

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

15 JANUARY 2021

DAY 329



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

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TRANSCRIBERS:

B KLINE; Y KLIEM; V FAASEN; D STANIFORTH



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PROCEEDINGS RESUME ON 15 JANUARY 2021

CHAIRPERSON: Good morning Mr Seleka, good morning everybody.

ADV SELEKA SC: Morning Chairperson.

CHAIRPERSON: Are we ready?

ADV SELEKA SC: We are ready Chairperson.

CHAIRPERSON: Yes.

ADV SELEKA SC: Chairperson today is the hearing of or the leading of testimony of Mr Brian Molefe. Mr Molefe is
10 legally represented. I would allow the legal representatives to place themselves on record.

CHAIRPERSON: Yes they may do that either from where they are seated if they put on the – if – ja there is no they can go to the podium. Somebody must just sanitise before they go there.

ADV MASUKU: Deputy Chief Justice together with Mr Tsheppe and Mr Sikhakhane on the instructions of Mr – of Molefe Attorneys. We appear for Mr Brian Molefe.

CHAIRPERSON: Yes thank you very much Mr Masuku.
20 Yes Mr Seleka.

ADV SELEKA SC: Thank you Chairperson. Chairperson Mr Molefe is here I envisage that he is ready to take the oath or affirmation.

CHAIRPERSON: Yes. Good morning Mr Molefe.

MR MOLEFE: Good morning Chairperson.

CHAIRPERSON: Thank you. Please administer the oath or affirmation.

REGISTRAR: Please state your full names for the record.

MR MOLEFE: Brian Molefe.

REGISTRAR: Do you have any objections to taking the proscribed affirmation?

MR MOLEFE: No objections.

REGISTRAR: Do you solemnly affirm that the evidence you will give will be the truth.

10 **MR MOLEFE:** I will.

REGISTRAR: The whole truth and nothing else but the truth; if so please raise your right hand and say, I truly affirm.

MR MOLEFE: I truly affirm.

CHAIRPERSON: Thank you; you may be seated.

ADV SELEKA SC: Thank you Chairperson.

CHAIRPERSON: Yes Mr Seleka.

20 **ADV SELEKA SC:** Chairperson the bundle we will be using is Exhibit Eskom Bundle 17 – 17 Exhibit U38. Exhibit U38 that is where you find Mr Molefe’s affidavit together with the annexures. Mr Molefe I will ask you to go there as well. Oh my learned friend Mr Masuku seeks to put certain things on record Chairperson.

CHAIRPERSON: Well you – I was expecting you to first indicate for the benefit for the public where Mr – what Mr

Molefe will be testifying.

ADV SELEKA SC: Yes.

CHAIRPERSON: About – he will be questioned about and so that the public will follow. Maybe you should do that and then once you are done with that Mr Masuku can address me.

ADV SELEKA SC: Thank you Chair. Yes Mr Molefe I should say at the outset that his names features in many things. A couple of issues from Transnet to Eskom and to
10 Parliament but his called by the Eskom work stream
Chairperson to focus on matters that pertain Eskom.

And that deals with Mr Molefe's secondment – how he was seconded to Tran – to Eskom from Transnet. Deals with Mr Molefe's decision making in regard to what he found to be the cooperation agreement and the fourth addendum between Eskom and Optimum. How he dealt with that. He will explain in regard to the decisions he made.

And to the extent that he can and I know that he
20 was not personally involved in certain decisions regarding the two pre-payments decisions. The R1.68 billion decision that was made by the board and the R659 million pre-payment decision made by the board.

He can explain to the extent he can and he will also deal with the penalties that were – that Eskom sought to

impose against OCM and how that matter ultimately got resolved.

Together with that Chairperson is the interaction between Eskom and the DMR on the one hand and in particular the approach Mr Molefe and Dr Ngubane makes to Mr Ramatlhodi in regard to that.

Mr Molefe has indicated to me that he would like to traverse other issues particularly in regard to the PP – the Public Protectors Report but he will do so in due course.

10 Chairperson there are other matters that might crop up during the – the leading of his evidence and if Mr Molefe is not ready on those we have indicated or agreed with him that he would ask for your permission to either file an affidavit seek for more time in order to deal with those matters.

CHAIRPERSON: Well one – the one matter which you – should be mentioned is that he will come back at some stage to deal with matters relating to Transnet.

ADV SELEKA SC: Yes.

20 **CHAIRPERSON:** So generally speaking today he will not be dealing with Transnet matters.

ADV SELEKA SC: Correct Chair.

CHAIRPERSON: Ja.

ADV SELEKA SC: Correct.

CHAIRPERSON: Okay alright.

ADV SELEKA SC: That is correct I have conveyed that much also to Mr Molefe and the legal team.

CHAIRPERSON: Ja. Okay alright. Then Masuku can address me if he wishes to address me.

ADV MASUKU: Deputy Chief Justice thank you for allowing me to raise these preliminary issues. They are raised not to create the impression that something is wrong.

But in a process like this these issues ought to be
10 raised so that the process is then reached and it is – it is made a little stronger.

I have been asked to raise – I have been asked and have a duty to raise those issues which concern – which concern the appearance of the Mr Brian.

The first is that Eskom has a – has filed a civil claim to the amount of I think of R3 billion against Mr Brian and I think eleven other defendants on the very issues that will be canvassed by the commission today.

20 So to the extent that some of the issues – some of the questions may undermine his defence in the civil claim we might raise an objection. We hope it does not have to come to that – to that level but he would be entitled to raise a defence on the basis that this would – it is not – it is – it would be unfair in light of the – in light of the pending litigation that is going on on the very same issues

that he is canvassing.

The second one you will be aware Chief Justice that the President has made a proclamation I think it was 2019 if I am not wrong in respect of which a full scale investigation was – or was ordered by the President the SIU must conduct in relation to the Eskom matters.

And we – Mr Molefe informs us that he has been informed that there are people who worked with him have been asked for affidavits in relation to that investigation
10 and at some point the SIU or whoever is investigating this issue will confront Mr Molefe on the – on those aspects.

We would ask that where it is possible his right to – his right to not incriminate himself be respected if it is raised legitimately and we hope we do raise it legitimately.

And then the last issue really is an issue of – you know if – having been here a number times Chief Justice if I do not complain it is just not right. So I am going to complain about...

CHAIRPERSON: So you are going to complain?

20 **ADV MASUKU:** Yes. I am going to complain about the fact that we did receive the documents on which Mr Molefe had to prepare for this hearing quite late – it was on Tuesday – Tuesday night.

We as legal representatives were able to access those documents the following day which was a Wednesday

and we only really had Wednesday and Thursday and part of – well today is Friday to go through the documents that had been sent to it.

It does create a problem for Mr Molefe because one of the questions we had asked quite early was which aspect – in which – in respect of which position was the commission seeking to have Mr Molefe come and testify?

Because the – the I think it is the Regulation 10.3 Notice does not really point out that he is fact testifying on
10 the Eskom issues and that issue became clearer when we received the letter that I commended and the letter by Mr Seleka which was a very polite and very fruitful letter to engage with.

So we do want to say that there is invariably prejudice that relates to the detail that he may require from Mr Molefe in respect of the issues that he got documents late on.

So in that respect we would ask that if he does say that he has not engaged with certain aspects of your
20 question that you allow him the opportunity to do so in writing after having gotten enough time with his lawyers to engage with those questions that you would be wishing him to engage with.

So because I mean subject to any questions that you may to just assist those are the remarks that I thought

are important to record so that we understand the context in which Mr Molefe is going to be giving his evidence.

It is the context of a civil and criminal liability that he is facing and the context in which the documents had been sent to him by the commission and the limited time that he had to prepare for those documents.

Absolutely the final one Chief Justice he does want to have this – he has a statement that he wants to make in which he – it may clarify his mind about the things that the
10 commission is investigating. If it is permitted Mr Brian is ready to give that statement.

CHAIRPERSON: No thank you Mr Masuku. I think to the extent that he may have received certain documents late and therefore has not had an adequate opportunity to prepare himself on certain documents or issues there will be no difficulty where he is not able to answer because he needs more time to look at those documents.

There will be no difficulty in arranging that he can deal with those at some other time or he might file an
20 affidavit and then he might be asked questions when he comes back as I indicate he must still come back to deal with non-Eskom matters.

So there will be no difficulty. Every effort is made to make sure that there is fairness. We might not always succeed but we will keep on trying to make sure.

So there will no – no difficulty in regard to documents that he really has not had enough time to look at because the commission gave him those late.

With regard to the question of criminal matters and the fact that he may in regard to some question wish to not to give an answer in order not to incriminate himself that if and when that is raised we will all deal with it then.

Whether or not anything that may fall under the civil action but not under the privilege not to incriminate
10 yourself whether or not that could be a ground not to answer we will deal with it if and when it arises. It might not arise.

So – so – but that is fine. Let us see how it goes and – and where there are challenges or concerns we will deal with them.

ADV MASUKU: Thank you Deputy Justice.

CHAIRPERSON: Thank you. I will allow Mr Molefe the opportunity to read or make some remarks or statements before he gives evidence. As I understand from you Mr
20 Masuku that he would like that opportunity. Mr Molefe I have indicated to your counsel that although I have allowed other witnesses to – that opportunity from a certain time I have been concerned whether we should insist that we should receive a written statement in advance so that we could see whether it will implicate any

third parties or any other people in wrongdoings so that the relevant procedural issues can be attended to.

But my understanding from your counsel is that your statement should not have anything like that. So after Mr – before Mr Seleka starts leading your evidence I will allow you the opportunity to either read the statement or make the remarks that you – that you wish to make. Mr Seleka.

ADV SELEKA SC: Thank you Chair. Should I...

CHAIRPERSON: Are you ready to start or do you still have
10 some housekeeping issues to attend to?

ADV SELEKA SC: No I am ready to start Chairperson.

CHAIRPERSON: Oh okay.

ADV SELEKA SC: I could identify the file and ...

CHAIRPERSON: Well I think let us – let us allow Mr Molefe to make his remarks or read his statement and then after that we – we – you can then take it from there.

ADV SELEKA SC: Thank you Chair.

CHAIRPERSON: Yes. Mr Molefe.

MR MOLEFE: Thank you Chairperson. Let me start by
20 expressing my gratitude for allowing me to crave your indulgence in making the statement.

Chairperson during the testimony of Dr Ben Ngubane you asked a pertinent question which in my opinion if answered will put into context and clarify the events that took place at Eskom during my tenure there in

2015 and 2016.

CHAIRPERSON: Yes just hang on Mr Molefe. I think you might wish to bring the microphone a little closer to you so that you are loud enough and you can keep your microphone on throughout. It will – you do not have to switch it off when non-speaking or when he is speaking. You can just keep it on all the time. Yes you can continue.

I just want everyone to hear what you say properly – your voice must be at it loudest.

10 **MR MOLEFE:** I do not want to talk into it and give the whole Covid.

CHAIRPERSON: Yes.

MR MOLEFE: Chairperson during that testimony you referred to a question that needs to be put to Optimum Coal Mine along the lines of and I quote what you said:

20 “How did you allow whoever signed on your behalf to sign a contract that the price would be the same for ten years or more? Were they sleeping or what or what was – how could you have signed such a contract? Nobody signs such a contract.”

Those were your words Chairperson. And unfortunately Chairperson these questions were not put to OCM. Because I think although it was during Dr Ngubane’s evidence you were asking about OCM’s lack of – or rather

– the reason behind what they did.

But the answers to these questions are at the heart of how and why we find ourselves where we are today. Why they were not asked? Nor had they barely answered these questions Glencore did shed some light as to how they had put themselves in that precarious situation out of which they were demanding to be rescued by Eskom.

Glencore did not sign the contract that you referred to. Glencore bought the contract with the company that
10 had signed the contract. This is in the evidence of Mr Ephron before this commission and it was on the 13 January – sorry it was – ja it was on the 13 January 2020 that he have this evidence.

That they had bought a company together with the SCA - CSA – Call Supply Agreement. Although Mr Ephron is a Chartered Accountant he admitted that Glencore did not conduct a due diligence on Optimum prior to the acquisition of the company and the contract.

Nor had they bothered to acquaint themselves with
20 how the Coal Supply Agreement worked. This was in page 3 of the statement sorry in paragraph – in page 3 of his statement.

Instead of conducting due diligence and understanding how the Coal Supply Agreement worked they did something extraordinary Chairperson. They sold 9.64%

of the shares in the new acquired company to Mr Cyril Ramaphosa. A political heavyweight and made him chairman of the newly acquired company.

That was a strategic decision to use the former Secretary General of the African National Congress and former Secretary General of the National Union of Mine Workers. A member of the National Executive Committee of the ANC at the time.

They knew that the profitability of the company
10 could only come from a successful renegotiation of the coal price and ignoring by Eskom of the penalties that were accumulating at the time.

Mr Ramaphosa was their bet. The profitability of Optimum was therefore dependent on the pedalling of political influence. And the extent to which Glencore would be able to exert pressure on Eskom directors and management and not on the fundamentals of the company that they had acquired.

This in my opinion was the source of Glencore's
20 problems. They had made their bed and needed to lie on it. It was unfair and arrogant of them to demand as they were doing that Eskom should effectively pay for the irresponsible manner in which they had tied themselves into the proverbial knot.

You observed Chairperson that on my arrival at

Eskom there was and I quote you:

“A complete change of attitude on the part of Eskom on the deal that had been proposed and had been supported by various levels of management.”

You were referring to the deal that had been entered into by Eskom management and Glencore to save Glencore’s skin from the consequences of purchasing a company having not conducted due diligence.

10 Eskom management and Glencore were in the process of sub-vetting Section 38 of the PFMA. Section 38 1C I which talks about the duty of a state owned entity or a state body to collect what is owed to it.

On the 8 December 2020 during the course of these hearings the evidence leader Advocate Seleka was at pains to explain how Glencore had fallen into hardship because the export price of coal had taken a nosedive.

20 Dr Ngubane tried to explain to the commission that when the international coal price was high and Optimum enjoyed super profits they had not shared their spoils with Eskom.

What was unfortunately lost in that exchange is the fact that Optimum was a cost plus mine. It had been built with Eskom’s capital and had been given a 40 year contract. Eskom had responsibility for the mining costs

and in return Optimum received a six margin. Eskom was and I think at some point during the hearings you referred to this as an absurd arrangement. Eskom was unfairly excluded in participating in the super profits of the time when times were good and yet it was expected to fork out more capital. Forego its legitimate price expectations and subsidise rich international corporations when the times were bad.

That is the situation that we find ourselves in. You
10 correctly pointed out Chairperson that Eskom had a legitimate contract with Optimum. In terms of that contract we at Eskom were supposed to get from them coal at the price of R150.00 per ton until 2018. Those were the terms of the contract.

Whether they liked it whether they did not like it those were the terms of the contract. In addition they had accumulated penalties in terms of that contract to the value of R2 billion.

Evidence was led in this commission that that R2
20 billion was not a figment of the – of my imagination. That R2 billion was calculated at – accumulated from 2012. I think it was Mr Bester who said that he actually had calculated the R2 billion and during his hearing on that matter there was debate about whether or not it should have been a million more or a million less but it was about

R2 billion.

Optimum demanded that the price of coal be increased to R530.00 per ton and that the penalties of R2 billion should be written off. Somebody mentioned 530 the other day and Advocate Seleka jumped and said it was not 530 it was 400 and something. But Advocate Seleka when they came to me for the first time the figure was 530. It may or may not have been written but that is what I clearly recall and they later on reduced it to what you refer to.

10 But the original demand at least to me it was R530.00 per ton from R150.00.

It was the opening negotiating position. R530.00 from R150.00. An increase from R150.00 to R530.00 per ton would have meant a transfer of R6 billion from Eskom to Glencore over a period of three years. 2015 to 2018.

Add to this the R2 billion write off of the penalties that they were asking for. The amount that Glencore wanted Eskom to pay for their original mistake of not doing due diligence was R8 billion.

20 R8 billion Chairperson. The observation that there was a complete change of attitude on the part of Eskom on the deal that had been proposed and had been supported by various levels of management when I arrived at Eskom is absolutely correct.

I am not ashamed of this change of attitude that

occurred. When I arrived I was having Eskom's interest and those of the country at heart. What was happening was wrong on many fronts. It was literally going to financially ruin Eskom.

But there was an added issue to this. The Glencore position would have seen an inequitable situation. The poor and most vulnerable in the country would subsidise the dealings of the rich. There was no way that I could with a clean conscience attend public gatherings and
10 meetings and shout until I am hoarse that Soweto residents needed to pay their debt to Eskom, when I was allowing international corporates to disadvantage Eskom on many fronts, not over. I could not face Eskom employees and unions and tell them that their bonuses will not be paid or that their salary increases will be zero. The bonuses will not be paid as was many the case in 2015.

And that we had no funds to fix the apartheid wage gap that still exists between black and white employees of Eskom. There is still an apartheid wage gap at Eskom, while
20 rich international corporations were duly - unduly exploiting Eskom.

As I have stated the payments to Glencore would have sunk Eskom. You will recall Chairperson that this was at the time when load-shedding was becoming the norm.

I could not Chairperson say to South Africans that load-

shedding will continue because we do not have enough money to conduct planned backlog maintenance on our electricity generating fleet. I am still allowed eight billion to be unjustly transferred to Glencore.

When I arrived at Eskom, a *de facto* board of the company had been established outside of the company in the form of a War Room in the Presidency. Management had to report to this War Room.

Ms Matsietsi Mokholo was here yesterday and she explained Chairperson, to you, how the War Room demanded meetings with management and officials of the Department of Public Enterprises, every Friday at seven a.m. Every Friday, they had to present reports.

So when I got there - the biggest activity that was happening at Eskom was preparing War Room reports from Wednesday, you must start preparing the reports, make sure that they are ready for Friday seven a.m. Then it is weekend. Then Monday, Tuesday we work. Then Wednesday we start preparing reports again. It was an unattainable situation.

There was a board, *de facto* board that was outside of the company. And what is even more strange Chairperson is that there has been evidence here including by Ms Mokholo who was here yesterday that members of the board, a legitimate board, a legal board of Eskom had not seen –

were not seeing those War Room reports. So management was reporting to the War Room.

But it gets even better Chairperson. The Deputy President of the Republic, Mr Cyril Ramaphosa was the Chairperson of the War Room. He was in fact a *de facto* chairperson of Eskom.

A *de facto* chairperson of a *de facto* board that was outside the company. He was the *de facto* chairperson and had started playing this role directly from begin chairperson
10 of Optimum.

When the deal was done in 2012 and he was sold shares or he bought shares, he was made chairperson. In 2014, he became Deputy President and Chairperson of the War Room.

One would have expected – corporate governance requires that there was be a cooling-off period precisely for things like this. Here is a person who was engaged in saying we must renegotiate. That contract was signed in 2014, the contract that I found at Eskom. We must renegotiate.

20 Effectively R 8 billion moves and becomes the *de facto* chairperson of the company. In fact, he sold his shares to Tembani. I am not sure if that was arms link(?) but he sold his shares to Tembani.

But at the time when I got to Eskom and when he was Deputy President and he was chairing the War Room, the

deal had not gone through. It was awaiting competition commission approval. I think that was granted in August. So I suspect there may have been conflicts but then again, I am not an expert.

The membership of the War Room included people like Professor Eberhardt from UCT, who has never in my presence, uttered an intelligent academic or sane word about electricity or corporate strategy.

I quickly came to realise that the War Room was not
10 about load-shedding and turning Eskom around. Something else was happening. Eskom senior managers were being destructed from fighting load-shedding by being made to attend endless meetings at which they were supposed to give unending and meaningless reports.

I was uncomfortable with the War Room and stop attending its meetings. If the War Room had been doing its work diligently, it would have solved the load-shedding crisis before I arrived at Eskom.

I was relieved when President Zuma closed it down in
20 favour of giving management a fair chance at fighting load-shedding and turning the economy around and turning the company around.

Under my leadership and the leadership of – and the leadership and technical expertise of people like Mr Koko and other engineers, the engineers at Eskom, the guardians

as they called them, the employees of Eskom who, when I was there, became very reverberated and determined to end load-shedding with the figured load-shedding in August 2015.

On the 8th of August 2015 we stopped load-shedding. And we never had load-shedding again for three years after I had left Eskom. Load-shedding came back to Eskom after Mr Cyril Ramaphosa following the R 1 billion **Lazarec(?)** **[00:07:29]** Conference was appointed president of the country. That is when load-shedding came back.

10 And after he was appointed president of the country and he in turn appointed the smooth talking and the dictatorial Pravin Gordhan as Minister of Public Enterprises. The less I say about Pravin Gordhan the better.

As you see Chairperson, despite his smooth talking, Public Enterprises are failing and it appears that they are on a course to be sold to private interest.

My suspicion is that like the javelin. They will be thrown over the fence and be caught at a later stage. It just a suspicion. To put it mildly Chairperson. The situation made
20 me sick. I found the behaviour of Glencore and that of Mr Cyril Ramaphosa to be revolting.

Mr Ramaphosa must have known about what Glencore sought to achieve. He was the Chairperson of the company that was bought without a due diligence. He was chairperson when the penalties were imposed.

He was still chairperson of Optimum when the unlawful agreement that sought to increase the price of coal to from 150 and set aside the penalties, was negotiated with certain members of Eskom' staff in 2014.

He knew that he was being used based on political standing hoped to influence matters to Glencore's favour. He had an interest in the matter, a 9.64%. He is not naïve and he has been dealing with these corporates which gave him his riches.

10 Mr Matjila Koko was interrogated at length about this agreement that was entered into before I arrived. He told me that the board had not sanctioned that agreement.

They also told me that the official who had signed it had no authority to do so but this is hearsay evidence which I shall not burden you with. Although it is hearsay evidence Chairperson, at least I know it was Mr Koko. I am not telling you it was somebody's brother that I do not know.

I hope that Mr Koko will shed more light on this aspect when the Commission ends its fascination with the
20 suspension of the executives in the hearing of his evidence.

Dr Ben Ngubane and members of his board understood the situation perfectly well. For them, I received the blessing to do what was right and for that I am thankful.

It is a pity that this Commission on State Capture missed an opportunity to investigate the nature of the cost plus

mines and 40-year contracts and what is currently collapsing Eskom. It is truly an injustice to the entire economy.

If this were to be investigated properly, we will all see the real problems from which we are being diverted. I believe with the blessing of Mr Cyril Ramaphosa and Pravin Gordhan.

I find it to be strange that the focus is on Tegeta given the fact that Tegeta supplied less than 4% of Eskom coal, while in 2015, four other white rich companies supplied more than 80% of Eskom coal to the value in excess of R 40 billion per annum with 40-year contracts. It goes into the trillions Chairperson over the 40-year period and yet we are here talking about this meeting and that meeting, concerning a company that was quite literally not supplying much.

Why some of us did not have the privilege of explaining our side of the story in an interview with the former Public Protector with respect to Optimum Coal Mine?

It is clear that Glencore had unvetted access to her and were able to impress on her what their beef with Eskom was. Mr Ephron testified in this Commission on page 7 of the transcript during his hearing on the 27th of February 2019.

He testified that he – they did have a meeting with the Office of the Public Protector, something that I was not afforded as a person against whom they were complaining.

She did not bother to interview me for my side of the story as is required by the Public Protector Act.

Section 7(9) talks about whether - what a Public Protector must do when a person is implicated. She must inform the person and give that person an opportunity to be heard and to interview the witnesses that came with the evidence. She did none of that.

Instead, she proceeded in unprecedented haste to write and label as final a report which has been used by the media
10 to link certain people including myself and which gave rise to this Commission. I think this Commission is the child of report that was written in very suspicious circumstances. That is when Mr Madonsela was leading and was in a hurry as if there was not going to be a Public Protector anymore in South Africa.

Glencore is a multi-billion rand company. Their BEE partner, Mr Cyril Ramaphosa, subsequently rose to become the Deputy President and then President of the country. It is rumoured that – and this happened without any cooling-off
20 period – it is rumoured that he has campaigned to become president of the ANC was financed to the tune of R 1 billion. This was unprecedented in the African National Congress.

I dare say that it was not in line with the culture, values and ethos of the ANC that I have come to know and which I continue to be a member of.

Mere mortals like myself, simple do not stand a chance to repeat ourselves against these powerful forces who are trying to extort R 8 billion from a state-owned entity, Eskom.

Constitutional bodies wrote powerful reports about us and no one dared to question the procedural fairness that disrespect for natural justice and the constitution because right we had, I believe, it is in the Constitution.

Or even the unlawfulness in the manner in which the Public Protector's Office under Thuli Madonsela has
10 conducted itself by disregarding Section 7(9) of the act. Nevertheless, I continued to have faith in our Constitution, a principle of transformative constitutionalism and the rule of law.

I am aware Chairperson that even as I make this statement, law enforcement agencies may be ready to pounce and judge me with criminal acts. I appear before you and state that my conscience is clear.

This I know because a spokesperson of the SIU, Mr Geniel(?) said during a television interview about the
20 pending case relating to Eskom against myself and others but they had not concluded their investigations, that they have not interviewed me and that the single court process against myself and others is part of their investigations on myself.

Their views of law enforcement and constitutional bodies

is not a myth. But no amount of manipulation of state institutions and agencies and intimidation will deter me.

It is unfortunate that the courts appeared to have also fallen to the narrative of the so-called State Capture, which by the way Chairperson, you must still establish whether or not it existed. It was the purpose of this Commission. But people talk as if you had already made your findings.

Sometimes even your own tongue slips and talks about it as if there is a finding. When this nightmare is over, our
10 country will return to normalcy. I hope that after this nightmare, some amongst us would desist from political linking and purges and rather focus on the sacred task of rebuilding our country.

I will assist the Commission as best as I can. Just for the record Chairperson. I submitted this affidavit that is in front of you in May.

I have written numerous letters to the Commission, requesting to come and I was told I was not scheduled and I must wait and so on until December. And in December, to
20 my surprise, what I get is a summons. A summons Chairperson who is has been begging to come.

I felt the Commission has a right you to summons but I felt like it was unnecessarily hostile because all it took – even if I have been sent an SMS message Chairperson, I would have been here.

After the summons was issued, the first thing that we did is. We received the summons, we are happy to come. Please indicate what it is about? Which matter is it? Is it Transnet, Eskom? Is it Eskom? Which Eskom matters? No reply. No reply right through December. No response. Until three days before the day which I was supposed to come. Tuesday, Tuesday night at ten o'clock at night, we received the documents. One thousand four hundred pages of documents.

10 I spent the last two days going through the documents. I did not sleep last night because I did not want to come here and say to you Chairperson, can we have a postponement. I wanted to engage. After all, I had said that I had been ready for a very long time but it is unfortunate in the manner in which this was done.

It is also unfortunate that, if they portray me for lack of not going through some of the parts of the documents as a person who is not prepared or who is reluctant to appear before the Commission.

20 Despite the fact that I was advised – legal advice was: You must treat this carefully. This is very serious. You cannot go in without having gone through the documents properly. I insisted that I will appear.

That is why Chairperson I have been seeking to come and present my side of the story. A natural justice right that

was denied me – that was denied to me by the former Public Protector.

My heart is at ease. I am ready to face the consequences of following the big dates of my conscience. Thank you, Chairperson.

CHAIRPERSON: Thank you, Mr Molefe. I think there are certain parts of your statement which made me wish we had received it in advance to give it to certain people or at least warned them about it.

10 But I think I can understand that there may be different views about whether there would be a need to do that. But maybe that – if I had – if we received it in advance, we would have preferred to err on the side of caution and given it.

So I just make this point to indicate that, to the extent that either you or your counsel might have taken the view that there is nothing that implicates anybody. I am not criticising that. I am not criticising that but ...[intervenes]

MR MOLEFE: Chairperson ...[intervenes]

20 **CHAIRPERSON:** ...I may have preferred to err on the side of caution. So I just wanted to make that point. You want to say something before I proceed?

MR MOLEFE: Yes, Chairperson. Mr Ramaphosa is mentioned in my affidavit of May 2020. Not only mention him, I also talk about this issue of the shares and so on. I

do not know if, after reading that affidavit on how seriously that affidavit was taken.

CHAIRPERSON: Yes.

MR MOLEFE: If there were any further investigations.

CHAIRPERSON: Yes.

MR MOLEFE: What surprised me.

CHAIRPERSON: Yes.

MR MOLEFE: is that there was no follow-up.

CHAIRPERSON: Ja.

10 **MR MOLEFE**: There is nothing. Even in the papers that I received on Tuesday.

CHAIRPERSON: Ja.

MR MOLEFE: Nothing says we would like to talk about this issue.

CHAIRPERSON: Ja.

MR MOLEFE: This issue that I consider to be the most critical.

CHAIRPERSON: Yes.

MR MOLEFE: I am not raising it for the first time.

20 **CHAIRPERSON**: Yes.

MR MOLEFE: In my affidavit.

CHAIRPERSON: Yes. No, no, no. That is fine. That was the first point I wanted to make. The second point I want to make is that. I like the idea that you have taken the attitude that you want to assist the Commission as much as you can.

And I think from the statement you have made, you have even said: Yes, I agree that when I came to Eskom, there was a change of attitude but there were reasons for that. And I will deal with the reasons why that was so.

And you have said, you sought to act in the interest of Eskom. That is why there was that change of attitude. So your statement gives me the impression that you are ready to engage with issues with a view to placing the facts as you know them before the Commission on the very issues, but
10 also, to give the Commission your perspective.

Because sometimes the facts are the same but the perspectives are different from different people. So I have said all along that, as the Commission we want to get all the perspectives from different people. We want to get facts from everybody.

And of course, what has happened in some instances is that certain people have come forward to the Commission and given affidavits, given information about the facts as they see them and their perspective of issues.

20 And then others who might have a different perspective of the same issues, some of them have not come forward to say: These are our perspectives on the same issues or these are the facts as we know them.

The result of that is that until all sides give the Commission their perspectives and the facts as they see

them.

Whenever there is only evidence and perspective from one side and the other side does not come forward, it puts the Commission in a place where it only knows one side. And so I am quite clear and I have said it before that we want all perspectives. We want facts from all sides. So that when we make findings, we make findings based on all sides, facts and all sides' perspectives.

10 So I think your statement, at least, gives me the impression that you are ready to give the Commission the facts as you know them and your own perspective on various issues which is quite important.

I know that you said that sometimes even from me, sometimes when it comes to State Capture, you say there is a slip of the tongue. I think... Well, all I can say is. From the beginning of the Commission up to now, I have tried to make it very clear whenever I talk about State Capture that I am talking about the alleged State Capture.

20 I think that anyone who examines what I have said about State Capture in the hearings and in the media briefings, will find, at least, that most of the time, I am talking about alleged State Capture or State Capture, if it is proved that it existed.

But I cannot say that when you examined all statements I have made from 2018, whether inside the hearing or

outside, and you might not find something that you say: Oh, okay. He does not say now alleged. [laughs] You know.

But certainly, there is – certainly from my side, that still must be proved and I will only make findings when all evidence has been completed.

So I thought I would just mention that. But thank you very much. I think that we should then – I should allow Mr Seleka to start. Okay Mr Seleka.

ADV SELEKA SC: Thank you, Chairperson. Mr Molefe and
10 I had a collegial exchange ...[intervenes]

CHAIRPERSON: I am sorry. Before you proceed. It would be good if I could have a copy of your statement Mr Molefe.

ADV SELEKA SC: Yes. I was going to say.

CHAIRPERSON: H'm.

ADV SELEKA SC: And my learned friend has indicated, he wants to give us.

CHAIRPERSON: Yes. Mister ...[intervenes]

ADV MASUKU SC: Sorry, Chairperson. That copy that you
20 have, have got some minor edits on it but there are... ja,
that is just typing errors and so on because we – I finished it
literally ...[intervenes]

CHAIRPERSON: You have one that has – in which those minor errors had been corrected?

ADV MASUKU SC: Oh, no I do not have it with me.

CHAIRPERSON: You do not have? Ja.

ADV MASUKU SC: I literally did not...

CHAIRPERSON: Yes.

ADV MASUKU SC: ...to come here. So ...[intervenes]

CHAIRPERSON: Okay.

ADV MASUKU SC: But it can be made available.

CHAIRPERSON: Ja, what can be done is. This one can be replaced.

ADV MASUKU SC: Yes.

CHAIRPERSON: With one that has been corrected.

10 **ADV MASUKU SC:** That has been properly edited.

CHAIRPERSON: Yes.

ADV MASUKU SC: Because over the last three days, it really had been a nightmare.

CHAIRPERSON: Yes, okay. And so it can be replaced with a version that reflects that the errors have been corrected.

ADV MASUKU SC: Yes, Chair.

CHAIRPERSON: And I wanted to say. Mr Seleka as well as Mr Masuku, separately and together, you can apply your minds as to whether this statement was the corrected one.

20 **ADV MASUKU SC:** H'm.

CHAIRPERSON: Can or should be admitted as an exhibit or not. You do not have to, if you are not ready to say that now, you can tell me later in the day.

ADV SELEKA SC: Chair, I think my inclination will be that it has to.

CHAIRPERSON: Yes.

ADV SELEKA SC: Because it makes reference to certain persons.

CHAIRPERSON: Ja.

ADV SELEKA SC: The two in particular.

CHAIRPERSON: Ja.

ADV SELEKA SC: And I think in all fairness to them.

CHAIRPERSON: Ja.

ADV SELEKA SC: Once it is accepted, it has to be served
10 on them.

CHAIRPERSON: Ja.

ADV SELEKA SC: So that that part of what he said about them does not remain a mere statement.

CHAIRPERSON: Ja.

ADV SELEKA SC: In the opening address.

CHAIRPERSON: Yes. I think Mr Masuku wishes to say something on this point.

ADV SELEKA SC: Yes.

ADV MASUKU SC: Deputy Chief Justice, they are
20 sabotaging me to come and stand behind the podium
...[intervenes]

CHAIRPERSON: Well ...[intervenes]

ADV MASUKU SC: [Indistinct]

[Parties intervening each other – unclear]

CHAIRPERSON: Well, what are they preventing from going

to the podium?

ADV MASUKU SC: I do not understand ...[intervenes]

CHAIRPERSON: Because you wanted to go to the podium.

ADV MASUKU SC: Yes, I was ...[intervenes]

CHAIRPERSON: I think you must go to the podium.

ADV MASUKU SC: Yes.

CHAIRPERSON: Ja, why have they prevented you?

[laughs] Just sanitise the podium and then you can use it.

But I am sure Mr Masuku, it is not any attempt to sabotaging

10 you. [laughs]

ADV MASUKU SC: Deputy Chief Justice, I am in agreement with my learned friend's view. The allegations made in the statement are not light allegations. That State Capture is what you find in the statement of Mr Molefe. I rather would add, is that, perhaps what should be send to the – to those implicated in the statement is not just the written statement that has been handed up to you but that the transcript of what he ...[intervenes]

CHAIRPERSON: Said.

20 **ADV MASUKU SC:** said ...[intervenes]

CHAIRPERSON: Ja.

ADV MASUKU SC: ...be part of his statement.

CHAIRPERSON: Of what was said, ja.

ADV MASUKU SC: Because at some point, I think he was elaborating on certain things, he would move away from the

statement and elaborate on certain things.

CHAIRPERSON: Ja.

ADV MASUKU SC: So if that could be done.

CHAIRPERSON: Yes.

ADV MASUKU SC: That will be...

CHAIRPERSON: Yes.

ADV MASUKU SC: The statement is not lightly made. It is a very serious statement.

CHAIRPERSON: Yes, yes.

10 **ADV MASUKU SC**: So I do accept that it is one that should be – certainly ...[intervenes]

CHAIRPERSON: Made an exhibit.

ADV MASUKU SC: Ja, yes. But just to take advantage of the fact that I am here. I made an error when I said that I was instructed by the Molefe attorneys.

CHAIRPERSON: Yes.

ADV MASUKU SC: It is Molaba Attorneys.

CHAIRPERSON: Oh, okay.

20 **ADV MASUKU SC**: But our instructing attorney is Mr Molefe.

CHAIRPERSON: Oh, okay. Well ...[intervenes]

ADV MASUKU SC: So it was just ...[intervenes]

CHAIRPERSON: There are a lot of Molefe's. So. [laughs]

ADV MASUKU SC: Yes, no, right here... [laughs]

CHAIRPERSON: [laughs] You got him understand you have

been confused. [laughs]

ADV MASUKU SC: [laughs]

CHAIRPERSON: Okay alright. Taken – we take it that in reading the statement, which is not an affidavit, can we take it that Mr Molefe was doing so on the understanding that he is under oath, therefore. Although it is a statement but – because I see he had already taken oath.

ADV MASUKU SC: Yes.

CHAIRPERSON: But I need to clarify it because he may
10 have prepared it ...[intervenes]

ADV MASUKU SC: I think he will answer that for you.

CHAIRPERSON: Ja.

ADV MASUKU SC: So what we have canvassed that is with him.

CHAIRPERSON: Yes, yes.

ADV MASUKU SC: And he has no difficulties turning it into an affidavit.

CHAIRPERSON: Into an affidavit, yes.

ADV MASUKU SC: If it should be required by the
20 Commission to do so.

CHAIRPERSON: Ja, okay.

ADV MASUKU SC: As he says, some of the things he made – some of the allegations he made, already in his ...[intervenes]

CHAIRPERSON: In his affidavit.

ADV MASUKU SC: ...in his affidavit. So there will not be any deviation from his central mission.

CHAIRPERSON: Yes.

ADV MASUKU SC: Which is to tell the Commission about what real State Capture looks like. [laughs]

CHAIRPERSON: [laughs] Okay alright.

ADV MASUKU SC: Thank you, Chair.

CHAIRPERSON: Thank you, Mr Masuku. Oh, I did not realise... I hope my watch is right. I did not realise that we
10 have gone past quarter past eleven. It says half-past eleven. Is that the right time?

ADV MASUKU SC: It is the right time Chair. We have gone beyond the tea-time.

CHAIRPERSON: Oh, okay. So I think that we should take the tea-break now then, so that when we come back, then you can start leading Mr Molefe's evidence.

ADV MASUKU SC: Okay that is in order.

CHAIRPERSON: We will take the tea adjournment now. It is half-past. We will resume at quarter to twelve.

20 **ADV SELEKA SC:** Thank you, Chair.

CHAIRPERSON: We adjourn.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Okay, you may proceed, Mr Seleka.

ADV SELEKA SC: Thank you, Chairperson.

CHAIRPERSON: I think I must just effectively make this announcement that going forward any witness who wishes to make remarks which are not in an affidavit or statement that has been given to the Commission already should forward his or her statement to the Commission at least seven days before the date of hearing and indicate that they would request to be allowed to read that statement at the Commission. That will give the Commission and opportunity to look at it and see whether anybody should
10 be alerted to it, advance on it. So I just want to make that so that in the future ...[intervenes]

ADV SELEKA SC: Yes, Chair.

CHAIRPERSON: ...everybody knows what is going to happen.

ADV SELEKA SC: Thank you, Chair.

CHAIRPERSON: Okay, alright, proceed.

ADV SELEKA SC: Thank you, Chairperson. Eskom bundle 17, Chairperson, EXHIBIT U38. That is the bundle we will be using. EXHIBIT U38 contains Mr Molefe's
20 affidavit and it starts on page 5. Mr Molefe, again the black pagination, the top left hand corner. You are there, Mr Molefe?

MR MOLEFE: Yes, I am, sir.

ADV SELEKA SC: Thank you. The affidavit, Chairperson, runs up to page 38. Mr Molefe, please go to page 38. 38,

go to page 38. Yes. So that is the last page of the affidavit. You see the signature there above the name Brian Molefe?

MR MOLEFE: Yes, Chairperson.

ADV SELEKA SC: You confirm that to be your signature?

MR MOLEFE: Yes it is indeed, Chairperson.

ADV SELEKA SC: You confirm this entire affidavit to be your affidavit?

MR MOLEFE: Yes and I also confirm that it was signed on
10 the 13 May 2020.

ADV SELEKA SC: Thank you, Mr Molefe. Chairperson, may I beg leave to have it admitted as EXHIBIT U38.1.

CHAIRPERSON: The affidavit of Mr Brian Molefe starting at page 5 of Eskom bundle 17 is admitted together with its annexures as EXHIBIT U38.1.

AFFIDAVIT OF MR BRIAN MOLEFE TOGETHER WITH ANNEXURES HANDED IN AS EXHIBIT U38.1

ADV SELEKA SC: Thank you, Chairperson. Chairperson, Mr Molefe and I had a friendly discussion this morning and
20 I told him that Dr Ngubane remembers him for his charisma and dance.

CHAIRPERSON: And dancing skills.

ADV SELEKA SC: Ja and he said he will give us a treat but now he took a long time in his address so I will simply go straight to the evidence.

CHAIRPERSON: There will be no time for dancing.

ADV SELEKA SC: Absolutely, Chair. Ja, thank you, Mr Molefe. Ample evidence has been led before us about your secondment to Transnet – I mean, to Eskom from Transnet. Could you tell the Chairperson about – a little bit about when you ...[intervenes]

CHAIRPERSON: Mr Molefe – Mr Seleka...

ADV SELEKA SC: Yes, Chair.

CHAIRPERSON: You see, Mr Masuku. Yes, I think that
10 quite a number of the initial pages of Mr Brian Molefe's affidavit talks about matters that we do not have to deal with.

ADV SELEKA SC: Yes.

CHAIRPERSON: About whether his contract was one for an indefinite period or a fixed term and pension and so on because those matters have been dealt with in litigation.

ADV SELEKA SC: Indeed, Chair.

CHAIRPERSON: So you do not have to deal with those, I think it is sufficient to deal with his secondment.

20 **ADV SELEKA SC:** Yes.

CHAIRPERSON: And when he started at Eskom on an acting basis and when he became – when he was appointed, then to go to the real issues.

ADV SELEKA SC: Yes.

CHAIRPERSON: Ja, okay, alright.

ADV SELEKA SC: Yes. Mr Molefe, so ...[intervenes]

CHAIRPERSON: Because I think a lot of those matters have been dealt with in litigation.

ADV SELEKA SC: Yes.

CHAIRPERSON: But which there has a judgment.

ADV SELEKA SC: Yes, yes. No, I have indicated that much, Chair, the pension payout will not be traversed in his evidence. But, Mr Molefe, you could just before you go into the secondment, just tell the Chairperson your
10 previous employment prior to coming to Eskom. If you do not follow my question you will ask, is it not?

MR MOLEFE: Yes, no, it just occurred to me how far back you wanted to go but ...[intervenes]

CHAIRPERSON: I am sure he just wants the employer before the Eskom employer only.

MR MOLEFE: Yes, yes.

ADV SELEKA SC: Yes.

MR MOLEFE: So I was – I worked in the office of the Premier in Limpopo, under Premier Mangoro(?) Matlhodi(?)
20 as a Chief Director for Strategic Planning. I have worked in the National Treasury as a director in the budget office dealing with provincial budgets and I was promoted again to Chief Director dealing with provincial budgets and then I became – sorry, asset management, Chief Director Asset Management which was actually about state owned

entities, the assets were the state owned entities.

In fact while I was there it was during the time when the PFMA was being written and I was in part of the committee that wrote the parts of the PFMA that relate to state owned entities and I promoted to Deputy Director General, asset and liability management, where we managed the debt, South Africa's debt both in domestic and international capital markets, the issuing of bonds in the domestic capital market and the issuing of bonds in the
10 international capital markets to finance the deficit.

We also did cash management and the Chief Director who was now doing asset management also reported to me, so it was state owned entities and debt management.

And then I was sent to the Public Investments Commissioners at the time as a secretary for the Commission. We started a process to change the legislation to convert the Public Investments Commissioners into a corporation because really the PIC
20 was an asset management company and we wanted to professionalise it and when I was ...[intervenes]

ADV SELEKA SC: When was that, Mr Molefe?

MR MOLEFE: I went to the PIC I think in 2000 or 2001. I was there until about 2008. I was there for seven years. The Public Investment Corporation Act was passed in 2004

and while I was there, we were managing assets – when I joined, assets under management were about R310 billion and by the time I left in 2008, assets under management were about R950 billion, just short of one trillion.

Subsequently, I think about a year after I left, the assets went over one trillion and they stayed about one trillion. And ...[intervenes]

ADV SELEKA SC: After 2008? After 2008 where did you go?

10 **MR MOLEFE:** After 2008 for about a year I decided maybe I was going to do my own thing and do some private transactions by myself.

ADV SELEKA SC: Oh, let me ask you this, when did you join Transnet?

MR MOLEFE: I think it was 2010.

ADV SELEKA SC: 2010?

MR MOLEFE: H'm.

CHAIRPERSON: I think it was 2011.

MR MOLEFE: Was it 2011? Yes, thereabouts, yes.

20 **CHAIRPERSON:** You joined Transnet in 2011, early, I think it may have been February or March or thereabout.

MR MOLEFE: Chairperson, I may make mistakes but I have submitted my CV, which has accurate details.

CHAIRPERSON: Yes, yes, but from ...[intervenes]

MR MOLEFE: I must apologise.

CHAIRPERSON: Yes.

MR MOLEFE: I might have left the PIC in 2009 then and went to Transnet in 2011.

CHAIRPERSON: Yes.

MR MOLEFE: But I remember there was about 18 months where I was just doing gardening.

CHAIRPERSON: Ja. I have read somewhere that you left PIC in 2010. Is that incorrect?

MR MOLEFE: It is possible because at the time when I
10 was leaving the PIC I kept saying to the board that I would like to leave and they kept saying stay for another six months, stay for another three months, stay – my contract had ended.

CHAIRPERSON: But the importance of whether you left PIC 2010 relates to when exactly did you leave because I may have misunderstood you but I thought you said you left PIC in 2008.

MR MOLEFE: Chair, we can go through my CV.

CHAIRPERSON: Oh, okay, alright.

20 **MR MOLEFE:** Which is an annexure and I think it is more accurate.

CHAIRPERSON: Well, you have not worked for too many employers. I would have thought that you would know these things easily because you were just in the Premier's office in Limpopo, you were in National Treasury, you were

in PIC and then after that you were in Transnet.

MR MOLEFE: But we only started there, Chairperson?

CHAIRPERSON: Hey?

MR MOLEFE: That is where we started.

ADV SELEKA SC: That is on page 46.

MR MOLEFE: Sorry?

ADV SELEKA SC: Page 46.

MR MOLEFE: 46?

ADV SELEKA SC: Yes.

10 **CHAIRPERSON**: Using the black numbers on the top left of each – of a page.

MR MOLEFE: 46.

CHAIRPERSON: Ja, the CV starts at page 46.

MR MOLEFE: Yes. 2011, 2015 at Transnet and June 2003 to July 2010 at Public Investments Corporation. I am sorry, Chairperson.

ADV SELEKA SC: On which page?

CHAIRPERSON: Ja, I think I was right, Mr Molefe.

MR MOLEFE: Yes.

20 **CHAIRPERSON**: Page 48 you CV says February 2011 to April 2015 you were Group Chief Executive of Transnet.

MR MOLEFE: Yes.

CHAIRPERSON: Ja, I was right about when you started at Transnet.

MR MOLEFE: Yes, Chair.

CHAIRPERSON: But what we do – what we need to see is when you left PIC.

MR MOLEFE: Your memory is impeccable, Chairperson.

CHAIRPERSON: H'm?

MR MOLEFE: I say your memory is impeccable.

CHAIRPERSON: Not really. I remember some things and I do not remember other things.

ADV SELEKA SC: It is there, Chair.

CHAIRPERSON: But I do not see – I do not know if you
10 deal with PIC here. You should be dealing with it but I cannot immediately see.

ADV SELEKA SC: It is there. It is there, Chair.

CHAIRPERSON: H'm?

ADV SELEKA SC: It is there.

CHAIRPERSON: What page?

ADV SELEKA SC: It has June 2003 to July 2010, Chief Executive Officer of Public Investment Corporation. On the same page.

MR MOLEFE: On page 48?

20 **CHAIRPERSON:** Yes, yes.

MR MOLEFE: Where it says work experience.

CHAIRPERSON: Yes, I can see that, so I think ...[intervenes]

MR MOLEFE: So it starts with Eskom, it goes to Transnet then it goes to PIC.

CHAIRPERSON: Ja, I think I was right also that you left PIC in 2010.

MR MOLEFE: Yes, yes.

CHAIRPERSON: Okay, alright.

MR MOLEFE: That is correct.

CHAIRPERSON: Okay.

ADV SELEKA SC: Thank you, Chairperson. Just by way of a background, Mr Molefe, the Gupta brothers, Mr Salim Essa, have become the highlight of the day and just by way
10 of a background could you explain to the Chairperson, starting first with the Gupta brothers, whether you had – you knew them, you had any relationship with them, of what kind?

MR MOLEFE: I feel like, Chairperson, let me start with Salim Essa because I think it is easier. I actually do not know Salim Essa. I have never met him. I do not know what he looks like. I hear about him.

The Gupta brothers I know and I know all three of them but the one that I know – that I had a lot of
20 interactions with was in fact Mr Ajay Gupta and not his two brothers. And ja, I know Mr Ajay Gupta, I have been to his house. I have been to their house and I have been there on numerous occasions to attend family functions, to have private meetings, a lot of times, so I know them. I know them quite well, especially Mr Ajay Gupta.

CHAIRPERSON: Okay.

MR MOLEFE: So I will not try to say to you that I do not know them.

CHAIRPERSON: Yes, yes.

MR MOLEFE: Like it is fashionable to do.

CHAIRPERSON: Yes, yes, okay.

ADV SELEKA SC: Can you also tell the Chairperson according to your recollection when did you come to know them?

10 **MR MOLEFE:** Chairperson, it is a very long story and – but I believe you have the time.

CHAIRPERSON: I am sorry, I did not hear that first sentence.

MR MOLEFE: I say it is a very long story.

CHAIRPERSON: Oh, okay. Well, will it take five, ten minutes?

MR MOLEFE: No, more.

CHAIRPERSON: Much more than that?

MR MOLEFE: Yes.

20 **CHAIRPERSON:** Okay.

MR MOLEFE: The Commission will go over budget.

CHAIRPERSON: Well, let us first give you fifteen minutes and see whether that will do.

MR MOLEFE: Yes.

CHAIRPERSON: Tell us – yes.

MR MOLEFE: While I was at the PIC I was called by Dr Motsuenyane.

CHAIRPERSON: Dr?

MR MOLEFE: Motsuenyane, Sam Motsuenyane..

CHAIRPERSON: Sam Motsuenyane

MR MOLEFE: Yes.

CHAIRPERSON: Okay.

MR MOLEFE: And he asked me to come to his house on a Saturday afternoon and we sat under a tree and they made
10 us tea and he told me a very long story, long painful story. He said to me that in 1964 an idea occurred to him that part of the problem that African people were not progressing was access to credit and yet they were classified as high risks by the bank and yet the money that was in the banks was theirs because they made deposits.

So he says it occurred to him that maybe what he should do is establish a bank that would be an African Bank. In fact that is what it was called. And he says he went around all the townships and villages in South Africa
20 trying to establish a bank. Trying to establish a bank and there were no hotels there. In fact, the hotels that were there did not take black people in the '60's and the '70's and he slept in people's houses and told them about this idea of establishing a bank and they donated money towards the establishment of the bank, these business

people who owned cafes and butcheries and African people that were not allowed to be involved in manufacturing by legislation at the time.

So it took him 10 years to raise R1 million with which to establish a bank and then when he had raised that R1 million, he says he spoke to the ANC about it and they gave their blessings but also directed him to go to London and speak to Barclays and he did. And Barclays said we will help you and they gave him the R9 million and he came
10 to South Africa and he had R10 million with which to establish a bank.

Now he came to South Africa and had to apply for banking licence from the Reserve Bank and the Reserve Bank did not refuse him, they gave him a banking licence with Barclays but put onerous conditions including the board membership of the bank and all sorts of things. It was incidentally headquartered in Ga-Rankuwa, which is where I am from and I remember it very well, it was in Zone 16, next to the cinema there, Makoko(?)

20 So he says because of the conditions of the Reserve Bank the bank struggled. For example, they were not allowed to open current accounts and yet their clients were business people from the township. They had to come and withdraw cash to go to Makro – to Metro and to Makro every Friday to buy stock. So they could not just go

and sign cheques there and it was very painful experience under the supervision of a very hostile Reserve Bank at the time.

But a long story short, Chairperson, his point was Molefe, you are now CEO of the PIC, it controls so many billion rands, the Governor of the Reserve Bank is a black man who comes from the ANC and the ANC is in power, the ANC that had bought into this idea in the first place in the '70's and [indistinct – speaking African language] which
10 means [indistinct – speaking African language], what is so difficult for you guys?

And, Chairperson, that was also a very, very – I took those words to heart and I went back to the PIC and I think it was ...[intervenes]

CHAIRPERSON: He was saying in effect look what I did under very difficult conditions.

MR MOLEFE: Exactly.

CHAIRPERSON: With hostility coming from the Reserve Bank and it was apartheid government, now you have an
20 ANC government, you have the ANC here, you have a governor of the Reserve Bank who has the background of the ANC, he is black ...[intervenes]

MR MOLEFE: The president of the ...[intervenes]

CHAIRPERSON: The conditions are – should be much more easier for you to achieve these things.

MR MOLEFE: Exactly. To achieve this thing, to capture the saving of African people.

CHAIRPERSON: Yes, yes.

MR MOLEFE: With the purpose of reinvesting them. Reinvesting them, to advance and improve the conditions.

CHAIRPERSON: He was saying what is your problem?

MR MOLEFE: He says – ja. Actually, he did not say what it is - [indistinct – speaking African language]. I think what is your problem is mild. [indistinct] is [indistinct].

10 **CHAIRPERSON:** Ja, why are you failing?

MR MOLEFE: Why are you failing?

CHAIRPERSON: Yes.

MR MOLEFE: Yes, yes. So, Chairperson, I mean, it gave me sleepless nights and I came back and thought about this thing. At about the same time there was a rumour that Nedbank is for sale and I decided that maybe what we should do is take Nedbank and transform it into this bank that Mr Motsuenyane was talking about.

20 So I mulled over the idea. I contacted Nedbank, it is owned by Old Mutual. They confirmed that Nedbank was indeed for sale. They had advised we were supposed to oversee the sale, expressed my interest and they agreed and they said but Molefe, can you raise the capital? I said I will try. And I left the PIC to go on this mission and I went to London to speak to people there about doing this

and I even thought of maybe we could buy some other banks like Standard – not Standard Bank, the one that is outside South Africa.

ADV SELEKA SC: Ja, while Mr Molefe is thinking, Chair...

MR MOLEFE: Ja, I remember it now, but it is Standard something. But, anyway ...[intervenes]

ADV SELEKA SC: Mr Molefe, sorry. I was saying to the Chairperson while you are thinking I must remind you that your pilot experience and estimation of time should not fail
10 me.

MR MOLEFE: But the Chairperson just gave me...

CHAIRPERSON: Ja.

MR MOLEFE: Ja. But, Chairperson, in South Africa there was a family that had come from India, had established themselves as business people and had opened a computer company and – well, I heard that they were doing quite well and I went to them and I asked, if one wants to establish a bank, what – where can one get the capital? How can one raise the capital to establish such a bank?

20 And they said that is very interesting. You know, in India we have banks that are Indian-owned, that our banks like Bank of Baroda and several others, let us speak to some people in England – I mean, in India, to see if they will be able to assist and they did.

I am not sure if I should mention who they spoke to

but they spoke to one of the richest people in India. I met him. I am just reluctant to release his name now. And he agreed and he said we will do the deal.

After five minutes of discussion, he said I will help buy a bank. I was happy, I was elated. And we went to the Reserve Bank with this person and the Guptas and Mr Ajay Gupta. And we got to the Reserve Bank and banking supervision said no, we cannot allow this to happen, Nedbank cannot be sold, we have already sold Standard
10 Bank to the Chinese. We have already sold ABSA to the English.

I remember when the Barclays Bank came to the PIC, when I was CEO, to say that they would like to buy ABSA and I said to them I did not think that the Anglo Boer War would end like this.

Any anyway, but then the Reserve Bank was reluctant to proceed and with the Reserve Bank reluctant to proceed – the Governor was Mr Mboweni. I do not know if I am implicating him, but he was Mr Mboweni. And I
20 even saw him – we had a code for this. If you ask him what is the Groblersdal minute, he will tell you what it is. It was about a black bank, it was about buying Nedbank.

So it was turned down by the Reserve Bank, so we did not proceed and so I was left – then I thought I would establish a property company. I spoke to Investec and

they were prepared to help in however way they could help.

And then one day ...[intervenes]

CHAIRPERSON: Do not speak too far away from your mic.

MR MOLEFE: Yes, Chair.

CHAIRPERSON: Ja, okay.

MR MOLEFE: And then one day I got a call. Not from the Guptas, from a head-hunter called Brian – now I am talking – what am I – I am talking about Transnet now. Oh, how I
10 know the Guptas. Okay, that is how I know them, Chairperson. That is - why now I am going to Transnet. Now I am going to how I went to Transnet.

CHAIRPERSON: Yes.

MR MOLEFE: But that is how I got to know them. We were doing this deal.

ADV SELEKA SC: Yes.

MR MOLEFE: And right through the years, Chairperson, we never stopped talking about this bank. And even up to today, I am still talking about it. And even up to today, I
20 am still on that mission, Chairperson, of Dr Motsuenyane. Hopefully before he passes on we can make him proud.

CHAIRPERSON: H'm Mr Seleka?

ADV SELEKA SC: Thank you, Chair. So the interaction with them, it is a while back when you were at PIC and it seems in that process, as you say, you came to know them

very well. Yes. But just keep your microphone on.

MR MOLEFE: I can also mention that while I was at the PIC they also tried to do deals there.

ADV SELEKA SC: They also tried to do deals there.

MR MOLEFE: Ja, at the PIC.

CHAIRPERSON: Please look this side so I can hear.

MR MOLEFE: They tried to do deals with PIC, they submitted funding applications.

CHAIRPERSON: Yes.

10 **MR MOLEFE:** And they were not approved while I was there.

CHAIRPERSON: Yes, yes.

MR MOLEFE: There is not a single deal that they did with the PIC when I was there.

ADV SELEKA SC: Yes.

CHAIRPERSON: Are you able to remember when it was you started interacting with them while you were at PIC? From around which year?

MR MOLEFE: Chairperson, maybe around 2007/2008.

20 **CHAIRPERSON:** Ja, okay.

MR MOLEFE: As you have seen, I cannot even remember my own life.

CHAIRPERSON: Okay. No, that is fine.

MR MOLEFE: Ja.

CHAIRPERSON: We will not hold you to it, ja, okay,

continue.

ADV SELEKA SC: And talking about deals, sorry I am just going out of sequence a bit but we will come to it, talking about deals Mr Molefe we know that at least that at Eskom Tegeta reach was having links with the Gupta Brothers.

MR MOLEFE: Yes.

ADV SELEKA SC: They would get deals at Eskom.

MR MOLEFE: They did.

ADV SELEKA SC: They did.

10 **CHAIRPERSON:** I am sorry Mr Seleka, I know I am interrupting you, before you get to Tegeta let me ask some question to Mr Molefe. So you started interacting with the Gupta Brothers, Gupta family around 2008, that's your estimate, 2007/2008 you are not sure.

MR MOLEFE: Yes.

CHAIRPERSON: And you said earlier on you have been to their house and I think you said many times, is that right?

MR MOLEFE: Pardon?

CHAIRPERSON: I think you said many times is that right?

20 **MR MOLEFE:** Yes, several times.

CHAIRPERSON: Several times.

MR MOLEFE: Ja, over the years I have lost count and I saw nothing wrong or abhorrent in going to their house. I saw them Chairperson as people in South Africa who enjoy the right that are in our constitution.

CHAIRPERSON: Yes.

MR MOLEFE: I had no reason to treat them like lepers.

CHAIRPERSON: Yes, yes.

MR MOLEFE: And as people pretend that they be at the time when they met them for the first time. It was a normal relationship that I had with people that I had approached and who had received us warmly to say let's talk about establishing this institution. They were foreigners that had come to South Africa but were prepared to buy into the vision of a bank that would belong to Africa. They were
10 prepared to buy into the vision of taking that bank and making it a bank of Africans.

CHAIRPERSON: Yes.

MR MOLEFE: Or like the African Bank has been the vision of Dr Muzinyane and a lot of our own South African business people did not buy into that vision. I don't want to go into names but I actually have spoken to a lot of people who thought that look they ...[intervenes]

CHAIRPERSON: No that is fine. I assume that as the
20 years went by from around 2007 to 2008 when you started interacting with them did your relationship with them get stronger, did you get closure in terms of the personal relationship or professional, whatever it was?

MR MOLEFE: Ja, I can't say close, it depends on how you define close.

CHAIRPERSON: Yes of course.

MR MOLEFE: But there were people that I knew
...[intervenes]

CHAIRPERSON: You interacted with them.

MR MOLEFE: That I interacted with, where I tried to do
this thing and had not succeeded and the vision was kept
alive.

CHAIRPERSON: Yes.

MR MOLEFE: Even when the Reserve Bank turned us
10 down we said, I said to them that it does not mean that we
must give up, and whenever there was information we
would discuss it, for example Bank of Baroda at some point
became our target. It operates very successfully in
Tanzania and in fact I have paid a lot of visits to Tanzania
and I just made it my business to see some of the branches
of Bank of Baroda in Tanzania. There was another one
that operates out of Togo, it is Eco Bank in Togo. That one
in fact Chairperson Nedbank they asked me if you became,
if you bought this bank and you became CEO of the Bank
20 what would you do? I said you know what your problem is
as Nedbank, and now I realise that I was naive because I
gave them a very important strategic thing that I had
thought about, and it was even before we did the deal.

I said the biggest bank in Africa with the widest
reach is actually Eco Bank, it has more branches than any

other bank in South Africa. It started in Nigeria, most of its operations are in Nigeria, its headquarters is in Lome, I don't know if you have ever been to Lome Chairperson, it is a very interesting place.

You see this market in town where they sell African traditional things, what is it called, *maimai*[], there's a big one there where they sell all sorts of things, but anyway I went there and I saw it, the head office, I didn't go inside, it is just from outside and it is a very impressive operation
10 but the problem with it is that their operations have not modernised, so there may be the bank with their ...[indistinct] of branches, but they don't have the – at the time the issue was there's AGMS's and now it will be ...[indistinct] ja, so they were not moving with the times.

So I thought that if you are Nedbank and you buy Ecobank and you modernise it with a reach on the whole continent you have done something very big and the deal didn't happen with Nedbank but Nedbank went and bought Ecobank but then they didn't do what needed to be done.
20 They also did other things, Nedbank at the time only the country they were only in Lesotho and Namibia, and I thought what is your reluctance to go outside of South Africa. Well of course we know the reason, the reason is because Nedbank actually is a Nederlandsche Bank, it came from the Netherlands and it was an Afrikaner Bank

for a very long time and perhaps that is why they never left South Africa, but they bought Ecobank with the PIC after I had left, so we would meet with the Guptas and talk about this, and say look at what your friends are doing, Baroda, so-so and so on and so forth, ja, so we would discuss ...[intervenes]

CHAIRPERSON: Ja.

MR MOLEFE: ...issues, most of the time not relating to Transnet or Eskom actually.

10 **CHAIRPERSON:** Okay, Mr Seleka?

ADV SELEKA SC: Thank you Chair. Mr Molefe being so far as Mr Salim Essa is concerned I did say that I will ask you this question about Mr Hank Bester.

MR MOLEFE: Yes, yes.

ADV SELEKA SC: Remember Mr Hank Bester says he had a meeting in 2014 with Mr Salim Essa.

MR MOLEFE: Yes.

20 **ADV SELEKA SC:** And during the course of that meeting Mr Salim Essa said to show you how powerful we are, or something to that effect, we have decided that Mr Brian Molefe is going to be the CEO of Eskom.

MR MOLEFE: Yes.

ADV SELEKA SC: That is 2014 before the announcement for your secondment ...[intervenes]

MR MOLEFE: In 20?

ADV SELEKA SC: 2014.

MR MOLEFE: 2014, yes.

ADV SELEKA SC: Yes. So how is it that he knew you and you say you didn't know him based on that instant.

MR MOLEFE: Mr Salim Essa?

ADV SELEKA SC: Yes Mr Salim Essa and you can tell the Chairperson what you said you are going to say.

MR MOLEFE: What I said?

ADV SELEKA SC: What you say will be your response to
10 that question.

MR MOLEFE: Yes Chairperson I was sitting at Rocco Mama's ...[intervenes]

CHAIRPERSON: At?

MR MOLEFE: Rocco Mama's, you know Rocco Mama's Chairperson.

CHAIRPERSON: Mmm.

MR MOLEFE: It's happening there, it is not a shebeen but ... it is a restaurant it sells very nice hamburgers, and not far from my table there were two Indian ladies.

20 **ADV SELEKA SC:** Is that in 2014.

CHAIRPERSON: You say it is Indian ladies?

MR MOLEFE: Hey?

CHAIRPERSON: Did you say Indian ladies?

MR MOLEFE: Yes.

CHAIRPERSON: Okay.

MR MOLEFE: Yes, I think they are sisters, from the way that they looked, but I could overhear their conversation and one of them kept saying that Mr Zondo is going to be the next Chief Justice. I just think it would be unfair to ask you to comment on that, it is exactly the same thing.

CHAIRPERSON: No, no.

MR MOLEFE: And that Mr Seleka will be the Deputy Chief Justice [laughing].

CHAIRPERSON: No, no there is nothing wrong in being –
10 in say look I can't comment, I don't where he got that information from, if that is – ja, there is nothing wrong with that if you don't know, but if you – you may well have an idea where he might have got that from in which case you will say, but when you have no idea you have no idea.

MR MOLEFE: So you also don't know?

CHAIRPERSON: Hmm?

MR MOLEFE: So you also don't know where they got it from?

CHAIRPERSON: What? [laughing]

20 **MR MOLEFE:** No I don't know Chairperson where that conversation came from, where it was going, I was not there, I don't know Mr Salim Essa, I have never met him.

ADV SELEKA SC: Yes.

CHAIRPERSON: Did you know people that know him from whom he might have got that information as far as you

know or you have no reason to think that he got it from anybody that you knew?

MR MOLEFE: No, I actually Chairperson I don't know where he got that from.

CHAIRPERSON: You don't know where, ja.

MR MOLEFE: It is just like a lot of the rumours that go around and round and round. In fact it is not something that I would normally apply my mind to and worry about and fret about and try to find out where it came from, 10 because it is just a – it happens every day Chairperson that somebody has, somebody was told in the corridor or a house, a strange house that he doesn't know that – about me, and he doesn't even know who that person is. I don't attach a lot of weight to ...[intervenes]

CHAIRPERSON: No, no that is fair enough, part of the reason why Mr Seleka is asking is that so that if you do know something you can share it. If you don't know you don't know, but I think we may as well mention this even though it might relate to Transnet and you might be able to 20 deal with it, you might – if you say you would prefer to deal with it when you come back and deal with Transnet that would be fine.

MR MOLEFE: No, no.

CHAIRPERSON: And I want to say you would know I assume that in 2010, December the New Age, which was a

newspaper owned by the Guptas ran an article, had an article, I don't know if it was December 6 or December 10 2010 which was either saying Mr Brian Molefe is going to be the next Group CEO of Transnet or the next boss of Transnet or whether it was simply saying it is likely that Mr Brian Molefe is going to be the next Group CEO of Transnet.

MR MOLEFE: Yes.

CHAIRPERSON: Have you heard about that article?

10 **MR MOLEFE:** Yes, yes I heard about it, I also heard the talk about it here.

CHAIRPERSON: Yes, yes, you don't know where they got that information from?

MR MOLEFE: I don't know but did they say in the article where they got the information?

CHAIRPERSON: Sorry?

MR MOLEFE: Did they say in the article where they got the information from?

20 **CHAIRPERSON:** I have read the article if I recall correctly, but I cannot remember whether – probably I don't think they would say, they might say certain reliable sources had told them.

MR MOLEFE: Did the article say who it was written by?

CHAIRPERSON: I am sure it should show, the – I think the legal team can just make arrangements to make a copy

of that article available to Mr Molefe.

MR MOLEFE: No, I know about it, the point that I was trying to make is did the Commission therefore ask the person who wrote the article where did you get that information?

CHAIRPERSON: Well the Commission investigations are ongoing, but the – what I wanted you to be able to say something about if you are able to, is to say we have a situation where it seems in 2010 a newspaper that is
10 owned by the Gupta family or their entities seems to predict that you are going to be the next Group CEO of Transnet and it actually that does happen and then in 2014 according to Mr Hank Bester who gave evidence here he meets with Mr Salim Essa on some issue relating to Transnet, business or contract, and Mr Salim Essa wants Mr Bester's company to work with his company and according to Mr Bester in an attempt to show that they, I assume Mr Salim Essa and whoever else he was talking about, are powerful people, he decided to tell him that you
20 know we know that the – Mr Brian Molefe is going to be the next boss of Eskom and in less than a year that does happen, so you might say look I don't have a comment, I don't know where that came from, that is fine, but it is fair to just say there is this, do you have something to say about, do you know anything about it.

MR MOLEFE: No I don't know anything about it, I did hear about the article at the time, in fact I was out of the country and ja, and somebody just came to me and said hey have you seen what is on social media, and then I said I don't know what this is all about and it was the end of the matter as far as I am concerned.

CHAIRPERSON: Ja, okay. Mr Seleka?

ADV SELEKA SC: Thank you Chair. Mr Molefe let us deal with your secondment because it has also come up
10 here a couple of times from – your secondment from Transnet to Eskom. Tell the Chairperson how did that come about, who approaches you, and what did they say to you?

MR MOLEFE: Chairperson in regard ...[intervenes]

ADV SELEKA SC: I am giving you two minutes.

CHAIRPERSON: Keep your mic on Mr Molefe, ja just put it on.

MR MOLEFE: As you can see Chairperson I am very eager to help your Commission.

20 **CHAIRPERSON:** I didn't hear that.

MR MOLEFE: I said as you can see I am very eager to help the Commission.

CHAIRPERSON: [laughing] yes.

MR MOLEFE: Chairperson as you remember in 2014/2015 the country suffered debilitating load shedding. It was so

bad Chairperson that one day I went to a bank and I wanted to go inside the bank at Irene Mall, which is a small mall and I found the bank manager, the Standard Bank bank manager, standing outside the bank and he said sorry the bank is closed. I had never imagined that South Africa could come to that, that on a weekday, I think it was a Wednesday ...[intervenes]

CHAIRPERSON: I assume it was closed because of load shedding.

10 **MR MOLEFE:** Load shedding, it was in the middle of load shedding, the bank was closed, around ten/eleven in the morning on a week day, the bank manager was standing outside the bank and said the bank is closed and I was at Transnet, we were trying to ramp up the transportation of coal to Richards Bay because of the backlogs and so on and so forth, with electric locomotives.

20 There was a time when we were running about 36 trains on the coal line to Richards Bay, scheduling them 36 trains in about 24 to 30 hours, that's a lot of trains, electric trains and it takes time and planning to schedule trains like that and it takes weeks for us to add a train, add a train, add a train, until you arrive at the point where you are running about one train every 45 minutes to Richards Bay, and then there would be load shedding on part of the line and the whole systems collapses and it takes three to four

weeks, maybe even more, six weeks to get the scheduling going on again.

So it really frustrated me on all sorts of levels and then one day during a function at I think at the Port of ...[indistinct] Minister Brown said if we asked you to go to Transnet would you go ...[intervenes]

CHAIRPERSON: Transnet or Eskom?

MR MOLEFE: Sorry Eskom, Eskom, eish, sorry Chairperson, my life is a ... if we asked you to go to Eskom
10 would you go.

ADV SELEKA SC: Who asked you?

MR MOLEFE: Minister Brown.

ADV SELEKA SC: Minister Brown, Lynne Brown?

MR MOLEFE: Lynne Brown yes, and I said yes, and she said okay and then a couple of days later, or maybe a week or so and she called back and said okay we are activating that.

CHAIRPERSON: She called back and said?

MR MOLEFE: We are activating it.

20 **CHAIRPERSON:** Okay ja, your move to Eskom.

MR MOLEFE: Yes and they said that's fine, and then so I was aware that she was working on it, so she would have done the communications to the Board and so on. We spoke, actually between me and her on this matter we spoke very few words. She asked and I agreed, there was

no long debate and so on and from my side it was like South Africa is really collapsing, the bank is closed at ten o'clock in the morning or at eleven o'clock in the morning and I saw the devastation on the rail line and I thought about what I was doing at Transnet was important, the implementation of the market demand strategy but I felt hey Eskom is more serious, if I can help there I should go there, and they activated it, she spoke to the Boards, one day I was on my way to Cape Town and I remember it was
10 a Friday afternoon, no Thursday afternoon. I had been invited to speak as a guest at a graduation ceremony of I think it was the Technikon, the Technikon in Cape Town, Western Cape Technikon, I don't know what they call it now and I said – well she said where are you, I said I am at the airport, I am going to Cape Town. She says don't go, we are making the announcement tomorrow. And I called Mr Caso Qiqwa[?] who was the CEO of Transport Port Terminals and I asked my PA to email him my speech at the graduation and asked him to go to Cape Town and deliver
20 that speech, he was in Durban and then I stayed and she said tomorrow morning at ten o'clock you must be at Eskom, on Friday and then she made the announcement.

CHAIRPERSON: We know that she made the announcement I think on the 17th of April 2015.

ADV SELEKA SC: Yes that is correct.

CHAIRPERSON: Yes, so even if you don't remember the exact date when she – that is now Minister Brown, raised this issue with you for the first time, how long before the 17th of April do you think it was how much time lapsed between the time when she raised it for the first time with you and the end when it was announced?

MR MOLEFE: Probably a week or a week and a half, something like that.

CHAIRPERSON: A week or a week and a half.

10 **MR MOLEFE:** A week and a half ja, since she raised it with me.

CHAIRPERSON: From what you say it looks like she was the first person to mention the possibility of you moving to Eskom.

MR MOLEFE: Yes, and she managed the process of communicating to the Boards, that the Boards had taken their proper decisions and this was done and I think in one – either one or both of them it was an *ex poste* approval which ...[indistinct] but the – and then there was a proper
20 agreement that was signed and I went to Eskom.

CHAIRPERSON: Is your – would it be fair to say your understanding was that she managed the whole process of your move from Transnet to Eskom.

MR MOLEFE: Yes.

CHAIRPERSON: Okay.

MR MOLEFE: And Chairperson she was the shareholder of both companies, representative shareholder, 100% shareholding ...[indistinct] and they belong to the government, so if government said look you must move from here to there to help there at the time she said you will come back to Transnet, it's just an appoint just to – there are certain things that I don't understand at Eskom. For example she says they are telling me that they cannot pay salaries in two months, Matsietsi Mohkolo repeated it
10 yesterday that at that time they were not going to be able to pay salaries.

CHAIRPERSON: Ja, okay, thank you. Mr Seleka?

ADV SELEKA SC: Thank you. Mr Molefe during that time did you know or even prior to that time did you know Dr Ngubane?

MR MOLEFE: No I did not know Dr Ngubane before I got to Eskom, I know about him, in fact he was the ambassador to Japan and ...[intervenes]

ADV SELEKA SC: Face the Chairperson.

20 **MR MOLEFE:** Sorry.

ADV SELEKA SC: Face to the Chairperson.

MR MOLEFE: Yes, yes, sorry Chairperson. He was the ambassador to Japan and I think I am not sure if my memory ...[intervenes]

CHAIRPERSON: He was a cabinet minister at some stage

before that as well.

MR MOLEFE: He had been a cabinet minister
...[intervenes]

CHAIRPERSON: ...[Indistinct – speaking simultaneously
and at some stage.

MR MOLEFE: Ja, I can't remember if he was still
ambassador but we went there and we did a deal.

CHAIRPERSON: In Japan?

MR MOLEFE: Ja, a Japanese Yen deal.

10 **CHAIRPERSON:** While he was ambassador.

MR MOLEFE: While he was, so we did a deal in the
market for South Africa, South Africa issued a Yen bond
and we went to Japan to sell the bond to Japanese
investors. I think I may have been with Ms Makato, she
was the head of foreign funding, and while he was there,
while we were there doing the deal as a delegation
representing the South African government he hosted us. I
mean that was the first time that I had actually interacted
with him closely and then for many years I never interacted
20 with him until Eskom.

ADV SELEKA SC: What name did you use, the first time
you interacted with who?

MR MOLEFE: Dr Ngubane.

ADV SELEKA SC: Oh is that the name you used, I
thought you used a different name.

MR MOLEFE: No, I don't know his name ...[indistinct – laughing]

ADV SELEKA SC: The reason I am asking is because Ms Matsietsi Mohkolo says prior to the decision being made for you to be seconded the Minister, Minister Lynne Brown, gets called to a meeting at Eskom with Dr Ngubane. At the time he is an acting Chairperson of Eskom Board. In that meeting when they arrived, that is the Minister and Ms Mohkolo, they find the Chairperson of Transnet, Ms Linda
10 Mambaso, they find Dr Ngubane, and Mr Sithemba Khoza who was at the time the Acting CEO.

MR MOLEFE: Yes.

ADV SELEKA SC: And according to her impression the person who introduces the idea of your secondment to Eskom is Dr Ngubane, so that is the reason I am asking you did you know Dr Ngubane at the time?

MR MOLEFE: I cannot comment on that meeting Chairperson, I do not know anything about it, I wasn't there, in fact I was away ...[intervenes]

20 **CHAIRPERSON:** I think Mr Seleka you may have understood her evidence like that, but I understood her – I think I understood her to be saying at the meeting the person who raised the subject was Dr Ngubane which I didn't necessarily understand to be – to say there may not have been discussions prior to that meeting which he might

have known nothing about.

ADV SELEKA SC: Yes.

CHAIRPERSON: Ja.

ADV SELEKA SC: Yes, no that is a fair assessment
Chair because I must also say in addition to that
Chairperson the same question was put to Dr Ngubane and
Dr Ngubane said this was a follow-up meeting according to
him, so there was a meeting before and this was a follow
up meeting. According to Dr Ngubane it was the Minister
10 who asked him to second you, who suggested that you be
seconded to Eskom.

CHAIRPERSON: Yes, yes, I think Dr Ngubane's evidence
seems to be consistent with Mr Molefe's evidence.

ADV SELEKA SC: Correct.

CHAIRPERSON: Because Mr Molefe says the first person
who raised this issue with him of moving to Eskom was
Minister Brown.

ADV SELEKA SC: Yes.

CHAIRPERSON: Dr Ngubane said that the idea that Mr
20 Molefe should be moved to Eskom came from Minister
Brown.

ADV SELEKA SC: Minister Brown.

CHAIRPERSON: So ...[intervenes]

MR MOLEFE: Yes.

CHAIRPERSON: ...I think that's consistent ja.

MR MOLEFE: Ja, but Chairperson I was referring to my consciousness for the first time I got to know it is when the Minister literally calls me aside during a function with many people and we speak in low tones, and she says would you go to Eskom. It didn't take three minutes and that was it so I don't know what happened before and after.

CHAIRPERSON: Ja, no, no, no that is fine, ja, ja.

ADV SELEKA SC: No that is alright. Ja, because just for your information, I am not – you may comment or you
10 may not be able to, you see how the dots connect it is because the central figure – you're laughing – the central figure in this is Mr Salim Essa who as we have already indicated to you the evidence of Mr Hank Bester in 2014 who says this is what Mr Salim Essa said, we have already decided that Mr Molefe will be the CEO of Eskom. Then you have on the 10th of March 2015 when Ms Suzanne Daniels ...[indistinct – word[s] cut off] Melrose Arch. Mr Salim Essa introduces himself as the Minister's advisor to her and that refers to Minister Lynne Brown.

20 Then you have again the involvement of Mr Essa when Mr Tsotsi does the composition of the sub-committees of the Eskom board. That Mr Essa proposes to him who should be on those sub-committees and Minister Lynne Brown gives Mr Tsotsi the same names or list of names that had been received from Mr Salim Essa.

And Mr Tsotsi is called to the Minister's office where according to him he finds the Minister with Mr Tony Gupta and Mr Salim Essa and the Minister insists on a particular list for the composition of the sub-committees.

So when the Minister then comes to you it seems that there is more than just the Minister behind the decision for your secondment. You may want to comment or you have no comment? I am just painting the picture to you.

MR MOLEFE: I am tempted to comment. Chairperson if you
10 can observe events some of them imagined some of them
real and you observe them either in your head or outside
happening. And then you decide that you would like to paint
a picture. You can paint any picture.

These thoughts these mythical thoughts can be construed from anything. Related events or unrelated events. You can take things that happen – that happen in a particular way as a result of coincidence – that happen in – I am telling you that I do not know about these meetings. I do not know Mr Salim Essa.

20 **CHAIRPERSON:** Yes. Yes.

MR MOLEFE: And yet you take all these events that were happening. Well I can even ask – I mean on the day that Mr Bester and Mr Salim Essa had that meeting was it raining? And was the fact that it was raining part of the dots? Or was it a full moon? Or anything can be connected to anything

Chairperson.

CHAIRPERSON: Hm.

MR MOLEFE: People who come here and say they are connecting a dot and then as I am sitting here I can look at the sky and imagine a lion and actually connect the dots between the different stars – the stars at night. You can see a lion if you look very carefully if you connect the dots.

So Chairperson I – in law there was a – I do not know I had never studied law. I know a lot of people who did but I
10 did not. But there is a theory of causation. What – if somebody wakes up in the morning and starts by going to the bathroom and comes back and sleeps in the kitchen what was the cause of that? Is it the fact that they woke up and went to the bathroom but because they – so you can connect the dots to anything and in fact this – this is a matter actually in law that is dealt with quite extensively about the theory of causation.

You cannot go and find all sundry events and try to connect them and find causation.

20 **ADV SELEKA SC:** Okay.

MR MOLEFE: I think they call it the theory of causation. Approximate causation not all the events that were happening in a restaurant in Melrose Arch for a discussion that people had on a rainy Sunday evening and say that it is – you know I even think that day maybe somebody got to a

traffic light and caused an accident.

ADV SELEKA SC: Yes.

MR MOLEFE: You could say that it was because of that discussion.

ADV SELEKA SC: I think it is very [00:04:36] of the – your response that you were not in those meetings.

MR MOLEFE: Yes I was not in those meetings.

ADV SELEKA SC: Ja.

MR MOLEFE: Let us leave it there Chairperson.

10 **ADV SELEKA SC:** Ja. I think...

MR MOLEFE: I think we can ignore the fact that I tried to venture into the law.

CHAIRPERSON: Ja. No, no, no but you remember we spoke about perspectives even if it is the same facts. Part of this is for you to be able to say well I do not know about this and that but there is a flaw in this risk game when you try to connect this and this and this as I see it. So I was not there but this does not connect. So that perspective. But if you say look I do not think that this means anything really. I

20 mean that is - that is fine.

MR MOLEFE: I think therefore Chair my comment to be fair Mr Seleka.

CHAIRPERSON: Ja.

MR MOLEFE: Is to say that I note that you are talking about events that happened; that I was not aware of most of them.

They may or may not be for me a picture. I cannot – have not definitively said and I do not think anyone can say that there is a picture that you draw from events that are carefully selected to paint the picture.

ADV SELEKA SC: Yes. No thank you Chair. Yes...

CHAIRPERSON: Well maybe we for the sake of completeness we may as well also mention this and if you have got something to say you can use the opportunity to say if you really have nothing to say you can – you do not
10 have to say anything that in – according to Mr Mcebese Jonas.

MR MOLEFE: Yes.

CHAIRPERSON: Ja he gave evidence in the commission and said he had a meeting at the Gupta residence on the 23 October 2015.

MR MOLEFE: Yes.

CHAIRPERSON: He said Mr Duduzane Zuma was in that meeting, Mr Hlongwane was in that meeting – Fana Hlongwane and he said there was a Gupta brother that was
20 there. I think initially he said it as Mr Ajay Gupta but I think later on he said he was not sure about whether it was Mr Ajay Gupta or one of the other brothers.

MR MOLEFE: So he does not know who said it?

CHAIRPERSON: But what did emerge through the investigation of the commission I think is that – and I think

Mr Duduzane Zuma accepted is that Mr Tony Gupta was in the house on the day of that meeting. But Mr Duduzane Zuma and Mr Hlongwane their version is Mr Tony Gupta was not part of the meeting he popped in at some stage and wanted to speak to – to Mr Duduzane Zuma. But he was not part of the meeting.

But Mr Jonas was adamant that there was a Gupta brother who was having a meeting with him. He said the two namely Duduzane Zuma and Mr Hlongwane were quiet most
10 of the time. It was just that Gupta brother and himself were talking.

One of the things that he said they – the Gupta brother said was that:

1. Mr Ntlantla Nene was going to be fired as Minister of Finance because he was not cooperating with them or not working with them or something to that effect and we do know that about six weeks later Mr Nene was fired as Minister of Finance.

And then he according to Mr Jonas he wanted him to
20 agree to take the job of being Minister of Finance of offered him some money.

But one of the things that he says the Gupta brother who he says was talking to him that he said was that there were certain people that they were working with and among those he mentioned Ms Lynne Brown and he mentioned you.

And according to Mr Jonas the Gupta brother who was there said among other things that Mr Brian Molefe's or Brian Molefe's career is well taken care of. I am using my own words something to that effect.

So there is – there is that as well. You might say, look

1. I was not in that meeting. I do not know what they were talking about. I do not have any comment. Or I do have some comment.

10 But I just want to make sure that you are aware that there is this evidence that Mr Jonas gave and if it is something that you had not looked at and you would rather deal with it later when you come back that is fine as well.

But if you say look I have no comments about it that is also fine.

MR MOLEFE: Chairperson the evidence of Mr Jonas he says he was at that house I think I remember that he said somebody was in the passage – he met in the passage. He does not know who that person is. Even as you are
20 describing now he thought it was so and so but then maybe it could have been so and so as well. And that person who he does not know said we are taking care of Mr Brian Molefe's career.

Now the weight of that evidence is very – is light it cannot be heavy – it cannot have a lot of – even though this

is an inquiry and this inquiry can accept hearsay because that is what it is it is hearsay.

Even though it is an inquiry that can accept hearsay but the quality of that hearsay is actually very bad. Because he does not know who he heard it from in the first place. And he says that he – I think he even said that that person was not part of the meeting.

CHAIRPERSON: Well he said the Gupta brother was part of the meeting.

10 **MR MOLEFE:** Now the person who said that – who talked about me was not part of the meeting.

CHAIRPERSON: Sorry.

MR MOLEFE: He said the person who talked about me was not part of the meeting.

CHAIRPERSON: No, no, no. The person that Mr Jonas said said these things about you was the Gupta brother that he said he was having a meeting with.

MR MOLEFE: Oh I thought he said it was somebody who was passing on the passage.

20 **CHAIRPERSON:** No, no.

MR MOLEFE: Okay but I – I cannot comment on it. I deny that there is any Gupta person was responsible for my career. I was responsible for my career and – and that especially because that hearsay evidence is not even corroborated by anyone. Nobody else overheard what they

were saying or came here to say that we are taking care of Mr Molefe's career.

I do not know whether it happened or that Mr Jonas is remembering it wrong or it is just a figment of his imagination or that he cannot distinguish it from something that he dreamt to something that really happened.

I do not know but I can tell you now as under oath as evidence that there was no Gupta brother that took care of my career.

10 **CHAIRPERSON:** Yes. I do not want to – to say took care but – of your career but I think in my recollection of Mr Jonas' evidence is that it was something like your career is taken care of. Maybe not necessarily by them but your career is – you will be fine in terms of career.

But let us complete the whole thing because we have now talked about it. I mean I do not know what finding I will make about Mr Jonas' evidence and Mr Duduzane's evidence and Mr Hlongwane's evidence about that meeting. What I will ultimately find to be the case.

20 But if I were to find that indeed Mr Jonas was told these things by a Gupta brother in that meeting and he was made the offer that he said he was made that if he agreed to be Minister of Finance and work with them bla, bla, bla it may well be that the – and the fact that that Gupta brother seems to have known in October already that Minister Nene

was going to be fired as Minister of Finance.

It may well be that it would be reasonable to say it looks like the Gupta brothers were looking to get a Minister of Finance for the – for the government who would meet with their approval.

And I have heard evidence about Mr Van Rooyen who was appointed as Mr Nene's successor. He has given evidence here as well. He indicated the number of interactions that he had with I think one or other of the
10 Gupta brothers between October and December before he was appointed and there has been evidence about the advisors that he appointed that is Mr Van Rooyen.

And there is the investigation of the commission led it to ask some of the people who were officials of the ANC in March 2017 I think that is when Mr Gordhan was fired as Minister of Finance.

MR MOLEFE: Hm.

CHAIRPERSON: Asked what reasons Mr Zuma may have told them why he was firing Mr Gordhan and they filed
20 affidavits Mr Mantashe, Dr Zweli Mkize was Treasurer General at the time. Mr Mantashe was SG and Ms Jessie Duarte they filed affidavits which are within the commission and if you have not been given copies you should be given of copies.

One of the things they say is that yes Mr Zuma did

discuss or tell them his plan to fire or leave out of cabinet Mr Gordhan and they say he told them that he wanted to replace Mr Gordhan as Minister of Finance with you.

And they say in those affidavits the officials of the ANC all rejected that idea. And we do know of course that the person who are – who replaced Mr Gordhan as Minister of Finance was then Mr Gigaba.

And in the meantime I think in February 2017 if I am not mistaken you became a member of Parliament National
10 Assembly for a few months. I think in May you resigned and went back to Eskom.

MR MOLEFE: Hm.

CHAIRPERSON: So you might be able to say, look I have no comment really on these things but I mention them and if you have not been given the affidavits that I am talking about arrangements should be made for you to have been – to be given and if you want to say let me read the affidavits first and deal with this issue later when I come back that is acceptable as well.

20 **MR MOLEFE:** Ja but Chairperson I feel it is a bit unfair that people come here and say that we were gossiping about Mr Molefe in his absence. And that I was at the house. I do not know about the – the fact Mr Jonas is making whether it took place R600 billion and so on. I am not commenting about that.

The fact that they talked about me at the meeting that I was not there and I am not aware of. And it may have been Mr Mkhize and a discussion at Luthuli House about me it was gossiping. Because I was not there.

CHAIRPERSON: Well I do not think it is fair to say it was gossiping because this was the President of the country Mr Zuma and President of the ANC talking to his – to the top leadership of the ANC the Top 5 – Top 6 to say this is what I am planning to do. And I guess he was confronting them.

10 **MR MOLEFE:** So they were – they were talking about me.

CHAIRPERSON: Yes.

MR MOLEFE: And I was not there.

CHAIRPERSON: But I do not think it is fair to say they were gossiping.

MR MOLEFE: Well I do not know what is the definition of gossip but ...

CHAIRPERSON: I am sure you talk about a lot of other people when they are not there but you would not say you were gossiping all the time.

20 **MR MOLEFE:** But that is what gossip is. I do not know but ...

ADV SELEKA SC: Especially...

MR MOLEFE: But let us not use the gossip then but they were talking about me and I was not there and I was not aware of their discussion.

I do not know how that should reflect on me.

CHAIRPERSON: No, no, no that – there is a...

MR MOLEFE: Or how I should take accountability.

CHAIRPERSON: No, no the idea.

MR MOLEFE: For those discussions that took place in my absence.

CHAIRPERSON: No as I say

MR MOLEFE: Or how I should then now in a commission of the inquiry explain myself about discussion that took place in my absence about me.

CHAIRPERSON: Well you see as I say you know you might say, look I know nothing about it and I have no comment about it. Or you might have some comment. But a possible scenario might be that you might say I do not know. You might say, well I am not surprised that Mr Zuma mentioned to the officials of the ANC that he was – he wanted to – they wanted me to replace Mr Gordhan because he had actually contacted me and asked me whether I would be prepared and I said I would be prepared so I am not surprised.

20 But you might say I am surprised because nobody ever talked about that to me. So the idea is just to enable you to say what you might know about these things.

MR MOLEFE: Ja I know nothing about it Chairperson and I will not comment on it.

CHAIRPERSON: Okay alright thank you.

ADV SELEKA SC: Thank you Chair. Yes I – one should emphasise that Mr Molefe there is a process of investigation in gathering information. Ultimately the law makes a decision based on the evidence presented if it is uncontroverted.

But the decision is not made based on reading the stars or making imaginations. So we are in the process and the end will be based on the evidence.

Now in addition to the secondment issue.

10 **CHAIRPERSON:** Well Mr Seleka I just realised we have gone over one o'clock.

ADV SELEKA SC: Oh we have gone. Yes Chair.

CHAIRPERSON: I think let us take the lunch adjournment.

ADV SELEKA SC: Indeed Chair.

CHAIRPERSON: We are at nine minutes past one we will resume at ten past two.

ADV SELEKA SC: Thank you Chair.

CHAIRPERSON: We adjourn.

REGISTRAR: All rise.

20 **INQUIRY ADJOURNS**

INQUIRY RESUMES

CHAIRPERSON: We are supposed to continue but we are unable to continue because we have received news that somebody that works closely with me has tested positive with Covid-19.

It seems that in those circumstances, because I am required to isolate myself, that we cannot proceed in this form. I took the trouble during lunch to ask Mr Seleka to share the information with Mr Masuku and an oral consent – I understand that there is an agreement that that is what should happen. Namely, we should adjourn. Is that confirmed?

ADV SELEKA SC: That is confirmed Chairperson. I did convey the message to my ...[intervenes]

10 **CHAIRPERSON:** Yes, to Mr Masuku. You confirm? Ja.

ADV SELEKA SC: [No audible reply]

CHAIRPERSON: Okay. It is unfortunate but it is the reality that we are faced with now and we have to find ways of how better to handle the situation because if each time somebody that has been in close contact with me tests positive, the hearings of the Commission have got to be disrupted, then it could pose quite a problem for the Commission's work and us finishing in the time within which we must finish.

20 So I think that, from my side, I think we should explore the possibility that if all concerned are available sometime next week on one of the days, we could explore the possibility of having the hearing via a video link or via Zoom from – and I would be sitting in my place of isolation. So we must explore that and see whether it is possible.

Obviously, because next week was not planned, that will

only happen if Mr Molefe is available, his legal team is available. I am saying next week, we could find a day where we could do that, because the Commission has been informed by the attorneys representing the former President, Mr Zuma, that he will not be appearing before the Commission next week.

He says that should not in any way be seen as disrespect on his part for any legal process. It seems that he says it is because he believes the review application that
10 he has lodged should be finalised first.

And that also, there is the matter that is in the Constitutional Court which has not been finalised. I am not trying to exhaust every reason that he gives, but I think it is fair to give, at least mention that those are the main reasons he gives through his lawyers.

So we know that he is not going to be here next week. So it would be good if there is a way of using it, at least some of the days.

So I do not know whether Mr Seleka you had any chance
20 to speak to Mr Masuku, but if you have not, maybe a discussion can be had after to see what is possible and what is not possible about sometime next week in relation to continuing with Mr Molefe's evidence but via Zoom or something.

ADV SELEKA SC: Yes. We did have a chance to speak

about that Chair. We – I know my learned friend was expressing, what, some advice on that, I would say. And maybe he could be given an opportunity. Is that right? To address the Chairperson.

ADV MASUKU SC: [No audible reply]

ADV SELEKA SC: He is fine but he thinks we should consider some factors ...[intervenes]

CHAIRPERSON: Ja.

ADV SELEKA SC: ...that might require us to self-isolate
10 and...

CHAIRPERSON: Ja. No, no, no. That is fine.

ADV SELEKA SC: That is fine.

CHAIRPERSON: The idea is that we should all talk about it and see whether ...[intervenes]

ADV SELEKA SC: Yes.

CHAIRPERSON: ...we all think it is something that can or should be done ...[intervenes]

ADV SELEKA SC: Yes.

CHAIRPERSON: ...or not.

20 **ADV SELEKA SC:** Yes, yes.

CHAIRPERSON: You know. There might be something that one is overlooking.

ADV SELEKA SC: Yes, correct.

CHAIRPERSON: It is just that one, it is trying to make sure that there is as little disruption to the hearings as possible.

ADV SELEKA SC: As possible.

CHAIRPERSON: Given the time constraint – limited time available.

ADV SELEKA SC: Yes.

CHAIRPERSON: But obviously, that assumes that one is in isolation but is not feeling unwell.

ADV SELEKA SC: Correct.

CHAIRPERSON: That assumes that one is okay.

ADV SELEKA SC: That is one of the things.

10 **CHAIRPERSON:** And... Ja. Maybe Mr Masuku wishes to say something?

ADV SELEKA SC: Ja.

CHAIRPERSON: [laughs] I am thinking Mr Masuku you must be saying: I may as well use this one that they wanted me to use earlier. [laughs]

ADV MASUKU SC: Not that one. I must just accept that... I mean, the – we have to follow the Covid protocol once you were exposed to someone with Covid. And one – you are quite correct that you now need to go and isolate. But it is
20 not just you who must isolate. It is your staff.

CHAIRPERSON: Ja. No, no, no. That is true.

ADV MASUKU SC: It is everybody that is.

CHAIRPERSON: Yes.

ADV MASUKU SC: Carry your bags.

CHAIRPERSON: Yes.

ADV MASUKU SC: Carry your books.

CHAIRPERSON: H'm.

ADV MASUKU SC: And everybody else.

CHAIRPERSON: Ja.

ADV MASUKU SC: And it seems to me that we should not really be in a rush to some hearing tomorrow ...[intervenes]

CHAIRPERSON: Ja.

ADV MASUKU SC: ...or next week without knowing exactly what your state of...

10 **CHAIRPERSON:** Ja.

ADV MASUKU SC: What the state of the situation looks like.

CHAIRPERSON: Yes.

ADV MASUKU SC: I would propose that maybe in about five days when the fog clears ...[intervenes]

CHAIRPERSON: Ja, yes.

ADV MASUKU SC: ...and you still feel okay ...[intervenes]

CHAIRPERSON: Ja.

20 **ADV MASUKU SC:** ...then you can write to everybody and say we can reconvene.

CHAIRPERSON: Ja.

ADV MASUKU SC: And we will make sure that Mr Molefe is available to do that.

CHAIRPERSON: Yes.

ADV MASUKU SC: We prefer being physically present.

CHAIRPERSON: Yes, okay, okay.

ADV MASUKU SC: And of course, this place has to be fumigated as well because ...[intervenes]

CHAIRPERSON: Ja. No, no, no. That will be done, ja.

ADV MASUKU SC: Ja.

CHAIRPERSON: Ja, ja, ja.

ADV MASUKU SC: So it is quite an inconvenience ...[intervenes]

CHAIRPERSON: Ja.

10 **ADV MASUKU SC**: ...to be exposed to this kind of thing.

CHAIRPERSON: Ja.

ADV MASUKU SC: But it is quite vigorous.

CHAIRPERSON: Ja. No, no. It is.

ADV MASUKU SC: So I would suggest that we do not ...[intervenes]

CHAIRPERSON: Do not fix anything so far at this stage.

ADV MASUKU SC: Ja.

CHAIRPERSON: Ja.

20 **ADV MASUKU SC**: And in respect of the other matter you mentioned, the letter, the love letter you received.

CHAIRPERSON: Yes, yes.

ADV MASUKU SC: Perhaps that also resolves some of the difficulties we would have faced.

CHAIRPERSON: [laughs]

ADV MASUKU SC: [laughs] I just thought I would mention

that one.

CHAIRPERSON: Well, when I saw the letter, I wanted to say to you – I wanted to say, you know – you do not have to take the fifth amendment. [laughs]

ADV MASUKU SC: Yes. [laughs]

CHAIRPERSON: [laughs]

ADV MASUKU SC: No, that is just.

CHAIRPERSON: No, that is fine. So I think that is a fair – those are fair points. We will adjourn. And if we end up
10 being able to use some of – sometime next week, good. But if we end up not being able because of whatever, it is fine.

ADV MASUKU SC: H'm.

CHAIRPERSON: As we go along, we are learning in terms of how to best handle the situation. And maybe, if and when it happens next time, I hope it never happens, but if it does happen, we might be better prepared in terms of some of the things that can be done. I am sorry that we cannot continue but it is one of those things that one has no control over.

ADV MASUKU SC: Ja.

20 **CHAIRPERSON**: Ja, ja. Okay. No, thank you.

ADV SELEKA SC: Chair.

CHAIRPERSON: Ja?

ADV SELEKA SC: We – from the Eskom work stream, we were going to have two evening sessions. So those sessions will also be impacted.

CHAIRPERSON: Yes.

ADV SELEKA SC: Ms Goodson.

CHAIRPERSON: Oh, ja.

ADV SELEKA SC: And Ms Naidoo.

CHAIRPERSON: Ja, ja. The one that we arranged for Tuesday.

ADV SELEKA SC: Tuesday.

CHAIRPERSON: Ja, that will have to be cancelled for now.

ADV SELEKA SC: Yes.

10 **CHAIRPERSON:** And the one that was this evening ...[intervenes]

ADV SELEKA SC: We were going to explore in regard to Ms Naidoo, yes.

CHAIRPERSON: Ja, ja, ja.

ADV SELEKA SC: Ja.

CHAIRPERSON: Okay alright. We will talk early next week and see. Maybe Tuesday and see how things look.

ADV SELEKA SC: Yes.

CHAIRPERSON: Ja, ja.

20 **ADV SELEKA SC:** Okay.

CHAIRPERSON: Okay alright.

ADV SELEKA SC: I told mister...

CHAIRPERSON: Yes?

ADV SELEKA SC: I told Mr Masuku that his attorneys wrote the letter prematurely Chair. So...

CHAIRPERSON: [laughs]

ADV SELEKA SC: [laughs] They would have taken advantage. [laughs]

CHAIRPERSON: [laughs]

ADV SELEKA SC: They take their hand too soon.

CHAIRPERSON: [laughs] No. Thank you very much Mr Masuku.

ADV MASUKU SC: We can say, it is divine providence.

CHAIRPERSON: [laughs]

10 **ADV MASUKU SC**: There is a ...[indistinct] [laughs]

CHAIRPERSON: [laughs] Okay no that is right. Mr Molefe, I am sorry that we cannot proceed but obviously you understand the situation.

MR MOLEFE: No, I do understand Chair.

CHAIRPERSON: Yes, yes. Arrangements will be made for the Commission to continue with your evidence as soon as possible. Ja. Okay. Thank you very much.

20 Then I have announced that for next week Mr Zuma will not be appearing before the Commission in terms of the letter that the Commission has received from his attorneys.

But the week after next. If one is able to work and then one is fine, it will be – we will hear evidence relating to state security. That is the week after next week. Alright. thank you very much. We will then adjourn for the day.

ADV SELEKA SC: Thank you, Chair.

CHAIRPERSON: We adjourn.

INQUIRY ADJOURNS SINE DIE