

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

11 JANUARY 2021

DAY 325



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Recording & Transcriptions

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TRANSCRIBERS:

B KLINE; Y KLIEM; V FAASEN; D STANIFORTH



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PROCEEDINGS RESUME ON 11 JANUARY 2021

CHAIRPERSON: Good morning Ms Sibiya, good morning everybody.

ADV SIBIYA: Good morning Chair.

CHAIRPERSON: Are you ready?

ADV SIBIYA: Yes Chair we are ready.

CHAIRPERSON: Mr Craythorne you – the oath you took on Friday will continue to apply in – with your evidence this morning. Ms Sibiya I have reflected on Mr Craythorne’s
10 entire affidavit. I do not think that it is necessary to take longer than two hours to complete his evidence. He has confirmed the contents of the affidavit as correct. What remains is that you must just focus on important issues – cover important issues in his oral evidence and I do not think that we need more than two hours for that so that thereafter I can deal with the question of what is going to happen with today’s other witness. Okay. So go for the important issues so that he can cover the important issues in your oral evidence otherwise everything that he has said
20 in his affidavit is before the commission; he has confirmed it to be correct; it is there to be read.

ADV SIBIYA: Thank you Chair.

CHAIRPERSON: Okay.

ADV SIBIYA: Thank you Chair that is duly noted. Mr Craythorne you heard that.

MR CRAYTHORNE: I did.

ADV SIBIYA: Okay thank you very much. On Friday when we left off you were dealing with the complaints that you had levelled against the mining contractors and on page 23 of Bundle Number 4 that is where we – that is where we stopped. We were on page 23 of Bundle Number 4. You indicated in paragraph 86 you say that it is only after Moodley was implicated in state capture that your contract was reinstated.

10 **MR CRAYTHORNE:** That is correct.

ADV SIBIYA: Do you link the two?

MR CRAYTHORNE: I do link the two because it became apparent at that point that the complaints that I had made in regard to Mr Moodley's involvement in Scarlet Sky seemed to have reason to be concerned over.

ADV SIBIYA: Okay. And you end off that section by indicating that the South African tax payers and the Ritchtersveldt community also deserved protection from what you would describe as the wholesale theft of the
20 marine diamonds of Alexkor. You say this has been achieved by manipulation of the provisions of the agreement between the PSJV and the SSI and the persistent undervaluation of the diamonds produced by the contractors.

MR CRAYTHORNE: Correct.

ADV SIBIYA: Now I will take you back on your affidavit to a section we did not deal with which is to be found – my apologies in the previous page on page 18.

MR CRAYTHORNE: Page 18?

ADV SIBIYA: Yes. In that page you talk about the – how the board of the Ritztersveldt mining company was unlawfully constituted.

MR CRAYTHORNE: That is correct.

ADV SIBIYA: Now the relevance of this unlawful
10 constitution of the mining company is what transpired at the time that it was not properly constituted. Is that correct?

MR CRAYTHORNE: It was during the lead up to the – the awarding of the tender and the – the launching of the tender process that it became clear to the board of Alexkor as well as the Joint board of the PSJV that the directors of Ritztersveldt Mining Company were not duly appointed. There has been a court case brought by Mr Craig Matthews against the removal of him as the sole director of
20 Ritztersveldt Mining Company and in his place the appointment of three other directors who were then the directors that formed the representation on the PSJV for Ritztersveldt Mining Company. And I know that from a letter written by Mr Craig Matthews to Alexkor as well as Minister Lynne Brown which flowed out of his successful

court action and that was confirmed by the Samela Judgment.

ADV SIBIYA: Yes.

MR CRAYTHORNE: Confirmed there was a judgment confirming that he was at that particular time; that critical time he was in fact the only lawfully appointed director. So the three Richtersveldt Mining Company representatives that were instrumental in on-boarding Scarlet Sky were not lawfully – they were acting unlawfully because they should
10 not have been in those positions. And Mr Craig Matthews made it very clear to both the boards of Alexkor and the board of the PSJV.

ADV SIBIYA: Hm.

ADV SIBIYA: And...

CHAIRPERSON: Do we have a copy of that judgment?

ADV SIBIYA: Yes, yes Chair.

CHAIRPERSON: In bundle?

ADV SIBIYA: Yes Chair in fact it is on page 469 of this same bundle that we are busy with. If we can turn there.

20 **CHAIRPERSON:** Okay – okay thank you.

ADV SIBIYA: Thank you Chair. Now on this page – are you there yet Mr Craythorne?

MR CRAYTHORNE: Almost there. I am now.

ADV SIBIYA: Okay. Now in this case we can see that this is a case that the judgment was delivered on the 4

September 2014 by Samela J, correct? On page 469. Can you see where it says the judgment was delivered on the 4 September 2014?

MR CRAYTHORNE: Correct.

ADV SIBIYA: Okay now if we can turn to page 483.

MR CRAYTHORNE: I have it.

ADV SIBIYA: The order is the third respondent was unlawfully removed as a director of the RMC on 22 November 2013.

10 **MR CRAYTHORNE**: Correct.

ADV SIBIYA: On page 469 where we last were it is clear that the third respondent is Craig Llewellyn Matthews, correct?

MR CRAYTHORNE: Correct.

ADV SIBIYA: Now the court order continues to say:

“The third respondent whom we now know is Mr Matthews is the sole director of the RMC.”

MR CRAYTHORNE: Correct.

20 **ADV SIBIYA**: Yes. And on the very next page on page 484 we can see that this order is being sent via email by Mr Matthews the third respondent who is the sole director to a number of people. Who are those people that he sent this court order and judgment to?

MR CRAYTHORNE: That is Zarina Kellerman, Zuki which

is Zukiswa Ntlangula.

ADV SIBIYA: What are their roles? Sorry when you mention a name can you tell us who that is?

MR CRAYTHORNE: Okay. Zarina Kellerman was the Chief legal officer at Alexkor Corporate.

ADV SIBIYA: Yes.

MR CRAYTHORNE: Zukiswa Ntlangula was a board member of the Alexkor SOC board.

ADV SIBIYA: Yes.

10 **MR CRAYTHORNE:** Raygen Phillips was the Company Secretary of the PSJV.

ADV SIBIYA: Yes.

MR CRAYTHORNE: Dr Raja Paul was a board member.

ADV SIBIYA: Of the JV or of Alexkor?

MR CRAYTHORNE: Of Alexkor. And I – and he was also a board member of the Joint board. Percy K that would be Percy Khoza was the CEO of Alexkor at the time.

ADV SIBIYA: Yes.

20 **MR CRAYTHORNE:** Dr Nena Mahutchwa Matabane I am not sure what her position in the company would have been. And then lastly Mr Mervin Cartens who was the Chief Executive Officer of the PSJV.

ADV SIBIYA: Yes. And if I may refer you also to page 400 and – my apologies I have lost my page Chair. Chair if the Chair will just bear with me. It is actually the very next

page 485.

MR CRAYTHORNE: I have it.

ADV SIBIYA: Okay. And on this – in this document this is a letter addressed from the Ritchtersveldt Mining Company to the directors of Alexkor and the CEO of the PSJV and the board secretary of the PSJV dated the 4 September, correct?

MR CRAYTHORNE: Correct.

ADV SIBIYA: And we can see that in this letter Mr
10 Matthews is communicating the content of the judgment.

MR CRAYTHORNE: That is correct.

ADV SIBIYA: And what does he say on paragraph 7 which is on the page 486?

MR CRAYTHORNE: Paragraph 7 reads as follows:

20 “The further implications are very serious in that in any decisions that were taken by the PSJV board since November 2013 are on the fact of it invalid for the mere fact that the Ritchtersveldt Mining Company representatives were not appointed by the RMC and had no authority to take decisions on behalf of the company and the PSJV board. You were advised in previous communications that subsequent to the finalisation of the aforementioned court

matters that RMC may review all decisions taken by the PSJV board since November 2013.”

ADV SIBIYA: Yes. And if I move you on to page 490. 90 – 490.

MR CRAYTHORNE: Yes.

ADV SIBIYA: What document is that?

MR CRAYTHORNE: This is an email or a letter transmitted by email from Mr Craig Matthews – oh no sorry it is
10 addressed – I beg your pardon. It is a letter sent to Mr Craig Matthews from Alexkor.

ADV SIBIYA: Yes and what is the subject line?

MR CRAYTHORNE: Western Cape High Court Matter.

ADV SIBIYA: Now this seems to be a response to the letter that had been sent by Mr Matthews, correct?

MR CRAYTHORNE: That is correct.

ADV SIBIYA: And in paragraph 2 together with 2.1 what does it say there in that letter?

MR CRAYTHORNE: We – it starts with:

20 “As far as we do however note the following: Neither the company nor the PSJV were parties to the court action referred to in your aforementioned letter and as a result the attached – the attachment of the court’s ruling as well as

an expose of the court action is of no consequence to us.”

ADV SIBIYA: Now what do you make of that response from Alexkor?

MR CRAYTHORNE: I think it is a reckless disregard for good governance and for the high court.

ADV SIBIYA: Hm. And in fact I can take you further to page 495 of the same document.

CHAIRPERSON: You mean of the same bundle.

10 **ADV SIBIYA:** Of the same bundle – my apologies Chair.

MR CRAYTHORNE: I have it in front of me.

ADV SIBIYA: Now we can see that this is a letter on the letterhead of Adams and Adams.

MR CRAYTHORNE: That is correct.

ADV SIBIYA: Dated – and it is dated the 5 November 2014.

MR CRAYTHORNE: That is correct.

ADV SIBIYA: It is addressed to Mr Bagus but with a wrong spelling.

20 **MR CRAYTHORNE:** Correct.

ADV SIBIYA: Okay. Now if I can just refer you to – well they confirm firstly that they act for the Ritchtersveldt Mining Company and they are writing the letter at the direction of the sole director Mr Craig Matthews.

MR CRAYTHORNE: Correct.

ADV SIBIYA: And then in paragraph 4 they also confirm that:

“On considering your correspondence regarding the judgment it is apparent to us that you are under the mistaken belief that due to not being a party to the proceedings the judgment is of no consequence to you despite the central issue in the judgment being the directorship of our clients.”

10 **MR CRAYTHORNE:** Correct.

ADV SIBIYA: And then they go on to address this – what Adams and Adams referred to as he mistaken belief. Do you see that in paragraph 5?

MR CRAYTHORNE: I do.

ADV SIBIYA: Yes. And they say in paragraph 5.2 – 5.2:

20 “The fact that Alexkor was not a party to the said proceedings is irrelevant. The decision making process of the PSJV presupposes that the directors of our client were validly appointed and or validly removed.”

And it sets out what the judgment says.

MR CRAYTHORNE: Correct.

ADV SIBIYA: Yes. So if we turn further to page 497.

MR CRAYTHORNE: I have it in front of me.

ADV SIBIYA: Yes. In paragraph 5.4 do you confirm that it says:

“Although our client accepts that you and the community property association are co-signatories to the settlement agreement your primary contractual obligation in terms of the settlement agreement and the unanimous resolution are to our client and his correctly appointed board of directors.”

10 **MR CRAYTHORNE:** Correct.

ADV SIBIYA: Yes. And in paragraph 5.5 what is the last thing that they mention?

MR CRAYTHORNE:

20 “Outlined is particularly concerned by your failure to appreciate the potential for all the decisions taken by the PSJV from 22 November 2013 by an improperly constituted board to be rendered null and void. This is illustrated by your persistence in engaging the purported directors. Despite the court order and accordingly there is a very real danger that the PSJV may be exposed to damages claims in respect of contractual arrangements concluded with third parties after 22

November 2013.”

ADV SIBIYA: Yes. And we already know from your evidence that what had transpired in this particular period was that there had been a decision that was taken to appoint – to go out on tender for the appointment of a service provider for the sale of diamonds.

MR CRAYTHORNE: That is correct.

ADV SIBIYA: Okay. Now we note that we do not have a response after that letter – immediately after that letter.

10 Oh please correct me because I am wrong. On the very – on page 499 is a response. Mr Craythorne if I – if I am wanting you to confirm something that is incorrect just bring me to order.

MR CRAYTHORNE: I will do so.

ADV SIBIYA: Yes.

MR CRAYTHORNE: Thank you.

ADV SIBIYA: And on page 499 is a response dated the 7 November 2014 from?

20 **MR CRAYTHORNE:** It is from Alexkor and it is addressed to Adams and Adams attention Mr A Malber.

ADV SIBIYA: Yes and who is the author of the letter on page 500?

MR CRAYTHORNE: Ms Zarina Kellerman.

ADV SIBIYA: Yes. And in this letter does Alexkor accept the position as set out in the letter of Adams and Adams?

Do they – do they even deal the merits of what was in the letter from Adams and Adams? I will take you through to paragraph 4.

MR CRAYTHORNE: Yes Ma'am.

ADV SIBIYA: They say:

10 “We place on record that Alexkor is never pronounced or actively supported any factions in the Ritchtersveldt community. It has through its obligations supported the legitimately elected structures created in terms of the deed of settlement concluded between the Government of South Africa and the people of Ritchterveldt for the full and proper implementation of the deed of settlement.”

And in paragraph 5 they say:

20 “Alexkor has no authority over the affairs of the Ritchtersveldt communal property association or its subsidiaries. We refer you to”

And they refer to a judgment that deals with that.

MR CRAYTHORNE: Correct.

ADV SIBIYA: And then they carry on in paragraph 6 and they say:

 “We are advised that your client was

removed through proper resolutions by the majority shareholder of Ritchtersveldt Mining Company.”

Now is this correct given what the judgment says:

MR CRAYTHORNE: Well that shows utter contempt for Judge Samela in my view.

ADV SIBIYA: Hm. Because is it not what the Judge in fact said – did not – is not what the Judge in fact say the exact opposite of this assertion?

10 **MR CRAYTHORNE:** That is correct. They are contradicting Judge Samela.

ADV SIBIYA: Hm. Hm. Now that is the last of that at that stage and that is in November. That is on the 7 November 2014.

MR CRAYTHORNE: That is correct.

ADV SIBIYA: Now we – you have already given evidence that on the 6 November what had been done by SSI and other companies.

20 **MR CRAYTHORNE:** They had begun competing to – when the right to market and sell Alexkor’s diamonds by way the request for proposal 03/14 I believe it is.

ADV SIBIYA: Yes. And SSI had in fact on this submitted their – their show of interest or expression of interest.

MR CRAYTHORNE: That – that is correct.

ADV SIBIYA: So as at the date when this letter is being

written by Alexkor the – the process is on-going.

MR CRAYTHORNE: That is correct.

ADV SIBIYA: Yes. And a few weeks thereafter you have already testified as has Mr Torres that the proposals were in fact received by the PSJV and the PSJV continued to evaluate and take the necessary steps without the involvement of Mr Matthews who was the sole director at that time of the RMC.

MR CRAYTHORNE: That is correct. So the – the whole
10 tender process continued regardless of the implications that Mr Matthews had raised.

ADV SIBIYA: Hm. And what did this indicate to you?

MR CRAYTHORNE: This indicated to me a total lack of accountability or sense of probity in relation to corporate governance.

ADV SIBIYA: Hm. And in fact we know that – or we can see – let me take you to page 501 of that same bundle.

MR CRAYTHORNE: I have it before me.

ADV SIBIYA: Yes. And what is that document in front of
20 you? It is a letter.

MR CRAYTHORNE: It is a letter addressed to Minister Brown on the 25 February 2015 and it is authored by Mr Craig Matthews.

ADV SIBIYA: Yes and what does he say is the purpose of the letter in paragraph 2?

MR CRAYTHORNE: He states the following:

“The purpose of my letter is to bring to your attention recent developments within the RMC and to raise my concerns regarding Alexkor’s attitude to these developments.”

ADV SIBIYA: Hm. And in paragraph...

CHAIRPERSON: Ms Sibiya will you make sure that page 502 is replaced with a page that is along the same lines as page 50 – no, no 501? On my bundle 501 is fine but 502 is
10 the opposite of 501 in terms of how it is placed here.

ADV SIBIYA: Oh. Oh I understand.

CHAIRPERSON: It is – I do not know what happened to the person who was putting them in. So if you could have that corrected.

ADV SIBIYA: Thank you Chair we will attend to it. Now on page 501 in paragraph 5 Mr Matthews indicates:

“That as regards Alexkor’s response to my attorney’s letter you will note...”

Yes.

20 **CHAIRPERSON:** You see paragraph 5 on mine is at page 502 not 501. Is yours on 501?

ADV SIBIYA: Yes Chair then we definitely need to correct it.

CHAIRPERSON: We should all have exactly the same thing.

ADV SIBIYA: Yes.

CHAIRPERSON: When you say paragraph 5 at page so and so I should find paragraph 5 on the same page.

ADV SIBIYA: Yes Chair.

CHAIRPERSON: So my paragraph 5 starts with

“In view of the aforesaid”

Is that your paragraph 5 as well?

ADV SIBIYA: Sorry Chair.

CHAIRPERSON: Does your paragraph 5 start with

10 “In view of the aforesaid”

ADV SIBIYA: No Chair I think we might even be reading two different documents as things stand.

CHAIRPERSON: Ja you see and that is – that makes it even worse then.

ADV SIBIYA: Yes.

CHAIRPERSON: The – the letter that you referred the witness to you said appears at page 501, is that correct?

ADV SIBIYA: Yes. Chair.

CHAIRPERSON: And you – when you say para – 501 –
20 okay maybe – maybe I – we – we are – or maybe I am the cause for the mistake here. You are using black numbers?

ADV SIBIYA: Yes Chair.

CHAIRPERSON: Oh okay no, no that is fine. I think where we have bundle that has got both red and black numbers you must always at the start of the proceedings just

confirm that it is the black numbers we are using. Okay so you are at black 501?

ADV SIBIYA: Yes Chair.

CHAIRPERSON: And your paragraph 5 starts with:

“You – as you will no doubt agree.”

Is that right?

MR CRAYTHORNE: Correct.

ADV SIBIYA: Then I am reading the wrong paragraph.

CHAIRPERSON: That is the wrong paragraph.

10 **ADV SIBIYA:** Because I meant to read paragraph 6 but I agree with that Chair.

CHAIRPERSON: Is it a letter addressed to the Minister of Public Enterprises?

ADV SIBIYA: It is the same document Chair.

CHAIRPERSON: Dated 25 February 2015?

ADV SIBIYA: Yes Chair.

CHAIRPERSON: But you say your paragraph 5 does not start with:

“As you will no doubt agree.”

20 **ADV SIBIYA:** No, no, no Chair I am confirming that that is how paragraph 5 starts.

CHAIRPERSON: Ja okay. No that is alright.

ADV SIBIYA: Yes. But I am...

CHAIRPERSON: Then the – the comments I made about 501.

ADV SIBIYA: Yes.

CHAIRPERSON: And 502 earlier on the two pages they relate to red 501 and red 502 but 502 still requires to be replaced with a page that is in line with paragraph – with page 501.

ADV SIBIYA: Yes Chair.

CHAIRPERSON: Okay alright.

ADV SIBIYA: Unfortunately we will have the same problem on another page in the future but I have noted that page as
10 well.

CHAIRPERSON: Ja okay alright.

ADV SIBIYA: Yes. Thank you Chair. Chair what I was in fact saying was that I am – I have referred to the witness to the wrong paragraph number. Yes.

CHAIRPERSON: Okay.

ADV SIBIYA: Because I want him to read paragraph 6.

CHAIRPERSON: Paragraph 6?

ADV SIBIYA: Yes on page 501.

CHAIRPERSON: Okay. Okay paragraph 6 at black 501.

20 **ADV SIBIYA:** Yes.

CHAIRPERSON: Okay.

MR CRAYTHORNE:

“As regards Alexkor’s response to my attorney’s letter you will note that despite our concerns that the PSJV would be

concluding transactions which may potentially be invalidated Alexkor sought to disregard this issue as merely an internal issue within the entities controlled by the Communal Property Associations.”

ADV SIBIYA: H’m. And the next page, the next paragraph.

MR CRAYTHORNE: Going onto paragraph 7:

10 “The obvious difficulty with Alexkor’s attitude is that it has left the PSJV exposed to potential damages claims as the contract entered into may potentially be invalidated due to the PSJV Board and regard to and acting on the instructions of persons not authorised to bind the RMC.”

ADV SIBIYA: H’m. And from what you know, did anything happen – did – was there a response to this letter? It is not addressed to you or by you but I am asking from the investigations you made, was there a response to this letter?

MR CRAYTHORNE: As far as I am aware there was no response from the minister to this particular letter.

20 **ADV SIBIYA**: Yes. Now on page 30. Sorry, 503, GC-30, black 503.

MR CRAYTHORNE: Okay. So it is black, page 530?

ADV SIBIYA: No, I can see you are on the wrong page.

MR CRAYTHORNE: Sorry. I beg your pardon.

ADV SIBIYA: 503.

MR CRAYTHORNE: 503. Dyslexic. I am sorry. Okay. I am at 503 now.

ADV SIBIYA: Yes. This is another letter from Adams & Adams, addressed to Mr Bagus. Correct?

MR CRAYTHORNE: That is correct.

ADV SIBIYA: And it is dated the 27th of February 2015.

MR CRAYTHORNE: Correct.

ADV SIBIYA: And among the requests that are made in that letter, is the request on paragraph 5.5 which appears on the
10 next page which is 504 which is the page that we were, correct?

MR CRAYTHORNE: Okay. So that is 504 on the black numbers?

ADV SIBIYA: Yes.

MR CRAYTHORNE: Okay.

ADV SIBIYA: And one of the requests that are made by Adams and Adams is in 5.5, and what does it say?

MR CRAYTHORNE: It reads as follows:

20 “Hold over all further decisions of the PSJV until a properly constituted board of the PSJV, that includes our client, has had an opportunity to reconsider these decisions.”

ADV SIBIYA: H’m. And if I may refer you to page 259 of the same bundle.

CHAIRPERSON: On what page?

ADV SIBIYA: 259 Chair.

CHAIRPERSON: Okay.

ADV SIBIYA: This is the middle of the document that starts on page 253. Can you go to page 253 so that we identify what the document is?

MR CRAYTHORNE: I am at page 253.

ADV SIBIYA: Yes. What is this document?

MR CRAYTHORNE: This is a covering letter, addressed to Honourable Minister, Ms Lynne Brown. Reporting back on an
10 investigation carried out by the Alexkor Audit and Risk Committee in relation to the appointment of Scarlet Sky.

ADV SIBIYA: Yes. And the date of the document?

MR CRAYTHORNE: 29 February 2016.

ADV SIBIYA: Now if we go to page 259.

MR CRAYTHORNE: 259?

ADV SIBIYA: Yes. Towards – on the left-hand side of the table that appears there, you will see at the top it says left. In the left column it says date. And in the middle column it says description. And then the second to last column it says
20 annexure. And in the last column it says reference to collaborative evidence. Correct?

MR CRAYTHORNE: That is correct.

ADV SIBIYA: So this is a report to the Minister, Ms Lynne Brown.

MR CRAYTHORNE: Correct.

ADV SIBIYA: Now at the bottom of that page, the very last entry. What is the date on that entry?

MR CRAYTHORNE: That is the 1st of March 2015.

ADV SIBIYA: Yes. And in the description, what does it say happened on the 1st of March 2015?

MR CRAYTHORNE: Yes.

10 “SSI was informed that they were the successful bidder and that the tender was awarded to them and all other companies were informed that their proposals were unsuccessful.”

ADV SIBIYA: So this is two days after the letter from Adams & Adams saying: Please hold over all further decisions.

MR CRAYTHORNE: Correct.

ADV SIBIYA: So they completely disregard it, that warning?

MR CRAYTHORNE: That is correct.

ADV SIBIYA: In addition to disregarding the judgment itself?

MR CRAYTHORNE: Correct.

20 **ADV SIBIYA:** What did this communicate to you, these actions in spite of the judgment and in spite of the warnings?

MR CRAYTHORNE: Well, I then repeat it. It indicated to me that there was an absolutely total disregard for due process, for honesty, for good governance and that was typical of what I understood to be a state capture at play.

ADV SIBIYA: H'm. Now if we can go back on your affidavit to page 44.

CHAIRPERSON: Just before that.

ADV SIBIYA: Yes, Chair?

CHAIRPERSON: Miss... Mr Craythorne, the members of the Alexkor Audit and Risk Committee who produced this report. To your knowledge, how many of them could be described as Gupta associates?

MR CRAYTHORNE: At least one.

10 **CHAIRPERSON:** Yes. Who is that?

MR CRAYTHORNE: And that was Mr Therry Haasbroek.

CHAIRPERSON: Yes, okay alright.

ADV SIBIYA: Thank you, Chair.

CHAIRPERSON: Yes, continue.

ADV SIBIYA: Thank you. If we can go to page 44 of the same bundle. Your affidavit.

MR CRAYTHORNE: I am on that page, 44.

ADV SIBIYA: Now I am taking you to the heading that you have titled State Capture.

20 **MR CRAYTHORNE:** I have that in front of me.

ADV SIBIYA: Okay. Now in this section, you tell us the background to the reports that we have just had a look at, and you indicate that there had been a complaint to the Public Protector and that this report was as a result of her reaction to the complaint to the Public Protector.

MR CRAYTHORNE: Correct.

ADV SIBIYA: What was the complaint to the Public Protector and who had made it?

MR CRAYTHORNE: It was a complaint authored by attorney, Duncan Korabie on behalf of the Richtersveldt community, objecting to the absence of a due diligence.

ADV SIBIYA: H'm.

MR CRAYTHORNE: Prior to giving the contract to Scarlet Sky. And then also in relation to the lack of transparency
10 and the lack of performance on the part of Scarlet Sky.

ADV SIBIYA: Yes. And if I can take you to Bundle 4B.

CHAIRPERSON: Ms Sibiya, just before you do that. Do you recall whether in the report of the Audit and Risk Committee, to which you referred a few minutes ago ...[intervenes]

ADV SIBIYA: Yes, Chair?

CHAIRPERSON: ...whether in their report, that committee said there had been a due diligence that was conducted?

ADV SIBIYA: They say that Chair.

20 **CHAIRPERSON**: They say that?

ADV SIBIYA: We are still going to go there but yes they say that.

CHAIRPERSON: Okay. Okay alright.

ADV SIBIYA: Yes.

CHAIRPERSON: Thank you.

ADV SIBIYA: Now in Bundle 4B, if we can open page 815.
Eight, one, five.

MR CRAYTHORNE: I have it in front of me.

ADV SIBIYA: Yes.

CHAIRPERSON: What is the page number again?

ADV SIBIYA: Eight, one, five.

CHAIRPERSON: Okay.

ADV SIBIYA: Is this the complaint that you were referring to Mr Craythorne?

10 **MR CRAYTHORNE:** That is correct.

ADV SIBIYA: So it is the complaint to the Public Protector for the attention of Ms Winnie M @pprotects.org.

MR CRAYTHORNE: Correct.

ADV SIBIYA: And what does it say the complaint is in the heading?

MR CRAYTHORNE: It reads:

“Complaint – Irregular awarding of contract to
Scarlet Sky Investments 60 (Pty) Ltd and Flawless
Diamonds.”

20 **ADV SIBIYA:** Yes. And if you turn a few pages to page 818

MR CRAYTHORNE: I have it in front of me.

ADV SIBIYA: You can see the who is the author of the complaint.

MR CRAYTHORNE: Duncan Korabie.

ADV SIBIYA: Yes, and he calls himself an independent

director, correct?

MR CRAYTHORNE: Correct.

ADV SIBIYA: Of the Richtersveldt Mining company.

MR CRAYTHORNE: Correct.

ADV SIBIYA: Okay. Now if we turn the page to page 819

MR CRAYTHORNE: I ...[intervenes]

ADV SIBIYA: And we look in the middle of the page where it says: Begin forwarded message. Can you see that?

MR CRAYTHORNE: [No audible reply]

10 **ADV SIBIYA**: In the middle of the page.

MR CRAYTHORNE: Is it 819? Okay, I have it, ja.

ADV SIBIYA: You see it?

MR CRAYTHORNE: I do.

ADV SIBIYA: And there is where we can see that this document was sent via email because this is where it says from and it has the email address of Duncan Korabie and to Winnie and it has that email address. And it tells us the date and time. What is the date and time of this complaint?

MR CRAYTHORNE: It is 11 September 2015 at 13:35.

20 **ADV SIBIYA**: Yes. And if you look at the top of the page. You can see that this message is forwarded to other people.

MR CRAYTHORNE: Correct.

ADV SIBIYA: Can you see that?

MR CRAYTHORNE: Correct.

ADV SIBIYA: It is sent from Duncan Korabie at 13:44 p.m.

on the same date. Correct?

MR CRAYTHORNE: That is correct.

ADV SIBIYA: And who is it now sent to?

MR CRAYTHORNE: It is CC'd – well, it is sent to Percy Khoza.

ADV SIBIYA: Yes.

MR CRAYTHORNE: percyk@alexkor.co.za.

ADV SIBIYA: And you have said it was the CEO at the time?

10 **MR CRAYTHORNE**: That is correct.

ADV SIBIYA: And who else was copied?

MR CRAYTHORNE: It was copied to Kgathatso Thakudi @dpe.gov.

ADV SIBIYA: H'm.

MR CRAYTHORNE: Mervin Carstens, mervinc@alexkor.co.za.

ADV SIBIYA: H'm. You do not have to read the email addresses. Just the names of the people.

20 **MR CRAYTHORNE**: Zarina Kellerman, Dr Rodger Paul, The Richtersveldt Communal Property Associations, Mr Willem Vries, Mr Dennis Farmer, Mr Pieter de Wet, Mr Joshua de Wet and Ms Catherine Slanga(?).

ADV SIBIYA: So many people were given this email. And what does it say to Mr Khoza?

MR CRAYTHORNE: Yes.

“Dear Mr Khoza, please find attached the RMC complaint to the Public Protector related to the appointed to the Scarlet Sky Investment 60 (Pty) Ltd.

I apologise for not forwarding the document to you yesterday but I only returned from a business trip yesterday evening and could only attend to finalising the complaint today.

10 It is unfortunate that we have to refer the matter to the Public Protector but we do not have the cooperation of the Executive Committee on this matter and we are slain in our access to the information.

We trust the above is in order.”

ADV SIBIYA: H’m. And if you look at the next page, page 820, you can see there is another email dated 2018, July. Can you see that?

MR CRAYTHORNE: Yes.

ADV SIBIYA: Who is it from?

20 **MR CRAYTHORNE:** There is a – it is from Duncan E Korabie.

ADV SIBIYA: Yes, and who is it addressed to? Which entity is it addressed to?

MR CRAYTHORNE: To Charmaine Essau at DPE.

ADV SIBIYA: Yes. And what does he say was the outcome

of the complaint?

MR CRAYTHORNE: It reads:

“Dear Charmaine, please find attached the original referral of the complaint. There was some additional information sent. Let me know if you want that.

The complaint was registered with the Public Protector under our reference: REF: 7/2-011497/15, Mr D Korabie.

10 In November 2015 we agreed, following a meeting between the CPO and the Minister of Public Enterprises, not to proceed with the complaint to allow her to investigate the matter internally.

We agreed that the ARC Committee on the PSJV will investigate the matter.

Later I discovered that Sarina Kellerman tried to investigate the matter herself.

To the best of my knowledge, the matter was never investigated.

20 There was a separate complaint against Kellerman. Let me know if you would like that as well.

Regards, Duncan Korabie.”

ADV SIBIYA: Yes. Thank you. You can put that bundle aside for now, as we go back to Bundle 4A.

MR CRAYTHORNE: [No audible reply]

ADV SIBIYA: If I can refer you in Bundle 4A to page 260?

MR CRAYTHORNE: I have it in front of me.

ADV SIBIYA: Yes. You confirm that this is still the report made by Alexkor to Minister Lynne Brown?

MR CRAYTHORNE: I confirm so, ja.

ADV SIBIYA: Yes. Now on page 260, we can see a heading marked 4.2.2. The response to the complaint by the committee.

MR CRAYTHORNE: Correct.

10 **ADV SIBIYA:** Now they start responding to the issues raised ...[intervenes]

CHAIRPERSON: I am sorry. I thought you said to page 206. That is not right, hey?

ADV SIBIYA: No, it is two, six, zero.

CHAIRPERSON: Two, five, zero?

ADV SIBIYA: Two, six, zero.

CHAIRPERSON: Two, six, zero.

ADV SIBIYA: Yes.

CHAIRPERSON: Okay.

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

CHAIRPERSON: Okay continue.

ADV SIBIYA: Thank you. So the gist of the complaint starts in paragraph – in what they say para 2. Do you see that reference in the box that – in the table that is below the heading, Responds to the Complaint?

MR CRAYTHORNE: Correct.

ADV SIBIYA: Yes. And it says:

“On the 17th of December, the previous chairperson contacted Korabie and required him to approve the conditional appointment.

Certain queries were raised surrounding the appointment and he persisted that a conditional appointment be done.

10 An inter alia condition of the appointment of SSI was that the CEO should conduct a due diligence on SSI and report back to the committee on such due diligence.”

MR CRAYTHORNE: Correct.

ADV SIBIYA: Do you see that?

MR CRAYTHORNE: I do.

ADV SIBIYA: So that is the complaint.

MR CRAYTHORNE: Correct.

20 **ADV SIBIYA:** Yes. The response by the committee is that Mr Korabie who we know is the author of the complaint, right?

CHAIRPERSON: Just to make sure that we have captured this in the transcript. You are now dealing with the Audit and Risk Committee report that starts at page 253. Is that right?

ADV SIBIYA: Yes, yes Chair.

CHAIRPERSON: Ja, okay alright.

ADV SIBIYA: Thank you.

CHAIRPERSON: So there response is – to the complaints is a response by that committee.

ADV SIBIYA: Yes ...[intervenes]

CHAIRPERSON: Is that right?

ADV SIBIYA: Yes. Yes, Chair.

CHAIRPERSON: Okay.

ADV SIBIYA: So it is in a way their findings.

CHAIRPERSON: Ja.

10 **ADV SIBIYA:** Having investigated the issues raised ...[intervenes]

CHAIRPERSON: Yes.

ADV SIBIYA: ...by – well, to the Public Protector.

CHAIRPERSON: Okay.

ADV SIBIYA: Yes. So in terms of their investigation. Mr Korabie did not raise any concerns regarding SSI. The only committee member who had further comment in his email was Dr Paul. Can you see that?

MR CRAYTHORNE: I do.

20 **ADV SIBIYA:** Yes. And it says it was confirmed by the chairperson that the reason for..

“The reason the approval was conditional was to ensure that all concerns of the committee were addressed even though SSI had attained the highest scoring.”

MR CRAYTHORNE: Correct.

ADV SIBIYA: Yes. And then in paragraph 3 or where they say para 3.

MR CRAYTHORNE: Yes?

ADV SIBIYA: They record the complaint as:

“It would appear that there could not have been much a due diligence.

10 SSI was previously owned by a Legal Frontiers Corporate Services which is a company that trade in shelf companies.”

It would appear, now on page 261:

“It would appear that from 2009 to 2014, SSI was a shelf company owned by LF. LF sold SSI and its new directors were registered on 20 November 2014.

We do not know who the shareholders are. “

MR CRAYTHORNE: That is correct.

ADV SIBIYA: What is the response by the committee?

MR CRAYTHORNE: It reads as follows:

20 “The CEO of the PSJV did a proper due diligence on all the technical aspect and submitted the report to members of the Tender Committee in an email dated 29 January 2015.”

ADV SIBIYA: Yes. Does this tell us the nature of the due diligence that was conducted?

MR CRAYTHORNE: It tends to be a purely technical due diligence.

ADV SIBIYA: Now based on the evidence you have already given. Could a due diligence on the technical aspects resulted in the continued appointment of SSI?

MR CRAYTHORNE: No, it could not have.

ADV SIBIYA: Why do you say that?

MR CRAYTHORNE: Well, because the absence of a license on its own was enough to trigger an expulsion from the SSI
10 from the process.

ADV SIBIYA: H'm. And we have already dealt with, in your evidence on Friday, with the question in relation to the experience.

MR CRAYTHORNE: And numerous other – those specifications which were minimum requirements in the tender specification which were – which SSI failed to meet.

ADV SIBIYA: H'm. So we do not know what their – why they would say – why the committee would give this response?

20 **MR CRAYTHORNE:** No.

CHAIRPERSON: But is your evidence that there was no due diligence that was done?

MR CRAYTHORNE: I have not seen any evidence whatsoever ...[intervenes]

CHAIRPERSON: Yes.

MR CRAYTHORNE: ...of any due diligence report.

CHAIRPERSON: Yes, yes. And the committee itself did not attach such due diligence report to its report, did it?

MR CRAYTHORNE: No, the only thing that I think is being preferred as a due diligence report was a mere email from ...[intervenes]

CHAIRPERSON: Ja, that cannot be what one is talking about when one is talking about a due diligence that must be conducted before you make this kind of appointment.

10 **MR CRAYTHORNE:** And even the email offers no assurance.

CHAIRPERSON: Yes.

MR CRAYTHORNE: Which is what the purpose of a due diligence is.

CHAIRPERSON: Ja. And I guess the first thing that would have been discovered would be that this company had no license.

MR CRAYTHORNE: Correct, Chairperson.

20 **CHAIRPERSON:** The question that arises is, whether there is room for saying that the Audit and Risk Committee in preparing this report acted in good faith or whether they included in the report false information knowing it to be false. Are you able to say anything about that?

MR CRAYTHORNE: Chairperson, these are people with PhD's.

CHAIRPERSON: Yes.

MR CRAYTHORNE: And I fail to see how anybody with a PhD can mistakenly – can mistake what might possible had been preferred as a due diligence – as a due diligence.

CHAIRPERSON: Yes.

MR CRAYTHORNE: I cannot see it.

CHAIRPERSON: Yes, yes. And their report does not say anything about SSI not having a license, or does it?

MR CRAYTHORNE: I would have to refresh my memory
10 Chairperson but there is no report.

CHAIRPERSON: Ja.

MR CRAYTHORNE: There is merely an email from
...[intervenes]

CHAIRPERSON: The committee's own report to the minister.

MR CRAYTHORNE: [No audible reply]

CHAIRPERSON: I am saying. Does their own report to the minister, the Audit and Risk Committee's report say anything about SSI not having a license?

20 **MR CRAYTHORNE:** No.

CHAIRPERSON: Yes.

MR CRAYTHORNE: Not to my recollection Chairperson.

CHAIRPERSON: Yes. And it is just difficult how they could have investigated without establishing that simple basic fact.

MR CRAYTHORNE: I agree.

CHAIRPERSON: They either must have turned a blind eye or they were simple not prepared to include that in their report.

MR CRAYTHORNE: I agree Chairperson.

CHAIRPERSON: And it is difficult to understand how they could do that in good faith. Maybe they will explain. Yes, Ms Sibiya.

ADV SIBIYA: Thank you. Thank you, Chair. If we continue on page 261 and I am taking you to the bottom of the page.

10 The last log and on the left it says para 6.

MR CRAYTHORNE: I have it in front of me.

ADV SIBIYA: The complaint is:

“Prior to the sitting of the Tender Committee, no documents were made available related to the candidates who would be considered to Korabie...”

Sorry, let me read that again so that it makes sense.

“Prior to the sitting of the Tender Committee, no documents were made available related to the candidates who would be considered, such report be made to Korabie...”

20

So Korabie did not get any documents And it says:

“Prior to the interview of the shortlisted candidates, the Tender Committee did no short listing and the Tender Committee had no insight into the methodology and process used in the short listing

process.

In an email response, Raygen Phillips mentioned that the CEO will speak with Korabie prior to the meeting.

No such discussions took place.

Individuals in the PSJV did the short listing.

Amongst others, we discovered the CEO and the secretary were part of that.

10 The CEO also sat also in the short listing interview process on the 11th of December 2014.”

MR CRAYTHORNE: Correct.

ADV SIBIYA: The response by the committee says:

“Gamiro Advisory Services was appointed to conduct the exercise of short listing.

The committee acknowledge that the presentation by Gamiro Advisory Services should have been accompanied by a report that informs the committee of the methodology followed and the process used to shortlist the company.

20 This matter will be highlighted to the management of the PSJV to enhance controls around reports received from external parties.”

MR CRAYTHORNE: Correct.

ADV SIBIYA: This response by the committee, does it tell you with the evidence that we have heard already or from

what you have investigated, that Gamiro Advisory Services were appointed to shortlist and that there were shortcomings in the presentation made by Gamiro Advisory Services?

MR CRAYTHORNE: I agree with that.

ADV SIBIYA: H'm. Now do you know whether the presentation by Gamiro Advisory Services identified any shortcomings?

MR CRAYTHORNE: It certainly did in relation to the license.

10 **ADV SIBIYA:** Yes. And also the scoring.

MR CRAYTHORNE: And – well, the scoring on the license portion of the evaluation where Gamiro scored zero. The bid evaluation committee themselves altered that from zero to 5.

ADV SABINA: Sorry, which committee?

MR CRAYTHORNE: The tender committee which finally – ultimately awarded the tender to Scarlet Sky altered the scoring which Gambro had placed on SSI in terms of the licence from zero to five.

20 **ADV SABINA:** And interestingly enough we have already heard evidence that SSI was scored a 100% but the person that scored them is the same person that made this report to the Public Protector.

MR CRAYTHORNE: That is correct. It is rather curious but it is correct and while the other scores given by Mr

Bogus and Dr Paul were way lower than Mr Korari's scoring. They were in any event the highest score amongst the three. So all three of these gentlemen scored Scarlet Sky the highest. So it was a unanimous – it was unanimous decision.

CHAIRPERSON: Do we have Mr Korabie's affidavit explaining his conduct that seems inconsistent in this regard?

ADV SIBIYA: We do not, Chair.

10 **CHAIRPERSON:** Why not?

ADV SIBIYA: Chair, that is part of the process that the investigating team is still undertaking.

CHAIRPERSON: Oh, but that should have long been done.

ADV SIBIYA: I confirm that.

CHAIRPERSON: He is such a - he is obviously such an important witness. I mean, he makes allegations about how he was contacted by the Chairperson who told him or instructed him that they should approve or award the
20 contract to SSI and then he seems to lay a complaint with the Public Protector about exactly that and as Mr Craythorne says, he awarded SSI a lot of points. So that is somebody that should long have been interviewed and an affidavit obtained. Do you know how far from having his affidavit? I mean, how far we are in getting his affidavit?

ADV SIBIYA: Chair, the next steps are being planned as we speak, as we prepare the – as we present the evidence.

CHAIRPERSON: I know that you ...[intervenes]

ADV SIBIYA: In securing his affidavit his affidavit because there were engagements but no response. So we are looking at the next steps, Chair.

CHAIRPERSON: I know that you only got involved in this work stream recently but I have been told for a long time that everything was ready with regard to the leading of
10 evidence of Alexkor and I thought that all important affidavits are in and Mr Korabie's affidavit is quite important.

ADV SIBIYA: Chair, I ...[intervenes]

CHAIRPERSON: Ja, you cannot say much.

ADV SIBIYA: Yes, yes.

CHAIRPERSON: Ja, okay.

ADV SIBIYA: But it was identified since my involvement as one of those that need to be obtained, Mr Chair.

CHAIRPERSON: Yes, yes. And do you know what the
20 position is with regard Mr Bagus, has he been interviewed? Is there an affidavit that has been obtained from him and Mr Carstens?

ADV SIBIYA: Sorry, Chair, I missed the first person?

CHAIRPERSON: Mr Bagus.

ADV SIBIYA: And things stand, Chair, there is interaction

with the legal representatives both of Mr Carstens and Mr Bagus. There has been a lot of communication. There had initially been technical issues raised in relation to the admissibility of this evidence that was raised in relation to Mr Bagus by his legal representation. So we are in engagements with them but they have not submitted any affidavit.

CHAIRPERSON: But if he is not cooperating he should be served with a 10.6 directive requiring him to furnish an affidavit and he would then be obliged to comply. We must not be wasting time, we do not have time.

ADV SIBIYA: Yes.

CHAIRPERSON: His lawyers may be taking whatever point, we will see what point they take, but if we need information from him we cannot be engaged in an endless toing and froing process. If the legal team believes that he has information that is required by the Commission, he must be served with a 10.6 directive and he be given a deadline. We do not have time to waste.

20 **ADV SIBIYA:** Chair, I will make sure that that is attended to this week.

CHAIRPERSON: Ja. And Mr Carstens? Has he been interviewed? Do you we have an affidavit from him?

ADV SIBIYA: Mr Carstens submitted an affidavit last week. It does not deal with the substance as such, it

explains his delay in responding and other matters. He has not been well, he is in isolation, as things stand. Ms Phillips, Raygen Phillips is presenting her response together with Mr Carstens and they are legally represented.

CHAIRPERSON: Ja. What should have happened is that by time we lead the evidence all the important affidavits should have been obtained.

ADV SIBIYA: Yes.

10 **CHAIRPERSON:** Including the affidavits of those people who may be seen as implicated persons.

ADV SIBIYA: Yes.

CHAIRPERSON: We should have their version, we should have their side of the story. That should have been done and when I was told that the Alexkor evidence was ready I thought that it would have included – that meant that the affidavits of all important witnesses were in. Okay, let us continue. But before we do that, Mr Craythorne I want to take you back to page 260, that is still in the report of the
20 audit and risk committee.

MR CRAYTHORNE: I have it before me, Chairperson.

CHAIRPERSON: Yes and I am taking you to a portion that Ms Sibiya did take you to but I want to canvass slightly different point. Can you see where it says paragraph 2?

MR CRAYTHORNE: Yes.

CHAIRPERSON: Ja, then it says – and that is a recording of the allegation or complaint.

“On the 17 December 2014 the previous Chairperson contacted Korabie and required Korabie to approve the conditional appointment of Scarlet Sky Investments 60 (Pty) Ltd. I raised certain queries with him surrounding the appointment and he persisted that a conditional appointment be done. *Inter alia* condition of the
10 appointment of SSI was that the CEO should conduct a due diligence on SSI and report back to the committee on such due diligence .”

You have read the response of the committee which comes immediately after that, have you not?

MR CRAYTHORNE: I have read the response, ja.

CHAIRPERSON: Yes. Does it deal with the factual allegation of – the factual allegation that Mr Korabie was contacted by the Chairperson who required Korabie to approve the conditional of Scarlet Sky Investments?

20 **MR CRAYTHORNE:** Well, what it appears to be is that it appears to simply say that Mr Korabie requested a due diligence but it does not answer the question of whether a due diligence was done or not.

CHAIRPERSON: Yes.

MR CRAYTHORNE: And Mr Korabie in protest resigned

from the board.

CHAIRPERSON: Yes, no but that is a separate issue. All I was asking was whether this committee, faced with an allegation that the previous Chairperson had contacted Korabie and required Korabie to approve the conditional appointment of SSI whether in its response this committee responded to that?

MR CRAYTHORNE: No, I do not see.

CHAIRPERSON: Yes. Do you know of any reason why
10 they would not have, in their investigation, contacted the previous Chairperson and found out whether this allegation about him made by Korabie was correct?

MR CRAYTHORNE: Well, it seems to me, Chairperson, that there was no rigor at all in ...[intervenes]

CHAIRPERSON: Ja, investigating.

MR CRAYTHORNE: In investigating and doing this report.

CHAIRPERSON: Yes, okay. Ms Sibiya, continue.

ADV SIBIYA: Thank you. On page 262 we see where it says para 7.

20 **MR CRAYTHORNE:** Yes.

ADV SIBIYA: The complaint is:

“The PSJV subscribes to the Public Finance Management Act 1 of 1999, at least according to the CLO.”

Chief legal officer.

MR CRAYTHORNE: Correct.

ADV SIBIYA: And the response by the committee is:

“The JV is not legally obliged to subscribe to the PFMA. However, it does subscribe and adhere to the PFMA through its association with a state-owned company.”

MR CRAYTHORNE: Correct.

ADV SIBIYA: Yes. And then on the next point is:

10 “On the 11 December 2015, the CLO and
Chairperson at the time took Korabie and Dr Roger
Paul, an Alexkor representative into his office and
discussed what he viewed as the new direction the
PSJV must take in appointing the service provider.
He mentioned that he met only one candidate that
will be interviewed, met the new direction he
proposes. He then mentioned SSI.”

Do you see that complaint?

MR CRAYTHORNE: I do see that.

ADV SIBIYA: And what is the response by the committee?

20 **MR CRAYTHORNE:**

“The date 11 December 2015 cannot be correct as the tender was awarded on 27 February 2015.”

ADV SIBIYA: Now pause there. That is correct, hey? It should be 2014?

MR CRAYTHORNE: Correct.

ADV SIBIYA: Yes and then what do they continue to say?

MR CRAYTHORNE:

“We have received the representation of Mr Bagus that he has no recollection of the meeting taking place.”

ADV SIBIYA: Similarly to the question that was posed by the Chair previously, does this deal with the substance of what was said to have been said at the meeting?

MR CRAYTHORNE: It sheds no light on the matter at all.

10 **ADV SIBIYA:** Yes.

CHAIRPERSON: What does CLO represent again?

ADV SIBIYA: Chief Legal Officer, that is Ms Zarina Kellerman.

CHAIRPERSON: So, therefore, the CLO and Chairperson would now be two different people?

ADV SIBIYA: Yes, Chair.

CHAIRPERSON: And in their response they talk about what Mr Bagus said but they do not say anything about what the CLO said, is it not?

20 **ADV SIBIYA:** Indeed.

CHAIRPERSON: The CLO would have been a different person. Is that right, Mr Craythorne?

MR CRAYTHORNE: That is correct, Mr Korabie is alleging that he has briefed by, amongst others, Mr Bagus and Mr Bagus stated he has no recollection of a meeting

with Mr Korabie having taken place.

CHAIRPERSON: And also, from this it looks like after they had talked to Mr Bagus, they did not go back to Mr Korabie and say – he says he cannot recall. What can you say to jog his memory?

MR CRAYTHORNE: And the matter is left there.

CHAIRPERSON: It is just left there, ja. He does not remember but here is somebody who does remember but it is just left there. And then the CLO, they decide not to
10 ...[intervenes]

MR CRAYTHORNE: Question it.

CHAIRPERSON: ...check with the CLO, particularly in circumstances where one of the parties says I cannot remember. That was all the more reason why they should talk to the CLO and say do you remember?

MR CRAYTHORNE: Correct.

CHAIRPERSON: But they just – they did not bother to interview the CLO.

MR CRAYTHORNE: That is correct, Chair.

20 **CHAIRPERSON:** Or, if they did interview him ...[intervenes]

MR CRAYTHORNE: There is no record of it.

CHAIRPERSON: They chose not record what he said. Oh, Ms Sibiya.

ADV SIBIYA: Yes, thank you, Chair. If you go to the

bottom on the same page where it says para 10.

MR CRAYTHORNE: I have it.

ADV SIBIYA: It says:

“During March 2015 the appointment of SSI reaches a boiling point with the sole shareholder of the RMC challenging the regularity of the appointment.”

What is the response by the committee?

MR CRAYTHORNE: No response.

ADV SIBIYA: Now is this an ...[intervenes]

10 **CHAIRPERSON:** Sorry, I missed that. Which one was that, Ms Sibiya?

ADV SIBIYA: Para 10, Chair.

CHAIRPERSON: Para 10?

ADV SIBIYA: Yes and the response by the committee is no response.

CHAIRPERSON: Oh, yes.

ADV SIBIYA: Yes.

CHAIRPERSON: So they chose not to investigate what this was about and whether this was factually true. Ja.

20 Okay. I think we should take the tea adjournment.

ADV SIBIYA: Thank you, Chair.

CHAIRPERSON: We will resume at half past eleven. We adjourn.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Okay let us continue.

ADV SIBIYA: Thank you Chair. Mr Craythorne we are still on page 262 where we have just dealt with the fact that there was no response, okay.

MR CRAYTHORNE: I am there.

ADV SIBIYA: Now if you turn the page to page 263, and you go to the very last entry that says para 15.

MR CRAYTHORNE: I see it.

ADV SIBIYA: It says:

10 “We have discovered – this is now the complaint – we have discovered that at two days before the tender closed the directors in SSI were registered with the company’s office in Pretoria”

So in other words they were only registered two days before the tender closed. Do you see that?

MR CRAYTHORNE: I do.

ADV SIBIYA: So that is the complaint. Do you see the response on the next page 264?

MR CRAYTHORNE: I do.

20 **ADV SIBIYA:** What is the response?

MR CRAYTHORNE: It is blank.

ADV SIBIYA: So no response to this allegation or to this complaint was given to the Minister.

MR CRAYTHORNE: Correct.

ADV SIBIYA: And then the next issue is on, it says para

16 the very next block. You will note from the attached
correspondence by Phillips:

“That was chosen because they were or they had a
good track record in the diamond industry that they
were the only entity willing to sign a beneficiation
agreement. To the best of our knowledge none of
the contractors were offered this proposal by the
tender committee. SSI has no track record in the
diamond industry prior to its appointment and since
10 the appointment of SS1 no beneficiation for the
community has taken place.”

MR CRAYTHORNE: Correct.

ADV SIBIYA: What is the response by the committee?

MR CRAYTHORNE: “During the adjudication of this three
shortlisted companies each tender committee
member was afforded an opportunity to score on the
beneficiation commitments. The outcome of the
scores out of ten for SSI was Doctor Paul SSI five
out of ten, Mr Korabie SSI ten out of ten, Mr Bagus
20 SSI five out of ten.”

That is the response.

ADV SIBIYA: Does the response deal with the issue
raised in the problem statement?

MR CRAYTHORNE: Not at all.

ADV SIBIYA: Does it deal with the track record of SSI?

MR CRAYTHORNE: No.

ADV SIBIYA: And does it deal with the beneficiation other than telling us that the parties were given an opportunity to score? Does it deal with the factual statement that since the appointment of SSI no beneficiation for the community has taken place?

MR CRAYTHORNE: No, not at all.

CHAIRPERSON: Well this risk and audit committee seems to really not have been interested in properly investigating
10 the allegations. Here is a very serious allegation made here that SSI had no track record in the diamond industry prior to its appointment.

They are supposed to have investigated that and in response to that complaint they are supposed to say we have investigated this we have found it to be true or we have found it not to be true. They say nothing about it...[intervene]

MR CRAYTHORNE: They just ignore it.

CHAIRPERSON: ...and it is such a critical issue and on
20 beneficiation the allegation is since the appointment of SSI no beneficiation for the committee has taken place. Instead of dealing with that allegation is that allegation true they tell us what happened at the adjudication and that is so unsatisfactory it is not the complaint, ja okay Ms Sibiya.

ADV SIBIYA: Thank you. The next issue is in para 17 and this is the complaint:

“It is clear to us that SSI was created specifically for this tender. We do not know who the shareholders are of SSI and their relationship if any with any of the tender committee Board members or the PSJV Board members. We do not know if SSI complies with the PFMA. We do not know if SSI complies with the BBE EE legislation. We do not know if the other requirement that led to their conditional appointment have been met.”

MR CRAYTHORNE: Correct.

ADV SIBIYA: And what is the response by the committee?

MR CRAYTHORNE: “The appointment of SSI was done via

Round Robin Resolution that was signed by all the Board members. Mr Korabie was not included as a signatory to the Round Robin Resolution as he no longer was a member of the PSJV joint Board. The PSJV Board from 27 January 2015 to 15 July 2015 consisted of five directors. All the directors of the PSJV Board signed the resolution.”

ADV SIBIYA: Again do they respond to the very first allegation that it is clear to us that SSI was created specifically for this tender?

MR CRAYTHORNE: No.

ADV SIBIYA: Do they deal with who the shareholders are or their relationships?

MR CRAYTHORNE: No.

ADV SIBIYA: Do they deal with the compliance by SSI?

MR CRAYTHORNE: No.

ADV SIBIYA: Do they deal with any of the other requirements that led to their conditional appointment having been met or not?

10 **MR CRAYTHORNE:** No.

ADV SIBIYA: So again the response is just filling up the space because it does not deal at all with the issues that are raised in the problem?

MR CRAYTHORNE: That is correct.

ADV SIBIYA: Now I will take you to the last one on that page it says para 19.

MR CRAYTHORNE: I have it.

ADV SIBIYA:

20 “At the Board meeting approving the appointment of SSI our representative Willem Vries was misled by the rest of the Board members and the CLO that Korabie had already approved the appointment of SSI and that it was a mere formality. They did not disclose to him that Bristow was involved, the Board at the time was irregularly constituted as it required

two independent directors from the RMC and a community director to constitute a quorum for the meeting. This was the requirement set by Alexkor and RMC.”

What is the response?

MR CRAYTHORNE: “We have received the affidavit from Mr W Vries which we have enclosed for ease of reference under file reference 26 which indicated that he was not misled to signing the resolution that approved the appointment of SSI.”

10

CHAIRPERSON: Is there any indication that they referred that affidavit to Mr Korabie to say what do you say about Mr Vries affidavit that says he was not misled? Is there any indication that they did that on their reports?

MR CRAYTHORNE: Not that I am aware of.

CHAIRPERSON: So on the face of their report it looks like they got an affidavit from Mr Vries saying I was not misled and that was enough for them?

MR CRAYTHORNE: Ja.

20 **CHAIRPERSON:** That is not investigating.

MR CRAYTHORNE: It seems to me that there was an original position which Mr Vries had which then changed and was confirmed by way of an affidavit.

CHAIRPERSON: Yes, Ms Sibiya.

ADV SIBIYA: And the last point that I want to refer you to

in relation to this report is where it says para 21. Can you see that on page 265?

MR CRAYTHORNE: I do.

ADV SIBIYA: And the issue that is raised is:

“It is still not clear what the outcome of the due diligence was.”

MR CRAYTHORNE: Correct.

ADV SIBIYA: And the response by the committee?

MR CRAYTHORNE:

10 “The outcome of the due diligence was forwarded to the Board on 29 January 2015. The RMC representatives were represented throughout the tender process and was well aware of the outcome of the due diligence.”

ADV SIBIYA: Does this tell us what was the outcome of the due diligence?

MR CRAYTHORNE: No.

ADV SIBIYA: So all it says is you should know it in effect, in a nutshell it says the RMC representatives were
20 represented throughout and the outcome was forwarded to the Board.

MR CRAYTHORNE: That is correct and that is a false statement because we already know from the errors of Craig Matthews or the correspondence of Craig Matthews in the Samela judgement that that is a false statement.

ADV SIBIYA: And then we get to the conclusion. What is the conclusion that is drawn just that paragraph under the heading conclusion.

MR CRAYTHORNE:

“Based on the affidavit and in collaborative evidence reviewed by the committee we could not find any fundamental breach of procurement procedures adopted by PSJV other than - I think it is a typing error mere it says - manner or manner of housekeeping that we have alerted the management of the PSJV to correct.”

ADV SIBIYA: Yes, so they did not find any wrongdoing?

MR CRAYTHORNE: That is correct.

ADV SIBIYA: There conclusion is, is that everything was above board?

MR CRAYTHORNE: Correct.

ADV SIBIYA: Thank you. Now I take you to a new topic.

CHAIRPERSON: Well that report who is it signed by Mr Craythorne?

20 **MR CRAYTHORNE:** I do not have a signed version.

CHAIRPERSON: Well not signed but who is reflected as the author of the reports?

MR CRAYTHORNE: It is Ms N Lehobayi Chairperson of the Audit and Risk Committee.

CHAIRPERSON: Yes, and according to what she has

written there she is a chartered accountant.

MR CRAYTHORNE: That is correct.

CHAIRPERSON: We need to have if you do not already have we need to have an affidavit from her explaining this report and all attempts must be made for her to be called to give evidence and be questioned about this report.

ADV SIBIYA: Noted Chair.

CHAIRPERSON: Let us continue.

ADV SIBIYA: Thank you Chair. Mr Craythorne I am
10 taking you to your affidavit on page 54, this is new topic.

MR CRAYTHORNE: Page 54?

ADV SIBIYA: Yes.

MR CRAYTHORNE: I have it before me.

ADV SIBIYA: Okay you see the heading there almost at
the bottom:

“The proposed diversification of Alexkor into the
coal industry.”

MR CRAYTHORNE: Correct, I have it before me.

ADV SIBIYA: Now you say in your affidavit that:

20 “With the appointment of Gigaba as Minister of
Public Enterprises in late 2010 a process of twin
state capture begins while at the same time
expropriating Alexkor’s diamond assets initially
through SSI and later through Trans Hex a group
with links to Regiment set about capturing Alexkor

itself in pursuit of coal supply contracts to be concluded by Gupta proxies at Eskom.”

MR CRAYTHORNE: Correct.

ADV SIBIYA: Where did you get all of this? How did you reach this conclusion?

MR CRAYTHORNE: I reached this conclusion as a consequence of having consumed quite a fair amount of evidence over time. The Apex document in regard to this would be what is referred to as the Questco plan which is a
10 document that sets out a collaboration amongst a vast array of political and business elites in South Africa to use Alexkor’s marine mining as the core component of a total monopolisation of the entire West Coast diamond mining industry extending even across the border into Namibia.

ADV SIBIYA: Mr Craythorne if I can refer you to Bundle 4B page 1203, one two zero three. Is this the document you are referring to?

MR CRAYTHORNE: That is correct.

ADV SIBIYA: So the document that is titled Questco
20 corporate advisory, West Coast diamond consolidation that is the document?

MR CRAYTHORNE: That is correct.

ADV SIBIYA: Can you briefly tell us who are the parties to this document and what it tells us?

MR CRAYTHORNE: The parties to this document are

Trans Hex, a corporate advisory by the name of Questco, De Beers and the Department of Public Enterprise, the Richtersveldt Mining Company and the PSJV.

ADV SIBIYA: And this appears on page 1207, is that correct and when I say is that correct I mean is it really correct you can correct me if I am not correct?

MR CRAYTHORNE: That is correct this is a portion of the document focusing on the stakeholder needs analysis that was conducted by the participants in this project.

10 **ADV SIBIYA:** And how did you get hold of this document?

MR CRAYTHORNE: It was given to me by a hitchhiker.

ADV SIBIYA: Sorry?

MR CRAYTHORNE: It was given to me by a hitchhiker.

ADV SIBIYA: A hitchhiker, someone you gave a lift to gave you this document?

MR CRAYTHORNE: That is correct.

ADV SIBIYA: What did he or she say you must do with the document?

20 **MR CRAYTHORNE:** Well I was driving from Alexander Bay to Port Nolloth I picked up a gentleman from the Richtersveldt who was hitchhiking and whom I happen to know actually and he asked me how I was looking forward to the new owners of Alexkor and I said to him well what are you talking about and he started telling me about a plan that would result in what we are looking at here in this

document.

And I found it quite fantastical and I took it with quite a pinch of salt but he persisted and then when we got to Port Nolloth he said to me well just park at this address and I will go and fetch you a copy of the document. And that is how I came to have possession of this document was given to me by a gentleman who I have picked up hitchhiking and this is a very important document in connecting the dots.

10 **ADV SIBIYA:** So what was the importance of this document to you?

MR CRAYTHORNE: The importance of this document to me is that first of all the stakeholder analysis excludes one of the most important stakeholder groups in the region and who depend upon Alexkor's success as an SOE which is a group of people I represent as a member of the EAC.

And that is the diamond diving community because it is the diamond diving community that have contributed more to the operational profits of Alexkor and the PSJV
20 than any other segment of the business and included in the stakeholder analysis is a collection of elite government and business and community representatives that set out to capture Alexkor's marine mining assets.

ADV SIBIYA: In fact you say in paragraph 241 of your affidavit in Bundle 4A on page 55.

MR CRAYTHORNE: 241?

ADV SIBIYA: Page 55 paragraph 241.

MR CRAYTHORNE: Okay, can you repeat the paragraph number for me please?

ADV SIBIYA: The page is 55.

MR CRAYTHORNE: Yes.

ADV SIBIYA: The paragraph is 241.

MR CRAYTHORNE: I have it before me.

ADV SIBIYA: Yes, you in fact say there that as it turns
10 out, yes continue.

MR CRAYTHORNE: “As it turns out while I was trying to persuade the Alexkor Board to review the SSI contract and to report on the true value of Alexkor’s marine diamond assets unbeknown to me Trans Hex, Questco, Khoza and Carstens had devised a plan to persuade Alexkor to dispose of its diamond assets in the region and to diversify into coal.”

ADV SIBIYA: And you say:

20 “What this in fact envisaged was the creation of a platform in order to take management control of Alexkor’s marine diamond operations construct a false narrative about the future mining potential of the marine mining rights by telling all stakeholders that the diamonds will be mined out within five to ten years whilst simultaneously stripping the assets

and running the town and mine infrastructure into the ground and to purchase Alexkor's marine diamond operations when government has lost hope in any future success and take over the 51% stake in the PSJV."

MR CRAYTHORNE: That is correct.

ADV SIBIYA: Now why do you say it would be a false narrative to indicate that the diamonds would be mined out within five to ten years?

10 **MR CRAYTHORNE:** Well while it is a well-known geological fact that Alexkor possesses the most stunning deposits of gem diamonds that have ever existed on the planet it was being - the PSJV management team under the leadership of Mr Carstens were telling the portfolio committees both the NCOP and the portfolio committee's that Alexkor in five or – if I can quote his exact words in one particular sitting that I attended he stated:

“That in five to ten years there will be no more mining.”

20 Which is extremely misleading because the actual mining of the orange river delta's diamond place has only just begun. The last one hundred years has only really mined probably less than 10% of the overall deposit.

The balance of the deposit remains in the ocean covered by sediment which possess geotechnical

challenges that have preserved it and which now is set to be mined due to the evolution of technological advances over the past ten years.

And confirmation of that is seen clearly in the great success that the Namibian government and De Beers are having on the northern, just on the northern side of the deposit because the single maritime boundary between Namibia and South Africa passes right through the middle of this deposit. On the northern side of the border you
10 have an extremely successful marine diamond mining industry that is spending money hand over fist.

There latest vessel is currently under construction here investments in excess of a billion rand to produce vessels while they are producing 1500 million carats a year and more we are struggling to produce 55 thousand carats a year on our side.

So it is the same deposit but with two very, very different, so it is a tale of two cities or a tale of two deposits, same deposit two approaches.

20 **ADV SIBIYA:** And of course the diamonds do not know where the boundary lines are.

MR CRAYTHORNE: That is correct and I would argue that the South African side of the boundary is the most valuable because of the Palio River system. Those are geological issues I will not go into now but that is my personal view is

that the diamonds that are in Namibia has actually been sampled by the current that flows south north from actually South African deposits.

So the major eye of this whole deposit is lying in South African waters and that is why there is a major boundary dispute going on at the moment between South Africa and Namibia.

ADV SIBIYA: And of course if you look at the Questco plan and the persons mentioned there or the entities
10 mentioned there why would they be interested in buying Alexkor if there was nothing left to mine?

MR CRAYTHORNE: It is just incredibly arrogant or audacious in my view because it is just shockingly audacious in my view that people could think that they can actually pull off something like this.

ADV SIBIYA: Now you say that this plans was given traction as Gigaba had repurposed the Alexkor Board in order to implement its emerging black coal miner exit strategy.

20 **MR CRAYTHORNE:** That is correct.

ADV SIBIYA: What is this strategy?

MR CRAYTHORNE: The strategy was to pivot Alexkor away from the mining of diamonds which seemed to be a very much sound set industry and the narrative that has been peddled to the government as the shareholder

representative for the people of South Africa in regard to the diamond deposits in the sea have been down played very much.

So the strategy that was embarked upon after 2010 when Minister Gigaba was appointed the Minister of Public Enterprises has got a level of rationality to it but it was done without having full cognisance of what Alexkor would lose as a result of such a disastrous strategy because in effect what he was doing either knowingly or unknowingly
10 he would be pivoting a State owned company away from the most important diamond rights in the world today towards a coal strategy in an area where we moving from fossil fuels to renewables and it just seemed like a tragic strategic blunder to me.

ADV SIBIYA: And if I can take you to page – to Bundle 4B and page...[intervene]

CHAIRPERSON: Must I keep Bundle 4B here for the rest of the hearing, are you going to be referring to it further?

ADV SIBIYA: I will ask the Chair to keep it but the Chair
20 must please forgive me if I do not refer him to it after this.

CHAIRPERSON: So you are not sure.

ADV SIBIYA: Yes, Chair.

CHAIRPERSON: What page?

ADV SIBIYA: It is page 1106 and my apologies for the way the page is printed Chair it will be corrected.

CHAIRPERSON: Yes.

ADV SIBIYA: Thank you, are you there Mr Craythorne?

MR CRAYTHORNE: Not quite. I do have it before me.

ADV SIBIYA: What is that document that starts on that page?

MR CRAYTHORNE: It is a document from the PMG Parliamentary Monitoring Group's archives and the heading is Eskom Enquiry and Malusi Gigaba Public Enterprises 13 March 2018.

10 **ADV SIBIYA:** Yes. Now if you turn the page to page 1107.

MR CRAYTHORNE: I have it.

ADV SIBIYA: Do you confirm that this is not the whole document but just certain extracts from the document?

MR CRAYTHORNE: That is correct.

ADV SIBIYA: So this is page 3 of 32 is what is marked at the bottom on the right hand side.

MR CRAYTHORNE: I see that ja.

ADV SIBIYA: Okay. Now can you read the highlighted parts at the top of the document?

20 **MR CRAYTHORNE:**

“Minister Gigaba.”

ADV SIBIYA: And that means he is the one that is speaking, am I correct?

MR CRAYTHORNE: Correct. Do I read the entire paragraph or just the highlighted section?

ADV SIBIYA: Yes you can read the entire paragraph.

MR CRAYTHORNE:

“The discussions with regard to specific coal contracts of Eskom I did not involve myself in those. I hold myself in a broader policy discussion with Eskom. This was predicated on what we were drafting as the emerging miner strategy which we started engaging on around 2012 when we were saying by 2018 we would like the 50% plus 1 of Eskom’s coal to be provided by Black Coal Miners. I therefore had that discussion with Eskom and we had several meetings with the board of Eskom. The strategy itself was being drafted by Eskom and spearheaded by the Eskom board including the executive directors. We had two consultative sessions with emerging coal miners at which we had specific discussions around these issues.”

20 **ADV SIBIYA:** Yes and then you have got Advocate Vanara saying:

“There appears to be an outcry even today from black emerging miners and this was in March 2018.”

MR CRAYTHORNE: Correct.

ADV SIBIYA: To access the business. What programs did you put in place at the time or see to it that the board addresses the transformation issues? You read the response up to the end of the highlighted section.

MR CRAYTHORNE:

10 “Minister Gigaba. The emerging miners' strategy eventually was not implemented. I think one of the things we were trying to do at the time was that we implemented a business case where Alexkor would diversify from diamond mining solely to also become a coal mine and supplier to Eskom with Alexkor as the basis to spearhead this emerging miners strategy and bring on board many other emerging miners. The emerging miners' strategy was the biggest plan we were working on and would have resulted by now in billions of rands being managed by Black Coal Miners.”

20 **ADV SIBIYA:** Yes. And on the next page 1108.

MR CRAYTHORNE: Yup.

ADV SIBIYA: Read the ex – the highlighted portion indicating who is saying it.

MR CRAYTHORNE:

“Mr Gigaba speaking: I was spearheading

the establishment of a policy intervention.

The emerging miners' strategy which would have resulted in the ending of those evergreen contracts."

ADV SIBIYA: Hm. And then if you turn the page to 1109. Minister Gigaba again unpacks the details of the emerging miners' strategy and he says:

10 "One of the objectives was that by 2018/2019 50% plus 1 of coal supply contracts to Eskom must be provided by black emerging miners in South Africa. We agreed with them on the approach to take and they were supportive of the policy proposal we were creating. That is when we began the discussions between Alexkor and Eskom to diversify Alexkor's asset base to involve not only diamond mining but also coal mining so that we use Alexkor to leverage the involvement of black miners in the coal supply program."

20 Now do you accept this statement?

MR CRAYTHORNE: It is not entirely true because it – it creates the perception that the intention was to leave Alexkor in diamonds and extend its focus into coal whereas the – the briefings that Alexkor gave to the Portfolio Committees in Parliament made it very clear that Alexkor –

Alexkor's strategy was to exit diamonds in the West Coast and pivot to coal.

ADV SIBIYA: Yes. Now if I take you few pages back in the same bundle to page 1101. 1101.

MR CRAYTHORNE: I have it before me.

ADV SIBIYA: What is this document that we are looking at?

MR CRAYTHORNE: It is a media address statement by Mr Malusi Gigaba on the 7 September 2012.

ADV SIBIYA: Yes. So this was at the AGM of Alexkor.

10 **MR CRAYTHORNE:** That is correct.

ADV SIBIYA: Yes. Now if you read on page 1101 the highlighted portion; the last paragraph of the highlighted portion.

MR CRAYTHORNE: That is the very last paragraph?

ADV SIBIYA: Yes.

MR CRAYTHORNE:

20 "In this regard I have appointed Mr Rafique Bagus as chairperson of the new board who will be assisted by Ms Jillian Nothlanda Jyeni [?]. Doctor Yvonne Nonno Matsa Matabane, Ms Zukiswa Ntlangula and Mr Mohammed Baba. I have given the new board the responsibility to fill the vacancies of CEO and CFO forthwith by no later than three months."

ADV SIBIYA: Yes. And the paragraph before that.

MR CRAYTHORNE:

“I have assessed the needs of the company and the capacity of the board to be able to execute its fiduciary duties over the state owned company. Our annual review of the board has necessitated that we rotate the board and include new skills sets and expertise to give impotence to the new strategic direction that the shareholder wants Alexkor to take.”

ADV SIBIYA: Yes. If I can just stop and mention a side issue. I am informed that I am pronouncing the surname of Mr Rafieq wrong and it is not Bagus and it is Bagus.

MR CRAYTHORNE: I beg your pardon that is my fault.

ADV SIBIYA: So – yes I know it is your fault Mr Craythorne because I asked you how to pronounce it but – yes so moving forward I will pronounce it as Bagus.

MR CRAYTHORNE: I concede.

20 **ADV SIBIYA:** Yes. On the next page 1102. We see the line that starts:

“During the past financial year.”

Can you read that for me Mr Craythorne?

MR CRAYTHORNE:

“During”

ADV SIBIYA: It is the first line.

MR CRAYTHORNE: Of 1102?

ADV SIBIYA: Yes. The second sentence.

MR CRAYTHORNE: Oh okay

“The shareholder has retained.”

ADV SIBIYA: The second sentence of that line.

“During the past financial year.”

MR CRAYTHORNE: Oh okay I have it.

10 “During the past financial year Alexkor has managed to a large extent to fulfil the developmental objectives of government by ploughing back to the community in which it is operations are based. This is at the core of how the mining industry can contribute positively to the development agenda of the state by ensuring that the benefits of the mining operations are accrued to the communities in which they operate. The Richtersveldt PSJV can provide the country

20 with their best practice on how the mining industry can become good corporate citizens by investing a human settlement for a long term economic and social stability.”

ADV SIBIYA: Yes. So as at this date the Minister is talking about the developmental objectives of government. He is

talking about ploughing back to the community in which the operations are based. Now how do you contrast this with the new strategy that was then being talked about later?

MR CRAYTHORNE: Well it was a completely at odds because the – the aversion because my understanding that although there would be a PSJV executive team and Joint board to oversee the activities of the PSJV executive team Alexkor still had a very real responsibility to ensure and provide oversight to make sure that the deed of settlement
10 and the unanimous resolution were successful projects. And by diverting attention to coal mining in Mpumalanga and Gauteng the – the board was completely redirected away from what was going on in Alexander Bay and in addition to that a large amount of funding that should have been utilised for rebuilding the mine and town infrastructure after the long Intaniswa [?] in court battles to enable Alexkor to recover from the court battle and become a successful state owned enterprise. Because all of the elements were there. You had the human capital; you had the resources; you had every
20 possible conceivable comparative advantage that you would want and in spite of that we ended up with the disaster that – that we have. And that is in a large part to do with Alexkor being redirected away from the activities in Alexander Bay and also the redirecting of crucial funding which had been allocated to Alexander Bay by way of the MT – the medium

term budget and other funding. A lot of the interest that accrued on those funds is all utilised for pursuing coal ambitions which had nothing to do with us in Alexander Bay and we were in affect funding those activities.

ADV SIBIYA: In fact if I can take you back to Bundle 4A that has your affidavit. If I can take you to page 62.

CHAIRPERSON: Ms Sibiya.

ADV SIBIYA: Yes Chair.

CHAIRPERSON: We have just reached two hours that I
10 gave you. How are you doing?

ADV SIBIYA: Chair we will be done before the lunch adjournment.

CHAIRPERSON: You are asking for more time?

ADV SIBIYA: Yes Chair I am asking for more time. I was careful not to promise that I would keep to it but rather to indicate that I would try.

CHAIRPERSON: Well you were not asked to promise. You were given a deadline.

ADV SIBIYA: Yes Chair.

20 **CHAIRPERSON:** Okay I will let you continue until one.

ADV SIBIYA: Thank you Chair.

CHAIRPERSON: Let us see – just try to focus on the important features of Mr Craythorne’s evidence.

ADV SIBIYA: Yes thank you Chair.

CHAIRPERSON: Okay alright continue.

ADV SIBIYA: Thank you. Page 62 of Bundle 4A.

MR CRAYTHORNE: I have it before me.

ADV SIBIYA: Yes. In paragraphs 280 to 282 you express this frustration of the money that was being spent in pursuit of the emerging black coal miner exit strategy and that it was in fact being generated by the marine miners of Alexander Bay and should have been applied to its maintenance but instead about R40 million per year since 2012 had been diverted to fund corporate headquarters in Joburg and to pay
10 consultants working on this exit strategy.

MR CRAYTHORNE: That is correct.

ADV SIBIYA: Hm. Now you say that the concealment on page 63 that the concealment – paragraph 285.

“The concealment of the true value of the marine diamond assets Alexkor possesses and the misrepresentation of the estimated life...”

CHAIRPERSON: I am sorry what page are you reading from now?

20 **ADV SIBIYA:** 63 Chair paragraph 285.

CHAIRPERSON: Okay. Yes.

ADV SIBIYA: It says:

“The concealment of the true value of the marine diamond assets Alexkor possesses and the misrepresentation of the estimated

life of its diamond mining ventures in the region has provided the new board with a rationale for exiting its diamond mining business and diversifying into coal. However should it sell off its marine mining business under the current manufactured climate it would seriously under recover for its business. It would also mean the individual miners would be forced to liquidate their mining operations at a substantial loss.”

MR CRAYTHORNE: That is correct.

ADV SIBIYA: Yes. Now you have indicated that there was instead a lot more coal that was yet to be mined and you say that:

“Mr Carstens mislead Parliament.”

In page 62 of your statement.

MR CRAYTHORNE: That is correct.

ADV SIBIYA: And what did he say on the 20 – on the 22 November?

MR CRAYTHORNE: Which paragraph?

ADV SIBIYA: On paragraph 282 at the bottom.

MR CRAYTHORNE: 282.

“Since 2012 approximately R40 million per year has been diverted to fund the corporate headquarters in Johannesburg and to pay

consultants working on Alexkor's exit strategy. To justify this Carstens has continued to undermine Alexander Bay's future diamond mining prospects. In Parliament on 22 November 2017 Carstens stated: In ten years' time or five years' time there is not going to be a mine anymore."

ADV SIBIYA: Hm. And yet he say there has been a lot of money that had been spent on this exit strategy. In
10 paragraph 284 on page 63 you state the amount that had been spent by financial year 2016 as having exceeded R175 million.

MR CRAYTHORNE: Correct.

ADV SIBIYA: And this is money that you say could have comfortably recapitalised the entire Alexkor diamond fleet with new technology and semi-mechanised mining vessels capable of mining through sand over burden. Had this money been properly spent this could have ensured that Alexander Bay could once again become a world class
20 diamond production centre.

MR CRAYTHORNE: Correct.

ADV SIBIYA: Yes. So the money was available.

MR CRAYTHORNE: Indeed.

ADV SIBIYA: But there was a decision to not plough it where it is needed.

MR CRAYTHORNE: Correct.

ADV SIBIYA: Yes. And according to you or your understanding – sorry Chair if you can just bear with me. Sorry Chair I have lost my train of thought so I will move away from that point. Now what was your biggest problem with the justification?

MR CRAYTHORNE: The biggest problem was the fact that it would ultimately lead to Alexkor exiting its crown jewels.

ADV SIBIYA: And what would be the consequence of that?

10 **MR CRAYTHORNE:** Well the consequences of that would be that you would have a total and absolute monopolisation of the entire West Coast diamond mining industry both on land which is Brownfields and in the ocean which is the next hundred years of global production will be coming out of the sea off the coast of Namaqualand.

ADV SIBIYA: Yes monopolisation by whom at whose expense?

20 **MR CRAYTHORNE:** The monopolisation of the – the interests that are mapped out in the Quesco plan and the losers would be the South African public and most importantly the people of Richtersveldt and Namaqualand because there would be no [00:20:14] development. It would all just be the same old brute force. This is what we offer you take it or leave it type of scenario. The would be flown out and siphoned out of Namaqualand as it has been done

for the past 100 years. The only difference would be that the environmental damage that we sit with on land would now be ending up in the sea as well and there are very serious signs of that already. Enormous amount of environmental disruption has already taken place.

ADV SIBIYA: Hm. How you put it in paragraph 286 is – please just read that paragraph.

MR CRAYTHORNE:

10 “The dynamics of a primary board and executive team that is conflicted by a Gupta Gigaba coal agenda and a PSJV board and executive team that is conflicted by a Trans Hex Questco diamond agenda has resulted in a decimation of a local economy, dilapidated critical infrastructure and a loss of social cohesion. It has also deprived Alexkor and the Richtersveldt community of its share in what could and should be a lucrative diamond industry. This has served to

20 dispossess the people of Namaqualand and South African tax payers of a mineral asset of immense value and strategic importance.”

ADV SIBIYA: Yes. Now tell us about the involvement of Bagus, Kellerman, Carstens and Khoza in the Questco plan? What role did they play each of them?

MR CRAYTHORNE: The – the – one of the major issues – problems with the Questco document is that it makes provision for a shareholding I – if I recall correct of 9% to be [00:22:30] for the PSJV management which has hopelessly conflicted anybody that has had ever time been involved in the operational management of the PSJV’s operations having been promised a – a share of the – the final consolidated enterprise that was proposed in the Questco document places all of those individuals in a position of conflict. It is
10 almost as if they had decided that the Questco plan was a fait accompli. You can manage this enterprise into the ground. The more you manage it into the ground in fact the better because it simply means that government will have greater levels of fatigue and the pursuers of these assets will have to pay less.

ADV SIBIYA: Hm. Yes. And in addition to that can you explain to us the role of each person in the decision making process?

MR CRAYTHORNE: Well the – while former Minister Gigaba
20 claims in his testimony before Parliament in the Eskom inquiry that the idea was to keep Alexkor in diamonds and just redirect Alexkor into coal. The Parliamentary briefings that were given by the Alexkor board under the chairmanship of Mr Rafique Bagus made it very clear that Alexkor was exiting diamonds and that the best thing for the people of

Namaqualand and Alexander Bay and Richtersveldt would be for Trans Hex and De Beers to take over the operations and that documentation I have provided in annexures.

ADV SIBIYA: Hm and as you have already said what would be the point of anyone buying Alexkor if there was nothing left to mine.

MR CRAYTHORNE: Correct.

ADV SIBIYA: Hm. Now if I can – you say in your statement – in your affidavit that you brought these concerns to
10 Parliament.

MR CRAYTHORNE: I did.

ADV SIBIYA: Yes. And you refer to a date where you raise this issue as November 2016.

MR CRAYTHORNE: That is the first time at which I publicly raised concerns over state capture although that was not – state capture had not at that point really become centred around the Gupta's. But it had certainly been around for as long as South Africa's been on the map. So...

CHAIRPERSON: Well 2016 is when Mr Jonas went public
20 about the meeting that he had at the Gupta house is it not?

MR CRAYTHORNE: Okay.

CHAIRPERSON: I thought he would – he went public in March 2016 about a meeting that had happened in October 2015. He public in March 2016.

MR CRAYTHORNE: Thank you; thank you Chair. Look if I

had been a little bit better informed I might have been more concerned about – at that stage about the – I only became more aware of the Gupta Links.

CHAIRPERSON: And of course not only that – or not only that Mr Jonas went public in March 2016 about allegations of an offer of the job of Minister of Finance and money that he said was offered to him but three years earlier in 2013 that being the Gupta landing – Gupta landing at Waterkloof which had captured the attention of the whole country. So it cannot
10 be true that in 2016 the country had not heard about allegations of state capture by the Gupta's.

MR CRAYTHORNE: You are correct Chairman I would – I will agree with that but I do not think the country was taken it seriously enough.

CHAIRPERSON: Yes Ms Sibiya.

ADV SIBIYA: Thank you. In effect what you are saying is you at that time were not concerned about the state capture by the Gupta's.

MR CRAYTHORNE: Well I – I was concerned not in a sort of
20 a general way because I had witnessed what had transpired with the Imperial Crown Trading affair and the Iron Ore assets that they tried to capture and what concerned us is the EAC is that at that particular time we were trying to reach out to the Department of Mineral Resources regarding issues of concentration in our industry and monopolisation

and while we had immense difficulty in that the Gupta's had their situation fought all the way to the constitutional court. So you had the Department ignoring our pleas for attention on our industry while at the same time spending hundreds of millions of rands in tax payers' money trying to defend the Gupta's hijacking of iron ore assets through Imperial Crown Trading. So that – that irked us as the EAC a fair amount.

ADV SIBIYA: And you referred us to the presentation to the Portfolio Committee on Public Enterprises that appears in
10 Bundle 10 – in Bundle 4B on page 1042.

MR CRAYTHORNE: 1000 and?

ADV SIBIYA: and 42 – 1042.

MR CRAYTHORNE: I have it in front of me.

ADV SIBIYA: Yes. Now you say this is when you raised these matters.

MR CRAYTHORNE: Correct.

ADV SIBIYA: The matters of State Capture.

MR CRAYTHORNE: Correct.

ADV SIBIYA: Now what was the response by Alexkor?

20 **MR CRAYTHORNE:** Well, as I attended this Portfolio Committee briefing, I listened to the board confirming its continued insistence of waiving(?) diamonds towards coal. And even more, investing in funding in a diamond beneficiation project. And that just amplified my concerns.

And subsequent to the portfolio briefing, I had a chat

with Zukiswa Nthlangula and I said to her: Look ...[intervenes]

ADV SIBIYA: Who is Zukiswa Nthlangula?

MR CRAYTHORNE: She stood in for the chairlady, Hansi Matseke, because she had a family emergency. So Zukiswa Nthlangula was a board member who was the stand-in chairperson for the duration of the briefing to parliament.

ADV SIBIYA: Yes.

MR CRAYTHORNE: So subsequent to that encounter with
10 Ms Nthlangula in parliament, I approached her and I said to her: Look, you really need to reconsider the strategic direction that you are embarking upon.

And I said that I had written an extensive document outlining what the true potential was for Alexander Bay as a marine diamond mining centre going forward which she had not been given.

I had given the report to Mr Carstens earlier that year, I think in April, but he had not distributed it to the board of Alexkor because that would have not supported the Questco
20 plan at all.

Because it was very convenient for the Questco Team to have the Alexkor Coal Team stay focussed on coal.

ADV SIBIYA: Now as a result of your interaction with Zukiswa on that day, what else did you do?

MR CRAYTHORNE: I then undertook to provide her with

further information by way of an email. I informed both Zukiswa Nthlangula and Honourable Zukiswa Rantho who I addressed my correspondence to, and I included also Ms Terry Stander from the DA as well, who was also present at that meeting that I attended.

And I said: Look, this is what I think is going on. You are dealing with a situation where there are strategic blunders currently unfolding which you need to address. And I am prepared to author a document. Put a document
10 together for you. But I will need some assistance.

And they were very pleased to hear this. And a month later, I were called into a meeting by Mr Mervyn Carstens and Ms Raygen Phillips who – this was just before the mine close, a day before the mine closed in December 2016 – and they were extremely irate.

They confronted me with the fact that I had suggested to parliament that Alexkor had been captured by Transnet. And I said to Mervyn: Well, I am afraid Mervyn, I feel you betrayed us.

20 And they thought that it was outrageous that I was interfering in strategic matters. And I felt as a serious investor - and my wife and I have invested everything into our business in Alexander Bay.

And for us to have that investment be jeopardised by ill-informed and bad decisions, in my view, was unacceptable.

And I was not prepared to keep quiet about it.

ADV SIBIYA: Now you say that you – on the 30th of November on page 52 of your affidavit in Bundle 4A.

MR CRAYTHORNE: Page 52?

ADV SIBIYA: Yes.

MR CRAYTHORNE: I have it in front of me.

ADV SIBIYA: Okay. In paragraph 230, you say that the equitable access campaign travelled to Cape Town to hand over a warning about the serious government problems and state capture at Alexkor to numerous portfolio committees.

MR CRAYTHORNE: That is correct.

ADV SIBIYA: Yes. How – what did you tell them?

MR CRAYTHORNE: Well, my fellow ESC colleague, Mr George Nicolai who is in the gallery today, took a document outlining the situation at Alexkor as I saw it as someone who was very deep inside the affairs of both Alexkor and the PSJV. And he drove down to Cape Town.

The idea was to print multiple copies but it would have been too expensive for us. So Mr Nicolai then made electronic copies on some drives and went door-to-door in parliament to numerous portfolio committees and handed some drives of the document which I authored, setting out the state of capture in regard to Alexkor.

ADV SIBIYA: And was there a response?

MR CRAYTHORNE: There was a limited response but

nothing concrete that raised out of our interactions with parliament.

ADV SIBIYA: What – do you confirm that this was not the first time you reported it to parliament?

MR CRAYTHORNE: I confirm that.

ADV SIBIYA: And in fact, you had previously written to Minister Brown.

MR CRAYTHORNE: Correct.

ADV SIBIYA: And the result had been the report that we
10 referred to earlier where there was an investigation that came back with no real findings.

MR CRAYTHORNE: Actually – okay if you are referring to the ARC Report, the ARC Report was a consequence of the complaint from Mr Korabie. What flowed out of my complaint to Minister Brown, was a letter of response, thanking me. She then made contact with the board of Alexkor.

And as a consequence of that, I was invited to attend a board meeting in Kimberley. And I then travelled down to Cape Town, flew up to Kimberley to attend that board
20 meeting.

And at that board meeting I raised some of my concerns in relation to the poor diamond pricing, the strategic realignments that were unfolding and the lack of transparency and public accountability.

ADV SIBIYA: Yes. Chair, if the Chair can give me one

minute? Just to bear with me for one minute.

CHAIRPERSON: Okay.

ADV SIBIYA: Thank you. Yes, thank you Chair. In fact, in – I have lost – I am not sure which bundle I last referred you to. So in Bundle 4B...

MR CRAYTHORNE: Okay.

ADV SIBIYA: On page 1127.

CHAIRPERSON: Just repeat the page.

ADV SIBIYA: 1127. One thousand one hundred and twenty-
10 seven. This is a letter that you sent to Kim Davids. Tell us about that.

MR CRAYTHORNE: This is a letter that I addressed to Ms Davids on the 9th of March 2017.

ADV SIBIYA: H'm.

MR CRAYTHORNE: After attending a – when the ESC as an organisation concerned with the rights of the small scale marine miners in Namaqualand, we became convinced and there was overwhelming evidence to the effect that there was corporate, major corporate realignments that were
20 taking place without us being consulted as a stakeholder.

And it has become clear to me – to us as an organisation that the level of a stake hold and materiality for the marine miners is zero.

And we then tried to muster support from our members to confront what the revelations that were being made by

accident, by way of the Questco document and formally parliament by way of the briefings to parliament concerning the exit strategy and other very, very serious decisions, you know, in a hope to try and raise our level of stakeholder materiality.

Immediately after that, we were sent quite a harsh letter from Ms Matseke, denying that there was any corporate plans to exit diamonds or anything of that nature. So.

Well, it said to me that it was pointless trying to raise
10 the EOC's concerns with the Alexkor Board in relation to these major realignments, that one have to reach out to the minister.

And the purpose of contacting Ms Davids was to reach out the minister in this regard and try to get her intervention.

ADV SIBIYA: H'm. And in fact, she responded to your letter on page – her responds appears on page 1145 of the same bundle.

MR CRAYTHORNE: 1145. I have it before me.

ADV SIBIYA: Yes. Is that the response that you got from
20 the minister?

MR CRAYTHORNE: That is correct.

ADV SIBIYA: And, in effect, in paragraph – in the third paragraph, there is the department who conveyed the report which you had prepared to the Department of Mineral Resources for review and consideration.

And furthermore, the Department notes the results of the survey undertaken to assess the level of satisfaction amongst the Alexkor Pooling and Sharing Joint Venture contractors.

“I recommend that you approach the board of Alexkor and Alexkor PSJV to address your concerns.”

Had you not already done this?

MR CRAYTHORNE: Pardon?

10 **ADV SIBIYA**: Had you not already done that?

MR CRAYTHORNE: Yes. There were two letters written to Minister Brown. And I am not sure of the sequencing.

ADV SIBIYA: H'm.

MR CRAYTHORNE: So I am not sure if this was the second or the first one. But I think this is what led to the visit to... I beg your pardon. This was the response that I got from Minister Brown. The second time I think I reached out to her was when we were being sued by Webber Wentzel.

ADV SIBIYA: H'm. Yes.

20 **MR CRAYTHORNE**: And – or thereabouts. Or when we are being threatened to say: Look, you know, we are no better off after having gone and you know try to meet the board and... I beg your pardon.

We are not as an organisation and as a group of contractors, there is an important segment of the Alexkor

operations, we are – the situation is deteriorating.

So the first attempt reaching out to Minister Brown was successful because it led to a meeting taking place or a board meeting and me being me invited to attend the board meeting in Kimberley.

When I tried to raise the issue around the Questco document to a person, Hansi Matseke refused to discuss it. And directed it to operations on the mine and the lack of transparency in relation to the diamond prices and the
10 deteriorating relations between the contractors and the PSJV Management.

ADV SIBIYA: And the minutes of that meeting appears on page 1146 to 1148. Is that correct?

MR CRAYTHORNE: That is correct.

ADV SIBIYA: Yes. If the Chair can give me one second to check with my teammate?

CHAIRPERSON: [No audible reply]

ADV SIBIYA: Thank you, Chair. Chair, from our side that is the evidence that we would like to present in this forum. But
20 I would like to invite Mr Craythorne if there is anything that is burning him that he feels I may have left out.

CHAIRPERSON: Yes. Is there something Mr Craythorne? And is contained in your affidavit or annexures that you think is very important that you have not been given a chance to cover in your oral evidence?

MR CRAYTHORNE: Thank you very much Chairperson. Through this whole period of State Capture, are there many issues and things that have disturbed me but of all the phenomenon that had disturbed me the most.

The failure of parliament to protect us is for me the most disturbing because we approached parliament over and over, so many times. Going back to 2010 even.

And when I am reading PMG summaries, statements made in parliament by – for instance Honourable Cathy
10 Labuschagne from the NCRP, putting on record that the NCRP was told to stay away from Alexkor.

I want to know who told Cathy Labuschagne to stay away from Alexkor. Because that, I think, is just the tip of the iceberg and I think if parliament had done a job, I would not be sitting here and extending my time.

CHAIRPERSON: Well, that is something very important Mr Craythorne. I think we are going to adjourn for lunch. But I am very interested in that aspect as I have indicated before. I would like, if it is possible, when we come back at
20 two, I am going to hear about Eskom's witness for today.

I will hear from the evidence leader who is going to lead that evidence and about the rest of the week. But when we come back, before I hear what they have to say, that is that work stream, I would like you to – Ms Sibiya ...[intervenes]

ADV SIBIYA: Yes, Chair.

CHAIRPERSON: ...to lead him on those specific issue – on that specific issue.

ADV SIBIYA: Yes.

CHAIRPERSON: With special reference to the dates of his communication or their communication to parliament, what it was about, when was it, was there a response. If there was, what was the response.

Because it is quite important that the Commission establishes what parliament was busy doing as some of
10 these things were happening in state owned entities.

In particularly when these matters were brought to their attention. Did they do their job? If they did not do their job, why did they not do their job? What was going on? That is quite important. So we will adjourn. But you confirm that that is the part that you wanted to bring to my attention?

MR CRAYTHORNE: Indeed, Chairperson.

CHAIRPERSON: Yes, okay alright. We will take the lunch adjournment. We come back at two. Then Ms Sibiya will deal with that. But obviously, because you know your
20 documentation much better than us, you will also have a look and will be able to say to her here is the relevant correspondence, that is the date, that is the page and this is what the response was or there was no response. I want that – I am very interested in that.

MR CRAYTHORNE: Thank you very much.

CHAIRPERSON: Okay. Okay Ms Sibiya, we will take the lunch adjournment. We will take the lunch adjournment now and resume at two. We adjourn.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Okay, Ms Sibiya, shall we cover that particular point about parliament's role?

ADV SIBIYA: Chair, I must first explain something. Chair, the witness has had a lot of correspondence with
10 parliament but the correspondence is not in the affidavit or the annexures and yes, Chair, there are reports that he has given.

CHAIRPERSON: Ja.

ADV SIBIYA: That are part of the evidence and the annexures but the correspondence itself is not included and we would seek an indulgence to prepare a supplementary affidavit because it is evidence that in
20 existence. So we would need to prepare that. And, Chair, in addition, while I am talking about a supplementary affidavit, during the course of last week in preparation for coming here, a number of affidavits were received from parties that had been implicated by Mr Craythorne that he would need to respond to, so he would need to prepare supplementary affidavit in response to those as well.

CHAIRPERSON: Okay but that correspondence, Mr

Craythorne, exists – it is there somewhere at home or your office.

MR CRAYTHORNE: It is even a machine here, Chairperson, but it would be awkward and time-consuming to ...[intervenes]

CHAIRPERSON: To deal with it without first preparing.

MR CRAYTHORNE: To deal with it.

CHAIRPERSON: Okay. No, that is in order so what will be necessary therefore would be a supplementary affidavit as Ms Sibiya says. It may be a separate supplementary affidavit separate from any other affidavit that Mr Craythorne may prepare to respond to other parties who have filed affidavits, simply a special affidavit that deals with this particular issue and refers to correspondence and then copies of the correspondence can be attached.

ADV SIBIYA: Yes.

CHAIRPERSON: Dealing with it very systematically to say on this date this is what we wrote to parliament about, this is what they said in response or they said nothing.

20 **ADV SIBIYA:** Yes.

CHAIRPERSON: Then on such and such a date we wrote about the same thing or about something else again, there was no response or this is the response we gave. Such and such a date we went there, we met with so and so, we raised our issues but nothing happened after that. Or this

what we were promised but nothing came of it, that kind of systematic narration of the issues. Okay, no, that is fine, then we do not need to deal with it today.

ADV SIBIYA: Yes, Chair.

CHAIRPERSON: And that affidavit will be furnished and then a decision can be taken at that stage whether it would be necessary for Mr Craythorne to come back and give oral evidence about it. It may be that the affidavit will be enough and that it can then be given to the relevant people
10 in parliament to say respond to this affidavit, to these allegations and then we take it from there.

ADV SIBIYA: Yes.

MR CRAYTHORNE: Thank you.

CHAIRPERSON: Okay, alright.

MR CRAYTHORNE: Perfect.

ADV SIBIYA: Thank you, Chair.

CHAIRPERSON: Okay, no, that is alright, then it means I should excuse you now, Mr Craythorne. Thank you very much for having come to give evidence and if necessary we
20 will ask you to come back but if possible, if at all possible we will try and avoid that but if necessary we will ask you to come back. But thank you very much, you are now excused. Thank you.

ADV BHAM: Mr Chair. Mr Chair?

CHAIRPERSON: Oh, I am sorry, I am sorry. Mr Bham, I

am sorry.

ADV BHAM: Not a problem.

CHAIRPERSON: I saw you in the morning but I think I did not see you now. Yes, yes.

ADV BHAM: In this Commission I always try to keep out of the – Mr Chair, can I just briefly state that on behalf of the State Diamond Trader you may be familiar with the affidavit that we filed on behalf of - by Mr Mnguni on behalf of the STD.

10 **CHAIRPERSON:** Okay, no, I have not seen it.

ADV BHAM: But it does not really matter.

CHAIRPERSON: Ja.

ADV BHAM: We have listened over a day and a half carefully to Mr Craythorne's evidence. We have considered the paragraphs we have been referred to in the notice and we have come to the conclusion that there is no need for the SDT to trouble this Commission with any cross-examination and I thought I would just place that on record and may I ask if we may be excused.

20 **CHAIRPERSON:** Yes. No, thank you very much, Mr Bham, you are excused.

ADV BHAM: I am grateful, thank you.

CHAIRPERSON: I always say that the advantage of having experienced counsel representing parties is because experienced counsel knows the issues that are

important and they will not want to just cross-examine for the sake of cross-examining.

ADV BHAM: I am glad you say so, my wife does not always agree. Thank you, Mr Chair.

CHAIRPERSON: You are excused, thank you, Mr Bham. Is the Eskom work stream team here? Mr Seleka is supposed to be here.

ADV SIBIYA: It does not appear so at the moment but the junior is present.

10 **CHAIRPERSON:** [indistinct] 06.10 do you know anything?

ADV SIBIYA: Chair, in addition, they need a short adjournment because the witness will be testifying via media, so ...[intervenes]

CHAIRPERSON: Well, the evidence leader must here first. Is his junior here?

ADV SIBIYA: Yes.

CHAIRPERSON: Ja, please come forward, tell me what is happening? Yes, good afternoon. Yes, switch on the mic? Yes?

20 **ADV JAGGANATH:** I must apologise for [indistinct] 07.18 I am not entirely sure why he is not present, we had made arrangements to meet at the venue by one. So I did send him a message, I assume he is driving. But, Chair, may we ask for a short adjournment so that I could call him telephonically to find out his whereabouts as well as the

fact to give us a short opportunity just to link up with the witness who is not going to be present.

CHAIRPERSON: Ja, is that Ms Nteta?

ADV JAGGANATH: Yes, Dr Ayanda Nteta.

CHAIRPERSON: Yes, I assume that Rule 3.3 notices were served quite a long time ago with regard to her evidence because she was going to testify some weeks ago.

ADV JAGGANATH: Indeed so.

CHAIRPERSON: Yes.

10 **ADV JAGGANATH:** She was going to testify last year, December.

CHAIRPERSON: Ja.

ADV JAGGANATH: And then there was – it was in the last week so...

CHAIRPERSON: Ja. Okay, alright. No, that is fine then we are going to adjourn but I need to talk to Ms Sibiya before we adjourn. Thank you.

ADV JAGGANATH: Thank you.

20 **CHAIRPERSON:** Ms Sibiya, do you want to come back to the podium? In terms of the way forward with regard to Alexkor, I know that the – you have a commitment that makes you unavailable from a certain date. Is it from the 18th?

ADV SIBIYA: Yes, it is from Monday.

CHAIRPERSON: Up to when?

ADV SIBIYA: Until the 22nd, 21 February.

CHAIRPERSON: Yes. So you would only be available after that to finish whatever needs to be finished in regard to Alexkor?

ADV SIBIYA: Yes, yes, Chair, I would not be – it would not be proper for me to be engaged in ...[intervenes]

CHAIRPERSON: No, no, I accept that you will not be able to...

ADV SIBIYA: Yes.

10 **CHAIRPERSON:** I was just making sure that you will be available after...

ADV SIBIYA: Oh.

CHAIRPERSON: Okay, so the witnesses that you still have are Mr Bishop?

ADV SIBIYA: And Mr Dekker.

CHAIRPERSON: Then Mr Dekker.

ADV SIBIYA: And then the implicated parties.

CHAIRPERSON: You need to have Mr Carstens.

ADV SIBIYA: Mr Bagus.

20 **CHAIRPERSON:** Mr Korabie and Mr Bagus.

ADV SIBIYA: Yes.

CHAIRPERSON: Certainly we need to have their affidavits.

ADV SIBIYA: Yes.

CHAIRPERSON: And then we can see where there might

be no need for oral evidence and where there might be need but we certainly need to have all of those in as soon as possible. I would like that all attempts be made to make sure that by end of January all those affidavits are in and obviously when they come in, copies need to be given to people like Mr Craythorne and maybe Mr Bishop and whoever whose evidence might be disputed by those people in certain respects.

ADV SIBIYA: Yes.

10 **CHAIRPERSON:** So that we reach a point where we say all affidavits are in and everybody has commented on everybody's versions that relate to them and then we can take it from there.

ADV SIBIYA: Yes, Chair, thank you very much, we will attend to that.

CHAIRPERSON: Ja, okay. I am going to hear in terms of the rest of the week as far as the work stream – the Eskom work stream is concerned. It may well be that there might be days this week when they are not going to – that they
20 are not going to be able to use. Now if that were to happen, subject to your own commitments for this week, it might be something to think about whether Mr Peter Bishop could be brought in when a day becomes available or half a day to come in and give his evidence. But if your situation does not permit because that was not in the

original plan, that is fine, I will understand, then Mr Bishop can give his evidence after you have become available.

ADV SIBIYA: Thank you, Chair, it would not be possible.

CHAIRPERSON: It would not be possible. Okay, no, that is alright. I am going to take a ten minutes adjournment to enable the Eskom work stream to get ready. We adjourn.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Your leader is not here? I am told he
10 said he is still going to be about ten minutes. Junior Counsel is supposed to be always ready to take over, I want you to take over. Let us continue, your leader can take over when he arrives, if that is fine, otherwise you can lead, okay.

ADV JAGGANATH: Indeed so Chair.

CHAIRPERSON: I don't have any file here. There might be no reason why you might not lead the witness up till the end. Yes, are you ready?

ADV JAGGANATH: Chair I am ready. The witness that we
20 are calling is Dr Ayanda Komotso Lindiwe Nteta. If we may start.

CHAIRPERSON: Okay are we going to use Eskom Bundle 14?

ADV JAGGANATH: Indeed so Mr Chair.

CHAIRPERSON: Okay alright and the next witness is

Ayanda Komotso Lindiwe Nteta?

ADV JAGGANATH: That is correct.

CHAIRPERSON: Yes.

ADV JAGGANATH: Mr Chair we have also indicated on a previous occasion that this witness is situated in Durban, as a result thereto we have requested her evidence by led via – remotely via Teams or Zoom. She is on line.

CHAIRPERSON: Ja no I was told by the request and I authorised that she can give evidence via videolink.

10 Before you start leading her do you want to assist the public by just telling me where her evidence fits in, in the whole Eskom saga?

ADV JAGGANATH: Indeed so.

CHAIRPERSON: Yes.

ADV JAGGANATH: Mr Chair this witness at the time, or her evidence being led she was the Acting Senior Manager of Fuel Resources at Eskom, in the period of March 2015 or from April 2015. She will – her evidence revolves around the coal supply agreements so it is basically the
20 Tegeta transactions in respect of OCH, which is the Optimum Coal Mines as well as the prepayment transactions which – those are the two areas that her evidence in essence will cover.

CHAIRPERSON: Yes okay. That's fine. Please administer the oath or affirmation.

REGISTRAR: Please state your full names for the record.

DR NTETA: Ayanda Komotso Lindiwe Nteta.

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

DR NTETA: I do not.

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

DR NTETA: I do.

REGISTRAR: Do you swear that the evidence you will
10 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.

DR NTETA: So help me God.

CHAIRPERSON: Thank you. Her screen needs to be
moved a bit, I don't think it is where we usually have the
screen, can you move her screen a bit, I think normally it
is a little towards that side yes. Is it in the same
position? Oh the room is different. If you move the screen
what will happen, if you move it towards this way, yes like
20 that, it shouldn't affect her. Okay I think that's much better
ja, okay, alright.

AYANDA KOMOTSO LINDIWE NTETA: [duly sworn,
states]

CHAIRPERSON: Okay, you may continue.

ADV JAGGANATH: Thank you Mr Chair. Mr Chair I must

apologise before you walked in we actually were just – I am not sure if the witness has the links of the files because I need to take her through her statement, if I can just ...[intervenes]

CHAIRPERSON: Yes, you can check with her.

ADV JAGGANATH: Dr Nteta an email link was sent to you shortly, have you had a chance to open it?

CHAIRPERSON: I am not sure if your voice is naturally soft or low or whether you should speak closer to the mic
10 or you should raise your voice, try your best.

ADV JAGGANATH: I will indeed. Dr Nteta?

DR NTETA: Okay I am currently opening my emails.

ADV JAGGANATH: Thank you. There should be links that would have been sent to you, the first one would contain, it should say Exhibit Bundle 40, or it will read Exhibit U28.

DR NTETA: Okay I have not received either, the last email I received was the meeting request, I am refreshing my emails.

20 **ADV JAGGANATH:** Thank you.

DR NTETA: I have not received it. I am not going to look into, I am just trying to get – ja, now it has come through, Exhibit U28.

ADV JAGGANATH: Would you be able to quickly download?

DR NTETA: Okay. I am also just getting the password sorry, I am just writing it down so that I ...

ADV JAGGANATH: No problem.

DR NTETA: I am entering the password. It is currently downloading, it indicates one unit left.

ADV JAGGANATH: Thank you.

CHAIRPERSON: Is she going to be looking at the documents on her computer?

ADV JAGGANATH: Yes Mr Chair.

10 **CHAIRPERSON:** As opposed to hard copies?

ADV JAGGANATH: Yes, we did not, we didn't have the opportunity to courier the documents down to Durban because it was a last minute arrangement from Friday where we were confirmed that she would be testifying via the link.

CHAIRPERSON: Mmm.

ADV JAGGANATH: There is just one more bundle that she also has to download, it is in respect of the Tegeta reference which would be ...[intervenes]

20 **CHAIRPERSON:** When you refer to specific page numbers will she have no problem identifying those?

ADV JAGGANATH: There should be no problem Mr Chair.

CHAIRPERSON: Okay, alright.

ADV JAGGANATH: Because it is exactly, it is basically our files that have been electronically uploaded, so we will

– I will quickly check with her now to make sure she has the black and the red numbers.

CHAIRPERSON: Okay, alright.

ADV JAGGANATH: Mr Chair she will also have to download the Tegeta reference bundle which would be – Dr Nteta have you managed to secure the Exhibit, Eskom Bundle 14?

DR NTETA: What I have just done is U28, Nteta A Affidavit and Eskom Bundle 18.

10 **ADV JAGGANATH:** Wonderful.

DR NTETA: Is there a second one that I should be looking for?

ADV JAGGANATH: No Eskom Bundle 18 is the second bundle, that should read the Tegeta reference bundle?

DR NTETA: Okay, that's it. Okay, I am opening it, it is called Bundle 18, it is Exhibit U – yes 34, Tegeta reference bundle and ...[indistinct] there is writing in black and there is also some writing in?

ADV JAGGANATH: Red.

20 **DR NTETA:** Yes.

ADV JAGGANATH: That is indeed so, that is actually the two references that the electronic pagination for the exhibits that is used at the Commission, we will be referred to the black numbers so the numbers on your left hand side, on the document.

DR NTETA: Okay, alright.

ADV JAGGANATH: Mr Chair my leader has just walked in.

CHAIRPERSON: Has he said he wants to take over, if he doesn't say that you can continue?

ADV JAGGANATH: He nodded to me indicating that he is willing to take over.

CHAIRPERSON: Okay. We will continue while he is busy until he is ready.

10 **ADV JAGGANATH:** Thank you Mr Chair. Dr Nteta like I have indicated we are using the black reference numbers, so if we look at U28, the first one, it starts on page – it says Eskom 14 which refers to the Exhibit number or the reference, and then the page number is 63, if you look at page 63 and go up to page 84 you confirm that is your statement?

DR NTETA: Yes I do.

ADV JAGGANATH: Okay ma'am if you turn then to page 84 you would see the affidavit was signed by yourself on
20 the 5th of July 2020 do you confirm that is correct?

DR NTETA: Yes I confirm that signature, the date I cannot see well but I confirm the signature.

CHAIRPERSON: Well ...[intervenes]

DR NTETA: I see the stamp of the South African Police yes the 6th of July, yes.

CHAIRPERSON: Well the stamp of the South African Police reflect 5 July 2020 but the Commissioner of Oaths said that you certified that you acknowledged that you knew and understood the contents of the affidavit which was signed and so on before him at July on the 5th day of June 2020, is that July or is that something else, do you see what I am reading?

DR NTETA: Yes sir I see what you are reading.

CHAIRPERSON: Does it look like July or is it the name of
10 a place that looks like July? Do you remember the place you went?

DR NTETA: Yes the place was Midrand.

CHAIRPERSON: Ja, so it is July then there's June and it cannot be both.

DR NTETA: Yes.

CHAIRPERSON: What's your recollection was it July or June, or you cannot remember?

DR NTETA: I cannot remember, right now I am inclined to say July because my signature under above looks like it
20 says 07.

CHAIRPERSON: Yes.

DR NTETA: So I am inclined to say July.

CHAIRPERSON: July, ja, okay, alright. Continue.

ADV JAGGANATH: I think a simple way to put it would be ma'am on the day that you signed your signature do you

remember being at the Midrand Police Station?

DR NTETA: Yes, yes, I do.

ADV JAGGANATH: And you would have commissioned this statement in front of the Commissioner at the police station, and the stamp would read July, so I think it is was just an error where there's 15 July, June, I think the statement was drafted around June but signed in July.

DR NTETA: Right.

ADV JAGGANATH: Ma'am as indicated that this is your
10 affidavit to the Commission, so for the record you have confirmed that it is your signature and it is your statement that you have provided. Can you ...[intervenes]

DR NTETA: Yes I confirm.

ADV JAGGANATH: Okay for the record would you be able to place your qualifications?

CHAIRPERSON: Just for the sake of completeness do you confirm that the contents of the affidavit are to the best of your knowledge true and correct?

DR NTETA: Yes I confirm that – yes I confirm.

20 **CHAIRPERSON:** Yes, continue.

ADV JAGGANATH: Mr Chair my Silk is asking if he may then now take over the proceedings.

CHAIRPERSON: Okay, that is fine.

ADV JAGGANATH: May I then be excused.

CHAIRPERSON: Ja.

ADV JAGGANATH: Thank you for the indulgence.

CHAIRPERSON: Ja.

ADV SELEKA SC: Thank you Chairperson.

CHAIRPERSON: Yes Mr Seleka.

ADV SELEKA SC: I apologise for the delayed arrival Chairperson, I understood that the witness of this morning might take longer than discussed with my learned friend yesterday but I was told after two he was excused.

CHAIRPERSON: Well when we started in the morning I
10 specifically said to Ms Sibiya that I would give her two
hours to finish and part of the reason why I mentioned that
in the open hearing was so that wherever you may be you
would know because you should be keeping an eye on what
is happening in the proceedings, you should know that we
were going to finish at about twelve, so we didn't finish at
twelve, so I thought by one o'clock you would be here.
One o'clock you were not here so I thought at least when
we come back at two you would be here and then you were
not here still, so later on I had to ask your junior to take
20 over.

ADV SELEKA SC: Yes, I hardly watched, but when
preparing ...[intervenes]

CHAIRPERSON: Well you had to watch if you wanted to –
if you knew you were going to have to start after the
witness had finished who had started in the morning, you

had to keep an eye or get somebody to check if something changed.

ADV SELEKA SC: I was amiss, I was.

CHAIRPERSON: Okay alright, let us continue.

ADV SELEKA SC: I have been observing on the issue of the signature of Ms or Dr Nteta's affidavit. Dr Nteta on the last page of your affidavit the Commissioner has put a stamp, the South African Police Service Supply Chain Management Midrand, the stamps shows a date of 5 July
10 2020, can you see that?

DR NTETA: Yes I can.

ADV SELEKA SC: And then the date of five your response with what is handwritten under oath and the month of July which is misplaced is put – the month is written in the space for the place, can you see that.

DR NTETA: Yes I do.

CHAIRPERSON: That has been covered.

ADV SELEKA SC: Yes.

CHAIRPERSON: That has been covered by your junior.

20 **ADV SELEKA SC:** Thank you Chair, so we can accept that your statement could have been commissioned on the 5th of July. Chairperson for the purposes ...[intervenes]

CHAIRPERSON: I think your junior had just started asking her to deal with her qualifications and she – when you took over.

ADV SELEKA SC: Yes.

CHAIRPERSON: And she was still to deal with her qualifications.

ADV SELEKA SC: Yes, Chair is it sufficient, the affidavit is in Exhibit U28.

CHAIRPERSON: The affidavit has not been admitted as yet, but the part you sought to cover has been covered, so if you ask me to have it admitted that can be done and then you can ask her about – then you can start asking her
10 questions starting with her employment history at Eskom and her qualifications.

ADV SELEKA SC: Yes.

CHAIRPERSON: So do you want to admit this affidavit?

ADV SELEKA SC: Yes Chair it is Exhibit U28.1.

CHAIRPERSON: The affidavit of Ayanda Komotso Lindiwe Nteta starting at page 53 of Eskom Bundle 14 is admitted together with its annexures as Exhibit U28.1.

ADV SELEKA SC: Thank you Chair. Chairperson for the purposes of the audience I could also briefly point out the
20 issues on which Ms Nteta will be testifying on. Can I do that, thank you Chair.

CHAIRPERSON: Ja.

ADV SELEKA SC: So Ms Nteta – it is predominantly of Eskom Chairperson, she was there in 2015 in the Division of Fuel, the Unit of Fuel Sourcing with the Division of

Primary Energy so she would have been responsible for fuel sourcing. The point that she is going to testify on mainly relates to the prepayment submission that was made for the prepayment of R659million to Tegeta in April 2015. She will tell the Chairperson that she was in fact the person who initiated the drafting of that submission which was ultimately signed by Mr Koko and submitted to the BGC in a meeting of the 11th of April for approval. She will also tell the Chairperson about her interactions with the
10 Gupta family, in this case specifically in her affidavit she addresses her interaction with Mr Tony Gupta. She will deal with as well her interaction with Mr Ravindra Nath who the CEO of Tegeta at the time, and tell the Chairperson how the transactions between Tegeta and Eskom in regard to Brakfontein and this particular transactions of R6 659million came about.

Thank you Chair.

CHAIRPERSON: Okay.

ADV SELEKA SC: Ms Nteta then in regard to your
20 qualifications just by way of background and introduction could you please tell the Chairperson what your qualifications are?

DR NTETA: Okay, I currently have a doctorate in Business Leadership, which I obtained from Unisa School of Business Leadership in Midrand.

ADV SELEKA SC: I see that you say you also have qualifications in Masters in Business Leadership?

DR NTETA: Yes I have a Masters in Business Leadership, obtained from the same institution, I also have a Bachelor of Arts degree which is my undergraduate degree.

ADV SELEKA SC: Yes.

CHAIRPERSON: I assume you obtained your doctorate after you deposed to this affidavit?

DR NTETA: Yes, I did, formally.

10 **CHAIRPERSON:** Congratulations.

DR NTETA: Thank you sir.

ADV SELEKA SC: Thank you Chair. Dr Nteta, I will call you doctor then, when did you start at Eskom?

DR NTETA: So I started at Eskom in June 2012 I think it is, and I started as a senior manager within the Field Sourcing Division which falls within Primary Energy Department.

ADV SELEKA SC: As a senior manager?

DR NTETA: Yes, as a senior manager.

20 **ADV SELEKA SC:** I see that from your affidavit you would have held this position from then June 2012 to about July 2015?

DR NTETA: Yes sir.

ADV SELEKA SC: And what position did you occupy thereafter?

DR NTETA: So after the position of senior manager I was then in August 2015 I was the Acting General Manager also within Fuel Sourcing, also within the Primary Energy Division, and that was until February 2017 where I was then Senior General Manager for Primary Energy Division.

ADV SELEKA SC: Thereafter?

DR NTETA: A position that I held up until April 2018, I am just trying to remember, where I then left the employ of Eskom.

10 **ADV SELEKA SC:** Ja, do you have your affidavit in front of you?

DR NTETA: I am just trying to get to that.

ADV SELEKA SC: Ja, that is in Eskom bundle 14, Eskom Bundle 14.

DR NTETA: Yes sir.

ADV SELEKA SC: It is on page 64, which is the black numbers on the left, top left hand corner.

DR NTETA: Yes I have that, and I have it in front of me.

ADV SELEKA SC: Thank you. So the period of interest
20 for present purposes is the one from August 2015 to January 2017 when you were the Acting GM Fuel Resourcing?

DR NTETA: Yes sir.

ADV SELEKA SC: Well we could actually take it back to June 2012, because of my next question. When – tell the

Chairperson when did you have engagements or interactions with the Gupta Family or members of the family?

DR NTETA: So my interactions with them, I had indicated that I do not recall the exact date but it would have been if I was to put a line in the sense after they had obtained their Brakfontein Coal Supply Agreement which they were awarded in I think it was 2015, where they were awarded that particular agreement.

10 **ADV SELEKA SC:** Yes, no I have looked at the evidence, even your affidavit, I see that that contract was signed on the 10th of March 2015.

DR NTETA: Yes.

ADV SELEKA SC: That Chairperson you find on page 69 of Dr Nteta's affidavit, paragraph 6.16.

CHAIRPERSON: Yes.

ADV SELEKA SC: Do you see that Dr Nteta?

DR NTETA: Yes, paragraph 16 yes it was signed on the 10th of March 2015.

20 **ADV SELEKA SC:** That is right.

DR NTETA: My interactions would have been post that.

ADV SELEKA SC: It would have post that, but would you please, just before we got into the details of your interaction with them would you please give us the background to the conclusion of the Brakfontein contract?

In a nutshell how did that contract come about what role you played in the build up to the conclusion.

DR NTETA: So ...[indistinct] from my perspective from – between June 2012 and December 2012 where I was requested by my then Manager, Johan Bester, to engage on the supply of coal from Tegeta, and from that point there were several interactions with various people from the organisation, from the CEO to the General Manager etcetera, and that culminated in the conclusion of an
10 agreement in March 2015, where we had various negotiations, the final negotiations was with my then manager, Johan Bester, to then conclude the Coal Supply Agreement then.

ADV SELEKA SC: Now on page 65 of your affidavit, and I am always referring to the black numbers on the top left hand corner, page 65, paragraph 6.3, it reads that during 2013 I together with representative from *inter alia* the technical, environmental and coal operations departments within PED, which is Primary Energy Division, is that
20 correct?

DR NTETA: Yes that is correct.

ADV SELEKA SC: Yes, and the Eskom Legal Department engaged primarily with Mr Ravindra Nath and Mr Satish Modalia from Tegeta Exploration during initial engagement that Eskom had with Tegeta the two resources to supply

coal from namely Vierfontein and Brakfontein mine. Is this interaction which you referred to during 2013 should in fact be dated June 2012 and onwards? From June 2012 onwards.

DR NTETA: In terms of the – that particular date why I am saying from June 2012 it was not exactly June 2012 I joined Eskom in June 2012.

ADV SELEKA SC: Yes.

DR NTETA: I cannot recall the exact date when Mr Bester
10 requested that I engage with the supplier. There were several engagements that we had.

ADV SELEKA SC: Yes.

DR NTETA: So I am – I cannot tell you the exact date but I do believe that there are some emails with regards to that that we might get closer to the date. do believe that there are some emails with regards to that that we might get closer to the date.

ADV SELEKA SC: Yes. Okay but is it correct that these engagements would have been based on an unsolicited if I
20 may use that word which I see from your affidavit – an unsolicited approach is made by Tegeta.

DR NTETA: Yes those engagements would have been from unsolicited approach made by Tegeta.

ADV SELEKA SC: From Tegeta. So no...

DR NTETA: Yes.

ADV SELEKA SC: This was not an engagement.

DR NTETA: If I can ...

ADV SELEKA SC: Carry on.

DR NTETA: If I can just indicate before they were Tegeta I believe they were called I think it was Idwala but yes in terms of the – the gentleman that we engaged with from the organisation.

ADV SELEKA SC: It was the same as the [00:01:48].

DR NTETA: Yes and Mr Satish.

10 **ADV SELEKA SC:** Mr Satish.

DR NTETA: Moodley.

ADV SELEKA SC: So there was procurement process necessarily followed here?

DR NTETA: In terms of a tender that went out no.

ADV SELEKA SC: No.

DR NTETA: But the – ja. In terms of a tender no.

CHAIRPERSON: At the time of your engagement at that stage were you aware that there had been no tender that had been advertised or that had gone out?

20 **DR NTETA:** Yes so at the time of my engagement yes I was aware that there was no tender that had been issued. In terms of our engagement within Eskom at the time we engaged with suppliers based on unsolicited offers. So we would get suppliers coming through to us to indicate that they have a potential to supply us with coal and that is how

we would engage them.

CHAIRPERSON: When you engaged them after they have made that approach to you unsolicited proposal would it be – would your engagement with them be on the basis that you are just exploring exactly what they have in mind but in due course a tender would be issued or was it understood that if it is an unsolicited proposal there would be no tender issued. You would discuss with them and if you reach agreement you conclude a agreement with them. What was your
10 understanding and experience of how Eskom was dealing with such proposals?

DR NTETA: My understanding and experience was that you would engage with suppliers to the point of conclusion into a coal supply agreement where they would supply us. At that point there were – we did not go out on tender and we would – we would conclude agreements with suppliers based on unsolicited offers.

CHAIRPERSON: That was your experience and that was your understanding?

20 **DR NTETA:** Yes.

CHAIRPERSON: And it had happened with a number of unsolicited proposals made by different suppliers in the past?

DR NTETA: Yes.

CHAIRPERSON: Okay alright. Or maybe before we move

on. You may not have been a procurement person but I guess being at senior management level you – one should expect that you would know. Did you have any understanding as to what Eskom's justification was for not going out on tender in such cases?

DR NTETA: So the justification that – that Eskom had with regards to the procurement of coal was based on a medium term mandate that was entered into in 2008 that said that the – we could then engage with suppliers in order to secure
10 coal. The reason – the rationale of the justification was that in terms of getting coal the mandate was to secure it because of the lack of availability of this coal particularly the volumes that Eskom was looking for as well as the quality. So it was within the medium terms mandate and what we were requested to do periodically is to then provide the – the board tender committee with feedback in terms of how we are faring against this mandate that we had.

CHAIRPERSON: No I can imagine that if supplier A
20 approaches Eskom and says I have a mine from which I can supply you with coal. I can image that obviously that coal – that is their mine and that is their coal. If there is nobody else who can supply you with coal there might – there might not be any issues about not going out on tender. But I leave that aside for the time being. But I can image that if somebody approaches you on the basis of an unsolicited

proposal and seeks to conclude a coal agreement with you as Eskom and you do have a need for coal; you do want people who can supply you with – with coal there is no reason why as Eskom you cannot go out on tender let somebody else who might have – who might be able to tender or put in a bid – also put in a bid and this one can put in a bid as well and then you might either take both if your need is great or take the one that gives you the best offer. Are you able to say something on this thinking that I am
10 having? Because you as senior management.

DR NTETA: With regard to the...

CHAIRPERSON: You as senior manager you might be – you might have knowledge of the dynamics at Eskom that I might not know. But I am just saying my immediate reaction is it does not look like there would be justification not to go out on tender because what if there is somebody else who can offer you coal at even a better price that you are not aware of and who has not put in an unsolicited proposal? Do you want to say something on that?

20 **DR NTETA:** So – yes I can say something. So the – the 2008 medium term mandate was a result of the – I want to call it an insatiable appetite that Eskom has for coal and having to look to secure it. So at the time the thinking was that we should look at all mechanisms that are available to – to secure coal and which is why looking in terms of the

speed in which we also secure coal which is why they had the mandate which was open for a large volume and it was a mandate that said as long as you are within this particular volume that they have put in as well as in terms of the pricing parameters then the primary energy head would then be authorised to conclude on the agreement. So that was one of the mechanisms that was made available because of the – the coal requirement. The second dynamic comes in in terms of the qualities that Eskom specifically looks for and
10 so there could be a mine that does have that particular quality or does not have that particular quality. So it – we also would look in terms of those various parameters when looking to secure coal.

CHAIRPERSON: Well you will tell me if this is something that you – you would not be able to deal with because of the position you held. But it seems to me that that mandate that you talk about could not authorise Eskom officials to do something that is unlawful. If the law required that you go out on tender that is the law. That is what you are supposed
20 to do. The board or somebody could not write a mandate that says to the executives do not bother about the law; do not go out to tender when in circumstances where the law says go out on tender. You understand what I mean?

DR NTETA: Yes.

CHAIRPERSON: Is that something you are able to say

something on or is that something you are not able to say something on to try and make me understand why Eskom would not go on tender in these circumstances – would not go out on tender in these circumstances?

DR NTETA: I am – no I would not speak on that in terms of the legalities of that or the specific mandate.

CHAIRPERSON: Okay no that is alright. Mr Seleka.

ADV SELEKA SC: Thank you Chair. Dr Nteta but the aspect is that the – the BTC mandate of 2008 was not specifically
10 relied upon for the Brakfontein contract. I see that you refer to it when you deal with the pre-payment of the R659 million. So do you know for sure or are you now surmising as to that being the reason for why the Brakfontein contract was concluded?

DR NTETA: So the – the 2008 mandate looks in terms of the securing of coal of a specific volume and specific rand per ton – or rand per gigajoule and it would then – so for the Brakfontein contract it would be within that particular mandate. Similarly for the – the pre-payment for the aspect
20 of the security of the coal it would be within that particular mandate in terms of that. But when you then begin to talk to and I am going to assume that we will talk to that you talk to the aspects of the pre-pay – of the payment and the finances then that is a separate matter.

ADV SELEKA SC: Yes.

CHAIRPERSON: I am sorry Mr Seleka and Dr Nteta. I am going back. I want to go back to the issue that we were dealing with a few minutes ago. Maybe I was being too soft on you to leave the issue where it was. You might not be procurement person; you might not be qualified in procurement in terms of paper and so on I do not know. But I would imagine that senior managers in any institution including Eskom would at least have some understanding of the basics of procurement so that even if they might not
10 have deep knowledge of procurement procedures and so on they would know at least is that before you conclude a contract with a supplier generally you are supposed – Eskom is supposed to go out on tender unless the situation falls within certain exceptions. And if there are not sure they would ask procurement – the procurement unit or division within Eskom is it right that we should not go on tender – out on tender on this? Because you would not as a senior manager want to involve yourself in a transaction where you might be accused of having breached procurement policies
20 of Eskom or procurement laws that are binding on Eskom, is it not? You would have that kind of basic knowledge would you not?

DR NTETA: Yes I would have that basic knowledge.

CHAIRPERSON: Yes.

DR NTETA: So when looking at the medium terms mandate

it is the – it was the practice within Eskom when looking to secure coal we would work towards that particular mandate for coal. So I would say that at that time probably about 80% of the transactions within the division were done within that particular mandate. It was a ten year mandate open for that period.

CHAIRPERSON: Did – did it – that is that mandate – did it specifically say that procurement policies or procedures need not be followed in those cases where there was an
10 unsolicited proposal?

DR NTETA: So I have not looked at the mandate recently but my understanding and recollection of that particular mandate it indicated in terms of what should be done with regards to concluding coal supply agreements. So it would look in terms looking in terms of those qualities and in terms of also looking at the – the price and also it was quite specific about the volumes. So it indicated what should be done.

CHAIRPERSON: So...

20 **DR NTETA:** I think your question to me was that does that particular mandate then override the – the laws of the country?

CHAIRPERSON: And the policies which I assume Eskom has in – had in relation to procurement which a lot of state owned entities had which require that the entity should go

out on tender; should issue tenders unless the particular – a particular case falls within certain specified circumstances – exceptions.

DR NTETA: Correct.

CHAIRPERSON: Yes so...

DR NTETA: So the history of ...

CHAIRPERSON: Ja continue – continue.

DR NTETA: Sorry Sir. So the history of the institution in terms where primary energy comes from it was a – in terms
10 of the standalone unit that had its own managing director at the time. And that is where the – the policies and the procedures etcetera came from that in terms of this particular standalone unit has its unique nuances and therefore the procurement processes would be then dictated by – at the time it was that particular mandate. But I – I am hesitant to get into the details because I would like to rather allow those who know better to talk about the – the history of that particular mandate where it comes from etcetera.

CHAIRPERSON: No, no that is fine.

20 **DR NTETA**: So the primary energy division did do its procurement in a particular way.

CHAIRPERSON: Yes. No, no that is fine but obviously what you are able to do is talk about what your own understanding was which may or may not be in line with what they will say is the – was the position. But you certainly had your own

understanding of how – what was supposed to be done and what was not supposed to be done. Is that right?

DR NTETA: Correct.

CHAIRPERSON: Your own understanding you are saying was that with regard to unsolicited proposals there was to your knowledge no need or requirement to go out on competitive tender, is that right? That was your understanding.

DR NTETA: Yes.

10 **CHAIRPERSON:** Yes.

DR NTETA: That was my understanding and that was the practice at the time.

CHAIRPERSON: And that was the practice at the time.

DR NTETA: Yes.

CHAIRPERSON: And it is in line with your understanding of the mandate that you have talked about?

DR NTETA: Yes.

CHAIRPERSON: Ja okay alright. Mr Seleka.

20 **ADV SELEKA SC:** Thank you Chair. Dr Nteta well the mandate is not attached to your affidavit. I know that you have referred to it elsewhere in your affidavit but it is not attached. I have had the opportunity to see that mandate and the question which the Chairperson is asking whether the mandate allowed the deviation from a procurement process that mandate you would have seen in fact it does

not have the deviation from a procurement process. The mandate contemplated the conclusion of medium term contracts. You will recall that?

DR NTETA: Yes.

ADV SELEKA SC: Yes. And the mandate did not envisage unsolicited offers. So you had to determine as Eskom that you needed coal and then you could invoke that mandate.

DR NTETA: Yes.

ADV SELEKA SC: There is a paragraph of particular
10 interest in your affidavit which is on page – it starts on page
64.

CHAIRPERSON: Mr Seleka before you proceed.

ADV SELEKA SC: Yes.

CHAIRPERSON: Can arrangements be made for me to see that mandate and for Dr Nteta to have access to it because I think we probably will not finish with her evidence today.

ADV SELEKA SC: Yes Chair.

CHAIRPERSON: If we continue tomorrow she would be able
20 to refresh her memory on what it says and maybe answers
some questions tomorrow.

ADV SELEKA SC: Yes.

CHAIRPERSON: Ja.

ADV SELEKA SC: Indeed Chairperson. Dr Nteta I was then referring to page 64 that paragraph on 5.2 – paragraph 5.2 of your affidavit. You talk about the reasons why you left

Eskom in that paragraph. You give a primary reason and you give what you say are secondary reasons. Are you on that page 64 paragraph 5.2?

DR NTETA: Yes Sir – yes I now am.

ADV SELEKA SC: You are there. Yes. So the primary reason you said it was for you to study – to pursue your studies. You see that?

DR NTETA: Yes.

ADV SELEKA SC: And then at a secondary level you give
10 quite an extensive explanation there which the essence of which is that you were essentially moving away from pressure being brought to bear on you by the executives to do certain things. Speak to me.

DR NTETA: Yes so my affidavit indicates that my primary reason for leaving Eskom yes is to pursue my studies. The secondary reason was that the area that I was within procurement which is the Primary Energy Division within Field Sourcing. There was a lot of interest in terms of the transactions that were in that area from my superiors up until
20 board level and at the time there had been a new board that was entering within Eskom and what I noted in terms of the new board that came in there still seemed to be the same interest in terms of coal transactions and I just felt that I did not want to partake in it.

ADV SELEKA SC: So the interest you are referring to are

you able to explain to the Chairperson what you mean by that?

DR NTETA: So with regards to interest in terms of coal transactions throughout my tenure at Eskom I would be asked about specific transactions as to how far we are within negotiations; how far we are within concluding. We from the Field Sourcing department are required to put together documents that go to the board tender committee so I would be asked questions in terms of those – you know various
10 transactions at different times. And in my opinion I just felt that

1. My level within the organisation I should not be asked those questions. There are people who are more senior to me who should be asked those questions.

2. And secondly that in terms of my level I do the transactions and so I did not want to continue to – to have that kind of pressure.

I was hopeful with the entering board that it would be different and it was not.

20 **ADV SELEKA SC:** Yes. Now are you able to tell the Chairperson whether or not in the conclusion of the Brakfontein contract did you have the same experience of pressure being brought to bear on you or interest being shown in this contract?

DR NTETA: Yes I did.

ADV SELEKA SC: So you did have the same experience?

DR NTETA: I had – yes. There was questions I was being asked to report in to my immediate manager in terms of where the transaction was. I had to report in. The last negotiations that we had my immediate manager joined into those particular negotiations. That was the last and final negotiation before the conclusion.

CHAIRPERSON: I imagine that your immediate supervisor or manager would not be one of the people that you were
10 concerned about in terms of asking you questions about transactions that you were doing because obviously your immediate manager or supervisor is entitled to ask you to see what progress you are making and maybe if he or she thinks the progress is slow to push you to try and conclude the transaction as soon as possible. You accept that?

DR NTETA: I do.

CHAIRPERSON: So I suspect that the people – the pressure that you are talking about which you seem to have found unacceptable would come from other people you are not
20 talking about with your immediate manager. You are talking about pressure that was directed at you or questions that were being put to you or inquiries by other people, is that correct?

DR NTETA: Correct. So with regard to the conclusion of the particular transaction with Brakfontein yes I would get

questions from my immediate manager and the frequency of the feedback that I had to give was weekly. I also would have to provide that same feedback to my managers' immediate manager in terms of the progress in terms of that particular transaction. We as a department Primary Energy Department were also called in to a meeting and it was only our department by our chairperson who spoke in general about our – how we are interacting with our suppliers which I also felt was inappropriate.

10 **CHAIRPERSON**: And...

DR NTETA: I am providing you with examples.

CHAIRPERSON: When you refer to your chairperson are you talking about the chairperson of the board of Eskom at the time?

DR NTETA: Yes.

CHAIRPERSON: Who would that have been at the time?

DR NTETA: Mr Tsotsi.

CHAIRPERSON: Mr Tsotsi. Okay. So let me go back to getting more clarification. The people who were putting
20 pressure that you found unacceptable on you would some of them have been members of the board of Eskom?

DR NTETA: So the – the member of – so this particular transaction for Brakfontein is that the question Sir?

CHAIRPERSON: No I am still at general level. You said you – the secondary reason why you left Eskom was because of

pressure that was being brought upon you in various transactions. So I am talking at a general level, at this stage.

DR NTETA: Okay thanks. Thank you for that clarity. At a general level, on coal transactions, the main – in terms of the chairman of the board – I gave an example of them calling us in and discussing in terms of our – how we engage in terms of our – the suppliers and that you get board level.

CHAIRPERSON: H'm.

10 **DR NTETA**: Yes.

CHAIRPERSON: H'm.

DR NTETA: So. Ja. It should – maybe at that level. But that also be within the executives.

CHAIRPERSON: It would all – pressure would also come from within the executives, other than your immediate manager.

DR NTETA: Other than my immediate manager, yes.

CHAIRPERSON: Yes. Obviously, you regarded this pressure as not legitimate. Is that right?

20 **DR NTETA**: I regarded the pressure as, that it is not required.

CHAIRPERSON: Ja.

DR NTETA: And it is not necessary.

CHAIRPERSON: Yes.

DR NTETA: Why I say so, is that, whether the medium-term

mandate is right or wrong. We have a process that we follow.

CHAIRPERSON: H'm.

DR NTETA: And I provide the feedback to my immediate boss.

CHAIRPERSON: H'm.

DR NTETA: He – as you have indicated, if he thought I was working too slow, he would let me know, et cetera.

CHAIRPERSON: H'm.

10 **DR NTETA**: But I just felt that if I have to give feedback every week on the transactions and me dealing with quite a few transactions, then I am providing more – the work that I am doing is providing more feedback than actually attending to the transactions.

CHAIRPERSON: H'm.

DR NTETA: And I thought that was inappropriate.

CHAIRPERSON: Yes, Mr Seleka.

ADV SELEKA (SC): Thank you, Chairperson. Dr Nteta, your immediate boss was Mr Johan Bester?

20 **DR NTETA**: Correct.

ADV SELEKA (SC): Is that correct?

DR NTETA: [No audible reply]

ADV SELEKA (SC): So providing feedback to him would be in order. Then you have mentioned the executives who would put pressure on you. Do you mind telling the

Chairperson, the ones that comes to your mind in this regard?

DR NTETA: So for example. Mr Johan Bester reported to the senior manager for Primary Energy. And I would give feedback to that senior general manager for Primary Energy. And I felt that it is not required because I do have an immediate boss and should he require information, he should receive it from there.

ADV SELEKA (SC): Who was the Senior GM, Primary
10 Energy at the time, 2012/2013?

DR NTETA: It was Mr Mboweni.

ADV SELEKA (SC): I have seen the affidavit of Mr Bester. When talking specifically about Brakfontein contract, he details the time period taken prior to this contract concluded on the 10th of March. So, as you quite correctly say, the engagement with Tegeta or the approach by Tegeta dates back to 2012. 2012 ...[intervenes]

DR NTETA: Correct.

ADV SELEKA (SC): Thank you. 2012, 2013, 2014. That is
20 three years. And only in March 2012... 2015, was the contract concluded. He ...[intervenes]

DR NTETA: Correct.

ADV SELEKA (SC): He says... Sorry, just repeat your answer.

DR NTETA: That is correct.

ADV SELEKA (SC): Correct. Thank you. He says then, during that time, even though you were reporting to him, he observed that you were being requested by persons like Mr Mboweni, **Mr Amabeleni(?) [00:04:41]** and Mr Matshela Koko to report directly to them. What is your comment on that?

DR NTETA: Yes. So as I have indicated. The weekly report that I had to write was to Mr Mboweni.

ADV SELEKA (SC): Yes.

10 **DR NTETA**: And – at his request. And I would then copy Mr Bester because I wanted him to know that I am seeing these reports and I also informed Mr Bester that I had been requested to provide weekly feedback in terms of the transaction. The progress on the transaction.

ADV SELEKA (SC): Yes, but he specifically says, he had concerns that you had to be asked to report directly to Mr Koko in regard to this Brakfontein negotiations. Your comment.

20 **DR NTETA**: I... Ja, I did not report directly to Mr Koko with regards to the Brakfontein negotiations. I think what Mr Bester – I have not seen his affidavit. I think what he is referring to is that, at the negotiations that we had with Brakfontein.

I did receive a call from Mr Koko where he asked me where Mr Bester was. And I went to Mr Bester and told him

that Mr Koko is looking for him during those – when we were in those negotiations.

ADV SELEKA (SC): So he testified in the first phase of the Commission. I will provide you with his affidavit but there is a passage in his affidavit where he says:

“I always knew that there was interest in the Tegeta Platform contract from higher up.”

So that seems to resonate with what you said earlier.

10 “Even since 2012, a significant pressure and focus came from the start of 2015. Brakfontein by then had its water use license and we had run out of legal excuses to keep betting them away.

From the beginning of 2015, we had to provide Mr Matshela Koko with weekly progress reports.

Also, I suspected, that Mr Koko was engaging Ms Ayanda Nteta directly although she reported to me. He never directly put pressure on me but he did on her.”

Your comment on that?

20 **DR NTETA**: So with regards to that. I do not know where my reports went, my weekly reports went to.

ADV SELEKA (SC): H’m.

DR NTETA: So Mr Bester would be better – he would be better able to advise as to where those particular reports went to. I know that I sent my reports to him and to mister –

to the senior general manager which is Johan Bester. Where they would go further, I do not know.

ADV SELEKA (SC): H'm. But can you say in regard to putting pressure, where you experienced that pressure was been brought today on you by Mr Matshela Koko?

DR NTETA: Not with regards to that particular transaction.

ADV SELEKA (SC): Okay. Mr Bester continues, and as I have said, I will provide you with his affidavit.

DR NTETA: H'm, h'm.

10 **ADV SELEKA (SC)**: In another paragraph, he says:

“I realised later that Mr Koko and his handlers had two games running each with their own timelines.

The primary run was to get rid of Finance Director, Ms Tsholofelo Molefe and Group Capital Executive, Mr Dan Marokane.

In hindsight, it made sense why we came under such pressure from Mr Koko and Mr Mboweni, as those pulling the strings needed to effect the suspension of the four executives including Mr Koko as a ruse.”

20 In brackets he puts [as a ruse against the name of Mr Koko].

“And the Brakfontein contract was taken longer than they had anticipated, and I guess they were worried that without Mr Koko they would not be able to apply any leverage over PED, which is Primary Energy.

It is well-documented that the contract was signed on 10 March 2015 and that Mr Koko was suspended on 11 March 2015, the next day after the contract was signed but few have joined the dots.”

So you understand the message he is conveying? So from 2015, he says pressure was brought to bear to have this Brakfontein contract concluded as soon as possible.

Because now when he reflects back, he can see that okay those who were putting pressure, they would have realised that without Mr Koko, the contract may not be concluded. You follow the reasoning?

DR NTETA: Yes, I do.

ADV SELEKA (SC): Do you have any comment on that?

DR NTETA: My comment is that, as I have indicated to the final negotiation that we had was when Mr Bester joined the negotiation and that was final.

At the time, I had just thought he felt I was taking too long and that is why he joined because he wanted to conclude the agreement.

20 So he and ...[indistinct - 00:11:17] and Mr Mboweni would have tried to shield me from the pressure that they were receiving. So they would ask me to do those weekly reports of which I did to them.

As I have indicated to you. I do not know where they went – where those reports went to after that.

ADV SELEKA (SC): I see. Now just ...[intervenes]

DR NTETA: But I understand his reasoning.

ADV SELEKA (SC): Yes. Bu you say they – he would have tried to shield you from the pressure?

DR NTETA: I will assume so. As he is my direct manager, he would try and do that.

ADV SELEKA (SC): Just the one ...[intervenes]

DR NTETA: So he is...

ADV SELEKA (SC): Go ahead.

10 **DR NTETA**: Sorry/

ADV SELEKA (SC): Just go ahead.

DR NTETA: [No audible reply]

ADV SELEKA (SC): You may proceed.

DR NTETA: No, I said I will assume that he would have done that. So your statement that you have read to me, say that Primary Energy was getting pressure from outside of Primary Energy.

20 The pressure that I was feeling and received was within Primary Energy from Mr Bester as well as from Mr Mboweni who I had within. So they would have received it elsewhere and filtered and then asked me to do those weekly reports.

ADV SELEKA (SC): Ja. But we are going that line because we thought you could also tell the Chairperson more about what you are saying in that paragraph 5.2 as your secondary reason for leaving, that you experienced pressure from the

executives and the board members. So we were seeking to have you say more to the Chairperson on that.

DR NTETA: Yes. So the Chairperson had asked me to talk about it in general of which I did. So the events leading to the conclusion of the Brakfontein contract. As I have indicated, was having to provide constant feedback.

Other events that happened were. Primary Energy, as a whole, was called into a meeting by the Eskom chairperson. I thought that was unprecedented. So those are the kind of
10 pressure that I felt that as we deal with the coal transaction are unnecessary.

ADV SELEKA (SC): Let me read just the last passage from Mr Johan Bester's affidavit. He says:

“The medium mandate had worked well until then.”

And I suppose he is talking about the 2008 mandate for medium-term ...[intervenes]

DR NTETA: Yes.

ADV SELEKA (SC): Yes.

20 “It worked well until then. And in fact, I still believed that even the Brakfontein contract was valid and properly negotiated and although entered into under pressure, did not compromise Eskom. Eskom was compromised when Mr Koko suspended those trying to implement the conditions of the contract.

The system was not broken. People like Mr Koko tried to compromise the system that was in place. And people like Mr Mboweni appeared to be powerless to push back.

Interestingly, in this instance, Mr Mboweni signed. He was probably told to do so to ensure that validity of the contract would not be questioned.”

You may comment if you have any comment in regard to the first part which I read about the system not being broken
10 but that Mr Matshela Koko tried to compromise the system that was in place. Whether you have any knowledge of this and people being suspended?

DR NTETA: I will agree with Mr Bester in terms of the medium-term mandate because I do believe that it served Eskom well. And that particular agreement fell within that medium-term mandate.

With regards to the suspension of executives, et cetera. I will not comment because I really did not follow that entity. So I would rather not comment on it.

20 **ADV SELEKA (SC):** I see. Thank you.

DR NTETA: H'm.

ADV SELEKA (SC): So the contract is concluded, the Brakfontein contract concluded on the 10th of March 2015. You say you would have interactions with the Gupta's. In particular here, you specifically mention Mr Tony Gupta after

the conclusion of that contract.

DR NTETA: Yes.

ADV SELEKA (SC): Now please relate to the Chairperson how those interactions came about, how many were they and what did they entail?

DR NTETA: Okay. So the interactions. And why I say it was after the conclusion of the agreement because the first interaction, I was actually requested by Mr Rabindranath who is the CEO of the organisation. We would engage

10 ...[intervenes]

CHAIRPERSON: The CEO of which organisation?

DR NTETA: Oh, sorry. Of Tegeta.

CHAIRPERSON: Ja. H'm.

DR NTETA: Sorry. So he had requested that I meet with him to discuss – at the time, we were discussing the volumes because the agreement that was put in place had a ramp-up of the volumes based on the mind being able to produce the coal.

20 So at the time, we were discussing in terms of that particular ramp-up of the agreement. So he requested a meeting with myself to ...[intervenes]

CHAIRPERSON: Hang on. Hang on Dr Nteta. Hang on.

DR NTETA: Yes?

CHAIRPERSON: Your interactions with Mr Tony Gupta, did they happen after the conclusion of the Brakfontein contract

or not?

DR NTETA: Yes, they did.

CHAIRPERSON: Or some was – happened before and others after?

DR NTETA: It was after.

CHAIRPERSON: They happened after the conclusion of the Brakfontein contract?

DR NTETA: Yes. Yes, it happened in the execution of the contract.

10 **CHAIRPERSON**: In the execution of the contract?

DR NTETA: After.

CHAIRPERSON: Yes. In that event, Mr Seleka. We need to cover the evidence up to the conclusion of the contract. I was seeing that in her affidavit it appears that up to paragraph 6.16 which is at page 69...

ADV SELEKA (SC): Yes, Chair.

CHAIRPERSON: Unless I have missed something. I seem to not have seen where before that part she talks about the signing of that contract, I see that at 6.16, she says...

20 **ADV SELEKA (SC)**: Yes.

CHAIRPERSON: SA was signed by Mr Mboweni on 10 March 2015. Is that the Brakfontein one?

ADV SELEKA (SC): That is 6.16.

CHAIRPERSON: Ja. If I have missed something – maybe I have – but I would like the evidence of the discussions and

the negotiations and the happenings that preceded the conclusion of the contract to be covered.

ADV SELEKA (SC): Yes.

CHAIRPERSON: So that we know this is how the contract got to be concluded.

ADV SELEKA (SC): Yes.

CHAIRPERSON: And then if we then deal with the execution of the contract and what happened in the connection with the execution of the contract, we can then
10 deal with that. Then we know that it is after the conclusion of the contract.

ADV SELEKA (SC): Thank you, Chairperson. Dr Nteta, you follow?

DR NTETA: I follow.

ADV SELEKA (SC): Yes.

DR NTETA: I am concerned because I thought you were dealing with that pre-payment but I will respond to the questions to the best of my memory.

CHAIRPERSON: Yes. You know, there is reference to – we
20 have had some discussion about the conclusion of the Brakfontein contract. And it seems to me to be left hanging. But both the evidence leader and yourself doctor, you would know more about the background to the affidavit. Both of you can alert me to something that I might have missed.

ADV SELEKA (SC): Yes.

CHAIRPERSON: But for the story and the evidence to be easy to follow, it is much better if we say this is what happened, the contract was concluded and then where the pre-payment fits in. Then, obviously, that can be dealt with where it should be dealt with. Mr Seleka, you will tell me if there is something I have missed.

ADV SELEKA (SC): No, Chair. I think you have not missed anything Chair but you are correct that we have not given the Chairperson the details as set out in Dr Nteta's affidavit
10 in regard to the Brakfontein contract.

Dr Nteta, maybe we could go into the detail insofar as you set them out in your affidavit because they are there in your affidavit. So. And that starts on page 65 of your affidavit. Just by way of a guidance, under paragraph 6.

Indeed I had certain questions to ask you in regard to the progress and exchanges made during the negotiations stages. So what we have established from you is that the negotiations or the approach by Tegeta would have taken place back in June 2012.

20 So Tegeta would have come to Eskom and said: We would like to offer coal to Eskom. Correct? Supply coal to Eskom.

DR NTETA: Yes. So the engagements with Tegeta preceded myself. They came to Eskom and they engaged with – and please excuse me, I think there are emails to this

regard. They dealt with various seniors within Eskom prior to my engagement. I just cannot recall the exact date.

ADV SELEKA (SC): So prior to you being employed at Eskom?

DR NTETA: Yes.

ADV SELEKA (SC): In fact, Tegeta had already approached Eskom to supply coal to them.

DR NTETA: Yes.

ADV SELEKA (SC): When you did ...[intervenes]

10 **DR NTETA:** Yes.

ADV SELEKA (SC): When you became employed at Eskom in June 2012, you became engaged in the – what is it – interactions or negotiations that were already ongoing.

DR NTETA: So. Yes. So prior to my employ at Eskom, Tegeta had been involved with various people. Apologies, that I just cannot get specific – all the specific names.

ADV SELEKA (SC): Ja?

DR NTETA: I joined in Eskom late – not as in terms of the date that I joined, then when I asked to look at Tegeta. I
20 joined Eskom and I am going to estimate, perhaps six to ten months after I had joined Eskom, Mr Bester then asked me to lead the negotiations with regards to this particular transaction.

ADV SELEKA (SC): I see. That engagement is what you deal with in paragraph 6.3 of your affidavit on page 65.

DR NTETA: Yes.

ADV SELEKA (SC): You say ...[intervenes]

DR NTETA: That is correct.

ADV SELEKA (SC): ...during 2013.

DR NTETA: Yes.

ADV SELEKA (SC): So during 3013:

10 “I, together with representatives from inter alia, the
 Technical Environmental and Coal Operations
 Department within PED and the Eskom Legal
 Department engaged primarily with
 Mr Rabindranath.”

 So we had read that passage.

DR NTETA: Yes.

ADV SELEKA (SC): And they were proposing to offer
Eskom coal from two mines, Vierfontein and Brakfontein.

DR NTETA: Yes.

ADV SELEKA (SC): Vierfontein did not succeed. Only
Brakfontein remained on the table as of that date.

DR NTETA: [No audible reply]

20 **ADV SELEKA (SC):** Just speak to the mic.

DR NTETA: Yes. So at the – my first engagements with the
supplier, they had indicated they had two offers. The
Vierfontein, why we did not progress with that because in
terms of one of the requirements for the conclusion of an
agreement is that the source has a water-use license.

So if my memory serves me correctly. The Vierfontein was further back in terms of that application for a water-use licence. And that is why we did not continue with this because the Brakfontein source was further along in terms of the application.

There could have been other environmental issues that the Environmental Team may have brought up which I cannot recall at this time.

ADV SELEKA (SC): Yes. You, in fact, do refer to
10 environmental issues in regard to Vierfontein. In the last sentence of your paragraph 6.3 but that is on page 66.

DR NTETA: Okay. Okay, yes.

ADV SELEKA (SC): Well, talking of the water-use license. That is P-66 Chairperson, the top paragraph. Talking of the water-use license. In 2012 and 2013, Tegeta also did not have a license in regard – a water-use license in regard to the Brakfontein Mine.

DR NTETA: Correct.

ADV SELEKA (SC): Could you have concluded a contract
20 with them at that stage?

DR NTETA: No. So in terms of what we were doing, in terms of unsolicited offers, we would engage with various suppliers and we would have advised them in terms of the requirements for the conclusion of an agreement.

So because – particularly when it is new sources, there

are a lot of things that would happen and the negotiations, generally, take about 18 to 24-months, unfortunately. And we recognised it in that – at that time, a water-use licence would take about 18 to 24-months.

So we would engage with various suppliers on aspects in terms of their coal, et cetera. There are also options in terms of the environmental issues if they do a box cut and we get coal. In terms of – from the box cut, there are certain requirements that would not be as a full blown mine.

10 So we would engage with suppliers. At some point, and there is a memo which I would ask them at Eskom to find, where the senior general manager then indicated that from this point onwards that we should ensure that we do actually – that we conclude only agreements with them.

So to answer in a longwinded way. We would engage suppliers even if they did not have a water-use license but we would not conclude an agreement.

ADV SELEKA (SC): Yes. And that engagement with the supplier who does not have a water-use license, I mean,
20 what would it entail?

DR NTETA: So the engagement. We would be looking in terms of the quality that we have. We would look in terms of the pricing that they have to offer. We would also look in terms of the – a potential legal agreement, that we would look at – so there would be quite a few engagements,

different aspects.

We would also remind them that they need to – we also would ask for progress in terms of how far they are in terms of the water-use license and remind them that they will need to have it.

ADV SELEKA (SC): You know ...[intervenes]

DR NTETA: Previously, we would actually conclude agreements without a water-use license.

ADV SELEKA (SC): Yes. When you talk about negotiations
10 will take 18 to 24-months. I am reminded of the tender process that was ongoing in April 2016 where – and that was in respect of the Amot Power Station, supply to Amot Power Station.

DR NTETA: Yes.

ADV SELEKA (SC): In April when the question was asked how long was that process going to take. You say you responded to ...[indistinct] members on a teleconference that it will be completed in September 2016.

DR NTETA: Correct.

20 **ADV SELEKA SC**: Which is much less than six months.

DR NTETA: Correct.

ADV SELEKA SC: So how do we understand – how should we understand your explanations?

DR NTETA: So one of the things that I tried to do when I was acting general manager for fuel sourcing was one, to

institute issuing out of tenders and to then have – to try and get a more robust process in terms of the tendering process and requirements and to try and streamline it so that it takes a much shorter time and that is why we were able then to then – I was able then to say we had anticipated to be concluded in terms of September.

ADV SELEKA SC: So are you saying that explanation would apply in 2011, that a shorter time period ...[intervenes]

10 **DR NTETA:** No, that is – no, so that explanation would not have applied in 2011 because the process at the time was looking one, in terms of what the requirements were, were different.

And so two, it was looking in terms of an unsolicited offer where the supplies then indicated that we needed x, y, z but the practice of what would happen is that we would indicate to the supplier that we need x, y and z, the supplier would then go away and we would not actually give them any timeline, they would come back to us within
20 30 days or something like that. We would actually just wait for the suppliers to come back and some of them took two to three months and then they would come back once they were able to rectify an element that we would ask them to rectify.

So the process in going out on the tender, we really

tried to – we tried to streamline it and try and do it more efficiently and effectively.

ADV SELEKA SC: Ja, I would have thought where you are approached by one supplier, unsolicited, they have all the information, that would be a more expedited process than when you go through a tender process.

DR NTETA: It could be if the supplier then came back timeously but the general practice is that the suppliers, some suppliers would come back in two weeks, three
10 weeks, other suppliers would come back in three months and we would leave it open for them to come back when they are ready.

ADV SELEKA SC: Yes.

DR NTETA: Whereas in a tender you have to submit everything by a certain time and we were quite stringent in terms of what are the requirements that we want them to continue what we were evaluating to try and make it more efficient.

CHAIRPERSON: Mr Seleka, we are at four o'clock now.
20 Sometimes we will work until late but it does not help to work until late if later in the week we are going to have days that might not be used. So what is the position with regard to other witnesses tomorrow and beyond?

ADV SELEKA SC: Chair, I believe Mr Koko is coming tomorrow.

CHAIRPERSON: Okay.

ADV SELEKA SC: He will take us the whole day.

CHAIRPERSON: Yes. Have 3.3 notices in regard to his evidence been sorted out?

ADV SELEKA SC: Not yet, Chair.

CHAIRPERSON: Well, if 3.3 notices have not been sorted out, how are we going to proceed with his evidence?

ADV SELEKA SC: Yes, Chair. I attended speaking to the Chairperson about it so that I could also communicate if

10 ...[intervenes]

CHAIRPERSON: Well, let us talk about it when they are here tomorrow because they are affected.

ADV SELEKA SC: Yes, Chair.

CHAIRPERSON: And after that, the next witness and beyond, what is the position?

ADV SELEKA SC: On Wednesday we had scheduled Mr Anoj Singh.

CHAIRPERSON: Mr?

ADV SELEKA SC: Anoj Singh.

20 **CHAIRPERSON:** Yes?

ADV SELEKA SC: I had a meeting with his attorney and counsel I think last week. Last week Friday, Chair. There is a default of filing an affidavit on his part, they want to regularise that.

CHAIRPERSON: They want?

ADV SELEKA SC: They want to regularise that and ...[intervenes]

CHAIRPERSON: Why have they not filed it up to now? As I understand there was a 10.6 directive.

ADV SELEKA SC: Absolutely, Chair. I have written to them a letter, Chair.

CHAIRPERSON: Ja.

ADV SELEKA SC: Setting out the position and ...[intervenes]

10 **CHAIRPERSON:** And I guess with regard to him there are no 3.3 issues, there are no Rule 3.3 issues with regard to him because I take it most of the time he is implicated and he is responding to that or what is the position.

ADV SELEKA SC: Yes, we have not seen his affidavit, Chair.

CHAIRPERSON: Yes, no I mean from your side.

ADV SELEKA SC: Oh, yes.

CHAIRPERSON: You are not able to say there are problems with 3.3 notices because there is nothing you
20 were supposed to serve on other people.

ADV SELEKA SC: Correct, Chair.

CHAIRPERSON: So he has been ...[intervenes]

ADV SELEKA SC: Summoned.

CHAIRPERSON: He has been served with a summons.

ADV SELEKA SC: Yes.

CHAIRPERSON: For Wednesday.

ADV SELEKA SC: For Wednesday.

CHAIRPERSON: Therefore he should be here and when he is here he is going to need to explain why he did not comply with the 10.6 directive.

ADV SELEKA SC: I have indicated that much to his legal representative, Chair.

CHAIRPERSON: Ja, so he must be here and he will need to explain that.

10 **ADV SELEKA SC:** Yes.

CHAIRPERSON: So that seems to be fine with regard to him.

ADV SELEKA SC: Yes, Chair.

CHAIRPERSON: And from what I remember, the deadline by when he was supposed to furnish an affidavit in terms of the 10.6 directive has long passed.

ADV SELEKA SC: That that was the 4 September, Chair.

CHAIRPERSON: So it is completely unacceptable. Well, he will need to take the stand here and explain. So that is
20 fine for Wednesday.

ADV SELEKA SC: Yes.

CHAIRPERSON: And how – he could be long in terms of his evidence.

ADV SELEKA SC: Chairperson, the way I have planned him is to be one day – a full one day with them.

CHAIRPERSON: Yes, but would he – or, by the way, he would cover Eskom only.

ADV SELEKA SC: Yes.

CHAIRPERSON: And he would not cover Transnet, he would have to come back for Transnet.

ADV SELEKA SC: That is right.

CHAIRPERSON: But your estimate is that one day would be enough for him.

ADV SELEKA SC: It should be enough, Chair.

10 **CHAIRPERSON:** Ja, okay, alright. And then Friday?

ADV SELEKA SC: Then Thursday, before Friday.

CHAIRPERSON: Oh, Thursday, ja.

ADV SELEKA SC: Yes. Thursday then we have Ms Mosilo and [indistinct] 07.58. We have also scheduled Ms Matsietsi Mokholo.

CHAIRPERSON: Ja.

ADV SELEKA SC: And then Friday is Mr Brian Molefe.

20 **CHAIRPERSON:** Ja, okay. And with regard to Brian Molefe, who much time have you considered to be adequate? Is it a one day also with him?

ADV SELEKA SC: One day but shorter than a full day.

CHAIRPERSON: Ja, okay.

ADV SELEKA SC: Ja, shorter than a full day.

CHAIRPERSON: Okay, now persons who implicated Mr Anoj Singh and Mr Brian Molefe, have they been given

whatever affidavits – I know you said Mr Anoj Singh has not filed an affidavit.

ADV SELEKA SC: Yes.

CHAIRPERSON: But I know that Mr Brian Molefe did file affidavits, I think. Have they been given to the witnesses who implicated them and have those witnesses commented on their version?

ADV SELEKA SC: Mr Brian Molefe's affidavit – Chair, I cannot recall offhand. I know we have exchanged the
10 affidavit of Mr Koko certainly and we would have also exchanged the written submission of Mr Anoj Singh at the Parliamentary Portfolio Committee with the witnesses. In regard to Mr Brian Molefe, I cannot recall offhand and I know that he does not implicate people, as such but ...[intervenes]

CHAIRPERSON: Ja, he might not implicate them but they might have something to say about his version.

ADV SELEKA SC: Insofar as he mentions them, yes.

CHAIRPERSON: Ja.

20 **ADV SELEKA SC:** But I think I have exchanged his affidavit with Ms Suzanne Daniels, Chair.

CHAIRPERSON: Ja, you must check.

ADV SELEKA SC: Ja.

CHAIRPERSON: Because the best scenario is where you have got all the information when the witness takes the

stand.

ADV SELEKA SC: Yes.

CHAIRPERSON: Ja.

ADV SELEKA SC: Yes.

CHAIRPERSON: Okay. Well, in that event, I think we should continue at least with this witness until five.

ADV SELEKA SC: Five, okay.

CHAIRPERSON: And then we take it from there.

ADV SELEKA SC: Thank you, Chair.

10 **CHAIRPERSON:** Okay, alright. Dr Nteta, we are going to continue until five o'clock, is that alright with you?

DR NTETA: That is fine.

CHAIRPERSON: Okay, alright. Mr Seleka?

ADV SELEKA SC: Thank you, Chairperson. So Dr Nteta, we were – you were explaining the time period it takes to negotiate this agreement and I was saying to you that it seems to me that if a supplier comes to you unsolicited, the process might be expeditious as opposed to when you follow a tender process but you have given your
20 explanation. Can I ask you this because you seem to have given two different answers. One the one hand when I ask you whether could you conclude an agreement with Tegeta in respect of Brakfontein if they did not have a water use licence? You said no but then you gave an explanation, subsequently you said in the past you did conclude

agreements with suppliers who did not have a water use licence. So which answer applies?

DR NTETA: Mr Seleka, when I said we, I said Eskom have concluded agreements with suppliers without a water use licence. There was an memo or a directive that was sent through by the senior general manager at the time that indicated that we must ensure that a supplier has a water using licence and that was in the time of the engagements with Brakfontein. So, I - we did that – for Brakfontein we
10 could not have concluded the coal supply agreement unless they had a valid water use licence, were able to produce it.

ADV SELEKA SC: Okay, I understand. So at a time of the Brakfontein negotiations a new dispensation was introduced.

DR NTETA: Yes. Yes, a new dispensation was introduced. However – yes.

ADV SELEKA SC: Okay. So in that dispensation you were precluded from concluding a coal supply with a
20 supplier who did not have a water use licence.

DR NTETA: Who was not able to produce one, yes. Ja.

ADV SELEKA SC: Yes. Because without...

DR NTETA: Yes?

ADV SELEKA SC: Yes because without the water use licence they are precluded from mining. They cannot mine.

DR NTETA: I do not want to answer that because that is on the environmental side because I think they can mine on a box cut but I am really not an expert to the extent of that, ja.

ADV SELEKA SC: Okay.

CHAIRPERSON: In those cases where in the past Eskom did conclude coal supply agreements with suppliers who did not have a water use licence do you know whether it would have been a condition of the agreement that they
10 obtain such a licence? Or, as you understand it, the position was that that would not be a condition to say that they must obtain a water use licence within a certain a period and if they did not get it then the agreement would fall away?

DR NTETA: That is my understanding but I am not confident on that understanding because I personally did not do it.

CHAIRPERSON: Okay.

DR NTETA: But I would make an assumption that it would
20 be a condition.

CHAIRPERSON: Yes.

DR NTETA: That you must have it within a certain period.

CHAIRPERSON: Ja, okay, alright.

ADV SELEKA SC: Thank you, Chair. So you personally have no experience concluding a contract with a supplier

who did not have a water use licence?

DR NTETA: Not that I am aware of.

ADV SELEKA SC: You personally. Okay. Now, let us go through this period of negotiations in respect of the Brakfontein. I am on page 66 of your affidavit. 66.

DR NTETA: Yes.

ADV SELEKA SC: Now there is an aspect I want to raise with you during this negotiation period because in November 2014 you say you send an email to Tegeta and
10 that email attached the supply agreement.

DR NTETA: Yes.

ADV SELEKA SC: Now maybe you can explain because at his stage of the negotiations Tegeta has not obtained a water use licence and you have a memorandum that you have referred to which introduces a new dispensation that you cannot conclude a contract with a supplier who does not have a water use licence. So can you explain to the Chairperson why did you provide them with a coal supply agreement at a time when you are precluded from
20 concluding a contract with them?

DR NTETA: So the practice at Eskom is that particularly for suppliers that have not engaged with Primary Energy and have not seen our coal supply agreement would be to send them a copy of the coal supply agreement so that they have an opportunity to view it, provide comment on it

and if there are issues that they believe would be a concern, they are able to raise it and then it also becomes part of the negotiation process because the process in terms of concluding a supply agreement, as I have indicated, can sometimes take 18 months, 12 to 18 months. We try and do as much as possible in parallel.

So the email that I would have sent to them would have been a copy of a draft coal supply agreement. I stand to be corrected but I do believe in my email I do
10 indicate to them that it does not – you have nice legal words, but it does not constitute an agreement and so I did put a disclaimer in that email but it was an opportunity for them to have a look at that agreement.

We do that with suppliers that do not – have not engaged and do not know our terms and conditions because our supply agreements are about 65 pages.

ADV SELEKA SC: Yes.

DR NTETA: Eskom's supply agreements are 65 pages.

CHAIRPERSON: Mr Seleka, the events leading to the
20 signing of the agreement that she, Dr Nteta, deals with in her affidavit, you would know how important they are.

ADV SELEKA SC: Yes, Chair.

DR NTETA: To be covered on by way of oral evidence. If there is no particular significance to them, things like Mr Bester took over the chairing of a certain meeting and so

on, we can move on.

ADV SELEKA SC: Yes.

CHAIRPERSON: But if they have a particular significance which emerges later then that is fine. So I know that I said we have not covered the conclusion of the Brakfontein contract but you would understand this in terms of some of these things better. If there is no significance then just put in there just to indicate what happened before the conclusion of the contract then you do not need to dwell on
10 them.

ADV SELEKA SC: Okay, Chair, thank you. I understand fully what the Chairperson is conveying to me. Dr Nteta, on this very point I am at, the email that you sent, did you send it on your own accord or were you told to send this email?

DR NTETA: I would have sent it on my own accord so that they can be aware of the agreement because I have done that before. When you supply them, you do that for new suppliers.

20 **ADV SELEKA SC:** I see you also talk about tests that were conducted in respect of the coal that was to be supplied by Tegeta. Can you recall what the test results were because I do not see it in your affidavit.

DR NTETA: I think there were several tests that were done with several reports but the members of the technical

team would be better placed to talk to those tests because that would be their responsibility.

ADV SELEKA SC: Okay.

DR NTETA: So I think there was a queue stand done, there were several tests.

ADV SELEKA SC: Yes. Then the water use licence was only granted in December 2014 and Mr Johan Bester said thereafter there was pressure brought to bear at least on him. He thinks there was also pressure on you but you
10 have explained yourself. Then in 2015, talking of 2015 – and I am now on page 68 of your affidavit – there is a request you refer to for Tegeta to be registered as a vendor but even at that stage Tegeta has not signed the agreement of Eskom. Do you recall that?

DR NTETA: Yes.

ADV SELEKA SC: Because now things seems to move fairly fast after they have obtained a water licence. In fact it took only less than three months for that agreement to be concluded on the 10 March 2015. Before I go into that,
20 can you explain, if you know, what was the delay from 2012 to March 2015, for three years?

DR NTETA: I can only talk to - you know, I can only talk to the period that I was engaged with them and I would say really the major delay, which is an issue when we have unsolicited is that we would discuss certain elements with

a particular supplier and they would then go away and attend to those issues. They would then come back to us when they are ready to do so. So at times – and I think there are some minutes that I attempted to do, you would see that there is a month or two delay where the supplier is attending to something or other and that is the main reason why it takes long because the suppliers normally take a while to come back to us.

ADV SELEKA SC: Ja and I am grappling to understand –
10 go ahead?

DR NTETA: So – and I am talking to the time when I was engaged with them. Prior to that I think they came to Eskom in 2011, I stand to be corrected. I do not know what the delay was.

ADV SELEKA SC: Yes. Yes, no, correct, we are taking your engagement from 2012, is it not, after June 2012.

DR NTETA: 20 – ja, I think 2013, yes.

ADV SELEKA SC: Ja. And I am grappling to understand
20 what are these issues because you only gave them a copy of the draft agreement in November 2014. I mean this is where, if you like, serious engagement takes place and they will go home and look at the draft, do comments and so on and so forth and then come back to you and we can see it is a short period of space from November 2014 to 10 March when the agreement was signed. It is about four

months.

DR NTETA: Yes.

ADV SELEKA SC: So what was the delay for three years?

DR NTETA: So the delay would be a few things, as I have indicated, and if you look at some of the minutes you might say to them – some of the delay also is from our – from Eskom’s side where we were doing combustion tests and that takes a bit of some time. It could be that for whatever reason they would be attending to certain issues, it could
10 be that maybe they are not prioritising it. I cannot answer to the reasons why they delay but it is not – I will not say it is not uncommon because a lot of times suppliers will come to Eskom and say I have coal, what do you need? And then when we advise them what we need then they will go back and sometimes they can even take six months to get whatever is needed from Eskom.

ADV SELEKA SC: Ja, so did the reason not have to do with the water use licence or the absence thereof?

DR NTETA: So I was about to say that it could be that
20 they did not prioritise this transaction because they understood from my engagement with them that, you know, we can go as far as we can but until you have got your water use licence we cannot conclude an agreement. So they could have decided not to prioritise it but I do not want to speak on their behalf.

ADV SELEKA SC: Ja. But then also on Eskom's side whether you would push enough, hard enough, if you know that they do not have this licence.

DR NTETA: Yes, so in general we do not – we would advise in terms of the suppliers, Eskom would advise the suppliers what is required and generally we do not really – we do not always follow up with them, you know, to say that okay, you have not come to see us after two months, what is the issue?

10 **ADV SELEKA SC:** Yes.

DR NTETA: Because we would also be dealing with other suppliers at the same time.

ADV SELEKA SC: Yes. But now here we see before March 2015 before the signing of the agreement you take steps to have them registered as a vendor.

DR NTETA: Correct.

ADV SELEKA SC: Correct? But it does not end there. You do say in your affidavit that you tell – you told the vendor department or the vendor management, the vendor
20 management department, that Tegeta has been awarded the contract. That is in paragraph 614 on page 68.

DR NTETA: Yes.

ADV SELEKA SC: Now explain that to the Chairperson because you do not have a contract with Tegeta, you are going to be placing them as a vendor on Eskom's database

but you do not only do that, you tell the management that in fact we have already awarded the contract to them, when you had not at that stage. This in February 2015. I wanted to suggest to you a possibility that maybe I should let you explain to the Chairperson why do you take the steps, why do you do this?

DR NTETA: So we negotiated with Tegeta in January 2014 with Mr Bester. At the end of that, Mr Bester sent them through an offer, offer letter, and in terms of that, 10 that is one of the – we have in the past, and it is not correct, had coal supply to Eskom based on that offer letter because it sets out the pricing volumes and qualities and that then constitutes an agreement that we have with the particular supplier. So we had done that. Also, having had the discussion with Mr Bester, he understood that from the vendor requirement side of things, it takes some time in terms of their additional requirements that the supplier has. So he had requested that I start that – get that process going to get them registered while we are 20 finalising the longer term supply agreement.

So my email is incorrect. I should have said that we have sent them a letter, an offer letter, and not necessarily to say an agreement. However, we have, wrongly so, had coal supply based on those offer letters.

ADV SELEKA SC: Wrongly, you say?

DR NTETA: Yes, it is not often.

ADV SELEKA SC: Yes.

DR NTETA: And it is not best practice, I agree.

ADV SELEKA SC: Yes, okay. What I thought was going on here – and tell me if I am incorrect – I am looking at the context of the affidavit of Mr Bester. He talks about pressure being brought to bear on him. I am looking at also what you have stated is the intervention by – the interest in this and some of the Board members and putting
10 pressure you asking every week what is going on. I thought what was happening here was a reaction to the pressure that was being brought to bear was as a consequence of the pressure that was being brought to bear. Your comment?

DR NTETA: So, having heard your – the affidavit of Mr Bester read to me right now, and looking in terms of that period from January to March, where I was being asked to provide weekly feedback and Mr Bester's involvement because prior to, let me say, December 2014 he was not
20 involved in the transaction but after, in 2015, he was. So, having put all that together, I can understand why Mr Bester will say that there was pressure and why he would then be involved in, you know, in the agreement to the extent that he is involved in that agreement because of the pressure that he was receiving and also sending it through

to myself and my pressure also from his senior. So, I agree with you, that it could have been a consequence and he was feeling that pressure and exerting it on myself.

ADV SELEKA SC: Chair, I think that is my part, sufficient in regards to the Brakfontein.

CHAIRPERSON: Ja, no that's fine.

ADV SELEKA SC: Ja, I could then go into Dr Nteta's meetings with one of the Gupta brothers, that should be fairly short, Chairperson.

10 **CHAIRPERSON**: Ja, you can do that.

ADV SELEKA SC: Dr Nteta, so the agreement is in place.

DR NTETA: Yes.

ADV SELEKA SC: You were relating about how the first meeting with Mr Tony Gupta came about.

DR NTETA: Yes.

ADV SELEKA SC: Yes.

20 **DR NTETA**: So, I had been engaging with Mr Nath, who is the CEO of Tegeta with regards to the – now the on boarding of this contract looking in terms of the volumes that are available and the general aspects of his contract. He'd asked the question from myself that we – for a meeting and at the time I was quite busy so we were trying to see the best time and then I'd indicated to him that, yes, I am going through to Sandton for some other meeting so that we could possibly meet. He then indicated to me – I

said, okay send me the address where we can meet and that's what he did. I put in the address and I arrived. The place that I arrived was in Saxonwold, at arrival it was quite – it's a huge complex and so I made the assumption at the time that their offices, Tegeta...[intervenes].

CHAIRPERSON: Did you say Saxonwold?

DR NTETA: At Saxonwold.

CHAIRPERSON: Did you say the place that you went to was Saxonwold?

10 **DR NTETA**: Sorry, I didn't hear that...[intervenes].

CHAIRPERSON: You say the place that you went to for that meeting, was Saxonwold?

DR NTETA: Yes, it was.

CHAIRPERSON: Okay, alright, continue.

DR NTETA: So, on arrival – sorry sir?

CHAIRPERSON: Continue.

DR NTETA: So, on arrival, I made that assumption that it is – the offices are there because it is quite a big complex and I came in and when I walked into the residence, I was
20 introduced to, by Mr Tony Gupta as Tony and I then indicated to him that I'm here to see Mr Nath for a meeting. He proceeded to ask me some questions with regards to the coal supplier agreement, the mechanics of how it works etcetera, and it was only in the realm of the Operations Department. so, I indicated to him that I normally deal

with the agreements up until the agreement is signed. The question that he is asking me about the mechanics of the agreement are in the realm of the Operations Department and I then indicated to him that, through his CEO he should then engage with the Operations Department so that he can understand how that contract goes and I did keep asking him in terms of where Mr Nath is. I suspect I may have irritated him because after a few, asking of where Mr Nath is then he then said, thank you, then I left.

10 **ADV SELEKA SC**: The address...[intervenes].

CHAIRPERSON: Did you say he said, thank you and you left?

DR NTETA: Yes, because I'd been asking him in terms of – he'd been wanting to get more details with regards to the operations of the agreement and I, to the best of my knowledge, I tried to answer him but I think, as I said to him, I think I may have irritated him because my understanding was, I was meeting Mr Nath, so I kept on asking, is Mr Nath coming, is Mr Nath coming, where he
20 was still trying – asked me about how the agreement runs. So, it wasn't long then I left, without seeing Mr Nath.

CHAIRPERSON: Did he ever say what was the story about Mr Nath and the meeting because one would have expected that he would call him for you, if he was not...[intervenes].

DR NTETA: Yes, so he never – he actually never really

answered the question in terms of, you know – each time I asked him he would sort of be a bit evasive and then he asked me more questions about the coal supplier agreement. So, you know, he just never really answered the question.

CHAIRPERSON: How long would you say you took, having this discussion with him?

DR NTETA: I'm going to say maybe fifteen, twenty minutes I would guess.

10 **CHAIRPERSON**: Yes, okay, Mr Seleka?

ADV SELEKA SC: Thank you Chair. The address itself would have indicated that the location is at Saxonwold, isn't it, the address given to you by Mr Nath?

DR NTETA: Yes.

ADV SELEKA SC: Yes, this is in 2015 and would you have known about the Guptas at this stage, in 2015?

DR NTETA: Not really, the name had been in the news, but I wouldn't – I don't follow it greatly, so I would probably know who the Gupta is but not intimately.

20 **ADV SELEKA SC**: Yes, so you would have, or would you have, become aware of media reports about the Gupta's?

DR NTETA: To be very honest with you, I don't fully follow in terms of what is happening in terms of the media, so I – it's a very difficult question for me to answer because I don't know, I might have known, like okay, there's an

organisation by the name – there's a family by the name of the Gupta's but I really did not follow.

ADV SELEKA SC: Ja, well just generally, general knowledge, not the details. So, really the question is, when you are introduced to him as Mr Tony Gupta, is the name, the first time you hear or is it a name that sounds familiar to you?

DR NTETA: So, the surname of Gupta is familiar to me, interestingly enough he introduced himself as Tony and not
10 with the surname, but I mean, it's Tony Gupta. So, it would – I would understand who he is but as I said I don't fully follow media and things like that.

ADV SELEKA SC: Yes, how did you make that connection?

DR NTETA: So, the connection that I made was in terms of also he's been asking me about the Brakfontein and I also then recall saying, well I see – the connection that, at the time, I did not understand that they were part of Oakbay, so I remember just thinking, okay this transaction, the shareholders it's Oakbay and some other individuals, I
20 think it was a lady etcetera, so then I then got an understanding that, okay, this is a shareholder and I think he did say he is a shareholder within Brakfontein and I want to understand the mechanics.

ADV SELEKA SC: Yes, but my question is, if he introduced himself to you, only as Tony, how did you make

the connection that he's Tony Gupta?

DR NTETA: So, he said his name is Tony, he may have said later on Tony Gupta, I'm Tony Gupta but in the interaction, he will always say Tony. So, I made the deduction that, Gupta, it must be part of the Oakbay and then also part of the transaction, and I do believe he then said to me, I'm a shareholder in terms of the Brakfontein.

ADV SELEKA SC: Ja.

CHAIRPERSON: When you saw the address which
10 included, Saxonwold, do you remember whether that may have – that might have given you the idea that this could be the Gupta residence at the time or is that something that didn't click with you at the time?

DR NTETA: So, on getting the address and saying, Saxonwold, I – yes, I understood that it could be their address but also understanding that that's probably – because I didn't actually know where the Tegeta offices were so then just thinking that it could have been in that area.

20 **CHAIRPERSON:** But as you were interacting with Tegeta, you knew the connection between Tegeta and the Gupta's or did you not know it?

DR NTETA: So, my first – I'm going to collect a light bulb moment, what actually, at the end of the agreement, the negotiations so then realised okay this is Oakbay, this is

Oakbay, Tegeta, Gupta and that really was at the end but in my initial negotiations with them, I actually did not put those two together but by the time that I did meet them, I had then understood that because also there was media, I'm not going to say that I did not know totally I did.

CHAIRPERSON: Ja, okay.

ADV SELEKA SC: Yes, thank you Chair. So, that would have been before the conclusion of the agreement which is 10 March 2015 that you would have had this knowledge
10 about them?

DR NTETA: I'm actually going to say, probably at the end of it, so probably April/May after the agreement, so prior to that, not really and as I said, I'm not one to be following a lot in terms of the media but from March onwards – I actually want to say round about May but I stand to be corrected.

ADV SELEKA SC: Ja, well to the extent that you knew about them, Dr Nteta, prior to this meeting with Mr Tony Gupta, well it was a meeting as you say, intended to be
20 with Mr Nath, but it ended up with Mr Tony Gupta, did you make a decision that this meeting will never take place – or a meeting such as this will never take place again? In other words, that you are not going to have a meeting anymore again with Mr Tony Gupta or any of the Gupta brothers?

DR NTETA: So, when I left there at the time, I was annoyed that I had been summoned there, believing that I was meeting Mr Nath, so that was more, if I can put it, my irritation with regards to that and that was my sentiment at the time. I didn't engage as to whether I would meet them again or not meet them again at all. It was just more, you know, why was Mr Nath not there?

ADV SELEKA SC: So, in paragraph 9.3 of the affidavit, JJZ2, you refer towards, he talked to you about, Mr Tony
10 Gupta. So, you say he proceeded then, the second sentence – the third sentence,

“He proceeded to ask me about coal sampling processes and predominantly coal operations processes – operations, I beg your pardon, coal operations processes at Eskom”.

DR NTETA: Yes.

ADV SELEKA SC: Please tell us what are these topics about? What exactly do you mean by...[intervenes]?

DR NTETA: So, when I say coal op – so in the discussion
20 that I had with him, it is, when I say coal operations, I'm talking about the coal supply agreement of the operations in terms of the mechanics of a coal supplier agreement. So, in terms of Brakfontein, how did they go about sampling, you know, what is the process in terms of sampling, how is the coal agreement, what are the

operations and the mechanics in terms of executing the contract.

ADV SELEKA SC: I see, so he wants you – he wants to obtain information from you on how the contract – well let me put it this way. On what is entailed in the execution of the contract?

DR NTETA: Yes.

ADV SELEKA SC: Is that right?

DR NTETA: What is the process and the procedure, yes.

10 **ADV SELEKA SC**: Yes, but these are things that the supplier is expected to know, isn't it?

DR NTETA: So, yes, what seems to happen in terms of Eskom and the engagements that I've had with coal suppliers is that you have coal suppliers where there's the operations and you'd have the Executives within the organisation, the CEO, the COO and those who are running the mine *per se*, and its often times different from the actual shareholders. So, in – for whatever reason there are some suppliers, for whatever reason, the operations
20 versus the shareholders, there's a disconnect and the shareholders may feel that, you know, we want to know more, we want to hear it from Eskom as to how things, the mechanisms of the agreement, whether they want to verify what the Executives are saying etcetera.

ADV SELEKA SC: Yes.

DR NTETA: So, the Executives would know how to execute the contract, not necessarily the shareholders.

ADV SELEKA SC: Yes, no that's correct but if a shareholder wants to meet with you, the shareholder is not going to trick you into, you thinking that you are meeting Mr X and then you suddenly end up meeting the shareholder. You're going to know that I'm going to meet the shareholder.

DR NTETA: Normally I would know that I am going to
10 meet the shareholder, yes.

ADV SELEKA SC: No, I'm saying...[intervenes].

DR NTETA: Because the shareholder would contact me or sometimes, I'd meet – the CEO would say or let me say the Executive would then say, I would like to – I would like you to meet with our shareholder.

ADV SELEKA SC: Yes, so you would know...[intervenes].

DR NTETA: They want – he wants to, sometimes – ja.

ADV SELEKA SC: Yes, the point is you would know
20 beforehand that the request is for you to meet with the shareholder?

DR NTETA: Yes, I would be told that – ja, normally I would be told that either by the Executive or by the shareholder contacting me directly.

ADV SELEKA SC: In this case, you were not told?

DR NTETA: No, I was told that I was meeting the CEO –

the CEO requested the meeting.

ADV SELEKA SC: Yes, and it really isn't Eskom's business as to what's happening between the Executives of a supplier and its shareholders, isn't it?

DR NTETA: It's – I don't want to say it's not our business to say because we've had situations, if there's some disconnect between, he two, it can jeopardise the potential for us to supply coal. So, if there's disgruntlement etcetera, it then affects us in terms of the security of coal
10 and one of our biggest mandates from the fuel sourcing perspective was security of supply.

ADV SELEKA SC: Ja, but in this case, you know nothing about the concerns of the shareholder, they haven't been raised with you beforehand, you haven't been told that, look the shareholder has X, Y and Z which is of concern to him or her or them and would you please address the shareholder on such a date at such a meeting. This meeting, arranged, is between you and the CEO and...[intervenes].

20 **DR NTETA:** So, at the time I didn't know there's a disgruntled shareholder, no but it's not uncommon that there would be a disgruntled shareholder.

ADV SELEKA SC: Ja, but you haven't said here that he's disgruntled, he doesn't seem to be disgruntled here, he's actually asking you information...[intervenes].

DR NTETA: No, no – yes.

ADV SELEKA SC: Okay, ja, so there's no disgruntlement, he's simply asking you information that seems to be information of more operational – at an operational level.

DR NTETA: Correct, of his agreement, yes.

ADV SELEKA SC: Yes.

DR NTETA: When I say disgruntled, I made the assumption that sometimes there are shareholders that are not happy in terms of...[intervenes].

10 **ADV SELEKA SC:** Ja but just confine it to this one, just confine...[intervenes].

DR NTETA: Sorry, apologies, no he's not disgruntled, he's just trying to understand the mechanics of his agreement.

ADV SELEKA SC: Did it not surprise you – well you said you were angry or upset, did it surprise you that he was asking information at that level of operations?

DR NTETA: It didn't surprise me that he's asking that information at that level because I've had shareholders ask me in terms of, take me through, you know, how to get a
20 contract in terms of Eskom, what needs to happen. So, his questions didn't surprise me because I've experienced them before, as I indicated, sometimes it's because the shareholder feels that he's not getting relevant information from his employee.

ADV SELEKA SC: Okay, then you do relate, in your

affidavit, the second meeting with Mr Tony Gupta.

DR NTETA: Correct.

ADV SELEKA SC: Would you tell the Chairperson about that one?

DR NTETA: Okay, so the second meeting, I was called by Tony to meet with him...[intervenes].

CHAIRPERSON: I'm sorry Dr Nteta, before you talk about the second meeting, for the sake of completeness, tell me whether, subsequent to your first meeting with him, which
10 was meant to be a meeting with Mr Nath, whether you connected with Mr Nath or he connected with you and what was his explanation for not turning up at the meeting?

DR NTETA: So, I did have quite a few engagements with Mr Nath, so I did indicate to him that he needs to take – that I met with his shareholder and he needs to take him through the process of coal operations and also that perhaps he needs to be meeting with the coal operations team, just so that he can understand it and Mr Nath then said that – it appeared to me that, Mr Gupta is the one who
20 wanted to meet so he says, no – so I got a sense that, that was the intention that he wanted to get an independent view.

CHAIRPERSON: Okay, were you mistaken in understanding, prior to going to Saxonwold, in understanding that your meeting was with Mr Nath?

DR NTETA: Yes, I was mistaken.

CHAIRPERSON: So, the intention on his part, that is, Mr Nath was that you meet with Mr Gupta as you subsequently understood?

DR NTETA: Yes.

CHAIRPERSON: But why wouldn't Mr Tony Gupta have said to you, no, no you are meant to meet with me not with Mr Nath. You kept on asking about Mr Nath and he never said, why what are you talking about, I'm the one you're
10 supposed to meet with. Do you ever understand why he wouldn't have said that, if his own understating too was that you were there to meet with him?

DR NTETA: I can't speak to that – I can't speak to his understanding as to why he didn't just tell me.

CHAIRPERSON: But you – are you saying that Mr Nath did explain why he didn't pitch up for the meeting and he explained it on the basis that you must have misunderstood the meeting that he asked you to go to was a meeting with Mr Tony Gupta?

20 **DR NTETA**: Yes, so I did ask him – it appears to me that, that was the intention. That the intention was for me to meet with Mr Gupta, the intention of both parties.

CHAIRPERSON: Is that because that's what he told you, Mr Nath, or is that because you didn't ask him directly, why did you not turn up at the meeting, but you inferred that he

was not meant to meet with you?

DR NTETA: So, I asked Mr Nath in terms of, I said, you requested the particular meeting, you were not at the meeting and he indicated that Mr Gupta is the person who wanted to meet with me and I said, well he was asking me in terms of information about coal operations and things like that, which, firstly is not within my area but also it's something that I felt, you could have explained to him and then he did indicate that he wanted to understand it and
10 wanting to understand that particular agreement and – so that's why I'm saying to you that it was the intention that I meet with him.

CHAIRPERSON: It's very strange – ja it's very strange. Ja, okay, alright maybe it's not so important, continue.

ADV SELEKA SC: Ja, but Dr Nteta, what the Chairperson was trying to establish with you, and I think you gave an answer that you didn't appreciate the question. The question is whether, were you mistaken when Mr Nath is asking you to come to a meeting, are you mistaken that it's
20 Mr Nath calling you or you know that it's Mr Nath calling you for the meeting?

DR NTETA: So, Mr Nath – I'm not mistaken that it's Mr Nath because he asked to meet with me and he made the arrangements to meet with me and because I'd been engaging with him, that's – it was my understanding that,

I'm meeting with Mr Nath.

ADV SELEKA SC: Yes, so you're not mistaken, as if, you read incorrectly the request for the meeting, do you understand what I'm saying?

DR NTETA: No, I don't.

ADV SELEKA SC: You didn't read incorrectly that, oh I thought I was called to the meeting by Mr Nath by now I see the request was actually made by Mr Tony Gupta, you follow?

10 **DR NTETA**: Mr Gupta didn't make the request it was Mr Nath who contacted me.

ADV SELEKA SC: Okay.

CHAIRPERSON: It's just strange – it's just strange to me how it would be possible to have that kind of misunderstanding. Mr Nath is the one you had been dealing with, I think from what you are saying now, you were not mistaken that the interaction or discussions you had, had with him were to the effect that you were going to meet him, am I right?

20 **DR NTETA**: Yes, that's what my understanding.

CHAIRPERSON: Ja and one would have expected that if he was not going to meet with you, he would have said so expressly to say, look there's a need for a meeting, it's Tony Gupta who wants to meet with you, I'm not going to be able to be there but I'm just setting up the meeting, this

is what he wants to talk about. One would have expected that to be something quite clear, then have a situation where you come all the way on the basis that you are meeting this one person, even as you are talking to Mr Gupta you keep on asking where is this person and he doesn't say, why do you keep on asking about that person because you are supposed to meet with me. He doesn't say that you actually end up leaving and you are unhappy because you haven't met the person that you were supposed to meet and he doesn't say, I'm sorry you must have misunderstood, didn't he tell you that you were going to meet with me? He doesn't say any of those things, can you see what my difficulty is, the natural reaction one would have expected from him if he knew that you were meant to meet with him and not with Mr Nath, would be when you asked where Mr Nath was, look you are supposed so meet with me not Mr Nath or he is not coming but I'm the one that you're supposed to meet with, with you, didn't he tell you? That's what one would expect but from what you have said he kept on avoiding telling you about where Mr Nath was until you left, this whole thing – it's strange that in the arrangements you would think that you were going to meet with Mr Nath when actually, that's not the arrangement and then it's strange that when you were – when Mr Tony Gupta was having this discussion

with you, while you kept on saying, where is Mr Nath, that's the person I'm supposed to meet, that he never says, no, no, but you're supposed to meet with me, I'm the right person that you are meeting. He doesn't say anything of that but keeps on asking questions and from what – he avoids giving you direct answers about Mr Nath, until you left and you are unhappy. Do you understand why I find it strange?

DR NTETA: I hear you Chairperson.

10 **CHAIRPERSON:** Yes, yes, okay but in the end maybe it might not be important. Mr Seleka?

ADV SELEKA SC: Dr Nteta do you know to the extent that you say you gave only general information and you encouraged Mr Tony Gupta to engage with Primary Energy of Eskom, whether that happened? Did he engage with Primary Energy?

DR NTETA: I don't know.

ADV SELEKA SC: Ja, let us go into the second meeting then. Explain to the Chairperson ...[intervenes]

20 **CHAIRPERSON:** Let us not go to the second meeting because it is five o'clock now.

ADV SELEKA SC: Oh, is it five?

CHAIRPERSON: Ja.

ADV SELEKA SC: Okay.

CHAIRPERSON: So let us go to the second meeting

tomorrow morning at ten. Just make sure that Dr Nteta has got a copy of the mandate that she talked about earlier. Just make sure that she has got a copy of the affidavit of Mr Essa and any other documents or affidavits that she may need to have sight of that may be relevant for her evidence tomorrow.

ADV SELEKA SC: Yes Chair.

CHAIRPERSON: Yes, we are going to adjourn now Dr Nteta you will come back at ten o'clock tomorrow morning.

10 Is that fine?

DR NTETA: It is fine, do I use the same link?

CHAIRPERSON: I think they would let you know, it is probably the same but they will let you know, the technicians will contact you.

Okay, we will then adjourn and then we will resume tomorrow at ten.

ADV SELEKA SC: Thank you Chair.

CHAIRPERSON: We adjourn.

INQUIRY ADJOURNS TO 12 JANUARY 2021