

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

06 NOVEMBER 2020

DAY 300



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TRANSCRIBERS:

B KLINE; Y KLIEM; V FAASEN; D STANIFORTH



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PROCEEDINGS RESUME ON 06 NOVEMBER 2020

CHAIRPERSON: Good morning Ms Hofmeyr, good morning everybody.

ADV HOFMEYR: Good morning Chair.

CHAIRPERSON: Are you ready?

ADV HOFMEYR: Yes we are.

CHAIRPERSON: Okay alright. Good morning Ms Myeni.

MS MYENI: Good morning Chairperson.

CHAIRPERSON: Before we start I am just going to repeat
10 something that I said yesterday Ms Myeni namely that the
commission gives you an opportunity to deal with all
evidence that or allegations that may have been made
against you or your board in the commission so as to
ensure that I have before me when I prepare the reports
your version as well not just what they have to say against
you but also your version and your perspectives.

The commission also gives you the platform in
responding to questions that are being asked to – to inform
the public of your side of the story in relation to whatever
20 may have been said to – against you – about you by
witnesses who have come to the commission.

But the commission recognises that you have a
privilege not to incriminate yourself and where you invoke
that privilege and there are reasonable grounds for its
invocation the commission will not compel you to answer

the questions.

But also it is going to be important that when a question has been asked you make up your mind whether you are going to invoke the privilege not to answer the question and on the basis that answering the question might lead to you incriminating yourself or whether you are going to answer the question.

You cannot have it both ways. You cannot give some answer and then later say no I am invoking the
10 privilege.

So where you are going to answer you answer but where you invoke the privilege you invoke it and that is it. If at some stage I might seek to enquire whether there are reasonable grounds to invoke it and as I said two days ago there may be cases where I compel you to answer but I will not do so unless I think that the – there are no proper grounds to invoke the privilege.

So I just wanted to remind you again naturally because as things presently stand this is the last day when
20 you are appearing to say it is an opportunity you have to respond to questions and deal with whatever different witnesses may have said about you or your board but where you choose to not to answer on the basis of invoking the privilege then that will be respected if there are reasonable grounds for invoking it.

But it is an opportunity that you decide whether to use or not. But as I said also yesterday when I prepare the report and I have to make findings it is not as if just because you – you invoked the privilege I cannot make findings. All it would mean is simply that the evidence I have on which I can make findings would be of those witnesses who have given evidence and some of them may have given evidence against you and if I do not have your version I make findings based only on the versions I have.

10 So I thought that I must just explain that once again but where you invoke your privilege and there are reasonable grounds or we have no – we have no grounds to think there are no grounds to do so that will be respected.

MS MYENI: Thank you very much.

CHAIRPERSON: Okay alright thank you. Ms Hofmeyr.

ADV HOFMEYR: Thank you Chair.

CHAIRPERSON: And the – the oath you took two days ago will continue to apply Ms Myeni. Okay alright.

20 **ADV HOFMEYR:** I am just worried. Ms Myeni I have – you seemed to speak there and we could not hear you. Could you say something again just so we can check that you are audible?

CHAIRPERSON: Say Chairperson.

MS MYENI: Chairperson.

ADV HOFMEYR: Ah excellent.

CHAIRPERSON: Okay it is alright.

ADV HOFMEYR: Thank you.

CHAIRPERSON: Okay alright.

ADV HOFMEYR: Thank you. Ms Myeni I would like to begin this morning by focussing on BOSASA. We looked yesterday in the concluding part of the day at Mhlatuze and the allegations that have been made against you there in relation to Mr X's evidence. And now I would like to spend
10 some time focussing on the evidence related to BOSASA.

Ms Myeni how well did you know Mr Watson?

MS MYENI: Chairperson may I not respond to the question so that I do not incriminate myself.

CHAIRPERSON: Okay.

ADV HOFMEYR: And Ms Myeni how well did you know Mr Agrizzi?

MS MYENI: May I Chair – may I please Chairperson not respond to the question so that I do not incriminate myself.

ADV HOFMEYR: Had you ever met with him?

20 **MS MYENI:** May I not respond Chairperson so that I do not incriminate myself.

ADV HOFMEYR: Mr Agrizzi gave evidence about a very particular meeting that he alleges he had with you at the Sheraton Hotel on the 23 September 2015. Can you confirm whether you were at that meeting?

MS MYENI: May I not respond Chairperson so that I do not incriminate myself.

ADV HOFMEYR: And there is another meeting that you are alleged to have held with him at the Intercontinental Hotel at the airport about two months later in 2015. Did you attend that meeting?

MS MYENI: May I not respond Chairperson so that I do not incriminate myself.

ADV HOFMEYR: Ms Myeni Mr Agrizzi testified before this
10 commission about your involvement in serious acts of corruption on his version and you in fact responded to his evidence in an affidavit that you prepared in March of 2019. It is the affidavit that we looked at briefly yesterday. So what I would like to do in the course of this morning is take you to aspects of that affidavit and give you an opportunity if you need to clarify or correct anything in that affidavit as we go through the various allegations that Mr Agrizzi and others have made against you in connection with BOSASA.

20 So I would like to just summarise the nub of Mr Agrizzi's allegations if I may and then what I will do is I will unpack each of them with you.

Ms Myeni Mr Agrizzi testified before this commission that BOSASA had paid you money and other benefits as a bribe and one of those other benefits was an

elaborate security installation done at your home. So I am going to call that the sort of general bribe allegation.

The second allegation was that BOSASA gave you money in order for you to hand it over to former President Zuma. I am going to call that the conduit allegation.

There was also evidence from Mr Agrizzi that you had facilitated meetings with the former President for BOSASA in order to advance their interests. And I am going to call that the facilitation allegation.

10 Ms Myeni I must just pause there. There has also been another allegation not connected per se with BOSASA but in relation to Eskom evidence that you facilitated another meeting at which the suspension of the Eskom executives was dealt with.

Now that aspect of the evidence before the commission is going to be dealt with by my learned friend Mr Pule Seleka in questioning you because that is an area of the commission's investigations in respect of which he leads the investigation. So I will not be touching on that
20 one today. I am going to touch on the allegations that come from Mr Agrizzi's evidence which have to do with Karoo fracking and BOSASA's sites in that area.

And then the fourth main allegation Ms Myeni is that you obtained confidential police documents concerning the investigation into BOSASA and that you provided those

documents to Mr Watson and Mr Agrizzi in September 2015 at that meeting which I asked you about moments ago on the 23 September 2015 according to Mr Agrizzi.

So what I will do now is I will explore each of those with you. I want to pick up on the meetings first.

Now Mr Agrizzi alleged that you used to assist BOSASA generally with coordinating meetings with former President Zuma and that there was a particular matter that BOSASA was interested in and it related to fracking.

10 Now I would like to take you to your affidavit that you deposed to on the 4 March 2019 so that we can look there at your response to that allegation.

Ms Myeni you will find it in your evidence Bundle DD34[b] and we should pick it up at page 1081. For your convenience that is under Tab 9.

CHAIRPERSON: The affidavit starts at 1080 is it not?

ADV HOFMEYR: Correct Chair.

CHAIRPERSON: Yes.

ADV HOFMEYR: And I did not actually take us there
20 yesterday. I made reference to it so this is actually the first time that we are going to it

CHAIRPERSON: Okay.

ADV HOFMEYR: So I – it may be convenient to enter it into the record. If I may suggest to following the indexing as DD34[b].9.

MS MYENI: Yes I have it Chairperson.

CHAIRPERSON: Thank you. I will admit it after she has confirmed her signature and the contents Ms Hofmeyr.

ADV HOFMEYR: Yes. Thank you Chair. Ms Myeni if you will go to page 1083 you will see a signature there can you confirm that that is your signature?

MS MYENI: Yes that is my signature.

ADV HOFMEYR: And can you confirm that this is your affidavit and that the contents of it are true and correct?

10 **MS MYENI:** Sorry – sorry I did not – I did not get that one.

ADV HOFMEYR: I was just asking you to confirm that the contents of that affidavit that bears your signature are true and correct?

MS MYENI: Chair the – the – Chairperson let me read this because the allegations I do not have a list of allegations with me of Agrizzi.

CHAIRPERSON: Yes. Okay. Well Ms Hofmeyr was just seeking your confirmation that the contents of your affidavit are to the best of your knowledge and belief true
20 and correct without asking about Agrizzi just to confirm.

MS MYENI: The contents of the - the contents of this statement as I was legally advised is correct.

CHAIRPERSON: Okay alright. The affidavit by Ms Duduzile Cynthia Myeni starting at page 1080 is admitted as Exhibit DD34[b].9. Okay.

ADV HOFMEYR: Thank you. Ms Myeni and if we could then go to page 1081 at which you will find paragraph 8 of your affidavit. Do you have that?

MS MYENI: Yes I do – thanks Chairperson.

ADV HOFMEYR: What you say at paragraph 8 is:

10 “This is just ingenuous for Mr Agrizzi to allege that I had an influence over former President Jacob Zuma to affect certain amendments to regulations which are required to facilitate the Karoo fracking. I vehemently deny these allegations. The meeting did in fact take place in Nkandla. There was no alleged bag of cash that was handed over to the President and that statement is denied.”

Ms Myeni as I understand this paragraph you are confirming here that at least one meeting did take place at Nkandla involving Mr Agrizzi, is that correct?

20 **MS MYENI:** Chairperson may I not respond to the question so that I do not incriminate myself.

ADV HOFMEYR: And then Ms Myeni if you go over the page to page 1082 you deal with other meetings. You see at the top of that page at paragraph 9 you say:

“I deny that I coordinated a meeting between former President Zuma, Mr

Watson, Mr O’Quigley and Ms Oberholzer.”

Do you confirm that you did not set up a meeting between those four people in relation to Karoo fracking?

MS MYENI: Chairperson may I not respond to the question so that I do not incriminate myself.

ADV HOFMEYR: Ms Myeni Ms Oberholzer has provided an affidavit to this commission in which she says that you did set up that very meeting that Mr Agrizzi testified about. Is she giving false evidence before this commission when she says that?

10

MS MYENI: Chairperson may I not respond to the question so that I do not incriminate myself.

ADV HOFMEYR: I would like to take you her affidavit and you will find that at page 1444 of the same bundle DD34[b]. Sorry let me give you the starting page. It commences at page 1433.

MS MYENI: I have it Chairperson.

ADV HOFMEYR: Thank you. Chairperson this is the first time that we are dealing with Ms Oberholzer’s affidavit.

20 Chair if I may suggest that we enter it into the exhibit again in accordance with the index as Exhibit DD34[b].15 - .15 and this is an affidavit that Ms Oberholzer deposed to you will find at page 1447 on the 22 October 2020.

CHAIRPERSON: Just one second. You said DD34[b].15?

ADV HOFMEYR: Correct Chair.

CHAIRPERSON: Okay. The affidavit of Ms Lizel Oberholzer starting at page 1423 will be admitted as Exhibit DD34[b].15.

ADV HOFMEYR: Thank you Chair. Now Ms Myeni what Ms Oberholzer says in this detailed affidavit amongst other things is that you did coordinate a meeting between herself and the former President and Mr Watson and Mr O'Quigley and she said that that took place and that you set that meeting up. Do you recall doing that?

10 **MS MYENI:** Chairperson may I not respond so that I do not incriminate myself.

ADV HOFMEYR: She was very specific about the date of that meeting. She said that it took place on the 27 July 2014. Do you recall that?

MS MYENI: Chairperson may I not respond so that I do not incriminate myself.

ADV HOFMEYR: Because your affidavit evidence before this commission is that you deny having set up this very meeting and so in a sense what the commission has before
20 it is your denial on the one hand and Mr Agrizzi and Ms Oberholzer's evidence before this commission that says you did set it up. That is why it is quite important in due course for this commission to be able to make a determination between those two versions. Do you accept that if one side of that debate had some documentary proof

that the meeting was coordinated by you it might tilt the balance in favour of their version?

MS MYENI: Chairperson may I not respond so that I do not incriminate myself.

ADV HOFMEYR: You see what Ms Oberholzer says about this meeting appears at page 1444 of DD34[b].15. So I would like to take you there. Page 1444 at paragraph 38.

MS MYENI: I have it.

ADV HOFMEYR: Ms Myeni you will see on that page there
10 is a heading in bold Nkandla 27 July 2014, do you see that?

MS MYENI: Yes I do.

ADV HOFMEYR: And at paragraph 38 this is what Ms Oberholzer says. She says:

“On this date a second meeting was held with President Zuma at his home in Nkandla.”

Can I just pause there to contextualise where she is in the affidavit. She dealt prior to this point in the affidavit
20 with the first meeting which I understand from your paragraph 8 of your affidavit you do not dispute having taken place. So on that aspect you and she are in agreement. But on this meeting because this is the one at which Mr O’Quigley, yourself, former President Zuma, Mr Watson were present. You say on your affidavit before this

commission it did not take place. So I just wanted to give you that context for where we are.

Okay paragraph 38 she says the following:

“On this date a second was held with President Zuma at his home in Nkandla Present at the meeting with me were Mr O’Quigley, Ms Myeni, Mr Watson – sorry Mr Gavin Watson and President Zuma. I understand that Ms Myeni had arranged the meeting with the President. The arrangements were made by email between Mr O’Quigley and Mr Gavin Watson in which I was copied. The suggestion that I attend this meeting came from Mr O’Quigley via a telephone call. I attach marked Annexure LO1 an email chain which was forwarded to me. The email chain starting on 20 July 2014. The email from Ms Myeni to Mr Gavin Watson is dated 20 July 2014 at 11:58 in the morning and 52 seconds. It will be noted that Ms Myeni advises that I am trying to set up a meeting for the 27th. It is for this reason that I have assumed that Ms Myeni arranged the meeting.”

I would like to take us to that email if we may go

there? And you will find that at page 1448. Do you have that?

MS MYENI: I see the email yes.

ADV HOFMEYR: So you need to start as one often does with emails...

MS MYENI: Yes Chairperson I have – sorry I have the email.

ADV HOFMEYR: Thank you. So you have to start with email at the bottom of the page as you often have to do
10 with email chains. And what you will see in the second half of the email is in bold the start of an email that says ‘from; dudum with an email address there dudumyeni@telkokmsa.net. Can you confirm that that was an email address you were using in July of 2014?

MS MYENI: Chairperson may I not respond to the question so that I do not incriminate myself.

ADV HOFMEYR: The date of the email is 20 July 2014 and the subject is Forward address by President Jacob Zuma at the launch of operation Phakisa big fast results
20 implementation methodology. And then I would like to read into the record what appears then in the body of the email. It reads:

“For my Mkhokheli”

Could you translate what Mkhokheli means? Ms Myeni can you hear us?

MS MYENI: Sorry – sorry I can hear. Sorry I was – I was checking where Mkhokheli is.

ADV HOFMEYR: Oh sorry so it is in the body of the email.

MS MYENI: I can see on the email.

ADV HOFMEYR: Yes. What does Mkhokheli mean?

MS MYENI: That was the word that was used by Mr Watson.

ADV HOFMEYR: Because you are addressing him here so could you translate it for us into English? What meaning
10 does it have for you in English?

MS MYENI: I am not sure it appears to be a Xhosa word.

ADV HOFMEYR: Okay but you were using it in this email so what did you mean by it?

MS MYENI: Can I not respond to this question Chairperson I do not want to incriminate myself.

ADV HOFMEYR: And the email reads as follows:

20 "For my Mkhokheli I hope you are well. By God's grace we are all well. I have to get this speech of the launch of yesterday's event because I felt you have to know what the event or launch was about. Please be assured all is under control. I am trying to set up a meeting for the 27th."
You see it is that last – oh and then it says:
"Regards."

It is that last sentence of that email where you say I am trying to set up a meeting for the 27th that forms the basis for Ms Oberholzer's evidence before this commission that you did set up this meeting. You have denied that on affidavit.

But I want to put to you that this is pretty clear in its terms that you are setting up a meeting. Do you have a response to that?

MS MYENI: Chairperson may I not respond to the question
10 so that I do not incriminate myself.

ADV HOFMEYR: Let us just continue with the email because then you will see how it gets to Ms Oberholzer. You have to now go up from the bottom. So above your email is the email that Mr Gavin Watson appears to have forwarded a bit later on that same day the 20th July 2014 at 16:11 in the afternoon. And what this records is Gavin Watson using a particular Gmail address wrote and I am quoting:

20 "Please see the email I received and who attended the meeting. We can discuss this further when we meet again. Regards Gavin Watson."

And if you go above that you see how the email reached Ms Oberholzer. Because it is Mr – there is then at the top of the page.

MS MYENI: Yes I see.

ADV HOFMEYR: An email from Mr O’Quigley dated the 20th July 2014 that much later in the day at six minutes past eight in the evening and he sends to Mr Watson, Mr Agrizzi, Ross Watson and Lizel Oberholzer who is Ms Oberholzer to send that email chain to all of them and his email reads:

10 “So hopefully we are set up for the meeting to take place on the 27th. I am booked on a flight to LHR on the 24th but will change as soon as you confirm the meeting is going ahead. Kind Regards. Phillip.”

Ms Myeni in the face of that documentary indication that you did in fact set up this meeting do you want to reconsider your evidence under oath on affidavit before this commission that you did not do so?

CHAIRPERSON: It looks like there – there may be some technical problem.

ADV HOFMEYR: Yes.

20 **CHAIRPERSON:** Can you hear me Ms Myeni.

MS MYENI: Chairperson may I not respond to the question?

CHAIRPERSON: Okay.

MS MYENI: I can hear you Chairperson.

CHAIRPERSON: Okay alright. Ms Hofmeyr.

ADV HOFMEYR: Ms Myeni I understand you to have declined to answer that question on that basis that it may tend to incriminate you. Is that correct?

MS MYENI: Well it is pointless that may I please invoke the privilege of answering the question in case I incriminate myself.

ADV HOFMEYR: Thank you. I would now like to move to the allegation of cash having been provided to you from time to time by BOSASA. Mr Agrizzi's evidence was that Mr
10 Watson had told him that he was giving you R 300 000,00 a month for the President and that it was being paid to the Jacob Zuma Foundation.

Chair, that for record purposes. Mr Agrizzi dealt with that in the transcript of the evidence on the 28th of January 2019, page 52, lines 4 to 8.

Ms Myeni, are you aware of that allegation?

MS MYENI: What page? Page?

ADV HOFMEYR: No, Ms Myeni. Sorry.

MS MYENI: [Indistinct] [distortion present – speaker
20 unclear]

ADV HOFMEYR: That is only... That is just a reference to the transcript. It is not in your documents. It is the transcripts of his evidence on the day and I am just recording that for record purposes. We do not need to go to it.

You are, no doubt, aware of Mr Agrizzi's evidence because you provided an affidavit to the Commission responding to it.

What I would like to just confirm is that you were aware of this specific allegation that Mr Watson told Mr Agrizzi that Mr Watson was giving you R 300 000,00 a month of the President and that it was being paid to the Jacob Zuma Foundation.

10 Are you aware that that allegation was made against you?

MS MYENI: Chair, may I not answer that question so that I do not incriminate myself?

ADV HOFMEYR: Now that allegation was another one of the allegations that you took up in your affidavit. I would like to go back to your affidavit if we may? You will find the relevant paragraph at page 1081 of the bundle we are in at the moment which is DD34-B.

MS MYENI: Sorry, it is page?

ADV HOFMEYR: 1081.

20 **CHAIRPERSON:** Ten-eighty-one.

MS MYENI: Yes, I have it Chairperson.

ADV HOFMEYR: Now there is one paragraph... Well, two paragraphs here where you deal with this R 300 000,00 that was alleged to have been given to you. At paragraph 4 you say:

“I further deny that I received R 300 000,00 per month from the BOSASA Group.”

And then if you jump down to paragraph 6 you also say there:

“I do not possess a Louis Viton handbag which was allegedly filled with cash to the amount of R 300 000,00. No such amount of money was ever given to me as alleged.”

Ms Myeni, when I read those two paragraphs together, I
10 understand you to be conveying that you did not receive money from the BOSASA Group which found its way into the foundation in due course.

I mean, your denial is even broader. You say no cash. But I want to focus particularly on the allegation of Mr Agrizzi that Mr Watson told him that he was giving it to you and then that is finding its way into the Jacob Zuma Foundation.

Do you deny that you received money from BOSASA and put it into the Jacob Zuma Foundation?

20 **MS MYENI:** Chairperson, may I not respond to this question because I do not incriminate myself?

ADV HOFMEYR: Now what we did manage to traverse a little bit in your evidence yesterday was that there were on occasion cash deposits made to the Jacob Zuma Foundation. Do you recall giving that evidence yesterday?

MS MYENI: I confirm that I said that yesterday. Indeed.

ADV HOFMEYR: Thank you.

MS MYENI: There was context.

ADV HOFMEYR: And what I was seeking to probe with you yesterday was. It is not easy to identify on cash deposit slips. Indeed, sometimes, I would suggest, it is impossible to identify how the depositor is on a cash deposit slip. Do you accept that?

MS MYENI: May I not respond Chairperson so that I do not
10 incriminate myself?

ADV HOFMEYR: Because I put it to you that if it is not possible to identify who the depositor is if all you got is cash deposit slip. Then it is possible that BOSASA was depositing cash into the account of the Jacob Zuma Foundation, provided there is evidence of cash deposit slips. Do you accept that?

MS MYENI: May I not respond Chairperson so that I do not incriminate myself?

ADV HOFMEYR: Did you yourself Ms Myeni ever take cash
20 and deposited in the foundation's bank account?

MS MYENI: May I not respond Chairperson so that I do not incriminate myself?

ADV HOFMEYR: Do you remember amounts as great as R 50 000,00 and R 100 000,00 and depositing those amounts as cash in the Jacob Zuma Foundation bank account?

MS MYENI: May I not respond Chairperson so that I do not incriminate myself?

ADV HOFMEYR: You see, because the Commission has managed to find numerous deposit slips of amounts in those large quantities which appear from signatures on those cash slips to have been deposited by you.

So I would like to take you to those cash slips if I may. I would like to start with the one that appears in the same bundle that you are in at the moment, DD34-B. And I would
10 like to look at the one appearing at page 1476. One thousand four hundred-and-seventy six.

MS MYENI: [No audible reply]

ADV HOFMEYR: Do you have that page?

MS MYENI: I have it Chairperson. Yes.

ADV HOFMEYR: Ms Myeni, you had helpfully assisted us on two occasions before this Commission in confirming that a signature that appears on a particular page is your signature.

You did it yesterday when you confirmed that the letter
20 you sent in response to the complaints from your co-board members in 2014 was your signature.

And you did it moments ago when you confirmed your signature on the affidavit that you presented to the Commission in March of 2019.

So I am hoping you will be able to assist us with the

signatures that appear on these deposit slips. You will see a signature on this deposit slip on page 1476.

Can you confirm that that is your signature? Actually, it appears twice at the bottom of the page. Do you see that?

MS MYENI: Chairperson, may I invoke the privilege of not responding to this question?

ADV HOFMEYR: And then if we go ...[intervenes]

MS MYENI: The reason is that each question follows another question.

10 **ADV HOFMEYR**: And if we go over to page 1478, there is another signature on that page on a deposit slip. Can you confirm whether that is your signature?

MS MYENI: May I not respond to the question Chairperson so that I do not incriminate myself?

ADV HOFMEYR: Before I go to other that we have with your signature. It is probably appropriate to just have recorded what the amounts of each of these deposit slips was. Let us go back to the deposit slip at page 1476.

20 Ms Myeni, it is sometimes difficult to see the numbering on the deposit slip. It took me, I must be honest, some time to work out how these deposit slips record the amounts but let me try and help you.

If you go to the top of the deposit slip, you will see there is emblem, ABSA on the left-hand side and then an emblem for Barclays. And then below that you have a date, 8

December 2014 and there is a time. It looks like one o'clock in the afternoon and two seconds.

Then it says CC. And then you will see there, fifty comma zero, zero, zero point zero, zero. So that is an indication that this is a deposit of R 50 000,00.

And what is then interesting. If you go just a bit further down, there is Jacob Zuma Foundation, MPC. There is reference number: Donation dash.. I cannot quite make that out. SAS, maybe?

10 And then there is... Do you see a one hundred there? And then you will see Rands and then zero, zero, zero comma zero comma fifty comma zero, zero, zero point zero, zero.

So that, as I understand it, is indicating that the R 50 000,00 came in hundred rand notes. If you had been depositing this, could you confirm for us that you took R 50 000,00's worth of a hundred Rand notes and deposited it in the foundation's bank account on the 8th of December 2014?

20 **MS MYENI**: Chairperson, may I not respond to this question? I do not incriminate myself?

ADV HOFMEYR: And then if we go to the one that also bears a signature with quite a striking resembles to the signatures that you have confirmed before the Commission in your evidence. That is at page 1478. You will see there that

that deposit slip is dated the 3rd of November 2016. That is under the emblem of ABSA at the top of the deposit slip. Do you see that?

MS MYENI: Chair, I see the deposit slip Ma'am.

ADV HOFMEYR: Thank you and then what that tells us is, that on this occasion R 100 000,00 was deposited. And if you go further down and follow the logic of the previous deposit slip. It was R 20 000,00 in two hundred Rand notes and R 80 000,00 in one hundred Rand notes.

10 Do you recall taking R 20 000,00 in two hundred Rand notes and R 80 000,00 in one hundred Rand notes and depositing them in the Jacob Zuma Foundation on the 3rd of November 2016?

MS MYENI: Chairperson, may I not respond to the question so that I do not incriminate myself?

ADV HOFMEYR: Ms Myeni, in the section of your bundle there a number of deposit slips. Not all of them. There what appears to be your signature. Some of them bears signatures the Commission has not been able to identify.

20 Some of them give a description like the one I referenced a moment ago, Donation SAS. Others bear no description at all.

I will give you a... Well, other than donation. But I will give you an example of one of those. If we go to page 1482. Do you have that?

MS MYENI: Yes, Chairperson.

ADV HOFMEYR: You see that one ...[intervenes]

MS MYENI: I have it Chair.

ADV HOFMEYR: If you look at that one, it just says after the date which it looks like it is 16 September 2017. Chairperson, can I just pause there? We did try to do the best copying we could but these are old deposit slips.

CHAIRPERSON: Yes.

ADV HOFMEYR: I mean, they are the originals.

10 **CHAIRPERSON:** Yes.

ADV HOFMEYR: So... But this was the best that we could do for the purposes of the bundle.

CHAIRPERSON: Yes.

ADV HOFMEYR: That were deposit slips that I understand it, are in the possession of the Commission. But let us just look at this one. You see, this one has a date. It looks like maybe 14 or 16 September 2017. And there is just says, Jacob Zuma Foundation, NPC, reference number: Donation. So on the first one we got Donation SAS. Here we get
20 nothing.

Unlike electronic transfers, you just do not know who is making these deposits unless you can identify the signature. Ms Myeni, there is just one other of the deposit slips bearing your signature that I would like to take you to and that is at 1488.

MS MYENI: Yes, Chairperson I have it.

ADV HOFMEYR: I take you to this one because it is amongst some of the clearest of the signatures that appear on that page. Can you confirm that that is your signature at page 1488?

MS MYENI: May I not respond Chairperson so that I do not incriminate myself?

ADV HOFMEYR: You will see Ms Myeni that this is a deposit that was made on the 6th of February 2016. And it is
10 in the amount of R 100 000,00 and it appears on this occasion the R 100 000,00 was made up of two hundred Rand notes.

Ms Myeni, if you did indeed deposit these large cash amounts. Can you assist the Commission as to where you got these large cash amounts from to deposit them into the Jacob Zuma Foundation bank account?

MS MYENI: *...it is myself.* [distortion present – speaker unclear]

CHAIRPERSON: I am sorry. We did not hear the whole
20 sentence Ms Myeni.

MS MYENI: Thanks, Chairperson. May I not respond to the question so that I do not incriminate myself Chairperson.

CHAIRPERSON: Okay.

ADV HOFMEYR: Ms Myeni, I must put it to you that the discovery of these cash deposit slips, bearing what on the

face looks like your signature, lends credence to Mr Agrizzi's version, potentially, that you were depositing cash which you received from BOSASA into the Jacob Zuma Foundation bank account. What is your response to that?

MS MYENI: May I invoke the privilege Chairperson that I do not respond to the question so that I do not incriminate myself?

ADV HOFMEYR: Ms Myeni, in fairness to you. I must record that the Commission has not found regular deposit
10 slips amounting to R 300 000,00 cash bearing your signature each month.

But what it has found are these deposit slips which appear in your evidence bundle. I have not taken you to all of them but they are large amounts of cash deposited by you and without explanation, given the approach that you are taking to your evidence today.

Are you sure that you do not want to give this Commission an explanation for those deposits of large cash amounts?

20 **MS MYENI:** Chairperson, with respect, may I not respond to the question so that I do not incriminate myself?

ADV HOFMEYR: Ms Myeni, I would like now to move off cash and go to travel benefit.

[distortion present]

CHAIRPERSON: I know you said Ms Hofmeyr, you did not

take her to all of them. I see there is one at page 1490 that has a signature that seems to be her signature.

ADV HOFMEYR: Indeed, Chair.

CHAIRPERSON: H'm.

ADV HOFMEYR: Indeed. We could maybe ask Ms Myeni again if she could confirm that signature. That would be useful.

CHAIRPERSON: Yes.

ADV HOFMEYR: Ms Myeni, if you could go to page 1490.

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

ADV HOFMEYR: Do you have that?

MS MYENI: Yes, I do.

ADV HOFMEYR: That appears to be a deposit, also on the 6th of February 2016. We looked at another one with this date a moment ago. This time in the amount of R 50 000,00 made up of hundred Rand notes. And there is a signature at the bottom of that page. Can you confirm whether that is your signature?

20 **MS MYENI**: Chairperson, may I not respond to this question so that I do not incriminate myself?

ADV HOFMEYR: Thank you. Chair, with your leave, I will then move to the travel benefits.

CHAIRPERSON: Yes.

ADV HOFMEYR: If I may?

CHAIRPERSON: Ja.

ADV HOFMEYR: So the evidence of Mr Agrizzi and others has not been confined to cash benefits that BOSASA was alleged to have given to you with some expectation that it would find its way to the foundation.

But there are also travel benefits that you are alleged to have benefited from. So I would like to deal with those. The allegations are those that come from the entity called Blakes Travel.

And the allegation is that you received a number of
10 travel and accommodation benefits through Blakes Travel that were paid for by BOSASA.

Can you confirm that you received those benefits?

MS MYENI: May I not respond Chairperson so that I do not incriminate myself?

ADV HOFMEYR: Now Mr Agrizzi's evidence before the Commission on this aspect. Chair, can be found both in his affidavit, which I am not suggesting we need to go to. This is again just for record purposes.

Ms Myeni is well-aware of these allegations. She has
20 responded to them on affidavit but just for record purposes. It is Mr Agrizzi's affidavit, Exhibit AA at page 65, paragraph 30.1.

And he also then addressed it in the transcript of evidence on the 22nd of January 2015, page 156, lines 5 to 10. So what Mr Agrizzi says in his affidavit and in testimony

before this Commission is, that BOSASA used Blakes Travel to facilitate arrangements for various government officials and other persons that they regarded to have influence.

And that evidence was then corroborated by Mr Brian Blake who is an employee of Blakes Travel. He also testified before this Commission and his evidence is to be found in Exhibit T. That is T for tomato. T-18.

Ms Myeni, that should be amongst the bundles that you have with you. We have until this point, I think, only been
10 dealing with your bundle. But I am now going to want to take you to T-18.

So can you look for Bundle T-18 amongst the mountain of files that you have? And Chair, yours will be provided to you.

CHAIRPERSON: T-18, I take it will be written on the spine of the file ...[intervenes]

ADV HOFMEYR: It will indeed.

CHAIRPERSON: ...for the benefit of Ms Myeni. So look at the spine of your files and look for one that is written T-18.

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

ADV HOFMEYR: Ms Myeni, if you will just alert us to when you have the file? And we will start with it at page 70. Seven, zero.

CHAIRPERSON: Her picture is off the screen but she may be hearing us.

ADV HOFMEYR: I think that is right. I think she has gone off video so that she can move around and find it.

CHAIRPERSON: Ja, okay.

ADV HOFMEYR: So if we can just give Ms Myeni a moment. Thank you, Chair.

MS MYENI: Chairperson... Sorry, Chair.

CHAIRPERSON: Yes.

MS MYENI: All my files are Exhibit DD.

CHAIRPERSON: There is no T-18?

10 **MS MYENI:** There is no T-18. All of them, they are DD and then they have A, B, C or Exhibit DD11.

CHAIRPERSON: Yes.

MS MYENI: DD9, DD8, DD14, 13, 12 and so on. There is no TT.

CHAIRPERSON: Could it be that her attorney might have it?

ADV HOFMEYR: It is possible. These... You see, the DD series Chair, the 55 files that are assembled behind me, are the Aviation files.

20 **CHAIRPERSON:** Yes.

ADV HOFMEYR: The other ones – and they are usually kept together – the other ones where I have to go to other work streams ...[intervenes]

CHAIRPERSON: Work streams, ja.

ADV HOFMEYR: So this is a T file. Now this... Ms Myeni,

these two files, I am going to take you to T-18 and later on I am going to take you to T-21. It did not come with the first shipment of files. They came later on your first day of evidence, as I understand the arrangements. So it might be that your attorney put them somewhere else?

MS MYENI: Can I turn? Because my attorney representative is here who brought the first shipment. So let me just quickly hear if we have them or not. Or we can maybe continue without the files.

10 **CHAIRPERSON:** Ja.

ADV HOFMEYR: Yes. Look, the purpose of the file is to take you to certain ...[intervenes]

MS MYENI: Chairperson, with your...

CHAIRPERSON: Yes. Maybe we should take an adjournment.

MS MYENI: Ja, please.

ADV HOFMEYR: I think so Chair.

CHAIRPERSON: Maybe we take an adjournment to enable Ms Myeni to talk to her attorney or the representative of her attorney to establish whether they have got the file.

20

MS MYENI: Yes, Chairperson.

CHAIRPERSON: Yes. Let us make the tea-break.

ADV HOFMEYR: Yes, Chair.

CHAIRPERSON: I think it is eleven.

ADV HOFMEYR: Quarter to ten.

CHAIRPERSON: I am sorry. It is ...[intervenes]

ADV HOFMEYR: We started early but it is very convenient to take.

CHAIRPERSON: It will be a break without tea. [laughing]

ADV HOFMEYR: Yes, indeed. Indeed.

CHAIRPERSON: Okay.

MS MYENI: How many minutes Chairperson?

CHAIRPERSON: Shall we make it ten? I think make it 15. I am just not sure... Let us say, we will make it 15 but if the
10 file is found earlier before the end of 15 minutes, I must be informed and then we will resume.

ADV HOFMEYR: Thank you so much.

MS MYENI: Thank you, Chair.

CHAIRPERSON: We adjourn.

MS MYENI: Thank you, Chair.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: I see the challenges in finding the file took a lot of our time.

20 **ADV HOFMEYR:** Indeed. Unfortunately, Chair, it seems what was not even a tea break became more like a lunch break and we do apologise for that.

CHAIRPERSON: No, that is alright.

ADV HOFMEYR: What I have discussed with my learned friends is that we are going to make arrangements. It was

sent electronically to Ms Myeni's lawyers but there is an issue with it being downloaded at the moment given its size.

CHAIRPERSON: Okay.

ADV HOFMEYR: So we are facilitating a hard copy getting to her. I am going to move off topic that require those two files to be addressed and the hope is that by lunch or after lunch she will have those hard copies and we can return to those matters.

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

ADV HOFMEYR: Thank you, Chair, we are indebted. So I was going to be dealing with travel benefits. I am now pending that and I am moving to that alleged, Ms Myeni, on the 23 September 2015. That is the meeting that Mr Agrizzi said had taken place with you and it is the meeting at the Sheraton where Mr Agrizzi said you handed to him and Mr Watson confidential police docket information regarding an investigation into BOSASA. Can you confirm that you had that meeting?

20 **MS MYENI:** Chairperson, may I not respond to the question, I would not like to incriminate myself.

ADV HOFMEYR: Ms Myeni, you did previously respond to this allegation though and you did so in your affidavit that we were looking at earlier, so I would like to take you to it, it is at page 1082 at paragraph 13 that I am interested in

and you will find it in your bundle DD34B.

CHAIRPERSON: 10..?

ADV HOFMEYR: 82, Chair.

CHAIRPERSON: Okay.

MS MYENI: I have it, Chairperson, before me.

CHAIRPERSON: Yes.

ADV HOFMEYR: So Mr Agrizzi did not testify about only
one meeting at the Sheraton but there was this particular
meeting on the 23 September 2015 where this very specific
10 exchange of the confidential police information, according
to Mr Agrizzi, took place and as I read your affidavit, Ms
Myeni, of March 2019 that you presented to the
Commission, you only deal with Sheraton meetings with Mr
Agrizzi at paragraph 13 and I would invite you to direct me
anywhere else in the affidavit if you have a different
understanding of it but what happens at paragraph 13 is
you say:

20 “Mr Agrizzi and I had only met in Sheraton for the
first time as stated on the allegations of his
affidavit. However, I was meeting Mr Watson to
request a donation for the former President’s
birthday event.”

Do you see that?

MS MYENI: Chairperson, I have the document, page 1082
in front of me.

ADV HOFMEYR: Thank you and then I was just reading paragraph 13 where it seems to me you deal with Sheraton meetings and you say there:

“Mr Agrizzi and I had only met in Sheraton for the first time as stated on the allegations of his affidavit. However, I was meeting Mr Watson to request a donation for former President’s birthday event.”

I asked whether you – do you have that in front of you? Do
10 you see paragraph 13, Ms Myeni?

MS MYENI: I have page 1082 with all the paragraphs, indeed.

ADV HOFMEYR: Okay, super. So I want to just convey to you, when I read that paragraph, it says to me that you are denying the meeting that occurred on the 23 September 2015. Is that correct? Do you deny meeting him on that day?

MS MYENI: Chairperson, may I invoke the privilege of not responding to the question so I do not incriminate myself.

20 **ADV HOFMEYR:** And you also do deal with this exchange of documents in your affidavit but not specifically the meeting at paragraph 11. You say at paragraph 11:

“I deny that...”

I think it is meant to say:

“...I had met anyone from the NPA nor am I aware of

the document referred to. I intend to raise this matter in the cross-examination. I was not in possession of any document from the NPA. I deny that I shared such a document with Mr Agrizzi or Mr Watson, it is indeed a lie. Mr Agrizzi must explain about this document in the cross-examination. I had no reason to get involved in their business.”

Do you stand by that denial that you handed over this confidential police information to Mr Agrizzi and Mr Watson
10 on the 27 September 2015?

MS MYENI: Chairperson, may I not respond to the question, I do not want to incriminate myself.

ADV HOFMEYR: Ms Myeni, can you tell us when the former President’s birthday is?

MS MYENI: Chairperson, may I not respond to the question, I would not want to incriminate myself.

ADV HOFMEYR: You see, from publicly available information it appears that the former President’s birthday falls on the 12 April each year and if that is so, it seems to
20 me, at least, and I would like your comment on this, to be unlikely that you would have a meeting in September of 2015 at which you were requesting a donation for the President’s birthday event because his birthday would have passed a few months earlier or it would have been many months in the future. Do you agree with me it is unlikely

that you would be asking for a donation for the former President's birthday event in September of a year?

MS MYENI: Chairperson, may I not respond to the question, so that I do not incriminate myself.

ADV HOFMEYR: Ms Myeni, as I understand your affidavit before this Commission you are accepting a different meeting may have taken place at the Sheraton with Mr Agrizzi but you are denying that this specific meeting took place and if that is indeed your denial I would like to probe
10 the denial a bit further because there is a series of independent evidence that this Commission has received which I am going to put to you tends to indicate that you were present at the Sheraton on the 23 September 2015. So I want to take you to each element of that independent evidence.

The first is that your – let me start, who is Mr Nick Linnell, Ms Myeni?

MS MYENI: Chairperson, may I not respond to the question that is being asked in case I incriminate myself.

20 **ADV HOFMEYR:** You see, the Commission has received evidence from Mr Linnell in which he says that he was an adviser, generally speaking, to you and that he was quite involved in the SAA matters, certainly in 2015 and 2016. Can you confirm that?

MS MYENI: Chairperson, may I not respond to the

question, so that I do not incriminate myself.

ADV HOFMEYR: I think in his evidence my learned friend Mr Seleka put it to him that he has been described as Mr Fix-it. Are you aware of that description of Mr Linnell?

MS MYENI: Chairperson, may I not respond to the question, so that I do not incriminate myself.

ADV HOFMEYR: You see, Mr Linnell, was invoicing SAA between 2015 and part of 2016 for a number of services he was providing to SAA, so what we were able to find – and I
10 am going to come to the topic of Mr Linnell in due, but we were able to find among those invoices was an invoice that he settled at the Sheraton Hotel which puts him there on the 22 and the 23 September 2015. Can you confirm that Mr Linnell, who would regularly provide advice to SAA, was also at the Sheraton Hotel on those dates?

MS MYENI: Chairperson, may I not respond to the question, so that I do not incriminate myself.

ADV HOFMEYR: I would like to just show you his invoice from the Sheraton so that there can be no debate on the
20 matter. I would like to take you, Ms Myeni, for that purpose to your bundle that you have in front of you, DD34B at page 1631 and you will find it under tab 27.

MS MYENI: I have it, Chairperson.

ADV HOFMEYR: So this is an invoice that Mr Linnell submitted to South African Airways for reimbursement and

you will see at the top right hand corner there is the emblem of the Sheraton. You will see there interestingly that he was staying in room 619. I am going to take you to the evidence that has already been presented to the Commission that you were staying in room 616 on these dates. Well, you stayed actually an extra date to the one that Mr Linnell stayed. So you will see in the columns on the right hand side says room number 619 and it says arrival 22.09.15 and departure 23.09.15. Can you confirm
10 that Mr Linnell was staying at the Sheraton over the same dates that you were staying at the Sheraton, Ms Myeni, in September of 2015?

MS MYENI: May I not respond, Chairperson, in case I incriminate myself.

ADV HOFMEYR: Can you tell us what you and Mr Linnell were doing at the Sheraton on the 22 and 23 September 2015?

MS MYENI: May I not respond, Chairperson, in case I incriminate myself.

20 **ADV HOFMEYR:** Now the Commission went to some extensive lengths to interrogate the photographs that Mr Agrizzi testified he had taken on that date of the 23 September 2015 when, on his version, you handed over the confidential police information to him. Do you recall his evidence about the photograph and then the efforts that

were taken by the Commission to verify the carpet that appears on the photograph? Are you aware of that evidence?

MS MYENI: May I not respond, Chairperson, in case I incriminate myself.

ADV HOFMEYR: You see, not only were efforts made to go and check what the carpet looked like on the 6th floor of the Sheraton Hotel where this alleged exchange took place, according to Mr Agrizzi's evidence between you and
10 him and Mr Watson. The Commission also went to the lengths of analysing the photograph itself which they were able to take from Mr Agrizzi's device and evidence was presented by Mr Frank Dutton, one of the investigators of the Commission, confirming that the analyses that had been done show that that particular photograph evidencing the police information and in the background the carpet that he confirmed from his own inspection *in loco* had the same pattern as the one in the picture, confirmed that the date the picture was taken was the 23 September 2015,
20 that the time it was taken was 10.37 in the morning and they could assess the location of the photographs as having been at the Sheraton Hotel.

Now in the fact of that independent evidence, Ms Myeni, do you persist in your denial that you were involved in giving that document to Mr Agrizzi on the 23 September

2015?

MS MYENI: I would like to invoke the privilege, Chairperson, of remaining silent and not responding to the question in case I incriminate myself.

ADV HOFMEYR: Do you deny that you were staying in room 616 on the 6th floor between the dates of the 22 and 24 September 2015 at the Sheraton Hotel in Pretoria?

MS MYENI: May I not respond to the question, Chairperson, in case I incriminate myself.

10 **ADV HOFMEYR:** Do you deny that your adviser Mr Linnell was staying three doors down at room 619 on the 6th floor of the Sheraton on the 23 September 2015?

MS MYENI: May I not respond, Chairperson, to the question in case I incriminate myself.

ADV HOFMEYR: The Sheraton Hotel's record which Mr Frank Dutton also addressed in his evidence confirmed that you stayed at the hotel between the 22nd and the 24 September 2015 and I want to therefore put it to you, Ms Myeni, that the independent evidence available to this
20 Commission indicates on a strong probability that you were there, that you were staying on the 6th floor, that the 6th floor had limited access, that was another part of Mr Agrizzi's evidence, that Mr Agrizzi on the 6th floor of the Sheraton on the 23 September 2015 took photographs of confidential police information reflecting in its background

the carpet in the floor of the Sheraton on the 6th floor that our investigator went and confirmed in 2019 remained the same patterned carpet.

Against all of that evidence will you deny that you were present on that day?

MS MYENI: May I not respond, Chairperson, in case I incriminate myself.

ADV HOFMEYR: You see, the challenge, Ms Myeni, is that as the weight of independent evidence mounts a bald
10 denial on your part or as is happening today, a refusal to engage in any of this, I put to you is going to leave the Commission in a difficult position but to conclude that there is a probability that you were there and that is Mr Agrizzi is to be believed in his evidence, that you handed over that confidential police information. Do you want to respond to that?

MS MYENI: Chairperson, I do not want to incriminate myself.

ADV HOFMEYR: Ms Myeni, I would then like to move to
20 another of the benefits that you are alleged to have received from BOSASA and that relates to a security installation. Did you have a security installation done at your home in Richard's Bay in May of 2014?

MS MYENI: May I not respond to the question, Chairperson, in case I incriminate myself.

ADV HOFMEYR: Did BOSASA pay for that installation?

MS MYENI: May I not respond, Chairperson, in case I incriminate myself.

ADV HOFMEYR: Mr Richard le Roux gave evidence before this Commission because he is the person who testified before the Commission that he actually undertook that security installation. Are you aware that he gave that evidence?

10 **MS MYENI:** May I not respond, Chairperson, in case I incriminate myself.

ADV HOFMEYR: You were sent a Rule 3.3 notice in relation to Mr le Roux's evidence on the 3 July 2020. Do you recall receiving that?

MS MYENI: May I not respond, Chairperson, in case I incriminate myself.

20 **ADV HOFMEYR:** Now in Mr le Roux's testimony he indicated that this installation at your home had taken place, as I say, in May of 2014. He estimated that it took over 21 days in total to install it because it was a very detailed installation and he approximated the total value of it when he included labour as well as the actual purchasing of the equipment at R486 514.63. Are you aware that that installation costs just under half a million rand?

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

ADV HOFMEYR: Do you agree that receiving something to the value of just less than half a million rand is a substantial benefit?

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

ADV HOFMEYR: Do you accept that if you did not reimburse BOSASA for those costs it would have been a gift to you?

MS MYENI: Chair, may I not respond to the question in
10 case I incriminate myself.

ADV HOFMEYR: In March 2014, Ms Myeni, you were the Chairperson of both the SAA board and the uMhlathuze Water Board, can you confirm that?

MS MYENI: Chairperson, may I not respond so that do not incriminate myself.

ADV HOFMEYR: The conflict of interest policy is that both of those entities require gifts to be declared. Are you aware of that?

MS MYENI: May I not respond, Chairperson, in case I
20 incriminate myself.

ADV HOFMEYR: Chair, in Ms Myeni's bundle there are affidavits that we have obtained both from uMhlathuze Water Board as well as from SAA. I do not think it is necessary to go there now. With your leave and if Ms Myeni is comfortable with it I will simply summarise what

they say about their records on gift disclosures, if I may?

CHAIRPERSON: Yes. No, that would be fine. Do you have any problem with that, Ms Myeni?

MS MYENI: I do not, Chairperson, although I am part of the people that would actually develop some policies relating to conflict of interest and ensure and enforce such policies at every board and every institution that I have presided over, but I am happy that Ms Hofmeyr reads the policy if the Chairperson allows her. It can educate many
10 other people.

ADV HOFMEYR: Yes, well let us start with the conflict of interest policy that operated at SAA at the time because that conflict of interest policy, and I quote:

“Required non-executive board members of SAA to declare all gifts received by non-executive directors in their capacity of officially serving SAA and of a monetary value estimated to be more than R1 000 shall be declared by the relevant non-executive director.”

20 Were you aware of that requirement in the conflict of interest policy in May of 2014?

MS MYENI: May I not respond, Chairperson, so that I do not incriminate myself.

ADV HOFMEYR: Now we asked SAA to go through its records of gift declarations and the affidavit that has been

provided by SAA has indicated that there is no declaration by you, Ms Myeni, of having received a gift in the order of R486 514.63 from BOSASA at that time. Do you dispute the records of SAA?

MS MYENI: Chairperson, may I not respond to the question so that I do not incriminate myself.

ADV HOFMEYR: The uMhlathuze Water Board had a similar provision, it required declarations to be made of gifts received by board members and in that case there
10 was actually a declaration by you having received a gift. It is a declaration you made later though in 2016. Do you recall making that declaration in 2016?

MS MYENI: Chairperson, may I not respond to the question so that I do not incriminate myself.

ADV HOFMEYR: Chair, just for record purposes I will indicate where that entry is on the uMhlathuze gift register. I do not suggest it necessary for us to go there unless Ms Myeni wants us to. The entry of Ms Myeni for this disclosure in 2016 appears at DD34B at page 1471. Ms
20 Myeni, it was a declaration that you had received – well, maybe let us go there momentarily. Will you call up 1471 in EXHIBIT DD34B?

MS MYENI: I have it, Chairperson.

ADV HOFMEYR: Ms Myeni, this is the register of the declaration of gifts received by any board member of

uMhlathuze Water Board and the page I have asked you to look at – oh and it spans from 2012. I think it goes up to 2017, this one. No, sorry, it is much more recent, it goes as far as this year. And what it says on the page we are looking at, we searched the whole register from 2012 to 2020 for any declarations that you had made and it appears at page 1471. If you look at the fifth line in that table that there was a gift received on the 20 January 2016. The first column indicated was received from an
10 entity, I assume, called ZDM, the recipient is indicated as Ms D Myeni. The description of the gift received is notebook and pen and the value is declared at R200. Do you remember making that declaration?

MS MYENI: Chairperson, may I not respond in case I incriminate myself.

ADV HOFMEYR: Ms Myeni, I put it to you that this entry in this gifts declaration indicates a few things. It indicates that you were aware of your obligation to declare gifts received. Do you accept that?

20 **MS MYENI:** May I not respond, Chairperson, in case I incriminate myself.

ADV HOFMEYR: It indicates that you took the receipt of a notebook and pen to the value of R200 to be sufficiently important to declare in this gifts register. Do you accept that?

MS MYENI: May I not respond, Chairperson, I would not want to incriminate myself.

ADV HOFMEYR: And I also put to you that it indicates that a failure in May 2014 to declare a gift of R486 515.63 would have been in breach of this policy. Do you accept that?

MS MYENI: May I not respond, Chairperson, in case I incriminate myself.

ADV HOFMEYR: Now, Ms Myeni, you will recall when I
10 dealt with the SAA policy on conflict of interest, they way that that policy works is that it requires the declaration to be made. If it is a gift received – and I am quoting now:

“In the capacity of officially serving SAA”

Were you aware that that was the way in which the obligation was framed in the SAA conflict of interest policy?

MS MYENI: May I not respond, Chairperson, in case I incriminate myself.

ADV HOFMEYR: You see, in fairness to you, Ms Myeni, it
20 may well be that had you come before this Commission today to answer the questions and not invoke that privilege, you might have said well, this installation was not in any way related to my official capacity at SAA. Do you think if you were minded to have given your version you might have raised that point of contention?

MS MYENI: Chairperson, I – with your permission, may I not be fed words to say or to have said to maybe if I was somewhere else I would have said something. I would prefer to say here is my response and I stand with the response I am making that says may I please, with your permission, invoke my right of not responding to the question.

ADV HOFMEYR: Ms Myeni Mr Agrizzi testified before this Commission that a few months, I think it was two months
10 after the September 2015 meeting there was another meeting that took place where BOSASA was meeting with the SAA CEO at the time, because it was interested in pursuing security and catering contracts with SAA. Do you remember that evidence of Mr Agrizzi?

MS MYENI: May I not respond Chairperson so that I don't incriminate myself.

ADV HOFMEYR: We got in contact with the then SAA CEO Mr Nico Bezuidenhout to find out from him whether he could recall any such meeting having taken place and
20 provided – I am going to say a statement, I will explain why in a moment, to the Commission. I would like to take us to it if we may go there, it is in the same bundle we have been dealing with, BB34B and it commences at page 1558 of that bundle.

MS MYENI: I have it chairperson, an affidavit.

ADV HOFMEYR: Thank you, Chair this is an affidavit that we have not come to yet and so I would like to request that we enter it as an exhibit, this will be in accordance with the index Exhibit DD34B.25, but Chair if I could just request before we enter it into the record that I can give the explanation of why I am calling it a statement and not an affidavit, despite the fact that it says affidavit on the first page.

CHAIRPERSON: Yes I see that. I think you are going to
10 tell me what I just picked up.

ADV HOFMEYR: Indeed.

CHAIRPERSON: That the Commissioner of Oaths did not sign.

ADV HOFMEYR: Well it is not quite that, the situation is such that this was prepared by Mr Bezuidenhout and signed on the 29th of October 2020, you see that date on the last page where the Commissioner should have signed.

CHAIRPERSON: Yes.

ADV HOFMEYR: But – and we have these
20 communications on this with the Commission, he was at that point in isolation for reasons similar to Ms Myeni and so what he did was he provided this signed, he had – it was prepared as an affidavit because he had every intention of deposing to it, and the arrangement we reached with him is that as soon as he is in a position to

go before a Commissioner of Oaths he will properly depose to it so that that will come before the Commission but we needed to have this version to put Ms Myeni today so we made that arrangement in the circumstances, with your leave.

CHAIRPERSON: Okay.

ADV HOFMEYR: So if we could enter it as EXHIBIT DD34B.25.

CHAIRPERSON: Is that DD34B.?

10 **ADV HOFMEYR:** .25.

CHAIRPERSON: 25, the statement/affidavit by Mr Nico Bezuidenhout starting at page 1558 is admitted as Exhibit DD34B.25. I take it you will seek to have to have it replaced with ...[intervenes]

ADV HOFMEYR: Indeed.

CHAIRPERSON: With one which has got the Commissioner's stamp as well.

ADV HOFMEYR: Indeed, indeed.

CHAIRPERSON: Ja, okay, alright.

20 **ADV HOFMEYR:** So for now I just want to enable Ms Myeni to respond should you wish to, to what Mr Bezuidenhout confirms here. If we start at page 1559 ...[intervenes]

CHAIRPERSON: Well we – I guess we start by saying who he is.

ADV HOFMEYR: Apologies.

CHAIRPERSON: He was acting CEO of SAA from 10 November 2014 to 10 July 2015.

ADV HOFMEYR: That is correct.

CHAIRPERSON: That is what he says ja.

ADV HOFMEYR: Indeed.

CHAIRPERSON: Yes you may proceed.

ADV HOFMEYR: Chair I realise that I have made an error in dates, and I need to just correct that, you will see here
10 at paragraph 4 on page 1559 Mr Bezuidenhout says there first:

“I do not carry any awareness of any meeting Ms Myeni had at BOSASA’s offices and was never informed of such.”

He was asked generally to indicate to the Commission what knowledge he had of any such meetings, so he indicates firstly he had no awareness of any meeting that Ms Myeni, you may have had at BOSASA’s offices, but then what he goes on to say is that you did shortly after he assumed his
20 acting CEO role at SAA in November of 2015 and at a time when Air Chefs was experiencing operational difficulties suggest that Air Chefs should consider engaging with and getting advice from BOSASA and he said that you had said that BOSASA was experienced in providing meals at large scale on a daily basis and he goes on says that they,

according to you, Ms Myeni, had proven this capability in the Prison Service, and he said I am under correction I seem to recall she also mentioned hospitals.

Do you remember having that conversation with Mr Bezuidenhout?

MS MYENI: Chairperson may I not respond I would not want to incriminate myself.

ADV HOFMEYR: It goes on and says that you advised that the CEO of BOSASA was travelling in Johannesburg, 10 he said it was on a Saturday morning as I recall and that Ms Myeni was in Johannesburg on the day and you asked him if he could join for an introductory meeting at the Intercontinental Hotel. Do you recall having that conversation with Mr Bezuidenhout?

MS MYENI: Chairperson may I not respond to the question, so that I don't incriminate myself.

ADV HOFMEYR: Chair I indicated that I had made a date error, I want to just explain why I think I made a date error but I suspect that it might not be my error and that it may 20 be necessary to go back to Mr Bezuidenhout. You see what I noticed that as I was going through the affidavit that Mr Bezuidenhout says at paragraph 1 that he was the Acting Chief Executive Officer for SAA from 10 November 2014 to approximately 10 July 2015 and then he goes on to talk about these interactions and he talks about them

having taken place in November of 2015 and he says that that was shortly after assuming his acting role at SAA, Chair that date doesn't make sense in the contents of paragraph 1, so we are going to need to get clarity from Mr Bezuidenhout. It may be that there is an error in the year that he put in 2015 when he means 2014, because that would accord with his first paragraph where he says he took up the position from approximately 10 November 2014. It is then consistent to say shortly thereafter there
10 was this interaction.

CHAIRPERSON: Yes.

ADV HOFMEYR: And certainly my knowledge is that he was there at that time, it is November 2014 to mid 2015, he is not in that role at the end of 2015, because that's when a lot is happening with Ms Mpshe who was filling the role and the Mr Zwane who replaced her so that created the concern in my mind about today, but subject to a clarification from Mr Bezuidenhout that if there is an error in his paragraph 4 it should be November 2014 and not
20 November 2015. I then want to go onto telling Ms Myeni what he said about the meeting and for present purposes I would like us to assume that it took place in November of 2014, given what I have just said.

So if we go to paragraph 5 on page 1559 that is where he indicated that you said that the CEO of BOSASA

wanted to have this meeting and you asked him whether he could join it at the Intercontinental Hotel and then at paragraph 6 he says:

“When I arrived at the hotel Ms Myeni introduced me to Mr Gavin Watson as BOSASA’s CEO and Mr Angelo Agrizzi as COO. I cannot specifically recall but there may have been a third unknown person but I am not sure.”

He says:

10 “After introductions Mr Watson proceeded to do a prayer and then discussions went into general topics and took a religious tone.”

Ms Myeni did you know Mr Watson as a religious person?

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

ADV HOFMEYR: Did you ever intend other meetings where Mr Watson would open the meeting with a prayer?

MS MYENI: Chairperson may I not respond to the question in case I incriminate myself.

20 **ADV HOFMEYR:** He goes on at paragraph 7 on page 1559 to say:

”Without the discussion having any objective as far as I know other than being an introduction one of the parties, I do not recall which one, referenced SAA Security Tender that was in progress at the

time and as I recall appeared to question whether the tender was being fairly handled.”

He says:

“I stated that whilst I am not directly involved with the tender SAA’s tender processes entail various checks and balances and that no information has been brought to me [that is him] to indicate that the process as far as the security tender was not being fairly handled.”

10 He then goes on at paragraph 8 and he says:

“One of the parties [again he doesn’t recall which one] turn to BOSASA’s experience in running large scale canteens and that there may have been assistance in this regard at Air Chefs. He said I advised that the management at Air Chefs will review all possible suppliers and interventions as the need to improve Air Chefs delivery was topical amongst S A Group Management.”

20 Do you recall those discussions having taken place at this meeting in November of 2014?

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

ADV HOFMEYR: He says at paragraph 9 that the meeting then concluded, as he recalls it, with Mr Watson asking whether:

“I had any personal security concerns, and me advising that no I had not and that SAA Security Division as is customary for CEO’s or Acting CEO’s had performed security risk assessment at my property.”

And he goes on and says:

“The meeting then concluded.”

Do you remember that discussion having taken place at that meeting?

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

ADV HOFMEYR: He says at paragraph 10:

“Following the meeting I obtained confirmation from SAA’s head of security that the then current tender process for SAA Security Services were being conducted fully compliant to SAA’s procurement procedures.”

And he goes on finally to say at paragraph 11:

20 “I further notified the Air Chefs Acting CEO of BOSASA’s claimed capability for consideration amongst the other possible service providers for interventions the Air Chefs team were considering at the time.”

And then he says he had no subsequent interactions with BOSASA. Did those, Myeni again just for your version do

you confirm that any of those accounts of the meeting took place?

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

ADV HOFMEYR: Ms Myeni the evidence about the security installation at your home was first received by the Commission through Mr Agrizzi and as I indicated to you earlier Mr Le Roux then gave evidence to confirm that he had done the installation at your home in Richards Bay, he
10 gave the approximate value of it, he indicated how many days it has taken and then the Commission has identified that in October of last year a search and seizure warrant was obtained by the Hawks in relation to the evidence that had been given at the Commission, are you aware of that?

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

ADV HOFMEYR: The search and seizure – well for reasons that will become apparent I don't actually think I should refer to it as a search and seizure, an operation
20 took place in October of last year pursuant to that warrant at your residence in Richards Bay, can you confirm that?

MS MYENI: Chairperson may I not respond to the question, so I don't incriminate myself.

ADV HOFMEYR: Mr Le Roux was involved in that operation, as was Captain Nevin of the Hawks and both of

them had deposed to affidavits which appear in your bundle Ms Myeni, I would like to go to first Mr Nevin's affidavit, you will find that at DD34B at page 1936. No sorry, I think that page ...[intervenes]

MS MYENI: I have it Chairperson.

ADV HOFMEYR: I think it starts at 1941. Oh sorry, I got confused ...[intervenes]

MS MYENI: I have it Chairperson.

ADV HOFMEYR: Let's start – apologies chair, I would like
10 to start at 1936 but that is not Captain Nevin's affidavit,
that is Richard Le Roux's affidavit.

CHAIRPERSON: Yes.

ADV HOFMEYR: So do you have 1936 in front of you Ms Myeni?

CHAIRPERSON: Have you got page 1936 in front of you?

MS MYENI: Yes I do Chairperson.

CHAIRPERSON: Okay, alright.

ADV HOFMEYR: Chair this is the first time we are coming
20 to this affidavit of Mr Le Roux, now this is actually the 4th
affidavit that Mr Le Roux has provided to the Commission.
May I request that we enter it as Exhibit DD34B.37 in
accordance with the index.

CHAIRPERSON: The affidavit of Mr Richard Le Roux starting at page 1936 is admitted as Exhibit DD34B.37.

ADV HOFMEYR: Chair and Ms Myeni what Mr Le Roux

begins by doing is really just for locating the read he talks a bit about the previous evidence he has given, he confirms again that he did the installation, that there were invoices identified which reflected the equipment that he purchased between the 21st of May and the 26th of May 2014. He again confirms that it took approximately 21 days, he confirms who he was with when he did the installation, he confirms where they stayed, etcetera, and he concludes, at page 1937 to say at paragraph 13:

10 “All the expenses relating to the security equipment, the costs, the labour, the accommodation and the travel were all paid for by BOSASA or African Global Operations.”

In paragraph 14 he says:

“I in my duty as head of special projects have no personal knowledge of what if any arrangements had been made by BOSASA and Ms Myeni in regard to the costs made by BOSASA or African Global Operations.”

20 Ms Myeni I think I asked you earlier but in case I didn't can I just confirm did you ever reimburse BOSASA for the R486 514,63 that was installation costs?

CHAIRPERSON: Did you hear that Ms Myeni, can you still hear us? It looks like she can't hear us.

MS MYENI: There was a – there was no – ja, I can hear

you now Chairperson, there was no connection.

CHAIRPERSON: Okay, alright Ms Hofmeyr will repeat her question.

ADV HOFMEYR: Yes, I was just asking Ms Myeni for confirmation whether you ever reimbursed BOSASA for the R486 514,63 that this installation cost at your home?

MS MYENI: May I not respond Chairperson, so I avoid incriminating myself.

CHAIRPERSON: I guess Ms Hofmeyr when you say
10 installation costs, it sounds like it is just labour costs.

ADV HOFMEYR: No I ...[intervenes]

CHAIRPERSON: You mean including material?

ADV HOFMEYR: Indeed, indeed.

CHAIRPERSON: Yes.

ADV HOFMEYR: So that is an estimate of the
approximate cost, this is dealt with at paragraph 12, of the
equipment and labour as he previously set out, thank you
for that clarification Chair. Chair just before I continue
with the questions I have just been sent a note by the
20 Secretariat of the Commission that they are having
difficulty making contact with ms Myeni's lawyers to
arrange for the drop off of the hard copy file in Pretoria.

CHAIRPERSON: Yes.

ADV HOFMEYR: So I have been asked if I could just ask
my learned friend if they can please make arrangements so

that that contact can be made so that we can facilitate the drop off as soon as you are able to do so.

CHAIRPERSON: H'm.

ADV HOFMEYR: Thank you.

CHAIRPERSON: Okay and somebody will tell them who to contact within the Commission to make that possible?

ADV HOFMEYR: Well as I understand it the Commission has the contact number and is endeavouring to contact the legal representative.

10 **CHAIRPERSON:** Oh, okay.

ADV HOFMEYR: He hasn't answered those calls but the person is waiting to make the delivery, so just so that you know we are ready and waiting at any point that contact can be made, we can facilitate the delivery, thank you.

CHAIRPERSON: Okay. Because that delivery is urgent let me find out whether you think you could be of assistance in this regard?

20 **ADV BUTHELIZI:** Sorry Chair, unless we take five minutes and see what we can do, because now we have got ...[intervenes]

CHAIRPERSON: Yes, yes. Okay let us take a five minute adjournment so that – because I was thinking that if we take a short adjournment it may well be that Ms Myeni who hears what Ms Hofmeyr has just said might on her side also contact her attorney to say please make yourself

available, the Commission is trying to contact you to deliver a bundle, so let's take shall we say ten minutes, it is twenty five past eleven, let us resume at twenty five to twelve.

ADV HOFMEYR: Thank you Chair.

CHAIRPERSON: We adjourn.

REGISTRAR: All rise.

INQUIRY ADJOURNS

INQUIRY RESUMES

10 **CHAIRPERSON:** I hope that it has been sorted out?

ADV HOFMEYR: Indeed Chair contact has been made and arrangements are now being made for the handover. So we really are very indebted to you. Thank you so much.

CHAIRPERSON: Yes. No thank you. Okay let us proceed.

ADV HOFMEYR: Chair before we took the adjournment and Ms Myeni we were looking at Mr Richard Le Roux's fourth affidavit before the commission and we were at page 1937 and I would like us now to turn up page 1938 which commences with paragraph 15.

20 Chair and Ms Myeni it is quite – it is not a very long affidavit and it is quite an important piece of evidence before the commission and so I am going to propose just to read parts of it into the record also for your benefit Ms Myeni. It has formed part of your bundle but you may not have had an opportunity to look at it in detail.

What Mr Le Roux starts to recount from paragraph 15 is an operation that he was involved in in October of last year and just to – Ms Myeni are you...

CHAIRPERSON: Just one second are you – are you settled Ms Myeni?

MS MYENI: I am Chairperson thank you. I have – I have the page in front of me.

CHAIRPERSON: Okay alright.

ADV HOFMEYR: So Mr Le Roux was involved in this
10 operation in October of 2019 and I just want to locate us in time before – as I did before the break.

Mr Agrizzi gives evidence in early 2019. Mr Le Roux himself gives evidence in mid-2019 and then this is what follows.

There is an operation conducted by the Hawks at Ms Myeni's home in Richards Bay and what Mr Le Roux is now going to tell us about in his affidavit.

So he says at paragraph 15:

20 "In or about October 2019 I was taken to Durban by vehicle with Captain Nevin of the South African Police Services the Hawks together with other members of the South African Police Services the Hawks. Captain Nevin requested me to assist him in pointing out both the premises and the equipment

myself and my team installed at Ms Myeni's house on the instructions of BOSASA and Gavin Watson. I remember there was also a police photographer that came down with the group of people. Captain Nevin will be able to give more details as to the names and ranks of the people that came down with us."

And I just pause there to indicate we have obtained Chair an affidavit of Captain Nevin. Mr Le Roux goes on to
10 say:

"To the best of my recollection we went down to Durban on a Wednesday in October 2019 where we slept over at a hotel in Durban we left Thursday morning for Richards Bay by road. We travelled down in two vehicles. Captain Nevin asked me if I was in a position to point out the premises to him as he did not want to give me the address and when we arrived in Richards Bay I took them to the
20 premises and pointed it out. When we arrived at the premises Ms Myeni was not there and we were not able to gain access to the premises. We spent many hours sitting outside the premises and the South African Police Services were busy in telephonic

discussions with both the State Advocate and what I understood were Ms Myeni's lawyers. We did not gain access to the house and then we left to return to the hotel in Durban. We travelled at approximately six am the next morning back to Richards Bay and after various phone calls between the lawyers when we arrived there we were given access to only certain parts of the premises. I personally waited outside until I was told by Captain Nevin to come onto the premises. We only gained access on the Friday."

10

Ms Myeni I am now over at page 1939 and I am reading from paragraph 25. What Mr Nevin then – sorry Mr Le Roux then says is:

"When I went onto the premises I was able to point out various of the equipment that I had installed but this was only on the outside of the premises and I pointed out certain items inside the premises. The Hawks were unable to get access to other parts of the house as these were closed off with Trellidor and no-one had keys in order to open same. The main equipment that I together with my technicians had installed was contained in

20

the main office inside the house to which no access was provided on the day of the search warrant execution. This consisted of the switches and the mains system that operated the security equipment. The Hawks were also unable to get access to the passage where I and my technicians had installed the alarm panel which had controlled the passives and the beams for the alarm system. The Hawks were also
10 unable to get access to the garage where I had installed the energiser which had controlled the electric fence which surrounded the premises. I recall that while I was doing the installation there was a standalone safe inside the room that was used as an office. Towards the garage there was also a large walk-in safe door and this safe did not appear to be in use. I myself
20 have no personal knowledge as to why the Hawks did not gain further access into the premises and I very, verily believe that Captain Nevin can give facts relating to why no further access was obtained in terms of the search warrant. From the security

equipment that access was obtained we managed to obtain serial numbers which were taken down by the Hawks and recorded. Members of the Hawks took photographs and kept notes of what I had pointed out to them.”

And now from page 1940.

10 “After the Hawks had completed the search of the premises I can confirm no security equipment were taken away from the – were taken from the premises. We then left to return to Jo'burg. I further recall that while we were travelling back to Johannesburg I was in the motor vehicle when Captain Nevin received a phone call from one of his fellow officers. The context of the conversation that I picked up was that Ms Myeni was extremely upset about the way in which the search warrant had been executed and
20 conducted and she had phoned a very senior person in Durban who had contacted Captain Nevin's offices in order to register her complaint.”

Ms Myeni before I ask for your comment on those events that took place in October last year I would like us

just to look at what the search and seizure warrant entitled The South African Police Service to do at your premises.

And you will find the search and seizure warrant attached to Captain Nevin's affidavit which is the next document in the bundle. It commences at page 1941. Do you have that?

ADV HOFMEYR: Yes Ms Hofmeyr.

ADV HOFMEYR: Chair if we could enter this affidavit of Mr Charles Nevin into the record as Exhibit DD34[b].38.

10 **CHAIRPERSON:** So the affidavit of Mr Charles Nevin starting at page 1941 is admitted as Exhibit DD34[b].38.

ADV HOFMEYR: So Chair I will return if necessary in a moment to the actual affidavit itself but what Captain Nevin does is he gives his account which in substantial measure accords with the account that I have just given of Mr Le Roux and then he attaches to his affidavit both the warrant itself which you will see commencing at page 1946 as well as the application that was made for the search and seizure warrant which commences at page 1950 and that is
20 accompanied by the affidavit supporting the search and seizure warrant being issued and that commences at page 1591.

Now what Captain Nevin confirms he was the deponent both to the affidavit supporting the application for the search warrant as well as the affidavit that he has

provided to the commission to explain what happened on the days of the execution of the warrant?

You see what he says in essence to the Magistrate before he came in order to obtain the search warrant is that – and Chair I am going to paraphrase a bit and read pertinent parts where it is appropriate to do so. And also for you benefit Ms Myeni.

Captain Nevin confirms in his affidavit pursuant to which the search and warrant was given that he had been
10 assigned to investigate the commission of the offence that is dealt with further below in the SAPS criminal investigation team. And at page 15 – 1952 paragraph 4.2 he says:

“The offence being investigated at this point in this time in the above investigation which is relevant to this application and which is submitted is at least reasonably capable of being believe or suspected to have been committed or are being committed as
[00:10:12] more detail below is as follows”.

20 And then it is offences in relation to corrupt activities relating to public a officer that is then set out. Those are provisions from PRECCA as I understand the legislation. Oh Chair it seems that we might have lost connection to Ms Myeni.

CHAIRPERSON: Oh yes.

ADV HOFMEYR: We looking into it I can see.

CHAIRPERSON: Okay let us wait hopefully the technicians will sort it out quickly.

MS MYENI: I am back Chairperson. There was – there was a connection problem.

CHAIRPERSON: Oh okay alright.

CHAIRPERSON: Yes but – but I have been following what – I have been hearing.

CHAIRPERSON: You have been hearing.

10 **MS MYENI:** What evidence leader was saying.

CHAIRPERSON: Okay alright.

ADV HOFMEYR: So what the affidavit does is it identifies that there is an investigation and reasonable grounds for suspecting that offences related to corrupt activities may have taken place. And the evidence is then set out and that is the evidence of Mr Le Roux that was provided to this commission.

20 Chair you will see that and Ms Myeni at page 1953 from paragraph 5.2. So what Captain Nevin is effectively doing here is going before a Magistrate to get a search and seizure warrant of Ms Myeni's premises based on the evidence that Mr Richard Le Rous presented to this commission and that is set out clearly in paragraph 5.2 because he makes reference to the statement of Mr Le Roux before the commission.

And then he says that that evidence is enough to warrant the search and seizure – to warrant the issue of the search and seizure warrants and he concludes with something that I do believe it is necessary to read verbatim into the record. And that appears at page 1956 from paragraph 9 on that page.

You see paragraph 9 is headed The need for the search and seizure of the articles referred above. And what Captain Nevin says in this affidavit pursuant to which a
10 warrant was issued is the following;

“It is submitted that there is a need to secure the articles concerned by way of a search for and seizure of the articles at the premises concerned and in terms of a warrant that has been applied for and issued.”

9.2

“The reasons are:

The above articles will form part of the evidence to strengthen the truthfulness of
20 the allegations made against the suspect thus strengthening the state case. The said Ms Dudu Myeni is the alleged perpetrator of the offence concerned. Any other manner of attempting to secure the articles concerned will forewarn the said Ms Myeni. In this

circumstance the said Ms Myeni is likely to take all reasonable steps she can to hide, destroy or otherwise prevent the articles being secured for the purposes of the investigation.”

And then he seeks a warrant in the terms that were attached to his affidavit and that was a warrant entitling the Hawks to go to Ms Myeni’s premises to obtain access, to search for the various articles of security equipment that Mr
10 Le Roux had testified about before this commission and to seize those articles because and I emphasise again their view was that there would otherwise be a risk that that equipment could be hidden, destroyed or otherwise prevented from being secured for the purposes of an investigation. And they made it clear that that would be evidence necessary in any subsequent case in involving Ms Myeni.

So Ms Myeni I have indicated to you the basis upon which the warrant was sought and obtained and I have
20 indicated to you what Ms Le Roux has said about how that search warrant was executed. Can you confirm whether there events did take place as Mr Le Roux describes them in October of last year?

MS MYENI: May I invoke the privilege Chairperson of not responding to the question so that I do not incriminate

myself.

ADV HOFMEYR: Ms Myeni I would like to put it to you that it is quite remarkable that the police service our country could obtain a search and seizure warrant to secure evidence that may be relevant in a criminal trial to arrive at your premises to seek to execute that warrant and to be kept outside the premises for a full day only to return the second day. Were you involved in barring their entry for the first day to your premises?

10 **MS MYENI:** Chairperson may I not respond to the question that is being asked so that I do not incriminate myself.

ADV HOFMEYR: When the police arrived on the second day they were then permitted access but they were not permitted to access the whole of the premises. Were you involved in giving an instruction that they could only access parts of the premises?

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

20 **ADV HOFMEYR:** You gave evidence yesterday that no-one accesses your premises without your permission. So I put it to you that it is likely that you were responsible for the instructions that denied access to certain parts of the premises. Can you confirm that?

MS MYENI: Chairperson may I not respond to the question so that I do not incriminate myself.

ADV HOFMEYR: The police were there with Mr Le Roux whose evidence before this commission is that he made these installations himself and he told them that in the parts of the house and the garage that they were not permitted to access he had installed the very equipment that the search and seizure warrant entitled the police to look for and seize. Did you give a specific instruction that they would not be permitted to do that?

MS MYENI: Chairperson may I not respond to the question
10 in case I incriminate myself.

ADV HOFMEYR: Ms Myeni if you did give this instruction do you have any idea of why the instruction was abided?

MS MYENI: Chairperson may I not respond to the question in case I incriminate myself.

ADV HOFMEYR: Ms Myeni maybe you can assist the commission with indicating to us how it can happen that a search and seizure warrant is authorised by a Magistrate. The police travel down to your home in Richards Bay. That they are delayed for the first day. They return on the second
20 day in circumstances where the very reason that they got this warrant is because they said that there reasonable grounds for suspecting the equipment may be hidden or destroyed or otherwise prevented from being accessed. And then when they finally are given access they only are given access to parts of the house. How does that happen Ms

Myeni?

MS MYENI: Chairperson may I not respond so that I do not incriminate myself.

ADV HOFMEYR: The final point I want to pick up on is you gave evidence yesterday that you do not have a safe either in your office, in your house or in your garage. Mr Le Roux says you do. Is he lying?

MS MYENI: Chairperson may I not respond to the question so that I do not incriminate myself.

10 **ADV HOFMEYR:** Ms Myeni I put it to you that you are – well you have been and you are - remain a powerful person. You are a person who can delay the police executing a search and seizure warrant as recently as October of last year. Do you have a response to that?

MS MYENI: I cannot comment Chairperson on somebody's view unless I am asked a question about Ms Hofmeyr's view Chairperson. He has made a view, it is his opinion. I am – I cannot comment on somebody's opinion.

20 **ADV HOFMEYR:** Ms Myeni your way of engagements with institutions of the state is something on which this commission has also received other evidence and that was evidence in relation to the activities of the state security agency at SAA while you were chairperson of the board and that is the topic I would like to move to next.

And just with the [00:20:04] Chair I – I ordinarily

would have concluded the BOSASA evidence but we will come back to the travel benefits once Ms Myeni has the bundle. But we are now going to move to the State Security Agency.

Ms Myeni you had protection services provided to you from the State Security Agency, correct?

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

ADV HOFMEYR: You received those protection services
10 according to the evidence of Mr Y before this commission from a special operations unit within the State Security Agency. Can you confirm that?

MS MYENI: May I not respond Chairperson to avoid incriminating myself.

ADV HOFMEYR: Chair when Mr Y gave evidence one of the things that was attached to his affidavit was the high level review panels review into the activities of the State Security Agency. That panel had found that this special operations unit of the State Security Agency was quote “a
20 law unto itself” and it was found to have “directly served the interests of the executives”.

Chair and Ms Myeni I do not suggest we go there but just for the record that reference is in Exhibit DD23 at page 237.

What that report also confirms is that those who

received protection services from the special operations unit were not entitled to it.

Ms Myeni before you received the services did you ever make enquiries as to whether you would be lawfully securing them?

MS MYENI: Chairperson may I not respond to the question to avoid incriminating myself.

ADV HOFMEYR: Mr Y's evidence was that no security assessment seems to have been done on you before these
10 protection services were provided according to the records of the State Security Agency. Can you dispute that?

MS MYENI: Chairperson may I not respond to the question so that I do not incriminate myself.

ADV HOFMEYR: For the record Chair that aspect of Mr Y's evidence can be found in the record at Exhibit DD23
page 12 paragraph 5.3.

The evidence of Mr Y, Mr Moonsamy whose affidavit was presented when Mr Y gave evidence is that those State Security personnel who were providing you with
20 protection services were also on occasion involved in confiscating items from members of the board of SAA while you were its chairperson. Do you dispute that?

MS MYENI: May I not respond Chairperson so that I do not incriminate myself.

ADV HOFMEYR: Evidence has been previously been

received by this commission that you on occasion would insist that members of the board and management of SAA leave all recording devices – well devices capable of recording so cell phones, laptops etcetera outside of meeting rooms and you further would require any notes from meetings to be torn up before people left the meeting. Do you dispute that?

MS MYENI: Chairperson may I not respond to that question so that I do not incriminate myself.

10 **ADV HOFMEYR:** Ms Myeni do you know why you were provided with these services despite the fact that they were not lawfully procured?

MS MYENI: Chairperson may I not respond to the question so that I do not incriminate myself.

ADV HOFMEYR: Ms Myeni why did you arrange for the State Security Agency to conduct a security vetting operation on the managers and support staff at SAA/

MS MYENI: Chairperson the question that is being asked is fact – is a factual question. Why did I arrange or
20 somebody has alleged or it is a fact. Just clarity Chair there – I am requesting respectfully for clarity.

ADV HOFMEYR: Yes I will certainly assist Ms Myeni. What we did in the evidence last year is we had Ms Dlamini who I understand conducted the operation – the security vetting operation at SAA give evidence. Do you know Ms

Dlamini?

MS MYENI: Chairperson may I not respond to the question so that I do not incriminate myself.

ADV HOFMEYR: It was Ms Dlamini whose evidence was that it was pursuant to engagements between yourself and then Minister Mahlobo that the security operation was undertaken. Can you confirm that?

MS MYENI: May I not respond Chairperson so that I do not incriminate myself.

10 **ADV HOFMEYR:** When Ms Dlamini gave evidence we were taken to the exchange of letters between Minister Mahlobo and Minister Nene at the time in terms of which the security vetting operation had been authorised. And what was given in that correspondence as the basis for the operation was that there was quote “sensitive information” that was being received on an on-going basis by the management and support staff of SAA. Do you recall being concerned about the receipt of sensitive information by managers and support staff at SAA?

20 **MS MYENI:** May I not respond to the question Chairperson so that I – I do not incriminate myself.

ADV HOFMEYR: Chair again for the record that letter from Minister Mahlobo to Minister Nene in which this basis for the operation is set out can be found in Exhibit DD24 page 17. And also just for the record the evidence of Ms

Dlamini occurred on the 19 February 2020.

Now Ms Myeni in the course of Ms Dlamini's evidence we established with her that the entire vetting operation was not in accordance with the governing legislation. Are you aware of that evidence having been given?

MS MYENI: Chairperson may I not respond to the question in case I incriminate myself.

ADV HOFMEYR: You see what we have probed with Ms
10 Dlamini is that in terms of the governing legislation these types of operations can only be conducted where classified information is being accessed by those who will be security vetted. And that classified information is something different from sensitive information. Before this operation was conducted at SAA did you ever take time to consider that distinction between classified information and sensitive information?

MS MYENI: Chairperson with your permission can Ms Hofmeyr read the letter that she is talking about?

20 **ADV HOFMEYR:** With pleasure.

MS MYENI: Or show me the letter that she is talking about?

ADV HOFMEYR: With pleasure let us go to it.

CHAIRPERSON: She will do so. She will do so Ms Myeni.

ADV HOFMEYR: Now for this Ms Myeni it is a DD Bundle.

MS MYENI: DD.

ADV HOFMEYR: So I am cautiously optimistic that you have it with you. It is DD24 at page 17. So if you will just find that bundle and then we can look at the letter.

MS MYENI: I have the letter Chairperson.

ADV HOFMEYR: So this letter Chair and Ms Myeni appears as an annexure – oh apologies Chair you do not have it. Let me just pause for a moment.

CHAIRPERSON: Not yet.

10 **ADV HOFMEYR:** Ms Myeni was quicker than you or I taking the bundle so... It will be page 17.

CHAIRPERSON: Yes I have got it now. I have got it Ms Hofmeyr.

ADV HOFMEYR: Thank you Chair. Ms Myeni I was just also locating you. So this is the first annexure to Ms Dlamini's affidavit which precedes it in this at BB24. And what you will see there, it is a letter. If you go over the page to 18, it is the letter that the then Minister of State Security, Mr David Mahlobo, writes to the then Minister of Finance, Mr
20 Nene. And this is a letter that was copied to you, the Chairperson of the Board of SAA. Do you remember receiving this letter around October of 2015?

MS MYENI: May I not respond Chairperson? The reason why I ask it Chair was, for the record, the letter be read, as I requested to you Chairperson. Because it appears from

what is being said and asked. I am the one who asked of the security of all South African state-owned enterprises.

And I do not think there is any Chairperson who sits in any cabinet to take such decisions. That is why Chairperson I am asking, for the record, that these letters be read because there is an insinuation that I would use state organs and the views that have been expressed here, which are unreserved views Chair.

I am here as an innocent person. And the way in which
10 the evidence leader is trying to meet questions, is trying to put my security issues back in my house that any person can just access somebody's house without have been present in the premises.

And I can see that I have no right as a black woman because no white woman who has a house without her being in the premises can allow any – just about any person to walk into the house.

Here now, I am the one who has given the cabinet a decision to vet all state-owned enterprises. It cannot be so.
20 I am here because my guilt is the association with Jacob Zuma. So it cannot be.

Chairperson, I want – I would like with your permission to get the protection. I am an ordinary human being that makes mistakes. Where I make a mistake, I admit to make a mistake but I cannot continue... continuously be associated

with certain decisions in state organs that are unfair. This is misleading.

CHAIRPERSON: Well ...[intervenes]

MS MYENI: That is why I am asking for the record. That the evidence leader read this letter. Because now it appears as though I am the one who went and asked Minister Mahlobo and Minister Nene to investigate or to vet only South African Airways stuff. I cannot be. I protected the stuff of South African Airways through and through when I
10 was chairperson there. Thanks, Chairperson.

CHAIRPERSON: Okay. Ms Hofmeyr will read that letter or she might ask you to read it so that it is read into the record. I just want to say about other matters that you have raised.

That when there is only one side of the story, it could give rise to certain perspectives. So where you are able to put your side of the story or your perspectives, it helps to give a balanced view.

But when I say that, I am not saying that you must not invoke your privilege if you consider it appropriate. I am just
20 mentioning that there is an disadvantage or the disadvantage is when there is only one side of the story as compared to where there are both sides.

So when there is one side, that could easily give rise to misunderstandings or give rise to certain perspectives which might not be there if there are all sides placed before the

Commission.

Ms Hofmeyr, are you going to read it or are you going to ask her to read it?

ADV HOFMEYR: Chair, I will read it with pleasure. I do just want to indicate one point of clarification.

CHAIRPERSON: Yes.

ADV HOFMEYR: Because I do want Ms Myeni to understand that – and the record will show this – at no point did I in my questioning state that Ms Myeni had been
10 responsible for the arranging of the vetting of all SOE's.

CHAIRPERSON: Yes.

ADV HOFMEYR: That is not something that I said.

CHAIRPERSON: Yes.

ADV HOFMEYR: What I said is that there had been evidence before this Commission that she was involved in arranging the vetting of SAA management and their support staff. It is a very different statement and it is that statement that I am exploring with Ms Myeni in the evidence right now.

And when she asked for clarification as to where that
20 came from, I made it clear that it came from the evidence of Ms Dlamini who had conducted the operation at SAA.

And she was asked in particular about the background to these letters. So it is not my statement.

CHAIRPERSON: Yes.

ADV HOFMEYR: It is Ms Dlamini's statement giving

evidence before this Commission. But let me read the letter into the record.

CHAIRPERSON: Yes.

ADV HOFMEYR: As Ms Myeni has requested.

CHAIRPERSON: Yes, it is a letter from Mr David Mahlobo, Minister of State Security, dated 18 October 2015, addressed to Mr N M Nene, Minister of Finance at the time. Yes, continue.

ADV HOFMEYR: Thank you, Chair. And just to note. It is
10 copied to Ms Myeni as Chairperson of the Board of SAA. It says: Dear Colleagues. So this is Minister Mahlobo speaking to Minister Nene.

“Security vetting of the South African Airways Executive Management and Support Staff.

1. The above matter refers.

2. It has come to the attention of the State Security Agency that there is an urgent need for vetting and re-vetting of the state-owned enterprises given sensitive information received on an ongoing
20 basis.”

I would just like to pause there. It is precisely how it came to the attention of the State Security Agency that we traversed with Ms Dlamini her knowledge of what was happening around this.

This letter was probed with her and her evidence was

that there had, she assumed – I do not recall her having personal knowledge of it – but she assumed that there had been engagements between Minister Mahlobo and Ms Myeni about this.

And certainly, the later letter is a letter from Ms Myeni providing the list of the people who are required to be vetted.

Paragraph 3 goes on.

10 “3. SOC, as the government entities have a huge impact on the economy of the country and therefore extremely important for the SSA to conduct security vetting as per Section 1 of the National Strategic Intelligence Act. That is Act 39 of 1994 as amended by Act 67 of 2002.

It states that:

“The National Intelligence Agency (NIA) has the mandate to vet all other national, provincial and local government departments, parastatals and their service providers.””

20 Chair, I should interject there as well just to give the benefit of Ms Dlamini’s evidence. We looked in her evidence for that alleged section from the act. You may recall this Chair.

CHAIRPERSON: I recall.

ADV HOFMEYR: And that section does not exist in the act.

CHAIRPERSON: Yes ...[intervenes]

ADV HOFMEYR: So it appears in this letter as though it is quoting from a section of the act. It does not – it cannot be found in the act.

CHAIRPERSON: H'm.

ADV HOFMEYR: Paragraph 4 over the page reads:

“4. This should be understood from the background of challenges affecting most of the state-owned companies.

10 6. The chairperson of SAA will be required to provide a list of all executive management and support staff.

7. And update will be provided on completion.

8. Your Sincerely.”

And then it is signed by Minister Mahlobo. Ms Myeni, so that is the letter that you have requested that we read into the record. I had asked you before your last answer, whether prior to this exercise being conducted, you had ever had the occasion to consider the distinction between
20 classified information and sensitive information. What is your response to that?

MS MYENI: Chairperson, may I not respond in case I incriminate myself? Thank you.

ADV HOFMEYR: Now this was a vetting operation that was conducted at SAA in late 2015. Ms Dlamini's evidence was

also that there were no other state-owned entities that were vetted at that time. The only other ones that have been vetted are with Transnet two years later in December of 2017 and Eskom in April of 2019.

So during the period of 2015 and 2016 there was no other vetting going on of SOE's. That reference you will find Chair and Ms Myeni in Ms Dlamini's affidavit, which is earlier in the bundle, DD24 at page 15.

Now Ms Myeni, one question that we probed with
10 Ms Dlamini is the following. If the concern which underscored the need to vet people at SAA, was there access to sensitive information.

We asked her for her view. Would it not then have made sense that not only management and support staff but also the board members of SAA be vetted?

Did you ever consider before this operation whether you and your colleagues on the board should be vetted?

MS MYENI: May I not respond Chairperson to the question in case I incriminate myself? But Chairperson, yesterday the
20 Chair said, once I have responded to the question, I can say something after I have responded.

CHAIRPERSON: Well, if you... If it is a question in respect of which you do not invoke your privilege and you say something like yes to a question but you want to explain something. Yes, that you can do.

So, in other words, or if you say: No, but I want to explain something, that is fine. But what I said this morning which I did not say yesterday was that if you invoke the privilege, then you invoke the privilege.

You cannot give some answer and then afterwards you are saying you are invoking the privilege to that question. So you have to make up your mind on each question. Am I invoking my privilege? If you do, that is what you do.

But if you elect to answer, then I am not... we are not...
10 you are not forced to say yes or no necessarily if you would like to explain something.

Obviously, it helps if you are able to say yes or no or – in terms of questions so that we make progress. But if there is a need to qualify your explain, I will allow you to do that. You understand?

MS MYENI: Yes, thank you very much Chairperson.

CHAIRPERSON: Yes.

MS MYENI: I understand and it is clear.

CHAIRPERSON: Yes, okay.

20 **MS MYENI**: What I would like to say. It is a comment.

CHAIRPERSON: H'm?

MS MYENI: To you Chairperson.

CHAIRPERSON: H'm?

MS MYENI: It is unrelated to whether... to the question that was asked.

CHAIRPERSON: H'm?

MS MYENI: Under normal circumstances Chairperson, in state-owned enterprises, board members before they get appointed they would be vetted. I am saying under normal circumstances. This is a comment for you Chairperson.

CHAIRPERSON: Okay. Alright.

MS MYENI: Thank you, Chair.

CHAIRPERSON: Ms Hofmeyr.

ADV HOFMEYR: Ms Myeni, Ms Dlamini indicated that no
10 board members were vetted during this operation in late 2015. Do you dispute that?

MS MYENI: May I not respond to the question Chairperson in case I incriminate myself?

ADV HOFMEYR: She indicated that in her view – and I would like your comment on whether you disagree with this view – if the management and support staff were being vetted because of access to sensitive information, and the board also had access to sensitive information, then the board members should also be vetted on the basis of
20 Minister Mahlobo's letter. Do you agree with that view?

MS MYENI: May I not respond Chairperson to the view of Ms Dlamini in case I incriminate myself?

ADV HOFMEYR: Do you know why this operation was conducted without board members who would have had as much access to sensitive information as anyone else in SAA,

were not vetted?

MS MYENI: May I not respond Chairperson? I invoked the privilege so I do not incriminate myself?

ADV HOFMEYR: Do you think it might have been because the board members did not want to be confronted with the very intimate questions that management were subjected to when they had to undergo the polygraph tests?

MS MYENI: May I not respond Chairperson to the question so that I do not incriminate myself?

10 **ADV HOFMEYR:** Would you agree that being asked a question like: Have you ever had an affair? Is a sensitive and intimate matter?

MS MYENI: I was not there. Chairperson, may I not respond to this question?

ADV HOFMEYR: [No audible reply]

MS MYENI: May I not respond to this question because I do not want to incriminate myself.

ADV HOFMEYR: We have received evidence from Ms Phumeza Nhantsi before this Commission that you
20 conveyed to her that you wanted to use the outcome of the vetting to remove one of the people in the Finance Department of SAA, Ms Lindsay Olitzki. Do you dispute her evidence on that count?

MS MYENI: May I not respond Chairperson in case I incriminate myself?

ADV HOFMEYR: For the record again. And Ms Myeni, if you would like to go there, we can. Ms Nhantsi's affidavit on the score can be found in Exhibit DD2, page 22, paragraph 70. Her version before this Commission is that you told her to get rid of Ms Nhantsi because she failed... Sorry, to get rid of Ms Olitzki because she failed the vetting on account of her dual citizenship. Do you dispute that?

MS MYENI: May I not respond Chairperson in case I incriminate myself?

10 **ADV HOFMEYR:** Ms Nhantsi's evidence was further to the effect that when... Well, she had a conversation, I think it was with Mr Zwane. She felt a bit uncomfortable about this. They were worried that there would be labour issues if this was taken forward and so she did not take it forward. And she said when she relayed that to you, you said that you were not happy about it. Do you dispute that?

MS MYENI: What did you say? Who told... who sent information to SAA that the person is that... Well, did not pass the vetting? Sorry, did you say that?

20 **ADV HOFMEYR:** Yes, sorry. So let me go back a step. The outcome of Ms Olitzki's security vetting was that ...[intervenes]

MS MYENI: Where is it? On the... On the file, is it here?

ADV HOFMEYR: Ms Olitzki's outcome?

MS MYENI: Yes.

ADV HOFMEYR: No, it is not because State Security Agency did not provide us with those documents. But we do have an affidavit of Ms Olitzki confirming that what was communicated to her was that she...

Well, that her dual citizenship was flagged as an issue for her security vetting and she was asked for her attitude in relation to her dual citizenship. So that is the background Ms Myeni.

But what I was putting to you was that Ms Nhantsi gave
10 evidence in this Commission that you, Ms Myeni, said to Ms Nhantsi that you wanted to remove Ms Olitzki on the grounds or following from the fact that she had failed the vetting on account of her dual citizenship. Do you dispute having said that to Ms Nhantsi?

MS MYENI: Chairperson, may I not respond to this question?

ADV HOFMEYR: Is that on the grounds that it may tend to incriminate you?

MS MYENI: Sorry, Chairperson I missed that. There was a
20 bit of delay.

CHAIRPERSON: Oh, she is asking whether that is on the grounds that you do not want to incriminate yourself.

MS MYENI: Yes, I completed the sentence Chairperson. I did.

ADV HOFMEYR: Oh, apologies.

CHAIRPERSON: Okay we did not hear this side.

ADV HOFMEYR: Ms Myeni, because you have raised the issue. I actually do think it is fair to you to read exactly what Ms Nhantsi said on this score. And if... would you like to take up the bundle? It is DD2. So you can have it in front of you.

MS MYENI: Chairperson, I thought there was a letter that Ms Hofmeyr was referring to that came from the State Security that made or communicated the outcomes of vetting.

10 That was the main question that I was asking because I heard Ms Hofmeyr saying it was communicated to her. I thought she is referring to me communicating to her.

CHAIRPERSON: She is going to ...[intervenes]

MS MYENI: Not to Ms Nhantsi. Not to Ms Nhantsi. To Olitzki.

CHAIRPERSON: Okay she is going to clarify that.

ADV HOFMEYR: Yes, let me just be clear. Sorry. And you know, there might have been a bit of a break in the transmission.

20 **MS MYENI:** There was. There was.

ADV HOFMEYR: So what happened is. Ms Nhantsi gives evidence before this Commission about a conversation that she had with you, according to her evidence. And I just think it is appropriate, given that this is a matter that requires clarity.

And in fairness to you Ms Myeni, I completely accept that we should be absolutely clear about it. If we go to Bundle DD2 at page 21 at paragraph 70. This is Ms Nhantsi's affidavit.

Ms Myeni, you may want to get it in front of you. I see you gone to do that.

MS MYENI: Yes, I am doing that. Thank you, Chair. I have got DD2. Phumeza Nhantsi.

CHAIRPERSON: Okay.

10 **MS MYENI**: Sorry, Chair.

CHAIRPERSON: Yes, Ms Hofmeyr. I believe I got it too.

MS MYENI: I have DD2 and I have Phumeza Nhantsi's statements.

CHAIRPERSON: Did you say page 21 Ms Hofmeyr?

ADV HOFMEYR: Page 21. Chair, yes ...[intervenes]

CHAIRPERSON: Page 21. Okay.

ADV HOFMEYR: Now at paragraph 70 at the bottom of that page just before there is a heading, Vetting Result of Ms Lindsay Olitzki that were performed by State Security
20 Agency. And I am reading from paragraph 70 there of Ms Nhantsi's affidavit. She says:

“Ms Myeni told me that the SSA people are still in progress with vetting for top security clearance certificate but they are done with some people.

She added that one of my staff members failed the

vetting due to dual citizenship. She did not show me the results, only told me who it was.

She stressed that the Finance Department is a very sensitive area. Therefore, I cannot afford to have someone who has failed the security clearance.

She suggested the following day I should have an off-site meeting with Ms Lindsay and first update her about the vetting results and secondly give her two options.

10 Either to dismiss her or she could choose an alternative department to work within SAA Group.

I discussed this matter with the acting CEO the following day, raising my concerns about Ms Myeni's instructions as it may lead to SAA facing labour disputes especially when the employees are able to prove that the SSA process was never part of their employment contract when they were appointed by SAA.

20 We then agreed that we will discuss this item at the next Exco meeting and the company needs to compile or derive a policy that will address this and the policy.

I did not arrange any meeting with Lindsay. Ms Myeni called me the same day and asked how the meeting went between Lindsay and I.

I gave her the update and she...”

That is the reference to you, as I understand it in the context.

“...was not happy with it.”

Do you dispute Ms Nhantsi’s evidence on this issue?

MS MYENI: I will not respond Chairperson in case I incriminate myself.

ADV HOFMEYR: Ms Myeni, I would like to move from the involvement of the State Security Agency, both in providing protection services to you and in conducting security vetting at SAA to evidence that has been received in this Commission by former Minister Nene and Minister Gordhan. So that... those are the topics we are going to move to now.

MS MYENI: Yes, Chairperson. I am ready. Sorry, I was just moving this file. I am ready.

CHAIRPERSON: Okay.

ADV HOFMEYR: Now Ms Myeni, Minister Nene gave evidence before this Commission about a meeting that he was called to in November 2015.

CHAIRPERSON: One second Ms Hofmeyr.

ADV HOFMEYR: Oh, apologies.

CHAIRPERSON: I am giving away this file.

ADV HOFMEYR: Yes, you can do so.

CHAIRPERSON: And DD24, can I give it away?

ADV HOFMEYR: Yes, you can.

CHAIRPERSON: Okay alright.

ADV HOFMEYR: We completed our work within there.

CHAIRPERSON: Oh, so we just remain with 34?

ADV HOFMEYR: Yes, indeed.

CHAIRPERSON: Ja, okay alright.

ADV HOFMEYR: Now Ms Myeni, when former Minister Nene testified before this Commission, he gave evidence about a meeting that was called in November 2014 with the former President and yourself. Are you aware of that evidence?

10 **MS MYENI:** May I not respond Chairperson so that I do not incriminate myself?

ADV HOFMEYR: Now his evidence was that that meeting was called after he had shared concerns about your leadership at SAA with colleagues at an ANC Study Group Meeting. Were you present at that meeting?

MS MYENI: May I not respond to the question Chairperson in case I incriminate myself?

ADV HOFMEYR: Now what Minister Nene said is, after he had communicated those concerns at the ANC Study Group
20 Meeting. He surmises that somebody told you.

He does not have actual knowledge of that but he surmises because the next thing that happens is, he is called to a meeting with you and former President Zuma.

I would like to ask you some questions about that meeting. Can you confirm whether meeting took place?

MS MYENI: I do not have... Sorry. I do not have a response Chairperson. May I invoke the privilege of not responding to the question in case I incriminate myself.

ADV HOFMEYR: Minister Nene said that during the course of the meeting, you complaint to the former President Zuma about him. Do you dispute that?

MS MYENI: Chairperson, may I not respond to the question because in case I incriminate myself?

ADV HOFMEYR: Minister Nene said that during that
10 meeting, he said to former President Zuma that you were obstructive and that you played the media. Do you dispute that he said that to President Zuma?

MS MYENI: Chairperson, may I not respond to the question? May I invoke the privilege so I do not incriminate myself?

ADV HOFMEYR: He also said that at that meeting, he told former President Zuma that the board under your leadership had been acting recklessly. Do you dispute that he told that to former President Zuma?

20 **MS MYENI:** May I not respond Chairperson? I would not want to incriminate myself.

ADV HOFMEYR: He also said that he communicated to former President Zuma at that meeting that you should be removed as chairperson of the board Do you dispute that he said that?

MS MYENI: May I not respond Chairperson in case I incriminate myself?

ADV HOFMEYR: He said of that meeting that he also conveyed to former President Zuma that as a result of the crisis situation that was then present in SAA – remember we are in November 2015 – there was a serious threat that the airline would default on its government guaranteed obligations and that that would have a ripple effect to the fiscus and the economy as a whole. Do you dispute that he
10 said that to former President Zuma?

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

ADV HOFMEYR: Minister Nene was quite clear in his evidence before this Commission that he was concerned about your Board. But he has also given evidence in which he has indicated that any recommendation for a new board of SAA at that time, that did not include you, would not pass through cabinet because former President Zuma would not support it. Do you dispute his version on that
20 score?

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

ADV HOFMEYR: Did you and former President Zuma ever discuss the view that Minister Nene conveyed to former President Zuma at that November 2015 meeting?

MS MYENI: I beg your pardon?

ADV HOFMEYR: Did you and former President Zuma ever discuss what Minister Nene had communicated at that November 2015 meeting?

MS MYENI: May I not respond to the question, Chairperson? May I invoke my privilege that I was given by you not to incriminate myself. But, Chair, please allow me to say something which will not invoke the private privilege or maybe respond to the message?

10 **CHAIRPERSON:** What is that?

MS MYENI: It is something, Chair, I would like to just state before you.

CHAIRPERSON: Yes?

MS MYENI: I said something yesterday, Chair, I would like to say it. I am guilty, Chairperson, by association of President Zuma and it appears here there has been very glaring lines to everyone who chooses to make glaring – sorry, who chooses not to distinguish properly between the relationship, the professional relationship and the
20 relationship where a person presides over the Jacob Zuma Foundation. I have been guilty since I assumed office as the Chairperson of the Jacob Zuma Foundation. I am stating this, Chairperson, because a professional relationship and an ordinary relationship, those are two separate relationships.

Therefore, I am just saying this, Chair, because it does bother me and the Chairperson did say if something I feel strongly about, I must put it before the Chairperson. I am still doing the same, Chair, because there has been a narrative that I cannot kill that suggest that being or working for a foundation meant that I would willy nilly and anyhow discuss issues that are not relevant to the foundation anywhere or anytime and it is a lie that somebody can just use proximity to do certain things that
10 are untoward and that are not professional. That also compromises the formal relationship that is written down that talks to issues of working and operational matters of either the Foundation of South African Airways.

And Chair, lastly, may I put it on record that South African Airways was assigned to President Ramaphosa as a Deputy President at the time who was responsible for government business. SOEs that were seen by cabinet to be problematic were all assigned under President Cyril Ramaphosa.

20 But, as you have seen, Chairperson, that all the time whenever there is SAA matter and former Chairperson matter on SAA, I would be seen walking with the President who visited South African Airways in the media and paraded as President Jacob Zuma is the only one who visited SAA. President Ramaphosa, as Deputy President,

responsible for government business, visited South African Airways but you will never see a picture of Dudu Myeni with President Ramaphosa on any media yet I welcomed him and I walked him out, as I did with President Zuma. And President Cyril Ramaphosa was happy when we met at SAA and he really sang praises about the work we had done. That, I believe, that was the statement of confidence because I never worked for his foundation nor did I have proximity because of the foundation-related
10 work.

I am just putting it across to you, Chair, as something that is inside my spirit to share with you. Thank you, Chair.

CHAIRPERSON: Okay. But I must just point out the questions that Ms Hofmeyr was putting to you related to evidence that was placed before the Commission by Mr Nene in regard to a meeting that he said he had with you and former President Zuma. That is where the questions emanated from. Okay, Ms Hofmeyr?

20 **ADV HOFMEYR:** Thank you, Chair. Just before your last interchange with the Chair, Ms Myeni, I had asked you whether you had discussed what Minister Nene had communicated at that meeting with former President Zuma afterwards. I understand you to have invoked your privilege to decline to answer, so I would like to ask the

next question.

Ms Myeni, in the face of that having been communicated to former President Zuma at the meeting with the then finance minister, can you assist the Commission in understanding how, if you did, you managed to persuade former President Zuma to retain you on the board despite what Minister Nene was reckless leadership that risked SAA defaulting on loans?

MS MYENI: Chairperson, do you have the – does the
10 Commission have the minutes of the meeting referred to?

ADV HOFMEYR: I do not believe that there were minutes taken, this was not a minuted meeting. What is your answer to the question whether – on what basis you managed, if you did, to persuade former President Zuma to retain your on the board despite the Minister of Finance having said to him that he was worried that your reckless leadership would risk SAA defaulting on loans?

MS MYENI: May I not respond to this question, Chairperson, so that I do not incriminate myself.

20 **ADV HOFMEYR:** Ms Myeni, former Minister Nene also linked his removal a month later in December 2015 amongst other things to the views he had expressed at that meeting about you to former President Zuma. Do you have any insight as to the reasons why former Nene was removed in December 2015.

MS MYENI: May I not respond, Chairperson, so that I do not incriminate myself.

ADV HOFMEYR: Ms Myeni, are you aware of what happened to the market the morning after former Minister Nene was removed in December of 2015?

MS MYENI: Which market, Ma'am?

ADV HOFMEYR: Well, it was the impact really on the bond yields and the depreciation of the South African currency the next morning. Are you aware of those
10 impacts?

MS MYENI: Chairperson, I need to understand not the – run the rigged markets-related issues, I must get a bit of clarity because there was too much of the rigging of the rand during that time and there was also a lot of other economic-related issues that happened in many other places. So I need to know what is specific about this particular question that when Mr Nene was removed the market performed badly or the rigging? Was it the rigging of the rand? Sorry, was this the rigging of the rand or was
20 it the poor performance of general markets? I need to understand because I am not a finance person.

CHAIRPERSON: Yes, Ms Hofmeyr will respond.

ADV HOFMEYR: This is – in fairness to you, Ms Myeni, an issue that the Commission itself has grappled with and the Commission in fact requested National Treasury to do a

submission for it about this very thing. It has colloquially been called the impact of Nenegate and what the Commission received was an affidavit from the then Director General of National Treasury and this is what is said in that affidavit, that:

10 “The morning after the announcement of Minister Nene’s removal there was an increase in bond yields and a depreciation of the currency as investors re-priced risks associated with investing in South Africa. “

Were you aware that Minister Nene’s removal had that impact?

CHAIRPERSON: Maybe just ...[intervenes]

MS MYENI: May I not respond, Chairperson, to this question so that I do not incriminate myself. The clarity was well-received, thank you.

CHAIRPERSON: Maybe you can just mention, Ms Hofmeyr, the name of the former Director General who deposed to that affidavit.

20 **MS MYENI:** Yes, that was Director General Madondo.

CHAIRPERSON: Okay.

MS MYENI: Thank you, Chairperson.

ADV HOFMEYR: And the other point that is made in that submission before the Commission is that the change in ministers – so the removal of Minister Nene and his

replacement with Minister van Rooyen was – increased the perceptions of risk that the South African Government's commitment to fiscal sustainability was weakening. Were you aware of that impact of the removal of then Minister Nene?

MS MYENI: May I not respond, Chairperson, in case I incriminate myself.

ADV HOFMEYR: Ms Myeni – Chair, I see that we are just before one o'clock and I am about move on so it may be
10 appropriate to take the break now.

CHAIRPERSON: Okay. Okay, let us take the lunch break, we will resume at two o'clock. We adjourn.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Okay are we ready?

ADV HOFMEYR: We are indeed Chair.

CHAIRPERSON: Okay alright, let us continue.

ADV HOFMEYR: Thank you. Ms Myeni before the break we were dealing with the evidence that former Minister
20 Nene had presented before the Commission, about that meeting that he had with you and former President Zuma in November of 2015. I would now like to turn to the evidence that Minister Gordhan gave before the Commission.

CHAIRPERSON: Yes, just before you do that Ms Hofmeyr

I want to indicate that I cannot think of what possible crime Ms Myeni could expose herself to by answering questions relating to that meeting. As I understand from Mr Nene's evidence that meeting was a meeting which where Mr Zuma was seeking to try and help the two of them to resolve some tensions between the two of them. I cannot possibly think what crime she could expose herself to be prosecuted about in relation to the content of that meeting.

So unless her Counsel intends advancing any
10 argument I am inclined to ask her to respond to those questions. Mr Buthelezi?

ADV BUTHELEZI: Thank you Chair. The question that the Chair says he sees no potential exposure to, I think it is inherent in the subsequent questions that followed, one being it was alleged that as a result of that meeting Ms Myeni's advice or impressed upon President Zuma to dismiss Minister Nene that is number 1, number 2, that dismissal subsequently led to at the time the markets. Now it is the questions that follow that are open to –
20 because if she then concedes that she participated in a meeting with Minister Nene and President Zuma and shortly thereafter Minister Nene was dismissed.

It then ventures into the potential that an allegation could be made that it could have been as an allegation currently exists to say it is on the back of her influence on

the President that a Minister was dismissed.

So I think Chair it is the aversion to subsequent questions that a question often is preceded by a plain and a factual question but if you then allow yourself into the terrain of answering that question you then bound yourself to answer all questions that follow because you say yes I confirm I participated in this meeting, yes I was in this meeting. Therefore, things that flow and the allegations that flow from admitting to being present in that meeting
10 you are very stranded in terms of now not being able to deny your participation there, Chair.

CHAIRPERSON: Well you see I think we are all agreed that she needs to deal with each question on its own merits.

ADV BUTHELEZI: Yes, Chair.

CHAIRPERSON: Yes, so it maybe that she might not have reasonable grounds to refuse to answer a particular question but she might have reasonable grounds to answer the next one.

20 **ADV BUTHELEZI:** Yes, Chair.

CHAIRPERSON: Which is a follow up so I think a lot depends simply on whether in regard to each question if one can say they are reasonable grounds.

ADV BUTHELEZI: Yes, Chair.

CHAIRPERSON: But even with that, with what you have

said in mind I would still have the concern that what crime she could expose herself to being charged for is not clear even if she could be said to have had an influence on Mr Zuma. Even if she said you must fire Mr Nene now I cannot know what crime she could possibly be...[intervene]

ADV BUTHELEZI: It is the greatest irony Chair because the very purpose of this Commission is to answer that very same question.

CHAIRPERSON: Well that is what I want you to address
10 to say well this could lead her to that particular crime that is what I want because there can be a number of things that maybe are improper but are not crimes, you see. Some are improper but are also crimes but there may be others that are not proper, that are improper but not crimes. So that is my concern and it arises from seeking to strike a balance between one respecting her privilege to not to incriminate herself but at the same time making sure that we allow that only when it falls within the reasonable grounds that case law talks about and that where the risk
20 of being prosecuted criminally is quite remote that that falls outside the privilege. So it is a question of trying to see where we should strike that balance.

ADV BUTHELEZI: Well Chair maybe you may provide guidance but the difficulty is here. Incrimination may not extend to a criminal prosecution but incrimination may

extend to a point where somebody concedes to participates in an improper conduct which enables you from where you sit to make an adverse finding and that adverse finding against the person made down the line constitutes part of conduct used in evidence in a criminal prosecution even in an unrelated crime but can be used to corroborate certain facts or can be used to draw certain conjecture or circumstantial evidence that may then stand as a bulk of evidence against an individual.

10 So it is a general aversion to saying to what extent can I expose myself given the unknown and what the potential consequences may be and I cannot participate in my own persecution and that is the difficulty.

CHAIRPERSON: Ms Hofmeyr, do you have something to say about this?

ADV HOFMEYR: Yes, I do Chair I have listened carefully to my learned friend. The one thing I have not heard him do is identify a crime that answering these questions could possibly lead to. I have heard about adverse findings
20 being made, I have heard about adverse findings potentially indicating improper conduct but I have not yet heard the identification of a crime and I think that that is something that would weigh will you as you decide whether to exercise your discretion to require an answer.

The second point and it is the final one I wish to

make is on this line between the first seemingly innocuous question to a question where you might get into the realm of an exposure to a criminal charge there is a protection living in the regulations of this Commission. So if you are deciding between you know a series of questions the fourth of which could expose to a criminal charge and you at the third and you happen to cross over to the fourth if an answer is given Regulation 82 of the regulations of this Commission said and I quote:

10 “A self-incriminating answer or a statement given by a witness before the Commission shall not be admissible as evidence against that person in any criminal proceedings brought against that person instituted in any court except and I am paraphrasing now for the crime of perjury.”

So Chair against that back drop it would be the submissions of the legal team that asking Ms Myeni or directing Ms Myeni to answer about that meeting does not on a reasonable basis tend to implicate her in the
20 commission of a crime.

CHAIRPERSON: Okay, Mr Buthelezi.

ADV BUTHELEZI: Yes, Chair the position as it existed at the formulation of the Commission under Rule 82 I would agree with Ms Hofmeyr that that was the initial position but the subsequent amendment that have come through that

enabled the Commission to collaborate with law enforcement agencies in our view invalidates 82 or are at odds with 82 and 82 now as it exists in our view is no longer in effect. We are no longer enjoying what we thought we initially enjoyed under 82 because the subsequent amendments that have come through as promulgated following I would not give you the exact date but it was quite recently.

CHAIRPERSON: January.

10 **ADV BUTHELEZI:** January, at the start of this year.

CHAIRPERSON: Ja I think January or later.

ADV HOFMEYR: These ones were July.

CHAIRPERSON: Oh July.

ADV BUTHELEZI: It was July.

CHAIRPERSON: There were January ones and then July ones.

ADV BUTHELEZI: But the recent ones gave the Commission bigger teeth and the size teeth that the Commission now has in our view no longer give us the
20 protection that we enjoyed previously under 82. So that has not been tested outside this Commission but to ere on the side of safety we are assuming the worst in terms of what those regulations and amendments are to think that if we were to go and rely on a defence of that we were protected by 82 that defence can be invalidated by these

amendments Chair.

CHAIRPERSON: I think somebody might just have to read the provision relating to the sharing of information.

ADV HOFMEYR: I can do so.

CHAIRPERSON: But my understanding is that there is nothing in the provisions that relate to the sharing of information between the Commission and the NPA or law enforcement agencies that says evidence given by a witness in the Commission will be admissible against that
10 witness in subsequent criminal proceedings.

So one has got to read different provisions of the regulations as far as possible in a manner that would make all of them work and if one adopts that approach as I recall that provision simply talks about sharing of information but does not say what the law enforcement agencies may do with the information once they have got it. Obviously they must not do anything that is not permitted by law now one of the things that Regulation 82 says is:

20 “Any evidence that a witness has given in the Commission will not be admissible against that witness in any criminal proceedings.”

That might not mean that the evidence of that witness cannot be used cannot be used against somebody else no if there were two or three people who were involved in a crime and one gives evidence before the Commission the

one who gives evidence that evidence it may well be argued maybe used against the other one, the other person.

But in terms of Regulation 82 it cannot be used against the one who gave evidence and the idea has to be obviously that the drafters of the regulation sort to encourage persons to come forward and give evidence. So the one interpretation to which I am inclined is the one that would say the sharing of information, the provision relating
10 to the sharing of information does not say, does not nullify what Regulation 82 says.

The law enforcement agencies who obtained information from the Commission cannot subsequently present that evidence in court in a criminal case against the person who gave it. They may well use it and present it against somebody else. So if that interpretation is correct then the immunity would still be in tact what it would mean is simply that where you have given evidence you are protected from the NPA or the Police using that
20 evidence in subsequent criminal proceedings against you. They might use it against somebody else but not against you. That is one possible interpretation there may be other possible interpretations.

ADV BUTHELEZI: May I go to another possible interpretation Chair?

CHAIRPERSON: Yes.

ADV BUTHELEZI: It is the one of what we have now observed in recent months where persons testifying at this Commission are arrested days after testifying here and whether correctly or incorrectly so an impression is created that says the basis of your arrest is your evidence at the Commission and it now not once not twice I think it has happened to I think three people who have testified and have subsequently been arrested and what is also a
10 distinguishing factor is that this was not happening pre-July regulations but post July regulations.

We now have a sequence of events where person's come testify at the Commission and then this follows. We are here preceded by media reports saying you are due for arrest in this week. So our aversion to whatever and we do not even know why what the potential charge may be but having observed how the law enforcement agencies have behaved in relation to the Commission and what is now playing out as an interplay between for example sorry to
20 cite but I will cite the issue of Mr Vincent Smith. His charged based on things that relates exactly to his evidence at this Commission.

So we cannot from where we sit take the risk of saying we have got this protection of 82 when we are now seeing something playing out totally different on the

surface and ours now to ere completely on the side of caution to say look we are highly exposed and we want to minimise the level of our exposure in the best way possible and going back to where Chair's comments initiated from on the point of how can this question potentially expose you.

But it can potentially expose you where your admission corroborates the evidence of another or where your admission corroborates certain other things which ultimately two, four questions down the line puts you in a hole. So rather than open yourself up because if you have admitted to a question to say I admit that I was in this meeting then the Chair can now compel you to answer to the contents of this meeting, and once you have stepped into that room then we no longer can invoke and say I do not want to incriminate myself because you have now said you were there and rightly the Chair can now then compel you to say you have already admitted to being there but the safer position is if I say no I am not telling you if I was there or not then I have not given the Chair a basis to say answer because you have not confirmed your presence in that meeting and that is the dilemma Chair. And we sit on different spectrums Chair, Ms Hofmeyr sits on what she needs to do, I sit on what I need to guard against and you sit on what you need to do.

CHAIRPERSON: Yes, yes.

ADV BUTHELEZI: It is this convergence now that is becoming a problem.

CHAIRPERSON: Yes, no I understand of course one does not know what prompts law enforcement agencies to act in a certain way at a certain time but one expects them to act in accordance with the law. If they act or carry out arrests because they believe that people who have given evidence that they can use in court evidence that has been given by
10 witnesses in the Commission against the witnesses that might be there view but the Commission believes that Regulation 82 provides protection.

Of course I must just say that it is a matter of concern where people who are mentioned by witnesses who have come before the Commission and have sort to assist the Commission in its work if we have been mentioned by witnesses who have come forward to the Commission to assist the Commission as having being involved in crime and people who have not themselves
20 come forward to assist the Commission get dealt with in a manner that may give rise to a perception that law enforcement agencies are punishing those who cooperate with the Commission that is a matter of concern because it could discourage other people who want to come to the Commission and tell the Commission about matters that

are being investigated by the Commission if there is a pattern that after you have given evidence before the Commission you get arrested.

So that would be a matter of concern. I have said publically that when certain arrests were made last year which included Mr Agrizzi and no arrest were made of certain other people who had been mentioned by him in his evidence that according to his evidence seems to be very involved in acts of corruption, alleged acts of corruption it was a matter of concern because Mr Agrizzi could easily say well I am no longer cooperating with the Commission fortunately, he continued to cooperate with the Commission.

So but of course we cannot make decisions based on what if the law enforcement agencies misread the law or attach a wrong interpretation of the law one has got to look at the law and determine what it means and then make a decision based on that. Ms Hofmeyr you wanted to respond?

20 **ADV HOFMEYR:** Chair just one submission the privilege against self-incrimination is not a privilege not to get arrested it is a privilege to decline to answer a question if the answer tends on reasonable grounds to expose you to on reasonable grounds to a criminal charge. That is the only question that needs to be answered with respect.

CHAIRPERSON: Yes, okay I am not going to make a blanket ruling but if you revert to that meeting I will look at each question as it comes and Ms Myeni can respond if she invokes the privilege and you – I will then look at each question as it comes.

ADV HOFMEYR: Thank you Chair.

CHAIRPERSON: Sorry Ms Myeni you were following the exchange?

MS MYENI: Yes, Chairperson I was thank you very much.

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

ADV HOFMEYR: Ms Myeni I was going to actually be moving from former Minister Nene's evidence to the evidence that Minister Gordhan gave before the Commission and in particular when he spoke about matters relating to SAA on the 20th of November 2018 before the Commission. Now his evidence was also to the effect that your conduct at SAA risks serious negative impacts for the fiscus. Are you aware of his evidence in that regard?

20 **MS MYENI:** Chairperson may I not respond to the question in case I incriminate myself.

ADV HOFMEYR: He came before the Commission and testified that your efforts to seek to reverse Minister Nene's decision on the airbus swop transaction would likely have triggered debt defaults by SAA due to the pressure that the pre-delivery payments under your

proposed transaction would have placed on SAA's cash reserves. Ms Myeni you will recall that the airbus transaction that was before the Ministry of Finance in 2015. Do you dispute that your efforts would have had this effect on SAA's cash reserves had you been successful in reversing Minister Nene's decision?

MS MYENI: Chairperson may I not respond so that I avoid incriminating myself.

ADV HOFMEYR: Minister Gordhan testified before the
10 Commission that he decided not to reverse Minister Nene's decision despite your application to him for that to be done and he decided not to reverse it for the very real impact he believed it would have on SAA's cash reserves. But then he received a call from former President Zuma asking if he would not reconsider his decision. Did you ask former President Zuma to place that call to Minister Gordhan?

MS MYENI: Chairperson may I not respond to the question in case I incriminate myself.

ADV HOFMEYR: Did you ever discuss with former
20 President Zuma your efforts to seek to reverse Minister Nene's decision on the airbus swop transaction?

MS MYENI: Chairperson may I not respond to the question in case I incriminate myself.

ADV HOFMEYR: Ms Myeni two successive Finance Ministers have testified before this Commission to the

effect that your approach to SAA and its financial stability during particularly the period of 2015 was reckless. Do you dispute that evidence?

MS MYENI: Chairperson may I not respond to the question in case I incriminate myself.

ADV HOFMEYR: Chair I would now like to go back if I may to the Blake's Travel aspect of the BOSASA evidence.

CHAIRPERSON: Yes.

ADV HOFMEYR: Just to summarise where we are
10 because of that interaction things have not flown as schematically as I had hoped but what we traversed in the evidence so far is BOSASA evidence today at least, BOSASA evidence about alleged payments being made and benefits being given because of a particular role that Ms Myeni is alleged to have played in facilitating matters with former President Zuma.

We have then looked at in the context of some of that evidence related to the security installation, we have looked at what happened with the search and seizure
20 operation at the end of last year, we have looked at the State security agencies activities within SAA and then we took that to some of the previous Ministers testimony. I am now going to loop back to BOSASA to complete that aspect and then we will move onto SAA matters I think for the remainder of the afternoon.

CHAIRPERSON: Okay no that is fine.

ADV HOFMEYR: Ms Myeni in order to deal with the Blake's Travel matters you will need that file T18 that I understand you now have with you; could you have that in front of you.

MS MYENI: Yes, I do Chairperson and I thank you very much for arranging for its delivery, much appreciated.

ADV HOFMEYR: Thank you.

CHAIRPERSON: Thank you.

10 **ADV HOFMEYR:** Ms Myeni, Mr Agrizzi apologies Chair, Mr Agrizzi gave evidence to the Commission that BOSASA used Blake's Travel to facilitate travel arrangements for various government officials and people who they believed had influence over and amongst others former President Zuma and I gave the indication previously Chair of where you will find that in his affidavit and the transcript of the 22nd of January 2019.

20 Now Mr Brian Blake who was an employee of Blake's Travel testified before the Commission and he did so on the 29th of July 2020 and just for record purposes I am going to pick up his testimony Chair at the transcript of the 29th of July 2020 at page 196 from line 11. Mr Blake's testimony was that BOSASA had paid for various air tickets and accommodation for you Ms Myeni. Do you dispute that they did that?

MS MYENI: May I not respond Chairperson on the question so that I do not incriminate myself.

ADV HOFMEYR: Ms Myeni what I would now like to take you to are the invoices that Mr Blake provided to the Commission so that I can have your response on each of them. You will find them in Bundle T18 and I would like to start at page 70, seven zero. This is an invoice according to the evidence of Mr Blake that evidences that BOSASA paid R17 759, 60 to enable you to stay at the Sheraton
10 Hotel between the 4th of May 2014 and the 6th of May 2014. Do you dispute that that is the case?

MS MYENI: May I not respond Chairperson to the question so that I do not incriminate myself.

ADV HOFMEYR: They did so again two months later according to the evidence of Mr Blake in July of 2014 and you will find that at page 75.

CHAIRPERSON: 75?

ADV HOFMEYR: Yes, Chair of the same Bundle T18. On that occasion they pay...[intervene]

20 **CHAIRPERSON:** Maybe I just want to say something here just to contrast with the issue I raised about the meeting between involving Mr Nene and Ms Myeni and Mr Zuma. When it comes to this payment I accept fully that Ms Myeni is entitled to invoke her privilege because I can see what it could lead to. So I just want to mention that there are

matters where one can see immediately that this could lead to a criminal charge but then there are others where you struggle to see what possible criminal charge but I just wanted to mention that in passing, okay alright.

ADV HOFMEYR: So this next one is two months later in July 2014 it is at page 75. Mr Blake's evidence was that BOSASA paid for this stay between the 3rd of July 2014 and the 4th of July 2014. Do you dispute Ms Myeni that BOSASA made that payment for you?

10 **MS MYENI:** May I not respond Chairperson so that I do not incriminate myself.

ADV HOFMEYR: I do not want to go to every invoice but I want to summarise and then offer you an opportunity Ms Myeni to respond. We have looked at the invoice in May, we have looked at the invoice two months later in July. Next there are three invoices during the course of August 2014, there are two invoices in September of 2014 and there is one invoice in November of 2014. Do you dispute that on all of those occasions BOSASA made payment for
20 your accommodation at the Sheraton Hotel?

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

CHAIRPERSON: Do you want Ms Hofmeyr to go to the specific invoices or are you happy that she does not go to the specific invoices?

MS MYENI: Yes, I am happy that she does not go to the specific invoices Chairperson.

CHAIRPERSON: Okay, alright.

ADV HOFMEYR: On my count that aggregates to eight accommodations over seven months at the Sheraton Hotel in Pretoria being paid for by BOSASA according to Mr Blake's evidence. Do you dispute that they paid for those stays for you?

MS MYENI: Chairperson may I not respond to the
10 question so that I do not incriminate myself.

ADV HOFMEYR: Mr Blake's evidence was that the accommodation was not confined to your stays at the Sheraton in Pretoria they included the Southern Sun Beverley Hills in July of 2014 and just for the record Chair unless Ms Myeni wants us to go there that can be found in T18 at page 79 and they also paid for you to stay at The Radisson Blu in Newlands Cape Town in February 2015 and that for the record is to be found at T18 page 90. Do you dispute that BOSASA paid those additional invoices on
20 your behalf?

MS MYENI: May I not respond Chairperson so that I do not incriminate myself.

ADV HOFMEYR: The benefits according to Mr Blake's evidence that BOSASA gave to you were not confined to covering your accommodation expenses over the period of

2014 and 2015 but also plane tickets for you. These are tickets throughout 2014, I will take you to one or two but I am going to summarise first they were plane tickets from Johannesburg to Nelspruit, from Durban to Cape Town, from Durban to Johannesburg, from Cape Town to Johannesburg, from Cape Town to Durban, from Johannesburg to Durban and from Johannesburg to East London and Durban to Johannesburg. And let us just go to one of them so that we can have your response on it. You
10 can find that in Bundle T18 at page 73.

MS MYENI: I have it Chairperson.

ADV HOFMEYR: So this reflects an item of South African Airways there is particular ticket number, the passenger indicated on the invoice is Dudu Myeni, the route is Johannesburg, Nelspruit, Johannesburg. The date is the 29th of May 2014. Do you dispute Mr Blake's evidence that BOSASA paid for this plane ticket for you?

MS MYENI: May I not respond Chairperson so that I do not incriminate myself.

20 **ADV HOFMEYR:** Do you dispute any of the remaining invoices as having being paid by BOSASA for you according to Mr Blake's evidence?

MS MYENI: May I not respond Chairperson so that I do not incriminate myself.

CHAIRPERSON: Ms Hofmeyr just for the record tell me

where the others are to be found?

ADV HOFMEYR: Certainly let me give the full record so the one we looked at was Exhibit T18 page 73, the next one is T18 page 76, the third is T18...[intervene]

CHAIRPERSON: Hang on.

ADV HOFMEYR: Oh apologies Chair I am going too fast.

CHAIRPERSON: Okay right continue.

ADV HOFMEYR: The next one is at page 80, eight zero of T18.

10 **CHAIRPERSON:** Yes.

ADV HOFMEYR: The next one is at page 82 of T18.

CHAIRPERSON: Yes.

ADV HOFMEYR: The next is at page 83 of T18.

CHAIRPERSON: Yes.

ADV HOFMEYR: Then we jump a bit to page 88 of T18.

CHAIRPERSON: Just one second, yes.

ADV HOFMEYR: And then over the page at T18 page 89.

CHAIRPERSON: Those are just air tickets?

20 **ADV HOFMEYR:** Those are just air tickets so I tried to group them schematically all be it that they are in some sense muddled up in there ordering. We did first accommodation at the Sheraton in Pretoria.

CHAIRPERSON: Yes.

ADV HOFMEYR: Then we did accommodation at two other locations Southern Sun and Radisson Blu.

CHAIRPERSON: Yes.

ADV HOFMEYR: Then we moved to airplane tickets.

CHAIRPERSON: Yes, okay at some stage will there be an attempt to say how much they totalled?

ADV HOFMEYR: Yes, certainly.

CHAIRPERSON: Okay, alright.

ADV HOFMEYR: And then Ms Myeni I would like to ask you why it is that BOSASA was paying for you to stay at these hotels and fly around the country?

10 **MS MYENI:** Chairperson may I not respond so that I do not incriminate myself.

ADV HOFMEYR: Ms Myeni in the absence of any evidence from you that could explain a relationship that entitled you to receive those benefits from BOSASA I want to put it to you that the fact that these payments were made is supportive of Mr Agrizzi's evidence before this Commission that these benefits were given to you because of the influence that you were understood to be able to exert. Do you dispute that?

20 **CHAIRPERSON:** It looks like there is a disconnection again.

MS MYENI: So that I do not incriminate myself.

CHAIRPERSON: I am sorry we had lost you now we hear you, did you hear everything? Did you hear the question Ms Myeni? She cannot hear.

ADV HOFMEYR: We seem to have a bit of an interruption.

MS MYENI: Yes, Chair.

CHAIRPERSON: Can you hear me now Ms Myeni?

MS MYENI: I heard the question Chair.

CHAIRPERSON: Okay alright.

MS MYENI: Yes, I heard the question Chair and I responded.

CHAIRPERSON: And what was the answer?

MS MYENI: I did respond to the question.

10 **CHAIRPERSON:** Oh just repeat the response because I did not hear it?

MS MYENI: The answer was may I not

CHAIRPERSON: Oh, she gets cut off again.

ADV HOFMEYR: Chair I have been informed that the issue is a bandwidth issue it happens intermittently it is on Ms Myeni's side so there is nothing we can do sitting here but it has been restored previously.

CHAIRPERSON: Yes.

20 **ADV HOFMEYR:** So maybe we wait a few more seconds and if not we could take an adjournment.

CHAIRPERSON: Ja.

ADV HOFMEYR: Thank you.

CHAIRPERSON: No that is fine I am sure she is going to come back. If you are back if you can hear us Ms Myeni just tell us?

ADV HOFMEYR: Chair what we are going to now try and do is just restart the session, the zoom session because that sometimes stops. So if we could request just a short adjournment to facilitate that?

CHAIRPERSON: Okay, alright, we adjourn.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: I understand we are able to continue now.

ADV HOFMEYR: Thank you Chair.

10 **CHAIRPERSON:** Okay.

ADV HOFMEYR: Ms Myeni can you hear us?

MS MYENI: Yes very well thank you.

ADV HOFMEYR: Thank you. Ms Myeni before we lost connection with you I had put it to you that in the absence of any explanation from you that would give this commission insight into why BOSASA was making these payments for you routinely between the period of 2014 and 2016. There is credence added to Mr Agrizzi's version that these payments were made because of the influence that BOSASA believed
20 you had in respect of former President Zuma. Do you dispute that?

MS MYENI: May I not respond Chairperson so that I do not incriminate myself.

ADV HOFMEYR: Ms Myeni the total value of these various payments that Mr Blake from Blake's Travel has testified

before this commission were paid on your behalf by BOSASA is amount of R101 576.67. Do you dispute that you received a benefit of that amount from BOSASA in the period 2014 to 2015?

MS MYENI: May I not respond Chairperson so that I do not incriminate myself.

CHAIRPERSON: Are you able to provide any legitimate reason why BOSASA would have spent these amounts on your behalf?

10 **MS MYENI**: May I not respond to you Chairperson.

CHAIRPERSON: In order not to incriminate yourself.

MS MYENI: Just for – sorry.

CHAIRPERSON: In order not to incriminate yourself.

MS MYENI: Sorry Chairperson.

CHAIRPERSON: I am saying are you...

MS MYENI: Correct Chairperson.

CHAIRPERSON: Okay no that is alright.

ADV HOFMEYR: And then just...

CHAIRPERSON: Ms Hofmeyr.

20 **ADV HOFMEYR**: Thank you. Just for the record of that R101 576.67 R21 660.00 of it was spent on the travel, the flights, the air tickets and R69 916.00 on accommodation. Ms Myeni Mr Blake also testified that in 2014 the Hawks had started to investigate the BOSASA travel benefits with respect to various government officials. And part of that

investigation involved cloning Blake's Travels hard drive with all of its customer information on it. Are you aware that Mr Blake gave that evidence before the commission?

MS MYENI: May I not respond Chairperson so that I do not incriminate myself.

ADV HOFMEYR: Ms Blake also testified and Chair just for the record you will find these parts of his testimony in the transcript of the 29 July 2020 from page 198.

He also testified that he had deposed to an affidavit
10 for the Hawks and was prepared to testify about what he knew regarding these benefits that you had received but that the Hawks had then suddenly informed him that the case had "disappeared".

Can you assist the commission in relation to those facts? Do you have any basis for disputing them?

MS MYENI: May I not respond to the question Chair to avoid self-incrimination.

ADV HOFMEYR: And then finally Mr Blake testified that in 2019 after Mr Agrizzi had testified Mr Blake followed up with
20 the Hawks about his cloned hard drive and was informed that the hard drive had been stolen or had disappeared from Hawks custody. Again Ms Myeni do you have any insight that you could provide to the commission or any evidence that you can make available to us to dispute that?

MS MYENI: Clarity – the disappearance or – of the

information from the Hawks and my involvement and what I need to dispute what is it that I have got to dispute/

ADV HOFMEYR: What I am asking is if you have...

MS MYENI: When somebody says the information

CHAIRPERSON: I think there is a little bit of disconnection.

Can you hear me Ms Myeni.

MS MYENI: Yes. There was a disconnection Chair. I am back now.

CHAIRPERSON: Yes I think just – just...

10 **MS MYENI**: Yes very well Chairperson.

CHAIRPERSON: Just start your response afresh because we heard some parts but I think we did not hear some parts of your response.

MS MYENI: In other words Chair I was asking for clarity.

CHAIRPERSON: These technical challenges are really problematic. We cannot hear you from this side Ms Myeni. Maybe you do hear us.

MS MYENI: To say when they have – what is it also I cannot hear you. Chair I can hear you very well.

20 **CHAIRPERSON**: Oh you can hear us? We cannot hear you. Now I can hear you but as you give your response you get cut off. So I do not know before lunch you know the – everything seemed to be smooth. I do not know whether there is something that should – should not be used for too long or what. We – we – I think we will try again. Let us try

again Ms Myeni. Each time you start giving your response a disconnection – a disconnection happens. So just try again to give your response again. I think she ...

MS MYENI: I need to assist the commission about disappearance of what is it that I can assist with when the Hawks say the – their information disappeared and I do not know Blake said that Hawks said that – so what is it that I have got to respond to? That is what I am trying to ask Chair. I need clarity in other words.

10 **CHAIRPERSON:** Okay no that is fine. Ms Hofmeyr.

ADV HOFMEYR: Thank you Chair. Ms Myeni I completely understand your request for clarity. It is simply and if you say I have no knowledge of those allegations at all that would certainly be an answer you could give. What I am seeking to do is give you an opportunity that if you happen to have some information that you thought was relevant to indicate that what Mr Blake had said was false we would certainly want that to come before the commission. So it is just an opportunity to say to you can you – do you have any
20 evidence that indicates that what he has said is not correct?

MS MYENI: May I not respond to this question Chair.

CHAIRPERSON: Okay.

MS MYENI: To avoid self-incrimination.

CHAIRPERSON: Okay.

ADV HOFMEYR: Chair I would then – that completes the

Blake's Travel evidence. And so now I would like to go if we may to – back to South African Airways actually and matters arising there?

CHAIRPERSON: Okay before you do that. So this has completed the BOSASA related evidence questions?

ADV HOFMEYR: Yes.

CHAIRPERSON: Is that right. Okay Ms Myeni with regard to BOSASA I just want to say this and you can – you can say that you do not have any comments or you do not want to
10 say anything that is fine.

I just want to say that the – the fact that you have not responded to most if not all the questions relating to BOSASA and to Mr Agrizzi's evidence that was put to you. Mr Le Roux's evidence about the security installations and the – Mr Agrizzi's evidence relating to the meeting at the Sheraton may well make anyone who has been following the evidence to ask the question what relationship was there between BOSASA or Mr Watson or Mr Agrizzi and Ms Myeni and or Mr Zuma that made BOSASA spend the amounts that Mr Agrizzi
20 spoke about because a lot of that evidence has not been denied in your oral evidence.

What is it that made BOSASA spend the kind of monies that according to Mr Richard Le Roux they spent I think close to half a million at your residence in Richards Bay in terms of security – security installations. That made

them spend the kind of money they spent on you in regard to travelling and accommodation.

So in other words it would make somebody ask that question to say why would a company spend so much money on somebody who does not work for it and who does not seem to have been conducting any business with it and so on? And of course when I evaluate the evidence that is before me and I need to mention this to you as part of being fair to you.

10 When I evaluate the evidence before me to try and establish what happened I will be having this evidence of these payments without any denial from you or any explanation to say no but these payments there was nothing wrong with they were legitimate. This is what they were about – about the payments for air tickets and payments for accommodation.

I will be evaluating evidence in circumstances where I will not have your evidence to say no there was nothing wrong with these – with BOSASA paying for these air tickets
20 and paying for accommodation because of a, b, c, d. And if there is no evidence that gives an explanation on these things it might be difficult not to accept the reason being advanced by Mr Agrizzi just to mark because Mr Agrizzi says BOSASA spent the monies they spent on you for a particular reason that he has given.

So I am just mentioning that so that you understand the impact of there being no answers from you on – or evidence from you that either denies or explains some of these things. You understand?

MS MYENI: I do understand Chairperson.

CHAIRPERSON: Okay thank you. Ms Hofmeyr.

MS MYENI: Is the Chairperson wanting me to make – to comment or the respond?

CHAIRPERSON: Well I just wanted you to be alert what the
10 implications are. That is what I wanted. Did you want to say something? You do not have to comment but if you want to comment I can listen.

MS MYENI: With respect Chairperson thank you for your – the clarity you have made in relation to the BOSASA matters and all what the Chairperson has alluded to.

Chairperson I think also I need to clarify that. When I say I would not like to comment or to respond to a question that is put before me Chairperson it does not mean admission of guilt nor admission of wrong doing.

20 **CHAIRPERSON:** Yes.

MS MYENI: So that if I say I do not want to incriminate myself people or any other listener or it is placed on record that when I do not say anything about what is put before me I am and I have in another – during another time I have responded.

Like for instance there is an affidavit – an affidavit I sent – I submitted to the commission but Chairperson at a – at the right forum if I am charged I will be able to give proper responses that are not muddied by – by any other narrative that is – is – has been happening in the country.

Chair with respect as well in my submission that I made before you – before coming into the – to this commission I referenced your comments regarding BOSASA and I am sure the Chairperson has been able to read the
10 comments I made.

CHAIRPERSON: I have...

MS MYENI: When somebody is – sorry Chair.

CHAIRPERSON: I have read yes.

MS MYENI: That Chairperson somebody would be testifying not mentioning my name but my name will be drawn in into that particular person's evidence that he is putting to say oh [African language] you know like [African language] when a person has not mentioned my name and then the person gets led into mentioning my name.

20 The classical example is Vincent Smith. So I am saying Chair let me remain with my silence as the privilege been given to me by your good self-Chair so that I do not incriminate myself.

And then I get into a place where – or a forum where I will be able to clear my name on things that have been said

at this commission or even by the media.

So Chairperson maybe I should just say thank you very much but I think I will continue with the preference that I have made.

CHAIRPERSON: Yes.

MS MYENI: To say I would rather

CHAIRPERSON: Yes.

MS MYENI: Not respond to some of the things that have been put before the commission. Yes Chair.

10 **CHAIRPERSON:** No, no thank you Ms Myeni. I appreciate that and what I said was not meant to say change your view. It was simply to – to make sure that you are understand the implications. Because sitting here if I like I can sit here and just keep quiet even if there is something that I am thinking and keep quiet.

But the other approach which I prefer is to articulate what is going on in my mind because then it gives you an opportunity to know what is going on in my mind and put your side of the story and influence me in regard to a certain
20 issue so that I can listen to everybody.

Otherwise if I like I can just keep quiet and you might then think I am not thinking anything but I prefer to put matters in front of you to say there is this issue what do you say about it? You get a chance to address it. It does not mean I have made up my mind.

It just means I want to hear what you have to say about it so that if I make a finding about it you have had a chance to have your say on it. You understand?

MS MYENI: Thank you very much Chairperson.

CHAIRPERSON: Ja.

MS MYENI: And it is greatly appreciated.

CHAIRPERSON: Yes okay alright. Ms Hofmeyr you may proceed.

ADV HOFMEYR: Thank you Chair. Ms Myeni I would now
10 like to take us back to SAA if I might? You recall that on
Wednesday we left SAA matters really at the end of 2014
after quite I would say tumultuous year at SAA given the
factions that had developed in the board. We saw the report
that the DPE had done about that. We traversed the
complaints that six board members had made against you
and your responses to them. And we culminated with the
decision of then Minister Brown to retain you and Ms
Kwinana on the board in October and the rest of the other
board members left and you were joined on the board as I
20 understand it by Dr Tambi and Mr Dickson.

But I want to focus in a little bit further in 2014 because at the time where there was that conflict amongst the board members as we saw evidence in the letters that we looked at we have evidence before the commission that you engaged the services of Werksmans Attorneys to provide

advice on the issues that you were having with the board. Is that correct?

MS MYENI: May I not respond Chairperson so that I do not incriminate myself.

ADV HOFMEYR: Now what Werksmans did is Chair we have received an affidavit from Mr Manaka at Werksmans which we can go to and just enter into the exhibit if we may – enter into the record as an exhibit. It is actually the last document that has been included in Ms Myeni's Bundle DD34[b] and it
10 is under Tab 43 and it starts at page 1977.

CHAIRPERSON: I have got it.

ADV HOFMEYR: Thank you Chair if I could request that we enter this...

CHAIRPERSON: Let us check if Ms Myeni has got it.

ADV HOFMEYR: Yes certainly.

CHAIRPERSON: Have you got it Ms Myeni?

MS MYENI: I am going to it Chairperson. I just would like to check if this document – 1977?

CHAIRPERSON: Ja the page is 1977.

20 **ADV HOFMEYR:** Of DD34[b]

MS MYENI: 34[b]

CHAIRPERSON: The bundle that has got your affidavit. 34 – DD34[b].

MS MYENI: Chairperson it ends on – it ends on page 1960.

ADV HOFMEYR: Oh I know why that is. That is because

the updates have been sent via email since Wednesday.

CHAIRPERSON: Oh okay.

ADV HOFMEYR: And we are going to encounter the same difficulty.

CHAIRPERSON: Okay.

ADV HOFMEYR: Chair I can do this part of the evidence without reference to Manaka's evidence – affidavit.

CHAIRPERSON: Okay.

ADV HOFMEYR: So let us rather do it that way.

10 **CHAIRPERSON**: Okay.

ADV BUTHELEZI: Sorry Chair.

CHAIRPERSON: Oh sorry. Sorry

MS MYENI: Sorry – sorry Chairperson I was asking if it was emailed as a Rule 3.3 to us when Mr Manaka was presenting to the commission?

ADV HOFMEYR: No Ms Myeni it was not because Mr Manaka has not presented to the commission. He prepared this affidavit for your evidence and that is why it was provided to you when we received it which was – I have lost
20 track of the days – today – we got it on Wednesday the 4th November so it was sent through on that date to your attorneys. So we only received this about two days ago and that is why I intended to traverse it with today.

CHAIRPERSON: Okay I think your counsel wishes to say something Ms Myeni. Mr Buthelezi.

ADV BUTHELEZI: Sorry Chair.

MS MYENI: Thank you Chair.

ADV BUTHELEZI: We have this affidavit. We received this morning.

CHAIRPERSON: Yes.

ADV BUTHELEZI: On our arrival.

CHAIRPERSON: Yes.

ADV BUTHELEZI: And this affidavit presents us with several challenges. And if I would like to go to the affidavit with you
10 Chair starting at paragraph 3. It says the following under the heading Purpose of Affidavit.

“I have been requested by”

Oh sorry it is the affidavit of Mr Manaka.

CHAIRPERSON: Yes.

ADV BUTHELEZI:

20 “I have been requested by the State Capture Commission legal team working on matters pertaining to South African Airways SOC Limited [SAA] to provide it with an affidavit detailing the circumstances which culminated in the issue and the payment of certain invoices during 2014.”

Then I skip I go to paragraph 6 and then I will go to paragraph 7 and 7.1. It says:

“On Sunday 30 March 2014 I received a

telephone call from Advocate Lindi Nkosi Thomas SC a former member of the SAA board. Advocate Nkosi Thomas advised me that then chairperson of SAA board Ms Myeni – Ms Dudu Myeni {Myeni} required an opinion on a number of issues and would be contacting me directly in this regard.”

Paragraph 7.

10 “On 31 March 2014 following the telephone call from Advocate Lindi Nkosi Thomas I received a call from Ms Myeni during which she advised that”

7.1

“She in her capacity as chairperson of the SAA board required the advice relating to her powers and duties and responsibilities.”

20 Now Chair in my understanding of the law this seeks to violate client attorney privilege. How it is that the commission can write to an attorney and ask for information that this person had consulted.

Now Chair I will refer you to the leading authority Chair on – on – in this country here a company – A company and Others versus The Commission of South African Revenue Services in supporting case where they say the following:

“1. The requirements to claim legal privilege is the following:

The legal advisor must have been acting in a professional capacity at the time.”

So Manaka says he is contacted in his capacity as a legal person.

“2. The advisor must have been consulted in confidence.

10 3. The communication must have been made for the purpose of obtaining legal advice. The legal requirements of the – of client attorney privilege.”

Now I am saying to you Chair this is sacrosanct in the legal space and we cannot comprehend how this commission Chair and by extension yourself then can venture into the space where an attorney is now on record saying:

20 “I have been asked to give evidence about the circumstances where the former SAA chairperson asked me about legal advice.”

We saying Chair this now then brings the proceedings into serious disrepute to have such an affidavit. Now two problems with this affidavit that continue Chair. This affidavit if you go the back of the page is deposed to on the 4th day of November. The 4th day of November we were

here testifying.

The confusion that then arises is to say why do we have an affidavit while the witness is on the stand being deposed to while she is giving evidence? Are we ambushed with this evidence? When would we have consulted? And it is not the only one Chair.

Two affidavits referred to today are affidavits deposed to this week, this week. The affidavit of Le Roux was deposed to on the 2nd. The affidavit of Mr who else?
10 The other Captain Nevin his affidavit is deposed to on the 3rd talking about incidents that happened last year when they said they did an inspection.

Now sinister as well we have got a situation with respect to counsel she seeks to amend the affidavit of Mr Bezuidenhout from the Bar about a contradiction that emerges on the dates and she says no this must definitely be a mistake, but she knows legally that is not how you amend an affidavit and she throws this into the evidence and says: The evidence – the commission must accept this as a bundle or an annexure.
20 However but these are the problems that emerged. We are registering Chair, for purposes of this hearing, extreme prejudice, extreme prejudice that has been going on, even until now.

The last bundle that Ms Myeni has to deal with was delivered to her now. Now, during lunch time. And the

Commission has had knowledge of her attendance for the longest time.

And we have to continuously bend over backwards and accommodate inefficiencies that emanating from the other side.

And I ask this one last question Chair. In which forum in this year – country, which court would allow one litigant to behave the way that the evidence leaders have behaved here?

10 It has never happened Chair where a witness is on the stand and the one other party is allowed to give them affidavits while they give their evidence. It has never happened.

CHAIRPERSON: Well, let me start with the – your last concern. Up to now, I did not hear any concerns relating to the lateness of any affidavits.

And the reason I am mentioning that is simply that one knows that between colleagues there is accommodation. You accommodate one another.

20 Obviously, somewhere you are entitled – everyone is entitled to draw a line but, you know, sometimes you accommodate one another. So I have not had any issues about – any complaints about the lateness of affidavits.

But where there are real concerns because the affidavits have been made available late. You know, those concerns

need to be looked into properly.

With regard to attorney-client privilege. I will hear what Ms Hofmeyr may have to say but I wonder whether the problem that arises – that may arise in invoking it, would not be that the privilege did not attach to Ms Myeni personally because the privilege related to her, in her official capacity as chairperson of the board at the time.

So that once she is no longer chairperson of the board, the person who is chairperson of the board at the time when
10 such an affidavit is sought, is the person who could object rather than the person is no longer in that position. So there may be that issue.

But with regard to the question of the lateness, I think that may need to be looked at.

ADV BUTHELEZI: Sorry, Chair.

CHAIRPERSON: Ja.

ADV BUTHELEZI: May I just give you a few pointers? I think the reason why that the lateness issue only arises now. We have not been – we tried our very best not to be
20 obstructive.

CHAIRPERSON: I accept that, ja.

ADV BUTHELEZI: [Indistinct]

CHAIRPERSON: I accept that.

ADV BUTHELEZI: But if we now look at a string of ...[intervenes]

CHAIRPERSON: Ja.

ADV BUTHELEZI: ...of incidents ...[intervenes]

CHAIRPERSON: Ja.

ADV BUTHELEZI: ...it then brings us to a point to say.

CHAIRPERSON: Ja.

ADV BUTHELEZI: I think we have been very understanding in that regard.

CHAIRPERSON: Ja.

ADV BUTHELEZI: And I think to be now saying, client must
10 now go to this affidavit that she does not have and we ourselves only received this morning.

CHAIRPERSON: H'm, h'm.

ADV BUTHELEZI: It is the last hour of the hearing.

CHAIRPERSON: No, no, no. When I said I had not had any complaints about the lateness. I did not mean that as criticism to you.

ADV BUTHELEZI: Yes.

CHAIRPERSON: Actually, I meant to say. Probably it is because you were trying to accommodate one another as
20 colleagues. It is meant as criticism at all. Ms Hofmeyr, do you want to say anything?

ADV HOFMEYR: Yes, certainly Chair. Let me begin with the privilege point because my learned friend began with it and pick up Chair on the point that you made. Indeed, the situation is such that this memorandum was procured from

Werksmans by Ms Myeni when she was chairperson in April of 2014.

It is work that Ms Myeni – that Werksmans did and Ms Myeni required SAA to reimburse her full on the basis that the memorandum had been presented to the board and had been procured for the benefit of SAA.

The consequence of that is that it is SAA's privilege. It is not Ms Myeni's privilege and there have been engagements with SAA in respect of which they consented to
10 the production of the memorandum.

Mr Manaka at Werksmans was very careful to confirm that that privilege, the holder of the privilege SAA was such that they were happy with him traversing the matters in the affidavit. So privilege is not an issue in my submission.

I then want to address the question of lateness. I began on Wednesday, I think it was, to reference some of the history of the engagements with Ms Myeni.

And the point that I would like to emphasise there is. The Commission has been tried for many... Well, it is more
20 than a year now to engage Ms Myeni because our investigations within SAA was so critically relevant to her and her position and it was essential for us to obtain her version to our current investigations.

So those engagements started in 2019. There were repeated invitations for Ms Myeni to meet with the

Commission initially to discuss what we were investigating. To give her an opportunity to assist us with her version.

She was asked repeatedly when those meetings were declined to give an affidavit to the Commission and numerous correspondences following up, will it be forthcoming.

Until Chair, you issued the Section 10(6) directive to Ms Myeni which you did on the 9th of October. Other than the affidavit in response to Mr Agrizzi which we have looked
10 at already, there was no affidavit forthcoming from Ms Myeni.

So from the point of view of earlier engagement on issues, certainly the Commission has endeavoured from more than a year ago to be engaging with Ms Myeni.

So let me be move to why we get to where we got to on the 4th of November and the bundle. Chair, you will have seen in many of the proceedings of the Commission. We are running against the clock and we do not have control over the timelines that third parties have in coming back to us.

And sometimes, we do get things late in the day but we
20 have one chance and the Commission's work is about to end and so what we endeavour to do is, where we do get things late, we make them available as soon as possible.

Now importantly, there are two different types of engagement with witnesses. There are witnesses who come really keen to tell their story and often early on ask for the

bundle which will be presented and dealt with in their evidence so that they can prepare.

At no point, prior to Wednesday of this week, was there a request on behalf of Ms Myeni or her lawyers to be provided with any of the bundle that would be presented to her.

I must be clear. There was a request. I think it is a few weeks ago. I can get the relevant correspondence if it becomes pertinent. Where Ms Myeni new attorneys,
10 because she has moved attorneys, requested us to provide them again with all the 3.3 notices that Ms Myeni had received and the underlining affidavits.

We indicated to them that Ms Myeni would have those in her possession. We have already provided them on one occasion previously. We suggested that they engage her to obtain the documents.

And we furthermore said, if they in doing so discover any that are missing, we then stand ready to send on a second occasion those documents but we did not ever
20 receive an indication that there was something missing. The only thing we did receive was the response to your 10(6) directive.

So when we have a situation where we get affidavits late in the day, it has happened on many occasions in this Commission that the affidavit is presented to the witness. It

is another version.

The witness is given an opportunity if there is a need for an adjournment or a consideration of it, to take the time to do so but at most, it is another version in respect of which they now have the opportunity to respond to that version.

So again I want to emphasise. This is nothing peculiar about Ms Myeni, what has transpired this week. It has happened on many previous occasions with witnesses. It is a function of the fact that we do not control the timelines
10 against which third parties who are presenting evidence to the Commission can produce it for us.

And when we do have the fortune of a witness before the Commission with little time left in which to complete the work, we endeavour to put whatever information we have received, versions we have received from others to the witness for their comment.

So Chair that is just a background on privilege and then why we got to where we are today and certainly explaining the lateness, why it has arisen and the efforts, certainly as
20 soon as we were in receipt of them, to get them to the attorneys as quickly as possible.

There is a process where they have be paginated but then they get across. Thank you, Chair.

CHAIRPERSON: Well, Mr Buthelezi. In terms of trying to find a way forward in regard to this affidavit. Have you got

any ideas?

ADV BUTHELEZI: No, Chair. I think in as far as the evidence leader insists that this affidavit be admitted and to may have it. The problem we have got is the client has not seen it and she does not have it.

So, but she said she will proceed without it and that is okay. The extent of our complaints to you Chair is just to register our prejudice.

CHAIRPERSON: Yes.

10 **ADV BUTHELEZI:** So that you note our prejudice in these proceedings.

CHAIRPERSON: Ja.

ADV BUTHELEZI: And we still proceed.

CHAIRPERSON: Yes.

ADV BUTHELEZI: Thank you, Chair.

CHAIRPERSON: Yes. How long is this affidavit of Mr Manaka, Ms Hofmeyr?

ADV HOFMEYR: Chair, it is 20 pages but I do want to emphasise the point. You see, we met some time ago with
20 Werksmans and there has, understandable, been a delay in production of the affidavit.

CHAIRPERSON: H'm?

ADV HOFMEYR: That is why the documents actually reference the underline work product like the opinion which we received from SAA and which was in the bundle from

Wednesday when Ms Myeni received the bundle.

So I can deal with this evidence without the necessity of going to the affidavit but of similarly, we have absolutely no difficulty with some arrangement where we do not deal with it now, we admit it later but it is a 20-page affidavit.

CHAIRPERSON: Yes, I am just concerned if she has not had a chance to read it, that is Ms Myeni. Of course, if – it may be that if you tell her what Mr Manaka’s version is about the matters that are covered in the affidavit, it may be that
10 she will say she prefers not to answer.

But preferable, one would prefer that she had the chance to read it first. I think Mr Buthelezi is keen not to obstruct the proceedings or delay the proceedings but he just wants to place on record their concerns as well, at the same time.

ADV BUTHELEZI: Indeed so Chair.

CHAIRPERSON: H’m. So one way is to – one approach is to deal with other matters and when they are dealt with, adjourn, give her a chance to go through it. She might need
20 30-minutes and then she is ready. I do not know what a fast reader she is. But if she reads fast, she might be able to.

Another option is to ask her to respond to certain questions by way of an affidavit after reading it which she can send to the Commission by a certain date. That would be another way.

ADV HOFMEYR: Indeed.

CHAIRPERSON: Ja. You have no problem with that?

ADV HOFMEYR: I have absolutely no difficulty with that. What might even be useful is, without reference to the affidavit ...[intervenes]

CHAIRPERSON: Yes.

ADV HOFMEYR: ...to take her to the underline documents.

CHAIRPERSON: Ja.

ADV HOFMEYR: So that Ms Myeni has a sense of the
10 issues arising from the documents.

CHAIRPERSON: Yes.

ADV HOFMEYR: And then to facilitate an opportunity in due course.

CHAIRPERSON: Ja. Yes.

ADV HOFMEYR: Or an affidavit responding to Mr Manaka to be produced. That should – certainly, the legal team would have no difficulty with that.

CHAIRPERSON: Yes, yes. Okay. I think what should be done, therefore, is to give you a chance to inform her of the
20 real issues or underline documents. If – without asking her questions or if you ask her questions, she must feel free to say: I rather prefer to deal with it after I have read the affidavit. Then that can be done. Ms Myeni, have you been following the discussion?

MS MYENI: Yes, Chairperson.

CHAIRPERSON: Yes. There are two or three possibilities. One possibility is that Ms Hofmeyr will not ask you about this affidavit now but will ask you about other matters and when she is done, we could adjourn for 30-minutes or so to allow you to read the affidavit and then we resume after that and she can ask you questions. That is scenario 1.

Scenario 2 is that she does not ask you questions on this affidavit today but she sends you, through your lawyers, questions that you must look at and then you prepare an affidavit after you have read this affidavit. You then respond to those questions by way of an affidavit. That is scenario 2.

Included in Scenario 2 is that, if she wishes to alert you to certain things connect with this affidavit now, she can alert you so that when you respond later, you have the background. You understand the issues. I think it is those two scenarios, really.

ADV HOFMEYR: Indeed, Chair.

CHAIRPERSON: Have you got a preference of which one you prefer Ms Myeni?

20 **MS MYENI:** The second one is much more preferred Chairperson.

CHAIRPERSON: Is the second fine?

MS MYENI: Because I need to read ...[intervenes]

CHAIRPERSON: Ja.

MS MYENI: ...that particular 20-page affidavit.

CHAIRPERSON: Yes, ja.

MS MYENI: And as well as other related documents.

CHAIRPERSON: Ja.

MS MYENI: And get a sense as the Chairperson suggested.

CHAIRPERSON: Ja.

MS MYENI: Scenario 2 is much more preferable Chair.

CHAIRPERSON: Okay. No, that is fine. So let us go with that route. And then Ms Hofmeyr, if you do have things that you want to bring to her attention in connection with that
10 affidavit for her benefit, so that when she deals with questions later in terms by way of an affidavit, she has the context. It is fine. We can do that. Or if you want to move to other matters.

ADV HOFMEYR: Chair, I think it makes sense to move.

CHAIRPERSON: Yes, okay.

ADV HOFMEYR: I appreciate the situation.

CHAIRPERSON: Yes.

ADV HOFMEYR: What I want to emphasise is that it was not of our making at all.

20 **CHAIRPERSON:** Yes, yes.

ADV HOFMEYR: We really are beholden to others and their own time constraints for things.

CHAIRPERSON: Yes, yes.

ADV HOFMEYR: So my suggestion is. We simply leave it.

CHAIRPERSON: Ja.

ADV HOFMEYR: We can send the set of questions through.

CHAIRPERSON: Ja.

ADV HOFMEYR: Ms Myeni can consider them in the goodness of time. We will give a reasonable amount of time.

CHAIRPERSON: Ja.

ADV HOFMEYR: And she can provide an answer on the affidavit when it is convenient.

CHAIRPERSON: Okay alright. So that is what will happen Ms Myeni. You will get correspondence from the
10 Commission through your lawyers and then you will respond by your affidavit. Okay alright. Thank you, Ms Hofmeyr.

ADV HOFMEYR: Thank you. Of course, let me just emphasise on Ms Myeni's behalf. If her attitude is similar to the one that she has taken today that she invokes her privilege, of course, that could be the response that she gives. But we will wait to see after consideration.

CHAIRPERSON: Yes, ja. Okay alright.

ADV HOFMEYR: Right. So then I would like to move Ms Myeni to a topic that I picked up on yesterday
20 momentarily but now I would like to explore in a bit more detail. And that was the role that Mr Nick Linnell played at SAA.

CHAIRPERSON: Or maybe Ms Hofmeyr, seeing that we are twenty to four, maybe we may as well discuss now what is possible in terms of how far we go. I am available to

continue beyond four o'clock. What is your situation?

ADV HOFMEYR: Chair, I certainly can continue and I would be very keen to make a push to complete the evidence. I am not very far from the end.

CHAIRPERSON: Yes.

ADV HOFMEYR: And so subject to the convenience of my learned friends and Ms Myeni, I would suggest we run on to completion if that is possible.

CHAIRPERSON: What is your estimate of how much more
10 time you need to get to completion?

ADV HOFMEYR: I would think. We are not at three thirty. Maybe five thirty. Something of that order.

CHAIRPERSON: Okay, okay.

ADV HOFMEYR: Possible six.

CHAIRPERSON: Mr Buthelezi, how is your situation?

ADV BUTHELEZI: Five thirty is too far Chair. I have got toddlers in waiting but the best that I can accommodate is to say five.

CHAIRPERSON: It is five?

20 **ADV BUTHELEZI:** That we even started at nine Chair.

CHAIRPERSON: Yes.

ADV BUTHELEZI: So I think for me about five o'clock would be the longest stretch.

CHAIRPERSON: Yes.

ADV BUTHELEZI: But if I am venturing to half-past five, I

have still got to negotiate traffic to try and get ...[indistinct]

CHAIRPERSON: Yes, yes.

ADV BUTHELEZI: It would be highly ...[indistinct]
...[intervenes]

CHAIRPERSON: Of course, having started at nine, we would have – we probably would have been finished by four if we did not have ...[intervenes]

ADV HOFMEYR: Yes.

ADV BUTHELEZI: Yes.

10 **CHAIRPERSON**: ...the technical glitches that we had. Ja, ja.

ADV HOFMEYR: Ja.

CHAIRPERSON: Okay. Ms Myeni, what is your situation?

MS MYENI: Chairperson, I am flexible. My flight was this evening.

CHAIRPERSON: Yes.

MS MYENI: But I am willing to travel tomorrow Chairperson.

CHAIRPERSON: yes.

MS MYENI: Therefore, the five o'clock is okay.

20 **CHAIRPERSON**: Yes. Okay let us continue and see where we are by five o'clock.

ADV HOFMEYR: Thank you, Chair.

CHAIRPERSON: Okay.

MS MYENI: Thank you, Chair.

CHAIRPERSON: It is alright.

ADV HOFMEYR: Right. Mr Linnell. Can you assist us with what services he was providing at SAA?

MS MYENI: Chairperson, may I not respond to this question to avoiding incriminating myself?

ADV HOFMEYR: Mr Linnell testified before the Commission just a few weeks ago that he was brought in to coordinate some of the difficult investigations into senior executives like Mr Ngqula, the former CEO. Can you confirm that that was part of the role that he played?

10 **MS MYENI:** Chairperson, may I not respond to the question to avoid incriminating myself?

ADV HOFMEYR: Why was his services required by SAA?

MS MYENI: [No audible reply]

CHAIRPERSON: Did you hear that Ms Myeni?

MS MYENI: A delay Chair. It was... I do not know whether there was a delay. Yes, I have heard... I have got no response Chairperson. I do not want to incriminate myself.

ADV HOFMEYR: You see, the reason why I ask is because the investigation and then the post-proceedings against
20 Mr Ngqula were being managed through ENS Attorneys, was it not?

MS MYENI: May I not respond Chairperson unless I make – I incriminate myself?

ADV HOFMEYR: You see. So, already SAA had its lawyer, ENS, running the Ngqula Investigation and then proceedings

and yet in addition to that, Mr Linnell appears to have provided services despite, on his own version in his evidence before this Commission, the fact that he was not an admitted attorney in South Africa. Had never held himself out to such and just have a law degree from Zimbabwe.

Against that backdrop Ms Myeni, what would role he have been playing in addition to that of SAA's firm of attorneys on the matter?

MS MYENI: May I not respond to the question Chairperson?

10 I do not wish to incriminate myself?

ADV HOFMEYR: Was he billed for his services to SAA?

MS MYENI: May I not respond Chairperson so that I do not incriminate myself?

ADV HOFMEYR: Ms Myeni, in your Bundle DD34-B, we have collated the various invoices that Mr Linnell submitted to SAA over a period of December 2014 to August 2016. It is just over a year and a half and I would like to take you to some of those if I may? We will start in DD34-B at page 1590.

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

CHAIRPERSON: Did you say 1950?

ADV HOFMEYR: 1590, Chair.

CHAIRPERSON: 1590. Sorry, I heard it the other way around.

ADV HOFMEYR: Yes, it is possible I said it the other way. I

have to confess.

CHAIRPERSON: [laughing]

ADV HOFMEYR: A smidgen of five-ness but we will keep going.

CHAIRPERSON: It is late in the day.

ADV HOFMEYR: It is and in the week. [laughing]

CHAIRPERSON: And in the week. [laughing] And you are working tomorrow also.

ADV HOFMEYR: I know. [laughing]

10 **CHAIRPERSON**: [laughing] Well, I am working too.

ADV HOFMEYR: You... Indeed, Chair.

CHAIRPERSON: Yes.

ADV HOFMEYR: Ms Myeni, do you have page 1590?

MS MYENI: Yes, I do.

ADV HOFMEYR: So you see, this invoice is consistent with Mr Linnell's evidence before the Commission. He indicated that he had been involved particularly in relation to Mr Ngqula's investigations. And you will see on this page, there is a very... Well, let us go back a page, actually, if we
20 may. To 1589.

MS MYENI: [No audible reply]

ADV HOFMEYR: Do you have that?

MS MYENI: Yes, 1589.

ADV HOFMEYR: Yes. So this is an invoice submitted to SAA dated the 2nd of February 2015 from what is, I

understand to be Mr Linnell's business, the Project Office.
Can you confirm that?

MS MYENI: May I not respond Chairperson? I am on page 1589 but may I not confirm any – or may I not respond to whatever needs to be confirmed in case I incriminate myself?

ADV HOFMEYR: So, as I said, 2 February 2015 invoice from the Project Office and you will see it covers the period – it is headed: Independent Advise with regard to alleged irregularity at SAA, December 2014 and January 2015. And
10 it is addressed to yourself as Chairperson of South African Airways. Can you confirm having received this invoice?

MS MYENI: May I not respond to the question Chairperson in case I incriminate myself?

ADV HOFMEYR: If you look in the box, in the middle of the page where there is a description of the work done, you will see under the second column, Matter. It says:

20 “To our advice to the sub-committee and the board regarding the Ngqula Investigation and related matters for December 2014 and January 2015. See billing memorandum attached.”

And then you go over to that page where we started and you have a, what I would suggest, is a fairly detailed billing memorandum, dealing with the work that Mr Linnell had done.

And there is an invoice and a total of R 192 654,26

excluding VAT which brings the total with VAT to R 219 615,60. Ms Myeni, do you know if that invoice was paid by SAA?

MS MYENI: May I not respond to the question Chairperson in case I incriminate myself?

ADV HOFMEYR: Now we have managed to obtain all of the invoices that Mr Linnell submitted over that period, December 2014 to August 2016 to SAA.

And what we noted, and I would be interested in your
10 comment on, is that the invoices start of this sort of detail where you get a very detailed memorandum.

Over the second page of the invoice, explaining with some particularity what Mr Linnell was doing from time to time.

But then as you get later in the course of 2015, his invoices become much more brief. Let me take you to one, for example. You will find that at DD34-B from page 1686.

MS MYENI: One, six...?

ADV HOFMEYR: Eight, six.

20 **MS MYENI:** I missed that. What page? One, six...

CHAIRPERSON: 1686.

MS MYENI: Thank you. Thank you, Chair.

CHAIRPERSON: H'm.

MS MYENI: Thank you, Chair. I have got it.

CHAIRPERSON: Okay.

ADV HOFMEYR: This is an invoice dated the 19th of April 2016. And there under matter, it becomes much more brief. It says:

“12 fees in respect of advise provided to the board on various matters.”

And in brackets, narration included in a separate billing memorandum which we were – certainly, there is no record in SAA of that more detailed billing memorandum. Are you aware whether one was provided?

10 **MS MYENI:** Sorry, Chair, this invoice is provided to the director...

ADV HOFMEYR: No, that is a good point. This one is addressed to the director, it just says South African Airways attention Ms Yakhe Kwinana.

Were you aware of this invoice when you were a Chairperson in April of 2016?

MS MYENI: Chairperson, may I not respond to the question, I would not want to incriminate myself.

20 **ADV HOFMEYR:** Ms Kwinana gave evidence earlier this week and she was asked about Mr Linnell and his services and the advice that he had given to the board and, as I have it, her evidence was effectively that he would on occasion attend board meetings and answer when a legal question cropped up.

But her approach to Mr Linnell’s services was that

they were not really needed. Do you agree with her in that evidence?

MS MYENI: May I not respond, Chairperson, to the question, I do not want to incriminate myself.

ADV HOFMEYR: And then, Ms Myeni, there are a series of invoices which continue in that pattern of the service being general advice to the board and within this section of your bundle we also have the expense authorisations from South African Airways related to these invoices and I would
10 like to take you to one of them, for example, you will find that at page 1684.

MS MYENI: Yes, Chair. I have got it, Chairperson.

ADV HOFMEYR: Thank you. You will see there as an expense – is this the type of expense authorisation you were familiar with when you were at SAA?

MS MYENI: May I not respond, Chairperson, to this question and I would want to invoke my privilege by saying I was a Chairperson, I was not a CEO and I was not a CFO, so I would leave it at that, Chair. May I not respond to the
20 question.

ADV HOFMEYR: What caught our eye on this page is where you see sort of a third – in the bottom third of the page there is in red something that says:

“Please confirm the following”

And then there is a box that says one procurement process

has been complied with. Do you see that?

MS MYENI: I see it, yes.

ADV HOFMEYR: And then 2:

“Compliance with the DOA”

I understand that to be delegation of authority. And then 3:

“Budget facility is available for this cost element”

Do you see that next to 3 is written there:

“No budget, not accrued for”

Do you see that?

10 **MS MYENI:** I have seen that. Yes, Chairperson.

ADV HOFMEYR: And just in relation to 1:

“Procurement processes then complied with”

There does not seem to be an indication that one was. Are you aware of any procurement having been followed before Mr Linnell’s services were procured?

MS MYENI: Chairperson, I was a Chairman, I was not a CEO.

ADV HOFMEYR: Yes and happily, Ms Myeni, if you do not have any knowledge about whether his procurement processes were followed, you could certainly say so. Were you aware?
20

MS MYENI: May I not respond, Chairperson, in case I incriminate myself.

ADV HOFMEYR: So when he was attending those board meetings – when we were questioning Ms Kwinana earlier

in the week, the Chairperson actually raised the question of why there would be a third party outsider attending board meetings and, as I understood Ms Kwinana's evidence it was that he was there to be sort of generally available.

I think she said he on occasion did *ad hoc* presentations. She, I do not think, could give us clarity on at whose invitation he appeared. Did he appear on your invitation?

10 **MS MYENI:** On that particular questions, Chair, can I have a supporting document? When you attend a board meeting there is an attendance register.

There is an invitation to attend the board, there is an attendance register, there is also obviously somebody – when somebody is travelling there will be a stub, maybe a slip, that he flew at this time on this day to attend a board meeting on this.

Can I have that record of Mr Linnell attending board meeting, then I will be able to help, Chairperson, by
20 responding perhaps to the question or maybe, when I say I do not want to respond to this question then I am able to make a proper judgment so that I do not appear not to be useful to the Commission but this information I am asking is for me to verify Mr Linnell's attendance to board meetings.

CHAIRPERSON: Well ...[intervenes]

MS MYENI: And just - maybe just one board meeting where he attended, the attendance register, his flight from wherever he came from to Gauteng to attend the board meeting. Thanks, Chair.

CHAIRPERSON: It may be that Ms Hofmeyr does have such documents, it may be that she does not have but I just want to say this. If – I mean, the trouble that sometimes the Commission goes to in order to obtain
10 documents arises when it knows that certain things are being denied or disputed but it does not go to certain trouble if it knows that everybody admits that certain things happened.

Now if, for example, you were to say I do know that he attended certain meetings but if you ask me about a particular meeting whether he attended it, I would need minutes to see, it is one thing.

But also, if you say as far as I know he never attended any meetings, it might warrant trying to get that
20 information. So the start might well be to say on your recollection or as far as you know, did he attend certain board meetings or did he not attend any board meetings where you were present or do you not remember and then – because Ms Kwinana certainly said he attended certain board meetings and he attended meetings of certain

committees. So maybe do you want to look at that or maybe let me check with Ms Hofmeyr. Do you want to react to the question raised by Ms Myeni?

ADV HOFMEYR: Yes, certainly, Chair. And I must be clear here. I have looked at lots of board minutes, I cannot have said all of them but as I stand here, I have no recollection of any board minutes – minutes of any board meetings reflecting Mr Linnell as an attendee.

I could be wrong, there might be one or two, my
10 team knows these papers better than me so I have asked them just to address it but actually, that is why I was somewhat surprised by Ms Kwinana's evidence the other day because she indicated the role he played with that board meetings.

So actually, Ms Myeni, when I put it to you, it is predominantly based on the evidence that Ms Kwinana gave and what I was going to follow up with you is well, if he was at those board meetings, we have not seen him reflected in the minutes and you, as Chairperson, would
20 certainly have had oversight at those meetings.

So could you help us just from your personal knowledge? Can you confirm whether he did or he did not attend meetings of the board of SAA?

MS MYENI: Chairperson, the problem I have is that I am expected to respond to an evidence that was presented

before the Commission by Kwinana which I have not – perhaps I still need to sit down, go through this Commission of Inquiry’s website to listen to Kwinana. I have not had that opportunity to do so. I have not heard Ms Kwinana’s evidence in the Commission. So if I am going to rely on what she said then I am not empowered to respond. But, Chair, the easiest thing for me as well to add on what I have requested, if I am to assist this Commission, because going forward I am certainly going to
10 be able to assist the Commission even post your Commission’s term maybe. I would be able to talk to this information if the contracts that Mr Linnell signed would be attached in this file with his invoices and also the title Mr Fix, if it was part of his contract. Then I will be able then to confirm.

Also, Chair, to assist the Commission, there is a company secretariat at South African Airways, whether it is me assisting the Commission or it is South African Airways assisting the Commission, including Ms Kwinana, then that
20 would be – we will all be able to give proper information which will be factual information so that I do not listen to what Ms Kwinana said. All I can say that if I am empowered with the information before me, I will be able then, Chairperson, to be of assistance to you.

CHAIRPERSON: Well, the only thing, Ms Myeni, is that all

that Ms Hofmeyr was asking is what you know or what you do not know, what your recollection is, irrespective of what documents might say. It may be that there are minutes somewhere. Ms Hofmeyr says she has seen a lot of minutes of board meetings but she does not recall seeing any minutes that reflected Mr Linnell as having attended the board meeting – any board meeting of those that she saw. She does not say that there are not board meetings that might reflect that. She does not know if somebody in
10 her team might have seen such minutes. But, of course, she does say what Ms Kwinana said, namely that she said Mr Linnell did attend some board meetings. So she is simply asking you to say on your recollection, do you remember Mr Linnell as having attended some meetings or do you have no recollection whether he attended any meetings or is the position that you feel that you might incriminate yourself and would prefer not to answer the question.

MS MYENI: Chairperson, I needed to have Mr Linnell's
20 contract which would have been generated by SAA not by Dudu. That is one. And the board resolution, Chair, that was taken to appoint Mr Linnell as an adviser to the board, not as a [indistinct] 13.18 with somebody but as an adviser to the board. The board resolution would articulate those things and his contract would articulate those things. And,

Chair, from my understanding, SAA had consultants, different consultants, but no consultant would simply be part and parcel of a board meeting.

The consultant would be required to walk inside the board meeting to present a certain aspect that the board would need in terms of update or in terms of a report to also understand the status of where – whatever the consultant is doing where the status of that particular advice to the board or to the company is.

10 But, for me to – because this thing is put before me as Dudu's Mr Fix. I would prefer that I get the attendance register, all the things that I have requested, the contract and the board resolution that appointed Nick Linnell to advise the board, not Dudu. Thank you, Chair.

So in other words then, Chairperson, in that regard, I leave this question as something that I can be of assistance to the Commission and to the Chairperson but I need to be empowered with the information that I have spoken about, Chairperson.

20 **CHAIRPERSON:** Yes, but ...[intervenes]

MS MYENI: Other than that I cannot then help you.

CHAIRPERSON: You see, Ms Myeni, the problem with that answer is that Mr Linnell's contract is not going to tell you whether he attended a particular meeting of the board of how many meetings he attended. So what you are being

asked is something that you either know or you do not know or you remember or you do not remember. That is all that is being asked and if you are not sure, you are not sure. So the minutes of a board meeting, if they reflect that he attended, they might assist, but it may be that they do not reflect and all that you are being asked is on your knowledge, on your recollection, what was the position. Did he attend some meeting of the board, the whole meeting? Did he attend only briefly on certain specific
10 issues or, on your recollection, he did not attend at all?

MS MYENI: May I not respond, Chairperson.

CHAIRPERSON: Okay, alright.

MS MYENI: I do not want to incriminate myself.

CHAIRPERSON: Okay.

MS MYENI: Thank you.

CHAIRPERSON: Ms Hofmeyr?

ADV HOFMEYR: Ms Myeni, the answer you have just given is consistent with the answer that you gave in your affidavit when you were asked by the Chairperson of this
20 Commission in his Regulation 10.6 directive to tell him everything you know and provide as much information as possible about the legal fees paid by SAA to Nick Linnell and reimbursements to yourself. You remember answering that question in the Chairperson's directive?

MS MYENI: Not sure.

ADV HOFMEYR: Okay. Well, it is at page 8 of DD34A which is the file that we are not often in but it is part of your bundle. If you would like to turn it up at page 8 of DD34A?

CHAIRPERSON: DD34A page 8, is that right?

ADV HOFMEYR: Yes, indeed.

CHAIRPERSON: Ja.

MS MYENI: Page 8?

CHAIRPERSON: Yes, page 8.

10 **MS MYENI:** I have got it, Chair.

ADV HOFMEYR: You will see there you deal with the second topic in the Chairperson's directive and it is headed:

“Legal fees paid by SAA to Nick Linnell and reimbursements to myself.”

And you say at paragraph 23 there:

“I am advised that in view of the possibility that the National Prosecuting Authority may want to charge me in accordance with the order of Tolmay J, I do not have to answer this question.”

20

So, Ms Myeni, do you accept that you had fair warning before today that this was going to be a matter to be traversed?

MS MYENI: I think, Chairperson, as much as the Chair had said I must not have a blanket response but anything

pertaining to what the order is before me by the judge, this is consistent with the order. But, Chair, for what I have been asked now, may I invoke the privilege of not responding so the question?

ADV HOFMEYR: You see, Ms Myeni, I asked you about procurement processes because in our engagements with SAA we did not find any procurement process having been followed. What we did find was that there had been an endeavour to motivate for Mr Linnell’s invoices to be paid
10 and I would like to take you to that motivation. You will find it – well, let me clear, it is a motivation that comes before the SAA board of directors on the 29 February 2016 and you will find it in DD34B, the old file we were in.

MS MYENI: What page?

ADV HOFMEYR: At page 1695

MS MYENI: I do have it.

ADV HOFMEYR: What you see there – the first thing, I have to say to you in fairness, that I noticed when I looked at this memo is it is very like the memos that you usually
20 see from South African Airways and that me and my team have become far too familiar with for our good. It usually has that block at the top where it says:

“To SAA board of directors, date 29 February 2016”
But there is actually usually a third block there that indicates who within SAA was the author of the document.

Does it surprise you like it surprised me that there is not a third block there?

MS MYENI: What is surprising you, Ma'am, sorry?

ADV HOFMEYR: That there is not - you know, on the usual board memos – my team will maybe help me just to find one so I can take you to it – there is usually that block at the top, it shows who it is addressed to, the date of it and then it usually says who wrote it, from, you know, it has been written by the Acting CEO or it is a document
10 prepared by the legal department but this one does not have that third block. Is that unusual?

MS MYENI: May I not respond, Chairperson, the only thing I am seeing here is the company secretary. So may I not respond because I do not know.

CHAIRPERSON: Where do you see the company secretary because I was about to say a resolution, one would expect the company secretary to sign at least. Is there something to suggest ...[intervenes]

MS MYENI: At the top right, Chair, to assist.

20 **CHAIRPERSON:** Top right? Just below the address? Are we on the same page 1695? Ms Hofmeyr, is that the page you said we must go to?

MS MYENI: Yes, Chair.

ADV HOFMEYR: That is where we are, yes.

CHAIRPERSON: Okay. Where about at the top right? I

can see South African Airways Company Secretary – oh, that is what you are referring to.

MS MYENI: That is what I am referring to, Chairperson.

CHAIRPERSON: Yes.

MS MYENI: Well, this is what I am seeing now, Chair.

CHAIRPERSON: Yes.

MS MYENI: That talks to the letterhead of the company secretary and at the back here, Chairperson, I see that there is a resolution that was generated by the company secretary, so – but ...[intervenes]

CHAIRPERSON: Well, the letterhead still may be that of the company secretary but one would normally expect resolution to be signed by somebody. My impression is that it is normally signed by the company secretary but it may be that sometimes the Chairperson signs, I am not sure. But I do not see anybody having signed here and other than the company secretary being reflected on the letterhead, there seems to be nothing on the document itself to indicate who prepared the document.

20 **ADV HOFMEYR:** Ms Myeni, I might just be able to assist. If you go to DD19, you will have DD19 amongst your files there. It is the bundle of Mr Mothibi's evidence. I have just picked that randomly because it is one of the memoranda that I would like to just show you as striking me as a comparison.

CHAIRPERSON: I am sorry, Ms Hofmeyr, please do not forgot what you want to go onto.

ADV HOFMEYR: Of course.

CHAIRPERSON: I see that on the next page, namely 1696, there is a letter from the company secretary addressed to – or Dear Director and then it says:

“SAA board of directors region resolution 2016/B04.
Ratification of the appointment of the external adviser to the board.”

10 And it says:

“We refer to the above matter and attached hereto the written resolution 2016/B04. Kindly consider, sign and return to us, the written resolution by 12 o'clock, Thursday 3 March 2016 via email. Kind regards, Ruth Kibuuka, Company Secretary.”

Now I do not know whether – oh, that might – I think that is a reference to this resolution because this resolution at page 1695 because it does refer to – it does say written resolution number 2016/B05.

20 **ADV HOFMEYR:** Yes.

CHAIRPERSON: If that is so then one can take it that the company secretary knows about or knew about the resolution.

ADV HOFMEYR: Yes, indeed.

CHAIRPERSON: Yes.

ADV HOFMEYR: What I – really my question
...[intervenes]

CHAIRPERSON: That is part of what I did not understand.

ADV HOFMEYR: Of course.

CHAIRPERSON: I think that part seems to be clarified
now.

ADV HOFMEYR: No, it does indeed, Chair, and we are
indebted for that. I guess where my point drives at – and
maybe I just go there immediately. It is not clear to me
10 who the author of this document was because usually it is
identified, Acting CEO is presenting this to the board for
consideration and requires a particular resolution to be
taken. This document is not like that and I was just
wondering if Ms Myeni found it unusual in the same way
that I did. Ms Myeni, would you like to answer that? Is
that unusual to you too?

CHAIRPERSON: Let us first check, did you follow what I
was saying about the letter or email at page 1696, Ms
Myeni? I know ...[intervenes]

20 **MS MYENI:** I did, Chair.

CHAIRPERSON: You did follow what I was saying.

MS MYENI: I did, I heard everything. It is just that I
stood up to take the file, Chair, sorry.

CHAIRPERSON: Yes, okay. No, that is fine. Okay,
maybe you can repeat your question then, Ms Hofmeyr.

ADV HOFMEYR: Yes, I was just ...[intervenes]

MS MYENI: I heard what you want me to respond to.

CHAIRPERSON: Oh, okay, alright. Yes.

ADV HOFMEYR: Could you give us your response?

MS MYENI: I am going to, Chair.

ADV HOFMEYR: Thank you.

MS MYENI: Okay.

CHAIRPERSON: Yes, you may respond, Ms Myeni.

MS MYENI: No, Chair, I am going to – I am not going to
10 respond to this particular document, Chairperson, but I am
going to say that a ratification of a decision that has
already been made might be different from a memo to the
board which is a normal memorandum that gets submitted
by the staff, by the executives.

So when the executives presented or would like the
board to approve something and the board meeting maybe
is still forthcoming, maybe the board meeting is in a month
or two months because the board is not a Monday to Friday
thing, Chair, the board would meet maybe bimonthly or
20 every quarter, four times a year, depending on the size of
the entity.

So some decisions that are needed urgently would
be sent - a motivation would be sent electronically to all
board members. Board members then would send
individual responses to the company secretary's office.

When the company secretary has all the responses then the company secretary at the board meeting formally will say we have to ratify what was electronically decided upon. So the ratification I see here is based on many other ratifications that would occur under normal circumstances, under normal circumstances.

So I am saying this could be amongst those, but I cannot confirm that this is – all I am saying is that if it is different from a board that Ms Hofmeyr refers to, one, two, 10 ratification of the Board resolution is not a Board resolution that would be an normal way of asking the Board to approve something at the Board meeting while the Board is meeting. That is my only way to assist you Chairperson.

Also if I touch here on page 1698 normally at the Board meeting the Board of Directors would sign there where it says name of the director in favour or against or abstain, so we would sign such things but sometimes they would send us information individually for us to take a decision after reading whatever that is being proposed by 20 the executives or whatever that is required in terms of urgent approvals, so this for me is a ratification.

ADV HOFMEYR: Thank you Ms Myeni we are indebted to you for that insight. I would just like to take you to page 1697 of this document, and it we really do – we are now chasing the clock so we are going to try and ...[intervenes]

CHAIRPERSON: Yes and I am terribly sorry I think we must take just a brief adjournment, let it be ten minutes only and then we will resume.

We adjourn.

ADV HOFMEYR: Thank you.

REGISTRAR: All rise.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Okay, let us continue.

10 **ADV HOFMEYR:** Thank you Chair, I am very mindful of the limited time, so I would like to just raise one further aspect in relation to Mr Linnell with Ms Myeni. Ms Myeni over the period that Mr Linnell was providing services to SAA which was between December of 2014 and August of 2016 do you know how much SAA paid him in that period?

MS MYENI: May I not respond Chairperson so that I don't incriminate myself.

ADV HOFMEYR: Ms Kwinana's evidence the other day was that his services were not really needed, do you hold
20 that view as well?

MS MYENI: May I not respond Chairperson so that I don't incriminate myself.

ADV HOFMEYR: Do you accept that if a State Owned Entity paid just under R2million for services that were not really needed that would constitute wasteful expenditure?

MS MYENI: May I respond Chairperson so that I don't incriminate myself.

ADV HOFMEYR: Ms Myeni I would then like to move to an allegation that has been made in this Commission previously by Ms Nansi, you will have received a Rule 33 notice in relation to Ms Nansi, did you follow her evidence at all?

MS MYENI: Chairperson I don't watch the State Capture Inquiry evidence of anyone, so I ...

10 **ADV HOFMEYR:** Well let me tell you what she did say in her evidence. She dealt with this topic of false whistleblower reports that she indicated she had been told by Ms Kwinana you used to prepare in order to get rid of executives who you no longer wanted in the management of SAA, are you aware of those allegations?

MS MYENI: In this regard Chairperson I think I responded when I was asked a question, what I don't recall properly with regards to Nansi, who was the Acting CFO and became CFO, what I don't remember properly is whether
20 my response was as a result of you know – whether my response was as a result of the media enquiry or something but I remember responding, in particular to the allegations that were levelled against me by Nansi, and I said I would hope, that was my response then and it is going to be my response now, I would hope Chairperson

that the Commission is not a hiding place for tainted employees who leave employment having committed serious offences where they come from, that was a general response I made when I was asked about Nansi, and therefore it is the same response I am making right now about what is being said about whistleblowers and about what Nansi alleges I would have done regarding the whistleblowers but also Chair there are too many gossips going around.

10 Now when I read Nansi's affidavit on whistleblower she was sitting with her friend, Kwinana, gossiping, talking about whistleblower and I cannot then change my response then and my response now. Kwinana and Nansi are friends and they have been business partners or they have worked together in some businesses, including Denel, therefore I do not want to glorify what is being said here about Nansi talking about me and whistleblower. That is my long-winded response Chairperson because I am referring to what I responded to last time and it is the
20 same response I am making right now Chair.

ADV HOFMEYR: Ms Myeni did you prepare false whistleblower reports in order to target members of management who you did not want in the organisation?

MS MYENI: Chairperson may I not respond to that particular question being referred to, in order not to

incriminate myself.

ADV HOFMEYR: Ms Myeni I didn't have an opportunity to ask Ms Kwinana about these allegations because her evidence didn't complete on Tuesday and I was still coming to the question, but are you aware that she gave this account of false whistleblower reports to OUTA shortly after she left SAA in August of 2016?

MS MYENI: Chairperson may I not respond to the question so that I don't incriminate myself.

10 **ADV HOFMEYR:** Chair I do just want to for the record be clear, Ms Kwinana was asked about this in her regulation 10.6 directive, her response in her 10.6 directive is:

“I have no way of knowing whether the false whistleblower reports allegedly prepared by Ms Myeni are false or not.”

That is her version on affidavit, I intend to pursue that with her tomorrow in the evidence. I wanted to give Ms Myeni an opportunity to answer that allegation against her though.

20 Ms Myeni I would now like to move to the BNP transaction, is that a transaction you are aware of?

MS MYENI: May I not respond Chairperson to the question, to avoid incriminating myself.

ADV HOFMEYR: Ms Myeni we received evidence of Ms Cynthia Stimpel before this Commission, I think she

testified over two days dealing with the BNP transaction and she explained that around February 2015 SAA was in dire need of cash and had reported that to Treasury and so it was in the process of securing funding. Can you confirm that that was the position in February 2015?

MS MYENI: May I not respond to the question Chairperson to avoid incriminating myself.

ADV HOFMEYR: Ms Stimpel's evidence was that there was a cross-functional team established in order to secure
10 this funding and that they worked quite steadily on it but then in October 2014 remember when the old complaining members of the Board are not retained and a much smaller board of yourself, Ms Kwinana, Mr Dixon and Dr Thambi is then put in place. The Board on her version started to involve itself in securing funding. Can you dispute her evidence on that?

MS MYENI: Chairperson may I not respond to the question so that I don't incriminate myself.

ADV HOFMEYR: Ms Stimpel's evidence was that that
20 level of Board involvement was something that she had not experienced before at SAA in her many years. Are aware of that level of Board involvement prior to transaction at SAA?

MS MYENI: Chairperson may I not respond so that I don't incriminate myself.

ADV HOFMEYR: It got to a point where the Board actually involved itself both in reviewing the draft RFP for the funding that was required, evaluating proposals and appointing bidders and Ms Stimpel said that similarly was unprecedented in the history of SAA's funding endeavours, do you dispute that?

MS MYENI: What is the name of the person? Sorry, what is the name of the person?

ADV HOFMEYR: Ms Stimpel, Ms Stimpel.

10 **MS MYENI:** Was she an executive?

ADV HOFMEYR: She was Group Treasurer at the time.

MS MYENI: Was she an executive ma'am?

ADV HOFMEYR: No she was not ...[intervenes]

MS MYENI: Was she in the Exco?

ADV HOFMEYR: No, no she was running the cross-functional team who was responsible for security ...[intervenes]

20 **MS MYENI:** It is unprecedented for a junior executive or a junior manager or a manager to expect that the Chairperson would just know her from Cynthia. Under normal circumstances Chairperson if the board members mentioned here do not include executive directors then it is not a factual reporting or accurate representation. The Board was constituted in accordance with the MOU of the organisation. There will be a specific number which would

be minimum to maximum. Now what I am surprised about is the mention of the non-executive director but the executive directors are not mentioned Chairperson.

Secondly if you were not a deputy finance person or a deputy CEO or maybe an HR executive, or any other executive it would be difficult for me to remember the other layer that was not at the executive level, so there is an assumption by Ms Hofmeyr that when she says Cynthia then I would automatically know who Cynthia is. I was not
10 a CEO of SAA, I was a non-executive director and the chairperson of the Board.

ADV HOFMEYR: Ms Myeni ...[intervenes]

MS MYENI: So that is why I am asking who is Cynthia.

ADV HOFMEYR: Ms Myeni I think it is a product of the delay and maybe a break in transmission. I would never in the proceedings of this Commission refer to somebody by only their first name. I did refer to her as Ms Cynthia Stimpel, I asked you about whether you had watched her evidence and the question I put to you is just the evidence
20 she has presented to the Commission. Her evidence is when they were seeking this funding in of February 2015 and the months thereafter the Board got involved in vetting the RFP for the funding, evaluating the proposals for the funding and appointing the bidders in a way that she had never – sorry – appointed the bidders to whom the RFP

would be circulated and she said she had never experienced that before, and so what I was asking you was do you dispute that this was the first time in a funding scenario that the Board was getting it itself involved.

MS MYENI: May I not respond to the question Chairperson, in case I incriminate myself.

ADV HOFMEYR: What happened was the RFP went out according to Ms Stimpel's evidence, bids were received, evaluations were done and that cross-functional sourcing
10 team in which she was involved selected a combination of three banks to source the funds Standard Charter, Nedbank and ABSA and they were ready to go but then there was a board meeting that was convened on the 3rd of December 2015 at which it was decided that the Free State Development Corporate should be the funder for SAA. Do you recall that decision being taken by the Board?

MS MYENI: May I Chairperson not respond to the question being posed to avoid incriminating myself.

ADV HOFMEYR: Ms Myeni you are indicated as having
20 been a member of the Board at the time and a supporter of that decision and that was the evidence of Ms Stimpel insofar as the records of the decision making was concerned and in the light of that I would like to ask you how it could be that you took the view, as one of the voting board members that a public entity like the Free State

Development Corporation could become involved in funding an SOE?

MS MYENI: What is the problem with the question you are asking me ma'am?

ADV HOFMEYR: Well National Treasury regulations says that it was not within the Free State Development Corporation's legal mandate to fund an entity like South African Airways, its mandate was limited to development projects within the Free State, so I am asking you why you
10 as a Board member supported the FBC funding SAA to the tune of R15billion?

MS MYENI: May I not respond to that question Chairperson, so that I don't incriminate myself.

ADV HOFMEYR: So what happened first is that there is this decision of the Board on the 3rd of December 2015 to get FDC to be the funder, but that is scuppered because in early January 2016 National Treasury conveys to the team at SAA that the FBC would be beyond its mandate if it were to provide this funding, and on Ms Stimpel's evidence what
20 then happens is that the Board decided to appoint a transaction advisor to source and facilitate this funding that SAA was looking for. Do you remember making that decision?

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

ADV HOFMEYR: Do you dispute that you were a member of the Board that made that decision?

MS MYENI: May I not respond Chairperson so that I don't incriminate myself.

ADV HOFMEYR: Ms Stimpel said the Board's decision was to her mind concerning because all that work that her team had done in running the RFP process, in getting the bids from the banks was now going to be redone by this transactional advisor. Why was the Board thinking a
10 transactional advisor needed to be appointed to do work that had already been done.

MS MYENI: May I not respond Chairperson I don't want to incriminate myself.

ADV HOFMEYR: So a process was run according to the evidence of Ms Stimpel, and an entity called B & P Capital was awarded the contract as a transaction advisor. We received the evidence of Mr Mhlangu who was a director of B & P Capital before this Commission and in the course of his evidence it was pointed out to him that there were
20 numerous false statements and incomplete documents in the bid submission. Does it surprise you that an entity like B & P Capital could run through a procurement process at SAA while you were its chairperson, be awarded a tender and then having done so when it had included false statements and incomplete documents in its bid

submission?

MS MYENI: Only white transaction plan advisors would rather be preferred, is it because he was a Mhlangu or is it because he had no capabilities of doing the work or he did not compete with other tenderers, with other service providers, it is a question of clarity chairperson.

ADV HOFMEYR: Yes, certainly ...[intervenes]

MS MYENI: What would make him not able to do a job for South African Airways, was it a reserved space for either
10 banks or was it a reserved space for some of the consultants or financial entities that would be able to source funding for South African Airways, I am just asking a question because there must be a beginning for a new entrant to be able to be also counted in the current situation in the country where any other person who is competent to do the work must do the work, but now I am asked why Mhlangu, why B & P Capital, I have never met him, I don't know him, but I am being asked a question which is operational. Cynthia Chairperson would have
20 reported to the CFO who is an Executive Director of SAA, therefore Chair with this background I am not invoking my privilege but I am not responding to the question that has been asked.

ADV HOFMEYR: Ms Myeni that is not an answer to my question, my question was based on the evidence before

this Commission that B & P Capital submitted a bid containing false statements, and incomplete documents and despite that were awarded a tender. And I asked you whether it would concern you to learn that that is how a procurement process was run at SAA.

MS MYENI: The non-executive director – sorry if the Executive Director, the CFO, had come to me and told me that these bidders are before us with false information that is something else, but for me to say did it concern me or
10 does it concern me or would it have concerned me. Chair may I not answer this question in case I incriminate myself.

ADV HOFMEYR: Mr Mhlangu testified that a Mr Masotsha Mugadi was – I am paraphrasing now, but really the brains behind B & P and that it was he who had all the meetings with SAA and there was an allegation that Mr Mugadi is a business associate of your son's, is that correct?

MS MYENI: May I not respond to the question Chairperson in case I incriminate myself.

ADV HOFMEYR: What then happened in the passage of
20 events is after B & P was appointed as a transactional advisor there was a decision taken to get the B & P to then source a R15billion that had never imparted the original tender but the Board took a decision to now extend the scope of B & P, without going out on tender for the sourcing of the funds and to get ...[intervenes]

MS MYENI: Sorry Chairperson, can I just get clarity there, who appointed B & P Capital?

ADV HOFMEYR: B & P Capital as transaction advisor was appointed, I think it fell within the CEO's delegation, I would just have to check that.

MS MYENI: I think for clarity.

ADV HOFMEYR: Sure. So now I am asking this extension of the scope of the transactional advisor was a decision of the Board, so the transactional advisor had then selected
10 through a procurement process, but then the Board intervened on the 21st of April 2016 to extend B & P's scope to include the sourcing of funds. Do you recall having made that decision?

MS MYENI: May I not respond Chairperson to the question.

ADV HOFMEYR: Do you dispute that ...[intervenes]

MS MYENI: ...in case I implicate myself.

ADV HOFMEYR: Do you dispute that as a member of the Board you took that decision to extend the scope in a
20 situation where no procurement process was followed prior to its extension?

MS MYENI: I request to invoke the privilege Chairperson of not responding to the question, in case I incriminate myself.

ADV HOFMEYR: Then a fairly odd thing happened,

because the Board had taken the decision to extend the scope of B & P to include sourcing of funds, but – and that was on the 21st of April, but then on the 6th of May, a few weeks later, Ms Stimpel was asked to sign a bid adjudication committee submission motivating for the decision that the Board had already taken. Is that something that regularly happened at SAA under your watch?

MS MYENI: May I not respond Chair person, in case I
10 incriminate myself.

ADV HOFMEYR: Ms Stimpel around the 6th of May was going away and she was concerned that this BEAC submission should not be signed, and she instructed her colleague, Mr Kline, not to sign the BEAC submission but she was told by him that he had received pressure to do so and had done so. Were you aware of this pressure being applied pursuant to the Board's resolution on the 21st of April 2016 to get the BAC submission signed?

MS MYENI: May I not respond Chairperson, may I not
20 respond I don't want to incriminate myself.

ADV HOFMEYR: And then what happened was the Board approved the appointment for a second time of B & P on the 24th of May 2016. Do you dispute that you were a member of the Board that took that decision?

MS MYENI: May I not respond to the question

Chairperson I don't want to incriminate myself.

ADV HOFMEYR: Now the Board took the decision on the 24th of May 2016, it was communicated to B & P on the 25th of May 2016, and on the same day that B & P was appointed to source funds, B & P wrote back to SAA and said that it wanted SAA to commit itself to a cancellation fee for the work that it had already done on sourcing funds, despite the fact that it hadn't been appointed to do so. Were you aware that B & P was seeking a cancellation fee

10 on those terms?

MS MYENI: May I not respond to the question Chair in case I incriminate myself.

ADV HOFMEYR: So on the very same it is appointed it wants SAA to commit to a cancellation fee. I think the cancellation fee started off at about R300million. Do you recall Ms Nansi having discussed that with you?

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

ADV HOFMEYR: Do you dispute that that initial amount of
20 R300million was brought to your attention?

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

ADV HOFMEYR: There was a series of correspondence between B & P and SAA at the time as it kept motivating for this cancellation fee. It made reference to the fact that

they had been trying to seek funders in all sorts of foreign locations and had to take trips there in order to do so. We received however the evidence of the main funder, which was an entity called Grissag, do you know the entity Grissag?

MS MYENI: May I not respond Chairperson, may I not respond Chairperson because I don't want to incriminate myself.

ADV HOFMEYR: The Commission received the evidence
10 of Mr van der Merwe, who was a director of Grissag, who told the Commission that what B & P was telling SAA about all the costs and work that it had done was false. Are you aware of that evidence?

MS MYENI: May I not respond Chairperson so that I don't incriminate myself.

ADV HOFMEYR: All of a sudden in this interchange
between SAA and B & P Capital that initial fee of R300million dropped to R49.9million and Ms Nansi's evidence was that that followed a call that she was told
20 you had made to Mr Zwane. Do you dispute that you made a call to Mr Zwane dealing with this drop of the B & P Capital cancellation fee amount?

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

ADV HOFMEYR: Ms Nansi's evidence was that that

conversation – in that conversation as relayed to her by Mr Zwane was that you had enquired about the level of the CEO's CAP of delegation because Ms Nansi was raising issues about it going to the Board and you wanted to find out from Mr Zwane at what level the decision to approve the cancellation fee would not be required to go to the Board. Do you dispute that that conversation took place between you and Mr Zwane?

MS MYENI: May I not respond Chairperson so that I don't
10 incriminate myself.

ADV HOFMEYR: Ms Myeni you were I think on our records the only member of the Board who supported approving the cancellation fee, do you dispute that you were the only member of the Board that approved the cancellation fee?

MS MYENI: Where did the approval, the motivation come from Ms Hofmeyr?

ADV HOFMEYR: I will deal with that in a moment. It came from Ms Nansi, I would like to take you first to your
20 email in which you convey your approval. You will find that in Bundle DD1, so if you can pick that up and it is the second file, so it will be DD1B and we need page 559.

CHAIRPERSON: I see we are at five.

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

CHAIRPERSON: Do you intend to ask one or two questions

or what is your...

ADV HOFMEYR: If I could just deal with this email and then we could think about logistics Chair. Could I complete the email depending on my learned friend's position?

CHAIRPERSON: Oh Mr Buthelezi is that fine? Okay alright.

ADV HOFMEYR: Thank you. You have 559 in front of you, do you Ms Myeni?

MS MYENI: I was going to ask for the page.

ADV HOFMEYR: Sorry.

10 **MS MYENI:** I have the file I found so page 559?

ADV HOFMEYR: Yes you will find it under Tab 59 in that file is that assists.

MS MYENI: I have it Chairperson.

ADV HOFMEYR: I would like to start mid-way on the page because that is an email from the com – Deputy Company Secretary it is addressed:

“Dear SAA board member”

And it says:

20 “Attached herewith for your consideration and approval please find the Round Robin in respect of the approval of the cancellation fee to the transaction advisor. Please kindly communicate your decisions as indicated in the Round Robin form”

And then above that is an email from your Jacob Zuma

Foundation address dated the 7 July 2016 returning – responding to the Deputy Company Secretary and your email reads:

“Dear Mdu does this need board approval if so I approve it. Regards Ms Dudu Myeni Executive Chairperson.”

Ms Myeni do you dispute having sent this email?

MS MYENI: Chairperson may I not respond so that I do not incriminate myself.

10 **ADV HOFMEYR:** Ms Myeni is fairness to you I must put it to that your first sentence of that email querying whether this decision needed board approval is consistent with the version that Ms Nhantsi presented to this commission related to your conversation with Ms Zwane about what the level would be in order for the matter not to come to the board for approval? Do you dispute that?

MS MYENI: Chairperson may I not respond to the question so that I do not incriminate myself.

ADV HOFMEYR: Chair those were my questions in relation
20 to that email and I am very conscious of my learned friend’s constraints so maybe we should be thinking about taking matters forward.

CHAIRPERSON: Yes. You might be needing about thirty minutes or at least not more than an hour to finish?

ADV HOFMEYR: Oh yes certainly.

CHAIRPERSON: Yes. Should we – should we make arrangements to – for Ms Myeni to give evidence during one of the evening sessions that we can – we can look at on one of the days. From your side how does that – without speaking about the date how does that sound to Ms Hofmeyr from your side?

ADV HOFMEYR: Yes I...

CHAIRPERSON: Subject to the date.

ADV HOFMEYR: Indeed Chair.

10 **CHAIRPERSON:** Ja. Mr Buthelezi subject to the date would that be fine with you? It might be from five to six – one hour or depending but coming in at five or at four just depending on the date that we – we can arrange?

ADV BUTHELEZI: You see Chair the time now we are just slightly above five.

CHAIRPERSON: Yes.

ADV BUTHELEZI: If I could get a firm - firm undertaking that ...

CHAIRPERSON: Sorry?

20 **ADV BUTHELEZI:** If I could get a firm, firm undertaking by latest half past five we could then wrap it up.

CHAIRPERSON: We could wrap it up.

ADV BUTHELEZI: Then in its entirety so that it does not...

CHAIRPERSON: We do not have to – yes.

ADV BUTHELEZI: Roll over.

CHAIRPERSON: Yes. How does – how does that sound Ms Hofmeyr? It is just that you sometimes you can never be sure?

ADV HOFMEYR: I really cannot I will do my absolute best Chair.

CHAIRPERSON: But there is ...

ADV HOFMEYR: I cannot commit in a way that – that means...

CHAIRPERSON: Yes. I guess you can commit if – if it was
10 something like not more than forty-five minutes, not more than an hour.

ADV HOFMEYR: Not more than an hour. I could very comfortably commit to it is.

CHAIRPERSON: Ja but within the time that is left you might not be sure.

ADV HOFMEYR: Indeed.

CHAIRPERSON: Because you do not want to mislead him.

ADV HOFMEYR: Of course.

CHAIRPERSON: To say..

20 **ADV HOFMEYR:** Of course.

CHAIRPERSON: You will finish by half past five.

ADV HOFMEYR: Yes.

ADV BUTHELEZI: No Chair, no Chair. I object to the hour. I am giving thirty minutes because we are here now.

CHAIRPERSON: No, no I am not saying let us go for an

hour. Ja I am not saying that.

ADV BUTHELEZI: So I am saying Chair we have done the utmost in making sure that we wrap everything up by today including the fact that we agreed to come in early even after having run days with – we agree now second time to a further extension.

So I think Chair there has got to be a level of fairness to say, look the commission must do its work but also have within reasonable parameters for the rest of us to say, what I do not want to happen is to leave this hanging today and then we spend two, three, four weeks trying to organise the next date because of the availability issues on our side.

I think it is also prejudicial to client to have this thing now hanging by another hour after she spent three days committed to the process. So what we envisaged at the start of the process was that come this time today this would be behind us. So we are making as much compromises as we can to say, let us put this behind us.

And we then also implore on the commission to say, I think allocate the time of three days for yourselves to say we want this witness here for three days. The witness has been here for three days and we have now even on the third day given further – further times. I think they also need to come to the party Chair.

CHAIRPERSON: Well the problem with that is even if Ms Hofmeyr – even if we proceed – continue then she finished by half past that would not necessarily mean – guarantee that Ms Myeni will not be asked to come back. So that is not a guarantee. But what is – what we – what I am interested in is to try and make sure that everyone is reasonably accommodated.

If we – if the position is that we do not finish or we cannot finish today because of time constraints we look at
10 another time when everybody can make themselves available.

Now when I talk about an evening session maybe from form five to six or whatever from my side I am looking as soon as possible but I accept that not everybody might be available so it is subject to discussion that part.

When we are looking at a date that is close by like within two weeks that we discuss – we can discuss but when we looking at a date that is quite far we do not discuss that. We can fix the date because we are giving reasonable
20 notice. But when it is close we accept that that might not be reasonable notice therefore it should be subject to discussion.

So – so – but I do know – I do not know what – or Ms Hofmeyr actually did say there is a part that would be dealt with by another member of the legal team that – that is the

part that relates to Eskom.

So when Ms Hofmeyr has finished it does not mean that everything has been finished. I know that Mr Seleka had in mind that he would get time today to – to question Mr Myeni on Eskom but obviously that has not happened.

So it may well be that we should not be looking at – we might not be looking at an hour. But the Eskom part I know is a very narrow issue.

ADV HOFMEYR: Yes.

10 **CHAIRPERSON:** It is a very narrow issue. I cannot see it taking more than an hour. So it may be that we should look at maybe about two hours which could be four to six; which could be five to seven on...

ADV HOFMEYR: Chair.

CHAIRPERSON: On an evening that we can agree upon in the next two weeks or something like that. So basically the idea is we can talk about when it should be as long as everyone accepts the principle.

20 **ADV BUTHELEZI:** Sorry Chair. We have just got one or two propositions. Initially we had the one question that hung over with Mr Manaka's affidavit maybe we had accepted that we could receive written questions which we could respond. I do not know whether if it is still feasible to take the same approach for the balance of Ms Hofmeyr's questions to come via written questions.

I do not think – I am not too sure what the attitude is with regards to Ms Seleka's questions. However then given client's constraints and logistics I – we cannot commit at this point what we could do but we would endeavour if the Chair insists that we pursue with oral evidence then that we just do a similar formula even if it would open the evenings via video link so that it does not matter where she is that she is still able to then [00:10:01] of having to plan a whole logistics.

10 I – we are Gauteng based. It would be easier for us. So if we can leave it to the Chair [00:10:10] arrange maybe dates. I cannot speak for them but I think maybe around if you say Chair it should happen soon the...

CHAIRPERSON: Ja.

ADV BUTHELEZI: She would still be allowed to then do that.

CHAIRPERSON: Ja, no in terms of Ms Myeni giving evidence via video link that can still happen. That can be arranged. That is point 1.

20 2. As long as the principle is accepted to say we might have to use an evening session then

1. I can leave Ms Hofmeyr and yourselves and maybe Mr Seleka to talk about a date which I can approve. If no agreement is reached then I will fix a date and give reasonable time.

ADV HOFMEYR: Chair.

CHAIRPERSON: Perhaps that will be the – that would be the arrangement – but preferably we would seek to – I would seek that we all agree on a date that is close.

ADV HOFMEYR: Chair could I – could I just make the following submissions? My learned friend referenced the fact that three days had been set aside which we absolutely accept.

But what – we should not lose sight of the fact that
10 we started appreciably later than we had hoped to on the first day because we were told the day before and let me be clear. I fully understand why we were told the day before that Ms Myeni had recently had an exposure to Covid.

She needed to take precautions and because of that we – from Tuesday late afternoon had to start making arrangements for how to facilitate the video link evidence that would happen the following day. So what I am just trying to get clear is there was a delayed start.

We really had estimated being able to do it in three
20 days but unfortunately had had to take those steps to facilitate the Zoom evidence given her recent exposure. I understand she could not have notified us earlier than that. What I am particularly worried about as I think about it now is these 55 files that have to get to Ms Myeni wherever she is going to be.

CHAIRPERSON: Oh yes. Oh okay.

ADV HOFMEYR: And I understood her earlier to say that she is going to be flying somewhere.

CHAIRPERSON: Yes.

ADV HOFMEYR: Either tonight or tomorrow.

CHAIRPERSON: Ja.

ADV HOFMEYR: So that might mean she is in a different location when we reconvene.

CHAIRPERSON: Yes okay. Okay.

10 **ADV HOFMEYR:** And off the back of all of that

CHAIRPERSON: Yes.

ADV HOFMEYR: What I would like to suggest is whether there is any way that at least this evidence could complete itself today. I will explain why? If all that is left over is the Eskom evidence I know that there is one file for Eskom.

So that would be a much easier logistical thing to manage with Ms Myeni wherever she is located and to do it potentially by Zoom. But there really will be a logistical difficulty.

20 If we cannot go on today I do understand if we cannot but then we need to think very creatively on how we are going to get 55 files to wherever Ms Myeni is going to be after she takes her flight. I think it was either later today or tomorrow.

CHAIRPERSON: Well the question that would arise is

whether given the fact that you think you are something like thirty minutes or forty five minutes away from finishing whether she would still need all those many files or whether there would only be a few – two or three that she might need which would obviously be better than 55.

ADV HOFMEYR: That is true. Though there could be – there could be a culling definitely Chair.

CHAIRPERSON: Yes. Yes, Yes. Okay. Okay. So I mean certainly if one is talking about 55 or forty something files
10 logistically that could be a nightmare in terms – and if she has got to testify via video link from – too far from – out away from Gauteng. But if it is a few files as you say that might be fine. Okay let us – shall we say

1. You will talk – the lawyers will talk on both sides and can then be approached by yourself to approve a date. And then as I say if there is no agreement we will – I will just fix a date.

ADV HOFMEYR: Certainly.

CHAIRPERSON: But give reasonable time. Before we
20 finalise – oh you want to say something Mr Buthelezi.

ADV BUTHELEZI: Yes Chair we were going to ask that we adjourn for maybe just five minutes and we discuss amongst ourselves the extent to which

CHAIRPERSON: Ja

ADV BUTHELEZI: We can accommodate today because first

prize would be ...

CHAIRPERSON: To finish.

ADV BUTHELEZI: To finish.

CHAIRPERSON: Yes, ja.

ADV BUTHELEZI: So in other words that [00:15:14] just can remain today.

CHAIRPERSON: Ja. Yes.

ADV BUTHELEZI: It would be ideal.

CHAIRPERSON: Okay.

10 **ADV BUTHELEZI:** And I think I also am conscious of client not to have this pending.

CHAIRPERSON: Yes. Yes.

ADV BUTHELEZI: It is pending [00:15:28].

CHAIRPERSON: Yes.

ADV BUTHELEZI: It is not depending even after so let the [00:15:31] bring to an end Chair. It would be really appreciated.

CHAIRPERSON: Yes.

20 **ADV BUTHELEZI:** So we are going to try to accommodate but with reluctance I am not saying there is a reluctance to accommodate us.

CHAIRPERSON: Ja.

ADV BUTHELEZI: I am saying Ms Hofmeyr...

CHAIRPERSON: You want to explore?

ADV BUTHELEZI: Must also try herself to say okay fine let

us – let us discuss it.

CHAIRPERSON: Ja. No that is fine we can adjourn. I think as long as you appreciate I do not know Ms Hofmeyr might be – might be up to date about this. As long as you appreciate that there is the Eskom part which might have to come later or might continue depending. I do not know if Mr Seleka is around or whatever but let me adjourn for five minutes. Ms Myeni you understand what is being discussed here?

10 **MS MYENI:** I do Chair. Thank you so much.

CHAIRPERSON: Yes. From your side you do not have any particular serious difficulty with whatever arrangement?

MS MYENI: Chairperson with respect to the commission I made an undertaking and I still do whatever that is reasonable to all of us but the first prize is to finish Chair.

CHAIRPERSON: Okay. Today if possible.

MS MYENI: Because what I do not want is to find myself Chair with the exposure.

CHAIRPERSON: Yes.

20 **MS MYENI:** And now the pressure that I am undergoing here then I end up starting to have my low immune system. So I am trying by all means in between here these breaks have been assistance because I am taking vitamins and stuff like that. So I am just telling Chair I am flexible but I am also within a certain reasonable time I would prefer to finish.

CHAIRPERSON: To finish okay no that is alright. Let us take an adjournment. It is about seventeen minutes past so maybe we return at twenty five past. We adjourn.

ADV HOFMEYR: Thank you Chair.

REGISTRAR: All rise.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Mr Buthelezi.

ADV BUTHELEZI: Thank you, Chair. We said let us
10 proceed Chair and Mr Seleka must also come and proceed because he is one person with one party.

CHAIRPERSON: H'm.

ADV BUTHELEZI: So I do not foresee why it would be difficult for him to latch onto that. We are running for how long and however it needs to run, let Ms Hofmeyr finish her part and then Mr Seleka arrives and then we finish tonight and then we all go ahead.

CHAIRPERSON: Well, I – as I said, I do not know what Mr Seleka's position is. He, as I understand it, certainly was
20 going to be available if Ms Hofmeyr had finished at a certain time but whether he was going to be available after, is something that I do not know anything about. So it just depends on that. That is something I do not know anything about.

ADV HOFMEYR ADDRESSES THE CHAIR: Chair, let me be

clear. I indicated to Mr Seleka that we were going to run for the day and so that it would not be the case that we would get to this evidence today.

CHAIRPERSON: Yes.

ADV HOFMEYR: And so, he would not be prepare in any way to do the evidence.

CHAIRPERSON: Yes.

ADV HOFMEYR: And it would not, in my view, in any way be feasible to drag him through those circumstances.

10 **CHAIRPERSON**: Ja.

ADV HOFMEYR: So we – whatever happens, that evidence – if we are able to complete this evidence today, it will have to be done at another point.

CHAIRPERSON: Ja.

ADV HOFMEYR: Which regularly happens when we run out of time on the allocated days.

CHAIRPERSON: Ja.

ADV HOFMEYR: If that is an issue for my learned friends, then we must move everything to that other day but I would
20 be keen again to try and finish my section if we can.

CHAIRPERSON: Ja. Okay Mr Buthelezi.

ADV BUTHELEZI: Sorry, Chair. We do not have an answer on the prospects of receiving written questions from Mr Seleka.

CHAIRPERSON: By Mr Seleka?

ADV BUTHELEZI: Yes.

CHAIRPERSON: Well, one, he is not here. Two, I doubt that in regard to the Eskom part, I doubt that I would prefer that it be dealt with by way of written questions but, for example, with regard to the Manaka affidavit, I do not have a problem that it be dealt with... Each issue depends on its own merits.

ADV BUTHELEZI: Then if we before we proceed then. Can we get an undertaking from Ms Hofmeyr, how much longer
10 are we here?

ADV HOFMEYR: As I said previously, certainly no longer than an hour and maybe even shorter than that.

CHAIRPERSON: H'm.

ADV BUTHELEZI: That is fine.

CHAIRPERSON: Okay alright.

ADV HOFMEYR: Thank you.

CHAIRPERSON: Thank you. Then let us proceed then on that basis.

ADV HOFMEYR: Thank you. Ms Myeni, where we had
20 stopped before we had this exchange, which unfortunately, I am sorry it has taken longer and I know that it is going late into the evening - was at your email that we have looked at where you were asked whether the approval of the cancellation fee requires board approval, and you say: It is so. I approved it.

What I would like to ask you following from that Ms Myeni is, what motivated you to approve R 15 million to be paid to BNP Capital as a cancellation fees in circumstances where they asked for the fee on the very same day they were appointed on the basis that they had undertaken work already?

How could that be a justifiable ground for committing to a, just short of R 15 million cancellation fee?

MS MYENI: Chairperson, may I not respond to the question
10 so that I do not incriminate myself?

ADV HOFMEYR: Ms Myeni, Ms Nhantsi's evidence before this Commission was that she did write that recommendation that you highlighted a moment ago in a question you asked me, to the board to approve the cancellation fee.

But her testimony before this Commission was that she had reservations about it and she, nonetheless, wrote the recommendation because she feared what would happen if she did not do that.

Because she said, you were putting pressure on her to
20 get this deal done. Just for the record before I have your answer on this Ms Myeni.

Chair, that can be found in the transcript of Ms Nhantsi's evidence. It is on the 19th of June 2019, page 51, lines 1 to 19.

Ms Myeni, do you dispute that you were placing pressure

on Ms Nhantsi to get this matter approved?

MS MYENI: Chairperson, may I not respond to the question in case I incriminate myself?

ADV HOFMEYR: She also indicated that one of the points that you made when you were encouraging her, or on her version pressurising her, to get this deal done, was that costs have been incurred in Paris(?). How did you know that?

MS MYENI: May I not respond Chairperson in case I
10 incriminate myself?

ADV HOFMEYR: Because Mr Van der Merwe's evidence before this Commission is that no costs had been incurred and that the letters prepared by the BNP Capital motivating for the cancellation fee on the basis that those costs had been incurred, was false.

So it is just difficult for me to understand how you had come to have knowledge of those alleged fees being incurred. Can you assist us with that?

MS MYENI: Chair, it is very difficult to sit before this
20 Commission and get asked about nitty-gritty's of operational matters. May I then, with respect Chair not respond to this question?

ADV HOFMEYR: This is not so a nitty-gritty operational matter because you yourself, Ms Myeni, approved that SAA would be BNP Capital R 49.9 million if SAA pulled out of the

transaction. So the reason for my questions is because you yourself gave that approval. And I am probing why you would give your approval in a situation ...[intervenes]

MS MYENI: May ...[intervenes]

ADV HOFMEYR: ...when a cancellation fee was sought on grounds that cannot be possible be justified for work that was done before the appointment was made. How could that be a valid basis for a cancellation fee?

MS MYENI: Chairperson, may I not respond to the question
10 so that I do not incriminate myself?

ADV HOFMEYR: You see, what emerged in the evidence was that BNP Capital have had its FSP licence suspended at a point in time before it was approved as the source of these funds. Were you aware of that?

MS MYENI: Chairperson, may I not respond to the question so that I do not incriminate myself?

ADV HOFMEYR: You see, the concern that arises from that fact is that someone at BNP was aware that this license had been suspended, was aware that the license was a
20 prerequisite for their valid appointment, and they well had been concerned that should SAA find out about the suspension of the license, they might pull the whole transaction.

And so, instead of scoring a success fee which was their first terms of remuneration in this transaction, they then

motivated for a cancellation fee. Do you have any comment on that being what might have been going on in the background?

MS MYENI: Chairperson, may I not respond to the question so that I do not incriminate myself?

ADV HOFMEYR: There has also been evidence before this Commission that your son, Mr Thalente Myeni is a business associate of Mr Mugabi. And I know I have already dealt with you about that earlier but there was a further indication
10 that they had been seen at SAA together on occasion. Can you confirm whether that is so?

MS MYENI: Chairperson, may I not respond [distortion present – speaker unclear]

CHAIRPERSON: We lost connection with Ms Myeni. Can you hear me, Ms Myeni?

MS MYENI: I can. I can Chair. Thanks.

CHAIRPERSON: Okay I think your answer was not complete. Do you want to repeat it or your response?

ADV HOFMEYR: May I not respond to the question
20 Chairperson in case I incriminate myself?

CHAIRPERSON: Okay.

ADV HOFMEYR: Ms Myeni, were you going to benefit in any way if BNP Capital had secured the R 49.9 million cancellation fee?

MS MYENI: May I not respond to the question Chairperson

so that I avoid incriminating myself?

ADV HOFMEYR: Ms Myeni, did you lodge a criminal complaint against Ms Yakhe Kwinana arising from the AAR/JM Aviation contract on the Components Tender?

MS MYENI: Can you please repeat the question Ma'am because that would be an instruction by who? And what is the motivation that you are talking about?

ADV HOFMEYR: No, Sorry. So I think you may not have heard me. I have just asked, did you lodge a criminal
10 complaint against Ms Kwinana arising from the AAR/JM Aviation Contract for Components?

MS MYENI: Chairperson, it is important to get a full picture to say if I lodged a complaint, as who? Because there is no decision when you are a board that you just decide alone on your own.

If, for instance, you are a board of ten people. At least the majority of the board must agree to doing something. Now I am saying, Dudu Myeni goes and open a case against Yakhe Kwinana or the board takes a decision, a resolution to
20 go and open a case against Kwinana per...

Sorry, per instruction by the minister, by instruction by the investigators, per instruction by the CEO. That is why I would like a ...[intervenes]

CHAIRPERSON: No, no, no.

MS MYENI: ...to hear.

CHAIRPERSON: No, no, no. Ms Myeni, the question is simple. Did you lay a criminal complaint against Ms Yakhe Kwinana in regard to the AAR/JM Aviation... is it B Tender or Component contract?

ADV HOFMEYR: Indeed.

CHAIRPERSON: Now, if you want to say: I did but I did not – I was not acting personally. I was acting on the strength of a resolution of the board. That is something you can clarify. But if you say you did not, then you say you did not.

10 **MS MYENI:** Chair, may I not respond then Chairperson so that I do not incriminate myself?

CHAIRPERSON: Chair, this is an occasion where it is not clear to me that this privilege can be invoked. I struggle to know what possible crime could arise from a question that is asked: Did you lodge a criminal complaint?

CHAIRPERSON: H'm.

ADV HOFMEYR: But I just note that and I am happy to proceed, depending on your direction.

20 **CHAIRPERSON:** Well, I indicated, I think on Wednesday, that we will proceed and Ms Myeni would invoke her privilege where she considers that is applicable but at some stage, yesterday or today, I might have a look at – and see where there are not certain questions where I would rule differently.

So I have not done that except maybe in one or two – in regard to one or two questions over the past three days. As

we speak now, I am inclined to take the view that when we are done, that might be important that the legal team could go through the transcript and see where there are questions that it wishes to present submissions on whether she should be compelled.

I would probably also would want to go through and see that. It maybe that there might be none. It may be that there might be some. So I – if you want to leave it and move on and just place your position on record, I do not have a
10 problem. But Mr Buthelezi wants to say something.

ADV BUTHELEZI: Yes, Chair. Just one point.

CHAIRPERSON: Ja?

ADV BUTHELEZI: There may not be possible any criminal liability that may arise from the question on the surface but even the prospect of perjury yourself, renders you perceptible to criminal prosecution.

So I think in part, it also goes to that point to say: I do not want to incriminate myself in as far as I may perjury myself.

20 So this is one of those questions where the witness, in our view, is entitled to avoid the question because they do not want to run the risk of perjury themselves. Thank you.

CHAIRPERSON: Ms Hofmeyr, you might want to say something.

ADV HOFMEYR: Yes.

CHAIRPERSON: You might want to simply say: No, you have recorded your position. You will take it from there. Or what would you like?

ADV HOFMEYR: Chair, the threat of committing perjury could never be a basis for invoking the privilege against self-incrimination. If that was so, every person ...[intervenes]

CHAIRPERSON: [laughing]

ADV HOFMEYR: ...whoever comes before this Commission ...[intervenes]

10 **CHAIRPERSON**: Ja.

ADV HOFMEYR: ...would be able to invoke that in order – in a sense, to invoke a right to silence which they do not have.

CHAIRPERSON: H'm, h'm.

ADV HOFMEYR: So you cannot say: I am... I will lie if I give my answer. So I invoke my right against – my privilege against self-incrimination not to give a lie.

CHAIRPERSON: H'm, h'm.

20 **ADV HOFMEYR**: Chair, we can make further submissions in due course but that could never be a basis for the implication of the privilege.

CHAIRPERSON: Okay but you have noted.

ADV HOFMEYR: I will leave it. I have noted that that is...

CHAIRPERSON: Yes.

ADV HOFMEYR: And Chair, the record will show.

CHAIRPERSON: Ja.

ADV HOFMEYR: I have been very careful to only raise the issue where it just does not appear on its face to be question that could ever lead to a series of questions to expose her to a criminal charge.

CHAIRPERSON: Ja. H'm.

ADV HOFMEYR: And I will just continue to note them when they arise.

CHAIRPERSON: Okay, okay.

10 **ADV HOFMEYR:** My next question Ms Myeni is, did you provide an affidavit to the police regarding the AAR/JM Aviation Contract for Components?

CHAIRPERSON: May I not respond Chairperson to avoid incriminating myself?

ADV HOFMEYR: You certainly... Ms Kwinana gave evidence on Monday or Tuesday that around the time that the contract was being finalised on the AAR/JM Aviation matter, you had asked her to give an account because there was commentary in the media, I think, flowing from Air
20 France's litigation on the case.

I think she said that the unions may have raised a concern. Do you confirm that you asked for an account of the allegations that there was something untoward in the award of that contract?

MS MYENI: May I not respond Chairperson in case I

incriminate myself?

ADV HOFMEYR: There was also evidence given my Ms Mamela who appeared before this Commission, that your specific concerns about the award of this contract in questionable circumstances, have been raised at SAAT Board meetings after the award was made. Can you confirm whether you had those concerns and if so, what they were?

MS MYENI: May I not respond Chairperson so that I do not incriminate myself?

10 **ADV HOFMEYR:** Ms Myeni, I would then like to turn to the 30% set-aside policy that was embarked upon at SAA. That policy was linked to the President's State of the Nation Address in 2015, was it not?

MS MYENI: May I not respond Chairperson so that I do not incriminate myself?

ADV HOFMEYR: Again Chair, for the record. It is not at all clear to me how – whether the 30% set-aside policy was linked to the former President's State of the Nation Address in 2015 could expose Ms Myeni to a criminal charge. But I
20 will move on for now.

Ms Myeni, you received communications, both from National Treasury and from the DTI that the 30% set-aside policy was unlawful, did you not?

MS MYENI: Chairperson, may I not respond to the question so that I do not incriminate myself?

ADV HOFMEYR: And having received those communications from National Treasury and the BBEE Commissioner, why was it that, despite that you, and particularly Ms Kwinana, together with your other board members, pushed for the imposition of this 30% set-aside policy?

MS MYENI: May I not respond Chairperson so that I do not incriminate myself?

ADV HOFMEYR: Ms Myeni, the Commission has received
10 evidence that on that on Friday the 2nd of October 2015, you and Ms Kwinana held a lengthy meeting with Dr Dahwa who was then the Head of Procurement at SAA.

And his version is that you placed pressure on him to prepare letters of award to Swissport and Engen arising from the 30% set-aside policy.

Ms Kwinana had denied before this Commission that that meeting took place. Do you confirm that the meeting took place or do you, like her, deny that it took place?

MS MYENI: May I not respond Chairperson? I do not want
20 to incriminate myself?

ADV HOFMEYR: Again, Chair it is not clear to me that that question could – answering that question could expose Ms Myeni to a criminal charge.

Dr Dahwa's evidence is that at that meeting you said to him that you were keep to take his job away, that the EFF

were going to be protesting at SAA the following Monday, and he would be at risk because they were going to protesting against those who are anti-transformation and Zimbabweans.

Do you recall issuing that threat to Dr Dahwa?

MS MYENI: Chairperson, may I not respond to the question so that I do not incriminate myself?

ADV HOFMEYR: Do you dispute that you threatened him in that way?

10 **MS MYENI**: Chairperson, may I not respond to the question?

ADV HOFMEYR: Dr Dahwa...[intervenes]

MS MYENI: I do not want to incriminate myself. And Chairperson, Dr Dahwa did not report to the chairman of the board. I do not want to incriminate myself. May I please not respond to the question?

ADV HOFMEYR: Dr Dahwa's evidence was that he was extremely distressed by that meeting on the 2nd of October 2015. Were you aware that he was very
20 distressed by it over the course of the day?

MS MYENI: Chairperson, may I not respond to the question so that I do not incriminate myself?

ADV HOFMEYR: Again, I – for the record Chair, it is not clear to me that that is a question that would – the answer to it would expose Ms Myeni to a criminal charge. After that

meeting, you received a letter from Ms Kwinana in which she called on you to take strong disciplinary action against Dr Dahwa for what she alleged was his insubordination, his efforts to sabotage SAA. Did you share those views of Ms Kwinana?

MS MYENI: May I not respond to this questions Chairperson? I do not want to incriminate myself?

ADV HOFMEYR: After that letter was sent to you Ms Myeni on the 9th of October 2015, Dr Dahwa was served with a
10 charge sheet and he then was subjected to a disciplinary process. Did you support the decision to discipline him?

MS MYENI: May I not respond Chairperson to the... May I not Chair to the question? I would not want to incriminate myself?

ADV HOFMEYR: Again Chair, for the record. It is not clear to me that the answer to that question could expose Ms Myeni to a criminal charge. Dr Dahwa's letter of suspension was prepared by Ms Phumeza Nhantsi, just a few days after she had taken up the position as acting CFO.

20 So she was in a position where she had no personal knowledge of the grounds for disciplining Dr Dahwa. Did you assist in the compilation of that letter of suspension at all?

MS MYENI: May I not respond Chairperson to the question? I do not incriminate myself?

ADV HOFMEYR: Again Chair, it does not – it is not clear to

me that that could be a question – the answer to which would expose Ms Myeni to a criminal charge. Ms Myeni, the disciplinary proceedings against Dr Dahwa commenced on the 16th of March. And do you have any knowledge of these proceedings?

MS MYENI: That is an operational matter, Ma'am.

ADV HOFMEYR: Is the answer no then?

MS MYENI: The answer is, it is an operational matter.

ADV HOFMEYR: That is not an answer to my question. My
10 question is. Did you know that his disciplinary proceedings began on the 16th of March 2016?

MS MYENI: Chairperson, in view of my answer not acceptable, then may I not respond to the question?

ADV HOFMEYR: And Ms Myeni, just to be clear. It is not that it is not acceptable. It is just that you – that question requires a yes or a no. And so, it would be helpful if you could indicate. If you do not have knowledge, that you do not. Saying it is an operational matter, does not actually answer the question.

20 **CHAIRPERSON:** Ja. You see ...[intervenes]

MS MYENI: May I then not respond Chairperson?

CHAIRPERSON: You see, Ms Myeni ...[intervenes]

MS MYENI: Because all these questions... Sorry, Chair. Sorry.

CHAIRPERSON: Yes, I am saying ...[intervenes]

MS MYENI: I am sorry.

CHAIRPERSON: I am saying, the question requires you to say whether you know or you do not know. And that it may be an operation matter, might mean that you do not know. But there may be operational matters that you know. So it is more about what you know or what you do not know.

MS MYENI: Chair, may I then... I appreciate that you are – you have given me clarity. Then can I then invoke my privilege to say, I would not like to respond to the question in
10 case I incriminate myself?

ADV HOFMEYR: Again Chair for the record. That is not a question that certainly, as I consider it, would expose – the answer to which expose Ms Myeni to a criminal charge.

There was quite severe concerns within the HR Department of South African Airways about the manner in which that disciplinary process was conducted. And despite the Head of HR raising those concerns...

Well, the Head of Employee Relations, raising those concerns, the process was continued with. Did those
20 concerns ever reached your level Ms Myeni?

MS MYENI: Chairperson, may I not respond to the question so that I do not incriminate myself?

ADV HOFMEYR: That again Chair is not a question, the answer to which, in our view, would expose Ms Myeni to a criminal charge. Chairperson, I appear to have done a little

bit better on my estimation of time. I would like, if I may then, to move to some of the conclusory aspects that I would like to put to Ms Myeni for her comment?

CHAIRPERSON: Yes. No, that is fine. Matters relating to the suspension and ultimately departure of Ms Mpshe did you cover those, something that...

ADV HOFMEYR: No, I have dealt with Dr Dahwa because there were indications in the papers that that might have elevated to Ms Myeni's ...[intervenes]

10 **CHAIRPERSON:** Oh, okay.

ADV HOFMEYR: But sorry, Chair, you do remind about an aspect that I must traverse. Thank you very much for that.

CHAIRPERSON: Okay.

ADV HOFMEYR: Ms Myeni, Ms Mphse gave evidence before this Commission about the Air Chefs contract. Well, it was first the LSG Sky Chefs contract, the award to it to provide lounge catering services at various airports and then an attendance at parliament on the 2 September 2015. Do you remember attending parliament on that day?

20 **MS MYENI:** May I not respond, Chairperson, so that I do not incriminate myself.

ADV HOFMEYR: Chair, let me just record now, knowing the questions that I am anticipating asking, it is not clear to me that the answers to any of these questions would tend to expose Ms Myeni to a criminal charge, so I am

going to say that now just to cover all of them so I do not have to keep saying it. Ms Mpshe said that there was an issue taken up when you presented before the portfolio committee on that day and there was criticism levelled at South African Airways for having awarded this contract to LSG Sky Chefs. Do recall that criticism having been made?

MS MYENI: May I not respond, Chairperson, I would not want to incriminate myself.

10 **ADV HOFMEYR:** Her evidence was that when the meeting adjourned and you were outside the room with her you berated her in front of colleagues and said how could we give this contract to a foreign company. Do you remember saying that to her?

MS MYENI: May I not respond, Chairperson, I know for a fact that I would incriminate myself.

ADV HOFMEYR: Ms Myeni, do you dispute Ms Mpshe's version that that is what you did after the meeting at parliament?

20 **MS MYENI:** May I not respond, Chairperson.

ADV HOFMEYR: What then followed, Ms Myeni was ...[intervenes]

MS MYENI: So that I do not incriminate myself.

ADV HOFMEYR: What then followed, Ms Myeni, was a number of interactions between the board and Ms Mpshe

as she endeavoured to explain to the board why the decision had been taken to go out on tender on that matter, what had informed that decision, the fact that LSG Sky Chefs was actually a local company, not a foreign entity. She explained that the concerns that Ms Kwinana had raised around the loss of jobs had been catered for because the employees would be moved over. She also addressed how negligible a portion of the revenue of Air Chefs this contract actually occupied. She went and got
10 advice from the legal department about the consequences of SAA of cancelling that contract and despite that, the board of SAA on the 28 September 2015 took a decision to cancel the award to LSG Sky Chefs and to award it to Air Chefs. Against the backdrop of what the Acting CEO was saying to you as the board at that time, why did you make that decision, Ms Myeni?

MS MYENI: What, Ma'am, to cancel LSG tender?

ADV HOFMEYR: Yes.

MS MYENI: Chairperson, may I not respond, Chairperson,
20 to the question so that I do not incriminate myself.

ADV HOFMEYR: You took that decision ...[intervenes]

MS MYENI: But also, Chairperson, sorry. But, Chairperson, it can also help you, Chair, to say – or help this Commission to say where I am sitting it would not make sense to take a competitor of Air Chefs and give all

the work of South African Airways to another company. In as far as I am concerned, Chair, in any work environment, Chairperson, there are decisions you take that are motivated and informed by the CEO or the CFO, that they motivate for you to consider applying your mind, exercise duty, care and skill and ensure that the decision is a proper decision that you would stand by. In this case, Chair, Air Chefs was, if it still exists, a subsidiary of South African Airways. So South African Airways Catering

10 Services ought to have been provided by Air Chefs. So, Chairperson, I can safely stop right there. I have provided what I can but I am deliberately limiting it to as far as I have spoken. Thank you, Chair.

ADV HOFMEYR: The board's decision to cancel the award to LSG Sky Chefs was against the advice of its own internal legal department. Why did you take a decision against the advice of your own legal department?

MS MYENI: Chair, I said the motivation, when it comes to the board, it is not a gun put on the face of the board or on

20 the head of any decision-maker within the board. When a motivation come, it is not a do or die. You have got to read what is before you, understand the financial implications, understand the risk, understand also the – maybe capabilities of those that you prefer than what you already have. In this case Air Chefs LSG provided similar

services. Now if we are to close Air Chefs and take LSG, that process ought to have been a properly deliberated upon process but whoever provides any motivation to the board, it does not mean that you will not have different views as the board. One can decide to say yes, one can decide to say no. So unless you are asking me as Dudu, then I can tell you what my view was then or what my view is today. But, Chairperson, I am saying I can only go as far as this, it does not mean that when you are given a
10 legal advice you must take every advice that comes.

It does not mean that the board memos, all board memoranda that were provided to the board meant that all of us will say yes. It does not operate like that at that decision-making level. You have got to apply your mind, you have got to ask questions as well. It does not mean also that when you received the memorandum from whoever then it means that memorandum is like you must say yes, thumbs up. You weight many things.

My views might not even touch on the – say, for
20 instance, another person would look at a risk that I would not have thought about. Another person in the board might raise another question that you did not think about or you, yourself, you would ask a question to say have we really thought about this or should we defer this decision and then come back about it and say maybe let us explore this.

So it does not mean, Ms Hofmeyr, that because it came from a legal department of SAA then it meant that we must just rubber stamp and not apply our minds. I am just saying that, Chair, I can go as far as that because it looks like these questions, they keep following each other, following each other. I would not, in my personal capacity, replace Air Chefs without following a proper process of killing, killing a subsidiary, and opt for LSG instead of continuing with your own baby. In other words, we ought to
10 have killed a child that was established by SAA as a subsidiary.

In other words, low cost airlines like Mango, we would have like – it is a comparative to say, in other words, take our passengers to a competing airline, leave Mango. It was not going to be a good decision.

This is my view, Chairperson, and I can only elaborate further at another forum, Chairperson.

ADV HOFMEYR: Ms Myeni, are you a lawyer?

MS MYENI: In the board you have a different type of
20 skills. I am not a lawyer but a lawyer might not be a finance person. A lawyer can be a legal expert but a chartered accountant can look at the financial risk. Another person would look at the HR component of the risk of whatever decision. Then you listen to all other inputs from different people. I do not have to be a lawyer to be

able to take decisions that are good for that particular operation that you are running. So if all of us would be lawyers in order to take good decisions then we will not complement each other. You need very – a spread of skills to be able to complement each other. Definitely you have seen my CV, Ma'am, therefore I do not think I need to respond to your question.

ADV HOFMEYR: Did you seek the guidance of any other lawyers to check whether they disagreed with the advice
10 that your own legal department was giving you about the consequences of cancelling the LSG Sky Chefs award?

MS MYENI: What was your question, Ma'am?

ADV HOFMEYR: Did you seek the views any other lawyers about whether the advice of your own legal department concerning the consequences of cancelling that award were correct or not?

MS MYENI: Chairperson, with respect, any submission to the board, is not for the board to rubber stamp. People get bribed to push certain decisions to the board. Other
20 people do not get bribed but they think that this business case, as executives, is a good business case but you need also a fair spread of different minds around an issue that you are talking about.

You see, Chairperson, as the board, we were reporting to the shareholder ministry and as the board we

had an oversight structure in parliament where we reported about the performance of the airline. So if we were to kill Air Chfs, we needed first to get the approval to say then we are killing Air Chfs, we are taking Air Chfs' functions to somewhere else.

I am making a very broad statement but a narrow statement I can provide the Chairperson is that it does not mean that when a submission is made to the board ten people will have the same answer. One person might say I
10 prefer not to approve this and then sometimes they even provide some motivation in terms of the reasons why they do not approve or eight people can say we are against this.

Say, for instance, you are not at the board meeting, you are on your own wherever you stay but you are reading something via the email, you have no one to ask any questions but sometimes you follow up by asking questions to check if this decision you are going to take is the right decision.

And the other thing is, I did not have veto power.
20 So whether I wanted to say, as Dudu alone, let this continue, it would never happen. So I am just saying, Chairperson, I do not want also to waste much of our time.

ADV HOFMEYR: Ms Myeni, did you ...[intervenes]

MS MYENI: It is important to say that I am not – one, I am not a lawyer. Two, it does not mean that any

submission that a person makes in the board that means it is a done deal. No.

ADV HOFMEYR: Ms Myeni, did you ...[intervenes]

CHAIRPERSON: Ms Hofmeyr?

ADV HOFMEYR: Apologies. Ms Myeni, did you believe that the legal department of SAA had been bribed to give the advice that they gave you on the consequences of cancelling the LSG Sky Chefs award?

MS MYENI: When I said it does not mean that every
10 submission that is presented to the board means everyone must then rubber stamp and approve. I do not insinuate that somebody was bribed or not.

I am saying the expectation of this Commission would be whether we were able to apply our minds when taking decision because then, Chair, you do not need a board. If then that legal department would take decisions, why are they bringing it to the board? Then it means the board was just a collective of like maybe people who do not think properly and who are not qualified to be able to
20 use proper skills to assess risk involved, financial side of the organisation, capability of whoever that is coming to render any service.

But also, the labour issue that now you are – you have equipped Air Chefs, now you are closing Air Chefs with all the new equipment that existed Air Chefs, you are

taking the business away somewhere else. I also, Chairperson, do not want to talk too much about one service provider and take so much time about one service provider because, Chair, it would then mean the whole country lost by not giving LSG the contract.

So, I am saying, Chair, please allow me to stop right there and not continue further about this question of LSG.

CHAIRPERSON: Ms Hofmeyr?

10 **ADV HOFMEYR:** Ms Myeni, the problem, and in fairness I must put it to you, with what you have said now about rubber stamping and the role of the board to interrogate what is placed before them, is that this decision was never within the delegated authority of the board, it was a decision that had been taken by the Acting CEO because it fell within ultimately her decision-making delegated, it was done off the back of a fully lawful and procedurally fair procurement process.

20 So there was no motivation to the board, there was no decision that the board was required to take, the lawful decision had been taken by the Acting CEO. A letter of award was sent to LSG Sky Chefs and despite that, after receiving some tough questions in parliament, on the second September 2015, the board of its own account decided to overrule that decision.

So I put it you, Ms Myeni, you cannot justify that decision on the basis that it is important for boards to consider carefully what come before them, you were overturning the lawful decision of your Acting Chief Executive Officer. Do you have a response to that?

MS MYENI: Sorry, I am losing – sorry, I am losing you a bit here. Sorry, now I hear you.

CHAIRPERSON: Yes.

ADV HOFMEYR: Did you ...[intervenes]

10 **CHAIRPERSON:** Ms Hofmeyr ...[intervenes]

MS MYENI: I can hear you, Chairperson.

CHAIRPERSON: Ja. Ms Hofmeyr says the difficulty with the response that you have given to her question is that this was not a case where the board was given any submission in order for the board to make a decision.

She says this was a case where the decision fell within the delegation of authority of the Acting CEO Ms Mpshe and she had made a lawful decision but the board, after facing some tough questions in parliament on the 2
20 September came back and then decided to overturn the Acting CEO's decision. Ms Hofmeyr, did I put it correctly?

ADV HOFMEYR: Almost verbatim, Chair, so thank you so much.

CHAIRPERSON: Okay, so that is what she is saying. So she says what do you say to that?

MS MYENI: Chairperson, then may I not say anything unless I incriminate myself because once something is in parliament, Chair, once something is in parliament it attracts the board's attention. So that is why then, Chair, nobody was taking away anybody's delegations of authority but it was being asked in parliament, as Ms Hofmeyr was saying. So, Chair, I invoke my privilege of not saying anything.

CHAIRPERSON: What would you say ...[intervenes]

10 **MS MYENI:** So that I do not incriminate myself, Chair.

CHAIRPERSON: What would you say to somebody who says you and your colleagues on the board ought to have, after getting questions in parliament about this issue, ought to have investigated it and then given answers to parliament maybe later on because the decision that had been made was a lawful decision made by somebody who was acting within her delegation of authority?

20 What would you say to somebody who say maybe you were caught off guard by the questions that you were asked in parliament, as board members, but then you should have investigated and then maybe subsequently went back to the board and say this decision was taken by the Acting CEO, she was acting within her delegated authority, maybe as the board we do not agree with it but she made a decision, it was a lawful decision, we will not

interfere? What do you say to somebody who might put that proposition to you?

MS MYENI: I will not make any comments, Chair.

CHAIRPERSON: Okay, alright. Ms Hofmeyr?

ADV HOFMEYR: If Ms Myeni has refused to answer that question on the basis that she is invoking her privilege against self-incrimination, Chair, we submit that that is an abuse of the privilege.

Ms Myeni has given us almost twenty minutes of an
10 account of this matter. At this point she is seeking to invoke the privilege to avoid answering difficult questions. Those will be our submissions in due course. Do you want to respond to that, Ms Myeni?

MS MYENI: Again, Chair, it is not accurate that it was twenty minutes, that is the starting point, Chairperson. I am sitting here, I am watching minute by minute on the iPad here and it is not fair to say I have given a twenty minutes response to the question or I do not know the comment that you have described, it was not twenty
20 minutes. Certainly, Chair, not.

Secondly, Chairperson, I said I am making a broad account of submissions that gets made. I did not say LSG was not within the delegation of authority of Ms Mpshe. And secondly, as the Acting CEO.

And thirdly, Chair, I cannot answer before you today

to say what were the steps that were followed then in the process of cancelling the LSG tender. I do not have that information, Chair, unless maybe I can go back to my documents. Before going back to the documents, I would want to go back to the recording of the parliament about the things that were raised. So, Chair, even now I have just spoken for one minute.

CHAIRPERSON: Ms Hofmeyr?

ADV HOFMEYR: Ms Myeni, you have given a version on
10 this. You gave it a few moments ago. You said that your decision to reverse the decision of the Acting CEO was based on the fact that you were concerned that it would “kill the child” and you associate the child being Air Chefs.

Ms Myeni, the evidence – at least the submission that acting CEO Ms Mpshe placed before the board showed that the impact of this contract on Air Chefs revenue was less than 4.3%. How could you possibly decide to overrule a lawful decision if the impact was only going to be less than 4.3% of revenue on the basis that it was going to kill
20 the organisation?

MS MYENI: Chair, the reference that is made was for me to explain to you, Chairperson, in broad terms and now I am being asked about a further question which I am going to happily invoke my privilege to say I prefer not to respond to this question, Chair.

CHAIRPERSON: You see, Ms Myeni, you remember this morning I said you must make an election – and I think I repeated during the day – each time a question is put to you whether you are going to invoke your privilege to refuse to answer or whether you are going to answer and I said if you are going to answer, you know, cannot later on say you are revoking – you are invoking the privilege.

Now when you in response to a certain question you have – there are some things that you say or you have a
10 lot to say but when you are being challenged on your answer you then invoke your privilege and say you prefer not to answer because you do not want to incriminate yourself, it will come across as if you are quite happy to give an answer as long as you are not being challenged on it or when you think the question is easy, you answer, but the moment questions become difficult, you then invoke your privilege. That is how it will come across. So I just mention that so that you are aware. Okay, alright. Ms Hofmeyr?

20 **MS MYENI:** Thank you, Chair.

ADV HOFMEYR: Thank you, Chair. The other decision that the board took at that meeting of the 28 September 2015 when you decided to cancel the award to LSG Sky Chefs and give the contract to Air Chefs was to reduce the Acting CEO's limit on her delegation of authority from a

100 million to 50 million. Was that an act of retribution against Acting CEO Ms Mpshe for having taken this decision that you did not like on LSG Sky Chefs?

MS MYENI: May I not respond, Chair, may I invoke the privilege, Chairperson, in case I incriminate myself, Chair.

ADV HOFMEYR: Chair, we will argue in due course that Ms Myeni is not abusing the privilege for the reasons I have given previously. Ms Myeni, in conclusion, Chair, subject to your questions, but let me conclude and then, of course, if there are other aspects now doubt you will address them, with respect.

Ms Myeni, the legal team of the Commission is likely to submit in due course what I am going to set out for you now as having emerged from the evidence that you have given over the last two days and all of the other evidence that has been presented to the Commission and I do so so that you have an opportunity to answer or respond to what I am putting to you now.

So, Ms Myeni, the likely submissions of the legal team in due course to this Commission will be that you knowingly misrepresented to the Minister of the Department of Public Enterprises in 2013 that the board of SAA had resolved to change the Pembroke transaction in circumstances where you knew that they had not done so and that misrepresentation cost SAA in the order of R800

million. Do you have a response to that?

MS MYENI: I do not have a response, Chairperson, so that I do not incriminate myself.

ADV HOFMEYR: The Jacob Zuma Foundation received R2 million that originally came out of the Free State Government's coffers, it was routed through VNA Consulting, when from VNA Consulting to your son's company, Premier Attraction, went from Premier Attraction to Mr X's company and if it were to be found by this
10 Commission that that R2 million constitutes the proceeds of crime, do you agree that the Jacob Zuma Foundation should have to pay that money back to the National Revenue Fund?

MS MYENI: May I not respond, Chairperson, in case I incriminate myself.

ADV HOFMEYR: Ms Myeni, we will argue in due course that you set up meetings with the former President Zuma so that those seeking to influence the President would have an opportunity to do so. Do you have a response to
20 that?

MS MYENI: Chairperson, may I not respond so that I do not incriminate myself.

ADV HOFMEYR: Ms Myeni, it will be argued in due course, received benefits from BOSASA including security upgrades valued at just less than half a million rand, travel

and accommodation benefits just in excess of R100 000 and cash. Do you have a response to that?

MS MYENI: I do not have a response, Chairperson, may I invoke the privilege of not incriminating myself.

ADV HOFMEYR: You handed over confidential police and NPA information to Mr Agrizzi on the 23 September 2015 in the morning at the Sheraton Hotel. Do you have a response?

MS MYENI: I thought we had – oh sorry, these are
10 conclusive remarks.

ADV HOFMEYR: Yes, indeed.

MS MYENI: Okay. I stand by the answer that I gave, Chairperson, and I would rather not respond so that I do not incriminate myself.

ADV HOFMEYR: The submission will be that you managed to delay and undermine the execution of a search and seizure warrant at your home in October of 2019. Do you have a response to that?

MS MYENI: May I not respond, Chairperson, to the
20 question so that I do not incriminate myself.

ADV HOFMEYR: You arranged for the State Security Agency to conduct an unlawful vetting operation at SAA of managers and their support staff. Do you dispute that?

MS MYENI: May I not respond, Chairperson, so that I do not incriminate myself.

ADV HOFMEYR: You tried to use the outcome of that operation to remove a member of the finance department or move her to another department. Do you dispute that?

MS MYENI: May I not respond, Chairperson so that I do not incriminate myself.

ADV HOFMEYR: You used false whistle blower reports to start investigations against managers whom you wanted to remove. Do you dispute that?

MS MYENI: May I not respond, Chairperson, in case I
10 incriminate myself.

ADV HOFMEYR: You created a climate of fear and intimidation while you served as the Chairperson of the Board of SAA. Do you dispute that?

MS MYENI: May I not respond, Chairperson, in case I incriminate myself.

ADV HOFMEYR: You bullied Dr Dahwa, the head of procurement when he refused to agree to your unlawful 30% set aside policy. Do you dispute that?

MS MYENI: May I not respond, Chairperson, so that I do
20 not incriminate myself.

ADV HOFMEYR: Your decisions at SAA during your tenure as Chairperson took no account of the considerable negative consequences for the fiscus whenever you had to approach the Minister of Finance both in relation to the Airbus swap transaction and the Pembroke transaction.

MS MYENI: May I not respond, Chairperson, in case I incriminate myself.

ADV HOFMEYR: R50 million that would have constituted the cancellation fee to BNP Capital was approved by you in circumstances where there was no justifiable basis for that cancellation fee to be paid. Do you dispute that?

MS MYENI: May I not respond, Chairperson, in case I incriminate myself.

ADV HOFMEYR: Chair, that brings me to the conclusion
10 of my questions. I think I went one minute or two over the allocated hour. Chair, it has done full circle because we ended with the BNP Capital issue, that is the issue that we started, the aviation evidence was about 18 months ago.

CHAIRPERSON: Yes, yes.

ADV HOFMEYR: Thank you.

CHAIRPERSON: Okay. No, thank you. We are going to stop here for the day. One thing that does remain is that Ms Myeni still needs to be questioned with regard to Eskom so arrangements will have to be made in due course about
20 that. So that is the one point.

The other point is the one that I mentioned earlier, namely that there is no time now and it is not convenient really to look at Ms Myeni's entire evidence and see which questions she may have justifiably invoked the privilege not to incriminate herself and which ones - in respect of

which ones she might not have done so justifiably or correctly.

I think the legal team would want to have a look at the transcript and they would take a view one way or another in regard to whether there is a need to do anything about any of the answers or questions or invocation of the privilege. I will probably will also have a look and see and obviously if there is something that needs to be raised with Ms Myeni's legal team it will be raised and if there is
10 nothing then there will be nothing. So that is another point that I wanted to mention.

But apart from that, before we adjourn, I just thought that I need to say something or to draw the attention of the public to some – to say something about what has happened over the past three days because it is something that has not happened before and it is important that the public also understands some of the things that happen and why they happen.

When a Commission, such as this one, is
20 established, it is established primarily to establish facts in regard to certain matters that fall within its terms of reference, matters that are viewed as very important and in the public interest and order to carry out its mandate, a Commission such as this would conduct investigations and, when necessary, have public hearings such as the ones

this Commission has had since August 2018 and it relies largely on the cooperation of people who have knowledge in regard to the matters that fall within its terms of reference in order for it to carry out its function properly.

Now prior to Wednesday this week then where about two or so witnesses who had invoked the privilege not to incriminate themselves and therefore sought not to answer certain questions. But, for the most part, they answered most of the questions that they were asked. So
10 Ms Myeni was the first witness who sought not to answer most of the questions that were asked that were put to her and answered only a few that she felt she could answer without the risk of her incriminating herself.

Now when the regulations applicable to this Commission were made, and they were made by the President at the time that the Commission was established, they have since been amended on two or three occasions, they included a provision in Regulation 8.2 to the effect that a witness who gives evidence before the Commission,
20 that evidence relates to matters before the – fall within the terms of reference of the Commission, that that evidence would be inadmissible in subsequent criminal proceedings against that witness. That, therefore, meant that if somebody gave evidence before the Commission and, in doing so, incriminated himself or herself, that evidence

would not be used in subsequent criminal proceedings against that person and therefore that person could feel free to be as helpful to the Commission as possible knowing that that evidence would not be used against him or her.

But the Commissions Act 8 of 1947 is the legislation that governs this Commission together with the regulations and in Section 3(4) it provides as follows:

10 “Any person who has been summoned to attend any sitting of a Commission as a witness or who has given evidence before a commission shall be entitled to the same witness fees from public funds as if he had been summoned to attend or had given evidence at a criminal trial in a Superior Court held at the place of such a sitting and...”

And this is the relevant part:

20 “...in connection with the giving of any evidence or the production of any book or document before a commission, the law relating to privilege as applicable to a witness giving evidence or summoned to produce a book or document in such a court shall apply.”

Now this latter part of Section 3(4) is understood to include the privilege against self-incrimination and it is this provision that enables a witness who appears before this

Commission to invoke the privilege against self-incrimination and therefore to refuse to answer questions that may tend to expose her to criminal prosecution.

As Ms Hofmeyr indicated when this issue was dealt with, either yesterday or on – I think on Wednesday, the case law relating to this is to the effect that the court, or in this case the Commission, that is the Chairperson, needs to give a witness latitude if he or she claims that she believes that if she answers a certain question she may
10 incriminate herself.

As Ms Hofmeyr indicated, the case law does not mean that whenever a witness invokes the privilege it means necessarily that she cannot be compelled to answer a question that he or she feels she may incriminate herself if she answers but it would seem on the case law that the court, or in this case the Commission and the Chairperson, is required to give quite some latitude to the witness when she does so.

This is despite the fact that Regulation 8.2 of the
20 Regulations of the Commission do say that if a witness gives evidence before the Commission, her evidence cannot be used against her in subsequent criminal trials.

The fact that Section 3(4) of the Commissions Act is there simply means that a witness is able to invoke it and the Commission cannot act illegally, the Commission has to

operate within the ambit of the law and that includes that provision.

Therefore, the Commission must respect that provision but the Regulation or Regulation 8.2 enables, it seems, any witness who wants to assist the Commission and wants to put his or her side of the story, to do so, it enables him or her to do so knowing that his or her evidence will not be used in any subsequent criminal trials against him or her.

10 So the Commission has to operate within this – and I though it is important to mention this and refer to the Section for the education of the public as well.

 The provision does not mean that the Commission cannot compel a witness to answer certain questions but it can only do so if the invocation of the privilege is not justified and it would see from the case law that it would not be justified if the apprehension of the witness that she may incriminate or he may incriminate himself or herself if she or he answers a certain question is not based on
20 reasonable grounds but it is a matter that the Commission needs to deal with properly and carefully having regard to its obligation to operate within the ambit of the law and having regard to the obligation to strike a balance between the rights of witnesses as well as its own mandate.

 I thought that I should just make those remarks so

that the public can have some understanding of the legal framework surrounding what has happened since Wednesday because it is something that had not happened before in the past two and a half years that – during which the Commission has been hearing evidence. Ms Hofmeyr?

ADV HOFMEYR: Thank you, Chair. I think that it is 9.30 tomorrow morning, is that right, when we will be assembling?

CHAIRPERSON: Yes, it will be 9.30. Is there anything
10 you want to say arising?

ADV HOFMEYR: No, thank you, Chair.

CHAIRPERSON: Yes, yes, okay. So tomorrow, yes, we will be – we will have a session here to complete Ms Kwinana's evidence. We will start at half past nine. Mr Buthelezi, is there anything you want to say arising from...?

MR BUTHELEZI: No, Chair.

CHAIRPERSON: Nothing.

MR BUTHELEZI: Thank you.

20 **CHAIRPERSON:** Okay, it remains for me to thank you, Mr Buthelezi and your instructing attorney or your colleague for all the cooperation and to thank Ms Myeni and Ms Hofmeyr.

We will adjourn and, as I said, with regard to Ms Myeni, there is still the Eskom part and there may still be

something else arising out of the invocation of the privilege but that will be dealt with through the right channels in due course. We are going to then adjourn for the day. We adjourn.

INQUIRY ADJOURNS TO 7 NOVEMBER 2020