

**COMMISSION OF INQUIRY INTO STATE CAPTURE**

**HELD AT**

**PARKTOWN, JOHANNESBURG**

10

**27 NOVEMBER 2018**

**DAY 31**

**FINAL**

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**PROCEEDINGS HELD ON 27 NOVEMBER 2018**

**CHAIRPERSON:** Good morning Mr Maleka, good morning everybody. Good morning Mr Manyi.

**ADV VINCENT MALEKA SC:** Good morning Chair.

**CHAIRPERSON:** Thank you. Are you ready this morning?

**ADV VINCENT MALEKA SC:** Yes Chair, I do recall that yesterday you intimated you might want to say something before the resumption of the proceedings this morning.

**CHAIRPERSON:** Yes I did say so and I do intend doing so. But I realised that there may be a lot of media people who are not here as yet.

10 **ADV VINCENT MALEKA SC:** Yes.

**CHAIRPERSON:** And therefore I think let me do that a little later when there are more people who have arrived.

**ADV VINCENT MALEKA SC:** Yes.

**CHAIRPERSON:** Particularly in terms of the media. So at some stage in the course of the morning I may interrupt the evidence of who – either Mr Manyi or the next witness and then address the issues that I want to address.

**ADV VINCENT MALEKA SC:** Yes.

**CHAIRPERSON:** So I suggest that for now we continue.

**ADV VINCENT MALEKA SC:** We get on with it.

20 **CHAIRPERSON:** Thank you.

**ADV VINCENT MALEKA SC:** Mr Manyi good morning.

**MR MZWANELE MANYI:** Good morning Mr Maleka. Before we start, Chair can I address the Chair?

**CHAIRPERSON:** One second Mr Manyi. Yes, Mr Manyi you want to say something before Mr Maleka ask questions?

**MR MZWANELE MANYI:** Yes Chairperson.

**CHAIRPERSON:** Yes do so.

**MR MZWANELE MANYI:** Just two issues Chairperson, without understanding how the Commission's nitty-gritty's or protocols or housekeeping issues work. I had written to the Commission last week before coming here to just seek some clarity on some housekeeping issues and the housekeeping issue I had was to check – because it is on the public domain that Mr Maleka had represented in the recent past – parties that have got an adversarial relationship with the companies that I since bought. Whether – is it – am I going to get a fair treatment, or maybe he has got some unfinished business with  
10 the companies, because I would imagine that if you are representing a client against some other people, there is some element of buying into what your client is saying and so on. So whether coming here he has got some unfinished business and all that.

So I thought as part of the opening yesterday I was going to – my mind was going to be set at ease. But then Chairperson what then happened yesterday, Mr Maleka's posture actually confirmed my fears. Because his posture yesterday was prosecutorial, as opposed to evidence leader. I am not so sure as to what is happening now, because I came here with the pretext of answering questions to assist the Commission. But I feel that I am the accused as it is right now and I have got a prosecutor here who is Mr Maleka who is busy cross-questioning everything and I have  
20 got no problem with that.

But the issue I am trying to understand is, why is this posture only reserved just for me? Other people have been here saying all kinds of things without producing any evidence. They were never asked to verify this and verify that and here – I am here treated like a hostile witness so to speak. So I am not understanding why am I getting this kind of a treatment.

In fact Chairperson you might know this that there are some people that wanted to come here and they said, with the treatment that they saw being dispensed with my yesterday, that they are no longer coming here and so on, because of what happened yesterday.

Then the second question Chair I had asked yesterday, without understanding again how the Commission works, because when I am asked a question I am supposed to respond on the spot. But when I ask a question, I do not know when it gets responded to. I had asked that my understanding of what we are dealing with here, we are dealing with the State Capture issues and all of that. Now I wanted to know the e-mails that were in my pack here and those e-mails were – did explain that they were all e-mails that relate to when I was not in the Public Service as it were. I was in the private sector writing, or getting invitation e-mails, it is not even substance on those e-mails to indicate any unlawfulness as it were.

So I just needed to get a context of why when private people are sending e-mails to each other and getting invited to this function or that function, or I will send a CV here or that kind of a thing. I need to understand why is that an issue here? Because there are many other people I have sent CV's to that I am not having to respond to. So I was not sure those are too many issues there Chairperson. Thank you.

20 **CHAIRPERSON:** Well thank you Mr Manyi for raising whatever concerns you may have. One, I am not aware of the letter or e-mail that you said you sent to the Commission and whatever questions you asked. Was it addressed to the Secretary or was it addressed to any particular person?

**MR MZWANELE MANYI:** It was addressed to – the only contact person I have with the Commission Chair is Mr Mabunda and he did respond in writing and responded.

**CHAIRPERSON:** Yes.

**MR MZWANELE MANYI:** And said, he has forwarded the e-mail to the team, so I assumed then that when I get here the team would have deliberated and they would set me at ease.

**CHAIRPERSON:** Yes.

**MR MZWANELE MANYI:** But that has not happened.

**CHAIRPERSON:** Yes. No he would have meant the Commission's Legal Team if he said he had sent it to the team. I will – let Mr Maleka say something in case he is aware of that letter and then we will take it from there.

10 **MR MZWANELE MANYI:** Okay.

**CHAIRPERSON:** Secondly, with regard to how Mr Maleka, as you put it, was posturing when he was asking you questions. This is what I would like to say, the approach of the Commission is that the Commission's Legal Team does not have clients so to speak, or its own witnesses as such, as you would have in a Court when a lawyer has got a client and they are his or her own witnesses that they will call. But they seek to bring evidence before the Commission and that evidence may prove or disprove allegations that are being investigated and that when they ask questions to any witness, they are free to ask questions, including what may be viewed maybe as difficult questions in order to try and establish the truth.

20 Now it may well be that it might be difficult sometimes to draw a line between a time when a member of the Legal Team is asking difficult questions that might not be an accurate term and a situation where they would be seen maybe as cross-examining. You know in the Rules of this Commission, I think most of the time in relation to the Legal Team, what is used is simply that they have a right to question and to ask questions aimed at establishing the truth.

So to the extent that you may have concerns, one would need to just see, as I say there may be situations where it is difficult to say, is this somebody who is just trying to get the truth out of the witness, or get what he believes, you know, are the answers that will satisfy the needs of the investigation of the Commission, or is it somebody who has gone beyond that line.

As I say, it can be difficult sometimes to make that distinction. But you are free to raise your concerns as we go along and I will apply my mind to whatever concerns. I will be watching, I will be listening and I do want each and every person who appears before this Commission, whether they are implicated or not implicated to  
10 leave the witness stand feeling that they have been treated fairly.

That does not mean that they will always get what they want. It does not mean that there will not be situations where they feel uncomfortable, but I am committed to doing what I can to make sure that they experience fairness in this Commission.

**MR MZWANELE MANYI:** Okay.

**CHAIRPERSON:** So one, I think maybe Mr Maleka if you know anything about the letter let me know.

**ADV VINCENT MALEKA SC:** Yes.

**CHAIRPERSON:** But I would say I would like to see that letter if it exists in due course  
20 sometime this morning if possible and I will have a look at it. I will do what I can to make sure that in one way or another there is a response to the issues that you may be raising there.

**MR MZWANELE MANYI:** Thank you Chair.

**CHAIRPERSON:** So with that understanding and subject to what Mr Maleka is going to say, you do not have a problem if we continue in the meantime?

**MR MZWANELE MANYI:** *Ja* I think he must just Chairperson reflect on how his has being doing all along before I came and try and be consistent. The view I have and the view that is being corroborated by a lot of people that called me yesterday, is that I got a very different treatment than others that were here.

**CHAIRPERSON:** Yes.

**MR MZWANELE MANYI:** So if he can just try and to be consistent to maintain the credibility of this Commission.

**CHAIRPERSON:** *Ja* okay thank you. Mr Maleka you wish to say something about the letter and I think there may be one issue that Mr Manyi raised which I just heard about  
10 now, I did mention.

**ADV VINCENT MALEKA SC:** Chair yesterday our leader Mr Paul Pretorius handed to me a – let me describe it as a letter dated 18 November 2018.

**CHAIRPERSON:** What is the date?

**ADV VINCENT MALEKA SC:** 18 November 2018. It comes on the face of – not from Mr Manyi, but from an organisation titled "Antipoverty Forum" and it raises a number of questions.

**CHAIRPERSON:** Well let me just check if that would be the letter. Would that be the letter?

**MR MZWANELE MANYI:** No Chairperson.

20 **CHAIRPERSON:** It is not?

**MR MZWANELE MANYI:** Mine was just an e-mail to Mr Mabunda.

**CHAIRPERSON:** Oh it is addressed to Mr Mabunda and Mr Mabunda does not happen to be here. You do not know anything about that?

**ADV VINCENT MALEKA SC:** No I do not know anything about it.

**CHAIRPERSON:** *Ja*.

**ADV VINCENT MALEKA SC:** I can place on record that Mr Pretorius told me that this letter raises a number of questions about our right to be here and ask questions on grounds similar to those raised by Mr Manyi and he asked me to respond to it, so that the full perspective can be placed before you to make a ruling.

But as far as I understand, there is neither a formal application from this organisation, or from Mr Manyi to request that you should rule us out of the Commission. I can assure Mr Manyi, Chair that I did not appoint myself to this Commission. I can assure him that we went through a rigorous process of accreditation and ultimately there is nothing untoward arising from that process. I can assure him  
10 that we are governed by strong rules of ethics about our conduct and I can assure him that as and when we raise questions from him before you, we are subject to tight rules of control by you, and if we behave untoward or inappropriately, you will rule us out of order.

I can assure him that if the concern is, I have previously acted for other clients and for that reason I may not have a perspective of impartiality when I ask him questions, that is not the case. Our rules of professional ethics require us to act for every person in the street who approaches us for as long as we are available to do so.

I can place on record that I have acted for a number of people who face allegations of impropriety before you. I have completed those cases. As and when  
20 they come here, my ethical duties to the Commission will be different. I can place on record that he approached me at some point to act for him. Unfortunately I was not available to act, but if I was available I would have acted for him. That is the extent of the impartiality which our profession calls us to uphold and I am willing and able to uphold it before you.

So in that context and against that background Chair, with your leave and



subject to any objection Mr Manyi may have, may I continue?

**CHAIRPERSON:** Let me say first one, I think the letter that Mr Pretorius gave to you is a letter that he got from me. I think there were two letters – one or maybe there may have been one but he may have mentioned both, you and him. The idea was that both he and you would comment on its contents and the allegations and then that would be given to me. So when you are able to do that. Then there would be response to the organisation that wrote.

**ADV VINCENT MALEKA SC:** Yes.

**CHAIRPERSON:** That is one. And two, I am sure that somebody within the Legal  
10 Team, or the administration, I see Doctor de Wee is there, will make sure that the letter that Mr Manyi says he sent to Mr Mabunda is made available in the course of this morning to the Legal Team and to myself, so that one can look at that and take it from there.

Then I will just make sure that in one way or another Mr Manyi gets responded to, if at all possible depending on the view I might take after reading the letter. I am not sure how much information it requires, maybe today or as soon as possible after today. But as I understand it, Mr Manyi has indicated that subject to what he has indicated, he does not mind that we continue, but he just had the request that he made. Mr Manyi  
am I right?

20 **MR MZWANELE MANYI:** *Ja* you are right Chair up until Mr Maleka responded. I must say Chair I am very disappointed by his response. I think if he can play tapes of what he has been doing all along until I came and compare to the tapes how he conducted himself in my – when I was here. If Mr Maleka cannot see the difference between how he treated other witnesses versus how – what was subjected to here yesterday.

I mean here Chairperson I am sitting here – I have not being subpoenaed to

be here on these matters, I was subpoenaed to only talk to the SMS. I can come here voluntarily. But I am put here on a stand as if I am this criminal and so on that he is lying. And other people that were here, their evidence was not interrogated or whatever they said, because they did not even produce anything. Their poetry which they were reciting here was not interrogated, but me every step of the way I had to be interrogated. If Mr Maleka sees nothing wrong with that kind of inconsistency which I was assuming that as an honourable person he would acknowledge that and then we can move forward. I cannot forward then Chairperson with a person who cannot admit when something is so blatantly wrong.

10           So I request that he must recuse himself and any member of the other Legal Team can continue from where he left off.

**CHAIRPERSON:** Well if you request that he recuses himself, that is quite an involved process. We may have to – subject to what Mr Maleka has to say, we may have to stop at this stage and give you an opportunity maybe to prepare a statement that sets out exactly what your grounds are. You articulate everything fully so that when a decision has to be made, whether he must recuse himself or not, there is something in writing that articulates the reasons properly and it may be necessary to, you know, put together other facts. Then at some stage before you continue that would have to be – that may have to be decided.

20   **MR MZWANELE MANYI:** *Ja.*

**CHAIRPERSON:** That is one option. Mr Maleka what do you have to say about this objection?

**ADV VINCENT MALEKA SC:** Well Chair, I mean if Mr Manyi feels uncomfortable we should follow process and I will be guided by you, but if there is a need for a formal application for a recusal on the strength of which we have to respond, then let it be. It

may well be that the Commission's time resources will be wasted until that application is decided. But I have no difficulty with that.

**CHAIRPERSON:** Yes, yes. So I think, therefore, if your request for Mr Maleka's recusal stands, I think that we would have to stop with your evidence at this stage and then give you an opportunity to – I know that you did say that you are not legally assisted. I do not know whether you would be intending to be legally assisted when you prepare whatever documents you need to prepare or not. I am asking that simply because if you will be legally assisted I might not need to explain much, because whichever lawyer will be assisting you will explain. But if you will not be legally assisted

10 I may have to explain one or two things. But may be that you are not sure as you sit there whether you will need to be assisted or not. So in which case you can just tell me at this stage you are not sure.

**MR MZWANELE MANYI:** Chairperson I think this process should be open to a man on the street this process. It cannot be a process that is for a man, for only those that are moneyed as it were. So I would rather take the posture of saying, I will not be legally assisted and if the Chairperson can assist me to prepare, or whatever, I will be happy to take that assistance.

**CHAIRPERSON:** Yes okay. One, if there is a lawyer who offers to assist you, subject to your being satisfied about who he or she is, is that something you would entertain, or

20 is the position that you just want to deal with it on your own?

**MR MZWANELE MANYI:** No I can entertain that Chair.

**CHAIRPERSON:** You want to deal with it on your own?

**MR MZWANELE MANYI:** No, no, no I am saying if there is a ...(intervenes).

**CHAIRPERSON:** A lawyer who can assist you free of charge for example?

**MR MZWANELE MANYI:** Yes, I am happy with that Chair.

**CHAIRPERSON:** Yes.

**MR MZWANELE MANYI:** I had also requested the assistance from GCIS in fact initially.

**CHAIRPERSON:** Ja.

**MR MZWANELE MANYI:** But the process is there.

**CHAIRPERSON:** Ja.

**MR MZWANELE MANYI:** They are not as quick.

**CHAIRPERSON:** Alright. I just say in public that if there is any lawyer who can assist Mr Manyi to bring the application that he wishes to bring, who would be prepared to do  
10 so free of charge, I would encourage them to do so and be in touch with him. That is number one. Number two, in case you end up dealing up it yourself, what we would require is an affidavit in which you would say that you are asking that Mr Maleka should recuse himself and you detail your reasons for it and any facts which you believe support your request. Detail that in an affidavit and then send it to the Commission. Then once it has been received, you will be informed of what is going to happen after that.

Because the Legal Team may want to prepare something in writing in response and you would be entitled to receive a copy in advance and whether – to decide whether after that you would like to respond to that. At some stage then we will  
20 fix a date when we can deal with that request in an opening hearing.

**MR MZWANELE MANYI:** Okay. Can I just check one thing Chair. Are we saying that as we sit here and now, Mr Maleka is the only person that is – on a ready mode, because to ask whatever questions, because the questions are actually given, they are written. Are we saying there is no other legal person right now that is able to take on from here, it is sort of prolonging this thing?

**CHAIRPERSON:** No we are not saying that. But what would have happened, but he can tell me because I was not there when they were preparing. Sometimes it is one person who is preparing in regard to a particular witness and I think sometimes he or she may be preparing together with another colleague. In which case if, for example, there is another colleague who is just as familiar with everything, that other colleague of his might be able to say, I can takeover, either immediately or be given some time to refresh his or her memory and then be able to proceed.

So I think your suggestion is, maybe we can avoid all of that if another colleague of Mr Malema – Maleka, I am sorry (laughter). I apologise Mr Maleka, is  
10 available. Mr Maleka I have apologised.

**ADV VINCENT MALEKA SC:** Chair I mean, I have said to you that we have a leader who designs the implementation of the Commission's mandate. I did not appoint myself to ask questions of Mr Manyi. It is the leader who has done so. Just to comfort Mr Manyi, the leader decided that I and Ms Hofmeyr – or Ms Hofmeyr and I should attend to matters relating to TNA and GCIS. It is in that context that I found myself asking Mr Manyi these questions around GCIS and TNA.

If, and to the extent that you are persuaded after consideration of his application that I am not fit for purpose, then that will not be the end of the day for the Commission. Because Ms Hofmeyr may well be able to takeover. But I emphasise it  
20 should be after you have considered and decided the application once brought.

It is unfair to our colleagues who have not prepared on this to start trying to fit into our shoes. It would be unfair to Mr Manyi too, because they would not be able to deal with the truth as far as it is necessary for you to pursue it. So my humble suggestion for that it is worth, is that there has to be an application. You have to consider it and decide it and thereafter you may give directions around how his

concerns may well be adequately catered for.

**CHAIRPERSON:** You see the way I look at it provisionally in terms of his suggestion is this. We can take one approach that says, look there must be an application first and it must be dealt with properly and decided and that would mean obviously adjourning his evidence and that would have to be dealt with at some stage in the future, which might not be before we take the December break, which might take us to when we resume next year.

Another approach might be one that says, irrespective of whether or not his objection to you has merit or not. It might be more in the – it may well be an option to  
10 explore to say, well if he has an objection to you, but somebody else within the team who can do the job, given some time can do it and we finish with his evidence, it may be that for practical purposes one could look at doing it that way, without saying that his objection has merit or not. So simply say at a practical level and to make progress maybe we should do it that way.

There may be criticism for that approach. There may be something good and practical about it. The one part what would be good is that we are able to make progress and finish his evidence and move on you know and then we take it from there. So but maybe what we should do is – because I see your leader is also not here. I assume that he is available in the next building.

20 **ADV VINCENT MALEKA SC:** Yes.

**CHAIRPERSON:** Maybe we should adjourn, we should stand the matter down, stand his evidence down for now. Then to allow for the head of the Legal Team to get involved and discussions to be heard, so that then at some stage later we can then reach some finality.

**ADV VINCENT MALEKA SC:** Yes.

**CHAIRPERSON:** In the meantime, it may well be that we may have to allow the next witness to take the stand. We interrupt his evidence, that is not something that I prefer, because I would have preferred that we finish with Mr Manyi's evidence. But it may well be that the practicalities are such that while discussions are taking place as to what should happen, if possible we should use the time for the next witness that is available.

So those are some of the things I have in mind.

**ADV VINCENT MALEKA SC:** Chair can I say two things before we adjourn?

**CHAIRPERSON:** Yes.

**ADV VINCENT MALEKA SC:** I understand the utility of trying to find a middle ground  
10 in the interest of the Commission's time and financial resources and of course I support it. But there are two things that I would like to place on record. The first thing is that you are confronted off the mark with a request for my recusal, based on matters that raises questions about my professional integrity. I own nothing in life, except my professional integrity. It is my tool of trade and to the extent that it is being questioned, I will ask for an opportunity to respond to it.

It is for that reason I would urge that there is some utility in the application for recusal, so that I or others whom may well advise me properly, would have an opportunity to respond to it. Second, it would be a sad day that witnesses come before you and choose who must ask questions of them. Because we might be setting a  
20 precedent, which will begin to limp the Commission in its important duty to discover the truth.

For those two reasons, I would ask you to seriously consider the utility of an application for recusal.

**CHAIRPERSON:** Thank you. Mr Manyi you want to say something?

**MR MZWANELE MANYI:** Yes. *Ja* two things Chairperson. I think firstly, I think the

response from Mr Maleka is again very regrettable. Because he postures as if it is somebody that I was just innocently asking questions yesterday, when in fact he was not doing that. He was doing more than just asking questions. He crossed the line of just asking questions and he was actually cross-examining me. This the issue Chairperson and the issue about cross-examining me may not be wrong *per se*, but what is an issue for me is that, why is it that I am the first witness to get this kind of cross – this hostile cross-examination that I was subjected to by Mr Maleka. So that is the one issue Chairperson.

The second issue, depending on how we proceed Chairperson. Now if we are  
10 going to stand down or whatever, I just need an opportunity to clarify just one thing from my deposition yesterday.

**CHAIRPERSON:** Yes?

**MR MZWANELE MANYI:** Okay. What I needed to just clarify Chairperson of all the questions I was responding to. The question was, I did not give a clear answer on, because – on the issue around the spend. Where I did not give a clear answer on, because also my posture coming here was really to say that the notion that TNA has got more than his fair share is actually misguided. That was my approach.

But when we went to the nitty-gritty about City Press and so on and I had said that City Press is probably 80 or 90% of that Ads24 figure that was there and I maintain  
20 that position. But then I think I needed to explain which I did not do yesterday that okay. Now what is this 199 000 for City Press Chairperson? Now I just needed to just clarify that very quickly just to simply say Chairperson that firstly indeed in Ads24 spent, there is a lot of pressing there, as I said most likely 90% plus, I am not changing that position.

Then what then happened Chairperson at a practical implementation is that



we have got these, call it, Sales House or marketing arms of these groups. Naspers has got Ads24, Black Tiso has got another one, I do not know what it is called, but it is Avusa something at the time. So you get these companies that do group purchasing for their various companies and so on. But then – and these are the companies that GCIS has been dealing with in the main.

But then that does not stop some regional person somewhere from having a relationship. It is a thing we were trying – I think GCIS is trying to clean up over the time. But what happened Chair – before you come in ...(intervenes).

**CHAIRPERSON:** I must just stop you Mr Manyi. I thought it was just a brief  
10 clarification.

**MR MZWANELE MANYI:** Just a second Chair.

**CHAIRPERSON:** You will get a chance.

**MR MZWANELE MANYI:** Oh.

**CHAIRPERSON:** When you are able to come back and continue with your evidence. You must just make note of the point you wanted to clarify further, so that you will remember it. Because you have raised an objection to Mr Maleka, we should not until we have resolved that issue continue.

**MR MZWANELE MANYI:** Okay.

**CHAIRPERSON:** Mr Maleka what is your position about whether or not you may desire  
20 to consult with your leader before we finalise anything? You would like that?

**ADV VINCENT MALEKA SC:** Chair I agree that I should consult with my leader. But in the interest of time, the next witness lined after Mr Manyi's evidence is available.

**CHAIRPERSON:** He is?

**ADV VINCENT MALEKA SC:** He is available.

**CHAIRPERSON:** Yes.

**ADV VINCENT MALEKA SC:** And I suggest that we take a 15 minutes break so that I can consult with my leader and Mr Mokoena can prepare himself to lead that evidence.

**CHAIRPERSON:** Yes. Okay it is now nearly 09:45 so let us take an adjournment until 10:00, would that be fine?

**ADV VINCENT MALEKA SC:** Chair should we leave it on the basis that we will come to you it will certainly be 10:00 or immediately after 10:00?

**CHAIRPERSON:** Oh okay alright.

**ADV VINCENT MALEKA SC:** Mr Mokoena has just whispered that 10:15 might suit him.

10 **CHAIRPERSON:** Oh okay alright. Let us take an adjournment so that Mr Maleka can consult with the Head of the Legal Team and we will resume at 10:00 or as soon thereafter as possible but not later than 10:15.

**ADV VINCENT MALEKA SC:** Thank you Chair.

**CHAIRPERSON:** And Mr Manyi would be informed once you have consulted of the view you take in regard to the issue and we will come back and I will indicate what is to happen.

**ADV VINCENT MALEKA SC:** Thank you Chair.

**CHAIRPERSON:** Okay. We adjourn.

**REGISTRAR:** All rise.

20 **COMMISSION ADJOURNS**

**COMMISSION RESUMES**

**ADV PAUL PRETORIUS SC:** Chair following certain discussions that have taken place during the adjournment, I am informed by Mr Manyi that he does not wish to proceed with the application for recusal. That he is prepared for Mr Maleka to ask questions and if he has any difficulties in relation to any particular question, it may be raised with

you in the ordinary course and you will rule. Chair, so the evidence of Mr Manyi will proceed.

That does involve some delay in calling of the next witness Mr Mantashe and we apologise for that delay, but it was unforeseeable. Thirdly Chair, I understand that prior to Mr Manyi continuing with his evidence, you intend to make a statement from the Chair. Thank you Chair.

**CHAIRPERSON:** Yes thank you. Mr Manyi would you wish to confirm what Mr Pretorius has told me in regard to your intentions about the objection to Mr Maleka?

**MR MZWANELE MANYI:** *Ja* thank you Chairperson. Yes my words were, I do not  
10 want to be a reason to frustrate the work of the Commission. I think the point has been made and I believe that from hereon Mr Maleka will take all of that on board. Thank you Chair.

**CHAIRPERSON:** Thank you very much Mr Manyi. Thank you Mr Pretorius. Before we proceed I wish to address certain matters that I intended to address earlier. I realise that I probably was mistaken to think that the room would be fuller in term of the media at this time. So I will go ahead.

Last week a protest was staged outside the building in which the hearings of this Commission are taking place. This occurred on the 3 days on which  
20 Minister Pravin Gordhan was giving evidence in this Commission. During that protest, certain statements were made concerning Mr Gordhan and the Head of the Commission's Legal Team Mr Paul Pretorius SC. The statements included insults directed at Minister Gordhan and Mr Pretorius.

It has been necessary to secure the transcript of the proceedings in which those statements were made before one could deal with them. While this Commission has no desire to get involved in any political disputes that may exist between

Mr Gordhan and any of his political arrivals. This Commission wants to make it clear that it is unacceptable for anybody to subject any witness appearing before it, to any form of harassment or intimidation whatsoever.

A witness who appears before this Commission and gives evidence, does so in order to help this Commission, with the matters that it is investigating and such a witness acts in the public interest. If no witnesses were to give evidence before this Commission, this country and the whole nation would not be able to get to know whether the State Capture occurred, how it occurred, who was involved in it and its full extent. Nor will the people of South Africa know the true nature and extent of corruption that has engulfed our country, which this Commission is required in terms of its terms of reference to investigate.

Therefore, it would not be possible to determine the most appropriate measures that should be adopted in order to eliminate corruption, or at least to drastically reduce the levels of corruption in our country. I have over a number of months called upon past and present members of the National Executive, Directors General and other Government officials or employees who have knowledge of activities relating to State Capture and corruption to come forward and assist the Commission with its work. Some of the past and present Ministers have come forward to do so. These include Mr Gordhan, Mr Nene, Mr Jonas and Ms Barbara Hogan.

Indeed this morning or today we are going to hear the evidence of one of the present members of the National Executive Mr Mantashe. Any harassment of witnesses appearing before the Commission will deter other potential witnesses, who otherwise may have wanted to come forward and give evidence and assist this Commission. This will seriously undermine the work of the Commission.

I therefore urge all South Africans and all other people and organisations who

are committed to a proper investigation of the allegations of State Capture and the extent and nature of corruption in our country not to do anything that may jeopardise the prospects of success of this Commission's work.

Any harassment of the personnel of this Commission is also unacceptable. I take this opportunity to once again point out that anybody who has a complaint against any personnel of the Commission, or other persons assisting the Commission is free to lodge their complaints with the Commission and the Commission will consider such complaints properly and advise them of the outcome thereof.

In this regard, I point out that the best way to get the Evidence Leaders of the  
10 Commission, to raise certain issues with witnesses, is to furnish them with evidence concerning what that witness is alleged to have done, so that the witness may be called upon to deal with those issues or allegations.

It does not help the Commission, nor the country for a person who has evidence implicating a witness appearing before this Commission to keep that evidence away from the Commission and not hand it over to the Commission. Anyone who has evidence of any corruption falling within the terms of reference of this Commission, or who has evidence of acts of State Capture, which he or she believes is credible, should hand it over to the Commission. Otherwise, if he or she fails to hand it over, many people will believe that he or she does not believe that that evidence is credible and will  
20 stand the scrutiny before this Commission.

This Commission will not consider what is said outside of the Commission and in the media if it is not brought inside the Commission. Minister Gordhan came to give evidence in the Commission voluntarily and was prepared to have his evidence tested by way of cross-examination. Anyone who has credible evidence concerning any alleged wrongdoing on his part, should himself or herself come forward and present

that evidence.

This Commission is fully conscious of the enormity of the assignment given to it and is ever aware that it is required to try and complete its work as soon as possible. It must not allow itself to be distracted, but must focus on the work it is called upon to perform.

For now, the Commission will not itself be laying any complaints with the police, so that it can continue to focus on the work it is called upon to do. When in breach of the Regulations of this Commission, the media published witnesses statements before those witnesses gave evidence before the Commission and without  
10 the written permission of the Chairperson, which is a criminal offence in terms of the Regulations. This Commission did not immediately lay any complaints with the police and in this case this Commission will not lay any complaint with the police at this stage, but will monitor the situation and the conduct of various people in regard to the Commission and in regard to witnesses who appear before it and when it considers it appropriate to do so, it will not hesitate to lay a complaint with the police.

It is important that this Commission and all its personnel are given space to focus on the national assignment that it has been given and do its job without any distractions. In this regard, I do want to emphasise that anyone who has complaints against members of the Legal Team and/or members of the Investigation Team, should  
20 once again feel free to lodge complaints and those would be considered properly. If there is any misconduct on the part of anybody, the Commission will deal with that appropriately.

Until evidence has been placed before the Commission which reflects that any one of the members of the Legal Team of the Commission has been involved in any misconduct or unacceptable conduct, I as the Chairperson of the Commission continue

to have confidence in the whole Legal Team of the Commission, including its Head Mr Pretorius.

I continue to have confidence also in the Investigation Team and until there is evidence placed before me, which I assess to reveal misconduct, or unacceptable conduct, I will continue to accept that they may continue with their work. This Commission will continue to do all it can to encourage persons who have information relating to the matters that it is investigating, to come forward and share their evidence with the Commission in the interest of the nation and in the interest of establishing the issues that this Commission is investigating.

10           It is hoped that from now on all concerned will allow the Commission the space it needs to do its work and to support its work. But any harassment and intimidation of any witness appearing before this Commission to assist it, will not be acceptable and this Commission will continue to look at how it can protect all those who appear before it in order to assist it.

One of the statements that was made last week in the protest that took place outside this building, was a statement to the effect that this Commission decided to use this building without looking at the possibility of using Government buildings, or a statement was made that this Commission should have been using Government halls or Government venues in order to reduce costs.

20           I just wish to make it clear that after I had been appointed as Chairperson of this Commission, I gave an instruction that those who would be looking for a venue that the Commission would use, which was Public Works and the Department of Justice assisted by the Secretary of the Commission, I made it clear to them that the preference should be to use Government venues, so that we would reduce costs.

Indeed I was told that various Government venues were inspected and for one

reason or another were either, are not available or not suitable. I will mention some of these that were considered. They are Spooral Park Office building in Centurion, Tshwane Municipal buildings Centurion, Kempton Park Civic Centre Kempton Park, Emoyeni Conference Centre Parktown Johannesburg, State Theatre Braamfontein.

So I just want to make it clear that this Commission and Public Works and the Department of Justice did not simply go for a privately owned building without exploring the possibility of saving costs and using a Government venue. But on the report that was given to me, none of the places that were looked at was available or was suitable for the needs of the Commission.

10           That is the statement I wanted to make and that is the end that statement.  
Thank you Mr Maleka, we may continue.

**ADV VINCENT MALEKA SC:** Thank you Chair, Mr Manyi if we could just orientate ourselves where we were yesterday. We ended when we were discussing the various revenue earned by entities that compete for Government business in regard to Government advertisement spend. I would like to start elsewhere this morning if you do not mind, and I would like to start with your explanation that you have adequately answered concern regarding how you were transferred to GCIS.

**CHAIRPERSON:** Well I am sorry Mr Maleka, earlier on when we were still not sure whether we would continue with Mr Manyi's evidence, he had indicated that there  
20           was a point he wanted to clarify, and I indicated that he would get a chance to do so when we resume. Maybe let us give him a chance to clarify that point, Mr Manyi?

**MR MZWANELE MANYI:** Thank you Chair. *Ja*, the point I wanted to clarify Chair, was I was saying that yesterday I did not give a clear response to the City Press as an example, question, that how is it that City Press will get so little so to speak, and I had originally said that the City Press as an example, is loaded into that Ads24, but



then it was shown here. I think what I should have clarified yesterday is that it appearing as a line item elsewhere does not preclude it from being at the centre in that big spend.

So what happens at a practical level Chairperson, is that what you find is that big groups like Tiso Blackstar would have the marketing arm that houses all the – that does all the work to procure advertisements for their publications. But the fact that they have a centralised place that does that, it does not stop an independent title like a City Press or a Sowetan on its own to have a bilateral of sorts with any other party.

10           So I am suggesting Chairperson that that City Press and all these one item things, what typically happens sometimes is that when you have a quick project and you have to meet a regulatory requirement, for instance you want to quickly advertise for a job and then you then just quickly – the regulation would say two national newspapers, for that specific thing you would then quickly just go directly to City Press or Sunday Times or whoever as opposed to go to their central place which does that.

              So this is what happens in that case. So the fact that we have 200 – 199 000 or something is a total misrepresentation of amount of money that goes to City Press. And as I said a lot of it is in that central figure of Ads24. So that is the  
20 clarification I wanted to give Chair.

**CHAIRPERSON**: Okay Mr Maleka, do you want to take that ...(intervenes).

**ADV VINCENT MALEKA SC**: Chair, can I with your leave follow-up on this because it is going outside the context and the business of where the Commissioner is?

**CHAIRPERSON**: Yes.

**ADV VINCENT MALEKA SC**: Mr Manyi, can I make it quite clear that the questions

that I asked of you yesterday, and the answers that you gave yesterday related to the figures that you produced about only that part of revenue and by competing newspapers from one and one source of revenue, and that is the Government's expenditure on advertising through the GCIS. I am not asking you to deal with issues relating to other source of revenue by the newspapers. Are we at one on that score?

**MR MZWANELE MANYI**: I think you are missing the point. The point here Chair, is that all those line items that are there, it is money from GCIS. All that is money routed through GCIS. So I am saying sometimes you get a direct – let us say even  
10 GCIS would do a direct City Press ...(intervenes).

**CHAIRPERSON**: Transaction?

**MR MZWANELE MANYI**: Ad-hoc – yes an ad-hoc – those are other – let me characterise them as ad-hoc placements in those other newspapers as opposed to your general campaigns that you do, and then when you do that then you speak to the consolidating house as in Ads24 or whatever the other group company. So all of them is still from GCIS. So I am not understanding why Mr Maleka is struggling to understand this simple point.

**ADV VINCENT MALEKA SC**: Chair, I will deal with it on the assumption that Mr Manyi's context is correct. I do not want to waste time.

20 **CHAIRPERSON**: Okay.

**ADV VINCENT MALEKA SC**: I will assume that the clarification he has given confirms the figures that he has produced and which he accepts they are correct. So I will deal with that issue on that approach. But with your leave that is where I do not want to start this morning. I want to start elsewhere this morning.

**CHAIRPERSON**: Yes.

**ADV VINCENT MALEKA SC:** Mr Manyi just to go back to where I think we should start this morning, you recall that yesterday you indicated to the Chairperson that the information you have now presented, especially page 229 of Exhibit M1 resolved all of the questions that we raised with you about your transfer. You recall that you said that yesterday to the Chairperson?

**MR MZWANELE MANYI:** *Ja*, yes I do Chair.

**ADV VINCENT MALEKA SC:** I am afraid it did not resolve some questions that we would like to explore with you if you do not mind. You answered our query with reference to Section 12(1) of the Public Service Act, but we would like to ask you  
10 some few questions around the lawful requirements for a lawful transfer of a Director General such as you were, and a Director General such as Mr Maseko at the time. We had placed before you an Exhibit bundle as F1. Chair that is the bundle of Ms Williams' testimony. We have asked your Registrar to bring it for you this morning and place it before you.

**CHAIRPERSON:** I have got a number of exhibits with red covers here. Registrar which one is it? Okay I have got it, Exhibit F1?

**ADV VINCENT MALEKA SC:** Indeed Chair. Mr Manyi do you have Exhibit F1 before you?

**MR MZWANELE MANYI:** Earlier on I had but now I have got H1 to H5.

20 **ADV VINCENT MALEKA SC:** Can I ask colleagues to place a copy of Exhibit F1 before you. Chair, may I ask you to turn to page 75 of Exhibit F1.

**CHAIRPERSON:** 75 you said?

**ADV VINCENT MALEKA SC:** Indeed.

**CHAIRPERSON:** Yes thank you.

**ADV VINCENT MALEKA SC:** And Chair just to lay a contextual basis for the

questions which will follow, you remember that Mr Manyi, in his statement referred to Section 12(3)(a), which reads as follows:

"The President may Transfer the Head Of A National Department or National Government component before or at the expiry of his or her term or extended term, to perform functions in a similar or any other capacity in the National Department or National Component in a post of equal, higher or lower grading or additional to the establishment, as the President considers appropriate."

And as I understand the testimony of Mr Manyi yesterday, is that his transfer  
10 was lawful because the President considered it appropriate to transfer him. Now Mr Manyi can I ask you to go to page 76, and ask you to consider with me what subparagraph (d) of Section 12(3) of the PSA provides, and let me read it together with you Chair:

"A transfer in terms of this subsection may only occur ..."

And I emphasise the phrase *only occur*:

"... if:

i. The relevant head of a department consents to the transfer or after due consideration of any representation by the head, the transfer is in the public interest."

20 Do you see that Mr Manyi?

**MR MZWANELE MANYI**: Yes I do.

**ADV VINCENT MALEKA SC**: I take it that you have worked with this legislation and you know what it requires to justify a lawful transfer, correct?

**MR MZWANELE MANYI**: *Ja*, Chairperson I am not understanding what is it that is not clear here. In my input yesterday I did indicate that I had a discussion with

Minister Chabane so in terms of (i), in terms of the conditions that Mr Maleka is reading here, where the relevant Head of a Department consents to the transfer, which is me, I consented to the transfer. So I am not understanding what is outstanding on this matter.

**CHAIRPERSON**: Yes, let him put his question. Mr Maleka put your question.

**ADV VINCENT MALEKA SC**: Let me start where I thought I had started and repeat the question, and frankly ask Mr Manyi to answer that question rather than anticipate what I might, I might not ask, and the question simply was this is not the first time you see this provision. As the Head of the Department you must have seen it, you  
10 must have considered it in your lifetime as a Director General of more than one department. Is that a fair summary of what you should know about this legislation?

**MR MZWANELE MANYI**: I note that but it is not necessarily true Chairperson, because it talks about transfer. So when you are in appointed the department, I do not think issues of transfer is something that comes top of your mind. So it is not an automatic something that you preoccupy yourself with.

**CHAIRPERSON**: So would you say you may or may not have seen it at the time you were Director General of one department or another but you cannot really remember. There was no issue that may have required you to focus on it?

**MR MZWANELE MANYI**: *Ja* that is correct Chairperson, that is a correct summary.

20 **CHAIRPERSON**: Okay.

**ADV VINCENT MALEKA SC**: Whether you have seen it before or not you will then accept that one of the most important requirements for a lawful transfer is that you should have consented, correct?

**MR MZWANELE MANYI**: I did say I did consent so ...(intervenes).

**ADV VINCENT MALEKA SC**: No, no Mr Manyi, we will get to that point and we will

explore it to see whether or not you consented. The question is different, and the different question is this, a lawful transfer under Section 12(3) would in the first instance require the consent of the affected Director General correct?

**MR MZWANELE MANYI**: Proceed.

**CHAIRPERSON**: Well Mr Manyi you may – if the question – if you think the question is legal and you are not a lawyer, you are uncomfortable committing yourself, you can indicate that you think it is something legal but if you think it is simple you can answer it. You can answer it. Do you want to say anything?

**MR MZWANELE MANYI**: *Ja* Chairperson, (d) has got two Roman figures, it is either  
10 or. So when a question is asked in the manner that it is asked, as if there is only one answer to the question, it creates a confusion because you can be transferred, in terms of my understanding of what I read here, (ii) if it is in the public interest, you may not yourself consent to it but a call can be made that is in the public interest.

**CHAIRPERSON**: Yes.

**MR MZWANELE MANYI**: So when I am asked a question that is – when I am asked a question as if there is only one answer, I just feel that sort of inappropriate.

**CHAIRPERSON**: No, well let me just say this Mr Manyi, just feel at ease. If you are asked a question as you said, your understanding that you know there are two scenarios but you are asked in the manner which you think suggests there is one,  
20 feel free to say that can be the case but it can also be another case. Just feel free and answer as you see the question.

**MR MZWANELE MANYI**: Yes Chair, but then Mr Maleka is going to blame me for not answering straight.

**CHAIRPERSON**: Well I will watch so *ja*, okay thank you.

**MR MZWANELE MANYI**: So that is the answer then Chairperson, that as indicated

in (i) and (ii).

**CHAIRPERSON**: Yes okay. Thank you Mr Maleka?

**ADV VINCENT MALEKA SC**: Well Chair let me try and follow that answer, and I hope that it is important for the Commission not simply to accept the answer because it is given but to probe whether or not the answer makes meaningful sense in the light of the Commission's pursuit for the truth.

**CHAIRPERSON**: Yes.

**ADV VINCENT MALEKA SC**: Now Mr Manyi as I understand your answer you say that the requirement is not singular in relation to the need for consent. You are  
10 suggesting that you may be transferred without your consent for as long as it is in the public interest?

**MR MZWANELE MANYI**: *Ja* that is my understanding of (ii) which did not apply to me. My specific situation which I am here to respond to is (i). The other provisions, I am not the employer so – and I cannot speak for other people, I can only speak for myself. So myself (i) addresses my issue.

**CHAIRPERSON**: Thank you.

**ADV VINCENT MALEKA SC**: Thank you very much, I understand. So on that premise I am willing to accept that if you do not consent those who want to affect a lawful transfer absent your consent, they must show that that lawful transfer is in the  
20 public interest. And Chair I raise this question because you would recall that the transfer of Mr Manyi was not without context. It was what we previously referred to as a cross-transfer. It is in that context that we are exploring the issue. So these requirements will apply but for now Mr Manyi, you would recall that your transfer took place in the context of the transfer of Mr Maseko out of the GCIS, because without the transfer of Mr Maseko out of the GCIS you would not have been lawfully

transferred to the GCIS as his replacement, correct?

**CHAIRPERSON**: Well I am not sure if that is fair Mr Maleka. You say you want him to say whether without the consent of Mr Maseko his own transfer would have been lawful.

**ADV VINCENT MALEKA SC**: No, no, I am not saying that Chair.

**CHAIRPERSON**: Okay what are you saying?

**ADV VINCENT MALEKA SC**: I am saying that as a matter of fact you could not have two heads of the GCIS.

**CHAIRPERSON**: Oh okay, well if you put it that way that is fine but that is not what I  
10 had heard.

**ADV VINCENT MALEKA SC**: Yes, no, I am sorry Chair, I apologise if I did not  
...(intervenes).

**CHAIRPERSON**: Alright.

**ADV VINCENT MALEKA SC**: Mr Manyi, I mean it is fair to suggest to you that you cannot have the two heads of the GCIS at the same time correct?

**MR MZWANELE MANYI**: No, I mean that is an obviously question, you cannot  
Chair, but I had provided Cabinet statement. In that Cabinet statement, in my initial  
response I had provided a Cabinet statement where these matters were dealt with.  
Cabinet noted that Mr Maseko is being transferred to DPSA, Cabinet noted that  
20 Mr Manyi is going to replace Mr Maseko. So I am not understanding this line of  
questioning.

**CHAIRPERSON**: Well maybe let me ask this question, prior to your being told that  
you were to be transferred to GCIS, were you aware of – were you aware whether  
Mr Maseko was to be transferred to another department?

**MR MZWANELE MANYI**: Chairperson that could never arise. I would never know.



**CHAIRPERSON**: Yes.

**MR MZWANELE MANYI**: *Ja*, there is no way that I would have ever known as to what is happening.

**CHAIRPERSON**: *Ja*, well of course you could have known if Minister Chabane had spoken to you and told you what was to happen to – what the arrangement was with Mr Maseko before telling you or at the time of telling you that you would go to GCIS.

**MR MZWANELE MANYI**: *Ja*. No Chairperson, I – Minister Chabane was a very honourable person. There was no way, and also he was very meticulous in terms of his modus operandi on a whole range of issues. He is a very strict disciplined person and I accepted that when Minister Chabane came to say that there is this  
10 kind of an opportunity for me to go into this space, that they have taken care of everything else to enable that to happen. But it is not my call and I think if I began to probe him it would have been – I would have been out of order. It would appear that I am doubting his competence as it were.

**CHAIRPERSON**: No, no, no Mr Manyi, you said that you could not have known and what I am saying to you is that you could have known if he had chosen to tell you more than what he told you. Do you accept that?

**MR MZWANELE MANYI**: Yes Chair, okay I accept that.

**CHAIRPERSON**: Yes, but in this case you say he did not tell you.

20 **MR MZWANELE MANYI**: And I do not think he had an obligation to tell me Chair.

**CHAIRPERSON**: Yes. No, no leave the obligation aside.

**MR MZWANELE MANYI**: Okay.

**CHAIRPERSON**: Just factually.

**MR MZWANELE MANYI**: Okay.

**CHAIRPERSON**: He did not tell you?

**MR MZWANELE MANYI**: No.

**CHAIRPERSON**: Yes okay.

**ADV VINCENT MALEKA SC**: And Mr Manyi at the level of fact you knew at that point in time that Mr Maseko was the Head of the GCIS. I mean he was your colleague, the same employment rank correct?

**MR MZWANELE MANYI**: Yes I did.

**ADV VINCENT MALEKA SC**: Yes. To get back to the requirements of paragraph D, you say that you consented to the transfer?

**MR MZWANELE MANYI**: Yes.

10 **ADV VINCENT MALEKA SC**: And you seem to suggest that page 229 of Exhibit M1 manifests that consent, is that your suggestion?

**MR MZWANELE MANYI**: 22?

**ADV VINCENT MALEKA SC**: Page 229, Exhibit M1.

**CHAIRPERSON**: M1?

**ADV VINCENT MALEKA SC**: Yes Chair.

**CHAIRPERSON**: Okay.

**MR MZWANELE MANYI**: *Ja* that is confirmation.

**ADV VINCENT MALEKA SC**: No, I see that it is confirmation of your transfer but there is not, as far as I read it, an indication that you have consented ... (intervenes).

20 **CHAIRPERSON**: I am sorry Mr Maleka, just raise your voice, I cannot hear you.

**ADV VINCENT MALEKA SC**: My apologies Chair. We are at page 229.

**CHAIRPERSON**: Yes.

**ADV VINCENT MALEKA SC**: The question is I have looked at that letter Chair, and I can assure you that I have read it more than once, I have not come across any indication in that letter that you consent to the transfer. Are you able to indicate to

us Mr Manyi, what part of that letter the Chairperson should read as an expression of your consent for the transfer?

**MR MZWANELE MANYI**: *Ja*. No Chairperson how the process works, that Mr Maleka might not be aware of, is that the releasing Minister and the receiving Minister, they concur and then there is something called a presidential minute that is put together. In that presidential minute all the issues that he is raising get contained in there to regularise the movements. So once the presidential minute is done all those questions are contained in there. They are not contained in a letter that advises me that now you are going this way. So if Mr Maleka is looking for that kind  
10 of an answer he is looking at the wrong document, and the people that will hold that document will be the presidency. They will have – it is called a presidential minute, it will have that detail he is looking for.

**CHAIRPERSON**: Well let me ask you this question, how did you convey your consent to the transfer? Was it verbal or was it in writing?

**MR MZWANELE MANYI**: No, I think like I said Chair, that with the discussion I agreed on the spot with the minister and *ja*.

**CHAIRPERSON**: In other words your consent was verbal?

**MR MZWANELE MANYI**: It was verbal, yes Chair.

**CHAIRPERSON**: Thank you.

20 **MR MZWANELE MANYI**: On that premise Mr Maseko told the Chairperson the context in which he was told by the late Minister Chabane how he would be moved out the GCIS, and Chair I am not going to bore you with those details, but the key point of concern is this, that Mr Manyi has now referred to a concurrence which is recorded in a Cabinet document of some sort, as between the transferring and the receiving ministers, but you would recall that Mr Maseko said that he was told he will

go to the Department of – is it Public Administration?

**CHAIRPERSON**: Public Service Administration.

**ADV VINCENT MALEKA SC**: Yes Public Service Administration, and his Ministers was not even too concerned about his presence there, and in fact he had to leave at some point because the Minister did not think that he wanted the DG, and that is the point of inquiry.

**CHAIRPERSON**: Yes well I am not sure, Mr Manyi might be able to assist you with that. He has said that as far as his transfer was concerned from the Department of Labour to GCIS, he gave his consent verbally and he has said, as I understand his  
10 evidence he has said that when there is a transfer such as the one that took place, he understands that there would be a presidential minute where the issues that you are raising, which I assume include the issue of consent and maybe public interest, if that applies, would be dealt with.

**ADV VINCENT MALEKA SC**: Yes.

**CHAIRPERSON**: But I am allowing you to continue.

**ADV VINCENT MALEKA SC**: No, no Chair, I think I will conclude that line of questioning on the note that Mr Manyi, as far as your discussion with Minister Chabane is concerned, it did not deal at all with the requirement for transfer on the grounds of public interest, correct?

20 **MR MZWANELE MANYI**: No, and also Chair as it relates to Mr Maseko I am the wrong person to be asked.

**ADV VINCENT MALEKA SC**: Mr Manyi the next issue that I would like to raise with you relates to your statement in response to Ms Williams' testimony, especially that part of your statement where you challenged and criticised Ms Williams' testimony about when you took over as the Head of the GCIS. May I ask you in that regard, if

you do not mind, to go to Exhibit M, and Chair if you could turn to page 7 of Exhibit M.

**CHAIRPERSON**: Thank you.

**ADV VINCENT MALEKA SC**: And Mr Manyi you will see that in paragraph 5.1 you say:

"The 3<sup>rd</sup> of February was my first day as CEO (Director General of GCIS) and as a Cabinet spokesperson. The submission by Ms Williams stating that Mr Themba Maseko left GCIS in January 2011 is false."

10 You see that?

**MR MZWANELE MANYI**: Yes sir.

**ADV VINCENT MALEKA SC**: And when you testified earlier on in your – I think it was the 14<sup>th</sup> of November, you went at length to criticise Ms Williams about that part of his evidence. You remember that?

**MR MZWANELE MANYI**: I was setting the record straight. If you say criticise, I do not know, I was not dealing with her, I was dealing with the facts. I just stated the facts as I know them.

**ADV VINCENT MALEKA SC**: Yes, I wonder whether you had an occasion to listen to Ms Williams' entire testimony. You would recall that she testified over two days,  
20 remember that?

**MR MZWANELE MANYI**: Yes I do.

**ADV VINCENT MALEKA SC**: She testified Chair, on the 30<sup>th</sup> of August and resumed her evidence on the 3<sup>rd</sup> of September, and in fairness to Ms Williams on the 3<sup>rd</sup> of September she was asked to clarify that part of the question, especially the date around which Mr Maseko left GCIS and Mr Manyi took over. I can take you

there Mr Manyi, if it is necessary, but I take that you had watched also, the second day of Ms Williams' testimony, is that a fair assumption to make?

**MR MZWANELE MANYI**: No, it is not a fair assumption, I did not watch the second day.

**ADV VINCENT MALEKA SC**: Alright.

**MR MZWANELE MANYI**: I watched the 31<sup>st</sup> only when it related to the part that I needed to respond to.

**ADV VINCENT MALEKA SC**: On the second day Ms Williams corrected her testimony. Chair, we have asked your Registrar to place before you the transcript of  
10 Ms Williams' testimony on the 3<sup>rd</sup> of September, and for the record ...(intervenues).

**CHAIRPERSON**: It is exhibit what?

**ADV VINCENT MALEKA SC**: It is not an exhibit, it is a transcript Chair, of Ms Williams' testimony. I can read it out to you, it is fairly straightforward and ...(intervenues).

**CHAIRPERSON**: Oh okay, yes.

**ADV VINCENT MALEKA SC**: And at page 20 Chair, opposite line 18 Ms Williams clarifies her evidence as follows, and I quote:

20 "Chairperson, I did go and verify the fact. It is true that the address my Mr Maseko and Mr Manyi subsequently was on the 2<sup>nd</sup> of February, and I will concur with that."

So Mr Manyi if you are not aware, Ms Williams has now corrected her testimony that it is true that you took over and Mr Maseko left around February 2011.

**MR MZWANELE MANYI**: On the 3<sup>rd</sup> of February Chair, is the date, not the 2<sup>nd</sup>.

**ADV VINCENT MALEKA SC**: Give or take, it is – now that you have that clarity by Ms Williams do you still criticise her as having given false testimony?

**MR MZWANELE MANYI**: Can you raise your voice a bit Chair, I cannot hear him.

**CHAIRPERSON**: Yes Mr Maleka, raise your voice.

**ADV VINCENT MALEKA SC**: Now that you have that clarity by Ms Williams, about when you took over at GCIS, would you still criticise her as having given false testimony?

**MR MZWANELE MANYI**: Yes Chair, because the first was January and now she continues to say 2<sup>nd</sup> of February. There is no give and take. The date is the 3<sup>rd</sup>. So even the second correction is still wrong, it was on the 3<sup>rd</sup>.

**CHAIRPERSON**: Thank you.

- 10 **ADV VINCENT MALEKA SC**: The next issue I would like to raise with you concerning your statement and criticism of Ms Williams begins at page 23 of the same bundle.

**MR MZWANELE MANYI**: Chair, can I just ask something quickly?

**CHAIRPERSON**: *Ja*.

**MR MZWANELE MANYI**: I know that this Commission does not operate strictly according to court processes.

**CHAIRPERSON**: Yes.

- 20 **MR MZWANELE MANYI**: But usually in court processes when you have an affidavit that is from an applicant then you get the response, then you get a reply. Now it looks like Ms Williams has submitted a reply affidavit so to speak, but I was not provided this reply affidavit that talked to my issues. Now Mr Maleka is busy giving me all kinds of surprises now with information that I was never provided.

**CHAIRPERSON**: Well I do not know about another affidavit but based on what he read out a few minutes ago from what he was reading out from as the correction by Ms Williams of an earlier evidence that she had given, he was reading from a

transcript of the evidence that was recorded electronically in this Commission when she gave evidence on the 3<sup>rd</sup>. In other words as far as that one is concerned he is not basing it on any affidavit, he is simply saying if you go back to her evidence before this Commission, on the 3<sup>rd</sup> of September as reflected in the transcript that he has, she did clarify.

**MR MZWANELE MANYI**: Yes Chair, the point I am making Chair, is that coming to this day I had all the documents I had to consider and now if Mr Maleka knew that this is also part of the documentation I needed to have in preparation for my responses here. I think I should have been given even that transcript if he was going  
10 to refer to it as it were, so that I do not – he is not the only one. Right now even the transcript he is reading, I do not even have a copy of it even as we speak.

**CHAIRPERSON**: Well he is supposed to have made sure that there is a copy of the transcript in front of you. He has indicated that I was supposed to have it, I am supposed to have it but as you may have observed he said he would just read it from what he had and it is a small portion. So I do not think it is something that should really be very contentious. Did you have a copy of the transcript for the witness Mr Maleka?

**ADV VINCENT MALEKA SC**: Yes Chair, I asked the attorneys to place it before him, but secondly Chair, lest there be a misunderstanding, in one of the letters where  
20 the Commission was sending to Mr Manyi to prepare himself on this and other issues, he was expressly told about the testimony of Mr Maseko and Ms Williams, and the transcripts of that testimony, and how he could get them and access them on the Commission's website. So it is not as if we are taking him by surprise.

**CHAIRPERSON**: Well it is – I am not aware of anything that should make this a big issue.



**ADV VINCENT MALEKA SC:** Yes.

**CHAIRPERSON:** You say that you arrived at GCIS on the 3<sup>rd</sup> of February, she says she had initially given another date, I think in January. She then clarified and corrected herself and said, as I understand from what Mr Maleka has read, it was on the 2<sup>nd</sup> of February. Unless there is something that I have missed I do not think it should really be a big issue whether it was the 2<sup>nd</sup> or the 3<sup>rd</sup> you know, we can just move on.

**ADV VINCENT MALEKA SC:** Yes Chair, I would like to move on, with your permission.

10 **CHAIRPERSON:** *Ja.*

**ADV VINCENT MALEKA SC:** Mr Manyi, I am dealing with the second issue arising from your statement, it is at page 23 and you would recall that from that page, flowing to the next two other pages you deal with the question of the text that you sent to Ms Williams when she testified on the 30<sup>th</sup> of August, and as I recall your testimony you accept that it is as a fact true that you sent a text in the middle of her testimony. There is no debate in that regard correct?

**MR MZWANELE MANYI:** *Ja*, no, there is no argument. If – *ja* if a Chairperson, during break, still the middle of the testimony which is when I sent it yes.

**CHAIRPERSON:** Yes thank you.

20 **ADV VINCENT MALEKA SC:** Chair all I want to establish are the few facts and I do not want to enter into a debate.

**CHAIRPERSON:** *Ja.*

**ADV VINCENT MALEKA SC:** I am going to ask you some factual questions around that matter which is common cause. When you sent that text to Ms Williams, you were already aware, and had received a notice from the Commission's attorney that

Ms Williams would be testifying from the 30<sup>th</sup> of August correct?

**MR MZWANELE MANYI:** Yes that is correct.

**ADV VINCENT MALEKA SC:** And the notice told you of the rights you had, including your right to present your version under oath. You read that part of the notice correct?

**MR MZWANELE MANYI:** Yes.

**ADV VINCENT MALEKA SC:** And my recollection is that the notice was sent to you on the 17<sup>th</sup> of August. In other words almost 13 days before Ms Williams testified.

**MR MZWANELE MANYI:** Yes.

10 **ADV VINCENT MALEKA SC:** And you would have been aware that at the right moment you would be entitled to respond fully to Ms Williams' evidence under oath.

**MR MZWANELE MANYI:** Ja, Chairperson can I ...(intervenes).

**CHAIRPERSON:** Yes.

**MR MZWANELE MANYI:** Can I just say that yesterday when I was explaining the circumstances of this matter I alluded to the fact that I thought what I was trying to correct was actually – did not even amount to a materiality thing in terms of what was happening, because all I was trying to do, I knew that I was coming to respond to the substantive issues as it were. I did not see this actually as a substantive issue as it were, I just thought it is just something that – because also Chair, as I explained, is  
20 that some of these mistakes in the rollout of the other people as they do things, get picked up real time and they have got serious damage that they cause to a person's reputation, which you do not recover 14 days later. So it is something that I thought needed to be corrected real time and it was not material and it was factual, that when you mentioned the name of Mr Zweli Momeka, he came in 2013. So I thought she would actually have appreciated that. I was not trying to distort or do anything but

just to make sure that as she does her things here it must just be within the right timeframes, that is all.

**CHAIRPERSON**: Thank you.

**ADV VINCENT MALEKA SC**: Last question on this Chair, Mr Manyi my difficulty is this, by the time Mrs Williams gives testimony and you feel compelled to correct her, or you feel compelled that she should say something more about the testimony, on your version he had already committed a critical mistake you identify as false, about when you started as the Head of the GCIS. So on your approach that was not the first mistake or false statement she mentioned in her oral testimony. Why did you not consider to correct her by SMS when she committed the first mistake, when the  
10 second mistake you described as not being material? Is there any reason why you did not choose to correct her by SMS?

**MR MZWANELE MANYI**: *Ja*, no, Chairperson I was given the – I was told how the process works, that I am going to have the opportunity to respond substantively, and I was actually given the affidavit beforehand. So I knew the areas of contention and the reason I did not respond to those areas of contention is because I was going to get the opportunity to respond to them properly. This arises out of oral evidence, and even there it was actually in my view I do say that – I did say in my affidavit that what happened is that I did say that the Evidence Leader was patently clear with the  
20 areas that she was probing, which was paragraph 14 to 16 of Ms Phumla Williams' affidavit. She was done with it. She was moving on to paragraph 17 on other matters, and once she was there then she began to ask about what other changes were there. So that was a change – that was something that even in the correspondence from the Commission was not a matter that I was seized with. It was a developing matter and it developed out of pure accident if you like, which I

thought I can just resolve.

**CHAIRPERSON**: Well Mr Maleka.

**ADV VINCENT MALEKA SC**: Yes Chair.

**CHAIRPERSON**: I am not sure whether you have in mind that you would suggest that the explanation that Mr Manyi has given for sending that text message to Ms Williams while she was giving evidence, is false or that he was actually trying to get Ms Williams to give untrue evidence, because if that is not the intention I am not sure that the time that we have should not be used for other areas that may be more important. I can just say that at this stage, subject to what you or the Legal Team of  
10 the Commission may say, my *prima facie* view is that the explanation that Mr Manyi has given is acceptable. And unless obviously if you later on wish to persuade me differently, I would look at that but it seems to me that it is something that we should not spend too much time on.

**ADV VINCENT MALEKA SC**: Yes Chair. I asked these questions because you asked us to probe this question. Secondly I raised this issue because ...(intervenes).

**CHAIRPERSON**: Oh yes, yes, yes.

**ADV VINCENT MALEKA SC**: You ...(intervenes).

**CHAIRPERSON**: No, no, no, you are right. *Ja* you are right. I had asked, that was, I think, of course before I read his explanation.

20 **ADV VINCENT MALEKA SC**: Yes.

**CHAIRPERSON**: And after I had read his explanation and heard his evidence I did not convey anything to you.

**ADV VINCENT MALEKA SC**: Yes.

**CHAIRPERSON**: But it is my *prima facie* view.

**ADV VINCENT MALEKA SC**: And Chair, I must conclude on this because there are

other important matters to deal with but I ask this in order to protect the integrity of the Commission's processes.

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

**ADV VINCENT MALEKA SC**: So that all and sundry must understand that it is inappropriate to interrupt witnesses' evidence.

**CHAIRPERSON**: *Ja*.

**ADV VINCENT MALEKA SC**: Especially when they have received notices that where they are implicated they will have a proper opportunity to set out their full version in response. Can I move on Chair?

10 **CHAIRPERSON**: Yes you may move on.

**ADV VINCENT MALEKA SC**: Mr Manyi the next topic that I would like to raise with you, and again I do so in the interests of trying to establish the truth, is your response to Ms Williams' version when you characterised her evidence as a corrupt empire equivalent to the VBS, which you had to dismantle, you recall that?

**MR MZWANELE MANYI**: Yes I do.

**ADV VINCENT MALEKA SC**: I would like to establish some facts Chair, and I am not going to go into a debate about whether Mr Manyi's description is correct or not. All I want to do is to establish the facts. Mr Manyi as I understand, and from the investigation that the Commission's Investigators had conducted, when you came in  
20 as the Head of the GCIS you reappointed Ms Williams as – and to continue as the Head of or the Chairperson of the Bid Adjudication Committee correct?

**MR MZWANELE MANYI**: *Ja* that is correct.

**ADV VINCENT MALEKA SC**: And by that time when you appointed her to continue, you had been aware of the treasury report around allegations of improper procurement of the three companies that you had identified with reference to Stats

SA procurement, correct?

**MR MZWANELE MANYI**: Incorrect Chair. The report of National Treasury came 1<sup>st</sup> of November 2012. I left the department 25<sup>th</sup> August 2012. So it is not correct.

**ADV VINCENT MALEKA SC**: So when did you come to the conclusion that you have inherited this VBS Bank?

**MR MZWANELE MANYI**: The reason we instituted an investigation Chair, is because we had *prima facie* evidence of a malfeasance of sorts, and this is why we got the investigation going. Now whilst the investigation is going, because we are rule of law people we have to presume people innocent until proven guilty and so on.

10 So I did not presume anybody guilty so to speak, but at the same time I had to do some precautionary measures as it were to make sure that we root out the malfeasance that was patently clear, but we also needed to get proper confirmation from a proper investigation.

**ADV VINCENT MALEKA SC**: When did you come to the conclusion that you have inherited a VBS type of an operation?

**MR MZWANELE MANYI**: In 2011 some time, I do not remember the date.

**ADV VINCENT MALEKA SC**: You cannot give us a date that we can work on? A month? Even it is an estimation.

20 **MR MZWANELE MANYI**: I cannot give the date. I think the time when the change was made to dismantle, around that period, that is when I had sufficient information to say we cannot continue like this. I gave the process a chance and asking people. I was – even our own internal investigations by the way, they did also ensue and all that. So whilst we were waiting for formal reports from National Treasury and elsewhere, but we also did our own little probing just to understand what was happening. So it must have been maybe then at the end of that process, maybe

towards the end of the year that one was sufficiently informed to say we have to change this.

**ADV VINCENT MALEKA SC**: Mr Manyi shall we proceed on the premise that when you decided to dismantle the Bid Adjudication Committee you then took out Ms Williams, and she no longer chaired that Committee, you appointed a new Chairperson correct?

**MR MZWANELE MANYI**: Yes, and four members. It was four people that we removed and replaced.

**ADV VINCENT MALEKA SC**: Yes in the bundle that we gave to you to prepare yourself, we included National Treasury's directive on a lawful composition of the Bid Adjudication Committee, of an entity such as the GCIS. I take it that you have read the directive. I take it that you knew it even before we enclosed it in the documentation handed to you. Chair it is on page 14 of Exhibit M1.

**CHAIRPERSON**: Thank you.

**ADV VINCENT MALEKA SC**: So if you are there Mr Manyi, and this is National Treasury speaking, it is not me or the investigating team or the Commission, in paragraph 8.1 the directive requires the following:

"The Departmental Bid Adjudication Committee will comprise of members appointed by the Accounting Officer or his or her delegate through the acquisition policy and delegations."

So the directive requires that you should establish a Bid Adjudication Committee as the Accounting Officer. But then it says the following:

"The composition of the Committee will be as follows, Chairperson, DECO.cs."

And it is common cause that Ms Williams was occupying that office of DCEO

at the time when you took her out of that Bid Adjudication Committee, correct?

**MR MZWANELE MANYI:** *Ja.*

**ADV VINCENT MALEKA SC:** So when you reconstituted the Bid Adjudication Committee you would have acted inconsistent with this directive when you excluded her from not only being a member but also the Chair of that Committee, correct?

**MR MZWANELE MANYI:** No, incorrect. I think Chairperson, this is a simplistic approach that is taken, also this page I have here, this page 14, it would have been good to have seen the cover page of this. It has nothing in here that says directive, I am not really sure what I am looking at but be that as it may the Accounting Officer,  
10 the duties of the Accounting Officer are clearly spelt out in Section 38 of the PFMA. Now if in my view whatever arrangement I found which might have followed a particular guideline, I found that not to be achieving that purpose it was intended for. Nothing stops me to rearrange it in a manner that is going to deliver the objectives of the PFMA. So the changes that I brought in restructuring this Committee, they did not flout a regulation. They did not flout a law. It could have been not in line with a particular guideline of sorts, but guideline is not a regulation. It guides you but if you have something better you can improve on a guideline. It is a guideline. You do not have - so it is not fixed on it. It is not a law.

**ADV VINCENT MALEKA SC:** Chair we will leave the rest for argument. The  
20 provisions of that directive are clear to me. I will not pursue the issue. I think I have established such facts as I need to later make argument on these matters. Mr Manyi the next issue that we would like to raise with you, and you must tell us whether you are comfortable in dealing with it, relates to the investigation that the Commission's investigators had done, and that investigation revealed that you received two CV's of persons, and Chair we have placed those CV's before you. We have redacted the



names of the persons concerned so that there ought not to be an unkind disclosure of their details. We can assure you Chair, that before we thought we should raise these issues we did write to the person concerned about this matter, and afforded them an opportunity to be present or exercise whatever rights they have in terms of the rules. So on that premise Mr Manyi, can I proceed and ask you some matters of fact in relation to the CV's concerned? My understanding of your evidence up to this point is that you claim that it would inappropriate for us to ask questions about those CV's because you received them when you were a private person and not an employee of Government, and that there is nothing wrong for you to receive CV's

10 from other private persons. Is that a fair summary of what you have said thus far concerning the CVs?

**MR MZWANELE MANYI:** It is a half summary. The full summary Chairperson ... (intervenes).

**CHAIRPERSON:** Before you give the other half of the summary Mr Maleka where are you now?

**ADV VINCENT MALEKA SC:** Chair I am at M1.

**CHAIRPERSON:** Yes?

**ADV VINCENT MALEKA SC:** Page 58.

**CHAIRPERSON:** Yes thank you. Yes Mr Manyi?

20 **MR MZWANELE MANYI:** Yes, because firstly I had asked a clarity seeking question before we deal with the e-mails, because it is an e-mail story. I needed to know Chairperson as to what brings by private conversations of people that are both not in government, private sector people sending around e-mails to each other.

**CHAIRPERSON:** Yes Mr Manyi I think what you are raising is a question of relevance. You are saying why is this relevant to what the Commission is doing.

**MR MZWANELE MANYI**: Yes.

**CHAIRPERSON**: And Mr Maleka will address that.

**ADV VINCENT MALEKA SC**: Yes. Chair if I may address the question of relevance at two levels. You will see – let us start with the first CV at page 58 that it is distributed as between two persons. The first of course is the original message from Mr Manyi dated 5 September 2014.

**MR MZWANELE MANYI**: Sorry page?

**ADV VINCENT MALEKA SC**: 58.

**MR MZWANELE MANYI**: 58 okay.

- 10 **ADV VINCENT MALEKA SC**: And the recipient Chair of that electronic message is someone called Ashu and the e-mail address is ashu@sahara.co.za and the subject matter is identified as a “black woman – legal” and I would like to explore without raising it for now the content of the e-mail. That is the first part of the relevant answer, but the second more important part of the relevant answer is the CV is addressed to someone and it records the discussion with another person of the Gupta family. Your mandate requires you to interrogate the way they ran business and whether the way they ran business engages their involvement in acts of state Capture. You will receive evidence about one of the models on how they ran business by receiving CV's of so many people including allegations that some of
- 20 them come from members of the executives. We want to understand the role of Mr Manyi to that extent. If he has any information that he can help you in that regard.

**CHAIRPERSON**: Okay you heard that Mr Manyi?

**MR MZWANELE MANYI**: Yes.

**CHAIRPERSON**: Yes.

**MR MZWANELE MANYI**: Okay although it is not clear as to what this means, but I

said ...(intervenes).

**CHAIRPERSON**: Okay maybe if it is fine with you let me allow Mr Maleka to ask some questions maybe from the questions. The relevance might become clearer.

**MR MZWANELE MANYI**: Yes.

**CHAIRPERSON**: And then if you still have a problem later on you can raise the issue again.

**MR MZWANELE MANYI**: Yes and then when he does so Chair if he can then just also just point out the irregularity of the issue.

**CHAIRPERSON**: Well it might not be an irregularity but I think what you are – well  
10 you are going back to the issue of relevance because you say it will be the irregularity that you understand may show relevance.

**MR MZWANELE MANYI**: Yes.

**CHAIRPERSON**: Okay. Mr Maleka?

**ADV VINCENT MALEKA SC**: Thank you Chair. Mr Manyi on the face of this electronic message you have annexed a CV of a black woman and sent it to Mr Ashu and I take it that is Mr Ashu Chawla, correct?

**MR MZWANELE MANYI**: Yes it is.

**ADV VINCENT MALEKA SC**: And it is quite clear on the body of the e-mail that you tell Mr Chawla as you transmitted this electronic message including the CV that you  
20 are sending it to him and I quote "as discussed with Tony", correct?

**MR MZWANELE MANYI**: Yes Chair I am still confused though.

**ADV VINCENT MALEKA SC**: I just want to establish the facts we will come to whether or not ...(intervenes).

**MR MZWANELE MANYI**: I did say yes.

**ADV VINCENT MALEKA SC**: Yes.

**CHAIRPERSON**: Yes he said yes.

**ADV VINCENT MALEKA SC**: Thank you Chair and the Tony referred to in that e-mail who you discussed with is Mr Tony Gupta, correct?

**MR MZWANELE MANYI**: Yes.

**ADV VINCENT MALEKA SC**: And Mr Chawla that you – Mr Ashu that you have sent this CV to at the Sahara e-mail address was connected to the Gupta family, correct?

**MR MZWANELE MANYI**: Yes but I still do not understand what turns on all of that.

**ADV VINCENT MALEKA SC**: Mr Manyi the sum total of the questions and answers which we have explored this far suggest that you have taken the CV's of people and  
10 you have sent them to persons connected with the Gupta family. I take it that in all of the business activities that you have run so far you were not an employment agency, correct?

**MR MZWANELE MANYI**: Yes but that does not preclude me. I think Chairperson that question is uninformed because you do not need to be an employment agency to be sending CV's around. I think totally it is a bankrupt question to be quite honest.

**CHAIRPERSON**: I think he has given his answer.

**ADV VINCENT MALEKA SC**: Yes.

**CHAIRPERSON**: Yes.

20 **ADV VINCENT MALEKA SC**: Chair can I ask you to go to page 72 and again I just want to establish the facts and move on.

**CHAIRPERSON**: Yes?

**ADV VINCENT MALEKA SC**: Are you at page 72 Mr Manyi?

**MR MZWANELE MANYI**: Yes.

**ADV VINCENT MALEKA SC**: And you will see that the original message from that

page comes from your e-mail, correct?

**MR MZWANELE MANYI**: Yes.

**ADV VINCENT MALEKA SC**: It is dated 26 November 2014 and address this to Mr Nazeem Howa, correct?

**MR MZWANELE MANYI**: Yes.

**ADV VINCENT MALEKA SC**: Do you want to tell the Chairperson who was Nazeem Howa at that point in time and his relationship with the Gupta family?

**MR MZWANELE MANYI**: No Nazeem was the – I think group CEO of Oakbay.

**ADV VINCENT MALEKA SC**: Of Oakbay?

10 **MR MZWANELE MANYI**: Yes.

**ADV VINCENT MALEKA SC**: And Oakbay is the holding company which was owned by the Gupta family?

**MR MZWANELE MANYI**: Yes it is public knowledge.

**ADV VINCENT MALEKA SC**: Yes and to be quick the body of the CV encloses a second CV of another person in the field of IT, correct?

**MR MZWANELE MANYI**: No incorrect this is not a CV this is a business proposal.

**ADV VINCENT MALEKA SC**: It is a business proposal?

**MR MZWANELE MANYI**: Yes.

20 **ADV VINCENT MALEKA SC**: Thank you for that correction I misread it and my apologies. So you enclose a business proposal addressed to Mr Howa of another person, correct?

**MR MZWANELE MANYI**: Yes.

**ADV VINCENT MALEKA SC**: And so what is the context? Did this person ask you to introduce this business proposal to Mr Howa or did you take it upon yourself simply to introduce the proposal to him?

**MR MZWANELE MANYI:** So this is the thing Chair I just want to understand what is the business of this Commission in this issue?

**CHAIRPERSON:** Well Mr Maleka has indicated when the issue of the relevance was raised that part of the terms of reference is to look at State Capture and allegations involving – relating to State Capture and other acts of corruption relating to relating to the Gupta family and to other people and he has indicated that he is looking at the way they may have been operating but maybe what I could say in order to try and assist you Mr Manyi. Mr Maleka do you want to try and go to the head of your line of questioning, because I think a lot of it is about the background or establish certain  
10 facts and you are entitled to do so, but you might have a way of expediting – reaching the real point.

**ADV VINCENT MALEKA SC:** Chair I have explored all the factual matters I needed.

**CHAIRPERSON:** Yes.

**ADV VINCENT MALEKA SC:** And I would like to move on if you do not mind.

**CHAIRPERSON:** Okay, all right. Thank you.

**ADV VINCENT MALEKA SC:** Mr Manyi the next or the second last topic that I would like to raise with you relates to the High Court application that you made for the liquidation of Afrotone after you took over the Gupta family's media businesses. You recall that in the bundle that we gave you we included the copy of the court papers  
20 which include the affidavit that you made and I take it that you read that application for the purposes of our discussion, correct?

**MR MZWANELE MANYI:** Well the first correction I need to make Chair it was not for the liquidation of Afrotone as Mr Maleka is saying it was for the liquidation of TNA.

**CHAIRPERSON:** Yes.

**MR MZWANELE MANYI:** But I have that document.

**CHAIRPERSON**: Yes but you have read, did you read it?

**MR MZWANELE MANYI**: I have read it.

**ADV VINCENT MALEKA SC**: Unless ...(intervenes).

**CHAIRPERSON**: I am sorry did you give an answer to that Mr Manyi? Did you give an answer to the question whether in preparation for this hearing you did read the application?

**MR MZWANELE MANYI**: I put the application myself Chairperson, yes I did.

**CHAIRPERSON**: You read it?

**MR MZWANELE MANYI**: It was my application.

10 **CHAIRPERSON**: Thank you.

**ADV VINCENT MALEKA SC**: Chair first thing first before we explore the idea that I am incorrect can I ask you to go to page 79 of M1?

**CHAIRPERSON**: Yes.

**ADV VINCENT MALEKA SC**: In fact the document starts at page 78, do you see that?

**MR MZWANELE MANYI**: Yes.

**ADV VINCENT MALEKA SC**: And the applicant who is described as the 1<sup>st</sup> applicant in those proceedings is Afrotone Media Holdings, correct?

**MR MZWANELE MANYI**: Yes as applicant.

20 **ADV VINCENT MALEKA SC**: And if you go to your own affidavit on page 85 ...(intervenes).

**MR MZWANELE MANYI**: Page?

**ADV VINCENT MALEKA SC**: 85.

**MR MZWANELE MANYI**: 85.

**ADV VINCENT MALEKA SC**: In paragraph 2.1 you under oath describe who the

applicant is. You say, I quote, "the 1<sup>st</sup> applicant is Afritone Media Holdings a private company with limited liability" and the rest is there. So it was the applicant in this case.

**MR MZWANELE MANYI**: I think there is a miscommunication here Chair. I was not querying who is the applicant I was querying who was being liquidated.

**CHAIRPERSON**: Yes.

**ADV VINCENT MALEKA SC**: We will come to that point because you explain who is going to be liquidated and so on, but for now Mr Manyi if you do not mind the – if you go to page 79 in paragraph 2 this is a legal document called the Notice of Motion.

10 You say that you ask the court to liquidate the respondent and it must be placed under provisional liquidation. Do you see that?

**MR MZWANELE MANYI**: Yes.

**ADV VINCENT MALEKA SC**: And the respondent is TNA Media, do you see that?

**MR MZWANELE MANYI**: Yes.

**ADV VINCENT MALEKA SC**: So it is Afrotone which is going to court to liquidate TNA Media.

**MR MZWANELE MANYI**: Yes.

**ADV VINCENT MALEKA SC**: What I want to establish from you is this and I am sure you would know the difference between liquidation of an entity and business rescue of an entity, correct? I mean you are a businessman you know the difference  
20 between the two, correct?

**MR MZWANELE MANYI**: Yes, yes correct.

**ADV VINCENT MALEKA SC**: And so when you instituted this application it must have been clear to you and your fellow directors that the business of TNA was beyond any business rescue and therefore had to folded over by way of a liquidation,



correct?

**MR MZWANELE MANYI**: Yes, that is factually correct.

**ADV VINCENT MALEKA SC**: So there was no way that this business is going to be saved. It had to fall over. Now the question is this that provisional order you requested I take it that it was granted?

**MR MZWANELE MANYI**: Yes, Chair it was granted.

**ADV VINCENT MALEKA SC**: It was provisional and therefore lawyers would go back to court to debate whether or not that provisional order should be made final. What is the status of the provisional order?

10 **MR MZWANELE MANYI**: It has been finalised, Chair. In fact tomorrow is the auction.

**ADV VINCENT MALEKA SC**: Yes.

**CHAIRPERSON**: Thank you.

**ADV VINCENT MALEKA SC**: Thank you for that clarification. So after tomorrow and after the auction Afrotone will not have a business called TNA Media, correct?

**MR MZWANELE MANYI**: Yes that is correct.

**ADV VINCENT MALEKA SC**: Yes. What I want to establish now that we have the facts from you is this. It must have been clear to you, Mr Manyi, when you took over this business in August 2017 that it was a loss making business? There was no way it could be saved.

20 **MR MZWANELE MANYI**: Well that is an incorrect summary. People buy loss making institutions with a view to turning them around. That was the situation and the fact that it was a loss making is actually recorded in this affidavit. So it is acknowledged that it was a loss making. I came into this with my eyes open but in this affidavit it is detailed how we thought we are going to turn the situation around.

**ADV VINCENT MALEKA SC**: Mr Manyi, we can do it the long way or we can do it the

short way. But I can tell you that I have looked at the financial statements which we have included in this bundle of TNA especially for the relevant period when you bought it in 2017.

It was quite clear when you consider the financial statements of that entity that it was in a loss making environment.

**MR MZWANELE MANYI**: Yes but, Chair I repeat that there is nothing sinister about buying a loss making business.

**CHAIRPERSON**: You did make – he did make that point Mr Maleka. He says you as a business person you might look at a loss making business and say well I have an idea  
10 how to turn it around. The people who were running it do not know how to turn it around.

**ADV VINCENT MALEKA SC**: Yes.

**CHAIRPERSON**: That is what he has said.

**ADV VINCENT MALEKA SC**: Yes and Chair if I can with your leave I want to explore that to show that it was quite clear on his approach that you could not even turn around this business. Do I have your permission to explore that issue?

**CHAIRPERSON**: But what will be the point? What is the point for purposes of the Commission? You know let us assume his – what he had in mind whether he thought it would work ...(intervenes).

20 **ADV VINCENT MALEKA SC**: Yes.

**CHAIRPERSON**: Just was something that could never work. Let us assume that. How does it help us in terms of the Commission's investigations?

**ADV VINCENT MALEKA SC**: Chair, the record will show that we have sought to indicate to you right from the beginning when we examined the element of State Capture relating to TNA business of the Gupta family, the record will show that they

sought to obtain business by methods that were inconsistent with the law.

The record will show that we suggested to you and have led some evidence to some extent that without government support this business would not stand. We want to round up and dot that part of what we said to you on the record that it was quite clear that without government business this entity would not survive absent those elements.

**CHAIRPERSON**: Well you might be needing to put a certain question to him maybe relating to the basis upon which he thought he could turn it around. I am not sure but ...(intervenes).

10 **ADV VINCENT MALEKA SC**: I will move on, Chair.

**CHAIRPERSON**: Okay, move on. Thanks.

**ADV VINCENT MALEKA SC**: Mr Manyi, the last topic that I would like to address with you is the one that we have talked about yesterday and I just want to clarify some aspects of it because you talked in general terms and I want to make sure that I understand that when you are not here and we debate the argument before the Chairperson we are not confused about what you meant in your general description.

One of the issues raised was that government felt excited by seeing this new player called TNA to come into the media space and compete with the cabal. Remember that?

20 **MR MZWANELE MANYI**: Yes I do.

**ADV VINCENT MALEKA SC**: And I want to understand who in government would have been so happy in the context of the discussions we have had around GCIS procurement of media buying on behalf of the government – on behalf of the state.

**MR MZWANELE MANYI**: Yes, no Chairperson I served in a forum called a FORSAT. This is a forum for DG's so this is the place where we discuss various policy co-

ordination matters and so on. This would have been a place where one would have – as part of my input into that forum to say by the way there is a new player on the block that as we do what we do let us consider also in line with the government strategy of media diversity and all that.

Let us consider doing business with this kind of a player because they have got this innovative strategies and so on. So I would have done call it a sell job of sorts to my colleagues and all of that and yes that is the level I operate. So I would have spoken to fellow DG's. I would have spoken to – we also had a forum called Communications – some communication meeting where all the communicators would  
10 meet regularly. I would even table there that there is a new player on the block. Let us consider doing business with them. So it is quite an aboveboard matter and so on.

**CHAIRPERSON:** Thank you.

**ADV VINCENT MALEKA SC:** And that is the type of process that would also have taken place in GCIS? You would have told GCIS that there is a new player?

**MR MZWANELE MANYI:** GCIS has – I keep repeating this, has got tools how they do their work. It is everything that must happen within a particular process as it were so there is nothing that as a result of the sale happened irregularly and, Chair I think the record of GCIS would show that as far as interacting with TNA in particular and that is Mr Maleka's bone of contention there was nothing irregular with the interaction of GCIS  
20 with TNA at any stage at least when I was there.

**ADV VINCENT MALEKA SC:** Chair I am not going to go through the details. You have heard the evidence of Ms Williams who told you about TELMA and that TELMA could not recognise TNA's breakfast show and that there was an issue around it. For now Mr Manyi can I confirm the facts?

**MR MZWANELE MANYI:** Can I interject, Chair?

**CHAIRPERSON:** Yes.

**MR MZWANELE MANYI:** I think it is important to understand what is TELMA and it is important to understand how GCIS operates. If anybody, Ms Williams included, thought that TELMA is a be all and end all of how GCIS thinks that understanding must be dismissed Chair as very incorrect and very lacking in strategy substance as it were.

There is no such a thing. TELMA, Chairperson for just a quick workshop TELMA is a software that places adverts and so on but that does not take away the – that does not take away other platforms – other approaches or platforms or opportunities to ensure that you get the exposure that you are looking for.

10 To place an advert is one way of communicating what you want to communicate but you can also do it differently. You do not have to place an advert. You can do – you can go on TV and do something different so and TV and that approach that you do in a particular platform does not have to be dictated to by TELMA.

I did say yesterday it is just one of the tools. It is not the only tool.

**CHAIRPERSON:** Thank you.

**ADV VINCENT MALEKA SC:** Chair, can I ask you to make this for your notes because Ms Williams went at length to describe not only TELMA as an evaluation tool to procure media buying but also the legal basis of it. But they had to go to Treasury. They had to go a special – they had to get a special dispensation under Treasury regulation 164.A which we now know. You will find all of that evidence.

**CHAIRPERSON:** Yes. I think what – I think you must tell the witness that basis to give him an opportunity to say but that is wrong if it is wrong.

**ADV VINCENT MALEKA SC:** Yes.

**CHAIRPERSON:** Because as I understand it your position would be that TELMA was

legally obligatory.

**ADV VINCENT MALEKA SC:** Yes.

**CHAIRPERSON:** And he is saying that was not so. So it is important that you put to him the basis so that he can deal with it.

**ADV VINCENT MALEKA SC:** Yes. Ms Williams says these things at various places but for now Mr Manyi I have asked the attorney of the Commission to place before you the transcript of her evidence of 31<sup>st</sup> August 2018. It is titled Day 8. Do you have it?

**MR MZWANELE MANYI:** No, where is that?

**ADV VINCENT MALEKA SC:** I will ask one of my colleague to help you find – locate it.

10 **MR MZWANELE MANYI:** Day 8?

**ADV VINCENT MALEKA SC:** Day 8. Chair, I will read it for you so that ...(intervenes).

**CHAIRPERSON:** I do not need to look at it.

**ADV VINCENT MALEKA SC:** Not at all.

**CHAIRPERSON:** Okay.

**MR MZWANELE MANYI:** But Chairperson as we are still shuffling through paper here I want to place it on record.

**CHAIRPERSON:** Yes?

**MR MZWANELE MANYI:** That is not true that TELMA is in any law. There is no such a thing.

20 **CHAIRPERSON:** Oh, no hang on Mr Manyi. You had made that point.

**MR MZWANELE MANYI:** Yes.

**CHAIRPERSON:** I was giving Mr Maleka an opportunity of telling you what the basis is for him to suggest that you are not correct.

**MR MZWANELE MANYI:** Okay. So it is ...(intervenes).

**CHAIRPERSON:** So I want you to hear his basis and then deal with it.

**MR MZWANELE MANYI**: Okay. All right.

**ADV VINCENT MALEKA SC**: Chair, at page 39 for your records, page 39 of 31 August 2018 transcript Ms Williams says the following and I read it for you so that we are together on this. Ms Hofmeyr asked her the following question. It is opposite line 16 give or take.

"So to understand the context in which this occurred, Ms Williams,  
you make reference ...(intervenes)."

**MR MZWANELE MANYI**: Sorry, Chair. I have not got the actual page here. Where is this?

10 **CHAIRPERSON**: Oh, okay.

**ADV VINCENT MALEKA SC**: 39.

**CHAIRPERSON**: 39 of the bundle that was put to you by the attorney or counsel who was assisting you.

**MR MZWANELE MANYI**: Yes.

**CHAIRPERSON**: Well just check Mr Maleka whether you have the same document on the page.

**ADV VINCENT MALEKA SC**: I believe that he has it, Mr Chair.

**CHAIRPERSON**: Oh, okay. All right.

**MR MZWANELE MANYI**: But the part that you are reading I do not see it here.

20 **ADV VINCENT MALEKA SC**: Page 38. Are you at page 38?

**CHAIRPERSON**: Maybe tell him what is prominent on that page.

**ADV VINCENT MALEKA SC**: Yes, you will see that on the left hand side of the pages there is a marginal number. The prominent one there is number 10. Do you see that?

**MR MZWANELE MANYI**: Yes you see, Chair my number 10 is blank. Is that the one?  
This is page 38 I have.

**ADV VINCENT MALEKA SC:** No, go to page 39. I said page 39.

**MR MZWANELE MANYI:** You came back and you said 38.

**ADV VINCENT MALEKA SC:** Let us stop quibbling about irrelevancies and get to the substance.

**CHAIRPERSON:** Okay, have you got it, Mr Manyi?

**MR MZWANELE MANYI:** I have got page 39.

**CHAIRPERSON:** Is that the page, Mr Maleka?

**ADV VINCENT MALEKA SC:** Yes, Chair.

**CHAIRPERSON:** Okay. All right.

10 **ADV VINCENT MALEKA SC:** You see the number 10 on the left?

**MR MZWANELE MANYI:** Yes.

**ADV VINCENT MALEKA SC:** Go four lines down. You will see Ms Hofmeyr is asking a question of Ms Williams. The question begins with so to understand. Are you there?

**MR MZWANELE MANYI:** Chair on this whole page Ms Hofman appears three times. The first time she starts by saying "Chair before I continue with my question." The next time she says "indeed Chair." The next time she says "thank you Chair, Ms Williams before the adjournment" that is what I have here.

**CHAIRPERSON:** Okay.

**ADV VINCENT MALEKA SC:** Yes. You are on the correct trajectory.

20 **CHAIRPERSON:** Okay.

**ADV VINCENT MALEKA SC:** Go down, go down. You see that the next reference to Ms Williams – to Ms Kate Hofmeyer is "so to understand" are you there?

**CHAIRPERSON:** Are you able to tell him round about what line number on the margin?

**ADV VINCENT MALEKA SC:** It is about 14 I said Chair just below 10. Perhaps I



will ask my colleague Ms Molefe to go and identify for him.

**CHAIRPERSON**: Otherwise we ...(intervenes).

**ADV VINCENT MALEKA SC**: "So to understand." It is page 39 "so to understand" line 14.

**CHAIRPERSON**: I assume Mr Maleka that it is important to have a look at it otherwise if you know the point you could put the point maybe he might be able to answer it without ...(intervenes).

**ADV VINCENT MALEKA SC**: Yes ...(intervenes).

**CHAIRPERSON**: The transcript.

10 **ADV VINCENT MALEKA SC**: Ms Molefe it is the transcript of 31<sup>st</sup> August 2018. Are you at page 39 and if you go to the middle do you see line 10? You will see ...(intervenes).

**CHAIRPERSON**: I think what should happen I think you take that go to Mr Maleka, let him show you the correct page and exactly where he wants to focus on and then take it to the witness.

**MR MZWANELE MANYI**: I am glad it is not that straightforward.

**CHAIRPERSON**: Sorry Mr Manyi?

**MR MZWANELE MANYI**: I am saying I am glad it is not that straightforward Chair.

20 **CHAIRPERSON**: Well maybe Mr Maleka we will take a five minutes adjournment to get this sorted out.

**ADV VINCENT MALEKA SC**: Yes Chair there must be some confusion about the transcript, because mine is page 39 of 113. The one placed before Mr Manyi is page 39 of 117.

**CHAIRPERSON**: Is it possible to either put the point to him on the basis that he might be able to answer even if he has not looked.

**ADV VINCENT MALEKA SC**: Yes.

**CHAIRPERSON**: Or that you move to another point and then later on maybe somebody – one of your colleagues can look at the issue of different pages and later on you can go back to it.

**ADV VINCENT MALEKA SC**: I can ...(intervenes).

**CHAIRPERSON**: Depending on how important it is.

**ADV VINCENT MALEKA SC**: I can do the first and it will be quick Chair if I may read.

**CHAIRPERSON**: Yes.

10 **ADV VINCENT MALEKA SC**: The question by Ms Hofmeyr is the following. "So to understand the context in which this occurred Ms Williams you make reference to the TELMA system which relates to media buying. Can you tell us a bit more about how that system works?" Ms Williams answers as follows "Chairperson I can have some water. I think my throat ... Chairperson I indicated earlier that when we agreed with National Treasury that we would like to bring it in house ...(intervenes).

**CHAIRPERSON**: Hang on you are going to confuse ...(indistinct).

**ADV VINCENT MALEKA SC**: I indicated earlier that when we agreed with National Treasury that we would like to bring it in house. There was an acknowledgement that we can use a delegation 16(a), which essentially, it is a delegation that is given  
20 to departments if it is something that is beyond our control which you need to do. However, the issue there is that you can use it, but you must write a motivation why you think this medium is the correct one. Whether it is cost effective and whether it will get to those audience that you want. Now our understanding is that the TELMA was assisting us to do that. It would, we would get a briefing from a client, load that in, the briefing into the system and the system would then say this is the most cost

effective and effective in terms of the audience that you want and the media buying people had to write down and submit it to us. Now in the case of TNA we battled with how to – how do you know ...(intervenes).

**CHAIRPERSON:** Well Mr Maleka that is going to be too long for the witness to remember. I thought you were going to just put the point to him and see if he is able to answer it without looking at the transcript. He might not be able to ...(intervenes).

**ADV VINCENT MALEKA SC:** The essence of it is this Chair ...(intervenes).

**CHAIRPERSON:** Yes?

**ADV VINCENT MALEKA SC:** That Ms Williams has confirmed under oath that  
10 TELMA was a delegation that was obtained from National Treasury. Secondly that they battled in applying TELMA to TNA because TELMA could not identify the breakfast shows relating to TNA and that is the ...(intervenes).

**CHAIRPERSON:** But were you not looking for the basis upon which you were to pursue the point that TELMA was obligatory?

**ADV VINCENT MALEKA SC:** Yes.

**CHAIRPERSON:** Because Mr Manyi said it was a guideline if I understood correctly and you said that there would be references which show that it was legally obligatory. So I thought you were looking for something that you would put to him to say look at this, this suggest it was obligatory and he would then comment on that.

20 **ADV VINCENT MALEKA SC:** Yes. Let me do that Chair. I have read that part of Ms Williams' evidence on how National Treasury gave them the delegation. I can put some few questions if it is convenient to you and Mr Manyi on that issue.

**CHAIRPERSON:** Well would that resolve what we are looking at namely ...(intervenes).

**ADV VINCENT MALEKA SC:** Yes ...(intervenes).

**CHAIRPERSON**: Would it show as far at least as you are concerned that TELMA was legally obligatory?

**ADV VINCENT MALEKA SC**: Indeed, indeed.

**CHAIRPERSON**: Okay go ahead.

**ADV VINCENT MALEKA SC**: I believe that my colleagues have found it now.

**CHAIRPERSON**: Okay, but if there is a way of doing the short route without reading that long passage that would help.

**ADV VINCENT MALEKA SC**: Yes. Mr Manyi as I understand government cannot go into public procurement without following the rules of procurement and as you  
10 have said the basic rule is competitive procurement in terms of Section 217 of the Constitution, correct?

**MR MZWANELE MANYI**: Can you repeat the question?

**ADV VINCENT MALEKA SC**: Government has no rights to go and procure goods willy-nilly it must follow a system of procurement and the basic rules of public procurement are set out in Section 217. In other words GCIS cannot wake up and say that it is going to go into media buying without following a public procurement process. Are we agreed on this score?

**MR MZWANELE MANYI**: Okay can I clarify this Chair, because I think there is a confusion and conflation of issues. The bulk buying which I suspect is what Ms  
20 Williams was trying to explain here TELMA is one of the tools within bulk buying. So the issue that exemption was sought is an issue of a broader subject of bulk buying.

**CHAIRPERSON**: May I suggest that you deal with the question. You consider dealing with the question in this way to his question. Yes it is so or no it is not so or yes it is so but with a qualification under the following circumstances this can happen and under different circumstances it cannot happen. Are you comfortable with that?

**MR MZWANELE MANYI:** Yes.

**CHAIRPERSON:** Yes.

**MR MZWANELE MANYI:** The answer is no, because there are certain circumstances which the public process cannot happen. It is just not practical if you are dealing with the bulk buying ...(intervenes).

**CHAIRPERSON:** Yes ...(intervenes).

**MR MZWANELE MANYI:** To go a different route than what was being exempted.

**CHAIRPERSON:** Yes.

**MR MZWANELE MANYI:** So what was exempted here was a bulk buying as  
10 opposed to TELMA. There is no such a thing as TELMA in the regulations.

**ADV VINCENT MALEKA SC:** Mr Manyi you may be correct or not, but the simple question is this GCIS could not go out to the market and do bulk buying of its own accord without following some system of public procurement. Are we agreed on that score?

**MR MZWANELE MANYI:** Chair I am confused by this question because I thought I have responded to it and the response is that there are two ways of procuring. It is public procurement where you issue tenders whatever to say who can do this or it is the media bulk buying approach. In that approach you do not go and advertise or anything. It is a different approach that is being used. This is why for bulk buying  
20 you get an exemption of how to do it, because it is not practical, because – yes.

**CHAIRPERSON:** But when you get exemption that is still under procurement rules as it were is it not?

**MR MZWANELE MANYI:** Or give ...(intervenes).

**CHAIRPERSON:** Exemption is provided for in the procurement rules.

**MR MZWANELE MANYI:** Yes, yes Chair.

**CHAIRPERSON**: Yes. So in other words your answer would be even when you have got exemption you are still acting in accordance with the procurement rules because the procurement rules make provision for that exemption. Am I correct?

**MR MZWANELE MANYI**: No, no Chair.

**CHAIRPERSON**: Yes?

**MR MZWANELE MANYI**: The exemption is to exempt you from the day to day procurement rules.

**CHAIRPERSON**: Yes but the exemption is in the – is not in the procurement legislative framework.

10 **MR MZWANELE MANYI**: Yes that it is Chair.

**CHAIRPERSON**: In other words ...(intervenes).

**MR MZWANELE MANYI**: Yes?

**CHAIRPERSON**: If you look at what you consider to be legislative framework ...(intervenes).

**MR MZWANELE MANYI**: Yes?

**CHAIRPERSON**: There is a general rule to say if you want to procure this is the general rule, but there are exceptions to it and these are the exemptions and one of the exemptions is maybe you do not need to do A, B, C, D if you have received exemption and exemption can be provided under the following circumstances.

20 **MR MZWANELE MANYI**: The confusion that Mr Maleka brings in that discussion Chair is that he then talks to Section 217 which talks to things that are like cost effectiveness and fairness and competitiveness and all of that. The exemption seeks to get away from that. People that are appointed on exemption could be challenged on competitiveness, could be challenged on a whole manner of ways, but you would have been exempted lawfully from it, but now the impression I am getting is that

having been exempted so to speak when you do whatever on exemption I am getting the sense that you would perceive that as having flouted Section 217 and because it keeps on saying in terms of Section 217. Exemption is outside 217...(intervenes).

**ADV VINCENT MALEKA SC**: No, no, no ...(intervenes).

**MR MZWANELE MANYI**: Because it is when you cannot do 217.

**CHAIRPERSON**: Yes not that is fine. Mr Maleka?

**ADV VINCENT MALEKA SC**: Chair let me be – I can put a proposition and he can comment and we will move on.

**CHAIRPERSON**: Yes.

10 **ADV VINCENT MALEKA SC**: Mr Manyi media bulk buying is still public procurement by GCIS. It is not private procurement. Do you accept that it is still part and parcel of public procurement?

**MR MZWANELE MANYI**: I accept that it is an exemption. Chair this is the thing it is an exemption of 217. So ...(intervenes).

**ADV VINCENT MALEKA SC**: I want to put another proposition, because we now agree that media buying is part and parcel of public procurement by GCIS the exemption that Ms Williams talks about and that you now embrace it is from a method of procurement not from the nature of the procurement. In other words you may not follow the normal open tender process you follow the tender – the  
20 procurement process via TELMA. So TELMA it is still a method of public procurement.

**MR MZWANELE MANYI**: No. This is the problem Chair, because in terms of Mr Maleka or Ms Phumla Williams' articulations is that the only way passport into procurement in the exemption is only TELMA and I am saying that is not true that the bulk buying that encompasses TELMA and also other considerations as it were. It is

not just TELMA and TELMA only.

**CHAIRPERSON**: Yes.

**MR MZWANELE MANYI**: For instance Community Media Chair as I made this point yesterday is not in TELMA but we still procure from Community Media which is not in TELMA but will still be public procurement.

**CHAIRPERSON**: Thank you.

**ADV VINCENT MALEKA SC**: Chair last point and that will be ...(intervenes).

**CHAIRPERSON**: And how far are we from ...(intervenes).

**ADV VINCENT MALEKA SC**: Well I am almost done Chair.

10 **CHAIRPERSON**: Okay all right.

**ADV VINCENT MALEKA SC**: Mr Manyi we confirmed yesterday that TNA did not use the ABC type of verification in order to prove the extent of its circulation. We have gone past that issue, correct?

**MR MZWANELE MANYI**: Yes we spoke to that.

**ADV VINCENT MALEKA SC**: And you said that TNA to verify its own circulation figures would submit figures from the auditors, correct?

**MR MZWANELE MANYI**: Yes.

20 **ADV VINCENT MALEKA SC**: Just as a matter of practicality how does it go about if Mr Lephoko who we know was the head of media buying in GCIS would say I would like to use TNA here what does he do as a matter of practicality? Does he call for the audited figures?

**MR MZWANELE MANYI**: Can you just rephrase your question? I am not understanding your question.

**ADV VINCENT MALEKA SC**: Mr Lephoko was in charge of media buying correct?

**MR MZWANELE MANYI**: Yes.



**ADV VINCENT MALEKA SC:** And he was reporting to you?

**MR MZWANELE MANYI:** Yes.

**ADV VINCENT MALEKA SC:** Directly?

**MR MZWANELE MANYI:** Yes.

**ADV VINCENT MALEKA SC:** Did he report to you how he would assist the circulation figures of TNA to justify its appointment for media buying?

**MR MZWANELE MANYI:** Okay Chairperson I think the first point that must be – the answer is no, but here is the issue. TELMA if anything is actually not a circulation tool. It is actually a readership tool. When you formulate what goes into TELMA the system  
10 itself how they do it, Chairperson, just so that Mr Maleka is clear TELMA sends out some kind of a spreadsheet with the various titles of all the newspapers.

They go around asking you which newspaper do you read? You say I read the Star, I read New Age. How old are you? What is your level of education and all that. They format that into in conjunction with the STATS SA information about household and all of that and then when you are a front end user of TELMA what you put into the system you then put in the LSM's that you are looking for.

You put in the geographic area that you are looking for and that gives you people that read that kind of newspaper in the area. It does not talk to circulation. It talks to actually it is a readership thing more than a circulation thing. So the conception  
20 that TELMA and circulation and this is totally wrong. TELMA for all intents and purposes is a tool that tells you who reads whatever kind of publication and so on and if you are looking for this kind of LSM, this kind of age, this kind of education those kinds of people tend to read Business Day kind of thing. So that is all it tells you and then you go from there.

**CHAIRPERSON:** Thank you.

**ADV VINCENT MALEKA SC:** Chair, I would not pursue that issue. Can I conclude and place on record that to the extent that Mr Manyi has raised issues in his last sets of affidavits relating to allegations of State Capture by National Treasury with reference to that procurement of R1.7 billion we as the Legal Team are certainly interested in pursuing that issue and we have referred the allegations to National Treasury for it to comment and at the right time at the right moment resources permitting we will ask for Mr Manyi to help us in that regard. That ends my questions to Mr Manyi.

**CHAIRPERSON:** Thank you, Mr Maleka. There is just one issue that I would like you to clarify Mr Manyi. Earlier on this morning you sought to provide clarification as to why  
10 I think using City Press to compare the revenue that it got from GCIS for advertisements compared to the New Age might not give a good picture.

**MR MZWANELE MANYI:** Yes.

**CHAIRPERSON:** I think what you were saying was City Press – what we see in the table that you provided would not be everything in terms of revenue that City Press got during the relevant period.

**MR MZWANELE MANYI:** Correct, Chair.

**CHAIRPERSON:** Did I understand you correctly?

**MR MZWANELE MANYI:** 100%, Chair.

**CHAIRPERSON:** Yes. Do you know how much else they might have got, that is City  
20 Press? I am simply asking because you are the one who brought the information to us. You might or might not know.

**MR MZWANELE MANYI:** Yes it is not broken down, Chair but on that Ads24 it is lumped in there so GCIS can be asked to provide a breakdown of that number because right now I have got a global number of Ads24 which is a Naspers thing and I – as I said yesterday City Press is there.

So the actual breakdown as to what is in that global figure GCIS is in a better place to do this. I do not know it offhand.

**CHAIRPERSON**: Okay. So you do not know what the figure is?

**MR MZWANELE MANYI**: No, Chair.

**CHAIRPERSON**: Okay.

**MR MZWANELE MANYI**: I just have the figure that is – what they tabled here is what went into the Naspers group as it were, the Avusa group as it were or Tiso Blackstar as it is now called. I have got those global amounts but as I said we have got some ad-hocs of both these groups that are there and they give a distorted figure as if that  
10 R200 000 or R30 000 is all they got.

It is not true. There are still those various publications that are double dipping if you like. They have got their line items as themselves on *ad-hoc* basis but they are also in the big amounts of the marketing wings that are Ads24 and the other one.

**CHAIRPERSON**: Well I would say that that information may be important and maybe beyond today you might be – you might wish to be in touch with the Legal Team because if documentation that GCIS has may back you up on that it might be important to have a look because it relates to one of the most important issues I think in terms of your evidence namely if one looks at the revenue that The New Age made from GCIS  
20 for advertisement during the relevant period it is far greater than individual, certain individual publications.

Now you have testified as to why you think that may be justified. I did hear that but what you have just said might be more – might be quite something that one can look at and to see how much whether it closes the gap or not because it may well be that whatever it is that must be added onto the City Press revenue for that period still

leaves quite a big difference between what City Press got and what The New Age got but it may well be that it makes a substantial difference so that the gap is narrowed quite significantly.

So I am just mentioning that I am interested in the exploration of that part of your evidence and you might be able to assist if you are in touch with the Legal Team beyond today so that we get that information if possible.

**MR MZWANELE MANYI:** Except that Chair and this is a point I tried yesterday to make that it is not a linear relationship. I am not sure – I can get that information but if the frame of reference is one of a linear relationship then that information would not assist  
10 in that if the contention of the Commission is that purely based on your circulation therefore there is a proportionately more revenue you should be getting then that is an incorrect approach because in the execution of the duties at GCIS we look at more than that because as I explained yesterday that is the issue of target marketing.

**CHAIRPERSON:** Yes.

**MR MZWANELE MANYI:** But I can give the figure but it is not – I can give that breakdown.

**CHAIRPERSON:** Yes.

**MR MZWANELE MANYI:** But I just want to beforehand warn the Commission that it is not a linear relationship.

20 **CHAIRPERSON:** No, no, no I understand you Mr Manyi. That is the point you made even yesterday.

**MR MZWANELE MANYI:** Yes.

**CHAIRPERSON:** And it is the point you made even today.

**MR MZWANELE MANYI:** Yes.

**CHAIRPERSON:** So I understand this.

**MR MZWANELE MANYI**: Okay.

**CHAIRPERSON**: All I am simply saying is there is a piece of evidence that you have given ...(intervenes).

**MR MZWANELE MANYI**: Okay.

**CHAIRPERSON**: Which I think may be important that I would like to be explored.

**MR MZWANELE MANYI**: Okay.

**CHAIRPERSON**: And I am simply thinking that the Legal Team on their own without your assistance might not be able to say what to ask for from GCIS.

**MR MZWANELE MANYI**: Yes.

10 **CHAIRPERSON**: But with your cooperation that might be easy to find.

**MR MZWANELE MANYI**: All right, Chair. For sure.

**CHAIRPERSON**: Okay. Thank you.

**MR MZWANELE MANYI**: Thank you, Chair.

**CHAIRPERSON**: Thank you very much. We – thank you for having come to give evidence to the Commission. You may or may not be asked later on to come back. I am not sure but thank you. Thank you very much. You are excused for now.

**MR MZWANELE MANYI**: Thank you, Chair.

**CHAIRPERSON**: Thank you. Well Mr Maleka ...(intervenes).

**ADV VINCENT MALEKA SC**: Yes?

20 **CHAIRPERSON**: I think that we probably should take an adjournment before – a short adjournment before we start with the next witness.

**ADV VINCENT MALEKA SC**: Yes, Chair we started early so if it is convenient we can start – we can take – it is 12:30 now. We can take a short lunch adjournment for 30 minutes and resume at 13:00 until Mr Mokoena finishes.

**CHAIRPERSON**: Well as far as I know the next witness should not take too long if I

look at his statement which I have read.

**ADV VINCENT MALEKA SC**: Perhaps Mr Mokoena should address you on this issue.

**CHAIRPERSON**: He is refusing.

**ADV PHILLIP MOKOENA SC**: Mr Chair, I refuse to estimate having regard to the experiences of the previous witnesses and also when we attempted our best to give proper time allocations we failed dismally.

**CHAIRPERSON**: Yes.

**ADV PHILLIP MOKOENA SC**: So the statement might be short.

**CHAIRPERSON**: Yes.

10 **ADV PHILLIP MOKOENA SC**: But the witness might not be as short as the statement.

**CHAIRPERSON**: Yes. Okay. No but I think what we should then do is just take – let us take a 10 minute break and resume at 12:40. Then we will have – we will use that time and at 13:00 we take the normal lunch break and then come back.

So we will adjourn and resume at 12:40.

HEARING ADJOURNS

HEARING RESUMES

**CHAIRPERSON**: Yes, Mr Mokoena? Good afternoon Mr Mantashe.

**MINISTER GWEDE MANTASHE**: Good afternoon, Chairman.

**CHAIRPERSON**: Thank you.

20 **ADV PHILLIP MOKOENA SC**: Mr Chair, you will pardon my voice. It is that time of the year when one's body simply collapses. I will try my best that I should be audible. The Commission, Mr Chair ...(intervenes).

**CHAIRPERSON**: You want to consult your leader?

**ADV PHILLIP MOKOENA SC**: No, Mr Chair.

**CHAIRPERSON**: Oh.

**ADV PHILLIP MOKOENA SC:** The Commission Mr Chair will be calling as its next witness Mr Mantashe. Chair, you will recall that the Commission in its previous sittings it did lead the evidence of the banks and the bank's testimony was relevant to term of reference 1.7. You will also recall, Mr Chair that the banks testified about a meeting which was initiated by the ANC at the instance of the Oakbay Group. Some of the banks, Mr Chair did attend that meeting with the ANC while others did not.

In fact to be much more precise Standard Bank, ABSA and Nedbank did attend that meeting and FNB did not attend the meeting with the ANC and currently Mr Mantashe will be testifying in response to the evidence that was led by the banks  
10 squarely pertaining to term of reference 1.7. We know now that he is the chairperson of the ANC and at that time he led the delegation that met with the banks in his capacity as the Secretary General of the ANC.

We have also made it clear to Mr Mantashe and the ANC that even though today they will be limiting their evidence only to deal with the responses of the banks. They will be called in the near future to assist the Commission in also addressing other terms of reference and in this regard Mr Chair we are ready to proceed and call the evidence of Mr Mantashe. May the witness be sworn in?

**CHAIRPERSON:** Yes Registrar I think probably it will be an affirmation with Mr Mantashe, but Mr, an oath or affirmation?

20 **ADV PHILLIP MOKOENA SC:** He indicated that it will be an oath.

**CHAIRPERSON:** Sorry?

**ADV PHILLIP MOKOENA SC:** An oath.

**CHAIRPERSON:** Okay thank you.

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

**MINISTER GWEDE MANTASHE:** My name is Samson Gwede Manthashe.

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

**MINISTER GWEDE MANTASHE:** No problem at all.

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

**MINISTER GWEDE MANTASHE:** Absolutely.

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

**MINISTER GWEDE MANTASHE:** So help me God.

**REGISTRAR:** Thank you.

10 **CHAIRPERSON:** Thank you. Well I understand Mr Mantashe that today you are here not in your capacity as Minister but in your capacity as the National Chairperson of the governing party or as former Secretary General of the party. I simply mention that because you are one of the Ministers at the moment and I have been calling for present and past Ministers who might have information that is relevant to the investigation of the Commission to come forward, but I just remembered that today you are here not as a Minister but as one of the leaders of the governing party.

**MINISTER GWEDE MANTASHE:** I agree.

**CHAIRPERSON:** Thank you. Yes Mr Mokoena you may continue.

20 **ADV PHILLIP MOKOENA SC:** Mr Mantashe for a meaningful treatment of the issues arising from your witness statement relevant to term of reference 1.7 we have placed two arch lever files before you. You will see if you look at the spine of each file they should be marked H1 and they go up until H6. Mr Chair we hope that those exhibits are also before you.

**CHAIRPERSON:** Let me just have a look. That is H1, Exhibit H1A, there is Exhibit



H only. There is Exhibit H3, H4. I do not – then there is Exhibit H2 and H5. Do I seem to have everything I am supposed to have with me?

**ADV PHILLIP MOKOENA SC**: You should – they should go up until H6. I suspect that the black file that is there should be the one that is marked H6.

**CHAIRPERSON**: No I do not have that one. Is this the one? I see that I do have it Mr Mokoena, but the problem is a problem that happened I think last week where on the spine it is written with very small words so it is difficult to read them if the file is a little far. So I have got it that, will somebody maybe during the lunch break just make sure that the writing on the spine is one that can be easily seen?

10 **ADV PHILLIP MOKOENA SC**: We will do so Mr Chair.

**CHAIRPERSON**: Thank you.

**ADV PHILLIP MOKOENA SC**: Mr Chair prior to leading the evidence of Mr Mantashe, Mr Mantashe and the ANC have made a request that they should make an opening statement. As the Legal Team we possess no power nor authority to grant such a request and it is on those basis we deem it necessary to bring it to your attention and to seek your guidance and direction in that regard.

**CHAIRPERSON**: Is there a written statement that I can have a look at first?

**ADV PHILLIP MOKOENA SC**: Mr Chair there is a written statement but we did not make it available to you up until you have provided the necessary ...(intervenes).

20 **CHAIRPERSON**: Yes can I have it? No that will be in order.

**ADV PHILLIP MOKOENA SC**: Mr Mantashe you may proceed. Should we not mark it first Mr Chair so that at least we know when we look at the record what was Mr Mantashe reading and if it is so can I propose that it should be Exhibit H7?

**CHAIRPERSON**: Okay we will mark the opening statement that Mr Mantashe is going to read as Exhibit H7. You may go ahead Mr Mantashe.

**MINISTER GWEDE MANTASHE:** Thank you very much Chairman. I am the National Chairperson of the ANC and I address the Commission on behalf of my organisation. When the ANC met the banks I was the Secretary General of the ANC. The position I held for 10 years up to the 20<sup>th</sup> of December 2017. At the outset I wish to put in context the importance of the work of this Commission and explain why all South Africans both black and white should embrace the Commission with open arms.

As the ruling party in government the ANC carries the obligation to build a South Africa ...(indistinct) nation and a strong capable state. Since 1994 we have  
10 come to learn that there are no shortcuts or quick fixes to nation and state building processes, but the ANC exhorts all South Africans to persevere who had to endure the pain and emotional trauma of building a nation with single national identity out of the ashes of a racially divided and inhuman past and we have to build a strong capable state from an exclusionary and illegitimate past. The Truth and Reconciliation Commission fulfilled an important role in the post apartheid nation building process.

As a young democracy we have achieved in a relatively short period of 24 years a degree of consensus on past cultural traditions, customs, symbols, rituals and historical experience of black and white people. This proved to be a strong indicator of the willingness of the different racial groups in our country to come  
20 together for the common good. In just over two decades we have succeeded in laying down a strong legislative ethical frame and an ethical framework of accountability and good governance. That compares favourable to countries that have been in existence since the evolution of the state system more than 250 years ago.

The constitutional democracy and freedoms we enjoy today sits precariously

on the sacrifices made by thousands of comrades who were exiled, imprisoned, maimed, bludgeoned to death and hanged. We must jealously guard our victories and not allow anyone to drag us back to the racially divided society where the rule of law was selectively used and where the majority of people existed as soulless, dehumanised individuals.

We should not shy away from all collective responsibility to protect our freedoms. We should not be deterred by fear. Against this backdrop this Commission stand as a reality check on how far we have progressed as a nation. What values we are shaping for ourselves, bequeathing to future generations, what  
10 lapses some members of the National Executive past and present suffered and whether as a nation we have succumbed to the scourge of corruption. In the view of the ANC this is probably the singular most important reason for the establishment of this Commission and equally the primary reason why all South Africans should protect the Commission at all costs.

The ANC will make a submission to the Commission in four parts. Today the ANC will respond to the evidence given by the banks, explore why it met the banks and what internal processes were followed thereafter. At a future date I will be given an opportunity to respond to comrade Barbara Hogan's allegation that I improperly and/or unlawfully sought to use my political influence to interfere in the management  
20 of Transnet by insisting on the appointment of Mr Siyabonga Gama as a CEO of Transnet. In the same session I intend to deal with comrade Hogan's remarks about the ANC's Polokwane conference and an allegation that I demanded that Mr Godfield should not be returned as chairperson of Eskom Board.

In her oral evidence which was not part of her written submission comrade Hogan alleged that comrade Jesse Duarte Deputy Secretary General and a senior

leader of the ANC was part of State Capture and that comrade Ahmed Kathrada was poorly treated. Comrade Hogan should be given an opportunity to withdraw or substantiate these allegations. For her part comrade Jesse Duarte is prepared to come before this Commission at any stage to rebut the allegation that she was part of State Capture and rebut any other allegation made against her. The ANC believes that a key outlook of the Commission should be the relationship between the party and the state. When the Commission makes time in the New Year the ANC will provide information about its deployment policy adopted by its National Executive Committee between January and July 1999 with specific reference to the

10 deployment framework, guidelines for deployment to various centres, deployment in human resource development, co-ordination of employees, organisational culture of the ANC, guidelines on the relationship between the organisational structures of the ANC and government executive. Guidelines on the role and criteria for ANC premiers. Criteria for the appointment of premiers, the 50<sup>th</sup> ANC national conference resolution on cadre deployment policy and the 52<sup>nd</sup> ANC national conference resolution on organisational renewal. In our submission to the Commission the ANC President Comrade Cyril Ramaphosa will respond to a broad set of issues relating to the ANC which arose in evidence before the Commission and will explain what action the ANC took and why it omitted to intervene in circumstances when it should

20 and could have done so. To assist the work of the Commission the ANC calls on all its members who may have information on the under mentioned terms of reference of the Commission to come forward with such information whether to what extent and by whom attempts were made to influence members of the National Executive including Deputy Ministers, office bearers and/or functionaries employed by any state institution, organ of state or directors of the boards of the state owned entities.

The nature and extent of corruption in the awarding of contracts, tenders to companies, business entities, organisation by public entities listed in Schedule 2 of the Public Finance Management Act. Whether there were any irregularities, undue enrichment, corruption and undue influence in the awarding of contracts, mining licenses, government advertising in The New Age newspaper, any other governmental services in the business dealings of the Gupta family with government department and SOE's.

Whether any member of the National Executive and including Deputy Ministers wilfully or corruptly or improperly intervened in a manner of closing of bank facilities for Gupta owned companies and the nature and extent of corruption in awarding of contracts and tenders to companies by government departments in particular whether any member of the national executive including the President, public officials, functionaries or any organ of state influenced the awarding of tender to the benefit to benefit themselves, their families or entities in which they held national interest.

Finally the ANC calls on all members to step up and answer the allegation made against them at the Commission. This is our opening statement I am submitting to the Commission.

**CHAIRPERSON**: Thank you very much, Mr Mantashe for the opening statement. The time is 13:00 so I think we should then adjourn and we will resume at 14:00 when you can continue with giving evidence. So we will take the lunch adjournment now and resume at 14:00. We adjourn.

**HEARING ADJOURNS**

**HEARING RESUMES**

**CHAIRPERSON**: Yes, Mr Mokoena you may proceed.

**ADV PHILLIP MOKOENA SC:** Thank you, Chair. Mr Mantashe, you had furnished the Commission with a written statement, is that correct?

**MINISTER GWEDE MANTASHE:** Yes.

**ADV PHILLIP MOKOENA SC:** May I refer you to ...(intervenues).

**CHAIRPERSON:** Oh there is a button to press there. Is it not working or maybe somebody is sabotaging you. The technicians will try and – and somebody is going to come and see if they can assist. Oh, and it was there before lunch because he made his opening statement from there.

Yes so who could have come in? Actually while the technician is looking at that  
10 I have just remembered something which I should have mentioned earlier on. I became aware late or early evening yesterday that some equipment belonging to the SABC had been removed or stolen from this ...(indistinct) yesterday. I think this is completely unacceptable.

The media should be able to find their equipment here if they leave their equipment here but the secretary of the Commission is here and is listening to me. He should take whatever steps are necessary to make sure that there will be no repeat of this.

The media is very important in conveying to the public what is going on here at the Commission and we cannot have their equipment stolen from this venue. So the  
20 secretary of the Commission will look into that. I know he had already been attending to it but he must just make sure that going forward we are not going to have a repeat of that. If it means that there should be somebody who remains here when it is the lunch break to make sure that everything that was left here is here that must be done. Thank you.

**ADV PHILLIP MOKOENA SC:** Mr Mantashe, I suspect that your answer could not

have been recorded. I posed the question to you whether you had furnished a written statement to the Commission and your answer?

**MINISTER GWEDE MANTASHE**: My answer is yes.

**ADV PHILLIP MOKOENA SC**: Yes. May I now refer you to one of the bundles that is before you that is Exhibit H6?

**MINISTER GWEDE MANTASHE**: Yes I have that.

**ADV PHILLIP MOKOENA SC**: Yes. You will see that on the first page – if you go to the first page of that exhibit it will be an index and if you turn over the page you will see that there is a document styled on the – if you turn over from the index ...(intervenes).

10 **MINISTER GWEDE MANTASHE**: Yes?

**ADV PHILLIP MOKOENA SC**: There will be page one on top.

**MINISTER GWEDE MANTASHE**: Yes.

**ADV PHILLIP MOKOENA SC**: Yes there is a document there styled the submission made by the African National Congress to the Judicial Commission of Enquiry to enquire into Allegations of State Capture, Corruption and Fraud in the Public Sector including Organs of State.

Now could you please turn to page 14? There is a signature there. Is that your signature?

**MINISTER GWEDE MANTASHE**: Yes that is my signature.

20 **ADV PHILLIP MOKOENA SC**: And this document is this the statement that you submitted before the Commission?

**MINISTER GWEDE MANTASHE**: Yes this is the statement we submitted.

**ADV PHILLIP MOKOENA SC**: Do you confirm same under oath?

**MINISTER GWEDE MANTASHE**: Yes I do confirm it under oath.

**ADV PHILLIP MOKOENA SC**: Yes. Now ...(intervenes).

**CHAIRPERSON:** I guess you intend or you mean he is confirming the contents thereof as correct?

**ADV PHILLIP MOKOENA SC:** Yes.

**MINISTER GWEDE MANTASHE:** Yes I do.

**CHAIRPERSON:** Thank you.

**ADV PHILLIP MOKOENA SC:** Now before we deal with the contents of this statement can you share with us very briefly your history within the ANC?

**MINISTER GWEDE MANTASHE:** I have been involved in the ANC for a long time, first as an activist. I ended up in the trade union movement. I have been active in the lines  
10 broadly but in the ANC as a leader I was elected Secretary General in 2007 and I remained as such until 2017. In 2017 I was elected Chairperson of the ANC.

**ADV PHILLIP MOKOENA SC:** Yes. Now the statement that I have just – that has just been admitted as evidence what was the purpose of this statement?

**MINISTER GWEDE MANTASHE:** If you go to point one of that statement it summarises the purpose. The three points that are listed there let me go through them. One is to clarify the confusion that has arisen when the banking institution presented their evidence about them meeting with the ANC and their meetings with the IMC together.

Though these are not same institution the one is the IMC. As a person who was  
20 not in government at the time I had nothing to do with the IMC so I cannot give evidence on the meetings with the IMC. So we are clarifying in the main the meetings with the ANC.

The second one is to respond specifically to the evidence tendered by the banking institution with reference to their meetings with the ANC at Luthuli House where three of the banks did meet us individually. We met ABSA. We met Standard



Bank. We met Nedbank. We did not meet FNB and finally it is to explain why the ANC met the bank and what internal processes were followed thereafter.

In that section the purpose is to explain that we did not just wake up and call the banks. There are quite a number of issues that put pressure on us to actually seek clarity on how the banks were working.

**ADV PHILLIP MOKOENA SC:** And you confirm that you were part of the delegation that met with the banks?

**MINISTER GWEDE MANTASHE:** I led all the delegations that met with the banks.

**ADV PHILLIP MOKOENA SC:** Who were the other members of the delegation?

- 10 **MINISTER GWEDE MANTASHE:** In the delegation we had Jessie Duarte who is the Deputy Secretary General of the ANC and we had Enoch Godongwana who is the Chairperson of Economic Transformation Committee of the ANC and of course we were supported by Krish Naidoo as a legal person in the ANC.

**ADV PHILLIP MOKOENA SC:** Yes. You commence your statement by dealing with the responses of the banks. Can I suggest that we do not follow that sequence and you rather start on page 5 paragraph 2 as it sets out a proper chronology leading to the circumstances upon which the meetings between the banks were – leading to the circumstances leading to the meetings with the banks and if you can sketch for us those circumstances please?

- 20 **MINISTER GWEDE MANTASHE:** The issue of the closure of the bank accounts of Oakbay in particular was a topical matter which was in the public domain. There was a lively public discussion on it and there were quite a number of pressure points on the ANC.

The first one is that Oakbay itself came to the ANC mainly emphasising the possibility of the loss of jobs. That is what appealed to us. The other issues were not a

major pressure point. Secondly, many of the black business particularly BBC did put pressure on us to say there is a precedence that is actually dangerous to black business but if you look into this you will see that there are quite a number of structural meetings of the ANC that took formal decision on how to deal with the matter.

**ADV PHILLIP MOKOENA SC:** And how many meetings did you held with Oakbay?

**MINISTER GWEDE MANTASHE:** Come again?

**ADV PHILLIP MOKOENA SC:** How many meetings? Was it only one meeting or did you have more than one?

**MINISTER GWEDE MANTASHE:** No we had a meeting with Oakbay. We had two.

10 There were two meetings of Oakbay first of all because they wanted to convince us on their case where they even look into their structure as a company how difficult it is for them to get licenses when they have applied.

Then they came to this issue of all the banks having refused to do business with them and therefore impossible to have a transactional bank that would process their payments including payments of salaries.

**ADV PHILLIP MOKOENA SC:** Yes and in the second meeting?

**MINISTER GWEDE MANTASHE:** That is – the second meeting was more emphasising on the closure of accounts. The first one was more outlining what is the structure of the company, how it works.

20 **ADV PHILLIP MOKOENA SC:** What intervention did they seek you know from the ANC?

**MINISTER GWEDE MANTASHE:** Actually many of the organisations they lobbied was to put pressure on the banks to reopen their accounts and they actually thought that we will join that campaign as the ANC.

**CHAIRPERSON:** That is Oakbay?

**MINISTER GWEDE MANTASHE**: That is Oakbay.

**CHAIRPERSON**: Okay.

**ADV PHILLIP MOKOENA SC**: And what did they – I mean how did the ANC deal with this request which was made by Oakbay?

**MINISTER GWEDE MANTASHE**: The ANC dealt with it in the very simple way. One, we met Oakbay. Number two, we did get a report from internal particularly that government was dealing with the same matter. We took a decision that listen we cannot deal with this issue from one angle.

We need to get the views of the banks, how do they operate, what leads to the  
10 closure of an account and when we got that information only then could we take a  
decision.

**ADV PHILLIP MOKOENA SC**: Now if you can turn to page 7 of the statement?

**CHAIRPERSON**: Mr Mokoena are you moving away from the second meeting?

**ADV PHILLIP MOKOENA SC**: No, no.

**CHAIRPERSON**: Not yet?

**ADV PHILLIP MOKOENA SC**: Not yet.

**CHAIRPERSON**: Oh, okay.

**ADV PHILLIP MOKOENA SC**: Now if you look at – on page 7 you outline you say that  
the officials also provided a framework of principles for the engagement with the banks  
20 in the following terms.

**MINISTER GWEDE MANTASHE**: Yes.

**ADV PHILLIP MOKOENA SC**: Was this subsequent to the two meetings with Oakbay?

**MINISTER GWEDE MANTASHE**: Let me preamble that with how they ANC works. If  
you are Secretary General you are full time in the ANC. People come to you. They  
need you. The DSG is a full time in the ANC. We meet them but the *modus operandi*

of the ANC is that you cannot do things as you wish.

You revert back to the structures of the organisation. You go to the officials, look, Oakbay was here. Oakbay raised these issues, how do we handle? Then you are provided with guidance on how to deal with the matter. So this is what officials – when you talk of officials we talk of the six elected office bearers of the ANC. They got together and gave – provided this guidance on how to handle this matter.

**ADV PHILLIP MOKOENA SC:** Now the second meeting with Oakbay how did it conclude?

**MINISTER GWEDE MANTASHE:** You see if you go to those meetings you will see that  
10 one of the meetings Oakbay wanted to meet officials. One was with the Secretariat and the second – the other one was with the officials and when you meet the officials you get six officials of the ANC listening to the case then those officials gave directives to the secretariat. This is how you should handle this matter.

**ADV PHILLIP MOKOENA SC:** Yes but specifically in relation to that meeting I mean what did the ANC – did the ANC – ANC make any promises to Oakbay? Was there any resolution that was taken at that meeting between Oakbay and the ANC as to how to deal with the issues relating to the banks?

**MINISTER GWEDE MANTASHE:** No, decisions not taken on our own. We listen, we get the information, we do not respond on the spot. That is why you will see the point  
20 you are pointing us at page 7 is then after having heard them then you are given the guidelines on how to deal with the matter.

**ADV PHILLIP MOKOENA SC:** Yes. Mr Chair I want to move to the guidelines unless there is something on the second meeting which the Chair might still need to clarify.

**CHAIRPERSON:** Yes, no I wondered whether you were intending to ask any questions about the first meeting or whether you – there is not much that you wanted to

...(intervenes).

**ADV PHILLIP MOKOENA SC:** There was not much but the witness did testify about the first meeting to say that it was addressing a number of issues but not related specifically to the banks. Mr Mantashe in your first meeting can you highlight those issues that you said Oakbay wanted the ANC to assist with?

**MINISTER GWEDE MANTASHE:** You see if you go to those circumstances the meeting of the 8<sup>th</sup> of April Nazeem Howa having requested the meeting with the ANC was to discuss ...(intervenes).

**CHAIRPERSON:** You are looking at what page?

10 **ADV PHILLIP MOKOENA SC:** Page 5 Mr Chair.

**MINISTER GWEDE MANTASHE:** Page 5.

**ADV PHILLIP MOKOENA SC:** Page 5 paragraph two.

**MINISTER GWEDE MANTASHE:** Yes page 5 sir.

**CHAIRPERSON:** Thank you.

**MINISTER GWEDE MANTASHE:** If you go there you see they wanted to discuss potential losses of jobs. In its written request to meet Nazeem Howa also stated that the number of banks had caused to work with the company have seized to work with the company to an extent that it had become virtually impossible to continue conducting business in South Africa. So those are the two main points that were discussed with  
20 Oakbay.

**ADV PHILLIP MOKOENA SC:** Yes.

**CHAIRPERSON:** There is a reference to them discussing with you or raising the issue of how difficult it was for them to obtain I think mining licenses if I am not mistaken.

**MINISTER GWEDE MANTASHE:** That goes further.

**CHAIRPERSON:** Is that in the same meeting or in other meeting?

**MINISTER GWEDE MANTASHE**: In another meeting.

**CHAIRPERSON**: That would be the second meeting with them?

**MINISTER GWEDE MANTASHE**: Yes.

**CHAIRPERSON**: Okay. Do you want to – what was the main purpose of that meeting?  
Was it to discuss that or mining licenses their difficulties?

**MINISTER GWEDE MANTASHE**: No. You see the question of mining licenses came as a by the way. It came as a by the way, as an additional issue. The main issue was that listen we do not have access to banking facilities, we are about to close and anyway in addition to that we are having a problem in getting licenses when we apply.

10 **ADV PHILLIP MOKOENA SC**: Mr Mantashe if I may refer you to page 15 in order to assist the Chair in following your evidence. Are you there?

**MINISTER GWEDE MANTASHE**: I am there.

**ADV PHILLIP MOKOENA SC**: Is this ...(intervenes).

**MINISTER GWEDE MANTASHE**: Page 15?

**ADV PHILLIP MOKOENA SC**: Yes 15 I am just trying to get there.

**MINISTER GWEDE MANTASHE**: Yes.

**ADV PHILLIP MOKOENA SC**: Sorry page 19 Mr Chair. Will that be the letter that you received from Oakbay which led to the first meeting?

**MINISTER GWEDE MANTASHE**: Yes this is the letter.

20 **ADV PHILLIP MOKOENA SC**: And what you were testifying about and telling the Chair about the potential loss of work it is also recorded in that letter, am I correct?

**MINISTER GWEDE MANTASHE**: Yes it is.

**ADV PHILLIP MOKOENA SC**: Maybe to assist the Chair and for us to place your evidence into proper context means it is better for you to read it into the record.

**MINISTER GWEDE MANTASHE**: Now in the letter that was written by ...(intervenes).

**ADV PHILLIP MOKOENA SC**: If you can read it. This one ...(intervenes).

**MINISTER GWEDE MANTASHE**: I read the whole letter. The letter is;

10 "Dear SG, re 7 500 potential job losses at Oakbay Investment and our portfolio companies. Now I wanted to request some time from you for Mr Moegsien Williams and myself to address the national officials on Monday to share with you our huge concern that Oakbay Investments and our portfolio companies may soon be incurring significant job losses. Following the unexplained decision of a number of banks and of our debtors to cease working with us and of continued press coverage of unsubstantiated allegations against the Gupta family it has become virtually impossible to continue to do business in South Africa. We believe that this is the result of an anti competitive politically motivated campaign designed to marginalise our business. We have received no justification whatsoever to explain why ABSA, FNB, SASFIN, Standard Bank and now Nedbank have decided to close our business account. KPMG themselves said there was not audit reason to end their work with us. Oakbay has a 23 year track record of strong business performance and turnaround skills in a number of sectors. Our ability to be a disruptor in new sector challenging the dominant business and global players in South Africa is the source of our success. Between 2012 and 2015, 47 000 jobs have been lost in South Africa's mining sector. In fact since 2015 the top three mining companies in South Africa have made more than 10 000 people redundant. In contrast we have created 3 500 jobs in mining. Our acquisition of Optimum from Glenco also

prevented liquidation that would have seen more 3 000 South African mining jobs lost. All these jobs are now at risk. With our bank accounts closed we are currently unable to pay many of the salaries of our more than 4 500 employees. We find it totally unacceptable that tens of thousands of their dependants would have to suffer as a result of the campaign against Oakbay and the Gupta family, therefore, the Gupta family have come to the conclusion that it is time to relinquish control of Oakbay Investment and have stepped down from all executive and non executive positions and any involvement in the day to day running of the business. By doing so they hope to end the political campaign against Oakbay. As the CEO I now hope to draw a line under the corporate bullying and anti competitive practice we have faced from the banks. The livelihoods of too many people are at risk should our bank accounts remain closed. I hope that you appreciate my candour and can see that we are doing everything we can to save thousands of South African jobs. We would like some time with the leadership of the ruling party to seek advice and assistance to avoid this eventuality. If you have any question please do not hesitate to contact me. Nazeem Howa."

20 **ADV PHILLIP MOKOENA SC:** Yes and after receiving this letter there was then the first meeting which you have already testified about.

**MINISTER GWEDE MANTASHE:** Yes.

**ADV PHILLIP MOKOENA SC:** And then thereafter there was the second meeting which we are still busy with and on page 6 ...(intervenues).

**MINISTER GWEDE MANTASHE:** Yes.



**ADV PHILLIP MOKOENA SC**: The last paragraph you then say:

”... after the second meeting the officials deliberated over the issues and directed the Secretary General to meet with the four major banks and some of the relevant Ministers. Mr Enoch Godongwana who was mandated to arrange the meetings with the banks pursuant to the decision by Cabinet to set up an Inter Ministerial task team it became unnecessary for the Secretary General to meet with the Ministers.”

Now we are at the point where we are now dealing with the framework principles which were going to serve as the guidelines for the officials to meet with the  
10 banks. You can take us now through those guidelines or framework principles.

**MINISTER GWEDE MANTASHE**: The officials gave the Secretary General and the delegation that would meet with the banks these guidelines. One, the ANC must be mindful that banks are not permitted to share information about their clients with a third party. As much as the engagement with the banks should be about principles and general facts. So in other words the first point is that when we meet the banks we cannot debate a relationship of the bank and a client. We should deal with the general principles. That is guideline one. Number two, how consistent is the principle of account closure applied and how widespread is the practice of account closure in the banking sector? Is it something that can be seen to be political, is it a normal practice in  
20 the banks? It is widespread? The fourth one is, is the internal debate of corporate capture in the sense of having any impact on the bank's decision making process in relation to closure of accounts. You must remember that at that time we – before we came to the stage of State Capture the debate in the ANC was raging on. We started with the concept called corporate capture which was referring to individual companies capturing individual influential political leaders. It is a graduation of that debate that

made us to coin the term State Capture and we actually took it further than that and said if we do not stop it we will end up with a mafia state. This is therefore, the question here is whether that debate within the ANC itself is influencing the banks to take that decision and within that framework the mandate to the Secretary General was extended to seek clarity on the perception emanating from certain quarters within the ANC. One, that banks are using their ability to terminate banking relationship to exercise power of “white monopoly capital”. You will see that we put that in inverted commas against black business to a degree that should concern policy makers and the four large banks are colluding and acting in concert in withdrawing bank services from a  
10 common customer. So that framework guided the delegation that I led that met the banks.

**ADV PHILLIP MOKOENA SC:** Now you recall that I referred you to page 19 annexure A that was the letter of Oakbay. You do not have to go there. If Oakbay's concern was that it is unable to operate because the banks has actually closed the accounts how were these guidelines going to achieve or going to assist Oakbay in any manner?

**MINISTER GWEDE MANTASHE:** If you go further in our submission you will see that one of the conclusions we came to was that the issue of jobs is very important but you put a qualifier there as you go further that says yes it is a bad ...(indistinct) but people must comply with the law and regulations of the country and the reason we came to  
20 that it is the influence of the meeting we had with the banks because the banks gave us a number of issues which I am not going to get into now, but we came to that conclusion that listen we cannot just talk about jobs we must also emphasise the importance of complying with the regulations and the rules.

**ADV PHILLIP MOKOENA SC:** So you now have the guidelines. You have the mandate from the officials.

**MINISTER GWEDE MANTASHE**: Yes.

**ADV PHILLIP MOKOENA SC**: And I take it that the meetings with the banks were arranged. On page 8 you are dealing with the meetings that were held with ABSA, Standard Bank and Nedbank and you summarise what emanated from those meetings.

If you may please go to page eight and deal with the paragraph starting by “in their response the banks tabled the following issues”.

**MINISTER GWEDE MANTASHE**: The first thing that ...(intervenes).

**CHAIRPERSON**: Before you – I am sorry Mr Mantashe.

**MINISTER GWEDE MANTASHE**: Yes?

10 **CHAIRPERSON**: Before you do so going back to what you told us Oakbay wanted I think if I understood you correctly you said it seemed that from their point of view they may have wanted more than what ultimately you were prepared to do. You were going to seek clarification but I understood you to be saying they seemed to want your intervention to assist them. Did I misunderstand that?

**MINISTER GWEDE MANTASHE**: No. The reality of the matter is that Oakbay in all their campaign they wanted every institution including the ANC to put pressure on the banks to open their accounts.

**CHAIRPERSON**: Yes. Okay.

**MINISTER GWEDE MANTASHE**: Yes.

20 **CHAIRPERSON**: Now at the meeting where they said that did you respond to say we cannot do that or was that to be indicated later on?

**MINISTER GWEDE MANTASHE**: No, what we did was to listen. After they had left we discussed the meeting with them and then we were given that guidance by the officials. Using that guidance then we were now meeting the banks.

**CHAIRPERSON**: Okay.

**MINISTER GWEDE MANTASHE**: Now when we met the banks they were giving us this framework.

**CHAIRPERSON**: Okay, thank you.

**ADV PHILLIP MOKOENA SC**: Yes we have now dealt with the framework. You are arranging the meetings with the banks and the banks expanded to the ANC. You are dealing with that from page 8.

**MINISTER GWEDE MANTASHE**: Yes.

**ADV PHILLIP MOKOENA SC**: And what was the response of the banks?

**MINISTER GWEDE MANTASHE**: Let me read through – let me go through the 12  
10 points that all the banks raised as guiding them.

**CHAIRPERSON**: Yes that is fine.

**MINISTER GWEDE MANTASHE**: Okay. The first one was that banks are expected to comply with 210 pieces of legislation in their everyday functioning and this includes legislation that governs their obligation in relation to money laundering, corruption, in general banks experience a measure of difficulty coping with this compliance and what they were outlining is that listen we are the banks. There are 210 pieces of legislation that govern us. We are expected to comply with all 210 of them and they summarised that.

**CHAIRPERSON**: Was your understanding that the 210 was nothing more than simply  
20 saying there are many regulations you have to comply with or was it a specific number that was meant to say that is the actual number of the legislation?

**MINISTER GWEDE MANTASHE**: Our understanding at the time was that that was the actual number because we think that having invited the banks the banks did their homework and actually gave us the exact number of pieces of legislation that they had to comply with.

**CHAIRPERSON:** Thank you.

**MINISTER GWEDE MANTASHE:** And the second one was that South African banks have helped South Africa to be rated in the top 10 in the world when it comes to banking. If you go to the World Economic Forum rankings when you come to the item banking South Africa is considered in the top 10. So they were explaining to us that because they were complying with this piece of legislation bad as they may look, bad as they may sound but they have helped South Africa to be ranked in the top 10 when it comes to the item banking.

The third one was that banks monitored the source of income and sources of  
10 wealth and shareholding of companies. Any deposit exceeding R25 000 is  
automatically reported to the regulator. All exchange control transactions are reported.  
For any client who applies to open an account the bank conduct a know your client due  
diligence and risk assessment. So they were trying to give us a general practice in the  
banks without going to a specific client that this is what we are doing because we must  
know the client.

If there is a movement of money to your account even if I am a private citizen  
that over R25 000 deposit in my account get automatically reported to the regulator  
because it looks abnormally big. That is how it is treated and for politically exposed  
persons ourselves an enhanced due diligence is conducted and this include family  
20 members of politically exposed persons.

Now if you are a politically exposed person there is a specific more  
enhanced due diligence on your finances and that is not limited to you. It is extended  
to your family and they can tell you if you can call us we are the politically exposed  
people.

If you ask us I can tell you – we can give you stories about that extension to

families and family members. It is a reality. It is not just a point that was made by the banks. Banks can only discuss details of their dealing with client with law enforcement agencies and regulator.

So the banks would not dare discuss their dealings with a particular client with us as the ANC. They are only obliged to discuss that with law enforcement agencies and the regulator. That discussion is off bounds for the ANC. Banks have an obligation not to compromise the client to allow them to be used as a point of illegal movement of money. So that is what is important about monitoring the movement of money. The banks are actually protecting not only the banks they also protect the  
10 country.

Number seven is that the regulator can instruct any bank to block or conduct surveillance on any account and no bank can inform the client of such an instruction as that can be regarded as prior notification. So if the regulator that is the regulator notices some irregular movement of banks they can instruct bank X that listen do this intervention there but the bank cannot disclose that to the client that we are instructed by the regulator and number eight is that banks gave an explanation of the distinction between the main banker, transactional and a secondary banker.

In this case because one of these that was raised is that we do not have a transactional banker. Transactional banker is the banker who does your daily  
20 transactions. You can have a secondary banker. You can invest. You can do everything but there is a transactional banker and they explained to us and we understood it very well after that that there is this distinction between this bank so not all four banks that we met not all three were actually transactional bankers of a client. Only one was. Others were secondary bankers.

On number nine is that the banks take into account consideration the

resolution of auditors, sponsors to the Johannesburg Stock Exchange as part of risk profile analysis. That talks to the point of the auditors. KPMG has withdrawn their service and when that happens for banks that is a ...(indistinct) already and on termination without notice it can happen if the bank suspects that the account is being used illegally and negligently or the client has dealings with a listed person and on any transaction conducted in US Dollars the United States has jurisdiction.

One of the banks actually even gave us a perfect example of what happened to their branch in another country outside of the country where transactions were in US Dollars and as a result of that they had to actually deal with the demands of the United States because transaction were in Dollars. That is the emphasis that is put there.

Banks follow the activities and analyse media reports whenever they indicate that a Cabinet post has been offered in exchange for favours or allegation that a Minister facilitated the sale of a mine in improper circumstances. They were not referring to this client but many of the things they were referring to here we understood them ...(indistinct) people are called to offer posts for a favour. For a bank they follow that in the media. For them that is a red signal.

Minister X has facilitated a transaction for a mine improperly. For the banks that is a red signal. So at the end of that we understood the basis of banks closing accounts and that was the essence of our meeting.

20 **ADV PHILLIP MOKOENA SC**: Now during this meeting I mean the banks was offering this explanation to the ANC delegation. Did the ANC delegation at least put the letter from Oakbay you know to the banks to say that well there are other issues which are raised by Oakbay and one of them being the potential loss of employment of our 7.5 employees and that Oakbay wanted us to communicate with you about their banking accounts which were closed at the time.

**MINISTER GWEDE MANTASHE**: If you read the letter from the group Chief Executive Officer of Standard Bank Sim Tshabalala which is an annexure to this report it summarises succinctly the issues that we discussed with them and that summary covers all the banks.

**ADV PHILLIP MOKOENA SC**: So that letter was never put to the banks?

**MINISTER GWEDE MANTASHE**: No the issue of job or potential job losses are covered in that letter.

**ADV PHILLIP MOKOENA SC**: I see.

**MINISTER GWEDE MANTASHE**: So we raised that issue that this is the risk involved  
10 in closing these banks but the issue was that we did not want to discuss that with the banks. We wanted to understand what is the basis of closing these accounts from the banks.

**ADV PHILLIP MOKOENA SC**: Mr Chair, the letter which Mr Mantashe is referring to if I may refer you to page 15. Is that the letter that you are saying it summarised accurately ...(intervenes).

**MINISTER GWEDE MANTASHE**: Yes.

**ADV PHILLIP MOKOENA SC**: What transpired between the banks and the ANC at the time?

**MINISTER GWEDE MANTASHE**: Yes.

20 **CHAIRPERSON**: And Mr Mokoena does it cover the issue you were asking him or does it not say anything about it?

**ADV PHILLIP MOKOENA SC**: Yes, Mr Chair it does cover those issues.

**CHAIRPERSON**: Oh.

**ADV PHILLIP MOKOENA SC**: That I was canvassing with the witness and he is saying that for context you know all the issues that were discussed between the banks and the



ANC are neatly summarised in that letter.

**CHAIRPERSON**: Well you asked him whether at that meeting with the banks they did as the ANC put before the banks the letter from, was it Oakbay? That is what you were saying?

**ADV PHILLIP MOKOENA SC**: Yes. Yes.

**CHAIRPERSON**: Yes and he responded by saying what they discussed is covered in Mr Tshabalala's letter. So I still want to know whether what you were seeking is dealt with in the letter or is the position that it is not dealt with in the letter because it was not discussed.

10 **ADV PHILLIP MOKOENA SC**: Meaning that those issues that are – that were raised with by Oakbay were the subject matter of the meeting between the banks and it was then summarised in this letter.

**CHAIRPERSON**: Okay.

**ADV PHILLIP MOKOENA SC**: On page 15 yes.

**CHAIRPERSON**: Mr Mantashe can I just ask you ...(intervenes).

**MINISTER GWEDE MANTASHE**: No, what we could not do ...(intervenes).

**CHAIRPERSON**: Yes?

**MINISTER GWEDE MANTASHE**: Because we thought it would be unethical to take Oakbay letter and give it to the banks.

20 **CHAIRPERSON**: Yes.

**MINISTER GWEDE MANTASHE**: We could not do that. We would raise the issues regarding the potential loss of jobs and many other issues because in engaging the banks we were very alive to the reality that we could not discuss Oakbay accounts with the banks.

**CHAIRPERSON**: Yes. Okay. Okay. Thank you.

**ADV PHILLIP MOKOENA SC:** Now, Mr Mantashe on page 9 you move to deal with the meeting of the NWC which was held on the 23<sup>rd</sup> of May 2016 and the observation flowing from that meeting. Can you please take the Chair through those observations and the meeting?

**MINISTER GWEDE MANTASHE:** No, I think first of all let me outline these structures, the officials are the top six officials that are elected with specific titles. Then there is a National Working Committee which is a structure that actually execute decision of the National Executive Committee. It is a quarter of the NEC, in this case 20 directly elected members are serving in the NWC. It processes all  
10 documents that go to the NEC. So when the officials have done work, they go and account to the National Working Committee. This National Working Committee meeting of the 23<sup>rd</sup> May is where the officials went to account that we met the banks. And therefore having given the report then the NWC made observations. There are five of these observations, one is that the coordinated action by the banks smacks collusion and governing regulator should confront that as an issue within the rules. In other words the NWC say okay you have met the banks, we have got the information but it is now up to the Government and regulator to deal with what looks like collusion.

Secondly, the power of banks to close businesses without being required to  
20 explain their action, poses a threat that in that these powers could be abused for various reasons including possible resistance to transformation, and that explains the question of the importance of empowering black South Africans in business, and they say this can be used to block the transformation programme.

Thirdly the potential loss of jobs must be raised sharply without the ANC being seen to be a spokesperson of any particular company. But the question of any

action that leads to job losses must be raised sharply by the ANC. The fourth one is that the Government must ensure that there is a broad understanding of the issues of legislation at Government level because the sense we had was that these 210 pieces of legislation, not everybody, very few people had a sense and understanding of these 210 pieces of legislation that banks should comply with, and therefore the issue raised here is that we must raise the understanding and awareness, and it would serve a good purpose if leaders and public representatives of the ANC are made to understand the concept of politically exposed persons and moral stigma attached to the politically exposed persons, that they are inherently corrupt until  
 10 proven otherwise. That is the interpretation of the NWC that when you are a politically exposed person you do not need to be proven innocent. You are assumed to be in transgression. Instead you should prove yourself that you are not transgressing and that is how it is interpreted.

And the fifth one is that the ANC must always be sensitive to public perception and appreciate the need to reassure so that even the value chains are genuine, and those were the three points that were raised by the NWC.

**ADV PHILLIP MOKOENA SC:** Yes, now these points that were raised by the NWC, were they ever conveyed to the banks? Was there any further engagement with the banks now that we have the understanding of the NWC?

20 **MINISTER GWEDE MANTASHE:** No, there could not be any further engagement with the banks because the banks gave us the clarity we needed. So there was no necessity for us to go back to them, because if we did that the fact that is the narrative that we are putting pressure on the banks would actually be real. So we did not go back to the banks. They have given us an explanation. We are happy with the explanation and it was up to us to use that information and knowledge to

deal with the realities that we were confronted with.

**ADV PHILLIP MOKOENA SC:** You are also dealing with the National Executive Committee meeting.

**MINISTER GWEDE MANTASHE:** Yes.

**ADV PHILLIP MOKOENA SC:** Which was held on the 28<sup>th</sup> – between the 28<sup>th</sup> and 30<sup>th</sup> of May 2016. Could you please share with us what was deliberated in that meeting?

**MINISTER GWEDE MANTASHE:** As I said the NWC processes issues, officials do certain work, NWC do certain work but ultimately the work process through the NWC  
10 and ...(indistinct) the National Executive Committee, which is the highest decision making structure of the ANC. Therefore having dealt with this issue, we have an obligation to take that report to the National Executive Committee, this is the NEC that received that report.

**ADV PHILLIP MOKOENA SC:** And what did it do with that report?

**MINISTER GWEDE MANTASHE:** That meeting of the NEC did adopt the report of the NWC and resolved that decision of the ANC to meet the bank was driven by the following concerns, that is the NEC now, mainly loss of jobs. That is what drove that. The perception that the bankers were colluding, and the perception that banks were exercising power of white monopoly capital against black business, and that is the  
20 observation of the NEC, that that is the basis of engagement between the ANC and the banks.

**ADV PHILLIP MOKOENA SC:** Now there were important issues which were dealt with by the NEC in the meeting of the 28<sup>th</sup> to 30 May 2016, and I want you to please take us through them, they are contained from page 11, if you go to paragraph 8, it appears that those are the issues pertinent to some of the terms of reference which

are currently being addressed by the Commission. Can you please take us through what was discussed there?

**MINISTER GWEDE MANTASHE**: You see the ANC was preoccupied with the challenges of State Capture. Anybody can say the main organisation that dealt with this issue directly because it had to confront it, was the fact that State Capture was a reality that we were engaging with, discussing in this meeting we received a report of the Oakbay and the banks, then we went further and actually dealt with the allegations that the Gupta family influenced decision of the State and of the ANC. That issue became a main issue. And then that is why, following the decision of the  
10 ANC, we had to report on the meeting we had with eight members of the ANC in two groups, and one, one, total eight, who reported to the SG, who was mandated by the NEC to listen to many of them. And we listened to these people, and at the end of the day all of them except for one said we do not think it is appropriate for us to deal with this issue in the ANC. We are going to be compromised. We are going to be ridiculed, it will be career limiting and many issues.

It is on the basis of that submission that we went to the NEC and say listen let us accept the proposal of these affected people to go and do independent institutions, and we took that decision and said they must go to the independent ... (indistinct) institution because anything we do ourselves, out ourselves is going to  
20 look suspicious. Let us allow them to go to independent institutions.

**ADV PHILLIP MOKOENA SC**: But are you able to share with us in much more details? I mean if you look at the first paragraph of – the first numbered paragraph of paragraph 8 you know, you would see that the NEC, it is at its meeting held between 28 and 30 May 2016 also dealt with the allegations that the Gupta family influenced decisions in the State and in the ANC. Are you able to share with us what – I mean

those specifics.

**MINISTER GWEDE MANTASHE**: The reason that we are referring to these eight comrades, many of them have come to this Commission, actually many of them because of that decision to go to independent institution, have gone to the Public Protector. Many of them went to the Commission that was set out by the SACC, and out of their information that we had we were convinced that many of our people were feeling that the Gupta family was influencing decisions in the State and in the ANC. And the overlap between the State and the ANC is that if you are a member of the NEC and you are a Minister, you get affected by this practice. It cannot – ANC  
10 cannot be totally exonerated. You are an ANC leader, you get subjected to this issue, and many of them were members of the ANC.

**ADV PHILLIP MOKOENA SC**: Mr Mantashe, were you part of that meeting?

**MINISTER GWEDE MANTASHE**: Come again?

**ADV PHILLIP MOKOENA SC**: Were you part of that meeting?

**MINISTER GWEDE MANTASHE**: Yes.

**ADV PHILLIP MOKOENA SC**: What was said about those allegations? I mean what were the specifics? Specifics around these allegations that the Gupta family influenced decisions in the State, that is number one, number two in the ANC?

**MINISTER GWEDE MANTASHE**: Okay let me put it this way, the National Executive  
20 did not deal with this issue as an inquiry. We gave report that we have had, Mcebisi Jonas has come, three top managers of the State Security have come, and they have refused to give us written submissions because they were suspicious of this. And we gave that report in detail to the NEC, and it is on that basis that in the issues listed in page 12, paragraph 4 it summarises a more involved debate of the report.

For example the publicly known allegation about members of the Gupta family

summoning people to their private residence to offer them Cabinet positions in return for working with them to secure business opportunities. Those were issues we were reporting to the NEC in detail. Or the former Director General spoke to the ANC about the authority of the family had over Directors General when they issued instruction directly to these individuals, and their family were of the view that the failure to comply could be career limiting. And I would imagine that one of those Directors General have been to this Commission, and they were saying we are reporting now, these people were not in the NEC. We are reporting to the NEC that having said to these people these are the issues that are coming through.

10           And the other area of concern was that the playing field was not level in competing for business opportunity as a consequence of black economic empowerment programme was being undermined. It would be – people have come and said listen in contracts, if you are not working with the Guptas you get elbowed out.

Now we are giving this report to the NEC, and the State owned entities were also being corroded systematically, they mentioned them, Transnet, Eskom, Safcol, SAA, Alexcor, and if you look into those, those are actually State entities that are a subject of discussion up to today.

20           So all we did here, and therefore the NEC noted, it does note, it noted accepted that eight comrades should make their submissions in an independent body, and we accepted that. That was the beginning of the process of discussing ANC supporting the formation of this Commission.

**ADV PHILLIP MOKOENA SC:** Are you able to share with the Chair, the eight names of the comrades that are referred to?

**CHAIRPERSON:** Maybe before you do that, I think I have in mind what you were

looking for from Mr Mantashe in relation to the first paragraph under 8, but the two of you may have been talking slightly at cross-purposes. Page 11, you have got there at 8 NEC meeting and then you have got the first paragraph after that. He asked you, I think about two, maybe three times about that paragraph. I seemed to understand you to focus on what is at page 12, but I understand what connection you were trying to make, but I think he wanted something, he was asking something slightly different and that is what I was also interested in. In that paragraph, the first one under 8, part of it says, well it says:

10           "The NEC, at its meeting held between 28 and 30 May 2016 also dealt with the allegation that the Gupta family influenced decisions in the State and in the ANC."

Dealt with, that gives the impression to me at least that it deliberated and maybe may or may not have taken a decision, but I do not know whether that is what happened. That is what I would like to hear.

**MINISTER GWEDE MANTASHE:** No, the reasoning I am linking that first paragraph to page 12 is because page 12 summarises almost the content of the discussions.

**CHAIRPERSON:** Yes.

20           **MINISTER GWEDE MANTASHE:** And the decision taken is that we are accepting the suggestion by these comrades that an independent body will be more competent to deal with this allegation than the ANC itself. Because if the ANC deals with these issues itself it is going to be easy to accuse it of covering up, and therefore following what is in paragraph – first paragraph of 8, a decision is taken that these comrades actually are correct in saying to us let us take this thing to independent body, and we felt that that was a correct issue because when we deal with some of these issues sometimes there is an assumption that the ANC can be a court, it can be police, it



can be prosecutors, it can be everything. And half the time we do not have that capacity. We have a capacity to take action that is limited to organisational matters, ideally State institutions should take over on the issues. And the reason that we referred this to independent body is that when it comes out of the formal institution, an independent body, that report is having a standing in law, and we took that decision.

**CHAIRPERSON:** So the allegation that the Gupta family was for example influencing decisions in the ANC, that was part of what the NEC heard from the Committee that was reporting as to what the eight people had said, but in terms of substance the  
10 NEC did not take any decision whether substantively that allegation was correct. It simply said these issues must go to an independent body, we agree with the suggestion that they should go to an independent body. That is what you are saying?

**MINISTER GWEDE MANTASHE:** No, let me explain the issue of the ANC. You see the difference between the ANC and the State is that when it comes to the State a person will come and say I was called by the Guptas. They offered me a position of a Minister of Finance, they offered me 600 million and all that. A person can do that. That is in the State. In the ANC it is more evasive in the sense that you are dealing at best with the suspicion that when we meet here position taken by individual  
20 leaders reflect such leaders being proxies of business interests. Half the time we cannot say the meeting of the officials was influenced by business interest, but we can suspect that when we meet, we are a big meeting of the ANC, when people put their positions they reflect influence of business, and therefore leaders of the organisation become proxies of business interest.

That was the basis of the concept of corporate capture, that if a company is

close to me it sponsors me, it sponsors my programme, it supports me, then I become a proxy of that company undeclared in the ANC yes.

**CHAIRPERSON**: No that is fine, let me ask this question but you must feel free if it would be more convenient to deal with it when you come back next time because the arrangement is that the ANC will be able to come back at some stage to deal with a lot of issues that it may wish to deal with that will arise from this Commission. Is there any stage where a Secretary General of the ANC, during the relevant period, in maybe the last 10 years or the last five, six years, is there any period when the ANC may have begun to have a strong view that within or among its own members, senior  
10 members, there may be a significant section that might be influenced by the Gupta family in regard to positions that must be taken by the ANC on certain issues or is that something that you would rather deal with more comprehensively at a later stage?

**MINISTER GWEDE MANTASHE**: We can do that. The reason that I am saying that is this issue of State Capture had been a major issue for the ANC over a period of time. When we went to our policy conference we submitted a document called the diagnostic report. That diagnostic report dealt with these matters, and among those issues was the influence of the Gupta family, amongst senior leaders of the ANC. So we have been dealing with that issue. So if you go to that report and link it to our  
20 organisational report to various conferences you will see that we have been occupied with this issue over a period of time.

**CHAIRPERSON**: Thank you. Yes Mr Mokoena?

**ADV PHILLIP MOKOENA SC**: What would be the date of that diagnostic report?

**MINISTER GWEDE MANTASHE**: The diagnostic report was submitted to the policy conference in June/July 2017.

**ADV PHILLIP MOKOENA SC:** And at high level what issues did it address around this phenomenon of State Capture?

**MINISTER GWEDE MANTASHE:** The issue of State Capture is that – let me break the period into various periods.

**CHAIRPERSON:** *Ja.*

**MINISTER GWEDE MANTASHE:** I must concede here that the first five years of the 10 years I was Secretary General, it was just comfortable, we were doing well. We structured things well, even deployment was done nicely. If you can look into the last five years ...(intervenes).

10 **ADV PHILLIP MOKOENA SC:** Mr Mantashe just to follow your evidence let us start with the first five years, from which period to which period?

**MINISTER GWEDE MANTASHE:** The first five years is 2007 to 2012.

**ADV PHILLIP MOKOENA SC:** Okay.

**MINISTER GWEDE MANTASHE:** That is the first five years, we did a lot of good thing. I think I always boast when people ask me what could you point, I said the decision to break education into two departments was as correct decision, results are showing, access to education and all that. I can point a list of those things we did exceptional well in the first five years. And in the last five years then things began to fall apart, it is when this issue of State Capture began to manufacture, to manifest, 20 and in manifesting it took various phases. Towards the end of that five years we were in trouble. And if you recall – you will recall at one point when there was a Cabinet reshuffle three of the officials revolted you see. That was an indication that we are dealing with a complex issue, serious and difficult.

**CHAIRPERSON:** That was after the dismissal of Minister Nene, what you refer to as the revolt?

**MINISTER GWEDE MANTASHE**: There were two specific reshuffles that actually caused a lot of unhappiness. The first one was the dismissal of Minister Nene, the second one was dismissal and recall of Minister Gordhan from England.

**CHAIRPERSON**: Yes okay.

**ADV PHILLIP MOKOENA SC**: I am sure that we will canvass those issues fully when you come back Mr Mantashe. Can I ask this question much more differently, I know that the Chair attempted to get some information from you, I posed it three times but I am sure that this time you will be able to share some information with us, you indicated that State Capture was a reality am I correct? That is what you said?

10 **MINISTER GWEDE MANTASHE**: Yes it is a reality.

**ADV PHILLIP MOKOENA SC**: I mean what does that mean and what evidence you know, did the ANC at the time have or which one can point to, to say that this is the reality of State Capture?

**MINISTER GWEDE MANTASHE**: No you see let me first declare that I have never been in Government, I am in Government now. I am eight months in Government, that is the sum total of my experience in Government. Now State Capture, we dealt with it at a political level in the ANC but you will see that in the way that Minister dealt with the issues, one of the responsibilities we had in the ANC head office as the secretariat was to always note when there is departure from ANC policies. When  
20 there was departure from ANC policies then we were forced to interrogate the reason, underlying causes for that departure from ANC policies. And many major debates that will be submitted here by many individuals were directly involved, will indicate on areas of departure from ANC policy.

**ADV PHILLIP MOKOENA SC**: Alright, on page 12 of your statement you refer to the National Conference of the ANC that was held during December 2017.

**MINISTER GWEDE MANTASHE**: Yes.

**ADV PHILLIP MOKOENA SC**: Can you share with us what was resolved in that conference?

**MINISTER GWEDE MANTASHE**: We thought that we should submit this resolution because this resolution was an outcome of a very detailed report. It is actually in details on page 13. One, we are noting there as conference, it is a big conference, we say corruption is a social ill that cuts across sectors of society. That is what we believe.

10            “There is a societal outcry regarding the problem of corruption in the organs of State and in society more broadly. The ANC Government must rigorously root out all forms of corruption including tender rigging, fraud, bribery, nepotism in all State institutions.”

Then the most important part is the resolve part, because the resolve part is a call to action. It says:

“The ANC needs to lead the moral regeneration of society and the programme must be adequately funded to account for – and accounted for, and the religious community and traditional leaders should be mobilising to a whole of society approach.”

Secondly is:

20            “That the ANC must mobilise community and societies around issues of corruption, position itself in leadership role with respect to culture of exposing corruption and rewarding whistle blowers within the organisation. The ANC Government and leadership must implement a programme to prevent irregular or fraudulent practices within the ANC and in Government, including ethics, monitoring, transparency

and procurement decisions, checks and balances and oversight mechanisms and disbarring of both public servants and public representatives at all level from doing business with the State, and the introduction of probity and lifestyle audits. The public service and administration portfolio should fast-track the establishment of integrity and ethics management office and build requisite capacity at all levels of Government. The scope must extent to SOE's."

And:

10 "The reporting of corruption to law enforcement agencies must be compulsory in the public sector, and the capacity of prosecutorial division must be posted. Government must introduce new regulation to implement the above provision for dealing with corruption in the public sector. Parliamentary oversight mechanism must pay special attention to corruption. The resolution was adopted by the conference in response, a month later, on the 23<sup>rd</sup> of January. President Zuma, in Cabinet appointed the Commission of Inquiry to investigate allegation of State Capture, corruption and fraud in the public sector, including organs of State, and appointed Honourable Justice Raymond Zondo, Deputy Chief Justice of the Republic of

20 South Africa as its Chairperson."

**ADV PHILLIP MOKOENA SC:** And that is why we are here today.

**CHAIRPERSON:** It looks like you left out unanimously there, was that deliberate, in that resolution?

**MINISTER GWEDE MANTASHE:** No, no, that was not voted on.

**CHAIRPERSON:** Okay.

**MINISTER GWEDE MANTASHE**: It is unanimous.

**CHAIRPERSON**: But am I – oh okay, okay.

**MINISTER GWEDE MANTASHE**: Yes.

**CHAIRPERSON**: It was not voted upon, it was accepted by everybody?

**MINISTER GWEDE MANTASHE**: It was accepted unanimously.

**CHAIRPERSON**: *Ja* okay. But the point I was making was that in your statement there is unanimously but when you read I seemed to think you skipped it.

**MINISTER GWEDE MANTASHE**: Yes, but the reality of the matter it was taken as a decision unanimously. There was no voting. There were no opposition.

10 **CHAIRPERSON**: But when you read it, I seem to think you skipped it.

**MINISTER GWEDE MANTASHE**: Yes the reality of the matter it was taken as a decision unanimous. There was no voting, there were no opposition to.

**ADV PHILLIP MOKOENA SC**: Mr Mantashe just to place some of the facts in proper context. In the last paragraph on page 14 you say:

"That the resolution was adopted unanimously by the National Conference in response a month later on the 23 January 2018, President Zuma in Cabinet appointed a Commission of Inquiry."

Would I be correct that he did not voluntarily appoint it, there were court applications before it was in fact appointed?

20 **MINISTER GWEDE MANTASHE**: There were?

**ADV PHILLIP MOKOENA SC**: Court applications.

**MINISTER GWEDE MANTASHE**: Yes I see the court application. But more important to us in the ANC is that in the structures of the organisation we took the decision. Not in response to court application, because of the conference resolution.

**ADV PHILLIP MOKOENA SC:** Yes. No, I am simply placing, you know the correct for that, subsequent to that, despite this resolution of the conference, it took some time before this Commission was appointed.

**MINISTER GWEDE MANTASHE:** Yes.

**ADV PHILLIP MOKOENA SC:** And it only came to be as a result of court applications.

**MINISTER GWEDE MANTASHE:** I cannot give evidence to that from the ANC point. In the ANC we took this decision, it took longer than we wanted it. If court applications nudged us, we accept that as complementing the resolution of conference. We resolved in conference to do this and this Commission was appointed.

10 I can tell you that, unless you understand the dynamics in an organisation as big as the ANC. Because when you are running an organisation as big as the ANC there is a responsibility in you to actually try to pull people around a particular direction. Once you get that resolution, a major step has been taken. That is important for the ANC.

**ADV PHILLIP MOKOENA SC:** No I understand. Let us wish away the court application. If there were no court application and Mr Zuma being aware of this resolution, we would not be having this Commission today. Because it was compelled through court applications.

**MINISTER GWEDE MANTASHE:** I will not agree with that, I will not agree with that.  
20 This Commission will be in place because in the ANC itself, the governing party we have accepted that there should be this Commission. I am even more convinced that we would have this Commission even if you did not appoint it. I would imagine that President Cyril Ramaphosa would have appointed it.

**ADV PHILLIP MOKOENA SC:** Yes. In your statement you also react to the evidence that was submitted by the banks, am I correct?



**MINISTER GWEDE MANTASHE:** Yes.

**ADV PHILLIP MOKOENA SC:** And having carefully perused your statement, it would appear that you do not take any issue with the evidence of FNB and Nedbank, am I correct?

**MINISTER GWEDE MANTASHE:** Yes we do not.

**ADV PHILLIP MOKOENA SC:** Just for completeness that is evidenced by what you say on page 2, Mr Chair.

**MINISTER GWEDE MANTASHE:** Yes.

**ADV PHILLIP MOKOENA SC:** And paragraph 1.10 and 1.11 you say that:

10 "The recollection of the exchange of communication between Mr Johan Burger a Director of FirstRand Bank Limited and Mr Godongwana of ANC, is a true reflection of what transpired between them."

So that is exactly what you contend with.

**MINISTER GWEDE MANTASHE:** We have no issue.

**ADV PHILLIP MOKOENA SC:** Yes. You also do that in relation to Nedbank if you have regard to paragraph 1.20 on page 5.

**MINISTER GWEDE MANTASHE:** With Nedbank?

**ADV PHILLIP MOKOENA SC:** Page 5 Nedbank ja.

20 **MINISTER GWEDE MANTASHE:** Yes.

**ADV PHILLIP MOKOENA SC:** You say that:

"The statement by Mr Michael Brown Chief Executive of the Nedbank Group about his meeting with the ANC on 28 April 2016 fully accords with the ANC appreciation of that meeting. What is significant and correctly so in the view of the ANC, Mr Brown has not coached his

evidence, nor made any mention of the terms of reference of this Commission."

That is what your statement says.

**MINISTER GWEDE MANTASHE:** We have no issue with that.

**ADV PHILLIP MOKOENA SC:** Yes. You however take issue with the evidence which was delivered by ABSA and Standard Bank and you deal first with ABSA from pages 1 paragraph 1.1 and the following paragraphs. Can you take us through what are the issues which you fundamentally object to, or you do not agree in relation to ABSA?

**MINISTER GWEDE MANTASHE:** The issue we are taking up with ABSA is that ABSA  
10 conflates the National Executive as in the State and the National Executive Committee of the ANC. We are saying if you conflate the two fundamentally that is flawed. That is the point we are making there. That is why the reference to the terms of reference of this Commission and link that to the meeting with the ANC is a wrong starting point, because that Executive in the terms of reference is the Executive as is in Cabinet. Not the NEC of the ANC.

**ADV PHILLIP MOKOENA SC:** And other than that, you do not take any issue with the remaining contents of ABSA statement?

**MINISTER GWEDE MANTASHE:** That is the main issue that we are referring to. For  
20 example, the fact that the meeting of the National Executive Committee, for the ANC it is not our issue.

**ADV PHILLIP MOKOENA SC:** Yes.

**MINISTER GWEDE MANTASHE:** It is the issue of the State. The fact that the meeting between the ANC at the request of the National Executive Committee and which took place in August that is factually correct. For the record actually, none of the persons who met ABSA at the ANC Head Quarters were members of the National Executive as

contemplated by the terms of reference. All of us were not in Government, we are fulltime in the ANC.

Therefore, we submit that that conflation of events by Ms Masitela was misleading and created confusion and stands to be created, because that is the issue we are taking an issue with.

**ADV PHILLIP MOKOENA SC:** Yes. You also take issue with the evidence of Standard Bank and you do so with reference to page 3 from paragraph 1.2. Can you summarise for the Chair the main issues of dispute?

**MINISTER GWEDE MANTASHE:** Our view is that Mr Ian Sinton of Standard Bank  
10 wrote a submission for this Commission, which was emotional and had no relationship with the meeting between Standard Bank and the ANC. The letter of the Group CEO of Standard Bank reflects the condition and circumstances under which we met.

For example, Mr Sinton had tried to create an example of the ANC what was pressuring them, putting them under pressure. Well the Group CEO is talking of a cordial meeting we had and he summarises the issues. More disturbing to us is the way that Mr Sinton is trying to belittle the Group CEO, his own Group's CEO and say, no in any way that letter was written by me, you see and all he did was to sign. It is not done even if I am a speech writer, I do not go public and announce that that speech of the President was written by me, did you like it, you do not do that.

20 So there is something wrong with the submission to the Commission on behalf of Standard Bank by Mr Sinton if you compare it to the letter written by the Group's CEO immediately after the meeting. That letter we are comfortable with it, we think its reflected immediately followed the meeting, the contents of the meeting and the environment of the meeting.

**ADV PHILLIP MOKOENA SC:** So in essence those were the main issues in which you

do not agree with Mr Sinton's testimony before this Commission?

**MINISTER GWEDE MANTASHE:** Yes.

**ADV PHILLIP MOKOENA SC:** Now you met – when I am saying you Mr Mantashe I am referring obviously you were doing that in your capacity at that time as the Secretary of the ANC. The ANC met with ABSA and Nedbank, I know that it was two different meetings, but they were held on the same day on the 20<sup>th</sup> April 2016, am I correct?

**MINISTER GWEDE MANTASHE:** Yes that is correct.

**ADV PHILLIP MOKOENA SC:** And you also met with Standard Bank separately on the  
10 21<sup>st</sup> April 2016?

**MINISTER GWEDE MANTASHE:** Yes correct.

**ADV PHILLIP MOKOENA SC:** Now I need to confirm with you, you know the facts which were publically known at the time and simply to give you an opportunity to react to those facts and you know to contextualise my questioning pertaining to why was it necessary at the time for the ANC to meet with Oakbay Company, or the Oakbay Group.

Would I be correct that at the time when the ANC met with the banks, that ANC was aware of the publically pronounced relationship between the ex President and the Guptas, would that be fair to say?

20 **MINISTER GWEDE MANTASHE:** Yes that was public knowledge at the time.

**ADV PHILLIP MOKOENA SC:** Yes. Then the second one, at the time when the ANC met with the banks, the ANC must have been aware that Duduzane the son of the President was having business relationship with Oakbay. Would that be fair?

**MINISTER GWEDE MANTASHE:** Yes.

**ADV PHILLIP MOKOENA SC:** Thirdly, that at that time, you know, there were media

reports already of the transaction involving the acquisition of the Optimum Coal Mines from Glencore by Tegeta to a value of R2.5 billion. Those were known facts at the time?

**MINISTER GWEDE MANTASHE:** Yes but that was not debated in the ANC.

**ADV PHILLIP MOKOENA SC:** Yes. No I understand. I am simply testing what was known at the time it was ...(intervenes).

**MINISTER GWEDE MANTASHE:** It was public knowledge.

**ADV PHILLIP MOKOENA SC:** Yes.

**MINISTER GWEDE MANTASHE:** Yes.

- 10 **ADV PHILLIP MOKOENA SC:** And maybe number 4 that at the time when this meeting took place, there was also reports from the media that Tegeta was awarded a contract of R4 billion to supply coal to the Amathuba Power Station in Mpumalanga. Those facts were known to the ANC?

**MINISTER GWEDE MANTASHE:** They were in the public knowledge.

**ADV PHILLIP MOKOENA SC:** Yes. Number five; that at that time – we know from the evidence of Mr Jonas that he said that on the 14<sup>th</sup> March 2016 he met with Mr Zizi Kodwa and he also met with you pertaining the media statement which he wanted to release, relating to the offer which was made to him by the Gupta family. That was known to the ANC before it met with Oakbay?

- 20 **MINISTER GWEDE MANTASHE:** Yes it was.

**ADV PHILLIP MOKOENA SC:** Yes. Furthermore, we have heard from the evidence of Mr Vytjie Mentor that at the time when – I mean during that period, or prior to the meeting between the ANC and the banks, he was already – there were allegations that he was offered a post or a position of public – or to become a Minister of Public Enterprise by the Guptas. Those facts were known?

**MINISTER GWEDE MANTASHE:** That is not a public information, we never knew that.

**ADV PHILLIP MOKOENA SC:** You never ...(intervenes).

**MINISTER GWEDE MANTASHE:** Actually I will doubt if it was factual.

**ADV PHILLIP MOKOENA SC:** That one you did not know at the time?

**MINISTER GWEDE MANTASHE:** That one I will doubt if it is factual.

**ADV PHILLIP MOKOENA SC:** Now the ...(intervenes).

**MINISTER GWEDE MANTASHE:** He was the Chairperson of the Portfolio Committee.

**ADV PHILLIP MOKOENA SC:** Now there were media reports at the time  
...(intervenes).

10 **CHAIRPERSON:** Mr Mokoena, I just want to make sure I understand where we are going. I understood that today we will deal with banks, the meeting of the ANC with banks. I know that to a limited extent we may have gone a little beyond that, but of course we should not go too beyond.

**ADV PHILLIP MOKOENA SC:** Yes Mr Chair I am not going there. Allow me the indulgence for 2 minutes.

**CHAIRPERSON:** Alright.

**ADV PHILLIP MOKOENA SC:** And the question would become much more clearer.

**CHAIRPERSON:** Okay alright.

20 **ADV PHILLIP MOKOENA SC:** Now one of the facts, the media at the time had reported that Mr Themba Maseko had claimed that the President Mr Zuma had requested him to assist the Gupta family. Those facts were known to the ANC by the time when it met with the Oakbay Company?

**MINISTER GWEDE MANTASHE:** Of the eight people we say we met was Mr Maseko. One of the eight people we met was Mr Maseko.

**ADV PHILLIP MOKOENA SC:** Yes.

**MINISTER GWEDE MANTASHE:** Yes.

**ADV PHILLIP MOKOENA SC:** Now against this background and I think that is where Mr Chair wants me to go to. Against this background – and I am putting this to you so that at least you are able to react them. Against this background and against these publically known facts at the time, was it not prudent for the ANC when it was approached by Oakbay, which was known at the time to have ties with the Gupta family, to say to them that well, these issues pertaining to client and the banks, we as the ANC we cannot deal with them, let them be dealt by the Regulator, or let those issues be dealt with within the legal existing framework at the time.

- 10 **MINISTER GWEDE MANTASHE:** The issue you must understand about the ANC as a governing party and the obligation it is having, we deal with the good and the bad in society. We do not have the luxury of selecting, that I cannot talk to you, you are bad, we can talk to you, you are good. We talk to everybody, but we process things and take decisions. That is the nature of the animal.

**CHAIRPERSON:** As a matter of – or for the sake of completeness. Did the ANC ever go back to Oakbay to say, well we listened to you, you said what you said, we know what you wanted, but having listened to the banks and everybody we cannot assist you, or anything like that?

- 20 **MINISTER GWEDE MANTASHE:** We went back to them telephonically, after the ANC meeting.

**CHAIRPERSON:** Yes.

**MINISTER GWEDE MANTASHE:** That is the only time we could do and tell them, listen yes these job losses attract, but people must comply with regulations and rules.

**CHAIRPERSON:** Thank you.

**ADV PHILLIP MOKOENA SC:** Yes. Mr Mantashe lastly I need to put the version of the

banks as it was placed before this Commission for you to be able to react and to see if you agree with what the banks had informed the Chair in these proceedings. Now if you may ...(intervenes).

**CHAIRPERSON:** Sorry Mr Mokoena. I know that he has already dealt with the evidence of some of the banks' witnesses. Maybe it is only one who gave certain evidence with which he has difficulty. He has dealt with that. Is there other evidence that he has not dealt with, with which he has difficulty?

**ADV PHILLIP MOKOENA SC:** Yes Mr Chair.

**CHAIRPERSON:** Oh okay.

10 **ADV PHILLIP MOKOENA SC:** I need Mr Mantashe to comment on certain aspects of the testimony that was adduced by the banks pertaining to their conduct that it was lawful. I mean, I am asking these questions as the Chairperson of the ruling or the governing party and at the time he was the Secretary General of the governing or the ruling party. When we make recommendations, one can be able to say that institutions such as the IMC that was formulated that time. What was the perspective of the ruling party on those issues, the Inter Ministerial Committee?

**CHAIRPERSON:** I am sorry, just mention the issues again, which issues?

**ADV PHILLIP MOKOENA SC:** You would recall Chair that parallel to the meetings of the ANC, that were called between the ANC and the banks, there was also a Cabinet  
20 decision in order to establish what Mr Gordhan referred to as the Task Team. But I think that in the papers it has been referred to as the "Inter Ministerial Committee" which was established specifically to deal with the closing of the bank accounts by the banks at the time, you know the banking accounts and the termination of their relationship between Oakbay and the banks.

Now the question is, what was the reaction of the ANC – I understand



Mr Mantashe has dealt with this from the perspective of being the member of the ANC. But whether the banks in their approach were they correct that is what I wanted to test with him.

But if you do not have to go there, you do not have to go there Mr Chair.

**CHAIRPERSON:** Well I am not sure that he is the right person to deal with that. Is that not an issue between the banks and the Inter Ministerial Committee?

**ADV PHILLIP MOKOENA SC:** But surely the ruling party would have a perspective about the issues that were publically known at the time and whether or not, was it a correct thing for such an intervention. I am in your hands Mr Chair.

10 **CHAIRPERSON:** *Ja.* Well if Mr Mantashe feels that he wants to answer it, and answer.

**MINISTER GWEDE MANTASHE:** No.

**CHAIRPERSON:** But you know he said that is a state matter he is here for the party.

**MINISTER GWEDE MANTASHE:** Yes.

**CHAIRPERSON:** And it seems to me that unless he particularly wants to say something.

**MINISTER GWEDE MANTASHE:** No, no I can confirm that with my experience. I have a lot of experience in Government now, 8 months. With that experience I know clearly how Cabinet takes decision without the party interfering.

20 **CHAIRPERSON:** *Ja.*

**MINISTER GWEDE MANTASHE:** I appreciate that better now.

**CHAIRPERSON:** Thank you.

**ADV PHILLIP MOKOENA SC:** Yes. Mr Chair that concludes the questions for Mr Mantashe.

**CHAIRPERSON:** Okay no thank you. I am very happy Mr Mantashe that in your

evidence you did indicate that the governing party and I see that you also did refer to it as the ruling party and the governing party. Minister Gordhan when I said ruling party, seemed not to like that, he preferred governing parties.

I am very happy that from what you have said in your evidence, it does appear that the ANC did look at the question of State Capture in regard to – and not just the State, well maybe it is not the State Capture. But in regard to how it was – how the State Capture was happening and it seemed from what you say, it seemed that the ANC deliberated quite a lot on that and you referred to a report.

10 Because you may already have heard that I have said that I do not think that the work of this Commission could really be said to be complete without the governing party being able to say, we as the governing party who were given the mandate by the Electorate, looked at the events and at a certain stage we started realising that there was State Capture happening and this is what we began to do and be able to say, maybe we fell short in certain respects, but this is what we did to try and deal with this issue as far as we could.

20 So I think that is very important and I think people in general in South Africa would when they look at the issues of State Capture, want to see how the governing party looked at the issue and what it did to try and deal with it. From what you have said it looks like when you come back you may be able to tell us quite a lot about that, yes.

**MINISTER GWEDE MANTASHE:** Preferable the last submission which would be led by the President. He can get to those details.

**CHAIRPERSON:** Yes.

**MINISTER GWEDE MANTASHE:** Because it is the details that we will get into, serious disagreements even within the ANC on certain issues.

**CHAIRPERSON:** Yes.

**MINISTER GWEDE MANTASHE:** One of the issues that divided us greatly, was the demand for the President of the ANC to resign.

**CHAIRPERSON:** Yes.

**MINISTER GWEDE MANTASHE:** Now that issue, when the people were outsiders, see us as a group of people who were just protecting this President of the ANC.

**CHAIRPERSON:** Yes.

**MINISTER GWEDE MANTASHE:** What they do not see is like a duck, when a duck swims, you see nice bubbles around the neck, you do not see the pedalling under the  
10 water. I hope that the President will be able to talk to those pedals under the water.

**CHAIRPERSON:** Yes. No, no, no that is fine. Of course the current President of the ANC and President of the country was not President of the ANC for certain of the years that we may be looking at and that would have to be covered. But obviously the ANC will see how it deals with that.

**MINISTER GWEDE MANTASHE:** He was Deputy President.

**CHAIRPERSON:** Yes. Thank you very much. Thank you for your evidence. You are excused for now thank you. Mr Mokoena is that the – have we reached the end of the day?

**ADV PHILLIP MOKOENA SC:** That is the evidence for the day Mr Chair.

20 **CHAIRPERSON:** Yes.

**ADV PHILLIP MOKOENA SC:** Of the long day.

**CHAIRPERSON:** I did not hear that.

**ADV PHILLIP MOKOENA SC:** That is the end of the long day Mr Chair.

**CHAIRPERSON:** Then tomorrow, who is coming tomorrow?

**ADV PAUL PRETORIUS SC:** Chair the two witnesses for tomorrow are

Advocate Moefi and Mr Ramathlodi.

**CHAIRPERSON:** Okay.

**ADV PAUL PRETORIUS SC:** I am not sure in that order, but those are the two.

**CHAIRPERSON:** Yes. We are going to adjourn now, tomorrow we will hear the evidence of Advocate Moefi and Advocate Ramathlodi. We will resume at normal time tomorrow at 10:00. We adjourn.

**REGISTRAR:** All rise.

**COMMISSION ADJOURNS**

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**HELD AT**

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