person is none the wise to the fact one.

She can ascertain what is self-incriminating and what is not. All factual questions, like the first question you had for you Chair: What date were you appointed?

But anything that goes to a second and tertiary level beyond that, we cannot keep raising our hands and say do not answer that, do not answer that, do not answer that. Because we do not know what the scope of what the NPA investigation is right now.

10 And then to take the point slightly further Chair. We have then said: Look, you have to answer other questions as they come.

But before warn Chair that what is likely to happen from this point forward, we are going to invoke the right not to self-incriminate by virtue of the fact that there are currently media reports as recent as this Sunday, saying that she is to be arrested.

Now we will be failing in our duties not to warn our client to say: Well, rather you say nothing. And we do not want to  
20 be contemptuous of the Commission. But we do not even know what she is being investigated for.

It could be issues around BOSASA. It could be issues around Lathuze(?). It could be a whole lot of issues. So for the protection of our client Chair and not to be ...[indistinct].

We have just said, let us limit to what we say in as much

as we can. But we are here to participate but we have this cloud and sword hanging over our necks.

**CHAIRPERSON:** Ja. I have already said what I have said about documents that have been at a public hearing being public documents, as I understand the position.

The regulations have got a particular provision and the Commissions Act has a provision that says the proceedings of the Commission happen in a public hearing.

So that is what we understand to render all documents  
10 that have been placed before a public hearing to become public documents as soon as they have been the subject of a public hearing but before that, it is a different situation.

So on the face of it, if OUTA obtained documents that had already been the subject of a public hearing that might not have needed my consent but if it was before that, they may have needed my consent.

I, certainly, have no recollection of giving any consent about that but I do not know whether they obtained documents after they have been used in a public hearing or  
20 before.

But to the extent that it may be necessary, it might be important to just get the facts of what happened in regard to that. Yes, Ms Hofmeyr.

**ADV HOFMEYR:** Thank you, Chair. It is going to be important just to traverse a bit of law.

**CHAIRPERSON:** Yes.

**ADV HOFMEYR:** Because what happened thus far in the engagement with Ms Myeni and her legal team is, different rights are being elided with each other and it is very important that we understand the difference between them because Chair, as you have indicated this morning, certain rights are applicable in these proceedings but others are not.

So let me begin with the right to remain silent. The right to remain silent is a right that accused persons have under  
10 Section 35(3)(h) of the Constitution.

Now that is a right and it reads as follows that:

“It gives every accused person a right to a fair trial which includes the right to be presumed innocent, to remain silent and not to testify during the proceedings.”

And that means, the proceedings in respect of which they are an accused. So that is the ambit application of the right to silence.

The right to silence as a consequence does not apply in  
20 these proceedings. What does apply in these proceedings is a privilege against self-incrimination and I will explain briefly how that becomes applicable in these proceedings.

But I do just want to give you Chair the reference to the case which makes it clear that the right is confined to a criminal trial and does not give a basis for a person to be

exempted from answering a question in other proceedings.

There are numerous cases on that but the one I draw your, the Chair's attention to is *Thatcher v The Minister of Justice*, 2005(4) SA 543 (C) at paragraphs 93 and 94. So ...[intervenes]

**CHAIRPERSON**: The paragraphs?

**ADV HOFMEYR**: 93 and 94, Chair.

**CHAIRPERSON**: Yes.

**ADV HOFMEYR**: So importantly, the right to silence does  
10 not have an application here. I highlighted a moment ago that there is a privilege that applies in these proceedings and so let me move to that.

Section 3(4) of the Commissions Act says in essence and of relevance of this argument that:

“The law relating to privilege as applicable at a criminal trial shall apply to a person summonsed before this Commission.”

Any commission and this Commission today. Now that is a privilege that you find in Section 203 of the Criminal  
20 Procedure Act and:

“It is a privilege that applies to a witness in criminal proceedings who shall not be compelled to answer any question that may tend to expose him or her to a criminal charge.”

What is important about the test is, it is focused on the

answering of a question that may tend to expose a person to a criminal charge.

Now our courts have in a number of judgments fleshed out what the test is that should be applied when such a privilege is invoked.

So just to summarise again. That is a privilege that any witness who comes before this Commission is entitled to invoke because the Commissions Act specifically gives recognition to that privilege.

10 Now when it is invoked, there is a particular test with implication. And the key judgment there Chair is the judgment of *Magmoet v Jansen van Rensburg and Others*. And the citation there is 1993(1) SA 777 (A) and the appellant division there sets out the principles from page 819 of the judgment.

And Chair, I submit that there are four important principles about that privilege. The first is that:

20 “It is a personal right to refuse to disclose admissible evidence in terms of which a witness may refuse to answer a question where the question may tend to expose them to criminal charge.”

The second important point is that:

“The privilege must be claimed by the witness and the court (or the commission as the case may be), is then required to rule when it is invoked.”

And then the test is set for how discretion is exercised by the body in respect of whose proceeding it is invoked and the principle is as follows:

“Before allowing the claim, the body must be satisfied from the circumstances of the case and the nature of the evidence the witness is called upon to give, that there is a reasonable ground to apprehend danger to the witness from being compelled to answer.”

10        Again Chair, because it is going to be the key-test, I submit, for today’s proceedings. The question that must be answered is whether...

Because of the circumstances of the case and the nature of the evidence that the witness is called on to give, the question will be: Is there a reasonable ground to apprehend danger to the witness from being compelled?

I am going to digress for a moment from *Magmoet* to other cases because they further fleshed out how that test is applied. The first is a case of *S v Carneson*. And that is a  
20 judgment of 1962(3) SA 437 (T) and the relevant passages are at 439H. So in an effort to flesh out, well what does it mean that it is reasonably tends to apprehend a danger, right? The court there says it must be real and appreciable and not imaginary and unsubstantial. So that is the first bit of further guidance.

And then the second bit of further guidance is that a mere remote or naked possibility of legal peril will be insufficient and that is the English case of R v Boyes 1981(1) VNS 331.

So, Chair, it is our submission that Ms Myeni certainly has been granted a privilege, as any witness who appears before this Commission, is granted to in respect of specific questions that there is a reasonable basis for apprehending would tend to incriminate her to then decline  
10 to answer. It is not capable of application to topics and that is the difficulty with, in our submission, the way that Ms Myeni proposes to approach the questioning because as I understand her request to you, Chair, it is that the topic of SAA is such that she will not answer questions. That cannot be so on the application of the law. Each question must be carefully evaluated for its tendency to incriminate her and where that tendency has a reasonable basis, a ruling will be made by you, Chair, with respect, and if there is that necessary tendency, not a remote  
20 possibility, but a reasonable tendency, then the privilege will be entitled to be claimed and no answer will be compelled thereafter.

So, Chair, we submit against those principles the way we propose proceeding today, is each question will be put to Ms Myeni and if she in response to a question in

both the right or her privilege against self-incrimination, an assessment will then have to be made.

The question that Ms Myeni responded to, to raise this issue, was a question that asked her whether she recalls having made an undertaking to the Department of Public Enterprises when she was appointed as acting Chairperson in December 2012. Chair, you will make a call in each case on whether that is the type of question reasonably likely to tend to incriminate her by her answer  
10 and on each occasion a judgment will have to be made.

Chair, I would then just like to deal with the facts in relation to this suggestion that there has been some improper receipt of documents from the Commission. Chair, we have requested the correspondence to be made available to us. I have a recollection of it, so I must just make it clear, I am going on memory now. This did occur just around the time of the OUTA trial which was at the end of 2019 but what one must recall is a great deal of South African Airways evidence was led in the June of that year  
20 before this Commission.

We certainly did receive a letter, it was a letter that expressed concern, there were documents that seems to be – well, that had been disclosed in discovery. I think it was at that stage that bore the watermark of the Commission and there was concern about how those documents had



been obtained and our response was twofold, as I recall it.

You see, the watermark is placed on the documents when they are placed on the website of the Commission and so the fact of the watermark in a sense is a key indicator that is already public, right? We do not watermark all the pages for our investigative purposes. But we also said but please identify the specific documents, send us the specifics documents because we would like to assess if there are any that do not, to our  
10 knowledge, fall within that category and I have no record of a response to that request. We will go back to our records and if my learned friends have an indication that there was a response to our request that greater identification of the documents be provided so we could take the matter further, they certainly can present that correspondence to us but over the break I will make sure I get copies so that they are available, if this point is going to be pressed at all.

But a final submission, if I may, even if, unbeknown certainly to me, Chair, and it appears to you, somehow  
20 documents got from the Commission to OUTA, in the OUTA trial. That is not a basis to invoke the privilege against self-incrimination. The law says there is a very particular test that must be applied and we submit to you, Chair, that is the test that should govern today's proceedings.

**CHAIRPERSON:** Yes from what you say it seems you are

saying by the time OUTA asked for documents the hearing relating to SAA had taken place sometime before that.

**ADV HOFMEYR:** Indeed.

**CHAIRPERSON:** So a lot of those documents would have been public documents by then.

**ADV HOFMEYR:** Indeed and as I understand it, the issue that was raised by Ms Myeni's lawyers was we have seen documents with the watermark of the Commission, explain how this can be possible. And, of course, the watermark is  
10 there when the documents become public and the evidence had been led and then we asked, just to be cautious, please identify the specific documents that you are concerned about and my knowledge is there was no response to that.

**CHAIRPERSON:** Okay, alright. I do not know whether it will be Mr Masuku or Mr Buthelezi? Oh, you want to stand. Ja, okay, you want to feel comfortable.

**ADV HOFMEYR:** Mr Masuku we will just sanitise, we do that every ...[intervenes]

20 **CHAIRPERSON:** Somebody must just sanitise. Well, Mr Masuku, I must just say this to you. When I was still in private practice, one of the courts I used to appear in was called the Industrial Court and it was permissible for lawyers to address the Presiding Officer seated but I used to want to stand because I felt I presented my argument

much better standing.

**ADV MASUKU SC:** Yes, that is true, Chairperson. But I – the chairs are a bit low and I am feeling a little strange.

**CHAIRPERSON:** Yes, yes.

**ADV MASUKU SC:** I need to stretch a little bit.

**CHAIRPERSON:** Yes. No, that is fine.

**ADV MASUKU SC:** So I prefer to...

**CHAIRPERSON:** That is fine.

10 **ADV MASUKU SC:** Deputy Justice, we are not going to rehash the law.

**CHAIRPERSON:** Yes.

**ADV MASUKU SC:** It is not a helpful premise from which to deal with the matter, as I said. The first issue is the Commission has to be fair to Ms Myeni. Commission is aware in the judgment issued by Justice Tolmay that all the issues that resulted in her being declared a delinquent director, on all those issues the court directed the NPA to gather all the evidence in that case and thereafter decide whether to criminally charge her.

20 So before you is a witness who is an axe hanging over her head and part of what makes a good witness in a fact-finding connection is just the freedom to speak freely or rather, the freedom to speak freely. Well, ja, that is what I mean.

**CHAIRPERSON:** Well, the freedom to speak freely must

be a very good freedom.

**ADV MASUKU SC:** Yes, yes.

**CHAIRPERSON:** A strong freedom.

**ADV MASUKU SC:** So it is the ability to speak freely on issues that the Commission is looking for information on. She is not speaking freely because there is a court order directing that she be investigated and charged criminally. What she has done is to tell the Commission that this is the situation she finds herself in, she calls it a dilemma.

10           She says I want to assist the Commission reach the truth but I face a dilemma because on one hand I may have facts that are relevant to what the Commission is looking for. On the other hand, giving that information to the Commission exposes me to criminal – or forces me to be disadvantaged that in a criminal case I may well have to face the possibility that I may not exercise my right, silence of my right not to incriminate myself fully.

              So she is not saying that she is not going to answer questions. If Ms Hofmeyr wants to ask questions on SAA  
20 she must do so. If her answer is I invoke my right not to incriminate myself for fear that given the judgment of Tolmay, in future I might be criminalised. That should be the – it may well be that the answer is what – is the answer as I suggest.

              But then where are we going with it because part of

what this Commission has to do is to look at the witness and say we created a fair environment for this witness to speak freely about matters that pertain to the Commission.

And so we are not suggesting that there is a blanket right to refuse to answer questions and I do not believe that that is what she is saying. She has given an answer that will determine how she moves forward with questions that she may be asked on SAA.

In other words, if the next question is going to be  
10 an undertaking, if that undertaking – I have no idea what the undertaking is referring to but if that undertaking – if the question about an undertaking may well set her up for a question that may result in a charge that that undertaking was breached and that breach was a criminal offence, then of course she is entitled to ...[intervenes]

**CHAIRPERSON:** It might be an undertaking to perform her duties as a director to the best of her abilities.

**ADV MASUKU SC:** Yes, yes, that is fair enough. So we do not know what the undertaking is.

20 **CHAIRPERSON:** I also do not know, I am just saying...

**ADV MASUKU SC:** But I do think that you have a witness whom you must accord the dignity that you have accorded all the witnesses and part of that dignity is that you are made aware that there is this axe hanging over her head. And I understand that this Commission may well have

descended into a cross-examination environment but we have to appreciate the importance of what she has just told you about the fact that there is a real fear based on a real judgment of a real judge that the real NPA will in the future charge her with crime arising from her activities as a Chairperson. So you really want to find the truth of this, have that in your mind as you ask her questions on SAA. If she affords you the answers, fair enough, but she has the right to invoke her right to privilege – I mean, the  
10 privilege against self-incrimination, she has that right.

**CHAIRPERSON:** Yes.

**ADV MASUKU SC:** Limited, as it is...

**CHAIRPERSON:** Yes.

**ADV MASUKU SC:** Let us be aware that you do not place her in a position of unfairness.

**CHAIRPERSON:** Ja.

**ADV MASUKU SC:** Because these proceedings do result in a great deal of prejudice to witnesses who are otherwise assisting the Commission.

20 **CHAIRPERSON:** Well, what I can tell you, Mr Masuku, is that certainly from my side and I think the same would be said in regard to Ms Hofmeyr, I do not think there is any intention to be unfair to her or anybody, you know? Certainly the idea is for me to treat witnesses with fairness but, of course, one has got to strike a balance. Being fair

does not mean that you will not be firm if you need to be firm.

**ADV MASUKU SC:** No, I...

**CHAIRPERSON:** And, of course, it does mean that sometimes when you think you are fair, the witness might think you are unfair, somebody else might think you are unfair. That is fine also, you know, but the commitment to try and be fair to all witnesses is there and the attempt to try and make it a reality is always going to be there and -  
10 but, as I say, there may be cases where I think I am being fair and the witness thinks differently. Somebody in your team thinks differently. That is normal, that is fine, but there would be certainly an intention to carefully look at areas where her right – her privilege not to incriminate herself should be correctly invoked and should be respected. There will be other cases where she might think it applies and maybe I think differently but certainly the attempt is going to always be – strike a balance.

**ADV MASUKU SC:** Yes.

20 **CHAIRPERSON:** Bearing in mind what the test is between respecting her rights and making sure that as far as possible the work of the Commission continues without her rights being infringed.

**ADV MASUKU SC:** Yes and all I want to end by saying, Deputy Justice, thank you for the assurance that you have

always treated my witnesses fairly. But what I do emphasise is the fact that on the issues that she has flagged and issues that are – as I said, there probably are Hawks waiting outside this building to arrest her.

**CHAIRPERSON:** Yes.

**ADV MASUKU SC:** That is what we have heard in the morning.

**CHAIRPERSON:** Yes, yes.

**ADV MASUKU SC:** So there is a real fear with the  
10 witness when she is being asked to answer questions on these topics.

**CHAIRPERSON:** Yes.

**ADV MASUKU SC:** And at the back of your mind and even as you exercise your discretion as to whether or not to grant her the privilege of that, be fair to her because this story is not going to end today, it is not going to end the Commission. We know the story will go to the criminal courts where she will be able to speak a bit more freely because she now has to defend herself.

20 So what I am asking the Commission to do is to be fair to her a bit more in the sense that even as you strike that balance, understand that there is a real hammer over her head.

**CHAIRPERSON:** Yes.

**ADV MASUKU SC:** Which hammer is that judgment of



Tolmay's.

**CHAIRPERSON:** Yes.

**ADV MASUKU SC:** And real reports about real police officers looking for her in order for her to be arrested for these things.

**CHAIRPERSON:** Yes.

**ADV MASUKU SC:** So let us not create a difficult thing for her.

**CHAIRPERSON:** No, no, no, I do not know about the be  
10 fair part to her ...[intervenes]

**ADV MASUKU SC:** No, no, no, all I mean ...[intervenes]

**CHAIRPERSON:** I mean, that might be [inaudible –  
speaking simultaneously]

**ADV MASUKU SC:** All I mean, Deputy Justice, that  
...[intervenes]

**CHAIRPERSON:** Take into account her real concerns.

**ADV MASUKU SC:** Yes, take into account that and in the  
exercise of the discretion afford her the benefit of that light  
and say to yourself well, look, I mean, there is in fact a  
20 real danger that she is going to a criminal court case  
involving these very issues you are dealing with. Perhaps  
that is the forum where she should be dealing with them.

Ms Hofmeyr can ask as many questions as she  
wants about SAA, if the answer is look, you want me to  
answer questions that I am going to – that the answers that

may be used in future against me in a criminal case, that danger is real. It is not just real, it is possibly imminent, from what we have read in the papers.

**CHAIRPERSON:** Yes.

**ADV MASUKU SC:** So we would – that is all really we are asking you to do, to just strike a balance but understand what she had told you is the basis and the premise from which she is answering questions in any other matter that may well be a matter of interest to the Commission.

10 **CHAIRPERSON:** Yes.

**ADV MASUKU SC:** So I am not debating the law with Ms Hofmeyr.

**CHAIRPERSON:** Yes, yes, no.

**ADV MASUKU SC:** I think she can...

**CHAIRPERSON:** No, I appreciate that, thank you, Mr Masuku.

20 **ADV MASUKU SC:** Oh, the last thing, Chairperson, on the issue of documents that have been used by the Commission, I think that issue will be resolved when all the documentation that involves communicating with a private entity and how the – how OUTA ended up having these documents is going to – it is not helpful to try and argue the case right now.

**CHAIRPERSON:** Ja, no, no, that is ...[intervenes]

**ADV MASUKU SC:** In any event Mr Buthelezi may well

address that tomorrow or the day after tomorrow if the matter proceeds at all.

**CHAIRPERSON:** Okay. No, that is fine.

**ADV MASUKU SC:** Thank you, Chair.

**CHAIRPERSON:** Ms Hofmeyr, I see we are at nine minutes past one but I think you should respond if you wish to respond before maybe we take the lunch break.

**ADV HOFMEYR:** Thank you, Chair. Just two brief points in response, if I may. The first is just to also emphasise  
10 that Regulation 8.2 of the regulations of this Commission also provided double protection in a sense to witnesses because what it makes clear – it actually took me some time to work out how the privilege in the Act operates together with Regulation 8.2 because what Regulation 8.2 says is any answer that you give in evidence in this Commission is not admissible in a later criminal trial except for a trial related to perjury. Right, I am paraphrasing, but that is the essence of it.

**CHAIRPERSON:** Yes, yes.

20 **ADV HOFMEYR:** And it was not entirely clear to me how that lives alongside a privilege to invoke whenever you want a not answer.

**CHAIRPERSON:** Yes.

**ADV HOFMEYR:** And what I resolved is likely to be the way to read those together, is the witness who is aware of

the privilege, invokes it and is entitled to invoke it in the appropriate circumstances when the test is applied. But there will be occasions where a question might not be anticipated as being incriminating or a witness might come before you not aware of that privilege and it is in those circumstances that there is even an additional protection, that nothing that can be said here is admissible as evidence in a criminal trial except for in relation to the crime of perjury.

10           So, Chair, that is just an additional protection that the Commission works with in order to make its determination and in the final point I wanted to make is just to refer, as I think Chair has already this morning to your previous ruling when this issue was raised with Mr Mokhesi. You see there, Chair, as I understand your ruling, it was directly in line with the legal authorities that I have addressed you on. It required the privilege to be invoked in relation to specific questions and the proceedings were conducted on that basis and there is  
20 also an importance of parity of treatment across witnesses in this Commission and so that, I submit, Chair, would be another consideration that you would bear in mind in making your determination whenever the privilege is invoked here. Thank you, Chair, those are our submissions.

**CHAIRPERSON:** Yes. No, that is fine. We are going to proceed after lunch – I know that there was a time when Mr Masuku was still addressing me when Ms Myeni was not appearing on the screen, so I do not know whether she nevertheless was able to hear Mr Masuku as he was addressing me even though she was not appearing on the screen or whether she could not hear. Ms Myeni, were you able to hear when you were not appearing on the screen? It looks like she cannot hear me. No, she cannot hear me,  
10 so I think there is something wrong with the – can you hear me now, Ms Myeni? She is speaking but we cannot hear her.

**ADV HOFMEYR:** Ms Myeni, I think you may have muted yourself, if you just – yes, there you go.

**MS MYENI:** I can hear, Chairperson, very well. I was hearing you all along.

**CHAIRPERSON:** Oh. And did you hear your counsel when he was addressing me, Mr Masuku?

**MS MYENI:** I did.

20 **CHAIRPERSON:** Oh, okay, alright.

**MS MYENI:** I did, Chairperson, thank you.

**CHAIRPERSON:** Okay, alright.

**MS MYENI:** Thank you.

**CHAIRPERSON:** As I understand the position based on Mr Masuku's address and Ms Hofmeyr's address, the

position is that, Ms Myeni, you will be asked questions even on SAA, okay, and in terms of your responses, there may be questions where you might revoke your privilege not to incriminate yourself and therefore say that you would like not to respond to that question or answer that question but the expectation, certainly from my side, is that there would be other questions which you ought to have no problem with or in respect of which I would not expect the privilege not to incriminate yourself to be  
10 invoked but, from your side, you will do – you will exercise your rights, as you understand them, in regard to the questions that you wish to invoke it.

If Ms Hofmeyr submits that that is not a question where you can invoke that privilege, I may hear argument and make a ruling whether your privilege may be invoked in regard to that question or not and if I make a ruling in regard to a particular question that you must answer, that would be the ruling. There may be others where I say no, you are entitled not to answer and then we will see as we  
20 go along but, from your side, you will protect yourself as you wish and your legal team is here, at any stage they will also indicate to me if have something to say. You understand that? Do you understand that, Ms Myeni? That delay is long, I think she does not hear me sometimes. Ms Myeni?

**MS MYENI:** Yes, I can hear you very well now. Yes, Chairperson, thank you, I understood.

**CHAIRPERSON:** Yes, okay.

**MS MYENI:** What the Chair was saying and thank you very much, we may proceed.

**CHAIRPERSON:** Yes, okay, alright. We are going to take the lunch break now, it is about quarter past one. We will resume at quarter past two. We adjourn.

**INQUIRY ADJOURNS**

10 **INQUIRY RESUMES**

**CHAIRPERSON:** Yes Ms Hofmeyr, are we ready?

**ADV HOFMEYR:** Thank you Chair, we are indeed. I understand from my learned friend over the break that there is an aspect that he wishes to address you on, so if I could hand over to him for a moment.

**CHAIRPERSON:** Yes, okay, no that is fine.

**ADV BUTHELEZI:** Thank you Chair. Firstly, Chair I would like to politely to excuse Mr Masuku, his transport arrangements force that he leave now, because he had to  
20 rush back to Cape Town.

**CHAIRPERSON:** Okay no that is fine.

**ADV BUTHELEZI:** Chair with the greatest of respect, firstly I would like to say we say, and personally my view as well as Counsel, this is not motion court, and this is not a platform for counsel to be the one arguing between

themselves. So, in as much as I make the submission, I make it with a heavy ...[intervenes].

**CHAIRPERSON:** I'm sorry Mr Buthelezi, I don't know why, it's very dark, once again where you are there on that side, much darker than it was – okay, alright when Ms Hofmeyr comes back we'll just check whether that will disturb her or whether it should be that side, that light, okay, ja.

**ADV BUTHELEZI:** So, Chair, the nature of my submissions are not to provoke a debate between Ms Hofmeyr and myself but our intention is to move us forward, having issued, upfront what our reservations and concerns are.

Now, the first of these, Chair, we've now said Ms Myeni wishes to invoke the right to silence, however, we, in our discussions have now discovered that, I think there may have been a misunderstanding with regards to SAA and we'd like to unbundle this misunderstanding and give grounds from where it emanates from. Ms Myeni had already answered the question as to when she was appointed as Chair, it was a question about SAA, and she answered it. The difficulty arose in the subsequent question that asked, do you remember taking an undertaking? Now, the nature of the question, when it says, do you remember making an undertaking, is in itself open ended it could go either way to an undertaking that



was, either not upheld and an undertaking that is a subject of a controversial point around her.

So, we can not to dictate to Ms Hofmeyr how to ask her questions an in the way it's asked and what questions to use but we then unpacked it to realise that, because the question had said, do you remember making an undertaking to the Department, then it leaves us open and we take the caution that we took to say, look, in that case then that question leaves us open.

10           So, we, in making the submission to the Commission in the affidavit were upfront in stating that we are restricted in what we have answered we haven't come and ambushed the Commission with the fact that these are the points that we will be relying upon because our *bone fide* isn't relying on that point, are upfront but the day that we submitted the affidavit, states clearly, on 1, 2, 3, 4, 5 issues I have these restraints. Now we want Chair, to say, we want to take this piecemeal approach of question by question and allow Ms Hofmeyr to proceed.

20           What we are wary of is, will three days be enough for the Chair to make a ruling on every question and we want to frame it in a way that says, look we've said, specifically with the questions that you've sent us, we've got discomforts in these 1, 2, 3, 4, 5 areas. Anything else you want to traverse you're at large to do so.

So, we don't object, so we are not asserting a blanket right to silence and I think that's the point that we don't want the Chair to be under the impression that Ms Myeni came here to assert a blanket right to silence, that is not correct

Secondly, Chair, Ms Hofmeyr raised the points about the test and the right to silence and we say to her yes, that is correct, that is the test and we qualify...[indistinct 5.17] because the test asked the two  
10 crucial questions, do we have a real and appreciable apprehension that prosecution may follow and we say ours if founded on a Court Judgment that has pronounced us as people who may be prosecuted. So, it's not fictitious, is it real, is it not naked, is it not too much, it is real.

Mr Agrizzi is arrested as we speak, and he testified about Ms Myeni. So, we are not framing things that are not tangible, we've got tangible reasons as to say, why we raise these issues. So, we would like to propose – not propose but suggest – because I can't keep coming to  
20 object and I don't want to coming to – we've lost an entire morning having made little progress Chair, to say, would it be possible, given that we've been upfront with everything that we are about and what is of concern to us, that the line of questioning be mindful of that and if the question says, do you remember making an undertaking, it's going

to trigger that we are, that we've lost an hour to trying to resolve to say, if the question is, you made an undertaking on this date saying A, B, C, D then it's clear to Ms Myeni to say, is this what she considers herself, incriminating, is this what she considers, she may be silent on or is this something she's comfortable to answer because from where I stand and from what I know she's comfortable to answer many, many questions and she wants to answer many, many questions, however, we do have those  
10 disclaimers Chair.

**CHAIRPERSON:** I think, what we may consider doing is maybe allow Ms Hofmeyr to question her and note questions where she seeks to invoke the right and the privilege not to incriminate herself and then Ms Hofmeyr continues, so that we are able to make as much – as much progress as possible on those questions where she's able to answer.

**ADV BUTHELEZI:** Yes Chair.

**CHAIRPERSON:** And then later today or tomorrow, we  
20 might have to come back to the questions that she – in respect of which she invoked the privilege not to incriminate herself and look at those and if I need to make a ruling, make a ruling but to avoid a situation where a question is asked she invokes her privilege and then there's an argument, then a ruling, then the next one, same

thing.

So, it may be that we do it that way, Ms Hofmeyr could ask as many of the questions she would like to ask as possible and then those that Ms Myeni – those in respect of which she says I would like to – not to respond to, answer that question and to invoke my privilege not to incriminate myself, we note and then can deal with later, together with others that she might – in respect of which she might adopt the same attitude.

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

**CHAIRPERSON:** Ja, thank you. Ms Hofmeyr, what do you think of that suggestion?

**ADV HOFMEYR:** Chair, from our side we have no difficulty with that proposal. I actually think, it will be unlikely that a ruling will be necessary and so let us go through it, provided, at a point I get clarity as to Ms Myeni's reasons for invoking the privilege. It is likely that we will simply move on. So, I think there's every chance that there will be speed and efficiency.

20 **CHAIRPERSON:** Yes, okay, not that's fine. Okay you may proceed.

**ADV HOFMEYR:** Thank you. So we've had the debate already but the question that I asked, I just want to be clear again, Ms Myeni, what approach you take to it, whether you are willing to answer it, given the debate

that's taken place today and the clarification about what the legal test is. So, the question was, whether you recalled having given an undertaking to the Department of Public Enterprises on the day that you were appointed as acting Chairperson of SAA?

**MS MYENI:** I don't recall.

**ADV HOFMEYR:** I'd like to take you to...[intervenes].

**MS MYENI:** I recall the letter of appointment and a phone call as an acting Chairperson, that I received in December  
10 when there were resignations.

**ADV HOFMEYR:** Right, then I'd like to take you, if I may, to that undertaking and for that purpose you will need to go to the second file that contains your Bundle, so you're going to need DD34B in front of you and the page we're interested in, is page 1240.

**MS MYENI:** DD34?

**ADV HOFMEYR:** B.

**MS MYENI:** B?

**CHAIRPERSON:** Ja.

20 **MS MYENI:** Did you say DD34B?

**ADV HOFMEYR:** Yes.

**CHAIRPERSON:** Have you got it?

**MS MYENI:** I have, 34B.

**CHAIRPERSON:** Ja, okay.

**MS MYENI:** Yes, Chairperson, I have.

**CHAIRPERSON:** Thank you.

**ADV HOFMEYR:** Thank you. Now, this document, Ms...[intervenues].

**MS MYENI:** Sorry what – sorry Chairperson, I didn't get the section, I still have the file DD34B.

**ADV HOFMEYR:** So, you will find it under tab13 in that file and the page number is 1240.

**MS MYENI:** Yes, Chair, I have it.

**ADV HOFMEYR:** Is that your signature on the page.

10 **MS MYENI:** Yes, there is a signature, it's my signature.

**ADV HOFMEYR:** And given that you didn't have a recollection of it, might I suggest that you read in to the record what you signed confirmation of on that page and then just for the record purposes I see the date on this is 2012/12/07, that's the 7<sup>th</sup> of December 2012 which I think was the date you indicated earlier you'd been appointed as acting Chairperson, is that right?

**MS MYENI:** Yes, it is correct.

20 **ADV HOFMEYR:** Thank you, so if you'd read that into the record please?

**MS MYENI:** Sorry?

**ADV HOFMEYR:** If you'd read what you say on this page above your signature.

**MS MYENI:** I'm not comfortable to continue with this question because I don't know where it's leading to. I did

sign an undertaking, I don't know where it is leading to.

**CHAIRPERSON:** Well all she's asking, Ms Myeni, is just to read what you signed into the record, that's all she's asking. Are you not comfortable reading it?

**MS MYENI:** I have answered, Chairperson.

**CHAIRPERSON:** Ms Hofmeyr do you want to just read it into the record.

**ADV HOFMEYR:** Certainly.

**CHAIRPERSON:** Yes.

10 **ADV HOFMEYR:** So, it reads,

“I Duduzile C Myeni, in my capacity as a non-Executive member of South African Airways Board, hereby accept the appointment as acting Chairperson of South African Airways Board. I undertake to observe and comply with the principles and provisions of all legislation relevant to South African Airways, the protocol on corporate governance under review and the provisions of the shareholders compact between the Board of South African Airways and the Minister of Public Enterprises. To devote sufficient time for the execution of my responsibilities to utilise my skills to the best of my ability, to initiate, develop and implement systems or mechanisms for the effective and efficient management of South African Airways

20

and to maintain and observe the highest standards of integrity and probity in the execution of my responsibilities”.

Ms Myeni did you observe the obligations that, that undertaking placed on you, while you served on the Board of SAA?

**MS MYENI:** I will not answer the question, Chairperson

**ADV HOFMEYR:** And why will you not answer it Ms Myeni?

10 **MS MYENI:** May I be allowed to invoke or to ask for the privilege that has been given to me, not to answer pertaining to questions I feel I’m not comfortable to answer?

**ADV HOFMEYR:** Ms Myeni, if I could just seek a point of clarification, you see there’s a very particular circumstance in which the privilege may be invoked so it’s important that I get clarity. Are you invoking the privilege because you believe that the answer you give, will tend to expose you to a criminal charge? Ms Myeni, if I may just pause there,  
20 that is the ultimate question I want to ask you but in fairness to you, I want to explain why I ask it because if there are other reasons on the basis of which you are declining to answer it’s important that we know them because if you are, for example, refusing to answer the question because you have an appeal pending against the



High Court Judgment, or because investigations might be under way by the NPA or because it relates to, as I think my learned friend said in his address a moment ago, a controversial point around you, those would not be legally valid grounds on which to refuse to answer. So, it's just very important for the Commission's purposes that you confirm that your reason for not answering is because you regard the answer as likely to expose you to a criminal charge, is that the reason you refuse to answer?

10 **MS MYENI:** I think, Chairperson, as I explained earlier, anything pertaining to SAA and decisions we made at SAA were done as a collective, as a Board. Therefore, having a judgment that has been made against one person makes me feel uncomfortable and I feel I might incriminate myself in this point into matters such as these ones, with respect Chairperson.

**CHAIRPERSON:** Ms Hofmeyr?

**ADV HOFMEYR:** Thank you. Ms Myeni speaking for myself, as the evidence leader, if you, in response to a  
20 question I've asked say that you confirm that you believe the answer you give is likely to expose you to a criminal charge, then subject to the direction of the Chairperson, my intention will be to move on to the next question but it's just extremely important that there is a proper understanding on your part, of what your rights are and

what your privileges are because this privilege cannot be invoked, simply because there are matters pending or there are possible investigations or because there are points of contention. You must have a reasonable belief that your answer is likely to expose you to a criminal charge and if you give that confirmation, if it's necessary there can be a ruling, Chair, I propose but if not, speaking for myself I would move on to the next question.

**CHAIRPERSON:** Maybe what we should do  
10 is...[intervenes].

**MS MYENI:** I know Ms Hofmeyr.

**CHAIRPERSON:** Yes Ms Myeni, you want to say something?

**MS MYENI:** I'm sorry Chairperson.

**CHAIRPERSON:** Yes.

**MS MYENI:** No, no Chair, I was saying I know that Ms Hofmeyr might not like my answer, but I have answered the question.

**CHAIRPERSON:** Yes, no, no she's saying that her  
20 inclination is to move on to another question without asking for any ruling if that's what you say, that's what she is saying. So I think what we should do, Ms Hofmeyr, is move on if you are comfortable to move on and at some stage when I know all of the questions, maybe that she has refused to answer, I can apply my mind to whether there

are some that I will compel her to answer because I come to the conclusion that they don't expose her or answers won't expose her to criminal prosecution.

**ADV HOFMEYR:** We're indebted to you.

**CHAIRPERSON:** But at least let us move on and at the end we will see how much she has been able to answer and how much she hasn't answered and then we can take it from there.

**ADV HOFMEYR:** Indeed.

10 **CHAIRPERSON:** You understand that Ms Myeni? I think she can't hear me anymore, Ms Myeni can you hear me?

**MS MYENI:** I can hear you now Chair.

**CHAIRPERSON:** Oh, okay, did you hear what I said about a minute ago?

**MS MYENI:** Yes, I did.

**CHAIRPERSON:** Okay, alright, thank you.

**MS MYENI:** Thanks Chair.

**CHAIRPERSON:** Thank you, let's continue.

20 **ADV HOFMEYR:** Thank you Chair. Ms Myeni when you served on the Board of SAA were you aware that you had certain duties under the Public Finance Management Act as a member of the accounting authority of SAA?

**MS MYENI:** I won't answer, Chairperson, the question.

**CHAIRPERSON:** Sorry, just repeat that, just repeat what you said?

**MS MYENI:** I've answered Chairperson, or I said, may I please, with respect, not answer that question Chairperson?

**ADV HOFMEYR:** And is that because you believe that the answer is likely to expose you to a criminal charge?

**MS MYENI:** What is your suggestions, Ms Hofmeyr, you're saying it might lead to a criminal charge, is that what you say I must say?

**ADV HOFMEYR:** No, I'm not telling you to say anything  
10 Ms Myeni. You said, I refuse to answer, so I'm seeking clarity because remember my question is, were you aware when you were a Board member of SAA, that you had duties under the Public Finance Management Act. As I understand it, you say, you don't want to answer that and I'm seeking clarity. Is that because you believe the answer is likely to expose you to a criminal charge?

**MS MYENI:** Yes, I've answered you Ms Hofmeyr, I said I would prefer not to answer because I don't want to incriminate myself.

20 **ADV HOFMEYR:** That - Ms Myeni, just to be clear...[intervenes].

**CHAIRPERSON:** Maybe let me explain it to her. Ms Myeni where the question that you're being asked is a question in respect of which you'd like to invoke your privilege not to incriminate yourself, it is not enough that

you just say would like not to answer, it's important also to give the basis that is why Ms Hofmeyr has been asking – after you said you would like not to answer the question, that is why, she will, each time ask you, whether the basis is this one because as she put it to you, if the basis is something else, that would not be applicable. So, when you say you'd like not to answer, she will ask you for the basis so that she can see whether it's the right basis, you understand?

10 **MS MYENI:** Thank you very much, Chairperson, for clarity, I appreciate it.

**CHAIRPERSON:** Okay, alright, okay Ms Hofmeyr?

**ADV HOFMEYR:** So do I have clarity then, Ms Myeni that you refuse to answer the question, whether as a Board member of South African Airways you were aware that you had duties under the Public Finance Management Act because you believe the answer to that question is likely to expose you to a criminal charge?

20 **MS MYENI:** No Chairperson, I don't refuse to answer that I was a Board – I was a Chairperson of the South African Airways Board, I don't refuse to answer that question, I did answer it at the beginning and I did everything that ought to have been done at SAA as the Chairperson of the Board in respect of my responsibilities as the Chair and leading a collective Board but what I would not like to answer is,

what is added on the question of whether I was a Chairperson of the Board of SAA and whether I knew – the other added part in respect of the PFMA and other relevant documents that were supposed to be used in executing our work at SAA.

**CHAIRPERSON:** Okay let me just make sure...[intervenues].

**MS MYENI:** In case, Chairperson, maybe let me add that the reason why I wouldn't want – in fact, I don't want to  
10 use the word, I refuse, Chairperson. I did indicate at the beginning that I respect the Commission I would prefer not to answer that question, Chairperson, because as you have explained it to me that I must add why I think I do not prefer to answer. I don't want to answer that question, Chairperson, because I do not wish to incriminate myself.

**CHAIRPERSON:** That is the question about whether you were aware that you had certain obligations under the PFMA, that's the question that you are saying you would like not to answer, is that correct?

20 **MS MYENI:** That's the question, I say, I would not like to answer Chairperson, for the reason I have explained yes Chair.

**CHAIRPERSON:** Yes, just so that we fit within the legal framework, I think you have made the point that you wouldn't like to say you refuse, out of respect. You say

you prefer but we can take that what you intend is to refuse just that you'd like to say, you prefer, you prefer not to answer as respect but otherwise your position is that, you are refusing but you don't feel comfortable to say that, is that correct?

**MS MYENI:** Yes, indeed Chairperson.

**CHAIRPERSON:** Yes, okay, alright.

**ADV HOFMEYR:** Thank you, Ms Myeni if I may make a suggestion, because I know the language is challenging,  
10 one doesn't want to say refuse in circumstances especially when one appears before a body as august as this. So in line with the legal test the simple question that you would need to form in your mind, I propose, is to confirm for yourself that you believe that the answer would tend to expose you to a criminal charge and so that might be the answer you give on occasions when you have that concern. Let me move to my next question then because you confirmed for us already, in relation to the question about obligations under the PFMA that you are declining to  
20 answer on the basis that the answer would tend to incriminate you...[intervenes].

**ADV BUTHELEZI:** Sorry Chair if I may try to assist Ms Hofmeyr.

**CHAIRPERSON:** Yes.

**ADV BUTHELEZI:** It was argued in Ms Myeni's case that

the basis – one of the reasons why her case would be referred to the NPA for investigation and then prosecution was that there are provisions in the PFMA that says, a person who is found to have contravened the PFMA may be criminally prosecuted, I think it's Section 89. Now, that is another trigger point for us, if you ask us questions that pertain to the PFMA because we already have a Court Order that says – or there's a finding that says we may, potentially have violated the PFMA and it's also the basis  
10 upon which Ms Myeni is apprehensive and to delve into any issues that - the obligations Chair.

**CHAIRPERSON:** Hm. Okay alright. Ms Hofmeyr let us continue.

**ADV HOFMEYR:** Thank you. Section 50 of the PFMA requires accounting authorities such as the Board of SAA to act with fidelity, honesty and integrity. Were you aware of that obligation while you served on the board of SAA?

**MS MYENI:** Chairperson I and with respect to the question may I not answer the question in case I incriminate myself.

20 **CHAIRPERSON:** Thank you.

**ADV HOFMEYR:** And there are also obligations under that section to exercise the duty of utmost care in conducting your business and exercising your functions. Were you aware of that obligation?

**MS MYENI:** May I not answer Chairperson in case I



incriminate myself.

**CHAIRPERSON:** Thank you.

**ADV HOFMEYR:** Ms Myeni the Public Finance Management Act also prohibits irregular, fruitless and wasteful expenditure. Were you aware that that is a prohibition it places?

**MS MYENI:** Chairperson with respect may I not answer the question in case I get affected by the response I make.

**CHAIRPERSON:** Okay.

10 **ADV HOFMEYR:** And just to clarify that it is because you believe it will tend to incriminate you, is that correct?

**MS MYENI:** I have answered Chairperson.

**CHAIRPERSON:** Yes I think she – I think Ms Hofmeyr just wants to make sure that what you say is in line with what the law says. But I think that is what you say – you – you fear that you might incriminate yourself if you answer that question.

**MS MYENI:** Yes Chair.

**CHAIRPERSON:** Yes.

20 **MS MYENI:** Yes Chair sorry. Sorry I must be consistent where I need to say...

**CHAIRPERSON:** Yes.

**MS MYENI:** What I think and I believe.

**CHAIRPERSON:** Yes.

**MS MYENI:** It could be case going forward.

**CHAIRPERSON:** Yes.

**MS MYENI:** Yes Chair.

**CHAIRPERSON:** If in regard to a particular question you feel that you have reasonable grounds to believe that your answer might incriminate you you can say you know I would like not to answer the question. We now understand that that is a code for I am refusing to answer the question because I believe that I am going to incriminate myself.

**MS MYENI:** Incriminate myself.

10 **CHAIRPERSON:** Ja. So there may be many – there may be a number of questions where you might have to say that but Ms Hofmeyr has got to do her job and ask you a number of questions that you might feel you – you might not wish to answer. But she has got to go through them and you take each one on its merits. Those that you believe that you have no problem with you must answer. As I said at some stage later today or tomorrow I am might have to look at all of them and see whether there are some where I might make a different ruling. But for now let us move on and you will  
20 treat each question – deal with each question as it comes.

**MS MYENI:** Thank you Chairperson.

**ADV HOFMEYR:** Ms Myeni what is your understanding of wasteful expenditure?

**MS MYENI:** May I not answer Chairperson the question? Just in case it happens that I incriminate myself.

**ADV HOFMEYR:** And if I said to you that my understanding was that it is expenditure that has no real value from which the party expending the money receives no value, would you agree with that?

**MS MYENI:** I have given my answer Chairperson. So I will not answer that question Chairperson so that I do not incriminate myself.

**CHAIRPERSON:** Okay.

**ADV HOFMEYR:** And Ms Myeni the PMFA the Public  
10 Finance Management Act makes the accounting authority of a state owned enterprise responsible to ensure that this type of expenditure that is wasteful expenditure does not take place, correct?

**MS MYENI:** May I not answer the question Chairperson just in case I incriminate myself.

**ADV HOFMEYR:** And I suggest to you and I would be interested in your comment on this. The rationale behind that obligation placed on the accounting authorities of state owned enterprises is because if they engage in wasteful  
20 expenditure then they are misusing public funds, are they not?

**MS MYENI:** May I not answer Chairperson to avoid self-incrimination.

**ADV HOFMEYR:** Ms Myeni do you agree that if public funds are wasted the entities who benefitted from those wasted

funds should pay back the money?

**MS MYENI:** May I not answer Chairperson in case I incriminate myself.

**ADV HOFMEYR:** And would you agree that they should pay back the money because the public have a right to have returned to them what is rightfully theirs?

**MS MYENI:** May I not answer Chairperson in case I incriminate myself.

**ADV HOFMEYR:** I would then like to move from the PFMA  
10 Ms Myeni to the Companies Act. When you were a director of SAA were you aware that you had obligations not only under the PFMA but also under the Companies Act?

**MS MYENI:** May I not answer Chairperson. May I have the privilege not to answer so I do not incriminate myself.

**ADV BUTHELEZI:** Sorry Chair.

**CHAIRPERSON:** Yes Mr Buthelezi. Is it more than one year and not more than three years?

**MS MYENI:** Ja more than one year not more than three years. Thank you Chairperson for your assistance.

20 **CHAIRPERSON:** Is it more than one year and not more than three years?

**MS MYENI:** Ja more than one year not more than three years. Thank you Chairperson for your assistance.

**ADV BUTHELEZI:** I would like to issue the same disclaimer that we issued with regard to PFMA because her being

declared a delinquent director is under Section 162 of the Companies Act.

**CHAIRPERSON:** Just raise your voice.

**ADV BUTHELEZI:** I am saying her being declared a delinquent director was under Section 162.5 of the Companies Act so there is a court ruling that has found her in breach of the Companies Act already. And that is also the subject of an appeal.

**CHAIRPERSON:** Ja.

10 **ADV BUTHELEZI:** So in as much as there are questions with regards to her applying the Companies Act or what she considers her actions and conduct regards to the Companies Act.

**CHAIRPERSON:** Ja.

**ADV BUTHELEZI:** She stands on the same advice Chair. So I am not too sure if it takes the commission forward because we declare these things up front.

**CHAIRPERSON:** Yes.

20 **ADV BUTHELEZI:** Is that is it constructive for us where it is obvious that she did not answer any questions on the PFMA and I really tell you now she is not going to answer any questions on the Companies Act and we declared this upfront. We are not grandstanding. It is genuine concerns we operating under a court order that has already found her in breach of this issue. She defended herself in court, the

court found against her. We are going to try to another platform. But the point is we could be wasting the commission's time answering questions where we have declared upfront that we do not feel comfortable answering these questions. Ms Kate Hofmeyr is at large to go into other areas but if she goes into legislation where she has already has adverse findings – adverse findings against her.

**CHAIRPERSON:** Yes.

**ADV BUTHELEZI:** She is not going to answer that.

10 **CHAIRPERSON:** Ms Hofmeyr.

**ADV BUTHELEZI:** And out of respect for the Chair and the processes we have advised our client accordingly and she is acting accordingly but she can ask other questions.

**CHAIRPERSON:** Ja.

**ADV BUTHELEZI:** But she knows what the issues already are.

**CHAIRPERSON:** Yes.

**ADV HOFMEYR:** Chair the privilege against self-incrimination places no limitation on the question that may  
20 be asked. And it is precisely because the fact that there is a judgment in civil proceedings cannot be a basis to invoke the privilege against self-incrimination that I propose to continue to ask the questions and when Ms Myeni fairly indicates to me that she in her own mind believes the answer will tend to incriminate her I move on.

**CHAIRPERSON:** Yes.

**ADV HOFMEYR:** But we must have certainty.

**CHAIRPERSON:** Yes.

**ADV HOFMEYR:** That that is the basis and it is not because for example some high court in a delinquent director case has found her to have been delinquent because that would not be the correct legal test. So my next question then is Ms Myeni whether you were aware when you were a board member that the Companies Act placed particular fiduciary  
10 duties on board members to act in the best interests of the company?

**MS MYENI:** Chairperson I request not to answer the question just in case I incriminate myself.

**ADV HOFMEYR:** And it also imposes obligations of duties and obligations of care, skill and diligence. Were you aware that you had those duties where you – when you served on the board of SAA?

**MS MYENI:** Chairperson may I not answer the question in case I incriminate myself.

20 **ADV HOFMEYR:** Ms Myeni are you still the Deputy Chairperson of Centlec SOC?

**MS MYENI:** I beg your pardon.

**ADV HOFMEYR:** Are you still the Deputy Chairperson of the state owned company Centlec?

**MS MYENI:** No.

**ADV HOFMEYR:** I understand Centlec to be an electricity utility solely owned by the Manguang Metropolitan Municipality, is that correct?

**MS MYENI:** Chairperson may I not answer that question. I would prefer not to answer the question so that I do not incriminate myself.

**ADV HOFMEYR:** Before you – I understand you to say you no longer a member of the board. How long did you serve on that board?

10 **MS MYENI:** I do not remember Ms Hofmeyr.

**ADV HOFMEYR:** Is it in the order of a year or four or five years?

**MS MYENI:** I will say something that might not be accurate so it would not be four years it certainly is under three years or – ja around there about.

**CHAIRPERSON:** Is it more than one year and not more than three years?

**MS MYENI:** Ja more than one year not more than three years. Thank you Chairperson for your assistance.

20 **CHAIRPERSON:** Okay.

**ADV HOFMEYR:** Thank you. And at the time of the OUTA trial that took place at the beginning of this year were you at that point a board member of Centlec?

**MS MYENI:** Chairperson with respect I think my – the Advocate – the legal representative that is before you there.



**CHAIRPERSON:** Mr Buthelezi?

**MS MYENI:** Can assist me. The matter is with OUTA – the issue of Centlec is with OUTA on the appeal as the case is continuing since we appealed and I think OUTA raised the issue of Centlec. So may I not answer any question pertaining to Centlec Chairperson in case I incriminate myself.

**CHAIRPERSON:** Let me hear what Mr Buthelezi if he has got anything to say about the issue?

10 **ADV BUTHELEZI:** Chair it is just – there is an application before court that where OUTA seeks to enforce the removal of Ms Myeni from the Centlec board despite the matter being appealed. And there are several contentious issues there. There is a constitutional issue as well with regards to whether the finding of an appeal does not stay the execution of an order and in particular the one released from the court that says she must be removed from the Centlec board on the basis of the judgement in the delinquency case. So I think the version then arises from that aspect because there  
20 is specific case by OUTA saying they want her removed from the Centlec board.

**CHAIRPERSON:** But she is no longer a member of that board as I understand the evidence. Or she is no longer Deputy Chairperson.

**ADV BUTHELEZI:** Then she can answer Chair.

**CHAIRPERSON:** Sorry.

**ADV BUTHELEZI:** Then I can ask her to answer that question.

**CHAIRPERSON:** Oh.

**ADV BUTHELEZI:** Can I – I would be testifying.

**CHAIRPERSON:** Ja no. No, no.

**ADV HOFMEYR:** No I think she has given the evidence already.

**CHAIRPERSON:** Ja. Well she – she said she is no longer  
10 Deputy Chairperson what I think you did not ask her is  
whether is...

**ADV HOFMEYR:** Any board member.

**CHAIRPERSON:** A board member ja.

**ADV HOFMEYR:** Well let me just ask that for clarity as my  
learned friend said he should not be – giving evidence and  
then if I may Chair just return to Mr Buthelezi's submissions.

**CHAIRPERSON:** Ja.

**ADV HOFMEYR:** Just for clarity and let us know if you are  
not comfortable answering the question. You indicated  
20 previously you were not currently the Deputy Chairperson of  
the Centlec board. May I then follow up and ask do you  
serve in any capacity on the board?

**MS MYENI:** Sorry what is your question again – I beg your  
pardon?

**ADV HOFMEYR:** Apologies. Do you serve in any capacity

on the board of Centlec? At the moment are you a board member of Centlec?

**MS MYENI:** I – I am not at Centlec Chairperson.

**ADV HOFMEYR:** Thank you.

**CHAIRPERSON:** Okay.

**ADV HOFMEYR:** Then just in response Chair if I may to my learned friend. It is again just underscoring the importance of the basis on which Ms Myeni is declining to answer the question. Because the fact that there are court proceedings  
10 to remove her from the board of a particular company because of a finding by a high court that she breached her fiduciary duties and was a delinquent director does not create a sufficient basis to decline to answer a question because of her privilege against self-incrimination. So that is why the clarity is so important. When I asked...

**ADV BUTHELEZI:** Sorry Chair.

**CHAIRPERSON:** Yes.

**ADV BUTHELEZI:** I think to correct Ms Hofmeyr I think that is her submission Chair but I think that should be your ruling  
20 in that regard. I think she cannot assert it as if this has been a ruling of this commission Chair.

**CHAIRPERSON:** No she is making a submission.

**ADV BUTHELEZI:** Yes.

**CHAIRPERSON:** Responding to you.

**ADV BUTHELEZI:** Yes.

**CHAIRPERSON:** Ja.

**ADV BUTHELEZI:** Specifically the point of saying that she...

**CHAIRPERSON:** She is not making a ruling.

**ADV BUTHELEZI:** I am sorry Chair I want to be specific. When she says the basis upon which Ms Myeni relies on these reasons cannot be the reason. I think she must qualify it as her own submission.

**CHAIRPERSON:** Ja.

**ADV BUTHELEZI:** Because I think it is beyond what...

10 **CHAIRPERSON:** Ja.

**ADV BUTHELEZI:** She cannot assert that.

**CHAIRPERSON:** Ja no I think whatever she says and whatever you say I will always understand as a submission. Even if you do not say so.

**ADV BUTHELEZI:** Okay thank you Chair.

**CHAIRPERSON:** Ja.

**ADV HOFMEYR:** So just to repeat my question so that we have your basis for answering or not answering clear. My question was; were you a member of the board of Centlec at  
20 the time that your trial against OUTA took place in the high court earlier this year.

**MS MYENI:** Yes Chairperson I was.

**ADV HOFMEYR:** And how much did you earn on a monthly basis from that directorship?

**MS MYENI:** May I not answer that question Chairperson in

case I incriminate myself.

**ADV HOFMEYR:** And – Ms Myeni you have experience in matters of corporate governance, do you not?

**MS MYENI:** What is your question Ms Hofmeyr?

**ADV HOFMEYR:** Do you have experience in matters of corporate governance?

**MS MYENI:** May I not answer that question – a question like that Chairperson in case I incriminate myself.

**ADV HOFMEYR:** If I indicated that in September of 2019  
10 you earned approximately R35 000,00 from your activities on the Centlec board could you confirm that for me?

**MS MYENI:** Can you repeat the question Ma'am?

**ADV HOFMEYR:** If I indicated that on our investigations you earned approximately R35 000.00 in September of 2019 from your activities on the Centlec board can you confirm that?

**MS MYENI:** May I not confirm anything pertaining to Centlec Chairperson in case I incriminate myself. And Chairperson I do also would – I do like to ask if I am on trial or not?

**CHAIRPERSON:** You are not on trial Ms Myeni. The  
20 commission does not conduct ...

**MS MYENI:** I beg your pardon Chairperson.

**CHAIRPERSON:** You are not on trial.

**MS MYENI:** Thank you Chairperson.

**CHAIRPERSON:** Because the commission...

**MS MYENI:** I just needed that clarity Chairperson.

**CHAIRPERSON:** Yes. No you are not on trial.

**MS MYENI:** Thank you very much.

**CHAIRPERSON:** Yes okay. Ms Hofmeyr.

**ADV HOFMEYR:** You have done quite a number of courses on corporate governance have you not?

**MS MYENI:** May I not answer that question Chairperson in case I incriminate myself may I not answer that question.

**ADV HOFMEYR:** Ms Myeni do you have a B Administration Degree?

10 **MS MYENI:** May I not answer that question Chairperson in case I incriminate myself.

**ADV HOFMEYR:** The Department of Public Enterprises produced a document shortly after or it might have been at the same time actually that you were appointed as acting chairperson on the 7 December 2012 in which it listed all the qualifications held by members of the board. And in relation to you that document which I will take you to in a moment indicated that you had the B Administration Degree. Are you aware that you were indicated on that document as holding  
20 that degree?

**MS MYENI:** My CV does not say anything to that effect that I have – I do not know what CV you have so may I not answer that question Chairperson in case I incriminate myself.

**ADV HOFMEYR:** Well I was not suggesting it was in a CV I

was indicating that it was a document prepared by the Department of Public Enterprises. So let me take you to it before I ask you the follow up question. You will find it in the file that we were working on previously. It is DD34[b] and you will be on the next page – page1241.

**MS MYENI:** Excuse me. Chairperson.

**CHAIRPERSON:** Yes.

**MS MYENI:** Chairperson it is on which – I do not know which document that is being referred to Chairperson and secondly  
10 may I – may I ask Chairperson that I should respond to a document that was prepared by Department of Public Enterprises or must I answer to a document that is prepared by myself? Just a question Chairperson.

**CHAIRPERSON:** Yes.

**MS MYENI:** In that regard.

**CHAIRPERSON:** Ja. No, no you – you – there may be a legitimate question that relates to a document that you did not yourself prepare. But obviously if you do not know what the answer to the question because the document you – was  
20 not prepared by you you would say so. But you can be asked a question that relates to a document prepared by somebody else. It just depends on what you are asked.

**MS MYENI:** Thank you Chair.

**CHAIRPERSON:** Okay alright. Ms Hofmeyr said – referred us to...

**MS MYENI:** Thank you Chairperson.

**CHAIRPERSON:** To Bundle 34[b] that is the file that is in front of us. What page Ms Hofmeyr?

**ADV HOFMEYR:** It is page 1241.

**CHAIRPERSON:** 12 – oh it is the page just after the undertaking that you...

**ADV HOFMEYR:** Exactly Chair.

**CHAIRPERSON:** Yes. Okay it is the same file that is supposed to be in front of you Ms Myeni.

10 **MS MYENI:** Yes indeed Chairperson. I can see Chairperson it is agreed and at the top it is written secret I see it yes.

**ADV HOFMEYR:** Yes, yes.

**CHAIRPERSON:** Yes.

**ADV HOFMEYR:** Exactly so if you have that in front of you Ms Myeni you will see it says Current SAA Board at the top. It is marked Secret. As we understand it it emanates from the Department of Public Enterprises and then annexure D. It was an annexure to another document. And under number 1 in the table there you will see number 1 full name: Ms  
20 Duduzile Myeni Chairperson. And then your gender and your ethnicity is given and then under qualifications you will see it says:

“Secondary Teacher’s Diploma, B Admin,  
Business Skills of SA Business  
management.”



So that recordal there is the basis for me saying to you that there is a document from the Department of Public Enterprises that records you as having a B Administration Degree and I was asking you whether you were ever aware of this document?

**MS MYENI:** May I not answer Chairperson because my CV does not look like this Chairperson.

**ADV HOFMEYR:** Ms Myeni that would not be a basis on which to decline to answer. What I understand you to be  
10 saying is your CV is different from this but my question was, were you ever aware of this document in which you were credited with having a B Admin Degree?

**MS MYENI:** May I not answer Chairperson in case I incriminate myself.

**ADV HOFMEYR:** And what does you CV say about this?

**MS MYENI:** Chairperson I have answered. I know Ms Hofmeyr may not be happy but I have answered.

**ADV HOFMEYR:** Ms Myeni.

**MS MYENI:** I clarified earlier that she has qualified the  
20 issuance of the document that I am looking at and she said it was prepared by the Department. It is not a document that I prepared.

**ADV HOFMEYR:** Correct and so my follow up question was...

**MS MYENI:** May I then Chairperson – may I then

Chairperson not respond to the question in case I incriminate myself.

**ADV HOFMEYR:** I do not think I finished the question so can I just be sure. My question was what does your CV say? Because a moment ago you told us your CV is different to this so I am following up on that. What does your CV say?

**MS MYENI:** Chairperson may I not answer this question in case I incriminate myself. I think also maybe my legal advisor can assist me because if the CV would be required  
10 for the commission since I am not on trial I would be happy to submit it Chairperson if you need my CV.

**CHAIRPERSON:** Yes.

**ADV HOFMEYR:** We – we have a copy of it. I was asking you what your understanding was of what was contained in the CV. You see my challenge is I asked you what was in it and your answer was I refuse to answer on the basis that it incriminates me. But then you added I am happy to provide to the commission. So that presents a difficulty. You cannot  
20 both volunteer to provide the CV to the commission and say you refuse to answer the question what is in CV on the basis that it would tend to incriminate you. So what is your position Ms Myeni? Would it incriminate you if you told us what was in your CV?

**MS MYENI:** Chairperson I am being asked about a document that was prepared by somebody else. I am not being asked

by a – about a document that is before me that is my document. That is the basis for which I say may I please not answer the question in case I incriminate myself.

**CHAIRPERSON:** Well the earlier question that Ms Hofmeyr asked was indeed about a document that seems to have been from the Department of Public Enterprises but the last question she was asking you was not about what is in that document but what is in your CV which you said you are quite happy to provide the commission.

10 **MS MYENI:** May I not answer Chairperson?

**CHAIRPERSON:** You would like not to answer what about – answer what is in your CV?

**MS MYENI:** I did not bring my CV here Chairperson so I...

**CHAIRPERSON:** Okay but you are happy to provide it?

**MS MYENI:** May I please not answer?

**CHAIRPERSON:** Ms Hofmeyr.

**ADV HOFMEYR:** Ms Myeni.

**MS MYENI:** May I not answer Chairperson.

20 **ADV HOFMEYR:** No I do need clarity. Because a moment ago you said that you declined to answer a question about what is in your CV because it may tend to incriminate you. And then you offered to provide your CV to the commission. Now those two propositions cannot live side by side. And it is for that reason that I ask you again would disclosing what is contained in your CV tend to incriminate you?

**MS MYENI:** I have given an answer Chairperson on this question.

**ADV HOFMEYR:** What was that answer?

**MS MYENI:** I am not going to answer your question in case it incriminates me.

**ADV HOFMEYR:** Thank you. Now we did establish a moment ago that you have ex – you have experience on matters of corporate governance and what I am interested in is probing just a little bit further about that. Is it your  
10 understanding of good corporate governance that a board should regard its function as different to the functions of management?

**MS MYENI:** May I not answer that question Chairperson in case I incriminate myself.

**ADV HOFMEYR:** And it is management of a company like South African Airways that is responsible for operational matters whereas a board is not responsible for operational matters. Do you agree with that?

**MS MYENI:** Can I not answer that question Chairperson in  
20 case I incriminate myself.?

**ADV HOFMEYR:** And procurement process, particularly, within a state-owned enterprise should generally run by management and not the board. Is that correct?

**MS MYENI:** May I not answer that question Chairperson in case I incriminate myself?

**ADV HOFMEYR:** Now Ms Myeni, in 2013 and 2014, there was quite a severe breakdown in the functioning of the Board of SAA, was there not?

**MS MYENI:** May I not answer that Chairperson, the question in case I incriminate myself?

**ADV HOFMEYR:** And Ms Myeni but the trouble really started with what has become known as the *Ten Two Ten* Transaction, the Pembroke Transaction which involved the sale in Sail and Lease Back of A 320 Aircraft, did it not?

10 **MS MYENI:** Chairperson, the transcript that was submitted is very elaborate on the matter that is being asked. There was an annexure that was submitted and I stand by that response.

So I am not going to answer Chairperson because transcripts have been provided with all the answers that we provided in court and the answers for the Commission to be able to know that I have dealt with the question that is being asked.

**CHAIRPERSON:** Well, Ms Myeni ...[intervenes]

20 **MS MYENI:** So Chairperson, in case I incriminate myself, I prefer to invoke the privilege that I have been given.

**CHAIRPERSON:** Well, you see Ms Myeni, the only basis on which you can refuse to answer the question is the privilege of self-incrimination and of course, in case there is attorney and client information.

But unless there is something else that I have forgotten, there is no other basis legally on which to refuse to answer a question.

You cannot refuse on the basis that you have provided a document that the Commission should look at to find an answer. That is not an acceptable basis.

But I thought I must mention that I did not actually here the question that Ms Hofmeyr asked. So Ms Hofmeyr, I am going to ask you to tell me what the question was.

10 **ADV HOFMEYR**: Indeed Chair.

**CHAIRPERSON**: So that I can know. I missed it.

**ADV HOFMEYR**: Chair, just aside. What I find quite remarkable about this afternoon is that it is very difficult to remember a question if there is not an answer to it. I am also struggling to remember my own questions.

**CHAIRPERSON**: [laughing]

**ADV HOFMEYR**: Because there is usually an answer which is ...[indistinct]

**CHAIRPERSON**: [laughing] Yes.

20 **ADV HOFMEYR**: Luckily, I do have ...[intervenes]

**MS MYENI**: I remember the question very well Chairperson.

**ADV HOFMEYR**: Oh, great.

**CHAIRPERSON**: Oh, yes.

**ADV HOFMEYR**: [laughing]

**CHAIRPERSON**: [laughing] Yes. At least... Ja, just repeat

it Ms Myeni.

**MS MYENI:** I beg your pardon Chairperson?

**CHAIRPERSON:** Just repeat the question. You said you remembered the question.

**MS MYENI:** Chair, yes. It was about the complaint by six board members, South African Airways board members in about a period of 2013/2014, thereabout. That is what I heard. And a letter between the Pembroke and financing of the aircraft.

10 **CHAIRPERSON:** Oh, okay.

**MS MYENI:** I think there were leases of the ...[intervenes]

**CHAIRPERSON:** Ja, of the airbus.

**MS MYENI:** ...aircraft. I hope I paraphrased correctly, according to my understanding.

**CHAIRPERSON:** Okay. No, that is fine.

**MS MYENI:** And my response is that, I prefer not to answer that question Chairperson in case I incriminate myself.

**CHAIRPERSON:** Yes, okay. Ms Hofmeyr.

20 **ADV HOFMEYR:** Now, I am going to pause this transaction for short, the Pembroke Transaction.

**CHAIRPERSON:** I am sorry, Ms Hofmeyr. I am going to just ask Ms Myeni something and it is connect with an earlier question about what is in the document from the Department of Public Enterprises and about her CV. Do you hold a Bachelor of Administration degree, Ms Myeni?

**MS MYENI:** [Indistinct] Chairperson. It is very explicit. I studied it. I did not complete it.

**CHAIRPERSON:** Okay.

**MS MYENI:** I did three years of ...[indistinct] ...[intervenes]

**CHAIRPERSON:** Yes.

**MS MYENI:** ...that particular degree.

**CHAIRPERSON:** Yes.

**MS MYENI:** And it is very explicit. It even says why anything and whatever the reason ...[intervenes]

10 **CHAIRPERSON:** Yes.

**MS MYENI:** ...that caused me not to do my majors.

**CHAIRPERSON:** Yes, yes.

**MS MYENI:** Very explicit on my CV.

**CHAIRPERSON:** Yes.

**MS MYENI:** That is why I am saying, this is not my CV.

**CHAIRPERSON:** Yes, okay. And ...[intervenes]

**MS MYENI:** But Chairperson, I prefer not to respond to the questions that might incriminate myself.

**CHAIRPERSON:** Yes, okay. No, that is fine. Ms Hofmeyr.

20 **ADV HOFMEYR:** Ms Myeni, if you did not complete the B-Admin degree, why would you include it at all on your CV?

**MS MYENI:** Chairperson, I prefer not to answer the question. We have dealt with it. I stand by the answer that I have given.

**ADV HOFMEYR:** Have you, in all your years in corporate,



ever seen other people's CV's where they list under qualifications, qualifications that they do not have?

**MS MYENI:** By whose standard Ma'am are you asking me that question? Let me just ask the question. Whose standards are we talking about?

**ADV HOFMEYR:** Ms Myeni ...[intervenes]

**MS MYENI:** Is there... No, just for me to understand Ma'am. Whose standard are you asking?

**ADV HOFMEYR:** Ms Myeni, I ...[intervenes]

10 **MS MYENI:** I am saying, whose... Sorry. Let me just finish my question because I need clarity.

**CHAIRPERSON:** Ms Myeni ...[intervenes]

**MS MYENI:** I need clarity Chair so that I can provide the answer.

**CHAIRPERSON:** Ms Myeni ...[intervenes]

**MS MYENI:** I have never seen people's CV's that a person will write a CV this way because this one has written it this way and that other one has written it this way.

20 I have written mine in my own way and in my own unprescribed standard that I preferred to do it. So Chairperson, may I not answer the question that Ms Hofmeyr has put before me in case I incriminate myself?

**CHAIRPERSON:** If I am not mistaken, I thought you did answer. But that is okay. Ms Hofmeyr, continue.

**ADV HOFMEYR:** Ms Myeni, my question has not yet been

answered, actually, the most recent one because my question was: Have you ever seen other CV's in your time at various corporate entities in which under the qualification section, a person lists a qualification that they do not have? I do not have a record that you have answered that.

**MS MYENI:** Chairperson, I prefer not to answer this question because my focus is dealing with poverty, inequality and all the other problems facing me as a woman leader.

I have never had an opportunity to sit down and start  
10 with people's CV's so that I can align my CV to somebody else's CV.

And Chairperson, if that is a crime. May I ask for an apology? That is why I am stating that my CV is written according to my own standard because I do not know if there are certain standards. Or that somebody who is somebody's CV that I should copy and emulate.

Chairperson, I am speaking not my language. Whose standard must my CV copy? My apologies Chairperson. If it is the kind that I did indicate that I studied at the University  
20 of Zululand.

It is an achievement for a black woman that studied after marriage. It is a big achievement for me to have passed the first year and the second year. And it is an inspiration for any other black woman somewhere.

And I am sorry Chairperson. If then I am before the

Commission to talk about my qualifications, they were not in your letter Chairperson.

And therefore, I request that I do not answer this question before it becomes something that will put in me in bad light that I should have followed some Western standards to write a CV.

**CHAIRPERSON**: Ms Hofmeyr.

**ADV HOFMEYR**: Ms Myeni, on the 27<sup>th</sup> of May 2013, there was a meeting of the Board of Directors of South African Airways that you attended. Do you recall that?  
10

**MS MYENI**: May I not answer that question Chairperson in case I incriminate myself?

**ADV HOFMEYR**: At that meeting – I would like to take you to a minute of that meeting if I may? You will find it in the bundle in front of you which is DD34-B and it is DD34-B, page 1247.

**MS MYENI**: Yes, Chairperson I do have the minutes.

**ADV HOFMEYR**: And can you confirm that you are being indicated as present on page 1247?

**MS MYENI**: May I not answer that question Chairperson in case I incriminate myself?  
20

**CHAIRPERSON**: Well, she is not asking whether you were – you attended that meeting. She is asking only whether the minutes reflects that you were present.

**MS MYENI**: I have not read the minutes Chairperson but I

can see that my name is there. I attended the meeting but I have not read the minutes to confirm that this is a true set of the minutes of the meeting.

**CHAIRPERSON**: Yes, okay.

**ADV HOFMEYR**: If I can take you to page 1263 which is the last page of those minutes and can you tell me whose signature appears on that page?

**MS MYENI**: Yes, Chairperson. I am on the page.

10 **ADV HOFMEYR**: And whose signature appears on that page?

**MS MYENI**: I am not too sure then because there is a rub on the signature. But Chairperson, be that as it may. May I not answer the question?

**ADV HOFMEYR**: So you cannot confirm whether that is your signature?

**MS MYENI**: May I not answer the question just in case I incriminate myself? I have not had an opportunity to read the minutes.

**ADV HOFMEYR**: Ms Myeni ...[intervenes]

20 **MS MYENI**: Under normal circumstances Chairperson...  
Sorry?

**ADV HOFMEYR**: No, please continue.

**CHAIRPERSON**: Yes, continue Ms Myeni.

**MS MYENI**: No, I am saying. I would prefer not to answer the question. I have not had an opportunity to read the

minutes. And apart from that, I do not want to incriminate myself.

**ADV HOFMEYR:** Let us go to what the board resolved at that meeting in relation to the Pembroke Transaction. You will find that at page 1259.

**MS MYENI:** I guess what ...[indistinct] is that whoever signed those minutes at page 1263 is given as the chairperson.

**ADV HOFMEYR:** Yes. And just for record purposes. Chair,  
10 these are minutes dated... Well, at least the signature appears to be dated the 28<sup>th</sup> of July 2013.

**CHAIRPERSON:** Yes, okay.

**ADV HOFMEYR:** ON that date Ms Myeni, were you chairperson of the SAA Board?

**MS MYENI:** May I not answer that question Chairperson in case I incriminate myself?

**CHAIRPERSON:** Okay ...[intervenes]

**ADV HOFMEYR:** Ms Myeni ...[intervenes]

**CHAIRPERSON:** I thought, but you can tell me if you prefer  
20 not to ask the question. Having said that you became chairperson or was it acting chairperson in 2013?

**ADV HOFMEYR:** 2012, Chair.

**CHAIRPERSON:** Or 2012.

**ADV HOFMEYR:** December of 2012.

**CHAIRPERSON:** Ja. I thought that it is accepted that you

were chairperson for a number of years thereafter. Are you able to confirm that or would you prefer not to

**MS MYENI:** I am not comfortable Chairperson.

**CHAIRPERSON:** Okay alright. Ms Hofmeyr.

**ADV HOFMEYR:** And just to clarify. You are not comfortable to answer on the basis that the answer may tend to incriminate you?

**MS MYENI:** May I not answer because I do not want to incriminate myself?

10 **CHAIRPERSON:** Okay.

**ADV HOFMEYR:** So I was going to the report in the meetings that contains the board resolution on this Pembroke Transaction. And you will find that at page 1259.

**MS MYENI:** [No audible reply]

**ADV HOFMEYR:** Do you have that?

**MS MYENI:** Can you repeat? Kindly repeat your question. I have to 1250 in front of me.

**ADV HOFMEYR:** Yes, correct. So I was just checking whether you have the right page Ms Myeni. I will then follow  
20 it up with my next question. If you go halfway down that page, you will see – it says:

“The board then resolved THAT.”

And then number 1:

“The update on the A 320 Sail and Lease Back Transaction and the process followed (b) and is

hereby noted.

2. The initial award of the A 320 Sail and Lease Back of 20 aircraft to the Bank of China Aviation approved by the board on 6 September 2012 (b) and is hereby cancelled or withdrawn.

3. The Sail and Lease Back of the first ten A 320 Aircraft (b) and is hereby awarded to Pembroke Capital.”

Were you aware of those decisions having been taken by  
10 the board at this meeting on the 27<sup>th</sup> of May 2013?

**MS MYENI**: Chairperson, may I worry you, please?

**CHAIRPERSON**: Yes?

**MS MYENI**: Am I allowed to ask a question, not on top of the question, but to ask a clarity question?

**CHAIRPERSON**: Yes, you can seek clarification.

**MS MYENI**: Or maybe I could say something. Then my ...[intervenes]

**CHAIRPERSON**: You may ...[intervenes]

**MS MYENI**: ...legal representative can assist me?

20 **CHAIRPERSON**: Yes, you may seek clarification to a question.

**MS MYENI**: Chairperson... Please, Advocate Buthelezi. Under normal circumstances, minutes are signed by the company secretary before they are signed by the chairperson. 1263. There is no company secretary

signature. I, therefore, will not answer any question pertaining to this in case I incriminate myself Chairperson.

**CHAIRPERSON**: Okay.

**MS MYENI**: And the question then is that... There is no company secretary's signature here. So these minutes can come anywhere, from anywhere.

**CHAIRPERSON**: Okay. Ms Hofmeyr.

**ADV HOFMEYR**: After this decision was taken by the board on the 27<sup>th</sup> of May 2013, there was then a Section 54  
10 application sent through to National Treasury to approve the transaction. Were you aware of that at the time?

**MS MYENI**: Chairperson, may I not answer the question in case I incriminate myself?

**ADV HOFMEYR**: And why would a Section 54 application had to have been sent to Treasury arising from this decision to enter into a Sail and Lease Back for ten A 320 Aircraft with Pembroke?

**MS MYENI**: Chairperson, may I not answer any questions pertaining to this in case I incriminate myself?

20 **ADV HOFMEYR**: Now after that application was submitted on the 30<sup>th</sup> of May 2013, you wrote a letter to the Minister of Public Enterprises at the time, Mr Gigaba. And that was on the 20<sup>th</sup> of June 2014. Do you recall that letter?

**MS MYENI**: [No audible reply]

**CHAIRPERSON**: Did you hear the question Ms Myeni?



**MS MYENI:** I heard the question Chairperson. Sorry, I delayed a bit to answer.

**CHAIRPERSON:** Yes.

**MS MYENI:** I am not answering the question Chairperson in case I incriminate myself.

**ADV HOFMEYR:** I would like to go to that letter if we may and you will find it in the same bundle, DD34 and it is a few pages on in the bundle at page 1544.

**MS MYENI:** I have it Chairperson.

10 **CHAIRPERSON:** Okay. Ms Hofmeyr.

**ADV HOFMEYR:** Thank you. Can you ...[intervenes]

**MS MYENI:** [Indistinct]

**ADV HOFMEYR:** ...confirm Ms Myeni that is your signature at the bottom of that page, 1544?

**MS MYENI:** I am not responding Chairperson in case I incriminate myself.

**ADV HOFMEYR:** Now this is a letter dated the 20<sup>th</sup> of June 2013. On its face, it is addressed to Minister Gigaba and it is signed by a signature that appears  
20 to be yours, Ms Myeni under the title: SAA acting Chairperson.

And the letter is dated 20 June 2013. What I would like to focus in on is the second paragraph of this letter. Well, let me start at the first for context. It reads:

“Dear Minister.”

And then it is headed: Section 54, Update on Novation of A 320 Order. It then reads:

“Reference is made to the attached letter dated 30 May 2013 with regard to the Novation of the Airbus A 320 order.”

That, as I understand is, that Section 54 application that I was just talking about. Do you understand that sentence in the same way?

**MS MYENI**: Can I not answer that question Chairperson in  
10 case I incriminate myself?

**ADV HOFMEYR**: And then the letter goes on and it says:

“We would like to update the Minister on the award of the Sail and Lease Back of aircraft to Pembroke Capital.

Whilst reference is made to ten aircraft in the previous correspondence, the board has subsequently resolved to transact for two aircraft with Pembroke to allow SAA to further explore engaging local financiers such as the Development  
20 Bank of South Africa, Public Investment Corporation, Shari’ah Bank and others.”

Ms Myeni, do you recall writing that to the minister on the 20<sup>th</sup> of June 2013?

**MS MYENI**: May I not respond Chairperson? I am not comfortable to respond in case I incriminate myself?

**ADV HOFMEYR:** My understanding of that paragraph and I want to seek your guidance on whether you understand it in the same way, given that you were the author of that letter.

I will come in a moment to why I say that. It cannot really be disputed that you were the author of that letter. It conveys the following.

Minister, you got an application for us or correspondence from us previously in which we were all asking you to authorise the Sail and Lease Back of ten  
10 aircraft but since then, the board of SAA has resolved to transact for only two aircraft with Pembroke.

Do you understand that paragraph in the same way?

**MS MYENI:** Chair, may I not answer Chairperson, just in case I incriminate myself?

**ADV HOFMEYR:** Ms Myeni, we have searched in the records of SAA for that resolution. The one you are referring to in the second paragraph here. Because you say, the board has subsequently resolved to transact for two aircraft. And we have not been able to find any such resolution. Are  
20 you aware of one having been taken?

**MS MYENI:** With respect. May I not answer that particular question? I would not want to incriminate myself.

**ADV HOFMEYR:** Ms Myeni, you previously answered that question in an affidavit that you placed before the Companies tribunal. Do you recall that?

**MS MYENI:** May I not answer the question Chairperson in case I incriminate myself?

**ADV HOFMEYR:** Now in the matter involving the Companies tribunal, as I understand it. The Companies and Intellectual Property Commission had issued you with the compliance notice because of what it is contained in the very letter that we were just looking at. Is that correct?

**MS MYENI:** Chairperson, may I not answer Chairperson in case I incriminate myself?

10 **ADV HOFMEYR:** Now in that affidavit, I would like to take you to it. You will find it in the same bundle, DD34-B and now we are page 1562. That is under Tab 26.

**MS MYENI:** I have it in front of me.

**ADV HOFMEYR:** And if you turn over to page 1584, that is the last page of the affidavit which appears to have been deposed to by you on the 10<sup>th</sup> of March 2017. Can you confirm that you deposed to this affidavit then?

**MS MYENI:** May I not answer that question Chairperson in case I incriminate myself?

20 **ADV HOFMEYR:** Now in the affidavit, you will see – back in the affidavit at page 1564.

**MS MYENI:** I have it before me.

**ADV HOFMEYR:** Thank you. I would like to pick it up at paragraph 7 there because it is at paragraph 7 that you identify what you understand the complaint against you by

the commission – the Companies and Intellectual Property Commission to have been. You say at paragraph 7:

“I assume from our correspondence with the respondent that it is finding its space on a letter I addressed to the Minister of Public Enterprises dated 20 June 2013.”

If I can just pause there. That is the one that we have just looked at.

10 “...in which I have stated that “whilst reference is made to ten aircraft in the previous correspondence, the board has subsequently resolved transact on two aircraft”.”

Do you see that?

**MS MYENI:** May I not answer that question in case I incriminate myself?

**ADV HOFMEYR:** Ms Myeni, if I can just be clear. You are declining to answer the question whether you see a paragraph on page 164 on the basis of answering that question might tend to incriminate you?

20 **MS MYENI:** May I not answer that question Chairperson in case I incriminate myself?

**ADV HOFMEYR:** And then if we go to paragraph 8, you will see that what you record in the affidavit there is that that letter was written - of what the board of SAA had resolved. I subsequently ascertained that I was mistaken and that

the board's decision had not changed, at which point I wrote a further letter to the Minister of Public Enterprises to clarify the situation which clarification was accepted by the minister.

Do you remember giving that explanation to the Companies and Intellectual Property Commission's tribunal – well, the Companies Tribunal in your matter with CIPC?

**MS MYENI:** May I not answer this question, Chairperson, in case I incriminate myself.

10 **ADV HOFMEYR:** I would like to just get clear whether my understanding of that paragraph of your affidavit and your understanding of it is the same. So what I understand paragraph 8 to be saying is you wrote the letter on the 20 June 2013 but thereafter you realised that the board had not decided to go for the two aircraft and you realised that its original decision to go for the 10 aircraft had not changed. Is that also your understanding of that paragraph?

**MS MYENI:** May I not answer, Chairperson, that question  
20 in case I incriminate myself?

**ADV HOFMEYR:** So just pushing that a bit further, if your realisation was that they had not in fact decided to go for two aircraft then that would mean that there was only one decision and the one decision was the decision for 10 aircraft, correct?

**MS MYENI:** May I not answer that question in case I incriminate myself.

**ADV HOFMEYR:** And then what you do in paragraph 8 is you go on and you say when you realised you mistake you wrote to the minister to clarify that you had made the mistake and the minister accepted your clarification. Do you also understand your paragraph 8 in the same way?

**MS MYENI:** May I not answer, Chairperson, the question in case I incriminate myself.

10 **ADV HOFMEYR:** Now we will shortly go the letter that you wrote to the minister on – and I have it that it was written on the 11 July 2013 and I would like to again check whether you and I are on common ground. If you identified that mistake and conveyed it to the minister in your letter of 11 July 2013 then you must have identified the mistake somewhere between the 20 June, which was your first letter, and the 11 July, which was your second letter, is that correct?

**MS MYENI:** May I not answer, Chairperson, the question  
20 in case I incriminate myself.

**ADV HOFMEYR:** And, Ms Myeni, what alerted you to that mistake, that mistake in thinking that there had been another board decision to go from ten to two aircraft?

**MS MYENI:** May I not answer, Chairperson, the question in case I incriminate myself.

**ADV HOFMEYR:** I would then like us to go to your actual letter, that is the letter of 11 July 2013, and you will find it in the same bundle, DD34B, and now we need to go back to page 1283.

**MS MYENI:** Sorry, the same file?

**ADV HOFMEYR:** The same file, yes, and page ...[intervenes]

**MS MYENI:** DD34B and page?

**ADV HOFMEYR:** 1283.

10 **MS MYENI:** I beg your pardon?

**ADV HOFMEYR:** Page 1283.

**MS MYENI:** 1283.

**ADV HOFMEYR:** Thank you.

**MS MYENI:** I beg your pardon, the same file and page 1...?

**ADV HOFMEYR:** 1283.

**MS MYENI:** 1283. I have got it before me. I have the document in front of me.

**ADV HOFMEYR:** Thank you.

20 **MS MYENI:** I have the document.

**ADV HOFMEYR:** Thank you.

**CHAIRPERSON:** Thank you.

**ADV HOFMEYR:** And then if you go; over two pages to 1285 can you confirm whether that is your signature on the page?



**MS MYENI:** Chairperson, may I not confirm and respond to the question just in case I incriminate myself.

**ADV HOFMEYR:** Now this is a letter that appears to bear your signature and you are identified at the end of the letter as SAA Chairperson. It is a letter dated 11 July 2013 and it is addressed to Minister Gigaba and what it says is the following:

“Honourable Minister...”

And then the title of the letter or the heading of the letter  
10 is:

“Section 54(2) of the PFMA, SAA Novation of the Airbus A320”

And the first paragraph reads:

“SAA submitted an application in terms of Section 54(2) of the Public Finance Management Act 1 of 1999 as amended for consideration and approval by the minister. For ease of reference a copy of the application dated 30 May 2013 is attached hereto and marked annexure A. Subsequent to the  
20 submission of the application a letter dated 20 June 2013 was written to the minister requesting that an approval for two aircraft instead of ten be granted by the minister. The subsequent request has since been reconsidered and SAA has decided to revert to the ten aircraft as stated in its application dated 30

May for the following reasons.”

And then a series of reasons follow. Now, Ms Myeni, maybe you can help me but I do not identify anywhere in that paragraph an identification on your part that you made a mistake. Can you point me to where you have identified for the minister that you made a mistake?

**MS MYENI:** Chairperson, may I not respond to the question in case I incriminate myself.

**ADV HOFMEYR:** You see, if I read that paragraph it is  
10 saying something quite different to what you said in your affidavit before the Companies Tribunal. In your affidavit before the Companies Tribunal – I am maybe going to call it the fall on your sword affidavit, you say:

I did write a second letter but I subsequently...”

Sorry.

“I wrote a second letter that advised the minister that the board had changed its first decision to a second decision to now go for two instead of ten aircraft but I subsequently discovered, after sending  
20 that letter, that I was wrong and the board had only decided to go for the ten aircraft.”

By contrast what you are conveying, as I read paragraph 2 of your letter, is that there is not one decision but three decisions. The first decision, taken for ten, then a request for that to change to two and then that subsequent request

you say in your own words has since been reconsidered and SAA has decided to revert to the ten aircraft.

So this letter, Ms Myeni, I put to you is conveying to the minister nothing about a mistake, it is conveying to the minister that three board decisions were taken, the first decision for ten aircraft, the second decision for two aircraft and the third decision for ten aircraft. Do you understand that as I understand that paragraph?

**MS MYENI:** Chairperson, may I not respond to the  
10 question just in case I incriminate myself.

**ADV HOFMEYR:** You see, I would put it to you, Ms Myeni, that when Minister Gigaba received this letter on the 11 July 2013 he was being told that the board of South African Airways had taken three decisions, two of which you admitted in an affidavit before the Companies Tribunal later in 2017 had never been taken. Why would you make such a false representation to the minister?

**MS MYENI:** Chairperson, may I not respond to this question in case I incriminate myself.

20 **ADV HOFMEYR:** Ms Myeni, do you know what fraud is?

**MS MYENI:** Chairperson, may I not confirm respond in case I incriminate myself.

**ADV HOFMEYR:** Do you know that fraud is a crime, Ms Myeni?

**MS MYENI:** I am sorry?

**ADV HOFMEYR:** Do you know that fraud is a crime?

**MS MYENI:** I have answered, Chairperson.

**ADV HOFMEYR:** The second question was slightly different. The first question was do you know what fraud is? The second question was do you know that fraud is a crime? Is your answer to the first question the same as your answer to the second question, that you decline to answer whether you know that fraud is a crime because your answer might tend to incriminate you?

10 **MS MYENI:** May I not answer the question, Chairperson, in case I incriminate myself.

**ADV HOFMEYR:** You see, fraud is generally or takes place – fraud is perpetrated or takes place when a person intentionally misrepresents a factual position to someone which causes them actual or potential prejudice. Do you have any understanding of that being what happens when fraud is committed?

**MS MYENI:** May I not answer the question, Chairperson, in case I incriminate myself.

20 **CHAIRPERSON:** Do you know whether fraud is a bad thing in society?

**MS MYENI:** Chairperson, I respect your Commission and I am sure your Commission's terms of reference cover a number of issues pertaining to broadly corruption not in a selective way but broadly. Certainly, Chairperson, as a

responsible citizen, it is known that I know the definition of fraud and what fraud means.

**CHAIRPERSON:** Okay.

**MS MYENI:** But, Chairperson, with your respect, I am not going to answer this question.

**CHAIRPERSON:** Okay.

**MS MYENI:** I do not want to incriminate myself.

**CHAIRPERSON:** Okay, alright. Ms Hofmeyr?

**ADV HOFMEYR:** Now at the time that these letters were  
10 written to the Minister of Public Enterprises there were a  
number of members of the board of SAA that were very  
concerned about the fact that you had written these letters  
and misrepresented the factual position to the minister.  
You were aware of their concerns.

**MS MYENI:** Chairperson, may I not answer the question, I do not want to incriminate myself.

**ADV HOFMEYR:** You see, they were not only concerned  
about the fact that a misrepresentation had been made,  
they were concerned that as a result of that  
20 misrepresentation the Pembroke transaction had been  
substantially delayed and that delay cost South African  
Airways in excess of R800 million. Are you aware that that  
was the second part of their concern?

**MS MYENI:** Sorry, Chairperson, may I get clarity? Who is Pembroke?

**ADV HOFMEYR:** Pembroke, as I understand it, is the party that the board resolved on the 27 May 2013 to enter into a transaction with for ten aircraft.

**MS MYENI:** Chairperson, may I not respond to this question in case I incriminate myself.

**CHAIRPERSON:** Okay. Ms Hofmeyr?

**ADV HOFMEYR:** Do you ...[intervenes]

**CHAIRPERSON:** Well, we are at four.

**ADV HOFMEYR:** Oh, alright.

10 **CHAIRPERSON:** Yes. We did not speak about what we would do when we reached four o'clock, I know we lost quite some time in the morning so I do not mind us proceeding. What do you propose subject to what Mr Buthelezi say and what Ms Myeni would say?

**ADV HOFMEYR:** Chair, from my side I can say evidence has never gone so quickly, so I am cautiously optimistic that given that we set aside today, tomorrow and Friday for Ms Myeni's evidence, I could quite comfortably finish within that period of time. I am available to remain later if it  
20 would be convenient to make a bit further advance.

**CHAIRPERSON:** Ja.

**ADV HOFMEYR:** But I do not see a risk that I will not complete my questions.

**CHAIRPERSON:** Okay. No, that is fine. Mr Buthelezi, have you got any particular view?

**MR BUTHELEZI:** Sorry, I have to run it past Mr Mabuzi and Ms Myeni herself given her current state, so I just would not want to commit her without having first confirmed, so maybe if you give me five minutes just to run it past the attorneys to see if they want us to proceed?

**CHAIRPERSON:** Yes, but maybe what we can do because Ms Hofmeyr says she is confident she will finish within the time that has been allocated. Maybe we can stop now for today and we could add another hour if we thought we are  
10 not going to finish within the time allocated. So maybe that would be fine with you as well.

**MR BUTHELEZI:** So are we saying, Chair, we adjourn now for the day?

**CHAIRPERSON:** That we adjourn now, it is four o'clock. If that would be fine with you.

**MR BUTHELEZI:** That is okay.

**CHAIRPERSON:** Yes and then tomorrow we can start at ten.

**ADV HOFMEYR:** Indeed, Chair.

20 **CHAIRPERSON:** Yes, okay, alright. Alright, Ms Myeni?

**MS MYENI:** Chairperson?

**CHAIRPERSON:** We are going to adjourn now for the day and then we will resume tomorrow at ten o'clock.

**MS MYENI:** Thank you very much, Chairperson.

**CHAIRPERSON:** Yes. Okay, we will adjourn for the day

and tomorrow we will resume at ten o'clock.

We adjourn.

**REGISTRAR:** All rise.

**INQUIRY ADJOURNS TO 5 NOVEMBER 2020**