

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

04 FEBRUARY 2021

DAY 337



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DATE OF HEARING:

04 FEBRUARY 2021

TRANSCRIBERS:

B KLINE; Y KLIEM; V FAASEN; D STANIFORTH



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PROCEEDINGS RESUME ON 04 FEBRUARY 2021

CHAIRPERSON: You must make sure you call me when Counsel is on the screen. Mr Myburgh are you available? He is not available. Oh he is helping with the technicians today Mr Van Stamela is not here. Good morning Dr. Khoza.

DR KHOZA: Good morning Chairperson.

CHAIRPERSON: The Counsel who is supposed to lead you has disappeared it seems. We –

10 **ADV FREUND SC:** Yes but Chair if I could indicate I am here I am seeing you; I am hearing you.

CHAIRPERSON: Oh.

ADV FREUND SC: I do not know whether you can hear it is...

CHAIRPERSON: Oh who controls who appears when; who disappears when on the screen?

ADV FREUND SC: Chair I believe that probably what has happened is that the Zoom setting that has been put in place is that you see the person speaking only.

20 **CHAIRPERSON:** Yes but they make sure at least the – that Counsel is on the screen when I enter because that is the first person that should be. So – but I – technicians please make sure that that is how it happens. Good morning Mr Freund, good morning everybody.

ADV FREUND SC: Good morning Chair.

CHAIRPERSON: Are we ready for this morning?

ADV FREUND SC: We are ready Chair.

CHAIRPERSON: Huh-uh. Yes okay. You want to call your witness, first witness for this morning and then the Registrar can administer the oath or affirmation.

ADV FREUND SC: Thank you Chair. The first witness this morning will be Dr Makhosi Khoza.

CHAIRPERSON: Yes thank you. Will they let her come onto the screen please? Who is – it looks like today things
10 are not working out as they normally do. Sorry. Okay Dr Khoza please speak so that you can appear on the screen so that the oath or affirmation can be administered.

DR KHOZA: Okay Chair.

CHAIRPERSON: Yes you are there.

DR KHOZA: I am hearing you.

CHAIRPERSON: Okay alright. Ja. Registrar please administer the oath or affirmation.

REGISTRAR: Please state your full names for the record?

CHAIRPERSON: It looks like – can you – it looks like you
20 cannot hear the Registrar speak to you Dr Khoza.

DR KHOZA: I can – I could not hear her.

CHAIRPERSON: Okay let her just...

DR KHOZA: If she could speak a little louder please.

CHAIRPERSON: Ja she will just speak up a bit.

REGISTRAR: Please state your full names for the record.

DR KHOZA: Makhosi Busisiwe Khoza.

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

DR KHOZA: No.

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

DR KHOZA: Yes.

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

DR KHOZA: So help me God.

CHAIRPERSON: Thank you very much Dr Khoza. Okay Mr Freund.

ADV FREUND SC: Thank you Chair. Dr Khoza is it correct that you deposed to an affidavit which has been submitted to the commission by yourself?

DR KHOZA: Yes that right – that is correct Chairperson.

ADV FREUND SC: And that affidavit is to be found – it is
20 to be Exhibit ZZ4 it is to be found in Bundle 1 at pages 744 to 837. Could you please Dr Khoza just go to the end of the affidavit itself which is at page 774? That is the – that is the numbers of the pages on the top left of the page. Could you please confirm that that is your signature?

DR KHOZA: Yes this is definitely my signature

Chairperson.

ADV FREUND SC: Chair I will request that Exhibit ZZ4 be formerly admitted into the record as an Exhibit.

CHAIRPERSON: The affidavit of Dr Makhosi Busisiwe Khoza which starts at page 744 of Bundle 1 will be admitted together with its annexures and marked as Exhibit ZZ4.

ADV FREUND SC: Thank you Chair. Ms Khoza you deal in your affidavit briefly from paragraph 4.1 to your
10 background within the African National Congress could you just briefly summarise the extent and the duration of your involvement with the African National Congress?

DR KHOZA: When I became associated with the African National Congress when I was 12 years old in 1982 until 2017 and basically I have spent almost 35 years in that organisation – associated with that organisation.

ADV FREUND SC: And could you just mention very briefly functions you have performed in public life as a representative of the African National Congress?

20 **DR KHOZA:** Well there are quite a number of them and the first one would be when I was the Deputy Mayor of then Pietermaritzburg Msunduzi Transition and Local Authority in 1996 and there subsequent to that I then – I went to the private sector but then I was called back and I found myself in the legislature KwaZulu Natal Legislature initially

as the Chair of the Economic Development and Tourism Committee and subsequently I became the Chair of the Standing Committee on public accounts. And I was also serving on the Standing Committee on finance at provincial level in KwaZulu Natal.

Then in 2014 I was then elected to serve in the National Parliament and – and whilst I was there I held a position – I was initially a back bencher and subsequently I became the Chair of the Public Service and Administration.

10 As a back bencher I was in the – I was serving in the Standing Committee on finance in Parliament and that will be it.

ADV FREUND SC: Alright and we will come back to that in a little more detail shortly. Just briefly as regards your educational background; your university qualifications?

DR KHOZA: Well I hold a – three of my under-graduate degrees that is the BA the post graduate diploma, the Masters Degree I obtained them at the University Of – of the then then University of Natal which is now University of
20 KwaZulu Natal and I also – I then obtained my PH3 through a – a partnership between Florida Agricultural and Mechanical University and the University of Zululand and I obtained a degree in administration specialising on total quality systems development using local government development and local government in South Africa is my

case study.

ADV FREUND SC: Alright now you have already mentioned that you served on the Standing Committee on Public Accounts in the KwaZulu Natal Legislature in paragraph 5.8 of your affidavit you explain very briefly what you 00:10:41. Could you just briefly explain to the Chair what happened then?

DR KHOZA: Sorry I did not hear you what you said about 5.8.

10 **ADV FREUND SC:** Well if you have a look at paragraph 5.8 it deals with what came of your activities on the SCOPA of the KZN Legislature. I am just asking briefly to summarise how your career on SCOPA of the KZN Legislature came to an end and why?

DR KHOZA: Well I – when I was a – the Chair of the Standing Committee on Public Accounts I was removed from that position because the ANC felt that I was too vocal on issues that were supposed to be internal issues and that was specifically on my call I used – my call on
20 calling on the then Counsellor Alpha Shelembe to be removed as the Deputy Mayor. There is a history to that.

Alpha Shelembe was removed as – he was amongst the counsellors that were removed as – as a counsellor in that Municipality because the Municipality had collapsed.

And – and as a spokesperson the ANC at that time I

was the one that was leading the – the whole campaign election campaign and went – what I did I was telling people how committed we are on corruption – in fighting corruption. And so when we – when the ANC won the elections in that Municipality they then brought back Alpha Shelembe that we had recalled before the elections.

So I then used my position as the Chair of SCOPA of the Standing Committee on Public Accounts to have him – to – I called on him to resign and indeed he resigned
10 within 24 hours but subsequent to that I was also removed as the Chair of the Standing Committee on Public Accounts.

I was what I call upward – I was – I was demoted upward I became the Chief Whip of the Legislature but I was not happy with that position so I – I left. I resigned from the Legis – KZN Legislature.

ADV FREUND SC: Now you have referred already to the fact that you became – you were elected as an ANC MP to the National Assembly from May 2014, is that correct?

20 **DR KHOZA:** That is absolutely correct.

ADV FREUND SC: And you say in your affidavit that you served amongst others on the Standing Committee on Finance known by the abbreviation SCOF – S-C-O-F from June 2014 to February 2017. You served on the ad-hoc committee to nominate a person for appointment as Public

Protector. In fact there you served as Chairperson. You served on the ad-hoc committee on the South African Broadcasting Corporation board's inquiry into the fitness of the SABC board in November 2016 to September 2017 and as we will deal with in due course you served on the Portfolio Committee on Public Service Administration, is all that correct?

DR KHOZA: Absolutely correct Chairperson.

ADV FREUND SC: So I would like to start with your
10 experiences as a – as a member of the Standing
Committee of Finance you deal with that in paragraph 8.2
of your affidavit and you refer there to the fact that:

“Whereas South African Airways have
previously fallen under the jurisdiction of
the Portfolio Committee on Public
Enterprises when it got into serious
financial difficulty oversight over that entity
fell to Treasury and because of that SAA
became accountable to the Standing
20 Committee on Finance.”

Is that correct?

DR KHOZA: Yes that is correct

ADV FREUND SC: And in the course of your oversight
activities on that committee you refer in paragraph 6.2.2 to
an engagement between yourself and Ms Dudu Myeni who

was before the committee to present a rescue plan for SAA. Could you just tell us very briefly what – what type of engagement you had and then if you could explain what the consequences of that were as you deal with in your next paragraph?

DR KHOZA: Thank you Chairperson. Basically we had requested the SABC board – I mean the – the South African Airways board to present a rescue plan and Ms Dudu Myeni in her capacity as a chairperson of that – of
10 the board was invited to appear before the committee.

So when she came before the committee her main concerns were around – were around certain – the awarding of certain contracts including the catering contracts and one of those issues that she was also concerned about which she included as part of the rescue plan was to replace the white – white pilots – old pilots with young black pilots. I then raised an issue on that.

Now it is very important to understand that where I come from my understanding of transformation is not
20 necessarily about one's skin pigmentation but it is also about quality systems that you put in place. And it is also about ensuring that the people that get appointed have the key competencies to be able to – to do that job.

My view was that – I asked her if she removes all the white – the white pilots – old pilots has she considered

the fact that South African Airways is internationally acclaimed as the safest airline simply because of those very pilots. How is she going to mitigate against that?

And it was then that it became a heated debate because I was viewed even by own colleagues as being the anti-transformation. There were notes that were exchanging – that we had to exchange it to say you cannot ask that question or whatever.

But after we finished that meeting I was he called
10 by Des Van Rooyen who was at the time the Chief – who was the Whip of the Committee and he also invited Pinky Kekana – I believe she is currently the Deputy Minister of Communications. I stand to be corrected – I am not sure what exactly – what kind of – what position she is holding currently.

So we then went for lunch. They invited me for lunch and we usually do that anyway when we wanted to engage on some issues. When we got at that lunch meeting Des Van Rooyen my Whip – the Whip of the
20 Committee then asked me why did I do something that was counter-revolutionary and that his questioning the transformation agenda that Comrade Dudu – Dudu Myeni was putting forward and I was then told that I must never ever challenge comrades.

And that argument was quite heated because I then

told them that to me you know one of my favourite even it is not there in the – in my affidavit but I do remember clearly even saying to them, you know sometimes as comrades and I am just quoting myself verbatim here. I said sometimes as comrades we – we – we adopt certain phrases and I was referring specifically to the one in the constitution the phrase “acting without fear, favour or prejudice” and we then turn against ourselves because when we are supposed to do so we do not do so. I do not
10 understand why I should not be asking Comrade Dudu Myeni you know those kinds of questions because to me the intention is to come up with a rescue plan is not to undo what is working with SAA. And the safety record of SAA at the time remained intact and I still believe there is still hope that – that report.

So basically that is what had happened.

ADV FREUND SC: Now those allegations that you have just made Mr – what Mr Van Rooyen said to you have been put to Mr Van Rooyen and he has submitted an affidavit to
20 the commission and he says that no discussion ever took place between you and him. He did not criticise you for the manner in which you had treated Ms Myeni and this is all lies. Do you want to comment on that?

DR KHOZA: Well I think Des Van Rooyen knows very well that that actually did take place and – and Pinky Kekana

was there at that meeting and it was during lunchtime and we were at Max Building which is usually used by the DA members and I am sure some of them probably did see us at that table. Because I remember as we were having that kind of engagement some of them because they were also having lunch they even kind of looked at us and then we had to lower our voices. So what Des Van Rooyen is saying to me I am disputing that because he did and that is a fact – he did say it.

10 **ADV FREUND SC:** I want to move on now to the SABC inquiry. You deal with this in paragraph [talking over one another] affidavit.

CHAIRPERSON: I am sorry Mr Freund. I am sorry Freund. Does Mr Des Van Rooyen's version include denying that the lunch took place between or involving the three of them?

ADV FREUND SC: Yes he did.

CHAIRPERSON: I have not seen the affidavit.

ADV FREUND SC: Yes it does – it does include that Chair.

20 **CHAIRPERSON:** Oh okay. So he denies the lunch as well?

ADV FREUND SC: Chair can I also – well let me – let me be as accurate as I can Chair. This is to be found in the Reference Bundle at page 91 and if I could just – he refers Chair to the allegation because he was furnished with a

Rule 3.3 Notice and he refers to the content of the Rule
3.3 Notice and the content of paragraphs...

CHAIRPERSON: You got the page number?

ADV FREUND SC: 6.2. –

CHAIRPERSON: Have you got the page number?

ADV FREUND SC: 6.2 – 91 in the Reference.

CHAIRPERSON: 91 okay. Yes continue.

ADV FREUND SC: Then at paragraph 8 of Mr Van
Rooyen's affidavit he having referred to what he was told
10 was going to be said in paragraph 6.2.2. and 6.2.3 of Dr
Khoza's affidavit he says the following:

“The allegations that Khoza makes against
me in paragraph 6.2.3 of her affidavit are
devoid of all truth. No such discussion ever
took place between her and me. I did not
criticise her for the manner in which she
had treated Ms Myeni in fact I did not say
any of the things that she alleges that I said
that is all lies.”

20 And he continues. I – it is not absolutely clear that he
says there was no lunch but he certainly disputes the nub
of what Dr Khoza contends.

CHAIRPERSON: Yes, no I ...

DR KHOZA: Chairperson I have no reason to lie on that.

CHAIRPERSON: Yes I think on my reading of paragraph 8

he appears to deny that there was such a lunch. In any event if he – if he wanted to say no such discussion took place but there was such a lunch that took place he would have said so. So it seems to me that there is justification in understanding that paragraph as including denying that lunch – that such a lunch took place. Okay Mr Freund.

ADV FREUND SC: Thank you Chair. Dr Khoza I want to turn to the SABC inquiry which you deal with in paragraph 6.4 of your affidavit and Chair just...

10 **DR KHOZA:** Yes.

ADV FREUND SC: Just for your own convenience there will be a witness later today one Mr Johnston and Mr Johnston attaches to his affidavit a – a more detailed summary of the events of – that are described here. You will find that in Bundle 1 pages 250 to 254. But we will deal with that when we get to Mr Johnston.

CHAIRPERSON: Okay.

ADV FREUND SC: Now in relation to the – sorry Chair.

CHAIRPERSON: Yes you may continue.

20 **ADV FREUND SC:** Thank you. In relation to the SABC inquiry you deal in paragraph 6.4.4 of your affidavit to certain critical comments you made about the then Minister of Communications Ms Muthambi and Dr Ben Ngubane who had been chairperson of the SABC board. In very brief terms – very brief what was the gist of the sorts of

comments or criticisms that you expressed in the course of that hearing?

DR KHOZA: Well first of all it was the manner in which they were – they were running the SABC the Public Broadcaster and – and secondly because at the time you must remember that I was a member of the ANC. I probed their credentials first of all as members of the ANC and if I remember very correctly I even spoke about the principles that are enshrined in the constitution of the ANC if I
10 remember correctly.

And – and basically I was critical at the manner in which they were running the affairs of the SABC because in my view I felt that even when you look at it from the party perspective the ANC perspective I felt that that was in contravention of what is expected of them as people who are claiming to be members of the ANC.

And there is public records to that regard that whole SABC hearing was broadcast live so that would be known – it will be there – the record will be there.

20 **ADV FREUND SC**: Yes and you say in the – in paragraph 6.4.5 that an example was that you were critical of the – of the appointment and continuous in office of the Chief Operating Officer Mr Hlaudi Motsoeneng despite as the Public Protector had already found his lack of formal qualifications. Is that one of the points you made?

DR KHOZA: Definitely I did. I think what is important you also have to understand that apart from just being a politician I am also a scholar and a scientist and to me when you – when we have so many highly qualified people who are not able to get into the private – into the public sector in those kinds of positions I feel that it negates the whole commitment to education.

If we are committed to improving education in South Africa we are not going to be taking somebody who had
10 only up to a standard 9 and make that person a Chief Operations Officer.

So you are correct that is exactly one of the things that I was questioning that why did we continue with Hlaudi Motsoeneng as the Chief Operations Officer when there was an adverse finding by Advocate Thuli Madonsela on his qualifications.

ADV FREUND SC: And then also just very, very briefly you refer to a remark you made at this hearing about Dr Ngubane. What was the gist of the remark that you made?

20 **DR KHOZA:** Well with – with Dr Ngubane you know first of all you must – you will recall that Dr Ngubane is a medical doctor and – and as a medical doctor he has to adhere to certain standards and – and he also has to function within a particular professional code of conduct.

And my main issue with him was that I was

identifying something different which – how he is running SABC and with him as a doctor who adhered to certain standards of professional codes – moral codes.

ADV FREUND SC: Alright now you deal in paragraph 6.4.7 with Ms Muthambi's response to you outside of the formal inquiry about your criticism of Mr Motsoeneng being retained. What did – what did Ms Muthambi say?

DR KHOZA: In fact Ms Muthambi not on one occasion on many occasions at some point she had called me to a
10 meeting in – at Inter-Continental Hotel in Johannesburg. She did not tell me why she was calling me. At the time she was the Minister of Communications and I went there because – and she communicated that through Munali Soma [?] who was an MP but also a friend of mine – a personal friend of mine.

So I went there and I remember because clearly because when we were there when I got at – at Inter-Continental Hotel I found Ms Muthambi with Hlaudi Motsoeneng. It was before the SABC inquiry and that
20 statement that she made to me wherein she said she has only one boss she mentioned it to me when she was telling me that President Zuma would like to consider me as the Minister of Finance. However I must accept that I will have one boss and that one boss will be President Zuma. And she made that statement during that time as well. She was

reminding me the statement she had made earlier to say she has one boss; she does not care about the NEC of the ANC; the people – the person that hired her is President Jacob Zuma and that was her only boss.

ADV FREUND SC: So when you said a moment ago she – she said it at that time she reminded me of what she had previously said are you referring to the time of the SABC inquiry?

DR KHOZA: Yes because you must remember at that
10 meeting that we had at Inter-Continental took place before there was SABC inquiry.

ADV FREUND SC: Yes and then she again raised the same issue if I understand you correctly?

DR KHOZA: She raised the same issue about having one boss.

ADV FREUND SC: Alright. Now in paragraph 6.4.8.

CHAIRPERSON: So I am sorry Mr Freund. I am sorry. Dr Khoza I may have misunderstood but I just want to confirm that I have got this right now. I thought when you said that
20 meeting happened before you had the SABC inquiry I thought you were talking about the one where she reminded you but I may have misunderstood because it looks like the one where she told you about her having one boss seems to – when she told you that for the first time it looks like it was – it happened before the SABC board took

– the inquiry took – the SABC inquiry took place. Am I right?

DR KHOZA: Yes. The context under which she said it with at – during the SABC inquiry was in relation to Hlaudi Motsoeneng. Hlaudi Motsoeneng you must remember that had been appointed and I am saying she – when she said that she was saying it within that context. Because she was repeating what she had said earlier to me before. She said if President Zuma is happy with Motsoeneng even with
10 his qualifications she has only one boss and that boss if that boss is happy she is also happy with that.

Basically what I was trying to emphasise here is that this statement that I have put here was not – it was not the first time that it was coming up but in this instance when she was mentioning it about Hlaudi Motsoeneng it was the first time she was mentioning it within that context of Hlaudi Motsoeneng’s qualifications.

ADV FREUND SC: And the occasion on which she would...

CHAIRPERSON: Okay. Okay I am sorry Mr Freund. I may
20 have missed this. So before you had a meeting with Ms Muthambi before or the first of the two meetings or the first of the two meetings did it happen before the SABC inquiry started or did it happen while the SABC inquiry was going on Dr Khoza?

DR KHOZA: We never had any private meetings – I never

had any private meetings with Minister Faith Muthambi after the SABC board inquiry because we – our relationship broke down and I would say irreversibly.

But that she said before it was long before the – it was long before the SABC inquiry.

CHAIRPERSON: Okay.

DR KHOZA: And I had requested Advocate Freund earlier on that I wanted to make some amendments to my affidavit because I wanted to – this is one of the things that I
10 wanted to raise because at a time when we put it together there were quite a number of details that I did not put in primarily because of the time when we met you would recall that I actually even broke down because I was extremely, extremely emotional about – I was still going through my own pain with the manner in which I was treated and I was actually even reluctant at a time when we put this affidavit together. I was reluctant to participate in the state capture commission but once we engaged and I reflected I then agreed and I said no that is fine I will go
20 ahead.

So I am saying please take into account the fact that when we wrote this affidavit – when we put forward – when we put together this I was – it was at a time when I was not really right emotionally. And I was not keen really. I was not really forthcoming but once I took that decision I

was.

CHAIRPERSON: Well just so that I do not forget I must thank you for making the decision to come and give evidence Dr Khoza. Mr Freund shared with me I think the correspondence – the correspondence so I know – I know the challenges that you were of concern to you but I am – I think that it was a very good decision you made to come and testify. Okay thank you. I think we can – we may proceed Mr Freund.

10 **ADV FREUND SC:** Thank you Chair. I just want to digress briefly because you are quite correct Dr Khoza that you did mention to me and before you came to testify today that there are some corrections that you would have wanted to make to the affidavit. Maybe we could just deal with that and then we will come back to where we are at the moment.

If you can just draw attention to other aspects of the affidavit if there are any?

20 **ADV FREUND SC:** Well thank you. In fact it was 6.4 it was specifically this part 6.4, 6.5 the entire of 6.5 and the 6.6. In 6.6 it says in respect with line 4 which starts with:

“This happened when I was removed from my position as Deputy Mayor of Pietermaritzburg. In fact this happened when I was the Chairperson of Economic

Development and Tourism in the KZN
Legislature not Deputy Mayor.”

ADV FREUND SC: Right I have that correction and we will attend in due course to...

DR KHOZA: Ja but otherwise the other ones they are captured correctly. The only thing that is – that is missing there is that I was very, very economical with the details and because I was trying to be careful and at the same time I also wanted to – I was – I wanted to raise as much
10 as possible that was in respect of Parliamentary oversight and in the process I omitted critical detail that will when I reflected I thought that it is going to be critical to be on record as we move forward in strengthening Parliamentary oversight.

ADV FREUND SC: So Dr Khoza if I can distinguish between two different issues? The one is that you feel more detail is required and I understand that; the other is where you think that something you said is inaccurate.

Now you have referred us to a – an inaccuracy in
20 paragraph 6.6.1 you said position of Deputy Mayor of Pietermaritzburg should have been a different position.

DR KHOZA: Yes.

ADV FREUND SC: Are there any other inaccuracies to which you wish to draw attention?

DR KHOZA: No it is only that. That is the technical one.

In other ones it is where I have more detail that I did not divulge at the time.

ADV FREUND SC: Thank you very much. Now I just want to go back because I am not sure that I understand clearly the evidence you have just been giving about the discussions you had with Ms Muthambi.

As I heard you but please correct me if I am wrong you referred initially and in particular to a meeting at a hotel. You had a comment about one boss was made. Am
10 I correct in understanding that there was a subsequent occasion on which she referred back to that comment and she referred to it with specific reference to Mr Motsoeseng's appointment and the views of her one boss the President?

DR KHOZA: I need to clarify this. When she mentioned this for the first time it was when we were meeting at Inter-Continental Hotel as we were engaging I think Gwede Mantashe walked in she – he was going to another meeting and they then said hey let us move away from where we
20 were so that he does not see us. And I said I think I made reference to the fact that but Gwede is our boss as the ANC you know.

So the first time she mentioned that she also said no you have to know that since President Zuma is considering you as the Minister of Finance you must

remember that you have only one boss because I have only one boss and that one boss is President Zuma.

So when she mentioned that she mentioned it in different context. The one that it is in the affidavit that I am mentioning here it was in relation to my questioning Hlaudi Motsoeneng's qualifications wherein she says if President Zuma is happy with Motsoeneng's qualifications therefore you note I have one boss if my boss is happy therefore I am happy with that.

10 So it was in relation to – to Hlaudi Motsoeneng the second time. It was not 00:42:42.

ADV FREUND SC: And that second time did that take place during – so before, during or after the SABC inquiry?

DR KHOZA: It was during the SABC inquiry. We got – we went out and that is what she said to me.

ADV FREUND SC: Outside of the hearing itself?

DR KHOZA: Yes.

ADV FREUND SC: Right.

DR KHOZA: Ja.

20 **ADV FREUND SC:** Now in paragraph 6.4.8 you say that you had both support and criticism. If you could just explain very briefly what you are addressing in this paragraph?

DR KHOZA: I think it has to be said that prior to the late Jackson Mthembu – Minister Jackson Mthembu becoming

assuming the position of Chief Whip in Parliament we heard Stone Sizani who was the – was the Chief Whip in Parliament.

Now Stone Sizani was clearly not as appreciative of the critical importance of Parliamentary oversight over the Executive. In his – my and this is my own opinion – this is my own view of him. He never really took it kindly when we were criticising the members of the Executive as members of the ANC.

10 And he – he in many instances he would even remind us that we should not be speaking like the opposition when we are engaging with our Ministers.

 However when Jackson Mthembu became the Chief Whip we suddenly had the space to express ourselves as members of the ANC.

In a way I do believe that Jackson Mthembu was kind of conflicted. On one hand, he wanted us to do the right thing but on the other hand he was a party loyalist. By a party loyalist, I am referring to the fact that there were – there was
20 – there were limitations to which you can criticise your – the senior leadership of the ANC but...

 And also, you must remember we also are operating within a very fractional environment. So when you are taking on those that did not necessarily belong to the Chief Whip's fraction, okay, Jackson Mthembu would be happy with that.

There was no limit.

But when you were actually there will be others to account that may be belonging to his own faction, he was not very keen.

ADV FREUND SC: Now I want you also please to refer to the other persons who expressed criticisms of your conduct and oversight as you refer to in paragraph 6.4.8.

DR KHOZA: No, I received a lot of criticism from Sis Zani Dlamini, Duduzane, from Nomvula Mokonyane, from Doris
10 Dlakude. From quite a number of members of Parliament that were not really not happy how we were tackling this especially those that were supportive of the President.

And I must say this at the onset that I was never a factionalist. So probably that was within that environment I was not – it was very difficult for me to get hundred percent support because to me it was – I was – it was very difficult to operate in a factional environment.

I treated every member of the executive the same whether you belong to this ANC faction or the other faction.
20 If you are coming before my committee and I had to do my job, I just did my job. It did not matter which faction you belong to.

ADV FREUND SC: I want to move on now to paragraph 6.6 of your affidavit where you explain that you moved from the Standing Committee on Finance to the Portfolio

Committee on Public Service and Administration. Could you just explain what happened?

DR KHOZA: Well, there was a growing perception that in the Finance Standing Committee I was extremely critical of Dudu Myeni. And it was a matter that was widely discussed about how I tackle her.

At some stage, I remember that one of the comrades, I do not even remember who was that comrade but an ANC comrade, came to me and said: But Comrade
10 Makhozi a problem with you when you start agreeing with Floyd Shivambu.

Floyd was coming from the EFF and sometimes we aligned in terms of how we were looking at the situation, at the financial position, the critical financial position of South African Airways.

So there was a view that when the opposition is raising something that you are not necessarily - that is - even if it is correct, whatever that opposition is raising is correct, you have to oppose it. And my view was not like
20 that.

I felt that if the opposition is opposing something and they are putting forward a compelling business case and they put forward evidence before us, I did not see why we should not – we should disagree with them.

So basically I am saying to you. I was finding

myself constantly in conflict with some of the comrades even those who were supportive of me but when I do it with other comrades, they were like kind of cautious in dealing with me.

ADV FREUND SC: So what happened? What happened to your membership of the Standing Committee on Finance and where did you go next?

DR KHOZA: Eventually I was removed from the Standing Committee on Finance and I remember very well because Eunice Karriem who was the chair was actually very
10 aggrieved by that. He felt that, you know, his committee – he had – each chair of the Portfolio Committee had this.

You will have your members that you will rely on to raise certain issues. For example, he was relying on me. When the African Bank collapsed, he actually was the one that proposed that I should run with that process of rescuing the African Bank. Meeting with BASA, the Banking Association of South Africa and engaging with them in order to try and strengthen that.

So when I was removed, he was very aggrieved,
20 Eunice Karriem. In fact, he did say to me that this is weakening the committee when I was removed. So I was removed and put – I was then promoted as the Chair of Public Service and Administration.

But to me it was also a demotion but – which was obviously a promotion if you look at the monetary side of

things but if you look at the value that I was adding. I am a person that love to do things that I am passionate about. So I was more passionate in the Finance Committee and I was more competent in that committee.

ADV FREUND SC: Alright. Now I want to move on to issues where you came clearly to national attention in the media. In fact, we deal with this in paragraph 7 of your affidavit and you refer in paragraph 7.1 to the events as they unfolded from April of 2017. Could you maybe just
10 talk to paragraphs 7.1 and 72 and explain to the Chair what this is all about?

DR KHOZA: What had actually happened is that we had – you will remember when President Zuma did that reshuffling which was – which became known as the Midnight Special where he removed Nhlanhla Nene and replaced him with Des van Rooyen.

And most of us were extremely unhappy with that especially because the leadership – and I want to put this on record because I subsequently started criticising the top
20 leadership of the ANC in my private Facebook page which is obviously accessible to the members of the public.

It was when they – I think it was the then Deputy President of the ANC, who is currently the President of the Republic, Cyril Ramaphosa. They came out in the open including Gwede Mantashe and Zweli Mkhize. Those

comrades came out against what the President had done. They were even saying publicly.

And this is something that I am not generating. It is something that everybody knows. They came out publicly criticising President Zuma, not directly but saying they did not know about the decision that Nhlanhla Nene was going to be replaced by Des van Rooyen but subsequently they backtracked.

So I then started writing. Then what actually
10 happened after that. There was then a march that as organised by Civil Society throughout the country. If I am not mistaken, I think it was on the 7th of April in 2017.

And I think what happened there was that, there was – everybody was... Oh, subsequent to that, after Des van Rooyen was removed, you will recall that then Pravin Gordhan was called back to take over that position. And subsequently – then after – when Pravin Gordhan was also removed, again there were public pronouncements on the
20 fact that they did not know about that decision of the removal of Pravin Gordhan.

So I am saying to you, it is then that I then decided to take a decision to start speaking out openly because clearly the leadership was not committed to dealing with the issues that were confronting us as members of Parliament who are supposed to perform the oversight function.

So as you know, during April – in April after Pravin Gordhan was removed, there were marches all over the country and there were even remarks made by Nomvula Mokonyane that if the Rand falls, we pick it up. And there was generally the failure of appreciating the effects of global markets on position such as that of the Finance Minister. So.

And it happened to me that on the day when this march took place, I was going to see my mother in
10 Maritzburg and I saw this biggest march ever post-1994. I have never seen that kind of march. Those kind of marches I knew them during the 1980's when we were fighting apartheid but post-1994, I had not seen those kind of marches.

In fact, they reminded me of the time when this – I think it was a cricketer or somebody like that that came to South Africa and people were – it was during the time when there were sanctions against apartheid and this guy who was a cricketer who came to South Africa.

20 And Maritzburg there was a big – it was a very, very big march. So when I went there and I saw that, to me that was speaking to myself directly. It is then that I then questioned the ANC. I wrote about leadership on my Facebook page because I felt that we were not listening to the people.

ADV FREUND SC: Alright. Can I then now refer you to paragraph 7.3 of your affidavit about what your hope or expectation was when you returned to Parliament after that march?

DR KHOZA: Well, when... In fact, you must – this was happening within the context of the fact that we had heard several votes of no-confidences on President Zuma. To me the marches on the 7th of April – and you will bear with me if I am making a mistake – I think it was the 7th of April.

10 To me it was a defining moment because when I went back to Parliament I was expecting that the ANC having seen that this is no longer just a matter of the opposition parties in Parliament but this is now the matter of society.

 It is a matter that is about the members of the public. It is not petty political scoring. It was a matter that had been taken up structures of civil society and the general members of the public. I was expecting that the ANC was going to be toned, was going to change but it did not change.

20 It was very clear that the ANC was hell bound at protecting President Zuma. And I must say that I was very disappointed especially on President Cyril Ramaphosa that I considered as the architect of the South African Constitution.

 I was expecting them to even in the ANC caucus meetings, because we did have the ANC caucus meeting

subsequent to that march, I was expecting them to be forthcoming in terms of the impact of how quickly the ANC was losing its popularity with the members of the public in South Africa because of its conduct.

And I could not understand why we had to protect President Zuma at all costs because it was clearly protecting him at all costs. So basically on the 9th it is then that I then decided to write – I then decided to defy the leadership.

10 It was not out of disrespect but it was more out of concern that they were not doing what they were supposed to do. They were not giving us direction as members of the ANC in Parliament but what they were doing to us, they wanted us to protect something that was wrong. Basically that is what had happened.

And as you can see in 7.4, there is also an extract of what I actually said, what I wrote about those incidents.

ADV FREUND SC: And that is what you wrote on your Facebook page on the 9th of April 2017. Is that correct?

DR KHOZA: Yes.

20 **ADV FREUND SC:** Now it is all quoted in your affidavit. I am not going to read it all onto the record but I will just quote one or two extracts. You refer there and you say:

“I want more tools to see the 7 April 2017 marches across the country as not conspiracies or wiping out of the capital but

genuine concerns of the majority of marches.”

And then you make a comment at the bottom of the quote:

“I am led by an injudicious leadership who are deleterious of ANC relevance and lifespan. We are directed to maintain unity at all costs even if it leads us into the ditch...”

Now what was the consequence to your life of having published that on Facebook?

10 **DR KHOZA**: Well, I was called ill-disciplined. And I think even Jackson Mthembu was getting increasingly very uncomfortable with me because he did not take it kindly that I was criticising the ANC.

In fact, I think we even have it in one of the annexures here where Mthembu was complaining about my ill-discipline and saying I need to be disciplined. But basically I cared so much about the ANC.

Mind you, I grew up in the ANC and I spent most of my life more with the ANC than with my biological parents
20 and that is a fact because I got involved in the ANC when I was 12-years old and I then left my home.

I became an international refugee during the violence in KwaZulu-Natal and I was living in different houses, with Eunice Karriem and Rene Hazel and all those people.

And I could not understand how can people reduce the marches that were taken place to white monopoly capital because they were not at that stage – the sentiment was really against Mr President Zuma’s capacity, moral reflective capacity.

And it was not so much about the ANC. It was more about President Zuma. They were calling on him to be removed as the President of the Republic. And therefore, that is the conflict that I was finding myself in.

10 So as you rightly pointed out in how I was quoted. That quote is absolutely correct.

ADV FREUND SC: Now you refer in paragraph 8.1 and 8.2 to an opposition proposed a vote of no confidence on the 18th of April 2017. This is not the so-called final vote of no confidence. This is an earlier one. And you refer there to instructions that ANC MP’s received. Could you just elaborate on that briefly, please?

DR KHOZA: Well, during that time consistently on Thursdays during our Parliamentary, ANC Parliamentary
20 caucus meetings, we were addressed by the Secretary General, Gwede Mantashe and often – I think Jessie(?) was often there as well.

And both of them were taking turns and sometimes if one of them is not there, the other is there. They were telling us that the ANC is under attack. We need to defend

the ANC. And we were told that an attack in the position of the President of the ANC is the attack to the entire organisation.

And some of us were feeling strongly that that was not so. To us it was one man that was a liability to the ANC at that time. It was President Jacob Zuma and not necessarily the entire ANC but we were then instructed to vote in favour of President Zuma's continuation as the President of the Republic and we were even told that no one
10 will be allowed to vote against the motion of no confidence.

And I recall that. In fact, in one of the media houses, even quoted Gwede Mantashe saying: If anyone who will vote against the President, in other words, if you are voting against the – if you are voting in favour of the no vote of confidence of President Zuma, Gwede Mantashe said that will be the highest form of betrayal.

In other words, as member of the ANC, if we are voting in favour of – if you are voting with the opposition against President Zuma, you will then be considered as
20 somebody who has betrayed the ANC.

And to me that was a problem because – and I maybe I need to make this point because that is what was – one was finding herself in. I found myself in a situation where the ANC was failing to transition from a liberation movement that was operating underground which is marked

by the high levels or a culture of secrecy.

You know when you are in the arm struggle and you are a liberation movement, the culture is there, is that of secrecy. There is no accountability because you are trying to hide whatever information from the enemy and at that time it was apartheid.

Now we are in a democratic dispensation where we are supposed to account where the constitution is calling for openness, for transparency but now we cannot do that. We
10 are now forced to retain the culture of the liberation struggle of underground culture in a democratic dispensation.

And yes, they were then saying to us we must vote. In fact, we were even guarded. All Whips of committees were even instructed to make sure that members are voting against the opposition that had put a motion of no confidence.

ADV FREUND SC: We will get back to that.

CHAIRPERSON: Mr Freund, do you intend coming back to the topic?

20 **ADV FREUND SC:** I do intend coming back to the topic Chair because there is yet another vote of no confidence that we will be coming to.

CHAIRPERSON: Okay alright. Then I will not ask Dr Khoza the questions that I wanted to ask her now. I will ask her when you come back to the topic but this might be a

convenient time to take the tea adjournment. Let us take the tea adjournment. The time is quarter past eleven. We will resume at half-past eleven. We adjourn.

INQUIRY ADJOURNS FOR THE TEA-BREAK:

INQUIRY RESUMES

CHAIRPERSON: Yes, let us proceed Mr Freund. Thank you.

EXAMINATION BY ADV FREUND SC (RESUMES): Thank you, Chair. Dr Khoza, can you hear me?

10 **DR KHOZA:** Yes, I can hear. Thank you.

ADV FREUND SC: Can I refer you now please to paragraph 8.6 of your affidavit?

DR KHOZA: Yes, thank you.

ADV FREUND SC: There you referred to Rule 4.17 of the Constitution of the African National Congress and I just want to read into the record just extracts from that Rule because this is what, as I understand it, persons joining the ANC are required to solemnly declare when they join. Is that correct?

20 **DR KHOZA:** Absolutely Chairperson.

ADV FREUND SC: And presumably, you did that as well?

DR KHOZA: I did that.

CHAIRPERSON: Hang on one second.

ADV FREUND SC: And the declaration ...[intervenes]

CHAIRPERSON: Hang on Mr Freund. There is some noise

coming from my – this – it is disturbing. Okay Mr Freund, continue.

ADV FREUND SC: Thank you, Chair. The declaration that persons joining the ANC make reads in part as follows:

“I solemnly declare that I will abide by the aims and objectives of the African National Congress as set out in the Constitution of Freedom Charter and other duly adopted policy positions.”

10 But it also says near the end of the declaration:

“..and that I will defend the unity and integrity of the organisation and its principles and combat any tendency towards disruption and factionalism.”

Are you with me Dr Khoza?

DR KHOZA: Yes, I am listening. Sorry.

ADV FREUND SC: And did you hear what I just said, the extracts that I read from the Constitution?

DR KHOZA: Yes. Yes, I have it before me.

20 **ADV FREUND SC:** I presume that you were comfortable when you joined the ANC to make such a declaration?

DR KHOZA: Indeed, I was. And especially, because the extract to me was appealing most that I will work towards making the ANC and even more an effective instrument of liberation in the hands of the people and that I will defend

the unity and integrity of the organisation and its principles and combat any tendency towards disruption and factionalism.

ADV FREUND SC: Right. Now ...[intervenes]

DR KHOZA: However, what the leaderships was telling us was that we have to unite at all costs. In other words, it does not matter. The integrity part does not matter. We have to unite behind President Jacob Zuma irrespective of the call that was made by the public, his resignation.

10 **CHAIRPERSON:** Sorry Mr Freund. Dr Khoza, what was your understanding – and you must tell me if you cannot hear me well with the mask on – what was your understanding of the concept of defending the integrity of the organisation in practical terms?

DR KHOZA: In fact, in that very extract that I quote in my affidavit, it is very clear. It is talking about, I am joining the organisation voluntarily without motives of material advantage.

20 So my understanding was that, when you are joining the organisation, when you are talking about the integrity.

First of all, we are talking about understanding the fact that we are no longer individuals absolutely but we are now representatives of the people and that we are going to uphold the constitution, not only of the ANC but that of the country as the supreme law of the land. So to me that is

what it meant.

CHAIRPERSON: What would it mean or what would you have understood it to mean in terms of the integrity of members of the ANC and the integrity of those who are put in leadership position with the ANC, the personal integrity of each member, the internal – the personal integrity of those who are put in leadership positions of the ANC? Did you see it in that context as well, this idea of defending the integrity of the organisation? In other words ...[intervenes]

10 **DR KHOZA:** Yes.

CHAIRPERSON: ...if a member of the ANC engages in conduct which you regarded as showing lack of integrity, how would defending the integrity of the ANC be used in that situation by somebody, namely another member of the ANC, who wants to say what am I expected to do as a member of the ANC in terms of this declaration that I signed? It says I will defend the integrity of the organisation. Did that have something to do with personal integrity or did that talk about avoiding the disintegration

20 of the organisation. In other words, did it have anything to do with honesty, with ethical leadership, those kinds of things or not really, it is more about making sure that the organisation does not disintegrate? What was your understanding?

DR KHOZA: Okay, Chairperson, I think in annexure 10, I

think it is annexure 10 or 11, there is a – we have a constitution of the ANC and if I may, if you could allow me...

CHAIRPERSON: Yes.

ADV FREUND SC: Chair, could I just ...[intervenes]

DR KHOZA: If you could allow me to ...[intervenes]

ADV PRETORIUS SC: Could I just interrupt?

CHAIRPERSON: Okay, Dr Khoza ...[intervenes]

DR KHOZA: Because it kind of captures ...[intervenes]

10 **CHAIRPERSON:** Okay, hang on one second, Dr Khoza. Mr Freund?

ADV FREUND SC: I would just like to give the Chair a reference to the constitution to which the witness is referring. It is in bundle 1 at page 821 and following.

CHAIRPERSON: 821?

ADV FREUND SC: That is correct, it is not the whole constitution, extract from it.

CHAIRPERSON: Yes, yes, okay, alright. Thank you, I have got it. Thank you, Mr Freund. Dr Khoza you may
20 proceed then I have – I see extracts from the constitution of the ANC starting at I think page 821, annexure MK10.

DR KHOZA: Yes. To me, you know, like if you – if we go to the jurisdiction which is 25.4, it talks about that:

“The ANC shall have jurisdiction to discipline any member, office bearer or public representative for

committing any act of misconduct as contained in rule 25.17 below as a member of the ANC and/or by virtue of his or her contract of deployment and/or by virtue of his or her membership of the structures of the ANC.”

Now if you go to 25.17 that this particular clause refers to, it is in the next page under the heading:

“Acts of misconduct.”

CHAIRPERSON: Yes.

10 **DR KHOZA:** It says, 25.17 says:

“The following conduct by a member, office bearer or public representative shall constitute misconduct in respect of which disciplinary proceedings may be invoked and instituted against him or her.”

I am going to go straight to 25.17.4:

“Behaving in a manner or making any utterances which brings or could bring or has the potential to bring, or as a consequence thereof, brings the ANC into disrepute.”

20 Then it also speaks about sowing racism, tribalism and so forth and 25.17.6, it says:

“Behaving in a manner which provokes or is likely to provoke or has the potential to provoke division or impact negatively on the unity of the ANC.”

But it also speaks specifically on the issues of personal

gain, those that are using state power to pursue personal gain and which is contained in that very solemn oath that each member of the ANC takes when they join the organisation.

It speaks about the fact that when you are joining the ANC you shall not use your position of authority for personal gain and it even talks about even misappropriation of funds and whether that of the state or even those of the ANC itself.

10 So I am saying to you, basically the parameters, it is not ambiguous, I think it is the leadership that made that ambiguous. But otherwise, in terms of what is written here, it is very clear of what integrity is about. Integrity is about being truthful, is about being honest, is about being able to understanding how to discharge your power without – will have to represent the members of the public truthfully because it is very clear but even as it talks about the unity of the organisation, it is not talking about it outside the moral and ethical code, it sets the moral and
20 ethical code of unity.

So what we were beginning to see is that we were being told that we have to unite and outside the moral and ethical code of the ANC and that, to me, was problematic.

CHAIRPERSON: Okay, thank you. Mr Freund?

ADV FREUND SC: Thank you. Dr Khoza, can I also refer

you to paragraph 25.17.8 in the constitution which reads as follows:

“Abuse of elected or employed office in the organisation or in the state to obtain any direct or indirect undue advantage or enrichment”

In your view is that of any relevance to the question you have just been dealing with?

DR KHOZA: Absolutely correct and thank you very much, I was looking for it and I could not see it. Thank you very
10 much for bringing it to my attention because I wanted to read that specific one too. But there is also, as a woman, I also wanted to read this specific one, which is 25.17.7 which:

“Engaging in sexual or physical abuse of women or children or abuse of office to obtain sexual or any other undue advantage from members or others.”

To me, President Zuma was not the embodiment of this value that is presented here and I do not have to talk about the Khwezi saga and with his own views of on how he
20 viewed woman and have he would actually harvest them – I am sorry to use this word, but he never really accorded them the kind of respect that women ought to have gained.

So I am saying the integrity is – embodies all these values, of non-sexism, of non-racialism, of anticorruption, ethical conduct, trying at all times to making sure that the

public purse is not used for one's personal gain.

ADV FREUND SC: Now could I refer you to paragraph 8.10 of your affidavit where you refer to the now famous judgment of the Constitutional Court, what became known as the Secret Ballot Judgment, the case of the United Democratic Movement and the Speaker of the National Assembly and there the Chief Justice held as follows, on behalf of the court:

10 “In the event of conflict between upholding constitutional values and party loyalty, their...”

Referring to members of parliament.

 “...irrevocable undertaking to in effect serve the people and do only what is in their interests must prevail.”

Now that judgment was, as you will recall, in the context of whether the next vote of confidence after the one to which we have previously referred was due to be held and I would like you to comment on whether, if at all, you believed that that judgment and in particular that sentence that I have
20 quoted had any impact?

DR KHOZA: It is actually very relevant because I think a number of ANC members were finding themselves having to being told by the leadership to, in covertly, to disregard the constitution of the country and even with that of the party, they were selecting clauses that were suiting their own

narrative, their own agenda of what they wanted to achieve.

So my understanding was that this judgment was making it clear that the constitution of the Republic of South Africa, 1996, is the supreme law of the land. Where there is conflict, obviously the constitution of the Republic takes precedence.

ADV FREUND SC: Now there was a subsequent vote of no confidence and before that vote of no confidence took
10 place, I am referring now to paragraph 8.13 of your affidavit, you made it public that in the planned no confidence motion you intended to vote with your conscience and not to toe the party line, is that correct?

DR KHOZA: It is correct and I do think that somewhere in my affidavit I even make it clear that I am going to vote not only with my conscience but I will also vote for the survival of the ANC because, to me, voting against – I mean, voting for – voting against the vote of no confidence on President Zuma was tantamount to liquidating the ANC and my view
20 was the public is going to judge us harshly and I was not just making that up. It had already happened in the City of Johannesburg, in the City of Tshwane, at Ekurhuleni and even - in fact Cape Town came first, where the ANC lost Cape Town and the ANC was becoming more of a rural party, a party that belongs to the periphery because the

ANC was simply not listening, not following its own code, moral code and that of the constitution of the Republic.

ADV FREUND SC: And in paragraph 8.17 you quote something that you were quoted saying at a conference in July of 2017, you said:

“I am here to defend the ANC mission and not a dishonourable and disgraceful leader.”

You then in the same – at about the same time, you called upon the president to step down, is that correct?

10 **DR KHOZA:** Yes, I did.

ADV FREUND SC: Now in paragraph 8.18 you say that that prompted certain severe criticism, if you could just tell the Chair about that?

DR KHOZA: I think that my woes started during this period, probably from the day I wrote that first article in the first book. The ANC would leak even went to – in Kwazulu-Natal in EThekweni region even went to an extent of publicising my home address on social media, calling for a revolt really against me and calling for me to be
20 disciplined and I also started receiving dirty threats and this also even escalated to other spheres of government and because, you know, my property happened to be below a reservoir – in fact during that time water was discharged onto my property and because I knew that each time I saw something, the water from the reservoir, which belongs to

EThekweni Municipality, which is under the ANC, would be discharged into my property and I would be left with having to clean up and doing all that. There was just a lot of things that were happening to me at a time.

So, however, I was clear that I was not going to backtrack because to me it was very important to not only just represent the people of South Africa but also defending the forefathers of the ANC, the people that founded the ANC. I do not think the ANC was founded to
10 do what it was doing and that is why I decided that I am not going to backtrack, I decided that I was going to – I became a little stubborn, I admit.

You refer in paragraph 8.18 to – you have given an example of what was said to you by Deputy Chief Whip, Doris Dlakude, would you just put that on record please?

DR KHOZA: Yes, Doris Dlakude did say that there are some comrades who are – I think she said there are some comrades who are saying they are going to vote according to their conscience and she was saying no, none of the
20 ANC comrades that are in parliament came to parliament because of conscience, they came through the ANC structures, through the ANC as a party. So nobody can claim to represent a conscience. That was the essence of what Dlakude was saying, she was basically saying we must divorce ourselves from our own conscience and follow

the instructions of the party directives. That is what she was trying to say to us and in fact, subsequently, it is not only Doris Dlakude, at the ANC policy conference in July 2017, Fikile Mbalula threatened the ANC MPs that would be voting with their conscience and he even synonymised them with suicide bombers and I knew - and in fact I think at some stage he even called by name that I am a suicide – Makhosi is a suicide bomber, you know, because of my commitment to following my conscience and I was not just
 10 acting arbitrarily, I was just acting within the confines of what the constitution of the country and that of ANC was saying. Those are the values that they embody.

ADV FREUND SC: Now you refer in paragraph 8.19 to similar comments from Mr Mantashe who I believe was then the Secretary General of the ANC and from Ms Jessie Duarte who was then I believe the Deputy Secretary General, is that correct?

DR KHOZA: Yes.

ADV FREUND SC: And what was the ...[intervenes]

20 **DR KHOZA:** And it was also – it was not – and this whole thing of the attack on conscience despite it being, if I am not mistaken, I think it is Section 15 of the constitution, it is covered even in the constitution of the country yet this was coming a lot from the leadership, being – the leadership I am referring to, Jessie Duarte, Gwede

Mantashe, they were all talking about attacking this whole concept of conscience and which was really making it very difficult for even members – there were some members, as it would be seen later on when members were voting, that did follow their conscience in their voting in this particular motion.

ADV FREUND SC: Now you deal in paragraph 8.21 in more detail with the position of Mr Mantashe and Ms Duarte and you make the point there that neither of them
10 were in fact members of parliament, is that correct?

DR KHOZA: Yes, they were not members of parliament and that is why during that period you must understand they were coming to caucus, to ANC caucus meetings every Thursday and I viewed that as intimidation because they were saying the same thing, there is nothing – there is no conscience here, we have to go and vote as a block and retain the unity of the ANC.

ADV FREUND SC: So where does that ...[intervenes]

DR KHOZA: So this was – they were not members of
20 parliament and that the challenge that you have is that you have people who are not necessarily members of parliament coming in and instructing us to violate the constitution.

ADV FREUND SC: I want to deal briefly and only briefly with what you deal with in paragraph 9 of your affidavit

which is threats that you and your family received. Would you just maybe highlight the core incidents that you think explain the sort of pressure you came under?

DR KHOZA: Ja, I always have a difficulty when I get to this part. The threats were not just directed at me, they were directed at my children. I was able – I was stronger when – and I did not mind when the threats were directed at me but my children were going through so much emotional pain. One of those key things that the ANC did
 10 to me, during that same period certain people came to my house – I lost my husband when I was 28 years old and my son was one year old at the time, they even came to my house and told my son that I killed my husband and that was also covered in the City Press – not City Press, I think it was Sowetan, where I was saying that I did not – I had to now start defending myself, being accused of things. They were even making my life at home miserable. As I earlier said, I am also, apart from being a politician, I am a scholar, I am also a scientist, I happened to have
 20 developed a system, a new [indistinct] 1.53.06 system that will demystify mathematics and make it easy for learners to comprehend mathematical concepts using their own languages and I started with isiZulu and I wrote those textbooks from grade 4 to grade 12 and I even made them – I subjected them for quality processes, they were

scrutinised by the Department of Basic Education and the Department of Basic Education basically even went to an extent of saying, you know, writing the letter, telling the provinces to say, you know, we highly recommend these materials because they were not only demystifying mathematics but they were also dealing with the language barrier crisis because there are bilingual grammar textbooks.

So I have had a situation where even universities
10 and in this instance – and I wanted to say this carefully before I have worked – I am working – we started engaging with the University of Kwazulu-Natal as we speak. Professor Tsonga(?) even was very honest with me, he sent me that email, which I can share with you, that you can even see where he is saying to me, you know, Dr Khoza, nobody can question your scholarly or scientific standpoint and I am aware that the university wants to use – of certain people in the university that wants to use your materials. However, your public stance, can – are
20 construed as a destabilising factor. In other words, my public pronouncements and corruption and stuff like that and on the ruling party and so forth were considered as destabilising factor.

So I am saying it is not just my children that had to suffer, my family, but even the fields of interest that I am

pursuing that have been – the children, the black African learners have not been allowed to study, to have materials that have been assessed and recommended by the Department of Education due to this stand that I made in parliament. And in fact at some stage I was called by one of the officials to say you know what, just apologise then your nightmares will be over and obviously I refused to apologise.

ADV FREUND SC: I just want to refer to one further
10 incident that you deal with in your affidavit, it is in paragraph 9.4.5, the man in a balaclava outside your house pointing a gun at you, would you just briefly summarise that incident?

DR KHOZA: Yes, there was one night when I came home and I came home and there was a black Mercedes Benz in the property on the driveway of my neighbour and I still believe that it was – I am not necessarily a very religious person but I still believe that maybe it was the grace of God or maybe even the ANC ancestors that were thinking I
20 was doing the right thing, you know, because for whatever reason, this person who had a black balaclava and black gloves and so forth, slipped – he was standing on the stone and the gun went on the other way and that is how I survived that night and – so I am saying a threat to my life was such that were my children were forever worried

whether I am going to come back alive. And mind you, I live in Kwazulu-Natal. In Kwazulu-Natal we are known as a province that has the highest levels of political intolerance and of violence, political violence and these things were happening to me and then the incidences are numerous, I cannot call all of them.

ADV FREUND SC: Alright, I want to move beyond that issue. Paragraph 10, paragraph 10.1, you refer to the fact that following the Constitutional Court's judgment on the
 10 secret ballot issue, the then Speaker of Parliament Ms Baleka Mbete announced that she was going to allow a secret ballot in that particular vote of no confidence, that is an announcement she made on the 7 August 2017 and you deal in the next paragraph 10.2 with what happened in the ANC caucus on the following day. Could you please just tell the Chair about that particular caucus meeting?

DR KHOZA: You know, this particular paragraph is very important to me because it kind of in a way explains what we are seeing now and I am glad that I presented this – I
 20 wrote this affidavit before what we have seen President Zuma doing to the Commission because at this particular meeting, Gwede Mantashe at this particular meeting after – at this particular meeting, parliament had a caucus meeting on the 8 August 2017, Gwede Mantashe said we have a danger of becoming judicracy. What I understand by that

was that democracy was now going to be replaced by judicracy. In other words, there was no respect of the rule of law or the independence of the judiciary but that the judiciary was now taking over the powers of the country, of the running of the country, so that is what Gwede Mantashe said. In fact that term he repeated a number times, the judicracy. He repeated it a number of times at the caucus meeting before we went to vote.

ADV FREUND SC: [indistinct] 01.59.59 on what members
10 of parliament were required to do, ANC members of parliament were required to do in that vote on that occasion, was that the same as before?

DR KHOZA: Pardon?

ADV FREUND SC: Did he give any guidance as to how ANC MPs should vote in that particular vote of no confidence.

DR KHOZA: It was very clear, he did say – obviously when he was saying we have to be careful and be mindful of the judicracy, he was also stressing the question of unity
20 and it was repeatedly mentioned to us that the attack is not just on President Zuma, it is on the ANC itself. So we were told that we have to go and defence the ANC.

ADV FREUND SC: Now it is matter of public record as appears from paragraph 10.3 of your affidavit that there were 177 votes for the motion of no confidence and 198

against and you say there it appears that a number of ANC MPs voted for the motion and you say you did the same.

DR KHOZA: Yes.

ADV FREUND SC: Just very briefly – we really touched on this already but very briefly you can summarise why you felt that that was the right thing to do on that occasion?

DR KHOZA: To me it was very important, we have a budding democracy and the truth is, we have had one state after another state in the African continent failing and as a
10 result of this failure to transition from a liberation movement to a democracy. To me it was particularly important during this time because I felt strongly that this was not just about only the people of South Africa but it was also about the people in the continent because they were beginning to look at South Africa, what South Africa is doing was likely to send a very good message to the entire continent. So it was not just about South Africa, hence I felt strongly that I needed be open about it even though I had the right to vote secretly and not declaring
20 how I voted. I thought it was important to do that.

ADV FREUND SC: Then you deal ...[intervenes]

CHAIRPERSON: Mr Freund, I am sorry, I am going to interrupt you. Ahead of that vote of no confidence in – was it August 2017? I just want to make sure ...[intervenes]

DR KHOZA: Yes.

CHAIRPERSON: ...that I understand what happened. Was there – did Mr Mantashe seek to persuade members of the ANC in parliament to vote against the motion or did he instruct them how to vote?

DR KHOZA: Chairperson, the language – yes, Gwede Mantashe – you must remember that the Speaker at this stage, it was very clear that she, the Speaker, Baleka Mbete as the Chairperson of the ANC was under enormous
10 pressure which is why she – her language was also beginning to change somewhat, you know, in favour of this secret ballot. However, Gwede Mantashe, he was still trying to persuade us. I would not say that he was as harsh as he was previously but on this day when he was talking to us about judicracy, he was very, very – he was ...[intervenes]

CHAIRPERSON: He was emphatic.

DR KHOZA: He was cautious about what he was saying.

CHAIRPERSON: Okay.

20 **DR KHOZA:** He was saying it but he was very measured.

CHAIRPERSON: Yes.

DR KHOZA: He was not speaking as usual.

CHAIRPERSON: Ja. He was not saying no member of the ANC will vote in favour of the motion, he was not saying that but he was emphasising points which sought to say

the right thing for you ANC members to do is to vote against the motion. Would that summarise it, capture it correctly?

DR KHOZA: Yes.

CHAIRPERSON: Yes, okay. But either you or somebody else may have said that in other – on other occasions when there were motions of no confidence in President Zuma the ANC was direct instructing its members in parliament not to support the motion, is that correct?

10 **DR KHOZA:** Yes, in previous ones, yes, the ANC was – the leadership, Gwede Mantashe and I mean and Jessie Duarte, the entire leadership was direct but this time they were very measured and if they were very academic, if I may say.

CHAIRPERSON: Ja.

DR KHOZA: Because it was the first time that Gwede Mantashe, if my memory serves me well, mentioned the concept of judicracy.

CHAIRPERSON: Yes. Okay, thank you. Proceed, Mr
20 Freund?

ADV FREUND SC: Thank you, Chair.

DR KHOZA: Chairperson, sorry.

CHAIRPERSON: Yes.

DR KHOZA: I wanted a break, a bit of a break, my battery is dying, I was not charging my laptop.

CHAIRPERSON: That is fine, we can take a break, how much time do you...?

DR KHOZA: I just want to organise that it gets charged.

CHAIRPERSON: Is it five minutes, ten minutes? That would be enough for that? How much time? Would that be enough?

DR KHOZA: Ja.

CHAIRPERSON: Five or ten?

DR KHOZA: Five minutes, ten minutes, it is fine with me.

10 **CHAIRPERSON:** Okay, let us take an adjournment of ten minutes. We adjourn.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Okay, let's proceed Mr Freund.

ADV FREUND SC: Thank you Chair. Dr Khoza before the break you had been referring to the vote of no confidence on the 8th of August 2017, I would like to take you now to paragraph 10.5 of your affidavit, where you describe the views expressed by President Zuma on the 14th of August.

20 Could you just explain what happened then?

DR KHOZA: Well the President, the then President Zuma stressed that unity was paramount, and that we needed to vote, you know, we needed to ensure that there was unity amongst us as the members of the ANC. In other words, we had to vote the same as per the directive of the

organisation.

ADV FREUND SC: Did he indicate whether any steps should be taken?

DR KHOZA: Pardon?

ADV FREUND SC: Did he give any views as to any further steps that should be taken?

DR KHOZA: Yes, it did say that, we demanded that steps be taken under the ANC Constitution... [08.28.05 – 08.41.10 no audio]

10 **ADV FREUND SC:** Chair, it appears we have lost Dr Khoza.

CHAIRPERSON: Yes.

ADV FREUND SC: And we understand that there is a power outage in KwaZulu Natal and perhaps also where you are in Johannesburg, I am not sure about that.

CHAIRPERSON: Oh.

ADV FREUND SC: And I am not quite sure how you think we should proceed.

20 **CHAIRPERSON:** Ja, let us see, do you need, must I adjourn?

ADV FREUND SC: Chair I believe that that might be prudent but perhaps before we adjourn if I could just ask for guidance on an issue. It has been suggested to me that if this is done without video picture but purely word with voice, that the connections would be better and we

could proceed. Now, I do not know whether you would want to do that or whether you would want to wait until we can be comfortable that we can have video as well as audio.

CHAIRPERSON: I would prefer to have both unless we got to a point where the delay was too long. I am wondering, we are at twenty to one, the technicians do you have an idea that you might need five, ten minutes or longer or you have no idea? Five minutes. Okay, I am told that five minutes might be fine. So I was tempted to say,
10 maybe we may as well just adjourn for lunch but I think let us just adjourn for ten minutes, we might go beyond 1 o'clock in order to make up for some time. So let us adjourn for ten minutes but if they are ready before, in five minutes, then we'll come back. We are adjourned.

INQUIRY ADJOURNS

INQUIRY RESUMES

ADV FREUND SC: We did loose connectivity again. What she told me on the telephone, was that ...[no audio] Can you hear us Dr Khoza?

20 **DR KHOZA:** Yes, I am.

ADV FREUND SC: Alright do you think there is a reasonable likelihood that this connection will remain adequate?

DR KHOZA: No, it is now going to be fine. I am using my other laptop, this other one I think it is the battery because

the battery died. So it is going to take longer before it has enough power for streaming live.

ADV FREUND SC: But the device you on now you think probably will work fine?

DR KHOZA: Yes, definitely.

ADV FREUND SC: Alright.

DR KHOZA: It has 90 it is on 95% and it is a Mac.

ADV FREUND SC: Then I think that we can advise the DCJ as soon as it is possible in Johannesburg.

10 **REGISTRAR:** Okay, alright. Thank you Dr Khoza, can you hear me, clearly from this side?

DR KHOZA: Yes, I can hear you.

REGISTRAR: Thank you so much. We are about to begin.

CHAIRPERSON: I understand the technical issues have been resolved, let us continue Mr Freund.

ADV FREUND SC: Thank you, Chair. Dr Khoza when we took a break, we had been referring to the Presidents response on the 14th of August 2017. I do not think that
20 we got properly on record what the President demanded on that occasion.

DR KHOZA: Yes, he did say that those that would not be upholding the unity of the organisation will have to be acted upon and especially those obviously that will would vote with their conscience.

ADV FREUND SC: Again on the 15th of August 2017...[intervene]

CHAIRPERSON: Hang on one second Mr Freund, oh no okay I think continue to that point before I ask a question.

ADV FREUND SC: Thank you Chair on the 15th of August 2017, which was the next day you say Mr Mantashe made an announcement. What was that announcement?

DR KHOZA: He made an announcement that the ANC National Working Group had decided to commence
10 disciplinary proceedings against the four ANC MP's and amongst those four ANC MP's that had voted against the President Zuma, in the vote of no confidence was myself.

ADV FREUND SC: Thank you, Chair.

CHAIRPERSON: Yes, Dr Khoza I just want to make sure whether you have any doubts about this evidence, because it is quite important, let us go back to paragraph 10.5. You say there:

20 "On 14 August 2017, President Zuma said that ANC unity was paramount, that ANC MP's could not vote according to their conscience and he demanded that steps be taken under the ANC Constitution against those who had voted according to their conscience, in the vote of no confidence."

Are you quite clear in your mind that your recollection of what he said is correctly captured there Dr Khoza?

DR KHOZA: I am very clear Chairperson.

CHAIRPERSON: Yes, and then you say in paragraph 10.6:

“The following day, namely 15 August 2017, Mr Mantashe announced that the ANC National Working Committee had decided to commence disciplinary proceedings against the four ANC MP’s, including me, who admitted voting against President Zuma in the vote of no confidence.”

10 Are you quite clear also that what Mr Mantashe said on that occasion, is correctly and accurately captured there?

DR KHOZA: Absolutely, Chairperson and it was well published.

CHAIRPERSON: Yes.

DR KHOZA: It was broadcasted even in mainstream media on SABC or ENCA and even our photographs, the four of us of those MP’s were actually put up on screen.

CHAIRPERSON: Well, I have not gone back to the so called secret ballot judgment and refreshed my memory
20 other than what I have read the excerpts that you may have put up in your affidavit. But my recollection, is that that judgment of the Constitutional Court was quite clear and that it was saying any member of Parliament would be entitled to vote the way they wanted to vote. I am just putting it in my own words. What was your understanding?

DR KHOZA: Chairperson it is not just only the Constitutional Court judgment, but even Speaker Ms Baleka Mbete is on record, even saying there will be no harm that will happen to members who would have voted otherwise, in other words, not voted according to the ANC position, but voted according to their conscience.

CHAIRPERSON: Yes.

DR KHOZA: She did that undertaking publicly.

CHAIRPERSON: Yes, Mr Freund if you could assist me.

10 Is it only the exert at paragraph 10.1 of Dr Khoza's affidavit that is in her affidavit from the Constitutional Court judgment in the secret ballot?

ADV FREUND SC: Chair, there would be more than that if one goes to Annexure MK9.

CHAIRPERSON: Yes, on what page?

ADV FREUND SC: Page 818 through to 820. There is a document, it is an article in News 24 but it purports to report the full statement by the Speaker Mbete under the headline:

20 "No member may suffer harm if they follow their conscience."

And it is set up in considerable detail.

CHAIRPERSON: Yes but I am first and foremost wanting to be accurate about what the Constitutional Court judgment said, then I can come to what the Speaker said.

ADV FREUND SC: Judge, the witness has already referred to paragraph 8.10 of the affidavit and that refers to the judgment and we have only included in the affidavit really two or three sentences from the judgment.

But in my submission, the sentence quoted goes to the very heart of the matter because it says:

“If there is a conflict between upholding constitutional values, and party loyalty then the interests of the public, in other words, the constitutional values must prevail.”

And then the passage in that paragraph that was quoted, I did not read the next sentence but the next sentence reads:

“It is so not only because they were elected through their parties to represent the people, but also to enable the people to govern through them in terms of the constitution.”

Now, I do not want to be absolutely categoric about this, but my impression is that the judgment did make clear that members of Parliament not only had a right to follow their conscience, to the extent that that was required by their understanding of the constitution. I think the court went further and said they had an obligation to do that, according to their best judgment as to what the constitution required.

CHAIRPERSON: Yes, no, that is my recollection and of course, maybe I should remember much better, because I was party to that judgment. But I was just concerned that I should not say anything inaccurate about what the judgment said but I think, based on what you are saying also and what I have just looked at here.

It seems that it is accurate to say, the judgment of the Constitutional Court in the secret ballot matter, made it clear that at least in regard to that motion of no confidence
10 that where there is conflict between the interests of the party and the interests of the people of South Africa, members of Parliament were entitled, or even obliged to vote to advance the interests of the people. Dr Khoza, are you still there?

DR KHOZA: Yes, I am Chairperson.

CHAIRPERSON: Yes, the reason why I raised this is this, that, it seems to me that the statements that according to your evidence were made by the then President Zuma and the decision taken by the National Working Committee of
20 the ANC, as articulated by Mr Mantashe were saying, in effect, do not bother about what the Constitutional Court has said in his judgment.

Namely, you as members of Parliament, if there is a conflict between your loyalty to the party and your loyalty to the people of South Africa, as to how you should vote,

you are entitled, or you are obliged to vote in accordance with advancing the interests of the people of South Africa.

These statements seem to say, do not bother about that you are a member of the ANC or to the extent that they may have been made after the voting had taken place, they were saying people, members of the ANC who followed, who acted in accordance with the constitution, as interpreted by the Constitutional Court, whose duty is to interpret the constitution were going to be disciplined for
10 acting in accordance with the constitution, and in line with the judgment of the highest court of the land.

Is that your understanding of the effect of what these statements were saying or is your understanding different?

DR KHOZA: Chairperson that is exactly my understanding and my understanding flows from what Gwede Mantashe had already said at the ANC caucus meeting previously, where he was warning us about “judiocracy” replacing democracy.

20 I am not going to be able to explain what he meant by that, I think he will be in the best or in the best position to do so. But my understanding was simply he was simply saying, forget what the constitutional judgment has said, this is what, how things ought to have happened in accordance with the party principles.

CHAIRPERSON: And that is quite important, because it may have been bad enough if it was said by any other party but when it is said by the ruling party, the majority party, it is even worse it seems to me.

If the ruling party through the National Working Committee through its Secretary General at the time, if the Constitutional Court hands down a judgment on any issue that was very critical for the country, and the Constitutional Court, which in terms of our constitution is the final court
10 on what the constitution means, says this is what the constitution means and somebody, and especially the Secretary General of the ANC, or the President of the ANC, or the National Working Committee of the ANC, says in effect, anybody who has acted in accordance with what the judgment of the Constitutional Court said, will be disciplined by the party. I cannot understand that, I cannot understand how that could be said in the light of the judgement. I can understand prior to the judgment, the Constitutional Court clarifying the position. I can
20 understand that there may have been interpretations, bona fide interpretations.

But once the highest court in the land, which in terms of the constitution is charged with interpreting what the constitution means, when there are different interpretations in the country in Parliament and the

executive, that is the court that has been given the power to say, tell us what the constitution means and the Constitution Court tells Parliament, tells the executive, tells everybody this is what the constitution means.

And then the ruling party says, anyone who has acted in accordance with the constitution, who has acted in accordance with the judgment of the Constitutional Court will be disciplined, it is just difficult to understand. I mean, what kind of message does that give?

10 Not just to the members of the ANC but to the members of the ANC in general, and to the public. What is it supposed to say about respect for the constitution? What is it supposed to say about respect for decisions of the courts of the country? What is it supposed to say about a judgment of the highest court in the land? And when you as members of the ANC, at the time, go back to your constituencies and people ask you the question, why are you being disciplined when you acted in accordance with what the Constitutional Court said, what are you
20 supposed to say?

If people say, in the light of what you were told, is it fine for us as members of the ANC or is the public to disregard what the constitution say, to disregard what the Constitutional Court says, to disregard what the courts say? What do you say, as a member of the ANC, who have

been told by the Secretary General of the ANC, and the President of the ANC, what you say you were told?

I accept that you, you might have nothing to say about what, I am just trying to indicate my difficulty to understand how the ruling party and how the Secretary General of the ruling party at the time, Mr Mantashe the President of the party, and the President of the country who had taken an oath to uphold the constitution, because Mr Zuma was still President at the time, he had taken an
10 oath to uphold and defend the constitution, how he could make a statement like that.

But those of them who will come before the Commission may be able to explain and maybe they will make me understand. I accept that you might have nothing to say about this.

You can still hear me Dr Khoza?

DR KHOZA: Yes, I can still hear you, Chairperson.

CHAIRPERSON: Okay, alright okay no that is fine, Mr Freund.

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

DR KHOZA: Before you come in, I wanted to comment on what the Judge was alluding to. The truth is, the situation within the ANC was such that anyone who sought to uphold the rule of law will be severely punished and I am a living example of that, because Gwede Mantashe did not only

make that statement, but he went further and acted on it and he fired me.

And in fact that is exactly what made me to resign from the ANC because it became very clear to me that if this is what we do with the Constitutional Court, and if this is what we do with another very important organ of State, therefore I am no longer, I can no longer justify my membership with that organisation and we have seen how there is a lot of confusion within the ANC. And by the way
10 in the ANC to be a Chair of a committee, sometimes it is a form of demotion.

So there is no – I am not sure if they do it deliberately, not to respect that three organs of State, I mean, and the legislature - I do not think they even value the legislature. It is not only the judiciary, that was my own impression because of what they would do, like even with the Ministers were accused of corruption, or whatever, they will never be treated as harshly as I was, I have never stolen a cent from government. I have always tried to
20 represent the interests of the people but I was the one that had to be punished severely. In that case, even Jacob Zuma was never punished for breaking almost every other clause of the constitution in terms of Rule 25.17.

CHAIRPERSON: Who were the members of the National Working Committee of the ANC that would have been party

to this decision that you say, Mr Mantashe talked about, namely the decision that members of Parliament who were members of the ANC who voted in favour of the motion of no confidence in Mr President Zuma, should be disciplined. Who were those people?

DR KHOZA: Those that I know of as per the ANC Constitution which obviously be the top seats which is the President, the Deputy President, the Chairperson and the Treasurer General, the Secretary and Deputy Secretary
10 General of the ANC, as well as the President of the ANC Women's League and the President of the ANC Youth League, those will be essentially part of the Working Committee of the ANC. That is your top leadership level of the ANC.

CHAIRPERSON: So that would have been President Zuma was President of the ANC at the time. That would have been Deputy President at the time of the ANC Mr Ramaphosa, that would have been Mr Gwede Mantashe and that would have been his deputy Ms Jesse Duarte, is
20 that right?

DR KHOZA: Yes.

CHAIRPERSON: In 2017?

DR KHOZA: Yes.

CHAIRPERSON: And that would have been the Treasurer, General, Dr Zweli Mkhize and then there would have been

others.

DR KHOZA: Zweli Mkhize he was the Treasurer of the ANC.

CHAIRPERSON: Yes, but you say the top six are part of the National Working Committee. So unless...[intervene]

DR KHOZA: And the Speaker of Parliament at the time was the Chairperson.

CHAIRPERSON: And the speaker of Parliament at the time, yes but she would have been there in her capacity as
10 Chairperson of the ANC.

DR KHOZA: Yes.

CHAIRPERSON: That would have been Ms Baleka Mbete.

DR KHOZA: Yes.

CHAIRPERSON: Yes, and so if indeed, Mr Mantashe if indeed the National Working Committee took this decision then all of those people, unless somebody disagreed they were party to that that decision, or unless somebody was not present on that occasion. Okay, Mr Freund.

ADV FREUND SC: Thank you. I just want to clarify
20 something that you referred to some minutes ago, when you said Mr Mantashe had I think you said fired you and that in response to that, amongst other things you had resigned. I just want clarity about the fired. Is that a reference to the events that are dealt with in paragraph 11 of your affidavit, which pertains to your removal as Chair of

the Portfolio Committee on Public Service and Administration?

DR KHOZA: Yes, I am referring to that as the Chairperson of the Public Service and Administration, you will recall that I had, I think I covered it somewhere where the ANC Study Group had convened a meeting, and were even Faith Muthambi was present and the Study Group of the ANC is like a brainstorming. It is not a constitutional structure necessarily of the ANC.

10 That is where I was charged, disciplined, and even Fired because of following my vote of - following my conscience, they were saying they cannot be led by conscience. So subsequently to that, that matter then, Gwede Mantashe then subsequently concurred because he subsequently said, I can no longer work with that Working Group, with those members of the committee, and therefore I am released from my position as the Chair of the Public Service and Administration with immediate effect.

ADV FREUND SC: Now I would like to go through what
20 you have just told us in a little more detail, which you do in paragraph 11 of your affidavit.

DR KHOZA: Okay.

ADV FREUND SC: Because you say in you say it in paragraph 11.1...[intervene]

CHAIRPERSON: Mr Freund.

ADV FREUND SC: ...on the same day...[intervene]

CHAIRPERSON: Mr Freund.

ADV FREUND SC: ...of course it is the day of Mr Mantashe's announcement.

CHAIRPERSON: Mr Freund I think we will take the lunch break in five minutes' time, quarter past, so I am just warning you so that whatever you deal with, you can tailor it to finish within five minutes. for us to stop at that time.

ADV FREUND SC: I will. Yes, I will endeavour Chair to
10 actually complete this witness's evidence in that time.

CHAIRPERSON: Okay.

ADV FREUND SC: You - what you say in the affidavit is that you, on the very same day, went into the meeting of your Study Group for the Portfolio Committee, which you Chaired. And when you got to that meeting, you were confronted by the ANC caucus for that study group, together with the Minister Ms Muthambi. Just explain very briefly, what you were confronted with at that meeting and why was Ms Muthambi there at all?

20 **DR KHOZA:** Well, Minister Muthambi, in her capacity as the Minister of Public Service and Administration has the right to attend Study Group meetings, as an ordinary member of the ANC who is part of that committee, is part of the Study Group. That is where we process issues that are going to be dealt within the committee.

However, what was strange about this meeting is that somebody who was actually serving in the Committee of Intelligence, and is somebody who had for lack of a better word, which is public knowledge, who had romantic at some stage, romantic relations with the President Zuma. She happened to be the cluster Chairperson.

On that day Ms Mina Lesoma who is supposed to be the Chair of the Study Group was not present at the meeting. So this particular person Sizani Dlamini-
10 Dubazana is the one that was Chairing that meeting, and is the one that was leading the charge. As a matter of fact, as soon after that, I even went to the former President Kgalema Motlanthe, I went to his house after they charged me because they took the constitution of the ANC and they were charging me for ill-discipline.

And they were saying in this constitution pointing to the Constitution of the ANC, there is nothing about conscience but there is something about unity. There is something about leading the ANC according to the ANC
20 Constitution and I went to Kgalema Motlanthe and when I asked him because I was confused at that stage and I said this is what had happened. Kgalema Motlanthe agreed with me and said, the Study Group has no powers whatsoever of instituting any disciplinary action, taking any disciplinary action against a member.

So he concurred with me and I was confused because, you know, the tone, even of Jackson Mthembu who had earlier on was against the study - had a problem with the Study Group for taking a decision to boycott the meeting that I was going to be Chairing. In fact, they had the Study Group of the ANC decided to call off the Portfolio Committee meeting of Parliament as a Study Group.

But the EFF, I think, Ndlozi, Dr Ndlozi was there at that meeting, they all decided to attend that meeting, there
10 were a number of members of the EFF that attended the meeting because the Study Group did not only end up with telling on the ANC members, but they went further to even instructing officials of government like the CEO of the School of Governance, Professor Levin.

And they went to an extent of telling some of those people from the different departments, the only people that attended that did not adhere to that call was the Public Service Commission Chaired by Sizani, I cannot remember the surname but he decided not to follow that instruction.
20 But he attended that meeting, which was ours, not according to the Study Group I was not supposed to continue with that meeting because they had already fired me.

But as the Chair of the part of the Committee of the Public Service and Administration Committee, so but

Jackson Mthembu had given me the green light to proceed with the meeting because subsequently to being fired, I contacted Cedric Frolick as well, who was the Chair of Chairs. He was the Chair of the Chairpersons and I contacted him and I said, this is what had happened and he said, no, that is wrong.

The Study Group has no right to call off the meeting of Parliament, and I also spoke to Jackson Mthembu, he also concurred with Frolic and said, I must go ahead with
10 the meeting. So I had the blessing of Cedric Frolick and Jackson Mthembu to go ahead with the meeting.

CHAIRPERSON: Okay, Mr Freund I think unfortunately, unfortunately we...[intervene]

ADV FREUND SC: In the five minutes, I think there is more to be covered.

CHAIRPERSON: Yes.

ADV FREUND SC: Chair we can adjourn for lunch, then we can continue with Dr Khoza thereafter.

CHAIRPERSON: Yes, let us continue with Dr Khoza after
20 the lunch break. Let us take the lunch break now, we will resume at quarter past two. We are adjourned.

ADV FREUND SC: Thank you.

REGISTRAR: All rise.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: I understand there was some technical issues Mr Freund.

ADV FREUND SC: Yes I am sorry for that Chair but they do seem to have been resolved at least for the moment so we are ready to proceed.

CHAIRPERSON: Okay let us proceed.

ADV FREUND SC: Dr Khoza can you hear me?

DR KHOZA: Yes I can.

ADV FREUND SC: Thank you. I just want to deal as briefly
10 as we can with your paragraph 11. And you say in paragraph 11.1 that on the same day the 15th August there was a meeting of the Portfolio Committee on Public Service and Administration scheduled to take place and you had arranged for Faith Muthambi who was by that time the Minister of Public Service and Administration to present a report to the committee on that – at that meeting, is that correct?

DR KHOZA: Yes that is correct.

ADV FREUND SC: Very briefly what – what was the issue
20 on which she was required by you to come and present a report to the committee?

DR KHOZA: There was an allegation that Minister Muthambi who at the time was the Minister of Public Service and Administration she was no longer the Minister of Communications that she had flown her relatives and people

that are – that – her friends to her budget speech.

Now what was – what was happening at the time was that we had issued an instruction as a committee that Ministers must be careful on how they spend because we were facing a contracting economy and South Africa was go – and the – generally National Treasury had reported to ask that the situation was not looking good in terms of the public finances.

So we were going to hold Minister Muthambi
10 accountable for that. We wanted to get clarity from her. In fact we were even – we were not even expecting a written report we were expecting an oral report from her because we wanted to hear her side of the story. The matter was reported in the media and we wanted her to verify those allegations.

And as a person who was from the ruling party I had heard other members of the opposition complaining about that they came to me to say, there is this allegation about Minister Faith Muthambi what is going to happen about that?

20 So we were meeting – we were going to have a meeting on the 15th August 2017 as a Study Group. The meeting if I am not mistaken was scheduled for ten o'clock because Minister Faith Muthambi was going to appear at two o'clock.

Now on that day I was surprised when I got to the

meeting at ten o'clock – in fact I got there a few minutes before ten o'clock which is what I always did; I always arrived early. And I knew that Mina Lesoma was not going to be present at that meeting because she had issues – had her own personal issues. She was the Whip of the committee.

So I was expecting to chair that meeting because she had asked me that I would chair that meeting because she will be gone. So to my surprise I found that there was a Minister Faith Muthambi at this meeting. By the way who
10 was not attending meetings of the Study Group. I was expecting her to attend later on that day so 00:03:49 before the committee but on this particular day Minister Faith Muthambi was there together with Sizani Dlamini who was not even though she was the Chair of the Governance Cluster she was not attending any of our Public Service and Administration Committee meetings.

So I found it odd that she was there and there were other members such as 00:04:19 the former Deputy Mayor of Pietermaritzburg that was recalled at some stage by the ANC
20 and subsequently promoted to go to National Parliament.

There was also MP Adine Thombela. There was also MP Velmar New 00:04:37 and the other person that was there was obviously the secretariat of the Study Group.

And to my surprise I was shocked when Sizani then said MP's honourable members Sizani took the ANC

constitution and she started wielding it and told me that the meeting is about to commence and she is going to be the chair of the meeting.

And at the meeting together with all of them Thembe and then they were accusing me of following – of following conscience and they were even pointing out to the constitution that there was nothing called conscience in the ANC constitution.

They went through a series of charges, of the rules
10 that I had broken I am not going to go through that but what was strange to me was that at that meeting I was charged and I was also even fired by the Study Group and they were telling me that from this – from that day I am no longer going to be the chair of the Study Group. It is then that I then – and they were saying all meetings of the Portfolio Committees, Parliamentary Portfolio Committees are suspended.

Now I tried to tell them that that was not relevant but they said to me well they as a Study Group they have their
20 power. So it is then that I actually contacted Cedric Frolick to advise on what had been.

ADV FREUND SC: I would just like to interrupt you there and I would just like to take you to part of what happened in that meeting. It is referred to in your affidavit at paragraph 11.8 and 11.9. You have already told the Chair part of the

00:06:29 was this question of conscience. But if you could just take us through what was – what you dealt with in paragraphs 11.8 and 11.9 of your affidavit please?

DR KHOZA: Well I was told that I had brought the name of the ANC into disrepute by my questioning of Ms Dudu Myeni and in my capacity as the then member of the Standing Committee on Finance and by my remarks in the SABC inquiry about Dr Ben Ngubane and I also had written which is true about the recycling of failure and so there were
10 accusing me that I had also done that. I had accused the ANC of recycling failure. Basically what I was referring to there was that Faith Muthambi was the Minister of Communications and we had as a committee, as the SABC inquiry – I mean the ad-hoc committee on SABC we had recommended to the President to review to look to – to review the position of Faith Muthambi basically we were simply saying to the President in short, President this person is incompetent and with the manner in which he has – she has managed SABC but subsequently she was promoted. So
20 there were accusing me of that. They also even alluded to issues that were – had to do with SABC and Hlaudi Motsoeneng and they also spoke about the vote of no confidence and conscience. So basically that is what had happened and from that I was never given an opportunity to respond. I was then told that they can no longer be led by

the conscience.

ADV FREUND SC: So you say in your affidavit that they all criticised you and you say in your affidavit Ms Muthambi is of these who criticised you for the fact that you had raised these criticisms of comrades in the various oversight committees about which you have already referred, is that correct?

DR KHOZA: Yes that is correct.

ADV FREUND SC: And what is more your committee
10 according to your affidavit also criticised you for having called Ms Muthambi to account to your committee as you have just described, is that correct?

DR KHOZA: Yes that is correct.

ADV FREUND SC: And you say that Ms Muthambi nodded her approval of this criticism, is that correct?

DR KHOZA: Yes that is correct.

ADV FREUND SC: Now you deal in your affidavit and I am not going to deal with it in any detail now but how you took this up in structures within the leadership of the ANC and
20 Parliament. But I do want to draw attention to paragraph 11.20.

CHAIRPERSON: I am sorry. I am sorry Mr Freund. I think seeing that you are moving to that far can I just ask Dr Khoza about some of the evidence she has just given? Dr Khoza.

DR KHOZA: Yes Chairperson.

CHAIRPERSON: Are you saying that the – the meeting...

DR KHOZA: I cannot hear.

CHAIRPERSON: You cannot hear.

DR KHOZA: Yes.

CHAIRPERSON: Okay let me bring the microphone closer, is that better?

DR KHOZA: Yes it is much better Chairperson.

CHAIRPERSON: Okay you must just say whenever I am
10 talking too soft. I am too used to people saying my voice is
loud so – so I try not to be loud. Who was saying you should
not have called Minister Muthambi to account about what you
had read in the media namely that she had flown or whatever
a number of her friends and relatives to Parliament
inappropriately as I understand the matter. Who was saying
that? Was that the committee of Parliament that you were
chairing but on that day you were not chairing? Was that a
Study Group of the party?

DR KHOZA: That complaint – that complaint arose because
20 the members of the opposition who are members of the
committee had brought to our attention that there was – wide
media coverage on Minister Muthambi having flown her
relatives to her budget speech. So basically we simply
wanted her to give us her side of the story and it was the
committee decided because that matter had been discussed

previously and at a previous Portfolio Committee meeting but we then said no we needed to afford the Minister an opportunity to come and give her oral report at the following meeting. So it was essentially a decision of the committee that she should be invited to come and account on that. To give us clarity; give us her side of the story.

CHAIRPERSON: Yes but you – you have testified about a meeting I think that Mr Sizani chaired which was also attended by Ms Muthambi. Was that a meeting of the Study
10 Group for the ANC as opposed to a meeting of a structure of Parliament?

DR KHOZA: Yes. It was a meeting of the Study – it was the ANC Study Group Chairperson.

CHAIRPERSON: Oh. And they said...

DR KHOZA: It was not the Parliamentary Committee.

CHAIRPERSON: Yes. And among other things you say they said you or your committee should not have called Minister Muthambi to account about what you – what had been seen in the media.

20 **DR KHOZA:** Pardon Chairperson.

CHAIRPERSON: Did they say – I just want to clarify that I understood you correctly. Did the Study Group of the ANC that you are talking about at that meeting say that you should not have called Minister Muthambi to come and account or provide clarification about the allegations in the

media against her?

DR KHOZA: No the committee was not concerned about that. The way it happened I just got in and I was kind of ambushed you know because I got into the meeting expecting us to discuss the strategy of how we wished to handle that matter of Faith Muthambi but to my surprise Faith Muthambi was also at that meeting and it looked like they had already had a pre-meeting and they were not concerned about what the meeting I the afternoon. Because
10 they had – it seemed as though they had already discussed and concluded that the Parliamentary Committee meeting which was scheduled for two o'clock that same day will not be taking place because they were asking the Secretary General Gwede Mantashe to give them the name of the new
00:14:28.

So they were talking basically about all the accusations. It became like a disciplinary hearing except that I was never advised in advance that there was going to be some kind of disciplinary hearing.

20 **CHAIRPERSON:** But was the discussion confined or your criticism by them confined to the Muthambi issue or were they going over a number of matters in which you – they disapproved of what – how you may have handled them?

DR KHOZA: Chairperson as I said the person who was chairing that meeting was Honourable Member Sizani

Dlamini-Dubazana and she made it very clear even during that meeting that there is only one item and that item confirmed myself. My ill-discipline and it was not about Muthambi. Muthambi was just part of that meeting and I was not – we were not – I was not in control of what was discussed. So it is only discussed the issues or allegations relating to my ill-discipline.

CHAIRPERSON: Hm. Okay thank you. Mr Freund.

ADV FREUND SC: Thank you Chair. I understand what you
10 have just said Dr Khoza but I think what the Chair is trying to get at is the question of what was the ill-discipline that you were accused of? And if we look at paragraph 11.8 and 11.9 you seem there to describe what it was that they were accusing you of. So I would like you just to maybe read into the record those paragraphs and then tell the Judge whether you stand by that or whether you wish to change that in any way.

DR KHOZA: Chairperson what is written there is absolutely correct. I am standing by what I have submitted.

20 **ADV FREUND SC:** So what you said there is this that you were told that you had brought the name of the ANC into disrepute by questioning – by your questioning of Ms Dudu Myeni in the SCOF. By your remark in the SABC inquiry about Dr Ben Ngubane and recycling failure. By your criticisms in the SABC inquiry of Ms Faith Muthambi and Mr

Hlaudi Motsoeneng and you were told you should not have attacked comrades like these. Is that correct?

DR KHOZA: Yes Chairperson.

ADV FREUND SC: And you also...

DR KHOZA: Save to say that there was also something they had – they said something specifically on the vote of no confidence that I was being disciplined on that.

ADV FREUND SC: Yes that you dealt with earlier in the same affidavit.

10 **DR KHOZA**: Ja.

ADV FREUND SC: And be – that was part of what they said. But another part of what they said you deal within paragraph 11.9. You say:

20 “I was also criticised for requiring Ms Muthambi to come to account to the Portfolio Committee about the recent allegations against her. It was alleged that it was unacceptable for me to call and I quote ‘our own ANC Minister’ to account in this way and Ms Muthambi nodded her approval of this criticism.”

Do you stand by that?

DR KHOZA: Yes I stand by that Chairperson.

ADV FREUND SC: And then you say in paragraph...

DR KHOZA: At the meeting Muthambi even said ended up

not even attending the meeting, that meeting at two o'clock she did not attend. She actually I suppose implemented the decision of the Study Group that said I was no longer the Chairperson.

ADV FREUND SC: I would also like to refer you to paragraph 11.10 of your affidavit because there you say the following:

10 “It was made clear to me by those present including Ms Muthambi that they agreed with what was being conveyed to me. They were given turns to speak and they all endorsed or added to what is set out above.”

Do you stand by that?

DR KHOZA: Absolutely Chairperson I was alone in that meeting basically. In fact I am just saying there was no other person that was on my side. Because Honourable Lesoma had decided not to attend that meeting.

CHAIRPERSON: I am sorry.

20 **ADV FREUND SC:** And then if we can move on to paragraph 11...

CHAIRPERSON: I am sorry Mr Freund. I am sorry Mr Freund.

ADV FREUND SC: Yes Sir.

CHAIRPERSON: I – I take it that the Study Group consisted of ANC – consisted of MP's only obviously ANC MP's did not

include anybody who was not an ANC person – ANC MP is that correct?

DR KHOZA: The Study Group Chairperson consisted of myself as the chairperson of the Public Service and Administration Committee also an MP and Mr Dombela who was also a member of the committee – the Portfolio Committee – the Parliamentary Portfolio Committee on the Public Service and Administration. Mr 00:19:55 who was also a MP and Ms Velmar 00:20:05 who was also a member
10 of Parliament as well as a vote the Minister of – the Minister of Department of Public Service and Administration and he had 00:20:22 Duba those were the members of the Study Group of the ANC.

CHAIRPERSON: So those are the people who according to your paragraph 11.10 all endorsed the decisions that were taken in that committee – in that meeting?

DR KHOZA: Yes it is important – it is to – important to note that Ms Sizani Dubazana was the ANC Cluster chairperson. She is also a member of Parliament.

20 **CHAIRPERSON:** Yes.

DR KHOZA: But was not necessarily a member of the ANC – was not one of those ANC members who were part of the Parliamentary Study Group.

CHAIRPERSON: Oh.

DR KHOZA: However she was the chairperson of the ANC

Governance Cluster to which the Public Service and Administration belonged.

CHAIRPERSON: Okay

DR KHOZA: So she was using her powers.

CHAIRPERSON: Yes.

DR KHOZA: As the Chair of the ANC Cluster – Governance Cluster to direct the meeting and to assist members in terms of making sure that a decision was taken on my discipline.

CHAIRPERSON: H'm. Otherwise normally who would chair
10 that Study Group's meetings?

DR KHOZA: That Study Group meeting ordinarily will be chaired by Ms Mina Lesoma as the Whip of the ANC Committee Study Group.

CHAIRPERSON: Okay. Okay. Thank you. Mr Freund you may proceed.

ADV FREUND SC: Thank you Chair. Now what you explain in your affidavit is that apart from what you have already told the Chair about what you were accused of you also explain that at that same meeting the Study Group purported to
20 make a decision that the Portfolio Committee meeting scheduled for that very afternoon would simply not happen and you told the Chair before the lunch adjournment that they not only decreed that they then directed for example I think you said the Director General not to attend the Portfolio Committee that afternoon, is that correct?

DR KHOZA: Yes that is correct they directed all the different departments that accounted to the committee. Only the Public Service and Public Service Commission attended the meeting at two o'clock but otherwise everyone else did not attend.

ADV FREUND SC: Now you say in your affidavit that you sought clarity for example I think you spoke to Mr Frolick if I am not mistaken and you were told...

DR KHOZA: Yes I did.

10 **ADV FREUND SC:** You were told no they do not have that power you must continue to go to the meeting and you went to the meeting, is that correct?

DR KHOZA: Yes that is correct. In fact even Jackson Mthembu spoke to me – I spoke to Jackson Mthembu about it as the Whip and he directed me to go ahead. He was so furious. Jackson Mthembu was so furious about what the ANC Study Group the decision that was taken by the ANC Study Group. Because he felt that they had no jurisdiction in the matter in directing the business of Parliament in saying a
20 Parliamentary program must continue or must stop.

So he then instructed – he instructed Mina Lesonma who was not present that day to tell all the members of the ANC to go to attend the meeting at two o'clock and instead what actually happened is that none of them attended. The only person that attended that meeting was 00:24:22 Boy I

am sorry I forgot to mention his name earlier on he was also a member of the Portfolio Committee. He is the only one that responded to – to the Chief Whip’s call that all members of the Study Group must attend no program of Parliament can be stopped by a Study Group of the ANC.

But Minister Muthambi did not attend that meeting and that made the EFF and the DA extremely angry at that meeting because they had seen her in the Parliamentary prescript they could not understand why she was not at the
10 meeting.

ADV FREUND SC: Now one of the members of the Study Group who you have mentioned several times already was Mr Melvin Dirks who you refer to in paragraph 11.20 is that correct?

DR KHOZA: Yes Chairperson.

ADV FREUND SC: And notwithstanding what you have already told us – well it was one of those who did not attend the Portfolio Committee meeting that afternoon, is that correct?

20 **DR KHOZA:** Who is that? Sorry.

ADV FREUND SC: Mr Melvin Dirks did not attend the meeting?

ADV FREUND SC: Melvin Dirks was actually – was at the meeting. The person that was not at the meeting was Mina Lesoma. Melvin Dirks was one of those people who was

00:25:45. And he had a serious bone to chew with me.

ADV FREUND SC: I think you may have misunderstood my question. I am now not talking about the – the Study Group meeting I am talking about the Portfolio Committee meeting in the afternoon and I am asking you whether Mr Melvin Dirks attended the Portfolio Committee meeting in the afternoon.

DR KHOZA: No none of the members of the Study Group of the ANC attended except for Nymi Boy.

10 **ADV FREUND SC:** Right now in paragraph 11.20 of your affidavit you quote ‘a social media posting by Mr Dirks’ and you say that he said amongst other things and I now quote:

“All of us must submit to the ANC position before we can attend any Portfolio Committee meeting as ANC mem – MP’s. We cannot have an ANC Study Group position called conscience when we go to the Portfolio meeting. The ANC Study Group called off the Portfolio Committee meeting
20 but Dr Makhozi is above the ANC and defied the Study Group’s decision.”

And he goes on. Is that correct? Is that part of what he said in his post?

DR KHOZA: Yes that is correct.

ADV FREUND SC: And you then deal on the – in the

paragraphs that follow with the fallout that came from what had happened at the Study Group meeting and the Portfolio Committee meeting and you say that initially Mr Mthembu was supportive of you or so it seemed but then in paragraph 11.22 you explain what happened next. Now you say Mr Mthembu adopted a different position. What was his different position as you deal with it in paragraph 11.22?

DR KHOZA: Minister Mthembu instead what had actually happened and I do recall that there was a strategy meeting
 10 that I was called to. The current Minister Tegodi Diza [?] was also present at that meeting where Mr Mthembu was very furious and even in fact called for the members of the ANC Study Group to face disci – to be disciplined. However subsequent to that Mthembu adopted a different position. He was then – he started accusing me of ill-discipline and that there will no organisation if people were allowed to vote with their conscience. And I could not understand because all along I thought that Mthembu and myself were in sync and after all I attended the meeting. I went ahead with the
 20 meeting at two o'clock because of his alignment with what I thought was correct that a Study Group of the ANC cannot be dictate the program of Parliament. But Mthembu had actually changed and when I went to – I think I was on – I was – I just landed at OR Tambo airport and I was going to deliver a letter on route first when Jackson Mthembu phoned

me as soon as I landed to advise me that the organisation has decided to recall me because there will be no organisation if we follow this thing called a conscience. And he said by instruction that he got from the Secretary General and he had the letter I did not have the letter he read the letter to me I never received the letter. So he then told me that I was immediately released from my position as the Chair of the Committee on Public Service and Administration.

ADV FREUND SC: And the Secretary-General to whom
10 you are referring to, at that time would be Gwede Mantashe. Is that correct?

DR KHOZA: Yes, it is Gwede Mantashe.

ADV FREUND SC: Now you referred a little earlier, a couple of minutes ago to what happened at a Strategy Meeting and that is a structure that has not yet been referred to in these proceedings. If you could just describe, what is this Strategy Meeting and how senior would the people involved in that would be?

DR KHOZA: Well, the Strategy Meeting of the ANC is very
20 senior and it is where we get with the ministers and really discuss where certain members of the ANC that are going – leadership of the ANC.

It is not – they have somebody who was the Committee of Chairs. You will have the Chief Whip, the Deputy Chief Whip who are members. And you will also –

and they had the powers of summoning any member whether it is the Minister, the Chair of the Portfolio Committee.

Maybe just to hear us out on what – where the issues that we are going to be dealing with in the committee. And most of the times we will be called to that Strategy Meeting when an issue was controversial or it was an issue that is probably confirmed or was confirmed to the Anc.

But the on the whole, the Strategy Committee was really ensuring that Parliament was – the ANC component of
10 Parliament was doing what it is supposed to do.

On the whole, they were doing that because it is that Strategy Committee that took the decision together with Jackson Mthembu that those members that he had instructed Parliamentary programme to be disrupted and not to cancel the meeting of the Portfolio Meeting.

They said those members must be disciplined. So that was the decision of that Strategy Committee.

ADV FREUND SC: So the Strategy Committee Meeting really came out on your side but thereafter.

20 **DR KHOZA:** Yes.

ADV FREUND SC: You say in paragraph 11.22, Mr Mthembu told you that he had now been instructed by the Secretary General, Mr Gwede Mantashe that you were to be relieved of your duties because the committee cannot be led by someone who has voted according to her

conscience. Is that your evidence?

DR KHOZA: Yes. Yes, that is right.

CHAIRPERSON: So... I am sorry Mr Freund. So Dr Khoza, you have said that the people who would attend the Strategy Meeting would be senior people in the party. But would that be a Strategy Meeting of the ANC in Parliament?

In other words, it would be consist of senior ANC people within Parliament or would it have been Strategy Meeting of the party, of the party outside of Parliament but
10 could cover work relating to Parliament?

DR KHOZA: No, it was senior people of the ANC that are senior leadership of the ANC within Parliament.

CHAIRPERSON: Oh, okay.

DR KHOZA: That were members of the committee. They had the powers even to call on the President. Maybe there is an issues. Like for example, in my case, I was called before the committee to come and clarify to the committee what had transpired the previous day when they started to take the decision to suspend all Parliamentary Committees
20 of the Public Service and Administration.

So it was a crisis issue that they were trying to resolve, which is why they called me in. I was not a member of that committee. I was called in as the leader of the Portfolio Committee and a senior member of the ANC within that committee, that Parliamentary Committee to clarify the

issues.

CHAIRPERSON: Those senior ANC MP's who were in that Strategy Meeting thought that what the Study Group had done to you was wrong and unacceptable but subsequently, Mr Mthembu said to you – is it the following day or shortly thereafter – that the Secretary General of the party namely Mr Mantashe had spoken to him and said that you – a decision had been taken to recall you as chairperson of the committee?

10 **DR KHOZA:** Yes, it was the intervention of Gwede Mantashe because he had written a letter which was supposed to be given to me by the Chief Whip. And the Chief Whip, unfortunately, I had already left and the Chief Whip phoned me to read me the letter that he had received from the Secretary General.

In fact, at some stage when I said to him: Oh, well that is fine. He thought I did not understand that I had been recalled with immediate effect. And he had to remind me that: Do you understand that you are no longer the
20 Chairperson of the Public Service and Administration? So I said: I understood you Chief Whip. I understand. And ja, that is how it happened.

CHAIRPERSON: Okay thank you. Mr Freund, continue.

ADV FREUND SC: Thank you, Chair. I just want to go back to the Strategy Committee because a witness yet to

testify has consulted with me in his – he had led me to understand that ordinarily the Strategy Committee Meeting is chaired by the leader of Government Business who ordinarily is the Deputy President and in that particular Parliament was the then Deputy President, Cyril Ramaphosa. Now is that ordinarily correct?

DR KHOZA: Yes, absolutely. I am so sorry. I forgot to mention that. Ja. It is very – it is really – it seeks to play like a harmony as well between Parliament and the Executive
10 so that, most of the times where there are real serious issues like if maybe there is a Minister who is not throwing the line, the leader of Government Business is because he is actually the leader in that committee and he also plays his role in ensuring that members of the Executives adhere to the rule of law.

ADV FREUND SC: But you were not a member of that Strategy Committee but you were called to a meeting on that particular day of the Strategy Committee. Is that correct?

20 **DR KHOZA:** Absolutely correct.

ADV FREUND SC: And do you remember whether or not on that particular occasion the then leader of Government Business was at that meeting?

DR KHOZA: President – the Deputy President, Cyril Ramaphosa was not there. I do not think he was at that

meeting. He was not at that meeting. But there was almost unanimity except maybe Doris Dlakude who was not very happy with the tone of the meeting but generally, everyone else was dismayed by the manner in which the ANC Study Group behaved.

ADV FREUND SC: Alright. I want to finally deal... Well, two final questions. The one we have not referred to thus far. That you deal with some detail in your paragraph 12. Maybe you can just briefly summarise what it was that
10 finally pushed you to tender your resignation.

DR KHOZA: What actually happened. I wrote a long letter to the Secretary General, Gwede Mantashe concerning my own experiences in Parliament and basically I was at pain in terms of explaining to him how, you know, the ANC is even interfering in a negative way in how we executive our roles as members of Parliament who are supposed to play the oversight function over the Executive.

I also objected about the disciplinary steps that were pending against me that were taken by the KZN
20 Disciplinary Structure. Mind you, I come from Kwazulu-Natal. So not only was I facing a disciplinary process in Parliament but also the ANC in KZN was also – had started its own process of disciplining me.

And they also pointed out that they were going to ensure that the ANC deals with me. That was the Kwazulu-

Natal ANC. So you had those parallel things. And it then – I then pointed out to him that I have a problem because right now I am at national level.

You must remember that the ANC structures, the way that they are arranged, they are arranged as such that they are in harmony with the structures at government level.

So my – I was expecting that because I was at national level and what I was accused of was that which was about a national issue, a national government issue, if you
10 like because it confirmed the vote of no confidence on the President.

I complaint to him about that because now there was this KZN structure which was also charging me on the issue – on a national issue.

I received no reply from Gwede Mantashe. I also even eluded to Gwede Mantashe to the fact that I feel as if my right, my constitutional right as per Section 15 of the Constitution to the right of conscience is being violated.

I reminded him of even of the court's ruling. I did
20 remind him about that but unfortunately he did not respond to me.

ADV FREUND SC: And having not received a response from him, what then did you decide?

DR KHOZA: It was at a stage where I was dealing with so many issues at the same time. My life was being threatened.

In fact, even the then Deputy President during one of the National Assemble meetings, sittings he saw me outside and he was going – he was leaving and he saw me. I was sitting outside on the bench, outside the chamber and he said to me: Be safe.

I mean, because everybody knew that my life was being threatened because of my stand on the vote of no confidence. So Cyril Ramaphosa said that to me.

But what I found very difficult was that I was being
10 hauled to the disciplinary process in KZN. I was handling death threats. I was having water being discharged into my property. I was dealing with so many issues. It was becoming so unbearable.

And the Speaker of Parliament who had said – who had undertaken that no member of Parliament will be harmed, was silent. I tried several times to secure a meeting with her but she was just not there for me.

And ultimately, I decided that I could no longer – I
no longer belong to this organisation. To me it was clear
20 that the ANC had adopted corruption as its new policy. It was an official policy because the only thing I was guilty of was to stand for that which was right.

I was not – I did not do anything wrong in terms of my role as a member Parliament. I do not believe that I brought the name of the ANC into disrepute but it appeared

as though I was the one that was guilty of having done something wrong and not those that had done something wrong. So I resigned.

ADV FREUND SC: Thank you Dr Khoza. I have no further questions.

CHAIRPERSON: Well, Dr Khoza it may well be that if certain evidence that I have heard from different witnesses and from you about how the ANC handled the issue of its members of Parliament performing their oversight functions
10 is true.

It may well be that the ruling party may be responsible for quite some share of members of the Parliament not having performed its oversight functions over the Executive effectively and properly to the extent that I may find in the end that that is the case.

So if I find that over the years Parliament did not perform its oversight functions the way it should have or effectively, obviously I have got to say: Why was that so?

And it may well be that if part of the evidence that
20 you have given and the other witnesses have given is true, that the ruling party itself may have been responsible for a certain share of blame as to why its own members of Parliament might have felt that they were limited in a very serious way in properly discharging their oversight functions.

Would you like to comment on that or not really

Dr Khoza?

DR KHOZA: Your observation Chairperson is absolutely correct except that I would qualify. I would not say the ANC played some part. In fact, the ruling party the instrument are crippling in weakening the Parliamentary oversight.

I just want to give you an example of three women in Parliament that happened to leave in the same Parliamentary that were engaging from time to time. And that is Daphne Zukiswa Rantho, Fezeka Loliwe and myself. The three of us
10 were very instrumental, I would say, in – you know we were trying to do our best because we were members within the Parliament.

And we would talk about then we cannot allow this to go on, you know. And independently we took the decision that we took that we are no longer to be silenced. We are going to try and do what is right.

What actually happened to those three members is tragic because I was removed as the Chair of the Public Service and Administration. Sis Fezeka Loliwe died from a
20 car accident and she was one of the women that was very, very smart. I respected her a lot because she sat in the SABC Board Inquiry and she was as critical as I was.

I subsequently also learnt that Rantho, Daphne Zukiswa Rantho was also not retained as a member of Parliament. Basically, the ruling party, if you are doing your

job, they find a way – I am not suggesting that they are responsible for Sis Loliwe’s death but I am saying it is something to note that all those that were in the forefront that had no skeletons that Minister Bathabile Dlamini, former Minister Bathabile Dlamini spoke of.

It was very easy to strangulate their voices and discard them. And that is the unfortunate situation. So other members of Parliament if they wanted to do it, we are always – even on social media as we speak, I mean, you will
10 hear people telling you that it is very cold outside the ANC.

If you are not going to follow the ANC’s directives – look at what happened to Makhozi. And they would side with most of us because it also happened at local government level, at provincial level.

People who try to keep on a prudential oversight function they are punished severely. Even their careers are destroyed. And I am speaking from experience.

CHAIRPERSON: Well, the ANC will come appear before the Commission. They are cooperating with the Commission and
20 filing affidavits as I understand. They – I did say – it is in the public domain already in 2019 – that I have said that the ANC as the ruling party would need to appear the Commission before the Commission can finish its job because it seems to me that it was bound to have to do with certain matters relating to state capture.

When did it start suspecting that there was state capture happening or allegedly happening? And what did they do? What could they have done? Did they act at all? Did they not act? And what about the levels of corruption in the country?

They had been raising for quite some time. What did they do? They were the ruling party in Parliament. They were – they had - the Executive was – their Executive, so to speak.

10 And it was the President of the country was the President of the ANC and there were all kinds of allegations concerning him and the Gupta family and state capture and corruption. What did they do about all of these things? Particularly if they were giving instructions that their members of Parliament should not perform their oversight functions properly.

 Were they giving those instructions because there was something defective they were doing within the party? Or was the position that they were given those instructions
20 but within the party they were also not doing anything. And therefore, allowing state capture and corruption to happen.

 So they will come here. They will put their side of the story. But it is quite concerning because if the ruling party was giving instructions or conducting itself towards its members of Parliament in a manner that was sending the

message to its members of Parliament that it is wrong to perform your oversight functions the way you are supposed to do.

It is wrong to perform your oversight functions properly. You should not call an ANC Minister to account. You should not criticise a member of the Executive who was not doing their job or against who there were serious allegations of corruption and other things.

Because then the message was, as long as you were a Minister in the ANC, ANC Minister you should not really take the committees of Parliament seriously because the majority would always be ANC members and you would always know that in terms of the instruction of the party or in terms of various pronouncements by leaders of the ruling party, you would, you know members of the party in the committee that you had to deal with are not supposed to be vigorous in performing their oversight functions against you because you are an ANC Minister.

And therefore, if Parliamentary oversight failed to stop corruption rising to the levels to which it has arisen, if Parliamentary oversight failed to stop various acts of alleged state capture happening, it may well be that in part – and you might say not in part, you might say hundred percent – it is because members of the majority party were hindered or impeded from doing their function properly.

And if they had not been hindered because of the instructions and the attitude approach taken by the ANC leadership, maybe they could have stopped some of the things that this Commission is looking at. Maybe they would not have had happened at the level at which they seemed to have happened.

Maybe the billions of rands of taxpayers' monies that this Commission has heard about that were taken away through corruption from government departments and SOE's
10 maybe would not have been so many billions if the members of Parliament who are in the majority party were allowed to perform their oversight functions against the Executive properly and were not hindered.

You might want to say something or you have said enough?

DR KHOZA: Well, there is just one thing that I would like to recommend if I may. You know, I really do think that Parliament is such an important institution in terms of having the rampant culture of corruption that we see in the country.

20 And I honestly do think that if we had some of the committees of Parliament, like whether it is finance, the Standing Committee of Public Accounts, the committee, the integrated committee chaired probably by the opposition as opposed to being chaired by the ruling party.

I think Parliament will be functioning better and it

will be performing its role. I am selecting those specific departments, those specific committees of Parliament because they are close cutting.

And if you have those as a standard that they should be chaired by the opposition, it is not necessarily to take away the responsibility of the ruling party but it is very – our experience in South Africa is that the ruling party, whether it is the ANC or another ruling party for that matter, it cannot be the player and the referee at the same time.

10 And we need to find mechanisms of ensuring that there are those mechanisms. And you start to remember, myself and other members of Parliament of the ANC who wish to do right and they cannot do right.

They need to be able to go to the Integrity Committee of Parliament but the problem is that the Integrity Committee of Parliament is also a committee – I mean, it is the ANC that decides who becomes the Chair of that committee. So you cannot go to anyone. You are basically helpless as a member of Parliament. You want to do good
20 but unfortunately you are constraint.

And maybe that is something that we might have to consider going forward so that the ruling party does not have absolute power or absolute control because we can see, obviously from the evidence that all these things would not have happened, all these billions of rands would not have

been stolen had Parliament been empowered to do its role and had the ANC not have absolute power over the Executive and over the legislature. Thank you.

CHAIRPERSON: And I guess the one thing that would be clear is that if the ruling party was really intolerant of corruption and wanted proper oversight to be performed by members of parliament, effective oversight, they – parliament could have stopped a lot of things that have happened that are wrong and anyone in the executive, including the President, if the ANC came to the conclusion that these ministers and this president are not doing right, the ANC could have either recalled them in terms of their internal processes outside of parliament or if they had allowed their members of parliament, ANC members of parliament, to really perform their functions of oversight over the executive using their own judgment it may well be that they could have done much more or they could have done a lot and members of the executive would know, even members of the ANC will support a vote of no confidence if I do not change or if I do a, b, c, d.

But if those in the executive, including the president, knew that I cannot be touched as long as the ANC is with me, it will give instructions to members of parliament to say you cannot vote in favour – you cannot vote with the opposition even if you think that the motion of

no confidence is in accordance with the interests of the people of South Africa that you represent as a member of parliament then ministers and the president will feel comfortable to say well, all these motions of no confidence are just a waste of time because the ANC members of parliament who are in the majority will be told, you cannot vote with your position even if in your own judgment voting in favour of the motion would serve the interest of the people of South Africa better than voting against it but

10 because the party says you are not allowed to vote for what you believe is right in terms of the interest of the people then you do not vote and you vote against it but actually you are being unfaithful to our oath of office as a member of parliament when you do that because the oath of office, in the oaths of office for members of parliament, when you take that oath you say you promise to be faithful to the Republic of South Africa. So how are you faithful to the Republic of South Africa when in your view the right thing for the Republic of South Africa is to vote in support

20 of the motion of no confidence in the president but your party instructs you to vote against it, your party instructs you to actually act in breach of your oath of office because you have looked at the situation and you believe that if you are to act in accordance with your oath of office, you must vote in favour of this motion of no confidence but your

party says forget about what you think, you did not bring yourself to parliament but they allowed you to take this oath, they were in support of you taking that oath to say in performing your functions as a member of parliament you will be faithful to the Republic of South Africa.

And, as the Constitutional Court said, in the secret ballot judgment, the oath does not talk about being faithful to the party, it talks about being faithful to the Republic of South Africa and I guess the framers of the constitution
10 knew that at the core of your function – of your role as a member of parliament lies the interests of the Republic.

Yes, your party might have brought you there but your oath says you must be faithful to the Republic of South Africa but if you are instructed to vote in a way that does not accord with what you believe is in accordance with the interests of the Republic of South Africa then it seems it is problematic.

But the ruling party will come and maybe they will explain their perspective and maybe one will understand
20 something that one might be understanding now but what do we do, Dr Khoza, about this problem because on the one hand there is the issue that you are brought to parliament by your party and in terms of the current electoral system, when you campaign, you campaign not for yourself as a member of the party, you campaign for the

people to vote for your party. It is the party that gets elected. When does one say let us leave it to the electorate to decide how to punish the party if they do something that the electorate does not support? Are you able to deal with that?

DR KHOZA: Yes. I think there is already a Constitutional Court judgment on that matter especially regarding the electoral system that we have in South Africa. All that has to happen is for the ruling party primarily to ensure that it
 10 is implemented. At the moment when you are – when you become a member of parliament there is only way of becoming a member of parliament, is it is through a proportional representation system, there is no directly elected members of parliament by their constituencies.

We need to make – this thing is very important because even though we have a state of paralysis at local government level and as a local government practitioner myself, I know for a fact that ward councillors have more power over the party because they represent their
 20 constituencies. Hence if they resign from the party there has to be – if they resign from the municipal council, there has to be by-elections but at national level you are really constrained because you come through the party ticket, they can fire you at any time and there are no consequences.

So I am saying the Constitutional Court judgment on the electoral reform, I think it has got to be something that has to be implemented because it will go a long way in ensuring that at least the half of the members of parliament will be accountable to their own constituencies if we are follow the recommendations of Van Zyl Slabbert report because they are already there. In fact even [indistinct] 10.15 Commission did a lot of work insofar as that is concerned and I think it will help a great deal

10 because then members – members of parliament will be able to vote with their conscience or they will be able to vote in accordance with the mandates that they are getting from their constituencies as opposed to getting an instruction from Gwede Mantashe, sometimes even unlawful instructions and you are forced to go for that kind of instruction. I think that will help a great deal. To me, that will be my submission, Chairperson. I thank you for giving me the opportunity to speak.

CHAIRPERSON: Yes.

20 **DR KHOZA:** And I think it was good that I came forward.

CHAIRPERSON: Yes. No, no, you did a very good thing. I just want to make one point arising from what you have said. I think it may well be that – I have not refreshed my memory on the judgment of the Constitutional Court about allowing independent candidates or people to stand for

parliament but what is – what seems to be important, among other things, is that members, in order for members of parliament particularly of the ruling party, but it would apply to any members of parliament, actually, any members of parliament, to really play proper and effective oversight role to exercise their functions of oversight without fear, is that they must know there is no threat to remove them from parliament.

10 So if, for example, in terms of the constituency system, I know that even though I am a member of a particular political party, so let us say ANC in this case, I know that when I – I know that members of my constituency are happy with my work, with my job, with how I perform my oversight functions in parliament and they will always – they will vote for me as long as they are happy for me.

DR KHOZA: Yes.

CHAIRPERSON: Even if I defy the instruction of the Secretary General of the ANC to say in that no confidence vote, do not support the no confidence vote. If I know on
20 my reading of the views of the people in my constituency that actually they would like me to vote in favour of that motion, I can vote in favour because as long – my being in parliament is not just dependent on the Secretary General of the ANC, I can always get voted by the people in my constituency. So in that way I would know that if I go

against this instruction that I think that is not in the interests of the people of South Africa, it does not mean the end of my parliamentary career, you know, as long as I act in accordance and satisfy my constituency that I am doing a fine job, they will elect me next time, even if the party were to fire me now maybe, the next time the people will elect me if there is a by-election, they will elect me and I will come back.

Or, maybe they cannot fire me for it, they can do
10 whatever but when it comes to who will represent that constituency in parliament, as long as my constituency is happy I will be able to go to parliament, so – but at the moment, members of parliament have to really weigh quote a lot.

You were saying that they always said it is very cold outside the ANC, so you think if they fire you or next time when there are elections you are put very much down, in the least you will not get elected. So you have to think about all of those things. It makes it difficult. You say it
20 seems better to just comply with instruction and then in that way I do not take too much of a risk but in the process then the proper performance of oversight functions is not done and because it is not done, the levels of corruptions that we have seen happen and then we know all the evidence that has been heard by the Commission about

looting and so on. Okay.

Thank you very much, Dr Khoza, for coming to give evidence, we appreciate it very much, I know that it was not easy but we really appreciate it very much. Thank you very much, you are now excused.

DR KHOZA: Thank you very much, Chairperson.

CHAIRPERSON: Thank you. Okay, Mr Freund?

ADV FREUND SC: Chair, I have a witness who I believe is probably immediately available and another witness after
10 that but I think we will be lucky to get through one more witness if we possibly can.

CHAIRPERSON: I am able to sit beyond four o'clock. How is your situation and do you know what the witness' situation is?

ADV FREUND SC: I cannot say as to the witness but my own situation, I can go all night.

CHAIRPERSON: Okay. No, that is fine. And what is your estimate of how much time we need for the witness?

ADV FREUND SC: Judge, it is extremely difficult to say.

20 **CHAIRPERSON:** I will not hold you to it.

ADV FREUND SC: I would imagine an hour and a half, something of that order.

CHAIRPERSON: An hour or hour and a half?

ADV FREUND SC: Yes, that is at best.

CHAIRPERSON: No, no, that is fine, then we will get

through, we will get through. As long as the witness is available we can finish. But I would like us to take a short adjournment before we start with the new witness. Ten minutes adjournment. We adjourn.

INQUIRY ADJOURNS

INQUIRY RESUMES

CHAIRPERSON: Mr Freund, you may proceed. You may call your next witness.

ADV FREUND SC: Thank you, Chair, the next witness, Mr
10 Manny de Freitas.

CHAIRPERSON: Yes, Mr de Freitas are you there?

MR DE FREITAS: Yes I am, Chairperson.

CHAIRPERSON: Okay, you are not on the screen yet. I understood that when you speak you come on the screen but this is not happening this time. I do not know whether it means you must speak – okay, you speak up. Good afternoon to you.

MR DE FREITAS: Good afternoon, Chairperson.

CHAIRPERSON: Yes, thank you for coming to assist the
20 Commission, thank you very much for availing yourself, we appreciate it very much.

MR DE FREITAS: only a pleasure, thank you.

CHAIRPERSON: Thank you. Registrar, please administer the oath or affirmation.

REGISTRAR: Please state your full names for the record?

MR DE FREITAS: Manuel Simão Franca de Freitas.

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

MR DE FREITAS: I have no objection.

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

MR DE FREITAS: I do.

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

MANUEL SIMÃO FRANCA DE FREITAS: So help me God.

CHAIRPERSON: Thank you. Mr Freund, you may proceed.

ADV FREUND SC: Thank you, Chair. Chair, this witness has presented voluminous written material to the Commission which in due course I will seek to have
20 admitted as annexure ZZ12. It starts in volume 3 at page 306, it goes through from 306 to 836 and then it also comprises a substantial portion of volume 4. Mr de Freitas, is that correct...[intervenes]

CHAIRPERSON: I am sorry, Mr Freund, you said it starts at volume 3 at page 306. I guess you mean bundle 3, is that correct, or not really?

ADV FREUND SC: Bundle 3, I will just check again. I

believe that is correct.

CHAIRPERSON: I have got his affidavit starting at 317.

ADV FREUND SC: 317, yes. The page before that is just sort of cover page indicating the exhibit number.

CHAIRPERSON: Yes, okay.

ADV FREUND SC: If I may, Chair, just take the witness to this brief confirmatory affidavit and it will all become a little clearer.

CHAIRPERSON: Yes but we – just for the record do you
10 confirm that it is not 306 but 317 where his affidavit starts.

ADV FREUND SC: That is absolutely correct, that is where the affidavit starts.

CHAIRPERSON: Okay, alright, you may proceed.

ADV FREUND SC: Thank you. Mr de Freitas, you will have heard that exchange and have you received from the technician a hard copy of your own submission paginated in accordance with the Commission's pagination system?

ADV FREUND SC:

MR DE FREITAS: I have that bit, I hope.

20 **ADV FREUND SC:** So you will know that what we tend to do is to refer to the pagination on the top left. We are in bundle 3, then page 317 will be the first page of your confirmatory affidavit. Do you have that?

MR DE FREITAS: I do indeed, thank you.

ADV FREUND SC: And can you confirm that that brief

affidavit is your affidavit and that that is your signature at page 320?

MR DE FREITAS: I confirm.

ADV FREUND SC: And have you had an opportunity to check that affidavit and you are comfortable with the contents of the affidavit?

MR DE FREITAS: Yes. There may be some grammatical mistakes and so forth but nothing substantial.

ADV FREUND SC: Thank you. Now what we see when we
10 look at that affidavit is that you annex – and this is at page 317, you annex marked A copy of your curriculum vitae and is that what we see at page 322?

MR DE FREITAS: Yes, a brief one, yes.

ADV FREUND SC: We will come back to that. And then what we see in paragraph 4 is you say:

“I annex hereto marked B a copy of a report that I prepared for submission to the Commission”

And is that the report that starts at page 323?

MR DE FREITAS: It is indeed.

20 **ADV FREUND SC:** And that report its main text goes through to page 456 in bundle 3, is that correct?

MR DE FREITAS: Yes it is correct, yes.

ADV FREUND SC: And then in addition to that you have furnished a substantial volume of annexures that are referred to in the main text of your submission document,

the bundle B document, is that correct?

MR DE FREITAS: That is correct, yes.

ADV FREUND SC: That comprises the rest of volume 3 and a substantial part of volume 4 of the papers before the Commission at the moment.

MR DE FREITAS: Yes.

ADV FREUND SC: Chair, against that background I request that we admit into evidence EXHIBIT ZZ12.

CHAIRPERSON: The affidavit of Mr Manuel Simão Franca
10 de Freitas which starts at page 317 is together with its annexures admitted as an exhibit and will be marked as EXHIBIT ZZ12.

AFFIDAVIT AND ANNEXURES OF MANUEL SIMÃO FRANCA DE FREITAS HANDED IN AS EXHIBIT ZZ12

ADV FREUND SC: Thank you, Chair. Now, Mr de Freitas, is it correct as appears in paragraph 1 of your confirmatory affidavit that you are a member of parliament?

MR DE FREITAS: I am indeed.

ADV FREUND SC: And you represent in parliament the
20 Democratic Alliance, is that correct?

MR DE FREITAS: That is correct.

ADV FREUND SC: And you have furnished to the Commission a very brief what we call a political curriculum vitae which we see at page 322. Would you turn to that please?

MR DE FREITAS: Yes.

ADV FREUND SC: And can you confirm that that is a fair summary of your public ...[intervenes]

MR DE FREITAS: Yes.

ADV FREUND SC: And what it shows in short if I may draw particular attention to it, is that you were a member of the fourth parliament from 2009 to 2014 during which period you served as shadow Deputy Minister of Transport and thereafter shadow Minister of Home Affairs, is that
10 correct?

MR DE FREITAS: Correct, yes.

ADV FREUND SC: And in the fifth parliament you were re-elected and you served during – for the duration of that fifth parliament from 2014 to 2019 as shadow Minister of Transport, is that correct?

MR DE FREITAS: [No audible reply]

ADV FREUND SC: And in the time that you served as shadow Minister of Transport is it correct that you served on the portfolio committee on Transport?

20 **MR DE FREITAS:** Yes, correct.

ADV FREUND SC: And is it correct that that portfolio committee is responsible for oversight of various entities but for present purposes those entities included PRASA.

MR DE FREITAS: That is correct, yes. That is the ...[intervenes]

ADV FREUND SC: Perhaps ...[intervenes]

CHAIRPERSON: Sorry, Mr Freund. Mr de Freitas, if you could speak up a bit some of your answers to the questions were not audible.

MR DE FREITAS: Speak up.

CHAIRPERSON: Yes, okay, alright. Try and speak up.

MR DE FREITAS: I apologise. Advocate, I am just saying PRASA stands for the Passenger Rail Agency of South Africa.

10 **ADV FREUND SC:** Yes, thank you. And then what you explain in paragraph 4 of your affidavit is that you prepared this submission report which we are going to spend quite some time dealing with in due course and you say in paragraph 5 that the report is in the main based on your personal experience as a member of parliament particularly as a member of Portfolio Committee on Transport, is that correct?

MR DE FREITAS: Yes, during the periods that I was a member of that committee, I am talking about my
20 experiences during those periods. So there was a break between 2012 and 2014 when I was in a different committee, so – you know, so – but otherwise it is my experience, right.

ADV FREUND SC: And then you say in paragraph 6 that you have refreshed your memory by making extensive use

of documents and hypertext links referred to in the report and that those include summaries of the meetings of the transport committee prepared by the parliamentary monitoring group and that to the extent that you have relied on either the PMG summaries or the hypertext links you believe them to be reliable sources, is that correct?

MR DE FREITAS: That is correct. Over and above that I keep copious records of everything, so I did have an external hard drive that I refer to and that is where the
10 various annexures come from. That – ja, I kept record of all these things, ja.

ADV FREUND SC: Now I just want to digress briefly to get your views in respect of the reports by the parliamentary monitoring group. You say in paragraph 7 that you regard them as the most reliable and extensive available records, the proceedings of the transport committee, is that correct?

MR DE FREITAS: Yes, I do and if I may elaborate, is that
20 if you look at the minutes prepared in parliament, not just for my committee but any of the committees, they really do not serve much, it is almost like a tick box exercise to say there as a meeting, these things were discussed and that is it. It does not dig into the substance of what happened in those committees. And so PMG, Parliamentary Monitoring Group, is a more reliable source because they

actually, you know, note who said at what time and the debate is a lot deeper in those minutes.

ADV FREUND SC: No those minutes by the PMG do you not purport to be like Hansard, they do not purport to be verbatim records but in your experience are that they are generally a fair reflection or a fair summary of what takes place.

MR DE FREITAS: I think overwhelmingly they are a fair summary, I think the problem with – in parliament is that it
10 suits the party with the majority for detail not to be there in the official parliamentary minutes because much of the debate and the information could be quite damning and implicates a lot of people and so it is suitable for them to have kind of a summary, very summarised minutes and luckily we have organisations such as the PMG who come in and do detailed records and so when I was preparing this submission I had my own records but certainly PMG assisted me and reminding me and jolting my memory and so forth in things that happened in committees.

20 **ADV FREUND SC:** I think the PMG would be very keen for me to stress, and I put this to you for your comment, that they endeavour to be nonpartisan, they are not – they are not a campaigning NGO type organisation, they are trying to produce a reliable objective set of records.

MR DE FREITAS: That is exactly why they are - you

know, I value them and they are respected, you know, because they should be non-political and nonpartisan and that is why everyone can refer to them knowing that are no party political parties behind their work.

ADV FREUND SC: Now in paragraph 8 of your affidavit you refer to not just the PMG's general reports as a resource but a very particular resource that has been made available to this Commissioner. You say:

10 "I have read and considered the report prepared by the PMG for submission to the Commissioner entitled Parliamentary Oversight over the Passenger Rail Agency of South Africa."

That you call the PMG report.

Chair, if I could indicate for your convenience that that report is or will be in due course, one hopes, EXHIBIT ZZ8.2. It is to be found in bundle 2 from page 825 to 875. It will be introduced formally through the evidence of a representative of the PMG.

CHAIRPERSON: Okay, thank you.

20 **ADV FREUND SC:** Now Mr de Freitas, against that background, if we can turn to what is strictly speaking annexure B1 to your affidavit but in substance is really your submission to this Commission and it starts at page 324, am I correct?

MR DE FREITAS: Correct.

ADV FREUND SC: And the – perhaps you could read into the record the title of the submission because it gives an oversight as to what you have tried to do.

MR DE FREITAS: Yes thanks, Advocate, it is quite a long one. I will just read what I put in front because I – as you say, it is a good summary. It is:

10 “Submission by Manny de Freitas to the Commission of Inquiry into allegations of state capture, corruption and fraud in the public sector including organs of state. The effectiveness of otherwise of parliamentary oversight in respect of alleged state capture or corruption particularly as regards the manner in which the Portfolio Committee on Transport dealt with allegations pertaining to PRASA during the fourth and fifth parliaments.”

20 **ADV FREUND SC:** What you have endeavoured to do in this extensive report and even more voluminous annexures is to give quite a detailed overview over quite an extended period of that issue that we described in the title, is that correct?

MR DE FREITAS: Yes and it is voluminous and I subsequently then summarised it before I finalised it and the reason why it is so voluminous is whatever I said and whatever the Chairperson will read in my submission, I

want to be in a position totally backup. I do not - you know, where it is my opinion, I state so and where certain things I claimed to have happened, I use backup information that are in the annexures. So that why it is so voluminous, I do not want – and I wanted to mention specific examples of what took place throughout this period so that it is concrete and not kind of academic or anything else but is a real concrete, sequential, chronological, you know, series of events that took place that we can
10 pinpoint.

ADV FREUND SC: Now, Mr de Freitas, I mean no disrespect to you and the extreme extent of the efforts you made but I am going to start at the fifth parliament and for present purposes and because of questions of time before this Commission, I am going to omit in your oral testimony reference to the fourth parliament and I would like you to start please at page 369 which is at the foot of the page, page 46 of your report.

MR DE FREITAS: Yes.

20 **ADV FREUND SC:** We are truly pressed for time, so I ask you as far as possible to be crisp and brief in your answers but what you do in this page and the page that follows is you refer to an issue which arose about the so-called Class Afro 4000 locomotives and concerns that arose in respect of procurement at very great public cost of a set of

locomotives. Could you just in one paragraph summarise what was the gist of the issue here?

MR DE FREITAS: Well, let just say that before this information was made public I had a whistle blower who had warned me of this and the information was so – it sounded so ridiculous that I half did not believe and every time I have worked with whistle blowers I have always made sure that I get information first, that I do not make accusations and so what I did is, I submitted questions
10 about it and the whistle blower had said to me that the incorrect height train, incorrect locomotives had been ordered and they had – and they were not suitable for our rail environment in South Africa and so I merely submitted official questions to backup this claim. This person could not give me it in writing, all they – they just knew, the information was given to me verbally.

So it was the gist of it and obviously the story before I got the reply and, you know, it broke into the newspapers and that, I was then in a position to then really
20 kind of push the issue after that because then it was public news and, you know, then it was more than just me perhaps making the claim unsubstantiated, there was something in the media that I needed to follow up from.

ADV FREUND SC: Alright. And before we move further with that issue, I would like to refer you to the foot of page

370 because there was another issue at about the same time which you referred to, on Mr Daniel Mthimkhulu and his qualifications which you say had found to be fake. If you could just crisply summarise what the issue was.

MR DE FREITAS: Well, the story broke about the incorrect height of trains, you know, at the beginning of July and literally a few days later, another story broke that an official, his name is Daniel Mthimkhulu, who was the head engineer effectively in PRASA who was the person
10 who would have signed off on the actual dimensions and actual engineering of these locomotives was actually not an engineer and was not qualified to have done this work.

ADV FREUND SC: And then if I can refer you to page 371 towards the middle of the page under the date 14 July 2015, you refer to two letters that you wrote to the Chairperson of the portfolio committee, that was the Portfolio Committee on Transport, am I right?

MR DE FREITAS: That is correct, yes.

ADV FREUND SC: You have already told us that is the
20 portfolio committee of which you were a member and which had responsibility for oversight in respect of PRASA.

MR DE FREITAS: Yes.

ADV FREUND SC: The Chairperson was one D Magadzi, is that correct?

MR DE FREITAS: That is right.

ADV FREUND SC: And in those two letters – you say the first letter was a request to summon Minister Peters before the portfolio committee to explain this matter and you refer there to a particular annexure. That is the issue about the locos that you have just described, is it?

MR DE FREITAS: Yes. Yes, I had asked for her to appear. I cannot remember the sequence but the replies to questions I had asked then came back and I am not sure if was before or after this letter, but I think it might have
10 been after, and she, at that stage said the dimensions of the locomotives were correct and then later – and then - you know, it is a side story, she stuck to the fact that it was the incorrect (sic) dimensions and so I have asked the chairperson of the portfolio committee to call on the minister to explain this matter.

ADV FREUND SC: Right. And then you write a second letter and you give the reference, it is in the bundle, the request that Mr Mthimkhulu be summoned to appear before committee to discuss the same matter which is really the
20 matter of the loco orders and their size specifications and the like, is that correct?

MR DE FREITAS: Correct, yes.

ADV FREUND SC: And you say in your report that in both instances receipt of your correspondence to Magadzi, this is the chair of the portfolio committee, was confirmed and

was covered extensively in the media but you say that you have received no acknowledgement, no response of any description from Magadzi, is that correct?

MR DE FREITAS: That is correct, yes.

ADV FREUND SC: Sorry, just for the record, do you know the first names of the Chairperson Magadzi?

MR DE FREITAS: It is Dikeledi.

ADV FREUND SC: Sorry, I did not hear that clearly.

MR DE FREITAS: Dikeledi Magadzi.

10 **ADV FREUND SC:** Dikeledi?

MR DE FREITAS: That is right.

ADV FREUND SC: Thank you very much. And then you say in addition these matters were never tabled at any meeting of the portfolio committee despite your approaches to the portfolio committee chair and the portfolio committee secretary about them, is that correct?

MR DE FREITAS: Yes. In fact, you know, these issues throughout the whole of parliament, you know, the Rail and PRASA and the whole – the rail infrastructure was imploding, all sorts of things were going in and it was as if the portfolio committee was in a bubble as if these things were not happened and they were completely being ignored as if we would come to portfolio committees and kind of follow a programme that had been set and all the news of the day were kind of ignored.

20

ADV FREUND SC: And then at page 372 under the heading 30 July 2015 you deal with what I think you were alluding to a moment ago the responses that you received or the response that you received from the then Minister Dupuo Peters to written questions about these locos and you were told that the dimensions were correct and so forth. You say, with the benefit of hindsight, although that is what she said, she was wrong.

MR DE FREITAS: Well, by then I knew that that was the
10 case. It was extensively covered in the media and, you know, new developments happening on a daily basis and so I then tabled a motion in parliament saying that the house – that the minister be referred to the Powers Privileges Committee because essentially she had lied which is a very, very grave transgression of anybody, let alone a minister and of course that motion was not - you know, it was not passed, the ANC blocked that.

ADV FREUND SC: Well, you say of course as though we should all know that such things would never happen.
20 Perhaps you could just elaborate on that a little.

MR DE FREITAS: Well yes, that is a good point. I mean, in an ordinary parliament and in a functioning democracy, you know, correspondence would responded to from no matter who they are, whether it is the opposition or whatever the case is and these kind of requests will be

considered very seriously. The culture that developed – and I know you are mentioning, you are not referring to the fourth parliament but if you look at my entire statement, I start off on the fourth parliament very naively believing that correspondence will be responded to, that if there were any transgressions that are identified that they would – you know, the government would look at and pursue. I very quickly realised that that is not the case and in fact they spend most of the time trying to, you know, prevent
10 any exposure of any transgressions, they tried to block the information that was available and any actions that I tried to undertake was simply ignored and so that became the culture, letters or correspondence would just be ignored and to a point where I would actually ask the Chairperson in the corridors informally and she said she would acknowledge that she got it and that she would respond in due course, which of course she never did.

ADV FREUND SC: So I hope I was not unfair to you because you now understand the pressure the Commission
20 is under on time grounds. You have summarised, as it were, the impressions you formed during the fourth parliament. Is there anything in particular that you think we should be drawing the attention of the Commission to, as to the events in the fourth parliament or you are content that we should move on in the fifth parliament?

MR DE FREITAS: Yes – well, I mean, the fourth parliament you can see the – the very quick, not slow, very quick destruction of Rail and PRASA as an entity and it starts off in a much better position and year by year the auditor general and all sorts of other organisations confirm that it is collapsing and nothing was done about it, you know, the warning signs were there. And no – whether it was the board and anybody else, did nothing and I kind of times felt kind of the only person shouting in the middle of
10 a desert and nobody seemed to be listening and we are now at a stage it is completely disseminated. So that is really the story of fourth parliament and I then started to look at other ways of trying to bring attention to and try and fix this institute.

ADV FREUND SC: Now you have referred to the deteriorating financial position of PRASA, there has already been evidence before the Commission through the evidence of Mr Themba Godi but alluding to an unsigned affidavit by the late auditor general Mr Kimi Makwetu and
20 you have had an opportunity in preparation for your evidence to go through that affidavit, that draft affidavit, fairly carefully, as I understand it, is that correct?

MR DE FREITAS: Yes, I have, yes.

ADV FREUND SC: And the auditor general, the former auditor general paints, in my view, a disturbing picture of

progressive financial deterioration and progressive deterioration in controls and progressive deterioration in adherence to the core prescripts that govern procurement. Would you concur or just agree with the picture painted in that draft affidavit?

MR DE FREITAS: Well, his – I concur complete and everything that he said is backed up in auditor general's reports which were tabled in parliament year after year, you know, and it was available. In fact we would every
10 year on an annual basis call in the auditor general and have these voluminous financial records in front of us that just showed a constant continued destruction of PRASA. So there was nothing hidden away, it was public knowledge, very - you know, very difficult to kind of keep monitoring. I, you know, was able to on a constant basis keep careful records of where the entity was because I believed particularly quite strongly in Rail and I believe that Rail should be the backbone of any public transport system anywhere in the world and in countries that is so
20 being done, they have got the best transport systems that they are able to move around. And so it was there in black and white, there were no secrets. There were no – this is not news and if members of the portfolio committee did not know about it, it because quite frankly they did not read this material.

ADV FREUND SC: Now I am going to come back later in your evidence to this very topic of the auditor general's report and the effectiveness of the portfolio committee's oversight but it is helpful that you just give us that brief introduction because it puts in context the bigger picture when we look at the points of detail that I am going to be taking you to. And the first point of detail that I now wish to take you to is referred to at page 372, I think we were at that page, and you will see under the heading 11 August
10 2015 that on that date the Public Protector at the time, Advocate Madonsela, issued her report into PRASA called Derailed. This over 390 page report revealed details of a total failure of delivery in governance – I think that is your wording – tender contracts have been improperly awarded and extended to the tune of hundreds of millions. Now I take it that you became quite familiar with the content of that report.

MR DE FREITAS: Yes.

ADV FREUND SC: And would you like to elaborate just
20 very briefly on what you think the main takeaway is from that report as you read it then in August of 2015?

MR DE FREITAS: Well, I mean, it was unbelievable information, again public information issued by the Public Protector at the time and detail, you know, with absolute detail mentioning dates and times and names, specific

names of companies and individuals.

So there was no – it was not an ambiguous report, it was an incredibly detailed report which a lot of research had put into and in fact the – at the end of that report the Public Protector at the time said that they would be releasing a second Derailed report, which never happened, I am not sure why. Certainly I would imagine you could easily prepare a series of derailed reports and essentially those – the report talks about mass looting, about how you
10 know people were taking an opportunity to self-enrich and rob the State, in this case PRASA, in whatever way they can through and making sure the tenders were issued to certain people, that prices were inflated, that procedures were not followed, so in order for this – it was clear, in the report which is what I've been saying before the report that, is that in order for all this corruptions, looting taking place there would have had to have been a network of corruption.

It would have been a network of – a hierarchy of
20 people to be able for this to happen because if you are – in order for you to be corrupt you'd need other people to help you fulfil these corruption activities. So, that was the gist of what the Public Protector was talking about. A lot of the work had been done, Parliament could have just taken that information and moved on with that?

ADV FREUND SC: Now, thank you for that but I do want to refer you to the top of page 374 where there's just one point of detail that I think, is perhaps, significant, is that, although this report was issued in – it was issued, as we said, in August of 2015, the report itself makes clear that it arises from 37 complaints made to the Public Protector by the South African Transport and Allied Workers Union, this was union complaint about PRASA and the allegations were made in 2012 and so by August of 2015 those
10 allegations made in 2012 are investigated and reported on. The point being that this indicates that the rot goes back a long way.

MR DE FREITAS: Yes, and that's exactly the point that I mentioned earlier is that in the Fourth Parliament I could see as a newcomer and not knowing the Departments – the way I got to know the Departments, it was clear that something was underfoot. Numbers weren't adding up, strange practices, it was clear, were taking place and very quickly I realised there was a network of corruption, of
20 people allowing this to happen and would have to come all the way from the top for, you know, all sorts of ...[indistinct - interference] worth millions to be able to have been passed were not suitable tenders for example. So, I very quickly caught on that this is what was going on, so it did take a while to realise what was going on and also as more

and more people got to read stuff that I'd – in the media, I started getting – being approached by whistle blowers, people who wanted to talk to me quietly and in dark alleys and so forth, to give me information and that helped a lot and started putting the pieces of the puzzle together very quickly.

ADV FREUND SC: I don't need you, really to repeat what you've said but I'll just draw attention to the fact, a lot of what you've just said appears at page 374 of your report
10 and I'd like you now to go to page 378 and perhaps if you could just read into the record under the date 23 February 2016, just what happened on that occasion?

MR DE FREITAS: I, on that day tabled – we had a pre-...[indistinct] National Assembly and so I tabled a motion, you know, requesting that we debate what I described as shambolic state of PRASA and what the causes of this stage was and what needed to be done to change this, to get fixed. I think this might have been – well this was one of many similar motions, I'm not sure if this is the first, I'd
20 have to check my records, but I made a similar motion throughout the two Parliaments, similar motions requesting that this be debated.

ADV FREUND SC: And this occasion...[intervenes].

CHAIRPERSON: One second Mr Freund, Mr De Freitas, to the extent that your report might not reflect all the

motions that you are talking about that you made, I'd be interested in knowing the various dates for the motions because it may well be that members of Parliament ought to have taken your motions seriously and maybe they didn't and that's why the motions did not succeed because one of the things we are looking at is, in regard to what matters was Parliament supposed to act because they had knowledge or reasonable suspicion that there was something wrong happening but they did not act. So, in
10 those circumstances where a member of Parliament did put a motion that was aimed at addressing some of the problems, but Parliament might have not given that motion the attention it deserves, that might be important. So, to the extent that your report might not cover all of those attempts, those motions I'd be interested in you giving Mr Freund more information about when and what the motion was about and what happened to it.

ADV FREUND SC: Thank you Chair, I attempted to list every time I tabled a motion in the house, in my affidavit
20 but I will just double check that, that is – that in fact I have covered every motion, I may have missed one or two because there were quite a few. I tried to table the motions, at least every few months because the state of PRASA was getting from bad to worse but may I just say, Chair, you were talking about, you know, to the extent that

people or other members of Parliament were not aware of the state of PRASA or rail, all they had to do was to go to any train station anywhere in the country and they would just see for themselves which I have, by the way, talked about later on in the affidavit. So, they didn't have to look for anything academic or anything complicated they just needed to go and visit train stations, be there at four in the morning as hard working, ordinary South Africans who were trying to catch a train and talk to them and they would tell
10 you how they suffer on a daily basis and how many of them lost their jobs because of the train system that wasn't working and how they would have to get there early in the morning so that hopefully two hours later, they may well get – catch a train or they may not. So, this was happening on the ground, this is no secret, this is not hidden away, this is not stuff that wasn't around it certainly was happening on a daily basis and continues to do so.

CHAIRPERSON: Yes, no the – I mean the point you make is fine but the fact that you put before the National
20 Assembly, motions is important in another respect, namely those who may not have taken the trouble to go to train stations and see what was happening. When you put in those motions they would have seen that you were calling for certain things to be done and if they did not support or did not take those motions seriously and they hadn't

bothered to go to train stations to inform themselves then they – then the situation is quite serious because at least if you didn't go to the train station but once a motion is put you give it proper attention, you take it seriously and you take steps to inform yourself before you decide whether to support it or not to support it, that's important because now, it is put in front of you to say, there's a problem so if you reject it without doing the homework that you should have done, then it's even more serious but thank you, Mr
10 Freund?

ADV FREUND SC: Thank you Chair. Mr De Freitas, maybe if I could add to the Chair's question. It is true that there's a great deal of detail in this submission, that it would be extremely helpful to the Commission if you could furnish a relatively short additional document which just focuses, in particular, on motions put to the House and particular to why, if you think that is the case, the members of Parliament ought, by then, by the time of the various particular motions ought to have been aware that there
20 were issues worthy of the attention of the House, that would be extremely helpful, would that be in order?

MR DE FREITAS: Yes.

ADV FREUND SC: Thank you. Now, can I take you now to page 381 and I'd like to focus, firstly on the date, I'm interested on the 8th of July 2016. Now, let's try and put

that in context. Ms Mazzone has testified, earlier this week about a whole series of matters that were in the public domain which prompted her to request the Portfolio Committee on Public Enterprises in March of 2016 to pursue an inquiry which she was unable to procure and then she talks about – and Ms Rantho whose testified has talked about events going back to 2011 and further – not further but from 2011 onwards and – so there was a climate by March of 2016, according to the evidence of some
10 considerable concern about what you might broadly call the State Capture issue and allegations relating, amongst others, to the Gupta family. All of that had happened before the 8th of July 2016 and you would have been familiar with that I imagine?

MR DE FREITAS: Yes.

ADV FREUND SC: Now, in that context, you refer, at page 381 in the second paragraph to a Sunday Times story that was published on the 19th of June 2016 with details of the R51billion tender for the purchase of 20 new
20 locomotives by PRASA which involved the Gupta family and Mr Duduzane Zuma and the allegations included – this is the allegations in the Sunday Times report that the Gupta family had attempted to rig the tender process so that they would benefit and other allegations included statements made in the media by the previous PRASA GCEO, Mr Lucky

Montana about who alleged – who claimed that he was introduced to the Gupta family and associated by previous Transport Minister, Mr Ben Martins and that the Gupta family wanted their associates to sit on the PRASA Board. So, that's what has appeared in the press. In the context of that, in the first paragraph, that you wrote a letter to the Chair of the Committee, Ms Mogotsi, you see it's Annexure C010, would you please turn to Bundle 3 page 485. Is that the letter to which you are referring in this paragraph of
10 your report, the letter of the 8th of July 2016 from yourself to Mrs Mogotsi?

MR DE FREITAS: Yes, 485?

ADV FREUND SC: Bundle 3 page 485.

MR DE FREITAS: Yes, that's correct yes.

ADV FREUND SC: Sir, I can't see you on screen have you had a chance to find that page?

MR DE FREITAS: Yes, I have, I found it yes.

ADV FREUND SC: Chair, can I just check that you have also been able to find it, I don't see you on my screen?

20 **CHAIRPERSON:** Sorry?

MR DE FREITAS: Just checking that you've managed to find the reference, page 485 in Bundle 3.

CHAIRPERSON: I did find it.

ADV FREUND SC: Yes, thank you and in that letter, Mr De Freitas you request that the Portfolio Committee on

transport launch an inquiry into this R51billion PRASA tender process, is that correct?

MR DE FREITAS: That is correct yes.

ADV FREUND SC: And you assert that the – that Parliament acting through the Committee has a duty to act under Section 55(2) of the Constitution and say that,

10 “Parliament must use its power to launch and inquiry in this matter immediately and you say the Gupta brothers and Duduzane Zuma should appear before Parliament to account for this highly irregular conduct for which they stand accused. Should Parliament determine that there were irregularities in this regard, Parliament is duty bound to refer these transgressions for criminal prosecution. I look forward to your soonest response in this regard”,

Now did you get a response from Ms Mogotsi.

MR DE FREITAS: I got no response, I must just say that I wrote the letter in context of, as you said, it was big news
20 at the time of how a family was influencing the State quite considerably but also this contract tender was worth R51billion, it’s a lot of money and so yes, I wrote to the Chairperson and received no response.

ADV FREUND SC: And you say, in the third last paragraph on page 381 that you, again, enquire about your

letter with the PC Chair to acknowledge the letter and said she would address it, she never did, do you stand by that?

MR DE FREITAS: I do and throughout the time my experience was that she would, in your presence, kind of say, she'd address a matter, or she would respond to it and fob me off and that I describe, as you know, a little bit later in the other inquiry attempts. Now, if you – just to get your bearings, would you turn to page 387 and you will see that there is a description of a meeting that started on the 7th of
10 March, you'll see that in the middle of page 387 and you'll see that, that meeting, really continued on the 8th of March, that you will see at page 66 and it goes right through to about 390. Now we don't have time to go through all of this but perhaps you could describe to us the first day of this two day meeting, the 7th of March which was a meeting with PRASA about the state of PRASA and the – just give us the highlights.

ADV FREUND SC: Yes, this meeting turned into a two day meeting because there was so much to discuss and so
20 much to do that it turned into a two day meeting. During that time big news, again, the media had exposed or released the fact that the acting Group CEO Colins Letsoalo had got himself a 350% salary increase and so that matter was discussed and matters to do with PRASA in general and the state of PRASA and that went on for two

days and by the end of those two days it was so obvious to everybody that some kind of investigation was required, some kind of inquiry and for something that I'd been fighting for, for quite a while, by the end of the second day, I was surprised – pleasantly surprised when one of the ANC members made a proposal that an inquiry was necessary and I could hardly believe my ears and in fact I asked the Chairperson to confirm that this was, in fact, the case and she said yes we need an inquiry into PRASA at
10 the end of the second day.

MR DE FREITAS: Let's just go through that, focusing on certain aspects in particular. Can I take you to page 388, second paragraph, it starts with...[intervenes]?

CHAIRPERSON: Sorry Mr Freund let me have a two minutes adjournment, nobody must go anywhere it will really be two minutes, we adjourn.

INQUIRY ADJOURNS

INQUIRY RESUMES

ADV FREUND SC: I am here Mr Chair.

20 **CHAIRPERSON:** Okay.

ADV FREUND SC: Mr De Freitas can you come back on video?

CHAIRPERSON: Okay we can proceed.

ADV FREUND SC: I just want to check Mr De Freitas are you hearing me? No I think Mr De Freitas is perhaps not

back with us yet.

CHAIRPERSON: I am sure he is going to.

ADV FREUND SC: I am sure he will be back with us shortly
Chair.

CHAIRPERSON: Ja. Ja.

MR DE FREITAS: I am sorry are you waiting for me? Sorry I
took a body break as well. Sorry about that.

CHAIRPERSON: Oh well I was about to say you might have
thought that two minutes would be five minutes. Okay alright
10 let us proceed.

ADV FREUND SC: Thank you. Mr De Freitas at page 388
the second paragraph it says that Mr Mulaudzi of the EFF
and Mr G Radebe of the ANC called for the suspension of
the 'corrupt' board and a comprehensive inquiry into PRASA.
Now I want to pause there and just to place this in context
because the commission has heard evidence quite some time
ago about the preceding board, the resignation of the
preceding Group Chief Executive Officer Mr Lucky Montana.
The appointment of a new board chaired by Mr Popo Molefe
20 and when we read here about a call by Mr Radebe for the
suspension of the corrupt board by that time we are referring
are we not to the board chaired by Mr Popo Molefe?

MR DE FREITAS: Yes. So there was clear – there was clear
shenanigans going on behind the scenes and I realised very
quickly that the reason why they wanted an inquiry were

different reasons to the – to what I – why I would wanted an inquiry. But I felt it was an opportunity anyway because once you start an inquiry you going to hide anything that needs to be exposed. And what they wanted to do is they wanted to get rid of Popo Molefe that is the bottom line because he started – he started exposing the rot that was going on in PRASA. He appointed investigators to start investigating and information started coming out which left many people uncomfortable and you would see throughout
10 this time there were two big villains that had been – that ANC were trying to create. The first was Popo Molefe and then they started holding onto the company that was doing investigations Werksmans Attorneys who – that – they – that became the other enemy and so they tried to divert attention from real issues into how much is Werksmans being paid you know that kind of thing. So that was the context and that was clearly in my view the agenda that the ANC members had to launch this inquiry.

ADV FREUND SC: Now I understand that there has been
20 evidence before the commission that there is room for argument about whether proper processes were followed in the appointment of Werksmans I am not expressing a view one way or the other but there is room for debate. That is not my – my question – yes carry on.

MR DE FREITAS: What I was going to say is that – that –

they may well have a case you know the way that Werksmans was appointed and that should be a subject on its own. But as a – I believe it is a convenient argument because it diverts away from the real issues. Because the reality is that those – that Werksmans was exposing all sorts of corruption and dirty laundry. They were – and they were not just – they were not just allegations there were proper investigations with real backup behind that. And that made certain people very uncomfortable. So that may well be the

10 case and maybe Popo Molefe did appoint them incorrectly and that was – should be addressed. But what about all the information that Werksmans was exposing? And at not one stage at any of the meetings whenever I brought that up I said well let us deal with that but let us then look at what Werksmans is exposing? And at no stage did they want that exposed which was interesting and I obviously it was a way of hiding the information that was being exposed. Sorry.

ADV FREUND SC: Well that was merely the point that I was going to move towards and let me ask the question

20 generally. Did the Portfolio Committee in your judgment at any stage show appropriate interest in whatever it is that Werksmans claimed to have exposed?

MR DE FREITAS: Well let me answer directly by saying I unambiguously said let us look at what Werksmans have exposed. Let us get them in. Let us get them to provide us

some kind of a report which I happen to know they would have been very happy to do. But at the – there was no interest at all in getting a Werksmans or anybody else that was investigating – I do not hold the brief for Werksmans I hold – you know I am interested in exposing the corruption and bringing out the truth. But at no stage was there ever any attempt even when I requested so to bring anybody to come and explain to the committee.

ADV FREUND SC: Now I want to take you to page 390 the
 10 third last paragraph before the heading, Peters fires across the board and I will just read that into the record.

“At the end of the second day of hearings – that is the two days you have been referring to the committee unanimously agreed that it undertake an investigation into PRASA and the problems that it was currently confronting. The Terms of Reference and other details would be discussed in subsequent meetings the motion to initiate
 20 an inquiry into PRASA was reconfirmed by myself at that meeting. The Parliamentary communication service issued a statement echoing this and you give a reference to the official statement was issued coming out of that meeting that there was to be an

investigation – an inquiry into PRASA.”

Is that correct?

MR DE FREITAS: Yes in fact you remember I just a minute ago explained at the end of the two days I could not believe my ears and so I asked the chairperson, are you saying you want an inquiry? I want to understand this is correct. So I made it – you know I clarified it absolutely. So it was not a misunderstanding I specifically asked the question and it was confirmed that they – we will launch an inquiry after you
10 know many attempts from my side for it happen and I was very hopefully that day.

ADV FREUND SC: So if we look at the next paragraph on the same page – page 390

“Before the end of the meeting the Department of Transport acting Director General Nothabata [?] Mokonyama read out a letter that had been sent to the committee from Minister Dipuo Peters in which he dissolved the board of PRASA.”

20 I take it that was a dramatic moment?

MR DE FREITAS: That was and I felt like I was in a Hollywood movie I must tell you. Because you know we confirmed that there is an inquiry and then suddenly this official out of the blue wants to speak and essentially fires the board and it leaves me completely confused and – but

immediately I am sensing there is something going on behind the scenes. So there was this – it really was very dramatic and so the meeting ended, it was not discussed, the letter was not discussed. Certainly it took wind out of my sails and ja it was quite – quite amazing – quite an amazing day ja.

ADV FREUND SC: And to take you now to the next page 391 there is a paragraph that deals with the date the 14th March 2017. Perhaps you could tell us with reference to that first or second paragraph under that date what happened on
10 that occasion?

MR DE FREITAS: So the very next week we have our Portfolio meeting again this – these two days happened and then there is the weekend. So the next Tuesday we were meeting and suddenly the room and the atmosphere was completely different. It is as if I am in a room with completely different people and in fact I say so in the meeting. Suddenly in this meeting the ANC say there is no need for an inquiry. It is not necessary. The Minister has now fired the board and therefore there is nothing to
20 discuss. That was the argument line and I literally took the wind out of my sails. And my colleague and I who is on the committee – was on the committee with me you know expressed to them how it was as if they were not there the previous week and they acted you know as if it is fine we must just move on and no inquiry is necessary and I was

completely gobsmacked that this was the case and I said as well that it is clear that Luthili House has got to eat with the ANC members and they have been instructed not to continue this inquiry it was clear and obviously it happened over the weekend.

ADV FREUND SC: Now reading the documentation one gets the impression that the reason relied upon for not proceeding with the inquiry was precisely the fact that the board chaired by Mr Popo Molefe had been replaced as
10 though that removed all need for any further inquiry. If that is the excuse proffered what is your comment on that excuse?

MR DE FREITAS: Well that is exactly the excuse they used and I – I said but you know it is irrelevant quite frankly whose at the helm of this thing? The problem is it does not take away what is going on. It does not take away the destruction of our rail system, the looting is clearly going on. All this is happening anyway. So again it was not a clever way but I would imagine the ANC thought it was a clever way
20 of trying to muddy the waters by putting in a new board and making – creating a perception that things were going to change and things were fixed. Because they had created this enemy in the publics' minds anyway that Popo Molefe was the root of all the problems and so that was a clever way of – or so they thought of getting rid of him and

suddenly PRASA is clean. And I said to them this is absolute nonsense these issues are still continuing. The looting and the corruption is still going on and nothing has changed.

ADV FREUND SC: Now...

CHAIRPERSON: I am sorry Mr Freund.

ADV FREUND SC: Let me turn to the next page please.

CHAIRPERSON: I am sorry Mr Freund. Mr De Freitas just articulate their reasons quite clearly for reversing their
10 stance on the institution of an inquiry. I would have thought that the – the disbandment of the board by the Minister would actually be an additional reason why there should be an inquiry in the way it was done. It seems that you know one would have been justified to say, well all the more reasons why we should have an inquiry so that we can understand exactly what is going on at PRASA. So what were the reasons that were articulated? Was it just that the board – the Minister had disbanded the board therefore there is no need for an inquiry? Why – what was – what was the –
20 or was the position that there is going to be a new inquiry let us leave it to it or what – what was the position?

MR DE FREITAS: There was no indication of there being any new inquiry. The explanation was that now that the Minister had fired the board things were going to be resolved – things were going to be fixed and PRASA was going to be

on – in the right track. And – and we kind of expected just to believe that. But the real truth is that they were not – they wanted to get rid of Molefe because he was working very hard to expose what was going on and the lot – and it now became almost a weekly event usual in a Sunday newspaper where you would see a new scandal after another involving rail or PRASA. And so it left the – certain people in the ANC very uncomfortable and so the members in the Portfolio Committee of the ANC were instructed I have no doubt – I
10 have no proof of this but looking and reading the room the very next week when suddenly it was as if I was talking to different people. It was clear that they have been instructed and told that they are to tow the line and to stop this inquiry. And you know I said this in as many words I did tell them that and I said it was absolutely shocking that they putting party ahead of the country. And so they just – they had obviously planned this discussion – they did not argue or debate with me they just kept very calm and collected and left it at that. So they anticipated I am guessing that I –
20 myself and my colleague would have created some kind of outcry and so the – and so that is what happened on that day.

ADV FREUND SC: Now...

CHAIRPERSON: So I guess that – I guess that maybe then your evidence that your reasons for wanting an inquiry and

their reasons for wanting an inquiry were different?

MR DE FREITAS: Yes.

CHAIRPERSON: With them once – if their – if the reasons for the inquiry or the objective was to get rid of Mr Popo Molefe or his board then their need for the inquiry had fallen away but your need for an inquiry was – or related to finding out what was causing the problems that were being talked about in regard to PRASA.

MR DE FREITAS: Chair you are quite right in that in that
10 unofficially being closed doors they wanted to get rid of Molefe and anybody who was exposing any mal-doing but the point is that in the meeting – the two day meeting the previous week the reasons that were given by the ANC were the same reasons that I was supporting. So even if – you know that was a meeting what they were saying and so I am not sure if it was all a pretence, it was part of a grander scheme to then just stop an inquiry but then my question is, why even propose such an inquiry because the proposal for an inquiry in this instance came from the ANC. I did not
20 even think that on the day to you know ask for an inquiry because I had tried before and I just – I just wanted – I was quite happy for the – the rot to be exposed so that it would add more credence to any future inquiries that I may request. So it came from the ANC and my reading – my suspicion is that some of the ANC members tried to do the

right thing and over the weekend they were very quickly told to stop it and that would explain a complete different demeanour the very next week.

CHAIRPERSON: Mr Freund.

ADV FREUND SC: Yes thank you. Can I take you back to page 388 please?

MR DE FREITAS: Yes.

ADV FREUND SC: In the fourth paragraph that starts with the words ‘although I agreed’ there is a sentence in the
10 fourth line that reads as follows:

“They which is a reference to the ANC members of the Portfolio Committee were angry with Popo Molefe for speaking out about allegations of payments to ANC coffers a cardinal sin I think that should be it is a typo for the ANC.”

Would you just elaborate on that please?

MR DE FREITAS: Well ...

ADV FREUND SC: And at part of it you say that they were
20 concerned about that and how important an issue was that in their desire to push Mr Molefe’s board out of office.

MR DE FREITAS: One of the things – the many things would have been – were coming out that Molefe was exposing with allegations of pay outs into the ANC and so forth and in fact there was a newspaper article again one of the famous

Sunday Times articles the very previous week if I am not mistaken exposing this kind of stuff. And so they – they – and that according to the ANC is a cardinal sin. You do not go and you know dirty and muddy the organisation – organisation always is a head of the country that is always the case. And so that – Molefe had committed the most cardinal of sins and so in their eyes they needed to get rid of him because he was now persona non grata and if I am not mistaken when Dr Molefe addressed this commission a while
10 back he alluded to similar things if you may remember. So certainly he had become an enemy of the ANC according to them because he had as I say in here he had betrayed the ANC and that is something you never do in their eyes.

ADV FREUND SC: Now I want to take you to page 397 please? And that the material you deal with dated the 15th August 2017. And you refer there to the fact that you had been alerted by your then Chief Whip Mr John Steenhuisen about a letter that had been written by the House Chairperson Mr Cedric Frolick and I would like to take you if
20 you could stay at that page but also have a look at Bundle 3 page 518.

CHAIRPERSON: I did not hear the first page Mr Freund.

ADV FREUND SC: Bundle 3 page 518 – 518.

CHAIRPERSON: The first page.

ADV FREUND SC: Yes page 518 in Bundle 3.

CHAIRPERSON: Okay.

ADV FREUND SC: Sorry.

CHAIRPERSON: Yes I have got it.

ADV FREUND SC: Now there it is a letter not to the chair of your own committee it is a letter to the chair of the Portfolio Committee on Mineral Resources but it is a letter to the chair of that committee requesting an investigation into allegations of state capture. Now is that the letter to which you are referring here at page 397 that Mr Steenhuizen told you
10 about the letter to the chairperson of the Mineral Resources Portfolio Committee?

MR DE FREITAS: Yes. My Chief Whip at the time told me that a letter had been written to a number of committees including the Transport Committee requesting that you know state – investigations be – be undertaken by these committees. My Chief Whip did not have the letter the specific letter addressed to the Transport Committee but the one that I put in the file here is the one he had and I said to him these are – this is to someone else and he said the
20 contents of the letter is exactly the same it is just that it was sent to the different you know committee chairs. And in fact I informally at one stage much later on did confirm with the chairperson of the committee that she had received such a letter and in fact I am correcting myself because in your – unofficial but then I did mention it when we were discussing

an inquiry later on that year. So I am – so she certainly did receive the letter but I never had the letter addressed to her and this is the copy that I have had and my Chief Whip had confirmed that it was the same throughout ja.

ADV FREUND SC: Yes if I can just pause you there because we rather run ahead of ourselves.

MR DE FREITAS: Okay.

ADV FREUND SC: So Mr – Mr Steenhuizen told you that he believed there was an existence a similar letter to the chair
10 of your own committee the Transport Committee, is that correct?

MR DE FREITAS: He was advised by Cedric Frolick.

ADV FREUND SC: Right.

MR DE FREITAS: That Mr Frolick had written to all these chairpersons.

ADV FREUND SC: Now that letter that was alleged to have existed I do not believe is annexed to your presentation but Chair may I refer you to Bundle 2 – Bundle 2 I stress page
20 488 that is an annexure to Ms Mazzoni's affidavit. You may not have this Mr De Freitas.

CHAIRPERSON: Registrar bring the file. Yes I have got it Mr Freund.

ADV FREUND SC: Thank you Chair. Now Ms Mazzoni testified and I may say that this evidence will be confirmed in due course by Mr Frolick that Mr Frolick wrote the letter we

see at page 488 on the 15th June to Ms Magadzi the Chairperson of your committee and it asks her on behalf of the committee of which she was chair to investigate allegations of state capture in organs of state in relation to PRASA and it is similar to letters sent to three other committees. Now my question to you Mr De Freitas is whether Ms Magadzi ever revealed to the committee that she had received that letter?

MR DE FREITAS: She did not. No she never – she never
10 did and I was the one who then asked her about – did she get any communication from anyone about looking into this matter and not at this stage it was later on when we were looking at Terms of Reference when we were going to do an inquiry which never happened.

ADV FREUND SC: You are talking about a period we yet have to come to.

MR DE FREITAS: Yet to come to yes. But I can also say [not audible].

ADV FREUND SC: Third attempt at an inquiry.

20 **MR DE FREITAS:** Yes.

ADV FREUND SC: Let us be clear about the chronology that you talk about. You have already testified about the attempts that were made in mid-2017 referring to the R51 million – R51 billion contract and the refusal to enquire on that occasion. You have already testified and that is what

you call the first occasion. You have already testified about a second occasion in which there was agreement to have an inquiry but then that was not pursued for the reasons you have referred to. Now after that so called second attempt we have not yet come to the so called third attempt and we are dealing with something that happened in the interim. And in the interim is there is evidence from other sources that this letter was sent by Mr Frolick to Ms Magadzi and your evidence if I understand correctly is at that time she did
10 not reveal to the committee that she had received such a request. Do I understand that correctly?

MR DE FREITAS: That is correct. She did not reveal anything. I did informally in a diplomatic way because I had not – that letter is not – was not addressed to me and I – you know I was not – ja it was not addressed to me so I did not want to appear as if I was reading her mail to put it bluntly and I just – I said to her informally I – in a roundabout way asked her about it and there was nothing forthcoming. So the short answer is no that letter was never tabled at the
20 committee.

ADV FREUND SC: Now you do say this at page 397 the last paragraph under the date 15 August.

“As I was officially not aware of such a letter I raised the subject as diplomatically as possible. I explained that I had heard of a

letter requesting us as a PC – that is the Portfolio Committee to initiate an inquiry into PRASA. The chairperson of the PC explained that PRASA itself was undertaking their own inquiry and that other agencies such as the Hawks were also involved. Her argument was that essentially this protruded us from launching an inquiry. I argued that this was not the case and that we are at liberty to investigate PRASA as Parliament has oversight on government.”

Can you confirm that that is correct what I have read into the record?

MR DE FREITAS: Yes and in fact the – you will see later on that in one of the replies to official – to one of my questions the Minister at the time says that PRASA has a problem with the information exposed in an external investigation and so the information had to go back to satisfy PRASA. And my argument is you do not check with PRASA they are an interested party, they are part of the problem. You do not go and confirm the so – it was – a similar argue – argument here in that there were other inquiries turning in place and therefore we should not worry and I am – ja I – you put the case exactly right I said to her that that should not preclude us from investigating and exposing this information.

ADV FREUND SC: And let us be clear – no let me – I will not ask that question. Can I now refer you to page 401 of Bundle [?].

MR DE FREITAS: Yes.

ADV FREUND SC: So there is a debate that takes place – a committee meeting to discuss implementation of the derailed report requirements. The derailed report is the Public Protector’s 2015 report. It required various things to be done. It resulted in the board under Mr Molefe appointing
10 Werksmans to do certain forensic investigations. It had resulted in the Hawks doing certain investigations. It resulted in National Treasury doing certain investigations and by this time – by November of 2017 the Minister of Transport is the one Mr Joe Masangane is that correct?

MR DE FREITAS: That is correct yes. He was a previous member of the committee.

ADV FREUND SC: So that was the point I wanted to come to. So – so a member of your committee who had sat with you in the committee and had been party to the events that
20 you have just described is now wearing a different cap. He had recently been elevated to the position of Minister of Transport, is that right?

MR DE FREITAS: I must tell you the corridor talk it is not in my affidavit but the talk amongst other ANC members were with me surprise that he would have been picked to be the

Minister and secondly that he was not the obvious choice to have been picked and there were members in the ANC who could not understand it because there were better options. So that was the corridor talk but my sense is that he was in the fraction that was in control and so he was needed there.

ADV FREUND SC: Now if we go to the next page 402 again in the time I am going to try to avoid dealing with too much detail but we see there from the middle of the page onwards Mr Radebe comments, Mr Ramafikane's [?] comments and so
10 forth. We see that this concern continues to be expressed by the ANC MP's on the committee about the fact that Werksmans is pursuing an inquiry and the impression one gets reading the PMG Report is that as far as the Portfolio Committee was concerned, the majority of the members of the committee, there was really only one concern. It was that money was being spent on Werksmans and very little interest in what, if anything, Werksmans was coming up with. Did that remain the case as it appears November of 2017?

MR DE FREITAS: Yes, it remained the case and in fact it
20 intensified the campaign if you like, developed by Werksmans and the amount of money they had been paid and how they were appointed and so forth. It intensified.

And at every opportunity in the Portfolio Committee, the ANC spoke on about it and I tried to smear or bring back the conversation into what is the state of

PRASA and let us look at what Werksmans is actually producing. And they, you know, cut us off every time.

ADV FREUND SC: Let me then move to page 409.

MR DE FREITAS: Okay.

ADV FREUND SC: And you will see, there is a section that starts in the middle of the page but that follows on from what we see at the preceding page just to get our date pairing. That is the 12th of January 2018. I am not interested in the first letter referred to. I am interested in
10 what we see at the middle of page 409.

And you say – I use the letter which is the same letter that you have been referring to earlier in this report.

“To also note that the committee should also scrutinise the recent appointments at PRASA, both the acting Group CEO of PRASA, Cromet Molepo and the acting CEO of Rail, Mthuthuzeli Swarts had multiple allegations of corruption and bad administration that had been lodged against them.”

20 But then you say at page 410, the second paragraph:

“Despite confirmation by the PC Chair’s Office at receipt of my letter I received no response to it.

While attempting to discuss my letter with the

PC Chair, I was shrugged off.”

Could you please elaborate on this incident?

MR DE FREITAS: Yes. So I had in fact before even writing this letter, I received a call from a whistle-blower and telling me about these two appointments. These appointments have a long history in local government, in government entities and so forth.

And the long and short of it is that they had been involved in all sorts of scandals of you know incorrect
10 misconduct and so forth. That is the gist of it.

So these are not fellows that who you should appoint to a failing entity. And so I requested to the PC – actually the Portfolio Committee chair that we should look into it. And you know again, no response.

ADV FREUND SC: Can you turn now please to page 414?

MR DE FREITAS: Yes.

ADV FREUND SC: There is reference there to a Transport Portfolio Committee meeting on the 13th of February 2018. And when you read you will see that this was the occasion
20 on which an NGO going by the name of Unite Behind was afforded an opportunity to make a presentation to the Portfolio Committee. Do you remember that occasion?

MR DE FREITAS: Yes, I do. Yes.

ADV FREUND SC: And there has been evidence before this Commission already about the stance taken by Unite

Behind that apart from complaints that they made about what you might call service delivery and operational problems, they also made allegations of state capture and corruption.

And when they appeared before the committee on the 13th of February 2018, there was a case pending before the court, before the High Court a few days later than that between United Behind and PRASA.

And it says here in the second last paragraph at
10 this page:

“Although the United Behind brief included state capture, governance and an emergency safety plan, the acting Chairperson, Mr Ramatlakane of the ANC said the committee would not deal with the state capture matter because it was not part of the agenda for this meeting.”

So can you confirm that although they permitted Unite Behind to make a presentation, they simply were not
20 willing to listen to anything what Unite Behind had to say about the allegations of state capture and corruption?

MR DE FREITAS: Yes. They allowed Unite Behind to talk about the state and it's you know the infrastructure that was failing and so forth but as soon as it has anything to do with state capture or certainly to looting and corruption

they were cut off.

And that is a comment tactic that was used throughout the period in various committees. You know, if it was no actually explicit on the agenda, it was a convenient way of not discussing the matter.

And so as I mentioned earlier, you would remember that the committee was as if it were in a bubble where all these things were happening at PRASA and we seemed to have been disconnected as a committee.

10 And here is an example where really pertinent issues of the day, important issues that need to be discussed and exposed were kind of cut off. And so that is a kind of a specific bubble I described earlier.

ADV FREUND SC: Now in many of the presentations and affidavits submitted to the Commission about Parliamentary oversight issues, some of it had not yet been lead in overall evidence, there is an ongoing theme that emerges about the questions of the matter of a subjudice.

20 In other words, something to do with the matter is before someone called somewhere. Would you just comment generally on whether that presented in your experience a problem in attempting to regard this?

MR DE FREITAS: Yes, all the time. There were always matters before court especially when it came to PRASA. And so at every opportunity when a debate needs to be

discussed, they use this subjudice war which was applied incorrectly by the way. But it was always conveniently applied, you know, to suit their means. So. And that happened more times than I can remember. And that was a way of just preventing discussion and taking matters further.

ADV FREUND SC: I would like to take you now to page 415. And really, I am going to try and cover very briefly what you deal with at quite some length between page 415
10 and page 424 or 423. But this is what you call the third attempt into a Parliamentary Inquiry and you commence this story on the 20th of February 2018.

Now could you maybe just summarise and give us the highlight of this attempt and as I understand it the decision to pursue and inquiry into the affairs of PRASA?

MR DE FREITAS: So by that stage, the financial reports which had to be submitted to Parliament by end of September of PRASA, the financial reports of PRASA had not been submitted.

20 And so as you rightly said in February this information was still not being submitted which is a big problem. And so that is kind of what lead to the eventually the committee agreeing that an inquiry is required and that it must conduct an investigation.

I am just trying to remind myself of the dates here

but we said ...[intervenes]

ADV FREUND SC: If I can take you to page 415 the third last paragraph starting with Mr Kekana.

MR DE FREITAS: Yes. So you know I cannot explain the change of heart but certainly it was very big you know in the news. It was spoken about much because there was total failure of PRASA happening all around.

And so I am hoping that that would have been the reason but the long and short of it is that PRASA needed to
10 be investigated and it was an agreement and I was very hopeful and very excited that this was going to take place. So a sub-committee was formed, comprising of Ramatlakane and Mr Hanzinger(?) to at, you know, the changing of reference inquiry and so forth and to report back to the committee.

ADV FREUND SC: Well, before you proceed. If I can take you to top of page 416?

MR DE FREITAS: Yes.

ADV FREUND SC: I know that you have said that often
20 minutes are too brief to be helpful but this is an extract that you have provided here from the official minutes. Is that correct?

MR DE FREITAS: Yes, I put in here. It is unusually inaccurate.

ADV FREUND SC: Yes. So it PRASA Investigation:

“The committee took a resolution to launch an investigation into the alleged maleficent at PRASA in terms of National Assembly Rule 227(1)(c).”

And then it says as you have just alluded to the terms of reference would be drafted and those terms of reference had to be completed by the 22nd of February 2018.

And there was, as I read it, an unequivocal
10 absolutely clear absolutely unambiguous decision there is now going to be an inquiry into alleged maleficent at PRASA. Is that correct.

MR DE FREITAS: Yes, and in fact, at this stage, when I saw that actually there was it was in black and white, it was that the terms of reference are going to be drawn up. We never go this far. We always, you know, as you have heard earlier, we got to a point and then suddenly all would collapse.

So I was quite confident that at last something is
20 going to happen because we got to this stage. So yes, this is correct and this is an exact extract from the official records.

ADV FREUND SC: Now let us just trying to get out sense of time once again.

MR DE FREITAS: Yes.

ADV FREUND SC: By this time the present Commission of Inquiry into allegations of State Capture had already been appointed.

MR DE FREITAS: Yes.

ADV FREUND SC: That was known to you and to everybody who participated in taking this decision to proceed with this particular inquiry. Is that correct?

MR DE FREITAS: Yes, yes. It is good news. And we often – often I would refer to the existing inquiry and so
10 you know we should be doing something similar as well because nobody is looking at PRASA. You know, these other inquiries are looking elsewhere.

ADV FREUND SC: Right. Now if I can take you to page 420. First let me take you to page 419.

MR DE FREITAS: Yes.

ADV FREUND SC: The official Portfolio Committee minutes of the meeting confirm that the terms of reference of the inquiry were proposed by Mr Ramatlakane and seconded by myself and it follows:

- 20
1. The inquiry will investigate governance, procurement and the financial sustainability of PRASA.
 2. The inquiry will look into, amongst others:
 - 2.1 appointment of permanent board members and executive management.”

I just want to address to say that you deal in length in this report with the problem of the appointment of the so-called Interim Board and the litigation that followed on Mr Molefe's board's removal and then reinstatement.

That is part of what you were concerned about but we have not touched on that in your oral evidence today.

3. Alleged procurement irregularities as indicated in the Public Protector Report, Derail.”

10 That is the 2015 report, finally now in 2018 in February this committee wants to get to grips with that.

“...as well as allegations made of procurement irregularities with regard to modernisation as to well as relevant stock products dating back to 2012.

4. Allegations of impropriety regarding PRASA's current acting Group CEO as well as past Group CEO's dating back to 2012.”

20 And then on it goes. Item 7: Consider Werksmans appointment process and scope legality and then other related matters. I have not read all of it into the record but I have highlighted those that seemed most pertinent for present purposes.

And if I can then – so I take it you can confirm that were – I read from an extract from the official terms of

reference.

MR DE FREITAS: Yes. Yes, this was tabled at our committee. Yes.

ADV FREUND SC: And then if we go to page 421. You have, at this stage and at later pages of your report, you have created the – inserted in colour various extracts to show an official programme and schedule.

And you make the point in the middle of page 421:

10 “An inquiry planner scheduled was agreed to unanimously.

The inquiry planner provided the inquiry or investigation to five stages starting with page 1.”

And this is the point:

“...on 16 May 2018 and concluding with phase 5 on 26 October 2018 as follows.”

And this not just something that you were dreaming up. This is the decision of the committee as I understand it. Is that correct?

20 **MR DE FREITAS:** It is not the committee. What I have done is to describe quite creatively – I had nothing to do with the creativity. This was literally cut and paste, taken from the official records and I have inserted in here. And I have done this on purpose again.

The reason why my affidavit is so long is because I

wanted anybody – I did not want any space open for anybody to say that I am not telling the truth.

And so I, for convenience and ease of reference, I have inserted all this information. So this was not my work. This was one of the officials that had tabled this programme.

You know, and all I have done is I have put it in here to prove that we got to a point where approved the terms of reference and now we have a planner who clearly
10 how we – were saying we can only do it later on that year because they have a whole lot of different things in the legislative programme which they have to deal with in Parliament. And so it only happened at that stage from mid-May.

ADV FREUND SC: So let us just look at – you can go to page 422. It is the written submission.

MR DE FREITAS: Yes.

ADV FREUND SC: Yes.

“Although the terms of reference ...[intervenes]

20 **CHAIRPERSON:** I am sorry. Mr Freund, you say we got to 4.22?

ADV FREUND SC: 422.

CHAIRPERSON: Oh, 422, the next page. Okay.

ADV FREUND SC: And Chair, immediately below the coloured calendars, the third written paragraph.

CHAIRPERSON: Okay thank you.

ADV FREUND SC: Yes.

“Although the terms of reference for the inquiry into PRASA was finalised at the 13 March 2018 PC meeting, the PC was advised that it was not made available to the public as the terms of reference had to be firstly submitted to the chair of the committee, Mr Frolick of the ANC.

10 However, my understanding was that the inquiry would proceed as advising Mr Frolic was simply to keep abreast of the developments.”

Is that correct.

MR DE FREITAS: Yes. My impression was and certainly the impression of given was this was a mere formality to advise Mr Frolick as the Chair of Chairs. And I at that stage thought nothing of it. You know, I thought well you have got to follow processes. And he is a responsible
20 officer in Parliament when it comes to these kind of things.

ADV FREUND SC: And then at page 423 under the heading 20 March 2018 there is a reference to a revised time schedule.

MR DE FREITAS: Yes.

ADV FREUND SC: It says – you say in your report in this

meeting and you give a reference to the PMG minutes:

“A revised inquiry schedule with an additional oversight in May 2018 included in the planner was provided to the members of the PC which indicated that phase 1 will start on 22 May 2018 instead of the initial 16 May 2018 and still concluding phase 5 on the 26th of October 2018.”

That is correct, is it?

10 **MR DE FREITAS:** Yes, yes. And I again insert in the affidavit an exact copy of what was tabled with the debate.

ADV FREUND SC: Now if I can take you to page 428.

MR DE FREITAS: Yes.

ADV FREUND SC: If I may so with respect, a bit of an omission in this particular submission because you see you deal with the 8th of May and you deal with 30th of May but we have just seen that the inquiry had been scheduled to start on the 16th of May. That is at page 100.

MR DE FREITAS: Yes.

20 **ADV FREUND SC:** But that did not happen, did it?

MR DE FREITAS: It did not happen. And in fact, in my affidavit somewhere I started realising that excuses are starting to be made because I kept on asking as the date is approaching what are the arrangements, you know, what are we doing to actually get this inquiry going.

And you know, are we calling any witnesses and so forth. And I could see the appetite was losing very quickly. And my reading was something is going on behind the scenes and someone is trying to either you know prevent this from happening or delaying it or something.

I could sense that something was not coming right. Why I did not do it on that page that I mentioned it but I do mention it somewhere else.

ADV FREUND SC: I can take you there.

10 **MR DE FREITAS:** Yes.

ADV FREUND SC: So if you go to the foot of page 429.

MR DE FREITAS: Yes.

ADV FREUND SC: It is the meeting that took place on the 5th of June 2018. Are you with me?

MR DE FREITAS: Yes, yes.

ADV FREUND SC: And if you turn over the page, the third paragraph you say:

“I reminded the committee that it had agreed to undertake an inquiry into PRASA.

20 The chairperson replied that PRASA was aware that the PC would be undertaking a parliamentary inquiry into PRASA.

Although the PC had planned to start to work in July 2018 (which is of course later than what we have just read) the parliamentary

programme had been adjusted due to Parliament extended recess.

The PC chairperson said that the PC would want to engage with the other boards within PRASA such as the inter sight and all boards should advise that the PC would communicate with PRASA Board as to when the inquiry would commence and what the terms of reference should be.”

10 Well, I thought we already had terms of reference, did we not?

MR DE FREITAS: It is exactly so. It was at that meeting that I realised – the penny dropped if you like. I realised that something is afoot. They are, you know, keep on pushing. I, you know, throughout the whole time because it was supposed to start in May. I kept on asking about this inquiry.

And eventually, you know, I think, you know, this is what came out. And I started to smell fish. It did not – it
20 was not right. And then you know again as if – you know we make decisions and then you know they pretend that these things have not happened. What is bad for them is that I am completely obsessed of keeping records of everything.

And I suspect they may not even have half these

records that I have got because there is nothing I throw away. So I keep every single record that I have. So I know for a fact that the terms of reference were agreed to and suddenly they are changing their story.

And I do not talk about it in here but certainly I expressed my displeasure about how this has been manipulated and been pushed away because suddenly a piece of legislation would – which we had been waiting for ten years, is suddenly very urgent. And you know

10 ...[intervenues]

ADV FREUND SC: If I can just interrupt you. I want to go to the point you now make.

MR DE FREITAS: Yes.

ADV FREUND SC: Like you say in the paragraph on page 450. You say:

“No commitment was ever subsequently made by the PC Chair about a commencement for an inquiry.

Excuses continued to be made as to why an inquiry could not take place.

20 The main excuse being the lack of time to undertake such an inquiry and the need to pass “urgent” legislation.

In both instances, you say, this was not true as the committee programme could have been

amended to accommodate in an inquiry in the same manner that the PC of Public Enterprises have done or their inquiry as in reality, there was no urgent legislation pending.”

Now I would like you to talk about that in a little more detail, please.

MR DE FREITAS: So it became very clear that they were - again something must have happened, I am guessing. Something must have happened behind the scenes and
10 they were told to delay or - because I am guessing they realised they have no committed.

It is in black and white to undertake such an inquiry. And so they had to find a way of it not happening and so they delayed and delayed.

Suddenly a piece of legislation which is not urgent. It has been sitting for over ten years and in fact it is legislation that we do not need, called the Road Accident Benefit Scheme to replace the Road Accident Fund. Suddenly became very urgent. Suddenly it had to be
20 passed in Parliament.

And so the whole programme of public participation when we would travel the entire country was tabled where they said we need to go to every province and we need to go to a number of cities and so forth to undertake public participation programme sessions about

the Road Accident Benefit Scheme.

And I immediately knew that at that stage this was to crowd out the calendar and to ensure there would be no time. Conveniently they then said there is no time but they created that situation to make sure that there was not time to initiate an inquiry.

ADV FREUND SC: And you make the point at page 430 at the end of the second last paragraph. Your point was that the RAFS was not urgent, has been confirmed that this
10 Parliament has agreed to completely scrap it. Is that correct?

MR DE FREITAS: In fact it is one of the first – obviously I am not part of the Transport Committee anymore but my colleague you know remained on the Portfolio Committee, Chris Hanzinger.

And very successfully and very early in this Parliament was able to convince the rest of the committee that this was a bad piece of legislation and was not required.

20 And luckily – I think he is a good – he can be very convincing and some sense prevailed and they completely scrapped this bill completely. So which proves the point. It is not even needed but they needed an excuse to crowd out the agenda.

ADV FREUND SC: Now there is a piece I want to deal

with you on this sort of chronological following of your report. But I would now like to take you back if I may to pages 339 through to 345. And again, I am aware that time is against us.

But you deal with some important issues there. You deal with some problems that experience has taught you that characterised the Portfolio Committee oversight in practice.

And then you deal with either techniques that can
10 be used as either the Portfolio Committees themselves. And then you make certain proposals.

Now the Chair will no doubt have an opportunity in due course to read all of this but I think this is your opportunity to try and highlight those that you think is most pertinent.

So let us start with your points about portfolio committees in practise and if you could just highlight. If you think of the main points in the sequence in which they appear here and where necessary if you can briefly but
20 only briefly elaborate on it.

MR DE FREITAS: I have just mentioned it that I find it interesting that Dr Khoza the previous witness to me mentioned something similar and that is where we got a situation where in Parliament all the chairpersons of the committees are from the party that is majority party except

for SCOPA.

And so that is one of the problems in that you have one party who is – who dominates and runs all committees and so there is a lack of accountability and transparency. And simply my proposal is that we perhaps on a proportional basis based on the strength of the party that there be chairpersonships given to different political parties so that there is a balance. And it would certainly I think increase and improve accountability and
10 transparency.

And then also, you know, I mean there is a lot that I do talk about but certainly for example the debates and the way that they are designed is designed in such a way that the minority parties and the opposition parties have minimal speaking time and can only participate in a limited way. And so that should be looked at.

And it keeps on being mentioned by the ANC to accommodate them. I think that is a very dangerous president. Yes, certainly there are a whole lot of rules and
20 so forth that gets you know ignored and circumvented and so forth.

And you know we mentioned the Road Accident Benefit Scheme and when we wanted to table our final report, the rules state quite clearly that you are entitled to include a minority report but yet the committee fought very

hard and then deny that and tried to kind of pretend it was not in the rules.

Then one of the other – I mean there are so many but the other point that I do want to talk about is. Certainly the minutes and the actual administration in Parliament are not the greatest and that should be beefed up and certainly support for MP's. There are so much going on that it is very difficult to keep abreast of portfolio times.

10 And so, you know, I was lucky enough to have a partner, a portfolio partner and so we split the portfolio between the two of us. But even so, it is very, very difficult you know to really keep abreast and make sure there is accountability.

I must just say that I found in my experience, is that particularly members of the ANC. Many of them are – do not come prepared to meetings. They do not – they arrive in many case I have seen them open their envelopes and documents for the first time and have not read the
20 information that has been provided to them.

And I know that because the questions they ask would not be asked had they read their material, had they prepared for the meetings, had they done research and come prepared.

So really what the ANC does is, they just have

some talking heads, people would just do the bidding and that is what you have in Parliament. And it is very sad because Parliament has been of any real challenge that can make a big difference.

Then it has been mentioned earlier as Dr Khoza has also mentioned. I think the electoral system needs to be changed. Van Zyl Slabbert has some good points. We have got some proposals also included in the documents which I feel would assist in making sure that there is more
10 accountability with real people on the ground.

As far as I know I was the only member in the Portfolio Committee at the time that actually went and visited trains on my own and went to talk to people to passengers and so forth.

And certainly the Minister cannot claim that he or she at the time, I do not know which Minister was on, do know about these things. Because what I am saying is, why are they ministers then. They have to know about this stuff and certainly our President knows, he himself was
20 stuck in a train during the campaign in the last – during the election campaign, in the last election campaign.

One of the things that I have done, I have learnt, is that there are many tools at the disposal of MPs that can be used very effectively and I have able to use them quite effectively in the work in then leading up to laying charges,

for example, and so forth and that is the very famous written questions where you can – a member of parliament may write written questions for written reply by a minister. The fact the rules say that you have got to respond within ten days is a different matter, it never happens. The ministers have no respect for these rules. But certainly I eventually do get replies and I also learnt to circumvent some rules, the rules in parliament, for example, so commit to the maximum of three questions a week. It is illogical, it is completely arbitrary, I do not know why that is the case.

So what I have done is, I have asked colleagues who would not be submitting questions that week, if I may use their name. And so that explains why you will see in annexures some questions are asked by someone else, they are actually my questions but I have used someone else's name, a colleague, with permission, to use so that I am able to put in more than three questions because I had so many going on every time. If I had to keep it to three it would not go anywhere. But the problem to that is, you may find a situation, I had it often, when ministers would not respond, you know, entirely, correctly, fully and so I would have to do follow-up questions and kind of zone in, laser in even deeper to make sure that I get the answer that I am looking for because they would – it was a constant cat and mouse game, it still continues to be. I

will not – I mean, there is a whole list here but you say I have got to concern myself with time.

I did use opportunities for oral questions which provides an opportunity for direct interaction with the minister in the house and to put him or her, you know, at a situation where they have got to respond. However, usually the Speaker would try and curtail debate, there was – replies usually are very bad and pointless and the Speaker at the time or the house chair at the time would
10 defend those members which defeats the whole point of what questions are about. Yes.

ADV FREUND SC: Mr de Freitas, when you say they were very bad, pointless, what are you trying to convey?

MR DE FREITAS: Well, you know, when you want to ask – you know, you are asking a question so you want a real answer, you know, and they would answer in a very general way with committing, for example, any particular answer, without giving the detail that you are looking for. I am not – I mean the rules talk about, you know, you cannot ask a
20 question about, you know, detailed stuff that you would for example require on a table but certainly the detailed information about, you know, what is going on in an entity and what is she doing about it or he doing about it, it would lead to very general replies which really you could not do anything with and so it continues to be a cat and

mouse game but I have also, as mentioned earlier, I have used motions in the house where you are able to actually table a motion, and statements as well, and the great thing about that is even if they turn it down, even if they turn down your motion or your statement it is on record, it is in Hansard and it is there that I have asked the question.

So if anybody in future that you may interview in this Commission denies any of that, it is all on record and that is very important, you know, the great thing about parliament is that these are official records. I just want to
10 just – the other ...[intervenes]

ADV FREUND SC: We will [indistinct] 3.56 to that but I think we are concerned about time and you have made proposals in writing. I would just like one last thing and I want to deal with it extremely briefly.

MR DE FREITAS: Yes.

ADV FREUND SC: The question of the affidavit of the late Mr Kimi Makwetu. Now he paints, if I may say so, a devastating picture of progressive deterioration and I think
20 you have already said that you concur with what he says and you say is all backed up by the auditor general's reports of the years that are covered by this affidavit, do I understand you correctly?

MR DE FREITAS: Yes, yes, yes, all his records are [indistinct] 04.39 quite right.

ADV FREUND SC: It is this point, he says he has no complaint about the willingness of portfolio committees including the portfolio committee on Transport, including in relation to PRASA, the willingness of the committees to invite and to listen to whatever the auditor general thinks should be brought to their attention. He says they are to be commended for their willingness and he also says they had demonstrated a concern about, for example, hugely increasing progressively worsening irregular expenditure
10 and the like but – and I am now referring to paragraph 249 of this affidavit. You do not need to go there but it is in volume 4 at page 959 and I will read to you what he says. He says:

“Although the PC’s interrogation of the audited results was visible from the records of the PCs recommendations or corrective action had been noted during the period under review. Furthermore, there was evidence that the PC would request an action or initiative to be taken but the follow-up
20 thereon was lacking. One example is the audit finding tracking register that the PC requested in the 2015/2016 financial year yet there was no evidence that the PC regularly followed up this action.”

And so really what he says is they listen, they do not like

what they hear but they do not do anything effective about it and, in particular, there is no mechanism or procedure to follow up. I would like to know your comments on that please.

MR DE FREITAS: That is exactly right, they make – all the right noises are made in the committee, you know, shock is expressed at what the auditor general presents to us and we are all in agreement, sure. And I can only agree with Makwetu what he is saying, it is quite right, but there
10 is no follow-up. You know, whenever you try and press, you know, let us really make some changes, it is as if they are hamstrung, there is a kind of culture to - you know, to kind of say we cannot really do anything about it, we have no powers. I just believe they do not know how much can be achieved in parliament if they only allow themselves to do so, but I suspect it is because of the party bosses, they have been given specific, you know, instructions and so they are following and that is a very sad state of affairs which then is one of the reasons why I am saying there
20 should be a system where political parties have various chairpersonships in committees because that will certainly bring it down and certainly will assist in, you know, even though there are instructions from a particular party, the chairperson of a committee could certainly drive issues anyway if they are from a different party.

ADV FREUND SC: I think you make the point in your submission, your written submission, when you are giving references to numerous parliaments in other foreign jurisdictions, one way or another do facilitate some degree of chairs being allocated of committees or their equivalents to members of opposition parties, this is not internationally unknown.

MR DE FREITAS: Yes. No, in fact it is very common, actually, it is more common than one would expect and
10 certainly it only strengthens democracy but the problem is, the ANC do not really make democracy, this is my comments, they believe that the ANC comes first and everything else comes second including the country and so as long as they are protecting their organisation and making sure that is their cadres that are protected and come first. That is all that matters. It is a very sad state of affairs.

ADV FREUND SC: Mr de Freitas, I have no further questions, thank you very much.

20 **MR DE FREITAS:** May I make, Advocate, may I make just one last comment before you let me go and that is the following. I am no longer a member of this portfolio committee but I watch with interest because I have been on the committee for a long time and I watch with interest what is going on in PRASA and there is more looting now

than ever before and in fact the Chairman of the board at the moment is a – he was a member of the committee and you have mentioned his name a few times throughout this interaction and his job is clear, it is to do the bidding of Luthuli House and to make sure that the looting continues. Only this week – and this is public knowledge in the newspapers – there were some officials that were fired by PRASA, the PRASA board, by the gentleman which I refer and those officials have saved PRASA billions.

10 They were the good guys and they are systematically purging all the good people and, you know, because these people were ensuring the right thing was being done, that the corruption was being exposed and, you know, PRASA was being fixed. And those very people that are doing the right thing are being fired and only this week in fact this happened.

 So there is no doubt that the looting is continuing and I am hoping that through what has happened here at the Commission, that the information that the information
20 that is exposed, will somehow start curtailing this hollowing out of Rail in South Africa. Thank you very much.

ADV FREUND SC: Thank you.

CHAIRPERSON: Thank you, Mr de Freitas. Certainly the last part you have told me, if really that is what is

happening and I did hear about the dismissal of somebody who has testified before this Commission. I think, from what I have heard, and it concerns me and it concerns me at different levels, one of which is the Commission is still busy and has not finalised inquiring into and hearing evidence about allegations of corruption and capture at PRASA and if your information is correct, it is just continuing and, as you say, then it is getting worse.

So there is the question of what it is that the
10 Commission can do if the executive is not doing the right thing? So it may well be that from the Commission's side it could take some steps to try and establish to what extent what you are saying may actually be the case but of course the Commission is nearing the end of its lifespan and a lot of its resources is directed at trying to complete the work.

Would you have quite some information relating to what is happening right now? I know that you said you are no longer involved, as such, but you still have that interest, would you have quite some information in terms of
20 details in regard to what makes you say it is actually worse now? Do you have that kind of information?

MR DE FREITAS: Yes I do and I will gladly pass it on if you require me.

CHAIRPERSON: Yes, if you could do that, if you pass it on to Advocate Freund, he will share it with me and if need

be it can be passed on to a member of the legal team who deals with PRASA together with another team in terms of the actual allegations of corruption and capture that may be happening there. But thank you very much, Mr de Freitas, for availing yourself to come and assist the Commission, we appreciate it very much. Thank you, you are now excused. Thank you. Mr Freund?

ADV FREUND SC: Chair, I had another witness.

CHAIRPERSON: Yes.

10 **ADV FREUND SC:** Who I had hoped to at least start and possibly complete today.

CHAIRPERSON: Yes.

ADV FREUND SC: He is still available but I am assuming that your view would be that we should adjourn around about now.

CHAIRPERSON: Well, it depends on a number of things. Tomorrow I know that in the morning or at some stage we should hear Mr Selfe in terms of the previous arrangement but he would not be long as far as I remember. Who else
20 or how many other witnesses are you lining up for tomorrow?

ADV FREUND SC: Well, Judge, a number, Mr Matt Johnston of OUTA will be the next witness. His affidavit is lengthy. I will do my best to be selective about what we present orally. After that I am expecting Mr Frolick

probably to testify and after that there are at least two further chairs of portfolio committees who would want an opportunity to answer some of the allegations that have been made and beyond that there are further witnesses but, I mean, we certainly will not get beyond what I might call the fact witnesses tomorrow.

CHAIRPERSON: Yes, ja. But in terms of fact witnesses, it is Mr Johnston, Johnson, Johnston? Then Mr Frolick, then Mr Selfe will just finish with his evidence, complete
10 his evidence.

ADV FREUND SC: Yes and then, in addition, we have Ms Magadzi.

CHAIRPERSON: Yes.

ADV FREUND SC: Who had been referred to today.

CHAIRPERSON: Ja.

ADV FREUND SC: And then you will recall that Mr Vincent Smith also wishes to testify.

CHAIRPERSON: Yes.

ADV FREUND SC: And I had hoped that we would hear
20 him in this current session.

CHAIRPERSON: This week. Yes.

ADV FREUND SC: So there are a lot of witnesses but it is a question of what is manageable.

CHAIRPERSON: Yes.

ADV FREUND SC: Now I have no difficulty, Chair, if you

are content to do so, start with Mr Johnston. His evidence will be quite lengthy. The difficulty with that is, that the arrangement is with Mr Selfe, that he will be the first witness tomorrow morning.

CHAIRPERSON: Yes.

ADV FREUND SC: So if we started with Mr Johnston, we would then need to interpose Mr Selfe and then go back to Mr Johnston but would at least have made some progress.

CHAIRPERSON: Yes.

10 **ADV FREUND SC:** But on the other hand, it is already six o'clock, we have been going for long today, so I am entirely in your hands and I mention Mr Johnston is also amenable depending on how you wish to do things.

CHAIRPERSON: I think if you break up what your estimate is in terms of hours of the remaining fact witnesses, what is your estimate? I am just thinking and obviously subject to your availability as well, I thinking whether there are some that we could hear in evening sessions next week on some of the days, those that we
20 cannot get to by end of tomorrow, if we do not finish them.

ADV FREUND SC: I obviously cannot speak for other persons' availabilities but my expectation, Chair, is that in all probability it would probably be possible to arrange several evening sessions in the course of next week and if that is convenient to you I imagine it would be possible to

fit in at least some of the fact witnesses. You will recall, Chair, that we also have at least four what we might call expert and proposals witnesses. We also have Ms Letsatsi-Dube who is a fact witness but who is not healthy at the moment. There is also the – what we anticipate to be the final witness to really speak from the leadership of the African National Congress on the oversight issues. So there is quite a bit more to be done.

CHAIRPERSON: Yes, yes.

10 **ADV FREUND SC:** And I am entirely in your hands as to how best you would prefer to deal with that and what hours you would want to operate.

CHAIRPERSON: Okay, just go back to the question of hours in terms of the fact witnesses again, what is your estimate of how long each one is likely to be?

ADV FREUND SC: These are obviously crude guesses.

CHAIRPERSON: Ja. No, I accept, ja.

ADV FREUND SC: Mr Selfe I would have thought no more than half an hour.

20 **CHAIRPERSON:** Ja, ja, ja.

ADV FREUND SC: Mr Johnston I would have thought probably two hours.

CHAIRPERSON: That is with Mr Johnston?

ADV FREUND SC: Mr Johnston.

CHAIRPERSON: Yes.

ADV FREUND SC: Because he covers so much terrain although I am only – I am going to focus on those parts of his affidavit that are not covered by other witnesses.

CHAIRPERSON: Yes, yes.

ADV FREUND SC: So two hours is fairly conservative in a sense that we should be able to make it in two hours, I would hope.

CHAIRPERSON: Okay.

ADV FREUND SC: Mr Frolick a minimum of an hour but I
10 would have thought longer.

CHAIRPERSON: Yes.

ADV FREUND SC: And the reason why I say that is because in the absence of the late former Speaker – former Chief Whip, Mr Frolick really is currently the most senior ANC witness other than the final witness who participates in parliament and who understands how things are seen from the perspective of senior ANC representatives. So I cannot see that we will be less than an hour, it may be two or three. Ms Magadzi, I would
20 imagine, relatively short, an hour should be enough.

CHAIRPERSON: Ja.

ADV FREUND SC: And Mr Smith, likewise I would have thought an hour should be enough.

CHAIRPERSON: Okay.

ADV FREUND SC: So those are my approximate

estimates of what we are currently are calling the facts witnesses available for this session.

CHAIRPERSON: So apart from Mr Selfe it is Mr Johnston, Mr Frolick, Mr Smith, Ms Magadzi. That is four.

ADV FREUND SC: Those are the ones, yes.

CHAIRPERSON: I think your estimates of how much time suggest to me that even making room for the fact that these are estimates, that if we were to start earlier than ten tomorrow and sit till like this time, we should – we have
10 a good chance of finishing the fact witnesses. What is your sense? That will give us about – let us say, for example, if we were to start at nine and go up to six, so that is ten, eleven, twelve one, I know there would be a tea break but that is four hours and then there is a lunch break. Then it is from two to three, that is five. From three to four, that is six hours and then if we go to six that is eight hours and we could go up to half past six and so on. What do you think?

ADV FREUND SC: Well, Judge, I certainly think that it is
20 possible that we may complete and that if we do not complete that the remainder would be much more manageable if we have to simply find a couple of hours in the evening or another evening.

CHAIRPERSON: Yes, yes.

ADV FREUND SC: I certainly have no difficulty with your

proposals.

CHAIRPERSON: Ja. No, no, that is fine, I think let us adjourn for now and let us start – or let us start at half past nine tomorrow but with a view that if need be we can go even up to seven in the evening. I am saying up to, if we all still feel quite energetic and we have to go beyond, I think I should be able to do that. Is that fine?

ADV FREUND SC: Certainly, Chair and obviously...

CHAIRPERSON: To the extent that there may be others,
10 whether from these fact witnesses or others that need to testify and they would be available on some evenings next week and they would not be too long, maybe two hours, three hours, we could look at next week to try and cover more evening sessions, ja.

ADV FREUND SC: That is certainly in order with me, Chair.

CHAIRPERSON: Yes. Okay, no, that is fine. Okay, I think let us adjourn then now and then tomorrow we start at half past nine. We adjourn.

20 **INQUIRY ADJOURNS TO 5 FEBRUARY 2021**