

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

08 JANUARY 2021

DAY 324



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Recording & Transcriptions

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

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TRANSCRIBERS:

B KLINE; Y KLIEM; V FAASEN; D STANIFORTH



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PROCEEDINGS RESUME ON 08 JANUARY 2021

CHAIRPERSON: Good morning Ms Sibiya, good morning everybody.

ADV SIBIYA: Good morning Chair.

CHAIRPERSON: Is everybody fine in the new year?

ADV SIBIYA: We are here definitely.

CHAIRPERSON: You are here. Okay are you ready?

ADV SIBIYA: Yes thank you very much Chair.

CHAIRPERSON: Okay.

10 **ADV SIBIYA:** This morning we will be dealing with the evidence of Alexkor and...

CHAIRPERSON: I think you have a soft voice you have to raise your voice and – and also make sure the microphone you are not too far away from the microphone.

ADV SIBIYA: Thank you Chair.

CHAIRPERSON: Okay. Yes.

ADV SIBIYA: Thank you Chair. With me there are some legal representatives of some of the parties that are mentioned in the evidence if may be they can place
20 themselves on record?

CHAIRPERSON: Yes let us take care of that. If you are able to do it from where you are that is acceptable if not you can just have to switch on the microphone.

ADV WILD: Than you Chair. Duncan Wild briefed by Webber Wentzel Attorneys for Gamera Advisory Services.

CHAIRPERSON: Thank you we will have to double check whether the transcribers could hear you because sometimes when the mask is on – when you have got the mask on they might not be able to – ja maybe just...

ADV WILD: Let us – thank you Chair.

CHAIRPERSON: You can just repeat ja.

ADV WILD: I will double. Duncan Wild briefed by Webber Wentzel acting for Gamera Advisory Services.

CHAIRPERSON: Thank you.

10 **ADV BHAM:** Thank you Chair Azhar Bham I am instructed by Wandile Ndabambi of ENS Attorneys and we appear for the State Diamond Trader.

CHAIRPERSON: Thank you very much. Thank you.

ADV SIBIYA: Thank you Chair – thank you Chair there had been an indication that there might be some issues in relation to the evidence that we intend to present this morning procedural aspects. I just need to check with my colleagues whether they will be raising any of those issues.

20 **CHAIRPERSON:** Well.

ADV SIBIYA: Prior to the ...

CHAIRPERSON: Well you can just press ahead if and when they want to say something they know what to do. Just press ahead and if they – if and when you reach a point where they have something they will indicate.

ADV SIBIYA: Thank you Chair. Chair this morning we are dealing with the evidence related to mining. That is the mining stream and the evidence specifically deals with Alexkor and irregularities that relate to Alexkor which is a state owned entity.

CHAIRPERSON: As you explain the evidence that will be led just take into account that members of the public.

ADV SIBIYA: Yes.

CHAIRPERSON: Might not even know what Alexkor is.

10 Explain what Alexkor is and what is involved in the evidence that we will be looking at so that as the evidence is given they will follow.

ADV SIBIYA: Thank you Chair. Alexkor is a state owned entity that is – that deals in the mining of diamonds in South Africa. It reports to the Department of Public Enterprises and the name derives from the area where the mining of diamonds was meant to be taking place and that is in Alexander Bay. So Alexkor derives from that.

20 The evidence that we will be dealing with came about when there was a whistle blower that came to the commission and indicated with some allegations in relation to the capture of Alexkor and the nature of the – the capture that he indicated was that there was capture in two ways.

There was the capture in the form of getting hold of

the produce of the mines which is diamonds. So getting access to that produce and the other capture that was indicated was in redirecting the purposes of – of Alexkor from its main mandate of mining diamonds into mining coals and – into mining coal and thereby positioning it for – for entities that are linked the Gupta family to be able to provide coal to Eskom.

The Minister at the time had changed the – had changed the – had agreed with the board in changing the
10 direction of Alexkor into coal mining as well but not to be performed in Alexander Bay which is the place that Alexkor was created to serve mainly but the coal was going to be mined in Mpumalanga and all the other areas that are not in Alexander Bay and thereby redirecting all the focus of Alexkor and depriving the community that Alexkor was created partly to serve.

This was – this followed the – the announcement that there were going to be opportunities to serve Eskom by providing coal for them.

20 Now what happened was that the – the idea or the aim was to position Gupta companies to provide the coal and there has been evidence that relates to that. So Alexkor was also being positioned for that.

The evidence – that was what the whistle blower indicated but he also indicated other irregularities that

were taking place at Alexkor.

Having received that submission from the whistle blower then the commission's investigators conducted their own investigations and the findings that were made or the conclusion that was drawn was that the allegations that had been made by the whistle blower could be supported by the evidence that was uncovered by the investigators.

So our witnesses will be – this evidence addresses the terms of reference 1.1 and 1.5 of the commission and
10 the – in Alexander Bay there was a land claim that was made by the community of Richtersveldt. They succeeded in their land claim. The effect of their success was that they could now have access to the land that had been allocated to Alexkor for mining.

So a consent or an order by consent was taken by the parties to that litigation which included the government of South African, Alexkor and the community of Richtersveldt in terms of which it was agreed that there would be a Joint Venture that would be created that would
20 represent the interest of the community as well as the interest of Alexkor.

And that Joint Venture would – and part of the agreement was that the – the interest in the Joint Venture would be held in the following manner:

Alexkor would have 51% interest and shareholding

and the community would have 49%.

So in effect a Joint Venture was then created and the purpose – the agreement was that the community got access to 49 – to the mining – the land mining rights and Alexkor which always had concessions to mine in that area it had had concessions to mine the land and also to mine the ocean. So there was also Marine Mining and the result was that in terms of this agreement the community gets 49% of the – of the share in the Joint Venture but they
10 come with the land mining rights. And Alexkor gets 51% and it comes with the Marine mining rights.

So this Joint Venture meant that they were going to pull their resources together so they would share in the – in the benefits which was good given that the land available for mining or the diamonds in the land had been depleted whereas the diamonds in the ocean had not been depleted.

So it meant that while the community got this victory of being awarded the land that included a mining
20 right which could also have become a – an anti-victory because there was very little left to mine it meant that there was a benefit to the community by the formation of the Joint Venture and the fact that they were going to share together in the pooled resources.

That is the nub of the evidence but what also came

out and what had been explained by the whistle blower was that the Joint Venture although it had been established to ensure the interest of the community were guarded had in fact – had in fact appointed a contractor which was not incorrect. They appointed a person or an entity that was going to be tasked with the marketing and sale of all the diamonds that were mined by the PSJV.

So that meant that whether it is mined on the land or in the marine it would go to this entity and from this
10 entity it would be marketed and sold and then the proceeds would come to be shared in accordance with the agreement.

The allegations that came with the whistle blower indicated that the entity that was awarded the contract of ensuring – of marketing and selling the diamonds on behalf of the community; on behalf of Alexkor and on behalf of the Joint Venture the evidence was that that entity was a Gupta linked entity. So – and their powers were extensive because the minors themselves – neither the miners nor
20 the Joint Venture would in fact value the diamonds that they were giving to this entity to market and sell.

So they would take the raw material and give it to this entity and only this entity could then determine this is how much we value these diamonds that you have given to us and they had no way of double checking that.

And then in the sale – in the selling what also came out was that there were no proper records to show who the sales were being made to and how much. So there was a lot of disgruntlement that had happened.

There was an investigation that was commissioned by the Department of Public Enterprises and our first witness will be talking to that investigation.

We have witnesses that will testify today that we have scheduled for testifying today. It is two witnesses it
10 is Mr Torres who is the author of the investigation reports that was commissioned by the Department of Public Enterprises and we also have Mr Gavin Craythorne who is the whistle blower that approached commission.

We also have other witnesses that we hope to be able to accommodate in the future that have – that will talk to the links in the evidence that was uncovered and – and tell – and put the story altogether.

One is Jan Decker he is a forensic accountant and he conducted an investigation into the valuation process
20 among other things and is able to talk to how much the – the diamonds were in fact undervalued because his conclusion was that they were being undervalued by the entity. And the other witness is Peter Bishop he conducted further investigations into the – into the allegations by the whistle blower and he drew conclusions from that and he

was able to go further than what the whistle blower had done due to the powers given to the commission.

CHAIRPERSON: Okay thank you; thank you. Are you ready for your first witness to take the oath?

ADV SIBIYA: Yes, yes.

CHAIRPERSON: Okay please administer the oath or affirmation.

REGISTRAR: Please state your full names for the record.

MR TORRES: My name is Albert Torres.

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

MR TORRES: I do not have.

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

MR TORRES: Yes I do.

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

20 **MR TORRES:** So help me God.

CHAIRPERSON: Thank you; you may be seated. Yes you may proceed Ms Sibiya.

ADV SIBIYA: Thank you Chair. Good morning Mr Torres.

MR TORRES: Okay thank you.

ADV SIBIYA: Chair if the Chair can have in front of him

the bundle that is marked Mining Bundle 01?

CHAIRPERSON: Is that the bundle you are going to be using at the moment?

ADV SIBIYA: Yes.

CHAIRPERSON: Okay that is Bundle – Mining Bundle 01. Right; yes.

ADV SIBIYA: Thank you. Mr Torres if I can take you – when I refer you to this bundle I will be talking about the numbering on the left hand side where it is writing – where
10 it is typed in black and where it says Mining – if you turn underneath the flap that is marked 1.1 you will see that on the first page that you open to on the left hand side of your page it says Mining 01001, can you see that?

MR TORRES: Yes I have got it.

ADV SIBIYA: Okay. When I refer you to a page I will not say Mining 01 or 001 I will say page 1 and that is where I will be taking to – okay. Thank you. Please look at that page?

MR TORRES: Okay.

20 **ADV SIBIYA:** Are those your full names written there and your ID Number?

MR TORRES: Yes it is.

ADV SIBIYA: Is that your initial at the bottom?

MR TORRES: Pardon.

ADV SIBIYA: Your initial.

MR TORRES: Signature – that is my signature.

ADV SIBIYA: Your initials or your full signature?

MR TORRES: The initials on page 1.

ADV SIBIYA: Yes.

MR TORRES: And then I got my full signature on page 2.

ADV SIBIYA: Okay. Do you confirm that this is a document that you prepared?

MR TORRES: Yes I do confirm.

ADV SIBIYA: And that you – you deposed to it in front of a
10 Commissioner of Oaths?

MR TORRES: Yes I do.

ADV SIBIYA: And do you confirm the contents that it is true to the best of your knowledge?

MR TORRES: Yes I do confirm the contents.

ADV SIBIYA: Have you had a chance to go through it just recently in preparation for today?

MR TORRES: No I have a chance yes.

ADV SIBIYA: Thank you. Chair with your leave may I ask that this document that is marked – that is titled
20 Confirmatory Affidavit appearing on pages 1 and 2 that it be admitted as an exhibit – Exhibit XX1.1?

CHAIRPERSON: Has it got any annexures or not?

ADV SIBIYA: It does – it does Chair.

CHAIRPERSON: It does?

ADV SIBIYA: Yes.

CHAIRPERSON: I see there is another affidavit by Ms Dineo Petunia Tomo.

ADV SIBIYA: Yes.

CHAIRPERSON: Is that an annexure to Mr Torres' affidavit or is it a separate affidavit?

ADV SIBIYA: It is a separate – it is a separate affidavit Chair.

CHAIRPERSON: So where are the annexures to Mr Torres' affidavit?

10 **ADV SIBIYA:** In fact Chair Mr Torres maybe I should take him first through the sections that I wanted to take him because it is a very short affidavit and it indicates what it is – what its purpose is. So it titled Confirmatory Affidavit.

CHAIRPERSON: Well before I – I admit it I want to know whether when I admit it I admit it...

ADV SIBIYA: With the annexures.

CHAIRPERSON: Together with its annexures or it is not.

ADV SIBIYA: Yes.

20 **CHAIRPERSON:** That is why I am asking whether it has got annexures.

ADV SIBIYA: It has got annexures Chair. He refers to them in [?].

CHAIRPERSON: Are they referred to in the affidavit?

ADV SIBIYA: Yes. Yes they are referred to Chair in his affidavit and they appear from page 5 and they go all the

way to page 1079.

CHAIRPERSON: Well the – I think the problem is that the affidavit does not say for example in paragraph 4.

ADV SIBIYA: Yes.

CHAIRPERSON: What annexure the report is. It just refers to the report. Is it not – is that right?

ADV SIBIYA: Yes.

CHAIRPERSON: It looks like the report is the only annexure is that correct?

10 **MR TORRES:** No Chair. The report itself has annexures to it.

CHAIRPERSON: No, no, no I am not talking about annexures to the report I am talking about annexures to the affidavit – to Mr Torres' affidavit.

ADV SIBIYA: Yes.

CHAIRPERSON: It looks like the report is the only annexure to Mr Torres' affidavit am I right?

ADV SIBIYA: And then include exhibits yes, yes Chair.

CHAIRPERSON: Yes.

20 **ADV SIBIYA:** Yes.

CHAIRPERSON: Okay then I think – I think Ms Tomo's affidavit should not have been placed where it is placed because if it is not an annexure to Mr Torres' affidavit and I understand why it should not it should not come between Mr Torres' affidavit and annexures to Mr Torres' affidavit.

That is not the right place.

ADV SIBIYA: Chair I concede that however it was necessary to do it in this way because her affidavit also confirms the same reports. They were working together and whereas he confirms that he was the lead she confirms that she was the junior that worked together.

CHAIRPERSON: Ja but could that achieve the same purpose even if it came after the report?

ADV SIBIYA: Yes.

10 **CHAIRPERSON:** Is it not?

ADV SIBIYA: Yes, yes I accept that Chair.

CHAIRPERSON: Because it now comes between the affidavit of Mr Torres and the annexures and documents or the report which is an annexure to that affidavit and yet it is not an annexure to his affidavit.

ADV SIBIYA: It delves in annexure yes, yes Chair.

CHAIRPERSON: So it may be that it should be – maybe you must think about where – are you going to be referring to it to his evidence?

20 **ADV SIBIYA:** No Chair. We will not be referring to it.

CHAIRPERSON: Ja maybe what we – what you – what you will need to do during the break maybe is to take it out from there and put it...

ADV SIBIYA: Somewhere else.

CHAIRPERSON: At the report. And then attend – then the

numbering will obviously will change. The best thing might be to not to interfere with the numbering if possible and have – have it numbered right at the end or after the report.

ADV SIBIYA: We will attend to that Chair.

CHAIRPERSON: Okay alright. The affidavit of Mr Albert Torres which starts at page 1 together with its annexure namely the final report referred to in paragraph 4 of his affidavit is admitted and will be marked as Exhibit

10 **ADV SIBIYA:** XX1.1

CHAIRPERSON: XX1.1. So Exhibit XX1 is Mr Torres' affidavit together with the report which is an annexure to the affidavit.

ADV SIBIYA: Thank you Chair.

CHAIRPERSON: Okay.

ADV SIBIYA: Thank you Chair. Mr Torres if we can go back to page 1 which is...

20 **CHAIRPERSON:** I think you need to move your microphone a little towards the centre because I do not think...

ADV SIBIYA: It does not move so I need to move.

CHAIRPERSON: No it should be possible to move it. Let – let somebody help you who – you see if you are speaking too far away from it you cannot be heard easily. Okay alright.

ADV SIBIYA: Thank you.

CHAIRPERSON: Okay let us start then.

ADV SIBIYA: Mr Torres I refer you back on page 1 of your affidavit. Do you confirm that at the time you deposed to this affidavit you were an executive director at Gobodo Forensics?

MR TORRES: Yes I do.

ADV SIBIYA: Please speak closer to the microphone.

MR TORRES: Okay.

10 **ADV SIBIYA:** I think there will be a similar problem. And when you answer Mr Torres please look at the Chairperson.

MR TORRES: Yes okay.

ADV SIBIYA: So your neck will be sore but you will have to look at me when I ask questions but look at the Chair when you answer. Thank you. Are you still an executive director at Gobodo Forensics?

MR TORRES: Gobodo I am a director of Gobodo however I retired now but I am still a director at Gobodo.

20 **CHAIRPERSON:** Does that – does that mean you are not executive – an executive director anymore.

MR TORRES: No I am non-executive.

CHAIRPERSON: Yes but you remain a director.

MR TORRES: I remain director.

CHAIRPERSON: Ja okay.

ADV SIBIYA: Thank you. And do you confirm that Gobodo

Forensic Audit was instructed by the Department of Public Enterprises to conduct an investigation?

MR TORRES: Yes I do confirm the Department of Public Enterprises appointed us to investigate this particular matter.

ADV SIBIYA: And can you explain to us the process that led to your appointment?

MR TORRES: Well we are on the panel with the Department of Public Enterprises. So being on the panel
10 suggests that we have already been appointed based on our technical abilities. So we were requested to submit a quotation for the investigation into the irregularities at Alexkor, PSJV entity. And on that basis we submitted a quotation and we were appointed.

ADV SIBIYA: What were the – what was the mandate that you were given?

MR TORRES: Well the mandate in summary there was – they wanted us to investigate the relationship – the soured relationship that existed between the contractors on the
20 one hand and the board and executive on the one hand.

But there were also concerns raised by the contractors and these concerns – some of the concerns were also identified as issued that had to be investigated. So they were.

ADV SIBIYA: Okay. And you conducted this investigation.

How long were you given to conduct it?

MR TORRES: We were appointed in or about July 2019. We then had a three month window period to complete. So we submitted our report to the Department Of Public Enterprises on the 14 October 2019. So it took us about three months.

ADV SIBIYA: And how many of you were involved?

MR TORRES: Only two of us.

ADV SIBIYA: Yes.

10 **MR TORRES**: It was myself and Dineo Tomo.

ADV SIBIYA: Yes. And you produced a report?

MR TORRES: Pardon.

ADV SIBIYA: You produced the report and conclusion.

MR TORRES: Yes I produced the report and I signed it.

ADV SIBIYA: Okay and this report you produced is the one that appears from page 5?

MR TORRES: That is correct that is the report.

ADV SIBIYA: And you were the author of the report?

MR TORRES: I was the author.

20 **ADV SIBIYA**: Okay. Thank you very much. Now if we can go to the report and we can go – if you can turn to page 43 of the report?

MR TORRES: Yes I am there.

ADV SIBIYA: Is this....

CHAIRPERSON: Did you say 43?

ADV SIBIYA: Yes, yes Chair.

CHAIRPERSON: He may have given – Mr Torres may have given the gist of their mandate but I am sure that in the report that is one of things they start with.

ADV SIBIYA: Yes.

CHAIRPERSON: To say this is our mandate. Maybe it would be good for you to direct him to that but actually he probably knows it so that he can just read that into the record.

10 **ADV SIBIYA:** Yes thank you very much.

CHAIRPERSON: Before you move on.

ADV SIBIYA: That is where I was going Chair because it is in the paragraphs that appear on that page.

CHAIRPERSON: Oh I thought it would be much earlier.

ADV SIBIYA: No before this...

CHAIRPERSON: Okay.

ADV SIBIYA: Is the executive summary Chair. So this is the actual start of...

20 **CHAIRPERSON:** Oh you wanted to look – you wanted to go to the executive summary or this – oh this is the executive summary?

ADV SIBIYA: Yes.

CHAIRPERSON: Okay alright.

ADV SIBIYA: Yes thank you – thank you Chair.

CHAIRPERSON: Okay.

ADV SIBIYA: So...

CHAIRPERSON: You can go ahead then.

ADV SIBIYA: Thank you. Mr Torres if you can look at paragraph 2.5?

MR TORRES: Yes I am there.

ADV SIBIYA: Please read that – is that – is it correct that that encapsulates what your mandate was, starting from 2.5.

MR TORRES: Okay can I read it?

ADV SIBIYA: Yes.

10 **MR TORRES:** Yes, that was the mandate.

ADV SIBIYA: Okay. So your mandate – if you can start reading, the department of ...[intervenes]

MR TORRES: Okay.

“The Department of Public Enterprises speaks to appoint a suitable qualified and experienced service provider to investigate the legality of actions taken by the PSJV in the exclusion of the marine mining contractors and make recommendations arising there from.”

20 **ADV SIBIYA:** Yes, and if you go on to paragraph 2.6.

MR TORRES: 2.6.

“The DPE, which is the Department of Public Enterprises, wishes to establish the cause of the soured relationship between Alexkor RMC PSJV and the marine contractors and make recommendations

on improvements that can be made.”

ADV SIBIYA: And paragraph 2.7.

MR TORRES: 2.7.

“The DPE further requires an investigation to establish whether the board and the executive of the Alexkor RMC PSJV exercised objective, fair and transparent processes in the management of the operations.”

ADV SIBIYA: Is that everything that you were instructed to
10 do?

MR TORRES: Yes, but under our Purpose and Objectives, we actually break it down further.

ADV SIBIYA: Yes, we will get to that.

MR TORRES: Okay.

ADV SIBIYA: Thank you.

MR TORRES: But in summary, that is what we were appointed to do.

ADV SIBIYA: Okay. Thank you. Now you are talking about the PSJV. What is the PSJV?

20 **MR TORRES**: Well, the PSJV – I think you eluded to the fact that there was a Deed of Settlement. That in 2007 a Deed of Settlement between Alexkor on the one hand and government and the community of Richtersveldt was made an order of the court, right?

Now in terms of the Deed of Settlement, the – an interim

board had to be appointed and the board then had to establish a Pooling and Sharing Joint Venture, which should be made up of the Richter veldt community on the one hand and Alexkor now.

So they referred to it as the Pooling and Sharing Joint Venture. So the abbreviation PSJV refers to the Pooling and Sharing.

ADV SIBIYA: So the Department of Public Enterprises gave you a mandate to investigate issues related to the PSJV?

10 **MR TORRES**: Yes, the Department of Public Enterprises is the shareholder representative of Alexkor.

ADV SIBIYA: H'm.

MR TORRES: And Alexkor was part of the Pooling and Sharing Joint Venture.

ADV SIBIYA: Yes.

MR TORRES: They actually had a majority shareholding.

ADV SIBIYA: Yes.

MR TORRES: And based on that, the Department of Public Enterprises appointed us.

20 **ADV SIBIYA**: Okay. Thank you.

MR TORRES: Sorry, Mr Chair. I must still get used to ...[intervenens]

CHAIRPERSON: Ja, you will get used to it.

MR TORRES: Get used to it.

CHAIRPERSON: You will get used to it.

MR TORRES: [laughs]

CHAIRPERSON: Okay.

MR TORRES: Okay.

ADV SIBIYA: Sorry. Thank you. Thank you very much. So they did not only limit your investigation to Alexkor issues?

MR TORRES: Because our investigation was into the Pooling and Sharing Joint Venture.

ADV SIBIYA: Yes.

MR TORRES: Because everything that happened that we
10 were investigation, we investigated for that period when the PSJV was already in existence.

ADV SIBIYA: Yes. Okay.

MR TORRES: I am sorry Mr Chair.

ADV SIBIYA: If you can turn to page 45?

MR TORRES: 45...

ADV SIBIYA: That is where you set out the Purpose and Objectives of the investigation and the report.

MR TORRES: Yes, that is correct.

ADV SIBIYA: Yes. So can you tell us what those were?

20 **MR TORRES**: Okay. 3.1, the purpose – this is just background information.

“The purpose of the report is to inform the Department of Public Enterprises regarding the background to the investigation, our approach to the investigation and procedures performed, any

assumptions made and estimates supplied, our factual findings in respect of the investigation and our conclusion and recommendations based upon our factual findings.”

Paragraph 3.2:

“The primary objectives of the investigation are:

- To establish the cause of the soured relationship between Alexkor RMC PSJV and the marine contractors and make recommendations on improvements that can be made.

10

- To establish whether the board and the executive of the Alexkor RMC PSJV exercised objective, fair and transparent processes in the management of Alexkor RMC PSJV.”

ADV SIBIYA: Now, you go to paragraph 3.3 and your title there is The Focus Areas of the Preliminary Investigation were as follows. What informed the choice of these areas as the focussed areas?

MR TORRES: Well, this was actually highlighted by the Department of Public Enterprises but – and they are based on the concerns and issues raised by the marine directors to the department, okay? So it was an attempt by the department to address their concerns as well.

ADV SIBIYA: And so those – these are the focussed areas. Can you tell what they are?

MR TORRES: The first bullet point:

- “- To investigate the validity of the decision taken by the Alexkor RMC PSJV.
- To exclude the three Marine contractors in 2018 Mining Services Procurement Cycle.
- To investigate the procurement process in the appointment of contractors in particular the appointment of a diamond marketing and sales company.
- 10 - To investigate the process followed in the evaluation of diamonds from the mine site to the diamond marketing and sales company officers.
- To obtain and review the prices of diamonds realised since the appointment of the diamond marketing and sales company.
- Investigate the alleged failure to comply with the contractual arrangement given access to the information relating to sales and marketing of the diamonds to the contractors.
- 20 - To investigate the legality of the Coffer-dam Operations which allegedly has caused adverse and damage.
- To review all contracts entered into between the PSJV and the marine mining contractors, as well as any other contract forming related to the subject

matter of the dispute between the parties.

- To determine the contract awarding processes and systems are fair, transparent, equitable with the focus on mining contracting for both land and marine mining contracting, including the appointment of the diamond marketing and sales company.

Oh, I think that is just a repeat of that.

ADV SIBIYA: H'm.

MR TORRES: Yes.

10 “- To determine the legality of the Cofferdam Operations which currently undertaking as Alexkor RMC PSJV and make recommendations on the outcome of the investigation.”

ADV SIBIYA: Thank you. Now where do these focussed areas emanate from because these are very detailed?

MR TORRES: Again, the Department of Public Enterprises. They gave us our scope and then detailed it for us. Because what we normally do when we do an investigation as well. We have – once we get appointed, we then have a briefing
20 session with our principle because we do not want any other – we do not want misunderstandings. So make it clear. Every briefing session, they will then detail what we need to do and this was also where we got.

ADV SIBIYA: Okay thank you. And if we move to page 49. There is that – the – are you there?

MR TORRES: I get confuse with the numbering but I have got it. Okay.

ADV SIBIYA: Yes. There you set out the approach and procedures performed.

MR TORRES: Yes.

ADV SIBIYA: Can you tell us shortly without reading word-for-word what was your approach ...[intervenes]

MR TORRES: Well, essentially what we do is, we – like we have a briefing session, then we would meet with the client.
10 After that, what we do is, we then agree on an implementation plan and that is where the three months came in. This is what we are going to do and our deadlines for the report and all that.

After that, it is – what we do is, is collation of documents. We collect all the documents and once we have collected all the documents... So, what we have here is just showing you our procedures, to collect the documents and what documents we have collected.

We then review the documents and then do, if
20 necessary, our interviews and all that. So that is basically the procedures.

ADV SIBIYA: Now in this case, where did the briefing take place?

MR TORRES: The initial briefing took place at the Department of Public Enterprises, their offices. We met the

officials there.

ADV SIBIYA: H'm. And where did you get the document?

MR TORRES: The documents, initially the Department of Public Enterprises was going to give us the documents but Alexkor, the PSJV is situated in Alexander Bay which is very far. It was then, subsequently, agreed – because we are not getting the documents.

We then liaised directly with the company secretary, called Reagan Phillips. And she electronically emailed us
10 documents which we then used here. And when we did visit the Alexkor Plant, we were also given documents.

ADV SIBIYA: So the person that gave you the documents, is the company secretary of the PSJV?

MR TORRES: That is correct.

ADV SIBIYA: To enable you to conduct your investigation?

MR TORRES: Pardon?

ADV SIBIYA: To enable you to conduct your investigation?

MR TORRES: Yes, yes. Correct.

ADV SIBIYA: Okay. Thank you. If we move ahead to page
20 60.

MR TORRES: Page 60?

ADV SIBIYA: Yebo.

MR TORRES: I am on page 60.

ADV SIBIYA: Yes. So you say here, Background Information on Individuals and Entities. You are talking

about the entities that you were to investigate?

MR TORRES: Ja. Essentially, the – it was for the joint venture.

ADV SIBIYA: Yes.

MR TORRES: Just background information on that. And that Scarlet Sky Investment 60 (Pty) Ltd. This is the marketing company. This is the company that was appointed to sell and market rough diamonds.

ADV SIBIYA: Okay.

10 **MR TORRES**: So we just gave a background. And also in the background, it is included who the individuals are, their links and so on.

ADV SIBIYA: Please tell us who the individuals are and what their links are as contained in your report without reading necessarily from the report.

MR TORRES: Okay. The – Daniel Mark Nathan was the Director of Scarlet Sky Investments but he was also the CEO. Hazel Ammann, Moira Ammann was what you would call a Stand-in Director because Scarlet Sky was a shelf
20 company and she was a second Stand-in Director. Christian Gouws was also a Stand-in Director. A lot of shelf companies would see his name. So he is also a Stand-in Director. The ...[intervenes]

CHAIRPERSON: A stand-in director being simple a director who is a director while a company is a shelf company, ready

to resign once they have sold the company to somebody?

MR TORRES: Yes, that is correct. Because if you have an incorporated company, you must have a director.

CHAIRPERSON: Yes, ja.

MR TORRES: So ...[intervenes]

CHAIRPERSON: But basically, at that time the company is not doing anything?

MR TORRES: Yes, yes.

CHAIRPERSON: Ja, ja. Alright.

10 **MR TORRES**: You are right Mr Chair.

CHAIRPERSON: H'm.

MR TORRES: And then you had Govender who became a director in 2015. And then you had Kubentheran Moodley who was appointed at the same time that Daniel Nathan was appointed a director. And he subsequently resigned on the 5th of November 2015.

ADV SIBIYA: Yes?

MR TORRES: Okay. So those are the four directors.

20 **ADV SIBIYA**: H'm. And you can continue with what you were describing there. Because you were describing the ...[intervenes]

MR TORRES: If I can just read 8.2.4.

“There have been allegations that Kubentheran Moodley was closed to Salim Essa of Trillion.”

Okay?

ADV SIBIYA: H'm.

MR TORRES: So. And then, we did a Google search and then found that there was a formal search seizure in storage facility by the State Capture Commission.

10 “In the same court, Moodley had requested the court to interdict the Zondo Commission and deny them access to his documentation and other important personal items, including jewellery and cash that were in the care of Wayne Ryan Becker, at a storage facility, Knox Titanium Vaults which is in Sandton.

It appears that Moodley’s name has been mentioned many times at the Zondo Commission.

The allegations that Moodley assisted Trillion Capital to lure Eskom and help the Gupta’s with ten million to buy Optimum Mine and had a hand in the Mediosa Contract in the North West.”

ADV SIBIYA: So this was the case at the time at the time you were preparing the report?

20 **MR TORRES:** This was the case. What we normally do as well, is just to give background information.

ADV SIBIYA: H'm.

MR TORRES: And the individuals that we are dealing with so we have a better perspective of what is happening.

ADV SIBIYA: H'm. What else are you saying here in relation to Moodley?

MR TORRES: Well, in paragraph 8.2.6:

“The available information suggests that Moodley was the former advisor of the then Mineral Resources Minister, Mosebenzi Zwane.

Zwane was appointed to former President Jacob’s Cabinet in or about September 2015.

We know that Moodley resigned from SSI, which is Scarlet Sky Investments, on 5 November 2015.

This is soon after Zwane was appointed to the Cabinet.”

10

ADV SIBIYA: Now just for my own sake of understanding. Did Moodley become an advisor of Minister Zwane after he left – he resigned or before he joined?

MR TORRES: It was before he resigned because he resigned in November.

ADV SIBIYA: H’m?

MR TORRES: And he was appointed in September, if I am correct, ja.

20

ADV SIBIYA: Oh. Because you are mentioning the appointment of the minister ...[intervenes]

MR TORRES: Of the minister.

ADV SIBIYA: ...as having been in September. So I am just trying to get clarity whether you are saying Moodley started... Oh, or rather, he became an advisor after he resigned, after Moodley resigned from SSI, or was he an

advisor prior to Minister Zwane becoming a minister?

Because your sentence says that the information suggests that Moodley was the former advisor of then minister. So I am not sure whether if a former advisor is what you wanted to say or when you say he was a former advisor, you meant he was an advisor prior to the minister being appointed.

MR TORRES: Okay ja, I am with you. No, when Zwane was appointed, okay, Moodley was still a director of SSI. As
10 soon as Zwane was appointed – Zwane was appointed in September 2015. So why I am saying former, it is a former now. Currently speaking, it is former. So he was – he resigned in November. Now I cannot remember whether he became an advisor in September or after he had resigned, unfortunately.

ADV SIBIYA: No, no, no. That is fine. I just needed to understand whether he was former then or if he is former now.

MR TORRES: He is former now.

20 **ADV SIBIYA**: Alright. Thank you very much. You mentioned another character in paragraph 8.2.7.

MR TORRES: We found that Zarina Kellerman, a lawyer, was also one of three individuals appointed to advise Zwane.

“The three advisors included, in addition to Moodley and Kellerman, Malcolm Mabaso.

Information in our possession suggested that Kellerman purportedly conducted a due diligence on SSI after they were appointed by the PSJV.”

ADV SIBIYA: Okay. You can leave it there for now. I will continue with that train of thought when we get to the relevant part.

MR TORRES: Okay.

ADV SIBIYA: And on 8.2.8, you explain the structure.

MR TORRES: Ja, the structure was.. Essentially, Daniel
10 Nathan trading on 40% of the business. It was represented by Daniel Nathan. 60% was owned by Kimode, represented by Moodley. So this gave the – in terms of the Black Empowerment Structure, there was a majority shareholding, black shareholding.

ADV SIBIYA: H'm. Okay. You can now turn to page 64.

MR TORRES: [No audible reply]

ADV SIBIYA: This is where you are dealing with the Review of Agreement. And you start by the Deed of Settlement between the Richtersveldt Mining company and Alexkor and
20 the Government of the Republic of South Africa.

MR TORRES: Yes. The Deed of Settlement was... Okay. There was an agreement between Alexkor on the one hand and government on the other. And also the agreement of the – and also the Richtersveldt Mining company. The Richtersveldt Mining company was a company that was

owned by the local community.

Now in 2007, the court declared the Deed of Settlement a court order. The Deed of Settlement deals with a number of issues. It deals with the issue of the mining rights and the environmental issues.

It deals with the way in which the company will be governed. It also – there is a paragraph that stipulates that an Interim Joint Board must be appointed. The Interim Joint Board will then form a Pooling and Sharing Joint Venture.

10 But also very important, because the next agreement called the Unanimous Resolution. The Unanimous Resolution is, in a sense, a governance framework. Because it speaks to your sub-committees, what sub-committees there should be.

It also eludes to procurement issues in a sense. So that was important just to establish the PSJV and give it a governance framework. So the Deed of Settlement and the Unanimous Resolution should be seen, you know, together.

ADV SIBIYA: And what did the Unanimous Resolution say?

20 **MR TORRES:** Now, the first thing they had to do in terms of the Unanimous Resolution is to form the Pooling and Sharing Joint Venture, the establishment of that.

ADV SIBIYA: Okay. And how do we know what were the terms?

MR TORRES: The terms in the share... Okay just hold on.

When you say it is the terms of the Unanimous Resolution?

ADV SIBIYA: Yes.

MR TORRES: Ja, the Deed of Settlement refers to the Unanimous Resolution should be formulated. So those are the terms. The terms come directly from the Deed of Settlement.

ADV SIBIYA: H'm. And also, the Deed of Settlement also says how the formation of the PSJV is going to happen and also to give effect to the agreement in terms of the ownership and the shareholding?

MR TORRES: Yes. I think if you look at paragraph 9.1.9.

ADV SIBIYA: H'm?

MR TORRES: It says here:

“Clause 8.4.5 stipulates that the members of the IJV, which is the Interim Joint Board, must before the Unanimous Resolution can take you back refer the Unanimous Resolution to the principles for unconditional.”

So they then did the Unanimous Resolution but got agreement from the principles, that is the government and Alexkor.

ADV SIBIYA: H'm. Yes. So this involved the Government of South Africa?

MR TORRES: Yes.

ADV SIBIYA: From the time that the joint venture was

contemplated, the government was a party to that arrangement?

MR TORRES: Yes, because they are in effect the shareholder of Alexkor. And also, because they have a 51% shareholding in the joint venture, they are also a shareholder in the joint venture, Pooling and Sharing Joint Venture.

ADV SIBIYA: H'm. Okay. You move on and you start dealing with the agreement that was concluded by the JV and SSI.

10 **MR TORRES**: [No audible reply]

ADV SIBIYA: On the next page 66.

MR TORRES: 66?

ADV SIBIYA: That is where you then move on to speak to that.

MR TORRES: H'm.

“An agreement was signed and completed between the PSJV and SSI.

SSI was appointed specifically to market, value, sell and for the beneficiation of diamonds.”

20 Now the agreement was signed by Daniel Nathan, representing the SSI, Scarlet Sky. And then Carstens, Norman Carstens, who was the CEO at the time Mr Chair, he represented the PSJV and signed the agreement.

The agreement actually stipulates what should be done. For example, it stipulates the type of pricing model that they

should have. And auction sales to be conducted in order to sell.

They also stipulated the way in which the diamonds should be sold. They gave a breakdown. For example, 10% had to be sold to the state diamond trader for beneficiation purposes.

Another 5% had to be sold to the local company also for beneficiation purposes. And then 85% had to be sold to an auction sale. Those was – these are key-elements in the
10 agreement.

ADV SIBIYA: Okay.

MR TORRES: And then he also speaks to the commission that has to be paid a handling fee to – which was 1.5% at that stage.

ADV SIBIYA: Okay. And this contract was signed in...? It is in paragraph 9.3.3.

MR TORRES: It was signed on 4 March 2015.

ADV SIBIYA: Yes. And then you move on. On the next page, you talk about a second agreement.

20 **MR TORRES**: Yes, there was a second agreement. The first appointment was a three-year appointment. So they were appointed at the beginning of 2015, SSI. But some time in 2016 a new procurement process was started for the selling and marketing of the diamonds.

Nobody can explain why because the term had not

expired yet but they were appointed. So this agreement relates to that. It is essentially the same but there are a few differences.

For example, the first agreement was a three-year duration period. The second agreement, the duration period was extended to five years which was quite a long time, you know.

And also there were key-issues. For example, the 5%, it had to be sold to the local - the batch sold locally. It was
10 excluded from this agreement.

ADV SIBIYA: Okay.

MR TORRES: So essentially...

ADV SIBIYA: Okay. We will go in more detail later on in your evidence at what your findings were because at this stage you are talking about what document ...[intervenes]

MR TORRES: Okay.

ADV SIBIYA: ...contracts you did. So you do not have to go into a whole lot of detail at this stage.

MR TORRES: Okay.

20 **ADV SIBIYA**: But later on, you tell us what you discovered and... Yes. If you made any adverse findings and what those were and what informed that.

MR TORRES: [No audible reply]

ADV SIBIYA: Okay. The next agreement you looked at, you refer to on page 69. So you can tell us briefly.

MR TORRES: Okay. This here, paragraph 9:

“This agreement will appoint the Shallow Water and Beach Marine contractors.”

Now, it specifically relates to – there are two documents. It is the Shallow – there were two agreements. The one was – it is called – in fact, it is one agreement but there are different types of marine mining. You have your beach mining activity and then you have your shallow water activity. So it deals with those miners here.

10 So it is just for standard clauses where, you know, what as – what are the obligations of the contractors on the one hand, the obligations of the principle on the other hand, but also in which payment will be done, the proceeds of the mining activity.

ADV SIBIYA: Okay. Now you move on, on page 10 to speak to – about the PSJV Cofferdam Operations. What is the Cofferdam ...[intervenes]

CHAIRPERSON: Did you say page 10?

20 **ADV SIBIYA**: Oh, my apologies. It is on page 71 and it item ...[intervenes]

CHAIRPERSON: Ja.

MR TORRES: Chair was also...

CHAIRPERSON: [laughs]

MR TORRES: [laughs]

ADV SIBIYA: Yes. My apologies. Thank you Chair.

MR TORRES: Cofferdam Operations. The Cofferdam Operations – I am not a technical person Chair. So I just want – but I had to find out what this was.

ADV SIBIYA: H'm.

MR TORRES: The Cofferdam Operations, essentially, take place where beach mining activity takes place. It is on the shore. So what they do is. They build the coffer-dam wall and within the coffer-dam wall, they would have a machine digging the gravel from this. So the coffer-dam would avoid
10 the transport the water.

Now Cofferdam Operations are – can be damaging to the environment. It depends on what you are using. So the Environmental Management Plan that the PSJV had only included the coffer-dam building with sand. So.

But they started using boulders and rocks to build the coffer-dam. And once you start, that is a listed activity in terms of the Environmental Act. It damages the environment. It damages the eco-system. And this was an issue, a contentious issue.

20 So it was one of the issues raised by the contractors, and we look at it. And we found that yes they had used boulders and rocks to build the coffer-dam. According to them, they stopped using sand because the tidal waves in South Africa are very strong and they had to rebuild the dams. Be that as it may, you need special permission to

use boulders and rocks. Now there were – they did
...[intervenenes]

ADV SIBIYA: Sorry. Sorry, I just need to stop you
because you keep saying they.

MR TORRES: Oh, sorry.

ADV SIBIYA: So you can continue.

MR TORRES: The previous JV, continued to use boulders
and rocks. They were reported to the authorities and by
their own admission they admitted that they had used a
10 listed activity because they submitted an application called
a 24G application. 24G in terms of inviting NEMA, the
Environmental Act. Now once you submit a 24G
application it is an admission that you have done wrong
and you want this wrong rectified, okay? So the
complaints by the contractors were valid.

ADV SIBIYA: And what were your findings in that regard
because is one of the issues that you did identify your
focus areas?

MR TORRES: Okay. Well, initially they denied that they
20 had used boulders and rocks but I mean by their own
admission what we found was that they had then applied to
the department for permission. There was a public hearing
because you need to have a public hearing, the public has
to make its input. We could find no adverse comments at
the public hearing about this. However, they then – there

was only one – what we found that they then received the – they had to submit a new environmental management plan which would then include the use of boulders. They had submitted that. The department did not approve it as yet by the time that we were doing the investigation because they were still waiting for a financial plan from the PSJV.

Now the financial plan is quite key because when you do the rehabilitation you need a financial plan but what we found was that the – we could find no evidence that
10 they had used boulders and rocks and we had an interview with the executive management and they were saying no, we have rehabilitated the land and that is why you will not see it there.

Now you cannot just rehabilitate an environment in a vacuum, there is a process that happens. You have to inform the department, the environmental department, they send out an inspector to have a look at the environment and then at the end of the rehabilitation process you get given a certificate to show the area has been rehabilitated.

20 They could not produce any of that, you see? That in itself was illegal as well, them just going and do it, you know? So besides the using wrong and listed activity, they also did that, Chair.

ADV SIBIYA: And what was the impact of what they were doing?

MR TORRES: Well, the impact is quite serious because once you build a cofferdam using material that you should not use, you then – you know, the sea has its own self-cleansing way so the transport, the sediments, the sea, the waves and all that, transport the sediments. So all that was stopped and then you find that it also damages the ecosystem there, that exists. So it is quite damaging.

ADV SIBIYA: And, as you say, it still has not been rehabilitated.

10 **MR TORRES:** No, no.

ADV SIBIYA: At the time [inaudible – speaking simultaneously]

MR TORRES: At the time when I was there.

ADV SIBIYA: Okay. Now we move on page 83 to the detail of the appointment of SSI. Page 83.

MR TORRES: Okay.

ADV SIBIYA: Yes. So you conducted this investigation into the appointment of SSI who were going to market and sell all the diamonds that were mined in the area by the
20 PSJV.

MR TORRES: That is correct.

ADV SIBIYA: Yes.

MR TORRES: So you want me to – okay, this, the first appointment of SSI, what we did was, we then reviewed the procurement process. It was very important, the manner in

which they were appointed. Now we found that the procurement, the procurement process for the appointment or the service provider to sell and market the rough diamonds, was ostensibly manipulated to favour Scarlet Sky and I will explain this, Chair.

SSI was essentially a shelf company when they first submitted their expression of interest. The director at that time was Hazel Ammann, who was a standing director and the two directors, Daniel Nathan and Kubentheran Moodley
10 were only appointed weeks later. So at the time when they submitted their expression of interest the supporting documents misrepresented Nathan and Moodley as directors. This was the first issue that we had.

The second issue that we have, Chair, a minimum requirement for the bidder was you needed to have a licence to sell rough diamonds. It is a statutory requirement in terms of the Diamond Act.

Now Scarlet Sky Investments did not have a licence so they should have been disqualified right at the
20 beginning and then we – the bid evaluation and short listing was outsourced to a company called Gamiro Advisory Services.

Now Gamiro Advisory Services is an external service provider. Now the unanimous resolution does make reference and alludes to the PFMA and the way the

procurement should be run. Even though the – and that scores a schedule 2 entity and the PSJV was also considered a schedule 2.

They need to – you need to formulate your own policy, it is like Transnet and Eskom, they are all schedule 2. You are allowed to formulate your own policy, okay? However, they did not have a policy specifically for SCM, so the Treasury prescripts applied. So in terms of the prescripts you need to have a properly appointed BEC
10 made up of staff members and management, cannot have an external party doing the evaluation and a short list. You can bring them in as advisers, Chair, for technical advice because there are some technical issues.

So this was an irregularity that we uncovered.

CHAIRPERSON: The noncompliance by SSI with one of the minimum requirements, namely being in possession of the licence, that could not have been an oversight on the part of those who were supposed to disqualify that, could it have been?

20 **MR TORRES:** Yes, it could not happen because it is a – I mean, it is one of the main requirements ...[intervenes]

CHAIRPERSON: Because the first thing you do, is do they meet the minimum requirements? Now in your investigation did you confront the person who was supposed to establish whether SSI met this requirement

and if you confronted them, what was their explanation?

MR TORRES: Chair, firstly, Gamiro Advisory Services, who did the evaluation actually allocated zero points to Scarlet Sky for not having a licence.

CHAIRPERSON: Oh, okay.

MR TORRES: Okay? So, I mean, this was disregarded by the tender committee.

CHAIRPERSON: So it is the tender committee that was supposed to pick this up?

10 **MR TORRES:** Yes.

CHAIRPERSON: Or at least they should have given effect to the zero ...[intervenes]

MR TORRES: Yes, they should have and they did not give them zero.

CHAIRPERSON: Yes.

MR TORRES: They gave them the full five points and so this is where the discrepancies came about.

CHAIRPERSON: Yes. But what I asking is whether you were able, as the investigators, to confront the tender
20 committee, the Chairperson or whoever, to say how could you ...[intervenes]

MR TORRES: Okay, Chair, the ...[intervenes]

CHAIRPERSON: ...not have disqualified SSI? What is your explanation for this?

MR TORRES: These were former board members and we

were unable to contact them, so we did not confront them but we did speak to the executive management team and to understand why this happened.

CHAIRPERSON: Yes, okay.

MR TORRES: So – but they also were excluded from the process and they could not...

CHAIRPERSON: You know, there is the tendency sometimes with investigators that just because somebody is no longer is employed by the entity then they do not
10 follow them. Why could you not get hold of them? You could not get hold of even one member of the tender committee, former member, to say tell us, what is your explanation, or send them a letter saying we are investigating, we have been mandated to investigate and this is what seems to have happened here and you were part of the tender committee and it seems you should have picked this up and you did not disqualify this. What is your explanation for that because we may make an adverse finding about you and the tender committee. What is your
20 explanation? Give us your explanation by such and such a date.

MR TORRES: No, we did not, Chair. We also had tight deadlines and time constraints, they wanted the report. So, I mean, there were a number of other issues that we wanted to follow up but unfortunately we could not.

CHAIRPERSON: Well, it is a pity you did not do that because, I mean, you did have three months and, if necessary, you could have told the Department of Public Enterprises that you needed more time because this is quite crucial because you have a situation where your investigations reveal that member of the tender committee failed to disqualify an entity that should obviously have been disqualified.

You need an explanation why they failed to do that
10 because they could not have not seen that the SSI did not have a licence because their job would have been to find out do you meet these minimum requirements.

Did they ask that question and what was the answer because it may mean that they were part of corruption and that is quite something serious and you do not want to reach that conclusion without giving those people an opportunity to give an explanation for their strange conduct. Do you understand that?

And it enriches your report if you have confronted
20 those people and you are able to say in your report: After we picked this up, we approached the tender committee and asked them, gave them an opportunity to explain and this is the explanation they have given, we think this explanation is nonsense or they have failed to give an explanation and we think they have failed to give it

because they have none. Do you understand that? Then your report has more value than if you leave them out.

MR TORRES: You are correct.

CHAIRPERSON: Ja.

MR TORRES: Thank you, Chair.

CHAIRPERSON: Okay, alright.

MR TORRES: I hear what you are saying. I think the next point that I was going to raise, Chair, was the tender committee recommended the appointment of Scarlet Sky.
10 However, they gave a condition, they said we will recommend the appointment provided a due diligence is conducted by the CEO, Carstens, who was also on the board.

Now Carstens then informed the board that he had conducted the due diligence. A due diligence would have entailed also confirming the legality of the licence, okay?

Now Carstens misrepresented to the board that he had conducted a due diligence and on that basis they were appointed. So we had interviewed Carstens about the due
20 diligence, he says he has done it. However, the company secretary informed us that no due diligence was done and he wrote on email saying that he has done a due diligence . So we looked at it from that point of view as well.

CHAIRPERSON: But if you have done a due diligence would that not be a report?

MR TORRES: Yes, there should be because we want to know what you have ...[intervenes]

CHAIRPERSON: Ja and if he said he did it, did you ask for the report? Where is your report?

MR TORRES: Yes, we asked, for months we asked the report.

CHAIRPERSON: Ja.

MR TORRES: Repeatedly. They had to eventually admit that no due diligence was done.

10 **CHAIRPERSON:** He ultimately admitted that?

MR TORRES: Well, no, the company secretary.

CHAIRPERSON: Yes.

MR TORRES: Because he still admitted.

CHAIRPERSON: Yes.

MR TORRES: He still maintained that he had done a due diligence .

CHAIRPERSON: Yes. Okay, alright.

ADV SIBIYA: Thank you, Chair, I think it is an opportune moment.

20 **CHAIRPERSON:** Yes, let us take – we will take the tea adjournment. It will be important that the – I hope the Commission investigators have closed the gaps that I am talking about that there will be evidence to say the tender committee has been approached about why it did not disqualify SSI. Do we have their affidavits? Do we have

an explanation? What is the explanation? Matters like that. There might be other minimum requirements that were not met. I hope that has been taken care of.

ADV SIBIYA: Indeed it has. Thank you, Chair.

CHAIRPERSON: Ja, okay. We will take the tea adjournment and we will resume at twenty to twelve. We adjourn.

INQUIRY ADJOURNS

INQUIRY RESUMES

10 **CHAIRPERSON:** Okay, let us continue.

ADV SIBIYA: Thank you Chair. Mr Torres you were explaining how the entity that scored SSI zero out of five and then you have the tender committee that changed the score.

MR TORRES: May I just put it on. Gamiro Advisory Services scored zero points for the license; they had the statutory requirement of a license. Gamiro also shortlisted three bidders there was seven that had submissions. Now Fusion Alternatives they got the highest score of 75,
20 Scarlet Sky Investments were second highest and then there was a third company called CS Diamonds okay they got 67 points. Now based on the short listing they presented to the tender committee; he tender committee then did their own evaluation subsequent to the first evaluation done by Gamiro. What we did then we then

compared the score sheets to see if there are any discrepancies and one of the discrepancies was the licence issue.

The tender committee had allocated full five points for a licence but also we found that the criteria and the allocation of the points had been changed. Now this to us was – I mean you cannot in the middle of ...[intervene]

CHAIRPERSON: And just on the 5% that you say the tender committee awarded for a licence that could simply
10 not be bonus points be awarded is it not because there was no licence.

MR TORRES: Yes.

CHAIRPERSON: So anybody who awarded SSI which is awarded five point which is as I understand from what you are saying with full points knew that there was no licence and therefore and awarding the full points must have been acting fraudulently because they would not have seen the licence, is it not or do I misunderstand something?

MR TORRES: No I agree with you Chair there was no
20 licence.

CHAIRPERSON: Because you cannot – either you have, either the entity has a licence or it does not have. It cannot be given 60% of the 100 points because if you have it, it is full points if you do not have it, it is no points, it is zero and therefore if you award the full points without

there having been a licence then that must be fraudulent.

MR TORRES: There was no licence Chair and there should have – and this was one of the discrepancies we find that is why we did the comparisons.

CHAIRPERSON: Yes.

MR TORRES: And I agree with you.

CHAIRPERSON: Because you cannot say we give you full points for a licence when you have not seen the licence.

MR TORRES: Correct.

10 **CHAIRPERSON:** Ja, or at least having satisfied yourself that there is a licence.

MR TORRES: Yes.

CHAIRPERSON: Ja and I guess the way to satisfy yourself is for you to ask the entity to produce the licence.

MR TORRES: And Chair we did if I can just, we did approach the Diamond Regulator and the Diamond Regulator confirmed that the SSI does not have a licence.

CHAIRPERSON: Yes, so that five points is most likely fraudulent.

20 **MR TORRES:** Yes.

CHAIRPERSON: The awarding of that unless those who awarded come and give an explanation that we cannot think of, ja okay.

ADV SIBIYA: They have been invited Chair to come and give their explanation. We are hoping that they will.

MR TORRES: Also Chair we found that in the original bid submission Scarlet Sky Investments has proposed an outright purchasing model all other bidders has proposed the auction sale of the pricing. Now that purchase pricing purchase model was what was used by the previous service provider and this caused so much unhappiness it was a contentious issues. It was actually a matter to management and the contractors. So when they did their presentations to the tender committee they then it was
10 changed to the auction sale pricing model. Now you have a bid validity period of 90 days within that bid validity period you cannot make changes to the bid or if you do make changes all other bidders must be informed. The company secretary again informed us that they have not informed any bidders that changes were made.

Now allowing SSI to make a crucial change to the bid submission is an unfair and uncompetitive practice and it is a contravention of the constitution Section 217. So we also found this to be a problem and lastly it is a due
20 diligence issue which I alluded to earlier that was not conducted. So in essence the procurement process was irregular, it appears to be manipulated to favour SSI given that all these discrepancies we found.

ADV SIBIYA: So you are saying whether we were looking at the licence issue or we were looking at the other issue.

MR TORRES: Ja the licence issues was one issue but there were a number of others. All these issues taken into accounts shows that there was manipulation.

CHAIRPERSON: But of course the licence requirements is a crucial one because you should not go beyond that stage if you do not have it because how are you going to do the job.

MR TORRES: No I agree with you Chairperson.

CHAIRPERSON: If you appoint somebody to as a Driver if
10 they do not have a drivers licence.

MR TORRES: No you cannot do that.

CHAIRPERSON: Okay, alright.

ADV SIBIYA: Thank you. Now Mr Torres and with your leave Chair you are aware that the Gamiro have prepared a response to this issue, yes?

MR TORRES: Yes, I have been informed.

ADV SIBIYA: Yes, and you are aware that according to Gamiro they were not instructed to shortlist and they did not shortlist. Can I refer you to page 622.

20 **CHAIRPERSON:** Is that in the same bundle?

ADV SIBIYA: In the same bundle Chair, it is not the affidavit.

CHAIRPERSON: 622?

ADV SIBIYA: Yes, Chair. Am I correct?

MR TORRES: No on that...[intervene]

ADV SIBIYA: Sorry Sir I am waiting for the Chair to get to the page.

MR TORRES: I am here.

ADV SIBIYA: Am I correct that this is the document on which you based your conclusion that they were the ones that shortlisted?

MR TORRES: Yes, this is the document the letter of appointment.

ADV SIBIYA: Yes, and this document that we find on page
10 622 tell us what it is and just read it for us?

MR TORRES: Okay, this is the letter to the chief executive of Gamiro Advisory Services and it is the appointment letter to Gamiro to evaluate and shortlist the procurement process for the marketing and selling of rough diamonds and the letter has been signed by Mervin Carstens the chief executive officer.

ADV SIBIYA: Where did you get this letter?

MR TORRES: This is a letter that we got from - in our batch because we got batch documents from the Company
20 Secretary was our main liaison. So she sent us all of these documents so we got this in our batch from the Company Secretary.

ADV SIBIYA: The company secretary of the PSJV?

MR TORRES: Of the PSJV called Reagan Phillips.

ADV SIBIYA: So she is the one that when sending you

documents that would support the investigation that you were undertaking included this document?

MR TORRES: Yes, what we would also do is we will give her specific documents that we wanted and say we need these documents and they would send it to us.

CHAIRPERSON: And what was the point about the letter that you say some of Gamiro or somebody makes?

ADV SIBIYA: The affidavit that has been submitted by Gamiro but was submitted in short notice and therefore is
10 not yet before the Chairperson. In that affidavit they dispute that they were instructed to shortlist, yes and...[intervene]

CHAIRPERSON: Do they do so on the basis of this letter?

ADV SIBIYA: They say that they never received this letter and I am taking it as yes...[intervene]

CHAIRPERSON: Oh okay, alright.

ADV SIBIYA: Yes, so they dispute that they shortlisted in the first place and Mr Torres has just given evidence of the scoring and the facts that they shortlisted. So I
20 am...[intervene]

CHAIRPERSON: Is that a way of saying that they were not required to check whether somebody had the entity had a licence?

ADV SIBIYA: No they say that they scored them zero for that aspect but they are distancing themselves from having

ensured that SSI is...[intervene]

CHAIRPERSON: But getting, giving them zero for that aspect should mean they should not proceed to do anything else.

ADV SIBIYA: Chair I do not want to be...[intervene]

CHAIRPERSON: You do not want to be there advocate.

ADV SIBIYA: Yes, however what they say in their affidavit which is under oath and they have submitted is that they only put in the scores but did not say that these are the
10 companies that must be shortlisted. They say that they did not have the authority to disqualify...[intervene]

CHAIRPERSON: Okay I am sure they will come and explain.

ADV SIBIYA: Yes.

CHAIRPERSON: Okay but it is important for you to put to Mr Torres what they say about their report, ja.

ADV SIBIYA: Yes, so do you accept that they did not?

MR TORRES: Based on this letter they did do a short listing and in any event when you do the scoring it is also
20 an automatic short listing process unless of course you say a company must be disqualified and you state explicitly why and there scoring already was the short listing.

ADV SIBIYA: And surely by employing Gamiro they had to have a certain expertise.

MR TORRES: Yes because you do not employ an external

service provider if they do not have the skills and the capabilities to do the job because you have the skills in house. So yes they should have known that SSI had to be disqualified for not having a licence.

ADV SIBIYA: How many tenders were in fact received?

MR TORRES: There were seven tenders that were reviewed Chair. There were actually nine express of interest submitted but two did not attend the briefing session and did not submit a formal proposal.

10 **ADV SIBIYA:** So there was an external service provider appointed to evaluate seven tenders?

MR TORRES: Seven tenders, correct.

ADV SIBIYA: And in your view and in your...[intervene]

CHAIRPERSON: That is the bids seven bids for a particular tender?

MR TORRES: Yes, yes for a particular.

CHAIRPERSON: Ja, okay.

ADV SIBIYA: So in your view why would they have needed to appoint a service provider for the evaluation of
20 the seven tenders if not to shortlist and not to...[intervene]

MR TORRES: Yes, you are quite right because you have the expertise inside who have been doing this job for quite some time and they do the bid evaluation all the time and then you provide an external provider it raises the question why specifically this service provider and why were they

asked to shortlist because normally you just say do the bid evaluation.

The bid evaluation should in itself tell you who goes to the next level. Have they reached the threshold level because there could have been a threshold level? I think there was a threshold level functionality of 70. So if you do not reach 70 you do not go to the next level. So there must have been a reason I think why...[intervene]

CHAIRPERSON: Were you given an explanation as to
10 why this was outsourced during your investigation?

MR TORRES: What we wanted to know why – we also found that the company secretary and the other executive members because they were not involved could not give us an explanation. So we then asked the...[intervene]

CHAIRPERSON: But somebody must have taken the decision to outsource did you approach that person?

MR TORRES: Carstens now we – there were allegations that he had in his previous job that he had contact with Gamiro Advisory but we could never confirm it.

20 **CHAIRPERSON:** Yes, but what I am asking is did you confront him to say explain why it was justified to outsource this and did you approach him, did you provide an explanation if he did what was the explanation?

MR TORRES: Well all that he said was that they have the necessary expertise and knowledge to do this particular

job and also that they were doing other advisory services for the entity.

CHAIRPERSON: I am sorry so you did approach him?

MR TORRES: Yes, we had an interview with him a formal interview.

CHAIRPERSON: Yes, and his explanation was?

MR TORRES: Well all he said they have the expertise they wanted them because they have the expertise.

CHAIRPERSON: What the internal expertise, why not use
10 the internal expertise?

MR TORRES: Well I...[intervene]

CHAIRPERSON: That is an obvious question you would ask why you outsourcing because we have got the expertise.

MR TORRES: Well we questioned because we said by employing external service providers even if they have the expertise it is actually fruitless and wasteful expenditure.

CHAIRPERSON: Yes, that is why I am saying it is an obvious question for you to ask to say why are you
20 outsourcing you have got the expertise because the outsourcing in circumstances where there is in-house expertise may be an indication of something else. So it is a crucial question and an explanation for that why it was done in circumstances where there was in-house expertise to do the job is quite important.

MR TORRES: No, his only explanation was that they have the technical ability in terms of the industry as well and that is why they were picked and then we let it at that Chair.

CHAIRPERSON: And what did you make of that explanation?

MR TORRES: It did not make sense to us Chair because the only technical issue was the licence. The rest was have you met the requirements. The scoring was on issues
10 such as – okay there was some technical issues but the scoring was on the criteria was mainly on local development what are they going to do on that, the pricing model was an important issue. So they could have had - and this is what our argument was - you said yes fine maybe they could have come in as a technical advisor because that is what happens all the time. Your BEC do not have all the technical knowledge at times so why did you not bring them in, you said no they were there they did the bid evaluation.

20 **ADV SIBIYA:** Thank you and what else did you discover had been done wrong in the procurement process?

MR TORRES: In the procurement process?

ADV SIBIYA: Yes.

MR TORRES: Well I think I have covered most of the items that were done wrong, it is just to summarise. There

was no licence, Gamiro as an external service provider there was no compliance in the way they were appointed because they should have appointed internal staff or have a properly constituted bid evaluation committee. Also the scoring of the three shortlisted services providers there were discrepancies.

For example, basic discrepancies like all three service providers had – okay after the changed bid submission of SSI they all proposed a commission of 1.5%
10 but two of the service providers were given three points and the other one was given four points. You know for the same so how do you – so it was just to us we got the impression that is why we say we think it was manipulated they were just giving points to ensure that SSI got the highest points that was the presentation after the presentation.

ADV SIBIYA: And of course we have the issue of the due diligence that was a condition.

MR TORRES: That was a condition that I think also the
20 sub-committee wanted to protect itself, they had made a recommendation. They then said based on our recommendation, no we recommend SSI however you need to conduct a due diligence which was never conducted, that is it.

ADV SIBIYA: And when it came to the Board and

reporting to the Board about the due diligence what did you find?

MR TORRES: Well Mervin Carsten's the CEO actually wrote an email to Board members confirming that he had conducted a due diligence and based on that they accepted it and awarded the contract to SSI.

CHAIRPERSON: But how could they, how could the Board just accept his word one would have expected that they would ask for the report, the due diligence report so that
10 they could evaluate it themselves and see what it says.

MR TORRES: Chair right from the beginning of our investigation the due diligence report was one of the things that we asked them for. Eventually right at the end they confessed and said, the company secretary actually, Reagan Phillips said look no due diligence was done.

CHAIRPERSON: Yes, so the letter that Mr Carsten's wrote to the Board did it say I have conducted due diligence and this is the outcome thereof or what did it say?

20 **MR TORRES:** I am trying to remember the email it is such a – but the email said I have conducted the due diligence.

CHAIRPERSON: Yes.

MR TORRES: I do not - the email did not specify you know what was in the due diligence.

CHAIRPERSON: Would that email be part of the

annexures to your report?

MR TORRES: It should be.

CHAIRPERSON: Or you are not sure.

MR TORRES: I am not sure Chair.

CHAIRPERSON: Okay that can be checked later, you see it becomes important because we also need to look at the role of Boards of these SOE's. How can you simply be told a due diligence has been conducted and you make a decision without seeing the due diligence report. How do
10 you do that?

MR TORRES: Right.

CHAIRPERSON: And it turns out there was no due diligence that was done anyway and then the question arises why was there nobody among the Board members who said where is the due diligence report, we want to see it before we make a decision you see. Did you have access to the minutes of the Board meeting where they discussed and made the decision?

MR TORRES: Chair we would have had I think where the
20 appointment was made in the Board I am sure we have got that minutes.

CHAIRPERSON: Ja, okay alright it would be important to see what was said, ja okay.

ADV SIBIYA: Thank you and then we move on to the second appointment but before we get there what did you

find in relation to the expertise, the scoring for the expertise did you have any problem?

MR TORRES: The scoring?

ADV SIBIYA: In relation to the experience and the expertise, did you have any problem with that?

MR TORRES: The experience?

ADV SIBIYA: Yes.

CHAIRPERSON: Of SSI.

ADV SIBIYA: Of SSI, yes.

10 **MR TORRES**: Well I think right at the beginning I alluded to the fact that it was a shelf company so there was no business tract record there was no experience so they should have gotten very little.

CHAIRPERSON: Yes.

MR TORRES: But they were allocated points and then there was also gaps in their bid that is why the criteria was changed as well because the pricing model they did not have in their first bid and then there was also beneficiation the local community they need to – there was an aspect
20 where the local community had to be empowered. That was actually removed from the criteria during the presentation stage.

ADV SIBIYA: Thank you okay now we can move to the second appointment of SSI.

MR TORRES: The second appointment of...[intervene]

CHAIRPERSON: What page is that?

ADV SIBIYA: It is the very next page Chair on page 92 I am sorry I did not take...[intervene]

CHAIRPERSON: When you took us to page 622 are we is it 623 or are we going back.

ADV SIBIYA: I am walking by myself Chair and leaving everyone behind.

CHAIRPERSON: Ja we can see that.

ADV SIBIYA: Yes, we are actually back...[intervene]

10 **CHAIRPERSON:** You need us.

ADV SIBIYA: We are back at page 92.

CHAIRPERSON: 92?

ADV SIBIYA: Yes thank you Chair.

MR TORRES: Okay I have got it here.

ADV SIBIYA: Yes.

MR TORRES: The second appointment of SSI ...[intervene]

20 **ADV SIBIYA:** Firstly I am sorry to cut you Mr Torres, were you happy with the appointment or did you also make adverse findings in relation to this appointment?

MR TORRES: In our view the procurement process for the appointment of the service provider to market and sell the rough diamonds was fatally flawed and we did have adverse findings.

ADV SIBIYA: Okay and you are talking about the second

tender.

MR TORRES: Yes, the second tender.

ADV SIBIYA: Yes, now you can go ahead and say what you findings were.

MR TORRES: Now the second tender the BEC there was a BEC and the BEC comprised the executive team managers, so there was a BEC. We then requested the minutes the scoring of the BEC it was at this stage when the company secretary who was also a member of the BEC
10 admitted to us that they did no evaluation at all. Their only job was to ensure that there is compliance with the requirements.

Now this is the requirements such as is there a tender certificate, is there a BEE certificate. Now this is an administrative job that is usually done by supplier management staff it should not be done by an executive team. So the BEC in itself was you could say a hoax in itself because they were appointed but to do what because your responsibility as a BEC is to do evaluation so they did
20 no evaluation and that was to us a problem. Already right from the start this whole, there were problems with the procurement process.

CHAIRPERSON: Did the company's admission, was the company's admission that no evaluation was done in writing?

MR TORRES: Well what she did was she said they had no records that an evaluation had been done and that is why it was a problem even to get minutes, documents. In fact, there was even a problem in us finding out the number of submissions admitted.

CHAIRPERSON: Yes, but my question is whether whatever he said whether that was in writing namely whether he said there was no evaluation done or whether he said there were no records indicating that evaluations
10 were done. What he told you was it in writing? Did he sign a statement or do an affidavit, did he send a letter or was it just...[intervene]

MR TORRES: No we had an interview with her on this particular and a number of other issues.

CHAIRPERSON: Yes.

MR TORRES: I am just trying to recall Chair but we did on this particular issues it is when normally they get appointed as BEC they do evaluations but I must, I cannot recall whether she informed us whether it was an
20 instruction and I think that is what you want to know, am I right Chair? That she was instructed.

CHAIRPERSON: Yes.

MR TORRES: Not to do an evaluation.

CHAIRPERSON: Would your interview with him would have been recorded by any chance?

MR TORRES: No, no.

CHAIRPERSON: It would not have been recorded because it is quite important information so I would have imagined that if you did not record the interview you would have asked him to do an affidavit or at least minimum a statement to say give us a statement that tells us exactly what you have just told us in this interview. Did you do that?

MR TORRES: No we did not.

10 **CHAIRPERSON:** Why not, it is such an important thing?

MR TORRES: Chair...[intervene]

CHAIRPERSON: I mean evaluation was important, it should have been done here is the company secretary either telling you no evaluation was done or we were instructed not to do it or there are simply no records indicating that this was done. So now you are conducting an important investigation how do you not secure either a statement or an affidavit from this giving you this information.

20 **MR TORRES:** I cannot recall us asking her for an affidavit but I agree with you it is an important point. Again Chair under the circumstances we were – in fact we thought we would get – get a second opportunity to continue and close the gaps but we never got to a second appointment.

CHAIRPERSON: Ja it is unsatisfactory. It is unsatisfactory.

I mean this is very important. Now somebody tells you very important information you are investigating. You are going to compile a report give it to the Department of Public Enterprises and he tells you crucial information; you do not ensure that it is in writing to say the least or it is an affidavit or it is recorded. It is unsatisfactory. Ms Sibiya continue.

ADV SIBIYA: Thank you. Maybe if I can assist you Mr Torres. On page 146.

MR TORRES: 100 and?

10 **ADV SIBIYA:** 46 – 146. This is the section where you detail the content of the interview. You detail the date of the interview with Ms Phillips and you set out in the report still what she informed you. Are you with me on page 146?

MR TORRES: Yes I am.

ADV SIBIYA: Okay. So you will see that in paragraph 17.5.4 you say:

20 “On 4 October 2019 we interviewed Ms Ragan Phillips the company secretary of the PSJV and she informed us that she is an admitted attorney whose done post graduate that is at Stellenbosch University.”

And then three bullet points down can you see what you wrote there as a recordal of your consultation? Can you read that for us. So the fourth bullet point.

MR TORRES: It is the fourth bullet point.

ADV SIBIYA: Yes.

MR TORRES:

“Appointed as – this is the interview with Phillips. Phillips informed as follows:

Appointed as part of the BEC for the procurement process involving the tender for marketing and selling of rough diamonds.

The committee did not do any scoring for the evaluation purposes only checked

10 compliance to the minimum requirements.”

CHAIRPERSON: Did you ask her why the evaluation was not done or the scoring for evaluation purposes was not done?

MR TORRES: Chair I think I do not see it here. I cannot recall.

CHAIRPERSON: But it is such an obvious question to ask if you are investigating. And this is what company secretary?

MR TORRES: Ja the company secretary.

CHAIRPERSON: The company secretary is an important
20 official in the company and – and if I recall correctly part of their job is to ensure compliance with legislation and so on. So she sits on a committee which was supposed to conduct an evaluation and she tells you they did not do the evaluation because if they did not score that means they did not do the evaluation. Most obvious question to ask is why

not. That is what you were about as a committee. That was your job. Why did you not do the job?

MR TORRES: In fact we raised the question that the PEC that is there job but she said they were – that is all they did. They were not given any other information to work on.

CHAIRPERSON: Ja did you ask her why were you not given? Who was supposed to give you information? Why were you not given information?

MR TORRES: Chair the questions – we raised a number of
10 questions. I must admit that at times the – the – they were evasive you know and because we also had time constraints we were in Cape Town we had conduct unfortunately were important when there was winds – a dust storm and we could not conduct any interviews. We had to reschedule because it is quite a drive to Upington. So you have to drive to Upington 700 kms then get a flight back to Joburg so it is an issue to get there. So I think that the time constraints were also.

CHAIRPERSON: Ja but you had three months to do this and
20 you are interviewing the company secretary and she tells you I was part of the committee that was supposed to do an evaluation. We did not do an evaluation. Obviously you must probe further to find out why. Why did you not do your job as a committee to find out whether they were instructed by anybody not to do the job? If they were instructed who

instructed them? What were – why did they comply with that instruction? Was that instruction lawful? And so or were they part of a certain agenda or were they not part of an agenda. And you cannot find – cannot get an answer to those questions if you do not ask the relevant questions. You see it – it dilutes the significance of your report if you do not ask questions that should have been asked.

MR TORRES: I agree Chair.

CHAIRPERSON: I see here on – on the fourth bullet point it
10 says – you recorded that she said they only checked compliance to the minimum requirements, is that right?

MR TORRES: That is right and I do say.

CHAIRPERSON: And did she say that they found that there was compliance with the minimum requirements – did she tell you that? Or did she – what did she say was their finding about?

MR TORRES: There was – there was compliance to the minimum requirements.

CHAIRPERSON: Sorry.

20 **MR TORRES**: There was compliance to the minimum requirements.

CHAIRPERSON: Yes. Is that because Scarlet now did have a licence or what?

MR TORRES: Well they were using the licence of a related company.

CHAIRPERSON: Is that allowed?

MR TORRES: It is not allowed. I mean you must have your own licence.

CHAIRPERSON: So – so why – why do we not – why did you not make an issue on that? Why did you not raise that with her to say but if they did not – if Scarlet did not have a licence then they did not meet the requirements. They could not use somebody else's licence.

MR TORRES: Chair I hear what you say but she says the
10 requirements that they were given – all the requirements were met. Now we do not have a written document stipulating what requirements were put down.

CHAIRPERSON: Did you ask for them?

MR TORRES: Ja but there was no – we asked for all of that. There were no documents.

CHAIRPERSON: But who would have – who would have decided on the requirements?

MR TORRES: Well there ask essentially when you submit there are certain requirements.

20 **CHAIRPERSON:** Yes.

MR TORRES: That you...

CHAIRPERSON: Yes.

MR TORRES: You will make your bids – your tax certificate, your BEE certificate.

CHAIRPERSON: Yes.

MR TORRES: The document must be properly signed.

CHAIRPERSON: Yes but I am saying somebody within the company would say for this tender these are going to be the minimum requirements is it not?

MR TORRES: No, no. There was no document stipulating what were the minimum requirements.

CHAIRPERSON: Yes so how – how did they – how did they know what the minimum requirements are that she is talking about here?

10 **MR TORRES**: Well we assumed that it was just the normal administrative requirements. You know having a tender, tax clearance certificate, a BEE certificate, a submission of documents.

CHAIRPERSON: Ja but how could you assume. This is something you are supposed to satisfy yourself about. If you are asked to investigate whether a company was awarded a particular contract lawfully obviously you go back to the start to say okay when the request for information – the request for proposals was issued what requirements were there?
20 Who was eligible to make a proposal? Did these – this company meet those requirements and take it from there?

MR TORRES: Well Chair at this stage already we knew it is a sham because there were no documents available. Because normally even the Supply Chain they would have a documents that is your tender requirements where these are

the requirements and it is a tick exercise really. You are quite right Chair it is a tick exercise. But there were no – there was nothing.

CHAIRPERSON: But – but does your report say that there was – there were no such documents?

MR TORRES: There were no documents we asked for it.

CHAIRPERSON: Hm.

MR TORRES: It does say.

CHAIRPERSON: It does say that.

10 **MR TORRES**: That we asked for all the minutes and everything.

CHAIRPERSON: But are you saying at page 146 of the report that Ms Phillips said they checked compliance with the minimum requirements and found that there was compliance? Is that what you record her as having said?

MR TORRES: I will not say – I said only check compliance to minimum requirements.

CHAIRPERSON: Yes.

MR TORRES: And...

20 **CHAIRPERSON**: So what I am asking – what – I am asking what that means because it says only checked. Now you can check and find that there was no compliance with the minimum requirements. You check and find that there was compliance. So this does not tell me which one so I am asking you did she say they checked as the committee

whether there had been compliance with the minimum requirements and found that there had been compliance with the minimum requirements?

MR TORRES: Yes.

CHAIRPERSON: Or do you not remember?

MR TORRES: Yes there was compliance but we needed also the documents and that was not available.

CHAIRPERSON: Yes.

MR TORRES: Because to us that – it is again yes there was
10 compliance, what did you check? They could not give us.
And I think this is one of our requirements that we wanted
compliance check list which also we did not get.

CHAIRPERSON: But your report say – in regard to your
interview of her does not – unless it is dealt with elsewhere
does not reveal that you raised these queries unless you
deal – you deal with that somewhere else. Because you are
interviewing the company secretary. She says we checked
compliance with the minimum requirements and obviously
you have to say what did you find? If she said there was
20 compliance you say what were the minimum requirements?
Where are the documents that say those were the minimum
requirements? That does not appear in the report.

MR TORRES: It does not appear here.

CHAIRPERSON: And yet it is quite something important.
Because how can she say there was compliance if she

cannot produce the document that tells you what those requirements were. Can you see where – what – where my problem is?

MR TORRES: No, no I – I hear you and I agree with you.

CHAIRPERSON: And you were – you would – I would have expected you to want to satisfy yourself on this because you want to be able in your report to say was she right in saying there was compliance with the minimum requirements or not? You see. In your report did you deal with whether she was

10 right about that?

MR TORRES: I deal – no the BEC I only deal with the BEC issue and what she responded to. The focus was because after – there was a short listing done and the short listing they also again like the first procurement presented to the tender committee. Now also again our problem was how did they short list if there was no evaluation done? There was no documents, nothing. In fact the procurement process for the second appointment was a sham.

CHAIRPERSON: Ja but you – at least this page 146 does
20 not reflect that you probed issues that you were supposed to probe. She seems to tell you she checked compliance with the minimum requirements and that seems to be left at that.

MR TORRES: Ja. Yes I think if you look at the issues three months might seem a long time but it is a short time. The investigation.

CHAIRPERSON: Yes but just this one person you do not need – I mean just an hour with this person you say okay what were the minimum requirements?

MR TORRES: No we had...

CHAIRPERSON: These were the minimum requirements. Where are you basing that on? Where is the document that told the bidders these were the requirements? Where do you get that from? How can you say there was compliance if the bidders were not told what the requirements were?

10 **MR TORRES:** Chair also you must understand that this also served as a preliminary investigation. We had expected to then have another phase where we would probe certain aspects.

CHAIRPERSON: Yes but these are the basic minimums. Why must those be dealt with by another investigation? This is – there are the first things you look at and then they do not need a lot of time. You see. Why must the Department of Public Enterprises have to either appoint you or appoint somebody else to do another investigation after they have
20 paid whatever they paid for your report when this can be established very quickly? Ms Sibiya continue.

ADV SIBIYA: Mr Torres on page 92 you set out on 12.1.2 what was the minimum requirements.

MR TORRES: Yes.

CHAIRPERSON: What page?

ADV SIBIYA: 92 Chair. In paragraph 12.1.2..

MR TORRES: No on 92?

ADV SIBIYA: Yes.

MR TORRES: Oh I am sorry.

ADV SIBIYA: 92 in black.

MR TORRES: I am looking here. The wrong page.

ADV SIBIYA: 12.1 – 12.1.2 Chair.

CHAIRPERSON: Okay.

ADV SIBIYA: You set out the minimum requirements for the
10 second feat and ...

CHAIRPERSON: 12.1.2 does not set out the minimum
requirements it sets out what was considered to be minimum
requirements. I do not know considered by whom.

CHAIRPERSON: Well Chair I am still taking Mr Torres to the
document that supports because I think some of it he might
have forgotten but he makes reference to it.

CHAIRPERSON: Ja okay.

ADV SIBIYA: Yes. So if I can take you very, very far to
page 640 of the same document. 640 in fact that identifies
20 the number of the exhibit only. Now the document that
appears there it is called the Tender – it says Marketing – oh
you not there yet. Are you not there yet?

MR TORRES: Pardon.

ADV SIBIYA: You are not there yet?

MR TORRES: I am it is 642 you said.

ADV SIBIYA: Yes. 641.

MR TORRES: 641

ADV SIBIYA: Yes.

MR TORRES: Yes I – I am there.

ADV SIBIYA: So what is this document?

MR TORRES: It says the Marketing Post Extraction Treatment processing and beneficiation of diamonds.

ADV SIBIYA: Yes but what is this document?

MR TORRES: Pardon.

10 **ADV SIBIYA:** What is this document?

MR TORRES: Oh it is a request for proposals.

ADV SIBIYA: Okay. And it is the request for proposals for the same contract we are talking about?

MR TORRES: That is correct.

ADV SIBIYA: Okay. Now if I can take you to page 655 of that same document.

MR TORRES: Yes.

ADV SIBIYA: Do you see in the middle of the page where it is in bold 655.

20 **MR TORRES:** Oh 655.

ADV SIBIYA: Yes.

MR TORRES: I have got it.

ADV SIBIYA: Can you see in the middle of the page this is still the same document can you confirm that it is still the same document that we have just identified?

MR TORRES: That is correct.

ADV SIBIYA: Okay. Can you see the heading in bold that says Section 2 detailed Terms of Reference? In bold in the middle of the page.

MR TORRES: Yes I do see it.

ADV SIBIYA: Okay. Can you see that sub-paragraph and immediately below that it says:

“As a minimum requirement proposals must demonstrate the bidders' ability to.”

10 **MR TORRES**: Okay I am there.

ADV SIBIYA: Okay. Do you not think this is where you got the minimum requirements that you reflect?

MR TORRES: I think this is exactly the same as the report.

ADV SIBIYA: Yes. It is almost – it is not everything. It is – this document – the items listed on this page there is only four of them so it is A to D and then you on page 92 in addition to what they have put in you include a BEE level and you include the tax clearance. But in terms of the substance this is exactly the same.

20 **MR TORRES**: Yes. Yes.

ADV SIBIYA: So...

CHAIRPERSON: Well what was the page on the other one which is has got considered?

ADV SIBIYA: 92.

CHAIRPERSON: 92?

ADV SIBIYA: Yes. We can go line by line.

MR TORRES: So now Mr Torres how does your evidence that there were no documents setting out the minimum requirements gets reconciled with this document that sets out at page 655 the minimum requirements.

MR TORRES: No I have got the minimum requirements but I think the – I am talking about the compliance Chair. There was no documents showing which compliance check was done. Because we needed the minutes.

10 **CHAIRPERSON:** Well when you and I were talking about – you remember the page in your report where you recorded what the company secretary said in the interview you had with her and she had said according to that report only checked compliance with minimum requirements. And then I asked the question was there compli – did she say there was compliance with the minimum requirements? Because checking compliance with minimum requirements does not tell me whether there was compliance or there was no compliance. So we then got to talking about what were the
20 minimum requirements. That is when you said no documents were provided to you that set out what the minimum requirements – as I understood your evidence

MR TORRES: Based on the report there were the minimum requirements were there Chair.

CHAIRPERSON: Sorry.

MR TORRES: Based on the report the minimum requirements were there.

CHAIRPERSON: Ja no I now know that they were there but I understood you to say you asked for documents that set out the minimum requirements and you were not provided with them. That is how I understood your evidence. Did I misunderstand your evidence?

MR TORRES: Well the – we did ask for documents that were not given the minutes. Even the compliance check because
10 she must have signed the compliance check list to say that I have done this to this and this is – that we did not get. But the compliance – the minimum requirements as specified in the terms of reference it is part of our exhibit – annexures.

CHAIRPERSON: Ms Sibiya how long do you need with this witness?

ADV SIBIYA: Chair I think one hour. Yes Chair. I do not want to underestimate the time as we are known to do.

CHAIRPERSON: Well we still have about thirty minutes before we get to one o'clock. See how much you – how
20 much you use that thirty minutes.

ADV SIBIYA: Thank you.

CHAIRPERSON: I am not sure that we need an hour.

ADV SIBIYA: Thank you Chair.

CHAIRPERSON: Continue.

ADV SIBIYA: Thank you. Now you move on – we move onto

the issue of the marine contractors.

MR TORRES: Okay.

ADV SIBIYA: If I understand correctly these were the people that had complained to the DPE and this related to the same soured relationship that had been identified and had been part of the reason that you were appointed to conduct this investigation. I am taking you to page 98.

MR TORRES: 98?

ADV SIBIYA: Yes.

10 **MR TORRES:** I am there.

ADV SIBIYA: Okay. Yes. So what did you investigate and what did you find as briefly as you can? What was the complaint that you were investigating?

MR TORRES: On the evaluation process itself we found more adverse findings. There was a properly constituted BEC also made up of the executive team. Because there were no issues with that. There was the BEC/Tender Committee recommended 9 out of the 19 bids. There were two bids. The beach mining activity and there was the
20 shallow water activity – marine activity.

So the beach mining activity there were – there were 19 submissions. 8 bids were recommended for award. The shallow water marine tender there were 66 bids submitted. 51 bids were recommended for – for appointment. Included in the 51 bids you had four contractors that were

subsequently excluded from the procurement process by the board.

Now the board held – and the four contractors that were excluded were Ocean Diggers, Malakaza, TL Marine and Repsol. These were the four contractors.

Now this is all related to the – the relationship that existed between the contractors on the one hand, the executive management and board on the one hand. It was a hostile and unfriendly relationship and the board then
10 decided – they had a special meeting held to – where they discussed the appointment of these four contractors.

At this meeting the board decided to exclude them from the procurement process on the basis that they were disruptive, they were abusive, they had damaged the reputation of the board and the executive management. So on this basis they were excluded.

However the – the process was not followed. Even – because in terms of the unanimous resolution it is quite explicit. It says the executive management can recommend
20 to the board the appointment of an independent contractor.

If the board disagrees and rejects the recommendation it must be referred back to the executive management for reconsideration. The executive management then referred the matter back to the board. And if the board still – the board cannot refuse or reject –

the second time around they cannot reject the recommendation of the executive team provided that the organisation will be financially prejudiced.

Now the exclusion was not based on financial prejudice. It was because of the type of relationship that existed. So the board acted improperly in rejecting the award of the four contractors.

CHAIRPERSON: Ms Sibiya remember that his report is before me.

10 **ADV SIBIYA:** Yes.

CHAIRPERSON: And the findings are there. Whatever recommendations are there. I think what is more important for you to look at the important findings that you want to bring to my attention let him deal with them and the basis for those findings and take it from there. Otherwise most of what he says is in the report and one can read it but it is important to see the basis for certain findings.

ADV SIBIYA: Yes.

20 **CHAIRPERSON:** Ja and question him on the basis or the process of him conducting the investigation.

ADV SIBIYA: Thank you Chair I will do so. Now Chair this is not an indication that I am not following what the Chair has said but I am just going to move to the next page.

CHAIRPERSON: No, no that is fine.

ADV SIBIYA: Of the report because the next ...

CHAIRPERSON: That is fine ja.

ADV SIBIYA: Thank you Chair. On page 108 it could be that I am saying it is the next page and maybe I have left you behind again but I am now asking us to go to page 108.

MR TORRES: 108?

ADV SIBIYA: Yes.

MR TORRES: Okay.

CHAIRPERSON: Is that 108?

ADV SIBIYA: Yes 108. Now this was one of the more
10 contentious issues am I correct?

MR TORRES: Yes it was a conten – evaluation pricing or contentious issue.

ADV SIBIYA: Yes. Okay. Tell us what you were asked to check and the process that you followed before you have reached your finding.

MR TORRES: Okay.

ADV SIBIYA: As briefly as you can.

MR TORRES: There were complaints that there was...
Chair, there were complaints that the diamonds were being
20 undervalued and that no proper evaluation process was being done.

Now the way that they value the diamonds. They call it the Four C's Method. It is your carat, your colour, the clarity and the cut. Now there was a problem – there are two evaluations done.

At the processing plant you have the PSJV. They have got a Diamond Evaluation who then do the evaluations there. Now the evaluation being done by the PSJV's evaluator was done purely using carat quantities. The other C's were not used.

And according to customs, it was the CEO. He said no shares gone. They evaluated at that stage. Had no skills. She could only do carat evaluation. So that was the reason they gave.

10 And then there is another evaluation done by SSI. They get an independent evaluator to do evaluation. There were also complaints from the evaluation done by SSI.

What we did with SSI. We then requested them to give us the certificate of the evaluation. Of each diamond, there is a certificate issued. Because that would give us more details on what, how it was done, what carat was there, the cut, the clarity and all that. They could not give us any certificates. I mean, they promised but they never gave us.

And then we also did a comparison because it was very
20 difficult now to do the evaluation based on here because they did not give us any information. So we were forced to then do a pricing – to get a pricing index, a Ziminsky pricing index.

And also the second index was Bloomberg. But it is not ideal to use this index because the pricing is average and a

mixed bag of diamonds get used. So your pricing will also be lower.

However, we have found there were big discrepancies, that the pricing was much lower than the Bloomberg and the Ziminsky prices. And in fact, under evaluation – ja, this would – there was a big problem there with the evaluation.

And then, of course, also there was no compliance with the contractual terms for the agreement. Contractual terms are very clear that 5% of the diamonds must be sold to a
10 local buy for beneficiation purposes but 10% must be sold through the State Diamond Treasure in terms of the Diamond Act.

And then the 85% had to be purchased by buyers through an auction sale. Now when we looked at the after-sales report and the invoices, we found that, firstly, it depicted that 85% of the diamonds were being sold to Scarlet Sky.

And in terms of the contract, it should be through an auction process. We then requested the names of the
20 bidders because they insisted that they held auctions. We said okay, then why – you should not be putting your name on the after-sales report.

The response was: It is classified information and we cannot reveal it. We then insisted that: No, PSJV is your client. It is their information, right. And we are doing the

investigation. They said: We never got that information. Because we needed to know who are the buyers.

We also needed to know how much was sold and to which buyer. It is very important. So that was a big problem to us. So that is why we were also forced to do this MSCI/Bloomberg evaluation. We then found that when we looked at the other, the 10% and the 5% sold, we found that it was based on carats, carat quantities.

Now in terms of the contract it should be based on value
10 and not on carat quantities. So we did a comparison. And then we found that the way they did the pricing, they actually sold – under sold to the state diamond trader by sixty million.

And they also under sold the 5% locally by thirty-eight million. There was a dispute with them all the time because they insisted it is done on carats and quantities and they are misreading the contract.

And even the regulator agreed with us. It should be on sales value. And the excess as well because it is a statutory
20 requirement that 10% gets sold. It is on sales value.

So there was – so there was definitely – it was a means of selling poor quality diamonds to – locally.

ADV SIBIYA: Mr Torres, when you speak about the sixty million amount ...[intervenens]

MR TORRES: Yes?

ADV SIBIYA: ...that was the value of the under sales. Over what period?

MR TORRES: We are talking about since that first appointment which was the beginning of 2015 right up to the time that we were appointed. I think just before our appointment.

ADV SIBIYA: Okay. And your appointment was in 2019. So that would be over a period of four years?

MR TORRES: Ja, I think.

10 **ADV SIBIYA:** H'm. Yes. And then you also, with regards to beneficiation, you also had a problem.

MR TORRES: Yes, we had a problem. That is the 5% that I am talking about.

ADV SIBIYA: H'm.

MR TORRES: 5% should have been sold – there were two problems. Firstly, the 5% was based on quantities and not on value. It also was undervalued and under sold. The second issues was that the 5% was sold to a related company which was Daniel Nathan, owned by one of the
20 directors.

Now this is a conflict of interest. And at times they sold it to another company called Gettys(?) [00:06:55] which was also in the same premises where they were situated. And, ja. So they did not see it as a problem but we saw it as a problem.

ADV SIBIYA: Without a license, could they, in fact, be selling to anyone?

MR TORRES: You know, eventually – because they could not provide us with all the information of the bidders, the evaluation certificate. They could not tell us how much was sold to which bidder. There was a suspicion because we even confronted the CFO and we said:

You verify the veracity of these documents and you made a payment, a commission payment to SSI. Why are
10 you not – now why are you so? Why did you not get the – why did you not ask for more information? Supporting documents before you signed off and paid?

According to him: No, we sold - the SSI are the buyers of the diamonds. I asked him then: Did you read the agreement? The agreement is explicit It says SSI only facilitate the buy. They should not be buying. He said he never read the agreement.

And that to me was also another problem because how are you CFO, you verify payments and you do not – and –
20 because you are supposed to check the veracity.

Check if these people had been properly appointment, is there an agreement in place, what does the agreement say. So that was the problem.

ADV SIBIYA: Thank you. And what did you find in relation to the relationship? I am moving to the next topic.

MR TORRES: The relationship?

ADV SIBIYA: Yes, the relationship between the marine contractors and the JV.

MR TORRES: There was a hostile and unfriendly relationship. In fact, the first relationship had broken down. And according to executive management, they were upset because their concerns were raised in public. They were not approached.

However, the contractors met with the executive team a
10 number of times, raised their concerns to them. It was ignored. And as a last resort, they then went public.

And there are certain concerns that they raised which we investigated. For example, they raised a concern that the processing, the gravel – the Diamond Gravel Processing Plant was operating inefficiently. And they were particularly worried about the security controls, you know, of the diamond gravel because there are various stages of extraction as used in the plant. We did a physical walk through the plant.

20 And the first stages, what they call Density Media Separation. Diamonds are supposed to be one of the heaviest minerals. So they use a dense – this separate the heavier diamond – the heavier material from the lighter material.

Now the complaint, that they were not allowed to use

their own traces, density traces. The density traces would then cast the density. We then approached and asked the operations manager why are they now allowed to use the traces.

According to the operations manager, who was Jerome Cloete at that stage, there is no guarantee that the traces had been tested. This was his excuse. And we found it was not acceptable because a certificate you could do. You can always ask the contractor to give a certificate that the tracer
10 has been tested. And that is what we told him.

And then the second point on the tracers was that, they were not told the number of traces that gets put into the separate piles, and this was an issue for them, because then you do not know what is happening.

Now according to Jerome: No, the contractors are lying. We have got records showing that they acknowledge how many traces are placed in that heaps and how many traces are taking out of the heaps.

We then asked for the records, showing that the
20 contractors had signed. They could not provide us with the records.

ADV SIBIYA: Okay.

MR TORRES: So we found the complaint and the issue raised on the traces was a valid one. And then there was also the issue of the security control issue in transporting

the diamond heaps from the X-ray room to the, what they call the Glove Compartment. This is a glass, sort of a container.

And because they use the container that is like – it is a metal milk-like container. It looks like old metal container. They use that to transport the gravel, the diamond gravels and that is secure.

However, because of insufficient numbers of containers, they then use a set-like bag. Then the contractors were very unhappy with it because the set-like bag was of a poor
10 quality and you could make a hole in this set-like bag and actually remove diamond gravel and then close the hole as well. So they were very unhappy.

Again we questioned the operations manager about this. He admitted that they do use the set-like bag and they do not have sufficient containers.

ADV SIBIYA: Okay.

MR TORRES: So this was an issue. And then the other issues that they had were the reclamation of the tailings. Now the tailings are essentially your residue. It is like your
20 mine dumps that you have in Johannesburg. It is a residue. So it is a dump that they have.

Now the special extraction process that they use to retrieve diamonds from the dumps. Now they complaint that they were not given – they needed to share.

In terms of their contract. It is called tailings, they need

to share equally the proceeds derived from the tailings. Now we then questioned the CEO about it. The CEO said yes they do qualify to share in the table tailings but not the stockpile tailings.

The agreement does not make a distinction between table tailings and stockpile tailings. The agreement only says tailings. That is all it says.

So we found this questionable. And also, we did not – it was not part of our brief to investigate the appointment of
10 ABICOR that did the – that was doing the extraction of the tailings.

So there was also a complaint that they had been appointed to do this and that Carstens' wife was a business partner of ABICOR.

ADV SIBIYA: And ABICOR is the company that were getting the balance of the tailings?

MR TORRES: No, no. ABICOR was appointed to do the extraction of the diamonds in the tailings.

ADV SIBIYA: Yes. So the tailings that were supposed to be
20 shared?

MR TORRES: Yes, correct.

ADV SIBIYA: Okay. Thank you. Now I will move you to the last issue that I am going to deal with and that is in relation to the Governance and Management issues.

MR TORRES: Okay.

ADV SIBIYA: You are on page 131.

MR TORRES: Okay.

ADV SIBIYA: Now you found that of the board – of the committees of the board that were in place, there was a committee that was not authorised to be a committee that is part them and that is the Tender Committee. Tell us what irregularities or what you are unhappy about in relation to the Tender Committee.

MR TORRES: The Tender Committee was a committee
10 comprising board members. It was a sub-committee of the board. Now the Unanimous Resolution stipulated the formation of certain sub-committees.

Now the role of the board has an oversight responsibility. They should not get involved in operational matters.

The Tender Committee – the work of a Tender Committee. What they did here was is similar to what a Adjudication Committee will do. The board does not get involved in operational matters.

20 So we have an issue with that, and there was a good reason why it was not suggested in the Unanimous Resolution.

ADV SIBIYA: H'm. Okay. Those are the questions that I have Chair for this witness.

CHAIRPERSON: What you may have forgotten to do is, is

to give Mr Torres the opportunity to give his background, his educational and professional background and experience.

ADV SIBIYA: Thank you Chair.

CHAIRPERSON: Will you take care of that?

ADV SIBIYA: Yes. Thank you. Mr Torres, I only asked you if you were still an Executive Director at Kimode and I did not deal with that. So can you tell us your experience ...[intervenes]

MR TORRES: Okay Chair ...[intervenes]

10 **ADV SIBIYA**: ..and your qualifications?

MR TORRES: I have got a BCom Honours Degree in Auditing, X in Accounting. I have also done my articles with what was then in the 80's known as Peat Marwick, now known as KPMG. I am a registered accountant with CIPA. I am also a certified Board Examiner with the international body and the local body.

I have almost 40-years' experience in financial management, external auditing, forensic accounting, due diligence investigations. I have done and conducted audit...

20 Well, when I was in the private sector, I did audits on the banks.

In the public sector, clients included the Reserve Bank of Ponzi schemes that we did. We also did the first FICA Audit of the four piping(?) banks. National Treasury was one of our big clients as well.

And then we have done across the public spectre. We have done state entities, provincial departments, municipalities And then...ja.

And then my other experience is working as a Financial manager. I have also sat on Audit Committees. I served as Audit Chair as well. So that is my background.

ADV SIBIYA: Okay. Thank you Chair.

CHAIRPERSON: Okay. Thank you very much Mr Torres for coming to give evidence. You may be asked to come back if
10 we feel there is a need but thank you very much. You are now excused. I do not think anybody wishes to do anything. So. Ja, you are excused. In the afternoon Ms Sibiya, who will you be calling?

ADV SIBIYA: I will be calling Mr Gavin Craythorne.

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

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Are you ready?

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

CHAIRPERSON: Okay, let us ...[intervenes]

ADV SIBIYA: Chair, if I may have leave to call my next witness who is Mr Gavin Craythorne.

CHAIRPERSON: Your voice has gone down again. You will have to raise your voice.

ADV SIBIYA: My apologies, Chair. I will do so.

CHAIRPERSON: Just repeat what you said. Sorry, what is next?

ADV SIBIYA: The next witness is Mr Gavin Craythorne. Thank you.

CHAIRPERSON: Well, it is as if I asked you to lower your voice more. Come closer to the mic I think because it looks like your voice is naturally soft. Okay?

ADV SIBIYA: Chair, my next witness that I will be calling
10 is Mr Gavin Craythorne. Thank you.

CHAIRPERSON: Okay, alright. Please administer the oath or affirmation.

REGISTRAR: Please state your full names for the record?

GAVIN JOHN CRAYTHORNE: Gavin John Craythorne.

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

MR CRAYTHORNE: No.

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

20 **MR CRAYTHORNE:** Yes.

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

MR CRAYTHORNE: I do. So help me God.

CHAIRPERSON: Thank you. You may be seated, Mr Craythorne. Yes proceed, Ms Sibiya.

ADV SIBIYA: Thank you, Chair. Mr Craythorne, firstly, thank you very much for availing yourself and thank you for approaching the Commission when you discovered there were some things that were happening that should not be happening. It takes a brave person to do that and we thank you for that.

MR CRAYTHORNE: Thank you very much, Chairperson, it
10 is an honour to be here today, I hope do not disappoint you.

CHAIRPERSON: Good, thank you for coming to give evidence, Mr Craythorne.

MR CRAYTHORNE: My pleasure.

ADV SIBIYA: Mr Craythorne, before we even qualify you and tell the Chairperson who you are and what you do, just tell me very briefly what it was that made you come to the Commission.

MR CRAYTHORNE: I a founding member ...[intervenes]

20 **CHAIRPERSON:** Do you not want to – I am sorry, Ms Sibiya, do you not want to get the procedural matters out of the way, get us to admit his affidavit first?

ADV SIBIYA: The affidavit admitted, yes.

CHAIRPERSON: Then you can go into that.

ADV SIBIYA: Thank you, Chair, I will do so. Mr

Craythorne, in front of you you should have a file that on the spine is written Mining Bundle 04A. Do you have that?

MR CRAYTHORNE: Yes. I do.

ADV SIBIYA: Okay, please turn in that bundle to just underneath the tab that says AFFI, A-f-f-i. Are you there?

MR CRAYTHORNE: I am there.

ADV SIBIYA: Okay, thank you. That is page 3.

MR CRAYTHORNE: That is correct.

ADV SIBIYA: If you look on the left. Okay. Do you
10 confirm that this is an affidavit that you deposed to, that these are your names at the top and at the bottom, that is your initial. One of those is your initials.

MR CRAYTHORNE: I do.

ADV SIBIYA: And if I take you to page 95 of that same document.

MR CRAYTHORNE: Yes.

ADV SIBIYA: Is that your signature almost at the bottom?

MR CRAYTHORNE: That is my signature.

ADV SIBIYA: And ...[intervenes]

20 **CHAIRPERSON:** Well, let us clarify that. There are two signatures there. The one above your name, is that your signature?

MR CRAYTHORNE: That is correct, Chairperson.

CHAIRPERSON: Yes, okay.

ADV SIBIYA: Thank you. And the signature that is right

at the bottom?

MR CRAYTHORNE: That signature if of Captain Donna van Wyngaardt from Alexander Bay.

ADV SIBIYA: Do you confirm that when you signed this document you signed it on the 17 July 2020 as stated there and in front of the captain?

MR CRAYTHORNE: I do.

ADV SIBIYA: And when you were signing this document did you swear the oath that this is the evidence – that this
10 is your document and it is the truth?

MR CRAYTHORNE: I did.

ADV SIBIYA: Okay. Have you gone through this document recently?

MR CRAYTHORNE: I have.

ADV SIBIYA: Do you confirm now that the contents of this document are the truth?

MR CRAYTHORNE: To be the best of my knowledge and to the best of my – it is true.

ADV SIBIYA: Okay. And do you confirm that in addition
20 to this document you submitted annexures that you refer to in this document?

MR CRAYTHORNE: Yes.

ADV SIBIYA: And that those annexures appear from page 96 of this bundle and carry on to the next bundle, bundle 4B. Do you confirm that those are documents that you

submitted to the Commission together with your affidavit?

MR CRAYTHORNE: Yes, I confirm that.

ADV SIBIYA: Thank you. Chair, if I may with your leave ask that the affidavit of Mr Gavin Craythorne that appears from page 3 to page 95 of bundle 4A and the annexures appearing from page 96 to the end of bundle 4B be accepted as EXHIBIT XX4?

CHAIRPERSON: The affidavit of Mr Gavin John Craythorne starting at page 3 of Mining bundle 04A
10 together with its annexures will be admitted as EXHIBIT XX4.

**AFFIDAVIT OF MR GAVIN JOHN CRAYTHORNE HANDED
IN AS EXHIBIT XX4**

ADV SIBIYA: Thank you, Chair.

CHAIRPERSON: Okay, you may then proceed.

ADV SIBIYA: Yes. Mr Craythorne, I had asked you to tell us briefly what it was that made you come to the Commission.

MR CRAYTHORNE: Chairperson, I am a founding member
20 of an organisation called the Equitable Access Campaign and I am also a veteran diamond diver with 35 years of experience in the industry and the past 20 years I have been involved in diving diamonds and producing mining vessels for Alexkor. I came to Alexkor in late 1998 when Alexkor first decided to outsource its diver mining

operations and I went through the epic court as a diamond contractor for Alexkor. I saw that in its entirety.

I then went through the period when the deed of settlement was being finalised. It was as if everything had come to a standstill and no real development could take place in Alexander Bay until the court case had been finalised. So we were all looking forward with great expectations once the land claim had been concluded and, you know, people living in Alexander Bay and in the surrounding areas could get on with rebuilding Alexander Bay into a world class marine mining centre. That did not happen.

You are going to hear today about the decline and the governance dissipation that has occurred over the past few years and as someone who has lived in Alexander Bay for 20 years and observed the steady and relentless decline in the standards of living, in the condition of the town, in the condition of the mine and knowing what was driving it and having already begun trying to raise awareness of these problems even before the Zondo Commission was constituted, when President Cyril Ramaphosa became president that became the turning point in my difficult journey.

And when the – when your Commission began I knew that there was a real chance to turn things around

and I must say I feel today more than ever and again, I thank you for the opportunity to be here.

ADV SIBIYA: Mr Craythorne, you indicated that you are a member of EAC. What is EAC?

MR CRAYTHORNE: The Equitable Access Campaign is an organisation that was founded in 2010 by a group of veteran diamond divers who had enough industry know-how to realise that the dramatic decline in our weather patterns was not something that could be ignored and that the
10 revelations regarding climate change and so on were in fact heralding a very, very difficult period ahead for our industry because our industry, which is focused on shallow water mining, depends heavily on the correct weather conditions.

We work in a surf zone and the surf zone is a very dynamic zone, you cannot work there when the swell is in excess of about three to four foot without injuring yourself or just wasting your time under water so you need very, very specific calm weather conditions which decline from
20 2000 at the turn of the millennium, we were averaging about between 140 and 160 sea days to the worse year I think was in 2010. I think it was around about 13 sea days.

So it is a like your business being shut down for 90% of the time compared to the availability that you have

had and that you have been used to, you know, in the past. And with the pressure that climate change was bringing, it became very clear to the veteran diamond divers that the extremely inequitable structure of our industry would not be able to be supported with the new reality of climate change.

Our industry is the only industry that I know of where you have an entire industry that is operated and run by professional people doing the actual mining but none of
10 whom are actually owners of any mining right. They have access to the ocean to go and do what they love doing but it is done entirely at the whim of concession holders and that has always been a weapon that has been used against the small-scale miners to prevent any form of real industry consolidation and unification and any possibility of collective bargaining because every time that we try to organise ourselves it would always be sabotaged by underhand tactics and divide and rule tactics.

So the EAC actually was prompted by the new
20 legislation of which was based, if you read the preamble to the Mineral and Petroleum Resources Development Act, the entire Act is based on the principle and notion of equitable access which makes perfect sense to me but it does not seem to make sense to the concession owners who use their consolidated industry ownership to exercise brute

force over contractors who, for the past ten years, I have been basically in a state of servitude because of the conditions and the commercial terms that I am forced to work under and all of my fellow diving contractors are in the same situation.

So with the arrival of the changes, the fundamental changes are the use it or lose it principle. We felt very confident that well, this is now going to herald a sea change, if you will excuse the pun, in our industry. So, you
10 know, a group of veterans, myself my good friend, who is here today, who has been on this difficult journey with me, Mr George Nikolai, he has been diamond diver in Port Nolloth five years longer than I have. He has been diving diamonds for 40 years and he has got even more community activity or he is more of a community activist than I am.

But it became clear to us that in order for us to get a better dispensation, a better relationship for our industry, we would have to rely heavily on the new legislation and
20 that resulted in us in forming the Equitable Access Campaign, we reached out to concession owners like De Beers, Trans Hex and the other Northern Cape concession owner Ms Ina Visser and we said to them listen, you guys are not anything with your concessions, you know, why do you not just, you know, give them back to DMR and let the

small-scale marine miners do application to get them.

That did not have much of an impact so we then approached parliament and we attended the hearings on the minding charter and we gave evidence to that effect.

CHAIRPERSON: Ms Sibiya, remember to lead the witness.

ADV SIBIYA: Yes, Chair, thank you very much.

MR CRAYTHORNE: Okay, so ...[intervenes]

CHAIRPERSON: He may have a lot to say but you know
10 the direction that you want to take him through.

ADV SIBIYA: Yes, Chair.

CHAIRPERSON: Okay.

MR CRAYTHORNE: So it is difficult to say it all in a few words, Chairman.

CHAIRPERSON: Yes.

MR CRAYTHORNE: But I hope that has been sufficient.

CHAIRPERSON: No, no, no, that is fine. Ms Sibiya knows what is in your statement fully and she will – through her questions she will direct you on the important
20 issues.

MR CRAYTHORNE: I will focus on the issue now.

CHAIRPERSON: Okay, alright. Ms Sibiya?

ADV SIBIYA: Thank you. Mr Craythorne, so in a nutshell you are representing Equitable Access Campaign which is a group of other miners.

MR CRAYTHORNE: That is correct.

ADV SIBIYA: That have been doing this work with you.

MR CRAYTHORNE: Correct.

ADV SIBIYA: Okay. Can you tell us about your qualifications and your experience and from there I need you to also explain how you started your engagements with Alexkor, briefly.

MR CRAYTHORNE: I matriculated in 1980, I went to the navy, I did my diver training in the navy to – what they
10 refer to as a clearance diver 2. After leaving the navy I worked under the late Dr John Gurney who had a small operation in Doring Bay.

ADV SIBIYA: Mr Craythorne, how long have you been diving?

MR CRAYTHORNE: I have been diving diamonds since 1985. So I have got 35-odd years of diamond diving experience 20 of which have been as a contractor for Alexkor.

ADV SIBIYA: Okay, thank you. What else do you do
20 other than actually dive. What else do you do that is related to diving?

MR CRAYTHORNE: I have always been fascinated by the possibilities that mechanising diver mining might have for the inshore as opposed to the offshore mining. So I have been designing and building diamond mining systems

starting off with very, very small cheap and nasty ski boats to, you know, much more advanced 50 foot vessels, to date I have built 40% of the diamond mining vessels that have ever worked in the industry have been built by me.

ADV SIBIYA: And how were you introduced to Alexkor?

MR CRAYTHORNE: I was approached by the then production manager of the marine operations, Mr Theunis Swart, to build a 26 foot Butt Cat mining vessel for Alexkor, which I did, I believe it was in 1993 and flowing out of that
10 I became interested in the affairs of Alexkor and the possibilities because Alexkor does sit with the most exciting diamond licences that I know of anywhere in the world.

ADV SIBIYA: Do you still design and manufacture mining vessels?

MR CRAYTHORNE: The last vessel that I built was for the late Dr John Gurney and his son, James Gurney. They had approached me in 2013 already to buy a share in my business to build a vessel to bring into operation, Alexkor's
20 operations, but we never made headway so I built it for them and they took it to Trans Hex at De Punt and that was the last vessel. That was 2013, I believe, that – the last time I built a mining vessel.

ADV SIBIYA: Okay. Mr Craythorne, if I can take you to page 119 of the same bundle? You will see that we are

already in the middle of a document when we get to page 119, so if we can first go – or keep your place in page 119 and then just turn back to page 106. Do you confirm this is your CV?

MR CRAYTHORNE: That is correct.

ADV SIBIYA: Okay and that the page on page 119 is part of your CV?

MR CRAYTHORNE: That is correct.

ADV SIBIYA: Okay. Now if you look at that page, page
10 119 and you look at the second vessel that is being mentioned there. I see the name Alexkor Limited. What does that mean?

MR CRAYTHORNE: This is a schedule of all the turn key mining vessels that I have built over the years and that is the DMV, which is the acronym for diamond mining vessel, Siya Delver 7(?) which was a 25 foot Butt Cat mining conversion that I had built under contract to Alexkor and I see it was 1993.

ADV SIBIYA: Do you still produce – how long after this
20 did you continue producing vessels for Alexkor?

MR CRAYTHORNE: Well, it was at this time that Alexkor started becoming more focused on political matters and it had been the intention to develop a fleet of these vessels because they are very cost-effective in comparison to the vessels that Alexkor had been building for itself over many

years. Large steel vessels are not very cost-effective for working in very shallow water whereas small agile catamarans are much more effective, much more cost-effective.

ADV SIBIYA: Okay. Am I correct if I take you two pages before page 119. Turn again to page 116.

MR CRAYTHORNE: Yes.

ADV SIBIYA: Am I correct that from page 116 up to page 130 those are vessels that you built or had a hand in?

10 **MR CRAYTHORNE:** That is correct and you will notice that many of them are barges which have been exported to riverine mining jurisdictions like Angola, Congo, Sierra Leone and so on.

ADV SIBIYA: Okay, thank you very much. Now when did your relationship with Alexkor change from being a service provider providing vessels to being a mining contractor?

MR CRAYTHORNE: Alexkor outsourced its operations for the first time in its history in late 1998 and when the notices went out for independent contractors to apply for
20 contractors I did and I was successful and I began contract mining operating a small 35 foot ski boat out of Alexander Bay Harbour in the last quarter of 1998.

ADV SIBIYA: Okay and has that relationship endured until now?

MR CRAYTHORNE: I have been an active producer of

diamonds for Alexkor except for a period...

ADV SIBIYA: Page 4.

MR CRAYTHORNE: Between 7 November 2017 to 19 March 2019. Those 16 months I believe it was - were months during which my contract had been effectively cancelled and my access to the mine had been blocked.

ADV SIBIYA: Okay, thank you. But you are back now working with Alexkor.

MR CRAYTHORNE: From ...[intervenes]

10 **ADV SIBIYA:** The PSJV or Alexkor.

MR CRAYTHORNE: Ja. Well, it is a PSJV. I was an Alexkor contractor up until the inauguration of the PSJV in 2012 and I to this day with the exception of those – with that interregnum I have been a contractor to the PSJV.

ADV SIBIYA: Okay and the other members of the EAC, are they also contractors to the PSJV?

MR CRAYTHORNE: That is correct, the EAC members are all – have either – are or have been formerly contractors to Alexkor. There are one or two members that have
20 contracted on non-Alexkor concessions but they are – probably one or two.

ADV SIBIYA: Now who determines where you can mine?

MR CRAYTHORNE: That depends on the – who owns the licences. The West Coast diamond area is divided up into a grid alphanumerically, running numerically north to south

and alphabetically east to west. Those concession blocks are approximately 40 kilometres long. In the shallow waters they run a kilometre out from the beach and there you have the B concessions which run about five kilometres but where you work first of all depends on who you have a contract providing access to go and mine.

ADV SIBIYA: So in this case where the EAC is contracted to the PSJV is that what you are saying?

MR CRAYTHORNE: All of the members of the PSJV, all
10 have contracts with the Alexkor PSJV to mine on the concession areas that they control and have ownership of.

Now having first gained access through a commercial agreement where the concession owner, the second level of access is governed by a cadastral system using very basic GIS technology where you use a digital map dater and then you use area marking system that you can register where you would like to work and you may go and register areas and work them as long as they have not been registered previously and the standard area that we
20 are allowed to mark as a 30 metre radius.

So, for instance, in Alexkor's 1A concession, running from the Orange River mouth about 40 kilometres south, you have maybe about 40 contractors that have contracts with Alexkor and then they have three areas that they are allowed to mark along the coastline and you are

also allowed to move those areas but you have to do it through a formal registration process done through the registry on the mine and the registry on the mine keeps track of where all the various contractors are working and to ensure that they are working in their registered blocks and to allow for cancellation and re-registration of these blocks.

ADV SIBIYA: Okay. Now tell me, when you mine in these areas, what is the timeframe that you are allowed to mine
10 and when is it determined that you now need to bring your whole – is there a time period that applies to when you can mine, when you cannot, what determines.

MR CRAYTHORNE: We have what we call a weather window of opportunity so as I have explained diver based mining is highly dependent on calm weather conditions and more specifically calm sea conditions because you can have atmospheric conditions that are quite bad, but the sea conditions can still be quite good, so then it is more comfortable under water actually than being on the vessel,
20 because the vessel is being blown around and making breaking anchor and so on but it is weather dependant and also on capacity of the vessel if you are working.

The amount of gravel that you have to produce generally to produce one carat of diamonds, my grades used to be in the order of 12 carats on a cube, that is a

cubic metre of gravel. The vessel that I operate can hold about 30 cubes and the density of marine gravel is about 1.6 tons per cube, you are looking at roundabout 50 tons of gravel to produce a mere few grams of diamond.

So when a vessel is full you have to come and offload or if the weather conditions are prohibitive then even before the vessel is fully loaded then you have to return to the harbour and offload what gravel you do have and sit on the moorings until the weather improves.

10 **ADV SIBIYA:** Now if you can tell us about Scarlet Sky Investments and your relationship with them, and bearing in mind that we have already heard the evidence of Mr Torre, so when did you start having a relationship with Scarlet Sky, do you have a relationship still?

MR CRAYTHORNE: The relationship that I have with Scarlet Sky is a pending Kimberly High Court SLAPP suit which has still yet to be resolved, which they brought against me for defamation, but other than that I have had a relationship with Scarlet Sky, they have simply been
20 brought into my life as a contractor through the decisions and the ...[indistinct] that were highlighted earlier today, so the adversarial nature of my relationship with Scarlet Sky began in 2016 because the minute that Scarlet Sky was awarded the contract there was a lot of consternation amongst my fellow contractors at the time about the lack of

transparency and the secrecy about who Scarlet Sky was, it was a strange name that nobody had heard before, no mention of diamonds anywhere in it, there was no track record.

I myself at that time had, while still being a very active member of the equitable access campaign I had not been able to focus too much attention in the early years from 2015 on Scarlet Sky because I have been very involved in developing a piece of technology that is
10 capable of being able to penetrate through the sediment overburden. The – besides the politics and the dissipation in governance the other factor that has prevented Alexkor and South Africa developing its marine mining – sorry Ms Sibiya – how did I get the relationship?

ADV SIBIYA: Yes.

MR CRAYTHORNE: I beg your pardon sorry.

ADV SIBIYA: So you heard the question.

CHAIRPERSON: Yes you can intervene when the witness seems to take long to answer your question.

20 **MR CRAYTHORNE:** Okay, so in the initial stages I was not involved too much with the kickback from the contractors over Scarlet Sky because I was devoting my attention and I had been travelling overseas going ...[intervenes]

ADV SIBIYA: Okay, thank you, so you weren't. Thank

you. Now tell me in the chain of how the mines – how the diamonds go from the mine to the public tells us about that process, because you have told us where you can mine, you have told us what the – about the – you said the size, the cubic ...[intervenes]

MR CRAYTHORNE: The cube is the gravel ja.

ADV SIBIYA: Yes, yes and all of those things, so tell us about that process from you now have this – you have a contract to mine for the PSJV, what happens from when
10 you mine to where I buy my ring?

MR CRAYTHORNE: Okay so as marine diamond mining contractors our job is to produce diamond bearing gravel off the seabed, we do that using specialised equipment, designed specifically for that. We deliver the ore that we mine off the seabed to the harbour in Alexander Bay. That bulk gravel is held for a period at the harbour, possibly a day or two before it gets transported inland to Alexkor's plant situated near the administration building.

ADV SIBIYA: Do I understand by the contractor, mining
20 contractor transport it to the ...[intervenes]

MR CRAYTHORNE: No the contractor delivers the gravel to the harbour and as soon as that gravel is offloaded from the vessel control over that gravel falls into the hands of Alexkor, or the PSJV in this case.

So Alexkor PSJV then transport the bulk gravel to

the plant. When it arrives at the plant it will be put into a gravel pound which is fenced off, where there's security access and it is usually the case that you don't bring your gravel straight from the harbour and put it into the plant because there are other contractors that are ahead of you that are processing gravel so when you arrive at the plant you will stand in a queue, you might have to wait an hour or two but when your gravel is ready to be processed they will flush the system and then they will start what we call
10 drawing your gravel out of a feed bin.

ADV SIBIYA: Is that done in the presence of the contractor?

MR CRAYTHORNE: That is correct, the contractors are called to the gravel pound when it is time to the fill the bins and it is the contractors working together with Alexkor PSJV personnel that use a front end loader to hoist the gravel up above the feed bins and then the contractors manually open up the bottom of the bulk bags to allow the gravel that has been placed in it while out at sea, because
20 when we mine out at sea the gravel that gets kept on the vessel to be processed is only a certain fraction of the full amount of material that comes off the seabed, maybe plus two millimetres minus 25 millimetres that gets retained and stored in those bulk bags, but at the plant those same bulk bags that get filled while you are out at sea then get

emptied into the gravel bin.

From the gravel bin the gravel then reports to the first phase of the recovery process and that is to reduce the bulk of the diamond bearing material.

ADV SIBIYA: Okay Mr Craythorne, I think you are possibly giving us too much detail, so what I need you to tell me are the steps that ...[intervenes]

MR CRAYTHORNE: Before it gets to the ...[intervenes]

ADV SIBIYA: That are involved yes in the process.

10 **MR CRAYTHORNE:** Okay, so ...[intervenes]

ADV SIBIYA: And when you are explaining that part all of that you must just remember to tell me whether the contractor is there, the contractor is keeping an eye on what is going on, or who is doing what, but very high level Mr Craythorne, we don't want to know about the separating and what falls out and ...[intervenes]

MR CRAYTHORNE: Understood. So when it arrives at the plant it goes through three primary – three distinct phases where eventually from perhaps 50 tons of gravel
20 you will end up with maybe ten or fifteen carats, sometimes you have a huge amount of diamonds from very little gravel and the converse is also true. The grades are very erratic, but the time that the gravel is being processed inside the plant is controlled by PSJV personnel called plant operators. In addition to the plant operators there are also

outsourced security personnel and in-source security personnel that patrol the plant and as the gravel progresses through the plant the risk of theft grows greater because you start off with a large needle in a haystack, or sorry you start off with a needle in a very large haystack and that haystack gets progressively smaller and smaller and as the haystack gets smaller the risk of theft becomes greater, because it is easier to ...[intervenes]

ADV SIBIYA: Is the contractor there at that time?

10 **MR CRAYTHORNE:** The contractor is not there all the time, but the contractor is always at the final recovery where the diamonds are fed onto the – or the super concentrate, the remains ...[intervenes]

ADV SIBIYA: No Mr Craythorne don't tell us about the super concentrates in that much detail.

MR CRAYTHORNE: That's where the glove boxes are, ja.

ADV SIBIYA: Yes, but you need to tell us that the diamonds gets from the harbour to this place for the purposes for example, I don't want to be feeding you
20 evidence ...[intervenes]

MR CRAYTHORNE: Okay so ...[intervenes]

ADV SIBIYA: Meaning that we don't need to know the actual process as if we are present when this is happening.

MR CRAYTHORNE: So when ...[intervenes]

CHAIRPERSON: When it comes to matters that you know

are not controversial you can lead on those, on matters which you know won't be disputed by anybody, and I am sure the processes that you are talking about.

ADV SIBIYA: Yes.

CHAIRPERSON: Ja.

MR CRAYTHORNE: Thank you Chairperson. So once the product has been recovered it then gets weighed in through a process control by Alexkor, it is a little register which is colloquially referred to as an *inweegboekie*. The
10 *inweegboekie* is a book which is countersigned the contractor as well as the Alexkor PSJV representative where you record the quantity and the weight off the diamonds that have been recovered and generally stones over one carat are weighed and recorded also individually.

ADV SIBIYA: And then what happens when you have recorded the stones that have been recovered?

MR CRAYTHORNE: At that point the diamonds are then put into safe custody and we are given a receipt out of the *inweegboekie* and unless you go to the sales that is the
20 last that you see of your diamonds.

ADV SIBIYA: What happens to the diamonds?

MR CRAYTHORNE: The diamonds then are – they accumulative during what is referred to as a production cycle, so a production cycle is a period from when there is a production cut-off to enable the mine to reconcile its

production for a period and prepare the production in that period for sale and when the next period starts, so ...[intervenes]

ADV SIBIYA: So the diamonds are kept in whose custody? In PSJV's custody during this period?

MR CRAYTHORNE: During this period while the diamonds are still on the mine it is kept in the PSJV's safe custody.

ADV SIBIYA: And when the production cycle is finished?

MR CRAYTHORNE: At the end of the production cycle
10 they issue a close off notice to say to the contractors no more production will be included in the upcoming sale beyond a certain date, so if they issue a cut-off date say for the end of January what usually happens is you have a flurry of processing taking place before the plant closes, but at the end of the day on January the 30th no more production will then be included for the upcoming sale.

ADV SIBIYA: So what happens to the diamonds at the end of the cycle, the diamonds that has been kept in the custody of the PSJV?

20 **MR CRAYTHORNE:** Those diamonds are then counted and weighed and sieved, what they call – well you have two ...[intervenes]

ADV SIBIYA: No, that's too much detail.

MR CRAYTHORNE: Okay, well at the close of the production cycle the diamonds are then transported p to

Johannesburg for presentation to the State Diamond Trader and ...[intervenes]

ADV SIBIYA: Who, who transports the diamonds up to Johannesburg and who presents them to the State Diamond Trader?

MR CRAYTHORNE: I do not know who transports the diamonds from what we call the mine gate, it is the industry term, when your diamonds leave the mine you talk about the diamonds leave the mine gate and we don't know
10 who conducts that service or what form of transport is used but the diamonds are transported to Johannesburg and then they are placed in a safe and secure area called Knox Vault in Johannesburg where Daniel Nathan has his premises, it is below the place Kuben Moodley has his safety deposit box.

ADV SIBIYA: Okay, we don't know about all of that, whose custody is it given to?

MR CRAYTHORNE: It is given to Scarlet Sky.

ADV SIBIYA: So it is only given to Scarlet Sky when it
20 arrives in Johannesburg?

MR CRAYTHORNE: That is my understanding.

ADV SIBIYA: Okay and then that – so that is the level of the relationship that you have with Scarlet Sky. What do they do with the diamonds that you have mined?

MR CRAYTHORNE: The diamonds that the contractors

such as myself mine are first ...[intervenes]

ADV SIBIYA: We are now just talking about Scarlet Sky and what do they do when they receive your diamonds?

MR CRAYTHORNE: When they receive the diamonds they prepare them for viewing for the State Diamond Trader to select their 10% representative sample. They select 5% for beneficiation and the balance, 85% then goes on auction at their premises, but I have never been to those auctions. Some of my colleagues have been up to auctions
10 but I have never been.

ADV SIBIYA: And then you next hear when you get your money, is that when you next hear what has happened with your diamond?

MR CRAYTHORNE: Well a sale cycle, from the time that the diamonds leave the mine gate until the time that they have gone through prep for the auction and the payout is usually about two weeks, about a two week period from the time that your diamonds leave the mine till the time that you get paid out.

20 **ADV SIBIYA:** Okay, so you have said that your relationship, you did not have any problems with SSI at the beginning?

MR CRAYTHORNE: I did not have any problem with SSI in the beginning and ...[intervenes]

ADV SIBIYA: Okay, and who determined the price at

which your diamonds were being sold?

MR CRAYTHORNE: Well the diamonds are supposed to be valued on the mine for two reasons, number one is to insure the diamonds for their fair value, because if you do not analyse your diamond production you cannot attach a fair value to the diamonds, so you cannot just look at the size of a diamonds and the stone size frequency distribution, you have got to analyse the colour as well, you have got to look at the special stones.

10 **ADV SIBIYA:** Yes, so who determines the value at which your diamond are sold?

MR CRAYTHORNE: It is a lady by the name of Michelle Adams who is an employee of Alexkor who is involved in the management of the final stages of the diamond recovery process and then ...[intervenes]

ADV SIBIYA: So the value of – the price at which your diamond will be sold is determined by Ms Adams?

MR CRAYTHORNE: No she doesn't determine the price at which ...[intervenes]

20 **ADV SIBIYA:** That is the question.

MR CRAYTHORNE: No she doesn't determine the price at which it should be, at which it would be sold but she makes a very inaccurate assessment of what the value is in order for insurance purposes.

ADV SIBIYA: Yes.

CHAIRPERSON: You say inaccurate?

MR CRAYTHORNE: Yes because any valuation Chairperson based solely on the size which is the one, the first of the four C's, the carat weight, so if you pick up a rough diamond and it weighs four carats, you can pick up another diamond that also weighs four carats and simply because of the difference in the other three C's, one stone could be worth 40 dollars and the other stone could be worth 40 000 dollars, so by simply conducting a valuation
10 on the basis of stone size is a wasted exercise.

CHAIRPERSON: So you say that she conducts effectively a useless exercise?

MR CRAYTHORNE: That is correct.

CHAIRPERSON: Yes. Ms Sibiya?

ADV SIBIYA: Thank you. So you ...[intervenes]

CHAIRPERSON: I think your question still stands.

ADV SIBIYA: Yes.

CHAIRPERSON: Ultimately when you sell, the price, that's what she wants, who determines how much you will
20 sell it for?

MR CRAYTHORNE: That is determined – that is supposed to be determined by what we call price discovery.

CHAIRPERSON: Price?

MR CRAYTHORNE: Price discovery.

CHAIRPERSON: What is that?

MR CRAYTHORNE: Proper price discovery is where you have a competitive bidding process where buyers ...[intervenes]

CHAIRPERSON: An auction?

MR CRAYTHORNE: An auction is a classic example of true price discovery but the auction has to be an honest auction. If you have collusion then you are not going to have price discovery. So if is an auction that is designed to allow for sharing of critical price information then you
10 defeat the whole price discovery mechanism.

CHAIRPERSON: But there must be a basis upon which somebody who has relevant knowledge and expertise and experience should be able to say if you take this piece of diamond that person having analysed whatever analysis is required should be able to say if you go to sell it at an auction you should fetch not less than so much and maybe not more than so much, so therefore its price must be in the region of – somebody must be able to say that isn't it?

MR CRAYTHORNE: In a fair world that would be the case
20 but for as long as I have been a contractor at Alexkor contractors have never been allowed to critically analyse the value of their diamonds. You have a brief look when you recover your diamonds but then it goes to the auction process, in the case Scarlet Sky, and previously it was an auction process conduct on SADIX, which is the South

African Diamond Index, which Alexkor had been using, and in earlier years it was done on an exclusive purchase agreement where there was absolutely no price discovery. A subsidiary of De Beers would come and look at the diamonds, set a price and take the diamonds, so the history in the time that I have been a contractor for Alexkor the history of diamond pricing has been an extremely contentious issue, with the exception of the period between 2006 until 2011 where there was a
10 reasonable period of price discovery. You will always have collusion at auctions, but you need to try and control it and put countermeasures in place to make it as difficult as possible.

When the – in 2006 ...[intervenes]

ADV SIBIYA: I was going to say you seem to be wanting to drive us there ...[intervenes]

MR CRAYTHORNE: Okay but it is not as simple to say how does a diamond ...[intervenes]

CHAIRPERSON: Ms Sibiya continue.

20 **ADV SIBIYA:** Yes, I don't think you have actually told us who determines.

MR CRAYTHORNE: The buyers determine it.

ADV SIBIYA: Okay so it is the buyer that determines that. Does anyone set a benchmark that it must not be lower than this price?

MR CRAYTHORNE: Well that is where there is a big problem in the case of Scarlet Sky because the company that is conducting the auction is also the company that is doing the valuations, so if there is collusion taking place during auctions and the prices achieved on auction are extremely low there is no safety measure in place to prevent the sale of the diamonds, so your reserve price is extremely important, because if you have collusion and you have an honest reserve price you won't have sales going
10 through.

ADV SIBIYA: So the reserve price is set by SSI?

MR CRAYTHORNE: The reserve price has been set by SSI since late 2005. For the period 2000 from about March to October ...[intervenes]

ADV SIBIYA: 2005?

MR CRAYTHORNE: Sorry, 2015, I beg your pardon, there was another valuator that was valuing the diamonds, that valuator was dismissed by Mr Carstens and then the function of valuing our diamonds was then given to Scarlet
20 Sky.

ADV SIBIYA: So how do you as a miner know that your diamond is being under-valued or is being sold at the right price?

MR CRAYTHORNE: You don't know on a sale by sale basis. Now ...[intervenes]

ADV SIBIYA: This question is being asked because you have alleged in your affidavit that they are being sold for less than their value, so ...

MR CRAYTHORNE: So the – on a sale by sale basis it is very difficult to pinpoint because the type of production that you have can vary on a sale by sale basis.

ADV SIBIYA: Mr Craythorne okay you are telling me how it is difficult to ascertain. I need you to tell me – you are saying on a sale by sale basis you cannot say that your
10 diamond is being sold for a lower value.

MR CRAYTHORNE: Ja.

ADV SIBIYA: So on what basis can you say that?

MR CRAYTHORNE: Statistically, using statistical methods, using longitudinal studies, which is what I have done, is I have tracked Alexkor's pricing from 2000 using very basic statistical figures, I have used the price data that Alexkor provide with every sale. I then created indexes for the various assortments of the mixed goods which are the diamonds below 6.8 carats. Diamonds larger
20 than 6.8 carats are not sold as mixed – what we refer to as mixed goods, they are sold as individual diamonds and the pricing information relating to those individual diamonds is only disclosed to the person that actually mined the diamond, whereas in the case of the goods below 6.8 carats there are 14 standard assortments into which all of

the diamonds below 6.8 carats are sorted into using a standard sieving process, so you will have your five carat diamonds, your six carat diamonds, your four carat and so on, so ...[intervenes]

ADV SIBIYA: You said you created your own indices.

MR CRAYTHORNE: I created my own indices based on the information that is published for diamonds below 6.8 carats. I then benchmark that pricing data going all the way back to 2000, because there is NISCI index dated
10 goes back to 2000 and I began really working at Alexkor roundabout that time. Dan Dale only arrived in 2000 and it was at that point that we started receiving brokers notes with the breakdown of what the prices are because the diamonds that if you are paid out pro rata on your contribution for each category.

ADV SIBIYA: So what do you put – you have now mentioned the Zimnisky Index what else do you use to compare and...

MR CRAYTHORNE: So – so what I have done is I have tabulated all of the pricing data over 20 years for each of the
20 standard 14 assortments. I have created indices for each of those assortments which I then benchmarked with the Zimnisky Index.

And what is important when you are analysing diamond prices is not the absolute price but the relative price because you do not – by looking at the absolute price

you do not know if you got a good price or not. You need to look at what the market is doing in that particular time and compare what your price was for similar goods at the same time.

So starting in 2000 I compared the pricing behaviour of each of the 14 standard assortments of Alexkor diamonds against an internationally recognised index which demonstrated very, very clearly that from 2000 to 2006 there was rapidly increasing tracking error.

10 Now tracking error is simply the difference by which the asset that you are interested in is differing in relation to the market in which it is being sold.

ADV SIBIYA: So how much does not...

CHAIRPERSON: Ms Sibiya.

ADV SIBIYA: Yes.

CHAIRPERSON: Just remember to keep your eye on the relevance and importance.

ADV SIBIYA: Yes.

CHAIRPERSON: Of some of these things.

20 **ADV SIBIYA:** Yes.

CHAIRPERSON: In relation to what we are looking at.

ADV SIBIYA: We are digging Chair but that is where we going.

CHAIRPERSON: Ja just keep an eye on – on the real issues.

MR CRAYTHORNE: So to...

ADV SIBIYA: Yes.

MR CRAYTHORNE: To sum up then Chairperson the – the prices of Alexkor's diamonds deteriorated dramatically in relation to the international benchmarks between the period 2000 to 2006.

When Alexkor went onto the open market from 2006 to 2011 the prices performed much, much better – significantly so and from 2011...

10 **ADV SIBIYA:** Did they – did they then correlate with the market in general?

MR CRAYTHORNE: Ja so when – when there – there was very little correlation in the first period from 2000 to 2006. There was a period of normalisation from 2006 until 2011 and where prices were very closely correlated with what the market was doing and then subsequent to 2011 from 2012 they have again worsened again dramatically.

ADV SIBIYA: What changed in 2012?

20 **MR CRAYTHORNE:** In 2012 all of South Africa's rough diamond prices suffered a massive drop. The drop came about as a result of a legislation that became effective in 2011 it is Section 20A of the Diamond Act. Up until the end of 2011 when rough diamonds were sold locally in South Africa licensed diamond buyers were allowed to visit auctions in Kimberley or in Johannesburg anywhere around

the country with – in partnership with international buyers.

What Section 20 did – what Section 20A did was it prohibited local licensed buyers from being accompanied by international buyers. So that took out the international competitiveness out of South Africa's local auction system.

It caused such a lot of consternation in the market it resulted in a constitutional court case which was finalised I think in 20 – I do not want to quote the date but it did find it way all the way up to the constitutional court and it was
10 based on the issues around Section 20A.

ADV SIBIYA: Yes. Now you say in your affidavit on page 5 that by 2013 in paragraph 14 you say:

“By 2013 the Marine Diamond production of the PSJV traded on average at 30.2 % below the market.”

MR CRAYTHORNE: That is correct. That is – that is a weighted average. So it is – to make the analysis more manageable and for purposes of this submission I took the 14 indexes that I created and fused them into one general index that taking into account the different weightings.

20 Because different categories of diamonds have different values and depending on the quantity that they make up of a production affects the overall average price. And based on that composite index by my calculation Alexkor's prices were trading 30.2% below the market.

ADV SIBIYA: And what was the response of the EAC to this

– to the fact that their diamonds that they were mining were trading 30% - 30.2%? Was there a response by the EAC?

MR CRAYTHORNE: No at this stage the EAC was not very active.

ADV SIBIYA: Okay.

MR CRAYTHORNE: In dealing with this matter.

ADV SIBIYA: So what was the response of the Joint Venture? What did they do to counter what they saw as the fall in prices?

10 **MR CRAYTHORNE:** Well the PSJV like everybody is very alarmed and their analysis of the situation was that there was a problem with the current service provider doing the marketing and sales called Diamond – Diamond Marketing Consultants and they – the technical committee of the PSJV made a recommendation to the board that the board rotate the then marketing and sales service provider to do a test.

ADV SIBIYA: How do you know this – those intimate details of what was happening inside the JV?

20 **MR CRAYTHORNE:** Well that – the contractors were informed by the PSJV that the PSJV was very unhappy with the price performance under the then service provider and wanted to do a trial run using a new service provider. So they brought in a company on a trial basis called Fusion Alternatives and for a period Fusion Alternatives then took over the function from the previous service provider.

ADV SIBIYA: And did the prices improve?

MR CRAYTHORNE: Not marketing. In fact in some instances they actually deteriorated further.

ADV SIBIYA: And it was at that point that the PSJV advertised their tender that resulted in the award to SSI am I correct?

MR CRAYTHORNE: That is correct and at – and at – in hindsight now that should be the point at which the PSJV should have realised that we were dealing with a problem
10 totally unrelated to the marketing and sales. The aetiology of the problem there somewhere else.

ADV SIBIYA: Okay.

MR CRAYTHORNE: That they pushed on ahead and got permission to launch a tender process to bring a permanent new marketing and sales service provider which culminated in the issuing of a tender in 2014 in October I believe.

ADV SIBIYA: Okay. Now Mr Craythorne you go into a bit of detail in your affidavit regarding what you call irregular tender process followed in the appointment of Scarlet Sky.
20 You have heard the evidence of Mr Torres before you. Now firstly just explain to the Chairperson how you came to have the detail that you have included in your affidavit because we understand that Mr Torres – his company was instructed by the Department to conduct an investigation. So how do you – where you do get the authority to speak to these

things? How do you know these things that you are speaking about here?

MR CRAYTHORNE: Chairperson in – from 2016 to – from 2015 when Scarlet Sky started marketing and selling our diamonds through 2016 the diamond prices got progressively worse. It was generating a huge amount of anger amongst the members of the EAC. My fellow EAC founding member Mr George Nikolai would regularly be stopped in the Main Street of Port Nolloth by angry members asking us when are
10 we going to do something about the problem relating to diamond prices. And in 2017 I then did a very brief analysis which reflected the difference between the international prices and what we were getting and I then posted those prices at the entrance to the mine.

That was at approximately four o'clock in the morning when I was actually on my way to go to sea. I did not think it was a big deal. Everybody knew that there was a problem so I thought well I was doing everybody a favour by just adding some you know analytical contribution to the consternation.

20 That had some very immediate and severe consequences. The – the data that I put up was in the form of a curve – an index basically just comparing the performance of Alexkor's diamond prices with the market. And there was security cameras filming this – this taking place. The security unbeknown to me when – because we –

I put the data up, went into the mine and went to sea and when I came back a day or two later there was a very angry letter from Mr Mervin Carstens saying that I was causing trouble by trying to generate anger amongst the contractors and our members for posting untrue information at the entrance to the mine. And I was warned that I would be suspended if I continued to cause anger amongst the members when in actual fact it was the anger of the members that was driving me. Not the other way around.

10 **ADV SIBIYA:** And then what was the outcome of that? Because remember you were answering the question of how did you come to know about the irregular tender process?

MR CRAYTHORNE: I was warned to back off on the issue of the diamond prices which I did for a while but – because the problem just was getting so out of hand I started making further enquiries about who was – who were the individuals behind Scarlet Sky because nobody knew. So I wrote to Regan Phillips and I requested information. That information was denied and the situation escalated to the point where my
20 contract – first of all my access into the mine was cancelled. Shortly thereafter the contract upon which Ocean Diggers operates was also cancelled together with my fellow EAC colleagues and that – following that I then put a lot of effort into trying to get to the bottom of what was going on.

ADV SIBIYA: Because you had all the time?

MR CRAYTHORNE: Because I had the time now. So I – I started digging and I started collaborating with other people in the anti-state capture project you could call it. And it was brought to my attention that the – one of the shareholders in Scarlet Sky was Mr Kuben Moodley. And that was a point at which we realised what was going on. And ...

ADV SIBIYA: What did you know about Kuben Moodley?

MR CRAYTHORNE: Well he had been mentioned in the Public Protector's State of Capture Report and that was good
10 enough for us to say well look there is a problem here. So his name popped up you know in AmaBhungane and Daily Maverick and all over the show.

ADV SIBIYA: In what context did his name pop up?

MR CRAYTHORNE: In relation to the – there was – there was irregularities at the SABC. There was irregularities in relation to Transnet and Eskom.

ADV SIBIYA: And how did he feature there?

MR CRAYTHORNE: He featured as a close lieutenant of the Gupta family.

20 **ADV SIBIYA:** Okay.

MR CRAYTHORNE: So with that knowledge in hand I then again confronted Mervin Carstens and said to him, listen you need to do something about this because this is why the diamond prices are so shocking. And I wrote a very, very confrontational email but I felt it was the only thing that I

could do at the time where I said straight out, listen you dealing with the state capture issue here. You know and you need to suspend this contract immediately.

ADV SIBIYA: Okay. Remember you are answering the question.

MR CRAYTHORNE: Okay how did I get the information?

ADV SIBIYA: Yes.

MR CRAYTHORNE: Well what – what – far from being received you know with my efforts to help understand what
10 was busy going on were met then with some threat from Webber Wentzel on behalf of Mr Carstens where they threatened me with – with legal action if I did not refrain from – sorry I beg your pardon – ja it was Webber Wentzel. I have had slap sheets. And I – I refused to back down so I got hit with the slap suit and I found myself very quickly having to learn how to defend myself and that when I started looking even closer and closer and digging into what was going on. I called certain questions to be asked in Parliament via Veronica Van Dyk about who these guys
20 were? What licences did they have? And I had to very, very quickly get to grips with the law because my life depended on it. So I successfully defended myself against Webber Wentzel and Mervin Carstens only to one month later be hit with another slap suit from Mr Vikma Nqashu.

ADV SIBIYA: Mr Craythorne.

ADV SIBIYA: That is where I got that information – that is how I learnt. I had to defend myself Chairperson and...

ADV SIBIYA: So where did you get the ...

CHAIRPERSON: Did you get some of the information from the court papers that were served on you?

MR CRAYTHORNE: No my court papers?

CHAIRPERSON: Or when you were being – defend yourself?

MR CRAYTHORNE: Ja when I defended myself I defended
10 myself on the basis of you guys are acting illegally because you – you do not have the licences and I confronted them.

ADV SIBIYA: But how did you know that they did not have the licence?

MR CRAYTHORNE: Because they were told then – because there are questions that are caused to be answered in Parliament admitted that they did not have the licence.

ADV SIBIYA: Okay. Can I refer you to page 270 – 270?

MR CRAYTHORNE: Okay I am there.

ADV SIBIYA: Is this the question you are talking about
20 because you mentioned now that you – you mentioned a Mr – a Ms Van Dyk.

MR CRAYTHORNE: That is correct ja. So this is a question.

CHAIRPERSON: This is at page 200 and?

MR CRAYTHORNE: 270.

CHAIRPERSON: 217?

ADV SIBIYA: No 270.

CHAIRPERSON: 270.

ADV SIBIYA: Yes. Yes Chair.

MR CRAYTHORNE: This is the – this is the Parliamentary question which I caused Ms Veronica Van Dyk to ask in Parliament.

ADV SIBIYA: Question number 1267?

MR CRAYTHORNE: That is correct.

ADV SIBIYA: Did you ask all these questions or was there
10 specific one that you were asking?

MR CRAYTHORNE: I – I provided the questions to Ms Van Dyk and she processed these questions through Parliament through their processes. And then the answer was provided and it is recorded here on page 272.

ADV SIBIYA: Okay so the first question that you caused to be asked was the question marked 1?

MR CRAYTHORNE: That is correct.

ADV SIBIYA: And you were questioning if there was a track record for Scarlet Sky Investments prior to them being
20 appointed by Alexkor?

MR CRAYTHORNE: Correct.

ADV SIBIYA: What made you ask this question?

MR CRAYTHORNE: Because it was one of the minimum requirements or rather it was part of the tender specifications that had been issued when the PSJV sent out

their RFP.

ADV SIBIYA: So you remembered this is 2018 that there had been this issue in 2014?

MR CRAYTHORNE: Well I looked back in the records to find what – what at the time that the tender was issued what the specifications were.

ADV SIBIYA: What put you in a position to question these things? What were – what information were you armed with that led you to dig deeper and ask these kinds of questions?

10 You have told us about your court case. Was this after your research? What did you discover in your research that led you here?

MR CRAYTHORNE: Through – throughout the period from the time that my access into the mine was cancelled I began a rigorous process of discovery. Trying to find out and that was an ongoing process right up until the time that I finished my affidavit for the Zondo Commission.

ADV SIBIYA: Okay.

20 **MR CRAYTHORNE:** So it has been – it has been a – it has been a process of discovery and the – the revelations that have come about have been through process of ongoing research and requesting information, contacting the regulator to enquire whether Scarlet Sky in fact did have a licence and they informed me that Scarlet Sky did not have a licence. So I was not only just relying on one source of

information I was double checking it through the regulator as well. So both the – both the regulator and Department of Public Enterprises confirmed that Scarlet Sky did not have the minimum requirement of licences.

ADV SIBIYA: Okay.

MR CRAYTHORNE: Showing...

ADV SIBIYA: So let us go back to page 270.

MR CRAYTHORNE: Okay.

ADV SIBIYA: So the question that was asked was whether
10 Scarlet Sky Investments had a track record prior to its appointment and the answer appears below – at the bottom of the page and the answer that they gave was that – that Alexkor gave was that the company had no track record until Mr Daniel Nathan with 20 years' experience within the diamond industry was appointed as a director of SSI in 2014.

MR CRAYTHORNE: That is correct.

ADV SIBIYA: Okay.

CHAIRPERSON: Even that must be inaccurate because that is not the track – track record of the company that is the
20 track record of an individual.

MR CRAYTHORNE: That is correct and the dates – and he is – his directorship only became effective on the 4 December.

CHAIRPERSON: Ja.

MR CRAYTHORNE: So he was appointed in November.

CHAIRPERSON: Ja.

MR CRAYTHORNE: But the records that I accessed show that he actually only became effective as a director on the 4 December even after the tender process.

CHAIRPERSON: But the fact of the matter is if you answer the question whether the company had a track record in this industry the answer is no.

MR CRAYTHORNE: Correct.

CHAIRPERSON: The fact that at some stage an individual
10 got involved in the company who had 20 years' experience does not give the company 20 years' experience track record.

MR CRAYTHORNE: That is how I looked at it.

ADV SIBIYA: And the next question was – question 2A why has no beneficiation for the community taken place since the appointment of the specified company by Alexkor and what are the details of how transferring the sale of diamonds to the company has impacted on the value return to Alexkor and the miners. Why did you ask this question?

20 **MR CRAYTHORNE:** I asked this question because that was one of their main selling points.

ADV SIBIYA: Whose main selling points?

MR CRAYTHORNE: Scarlet Sky. Because when – you know we were as contractors raising major concerns about their poor performance in attaining fair diamond prices for us

there was you know feedback from PSJV saying that you know they were doing a lot for the Richtersveldt community.

ADV SIBIYA: And the answer that they gave was that beneficiation is taking place in Houghton and has been taking place since 2015 and that SSI currently employs learners from the community.

MR CRAYTHORNE: That is correct but as far as I am aware there had been no lasting – or there had – as far as I know there had been no qualified cutters or polishers that have
10 emerged out of any of the commitments that Scarlet Sky made to the Richtersveldt community.

ADV SIBIYA: They continued to say beneficiation contribute an additional 9% income to the pooling and sharing Joint Venture to income after the tender process.

MR CRAYTHORNE: Well whether the agreement with regards to beneficiation of diamonds was that the contractors would share in any upside and to my knowledge no contractors have shared in any upside of the diamonds that have been taken out of the production for beneficiation.
20 So if there has been 9% that should have been shared in the same ratio as the contractors contract to mine those diamonds stands. So if a contractor has a 50% deal to mine a diamond for Alexkor and that diamond then goes for beneficiation you get paid out on a valuation price but whatever the upside it subsequent to polishing and the sale

if there is a 9% additional value add that was supposed to have been shared 50% to the PSJV and 50% to the contractor after the beneficiator had taken his percentage.

ADV SIBIYA: The next question is on what basis was the company SSI again awarded the contract in November 2016? That is the first part of the question and then they continue with the next part of the question. Now their response to the question posed on 3A on what basis was the company again awarded a contract in November 2016? Their response is
10 long but at the end of it is that it says – well let me start at the top. It says:

“The process included the RFP which was advertised in the Government Tender Bulletin of 1 October 2014 as well as the Business Day of 2014.”

Do you agree that was not for the 2016 tender?

MR CRAYTHORNE: No that was – I beg your pardon that was for the previous tender.

ADV SIBIYA: Yes. And then it continues
20 “Seven companies expressed their interest in RFP 03 of 2014 and submitted proposals.”

Also in relation to the previous ones?

MR CRAYTHORNE: Ja because the – the convention – the numbering convention that you see in the RFP relates to the year – the 2014 indicates that that was a RFP from 2014.

ADV SIBIYA: Yes. And then it continues and it says:

“Gamera Advisory Services were appointed by the Alexkor PSJV board to evaluate the proposals received.”

MR CRAYTHORNE: That is correct.

ADV SIBIYA:

“The top three companies according to the evaluation scores were invited to present to the Alexkor PSJV board tender committee.”

10 **MR CRAYTHORNE:** Correct.

ADV SIBIYA:

“Following the presentation and assessment of the SSI bid proposal the Alexkor PSJV board was satisfied with the prices and proposals submitted by SSI. The Alexkor PSJV board appointed SSI with effect from 1 March 2018.”

Is any of this correct in answer to the question of – on what basis was the company awarded a contract in November
20 2016?

MR CRAYTHORNE: Not at all.

ADV SIBIYA: Why do you say that?

MR CRAYTHORNE: Well it does not make sense because they conflating the first tender process with the second tender process and they talk about a date being an effective

date being the 1 March 2018 which it could not possibly have been.

ADV SIBIYA: Because the question is specific.

MR CRAYTHORNE: That is 2016.

ADV SIBIYA: Yes.

MR CRAYTHORNE: Ja.

ADV SIBIYA: Yes it is specific to 2018 to 2016 sorry. So Alexkor did not answer this question?

MR CRAYTHORNE: No.

10 **ADV SIBIYA:** The next part of the question is:

“Why is there no longer an independent valuator model included in the company’s contracts?”

You can see their answer there in B.

MR CRAYTHORNE: Well...

ADV SIBIYA: And it says:

20 “The independent valuator process was stopped after some of the contractors complained about beneficiation and it was decided that the diamonds selected for beneficiation process will be paid based on the tender price.”

MR CRAYTHORNE: Well, I do not know what to make of it because again it seems to be conflating different issues. For instance, the original bid that Scarlet Sky made and the

basis upon which they were provisionally awarded, successfully awarded the tender at the close of 2014, was an exclusive purchasing agreement akin to what was in place from 2000 to 2006... [dropping voice]

And they had made it very clear, according to their expert opinion, in their bid documents that because of the introduction of Section 20A, auction processes would no longer be optimum solution achieving fair diamond prices and that Alexkor would need to consider their, what they
10 refer to as a Proprietary Independent Evaluator Model.

So they were trying to resurrect the same arrangement that we had fought so hard against when De Beers buying Alexkor Diamonds. And that bid which had cast dispersions on the tender system or the tendered documents.

All of a sudden in January without any explanation, they do a flip-flop and changed their proposal from what they had initially proposed, which was, as what they referred to as their Proprietary Evaluation Model to the tender processes.

So something happened over the holiday period resulting
20 in a complete about-turn now which they then embraced the same sales model which they had themselves cast suspicions on. And then on top of it, won the tender.

ADV SIBIYA: And the next part of the question is. Who made the decision? Now I am not sure whether the decision – that is being referred to is the absence of an Independent

Evaluator Model or whether the decision they are talking about is the award to SSI..

MR CRAYTHORNE: It seems to me they have cannibalised some facts and mixed them up. In a certain way it is true. They did abandon the Evaluator Model but they have abandoned it over December.

And yet for the first year, there was still an Independent Evaluator. So it seems to that even though this company had agreed that tender was the way to go that at least for
10 the first few sales that were conducted, they were done on an evaluation basis, not on an auction basis.

And at the point at which the Independent Evaluator then becomes redundant, he was dismissed. So it is very confusing, actually. And it is difficult to make head or tail of what was going on. But it does not make sense and it certainly did not answer my question.

ADV SIBIYA: Okay. Now I will move on to Question 4.

MR CRAYTHORNE: Yes.

ADV SIBIYA: Question 4 says: Is the specialised company
20 a licensed diamond trader? Now who are we referring to when we say the specified company?

MR CRAYTHORNE: Scarlet Sky, the company that won the contract.

ADV SIBIYA: Yes. So is the specified company a licensed diamond trader and the premises licensed as a tender

house? The answer is contained in page 272.

MR CRAYTHORNE: The answer that was given was that the diamond dealer license. It was in a different company called Diamond Trading House. Oh, sorry. I beg your pardon. Called Daniel Nathan Trading

ADV SIBIYA: Where does it say SSI does not have a license Mr Craythorne?

MR CRAYTHORNE: Okay. I am sorry. Can I just read it?

ADV SIBIYA: Yes.

10 **MR CRAYTHORNE**: Okay. In terms of ...[intervenes]

ADV SIBIYA: That is why I referred you to the page.

MR CRAYTHORNE: Okay.

“In terms of the South African Diamond and Precious Metals Regulator Prescripts, a license is issued to an individual diamond dealer or to a company, Diamond Trading House. In this instance, Mr Daniel Nathan is the holder of the required diamond deal license.”

20 **ADV SIBIYA**: Did they say anything about the specified company?

MR CRAYTHORNE: Nothing.

ADV SIBIYA: So do they answer the question of whether SSI has a licence?

MR CRAYTHORNE: No.

ADV SIBIYA: Is it true what they are saying in their answer

that Mr Daniel Nathan is a holder of the required diamond deal license?

MR CRAYTHORNE: No, it is not true. The license is held in a company called Daniel Nathan Trading CC.

ADV SIBIYA: So none of this part of the question – of the answer is true?

MR CRAYTHORNE: With regard to the Diamond Trading House, I am not sure, regarding that license but certainly in the case of the diamond dealer license it is not true.

10 **ADV SIBIYA:** But Mr Craythorne, they do not say anything about issuing of a Diamond Trading House license.

MR CRAYTHORNE: No, in their answer?

ADV SIBIYA: Yes.

MR CRAYTHORNE: They say.

ADV SIBIYA: Yes.

MR CRAYTHORNE: So I do not know if that answer is true because you have a diamond dealer license. And in the premises that the diamond dealer conducts trading activities on, has to be licensed as well.

20 **ADV SIBIYA:** Yes.

MR CRAYTHORNE: So I am not – as far as I am aware, there is no license for that as well as far as Scarlet Sky goes.

ADV SIBIYA: You are conflating the issues Mr Craythorne.

MR CRAYTHORNE: Ja, let me ...[intervenes]

ADV SIBIYA: But they do not say Nathan has or does not have a trading house.

MR CRAYTHORNE: Okay.

ADV SIBIYA: They are just telling us the fact of how licenses are issued.

MR CRAYTHORNE: Okay.

ADV SIBIYA: That is all they are telling us there. Now I want to take you back to Question 3A because I now want to refer you to documentation. So Question 3A is the one that
10 was asking on what basis was the company again awarded the contract in November 2016? And the answer was contained on the next page on page 271. Now you will note that it says when – it deals firstly with the wrong contract in that it deals with the process that was followed for the 2014 tender process. Correct?

MR CRAYTHORNE: Correct.

ADV SIBIYA: Alright. And then at the end it says the Alexkor Board appointed SSI with effect from 1 March 2018 which is also incorrect.

20 **MR CRAYTHORNE:** Probably.

ADV SIBIYA: So they do not explain why the company was awarded another contract a year after it had been awarded a contract.

MR CRAYTHORNE: They do not.

ADV SIBIYA: Okay. Now just to complete that thought.

Can I refer you to Bundle 2? So it is a different bundle all together.

MR CRAYTHORNE: I have the bundle.

ADV SIBIYA: Yes. Please turn to page 263. Page 263.

CHAIRPERSON: This is Mining Bundle of 2?

ADV SIBIYA: Yes, thank you.

CHAIRPERSON: What is the page?

ADV SIBIYA: 263.

CHAIRPERSON: 263.

10 **ADV SIBIYA**: Underneath the tab marked 3.

CHAIRPERSON: [No audible reply]

MR CRAYTHORNE: Page 263?

ADV SIBIYA: Yes.

MR CRAYTHORNE: I have it.

ADV SIBIYA: Okay. This document is the agreement to market value and sell diamonds between Alexkor RMC PSJV and Scarlet Sky Investments 60 (Pty) Ltd.

MR CRAYTHORNE: It is correct.

20 **ADV SIBIYA**: Now if we take this document and turn to page 268...

MR CRAYTHORNE: I have it in front of me.

ADV SIBIYA: In Clause 4.1 it says:

“This agreement shall commence on the signature date and shall continue enforce for a period of three years.”

Do you see that?

MR CRAYTHORNE: I see that.

ADV SIBIYA: Okay. And then we can turn to page 284 of the same bundle.

MR CRAYTHORNE: I have it in front of me.

ADV SIBIYA: So we see in that page that the signature date is the 4th of March 2015.

MR CRAYTHORNE: That is correct.

ADV SIBIYA: So we know that this agreement started on
10 the 4th of March 2015.

MR CRAYTHORNE: Correct.

ADV SIBIYA: Appointing SSI to market and sell the diamonds for the PSJV.

MR CRAYTHORNE: Correct.

ADV SIBIYA: Now if I take you further in the same bundle to page 295.

MR CRAYTHORNE: I have it in front of me.

ADV SIBIYA: This document is called The Agreement to
Market Value Sell and Beneficiation of Diamonds between
20 Alexkor and CJV and Scarlet Sky Investments 60 (Pty) Ltd.
Same parties, correct?

MR CRAYTHORNE: Correct.

ADV SIBIYA: Same kind of contract, correct?

MR CRAYTHORNE: Correct.

ADV SIBIYA: Okay. Now I take you to page 300.

MR CRAYTHORNE: I have it in front of me.

ADV SIBIYA: If we look towards the bottom of the page, you will see in bold number 4, Commencement and Duration. Do you see that?

MR CRAYTHORNE: I do.

ADV SIBIYA: Now in 4.1 it says similarly:

“This agreement shall commence on the signature date and shall continue enforced by a period of five years.”

10 So the difference is that the previous one said it would continue for three years. This one says for five years. But this contract also commences on signature date. Correct?

MR CRAYTHORNE: That is correct.

ADV SIBIYA: Okay. Now we go ...[intervenes]

CHAIRPERSON: Did this one replace the 2015 one or did they run parallel to each other?

ADV SIBIYA: That is the answer we do not have Chairperson.

CHAIRPERSON: Okay.

20 **ADV SIBIYA:** Because it is the answer that was not given to the parliamentary question.

CHAIRPERSON: In the second agreement, does it not say what its relationship is with the previous agreement?

ADV SIBIYA: No.

CHAIRPERSON: H'm. Okay alright.

ADV SIBIYA: And then on page 317...

MR CRAYTHORNE: I have it in front of me.

ADV SIBIYA: We can see that it is now says:

“This agreement is signed on the
6th of October 2016.”

MR CRAYTHORNE: That is correct.

ADV SIBIYA: And as we have already seen, it starts from
signature date. So this means that this contract started in
October 2016 when previously they had signed with the
10 same company in March 2015 for three years.

MR CRAYTHORNE: Correct.

ADV SIBIYA: So clearly, the question related to the second
contract. The question in the parliament – the question in
parliament that state: On what basis was the company
awarded the contract in November 2016? So they are talking
about the second contract?

MR CRAYTHORNE: Correct.

ADV SIBIYA: Okay.

CHAIRPERSON: Well, Ms Sibiya ...[intervenes]

20 **ADV SIBIYA:** The date is ...[intervenes]

CHAIRPERSON: The answer to my question is to be formed
in Clause 30 of the second agreement. It says:

“This agreement supersedes any previous
agreements between any of the parties in relation
dealt with in this agreement.”

ADV SIBIYA: Yes, yes.

CHAIRPERSON: So the second agreement replaced the first agreement.

ADV SIBIYA: Replaced... Yes, yes. Thank you Chair.

CHAIRPERSON: H'm.

ADV SIBIYA: Now the question that had been posed was: On what basis was the company again awarded a contract in November 2016? We note that this is October 2016 but on a reading – do we know of any contracts that was awarded to
10 SSI in November as opposed to the one in October 2016?

MR CRAYTHORNE: No, they provided no clarity to my question that I posed via the parliamentary process.

ADV SIBIYA: Okay. I think you misunderstood my question. The question talks to November 2016 but we can see that this contract was signed in October 2016. You posed the question to be asked. Were you talking about this contract signed in October 2016 or were you talking about a different contract?

MR CRAYTHORNE: I was talking about the second contract
20 which we had heard ...[intervenes]

ADV SIBIYA: This contract?

MR CRAYTHORNE: Ja. We had heard that there had been a subsequent contract.

ADV SIBIYA: Okay.

MR CRAYTHORNE: So. But that is all that we were told.

ADV SIBIYA: Okay. So you assumed the time to be November 2016?

MR CRAYTHORNE: 2016, ja. So my understanding was that there had been a contract initiated in 2015 which was supposed to run for three years. Then we had heard via the grapevine that another contract had been issued in 2016.

ADV SIBIYA: Yes.

MR CRAYTHORNE: With no clarity as to – how that came about, was offered and that is why I asked the question via
10 parliament.

ADV SIBIYA: So do you agree that it is incorrect in page 271, paragraph 3(a)(v) where they say:

“The Alexkor PSJV Board appointed SSI with effect from 1 March 2018.”

MR CRAYTHORNE: I beg your pardon. Can you just tell me that page number again? 271?

ADV SIBIYA: 271, yes.

MR CRAYTHORNE: Okay, so ...[intervenes]

ADV SIBIYA: And the paragraph is 3(a)(v). The V.

20 **MR CRAYTHORNE:** Are we still in Mining 02?

ADV SIBIYA: Oh, my apologies.

MR CRAYTHORNE: Okay.

ADV SIBIYA: I have left it behind.

MR CRAYTHORNE: No worries.

ADV SIBIYA: We are back in Mining 04. My apologies

Chair.

CHAIRPERSON: Has it not become clear that a substantial part of that answer does not – is not an answer to the question and in particular about the basis on which the contract was awarded?

ADV SIBIYA: Yes, Chair. But there is also the issue of the date because ...[intervenes]

CHAIRPERSON: 2018?

ADV SIBIYA: Yes.

10 **CHAIRPERSON**: But that is obvious, is it not?

ADV SIBIYA: Yes.

CHAIRPERSON: Ja.

ADV SIBIYA: But the contract itself said, it is effective on signature and signature was in 2016.

CHAIRPERSON: Ja.

ADV SIBIYA: So everything that was answered here was not true.

CHAIRPERSON: H'm.

MR CRAYTHORNE: That is correct.

20 **ADV SIBIYA**: Thank you very much. Now what else did you find out about that was not correct in the appointment? Because you have not yet told us what you discovered was incorrect. You have told us that you asked and discovered that SSI did not have a license through your questions that you caused to be asked in parliament.

CHAIRPERSON: Before you answer the question. Can I just get this out of the way? As far as the second contract is concerned. That was not the subject of – that was not preceded by any competitive tender process, was it?

MR CRAYTHORNE: As far as I am... Chair, if I recall. I remember seeing a copy of a request for a proposal but I cannot be sure on that because everything is so hazy, you know. If it is difficult for me to track it. But I do recall seeing something of a repeat ...[intervenes]

10 **CHAIRPERSON:** Yes.

MR CRAYTHORNE: ...that but I cannot recall exactly where but it seems to me that to some degree there was some attempt to have an RFB.

CHAIRPERSON: Yes. Do you know what the answer is?

ADV SIBIYA: Yes, Chair. It is the one that Mr Torres was answering about when he said he asked the company secretary what rolled they played. And the Company Secretary, Ms Reagan Phillips then said, although they were called a BEC, all they did was to ...[intervenes]

20 **CHAIRPERSON:** Where there was no evaluation?

ADV SIBIYA: Yes, yes.

CHAIRPERSON: Ja.

ADV SIBIYA: So that is the second contract. So ...[intervenes]

CHAIRPERSON: But did Ms Philips' response to him reveal

that there had been requests for proposals or not really?

ADV SIBIYA: Chair, we did not deal with that detail but it is part of the report of the Gobodo report that – which Mr Torres was testifying and it appears that there was.

CHAIRPERSON: Okay.

ADV SIBIYA: But it seems to have been a foregone conclusion.

CHAIRPERSON: Ja.

ADV SIBIYA: And he indicated that he does not know why
10 there was a need for the second ...[intervenes]

CHAIRPERSON: Yes, well you will just have to double check things to that report.

ADV SIBIYA: Yes.

CHAIRPERSON: Because it transpired while he was giving evidence that he was not asking some of the most obvious questions he should have asked.

ADV SIBIYA: No, Chairperson.

CHAIRPERSON: So if he has reached certain conclusions, we have got to – or made certain findings – we have got to
20 double check that those findings are sustainable.

ADV SIBIYA: Yes, Chair.

CHAIRPERSON: Okay.

ADV SIBIYA: But in as far as there having been a process, that is the one that had the minimum requirements and I referred us to the document that indicated the minimum

requirements in the whole tender document that went out.
So. But I – we will double check ...[intervenes]

CHAIRPERSON: Yes, so what I am saying is. If they say there was no process, double check that that is factually true.

ADV SIBIYA: H'm.

CHAIRPERSON: That is what I want.

ADV SIBIYA: Yes. Thank you. Now can I take you back to the identified irregularities in relation to the appointment of
10 Scarlet Sky that you referred to on page 6 of your affidavit?
Now I had asked, how did you get the detail? Because the detail in the affidavit is: “On the 21st of October, the process was initiated...”

And then you go on to detail what happened in the Technical Committee and the tender advertisement and all those things. So I had asked, how did you get this information of you to give it in this Commission as your evidence?

MR CRAYTHORNE: Chairperson, there was a – there is a
20 lot of unhappiness from the Richtersveldt community over the issue of Scarlet Sky and the diamond prices and the manner in which the tender was awarded.

And that led to a complaint being made by the – an attorney acting for certain members in the Richtersveldt community because there are divisions within the

Richtersveldt Community. So this particular attorney was only acting on behalf of – on one instructions for one particular individual but it certainly ...[intervenes]

CHAIRPERSON: Did you get that information from the attorney?

MR CRAYTHORNE: No, that information – I got it from a gentleman called Pieter de Wet who is a Richtersveldt member who also made a complaint to the – to – I think to DPE regarding the Scarlet Sky issue.

10 That, flowing out of the complaint to the Public Protector, an arrangement was – and there was an agreement between the parties, between Minister Lynne Brown, the Public Protector and that particular attorney that Alexkor's own Audit and Risk Committee would do an investigation into the circumstances surrounding the appointment of Scarlet Sky.

And as a result of that report, which I was given a copy of from Sam Saul, because he also blew the whistle to Amabhugane in the early days, and Sam and I have shared
20 information.

So Sam, when he started doing queries into the whole Alexkor PSJV story and which led to him like an in-depth exposé on it, he was given a copy of this document which he passed onto me and this document derives a lot of the timelines and surrounding the appointment of SSI, when the

need for a new marketing and sales service provider was identified and then the events that followed.

CHAIRPERSON: Basically, that is part of where you got your information from?

MR CRAYTHORNE: That is correct.

CHAIRPERSON: Ja, okay.

ADV SIBIYA: Alright. Thank you. Now you say – you then go into detail the Technical Committee meeting of the PSJV which raised the concern regarding the manner in which
10 diamond ...[intervenes]

CHAIRPERSON: Where are you now Ms Sibiya?

ADV SIBIYA: My apologies. I am sure this time I have not left you in a different bundle. On Bundle 4 on page 7.

CHAIRPERSON: Okay alright. You may continue.

ADV SIBIYA: Thank you. I was reading from paragraph 25.

CHAIRPERSON: Okay.

ADV SIBIYA: And then it says”

20 “The committee advised that management request approval from the PSJV Board to appoint a new service provider on a basis to determine whether there would be an improvement in pricing.”

And then you highlight those that were present at the meeting. Why?

MR CRAYTHORNE: Because those are the individuals that played key-roles in the appointment, the ultimate

appointment of Scarlet Sky because they triggered the process that ultimately led to Scarlet Sky being awarded the contract.

ADV SIBIYA: Okay. And then you say that at the time, Rafique Bagus chaired the joint board of the PSJV.

MR CRAYTHORNE: That is correct. And this information is drawn from the annual report, the Alexkor Annual Report.

ADV SIBIYA: Yes. Now if we turn the page and move on to page 8...

10 **MR CRAYTHORNE:** I have it in front of me.

ADV SIBIYA: Yes. In paragraph 30, you say that:

“SSI sent an expression of interest on 6 November 2014 on a letterhead that indicated the directors, were then Daniel Nathan and Kuben Moodley.”

MR CRAYTHORNE: That is correct.

ADV SIBIYA: You say this was wrong. Why?

CHAIRPERSON: Ms Sibiya, some of the matters have been covered by your previous witness.

20 **ADV SIBIYA:** Yes.

CHAIRPERSON: And both of them might think their sources are the same. It is just documentation.

ADV SIBIYA: Chair, he talks to a different aspect of irregularity that was not noted ...[intervenes]

CHAIRPERSON: Oh, okay alright.

ADV SIBIYA: ...in the evidence of the previous witness.

CHAIRPERSON: Alright, alright.

ADV SIBIYA: Yes.

MR CRAYTHORNE: The information that the Gobodo report refers to is based on the appointment date that when I did a company search, I worked on the effective date. So while they were appointed on a date that Gobodo say, the appointment date is not the same as the effective date because they – as directors they get appointed internally in
10 the company but the effective date as far as the registrar is concerned, was on the 4th of December which was even later, and I think that is relevant.

ADV SIBIYA: But you have gone ahead of me.

MR CRAYTHORNE: Oh, sorry.

ADV SIBIYA: Mr Craythorne, I was asking you why you say it was wrong for SSI on the 6th of November to say that the directors were Daniel Nathan and Kuben Moodley? So we are talking about the 6th of November date.

MR CRAYTHORNE: At that date, the company that they
20 ended up with, was still sitting on the shelf, and they were stand-in directors. Moira... I think it is Moira...

ADV SIBIYA: So that is what is wrong?

MR CRAYTHORNE: That is what is wrong, ja.

ADV SIBIYA: This was not true, in fact?

MR CRAYTHORNE: It is not true.

ADV SIBIYA: H'm. And then it says - and then we get to your point which is that... ...[indistinct – recording cut off] were – they became shareholders on the 20th of November 2014. And then you say for – later on until the 4th of December - on paragraph 31.1:

10 “Until the 4th of December 2014, the date upon which Ms Moodley and Nathan officially became directors, SSI was the shelf company, and the day on which they became directors was 11-days after the official closing date of 24 November 2014.”

ADV SIBIYA: That was my point.

MR CRAYTHORNE: And the evidence of Mr Torres was that there were directors then.

ADV SIBIYA: Which is incorrect.

MR CRAYTHORNE: Now you say it is incorrect. Can I take you back to that bundle that we have put away, which is Bundle 2?

20 **CHAIRPERSON:** Before you do so. We are at four o'clock. Let us talk about what is going to happen so that we are all on the same page. I am still quite happy to continue.

ADV SIBIYA: Yes, Chair.

CHAIRPERSON: But you have raised the issues of curfews and so on of which we may have to be aware.

ADV SIBIYA: Yes.

CHAIRPERSON: What would you like me to do?

ADV SIBIYA: Chair, I believe we can continue until six if no one is objecting to that. That would allow enough time for people, including my witness who is staying at a hotel, to get there at the right time. And the Chair had asked me about the possibility of continuing on another day if by six we are not done.

CHAIRPERSON: H'm.

ADV SIBIYA: Chair, the witness is available to continue on Monday.

10 **CHAIRPERSON:** H'm. Okay. Mr Craythorne, you are quite happy to – that we continue until six?

ADV SIBIYA: Yes, Chairperson.

CHAIRPERSON: Yes. Counsel? Mr Bham?

ADV BHAM SC: We are fine, yes.

CHAIRPERSON: You are fine?

ADV BHAM SC: [No audible reply]

CHAIRPERSON: Okay thank you. Let us take a ten minutes' break now and then we will come back and continue.

20 **ADV SIBIYA:** Thank you.

CHAIRPERSON: We adjourn.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: I think if we are going to continue on Monday we might not need to go on up to six, we might

need to maybe take an hour from now, go up to quarter past five, so – because it appears that on Monday there will be some flexibility in terms of other witnesses. There may be some – we should have enough time to finish his evidence first. So we might not need to go up to six o'clock but if there was not much space on Monday then we would have to use every minute that we have this evening. So I think let us go up to quarter past five.

ADV SIBIYA: Thank you, Chair.

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

ADV SIBIYA: Thank you. I was referring us back to bundle 2, Mining 2. If we can turn to page 286. Okay, this is ...[intervenes]

CHAIRPERSON: Is it quite hot inside here or is it just me?

ADV SIBIYA: It is, Chair.

CHAIRPERSON: I think Mr Bham indicates it is hot. Maybe the technicians can switch on the aircon but they must just make sure it does not make too much noise. Ja.

20 Okay, alright.

ADV SIBIYA: Thank you, I will adjust my voice accordingly, Chair.

CHAIRPERSON: I do not have a lot of hope that you will succeed.

ADV SIBIYA: I will try my best.

CHAIRPERSON: I am willing to be proved wrong.

ADV SIBIYA: Thank you, Chair.

CHAIRPERSON: Okay, let us continue in the meantime.

ADV SIBIYA: Thank you, Chair. Now, Mr Craythorne, this document that appears on page 286 is a company report on Scarlet Sky Investments 60, correct?

MR CRAYTHORNE: That is correct.

ADV SIBIYA: Did you source this document?

MR CRAYTHORNE: Correct.

10 **ADV SIBIYA:** Okay. Now I will take us – I would like us to go to page 292. If you look towards the bottom you will see where it is written in orange:

“Company change history.”

Correct?

MR CRAYTHORNE: Correct.

ADV SIBIYA: And then if you go onto the next page, 293, and you will look at the third date from the top. What is contained there?

MR CRAYTHORNE: Third from the top is the:

20 “Director Daniel Martin Nathan details was changed”

And that was on the 4 February ...[intervenes]

CHAIRPERSON: Well, sorry, just tell first what the third date from the top is?

MR CRAYTHORNE: 4 February.

CHAIRPERSON: It is 4 February 2016, is that correct?

MR CRAYTHORNE: That is correct, Chairperson.

CHAIRPERSON: Yes and then there is a column where it is written director/members/secretary/trust/both director and officer and then there is something written against that. Just repeat what – tell me what it is?

MR CRAYTHORNE: It says:

“Director/member/secretary/trust/both director and officer”

10 Followed by:

“Director Daniel Mark Nathan, details was changed.”

ADV SIBIYA: Okay, thank you. Now if you go down, further down ...[intervenes]

CHAIRPERSON: I am sorry, what is the document? What is the nature of that document? What is the – what document is this? It is a company report?

ADV SIBIYA: It is a company report on Scarlet Sky.

CHAIRPERSON: For Scarlet Sky Investments.

20 **ADV SIBIYA:** Yes, sourced from that ...[intervenes]

CHAIRPERSON: It is a document issued by the same company.

ADV SIBIYA: Yes, it is the document issued by LexisNexis, yes.

CHAIRPERSON: Ja. Okay, alright.

ADV SIBIYA: Thank you. And then if you go further down back on page 293, Mr Craythorne.

MR CRAYTHORNE: Yes.

ADV SIBIYA: If you go further down – so you are on the third one and you go the 4 – the next one is the 4 February, the one below that is the 12 August 2015. The one below that is the 4 December 2014. Can you read that one?

MR CRAYTHORNE: Again it says:

10 “Director/member/secretary/trust/both director and officer.”

And then followed by:

 “Director, Daniel Mark Nathan was added.”

ADV SIBIYA: What does this mean?

MR CRAYTHORNE: This means that his appointment only became effective on the 4 December 2014 and then we go below that and we see on the 4 December 2014 again ...[intervenes]

CHAIRPERSON: Well, I am sorry, now that you have
20 asked that question, let us go back to that date that we have dealt with with regard to Mr Daniel Mark Nathan, there it is says his details were changed. Do you know what that means?

MR CRAYTHORNE: I believe that could have been in relation to a shareholding change possibly. I am not sure

...[intervenes]

CHAIRPERSON: You are not sure what it is.

MR CRAYTHORNE: I am not sure, Chairperson.

CHAIRPERSON: Okay, alright.

ADV SIBIYA: Thank you. So if you go to the second date, that is the 4 December 2014.

MR CRAYTHORNE: It has the same preamble followed by director Kubentheran Moodley was added.

ADV SIBIYA: And what does that mean again?

10 **MR CRAYTHORNE:** That means that his directorship only became effective as of the 4 December 2014.

ADV SIBIYA: Now we already know that the tender closed on – they submitted their tender in November 2014. Were they directors when they submitted the tender on behalf of SSI as directors?

MR CRAYTHORNE: No, they were not.

ADV SIBIYA: So should they have been appointed just on that point alone?

20 **MR CRAYTHORNE:** No because this is a false representation, they represented themselves as being directors of a company that was bidding when it is not true.

ADV SIBIYA: So if we go back to that other statement in that other document where they said in answer to the question did they have a proven record at the time and they said no, until Nathan joined them with his experience.

So the question was did SSI have the experience and the response was they did not have a track record until Daniel Nathan joined them. Is that true? And as at the time they submitted the tender was Daniel Nathan in fact part of SSI?

MR CRAYTHORNE: His experience was of no consequence to SSI's tender.

ADV SIBIYA: Yes because he was not even a director at the time. So that is another reason, that is something else
10 that you discovered was not correct.

MR CRAYTHORNE: True.

ADV SIBIYA: An irregularity. This was talking to your paragraph 31.2 which is where we were on page 8 of your affidavit so these were ...[intervenes]

CHAIRPERSON: Are you asking us to move back to the other bundle?

ADV SIBIYA: Yes, Chair, the other bundle, thank you.

CHAIRPERSON: Ja, just announce each time you move from one bundle to another so that we can move with you.

20 **ADV SIBIYA:** My apologies once again, Chair, for that.

CHAIRPERSON: Okay, we are going back to Mining bundle 4A.

ADV SIBIYA: 4, yes, Chair.

CHAIRPERSON: And you are at page?

ADV SIBIYA: 8.

CHAIRPERSON: Okay.

ADV SIBIYA: So basically what you are saying, Mr Craythorne, in your paragraph 31.2, you say:

“The date on which they became directors was 11 days after the official closing date of 24 November for formal written proposals to be submitted in order to compete in the tender.”

MR CRAYTHORNE: That is correct.

ADV SIBIYA: So if a due diligence had been conducted,
10 which we have heard in the evidence of Mr Torres that it was not, it would have showed these things and SSI should not have been appointed.

MR CRAYTHORNE: That is correct.

ADV SIBIYA: Now from the evidence that you have given it seems that these were things that were easy to find.

MR CRAYTHORNE: That is correct.

ADV SIBIYA: What does it tell you, that these things were not highlighted and instead SSI went through the shortlist and the appointment.

20 **MR CRAYTHORNE:** It tells me that it was a foregone conclusion, a *fait accompli*.

ADV SIBIYA: And what did you make of that?

MR CRAYTHORNE: I made of that that it was classic state capture.

ADV SIBIYA: And this was because?

MR CRAYTHORNE: This was because the *modus operandi* that was being followed here was a dead ringer for the other known examples of this behaviour.

ADV SIBIYA: Sorry, I did not hear the last part?

MR CRAYTHORNE: And this was a classic example of other state capture projects that had already been revealed in the public domain.

ADV SIBIYA: And then in paragraph 32 – oh, before I go to paragraph 32, you have already said that Kuben
10 Moodley had been linked with state capture.

MR CRAYTHORNE: Correct.

ADV SIBIYA: According to your investigations. Okay. Now in paragraph 32 of your affidavit you tell us about an investigation carried out in 2015 by the audit and risk committee of Alexkor as instructed by Minister Brown.

MR CRAYTHORNE: That is correct.

ADV SIBIYA: In paragraph 32.6 you set out an extract from the ARC report. What is the significance of this extract?

20 **MR CRAYTHORNE:** May I just take some time to read it?

ADV SIBIYA: Okay, maybe let me direct you correctly and not direct you to the extract first. In the paragraph above that, 32.5, you say that:

“At the final selection only three people sat on the panel at Alexkor’s Rosebank, Johannesburg head

office.”

Now this is part of what was contained in the report, correct?

MR CRAYTHORNE: That is correct.

ADV SIBIYA: So this is not your own information, this is what you got from the report.

MR CRAYTHORNE: Correct.

ADV SIBIYA: And it says:

10 “These were the people, Bagus, Duncan Korabie
 and Dr Roger Paul.”

MR CRAYTHORNE: That is correct.

ADV SIBIYA: And you mention that Korabie awarded SSI a full 100% mark.

MR CRAYTHORNE: According to the Gamiro report that is true. I beg your pardon, no. According – I think it is in the Gobodo report that I picked this up, the fact that a 100% - I am not sure if – I cannot recall if I picked it up in the ARC or in the Gobodo report.

20 **ADV SIBIYA:** Well, you picked it up in the ARC report
because you say in paragraph 32:

 “And investigation was carried out and ARC report
 to Brown revealed the following.”

MR CRAYTHORNE: Okay. You are quite right, I beg your pardon.

ADV SIBIYA: Yes, the day has been long. We

understand, Mr Craythorne. Now you say in paragraph 33 that:

“It appears that there was a significant lack of clarity about SSI’s proposal and what exactly SSI had committed to in terms of funding, pricing, beneficiation, etcetera, which resulted in a delay in finally awarding the tender to SSI.”

MR CRAYTHORNE: That is correct. Dr Roger Paul had raised concerns regarding the commitment to community
10 upliftment and the issue around the valuation and whether or not that was an appropriate way of ensuring that Alexkor would achieve the best prices and – I do not recall of the concerns they had but there was a flurry of emails in late December whereby Mr Carstens was anxious to inform Scarlet Sky that they had been provisionally awarded winning the contract.

There was hesitance on the part of Dr Roger Paul, I recall, but ultimately Mr Carstens was given permission to inform Daniel Nathan and Marc Chipkin who was – on
20 correspondence that I have seen, he was the Chief Operating Officer of SSI at the time that the tender was taking place and Mr Carstens informed that subject to him doing a due diligence in January they had been successful.

ADV SIBIYA: Now you say in paragraph 37 – in fact in paragraph 37 you make a number of conclusions. Are

these your own conclusions or are these – are you quoting from a document?

MR CRAYTHORNE: These are my own conclusions flowing out of information that I had gathered in my SLAPP suit defence.

ADV SIBIYA: So in paragraph 37.1 tell us what you say there.

MR CRAYTHORNE:

10 “Whereas SSI’s original proposal was to procure rough diamond production through an outright purchase of production at a price determined by an independent valuer, SSI was permitted to change its bid proposal to the selling of rough diamonds through an auction process to the highest bidder. This favoured SSI and afforded it a competitive advantage over other bidders. SSI was also permitted to include 1.5% handling fee by handling the rough diamonds.”

ADV SIBIYA: And then in paragraph 38 you say:

20 “It seems self-evident that the outcome of that process was a foregone conclusion.”

As you have just testified.

“And that the process itself was a mere sham put on by the PSJV management team headed by the CEO Carstens to try to create a façade of compliance

with required procurement processes.”

That is your own conclusion.

MR CRAYTHORNE: That is my own conclusion, yes.

ADV SIBIYA: And then in paragraph 40 you say:

“Having won the tender SSI went from being a dormant shelf company to suddenly appearing on the local Diamond Trading scene as the PSJV’s new marketing and sales service provider taking delivery of its first tranche of multi-million rand rough diamonds on 15 March 2015.”

MR CRAYTHORNE:

“At its new offices located at 1 River Street, Houghton, Johannesburg.”

That is correct.

ADV SIBIYA: Yes, that is what I wanted to check, what did you want to highlight there?

MR CRAYTHORNE: What I wanted to highlight there was the fact that a considerable amount of money had been spent in anticipation of winning this tender.

20 **ADV SIBIYA:** So the new office as created in anticipation.

MR CRAYTHORNE: Ja, ja.

ADV SIBIYA: Alright. Now you say in paragraph 42:

“As will be demonstrated below, the awarding of the tender to SSI and the subsequent renewal of its contract has contributed to the collapse of Alexkor

and with it, the economies of Alexander Bay and Port Nolloth and RMC.”

MR CRAYTHORNE: Correct.

ADV SIBIYA: Is that part of the reason why you came here?

MR CRAYTHORNE: Absolutely.

ADV SIBIYA: Now in the next section you detail the links between Scarlet Sky and the Guptas. We know that some of this was not your own investigation and you mention that
10 part of it was dealt with in the investigation by Peter Bishop. Can you talk to these findings, was any of what follows between paragraph 43 and 48 your own investigation or is this based on the investigation that you referred to?

MR CRAYTHORNE: This is my own information, this – but I may have drawn on documents that were provided to me. But I do not see anything here that ...[intervenues]

ADV SIBIYA: You did not find yourself?

MR CRAYTHORNE: Ja.

20 **ADV SIBIYA:** Okay. Now in these paragraphs you mention the links. Can you tell us what the links are without necessarily repeating what is in the affidavit? These are the links between SSI and the Guptas as discovered by you.

MR CRAYTHORNE: Ja, when you look at the individuals that are involved with the outcome of SSI being inserted in Alexkor's diamond value chain, they are very well-known individuals in the public discourse around state capture.

ADV SIBIYA: Other than Moodley, who would you be talking about?

MR CRAYTHORNE: I have mentioned here Malusi Gigaba, Mosebenzi Zwane, Rafique Bagus, Mervyn Carstens, Kuben Moodley, Percy Khoza, Kellerman, Hantsi Matseke, Daniel
10 Nathan, Selwyn Nathan, Marc Chipkin and Salim Essa.

ADV SIBIYA: Yes. Now tell us, you say in paragraph 48.1 that Malusi Gigaba was instrumental in the awarding of the tender. Now we know that the tender was awarded in March 2015 and that Malusi Gigaba was no longer a Minister at the Department of Public Enterprises at that time so when you answer the question of why you say he was – he is the first person you list as having been instrumental in making sure the award was made to SSI.

MR CRAYTHORNE: The name came first in mind because
20 this is when the state capture project actually began with the appointment of Malusi Gigaba and him gaining influence over the strategic future of Alexkor. So in my mind he was involved, but I will concede that he was not directly involved but he was certainly laying the groundwork for what was to come later. So I will concede

that it is not correct to say that he was directly involved but he was certainly a pivotal player in the overall theme of state capture at Alexkor running from 2010 to where we are today.

ADV SIBIYA: Yes and in 2010 what happened?

MR CRAYTHORNE: He became Minister of Public Enterprises.

ADV SIBIYA: Now sorry to take you back because I have taken you to paragraph 48 but I need you to go back to
10 paragraph 44. In paragraph 44 ...[intervenes]

CHAIRPERSON: I am sorry, just to make sure that the two of you are on the same page. Mr Gigaba was appointed as Minister of Public Enterprises with effect from the 1 November 2010, he replaced Ms Barbara Hogan.

MR CRAYTHORNE: That is correct.

CHAIRPERSON: And I think he remained Minister of Public Enterprises until 2014, after the general election.

ADV SIBIYA: Yes.

CHAIRPERSON: So if you look at the term or the period
20 during which he was Minister of Public Enterprises, are there any decisions that he made relating to Alexkor which you associate with him having played a role in the alleged state capture – alleged capture of Alexkor?

MR CRAYTHORNE: Yes, Chairman, because Malusi Gigaba or ex-minister Malusi Gigaba was instrumental in

repurposing the board for the purpose of taking Alexkor ultimately out of diamond mining and into coal mining which I view to be an absolute strategic blunder of epic proportions and was one of the issues that I tried to deal with by confronting the Portfolio Committee in parliament over this strategic decision and I wrote a report to parliament trying to raise the alarm bells but ultimately all of my efforts to draw attention to how catastrophic it would be to take Alexkor, which had just resolved the Gordian
10 knot of the land dispute, and was all set now to recover and rebuild itself after that internecine fight, was now going to be misdirected into a misguided strategy around coal when it had no – absolutely no, in my view, strategic reason to want to go there, it had every reason to want to focus on the marine diamonds because there is a such an enormous future in marine mining on the West Coast of South Africa and you can see it in Namibia, Namibia has a flourishing marine mining industry. They are investing trillions in building capacity and we sit with a moribund
20 industry on the other side of the maritime boundary.

CHAIRPERSON: Now you mention that you communicated with the Portfolio Committee in parliament to try and bring this issue to their attention. Do you have copies of correspondence between yourself and the Portfolio Committee and are they here in the bundle?

MR CRAYTHORNE: Volumes.

CHAIRPERSON: Okay, alright, that is important because part of what the Commission is looking at is what was parliament doing about some of these matters.

1. Which may have been in the public domain.
2. Which may have been brought specifically to their attention by members of the public.

So it is important to have that evidence to say here is the member of the public who brought these matters to the attention of parliament, what was parliament's response, did they acknowledge receipt, did they respond in substance, what did they do about it or were these pleas simply ignored?

MR CRAYTHORNE: They were simply ignored.

CHAIRPERSON: Okay, thank you. Ms Sibiya?

ADV SIBIYA: Thank you. I am trying to decide whether to continue the vein where the Chair as started or to finish the parts I was dealing with. I think I will finish the part I was dealing with.

20 **CHAIRPERSON:** Ja.

ADV SIBIYA: And then continue in this vein.

CHAIRPERSON: Ja, okay.

ADV SIBIYA: Thank you. Mr Craythorne, I was referring you back to paragraph 44 on page 12.

MR CRAYTHORNE: Yes.

ADV SIBIYA: Where you say – where you set out the group structure that was submitted with the proposal for the first tender by SSI. Now at this time 60% of the shares were owned by a company represented by Moodley and 40% was owned by DMT represented by Daniel Nathan.

MR CRAYTHORNE: Correct.

ADV SIBIYA: Okay. And then in paragraph 45 you tell us about the current shareholding. Now who told you about this current shareholding?

10 **MR CRAYTHORNE:** This current shareholding I am not sure it could have come from – I have to refresh my mind because I have drawn on so many resources, I think it could have come from the Commission’s investigators or Mr Henk Smith, I honestly, I cannot remember offhand.

ADV SIBIYA: Okay, and it says – because I want to know whose opinion is this reflected in paragraph 45.3, because in paragraph 45 you then set out a different shareholding reflecting 30% owned by the Richtersveldt Community Trust, DNT still owning the 40% and then in 45.3 you say
20 30% was owned by a black female who Daniel Nathan informed a Democratic Alliance member of Parliament, Veronica van Dyk, when she visited the premises in December 2018 that this member, this black female is Reagan Phillips and then you say the company searches could not confirm this.

MR CRAYTHORNE: That's correct, Ms Veronica van Dyk her constituency is Namaqualand so it is not her portfolio, mining is not her portfolio but she has great affinity for the people of Namaqualand, she has seen the devastation left behind the terrestrial mining activities over the past 70 years and she was introduced to me by a fellow female diamond diver, there are female diamond divers, who said that Ms van Dyk was quite passionate about the Richtersveldt and Namaqualand and wanted to learn more
10 and that resulted in a friendship whereby she would help me try and get answers which I was unable to get through any others means, by launching questions in Parliament, so there were a whole series over time of questions and one of the things that Veronica revealed to me was because of the questions that she was asking in Parliament she was approached by certain individuals, who I haven't mentioned in my affidavit, so I won't mention it here, who were concerned about the questions that she was asking in Parliament and assured her that she was effectively
20 barking up the wrong tree, and there was no substance to what myself and others were saying in the EOC and invited her to go and attend the auctions.

I have never attended an auction because there is no point in attending an auction without having access to data, it is pointless, so Veronica did go, Ms van Dyk did go

an auction, met Mr Daniel Nathan and upon meeting Mr Daniel Nathan he informed, according to her, that the shareholding that had been relinquished by Kuben Moodley had subsequently been taken up by two individuals, one of whom was the Financial Accountant of Alexkor and the other was Company Secretary, Ms Reagan Phillips but that was – I only was told that by Veronica and I couldn't confirm it in any way Chairperson.

ADV SIBIYA: Okay thank you. Now I am taking you back
10 to where you were – where you were explaining why you say former Minister Gigaba was instrumental in awarding of the tender to SSI.

If I may just refer you to paragraph 49 on the next page, page 13. You start saying that at the time of the appointment of SSI Bagus was both the Chairman of Alexkor and of the RMC Alexkor Joint Venture and then you say he was appointed the Chairman of Alexkor by Gigaba in September 2012. When Bagus was appointed all of the directors of the board of Alexkor resigned and six new
20 directors were appointed.

What were you saying here?

MR CRAYTHORNE: What I was saying here was that the Board had been reconstituted to fit his vision for Alexkor becoming a coal major.

ADV SIBIYA: When you say his vision who is the he that

you are talking about?

MR CRAYTHORNE: That is the vision which was announced by both Mr Gigaba as well as the Deputy Minister at the time and it was also given in his testimony in I think 2018 before Parliament on the Eskom inquiry he was asked by the Minister, by the Portfolio Committee Chairlady, I Ms Ngangu Gcabashe, about what he had done to advance emerging black miners and he repeated that he had intended to develop emerging black miners by
10 redirecting Alexkor out of diamonds and into coal and into partnering with emerging black coal miners to supply coal to Eskom.

CHAIRPERSON: Was it not strange to take a company that is based where Alexkor was based, where it had been dealing with the mining of diamonds and say it must now also direct its attention to coal mining in Mpumalanga?

MR CRAYTHORNE: Absolutely but the reasoning given was the PSJV and the fact that the PSJV had effectively sidelined Alexkor itself as a company because Alexkor will
20 only have oversight, so in principle in some respects there was nothing wrong with Alexkor looking for an alternative revenue stream, but there was something very wrong in doing it when it wasn't budgeted or costed, so the money to support all of the activities that were taking place, all of the consultants that were being paid to pursue a coal exit

strategy was coming from the efforts of myself and my fellow diamond divers.

So while we were producing very profitably for the PSJV a lot of money, a significant amount of money was being invested in these coal mining ambitions and you could see Alexander Bay as a town deteriorating, you could see our operations and the support of our operations deteriorating and still the money kept on flowing and Parliament raised the issue in 2016 when I attended the
10 Portfolio Committee briefing, because it had been announced already in 2013 I think in the annual reports that Alexkor was going to start pursuing coal mining opportunities and various other opportunities beyond the Richtersveldt and my argument was it cannot be fair that enormous amounts of money are expended by Alexkor pursuing projects funded by people like myself that don't have any intention of benefitting us.

CHAIRPERSON: Ja, okay, Ms Sibiya?

ADV SIBIYA: Thank you. According to your knowledge
20 did Alexkor in fact even have the expertise to embark on this new direction?

MR CRAYTHORNE: I don't believe so.

CHAIRPERSON: And the resignation of the other board members to which you refer, of the Board members to which you refer in paragraph 49 I think when Mr Bagus was

appointed do you know the circumstances under which they resigned, were they asked to resign, did they decide to resign on their own in protest to something or what was the position, or had their term come to an end, is that something you know, or is that something you don't know?

MR CRAYTHORNE: Chairperson at some point I remember tracking down Dr Di, Dr V Magen, I believe at the time that I got hold of her she was living on the West Coast, I think she had retired and I had a very long and
10 cordial discussion with her trying to find out what was going on, and I couldn't get ...[intervenes]

CHAIRPERSON: A straight answers?

MR CRAYTHORNE: I couldn't get a straight answer no.

CHAIRPERSON: Ja, okay so at this stage all you are going to say is they resigned but what the reason was you are not sure.

MR CRAYTHORNE: Ja.

CHAIRPERSON: Okay, alright.

ADV SIBIYA: Thank you, in paragraph 50, five zero, you
20 then link Mr Bagus to the board meeting of ...[intervenes]

CHAIRPERSON: Of course Ms Sibiya it may be that when they resigned they would have furnished letters of resignation and those maybe on record within the company and maybe some of them would have stated the reasons so that can be checked, the reasons may be relevant,

because in other SOD's there has been evidence of certain people being pushed out of certain positions so that others would be appointed and then certain things happened after those appointments had to have happened, so it is important to check whether the reasons for the resignations may have anything to do with that.

ADV SIBIYA: Thank you Chair, we will follow up on that.

In paragraph 50 Mr Craythorne you mention that Bagus attended the Alexkor Board meetings as well as those of
10 the joint venture including those of the 23rd January 2015 and 29 January 2015 where the decisions to support SSI were made.

MR CRAYTHORNE: That's correct.

ADV SIBIYA: And then you say after the meeting of 23 January 2015 Korabie resigned.

MR CRAYTHORNE: Correct.

ADV SIBIYA: This is the same Korabie that had scored a 100, that had scored SSI 100?

MR CRAYTHORNE: That is correct.

20 **ADV SIBIYA:** Do we know why he resigned?

MR CRAYTHORNE: In the Audit & Risk Committee report that was compiled for former Minister Lynn Brown, it was recorded in that report that Mr Korabie resigned around the time that the due diligence was not being done and Mr Korabie had raised quite a lot of objection to the award

without a proper due diligence and further information was revealed to me by way of Mr Sam Sole from Amabhungane who shared the information that Alexkor had provided him in response to questions he had asked the PSJV Board in response to prompts from me as whistleblower and in the response that he had got and in the article that he wrote for Amabhungane, I beg your pardon, he mentioned that there – it was a burning issue for Korabie, which it clearly is because he awarded them 100% but then was extremely
10 unhappy when they were appointed without their being a due diligence.

ADV SIBIYA: Thank you. You carry on to speak about Carstens and you say he was appointed as the CEO in paragraph 52 on page 15, you say he was appointed as the CEO of the joint venture in August 2012 and then you mention in the next paragraph that the Audit & Risk Committee meetings were attended *inter alia* by Carstens, Dr Paul, Dr Briscoe who were present at the meeting of the
15th of January where the decision to support SSI were
20 made and that these are the same people that attended the technical committee meetings, so you are linking again Carstens, as you indicated in paragraph 48, that these are the people that were instrumental in ensuring that the tender was awarded.

Now you say there are Gupta associates linked to

State Capture, why do you say Carstens is a Gupta associate linked to State Capture?

MR CRAYTHORNE: Well because Carstens compromised himself so obviously in an effort to accommodate what a Gupta linked company was executing upon Alexkor, so his behaviour is the basis upon which I link him to the Guptas, because no rational person would have done that.

ADV SIBIYA: Yes, in the face of all the shortcomings with its SSI tender.

10 **MR CRAYTHORNE:** And also the vicious response and relentless victimisation that he inflicted upon myself and other contractors that tried to raise valid concerns regarding the Gupta links of this entity, he defended them viciously.

ADV SIBIYA: And we won't forget that he indicated there had been a due diligence.

MR CRAYTHORNE: Correct.

ADV SIBIYA: No evidence existed and when in fact the Company Secretary said there hadn't been.

20 **MR CRAYTHORNE:** That is correct.

ADV SIBIYA: You move on and you deal with Khoza, Mr Percy Khoza, you deal with him in paragraph 54 and you say he was appointed as the CEO of Alexkor and he was a mining executive with both diamond and coal experience, and then you make a – you draw a conclusion that he was

hired in part to pursue Alexkor's diversification into coal approved by Gigaba. Why do you say that?

MR CRAYTHORNE: Because he told me personally in a meeting in Cape Town during one of the Indabas, I forget which one, I forget which Mining Indaba it was, that I had met Mr Khoza and he had told me in the presence of a former Alexkor Chief Executive as well as a colleague of mine from the marine mining industry, that he had been brought on board to execute the coal strategy but he was
10 going to resign from Alexkor.

ADV SIBIYA: Okay then you go on and you deal with Mr Moodley, of whom you have already told us, and in paragraph 57 on page 15 at the top of page 15, you say that a number of media reports have linked Moodley to the Guptas and to the erstwhile Minister of Mineral Resources, Zwane, who is infamous for his involvement in the Vrede Dairy Project which paid for the Gupta wedding.

MR CRAYTHORNE: Correct.

ADV SIBIYA: And you mention that you have noted that in
20 the Commission witnesses have stated that Moodley assisted Trillian Capital to loot Eskom and assisted the Gupta's in acquiring Optimum Mine.

MR CRAYTHORNE: Correct, that flows out of the Public Protector's Report as well.

ADV SIBIYA: Mmm, and then you carry on, would you like

to read the last line there?

MR CRAYTHORNE:

“It would appear that he has also assisted the Guptas in looting the diamond resources in the Richtersveldt for Daniel Nathan and other connected persons benefit.”

ADV SIBIYA: And then you move to Mr Essa. Do you have personal information in relation to Essa’s involvement? I note that you mention that much of this
10 was discussed in Bishop’s affidavit, so that is why I don’t want to go into it if you ...[intervenes]

MR CRAYTHORNE: Yes and also Essa’s links were also made public by if I recall the – or a key link in this was the Integrated Capital Management which had very strong links to Salim Essa but also had very strong links to Scarlet Sky because Marc Chipkin was in fact the Chief Operating Officer of Scarlet Sky at the time that it was punting for the tender, so the Chipkin, the Marc Chipkin links and the Trillian story in my mind positively link Mr Salim Essa to
20 the SSI story.

ADV SIBIYA: Mmm.

CHAIRPERSON: On a lighter note Mr Craythorne I wanted to say I see that you when you give an answer you look at the evidence leader and it is only when she doesn’t look at you that you look at me [laughing].

MR CRAYTHORNE: I am learning. I asked her ...[indistinct] but she said that would be too obvious.

CHAIRPERSON: [laughing] let us continue.

ADV SIBIYA: Indeed Chair, I will draw no meaning from that at all, thank you Chair. You carry on and you mention Kellerman, that is Zerina Kellerman.

MR CRAYTHORNE: Correct.

ADV SIBIYA: Yes. We have heard of Kellerman in the earlier evidence of Mr Torres.

10 **MR CRAYTHORNE:** She was the Chief Legal Officer of Alexkor at the time that SSI was being introduced. I did not investigate or look much into Ms Kellerman, I know very little about what her links are further than the fact that she was subsequently appointed as an advisor I think to – as I record here Mazibenzi ...[indistinct – dropping voice] but there is also some emails where she was copied in during the period so she was very much on board the process of bringing Scarlet Sky into Alexkor but I am not certain exactly what active role she was playing so it
20 looked to me more like you know it doesn't seem to me that – I don't have any evidence of – that I can say well she did exactly this or exactly that, but as the legal officer and with regard to her responsibilities for ensuring the governance she could have done much more to prevent these governance oversights taking place.

ADV SIBIYA: You go on to mention Ms Hantsi Matseke.

MR CRAYTHORNE: It was very clear yes to me as a marine miner how Ms Hantsi Matseke could become the Chairperson of Alexkor. My investigations in the public domain revealed her links to the former Premier of the Free State, Secretary General Ace Magashule, and her relationship so there were certainly deep concerns for me when I discovered this because it just added to the weight of the State Capture theme that was developing.

10 **ADV SIBIYA:** And from the timeframe that you give in this paragraph that she was the Chair of Alexkor from August 2015 to October 2018, you already testified that the – no you did not – sorry I don't want to put words in your mouth. Do you know if she was the Chairperson, well you say yes, I am sorry, I am confusing myself, you say she was also the Chair of the joint venture, so if you look at the timeframe of August 2015 to October 2018 she was the Chair at the time that the second award was made.

MR CRAYTHORNE: That is correct and she was also the
20 Chairperson of the Free State Development Corporation. So it was a curious mix of credentials.

ADV SIBIYA: And then the last institution that you mention is Regiment Capital.

MR CRAYTHORNE: Well Regiment – a lot of what I have subsequently discovered about Regiments Capital has

been through interaction with the Commission, but the individuals in Regiments Capital, in Trillian, Integrated Capital Management, it was a – seemed like there was a constellation of satellite entities revolving around Salim Essa's office in Melrose Arch, even Scarlet Sky's offices at the time the tender that the tender was placed it was right next door to Salim Essa, so in terms of connecting ...[intervenes]

CHAIRPERSON: How do you know that, is it because you
10 physically go there, or how do you know that?

MR CRAYTHORNE: No I have seen letterheads with the addresses of the various companies.

CHAIRPERSON: Yes.

MR CRAYTHORNE: And you know information in the public domain, the Budlender Report.

CHAIRPERSON: Yes, yes.

MR CRAYTHORNE: And various other reports, they all talk about a Melrose Arch centre of gravity when it comes to State Capture.

20 **CHAIRPERSON:** Ja, well it is important because as you may know there has been evidence in regard to Eskom.

MR CRAYTHORNE: Absolutely.

CHAIRPERSON: Relating to Mr Essa meeting with certain Eskom officials at Melrose Arch in some offices there, so – but you say you base what you are saying on letterheads

and information in the public domain?

MR CRAYTHORNE: Correct.

CHAIRPERSON: Okay.

ADV SIBIYA: On page 16 of the same bundle in paragraph 62 you make a submission that the buyers tender process and the involvement of the aforementioned Gupta linked individual are enough evidence to reasonably conclude that the insertion of SSI into the PSJV's Diamond Value Chain was a Gupta sponsored State Capture project
10 that followed the same *modus operandi* used by the Guptas in the capture of other SOE's.

MR CRAYTHORNE: That is correct.

ADV SIBIYA: Mmm. And you carry on that there was not even a need for such a company to be appointed, for any company to be appointed in this role in the next paragraph?

MR CRAYTHORNE: Yes, I am going to read it and then follow it with perhaps some further explanation, is that in order?

20 **ADV SIBIYA:** Yes that is fine.

MR CRAYTHORNE: Paragraph 63 reads as follows:

“Indeed there was absolutely no need for any marketing or sales company to promote the diamonds recovered by PSJV. Given the expert opinion of Charles Windham regarding the self-

selling quality of Alexkor's diamonds, and example set by Zimbabwe State owned diamond company, who sell their own productions in Zimbabwe, I submit that international buyers will travel to Zimbabwe to buy Mirandi diamonds, they will certainly also travel to Alexander Bay to buy Alexander Bay's diamonds, Alexkor's diamonds."

So Charles Windham is an internationally acclaimed expert on polished and rough diamonds. His company for many
10 years was the government diamond evaluator for the Canadian Diamond Industry. He was brought into contact with Alexkor around 1998 by the former or the Chairperson at the time who was Advocate Nona Gaza, because Advocate Gaza had deep concerns already then about what was taking place, and she went and visited Ma ...[word cut off] and did extensive research Chair and did extensive research on the diamond pipeline it is what we call it in the industry. And – and as part of the process Mr Charles Windham submitted a report in 1998 to Alexkor making it
20 very clear to Alexkor that by turning themselves into an exclusive agreement with De Beers – at the time it was De Beers it was costing at least 23% of what could have been achieved through a process of proper price discovery. And the – the report that Mr Windham authored even he as an expert based in London knew that there is no better address

in terms of the [00:01:00] geology than the address that Alexander Bay has. It has got the – what – in the mining industry they talk about a phenomenon called closeology so you have scientific geology but then you have closeology. So if you mining diamonds hand over fist like they are in Namibia you should be able to be mining diamonds hand over fist across an imaginary line in South Africa. It is the same deposit. So that is what closeology means and that is a point that already in 1998 somewhere as far removed from
10 Alexander Bay as Mr Charles Windham was making. So the – regarding the quality of Alexkor’s diamonds he made it very clear that Alexkor does not need any marketing the diamonds are so well renowned people will come and buy them in Alexander Bay. This whole story of marketing this and marketing that it is all nonsense. It all opens up opportunity for state capture and for ravaging the value pipe – the value chain and the diamond pipeline.

ADV SIBIYA: Thank you very much. Chair this is the end of this line of questioning so I am looking at the time as
20 agreed.

CHAIRPERSON: Well we can stop now or we could go on for another fifteen minutes and stop at half past. If that is fine with everybody I think it would be fine with everybody. Maybe let us do that.

ADV SIBIYA: Thank you Chair.

CHAIRPERSON: Just take the next fifteen minutes then stop at half past.

ADV SIBIYA: Thank you Chair.

CHAIRPERSON: Okay.

ADV SIBIYA: The next section of your affidavit Mr Craythorne you deal with how there was also a breach of statutory provisions. We are still on page 16. You deal with the provisions of the Diamonds Act.

MR CRAYTHORNE: That is correct. By law you are not
10 allowed to conduct licensed activities under the licence of someone else. So the – the activities of Scarlet Sky which were conducted on the strength of a licence held by Daniel Nathan Trading is – is not permitted. It is unlawful.

ADV SIBIYA: So in addition to the other irregularities in relation to their appointment this was in fact unlawful for SSI to then having been appointed – do what it was appointed to do?

MR CRAYTHORNE: That is correct.

ADV SIBIYA: And then you explain in paragraph 70 on page
20 17 paragraph 70 that there is even a prohibition on the utilisation of unregistered premises as a trading house.

MR CRAYTHORNE: I am not sure what the situation is now but at the time there – the premises that Scarlet Sky was conducting the auctions was not registered as a tender – what they call a tender house. So the premises themselves

have to be licensed as does the entity that is managing and conducting and directing those activities on those premises.

ADV SIBIYA: And then you – you take us back to that question that we have already dealt with in Parliament and you draw a conclusion on page 18 at the top of page 18 paragraph 73.1 and you say:

“Although Daniel Nathan is a holder of a diamond dealer licence and a diamond trading house licence these licences were
10 issued in the name of DNT and not SSI.”

What is the significance there?

MR CRAYTHORNE: The significance of that is that it is irrelevant that he has a licence. It is a requirement that the – the entity that is conducting the business and the premises upon which they are conducted has – that entity has to have the licence. It has to be in that entity’s name. It cannot – it is like the driver’s licence as Mr Torres said. You cannot drive a car on someone else’s licence.

ADV SIBIYA: Okay. Now we move to a different section of
20 your affidavit and we deal on page 19 with a complaint levelled by the mining contractors. You start out by saying that the value has considerably diminished. You have already told us how you calculated the value by producing your own indices and doing comparisons. Now you are telling us that in October 2017 you wrote to the company

secretary of the JV on behalf of the EAC's members and who had – who had expressed their concern and anger about the ever decreasing values attributed to the diamonds produced by them. Now was this after or before you posted the pricing on the outside of the mine – the plant?

MR CRAYTHORNE: This was around the same time. I cannot be certain whether it was before or after.

ADV SIBIYA: What was the gist of what you wrote to Ms Reagan – Ms Phillips?

10 **MR CRAYTHORNE:** The gist was effectively that there was no – well first of all there was a huge amount of discontent regarding the price performance but there was also a lot of consternation about the lack of information about what – who these people were and you know what was – what was the reason for this dramatic drop? So my – the purpose of my letter to Ms Phillips was to say, look everybody is very unhappy about this situation. Can we get together as the EAC representing the contractors and yourselves and can you start making some disclosures so that you know we can
20 at least understand who it is that is behind this poor performance and how it is that they came to be where they are? And there – I also raised the concerns around the disappearance of our tailings which was also a burning issue. I raised also concerns about the lack of disclosure in the annual reports. Because it is vital for us and in fact any

user of an integrated report to have segment information. You need to understand if there is cross subsidisation of business units which are the business units that are performing well and which are the business units that are not? And if you do not have segment reporting you have no way of understanding why it is that when you have a segment that you are a part of that is performing very well it is that the overall enterprise is going downhill.

ADV SIBIYA: Now you pointed out a number of things.

10 What was the response that you received because to me this sound like serious issues? So what response did you receive?

MR CRAYTHORNE: I can – can I read the response?

ADV SIBIYA: Huh-uh.

MR CRAYTHORNE:

20 “Dear Gavin your email 09 instant is noted. Any issue pertaining to the diamond sales and diamond pricing trends must be addressed directly with the PSJV. SSI is the marketing agent of the PSJV duly appointed by the board. We cannot provide information of a service provider to third parties. You are welcome to discuss any issues with SSI or any other service provider of the PSJV with management. Regards Reagan

Phillips."

ADV SIBIYA: Ja and after this you wrote another email which is then when you went into greater detail as you have just explained?

MR CRAYTHORNE: That is correct. Actually it was the second letter that I went into the type of detail about what sort of transparency it is the contractors were seeking in order to gain some kind of understanding as to why their businesses were suffering as a result of such poor pricing
10 performance. And I – I note in my affidavit that I received no response to that email.

ADV SIBIYA: Hm. Instead what happened after that email in paragraph 85?

MR CRAYTHORNE: After I raised serious concerns regarding the sharp decline in the prices of our diamonds my and several other miners' contracts were cancelled.

ADV SIBIYA: So in the timeline how soon after these emails were your contracts cancelled?

MR CRAYTHORNE: Well before the contracts were
20 cancelled they were – they were actually cancelled by way of non-renewal. So we had been contractors with Alexkor for many, many years and the contracts would get renewed every three years or so and what happened in our instances the – the whistle blowers from the EAC did not have their contracts renewed but in my case because they felt that my

behaviour was particularly egregious to them they actually blocked me personally. So before they cancelled my company's contract they knocked me out as the key person involved in running the business and blocked my access into the mine. So that began what was to be the start of the decimation of my financial wellbeing. Because that resulted in sixteen months of shut down without you know vessel insurance which I – to this day I cannot pay the insurance on my vessel. This year I nearly lost my vessel twice. Just
10 before I came to the commission I struggled in a big storm 35 knot wind where the moorings broke and I had to go into the mine and myself and swim out to my vessel to save that vessel. If that vessel is gone on the rocks that is the only thing my wife and my family have left and we cannot insure it because we – they are stealing our diamonds in the plant. So – it has been a tough journey to get here Chairperson.

CHAIRPERSON: Yes.

ADV SIBIYA: Mr Craythorne you say it was yours and several other miners' contracts that were cancelled. Were
20 they also people that had been vocal against certain things at the PSJV?

MR CRAYTHORNE: Yes but not very vocal. Look I – I – over the four years from the time that I first blew the whistle in Parliament in November 2016 it was not as if we came out guns blazing. It started off you know friendly request to – I

wrote to the Alexkor board and I said look there are things that are going on in Alexander Bay which have serious implications for you as the 51% owner in this PSJV and with regard to your – your assets – your very valuable diamond assets that we need to know about. And I gave an undertaking – I corresponded with Zukiswa Rantho who was then the chairperson of the Portfolio Committee. She was very interested and we found out in a subsequent meetings that we had my colleague George and I that her son had
10 been threatened in a street coming out of school. Okay. She told me and George that she had tried time and time again to arrange an oversight visit to Alexander Bay and every time she tried to arrange it the answer was no because it was too dangerous and the members of the Portfolio Committee safety could not be guaranteed. The same allegations were made on record it is in the [00:15:37] by Honourable Cathy Labuschagne where she stated in a Portfolio Committee that she was told to stay away from Alexkor and we need to find out who it is that was
20 intimidating Zukiswa Rantho and Cathy Labuschagne and going out of their way to make sure that Alexkor or the Portfolio Committee could not do oversight of what was going on in Alexkor.

CHAIRPERSON: What reasons were you given for the cancelation of your contracts?

MR CRAYTHORNE: The breakdown of the trust relationship.

CHAIRPERSON: What were you told was the factual basis for the conclusion that there was a breakdown in the trust relationship if this was clarified to you at all?

MR CRAYTHORNE: There was not much detail given.

CHAIRPERSON: Hm. Did you ask – ask them to tell you what they were talking about?

MR CRAYTHORNE: Well we – one colleague in particular wrote to Ms Phillips. I could understand why they were
10 upset with me because I was going to the press, I was going to the media but...

CHAIRPERSON: Ja.

MR CRAYTHORNE: That had only come very late in the day. So there had been a build-up of tension of tension so what – what became apparent to me Chairperson as someone – a member of the public that is if you want to make – if you want to get people’s attention you have to put yourself in harm’s way. They do not take you seriously. I had to put myself in harm’s way and end up getting slap suited by
20 Webber Wentzel and top advocates and then again getting another slap suit again. That destroyed my business. It destroyed my sense of wellbeing. It has had an immense impact but that is the kind of thing that you have to do before people actually start thinking well look why is this guy so crazy? You know is he a lunatic or does he really have

something that he has to be angry about?

CHAIRPERSON: Yes.

MR CRAYTHORNE: Or upset about.

CHAIRPERSON: And of course sometimes what – what happens is that harm is visited upon you to – so as to deter others from following in your footsteps.

MR CRAYTHORNE: And that is why there is so much fear amongst the – that is why we do not have a support base. We do not have a power base because when – when Mr
10 Wayne Cook very – when my – when I – when my access into the mine was cancelled Wayne simply wrote a letter to Reagan Phillips saying look this is a bit heavy. And you know she reacted very, very harshly to him and that resulted in him having his contract cancelled. And they – when he asked for an explanation they said to him because you Mr Wayne Cook are supporting Mr Gavin Craythorne.

CHAIRPERSON: What do you think they would say in defending their decision to cancel your contracts? What do you think they would put on the table? Do you think they
20 would have nothing factually other than to really talk about what indeed happened? Namely you were raising issues that they were uncomfortable with or do you think they would come up with some?

MR CRAYTHORNE: When – Chairperson when I first rang the bell in late November 2016 my concerns were not about

the Gupta's. The – the Gupta emails had not surfaced yet. The whole state capture story had not really dawned on us as a country of what was going on. I was more concerned with white monopoly capital state capture because I had read Santie Terblanche's book *Lost in Transformation* and that woke me up to what apartheid was all about. To what you know it is just you have the insiders and you have the outsiders. So if you are on the outside it is tough and sometimes you can get on the inside but then you got to play

10 the same game. So the only indication that I got was when I tried to point out to the Alexkor board who I met in Parliament listen the issues that you need to start paying attention to. I told them that I believe that the PSJV had been captured by Transhex okay. The entire PSJV top management is all Transhex executives and they are also part of – oh okay let me not go there for now Chairman. But it was very clear to me what was going on and I tried to warn the Alexkor board that the narrative that there was no future diamond mining potential for Alexkor was a horrendous lie. I

20 In fact authored a report discussing the local geology – historical production and why it was so important to start focussing on the marine. And I initially got a very warm response from Zukiswa Ntlangula who was a board member of Alexkor at the time. And when I met her in Parliament I had a very good discussion with her and I said to her, look I

will put together a report for you okay but I need your support. All that happened was that she referred what I was saying to Mr Carstens and that resulted in a month later just before the mine closed I got called into meet and face Mervin Carstens and Ms Reagan Phillips who were livered because what I had done and they said listen I am going to lose my contract. And I said straight to them and I said listen you know you betrayed us you know in terms of you know the Scarlet Sky issue and you know this Quesko [?] plan which had emerged and so on.

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CHAIRPERSON: Ja okay alright. We are – we have gone past half past five. I think we must stop here unless there is a question which you think should not wait.

ADV SIBIYA: I have.

CHAIRPERSON: Until Monday.

ADV SIBIYA: I have one question but I cannot guarantee how long Mr Craythorne will take in answering.

CHAIRPERSON: Okay.

ADV SIBIYA: So we can stop here.

20 **CHAIRPERSON:** Let is wait. Let it wait.

ADV SIBIYA: Yes Chair.

CHAIRPERSON: Okay we are going to stop at this time. Thank you to everybody for cooperation for us to work until now. We will continue on Monday then at ten o'clock and we will deal with other issues connected with Monday on

Monday in terms of other witnesses. So we are going to adjourn. We adjourn.

REGISTRAR: All rise.

INQUIRY ADJOURNS TO 11 JANUARY 2021

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